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# Take Me Out to the Hearing: Major League Baseball Players Before Congress

Howard W Brill



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**Take Me Out to the Hearing:  
Major League Baseball Players Before Congress**

**Christian H. Brill & Howard W. Brill**

# TAKE ME OUT TO THE HEARING: MAJOR LEAGUE BASEBALL PLAYERS BEFORE CONGRESS

Christian H. Brill\* & Howard W. Brill\*\*

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## INTRODUCTION

The U.S. Congress has a long history with the game of baseball. The first congressional hearing mentioning baseball was the 1921 impeachment investigation of baseball commissioner and Judge Kenesaw Mountain Landis.<sup>1</sup> A year later, the Supreme Court's decision in *Federal Baseball Club v. National League*<sup>2</sup> exempted baseball from federal antitrust laws, giving Congress its primary justification to hold oversight hearings on the sport.<sup>3</sup>

As Congress has exercised its authority to hold these oversight hearings, it has regularly used that authority to call Major League Baseball players as witnesses at its hearings. At least forty-eight different major league players have testified at thirty-eight separate hearings for a total of seventy appearances.<sup>4</sup> The subjects of testimony have included South Africa's apartheid policies, drug sentencing guidelines, the fitness of a nominee for the Supreme Court, and the reserve clause. These appearances include then-active and former players; a player who played 3,026 games (Stan Musial) and a player who played only seventeen (Cy Block); folk heroes (Mickey Mantle) and convicted felons (Willie Aikens).<sup>5</sup> By far the most common player to be called before Congress—not surprisingly given his status as a player, public figure, and civil rights icon—was Jackie Robinson, who appeared nine times over twenty-one years.<sup>6</sup> Jim Bunning, David Cone, Joe Garagiola, and Robin Roberts each testified three times.<sup>7</sup>

<sup>1</sup> *Conduct of Judge Kenesaw Mountain Landis: Hearing Before the H. Comm. on the Judiciary*, 66th Cong. 4–6 (1921). The investigation arose out of congressional concern about Landis's appointment as Commissioner while he also served as a federal judge. *Id.* at 6.

<sup>2</sup> 259 U.S. 200 (1922).

<sup>3</sup> *Id.* at 209.

<sup>4</sup> See *infra* Appendix: List of All Testimony. At least thirty appearances were by active players.

<sup>5</sup> *Baseball: Aikens Gets 20-Year Term*, N.Y. TIMES, Dec. 13, 1994, at B17; George Vecsey, *Sports of The Times: The Death of Hero; An Imperfect Baseball Deity*, N.Y. TIMES, Aug. 14, 1995, at A1; *Cy Block Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/b/blockcy01.shtml> (last visited Sept. 27, 2011); *Stan Musial Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/m/musialst01.shtml> (last visited Sept. 27, 2011).

<sup>6</sup> See *infra* Appendix: List of All Testimony.

<sup>7</sup> Each of Bunning's appearances came while representing Kentucky in the House of Representatives and Senate. See *infra* Appendix: List of All Testimony.

Certainly congressional hearings on baseball also featured other baseball personalities,<sup>8</sup> but the scope of this article is limited to only those witnesses who played professional baseball. Labor representatives, owners, and commissioners have all been excluded, as have athletes who spent their careers in the minor leagues.

Player testimony can be divided into two categories based on whether the hearing considers issues relating to the game of baseball or not. Depending on the hearing's topic, players serve two different purposes with their appearances—expert witnesses and celebrity witnesses. Each individual appearance varies, and each appearance has elements of both purposes. When players are testifying about issues directly relating to the game of baseball, they are more likely to be expert witnesses, sharing what they know from personal knowledge or observation. But when players have testified before Congress on non-baseball issues, they function more as celebrities than as experts.<sup>9</sup> Although they typically have knowledge about the issue, or at least a strong interest or opinion, their expertise is usually outweighed by their celebrity. The cause or issue on which they speak may be enhanced or publicized because of the player's celebrity status.

# I. EXPERT WITNESSES: THE GAME OF BASEBALL

When it comes to issues about the game of baseball itself, players can provide helpful testimony, much like that of an expert witness. In the courtroom, an expert witness provides "specialized knowledge" based on his or her unique "knowledge, skill [or] experience."<sup>10</sup> On the congressional witness stand, most witnesses are called for a similar reason. Thus, when Congress considers baseball issues, it is only natural that players should be called to testify. Because a player's opinion on legislation comes

<sup>8</sup> See, e.g., *Baseball's Revenue Gap: Pennant for Sale: Hearing Before the Subcomm. on Antitrust, Bus. Rights, and Competition of the S. Comm. on the Judiciary*, 106th Cong. 9-53 (2000) (statements of Bud Selig, Comm'r, Bob Costas, Sportscaster, and George Will, Columnist, *Washington Post*).

<sup>9</sup> See Linda J. Demaine, *Navigating Policy by the Stars: The Influence of Celebrity Entertainers on Federal Lawmaking*, 25 J.L. & POL. 83, 93 (2009) (includes an in-depth discussion of the issues surrounding celebrity testimony in Congress). See also Kathryn Gregg Larkin, Note, *Star Power: Models for Celebrity Political Activism*, 9 VA. SPORTS & ENT. L.J. 155, 157 (2009).

<sup>10</sup> FED. R. EVID. 702.

from a different perspective than that of an owner or broadcaster, it can provide helpful insight to the committee.

## A. Antitrust

*Sen. Kefauver: "I was asking you, sir, why it is that baseball wants this bill passed."*

*Mr. Stengel: "I would say I would not know, but I would say the reason why they would want it passed is to keep baseball going as the highest paid ball sport that has gone into baseball and from the baseball angle, I am not going to speak of any other sport."*

....

*Sen. Kefauver: "Mr. Mantle, do you have any observations with reference to the applicability of the antitrust laws to baseball?"*

*Mr. Mantle: "My views are just about the same as Casey's."<sup>11</sup>*

Baseball has long had a unique status in antitrust law, permitting it to develop without the legal challenges faced by other professional sports. Under "the trilogy" of cases, baseball was exempted from the Sherman Act.<sup>12</sup> This antitrust exemption has often been the reason for congressional panels to examine issues related to the game, in both multi-issue and single-issue hearings.

## 1. The Player Viewpoint

When a player was called to testify before a congressional committee, his testimony usually began with his history with the game. Hall of Famer Ty Cobb, who opened the first antitrust hearings in 1951,<sup>13</sup> had a typical story: "I was just a young boy from a small town, Royston, Ga., and they organized this league;

<sup>11</sup> *Organized Professional Team Sports: Hearings on H.R. 10378 and S. 4070 Before the Subcomm. on Antitrust and Monopoly of the S. Comm. on the Judiciary*, 85th Cong. 13, 24 (1958) [hereinafter *Organized Professional Team Sports 1958*] (statement of Casey Stengel, Manager, New York Yankees, and Mickey Mantle, Player, New York Yankees).

<sup>12</sup> *Flood v. Kuhn*, 407 U.S. 258, 273 (1972) (Congress had not applied the antitrust laws to baseball); *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 364 (1953) (suggesting that Congress address the issue of the exemption); *Fed. Baseball Club of Baltimore, Inc. v. Nat'l League of Prof'l Baseball Clubs*, 259 U.S. 200, 209 (1922) (holding baseball was not commerce).

<sup>13</sup> *Study of Monopoly Power: Organized Baseball: Hearings Before the Subcomm. on Study of Monopoly Power of the H. Comm. on the Judiciary*, 82nd Cong., pt. 6, 4 (1951) [hereinafter *Study of Monopoly Power*] (statement of Tyrus Raymond Cobb, Retired Player, member of Baseball Hall of Fame).

so I decided that I wanted to try out in baseball.”<sup>14</sup> As they did with Cobb, members of Congress would then ask the players to discuss baseball-related issues of every type. While Cobb’s testimony was broad ranging, other witnesses—particularly those who were not necessarily stars—discussed issues with which they were particularly familiar. Pitcher Albert Widmar testified about a salary dispute he had had with the St. Louis Browns in which he had threatened to sue the club.<sup>15</sup> Pitcher Cy Block, who spent most of his career in the minor leagues, spent his testimony discussing the discrepancies between major and minor league contracts, pensions, and salaries.<sup>16</sup> Branch Rickey, then a Pittsburgh Pirates executive, was questioned heavily about the farm system he had created.<sup>17</sup>

At the early hearings in the 1950s, the topic under discussion—the complexities of federal antitrust laws—was overwhelming to players, although these witnesses were ostensibly the experts. When asked whether the reserve clause should be limited, Mickey Mantle replied, “I don’t know. I don’t think about this stuff very much.”<sup>18</sup> Despite their lack of knowledge, players were also thankful for what baseball had given them. Ted Williams gratefully told the committee,

I think I have been awfully lucky, I know I have been lucky in baseball, and I know I have been treated wonderfully in baseball, and I think the only reason for all of this discussion, as I understand it—and I am not a lawyer—is to give baseball a chance

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.* at 543, 546–50 (statement of Albert J. Widmar, Pitcher, St. Louis Browns).

<sup>16</sup> *Id.* at 580, 582–87, 589 (statement of Cy Block, Former Pitcher, Major and Minor League Baseball). Other players who spent most of their careers in the minor leagues would also address this issue. See, e.g., *Baseball’s Antitrust Immunity: Hearing on the Validity of Major League Baseball’s Exemption From the Antitrust Laws Before the Subcomm. on Antitrust, Monopolies, and Bus. Rights of the S. Comm. on the Judiciary*, 102nd Cong. 405 (1992) (statement of Roric Harrison, Former Pitcher, Major League Baseball) (describing his inability to transfer from one minor league team to another, “No business restricts opportunities and dreams like baseball.”).

<sup>17</sup> *Study of Monopoly Power*, *supra* note 13, at 987–93 (statement of Branch Rickey, Jr., Executive Vice President and General Manager, Pittsburgh Baseball Club). Although better known as an executive, Rickey played 120 games in the majors with the St. Louis Browns and New York Yankees. See *id.* at 977–78; see also Jay Dunn, *Branch Rickey was a True Innovator*, TRENTONIAN (N.J.), Mar. 9, 2011, <http://www.trentonian.com/articles/2011/03/09/sports/doc4d7839eddd290723782435.txt?viewmode=fullstory>.

<sup>18</sup> *Organized Professional Team Sports 1958*, *supra* note 11, at 24–25 (statement of Mickey Mantle, Player, New York Yankees).

to operate as it has operated and to give it a change [sic] not to be interfered with, because I think if it is, it is going to lose a lot of its—a lot of the wonderful things in it . . . .<sup>19</sup>

Just like Williams, most players simply wanted the status quo. Stan Musial told the committee, “I think everybody likes this great game of baseball as is, and, of course, if we can go along with that I know everybody will be well satisfied.”<sup>20</sup> Ty Cobb felt the same, “Baseball, as we have it today, is a great force in our country, and there must be something, I feel, for the protection of baseball as we have it today.”<sup>21</sup> Although Casey Stengel’s meandering testimony is so confusing that the transcript can hardly be followed, even he seemed to want Congress to leave baseball alone, as evidenced by the following exchange with Senator John Carroll:

Sen. Carroll: “Do you think you could still exist under existing law without changing the law?”

Mr. Stengel: “I think it is run better than it has even been run in baseball, for every department.”

. . . .

Sen. Carroll: “Then what is the need for legislation, if they are getting along all right?”

Mr. Stengel: “I didn’t ask for the legislation.”

. . . .

Sen. Carroll: “Are you ready to say there is no need for legislation in this field, then, insofar as baseball is concerned?”

Mr. Stengel: “As far as I am concerned, from drawing a salary and from my ups and downs and being discharged, I always found out that there was somebody ready to employ you, if you were on the ball.”<sup>22</sup>

In contrast to Stengel, Bob Feller’s ability to converse about antitrust legislation was the exception rather than the rule. “[O]rganized baseball should be clearly declared to be covered by

<sup>19</sup> *Id.* at 30 (statement of Ted Williams, Boston Red Sox). See also *Study of Monopoly Power*, *supra* note 13, at 11 (statement of Tyrus Raymond Cobb) (“Baseball has made it possible for fellows like myself from a little old small town in Georgia to improve himself. I feel very fortunate, and I owe a lot to baseball.”).

<sup>20</sup> *Organized Professional Team Sports: Hearings on H.R. 5307, H.R. 5319, H.R. 5383, H.R. 6876, H.R. 6877, H.R. 8023, and H.R. 8124 Before the Antitrust Subcomm. of the H. Comm. on the Judiciary*, 85th Cong., pt. 2, 1305, 1308 (1957) [hereinafter *Organized Professional Team Sports 1957*] (statement of Stan Musial, St. Louis Cardinals).

<sup>21</sup> *Study of Monopoly Power*, *supra* note 13, at 12.

<sup>22</sup> *Organized Professional Team Sports 1958*, *supra* note 11, at 21 (statement of Sen. Carroll and Casey Stengel, Manager, New York Yankees).

appropriate Federal laws and the Taft-Hartley law in view of the recent decisions of the United States Supreme Court in the Toolson case and the very late Radovich football case.”<sup>23</sup> When player representatives—as opposed to the biggest stars—began to testify more frequently in the 1990s, they had gained more expertise on the issues. In 1995, player representative David Cone was able to explain the impact that the antitrust exemption had on the baseball strike,<sup>24</sup> and Eddie Murray argued against baseball’s uniqueness: “Should fire codes not apply to stadiums because baseball is unique? Should health codes not apply to hot dogs sold in baseball stadiums? Should civil rights not apply to baseball?”<sup>25</sup> Even those who did not completely understand the law knew precisely what it meant to their careers.<sup>26</sup>

## 2. Comprehensive Hearings

When baseball antitrust hearings began, they were broad-ranging and lengthy. The first major series of antitrust hearings occurred in 1951, concluding just three weeks after Bobby Thomson’s famous “Shot Heard ‘Round the World.”<sup>27</sup> The hearings were called by House Judiciary Committee Chairman Emanuel Celler, who also headed a special Subcommittee on Study of Monopoly Power.<sup>28</sup> The subcommittee held sixteen

<sup>23</sup> *Organized Professional Team Sports 1957*, *supra* note 20, at 1309–10 (statement of Robert W. Feller, President, Major League Baseball Players Association).

<sup>24</sup> *The Court-Imposed Major League Baseball Antitrust Exemption: Hearing on S. 415 and S. 416 Before the Subcomm. on Antitrust, Bus. Rights, and Competition of the S. Comm. on the Judiciary*, 104th Cong. 83–84 (1995) [hereinafter *Court-Imposed MLB Antitrust Exemption Hearing*] (statement of David Cone, Player, Major League Baseball Players Association).

<sup>25</sup> *Id.* at 86 (statement of Eddie Murray, Player, Major League Baseball Players Association).

<sup>26</sup> *The Impact on Collective Bargaining of the Antitrust Exemption; H.R. 5095, Major League Play Ball Act of 1995: Hearing Before the Subcomm. on Labor-Mgmt. Relations of the H. Comm. on Educ. and Labor*, 103rd Cong. 13 (1994) [hereinafter *Impact on Collective Bargaining of the Antitrust Exemption*] (statement of Bernie Williams, Center Fielder, New York Yankees) (“I do not understand how the anti-trust laws work, but I do understand that baseball players cannot solve our problems the same way other professional athletes can, and I do not think that is right.”).

<sup>27</sup> See *Study of Monopoly Power*, *supra* note 13, at 1; 1951 *National League Playoff: Bobby Thompson Launches “The Shot Heard ‘Round the World” & “The Giants Win the Pennant!”*, MLB.COM (Oct. 3, 1951), [http://mlb.mlb.com/mlb/baseballs\\_best/mlb\\_bb\\_gamepage.jsp?story\\_page=bb\\_51reg\\_100351\\_bknyg](http://mlb.mlb.com/mlb/baseballs_best/mlb_bb_gamepage.jsp?story_page=bb_51reg_100351_bknyg).

<sup>28</sup> *Study of Monopoly Power*, *supra* note 13, at II, 1. The Associate Minority Counsel to the subcommittee was future Supreme Court Justice John Paul

separate days of hearings and gathered 1,600 pages of testimony “to clarify baseball’s relationship to the antitrust laws [and] . . . endeavor to determine whether the public interest requires an exemption.”<sup>29</sup> In particular, the subcommittee was considering three separate bills to codify baseball’s exemptions from the antitrust laws.<sup>30</sup>

Similar patterns would hold true for other broad antitrust hearings. In 1957, Representative Celler held another series of hearings on professional sports and the antitrust laws.<sup>31</sup> In the six years since Celler’s first hearings, the Supreme Court had upheld baseball’s antitrust exemption<sup>32</sup> and denied an exemption for professional football.<sup>33</sup> Proposals had been introduced in Congress to both provide exemptions to all professional sports and to remove baseball’s exemption, as well as provide exemptions for certain practices only.<sup>34</sup>

In July 1958, a Senate subcommittee held twelve more days of antitrust hearings.<sup>35</sup> The opening day of the hearings featured future Hall of Famers Ted Williams, Mickey Mantle, Casey Stengel, Stan Musial, and Robin Roberts and discussed many of the same issues as the previous year’s hearings.<sup>36</sup> The Senate Judiciary Committee held four more days of hearings in 1964.<sup>37</sup>

Stevens, a Chicago Cubs fan who witnessed Babe Ruth’s supposed called home run at the 1932 World Series. Henry D. Fetter, *How Justice Stevens Changed Baseball*, ATLANTIC (June 29, 2010, 10:45 AM), <http://www.theatlantic.com/entertainment/archive/2010/06/how-justice-stevens-changed-baseball/58672>.

Stevens handled much of the questioning at the hearing. *Id.*

<sup>29</sup> *Study of Monopoly Power*, *supra* note 13, at 3 (statement of Rep. Emanuel Celler, Chairman, Subcomm. on Study of Monopoly Power).

<sup>30</sup> *Id.* at 1.

<sup>31</sup> See *Organized Professional Team Sports 1957*, *supra* note 20, pt. 1, at II, 1.

<sup>32</sup> *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953).

<sup>33</sup> *Radovich v. Nat’l Football League*, 352 U.S. 445, 447–48, 451–52 (1957).

<sup>34</sup> *Organized Professional Team Sports 1957*, *supra* note 20, pt. 1, at 2–5 (statement of Emanuel Celler, Chairman, Antitrust Subcomm.).

<sup>35</sup> See *Organized Professional Team Sports 1958*, *supra* note 11.

<sup>36</sup> *Id.* at III–IV, 3. The hearings began the day after the 1958 All-Star Game in Baltimore, in part so that high-profile players could testify. *July 8, 1958 NL All-Stars at AL All-Stars Box Score and Play by Play*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/boxes/ALS/ALS195807080.shtml> (last visited Sept. 27, 2011). After his testimony, Mantle played and was hitless in the Yankees’ 12-2 loss to Cleveland. See *Cleveland Indians vs. New York Yankees July 9, 1958 Box Score*, BASEBALL-ALMANAC.COM, <http://www.baseball-almanac.com/box-scores/boxscore.php?boxid=195807090> (last visited Sept. 27, 2011).

<sup>37</sup> See *Professional Sports Antitrust Bill—1964: Hearings on S. 2391 Before the Subcomm. on Antitrust and Monopoly of the S. Comm. on the Judiciary*, 88th Cong. (1964) [hereinafter *Professional Sports Antitrust Bill—1964*].

Despite the comprehensive nature of antitrust hearings, Congress tended to examine several issues with regularity.

### 3. Reserve Clause

One issue regularly raised before Congress was that of the reserve clause. For more than a century, the "reserve clause" bound a player to a team for his entire career. With the agreement of all the owners and teams, every major league player contract included this clause, which required an annual roll-over or continuation provision.<sup>38</sup> Players could be traded from one team to another, they could be sold to another team, they could retire, or play in Mexico, but they had no prospect or expectation of playing for any of the other major league teams.<sup>39</sup> In most of the early congressional hearings, the reserve clause was supported by every player. "Pee Wee" Reese noted in 1951 that he did not know of a single player in the major leagues who would want to change it.<sup>40</sup>

By 1969, however, player sentiment, at least for one player, had changed enough for the reserve clause to be dramatically challenged. Curt Flood, a center fielder for the St. Louis Cardinals, a consistent All-Star, and a prominent citizen of the St. Louis community, was traded to the Philadelphia Phillies.<sup>41</sup> He refused to go. Instead, he wrote Commissioner Bowie Kuhn:

After twelve years in the Major Leagues, I do not feel I am a piece of property to be bought and sold irrespective of my wishes. I believe that any system which produces that result violates my basic rights as a citizen and is inconsistent with the laws of the United States and of the States.<sup>42</sup>

<sup>38</sup> See PAUL DICKSON, *THE DICKSON BASEBALL DICTIONARY* 701 (Skip McAfee ed., 3d ed. 2009).

<sup>39</sup> CHARLES P. KORR, *THE END OF BASEBALL AS WE KNEW IT: THE PLAYERS UNION, 1960-81*, at 3 (2002); see also David L. Snyder, *Anatomy of an Aberration: An Examination of the Attempts to Apply Antitrust Law to Major League Baseball through Flood v. Kuhn* (1972), 4 DEPAUL J. SPORTS L. CONTEMP. PROBS. 177, 187 (2008).

<sup>40</sup> *Study of Monopoly Power*, *supra* note 13, at 853 (statement of Harold "Pee Wee" Reese, Shortstop, Brooklyn Dodgers).

<sup>41</sup> KORR, *supra* note 39, at 84-85; Allen Barra, *How Curt Flood Changed Baseball and Killed His Career in the Process*, ATLANTIC (July 12, 2011, 2:05 PM), <http://www.theatlantic.com/entertainment/archive/2011/07/how-curt-flood-changed-baseball-and-killed-his-career-in-the-process/241783>.

<sup>42</sup> Letter from Curt Flood, Player, Major League Baseball, to Bowie K. Kuhn, Commissioner, Major League Baseball (Dec. 24, 1969), available at [http://mlb.mlb.com/news/article.jsp?ymd=20070315&content\\_id=1844945&vkey](http://mlb.mlb.com/news/article.jsp?ymd=20070315&content_id=1844945&vkey)

Flood sued in federal court, but his request for a preliminary injunction to allow him to play in 1970 was denied.<sup>43</sup> The Supreme Court rejected his plea for free agency, citing precedent and congressional failure to act.<sup>44</sup> Free agency was subsequently obtained within the decade, not in the courts, but through arbitration under the collective bargaining agreement.<sup>45</sup> After Flood's death in 1997, Congress passed the Curt Flood Act of 1998,<sup>46</sup> removing the exemption and, finally, giving baseball players the same antitrust protections as football and basketball players.<sup>47</sup>

Given the importance of the reserve system, it was only to be expected that Congress could raise the issue at almost every antitrust hearing at which players testified. George Selkirk's testimony was typical. When the former player and executive was asked whether the reserve clause was beneficial to baseball, he said, "I have never heard any objections to the reserve clause from a ballplayer, because I think they realize that this is about the only way we can operate the major leagues, otherwise it would be strictly chaos . . . ."<sup>48</sup>

### 4. Collective Bargaining

The Major League Baseball Players Association (MLBPA),

=news\_mlb&fext=.jsp&c\_id=ml.

<sup>43</sup> See generally Barra, *supra* note 41 (noting no active players stepped forward to support Flood's claim; only Jackie Robinson and Hank Greenberg testified for him).

<sup>44</sup> Flood v. Kuhn, 407 U.S. 258, 283-85 (1972).

<sup>45</sup> See Kan. City Royals Baseball Corp. v. Major League Baseball Players Ass'n, 532 F.2d 615, 617, 631 (8th Cir. 1976). Andy Messersmith played 1975 without signing a new contract. *Id.* at 617. The arbitration panel interpreted the reserve clause as permitting only a one year renewal, not renewals in perpetuity. *Id.* at 631.

<sup>46</sup> 15 U.S.C. § 26(b) (2006); John T. Wolohan, *The Curt Flood Act of 1998 and Major League Baseball's Federal Antitrust Exemption*, 9 MARQ. SPORTS L.J. 347, 348 (1999). See generally Edmund P. Edmonds, *The Curt Flood Act of 1998: A Hollow Gesture After All These Years?*, 9 MARQ. SPORTS L.J. 315 (1999).

<sup>47</sup> See *Major League Baseball Antitrust Reform: Hearing on S. 53 Before the S. Comm. on the Judiciary*, 105th Cong. 15-16 (1997) (statement of Dan Peltier, Player) (discussing how owners' actions toward the minor leagues should not receive antitrust exemption). Dan Peltier was the only former major league player to testify at a hearing on the Curt Flood Act and he primarily discussed the effect of the antitrust exemption on the minor leagues. *Id.* See also Edmonds, *supra* note 46, at 317.

<sup>48</sup> *Professional Sports Antitrust Bill—1964*, *supra* note 37, at 8-9 (statement of George Selkirk, General Manager, Washington Senators).

founded in 1954, and Major League Baseball first entered into a collective bargaining agreement (CBA) in 1968.<sup>49</sup> With the expiration of each CBA, the rhetoric between the parties frequently included threats or warnings of strikes, lockouts, and shutdowns. The collective bargaining negotiations have resulted in eight work stoppages, including eighty-six games cancelled and lost in April 1972, fifty days and 712 games lost in June and July 1981, leading to the split season, and the collapse at the end of the 1994 season.<sup>50</sup>

The CBA ended in December 1993, and the 1994 season began without a new agreement. When negotiations stalled, the players went on strike on August 12, and soon the World Series was cancelled.<sup>51</sup> Spring training in 1995 opened with "replacement" players,<sup>52</sup> as they were politely called. The National Labor Relations Board issued a complaint that the owners had engaged in unfair labor practices by making unilateral changes in the basic agreement and sought injunctive relief.<sup>53</sup> United States district court Judge Sonia Sotomayor, later Justice Sotomayor, issued a temporary injunction mandating a return to the status quo, namely, the continuation of the existing CBA.<sup>54</sup> She concluded that the "public interest in the process of collective bargaining [would] be irreparably harmed if [the] injunction [was] not issued."<sup>55</sup> Further, "returning the parties to the status quo" would restore bargaining equality.<sup>56</sup> With the preliminary injunction against the owners in place, the shortened season

<sup>49</sup> DICKSON, *supra* note 38, at 81, 527-28; KORR, *supra* note 39, at 13, 68.

<sup>50</sup> KORR, *supra* note 39, at 115, 261; MARVIN MILLER, A WHOLE DIFFERENT BALL GAME: THE INSIDE STORY OF THE BASEBALL REVOLUTION 125 (2004); Robert H. Lattinville et al., *Labor Pains: The Effect of a Work Stoppage in the NFL on its Coaches*, 20 MARQ. SPORTS L.J. 335, 338 (2010).

<sup>51</sup> Dave Anderson, *Sports of The Times; A Strike Date of Oct. 1 Insults Every Fan*, N.Y. TIMES, May 19, 2002, at 52.

<sup>52</sup> See Larry Whiteside, *NLRB Votes to Seek Injunction*, BOS. GLOBE, Mar. 27, 1995, at 26.

<sup>53</sup> *Id.*

<sup>54</sup> Silverman v. Major League Baseball Player Relations Comm., Inc., 880 F. Supp. 246, 261 (S.D.N.Y. 1995), *aff'd*, 67 F.3d 1054 (2d Cir. 1995). The judge wrote that "baseball purists will wince at my simplified explanation of the very complex relationship between the Owners and Players . . . [and] others will be disappointed by my cursory description of the prolonged negotiations between the parties." *Id.* at 250.

<sup>55</sup> *Id.* at 259.

<sup>56</sup> *Id.*; Michael A. McCann, *Justice Sonia Sotomayor and the Relationship Between Leagues and Players: Insights and Implications*, 42 CONN. L. REV. 901, 907 (2010).

began in late April. Two years later a new CBA was accepted by the owners and the players.<sup>57</sup>

During the 232 day strike, Congress held three hearings in September 1994 and February 1995 in which players made their cases before the legislature.<sup>58</sup> Congress considered a bill to eliminate the antitrust exemption for labor negotiations, thus allowing the players to have access to the federal courts.<sup>59</sup> MLBPA representative Orel Hershisier called the legislation "that bill that will bring baseball back."<sup>60</sup> The players saw the elimination of this part of the antitrust exemption as necessary: "Major League Baseball players are not asking for special treatment. We are only asking for equal treatment."<sup>61</sup> They appealed to America's love of baseball, encouraging the panel to move the bill forward so that the national pastime could resume. "[M]ore than anything else, I want to be playing baseball."<sup>62</sup>

## 5. Relocation of Franchises

Another major issue related to baseball's antitrust exemption is relocation. From the very first witness in congressional antitrust hearings, members of Congress have been keenly interested in the location of baseball teams, particularly as movement impacts their own states and districts.<sup>63</sup> In 1951, Kansas City was the westernmost city with a team,<sup>64</sup> and members of Congress asked

<sup>57</sup> *Baseball: The Labor Deal Is Now Official*, N.Y. TIMES, Mar. 15, 1997, at 37. See also *Players, Owners Strike 5-Year Labor Pact*, CHI. SUN TIMES, Oct. 25, 2006, at 117 (the current five-year CBA expires at the end of the 2011 season).

<sup>58</sup> *Court-Imposed MLB Antitrust Exemption Hearing*, *supra* note 24, at 83-86 (1995) (statement of David Cone, Major League Baseball Players Association; statement of Eddie Murray, Major League Baseball Players Association); *Baseball's Antitrust Exemption: Hearing Before the Subcomm. on Econ. and Commercial Law of the H. Comm. on the Judiciary*, 103rd Cong., pt. 2, 60-63 (1994) [hereinafter *Baseball's Antitrust Exemption 1994*] (statement of Orel Hershisier, Pitcher, Los Angeles Dodgers); *Impact on Collective Bargaining of the Antitrust Exemption*, *supra* note 26, at 11-13 (statement of Orel Hershisier, Pitcher, Los Angeles Dodgers; Bernie Williams, Center Fielder, New York Yankees).

<sup>59</sup> See Professional Baseball Antitrust Reform Act of 1995, S. 415, 104th Cong. § 27 (1995).

<sup>60</sup> *Baseball's Antitrust Exemption 1994*, *supra* note 58, at 63.

<sup>61</sup> *Id.*

<sup>62</sup> *Impact on Collective Bargaining of the Antitrust Exemption*, *supra* note 26, at 12.

<sup>63</sup> *Study of Monopoly Power*, *supra* note 13, at 4, 21-22.

<sup>64</sup> Chad Underwood, *The 10 Most Devastating Franchise Relocations in Professional Sports History*, BLEACHER REPORT (June 9, 2011),



Ty Cobb—the first witness of the first antitrust hearing—his opinion on westward expansion.<sup>65</sup> Fred Hutchinson and “Pee Wee” Reese both believed baseball’s expansion to the west would be impractical, worrying that “if they move franchises out there [to the West Coast] you are going to hurt all those leagues out there.”<sup>66</sup> Reese was concerned that his teammates’ fear of flying would be a deterrent to long road trips, but he could envision a third major league in the west.<sup>67</sup>

Eventually, of course, expansion won out. Relocation of major league teams in the modern era began with the 1953 move of the Braves to Milwaukee.<sup>68</sup> Two decades of moves followed: the St. Louis Browns to Baltimore in 1954, the Philadelphia Athletics to Kansas City in 1955, the Brooklyn Dodgers to Los Angeles and the New York Giants to San Francisco in 1957, the Washington Senators to Minnesota as the Twins in 1961, the Braves moving again in 1966 to Atlanta, the Kansas City Athletics to Oakland in 1968, the Seattle Pilots to Milwaukee as the Brewers in 1970, and the second Washington Senators team to Texas as the Rangers in 1972.<sup>69</sup> Even when relocation ended in 2005,<sup>70</sup> owners still desired new, more luxurious (or more “traditional”) ballparks and more enthusiastic fan bases. The threat of relocation successfully coerced communities and taxpayers into financing new stadiums.<sup>71</sup> Communities, unable to persuade Major League Baseball to expand and grant a new team,<sup>72</sup> sought to lure and

<http://bleacherreport.com/articles/692140-the-10-most-devastating-franchise-relocations-in-professional-sports-history#articles/692140-the-10-most-devastating-franchise-relocations-in-professional-sports-history/page/2>.

<sup>65</sup> *Study of Monopoly Power*, *supra* note 13, at 21 (statement of Tyrus Raymond Cobb).

<sup>66</sup> *Id.* at 843 (statement of Frederick Hutchinson, Pitcher, Detroit Tigers).

<sup>67</sup> *Id.* at 856 (statement of Harold “Pee Wee” Reese, Shortstop, Brooklyn Dodgers).

<sup>68</sup> Howard W. Brill, *The Name of the Departed Team: Who Can Use It?*, 15 WHITTIER L. REV. 1003, 1013–14 (1994).

<sup>69</sup> *Id.* On trademark issues arising from the movement of teams, see generally *id.*

<sup>70</sup> The Montreal Expos moved to Washington, D.C., and became the Washington Nationals. *Announcement Will Come Wednesday*, ESPN.COM, <http://sports.espn.go.com/mlb/news/story?id=1890915> (last visited Sept. 27, 2011).

<sup>71</sup> See *Move Contingent on New D.C. Ballpark*, ESPN.COM (Dec. 3, 2004), <http://sports.espn.go.com/mlb/news/story?id=1937896>. For relocation, MLB requires a three-fourths vote of the owners in the affected league and a majority vote in the other league. DICKSON, *supra* note 38, at 699.

<sup>72</sup> The most recent expansions were in 1993 (Florida Marlins and Colorado Rockies) and 1998 (Arizona Diamondbacks and Tampa Bay Rays). *MLB*

entice existing teams.

The Chicago White Sox, the Seattle Mariners, and the San Francisco Giants played the courting game with St. Petersburg, Florida.<sup>73</sup> The city built the Suncoast Dome (now called Tropicana Field) in 1990, and it needed a tenant.<sup>74</sup> In August 1992, newspaper headlines in Florida read “The Giants are Coming!”<sup>75</sup> When the National League owners refused to approve the transfer, litigation followed. The Tampa Bay ownership group sued,<sup>76</sup> the Florida Attorney General stepped in,<sup>77</sup> and another Florida group alleged it had been barred from buying the Minnesota Twins.<sup>78</sup> Ultimately, federal courts ruled that, despite the passage of the Curt Flood Act, relocation decisions are part of the business of baseball and are exempt from federal and state antitrust laws.<sup>79</sup>

In the middle of this legal and civic maneuvering and posturing, Congress held antitrust hearings,<sup>80</sup> and players joined members of the Florida congressional delegation as witnesses. The failed relocation of the Giants set the tone for a March 1994 Senate hearing in St. Petersburg, “down the road from some rather tangible evidence of the over privileged owners’ cartel and its monopoly power: the empty Sun Coast Dome.”<sup>81</sup> Although other issues were covered—notably the refusal of owners to select

*Expansion: Baseball Discussions to Add Two More Teams*, MLB REPORTS (July 1, 2011), <http://mlbreports.com/2011/07/01/mlb-expansion/>.

<sup>73</sup> Hank Hersch, *Tale of Four Cities*, SPORTS ILLUSTRATED, Aug. 24, 1992, at 33, available at <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1004133/index.htm>.

<sup>74</sup> *Id.* The tenant arrived with the expansion Tampa Bay Rays in 1998, but the team is already looking for a new home in the Tampa Bay area. See generally Editorial, *Off the Field, Rays Face Major Hurdles*, TAMPA TRIB., Apr. 4, 2010, at Views.

<sup>75</sup> Hersch, *supra* note 73 (“The news [of the agreement to move Giants] was received in [the] Tampa Bay area with jubilation.”).

<sup>76</sup> *Piazza v. Major League Baseball*, 831 F. Supp. 420, 421 (E.D. Pa. 1993).

<sup>77</sup> *Butterworth v. Nat’l League of Prof’l Baseball Clubs*, 644 So. 2d 1021, 1022 (Fla. 1994).

<sup>78</sup> *Morsani v. Major League Baseball*, 663 So. 2d 653, 655 (Fla. Dist. Ct. App. 1995).

<sup>79</sup> *Major League Baseball v. Crist*, 331 F.3d 1177, 1183 (11th Cir. 2003).

<sup>80</sup> See *Professional Baseball Teams and the Antitrust Laws: Hearing on S. 500 Before the Subcomm. on Antitrust, Monopolies, and Bus. Rights of the S. Comm. on the Judiciary*, 103rd Cong. (1994) [hereinafter *Professional Baseball Teams and the Antitrust Laws*]; John Wunderli, *Squeeze Play: The Game of Owners, Cities, Leagues and Congress*, 5 MARQ. SPORTS L.J. 83, 112–15 (1994).

<sup>81</sup> *Professional Baseball Teams and the Antitrust Laws*, *supra* note 80, at 1 (statement of Sen. Howard Metzenbaum).

a new commissioner—relocation hung over the hearing.<sup>82</sup> Kentucky Senator and Hall of Famer Jim Bunning vehemently argued for the end of the antitrust exemption, "When the owners abuse these powers, like the episode several years ago involving the Giants moving to the Tampa-St. Pete area, there is nothing anyone can do about it."<sup>83</sup>

## 6. Miscellaneous Issues

Congress has also held hearings that dealt with only one issue relating to baseball's antitrust exemption. For example, in 1953, Hall of Famer Joe Cronin, then the general manager for the Boston Red Sox, appeared briefly at a hearing on television broadcasting.<sup>84</sup> Cronin explained where the team broadcasted and was supportive of a local broadcast option, which would require a team to agree to a television broadcast of another team within its local territory.<sup>85</sup>

Another limited antitrust bill was considered in 1954, when the Senate examined legislation to make the antitrust laws applicable to teams affiliated with the alcoholic beverage industry—namely, the St. Louis Cardinals.<sup>86</sup> Beer magnate Gussie Busch had purchased the Cardinals in 1953 and raised the ire of Senator Edwin Johnson from Colorado.<sup>87</sup> Citing the team's stadium—recently rechristened Busch Stadium—and the Clydesdale horse-drawn wagon on the playing field, Johnson charged that the franchise was a subsidiary of the brewer.<sup>88</sup> "Mr. Busch's lavish and vulgar display of beer wealth and beer opulence in the operation of the Cardinal Ball Club should

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 20 (statement of Sen. Jim Bunning); see also *Baseball's Antitrust Exemption: Hearing Before the Subcomm. on Econ. and Commercial Law of the H. Comm. on the Judiciary*, 103rd Cong., pt. 1, 25 (1993) (statement of Sen. Jim Bunning) ("28 owners totally control the destiny of the sport and the lives of those it affects like so many Roman gods sitting comfortably on their thrones.").

<sup>84</sup> *Broadcasting and Televising Baseball Games: Hearing on S. 1396 Before a Subcomm. of the S. Comm. on Interstate and Foreign Commerce*, 83rd Cong. 34 (1953).

<sup>85</sup> *Id.* at 34–35.

<sup>86</sup> *Subjecting Professional Baseball Clubs to the Antitrust Laws: Hearing on S. J. Res. 133 Before a Subcomm. of the S. Comm. on the Judiciary*, 83rd Cong. 1, 17 (1954) [hereinafter *Subjecting Professional Baseball Clubs to the Antitrust Laws*] (testimony of Sen. Edwin C. Johnson).

<sup>87</sup> *Id.* at 22.

<sup>88</sup> *Id.* at 17–18.

disturb baseball greatly."<sup>89</sup> In his first of three appearances before Congress,<sup>90</sup> St. Louis native and Chicago Cub catcher Joe Garagiola was called to testify about this business relationship.<sup>91</sup> However, Garagiola knew little. As a Cub, he had briefly discussed a future broadcasting career with the advertising agency for Anheuser-Busch.<sup>92</sup> Most of his testimony was taken up by Senator Johnson's attempts to portray the conversations as evidence of Anheuser-Busch's control of baseball.<sup>93</sup> The connection was so tenuous, however, that Garagiola's final words at the hearing were, "I am thoroughly confused."<sup>94</sup> It is likely that he was not the only one.

## B. Performance Enhancing Drugs

*Rep. William Lacy Clay: "In addition to andro, which was legal at the time—that you used it—what other supplements did you use?"*

*Mark McGwire: "I am not here to talk about the past."*

....

*Rep. William Lacy Clay: "... Mr. McGwire, let me go back and ask you, would you have been able to perform at that level without using andros?"*

*Mark McGwire: "I am not going to talk about the past."<sup>95</sup>*

The issue of congressional investigations of performance-enhancing drugs in baseball has been well-documented.<sup>96</sup> In the

<sup>89</sup> *Id.* at 18. "How can there remain any sportsmanship in baseball if a totally different corporation makes the baseball corporation a wholly owned subsidiary as is the Cardinal Baseball Club of the alcoholic beverage industry?" *Id.* at 17.

<sup>90</sup> See *infra* Appendix: List of All Testimony.

<sup>91</sup> See *Subjecting Professional Baseball Clubs to the Antitrust Laws*, *supra* note 86, at 42–57 (testimony of Joseph H. Garagiola, Former Player, Chicago Cubs).

<sup>92</sup> *Id.* at 46–47.

<sup>93</sup> *Id.* at 42–57.

<sup>94</sup> *Id.* at 65.

<sup>95</sup> *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. 264 (2005) [hereinafter *Restoring Faith in America's Pastime*] (statement of Mark McGwire, Former Player, St. Louis Cardinals).

<sup>96</sup> Matthew A. Foote, *Three Strikes and You're (Not Necessarily) Out: How Baseball's Erratic Approach to Conduct Violations is Not in the Best Interest of the Game*, 6 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 1 (2009); Andrew L. T. Green, Note, *Spreading the Blame: Examining the Relationship Between DSHEA and the Baseball Steroid Scandal*, 90 B.U.L. REV. 399, 401 (2010); Holli N. Heiles, Comment, *Baseball's "Growth" Problem: Can Congress Require Major League Baseball to Test Its Athletes for Human Growth Hormone? A Proposal*, 62

mid-2000s, Congress took a high-profile interest in the issue with two blockbuster hearings featuring players considered among the all-time greats of the game. In these hearings, however, the players were not just expert witnesses; several were essentially defendants on trial.

In 2005, the House Government Reform Committee called seven players as witnesses—five of the top thirty-two home run hitters of all time (Sammy Sosa, Mark McGwire, Rafael Palmeiro, Frank Thomas, and Jose Canseco), a star pitcher with two (soon to be three) World Series rings (Curt Schilling), and a Hall of Famer (Senator Jim Bunning).<sup>97</sup> After a cursory congressional investigation prompted by the publication of Canseco's memoir alleging widespread steroid use in the game,<sup>98</sup> Chairman Tom Davis called the hearing in order to examine baseball's drug policy and the "larger societal and public health ramifications of steroid use."<sup>99</sup> As soon as Davis called the first witness—Hall of Famer and Senator Jim Bunning—it was clear that baseball would be under fire. Calling the new steroid testing policy "a first baby step,"<sup>100</sup> Bunning proposed wiping out steroid-aided records and immediate expulsion from the game for players who testified positive for banned substances.<sup>101</sup>

When the panel of active players testified, no one looked like a hero.<sup>102</sup> Both Sosa<sup>103</sup> and Palmeiro<sup>104</sup> denied using banned

ARK. L. REV. 315 (2009); see generally Joshua M. Kimura, *The Return of the Natural: How the Federal Government Can Ensure that Roy Hobbs Outlasts Barry Bonds in Major League Baseball*, 16 SPORTS LAW. J. 111, 114, 129–31 (2009) (examining the use of the federal mail fraud statute against performance enhancing drugs).

<sup>97</sup> *Restoring Faith in America's Pastime*, supra note 95, at 55, 207 (statement of Chairman Tom Davis introducing Sosa, McGwire, Palmeiro, Thomas, and Canseco). Schilling and Thomas both appeared because they had spoken out against steroids. *Id.*

<sup>98</sup> JOSE CANSECO, JUICED: WILD TIMES, RAMPANT 'ROIDS, SMASH HITS, AND HOW BASEBALL GOT BIG (2005). Sosa, McGwire, and Palmeiro were among those accused of steroid use. *Id.* at 135, 201.

<sup>99</sup> *Restoring Faith in America's Pastime*, supra note 95, at 2 (statement of Chairman Tom Davis). "[T]here is no joy in Mudville—until the truth comes out." *Id.* at 8 (paraphrasing Ernest Thayer, *Casey at the Bat*, S.F. EXAMINER, June 3, 1888, available at [http://www.baseball-almanac.com/poetry/po\\_case.shtml](http://www.baseball-almanac.com/poetry/po_case.shtml)).

<sup>100</sup> *Id.* at 55 (statement of Sen. Jim Bunning).

<sup>101</sup> *Id.* at 95.

<sup>102</sup> See Editorial, *Lame Baseball Show Stiffs Us on the Tell*, CHI. SUN TIMES, Mar. 20, 2005, at 49 ("No one came off well at these hearings—not MLB, not Congress, not the players union, not the legal eagles advising McGwire to say as little as possible."). See also *Restoring Faith in America's Pastime*, supra note

substances despite committee skepticism. Canseco backtracked on his book's claim that steroids could be helpful to athletes; Schilling admitted to exaggerating his knowledge of widespread steroid use.<sup>105</sup> McGwire's testimony, however, became the most lasting image of the hearing. Rather than admitting steroid use,<sup>106</sup> he evaded almost one-third of congressional questions, many with his now-famous response: "I'm not here to talk about the past."<sup>107</sup> The slugger who had captivated America with his chase of Roger Maris's hallowed single-season home run record was a "shrunk, lonely, evasive figure whose testimony brought him to the verge of tears."<sup>108</sup> The diminished stature of these baseball greats was a far cry from Williams, Mantle, and Musial, who each left the hearing room with their hero status unquestioned and intact.

Three years later, a government reform subcommittee held another hearing on steroid use. This hearing was prompted by the December 2007 report of former Senator George Mitchell investigating steroid use in baseball.<sup>109</sup> The report alleged steroid

95, at 236 (statement of Frank Thomas). The sole exception was Frank Thomas, who appeared only by videoconference and answered no questions. *Id.*

<sup>103</sup> *Restoring Faith in America's Pastime*, supra note 95, at 215 (statement of Sammy Sosa) ("To be clear, I have never taken illegal performance-enhancing drugs. I have never injected myself or had anyone inject me with anything. I have not broken the laws of the United States or the laws of the Dominican Republic."). Sosa's opening statement was read by his attorney because of his limited English. *Id.* Some skeptics noted Sosa's carefully crafted statement and his fluency when answering questions in the clubhouse. See Thomas Boswell, *Players of Stature, Feats of Clay*, WASH. POST, Mar. 18, 2005, at D1.

<sup>104</sup> *Restoring Faith in America's Pastime*, supra note 95, at 227 (statement of Rafael Palmeiro) ("I have never used steroids, period."). See also *Rafael Palmeiro Claims No Steroid Use*, ESPN.COM (Dec. 30, 2010, 2:18AM), <http://sports.espn.go.com/mlb/news/story?id=5966668> (discussing how Palmeiro maintained his innocence even though he was suspended ten games for a positive steroid test).

<sup>105</sup> Darren Rovell, *Sizing Up How the Players Performed*, ESPN.COM (Mar. 17, 2005), <http://sports.espn.go.com/mlb/news/story?id=2015850>.

<sup>106</sup> *Restoring Faith in America's Pastime*, supra note 95, at 264. McGwire later admitted to using performance-enhancing drugs. See Tyler Kepner, *McGwire Admits Steroid Use in 1990s, His Years of Magic*, N.Y. TIMES, Jan. 11, 2010, at B10.

<sup>107</sup> *Restoring Faith in America's Pastime*, supra note 95, at 264 (statement of Mark McGwire); Rovell, supra note 105.

<sup>108</sup> Dave Sheinin, *Baseball Has A Day of Reckoning In Congress; McGwire Remains Evasive During Steroid Testimony*, WASH. POST, Mar. 18, 2005, at A1. See also George Vecsey, *Avoiding the Past, a Role Model is History*, N.Y. TIMES, Mar. 18, 2005, at D1 ("Mark McGwire, who once heard crowds cheer his name, came up mute in front of Congress. He had the worst day of all.").

<sup>109</sup> GEORGE J. MITCHELL, REPORT TO THE COMMISSIONER OF BASEBALL OF AN

use by seven-time Cy Young Award winner Roger Clemens with the assistance of his trainer, Brian McNamee.<sup>110</sup> "[I]f the Mitchell Report is to be the last word on baseball's past, we believe we have a responsibility to investigate a serious claim of inaccuracy."<sup>111</sup>

In his opening statement, Clemens was resolute: "Let me be clear. I have never taken steroids or HGH."<sup>112</sup> His accuser, McNamee was equally resolute: "During the time that I worked with Roger Clemens, I injected him on numerous occasions with steroids and human growth hormone."<sup>113</sup> The hearing continued in that pattern of allegations and denials for four hours as the two witnesses pointed fingers at each other.<sup>114</sup> At the end of the day, Clemens, like McGwire, left with his credibility questioned and his on-the-field accomplishments shrouded in doubt.<sup>115</sup>

Two weeks later, the committee asked the Justice Department to investigate the truth of Clemens's statements.<sup>116</sup> Clemens was eventually charged with perjury and obstruction of Congress based on his appearance, but his 2011 trial abruptly ended in a mistrial after two days.<sup>117</sup>

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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>.

<sup>110</sup> *Id.* at 167-75.

<sup>111</sup> *The Mitchell Report: The Illegal Use of Steroids in Major League Baseball, Day 2: Hearing Before the H. Comm. on Oversight and Gov't Reform*, 110th Cong. 3 (2008) [hereinafter *The Mitchell Report*] (statement of Henry A. Waxman, Chairman). Clemens and McNamee were the only baseball witnesses at the hearing. *Id.* at III. Waxman later regretted calling the hearing in the first place, saying "I'm sorry we had the hearing. I regret that we had the hearing. And the only reason we had the hearing was because Roger Clemens and his lawyers insisted on it." Duff Wilson & Michael S. Schmidt, *Waxman Regrets Hearing Was Held*, N.Y. TIMES, Feb. 15, 2008, at D1.

<sup>112</sup> *The Mitchell Report*, *supra* note 111, at 21 (statement of Roger Clemens, Player, New York Yankees).

<sup>113</sup> *Id.* at 78 (statement of Brian McNamee, Former Strength and Conditioning Coach, Major League Baseball).

<sup>114</sup> Some observers also noted a partisan slant in the questioning, with Republican members tending to believe Clemens. See Editorial, *Say It Ain't So, Roger*, BOS. GLOBE, Feb. 15, 2008, at A14.

<sup>115</sup> See, e.g., *id.* "Given his chance Wednesday to say it ain't so, Clemens said it ain't. But more credible witnesses said it is." *Id.*

<sup>116</sup> Richard Sandomir & Michael S. Schmidt, *Congress Requests Clemens Inquiry*, N.Y. TIMES, Feb. 28, 2008, at D1.

<sup>117</sup> Shira Springer, *Mistrial Declared in Clemens Perjury Case*, BOS. GLOBE, July 15, 2011, at 1. The Clemens trial was foreseen by some observers. See Thomas Boswell, *Players of Stature, Feats of Clay*, WASH. POST, Mar. 18, 2005, at D1 (referring to the 2005 hearings) ("It is even possible that, within a few years, depending upon how many revelations from the Steroid Age finally

### C. Gambling

*[I]f we further legalize sports betting we will create doubt about the integrity of the game. Just as we do not want our integrity challenged, so it is that I do not want the honesty of baseball to be in doubt.*<sup>118</sup>

A variety of congressional hearings have been held on gambling in sports, but only one has featured a baseball player at the witness table. In 1991, the House Judiciary Committee took up a bill to prohibit state-sponsored sports lotteries.<sup>119</sup> Baseball Hall of Famer Frank Robinson joined representatives of other sports, including legendary Boston Celtics coach Red Auerbach and National Football League commissioner Paul Tagliabue, to express his support for the legislation.<sup>120</sup> Robinson was concerned about any actions that might raise questions about the honesty of the game, particularly in light of the recent revelations about Pete Rose's gambling. Despite the support of these sports luminaries, however, no further action was taken on the bill.

## II. CELEBRITY WITNESSES: NON-BASEBALL ISSUES

Baseball players have also appeared before Congress to discuss topics that have merely tangential relationships with the game of baseball itself. Although the players have differing scopes of knowledge on the topics, as well-known individuals and celebrities, they help to focus media and public attention on the issue at hand. Three broad categories of issues can be identified—political activism, health, and illegal drugs.

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become public, we could even see one of these men charged with perjury or contempt of Congress.").

<sup>118</sup> *Professional and Amateur Sports Protection Act: Hearing on H.R. 74 Before the Subcomm. on Econ. and Commercial Law of the H. Comm. on the Judiciary*, 102nd Cong. 39 (1991) (statement of Frank Robinson, Assistant General Manager, Baltimore Orioles, on behalf of Major League Baseball).

<sup>119</sup> *Id.* at 1 (statement of Hon. Jack Brooks, Chairman).

<sup>120</sup> *Id.* at 10, 33, 38-39 (statement of Paul Tagliabue, Comm'r, National Football League; statement of Arnold "Red" Auerbach, President, Boston Celtics, on behalf of the National Basketball Association; statement of Frank Robinson, Assistant General Manager, Baltimore Orioles, on behalf of Major League Baseball).

## A. Political Activism

*[W]hite people must realize that the more a Negro hates communism because it opposes democracy, the more he is going to hate any other influence that kills off democracy in this country—and that goes for racial discrimination in the Army, and segregation on trains and buses, and job discrimination because of religious beliefs or color or place of birth.*<sup>121</sup>

The most significant testimony of baseball players outside of the game of baseball is on political issues. Perhaps most notable was the earliest instance of a player's testimony—July 18, 1949, when Jackie Robinson was called before the House Subcommittee of the Committee on Un-American Activities.<sup>122</sup> His appearance was in response to a speech by entertainer Paul Robeson, who reportedly made comments that African Americans would never fight against the Soviet Union due to African American discrimination in the United States.<sup>123</sup>

Robinson was reluctant to discuss communism before the Committee:

I don't pretend to be any expert on communism . . .

[Baseball] has been enough to keep me busy without becoming an "expert"—except on base stealing . . .

But you can put me down as an expert on being a colored American, with 30 years of experience at it.<sup>124</sup>

However, Robinson used his platform to paint a picture of his race as both loyal and oppressed:

I can't speak for any 15,000,000 people any more than any other one person can, but I know that I've got too much invested for my wife and child and myself in the future of this country, and I and other Americans of many races and faiths have too much invested in our country's welfare, for any of us to throw it away . . .

<sup>121</sup> *Hearings Regarding Communist Infiltration of Minority Groups: Hearings Before the H. Comm. on Un-American Activities*, 81st Cong., pt. 1, 81 [hereinafter *Hearings Regarding Communist Infiltration of Minority Groups*] (testimony of Jack Roosevelt "Jackie" Robinson, Player, Brooklyn Dodgers) (1949). Despite the unpleasant nature of the proceedings, Robinson's desire to remain out of partisan politics, and public encouragement to refuse, he testified out of "a sense of responsibility." *Id.* at 479–80.

<sup>122</sup> *Id.* at 479–83.

<sup>123</sup> See Ronald A. Smith, *The Paul Robeson—Jackie Robinson Saga and a Political Collision*, 6 J. SPORT HIST. 5, 5–7 (1979).

<sup>124</sup> *Hearings Regarding Communist Infiltration of Minority Groups*, *supra* note 121, at 480.

But that doesn't mean that we're going to stop fighting race discrimination in this country until we've got it licked. It means that we're going to fight it all the harder because our stake in the future is so big. We can win our fight without the Communists and we don't want their help.<sup>125</sup>

Remarkably, after his emotional testimony, Robinson returned to Brooklyn for the Dodgers game against the Cubs that same day, where he hit a triple and stole two bases in the Dodgers 3-0 win at Ebbets Field.<sup>126</sup> He would finish the year as the National League Most Valuable Player.<sup>127</sup>

Not surprisingly, Robinson's political activism continued after his career ended, and he would testify nine times before Congress—more than any other player. He called on Congress to support efforts to fight juvenile delinquency,<sup>128</sup> support minority-owned businesses,<sup>129</sup> establish a Commission on Negro History and Culture,<sup>130</sup> and even to scrap weapons systems to address issues of crime and poverty instead.<sup>131</sup>

In each of these appearances, Robinson continued to stand for equality and opportunity for minorities, telling Congress in no uncertain terms to reorient the nation's priorities. Four days after the assassination of Martin Luther King, Jr., he told a

<sup>125</sup> *Id.* at 482; see also Editorial, *Negroes are Americans: Jackie Robinson Proves it in Words and on the Ball Field*, LIFE, Aug. 1, 1949, at 22 ("When he had finished someone in the audience called out, 'Amen!' So say we.").

<sup>126</sup> See *Chicago Cubs vs. Brooklyn Dodgers: July 18, 1949 Box Score*, BASEBALL ALMANAC, <http://www.baseball-almanac.com/box-scores/boxscore.php?boxid=194907180BRO> (last visited Sept. 27, 2011).

<sup>127</sup> Dave Anderson, *New Plaque, Same Giant of a Man*, N.Y. TIMES, June 26, 2008, at D1.

<sup>128</sup> *Juvenile Delinquency: Antisocial Juvenile Gangs in New York City: Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the S. Comm. on the Judiciary*, 86th Cong., pt. 4, 536–40 (1959) (statement of Jackie Robinson, Vice President, Chock Full o'Nuts Corp.). His statement called for positive news coverage of youth, mentoring, and better housing condition. "[A]ll of us, now more than ever, are sufficiently angry and determined to contain this menacing cancer known as juvenile delinquency." *Id.* at 536–37.

<sup>129</sup> *Federal Minority Enterprise Program: Hearings Before the Subcomm. on Small Bus. of the S. Comm. on Banking and Currency*, 91st Cong. 145 (1969) (statement of Jackie Robinson, Vice President, Sea Host, Inc.).

<sup>130</sup> *To Establish a National Commission on Negro History and Culture: Hearing on H.R. 12962 Before the Subcomm. on Labor of the H. Comm. on Educ. and Labor*, 90th Cong. 62–64 (1968) [hereinafter *To Establish a National Commission on Negro History and Culture*] (statement of Jackie Robinson).

<sup>131</sup> *Department of Defense Appropriations for 1970: Hearings Before the Subcomm. of the H. Comm. on Appropriations*, 91st Cong., pt. 6, 883–87 (1969) [hereinafter *Department of Defense Appropriations for 1970*] (testimony of Jackie Robinson, Former Major League Baseball Player).

panel, "[I]f you don't know why Martin Luther King died, if you don't have the capacity to examine yourself and find where you are wanting in the quality of your conscience or the discharge of your duties as a public servant, then there is nothing I can tell you."<sup>132</sup> Robinson was unafraid to criticize members of Congress for their lack of action on minority issues:

Our over preoccupation with a possible future external threat, on which we are preparing to spend billions of dollars, has blinded us to human misery at home. The same voices which call for expanded weapons systems of dubious value are the voices which tell us there is no money to help our children and our youth.<sup>133</sup>

Just as he did on the playing field, Jackie Robinson often represented an entire race of Americans before Congress and did his best to help the members of Congress understand the point of view of African Americans, particularly young African Americans, across the country.<sup>134</sup>

Political activism was not limited to Jackie Robinson. In 1970, the House Foreign Affairs Committee convened a hearing after tennis great Arthur Ashe was denied a visa to play in a South African tennis tournament based solely on his race.<sup>135</sup> Houston Astros pitcher Jim Bouton was one of the key witnesses.<sup>136</sup> Bouton's appearance had little to do with his baseball knowledge; rather, he had become known for his protests against South Africa's apartheid policies, previously encouraging American Olympic officials to take a strong stand against the nation's discriminatory athletic teams.<sup>137</sup>

Bouton called for the use of sport as a tool to end discrimination. "Athletics are extremely popular all over the world, and near-sighted policies and attitudes on the part of our

<sup>132</sup> *Human Resources Development: Hearings Before the Subcomm. on Gov't. Research of the S. Comm. on Gov't. Operations*, 90th Cong., pt. 1, 6 (1968) [hereinafter *Human Resources Development*] (statement of Jackie Robinson, Special Assistant for Community Affairs, Governor of N.Y.).

<sup>133</sup> *Department of Defense Appropriations for 1970*, *supra* note 131, at 885.

<sup>134</sup> See *Human Resources Development*, *supra* note 132, at 4 ("I know how it feels to be young and black and pessimistic [but] I have been very fortunate in life."); see also *To Establish a National Commission on Negro History and Culture*, *supra* note 130, at 63 ("I think it's high time that the Congress understood the tremendous frustrations that the young Negro has today . . .").

<sup>135</sup> See *Foreign Policy Implications of Racial Exclusion in Granting Visas: Hearing Before the Subcomm. on Africa of the H. Comm. on Foreign Affairs*, 91st Cong. 17-19 (1970) [hereinafter *Foreign Policy Implications*] (statement of Arthur Ashe, U.S. tennis champion).

<sup>136</sup> See *id.* at 37-43 (statement of James Bouton, Member, Houston Astros).

<sup>137</sup> See Jim Bouton, *A Mission in Mexico City*, *SPORT*, Aug. 1969, at 64-65.

sports officials, whether they officially represent our country or not, can undo all the good efforts of our Government to make friends, especially among the nonwhite nations."<sup>138</sup> He testified that the problem of discrimination could not be left to athletic organizations only; rather, the government needed to take a strong stance against apartheid.<sup>139</sup> Individual Caucasian athletes could also be involved by refusing to compete against South African teams as long as the teams were white-only.<sup>140</sup> At the time, few athletes were speaking about these types of issues, but Bouton was not one to shy away from controversy; he would become well-known later in 1970 with the publication of his outspoken book *Ball Four*.<sup>141</sup>

The most recent testimony by a baseball player before Congress was that of former pitcher David Cone, who testified at the confirmation hearing of Sonia Sotomayor to be an Associate Justice on the U.S. Supreme Court.<sup>142</sup> As a federal district judge, Sotomayor issued an injunction that helped end the 1994 baseball strike.<sup>143</sup> Cone, a union representative during the strike, praised her "tough, courageous call that put the baseball players back on the field."<sup>144</sup> "[I]t can be a good thing to have a judge or a Justice on the Supreme Court who recognizes that the law cannot always be separated from the realities involved in the disputes being

<sup>138</sup> See *Foreign Policy Implications*, *supra* note 135, at 38.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> JIM BOUTON, *BALL FOUR: MY LIFE AND HARD TIMES THROWING THE KNUCKLEBALL IN THE BIG LEAGUES* (Leonard Shecter ed., 1970).

<sup>142</sup> *Confirmation Hearing on the Nomination of Hon. Sonia Sotomayor, To Be an Associate Justice of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary*, 111th Cong. 519-21 (2009) [hereinafter *Nomination of Hon. Sonia Sotomayor*] (statement of David Cone, Former Player, New York Yankees).

<sup>143</sup> *Silverman v. Major League Baseball Player Relations Comm., Inc.*, 880 F. Supp. 246, 250, 261 (S.D.N.Y. 1995). See also Sean Gregory, *How Sotomayor "Saved" Baseball*, *TIME*, May 26, 2009, available at <http://www.time.com/time/nation/article/0,8599,1900974,00.html>.

<sup>144</sup> *Nomination of Hon. Sonia Sotomayor*, *supra* note 142, at 520. President Barack Obama also saw Sotomayor's decision as a reason to support her elevation to the high court: "In a decision that reportedly took her just 15 minutes to announce, a swiftness much appreciated by baseball fans everywhere . . . she issued an injunction that helped end the strike. Some say that Judge Sotomayor saved baseball." Press Release, Barack Obama, Remarks by the President in Nominating Judge Sonia Sotomayor to the United States Supreme Court (May 26, 2009), available at [http://www.whitehouse.gov/the\\_press\\_office/Remarks-by-the-President-in-Nominating-Judge-Sonia-Sotomayor-to-the-United-States-Supreme-Court](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-in-Nominating-Judge-Sonia-Sotomayor-to-the-United-States-Supreme-Court).



decided."<sup>145</sup>

### B. Health Care

"We are here as foot soldiers"—Steve Garvey

Baseball has felt a special kinship to health issues since 1939, when Yankee great Lou Gehrig was diagnosed with the mysterious disease that now bears his name. Gehrig never appeared before Congress, although his widow, Eleanor, testified movingly in support of multiple sclerosis funding eight years after his death.<sup>146</sup>

Today, players testifying on health-related issues typically have a personal connection of some sort to the illness in question and are calling for Congress to provide funding for research or education on the disease. Many of these players suffered from the very diseases that were the subject of the hearings. For example, Pittsburgh Pirates pitcher Dock Ellis was diagnosed with sickle cell anemia and called for research, education, and counseling programs in the District of Columbia.<sup>147</sup> Dom DiMaggio<sup>148</sup> suffered from Paget's Disease and served as a spokesman for the Paget's Disease Foundation, calling for more research funding to determine causes of the chronic bone

<sup>145</sup> *Nomination of Hon. Sonia Sotomayor*, *supra* note 142, at 521.

<sup>146</sup> See *National Multiple Sclerosis Act: Hearing on S. 102 Before the Subcomm. on Health of the S. Comm. on Labor and Pub. Welfare*, 81st Cong. 11-12 (1949) (testimony of Mrs. Lou Gehrig, widow of famous Yankee baseball player Lou Gehrig).

Gentlemen, we all "owe God a debt," as Shakespeare puts it. That my husband should pay his debt to God sooner than most men is regrettable, but not uncommon in the degenerative diseases.

But to watch someone close to you become a helpless, hopeless paralytic and to know that medical science is powerless to halt the progress of the disease, is something which no person should be called upon to endure.

*Id.* Eleanor Gehrig continued her advocacy until her death in 1984, forty-three years after her husband succumbed to ALS in 1941. See Joseph Durso, *Eleanor Gehrig, 79, Widow of Yankee Hall of Fame Star*, N.Y. TIMES, Mar. 8, 1984, at D22.

<sup>147</sup> See *Sickle Cell Anemia: Hearing on S. 2677 Before the Subcomm. on Pub. Health, Educ., Welfare, and Safety of the S. Comm. on the D.C.*, 92nd Cong. 30-32 (1971) (statement of Dock Ellis, Pitcher, Pittsburgh Pirates).

<sup>148</sup> Although overshadowed by his older brother Joe, Dom DiMaggio was a seven-time All-Star center fielder during eleven seasons with the Red Sox. Richard Goldstein, *Dom Dimaggio, Red Sox All-Star and Joe's Kid Brother, Dies at 92*, N.Y. TIMES, May 9, 2009, at D8.

disease.<sup>149</sup> Juvenile diabetes sufferer and Chicago Cub Ron Santo, testified twice on behalf of the Juvenile Diabetes Research Foundation, asking for congressional appropriations while movingly sharing how he tried to conceal his condition in the clubhouse.<sup>150</sup> Pitcher Ed Farmer inherited polycystic kidney disease from his mother; he was close to death before receiving a kidney transplant.<sup>151</sup> These are perhaps the quintessential uses of celebrity witnesses—Congress could have called many other sufferers of these diseases to testify, but the committee deliberately chose a well-known interest group spokesperson to help highlight the federal response to each health threat.

Other players were called as witnesses due to their connections to Lou Gehrig's disease. Pitcher Tommy John became involved in the ALS Association after his teammate, Hall of Famer Catfish Hunter, was diagnosed with the disease.<sup>152</sup> David Cone became the Yankee spokesperson for the organization because of the franchise's long association with Lou Gehrig's disease.<sup>153</sup> Both appeared before Congress calling for more research funding for the illness. Steve Garvey had not been personally affected by ALS, but nonetheless sought congressional support.<sup>154</sup>

Despite the connection between sport, exercise, and health,

<sup>149</sup> *Osteoporosis: Prevention, Education, and Research: Hearing Before a Subcomm. of the S. Comm. on Appropriations*, 105th Cong. 23 (1999) (statement of Dominic DiMaggio, Member, Board of Directors, the Paget Foundation).

<sup>150</sup> See *infra* Appendix: List of All Testimony; *Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations for Fiscal Year 1985: Hearings on H.R. 6028/S. 2836 Before the Subcomm. on Departments of Labor, Health and Human Services, and Education, and Related Agencies of the S. Comm. on Appropriations*, 98th Cong., pt. 3, 660-61 (1984) (statement of Ron Santo, Honorary Member, Board of Directors, Juvenile Diabetes Foundation International). Before his death in 2010, Santo would raise millions of dollars for diabetes research and suffer numerous health complications, including the amputation of both legs. See Richard Goldstein, *Ron Santo, Long a Favorite of Cub Fans, Dies at 70*, N.Y. TIMES, Dec. 4, 2010, at A16.

<sup>151</sup> *Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations for 1996: Hearings Before the Subcomm. on Departments of Labor, Health and Human Services, and Education, and Related Agencies of the H. Comm. on Appropriations*, 104th Cong., pt. 7, 905 (1995) (statement of Ed Farmer, Polycystic Kidney Research Foundation).

<sup>152</sup> *Amyotrophic Lateral Sclerosis (ALS): Hearing Before a Subcomm. of S. Comm. on Appropriations*, 109th Cong., pt. 1, 39-40 (2005) (statement of Tommy John, Former Player, Major League Baseball).

<sup>153</sup> *Id.* at 42 (statement of David Cone, Former Player, New York Yankees).

<sup>154</sup> *Amyotrophic Lateral Sclerosis: Hearing Before a Subcomm. of the S. Comm. on Appropriations*, 106th Cong., pt. 2, 22 (2000) [hereinafter *Amyotrophic Lateral Sclerosis 2000*] (statement of Steve Garvey, Former First Baseman, Los Angeles Dodgers).

only one testimony has highlighted the need for good health in general. Atlanta Braves first baseman Sid Bream<sup>155</sup> testified at a 1991 Senate hearing examining the role of the federal government in promoting health through schools.<sup>156</sup> Bream lauded the importance of teachers and parents in shaping the character, values, and abilities of students.<sup>157</sup>

As Steve Garvey noted, these players saw themselves as foot soldiers in efforts to fight these diseases—not necessarily leading the charge, but adding their personal stories and celebrity status to the fight in hopes of bringing increased federal support to the battle.<sup>158</sup>

### C. Drug Use

*"I used cocaine after each game of the 1980 World Series as a member of the Kansas City Royals . . . [But] [l]ook at the progress that [I have] made in my life, because I was given another chance to live my life as a free man."*<sup>159</sup>

In addition to the testimony of players about drug use in baseball itself,<sup>160</sup> three players have testified on issues related to addictive drugs. Oakland Athletics pitcher Dave Stewart testified only days after being named the Most Valuable Player of

<sup>155</sup> Bream's most famous baseball moment would come about a year later, when his pennant-winning slide lifted Atlanta over Pittsburgh in the ninth inning of Game Seven of the 1992 National League Championship Series. See J. Rosenberg & A. R. Tays, *National League Champions, Oh, Yes!: Braves Rally for Incredible 9th-inning Win; Fans Erupt in Joy as Game 7 Heroics Send Team Back to World Series*, ATLANTA J. & CONST., Oct. 15, 1992, at A1 ("Slow-footed Sid Bream slid across home plate late Wednesday night, capping one of the most dramatic comebacks in the history of American sports and giving the [Atlanta] Braves their second straight National League title.").

<sup>156</sup> *Healthy Schools, Healthy Children, Healthy Futures: The Role of the Federal Government in Promoting Health Through the Schools: Hearing Before the Subcomm. on Oversight of Gov't Mgmt. of the S. Comm. on Governmental Affairs*, 102nd Cong. 14–20 (1991) (statement of Sid Bream, First Baseman, National League Champion Atlanta Braves).

<sup>157</sup> *Id.* at 15.

<sup>158</sup> *Amyotrophic Lateral Sclerosis 2000*, *supra* note 154.

<sup>159</sup> *Unfairness in Federal Cocaine Sentencing: Is it Time to Crack the 100 to 1 Disparity?: Hearing on H.R. 1459, H.R. 1466, H.R. 265, H.R. 2178, and H.R. 18 Before the Subcomm. on Crime, Terrorism, and Homeland Sec. of the H. Comm. on the Judiciary*, 111th Cong. 68, 71 (2009) [hereinafter *Unfairness in Federal Cocaine Sentencing*] (statement of Willie Mays Aikens, Former Player, Major League Baseball).

<sup>160</sup> See *supra* Part II.B.

the earthquake-delayed 1989 World Series.<sup>161</sup> Stewart, a committed community volunteer in Oakland, founded a youth development program to provide opportunities for young people and discourage illegal drug use—"my solution to drug problems is recreation, keeping an idle mind busy, giving them other alternatives, showing them something positive for every negative, allowing them a chance to breathe."<sup>162</sup>

Joe Gariagola, who testified as a player forty years earlier,<sup>163</sup> made two appearances in the 1990s as a broadcaster and an advocate about the dangers of smokeless tobacco.<sup>164</sup> His folksy demeanor and rambling testimony was reminiscent of Casey Stengel years before. "[Opponents believe smokeless tobacco] is not scientifically proven to be adverse to your health. Let me tell you about scientists. They said the curve ball was an illusion. That illusion made me a broadcaster 5 years before I wanted to quit, I will tell you that."<sup>165</sup> Garagiola called on Congress to encourage more education about the dangers of smokeless tobacco, FDA regulation of the drug, and even a change in nomenclature to emphasize its dangers: "Just treat it the same as cigarettes. That is all I am asking. Help me. And that word 'smokeless,' if you can ban that, I will feel great. I will light candles for you in church, for crying out loud."<sup>166</sup>

The final player who testified about the dangers of drug abuse had an intensely personal connection to the subject. Kansas City Royals first baseman Willie Aikens was the first player to hit two home runs in two different World Series games.<sup>167</sup> Unfortunately, Aikens's career had a dark side, and he was one of the first active

<sup>161</sup> See Steve Fainaru, *A's Got the Job Done; Oakland Won Series with Businesslike Precision*, BOS. GLOBE, (Sports), at 37. See also *Impact of Drugs on Children and Families: Joint Hearing Before the S. Comm. on Labor and Human Res. and S. Comm. on the Judiciary*, 101st Cong. 8 (1989) (statement of Dave Stewart, Pitcher, Oakland Athletics, and Founder, KIDSCORPS, Oakland, California).

<sup>162</sup> *Id.* at 10.

<sup>163</sup> *Subjecting Professional Baseball Clubs to the Antitrust Laws*, *supra* note 86, at 42–65 (testimony of Joseph H. Garagiola, Player, New York Giants).

<sup>164</sup> See *infra* Appendix: List of All Testimony.

<sup>165</sup> *Tobacco Legislation and the Food and Drug Administration and Smokeless Tobacco Issues in the Proposed Settlement: Hearing Before the S. Comm. on Science, Commerce, and Transp.*, 105th Cong. 47 (1998) (statement of Joe Garagiola, Oral Health America's National Spit Tobacco Education Program).

<sup>166</sup> *Id.* at 45.

<sup>167</sup> *Unfairness in Federal Cocaine Sentencing*, *supra* note 159, at 65–71.



players to be sentenced to prison for drug use.<sup>168</sup> After his playing career ended, he was found guilty of four purchases of crack cocaine in 1994 and sentenced to more than twenty years in prison due to federal mandatory minimum sentencing guidelines.<sup>169</sup> Had he purchased powder cocaine, his sentence would have been only twenty-seven months.

When appearing before Congress in 2009 after his release, he urged Congress to eliminate the disparity between crack and powder cocaine sentencing laws.<sup>170</sup> Aikens testified about his changed life and argued, "Cocaine is cocaine, regardless of the form it comes in."<sup>171</sup> Congress listened to Aikens's testimony and, in 2010, President Barack Obama signed the Fair Sentencing Act into law.<sup>172</sup> Aikens was hired as a Royals minor league coach in 2011.<sup>173</sup>

#### CONCLUSION

What has been the impact of the congressional testimony of baseball players? It is admittedly difficult to identify any legislation or other positive results that can directly be attributed to a player's appearance before Congress. A piece of legislation almost never becomes law because of the testimony of one witness at one hearing. Even the Curt Flood Act—one of the most important baseball-related pieces of legislation passed by Congress—did not result from player testimony. On the other hand, negative results are more easily traced. For example, Mark McGwire's appearance before a House panel, and his later admission of steroid use, likely will prevent one of the game's greatest sluggers from entering the Baseball Hall of Fame.<sup>174</sup>

<sup>168</sup> *Id.* at 65.

<sup>169</sup> *United States v. Aikens*, 64 F.3d 372, 373 (8th Cir. 1995).

<sup>170</sup> *Unfairness in Federal Cocaine Sentencing*, *supra* note 159, at 65–66. See also Asa Hutchinson, *End the Crack/Powder Cocaine Sentencing Disparity*, ROLL CALL (July 14, 2010) (giving a concise description of the arguments supporting the elimination of the sentencing disparity).

<sup>171</sup> *Unfairness in Federal Cocaine Sentencing*, *supra* note 159, at 66.

<sup>172</sup> Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372 (2010) (codified at 28 U.S.C. § 994(h)(2) (Supp. 2011)).

<sup>173</sup> Sam Mellinger, *In a Life Defined by Choices, Aikens Chooses to Believe*, KAN. CITY STAR (Mo.), Mar. 24, 2011, available at <http://www.kansascity.com/2011/03/24/2751316/in-a-life-defined-by-choices-aikens.html#ixzz1TEFnJn8w>.

<sup>174</sup> Thomas Boswell, *Mark McGwire's Steroids Admission Kills His Chance for the Hall of Fame*, WASH. POST, Jan. 13 2010. McGwire received only 19.8% of the votes on the 2011 Hall of Fame ballot, far less than the 75% needed for admission; Rafael Palmeiro garnered 11%. See 2011 BBWAA Candidates,

Roger Clemens's testimony has brought him federal perjury and obstruction of Congress charges.

But perhaps the more important result was that the testimony of these players focused attention on baseball and non-baseball issues in a fashion that attracted the attention of both Congress and the public. When Jim Bunning testified on baseball's antitrust exemption, Tommy John on ALS, and Jackie Robinson on civil rights, they spoke not only to Congress, but also to the fans of baseball. The broad impact of their statements vividly demonstrates the impact of baseball on American life.

BASEBALL HALL OF FAME, <http://espn.go.com/mlb/halloffame> (last visited Sept. 27, 2011).

## APPENDIX: LIST OF ALL TESTIMONY

1949	Jackie Robinson	Hearings Regarding Communist Infiltration of Minority Groups	H. Comm. on Un-American Activities	Political Activism
1951	Ty Cobb	Hearings on Study of Monopoly Power, Part 6: Organized Baseball	Subcomm. on Study of Monopoly Power of the H. Comm. on the Judiciary	Baseball Antitrust
1951	Albert Widmar			
1951	Cy Block			
1951	William Werber			
1951	Frederick Hutchinson			
1951	Harold (Pee Wee) Reese			
1951	Lou Boudreau			
1951	Branch Rickey			
1953	Joe Cronin	Broadcasting and Televising Baseball Games	Subcomm. of the S. Comm. on Interstate and Foreign Commerce	Baseball Antitrust
1954	Joe Garagiola	Subjecting Professional Baseball Clubs to the Antitrust Laws	Subcomm. of the S. Comm. on the Judiciary	Baseball Antitrust
1957	Eddie Yost	Organized Professional Team Sports	Antitrust Subcomm. of the H. Comm. on the Judiciary	Baseball Antitrust
1957	Jerry Coleman			
1957	Stan Musial			
1957	Bob Feller			
1957	Robin Roberts	Organized Professional Team Sports	Subcomm. on Antitrust and Monopoly of the S. Comm. on the Judiciary	Baseball Antitrust
1958	Ted Williams			
1958	Robin Roberts			
1958	Eddie Yost			
1958	Mickey Mantle			
1958	Stan Musial			
1958	Casey Stengel			
1958	Jackie Robinson			
1958	Bob Feller			
1959	Jackie Robinson	Juvenile Delinquency, Part 4: Antisocial Juvenile Gangs in New York City	Subcomm. to Investigate Juvenile Delinquency of the S. Comm. on the Judiciary	Political Activism
1964	Bob Allison	Professional Sports Antitrust Bill—1964	Subcomm. on Antitrust and Monopoly of the S. Comm. on the Judiciary	Baseball Antitrust
1964	Bob Friend			
1964	Joe Cronin			
1964	George Selkirk	To Establish a National Commission on Negro History and Culture	Subcomm. on Labor of the H. Comm. on Educ. And Labor	Political Activism
1968	Jackie Robinson			
1968	Jackie Robinson	Human Resources Development	Subcomm. on Govt. Research of the S. Comm. on Govt. Operations	Political Activism

1969	Jackie Robinson	Department of Defense Appropriations for 1970	Subcomm. on Dept. of Defense Appropriations of the H. Comm. on Appropriations	Political Activism
1969	Jackie Robinson	Federal Minority Enterprise Program	Subcomm. on Small Business of the S. Comm. on Banking and Currency	Political Activism
1970	Jackie Robinson	The Impact of Franchising on Small Business, Part 1	Subcomm. on Urban and Rural Econ. Dev. Of the S. Comm. on Small Business	Political Activism
1970	Jim Bouton	Foreign Policy Implications of Racial Exclusion in Granting Visas	Subcomm. on Africa of the H. Comm. on Foreign Affairs	Political Activism
1970	Jackie Robinson	Crime in the National Capital. Part 10: Drug Abuse Education and Prevention	S. Comm. on the District of Columbia	Addictive Drugs
1971	Dock Ellis	Sickle Cell Anemia	Subcomm. On Public Health, Education, Welfare, and Safety of the S. Comm. on the District of Columbia	Health
1984	Ron Santo	Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations for Fiscal Year 1985	Subcomm. on Departments of Labor, Health and Human Services, and Education, and Related Agencies of the S. Comm. on Appropriations	Health
1985	Ron Santo	Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations for 1986	Subcomm. on Departments of Labor, Health and Human Services, and Education, and Related Agencies of the H. Comm. on Appropriations	Health
1989	Dave Stewart	On Examining the Impact of Drugs on Children and Families	S. Comm. on Labor and Human Resources and S. Comm. on the Judiciary	Addictive Drugs
1991	Frank Robinson	Professional and Amateur Sports Protection Act	Subcomm. on Economic and Comm. Law of the H. Comm. on the Judiciary	Gambling
1991	Sid Bream	Healthy Schools, Healthy Children, Healthy Futures: The Role of the Federal Government in Promoting Health Through the Schools	Subcommittee on Oversight of Government Management of the S. Comm. On Governmental Affairs	Health
1992	Roric Harrison	Baseball's Antitrust Immunity	Subcomm. on Antitrust, Monopolies, and Business Rights of the S. Comm. on the Judiciary	Baseball Antitrust
1993	Jim Bunning	Baseball's Antitrust Exemption	Subcomm. on Economic and Comm. Law of the H. Comm. on the Judiciary	Baseball Antitrust
1994	Jim Bunning	Professional Baseball Teams and the Antitrust Laws	Subcomm. on Antitrust, Monopolies, and Business Rights of the S. Comm. on the Judiciary	Baseball Antitrust
1994	Robin Roberts			
1994	Orel Hershisier	Baseball's Antitrust Exemption (Part 2)	Subcomm. of Economic and Commercial Law of the H. Comm. on the Judiciary	Baseball Antitrust
1994	Bernie Williams	The Impact on Collective Bargaining of the Antitrust Exemption; H.R. 5095, Major League Baseball Play Ball Act of 1995	Subcomm. on Labor-Management Relations of the H. Comm. on Education and Labor	Baseball Antitrust
1994	Jay Bell			
1994	Orel Hershisier	Health Effects of Smokeless Tobacco	Subcomm. on Health and the Environment of the H. Comm. on Energy and Commerce	Addictive Drugs
1994	Joe Garagiola			

1995	Ed Farmer	Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations for 1996	Subcomm. on Departments of Labor, Health and Human Services, and Education, and Related Agencies of the H. Comm. on Appropriations	Health
1995	David Cone	The Court-Imposed Major League Baseball Antitrust Exemption	Subcomm. on Antitrust, Business Rights, and Competition of the S. Comm. on the Judiciary	Baseball Antitrust
1995	Eddie Murray			
1997	Dan Peltier	Major League Baseball Antitrust Reform	S. Comm. on the Judiciary	Baseball Antitrust
1998	Joe Garagiola	Tobacco Legislation and the Food and Drug Administration and Smokeless Tobacco Issues in the Proposed Settlement	S. Comm. on Science, Commerce, and Transportation	Addictive Drugs
1998	Dom Dimaggio	Osteoporosis: Prevention, Education, and Research	Subcomm. of the S. Comm. on Appropriations	Health
2000	Steve Garvey	Amyotrophic Lateral Sclerosis	Subcomm. on Departments of Labor, Health and Human Services, and Education, and Related Agencies of the S. Comm. on Appropriations	Health
2005	Curt Schilling	Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts To Eradicate Steroid Use	H. Comm. on Govt. Reform	PEDs
2005	Frank Thomas			
2005	Jim Bunning			
2005	Jose Canseco			
2005	Mark McGwire			
2005	Rafael Palmeiro			
2005	Sammy Sosa			
2005	David Cone	Amyotrophic Lateral Sclerosis	Subcomm. on Departments of Labor, Health and Human Services, and Education, and Related Agencies of the S. Comm. on Appropriations	Health
2005	Tommy John			
2008	Roger Clemens	The Mitchell Report: The Illegal Use of Steroids in Major League Baseball, Day 2	H. Comm. on Oversight and Govt. Reform	PEDs
2009	Willie Aikens	Unfairness in Federal Cocaine Sentencing: Is It Time To Crack the 100 to 1 Disparity?	Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary	Addictive Drugs
2009	David Cone	Nomination of Hon. Sonia Sotomayor, to be an Associate Justice of the Supreme Court of the United States	S. Comm. on the Judiciary	Political Activism