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BOOK REVIEW

ASTERISK: *HOME RUNS, STEROIDS, AND THE RUSH TO JUDGMENT

David Ezra

[Chicago, Illinois: Triumph Books, 2008]

226 pages

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He entered major league baseball as a long and lean lefty. He was swift *and* strong, a talented outfielder with a lively arm. At first, his numbers were more than respectable. But during one off-season he worked out particularly hard. Suddenly, almost out of nowhere, he gained weight and got stronger. The next season he hit more home runs than anyone ever had. No one could believe what was happening. A teammate let us in on a little secret: "To understand him you had to understand this: he wasn't human."¹

Based on current public perception, it would be reasonable to assume that the subject of this statement must be Barry Bonds, right? Wrong! This quotation actually refers to Babe Ruth. Attorney David Ezra begins his book *Asterisk* by challenging the reader's assumptions about Bonds. Ezra spends the remainder of the book poking holes in the arguments of the majority of people who believe that Bonds definitely used performance-enhancing drugs en route to establishing himself as the all-time and single-season home run record holder in Major League Baseball (MLB). This book is not a defense in the sense that Ezra contends that Bonds never used performance-enhancing drugs. Instead, Ezra points to the faulty logic and assumptions used by those, such as Mark Fainaru-Wada and Lance Williams, the authors of *Game of Shadows*, who have previously condemned Bonds and have convinced a large portion of the public that Bonds knowingly used performance-enhancing drugs.

Ezra begins by laying out the numerous groups of people who have created the negative public perceptions surrounding Bonds and the reasons for

1. DAVID EZRA, *ASTERISK* xi (2008) (emphasis in original).

this image. First, there is the story that Bonds, while attending Arizona State University, broke into a teammate's apartment to steal food even though he was the son of a Major League Baseball player.² In addition, there are stories that he treated his teammates as underlings, no matter their accomplishments or stature on the team.³ Moreover, there are numerous accounts of Bonds's standoffish relationship with the media in which, for example, he made members of the media jump through hoops to secure an interview or would answer a reporter's questions with one-word answers and no subsequent elaboration.⁴ Ezra points to Bonds's tenuous relationship with fans for which he constantly refused to sign autographs because, as he once explained, people who pay to see a movie do not expect to get the movie star's autograph.⁵ Furthering his own poor image and public persona, Bonds once even refused to sign autographs for the man who signed his paychecks, San Francisco Giants owner Peter Magowan.⁶ Finally, there are reports of Bonds's egregious off-field conduct, such as the accusation by his former wife, Sun, that he regularly beat her and that he once refused to sign items to aid a former teammate's son's fight against cystic fibrosis even though other players of Bonds's stature had done so.⁷ Ezra rightly asserts that, given the aforementioned depictions of Bonds, it is not difficult to see why Bonds is not well-liked. Ezra contends, however, that this perception is a significant factor in the public's perception that Bonds took performance-enhancing drugs, but that, as a matter of logic, being a bad person or an "equal opportunity jerk,"⁸ does not mean that Bonds took steroids.

Next, Ezra points to Bonds's natural baseball ability and his dedication to improving himself as a player as reasons for his success as a player. Ezra argues that a significant reason for Bonds's success is that he is the son of a former major leaguer, was raised around the game, and spent a lot of time in major league clubhouses with his father, Bobby Bonds. To illustrate Bonds's natural talent, Ezra recounts a story in which Bonds was able to correctly guess each of an opposing pitcher's pitches prior to delivery because of the way the pitcher moved his glove.⁹ When he pointed this out to his teammates and manager, no one else was able to see what Bonds was seeing even after

2. *Id.* at 6.

3. *See id.* at 8-13.

4. *Id.* at 13-14.

5. *Id.* at 17.

6. *Id.* at 18.

7. *Id.* at 19-21.

8. *Id.* at 10.

9. *Id.* at 28.

Bonds had clued them in to what the pitcher was doing.¹⁰ Bonds also studied pitchers closely and even attended pitchers' meetings to learn how pitchers think.¹¹

To complement the argument that Bonds may have relied on natural ability to achieve his success, Ezra points to several players who had statistically anomalous seasons like Bonds did in his 2001 campaign, in which he smacked seventy-three home runs, but who definitely did not use steroids. For example, Hack Wilson, who hit fifty-six home runs on his way to setting the single season runs batted in (RBI) record in 1930, had never hit more than forty home runs before 1930 and did not hit more than twenty-three after the record season. Additionally, Roger Maris averaged a home run every 9.67 at-bats during his 1961 season in which he became the then single-season home run record holder even though he averaged only a home run every 19.3 at-bats prior to 1961 and 22.5 at-bats after 1961.

Ezra raises a valid argument here that it is possible to have a statistically anomalous season without the aid of steroids. However, his argument is weakened by the fact that he failed to address any of the statistically anomalous seasons during Major League Baseball's so-called "steroid era" that later were shown to have been achieved by way of steroid use. For example, Ken Caminiti was named National League Most Valuable Player (MVP) in 1996 in a season in which he hit fourteen more home runs and had a batting average twenty-four points higher than he had in any other season prior to 1996. Caminiti, however, later admitted to using steroids during his MVP season.¹²

In the case of Wilson and Maris, they cannot be accused of taking steroids because they were not invented or readily available during the seasons in question, 1930 and 1961 respectively. Conversely, and further weakening Ezra's argument on this point, the same cannot be said for Bonds's 2001 season in which steroids were readily available to Bonds. That is not to say that Bonds used or did not use steroids, but rather that he could have used them if he chose to do so, and Ezra does not even raise this issue.

Ezra then turns to the reasons why the court of public opinion has seemingly convicted Bonds of using steroids. These reasons include changes in Bonds's physical appearance; the difference in his statistics before and after

10. *Id.*

11. *Id.*

12. Tom Verducci, *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, at 34, available at <http://vault.sportsillustrated.cnn.com/vault/article/magazine/MAG1025902/index.htm>.

he allegedly began using steroids prior to the 1998 season; testimony of Internal Revenue Service (IRS) agent Jeff Novitzky, Bonds's former girlfriend Kimberly Bell, and Bonds's personal trainer Greg Anderson.¹³ According to Ezra, Bonds's accusers point to his alleged weight gain, which was accompanied by an increase in muscle mass, acne on his back, increase in head size, hair loss, and shrinking of his testicles as evidence of Bonds's steroid use.¹⁴

After revealing these reasons, Ezra offers explanations as to how these allegations can be explained, and these same results realized, without any steroid use. First, the weight gain can be explained by the fact that it is not unusual for a male to gain fifteen to twenty pounds over a twenty-year period.¹⁵ Even if the weight gain was not a result of Bonds simply filling out over his two-decade career, Ezra claims the weight gain is a result of Bonds's well-documented and rigorous workout regimen. To point out how strenuous these workouts actually were, Ezra tells the story that during one offseason, MLB All-Star Gary Sheffield trained with Bonds but was quickly burned out by Bonds's routine.¹⁶ Ezra furthers his "muscle gain does not mean steroid use" argument by mentioning that there are organizations such as the World Natural Bodybuilding Federation that promote muscle growth without the aid of steroids.¹⁷ Further, Ezra argues that the acne on Bonds's back can be attributed to Bonds not fully cleaning his back after a workout, and that it is known, and not uncommon, that a sweaty back can cause the skin inflammation that leads to acne.¹⁸

Additionally, as to the allegations of testicular atrophy, Ezra points out that there is no way to definitively prove that this has even occurred, and even if it did, it would be difficult to quantify by how much.¹⁹ Plus, according to Ezra, controlled steroid testing that actively looks for testicular atrophy is a rarity, meaning that there is little to no evidence concerning this purported side effect.²⁰

After addressing the claim of testicular atrophy, Ezra then addresses the allegations that Bonds's hair loss is attributable to steroid use and points to two examples that purport to disprove these claims. First, Jay Buhner was a

13. EZRA, *supra* note 1, at 59-82.

14. *Id.* at 83-111.

15. *Id.* at 86-87.

16. *Id.* at 100-01.

17. *Id.* at 93.

18. *Id.* at 103-04.

19. *Id.* at 104-07.

20. *Id.* at 105.

bald slugger who played in the same era as Bonds and hit forty or more home runs for three consecutive seasons, but Buhner's baldness and power were never attributed to steroid use.²¹ Whereas, conversely, Arnold Schwarzenegger has admitted to steroid use during his time as a bodybuilder, and he still has a full head of hair.²² When you couple these facts with the fact that many males lose their hair during their twenties, thirties, and forties, Ezra argues, quite pointedly, that you cannot definitively link Bonds's hair loss to steroid use.²³

Finally, Ezra tackles the claim that Bonds's head increased in size due to steroid use. Ezra points out that both Bonds and a noted Bonds memorabilia collector contend that Bonds' hat size did not fluctuate by more than one-eighth of an inch during his playing career.²⁴ Furthermore, there is a complete lack of medical evidence that Bonds's head size increased during his playing career.²⁵ Ezra asserts that any increase in head size is more likely attributable to weight gain, making Bonds's head appear somewhat larger.²⁶

While Ezra's contention throughout the book is that there is no definitive proof that Bonds took steroids, it borders on naivety to ignore the totality of the circumstances concerning Bonds's alleged steroid use. To be sure, any one of these factors standing alone might support this argument, but Ezra's argument is substantially weakened when all of the factors and symptoms mentioned above are combined with the fact that they are all known or believed to be side effects of steroid use. Obviously, none of these allegations, especially in the singular, are definitive proof that Bonds used steroids, but circumstantial evidence is permitted in a courtroom, and the totality of the circumstantial evidence against Bonds, especially in the aggregate, could very well point to steroid use. Conveniently, however, Ezra never addresses the combination of all of these factors, which again, greatly weakens his argument that there is no proof that Bonds used steroids, given that the evidence when viewed collectively could indicate steroid use.

Finally, Ezra turns to testimony given during the investigations into Bonds and the Bay Area Laboratory Co-operative (BALCO), the San Francisco laboratory that allegedly supplied Bonds with performance enhancing drugs. Ezra first analyzes Jeff Novitzky, a special agent for the IRS's Criminal

21. *Id.* at 107.

22. *See id.* at 108. *See also* Tom Farrey, *Conan the Politician*, ESPN.COM, Nov. 17, 2003, http://espn.go.com/columns/farrey_tom/1655597.html.

23. EZRA, *supra* note 1, at 109.

24. *Id.* at 111.

25. *Id.*

26. *Id.*

Investigation Unit who participated in the BALCO investigation.²⁷ To show how far Novitzky went in his investigatory efforts, Ezra describes how, during the BALCO investigation, Novitzky went as far as to voluntarily spend his nights sifting through BALCO's trash.²⁸ After the government raided BALCO's facilities in 2003, Novitzky interviewed BALCO founder Victor Conte.²⁹ In this interview, Novitzky claims that Conte admitted to him that he had supplied Bonds with steroids.³⁰ Instead of accepting Novitzky's claims as true, Ezra questions his interrogation tactics, asking why Novitzky did not use a tape recorder during the interview, why his memo detailing the alleged confession came two days after the raid, and whether the interview was even voluntary.³¹

In furtherance of Ezra's point, while Conte supported Novitzky's recollection with respect to many other athletes, he never did so with Bonds, even though, as Ezra contends, Conte had no reason to protect Bonds.³² Ezra writes that Novitzky either made the investigation a personal vendetta against Bonds or got so excited about possibly being able to prove Bonds took steroids that he wanted to believe that Conte confessed to supplying Bonds with steroids.³³

Additionally, Ezra argues that Bonds's former girlfriend, Kimberly Bell, would have been in a position to see Bonds take steroids, but she has never testified to that fact.³⁴ Bonds and Bell were together for nearly a decade, and during this time, Bell frequently traveled with Bonds, and as Ezra sees it, it would be nearly impossible for her to never see any evidence of Bonds's alleged steroid use because they spent so much time together during their relationship.³⁵ However, the couple had a very messy falling out in which Bonds left her in financial ruin, so Bell would have a motive to testify to Bonds's steroid use, but she has never done so.³⁶

Finally, Greg Anderson, Bonds's former personal trainer, would have had an opportunity to see Bonds use steroids and a motive to testify to such use,

27. *Id.* at 66.

28. *Id.*

29. *Id.* at 153-54.

30. *Id.* at 154.

31. *Id.* at 155-57.

32. *Id.* at 157.

33. *Id.* at 162-63.

34. *Id.* at 171.

35. *Id.*

36. *Id.*

but like Bell, Anderson has never done so.³⁷ The government tried at least two undercover operations to link Anderson and Bonds to steroids but was unsuccessful in doing so.³⁸ Anderson admitted to providing steroids to other baseball players, but never did so with respect to Bonds even though Anderson had a motive to do so.³⁹ Notably, Bonds treated Anderson like he did pretty much everyone else in his life—lousily.⁴⁰ Bonds rarely paid Anderson, and when he did, the payments were not particularly large.⁴¹ Bonds also constantly berated and belittled Anderson.⁴² Nevertheless, according to Ezra, Anderson's greatest incentive to testify against Bonds would have been to avoid jail time.⁴³ Anderson twice spent time in jail related to steroid charges and, Ezra claims, likely could have avoided any incarceration in exchange for testifying against Bonds.⁴⁴ However, Anderson never did so, signaling that perhaps he has no evidence of Bonds using steroids.⁴⁵

Overall, *Asterisk*, is an intriguing and provocative read. It is an extreme rarity to see anyone attempt to raise a defense to Bonds's alleged steroid use. Instead, Ezra uses his training as a lawyer to poke holes in Bonds's accusers' arguments to suggest that perhaps people have rushed to judgment in condemning Bonds for steroid use. Notably, if the government is required to prove Bonds's steroid use under the legal burden of proof standard, "beyond a reasonable doubt," then Ezra's arguments may prove sufficient to relieve Bonds, at least criminally, of liability.

In Ezra's view, there is no definitive proof that Bonds ever used steroids. When that is coupled with the fact that those who would be in a position to testify to Bonds's steroid use have never done so, Ezra raises a reasonable doubt that Bonds ever used steroids or any other performance-enhancing drug. As noted, however, Ezra's defense of Bonds is not perfect. He points out several other baseball players who had statistically anomalous seasons without the aid of steroids and attempts to use the same line of reasoning with Bonds. However, this logic fails to address that the players from previous generations could not have used performance enhancing drugs, while it is quite possible that Bonds, a product of the "steroid era," did use steroids. Ezra also ignores

37. *Id.* at 164.

38. *Id.*

39. *Id.* at 165.

40. *Id.* at 165-66.

41. *Id.* at 166.

42. *Id.*

43. *Id.* at 165.

44. *Id.*

45. *See id.* at 164-69.

the fact that, while any one of Bonds's alleged physical changes standing alone might not be proof of steroid use, all of these purported changes in the aggregate may be more proof of steroid use than Ezra wants to admit. Nevertheless, Ezra creates enough doubt about Bonds's steroid use that it would be difficult for any jury in a criminal trial to convict Bonds of this fact.

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