



## Immaculate Suspension: *Non-Analytical Positive Doping Violations from USADA to MLB*

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After the “Steroid Era” of baseball reached its apex following the 2013 Biogenesis scandal and MLB’s subsequent suspension of 14 major and minor league players, players can expect to see MLB make increasing use of its only tool for combating undetectable drug use in sports: the “non-analytical positive.” The Biogenesis scandal broke in January 2013 when the Miami New Times published a torrid exposé on Biogenesis, a South Florida anti-aging clinic, Anthony Bosch, the clinic’s chief, and boxes of stolen clinic records showing that the clinic was allegedly supplying some of MLB’s biggest names with dope in the form of testosterone laced creams, blood transfusions, lozenges, and other novel forms of performance enhancing drugs.<sup>1</sup> The related suspensions ushered in a new era of combatting drug use in baseball, one where players are suspended for doping violations not because of a positive drug test, but based on non-analytical evidence.

After a seven-month investigation into the Biogenesis clinic, MLB relied upon non-analytical evidence to impose 50-game suspensions on 12 players tied to the Biogenesis scandal.<sup>2</sup> Not a single one of those suspensions involved a positive drug test result.<sup>3</sup> With no positive test result, MLB also imposed

a 162-game suspension on Alex Rodriguez.<sup>4</sup> MLB also imposed a 65-game suspension on Ryan Braun based, in part, on evidence not tied to any drug result.<sup>5</sup> While Biogenesis did not mark MLB’s first use of the non-analytical positive, prior to the scandal MLB had relied on non-analytical positive evidence to discipline only a handful of MLB players who did not test positive for performance-enhancing drugs. Those players include Jason Grimsley, Ryan Jorgensen, Jay Gibbons, José Guillén, and Manny Ramírez.<sup>6</sup> With Commissioner Selig lauding MLB for a drug program that “is not limited only to testing” but also to “fact-finding and investigative skills”<sup>7</sup> and with Congress pouring its praise upon baseball’s drug program and calling upon other pro sports leagues, especially the NFL, to “implement their own robust testing regimes,”<sup>8</sup> the non-analytical positive may soon become more prevalent not only in baseball, but in other pro sports as well.

Non-analytical positive suspensions, however, are hardly new to America’s athletes. Heavily relied on by the United States Anti-Doping Agency (USADA) to discipline cyclists and sprinters such as Lance Armstrong, Michelle Collins, and Tim Montgomery, the non-analytical positive is a method of proving

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an athlete's drug use not on the basis of a positive test, but on the basis of other facts suggesting use. These other facts range from hard evidence such as written doping admissions to less reliable indicia of drug use such as testimony from a begrudged aide.<sup>9</sup> While most people agree with the critical need to combat the rampant use of performance-enhancing drugs in baseball, the discipline of players through circumstantial evidence is intrinsically problematic.

With no limitations on the types of evidence an arbitral body can consider, the non-analytical positive is an amorphous concept. Despite non-analytical positive-based suspensions for at least 19 MLB players, there is still not a single mention of "non-analytical positives" in any public MLB document.<sup>10</sup> With little guidance from MLB, the USADA cases give an instructive overview of the different types of evidence that may be introduced against an athlete and a glimpse into how an arbitral body may treat that evidence. In each of these cases, the arbitrators adopted different ways of looking at evidence, including a progressively expansive view of what they deemed to be "admissions." A look at USADA's non-analytical positive cases illuminates what MLB players facing discipline for a non-analytical positive violation can expect to see and, more importantly, what types of challenges they may be able to raise.

#### ORIGINS OF THE NON-ANALYTICAL POSITIVE: FROM WADA TO MLB

The term "non-analytical positive" comes from the World Anti-Doping Agency (WADA) Code.<sup>11</sup> The WADA Code introduced the concept of "non-analytical" doping violations to impose sanctions where there was evidence that an anti-doping rule violation occurred but where there was no positive doping control test.<sup>12</sup> Under the WADA Code, use or attempted use may be established by reliable means such as admissions by the athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, or other analytical information that does not otherwise satisfy all the requirements to establish presence of a prohibited substance.<sup>13</sup>

Non-analytical positive doping violations began to take on prominence against U.S. athletes in the wake of the Bay Area Laboratory Co-Operative (BALCO) scandal. Michelle Collins, former Olympic sprinter, was the first U.S. athlete to face doping discipline without a positive test.<sup>14</sup> Since *Collins*, USADA has successfully lodged non-analytical positive cases against sprinters Tim Montgomery,<sup>15</sup> Chryste Gaines,<sup>16</sup> and Alvin Harrison,<sup>17</sup> cyclist Kayle Leogrande,<sup>18</sup> and, of course, Lance Armstrong.<sup>19</sup>

MLB's adoption of the non-analytical positive came on the heels of congressional hearings where MLB was told to beef up its drug program or otherwise face congressional intervention.<sup>20</sup> The first player to face discipline based on a non-analytical positive was Arizona Diamondbacks pitcher Jason Grimsley in 2006.<sup>21</sup> At that time, MLB's drug policy, the "joint drug program," did not provide for discipline based on non-analytical evidence.<sup>22</sup> However, the commissioner relied on his general authority under the Basic Agreement to impose discipline "in the best interests of baseball."<sup>23</sup>

Three years later, at the Mitchell Report hearings, Major League Baseball Players Association (MLBPA) Executive Director Donald Fehr testified, "We have developed and agreed to

procedures which allow players to be suspended for HGH use based on evidence other than a positive test, a so called 'non-analytical' finding."<sup>24</sup> This comment was likely in response to the Mitchell Report's recommendation that the commissioner's office put greater efforts into the "aggressive investigation" of non-analytical doping evidence.<sup>25</sup> Although neither the Basic Agreement nor the joint drug program was revised to reflect these new procedures, the MLBPA and the commissioner's office had agreed in 2006 that discipline for a non-analytical positive was permissible under the joint program.<sup>26</sup> This was confirmed by the Alex Rodriguez panel decision where the panel chair distinguished Rodriguez's case by noting that at the time of Jason Grimsley's suspension, the joint drug program "did not expressly cover discipline for 'non-analytical positives.'"<sup>27</sup> The panel chair's comment suggests that despite no mention of the term in the current joint drug program, it now covers non-analytical positive doping violations.

#### Non-Analytical Positive Evidence Overview

- Negative blood tests with enhanced levels of a banned substance
- Fluctuations in testosterone levels
- Admissions in writing
- Admissions through witness testimony
- Corroborating documentary evidence such as payment receipts, phone bills, text messages, emails, medical records, travel records
- Evidence of masking agents
- Reinterpreted negative tests

#### THREE TYPES OF EVIDENCE: ADMISSIONS & WITNESS TESTIMONY, DRUG TESTS, AND DOCUMENTARY EVIDENCE

##### *Admissions & Witness Testimony*

The most damaging evidence against any of the USADA athletes has been, in every case, the athlete's own admissions. The definition of "admission," however, has stretched with each case. Michelle Collins's glaring admissions were found in her own e-mails to BALCO's Victor Conte.<sup>28</sup> Unsurprisingly, the arbitrators placed particular emphasis on an August 2002 e-mail exchange in which Collins wrote, "I have access to a testosterone gel. . . . I'm wondering can I use this with the cream that I already have?"<sup>29</sup> In another e-mail, Collins wrote, "How much was the E? I'm prepared to pay the amount now."<sup>30</sup> The arbitral tribunal held that "Collins's emails constitute[d] admissions, and prove[d] beyond a reasonable doubt" that she used both testosterone/epitestosterone cream and EPO.<sup>31</sup>

In Tim Montgomery's case, the arbitral panel also held that the athlete's admissions constituted evidence "on which basis alone" was sufficient to find him guilty of doping.<sup>32</sup> Unlike Collins, however, Montgomery's so-called admissions came from fellow sprinter Kelli White's testimony about a single conversation she had with Montgomery where he asked her if "it" made her calves tight.<sup>33</sup> White testified that "it" referred to steroids from BALCO known as "the Clear."<sup>34</sup> In *Montgomery*, the arbitral panel elevated witness testimony, which it had labeled as "corroborating evidence" in *Collins*, to a direct "admission."<sup>35</sup>

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In the case against Kayle Leogrande, the tattoo-cloaked member of the outlaw cycling team, Rock Racing, the arbitral panel accepted as admissions dubious and questionably reliable testimony from the athlete's soigneur and team leader.<sup>36</sup> Leogrande's soigneur testified that, in the open-door cyclists' hospitality hotel room, the athlete told her that he had been using testosterone gel but thought that patches would work better and asked her if she knew where he could obtain such patches.<sup>37</sup> The soigneur testified that she responded, "maybe in Mexico."<sup>38</sup> She testified that on another occasion, while giving him a massage, Leogrande told her he was nervous because he had just given a urine sample at a doping control station but had been taking Vicadin, Ventalin, and EPO.<sup>39</sup> She also testified that he told her he had put soap on his wrist prior to entering the doping control station and put some of the soap into his urine stream, hoping this would manipulate the test.<sup>40</sup> She also testified that Leogrande told her his mother had been taking EPO and knew that the athlete was using the drug.<sup>41</sup> Leogrande's team leader, Frankie Andreu, testified that the soigneur reported this conversation to him and that he had a subsequent conversation with Leogrande where it was inferred that the soigneur's reports were accurate.<sup>42</sup>

Although Leogrande vehemently denied these accusations in his own testimony, presented rebuttal testimony from his wife and mother, and pointed out inconsistencies in Andreu's testimony and the soigneur's inability to explain why she would suggest Mexico as a place to obtain testosterone, the panel found that Leogrande presented "no credible testimony to dispute his admission."<sup>43</sup> Clearly viewing Leogrande as a liar, the panel justified its holding by glossing over the weaknesses in the witness's testimony and placing heavy reliance on corroborating evidence.<sup>44</sup> For instance, the panel found that the soigneur was "consistent in the core of her understanding of what Leogrande admitted to her" and that she had "nothing to gain . . . and a lot to lose" by reporting Leogrande's "admissions."<sup>45</sup> The *Leogrande* award represents the outer bounds of what an arbitral body will label as an "admission."

While the USADA cases present a hodgepodge of what substantively can be considered an "admission," they send a clear message that an athlete's disclosure of drug use constitutes fatal evidence against the athlete. This reliance on admissions, in any form, has already permeated MLB. For instance, the first MLB non-analytical positive case was based on Jason Grimsley's reported admissions to federal agents that he had used steroids and human growth hormone (HGH).<sup>46</sup> In 2013, Ryan Braun's 65-game suspension was based upon, in part, his own admission to using performance enhancing substances.<sup>47</sup> Of course, he only made this admission in the face of significant documentary evidence and a 2011 test result that showed elevated levels of synthetic testosterone.<sup>48</sup>

Strikingly similar to the USADA "admissions," the case against Alex Rodriguez relied heavily on the questionable testimony of Tony Bosch as well as BBM messages between the two. Despite Bosch's repeated public denials of having supplied drugs to Rodriguez and despite MLB's admission that it had promised to pay Bosch's legal fees, pay up to \$2,400 per day for his personal security, and hold him harmless from civil liability from any claim brought by a player, the MLB arbitration panel chair found that Bosch's testimony was "direct, credible, and squarely

corroborated by excerpts from several of the hundreds of pages of his personal composition notebooks."<sup>49</sup> The panel chair also found that the BBM messages between Bosch and Rodriguez corroborated Bosch's testimony and provided further evidence regarding doses, timing, and administration of dope to Rodriguez.<sup>50</sup> The USADA and MLB cases all demonstrate that an athlete's statements—whether made to an investigatory body, an unreliable third party, or in a text message—will be admissible and could potentially wipe out any defense.

### **Negative, Independent, or Inconclusive Blood and Urine Tests**

In both *Collins* and *Montgomery*, arbitral bodies relied on urine and blood analyses that the athletes had arranged through independent labs and not as part of any sanctioned testing. The novelty in these cases lies not just in their reliance on unregulated tests, but in the way in which the tests were used.

Although *Collins* did not have a single positive test, USADA presented expert testimony from three different doctors stating that *Collins* had a pattern of testosterone and epitestosterone (T/E) levels that "can only be explained by use of [BALCO's] cream."<sup>51</sup> The American Arbitration Association (AAA) arbitral tribunal found that the testimony submitted by USADA's experts was credible and reliable and found that doping was "the only potential explanation" for the variations in *Collins*'s T/E ratios.<sup>52</sup> Because EPO testing was not conducted at the time, USADA also presented blood test results that had been arranged by BALCO to show that *Collins* had abnormally high hematocrit levels consistent with EPO use. The panel found that her elevated hematocrit levels during the time when she was allegedly doping proved "beyond a reasonable doubt" that *Collins* was doping.<sup>53</sup>

In *Montgomery*, the Court of Arbitration for Sport (CAS) panel relied on blood test results from a Mexican laboratory that showed *Montgomery*'s testosterone levels doubling in one day.<sup>54</sup> It also relied on abnormal blood test results on five separate occasions between November 2000 and July 2001. Unlike *Collins*, however, the panel did not find that these tests established *Montgomery*'s guilt beyond a reasonable doubt.<sup>55</sup> Also unlike *Collins*, *Montgomery* challenged the authenticity, reliability, interpretation, and weight of the test results, as well as the overall interpretation of the blood and urine results.<sup>56</sup>

In *Leogrande*, USADA submitted the cyclist's sanctioned negative test results but reinterpreted them through expert testimony. USADA's expert stated that the tests, although negative, suggested EPO use because there was no human EPO present in the urine.<sup>57</sup> The absence of human EPO is common when synthetic EPO is ingested. USADA's witness also stated that had her lab tested the urine, she would have issued a "positive" result.<sup>58</sup> Leogrande, of course, introduced his own expert, who challenged these assertions.<sup>59</sup> He also argued that USADA should not be able to reinterpret a test, stating that "the rule-makers and the rule-appliers must begin by being strict with themselves."<sup>60</sup> Although the panel agreed with Leogrande in part, it held that it could accept the reinterpreted tests not as a non-analytical positive, but, along with other evidence against him, as corroborating evidence of a non-analytical positive. The panel's willingness to accept reinterpreted negative tests suggests that other players' negative test results may be subject to retesting, outside the agreed upon testing procedures.

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Like admissions, negative drug test results have already been used by MLB in non-analytical positive cases. The 2009 suspension of Manny Ramirez was triggered by a test that contained traces of a banned substance, although not enough to trigger a positive result.<sup>61</sup> Although Ramirez's drug test results were buffered by corroborating documentary evidence, the reliance on a negative test suggests that MLB players may be subject to further scrutiny of negative tests or the longitudinal analysis present in *Collins* and *Montgomery*.

### Documentary Evidence

In each of the USADA cases, documentary evidence has played a secondary role to admissions, witness testimony, and lab tests. In *Collins*, the tribunal viewed the athlete's medical file from BALCO and FedEx air bills showing shipments from Conte as "corroborating" evidence.<sup>62</sup> Other "corroborating evidence" relied on by the tribunal included an IRS agent's interview memoranda and affidavit regarding statements made by Conte, a check showing payment from Collins to BALCO, evidence of shipments from BALCO to Collins that were pulled from BALCO's trash, and testimony from fellow sprinter Kelli White.<sup>63</sup> In *Montgomery*, the panel also relied on files seized from BALCO that "individually or when linked together established Montgomery's doping."<sup>64</sup> Because the panel relied primarily on Kelli White's testimony of Montgomery's admission, it declined to assess the weight or credibility of the BALCO documents.<sup>65</sup>

In *Leogrande*, USADA submitted a photograph of the athlete holding synthetic EPO capsules and a signed notecard addressed to Joe Papp, the EPO supplier, which the panel believed was a receipt for EPO.<sup>66</sup> While Leogrande admitted that he had a close relationship with the supplier, he denied having ever signed the notecard or ever taking any EPO and said that the photo was taken without his knowledge when Joe was just "showing him a box of vials with liquid."<sup>67</sup> The panel did not delve into the details of that relationship or the underlying story of the photograph and notecard. Still, without the full story of these items, the panel found that, taken in the context of Leogrande's relationship with the supplier, the photo and notecard "called his credibility into question" and added weight to the truth of the witness testimony against Leogrande.<sup>68</sup>

Even more than in the USADA cases, documentary evidence has played a key role for MLB. In 2007, both José Guillén and Jay Gibbons were suspended for 15 days each based on evidence that the players had purchased HGH and steroids.<sup>69</sup> Both players were named in the business records of the Palm Beach Rejuvenation Center as having purchased performance-enhancing drugs. Shortly before they were supposed to serve suspension, however, the players were granted amnesty by Commissioner Bud Selig along with all the other players named in the Mitchell Report.<sup>70</sup>

In 2013, the 14 Biogenesis related suspensions were based primarily on documentary evidence.<sup>71</sup> This documentary evidence, which was stolen from the Biogenesis clinic, stolen from the person who stole the documents from the clinic, and then sold to MLB for \$125,000, included medical charts, patient files, payment records, and Tony Bosch's handwritten notebooks.<sup>72</sup> Despite grave chain of custody concerns and the possibility of tainted evidence—concerns which would almost surely bar these documents from admission into a U.S. court of law—MLB

made unapologetic use of these documents.<sup>73</sup> In the Rodriguez case, the panel chair was unconcerned that the documents had been stolen (twice) or that MLB only obtained out of order copies of the stolen documents.<sup>74</sup> Indeed, in his own statement, Commissioner Selig boasted that, "This case resoundingly illustrates that the strength of our Program is not limited only to testing."<sup>75</sup> MLB's willingness to discipline players based, at least in part, on documentary evidence broadcasts that such evidence will continue to play a role in MLB non-analytical positive cases.

### CONCLUSION

As MLB continues to boost its drug policy, it will make increasing use of non-analytical evidence. Despite the dearth of guidance from current MLB documents or arbitration proceedings, the USADA cases offer in-depth insight into the types of evidence that may be introduced against a baseball player and some potential challenges to that evidence.

### Endnotes

1. Elfrink, Tim, *A Miami Clinic Supplies Drugs to Sports' Biggest Names*, Miami New Times (Jan. 31, 2013), available at <http://www.miaminewtimes.com/2013-01-31/news/a-rod-and-doping-a-miami-clinic-supplies-drugs-to-sports-biggest-names/>.

2. MLB issued 50-game suspensions against Nelson Cruz (Rangers), Everth Cabrera (Padres), Jhonny Peralta (Tigers), Antonio Bastardo (Phillies), Francisco Cervelli (Yankees), Jordany Valdespin (Mets) (minors), Jesus Montero (Mariners) (minors), Cesar Puello (Mets) (minors), Sergio Escalona (Astros) (minors), Fernando Martinez (Yankees) (minors), Fautino De Los Santos (free agent), and Jordan Norberto (free agent). See Eder, Steve, *M.L.B. Suspends Rodriguez and 12 Others for Doping*, New York Times (Aug. 5, 2013), available at [http://www.nytimes.com/2013/08/06/sports/baseball/mlb-suspends-12-in-doping-investigation.html?ref=sports&\\_r=0](http://www.nytimes.com/2013/08/06/sports/baseball/mlb-suspends-12-in-doping-investigation.html?ref=sports&_r=0); see also MLB Press Release, *Discipline Issued in Biogenesis Investigation*, MLB.com (Aug. 5, 2013), available at [http://mlb.mlb.com/news/article.jsp?ymd=20130805&content\\_id=55962130&vkey=pr\\_mlb&c\\_id=mlb](http://mlb.mlb.com/news/article.jsp?ymd=20130805&content_id=55962130&vkey=pr_mlb&c_id=mlb).

3. There is no public indication that any of the Biogenesis players tested positive for PED use other than Ryan Braun, Melky Cabrera, Yasmani Grandal, and Bartolo Colon. Because Cabrera, Grandal, and Colon had been previously suspended following their positive results, they received no additional punishment after the Biogenesis scandal broke. See Moylan, Connor, *Biogenesis: Bartolo Colon, Melky Cabrera and Yasmani Grandal Receive No Additional Discipline*, SB Nation (Aug. 5, 2013), available at <http://www.sbnation.com/mlb/2013/8/5/4591182/biogenesis-bartolo-colon-melky-cabrera-yasmani-grandal>; see also Oz, Mike, *Big League Stew, It's Tough to Have Faith in MLB's Drug-Testing System After the A-Rod/Biogenesis Saga*, Yahoo! Sports (Jan. 13, 2014), available at <http://sports.yahoo.com/blogs/mlb-big-league-stew/tough-faith-mlb-drug-testing-system-rod-biogenesis-223654367—mlb.html>; see also Bryant, Howard, *ESPN MLB, Scandal Will Test MLB Labor Peace*, ESPN.com (June 6, 2013), available at [http://espn.go.com/mlb/story/\\_/id/9349858/biogenesis-scandal-test-mlb-labor-peace](http://espn.go.com/mlb/story/_/id/9349858/biogenesis-scandal-test-mlb-labor-peace).

4. MLB initially sought a 211 game suspension but it was later reduced to 162 games following Rodriguez's appeal. See Grievance No. 2013-02 at 28-31 (Alexander Rodriguez), Panel Decision No. 131 (Jan. 11, 2014); see also Hagen, Paul, *Arbitrator: A-Rod Suspended for 2014 Season*, MLB.com (Jan. 11, 2014), available at [http://mlb.mlb.com/news/article/mlb/arbitrator-rules-alex-rodriguez-to-be-suspended-for-2014-season?ymd=20140109&content\\_id=66433260&vkey=news\\_mlb](http://mlb.mlb.com/news/article/mlb/arbitrator-rules-alex-rodriguez-to-be-suspended-for-2014-season?ymd=20140109&content_id=66433260&vkey=news_mlb).

5. McCalvy, Adam, *Braun Suspended for Remainder of Season*, MLB.com (July 23, 2013), available at <http://newyork.yankees.mlb.com/news/article>.

jsp?ymd=20130722&content\_id=54364032&vkey=news\_mlb&c\_id=mlb.

6. See Mitchell Report, *infra* note 10 at SR-13-14 (summarizing the non-analytic based suspensions of Grimsley, Jorgensen, Gibbons, and Guillen). The 2007 suspensions of Jay Gibbons and José Guillén were reversed as part of an amnesty package before either player served his disciplinary sentence.

7. MLB Press Release, *Commissioner's Statement Regarding Biogenesis Investigation*, MLB.com (Aug. 5, 2013), available at [http://mlb.mlb.com/news/article.jsp?ymd=20130805&content\\_id=55963810&vkey=pr\\_mlb&c\\_id=mlb](http://mlb.mlb.com/news/article.jsp?ymd=20130805&content_id=55963810&vkey=pr_mlb&c_id=mlb).

8. Press Release, H. Comm. on Oversight & Gov't Reform, House Oversight Committee Statement on HGH Testing in Major League Baseball (Jan. 20, 2013), <http://oversight.house.gov/release/house-oversight-committee-statement-on-hgh-testing-in-major-league-baseball/>.

9. See USADA v. Leogrande, AAA No. 77 190 00111 08 (N. Am. Ct. Arb. for Sport Panel Dec. 1, 2008) (relying, in part, on the testimony of Kayle Leogrande's former soigneur to affirm his doping violation); USADA v. Collins, AAA No. 30 190 00658 04 (N. Am. Ct. Arb. for Sport Panel Dec. 9, 2004) (relying on e-mail admissions by Michelle Collins to affirm her doping violation).

10. There are references to "non-analytical positive" evidence in both the Mitchell Report and the Alex Rodriguez arbitration hearing decision. See Grievance No. 2013-02 at 31 (Alexander Rodriguez); see also GEORGE J. MITCHELL, REPORT TO THE COMMISSIONER OF BASEBALL OF AN INDEPENDENT INVESTIGATION INTO THE ILLEGAL USE OF STEROIDS AND OTHER PERFORMANCE ENHANCING SUBSTANCES BY PLAYERS IN MAJOR LEAGUE BASEBALL SR-13 (2007) [hereinafter MITCHELL REPORT].

11. See WORLD ANTI-DOPING CODE art. 2.2 cmt. (2009), available at [www.wada-ama.org/Documents/World\\_Anti-Doping\\_Program/WADP-The-Code/WADA\\_Anti-Doping\\_CODE\\_2009\\_EN.pdf](http://www.wada-ama.org/Documents/World_Anti-Doping_Program/WADP-The-Code/WADA_Anti-Doping_CODE_2009_EN.pdf).

12. See *World Anti-Doping Code*, WORLD ANTI-DOPING AGENCY, [www.wada-ama.org/en/World-Anti-Doping-Program/Sports-and-Anti-Doping-Organizations/The-Code/](http://www.wada-ama.org/en/World-Anti-Doping-Program/Sports-and-Anti-Doping-Organizations/The-Code/) (last updated May 2011).

13. See WORLD ANTI-DOPING CODE, *supra* note 11, at art. 2.2 cmt.

14. See *Collins*, AAA No. 30 190 00658 04.

15. See USADA v. Montgomery, No. CAS 2004/O/645 (Ct. Arb. for Sport 2005).

16. See USADA v. Gaines, No. CAS 2004/O/649 (Ct. Arb. for Sport Dec. 13, 2005).

17. See Associated Press, *Attorney: Suspension Will End Sprinter's Career*, ESPN OLYMPIC SPORTS (Oct. 19, 2004), <http://sports.espn.go.com/oly/news/story?id=1905046>.

18. See USADA v. Leogrande, AAA No. 77 190 00111 08 (N. Am. Ct. Arb. for Sport Panel Dec. 1, 2008).

19. See Reasoned Decision of the United States Anti-Doping Agency on Disqualification and Ineligibility, USADA v. Armstrong (Oct. 10, 2012), available at <http://d3epuodzu3wuis.cloudfront.net/ReasonedDecision.pdf>. Alvin Harrison and Lance Armstrong both accepted USADA's discipline without challenging it to an arbitral body.

20. See Barry M. Bloom, *Players, Execs Testify at Hearing*, MLB.COM (Mar. 18, 2005), [http://mlb.mlb.com/news/article.jsp?ymd=20050317&content\\_id=969756&vkey=news\\_mlb&fext=.jsp&c\\_id=mlb](http://mlb.mlb.com/news/article.jsp?ymd=20050317&content_id=969756&vkey=news_mlb&fext=.jsp&c_id=mlb).

21. See generally, MITCHELL REPORT, *supra* note 10; see also Jack Curry, *Grimsley Receives 50-Game Suspension*, N.Y. TIMES, June 13, 2006, at D1.

22. MITCHELL REPORT, *supra* note 10, at 107.

23. *Id.*

24. *The Mitchell Report: The Illegal Use of Steroids in Major League Baseball: Hearing Before the H. Comm. on Oversight and Gov't Reform*, 110th Cong. (Jan. 15, 2008), [http://mlbplayers.mlb.com/pa/pdf/011508\\_fehr\\_statement.pdf](http://mlbplayers.mlb.com/pa/pdf/011508_fehr_statement.pdf) (statement of Donald M. Fehr, Executive Director, MLBPA).

25. MITCHELL REPORT, *supra* note 10, at 285.

26. *Id.* at 275.

27. See Grievance No. 2013-02 at 31 (Alexander Rodriguez)

28. USADA v. Collins, AAA No. 30 190 00658 04 (N. Am. Ct. Arb. for Sport Panel Dec. 10, 2004).

29. *Id.*, slip op. at 16.

30. *Id.*, slip op. at 18.

31. *Id.*, slip op. at 16–18.

32. USADA v. Montgomery, No. CAS 2004/O/645, slip op. at 17 (Ct. Arb. for Sport Dec. 13, 2005).

33. *Id.*, slip op. at 18.

34. *Id.*

35. *Id.*, slip op. at 16.

36. USADA v. Leogrande, AAA No. 77 190 00111 08 (N. Am. Ct. Arb. for Sport Panel Dec. 1, 2008).

37. *Id.*, slip op. at 2.

38. *Id.*, slip op. at 10.

39. *Id.*, slip op. at 2.

40. *Id.*

41. *Id.*, slip op. at 3.

42. *Id.*

43. *Id.*, slip op. at 13.

44. *Id.*, slip op. at 11–14.

45. *Id.*, slip op. at 11.

46. MITCHELL REPORT, *supra* note 10, at SR-13; see also Curry, *supra* note 21.

47. McCalvy, Adam, *Braun Suspended for Remainder of Season*, *supra* note 5.

48. *Id.*

49. See Grievance No. 2013-02 at 12, 23 (Alexander Rodriguez), Panel Decision No. 131 (Jan. 11, 2014).

50. *Id.* at 24.

51. USADA v. Collins, AAA No. 30 190 00658 04, slip op. at 23 (N. Am. Ct. Arb. for Sport Panel Dec. 10, 2004).

52. *Id.*, slip op. at 24.

53. *Id.*, slip op. at 16.

54. USADA v. Montgomery, No. CAS 2004/O/645, slip op. at 16 (Ct. Arb. for Sport Dec. 13, 2005).

55. *Id.*, slip op. at 20 (holding that the "USADA bears the burden of proving, by strong evidence commensurate with the serious claims it makes that the [Respondent] committed the doping offences in question"). After *Collins*, the International Association of Athletics Federations (IAAF) adopted the WADA Code's standard of proof, "comfortable satisfaction," so there was no need for the arbitral body to find that the evidence established a doping violation "beyond a reasonable doubt." See *Collins*, AAA No. 30 190 00658 04, slip op. at 12–13 (explaining the change to the standard of proof).

56. *Montgomery*, No. CAS 2004/O/645, slip op. at 17.

57. USADA v. Leogrande, AAA No. 77 190 00111 08, slip op. at 4 (N. Am. Ct. Arb. for Sport Panel Dec. 1, 2008).

58. *Id.*

59. *Id.*, slip op. at 12.

60. *Id.*

61. See *Sources: Ramirez Used Fertility Drug*, ESPN MLB (May 8, 2009), <http://sports.espn.go.com/mlb/news/story?id=4148907>.

62. USADA v. Collins, AAA No. 30 190 00658 04, slip op. at 25–26 (N. Am. Ct. Arb. for Sport Panel Dec. 10, 2004).

63. *Id.*

64. USADA v. Montgomery, No. CAS 2004/O/645, slip op. at 16 (Ct. Arb. for Sport Dec. 13, 2005).

65. *Id.*, slip op. at 17.

66. USADA v. Leogrande, AAA No. 77 190 00111 08, slip op. at 4 (N. Am. Ct. Arb. for Sport Panel Dec. 1, 2008).

67. *Id.*, slip op. at 7.

68. *Id.*, slip op. at 11–12.

69. See Matthew Leach, *MLB Suspends Guillen, Gibbons 15 Days*, MLB.com (Dec. 6, 2007), [http://mlb.mlb.com/news/article.jsp?ymd=20071206&content\\_id=2320611&vkey=news\\_mlb&fext=.jsp&c\\_id=mlb](http://mlb.mlb.com/news/article.jsp?ymd=20071206&content_id=2320611&vkey=news_mlb&fext=.jsp&c_id=mlb).

70. See Teri Thompson et al., *Jose Guillen, San Francisco Giants Outfielder, Linked to Human Growth Hormone Shipment Investigation*, N.Y. DAILY NEWS (Oct. 28, 2010), [www.nydailynews.com/sports/baseball/jose-guillen-san-francisco-giants-outfielder-linked-human-growth-hormone-shipment-investigation-article-1.192423](http://www.nydailynews.com/sports/baseball/jose-guillen-san-francisco-giants-outfielder-linked-human-growth-hormone-shipment-investigation-article-1.192423).

71. See Thompson, Teri et al., *Biogenesis Files At Center of Alex Rodriguez War with MLB Over 211-Game Suspension*, New York Daily News (Nov. 4, 2013), available at <http://www.nydailynews.com/sports/i-team/a-rod-legal-team-touts-lack-suspension-report-06-positive-article-1.1506811>.

72. *Id.*; see also Elfrink, Tim, *A Miami Clinic Supplies Drugs to Sports' Biggest Names*, Miami New Times (Jan. 31, 2013), available at <http://www.miaminewtimes.com/2013-01-31/news/a-rod-and-doping-a-miami-clinic-supplies-drugs-to-sports-biggest-names/>; see also Grievance No. 2013-02 at 11

(Alexander Rodriguez) (detailing MLB's procurement of the stolen documents).

73. See Davidoff, Ken, *A-Rod, MLB Shelled Out Cash For Drug Evidence*, New York Post (Oct. 18, 2013), available at <http://nypost.com/2013/10/18/mlb-admits-paying-125k-for-a-rod-documents-source/>.

74. Grievance No. 2013-02 at 23 (Alexander Rodriguez).

75. MLB Press Release, *Commissioner's Statement Regarding Biogenesis Investigation*, MLB.com (Aug. 5, 2013), available at [http://mlb.mlb.com/news/article.jsp?ymd=20130805&content\\_id=55963810&vkey=pr\\_mlb&c\\_id=mlb](http://mlb.mlb.com/news/article.jsp?ymd=20130805&content_id=55963810&vkey=pr_mlb&c_id=mlb).

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