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Performance Enhancing Drugs in Baseball: A Legal and Moral Analysis

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Part I – A Legal Analysis

For as long as competition has existed, individuals have attempted to gain a leg up on their adversaries. This is especially true in the sport of baseball, which has seen a long history of such behavior. Whether this involved pitchers doctoring baseballs or hitters corking bats, enhancing ones performance through artificial means has always been an objective for some players. With the revelation that Baseball Hall of Famers Willie Mays and Hank Aaron used amphetamines as early as the 1960's, performance enhancing drugs (PEDs) have been in the game for around fifty years.¹ Of course when most people refer to baseball's "Steroid Era" they mean the period of time from the late 1980's until the mid-2000's, when anabolic steroid use pervaded the sport.² Major League Baseball has since cleaned up its act by instituting its Joint Drug Prevention and Treatment Program, but that hasn't stopped some players from using performance enhancing drugs in violation of federal law and baseball policy.³ Over the past decade baseball players have cheated, testified in front of Congress, lied to Congress, and have been tried for offenses related to their alleged use of performance enhancing drugs. These trials have ultimately proved fruitless as the government has failed to secure a perjury conviction while wasting large sums of taxpayer money in the process. Since Major League Baseball lacks subpoena power, there's only so much they can do to stop multi-millionaires who have the desire to gain any advantage they can.⁴ In the wake of a recent investigative report which has tied more than twenty MLB players to a Miami based anti-aging clinic, which

¹ T.J. Quinn, *The Hall of Fame: Why I Stopped Voting*, 2012, available at <http://espn.go.com/mlb/story> (last visited on May 14, 2013).

² George Mitchell, *Report to the Commissioner of Baseball of an Independent Investigation Into the Illegal Use of Steroids and Other Performance Enhancing Substances by Players in Major League Baseball*, 2007, available at <http://files.mlb.com/mitchrpt.pdf> (last visited on May 14, 2013).

³ See Mitchell, *supra* Note 2.

⁴ See Mitchell, *supra* Note 2.

was providing them with banned substances,⁵ it is appropriate to revisit the topic of performance enhancing drugs in baseball through a legal and moral analysis.

In order to properly evaluate possible future regulation of performance enhancing drugs in baseball, it is important to focus on the legal considerations of the past which gave rise to this current environment. The issue of performance enhancing drugs in baseball emerged after players had been organized into unions that engaged in collective bargaining under the umbrella of the National Labor Relations Act.⁶ The Major League Baseball Players Association (MLBPA) staunchly opposed initiatives taken by commissioners to address drug problems in the sport citing privacy concerns, both in regards to players who were found to have abused drugs (illegal narcotics and performance enhancing) and about a league institution of mandatory drug testing.⁷ The legal and contractual framework for collective bargaining furnished an effective base for the union and players to challenge these initiatives, as drug testing has been subject to collective bargaining in Major League Baseball since 1986.⁸ As a result, due to suspected anabolic steroid use by players, then-Commissioner Fay Vincent sent out a memo to each team and their players which prohibited the possession, sale, or use of any illegal drugs, including steroids.⁹ The memo did not include a drug testing program, because the MLBPA would have had to agree to this through collective bargaining, but it

⁵ Tim Elfrink, *A Miami Clinic Supplies Drugs to Sports' Biggest Names*, 2013, available at <http://www.miaminewtimes.com/2013-01-31/news/a-rod-and-doping-a-miami-clinic-supplies-drugs-to-sports-biggest-names> (last visited on May 14, 2013).

⁶ The decision that gave professional athletes their rights under labor law was rendered in a union certification application by umpires in THE AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS & ASS'N OF NATIONAL BASEBALL LEAGUE UMPIRES. National Labor Relations Board, 1969. 180 N.L.R.B. 190.

⁷ Paul Weiler & Gary Roberts, *Sports And The Law, Second Edition*.

⁸ See Mitchell, *supra* Note 2.

⁹ David Epstein, *The Rules, The Law, The Reality: A primer on baseball's steroid policy through the years*, 2009, available at <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1151761/> (last visited on May 14, 2013).

did set out treatment and penalty guidelines.¹⁰ The MLBPA, widely considered to be one of the strongest unions in the United States,¹¹ was able to successfully deflect subsequent talk of a drug testing program for over a decade after Fay Vincent altered baseball's drug policy to include prohibiting anabolic steroids.¹²

Anabolic steroids are listed as controlled substances under the Federal Controlled Substances Act.¹³ Since 2004, the dietary supplement androstenedione and other steroid precursors have been as well.¹⁴ That means that it is illegal to use or possess steroids without a valid physician's prescription. Violations of this law carry penalties similar to those applicable to the illegal use or possession of narcotics.¹⁵ Human Growth Hormone (HGH) is a prescription medication.¹⁶ It is illegal to use a prescription for HGH except for very limited purposes.¹⁷ HGH has never been approved for cosmetic or anti-aging uses, or to improve athletic performance.¹⁸ Issuing a prescription for HGH for any of these unauthorized purposes is a violation of federal law.¹⁹ It defies logic that there was not mandatory random drug testing in baseball until the 2002 Basic Agreement, when it was accepted through collective bargaining between the MLBPA and Major League Baseball. Essentially, the opposition by the player's union delayed the adoption of mandatory random drug testing in Major League Baseball for nearly twenty years.²⁰ It

¹⁰ See Mitchell, *supra* Note 2.

¹¹ Major League Baseball Players Association, available at <http://mlb.mlb.com/pa/info/history.jsp> (last visited on May 14, 2013).

¹² See Mitchell, *supra* Note 2.

¹³ See Mitchell, *supra* Note 2.

¹⁴ Steroid precursors, while not technically a steroid, essentially functions as an anabolic steroid once it is ingested.

¹⁵ See Mitchell, *supra* Note 2.

¹⁶ See Mitchell, *supra* Note 2.

¹⁷ See Mitchell, *supra* Note 2.

¹⁸ See Mitchell, *supra* Note 2.

¹⁹ See Mitchell, *supra* Note 2.

²⁰ See Mitchell, *supra* Note 2.

was only after the players, the union, and Major League Baseball felt external pressure, brought about from the negative publicity generated by the steroid era, that drug testing was adopted and an independent investigation into steroid use in baseball was conducted by former Senator George Mitchell.

The steroid era was in part fostered and cultivated by Major League Baseball turning a blind eye to the offenses that were taking place even though, in retrospect, they should have been apparent.²¹ Baseball lost many of its diehard fans after a work stoppage resulted in the cancelation of the end of the 1994 season, including the postseason and World Series.²² There was widespread outrage in the sports world and amongst fans in general. As a result, Major League Baseball was desperate to get back in everyone's good graces. They found an opportunity to capitalize on, with Mark McGwire's and Sammy Sosa's pursuit of Roger Maris' single-season homerun record in 1998.²³ Mark McGwire was known as a slugger after he smacked 49 homeruns in his rookie season in 1987 for the Oakland Athletics.²⁴ He and teammate Jose Canseco were referred to as the "Bash Brothers" for their muscle-bound, power-hitting ways.²⁵ In 1988, Canseco was the subject of the first media speculation about a Major League Baseball player using steroids but for the most part the general public was kept in the dark about any serious suspicions of PED use in baseball.²⁶ Sammy Sosa on the other hand began his career as a light-hitting speedy outfielder. In 1992 he hit only eight homeruns, but after that went on to have five consecutive seasons of at least 25 homeruns with the Chicago Cubs prior to

²¹ See Mitchell, *supra* Note 2.

²² It marked the first time since 1904 that a World Series was not played.

²³ Greg Bishop, *After Drug Revelations Redefining '98 Homerun Chase*, 2009, available at <http://www.nytimes.com/2009/07/05/sports/baseball> (last visited on May 14, 2013).

²⁴ Mark McGwire Statistics and History - Baseball Reference, available at <http://www.baseball-reference.com/players/m/mcgwima01.shtml> (last visited on May 14, 2013).

²⁵ Jose Canseco, *Juiced: Wild Times, Rampant 'Roids, Smash Hits, And How Baseball Got Big*, (2005).

²⁶ See Mitchell, *supra* Note 2.

the 1998 season.²⁷ The McGwire-Sosa homerun race of 1998 captivated the nation, as they hit 70 and 66 respectively, and engendered much needed goodwill towards baseball because of their “sportsmanship” throughout the summer.²⁸ Others were less enthused by what McGwire and Sosa had accomplished in 1998.

According to a book released in early 2006, *Game of Shadows: Barry Bonds, BALCO, and the Steroids Scandal that Rocked Professional Sports*, Barry Bonds was convinced that the performances of McGwire and Sosa were aided by steroids.²⁹ After all a container of androstenedione (andro), a then-legal steroid precursor, was discovered in McGwire’s locker that summer.³⁰ Bonds, widely considered to be one of the most complete players in baseball for almost his entire career, was jealous of the attention two players inferior to him were getting because of their use of performance enhancing drugs.³¹ As a result, a player who had previously been clean for his entire career turned to steroid use. The book also contained reports linking Bonds to the Bay Area Laboratory Co-Operative (BALCO), a San Francisco company that had been identified as a major hub for steroids and other PEDs.³² BALCO founder, Victor Conte, created designer steroids which were so new that they were undetectable by drug testing.³³ These were there ones used by Barry Bonds which enabled him to surpass Mark McGwire’s single-season homerun record in 2001 by hitting 73 homeruns and to break one of the

²⁷ Sammy Sosa Statistics and History - Baseball Reference, available at <http://www.baseball-reference.com/players/s/sosasa01.shtml> (last visited on May 14, 2013).

²⁸ See Bishop, *supra* Note 23.

²⁹ Mark Fainaru-Wada & Lance Williams, *Game of Shadows* (2006).

³⁰ Joshua H. Whitman, *Winning at All Costs: Using Law & Economics to Determine the Proper Role of Government in Regulating the Use of Performance Enhancing Drugs in Professional Sports*, University of Illinois Law Review (2007).

³¹ Mark Fainaru-Wada & Lance Williams, *Game of Shadows* (2006).

³² See Whitman, *supra* Note 30.

³³ Teri Thompson, *As Barry Bonds goes to trial, BALCO founder Victor Conte finds redemption, success*, 2011, available at <http://www.nydailynews.com/sports/barry-bonds-trial-balco-founder-victor-conte-finds-redemption-success-article-1.139977> (last visited on May 14, 2013).

most cherished records in all of baseball, Hank Aaron's Major League homerun record.³⁴ BALCO's facilities were raided by federal agents in the summer of 2003 which resulted in a grand jury probe of Victor Conte.³⁵ Bonds, who was linked to Conte through the records seized in the raid, was subpoenaed to testify. Federal prosecutors believed Bonds had perjured himself in front of the grand jury in December of 2003, by offering misleading statements and lying about his personal use of steroids, and charged him with obstruction of justice and perjury in November of 2007.³⁶ In April of 2011 Bonds was found guilty of obstruction of justice, but a mistrial was declared as to the three perjury counts he faced.³⁷ The judgment was considered a failure for the government because of the expense to taxpayers and the squandering of resources which resulted in the decision to not retry Bonds.³⁸

It became apparent to Major League Baseball that something needed to be done as the league was seeing prodigious offensive numbers that had never been witnessed before in the game, aided by performance enhancing drugs. In 2001, baseball instituted the Minor League Drug Prevention and Treatment Program.³⁹ Under the program, minor league players were prohibited from using, selling, or distributing drugs of abuse or anabolic steroids.⁴⁰ Since collective bargaining did not apply to players in the minor leagues, because they were not members of the MLBPA, baseball was also able to

³⁴ See Mitchell, *supra* Note 2.

³⁵ See Mitchell, *supra* Note 2.

³⁶ ESPN, *Barry Bonds indicted on perjury, obstruction charges*, 2007, available at <http://sports.espn.go.com/mlb/news/story?id=3112487> (last visited on May 14, 2013).

³⁷ ESPN, *Barry Bonds found guilty of obstruction*, 2011, available at <http://sports.espn.go.com/mlb/news/story?id=6347014> (last visited on May 14, 2013).

³⁸ CNN, *Feds: No retrial for Barry Bonds on perjury charges*, 2011, available at <http://edition.cnn.com/2011/SPORT/08/31/barry.bonds.no.retrial/index.html> (last visited on May 14, 2013).

³⁹ See Mitchell, *supra* Note 2.

⁴⁰ See Mitchell, *supra* Note 2.

mandate in-season testing. The program implemented a system of random urine testing for prohibited substances, subjecting each player to up to three random tests per year in addition to any “reasonable cause” testing that might be justified in the case of any player.⁴¹ Two rounds of in-season testing were conducted on minor league players in 2001, resulting in positive tests for steroids in 9.1% of tests.⁴² That program was used as the basis for Commissioner Selig’s 2002 proposal to the MLBPA for a major league program.

The MLBPA and the clubs negotiated the terms of the Joint Drug Prevention and Treatment Program as part of the 2002 Basic Agreement, and the terms of the original minor league proposal include many of the same elements that are in place in Major League Baseball’s testing program today.⁴³ It provided for the possibility of mandatory random testing of all major league players if more than 5% of players tested positive for steroids during anonymous survey testing in 2003.⁴⁴ After that did occur, mandatory random drug testing began in Major League Baseball in 2004. This was not a panacea as player’s began switching from steroids which were detectable in drug tests to those that weren’t, such as HGH. To remedy this, several changes were made to the drug program in subsequent years. HGH was added to the prohibited substance list in 2005 and random blood testing for HGH began in January of 2013, which was a huge accomplishment as that also had to be collectively bargained.⁴⁵ The penalty for a positive test was also tweaked. When the program first started the punishment was a 10 day suspension for a

⁴¹ See Mitchell, *supra* Note 2.

⁴² See Mitchell, *supra* Note 2.

⁴³ See Mitchell, *supra* Note 2.

⁴⁴ See Mitchell, *supra* Note 2.

⁴⁵ Scott Boeck, *MLB: In season HGH testing, an eye on testosterone use*, 2013, available at <http://www.usatoday.com/story/sports/mlb/2013/01/10/mlb-expands-drug-testing-program-hgh-in-season-testing/1823607/> (last visited on May 14, 2013).

first offense, 30 day suspension for a second offense, 60 day suspension for a third offense, one year suspension for a fourth offense, and the penalty for a fifth offense was up to the commissioner's discretion.⁴⁶ Now the penalty is a 50-game suspension for a first offense, a 100-game suspension for a second offense, and a third offense results in a lifetime ban from Major League Baseball.⁴⁷ A positive test for amphetamines results in a 25-game suspension, where amphetamines were not part of the original drug agreement.⁴⁸ The penalties for positive drug tests under the major league program are the strongest in major U.S. professional sports leagues.⁴⁹ These changes were largely brought about as a result of congressional hearings which put pressure on Major League Baseball, the players, and executives from the player's union.

In 2005, congressional committees held several highly publicized hearings featuring testimony from prominent sports figures due to growing public scrutiny. In addition, congressional members introduced various bills in both the House of Representatives and the Senate proposing government action to alleviate the problem of PEDs in sports.⁵⁰ These legislative proposals called for mandatory testing of professional athletes and would have removed any bargaining power or discretion from the hands of the individual leagues, their executives, and their players' unions. One such proposal, the Drug Free Sports Act, called for a federal drug testing policy under the auspices of the Secretary of Commerce which would have governed all professional sports in the United

⁴⁶ See Mitchell, *supra* Note 2.

⁴⁷ See Mitchell, *supra* Note 2.

⁴⁸ MLB News, *MLB, union agree to stricter drug testing policy*, 2005, available at http://mlb.mlb.com/news/article.jsp?ymd=20051115&content_id=1268529 (last visited on May 14, 2013).

⁴⁹ See Mitchell, *supra* Note 2.

⁵⁰ See Whitman, *supra* Note 30.

States.⁵¹ Another proposal, the Clean Sports Act of 2005, would have mandated at least five drug tests per year and attempted to put control of the program under the Director of the White House Office of National Drug Control Policy.⁵² Congress also invited several baseball stars of the past and present to testify including Mark McGwire, Sammy Sosa, Curt Schilling, and Rafael Palmeiro.⁵³ During the hearings, Mark McGwire stated that he “was not here to talk about the past.”⁵⁴ McGwire later admitted to using steroids in January of 2011. Sammy Sosa testified that he did not use steroids but also conveniently had trouble remembering how to speak the English language during the proceedings. Rafael Palmeiro infamously waved his finger in front of Congress and stated unequivocally “I have never used steroids, period!”⁵⁵ Only months later, he tested positive for steroids and served a 10 day suspension for a first offense of the Joint Drug Agreement.⁵⁶ The hearings also included testimony from parents of two young baseball players who committed suicide after abusing anabolic steroids. Don Hooton created the Taylor Hooton Foundation for Fighting Steroid Abuse in memory of his son.⁵⁷ Dr. Denise Garibaldi, a psychologist, and her husband Ray Garibaldi offered testimony about their son Rob, who began using steroids at age eighteen and committed suicide while in a steroid-aided depression at the age of twenty-four.⁵⁸ Overall, the congressional hearings did not paint Major League Baseball and its players in a kind light. As a result, Commissioner Bud Selig charged former Senator George Mitchell with conducting an

⁵¹ Drug Free Sports Act, H.R. 3084, 109th Cong. (2005).

⁵² Clean Sports Act of 2005, S. 1114, 109th Cong. (2005).

⁵³ See Mitchell, *supra* Note 2.

⁵⁴ CNN, *McGwire mum on steroids in hearing*, 2005, available at <http://edition.cnn.com/2005/ALLPOLITICS/03/17/steroids.baseball> (last visited on May 14, 2013).

⁵⁵ YouTube, available at <http://www.youtube.com/watch?v=kAxo4pCITRM> (last visited on May 14, 2013).

⁵⁶ See Mitchell, *supra* Note 2.

⁵⁷ See Mitchell, *supra* Note 2.

⁵⁸ See Whitman, *supra* Note 30.

independent investigation into the illegal use of steroids and other performance enhancing substances by players in Major League Baseball.

While this move by Commissioner Selig appears to have been self-serving, as he no doubt commissioned the Mitchell Report with the intent of appeasing Congress and ensuring that the proposed legislation did not impact his autonomy, Senator Mitchell's findings and recommendations have been utilized in the administration of the Joint Drug Prevention and Treatment Program. Since the investigation was commissioned at the behest of Bud Selig, Senator Mitchell did not have subpoena power.⁵⁹ However, he did have enough influence with federal authorities that he was able to interview certain persons who had dealt or administered steroids to prominent baseball players. These individuals were compelled to talk with Senator Mitchell, as any deals they made in cooperating with federal authorities would have been off the table if they did not speak with or provide truthful testimony to the Senator.⁶⁰ The Mitchell Report named names and identified ninety individual players who engaged in the use of performance enhancing drugs.⁶¹ One of the baseball players named in the report was Roger Clemens, who up until that point was a sure fire Hall of Fame pitcher. Roger Clemens fervently denied that he had ever used steroids and even testified in front of Congress to as much in February of 2008.⁶² The bipartisan House committee in front of which Clemens appeared, cited seven apparent inconsistencies in his testimony, and recommended that the Justice Department investigate whether Clemens lied under oath about using PEDs. Clemens was indicted on one count of obstruction of Congress, three counts of making

⁵⁹ See Mitchell, *supra* Note 2.

⁶⁰ See Mitchell, *supra* Note 2.

⁶¹ See Mitchell, *supra* Note 2.

⁶² NBCSports, *Clemens, McNamee get grilled by Congress*, 2008, available at <http://nbcsports.msnbc.com/id/23119245/> (last viewed on May 14, 2013).

false statements, and two counts of perjury.⁶³ His first trial began in July of 2011, but on the second day a mistrial was declared due to prosecutorial misconduct after prejudicial evidence was shown to the jury.⁶⁴ The verdict from his second trial came in June of 2012 when he was found not guilty on all six counts he faced in relation to his alleged false testimony in front of Congress.⁶⁵ Again, as with Barry Bond's trial, there was public outrage that federal prosecutors had wasted taxpayer money, in the middle of a recession, in their failed pursuit of a conviction of an athlete who had lied about using performance enhancing drugs.

In the years after the Mitchell Report was released, the game of baseball witnessed a stabilizing effect in the amount of offense being produced league wide, indicating that the Joint Drug Agreement had begun to achieve its desired outcome of eliminating performance enhancing drug use in the sport. However, the newest steroid scandal to hit baseball has shown that PED use is a problem that will likely persist well into the future. On January 29, 2013 the Miami New Times reported the findings of their investigation into an anti-aging clinic called Biogenesis. The report linked some high-profile players to the clinic, which was dispensing and distributing PEDs to them under the direction of Biogenesis founder Tony Bosch.⁶⁶ In the months that followed it was reported that up to ninety players were linked to the clinic through records obtained by

⁶³ Michael Schmidt, *Clemens Lied About Doping, Indictment Charges*, 2010, available at <http://www.nytimes.com/2010/08/20/sports/baseball/20clemens.html> (last viewed on May 14, 2013).

⁶⁴ ESPN, *Mistrial ruled in Roger Clemens case*, 2011, available at http://espn.go.com/mlb/story/_/id/6768825/roger-clemens-trial-judge-declares-mistrial (last viewed on May 14, 2013).

⁶⁵ ESPN, *Roger Clemens found not guilty*, 2011, available at http://espn.go.com/mlb/story/_/id/8068819/roger-clemens-found-not-guilty-all-six-counts-perjury-trial (last viewed on May 14, 2013).

⁶⁶ ESPN, *MLB investigating region in PED war*, 2013, available at http://espn.go.com/espn/otl/story/_/id/8884955/mlb-investigating-south-florida-ground-zero-ped-war (last viewed on May 14, 2013).

Major League Baseball from former Biogenesis employees. Some of the players named in the report include Melky Cabrera, Alex Rodriguez, and Ryan Braun.⁶⁷ Melky Cabrera served a 50-game suspension last summer for having elevated levels of testosterone in his system. After being made aware of his failed test, he created a fake website advertising a product which he claimed he used, unaware of the fact that it contained testosterone. Major League Baseball investigated his claims, found them to be false, and suspended him.⁶⁸ The Melky Cabrera saga initiated the investigation of Biogenesis by the Miami New Times because his co-conspirator in the fake website scheme had ties to the clinic. Alex Rodriguez, a three-time American League Most Valuable Player, was linked to PEDs when the results of his positive test from 2003 was leaked to the media.⁶⁹ The test in question was supposed to be anonymous, as this survey testing was conducted in order to determine if Major League Baseball needed to institute a mandatory drug testing program.⁷⁰ He admitted to using performance enhancing drugs as a result, but only from 2001 until 2003. This admission came prior to the news of the Biogenesis scandal. It is entirely possible that Alex Rodriguez has used steroids for his entire career which enabled him to secure two 10-year contracts worth a combined \$527 million.⁷¹ It was also recently reported that Alex Rodriguez purchased records implicating him in the scandal from the same former Biogenesis employees that sold information to Major

⁶⁷ Bob Nightengale, *MLB sets sights on Braun, A-Rod*, 2013, available at <http://www.usatoday.com/story/sports/mlb/2013/03/19/ryan-braun-remains-calm-amid-drug-firestorm/2001581/> (last visited on May 14, 2013).

⁶⁸ ESPN, *Melky Cabrera eyed for failed plot?*, 2012, available at http://espn.go.com/mlb/story/_/id/8282185/san-francisco-giants-melky-cabrera-launched-fake-website-ruse-report-says (last visited on May 14, 2013).

⁶⁹ See Elfrink *supra* Note 5.

⁷⁰ See Mitchell, *supra* Note 2.

⁷¹ ESPN, *Rodriguez finalizes \$275 million deal with Yankees*, 2007, available at <http://sports.espn.go.com/mlb/news/story?id=3153171> (last visited on May 14, 2013).

League Baseball.⁷² Ryan Braun, the National League Most Valuable Player in 2011, was going to be suspended for 50 games after an October 2011 test indicated extremely high levels of testosterone in his system.⁷³ An arbitration panel voted to sustain a grievance filed by Braun challenging the chain of custody procedures used in Major League Baseball's Joint Drug Prevention and Treatment Program.⁷⁴ After learning that his name was listed in the Biogenesis documents for services rendered, Braun claimed that he and his lawyers had consulted with Tony Bosch while preparing the defense for his successful grievance.⁷⁵ It remains to be seen whether these upstanding individuals will be disciplined under Major League Baseball's Joint Drug Agreement.

It is important to note that federal authorities did not play a role in uncovering the Biogenesis scandal. While Major League Baseball urged the authorities to get involved, they took no action. A lack of subpoena power makes it extremely unlikely Major League Baseball will discipline players involved in the Biogenesis scandal because they have not tested positive under the Joint Drug Agreement. Major League Baseball has yet to interrogate any of the players implicated in the Biogenesis reports but is likely to in the near future⁷⁶. If the players refuse to talk to MLB officials, the league can suspend them per the bylaws of the collective bargaining agreement. Players could be granted immunity even if they admit guilt to the use of performance enhancing drugs. In this case, the players would have to fully disclose their arrangement with Tony Bosch, including any involvement by their agents or knowledge of any other player who

⁷² NY Daily News, available at <http://www.nydailynews.com/sports/i-team/sources-a-rod-bought-biogenesis-documents-article-1.1315322> (last visited on May 14, 2013).

⁷³ See Nightengale *supra* 67.

⁷⁴ See Nightengale *supra* 67.

⁷⁵ See Nightengale *supra* 67.

⁷⁶ See Nightengale *supra* 67.

received PEDs from him.⁷⁷ This could wind up being Major League Baseball's only way to obtain evidence out of players listed in the records. While Major League Baseball did purchase the records from former Biogenesis employees, without player testimony or a positive test under the Joint Drug Agreement, any discipline the league plans to hand down against MLB players or agents will assuredly be challenged by the Major League Baseball Player's Association. It must be really frustrating for the league to have all of this evidence that more than ninety players were involved in the Biogenesis scandal, yet they will most likely be powerless to discipline these individuals. It behooves Congress to become involved in the regulation of performance enhancing drugs in baseball as it would benefit the sport, the players, and society at large.

The deleterious effects of performance enhancing drug use are wide ranging and justify governmental regulation. The sport of baseball is a multi-billion dollar industry and as a result would fall within the influence of Congress and the Interstate Commerce Clause. Due to the complex issues that arise from steroid use in Major League Baseball, Congress would be in the optimal position to finally eradicate the sport of PEDs. In order to do so, Congress would have to remove drug testing from the grasp of collective bargaining and put it within the purview of federal regulators. They could go about this by amending the National Labor Relations Act to remove employee drug testing from the list of mandatory bargaining subjects, at least in the limited context of professional sports, and instead institute its own set of PED procedures and punishments.⁷⁸ Some are loathe to have Congress attempt to get involved in anything, as they prefer small government, while others argue that there should be no ban on performance enhancing

⁷⁷ See Nightengale *supra* 67.

⁷⁸ See Whitman *supra* 30.

drugs in baseball at all. This laissez faire attitude misses the point entirely as there is indeed a performance enhancing drug epidemic.

The regulation of performance enhancing drugs represents a compelling governmental interest and poses a public health concern. The illegal use of these substances to improve athletic performance carries with it potentially serious negative side effects on the human body.⁷⁹ Steroid users place themselves at risk for psychiatric problems, cardiovascular and liver damage, drastic changes to their reproductive systems, musculoskeletal injury, and other problems.⁸⁰ Users of human growth hormone risk cancer, harm to their reproductive health, cardiac and thyroid problems, and overgrowth of bone and connective tissue.⁸¹ Those baseball players who engage in steroid use don't only harm themselves; they can also negatively influence the young athletes who try to emulate them.

The nation's youth will always treat professional athletes as role models and as such the impact of performance enhancing drug use by baseball players cannot be overstated. Because adolescents are already subject to significant hormonal changes, the use of steroids and other performance enhancing substances can have more serious effects on them than they have on adults.⁸² It is estimated that between 3 to 6 percent of high school students engage in steroid use.⁸³ Even though that might seem like a small amount, it means that hundreds of thousands of high-school aged youths are engaging in

⁷⁹ See Mitchell, *supra* Note 2.

⁸⁰ See Mitchell, *supra* Note 2.

⁸¹ See Mitchell, *supra* Note 2.

⁸² *Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use: Hearing Before the H. Comm. On Gov't Reform*, 109th Cong. 307 (2005).

⁸³ See Mitchell, *supra* Note 2.

the use of illegal PEDs.⁸⁴ Rob Garibaldi, who committed suicide after abusing steroids, stated the following to his father Ray who testified in front of Congress, “I’m a baseball player, baseball players take steroids. How do you think Bonds hits all his homeruns? How do you think all those guys do all this stuff?”⁸⁵ Don Hooton, whose son Taylor also committed suicide as a result of steroid abuse, stated the following in his 2005 congressional testimony “Our youngsters hear the message loud and clear, and it’s wrong. If you would want to achieve your goal, it’s OK to use steroids to get you there, because the pros are doing it.”⁸⁶ If baseball players believe they need performance enhancing drugs to make themselves better, then young athletes are going to assume the same thing. Teens often focus only on the results, not the ethical dilemmas or health problems by the shortcuts used to achieve them.⁸⁷ Health, both of Major League Baseball players and young athletes, which represents the greatest concern is not the only factor to consider.

Performance enhancing drug use in baseball poses a serious threat to the integrity of the game and victimizes the majority of baseball players who remain clean. The integrity of the game is called into question because we no longer know whether achievements were accomplished through hard work or through artificial means. Baseball records, which once held significant meaning, are now tainted as we often cannot tell which players engaged in PED use. This casts suspicion on all baseball players, even the ones who remained clean and should be applauded for their hard work and morals. A September 2000 study by the National Center on Addiction and Substance

⁸⁴ See Mitchell, *supra* Note 2.

⁸⁵ See Whitman, *supra* Note 30.

⁸⁶ See Mitchell, *supra* Note 2.

⁸⁷ See Whitman, *supra* Note 30.

Abuse observed that clean athletes face three choices: (1) compete without performance enhancing substances, knowing that they may lose to competitors with fewer scruples; (2) abandon their quest because they are unwilling to use performance enhancing substances to achieve a desired competitive advantage; or (3) use performance enhancing substances to level the playing field.⁸⁸ Not only are baseball players benefiting through their PED use, as they are signing massive contracts and endorsement deals, the players that are remaining clean are being significantly disadvantaged. Their statistics are being lessened by the PED users, which reduces their potential to sign huge contracts and endorsement deals. They may also be losing their livelihoods as dirty players may be taking roster spots from them. Overall, the integrity of the game or lack thereof, has been severely impacted by those baseball players who use PEDs.

It is clear that performance enhancing drug in baseball use has negatively impacted the common good. The two most important values which are forsaken when baseball players engage in steroid use include life and fair play. The lives of both the athletes who engage in PED use as well as those young athletes who look up to them are in danger. Fair play, which is essential to the integrity of the game is being challenged. In formulating a moral analysis, which considers all of the relevant factors in eradicating performance enhancing drugs from the game of baseball, it is appropriate to analyze the work of natural law theorist John Finnis.

⁸⁸ See Mitchell, *supra* Note 2.

Part II – A Moral Analysis

John Finnis is an Australian legal scholar and philosopher, specializing in the philosophy of law. He is known for his work in moral, political and legal theory, as well as constitutional law. He is Professor of Law at Oxford University and the University of Notre Dame and teaches courses in Jurisprudence, in the Social, Political and Legal Theory of Thomas Aquinas and the Social, Political and Legal Theory of Shakespeare.⁸⁹ Finnis was educated at St. Peter's College and the University of Adelaide, where he was a member of St. Mark's College. He earned his LL.B. there, winning a Rhodes scholarship to Oxford University in 1962, where he obtained his D.Phil. for a thesis on the concept of judicial power.⁹⁰

His work, *Natural Law and Natural Rights* (1980), is regarded as one of the definitive works of natural law philosophy. It confronts moral skepticism by using contemporary analytical tools to provide basic accounts of values and principles, community and “common good,” justice and human rights, authority, law, the varieties of obligation, unjust law, and the question of divine authority.⁹¹ In it, Finnis contends that there are seven irreducible, fundamental, basic, universal goods or values. These are life, knowledge, friendship, play, aesthetic experience, religion and practical reason. Finnis maintains that each of the basic or universal goods or values are intrinsic goods, worth having for their own sake, and not as a means of obtaining other goods. He believes that it is self-evident that these are all equally and intrinsically valuable and that the pursuit of

⁸⁹ The University of Notre Dame Law School, Staff and Faculty, available at <https://law.nd.edu/directory/john-finnis> (last visited on May 14, 2013).

⁹⁰ Oxford Law Staff and Professors, available at <https://law.nd.edu/directory/john-finnis> (last visited on May 14, 2013).

⁹¹ Oxford University Press, available at <http://www.oup.com/us/catalog/general/subject/Law/jurisprudence> (last visited on May 14, 2013).

these values exhausts the ultimate reasons one could have for action.⁹²

Finnis also sets out the nine requirements of practical reasonableness that are the basis for morality. These are to form a coherent plan of life, to show no arbitrary preferences amongst the values, to show no arbitrary preferences amongst persons, to maintain some detachments from all the specific projects one undertakes, not to abandon one's commitments lightly, to pursue the good efficiently and within reason, to respect every basic value in every act, to foster the common good of one's communities, and to act in accordance with one's conscience. In order to pursue one's own good successfully, one must satisfy these requirements. All the requirements are interrelated and are capable of being regarded as aspects of one another. Not every one of the nine requirements has a direct role in every moral judgment, but some moral judgments do sum up the bearing of all of the nine requirements of practical reasonableness. Every moral judgment sums up the bearing of one or more of the requirements and each of the requirements can be thought of as a mode of moral obligation or responsibility.⁹³

The first requirement of practical reasonableness is a coherent life plan. Basic aspects of human well-being are discernible only to one who thinks about his opportunities, and thus are realizable only by one who intelligently directs, focuses, and controls his urges, inclinations, and impulses. In order to fulfill effective commitments, it is unreasonable to live merely from moment to moment, following immediate cravings or just drifting from one commitment to the other.⁹⁴ Finnis states that it is irrational to devote one's attention exclusively to specific projects which can be carried out completely by simply deploying defined means to defined objectives. It is necessary for

⁹² John Finnis, *Natural Law and Natural Rights*, page 105

⁹³ *Id.* at 105

⁹⁴ *Id.* at 103

individuals to have both direction and control over their impulses in the undertaking of specific projects. Individuals also require the redirection of inclinations, the reformation of habits, the abandonment of old projects for the adoption of new ones, and the overall harmonization of all of one's deep commitments.⁹⁵

Finnis states that we should see our life as one whole, the activities of one rational subject spread out in time. He uses the Christian parable of the man who devoted all his energies to gathering riches, with a view to nothing more than drinking and eating them up as an example of a folly and how not to live.⁹⁶ Finnis would criticize those baseball players who engage in the use of performance enhancing drugs simply to boost their numbers in an effort to sign a big money contract or earn huge endorsement deals. He would say that these individuals are clearly not controlling their impulses and are being unreasonable in that they are living from moment to moment and being driving by immediate cravings of fame and fortune. If these baseball players were viewing their lives as a whole instead of in the moment they would realize they were being irrational by using PEDs. Not only would they be risking their health and happiness given the deleterious effects of prolonged steroid use, they would also be risking their reputation which could be tarnished if their drug use became public knowledge. Instead of simply using steroids to improve their performance and become wealthy, baseball players should utilize a coherent life plan through constant mental and physical training. This would allow them to harmonize their commitments to their team, the public who view them as role models, as well as to their families and themselves.

The second requirement of practical reasonableness is that there must be no

⁹⁵ *Id.* at 105

⁹⁶ *Id.*

arbitrary preferences amongst values. “Arbitrary” is the key word in this portion of his theory. Finnis recognizes that any commitment to a coherent life plan is going to involve some degree of concentration on one or some of the basic forms of good, at the expense, temporarily or permanently, of other forms of good. “It will be unreasonable if it is on the basis of a devaluation of any of the basic forms of human excellence, or if it is on the basis of an overvaluation of such merely derivative and supporting or instrumental goods as wealth or ‘opportunity’ or of such merely secondary and conditionally valuable goods as reputation or pleasure.”⁹⁷ Finnis uses the example of a scholar, who has little interest in friendship, and how it would be unreasonable for him to deny that friendship, in and of itself, is good even though that scholar has no taste for friendship. By espousing this, Finnis rejects John Rawls’s “thin theory of the good” which states that, in selecting principles of justice, only liberty, opportunity, wealth and self-respect must be treated as primary goods. Rawls believes that one must not attribute intrinsic value to such basic forms of good as truth, or play, or art, or friendship.⁹⁸ Finnis believes the “thin theory of the good” to be arbitrary and as a result formulated the second requirement of practical reasonableness.

In terms of performance enhancing drugs in baseball, athletes who use steroids are overvaluing wealth and opportunity at the expense of reputation and pleasure, and as a result are being unreasonable. Players who use PEDs do so in order to boost their statistics, either to take them from an average level of performance and turn them into a superstar or from a minor league or bench role and give them the opportunity to play everyday. This PED use will ultimately impact their reputation and pleasure. At the

⁹⁷ *Id.* at 105

⁹⁸ *Id.* at 106

same time these players are rejecting forms of good such as truth, play, and friendship by seeking principles of justice espoused by John Rawls in the “thin theory of the good.” By using steroids players are rejecting truth and fair play because their statistics have been artificially inflated through dishonest and prohibited means. In attempting to gain an advantage, they have arbitrarily preferred wealth. While some players engage in PED use to provide themselves with a greater opportunity, they are doing so at the expense of other players who have not used steroids, thus foregoing friendship. The players who have not used steroids and have gone about their business honestly ultimately have not arbitrarily preferred some values over other ones. They would undoubtedly be upset that they lost out on wealth and opportunity to those who decide to cheat. PED users who have little interest in truth, play, or friendship would also be unreasonable if they were to deny that truth, fair play, and friendship were good. Ultimately, it would be unreasonable for them to deny that players who don’t use performance enhancing drugs are better men than they are which is in keeping with Finnis’ second requirement of practical reasonableness.

After asserting that there must be no arbitrary preferences amongst values, Finnis’ third requirement of practical reasonableness states that there must be no arbitrary preferences amongst persons. Finnis tells us that we should not prefer one person over another. He goes on to state, “Another person’s survival, his coming to know, his creativity, his all-around flourishing may in any event be beyond my power to affect. But have I any reason to deny that they are really good, or that they are fit of matters of interest, concern and favor by that man and by all those who have to do with him?”⁹⁹ In other words, an individual’s well-being is not more valuable than another’s simply

⁹⁹ *Id.* at 106

because it is theirs. The only reason for an individual to prefer their well-being over another's is through their self-determined and self-realizing participation in the basic goods that reasonableness suggests and requires. When an allowance is made for this, double standards and hypocrisy persist. The solution for this lies within the principles of the "Golden Rule" and involves individuals putting themselves in their neighbor's shoes and not condemning others for what said individual is willing to do to themselves. "These are requirements of reason, because to ignore them is to be arbitrary between individuals." Finnis goes on to state that, "Provided we make the distinctions between basic practical principles and mere matters of taste, inclination, or ability we are able to favor the basic forms of good and to avoid and discourage their contraries. In doing so we are showing no improper favor to individuals."¹⁰⁰

This applies to the issue of PEDs in baseball because steroid users, and those who defend steroid users, have been quick to point out that they were not the only ones using during baseball's steroid error. The "everyone was doing it" defense takes away from those baseball players who have not used steroids and are self-interested claims meant to deflect blame onto others. There is no reason for steroid users to prefer their well-being over those of others because they have not engaged in the basic goods that reasonableness suggests and requires. They should put themselves in the shoes of the clean players and see how they would like competing against individuals who were cheating and trying to take away their livelihoods through prohibited means.

This also applies to the government in their pursuit of PED enthusiasts who allegedly perjured themselves in regards to their steroid use. Both Barry Bonds and Roger Clemens represented potential big gets for federal prosecutors as they were their

¹⁰⁰ *Id.* at 107

one's particular project the overriding and unconditional significance which only a basic value and a general commitment can claim: they are the evil consequences that we call to mind when we think of fanaticism."¹⁰¹ Finnis' fifth requirement establishes the balance between fanaticism and dropping out, apathy, unreasonable failure, or refusal to get involved with anything. Finnis states that, "one should be looking creatively for new and better ways of carrying out one's commitments, rather than restricting one's horizons and one's effort to the projects, methods, and routines with which one is familiar."¹⁰²

Essentially, Finnis' fourth and fifth requirements could be summed up through the way Major League Baseball has dealt with performance enhancing drug use in the sport. Major League Baseball turned a blind eye to steroid use for over a decade because the sport had seen an astronomical rise in revenue and attendance figures as a result of fans who wanted to see star players hit homeruns. After it became abundantly clear that Major League Baseball had cultivated this environment, they were rightfully skewered in the media along with Commissioner Bud Selig. The sport then took several steps to rid itself of performance enhancing drug use through Major League Baseball's Joint Drug Agreement, between the Commissioner's Office and Major League Baseball's Players Association. Most recently, Human Growth Hormone (HGH) was added to the list of substances that MLB can test for. Major League Baseball has undoubtedly been vigilant in its commitment to rid the sport of PEDs after abandoning that same commitment by refusing to get involved in the steroid era. However, they are bordering on the verge of fanaticism after the latest steroid scandal. Ryan Braun, who won an arbitration award last year overturning his 50-game drug suspension on the basis that the chain of custody

¹⁰¹ *Id.* at 110

¹⁰² *Id.*

era's best hitter and pitcher respectively. Bonds was found guilty of obstruction of justice, but a mistrial was declared as to the three perjury counts he faced after allegedly lying about his steroid use in front of a grand jury. Clemens was acquitted on all six counts of lying to and obstructing Congress he faced after voluntarily testifying in front of Congress about his alleged steroid use. This was done in an attempt to repair his reputation, after he was named in the Mitchell Report. In the wake of the recent Biogenesis scandal, federal authorities have refused to take action. Since Major League Baseball does not have subpoena power, the government would have to get involved to get to the bottom of what actually happened. Most likely, they are refusing to get involved because of their failures in the trials of Bonds and Clemens. However, this could set a double standard as the government could be perceived as going after the big fish and letting the little fish swim away. It could also be a sign of hypocrisy in that they went after Bonds and Clemens on the basis of steroid use in baseball being a public health concern. In turning a blind eye this time around they seem to be minimizing the issue. Either way this would go against the third requirement of Finnis' theory of practical reasonableness that there must be no arbitrary preferences amongst persons.

Finnis essentially combines the fourth and fifth requirements of practical reasonableness. The fourth requirement is that one must have a certain detachment from all the specific and limited projects which one undertakes. The fifth requirement is not to abandon one's commitments lightly. Finnis believes that there should be a balance between being too attached to specific projects (fanaticism) and abandoning a commitment before it reaches fruition. In regards to detachment Finnis states, "there are often straightforward and evil consequences of succumbing to the temptation to give

procedures in Major League Baseball's Joint Drug Agreement were flawed, was named as one of the players in the Biogenesis scandal. As a result, Major League Baseball has made it clear that they intend to go after Braun, and suspend him if possible, because he publicly embarrassed them by beating his previous suspension. Finnis would say this is fanatical and that it shows an arbitrary preference amongst the persons because MLB is not as focused on the other players named in the Biogenesis scandal. The government can also be viewed as abandoning their commitment this time around after previously showing an interest in stopping performance enhancing drug use. Congress also has a multitude of issues, far more important than PED use, on its plate right now which can explain the refusal.

The sixth requirement of practical reasonableness Finnis espouses is that one must bring about good in the world (in one's own life and the lives of others) through actions that are efficient for their reasonable purpose. According to Finnis, "one must not waste one's opportunity by using inefficient methods. One's actions should be judged by their effectiveness, by their fitness for their purpose, by their utility, and their consequences."¹⁰³ Finnis rejects utilitarianism or consequentialism as a general strategy of moral reasoning, stating they are irrational. What ultimately generates the conclusions is always something other than the calculus: an overpowering desire, a predetermined objective, the traditions or conventions of the group, or the requirements of practical reason.¹⁰⁴

The government's failed cases against Barry Bonds and Roger Clemens cost taxpayers millions of dollars and diverted resources which may have been better allocated

¹⁰³ *Id.* at 111

¹⁰⁴ *Id.* at 113

elsewhere. If we were to do a cost-benefit analysis, it would be a no-brainer that the government should have never tried these cases. At the same time they were trying to show that no one is above the law. There was substantial evidence that both men perjured themselves, but the federal prosecutors proved to be no match for the high powered defense lawyers Clemens and Bonds spent lavishly on. Of course a great deal of this money came about as a result of their PED use, since they were able to flout mortality and perform like superstars into their early forties. Clemens also allegedly perjured himself in front of a Congressional hearing that heard parents testify as to how their children died as a result of steroid abuse. Finnis is correct in saying that the calculus does not ultimately generate the conclusions. The government wanted to put an end to the PED epidemic and make sure that more young people did not die as a result of looking up to "role models" who used steroids. It could be said that they utilized their resources efficiently because if they were going to try to bring down anybody it would have been Clemens and Bonds. Major League Baseball will also have to deal with the question of efficiency in their drug testing program in the future. While they are able to test for HGH now, the cheaters will always be a step or two ahead of them. Wealthy baseball players will continue to find a way to compensate brilliant chemists who can create undetectable drugs. Something other than calculus will stop these players; it will be the overwhelming desire of Major League Baseball to reach their predetermined objective of having a clean sport.

The seventh requirement of practical reasonableness is to have respect for every basic value in every act. One should not choose to do an act which of itself does nothing but damage or impede a realization or participation of any one or more of the basic forms

of human good. All acts should be done as a means of promoting or protecting, directly, or indirectly, one or more of the basic goods.¹⁰⁵ The basic goods are: knowledge, life, play, aesthetic experience, friendship, religion, and practical reason.

Using performance enhancing drugs completely goes against Finnis' seventh requirement. By engaging in PED use, an individual does nothing but damage several of the basic forms of human good. Steroid use would have a deleterious effect on life, fair play, friendship, religion, and practical reason. While using PEDs may enhance aspects of knowledge, play, and aesthetic experience Finnis could not condone this behavior. Anything positive that may come out of this for the individual would go against the common good. Steroid use would damage practical reason itself, because it does not make sense to put something into one's body which could cut curtail one's life. Finnis would promote regulating PED use because doing so would not damage any of the basic forms of human good. Overall, Finnis would disapprove of performance enhancing drug use because it violates the seventh requirement and practical reasonableness as a whole.

The eighth requirement is that of favoring and fostering the common good of one's communities. Finnis states, "Very many, perhaps even most, of our concrete moral responsibilities, obligations, and duties have their basis in the common good."¹⁰⁶ Major League Baseball owes it to the baseball community which consists of fans, teams, players, and the community at large to ensure that performance enhancing drug use is eradicated. The common fan who has a great deal more to worry about than wealthy baseball players shouldn't have to question if the product they are watching on the field is tainted. They should just be able to enjoy the game of baseball, which is why baseball

¹⁰⁵ *Id.* at 119

¹⁰⁶ *Id.* at 125

players get compensated in the first place. Teams who spend huge sums of money on players shouldn't have to worry that, what they thought might have been a safe investment in a player, turns out to be a tremendous albatross of a contract after that player's body breaks down after years of prolonged steroid use. The Yankees shelled out \$275 million over ten years because they believed Alex Rodriguez was a physical freak who would continue to produce at an All-Star level well into his forties. Now they look like complete fools because, as it turns out, Alex Rodriguez was probably using PEDs for his whole career. Other baseball players shouldn't have to worry that they are competing against cheaters, or that their teammate who beats them out for a roster spot has cheated. Clean players shouldn't be tempted to engage in performance enhancing drug use because they might not be able to compete at the same level as someone who is using PEDs. Their livelihoods are being threatened because others are not competing fairly. Parents should not have to worry that their child may turn to steroid use, because professional athletes are doing so, and wind up dead or have their bodies break down at a young age. Overall, Major League Baseball and the government will favor and foster the good in one's community by trying to put an end to performance enhancing drug use.

The ninth and final requirement of practical reasonableness is that one must act in accordance with one's conscience. Finnis says that, "one should not do what one judges or thinks or 'feels'-all-in-all should not be done."¹⁰⁷ This ninth requirement flows from the fact that practical reasonableness is not simply a mechanism for producing correct judgments, but an aspect of personal full-being, to be respected in every act as well as overall, whatever the consequences.

¹⁰⁷ *Id.* at 125

If a player who engaged in performance enhancing drug use, acted in accordance with their conscience, they would view it as wrong. Likewise, if a clean player were to look into their conscience they would know that PED use is wrong, but they could feel better about themselves in knowing that they took the higher road and made the morally correct decision. Major League Baseball is on the right path of trying to get performance enhancing drugs out of baseball. They have met John Finnis' nine requirements of practical reasonableness, which have produced the morally correct course of action. Governmental regulation of performance enhancing drugs in baseball is also the morally correct course of action. If Congress went through Finnis' requirements of practical reasonableness like I did in this paper, they will conclude that legislation is needed to eradicate the use of performance enhancing drugs in baseball.

Conclusion

It is becoming increasingly evident that performance enhancing drug use in baseball may never disappear. This is due to the overwhelming desire by some individuals to accumulate wealth and fame at the expense of the common good. By taking this course of action they risk their own lives and the lives of others and remove the element of fair play from the game of baseball.

The morally correct course of action dictates that performance enhancing drugs should be eradicated from Major League Baseball. Whether the government will attempt to regulate PEDs in baseball remains to be seen, but they represent the best hope of a drug free sport.