

The Uproar Concerning Steroids in Baseball

A Slippery Slope with No Clear Answers

By Joseph Siprut

Unless you've spent the last year living in a cave, you're familiar with the uproar concerning performance-enhancing drugs in professional sports, and baseball in particular. Most notoriously, Barry Bonds was publicly linked to steroid use in 2003 when investigators and Internal Revenue Service agents raided the Bay Area Laboratory Co-Operative (BALCO) in Burlingame, Calif.

Bonds, according to leaked grand jury testimony reported by the *San Francisco Chronicle*, testified Dec. 4, 2003, before a federal grand jury that his personal trainer, Greg Anderson, told him that "clear" and "cream" substances Anderson gave him were the nutritional supplement flaxseed oil and a rubbing balm for arthritis. Federal investigators maintain they were steroids, according to the book *Game of Shadows*, by *San Francisco Chronicle* reporters Mark Fainaru-Wada and Lance Williams. The book also details Bond's alleged use of Winstrol, Deca-Durabolin and other banned performance-enhancing drugs.

Of course, Bonds is not the only big name to be implicated by this controversy: Mark McGwire, Sammy Sosa, Rafael Palmeiro and other prominent players continue to be dogged by allegations of steroid abuse.

Beneath the surface, however, lurks a fundamental but difficult question: What exactly is wrong with the use of steroids in baseball? Before I'm crucified, let me be clear: This article is not an argument in support of steroid use. But for reasons explained below, trying to pin down a cogent rationale for condemning steroid use turns out to be more difficult than the public generally chooses to believe. Let's dig a little deeper.

The "policy-based" arguments against the use of performance-enhancing drugs typically go something like this. Baseball fans want, and expect, to watch genuine competition based on skills that come from talent and practice, not from drug use. Moreover, drug-ingesting athletes of today — especially those breaking (or threatening to break) long-established landmark records of achievement, such as Hank Aaron's career home-run record — are in effect cheating their predecessors, since these achievements of today are the product of chemical engineering, not athletic achievement. Therefore, such drug use should be condemned.

This argument has strong intuitive appeal. But it glosses over very difficult questions. If, as the argument suggests, any practice that reduces the effect of pure talent and practice should be condemned, we'd be throwing out the baby with the bath water.

For example, almost all baseball players today (as well as professional athletes in general) rely heavily on weight training to boost performance. Stronger, more powerful muscles lead to more home runs and power at the plate (and probably increase the effectiveness of pitchers, though this is less clear). Indeed, entirely apart from the use of performance-enhancers ("chemical engineering"), there is a science to weight lifting and training. Athletes who train more regularly and consistently (and knowledgeably), and who have a superior genetic disposition for building muscle, will pack on strength more easily than their peers.

Does this give these athletes an unfair advantage in the sport? And do the weight-lifting athletes of today therefore cheat the past and their predecessors — Hank Aaron, Babe Ruth and other legends — in whose era weight lifting was largely ignored, and where "talent and practice" therefore reigned supreme?

Perhaps this is unfair. Maybe, the better argument is that we do place a premium on talent and skill, but using the power of modern exercise theory is not inconsistent with that. So if a player wants to lift weights and increase

Democracy in Action

Hair Splitting on the *Sundance* Case in the Adult Industry

By Philip Green

In a narrow and carefully tailored ruling, the Tenth Circuit held against the government in an Internet pornography case that has been very closely watched by advocates of a child-proof Internet and the adult film industry.

Free Speech Coalition, et al. vs Gonzales (1st Dist Colo. No. 05-CV01126-WDM-BNB) (FSC case) ordered a temporary injunction that prevents enforcement of new regulations against plaintiffs and “secondary producers” not connected with the hiring and firing and actual production of adult films.

Even for those not fans of adult films, the ruling shows the continued strength of the constitutional safeguards of free speech. The new rules were promulgated by Attorney General Gonzales in 2005 and are likely to be held as *ultra vires* under the case of *Sundance Association vs. Reno*, 139 F.3d 804 (10th cir., 1998). This would force the rules to be redrafted. The likely outcome from the FSC case will eliminate the “secondary producer” issues by limiting or removing this category from the rules.

The regulations had initially sought to enhance the Department of Justice’s abil-

ity to regulate the production of adult sexually explicit films under 18 USC § 2257. This criminal statute was originally enacted to prevent the use of actors and models who were under 18 in the production of adult pornographic films. Adult films are legal if they are not obscene under the test of *Miller vs. California* (U.S. Cal. 1973), 93 S.Ct. 2607 and its progeny. They may be pornographic and sexy and even very graphic but are quite legal under our Constitution.

By the initial regulations, promulgated under the statute at 28 CFR 75.1 (the Regulations), “producers” were to

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strength — and thereby increase productivity — more power to him. Fair enough. And if that player wants to ingest large portions of foods generally known to contain high amounts of protein to further aid his quest for muscle? No problem there; there’s nothing “unnatural” about protein.

But, the bright line should be drawn between something natural or not. And if egg whites, milk and protein powder are natural, then how about creatine — large amounts of which can be found in a piece of steak? And what of androstenedione (“andro”), the supplement made famous by Mark McGwire, and which is produced “naturally” by the body in both men and women? If protein powder and creatine are acceptable, why not andro?

Of course, since McGwire’s day, andro has been banned by the FDA, so perhaps the answer is that supplements like protein powder and creatine are “safe,” whereas products like andro are “unsafe.” But this is far from clear. If used in excess, protein and creatine supplements can in fact be unhealthy (to the kidneys, among other things). And when used properly, many other supplements just as effective as andro may be perfectly safe, and which have thus far (unlike andro) passed FDA scrutiny. Even basic weight lifting, when done improperly, can be unhealthy, to the extent that it causes joint problems, reduced flexibility, etc.

So, with all that said, why are weight lifting and the careful use of muscle-building supplements proper, but steroid use wrong (at least in my view)? That’s simple: because anabolic steroids are prohibited by the rules of baseball. Players who compete in a professional sports league have implicitly — and under their union contracts, probably explicitly — agreed to play by the established rules. If you don’t like the current rules, lobby for change, but don’t just ignore them — especially when doing so puts “law-abiding” players at a competitive disadvantage.

So far, so good. But here’s the problem: *Steroid use was not illegal in baseball until 2003*. Thus, even if Bonds did use steroids between 1998 and 2003, he violated no rules — and yet Bonds has somehow become the No. 1 villain in all of sports. But if Bonds should be condemned for using steroids during a period of time when they were not illegal, then guess who else that argument implicates: Babe Ruth himself, who used laminated bats when they were legal, but stopped using them when they were outlawed.

Moreover, whether steroids were technically legal when Bonds appears to have taken them seems to be an issue of secondary concern to the public, whose main beef is the diminished role of “natural talent” and the rise of chemical engineering. If we’ve seen anything thus far, however, it’s that: (i) this position implicates much more than just illegal drug use, including practices that we encourage and freely tolerate; and (ii) once we start down that slippery slope, it’s hard to put on the brakes.

Thus, if steroid use is wrong because — and *only* because — it’s prohibited by the current rules of the game, then modern players whose achievements were made possible through “permissible” chemical engineering — performance enhancers that were legal at the time of their use — did not, put literally, cheat the past (or the present). And if the difference between “right and wrong” does turn on following established rules (both those of the United States and individual professional sports), let us hope the rulemakers know what they are doing.

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Pinned Down Labor Law and Professional Wrestling

Part II: Workers in the Billion Dollar Pro-Wrestling Industry

This is the second in a three-part series on labor law issues in pro wrestling — the crossroad of sport and entertainment.

By Jamie Sharp

How to classify pro wrestlers

Professional wrestlers are a unique breed of workers who have no real labor classification. While professional wrestling certainly requires a great deal of athleticism, professional wrestlers are not considered professional athletes because they do not compete in legitimate athletic competition.

Similarly, although professional wrestlers participate in scripted storylines, they are generally not considered actors because they do not perform on a stage or on movie sets.¹ Since professional wrestling uses elements of both professional sports and entertainment, perhaps the best way to classify professional wrestlers is to follow Vince McMahon's lead and call them "sports entertainers."

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Independent Film Festival Report Sundance 2006

By Dan Satorius

Of the hundreds of film festivals in the United States, the premiere one for the independent film industry is the Sundance Film Festival held each January in Park City, Utah. Sundance has defined and directed the independent film industry for many years. It is the over-caffeinated, over-crowded and over-affected must-attend event of the year for the independent film business.

Festivals vs. markets

Film festivals are supposed to be different from film markets. A market is where buyers and sellers meet to buy and sell films and television programs. The IFP market in New York and the American Film Market in Santa Monica are examples of film markets. Real Screen and Hot Docs are examples of television markets.

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Prime Time Anytime: Wireless Video on Demand

By Eleanor Sasis

When I moved into my new flat, I possessed the only television set among my roommates. To put my TV in the living room for all to share — or not: That is the question. If I moved my TV into the living room, I would run the risk of it not being available for use when my shows are on. One of my roommates could be watching the news or worse, "Wife Swap"! What was I to do?

The future of my television viewing (and network television) got brighter when Apple Computer Inc. announced that consumers would be able to download select NBC Universal, Sci Fi Channel, USA Network, Disney and ABC television shows from the iTunes Music Store. For \$1.99, you can download the latest episode just one day after it airs on your TV.¹ Downloaded shows may then be synced to the newest versions of the full-sized iPod, letting you watch your shows whenever and wherever.

Apple's iTunes Store features full seasons of "The Office," "Law and Order," and more. It's just a matter of browsing the iTunes Music Store listening to find what you want, clicking to buy and downloading the stutter-free, ad-free

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