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THE MITCHELL REPORT: THE ILLEGAL USE OF STEROIDS IN MAJOR LEAGUE BASEBALL

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

JANUARY 15, 2008

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CONTENTS

	Page
Hearing held on January 15, 2008	1
Statement of:	
Fehr, Donald M., executive director, Major League Baseball Players Association	112
Mitchell, Hon. George, former U.S. Senator	21
Selig, Allan H. "Bud", commissioner, Major League Baseball	91
Letters, statements, etc., submitted for the record by:	
Fehr, Donald M., executive director, Major League Baseball Players Association, prepared statement of	116
Mitchell, Hon. George, former U.S. Senator, prepared statement of	26
Selig, Allan H. "Bud", commissioner, Major League Baseball, prepared statement of	96
Waxman, Hon. Henry A., a Representative in Congress from the State of California:	
Letter dated January 8, 2008	11
Letter dated January 15, 2008	4
Prepared statement of	14

THE MITCHELL REPORT: THE ILLEGAL USE OF STEROIDS IN MAJOR LEAGUE BASEBALL

TUESDAY, JANUARY 15, 2008

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 9:31 a.m., in room 2154, Rayburn House Office Building, Hon. Henry A. Waxman (chairman of the committee) presiding.

Present: Representatives Waxman, Towns, Cummings, Davis of Illinois, Tierney, Watson, Lynch, Yarmuth, Norton, McCollum, Van Hollen, Sarbanes, Welch, Davis of Virginia, Burton, Shays, McHugh, Souder, Turner, Issa, and McHenry.

Staff present: Phil Schiliro, chief of staff; Phil Barnett, staff director and chief counsel; Karen Lightfoot, communications director and senior policy advisor; Brian Cohen, senior investigator and policy advisor; Michael Gordon, senior investigative counsel; Steve Glickman, counsel; Earley Green, chief clerk; Teresa Coufal, deputy clerk; Caren Auchman and Ella Hoffman, press assistants; Zhongrui "JR" Deng, chief information officer; Leneal Scott, information systems manager; Kerry Gutknecht, William Ragland, and Miriam Edelman, staff assistants; David Marin, minority staff director; Larry Halloran, minority deputy staff director; Jennifer Safavian, minority chief counsel for oversight and investigations; Keith Ausbrook, minority general counsel; Steve Castor, minority counsel; Patrick Lyden, minority parliamentarian and Member services coordinator; Brian McNicoll, minority communications director; Benjamin Chance, minority clerk; Ali Ahmad, minority deputy press secretary; Jill Schmalz, minority professional staff member; and John Ohly, minority staff assistant.

Chairman WAXMAN. Good morning. The committee will come to order.

When our committee held its first hearing 3 years ago on Major League Baseball's steroid scandal, I talked about how the culture of Major League clubhouses trickled down to become the culture of the high school gym.

Later that same day, Dan Hooten and Denise and Raymond Garibaldi proved that connection with their powerful testimony about the deadly impact that steroids had on their sons.

The Hooten and Garibaldi families were frustrated that baseball wasn't doing more to confront its role in a growing epidemic. For our part, this committee made it clear to the players and owners that they needed to take steps, and major ones, to deal with this problem. The first was to dramatically strengthen the league's test-

ing program for performance-enhancing drugs. The second was to investigate the extent of steroid use.

The starting point for addressing any scandal is in the facts. If a cheating scandal broke out at any university, the bare minimum we'd expect a thorough review of what happened and how it happened. This, unfortunately, wasn't baseball's first impulse. The commissioner, the owners and the union didn't want to look at the past. The code of silence in baseball clubhouses was threatening to become baseball's official policy.

To his credit, Commissioner Selig listened to the testimony at our hearing and recognized that baseball had a serious problem. He then did the right thing and asked Senator George Mitchell to take a hard look at baseball's steroid era.

I thank Commissioner Selig for that, and I thank Senator Mitchell for taking on an enormous task. Anyone who reads the Mitchell report will come to understand how difficult this challenge was. Virtually no one volunteered information to Senator Mitchell. In fact, only one active player, Frank Thomas agreed to speak with his investigators. Senator Mitchell and his staff did a superb job, but I think even they would acknowledge that their report isn't a comprehensive accounting of the steroids scandal. If reports had epitaphs, this one's would be: It didn't tell us everything, but it told us enough.

And what it tells us is damning. The illegal use of steroids and performance-enhancing drugs was pervasive for more than a decade. Major League Baseball was slow and ineffective in responding to the scandal, and the use of Human Growth Hormone has been rising.

The Mitchell report also makes it clear that everyone in baseball is responsible. The owners, the commissioner, the union and the players. Despite that shared responsibility, most of the media attention over the past month has focused on the players. They are the face of the game, and they are the ones our kids emulate.

As Chuck Kimmel, the president of the Athletic Trainers Association, recently pointed out: "Young athletes are very impressed by what their sports heroes say and do. There's a real authority carryover in these situations. They assume because a person is an expert in one area that they're qualified in another."

Our committee hasn't had an easy experience with individual players. We have tried to be sensitive to their legitimate privacy rights and to the obvious harm this issue can do to their reputation. But too often their responses to legitimate questions have been evasive or incomplete. This investigation is no different than any other that we undertake. We expect and the law requires truthful testimony. In one important instance, the Mitchell report provides new information relating to one of our previous inquiries.

Three years ago, we initiated an investigation into testimony that Rafael Palmeiro provided on March 17, 2005. Mr. Palmeiro testified that he never took steroids. Several months later, he has tested positive for Winstrol, a powerful steroid. As part of that investigation, we interviewed Miguel Tejada for relevant information. A transcript of that interview has never been made public out of respect to Mr. Tejada's privacy. But in that interview, Mr. Tejada told the committee that he never used illegal performance-enhanc-

ing drugs and that he had no knowledge of other players using or even taking or talking about steroids.

Well, the Mitchell report however directly contradicts key elements of Mr. Tejada's testimony. The conflict is stark and fundamental to the committee's 2005 investigation. As a result, Ranking Member Tom Davis and I will be writing the Department of Justice today to request an investigation into whether Mr. Tejada gave truthful answers to the committee.

[The information referred to follows:]

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January 15, 2008

The Honorable Michael B. Mukasey
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

We are writing to ask the Justice Department to investigate whether former Baltimore Orioles baseball player Miguel Tejada made knowingly false material statements to the Committee in connection with the Committee's investigation of former Orioles player Rafael Palmeiro. Such statements would constitute a violation of federal criminal law under 18 U.S.C. 1001.

Mr. Tejada made statements to the Committee in a transcribed interview on August 26, 2005, regarding his knowledge of and involvement with steroids. Evidence contained in former Senator George Mitchell's report on steroid use in Major League Baseball appears to be inconsistent with the statements he gave to the Committee.

In light of the new evidence contained in Senator Mitchell's report, we respectfully request that the Justice Department investigate Mr. Tejada's statements to the Committee.

Background

On March 17, 2005, the Committee held a hearing entitled, "Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use." During that hearing, former Baltimore Orioles baseball player Rafael Palmeiro appeared before the Committee and testified under oath that he had never used steroids.

On August 1, 2005, Major League Baseball announced that Mr. Palmeiro tested positive for steroids on May 4, 2005. As a result of Mr. Palmeiro's positive test, the Committee initiated an investigation into the truthfulness of Mr. Palmeiro's testimony before the Committee. During this investigation, Mr. Palmeiro denied using steroids. He also said that the positive steroid test

could have resulted from his use of an injectable form of vitamin B-12 that he received from his teammate Mr. Tejada.

On August 26, 2005, Committee staff conducted a transcribed interview of Mr. Tejada. During this interview, Mr. Tejada was asked questions about his relationship with Mr. Palmeiro and his knowledge and use of illegal steroids.

Out of deference to Mr. Tejada's privacy, the Committee never released the transcript of Mr. Tejada's interview. Mr. Tejada's statements did, however, have a significant impact on the Committee's investigation.

Committee Interview of Miguel Tejada

The Committee's interview with Mr. Tejada took place on August 26, 2005, at the Renaissance Harborplace Hotel in Baltimore, Maryland. The interview was transcribed, but Mr. Tejada was not placed under oath. Mr. Tejada was accompanied by his attorney, Mark Tuohey, and Diego Beritz, a Spanish-language interpreter. Before the questioning began, Committee staff advised Mr. Tejada of the importance of providing truthful answers, stating:

> [I]t is important that your answers be completely truthful. A person who makes a knowingly false material statement, even when it is not under oath and not in a hearing, can be prosecuted under 18 USC section 1001 for a criminal offense.[1]

The interview began with questions about Mr. Tejada's baseball career and the B-12 vitamin supplements that he regularly purchased in the Dominican Republic for use in the United States during the baseball season. Then, Mr. Tejada was asked about his awareness of any discussions among fellow players about steroids:

Committee Staff:	Has there been discussion among other players about steroids?
Mr. Tejada:	No, I never heard.
Committee Staff:	You never heard any of that?
Mr. Tejada:	No.[2]

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[1] Interview of Miguel Tejada, House Committee on Oversight and Government Reform, 9 (Aug. 26, 2005).

[2] *Id.* at 31.

Mr. Tejada played on the Oakland Athletics from 1997 to 2003. He was asked specifically whether he knew of any other players on the Oakland Athletics who used steroids:

Committee Staff:	When you were with the Oakland A's, they had a reputation in some places as a place where a lot of players used steroids: were you aware of that?
Mr. Tejada:	In the big leagues or in the minor leagues?
Committee Staff:	Big leagues.
Mr. Tejada:	No.
Committee Staff:	You never knew of any other player using steroids?
Mr. Tejada:	No.
Committee Staff:	Or just that it was even an issue for some players?
Mr. Tuohey:	Are you suggesting when he was playing with Oakland, or today?
Committee Staff:	When he was playing.
Mr. Tejada:	I didn't know any player.[3]

Mr. Tejada was also asked if he had ever taken steroids or other performance-enhancing drugs. He denied doing so:

Committee Staff:	And you, I believe, testified to this earlier, but I just want to make sure, have you ever taken a steroid before?
Mr. Tejada:	No.
Committee Staff:	Have you ever taken any illegal performance-enhancing drugs?
Mr. Tejada:	No.
Committee Staff:	Have you ever taken Andro or any other steroid precursor?
Mr. Tejada:	No.[4]

Mitchell Report Discussion of Miguel Tejada

These statements by Mr. Tejada appear to conflict with evidence contained in Senator Mitchell's report, entitled "Report to the Commissioner of Baseball of an Independent Investigation into the Illegal Use of Steroids and Other Performance Enhancing Substances by Players in Major League Baseball."

According to Senator Mitchell, he was contacted during his investigation by Adam Piatt, a former major league player. Mr. Piatt was the only player to voluntarily admit his use of performance-enhancing drugs and to accept full responsibility for his actions. In cooperating with Senator Mitchell's investigation, Mr. Piatt told Senator Mitchell about his knowledge of the use of steroids in baseball.

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[3] *Id.* at 33.

[4] *Id.* at 116.

Mr. Piatt and Mr. Tejada were teammates on the Oakland Athletics in 2003. Mr. Piatt told Senator Mitchell that during this period, he discussed steroid use with Mr. Tejada and provided him with steroids and human growth hormone. Senator Mitchell's report states:

> According to Piatt, Tejada asked specifically if he had any steroids. ... Piatt had several conversations with Tejada before a transaction occurred. Piatt admitted he had access to steroids and human growth hormone and agreed to obtain them for Tejada. Piatt recalled that he provided Tejada with testosterone or Deca-Durabolin, as well as human growth hormone.[5]

As corroborating evidence, Senator Mitchell's report reproduces copies of two checks written by Mr. Tejada to Mr. Piatt. The checks are both dated March 21, 2003, and were in the amounts of $3,100 and $3,200.[6]

Additionally, Senator Mitchell's report states that Kirk Radomski, a former New York Mets clubhouse employee, also corroborates some of the information provided by Adam Piatt. According to the report:

> Radomski recalled receiving a call from Piatt during which he said he needed extra testosterone because "one of the guys wanted some." In a later conversation, Piatt told Radomski that the testosterone was for his teammate, Miguel Tejada. ... Radomski provided this information to me without knowledge that I had spoken to Piatt or that I was otherwise aware of Piatt's alleged sales to Tejada.[7]

Senator Mitchell's report did not include direct evidence that Mr. Tejada used the steroids Mr. Piatt said he provided to him. But the evidence that Mr. Tejada purchased steroids from Mr. Piatt does raise the possibility that Mr. Tejada used illegal performance-enhancing drugs. Such use would also be inconsistent with the Mr. Tejada's denials in his interview with the Committee.

Request for an Investigation

In light of the conflicts between the statements that Mr. Tejada provided to the Committee and the evidence in Senator Mitchell's report, we ask the Justice Department to investigate whether Mr. Tejada made knowingly false material statements to the Committee in

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[5] Senator George J. Mitchell, *Report to the Commissioner of Baseball of an Independent Investigation into the Illegal Use of Steroids and Other Performance Enhancing Substances By Players in Major League Baseball* (Dec.13, 2007).

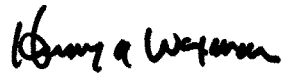
[6] *Id.*

[7] *Id.*

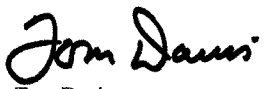
violation of 18 U.S.C. 1001. We do not presume that Mr. Tejada lied to the Committee. But we do believe that this is a serious enough issue to warrant further examination by the Justice Department. We are especially concerned about the veracity of Mr. Tejada's statements because they materially influenced the course of the Committee's investigation in 2005.

Thank you very much for your assistance.

Sincerely,



Henry A. Waxman
Chairman



Tom Davis
Ranking Minority Member

Chairman WAXMAN. I also want to make it clear that the steroid scandal is not just about ball players. In my view, not enough attention has been paid to the Mitchell report's indictment of the people who run baseball. The players seem to have been surrounded by enablers and officials willing to look the other way.

In the end, the owners and the Commissioner's Office are every bit at fault as the players. The report recounts how the medical director for Major League Baseball actually led a presentation in 1998 on the benefits that could be obtained from testosterone. Team doctors who attend the meeting were disturbed. The league's medical office seemed to be sending an official message of leniency.

The situation in the league security office didn't seem to be much better. Little investigating seems to have been done when reports of illegal steroid use were passed along. In a steroids case involving former Cleveland Indian outfielder Juan Gonzalez, the league security office appears to have done nothing. In another case, a bullpen catcher for the Montreal Expos, Luis Perez, gave Kevin Hallinan, the director of security for Major League Baseball, a list of eight players who had obtained anabolic steroids.

And I want to read from the Mitchell report about what happened next: "Hallinan told us that the Perez incident could have been the 'single most important steroids investigation' he conducted, but to his disappointment, he was not given permission to interview the Major League players named by Perez."

The Mitchell report also recounts the efforts of Stan Conte, the chief trader for the San Francisco Giants, to remove Greg Anderson from the Giants clubhouse. Mr. Anderson was Barry Bonds' personal trainer. The different approaches taken by Mr. Conte; the Giant's general manager, Brian Sabean; and the Giant's president, Peter Magowan, are a sad reflection of the poor leadership many teams brought to this effort.

It is a dismal record and it needs to be put front and center; not hidden. It helps us understand how the steroid era infected baseball and how that virus spread to colleges and high school. That is the bad news.

The good news is, I believe baseball is now taking steroid use seriously and making fundamental changes. In 2005, Commissioner Selig and Don Fehr, the head of the players union, voluntarily reopened bargaining. To their credit, they worked together to make baseball's steroid policy one of the toughest in sports. I might say that in 2005 I had my doubts at whether Mr. Selig and Mr. Fehr would rise to this occasion, but I want to commend them both for the leadership that they have been showing. And in the wake of the Mitchell report, Mr. Fehr accepted responsibility and said: "in retrospect, we should have done something sooner."

Since the report's release, Commissioner Selig has begun implementing some of the Mitchell recommendations, and both the owners and the players have agreed to try to reach agreement on additional changes. This committee wants Major League Baseball to have the most effective program possible. We also want to do everything we can to eliminate the use of these drugs by children.

Frank and Brenda Marrero, the parents of Efrain Marrero, are here this morning along with Don Hooten. Efrain Marrero was a promising 19-year-old college athlete who turned to steroids and ul-

timately committed suicide. In his memory, Mr. and Mrs. Marrero have established a foundation to fight steroids and other performance-enhancing drugs. They've also submitted testimony for this hearing, and I ask unanimous consent that it be made part of the record.

Without objection, that will be the order.

[The information referred to follows:]

THE EFRAIN ANTHONY MARRERO FOUNDATION

FIGHTING AGAINST STEROIDS TOGETHER

Health Education Council PROGRAM

www.efrainmarrero.org

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January 8, 2008

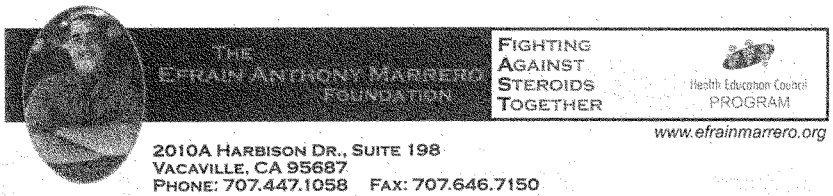
Honorable Congressman Henry Waxman,

The eyes of the world were riveted on Barry Bonds as he broke one of the most sacred records in the sports world – Hank Aaron's home run record. How ironic that while he was closing in on that coveted mark he was also under investigation for using steroids to achieve his baseball success. Hundreds of thousands of young athletes in this country are watching how this drama plays out – will Barry Bonds go down in history as a true sports hero or be dismissed as a cheater? Make no mistake -- the answer to that question will affect how our children approach their own athletic endeavors.

Did Barry Bonds, Roger Clemens or any other elite athlete use steroids? That is the question your hearings have to answer. I can tell you, however, that my nineteen year-old son Efrain believed they did. Efrain, a promising college athlete, confessed to steroid abuse in the fall of 2004 because of the devastating side effects he was experiencing. When asked what led him to use steroids he replied, "Barry Bonds and Mark McGuire did it!" Three and half weeks after he quit using steroids "cold turkey" my son took his own life – a victim of the deep depression that accompanies withdrawal from these drugs. The sight of our son lying lifeless in our home is forever seared into our soul, and we can't help wondering how many other families risk experiencing the same horrifying tragedy as their youngsters turn to steroids following the footsteps of their sports heroes.

So, we are at a defining moment in sports history -- your findings and recommendations to Commissioner Selig and America concerning steroid abuse by Bonds and others will shape how the sports world treats athletic achievements gained through unfair use of performance enhancing methods. Now is the time to take a stand – are we going to condemn cheating or celebrate it? Rest assured our young athletes will get the message either way. You are a highly respected, influential leader with a unique opportunity to chart the path for the future of sports in our country – show our children the right way!

Simple, honest accountability is all we're asking for. If your investigation discovers Barry Bonds, or any other player, has abused steroids during their career we would expect meaningful consequences to follow. Specifically, any and all records achieved by offending athletes should be voided, and the players should be stripped of all awards such as "Gold Glove Awards," "Cy Young Awards," "Most Valuable Player," etc. Additionally the offending players should be permanently banned from "Hall of Fame" consideration. Players found to have achieved success through use of steroids should be ostracized, serving as clear examples to young athletes that cheaters are not worthy of recognition, respect and admiration.



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I'm sure Hank Aaron wouldn't mind his record falling to a truly gifted player who achieved greatness with natural ability. But, what a slap in the face for Hank's legacy if we continue to celebrate the accomplishments of a lesser athlete who was reportedly only able to eclipse the record by "juicing!" These days, as we watched Barry Bonds break Hank Aaron's record, our family reflects less on the record and more on the tremendous negative influence this man and all these athletes had on our son. No family should have to endure the anguish we've suffered – but tens of thousands of youngsters are at risk. For them we ask you to dig deep – find the unvarnished truth and report it fairly. It's been said that all it takes for evil to triumph is for good men to do nothing – you're a wise and courageous leader in America, and it's time to shine the light of day on this problem. Our foundation stands ready to help you in any way we can.

Thank you!

Very Respectfully Yours,

Brenda Marrero
Frank Marrero

Frank and Brenda Marrero
Parents of Efrain A Marrero
The Efrain Anthony Marrero Foundation
Fighting Against Steroids Together

Chairman WAXMAN. I want to close my opening statement by reading from their statement: "simple, honest accountability is all we're asking for . . . no family should have to endure the anguish we've suffered, but tens of thousands of youngsters are at risk. For them we ask you to dig deep, find the unvarnished truth and report it fairly."

To Mr. and Mrs. Marrero, and Mr. Hooten, and to all the concerned parents around our Nation, I want you to know we're trying to do just that.

I now want to recognize Mr. Davis, who as chairman of this committee held that important hearing and investigation, got us started. It is an effort we've worked closely together on, and I'm pleased to continue that role with him in this year's hearing.

[The prepared statement of Chairman Henry A. Waxman follows:]

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Opening Statement of Rep. Henry A. Waxman
Chairman, Committee on Oversight and Government Reform
Hearing on "The Mitchell Report: The Illegal Use of Steroids in Major League Baseball"
January 15, 2008

When our Committee held its first hearing three years ago on Major League Baseball's steroid scandal, I talked about how the culture of major league clubhouses trickled down to become the culture of the high school gym.

Later that same day, Don Hooten and Denise and Raymond Garibaldi proved that connection with their powerful testimony about the deadly impacts steroids had on their sons.

The Hooten and Garibaldi families were frustrated that baseball wasn't doing more to confront its role in a growing epidemic. For our part, this Committee made it clear to the players and owners that they needed to take two major steps. The first was to dramatically strengthen the league's testing program for performance enhancing drugs; the second was to investigate the extent of steroids use.

The starting point for addressing any scandal is the facts. If a cheating scandal broke out at any university, the bare minimum we would expect is a thorough review of what happened and how it happened.

This, unfortunately, wasn't baseball's first impulse. The Commissioner, the owners, and the union didn't want to look to the past. The code of silence in baseball clubhouses was threatening to become baseball's official policy.

To his credit, Commissioner Selig listened to the testimony at our hearing and recognized that baseball had a serious problem. He then did the right thing and asked Senator George Mitchell to take a hard look at baseball's steroid era.

I thank Commissioner Selig for that and I thank Senator Mitchell for taking on an enormous challenge.

Anyone who reads the Mitchell report will come to understand just how difficult this challenge was. Virtually no one volunteered information to Senator Mitchell. In fact, only one active player, Frank Thomas, agreed to speak with his investigators.

Senator Mitchell and his staff did superb work, but I think even they would acknowledge that their report isn't a comprehensive accounting of the steroids scandal. If reports had epitaphs, this one's would be: "It didn't tell us everything, but it told us enough."

And what it tells us is damning. The illegal use of steroids and performance enhancing drugs was pervasive for more than a decade, Major League Baseball was slow and ineffective in responding to the scandal, and the use of human growth hormones has been rising.

The Mitchell report also makes it clear that everyone in baseball is responsible: the owners, the Commissioner, the union, and the players.

Despite that shared responsibility, most of the media attention over the past month has focused on the players. They are the face of the game. And they are the ones our kids emulate.

As Chuck Kimmel, the President of the National Athletic Trainers' Association recently pointed out, "Young athletes are very impressed by what their sports heroes say and do. There's a real authority carryover in these situations. They assume because a person is an expert in one area that they're qualified in another."

Our Committee hasn't had an easy experience with individual players. We've tried to be sensitive to their legitimate privacy rights and to the obvious harm this issue can do to their reputations. But too often their responses to legitimate questions have been evasive or incomplete.

This investigation is no different than any other that we undertake. We expect — and the law requires — truthful testimony.

In one important instance, the Mitchell report provides new information relating to one of our previous inquiries. Three years ago we initiated an investigation into testimony that Rafael Palmeiro provided on March 17, 2005. Mr. Palmeiro testified that he never took steroids. Several months later he tested positive for Winstrol, a powerful steroid.

As part of that investigation, we interviewed Miguel Tejada for relevant information. A transcript of that interview has never been made public, out of respect for Mr. Tejada's privacy. But in that interview, Mr. Tejada told the Committee that he never used illegal performance-enhancing drugs and that he had no knowledge of other players using or even talking about steroids

The Mitchell report, however, directly contradicts key elements of Mr. Tejada's testimony. The conflict is stark and fundamental to the Committee's 2005 investigation. As a result, Ranking Member Tom Davis and I will be writing the Department of Justice today to request an investigation into whether Mr. Tejada gave truthful answers to the Committee.

I also want to make it clear that the steroid scandal is not just about ballplayers.

In my view, not enough attention has been paid to the Mitchell report's indictment of the people who run baseball. The players seemed to have been surrounded by enablers and officials willing to look the other way. In the end, the owners and the Commissioner's office are every bit at fault as the players.

The report recounts how the medical director for Major League Baseball actually led a presentation in 1998 on the benefits that could be obtained from testosterone. Team doctors who attended the meeting were disturbed: the league's medical office seemed to be sending an official message of leniency.

The situation in the league's security office didn't seem to be much better. Little investigating seems to have been done when reports of illegal steroid use were passed along. In a steroids case involving former Cleveland Indians outfielder Juan Gonzalez, the league's security office appears to have done nothing.

In another case, a bullpen catcher for the Montreal Expos, Luis Perez, gave Kevin Hallinan, the director of security for Major League Baseball, a list of eight players who had obtained anabolic steroids. I want to read from the Mitchell report what happened next:

> "Hallinan told us that the Perez incident could have been the 'single most important steroids investigation' he conducted, but to his disappointment he was not given permission to interview the major league players named by Perez."

The Mitchell report also recounts the efforts of Stan Conte, the chief trainer for the San Francisco Giants, to remove Greg Anderson from the Giant's clubhouse. Mr. Anderson was Barry Bonds personal trainer. The different approaches taken by Mr. Conte, the Giants general manager Brian Sabean, and the Giants president, Peter Magowan, are a sad reflection of the poor leadership many teams brought to this effort.

It is a dismal record and it needs to be put front and center, not hidden. It helps us understand how the steroids era infected baseball and how that virus spread to colleges and high schools.

That's the bad news. The good news is that I believe baseball is now taking steroid use seriously and making fundamental changes.

In 2005, Commissioner Selig and Don Fehr, the head of the players union, voluntarily reopened bargaining. To their credit, they worked together to make baseball's steroids policy one of the toughest in sports.

And in the wake of the Mitchell report, Mr. Fehr accepted responsibility and said: "In retrospect, we should have done something sooner."

Since the report's release, Commissioner Selig has begun implementing some of the Mitchell recommendations and both the owners and the players have agreed to try to reach agreement on additional changes.

This Committee wants Major League Baseball to have the most effective program possible. We also want to do everything we can to eliminate the use of these drugs by children.

Frank and Brenda Marrero, the parents of Efrain Marrero, are here this morning, along with Don Hooten. Ephrain Marrero was a promising 19-year-old college athlete who turned to steroids and ultimately committed suicide. In his memory, Mr. and Mrs. Marrero have established a foundation to fight steroids and other performance enhancing drugs. They have also submitted testimony for this hearing, and I ask unanimous consent that it be made part of the record.

I want to close by reading from their statement. It reads:

> "Simple, honest accountability is all we are asking for. … No family should have to endure the anguish we've suffered — but tens of thousands of youngsters are at risk. For them we ask you to dig deep — find the unvarnished truth and report it fairly."

To Mr. and Mrs. Marrero, Mr. Hooten, and to all the concerned parents around our nation, I want you to know we are trying to do just that.

Mr. DAVIS OF VIRGINIA. Thank you, Mr. Chairman. I'd associate myself with your opening statement.

I want to note that we, too, have reviewed Mr. Tejada's statement to the committee and the evidence regarding him in the Mitchell report. And as a result of that review, we've concluded that further investigation is warranted into whether Mr. Tejada made knowingly false material statements to the committee. Therefore, we'll join the chairman in asking the Justice Department to investigate this matter.

Mr. Chairman, thank you for calling this hearing. In the words of baseball's dugout philosopher, Yogi Berra, this is deja vu all over again. The game of baseball, its fans and aspiring players seem caught in the grip of a recurring drug-induced nightmare.

Let's be clear about our purpose. We're not self-appointed prosecutors trying the claims of the Mitchell report. This is not a court of law. And the guilt or innocence of the players accused in the report of steroid abuse is not our major concern. Our focus is on Senator Mitchell's recommendations more than his findings. We're here to save lives, not ruin careers. We want steroids and other dangerous drugs out of sports, period.

We want this because we know those who aspire to athletic stardom look up to those who have achieved it and often emulate their methods. We want young athletes to understand there are no shortcuts to success, that excellence has to be the product of physical exertion not pharmacology. In true sport, the road to achievement is paved with hard work, dedication and focus; not "the clean," "the clear," or Human Growth Hormone.

We know some consider this exercise a waste of time. They say sports are none of our business and we ought to be sticking to what is important: winning the war on terror, strengthening homeland security, reviving a flagging economy. Some even throw a sports metaphor back at us and claim we're only grandstanding. Us, playing to the crowd? Perish the thought.

But seriously, to those critics I say, other issues might be more important, but that doesn't make this inquiry unimportant. There is nothing irrelevant or inconsequential about the health of our children and the integrity of the game so many of us love. I would hope no one would dispute that protecting public health, keeping young athletes safe is a vital and appropriate function of government.

Nearly 3 years ago, our first foray into this subject proved extremely productive. After our hearings, then Ranking Member Henry Waxman and I introduced legislation that turned out to be unnecessary because baseball and other major sports acted quickly on their own to enhance drug testing and enforcement programs. A little governmental sunshine can go a long way.

Today, thanks to the leadership of Commissioner Selig and the wise willingness of union chief Don Fehr to urge cooperation among its members, baseball now doles out 50 game suspensions for first offenses, 100 game suspensions for second offenses, and lifetime bans for third offenses. All players are tested twice a year, and testing techniques have been improved to detect more substances at lesser levels.

Baseball also has targeted abusive amphetamines, which in many clubhouses were literally dumped into a coffee pot for communal consumption. Now we have before us the Mitchell report. Its 409 pages paint a sordid picture of backroom drug deals involving clubhouse personnel; players injecting each other with illegal substances right in their locker rooms; and more efforts aimed at obfuscation and confiscation. The report names 89 players with varying degrees of involvement with steroids and HGH.

But they are just part of a far wider culture in a sport that values home runs and victories over fair play. The report confirms that active participation or passive acquiescence and drugging cannot coexist with the responsibility to set a proper example for those stepping up the lower rungs of the ladder of athletic success. In other words, while 2 years ago we hoped otherwise, our work here is definitely not done. Stiffer penalties and stepped-up enforcement have caused some players to back off of steroid use. Unfortunately that progress has created a strong, perverse incentive to develop substances that can't be detected by current testing regimes.

But as a panelist in our last baseball hearing famously said, We're not here to talk about the past. Our panel today will address in essence one question: Going forward, what will the leaders of baseball do to implement the recommendations outlined in this report?

We'll ask Senator Mitchell how these specific recommendations came to be; what makes them particularly important given what the Mitchell panel found. We are watching closely because America's youth are watching closely. Despite significant efforts, including the Atlas and Athena programs that discourage steroid use among high schoolers, attitudes about steroids and usage levels among young athletes remain stubbornly constant.

Not surprisingly, rates of steroid use go up as the athletic stakes get higher. Steroid abuse by high school seniors seeking that extra edge to earn a college scholarship is twice that of eighth graders where the goal is merely to catch the eye of a high school coach. Over the past 5 years, more teens have come to believe steroids are dangerous, but the percentage of those who actually disapprove of performance-enhancing drugs remains sadly unchanged. The myth of youthful invulnerability, the allure of athletic success and the rationale that every one else is doing it combine to drive an intoxicating culture that won't be countered effectively with slogans, posters and half-hearted enforcement programs.

We commend Commissioner Selig for having the coverage to appoint Senator Mitchell to undertake this investigation and for letting his findings become public. They certainly did not reflect well on the commissioners' 10 years as leader, but he let the chips fall where they may. Let's applaud him for finally attacking the problem rather than running and hiding from it.

Already the commissioner has ordered all recommendations that he believes did not require union approval to be implemented immediately. This means drug tests and background checks for clubhouse personnel. It means clubs will maintain a log of all packages sent to Major League ballparks; that they'll distribute and post Major League Baseball's policy on prohibited substances. Perhaps most significantly, it means the 24-hour notice of steroid testing

will be eliminated. These are encouraging first steps, but that is all they are, first steps.

We also commend Mr. Fehr for standing ready to discuss further amendments to the collective bargaining agreement. He leads a union that too often has been, frankly, intransigent and uncooperative. We know some of the measures suggested in the report—for example, that baseball should hire an independent firm to conduct testing—will not be easy to sell. But he has helped his members see the writing on the wall which says this: Baseball needs to fix the problem, change this culture, alter how it does business with regards to steroids, Human Growth Hormone and all matter of dangerous performance-enhancing drugs or—and this is a promise not a threat—Congress will do it for you.

Finally, we commend Senator Mitchell for his excellent work. Saddled with a daunting list of obstacles—no subpoena power, no corporation from the players and little enthusiasm among owners more concerned about keeping turnstiles clicking and home runs flying—he produced a sober, even-handed document whose factual assertions almost universally have stood up to scrutiny. Senator Mitchell's recommendations at first glance seem well grounded and realistic, and we'll have the chance to probe them further today.

For example, he urged the commissioner to establish an office with enhanced authority to investigate and report the use of performance-enhancing drugs. Major League Baseball already responded last week, announcing creation of a new department of investigations. The recommendations and actions appear to be sound, but I understand the union chief believes the devil will be in the details. How will the new office's powers be? How will it work with the players to accomplish its goal? Has baseball effectively reorganized itself in setting up this office, or has the sport simply reshuffled the deck chairs in response to a scandal, like we often do in Congress?

Senator Mitchell also calls for increasing player education about the dangers of steroid use. Former big league manager, Phil Garner, told the story of confronting one of his players about steroid use and telling him his heart could give out by the age of 40. The player said he didn't care, that he wanted to be as big and strong and rich now as possible; he'd worry about the rest later.

Finally, Senator Mitchell recommends increasing independence and transparency of the program, as well as conducting year-round unannounced testing.

Mr. Fehr, I suspect you have your work cut out for you to convince players to embrace these recommendations. But the collective bargaining process should not be used as an excuse to tolerate or shield illegal activities, activities which degrade and damage the very enterprise that employes the players. Negotiation is the right process, but we can't abide inaction or half measures as its only products. The health of young athletes across the country is at stake, and we won't hesitate to defend their interests and the interests of millions of Americans who have grown tired of the cloud that is still hovering over baseball.

From this moment, we begin to look into steroids in sports and how their use affects impressionable young athletes. Our efforts on this issue have been bipartisan. From the beginning our committee

has come together in a sense of cooperation and team work that continues to this day. And in that spirit, we look forward to a frank and constructive discussion today on how to clean up baseball. When commentators talk about the importance of chemistry in the locker room, that is not what they had in mind.

Thank you, Mr. Chairman.

Chairman WAXMAN. Thank you very much, Mr. Davis. I also want to commend Senator Mitchell for the terrific work he has done on this report.

Senator Mitchell, you have an outstanding record as a Member of the Senate and the leader of the Senate, and I could go through your many accomplishments, but you may have achieved even more since you left the Senate as an international statesman. You're well-known for your work in bringing divided groups together. Brought people together in Northern Ireland, and brought Democrats and Republicans together on this committee, and I thank you for that. You've done a great job, and I know how difficult it is to do a job without subpoena power when we were in the minority. But we worked together on this committee to use what powers we have to accomplish the important things that need to be accomplished. So I thank you for your work, and I'm pleased you're here.

I'm also mindful of your time schedule. I do want to inform you it is the policy of this committee, no matter who testifies, that they testify under oath. So if you'd please rise and raise your right hand.

[Witness sworn.]

Chairman WAXMAN. Well, I want to recognize you to make your presentation to us.

STATEMENT OF HON. GEORGE MITCHELL, FORMER U.S. SENATOR

Mr. MITCHELL. Mr. Chairman, Congressman Davis, members of the committee, thank you for inviting me to appear before you this morning.

In March 2006, I was asked by the commissioner of baseball to conduct an independent investigation into the illegal use of steroids and other performance-enhancing substances in Major League Baseball. When he asked me to accept this responsibility, the commissioner promised that I would have total independence and his full support. He kept that promise.

Last month I completed and made public my report. Since then, the public discussion has largely focused on the names of players who are identified in the report. I will focus today on the report's broader findings and recommendations.

I begin with a summary of our conclusions. The illegal use of steroids, Human Growth Hormone and other performance-enhancing substances by well-known athletes may cause serious harm to the user. In addition, their use encourages young people to use them. Because adolescents are already subject to significant hormonal changes, the abuse of steroids and other such substances can have more serious adverse effects on them than on adults. Many young Americans are placing themselves at serious risk. Some estimates appear to show a recent decline in steroid use by high school students. That is heartening. But the most recent

range of estimates is from about 2 percent to 6 percent. Even the lower figure means that hundreds of thousands of high-school-aged young people are illegally using steroids. It is important to deal with well-known athletes who are illegal users, but it is at least as important, perhaps even more so, to be concerned about the reality that hundreds of thousands of our children are using these substances. Every American, not just baseball fans, ought to be shocked by that disturbing truth.

During the period discussed in my report, the use of steroids in Major League Baseball was widespread, in violation of Federal law and of baseball policy. Club officials routinely discussed the possibility of substance use when evaluating players. The response by baseball was slow to develop and was initially ineffective. The Players Association had for many years opposed a mandatory random drug-testing program, but they agreed to the adoption of such a program in 2002 after which the response gained momentum.

Since then, the Major League clubs and the Players Association have agreed to a number of improvements to the program, including stronger penalties that have increased its effectiveness. The current program has been effective in that detectable steroid use appears to have declined. However, many players have shifted to Human Growth Hormone, which is not detectable in any currently available urine test.

The minority of players who use these substances were wrong. They violated Federal law and baseball policy. And they distorted the fairness of competition by trying to gain an unfair advantage over the majority of players who followed the law and the rules. They, the players who follow the law and play by the rules, are faced with the painful choice of either being placed at a competitive disadvantage or becoming illegal users themselves. No one should have to make that choice.

Obviously, the players who illegally used performance-enhancing substances are responsible for their actions. But they did not act in a vacuum. Everyone involved in baseball over the past two decades—commissioners, club officials, the Players Association and players—share to some extent in the responsibility for the steroids era. There was a collective failure to recognize the problem as it emerged and to deal with it early on. As a result, an environment developed in which illegal use became widespread.

Knowledge and understanding of the past are essential if the problem is to be dealt with effectively in the future. But being chained to the past is not helpful. Baseball does not need and cannot afford to engage in a never-ending search for the name of every player who used performance-enhancing substances.

In my report, I acknowledge and even emphasize the obvious. There is much about the illegal use of performance-enhancing substances in baseball that I did not learn. There were and there are other suppliers and other users. It is clear that a number of players have obtained these substances through so-called rejuvenation centers using prescriptions of doubtful validity. Other investigations will no doubt turn up more names and fill in more detail, but that is unlikely to significantly alter the description of baseball's steroidera as set forth in my report.

The commissioner was right to ask for this investigation and this report. It would have been impossible to get closure on this issue without it or something like it. It is appropriate to acknowledge, Mr. Chairman, that it was you and this committee who originally suggested that such an inquiry be conducted. But it is now time to look to the future, to get on with the important and difficult task that lies ahead. I urge everyone involved in Major League Baseball to join in a well planned, well executed and sustained effort to bring the era of steroids and Human Growth Hormone to an end, and to prevent its recurrence in some other form in the future. That's the only way this cloud will be removed from the game.

The adoption of the recommendations set forth in my report will be a first step in that direction, and I will now summarize them. While some can be and have been implemented by the commissioner unilaterally, others are subject to collective bargaining and, therefore, will require the agreement of the Players Association. The recommendations focus on three areas.

First, there must be an enhanced capacity to conduct investigations based on nontesting evidence. Some illegal substances are difficult or virtually impossible to detect. Indeed, one leading expert has argued that testing only scratches the surface. The ability to investigate vigorously allegations of violations is an essential part of any meaningful drug prevention program. The commissioner has accepted my recommendation to create a department of investigations led by a senior executive to respond promptly and aggressively to allegations of the illegal use or possession of performance-enhancing substances. To do its job effectively, this department must establish credibility and cooperate closely with law enforcement agencies.

I recommended that the commissioner strengthen pre-existing efforts to keep illegal substances out of Major League Baseball clubhouses by logging and tracking packages shipped to players at Major League ballparks; conducting background checks and random drug tests on clubhouse employees; and adopting policies to ensure that allegations of a player's possession or use of performance-enhancing substances are reported promptly to the department of investigations. I also recommended that club personnel with responsibility affecting baseball operations be required to sign annual certifications that they have no unreported knowledge of any possible violation of Major League Baseball's drug prevention policy. The commissioner has implemented all of these recommendations.

Second, improved educational programs about the dangers of substance use are critical to any effort to deter use. Over the last several years, the Commissioner's Office and the Players Association have made an increased effort to provide players and club personnel with educational materials on performance-enhancing substances. Some of these efforts have been effective. Some were criticized by both former players and club personnel. Several suggestions for improvement are set forth in my report.

Third, although it is clear that even the best drug-testing program is by itself not sufficient, drug testing remains an important element of a comprehensive approach to combat illegal use. The current program was agreed to in 2006 and will remain in effect

until 2011. Any changes to the program therefore must be negotiated and agreed to by the clubs and the Players Association. In my report, I set forth the principles that presently characterize a state-of-the-art drug-testing program. And I urge the clubs and the Players Association to incorporate them into baseball's program when they next deal with this issue. The program should be administered by a truly independent authority that holds exclusive authority over its structure and administration. It should be transparent to the public, allowing for periodic audits of its operations and providing regular reports of aggregate data on testing and test results. It should include adequate year-round unannounced testing and employ best practices as they develop. To ensure that the independent administrator can accomplish these objectives, the program should receive sufficient funding. And it should continue to respect the legitimate privacy and due process rights of the players.

Finally, I hope that the commissioner, the clubs and the Players Association will have a reasonable time and opportunity to consider and discuss these recommendations with their members and constituents and to reach their own conclusions about their implementation. My report demonstrates I'm not an apologist for either the commissioner or the Players Association. But in fairness, I think we should recognize what they have done to address this problem. As noted in my report, prior to the 2002 negotiations, the commissioner took several key steps to lay the foundation for an agreement on the mandatory drug-testing program, including in early 2001 he convened a meeting of several respected team physicians, during which they shared their own experiences and concerns about the use of steroids by Major League players. That year, he unilaterally imposed a drug-testing program for Minor League Players which he could do because Minor League Players are not represented by the Players Association. In 2002, after detailed negotiations, the Players Association agreed to the commissioner's proposal for a mandatory random testing program in the Major Leagues. To their credit, this was a significant step by the Players Association because, as I noted earlier, they had for many years opposed such a program.

The drug-testing programs in all sports, including the Olympics, have evolved over time through a process of trial and error as the programs were modified to address emerging problems and concerns. In that respect, baseball's program has been like all the others as described in my report. Since 2002, the commissioner and the Players Association have agreed to several improvements in the program to deal with issues as they arose. They did so even though under Federal labor law they were under no obligation to modify their collectively bargained agreement during its term.

Mr. Chairman, members of the committee, I was asked to conduct an inquiry and to report what I found as accurately, as fairly and as thoroughly as I could. I've done so to the best of my ability, and my work has been completed. Now it is up to the commissioner, the clubs and the players to decide how they will proceed. Their actions over the past 6 years have demonstrated that they can address this problem through the collective bargaining process.

I hope you will encourage and give them the opportunity to do so again.

Thank you again, Mr. Chairman, for inviting me to be here and for your patience. And I'll be pleased now to try to respond to any questions that you or any other member of the committee may have.

[The prepared statement of Mr. Mitchell follows:]

STATEMENT OF SENATOR GEORGE J. MITCHELL
BEFORE THE HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
January 15, 2008

Mr. Chairman, Congressman Davis, Members of the Committee, thank you for inviting me to appear before you this morning.

In March 2006 I was asked by the Commissioner of Baseball to conduct an Independent Investigation into the Illegal Use of Steroids and Other Performance Enhancing Substances in Major League Baseball. When he asked me to accept this responsibility, the Commissioner promised that I would have total independence and his full support. He kept that promise. Last month I completed and made public my report.

Since then, the public discussion has largely focused on the names of players who were identified in the report. I will focus today on the report's broader findings and recommendations.

I begin with a summary of our conclusions.

1. The illegal use of steroids, human growth hormone, and other performance enhancing substances by well known athletes may cause serious harm to the user. In addition, their use encourages young people to use them. Because adolescents are already subject to significant hormonal changes, the abuse of steroids and other such substances can have more serious adverse effects on them than on adults.

Many young Americans are placing themselves at serious risk. Some estimates appear to show a recent decline in steroid use by high school students. That's heartening. But the most recent range of estimates is from about 2 to 6 percent. Even the lower figure means that hundreds of thousands of high school-aged young people are illegally using steroids.

It's important to deal with well known athletes who are illegal users. But it's at least as important, perhaps even more so, to be concerned about the reality that hundreds of thousands of our children are using these substances. Every American, not just baseball fans, ought to be shocked by that disturbing truth.

2. During the period discussed in my report, the use of steroids in Major League Baseball was widespread, in violation of federal law and baseball policy. Club officials routinely discussed the possibility of substance use when evaluating players.

The response by baseball was slow to develop and was initially ineffective. The Players Association had for many years opposed a mandatory random drug testing program, but they agreed to the adoption of such a program in 2002, after which the response gained momentum. Since then, the major league clubs and the Players Association have agreed to a number of improvements to the program, including stronger penalties, that have increased its effectiveness.

The current program has been effective in that detectable steroid use appears to have declined. However, many players have shifted to human growth hormone, which is not detectable in any currently available urine test.

3. The minority of players who used these substances were wrong. They violated federal law and baseball policy, and they distorted the fairness of competition by trying to gain an unfair advantage over the majority of players who followed the law and the rules. They – the players who follow the law and the rules – are faced with the painful choice of either being placed at a competitive disadvantage or becoming illegal users themselves. No one should have to make that choice.

4. Obviously, the players who illegally used performance enhancing substances are responsible for their actions. But they did not act in a vacuum. Everyone involved in baseball over the past two decades – Commissioners, club officials, the Players Association, and players – shares to some extent in the responsibility for the steroids era. There was a collective failure to recognize the problem as it emerged and to deal with it early on. As a result, an environment developed in which illegal use became widespread.

5. Knowledge and understanding of the past are essential if the problem is to be dealt with effectively in the future. But being chained to the past is not helpful. Baseball does not need and cannot afford to engage in a never-ending search for the name of every player who ever used performance enhancing substances.

In my report I acknowledged and even emphasized the obvious: there is much about the illegal use of performance enhancing substances in baseball that I did not learn. There were and are other suppliers and users. And it is clear that a number of players have obtained these substances through so-called rejuvenation centers, using prescriptions of doubtful validity. Other investigations will no doubt turn up more names and fill in more details, but that is unlikely to significantly alter the description of baseball's steroids era, as set forth in my report.

The Commissioner was right to ask for this investigation and report. It would have been impossible to get closure on this issue without it, or something like it. It's appropriate to acknowledge, Mr. Chairman, that it was you and this committee who originally suggested that such an inquiry be conducted.

6. But it is now time to look to the future, to get on with the important and difficult task that lies ahead. I urge everyone involved in Major League Baseball to join in a well-planned, well-executed, and sustained effort to bring the era of steroids and human growth hormone to an end and to prevent its recurrence in some other form in the future. That's the only way this cloud will be removed from the game.

Summary of recommendations

The adoption of the recommendations set forth in my report will be a first step in that direction, and I will now summarize them. While some can be and have been implemented by the Commissioner unilaterally, others are subject to collective bargaining and therefore will require the agreement of the Players Association.

The recommendations focus on three areas.

First, there must be an enhanced capacity to conduct investigations based on non-testing evidence. Some illegal substances are difficult or virtually impossible to detect. Indeed, one leading expert has argued that "testing only scratches the surface." The ability to investigate vigorously allegations of violations is an essential part of any meaningful drug prevention program.

The Commissioner has accepted my recommendation to create a Department of Investigations, led by a senior executive, to respond promptly and aggressively to allegations of the illegal use or possession of performance enhancing substances. To do its job effectively, this department must establish credibility and cooperate closely with law enforcement agencies.

I recommended that the Commissioner strengthen pre-existing efforts to keep illegal substances out of major league clubhouses by logging and tracking packages shipped to players at major league ballparks, conducting background checks and random drug tests on clubhouse employees, and adopting policies to ensure that allegations of a player's possession or use of performance enhancing substances are reported promptly to the Department of Investigations.

I also recommended that club personnel with responsibility affecting baseball operations be required to sign annual certifications that they have no unreported knowledge of any possible violation of Major League Baseball's Drug Prevention Policy.

The Commissioner has implemented all of these recommendations.

Second, improved educational programs about the dangers of substance use are critical to any effort to deter use. Over the last several years, the Commissioner's Office and the Players Association have made an increased effort to provide players and club personnel with educational materials on performance enhancing substances. Some of these efforts have been effective, but some were criticized by both former players and club personnel. Several suggestions for improvement are set forth in my report.

Third, although it is clear that even the best drug testing program is, by itself, not sufficient, drug testing remains an important element of a comprehensive approach to combat illegal use. The current program was agreed to in 2006 and will remain in effect until 2011. Any changes to the program therefore must be negotiated and agreed to by the clubs and the Players Association.

In my report, I set forth the principles that presently characterize a state-of-the-art drug testing program, and I urged the clubs and the Players Association to incorporate them into baseball's program when they next deal with this issue.

The program should be administered by a truly independent authority that holds exclusive authority over its structure and administration. It should be transparent to the public, allowing for periodic audits of its operations and providing regular reports of aggregate data on testing and test results. It should include adequate year-round unannounced testing, and employ best practices as they develop. To ensure that the independent administrator can accomplish these objectives, the program should receive sufficient funding. And it should continue to respect the legitimate privacy and due process rights of the players.

Finally, I hope that the Commissioner, the clubs, and the Players Association will have a reasonable time and opportunity to consider and discuss these recommendations with their members and constituents, and to reach their own conclusions about their implementation.

My report demonstrates that I'm not an apologist for either the Commissioner or the Players Association. But in fairness, I think we should recognize what they have done to address this problem.

As noted in my report, prior to the 2002 negotiations, the Commissioner took several key steps to lay the foundation for an agreement on a mandatory random drug testing program, including:

In early 2001, he convened a meeting of several respected team physicians, during which they shared their own experiences and concerns about the use of steroids by major league players. That year he unilaterally imposed a drug testing program for minor league players, which he could do because minor league players are not represented by the Players Association.

In 2002, after detailed negotiations, the Players Association agreed to the Commissioner's proposal for a mandatory random testing program in the major leagues. To their credit, this was a significant step by the Players Association because, as I noted earlier, they had for many years opposed such a program.

The drug testing programs in all sports, including the Olympics, have evolved over time through a process of trial and error, as the programs were modified to address emerging problems and concerns. In that respect, baseball's program has been like all the others.

As described in my report, since 2002 the Commissioner and the Players Association have agreed to several improvements in the program to deal with issues as they arose. They did so even though, under federal labor law, they were under no obligation to modify their collectively bargained agreement during its term.

Mr. Chairman, members of the Committee, I was asked to conduct an inquiry and to report what I found as accurately, as fairly, and as thoroughly as I could. I've done so, to the best of my ability, and my work has been completed.

Now it's up to the Commissioner, the clubs, and the players, to decide how they will proceed.

Their actions over the past six years have demonstrated that they can address this problem through the collective bargaining process. I hope you will encourage and give them the opportunity to do so again.

REPORT TO THE COMMISSIONER OF BASEBALL OF AN INDEPENDENT INVESTIGATION INTO THE ILLEGAL USE OF STEROIDS AND OTHER PERFORMANCE ENHANCING SUBSTANCES BY PLAYERS IN MAJOR LEAGUE BASEBALL

SUMMARY AND RECOMMENDATIONS

Summary and Recommendations

For more than a decade there has been widespread illegal use of anabolic steroids and other performance enhancing substances by players in Major League Baseball, in violation of federal law and baseball policy. Club officials routinely have discussed the possibility of such substance use when evaluating players. Those who have illegally used these substances range from players whose major league careers were brief to potential members of the Baseball Hall of Fame. They include both pitchers and position players, and their backgrounds are as diverse as those of all major league players.

The response by baseball was slow to develop and was initially ineffective, but it gained momentum after the adoption of a mandatory random drug testing program in 2002. That program has been effective in that detectable steroid use appears to have declined. But the use of human growth hormone has risen because, unlike steroids, it is not detectable through urine testing.

This report, the product of an intensive investigation, describes how and why this problem emerged. We identify some of the players who were caught up in the drive to gain a competitive advantage through the illegal use of these substances. Other investigations will no doubt turn up more names and fill in more details, but that is unlikely to significantly alter the description of baseball's "steroids era," as set forth in this report.

From hundreds of interviews and thousands of documents we learned enough to accurately describe that era. While this investigation was prompted by revelations about the involvement of players with the Bay Area Laboratory Co-Operative, the evidence we uncovered indicates that this has not been an isolated problem involving just a few players or a few clubs. It has involved many players on many clubs. In fact, each of the thirty clubs has had players who have been involved with performance enhancing substances at some time in their careers.

The illegal use of these substances was not limited to the players who are identified in this report. There have been many estimates of use. In 2002, former National League Most Valuable Player Ken Caminiti estimated that "at least half" of major league players were using anabolic steroids. Dave McKay, a longtime coach for the St. Louis Cardinals and the Oakland Athletics, estimated that at one time 30% of players were using them. Within the past week, the former Cincinnati Reds pitcher Jack Armstrong estimated that between 20% and 30% of players in his era, 1988 to 1994, were using large doses of steroids while an even higher percentage of players were using lower, maintenance doses of steroids. There have been other estimates, a few higher, many lower, all impossible to verify.

However, it is a fact that between 5 and 7 percent of the major league players who participated in anonymous survey testing in 2003 tested positive for performance enhancing substances. Those figures almost certainly understated the actual level of use since players knew they would be tested at some time during the year, the use of human growth hormone was not detectable in the tests that were conducted, and, as many have observed, a negative test does not necessarily mean that a player has not been using performance enhancing substances.

Mandatory random testing, formally started in 2004 after the survey testing results, appears to have reduced the use of detectable steroids, but players switched to human growth hormone precisely because it is not detectable. Players who use human growth hormone apparently believe that it assists their ability to recover from injuries and fatigue during the long baseball season; this also is a major reason why players used steroids. Human growth hormone was the substance most frequently sold to players by Kirk Radomski, a former New York Mets clubhouse employee who was a significant source of illegal performance enhancing substances until late 2005. Separately, a number of players reportedly purchased human growth hormone

through "anti-aging" centers using dubious prescriptions written by physicians who never examined, or even met, the customers for whom they were writing prescriptions.

At the beginning of this investigation, I said that I would conduct a "deliberate and unbiased examination of the facts that will comport with basic American values of fairness." To honor that commitment, I invited each current or former player about whom allegations were received of the illegal possession or use of performance enhancing substances to meet with me so that I could inform him of the evidence supporting the allegations and give him a chance to respond. The explanations provided by those players who we did interview were taken into account and are reflected in this report.

Among current players I asked to interview were five who have spoken publicly about the issue. When I did so, I made clear that there was no suggestion that any of the five had used performance enhancing substances, and I repeat here that clarifying statement. Four of the five declined. One of them, Frank Thomas of the Toronto Blue Jays, agreed. His comments were informative and helpful.

Since 1986, drug testing has been subject to collective bargaining in Major League Baseball. For many years, citing concerns for the privacy rights of players, the Players Association opposed mandatory random drug testing of its members for steroids or other substances. On the other side of the bargaining table, the owners and several Commissioners proposed drug testing programs but gave the issue a much lower priority in bargaining than economic issues. But when the opportunity was presented in 2002 to achieve agreement on a system of mandatory random drug testing, the Commissioner pressed hard on the issue and the Players Association agreed to the basic elements of the program that is in place today.

No drug testing program is perfect. The current drug testing program in Major League Baseball is the product of the give and take inherent in collective bargaining. It appears to have reduced the use of detectable steroids but by itself has not removed the cloud of suspicion over the game. Even as this investigation was underway, developments in several government investigations exposed the depth and breadth of the continuing illegal use of these substances in baseball (and in other sports) and made clear that this problem continues, years after mandatory random testing began and stringent penalties for failing those tests were adopted.

Plainly, baseball needs to do more to effectively address this problem. I have never met or talked with Jeff Kent of the Los Angeles Dodgers, but he appears to have understood this when he said in September, as reported in several newspapers: "Major League Baseball is trying to investigate the past so they can fix the future."

That is the purpose of the recommendations that are set forth in detail in this report. In summary, they fall into three categories: (1) Major League Baseball must significantly increase its ability to investigate allegations of use outside of the testing program and improve its procedures for keeping performance enhancing substances out of the clubhouse; (2) there must be a more comprehensive and effective program of education for players and others about the serious health risks incurred by users of performance enhancing substances; and (3) when the club owners and the Players Association next engage in collective bargaining on the joint drug program, I urge them to incorporate into the program the principles that characterize a state-of-the-art program, as described in this report.

Although I sought and received a wide range of views, including the opinions of many experts in the field, the conclusions and recommendations in this report are mine alone,

following close consultation and extensive discussions with the very talented members of the staff I assembled to assist me in this effort.[1]

A. The Investigation and this Report

On March 30, 2006, the Commissioner of Baseball, Allan H. ("Bud") Selig, asked me to investigate allegations that a number of players in Major League Baseball had illegally used steroids and other performance enhancing substances. I accepted on the conditions that (1) I have total independence in conducting the investigation and in preparing this report; and (2) I have full freedom and authority to follow the evidence wherever it might lead, so that the investigation would not be limited to any one player or team. The Commissioner readily agreed. He pledged that this report, when completed, would be made public, a decision I agreed with. He promised his full support and he kept his promise.

The Commissioner retained the authority to determine whether any activities in the conduct of this investigation might violate his obligations under the Basic Agreement, including the joint drug program. I agreed to be bound by his decisions in that regard.

The Commissioner also retained the right to prohibit publication in this report of any information that he is under a legal duty to keep confidential. To enable him to make that determination, I agreed to provide his office the opportunity to review this report three business days before it was released publicly. No material changes were made as a result of that review.

I was assisted in this investigation by lawyers from the firm of DLA Piper US LLP and by several experts. They include Richard V. Clark, M.D., Ph.D., a leader in the fields

[1] I personally conducted many of the interviews that form the basis for this report, but because more than 700 interviews were taken during this investigation it was not possible for me to conduct all of them. Lawyers on my staff from the law firm of DLA Piper conducted the interviews that I did not attend. In this report, I use the pronouns "I" and "we" interchangeably because its findings are based on our work collectively, under my direction.

of andrology and endocrinology and Richard H. McLaren, HBA, LL.B., LL.M., C. Arb., a professor of law at the University of Western Ontario and a distinguished arbitrator for the Court of Arbitration for Sport.[2]

I requested the production of relevant documents from the Commissioner's Office, each of the thirty major league clubs, and the Players Association. We received and reviewed more than 115,000 pages of documents from the Commissioner's Office and the thirty clubs and over 20,000 electronic documents that were retrieved from the computer systems of the Commissioner's Office and some of the clubs. We also gathered and reviewed many documents from other sources, some of them public.

In the course of the investigation, we interviewed more than 700 witnesses in the United States, Canada, and the Dominican Republic. Over 550 of these witnesses were current or former club officials, managers, coaches, team physicians, athletic trainers, or resident security agents. We also interviewed 16 persons from the Commissioner's Office, including Commissioner Selig, president and chief operating officer Robert DuPuy, executive vice president for labor relations Robert D. Manfred, Jr., and former senior vice president for security and facility management Kevin Hallinan.

We sought to interview as many current and former players as possible. We attempted to reach almost 500 former players. Many of them declined to be interviewed, but 68 did agree to interviews. In addition, interviews of 3 former players were arranged through the assistance of federal prosecutors and law enforcement agents.

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[2] Lawyers from Foley & Lardner LLP played a separate but important role as counsel for the Commissioner and Major League Baseball. Lawyers from Foley & Lardner did not participate in many of the interviews that we conducted and had no role in preparing this report other than reviewing it, as representatives of the Commissioner, three days before its release.

The Players Association was largely uncooperative. (1) It rejected totally my requests for relevant documents. (2) It permitted one interview with its executive director, Donald Fehr; my request for an interview with its chief operating officer, Gene Orza, was refused. (3) It refused my request to interview the director of the Montreal laboratory that analyzes drug tests under baseball's drug program but permitted her to provide me with a letter addressing a limited number of issues. (4) I sent a memorandum to every active player in Major League Baseball encouraging each player to contact me or my staff if he had any relevant information. The Players Association sent out a companion memorandum that effectively discouraged players from cooperating. Not one player contacted me in response to my memorandum. (5) I received allegations of the illegal possession or use of performance enhancing substances by a number of current players. Through their representative, the Players Association, I asked each of them to meet with me so that I could provide them with information about the allegations and give them a chance to respond. Almost without exception they declined to meet or talk with me.

My goal in preparing this report was to provide a thorough, accurate, and fair accounting of what I learned in this investigation about the illegal use of performance enhancing substances by players in Major League Baseball. To provide context for my conclusions and recommendations, I also include in the report the medical, legal, and historical issues that are part of this complex problem.

I have not included every allegation that we received or the results of every interview we conducted or every document we reviewed. Inevitably, much of that information was cumulative, not relevant, or of only marginal relevance. None of it would have materially altered the account that is provided.

B. The Problem Is Serious

The illegal use of performance enhancing substances poses a serious threat to the integrity of the game. Widespread use by players of such substances unfairly disadvantages the honest athletes who refuse to use them and raises questions about the validity of baseball records. In addition, because they are breaking the law, users of these substances are vulnerable to drug dealers who might seek to exploit their knowledge through threats intended to affect the outcome of baseball games or otherwise.

The illegal use of these substances to improve athletic performance also carries with it potentially serious negative side effects on the human body. Steroid users place themselves at risk for psychiatric problems, cardiovascular and liver damage, drastic changes to their reproductive systems, musculoskeletal injury, and other problems. Users of human growth hormone risk cancer, harm to their reproductive health, cardiac and thyroid problems, and overgrowth of bone and connective tissue.

Apart from the dangers posed to the major league player himself, however, his use of performance enhancing substances encourages young athletes to use those substances. Young Americans are placing themselves at risk of serious harm. Because adolescents are already subject to significant hormonal changes, the abuse of steroids and other performance enhancing substances can have more serious effects on them than they have on adults.[3]

Some estimates appear to show a recent decline in steroid use by high school students; they range from 3 to 6 percent.[4] But even the lower figure means that hundreds of

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[3] *See Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use: Hearing Before the H. Comm. on Gov't Reform*, 109th Cong. 307 (2005) (statement of Dr. Kirk Brower).

[4] National Institute on Drug Abuse, Monitoring the Future: Nat'l Survey Results on Drug Use, 1975-2006, Vol. 1, at 44 (2006); Centers for Disease Control and Prevention, *National*

thousands of high school-aged young people are still illegally using steroids. It's important to devote attention to the Major League Baseball players who illegally used performance enhancing substances. It's at least as important, perhaps even more so, to be concerned about the reality that hundreds of thousands of our children are using them. Every American, not just baseball fans, ought to be shocked into action by that disturbing truth. The recent decline is welcome, but we cannot be complacent.

Don Hooton, whose son committed suicide after abusing anabolic steroids, created the Taylor Hooton Foundation for Fighting Steroid Abuse. In 2005 congressional testimony, Mr. Hooton said:

> I believe the poor example being set by professional athletes is a major catalyst fueling the high usage of steroids amongst our kids. Our kids look up to these guys. They want to do the things the pros do to be successful.
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> * * *
>
> Our youngsters hear the message loud and clear, and it's wrong. "If you would want to achieve your goal, it's OK to use steroids to get you there, because the pros are doing it." It's a real challenge for parents to overpower the strong message that's being sent to our children by your behavior.[5]

Finally, the illegal use in baseball of steroids and other performance enhancing substances victimizes the majority of players who do not use those substances. A September 2000 study by the National Center on Addiction and Substance Abuse observed that:

> 'Clean' athletes face three choices: (1) compete without performance-enhancing substances, knowing that they may lose to competitors with fewer scruples; (2) abandon their quest because they are unwilling to use performance-enhancing substances to achieve a decisive competitive

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Youth Risk Behavior Survey: 1991-2003: Trends in the Prevalence of Marijuana, Cocaine and Other Illegal Drug Use (2004).

[5] *Restoring Faith in America's Pastime: Evaluating Major League Baseball's Efforts to Eradicate Steroid Use: Hearing Before the H. Comm. on Gov't Reform*, 109th Cong. 307 (2005) (statement of Donald M. Hooton, president & director, Taylor Hooton Foundation).

> advantage; or (3) use performance-enhancing substances to level the playing field.[6]

We heard from many former players who believed it was grossly unfair that some players were using performance enhancing substances to gain an advantage. One former player told us that one of the "biggest complaints" among players was that a "guy is using steroids and he is taking my spot."

C. Governing Laws and Major League Baseball Policies

Anabolic steroids are listed as controlled substances under the federal Controlled Substances Act. Since 2004, the dietary supplement androstenedione and other steroid precursors have been as well. That means that it is illegal to use or possess steroids or steroid precursors without a valid physician's prescription. Violations of this law carry penalties similar to those applicable to the illegal use or possession of narcotics. Human growth hormone is a prescription medication. It is illegal to issue a prescription for human growth hormone except for very limited purposes. Human growth hormone never has been approved for cosmetic or anti-aging uses, or to improve athletic performance. Issuing a prescription for human growth hormone for any of these unauthorized purposes is a violation of federal law.

Many have asserted that steroids and other performance enhancing substances were not banned in Major League Baseball before the 2002 Basic Agreement. This is not accurate. Beginning in 1971 and continuing today, Major League Baseball's drug policy has prohibited the use of any prescription medication without a valid prescription.[7] By implication,

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[6] National Center on Addiction and Substance Abuse at Columbia University, *Winning at Any Cost*, at 3 (Sept. 2000).

[7] *See* Notice No. 12, Memorandum from Major League Baseball Office of the Commissioner to Administrative Officials of Major and Minor League Ball Clubs Re: Drug Education and Prevention Program, dated Apr. 5, 1971, ¶ 9 ("Baseball must insist its personnel

this prohibition applied to steroids even before 1991, when Commissioner Fay Vincent first expressly included steroids in baseball's drug policy. Steroids have been listed as a prohibited substance under the Major League Baseball drug policy since then, although no player was disciplined for steroid use before the prohibition was added to the collective bargaining agreement in 2002.

It is also inaccurate to assert, as some have, that baseball's drug policy was not binding on players before it was added to the collective bargaining agreement. Many players were suspended for drug offenses before 2002, even though none of those suspensions related to the use of steroids or other performance enhancing substances. Some suspensions were reduced in grievance arbitrations brought by the Players Association, but no arbitrator ever has questioned the authority of the Commissioner to discipline players for "just cause" based on their possession, use, or distribution of prohibited drugs.

For many years before 2002, the Players Association opposed any drug program that included mandatory random testing, despite several proposals for such a program from different Commissioners. The early disagreements on this issue centered around testing for cocaine and other "recreational" drugs, not steroids, but the effect of the Players Association's opposition was to delay the adoption of mandatory random drug testing in Major League Baseball for nearly 20 years.

However, opposition by the Players Association was not the only reason that mandatory random drug testing was not adopted. In 1994, Commissioner Selig and the club owners proposed a drug program that would have included some forms of testing and would have listed steroids among baseball's prohibited substances. Robert D. Manfred, Jr., who is now

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comply with the federal and state drug laws. It is your obligation to be familiar with these drug laws.").

executive vice president for labor relations in the Commissioner's Office, recalled that anabolic steroids were included in the 1994 proposal to be proactive, and the decision to include steroids in the proposal was not based on any particular concern about the use of those substances in baseball at that time. He acknowledged that at the time the drug program was not as high a priority as economic issues.

The Players Association did not agree to the proposal. Officials of the Players Association said that the clubs did not appear to regard the 1994 proposal as a high priority and did not pursue its adoption vigorously. Indeed, Players Association executive director Donald M. Fehr recalled that the proposal never even reached the main bargaining table during negotiations.

Later that year, a work stoppage ended the season and resulted in the cancellation of the World Series. Play resumed in 1995 without a collective bargaining agreement, and the owners made no attempt to renew the drug program proposal when collective bargaining resumed. That bargaining resulted in an agreement that remained in effect until 2002, so the next proposal for a mandatory random drug testing program was made in those negotiations with the Players Association in early 2002.

In 2001, the Commissioner had unilaterally implemented drug testing throughout baseball's affiliated minor leagues. He used that program as the basis for his 2002 proposal to the Players Association for a major league program. The proposal included many of the elements of the current Major League Baseball joint program. Building from that proposal, the Players Association and the clubs negotiated the terms of a joint drug program as part of the 2002 Basic Agreement. For the first time, there was a program; it provided for the possibility of mandatory random drug testing of all major league players if more than 5% of players tested

positive for steroids during anonymous survey testing in 2003. After that did in fact occur, mandatory random drug testing began in Major League Baseball in 2004. That year, there were 12 undisputed positive tests for steroids. No player was suspended because the program did not provide for suspensions of first-time offenders at that time.

The Major League Baseball Joint Drug Prevention and Treatment Program has been modified twice since it originally was agreed to in 2002. In January 2005, human growth hormone (along with seventeen other compounds) was added to the list of prohibited substances. In addition, the Players Association agreed to more stringent penalties for a positive test for steroids (or similar substances) including, for the first time, a suspension of ten days for a player's first positive test. In 2005, 12 players tested positive for steroids and were suspended for ten days.

Later that year, further revisions were agreed to, including significant increases in penalties: a 50-game suspension for a first positive test; a 100-game suspension for a second positive test; and a permanent suspension for a third positive test. The penalties are unchanged since those revisions. The penalties for positive drug tests under the major league program are the strongest in major U.S. professional sports leagues.[8] In 2006, two players tested positive for steroids and were suspended for 50 games. In 2007, three players were suspended for 50 games each for positive steroids tests.

In addition, in June 2006 Arizona Diamondbacks pitcher Jason Grimsley was suspended for 50 games based on "non-analytic" evidence that he had violated the policy,

[8] In major professional sports leagues in the United States, athletes are represented in collective bargaining by players associations. Under federal law, drug testing is a subject of collective bargaining and, in this context, requires the agreement of the players associations. That is not the case with the Olympics or other traditionally amateur sports; there the governing bodies may unilaterally impose any program of their choice.

specifically, his reported admissions to federal agents that he had used steroids and human growth hormone. In September 2007, Cincinnati Reds catcher Ryan Jorgenson also was suspended for 50 games based on non-analytic evidence that he had violated the joint program. In December 2007, two players, Jay Gibbons and Jose Guillen, were each suspended for 15 days based on non-analytic evidence of past violations of the joint program.

D. The Rise of the "Steroids Era"

Reports of steroid use in Major League Baseball began soon after the widely publicized discipline of Canadian sprinter Ben Johnson at the Summer Olympic Games in September 1988. Jose Canseco of the Oakland Athletics was the subject of the first media speculation about his use of steroids, and Boston Red Sox fans taunted him for his alleged steroids use during the 1988 American League Championship Series.

News reports about alleged steroid use in baseball grew more frequent throughout the 1990s. In 1996, after a dramatic increase in offense throughout Major League Baseball, Ken Caminiti of the San Diego Padres was voted the National League's Most Valuable Player. In a 2002 Sports Illustrated article, he admitted that he had been using steroids that season and credited them for his increased power. In August 1998, coverage of the issue reached what seemed at the time to be a peak, when an article reported that Mark McGwire was using the thenlegal steroid precursor androstenedione while chasing the single-season home run record.

With the benefit of hindsight, it is clear that baseball missed the early warning signs of a growing crisis. Then, beginning in the summer of 2000, a number of incidents involving steroids or drug paraphernalia came to the attention of club and Commissioner's Office officials, and the Players Association. They included:

- In June 2000, state police in Boston discovered steroids and hypodermic needles in the glove compartment of a vehicle belonging to a Boston Red Sox infielder;

- Also in June 2000, a clubhouse attendant found a paper bag containing six vials of steroids and over two dozen syringes in the locker of a pitcher with the Florida Marlins;
- In mid-September 2000, a clubhouse employee discovered a bottle of steroids and several hundred diet pills in a package that had been mailed to the ballpark for an Arizona Diamondbacks infielder;
- In October 2001, officers with the Canadian Border Service discovered steroids, syringes, and other drugs in an unmarked bag that came from the entourage of a Cleveland Indians outfielder;
- In September 2002, a bullpen catcher with the Montreal Expos was arrested for trying to send marijuana back to Florida with the Florida Marlins' luggage. He later told Major League Baseball security officials that he had supplied drugs to nearly two dozen major league players, including eight players for whom he said he had procured steroids.

Further inquiries were made in the Arizona and Montreal incidents, but in some of these cases, little investigation was conducted. Almost without exception, before this investigation began active major league players were not interviewed in investigations into their alleged use of performance enhancing substances.

Instead, players under suspicion frequently were subjected to "reasonable cause" testing for steroid use. Prior to the 2002 Basic Agreement those tests were the subject of an informal arrangement between the Commissioner's Office and the Players Association that involved negotiations in each case as to whether testing of a player would be conducted and, if

so, when. As a result, when they did occur, the tests were administered long after the allegations were received, and no suspected player ever tested positive for steroids in these tests.

Commissioner Selig and Rob Manfred both recognized the flaws in "reasonable cause" testing as it was conducted during those years. In 2002, Manfred told a Senate subcommittee that the process was "ad hoc at best, and dysfunctional at worst."[9] To remedy the problems, they focused their efforts on negotiating a comprehensive drug program with the Players Association which, when it was agreed to, included both mandatory random drug testing and its own formal procedure for reasonable cause testing.

More recently, the Commissioner's Office has been more aggressive in responding to allegations of the use of steroids or other performance enhancing substances. Examples include:

- In June 2004, a minor league athletic trainer discovered a vial of steroids in a package that had been mailed by a player on a major league 40-man roster. Manfred and his deputy investigated the incident and negotiated a resolution with the Players Association under which the player was immediately separated from his team and was required to submit to a drug test if he ever attempted to return to Major League Baseball;
- In June 2006, the Commissioner suspended Arizona Diamondbacks pitcher Jason Grimsley for 50 games based on admissions he reportedly made to federal law enforcement officers about his illegal use of performance enhancing substances. The joint drug program did not expressly provide for a suspension under those

[9] *Steroid Use in Professional Baseball and Anti-Doping Issues in Amateur Sports: Hearing Before the Subcomm. on Consumer Affairs, Foreign Commerce and Tourism of the S. Comm. on Commerce, Science and Transp.*, 107th Cong. 7 (2002).

circumstances, but as part of a later settlement the Players Association agreed that the suspension was appropriate and could be a precedent in the future;

- During 2007, the Commissioner's Office interviewed several players, and to date has suspended two of them, after news articles appeared alleging their past illegal use of performance enhancing substances.

E. The BALCO Investigation

Commissioner Selig asked me to conduct this investigation after the publication of *Game of Shadows*, a book that contained allegations about the illegal use of performance enhancing substances by major league players that were supplied by BALCO and the personal trainer Greg Anderson.

Throughout this investigation, a federal criminal investigation related to BALCO was ongoing. On November 15, 2007, former San Francisco Giants outfielder Barry Bonds was indicted for perjury and obstruction of justice based on his grand jury testimony in that investigation. The ongoing criminal investigation, and the resulting unwillingness of many participants to cooperate with me, limited my ability to gather information that was not already in the public record about the involvement of major league players with BALCO. The information that we did obtain is set forth in Chapter VII.

F. Evidence Obtained of Other Players' Possession or Use

Through the efforts of the United States Attorney's Office for the Northern District of California and federal law enforcement agencies, we obtained the cooperation of former New York Mets clubhouse employee Kirk Radomski. Radomski was interviewed by me and members of my investigative staff on four occasions, with federal law enforcement representatives participating in all interviews and his lawyer participating in three of them.

Radomski identified a large number of current or former major league players to whom he said he illegally sold steroids, human growth hormone, or other substances.

Radomski also provided me with a number of documents relating to his transactions with players in Major League Baseball, including copies of deposited checks that he retrieved from his banks, copies of some shipping labels or receipts, his telephone records for two years, and a copy of his address book in the form in which it was seized by federal agents when they executed a search warrant at his home.

We also obtained information from sources other than Radomski about players' possession or use of performance enhancing substances. These included several former major league players and two former strength and conditioning coaches, some of whom met with us voluntarily; others did so at the request of federal law enforcement officials.

As a result, we gathered sufficient evidence about their alleged illegal possession or use of performance enhancing substances to identify in this report dozens of current or former players in Major League Baseball. Each of the players was invited to meet with me to provide him with information about the allegations against him and give him an opportunity to respond.

Both pitchers and position players are named in this report. Some of those named are prominent, including winners of significant post-season awards. Many played in the World Series or in All-Star games. Others are less well known, and some had only brief careers at the major league level. The players were with clubs spread throughout Major League Baseball, as Radomski's customers referred their friends and teammates to him as they moved from club to club.

I carefully reviewed and considered all of the information we received about the purchase, possession, or use of performance enhancing substances by Major League Baseball players.

1. Kirk Radomski provided substantial information about the distribution of performance enhancing substances, and in many cases his statements were corroborated by other evidence. He did not, however, observe or participate in the use of performance enhancing substances by any player named in this report, with one exception that is described below.

The corroboration took many forms, including: (a) the admission by eleven players that Radomski had supplied them with performance enhancing substances, as he had said in our interviews of him;[10] (b) checks or money orders written to Radomski by some players in appropriate amounts; (c) mailing receipts for shipments of performance enhancing substances by Radomski to some players; (d) statements by other witnesses supporting the allegations of use by some players; (e) the names, addresses, and/or telephone numbers of many players were found in Radomski's seized address book; (f) telephone records showing calls between Radomski and some players; and (g) a positive drug test.

I did not include in this report the names of three players to whom Radomski said he sold performance enhancing substances: two of them because the players had retired from Major League Baseball by the time of the alleged sales; and one of them because the player admitted that he had purchased and possessed the substances but denied that he had used them and his version of events was corroborated by other credible evidence.

I interviewed Radomski four times (in June, July, October, and November 2007), three times in person, once by telephone. His personal lawyer participated in three of the

[10] Two players admitted receipt and possession of illegal performance enhancing substances sold by Radomski but denied they ever used them.

interviews. Federal law enforcement officials and members of my staff participated with me in all of the interviews. No one from the Commissioner's Office, any club, or the Players Association participated in these interviews.

During each of the interviews, the law enforcement officials warned Radomski that if he made any false statements he would forfeit their commitment to recommend a more lenient sentence and he would face further criminal jeopardy. Before the interviews, Radomski had been debriefed extensively by federal prosecutors and agents. They subsequently confirmed that the information he provided to us in his interviews was consistent with the information he had previously provided to them.

2. Six players are named based on information obtained from persons other than Radomski or former major league strength and conditioning coach Brian McNamee. In each case, these allegations are supported by one or more of the following: (a) checks; (b) prior consistent statements; (c) a statement made about a player's use where the witness was a friend of the player identified and under circumstances in which the witness faced criminal exposure for making a false statement; (d) statements reporting a witness's direct observation of the player using a performance enhancing substance; (e) the player's own admission of his use.

3. Brian McNamee said that he was a direct eyewitness and participant in alleged illegal use by three players who he served as a personal trainer. I interviewed him three times (in July, October, and December 2007), once in person and twice by telephone.[11] His personal lawyer participated in each interview. Federal law enforcement officials and members of my staff participated with me in all of the interviews. No one from the Commissioner's Office, any club, or the Players Association participated in these interviews.

[11] In addition, a member of my investigative staff interviewed him by telephone on a fourth occasion in December 2007; his personal lawyer also participated.

During each of the interviews, the law enforcement officials warned him that he faced criminal jeopardy if he made any false statements. With respect to two of the players, McNamee was acting against his financial interest in disclosing this information. Before the interviews, McNamee had been debriefed extensively by federal prosecutors and agents. They subsequently confirmed that the information he provided to us in his interviews was consistent with the information he had previously provided to them.

In some cases, I include statements by club personnel in emails or other documents commenting on a player's alleged drug use. Those statements are cited as corroboration of other evidence that a player possessed or used performance enhancing substances; they did not serve as the primary basis for any of the decisions I made. No player is identified in this report on the basis of mere suspicion or speculation.

Radomski met with many players while they were in New York, where he lives. Most of his business, however, was conducted by telephone and mail or overnight delivery. He sent drugs to their homes, to hotels, and in some cases to major league clubhouses. He was paid by check, by money order, or in cash.

Even before mandatory random drug testing began in Major League Baseball, Radomski observed players moving away from oil-based steroids that stay in the body for a long time, to water-based steroids that clear the body faster. Because human growth hormone cannot be detected in a urine test, as mandatory random drug testing was implemented many players switched to it even when they concluded that it was less effective than steroids.

A detailed discussion of Radomski's network of customers, and other players for whom evidence has been obtained of their alleged possession or use of performance enhancing substances, is provided in Chapter VIII of the report.

G. Players' Use of Substances Purchased from Anti-Aging Centers

In February 2007, a government task force executed search warrants on Signature Compounding Pharmacy in Orlando, Florida and other businesses, including several so-called "rejuvenation centers," exposing another source of illegal performance enhancing substances. Some businesses that describe themselves as anti-aging or rejuvenation centers sell steroids or human growth hormone and arrange for buyers to obtain prescriptions for those substances from corrupt or suspended physicians or even, in some cases, a dentist. The prescriptions are then filled by a compounding pharmacy affiliated with the center and delivered to the buyer either through the mail or at the "clinic."

In a series of news reports during 2007, eight active major league players and eight former players were identified as appearing in the customer records of either anti-aging clinics or compounding pharmacies that are involved in this illegal trade. Those players reportedly purchased steroids, human growth hormone, and other drugs used to counteract the effects of steroid use.

Several players mentioned in these news reports admitted that they purchased human growth hormone from an anti-aging clinic or rejuvenation center and claimed that the purchases were to treat an injury or other medical condition. The Food and Drug Administration has never approved the use of human growth hormone to treat an athletic injury, to become more lean, or to improve athletic performance. The use of human growth hormone is a violation of federal law if not for an authorized purpose, even if with a prescription. In any event, based on the news reports it is doubtful that the prescriptions were valid.

In the section of this report entitled "Alleged Internet Purchases of Performance Enhancing Substances By Players in Major League Baseball," I briefly describe alleged purchases by sixteen players. The information in that section was obtained from public sources,

primarily news articles. All of these disclosures arose out of investigations by federal and state law enforcement agencies.

H. Major League Baseball's Joint Drug Prevention and Treatment Program

The joint drug prevention and treatment program was added to the Basic Agreement in 2002. Under that program, testing has been conducted of players in Major League Baseball since 2003, first in the form of anonymous survey testing in 2003, and thereafter in mandatory random testing that now carries with it severe penalties for violations. The program has been amended formally twice since 2002 as the result of negotiations between the Commissioner and the Players Association, and other minor modifications also have been made. As a result, penalties have been increased, the list of prohibited substances has been lengthened, and some improvements in procedures have been made.

Adoption of the current program was a positive first step. The information obtained in this investigation suggests that the use of detectable steroids by players in Major League Baseball has declined but the use of human growth hormone has increased. In some respects, however, the program still falls short of current best practices in drug testing for the use of performance enhancing substances.

The drug testing programs in all sports, including the Olympics, have evolved over time through a process of trial and error, as the programs were modified to address problems and concerns. In that respect, baseball's program has been like all the others. The challenge now is to take the program to a new and higher level and to then continue the process of improvement to deal with the problems and concerns which cannot be foreseen but which inevitably will arise. Certain characteristics are now widely recognized as essential to an effective testing program. These are: independence of the program administrator; transparency

and accountability; effective, year-round, unannounced testing; adherence to best practices as they develop; due process for athletes; adequate funding; and a robust education program.

Programs based on these principles can more readily adapt to changing circumstances in the ongoing contest between athletes who compete clean and those who do not, although even the strongest program by itself cannot entirely eradicate the use of banned substances. The Major League Baseball joint drug program can be strengthened in several of these areas. Most notably, the program is not administered by a truly independent authority. Although in their latest revisions to the program the parties established an "independent program administrator," the Commissioner's Office and the Players Association continue to retain authority over the program administrator and other important issues.

The current program also lacks transparency, an essential attribute to demonstrate the integrity and effectiveness of the program to outside observers. Transparency is most often obtained by issuing periodic reports on a program's operations, including reporting aggregate data on testing, and by regular audits, neither of which is now done under the joint program.

Concerns have been raised about the collection procedures used, including allegations that some players received advance notice of testing. In *Game of Shadows*, and in an earlier San Francisco Chronicle article, the authors described a surreptitious recording of a conversation that reportedly occurred in spring 2003 between Greg Anderson and an unidentified person. In that conversation, Anderson reportedly claimed that he would receive notice of upcoming tests between one and two weeks in advance. He also reportedly claimed that testing was "going to be either at the end of May or beginning of June . . ."

I could not obtain a copy of the recording or otherwise confirm that Anderson made these statements, or that he made them before late May 2003 as reported by the authors.

However, records that we obtained from the contractor who administered his tests show that Bonds was tested on May 28 and June 4, 2003. Therefore, if the report of this conversation is accurate Anderson correctly predicted the dates of testing, at least for his client Barry Bonds.

We interviewed the relevant personnel from Comprehensive Drug Testing, Inc., the company responsible for sample collection under the Major League Baseball joint drug program. Those witnesses denied that they provided advance notice of test dates to Bonds or anyone else. CDT witnesses also told us that advance notice of testing dates was never provided to Quest Diagnostics, Inc., the laboratory that processed test samples, so Quest personnel could not have been the source of advance notice to anyone else. A Quest spokesman was reported to have said the same thing in the original news article about the recording.

I also investigated other allegations that some players received advance notice of tests in 2004. In April 2004 federal agents executed search warrants on the two private firms involved in the 2003 survey testing, Comprehensive Drug Testing, Inc. and Quest Diagnostics, Inc.; the warrants sought drug testing records and samples for ten major league players connected with the BALCO investigation. In the course of those searches, the agents seized data from which they believed they could determine the identities of the major league players who had tested positive during the anonymous survey testing.

Shortly after these events, the Players Association initiated discussions with the Commissioner's Office regarding a possible suspension of drug testing while the federal investigation proceeded. Manfred said the parties were concerned at the time that test results that they believed until then raised only employment issues had now become an issue in a pending criminal investigation. Ultimately, the Commissioner's Office and the Players Association agreed to a moratorium on 2004 drug testing. While the exact date and length of this moratorium

is uncertain, and the relevant 2004 testing records have been destroyed, Manfred stated that the moratorium commenced very early in the season, prior to the testing of any significant number of players. Manfred stated that the Players Association was not authorized to advise its members of the existence of the moratorium.

According to Manfred, the moratorium lasted for a short period. For most players, drug tests then resumed. With respect to the players who the federal agents believed had tested positive during 2003 survey testing, however, the Commissioner's Office and the Players Association agreed that: (1) the Players Association would be permitted to advise those players of this fact, since that information was now in the hands of the government; (2) the testing moratorium would continue with respect to those players until the Players Association had an opportunity to notify them; and (3) the Players Association would not advise any of the players of the limited moratorium.

Sometime between mid-August and early September 2004, Manfred contacted Orza because the Players Association had not yet notified the players involved. The 2004 season was drawing to a close without those players having been tested because they remained under the moratorium. Manfred said that he pressed Orza to notify the players as soon as possible so that they could be tested. All of the players were notified by early September 2004.

A former major league player stated that in 2003 he was tested as part of the survey testing program. He said that in September 2004, Gene Orza of the Players Association told him that he had tested positive in 2003 and that he would be tested in the next two weeks. Independently, Kirk Radomski told us that this former player had earlier told him the same thing about Orza's statements shortly after the conversation between Orza and the former player

occurred. In addition, the former player Larry Bigbie told us that the same former player had told him the same thing about his conversation with Orza.

Furthermore, according to Bigbie, in 2004 a current player admitted to Bigbie that he also had been told by a representative of the Players Association that he had tested positive for steroids in 2003.

I am not permitted to identify either the former player with whom we spoke or the current player who made the admission to Bigbie because the Commissioner's Office and the Players Association have concluded that for me to do so would violate the confidentiality provisions of the joint program.

According to the redacted affidavit filed in support of a search warrant sought for Jason Grimsley's residence, Grimsley told federal agents that he, too, was informed that he had tested positive for anabolic steroids in 2003. The identity of the person who so advised Grimsley is redacted in the public version of the affidavit, and I did not have access to the unredacted version.[12]

Other players may have received similar notice, since (1) the program required that each player be tested once during the 2004 season, (2) the Commissioner's Office and the Players Association agreed that, since the government had the names of the players who they believed had tested positive in 2003, those players should be notified and should not be tested in 2004 until that notification had taken place, and (3) that notification did not take place until late August or early September 2004, just weeks before the season ended.

Orza declined my request for an interview.

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[12] Affidavit of IRS Special Agent Jeff Novitzky in Support of Search Warrant, sworn to on May 31, 2006, ¶ 16.

Officials of the Commissioner's Office emphasized that the circumstances described above represented an emergency response to an unforeseen event: a government investigation that obtained the names of players who had tested positive in the 2003 survey testing, information that the parties had agreed in advance would be anonymous. Consequently, they assert that it does not describe the normal operation of the program.

The Players Association objected to my making any reference to this matter in this report. I offered to include a statement by the Association and they provided me with the following:

> Because of certain actions by the Government in 2004 (which led to litigation, much of which has been under seal), the parties were forced to confront a serious threat to the confidentiality and integrity of our program. To combat that threat, and indeed to save the credibility of our program, the parties undertook certain measures in that year only. These were not unilateral actions undertaken by the MLBPA, but actions discussed and agreed upon between the MLBPA and the Commissioner's Office. Each party was fully aware and in agreement with the steps the other was taking.
>
> The MLBPA believes that, by publishing in this Report anything related to these subjects, Senator Mitchell and the Commissioner's Office are breaching promises of confidentiality made to the MLBPA and to its members.

I. Recommendations

To prevent the illegal use of performance enhancing substances in Major League Baseball, I make a series of recommendations. Some can be implemented by the Commissioner unilaterally; some are subject to collective bargaining and therefore will require the agreement of the Players Association.

The recommendations below focus on three principal areas: investigations based upon non-testing evidence; player education; and further improvements in the testing program. These recommendations are designed to work in combination with one another to more

effectively combat performance enhancing substance violations. It bears emphasis that no testing program, standing alone, is enough. Certain illegal substances are difficult or virtually impossible to detect, and law enforcement investigations of Kirk Radomski and compounding pharmacies and anti-aging clinics show that, even in this era of testing, players can continue to use performance enhancing substances while avoiding detection. Indeed, one leading expert has argued that "testing only scratches the surface." The ability to investigate vigorously allegations of performance enhancing substance violations is an essential part of any meaningful drug prevention program.

First, the Commissioner should create a Department of Investigations, led by a senior executive who reports directly to the president of Major League Baseball, to respond promptly and aggressively to allegations of the illegal use or possession of performance enhancing substances. The success of that official will depend in part upon his interaction with law enforcement officials, who in the course of their own investigations obtain evidence of athletes' possession or use of illegal substances that, under appropriate circumstances, can be shared with sports leagues, as recent events in both Major League Baseball and other sports have demonstrated.

The Commissioner also should strengthen existing efforts to keep illegal substances out of major league clubhouses. Given the evidence that many players have had steroids and human growth hormone shipped to them at major league ballparks, packages delivered to players through their clubs should be logged and tracked. Clubs also should be required to adopt policies to ensure that allegations of a player's possession or use of performance enhancing substances are reported promptly to the Department of Investigations.

Second, improved educational programs about the dangers of substance use are critical to any effort to deter performance enhancing substance use. Over the last several years, the Commissioner's Office and the Players Association have made an increased effort to provide players and some club personnel with educational materials on performance enhancing substances. Some of these efforts have been effective, but we heard criticism from both former players and club personnel about the anti-steroids education programs.

Most of the educational programs we reviewed address the side effects of performance enhancing substance use and the deleterious health effects of long-term use. According to Dr. Jay Hoffman, a former professional athlete and expert in the field, discussions of health risks alone, although important, generally will not deter a player from using these substances because players who consider using performance enhancing substances do not view them as dangerous if used properly. To counter this skepticism, Dr. Hoffman proposes that education about the dangers of performance enhancing substances be combined with education on how to achieve the same results through proper training, nutrition, and supplements that are legal and safe.

Another health risk associated with performance enhancing substances is the unknown nature and origin of the substances. Players need to be aware of the risks associated with buying black market drugs.

The public outcry over the use of performance enhancing substances in professional sports has provided the substance dealer with an opportunity to exploit his relationship with a player. Those players who buy and use illegal performance enhancing substances place their livelihoods and reputations in the hands of drug dealers. Players also

should be reminded of their responsibilities as role models to young athletes, who in emulating major league players' illegal substance use will place themselves at risk.

Third, although it is clear that even the best drug testing program is, by itself, not sufficient, drug testing remains an important element of a comprehensive approach to combatting the illegal use of performance enhancing substances. In Major League Baseball, however, the Commissioner does not have the authority to act unilaterally on drug testing; the agreement of the Players Association is required. The current joint drug program is part of the Basic Agreement that was agreed to in 2006 and will remain in effect until 2011. Any changes to the program therefore must be negotiated with and agreed to by the Players Association. Neither party is obligated to agree to reopen the Basic Agreement to address the program, even though that is what happened in 2005. There is no way for me to know whether that will happen again.

In recognition of the uncertainties associated with both the timing of further action on drug testing and the position of the parties when that action does take place, I set forth in this report the principles that presently characterize a state-of-the-art drug testing program. Every program should be updated regularly to keep pace with constantly changing challenges and best practices. It will be for the clubs and the Players Association to decide when to undertake a fresh review of these issues. When they do, I urge them to incorporate into the Major League Baseball joint drug program the principles described in this report.

The program should be administered by a truly independent authority that holds exclusive authority over its structure and administration. This could be in the form of an independent expert who cannot be removed except for good cause, an independent non-profit corporation, or another structure devised and agreed to by the Players Association and the major league clubs.

The program should be transparent to the public, by allowing for periodic audits of its operations and providing regular reports of aggregate data on testing and test results. The program should include adequate year-round, unannounced testing and employ best practices as they develop. How the program achieves those objectives is best left to a truly independent administrator to decide. To ensure that he can accomplish these objectives, the program should receive sufficient funding. The program should continue to respect the legitimate privacy and due process rights of the players.

* * *

All of these recommendations are prospective. The onset of mandatory random drug testing, the single most important step taken so far to combat the problem, was delayed for years by the opposition of the Players Association. However, there is validity to the assertion by the Players Association that, prior to 2002, the owners did not push hard for mandatory random drug testing because they were much more concerned about the serious economic issues facing baseball.

To prolong this debate will not resolve it; each side will dig in its heels even further. But it could seriously and perhaps fatally detract from what I believe to be a critical necessity: the need for everyone in baseball to work together to devise and implement the strongest possible strategy to combat the illegal use of performance enhancing substances, including the recommendations set forth in this report.

I was asked to investigate the use of performance enhancing substances by major league players and to report what I found as fairly, as accurately, and as thoroughly as I could. I have done so.

Only the Commissioner is vested with authority to take disciplinary action. Any such determination is properly for the Commissioner to make, subject to the players' right to a hearing.

I urge the Commissioner to forego imposing discipline on players for past violations of baseball's rules on performance enhancing substances, including the players named in this report, except in those cases where he determines that the conduct is so serious that discipline is necessary to maintain the integrity of the game. I make this recommendation fully aware that there are valid arguments both for and against it; but I believe that those in favor are compelling.

First, a principal goal of this investigation is to bring to a close this troubling chapter in baseball's history and to use the lessons learned from the past to prevent the future use of performance enhancing substances. While that requires us to look back, as this report necessarily does, all efforts should now be directed to the future. That is why the recommendations I make are prospective. Spending more months, or even years, in contentious disciplinary proceedings will keep everyone mired in the past.

Second, most of the alleged violations in this report are distant in time. For current players, the allegations of possession or use are at least two, and as many as nine years old. This covers a period when Major League Baseball made numerous changes in its drug policies and program: it went from limited probable cause testing to mandatory random testing; since 2002, the penalties under the program have been increased several times; human growth hormone was not included as a prohibited substance under the joint drug program until 2005. Under basic principles of labor and employment law, an employer must apply the policies in place at the time of the conduct in question in determining what, if any, discipline is appropriate.

Until 2005, there was no penalty for a first positive drug test under the joint drug program, although the Commissioner has always had the authority to impose discipline for "just cause" for evidence obtained outside of the program.[13]

Third, and related, more than half of the players mentioned in this report are no longer playing in Major League Baseball or its affiliated minor leagues and thus are beyond the authority of the Commissioner to impose discipline.

Fourth, I have reported what I learned. But I acknowledge and even emphasize the obvious: there is much about the illegal use of performance enhancing substances in baseball that I did not learn. There were other suppliers and there have been other users, past and present. Many of those named in this report were supplied by Kirk Radomski. Yet plainly he was not the only supplier of illegal substances to major league players. Radomski himself said that some players told him they had other sources. And the evidence demonstrates that a number of players have obtained performance enhancing substances through so-called "rejuvenation centers" using prescriptions of doubtful validity.

Fifth, the Commissioner promised, and I agreed, that the public should know what I learned from this investigation. Perhaps the most important lesson I learned is that this is a serious problem that cannot be solved by anything less than a well-conceived, well-executed, and cooperative effort by everyone involved in baseball. From my experience in Northern Ireland I learned that letting go of the past and looking to the future is a very hard but necessary step toward dealing with an ongoing problem. That is what baseball now needs.

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[13] It should be noted, however, that the rule that there would be no discipline for the first positive test was part of the quid pro quo for the Players Association's agreement to mandatory random drug testing. Indeed, the Basic Agreement protects a "First Positive Test Result" from discipline but does not similarly protect the first use of steroids from discipline. The primary evidence of wrongdoing in this report was not obtained from baseball's testing program but rather from an independent investigation.

The Commissioner should give the players the chance to make a fresh start, except where the conduct is so serious that he must act to protect the integrity of the game. This would be a tangible and positive way for him to demonstrate to the players, to the clubs, to the fans, and to the general public his desire for the cooperative effort that baseball needs to deal effectively with this problem. It also would give him a clear and convincing basis for imposing meaningful discipline for future violations.

J. Conclusions

There has been a great deal of speculation about this report. Much of it has focused on players' names: how many and which ones. After considering that issue very carefully I concluded that it is appropriate and necessary to include them in this report. Otherwise I would not have done what I was asked to do: to try to find out what happened and to report what I learned accurately, fairly, and thoroughly.

While the interest in names is understandable, I hope the media and the public will keep that part of the report in context and will look beyond the individuals to the central conclusions and recommendations of this report. In closing, I want to emphasize them:

1. The use of steroids in Major League Baseball was widespread. The response by baseball was slow to develop and was initially ineffective. For many years, citing concerns for the privacy rights of the players, the Players Association opposed mandatory random drug testing of its members for steroids and other substances. But in 2002, the effort gained momentum after the clubs and the Players Association agreed to and adopted a mandatory random drug testing program. The current program has been effective in that detectable steroid use appears to have declined. However, that does not mean that players have stopped using performance enhancing substances. Many players have shifted to human growth hormone, which is not detectable in any currently available urine test.

2. The minority of players who used such substances were wrong. They violated federal law and baseball policy, and they distorted the fairness of competition by trying to gain an unfair advantage over the majority of players who followed the law and the rules. They - the players who follow the law and the rules - are faced with the painful choice of either being placed at a competitive disadvantage or becoming illegal users themselves. No one should have to make that choice.

3. Obviously, the players who illegally used performance enhancing substances are responsible for their actions. But they did not act in a vacuum. Everyone involved in baseball over the past two decades - Commissioners, club officials, the Players Association, and players - shares to some extent in the responsibility for the steroids era. There was a collective failure to recognize the problem as it emerged and to deal with it early on. As a result, an environment developed in which illegal use became widespread.

4. Knowledge and understanding of the past are essential if the problem is to be dealt with effectively in the future. But being chained to the past is not helpful. Baseball does not need and cannot afford to engage in a never-ending search for the name of every player who ever used performance enhancing substances. The Commissioner was right to ask for this investigation and report. It would have been impossible to get closure on this issue without it, or something like it.

5. But it is now time to look to the future, to get on with the important and difficult task that lies ahead. Everyone involved in Major League Baseball should join in a well-planned, well-executed, and sustained effort to bring the era of steroids and human growth hormone to an end and to prevent its recurrence in some other form in the future. That is the

only way this cloud will be removed from the game. The adoption of the recommendations set forth in this report will be a first step in that direction.

Chairman WAXMAN. Thank you very much, Senator Mitchell. We'll now proceed to recognize Members for 5 minutes for questions for the Senator. We'll start with Mr. Towns.

Mr. TOWNS. Thank you very much, Mr. Chairman, for holding this hearing and, of course, Ranking Member Davis as well.

Senator Mitchell, thank you so much for your job well done. At the hearing in 2005, I asked the players whether anyone who had knowledge of steroid use should be required to report it. And by "anyone" I mean trainers, team doctors, scouts, agents, clubhouse staff, management, everyone officially connected with the game. Some players said yes; some said no.

Senator Mitchell, your report found that a lot of people in and out of baseball knew about steroid use and either turned a blind eye or actively concealed it or "I don't want to get involved" concept. What should the consequences be for the people who enabled the players to cheat, and has baseball done enough dealing with that problem?

Mr. MITCHELL. Thank you, Congressman. In my report, I noted that, for many years, baseball has had a policy requiring the disclosure of information about the use of performance-enhancing substances. And making possible severe penalties in the form of fines for those who fail to comply with that policy. We found, however, that very large numbers of persons involved in baseball were unaware of the policy, and even many who were aware did not follow it. We also found that no one has ever been fined for failure to comply with that policy. As a consequence—included as part of our recommendations, and they are found in the report—we suggest that there be a written policy at the Major League level, MLB level, which is distributed to all of the clubs, setting forth the process to be followed when information is available that should be reported and also that every club so have a policy widely distributed, posted, and made known to all employees about the process to be followed when such information is available and should be reported.

I should point out, however, that there are some ethical questions regarding physicians and other medical personnel in terms of legal requirements imposing restraints on the provision of information. And of course, every State has such laws, and they must be observed. With that in mind, we think the policy can be much more clearly articulated and can be much more aggressively disseminated and pursued. And failures to comply with the policy should receive discipline or punishment pursuant to the policy.

Mr. TOWNS. Very quickly. I see the light is about to change on me. How would you characterize the level of cooperation you received from the Players Association while conducting your investigation?

Mr. MITCHELL. As I said in my report, the Players Association was largely uncooperative.

Mr. TOWNS. You know, I'm concerned about that because, you know, I remember when football, we had some problems, and of course, they need to understand that this is very serious. They are role models, even though some say they are not. But I think when young people look at them, they see them as role models, and I think they have to understand that. And we have an obligation and responsibility.

Very quickly, just before the light changes on me, when we had a hearing on baseball a few years ago, one of the things we found was that Major League Baseball was sweeping the problem of steroids use under the rug. Other sports like football had a serious steroid problem in the past but had really taken steps to clean up the game. Senator Mitchell, how would you compare Major League Baseball today to the other sports leagues like NCAA and the Olympic sports in terms of how credible and effective the drug program is?

Mr. MITCHELL. In my report, I included an analysis of the known provisions of all of the programs, a point-by-point comparison. It is clear that, in terms of penalties, Major League Baseball has the strongest program. The penalties are the stiffest when measured in proportion to the length of season and other indicia. With respect to the operations of the program, we did not have access to the other programs, other than that which has been publicly described about them. And I caution anyone in attempting to make comparisons based solely on the published data about the programs. It really does require a detailed analysis and in depth knowledge of the actual manner in which the programs are operated to be able to conduct the kind of comparison which I think you're seeking.

Chairman WAXMAN. Thank you, Mr. Towns.

Mr. Davis.

Mr. DAVIS OF VIRGINIA. Senator Mitchell, again, thank you again for your report. Let me start—there seems to be some disagreement between the Players Association and you regarding the opportunity for a player to respond to the evidence against him. Most of this disagreement appears to be over how and what was communicated to the players prior to October 22, 2007. We have a letter from you on that date stating that, During the course of any interview, I will inform the player of the evidence of his use, including permitting him to examine and answer questions about copies of any relevant checks, mailing receipts or other documents and give him an opportunity to respond.

The Players Association responded in a November 20th letter that the players had been informed that you would provide them with the evidence if they consented to the interview. Your letter talks about an opportunity to respond. The Players Association talks about being provided with evidence if they consented to an interview. I guess my question is, was a player required to consent to an interview to see the evidence against them?

Mr. MITCHELL. Yes.

Mr. DAVIS OF VIRGINIA. So they couldn't simply appear, review the evidence and leave if they concluded they had nothing to say about the evidence?

Mr. MITCHELL. That's correct.

Mr. DAVIS. Do you have any earlier letters communicating your offer to provide the evidence to the players.

Mr. MITCHELL. Yes.

Mr. DAVIS OF VIRGINIA. Could the decision of players not to come in have been a result of their belief that they would be required to answer questions?

Mr. MITCHELL. I can't speak for the players. I did not communicate with any current players directly. And if I might, I would

be glad to give a more detailed explanation, Congressman Davis, when you complete your question.

Mr. DAVIS OF VIRGINIA. Go ahead. It is important.

Mr. MITCHELL. Well, from the first day of this investigation to the last, I was consistent in my public statements that players would have the opportunity to meet with me and, at that time, I would disclose to them all of the evidence that I had and give them an opportunity to respond. On March 30, 2006, the day I publicly accepted this assignment, I said, "We'll provide those whose reputations have been or might be called into question by these allegations an opportunity to be heard."

On January 18, 2007, I addressed the owners in Phoenix, and my remarks were made public and widely reported throughout the country. I said, I'll insist that those who might be adversely affected by this investigation have an opportunity to be heard. I made similar statements in press interviews during the spring and summer of 2007. And I'll be glad to provide you references to those statements.

We were informed early in the process by Major League Baseball officials that we were bound by the provisions of the collective bargaining agreement between Major League Baseball and the Players Association, which require that requests for interviews with current players be made through the Players Association. As a result, in the summer and fall of 2007, I sent a series of letters to the Players Association listing the names of those players we sought to interview because we had received allegations that they had used performance-enhancing substances. We identified the years during which the alleged use had occurred and the clubs with which the players were then affiliated. The Players Association subsequently responded in letters stating that all of the players declined to be interviewed.

In October 2007, in a personal meeting that I had with representatives of the Players Association, we were informed that they had not previously understood that any player who participated in an interview would at that interview be informed of the allegations that we received about it. So to make absolutely certain that there could not possibly be any further misunderstanding, I asked them to again contact all of the players involved and inform them of the details of my offer. I followed that up with a letter in which I reiterated that, "To be clear, I have been and remain willing to meet with any player about whom allegations of performance-enhancing substance use have been made in order to provide those players with an opportunity to respond to those allegations. During the course of any such interview, I will inform the players of the evidence of their use, including permitting him to examine and answer questions about copies of any relevant checks, mailing receipts or other documents, and give him an opportunity to respond."

Five weeks later, the Players Association responded in a letter on behalf of those players. The letter stated in part that some have been in direct contact with you. On behalf of the others, we report that they continue to respectfully decline your request. And those that had been in contact with us declined the request through other lawyers almost without exception. That is, according to the

Players Association, all of the current players about whom allegations were received were contacted twice; once in the summer and early fall of 2007, and then between October and November 2007, and each time they declined my invitation to meet and talk with me. At your request, Mr. Chairman, I've supplied all of this correspondence to the committee.

I should say, just for the record, Congressman Davis, a different procedure was followed for former players. They are not members of the bargaining unit that is represented by the Players Association. We contacted each former player directly by telephone, by letter or both to inform them that allegations had been received about them and to invite them to an opportunity to interview and to provide them with the chance to respond. Even though we were not required to do so, at the request of the Players Association, we provided to the Players Association a list of all the former players about whom allegations were received.

Mr. DAVIS OF VIRGINIA. Can I just ask, did any former or current players come forward and have their names cleared as a result of the invitation that you——

Mr. MITCHELL. Yes, one former player retained his own lawyer who contacted us and asked to come in and meet with me. I met with him and his lawyer. He told us that he had in fact purchased performance-enhancing substances illegally as had been alleged by Kirk Radomski, one of the witnesses whom we interviewed. He told us however, that he had not used them. I asked him whether he had any evidence to support or corroborate his statement. He said that he had, and he provided that evidence to us. We conducted an independent investigation and concluded that he was telling the truth and that we therefore made the decision not to include him in the report. Now, I'm not clear whether you're talking about current or former players.

Mr. DAVIS OF VIRGINIA. I asked both, and you just said it was a former player. No current player?

Mr. MITCHELL. No. Let me—I don't want to characterize the status of the player, if I might.

Mr. DAVIS OF VIRGINIA. That's fine. Right. Thank you.

Chairman WAXMAN. Thank you, Mr. Davis.

Mr. Cummings.

Mr. CUMMINGS. Senator Mitchell, I want to first of all thank you for an outstanding report. And I have for a long time been a great admirer of yours, your integrity and your—what you bring to public life is just incredible. I want to just kind of refocus us a little bit. Senator Mitchell, this committee held hearings on this issue of steroid abuse in Major League Baseball in 2005. One of our most powerful witnesses at that hearing was Donald Hooten, the father of Taylor Hooten, a teenage ballplayer who committed suicide after taking steroids. Mr. Hooten is in the audience at this hearing. Frank and Brenda Marrero are also here today. Unfortunately, their son, too, Efrain, also committed suicide after taking steroids in an effort to become a better athlete. I noticed that when you talked about your findings, the No. 2 finding went to the whole issue of children and the fact that it could have—the steroids and illegal substances could have a very detrimental effect on children. This committee, Senator, as you probably know, got a lot of flack

back in 2005 when we took a look at Major League Baseball and its handling of steroids. And we are receiving similar criticism even today. People are saying, Why are you getting involved in that? But I want to take a moment to remind everyone why we're here in the first place. We are here—we started this because of our youngsters. We first took a look at the issue of steroids upon learning of the deeply troubling Centers of Disease Control Prevention study that said 1 in 16 students reported using steroids. This was almost three times the amount who reported using steroids 10 years ago. And I can tell you that steroid use is, as you said, extremely dangerous. And I think as I listen to you, I want you to help us with this. You talked about ending the era of steroids. You also talked about how our children are affected. Your recommendations I know were going to the League, but I'm just wondering, if the bottom line—see, I don't worry so much about the players because they're millionaires. I worry about the kids who are impressionable, who are going to those stores on the weekend using their allowance to buy these substances. That is what I worry about. I worry about the kids in my neighborhood, whose only dream, they think the only dream they have is to become a Major League athlete and buying this stuff. And so I guess what I'm asking is, if we—and we have a program say in Baltimore called Powered by Me. And what it does, it works with coaches and the clergy and so many others, parents, to try to get parents—kids to stay off steroids.

Peter Angelos, the owner of the Orioles, who I am glad is here, has agreed to be a major part of that program.

I want to thank you, Peter.

But I guess what I'm saying is, if we're going to end it—are you looking at some kind of amnesty for these players so they can perhaps turn around and help our children. I mean, what did you have in mind? And these people who—you know—one of the dilemmas that we find ourselves in is that the people have committed a crime, as you said, gone against baseball policy. And at this critical moment, what message do we send if we were to grant some type of amnesty, and is the benefit of stopping here and saying, OK, you did it, we're going to put that aside, but we are going to go forward, is there—you know, is there a benefit to doing that? And how do you—what is your feeling about the way, if any, Major League Baseball should help our children, because the fact is that a lot of damage, Senator, has already been done? It has already been done. There are kids right now who have in their backpacks some of these very substances, and they're going to be probably using them today, God forbid. But that is a fact. And it is based a lot upon the folks that they were trying to emulate. So I know that is a packed question. But if you'd try at it, please.

Mr. MITCHELL. I'm happy to do so, Congressman. First, it is not a consequence that I began my remarks with a reference to the dangers of steroid use by young people. I believe that to be the most shocking fact that I uncovered in the course of this, uncovered in the sense of my knowledge. It was obviously known before, but it is not widespread. And I tried hard in every public appearance that I've made and will continue to do so to call attention to that fact. The fact that hundreds of thousands of American youngsters

are using steroids ought to be a wake up call to every American, whether they're sports fans or baseball fans or not.

Second, let's be clear, this goes far beyond baseball, way, way beyond baseball. Baseball players are not the only persons who are role models for young people. All professional athletes are. Entertainers are. Political leaders are. It is a broad societal issue that—of which baseball is only a part. Could I answer the second part, Mr. Chairman, about——

Chairman WAXMAN. It would be welcome, Mr. Mitchell, but we do have many Members, and you're trying to get a train. But go ahead and see——

Mr. MITCHELL. I just say, respectfully, amnesty is a loaded word in American politics today. What I said in my report was that I believe the commissioner should forego discipline on past users except in those cases where he deems it necessary to impose discipline to protect the integrity of the game. My recommendation is based on several reasons. The first is that I believe that everyone involved should be trying to bring this troubling chapter in baseball's history to a close. The more time you spend in the past, the harder it is to look into the future.

Second, the actions which I describe in my report are between 2 and 9 years old. They're dated in time. It is a well established principle of American labor law that if you impose discipline, it must be in accordance with the law that existed at the time the act occurred. In many of these instances, there was no punishment under the program or even predated the program.

Third, more than half of the people mentioned in my report are no longer in Major League Baseball, and therefore, the commissioner has no authority to discipline them even if he wanted to do so.

And finally, and I have a fairly long section on this in the report, I want to just close with one thing; I spent 5 years working in Northern Ireland. And after many long and painful negotiations and difficult decisions, a conflict that had raged for a long time was brought to an end. The most difficult, emotional, and controversial part of the process that we adopted dealt with an analogous circumstance, the release from prison of persons who had been engaged in the struggle, who had committed what they believed were acts of patriotism but which the authorities and the victims and their families believed were brutal criminal acts. And I learned then that some times you have to turn the page and look to the future. And I sincerely believe, even as I recognize there are valid arguments both ways, that baseball has to look to the future. And the way to do that is to turn the page on the past, to lay the foundation for a well conceived and well executed program and also a very strong discipline for future violations when everybody knows this is what we're going to do.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Chairman WAXMAN. Thank you, Mr. Cummings. Let me announce that because of the time constraints, we won't recognize any Members who have not come to the hearing up to this point to ask questions, and I'd like to ask each Member to stay strictly within the 5-minute timeframe even to anticipate that the answer

may be part of the 5 minutes; not 5 minutes and then a further 5 minutes for the answer itself.

Mr. BURTON. Thank you Mr. Chairman.

It's nice to see you again, Senator.

Mr. MITCHELL. Thank you, Congressman.

Mr. BURTON. I would like to start off by saying, I hope every sport and every commissioner of every sport and all the leaders of the sports will recognize that this is a problem that's very pervasive. And I hope that they'll all take their lead from baseball and football and start making sure that they stop steroid use and other drug use in their sports so that we don't have to have these kinds of hearings.

I don't like to see Congress doing this. This doesn't seem to be something I think Congress should be doing. Nevertheless, I think it is useful, especially if it gets the message out to all sports figures and high-profile figures that they should not be involved in this.

I just have two questions for you, Senator, and then I'll let my colleagues ask the rest of them.

First of all, some of the sportscasters have asked why did you give the owners an advance copy of the report and not give it to the Players Association.

Mr. MITCHELL. No owner received an advance copy of the report, Congressman. Under the agreement I reached with the commissioner at the outset, I provided to the Commissioner's Office a copy of the report because the commissioner is legally bound to maintain confidentiality of certain information with respect to the drug testing program under the agreement between baseball and the Players Association. The commissioner wanted, and I believe appropriately, to be able to review the report to make certain that I did not inadvertently disclose any information in violation of his legal obligation to maintain its confidentiality. He reviewed the—his attorneys and others reviewed the report on that basis. There were no material changes in the report as a result. To the best of my knowledge no owner saw the report. And certainly it was not my intention, in complying with that agreement, that the report go to the owners.

Mr. BURTON. Along the same lines, the chief investigator of the Pete Rose case, John Dowd, said that he was surprised that there was a refusal by you and your staff not to make public to the AP and other news people documents that were referenced in your footnotes.

I would just like to know what the response is to that.

Mr. MITCHELL. Certainly.

We received and requested a number of documents, a total of 115,000 in all in the course of the investigation, from others for use in connection with the investigation.

Our investigation is over, my work is completed, and the responsibility for the disclosure of those documents rests with the persons who are the owners and possessors of the document. And those who seek them we simply directed to the persons who own and possess the documents.

Mr. BURTON. Thank you, Senator.

I yield back my time, Mr. Chairman.

Chairman WAXMAN. Thank you very much, Mr. Burton.

Mr. Tierney.

Mr. TIERNEY. Thank you, Senator. Thank you for your report and for your time here today.

I understand, Senator, one of the key features of any drug testing policy is the medical use exemption. And athletes who have a legitimate need for a particular banned substance or banned drug are allowed to apply for an exemption in order to use that, and baseball has that kind of a policy, as well, as I think the Olympics do. That's an important exemption, but people are always concerned that it will be abused, obviously, that somebody is going to use that exemption as an excuse to get their hands on a performance enhancing drug.

I understand that you attempted to obtain, in order to evaluate information on medical use exemptions, that information from the Major League testing program, but didn't get it. Why did you ask for it?

Mr. MITCHELL. For the very reason stated in your question: to attempt to satisfy ourselves that the program was being properly operated.

There have been published reports involving other programs, suggesting that the use of therapeutic use exemptions has been a mechanism to avoid the purposes of the program; and that's the reason we sought the information.

Mr. TIERNEY. Now, I understand that you were not able to obtain them. You didn't have subpoena power, which—it is remarkable that you did such a thorough report without that, and I commend you for that. This committee did ask the league for that information, and to their credit, they gave the information to the committee. And interestingly enough, one of the largest number of players receiving exemptions were those that sought it for treatment of attention deficit disorder.

There were drugs like Ritalin and Adderall. My understanding is that these are stimulants, similar to amphetamines. Some athletes think that they are performance enhancers. They're listed by baseball as prohibited stimulants. Ritalin is classified as a Schedule II controlled substance. According to the Federal Drug Association these ADD drugs can cause sudden death, stroke, heart attack and adverse psychiatric effects.

In 2006, ADD drugs were not a major issue. It appears that only 28 medical exemptions were granted; but in 2007, over 100 major baseball players received medical-use exemptions for these types of drugs. That's almost 8 percent of all players saying they had a medical use exemption for an ADD drug.

This would appear to be an exceptionally high percentage, somewhat over 8 percent, or eight times rather, the percentage of regular adults taking ADD medication in our population.

I would like to know what your reaction is to that.

Mr. MITCHELL. Amphetamines were not part of our investigation; they were outside the mandate of our investigation. So I don't have any knowledge of the information that you just provided.

Mr. TIERNEY. I understand that you weren't able to get the information.

Mr. MITCHELL. I would prefer not to comment until I saw the full details, Congressman. I don't know anything other than what you

just stated. And since it was not part of our investigation, I don't have any comment at this time.

Mr. TIERNEY. I appreciate that. And perhaps we'll save the questions for the league and for the Players Association. I don't think we have enough information right now, either, on that. We will probably want to explore it more.

But I think it's certainly concerning that you have eight times the adult population in our society using it in baseball, and so we'll explore it a little bit more with them. Thank you.

Mr. MITCHELL. Thank you.

Chairman WAXMAN. Thank you, Mr. Tierney.

Mr. Shays.

Mr. SHAYS. Thank you, Senator, for your investigation. This is almost surreal to me. I first want to compliment the chairman and ranking member for holding this hearing and for working so closely together. And they worked closely together when the now ranking member was the chairman.

And I want to agree with now-Ranking Member Davis when he said this is not the most important issue facing the country, but it is still a very important issue. What I wrestle with is, and why I feel this is surrealistic is why should cheaters, why should cheating be a matter of collective bargaining?

In 1919, the Chicago Blackhawks scandal, you had eight players; you had a shortstop, two pitchers, two fielders, a first baseman, a utility man, a third base. When they tried to throw the Chicago White Sox, playing Cincinnati Reds, they were booted out for life. You didn't have a commissioner at the time.

You had a commission, because the American League and National League were formed in 2003. So now we get a commissioner because of this scandal, and they took decisive action because of cheating. They didn't do anything other than fire them, get rid of them and send a huge message.

So tell me why cheating should be a matter of collective bargaining.

Mr. MITCHELL. It has been settled law in the United States for more than 20 years that drug testing in the workplace is a subject of collective bargaining in those employer/employee situations where a recognized bargaining unit exists.

Mr. SHAYS. But isn't there a difference?

The purpose of these drugs is not to give pleasure; it's to give them an unbelievable advantage over the other players. It means they get to play and someone else doesn't get to play. It means, if you're a pitcher, you have an advantage over the hitter; if you're a hitter, you have an advantage over the pitcher and so on.

This is cheating, isn't it?

Mr. MITCHELL. It is indeed. I've described it as such.

Mr. SHAYS. So what I wrestle with is maybe the issue of extracting blood and the testing process. But it doesn't seem to me that the penalty should be a matter of collective bargaining. It strikes me, if you cheat, that supersedes the issue of drugs. It's an issue of cheating.

So what I wrestle with, and I'm wondering if you have the same issue yourself, don't you see a difference between someone taking

a drug for pleasure and someone taking a drug so that they can cheat?

Mr. MITCHELL. Yes, I do, and I described that in my report. There is a difference and it's a significant difference. And taking a performance-enhancing substance to gain an unfair competitive advantage is a serious form of cheating in addition to being a violation of the law.

Mr. SHAYS. I'll just say what the irony of this for me, as well, is because of the Blackhawks scandal, we established a commissioner so that they would take, or he or she would take, decisive action. And yet we have a circumstance where we banned steroids in 1991, but didn't have a testing process until 2003. And when we were asking in our hearing nearly 3 years ago what the procedures were, they basically said, they weren't in writing.

Then we found out they were in writing. But they said it was a draft. And then when we got to see what was in writing and it wasn't a draft, it was a suspension or a fine. So someone could pay a fine and you would never know about it.

Let me ask you about Mr. Palmeiro. This case seems to describe to me a continued failure on the part of the commissioner and Major League Baseball to come to grips with this issue. Was he found to have taken drugs before he hit his 3,000th hit?

Mr. MITCHELL. I'm sorry, before what?

Mr. SHAYS. He had his 3,000th hit—Mr. Palmeiro. Is this a case you're familiar with?

Mr. MITCHELL. I'm familiar with the case. But the test concluded that steroids were present in his system. I don't know whether a test can tell precisely when the steroids were placed into his system.

Mr. SHAYS. I'll end with this, because I can ask the next panel. What I will want to ask the next panel is, when was he found to have taken the drug, the drugs, was it before or after he had concluded his 3,000th hit?

Mr. MITCHELL. He was tested before he received his 3,000th hit.

Mr. SHAYS. And it was a positive test?

Mr. MITCHELL. Yes.

Mr. SHAYS. And Major League Baseball kept it quiet until he hit his 3,000th hit; is that correct or not?

Mr. MITCHELL. That I don't know. Someone behind me is saying "no," so I think that's a question for Major League Baseball.

Chairman WAXMAN. Mr. Shays, your time has expired and we're on a very tight schedule.

Ms. Watson.

Ms. WATSON. I want to thank the Chair and the ranking member for your efforts to thoroughly investigate the topic of illegal steroid and hormone abuse in Major League Baseball. I also want to commend Mr. Selig, because the Mitchell Report is an important tool for MLB, especially for the reason that you, Senator Mitchell, conducted your investigation independently and released the report, unedited by the Commissioner's Office or the players' union.

And again, I want to caution that, although comprehensive, that Mitchell Report is most exhaustive—it's not completely exhaustive of the situation. So in an effort to take this to another level, I want to focus on the responsibility that Major League sports groups,

high-profile athletes and the leaders in our society have to the general public.

They must be held accountable to the message we send to other athletes, college students, impressionable high school, young adults and small children, and people serving in a position of authority and leadership. And this includes sports personalities whom young people seek to emulate in every way. And our media-saturated society must always be critically aware of the consequences of their action and statements.

Now, Major League Baseball does have well-intentioned programs in the field, and I want you to comment. I'll just make my statement, and whatever time we have left, Senator, I would like you to comment.

For example, the Compton, California-based legacy of the late Congresswoman, Juanita Millender-McDonald, a dear friend and a really competent colleague—thanks to the partnership of Congresswoman Millender-McDonald and Jimmie Lee Solomon, who is here, and Baseball Commissioner Bud Selig and Major League Baseball—built its first baseball academy for urban minority children. There is nothing like it anywhere else in the country. And on the campus of Compton Community College the baseball academy brings 2,000 Los Angeles area youth per year to play ball, study academics and learn a vocation.

And I look forward to the program's expansion into my neighboring district in the center of Los Angeles—we call it South Central Los Angeles. And this is a very positive program, but illegal drugs in sports must be eradicated for the messages to truly sink in with our youth. And so I would like to see some push behind the proliferation of such a program.

In the remaining time, would you comment? And thank you so very much for your dedication and your work.

Mr. MITCHELL. Thank you for your kind remarks.

I wholeheartedly endorse your suggestion that such programs gain support and proliferate around the country. It is of critical importance.

Reference was earlier made to Don Hooton, who is here; I met with him, I've listened to his message. He's gone through it painfully, as have other families who are here. I think it is a very serious problem, and it can't be solved solely by the professional leagues themselves.

That's the point I tried to make earlier. This goes far beyond baseball or any one organized sport. It's a broad, societal issue and will require a broad response at every level of society. And grassroots programs of the type you described at Compton are just what's needed all around the country.

Ms. WATSON. Thank you so much, Senator.

Chairman WAXMAN. Thank you, Ms. Watson.

Mr. Souder.

Mr. SOUDER. Thank you, Mr. Chairman.

I have a few questions that go to the fundamental question of whether baseball can, in fact, regulate itself; and I want to ask several of them. If you can't give a full, complete answer, then perhaps you could answer for the record so it's part of a complete record.

Mr. MITCHELL. I'll do that, Congressman.

Mr. SOUDER. One challenge is this, a code of protection, this wall of silence that you were met by players was a horrific and terrible role model for Americans all over this country and kids, because we could not prosecute any drug abuse in America if Americans followed the pattern that baseball players did; that drug abusers and drug dealers being protected in this way doesn't help the drug abuser and it harms potentially innocent people, and calls into question really how you do collective bargaining when they wouldn't respond to you, they won't respond to Major League Baseball.

I mean, literally one either former or current player coming forth is a humiliation. If that were followed by other Americans, we would be in a disaster in our society.

Now, a couple of things. You mention on page 309, just before you wind up, that there were other trainers, Kirk Radomski had mentioned that. There were probably others that came through. It's pretty clear that the major breakthroughs came because of the BALCO investigation. There was really no legal breakthrough. You didn't have subpoena power. You didn't have the ability to grant immunity, which we usually work with in narcotics cases.

Do you believe that we can actually find out—because most of this stuff is 2 years old, not because we have any proof that it's not ongoing; it's because that's when BALCO investigations lost our key people—can this be done without the Justice Department and find out whether it's going currently, or not currently if you don't have immunity and you don't have the ability to subpoena, to find out even what's happening currently?

The second part of my question is, did you in the course of—and this goes to management culpability, obviously the abuser's abuser—but did you look through e-mails and discussions with the management to find out what they knew, whether they were discussing it, whether they had, in fact, some knowledge that they didn't come forth, because there really wasn't a lot of that.

You allude to the fact that everybody was involved in this. But if, in fact, under pressure, management can't be trusted to make the decision, this becomes a huge challenge in how we go forward.

Similarly, with the trainers, the trainers, it's clear from the statement about Radomski, they are under the employment of the managers, not under the collective bargaining agreement of labor. Did any of them come forth? If they didn't come forth, why wasn't their management pushing them to come forth?

I have heard from many sports writers in the first round and in this round, who say they saw the stuff in the locker room, they know the trainers were there. Why wouldn't they talk, because they weren't part of the collective bargaining agreement?

Mr. MITCHELL. We interviewed over approximately 700 witnesses. A very large number of them were employees of Major League Baseball clubs, who were required to participate in interviews as a condition of their employment. And they included many of the persons in the categories that you described.

As I note in my report, quite a number of witnesses provided testimony that we judge to be not credible in the sense that many said, "I didn't know anything about steroids," "I never saw anything," "This is the first discussion I've ever had involving it." but

a large number came forward. And we also talked to a large number of former persons in the employment categories that you described.

And so I think the comments made that the report is not exhaustive in the sense that it does not include every single person who used steroids, I don't think it is ever possible to get to that level. It does provide a substantial basis for describing the era as it exists.

One final comment, Congressman, on the issue of trainers and other medical personnel. I repeat what I said earlier: They are subject to certain legal and ethical constraints on what they can and cannot disclose about persons whom they serve in that capacity. And that has to always be taken into account in trying to achieve the proper balance.

Mr. SOUDER. Can that be done—because of HIPA and all that type of thing, can that be done in any format other than the Department of Justice? In fact, won't that come up in future baseball enforcement?

Mr. MITCHELL. It's very difficult to do in the absence of the power of compulsion.

I prosecuted at the State level. I was the U.S. attorney for Maine and a Federal Judge and I've now been through this experience, and I can tell you, there's a huge difference between conducting an investigation when you can compel testimony and documents and when you have to simply ask for them. A huge difference.

Chairman WAXMAN. Thank you, Mr. Souder.

Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman and the ranking member.

Thank you, Senator. And as an Irish-American, I appreciate all your great work in Northern Ireland as well, although I find it difficult to accept the analogy to what we're doing here.

Let's go back to the previous point about the difficulty of an investigation without the ability to compel. You had very limited tools at your disposal. And still I am quite impressed with the amount of information that you've come up with here. Could I ask you what percentage of your report or what portion of your report would you consider the result of the assistance given to you in your commission by Mr. Radomski and Mr. McNamee.

Mr. MITCHELL. We made no effort to categorize it in percentage terms on that basis.

Mr. LYNCH. Well, let me put it in the inverse then. How successful do you think you would have been without it?

Mr. MITCHELL. Not as successful as we were with them.

Mr. LYNCH. All right. Here's what I'm getting at.

You conducted this as a voluntary investigation. From this side of the dais this is an investigation regarding the Controlled Substances Act, the Federal Controlled Substances Act; and you were compelled to conduct this investigation without tools, without subpoena power, without the ability to plea bargain. And it seemed to me in reading the report that a lot of information came down, a lot of people were named as a result of what Mr. Radomski and what Mr. McNamee brought forward.

Now, their testimony, unlike what you were trying to compel, was not voluntary. They cooperated as part of their plea bargain

agreement. And so my first question to you is, how fruitful or how worthwhile do you think a further investigation might be conducted by someone else, but with the aid of the ability to subpoena, with the prospect of criminal charges, and with the ability to plea bargain?

Mr. MITCHELL. I respectfully do not agree that this was an investigation into the Controlled Substances Act. That was a necessary part of it, since many of the acts involved violated that law and other laws. But this is a private investigation conducted for a private entity, Major League Baseball, in an effort to—first, to respond to the request of the chairman of this committee and the committee as a whole, and second to lay the foundation for policies to reduce or eliminate the use of such substances in the future.

Let me just say that it is the policy of the U.S. Government, and has been for many years, not to prosecute individual users of some illegal substances, but to concentrate prosecutorial resources on manufacturers, distributors and dealers. That's the case today.

In the last few years 250 professional baseball players have been publicly identified as having tested positive in drug tests and suspended, most of them in the minor leagues, because that program has been going on longer, some in the major leagues. Not a single one has been prosecuted, not a single one, even though the evidence was public and known. That's because we have pursued a policy in this country for decades that we ought to be concentrating on the distributors and the dealers.

Now, if Members of Congress believe that is a wrong policy, then of course it is within their power to pursue a change in that policy. But if you do that, you will go back to the arguments made 20, 30, 40 years ago when this policy was first initiated about how best to allocate scarce government and prosecutorial resources.

Mr. LYNCH. In yielding back my time, Senator, I just want to say that I think there's a distinct difference between these individuals, these professional athletes represented by counsel, that have agents, that have a lot of resources who are not unwittingly being induced to use these drugs but are seeking them out for a decided advantage. This isn't some drug pusher going into a neighborhood preying on adolescents.

These are adults. These are people who have the resources, the skills, the ability to discern what is good for them and what is not good for them. And they are deciding to use these drugs at a decided advantage because there's a monetary incentive there, distinct monetary incentive for them to cheat.

And I will yield back my time. Thank you, Senator.

Mr. MITCHELL. Thank you, Congressman.

Chairman WAXMAN. Thank you, Mr. Lynch.

Mr. Turner.

Mr. TURNER. Thank you, Mr. Chairman.

And thank you, Senator, for all your work on this. And I want to echo the comments of those who have gone before me on this panel that the most important issue is how this reflects to our kids and how, from this, their views are formed of drug use.

In using your analogy on Northern Ireland, you indicated that what we need to do in this is turn the page, get it behind us and go forward. But you also said that the Players Association was

largely uncooperative. In order to turn the page we have to at least have an agreement on shared values. But yet you have great optimism that could be done.

Could you explain that to me?

Mr. MITCHELL. Yes. I did say the Players Association was largely cooperative in my investigation. I also said that in 2002 the Players Association reversed its longstanding policy of opposition to a mandatory random drug testing program and agreed to one, the program that exists today. That was a very significant step forward, and I think they ought to get credit for that, as well as concern about the other aspect of it.

I also pointed out that since 2002 the Players Association and the commissioner and the clubs, on the other hand, have agreed to a number of steps to improve and strengthen the program even though they were not obligated to take them up, because the collective bargaining agreement had not expired. It's a policy of the United States to encourage collective bargaining agreements when employees are represented by unions. And to ensure stability, economic stability, once an agreement is entered into, the parties are not obligated to take up any of the provisions until the agreement expires, notwithstanding that both sides have made significant changes, some of which, Congressman, came to light in the course of our investigation. As we would report it to them and ask them questions about it, they took steps to correct it on an ongoing basis.

Mr. TURNER. Thank you, Senator, because I do think that with all the work that has been done—and our chairman and ranking member need to be congratulated and, of course, for your work—there does have to be some focus on the future and what changes are being made so that we do have an ability to have a different message to our kids. And I appreciate your work to help accomplish that.

Mr. MITCHELL. Thank you, Congressman.

Chairman WAXMAN. Thank you very much.

The Chair now recognizes Mr. Yarmuth.

Mr. YARMUTH. Thank you, Mr. Chairman.

Chairman WAXMAN. Before you begin, Mr. Yarmuth,Senator Mitchell, I know you hoped to get out by 11. We have five Members, and there are some important issues that we still want—my colleagues want to cover. If you would give us another 20 minutes, I would appreciate it.

Mr. MITCHELL. Yes, that's fine. I will, Mr. Chairman.

Chairman WAXMAN. Thank you.

Mr. YARMUTH. Thank you for your report, although I must say as the Representative of Louisville, Kentucky, I'm disappointed the report didn't deal with the performance enhancing qualities of the Louisville Slugger. I'm sure you will take that up at a further time.

Mr. MITCHELL. There has been a lot of speculation about bats in recent years, as you know.

Mr. YARMUTH. But I do want to focus on the issue of the concept of performance enhancing, because you mentioned in your testimony—you said, the players apparently believe—they took HGH because they apparently believe that it enhanced their ability to recover from injuries and to combat fatigue. And I think I'm focused,

as some of the other Members are, Congressman Cummings and others, on the impact, the influence on our young people.

And I'm sure that our young people are looking at this whole issue of performance enhancement and looking at Barry Bonds and some of the other players who have been named and saying, I can hit more home runs, I can throw faster pitches. And I'm sure you're familiar with the op-ed piece that was in the New York Times right after your report came out. A sociologist and a statistician analyzed all the players mentioned in your report and found out that there was no discernible statistical difference between their performance before and after they were identified as having taken these enhancement substances. And, in fact, there was a slight drop-off, if anything.

So I'm wondering whether in the course of your investigation you felt that we really knew enough about what these substances really did. Because in terms of providing education for our kids, if in fact there is no performance enhancement, I mean in terms of batting average or ERA or those types of statistics, maybe the kids would be less prone to use them if we really found out that there wasn't any quantitative difference in their performance.

Would you comment on that, please?

Mr. MITCHELL. I believe that the subject is very complicated. And as often happens in life, a phrase has entered into the universe of vocabulary of our society, "performance enhancing substances." if you look at and talk to the players who use them, you find that the motives, while they ultimately involve performance, don't always do so in an immediate sense.

A lot of it is recovery time, recovery from injury, recovery from strenuous workouts, the ability to work out more often. A lot of it is psychological: It made me feel good. Each of us is familiar with that effect. When you walk in to give a speech before 5,000 people at a convention, you know if you're feeling good you're going to do a much better job than if you're not. There is a huge placebo effect all throughout American medicine, not just in terms of athletes or performance enhancing substances.

So I think the subject is more complicated than a simple phrase represents.

However, I think there is also, on the other side, substantial evidence that in at least some individual cases performance was enhanced as a consequence. It might have been psychological, it might have been recovery. I happen to think, having tried to play baseball myself as a young man, that anybody who makes it to the major leagues is a highly talented person. You have to be a great athlete to get to the major leagues in the event.

So I don't think anybody who gets to the big leagues needs a steroid or some other drug to be able to hit or throw or field a baseball. What they were looking for was a competitive advantage in a highly competitive situation.

In my report, we quote one player who said one of the biggest gripes is this other guy is taking steroids and he's taking my spot on the roster. And so I think it's more complicated than the phrase itself suggests. And as so often happens in life, the motives of the individuals who take them are not always identical; indeed, some of them cite different reasons for taking different substances.

Mr. YARMUTH. Thank you, Senator. I yield back.

Chairman WAXMAN. Thank you, Mr. Yarmuth.

Mr. McHugh.

Mr. MCHUGH. Thank you, Senator. Like all my colleagues I deeply appreciate not just this work, but all the work you've done in an amazing career.

In both your written, as well as your presented testimony here today, you talked about, in your words, a "truly independent administrator." I wonder if you could define for the record what you mean by that, particularly with respect to the current administrative approach by Major League Baseball.

Mr. MITCHELL. Currently, all of the professional—the major professional sports in the United States operate their programs in a way that retains significant authority in the league and the Players Association. For example, in baseball the person who holds the title of independent program administrator may be dismissed at any time by either party for any reason or for no reason.

That person does not have authority over important elements of the program: the testing regime, in season and off season, the laboratories to be used to analyze the results, a range of issues. So while he has the title, "independent program administrator," I do not believe that he qualifies as independent as that term is understood in terms of best practices in the field today.

I cited a couple of examples, but I also said—and I believe this—that the test is not the form adopted or the words used to describe it; the test is the substance of the authority that the person actually has. And that's what the two parties, the Players Association and Major League Baseball, the clubs, have to decide on what to do.

They're perfectly capable of devising an alternative method so long as it truly meets the test of independence. And I don't think you'll be able to answer that until you see which process they adopt. There are models now which exist outside of baseball, which I cited.

Mr. MCHUGH. Thank you. I would certainly agree with your observation that both Major League Baseball and the Players Association have come a long way and have acted in a forward leaning way to implement many of the provisions of your report.

Have you had a chance to sit down with Major League Baseball and the Players Association to talk about the remaining provisions in your report? Do you intend to do that, if you have not? And whether you have or have not, how do you view the likelihood of all of your recommendations being implemented in a timely manner?

Mr. MITCHELL. I've spoken by telephone twice with each, with the commissioner and with Mr. Fehr, prior to today and have talked with them; and in both cases we agreed that we would talk in the future.

I have to say that I'm torn. My work is completed, and I'm trying hard to get back to other things in my life. So I don't want to appear here to be volunteering to continue my participation any longer. But I certainly will do anything that I'm asked.

My understanding is that they have begun discussions on the issues within their jurisdiction. And as I noted in my remarks, the

commissioner has unilaterally adopted the recommendations that I made, which he had the authority to act upon unilaterally.

Mr. MCHUGH. So you're optimistic that the entire report, in due course, will be implemented?

Mr. MITCHELL. This is not an easy issue. Let's just look at the facts. There are 30 clubs, there are dozens of officials. You have constituents. The commissioner has constituents. There are 1,200 Major League players. They're scattered all over the world. They won't be getting together until some time in February or March at spring training.

Mr. Fehr has constituents. So just as you go home on weekends and hold town meetings and consult with your constituents and try to get a sense of what they're feeling, they've got to do what is, in essence, the same thing. And I think they ought to be given the opportunity to do that, and then see what they can accomplish. And then everybody—members of the committee, members of the public, members of the press—will have a chance to judge and evaluate what they've done.

Mr. MCHUGH. Thank you, Senator.

Thank you, Mr. Chairman.

Chairman WAXMAN. Thank you, Mr. McHugh.

Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman. And thank you particularly for the rigorous followup on this issue.

We all appreciate what you've done, Senator Mitchell; and as I hinted to you before the hearing, in your spare time, Congress could undoubtedly use your services with a few disputes I could name. I'm particularly pleased that your report has come up before baseball returns to Washington this spring.

I want to ask you a question about the naming of names, which I think is one of the most valuable parts of your report. And you named 90 players who, you alleged, used steroids and human growth hormone. It's interesting to note that few have denied the allegation since. I'm going to ask you about one who has. And to their credit some have come forward to say that they indeed were involved in such use.

I would like to give you an opportunity to respond to the criticism, however, to the naming of players; and some have alleged that you had too little corroboration. In doing so, could you tell us what standard of evidence you used in deciding when to name players and when not to name players? Were there some you did not name because you did not think that they had met whatever standard you were using?

Mr. MITCHELL. I carefully reviewed and considered all of the information that we received about the purchase, the possession, or the use of performance enhancing substances by Major League Baseball players. We received information from a wide variety of sources. And, of course, in every instance we attempted to establish the truthfulness of the information that we received before anything was placed in our report.

Since the commissioner had made clear from the outset that he wanted this report to be public, we obviously understood that our responsibility was to learn as much as we could and to make public

that which we could in response to the mandate to accurately, fairly, and thoroughly provide all the information possible.

Now, we received information from so many sources that it would take far more than time permits here in this limited time to deal with every single source of information. Some of it was documents, some of it was canceled checks, mailing receipts, admissions by persons. A significant number of persons admitted the allegations over the course of time; some of it, as has been noted previously, came from the testimony of two men, Kirk Radomski and Brian McNamee.

Ms. NORTON. Let me ask you, Senator, because I think those are precisely the kinds of sources we would expect you to use under the circumstances. But let me ask you about the most controversial name in your report, perhaps, Roger Clemens, a seven-time Cy Young Award winner who, you say, was a user of steroids and human growth hormone. Now we see Mr. Clemens coming out and strongly denying these allegations and doing so publicly.

Why do you think he refused your invitation to talk to you before the release of the report?

Mr. MITCHELL. I do not know why. As I stated earlier, Congresswoman Norton, we followed the legal process which we were required to follow; and that is notification of then-current players through the Players Association. As I described earlier—and I will not repeat so as not to take up all of your time—the way it turned out, there were two letters that——

Ms. NORTON. Obviously, he hasn't told you and he hasn't told us. That's why I wondered.

But could I ask you about Mr. McNamee on whom you relied heavily, for him and perhaps others. Why do you believe that Mr. McNamee was a credible witness, and have you learned anything since the report that would lead you to reassess your conclusions regarding this credibility that you found in Mr. McNamee's allegation?

Mr. MITCHELL. Since the report was issued, Andy Pettite has said that Mr. McNamee's statements about him were true. So they confirmed the testimony.

Ms. NORTON. And you believe he was a credible—you believe he was credible on Roger Clemens, why?

Mr. MITCHELL. Well, let me describe the process.

We made every effort to establish the truthfulness of his testimony. Through his attorney he entered into a written agreement with the U.S. Attorney's Office for Northern California. That agreement provides that McNamee will cooperate with that office. No truthful statements can be used against him in any Federal prosecution by that office. If, however, he should be untruthful in any statement made pursuant to that agreement, he may be charged with criminal violations, including making false statements, which is a felony.

As part of his cooperation with the U.S. Attorney's Office and at his request, Mr. McNamee agreed to be interviewed by me and my staff and to provide truthful information. I interviewed him three times, once in person, twice by telephone. His personal lawyer participated in each of the interviews. Also participating were Federal prosecutors and agents from the FBI and the Internal Revenue

Service. I told him at the outset of each interview that I wanted nothing but the truth, no exaggeration, no minimizing, just tell the truth.

Also, on each occasion Mr. McNamee was informed by the Federal officials present that if he made any false statements during these interviews, he would subject himself to further criminal charges.

Chairman WAXMAN. Senator Mitchell, let me——

Mr. MITCHELL. I just want to make one final statement.

Thus, Mr. McNamee had an overwhelming incentive to tell the truth. And I'll just finish, Mr. Chairman.

The third and last interview was in early December 2007, just before we released the report. The purpose was to make absolutely certain that we had accurately understood and reported his statements to us; and to make certain that we achieved that objective, a senior member of my investigative staff read to him verbatim the portions of the report that were attributed to him.

At the conclusion of the interview, as we had at the beginning, we reminded him that all we wanted was the truth. We asked him if he was completely comfortable with the truth and accuracy of the statements which would be included in the report, and he said that he was. He had a couple of minor suggestions which had no material effect on the report, and we proceeded on that basis.

And, as noted, I asked Mr. Clemens to meet with him to give him an opportunity to respond to the allegations, and he declined.

Chairman WAXMAN. Thank you, Ms. Norton.

Senator Mitchell, in other words, despite the public presentation by Mr. Clemens that the testimony was not accurate, you continue to feel comfortable with Mr. McNamee's credibility?

Mr. MITCHELL. We believe that the statements provided to us were truthful.

Chairman WAXMAN. Thank you very much.

Ms. McCollum.

Ms. MCCOLLUM. Thank you, Mr. Chair.

Senator, if players using these drugs constitute cheating, and owner and league officials knew about the use of these illegal drugs, as is clear from the report, then it would appear for more than a decade millions of baseball fans were subject to fraud, fixed games played by big drug users that illegitimately altered the outcome of the games.

It's my opinion we're here in the middle of a criminal conspiracy that defrauded millions of baseball fans, billions of dollars over the past 15 years. If baseball is simply another form of entertainment, like going to a concert or attending a professional wrestling match, which an audience attends solely for pleasure, and they do not attend under the presumption of some form of fair athletic competition, then there would be no difference between Barry Bonds and Britney Spears.

But, in fact, Major League Baseball is sold as a legitimate competition in which the outcome of the game is dedicated in a field of transparency wherein every fan can watch it. The fact that league officials, owners, players and players union all knew of the massive illegal drug abuse problem that existed, and continues to exist, with the use of human growth hormones demonstrates to me

fraud to millions of baseball fans. Every fan who has bought a ticket to see the game for the past 20 years has been witness to a fraud.

Baseball is sold as America's game: hometown, apple pie. But, in fact, it appears that it has been rooted in cheating for profit. The more home runs hit, the more fans in the seat, the more money in owners' pockets and the bigger salaries for players.

Major League Baseball is filled with lawbreakers and coconspirators who ignore the problem and actively fuel the problem.

In your report you mention two items which I would like you to elaborate on. David Segui of the Baltimore Orioles on September 24, 2004 told his general manager, Jim Beattie, that he was going to go see a doctor in Florida to obtain human growth hormone. This information was related to the second Orioles general manager, Mike Flanagan, so two of the top Orioles executives knew about this drug use. And your report notes that no one in the Orioles organization reported this admission of use of growth hormone to the Commissioner's Office.

You also discuss another incident, one surrounding Greg Anderson and Barry Bonds' personal trial. The Giants trainer, Stan Conte, raised concerns about Anderson supplying players with steroids to the team's general manager, Brian Sabean.

So my question to you is, what did these individuals do with this information? For example, did Brian Sabean take this information and ask to have Mr. Anderson investigated? You spoke to the Giants' owner; what did the Giants' owner tell you about this? Did Mr. Beattie or Mr. Flanagan give you any insight as to why they failed to report this very important information to the commissioner?

To your knowledge, has anyone else in the Orioles organization who knew about the use of human growth hormones, what have they done?

And I thank you for your work on this, because I want to get America's game back on track.

Mr. MITCHELL. Let me state as a general matter at the outset, Congresswoman, that I very much share the concern that you expressed about the use of a performance enhancing substance in baseball. But I think we all have to recognize that this goes far beyond baseball and it goes far beyond the modern era.

One of the things I did in preparation for this investigation was to read some of the history, and you can go back to the original Olympics, many thousands of years ago, to find allegations of people in competitive sports using material to try to gain a competitive advantage. So I think we should be clear, this is not unique to baseball, this is not unique to the modern era, this has existed for a very long time.

Chairman WAXMAN. Senator Mitchell, let me interrupt you because we're trying to help you get to your train. Could you address the specific question? Then we have one last question.

Mr. MITCHELL. We don't have any more knowledge about the incident that you referred to, other than we put what we knew into the report, and we have no information that any other Orioles official was aware of the allegations.

Chairman WAXMAN. Thank you very much.

Mr. Welch.

Mr. WELCH. Thank you, Mr. Chairman.

Senator Mitchell, I agree with the wisdom of your judgment to look forward, not look backward. I also agree with your report that the minority of players who used these drugs violated Federal law and baseball policy and distorted the fairness of the game. The question I have is this.

Do you believe that a Major League baseball player who did use performance enhancing drugs and is the holder of a Major League baseball record—most home runs, most batter struck out, most stolen bases—should be stripped of that record?

Mr. MITCHELL. Congressman, I've done several of these investigations, and in every instance I've been invited to express opinions that go far beyond my mandate and far beyond my authority and, therefore, I have adopted and pursue a policy of restraint.

I answered the questions I was asked to answer in the report. It really is not my responsibility, nor do I have any special knowledge or insight that entitles my opinion to have greater weight than yours or any other fan on the subject you express. That's the responsibility of other officials; that's where it should rest, and I think that I should limit myself to what I was asked to do, which I've done.

Mr. WELCH. Just a few questions about the role of Major League Baseball itself.

According to your report, the 1998 winter meetings, Dr. Millman, Robert Millman, the medical director of Major League Baseball, gave a presentation that focused on the benefits, not the risks of taking testosterone, a steroid.

Can you elaborate on why the medical director would be doing this, which appears to be completely in conflict with the policy?

Mr. MITCHELL. I'm not able to elaborate. We made repeated attempts by telephone, by certified mail and otherwise to contact Dr. Millman. He did not respond. And, therefore, we were unable to ask him about that and some of the other information contained in the report.

Mr. WELCH. There are a couple of other incidents in your report of apparent complacence by Major League Baseball. When the Florida Marlins were presented with steroids that were found in the locker of Ricky Bones, that was not reported; in fact, the steroids were returned to him.

Another case where the personal trainer of Juan Gonzalez, as you know an MVP, was caught by Canadian customs with syringes. Do you know what happened in that situation?

Mr. MITCHELL. What we found out we put in the report. Beyond that, we don't have any information. I think it's fair to say that, as we described in the report, the baseball policy requiring reporting of information was not widely known or understood and not widely followed during the era described.

Mr. WELCH. Your report does provide examples of Major League Baseball having what I think could be called a "culture of silence"; the desired teams to win games at all costs, and the historic inability of the Commissioner's Office to take the problem seriously for longer than it should have.

Any comments on the role of Major League Baseball in, essentially through this action and inaction, aggravating what was already a very dangerous situation?

Mr. MITCHELL. I made my comments, Congressman, in the report and in my opening statement, and I thought about those words and believed they best and most accurately and most fairly characterized the circumstance.

Mr. WELCH. I yield my time. Thank you.

Chairman WAXMAN. Thank you very much, Mr. Welch. I do want to point out that Mr. Davis has been sitting here a long time, and I regret the fact that he's not going to be able to have time to ask any questions.

Mr. MITCHELL. Is this the last one?

Chairman WAXMAN. Yes.

Mr. MITCHELL. Go ahead, Mr. Davis.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman. And I want to thank you for your continuing probe of these great issues of significance to the American people.

Senator Mitchell, I want to commend you and your colleagues for the tremendous work that you've done in preparing this report. And I certainly appreciate your giving me these last opportunities.

It is my feeling that Major League Baseball has failed miserably in policing itself relative to the use of illegal drugs and the proliferation of performance enhancing substances by Major League baseball players.

The report that you have put together implies certain things to me. My question is, do you think that the report suggests that Major League Baseball has the inability to actually police itself, or is it going to require further legal legislative action to get beyond the discussions and get beyond where we are to something actually being done that's going to stop the proliferation?

Mr. MITCHELL. I do not believe that the report leads to the conclusion that Major League Baseball is incapable of policing itself. To the contrary, I believe that what has happened in baseball is quite similar to what has happened in almost every other sport, including the Olympics: a slow start to recognize the problem; an ineffective beginning; but gradually an effort increasing in intensity and effectiveness that I believe can be successful. I think it is very important that you don't take one sport and think that it is unique in that respect. You go back over the Olympics, you go over all the other sports; they've gone through the same process of trial and error, getting started, trying to figure out what to do.

So I believe that in the past 5 years, beginning with the adoption of the mandatory random drug testing program and continuing through a serious of changes and improvements in that program in an effort to make it more effective to the contrary, MLB and the Players Association have demonstrated an ability to deal with the problem, not as effectively as I or you would like, not as effectively as they'd like.

And since the problem is dynamic, it is constantly changing. At this very moment, in various parts of the world, there are people trying to figure out ways to make new drugs that will enhance performance and not be detectable. You have to keep at it and you

have to adopt the best program and you have to be flexible. I believe they can do it. I hope they will.

Mr. DAVIS OF ILLINOIS. Let me just ask, how cooperative would you say that the officials of Major League Baseball were during your investigation and how cooperative were the Players Association?

Mr. MITCHELL. The commissioner was fully cooperative. The clubs were cooperative. The Players Association was largely uncooperative.

Mr. DAVIS OF ILLINOIS. Thank you very much, Senator.

Chairman WAXMAN. You've been very generous with your time and we very much appreciate your work and your presentation to us. The committee is now going to take a 10-minute break before we call forward our next panel.

[Recess.]

Chairman WAXMAN. The committee will reconvene. Our next two witnesses need no introduction to this committee. Commissioner Bud Selig and the president of the Players Association, Don Fehr, have testified before and are the leaders of Major League Baseball. Don Fehr has led the Players Union since 1985 and Bud Selig has been baseball's commissioner since 1992. They both are familiar with our committee rules and we welcome you today. And as you know, we swear in all of the witnesses. I'd like to ask if you'd both stand and raise your right hands.

[Witnesses sworn.]

Chairman WAXMAN. The record will indicate our witnesses answered in the affirmative. We're pleased to have you here and we're looking forward to your presentation and the opportunity to ask questions.

Mr. Selig, why don't you get started first? There is a button on the base of the mic. Be sure it is on.

Mr. FEHR. Mr. Chairman, if it is green, it is on?

Chairman WAXMAN. Yes.

STATEMENT OF ALLAN H. "BUD" SELIG, COMMISSIONER, MAJOR LEAGUE BASEBALL

Mr. SELIG. I would like to thank the chairman, the ranking member and the committee members for inviting me to testify today. I have a number of people with me today that I'd like to introduce. First our advisor, Dr. Gary Green of UCLA, one of America's leading experts on performance enhancing substances; Steve Pasierb from the Partnership for a Drug Free America; Donald Hooten who has been here before, the head of the Taylor Hooten Foundation; Peter Angelos, the owner of the Baltimore Orioles who has been at the table for the last two rounds of labor negotiations; Randy Levine, the president of the New York Yankees; and Stan Kasten, the president of the Washington Nationals.

On March 30, 2006, I asked Senator Mitchell to conduct a comprehensive investigation of the illegal use of performance enhancing substances in baseball. I decided to do this investigation so that no one could ever say that baseball had something to hide, because I certainly did not. Baseball accepts the findings of this investigation and baseball will act favorably on its recommendations.

Before I turn to the Mitchell report it is important to recall the progress we have made. Baseball now has the strongest drug testing program in professional sports. Our penalty structure is the toughest; we have year-round unannounced testing, including testing on game days both before and after games. We use the Olympic-certified laboratories in Montreal and UCLA for our testing and the day-to-day administration has been delegated to an independent program administrator. A whole generation of players has grown up under our strict Minor League testing policy which is entering its eighth season. As a result of all of this, steroid use in baseball today has dropped dramatically from more than 90 violations in the 2003 survey test to just 2 steroid positives in 2006 and 3 in 2007.

This improvement is similar to what we've observed in our Minor League program, where positive test results declined from 9 percent in 2001 to less than 1½ of 1 percent in 2007.

Nonetheless, I felt a need to appoint Senator Mitchell to deal with the past. Nothing is more important to me than the integrity of the game of baseball. Baseball needed to fully, honestly, and publicly confront the use of performance enhancing substances by players. I knew that an investigation would be an extraordinarily difficult undertaking. I knew that an investigation would be painful for all of those associated with the sport. No other sport had confronted its past in such a way, but I knew that baseball must undertake that journey in order to preserve the integrity of our game and maintain credibility with the millions of baseball fans throughout the world.

This investigation had a second purpose as well. I'm committing to keeping Major League Baseball's program the strongest in professional sports. Indeed, Senator Mitchell confirmed that our current program has been effective and the detectable steroid use appears to have declined. But I knew from experience that the development of a state-of-the-art drug program requires continual evaluation and refinement. My desire was for Senator Mitchell to provide us with recommendations and insights to help make additional progress in the ongoing battle against the illegal use of performance enhancing substances in sports.

I gave Senator Mitchell complete independence to conduct the investigation, to consider any evidence that he deemed relevant, and to follow that evidence wherever it may lead. It is extremely unusual to afford a third party such unfetterred discretion to conduct an investigation and to make findings public. Yet I believe that such extraordinary steps were necessary to satisfy my goal of conducting the most exhaustive and credible investigation of this subject that was within my power as the commissioner.

As a lifelong baseball fan, I am deeply saddened and disappointed by the conduct of the players and many other individuals described by the Senator in his report. On the other hand, as the commissioner of baseball, with the responsibility for protecting the integrity of the game for future generations, I'm optimistic that Senator Mitchell's report is a milestone step in dealing with baseball's past and the problems caused by these dangerous and illegal substances in both amateur and professional sports.

Senator Mitchell's report, including his 20 recommendations, which I fully embrace, help point a way forward as we continue the battle against the illegal use of performance enhancing substances. I want to be clear that I agree with the conclusion reached by Senator Mitchell in his report, including his criticisms of baseball, the union and our players. I have personally agonized over this a thousand times, and what could have been done differently, and I accept responsibility for everything that happens in our sport.

However, as Senator Mitchell found in his report, by August 1998, when the discovery of andro in Mark McGwire's locker, we immediately took a number of steps to lay the foundation for bargaining a joint drug program in the 2002 negotiations that included random testing for steroids. These steps included efforts to improve regulation of dietary supplements such as andro and the introduction of a steroid education program.

In addition, in 2001 I unilaterally implemented a drug testing program in Minor Leagues which prohibits all Schedule III steroids and required random drug testing. After contentious negotiations in 2002, we finally reached an agreement that led to the first mandatory drug testing program in baseball. I am proud of what we've done, but in hindsight, we should have done it sooner. The compromise we reached with the players in the 2002 drug program was not perfect. As Senator Mitchell reported, it was a necessary first step toward achieving the tough drug program that is in effect today.

And as Senator Mitchell recognized, our program has evolved since that time. In January 2005, with the agreement of the Players Association, we revised the drug program to add 17 substances as prohibited substances, including the addition of Human Growth Hormone. We also increased the penalties for positive tests.

In March 2005, with the support of this committee, I sought the Players Association agreement to further increase penalties to a 50-game suspension for first-time offenders, 100-game suspension for second-time offenders, and a permanent ban for third-time offenders. I also proposed adding stimulants, including amphetamines, as banned substances. After months of difficult negotiations, the Players Association accepted my proposals in November 2005.

I fully support each of the 20 recommendations for improving our program that Senator Mitchell included in his report. Almost all his recommendations that do not require bargaining with the Players Association have already been implemented. Just last week we issued written policies that require all clubs to adopt the uniform written policy for reporting information about possible substance abuse violations and certify to the Commissioner's Office that such policies have been complied with; require all Major and Minor League clubs to establish a system to log every packet sent to players at its facilities; require background checks to be performed on all clubhouse personnel; and require all clubhouse personnel to be randomly drug tested.

Also last week, we established the Department of Investigations to deal with the investigation of drug use. Headed by well-credentialed former law enforcement officers who are here today, who combine to bring over 50 years of experience, the Department

has established a hotline for the anonymous reporting of information concerning the use of prohibited substances and has already made initial contacts with law enforcement agencies to pursue continued cooperation. Although the legal issues are more significant, we'll also be developing a program to require top prospects to the Major League draft to submit to drug testing before the draft.

Senator Mitchell also recommends certain changes to the joint drug program that clearly require agreement of the Players Association. In the weeks since the release of his report, we've discussed each of these recommendations with the Players Association. We have already agreed to eliminate the 24-hour notice that drug testing collectors had given to the clubs. We have not yet reached an agreement on the other points, but I certainly will continue to press for an agreement to revise the program to adopt all of Senator Mitchell's recommendations.

I'm committed to a program that provides adequate year-round unannounced testing. As commissioner, I recognize that baseball is a social institution. Part of our responsibility is to young people. We have been working closely with the Partnership for Drug Free America and the Taylor Hooten Foundation to educate America's youth and their parents about the dangers of performance enhancing substances. It is essential that we not only investigate and enforce our policy, but that we educate our players concerning the dangers posed by the use of these substances.

Senator Mitchell noted an improved educational program about the dangers of substance use are critical to any effort to deter performance enhancing substance use. Increasing awareness of the dangers of these issues is important not only for the health of the athletes but also to protect the health of amateur athletes and our Nation's youth, who themselves strive to be better on the field of play.

As Senator Mitchell described in his report, for the past decade, MLB has conducted educational programs for players in the Major and Minor Leagues during spring training. We've stepped up these efforts in recent years, striving to find ways to make these programs more effective in reaching the players.

For example, in 2003, I hired Dr. Gary Green, who is seated right here. Former director of UCLA's intercollegiate drug testing program, chairman of the NCAA's subcommittee on Drug Testing and Drug Education, and a USADA panel member to develop and implement educational programs and materials on performance enhancing substances.

Using Senator Mitchell's recommendations as a guide, we're making even further improvements to our educational program. Senator Mitchell's report feels there are those who are intent on cheating and will continue to search for ways to avoid detection such as turning to the use of HGH, Human Growth Hormone, which is not detectable in a urine test. I'm committed to stop the use of HGH in our sport.

Along with the National Football League, baseball is funding an effort by Dr. Donald Catlin, one of the leading drug experts in the world, to develop a urine test for HGH. We'll be convening a summit of the best minds in sports and science to develop a strategy to address the use of HGH by players.

Just recently, we've joined with the U.S. Olympic Committee, USADA, and the National Football League in a new long-term program of research on performance enhancing substances. Our initial commitment is for $3 million in funding when a valid, commercially available and practical test for HGH becomes reality. Regardless of whether the test is based on blood or urine, baseball will support the utilization of that test.

I'm also here to ask for your assistance in this fight. The illegal use of performance enhancing substances is a problem for baseball, but is a social problem that extends well beyond this sport or, frankly, any sport. We welcome your participation in attacking the problem at its source.

There are a number of bills that have been introduced that we wholly support, including Representative Lynch's bill, H.R. 4911; Senator Schumer and the Senate bill 877; Senator Grassley, Senate bill 2470; and Senator Biden's bill, Senate bill 2237. I'd like to personally thank Representative Lynch for introducing the bill that would make HGH a Schedule III controlled substance, which I believe is an important legislative initiative.

Even prior to the issuance of the Mitchell report, we had made great strides in reducing the number of players who used performance enhancing substances. I'm confident by adopting Senator Mitchell's recommendations, constantly working to improve our drug program regardless of the effort of the cost, by pursuing new strategies to catch cheaters, and by enhancing our educational efforts we can make additional progress in our ongoing battle against the use of performance enhancing substances in baseball.

The lessons from the past serve only to strengthen my commitment to make the Major League Baseball program the strongest and most effective in sports.

Thank you, Mr. Chairman. I ask that a copy of my entire written statement be made part of the record.

Chairman WAXMAN. Thank you very much, Mr. Selig. Both of your written statements will be made part of the record in their entirety.

[The prepared statement of Mr. Selig follows:]

STATEMENT OF COMMISSIONER ALLAN H. SELIG BEFORE THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
JANUARY 15, 2008

I would like to thank the Chairman, the Ranking Member and the Committee members for inviting me to testify today. I have a number of people here with me today that I want to introduce. First, I have our advisor Dr. Gary Green of UCLA, one of America's leading experts on performance enhancing substances. I also have Steve Pasierb, from the Partnership for a Drug-Free America, Donald Hooton, the head of the Taylor Hooton Foundation, Peter Angelos, the owner of the Baltimore Orioles who has been at the table for our last two rounds of labor negotiations, Randy Levine the President of the New York Yankees, and Stan Kasten, the President of the Washington Nationals.

On March 30, 2006, I asked Senator Mitchell to conduct a comprehensive investigation of the illegal use of performance enhancing substances in Baseball. Mr. Chairman, I decided to do this investigation so that no one could ever say that Baseball had something to hide because I certainly did not. Baseball accepts the findings of this investigation, and Baseball will act on its recommendations.

Before I turn to the Mitchell Report, it is important to recall the progress we have made. Baseball now has the strongest drug testing program in professional sports. Our penalty structure of 50 games, 100 games and life is the toughest. We test for stimulants, including amphetamines. We have year-round, unannounced testing, including testing on game days, both before and after games. We use the Olympic-certified laboratories in Montreal for our testing and the day-to-day administration of the program has been delegated to an Independent Program Administrator. A whole generation of players has grown up under our strict Minor League testing policy, which is entering its eighth season. As a result of all of this, our positive tests have declined significantly from 96 in the 2003 survey test to just two steroid positives in 2006 and three in 2007. This improvement is similar to what we have observed in our Minor League program under which the positive rate declined from nine percent in 2001 to less than one-half of one percent in 2007. Just last week, I met with a group of 12 certified athletic trainers from Major League Clubs who assured me that we have changed the culture in Clubhouses regarding steroid use.

Ever since we last reopened our agreement in 2005, our program has continued to improve. Along with the MLBPA, we have tightened our collection procedures by adding chaperones to monitor players. We also

often test players after a game, rather than before a game, to deter stimulant use. And the Commissioner's Office has placed emphasis on discipline for non-analytical positives. We had three disciplines for non-analytical positives in 2007 alone.

Because of these facts, I feel that Baseball is dealing effectively with the present and will continue to evolve to deal with the future. Nonetheless, I felt a need to appoint Senator Mitchell to deal with the past.

As I said in March 2006, "nothing is more important to me than the integrity of the game of baseball." I strongly believed 21 months ago, and I continue to believe today, that Baseball needed to fully, honestly and publicly confront the use of performance enhancing substances by players. I knew that an investigation would be an extraordinarily difficult undertaking. I knew that an investigation would be painful for all of those associated with the sport. No other sport had confronted its past in such a way. But I knew that Baseball must undertake that journey in order to preserve the integrity of our game and maintain credibility with the millions of baseball fans throughout the world. I want to thank this Committee for its role in helping to focus us all on the dangers of performance enhancing substances and for

its patience as we at Baseball moved forward with this important investigation.

The investigation had a second purpose, as well. I am committed to keeping Major League Baseball's program the strongest in professional sports. I believed in March 2006 that our current drug program would be effective in curtailing the use of detectable steroids by players. Indeed, Senator Mitchell confirmed that our current program has been effective in that detectable steroid use appears to have declined. I also knew from experience that the development of a state-of-the art drug program is an evolutionary process. I knew that our work on this important issue was not done. By rigorously examining Baseball's experience with performance enhancing substances, my desire was for Senator Mitchell to provide us with recommendations and insights to help make additional progress in the on-going battle against the illegal use of performance enhancing substances in sports, recognizing, of course, our collective bargaining obligations.

As Senator Mitchell stated in his report, I gave him complete and total independence to conduct the investigation as he saw fit, to consider any evidence that he deemed relevant, and to follow that evidence wherever it might lead. It is extremely unusual to afford a third-party such unfettered

discretion to conduct an investigation and to make the findings public. Yet, I believed that such extraordinary steps were necessary to satisfy my goal of conducting the most exhaustive and credible investigation of this subject that was within my power as Commissioner.

Senator Mitchell's thorough and detailed report elicited from me a range of reactions. I am a lifelong baseball fan. I have devoted the last 45 years to the game. As a fan of the game of baseball and a student of its history, I am deeply saddened and disappointed by the conduct of the players and many other individuals described by the Senator in his report. On the other hand, as the Commissioner of Baseball, with the responsibility for protecting the integrity of the game for future generations, I am optimistic that Senator Mitchell's report is a milestone step in dealing with Baseball's past and the problems caused by these dangerous and illegal substances in both amateur and professional sports. Senator Mitchell's report helps bring understanding of and hopefully closure to the rumors and speculation that have swirled around this issue. Perhaps more important, Senator Mitchell's report – including his twenty recommendations which I fully embrace – helps point a way forward as we continue the battle against the illegal use of performance enhancing substances.

I want to be clear that I agree with the conclusions reached by Senator Mitchell in his report, including his criticisms of Baseball, the union and our players. I have personally agonized over what could have been done differently and I accept responsibility. In 1994, during a very difficult round of collective bargaining that included a lengthy strike, we proposed to the union a joint drug program that included steroids as prohibited substances. We made this proposal in an effort to be proactive, and I can assure you that we did not appreciate the magnitude of the problem that would develop. Senator Mitchell has suggested that the Clubs did not give this proposal the highest priority, but the Major League Baseball Players Association was fiercely and steadfastly opposed to any form of random drug testing. Even if the Clubs had taken a harder line on drugs, the Union would not have agreed and the strike could have lasted even longer. Unfortunately, the next round of bargaining did not occur until 2002, and, therefore, we did not have an opportunity to address the problem before it became more significant.

However, as Senator Mitchell found in his report, Baseball was taking action during this time. After the discovery of androstenedione in Mark McGwire's locker in August, 1998, we immediately took a number of steps to lay the foundation for bargaining a joint drug program in the 2002

negotiations that included random testing for steroids.[1] Those steps included efforts to improve regulation of dietary supplements such as androstenedione and the introduction of a steroids education program.[2] Along with the MLBPA, we also funded a study of androstenedione at Harvard. In addition, in 2001, I unilaterally implemented a drug testing program in our Minor Leagues which prohibited all Schedule III steroids and required random drug testing. Collective bargaining is by its nature an incremental process and these foundational efforts were necessary to overcome the union's long-standing opposition to drug testing. Even with those efforts, the bargaining with the MLBPA in 2002 was contentious and the union resisted any agreement on steroids until late in the negotiations. Some of the sharpest exchanges at the bargaining table occurred on the steroids issue and Mr. Angelos can certainly tell you about those exchanges.

Senator Mitchell's report recognizes that "the drug testing programs in all sports, including the Olympics, have evolved over time through a process of trial and error, as the programs were modified to address

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1 Report to the Commissioner of Baseball of an Independent Investigation Into the Use of Steroids and Other Performance Enhancing Substances by Players in Major League Baseball (the "Mitchell Report"), at 44.

2 Id.

problems and concerns. In this respect, Baseball's program has been like all others."[3] And, as Senator Mitchell observed, "the current drug testing program in Major League Baseball is the product of the give and take inherent in collective bargaining."[4] The compromise we reached with the players on the 2002 drug program was not perfect. As Senator Mitchell reported, it was a necessary first step toward achieving the joint drug program that is in effect today.[5] In January 2005, with the agreement of the Players Association, we revised the drug program to add seventeen substances as prohibited substances (including the addition of Human Growth Hormone). We also increased the penalties for a positive test result. In March 2005, with the support of this Committee, I sought the Player Association's agreement to further increase penalties to a 50-game suspension for first-time offenders, a 100-game suspension for second-time offenders, and a permanent ban for third time offenders. I also proposed adding stimulants, including amphetamines, as banned substances. After months of difficult negotiations, the Players Association accepted my proposals in November 2005.

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3 Mitchell Report, at 258.

4 Mitchell Report at SR-4.

5 Mitchell Report, at 53-54.

As Senator Mitchell found, "[t]he penalties imposed under the joint program are stronger than those imposed under drug programs in other major professional sports leagues in the United States."[6] I am proud that, in this respect, Major League Baseball is a leader. Our "three strikes and you're out" policy states loudly and clearly that we will not tolerate the illegal use of performance enhancing substances in our sport.

Senator Mitchell concluded that the drug program that has been in place since November 2005 "has been effective in that detectable steroid use appears to have declined."[7] I am encouraged by that finding, but also recognize, as did Senator Mitchell, that "no drug testing program is perfect," and that there is always room for improvement.[8] I fully support each of the twenty recommendations that Senator Mitchell included in his report. I promised that all of his recommendations that do not require bargaining with the Players Association would be implemented immediately and I am delivering on that promise. Just last week, we issued written policies that: (i) require all Clubs to adopt a uniform, written policy for reporting information about possible substance abuse violations and certify to the

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6 Mitchell Report, at 276.

7 Mitchell Report, at SR-1.

8 Mitchell Report, at SR-4.

Commissioner's Office that such policies have been complied with; (ii) require all Major and Minor League Clubs to establish a system to log every package sent to players at its facilities; (iii) require background checks to be performed on all Clubhouse personnel; and (iv) require all Clubhouse personnel to be randomly drug tested.

Also last week, we established a separate department of investigations to deal with all allegations of drug use and violations of our rules. That department will be headed by Dan Mullin who served 23 years with the New York City Police Department and retired as a deputy chief with responsibility for 3,000 officers. He will be assisted by George Hanna, a former FBI agent with 30 years of investigative experience. Mr. Mullin will report directly to the President of Major League Baseball, Bob DuPuy, and me. Consistent with Senator Mitchell's recommendations, the department has established a hot line for the anonymous reporting of information concerning the use of prohibited substances and has already made initial contacts with law enforcement officials to pursue continued cooperation.

Likewise, although the legal issues are more significant, we will also be developing a program to require top prospects for the Major League draft to submit to drug testing before the draft.

Senator Mitchell also recommends certain changes to the joint drug program that clearly require the agreement of the Players Association. We already have agreed with the union to eliminate the overnight notice that the drug testing collectors had given to the Clubs. The other recommendations include increasing the number of off-season drug tests, making the program more transparent to the public, increasing the independence of the program administrator and improving and expanding our programs to educate players about the use of prohibited substances. We have met with the Players Association to discuss each of these recommendations. We have not yet reached an agreement on these matters, but we will continue to press for an agreement to revise the program to adopt all of Senator Mitchell's recommendations. Personally, I am committed to a program that provides adequate, year-round, unannounced testing.

As Commissioner, I recognize that Baseball is a social institution with important responsibilities, particularly as they relate to young people. We have been working closely with the Partnership for a Drug-Free America and the Taylor Hooton Foundation to educate America's youth and their parents about the dangers of performance enhancing substances. These programs warn our youth about the health risks in using steroids and other black market drugs, and teach them how to achieve the same improved

results on the field through proper training, nutrition and methods that are legal and safe. Our athletes, prospective ballplayers and our youth must come to understand that the use of performance enhancing substances is illegal, it is cheating, it does long term damage to an athlete's health, and it puts at risk an athlete's reputation and integrity. Baseball will continue and enhance its efforts in this area.

Finally, I fully recognize that eliminating performance enhancing substances from Baseball requires us to be proactive and vigilant. The strongest penalties in professional sports and the testing of players has not proven to be effective enough to rid our sport – or any other sport, including the Olympics – of the illegal use of performance enhancing substances. I am committed to having the strongest and most effective program in sports.

As part of my commitment, it is essential that we not only investigate and enforce our policies, but that we educate our players concerning the dangers posed by the use of these substances. As Senator Mitchell noted, "improved educational programs about the dangers of substance use are critical to any effort to deter performance enhancing substance use."[9] For the past decade, as Senator Mitchell describes in his report, MLB has

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[9] Mitchell Report, at SR-30.

conducted educational programs for players in the Major and Minor Leagues during Spring training. We have stepped up these efforts in recent years, striving to find ways to make those programs more effective in reaching the players. For example, in 2003, I hired Dr. Gary Green, former director of UCLA's intercollegiate drug testing program, chairman of the NCAA's subcommittee on Drug Testing and Drug Education, and a USADA panel member, to develop and implement educational programs and materials on performance enhancing substances. Major League Baseball remains committed to this educational effort and each year our educational efforts evolve and improve. I welcome the Senator's fresh perspective on our efforts and using his recommendations as a guide, we are making even further improvements to our educational programs.

Senator Mitchell's report reveals that those who are intent on cheating will continue to search for ways to avoid detection, such as turning to the use of Human Growth Hormone ("HGH") which is not detectable in a urine test. Perhaps my single biggest frustration in reading Senator Mitchell's report was in learning that, just as Baseball was putting in place an effective testing program aimed at steroids, HGH use was growing. Just as we have seen our programs effectively reduce the use of steroids in Baseball, I am committed to stop the use of HGH in our sport, as well. Along with the National

Football League, Baseball is funding an effort by Dr. Don Catlin, one of the leading drug testing experts in the world, to develop a urine test for HGH, and we will be convening a summit of the best minds in sports and science to develop a strategy to address the use of HGH by players. Just recently, we have joined with the United States Olympic Committee in a new, long-term program of research on performance enhancing drugs. Our initial commitment is for $3 million in funding. When a valid, commercially available and practical test for HGH becomes reality – regardless of whether the test is based on blood or urine – Baseball will support the utilization of that test.

Some have described the use of performance enhancing substances in sports as an "arms race" between the chemists and the cheaters, on the one hand, and the honest players, the leagues and the testers on the other hand. Each is continually improving its methods to obtain an advantage over the other. Well, if this is such a war, then as Commissioner of Baseball I am committed to arm the side of honesty and fair play by funding laboratory research to detect the illegal use of these substances so that drug users will be caught and the cloud of suspicion over honest players will be lifted.

I am here today not just to describe to you my commitment to eradicating the use of performance enhancing substances from Baseball and to relate to you Baseball's on-going efforts to improve and strengthen its programs. I am here to ask for your assistance in this fight. The illegal use of performance enhancing substances is a problem for Baseball – but it is a social problem that extends beyond this sport or any sport. It is a societal issue. Senator Mitchell's report identified the difficulties inherent in any attempt, whether by Baseball, by other professional sports, or by the Olympics, to stop by itself the use of illegal performance enhancing substances. We welcome your participation in attacking the problem at its source. There are a number of bills that have been introduced that we wholly support, including Representative Lynch's bill (HR 4911) and Senator Schumer's bill (Senate Bill 877) to make HGH a Schedule III Controlled Substance, Senator Grassley's bill (Senate Bill 2470) to prohibit the sale of DHEA to minors, and Senator Biden's bill (Senate Bill 2237) to crackdown on the sale of controlled substances over the Internet.

In closing, Senator Mitchell quoted a veteran Major League Player in the report as saying that "Major League Baseball is trying to investigate the

past so that they can fix the future."[10] Even prior to the issuance of the Mitchell Report, we had made great strides in reducing the number of players who use performance enhancing substances. I am confident that by adopting Senator Mitchell's recommendations, by constantly working to improve our drug program regardless of the effort or the cost, by pursuing new strategies to catch drug users, and by enhancing our educational efforts, we can make additional progress in our on-going battle against the use of performance enhancing substances in Baseball. Senator Mitchell's report identified the principal goals of his investigation: "to bring to a close this troubling chapter in baseball's history and to use the lessons learned from the past to prevent future use of performance enhancing substances."[11] The lessons from the past serve only to strengthen my commitment to keep Major League Baseball's program the strongest and most effective in sports.

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[10] Mitchell Report, at SR-4.

[11] Mitchell Report, at 308.

Chairman WAXMAN. Mr. Fehr, we're pleased to welcome you and we are looking forward to hearing from you.

Mr. FEHR. Thank you, Mr. Chairman. Chairman Waxman——

Chairman WAXMAN. Would you pull the mic a little closer? Thanks.

Mr. FEHR. Is that better?

Chairman WAXMAN. Yeah.

STATEMENT OF DONALD M. FEHR, EXECUTIVE DIRECTOR, MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION

Mr. FEHR. Chairman Waxman, Ranking Member Davis, and members of the committee. As you know, my name is Donald Fehr and I serve as the executive director of the Major League Baseball Players Association, And I appreciate the opportunity to speak with you today.

As I've previously testified before many committees, but specifically this one 3 years ago, playing Major League Baseball requires talent, drive, intelligence, determination and grit. Steroids and other unlawful performance enhancing drugs have no place in the game and we neither support nor condone the use of such substances by players or by anyone else.

We cannot change but we can learn from the past. Baseball's problem with performance enhancing substances was bigger than I realized. We understood that a number of years ago when we began the testing programs. In retrospect, action should have been taken and probably could have been taken sooner. The Players Association accepts its share of responsibility for what happened and, as I indicated at my press conference following the issuance of Senator Mitchell's report, so do I.

Since our first joint drug agreement in 2002, and in particular since we appeared before this committee some 3 years ago, we have worked vigorously to rid the game of performance enhancing substances, and the evidence regarding steroids indicates, I believe, that we've been largely successful. On behalf of the players, I reaffirm the commitment to continue that effort.

Today we believe we have the best program in professional sports. It is a program that members of this committee and other Members of Congress praised when it was agreed to and implemented. It is independently administered as state-of-the-art random unannounced testing procedures, and we use the universally acclaimed WADA-certified Olympic lab in Montreal to analyze the samples. The penalties, as indicated, have been the toughest in professional sports and it is a program, as Senator Mitchell indicated, that we've worked to improve. Over the last 2 years, even after the 2005 amendments, without any fanfare or controversy, we've agreed on several improvements.

Which brings me to Human Growth Hormone. This is a difficult and perhaps a unique challenge. There are currently no valid blood or urine tests for HGH. So what can be done and what have we done?

First, we banned HGH. We've agreed to test for it as soon as a scientifically valid urine test exists. We also have procedures which allow for players to be disciplined or suspended based on evidence other than a positive test, and players have been suspended on

that basis. It is the so-called nonanalytical finding, so should a scientifically accurate, commercially viable blood test become available, we'll consider it in good faith. But as Senator Mitchell noted in his report, the blood tests now being developed may be of limited practical utility. And while the union has warned players for years of the risks associated with HGH and other of the substances, the parties can do more by way of education.

We've recently discussed with the Commissioner's Office having medical experts meet with players early this season to warn of dangers posed by HGH and other bad substances to reinforce that message. But we can't do it alone. Abuse of Human Growth Hormone, as I think the commissioner and Senator Mitchell have already mentioned, is not just a baseball problem; it is not even much of a sports problem. All one has to do to appreciate this is to go on to the Google Web site, maybe after this hearing, and type in the words, "Where can I buy HGH?" we did this a few days ago and we got 349,000 hits in a quarter of a second. Ads for Human Growth Hormone and related substances can be found widely distributed in periodicals that everybody reads.

Representative Lynch and others have introduced legislation to reclassify HGH as a Schedule III drug, making its treatment comparable to anabolic steroids. I assume that appropriate consideration will be given by the Congress to that bill.

Consideration might also be given to taking action in some form against the unlawful online sales in marketing of HGH and other of such substances.

Finally, as I have previously suggested, perhaps the Congress should examine whether the Dietary Supplement Health and Education Act [DSHEA] as it is commonly known, is being adequately enforced. One of the members from the panel in his opening statement, or in one of the questions, suggested to kids buying stuff in stores. To the extent that is true—and I think it is—that means it is available in stores, and legally.

Senator Mitchell and his law firm were hired to write a report and he served his client well. But I ask you to remember that this was a unilateral action taken by management. As a result, we had no choice but to act as unions are required to act by Federal law, to represent our members in connection with an investigation with potential disciplinary consequences. If we had done otherwise, we would have violated our statutory duty of fair representation. Even so, while the conduct of the investigation was ongoing, we continued to discuss improvements in our program with the owners. Most of the media reaction to the report has focused on individual players and what they are alleged to have done. That is understandable. But I would ask you also to recognize that the report contains no new allegations of improper drug use in 2006 or 2007 when the current program was in effect. In those 2 years, we administered some 6,500 tests with only five positive results for steroids. I think it is clear our program is working well with respect to steroids which are capable of being detected.

I recognize that many of you hope that I will today endorse all of Senator Mitchell's recommendations. With respect, I ask that you adopt his suggestion that the parties be allowed time to discuss what can and should be done. You can be assured that you have

my commitment both on behalf of the organization and personally that the players will discuss all of those recommendations. We have already begun those meetings and they will need to be expanded to include not only staff, but players and the commissioner, as I'm sure he'll want an opportunity to express his views directly to the players. Unfortunately, the situation has been muddied a bit by the commissioner's unilateral imposition of some of the recommendations. He did so even though these unilateral changes affect our members and even though we have never declined to discuss any potential improvements. In addition, the suggestion is there that we should once again reopen our bargaining agreement. It goes without saying that no union, and no management for that matter, takes lightly the suggestion by the other party that it should reopen the agreement before the term ends. The contract is the lifeblood of the union. This makes the process somewhat more difficult. But we're committed to pushing forward notwithstanding that.

There are some subjects that we intend to raise in addition to what Senator Mitchell has proposed. We want to make certain that every Major League club has throughout its organization thoroughly vetted and qualified strength and conditioning personnel. We believe that unproven allegations against players should not be aired publicly and that fundamental protections of due process should be strictly adhered to. And we'll suggest that Minor League players who currently do not have a neutral decisionmaker with respect to an alleged violation of the Minor League program should have that opportunity if they wish to challenge a failed test.

We also hope to build on one of Senator Mitchell's recommendations. Baseball can do a better job of educating its players and educating the public, and that specifically includes the children that so many of the Members here today have mentioned. Telling our Nation's kids that drugs will destroy them is only half the battle. And I went to college in the 1960's, and we had been telling people that for all of my adult life, and we're still struggling with it. So perhaps the focus ought to be shifted, in addition to that, to something else, because the Nation's high school athletes and their parents will still aspire to scholarships and want to pursue their athletic dreams. So knowing what to do is as important and perhaps more important than being told what not to do.

Perhaps players can lead the way in developing nutrition, strength, flexibility and wellness routines and educating America's youth in that regard. And in an era in which we hear a lot about so-called childhood obesity, perhaps that is a more powerful idea than we can yet appreciate.

Let me just summarize and I'll conclude. There is no new evidence in the Mitchell report of steroid use in 2006 or 2007. That does not excuse or condone what happened before that; but it is, I think, relevant to an examination of the steps we've made. Human Growth Hormone is a problem both within sports and generally. There is not yet a test, but we'll consider in good faith any valid and effective test which is developed. And we've agreed that if compelling evidence exists, a violation of our program can be found even though there is no positive test.

We have not refused to discuss improvements in our program. We will not do so here. We'll not refuse to discuss them here. We're committed to discussing Senator Mitchell's recommendations in good faith and look forward to receiving specific proposals from the commissioner.

Last, we've made progress and I think great progress, especially after the amendments we agreed to in 2005. But let me come back to what I began with. In retrospect, action should have and could have been taken sooner. As an institution, the Players Association bears some of the responsibility to that. As its leader, so do I.

Thank you, Mr. Chairman.

Chairman WAXMAN. Thank you very much, Mr. Fehr.

[The prepared statement of Mr. Fehr follows:]

BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

STATEMENT OF DONALD M. FEHR

EXECUTIVE DIRECTOR, MAJOR LEAGUE

BASEBALL PLAYERS ASSOCIATION

15 JANUARY 2008

Mr. Chairman and Members of the Committee:

My name is Donald M. Fehr, and I serve as the Executive Director of the Major League Baseball Players Association (MLBPA). I appear today in response to the Chairman's and Ranking Member's 19 December invitation to testify.

Let me begin by re-stating the MLBPA's position. As I said when I appeared before this Committee nearly three years ago, the Major League Baseball Players Association does not condone or support the use by players - or by anyone else - of any unlawful substance, nor do we support or condone the unlawful use of any legal substance. I cannot put it more plainly. The unlawful use of any substance is wrong.

Moreover, the Players are committed to dispelling any suggestion that the route to becoming a Major League athlete somehow includes taking illegal performance enhancing substances, such as steroids. It does not take a physician to recognize that steroids are powerful drugs that no one should fool around with. This is particularly true for children and young adults, as the medical research makes clear that illegal steroid use can be especially harmful to them.

Playing Major League Baseball requires talent, drive, intelligence, determination, and grit. Steroids and other unlawful performance enhancing drugs (PEDs) have no place in the game.

I appeared before this Committee in March 2005. That same year I testified before the Senate Commerce Committee and also the House Sub-Committee on Commerce, Trade and Consumer Protection. In 2004 I also appeared before the Senate Commerce Committee.

At each hearing I explained the Joint Drug Agreement (JDA) that we had reached in 2002 and which began to operate in 2003, and voiced my view that, given time, it would be effective in ridding the game of unlawful PEDs. Nevertheless, the Players took the virtually unprecedented step of reopening the JDA and improving it. We announced a stronger program in January 2005, and, then, later that same year, we did it again. Even though by all accounts the program we had in place was working very well to deter drug use, in response to the urgings of members of Congress, including members of this Committee, the players reopened the agreement a second time and announced a new, stronger, JDA in November 2005.

Among other things, the November, 2005 agreement greatly increased penalties, significantly increased the number and frequency of tests, added off-season-testing, and provided that the program would be run by an Independent Program Administrator (IPA).

When our November 2005 agreement was announced, it was praised by members of Congress of both Houses, many of whom had taken part in the various hearings. It was said to be the standard against which other leagues' programs should be measured; that it was what Congress was hoping for all along; and, that it was proof that the collective bargaining process had worked.

For his part, at the time that this agreement was announced the Commissioner of Baseball said it was "the most stringent steroid testing program in sport." Last month, just days after the Mitchell Report issued, Commissioner Selig said much the same thing.

That agreement he has praised is scheduled to run through December 2011, as do the other terms of our collective bargaining agreements.

We believe our drug agreement is the best in American professional sports. Our testing procedures are indeed state-of-the-art. The tests are conducted and the samples are collected by a well-respected independent company based in California and the samples are analyzed by the world-class WADA-certified Olympic lab in Montreal.

Our agreement contemplates that we will discuss improvements during its term, and we have done so. For example, over the past two years, the parties have implemented changes - what Senator Mitchell might call "best practices" - including the following:

- We have added language confirming that players may be disciplined for "non analytical positives" i.e., - violations of the Program that are proven through means other than testing. And this has led to a number of publicly announced suspensions;

- We have improved our rules for processing therapeutic use exemptions.

- We have improved our collection procedures by adding player chaperones to monitor players once they've been notified they are going to be tested that day.

- We have shortened the notice period given to Clubs that a collector is coming to the ballpark. Notice is now given the same day and only a few hours before the collector arrives.

And so the program that in November 2005 was hailed as the standard for other sports has indeed been strengthened over the past two years, and it compares quite favorably to the programs in other major sports. As Senator Mitchell's report recognizes (p. 276), baseball's program has the toughest penalties. We require year-round random testing, test players at the site of competition, test for amphetamines in addition to steroids, and our program is run by an independent administrator.

Senator Mitchell pointed out that our JDA is indeed working to detect the use of detectable performance enhancing substances. With respect to steroids, the numbers are clear: We have conducted more than 3,000 tests in each of the last two years, and the number of steroid positives we have had during that time is five. More precisely, during 2006 and 2007 we conducted 6,252 tests, and there were five steroid positives (two in 2006 and three in 2007).

But what about undetectable PEDs, most notably Human Growth Hormone (HGH)? We share Senator Mitchell's concern, and we have acted. Starting in January 2005, we banned HGH. We do not test for HGH, because there is no scientifically reliable urine test available. As soon as one is, our agreement states that HGH testing for players will begin automatically.

Even in the absence of a test, our commitment against HGH is no less strong than our commitment against steroids. We have developed and agreed to procedures which allow players to be suspended for HGH use based on evidence other than a positive test, a so called "non-analytical" finding. In both 2006 and 2007, players were suspended on that basis.

Of course, it is possible that a valid blood test for HGH will be developed before a valid urine test. However, as Senator Mitchell has indicated, if there is a blood test developed in the near future it may well be of very limited utility; i.e. a player will need to have used HGH a very short time before the test in order for it to show up. In addition there are very serious issues involved with blood tests for athletes, particularly on competition days, and in baseball we play nearly every day. As of now, no major professional sport has blood testing for PEDs. If and when a blood test becomes available, we will consider it based on the facts then available.

However, the biggest problem with HGH is very probably its availability to the American public. Anti-aging clinics and others openly advertise in magazines stressing the benefits of HGH. We will continue to take steps against HGH, but this is a societal, not just a baseball problem. If we did not know that before, the investigations into internet pharmacy sales of HGH made public over the last year have made this apparent.

All one need do in order to appreciate the magnitude of this problem is to go onto Google's website and type in the words, "Where can I buy HGH?" A few days ago this search returned 349,000 options in a quarter of a second. Advertisements for HGH can be found in newspapers and magazines nationwide. For example, in the current Continental Airlines magazine, on page 99, there is an advertisement with the following headline: "Choose life. Grow young with HGH." Abuse of HGH and other licit (and illicit) pharmaceuticals is not just baseball's problem.

Senator Schumer has introduced legislation to reclassify HGH as a Schedule III drug, making its treatment comparable to anabolic steroids. This may be a good first step. But I hope consideration will also be given to addressing the dangers of online sales and marketing of HGH that is false and misleading and to determine why so much product is available to organizations, such as Signature Pharmacy in Florida, which do not appear to be prescribing the pharmaceutical legitimately. And, as I have suggested before, serious consideration should be given to determining whether the Dietary Supplement Health and Education Act is being adequately enforced or whether the law needs to be amended. Certainly a review of DSHEA is warranted.

In addition, there clearly is more that we as players can do in the way of education. Telling our nation's kids that drugs will destroy them is only half the battle. The nation's high school athletes - - and their parents - - will still aspire to college scholarships and will still pursue their athletic dreams. Knowing what to do is as important as knowing what not to do. Ballplayers must lead the way in developing

nutrition, strength, flexibility and wellness routines. In an era of child obesity, this may turn out to be an even more powerful idea than we can appreciate today.

Let me turn now to the Mitchell Report.

Since 2002, the players and owners have worked together effectively in many ways to deal with the problems involving PEDs in baseball. Senator Mitchell's investigation, however, was a unilateral action undertaken by management. Commissioner Selig hired former Senator George Mitchell and his law firm, DLA Piper, to conduct the investigation on behalf of the owners. We had no role in it whatsoever. In such circumstances a union, including one which represents baseball players, is obligated to represent its members – all of its members - in connection with the investigation.

The MLBPA fulfilled it responsibilities. Where we thought we could cooperate with the Mitchell investigation we did. Where the rights of our members needed to be asserted, we did that. We gave appropriate legal advice to the players (and to their individual counsel) with respect to the employment consequences of the investigation, and urged players to retain individual counsel where that was appropriate. In many ways, we thought the conduct of the investigation was unfair. But, for the most part, we have avoided speaking publicly about those issues, and it would serve no purpose to do so here.

Most of the media comment and reaction to what is contained in the report has focused on the individual players who were named by Senator Mitchell, and what they are alleged to have done. That is as unfortunate as it is understandable. But, in that process, an important point may have been lost. The Mitchell Report reveals virtually nothing about drug use under our current new agreement, *i.e.* 2006 and 2007. There is not a single allegation in the report about any individual who may have used steroids during that time. There is only one incident discussed involving a player and HGH during 2006. But that incident was publicly known at that time, and the player was disciplined. In short, whatever the case was prior to our November 2005 agreement, the Report does not even remotely suggest that our current JDA is failing. To the contrary, it confirms that it is working very well.

Indeed, for the most part the revelations in the Report are quite dated, as Senator Mitchell himself noted. In fact, the Report shows little about steroid use that was not detected since we began individual random testing with disciplinary consequences in 2004, which was two years before the current agreement.

Let me now turn to the recommendations contained in the Report. I hope you can appreciate the situation in which we are placed. We had no role in writing this Report. We were not even allowed to read it prior to the time it was released to the public on December 13. And then, about the same time the press conference was ending, as I recall, we received notice this Committee was going to hold a hearing, the principal

subject of which would be when the union would agree to the Report's recommendations. This is not the way collective bargaining ordinarily occurs.

In many ways the Mitchell Report has taken us off track. We have accomplished much in this area through joint endeavors. But due to the investigation which led to the Report, we were forced to exercise our more traditional role of making sure that players being investigated by management were appropriately represented. Hopefully we can now work together in a more collaborative way with the Clubs. Again, if the positions were reversed, I hope we would have acted more constructively and inclusively. But I understand, this Committee is not interested in what was done wrong in the past. You want to know what we are willing to do going forward.

Today we are being asked to reopen our contract for the third time. It would have been much easier, in my view, to discuss changes to our program if MLB had approached us privately. Several times now in the last few years we have shown flexibility and the willingness to discuss these issues and make needed changes. Instead, we are now being asked to negotiate against the backdrop of a media extravaganza.

Nevertheless, we have never refused to discuss changes to our JDA at any time during its term, and we have advised the Commissioner that we are willing to have discussions now. A preliminary meeting was held a week ago today, and we expect to have more meetings soon. I do not know what the result of those discussions will be. I can assure you that the Players will discuss the recommendations and any other issues

which may come up in good faith, as we have done previously, and we trust that the Commissioner will do the same.

I know that many of you will urge us to adopt Senator Mitchell's recommendations. Respectfully, I hope that you will adopt his recommendation that the parties be allowed time to discuss, privately and away from the spotlight, what can and should be done.

In his report, Senator Mitchell paints a picture of an industry which, at least prior to the adoption of the JDA in 2002, had a problem with PEDs far larger than many of us, certainly including me, appreciated at the time. Indeed, our survey testing in 2003 demonstrated as much. He also suggests that everyone connected with the game bears responsibility, and is somewhat to blame, and I agree. In retrospect, we should have acted sooner. The MLBPA accepts its share of the responsibility, as do I.

We will not quibble about who deserves how much blame and for what; we instead choose to look forward. Since we reached our first Joint Drug Agreement in 2002, the Association has worked vigorously to try and combat this problem and do our best to rid the game of performance enhancing drugs. We will continue to do so. On behalf of the players I reaffirm their commitment to this.

The union's task – and my job – is to represent the players, all of the players. We represent players who use prescription medicine to address long-time medical conditions.

We represent players who want their medical records to remain confidential and private. We represent players who have been wrongly accused of misconduct and have been vindicated. We represent players who, even if they may have made mistakes, nevertheless are entitled to due process and a fair defense. We represent players who share an interest in collection procedures that ensure the integrity of samples, but also respect privacy and do not interfere with the integrity of competition. We represent players who believe that only scientifically validated tests should be used as the basis for punishment. We represent players who understand that they are not above the law, but believe that products that are publicly available should not be banned. We represent players who believe that no one should have their reputations forever tarnished without the opportunity first to confront their accuser and have a neutral weigh the evidence.

Indeed, we represent all of the players. The union and its players have demonstrated, time and time again since 2002, that we are committed to the fight against performance enhancing drugs. That commitment, we believe, cannot now be fairly questioned.

In conclusion, Mr. Chairman, the Players will discuss Senator Mitchell's recommendations and any other issues which may come up in good faith, as we have done previously, and we trust the Commissioner will do the same. We have already begun those meetings. The meetings will need to be expanded to include not only the players but the Commissioner as well. We are not in a position today to pass judgment on the recommendations; indeed, the Commissioner has yet to make clear to the players

the details of what he is proposing. But you have my commitment that we will meet not only on the ideas suggested by Senator Mitchell but other suggestions and proposals as well, in order to ensure that the Joint Drug Agreement in baseball not only remains the best in professional sports but is one that is as effective as it is fair.

Chairman WAXMAN. To start off the questioning, the Chair would like to recognize Mr. Towns for 5 minutes.

Mr. TOWNS. Thank you very much, Mr. Chairman, for holding this hearing. There has been considerable discussions on the problem that Senator Mitchell had in obtaining cooperation from individual players and the Players Association. It appeared that there was a wall of silence; that people were not allowed to talk or come forward with information. And in some instances they said the trainers were not allowed to talk. And then, of course, some information came forth that trainers were providing the steroids. So why would there be this code of silence?

Do you support this, Mr. Fehr?

Mr. FEHR. Thank you for the question. I think it is something that came up before and deserves an appropriate answer. We are obligated to represent the players in connection with the disciplinary investigation. I think that is why Senator Mitchell recognized in his press conference that what we did was, "largely understandable." And those were his terms.

Where you have a management investigation with potential discipline, employment consequences, we have an obligation to give the players appropriate advice as to what that could be and what the effect of what they say is. We asked if discipline would be imposed, and we did not get an answer that it would not be. Further—and this made it very difficult—this process was complicated because there were ongoing criminal investigations in San Francisco, in Albany and elsewhere, and I assume others, that we don't know anything about and shouldn't know anything about. I believe that Senator Mitchell had ongoing relationships with those offices. He has indicated as much. Therefore, we had to advise players that nothing they said was privileged and that if the authorities wanted it, they could compel him to provide it; that there would be possible discipline; and to do something which ordinarily a union need not do, which is to advise players that they may need to secure individual counsel before they made their individual decisions as to whether or not to speak to Senator Mitchell. It is a difficult situation, and that is about the best way I can describe it.

Mr. TOWNS. What are you going to do in the future to change this? Are you working to change this in terms of the code of silence, because as long as you have this, there is going to be this problem that people are going to feel that you're not addressing it in a very vigorous manner.

Mr. FEHR. I can guess what I can tell you is this: We would have—and any union would have—obligations to represent their members and to give them appropriate legal advice. We hope that the programs that we're working on will put us in the position so that questions as to whether there is a code of silence becomes largely not central in any future situation. If there are future investigations and we have an opportunity to discuss the parameters and the conditions of those before they get started, I don't know what would happen. But that was not an opportunity we were afforded here.

Mr. TOWNS. Mr. Selig, it is my understanding that Senator Mitchell wanted to get data from players' medical records. For example, he wanted data that would show whether there were trends

in medical records that might indicate the level of steroid use. This information would not have identified individual players. We understand if you're going to identify them, that is a problem. But this information would not have identified individual players, but his staff said that the clubs delayed providing this evidence for so long that it became too late to use it.

Mr. SELIG. Well, that was—I think Senator Mitchell would tell you right from the start that the clubs were remarkably cooperative in every way and I, frankly, didn't give them any alternative.

Having said that, there were some clubs who felt that there were some State laws that prevented them from doing it. There were other people that were concerned about it. In the end, though, we did reach agreement. It took a long time, but I believe in the end we resolved those problems, but—so I think that they did get the information that they required. It did take a long time because, frankly, the clubs' lawyers, individual lawyers, had a lot of questions and were very difficult. But we kept going until we were able to satisfy all the individual clubs. We have 30 clubs and 30 outside lawyers and all in different States, and State laws are different. I can remember there was some problems with Florida law and Texas law and other things. So it took a long time to resolve those, Congressman.

Mr. TOWNS. Let me put it this way. Senator Mitchell indicated that there was a tremendous code of silence. Do you support that code of silence?

Mr. SELIG. Well, I don't think Senator Mitchell said that he had any problem with that so-called code of silence from the club standpoint or from our office. In fact, he said over and over again, and he has told me over and over again, that we cooperated in every way. I told him the fateful day I called him in late March and said, "You'll have complete cooperation. You go wherever you want to go, wherever you want to—I want you to find out what happened, why it happened, and how it happened." and I think that he did, and he did largely because of the cooperation we got.

No, I don't—of course, I don't support a code of silence, not in any way, shape, form or manner.

Chairman WAXMAN. Thank you, Mr. Towns. Mr. Davis.

Mr. DAVIS OF VIRGINIA. Thank you very much.

Commissioner Selig, thanks for moving forward in this. It has been sort of easy after you reached your collective bargaining agreement to sweep it under the rug and say that is the end of it. And you didn't and you let the chips fall where they may. And I wish they had fallen differently, and I know you do too. But it is what it is and we need to move on.

I understand from some of the press reports you are weighing some disciplinary action in some cases; is that correct?

Mr. SELIG. That is correct, Congressman.

Mr. DAVIS OF VIRGINIA. Do you have any criteria or give us any clue into kind of what you are looking at?

Mr. SELIG. No, I can't, because I'm the judge in this case. So I'm sensitive. But what I said to you on December 13th and what I'd say to you again today, I have great respect for Senator Mitchell and I know his feeling on this subject, but I'm going to review each

one of these matters, management and players, on a case-by-case basis. I'm getting a lot of information from him.

There is other information yet, Congressman Davis, and then I'll make my decisions as I move ahead.

Mr. DAVIS OF VIRGINIA. Thank you. I know you note—you stated that Senator Mitchell was given unfetterred access to any information that was within your control. Were there any instances in which you or the clubs denied Senator Mitchell access to information?

Mr. SELIG. None that I know of. Absolutely none.

Mr. DAVIS OF VIRGINIA. Mr. Fehr, what would you have liked Senator Mitchell to have done differently?

Mr. FEHR. I think that had I been conducting such an investigation, I might have approached it differently. I might have had some preliminary conversations. I might have tried to see if there were some ways it could be approached other than by someone who is legally a management lawyer doing an investigation.

Having said that, the biggest gripe that I think I have and the players have is that I would have preferred that at some point before he issued a report, if he was going to write something about Don Fehr, that under the circumstances and the seriousness of it, he would have sent Don Fehr and his lawyer, if he had one, a letter: I intend to say the following about you. This is why I'm going to say it, this is your last chance to tell me.

He didn't do that. He has explained why he thought it was the appropriate way to do it, the manner in which he proceeded. I would have done it differently.

Mr. DAVIS OF VIRGINIA. Have you and the commissioner had any discussions between yourselves, or has it been at the staff level, about the report and substantively how you're going to proceed from here?

Mr. FEHR. The commissioner and I had a very brief discussion out in Arizona right before the new year when we met to talk about another important issue. What followed that was a meeting of staff, which occurred last week, to begin to set the ground rules and explore what we needed to talk about. And what we're going to be trying to do now is figure out when we can have other meetings, and that is a little complicated because this is the busiest time of the year and it is hard to get hold of players. They are negotiating contracts, they are in workout routines, and they're spread.

But I hope we will have those meetings put together in the very near future and then we'll begin the process in a more formalized way.

Mr. DAVIS OF VIRGINIA. Is it safe to assume, then, that you and the commissioner and your staffs will take this report and meet on each aspect of it and see where you can come to closure and have some discussions off camera about implementing this?

Mr. FEHR. Yes. I'd expect that we'd discuss, as I hope I indicated in my opening statement, all of the recommendations and any other matters which come up that would be relevant to those discussions.

Mr. SELIG. I'd add, Congressman Davis, we've done the ones that we felt we should. And I would hope that, frankly, we have this all completed before spring training.

Mr. DAVIS OF VIRGINIA. Commissioner, let me ask you: In the book Game of Shadows, it was reported that Barry Bonds' trainer, Greg Anderson, was either tipped off about when Bonds was to be tested or he was able to figure it out. As I understand it, Major League Baseball looked into that allegation.

What did you learn? How was Anderson able to determine when Bonds' test would occur? Or was that just an allegation?

Mr. SELIG. As far as I know, that was just an allegation. Obviously—one thing that Senator Mitchell said today—and I know in the last decade plus, I've learned a lot. This is an evolutionary process. And I think with each time we are able to tighten this program and maybe do something that we should have done X years ago, that makes it better. As far as I'm concerned, that is an allegation. I don't have any evidence of that. But it is impossible today, it has been impossible now for quite some time, and we need to continue to strengthen the program so that even people can't make those allegations.

Mr. DAVIS OF VIRGINIA. OK. Thank you.

Chairman WAXMAN. Thank you, Mr. Davis. Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. Selig, I want to join the chairman in thanking you. You know, a lot of people complain about this committee taking on this role. But, I mean, what we've seen done in Major League Baseball has been quite a bit and I think it has been very good. Also thank you for asking Senator Mitchell to do this investigation.

One of the things that concern me is a few minutes ago in answering Congressman Towns' questions, he was talking about this whole code of silence. And Senator Mitchell also told us that the clubs refused to allow their trainers to provide information about the steroid use of the individual players. And I understand that the clubs claim that there was a, "trainer/player privilege," which I've never heard of. And maybe that is a new concept in the law. This obviously made it much more difficult for the Senator to do his job.

Are you familiar with that? Is that something new?

Mr. SELIG. You know, I've heard the discussion. Let me just talk about trainers, if I may, Congressman, just for a second. I started meeting with the trainers and team doctors. I just had a meeting on January 9th with 12 team trainers. So I've become very familiar, they're very professional, they—and they have really briefed me as thoroughly as one could the last 7 or 8 years. Rob Manfred of our staff is there. They did it again. I think that only when there were issues that either the club lawyers felt—and I'm talking about the individual club lawyers—felt that they were compromising themselves in terms that they would have to describe to you. But other than that, every trainer that they wanted to interview, they interviewed. And I think the trainers were—at least told me they were very forthcoming. So I don't think that—unless you have a situation where there is something that the trainer had that was—that would violate some type of law, I think that they were very forthcoming.

Mr. CUMMINGS. Keep your voice up. I want to make sure we hear you.

The two of you have a long history with baseball. Mr. Selig, you've been a team owner, a baseball executive, for 40 years. You've been commissioner since 1994.

Mr. Fehr, you've been head of the Players Association since 1986, for decades now. You all have been the two most powerful men in the sport. We all agree that we need to focus on the future, and we will do that. But this scandal happened under your watch. I want that to sink in. It did.

I have a very simple question. Do you all accept, you all, you individually, accept responsibility for this scandal, or do you think there was nothing you could do to prevent it?

Mr. Fehr, why don't you go first?

Mr. FEHR. Thank you, Representative. I'm thinking a minute because I don't want to—I could talk for a long time in response to that question and I know we don't want to do that.

Let me simply say as follows. If the question is, did we or did I appreciate the depth of the problem prior to the time that we began to work on it hard, the answer is no. If the question is, should we have? Perhaps we should have. It is a failure that we didn't and it is a failure that I didn't. We can't change that. There were a lot of things going on. But if your question more generally is, do the individuals who have responsibility for negotiating the agreements on both sides bear responsibility for what took place for a failure to get at it sooner, as I indicated in my opening statement, of course we do.

Mr. CUMMINGS. Mr. Selig.

Mr. SELIG. Sure. What I would say to you, as I said in my statement, I thought about this thousands of times. I've been in this sport all of my adult life. I agonize over that because I consider myself, in the end, a baseball man. In the nineties, you know, hindsight is always very beneficial. I watch things. I have reread all the articles that Senator Mitchell had. I take responsibility for everything. So let's understand that. I take it for all the goods things that have happened to make the sport as popular as it is today, and when we talk about something, I guess there is no question about that. I've agonized.

But I would also remind you—and who knows how long this has gone on? The Senator said over 20 years, which is well before me. I was then the owner of the Milwaukee Brewers. We have come a long way and in a difficult environment. My Minor League program, Congressman, is going into its eighth year. So all the great young players in this sport have now been tested 8 years. And do I wish we had reacted quicker? Should we have? Yes, one can make a compelling case and I've—I do a lot of introspective thinking and I'll second-guess myself. But as far as responsibility, of course all of us have to take responsibility, starting with me.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Chairman WAXMAN. Thank you very much, Mr. Cummings. Mr. Souder.

Mr. SOUDER. Thank you. I want to thank Mr. Selig and Mr. Fehr for having taken some steps. And I believe that this report and the followup are additional steps. But I don't know. And what many of

us are asking is, would they have been taken if BALCO hadn't occurred? Would they have been taken if the hearings here hadn't occurred? The leadership part is missing. It tends to be waiting until potentially the law is coming, and then trying to fend the law off.

Let me ask a couple of questions, Mr. Selig. Are you looking at gene doping?

Mr. SELIG. I'm sorry. I didn't hear you.

Mr. SOUDER. Are you looking at gene doping, genetic alteration? As a potential testing question, are you looking at gene doping, genetic doping.

Mr. SELIG. We've hired the best experts that we can. And we certainly will look at that.

Mr. SOUDER. Mr. Tagliabue, when we asked him that question 3 years ago, said this is the greatest potential challenge and the NFL was looking at this. It raises a fundamental question. Are you looking at ways that people disguise steroids, such as cream, vitamin B–12, what things can be mixed, and will there be penalties for those?

Mr. SELIG. Let me again—because this is all an evolutionary process, the answer is yes. Dr. Green, who is sitting behind me, is one of the leading experts in the country. We have the two gold standard labs—Christian Ayotte, whom I wish were here today but isn't, the head of the Montreal lab and—and between he and Gary Green and all the other experts that we have, all the team doctors who I meet on a regular basis, we need to continue to be vigilant, there is no question about it. When we think we have a problem solved, there are chemists working—creating new products out there.

Mr. SOUDER. Are you looking at—I worked in 1989 for Senator Coats when we drafted the first drug testing laws on what was allowed for athletes in high school. And what laws have been upheld by the courts—it isn't probable cause, because you don't know, but it is potential cause. In other words, if the students are repeatedly late for school, if they drive a car, if there are certain erratic behavior changes, you can do testing.

Are you looking specifically at when you see changes in performance, in key categories where they are tripling from 1 year, then you do extra testing?

Mr. SELIG. Well, we are—you know, we have the program now. We test as frequently as we can. If there are reasons to test more, we're willing and able to do that.

Mr. SOUDER. Are statistical changes potentially one of the reasons?

Mr. SELIG. Are what?

Mr. SOUDER. Are statistical anomalies potentially a reason?

Mr. SELIG. That is something that the independent administrator would have to do. But I—yes——

Mr. SOUDER. I agree that would be something in due process. But it is a question. But I raise some of these questions because the problem with an evolutionary process and—Mr. Fehr, there is a distinct difference here between due process of penalties, of making sure that the tests are accurate and what should be tested. And I'd like that—for you to comment on that. Every time there is a new variation, does this mean it has to be negotiated? Or in between

labor agreements, can there be decisions that this is being added to the list as long as there is process from your perspective?

And the second thing is, why do both of you feel that not only baseball but all professional sports should be different than the Olympics? What is your criteria for saying that we have this restriction on the Olympic performers who—they aren't kids either. Many of them are just as old. They get all kinds of contracts. They may not be paid for performance at the Olympics, but they certainly are paid athletes at this point. In fact, Professional Basketball plays in the Olympics.

I'd like you to finish with that question. And also, what do you do in between labor agreements?

Mr. FEHR. Perhaps let me begin. To answer your last question first, under the labor law that—when you're between agreements, the terms of your preexisting agreement continue by law, unless and until somebody does something, there is a strike or a lockout or a unilateral change or a new agreement is reached. So the period in between is not an issue.

Second, with respect to gene doping, I don't remember precisely the audience that I spoke to. This is a number of years ago now. But I think I told the group, and got people sort of sitting up straight, that gene doping will make what we see now look quaint. And the reason that it will make it look quaint is if it is done right—my understanding is that people are trying to develop it so that it will be done in utero and you would be penalizing something for someone—for something his parents did at the time that he was still being carried by his mother. That is a very serious issue. And I don't pretend to have a handle on the ethical or scientific or policy questions that relate to that. But it is a very difficult issue.

Second, with respect to mixed and disguised substances, all I can tell you is that the laboratory we use believes it can find those. We do add substances in between agreements. If something becomes unlawful under Federal law it is added automatically, as androstenedione was when the law was passed in 2005. And we get lists of masking agents and diuretics and all the rest it of from the lab that they can test for.

With respect to due process issues—if I can do this very succinctly. Where there is an alleged violation, there has to be an opportunity to challenge that, an appropriate adversary hearing, with neutral decisionmakers, with whatever arguments are appropriate to be made by the individual, so that it can be considered to be a fair hearing.

One of the difficulties with the report we have is that if Senator Mitchell had said Don Fehr did X, used this particular drug unlawfully, I don't have a hearing, I don't confront witnesses, I can't cross-examine anybody. The most I can do is be interviewed by the same person who is the investigator, the prosecutor, and in that case would be the judge or the jury. That is inconsistent with most fundamental notions of due process.

On the Olympics, I can say as follows. They have to do what's best, what they think is best. The athletes are not really represented. We have to do what we think is best and the test will be whether we're successful in eradicating these drugs, as we be-

lieve the evidence has shown that we have been in the last several years with respect to detectable steroids.

I'll give you one example of how it works the other way. This is not my first experience with Senator Mitchell on an investigative panel. He and I were two of the five members of the U.S. Olympic Committee's panel that investigated the Salt Lake City bribery scandal and the report that was written. And we made a series of recommendations that the USOC adopted in large part as to how they should change their practices. Suffice it to say, the IOC had enormous difficulties with our even raising the issue to them. They did make some changes, but grudgingly. Cultures are different.

Chairman WAXMAN. The gentleman's time has expired. Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman.

Gentlemen, thank you for being here today. I want to take up a train of thought that I had at the earlier session with Senator Mitchell. And that is that we had asked the League for some information on exemptions from the drugs on that. And just looking at the raw numbers here, 2006, the total number of players that were subjected to testing was 1,356. And there were 35 therapeutic-use exemptions granted. Of those, 28 were for ADD or ADHD medications.

In 2007, that number jumped significantly. Of the 1,354 players tested, therapeutic-use exemptions granted were 111, of which 103 were ADD or ADHD medications.

Now, that would make that almost eight times the normal adult usage in our population amongst baseball players. Does that have any significance to either of you gentlemen as something we ought to be looking at? Have we set up procedures to look for anomalies like this and then determine what we're going to do about it?

Mr. FEHR. Let me respond to that, and I appreciate your asking the question since you did raise it with Senator Mitchell. Thank you for doing so. First of all, therapeutic-use exemptions are granted by the independent program administrator. He must have, in order to do that, appropriate medical documentation from an appropriate doctor who has conducted a legitimate examination, and he is free to question that individual to secure more recommendations or any of the rest of it. He is a physician. He is expert in sports medicine. To go—and I believe that Senator Mitchell did interview him with respect to the procedures he utilizes to determine whether therapeutic-use exemptions will be granted. No problems were reported by Senator Mitchell in that regard.

As to your more general questions——

Mr. TIERNEY. I think the problem with that is Senator Mitchell didn't have the information that we had. You could ask him about the procedures, but he didn't have this data to look at.

Mr. FEHR. I'm coming to that.

As to your more general question, I'm not familiar—I accept what you say about the use in the adult population. I suspect, from some personal exposure I've had to hyperactive kids, that the use of such drugs among young adults by prescription may be significantly larger than it is in the general adult population.

Having said that, I don't know that to be true. What I would expect is that if Dr. Smith believes that we have anomalies which

should be investigated and looked into more closely, he would do three things: He'd tell us that; he'd look into it more closely with the doctors granting the exemptions and the players; and if he thought there were changes that should be made, he would so recommend them. And as Senator Mitchell pointed out, we have not had a recommendation that he made that has not been adopted.

Mr. SELIG. If I can add to that, because I've asked the same question over and over. You have to start with two things here. No. 1, the player gets a prescription at the local level. The player playing for the Chicago Cubs and the Milwaukee Brewers, that doctor there gives him that. Then Dr. Smith reviews all of that. So they've been through—it's been through two levels of medical research. I mean, the examination and why and how. And if Dr. Smith accepts it, I guess that we do too. It is within the limit of the adult population, overall population. It is a little higher, but it did go up. And we are reviewing that right now, trying to break down exactly why it happened and how it happened.

Interestingly enough, in my meeting with the trainers, that was one of the major subjects last week: why, how? And everybody has had a different view of it, and I was fascinated by that view. So we just need to keep working at it. And I guess hopefully after we conduct our review with all of the team physicians and Dr. Smith and all of the team trainers, we'll be able to give you a better answer to that.

Mr. TIERNEY. Just out of curiosity, is it perceived to be a performance enhancement, the ADD drugs? Are they perceived to be a performance enhancement to begin with?

Mr. FEHR. Oh, sure. If they are not appropriately medically prescribed, yes, then they are prohibited.

Mr. SELIG. That's right. And remember it has to go, as I said, through two levels of doctors. Our independent is the last one. But you'd hope that a doctor in Kansas City or Philadelphia or anywhere else is only prescribing it if he feels it is medically necessary.

Mr. TIERNEY. Well, I take it from your comments, Mr. Selig, you do have a system set up to look at anomalies like this and then you are in this instance looking into it and——

Mr. SELIG. Absolutely. No question about it. This is one that needs to be dissected.

Chairman WAXMAN. Thank you, Mr. Tierney.

Mr. Burton.

Mr. BURTON. Thank you, Mr. Chairman. I just have one question of Mr. Fehr. I was interested in your answer about due process. And I wonder, you probably talked to a number of the players, I wondered why some of the players didn't come in. Was it because they had not been apprised of the allegations against them and they thought if they went in they would immediately be looked upon in this media age as guilty of something by virtue of the fact that they showed up, and is that why they declined, and so they were darned if they do and darned if they don't, because if they went in it would look like there might be something that was against them, and if they didn't go in ultimately when the report came out they would be judged guilty before they had a chance to defend themselves?

Mr. FEHR. I guess I would have a couple of responses to that. First of all, because we are giving legal advice we wanted to make sure that an attorney retained by the Players Association to give that advice was conversing with the individual players about these subjects, and so it wasn't me that did that. Having said that, I think that it is probable that there was some players that had some concerns in those regards. My guess is, because I don't know what the bases of individual decisions were that were made by the players and their individual counsel, but my guess is that it was the totality of the circumstances that was involved; it was the investigation, possible employment consequences, general reluctance to get wrapped up in something, concern that they didn't have precise information as to what the allegations were before they went in, worry about various criminal investigations that were ongoing which they might get called even as a witness or somebody to talk to Senator Mitchell, and the lack of privilege that would apply, added to the fact that there's no process to resolve in any meaningful way what happens after an allegation is made. I suspect that it would be very difficult for most attorneys to recommend that their clients go in under that basis.

Mr. BURTON. Let me just followup real quickly. In the future if there's an allegation against a baseball player, do you think it should be changed so that they're apprised of the allegations against them before some kind of report like this comes out so they have a chance to prepare and be able to defend themselves?

Mr. FEHR. Yes. I would hope that one of the subjects that we would discuss in our upcoming meetings would be whether we can agree that in the future there will be an opportunity for a procedure to challenge in a formal way, in some sort of a neutral to make a decision before matters are raised publicly. Whether players would take advantage of that would depend on the individual player and the individual circumstance at the time. Each decision is going to be fact bound.

Mr. BURTON. Thank you. I yield my balance to Mr. Shays. Did you want to go further?

Mr. FEHR. No. I just said I appreciate your question.

Mr. SHAYS. I thank the gentleman for yielding. Mr. Fehr, you continually say we have to do what is best. But it's clear to me that involves what is best for the players. You have an obligation you feel as the representative of the players. What I want to ask is what obligations do the players have and Major League Baseball Players Association have to the fans and to the public at large, particularly our young people, what are the obligations there?

Mr. FEHR. I think that I can best respond in the following way. They have an obligation, and this is not necessarily in order of priority. But they have an obligation, first of all, to comply with the law and not suggest to anyone that they're different and don't have to or shouldn't have to or that it's OK. Second, that to the extent they can they should be in a position to help educate people both as to what not to do, but as I said in my other statement, perhaps it would be better as to what they should do. Third, as a group you can make certain statements. As an individual who is called before a tribunal or an individual or who may be challenged with wrongdoing, that individual faces an entirely different set of cir-

cumstances and theoretically facts of which he has some knowledge and people making accusations. What he should do in the context of that case is going to depend on what the situation is, what the best advice is he can have and what he ultimately decides to do.

Mr. SHAYS. I would like to ask the same question to Mr. Selig. What obligations does Major League Baseball have to the public at large, the fans, the public at large and to our young people in particular?

Mr. SELIG. Congressman Shays, we have an enormous responsibility. There is no question. I have often said in my long career that we're a social institution, we have enormous social responsibilities. One of the reasons that I decided to do the George Mitchell report, and I thought long and hard about all the consequences, various people that could do it, is that I felt that we had an obligation to. We had toughened our program, we had taken care of the present and the future, but we had an obligation to go back and have somebody take a look at what happened so it would be a road map for the future, for people who came after me and for other people. But we also, I felt, had an obligation to our fans. There is no question that the impact of this sport socially in this country is enormous and that is really our primary responsibility.

So that's why I did the Mitchell report even though there were a lot of people on all sides who didn't like it and didn't like somebody doing it. I felt given the fact I never wanted anybody to say what were you hiding, why wouldn't you let somebody look at it. And I heard it when I was here. And it was an absolutely very fair concern. And I final said to myself, this is going to be a painful journey but it's a journey we're going on, and I would do it again today.

Chairman WAXMAN. The gentleman's time has expired. Before I recognize Ms. Watson, who will be the next questioner, the two of you talked about the medical exemption issue and your reviewing it. Would you keep us apprised of your decisionmaking in that area?

Mr. SELIG. Absolutely.

Mr. FEHR. Yes, of course.

Chairman WAXMAN. Ms. Watson.

Ms. WATSON. Thank you so much, Mr. Chairman. And I want to thank the commissioner and Mr. Fehr for being as forthcoming as you have been. And I know that one of the concerns with the Mitchell report was that they felt that there was not enough off-season testing. And I know the two of you have grappled with how do we meet this issue head on. And according to Senator Mitchell, baseball only conducts 60 off-season tests each year. And this means that the average league baseball player will go their whole entire career without being tested even once in the off-season process. And so first to the commissioner, Mr. Selig, do you agree with Senator Mitchell that more off-season testing is needed, and I'll ask Mr. Fehr the same thing, and I would like to have you go into your views about what actually is needed.

Mr. SELIG. Yes. The fact of the matter is that if you were to ask me today what would I do if I could change the program today, we need more testing, more year-round testing. There is no question in my mind that would strengthen the program. So I not only agree

with Senator Mitchell, but I agreed with it even before Senator Mitchell made that observation and did his investigation. So yes, there is no question that more testing and off-season testing would be very helpful.

Mr. FEHR. For my part, one of the things which came out of the Mitchell report was the players were told the number of off-season tests. Prior to that time they didn't know how many there were going to be. They didn't know whether there would be few or there would be many. As far as they knew that was going to be up to the people that draw the names out of a hat to determine who is going to be tested. One of the things that Senator Mitchell suggested, and I may not have this precisely right, I didn't review this part of it overnight, was that perhaps the number of tests in season and off season in terms of how they are divided should not be static and should be changeable and all the rest of it, and that probably bears some examination.

Ms. WATSON. That goes right to something that Jeff Kent, who is the second baseman, as you know, for the Los Angeles Dodgers and a former Most Valuable Player, and he stated that baseball never conducts tests, testing in the post season. And I understand that there was some testing in 2007, but it was limited. And so can you give me an estimate of the testing in 2007 and what you feel as to whether it's efficient or not?

Mr. FEHR. Sure. I can get the precise numbers after the hearing if there's an interest. But we began testing in the post season I believe in 2007. And we do what is traditional in team sports. As I understand it, a number of people from each team are tested during that process. I don't know the precise numbers. But one of the improvements we made since 2005 was to increase, was to provide for testing in October.

Mr. SELIG. Yes, we did test——

Mr. FEHR. Excuse me, I'm sorry. I'm told it was both 2006 and 2007.

Mr. SELIG. We did test in the post season last year, that's correct.

Ms. WATSON. It appears from what the two of you have said that the players possibly are under a misunderstanding and they feel that there is no opportunity for post-season testing. How would you comment?

Mr. FEHR. Well, I hope they're not under that misunderstanding, because if they are and they use drugs that they shouldn't, then the likelihood is that they're going to be caught by the testing procedures. But part of my job is to try and make sure that players understand what the rules are. And if there's been a failure there that's one of the things we can emphasize in our spring training meetings.

Ms. WATSON. And probably they ought to be under more scrutiny. If this is something that's really widespread I would say leadership needs to inform them that random testing after the season is something that you're going to see happen. And I would hope that we would get word of your followup on post-season testing prior to another hearing like this.

And thank you two for your input. We appreciate it. I yield back my time.

Chairman WAXMAN. Thank you very much, Ms. Watson.

Mr. Lynch.

Mr. LYNCH. I thank the gentleman for yielding. commissioner and Mr. Fehr, I just want to say at the outset that a lot of progress has been made, and I want to congratulate you both on that. I remember the last hearing we were looking at a collective bargaining agreement that actually allowed a player to leave in the middle of his urine test and leave unmonitored and then come back an hour later for no apparent reason. It also allowed players to pay a $10,000 fine rather than be suspended, which I thought was a slap on the wrist. All that has changed, and it has changed because of the collective bargaining agreement and the whole collective bargaining process that you've engaged in. And I want to congratulate you on that, and I think it needs to be said here publicly.

But look, I'm a former union president, and I've negotiated a fair number of contracts myself. And I always viewed, even though I was representing Ironworkers who were a heck of a lot less well paid I guess than the union members you're representing, I always felt that the—well, I was always one of the biggest advocates for a drug-free workplace. And I felt that was my rightful position, representing the best interests of the people that I represented.

And I do want to just note one thing. This Mitchell report, which was well done, did note one bit of new information. And I think it deserves recognition by both of you. And that is he said in the report that while steroid use was down considerably, and that's a good thing, he said, HGH is on the rise, it is on the rise. Now, I think that deserves some type of acknowledgement in your agreement. And I respect the sanctity of the collective bargaining agreement. But here is information we didn't have when you sat down. And I know this current agreement goes from 2007 to 2011. December 2011, that's the next time, unless we reopen this agreement, that's the next time we're going to be presented with an opportunity to change the drug testing protocol in this agreement. And, you know, I know that Gary Wadler, who testified last time we were here about the fact that HGH blood testing was used at the Athens Olympics in 2004. And that's the World Anti-Doping Agency, a fairly reputable outfit regarding drug testing. And I just think there's a way here to get at that. We know it's on the rise, we know it's being used in the sport, we've got to get at it.

So I'm going ask each of you, we know it's a problem, there's some testing protocols. Oh, and I just want to get at, I understand Mr. Fehr's comments earlier on. You're saying there's no valid testing protocol right now that's commercially available. I think Mr. Wadler, Dr. Wadler, would disagree with that. And you're saying that you don't want to test for it until something is out there. And here is my response to that. No. 1, you banned it in your agreement. It says HGH is a banned substance under your current collective bargaining agreement, but you're not testing for it. All I'm saying is test for it now, test for it now, get the blood samples, OK. And when the test becomes commercially effective, if that's your objection, we'll be able to test these retroactively. And I bet you, I just know that these players, if they know they're being tested for HGH you'll see the incidence of use drop just like you did with steroids when we started testing for that.

Mr. SELIG. Congressman Lynch, if I can just add, I don't disagree with much of what you said. Our deal with the USOC, which you probably read about last week, that's exactly what this is about. There's no question, and I agree with Senator Mitchell, the use of HGH is on the rise. In my meetings with trainers and doctors, frankly, that's a subject that I spend a lot of time on. What I would say to you today is that according to our experts, one of whom, Dr. Green, is sitting right behind me, there is no commercially available test today. Maybe there will be one in 2 or 3 months. I can speak from our perspective, because I am so concerned, I'm frustrated by HGH and the lack of a test. It has been—you know, we're funding Dr. Catlin with the National Football League, we've done a lot of other things. I cannot tell you my level of frustration about this. So if there comes a test that's available, as I said in my statement, I think that we would have to have very meaningful, expeditious discussions because I believe that if we're serious about it, and I think we all are, that we would adopt that test, and we would adopt it as soon as it's available. So as for the storing of these things——

Mr. LYNCH. Commissioner, I guess you're missing my point. I'm saying if we take the samples now.

Mr. SELIG. I'm going to get to that right now. According to the people that I've talked to and we've talked to Dr. Green, Chris Ayotte, the head of the Montreal laboratory, there has been a feeling that storing samples is not practical. I'm not a medical expert. Frankly, if there is a way to do it I'm not adverse to doing that. But I've taken the best medical advice that I can get from people, and they tell me that at least for the moment that is not the way to do it. Look, if I really felt that there was a way to do it and it would really do what you say it would do, and I believe that may be right, of course we would do it. So I have to be guided by the head of the labs and everybody else. And if they think it's doable, then it's something that we will seriously consider, absolutely.

Mr. LYNCH. Fair enough, Mr. Commissioner. Mr. Fehr.

Mr. FEHR. Thank you. First of all, I don't know personally whether Senator Mitchell is right that players have switched to HGH because we had workable testing for steroids. It certainly wouldn't surprise me. That's an old story in athletics, where people move on to the next available drug. And I indicated in my testimony in response to other questions things which I think we can do about that. I am not aware of any test or any protocol that says you can store and then test at a later time. And it troubles me to do that. And I would just remind everybody, although I don't want to bring unnecessarily someone else into a hearing, we had issues, "we" meaning this country, had issues with stored samples that were looked at years later in Lance Armstrong's case in France. So all I can tell you is that when a scientifically valid and effective test is available or some other procedure that the medical experts tell us we can rely on then we have to look at it very hard and we will.

Chairman WAXMAN. The gentleman's time has expired.

Mr. Shays.

Mr. SHAYS. Thank you. I feel Major League Baseball is in a different place now than in 2005. You do have three strikes and you're out, except for the fact that you can petition 2 years later.

And I'm going to want to know why you should be able to petition 2 years later after you've had that third strike. I want to know specifically do either of you see a difference between cocaine and heroin use versus steroids and enhanced drugs as it relates to baseball.

Mr. FEHR. I'll take that first since Bud took the last one. I think yes, in one very specific way, and that is that one category of drugs is—can or is alleged or is believed to effect the play of the game on the field and the others do not, so far as I know. And that is a significant difference and it suggests why you can have different approaches to that kind of an issue.

Mr. SHAYS. Commissioner, do you have the same answer? If it is, I'll go to the next one.

Mr. SELIG. Look, the cocaine—and by the way this sport had a terrible cocaine problem in the 1980's and unfortunately there was no testing as a result of that. But the steroids and HGH are enhancing as opposed to the others, which are recreational.

Mr. SHAYS. So basically you see a difference. And so what I get to is the issue of collective bargaining. I don't know how you have collective bargaining for cheating. And that's what I wrestle with more than anything else. I don't know, Mr. Fehr, how you can even make the argument in the sense that your players should be allowed to cheat once, twice, three times before they're kicked out. It's inconceivable to me and I think to other people as well. So tell me why a player should be allowed to cheat three times.

Mr. FEHR. The best way I can respond, Congressman, I suppose in the short time we have is as follows: Under the law we're supposed to negotiate all terms and conditions of employment. Discipline and increasing levels of discipline for repeat violations is a traditional method which is utilized in collective bargaining agreements all across the country in sports and out of sports and has been for longer than I've been alive. In our case the way I look at it is we want to have a program which stops the use, but does not destroy, if you can reform people and avoid having repeat problems, their careers. And therefore we think that this works. The commissioner proposed three strikes, as you know, back in 2005 and we agreed to it.

Mr. SHAYS. Why should someone be allowed to reform when they're cheating? In other words, that's what I don't get. It seems to me it's a different kind of drug. One they're taking because they want to cheat, they want to have an advantage. I don't know about its addictive nature, but it strikes to me as a huge difference. It would strike me then that your argument could be the Black Sox of 1919 should have been allowed three strikes before they were kicked out. Because it's the same difference and it's the same thing. That's kind of how I'm seeing it. Mr. Selig, how do you see it?

Mr. SELIG. I'll answer it from my—look, we have—today the three strikes you're out is the toughest program in American sports. My father always used to say to me, nothing is ever good or bad except by comparison. Having said that, in a perfect world, Congressman Shays, I would like a tougher program. But this is a subject of collective bargaining and this where we are and this is the best that we could do, and we came a long way.

Mr. SHAYS. I hear you and I appreciate what you did in the minor leagues for taking a stronger action. And, Mr. Fehr, I understand you're going to speak for your players, you're going to represent them to the best of your ability. The consequence is though that you are really saying to the players that they can cheat three times, and you are arguing that they should be allowed to. That's the way I'm left with it.

Mr. FEHR. I think you and I have a disagreement on that, Congressman. But I can assure you of this. I can't envision the player, and I've never met him, who believes that the public disclosure of a steroid violation is something which is anything other than of enormous consequence. And maybe that's why we haven't had to repeat it once. I hope we don't. If we do it will be tougher. Thank you.

Chairman WAXMAN. Thank you, Mr. Shays.

Mr. Yarmuth.

Mr. YARMUTH. Thank you, Mr. Chairman. Commissioner, the Mitchell report details in a number of places incidents in which club personnel appear to have been complicit in at least enabling the violations of some of the rules. In one case we know or we heard that club personnel actually returned steroids to a player after he had found it. We talked about the penalties being imposed upon the players for violations. What plans do you have to hold club personnel accountable for incidents in which they may be complicit in the violation?

Mr. SELIG. For the same reason that I said that baseball is a social institution with enormous social responsibilities I plan to evaluate the club personnel in the same way I'm doing the players. There is no question that if there were club personnel, and there have been some pretty serious accusations there, if those people are guilty of doing what was said they are doing, they will face discipline and very significant discipline.

Mr. YARMUTH. Thank you for that. I would like to pursue a discussion I had with Senator Mitchell about the issue as to whether we really know enough about the effects of the substances we're talking about. And again I wanted to make a distinction between the legality issue and the competitive advantage issue. I'm talking strictly about the competitive advantage issue. We've heard a lot about what you just mentioned, the distinction between cocaine and steroids. And you said one is performance enhancing and one is not. And yet as I said, there is some evidence at least that there is no, at least statistically there's no competitive enhancement. So my question is do we really know enough to say that taking steroids or HGH improves a player's competitive position any more than chewing tobacco does, any more than chewing on sunflower seeds does, or anything else they might put in their body to relax them or to stimulate them? I ate up boxes of Wheaties as a kid. I know Wheaties don't do it. But do we have enough evidence to really make these types of determinations?

Mr. FEHR. I'm sorry, the question was directed to you.

Mr. SELIG. My answer to that would be yes, I think there is enough evidence that using performance enhancing drugs gives a player an advantage. I've talked to a lot of doctors, I've talked to our own people, I've talked to other team doctors, I've talked to

trainers about it. Yes, I think there is. And I'll tell you what else it does when you think about it. It attacks the integrity of the sport. You have some people doing something that others aren't. And even if one could make a case that, well, really it doesn't help, I happen not to agree with that, and I think there's a lot of medical evidence that would support that. The fact of the matter is that's something you just can't tolerate. And as I said to Senator Mitchell way back when, I wanted him to create a road map, that was my reason, a road map which will show us, which will take history, and using the way I love to use history to try to educate us for the future, and you get into an integrity problem. And so as far as I'm concerned I don't have a scintilla of doubt that the use of performance enhancing drugs is a very serious matter for this sport at its core, at its core.

Mr. YARMUTH. Mr. Fehr, do you have the same conclusion?

Mr. FEHR. Let me say a number of things. First of all, I approach it this way. The use of such substances in a fashion not authorized by law is unlawful. That's where you start.

Second, players use it for a lot of mixed motives, including to recover and to help train better, as Senator Mitchell indicated. But undoubtedly there are players, and perhaps most of them, who use it because they believe it has such effects whether it does or not.

Third, we did a study jointly with Major League Baseball about a decade ago as to whether or not androstenedione built muscle mass. And what the study indicated, if I remember it correctly, I haven't looked at it in a long time, is if you take dosages in the amounts recommended on the bottle nothing much happens. If you take it in much larger amounts, however, you do build muscle mass in a fashion which would otherwise have to be duplicated by more traditional methods of exercise and diet.

Fourth, and to go back to the kids issue, regardless of its effect on adults, and we do draw distinctions between children and adults in this country for a lot of issues, but the evidence is clear that it's bad for children. And that's something we need to pay some attention to.

The last thing I'll say, and I want to stress that I am saying this because I'm using a bit in response to your question, I am not saying it because it represents a position of the Players Association or even one that I advocate, but I have wondered given the anecdotal suggestion about ability to recover better if some of these things are used, whether in fact there are therapeutic doses which could be administered to people who have—elderly people with broken hips. I mentioned that because we had an experience in my family with that recently. That would be helpful, and I don't know whether any of that research has been done. But that's a musing on my part.

Chairman WAXMAN. The gentleman's time has expired. The Chair wants to recognize himself to followup on some of the points raised.

Commissioner Selig, I want to ask you about the BALCO scandal. Senator Mitchell explored the scandal and the role of the management of the San Francisco Giants in great detail. What he learned provides a case study of everything that went wrong with baseball management's approach to reports of steroids use. As

early as 2000 the Giants trainer Stan Conte expressed concerns about the presence of Greg Anderson in the Giants locker room, but he received no support from General Manager Brian Sabean to have him removed.

In 2001, another Giants trainer, Barney Nugent, raised concerns about Anderson with Kevin Hallinan, the head of Baseball Security Office. And Mr. Hallinan promised to do something about this. He did nothing.

In 2002, Stan Conte reported to Giants general manager, Brian Sabean, that he believed Greg Anderson was selling steroids to players. Mr. Sabean did not confront Mr. Anderson or Barry Bonds about these allegations. He did not take steps to have Mr. Anderson removed from the clubhouse, and he did not report Conte's concerns to anyone in the Giants organization or in the Commissioner's Office.

Finally, in September 2003 a search warrant was executed on Mr. Anderson's residence and it became public that Anderson was under investigation for steroid distribution. Only then was Anderson barred from the Giants clubhouse. And even at this point Mr. Sabean never reported to the Commissioner's Office that anyone in the Giants organization had raised concerns about Mr. Anderson.

Commissioner Selig, Stan Conte did the right thing here, he warned Brian Sabean repeatedly about Anderson's ties to steroids, but Mr. Sabean never did a thing about it. Instead he seemed to go out of his way to allow the suspicious behavior to continue. How do you account for Mr. Sabean's behavior and at the very least should Sabean have reported the suspicion to your office?

Mr. SELIG. Well, it's a subject that I'm familiar with, Mr. Chairman, because I ran a club for almost 30 years, and I understand the sanctity of a clubhouse and who should get in and should not get in. There should not have been anybody in clubhouses. We now have done that. We sent a trainer's letter out in 2003 telling people that the clubhouses now would be carefully watched. They are, we've changed all that. But this is one of the matters that frankly is under review and under discussion. You've raised a very valid point. It's a point of great concern to me. The fact of the matter is why anybody is ever in a clubhouse, other than the trainer, is beyond my comprehension. And I have 30 years of practical experience.

Chairman WAXMAN. Do you think Sabean should have reported this to the Commissioner's Office?

Mr. SELIG. Of course.

Chairman WAXMAN. Senator Mitchell——

Mr. SELIG. I don't really want to say any more because it is a matter that I have under review, but the answer to your last question is yes.

Chairman WAXMAN. Senator Mitchell also interviewed Giants owner, Peter McGowan, about his actions with regards to reports that Barry Bonds was using steroids. McGowan told Mitchell that he asked Barry Bonds this question in 2004. "I've really got to know, did you take steroids?" Mr. McGowan said that Mr. Bonds admitted that he had taken substances that he later found out to be steroids. According to Senator Mitchell, 2 days after his interview with Mr. McGowan, Mr. McGowan's lawyer called and said

that Mr. McGowan had misspoke about this conversation with Mr. Bonds. Commissioner Selig, what do you think was going on here? Do you think the Giants owner had any knowledge or at least suspicions that Barry Bonds was taking steroids? What do you think Mr. McGowan's lawyer meant, lawyers meant when they said that Mr. McGowan had misspoke?

Mr. SELIG. Mr. Chairman, again, it's a matter under review, but it's something that I'll have to look into. But I can tell you right now I've already started to look into it and I will continue.

Chairman WAXMAN. Well, this incident shows why it's important for baseball's management to take the problem of steroids seriously. It's possible that the BALCO scandal could have been averted had Brian Sabean and Peter McGowan acted in a responsible fashion. Instead they seemed more intent on protecting Barry Bonds. And it seems clear that Brian Sabean violated baseball rules by failing to report information about alleged steroid use to the Commissioner's Office. And Peter McGowan's answer to Senator Mitchell's questions don't seem to clarify his role at all. Will Sabean be sanctioned by your office? What about Mr. McGowan or the Giants organization?

Mr. SELIG. Well, I'm going to give you the same answer. And I think you'll understand since I'm the judge that it's one of many matters under review.

Chairman WAXMAN. Well, it's easy to blame the players for the entire steroid problem, but the Mitchell report shows that the blame runs much deeper. There was a culture throughout baseball to just look the other way when it came to responding to reports of steroid use.

I thank you for your responses. Mr. McHenry.

Mr. MCHENRY. Thank you, Mr. Chairman. To be honest with you, Mr. Chairman, I don't think that Congress' proper role is to mediate disputes between those that make tens of millions of dollars and those that make hundreds of millions of dollars. And to be honest with you, the substance of this hearing is really about the images that your players are sending to our youth. To be honest with you, Canseco, McGwire, Sosa, Palmeiro, it's not really about their health and well being we're talking about. We're talking about the sanctity of the game that we love. But more importantly the images we're sending to those kids in high school, they want to be professional ball players that seek it, that crave it, that look up to these guys as heroes. And so my questions are going to be about that, centered around that. And that's my main concern here, is the images we're sending to our youth. I know there are questions about your social responsibility. But it goes beyond professional athletes. It goes beyond the Players Association and the owners. But the actions you took in 2005 were good. You have a tough testing program. We want to make sure it remains strong. But it did take a long time for you to get there.

My question to you, Mr. Fehr, what responsibility does the Players Association have for the health and well being of your members?

Mr. FEHR. I think for the health and well being of our members, is that your question?

Mr. MCHENRY. Yes.

Mr. FEHR. I think a couple of things. Obviously we're concerned about that. Obviously it's our role to try to educate players as best we can.

Mr. MCHENRY. How do you educate them?

Mr. FEHR. You talk to them, you have doctors talk to them, you warn them.

Mr. MCHENRY. Do you have programs that do that?

Mr. FEHR. Yes, we have some. And we've already had before you came into the room some discussion about the fact that we've had at least one meeting in which we discussed enhancing that beginning early this season.

Mr. MCHENRY. Do you think, Mr. Selig, Mr. Fehr, your actions in 2005 have been enough?

Mr. SELIG. I'm sorry, that question?

Mr. MCHENRY. Do you think your actions in 2005 have been enough?

Mr. SELIG. We've made enormous progress. I do want to keep saying that. Look, this is a process evolving. We need to do more. There are things that I think we can do, I think that we can do them together in some cases, and we need to expand our educational program. One of the things I have to say today that I'll never forget as long as I live is Donald Hooton's presentation with the Garibaldis. I sat over there and it stunned me. And I think Mr. Hooton will tell you, I called him the next morning. He didn't believe it was me, so we had to go through 2 minutes of that. But the fact of the matter is for our own people it's a tough enough situation, and it attacks the integrity of the sport and everything else. But the message that we send is critical. And I have since talked to a lot of athletic directors, coaches, football and basketball and other sports and baseball, and there's no question that we need to tighten this program and we need to continue to tighten this program. And so I agree, you know I agree with Senator Mitchell over and over, this is an evolutionary thing. And we can't rest because we don't know what else is out there, and that's what we need to do.

Mr. MCHENRY. Mr. Fehr, why was the union so hesitant to allow the adoption of an anti-steroid policy? The Major League Baseball did it unilaterally with the minor leagues in 2001. And it took 5 years for there to be an effective testing policy to the point where you're—quoting the newspaper, we're still in discussions. Why is that? Why did you hesitate adopting an anti-doping policy?

Mr. FEHR. The question I think is more appropriately put, why did we oppose mandatory random testing prior to 2002, which we did. And the reason why I've previously testified—I'll try and succinctly respond to your question today—I believed, the players believed, that fundamental principles of probable cause bore a role here. That before you did a search or invaded the privacy of an individual you ought to have cause related to that individual to do that. It became apparent a year after or some months after the 2001 program was introduced in the minor leagues, with revelations about Ken Caminiti and so on in the spring of 2002, that approach may have not been as well thought through as we thought it would. And as I testified at this committee in 2005 we had a lot of discussions and we decided that the best approach was to test

it empirically. And we did a survey test. And the survey test came back significantly higher than I believed it would, and certainly than I hoped it would. We then went to program testing. I thought at the time that the testing we had in effect in 2004 would probably have done the trick with respect to steroids. A lot of people didn't, including a lot of members of this committee. And so we took the additional steps. And since 2002 we have modified the agreement, sometimes formally, sometimes administratively, in a number of requests, in a number of different respects, including recently, and I expect that to continue.

Mr. MCHENRY. Mr. Selig.

Mr. SELIG. One of the virtues of the Mitchell report for me was to point out again, even though we had done all these things, how much more we had to do, which answers your basic question. That this thing is changing so rapidly that we not only will continue to do it, but we need to look forward and do more.

Mr. MCHENRY. A final comment.

Chairman WAXMAN. The gentleman's time has expired.

Mr. MCHENRY. A final comment. You need to think about the youth here and the images you're sending to them. And a followup question for both of you, a simple yes or no. Do you two feel complicit in the rise of steroid use in Major League Baseball?

Mr. FEHR. As I indicated in my testimony, we didn't pay enough attention to it soon enough. If that fits your definition of "complicit," then the answer is yes.

Mr. SELIG. I said in my testimony and my statement and again today I'll take responsibility. I take it for all the great things that have happened in the last 16 years. I'll certainly taking it for that. And that's why I wanted the Mitchell report, because it would show me and show the people who come after me a road map of what maybe they should have done under the circumstances.

Chairman WAXMAN. Thank you, Mr. McHenry.

Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman. First, I would like to commend both of you on the progress you've made, especially since our hearings. In my view, the most important recommendation in Senator Mitchell's report is his recommendation, and I'm going to quote him, for an entity with, "exclusive authority over all aspects of the formulation and administration of the drug program." Commissioner Selig, you mentioned in your testimony an independent program administrator. I would like to know what your version of an independent entity would look like. And to ask Mr. Fehr what his thoughts are concerning a completely independent drug testing program.

Mr. SELIG. Well, I'll give my answer first. I think since we've been here we're much more independent, we have two of the gold standard labs on the North American continent in Montreal and UCLA. We have Dr. Brian Smith from the University of North Carolina, who Dr. Green had recommended to us. I think that everybody involved in the program will tell you that nobody has overturned any of his decisions, so he has been independent. It's a matter that we'll continue to review. But I think frankly based on the results, and we've gone into it in very significant detail and surrounded these with the best labs and the best people whose reputa-

tions are impeccable, and Dr. Smith I think if he were here today would tell you that he has been independent, and it's up to us to make sure that he is.

Ms. NORTON. Mr. Fehr.

Mr. FEHR. Thank you, Congresswoman. Let me begin by stating something which is obvious to labor lawyers, but perhaps in this day and age isn't as well known. Under the law we have the legal right, but more importantly the responsibility to negotiate all terms and conditions of employment.

Ms. NORTON. You don't have to go—I taught labor law, Mr. Selig. I'm asking you a question.

Mr. FEHR. I apologize.

Ms. NORTON. Because I'm aware of—I have great respect for collective bargaining. It was one of the subjects I taught at Georgetown Law School. I'm asking what your views are?

Mr. SHAYS. You blew that one.

Mr. FEHR. It would appear so, yes.

Ms. NORTON. What your views are, your personal views are, however you arrived at that. And you're talking about someone who respects the collective bargaining process, not somebody who thinks we or anybody ought to override it. What are your views of a completely independent drug testing program?

Mr. FEHR. Let me try again. I believe that there should be an independent program administrator. We have one, as has been indicated. None of his recommendations have been other than complied with. Senator Mitchell indicated, and I agree with, in his report, and I agree with it, that there are a number of different alternatives that might be considered the precise formula that would be adopted, needs to be decided in bargaining—I haven't closed yet—on the kinds of recommendations that I will make to the players as to what changes make sense. We do expect to get some proposals from the Commissioner's Office. And we'll look at it in good faith and we'll let you know what we come up with.

Ms. NORTON. I appreciate that answer. And by the way, I understand the position you're put in. I'm not asking you to bargain at the witness table. I do want to indicate that you have a terrible burden, Mr. Fehr, because you do represent players. There's no way for players to feel good about any kind of additional oversight. I understand that entirely.

Mr. FEHR. I appreciate that.

Ms. NORTON. However, from your point of view nothing would be better than to take this issue off the table. If you want to talk about a deterrent effect. Imagine the deterrent effect of knowing that an independent entity having nothing to do with anybody, not just doctors or scientists whom you trust, is who is going to conduct these random tests. Then the union does not have to worry about grievances where they've got to represent the player no matter what. It's out of your hands. And therefore I must ask you, what would be your objection to adopting the world and U.S. anti-doping agency standards in baseball after all you've gone through just to get this off the table, to imagine the effect of regaining almost instantly the credibility that baseball has lost the trust just in time for the Nationals to come to Washington?

Mr. FEHR. I think they would say they're already here, but we are having a new stadium. Let me just try and respond. I don't think my responsibilities are consistent with doing something just to get it off the table. Our responsibilities are to do two things. We have to negotiate what we think is a fair and appropriate program.

Ms. NORTON. Mr. Fehr, I said a deterrent effect.

Mr. FEHR. No, I understand.

Ms. NORTON. If you want to go with grievances for the players from here to kingdom come, then be my guest.

Mr. FEHR. All I can tell you is that I believe we can and have and will continue to achieve that deterrent effect, and we'll see where these discussions take us. And I'm sure that this committee——

Ms. NORTON. Well, let me ask Mr. Selig if he would at least consider a totally independent administrator. I mean, that's one of the recommendations. You say you supported all 20 recommendations. He knew what you all have just said to me, he knew about the vast improvement that you've already done and still he said you needed a totally transparent independent commission. Mr. Selig, what would be your response to at least considering that?

Chairman WAXMAN. Your time has expired to ask questions, but we would like to hear your response to the question.

Mr. SELIG. I really believe, as I said to you earlier, that this program is working in an independent way. But it's a very fair question and it's one we will closely evaluate because we need to be totally and completely independent.

Ms. NORTON. Thank you.

Chairman WAXMAN. Thank you very much.

Mr. Davis.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman. The focus of this committee's work on baseball has mainly been with regards to its drug testing policy. But Senator Mitchell notes that improvements to the drug testing program by itself will not be sufficient and that the Commissioner's Office should place a higher priority on the aggressive investigation of nonanalytical evidence; that is, evidence of possession on youths. Commissioner Selig, you acted quickly on this recommendation, and I commend you for it, because on Friday of last week you appointed a new Office of Investigations for your office. Could you tell us the purpose of that office and what it's intended to do?

Mr. SELIG. I can. That was I think Senator Mitchell found in the course of our history, Congressman, that we didn't have enough of an independent arm, so to speak, just doing investigation which would help us overall. So we've taken two people. One is a former deputy police chief in New York, the other an FBI man for over 30 years. They're here today. They have over 53 years of experience in law enforcement. They are to track every possible rumor, everything that's said on this subject, so that I can say to myself and to people in baseball and to all of you we now have a department that will do nothing but that so that nothing escapes us. And that will be their primary and really sole responsibility.

Mr. DAVIS OF ILLINOIS. Mr. Fehr, let me ask you, will the Players Association cooperate fully with this new office and urge players to do the same?

Mr. FEHR. One of the difficulties I have in responding is I don't yet know what the department is going to do, I don't know what techniques it's going to follow. It's my understanding that the protocols have not yet been developed. One of the things we've indicated to the commissioner we would like to talk about is how is this going to work. We have developed, for example, procedures to handle investigations for the nonanalytical positives that have resulted in suspensions the last several years. I don't know whether there will be differences or not. I can't evaluate it until we look at that. I certainly hope that we're going to be in a position to say at the end of the day that we'll represent our players in connection with any such investigations. But the investigations are going to be conducted in a way which does not suggest there are fundamental problems with it. We'll let you know.

Mr. DAVIS OF ILLINOIS. Earlier this morning Senator Mitchell indicated that he did have some faith and confidence that baseball would be able to adequately police itself. Could the two of you tell me what as a team that you expect to do that you have not already done that's going to vindicate this kind of faith that the Senator expressed?

Mr. SELIG. Well, in the case of the department these people's sole responsibility really will be to investigate all these things. They won't have to go through layers of people. I think the Senator was a little bit troubled by that. There are people with, as I said, 53 years of law enforcement experience. So that they will be, they will not only be in touch with all the law enforcement departments everywhere where all our franchises are, but here in Washington and everything else, and that is their job now and it is a big one. So that we can never again say, well, we didn't know or this guy told this guy somebody else or labor said this to security and security said this. They will report to Mr. DuPuy, the president of Major League Baseball, directly and there will be no question about it. And as I said, both of these very well-trained people will do nothing but follow this subject in every way, shape, form and manner.

Mr. FEHR. Congressman, in all the years I've been in baseball and in the 30 odd years I've known the commissioner I don't think anybody has ever previously referred to us as a team, either actual or potential.

Mr. DAVIS OF ILLINOIS. Nor will they again.

Mr. FEHR. Given the conflicting interest that our relative constituencies have, especially in the economic matters, and the adversarial nature of the collective bargaining process that our law enshrines, it may not happen again.

Mr. Selig may be right. All I can tell you is this. Since the strike in 1994–1995, which was horrible and ugly and ended as a result of an injunction as a result of unfair labor practices and it took a long time to get an agreement afterwards, there's been a change in the relationship. We were able to reach agreements in 2002 and in 2006, although not without difficulty, but without stoppages and without the last time around threats of stoppages. We have been able to negotiate agreements dealing with performance enhancing drugs and to amend those a number of times, both administratively and formally. What I can tell you is that we should be in a position to cooperate where we can. Where we can't, where the constitu-

encies differ, I assume that we'll have to work those out. That's the nature of bargaining. But the object is to cooperate where we can and minimize the areas of dispute. From my part I had a long time with a lot of disputes with Major League Baseball. I'm willing to have another one if we have to. That's far from my first choice.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman. And I just hope that you can find enough common ground to protect and preserve not only the integrity of the game, but also to promote the public interest and send the right signals and the right messages to our young people. Thank you very much.

Chairman WAXMAN. Thank you, Mr. Davis.

Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman, for holding the hearing. You all have been very patient and you'll be glad to know you're getting toward the end here. I'm highly sensitized of this issue recently for a couple of reasons. One is a few weeks back I introduced legislation that would create a foundation to support the President's Council on Physical Fitness and Education, which I hope will take the lead with others in a campaign nationally that we have to undertake to combat the use of steroids. But in the process I've been visiting a lot of youth sports programs, and so forth, around my district over the last few weeks just to promote the mission of the President's Council and have seen firsthand obviously the impact that professional athletes have. I mean, the posters that are on the walls, the comments of the kids. And so the effect that modeling has on them is I think obvious to all of us.

The other thing is a little thing that happened yesterday. My 14-year old son loves baseball. He wants to play baseball. He's been playing it. So I thought I would help him get in shape for the baseball season that's coming up and went out and bought him one of these push-up things where there's a piece of equipment, there's a tape that comes with it. So last night we went down to watch the tape. It seemed innocent enough. But at the end of it the person on the videotape said, so what you need is three things, you need equipment, you need this instruction booklet on how to make sure your form is good, and then of course you need these supplements that you can go buy too. So that pretty much drove it home. This was last night at 9. So I was ready for the hearing just based on that.

There seem to be three categories of athletes that we're talking about. One of those who are not using any performance enhancing drugs, and it sounds like it requires quite a bit of discipline to resist it. The second group would be those who are doing it and don't care. They've just decided that it's all about the detection, if they can escape detection they will, and they'll use these drugs to get a competitive advantage. And then I think there's a group in the middle which has been described which are the athletes who say I don't want to do this, but if I'm losing out competitively to these other folks who aren't being taken to task I'm not just going to sit idly by, and so they get pulled into it.

Now, what I'm curious about is how can we move the culture away from this notion that you don't do it because you don't want to be detected, which leaves you open to the arrival of new non-detectable drugs to sort of undermine the effort? How can we get

to a culture of clean? Do you have any confidence that the enforcement mechanisms that you've implemented and will agree to implement further going forward can actually lead to that so that those who don't use and those who don't want to use but are can take over the game in a positive way and drive that culture? So it's not about whether you're getting detected or not, it's about doing the right thing. I don't want to sound naive about it, but can we get to that point where that's the sort of cultural norm? How much confidence do you have in that, both of you?

Mr. SELIG. Well, I would say that I have a lot more confidence than I did 3 years ago. All of our educational programs that go out, baseball with the Partnership for a Drug-Free America and the Hooton Foundation have spent an enormous amount of time and money and we're getting the message across. Now, with all the internal things we're doing in baseball to change the culture, and I think the culture has been changed in a lot of ways, maybe even more than we know, but I would hope that all the things that we've done, just think all the things in the last week of the Mitchell recommendations about certifying from trainers and checking packages and doing all the things that support the new department, which I think is going to be very important, I think today everybody in this sport, and I'm talking on the field and off the field, has a much clearer understanding that this culture not only needs to be changed, is changing and is changing dramatically. We just got to keep the pressure on, to be frank with you. Yes, I'm optimistic that we can do that. And in fact we have to do it. We have no other choice. This must be done.

Mr. FEHR. I guess from my part I hope we can. I think we're moving and have made some big strides in that direction. I have no doubt that this or other committees of the Congress will be interested in whether history proves out that we have. And we'll see. Our task is to keep working at it.

But let me address one thing you said, which is—to me is of really enormous importance. You talked about your son's seeing a video that said he should take supplements. If any of you haven't done it, please go to the drugstore or GNC or somewhere else and look at what is up on the shelf. Every tree, every grass, every bush, every mineral, everything else anybody has ever heard of is there.

When I mentioned in my prepared testimony in my opening remarks that one of the things that may bear consideration is a review of the Dietary Supplements Act [DSHEA], to see if it makes sense, so that we don't, in effect, advertise to kids. Because, as Senator Mitchell has said, as the commissioner said, as I have said any number of times, this is a very wide problem.

And I will just give you one example of it. I will hand it up to the committee when we are done.

This is an ad in the Continental Airlines magazine. We saw it coming down here. It says, "Choose life, grow young with HGH, the reverse aging miracle."

It is one thing to say that athletes should do whatever they can, and we don't question that. But if the messages generally are not consistent with that, especially to kids, we have a really tough road to hoe. And so I hope that people would consider that.

Mr. SELIG. The public service announcements that we are doing with the Partnership for a Drug-Free America which shows what it does to people's bodies, that needs to go on at every level.

As I said earlier, I've talked to a lot of people in college sports and high school sports and other things, and there is no question, and hopefully, out of all this, baseball can be a leader in doing exactly what you are asking, and that is to send a right message.

Mr. FEHR. If I could apologize and ask your indulgence for 30 more seconds. If you go to young people's athletic programs, one of the messages you will see most consistently delivered in any variety of ways will be, you are not big enough, you are not strong enough, you are not fast enough. Do something about it. And the kids want to.

In wrestling, we approach this in different ways. We have things like weight classes. We don't otherwise. If the message is going to be in the main competitive team sports that most people are not big enough, strong enough or fast enough, that makes it even more difficult. And I haven't got a clue as to how to attack that, because that is what the coaches want.

Mr. SARBANES. Thank you.

My time is up, Mr. Chairman. I appreciate it. I would just say that I hope that the public is watching not just as fans of baseball but also does some self-reflection as parents and coaches and things about the messages that we are sending and how we can participate in this campaign to turn around steroid use.

Chairman WAXMAN. Thank you very much, Mr. Sarbanes; and Mr. Selig, Mr. Fehr, I thank you so much for your patience and your willingness to be here.

Senator Mitchell described a pretty sad and in many ways depressing history of baseball in the era of steroids, but he also laid out a road map. And I appreciate the fact that both of you are willing to consider those recommendations in that road map so that we can get beyond where baseball has been in the past. I think we have made progress, but we still have a ways to go.

I thank you very much for your leadership, your efforts; and I hope we can hear continued good news from both of you about this subject.

Mr. SELIG. Thank you very much.

Mr. FEHR. Thank you very much.

Chairman WAXMAN. Before we close, I want to ask unanimous consent to put in the record a statement by the Marreros. If it is not already in the record, we want to make sure they are able to put their statement in the record on behalf of the Efrain Anthony Marrero Foundation.

Without objection, that will be the order.

That concludes our business today, and we stand adjourned.

[Whereupon, at 1:50 p.m., the committee was adjourned.]

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