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Opinion: MLB VS. A-ROD: Playing with different set of rules?

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BY JEFF IFRAH

THE RECORD

Jeff Ifrah, a former special assistant U.S. Attorney for the District of New Jersey, currently practices criminal defense law at Ifrah PLLC, the 12-attorney law firm in Washington, D.C.

UP AGAINST a wall, with no hard evidence against a series of drug dealers, the government routinely makes deals. The offer: Cooperate, and you walk if you testify to the guilt of the other charged drug dealers.

Of course, once the remaining charged defendants hear about the cooperator's deal, almost all rush in to make a deal. But in some



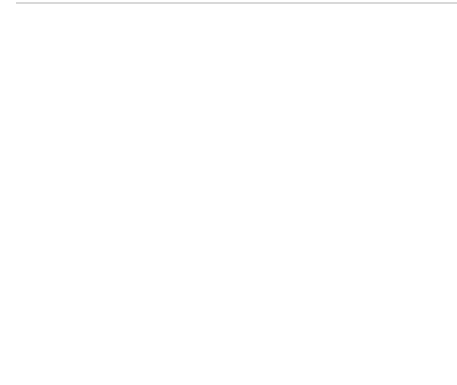
New York Yankees' Alex Rodriguez signing autographs during a spring training baseball workout in Tampa, Fla., in 2009.

There is no hard evidence of deal. It is his word against the cooperators. Usually the cooperators had selfish and ulterior motives for making deals with the government, right?

Alas, too often, the hold-out misjudges the power of cooperating testimony and is convicted, and then the government punishes the hold-out. The government denies that he is being punished for going to trial and yet, based on his lack of cooperation, the hold-out receives a prison sentence far more onerous than the sentence meted out to the other defendants who committed the same offense but cooperated and made a deal.

This happens every day in the offices of state and federal prosecutors everywhere in cases involving narcotics and other street crimes, as well as in white-collar fraud cases. And now, apparently, it is happening in Major League Baseball.

MLB is making the deals; Tony Bosch, a director at BioGenesis, is cooperating, and everyone implicated is taking the 50-game suspensions and biding their time. Except for Alex Rodriguez — the hold-out — who either likes his chances at trial or calculates that this is a fight he must take because, at his age, any suspension is the functional equivalent of a life



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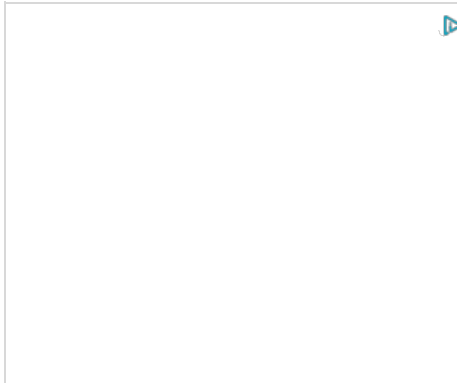
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suspension.

A-Rod's refusal to join his baseball colleagues and accept a 50-game suspension comes with a high cost – a 211 game suspension, the most significant drug-related suspension in MLB's 139-year history. And if he loses at trial, the cost could be even higher if the Yankees then choose to void his multi-million dollar contract based on some "new evidence" revealed during trial. (A-Rod's contract runs through 2017).

If MLB is going to get in on the game of imposing punishment without the benefit of a judge or jury, it needs to learn a few things about how the game is supposed to be played.

First, it better make sure that the evidence of guilt is in order. How exactly will MLB prove at trial that A-Rod took performance-enhancing drugs? Is it relying exclusively on the uncorroborated testimony of Tony Bosch? Does Bosch have dispositive records between BioGenesis and A-Rod?

Second, the MLB better make sure its star witness can withstand the grilling of a well-trained trial attorney. Has the MLB fully considered Bosch's own motives in testifying against A-Rod? Has MLB considered how A-Rod's cadre of A-team lawyers will attack and damage Bosch's credibility on cross-examination? And how did that complaint MLB filed in Florida against Bosch get resolved exactly?

Third, MLB better make sure it has a good explanation for why 16 players received 50-game suspensions and the one objecting hold-out will miss 211 games. Are there written guidelines that provide a reduced sentence for players who admit to their offense without troubling MLB to go to trial?

Fairness in sentencing

Also, have baseball executives considered how they will defend the fairness of a sentence that is not only four times greater than those who saved them the inconvenience of a trial, but also greater than any punishment ever imposed upon any player (and almost two times higher than the 119-game suspension of seven-time admitted abuser Steve Howe)?

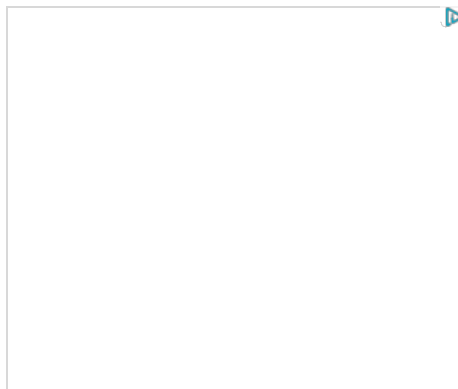
Fourth, MLB sure as heck better read the agreements it struck with the players. Such as MLB's Joint Drug Prevention and Treatment Program agreed to between the commissioner of baseball and the player's association that provides that a first-time offender testing positive for PEDs will be subject to a 50-game suspension, not a 211-game suspension.

Now, perhaps MLB believes that by arguing that A-Rod lied about his PED use, the negotiated guideline does not apply. How many offenders do you know who were truthful about their PED use? Does MLB honestly believe that is a fair basis for an enhancement of this degree? Didn't Ryan Braun lie about PED use and still get only a 65-game suspension? How will MLB explain that?

The upcoming arbitration between the MLB and A-Rod may take place as early as next month. If MLB is looking to improve its chances at that arbitration, it may want to consider reducing its suspension to a level consistent with that meted out to others or reaching a quick out-of-court settlement.

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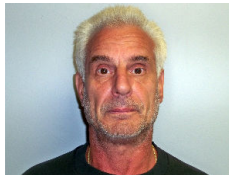
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