El Monticulo ("The Mound"): The Disparate Treatment of Latin American Baseball Players in Major League Baseball

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EL MONTÍCULO ("THE MOUND"): THE DISPARATE TREATMENT OF LATIN AMERICAN BASEBALL PLAYERS IN MAJOR LEAGUE BASEBALL

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I. INTRODUCTION

While baseball is commonly recognized as the great American pastime, the game is undeniably becoming a global pursuit. In fact, as of the 2002 season, over one quarter of the players in Major League Baseball ("MLB") were born outside of the United States. Latin American ballplayers, in particular, have long contributed to baseball’s deep and rich history, and today occupy a substantial portion of MLB rosters. Major League Baseball recently recognized this long standing contribution by naming a Latin American Legends team. In announcing the Legends team, MLB

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Commissioner Bud Selig noted that Latin American ballplayers have a “deep passion for the game of baseball, and have made immense contributions to the national pastime.”

Not only are Latin American ballplayers an important part of baseball’s past, but it is readily apparent that they will play a critical role in baseball’s future. Recently, players of Latin American origin have garnered several of MLB’s most coveted and respected awards. In addition, in 2005, Chicago White Sox manager Ozzie Guillén became the first Latin American to guide his team to a World Series victory. Simply put, Latin American ballplayers represent some of the most coveted and highest paid players at their respective positions in MLB.

It is perhaps the vast and many successes of today’s Latin American ballplayers that overshadows the fact that always looming in the background of these successes are stories of disparate treatment and

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5. Jesse Sanchez, Latino Legends Announced: Clemente, Carew, Manny, Pedro and Pujols Among 12 Honorees, mlb.com (October 26, 2005) http://arod.mlb.com/news/article.jsp?ymd=20051026&content_id=1260107&vkey=ps2005news&fext=.jsp (last visited July 2, 2008) (Commissioner Selig further expounded that this team was created to “reflect those contributions and to honor the indelible mark they [Latinos] have left on the game.”).

6. See Vargas, supra note 1, at 2 (noting that “[i]n the globalization of baseball, Latin American countries, particularly the Dominican Republic and Venezuela, are at the forefront of MLB teams’ attention and activities as they deepen their search for the next generation of Latino superstars.”); see also Guevara & Fidler, supra note 2, at 2 (“Players from Latin American countries represented 88 percent of the total number of the foreign countries represented on MLB rosters on opening day of the 2002 season . . . .”); Wendel, supra note 3 at xi (forward by Bob Costas notes that as of 2001, nearly 20-percent of MLB roster spots were occupied by Latino players).

7. See, e.g., 2006 MLB Awards: Johan Santana, Venezuela, American League (“AL”) Cy Young; Hanley Ramirez, Dominican Republic, National League (“NL”) Rookie of the Year (“ROY”). 2005 MLB Awards: Bartolo Colón, Dominican Republic, AL Cy Young; Albert Pujols, NL Most Valuable Player (“MVP”). 2004 Awards: Johan Santana, AL Cy Young; Vladimir Guerrero, AL MVP; 2003 Awards: Alex Rodriguez, AL MVP; Ángel Berroa, Dominican Republic, AL ROY; Tony Péña, Dominican Republic, AL Manager of the Year, http://mlb.mlb.com/NASApp/mlb/mlb/awards/index.jsp (last visited July 12, 2008); see also Bob Wolfley, Latino Baseball Players Finally Get Their Due, Milwaukee Journal Sentinel, Sept. 23, 2005 (noting that 9 of the 20 all-star starters were of Latino descent).

8. Associated Press, Guillén Returns to Birth Home a Proud Champion (November 4, 20005) available at http://sports.espn.go.com/mlb/news/story?id=2214222 (last visited July 2, 2008) (Guillén made it very clear that this victory was not only important for him, but it was important for the citizens of his homeland: “This is for all of Venezuela . . . I’m filled with pride, that a Venezuelan can hold this trophy in his hands.”).

hardships suffered by these players. While some might write-off poor treatment of Latin American ballplayers as a characteristic of the past, sufficient evidence continues to arise that suggests many Latin American ballplayers still suffer from disparate treatment when compared to their MLB teammates. The purpose of this article is to examine the areas of reported disparate treatment and to suggest potential avenues for positive social change.

This article consists of four parts. First, it provides an overview of Latin Americans in United States professional baseball, in part, addressing barriers to their entrance into the league. This section also examines the historical role of major league scouts in bringing Latin American players into the United States, and the importance of Latin American ballplayers in today's game. Second, it examines the reported unfair treatment Latin American ballplayers suffer before, during, and after signing with MLB teams. Next, the article examines proposals made by other scholars and journalists to curb the abuses endured by Latin American ballplayers, and then outlines a roadmap aimed at preventing the disparate treatment of Latin American ballplayers. The crux of this paper's proposal is that MLB make a genuine effort to self-regulate in real and meaningful ways—just as it has begun to do in light of its recent steroid scandal. Finally, the article concludes by setting forth why MLB should make efforts to remedy this scarcely known social problem.

II. LATIN AMERICAN PRESENCE IN MAJOR LEAGUE BASESBALL

A. EARLY LATIN AMERICAN BALLPLAYERS

Esteban Bellán is widely regarded as the first Latin American ballplayer to play in a United States professional baseball league. Bellán, a native of Havana, Cuba, played infield for the Troy Haymakers and the New York Mutuals from 1871-1873. He learned to play baseball while attending Fordham University, where he took part in the first nine-man,
college game of baseball in the United States. Vincent Nava was the second Latin American player in the major leagues and the first to come from Mexico. Nava played catcher for the Providence Grays (1882-1884) and the Baltimore Orioles (1885-1886). Unlike Bellán, Nava was reportedly dark-skinned and played just prior to the induction of American professional baseball's color barrier.

The implementation of the color barrier did not present a total bar to Latin American participation in the major leagues. For example, Cubans Adolfo Luque and Mike González played in the majors from 1914-1935 and 1912-1932, respectively. It was possible for Cuban ballplayers like González and Luque to enter professional baseball at this time, when African-Americans could not, because these Cuban ballplayers appeared white. Despite the fact that they were considered white enough to play in MLB, Luque and González typically found themselves as punch lines for racial stereotypes and jokes.

Although Latin American players participated in American professional baseball long before his presence, Roberto Clemente is often referred to as this group's trailblazer and arguably parallels the importance Jackie Robinson had for African-American ballplayers. In fact, some strongly

14. Id. (“During his time at Fordham, Bellán played for the newly created Fordham Rose Hill Baseball Club. Founded in the late 1850's, the Fordham Rose Hill's played the first ever nine-man team college baseball game in the United States against St. Francis Xavier College on November 3, 1859.”).


16. Id.

17. Id.

18. Marcos Breton, Fields of Broken Dreams: Latinos and Baseball, ColorLines, (Spring 2000) (“[M]any early Latino players, with their ‘un-American’ skin colors, were treated like novelties and slipped under the U.S. racial radar. But the best Latino players, whose African ancestry was evident, were barred from the big leagues, along with legendary Negro Leaguers like Hall of Famer Josh Gibson.”).


20. Id. at 12.

21. Id. (“Adolfo Luque, became a star. In a career that spanned from 1914 to 1935, Luque won 194 games, claimed a World Series victory, and, in 1923, led all National League pitchers with a microscopic 1.93 earned run average. But aside from Luque, other Latinos received little notoriety. Generally, the attention directed toward them centered on cultural and comical stereotypes. The phonetic spelling of their broken English commonly appeared in the sports pages. And one, ‘Good Field; No Hit,’—a phraseology reportedly delivered by Cuban catcher Mike González in his description of a potential Latin recruit—became the caricature of Latin players who came into American professional baseball. Although many Latins performed admirably against big leaguers in the United States and the Caribbean, they were regarded by scouts or MLB teams as no more than cheap, disposable players.”).

22. Ilyana M. Kuziemko & Geoffrey C. Rapp, Customer Racial Discrimination in Major League Baseball: Is There No Hope for Equal Pay?, 7 TEX. HISP. J.L. & POL’Y 119 (2001) (“While Hispanics have been playing in the major leagues for years, the emergence of Hispanic players really began in the mid-1950s, when Roberto Clemente became an all-star for the Pittsburgh Pirates.”); see also Dick Kaegel, Baseball Has Become Americas’ Game, PUERTO RICO HERALD, Mar. 30, 2003, available at http://www.puertorico-herald.org/issues/2003/vol7n17/BaseballHasBecome-en.html (last visited July 2, 2008) (“Clemente was one of the first Latin players who was adored by all–African Americans, whites
believe that every successful Latin American ballplayer is indebted to Clemente:

Racism in this country did not end the day Jackie Robinson put on a Dodger’s uniform. Robinson accomplished something phenomenal. But Roberto Clemente continued and carried that same achievement. People should realize that twenty years from now the majority of major league players are going to be Latin American. Where did this all begin? It starts with Clemente. Every Latin American superstar who plays now—Carlos Beltran, Alex Rodriguez, Carlos Delgado—owes this debt to Clemente. He is the one who broke down the doors in this modern era.23

Born in Puerto Rico, Clemente played from 1955 and 1972, before his tragic death in a plane crash in 1972, and accomplished feats never before reached by a Latin American ballplayer.24 For one, Clemente was the first Latin American baseball player inducted into the Baseball Hall of Fame.25 Since Clemente, only four other Latin American ballplayers have been inducted into the hall of fame: Al Lopez in 1977, Juan Marichal in 1983, Luis Aparicio in 1984, and Rod Carew in 1991.26 Given the skills and continuous heroics of today’s Latin American ballplayers, MLB will inevitably see many more Latin American ballplayers inducted into its hall of fame over the years to come.27

B. SCOUTS IN LATIN AMERICA

The inclusion of Latin American players in the major leagues was primarily due to the work of major league scouts. A “scout” is someone who is employed by a professional baseball team to assist it in locating potential talent.28 Early in the 20th Century, professional scouts learned that Latin America presented the unique opportunity to find undiscovered and,

and Latinos. He proved that Latinos could be stars...”); David Zirin, The Value of A Number, THE NATION, available at http://www.commondreams.org/views06/0208-32.htm (last visited July 12, 2008) (reporting on a movement by the Hispanics Across America to have Roberto Clemente’s number 21 retired throughout baseball, as was Jackie Robinson’s number 42).


25. Id.

26. Id. (Clemente’s tragic death in 1972 prompted the Hall of Fame’s Board of Director’s to unanimously wave the customary five year period for induction, opening the door for the Baseball Writers Association of America (BWAA) to hold a special election on Clemente’s behalf. Clemente became the first player of Latin American descent to be inducted into the Hall of Fame.).


perhaps more importantly, inexpensive labor. Two of the pioneers of the early Latin America scouting movement were Joseph “Papa Joe” Cambria and Alex Pompez.

Cambria was born in Italy in 1911 but came to the United States as an infant. He played minor league baseball in Boston, and went on to operate several of his own minor league teams after he suffered a broken leg and could no longer play. Cambria ultimately could not meet the payroll for his own team, so went on to be hired as a scout for the Washington Senators. Much of the Washington Senators moderate success was attributed to Cambria’s recruitment in Cuba. Until the color barrier was broken, these Cuban players were, of course, white. Still, Cambria’s “white” recruits were hardly granted star status in the racially biased United States:

Cambria’s exploitation of the Cuban players—he’d sign them to blank contracts and assign them to southern spring training venues or the Senators’ minor league teams in segregated cities such as Chattanooga, where they’d be exposed to ridicule and racial prejudice—earned him a goodly share of criticism. He was despairingly referred to as “The Ivory Hunter” by the U.S. sportswriters of the time, and “El Lavandero” (the laundry man) in Cuba, although his players affectionately called him “Papa Joe.”

Nevertheless, Cambria’s resolve to recruit in Latin America remained strong as he ultimately scouted and signed approximately 400 Cubans to play professional baseball in the United States. Cambria’s exploits in Latin America subsequently opened the door for scouts like Alex Pompez.

Alex Pompez’s life was so flashy, politically connected, and reportedly corrupt that it is hard to believe that Hollywood has yet to produce a film of

29. Regalado, supra note 9, at (“Within this neocolonialist environment, professional baseball organizations from the United States had taken notice of the resources in Latin America by the first decade of the twentieth century. Part of the reason for this interest was that nineteenth century laissez-faire business practices were still viable there. Labor relations with management were loosely defined and scarcely regulated. Child labor laws were virtually non-existent. And, there was a plethora of recruits eager to enter the professional baseball labor force.”).
30. Bill Madden, Scouts’ Honor: Cambria, Pompez Found Diamonds in the Rough, N.Y. DAILY NEWS, Sept. 18, 2005 (noting that Cambria and Pompez are “names forgotten in time, even though they were the first to mine what was then - and still is- baseball’s primary source of cheap labor.”).
31. Id.
32. Id.
33. Id. The Washington Senators later moved to Minnesota, where they became the Twins. The Twins have since maintained active in the recruiting and development of Latin American ballplayers.
34. Id. (noting that Cambria “began making regular scouting expeditions to Puerto Rico, Panama, Mexico and especially Cuba—where he signed dozens and dozens of players on the cheap that helped keep both the perpetually-second division Senators afloat and their farm system stocked.”).
35. Id.
36. Id.
37. Id.
38. Id.
his story. In addition to owning the New York Cubans of the Negro National League, Pompez was connected to the Tammany Hall political machine and notorious mobster Dutch Schultz.\(^{39}\) The majority of Pompez’s criminal connections were eventually jailed and he temporarily fled to Mexico.\(^{40}\) However, Pompez soon returned to the United States, only to recognize the Negro League’s lifespan was nearing finality; thus, he reestablished the Cubans as a farm club for the New York Giants.\(^{41}\) The New York Cubans and Giants both benefited from Pompez’s recruitment throughout all of Latin America, including Cuba and the Dominican Republic.\(^{42}\) Lore has it that Pompez once even recommended the signing of right-handed pitcher, Fidel Castro.\(^{43}\) Pompez remains a controversial figure, as his recent induction into the professional baseball hall of fame was called into question: “[t]hen there is the selection of Alex Pompez, the owner of the New York Cubans. He had known ties to organized crime and was indicted for racketeering. Made Pete Rose look like a choirboy.”\(^{44}\) As discussed in the following section, scouts continue to play a critical and often controversial role in shaping Latin American participation in MLB.

C. IMPORTANCE OF LATIN AMERICAN PLAYERS IN TODAY’S GAME

As discussed in the introduction to this article, the significance of Latin American ballplayers in MLB continues to increase. As of Opening Day 2005, Latin American players comprised approximately one-quarter of the players in MLB.\(^{45}\) That number continues to rise and the percentage of Latin American ballplayers in MLB is approaching the thirty-percent mark.\(^{46}\) Despite comprising \textit{less} than one-third of the MLB rosters, in 2006, \textit{over} one-third of MLB payroll was paid to Latin American Players.\(^{47}\) Latin Americans also constituted approximately one-third of the MLB all star rosters in 2006.\(^{48}\) Accordingly, since their entrance into the league,
Latin Americans have become, by far, the largest minority group represented in MLB (African Americans currently make up approximately eight-percent of MLB’s players), and some speculate, not unreasonably given MLB’s heavy investment in Latin America, that Latin Americans will some day make up the majority of MLB rosters. Gerry Hunsicker, senior vice president of the Tampa Bay Rays, perhaps summarized it best: “I start with the premise that in today’s game if you don’t have a strong presence in Latin America, I don’t see how you can compete. . .”

III. DISPARATE TREATMENT OF LATIN AMERICAN BALLPLAYERS

This section provides an overview of the disparate treatment Latin American ballplayers have historically experienced and continue to endure, as detailed by experts like Vargas and others, and provides an overview of three areas where abuses reportedly occur: (1) the recruitment and signing of Latin American ballplayers; (2) the operation of MLB baseball academies in Latin America; and (3) the daily life of Latin American ballplayers in the United States.

The reported disparate treatment of Latin American ballplayers is well-documented throughout their participation in United States professional baseball. Experts like Ángel Vargas, President of the Venezuelan Baseball Players Association, have long argued that Latin American ballplayers are mistreated by MLB from the recruitment stage through their participation in the major leagues. Given the many recent calls for action and the MLB teams’ purported awareness of these issues, public relations spin from some MLB teams would lead the casual observer to believe that progress in this area is being made. However, any illusion that MLB has this issue under control was shattered by recent reports of a United States’ federal investigation into the signing practices of MLB teams in Latin America.

A. RECRUITMENT AND SIGNING

Under the current collective bargaining agreement, players from the United States, Puerto Rico, and Canada enter MLB through a procedure

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49. Lapchick, supra note 46.
50. Zirin, supra note 21 (quoting Sergio Rodriguez, host of ESPN Radio’s Orlando Sports Caliente).
52. Marcano & Fidler, supra note 10.
53. Vargas, supra note 1.
54. Sanchez, supra note 51 (noting, for example, the importance of providing Latin American players with necessary life skills).
55. Schmidt, supra note 11.
known as the Rule 4 Draft. Generally, this is a process where MLB teams pick players based upon the teams’ record the previous season (i.e., the team with the worst record picks first). The collective bargaining agreement requires that players graduate high school before signing, sets strict rules for the acquisition of agents, and caps the percentage of a player’s signing bonus that an agent can demand for his services.

Unlike Rule 4 Draft eligible players, there are essentially no rules for the signing of players from other countries, other than that they reach the age of 17 before the end of the MLB season of which he is signed. Put differently, while American ballplayers must graduate from high school before signing with an MLB team, players from Latin American can sign at age 16. Thus, the climate in places like the Dominican Republic and Venezuela, two of MLB’s primary sources of foreign talent, has been referred to as an “economic free for all” or more simply, “the wild west”, as one assistant general manager recently remarked. The synergy of lack of governance paired with desperate economic conditions in countries like the Dominican Republic fosters an environment ripe for abuse.

Many Latin American ballplayers—particularly those from the Dominican Republic—come from poverty, and the dream of playing professional baseball is often viewed as a means of escaping such a fate. While young American boys also share a similar dream, the economic realities in the United States present American ballplayers, who do not make it to the Majors, with more choices and opportunities for their future:

When an American boy tells his father that he wants to be a Major League Baseball player, the father will probably say, ‘Sure,’ and smile to himself. He knows that chances are slim that such childish dreams will be fulfilled, and that as the boy turns into a man he will learn to be more realistic, accept becoming a lawyer, a mechanic or an accountant.

57. Id.
59. Id.
61. Vargas, supra note 1, at 24 (“[T]hese powerful, wealthy teams are targeting Latino children, many of whom come from poor families and for whom professional baseball offers the only hope of economic stability.”); see also Thomas George, Beisbol - Part 1 of 3: The Fabric of Game is Woven into Life in Dominican Republic, THE DENVER POST, Nov. 13, 2005, available at http://www.denverpost.com/rockies/ci_3210402 (last visited July 2, 2008) (“Boca Chica, a 40-minute drive east of Santo Domingo, is where the [Colorado] Rockies’ complex sits. There are many tired, drooping, two-room houses in that city, several so small that when the front and back doors are open, one can easily see through the house into the backyard. Many of these homes are made of worn tin. Or rotting wood. The roofs are often made of thick tree leaves, sugar cane leaves, straw and tree branches. Many of the children prance around with bare feet. ‘I have signed players in homes with four wooden walls and dirt floors,’ said Rolando Fernandez, the Rockies’ director of Latin American operations.”).
This conversation, however, plays out very differently in Latin America. Yes, the Major Leagues are also an impossible dream for a Latin American child, but the grim reality is that he is unlikely to become anything else that will allow him make a decent, if humdrum, living. For him, the dream of baseball can be literally all or nothing.62

Vargas reports that MLB scouts are aware of this desperation and use it to their full advantage: “[t]he appetite of powerful MLB teams for Latin American talent combined with the vulnerability of children and their parents in these countries is a recipe for exploitation.”63 In fact, entire families may become dependent upon this dream.64

1. **Boatload Mentality**

MLB teams have long capitalized on the desires and dreams of Latin American players by signing many Latin American players by what is typically referred to as the “boatload mentality.”65 Since so many Latin American players want to play for MLB teams and are often willing to sign for much less than their American counterparts, MLB teams sign many Latin American players, hoping that they may find the quintessential “diamond in the rough.”66 This was the technique employed by scouts like Pompez and Cambria, and is still employed by major league teams today.67 As the Yankees international scouting director, Lin Garrett, recently put it, “[y]ou try to sign what you can out of the elite group of players...[b]ut you also need quantity when you talk about 16-year olds. No one’s that good of an evaluator.”68 This free-for-all climate has created the opportunity for harmful, opportunistic behavior in a variety of forms—both in the United States and abroad.

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64. See Kaegel, *supra* note 21 (“Typically, Latin players who make the major leagues become providers for their relatives and others in their home countries. [Felipe] Alou remembered turning over the $200 signing bonus he received directly to his parents to pay for groceries and other necessities. ‘We are the Social Security of our families,’ said Alou, one of the Dominican Republic’s first big-league starts. ‘We carry a load when it comes to family, and in certain cases, friends too.’”).
65. Vargas, *supra*, note 1 at 27.
2. Buscones

MLB scouts begin recruiting Latin American players at very young ages. The scouts may recruit the children themselves or employ the services of "buscones." Buscones are similar to sports agents and it is their job to "comb the country for baseball talent." Once a talented child is located, the buscone might pass along a business card to the child's parents or even entice a particularly gifted young athlete with presents, such as baseball equipment. While a gift of baseball equipment may seem trite, it must be remembered that it is not uncommon to drive through the Dominican Republic and see young boys using baseball mitts made of cardboard.

Given that Latin American ballplayers do not play within an organized structure, some consider the buscones to play a necessary role in identifying talent. José Rijo, assistant general manager for the Washing Nationals who oversees the team's Dominican academy and has recently been approached by FBI investigators to discuss Dominican signing practices, recently explained that: "[B]uscones go rescue the kids. If you don't have the buscones in the Dominican Republic, you have nothing." Despite Rijo's declaration for the necessity of buscones, it is generally understood that even in the best case scenarios, buscones take a cut of no less than 30% of a ballplayers salary compared to the standard 3-5% an American agent receives.

While "best case" scenarios may seem, to say the least, inappropriate, the worst case scenarios are horrific and criminal:

Rumors float through Latin American baseball circles about which buscones pump their kids full of steroids or change identification papers to falsify ages, which ones have been shot for stealing...
clients, and worst of all, which ones force kids to perform sexual favors in return for training and representation. As the success-rate of Latin American ballplayers increased, buscones began to compete furiously with one another to sign Latin American talent. Unfortunately, this only resulted in the increased exploitation of Latin American children. Therefore, scholars such as Ángel Vargas urge that there must be further regulation of scouts and buscones by the MLB and by Latin American countries in order to curb abuses.

Some individuals associated with professional baseball in the United States, such as renown baseball agent Scott Boras, more directly place the burden on fixing this problem on the Latin American countries themselves, arguing that they “can correct the buscone situation a lot quicker than Major League Baseball can . . . I think we want the citizenry of the Dominican to legislate their own country, you know? I really do.” However, in light of the recent MLB bonus-skimming scandal, it is apparent that regulation within the Latin American countries is simply not enough, and employees of MLB teams need to apply equal oversight.

3. MLB Bonus-Skimming Scandal

A longstanding critique of the manner in which Latin American players are signed is that, given the lack of a world-wide draft and the problems related to hiding players, Latin American ballplayers do not receive signing bonuses equal to that of their Rule 4 eligible counterparts. This is one of the areas where, at least at first blush, it appears that progress is occurring. For example, the Oakland Athletics recently paid Dominican pitching prospect, Michel Inoa, a $4.25 million dollar signing bonus, the largest amount ever paid to a Latin American prospect. Unfortunately, White Sox General Manager Kenny Williams said it best, “[s]ometimes you have to laugh to keep from crying.”

76. Helfcott, supra note 51, at 87.
77. Vargas, supra note 1, at 25.
78. Id. (citing Associated Press, False Pitches Crush Latin American Youngster’s Baseball Dreams, Jun. 4, 2000 (“In June 2000, the Associated Press reported that ‘[s]ports officials in Caracas, Venezuela, denounce an increasing tendency [of MLB teams] to recruit underage players and to crush their baseball dreams through exploitation and false promises. In the worst cases, the officials say, scouts promise boys lucrative major league contracts, then take them out of local play to hide them from other scouts.’”).
79. Id.
81. Vargas, supra note 1, at 28.
Recent allegations have come to light that an unspecified number of Latin American ballplayer signing bonuses have been artificially inflated, so as to enable individuals, allegedly employed by MLB teams, to receive kickbacks. In fact, the Chicago White Sox, apparently related the newest MLB scandal, have already fired their scouting director and two of their Latin American scouts. Federal investigators, who are said to be conducting a probe of this matter, have also reportedly targeted both the general manager and assistant general manager of the Washington Nationals for purposes of the bonus-skimming investigation. There are several different types of schemes that are reportedly ongoing:

In one scheme, the scout agrees with the player and his family on, say, a $100,000 signing bonus. He reports to the parent club the player can be signed for $120,000, the check is cut and the scout pockets the rest.

In another, he simply claims a finder’s fee, paid by the family, which often enough is satisfied with whatever remains of the bonus.

In all, it has been speculated that approximately ten teams are being investigated by the FBI. As one National League Executive put it, “It’s criminal... [t]his is orange jumpsuit-kind of stuff. It’ll be interesting to see how far it goes.”

B. BASEBALL ACADEMIES

Once a Latin American player is signed, they will typically find their way to a MLB baseball academy. The majority of MLB teams have academies located in both the Dominican Republic and Venezuela. The operations of these Latin American baseball academies have been criticized on two fronts: first, young Latin Americans are often treated poorly while there; and second, they typically operate outside of the laws of the countries in which they are situated.

Some writers describe living in baseball academies, on a material level, as a seemingly wonderful opportunity for young ballplayers and as a drastic upgrade from their standard of living:

Teams house their players in dormitories and feed their prospects balanced meals. Often it’s the first time these boys will sleep under clean sheets or eat nutritious meals. The firsts don’t stop there: Some of these boys encounter a toilet for the first time. Or an

84. Id.
85. Id.
86. Harlan, supra, note 69.
88. Schmidt, supra, note 11.
89. Brown, supra, note 82.
90. Id. at 28-29.
indoor shower. They are taught discipline, the importance of being on time, of following instructions.\textsuperscript{91}

On the other hand, Vargas argues that although some of these facilities—such as the one operated by the Los Angeles Dodgers—are well financed and well run, they are exceptions to the rule, and that the majority of the academies, at least in Venezuela, are deficient in several ways.\textsuperscript{92} Vargas is also concerned that many of the children attending the academies are deprived of a full education, claiming that, at best, they are required only to learn very basic English.\textsuperscript{93}

These purported deficiencies lead into Vargas’ second point, which is that the academies are run in a manner that ignores the laws of the countries they are located in. For example, it is rumored that these players often receive poor medical treatment when they are injured, and that teams would rather release injured players than pay for their medical bills.\textsuperscript{94} This, Vargas argues, is contrary to Venezuelan law, which provides that: “firing an employee who is injured on the job is illegal under Venezuelan labor law, as is the refusal to pay for the medical expenses that the employee incurs treating the injury.”\textsuperscript{95} Vargas further notes that many of these teams

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  \item \textsuperscript{91} Zirin, \textit{supra} note 42 (quoting MARCOS BRETON, \textsc{HOME IS EVERYTHING: THE LATINO BASEBALL STORY} (Cinco Puntos Press 2003); see also ALAN M. KLEIN, \textsc{SUGARBALL: THE AMERICAN GAME, THE DOMINICAN DREAM} 65 (Yale University Press 1991) (In describing the Los Angeles Dodger’s academy in the Dominican Republic, Klein notes that “[t]he finished complex looks more like one of the posh resorts along the coast than the sugar cane plantations around it. The fifty acres of Campo Las Palmas are beautifully manicured, with two fields (a third is being added), modern buildings, and the most modern equipment. All is new, well maintained, and clean. At this plush academy the rookies are ministered to and instructed. They take daily practice and play two seasons a year: winter (November to February) and summer (June to September).”).
  \item \textsuperscript{92} Vargas, \textit{supra}, note 1 (arguing that these facilities provide a lack of “security against personal and property crimes; consistent and adequate supplies of clean water; consistent and adequate supplies of clean water; consistent and adequate sanitary services (e.g., toilets); well-maintained buildings; sufficient food and nutrition; trained medical staff; serious education activities; and high-quality playing facilities.”); see also Gary Marx, \textit{Cleanup of a Sorry Mess: Baseball’s Latin American Facilities Improving. But Some Franchises Continue to Lag Behind}, CHICAGO TRIBUNE, Jun. 29, 2003 (“After years of neglect, Major League Baseball only recently has begun monitoring the living conditions of the players who train at the 39 minor-league facilities in the Dominican Republic and Venezuela, setting minimum standards and assigning staff to inspect the facilities each year. As a result of the push, several teams boast gleaming new complexes or freshly upgraded facilities. But during a 10-day visit to the island nation before this year’s training, the Tribune found that a handful of organizations still house players in deplorable conditions. And though the Cubs and White Sox have upgraded their facilities, they lag behind many teams. The Cubs, owned by Tribune Co., for years scoured Latin America for promising players and then trained them on fields that failed to match many high school facilities in the United States. For several years, Cubs prospects in the Dominican Republic were stuffed into small rooms furnished only with beds. There were blackouts and no running water, according to former players. The heat was stifling.”).
  \item \textsuperscript{93} Vargas, \textit{supra} note 1, at 32; see also Michelle Kaufman, \textit{Latinos Suffer Major-League Culture Shock}, ST. PETERSBURG TIMES, Mar. 29, 1988, (“Jimmy Kelly said he has aged 10 years in the past four. He had no choice. He dropped out of school in the ninth grade and left his family in Santo Domingo, Dominican Republic, to pursue a major-league baseball career with the Toronto Blue Jays. He spoke no English and had no friends here.”).
  \item \textsuperscript{94} Vargas, \textit{supra} note 1, at 32.
  \item \textsuperscript{95} \textit{Id.}
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typically have uncertified trainers working in their facilities despite the fact that Venezuelan law requires anyone who claims to be a medical trainer to be certified by the government. According to Vargas, these infractions are merely the tip of the iceberg, as MLB teams routinely violate a bevy of other Venezuelan laws.

MLB teams are presently investing in Latin American more countries than ever before. Many teams are building new and expensive training complexes in countries like the Dominican Republic, which appears to address at least some of the concerns expressed by experts like Vargas. Selfishly, the movement to build better academies does not appear to have been driven by a desire to provide for a better quality of life for young ballplayers, but rather it seems to be the result of competitive forces, as the MLB teams want to recruit the best talent to their academies. In addition to providing for better facilities, there are also reports that at least some teams are making more of an effort to provide their players with an education. Accordingly, while the extent of the progress being made in this area is not readily quantifiable, it does appear that at least some progress is being made with respect to how MLB sanctioned baseball academies are run.

96. Id.
97. Id. at 31-32 ("To my knowledge, MLB teams do not comply with the following requirements of Venezuelan law: If an employee is fired before the employment contract terminates, the employer must pay the rest of the salary due under the contract. MLB teams routinely release players under contract without providing the rest of the salary due under the contract. Employers must pay ten days of salary for every three months an employee works. MLB teams do not make such payments to players under contract. Companies must make social security payments to the Venezuelan federal government for all Venezuelan employees. MLB teams make no such payments. To employ foreign workers in Venezuela, companies must obtain working visas for the workers. MLB teams routinely ignore the working visa requirements for foreign players, such as Dominicans, who play in the academies and in the Summer League.").
98. PiratesDugout.com, Bucs To Build Baseball Academy (Jan. 11, 2008), available at http://pirates.scout.com/2/719033.html (last visited Aug. 10, 2008) ("This complex will provide us with an advantage in recruiting players, while providing an optimal setting to teach our young players not only baseball skills, but life skills."); see also Mario Emilio Guerrero, Padres open academy in Dominican State-of-the-art complex can house 64 players, Padres.com (Apr. 30, 2008), available at http://sandiego.padres.mlb.com/news/article.jsp?ymd=20080430&content_id=2618585&vkey=news_sd&fext=.jsp&c_id=sd (last visited Aug. 10, 2008) ("The 2,000 square-foot building also features meeting rooms, recreation rooms, and a laundry area and is equipped with television and computers. The three-story clubhouse features central air conditioning and ceiling fans, a state-of-the-art gym with 35 machines and eight massage tables, as well as a spacious dressing room.").
99. Id. (quoting Pirates Chairman of the Board Bob Nutting) ("Today, no team has more opportunity or, frankly, a greater need to acquire and develop quality players from this region than we do.").
C. LIFE IN NORTH AMERICA DURING AND AFTER PROFESSIONAL BASEBALL

Much has also been reported about the difficult transition Latin American players face when they move from their respective countries to the United States. For example, given the boatload mentality that was and is employed with respect to Latin American ballplayers—meaning the signing of many players for a much lower price than American players—the Latin American players that come to the United States often have far fewer financial resources to live on when they arrive in the United States, particularly given the relatively low incomes they receive when playing in the minor leagues. These Latin American players also face pressure from their families at home seeking financial support, believing that the young Latin American players are earning as much as MLB’s superstar players.

Furthermore, given that many of the Latin American players have historically received little instruction on the English language before their arrival to the United States, they often face a multiplicity of challenges related to assimilation. Current major leaguer Vladimir Guerrero, for example, used to carry around a piece of paper in his pocket with his address written on it because, given his lack of language skills, he was too afraid to ask strangers how to get home, while he lived in Montreal playing for the Expos. Additionally, given the poor living conditions in the Dominican Republic, for example, players who are released from their teams often remain in the United States rather than return home: “Out of 10 (Dominican players) who are released, I’d say nine stay here...They would rather live in the worst areas of New York than go back home...” said Ron Plaza, a former major league manager.

IV. AVENUES FOR CHANGE

A. OVERVIEW OF PROPOSED SOLUTIONS

Scholars have recommended several proposed solutions in order to curtail the disparate treatment of Latin American ballplayers. One frequently made proposal is that MLB needs to move to a worldwide draft, the intended result of which would be to promote uniformity in the

102. Bretón, supra, note 96.
103. Id.
104. Gutierrez, supra, note 96.
105. Id.
treatment of Latin American players and would also account for the disparity of economic resources between large and small market baseball teams.\textsuperscript{106} With respect to signing, commentators have also argued that MLB and the players’ home governments need to provide better oversight to ensure compliance with all labor laws of the United States and the home countries.\textsuperscript{107}

In order to implement some of these, as well as other proposed changes, Arturo Marcano and David Fidler argue that MLB first act by drafting rules affecting these problems, and then provide for transparency of reported violations by permitting non-governmental organizations and others to access complaints of alleged violations of these rules.\textsuperscript{108} Jessica Trotter takes this a step further by arguing that MLB contracts with international players should include international labor standards, which would presumably subject MLB contracts to additional scrutiny by government entities.\textsuperscript{109} These and other proposals have been considered in creating the following proposed roadmap for change, which focuses on a course of action that can readily be imposed by MLB.

\textbf{B. A ROADMAP FOR CHANGE: ACCEPTANCE AND EVALUATION}

The first step MLB must take is to accept that a problem exists, or at least accept that a problem \textit{may} exist—a fact that the recent federal bonus-skimming scandal should make impossible to ignore. While this suggestion may appear trite, if the steroid scandal has taught anything, it is that MLB often fails to publicly address social problems within its game.\textsuperscript{110} To be fair, culpability for the steroid scandal extended beyond MLB management, as many players, coaches, and even fans all were caught up in and energized by the surge in baseball’s power numbers.\textsuperscript{111} Similarly, with Latin American ballplayers performing at a very high level, and given that

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\textsuperscript{107} Vargas, \textit{supra}, note 1 at 34-35.
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\textsuperscript{108} Marcan & Fidler, \textit{supra}, note 10 at 571.
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\textsuperscript{109} Trotter, \textit{supra}, note 106 at 454-57.
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\textsuperscript{110} T.J. Quinn, \textit{Steroids and a Code of Silence: Baseball’s Unhappy Union}, \textit{www.espn.com} (Feb. 29, 2008) http://sports.espn.go.com/espn/print?id=3270983&type=story (last visited June 21, 2008); see also Marcano & Fidler, \textit{supra}, note 10 at 572 (“Is MLB really likely to adopt such a proposal? At the moment, the idea is hopelessly naïve. MLB teams are all part of a ‘silent conspiracy’ in connection with the treatment of Latino baseball prospects because they are all involved in these questionable practices.
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\textsuperscript{111} Sen. George Mitchell, Mitchell: Many to Blame for Baseball’s ‘Steroids Era’, NPR, Dec. 13, 2007, \textit{available at} http://www.npr.org/templates/story/story.php?storyId=1722523 (last visited Aug. 10, 2008) (“For at least a decade, and probably much longer. The 1990s saw a surge in home runs and, not coincidentally, a surge in attendance, as well. There were rumors of illegal doping, but the baseball establishment — owners, players, fans — largely turned the other way, content to see the game bouncing back from the disastrous 1994 players’ strike.”))
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they constitute a large percentage of today's professional players, it is critical to understand that neither MLB nor its consumers have any real incentive to upset the status quo. However, the steroid problem in MLB demonstrated that unattended problems can eventually pose serious threats to the health of the game. MLB fans learned this by watching ballplayers grew into comic-like versions of themselves, and perhaps permanently shattering what many baseball fans consider to be baseball's most sacred records.  

The aftermath of the steroids scandal also taught us, however, that MLB can address and correct social problems in its game if the proper steps are taken. The results of the Mitchell Report have been responded to, by some, in a positive manner. Moreover, the decline of power numbers (i.e., home runs) in MLB may also, in fact, be evidence that MLB's effort to curtail performance-enhancing substances is working. Granted, in order to provide a catalyst for this change, MLB did need to seek the assistance of third parties (i.e., Senator Mitchell). Still, given the relative success of Senator Mitchell's inquiry, should MLB choose to accept that the treatment of Latin American ballplayers is indeed a problem, its first step should be to sanction a commission tasked with evaluating the present abuses and hardships of Latin American ballplayers, which should then make the results of that investigation available to the public in order to restore public confidence amongst global observers.

C. A LINE IN THE SAND

The key to effectuating change in MLB is establishing rules where neither the league nor the Players' Association can “pass the buck.” To employ the cliché used by many professional athletes, MLB needs to control the things it can control. Certainly, it is unrealistic to expect MLB to control the actions of every ill-acting buscone operating in Latin America. However, MLB can exert a certain level of control over every


115. To this extent MLB wants to contribute to curtailing these abuses, it would perhaps be
transaction, which results in or is related to a player signing a contract with its league. MLB can also assume a certain level of control over how its teams operate and how they treat their prospective players. The key to the proposals in this roadmap is that they seek to effectuate change in a way that MLB exerts control over implementation and compliance.

Based upon a review of the scholarship and journalism on this subject, there are two overarching problems that MLB faces with respect to the treatment of Latin American ballplayers. The first class of problems relates to transparency, and the second relates to life skills. This roadmap will narrowly focus on addressing these two issues.

I. Transparency

As an anonymous MLB official said it, "[a] lot of issues improve significantly with transparency." One of the real driving forces behind the implementation of a worldwide draft and the call for better regulating of the scouting and academy processes is to have more transparency in the recruiting and signing process, and to foster a fair and competitive marketplace for Latin American ballplayers. The hiding of players, for example, directly hinders market competition, as players are forced to sign with teams without competition driving up the price of their signing bonuses and salaries. Additionally, even for those players who are not "hidden," the absence of a draft precludes Latin American ballplayers from understanding their actual value when compared to their draft-eligible counterparts.

While the implementation of a worldwide draft may be a step in the right direction to promote transparency, such a draft does not appear to be the *deus ex machina* that will solve disparate treatment. In fact, Puerto Rico recently expressed a desire to be excluded from the Rule 4 draft, as its players are failing to be drafted at all because it is more economically attractive to sign talent from non-draft countries (i.e., Venezuela, Dominican Republic, etc.). Thus, given the reported problems with the Puerto Rican model, any proposal to expand the draft will likely have opponents on both the supply and demand side. Additionally, those associated with MLB continue to speculate that the institutional draft will not curtail the problem of hiding players, as they believe teams may still attempt to hide players from the draft only to later introduce them into the league as free agents. Finally, given today’s MLB collective bargaining

well-served to employ the help of third parties, such as non-government organizations, as suggested by Marcano and Fidler; see supra note 68.

116. Brown, supra, note 82.
117. *Id.*
agreement, it is unlikely that a worldwide draft will even be possible for several more years. Still, the institution of a worldwide draft is not the only way to breach this opaque structure, and other avenues to create transparency should be explored—even if they are someday used in conjunction with a worldwide draft system.

Another way to foster transparency would be to require some sort of disclosure process prior to any MLB team’s signing of a Latin American ballplayer. This can be done one of two ways. First, the disclosure can simply take place via paperwork, detailing who the prospect is and vital background information regarding each player. This process would admittedly require a great deal of trust and good faith amongst the teams and would likely be a substantial departure from MLB’s longstanding, competitive scouting process. A second option could be for MLB to institute something similar to the National Football League’s combine system. Under this system, each non-draft-eligible ballplayer would be required to participate in a series of drills and physical tests. Each MLB team would then be permitted to attend this combine, thus ensuring that each team has at least one opportunity to evaluate non-draft eligible players prior to their entrance into the league. Not only would this provide transparency, but, like the increasingly popular NFL combine, it would be another way for MLB to potentially market its product.

A more dramatic approach—one which has previously been suggested by the Major League Baseball Players Association (MLBPA)—would be for MLB to take control over the various Latin American baseball academies. In the event MLB someday chooses this option, this article proposes that MLB require that all players signed from non-draft eligible countries first gain entrance into one of the MLB academies. This approach would curb the abuse of hiding players, and would also present the opportunity for a better system of providing potential Latin American ballplayers with necessary American life skills. Additionally, if a player did not gain acceptance into an academy, it would be an indicator at an earlier age that it is time to move on and find a different path in life, rather

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121. 2008 Scouting Combine, http://www.nfl.com/combine (last visited Aug. 19, 2008) (noting that “[t]he 2008 Scouting Combine is the annual job fair for prospective new NFL players. For six days from the RCA Dome in Indianapolis, players are put through a series of drills, tests and interviews with more than 600 NFL personnel including head coaches, general managers and scouts.”).
than allowing MLB to sign many Latin American players only to release them in their twenties with limited life skills.

2. Increased Focus on Life Skills

If MLB continues to allow its teams to individually operate baseball academies, the call for better providing players with life skills must be answered. At a minimum, MLB should require that all players receive at least the equivalent of a high school education, English language classes, and instruction related to money management and other basic life skills. However, it is one thing to require MLB teams to provide their players with these skills, but quite another to ensure that each team-operated academy adequately satisfies any imposed requirements.

One way to ensure that the academies actually provide their players with basic life skills would be to require each non-draft eligible player to take some form of an entrance exam prior to signing with an MLB team. Such an entrance exam could be essentially the equivalent of a high school G.E.D. exam. While this proposal might be extreme, without MLB officials actually controlling the operations at the Latin American baseball academies, it would be the most objective way for MLB to ensure that the team-run academies are sufficiently implementing any educational requirements it chooses to impose upon them.124 Teams which repeatedly fail to have their players meet the basic standards should lose their privilege of operating their academy in that country for a period of time. If many teams continue to fail in this category, it would demonstrate to MLB that the academies should in fact be run in a more uniform manner, by MLB, the MLBPA, or a combination thereof.

If MLB chooses to implement more stringent quality of life rules at team operated academies, it should also require that a compliance officer be present at each MLB operated academy. The first step would be to tax major league teams based upon their participation and recruiting in the international marketplace. From that tax, “Co-Director of Player Development Compliance” positions should be created and located at MLB’s International’s central office. One director should be appointed by MLB, while the other should be appointed by the MLBPA, in order to better ensure adequate oversight. These directors would then appoint individual compliance officers to work at the various baseball academies in Latin America and throughout the world, as the MLB academy system continues to spread.

124. This requirement is no way intended to make it more difficult for Latino players to access MLB. In fact, there is no reason that MLB could not implement a similar requirement for draft-eligible players. MLB could then require additional education requirements for any draft-eligible player prior to their signing with an MLB team.
IV. CONCLUSION – WHY ROCK THE BOAT NOW?

Latin American ballplayers have and will continue to play an important role in America’s national pastime, as they constitute a significant and growing source of MLB’s labor pool. Despite their importance to MLB, the question remains as to why MLB would permit almost one-third of its labor force to remain apt to abuse and exploitation. The simple answer appears to be that if the system is not broke for the MLB teams, who continue to reap the financial benefit, then why fix it? The idealistic answer would, of course, be because it is the right thing to do. However, as with any other money making entity, doing the right thing does not necessarily serve as the catalyst. From a more rational standpoint, there appears to be no fewer than three “rational” reasons as to why MLB should act on this problem now.

First, as was the case with the steroid scandal and as is now the case with the bonus skimming scandal, the federal government will only allow MLB baseball to act in an irresponsible manner for so long. Congress made it clear to MLB that if MLB did not fix the steroid problem, Congress would do it for them. The same may now becoming true for MLB’s failure to address problems with its teams treatment of foreign labor. Accordingly, MLB now has an incentive to act fast and dramatically, so as to demonstrate that it can solve its own problem in a manner that would likely be less arduous and expensive than solutions imposed the federal government.

Second, with Latin American players becoming such an abundant force in MLB, one cannot expect that they will continue to permit their own exploitation indefinitely. As the number of Latin American players continue to grow, one would expect that they would begin to create a certain solidarity as a labor force—despite the desperate nature of the economic climate from which they come. For this to happen, it would require the Latin American stars in MLB to take a stand on behalf of their younger, still exploited brethren. Given that Latin Americans now comprise almost one-third of MLB’s labor force, it is hard to believe that pressure exerted by Latin American players on MLB, perhaps by way of a strike, would not have a significant financial impact on MLB.

126. Marcan & Fidler, supra, note 10 at 572 (citing Janelle M. Diller & David A. Levy, Child Labor, Trade and Investment: Toward the Harmonization of International Law, 91 Am. J. Int’l L. 663, 694 n. 265 (1997) (“Other global corporations have found it in their economic self-interest to make reforms voluntarily in their foreign labor practices through codes of conduct rather than to continue to suffer he wounds of bad public relations and consumer anger.”)
127. Marcan & Fidler, supra, note 10 at 575-76.
128. Vargas, supra, note 1 at 34.
129. Keven Canfield, Big $ Costs of a Baseball Strike: MLB Would Lose 1.2B if the Season is Called Off, Sports TV, Aug. 21, 2002, available at
Finally, MLB has made no misgivings about its desire to grow the game of baseball as a global sport, in part to expand its fan base and potential talent pool.130 The New York Yankees, for example, have recently begun building the first MLB academy program in China.131 As MLB grows the game of baseball for its own benefit, it is also opening the door for another long term problem—the creation of global competitors. While this suggestion may seem far fetched, the existence of international competitors is part of baseball’s history132 and is a recent development that is now facing other United States’ based sporting leagues.133 Ultimately, other leagues around the world may create an economic and social climate for playing baseball that is appealing to Latin Americans, should they continue to feel exploited by MLB’s way of doing business. And given that the United States has failed to win either of the first two World Baseball Classics, it is clear that other countries around the world can play ball.134

http://www.medialifemagazine.com/news2002/aug02/aug19/3_wed/news2wednesday.html (last visited Aug. 10, 2008) (noting that baseball would have lost an estimated $5 Billion if the 2003 season was called off).


