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

Howard W Brill

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Christian H. Brill & Howard W. Brill
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. A year later, the Supreme Court's decision in Federal Baseball Club v. National League exempted baseball from federal antitrust laws, giving Congress its primary justification to hold oversight hearings on the sport.

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. The subjects of testimony include 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).

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. Jim Bunning, David Cone, Joe Garagiola, and Robin Roberts each testified three times.

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1 Condon 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.
2 259 U.S. 200 (1922).
3 1948 U.S. 200 (1922).
4 See infra Appendix: List of All Testimony. At least thirty appearances were by active players.
6 See infra Appendix: List of All Testimony.
7 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,8 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.9 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."10 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

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10 FED. R. EVID. 702.
so I decided that I wanted to try out in baseball." 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. 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. Branch Rickey, then a Pittsburgh Pirates executive, was questioned heavily about the farm system he had created.

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." 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 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—so much of the wonderful things in it...."

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." 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." 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."

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

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14 Id. at 5.
15 Id. at 543, 546–50 (statement of Albert J. Widmar, Pitcher, St. Louis Browns).
16 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.")
17 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/doc4d78396edd4290723782435.txt?viewmode=fullstory.
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. 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, 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?” Even those who did not completely understand the law knew precisely what it meant to their careers.

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.” The hearings were called by House Judiciary Committee Chairman Emanuel Celler, who also headed a special Subcommittee on Study of Monopoly Power. The subcommittee held sixteen 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.” In particular, the subcommittee was considering three separate bills to codify baseball’s exemptions from the antitrust laws.

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. In the six years since Celler’s first hearings, the Supreme Court had upheld baseball’s antitrust exemption and denied an exemption for professional football. 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.

In July 1958, a Senate subcommittee held twelve more days of antitrust hearings. 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. The Senate Judiciary Committee held four more days of hearings in 1964.  


30 *Study of Monopoly Power, supra note 13, at 3 (statement of Rep. Emanuel Celler, Chairman, Subcomm. on Study of Monopoly Power).*


34 *See Organized Professional Team Sports 1957*, supra note 20, pt. 1, at 2-5 (statement of Emanuel Celler, Chairman, Antitrust Subcomm.).


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. 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. 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.

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. 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.


founded in 1954, and Major League Baseball first entered into a collective bargaining agreement (CBA) in 1968. 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 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.

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. Spring training in 1995 opened with "replacement" players, 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. 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. She concluded that the "public interest in the process of collective bargaining [would] be irreparably harmed if [the] injunction [was] not issued." Further, "returning the parties to the status quo" would restore bargaining equality. With the preliminary injunction against the owners in place, the shortened season began in late April. Two years later a new CBA was accepted by the owners and the players.

During the 232 day strike, Congress held three hearings in September 1994 and February 1995 in which players made their cases before the legislature. Congress considered a bill to eliminate the antitrust exemption for labor negotiations, thus allowing the players to have access to the federal courts. MLBPA representative Orel Hershiser called the legislation "that bill that will bring baseball back." 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." 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."

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. In 1951, Kansas City was the westernmost city with a team, and members of Congress asked

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[61] Id.


[64] Chad Underwood, The 10 Most Devastating Franchise Relocations in Professional Sports History, BEECHER REPORT (June 3, 2011),
Ty Cobb—the first witness of the first antitrust hearing—his opinion on westward expansion. 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.” 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.

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. 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. Even when relocation ended in 2005, 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. Communities, unable to persuade Major League Baseball to expand and grant a new team, sought to lure and entice existing teams.

The Chicago White Sox, the Seattle Mariners, and the San Francisco Giants played the courting game with St. Petersburg, Florida. The city built the Suncoast Dome (now called Tropicana Field) in 1990, and it needed a tenant. In August 1992, newspaper headlines in Florida read “The Giants are Coming!” When the National League owners refused to approve the transfer, litigation followed. The Tampa Bay ownership group sued, the Florida Attorney General stepped in, and another Florida group alleged it had been barred from buying the Minnesota Twins. 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.

In the middle of this legal and civic maneuvering and posturing, Congress held antitrust hearings, 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.” Although other issues were covered—notably the refusal of owners to select


Study of Monopoly Power, supra note 13, at 21 (statement of Tyrus Raymond Cobb).

Id. at 843 (statement of Frederick Hutchinson, Pitcher, Detroit Tigers).

Id. at 856 (statement of Harold “Pee Wee” Reese, Shortstop, Brooklyn Dodgers).


Id. On trademark issues arising from the movement of teams, see generally id.


The most recent expansions were in 1993 (Florida Marlins and Colorado Rockies) and 1998 (Arizona Diamondbacks and Tampa Bay Rays).

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a new commissioner—relocation hung over the hearing. An early resolution by the Kentucky Senate 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."62

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.63 Cronin explained where the team broadcast 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.64

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.65 Beer magnate Gussie Busch had purchased the Cardinals in 1953 and raised the ire of Senator Edwin Johnson from Colorado.66 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.67 "Mr. Busch's lavish and vulgar display of beer wealth and beer opulence in the operation of the Cardinal Ball Club should disturb baseball greatly."68 In his first of three appearances before Congress,69 St. Louis native and Chicago Cub catcher Joe Garagiola was called to testify about this business relationship.70 However, Garagiola knew little. As a Cub, he had briefly discussed a future broadcasting career with the advertising agency for Anheuser-Busch.71 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.72 The connection was so tenuous, however, that Garagiola's final words at the hearing were, "I am thoroughly confused."73 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 androstrenolone?"

Mark McGwire: "I am not going to talk about the past."74

The issue of congressional investigations of performance-enhancing drugs in baseball has been well-documented.75 In the

62 Id.
63 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.").
64 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).
65 Id. at 34–35.
67 Id. at 46–47.
68 Id. at 42–57.
69 Id. at 65.
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). After a cursory congressional investigation prompted by the publication of Canseco’s memoir alleging widespread steroid use in the game, 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.” 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.”

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,” Bunning proposed wiping out steroid-aided records and immediate expulsion from the game for players who testified positive for banned substances.

When the panel of active players testified, no one looked like a hero. Both Sosa and Palmeiro denied using banned 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. McGwire’s testimony, however, became the most lasting image of the hearing. Rather than admitting steroid use, he evaded almost one-third of congressional questions, many with his now-famous response: “I’m not here to talk about the past.” 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.”

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. The report alleged steroid use by players, including Ryan Zimmerman, Matt Holliday, and Kendry Morales. Democrats and Republicans expressed outrage and called for sweeping reforms in Washington, D.C.

In 2012, Representative Peter King of New York and Representative Jerry Nadler of New York introduced the “Professional Sports Integrity Act,” a bipartisan bill that would ban the use of performance-enhancing drugs in professional sports and create a federal agency to enforce the ban. The bill passed the House of Representatives but was blocked in the Senate. Two years later, the “Baseball Integrity Act” was introduced, which would have made it a federal crime to use steroids in professional baseball. The bill died in committee.

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

95 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, Beats of Clay, WASH. POST, Mar. 18, 2005, at D1.

96 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=5066666 (discussing how Palmeiro maintained his innocence even though he was suspended ten games for a positive steroid test).


99 Restoring Faith in America’s Pastime, supra note 95, at 264 (statement of Mark McGwire); Rovell, supra note 105.

100 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 A1 (“Mark McGwire, who once heard crowds cheer his name, came up mute in front of Congress. He had the worst day of all.”).

101 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.\textsuperscript{110} "[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."\textsuperscript{111}

In his opening statement, Clemens was resolute: "Let me be clear. I have never taken steroids or HGH."\textsuperscript{112} 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."\textsuperscript{113} The hearing continued in that pattern of allegations and denials for four hours as the two witnesses pointed fingers at each other.\textsuperscript{114} At the end of the day, Clemens, like McGwire, left with his credibility questioned and his on-the-field accomplishments shrouded in doubt.\textsuperscript{115}

Two weeks later, the committee asked the Justice Department to investigate the truth of Clemens's statements.\textsuperscript{116} 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.\textsuperscript{117}

\textbf{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.

\textbf{C. Gambling}

\textit{[If 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.]}\textsuperscript{118}

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.\textsuperscript{119} 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.\textsuperscript{120} 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.
A. Political Activism

White 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 hails 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.\(^1\)

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.\(^2\) 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.\(^3\)

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.\(^4\)

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 . . . .

\(^{1}\) 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.

\(^{2}\) Id. at 479–83.


\(^{4}\) 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.\(^5\)

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.\(^6\) He would finish the year as the National League Most Valuable Player.\(^7\)

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,\(^8\) support minority-owned businesses,\(^9\) establish a Commission on Negro History and Culture,\(^10\) and even to scrap weapons systems to address issues of crime and poverty instead.\(^11\)

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
panel, "If 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."\textsuperscript{132} 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.\textsuperscript{133}

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.\textsuperscript{134}

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.\textsuperscript{135} Houston Astros pitcher Jim Bouton was one of the key witnesses.\textsuperscript{136} 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 stand against the nation's discriminatory athletic teams.\textsuperscript{137}

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

\textsuperscript{132} 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.).

\textsuperscript{133} Department of Defense Appropriations for 1970, supra note 130, at 65 ("I think it's high time that the Congress understood the tremendous frustrations that the young Negro has today . . .").


\textsuperscript{135} See id. at 37-43 (statement of James Bouton, Member, Houston Astros).

\textsuperscript{136} See Jim Bouton, A Mission in Mexico City, SPORT, Aug. 1969, at 64-65.

\textsuperscript{137} See Foreign Policy Implications, supra note 135, at 38.

\textsuperscript{138} Id.

\textsuperscript{139} Id.

\textsuperscript{140} Id.


\textsuperscript{144} 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 swiftsworn 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.
decided."

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.\(^{146}\)

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.\(^{147}\) Dom DiMaggio\(^{148}\) 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 disease.\(^{149}\) 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.\(^{150}\) Pitcher Ed Farmer inherited polycystic kidney disease from his mother; he was close to death before receiving a kidney transplant.\(^{151}\) 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.\(^{152}\) David Cone became the Yankee spokesperson for the organization because of the franchise’s long association with Lou Gehrig’s disease.\(^{153}\) 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.\(^{154}\)

Despite the connection between sport, exercise, and health,

\(^{145}\) Nomination of Hon. Sonia Sotomayer, supra note 142, at 521.


\(^{147}\) 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.

\(^{148}\) 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.

\(^{149}\) Id. Eleanor Gehrig continued her advocacy until her death in 1984, forty-three years after her husband succumbed to ALS in 1941. See Joseph Durose, Eleanor Gehrig, 79, Widow of Yankee Hall of Fame Star, N.Y. TIMES, Mar. 8, 1984, at D22.


\(^{151}\) 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.

\(^{152}\) Id. at 42 (statement of David Cone, Former Player, New York Yankees).

\(^{153}\) Id. at 42 (statement of Tommy John, Former Player, Major League Baseball).

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

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.\textsuperscript{158}

C. Drug Use

"I used cocaine after each game of the 1980 World Series as a . . . member of the Kansas City Royals . . . . [But] [I look at the progress that [I have] made in my life, because I was given another chance to live my life as a free man."\textsuperscript{159}

In addition to the testimony of players about drug use in baseball itself,\textsuperscript{160} 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 the earthquake-delayed 1989 World Series.\textsuperscript{161} Stewart, a committed community volunteer in Oakland, founded a youth development program to provide opportunities for young people and discourage illegal drug use—"[m]y 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."\textsuperscript{162}

Joe Garagiola, who testified as a player forty years earlier,\textsuperscript{163} made two appearances in the 1990s as a broadcaster and an advocate about the dangers of smokeless tobacco.\textsuperscript{164} 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."\textsuperscript{165} 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."\textsuperscript{166}

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.\textsuperscript{167} Unfortunately, Aikens's career had a dark side, and he was one of the first active

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\textsuperscript{155} 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 I. J. Rosenberg & A. R. Tays, National League Champions, Oh, Yes!: Braves Rally for Incredibile 9th-inning Win; Fans Erupt in Joy as Game 7 Heroes 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.").

\textsuperscript{156} 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).

\textsuperscript{157} Id. at 15.

\textsuperscript{158} Amyotrophic Lateral Sclerosis 2000, supra note 154.


\textsuperscript{160} See supra Part II.B.

\textsuperscript{161} 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).

\textsuperscript{162} Id. at 10.


\textsuperscript{164} See infra Appendix: List of All Testimony.


\textsuperscript{166} Id. at 45.

\textsuperscript{167} Unfairness in Federal Cocaine Sentencing, supra note 159, at 65–71.
players to be sentenced to prison for drug use. 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. Aikens testified about his changed life and argued, "Cocaine is cocaine, regardless of the form it comes in." Congress listened to Aikens's testimony and, in 2010, President Barack Obama signed the Fair Sentencing Act into law. Aikens was hired as a Royals minor league coach in 2011.

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.

168 Id. at 65.
169 United States v. Aikens, 64 F.3d 372, 373 (8th Cir. 1995).
170 Unfairness in Federal Cocaine Sentencing, supra note 159, at 65-66. See also Ann 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).
171 Unfairness in Federal Cocaine Sentencing, supra note 159, at 66.
174 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, BASEBALL HALL OF FAME, http://espn.go.com/mlb/halloffame (last visited Sept. 27, 2011).
## Appendix: List of All Testimony

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<td>1951</td>
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<td>1951</td>
<td>William Werber</td>
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<td>1956</td>
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<td>1959</td>
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### 2012:Take Me Out to the Hearing

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