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House of Representatives

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June 12, 2008

Mr. Donald Fehr
Executive Director
Major League Baseball Players Association
12 East 49th Street
24th Floor
New York, NY 10017

Dear Mr. Fehr:

We are writing about recent allegations regarding Major League Baseball's performance enhancing drug testing program that appeared in the Mitchell Report and were highlighted in a recent *New York Times* report. These allegations raise questions about the testimony that the Major League Baseball Player's Association (MLBPA) provided to the Committee during the March 17, 2005, hearing on steroid use in Major League Baseball.

At that 2005 hearing, the MLBPA claimed that the steroid testing program in place at the time was a success, citing the testing results from 2004. You claimed that "use of illegal steroids declined significantly" and that "the data suggests convincingly that the 2004 program did work."¹ You also defended the integrity of the testing program, stating that "no player knew when he was going to be tested."²

Senator Mitchell's report on steroid use, released in December, 2007, contained two pieces of new information about the MLB testing program that was in effect in 2004.³ First, Sen. Mitchell reported that the random testing program was suspended for a large part of the 2004

¹ Testimony of Don Fehr, House Committee on Oversight and Government Reform, *Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use* (Mar. 17, 2005).

² *Id.*

³ Sen. George Mitchell, *Report to the Commissioner of Baseball of an Independent Investigation Into The Illegal Use of Steroids and Other Performance Enhancing Substances in Major League Baseball* (Dec. 13, 2007).

baseball season. Second, Sen. Mitchell reported that players may have been told of upcoming tests.

In April 2004, federal agents involved with the BALCO investigation obtained search warrants and seized MLB steroid testing results from 2003. According to the Mitchell Report, MLB and the MLBPA agreed to a suspension of the testing program in response to the seizure. This suspension allegedly lasted only a short time for players who tested negative in 2003. However, for players who tested positive in 2003, the suspension lasted until August or September 2004. One unnamed player told Sen. Mitchell that he was informed in September 2004, by Gene Orza, the MLBPA Chief Operating Officer, that he had tested positive in 2003 and that he would be tested within the next two weeks.

The information in Sen. Mitchell's report raises questions about your assertions in the March 2005 hearing. To help the Committee assess the apparent discrepancies and complete its record, we ask that you answer the following questions:

1. Was the MLB steroid testing program suspended during the 2004 season? What provision of the collective bargaining agreement was invoked in order to begin this suspension? If the program was suspended, why did the MLBPA fail to inform Congress of this suspension during the 2005 hearing, or at any time thereafter?
2. When did the suspension of the program begin? How many samples were collected before this suspension began, and what percentage of these results were positive?
3. When did the suspension of the testing program end for players who did not test positive in 2003? For these players, how many samples were collected after the end of the program suspension, and how many of these were positive?
4. Were players who tested positive in 2003 informed at any point that they had tested positive? How many of these players were informed, when were they informed, and what individuals with the MLBPA informed them of the positive results? Were these players also informed of the end of the program suspension?
5. When did the suspension of the testing program end for players who tested positive in 2003? For these players, how many samples were collected after the end of the program suspension, and how many of these were positive?
6. Following the end of the program suspension, were any of these players informed that they would be tested within a two-week or similar period? Were any other players informed of test results, or of when they would be tested? If players were informed, why did the MLBPA fail to inform Congress of this fact during the 2005 hearing, or at any time thereafter?

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7. Which individuals at the MLBPA were aware of the 2004 program suspension at the March 2005 hearing? Were you aware of the program suspension?

We ask that you provide the answers to these questions no later than June 26, 2008.

Sincerely,



Henry A. Waxman
Chairman



Tom Davis
Ranking Minority Member