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## Balking at Responsibility: Baseball's Performance-Enhancing Drug Problem in Latin America

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# BALKING AT RESPONSIBILITY: BASEBALL'S PERFORMANCE-ENHANCING DRUG PROBLEM IN LATIN AMERICA

Tyler M. Simpson\*

## I. INTRODUCTION

IN 2001, Lino Ortiz, a 19-year-old prospect from La Romana, Dominican Republic injected himself with a performance-enhancing drug hoping it would give him an edge on the competition at his tryout with the Philadelphia Phillies.<sup>1</sup> But the drug did not have the desired effect. Young Lino's arm swelled and within three days he fell into a coma and died.<sup>2</sup> It is believed that the drug Lino used "was either Diamino, an animal dietary supplement, or Caballin, a bootleg horse steroid."<sup>3</sup> Three months before Lino's death, another young baseball prospect named William Felix died in La Romana from a heart attack apparently caused by prolonged use of a veterinary substance. Like Lino, William used this supplement hoping it would help him get to the major leagues.<sup>4</sup>

These tragic stories underscore the quiet epidemic that is plaguing Major League Baseball: performance-enhancing drug use in Latin America. For years, the story of performance-enhancing drugs in sports has received what seems like endless media attention. Almost every sport including cycling, track and field, soccer, swimming, softball, weightlifting, football, and horse racing has produced a "juicy" scandal involving the use of steroids or other performance-enhancing substances. But no sport has received more attention from the American media than baseball. From the steroid rumors surrounding the 1998 homerun race between Sammy Sosa and Mark McGwire to the recent "tell-all" book written by

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1. Steve Fainaru, *Injecting Hope—And Risk: Dominican Prospects Turn to Supplements Designed for Animals*, WASH. POST, June 23, 2003, at A01, available at <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node&contentId=A21456-2003Jun22&notFound=true>.

2. *Id.*

3. *Id.*

4. *Id.*

Jose Canseco<sup>5</sup> and the ongoing federal BALCO investigation, the American public has put baseball under the microscope. But critics have focused their attention on the drug use in America. Little has been done to address the growing performance-enhancing drug problem outside the United States, particularly in Latin American countries. Driven by the dream of being drafted by a Major League Baseball team, a growing number of young, Latin American teenagers like Lino and William turn to steroids, amphetamines, and dangerous animal supplements to gain an edge and attract the attention of baseball scouts. Since baseball teams recruit a large portion of their players from Latin America, Major League Baseball cannot hope to solve the performance-enhancing drug problem without addressing the problem in Latin America.

To that end, Part II of this paper introduces the scope of the problem by using statistical evidence to illustrate the high percentage of Latin American baseball players using performance-enhancing drugs. Part III describes why performance-enhancing drugs are dangerous by outlining the negative medical effects of the most popular performance-enhancing drugs in Latin America. Part IV discusses the three main factors driving Latin American baseball players to use performance-enhancing drugs. Part V outlines Major League Baseball rules concerning performance-enhancing drugs and the current drug laws in both America and a number of Latin American countries. Part VI discusses the inadequacy of Major League Baseball's recent action aimed at curbing performance-enhancing drug use among Latin American ballplayers. Finally, Part VII proposes five solutions that Major League Baseball and Latin American governments must implement in order to properly address the performance-enhancing drug problem in Latin America.

## II. SCOPE OF THE PROBLEM

Over the past two decades, the number of Latino players has exploded in Major League Baseball. Some of the game's greatest players of the past two decades come from Latin American countries, including Albert Pujols, Manny Ramirez, David Ortiz, and Pedro Martinez. Although most players come from either the Dominican Republic or Venezuela, almost every Latin American country is represented at some level in Major League Baseball. At last year's inaugural World Baseball Classic, two Latin American countries (Dominican Republic and Cuba) reached the semifinals, and one Latin America country (Cuba) reached the finals.<sup>6</sup> Noticeably missing from the finals was the U.S. team, which lost in the quarterfinals.<sup>7</sup>

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5. JOSE CANSECO, *JUICED: WILD TIMES, RAMPANT 'ROIDS, SMASH HITS, AND HOW BASEBALL GOT BIG* (Regan Books 2005).

6. World Baseball Classic Home Page, <http://www.worldbaseballclassic.com/2006/index.jsp>.

7. *Id.*

During the 2005 Major League Baseball season, 339 of the more than 1100 active players on major league rosters were of Latin American descent.<sup>8</sup> This number represents 28.7 percent of the total Major League Baseball population.<sup>9</sup> This is by far the highest percentage of any other minority in Major League Baseball including African Americans (9 percent), Asian (3 percent), and Other (0 percent).<sup>10</sup> In 2005, Latino shortstops in the majors outnumbered White shortstops by a two to one margin.<sup>11</sup> Even more amazing is the rapid increase in Latin American players participating in Major League Baseball over the past several years. For example, there was a 3 percent increase in the number of Latino baseball players from 2004 to 2005.<sup>12</sup> Moreover, in the decade from 1991 until 2005 the percentage of Latin American players on major league teams went from 14 percent to 29 percent.<sup>13</sup> These increases are not likely to diminish anytime soon because more than 40 percent of the minor league players waiting to be called up to the majors are from Latin American countries.<sup>14</sup>

Notwithstanding the large number of Latin American baseball players in Major League Baseball and Minor League Baseball, evidence shows that there is a disproportionately large number of Latin American baseball players testing positive for steroids and other performance-enhancing drugs.<sup>15</sup> In 2005, Major League Baseball conducted its first season of mandatory steroid testing.<sup>16</sup> During that year, twelve players from the American and National Leagues tested positive for banned steroids. Seven of those twelve players were from Latin American countries.<sup>17</sup> In other words, 58 percent of those who testing positive in the Major League in 2005 were from Latin America. This figure is staggering considering the previously mentioned fact that Latin Americans made up 28.7 percent of the total number of major leaguers.<sup>18</sup> Additionally, twenty-four of the forty-seven minor league players who tested positive for banned steroids in 2005 were born in Latin American countries.<sup>19</sup> This means that 51 percent of those minor leaguers who tested positive were from Latin American countries. Though not as astounding as the major league

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8. RICHARD LAPCHICK & STACY MARTIN, *The 2005 Racial and Gender Report Card: Major League Baseball* 13 (2006), available at [http://www.bus.ucf.edu/sport/public/downloads/2005\\_Racial\\_Gender\\_Report\\_Card\\_MLB.pdf](http://www.bus.ucf.edu/sport/public/downloads/2005_Racial_Gender_Report_Card_MLB.pdf).

9. *Id.* at 3.

10. *Id.* at 13.

11. *Id.*

12. *Id.*

13. *Id.*

14. Jorge L. Ortiz, *Culture Gap Draws Attention: High Proportion of Latinos Caught in the Web of Drugs, Steroids*, S.F. CHRON., May 6, 2005, at D-1, available at <http://sfgate.com/cgi-bin/article.cgi?file=/C/a/2005/05/06/MINORS.TMP>.

15. See Joseph Contreras, *Too Intense?: Some Worry the Pressure on Latin American Baseball Players is Creating a New Generation of Steroid Abusers*, NEWSWEEK, May 27, 2006, available at <http://www.newsweek.com/id/47857/output/print>.

16. Contreras, *supra* note 15.

17. *Id.*

18. Compare LAPCHICK & MARTIN, *supra* note 8, at 3, with Contreras, *supra* note 15.

19. Ortiz, *supra* note 14.

figures, this percentage is still higher than the percentage of Latin Americans who played in the minors in 2005.<sup>20</sup>

Statistics also show that Latin America-born ballplayers are not just testing positive for steroids at a high rate in American professional baseball. They are testing positive for steroids in high numbers in Latin American baseball leagues. Major League Baseball began conducting steroid testing in some Dominican Republic baseball academies<sup>21</sup> during the 2005 season. These baseball academies house both signed and unsigned prospects. Most prospects in these academies are under eighteen years old. The test results were frightening. Of the more than 800 players analyzed, 11 percent tested positive for steroids or steroid precursors.<sup>22</sup> While this percentage may not seem high standing alone, it is considerably high when compared to the fact that only 1-2 percent of Major League Baseball players tested positive during the 2004 season.<sup>23</sup>

Admittedly, these high percentages among Latin American players may be an anomaly, since the statistics come from only one year.<sup>24</sup> But in the spring of 2006 eight of the twelve Major and Minor League Baseball players who tested positive for steroids were from Venezuela and the Dominican Republic.<sup>25</sup> In addition, a number of current major league players and coaches who have been interviewed regarding the subject of performance-enhancing drug use among Latin American baseball players have not been surprised at the alarmingly high percentage of Latin Americans testing positive for such drugs.<sup>26</sup> In fact, Felipe Alou, a well-known manager for the San Francisco Giants and Dominican Republic native, has acknowledged the problem among Latin American baseball players claiming:

[t]hroughout the years the Latin players have tried to even their chances when competing with the Americas . . . How? Different ways: taking off years (using fake birth certificates), exposing their

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20. Compare Ortiz, *supra* note 14, with Contreras, *supra* note 15.

21. Baseball academies are located throughout many Latin American countries and especially in the Dominican Republic. They are primarily used by professional baseball teams to evaluate talent and prepare "players for the rigor of the major leagues so they [will] not be released by teams *en masse* after arriving in the United States." Vanessa Marie Zimmer, Comment, *Dragging Their Devotion: The Role of International Law in Major League Baseball's Dominican Affairs*, 4 NW. U. J. INT'L HUM. RTS. 418, \*6-8 (2005).

22. Ortiz, *supra* note 14.

23. Compare Ortiz, *supra* note 14, with MLB.com, *Special Report: Drug Policy in Baseball*, [http://mlb.com/mlb/news/drug\\_policy.jsp?content=timeline](http://mlb.com/mlb/news/drug_policy.jsp?content=timeline) (last visited Feb 6, 2007).

24. Major League Baseball started conducting steroid testing under its new policy during the 2005 season. The previous steroid policy was merely a "survey testing" policy employed to gauge the use of steroids in baseball and determine the need for a future, punitive policy. Under the previous policy, the names of players who tested positive were never released to the public. Thus, it is difficult to determine the percentage of players from Latin American countries who tested positive for steroids in seasons prior to 2005. See *Special Report: Drug Policy in Baseball*, *supra* note 23.

25. Contreras, *supra* note 15.

26. See *id.*; Ortiz, *supra* note 14.

lives in boats to cross not just the Florida strait but also from the Dominican trying to reach Puerto Rico. . . . And now you have steroids.<sup>27</sup>

These comments by current managers and players, coupled with the 2005 testing results and early results from the 2006 season, strongly supports the contention that baseball players from Latin American countries are using steroids at a disproportionately high rate.

### III. THE PERFORMANCE-ENHANCING DRUGS USED BY LATIN AMERICAN BASEBALL PLAYERS AND THE DANGERS ASSOCIATED WITH THOSE DRUGS

Most people tend to think performance-enhancing drugs consist exclusively of anabolic steroids. But there are a number of performance-enhancing drugs that are not classified as anabolic steroids. These drugs are as dangerous, if not more dangerous, to the health of an athlete as anabolic steroids. And a number of these drugs are available to Latin Americans baseball players over-the-counter in their home countries. Before attempting to create an effective policy to combat performance-enhancing drug use among Latin American baseball players, it is important to understand the types of drugs that are popular within this group of players. It is also important to understand these drugs' positive and negative effects.

#### A. ANABOLIC STEROIDS

An anabolic steroid is a synthetic substance similar to male sex hormones called androgens.<sup>28</sup> Similar to the androgens found in the male testicles, anabolic steroids promote the growth of skeletal muscles as well as the development of male sexual characteristics.<sup>29</sup> Steroids are a versatile drug and can take the form of a liquid, cream, gel, or solid.<sup>30</sup> Thus, baseball players can take steroids orally through a pill or a liquid, inject steroids directly into the blood stream using a hypodermic needle, or rub steroids onto the skin using a cream or gel.<sup>31</sup>

Steroid users often "stack the drugs meaning that they take two or more different anabolic steroids, mixing oral and/or injectable types."<sup>32</sup> Although not scientifically proven, some believe that "stacking" anabolic steroids produces an effect on the muscles that is greater than an individual steroid's effect.<sup>33</sup> Steroid users also take doses in cycles, starting out

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27. Ortiz, *supra* note 14.

28. NAT'L INST. ON DRUG ABUSE, NAT'L INST. OF HEALTH, PUBL'N NO. 00-3721, ANABOLIC STEROID ABUSE 1 (2001), <http://www.nida.nih.gov/PDF/RRSteroi.pdf> [hereinafter NAT'L INST. ON DRUG ABUSE].

29. *Id.*

30. *Id.* at 3-4.

31. *Id.*

32. *Id.* at 4.

33. *Id.*

at a low dosage, increasing the dosage over time until a certain point, and then decreasing dosage after that point until the dosage reaches zero.<sup>34</sup> Users believe that cycling allows the body time to adapt to the steroids, which allows them to use higher levels of the drug.<sup>35</sup>

Because of their effects on muscles, baseball players tend to use steroids in order to increase muscle mass and decrease body fat. But there are serious physiological side effects associated with these drugs.<sup>36</sup> Some of these side effects include "decreased sperm production, enlargement of breast tissue, over-retention of fluid leading to hypertension or heart disease, and biochemical effects on the liver."<sup>37</sup> In addition to the negative physiological effects that result from anabolic steroid use, there are also negative psychological effects.<sup>38</sup> The most common psychological side effect of steroid use is called "roid rage," which manifests itself in the form extreme irritability and aggression.<sup>39</sup> "Roid rage" is caused by the high levels of testosterone produced during steroid use.<sup>40</sup> Heavy steroid users also suffer from severe depression after they stop taking steroids.<sup>41</sup>

## B. STEROIDAL SUPPLEMENTS

Steroidal supplements are converted into testosterone or a similar compound when they are introduced to the human body.<sup>42</sup> Thus, although they do not have the same chemical compound as anabolic steroids, they produce similar effects.<sup>43</sup> For example, androstenedione (andro) is a chemical occurring naturally in the human body and is an intermediate chemical in the biochemical process, allowing the body to produce testosterone.<sup>44</sup> Steroidal supplements such as andro and tetrahydrogestrinone (THG) were previously legal in the United States.<sup>45</sup> When they were legal, athletes could purchase these steroidal supplements over-the-counter at drug stores.<sup>46</sup> Now only a few steroidal supplements are legal in the United States.<sup>47</sup>

Steroidal supplements have similar positive and negative effects to anabolic steroids. Athletes use these drugs to increase muscle growth and to

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34. *Id.*

35. *Id.*

36. Jarred R. Tynes, Comment, *Performance Enhancing Substances: Effects, Regulations, and the Pervasion Efforts to Control Doping in Major League Baseball*, 27 J. LEGAL MED. 493, 495 (2006).

37. *Id.*

38. *Id.* at 496.

39. *Id.*; NAT'L INST. ON DRUG ABUSE, *supra* note 28, at 5-6.

40. NAT'L INST. ON DRUG ABUSE, *supra* note 28, at 6.

41. Tynes, *supra* note 36, at 496.

42. NAT'L INST. ON DRUG ABUSE, *supra* note 28, at 2.

43. *Id.*

44. Press Release, U.S. Food & Drug Admin., Health Effects of Androstenedione (Mar. 11, 2004), available at <http://www.fda.gov/oc/whitepapers/andro.html> [hereinafter Health Effects of Andro].

45. NAT'L INST. OF DRUG ABUSE, *supra* note 28, at 2.

46. *Id.*

47. *Id.*

help them recover quickly from workouts. The negative side effects of steroidal supplements include "testicular atrophy, impotence, and the development of female characteristics such as breast enlargement in men."<sup>48</sup> Steroidal supplements also can cause heart and liver disease as well as increased aggression in users.<sup>49</sup> Similar to anabolic steroids, these performance-enhancing drugs pose a significant risk to adolescents because they can cause the early onset of puberty or premature cessation of bone growth.<sup>50</sup> Children who use steroidal supplements can permanently stunt their growth, leaving their bones, tendons, and ligaments weak and susceptible to injury.<sup>51</sup>

### C. EPHEDRINE AND OTHER STIMULANTS

Baseball players use stimulants primarily to boost energy. Because of the demanding 162-game major league schedule, many professional baseball players believe they must use stimulants in order to compete at a high level during every game.<sup>52</sup> Although there are countless types of stimulants, the two most dangerous stimulants used by baseball players are ephedrine and amphetamine.

Ephedrine is the active ingredient in ephedra and is a chemical compound that boosts metabolism and burns fat.<sup>53</sup> Ephedrine functions in a manner similar to adrenaline in the human body: "it excites the nervous system, opens the blood vessels, and stimulates the heart."<sup>54</sup> Baseball players use it "to enhance athletic performance by minimizing fatigue and controlling weight."<sup>55</sup> Unlike anabolic steroids or steroidal supplements, if taken properly, ephedrine does not pose a significant health risk.<sup>56</sup> But, if not taken properly, ephedrine has some extremely dangerous side effects.<sup>57</sup> Common side effects of ephedrine taken in correct dosages include "skin flushing, tingling, dizziness, nervousness, headaches, insomnia, palpitations, and vomiting."<sup>58</sup> When taken in high doses, a practice that is common in baseball, injury and death can occur as a result of increased susceptibility to heart attack and stroke.<sup>59</sup> Ephedrine is at least partially to blame for one Major League Baseball player's death.<sup>60</sup> Fur-

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48. Tynes, *supra* note 36, at 497.

49. Health Effects of Andro, *supra* note 44.

50. Tynes, *supra* note 36, at 497.

51. *See id.*; *see also* Health Effects of Andro, *supra* note 44.

52. Carlos Frias, *Baseball and Amphetamines*, PALM BEACH POST, April 2, 2006, available at [http://www.palmbeachpost.com/marlins/content/sports/epaper/2006/04/02/PBP\\_AMPHET\\_0402.html](http://www.palmbeachpost.com/marlins/content/sports/epaper/2006/04/02/PBP_AMPHET_0402.html).

53. Tynes, *supra* note 36, at 496.

54. *Id.*

55. *Id.*

56. *Id.* at 497

57. *Id.*

58. *Id.*

59. *Id.*

60. Steve Bechler, a 23-year-old pitcher for the Baltimore Orioles died of a heart attack after using the dietary supplement ephedra, which contains ephedrine. The medical examiner who conducted the autopsy revealed that the ephedra in the ballplayer's system contributed significantly to his death. Murray Chass, *Pitcher's*



thermore, when ephedrine is mixed with other stimulants such as caffeine, chocolate, or some types of over-the-counter medication, the effects of the drug amplify and "may lead to a toxic build-up of the substance in the body."<sup>61</sup> Ephedrine is no longer available in dietary supplements sold in the United States; however, the stimulant is available in other legal medicines sold over-the-counter and by prescription.<sup>62</sup>

Amphetamine, sometimes called "greenies"<sup>63</sup> in the baseball community, is a chemical substance which stimulates the central nervous system by increasing the amount of certain chemicals in the body.<sup>64</sup> This in turn increases heart rate, suppresses appetite, and heightens concentration.<sup>65</sup> Like ephedrine, baseball players use it to combat fatigue and boost energy.<sup>66</sup> It can be ingested orally in pill or powder form and is often used to spike coffee in baseball locker rooms to facilitate group use.<sup>67</sup> Amphetamine has many negative side effects. For one, amphetamine significantly increases blood pressure, which can lead to heart attack or stroke.<sup>68</sup> Prolonged use of the drug amplifies the negative consequences because users develop a tolerance to the drug and need higher dosages to receive the desired effect.<sup>69</sup> Furthermore, prolonged use can lead to addiction.<sup>70</sup> Aside from the physiological side effects, the psychological side effects of amphetamine use include severe anxiety, depression, paranoia, and a detached sense of reality.<sup>71</sup>

#### D. ANIMAL SUPPLEMENTS

Animal supplements are popular among baseball players from Latin American countries because they are cheaper and more readily available than conventional steroids and steroidal supplements. And many of these drugs actually contain anabolic steroids. These drugs are meant to increase growth in animals; however, many baseball players use them for human muscle growth. Drugs like Ganabol and Dimetabol are marketed

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*Autopsy Lists Ephedra as One Factor*, N.Y. TIMES, March 14, 2003, available at <http://query.nytimes.com/gst/fullpage.html?res=9501E3DE113EF937A25750C0A9659C8B63&sec=health&spon&pagewanted=all>.

61. Tynes, *supra* note 36, at 497.

62. Press Release, U.S. Food & Drug Admin., FDA Issues Regulation Prohibiting Sale of Dietary Supplements Containing Ephedrine Alkaloids and Reiterates Its Advice That Consumers Stop Using These Products (Feb. 6, 2004), available at <http://www.cfsan.fda.gov/~lrd/fpephed6.html> [hereinafter FDA Regulation on Ephedrine].

63. Amphetamines are called "greenies" because of the color of the pills when they were introduced to the game in the 1940s. Frias, *supra* note 52.

64. MERCK & CO., THE MERCK MANUAL: ONLINE MEDICAL LIBRARY (2003), <http://www.merck.com/mmhe/sec07/ch108/ch108g.html> (last visited February 7, 2007) [hereinafter MERCK MANUAL].

65. *Id.*

66. Frias, *supra* note 52.

67. *See id.*

68. MERCK MANUAL, *supra* note 64.

69. *Id.*

70. Frias, *supra* note 52.

71. MERCK MANUAL, *supra* note 64.

for cattle, sheep, and fighting cocks.<sup>72</sup> These drugs contain boldenlone and nandrolone, which are anabolic steroids banned by Major League Baseball.<sup>73</sup> Other animal supplements, such as Diamino, do not contain anabolic steroids, but contain vitamins and minerals meant to spur growth and recovery in sick animals.<sup>74</sup> Although these supplements may contain substances which are regularly used on humans, the amount of active substance in these animal supplements varies significantly.<sup>75</sup> Thus, ingesting or injecting an unknown veterinary supplement may cause a player to receive two, three, or four times the amount recommended for humans.

#### IV. FACTORS DRIVING LATIN AMERICAN BASEBALL PLAYERS TO USE PERFORMANCE-ENHANCING DRUG

What are the factors driving a disproportionately high number of baseball players from Latin America to use performance-enhancing drugs? Is it a culturally driven pressure to succeed? An economically driven pressure to succeed? The informal structure of baseball in these countries? The easy availability of performance-enhancing drugs in Latin American countries? A lack of communication about which drugs are prohibited under Major League Baseball policies? A failure to educate Latin American ballplayers about the dangers of performance-enhancing drug use? A cultural difference between Latin American and the United States? The simple answer is that all these factors work in conjunction with one another to produce the higher than average drug use among Latin American ballplayers. But each factor is complicated. Therefore, in order to understand how these factors work together, it is important to understand the nuances of each.

##### A. PRESSURE TO SUCCEED

Just like any sport, baseball is a product of its environment.<sup>76</sup> It reflects the social, economic, and political character of its surroundings.<sup>77</sup> Thus, while the fundamental rules and strategies associated with baseball remain the same from country to country, the culture of baseball differs dramatically in each landscape. Baseball is idolized in Latin American countries. In fact, the level of passion with which the game is played in countries like the Dominican Republic and Venezuela is unrivaled anywhere in the world. But this idolization of baseball within the Latin America landscape has created an intense pressure to succeed. This intense pressure to succeed among Latin American ballplayers is the chief

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72. Fainaru, *supra* note 1.

73. *Id.*

74. *Id.*

75. *Id.*

76. See Diana L. Spagnuolo, Comment, *Swinging for the Fence: A Call for Institutional Reform as Dominican Boys Risk their Futures for a Chance in Major League Baseball*, 24 U. PA. J. INT'L ECON. L. 263, 263 (2003).

77. *Id.*

reason for the disproportionately high number of ballplayers using performance-enhancing drugs. There are three main forces driving this pressure to succeed: culture, organizational structure, and economics.

### 1. *Baseball Obsessed Culture*

In America, baseball is a national pastime. It is played by people of all ages from the young child learning how to throw and catch to the older corporate executive playing on his company's recreational team. But most Americans do not devote their lives to the game of baseball. For the average American, baseball is simply considered a game or a sport. In contrast, baseball is life for Latin Americans. Latin Americans have a passion and devotion to the game which is unrivaled in the world. As one former general manager describes it, "[y]ou drive around and look at local ballfields in this country [the United States] and you'll find they are empty. . . . That's what I love about going to Latin American countries, places like the Dominican Republic. . . you see kids playing everywhere, with taped-up balls, taped-up bats, whatever they've got the play with."<sup>78</sup> Children in Latin America do not dream of becoming doctors, lawyers, or actors; they want to become professional baseball players.

### 2. *Organization Structure of Baseball in Latin American Countries*

#### a. *Structure of Baseball in North America and Puerto Rico*

There are fundamental differences in the organizational structure of baseball in Latin American countries as compared to other countries contributing substantial numbers of players to Major League Baseball. First and foremost, the process by which Latin American recruits come to play for major league teams is vastly different from the same process in other countries. In the United States, Canada, and Puerto Rico, recruits join Major League Baseball teams through the Draft.<sup>79</sup> Teams are barred from signing high school players, so the effective minimum signing age is eighteen years old.<sup>80</sup> Players can elect to enter the Draft at any point after high school. Some enter immediately after high school; some enter after a few years in college; some wait until they graduate from college to enter. A player from the United States, Canada, or Puerto Rico enters the Draft when he asks "that his name be placed on the Draft List."<sup>81</sup> Once on the Draft List, the player is "protected by the provisions of the current Major League Baseball Collective Bargaining Agreement."<sup>82</sup>

78. Arturo Marciano & David P. Fidler, *The Globalization of Baseball: Major League Baseball and the Mistreatment of Latin American Baseball Talent*, 6 IND. J. GLOBAL LEGAL STUD. 511, 530 (1999).

79. The amateur draft guidelines apply only to countries whose players are a party to the Major League Baseball Collective Bargaining Agreement. These countries are the United States, Canada, and Puerto Rico. *Id.* at 533; Zimmer, *supra* note 21, at \*23.

80. Zimmer, *supra* note 21, at \*19.

81. *Id.*

82. Marciano & Fidler, *supra* note 78, at 533.

Under the terms of the Collective Bargaining Agreement, players are entitled to a guaranteed minimum salary and are bound to a franchise for six years.<sup>83</sup>

Before 1965, when the Draft was instituted, players were at the mercy of Major League Baseball franchises.<sup>84</sup> Under the old system, players were free agents and could deal with every professional team.<sup>85</sup> Although the old system may seem to have empowered players by allowing them to choose between teams and negotiate using leverage, the system actually had the opposite effect. Because there was no formal talent gathering process under the old system, teams had to rely on scouts to locate talent.<sup>86</sup> Under this system, scouts played an integral role and possessed tremendous power over amateur players.<sup>87</sup> If a player wanted a major league team to notice him, he had to impress a scout. Because of the power they wielded, these "smooth-talking" scouts would often dupe young, uneducated players into signing contracts against their interests.<sup>88</sup> And because they worked directly for the Major League Baseball teams, scouts did not look after the best interests of the players. Under the old system, wealthy franchises were the only winners because they could afford to set up elaborate scouting systems with numerous scouts scouring the country for talented, young baseball players.<sup>89</sup> These teams, including the New York Yankees and the Boston Red Sox, practically cornered the market on talent during this period and used their leverage in negotiations with players.<sup>90</sup> Most players at that time were young, poorly educated, and could not adequately negotiate contracts.<sup>91</sup> Unless a player had a family member adept at negotiations, the player was left with no one to look after his best interests during contract negotiations.

In contrast to the old system, the Draft provides an open and transparent process through which baseball players can join the professional ranks.<sup>92</sup> This helps ensure that the process is fair to both players and teams. Under the draft system, players have considerably more protections than they possessed under the old system. The Draft's formal and transparent process makes it more difficult for teams to coerce players into signing contracts that are contrary to their best interests. Also, the draft system allows players to obtain representation through professional agents who are familiar with the contract negotiating process.<sup>93</sup> Unlike scouts in the old system, the agents are paid by the players and have no

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83. *Id.*

84. *See generally* Marcano & Fidler, *supra* note 78, at 533-36 (discussing the history of the draft and the drawbacks of the old system where scouts were emphasized).

85. *Id.* at 533.

86. *See id.* at 533-34.

87. *Id.* at 534.

88. *Id.* at 534-35.

89. *Id.* at 533.

90. *See id.*

91. *Id.* at 534

92. *Id.* at 533.

93. *Id.* at 535.

allegiance to Major League Baseball teams. Thus, agents are able to look after the best interests of the players they represent.

Furthermore, players who enter the Draft come from "very formal and organized systems, from Little League through high school into university."<sup>94</sup> These players are usually highly educated individuals since the formal baseball systems are linked "to educational institutions so that baseball prospects also receive formal education."<sup>95</sup>

#### b. Structure of Baseball in Latin American Countries

The organizational structure of baseball in Latin American countries is drastically different from the structure in North America and Puerto Rico. Because of the unique structure of baseball in Latin American countries, players face an overwhelming pressure to succeed at an extremely young age. There are three main identifiable differences in the two systems which contribute to this pressure: the organization of youth training facilities called baseball academies, the existence of private street scouts known as *buscones*, and the process by which players from Latin American countries turn professional.

One of the most marked differences between the North American system of baseball and the Latin American system is the existence of baseball academies in Latin American countries.<sup>96</sup> These baseball academies exist for the purpose of developing young, talented Latin American players.<sup>97</sup> Unlike the North American system where talent is developed through local youth leagues, secondary school teams, and collegiate teams, baseball academies are the primary systems of talent development in Latin American countries. Baseball academies began to pop up in Latin American countries in the late 1970s and early 1980s.<sup>98</sup> The Toronto Blue Jays were the first Major League Baseball team to build a baseball academy in Latin America when they built theirs in 1975.<sup>99</sup> Now, most major league teams have a baseball academy and some have multiple academies in a number of Latin America countries.<sup>100</sup> But, not all baseball academies are owned and operated by major league teams.<sup>101</sup>

Other baseball academies are operated privately by former professional players and independent baseball scouts known as *buscones*.<sup>102</sup> While some players in baseball academies are already signed by Major League Baseball teams, the majority are not.<sup>103</sup> The U.S. government restricts the number of visas given to Major League Baseball players.<sup>104</sup>

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94. *Id.*

95. *Id.*

96. Zimmer, *supra* note 21, at \*23.

97. See Spagnuolo, *supra* note 76, at 239.

98. Marciano & Fidler, *supra* note 78, at 542.

99. *Id.*

100. *Id.* at 543.

101. See Zimmer, *supra* note 21, at \*23.

102. *Id.*

103. Spagnuolo, *supra* note 76, at 269

104. *Id.*

Thus, before they are granted visas, many teams place newly signed players in baseball academies to hone their skills and help them adjust to the rigors of professional baseball. But the majority of the players in Latin American baseball academies are not signed.<sup>105</sup> Most players in these academies are between the ages of twelve and sixteen.<sup>106</sup> Major League Baseball prohibits teams from signing a player until the player is at least seventeen or will "turn seventeen prior to either the end of the baseball season in which he is signed or September first of the year in which he is signed."<sup>107</sup> This rule, called the seventeen-year-old rule, only applies to the signing of Latin American baseball players. While this rule prohibits teams from signing players under a certain age, it does not prohibit them from scouting players under the specified age and sending them to baseball academies.<sup>108</sup> And often, teams circumvent the seventeen-year-old rule in this manner.

The loophole in the seventeen-year-old rule not only allows Major League Baseball teams to evaluate and develop talent at an extraordinarily young age, it also allows them to hoard players and prevent other teams from signing them.<sup>109</sup> This takes players off the market and virtually commits them to one team at a young age.<sup>110</sup> After spending a few years at a team's academy, players are "easy and cheap to sign because they have invested so much of themselves in the particular team that they are very unlikely to look at other teams for employment."<sup>111</sup> In essence, although teams are not allowed to sign players until they are seventeen or near seventeen, teams can lock players away in baseball academies, hiding them from other teams and accomplish the same goal as contractually binding the players.

Players at baseball academies face rigorous training schedules that are similar if not equal to the training schedules of professional ballplayers. Also, they practice and live in facilities that are poorly maintained.<sup>112</sup> Some critics believe that these rigors are too great for young players.<sup>113</sup> Angel Vargas, President of the Venezuelan Baseball Players Association and General Secretary of the Caribbean Baseball Players Confederation, claims that players at baseball academies are treated the same regardless of their age.<sup>114</sup> He says that in his experience "thirteen- and fourteen-year-olds are expected to complete workouts designed for players seven-

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105. *Id.*

106. *Id.*

107. Zimmer, *supra* note 21, at \*20; Angel Vargas, *The Globalization of Baseball: A Latin American Perspective*, 8 IND. J. GLOBAL LEGAL STUD. 21, 28 (2000) (citing Major League Baseball Rule 3(a)(1)(B) as the "seventeen-year-old rule" which applies only to players who are ineligible for the Major League Draft).

108. Vargas, *supra* note 107, at 29.

109. See Spaguolo, *supra* note 76, at 269.

110. *Id.*

111. Marcano & Fidler, *supra* note 78, at 544.

112. *See id.*

113. *See* Vargas, *supra* note 107, at 28-32; *see also* Marcano & Fidler, *supra* note 78, at 544-45.

114. Vargas, *supra* note 107, at 29.

teen years and older.”<sup>115</sup> Some critics complain that the academy facilities are poorly maintained and pose health risks to players.<sup>116</sup> Angel Vargas has complained of the lack of “security against personal and property crimes; consistent and adequate supplies of clean water . . . sufficient food and nutrition; trained medical staff . . . and high-quality playing facilities.”<sup>117</sup>

These critics, however, do not take into account the fact that these baseball academy facilities are considerably better environments than the communities outside the academy.<sup>118</sup> Many baseball players in these academies receive nutrition, immunization, education, and health care, which they would not receive if they lived with their families or on their own. In contrast to the image of mistreatment and exploitation offered by some critics, most Latin American baseball academies offer players opportunities not available to average citizens.<sup>119</sup> Baseball academies empower young Latin America baseball players and give them hope in otherwise bleak surroundings. This perpetuates what one authors calls the “‘rags-to-riches’ mythology of American baseball.”<sup>120</sup> Essentially, this mythology is baseball’s version of the American dream. And it acts as a heavy force on young Latino baseball players; pushing them to their limits in the hope of one day making it to the big leagues.

The second major difference between the organization structure of baseball in North America and in Latin American countries is the existence of private scouts known as *buscones*. Because there is no draft for players from Latin American countries, Latino ballplayers are free agents. Scouts play a crucial role under this system in the same way as they did in America prior to the institution of the Draft in 1965.<sup>121</sup> But unlike in America, where all the scouts involved in the process were employed by Major League Baseball teams, in Latin American countries there are two types of scouts. First, there are scouts employed by Major League Baseball teams. Second, there are independent street scouts, known as *buscones*, who search the countryside of Latin American countries “in search of young talent and notify MLB scouts when they believe they have discovered noteworthy players.”<sup>122</sup> Both types of scouts exert pressure and influence on Latin American players, but *buscones* wield the most power.

Like American scouts prior to 1965, *buscones* exert an incredible amount of power over baseball prospects.<sup>123</sup> But *buscones* wield even more under the Latin American system for three reasons: they often run

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115. *Id.*

116. *See id.*

117. *Id.*

118. Marcano & Fidler, *supra* note 78, at 545-46.

119. *Id.* at 546.

120. *Id.*

121. *See supra* text accompanying notes 83-87.

122. Spagnuolo, *supra* note 76, at 274.

123. Marcano & Fidler, *supra* note 78, at 538.

baseball academies, their primary income consists of commissions from signing bonuses, and they operate in an unregulated environment.<sup>124</sup> First, *buscones* are often the owners and operators of independent baseball academies.<sup>125</sup> Because of the vast number of these independent academies, competition between *buscones* is fierce. *Buscones* will take ballplayers as young as twelve into their academies hoping that they can turn the players into professionals.<sup>126</sup> The fierce competition between *buscones* also drives some *buscones* to use gifts and money to influence the parents of young baseball players into sending their kids off to baseball academies.<sup>127</sup> Unsigned Latino baseball players who want to develop their skills in baseball academies have no choice but to approach *buscones* for their help.

Second, a *buscon's* income is tied primarily to the success of his baseball players. When a player from a Latin American country signs with a Major League Baseball team, the player's buscon almost always receives a portion of the player's signing bonus as payment for introducing the player to the major league scout.<sup>128</sup> Sometimes these payments can be as high as 50 percent or higher.<sup>129</sup> Because the income of *buscones* depends entirely on the success of their players, *buscones* have a strong incentive to use whatever means necessary to ensure the success of their players. Some *buscones* are known to administer steroids and other performance-enhancing drugs to young ballplayers shortly before the players try out with Major League Baseball teams.<sup>130</sup> And since *buscones* do not have a financial stake in their players after they sign with professional teams, *buscones* are more likely to encourage players to use performance-enhancing substances such as steroids and amphetamines, which positively affect players in the short term but negatively affect them in the long term.

Finally, the activities of *buscones* are regulated by neither Major League Baseball nor Latin American governments.<sup>131</sup> Because of this, *buscones* are able to utilize deceitful tactics in order to pressure players into signing informal contracts binding them to the *buscones* and obligating them to pay the *buscones* a percentage of any signing bonus they receive. Some *buscones* even hold themselves out as Major League Baseball scouts in order to increase their influence on young players.<sup>132</sup> Also, since performance-enhancing drugs are not illegal in Latin American countries, *buscones* can legally provide the drugs to players.

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124. See Spagnuolo, *supra* note 76, at 274.

125. *Id.* at 275.

126. Marcano & Fidler, *supra* note 78, at 539.

127. *Id.*

128. Zimmer, *supra* note 21, at \*17.

129. *Id.*

130. Ortiz, *supra* note 14.

131. Spagnuolo, *supra* note 76, at 275.

132. *Id.*



The final major difference between the organization structure of baseball in North American and in Latin American countries is the process by which amateur baseball players from Latin American countries join the professional ranks. This process is drastically different and affords Latinos fewer protections than players from North America and Puerto Rico.<sup>133</sup> The process places tremendous pressure on Latino players. There is no amateur draft process for Latin American ballplayers. Players from Latin American countries are considered free agents and can be signed by Major League Baseball teams at any point as long as they meet the requirements of the seventeen-year-old rule.

But under this informal system, even the seventeen-year-old rule is broken.<sup>134</sup> Both Latino players and Major League Baseball teams disregard this rule.<sup>135</sup> For example, in 1999 the Los Angeles Dodgers were exposed for violating the seventeen-year-old rule by signing third baseman Adrian Beltre when he was fifteen years old.<sup>136</sup> A Dodgers scout altered Beltre's birth certificate with white-out so that he would meet the requirements of the seventeen-year-old rule.<sup>137</sup> In response to the scandal, Dodgers' Senior Vice President and former manager Tommy Lasorda claimed "I bet you there's fifty ballplayers in the major leagues that have signed illegally."<sup>138</sup> Under pressure to succeed at any cost, Latin American players often alter their birth certificates to better position themselves as free agents.<sup>139</sup> Some young players alter their birth certificates to appear older so that teams can sign them before they meet the requisite signing age. Other players alter their birth certificates to appear younger because many scouts lose interest in players older than twenty.<sup>140</sup> For example, Miguel Tejada shortstop for the Oakland Athletics "claims to have been born in 1976 . . . [h]owever, in a 1999 interview with men from Tejada's community, many of whom had grown up playing baseball with Tejada, the young men insisted that Tejada must have been born in 1974, or even earlier."<sup>141</sup> While the Miguel Tejada incident was not a violation of the seventeen-year-old rule, it illustrates how far Latin American players will go to become professionals.

Aside from breaking the seventeen-year-old rule, Major League Baseball teams also manipulate the Latin American system of free agency by signing more free agents than the team knows will ever play professionally. Some authors have dubbed this the "boatload mentality."<sup>142</sup> Cast-

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133. Zimmer, *supra* note 21, at \*20.

134. *See id.* at \*20-21.

135. *Id.*; *see also* Spagnuolo, *supra* note 76, at 276.

136. Zimmer, *supra* note 21, at \*20.

137. *Id.*

138. ESPN.com, Lasorda Defends Dodgers' Actions, Nov. 16, 1999, <http://espn.go.com/mlb/news/1999/1116/174860.html> (last visited Mar. 4, 2007).

139. Spagnuolo, *supra* note 76, at 276.

140. *Id.*

141. *Id.*

142. *Id.* at 271.

ing a wide net allows teams to retain as much talent as possible.<sup>143</sup> Major League Baseball teams are unable to sign North American free agents in this fashion because of the Draft and because doing so “would be prohibitively expensive.”<sup>144</sup> But this system works well in Latin American countries because recruits from those countries cost significantly less to sign.<sup>145</sup> This system helps perpetuate the “rags-to-riches” mythology among Latino baseball players. It lends the appearance that there are plenty of professional positions for hard working Latino players. Believing that they have a chance to succeed, Latino baseball players are more inclined to use performance-enhancing drugs to reach their goals.

### 3. *Economics*

It is a sad reality that many Latin American baseball players come from extremely impoverished areas of the world. For example, the gross domestic product per capita for 2007 in the Dominican Republic is estimated at \$4,044.38 and in Venezuela at \$8,251.73.<sup>146</sup> This is significantly lower than the United States’ and Canada’s gross domestic products per capita for 2007, which are estimated at \$45,493.85 and \$42,738.21 respectively.<sup>147</sup> In these impoverished environments, baseball is a ticket out of the cycle of poverty.

For some, baseball is the only possible means of employment. Unemployment rates in these countries can range from fifteen to thirty percent.<sup>148</sup> Oftentimes, baseball is the only real means by which these players can make money for their families. And the paychecks baseball players receive, even those at the academy level, can help subsidize a significant portion of a family’s yearly expenses. In some cases an entire household depends “on a young prospect’s performance for its support.”<sup>149</sup> A baseball player who is lucky enough to sign with an academy can earn \$600 per month in their first year, \$700 in their second year, and \$750 in their third year.<sup>150</sup> This provides these players “incomes that far exceed most employment alternatives.”<sup>151</sup>

Also, children in Latin American countries grow up idolizing Latino players like Sammy Sosa, Alex Rodriguez, and Pedro Martinez. These players are the pinnacle of the “rags-to-riches” mythology. They once lived in poverty, but now make in excess of ten million dollars per year. Because of the success of these players, young Latin American players believe they can change their lot in life by working hard and becoming

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143. *Id.*

144. *Id.*

145. *See id.*

146. International Monetary Fund, Data and Statistics, <http://imf.org/external/pubs/ft/weo/2007/02/weodata/index.aspx> (last visited Apr. 11, 2008).

147. *Id.*

148. Spagnuolo, *supra* note 76, at 279.

149. Ortiz, *supra* note 14.

150. Spagnuolo, *supra* note 76, at 273.

151. *Id.*

the next professional baseball superstar. And this type of economic environment puts intense pressure on young Latino children to succeed.

#### B. AVAILABILITY OF PERFORMANCE-ENHANCING DRUGS IN LATIN AMERICAN COUNTRIES

Baseball players in Latin American countries turn to performance-enhancing drugs not only because of the intense pressure to succeed, but also because of the availability of the drugs. Many drugs that are illegal in the United States, or at least banned by Major League Baseball, are readily obtainable in Latin American countries. In fact, many forms of these drugs are available over-the-counter at pharmacies or on the streets at bodegas.<sup>152</sup> In a recent article by the San Francisco Chronicle, Dr. Larry Westreich, a consultant to Bud Selig on drug issues and a member of Major League Baseball's Health Policy Advisory Committee, was quoted as saying, "Individuals are able to get anabolic steroids, anabolic steroid precursors and other performance-enhancing drugs at the local pharmacy, veterinary supply stores and from unscrupulous unofficial 'scouts'."<sup>153</sup> In addition to the fact that performance-enhancing drugs are readily available in Latin American countries, the drugs are also affordable. Many of the drugs used by young, Latin American players are veterinary products. These drugs can cost a fifth of what conventional steroids can cost.<sup>154</sup>

#### C. LACK OF COMMUNICATION REGARDING THE DANGERS OF USING PERFORMANCE-ENHANCING DRUGS AND THE PROHIBITIONS AGAINST USING THEM IN MAJOR LEAGUE BASEBALL

In addition to the availability of performance-enhancing drugs in Latin American, there is also a lack of understanding among Latin American players about the negative effects of the drugs and Major League Baseball's prohibition on the drugs. Most young players are not educated enough to understand how these drugs affect their bodies. And few players who take these drugs know what they are taking.<sup>155</sup> Most frightening of all, these players do not know how to take performance-enhancing drugs properly and therefore have a significant risk of overdosing.<sup>156</sup> The only information these players have regarding performance-enhancing drugs comes from other players and *buscones*. These people usually limit the information to the positive effects of the drugs. So most players believe simply that performance-enhancing drugs will help make them stronger, faster, and heal quicker. Furthermore, even if the *buscones* who

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152. Ortiz, *supra* note 14.

153. *Id.*

154. Fainaru, *supra* note 1.

155. *Id.*

156. Steve Perry, *Baseball, Steroids, and MLB's Latin Plantations: A Whole Different Ballgame*, CITY PAGES, May 25, 2005 (based on interview with Arturo Marciano, International Legal Advisor to the Venezuelan Baseball Players Association), available at <http://citypages.com/databank/26/1277/print13316.asp>.

provide steroids, veterinary substances, and amphetamines to players understood the negative side effects of performance-enhancing drugs, they have no incentive to explain the drugs' dangers.

Additionally, players in Latin American countries may not even realize that the substances they are taking are banned by Major League Baseball.<sup>157</sup> The list of performance-enhancing substances banned by Major League Baseball has consistently grown over the past ten years. It is difficult enough for an English-speaking player in the United States to understand what substances he is not allowed to take. This situation is exponentially more problematic among players from Latin American countries who understand little or no English. These players may never come into contact with a list of substances banned by Major League Baseball, and even if they do it is unlikely that they would be able to understand a list written in English. Moreover, even if lists of the banned substances were distributed to all Latin American baseball players in Spanish, it is unlikely this would entirely solve the problem because many of these players have trouble understanding written Spanish.<sup>158</sup>

#### V. CURRENT LAWS AND MAJOR LEAGUE BASEBALL RULES FOCUS SOLELY ON THE DOMESTIC USE OF PERFORMANCE-ENHANCING DRUGS

Despite evidence that players from Latin American countries are using performance-enhancing drugs at alarming rates, current U.S. laws and Major League Baseball rules focus almost exclusively on performance-enhancing drug use in North America. It is true that in recent years, lawmakers and baseball officials have cracked down on performance-enhancing drug use in professional baseball. But, as of yet, officials have done little to address the problem on a global scale, preferring to take a more hands-off approach when it comes to drug use in Latin America.

##### A. UNITED STATES LAW

Federal legislators' first major action aimed at regulating performance-enhancing drugs was the Anabolic Steroid Control Act of 1990 (1990 Act).<sup>159</sup> This law "criminaliz[ed] the possession of anabolic steroids without a valid prescription."<sup>160</sup> The 1990 Act accomplished this by amending the Controlled Substances Act (CSA)—the law which contains the schedules of controlled substances—to include anabolic steroids as a Schedule III drug.<sup>161</sup> But the 1990 Act was limited in scope and only covered twenty-seven compounds.<sup>162</sup> It did not cover thousands of anabolic ster-

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157. *Id.*

158. *Id.*

159. Rick Collins, *Changing the Game: The Congressional Response to Sports Doping Via the Anabolic Steroid Control Act*, 40 NEW ENG. L. REV. 753, 754 (2006).

160. *Id.* at 755.

161. *Id.*

162. *Id.*

oidal compounds, or steroidal supplements.<sup>163</sup>

A few years later, in 1994, the Federal Food and Drug Administration (FDA) was given power to regulate performance-enhancing drugs and supplements under the authority of the Dietary Supplement Health and Education Act of 1994 (DSHEA).<sup>164</sup> But this regulatory scheme did little to curtail the use of steroidal supplements and other performance-enhancing supplements because, under the DSHEA, the FDA could remove a supplement from the market "only after undertaking an extensive review of the product's efficacy."<sup>165</sup> Only after this extensive review indicated that the product posed a significant and unreasonable health risk to the public could the FDA take the product off the market.<sup>166</sup>

The most recent action taken by Congress to regulate performance-enhancing drug use was the Anabolic Steroid Control Act of 2004 (2004 Act).<sup>167</sup> The law increased the scope of the CSA by adding twenty-six new steroidal compounds to the list of anabolic steroids classified as Schedule III controlled substances.<sup>168</sup> Among these steroidal compounds were many dietary supplements that baseball players consumed, including the "'designer steroid' that precipitated the BALCO scandal and prosecutions."<sup>169</sup> In addition to the ban on these compounds, the law also provided financing for high school education programs aimed at informing young athletes about the dangers of performance-enhancing drug use.<sup>170</sup> But, as with all U.S. laws, the 2004 Act only applies within the borders of the United States.

## B. MAJOR LEAGUE BASEBALL RULES

Surprisingly, Major League Baseball has been slow to adopt regulations against the use of performance-enhancing drugs. Baseball did not aggressively begin to combat the use of these drugs until 2003, when Major League Baseball and the Major League Baseball Players Association (MLBPA) agreed to a collective bargaining agreement that included a provision on random drug tests for steroids and other performance-enhancing substances.<sup>171</sup> "The 2003 program prohibited players from using, possessing, selling, or facilitating the sale or distribution of Schedule I, II, and III substances as well as any anabolic androgenic steroids that are not covered by Schedule III but that may not lawfully be obtained."<sup>172</sup> But

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163. *Id.*

164. Tynes, *supra* note 36, at 499.

165. *Id.*

166. *Id.*

167. Anabolic Steroid Control Act of 2004, Pub. L. No 108-358, 118 Stat. 1661 (2004) (codified as amended at 21 U.S.C. §§ 802-11 (2000)).

168. Collins, *supra* note 159, at 757.

169. *Id.*

170. Tynes, *supra* note 36, at 502.

171. Allan H. "Bud" Selig & Robert D. Manfred, Jr., *The Regulation of Nutritional Supplements in Professional Sports*, 15 STAN. L. & POL'Y REV. 35, 52 (2004).

172. Tynes, *supra* note 36, at 503 (internal quotations omitted).

this program was intended more as a trial than an actual policy.<sup>173</sup> Major League Baseball officials wanted to gauge the performance-enhancing drug problem within the sport before committing to a permanent drug testing policy.<sup>174</sup> As such, the program lacked meaningful disciplinary action<sup>175</sup> for a violation and received harsh criticism.<sup>176</sup>

Under pressure from lawmakers in Washington and the public, Major League Baseball toughened its policy in the 2005 season and again in the 2006 season.<sup>177</sup> As it stands now, not only are traditional performance-enhancing drugs on the banned list, but also amphetamines and other dangerous stimulants.<sup>178</sup> Additionally, the new policy employs a more aggressive penalty structure than under the 2003 policy.<sup>179</sup> For instance, a player who tests positive for steroids for the first time incurs a fifty-game suspension.<sup>180</sup> A second positive test results in a one-hundred-game suspension and a third positive test results in a lifetime ban.<sup>181</sup> A player testing positive for amphetamine incurs no suspension for the first positive test, but suffers a twenty-five-game suspension for a second positive test, an eighty-game suspension for a third positive test, and a lifetime ban for a fourth positive test.<sup>182</sup> But because this policy was adopted through a collective bargaining agreement, it only applies to professional baseball players covered under the agreement.<sup>183</sup> Thus, unsigned players from Latin American countries are not covered by this new policy.

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173. See Selig & Manfred, *supra* note 171, at 52-54.

174. See *id.* at 53.

175. Under the 2003 program, a player who tested positive for a banned substance for the first time was merely placed in a treatment program. The second positive test resulted in a fifteen-day suspension or up to a \$10,000 fine. The third positive test resulted in a twenty-five-day suspension or up to a \$25,000 fine. The fourth positive test resulted in a fifty-day suspension or up to a \$50,000 fine. And the fifth positive test resulted in a one year suspension or up to a \$100,000 fine. Selig & Manfred, *supra* note 171, at 53.

176. Tynes, *supra* note 36, at 503.

“Richard Pound, the chairman of the World Anti-Doping Agency (WADA), had the following to say regarding baseball’s 2003 policy: I think it’s an insult to the fight against doping in sport, an insult to the intelligence of the American public, and an insult to the game itself. . . . You can test positive for steroid five times, then they think of booting you out for a year? Give me a break. The first time someone knowingly cheated and they give you counseling? It’s a complete and utter joke. *Id.*”

177. *Id.* at 504-05.

178. *Id.*

179. *Id.* at 505.

180. *Id.*

181. *Id.*

182. *Id.*

183. Barry M. Bloom, *Players Approve New Steroid Agreement*, MLB.COM, Dec. 8, 2005, [http://mlb.mlb.com/news/article.jsp?ymd=20051208&content\\_id=1279825&vkey=news\\_mlb&fext=.jsp&c\\_id=mlb](http://mlb.mlb.com/news/article.jsp?ymd=20051208&content_id=1279825&vkey=news_mlb&fext=.jsp&c_id=mlb) (last visited Mar. 4, 2007).

VI. THE INADEQUACIES OF RECENT MAJOR LEAGUE  
BASEBALL POLICY CHANGES DIRECTED TOWARDS  
CURBING THE PERFORMANCE-ENHANCING  
DRUG PROBLEM

Major League Baseball has taken some action to curb performance-enhancing drug use among baseball players from Latin American countries. But this action has only come within the last three years and is woefully inadequate to address the root causes of the problem. Currently, Major League Baseball's approach is two pronged—involving both drug testing and education.<sup>184</sup>

Major League Baseball began steroid testing in the Dominican Republic at the beginning of the 2004 season.<sup>185</sup> This testing policy is specifically directed to players in the Dominican Summer League. The Dominican Summer League is a group of twenty-seven minor league teams located throughout the Dominican Republic.<sup>186</sup> The league is affiliated with Major League Baseball and consists mostly of seventeen and eighteen-year-old prospects.<sup>187</sup> Like the numerous minor leagues located throughout North America, all players in the Dominican Summer League have contracts with Major League Baseball franchises and are affiliated with a specific Major League Baseball team.<sup>188</sup> Under the drug testing policy, all players in the Dominican Summer League are subject to a random drug test at least once a year.<sup>189</sup>

Similarly, Major League Baseball began steroid testing in the Venezuelan Summer League in 2005.<sup>190</sup> The Venezuelan Summer League is similar to the Dominican Summer League, although the league only has nine teams.<sup>191</sup> The nine teams play a sixty-four game schedule beginning on May 1 and ending on August 31.<sup>192</sup> Like the Dominican Summer League, most players in the Venezuelan Summer League are young, newly signed prospects.<sup>193</sup> But unlike the Dominican Summer League, the Venezuelan Summer League is open to players from all Latin American countries except the Dominican Republic and Puerto Rico.<sup>194</sup> Under the drug testing policy, all players in the Venezuelan Summer League are subject to a random drug test once a year.

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184. See Mike Fish, *Steroid Problem Reaches Critical Mass in the D.R.*, ESPN.COM, Feb. 14, 2007, <http://sports.espn.go.com/mlb/news/story?id=2763194> [hereinafter *Critical Mass in the D.R.*].

185. *Id.*

186. Tom Farrey, *MLB to Begin Program in League of Teen Prospects*, ESPN.com, May 1, 2004, <http://sports.espn.go.com/mlb/news/story?id=1793139>.

187. *Id.*

188. *See id.*

189. *Id.*

190. Ortiz, *supra* note 14.

191. See Venezuelan Summer League Homepage, <http://www.vsl.com.ve/> (last visited Mar. 6, 2007).

192. *Id.*

193. *Id.*

194. Minor League Baseball Homepage, [http://www.minorleaguebaseball.com/leagues/ip\\_index.jsp?lid=1134&mc=info](http://www.minorleaguebaseball.com/leagues/ip_index.jsp?lid=1134&mc=info) (last visited Mar. 6, 2007).

Also, Major League Baseball is using educational programs curb performance-enhancing drug use by baseball players in Latin American countries.<sup>195</sup> The educational programs exist in both the Dominican Republic and Venezuela. The programs have two primary goals: to educate Latin American ballplayers about the dangers of performance-enhancing drug use and to provide information about Major League Baseball's performance-enhancing drug policy.<sup>196</sup> The educational programs are directed at both the summer leagues and the baseball academies where many unsigned Latino baseball players begin using performance-enhancing drugs. One of these education programs is an infomercial featuring Ozzie Guillen, manager for the Chicago White Sox.<sup>197</sup> The infomercial is aimed at educating Venezuelan players about Major League Baseball's anti-doping program.<sup>198</sup>

Although these recent actions taken by Major League Baseball are an improvement on the previously nonexistent policy and are a step towards addressing the problem of performance-enhancing drug use among Latin American baseball players, the actions are woefully inadequate. First, the drug testing policy that Major League Baseball has instituted in the Dominican Republic only covers steroids.<sup>199</sup> With this policy, other performance-enhancing drugs, such as amphetamines and veterinary drugs, are not tested for.<sup>200</sup> In fact, the drug Diamino—which was the most likely cause of Lino Ortiz's death—is not covered under the current testing policy.<sup>201</sup> In some cases, those veterinary drugs are more popular among Latin American baseball players because they are cheaper and easier to acquire than anabolic steroids. And because veterinary drugs are not meant for human consumption, they are more dangerous than traditional anabolic steroids.

Second, the new testing policy lacks adequate disciplinary consequences for players who test positive.<sup>202</sup> Although consequences for testing positive in the Venezuelan Summer League are the same as they are in the Major Leagues, there are no consequences for testing positive in the Dominican Summer League. Players from the Dominican Republic who test positive for steroids are not suspended under the policy.<sup>203</sup> This is because local law in the Dominican Republic prevents the suspension

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195. *Critical Mass in the D.R.*, *supra* note 184.

196. *Id.*

197. *Id.*

198. *Id.*

199. Farrey, *supra* note 186.

200. *Id.*

201. *Id.*

202. Geoff Baker, *Growing Pains: Venezuela Deals with Steroid Testing*, SEATTLE TIMES, Nov. 12, 2006, available at [http://seattletimes.nwsources.com/html/mariners/2003404352\\_steroids12.html](http://seattletimes.nwsources.com/html/mariners/2003404352_steroids12.html); David Picker, *Baseball Urged to Fight Steroids in Latin America*, N.Y. TIMES, Apr. 15, 2005, available at <http://www.nytimes.com/2005/04/15/sports/baseball/15steroids.html?ex=1173330000&en=7bcb0b8264438099&ei=5070>.

203. Baker, *supra* note 202.



of players.<sup>204</sup>

Third, testing only occurs once a year, making it possible for players to use steroids after the first random drug test. Fourth, steroid testing only applies to players already signed by Major League Baseball teams. Fernando Mateo, the head of Hispanics Across America—an organization which has urged Major League Baseball to curb performance-enhancing drug use in Latin America—has said that one of the biggest problems is Latino kids doping before major league tryouts.<sup>205</sup> These players are not covered under the drug testing policy because they have not yet signed contracts with Major League Baseball teams. Moreover, since these players are young and uneducated about the dangers of performance-enhancing drug use, they are the players who most need to be tested.

Finally, the educational program adopted by Major League Baseball to teach Latin American players about performance-enhancing drugs is too small in scale. Ronaldo Peralta, manager of Major League Baseball operations in Latin America, admits that currently there are only two permanent employees—one in the Dominican Republic and one in Venezuela—who are in charge of this educational program.<sup>206</sup> Two full-time employees are not enough in these Latin American countries, which are home to tens of thousands of baseball players.

## VII. PROPOSALS FOR CHANGE

In order to fully address the problem of performance-enhancing drug use in Latin American baseball, Major League Baseball and the governments of Latin America countries must adopt an aggressive strategy that deals with all the factors causing Latino ballplayers to use these drugs. The following are five proposals for change that, if implemented by Major League Baseball and Latin American governments, would significantly curb the use of performance-enhancing drugs among Latin American baseball players.

### A. REGULATION OF *BUSCONES*

As illustrated above, *buscones* operate in an unregulated void in countries like the Dominican Republic and Venezuela. Latin American baseball players often get their first dose of performance-enhancing drugs from these street scouts. As the system exists now, *buscones* are financially motivated to provide performance-enhancing drugs to players because their income depends on the success of their players.

The regulation of *buscones* needs to start with a licensing program in Latin American countries. Because Major League Baseball cannot directly regulate Latin American citizens, it must instead put pressure on

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204. *Id.*

205. Mike Fish, *Activist: MLB Should Keep Promise to Test Prospects*, ESPN.COM, Feb. 14, 2007, <http://sports.espn.go.com/mlb/news/story?id=2763304>.

206. *Critical Mass in the D.R.*, *supra* note 184.

these countries to adopt such a licensing program. The licensing program should consist of a national registration system for each Latin American country. Under the program, every person operating or wishing to operate as a *buscon* would have to pay a licensing fee to the government and register their name and address. As a part of the licensing program, a person desiring to become a *buscon* would have to participate in a mandatory education program. The money raised by the collection of licensing fees could help pay for this education program. The education program should teach *buscones* about the dangers of performance-enhancing drug use and the current Major League Baseball rules regarding performance-enhancing drugs. It should also describe, in detail, each drug currently banned by Major League Baseball under its drug policy. The education should emphasize performance-enhancing drugs that are popular in the particular area of the country where the *buscon* works. Latin American countries should require all *buscones* to renew their licenses yearly and undergo annual training aimed at addressing any changes to Major League Baseball's drug policy.

To ensure compliance with this new licensing program, Latin American countries should create consequences for violations of this program. Unlicensed individuals who work as *buscones* should be fined and imprisoned. Licensed *buscones* who knowingly provide illicit performance-enhancing drugs to baseball players should have their licenses revoked and be forced to pay a fine. Also, licensed *buscones* who knowingly offer misleading advice to baseball players with regards to either performance-enhancing drugs or Major League Baseball's drug policy should be fined and have their licenses suspended for a period of time.

Furthermore, Major League Baseball should require drug testing for all baseball players who sign professional contracts. Under these rules, if a player failed the drug test, he should have his signing bonus reduced or revoked. Also, any money paid to a *buscon* in connection with such a contract should be taken away. This would ensure that *buscones* would have a financial incentive to keep their players away from performance-enhancing drugs.

## B. LATIN AMERICAN DRAFT

In addition to regulating the activities of *buscones*, Major League Baseball must create an international draft for Latin American players. Under the current system of free agency, *buscones* wield too much power over Latin American players. An international draft system would reduce the *buscones'* power and create a more formalized and transparent system of recruitment. The idea of an international draft is not a new idea.<sup>207</sup> In fact, Major League Baseball has considered the idea before.<sup>208</sup> But Major League Baseball must do more than simply "con-

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207. Spagnuolo, *supra* note 76, at 282-83.

208. In October of 2002 a committee sponsored by Major League Baseball and the MLBPA was to be formed to discuss the idea of an international draft. "Initially

sider" the idea. It must adopt and implement the idea

Although the exact framework of an international draft is beyond the scope of this paper, its advantages are clear. First, an international draft for all Latin American baseball players would effectively eliminate the power of the *buscones*. Second, an international draft would allow Major League Baseball to formalize and monitor its current rules regarding performance-enhancing drug use. For example, as a prerequisite to participating in the draft, Major League Baseball could require all players to be drug tested. Finally, it makes logical sense to conduct an international draft because of the amount of international players now associated with Major League Baseball.

### C. MORE AGGRESSIVE DRUG TESTING

Major League Baseball must get more aggressive with its drug testing policies in Latin American countries. These drug testing policies must change in four ways. First, Major League Baseball should test every Latin American player at the time they sign a professional contract. This would help cut down on the problem of players using performance-enhancing drugs before tryouts. Also, as mentioned above, it would also create a financial incentive for *buscones* to discourage performance-enhancing drug use. Second, Major League Baseball must create a drug testing policy in Latin American that is consistent with the drug policy in North America. Major League Baseball should test for all banned performance-enhancing drugs, not simply anabolic steroids. Also, drug testing should occur more than once-a-season. Standardizing the policy would make the adjustment from playing baseball in Latin America to playing baseball in North America easier on Latino players. Third, Major League Baseball must consistently drug test players in baseball academies. If possible, Major League Baseball should encourage drug testing at the unofficial academies, but as a practical matter this may be prohibitively difficult. At a minimum, Major League Baseball must consistently drug test players at academies which are run by Major League franchises. Fourth, it must create harsher consequences for violators that mirror the consequences imposed on players in North America. Specifically, Major League Baseball must work out a compromise with the Dominican government so that it can suspend players who violate the drug policy. If the two parties cannot reach a compromise, then Major League Baseball must come up with another consequence that will have a similar deterrent effect. For example, Major League Baseball could create a database that contains the names of Dominican players who test positive for performance-enhancing drugs. Then, this database could be used to prevent players who violate the drug policy from entering the United States to play on Major League Baseball teams. In addition to the harsh consequences for

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the committee was to be formed by October 15, 2002, but both parties are now hoping to finalize the committee's membership by Opening Day 2003." *Id.*

violations of the drug policy, Major League Baseball must sponsor a treatment program for first-time offenders.

D. INCREASED EDUCATION CONCERNING THE DANGERS OF  
PERFORMANCE-ENHANCING DRUG USE AND MAJOR  
LEAGUE BASEBALL'S DRUG POLICY

Major League Baseball must devote a considerable amount of time and effort towards educating amateur and professional baseball players in Latin American countries about both the dangers of using performance-enhancing drugs and Major League Baseball's drug policies. To accomplish this, Major League Baseball must form a commission dedicated to developing effective educational programs for Latin American baseball players. The commission should consist almost entirely of citizens from the major Latin American countries. This will help ensure that the programs developed are tailored specifically for the unique needs of Latin American players. It will also help ensure that the programs communicate a consistent message regarding Major League Baseball's drug policy so that there is no confusion among players from different countries. Major League Baseball should expose both professional and amateur players to these educational programs. As a practical matter, the educational programs directed at young, amateur players should focus on the dangers of performance-enhancing drugs. But the programs must also emphasize the fact that players can make it to the Major Leagues without resorting to these drugs. This will serve the dual purpose of scaring young ballplayers into not using these drugs and empower at the same time. Educational programs directed towards professional ballplayers should focus on the details of Major League Baseball's drug policy. Because many of the banned drugs are legal in these players' home countries, the programs must cover every illicit drug and describe the common substances which contain the illicit drugs. Also, players who test positive for performance-enhancing drugs should undergo further education to ensure that they fully understand the major league policy and the reasoning behind it.

E. PERFORMANCE-ENHANCING DRUG LAWS IN LATIN  
AMERICAN COUNTRIES

Finally, Major League Baseball must work with Congress and the U.S. State Department to encourage Latin American countries to adopt stricter drug policies with regards to performance-enhancing substances. As mentioned previously, many substances that Major League Baseball has banned under its drug policy are legal in Latin American countries. In order to send a consistent message to players about the dangers of these drugs, Latin American countries must adopt drug policies that are similar to the laws of the United States and Canada. First and foremost, Latin American countries must make all anabolic steroids illegal and stop pharmacies from selling them over-the-counter. Second, these countries must adopt tighter regulations on the sale and distribution of veterinary

drugs and animal supplements. This includes cracking down on the underground market for these substances. Finally, these countries must adopt tighter regulations on the sale and distribution of steroidal supplements, as well as harmful stimulants such as amphetamine.

### VIII. CONCLUSION

Major League Baseball has finally committed itself to ridding the game of performance-enhancing drugs. But the game will never be rid of these dangerous drugs if Major League Baseball does not address the problem in Latin America. Now that the game of baseball has become global sport, it is important for baseball officials to take responsibility for the livelihood of players beyond the North American borders. Hopefully, the next generation of Latin American baseball players will not feel pressure to take dangerous performance-enhancing substances. Hopefully, they can realize that their passion and commitment to the game is all they need to succeed.