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109TH CONGRESS *1st Session*	HOUSE OF REPRESENTATIVES	REPORT 109–310

INVESTIGATION INTO RAFAEL PALMEIRO'S MARCH 17, 2005 TESTIMONY AT THE COMMITTEE ON GOVERNMENT REFORM'S HEARING: "RESTORING FAITH IN AMERICA'S PASTIME: EVALUATING MAJOR LEAGUE BASEBALL'S EFFORTS TO ERADICATE STEROID USE"

THIRD REPORT

BY THE

COMMITTEE ON GOVERNMENT REFORM

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NOVEMBER 18, 2005.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, DC, November 18, 2005.

Hon. J. DENNIS HASTERT,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: By direction of the Committee on Government Reform, I submit herewith the committee's third report to the 109th Congress.

TOM DAVIS,
Chairman.

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Mr. TOM DAVIS, from the Committee on Government Reform submitted the following

THIRD REPORT

On November 16, 2005, the Committee on Government Reform approved and adopted a report entitled, "Investigation into Rafael Palmeiro's March 17, 2005 Testimony at the Committee on Government Reform's Hearing: 'Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use.'" The chairman was directed to transmit a copy to the Speaker of the House.

I. EXECUTIVE SUMMARY

On March 17, 2005, the Committee on Government Reform (the "Committee") held a hearing entitled, "Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use," to gauge the reality of steroid use in Major League Baseball [MLB], to examine MLB's new drug testing policy, and to educate America's youth on the health ramifications of steroid use. Several current and former baseball players were subpoenaed to appear at the hearing. Baltimore Orioles baseball player Rafael Palmeiro appeared before the Committee and testified under oath that he had never used anabolic steroids. On August 1, 2005, MLB announced that Mr. Palmeiro had violated MLB's Joint Drug Prevention and Treatment Program ("MLB's testing program") and would be suspended for 10 days. It was later confirmed that Mr. Palmeiro had tested positive for the steroid stanozolol.

Mr. Palmeiro tested positive for a performance enhancing drug 6 weeks after his congressional testimony. As a result of his positive test, the Committee conducted an investigation to determine whether Mr. Palmeiro's March 17, 2005, testimony should be referred to the Department of Justice for an investigation of potential perjury. The Committee's investigation included a review of the MLB arbitration proceedings, and Committee staff interviews with Mr. Palmeiro, his wife, several current baseball players, and current and former trainers and physicians with the Baltimore Orioles and the Texas Rangers. The Committee also sought expert witness opinion on stanozolol and had a substance tested for steroids.

The Committee will not make a perjury referral to the Department of Justice. A referral for perjury is a serious step. In this case, the evidence before the Committee is insufficient to merit a perjury referral.

It is important to emphasize the narrow focus of the Committee's inquiry. On repeated occasions, Mr. Palmeiro explained his positive steroid test as the result of inadvertent exposure. The Committee's scope, however, did not include readjudication of his suspension from MLB. Instead, the Committee examined the positive test for stanozolol only as it related to potential perjury. In the process, the Committee received evidence that was confusing and contradictory in many respects. After making the determination that the evidence did not meet the standard for a perjury referral, the Committee concluded its investigation and did not make further determinations about the accuracy or inaccuracy of assertions by Mr. Palmeiro or others.

In the course of the investigation, the Committee did learn facts that are relevant to the broader policy debate about the need for effective standards to eliminate performance-enhancing drugs in professional sports. The Committee received information that the use of performance-enhancing amphetamines may be a significant problem in Major League Baseball. In addition, interviews with Mr. Palmeiro and another player raised questions about the integrity of the sample collection procedures in the current MLB drug testing program.

II. INTRODUCTION

In 1991, anabolic steroids were added to the Federal Controlled Substance Act as a Schedule III drug, making it illegal to possess or sell anabolic steroids without a valid prescription.[1] Despite this Federal criminal prohibition, use among teenagers—especially young, aspiring athletes—is a large and growing problem. According to a 2003 Centers for Disease Control and Prevention survey, more than 1 million high school students have tried steroids, nearly triple the number just 10 years ago.[2] A second national survey,

[1] Anabolic Steroids Control Act of 1990, Public Law No. 101–647, § 1901, 104 Stat. 4851 (1990) (prior to 2004 amendments).

[2] This number was reached by multiplying the number of high school students who reported using illegal steroids by the number of high school students in the United States. According to the study, 6.1 percent of high school students in 2003 reported using illegal steroids. Jo Anne Grunbaum, et al., *Youth Risk Behavior Surveillance—United States, 2003,* Morbidity & Mortality Weekly Report, May 21, 2004, at 61. According to U.S. Census data, the number of high school students in the United States in 2003 was approximately 16.5 million. http://www.census.gov/PressRelease/www/releases/archives/population/001703.html (last visited Nov. 8, 2005).

conducted in 2004 by the National Institute on Drug Abuse and the University of Michigan, found that over 40 percent of 12th graders described steroids as "fairly easy" or "very easy" to get, and the perception among high school students that steroids are harmful has dropped from 71 percent in 1992 to 56 percent in 2004.[3]

After the 1994 MLB players strike, rumors and allegations of steroid use in the league began to surface. During this timeframe, several longstanding records were broken.[4] Along with these broken records came allegations and rumors of steroid use among MLB's star players.[5] Despite the circulating rumors of illegal drug use, as well as reports in numerous national news publications, including the Los Angeles Times,[6] the Denver Post,[7] the New York Times,[8] and Sports Illustrated,[9] MLB and the Major League Baseball Players Association ("Players Association") did not adopt a collective bargaining agreement that banned the use of steroids until 2002. The result was almost a decade's worth of unanswered questions shadowing the validity of the new MLB records and the integrity of the game itself.

In February 2005, former MLB All-Star and MVP Jose Canseco released his book, *Juiced: Wild Times, Rampant 'Roids, Smash Hits, and How Baseball Got Big.*[10] In his book, Mr. Canseco identified well-known MLB players as steroid users, and alleged that there was extensive use of steroids in baseball during his 17-year career.[11] Mr. Canseco identified Rafael Palmeiro as one of the players who took steroids with him while playing for the Texas Rangers.[12]

After Commissioner Allan H. ("Bud") Selig made public statements that MLB would not launch an investigation into the allegations raised by Mr. Canseco, Ranking Member Henry A. Waxman wrote to Chairman Tom Davis asking for a Committee hearing "to find out what really happened and to get to the bottom of this

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[3] Lloyd D. Johnston, et al., National Institute on Drug Abuse, *Monitoring the Future: National Survey Results on Drug Use, 1975–2004: Volume I, Secondary school students,* 335 (2005).

[4] New York Yankee Roger Maris set the single season home run record with 61 home runs in 1961. This record was broken in 1998 and has been surpassed six times since. In 1998, St. Louis Cardinal Mark McGwire hit 70 home runs. In 2001, San Francisco Giant Barry Bonds hit 73 home runs. In addition, Sammy Sosa, then of the Chicago Cubs, hit 66 home runs in 1998, 63 home runs in 1999, and 64 home runs in 2001; McGwire hit 65 home runs in 1999. New York Yankee Babe Ruth set the single season slugging average of .847 in 1920. This record stood until 2001, when Bonds set the new record at .863, *available at* www.baseball-almanac.com (last visited Nov. 9, 2005).

[5] *See generally* Donna Liquori, *At a Shrine to Baseball, Steroid Inquiry Inspires Shame,* N.Y. Times, Dec. 5, 2004, at 46 (discussing rumors of steroid use by Barry Bonds and Jason Giambi); Peter Roby, *Baseball's Bulging Crisis,* Boston Globe, Dec. 8, 2004, at A19 (discussing rumors of steroid use by Barry Bonds, Jason Giambi, Mark McGwire, and Sammy Sosa); Christian Red, *Van Slyke: I'm Certain that Bonds Used 'Roids,* Daily News (N.Y.), May 5, 2004, at 63 (discussing rumors of steroid use by Barry Bonds, Jason Giambi, and Gary Sheffield).

[6] Bob Nightengale, *Steroids Become an Issue; Baseball: Many Fear Performance-Enhancing Drugs is Becoming Prevalent and Believe Something Must Be Done,* Los Angeles Times, July 15, 2995, at C1.

[7] Jerry Crasnick, *Get a Load of This! All Over the Major Leagues, Baseball Players are Taking a Powder—Creatine, Which is Becoming as Much a Part of Strength Training as Barbells and Free Weights,* Denver Post, July 28, 1997, at D–01.

[8] James C. McKinley, Jr., *Guessing the Score: Open Secret: Steroid Suspicions Abound In Major League Dugouts,* N.Y. Times, Oct. 11, 2000, at A1.

[9] See Rick Reilly, *The 'Roid to Ruin,* Sports Illustrated, Aug. 21, 2000, at 92; Tom Verducci, et al., *Totally Juiced; With the Use of Steroids and Other Performance Enhancers Rampant, According to a Former MVP and Other Sources, Baseball Players and Their Reliance on Drugs Have Grown to Alarming Proportions,* Sports Illustrated, June 3, 2002.

[10] Jose Canseco, *Juiced: Wild Times, Rampant 'Roids, Smash Hits, and How Baseball Got Big." (2005).*

[11] *Id.*

[12] *Id.* at 133, 135–36.

growing scandal."[13] In highlighting the need for a hearing, Representative Waxman reasserted President Bush's remarks from his 2004 State of the Union Address that "the use of performance-enhancing drugs like steroids in baseball, football and other sports is dangerous, and it sends the wrong message—that there are shortcuts to accomplishment, and that performance is more important than character."[14]

Chairman Davis shared Representative Waxman's concerns regarding the use of steroids in professional sports and the message it sends to America's youth. In a day and age when parents must worry about teaching their children the dangers of recreational drug use, Chairman Davis recognized parents are now confronted with the additional responsibility of teaching their children the dangers of anabolic steroids and performance-enhancing drugs. Such education is necessary not only for teenage athletes, but also for young children playing in little league sports. In light of their shared concern, Chairman Davis and Representative Waxman agreed to hold a hearing, entitled "Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use," on March 17, 2005.

As news of the Committee's hearing reached the professional baseball community, MLB players shared their thoughts and reactions with the press. On February 26, 2005, an article entitled, "Palmeiro, Saunders Would Testify" ran in the Sun Sentinel, stating, "Orioles Rafael Palmeiro and Tony Saunders said they would have no problem talking to Congress."[15]

Following the publication of the Sun Sentinel article, Chairman Davis and Representative Waxman sent Mr. Palmeiro an invitation letter for the March 17 hearing on March 4, 2005.[16] The letter stated that Mr. Palmeiro could use his written or oral testimony to clear his name under oath.[17] On March 5, 2005, an article entitled, "Palmeiro Won't Testify in House," ran in the Washington Post.[18] When asked about the March 17 hearing, Mr. Palmeiro stated the following: "That's my wife's birthday. That should tell you right there what the answer is. . . . Honestly, I don't really have anything to say on the subject. I don't want anything to do with that stuff. All I'm interested in right now is just getting ready to play baseball and stay here with my team. I'm flattered that they've invited me, but I'll respectfully decline the invitation."[19]

Following Mr. Palmeiro's public statements, the Committee received no direct communication from Mr. Palmeiro or his representatives declining the invitation. On March 9, 2005, Chairman Davis and Representative Waxman received a letter via facsimile from the owner of the Baltimore Orioles, Peter G. Angelos.[20] The letter

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[13] Letter from Henry A. Waxman, ranking member, House Committee on Government Reform, to Tom Davis, chairman, House Committee on Government Reform (Feb. 24, 2005).

[14] *Id.*

[15] Craig Barnes, *Palmeiro, Saunders Would Testify,* Sun-Sentinel (Ft. Lauderdale), Feb. 26, 2005, at 4C.

[16] Letter from Tom Davis, chairman and Henry A. Waxman, ranking member, House Committee on Government Reform, to Rafael Palmeiro, Baltimore Orioles (Mar. 4, 2005).

[17] *Id.*

[18] Jorge Arangure, Jr., *Palmeiro Won't Testify in House,* Washington Post, Mar. 5, 2005, at D09.

[19] *Id.*

[20] Letter from Peter G. Angelos, owner, Baltimore Orioles, to Chairman Tom Davis and Ranking Member Henry A. Waxman, House Committee on Government Reform (Mar. 9, 2005) [hereinafter Angelos letter].

referred to an attached February 7, 2005, press release from the Orioles in response to Jose Canseco's book, *Juiced.*[21] The press release quoted Mr. Palmeiro as saying "I categorically deny any assertion made by Jose Canseco that I used steroids. At no point in my career have I ever used steroids, let alone any substance banned by Major League Baseball. As I have never had a personal relationship with Canseco, any suggestion that he taught me anything, about steroid use or otherwise, is ludicrous . . . ."[22] Mr. Angelos' letter did not decline Mr. Palmeiro's invitation, but argued that Mr. Palmeiro's testimony at the March 17 hearing would serve no legitimate public purpose.[23]

On March 10, 2005, the Committee issued and served, by agreement, on Mr. Palmeiro's attorney, a subpoena for Mr. Palmeiro to appear at the Committee's March 17 hearing. Mr. Palmeiro testified at the hearing, along with Curt Schilling of the Boston Red Sox and Sammy Sosa of the Baltimore Orioles, as well as former MLB players Mark McGwire and Jose Canseco.[24] Frank Thomas of the Chicago White Sox testified via television satellite.[25] All players testified pursuant to a subpoena at the hearing. In his opening statement, Mr. Palmeiro directly addressed Mr. Canseco's allegations:

> Let me start by telling you this: I have never used steroids, period. I do not know how to say it any more clearly than that. Never. The reference to me in Mr. Canseco's book is absolutely false. I am against the use of steroids. I don't think athletes should use steroids, and I don't think our kids should use them.[26]

Throughout his testimony, Mr. Palmeiro reiterated his feelings regarding steroids and MLB's steroid testing policy. Mr. Palmeiro testified that he believed players should be suspended for steroid use,[27] and that he would play under the rules of the Olympics, which call for a 2-year suspension for the first positive steroid test and a lifetime ban for a second positive steroid test.[28] Mr. Palmeiro also stated that if MLB did not come forward with a more stringent policy, he would be happy to come back to Congress and address the problem again.[29] Mr. Palmeiro testified that he agreed that using steroids is cheating[30] and he testified that "as long as there's [sic] positive tests, it's wrong and we need to clean it up."[31]

During the hearing, Chairman Davis also announced the formation of "Zero Tolerance," an advisory committee designed to work on ending the use of performance-enhancing drugs in sports.[32] Curt Schilling and Frank Thomas were designated as Co-Chairs for Zero

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[21] Press release, Baltimore Orioles, Orioles Statements on Canseco Book (Feb. 7, 2005) (on file with the Baltimore Orioles).
[22] *Id.*
[23] Angelos letter, *supra* note 20.
[24] *Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use,"* hearing before the House Committee on Government Reform, 109th Cong. (2005) [hereinafter Mar. 17, 2005 hearing].
[25] *Id.*
[26] Mar. 17, 2005 hearing, *supra* note 24, at 227 (statement of Rafael Palmeiro).
[27] *Id.* at 238.
[28] *Id.* at 240.
[29] *Id.* at 256.
[30] *Id.* at 247.
[31] *Id.* at 259.
[32] Mar. 17, 2005 hearing, *supra* note 24, at 206–07 (statement of Chairman Tom Davis).

Tolerance.[33] In his statement to the Committee, Mr. Palmeiro testified:

> To the degree an individual player can be helpful, perhaps as an advocate to young people about the dangers of steroids, I hope you will call on us. I, for one, am ready to heed the call. Mr. Chairman, I think the task force is a great idea to send the right message to kids about steroids. If it is appropriate, I would like to serve with Mr. Schilling and Mr. Thomas.[34]

Subsequently, Chairman Davis offered Mr. Palmeiro a position on Zero Tolerance, and Mr. Palmeiro accepted.

The day after the hearing, Mr. Palmeiro spoke with the press regarding his testimony. Mr. Palmeiro's comments were reported in the Washington Post and the Baltimore Sun on March 19, 2005.[35] Mr. Palmeiro stated, "They brought me in basically to give me a chance to clear my name and speak my heart. I'm very happy that I went . . . . I think it's our obligation to take a stand against steroids and make a positive out of this whole thing."[36]

On August 1, 2005, MLB announced that Mr. Palmeiro had violated MLB's Joint Drug Prevention and Treatment Program and would be suspended for 10 days. On the same day, Mr. Palmeiro conducted a media conference call, during which he read a statement that included, "I am here to make it very clear that I have never intentionally used steroids. Never. Ever. Period."[37] It was later confirmed to the Committee by MLB and the Players Association that Mr. Palmeiro tested positive for the steroid stanozolol.[38]

After learning of Mr. Palmeiro's positive test results, the Committee opened an investigation to determine whether or not to refer this matter to the Department of Justice for further investigation and possible prosecution for perjury.[39] This report sets forth the results of this investigation.

III. The Evidence Examined by the Committee

On August 2, 2005, Mr. Palmeiro spoke to Chairman Davis and agreed to cooperate fully with the Committee's perjury investigation, including providing access to documentation from MLB regarding Mr. Palmeiro's positive drug test and the subsequent arbitration proceedings. In addition to reviewing documents, the Com-

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[33] *Id.*

[34] Mar. 17, 2005 hearing, *supra* note 24, at 227 (statement of Rafael Palmeiro).

[35] Jorge Arangure, Jr., *Palmeiro Makes His Point; Steroid Testimony "Was Speaking From the Heart,"* Washington Post, Mar. 19, 2005, at D07. Roch Kubatko, *Palmeiro Returns, Moved by his Day with Congress; "I Think Some Good Will Come Out of This," He Says,* Baltimore Sun, Mar. 19, 2005, at 1C.

[36] Jorge Arangure, Jr., *Palmeiro Makes His Point; Steroid Testimony "Was Speaking From the Heart,"* Washington Post, Mar. 19, 2005, at D07.

[37] Press release, Baltimore Orioles, Statement from Rafael Palmeiro (Aug. 1, 2005) *available at* http://baltimore.orioles.mlb.com (last visited Nov. 9, 2005).

[38] MLB confirmed this information during a meeting with committee staff on Aug. 12, 2005. The Players Association confirmed this information during an Aug. 15, 2005 meeting with committee staff.

[39] "Whoever having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States." 18 U.S.C. § 1621 (1) (2004).

mittee also conducted interviews and obtained information from relevant individuals, including current and former teammates of Mr. Palmeiro, medical personnel from the Baltimore Orioles and the Texas Rangers, and other experts. All interviews were given voluntarily.

In the course of the Committee's investigation, the evidence the Committee obtained included the following:

- Arbitration proceedings regarding Mr. Palmeiro's case conducted by Major League Baseball on June 16, 2005 and July 14, 2005;
- Documents from a polygraph test taken by Mr. Palmeiro on June 13, 2005;
- Mr. Palmeiro's Major League Baseball drug test results from 2003 and 2005;
- An interview of Mr. Palmeiro by Committee staff on August 25, 2005;
- An interview of Mr. Palmeiro's wife, Lynn Palmeiro, by Committee staff on August 25, 2005;
- Interviews with other players and officials of the Baltimore Orioles;
- Interviews with players and officials of the Texas Rangers during Mr. Palmeiro's time with the Texas Rangers; and
- Correspondence with Jose Canseco.

A. MLB Arbitration Proceedings

On August 3, 2005, Chairman Davis and Representative Waxman sent a letter to MLB Commissioner Bud Selig requesting documents that would allow the Committee to "learn more about the circumstances that led Major League Baseball to suspend Rafael Palmeiro for use of a banned substance."[40] On August 12, 2005, MLB delivered the following documents to the Committee:

1. The Certificate of Analysis that accompanied Mr. Palmeiro's urine sample from the time the sample was given to the testing facility;[41]
2. A May 2005 timeline of events regarding Mr. Palmeiro's positive test results;
3. The transcript from the June 16, 2005 and July 14, 2005 arbitration between the Players Association and the Office of the Commissioner of Baseball and exhibits presented during the arbitration process; and
4. Six correspondences and press releases in possession of MLB related to Mr. Palmeiro's positive test result.

The arbitration record revealed that, on May 4, 2005, Mr. Palmeiro was selected for a random, unannounced test under MLB's testing program.[42] On approximately May 19, 2005, Mr.

[40] Letter from Chairman Tom Davis and Ranking Member Henry A. Waxman, House Committee on Government Reform, to Allan H. Selig, commissioner, MLB (Aug. 3, 2005).

[41] On Aug. 22, 2005, committee staff conducted a detailed discussion with Christiane Ayotte, Ph.D. regarding the testing performed on Mr. Palmeiro's May 4, 2005 urine sample. Telephone interview by House Committee on Government Reform staff with Dr. Ayotte, Ph.D., Aegis Laboratories, in Washington, DC (May 4, 2005). Dr. Ayotte confirmed that Mr. Palmeiro's urine sample was divided into sample A and sample B. (*Id.*) Aegis Laboratories ran a screening and a confirmatory steroid test on sample A, both of which came back positive for stanozolol and two of its metabolites. (*Id.*) At Mr. Palmeiro's request, Aegis ran another confirmatory steroid test on sample B, which also came back positive for stanozolol. (*Id.*)

[42] Arbitration transcript at 52, Major League Baseball Players Association v. Office of the Commissioner of Baseball, Major League Baseball Arbitration Panel Decision No. 110, Griev-

Continued

Palmeiro was notified by the Players Association that he had tested positive for the steroid stanozolol.[43] MLB's program provides procedures for players to challenge a positive test result.[44] On May 25, 2005, Michael Weiner, general counsel for the Players Association, notified the Health Policy Advisory Committee [HPAC] of Mr. Palmeiro's intent to challenge his positive test result.[45] On June 9, 2005, HPAC held a conference call with Mr. Palmeiro.[46] Because at least one HPAC member concluded that Mr. Palmeiro had a "reasonable basis to challenge" his positive test result,[47] Mr. Palmeiro was permitted to present his challenge in front of an arbitration panel.[48]

While Mr. Palmeiro followed the necessary steps to present his challenge to the arbitration panel, MLB Commissioner Selig continued to follow through with Mr. Palmeiro's discipline. On June 10, 2005, Mr. Selig sent Mr. Palmeiro a written notice of his 10-day suspension which was set to begin on June 14.[49] MLB's program calls for suspensions to begin 2 business days after the discipline is issued.[50] On June 13, 2005, Mr. Palmeiro filed a formal grievance to challenge his discipline, permissible under MLB's program.[51] Consequently, the discipline was stayed until the arbitration panel reached its findings.[52]

On June 16, 2005, the arbitration panel started its proceedings to review Mr. Palmeiro's grievance.[53] Francis Q. Coonelly, general labor counsel for MLB's Labor Relations Department, argued for MLB, and Mr. Weiner, general counsel for the Players Association, represented the Players Association and Mr. Palmeiro. Mr. Palmeiro testified on his own behalf at the hearing under oath. As part of his arbitration, Mr. Palmeiro testified that he had never taken steroids and that he had never used any illegal drugs.[54]

According to the arbitration record, after learning of his positive test result, Mr. Palmeiro turned over to the Players Association the supplements he consumed prior to his urine test.[55] Mr. Palmeiro stated he took EAS Active Repair Betagen, a form of Creatine purchased at General Nutrition Centers [GNC]; an EAS shake; Myoplex Carb Sense EAS shake; High Potency Ultra Vita Man; and Gatorade Performance Series Nutritional Shakes and Gatorade Performance Series Energy Drink.[56] Mr. Palmeiro stated that both

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ance No. 2005–12 (R. Palmeiro) (June 16, 2005) (Das, Arbitration) [hereinafter Palmeiro arbitration transcript].

[43] May 2005 Positive Test Result for Steroid, Rafael Palmeiro timeline from MLB to House Committee on Government Reform (Aug. 12, 2005) [hereinafter MLB timeline].

[44] *See* MLB, Joint Drug Prevention and Treatment Program (2005) (also referred to as Attachment 18 of the 2003–2006 Basic Agreement) § 9 (C) [hereinafter MLB testing program].

[45] MLB timeline *supra* note 43. The HPAC consisted of four members: Robert Manfred, MLB's executive vice president for labor and human resources, Gene Orza, the chief operating officer and associate general counsel of the Player's Association, and two physicians, one appointed by MLB and one appointed by the Player's Association.

[46] MLB timeline, *supra* note 43.

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] MLB testing program, *supra* note 44.

[51] MLB timeline, *supra* note 43. MLB testing program, *supra* note 44.

[52] MLB timeline, *supra* note 43.

[53] The arbitration panel consisted of three members: John McHale, representing MLB, Steven A. Fehr, representing the Players Association, and independent member Shyam Das.

[54] Palmeiro arbitration transcript, *supra* note 42.

[55] *Id.* at 62–63.

[56] *Id.* at 54–55, 63–64. Mr. Palmeiro's Aug. 25, 2005 interview with committee staff was consistent with his testimony before the arbitration panel as to the nutritional supplements he took during the 2005 season. (Interview by House Committee on Government Reform with Rafael

Gatorade products were provided by the Orioles.[57] Mr. Palmeiro also testified that he could not recall taking prescription medication, although it was possible he had received an allergy shot.[58] In addition, Mr. Palmeiro stated that he had taken over-the-counter pain and allergy medication[59] and multivitamins purchased at GNC,[60] a national retail health store. The Players Association testified that Aegis Labs tested all the supplements Mr. Palmeiro consumed.[61] The laboratory found that none of these substances contained steroids or precursors.[62] On May 27, 2005, Mr. Palmeiro gave a second urine sample to be tested by Aegis Labs. This urine sample tested negative for all substances banned by MLB.[63]

Mr. Palmeiro also testified that in mid-April 2005, his Baltimore Orioles teammate, Miguel Tejada, gave him a vial containing what Mr. Palmeiro believed was liquid vitamin B–12[64] and one syringe.[65] According to Mr. Palmeiro's account:

- This was the first time in his career that another player offered him B–12 or any injectable drug.[66]
- The vial's label was in Spanish.[67]
- He decided not to ask the Orioles medical staff to administer the shot.[68]
- He brought the vial to his home and asked his wife, Lynn Palmeiro, to give him the injection.[69]
- Mrs. Palmeiro had no medical training and had never administered a shot to another person, but she frequently injected their two dogs with medication.[70]
- When Mrs. Palmeiro administered the B–12 shot, it was the first time someone other than a trained medical professional had given him a shot.[71]
- A few days after the shot, Mrs. Palmeiro discarded the vial with a small amount of B–12 remaining in it.[72]

Mr. Weiner stated that after the Players Association was informed that Mr. Palmeiro had used the substance given to him by Mr. Tejada, the Players Association requested and received a vial labeled Tiaminal B–12, 50,000 from Mr. Tejada.[73] Mr. Palmeiro did not personally inspect the vial the Players Association received from Mr. Tejada, but examined pictures of the vial. Mr. Palmeiro testified that the vial in the picture looked similar to the vial he

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Palmeiro, baseball player for the Baltimore Orioles in Washington, DC (Aug. 25, 2005)). In addition, Mr. Palmeiro stated he had protein powder in his locker that was not tested by the Players Association. (*Id.* at 25). Mr. Palmeiro stated he had not consumed any of the powder in the 4 months prior to the interview. (*Id.* at 26) The only other "supplements" Mr. Palmeiro stated he consumed that were not tested were energy drinks provided to Mr. Palmeiro by his personal trainer during the off-season. (*Id.* at 30–33).

[57] Palmeiro arbitration transcript, *supra* note 42, at 93–96.
[58] *Id.* at 53–54.
[59] *Id.* at 54.
[60] *Id.* at 55.
[61] *Id.* at 63–64, 93–96.
[62] *Id.* at 64.
[63] *Id.* at 64–65.
[64] *Id.* at 55–56, 71.
[65] *Id.* at 76–77.
[66] *Id.* at 72.
[67] *Id.* at 79–80.
[68] *Id.* at 87–88.
[69] *Id.* at 58.
[70] *Id.* at 75.
[71] *Id.* at 74–75.
[72] *Id.* at 60–61.
[73] *Id.* at 59.

received from Mr. Tejada.[74] Mr. Weiner further explained that Aegis Labs tested the vial of Tiaminal B–12, 50,000 and found the vial contained no steroids or precursors.[75]

During the arbitration, Mr. Palmeiro was questioned extensively regarding the B–12 he received from Mr. Tejada and whether the B–12 could have led to Mr. Palmeiro's positive steroid test. When asked whether Mr. Tejada would have any reason to give Mr. Palmeiro a substance containing steroids, Mr. Palmeiro answered, "I wouldn't think so. I mean that's why I got it from him. I didn't suspect that he would be on anything. I mean he's Miguel Tejada, he's a teammate. He's like a brother to me."[76]

As part of his testimony, Mr. Palmeiro explained that he thought Mr. Tejada may have offered the B–12 because Mr. Tejada saw that Mr. Palmeiro went through a stressful spring training and that Mr. Tejada may have seen that Mr. Palmeiro was "tired and rundown."[77] Dr. Gary Green, a medical expert and an adviser to MLB on steroid issues, testified during the arbitration proceedings that there was no medical reason for Mr. Palmeiro to take vitamin B–12 by injection.[78] Dr. Green stated that the only individuals who would need a B–12 shot are individuals who suffer from a rare condition known as pernicious anemia and are not able to absorb B–12 through food or tablets taken orally.[79] He stated it is not legal in the United States to take an injectible B–12 without a prescription, because liquid B–12 is a prescription medication.[80] He also stated that "[t]here has [sic] been no studies to demonstrate that . . . in someone who is not B–12 deficient that B–12 would have any effect on energy at all."[81]

Mr. Coonelly and Mr. Weiner each questioned Mr. Palmeiro as to how the stanozolol could have entered his body. Mr. Palmeiro testified that he had "no idea" and "no explanation" for how stanozolol entered his urine.[82] Further, Mr. Palmeiro stated, "I have never ever in my life used any type of steroids, any drugs, anything that's illegal,"[83] "I have never used an illegal steroid,"[84] "I have never used an illegal drug in my life,"[85] and "[y]ou know, like I said before, under oath twice now, I have never taken steroids in my life. I have no idea how this got into my system."[86] When asked whether Mr. Palmeiro believed his positive test was a result of taking the B–12 provided by Mr. Tejada, Mr. Palmeiro responded, "I don't know that, no."[87]

For purposes of the arbitration, MLB and the Players Association stipulated that the MLB policy:

> was not intended to provide for discipline of a Player when the presence of a Steroid in the Player's urine was not due to his fault or negligence. To prevail under this exception

[74] *Id.* at 60.
[75] *Id.* at 62.
[76] *Id.* at 82.
[77] *Id.* at 57.
[78] *Id.* at 144–45.
[79] *Id.*
[80] *Id.* at 145.
[81] *Id.* at 144.
[82] *Id.* at 66.
[83] *Id.*
[84] *Id.* at 68.
[85] *Id.* at 69.
[86] *Id.* at 83.
[87] *Id.* at 82–83.

> to the general rule, the Player has the burden to establish that his "positive" test result was not due to his fault or negligence.[88]

In addition, "[a] Player cannot satisfy his burden under such a defense by merely denying that he intentionally used a Steroid . . . . [T]he Player would need to provide objective evidence in support of his denial."[89]

On July 14, 2005, closing arguments were given, for which Mr. Palmeiro was not present. Mr. Coonelly argued that the arbitration panel could not conclude, based on the record presented, that Mr. Palmeiro's positive test result was not due to fault or negligence on Mr. Palmeiro's part.[90] According to Mr. Coonelly, Mr. Palmeiro offered no evidence to support his assertion that his positive test result was not due to his own fault or negligence.[91]

Mr. Coonelly argued that Mr. Palmeiro was clearly negligent in the manner in which he had obtained the substance from Mr. Tejada, calling Mr. Palmeiro's story "far-fetched and odd."[92] Mr. Coonelly also stated there was no indication that the substance in the B–12 vial in question had been contaminated with stanozolol, no indication generally that vials labeled as B–12 have ever been unintentionally contaminated with stanozolol, and no reason to believe that the shot of the substance in the B–12 vial was the cause of the positive test.[93]

In addition, Mr. Coonelly raised the question of whether Mr. Palmeiro may have committed perjury at the March 17 hearing, arguing that he may have been "arrogant [or] desperate to deny the fact of his steroid use."[94] Mr. Coonelly argued that a polygraph administered to Mr. Palmeiro failed to contain explicit denials of steroid use.[95] Finally, he argued that two other pieces of evidence—the allegation of steroid use contained in Jose Canseco's book and the fact that Mr. Palmeiro's home run production increased soon after he met Mr. Canseco—reduced Mr. Palmeiro's credibility and led to the conclusion that Mr. Palmeiro failed to meet the burden of proving that he did not receive the stanozolol through this own fault or negligence.[96]

Mr. Weiner argued that Mr. Palmeiro had "nothing to gain and everything to lose by using steroids in 2005."[97] According to Mr. Weiner, Mr. Palmeiro had no financial incentive, as it was the last year of his career;[98] Mr. Palmeiro had no on-field incentive, as Mr. Palmeiro's goal was to achieve approximately 70 hits to get to the 3,000 hits milestone;[99] and Mr. Palmeiro had no medical incentive, as he was not recovering from an injury.[100]

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[88] Major League Baseball Players Association v. Office of the Commissioner of Baseball, Major League Baseball Arbitration Panel Decision No. 110, Grievance No. 2005–12 (R. Palmeiro) at 4 (Aug. 4, 2005) (Das, Arbitration) [hereinafter Palmeiro arbitration decision].
[89] *Id.*
[90] Palmeiro arbitration transcript, *supra* note 42, at 196.
[91] *Id.*
[92] *Id.* at 199.
[93] *Id.* at 201–03.
[94] *Id.* at 208.
[95] *Id.* at 212–17.
[96] *Id.* at 218–19.
[97] *Id.* at 221.
[98] *Id.*
[99] *Id.*
[100] *Id. at 222.*

Throughout the arbitration process, Mr. Palmeiro was represented by Mr. Weiner and the Players Association, not private counsel. The Players Association did not argue the substance in the B–12 vial taken by Mr. Palmeiro resulted in his positive test result.[101] In fact, Mr. Weiner argued just the opposite, stating in closing arguments, "The Players Association does not contend that the B–12 shot that Mr. Palmeiro took caused his positive test result. We have no evidence to suggest that. As a matter of fact, all of the evidence that exists runs in the other direction."[102]

On August 1, 2005, the arbitration panel denied Mr. Palmeiro's grievance[103] and Commissioner Selig announced Mr. Palmeiro's 10-day suspension.[104] On August 4, 2005, the arbitration panel released its formal opinion denying Mr. Palmeiro's grievance, stating:

> The result reached by the Panel is based on the uncontested positive test result and our determination that the evidence in this record is not sufficient for the Player to meet his burden of proof . . . . The panel considers it important to point out that our decision does not equate to a finding or belief that Rafael Palmeiro—whose testimony in many respects was quite compelling—was untruthful in his testimony before this Panel or any other body.[105]

B. Polygraph Documents

Attached to the arbitration documents was a Polygraph Examination Summary by W. Ronald Lilly of Lilly Polygraph Services, dated June 14, 2005.[106] Mr. Lilly administered a polygraph examination to Mr. Palmeiro on June 13, 2005. The arbitration documents included the following two questions:

> Q: When you received that B–12, did you know that it contained a steroid?
>
> A: No.
>
> Q: When you received that B–12 this past April, did you know that it contained a steroid?
>
> A: No.[107]

The examination summary stated, "It is the opinion of this examiner that Mr. Palmeiro passed his examination, as he did not record responses that were indicative of deception."[108]

On August 23, 2005, Mr. Palmeiro's attorneys sent to the Committee, via facsimile, additional documents relating to the polygraph examination.[109] The documents included all questions posed to Mr. Palmeiro during the June 13, 2005, polygraph examination. In addition to the two questions cited in Lilly's Polygraph Examination Summary, Mr. Palmeiro was also asked the following:

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[101] *Id.* at 233.
[102] *Id.*
[103] The final decision of the arbitration panel was 2–1, with Mr. Fehr dissenting.
[104] MLB timeline, *supra* note 43.
[105] Palmeiro Arbitration Decision, *supra* note 88, at 17.
[106] Polygraph examination summary by W. Ronald Lilly of Lilly Polygraph Services, from MLB to House Committee on Government Reform (Aug. 12, 2005).
[107] *Id.*
[108] *Id.*
[109] On Aug. 29, 2005, attorneys for Mr. Palmeiro delivered the charts from the polygraph exam to the committee. Letter from Adam C. Sloane, attorney for Rafael Palmeiro, to House Committee on Government Reform staff (Aug. 23, 2005).

Q: Did you unknowingly receive a B–12 supplement that contained a steroid?

A: Yes.

Q: Do you recall ever secretly doing anything that would have caused shame or dishonor to your family?

A: No.

Q: In the past year, did you ever seriously think about violating your personal beliefs by doing something unlawful?

A: No.

Q: Are you the kind of person who would lie in order to protect someone involved in an unlawful activity?

A: No.[110]

During his interview with Committee staff, Mr. Palmeiro was questioned about the polygraph examination and why the examiner did not ask Mr. Palmeiro whether he knowingly took steroids.[111] Mr. Palmeiro responded: "I'm not sure. I did not set it up. I have never done a polygraph test in my life. I didn't know what to expect. I was just there to answer the questions that they put in front of me."[112]

C. Results of Rafael Palmeiro's Drug Tests

Mr. Palmeiro was tested for steroids under the MLB drug testing program in 2003, 2004, and 2005.[113]

In 2005, Mr. Palmeiro's only test was the May 4 test.[114] This sample was positive for stanozolol and stanozolol metabolites, and contained no other banned substances.[115] Stanozolol, also commonly referred to as Winstrol, is available in both oral and injectable form. An independent expert informed Committee staff that the detection window for injectable stanozolol is approximately 3 to 4 weeks, and the detection window for oral consumption of stanozolol is approximately 7 to 10 days.[116] Mr. Palmeiro's May 4 test occurred approximately 6 weeks after his March 17 testimony. This makes it likely that the consumption of stanozolol that resulted in Mr. Palmeiro's positive test occurred after his testimony to the Committee.

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[110] Polygraph exam questions by W. Ronald Lilly of Lilly Polygraph Services, from attorneys for Rafael Palmeiro to House Committee on Government Reform staff (Aug. 23, 2005).

[111] Transcript at 178–79, interview by House Committee on Government Reform staff with Rafael Palmeiro, baseball player for the Baltimore Orioles, in Washington, DC (Aug. 25, 2005) [hereinafter interview with Rafael Palmeiro].

[112] *Id.*

[113] Letter from Rob Manfred, executive vice president, labor and human resources, MLB to Chairman Tom Davis and Ranking Member Henry A. Waxman, House Committee on Government Reform (Aug. 12, 2005).

[114] MLB timeline, *supra* note 43.

[115] Certificate of analysis from Laboratorie de control du dopage (Quebec) to Dr. Jean Joseph (Certificate No. 05–0532AA) (May 19, 2005) (on file with MLB).

[116] Letter from Gary I. Wadler, clinical associate professor of medicine at New York University School of Medicine, to Tom Davis, chairman, House Committee on Government Reform (Oct. 27, 2005).

In 2004, Mr. Palmeiro was also randomly tested under the MLB testing program.[117] The Committee was informed by MLB that copies of the 2004 testing results were no longer available.[118] However, MLB also informed the Committee that all positive tests were required to be reported to the Commissioner's office as positive.[119] Because the results for the 2004 test were not reported to the Commissioner's office as a positive, Mr. Palmeiro's test results must have been negative.[120]

MLB also informed the Committee that test results of players in 2003 were maintained anonymously and were not provided to MLB, the Players Association, or to individual players.[121] This anonymity was because the 2003 testing was conducted to provide a sampling of positive results of performance-enhancing drugs in professional baseball. However, despite being unaware of his 2003 test results, Mr. Palmeiro agreed to allow the results to be released to the Committee.[122] The requested 2003 test results were delivered to the Committee on September 27, 2005. According to these results, Mr. Palmeiro was tested on March 14, 2003, and his test result for performance-enhancing drugs was negative.[123]

D. Interview with Rafael Palmeiro

On August 25, 2005, Committee staff conducted an in-person interview of Rafael Palmeiro.[124] Mr. Palmeiro stated that he stood by his testimony from the March 17, 2005 hearing, and that there was nothing he would like to change or alter with regard to his testimony.[125] Mr. Palmeiro added that he never used any legal or illegal performance-enhancing drug, and that he had never used Dehydroepiandrosterone, commonly known as "DHEA," Androstenedione, commonly known as "Andro," or Human Growth Hormones, commonly known as "HGH."[126]

Mr. Palmeiro stated that he was informed when he arrived at the ballpark[127] on May 4, 2005, that he was on the list to be tested, and that he had until 1 hour after the game was completed to provide his urine sample.[128] Mr. Palmeiro stated that he prepared for the game and that he gave his urine sample about 30 minutes prior to the game.[129] Mr. Palmeiro asserted that he was not supervised by drug testing officials between the time he was told that he had to provide a sample and the time he provided the sample.[130] He also stated that he did not discuss his test with any of his teammates or his wife.[131]

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[117] Letter from Robert D. Manfred, Jr., executive vice president, labor and human resources, MLB, to Tom Davis, chairman and Henry A. Waxman, ranking minority member, House Committee on Government Reform (Aug. 12, 2005).
[118] *Id.*
[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] Letter from Adam C. Sloane, attorney for Rafael Palmeiro, to House Committee on Government Reform staff (Aug. 29, 2005).
[123] Report from Quest Diagnostics (Las Vegas, NV) to Comprehensive Drug Testing, Inc. (Long Beach, CA) (Mar. 19, 2003).
[124] Interview with Rafael Palmeiro, *supra* note 111.
[125] *Id.* at 5.
[126] *Id.* at 33–34.
[127] Camden Yards, Baltimore, MD.
[128] Interview with Rafael Palmeiro, *supra* note 111, at 34.
[129] *Id.* at 57.
[130] *Id.*
[131] *Id.* at 59–60.

According to Mr. Palmeiro, he learned of his positive test result on approximately May 19, 2005, while he was at the ballpark before a home game when Eugene Orza, the Players Association's chief operating officer, left a message with Mr. Palmeiro and a message with the Orioles manager.[132] Mr. Palmeiro stated that when he returned Mr. Orza's telephone call, Mr. Orza informed him that he had tested positive for stanozolol.[133] When Mr. Palmeiro returned home after the game, he called Michael Weiner, the general counsel of the Players Association.[134] Mr. Palmeiro explained that he told Mr. Orza and Mr. Weiner there had to be a mistake with the testing, as there was no way he could have tested positive for steroids.[135]

According to Mr. Palmeiro, on the evening that he was notified of his positive test result, Mr. Weiner told him to contact Arn Tellem.[136] Mr. Tellem is the "head" of SFX Sports, the agency that represents Mr. Palmeiro.[137] According to Mr. Palmeiro, Mr. Tellem is not his direct agent,[138] and he is not responsible for negotiating Mr. Palmeiro's contracts.[139] Mr. Palmeiro explained that at the time he received his positive test results, he had never met Mr. Tellem.[140] Mr. Palmeiro stated that although he had not authorized the Players Association to inform Mr. Tellem of his positive test, Mr. Tellem was already aware of the test result when they talked on the telephone.[141] In addition, Mr. Palmeiro stated that he believes that Mr. Weiner told him not to tell his agent, Fernando Cuza, of the positive test result, as Mr. Cuza might have a conflict of interest.[142]

According to Mr. Palmeiro, during the initial telephone conversation, Mr. Orza asked him if there was a substance he may have taken by accident.[143] Mr. Palmeiro stated that although he recalled the B–12 he took earlier in the season, he did not mention the B–12 to Mr. Orza during this conversation.[144] Mr. Palmeiro stated that a few days later, he informed Mr. Weiner of the B–12.[145] Mr. Palmeiro noted that he initially did not want to disclose the identity of the player who gave him the B–12,[146] but that Mr. Weiner insisted that he needed to disclose the source of the B–12. Mr. Palmeiro stated that within that week he told Mr. Weiner that Miguel Tejada was the source of the B–12.[147]

Mr. Palmeiro stated that after telling Mr. Weiner that Mr. Tejada was the source of the B–12, Mr. Palmeiro knew the Players Association discussed getting another vial of B–12 from Mr. Tejada to have it tested.[148] According to Mr. Palmeiro, Mr. Tejada never mentioned to him that the Players Association asked for a vial of

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[132] *Id.* at 64–65.
[133] *Id.*
[134] *Id.* at 66–67.
[135] *Id.* at 65–66, 68.
[136] *Id.* at 69–70.
[137] *Id.* at 69.
[138] *Id.* at 69, 73.
[139] *Id.* at 71, 73.
[140] *Id.* at 70.
[141] *Id.* at 70, 74.
[142] *Id.* at 73–74.
[143] *Id.* at 68–69.
[144] *Id.*
[145] *Id.* at 81–82.
[146] *Id.* at 116.
[147] *Id.* at 116–17.
[148] *Id.* at 149–50.

B–12.[149] In fact, according to Mr. Palmeiro, after he took the B–12 from Mr. Tejada in April 2005, the two never discussed the issue again.[150]

According to Mr. Palmeiro's account:

- He received the B–12 vial in mid-April 2005.[151]
- He and Mr. Tejada were near their lockers in the clubhouse when Mr. Tejada offered the B–12.[152] It was the first and only time that Mr. Tejada, or any other player, offered B–12 to Mr. Palmeiro.[153]
- Mr. Tejada said he had taken B–12 because it gives him energy,[154] and Mr. Palmeiro assumed Mr. Tejada believed Mr. Palmeiro needed a boost after a long, hot spring training.[155]
- Mr. Tejada removed the B–12 and a syringe from his locker during the conversation and Mr. Palmeiro then put both items in his own locker.[156]
- Mr. Palmeiro did not ask Mr. Tejada where he obtained the B–12 and had no knowledge of whether Mr. Tejada offered B–12 to other players.[157]

Mr. Palmeiro stated he was not concerned about receiving the B–12 and a syringe from Mr. Tejada because he had experience with B–12 shots when he played for the Texas Rangers.[158] According to Mr. Palmeiro, he received B–12 shots when he played for the Rangers.[159] Mr. Palmeiro indicated that he received B–12 shots from the Rangers team physician, Dr. Mycoskie,[160] and that he received two to four B–12 shots during the regular season and perhaps one or two during spring training.[161] Mr. Palmeiro recalled that he always received the shot from the team physician.[162] According to Mr. Palmeiro, the Rangers' doctor offered the B–12 shots, and he never felt that taking B–12 was "anything major."[163]

Mr. Palmeiro explained that when Mr. Tejada offered the B–12, it "wasn't a big deal accepting it, even accepting it from a teammate,"[164] and that—[w]hen he gave me the B–12, I believed that it was a B–12. I didn't believe anything other than that, and that is really why I took it."[165]

Mr. Palmeiro described his relationship with Mr. Tejada as "close,"[166] that the two men are "pretty good friends,"[167] and that he feels like Mr. Tejada is like a "brother."[168] In Mr. Palmeiro's opinion, Mr. Tejada is a "really good, genuine family guy" and "really happy."[169] Mr. Palmeiro explained that he never had con-

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[149] *Id.* at 150.
[150] *Id.* at 150–51.
[151] *Id.* at 83.
[152] *Id.* at 86.
[153] *Id.* at 110.
[154] *Id.* at 89.
[155] *Id.* at 84.
[156] *Id.* at 86, 88–89.
[157] *Id.* at 89–91.
[158] *Id.* at 109, 111.
[159] *Id.* at 120.
[160] *Id.*
[161] *Id.* at 121.
[162] *Id.* at 123.
[163] *Id.* at 111.
[164] *Id.*
[165] *Id.* at 153–54.
[166] *Id.* at 84.
[167] *Id.*
[168] *Id.* at 102.
[169] *Id.* at 103.

cerns in the past that Mr. Tejada was taking performance-enhancing drugs.[170] Mr. Palmeiro stated that Mr. Tejada called him the first day his suspension was announced and left him a supportive voice mail.[171] On Mr. Palmeiro's first day back after his suspension, Mr. Palmeiro said:

> A: [Mr. Tejada] actually received me very well, better than anyone else. He embraced me, and it seemed like in public he was really being, you know, one of the supportive guys.
>
> Q: What did he say to you?
>
> A: Hey, you know, I love you. I support you. Hang in there. Don't worry about that stuff. Let's focus on playing. I think that is the kind of conversation we had.[172]

According to Mr. Palmeiro, he took the B–12 vial to his home in Baltimore and asked his wife, Lynn, to inject him.[173] Mr. Palmeiro stated that he knew that Orioles staff would not provide the B–12 shot because he previously asked a trainer for a B–12 shot and was told he could not receive one.[174] Mr. Palmeiro explained that Mrs. Palmeiro knew how to use a syringe because she was responsible for injecting the family dogs for their allergies,[175] and that Mrs. Palmeiro learned to give these shots from the family veterinarian.[176] According to Mr. Palmeiro, this was the only injection Mrs. Palmeiro had ever given him.[177] He stated that after Mrs. Palmeiro gave him the shot, there was very little B–12 left in the vial.[178]

Contrary to Mr. Palmeiro's defense during his arbitration, Mr. Palmeiro informed Committee staff that it is his belief that the B–12 injection resulted in his positive test for steroids. He stated:

> A: My best guess would be the B–12, it could have been contaminated, but I can't prove it. It could have been something else. It could have been something else, any other supplement that I took. But my best guess would be the B–12.
>
> Q: You believe it was the B–12?
>
> A: I believe it was, but I wish I could prove it.[179]
>
> * * *
>
> Q: How in your mind do you think this was contaminated? What do you think? Do you think it was inadvertently not B–12 but a steroid?

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[170] *Id.* at 102–03.
[171] *Id.* at 154.
[172] *Id.* at 155–56.
[173] *Id.* at 139–40.
[174] *Id.* at 93–95, 126–27.
[175] *Id.* at 137.
[176] *Id.* at 138.
[177] *Id.* at 140.
[178] *Id.* at 143. Mr. Palmeiro's attorneys provided committee staff with further information from Mr. and Mrs. Palmeiro regarding the condition of the vial of B–12. The attorneys confirmed that "the B–12 vial was not full when Mr. Palmeiro received it or when Mrs. Palmeiro first saw it; that the syringe was wrapped in plastic, but the vial was not; that the vial had a rubber stopper, but did not have a metal cap; and that, after one syringe of liquid was extracted from the vial, there was not enough liquid to fill a second syringe." Letter from Adam C. Sloane, attorney for Rafael Palmeiro, to House Committee on Government Reform staff (Nov. 1, 2005).
[179] Interview with Rafael Palmeiro, *supra* note 111, at 151.

A: No, I'm not sure. I don't know how to answer that, because obviously I didn't take the proper steps to look into it, but when I got it, I feel sure that it was B–12. And I'm not saying that that's not what it was. I'm just saying that could have been what got me contaminated. I can't say for sure that is what it was, but that is the thing I can pinpoint to that is different than anything else that I have done in the past.[180]

* * *

Q: [W]hat you are saying here is that you believe, your best guess is that your positive test was as a result of that B–12 shot?

A: That is my guess.[181]

Committee staff questioned Mr. Palmeiro about the discrepancy between the arbitration proceedings and the interview with Committee staff concerning Mr. Palmeiro's belief that the B–12 caused his positive test result. Mr. Palmeiro stated:

> I know, but that is because the way that I understood it was I could not prove what did it. But when I think back on it, my best guess would be the B–12. Now, I may be wrong. It could be something else. But if I have to guess, if I have to pinpoint something, that is the logical thing.[182]

During the arbitration proceeding, Mr. Weiner stated, "The Players Association does not contend that the B–12 shot that Mr. Palmeiro took caused his positive test. We have no evidence to suggest that. As a matter of fact, all of the evidence that exists runs in the other direction."[183] In the Committee staff interview, Mr. Palmeiro was asked about Mr. Weiner's statement:

Q: So do you disagree with that statement?

A: I disagree with what he is saying. He is speaking on the Players Association behalf; but I feel that the B–12 was probably the thing that might have done it. I could not prove it. I have no way of proving whether you know this was an unintentional thing that I did or something that somebody did to me. I couldn't prove it.[184]

When questioned about his increased performance, Mr. Palmeiro responded:

> Well, the only reaction to that is obviously they are not giving me any credit for my abilities that God gave me. But if you go back beyond my professional career, and I do not think that you have it, I hit home runs everywhere. I was a three-time All-American in college. I was freshman player of the year. Summer ball I hit more home runs than Barry Bonds and McGwire and all those guys when we played summer ball. So I have always been a guy that's hit home runs. And if they choose to think that I did this ille-

[180] *Id.* at 162.
[181] *Id.* at 163.
[182] *Id.* at 159.
[183] Palmeiro arbitration transcript, *supra* note 42, at 12.
[184] Interview with Rafael Palmeiro, *supra* note 111, at 158.

> gally, that is fine, but I know in my heart that everything that I have done in baseball is done with my hard work, the talent that God gave me, and what my dad taught me.
>
> You go beyond those numbers, '82, '83, '84, '85, when I was a kid, and you can see that I hit a lot of home runs. So for them to say that I was not going to be any good or that I had to do something better, you know, that is fine, but to me, you know, I worked hard. I am not one of these guys that hits—I don't know if you guys follow my career, but my home runs are barely going over the wall. I just happen to have a nice, smooth, steady swing. I can't hit the ball out the other way. My home runs are all pretty much regular, you know. But I have always had success all the way back to when I first started.[185]

Committee staff also questioned Mr. Palmeiro about specific allegations of steroid use contained in Mr. Canseco's book.[186] Mr. Palmeiro denied Mr. Canseco's allegations[187] and told Committee staff that:

- He never discussed steroids or injections with Mr. Canseco.[188]
- He was never injected with steroids or any other substance by Mr. Canseco.[189]
- He didn't know whether Mr. Canseco ever injected Juan Gonzalez or Ivan Rodriguez but did not believe it to be true.[190]

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[185] *Id.* at 175.

[186] Canseco, *supra* note 10.

[187] In his book, Mr. Canseco writes of the 1992–1993 season, during which he played for the Texas Rangers, along with Rafael Palmeiro, Ivan Rodriguez, and Juan Gonzalez. Mr. Canseco wrote that "I sat down with Rafael Palmeiro, Juan Gonzalez, and Ivan Rodriguez, and educated them about steroids. Soon I was injecting all three of them. I personally injected each of those three guys many times, until they became more familiar with how to use a needle and were able to do it themselves," (Canseco, *supra* note 10, at 133) and that "Palmeiro, Gonzalez, and Ivan Rodriguez all started asking me a lot of questions about steroids soon after I joined the Rangers." (Canseco, *supra* note 10, at 135). In addition, Mr. Canseco wrote that the players were on a "combination of growth hormone and steroids—mostly Deca and Winstrol." (Canseco, *supra* note 10, at 135). Winstrol is another name for Stanozolol, the steroid detected in Mr. Palmeiro's urine.

[188] Mr. Palmeiro's interview included the following exchanges:

Q: Did Canseco ever sit down with you to talk to you about steroids?
A: Never. He never sat down with me to talk about steroids or anything other than about just baseball.
Q: Was there ever a time that you can recall that you, Juan Gonzalez, and Ivan Rodriguez sat down with Jose Canseco?
A: No.
Q: Do you know whether or not he spoke with either of those two about steroids?
A: I don't know. I can't answer for them, but I know that I didn't sit down with him. (Interview with Rafael Palmeiro *supra* note 111, at 168–69.

* * *

Q: [Mr. Canseco's book states], "Palmeiro, Gonzalez, and Ivan Rodriguez all started asking me a lot of questions about steroids soon after I joined the Rangers." Did you ever ask Mr. Canseco about steroids?
A: No, I would never talk about steroids. (*Id.* at 170).

[189] Mr. Palmeiro's interview included the following exchange:

Q: Did Jose Canseco ever inject you with a steroid?
A: Never. He never injected me with anything.
Q: With nothing?
A: Nothing.
Q: Did he ever explain to you how to use a needle?
A: No. (*Id.* at 169).

[190] Mr. Palmeiro's interview included the following exchange:

Continued

- He had never heard of B–12 being used as a code name for steroids, as alleged in Mr. Canseco's book.[191]
- Prior to his interview with Committee staff, he had not read Mr. Canseco's book or known that Mr. Canseco alleged that Mr. Palmeiro used Winstrol (stanozolol).[192]

E. Interview with Lynn Palmeiro

The Committee staff conducted an in-person interview of Lynn Palmeiro on August 25, 2005.[193] Mrs. Palmeiro confirmed Mr. Palmeiro's account of the B–12 injection. Mrs. Palmeiro said that she did not look to see if the vial had been punctured.[194] Mrs. Palmeiro stated that she filled the entire syringe and injected Mr. Palmeiro with the B–12.[195] Mrs. Palmeiro stated that she knew to inject Mr. Palmeiro in the buttocks because Mrs. Palmeiro witnessed Mr. Palmeiro receiving B–12 shots during spring training with the Texas Rangers and because Mrs. Palmeiro also received B–12 shots from the Rangers' physician.[196]

According to Mrs. Palmeiro, she noticed the B–12 label was in Spanish, but she could read that it said B–12.[197] She stated that after administering the B–12 shot, she noticed that there was a small amount of liquid left in the vial and after determining that there was not enough liquid for another shot, she discarded the sy-

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Q: Two paragraphs down, [Mr. Canseco's book states that] "Raffy, Juan, and Ivan were definitely scared the first time I injected them, but after a while it became no big deal to them, either." Do you have any knowledge whether or not Canseco was injecting either Ivan or Juan?

A: I don't have knowledge of that, but I'm going to guess no. There's no way. (*Id.* at 171).

[191] Mr. Palmeiro's interview included the following exchanges:

Q: [Mr. Canseco's book] is talking about steroids here. He says, "It was so open, the trainers would jokingly call the steroid injections 'B–12 shots,' and soon the players had picked up on that little code name, too. You'd hear them saying it out loud in front of each other: 'I need to go in and get a B–12 shot,' a player would say, and everyone would laugh. They weren't talking about vitamins or supplements, of course, but a combination of steroids." To your knowledge, did "B–12 shots"—was that code for steroids?

A: You know what? I don't even think I knew what B–12 was back then. I never heard anyone say B–12 or steroids or anything like that. A code name? Come on. I don't know where he got that from. (*Id.* 172).

* * *

Q: —Your understanding of what [your teammates] were talking about was what [when they mentioned B–12]?

A: B–12. And you are talking about '92, '93. You know, I became aware of B–12 in '99, 2000, my second time around. I didn't even know what B–12 was probably back then.

Q: Do you recall or did you ever hear of anybody else mentioning B–12 meant steroid?

A: No, I had no idea that that was a code word or something that he used. He is probably making that B–12 stuff up. (*Id.* at 173).

[192] Mr. Palmeiro's interview included the following exchange:

Q: Did you know the previous page where he mentions you and Winstrol, were you aware of that before you just saw this?

A: No. The only thing I was aware of is that he had said that he had taught me how to inject. That is the only thing that I was aware of. I have not read the book. I have not, you know, studied or gotten information on what he has said about me. This is the first I heard about the Winstrol stuff in his book. (*Id.* at 1173–74).

[193] Interview by House Committee on Government Reform staff with Lynn Palmeiro, wife of Baltimore Oriole, Rafael Palmeiro, in Washington, DC (Aug. 25, 2005).

[194] *Id.* at 16.

[195] *Id.* at 17.

[196] *Id.* at 17–18, 23.

[197] *Id.* at 26.

ringe.[198] Mrs. Palmeiro stated that the B–12 shot was the first and only time she injected Mr. Palmeiro.[199]

Mrs. Palmeiro explained that she did not have concerns for Mr. Palmeiro taking the B–12, because "he felt comfortable with the product being from his teammate. And I am sure he felt that it was okay."[200]

Committee staff questioned Mrs. Palmeiro regarding what she thought may have caused Mr. Palmeiro to test positive for steroids.[201] Mrs. Palmeiro said she could not think of another substance that Mr. Palmeiro took that would have resulted in a positive steroid test.[202]

F. Interviews With Other Players and Officials from the Baltimore Orioles

i. Interview with Miguel Tejada

During his interview with Committee staff, Mr. Palmeiro asserted that the B–12 vial provided to him by Baltimore Orioles teammate, Miguel Tejada, may have been the source of his positive steroid test result. On August 26, 2005, Committee staff conducted an in-person interview of Miguel Tejada.[203]

Mr. Tejada stated the only supplement he takes is vitamin B–12.[204] He stated that he began receiving B–12 injections and pills at 5 or 6 years of age in the Dominican Republic.[205] Mr. Tejada recalled that he would receive the injections at a clinic or from his father,[206] and that he continued taking B–12 throughout his childhood and teens.[207] Mr. Tejada stated it was common in the Dominican Republic for people to take B–12 injections,[208] saying that Dominicans receive B–12 shots to help increase appetite, to prevent anemia, and to protect against illness.[209] Mr. Tejada explained that he takes B–12 to help increase his appetite.[210]

Mr. Tejada stated that he signed as a minor league player when he was 17 years old[211] and came to the United States in 1994 or 1995.[212] Mr. Tejada explained that he returns to the Dominican Republic each off-season.[213] According to Mr. Tejada, when he returns to the United States, he brings liquid B–12 from the Dominican Republic to use during the season.[214] He stated that each time he returned he would bring approximately two to four vials of B–12 back with him.[215] Mr. Tejada said that he does not use B–12

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[198] *Id.* at 24.
[199] *Id.* at 32.
[200] *Id.* at 26–27.
[201] *Id.* at 29–30.
[202] *Id.*
[203] Interview by House Committee on Government Reform staff with Miguel Tejada, baseball player for the Baltimore Orioles, in Washington, DC (Aug. 26, 2005) [hereinafter interview with Miguel Tejada].
[204] *Id.* at 5–6.
[205] *Id.* at 6–7, 11.
[206] *Id.* at 7–9.
[207] *Id.* at 11–13.
[208] *Id.* at 7, 14.
[209] *Id.*
[210] *Id.* at 6–7, 49.
[211] *Id.* at 13, 15.
[212] *Id.* at 15.
[213] *Id.* at 4–5.
[214] *Id.* at 16–17.
[215] *Id.* at 17, 19–20, 22.

during the off-season,[216] unless he is playing in the Winter League playoffs in late December and January,[217] or the Caribbean World Series in February.[218]

Mr. Tejada explained that in the Dominican Republic, liquid B–12 is sold without prescription in a box with one bottle of B–12 and a syringe.[219] He stated that each vial has approximately four doses,[220] and that he would buy extra syringes at the pharmacy.[221] The syringes have the numbers one through four on them.[222] Mr. Tejada explained that he would fill up the syringe with B–12 to the number two and a half.[223]

For the 2005 season, Mr. Tejada stated he brought four boxes of B–12 to the United States,[224] and that he brought extra syringes, four for each bottle of B–12.[225] Mr. Tejada recalled that he had one extra bottle at his house from the previous year.[226]

During the 2005 season, Mr. Tejada stated he gave B–12 to Player A, Player B, and Mr. Palmeiro.[227] Mr. Tejada explained he gave the B–12 to Player A and Player B at the beginning of the 2005 regular season in the clubhouse.[228] Mr. Tejada said that he started a conversation with Player A and Player B and explained why he took B–12.[229] Mr. Tejada recalled that he told them that when they were not feeling well or not eating, they should take B–12.[230] Mr. Tejada said that Player A and Player B never said they were not eating well.[231] According to Mr. Tejada, after that conversation, he gave both Player A and Player B a bottle of B–12.[232] Mr. Tejada stated that he did not give Player A or Player B a syringe.[233] According to Mr. Tejada, he explained to Player B how much B–12 he should take.[234] Mr. Tejada said that he does not know whether Player A or Player B used the B–12.[235]

Mr. Tejada stated that he believes he gave Mr. Palmeiro a vial of B–12 on a separate day but around the same time he gave it to Player A and Player B.[236] His recollection is similar to Mr. Palmeiro's in many ways, such as providing the B–12 in mid-April 2005.[237] But there are differences in their statements to Committee staff. Mr. Tejada believes he and Mr. Palmeiro discussed B–12 while sitting on a couch in the clubhouse and that Mr. Palmeiro said he had not been eating well.[238] Mr. Tejada claimed he did not

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[216] *Id.* at 19.
[217] *Id.* at 42–46, 48.
[218] *Id.* at 48.
[219] *Id.* at 10–11.
[220] *Id.* at 17.
[221] *Id.* at 48.
[222] *Id.* at 50.
[223] *Id.*
[224] *Id.* at 45–46, 62, 68, 81.
[225] *Id.* at 48–49.
[226] *Id.* at 68, 82.
[227] *Id.* at 51. During his interview, Mr. Tejada identified two current Baltimore Orioles players to whom he gave liquid vitamin B–12. For purposes of the report, they will be identified as Player A and Player B.
[228] Interview of Miguel Tejada, *supra* note 203, at 51–52, 56, 59, 61, 83.
[229] *Id.* at 53–54, 59–61.
[230] *Id.* at 54–55, 59.
[231] *Id.* at 54, 59.
[232] *Id.* at 52, 54–55, 58–59, 61–62.
[233] *Id.* at 55, 62, 84–86.
[234] *Id.* at 55.
[235] *Id.* at 56, 89.
[236] *Id.* at 51, 63–64, 83.
[237] *Id.* at 80.
[238] *Id.* at 53, 64–66, 79–81.

have the B–12 in his locker as Mr. Palmeiro testified.[239] Instead, Mr. Tejada remembered retrieving the B–12 and syringe from his home and handing it to Mr. Palmeiro at the ball park the following day.[240]

In Mr. Tejada's account, he did not give Mr. Palmeiro instructions on how to use the B–12, nor did Mr. Palmeiro ask for instructions.[241] Mr. Tejada stated that he never asked Mr. Palmeiro if he used the B–12.[242] Mr. Tejada explained that he was unaware if Mr. Palmeiro ever used the B–12, as the two had never discussed the issue after Mr. Tejada gave him the vial in April 2005.[243]

Mr. Tejada stated that prior to the 2005 season, he never gave another player B–12,[244] and that no one knew that Mr. Tejada used B–12 except for Player B, who learned that Mr. Tejada used B–12 during the 2004 season.[245] Mr. Tejada stated that he did not give Player B any B–12 in 2004.[246]

Mr. Tejada also stated that Player A had injected Mr. Tejada with the B–12 "when [Mr. Tejada was] feeling like [he] need [sic] it."[247] He said that the last time Player A injected Mr. Tejada was May or June 2005.[248]

Mr. Tejada stated that in May he received a telephone call from Michael Weiner with the Players Association.[249] Mr. Tejada said that Mr. Weiner asked him if he took B–12 and Mr. Tejada said yes.[250] Mr. Tejada asked Mr. Weiner why he was asking, and Mr. Weiner replied that he wanted to know what Mr. Tejada took.[251] Mr. Tejada said that Mr. Weiner asked where he got the B–12 and Mr. Tejada told him in the Dominican Republic.[252] According to Mr. Tejada, Mr. Weiner told him the Players Association wanted to test a bottle of his B–12 to make sure the vial contained B–12.[253] Mr. Tejada stated that his agent sent a vial of B–12 in a closed box to the Players Association.[254] Mr. Tejada also stated that the bottle had been used by him.[255] He recalled that when the Players Association requested the vial from him, they told him not to use any of his B–12 until they completed the tests.[256] He stated that about 2 weeks later, the Players Association told him he could continue to use the B–12 because it was "legal."[257]

Mr. Tejada stated that after he discussed the B–12 with the Players Association in May, he told Player A and Player B not to use the B–12.[258] He said that he told Player A and Player B that the league was checking out the B–12 and not to use it until he

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[239] *Id.* at 69–71.
[240] *Id.* at 56–57, 65–67, 69–72, 80–81.
[241] *Id.* at 71.
[242] *Id.* at 72–73.
[243] *Id.*
[244] *Id.* at 86.
[245] *Id.*
[246] *Id.*
[247] *Id.* at 23–24, 88–89.
[248] *Id.* at 23–24, 27.
[249] *Id.* at 26–27, 38, 89–97.
[250] *Id.* at 91.
[251] *Id.* at 91–92.
[252] *Id.* at 95.
[253] *Id.* at 24, 38, 92–93, 96. At an Aug. 15, 2005 meeting, the Players Association informed committee staff that Mr. Weiner told Mr. Tejada the B–12 vial would be tested for steroids.
[254] Interview with Miguel Tejada, *supra* note 203, at 24, 39.
[255] *Id.* at 88, 96–97.
[256] *Id.* at 24, 39–40, 110–11.
[257] *Id.* at 24–25, 40, 93, 100.
[258] *Id.* at 111–12.

got the results.[259] According to his account, Mr. Tejada forgot to tell Mr. Palmeiro not to use the B–12.[260]

Mr. Tejada stated that later in the summer, Gene Orza with the Players Association called Mr. Tejada about the B–12,[261] and that he spoke to the Players Association at a meeting approximately 2 weeks prior to the Committee staff interview.[262] Mr. Tejada stated that Mr. Orza; Rob Manfred, an attorney for MLB; a doctor for the Players Association; and a doctor for MLB were present at the meeting.[263] Mr. Tejada indicated that he understood the purpose of the meeting was to talk about B–12.[264] Mr. Tejada said that they also discussed that Mr. Palmeiro mentioned Mr. Tejada's name during Mr. Palmeiro's interview.[265] Mr. Tejada stated that they asked questions regarding why Mr. Tejada gave the B–12 to Mr. Palmeiro,[266] and that during this meeting, the Players Association asked for another vial of B–12.[267] Mr. Tejada stated that he gave the Players Association the B–12 vial left over from the previous year.[268] He said that the Players Association again told him not to use the B–12.[269] Mr. Tejada recalled that the doctors at the meeting questioned him about why he takes B–12 and they told him not to inject himself anymore.[270] Mr. Tejada stated that he never heard from the Players Association regarding the second vial of B–12.[271]

According to Mr. Tejada, after he sent the B–12 to the Players Association for testing, he quit using it.[272] He said that the Players Association told him they would send him some B–12 pills.[273] Mr. Tejada stated that he had not yet received the B–12 pills.[274]

Mr. Tejada explained that he never had concerns that the vial labeled B–12 did not contain vitamin B–12.[275] Mr. Tejada stated he never spoke to a team doctor about taking B–12.[276] Mr. Tejada said that he has never heard of reports of contaminated B–12 in the Dominican Republic.[277] He also said that he never heard of B–12 being used as code for steroids.[278]

Mr. Tejada stated that when learned that Mr. Palmeiro tested positive for steroids, he, and everyone, was surprised.[279] He recalled that after learning of Mr. Palmeiro's suspension, he left Mr. Palmeiro a voice message on his cellular telephone.[280] According to

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[259] *Id.* at 112.
[260] *Id.* at 111–12.
[261] *Id.* at 26–27.
[262] *Id.* at 27, 36–38, 101–04.
[263] *Id.* at 37, 102–03. Rob Manfred, Jr., MLB executive vice president for labor and human resources, confirmed to committee staff that the meeting with Mr. Tejada was an HPAC meeting.
[264] Interview with Miguel Tejada, *supra* note 203, 37–38.
[265] *Id.* at 104–08.
[266] *Id.* at 105.
[267] *Id.* at 27, 37, 106–07.
[268] *Id.* at 88, 106.
[269] *Id.* at 40, 109–10.
[270] *Id.* at 108–10.
[271] *Id.* at 107. Rob Manfred, Jr., executive vice president for labor and human resources, MLB, confirmed to committee staff that HPAC received another vial of B–12 from Mr. Tejada and the vial tested negative for steroids.
[272] Interview with Miguel Tejada, *supra* note 203, at 26.
[273] *Id.* at 28, 34, 108–09.
[274] *Id.* at 34, 109.
[275] *Id.* at 28–29.
[276] *Id.* at 32.
[277] *Id.* at 29.
[278] *Id.* at 30.
[279] *Id.* at 74–75.
[280] *Id.* at 76.

Mr. Tejada, Mr. Palmeiro did not return the call.[281] Mr. Tejada said that when Mr. Palmeiro returned from his 10-day suspension, he and Mr. Tejada did not discuss Mr. Palmeiro's positive test result.[282]

Mr. Tejada stated that he has no personal knowledge of Mr. Palmeiro taking steroids.[283] Mr. Tejada also stated he and Mr. Palmeiro never discussed steroids,[284] and that he never heard rumors of Mr. Palmeiro taking steroids until Mr. Palmeiro testified in front of Congress.[285] Mr. Tejada said he had no knowledge or reason to know how Mr. Palmeiro tested positive for steroids.[286] Mr. Tejada explained that he had never thought Mr. Palmeiro's positive test result had anything to do with the B–12 because the B–12 was tested by MLB.[287]

During the 2005 season, Mr. Tejada was tested under MLB's program twice prior to the interview.[288] Both test results were negative.

ii. Interviews with Players A and B

Based on Miguel Tejada's assertions that he provided liquid vitamin B–12 to Player A and Player B of the Baltimore Orioles, Committee staff felt it necessary to interview the two players.[289]

Player A and Player B confirmed that they had received B–12 from Mr. Tejada.[290] However, the accounts of Player A and Player B differed in significant respects from Mr. Tejada's account. Mr. Tejada stated that prior to the 2005 season, he never gave another player B–12.[291] But Player A and Player B both said that they received B–12 from Mr. Tejada during the 2004 season.[292] Mr. Tejada stated that he gave B–12 to Player B in 2005.[293] However, Player B said that he only received B–12 from Mr. Tejada during the 2004 season.[294] Mr. Tejada explained that the B–12 he purchased came in a box and contained one vial of liquid B–12 and one syringe.[295] Player A stated the B–12 he received from Mr. Tejada

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[281] *Id.* at 77.
[282] *Id.* at 77–78.
[283] *Id.* at 75–76.
[284] *Id.*
[285] *Id.* at 76.
[286] *Id.* at 78–9.
[287] *Id.* at 87, 119
[288] *Id.* at 74, 114–15.
[289] During committee staff's interviews with Player A and Player B, they were asked about their knowledge of steroid use by Mr. Palmeiro. Neither Player A nor Player B had personal knowledge of Mr. Palmeiro taking steroids. Interview by House Committee on Government Reform staff with Player A, baseball player for the Baltimore Orioles, in Baltimore, MD (Sept. 28, 2005) [hereinafter interview with Player A]. Telephone interview with Player B, baseball player for the Baltimore Orioles, in Washington, DC (Oct. 20, 2005) [hereinafter telephone interview with Player B]. Neither was ever approached by anyone having personal knowledge of Mr. Palmeiro taking steroids. (*Id.*) Neither ever had a reason to personally suspect Palmeiro of taking steroids. (*Id.*). Player A stated he was surprised by Mr. Palmeiro's positive test result. (Interview of Player A). Player B did not suspect Mr. Palmeiro of taking steroids because Mr. Palmeiro did not have the body type and he has a nice swing. (Telephone interview with Player B). Player B said Mr. Palmeiro's positive test result was hard for Player B. (*Id.*). Mr. Palmeiro was "the last guy" Player B would think would be on steroids. (*Id.*).
[290] Interview with Player A, *supra* note 289; telephone interview with Player B, *supra* note 289.
[291] Interview with Miguel Tejada, *supra* note 203, at 86.
[292] Interview with Player A, *supra* note 289; telephone interview with Player B, *supra* note 289.
[293] Interview with Miguel Tejada, *supra* note 203, at 51–53, 57–58.
[294] Telephone interview with Player B, *supra* note 289.
[295] Interview with Miguel Tejada, *supra* note 203, at 10–11.

came in an unopened box and contained five syringes.[296] Mr. Tejada stated he gave Players A and B the B–12 after having a joint conversation with them in the ballpark.[297] However, Players A and B said that they had individual, private conversations with Mr. Tejada regarding the B–12.[298]

Mr. Tejada stated that, in the 2004 season, he had only enough B–12 to provide a maximum of 12 injections.[299] However, Player A stated that he injected Mr. Tejada approximately 40–45 times in 2004.[300] Further, Mr. Tejada said that, in the 2005 season, he had only enough B–12 to provide for a handful of injections, and that he last received a B–12 shot in May or June 2005.[301] However, Player A stated that he injected Mr. Tejada approximately 30–35 times in 2005 before Player A voluntarily chose to stop in July 2005.[302]

Mr. Tejada stated that after giving a vial of B–12 to the Players Association, he spoke to Player A and Player B,[303] telling them not to use the B–12 until he got the results from the league.[304] However, Player A told Committee staff that Mr. Tejada never mentioned any problems with the B–12 and never told Player A to quit using it.[305] Player A further stated that after voluntarily choosing to stop injecting Mr. Tejada in July 2005, Mr. Tejada attempted to convince him that there was nothing wrong with the B–12.[306] Player B stated that he never received B–12 from Mr. Tejada during the 2005 season and that Mr. Tejada never told him to quit taking B–12.[307]

Player A stated that during the 2004 season, he accepted 2–3 boxes of B–12 from Mr. Tejada.[308] Player A stated that each box contained a vial of liquid B–12 and five syringes, and that the label on the vial was printed in Spanish and read "B–12" and "Made in Mexico."[309] He stated that in May of the 2005 season, Mr. Tejada gave him one box of B–12.[310]

During his interview with Committee staff, Player A stated he had a remaining vial of what he believed to be B–12 provided to him by Mr. Tejada in May 2005.[311] Player A willingly offered to provide this vial to the Committee. The vial was sent to the University of California, Los Angeles Olympic Analytical Laboratory

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[296] Interview with Player A, *supra* note 289.
[297] Interview with Miguel Tejada, *supra* note 203, at 61–62.
[298] Interview with Player A, *supra* note 289; telephone interview with Player B, *supra* note 289.
[299] Interview with Miguel Tejada, *supra* note 203. Mr. Tejada stated that he had four vials of B–12 at the start of the 2004 season (*Id.* at 68) and that he used three of these vials. (*Id.* at 67) Mr. Tejada stated that each vial contained four injections (*Id.* at 17). As such, Mr. Tejada, would had have access to a total of only 12 injections.
[300] Interview with Player A, *supra* note 289.
[301] Mr. Tejada recalled that at the start of the 2005 season, he had five B–12 vials in his possession, (interview with Miguel Tejada, *supra* note 203, at 68) providing him with a maximum of 20 shots. But, Mr. Tejada stated that, at various times during the 2005 season, he gave one vial each to Player A, (*Id.* at 51), Player B, (*Id.*) Mr. Palmeiro, (*Id.*) the Players Association, (*Id.* at 24, 97) and HPAC (*Id.* at 36, 101). Thus, according to Mr. Tejada, he gave away each of the five vials in his possession.
[302] Interview with Player A, *supra* note 289.
[303] Interview with Miguel Tejada, *supra* note 203, at 111–12.
[304] *Id.* at 112.
[305] Interview with Player A, *supra* note 289.
[306] *Id.*
[307] Telephone interview with Player B, *supra* note 289.
[308] Interview with Player A, *supra* note 289.
[309] *Id.*
[310] *Id.*
[311] *Id.*

("UCLA Olympic Lab") for analysis. The vial was labeled Tiaminal, B–12, 50,000. UCLA Olympic Lab tested the vial for "anabolic androgenic steroids, stimulants and narcotics on the WADA (World Anti-Doping Agency) list."[312] The analytical findings were that "no banned substances were detected."[313]

Player A was tested under the MLB testing program in 2005.[314] Player A recalled that on the day he was tested, he was told that he had to take his test within the next several hours, but was then left unsupervised until he chose to provide a sample.[315] Player A did not test positive for performance-enhancing drugs during the 2005 season.[316]

Player B stated that halfway through the 2004 season, he accepted four boxes of B–12 from Mr. Tejada.[317] He stated that the boxes contained five pre-filled, unopened needles of B–12.[318] Player B explained that he would snap on the syringe to use the B–12.[319] He recalled that the boxes said "Bedoyecta" on them and were unopened.[320] According to Player B, Mr. Tejada also gave him a B–12 vial that came in a plastic bag, and this vial said "Tiaminal" on it and did not come with needles.[321] Player B stated Mr. Tejada gave some needles to use with the vial of B–12.[322] Player B said the label was printed in Spanish.[323] He stated that he believed the B–12 was from the Dominican Republic or Mexico.[324] Player B stated that he did not receive B–12 from Mr. Tejada during the 2005 season.[325] Player B was tested under MLB's program in 2005 and did not test positive for performance-enhancing drugs during the 2005 season.[326]

iii. Interviews with Baltimore Orioles Physician and Trainer

Rafael Palmeiro played for the Baltimore Orioles from 1994–1998 and from 2004–2005. Committee staff interviewed personnel from the Orioles medical and training staff as part of the investigation. On September 7, 2005, Committee staff conducted an in-person and telephone interview of Dr. Charles Silberstein, the orthopedic physician for the Baltimore Orioles.[327] Dr. Silberstein has worked for the Orioles since 1966.[328]

Dr. Silberstein stated that as the Orioles orthopedist, his primary role was to evaluate players for injuries.[329] Dr. Silberstein explained that all medical staff and trainers for the Orioles ask players about their medications and review the supplements taken

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[312] Letter from Don H. Catlin, M.D., director, professor of molecular and medical pharmacology, UCLA Olympic Lab, to House Committee on Government Reform staff (Oct. 24, 2005).
[313] *Id.*
[314] Interview with Player A, *supra* note 289.
[315] *Id.*
[316] *Id.*
[317] Telephone interview with Player B, *supra* note 289.
[318] *Id.*
[319] *Id.*
[320] *Id.*
[321] *Id.*
[322] *Id.*
[323] *Id.*
[324] *Id.*
[325] *Id.*
[326] *Id.*
[327] Interview by House Committee on Government Reform staff with Dr. Charles Silberstein, orthopedic physician, the Baltimore Orioles, in Washington, DC, and Baltimore, MD (Sept. 7, 2005).
[328] *Id.*
[329] *Id.*

by the players.[330] Dr. Silberstein was not aware of any medical doctor for the Orioles prescribing or administering vitamin B–12 to players.[331]

When asked about his knowledge of steroid use by Mr. Palmeiro during his two tenures with the Orioles, Dr. Silberstein stated that Mr. Palmeiro was the last person in the Baltimore Orioles association that he would ever think would be involved with steroids.[332] Dr. Silberstein indicated that he views Mr. Palmeiro as a solid citizen and was shocked to see Mr. Palmeiro involved in any controversy.[333]

Also on September 7, 2005, Committee staff conducted an in-person and telephone interview of Richard Bancells, the head athletic trainer for the Baltimore Orioles.[334] Mr. Bancells started working for the Orioles in 1984 as the assistant athletic trainer.[335] He became the head athletic trainer in 1988.[336]

Mr. Bancells stated that the Orioles have a policy that the ball club does not supply supplements to the players.[337] Mr. Bancells explained that he recommends that players not take supplements because they do not know what they are receiving.[338] Mr. Bancells further stated that approximately 3–4 years ago, the Orioles discontinued giving vitamins to players.[339]

Mr. Bancells stated the Orioles have an educational program in spring training and the players are cautioned about supplements.[340] He explained that the Orioles have a nutritionist on staff who can answer players' questions regarding supplements and that the staff will attempt to check out supplements provided by the players to tell if the supplement is not regulated, if the label is accurate, if there are other ingredients not listed, or if the amount on the packaging is incorrect.[341]

As the head athletic trainer, Mr. Bancells said that he is "mostly aware of what medicines the players are taking."[342] Mr. Bancells indicated that he will routinely ask players about their medications. He stated that if players were to ask him for medications, he would pass along the request to the team physician.[343]

Mr. Bancells said that vitamin B–12 has always been a part of baseball.[344] He said that in the past, the vitamin has been readily available and administered by team physicians, as trainers are not allowed to give injections.[345]

Mr. Bancells stated that Mr. Palmeiro never asked for a B–12 shot or asked about receiving a B–12 shot.[346] Mr. Bancells said he never witnessed B–12 in Mr. Palmeiro's possession.[347] Mr. Bancells

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[330] *Id.*
[331] *Id.*
[332] *Id.*
[333] *Id.*
[334] Interview by House Committee on Government Reform staff with Richard Bancells, head athletic trainer, the Baltimore Orioles, in Washington, DC, and Baltimore, MD (Sept. 7, 2005).
[335] *Id.*
[336] *Id.*
[337] *Id.*
[338] *Id.*
[339] *Id.*
[340] *Id.*
[341] *Id.*
[342] *Id.*
[343] *Id.*
[344] *Id.*
[345] *Id.*
[346] *Id.*
[347] *Id.*

stated that he does not believe that Mr. Palmeiro asked other team trainers for a B–12 shot.[348] To Mr. Bancells' knowledge, Mr. Palmeiro did not ask the Orioles medical doctors for B–12.[349]

When asked about his knowledge of steroid use by Mr. Palmeiro during his two tenures with the Orioles, Mr. Bancells stated he had no reason to believe Mr. Palmeiro took steroids.[350] Mr. Bancells explained that he based this belief on his observation of Mr. Palmeiro's physical stature, as Mr. Palmeiro was not "bulked up."[351]

G. Interviews with Officials from the Texas Rangers During Rafael Palmeiro's Time with the Texas Rangers

Rafael Palmeiro played for the Texas Rangers from 1989–1993 and 1999–2003. Personnel from the Texas Rangers medical and training staff were interviewed by Committee staff. All those interviewed stated they had no personal knowledge of Mr. Palmeiro taking steroids; that they were never approached by anyone who claimed to have personal knowledge of Mr. Palmeiro taking steroids; and that they never had professional concerns or suspicions that Mr. Palmeiro was taking steroids.[352]

i. Interview with Dr. B.J. Mycoskie

On September 16, 2005, Committee staff conducted a telephone interview of Dr. B.J. Mycoskie.[353] Dr. B.J. Mycoskie began working for the Texas Rangers in 1972 when he served as the head doctor and medical director for the team.[354] In 1985, Dr. B.J. Mycoskie turned over his work to his son, Dr. Mike Mycoskie.[355] Dr. B.J. Mycoskie stated he still attends spring training every year and occasionally assists in the training room before home games.[356]

Dr. B.J. Mycoskie stated that it was common to administer B–12 shots to players.[357] He indicated that the shot would always be recorded, indicating who received it, how much was injected, and where the shot was injected.[358] Dr. B.J. Mycoskie stated that B–12 is not used for performance-enhancement.[359] Dr. B.J. Mycoskie said B–12 can be helpful for those who are tired, "washed out," irritable, or suffering from chronic fatigue syndrome.[360] Dr. Mycoskie

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[348] *Id.*
[349] *Id.*
[350] *Id.*
[351] *Id.*
[352] Telephone interview by House Committee on Government Reform staff with Dr. B.J. Mycoskie, former head doctor and medical director, Texas Rangers, in Washington, DC (Sept. 16, 2005) [hereinafter telephone interview with Dr. B.J. Mycoskie]; telephone interview by House Committee on Government Reform staff with Dr. Mike Mycoskie, former medical director, Texas Rangers, in Washington, DC (Sept. 26, 2005) [hereinafter telephone interview with Dr. Mike Mycoskie]; telephone interview by House Committee on Government Reform staff with Dr. David Hunter, internist, Texas Rangers, in Washington, DC (Sept. 23, 2005) [hereinafter telephone interview with Dr. David Hunter]; telephone interview by House Committee on Government Reform staff with Jamie Reed, head trainer, Texas Rangers, former assistant trainer, Baltimore Orioles, in Washington, DC (Sept. 16, 2005) [hereinafter telephone interview with Jamie Reed]; telephone interview by House Committee on Government Reform staff with Dan Wheat, former head trainer, Texas Rangers, in Washington, DC (Sept. 15, 2005) [hereinafter telephone interview with Dan Wheat].
[353] Telephone interview with Dr. B.J. Mycoskie, *supra* note 352.
[354] *Id.*
[355] *Id.*
[356] *Id.*
[357] *Id.*
[358] *Id.*
[359] *Id.*
[360] *Id.*

stated that he performed an annual spring training physical of the players, but did not conduct any other evaluation prior to prescribing B–12 to players.[361] Dr. B.J. Mycoskie stated B–12 shots were not given very often to players, maybe three to six times per season, and that fewer than 12 players in a year would receive them.[362]

Dr. B.J. Mycoskie stated he gave B–12 shots to both Rafael and Lynn Palmeiro.[363] Dr. B.J. Mycoskie's recollection was that the shots took place in 2003 at spring training in Arizona.[364] Dr. B.J. Mycoskie indicated that Mr. Palmeiro would come to him and discuss getting a B–12 shot.[365] Dr. B.J. Mycoskie stated that he did not recall giving Mr. Palmeiro B–12 shots during Mr. Palmeiro's first tenure with the Rangers.[366]

Dr. B.J. Mycoskie recalled that he was never worried about B–12 contamination because all syringes were individually packaged and sealed and the team received the B–12 from one drug supplier in California.[367]

ii. Interview with Dr. Mike Mycoskie

On September 26, 2005, Committee staff conducted a telephone interview with Dr. Mike Mycoskie.[368] Dr. Mike Mycoskie is an orthopedic surgeon who was formerly on the medical staff of the Texas Rangers.[369] Dr. Mike Mycoskie began as a medical consultant for the Rangers in 1981 and became the medical director in approximately 1985.[370] In 1996, Mike Mycoskie returned to being a medical consultant. He stopped working for the Rangers in 2003.[371] Dr. Mike Mycoskie is the son of Dr. B.J. Mycoskie.[372]

Dr. Mike Mycoskie stated he did provide B–12 shots to players, a couple times per year.[373] He explained that the B–12 shot requests were always initiated by the players and no more than a handful of players would request the shots each season.[374] Dr. Mike Mycoskie stated that he is sure that he provided Mr. Palmeiro with a B–12 shot.[375]

Dr. Mike Mycoskie stated that he never had professional concerns or suspicions that Mr. Palmeiro was taking steroids because Mr. Palmeiro did not have the body type of a steroid user.[376]

iii. Interview with Dr. David Hunter

On September 23, 2005, Committee staff conducted a telephone interview of Dr. David Hunter.[377] Dr. Hunter began working with the Texas Rangers in 1981 as an internal medicine consultant.[378]

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[361] *Id.*
[362] *Id.*
[363] *Id.*
[364] *Id.*
[365] *Id.*
[366] *Id.*
[367] *Id.*
[368] Telephone interview with Dr. Mike Mycoskie, *supra* note 352.
[369] *Id.*
[370] *Id.*
[371] *Id.*
[372] *Id.* Telephone interview with Dr. B.J. Mycoskie, *supra* note 352.
[373] Telephone interview with Dr. Mike Mycoskie, *supra* note 352.
[374] *Id.*
[375] *Id.*
[376] *Id.*
[377] Telephone interview with Dr. David Hunter, *supra* note 352.
[378] *Id.*

In the mid 1980's, Dr. Hunter became the primary internist for the Rangers.[379]

Dr. Hunter explained that he did see every player, and had no recollection of treating Mr. Palmeiro for a significant illness during either of Mr. Palmeiro's tenures with the Rangers.[380] Dr. Hunter stated that he did not treat Mr. Palmeiro's family, as he tends to not treat the players' families.[381] According to Dr. Hunter, he never gave Mr. Palmeiro any oral or injectable vitamins during either of Mr. Palmeiro's tenures with the Rangers.[382]

Dr. Hunter did not recall Mr. Palmeiro ever asking for B–12.[383] Dr. Hunter stated that he was aware that players periodically received B–12 shots and that he would assume Mr. Palmeiro received B–12 shots.[384] Dr. Hunter said that Dr. B.J. Mycoskie would give the B–12 shots and that Dr. B.J. Mycoskie had more interaction with the players than Dr. Hunter.[385]

Dr. Hunter said his reaction to learning that Mr. Palmeiro tested positive for steroids ranged from shock and disbelief to anger and sadness.[386] Dr. Hunter said Mr. Palmeiro's positive test result was the last thing in the world he thought would happen.[387]

iv. Interview with Jamie Reed

On September 16, 2005, Committee staff conducted a telephone interview of Jamie Reed. Mr. Reed is the head athletic trainer for the Texas Rangers.[388] Mr. Reed began serving his role with the Rangers in 2003.[389] He also served as the Baltimore Orioles assistant trainer from 1989–1996.[390]

Mr. Reed said that he was familiar with players receiving B–12 injections while with the Rangers.[391] He stated that he did not recall a specific request from Mr. Palmeiro for B–12.[392] Mr. Reed explained that as the athletic trainer, he was not permitted to prescribe medicines or give injections to players.[393]

With regard to the time that Mr. Palmeiro and Mr. Reed were in Baltimore together (1994–1996), Mr. Reed stated that he did not personally observe Mr. Palmeiro taking steroids.[394] In addition, Mr. Reed recalled that he never had a discussion with anyone who claimed to have personal knowledge of Mr. Palmeiro taking steroids.[395] In addition, Mr. Reed stated he never had a professional reason that led him to believe that Mr. Palmeiro might be taking steroids.[396] Mr. Reed said that he did not suspect that Mr.

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[379] *Id.*
[380] *Id.*
[381] *Id.*
[382] *Id.*
[383] *Id.*
[384] *Id.*
[385] *Id.*
[386] *Id.*
[387] *Id.*
[388] Telephone interview with Jamie Reed, *supra* note 352.
[389] *Id.*
[390] *Id.*
[391] *Id.*
[392] *Id.*
[393] *Id.*
[394] *Id.*
[395] *Id.*
[396] *Id.*

Palmeiro was taking steroids because Mr. Palmeiro's body size was consistent when he played in Baltimore and in Texas.[397]

v. Interview with Dan Wheat

On September 15, 2005, Committee staff conducted a telephone interview of Dan Wheat.[398] Mr. Wheat began working for the Texas Rangers as an assistant athletic trainer in 1985.[399] In 1991, Mr. Wheat was promoted to head athletic trainer.[400] Mr. Wheat left the Rangers in 2002.[401]

Mr. Wheat stated that athletic trainers were not permitted to give injections to players.[402] The trainers would distribute over-the-counter and prescription medications to players per the team doctors' requests.[403]

Mr. Wheat recalled that B–12 shots were frequently administered to players, but could not recall which players received the shots.[404] He said that players typically received the shots two or three times throughout the year.[405] Mr. Wheat said players took B–12 because they believed the vitamin made them feel better and gave them a boost.[406]

Mr. Wheat was also asked about the use of steroids and amphetamines by players on the Rangers.[407] He stated that he suspected that some players might have used steroids, but felt that the use of amphetamines was "prevalent."[408] He would frequently hear players say things like "Who's got 'em?" and "I need another one" in reference to amphetamines.[409] He related an anecdote involving "greenies," a name for amphetamines.[410] He once asked a player, "Of the nine players on the field, how many took greenies today?"[411] The answer from the players was "eight."[412] Mr. Wheat indicated that the use of amphetamines remained prevalent throughout his tenure as trainer, and that he thought that amphetamine use in Major League Baseball was an even bigger problem than steroid use.[413]

Another player interviewed by Committee staff also indicated that amphetamine use may be prevalent and accepted in MLB.[414] Regarding amphetamine use in Major League Baseball, he stated that "I am sure different guys have," noting that "it is part of the baseball world." He also related that he stays away from the coffee in the clubhouse because of concerns that players have spiked the coffee with amphetamines. He indicated that he is "sure" that players have spiked it in the past, that "they don't think it is anything big," and that "in my . . . career, I can guarantee you there has

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[397] *Id.*
[398] Telephone interview with Dan Wheat, *supra* note 352.
[399] *Id.*
[400] *Id.*
[401] *Id.*
[402] *Id.*
[403] *Id.*
[404] *Id.*
[405] *Id.*
[406] *Id.*
[407] *Id.*
[408] *Id.*
[409] *Id.*
[410] *Id.*
[411] *Id.*
[412] *Id.*
[413] *Id.*
[414] This player's identity will not be disclosed.

[sic] been players, when a team is struggling or a team is going through a bad streak, they will spike the coffee." Although he indicated that these concerns were "pretty much" restricted to the era before MLB drug testing, he stated that "it still happens" today and that players are unaware of the risk.

H. Jose Canseco's Allegations

In February 2005, Jose Canseco published *Juiced: Wild Times, Rampant 'Roids, Smash Hits, and How Baseball Got Big.*[415] In his book, Mr. Canseco writes of the 1992–1993 season during which he played for the Texas Rangers, along with teammates Rafael Palmeiro, Ivan Rodriguez, and Juan Gonzalez.[416]

Mr. Canseco wrote:

> I sat down with Rafael Palmeiro, Juan Gonzalez, and Ivan Rodriguez, and educated them about steroids. Soon I was injecting all three of them. I personally injected each of those three guys many times, until they became more familiar with how to use a needle and were able to do it themselves.[417]
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> * * *
>
> Palmeiro, Gonzalez, and Ivan Rodriguez all started asking me a lot of questions about steroids soon after I joined the Rangers.[418]

In addition, Mr. Canseco wrote that the players were on a "combination of growth hormone and steroids—mostly Deca and Winstrol."[419] Winstrol is another name for stanozolol, the steroid detected in Mr. Palmeiro's urine.[420]

i. Correspondence with Jose Canseco

On October 24, 2005, Chairman Davis and Representative Waxman sent a letter to Jose Canseco, via Mr. Canseco's attorney, Robert Saunooke.[421] The letter requested that Mr. Canseco "take this opportunity to share with the Committee any additional information or evidence you may have regarding Mr. Palmeiro and any allegations of his steroid use."[422]

On October 28, 2005, Mr. Saunooke responded in writing to Chairman Davis on Mr. Canseco's behalf.[423] Mr. Saunooke wrote:

> Mr. Canseco has no additional information or knowledge other than that which is set forth in his book . . . regarding use by Rafeal [sic] Palmeiro. Mr. Canseco stands behind the statements in his book, the timing during which the events took place as set forth in his book, and his prior

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[415] Canseco, *supra* note 10.

[416] *Id.* at 131–36. Mr. Canseco, Mr. Palmeiro, Mr. Rodriquez, and Mr. Gonzalez played on the Texas Rangers together during the 1992–1993 season.

[417] Canseco, *supra* note 10, at 133.

[418] *Id.* at 135.

[419] *Id.*

[420] Letter from Gary I. Wadler, clinical associate professor of medicine at New York University School of Medicine, to Tom Davis, chairman, House Committee on Government Reform (Oct. 27, 2005).

[421] Letter from Chairman Tom Davis and Ranking Member Henry A. Waxman, House Committee on Government Reform, to Jose Canseco (Oct. 24, 2005).

[422] *Id.*

[423] Letter from Jose Canseco, to Chairman Tom Davis and Ranking Member Henry A. Waxman, House Committee on Government Reform (Oct. 28, 2005).

statements to the Committee during the hearings of March 17, 2005.[424]

ii. Interview with Ivan Rodriguez

Ivan Rodriguez and Mr. Palmeiro played on the Texas Rangers together from 1991–1993 and 1999–2002. Because of the length of time the two men played together and the allegations by Jose Canseco, Committee staff interviewed Mr. Rodriguez. This interview was conducted on October 18, 2005.[425]

Mr. Rodriguez was asked about his knowledge of steroid use by Mr. Palmeiro. Mr. Rodriguez stated that during their playing time together, he had no personal knowledge of Mr. Palmeiro taking steroids.[426] Mr. Rodriguez stated he was never approached by anyone else who had personal knowledge of Mr. Palmeiro taking steroids.[427] Mr. Rodriguez explained that he never had personal reasons to suspect that Mr. Palmeiro was taking steroids.[428]

Mr. Rodriguez was asked about the portions of Jose Canseco's book, *Juiced,* which referred to events that allegedly occurred when Mr. Rodriguez, Mr. Palmeiro, Juan Gonzalez, and Mr. Canseco played together for the Texas Rangers.[429] Mr. Rodriguez said Mr. Canseco and Mr. Palmeiro had a relationship in the field because they were teammates.[430] Mr. Rodriguez stated that he never heard Mr. Canseco and Mr. Palmeiro talk about any subject other than baseball.[431] Mr. Rodriguez said that he never heard Mr. Canseco and Mr. Palmeiro talking about steroids. Mr. Rodriguez stated that he never saw Mr. Canseco inject Mr. Palmeiro.[432]

iii. Interview with Juan Gonzalez

Juan Gonzalez and Mr. Palmeiro played on the Texas Rangers together from 1991–1993, in 1999, and from 2002–2003. Because of the length of time the two men played together and the allegations by Jose Canseco, Committee staff interviewed Mr. Gonzalez. This interview was conducted on October 4, 2005, by telephone.[433]

Mr. Gonzalez stated that he first met Mr. Palmeiro at spring training in 1990.[434] Mr. Gonzalez said he and Mr. Palmeiro were friends and would talk like teammates and that the two did not socialize outside of the clubhouse.[435]

Mr. Gonzalez was asked about his knowledge of steroid use by Mr. Palmeiro. Mr. Gonzalez stated that during their playing time together, he had no personal knowledge of Mr. Palmeiro taking steroids.[436] Mr. Gonzalez stated he was never approached by any-

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[424] *Id.*

[425] Telephone interview by House Committee on Government Reform staff with Ivan Rodriguez, former Texas Ranger, in Washington, DC (Oct. 18, 2005) [hereinafter telephone interview with Ivan Rodriguez].

[426] *Id.*

[427] *Id.*

[428] *Id.*

[429] Mr. Rodriguez was not asked about allegations surrounding his own personal steroid use, as such questions fell outside the scope of the committee's investigation.

[430] Telephone interview with Ivan Rodriguez, *supra* note 425.

[431] *Id.*

[432] *Id.*

[433] Telephone interview by House Committee on Government Reform staff with Juan Gonzalez, former Texas Ranger, in Washington, DC (Oct. 4, 2005) [hereinafter telephone interview with Juan Gonzalez].

[434] *Id.*

[435] *Id.*

[436] *Id.*

one else who had personal knowledge of Mr. Palmeiro taking steroids.[437] Mr. Gonzalez explained that he never had personal reasons to suspect that Mr. Palmeiro was taking steroids.[438]

Mr. Gonzalez was asked about the portions of Jose Canseco's book, *Juiced.*[439] Mr. Gonzalez said he never saw Mr. Canseco talk to Mr. Palmeiro about steroids.[440] Mr. Gonzalez stated that he never saw Mr. Canseco inject Mr. Palmeiro. Mr. Gonzalez recalled that Mr. Canseco never told him that Mr. Canseco gave Mr. Palmeiro steroids or that Mr. Canseco injected Mr. Palmeiro with steroids.[441] Mr. Gonzalez said he only heard Mr. Palmeiro and Mr. Canseco talk about baseball, and that Mr. Palmeiro and Mr. Canseco were from the same country, so they spoke casually to each other and were professional.[442] Mr. Gonzalez stated that he did not know if Mr. Palmeiro and Mr. Canseco socialized outside of the clubhouse.[443]

iv. Other Evidence[444]

Representatives for Mr. Palmeiro provided information to the Committee in support of Mr. Palmeiro's assertion that his positive drug test was due to contaminated B–12. On August 12, 2005, Mr. Palmeiro's attorneys provided a letter from Dr. Ronald Maugham, of Loughborough University.[445] This letter spoke to the general issue of contaminated nutritional supplements, indicating that contamination of such supplements by steroids had occurred in the past. Dr. Maugham stated that he was unaware of any cases of contamination of supplements by stanozolol.[446] He also, however, provided no evidence indicating that B–12 had ever been contaminated by stanozolol or any other steroid.[447]

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[437] *Id.*

[438] *Id.*

[439] Mr. Gonzalez was not asked about allegations surrounding his own personal steroid use, as such questions fell outside the scope of the committee's investigation.

[440] Telephone interview with Juan Gonzalez, *supra* note 433.

[441] *Id.*

[442] *Id.*

[443] *Id.*

[444] Tracy Ringolsby, *Piedra's Take on Palmeiro: "We All Make Mistakes,"* Rocky Mountain News (Denver, Co.), Aug. 3, 2005, at 5C. The article indicated that Jorge Piedra of the Colorado Rockies was an off-season workout partner of Mr. Palmeiro's. Like Mr. Palmeiro, Mr. Piedra was suspended by Major League Baseball (on Apr. 11, 2005) for violation of the MLB drug policy. Because of his alleged relationship with Mr. Palmeiro and the fact that each had a positive drug test in 2005, committee staff interviewed Mr. Piedra by telephone on Sept. 12, 2005. Telephone interview with Jorge Piedra, baseball player for the Colorado Rockies, in Washington, DC (Sept. 12, 2005). Mr. Piedra stated that in the 2003–2004 off season, he worked out at the Fast Twitch Sports Training Center in Southlake, TX. (*Id.*) He indicated that Mr. Palmeiro worked out at the same facility six to eight times while Mr. Piedra was there. (*Id.*) Mr. Piedra indicated that his interaction with Mr. Palmeiro was limited. (*Id.*) Mr. Piedra stated that Mr. Palmeiro knew he was a ballplayer and would say hello; that the two exchanged small talk a few times about family and where they would practice hitting; and that the two have not spoken to each other since, except when their teams, the Rockies and the Orioles, played against each other. (*Id.*) Mr. Piedra indicated that at these games, Mr. Palmeiro recognized Mr. Piedra and exchanged a short greeting. (*Id.*) During the committee's interview of Mr. Palmeiro, he stated that he participated in an off season workout at the Fast Twitch facility in Southlake, TX during the 2003–2004 off season. Interview with Rafael Palmeiro, baseball player for the Baltimore Orioles, in Washington, DC, 11–14 (Aug. 25, 2005). Mr. Palmeiro indicated that he did not know Mr. Piedra, did not remember his name, (*Id.* at 12) and did not know if he trained with Mr. Piedra (*Id.* at 12).

[445] Letter from Ron Maughan, Ph.D. FACSM, Loughborough University to Adam C. Sloane, attorney for Rafael Palmeiro (Aug. 11, 2005).

[446] *Id.*

[447] *Id.*

Mr. Palmeiro's representatives sent a second letter to the Committee on September 6, 2005.[448] This letter, from Dr. Milton S. Pinedo, the president of the Dominican Federation of Sports Medicine, stated that Dr. Pinedo had seen cases in the Dominican Republic where B–12 had been deliberately mixed with steroids.[449] This letter provided no specific information on the contamination or deliberate mixture of B–12 with stanozolol.[450]

Committee staff consulted with WADA, the U.S. Anti Doping Agency [USADA], and an independent expert on steroids, Dr. Gary Wadler, of the New York University School of Medicine, regarding vitamin B–12 contamination. WADA and USADA confirmed for Committee staff that the organizations had never seen a case in which a positive steroid test was caused by contaminated B–12, or a case where an athlete claimed that his or her steroid exposure was due to contaminated vitamin B–12, or the deliberate mixing of vitamin B–12 and steroids.[451] Dr. Wadler also informed Committee staff that he had never seen such a case.[452]

As part of the investigation, Committee staff inquired about the use of B–12. The Committee staff determined that B–12 in injectable form can legally be obtained only via prescription.[453] The only approved use of this drug is to treat patients with pernicious anemia and similar conditions resulting in B–12 deficiencies.[454] There is no medical evidence that vitamin B–12 improves the well-being of individuals who do not suffer from B–12 deficiencies.[455]

IV. Findings

The Committee will not make a perjury referral to the Department of Justice. A referral for perjury is a serious step. The evidence before the Committee is insufficient to merit a perjury referral.

Mr. Palmeiro's urine sample that tested positive for stanozolol was collected on May 4, 2005. Based on the detection windows for stanozolol, which are as long as 4 weeks, the Committee is unable to conclude that Mr. Palmeiro took—either purposefully or inadvertently—the stanozolol that resulted in his positive test result before March 17, 2005, the date of his congressional testimony.

During his interview with Committee staff, Mr. Palmeiro stated that his best guess as to what caused his positive steroid test was his use of liquid B–12. The Committee obtained no evidence indicating that B–12 has ever been inadvertently contaminated with stanozolol. The vial of B–12 provided to Mr. Palmeiro by Mr. Tejada was discarded by Mrs. Palmeiro. However, two bottles of B–12 were provided to the Players Association by Mr. Tejada. Neither

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[448] Letter from Milton S. Pinedo, M.D., president of the Dominican Federation of Sports Medicine, to Adam C. Sloane, attorney for Rafael Palmeiro (Aug. 25, 2005).

[449] *Id.*

[450] *Id.*

[451] E-mail from Elizabeth Hunter, director of communication, World Anti-Doping Agency, to House Committee on Government Reform staff (Nov. 9, 2005, 07:32 EST) (on file with House Committee on Government Reform). E-mail from Travis Tygart, general counsel, U.S. Anti-Doping Agency, to House Committee on Government Reform staff (Nov. 7, 2005, 21:45:29 EST) (on file with House Committee on Government Reform).

[452] Letter from Gary I. Wadler, clinical associate professor of medicine at New York University School of Medicine, to Tom Davis, chairman, House Committee on Government Reform (Nov. 9, 2005).

[453] Memorandum from Congressional Research Service, *Vitamin 12 Therapy,* (Nov. 4, 2005).

[454] *Id.*

[455] *Id.*

sample was contaminated with stanozolol. During the Committee staff's interview of Player A, he stated he had a remaining vial of B–12 provided to him by Mr. Tejada in May 2005. Player A gave to the Committee the remainder of the vial of B–12. This bottle was tested, and also contained no stanozolol.

During the 2005 season, Mr. Tejada and Player A both injected B–12 purchased by Mr. Tejada and neither tested positive for steroids under MLB's testing program. Based on this information, the interviews with Miguel Tejada and Player A, and the analysis run on the vial of B–12 provided to Player A by Mr. Tejada, the Committee is unable to determine whether the B–12 provided to Mr. Palmeiro by Mr. Tejada contained stanozolol.

In his book, Jose Canseco alleged that he personally taught Mr. Palmeiro how to take steroids and injected Mr. Palmeiro with steroids. Mr. Palmeiro denied these allegations. In addition, Ivan Rodriguez and Juan Gonzalez, both teammates of Mr. Canseco and Mr. Palmeiro, and both of whom Mr. Canseco alleged were present during Mr. Palmeiro's steroid use, stated they have no personal knowledge of Mr. Palmeiro taking steroids. Mr. Canseco was given the opportunity to provide the Committee with additional information regarding Mr. Palmeiro's steroid use, as Mr. Canseco's book, *Juiced,* does not provide dates and contains general, rather than specific descriptions of Mr. Palmeiro's alleged steroid use. Mr. Canseco chose not to elaborate further on the general information in his book.

The Committee staff also interviewed current and former teammates, trainers, and team physicians regarding knowledge of Mr. Palmeiro's steroid use. The individuals who were interviewed stated they had no personal knowledge or information from any other source that Mr. Palmeiro took steroids.

In the absence of specific evidence that Mr. Palmeiro took steroids prior to March 17, 2005, the Committee will not be referring the matter to the Department of Justice for a possible perjury prosecution.

V. Other Matters

During this investigation, the Committee learned of information relevant to the policy debate in Congress about the need for Federal standards for performance-enhancing drug testing in professional sports.

First, the Committee learned that the problem of performance enhancing drugs in Major League Baseball may not be restricted to steroids. The Committee heard from two witnesses—Dan Wheat and a player interviewed as part of the investigation—about the use of amphetamines in Major League Baseball. Mr. Wheat indicated that the use of amphetamines was prevalent, and that amphetamines were an even bigger problem in Major League Baseball than steroids. The player who was interviewed indicated that they were used by a number of players, and that their use was widely accepted and considered "part of the baseball world." He also indicated that on at least one occasion in his career, players had spiked clubhouse coffee with amphetamines.

Second, the testimony of two players—Mr. Palmeiro and Player A—raised questions about the integrity of MLB's testing program collection procedures. Pursuant to MLB's testing program, if a

player is unable to provide a sample, the player may be given "an hour" to attempt another sample.[456] In addition, the collector "may have to stay 1 hour after the end of the game to collect an adequate sample."[457] However, both Mr. Palmeiro and Player A told Committee staff that on the day they were informed they would be tested under the MLB testing program, they were given a window of several hours between the time they were notified and the time they were required to take the test. During this time, they were unsupervised, and able to come and go from the locker room and other areas as they pleased. It is the Committee's understanding that any additional time given to players to provide a urine sample, is based upon the player being unable to provide an adequate sample, not based upon the player choosing to provide his sample at a later time. The time between notification and sample collection provides opportunities for players to cheat on their drug tests—either by taking masking agents to avoid the detection of steroids in their urine or by more invasive methods.

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[456] MLB testing program, *supra* note 44, at Addendum A.
[457] *Id.*