

## **Juicing: Congress' War on Steroids**

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The attendance at the House Government Reform Committee hearing of March 17, 2005 read more like an All-Star starting lineup than a typical House of Representatives hearing. The Committee questioned professional baseball players including Mark McGwire, Jose Canseco and Sammy Sosa, as well as baseball's commissioner Bud Selig, regarding the use of illegal performance enhancing drugs in the major leagues (Dumcius, 2005). This hearing was the culmination of months of governmental concern with baseball's apparent failure to regulate drug use, a topic which was even mentioned in President George W. Bush's State of the Union address for 2004 (Pound, 2005). Congressional leaders, feeling that baseball players and executives "[could not] be trusted" to solve the issue on their own, demanded that stricter testing policies and punishments be implemented immediately (Kepner, 2005).

This paper will examine the moral and legal questions created by the government's active involvement in sports policy, specifically the enforcement of drug testing and sanctions. Close attention will be paid to the relationship between the United States government and sports institutions, especially Major League Baseball (MLB). Additionally, the reasoning in favor of and opposed to government involvement in sports will be evaluated.

The House of Representatives cites two main reasons for actively pursuing a new drug policy in the MLB. The first is that the substances in question have been deemed hazardous and illegal, and fall under the umbrella of the war on drugs. The second and less tangible reason is that the use of drugs in professional sports violates “the integrity of the game,” and sets a negative example for impressionable children (Pound, 2005).

Are performance enhancing drugs dangerous enough to warrant the attention they have received from the upper echelons of the United States government? It is difficult to say for certain. For the most part, the extent to which steroids enhance performance and endanger the user is not yet clear (Noakes, 2004: p848). Documented side effects to the use of anabolic steroids are wide ranging: everything from liver and bone damage to disrupted metabolic and sexual function (Wade, 1972: p1399). Many of these problems are attributed to the unregulated nature of illegal anabolic steroids, which are commonly taken in dangerously large doses by uninformed users (Ibid: p1400).

If the government illegalizes substances based on the risk they pose to the user, why do alcohol and tobacco remain legal and loosely regulated? It is apparent that “alcohol claims more lives in one year alone than [anabolic steroids] will in a decade,” but it remains a legal, taxable commodity (Voy, 1991: p23). It is the opinion of some that this fact undermines the paternalistic reasoning of protection from risk that the government cites in illegalizing performance enhancing drugs.

However, risk is not the only reason Congress has for actively pursuing new steroid policy in professional sports. The House Committee on Government Reform has stated that the failure of the MLB to address its steroid problem has demonstrated the “absolute insensitivity of both the owners and the players to the American people,”

violating the spirit of fair competition and accomplishment that is central to sport (Kepner, 2005). This is the core controversy of the Congressional steroid hearings: whether or not it is the role of government to ensure fair play and preserve the spirit of sporting.

What little precedent there is on this issue seems to favor a more hands off approach to sports regulation. In the *Mercury Bay Boating Club v San Diego Yacht Club* decision of 1988, the New York Supreme Court was faced with the prospect of addressing fair play from a legal standpoint. The plaintiff (Mercury Bay Boating Club) accused the San Diego Yacht Club of violating the spirit of fair play by entering a catamaran into a boating race typically made up of monohulled vessels. While this was not a violation of the rules of the race as they were written, it granted the San Diego club a distinct advantage in the races. After considerable debate and appeal, the New York Supreme Court ruled that although the use of the catamaran was an unfair move, “questions of sportsmanship and fairness with respect to sporting contests depend largely upon the rules of the particular sport... they are not questions suitable for judicial review” (Nafziger, 1992: pp 513-514). The generally accepted norm is that the rules of sport are best left to those involved, and not to courts which are generally unfamiliar with the intricacies of the game (Ibid: p510).

It is possible that the dominant groups in modern American government are simply using baseball the same way they have arguably used controversial issues like abortion and gay marriage: to make moral statements without effecting genuine change. The moral values trumpeted in the steroid issue are inherently American: “self discipline, sacrifice for the good of the whole, and fair play” (Frey, 1991: p749). President Bush’s

attack on the MLB was clearly moralistic rather than risk-oriented, as he stated that performance enhancing drugs were unacceptable “shortcuts to accomplishment” that devalued the hard work of honest athletes (Kornblut, 2005).

Another striking attribute of government policy on athletics in the United States is the lack of equal treatment from sport to sport. No other professional sport has earned the Congressional attention that Major League Baseball has garnered. A possible explanation is that the MLB has been traditionally treated as an exception due to its informal status as America’s pastime. The most obvious example of this governmental exceptionalism is the antitrust exemption status Major League Baseball has enjoyed since 1922. This legal loophole permits baseball to act as a unified monopoly in negotiating finances with players and fans alike, outside of the jurisdiction of legislation like the Sherman Antitrust Act (Kornblut, 2005). This unique situation has given the government a vested interest in baseball as well as the looming threat of withdrawal of the exemption to leverage in negotiation.

Perhaps the most glaring discontinuity in the American government’s commitment to fair play and athleticism is its treatment of Olympic athletes. These international stars, arguably the finest examples of pure sportsmanship the world has to offer, are largely neglected by the government. In contrast, many other governments worldwide provide their athletes with extensive financial support and comprehensive state-run training facilities (Voy, 1991: p141).

There has been an outcry among scholars and sports enthusiasts to simply allow professional sports to self-regulate, and eliminate problems such as drug abuse on their own. Many believe that professional athletes are for the most part honestly devoted to the

spirit of their sport, and will “follow rules even when no one is watching” (Bird, 1997: p755). Even those who are skeptical of such altruism concede that any sport that reduces honest competition by allowing performance enhancing drugs “reduces its marketability” by doing so, and that professional sports will thus crack down on doping for practical financial reasons (Ibid: p753).

The recent aggressive posturing by the United States Congress, specifically the House Committee on Government Reform, appears to be little more than political grandstanding supported by reasoning that is rife with discrepancies and hypocrisy. The trite stance that steroid policy has the welfare of professional athletes in mind fails under examination, thanks both to inconclusive scientific evidence and the legal tolerance of more dangerous substances, namely alcohol and tobacco.

With the health issue essentially dismissed, all that remains is a controversial moral judgment on what constitutes fair play in a sports. Congress’ newfound interest in fair play appears to be little more than a diversionary tactic, designed to rally the sharply divided House against an immoral bugbear, a campaign filled with more celebrities and fiery rhetoric than actual legislation or policymaking.

For centuries of American history, baseball has been a critical part of our culture. Traditionally, our national pastime reflects our core values: “individualism, with just a dash of cooperation” (Wilfrid, 1995: p10). There is no room in this great sport for hypocritical moralism like that demonstrated by the House Committee on Government Reform in March of 2005. With a war overseas and a precarious approval rating, the United States Congress has more important roles to play than that of umpire in a big league ball game.

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