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ONE HUNDRED NINTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON GOVERNMENT REFORM

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INDEPENDENT

March 10, 2005

Mr. Stanley Brand
Brand & Frulla
923 Fifteenth St., N.W.
Washington, D.C. 20005

Dear Mr. Brand:

On March 8, we received your letter on behalf of "Major League Baseball ('MLB'), the Major League Baseball Players Association, and Major League Club officials" questioning the Committee's jurisdiction and the basis of the Committee's investigation into steroid use in baseball. Your legal analysis is flawed, and any failure to comply with the Committee's subpoenas would be unwise and irresponsible.

The issue of jurisdiction is easily resolved. The Government Reform Committee is the principal investigative committee in the House. Under the rules of the House, "[T]he Committee on Government Reform may **at any time** conduct investigations of **any matter** . . . ."[1] The House has given the Government Reform Committee this broad oversight jurisdiction so that the Committee can make "findings and recommendations . . . available to any other standing committee having jurisdiction over the matter involved."[2] Without question, the use of illegal performance-enhancing drugs under the Federal Controlled Substances Act is a "matter" within the oversight jurisdiction of Congress and the Government Reform Committee.

In addition, the Committee also has considerable legislative jurisdiction in the area of drug policy. The Committee has jurisdiction over the laws authorizing the activities of the White House Office of National Drug Control Policy, which "establishes policies, priorities, and objectives for the Nation's drug control program."[3] The allegations that illegal performance-enhancing drugs are used in baseball have implications for these federal policies.

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[1] House Rule X, clause 4(c)(2)(emphasis supplied).

[2] *Id.*

[3] White House Office of National Drug Control Policy, *About ONDCP* (online at http://www.whitehousedrugpolicy.gov/about/index.html).

In 1991, Congress defined steroids as Schedule III drugs under the Federal Controlled Substances Act. As a result, both possessing these drugs without a valid prescription and distributing these drugs are federal offenses. Yet over the past decade, the news media has repeatedly reported that steroid use is common in Major League Baseball and that management was aware of the problem but did not intervene or investigate. Some informed observers have even alleged that "the owners ... have been complicit, content to watch balls fly out of the ballparks and make the cash registers ring."[4]

For example:

- In 1995, the *Los Angeles Times* published an investigative report on steroid use in baseball titled "Steroids Become an Issue." The report quoted Randy Smith, the general manager of the San Diego Padres, who stated: "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%."[5]

- In 2000, the *New York Times* published a front-page story titled "Guessing the Score: Open Secret; Steroid Suspicions Abound in Major League Dugouts." 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, estimated that 30 percent of major league baseball players had used steroids at some point in their careers. One veteran all-star outfielder said he believed that: "[T]wo-thirds of the top players in the National League are using some kind of steroid."[6]

- In 2002, *Sports Illustrated* published a cover story on performance-enhancing drugs in baseball entitled "Totally Juiced." The magazine reported that "the game has become a pharmacological trade show." Former San Diego Padre Ken Caminiti admitted to using steroids during the 1996 season, when he was voted the National League's most valuable player. Outfielder Chad Curtis estimated that 40 percent to 50 percent of major league players use steroids.[7]

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[4] Harvey Araton, *Players' Steroid Proposal Is Lacking in Muscle,* New York Times (Aug. 11, 2002).

[5] *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).

[6] *Guessing the Score: Open Secret; Steroid Suspicions Abound In Major League Dugouts*, New York Times (Oct. 11, 2000).

[7] *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, 2002).

We do not presume that these reports are accurate. But clearly they should have been investigated. 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. Yet ten years after the *Los Angeles Times* reported widespread use of illegal performance-enhancing drugs in baseball, Congress remains concerned that Major League Baseball's recognition of the problem and its solution may not be adequate.

Even after the publication earlier this year of Jose Canseco's book about steroid use by Mark McGwire and other baseball players, Sandy Alderson, the executive vice president of baseball operations, stated: "I'd be surprised if there was any significant follow-up."[8]

Contrary to your letter, whether and how baseball chooses to police itself raises important federal policy issues. Steroid use among teenagers – especially aspiring teenage athletes – is a large and growing problem. More than 500,000 high school students have tried steroids, nearly triple the number just ten years ago.[9] The National Institute on Drug Abuse and the University of Michigan looked at steroid use in teens and concluded that nearly 20 percent of eighth graders, nearly 30 of tenth graders, and more than 40 percent of twelfth graders surveyed in 2004 reported that steroids were "fairly easy" or "very easy" to obtain.[10]

Many of these youth follow baseball and seek to emulate their heroes, potentially contributing to this serious public health problem. Moreover, the reports of the extensive use of federal controlled substances within Major League Baseball raise issues about the adequacy of federal drug laws and the effectiveness of federal enforcement efforts.

These are some of the questions that the Committee intends to examine in its hearing. Our investigation will be thorough, fair, and responsible. And it will help remove the cloud over baseball, educate the public about the dangers and consequences of illegal drug use, and inform Congress about the effectiveness of federal steroid policies.

We understand that Major League Baseball and the Players Association are adopting a new steroid policy for the 2005 season. But we do not agree that this eliminates the need for a

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[8] *Commissioner's Office Likely Will Not Pursue Canseco Allegations,* Associated Press (Feb. 11, 2005).

[9] Centers for Disease Control and Prevention, *Trends in the Prevalence of Marijuana, Cocaine, and Other Illegal Drug Use, National Youth Risk Behavior Survey 1991-2003* (2004).

[10] 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).

hearing. To the contrary, questions have been raised about the adequacy of the new policy that we hope to examine as part of our inquiry. Baseball has had a series of steroid policies in effect since at least 1991. Understanding how baseball has implemented – or failed to implement – those policies is relevant to an evaluation of how effectively the new policy may be applied.

You also appear to have made factually incorrect public statements regarding the document subpoena served on Major League Baseball by the Committee. As you may be aware, on March 2, 2005, we met with representatives from Major League Baseball, including the League representative who negotiated the policy with the Players Association, to discuss the hearing and the new drug testing policy. During this meeting, we personally asked Major League Baseball for the protocols of the new drug testing policy. That afternoon, a call was placed by the Committee to the person whom Major League Baseball held out as their representative in Washington, D.C. The Committee confirmed to Major League Baseball that a hearing would be held on March 17, 2005, and also requested an additional meeting with the League regarding the hearing as soon as possible. Telephone calls made by the Committee to the League from March 2 until the present were ignored. In fact, your March 8th letter was the first substantive communication the Committee received from Major League Baseball.

Any suggestion that the Committee gave Major League Baseball only one day to produce documents is false. The Committee's March 7, 2005 letter requesting documents stated that "if significant forward movement is not made" by the League, the Committee would be forced to subpoena the documents. It was our hope that the letter would encourage the League to return the Committee's telephone calls. Nowhere in the letter did it state that the documents must be produced, in full, within 24 hours. Even after getting no forward movement in response to our letter, the Committee made three additional attempts to communicate with the League to discuss the document request. Major League Baseball was given not only adequate time to produce documents, but more than enough encouragement to work with the Committee.

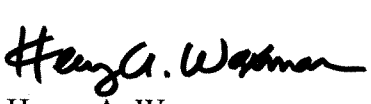
We also object to your erroneous characterizations of the Committee's subpoena to Major League Baseball. As you know full well, the subpoena to Major League Baseball expressly states that the documents being sought by the Committee should be provided "with personal identifying information redacted."

We are fans of baseball and admirers of professional baseball players. But Major League Baseball and professional baseball players should not be above responsible scrutiny. We believe that Major League Baseball and baseball players should not be singled out for unfair or punitive treatment. But at the same time, baseball and ballplayers do not, by virtue of their celebrity, deserve special treatment or to be placed above the law.

In this case, the Committee is clearly acting within its jurisdiction on a matter of important federal policy. The Committee has properly issued subpoenas. Any American citizen under these circumstances would be required to comply with the Committee's request. Major League Baseball and baseball players are no different.

Sincerely,

Tom Davis
Chairman



Henry A. Waxman
Ranking Minority Member