

**OVERSIGHT OF THE NATIONAL FOOTBALL
LEAGUE (NFL) RETIREMENT SYSTEM**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION**

UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

SEPTEMBER 18, 2007

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ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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OVERSIGHT OF THE NATIONAL FOOTBALL LEAGUE (NFL) RETIREMENT SYSTEM

TUESDAY, SEPTEMBER 18, 2007

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m. in room SR-253, Russell Senate Office Building, Hon. Byron L. Dorgan, presiding.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. I call the hearing to order. This is a hearing of the Senate Commerce Committee, a full committee hearing. I am chairman of the Subcommittee dealing with interstate commerce, trade, tourism, and sports. We will be joined by other colleagues, but I want to start on time, because we have a series of votes that begin shortly after 12 o'clock today, and I do want to begin on time.

I should say, at the start, that I am a football fan. I watched Monday Night Football last evening. Football is an unbelievably popular sport, very interesting and wonderful sport in many ways. It is also big business. I call it "sport," it is also big business, with mostly wealthy owners and players that are paid a great deal of money. There are, I believe, 32 teams. They are able to work with and speak with each other because of an antitrust exemption. Those 32 teams, of course, do not include teams from North Dakota or Wyoming or states similar to that. We reserve these national pastimes for the large population centers, and many states do not participate personally in them by having professional sports teams, and that's certainly the case with my state.

It is a sport, the sport of football, that causes, and can cause, substantial physical injury to many athletes. We have about 8,000 former players of this sport. There is, and has been, controversy about disability issues, how former players have been treated. Those who have formerly played this professional sport believe that about 3 or 4 percent of the living retirees qualify for some type of disability benefit. The National Football League owners and the Players Association say that is much higher than the 3 or 4 percent.

It seems to me that the Players Association represents active players, and the Commissioner represents the owners. We have many who will testify here who are former players in this sport, and I don't quite know who represents them, if anyone. In many cases, they are great athletes who ended their careers with real

damage to their bodies. Some live in pain. And the question is, what happens to them? Who represents them? What role do they have with respect to this growing industry and the resources that this growing industry provides? It's a very large and a very profitable industry, and, it seems to me, an industry that ought to be able to take care of the needs of those who helped build this wonderful sport.

When we called this hearing, I did not know what to expect, in terms of communications. I must tell you, I have received, as Chairman of the Subcommittee—and I'm chairing the full committee at the request of Senator Inouye—I must tell you, I have received a lot of mail, a lot of letters from former football players, and was surprised by that, and surprised by the message. I've had a chance to meet with people who feel strongly on both sides of the issue of the controversy over disability payments, and it is a worthwhile subject for us to discuss what has happened, how it has happened, what might be considered. And some would say, Well, why is it any business of the United States Congress? Obviously, we have, in the jurisdiction of this committee, sports. I've been involved in sports issues, with Senator McCain and others, dealing with the subject of boxing. Boxing is a sport in which too many young boxers are used up by promoters, and discarded, and end up with nothing. And so, we've attempted to create a National Boxing Commission. And, with respect to football, there is an antitrust exemption that allows the teams to work together and to negotiate various things together. So, there is a reason for us to be interested and concerned, and that's the purpose of this hearing.

I'm going to call on Congresswoman Maxine Waters, who has asked to testify today, and we appreciate having her here. I'll take her testimony first. I don't expect we will ask questions, but we're happy to have her here. And then we will have two panels, and I will talk about the panels in a moment. But let me introduce Senator Hutchison for an opening comment.

**STATEMENT OF HON. KAY BAILEY HUTCHISON,
U.S. SENATOR FROM TEXAS**

Senator HUTCHISON. Well, thank you, Mr. Chairman. I really appreciate the opportunity to be at this hearing. I want to thank Chairman Inouye, as well as Vice Chairman Stevens, and, of course, Mr. Chairman Dorgan.

And I think you have laid it out very well. We know that there are players, before the era of the mega-salaries especially, who have had injuries that have manifested after the 5-year time period in which they have full coverage. And so, we read about these things, and it does raise questions. And my hope is that, with this hearing, we will hear some of the issues on both sides, and then, hopefully, the NFL will be able to work it out with a good, fair negotiation with the players and the former players, with everyone represented from their different perspectives, because I do think that perspectives are different, depending on the era in which a player was able to play. And I also think that your reference to boxing is one that does provide somewhat of a model, because this is a high-risk sport, there is no question about it, and so, we know

that probably extra care on the medical side is something that is certainly warranted.

However, I do hope that this can be settled in an amicable way and a responsible way by all the parties. And, as we gather information, maybe that will be helpful, and as we monitor those negotiations.

Let me just say, on a personal note, that one of my constituents is here, Daryl Johnston. I have known Daryl, from a personal level, because our children go to the same school, and so, I have watched him and his wonderful wife, who are so active in the school and give back so much—so, I've known him personally, but know he also had to retire, after 10 years with the Dallas Cowboys, because of neck injuries, and has had a view on this that I think is worthy for us to hear. He is a person—Daryl “Moose” Johnston—who played for Syracuse—he was an All American there—then earned his bachelor's degree in economics, and is a FOX Sports NFL broadcaster now, has a great career. And I really am very pleased that he could become a part of the panel, and I thank the Chairman for allowing that to happen.

And, with that, I will listen to the testimony. I do have to leave a little earlier than the end of the hearing, so I will say that ahead of time, but look forward to having all of the testimony in writing.

Thank you.

Senator DORGAN. Senator, thank you very much.

First, we will hear from Congresswoman Waters.

Thank you very much for being with us. You may proceed.

**STATEMENT OF HON. MAXINE WATERS,
U.S. REPRESENTATIVE FROM CALIFORNIA**

Representative WATERS. Thank you very much. Good morning, ladies and gentlemen—

Senator DORGAN. Is the microphone turned on?

Ms. WATERS. Can you hear me now? Yes? Good morning.

I'd like to thank you, Chairman Dorgan, for holding this hearing. And I'd like to thank you, Senator Hutchison, for being here this morning. And I'd like to thank all of the witnesses who have come today to help shed some light on many of the concerns that have been identified by former players.

The National Football League's current system of compensation for its disabled retirees is an issue that has been widely discussed in Congress and the media. This issue also has great personal significance for me. My husband, Sidney Williams, played football in the NFL for 5 years. The NFL, we believe, has failed to fairly compensate its retired players for injuries suffered while playing a game that is one of the hallmarks of our American sporting tradition. These players chose professional football as a career, dedicated themselves to training and practice, and worked and played hard in a highly competitive contact sport. These players have given much to the NFL, and, indeed, have given their blood, sweat, and tears to the game of football. In return, the NFL owes much to its retired players that were injured as a result of competing in the game that Americans cherish.

My purpose here today is to talk about a very specific case that I worked on for almost a year for a gentleman by the name of Jim

Shorter. Mr. Shorter was a friend of my husband's and a former NFL player. Mr. Shorter died a horrible death, a death caused by years of neglect of football-related injuries. These injuries were compounded by the onset of adult diabetes and a lack of healthcare. When he died, Mr. Shorter had undergone several amputations, was blind, had had a heart attack, and was on dialysis. Furthermore, Jim Shorter died a broke man, stripped of his dignity and his silver years by an unfair and unyielding NFL disabilities program. This program, which is built like the rest of the functions of the NFL, from the blood, sweat, and tears of men like Jim Shorter, was designed, in my belief, to refuse benefits for the very players that needed them most.

At issue today are three components of the NFL benefit plan: pensions, disability benefits, and medical insurance. None of these adequately compensate the NFL's disabled players. Despite their hard work, injuries, and playing through those injuries, the average payout to retired professional football players is less than \$2,000 a month. This is striking, given that the poverty level in the United States is approximately \$1,800 a month. Many retired football players receiving pensions have serious physical problems stemming from their playing days. Some have trouble walking, others have trouble sleeping, some have undergone multiple surgeries. In a few cases, former players have even committed suicide. One thing is clear, nearly all need more money than is provided by their pensions.

Employer compensation to the NFL's pension plan paled in comparison to Major League Baseball. Total pension contributions left an average payout of \$13,000 per football player and \$36,700 per baseball player. To make the picture even clearer concerning the disproportionate pension system between football and baseball players, if former Washington cornerback Darrell Green, who played 20 years, decides to collect, at age 55, he would get the largest pension in NFL history, \$69,660 per year. A baseball player with a similar career, Cal Ripkin, Jr., stands to collect, at 62, about \$160,000. These numbers are astounding, given that football grosses considerably more revenue and income than baseball. The MLB's gross income is approximately \$4.3 billion, while the NFL's gross is over \$7.1 billion. Baseball continues to prosper on less income and higher expenses. There is no excuse for the NFL retirement benefits plan not to at least match the MLB's benefit plan. The risk of long-term injuries to which NFL players are exposed are legend. For example, there are growing concerns regarding the frequency of concussions among NFL players. In an aggressive contact sport, there are likely thousands of cases of concussions, many of which may result in subsequent disabilities. These retirees do not receive disability payments, because they do not realize the impairments were caused by head injuries incurred years earlier. They are oftentimes too embarrassed to come forward, and the benefit system has been at least slow to recognize this phenomenon.

Former safety Andre Waters, a 12-year veteran, recently committed suicide, 44. A study of Waters' brain tissue revealed a succession of football-related concussions that left Waters with the brain tissue of an 85-year-old man. The physical nature of the NFL often leaves veterans unable to lead normal lives, and many rely

on their pensions to survive. Reform of the disability benefit system is necessary to allow retirees to receive the compensation that they deserve and need for their disability.

Under the NFL's current medical insurance plan, the League provides insurance to vested players for 5 years after retirement. However, the 5-year period fails to account for the many injuries that will not manifest serious health effects until the end of this period. Because football is an intense contact sport, football players face long-term physical ailments that other athletes are lucky enough to avoid. A 2003 University of North Carolina study found that 263 of the 2,500 retired NFL players said concussions may have had a permanent effect on their ability to think and remember as they got older. In 2005, just before the Super Bowl, the *Pittsburgh Tribune-Review* produced an investigation on the number of injuries professional players suffer on the job. The investigation found that, in the 2000 through 2003 seasons, NFL players racked up 6,558 injuries. More than half the athletes were hurt annually, with the number spiking at 68 percent in 2003 and 2004. During typical 4-year careers, one of every ten NFL receivers experiences a concussion. On average seven professional football players a week face potentially life-altering head, spine, or neck trauma. The effects of these players' injuries do not become apparent until many years into the future. Long-term medical insurance is needed to treat the professional football players' injuries.

As I mentioned at the beginning of my remarks, this issue of—is of personal concern to me. My husband, Sidney Williams, was an NFL player in the 1960s. During his 6 professional years, he served as linebacker on one championship team. Football is one of America's greatest sports. Our NFL football players give their all on the field and play hard for the glory of the game. The NFL should not forget the contributions of its former players, and should provide them with an adequate system to address their retirement and disability benefits.

Mr. Chairman, I have here a folder about Mr. Jim Shorter's case. I worked on the case for almost a year. It started in January 1999, when he informed me that he had been trying to get the attention of the Association, and they had not returned his calls, they had not responded. I started writing letters to them, and I wrote to everybody, including Mr. Tagliabue, Mr. Upshaw. And, finally, they advised us what we needed to do, getting the health records. Not only did I get Mr. Shorter all of the examinations that he needed, I went back into records, years past, to get physical examination records in order to help present his case. I wrote letters to every member of the board. At that time, it was—

Senator DORGAN. Congresswoman Waters, I'm going to have to ask you to summarize. We have ten witnesses today.

Representative WATERS. Thank you. Well, we wrote letters to the board. We reviewed the Bert Bell Plan. We discovered that Mr. Shorter had received early retirement after he left football, having made very little money. Of course he took early retirement, because he had no funds. But, at that time, the plan said, if you take early retirement, no matter what your disabilities are, you can never receive disability benefits.

And so, these are the records, and the Committee is welcome to them. Some, perhaps we can share with you at a later date, but I wanted to share with you, today, my personal knowledge about the inadequacies of the plan. And I thank you very much.

Senator DORGAN. Congresswoman Waters, we will include—if you will provide us with information, we will include relevant information in the permanent committee record.

Senator DORGAN. We appreciate very much your coming over from the U.S. House today to provide testimony.

Thank you.

Representative WATERS. You're welcome. And thank you.

Senator DORGAN. Thank you very much.

Representative WATERS. You're welcome.

Senator DORGAN. We have two panels today, and I want to mention the first panel. Let me introduce members of the first panel: Daryl Johnston, who has been introduced by my colleague from Texas, a FOX Sports announcer, former NFL player, Dallas Cowboys; Dave Duerson, a player Trustee for the NFL Player Retirement Plan, and former NFL player for the Chicago Bears; Brent Boyd, former NFL player for the Minnesota Vikings; Bill Bain, former NFL Player for the Los Angeles Rams; and Garrett Webster, the son of NFL player Mike Webster, of the Pittsburgh Steelers.

My understanding is that we have a number of other retirees in the room who have traveled to Washington for the hearing. I have the names of at least four of them. Let me mention them. If you are in the room, if you would just identify yourself: Conrad Dobler—is Conrad Dobler here? Thank you. David Pear, Dwight Harrison, and Delvin Williams. Thank you for being here. We appreciate your attending the hearing.

Let us begin with this panel, and let me call on you, Mr. Johnston. And let me say that the entire statement that you submit will be made a part of the permanent record. I would ask that each of you summarize your statements, if you would.

**STATEMENT OF DARYL JOHNSTON, SPORTS BROADCASTER,
FOX; AND FORMER NFL PLAYER, DALLAS COWBOYS**

Mr. JOHNSTON. Thank you, Senator Dorgan. Welcome, to all the distinguished guests.

My name is Daryl Johnston. I played 11 years in the NFL for the Dallas Cowboys, at the running back position. My career was ended prematurely due to a neck injury I suffered in the opening game of the 1999 season. I know, firsthand, the frustration that many NFL players experience when going through the disability process.

The initial doctor that filed my claim, and the doctor who heard my appeal, are designated as neutral physicians, but, in reality, are handpicked doctors by the NFL Players Association. The Board that denied my claim is selected by NFL ownership and the NFL Players Association. Obviously, this is a system that is, by design, not interested in assisting the retired player.

Going through this process, the frustration causes us to use such strong words as "fraud," "corruption," "cronyism." And I don't think that the NFL Retirement Board understands that they're not only

impacting the player, but the families of these players. Divorce is high. People are fighting for the custody of their children. I was very fortunate to play at a time when the NFL Players Association had regained some of their bargaining power and used that in the 1993 collective bargaining agreement to implement some plans for current players, such as a severance package, a 401(k), a second-career savings plan, and 5 years in a COBRA health plan. But none of these programs benefit players before 1993. Players such as Mike Mosley, who played from 1982 to 1984, who received full disability for 6 years, until a doctor, hired by the NFL, ruled sedentary work was possible, and, without warning, withdrew his payments in 2004. Mike now lives at home with his 75-year-old mother, his 14-year-old daughter, and they're asked to survive on his mother's \$306-per-month Social Security check.

I also played in an era when player safety was emphasized. The artificial surfaces that we played on were much safer than those played on the generation previous to me. A gentleman such as Conrad Dobler, who spent his entire 10-year career playing on an experimental surface, known as Astroturf, that has a direct link to the multiple knee and hip replacements he's had. In a span of 1 year he had seven surgeries performed, and spent nearly 100 days in the hospital last year. He's been denied disability multiple times, even though he has been deemed to be 90 percent disabled.

During my career, there was also raised awareness about the concussion issue and its impact on NFL players. Stricter protocols were put into place, with—about when a player could return to the field of play, and, also a whistleblower policy was implemented to make sure that these protocols were upheld within organizations. This type of policy would have benefited Garrett Webster's father, Mike Webster, who, if not the best, one of the best centers to ever play in the NFL. Upon retirement, he was impacted by dementia, was homeless, living out of his car, and never received a dime of disability from the NFL plan.

The NFL Players Association is trying to make amends. In the most recent CBA, they did create a program, that they are implementing the "88 Plan," named for Baltimore Colts tight end John Mackey. The 88 Plan provides \$88,000 a year for residential care facility or \$54,000 a year for home care, for players suffering from dementia, early onset Alzheimer's, as John Mackey himself is. However, this is administered as a reimbursement plan. Kay Morris, who's the wife of Bears linebacker Larry Morris, who played in the late 1950s and early 1960s, has yet to receive a disability payment off of The 88 Plan, although she has already incurred \$200,000 in medical expenses.

The reason that we have the retirees in the situation that they're in right now is that we have no voice and we have no bargaining power. And I would like to ask the Senate oversight committee to help us find our voice, to help us increase our bargaining power, so that we, the retirees, can do the same thing that the NFLPA did in the 1993 collective bargaining agreement for the current players.

I also would like to request that this committee call on the Government Accountability Office to conduct a study so all the data can be known by all the members that will be involved in negotiations as we move forward. The NFL, as has been mentioned, is a

\$7 billion-a-year industry. There is too much money here for this problem to exist. With the help of all the parties involved, Gene Upshaw, Roger Goodell, who will testify later, Dave Duerson, who sits to my left, the retired players who are in this room, we can fix this problem. The money is there to fix this problem. And there is no reason for our players to be in the situations that they're in. And, with your help, I hope that we can take the first steps in creating a disability program that gives NFL retirees a voice and ensures that the players who founded this league are no longer forgotten.

Thank you for your time.

[The prepared statement of Mr. Johnston follows:]

PREPARED STATEMENT OF DARYL JOHNSTON, SPORTS BROADCASTER, FOX; AND
FORMER NFL PLAYER, DALLAS COWBOYS

Chairman Inouye, Subcommittee Chairman Dorgan, Ranking Member Stevens, Subcommittee Ranking Member DeMint, Members of the Committee and distinguished guests, my name is Daryl Johnston. I had the privilege of playing professional football for the Dallas Cowboys for 11 years as a Running Back. I was forced to discontinue playing when a neck injury sidelined my career. I am here today to help implement positive change to the NFL's existing disability system, which is in dire need of reform. As a member of a fairly recent generation of retirees who ended his career in 1999, I want to assure you that this problem is a crucial concern for anyone who has ever played or will play professional football.

Growing up, I knew I always wanted to play football. My heroes were Larry Csonka, Rocky Blier, and Roger Staubach because of their unwavering courage and love of the game. They played with their hearts, they played with passion, and these men were my heroes. As a Pop Warner player, I always considered football a contact sport. At the college level, my coach taught us football is not a contact sport—that if you want a contact sport, then take ballroom dancing. Football is a collision sport. I was also taught the difference between pain and injury, which are quite different concepts in the world of the NFL. If you are not injured, the emphasis is to get back out on the field and perform your job. You play through the pain—and thus put yourself at greater physical risk for life after football. With the size and speed of the players today, and with the nature of new equipment design, the collisions have become more violent every year. The severity of collisions was evidenced once again just recently when Kevin Everett with the Buffalo Bills suffered a catastrophic spinal injury. A career ending injury is every player's worst fear when he steps onto a football field.

In the late 1960s and early 1970s, the players competed on a new experimental surface called Astroturf. Astroturf basically consisted of a thin, carpet-like cushion between the playing surface and the concrete. NFL organizations chose to put down a low-maintenance, synthetic surface to allow for revenue producing events in their stadiums without regard for the damaging effects this hard surface would have on the players' bodies. For decades, the NFLPA has knowingly misled players to believe that artificial turf posed no more threat to injury than natural grass. As a player, one knows and experiences firsthand on Monday morning, from the aches, pains, bruises, and abrasions that result from playing on an inferior artificial surface the day before. And this type of surface is responsible for as many concussions—probably more—than the actual collisions you see on the field.

I recently met Conrad Dobler, a 10-year veteran Offensive Lineman for the St. Louis Cardinals. He has had multiple knee and hip replacements from playing on Astroturf. He has had as many as seven surgeries in 1 year, and he's spent nearly 100 days in the hospital this past year. He has been denied disability benefits numerous times by the NFL Players Union, yet has been told by doctors he is severely disabled. He's never received a penny of disability money from the union or the league. The NFLPA has nothing in place to take care of players suffering these medical challenges from the physical abuse of an NFL career. Another issue unaccounted for under the NFLPA's disability plans are the degenerative nerve conditions that result from the violent collisions associated with the game of football. As a player, you always believe the Union will be there for you at the end of your career. However, as I learned, that is not the case. The union is only obligated to represent and protect active employees—not retired players. Therefore, they only focus on the interest of active players.

Highly recognizable players are suffering heart-wrenching setbacks and near hopeless predicaments. Mike Mosley, a receiver for the Buffalo Bills from 1982–84, experienced knee, neck, and back injuries that shortened his career and left him permanently disabled. Mosley played 20 games in 3 seasons as a wide receiver. He received full disability payments for 6 years, and then a doctor assigned by the NFL ruled sedentary work was *possible* so, in 2004, all his disability payments were immediately cutoff without warning. He has lost his house, his truck, his savings, and his entire quality of life. He's had to move in with his 75 year old Mom (living off a \$306 social security check), and has sole custody of a 14 year old daughter he's trying to raise—for whom he cannot even buy clothes. He also has no health insurance and cannot afford *any* medical care. It has ruined his life. In a medical emergency, he will no doubt become the responsibility of the state. So, much as you and I send tax money that should pay for our schools and teachers to build NFL stadiums, we will pay for Mike's care someday because the NFL doesn't want to pick up their own check.

Brian DeMarco, a former offensive lineman for the Jacksonville Jaguars and Cincinnati Bengals, is damaged so badly from his 5 years playing pro football that he is only a fraction less disabled than a quadriplegic at age 35. He has had so many injuries that only people who have been in horrendous car crashes might understand—all from playing America's favorite sport. DeMarco's career ended amid severe health problems after the 1999 season. After 4 attempts over several years to navigate the NFL's disability system's red tape, he was unable to even get his application process started and be assigned a doctor for evaluation—even though his back was broken in 17 places. He's been homeless 3 times in the last 4 years, and has lived in storage units for 5 months with his wife and 2 children. He has constant pain from his crushed spine, numerous physical ailments, and is unable to hold a job. This is a man who's given up his quality of life for this sport. Because of injuries and runaway medical bills and an inability to work or get any kind of health insurance, the once proud and well-off DeMarco was as down and out as you can get in this country. The NFL Players Association has given him virtually no help. He has called the NFLPA over 100 times in the last year but has experienced no success in getting a claim opened. At one point, he was actually told that he needed to help himself before the NFLPA could help him and he was told to get a job and sent bus fare to search for one by an NFLPA representative. And, finally, whenever he has had the temerity to raise his voice and discuss his problems in public, the NFL's and NFLPA's representatives have branded him a fraud.

The urgency and demand in the NFL to get back on the field creates a greater risk. The cumulative effect of multiple surgeries throughout your career is damaging to the body. This toughness, a sign of the times in that NFL era in the early 1960s explains why Larry Morris, a linebacker for the Bears from 1959 to 1965, once returned to action 6 weeks after knee surgery, removed a cast on his broken thumb during a game and played through 4 concussions. After one such knock in the head during the 1964 season, the NFL encouraged Larry to ignore dizzy spells and ringing in his ears so he could play. Larry is best known for being the most valuable player for the Bears in the 1963 NFL Championship game. Larry now suffers from dementia at age 73 and cannot be left unattended. His healthcare expenses have sapped more than \$200,000. His wife of 50 years, Kay Morris is still waiting for the full benefits to which Larry is entitled under the new "88 Plan"—named after the number of Baltimore Colt great John Mackey—but the award to date is at a lower level and administrative difficulties with that Plan have prevented her from obtaining adequate support. It has been proven that almost all medical claims coming from brain trauma due to concussions are denied or only given lesser benefits stating that the injuries and mental issues such as depression and early onset dementia cannot be proven that they are a direct result of football. (In a recent article in the *Charlotte Observer*, an NFL Plan attorney divulged that there have only been four such claims made successfully in the history of the Plan—only *four* concussion cases!) It is difficult for families who are technologically challenged and struggling to afford food and healthcare to navigate this bureaucratic maze.

My own career was ended prematurely. I had five remaining years of a seven-year contract. I suffered a herniated disk at C-6 and C-7. After surgery, I battled my way back onto the field and played 1 year and one game. I herniated a disk again at C-5 and C-6. I had an agreement with my doctor that, if this happened, I would retire and walk away from the game. I chose quality of life with my new family moving forward under the impression that the union would provide financial assistance in lieu of the money I left on the table with my contract. I discovered by going through the NFLPA Disability process that this system was put in place to deny claims by former players. The only concern that they had was that I could maintain

another job—any other job—and generate income with no regard to the injuries that were a direct result of playing the game of football.

The doctor I met with is considered a neutral physician but, in reality, he was a physician designated by the NFLPA. I was not allowed to bring in x-rays, MRI's, and the doctor could not consult with the trainers from my team or the doctor who performed my surgery. He denied my claim. His only interest was whether I was capable of holding another job. He showed little interest in my physical condition and the injuries sustained from an 11 year NFL career.

Upon appeal, to another designated NFLPA physician, my claim was denied as I walked into the office. He did not examine me, nor did he interview me. My impression was the decision was made long before I walked through the door. I am not the first to have experienced this routine treatment of injured players. When I talked to other colleagues about my case, their instructions to me were to just keep fighting and, eventually, I would be accepted. The system has no set standards that instill confidence and trust with any player going through the process that they will be granted disability benefits.

Former NFL players are hurting physically, emotionally, and financially. There is a tremendous amount of pride in NFL players. We don't ask for much but we will beg for nothing. This system forces us to beg for benefits that we have earned and to which we are rightfully entitled. The League needs to take care of these legendary players who made the game of football what it is today.

The NFL claims to have paid benefits to 284 former players—only about 3 or 4 percent of the estimated 7,000 NFL retirees who have received disability payments (this is the Plan's own figure; it has also used 8,000 in testimony before the House of Representatives and 9,000 in public statements afterwards, but I'll use the lower number to give the most flattering picture of their efforts). A meager 3 or 4 percent *at most* who have received disability payments is not nearly enough for a game that takes the unique toll on human bodies that football does. That this discrepancy should exist in a game that realizes over \$7 billion in annual revenue is a stain upon the game's integrity. The issue of former NFL players' needing financial and medical assistance is hardly a new one. The story of former Pittsburgh center Mike Webster, a Hall of Fame player, came to light a decade ago. Crippled by the constant banging during his career, Webster became homeless. He applied several times for disability, but was unanimously turned down each and every time. He died of a heart attack in 2002, and his family sued the NFL for benefits the league had denied him. They won \$1.5 million.

In recent months the league has taken positive measures to acknowledge those realities by implementing "The 88 Plan" into the most recent labor agreement in honor of former Baltimore Colts tight end John Mackey. Like Morris, Mackey suffers from dementia—but on a more severe level. The "88 Plan" provides up to \$88,000 a year for families to put toward a residential care facility or up to \$54,000 for home care. In the case of Kay Morris, Kay doesn't believe a nursing home is the best place for her husband, and the \$54,000 allotted for home care just isn't enough money to pay for nursing help and necessary medical attention. This added program is a step in the right direction; however, it is not enough. Moreover, since the Mackey Plan is administered as a reimbursement plan, many qualifying players do not have the front money to participate and obtain care.

To protect their economic interests, the NFL and the current players' union have allowed the Plan's procedures to become an obstacle course for former players in order to prevent them from getting benefits. They have not published or prescribed rules or standards for the determination of benefit eligibility. There are documented cases, such as Brent Boyd's, in which the Plan has disregarded the medical opinions of its own "Plan Approved" doctors when the Board does not want to pay benefits. In order to minimize the amount owners must pay, the Board denies many former players' claims. This is an inherent conflict of interest that favors the owners and active players and has led to tragic results for many severely disabled NFL retirees.

The Retirement Board created a 42-month limit on retroactive disability amounts for retired players, which is not only against the retired player's best interests but also a direct violation of the ERISA law. The imposition of a limitation on the amount a player is able to recover reduces the accrued benefit. Degenerative conditions do not always show up within 42 months. Therefore, this makes applying for this benefit impossible due to the time limitation.

The NFL Retirement Board, not the NFLPA, determines disability claims. Representatives are appointed by the NFL owners and the NFL Players Association. There is no one on the board looking out for the interests of former players. This six-member board votes unanimously almost every time. The Groom law firm who established the pension fund in the 1993 Collective Bargaining Agreement also serves as counsel to defend the distribution of disability payments. They have

earned \$3.15 million for defending claims in the past year—about one-sixth of what the Plan says it pays out in disability benefits. This is an obvious conflict of interest. The emphasis is only on the current player. The players who built the NFL have been left behind.

The retired player has no voice in the current system. The salaries paid to players who built the NFL pale in comparison to the salaries the players receive today. The NFLPA, however, continues to focus on the current player and his financial stability. In 1993, the Collective Bargaining Agreement (CBA) added many new benefits in addition to the pension. It added a severance, a 5 year COBRA Health Plan after retirement, a 401k Plan, and a second career savings plan—none of which was retroactive before 1993 and there had been no changes in benefits for the previous twenty-three years.

Delvin Williams, who played 8 years as a running back in the NFL, experienced this firsthand. After 8 years, 6 surgeries, 2 concussions, broken ribs, a dislocated thumb, knee and spinal injuries, as well as numerous other joint and vertebrae injuries, his professional football career ended in 1981, when the Green Bay Packers released him. He was one of approximately 285 out of 7,000 retired NFL Players who received degenerative disability benefits. However, it did not come without a fight and persistence. He started the process in 1983 and was awarded a football degenerative disability benefit in July 1995—12 years later! In 12 years, he was turned down twice and lost at arbitration before being awarded the disability pension benefit.

The NFL may be concerned about the small number of players who might abuse the system, but in ostensibly protecting against this small problem, they are turning their backs on literally hundreds of players who need assistance. The NFLPA looks at this as protecting themselves against a player, however, this is destroying the family unit and quality of life—families are divorcing, players are losing custody of their children, losing their houses, living in homeless shelters, etc. There are lots of players in dire need. They were the foundation of the NFL. The league and active players are making millions of dollars. These former players are losing their health, homes, and dignity. Even the great Johnny Unitas was denied disability.

The retirement plan has been contorted into a way for the players association to aid the active players. They have cut out the retired players and diverted this money into new plans for active players. Major League Baseball, which draws annual revenues of \$4.3 billion, pays out an average of \$36,700 in benefits to its participating players. Compare that to the NFL, which is currently drawing \$7.1 billion in annual revenues, yet its average benefit payout is \$13,000. This is an incredible injustice.

These disabled football players helped build the NFL into a multi-billion dollar industry that continues to grow. Many of these individuals are suffering from debilitating injuries, post-traumatic stress, and dementia after sacrificing their bodies and minds for the League—for the NFL's success. They face mounting medical problems and financial hardships and the League must do more to assist them. The league has not only forgotten them, but has attempted to strangle their quality of life through an unwieldy retirement and disability benefit system. This disability plan is grossly inadequate for those who need it the most—the former players.

Why am I here? I am not here to cause controversy, but to affect positive change. We want to fix this issue. As Senators, you have the ability to make a difference and the power to create change immediately. After presentation of these facts, my hopes are high that this situation will be resolved. There is an excessive amount of money generated by the NFL—the money is there to solve this problem. This is a \$7 billion dollar industry. Why is it not being funneled into the right areas and why is it not being administered to accomplish what it was set up to do? I implore you to make educated decisions and take care of those retired players—the heroes that have made the game of football the number one spectator sport in America. These retired players are being denied benefits while the NFL continues to profit off their work. These are the giants that helped build the league.

I am asking the Senate Committee for oversight to ensure the NFLPA is working toward correcting the problem in good faith. I would like to request the NFLPA be fiscally responsible in paying disability claims. Claim information needs to be publicly divulged so all can see the record of disability claims that have been paid. A major frustration has been the lack of openness on the part of the NFLPA to share the financial aspects of the Plan. The Plan completes a valuation once a year, which compares the assets to the liabilities for the past year. There is nothing confidential or privileged about the information included in this report. If copies of this report for the past 5 years were made available to retired players, a huge increase in trust could be achieved. Why has this not happened before now? This simple request for

information should be volunteered by the NFLPA with openness as evidence of proper administration of the plan.

What do we hope to accomplish? Our hope is to bring a measure of fairness to the relationship between the League and retired disabled football players. We would like to rework the structure of the disability system. The system must be neutral to all parties. The framework must include a designated group of retirees from each decade of the NFL in order to provide a voice for forgotten players. The voices that need to be heard are those of retired players who are suffering medically and financially from the harsh realities of their post NFL careers. It is necessary they be voted in by their peers, not appointed or hand picked by the NFL Committee. The league needs to take a hard look at doing more for veteran players, and address the core issue of overhauling the current disability system. My goal is to help create a system that addresses the needs of former players that are in dire straights because of the injuries they suffered as a direct result of playing professional football. There are unique circumstances to some of these individuals that the system must account for and take into consideration. The retired players from the previous era must be provided a voice as the NFL moves forward.

Roger Goodell, the Commissioner of the NFL is forming its first alliance to improve medical services for ailing retired players. As a form of recognition that a serious problem exists, this is a step in the right direction, but the alliance was devised and announced without gaining sufficient input from advocates who have represented the interests of retirees for years. A better negotiation process would have produced a better alliance. To his credit, Mr. Goodell is cleaning up the NFL regarding the actions of certain contemporary players, but now he needs to restore the dignity of the Players who built this league, which has been robbed from many of them by the disability process. According to the Integrity Clause of the NFL, "The Commissioner is in charge of the integrity of the game, its management and its players." Webster defines the term "integrity" as "a noun . . . [that] means honesty. . . . A trustworthiness and incorruptibility to the degree that one is incapable of being false to an agreement, contract, responsibility or pledge." We have an ethical and fiduciary responsibility to the Public—the people who drive the "engine of success" of the NFL. The fans and retired players are counting on the Commissioner and the Senate to be truthful and honest, and to make a difference in the lives of these broken heroes and past football giants that made football the number one spectator sport in America.

Senator DORGAN. Mr. Johnson, thank you very much.

Next, we'll hear from Mr. Dave Duerson, the player Trustee for the NFL Player Retirement Plan, and former NFL player for the Chicago Bears.

Mr. Duerson?

**STATEMENT OF DAVE R. DUERSON, TRUSTEE, BERT BELL/
PETE ROZELLE NFL PLAYER RETIREMENT PLAN; AND
FORMER NFL PLAYER, CHICAGO BEARS, NEW YORK GIANTS,
AND PHOENIX CARDINALS**

Mr. DUERSON. Mr. Chairman, it's a pleasure to be here. It's been quite some time since I've walked these halls, back as a summer intern in 1982, for Senator Dick Lugar. So, please say hello for me to him.

But, to you, Chairman and the members of the Committee, I'm David R. Duerson, an 11-year retired NFL veteran. It is my privilege to serve as a trustee of the collectively bargained plans covering NFL players.

I was born in Muncie, Indiana, in 1960, to Julian Arthur Duerson, Jr. My parents were married for 59 years, until my mother's death, almost 4 years ago. My father is my hero. He has two Bronze Stars from World War II, having fought in the European theater, yet the medal he is most proud of is his Medal of Conduct. He also believes that every male child should serve 2 years in the armed services. My dad spent 38 years with General Motors, and

was an active member in the UAW. I stood alongside of him, as a very small child, on many picket lines, and I can still remember the day, in 1974, that we became a two-car, and then a three-car, family. I asked my dad, "What changed?" And he said that GM had just given him the job, in 1974, that he was qualified to do in 1945, upon returning from the war. My dad also told me that he was not raising any average kids. God, integrity, and education forms the foundation from which the Duerson name is built upon.

I attended the University of Notre Dame on a football/baseball scholarship, graduating in May 1983 with a BA in economics. I was a 4-year starter, two-time All-American captain, Most Valuable Player, and was drafted by the Bears in 1983 as the 64th player overall. I also graduated from McDonald's Hamburger University and Harvard Business School's Owner/Presidents Management Program.

Since retiring from the NFL, I have owned three McDonald's restaurants and two world-class meat processing companies. My first company ranked as high as the 44th largest African-American-owned and -operated business in the United States, with 2001 revenue in excess of \$63 million.

I had an extremely blessed NFL career, which included four consecutive Pro Bowls, two World Championships, 1987 NFL Man of the Year, and 1988 NFLPA Humanitarian of the Year. My service to the NFLPA has been uninterrupted since the end of my rookie year, when I was voted assistant player representative, until today, as a trustee. I represented both the Bears and the Giants as player rep, and the Arizona Cardinals as rep, and as a member of the NFLPA Executive Committee. I was also a named plaintiff in the Federal lawsuit which brought free agency to the NFL in 1993, along with Reggie White, Michael Buck, Hardy Nickerson, and Van McElroy.

I personally observed Gene Upshaw and his staff take our union from insolvency to an organization with a for-profit wing that generates millions of dollars for the players. I also watched them take us through decertification and recertification of the exact same union, the first time in the history of organized labor that that occurred. It was Gene who coined the phrase, "Past, Present, Future." The focus has always been on honoring those players who played before us. I'm very proud of the role my teammates had in leading the strike. The union meeting to strike was held in Chicago. I will never forget the comment that our head coach, Mike Ditka, made when we returned to work. During the strike, the league brought in replacement players. Mike kept four of those replacement players, and he told all of us that, "Those guys, the four SCAB players, are the real Bears." Mike's comments furthered my resolve, which ultimately led to my role as a plaintiff in U.S. District Court.

Fighting for players' rights became a passion for me, and it's even stronger today. I was honored when I received an invitation, upon retiring from the NFL, to become alternate trustee of the players' plans, to serve alongside of Tom Condon, Jeff Van Note, and the late great Len Teeuws. Each man has operated with absolute integrity and with great resolve in carrying out their fiduciary responsibility.

Our meetings with the NFL trustees have oftentimes been spirited, and, on occasion, contentious, but always with both sides operating within ERISA guidelines. In all cases, Federal law requires us to follow the terms of the plan, which states that if an individual is, quote, “employable,” he does not qualify for total and permanent disability. That is not an arbitrary decision being made on the part of the board. It is the law.

1993 was a pivotal year in regards to player salaries and benefits as a result of collective bargaining in Dallas, Texas, and a new collective bargaining agreement was agreed to. In that same meeting, the Executive Committee moved to create a pension benefit for the pre-'59ers, those men who played prior to the creation of benefits. We got there with Mike Kenn as President and an 11-member Executive Committee, and a few strong player reps who wouldn't bend. Since 1993, with every negotiation and extension, the players have reached back to fund increases and pass players benefits.

Can the process be improved? Absolutely. Can the process be sped up? It must be. But, remember, we are bound by Federal law and the terms of the plan. Can more be placed into the coffers for disability benefits? Again, absolutely. But those decisions are made by the current players, who, by the way, are putting 6 percent of their collectively negotiated package into total benefits. That's \$82,000 per player per year, that comes directly from additional salary they would realize, that's going into benefits to the benefit of retired players.

Gene and his staff have done yeomen's work on more than one occasion. I pay tribute to all of those players who, over the years, sacrificed time with family—and, oftentimes, careers—to join in this fight. I can personally recall numerous men who lost their jobs because of their union involvement. Today, we are as close to labor peace as we've ever been, but the day is coming when the agreement will run out, and a system very much like pre-1993 becomes a possibility again, with salaries being set and no free agency. I can uniquely relate to the players, both current and retired, as well as management, since I had as many as 252 employees. I paid their benefits out of my pocket. And I can also relate to the players, who are feeling a significant financial crunch, as I lost my business in 2006 to receivership due to a cash-flow challenge associated with a late startup after construction. I won a Federal lawsuit in October 2004, for \$34.592 million, but, because the company is based in the Netherlands, I have been unable to secure any of the individuals' assets, as of yet, but I will. It has cost me my business and my home, and I'm exhausting assets as I speak. But God has been good, and he has been good to those men who take issue with where they find themselves today.

This, Capitol Hill, is not the proper venue for this discussion of, How do we improve disability benefits? I am a retired player, and every man playing today will very soon join our ranks. The place for this discussion is at the annual player rep meeting. Retired players need to be there, 300 strong. It's there that the decisions are made, and it's there that our voice will be heard, and influence felt. Eight men thoroughly immersed in a truly united spirit are far greater assets than 80 with lukewarm enthusiasm.

The game is better than it has ever been, and the players are compensated at unprecedented levels. I didn't realize the impact of it, but one of my sons might, or their children, when they have them. I'm excited about what we've accomplished so far, and it's been a very fair life.

I thank you. God bless you.

[The prepared statement of Mr. Duerson follows:]

PREPARED STATEMENT OF DAVE R. DUERSON, TRUSTEE, BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT PLAN; AND FORMER NFL PLAYER, CHICAGO BEARS, NEW YORK GIANTS, AND PHOENIX CARDINALS

Chairman Dorgan and Members of the Committee, I am David R. Duerson, an 11-year retired NFL Veteran. It is my privilege to serve as a Trustee of the collectively bargaining plans covering NFL players.

I was born in Muncie, IN, in 1960, to Arthur and Julia Duerson, Jr. My parents were married for 59 years, until my mother's death, of almost 4 years. My father is my hero! He has 2 Bronze Stars from WWII, having fought in The European Theatre, yet the medal he is most proud of is his Medal of Conduct! He also believes that every male child should do 2 years in The Armed Services! My dad spent 38 years with General Motors, and was an active member in The UAW. I stood along side of him, as a very small child, on many picket lines. I can still remember the day, in 1974, that we became a 2-car, and then 3-car family. I asked my dad "what changed?", and he said that GM had just given him the job in 1974 that he was qualified to do in 1945, upon returning from the War. My dad also told me that he was not raising any "average kids!" He proved it to me, by taking Baseball (my best sport) away from me one summer, because I brought home less than acceptable grades! GOD, Integrity, and Education forms the foundation from which the Duerson name is built upon.

I attended The University of Notre Dame (1979–1983) on a Football/Baseball Scholarship, graduating in May 1983 with a B.A. in Economics. I was a 4-year starter, 2-time All-American, Captain and MVP of The Fighting Irish, and was drafted by The Bears in 1983, as the 64th player overall. I also graduated from McDonald's Hamburger University in 1994, and am an Alum of Harvard Business School's Owner/President/Management Program (OPM30), finishing in May 2001.

Since retiring from NFL football in April 1994, I have been in the private sector. While finishing my career in Phoenix, with The Cardinals, I would play on Sunday and be behind a McDonald's counter on Monday and Tuesday . . . which ultimately led to my having 3 McDonald's restaurants in Louisville, KY for 6 months, before moving to the supply-side. From April 1995–December 2006 I owned 2 world-class, 1st-tier meat processing companies, serving internationally the likes of McDonald's, Burger King, The Olive Garden, and Sara Lee, as well as, The USDA's National School Lunch Program and military bases throughout The European Theatre, and others. In 1998–99, we were the 44th largest African-American owned and operated company in The United States. Our 2002 revenue was in excess of \$63M.

I had an extremely blessed NFL career, which included: 4 consecutive Pro Bowls, All-Pro 3-times as a Strong Safety and once as a Free Safety, 2 World Championships (Chicago Bears SB XX, and NY Giants SB XXV), 1987 NFL Man Of The Year and 1988 NFLPA Humanitarian Of the Year. My service to The NFLPA has been uninterrupted, since the end of my rookie year (1983) with The Bears, when I was voted Assistant Player Representative, until today as a Trustee. I represented both The Bears and The Giants in the role of Player Rep and The Arizona Cardinals as Rep and as a member of The NFLPA Executive Committee. I was also a named plaintiff, in The Federal Lawsuit which brought Free Agency to The NFL, in 1993, along with Reggie White, Michael Buck, Hardy Nickerson, and Van McElroy.

I personally observed Gene Upshaw and his staff take our union from insolvency to an organization with a For-Profit wing that generates millions of dollars for the players. I also watched him take us through Decertification and Recertification (of the exact same union) . . . the first time in the history of Organized Labor that that occurred! It was I who moved to give Gene and his staff a Vote Of Confidence . . . it was unanimous! I also recall during those lean years the number of times that Gene and his staff would not cash their pay cheques, because there was not enough money to pay them . . . they kept their cheques in their desk drawers! It was Gene who coined the phrase, our motto and mission statement: "*Past, Present, Future!*" The focus has always been on honoring those players, who played before us!

I became team Player Rep in 1987, the year of our strike. I am very proud of the role my teammates had in leading the strike, and we were the last group of men to return to the practice field, when the strike was called off, and no one crossed the picket line! The union meeting to strike was held in Chicago. I will never forget the comment that our Head Coach, Mike Ditka, made when we returned for our first meeting. As a result of the strike, The League brought in replacement players (SCABS) who played (3) games in place of the striking players. Mike kept 4 of those replacement players, when we returned, and he told all of us that "*Those guys (the 4 SCAB players) are THE REAL BEARS!*" Mike's comments furthered my resolve, which ultimately led to my role as a plaintiff in U.S. District Court. It stung my conscience, as much as my dad's comments regarding GM and the 29 years it took them to give him the job he was qualified to do in 1945. And also of my first meeting with Buddy Ryan, my rookie year, who asked me: "Golden Domer, you one of those doctors or lawyers?" I said "yes sir!" He said "well, you won't be here too long, because I don't like smart Niggas!" I called my dad and told him that "I didn't graduate from college to go through this!!!" My dad said: "*It sounds to me like you're in The Army!*" It was a very short phone call. From that, I learned to persevere.

Fighting for players' rights became a passion for me and it's even stronger today. I was honored when I received an invitation, upon retiring from the NFL, to become Alternate Trustee of the player plans, to serve along side of Tom Condon, Jeff Van Note, and the late great Len Teeuws. Each man has operated with absolute integrity and with great resolve, in carrying out their fiduciary responsibility. In fact, during the years that we played without a union representing us, those men were totally naked, in terms of liability, without any financial backing from the players, had a suit arisen!!!

I recall receiving my first set of documents with players' applications and renewals, with all of their medical records, and turning to my wife and saying: "I now know far more than I care to know about these men and their financial & family situations." Our meetings with the NFL Trustees have oftentimes been spirited and on occasion contentious, but always with both sides operating within ERISA Guidelines. I can say, without question, that Tom, Jeff, Len, and I have fought for every individual player who has filed an application for benefits. Len was a tireless champion for the men who served in The Armed Services, to get accredited seasons for them, during those years when they were serving our country. In replacing Len, as a full trustee, upon his retirement, I have continued that fight. Trace Armstrong now serves as the Alternate. We are even more diligent in our efforts to gain benefits for any and all players who are deemed totally & permanently disabled! In all cases, Federal law requires us to follow the terms of the Plan, which states that if an individual is "employable", he does not qualify for total and permanent disability. *That is not an arbitrary decision being made on the part of the Board. . . . It Is The Law!*

1993 was a pivotal year, in regards to player salaries and benefits. As a result of collective bargaining, in Dallas, TX, a new CBA was agreed to. The very first thing negotiated was Benefits, and I immediately left the room to go and call Daryl Stingley to let him know that his benefits were tripling! In that same meeting, the Executive Committee moved to create a Pension Benefit for The Pre-59'ers . . . those men who played prior to the creation of benefits, who had not received one from the guys who came after them. We got there with Mike Kenn as President and an 11-membered Executive Committee, and a few strong player reps who wouldn't bend! Since 1993, every negotiation and extension of the current agreement, the players have reached back (out of their pockets to the tune of \$82K per year, per player this year) to fund increases in PAST PLAYER'S BENEFITS!

Can the process be improved? Absolutely! Can the process be sped up? It must be! But remember, we are bound by Federal law and the terms of the Plan, and quite frankly, the only reason the players have a seat on the Board is because it was collectively bargained . . . just as with my companies, I as management could run the benefit portion without employee input! Can more be placed into the coffers for Disability Benefits? Absolutely! But, those decisions are made by the current players who, by the way, are putting 6 percent of their collectively negotiated package into total benefits. That \$82K per player per year comes directly from additional salary they could realize!

I have seen our benefit numbers grow from under \$7M to over \$2.5B, since the year I became a rep. Gene and his staff have done yeoman's work, on more than one occasion. I pay tribute to all of those player reps, who over the years, sacrificed time with family and oftentimes, careers, to join in this fight. I can personally recall numerous men who lost their jobs because of their union involvement. Today, we are as close to labor peace as we've ever been. . . . The "Poison Pill" at the end of the agreement, placed their by The Special Magistrate is responsible for that. The

day is coming when the agreement WILL run out, and a system very much like pre-1993 becomes a possibility, again, with salaries being set and no Free Agency. On that day, benefits will be frozen or simply taken away.

I can uniquely relate to the players, both current and retired, as well as, management, since I had as many as 252 employees . . . I paid their benefits out of my pocket. I can also relate to the players who are feeling a significant financial crunch, as I lost my business in 2006 to receivership, due to cash-flow challenges, associated with a late startup, after construction. I won a Federal Lawsuit in October 2004 for \$34.592M, but because the company is based in The Netherlands, I have been unable to secure any of the individual's assets, as of yet, but I will. The Hedge Fund wasn't concerned with my challenge, nor my family's. It has cost me my business and my home, and I'm exhausting assets as I speak. But, GOD has been good, and HE has been good to those men who take issue with where they find themselves today.

I have had some great coaches: Terry Hitchcock, Dan Devine, Jim Johnson, Mike Ditka, Buddy Ryan, Bill Parcells, and Bill Belichick. I've had and have great mentors and known great leaders.

This (Capitol Hill) is not the proper venue for this discussion, of how do we improve disability benefits. I *am* a retired player, and every man playing today will very soon join our ranks. The place for this discussion is with the current players, at their Annual Player Rep Meeting, in March. Retired Players need to go there 300+ strong! It's there that the decisions are made, and it's there that our voice will be heard and influence felt! "Eight men thoroughly immersed in true unionized spirit are far greater assets, than eighty, with lukewarm enthusiasm!"

The game is better than it has ever been, and the players are compensated at unprecedented levels. Salaries and benefits skyrocketed as a result of Reggie White, Michael Buck, Hardy Nickerson, Van McElroy, and myself, and others. I didn't realize the impact of it, but one of my sons might, or their children (when they have them). I'm excited about what we've accomplished so far and it's been a very fair life.

Thank you. GOD Bless You!

Senator DORGAN. Mr. Duerson, thank you very much. As you know, we have arranged the sounds of a carpenter as accompaniment for your testimony. We apologize for that. But—see if we can stop it. Thank you for your statement.

Mr. Bill Bain is a former NFL player for the Los Angeles Rams.
Mr. Bain, you may proceed.

**STATEMENT OF BILL BAIN, FORMER NFL PLAYER,
LOS ANGELES RAMS, GREEN BAY PACKERS, NEW ENGLAND
PATRIOTS, DENVER BRONCOS, NEW YORK JETS**

Mr. BAIN. Good morning, Mr. Chairman, Senators, and members of the Committee.

My name is Bill Bain. I am happy to be here in support of the NFLPA. I played 12 years in the NFL, most of them on running teams. It was my pleasure to spend 8 years with the L.A. Rams. I got to play with Hall of Famers Jack Youngblood, Jackie Slater, and Eric Dickerson. In 1983, Eric set the rookie record, which still stands after 24 years. In 1984, Eric set the NFL rushing record, which still stands after 23 years. I was very proud to be part of that L.A. Ram offensive line.

Now, as I stated before, I've been on running teams most of my career. The injuries I have received can best be described by an equation developed by a physicist that says, "Two 280-pound linemen hitting head-on 60 times a game is the equivalent to two cars hitting head-on at 40 miles an hour." On running teams, you practice run-blocking on Wednesday, Thursday, and Sunday. By doing so over 12 years, I developed a condition called venous insufficiency in both legs. That means that the veins have collapsed, making it difficult for blood to return—back up to my heart. It just pools into

my feet, in my legs. My legs, from my calf down, are the color of this tie. After retiring, in 1987, I could not use my college degree to help my family, because the employers that wanted to hire me were afraid that my medical conditions would increase the future medical insurance premiums beyond their acceptable levels. It was then that I was forced to take various physically demanding jobs to help my family out. This deteriorated my legs even further, causing ulcers, which would ooze and bleed and take 4 to 6 months to heal. An ulcer can best be described as a worm in an apple, with stuff oozing out of it.

In 1993, I received two letters from the NFL Players Benefits Office advising me of a financial condition of two funds that were negotiated by the NFLPA in the most recent CBA, which was negotiated after I had retired. I called the NFL office. My call was directed to Miki Yaris-Davis. And she is a godsend. Anyway, she explained to me what the two programs were. I got off the phone, explained what the two programs were to my wife. She—we both looked at each other and, kind of, laughed. And she said, “You can easily qualify for this.”

I called the NFLPA and requested a physical exam. A form was sent to me immediately. I had a doctor’s appointment made. However, when I got to that doctor’s appointment, unbeknownst to me, I needed to pay \$300 up front for the exam. The doctor would not see me. Finally, on September 15, 1996, 2 years 9 months after receiving the two letters, I was able to save up \$300 to pay the upfront fee for the physical and take the examination. On January 16, the Retirement Board met, and on January 18th I received a letter of denial. The letter stated that Dr. Schultz did not consider me permanently damaged goods.

Between January 19 and March 15, I started the appeal process. I collected letters from two workman’s comp attorneys, three physicians, and two personal friends, all who have known me well and had followed my career. One of the attorneys was Mike Bagby. Mike’s a great friend. Mike Bagby is a lawyer, and he has associates, and they specialize in workman’s comp attorney law for the employer; and he’s out of Santa Ana, California. Mike read Dr. Schultz’s report and asked me if I had a surgically repaired scar on my right knee. My answer was no, it’s on my left knee. Then Mike asked me how come there was no reference to the venous insufficiency? And I answered, “Mike, because he didn’t ask me to take my socks off.” I presented these letters to the board on April 24, 1997. I had my appeal hearing. It ended at a 3–3 tie. And that’s a good thing—it’s three players and three owners—it was a good thing, because, with that decision as a tie, I get to go see a MAP doctor. “MAP,” meaning Medical Advisory Physician.

On May 28, 1997, I was examined by Dr. Tiboni. Thank God I took my wife with me, who’s an RN. During the exam, Dr. Tiboni stated, “You’re kinda messed up, but not so badly that you should receive disability.” That’s when my wife said—as I said, “She’s an RN”—that’s when my wife said, “Bill, take down your socks.” Well, Dr. Tiboni—looked—he just went like that, a look of complete astonishment. Dr. Tiboni examined my feet and my legs for the next 10 minutes, and then said, “Congratulations, you’ve flunked your physical.” This is a good thing.

On July 23, the Board granted my appeal for total and permanent disability benefits. On August 15, 1997, the Feast of the Assumption, I received my first check. During that tough, long year process, I wanted to quit several times, but due to the support of the NFLPA and Miki Yaris-Davis, I didn't.

In closing, I want to say that, without the NFLPA's efforts, I'd be upside down. Without the Federal Social Security disability benefits, I'd be inside out. Without my wife and her job and the medical benefits her job provides, I don't know where I would be, my four daughters would be, my whole family would be. I thank the NFLPA so very much for all their help, because they stuck by me.

Thank you very much.

Senator DORGAN. Mr. Bain, thank you very much for being with us and sharing that story and your testimony.

Next, we'll hear from Mr. Garrett Webster, the son of NFL player Mike Webster, from the Pittsburgh Steelers.

Mr. Webster, you may proceed.

**STATEMENT OF GARRETT WEBSTER, SON OF MIKE WEBSTER,
FORMER NFL PLAYER, PITTSBURGH STEELERS AND
KANSAS CITY CHIEFS**

Mr. WEBSTER. Thank you, Senator.

Ladies and gentlemen, before I begin my testimony, I would just like to express my gratitude for being included in today's proceedings. I am humbled to be here today in the capital of the greatest country in the world and to share the story of a great football player and a great man who was abandoned by the League he helped build.

Today, you will hear firsthand from former players about what it's like to try and obtain disabilities from the NFL. You will hear what it's like to be in constant pain. You will hear what it is like to fear the loss of your mind, body, and perhaps even your very soul while you are still relatively young.

But that's not my story. I cannot tell you what it's like to wake up and not be able to walk out—walk to the shower without being in constant pain. I cannot tell you what it's like to fear the loss of your mind and then to feel it actually happening. I cannot tell you what it's like to become a stranger even to yourself.

However, what I can tell you, and what I will tell you, is what it's like to stand by, helpless, as your father's life is turned into a constant living hell that most people would take their own lives to escape from.

My father was Iron Mike Webster. He played 17 years and was perhaps the most widely respected player in the League during that time period. For—he was mainly respected for his work ethic and his devotion to his city and his team, the Pittsburgh Steelers. He was the Steeler the fans viewed as one of their own, a blue-collar man who would dedicate countless hours to help raising millions of dollars for spina bifida, who would stay long after autograph shows so everyone got their souvenir signed, who greeted everyone with a handshake from those massive hands, and made them feel like they were a personal friend. Ask all of these people who Mike Webster was, and they will tell you he is the definition of an all-time great.

I am proud of my father, and, as all sons are, I think my dad was the greatest dad in the world. When I was young, I remember my dad wrestling with my brother Colin and I in the pool, chasing robins with my sisters, Brooke and Hillary, out in our front yard, and reading stories into a tape recorder so we could hear his voice while he was on long road trips. My mother, who could not be here today, remembers my dad as a good father and husband, who could remember the street layouts of Chicago after taking one look at a map, and a man who would play practical jokes on the neighbors, not limited to putting a few rubber snakes in Mrs. Gregg's mailbox.

But, as I grew older and I grew more and more aware of my dad and his condition, I knew that the Mike Webster that I grew up and loved was dying. I remember the day that I knew something was wrong, when, on my 10th birthday, my dad was nowhere to be found. I didn't even receive a phone call, which was not like him, because he would usually call me every single night before I went to sleep, and call me his "Little Buddy."

Later that month, I found out why, when our family discovered Iron Mike Webster, bloated to over 300 pounds, shivering naked in a bed in a rat-infested motel, and, at his side were not pictures of his kids, nor his Super Bowl rings, nor autographs or any glory that you associate with football, but a bucket of human waste, because he was too weak to make it to the bathroom.

As time passed, my dad's condition only got worse. I have lived through things I would not wish on my worst enemy. Have any of you people around here had to shock your own father with a taser so he could go a few minutes without pain? Have any of you had to receive a phone call from your father telling you he was about to kill himself so he could get away from it all? Have any of you had to witness a once-proud, strong man as Mike Webster, have to beg for KFC and perhaps offer autographs just so he could eat something? Well, I have. And I cannot forget those experiences.

My father is gone now. I cannot help him. But I can do what he would do for his teammates and fellow football players if he were here, healthy, and the man that he was before the repeated head injuries suffered on the football field took his mind and body from him at an early age, and took him from me far too soon.

What I'm asking is that the NFL Players Union and the National Football League, as a whole, look beyond the bottom line and help the past, present, and future gladiators, in every way that they can, to find peace, self respect, and a measure of health when their very short time in the game is over, and they don't end up relieving themselves in the oven as—in a flash of dementia, as my father once did. Believe me, there are millions of kids who play this beautiful game of football and have no idea of the risks. I'm calling on the League, the Players Union, the Commissioner, the retired players, and the U.S. Government to put aside egos and hurt feelings and work in a way to educate people about the health risks involved with playing the game, and to take care of those athletes who got hurt while playing it in a fair and balanced way, whether it be with healthcare, social workers, insurance, or whatever can be provided by a multibillion-dollar corporation.

A final plea, I will make to you, Commissioner Roger Goodell. I personally think that you're a good man who wants to promote

positive change in today's game. You have shown good leadership with things, such as making sure the NFL players are accountable when they break the law, so they are good role models for kids today. I am making a plea to you, not as the son of Mike Webster, not as a 23-year-old kid who has lost his best friend and father, but as a young man who desperately wants no one to ever feel the pain that I feel every morning, to feel the loneliness that I feel when I have to turn to my father for advice and he is not there, to feel the heartbreak that I feel when I hear about Chris Benoit, Andre Waters, Reggie White, Justin Strzelczyk, and the web of people connected to them that have had brain injuries, and those brain injuries have destroyed their lives by repeated concussions and head—other head injuries. I ask you, Mr. Goodell, to use your position as NFL Commissioner, to lead the charge to educate the public about brain injuries and show them how to rehab and take care of those injuries, and take care of people that are slowly becoming a stranger to themselves and those around them. I pledge to offer whatever help I can, and support. My father would like that, I know. I would give my life to never see another family end up like mine. I am ready to help. Please join me.

Ladies and gentlemen of the Senate, I thank you for your time.
[The prepared statement of Mr. Webster follows:]

PREPARED STATEMENT OF GARRETT WEBSTER, SON OF MIKE WEBSTER, FORMER NFL PLAYER, PITTSBURGH STEELERS AND KANSAS CITY CHIEFS

The following people all helped Mr. Mike Webster in his final years, and I would like to include their names on this document—

Bob Fitzsimmons
Sunny Jani
Devin Jani
Alexis Jani
Dr. Charles Kelly
Dr. Jim Vodvarka
Freddy Shaheen
Sam Nuci
Terry Despoy
Cy Smith
Pamela Webster
Brooke Webster
Colin Webster
Garrett Webster
And the entire Pittsburgh Steelers Family.

Ladies and gentleman, before I begin my testimony, I would like to express my gratitude for being included in today's proceedings. I am humbled to be able to appear here today, in the capitol of the greatest country in the world, to share the story of a great football player and a great man who was abandoned by the league he helped build.

Because I am proud of the way my father lived and still agonized at the way he died, I may struggle in my oral presentation of this testimony against being inappropriate. I hope I am at my best for you Members of the Committee who have kindly taken oversight of the great injustices of the NFL's disability system, and for the men who have suffered, and who continue to suffer, under it. I know that, for their sake and for the memory of my father, whom I represent today, that I must try to put hurt feelings aside and coolly expose the deceptions in that system that will rob other children of fathers, mothers of sons, and wives of husbands if it is allowed to continue. I ask you to listen with open hearts and open minds with concern not for icons, superstars, quarterbacks, lineman, or football players, but for your fellow human beings. In return, I will try to be as brave before my task as my father was in life.

Today you will hear, first hand, from former players about what it's like to try and obtain relief for their disabilities from the NFL. You will hear what its like to be in constant pain. You will hear what its like to fear the loss of your mind, body, and perhaps even your very soul while you are still relatively young. But that is not my story. I cannot tell you what its like to wake up and not be able to walk to the shower without being in constant pain. I cannot tell you what its like to fear the loss of your mind and to feel it actually happening. I cannot tell you what its like to become a stranger even to yourself. However what I can tell you, and what I will tell you, is what its like to stand by, helpless, as your father's life is turned into a constant living hell that most people would take their own lives to escape.

My father was Iron Mike Webster. He played 17 years and was perhaps the most widely respected player in the league during the 1970s and 80s for his strength, for his work ethic, and for his devotion to his team, the Pittsburgh Steelers. He was the Steeler the fans viewed as one of them—a regular man who dedicated hundreds of hours to helping raise millions of dollars for spina bifida, who would stay long after autograph shows so everyone got a souvenir signed, who greeted everyone with a handshake from those massive hands and made them feel like they where a personal friend. Ask all of these people who Mike Webster was and they will tell you that he is the definition of an all time great.

I would love to tell you that Iron Mike Webster lived out his remaining years, a proud man, sharp as a tack, humorous, warm, and caring, a wonderful husband and father. But I cannot lie and, because I care about my Dad's memory and I care about the people that are here today who are suffering under the same system that failed him so miserably, I must try to tell the truth as I saw it, through the eyes of a surviving son.

I'm proud of my father, and as all sons are, I think my dad was the greatest dad in the world. When I was young, I remember my dad wrestling with my brother Colin and I in the pool, chasing robins with my sisters Brooke and Hillary in our front yard and reading stories into a tape recorder so we could hear his voice when he was away on road trips. My Mother, who could not be here today, remembers my dad as a good father and husband who could remember the street layouts of Chicago after taking one look at a map, and who would play practical jokes on the neighbors, not limited to putting a few rubber snakes in Mrs. Gregg's mailbox.

But, as I grew older, I grew more and more aware that the Mike Webster I knew was dying. I remember the day I knew something was wrong when, on my 10th birthday, my dad was nowhere to be found. I didn't even receive a phone call, which was not like him. Later that month I found out why, when our family discovered "Iron Mike" bloated to over 300 pounds, shivering in a bed at a rat infested motel. At his side were not pictures of his kids, nor his super bowl rings, but a bucket of human waste because he was too weak to make it to the bathroom.

As time passed, my dad's condition only got worse. I have lived through things I would not wish on my worst enemy. Have any of you had to shock a family member with a tazer so he could be without pain for a few moments, have any of you, at the age of 13, received a phone call from your father in which he tells you he is about to kill himself? Have any of you witnessed a once strong, proud man, reduce himself to begging for Kentucky Fried Chicken? I hope not. I have and I cannot forget.

My father is gone, now. I cannot help him. But I can do what he would do for his teammates and fellow football players if he were here, and healthy, and the man he was before repeated head injuries suffered on the football field took his mind and body from him at an early age, and took him from me far too soon. What I'm asking is that the NFL Players Union and the National Football League as a whole look beyond the bottom line and help the modern day gladiators in every way they can to find peace, self respect and a measure of health when there very short time in the game is over so they don't end up relieving themselves in an oven in a flash of dementia as my father did once. Believe me, there are millions of kids who play this beautiful game of football who have no idea of the risks. I'm calling on the League, the Players Union, the Commissioner, the retired players, and the U.S. Government to put aside egos and hurt feelings and work on a way to educate people about the health risks involved with playing the game, and to take care of those athletes who got hurt while playing it in a fair and balanced way, whether that be with healthcare, social workers, insurance or whatever help can be provided by a multi-billion dollar corporation.

The final plea I will make is to you, Commissioner Goodell. I personally think that you're a good man who wants to promote positive change in today's game. You have shown good leadership with things such as making sure NFL players are accountable when they break the law, so they are good role models for kids today. I'm making a plea to you, not as the son of Mike Webster, not as a 23 year-old kid who

has lost his best friend and father, but as a young man who desperately wants *no one* to ever feel the pain that I feel every morning, to feel the loneliness when I feel when I need to turn to my father for advice and he is not there, to feel the heartbreak that I feel when I hear about Chris Beniot, Andre Waters, Reggie White, Justin Strylczick and the web of people connected to them, that have had their lives destroyed by repeated concussions and head injuries. I ask you, Mr. Goodell, to use your position as NFL Commissioner to lead the charge to educate the public about brain injuries and show them how to rehab and take care of someone that is slowly becoming a stranger to himself and those around him. I pledge to offer whatever help I can in support. My father would like that, I know. I would give my life to never see another family end up like mine. I am ready to help. Please join me.

Ladies and gentlemen of the Senate, I thank you for your time.

Senator DORGAN. Mr. Webster, thank you very much for being here today and for providing your testimony, as well.

Finally, we will hear from Brent Boyd, who's a former NFL player for the Minnesota Vikings.

Mr. Boyd, you may proceed.

**STATEMENT OF BRENT BOYD, FORMER NFL PLAYER,
MINNESOTA VIKINGS**

Mr. BOYD. All right, thank you, Senator Dorgan and the Committee, and especially your dedicated staff, who's been so generous with their time and hard work going—leading into this hearing.

Before my clock starts, as I was allowed in the House, I request a chance to explain my invisible disability, because it affects my testimony. I do have brain damage. It's been located on brain scans. The damaged part of the brain gets—when I'm under stress, gets less blood, instead of more, like normal people, in—besides causing problems communicating, it causes excruciating pain. So, you know, this is a Senate hearing, it's fairly stressful, and, you know, the 5-minute clock is a little stressful, so I need to—I beg of you to let me go slow and tell the story. There's a lot to tell. I'm going to need questions to tell—I can't get it all into 5 minutes. Thank you for accommodating my disability.

And now, to begin, I'm Brent Boyd. I'm a native Californian. I graduated with honors from UCLA, am now a resident of Reno, Nevada.

My wife, Gina, a U.S. Postal mechanic, and son, Anders, 19 years old, fireman in training, they couldn't make it with this trip. My neurologist prefers, I don't travel alone, so I want to thank and acknowledge that I have been escorted by one of America's most decorated Vietnam heroes: retired Colonel Jack Kelly, United States Marine Corps, has escorted me from the West Coast and around town.

Although I just turned 50 this year, I am already on medications for dementia and Alzheimer's. As is all too common for NFL players, the snowball of dementia has started rolling, so please grant me the opportunity to tell this whole story while I'm able. I have a lot to tell. The Committee needs to hear a lot. So, as long as we're here and we have this time together, let's take advantage of it, please. And exhaust me with questions. I am fighting for my life, I'll stay here all day to answer questions.

In addition to my own story, in the last week or two, players who have found my e-mail address have written their own stories. And I haven't counted them. There are 150, 200 letters, probably. I would like to submit this into the official record. Instead of a form

letter, where, you know, faceless signatures are on it, each story here tells their own story of their disability and their journey through the rigged disability board. And each story is different and unique in its own way, but each has the common thread of the fraud and corruption of this disability process.

May I submit this?

Senator DORGAN. Without objection, we will include it—

Mr. BOYD. OK.

Senator DORGAN.—in the permanent record, Mr. Boyd.

Mr. BOYD. Also, I wrote the Boyd Plan, which is attached to my written testimony, and this was in answer to Chairwoman Sanchez's written follow up question, but it's the only—to date—comprehensive solution to this. So, I'm here to complain, but there is also a solution to the process of the plan. So, I would like—just to let you know, I can answer questions not only anecdotally about myself, but about these other things.

Now I got lost.

There are—they keep changing the number of former players, but, you know, there are approximately 8,000 former players in this most violent sport since the gladiators. We read, Sunday, only four qualify for concussion disability. They claim 317 disability recipients, which is a ridiculous number, to begin with, but their 2006 tax filings show only 121 of the 8,000 former players are receiving any disability payments.

The most disgusting number is this. They're taking \$3.1 million out of our own pension fund to pay Doug Ell and Groom law firm to fight us, with our own money, and to alter and change the plan, and turn it into a jungle of red tape. By contrast, baseball is paying their attorneys \$170,000 to do the same job.

Now, I love football. Everybody in this room loves football. I am aware that I'm putting a damper on this party. Everyone loves football. They play Fantasy Football. They don't want to hear about this ugly side, about all the carnage. It's like hearing Santa Claus beat up the reindeer. When a horse gets crippled, like Barbaro, you'd think President Lincoln got shot again. When decades of NFL players are crippled and are denied benefits and left destitute by a rigged system, we are shoved into the shadow so the party can continue.

I am depending on your questioning to allow for details, but here is the story, in short.

It was not until 1999 that doctors correctly diagnosed my problems as being connected with concussions. Once they did that, I was sent for a 2-day neurological report—brain scans show, clear as day—it's on the brain scan, there is brain damage. It's on the picture. It's important, because when they shopped and got to the third doctor who denied me—in his report, he admits he never looked at any brain scan.

Well, hearing this, friend and baseball agent Barry Axelrod helped me file my claim. When I called the NFL to alert them that I was filing my claim, I was told not to bother, and their quote was, "The owners would never open that can of worms by approving a claim for head injury." The liability is so great, it's like tobacco companies fighting against the link between smoking and cancer, it's like automakers, when they have faulty designs, trying to deny

any liability. This is a \$7 billion to \$8 billion industry. I'm just a guy who has been, off and on, homeless, and am fighting, you know, on the computer in my bedroom. But that's—this is the truth of the situation.

So, you have the statement saying they will never open this can of worms. Shortly after that, my Viking medical files disappeared. Out of the blue, you know, it has to be, the NFL destroyed these files to remove the pesky contemporaneous notes that would prove my claim instantly, and then to allow the Path & Groom Law's experts at manipulating ERISA.

I was sent to a doctor picked by the NFL, as expected. This doctor was picked off a preapproved list of physicians. I was living in San Diego at the time, single father with a young son. This neurologist enthusiastically supported my claim, to the point of—the NFL only asked him to examine me 1 day; he voluntarily brought me back a second day, because, at the end of the first day, he said, "I suspect you have vertigo as a result of these concussions, and I need another full day to confirm that." His tests confirmed, I have vertigo from NFL concussions. This report was sent to the NFL Disability Board. NFL Disability Board does not care. The NFL Disability Board ignores the basic tenet of ERISA. They only look for reasons to deny a claim, they never look for reasons to approve a claim.

Importantly—after they ignored him, they sent me to a second doctor; this time, a psychiatrist—first one was a neurologist. And the second—the psychiatrist was even more enthusiastically in support of my claim. He sees NFL players often, and he says mine was the most profound that he had seen. And then—most importantly, these first two NFL doctors—there is a mandatory NFL form that the NFL asked these doctors to fill out. The reason for this form is to remove any doubt as to cause of—causation, make sure there are no claims of ambivalence or "equivalitization," if I said that right. The first two doctors checked the boxes—you know, it asked them if I was fully disabled, permanently disabled, yes; part of the body: brain. Question is, on both of these—I'll just hold up one—Is the disability a result of injury? Yes. Is the injury resulting from football-related activity? Yes. Both NFL—remember, they're NFL doctors—checked these claims, sent them to the Disability Board. The Disability Board doesn't want to hear it, because it's in support of a player.

Now, again, this form proves causation and removes doubt about equivocating. The third doctor, who had denied my claim, has yet, to this day, to fill out this questionnaire. His name is Dr. Barry Gordon, from Johns Hopkins. This third doctor never says, in his report what they used to deny me, that—it's not found in his report that he says—even says I am not disabled by the NFL. He does make a ridiculous statement that says, "Concussions could not cause headaches." And anybody who believes that, raise your hand. "Concussions don't cause depression, dizziness, and fatigue," my four symptoms he admits I have, says they are impossible to link to concussions.

To this day, despite what you're told in the misleading NFL white papers, we still have no idea what Dr. Gordon's answer is to

the question, whether my disability is football-related. But that I was close enough for them to vote unanimously to deny my claim.

Now, again, I was a single dad, often homeless. I was kept alive by charity. To the disgrace of the National Football League, it was Major League Baseball who kept me alive. Through Barry Axelrod, baseball players Mark Grace, Rick Sutcliffe, Jeff Bagwell, along with UCLA alums, actor Mark Harmon, Bill Walton, and others, formed a charity to move my son out of a campground or out of the cheap motel we were living in, into an apartment near my son's school. And I need to thank the San Diego Native American Health Clinic, of which I don't qualify, but they provided emergency medical and dental care, just out of pity.

So, after a 9-month delay, in which I was still reliant on charity, I was forced to leave my young son in San Diego and travel to Baltimore to see Dr. Barry Gordon. We fought this. There are plenty of doctors in Southern California—Doug Ell said, "You see Dr. Gordon—only Dr. Gordon, or you're denied." So, I had no choice but to go.

Importantly, those first two doctors were selected off that preapproved list, Dr. Gordon was handpicked by Doug Ell of Groom Law.

Since I had already seen a neurologist, they can't just send me to another neurologist and—say they weren't happy with the first neurologist's report, they needed to have another excuse to go. So, I was told I was being flown coast to coast to take a complex, sophisticated neuropsychological exam. And, before we get into that plan, I want to—it's important for you to know that, after these first two doctor reports, the wording of the plan, the hangup for Mr. Ell, was—the plan says that I am to be awarded full disability if my disability is "caused by, or even relates to, a head injury." No percentage of causation, just if it relates to a head injury. So, again, incredibly, Dr. Gordon admits, in his report, he never bothered to look at existing brain scans, never ordered his own. He ruled on a body part he never looked at. As they teach in law school, "Don't ask, if you don't want the answer."

And now, this neuropsychological test, that was all important to deciding my case, that they forced me to fly coast to coast, was not given by Dr. Gordon, as they had been telling me the whole time. This story gets more ridiculous as we go along, so hang with me. I show up in Baltimore, and this neurological test, which takes years to learn how to administer—is supposed to be only given by a Ph.D., especially if it's a case with legal ramifications, and it takes years to understand the nuance—this is—it's not just reading what was checked, you know, on the paper, you've got to understand the nuances of the person taking the test. It's supposed to be given by a neuropsychologist. They didn't bother hiring a neuropsychologist. It was a young linguistics student named Laura Atella, who kept telling me, over and over, as a running joke, she had never seen the test til the day before. She took it home the night before, and practiced on her boyfriend. This was the test they flew me coast to coast, this was the test that was going to decide the fate of me and my son. They don't hire a neuropsychologist, they pull a linguistics student, with no medical training, off the street, she gives me the test.

Her test was paired with Dr. Gordon's report. And Dr. Gordon's report, again, says, "concussions could not cause headaches." And, again, I'm asking anybody to raise their hand who agrees with that. My—now, this claim that, for years, while all the reports were in my favor, stretched for years, once they got this report I was denied, by the end of the week. It only took days.

Now, after my Ninth Circuit case—too late for my case—I found a 1990 medical journal, fully documented by our same Dr. Barry Gordon, who said all of my symptoms—he admitted my symptoms had expression—dizziness, fatigue—when paid by the NFL, said, "You can't link those symptoms to concussions." Here's an article, called "Postconcussion Syndrome," written by Dr. Barry Gordon at Johns Hopkins. The very first paragraph says, "Overall, headache, fatigue, and dizziness are the most common symptoms." And then, to make it easier, on his—page one, he creates a chart, Table 1. Title of the chart is, "Symptoms of Postconcussional Syndrome." All the symptoms—all my symptoms are on this chart, the same symptoms, when paid by Doug Ell, he wrote, "you can't link to concussions." This is his own medical independent research for review by other neurologists by his own peers.

So, this process took years. And, to this day, my supposed advocates have never returned a call or e-mail. That's why so many veterans are so angry. Mr. Upshaw's in the paper, saying, "Why are they mad at me? Why are they mad at Tom Condon?" This is why Lanny Davis is brought into the process.

During these years, they kept getting it wrong. You know, we get 90 days between when we can get a report. I tried to try to call Gene Upshaw or Tom Condon or members of the Disability Board and say, "Hey, it's wrong. Fix it before the next meeting." They don't answer a call. To this day, they have never answered a call. They're not—they are our trusted advocates. We don't get to pick them. They're supposed to stand up and defend us. They don't return our calls. They are like dirty cops, sitting idly by in these meetings, as doctor-shopping and schemes for false denials are cooked up and executed right in front of them.

We wouldn't be here, we wouldn't have a need for this hearing today, if they would just stand up and do their job and advocate. We wouldn't be here today if not for the willing collusion of all sides—the Commissioner—the previous Commissioner, at least—Mr. Upshaw, who are—both attend the meeting. There are three owners and three people appointed by Mr. Upshaw who are the six who actually vote. They all have to—

Senator DORGAN. Mr. Boyd, I'm going to have to ask you to summarize. I have—

Mr. BOYD. OK. I know I got—that's why I say—

Senator DORGAN. But we have—

Mr. BOYD. In review, I can speak for thousands of players, I can speak about solutions. I suffer both from the rigged system and the extra issue of concussions. To review—I was told they would never open a can of worms. My medical files disappeared. I was flown cross-country for a sophisticated neuropsychological exam that was given by a young linguistics student. The doctor who denied me didn't bother to look at the brain scans. He wrote "concussions could not cause headaches," but his independent medical research

is totally contradictory to what he wrote when paid by the NFL. This is fraud, corruption, collusion. It's rampant in the NFL. I have over 150 letters from—saying the same story.

Thank you. Please exhaust me with questions. And—sorry to go on so long.

[The prepared statement of Mr. Boyd follows:]

PREPARED STATEMENT OF BRENT BOYD, FORMER NFL PLAYER, MINNESOTA VIKINGS

Dear Members of the Senate Committee on Commerce:

I am Brent Boyd, disabled former National Football League player. I am here for double duty . . . to explain to you the corrupt NFL Disability process in general, and to also address the more controversial issue of concussions. The NFL would rather you not look into the topic of head injuries, their liability is huge.

I want to thank you for inviting me to testify, I have an incredible but true story that is guaranteed to open your eyes in anger. I thank you for your interest in this issue on behalf of thousands of hurting former players, I tip my hat to your courage on taking on this \$7–8 \$BILLION sports league. While they have owned the legal process, today is our time for justice.

I am 50 years old, a native of Southern California and currently reside in Reno, NV. My wife Gina, a U.S. Postal mechanic, and son Anders, a firefighter in training, could not accompany me today. My neurologist prefers I don't travel alone, and I am honored to be escorted cross-country by one of America's highly decorated Marines from Vietnam, Retired Colonel John "Jack" Kelly, USMC.

For your convenience, and edification, I have broken up my testimony into 3 parts. One, my written testimony from the June 26th House hearing, for which I was also a witness. This is invaluable to walk you through the NFL disability process and makes clear as day the false disability claim denials and doctor shopping. This testimony spells out clearly what happened in my case, and I pray you ask plenty of questions because 5 minutes is not near enough time to explain the crime committed against me.

Also, you will see how fiercely the NFL is fighting to avoid full liability for our concussions. Another issue is the generations who served as guinea pigs for the horrible Astroturf playing surfaces. We literally played on concrete, and many concussions did not involve hitting another player but just the ground, and it ruined knees and bodies as well as minds.

The second section, entitled "Delay, Deny, and Hope We Die" (after the NFL's famous delay tactics hoping for the OSHA life expectancy of 52 years or the destitution and depression to force suicides) describes the problem in a more general sense, with facts and figures that will outrage you. This is a presentation first written for Senator Harry Reid's staff on August 20, 2007.

Only 4 players in the history of the NFL qualify for disability due to concussions. Only 121 TOTAL are receiving any benefits for any reason, according to their 2006 tax return. \$3.1 million per year spent on legal fees out of our own retirement fund solely to alter the plan and fight us in court . . . baseball spends approx. \$170,000 by contrast. This section also tells you why not to be tricked by the boasts that we lost in court . . . once the process has been corrupted in the early stages, all courts are hogtied by "full discretion" wording, courts do not rule on medical evidence. For the NFL to claim we had a fair day in court is disingenuous.

But I am not here only to complain. . . . I have written the only comprehensive solution to this process, "The Boyd Plan", the final section. This is a response to chair Linda Sanchez' written follow up question after last June's House hearings. The Boyd Plan is a simple solution to solving the "Process" players must go through to receive a claim, how to streamline, make transparent, add actual medical professionals to interpret stacks of doctor's reports instead of the plan's attorneys. The Boyd Plan at worst is a starting point for debating the answers to how to fix the "process" side of the problem.

The current process is so corrupted, so rigged against disabled players, and is done in medieval secrecy. Doctor shopping is flagrant and in the open, the NFL, with their absolute power, are like war criminals in that they once had total power and never dreamed they would be caught, exposed, and held accountable for so many unforgivable offenses. That includes needless homelessness and suicides. Doug Ell and Groom Law can manipulate the legal process, but they can't fool the distinguished members of this Commerce committee.

I am fighting for my life here today, for benefits for my family—in full and fully retroactive—we do not expect half-measures or partial settlements. There are count-

less proud men who are destitute, homeless, on the brink of suicide from the pain and financial shame.

Lastly, it is important for all of you to know that I received over a hundred e-mails in the last 2 weeks, each from a different player with a different injury and a different story. But each has a common thread, the thread of a rigged system, of doctor shopping, of a union that doesn't care.

Because I have received so many letters, which will be made part of the record, and the fact I authored the "Boyd Plan", I ask you to exhaust me with questions. Not just anecdotal regarding my own experience, but perhaps on the general nature of the widespread problem for which I can speak with confidence. And because "the Boyd Plan" offers solutions, I ask to be also included in questions and answers regarding what to do next.

Please allow me to help you understand this NFL disability issue and how to fix it.

Respectfully,

BRENT BOYD

ATTACHMENT 1

TESTIMONY OF BRENT BOYD, DISABLED FORMER NFL PLAYER TO THE SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW OF THE U.S. HOUSE OF REPRESENTATIVES' COMMITTEE ON THE JUDICIARY

Hearing on the National Football League's System for Compensating Retired Players: An Uneven Playing Field?

June 26, 2007

Madam Chairwoman, Ranking Member Cannon, Members of the Committee:

My name is Brent Boyd. I played for the Minnesota Vikings from 1980-86. I am a native Southern Californian, was raised in La Habra, CA, graduated WITH HONORS from UCLA and am a proud resident of Reno, NV since 2002. I am here today with my wife Gina, who is a mechanic for the U.S. Postal Service. My 18 year old son Anders couldn't come, he is home fighting wildfires for the BLM. I am on Social Security disability due to my post concussion injuries from the NFL, but receive only the minimum "non-football related" disability benefits from the NFL.

First of all, thank you for having the courage to hold these hearings. It's long overdue and I am sure what you hear today will lead to immediate further hearings and big changes demanded by Congress of the NFL leadership. It's high time to expose the corruption of the NFL Disability Board, especially with Groom Law Group's absolute power and members like Tom Condon, whose unforgivable co-chairmanship is responsible for all this needless suffering that lead to you calling this hearing.

I would also like to thank Jennifer Smith and the Gridiron Greats for making my travel here today possible. We could never have afforded to be here and I am grateful for their assistance.

I am here today because I have a remarkable but true story about my claim denial, doctor shopping and fraud. And betrayal by the League I love. My case also involves the subject of concussions. Just like the tobacco companies fought like hell to deny any link between smoking and cancer, the NFL is desperately fighting to avoid any liability for all the carnage left behind by these NFL concussions.

Joe Montana was recently asked about my NFL concussions disability claims denial by Mike Sullivan of San Diego's *North County Times*,

"Once they say there is an issue, then they have to fix it," Montana said. "As long as they never admit that there is one, then they never have to fix it.

"They're never going to admit it because then they have to go about and try to correct it."

I am here to illustrate for you how the NFL disability process is corrupted, how Tom Condon, Gene Upshaw, the NFL, and Doug Ell of Groom Law orchestrate these fraudulent decisions, and I am sure if I can walk you thru my experience you will get a feel for the travesty that has befallen countless other disabled players.

Before I get to the details of my case, I would be remiss if I didn't point out to you that another loser when we are denied benefits are the hard working American taxpayers. These 32 NFL billionaire team owners hire their "dream team" of attorneys to get them out of paying their legal obligation. So we are then cast upon the taxpayers, thru Social Security and Medicare, and our communities through local charities and churches. The same Taxpayers who are already paying for the stadiums they can't afford to go watch a game in, are the poor people stuck with the bill every time the NFL's money buys them a disability denial in court.

Plus, our court cases set legal precedents that make it harder for the average truck driver, saleswoman, office worker, mechanics and so on to ever collect a disability claim. The NFL Disability Board isn't just sticking it to football players, they are sticking it to the American workers and taxpayers as well.

My concussions started in August 1980 . . . that was one of only God knows how many concussions I suffered. This one sticks out in my memory because I temporarily lost sight in my right eye and became very frightened. We didn't even count concussions or keep track of them back then, a concussion was not considered a serious injury, as opposed to an injury to a weight bearing bone. A concussion was a "nuisance" injury, like getting hit in the funny bone. It's a pain in the butt, hurts like heck for a while. But like a hit to the funny bone the symptoms faded away soon and you never considered it again once it subsided . . . you surely didn't think getting "dinged" was going to affect you the rest of your life, and in fact in my case, destroy my life.

A little background info about myself first,

I was an "A" student growing up in La Habra, Ca.

A month prior to going to my first NFL training camp, I graduated WITH HONORS from UCLA, June 1980. That took a tremendous amount of drive and determination. I was drafted in the third round to Minnesota, a feat which also requires a great deal of effort and self sacrifice. My whole life up to that point was of hard work, dedication, and an ability to set goals and successfully reach them.

As a rookie, we had only 9 days between the start of training camp and our first exhibition game. We didn't have all the off-season practices they have today. In those 9 days as a rookie I was able to learn and play all five offensive line positions, something I'm told hasn't happened often if at all in the NFL.

The end of that month was when that first concussion occurred in a preseason game in Miami, that's the concussion I remember most because of going temporarily blind, but there were so many more in the 7 years that I played.

When I complained to the medical staff about headaches, I was told it was from the anti-inflammatory medications I was taking for my knees. Mainly a drug called Indocin, which was notorious for giving headaches but worked miracles on injured knees. I kept asking for a brain scan because of my headaches. . . . I think I was more afraid I had a brain tumor, because I was never told my concussions would have these long lasting effects. I was always denied the brain scan.

Upon being released mid-season 1986, I was given an "exit exam". I was released because of poor performance and lackadaisical effort. I had been complaining of a sore leg all season, and was told it was just shin splints. On my exit exam I asked for both a leg x-ray and a brain scan.

Again, I was denied a brain scan for headaches, but was granted the x-ray. The leg x-ray showed I had been playing 8 weeks on a broken leg. This was never announced to the media or my coaches or teammates, they were left to think I was dogging it, physically with my leg and mentally with my inability to retain plays and keep the energy and focus required to play in the NFL.

I continued to take Indocin until the mid to late 1990s, dealing with the headaches but still believing it was from Indocin. When I stopped taking Indocin, my headaches never subsided.

I tore my knee again around 1996 while playing with my son at Disneyland, and had more surgery. A friend told me about the NFL disability plan and said if anyone qualified, I might because of my knee. In 1996 or 1997, I called the union, Miki Yaras-Davis helped me write a letter, and they sent me to a doctor, who said I didn't qualify. I left it at that, I thought this was some informal process between ex-players and NFLPA. I don't believe I even submitted my own doctor's reports, it was not presented to me as any legal thing, I was never told to get an attorney or about this behemoth called ERISA that a few years later would rule my life. I simply asked if my knee qualified, they said no, and that was that. I didn't even know I was allowed to appeal.

After a life of hard-driven success, suddenly the 1980s and 1990s were nothing but one failure after another for me. I couldn't concentrate, I always felt sick—dizzy, a little nauseous, and always very tired. I had a splitting headache that never went away, but was eased through self medication. In the 1980s, before the news my son was conceived, I was like many 20-somethings and used cocaine, in my case I was desperate for the energy to make up for my fatigue. (my cocaine use was stopped for good in 1987 with news of a son on his way.)

And the alcohol numbs my headaches and physical pains.

I spent years searching for a medical answer, doctors could find nothing wrong below the neck. They were also trying to treat depression, which they came to believe was the cause of my fatigue . . . over the years I took every anti-depressant in every dosage and in every combination with other drugs.

I stopped drinking for many years with no positive change in my symptoms.

From mid to late 1990s I was checked for every form of cancer, and had every organ x-rayed, MRI'd and ultrasounded. I had tubes and cameras stuck up both ends.

After years of hoping to find relief but not getting any better, 1 day one of my psychiatrists told me a probable reason NONE of these drugs had any effect could be if I had an organic brain injury. He then asked if I ever had a concussion? That was in 1999, and that was the first time any doctor had ever asked me about concussions.

I was sent to neurologists and had brain scans and SPECT scans and all kinds of testing done. The scans showed the exact location of the brain injury, and they explained how the areas damaged correlated to the symptoms I was having, both the temporary loss of sight in 1980 and the lingering symptoms of depression, headaches, fatigue, dizziness. They said the concussions also gave me "trauma-induced A.D.D."

I was relieved to find a medical cause after all those years. For over 15 years I had been stung by words like "lazy", "crazy", "alcoholic", "failure", and all this was from my loved ones! My employers were even harder on me. Worst of all, I came to believe it myself. I thought my failures were from a character flaw.

I lost my home, my car, my first marriage, and job after job after job. I was then a single father, and we were scrambling for a roof over our heads. (I divorced in 1992, and was a single Dad until marrying Gina in 2004) We lived in some nice places sometimes, but we were homeless at others. We lived in cheap motels and even had to pitch a tent in a campground more than once.

My son went without getting his needs met, my son Anders is the REAL victim of this crime. Even in the years after we filed our disability claim, and the NFL knew we were in dire straits, my son lost teeth because of lack of basic dental care, he had a significant vision problem that needed surgery in kindergarten and glasses thereafter. He went to school every day with old beat up scratched glasses that no man could see thru. He has learning disorders that I could not afford tutoring help for, and he was always grading poorly in school.

But this kid has tenacity, he still showed up to school everyday with a smile, did homework without argument, got straight "O's" for Outstanding citizenship but D's and F's for the class grade. He never quit, never gave up, never gave in and took up drugs or any of the temptations of this era . . . and he is now a fine young man, a high school grad in 2006 and a fireman in training. He is spending this summer fighting wildfires for the BLM. My son Anders has suffered so greatly, so much of it purposefully at the hands of Tom Condon and the NFL, and I love and admire him for his perseverance.

When I think of what the corrupt NFL Disability Board needlessly put my child through is when I get my angriest!

We did get help from the NFL Players Assistance Trust, but it was \$5,000 that could not be given directly to me. It helped pay past doctor bills, yes, but it did not alleviate the stress and fear of where would we sleep tomorrow and how was I going to feed and clothe my son.

Now to what I'm here to describe, the fraud and corruption of the NFL Disability process.

Once my team of treating doctors concluded clearly that I had suffered organic brain damage from NFL concussions, and that I was total and permanently disabled, we filed my claim with the NFL. I was helped by a good friend and fellow UCLA alum Barry Axelrod. Barry is both an attorney and a prominent sports agent, but he was neither to me. He was just a friend helping a friend, for free. We submitted piles of doctor's reports and brain scans.

Upon filing my claim, I was told by Miki Yaras-Davis of the NFLPA not to bother filing, her exact words were "the owners will never open that can of worms" by granting a claim for concussions.

Shortly after that, my Vikings medical files mysteriously "disappeared". The courts were never made aware of this. Medical files are sacred to a player, we were not ever allowed in the same room with them. We had to trust that after our career the NFL would store the files and present them in the event of a claim.

In essence, they destroyed the evidence that would have easily proven my claim. The 9th Circuit would mistakenly hold that against ME, not them, and said without any contemporaneous notes the Disability Board could send me from one doctor to another.

There were contemporaneous notes, I believe Groom Law destroyed them to clear their path for manipulation of the process.

Now starts the process of seeing an NFL doctor to see if he agrees or disagrees with my claim. I am living in San Diego, they send me to an NFL chosen neurolo-

gist in San Diego, Dr. J Sterling Ford. Dr Ford not only totally agrees with my doctor's and approves my claim, this NFL doctor voluntarily asks me to come back a second day to test for vertigo, which he suspected I was suffering as a result of the concussions. His testing confirmed his suspicions; according to the NFL's own neurologist I do have vertigo caused by head injury.

So at this point we have several of my treating physicians and the NFL's own doctor all agreeing, we feel that will mean automatic approval.

Barry Axelrod organizes a group of his Major League Baseball clients and friends and other UCLA alumni to create a charity to move my son and I out of the cheap motel we were living in and into an apartment near his school. They believe, with all of this overwhelming evidence in my favor, it will only be a matter of weeks until the next Board meeting that they will need to support me. There was no way I could be denied my claim! These guys were not doing this for publicity, quite the opposite. The individual identities of this group from 2000–2002 was not known to me, other than Barry Axelrod, until last February's ESPN report.

The group included the great baseball players Mark Grace, Rick Sutcliffe, Jeff Bagwell; actor Mark Harmon, NBA legend Bill Walton and his ex-NFL player brother Bruce, and many others. Without the help of these guys, I would not have survived to be here today. Along with Pastor Don Seltzer and the folks at North Coast Presbyterian Church in Encinitas, CA. They cared about my son and me . . . while at the exact same time the NFL didn't give a damn if we died, in fact they hoped I would put a bullet in my head and solve their problem, and were busy scheming a way to deny my benefits.

The NFL decided not to listen to their own first doctor, because his opinion was in favor of a player, so the NFL selects a second doctor of their own choosing, this time a psychiatrist in Long Beach, CA. His name is very long, Dr. Branko Radisavljevic, but he says to call him Dr. Branko.

Dr. Branko enthusiastically supports my claim, and joins every other doctor to this point. Every doctor had the same opinion, it was all one voice that included my own doctors and now TWO NFL doctors. Unfortunately for Condon and Ells, all these reports were FAVORABLE to a disabled player . . . that's no good. . . .

The Board meets every 90 days, we know there is no way they can delay approving my claim any longer . . . but instead my case is "tabled" at their next meeting, meaning 90 more days of stress. Only the next meeting doesn't bring approval either. That means 6 extra months now of relying on charity to survive.

They DO decide at this point that I AM totally and permanently disabled and begin giving me the \$1,500/mo "non-football" related disability. Despite the glaring fact that every doctor had said it was concussions that caused my suffering. But remember, they don't want to admit it is concussion-related, they "don't want to open that can of worms".

So after an 8-month delay to give them time to buy a doctor, and 8 more months of relying on charity to survive, I am forced to travel from San Diego to Baltimore to see Barry Gordon at Johns Hopkins. The reason given is they wanted me to take a sophisticated neuropsychological exam. I can take this test at any neuropsychologist in San Diego, as Social Security sent me to when they approved my disability claim for post-concussion . . . but they insisted I see Gordon and ONLY Gordon. If I refuse or hold out for another doctor, I am told, I am denied.

Gordon is not on the list of pre-approved "neutral" physicians normally used by the Board, he is hand picked by Doug Ells of Groom Law. Gordon is also walking distance to NFL Benefits headquarters in Baltimore. Axelrod and I smell a rat, but we have no choice, if I don't go I am denied anyway, they will not agree to a doctor in Southern California.

So, I arrange for care for my son, they fly me coast to coast, pay for taxis, meals, hotels, even replaced clothes when my luggage was lost.

They went to ALL that expense, but they didn't go to the most important expense, HIRING A NEUROPSYCHOLOGIST to give me the test. This test takes years to understand the nuances and complexities, and, especially in cases with legal ramifications, should only be given by someone with a Ph.D., . . . a neuropsychologist!

I thought Gordon was going to be giving me the test himself, that's why all the bother to fly across country. But I wind up seeing him for only about 30 minutes. He bangs my knee with a hammer, tickles the bottom of my feet, and conducts tests I now am told by neurologists were just for show and his tests only tested the NERVE ENDINGS, not the brain.

Barry Gordon writes in his report that "the records available to me are incomplete in ways that may be relevant for my impressions." He also admits he didn't bother to look at the existing brain scans and ordered none of his own. This is like diagnosing a broken leg without seeing an x-ray—he was deciding my fate by opining on a body part he never bothered to look at!

Instead of hiring a neuropsychologist to give me this neuropsychological test they deem SO important to deciding my case, this neuropsychological test was instead given to me unsupervised by a young grad student in LINGUISTICS, with no medical background. Her name is Lara Atella.

Lara Atella keeps apologizing and laughing, she keeps telling me she had never seen this test until the day before, and she took it home to practice on her boyfriend. I spend 99 percent of my time in Johns Hopkins with Lara, and am sent home wondering why I didn't see much of Dr. Gordon.

Atella's test result was paired with Gordon's ridiculous report stating that my symptoms of headaches, depression, dizziness, and fatigue COULD NOT BE CAUSED BY CONCUSSIONS!

Let me repeat in case you didn't grasp that—concussions COULD NOT cause headaches!

Does anyone REALLY believe that?

This process has been stretched out years when all the doctor's reports were in my favor.

Armed with a report unfavorable to a player, Within DAYS I am immediately denied my claim by a unanimous vote. Upshaw and his appointees, Tom Condon and Jeff Van Note, and Len Teeuws, my advocates in those Board meetings, never said a word of protest . . . at this point they should have been screaming bloody murder, crying out this is a bunch of bull, and insisting this fraud stops right there. You know, advocating! Doing their appointed duty!

None of this could have been possible without the FULL knowledge, cooperation, and participation from all sides on the Board. Commissioner Taglibue, Upshaw, the NFLPA, and especially Tom Condon and Jeff Van Note. And it was all masterfully orchestrated by Doug Ell of Groom Law Group, located at 1701 Pennsylvania Ave across the street from the White House.

What's worse, as my only advocates allowed in Board meetings, Condon and Upshaw and Upshaw's other appointees never once, including to this day, returned my phone calls, letters or e-mails. Or made any effort to understand my case. They simply followed orders from Doug Ell and Groom Law.

They will tell you they found the first two NFL doctor's reports "equivocal." I have spoken with those two NFL doctors since, and they are furious I was denied and furious they were characterized as equivocal. I hope you can subpoena them. These doctors will tell you NO ONE, not even my advocates, had ever called for clarification. The NFL couldn't risk clarifying, they didn't want the truth. It was easier to wait 8 months and fly me cross country than to pick up a phone?

As they teach in law school, don't ask a question if you don't want the answer.

If you read Dr. Gordon's report, you will find a gold mine of equivocalization. The fine tooth comb used by Groom Law to play semantics with doctors who approved my claim is suddenly missing when a report supports denial.

Not only that, but the first two doctors filled out the required NFL questionnaire. This is where they avoid confusion and are asked to check boxes simply yes or no. Both Ford and Branko checked "yes" to the questions "am I disabled from an injury" and "was this injury a result of playing football" Both checked Yes. Period. Case closed.

Despite many demands on record from NFL Benefits Office to Gordon to attach his questionnaire to his invoice or he wouldn't get paid, he never filled that form out. And he was paid. That leaves HIS report incomplete. Gordon never answers the question "is my disability "football-related"!!!

Gordon's report gives possible alternative reasons for my symptoms, which included chronic pain and other football-related causes, so maybe he still could have checked the box "yes" when asked if my disability was football related . . . all he said was it was impossible to link headaches with concussions. We still don't know Gordon's answer to that question!

Wait, you think this is bad enough already? Here's where it gets even better. . . .

The most important and most damning proof of fraud and doctor shopping comes from *Dr. Gordon* himself. After my 9th Circuit case, I found this 1990 medical journal, containing an article by our same Barry Gordon. It's titled "postconcussional syndrome". You only need read the first paragraph to see he is adamant that my symptoms, headache, depression, dizziness, and fatigue are THE MOST COMMON SYMPTOMS of post concussion. He even makes it easier for the reader, he creates a chart, table 1, titled "most common symptoms of post concussion" . . . right there in that list are ALL of my symptoms, the same symptoms, that when paid by the NFL he wrote were impossible to link to concussions.

His article also says he orders a brain scan "in essentially all patients". He didn't go to that bother with me.

If that's not proof of fraud and corruption, than we need to remove the words fraud and corruption from our vocabulary.

The only reason they aren't in jail is that there are some holes in Federal Laws that you in Congress need to fix to help EVERY American worker, mainly the "full discretion" allowed to the Board, and you need to return the "treating physician rule" removed from law by Groom Law Group's secret intervention in Supreme Court "*Nord v. Black & Decker*" (my attorney was on the losing end of that decision).

The NFLPA fiercely tries to claim no responsibility in our claim denials. Here is a quote from Feb. 11, 2007 ESPN article on my case by John Barr and Arty Berko, that accompanied their story on me on ESPN TV's "Outside the Lines," catching Gene Upshaw in flat out lies:

"While nobody from the NFLPA would speak with ESPN about Boyd's case, NFLPA Executive Director Gene Upshaw did address Boyd's allegations at a recent news conference.

"To say that the NFLPA is 'doctor shopping,' we don't have anything to do with it, with the process," Upshaw said.

The facts say otherwise. The retirement board, the ultimate authority on disability cases, is made up of three league and three union representatives. To say the union has nothing to do with the process is simply untrue.

Upshaw went on to say, "If a doctor determines that a player is entitled to a disability and he meets the standards he gets it." But in Boyd's case, two doctors, chosen by the retirement board, determined his disability was football-related and his claim was still rejected.

The NFLPA is quoted recently as saying they were only doing what ERISA demands them to do. In other words, "The devil made them do it!" Nonsense. ERISA demands that they look EQUALLY as hard for evidence to APPROVE a claim as they look for evidence to DENY a claim. That clearly is not happening in the NFL.

The real "devil that made them do it" is in reality Doug Ell and Groom Law, with their scorch and burn, leave no witnesses, win at all cost strategies.

This NFL Disability Board has blinders on and only seeks reasons to DENY.

Courts are hogtied by the "full discretion" wording, and the absence of discovery and depositions in ERISA cases. Only you in Congress, with your oversight of the NFL, and your gifting of anti-trust exemptions, and your power of subpoena under oath, can fix this scam.

ERISA gives the Board "full discretion", which is the opposite of what they are claiming now in public. Instead of LIMITING their options, "full discretion" gives the Board the widest possible range of options possible. The only restrictions on their "discretion" are what their stomachs and conscience had handle.

ERISA does not "force" the Board to ignore evidence supporting players' claims, nor to draw up elaborate doctor shopping schemes to defeat them, as Dave Duerson recently hinted. (Duerson is the newest robot member of the Board)

Congress gives the Board "full discretion" through ERISA, which gives the Board absolute power. AND WE ALL KNOW THAT ABSOLUTE POWER CORRUPTS!. Please eliminate the "full discretion" wording in ERISA.

A 1994 OSHA study said life expectancy for NFL players is 55 years, 52 for linemen . . . that is why Condon and the Board's tactics are to "delay, deny, and hope we die. . ."

I beg this Committee to hold further hearings, subpoena Tom Condon, Gene Upshaw, Doug Ell, Paul Tagliubue, and Barry Gordon. Clean house in the NFL Disability Board, punish Groom Law and Tom Condon and Gene Upshaw for their conflicts of interests and selfish greedy actions.

And most of all, someone FINALLY hold the NFL/NFLPA accountable for all the needless suffering that their blatant doctor shopping and fraudulent claims denials have caused countless NFL retired players.

I also welcome questions regarding "88 Plan".

I have e-mailed several attachments to my testimony and ask that they all be officially included in the record.

Thank You,

BRENT BOYD

ATTACHMENT 2

"THE BOYD PLAN"

Brief Outline:

1. Fire Groom Law—there can and will be no trust until Groom is replaced. Groom Law is a symbol of years of too many unfair decisions, questionable tactics, doctor shopping, needless suffering, needless homelessness, needless deaths, needless suicides—Groom Law must go before any healing begins!

2. Eliminate the "full discretion" wording or implication in our plan; investigate etiology of "full discretion" into our plan; full discretion equals absolute power; absolute power corrupts—and predictably we have seen that abuse as the outcome of allowing full discretion to NFL disability board. We need checks and balances.

3. Define the plan's definition of "disability" in terms set in stone and easily understood by all, in definitive terms that will be easily interpreted the same way by players, the board and every court—not open to Groom's manipulation (full discretion—and Groom—will be gone so that will help) and remake this new definition of disability so that it is not so overwhelmingly prohibitive to approval of claim—don't continue with Groom's ever changing and impossible to meet definition.

Current unwritten but strictly adhered to definitions of disability include the infamous "can he sell pencils on the street corner" quote or "wash windshields" criteria, which are obscene and must be eliminated along with all those who support these draconian standards. The men who built this multi-billion dollar league deserve dignity if not wealth.

And eliminate the "15 years after playing" limit for full benefits, most disabilities don't degenerate into full disabilities until long after that period. It is when guys enter their 50s and beyond that these disabilities become debilitating and they can't live on the lesser benefit amount . . . and remember, OSHA says NFL linemen life expectancy is 52 years.

4. Ensure transparency—shine the light! Print the minutes of board meetings, record all debates, report each vote—allow Congressional representatives to sit in on any meeting at will. The NFL disability board shall no longer act as a secret medieval organization.

5. Treating physician rule—give more weight to our own doctors who treat us regularly for years than is given to opposing doctors who see us for 30 minutes. Reimburse the plan for all fees paid to Groom Law when they covertly helped remove treating physician rule from ERISA—by joining non-football related court cases (*e.g.*, *Nord v. Black & Decker* in Supreme Court) those fees paid to Groom were taken out of our own pension funds—using our own money to take our own rights away, all without our knowledge!

6. If NFL's own chosen physicians agree with a player's claim, so should the disability board.

Doctor shopping carries "death penalty"—similar to NCAA football programs in violation of certain rules—or gambling in NFL—

If NFL's own chosen doctor agrees with player's claims, no more ignoring that doctor and sending players to endless doctors until finally one supports denial. If board claims a doctor to be "equivocal," simply pick up phone and clarify instead of delaying for months and doctor shopping.

Any knowledge of or connection with doctor-shopping or fraudulently denying a player his rightful benefits will result in no further association with NFL in any capacity, ever—this must be considered a sacred intolerable offense!

7. Let retired players select our own 3 advocates to the board, not selected by NFLPA executive director. Replace all existing board members. Active players' agents and actual or *de facto* employees of NFL are not acceptable as players reps board members, they have blatant conflict of interest.

Destroy the longstanding mentality of board that defines "fiduciary duties" to mean only to protect the "pot of money". Players rights and disabled players receiving their rightful benefits have equal or greater weight to the fiduciaries as does the "pot of money".

The board must look equally as hard for reasons to approve a claim as they look for reason to deny a claim. "Fiduciary duties" do not mean solely to automatically reject a player's claim and save the plan's money. Give players' rights equal attention, equal rights, and even more protection than the "pot of money."

8. Allow players and/or representative to attend board meetings—that's not currently allowed (at least not at time of my claim)—especially allow them to attend the final appeals meeting.

Stop holding board meetings at 5-star resorts, meet at more practical locations so players can afford to attend; also it will stop wasting our precious plan money! (Aren't they claiming we are short on cash?)

9. Add 3 medical professionals to board, not just to explain complex medical issues to the otherwise all-laymen board—but give these doctors votes! This will eliminate the 3 to 3 votes that lead to doctor shopping. Pay these doctors out of a blind trust favoring neither side, rotate these doctors often to prevent the buying of doctors by the league that has been suspected in the past.

The doctors on the board shall have no information as to the financial health of the pension fund, and shall leave the room when any issues other than medical are discussed.

10. Write the rules. Once and for all. This sounds simple but has not happened successfully. Currently Groom Law unilaterally makes up or changes rules on the fly to suit their needs, at the expense of players' rights. Right now rules and regulations are a moving target.

11. *No more lengthy, strategic, and painful delays.* Keep the claims process and voting a fluid process.

Hold meetings monthly instead of every 90 days—more often using modern technology. Send player to a doctor immediately after he files a claim. Send all doctor's reports immediately to player/attorney to allow speedy response. Use today's technology to keep the process moving.

12. The current system of two "gatekeepers" was not in place at time of my claim, but like most elements of Groom Law's changes to our plan, all without valid plan purposes, this one doesn't pass the "smell test" either. A one to one tie means denial? This is obviously Doug Ell's ideal vision of a plan, the player has no chance from the get-go.

13. This one is for Congress only—remove "full discretion" and "deference" from not only the NFL plan but from ERISA; sit in on NFL disability board meetings at your pleasure;

Set goals and expectations for the disability board to meet annually in order to keep anti-trust and other Congressional gifts, without which they could not exist.

Do not allow certain disabilities—*especially concussions!*—to be constantly denied as disability claims. Congress must step in to permanently protect the brain damaged players.

For the sake of all American workers everywhere, rework ERISA! ERISA is a mess. ERISA is a disaster for American workers, a gold mine for attorneys.

Keep Congressional oversight and pressure on the NFL disability board . . . players desperately depend on your protection!

Senator DORGAN. Mr. Boyd, thank you very much. Let me thank all the members of this panel.

We have two panels today, with ten witnesses. I want to have the next panel begin testifying at a quarter after 11. That's 10 minutes from now. And I'm sorry we don't have unlimited time, but we will begin a series of votes on the floor of the Senate at 12:15. So, we're—let me make a couple of comments.

First of all, the panel that we have heard from first is a panel that has very strong feelings about this issue. I think it—you contribute to a body of knowledge here, and information, that describes a problem. You know, I mean—and we're going to have a second panel in which some of that will be reacted to, some of it will be described again.

But I've written a list of questions. I—what I'm going to want to do is submit some questions to you in writing, if you're willing to respond to them.

You raise a lot of important things. You know, Mr. Johnston, just very quickly, the concussion issues—seems to me that's probably a very significant issue in this sport, probably not very well described, or not very well discussed in the early years of the sport. Do you think it's been addressed now for current players? It is obviously safer, they have more procedures. Is it addressed sufficiently for current players?

Mr. JOHNSTON. More so now than it was in the past. There are improvements in equipment. There are a lot of different things that have contributed to that. But the protocol for getting a player back onto the field, he has to pass a series of tests. They are forced sometimes, with the severity of the concussion, to sit out the game the following week. So, they are making some strides there. But, back in the day, back when Mr. Boyd played, it was a badge of honor to go out on the field. We joked with each other, "The light's on, but nobody's home." "The elevator doesn't go to the top." So, we wore that as a badge of honor back at that time. It's changed, but it's an issue that is going to affect the players from the previous generation, absolutely.

Senator DORGAN. One of the overlying questions here is that Commissioner Goodell represents the owners and Mr. Upshaw represents current players for the Players Association. The question is—and I will ask others about this in the next panel, as well—the implication, I guess, is that the retired players don't have an advocate, or are not represented. And I think Mr. Upshaw will say, "Well, we have bargained and made some substantial changes to try to improve things." But we will ask some questions about that.

I've been joined by several colleagues. I'd like very much to call the second panel up at 11:15. We, unfortunately, don't have unlimited time this morning, because of the votes that will occur in the Senate.

Senator Klobuchar?

**STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you, Mr. Chairman. Thank you for putting this together.

I wanted to welcome Mr. Boyd, who's a former Viking. And Mr. Boyd knows well that my father used to cover the Vikings and wrote several books including "True Hearts and Purple Heads," and "Will the Vikings Ever Win the Super Bowl?" and "Will America Accept Love at Halftime," my favorite one.

[Laughter.]

Senator KLOBUCHAR. But I just wanted to thank you for sharing your difficult story today. And I think that all active players will one day be former players, and the average career, of an NFL player is short, and I would hope that active players have a strong interest in the fair treatment of retired players. I appreciated you coming, Mr. Boyd, and sharing your story with me, as well as the other players. I'm sure that everyone can agree that the NFL and the NFL Players Association would do best if they came to an agreement in a fair and an appropriate way about how former players should be treated.

I have one quick question, Mr. Chairman, and that is—of some of the retired players—what were your understandings about your retirement when you were an active player? Did anyone ever explain to you how your retirement plan worked? What advice would you give now to active players about their consideration of their benefits as they go forward?

Mr. BOYD. Real quickly—and they can answer, too—but we understood that it would be physical, orthopaedic risk. And, you

know, I have all that—replaced knee and replaced hip's coming next, and—but they never explained to us was that concussions would have the—would—a mild concussion would—could destroy your life. We thought that we'd have a safety net. NFL players take incredible risks with their health and their life, and we thought at least there would be a safety net. But, incredibly, they're paying millions of dollars—the process is there, the money is there—they're paying millions of dollars to get great attorneys to make sure we don't get those benefits.

Mr. DUERSON. If I understood the question in regards to what the players knew, in terms of benefits and that information, that education process is quite thorough, and the players have a full understanding in regards to the choices they make. And, even for those players who—some years ago, who played—perhaps in the 1960s and 1970s, who took the early retirement benefits, signed documents that they, in fact, yes, understood the penalties associated with taking early retirement, and the ramifications of that. So, from the standpoint of player reps on each team, those meetings, and—as well as seminars that take place—were taking place, certainly, in the 1980s when I played, and they're most certainly taking place now—that education process is quite thorough. But, for individual players, they have to make those decisions themselves.

And also, in regards to the issue of Alzheimer's, my father's 84, and, as I had mentioned earlier, Senator, spent 30 years with General Motors. He also has—he has Alzheimer's and brain damage, but never played a professional sport. So, the challenge, you know, in terms of where the damage comes from, is a fair question, and one that—you know, that has been addressed, and that—and is one that we, in fact, ask.

But I would just say, to Mr. Boyd, that I've never received a phone call from him.

Mr. BOYD. Well, he is new, he wasn't—

Senator KLOBUCHAR. All right.

Mr. BOYD.—there during my process.

Mr. DUERSON. Well, but various names were mentioned, and so—and then I was a trustee at that time, as well, and I can tell you that, for any player who's ever given me a call, I've—

Mr. BOYD. They don't—ask my wife—there are plenty of people—we've got a stack of letters—who had called.

Mr. JOHNSTON. Mr. Duerson's statement that his father has Alzheimer's and he worked for GM at a plant, and that automatically excludes NFL—

Mr. DUERSON. No, I didn't say—

Mr. JOHNSTON. Well, that's the reasoning, that's the—that's the line you're trying to connect.

Mr. DUERSON. No, I'm not, Moose, I—

Mr. JOHNSTON. And—well, but if—just let me finish. Let me finish.

Senator DORGAN. Can we let Mr. Johnston speak, here, please?

Mr. DUERSON. Well—but he's putting words in my mouth.

Mr. JOHNSTON. Well, I'm not—but that's—

Senator DORGAN. One at a time, please.

Mr. JOHNSTON.—the process—that’s how we understand the process to be, that they’re looking for ways to deny claims. We don’t know if it’s a 100 percent certainty that playing in the—the National Football League will cause you to have early onset Alzheimer’s or dementia. We don’t know that 100 percent. But there is definite information that leads us that way. And, you know, trying to—trying to prevent one or two or three people going through this system and receiving benefits, and tightening the purse strings down is turning your back and denying benefits to the other 98 percent, 99 percent of the people who rightfully qualify. That’s the impression that we get, as players, is there is so much concern about opening Pandora’s Box and these funds being depleted, that you’re turning your back on everybody that rightfully deserves this disability payment.

Senator DORGAN. Let me just say, we will not serve the interests of the inquiry of this hearing if we don’t get the second panel up, because we’ve spent nearly an hour on this panel.

I’ll call on Senator McCaskill and then Senator Kerry, and then I want to call the second panel up.

Senator McCaskill?

**STATEMENT OF HON. CLAIRE McCASKILL,
U.S. SENATOR FROM MISSOURI**

Senator McCASKILL. Thank you, Mr. Chairman—I heard you call Conrad Dobler’s name, and I guess he’s not here?

Senator DORGAN. He’s here.

Senator McCASKILL. Oh, hi, Conrad. I used to represent Conrad on some matters as a lawyer in Kansas City. And I certainly was a big fan of your dad’s, Mr. Webster, as a Chiefs season ticket-holder for a number of years.

I really am going to please you, Mr. Chairman, because my questions really are probably more appropriate for the second panel, because what I want to talk about is financial transparency. I want to talk about the fact that the disability fund and pension fund has a billion dollars in assets, and the fact that the retired players don’t have a good sense of exactly how that’s earning money, exactly how it’s being paid out, whether or not it is financially viable, in terms of being more generous, in terms of disability determinations and taking care of the players that have taken care of fans for as long as the game has been in existence. And so, I will withhold my questions, and hopefully I’ll be here by the time it’s time to do that. If not, I’ll make sure they get answered for the record.

But thank you all for being here. And we will do our best to see if we can’t alleviate some of the pain and suffering that is ongoing with retired NFL players.

Mr. BOYD. Thank you.

Senator DORGAN. Senator McCaskill, thank you very much.
Senator Kerry?

**STATEMENT OF HON. JOHN F. KERRY,
U.S. SENATOR FROM MASSACHUSETTS**

Senator KERRY. Mr. Chairman, thank you. I apologize for being late.

Just very quickly, because we do want to hear from the second panel—obviously, America loves this game. It's important to our national fabric. And it's a great game, and people respect those of you who played it, and particularly those retired players who have built what we have today, this extraordinary franchise, something like 67,000 spectators per game across the country. It's the highest-watched domestic sport—professional sport in the Nation. The revenues are extraordinary, \$6 billion annually. And you have this fund of \$1.1 billion. And I think most Americans would look at this today and say, "Wow, what is the Congress doing getting into this, and why do they have to, and what's going on in this relationship?"

It seems to me that a league as wealthy and as successful as the National Football League, built on the contribution of a bunch of gifted athletes, who, two-thirds of them have suffered an injury that required either surgery or an eight-game absence, 50 percent of whom retire because of an injury, 60 percent of whom had had a concussion, a quarter of whom have had multiple concussions—it seems to me the League itself is dropping the ball here, no pun intended, in terms of, just, its relationship with these people.

What do you do in the face of that kind of wealth, that kind of money being made by people who never touch the field except to walk on it, congratulate the guys who played, and people are struggling with the aftereffects in the way that they are? There isn't any physician in the country, or any person who's a weekend athlete, who doesn't understand what happens to the body as it gets older and what happens to you as a consequence of early injuries of any kind.

So, my hope is, the League will get its act together here. That's really what's needed. Better communication, a standardized sort of understanding of the process. And, frankly, a presumption in favor of those who went out on the field and put themselves at risk in the way that they do on a weekly basis.

So, I hope we don't have to do something. And, Mr. Chairman, I'm sure you are—I am prepared, if the League doesn't do that, to introduce—which I would hope we wouldn't ever have to do—legislation to create some kind of appropriate accountability and oversight. I hope that it never comes to that.

Senator DORGAN. Senator Kerry, thank you very much.

Senator Thune, we have just finished with the first panel and are about to call up the second panel. Would you want to be recognized now, or would you like to wait til the—

**STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Mr. Chairman, I'd be happy—I've got an opening statement I'll include for the record. I want to thank you for holding the hearing, and appreciate those who have come today to share their stories and testify.

[The prepared statement of Senator Thune follows:]

PREPARED STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM SOUTH DAKOTA

I would like to thank Senator Dorgan for convening this hearing. I would also like to thank our witnesses for taking time out of their schedules to testify before our committee today.

I grew up watching the Green Bay Packers and it pains me to think, as it does many Americans, that some of our former football heroes are struggling to make ends meet. Some of the stories we have heard today at the hearing as well as those recently highlighted in news and magazine articles are heart-wrenching. It is counter-intuitive to think of strong, well-paid NFL players, leaving the game, and falling into lives of pain, disability, and even poverty.

I hope today's hearing helps shine the light on these issues and helps bring players, management and former players together to find a solution. If we step back and compare the pension and disability plans for NFL players to the plans most Americans have access to, the NFL players are well ahead of the curve. Therefore I hope the opposing sides can work this out on their own.

Senator DORGAN. Thank you very much.

Let me just say, as we release this panel, we will be submitting some questions to you.

Mr. Bain, Mr. Boyd, for example, your testimony—I understand the passion and the emotion. This is not a debate about some idea, this is about your lives. And so, I understand that, and I very much appreciate your willingness—and, Mr. Webster—your willingness to come—Mr. Duerson, thank you for being here, and Mr. Johnston, as well—to come and be a part of this discussion. It's a very important discussion. And so, we will be submitting some questions to you. But many of you have come great distance to present testimony, and we are very grateful for that. Thank you very, very much.

Mr. BOYD. Ms. McCaskill, if I can add one stat that'll be important before you get to the second—and it's only 5 seconds. 1994 OSHA study, life expectancy for NFL players, for total players, is 55 years; for the big linemen like us, is 52 years. And that's—thus, our slogan is, what they're doing “Delay, deny, hope we die.” They have incentive to drag their feet and hope that nature takes its course and solves this problem.

And the second point is, they say, “Well, you—if you work for IBM, you know, when you're 50, they don't take care of you. But if you walk in the room, a 50-, 60-year-old IBM veterans, you know, most of them aren't crippled, and half of them aren't—don't have dementia. So, I just wanted to let you know there was a—that OSHA study is very important for you to know.

Senator DORGAN. Let me thank this panel. We will excuse the panel and ask for the second panel to please come forward. Thank you very much for your testimony and your appearance.

The second panel will include Mr. Gene Upshaw, the Executive Director of the National Football League Players Association; Mr. Roger Goodell, the Commissioner of the National Football League; Mr. Mike Ditka, Member of the National Football League Hall of Fame, former NFL Player and Coach; Mr. Gale Sayers, the—Member of the NFL Hall of Fame, former NFL Player for the Chicago Bears.

We would ask that those witnesses come forward and take their place at the witness table.

[Pause.]

Senator DORGAN. Let me thank the second panel for coming. And I apologize that you have had to wait, but I think it is probably valuable to have heard the first panel. I know many of you have traveled long distances to be here, as well, and we appreciate that.

We will hear first from Mr. Gene Upshaw, Executive Director of the National Football League Players Association.

Mr. Upshaw, you may proceed.

**STATEMENT OF GENE UPSHAW, EXECUTIVE DIRECTOR,
NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION**

Mr. UPSHAW. I'm just waiting for a chart that has to get up, but I'll start anyway.

Senator DORGAN. All right.

Mr. UPSHAW. I first want to thank the Chairman and the panel for inviting us here and—to be part of this.

Before I get started, I'd like to introduce a few players that came along to hear the testimony: Troy Vincent, who is the President of the NFL Players Association, Eddie Mason, Ryan Kuehl, Brian Mitchell, and Brig Owens. They're all here because they are very interested in this issue, as all active and retired players are.

I would first like to say that I am Gene Upshaw. I am the Executive Director of the NFL Players Association. And I appear before this committee at your invitation to discuss benefits provided for NFL players in the National Football League.

Prior to becoming Executive Director, I played 16 years in the National Football League, and I understand the rewards and the risks of playing this game. I'm also distressed when I hear about former players who are hurting and are in need. Remember, I played with a lot of these guys, I know a lot of these guys, and I played against a lot of these guys. So, I've spent my entire professional life fighting for the rights of players, both active and retired.

I also recognize that these are emotional issues, that we play an emotional game, and this game brings out some emotions that it takes to play it, and it just follows you the rest of your life.

I'll ask permission from the Chairman to submit our White Paper as part of the record, also my written testimony and my summary as part of the record.

Senator DORGAN. Without objection.

Mr. UPSHAW. Thank you.

Our benefits in the National Football League were forged in collective bargaining. In 1993, as part of my first collective bargaining agreement as Executive Director, we dramatically improved both pension and disability for all players. I just want to make three simple points in my presentation.

First, the NFLPA is proud of the job that we have done for NFL players, both active and retired. Players are well compensated and enjoy an outstanding benefit package. Unlike many businesses, where benefits have been reduced, benefits for NFL players have been maintained and repeatedly improved. We represent the best practices of labor relations.

Second, we're not finished. I think the active players respect and empathize with the emotions and concerns expressed by retired players. That is why we established, in 1984, a Retired Players Division at the NFL Players Association's office. And, in 1990, we established a Players Assistance Trust, which is funded by the active players to help former players in need. In the past 18 months, this fund has distributed over \$1.5 million to former players in need and in financial—that need financial assistance.

When I became Executive Director, in 1983, about 30 percent of the NFL revenues went to the players. That has now doubled to 60 percent and—of all of the revenues. Our union had to go through some dark times to achieve this. We had to renounce our status as a union, we had to decertify, and we had to bring a legal challenge that ultimately led to our present success. I don't think any union has ever done that. And many thought we were crazy, but we made it work. We shifted the battle from the picket line to the courtroom and forged a partnership with the owners we are proud of today. With labor peace, the game has grown and has benefited both the players, the owners, and the fans. This success has allowed us to win against prevailing trends of reducing workers' benefits.

I have some charts that I brought me to, sort of, illustrate the point that we have.

Chart 1, that's to my right and your left, shows that, in 1993, we reached back, for the first time, to include all players that had no pension, the pre-59ers, and brought them into the pension plan in 1993. This mean that we brought in an additional 900 players and their beneficiaries.

Each succeeding extension—1998, 2002, and 2006—we have improved the pension benefit credits for all former players, and they've been increased.

Let's turn to disability. I want to begin by emphasizing that the Players Association—the members, the staff, and me personally—are sensitive to the medical, financial, and emotional needs of professional players, both active and retired. We are distressed when we hear about a player in need, and we're committed to responding to the needs of all players. But we reject the charges that the present disability system treats veteran players harshly and denies them access to the benefits. The factual record disproves those charges. Of course the system can be improved. And Commissioner Goodell and I are determined to simplify, expedite the process of these claims.

Chart 2, it summarized the disability decisions from 1993, when the present categories were put in place and established. We've had 1,052 applicants. We have 48 cases that are pending. We've approved 428 cases, and we have 776—576 that were denied.

Of the cases that are denied, there are several reasons why they were denied. Some were already drawing pension, some didn't have enough vested years. Just recently, we just added a new disability, that's been mentioned earlier—in earlier testimony, Plan 88. Plan 88 was established in honor of John Mackey, the great tight end Hall of Famer who wore number 88 and is suffering from this terrible, terrible disease. It was negotiated between Paul Tagliabue and myself in the 2006 CBA extension. This benefit was extremely important to all of us connected to the National Football League. John was the first president of the combined union in 1970, and we all have tried to remain as close to John as we possibly can as he deal with this terrible, terrible disease.

Chart 3 shows in—as of February, when we instituted this plan, that 130 applications were mailed out to players. We received 79 back, and, of that 79, 60 have been approved, 4 have been denied, and 15 are pending.

Commissioner Goodell and I do not decide disability claims. You've heard a lot about the Disability Board that sits, and the Retirement Board that sits, on behalf of the NFL players and the NFL owners. These claims must first go through a two-person Disability Committee, then it must—if a player is not happy, he can—if a player is not happy and there is a deadlock, he can then appeal it to the full board, where there are three members, three player—former players—Tom Condon, who is a President of the NFLPA—former president; Jeff Van Note, another former President of the NFLPA, played 18 years for the Falcons; and Dave Duerson, who testified earlier. The NFL appoints team owners, and have appointed team owners—Bill Bidwell, of Arizona, Clark Hunt, of Kansas City, and Dick Cass, who is the President of the Baltimore Ravens.

If a player is dissatisfied with this board, they have a right, which you have heard from Brent Boyd, to appeal to the Federal courts. And we have had several appeals to the Federal courts.

Most recently, the NFL and the NFLPA formed an alliance, bringing together over \$7 million, initially, to fund joint replacements and to address financial needs and hardships of retired players. The joint replacement surgery will be available at no cost to players, without insurance, and designated—at designated hospitals across the country. All of these benefits are paid for by the active players.

Chart 4 shows that the current players give up—what the current players give up to fund these benefits. Our CBA allocates a fixed percentage for salaries and benefits. This past year, the active players voluntarily gave up \$147.5 million to fund the benefits for the retired players. That's \$95 million—I mean \$96.5 million to fund pensions, 20 million to fund disability benefits, 31 million to fund medical benefits, just for the former players. And these numbers are growing. We've had 124- percent increase from 2005 to 2006 in just pension increase alone.

The process has cost active players \$82,000 per player to fund these benefits, which brings me to my third point. I have three suggestions for Congressional consideration to help us in this.

First, we need standards for workers' compensation. The current state-by-state system causes the vast majority of hurt workers, not just NFL players, to settle for a lump-sum payment and give up their rights to lifetime medical for their injuries on the job. Congress could impose Federal standards to allow workers to get immediate medical care, but still maintain lifetime coverage.

Second, the Federal law does not allow a union to manage the plans alone. It's negotiated with an—employees, and they give a fixed amount. And, since we are getting blamed for not granting disabilities, we believe that we should have the only voice when it comes to granting of disabilities. We're not saying that the six trustees have done anything wrong, or have—or we're not criticizing the trustees for the job that they've done.

And, third, the Department of Labor, in 2006, imposed a standard, a different—a layer on disability decisions. It's an Initial Claims Committee. It's a—we think that Congress could eliminate this requirement, which is another bottleneck that will help speed up the process.

Senator DORGAN. Mr. Upshaw, I'm going to have to ask you to summarize, please.

Mr. UPSHAW. I'm at the end.

Senator DORGAN. All right.

Mr. UPSHAW. So, after 16 years as an NFL player, and another 24 as Executive Director, be assured that no one cares more for the players in the National Football League, both past and present, than I do. And I've spent an awful lot of my lifetime fighting those battles to protect those rights and to give us what we have today. But our job is not over.

[The prepared statement of Mr. Upshaw follows:]

PREPARED STATEMENT OF GENE UPSHAW, EXECUTIVE DIRECTOR, NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION

Chairman Dorgan and Members of the Committee, I am Gene Upshaw, Executive Director of the NFL Players Association ("NFLPA"). I appear today at the Committee's invitation to discuss the benefits provided to players in the National Football League ("NFL"). Prior to becoming Executive Director in 1983, I played 16 years in the National Football League. I know the risks and rewards of the game.

I am distressed when I hear about any former player who is hurting and in need. Remember I played with a lot of these guys. I have spent my entire professional career fighting for the rights of players. I also recognize these are very emotional issues but we cannot overlook the facts. The facts are the facts. I ask permission to submit for the record our detailed "White Paper," which describes the retirement, disability, health care, and other benefits currently available to NFL players.

Our benefits were forged in collective bargaining. In 1993, as part of my first collective bargaining agreement as Executive Director, we dramatically improved both pension and disability benefits for all players.

I want to make three simple points.

First, the NFLPA is proud of the job we have done for NFL Players both active and retired. NFL Players are well compensated and enjoy an outstanding benefits package. Unlike many businesses, where benefits have been reduced, benefits for NFL players have been maintained and repeatedly improved. We represent the best practices of labor relations.

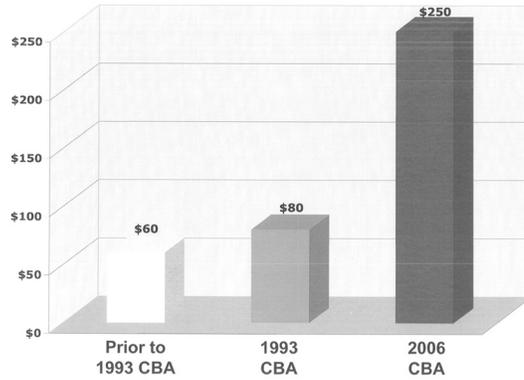
Second, we are not finished. I think all of the active players respect and empathize with the emotions and concerns expressed by retired players. This is why we established a Retired Players organization as a division of the NFLPA in 1984. And, in 1990, we established the Players Assistance Trust (PAT), funded by the active players to help former players in need. In the past 18 months, this fund has disbursed over \$1.5 million to former players in need of financial assistance.

When I became Executive Director in 1983, about 30 percent of NFL revenues went to the players. That has now doubled, to 60 percent of all revenues. Our union went through some dark times. We had to renounce our union status—"decertify"—to bring the legal challenge that ultimately led to our present success. I don't think any other union had ever done that; everyone said we were crazy. But we made it work. We shifted the battle from the picket line to the courtroom, and forged the partnership with the owners we are proud to have today. With labor peace, the game has grown enormously, and all have benefited—players, owners, and fans.

This success has allowed us to win against the prevailing trend of reducing benefits to workers. Before we get into the hype, let's look at the facts. The NFLPA has fought hard to increase benefits—especially pensions, disability, and health care. The charts behind me, and our more detailed White Paper, speak the truth.

Chart I shows in 1993, we reached back and included the "pre-59ers" for the first time in the Pension plan and reduced the vesting period. These changes extended coverage to over 900 former players and their beneficiaries. In each succeeding extension of the CBA in 1998, 2002 and 2006, the benefit credits for pension purposes of former players were increased.

Pre-59ers CBA Benefit Credit Benchmarks



Let's turn to disability. I want to begin by emphasizing that the Players Association, its members, staff and me personally, are sensitive to the medical, financial and emotional needs of professional football players—both retired and active. We are distressed when a former player is in need, and we are committed to responding to the needs of all players.

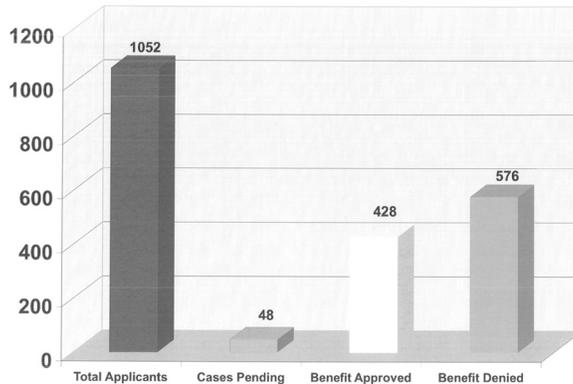
But we reject charges that the present NFL Disability Benefit system treats veteran players harshly or denies them access to benefits. The factual record disproves those charges. Of course, the system can be improved, and Commissioner Goodell and I are determined to simplify and expedite the processing of claims.

Chart II summarizes disability decisions from 1993, when the present disability categories were established, through June 2007.

Overall Disability Applicants



(1993 - 2007)



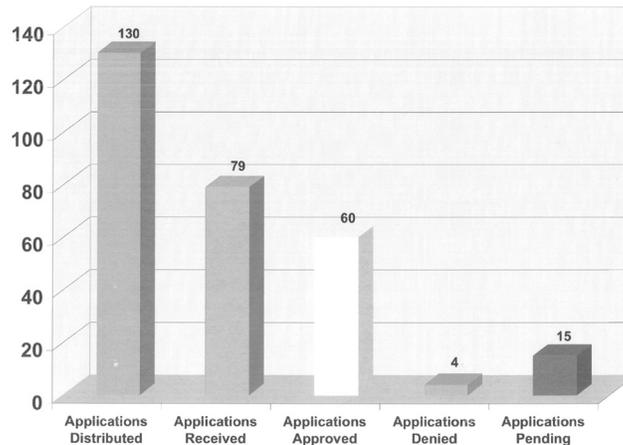
Of the 1,052 applicants for disability benefits since 1993, many were ineligible because they were not vested or were already receiving a pension. Since 1993, 428

players, or 42.6 percent of those who applied, have received disability benefits. Forty eight cases are still pending, and there will be more approvals. This compares to a 47 percent approval rate for Social Security disability.

Another recent disability benefit added by agreement between the NFLPA and NFL is the establishment this year of the "88 Plan". "88" was Hall of Fame John Mackey's number and the plan is named in his honor. It was negotiated and agreed to between Paul Tagliabue and myself during our 2006 CBA extension talks. This benefit was extremely important to me and our union because of how much John Mackey meant to us. He was the first President of the NFLPA after the merger of the old NFL Players Association with the American Football League Players Association in 1970. John put his name on the line in a major antitrust suit which we won in the mid-1970s, and he has long been an inspiration to the officers and staff of the NFLPA. I know John well and he is always in our thoughts as we continue to make improvements.

Chart III shows that since February of this year we have distributed 130 applications to players. Of those applicants, we have received 79 back from players and 60 of the applications have been approved. Of the remaining 19, only 4 have been denied and 15 are pending.

88 Plan



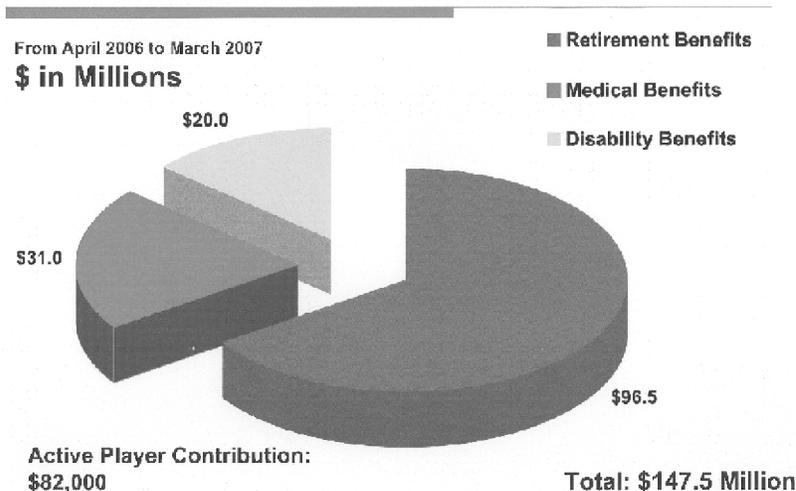
Commissioner Goodell and I do not decide disability claims. Disability claims must first go to a two-person Disability Initial Claims Committee (required by Department of Labor regulations since January 2002). If the Committee deadlocks or a player is not satisfied with its decision, the player may appeal to the full Retirement Board. The Board has six voting members; three appointed by the League and three appointed by the NFLPA. The 3 members appointed by the NFLPA are retired players: Tom Condon, former President of the NFLPA, played 11 years in the NFL; Jeff Van Note, former President of the NFLPA, played 18 years for the Atlanta Falcons; and Dave Duerson, who played 11 years, and was an All-Pro safety. The NFL appointees are team owners William (Bill) Bidwell (Arizona Cardinals), Clark Hunt (Kansas City Chiefs) and Dick Cass (President, Baltimore Ravens). If a player is dissatisfied with the Board's decision, a player may seek review in Federal court.

More recently the NFLPA/NFL formed an "Alliance" bringing together an initial \$7 million fund to pay for joint replacement surgery and address other financial hardships of retired players. The joint replacement surgeries will be available at no cost to retired players without insurance at designated hospitals across the country.

All of these benefits and improvements are paid for by the active players.

Chart IV shows what the current players give up to help those who came before them. Our CBA allocates a fixed percentage of total NFL revenues for player salaries and benefits. As you can see, last year alone the current players voluntarily gave up \$147.5 million to help former players. None of this \$147.5 million went to current players.

Active Players Pay for All Benefits



That's \$96.5 million to fund pensions, \$20 million to fund disability benefits, and \$31 million to fund medical benefits. Just for former players. And these numbers are growing. Because of the pension increases in the 2006 CBA, the cost of funding pensions alone for former players more than doubled—from \$39 million to \$96.5 million—a 147 percent increase in 1 year.

In the process each active player essentially reduced his salary by \$82,000.

My third point is that Congress can help. I have three suggestions for legislative action.

First, we need Federal standards for workers compensation. The current state-by-state system often causes the vast majority of hurt workers, not just NFL players, to settle for a lump sum, and give up their rights to lifetime medical care for their injuries on the job. Congress should impose Federal standards that allow injured workers to get immediate medical help and keep lifetime coverage.

Second, Federal law does not allow unions to manage their own plans, even when, as here, the negotiated contribution by employers is fixed and plan actions cannot impose extra liability. By proposing this I do not suggest that any of the six trustees have not acted in good faith and in accordance with their fiduciary duty. But since the NFLPA has been criticized when applications are denied (even though a majority vote of the six trustees is necessary for a decision), and since current players are funding the system, it makes sense for the players to be the ones making the disability decisions.

Third, in 2002, the Department of Labor imposed an extra level of decision-making in disability decisions—a new Initial Claims Committee—before our six trustees can hear the evidence about a particular player's disability. I ask Congress to eliminate this requirement. I opposed the creation of this extra committee when the Department of Labor proposed it.

Conclusion

After 16 years as a player in the NFL and another 24 years as NFLPA Executive Director, be assured that no one cares more than I do about the disability issues and others facing my fellow players. We have made great progress and we are not finished. Congress can help.

I welcome any questions the Committee may wish to ask and will do my best to answer them.

NFLPA WHITE PAPER

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I. NFL/NFLPA Benefits Overview

Active Players Pay For All Benefits: The NFL Players Association and the NFL agree in collective bargaining on the benefits to be provided. Benefit costs reduce the revenue available for active players under the Collective Bargaining Agreement ("CBA"):

- The CBA between the Players Association and the NFL provides retirement, medical, and disability benefits to former players. The CBA allocates a percentage of the League's revenues for player salaries and player benefits (currently 60 percent).
- The costs of benefits to former players come from the active players' side of the table. In other words, all of the CBA benefits, including the cost of benefits for players no longer active, reduce the amount available for salaries and benefits of active players.
- In 2006 alone, active players gave up \$147.5 million for benefits to retired players. This means that each active player gave up approximately \$82,000 of his salary for medical, disability, and retirement benefits for former players.

From April 2006 to March 2007—the active players gave up approximately:

- \$96.5 million to fund retirement benefits for retired players;
- \$31 million to fund medical benefits for retired players;
 - \$18 million in contributions to health reimbursement accounts.
 - \$2 million to 88 Plan for Dementia.
 - \$11 million for 5 years post-retirement fully paid health care.
- \$20 million to fund disability benefits for former players.

In 2005–2006, current players contributed \$39 million to fund retirement benefits for former players.

- The current \$96.5 million is a 147 percent increase in 1 year thanks to the 2006 CBA.

The NFLPA Has Obtained Repeated and Significant Increases in Benefits for Retired Players.

Beginning in 1993, the NFLPA obtained significantly increased pensions for retired players four times. Pre-59ers were included in the Retirement Plan for the first time in 1993, and their benefits have since been more than tripled.

Significantly increased Total and Permanent Disability benefits.

Tripled widow and surviving children benefits.

Created Plan 88 (see below).

II. Disability System

A. Disability Benefits Overview

Most Generous and Flexible Disability in Professional Sports: The Plan offers total and partial disability benefits—T&P and Line of Duty—explained in further detail below.

- The disability award process investigates (1) whether a player is able to work; (2) what caused the player's disability; and (3) when the disability began.
- Vested former NFL players who become unable to work—for whatever reason—decades after they leave the game may still receive a disability benefit that serves as income replacement.
- This is highly unusual. An employee of a corporation like IBM or General Motors does not expect to get—and does not get—disability benefits if he or she becomes unable to work decades after leaving the job.
- The Plan also offers partial disability called “Line of Duty,” which players may receive even when they are still able to work.
- Since 1993—when the current structure was put in place—about \$140 million has been paid to disabled players.
- Once a disabled retired player reaches retirement age, he will begin to receive the higher of either his disability or his pension for the remainder of his life.

The NFLPA Is Always Working to Improve Benefits and Procedures: Even outside of the formal collective bargaining process, the NFLPA continues to seek improvements in benefits and in the process.

- The NFL/NFLPA recently announced an agreement that automatically grants disability benefits to eligible former players who receive social security disability benefits.
- Because of this change, additional players will now receive NFL disability benefits, and players already receiving social security benefits will not have to be examined by a Plan doctor.
- The NFLPA has suggested other major changes that could eliminate difficult decisions on effective dates and causation for many players, and allow the Plan to process applications faster.

B. Disability Eligibility and Award Statistics

Eligibility and Award Statistics: This has been considerable misinformation reported about the disability award and eligibility statistics, which we would like to clarify below:

- From 1993 to June 2007, 42.6 percent of individuals who have applied for NFLPA/NFL disability benefits were awarded disability benefits of some kind. Social security is awarded at roughly 47 percent.
- As the table below demonstrates, 428 applicants have received disability benefits—of the 1004 who have received a final decisions—which brings the approval rate to 42.6 percent.
 - There are currently 317 former players who are receiving some kind of disability benefit under the Plan. Since 1993, 41 former players who were awarded disability began receiving their pension when they reached retirement age, and therefore no longer receive disability payments. The remaining players who no longer receive disability have either passed away, or no longer qualify for disability since their initial award because the benefit expired, or because the Plan has determined that they are no longer disabled.

- Of the 1,052 people who applied in this period, many were already receiving a pension or were not vested (had not played 3 or more seasons), and therefore were ineligible when they applied for disability benefits.
- Currently, there are 4,900 vested (3 seasons or more) former players who are eligible to apply for disability benefits under the NFL/NFLPA plan, not 10,000, as has been reported in some media outlets.
- In addition to the 4,900 vested former players who are eligible, there are currently 2,100 active players who are *not* eligible to apply for disability because they are actively playing football, and are therefore not disabled.
- There are additionally close to 3,000 former players who are currently receiving a pension from the NFL/NFLPA Retirement Plan, and are also therefore *not* eligible to receive disability. Since pension and disability are both “income replacement” benefits, once a player begins to receive his pension he can no longer apply for disability benefits. (This is standard, if not universal, among all employers.)

Table 1 summarizes the disability decisions of the Retirement Plan from July 1993, when the present disability categories were created to June 26, 2007.

Table 1

Total disability applicants	1,052
Approved at initial stage ¹	358
Denied at initial stage	675
Awaiting initial decision	19
Applicants denied at initial stage who appealed	223
Approved on appeal	69
Denied on appeal	132
Appeal Pending	22
Applicants who have sued	32
Retirement Board upheld	24
Retirement Board reversed	1
Lawsuit pending	7
Overall disability applicants	1,052
Cases pending	48
Benefit approved	428
Benefit denied	576

¹ Prior to January 1, 2002, initial decisions were made by the Retirement Board. After January 1, 2002, initial decisions are made by the Disability Initial Claims Committee, as required by a change in Federal law. The Disability Initial Claims Committee has deadlocked on whether to grant a benefit 37 times.

C. Disability Categories, Application and Award Process

1. Disability Categories

Plan Pays Both Total and Permanent and Partial Disability Benefits: The Retirement Plan awards both “total and permanent,” (“T&P”) disability benefits (meaning the retired player is unable to work) and partial disability benefits.

Total and Permanent Disability—T&P: Total and Permanent disability benefits are paid when an eligible player is unable to work, and are designed to replace income.

- Eligible players may receive T&P benefits even when their inability to work occurs many years after a football career has ended, and even when NFL football did not cause the inability to work.
- Once a retired player reaches retirement age (55), he will begin receiving the higher of either his disability payment or his pension for the remainder of his life.
- Players who begin receiving their pension can not apply for disability. Both are income-replacement benefits; this is standard, if not universal, among all employers.

Four Categories of Total and Permanent Disability Benefits:

- Active Football: Football-related, within 6 months.
 - A former player receives \$224,000 per year if he becomes totally and permanently disabled due to NFL football within 6 months after his NFL career ends.
 - No vesting required—available to a player who plays in as little as one game.
- Active Non-Football: Non-football related, within 6 months.

- A former player receives \$134,000 per year if he becomes totally and permanently disabled from any other cause within 6 months after his NFL career ends.
- Based on a player's benefit credits, this amount could be higher.
- No vesting required—available to a player who plays in as little as one game.
- Football Degenerative: Football-related, within fifteen years.
 - A former player receives \$110,000 a year if he becomes totally and permanently disabled due to NFL football within 15 years after his NFL career ends.
- Inactive: Non-football related, no time limit.
 - A former player receives a minimum of \$18,000 a year (\$21,000 for applications on and after April 1, 2007) if he becomes totally and permanently disabled and does not qualify for one of the other categories.
 - Based on a player's benefit credits, this amount could be higher.

NOTE: Vesting Required for Football Degenerative and Inactive T&P benefits:

- These two categories of disability are only available to former players who played in the NFL during at least three seasons and are therefore “vested.” Generally, a player earns a season if he is paid for three or more games during that season.

Line of Duty Benefits (“LOD”): Partial Disability, Player may be working.

Partial disability benefits are paid to players who suffer a “substantial disablement.” Whether a player has a substantial disablement is generally determined using the rating system created by the American Medical Association for measuring impairments.

LOD benefits are available to players who play in as little as one NFL game.

To receive “LOD” disability a player must apply within 48 months (4 years) after his NFL career ends. Partial disability benefits are paid for up to 90 months (7.5 years).

A player's LOD benefit equals the sum of his Benefit Credits. Therefore, a player who leaves the game today with five seasons would have a monthly LOD benefit of \$2,350 (5 seasons times \$470).

Regardless of the number of a player's seasons, he will receive at least \$1,000 per month.

Most injuries to NFL players are orthopedic. The collective bargaining parties have adopted guidelines created by the American Medical Association to measure impairments resulting from orthopedic injuries.

For orthopedic impairments, using the AMA guidelines, LOD benefits are paid if the player meets any one of the following thresholds:

- A 38 percent or greater loss of use of the entire lower extremity;
- A 23 percent or greater loss of use of the entire upper extremity;
- An impairment to the cervical or thoracic spine that results in a 25 percent or greater whole body impairment;
- An impairment to the lumbar spine that results in a 20 percent or greater whole body impairment; or
- Any combination of lower extremity, upper extremity, and spine impairments that results in a 25 percent or greater whole body impairment.

Up to 3 percentage points may be added to the impairment ratings of a player if he experiences excess pain.

2. Disability Application and Award Procedure

Decisions Are Made By Plan Fiduciaries, Including 3 Former Players: The Players Association and the NFL do not award or deny disability claims. Final decisions on disability benefits are made by 6 voting members of the Retirement Board—three of whom are former players—and all medical decisions are based on the medical reports of one or more neutral doctors chosen by all voting members, and all medical information submitted by the player.

Disability Claims are Processed as Required by Federal Law: In compliance with Federal law, the Retirement Plan gives former players every opportunity to qualify for disability benefits. The process that a player goes through is outlined as follows:

Application: A player seeking disability benefits begins by completing a written application and sending it to the Plan Office in Baltimore. The Plan Office has a toll-free number that former players can call to ask questions and get forms, and also has a website for downloading forms.

Initial Medical Examination: The player is then sent to a neutral, qualified physician approved by the Retirement Board for an examination. These physicians are called neutral physicians because they are appointed jointly by the Retirement Board members appointed by the Players Association and the NFL. Based on his examination, the physician provides a written report that describes the player's condition, measures impairments for purposes of LOD benefits, and addresses the player's ability to work.

- *Initial Decision:* The Disability Initial Claims Committee (the "DICC" or "Committee") makes initial decisions on disability benefit claims. It is comprised of two individuals—one appointed by the NFL and the other by the NFLPA. The Labor Department required this layer of decisionmaking by Federal law in 2002.
- The Committee reviews the player's entire file, including all medical reports by the Plan neutral physicians and by other physicians submitted by the Player. If the Committee approves the application, disability payments begin immediately.
- If the Committee denies the player's claim, or if the Committee is deadlocked (in which case the application is deemed denied), the player may appeal, as described below.

Appeal Rights: If the Committee denies a claim, is deadlocked, or the player is dissatisfied with the Committee's decision in any way, the player may appeal to the full Retirement Board for a complete review of the claim. On appeal, the Retirement Board will review all available materials, whether or not presented to the Committee, and will give no deference to the decision of the Committee. The Retirement Board conducts a full and fair and totally independent review of all appeals.

Retirement Board: The Retirement Board has six voting members—three appointed by the NFLPA, and three appointed by the NFL.

NFLPA-appointed voting members: All distinguished retired players:

- Tom Condon played for the NFL for 11 years, and served as President of the NFLPA while he was an active player. Today, he is an attorney and a top football agent with Creative Artists Agency.
- Jeff Van Note played for the Atlanta Falcons for 18 years, and served as President of the NFLPA while he was an active player.
- David Duerson played in the NFL for 8 seasons, was all-Pro in 4 years, and won two Super Bowl rings. Mr. Duerson attended Harvard Business School after retiring from the NFL and currently works in business.

NFL-appointed voting members:

- William Bidwill, Owner of the Arizona Cardinals.
- Clark Hunt, Owner of the Kansas City Chiefs.
- Dick Cass, President of the Baltimore Ravens.

Second Medical Exam: On appeal, the player is sent, as required by Federal law, to one or more new neutral physicians for additional medical examination. These physicians provide written reports on the Player's condition.

The Retirement Board decides all appeals based on the entire record.

Resolving Deadlocks: 3 to 3 votes—of the Retirement Board are resolved by either:

- *Medical Advisory Physician ("MAP"):* If the dispute is over a medical issue, such as whether a player medically is substantially unable to work, either side (the player-appointed trustees or the management-appointed trustees) can send the player to one of the Plan's top, pre-approved, neutral three doctors. These doctors are called "Medical Advisory Physicians ("MAPs"), and their medical decisions are binding on the Retirement Board. This final review will almost always resolve any deadlock between voting trustees.
- *Arbitration:* In rare cases—and this has happened only once in the last 14 years—the deadlock is resolved by arbitration between the members of the Retirement Board.

Players Can Appeal to Federal Court: If a player is dissatisfied in any way with the decision of the Retirement Board, he has the right to file a lawsuit in Federal court for benefits.

Since 1993, the courts have upheld 96 percent of the Retirement Board's decisions in lawsuits filed by retired players (in 24 of 25 decided cases).

This record demonstrates the care with which the Committee and the Retirement Board decide pension and disability claims.

D. Facts About Former Players With Public Controversies Over Disability Issues

Brent Boyd

Mr. Boyd played professional football in the NFL from 1980–1986.

Mr. Boyd is receiving total and permanent disability (“T&P”) benefits under the Plan’s “Inactive” category, which provides a minimum of \$18,000 per year.

- Mr. Boyd is receiving Inactive T&P benefits rather than Football Degenerative T&P benefits because the only doctor who was certain about the cause of his psychological and psychiatric problems—a neutral and renowned expert from Johns Hopkins University Medical Center—determined, to a reasonable degree of medical certainty, that Mr. Boyd’s problems *could not have been caused by* Mr. Boyd’s concussion in 1980.
- Accordingly, he did not meet the standard for the highest level of payment, the football-related “Football Degenerative” T&P benefits.

Mr. Boyd first applied for T&P benefits in 1997; he claimed that he was unable to work due to orthopedic impairments, *never mentioning a football-related head injury in his application.*

- After a Plan neural orthopedist opined that Mr. Boyd was capable of sales and other work, the Retirement Board denied Boyd’s application.
- Mr. Boyd did not challenge that decision by pursuing a Federal court appeal.

Mr. Boyd reapplied in 2000; he now claimed, *for the first time*, that he was unable to work due to a psychological disorder caused by a head injury that occurred in 1980.

The Retirement Board referred Mr. Boyd for examination by a neurologist and a psychiatrist.

- Both doctors indicated that Mr. Boyd was then totally and permanently disabled (*i.e.*, substantially couldn’t work) due to cognitive and psychiatric impairments. *But, both physicians also indicated in their written reports that they were uncertain what caused Mr. Boyd’s disability.*
- The player trustees wanted to award Mr. Boyd the higher Football Degenerative T&P benefit, but the management trustees would not agree, in large part because Mr. Boyd had not claimed head injuries in his 1997 application.
- The Retirement Board awarded Mr. Boyd the Inactive T&P benefits (*i.e.*, a minimum of \$18,000 per year where a player does not qualify for a higher category) on the basis of these reports, and agreed to further study the causation of Mr. Boyd’s impairments for possible reclassification.

To resolve the deadlock on causation, the Retirement Board referred Mr. Boyd to a pre-eminent neurologist at Johns Hopkins, Dr. Barry Gordon, who has particular expertise in memory, cognitive impairments, and head injuries.

After an extensive examination by Dr. Gordon, which lasted well over an hour, Dr. Gordon concluded, “to a reasonable degree of medical certainty,” that Mr. Boyd’s impairments were *not caused by NFL Football*. Mr. Boyd and his attorneys were given repeated opportunities to provide a medical rebuttal, but never did. Contrary to Mr. Boyd’s public statements, Dr. Gordon’s assistant, who performed tests, had completed the course work for a Masters in Developmental Psychology at Hopkins (which she received 2 months later), was well-trained in testing and had performed that test on other patients at least a dozen times before Mr. Boyd, and still works as a consultant to John Hopkins.

Based on this information, the Retirement Board concluded that Mr. Boyd did not meet the requirements for a football-related disability, and awarded him Inactive total and permanent disability benefits (the fourth T&P category, at a minimum of \$18,000 per year).

Mr. Boyd sued the Retirement Plan in Federal District Court in San Diego. That court upheld the Board’s decision and reasoning that Mr. Boyd’s psychological impairments were not caused by a football-related injury, and rejected Mr. Boyd’s arguments.

Mr. Boyd then appealed to the Ninth Circuit Court of Appeals. A three judge panel unanimously affirmed the District Court’s decision and upheld the findings of the Retirement Board. The Ninth Circuit rejected Mr. Boyd’s claim that his psychological condition was football-related.

Brian DeMarco

Mr. DeMarco played professional football in the NFL from 1995–1999.

Mr. DeMarco has *never* filed a claim for disability benefits, even after the Retirement Plan sent him five applications via certified mail over the past 5 years.

The plan sent Mr. DeMarco disability applications in March 2002, December 2002, September 2005, August 2006, and July 2007.

The Plan Office has never received a single disability application from Mr. DeMarco. The Plan still has three of the written, signed proofs that the application was received.

Because Mr. DeMarco has declined to even begin the process, the Plan cannot be blamed for failing to pay disability benefits to him.

Mr. DeMarco has claimed that he sent in the application, which was misplaced by the Plan office. This is false. As of September 2007, Mr. DeMarco has still not sent in an application for disability.

Conrad Dobler

Mr. Dobler played professional football in the NFL from 1972–1981.

First, the Board denied Mr. Dobler's 1993 claim for T&P benefits because he was able to work at that time, despite his knee and elbow impairments. As described above, T&P benefits are reserved for former players whose impairments prevent them from being able to work.

- Mr. Dobler applied for Total and Permanent Disability in 1993.
- After evaluating the report of the Plan neutral physician who examined Mr. Dobler, the player trustees wanted to award him T&P disability benefits, but again the management trustees refused to do so, which left the Board deadlocked at 3 to 3.
- As a result of this deadlock, the Board sent Mr. Dobler for an additional examination by a Medical Advisory Physician ("MAP"), whose medical determinations are final and binding on the Board.
- The MAP determined that Mr. Dobler did not qualify for T&P benefits because he was able to work, and was in fact working. Therefore, the Board denied his application for T&P benefits.

Second, the Board denied Mr. Dobler's 2006 claim for LOD benefits (partial disability, player may still be able to work) because his claim for those benefits was more than 2 decades late. The Plan requires that a player apply for LOD benefits within 4 years of leaving the game.

- In 2006, thirteen years after his initial application and 25 years after playing football, Mr. Dobler applied for LOD benefits.
- His application was more than 20 years late.
- A player must apply for Line of Duty disability within 4 years of retiring from the NFL, and Mr. Dobler's last season was 1981.

Daryl Johnston

Mr. Johnston played professional football in the NFL from 1989–1999.

Mr. Johnston's neck impairment did not meet the Plan's standards for a "substantial disablement" for line-of-duty disability ("LOD") benefits when he applied, and he therefore did not qualify to receive them.

- Mr. Johnston applied for LOD benefits in 2001.
- The player members of the Retirement Board wanted to award LOD benefits, and the management members refused, which left the Board deadlocked at 3 to 3.
- As a result of this deadlock, Mr. Johnston was sent to a Medical Advisory Physician, whose medical opinion is final and binding on the Retirement Board.
- This physician determined that Mr. Johnston did not meet the Plan's standards for LOD benefits.

Eugene "Mercury" Morris

Mr. Morris played professional football in the NFL from 1969–1975.

In 1992, Mr. Morris accepted a lump sum payment of \$295,000 in return for giving up all rights to any future disability benefits.

Mr. Morris made this decision while represented by his attorney.

In spite of the settlement, Mr. Morris has repeatedly tried to set aside the settlement by filing multiple lawsuits and conducting a harassment campaign against Plan attorneys.

Three Federal courts have told Mr. Morris he is bound by the agreement and that the agreement clearly does not allow him to obtain additional benefits for disability.

The courts have told him that another lawsuit will result in sanctions.

Mike Mosley

Mr. Mosley played professional football in the NFL from 1981–1984.

After receiving Football Degenerative total and permanent disability benefits for 6 years (third category of T&P benefits, which pays \$110,000 per year), Mr. Mosley no longer qualified for these benefits because he became able to work. It would be unfair to disabled players to pay benefits to former players who are not disabled.

- Mr. Mosley applied for total and permanent disability benefits in September 1998.
- His application was approved in October 1998, and Mr. Mosley began to receive the disability benefits awarded to him.
- In 2004, Mr. Mosley was reexamined by a Plan doctor who found that Mr. Mosley was able to work.
- A second, neutral Plan doctor confirmed this assessment.
- The Plan therefore terminated Mr. Mosley's benefits in October 2004.

Dave Pear

Mr. Pear played professional football in the NFL from 1975–1980.

The Retirement Board denied Mr. Pear's 1983 claim for LOD benefits based on an arbitration decision finding that Mr. Pear did not meet the requirements for those benefits in effect when he applied.

- Mr. Pear applied for LOD benefits in 1983.
- At that time, the Retirement Board was required to determine that the player's injury caused him to leave football before it could grant LOD benefits.
- After evaluating the report of the neutral physician who examined Mr. Pear, the three player trustees wanted to award Mr. Pear the LOD benefits, but the three management trustees refused to do so.
- As a result of this deadlock, the Board sent the issue to an arbitrator, who ultimately ruled that the injury did not cause Mr. Pear to leave football.
- As a result of the NFLPA's successful negotiations in bargaining, this requirement for LOD benefits—that the injury must have made the player leave the game—was dropped from the Plan after the 1993 CBA.

The Retirement Board denied Mr. Pear's 1995 claim for T&P benefits because the Board determined that he could work after evaluating the medical evidence in his file.

- Mr. Pear applied for T&P benefits in 1995.
- The Plan doctor who examined Mr. Pear determined that he could work.
- The Board therefore concluded that Mr. Pear did not qualify for T&P disability benefits.

Mike Webster

Mr. Webster played professional football in the NFL from 1974–1990.

Mr. Webster applied for Football Degenerative T&P disability benefits (third T&P category that pays \$110,000 per year) due to head injuries in June 1999. The Board promptly and unanimously determined that Mr. Webster could not work, and that football had caused his disability.

Mr. Webster began to receive over \$9,000 per month, and he collected those benefits for the rest of his life. The Plan also paid an additional \$300,000 in retroactive benefits after the Board unanimously determined that he became totally and permanently disabled in 1996.

The only issue in dispute in Mr. Webster's case was *when* Mr. Webster became unable to work. The Retirement Board unanimously decided to pay Mr. Webster retroactively back to 1996, when the evidence showed he was first unable to work, and the Board unanimously found that football caused his inability to work.

- Mr. Webster had worked very hard to set up businesses and real estate deals after he left the NFL in 1991.
- The Retirement Plan undertook a thorough investigation into the time of Mr. Webster's impairment, carefully reconstructing the details of Mr. Webster's life almost a decade earlier.

- The Plan learned that in the years immediately following football, Mr. Webster set up businesses, bought property, promoted products, traveled extensively, and filed lawsuits.
- In 1995 Mr. Webster's own attorney told him that he would not qualify for Social Security disability benefits because he was working.
- Although his businesses ultimately failed, there was no indication that Mr. Webster had a serious medical impairment until he was hospitalized in September 1996.
- *The Retirement Board unanimously decided to pay benefits retroactively to September 1996—an award of over \$300,000 in retroactive benefits, in addition to his disability payment of over \$9,000 per month for the rest of his life.*

The Retirement Board *never* improperly delayed payment to Mr. Webster.

- When Mr. Webster applied for T&P benefits in June 1999, the Retirement Plan awarded Football Degenerative T&P benefits within 3 months (at the first meeting it could do so) of his application because of the head injuries he had sustained, and Mr. Webster promptly began to receive disability payments of over \$9,000 per month.
- It did take time to reconstruct Mr. Webster's activities in prior years—Mr. Webster's attorney requested and received additional time to make a case that Mr. Webster was totally and permanently disabled upon his retirement from NFL football in 1991.
- The IRS then presented a tax levy based on unpaid taxes for income Mr. Webster received during 1992 and 1993, during which time Mr. Webster was claiming total and permanent disability.
- Mr. Webster's then-attorney took many months to explain Mr. Webster's income during those years.

Ultimately, the Estate of Mike Webster exercised its right to judicial review of the matter, and sued the Retirement Plan in the Baltimore, Maryland Federal district court.

Through his attorney, Mr. Webster argued that he was so mentally impaired when he left football in 1991 that he could not even file an application.

The court determined that Mr. Webster was totally and permanently disabled as of 1991, 5 years earlier than the date awarded by the Retirement Board, and thus awarded his Estate additional \$2 million in retroactive disability benefits for 5 years and attorneys fees.

The Fourth Circuit Court of Appeals upheld the district court's decision on when Mr. Webster became unable to work, and the Retirement Board paid the additional disability benefits awarded by the court to the Estate of Mike Webster.

Delvin Williams

Mr. Williams played in the NFL from 1974 to 1981.

Mr. Williams applied for LOD benefits in 1983. The player members of the Retirement Board believed he qualified for that benefit, but the management members did not. The matter was sent to arbitration. The arbitrator said that he did not qualify.

Mr. Williams applied for T&P benefits in June 1995. Based on the medical evidence, at its July 20, 1995 meeting, the Retirement Board unanimously awarded Mr. Williams Football Degenerative T&P benefits starting August 1, 1995.

Because Mr. Williams desired an effective date of July 1, 1993 for his T&P benefits, the Plan requested evidence of Mr. Williams' employment during the period between July 1, 1993 and August 1, 1995. The Plan learned the following facts:

- According to his Social Security Administration earnings records and tax records, Mr. Williams had substantial employment earnings in most of the years after his retirement from the NFL in 1981 and up to 1995. In 1992, Mr. Williams earned \$51,583; in 1993, his income was \$52,491; in 1994, his income was \$55,839; and in 7 months of working in 1995, he earned \$31,574.
- From December 1, 1991 to December 1, 1992, Mr. Williams worked for Solem & Associates, a San Francisco public relations firm. From January 1, 1993 to April 1, 1995, Mr. Williams worked for the San Francisco Chamber of Commerce. Mr. Williams worked for a company called Sports Lab from April 17, 1995 to July 15, 1995. During these years, Mr. Williams listed his occupation as "Executive" or "Community Relations" on his Federal income tax returns.

Based on Mr. Williams' substantial employment during the period prior to August 1, 1995, the Retirement Board denied his claim for retroactive disability benefits.

Mr. Williams appealed, and submitted a new medical report from the doctor that examined him in 1983, in connection with Mr. Williams' unsuccessful claim for LOD benefits. This doctor stated both that Mr. Williams had been totally and permanently disabled in 1983 and that his medical condition had not changed since 1983. This doctor made these statements in 1997 even though he did *not* find Mr. Williams totally and permanently disabled in 1983.

The Retirement Board found this report unconvincing, because it contradicted both that same doctor's report in 1983 and the undisputed evidence of Mr. Williams' substantial employment through 1995. The Retirement Board unanimously denied his appeal for disability benefits for periods prior to August 1995.

In October 1998, Mr. Williams filed a class action lawsuit for retroactive disability benefits for the period from July 1993 to August 1995. He also asked the court for various other remedies arising out of alleged fiduciary breaches and unlawful amendments of the Retirement Plan and Disability Plan. His complaint was over 100 pages long.

The district court dismissed all of the fiduciary breach and illegal plan amendment claims advanced by Mr. Williams. The court also rejected Mr. Williams' attempt to convert the case into a class action. The court, however, did award Mr. Williams an earlier effective date for his T&P benefits.

On appeal, a three judge panel of the Ninth Circuit Court of Appeals unanimously overturned the effective date decision of the district court. The Retirement Board was completely vindicated.

Following the Ninth Circuit's decision, the district court awarded the Retirement Plan a modest amount of attorneys' fees and costs, to be paid gradually out of the \$110,000 each year that Mr. Williams continues to receive in disability benefits.

III. Workers' Compensation

NFLPA bargained for and obtained Workman's compensation benefits for all players and provides legal counsel to help players apply.

The NFLPA has negotiated for Workers Compensation benefits to be provided to all players. Over the past 25 years the NFLPA has established a panel of qualified lawyers to help players file and pursue their claims.

- *Workman's Compensation Benefits are in addition to disability benefits.*
- *Workman's Compensation Benefits are paid for by current players.*
- The NFLPA strongly advises each player to preserve his rights under Workers Compensation for life-time medical care for his football injuries.
- The NFLPA and NFL have agreed that there is no reduction in other disability benefits when a player also receives Workers Compensation.
- The cost of Workers Compensation comes out of the players' share of League revenues, like other health and disability benefits.

IV. Lifetime Retirement Income Security Plans

A. Lifetime Pension Payments

Vesting: A player needs to be vested to be eligible for retirement and for the third and fourth categories of T&P disability benefits—Football Degenerative and Inactive. Currently, a player is vested if he is plays for three or more seasons. A player receives a credited season if he is paid for three or more regular or post-season games in that season.

Under the 1993 collective bargaining agreement—the first collective bargaining agreement negotiated by Gene Upshaw—the vesting standard was reduced from four seasons to three seasons for all players with a season after 1992.

Under the 1998 collective bargaining agreement, the vesting standard for all older players was reduced from five seasons to four. The effect of these changes was to provide many more players with a vested pension benefit under the Retirement Plan.

Benefit Credit: Every vested player qualifies for a pension based on the sum of his "Benefit Credits," which are amounts determined by collective bargaining for each NFL season.

The current schedule of Benefit Credits for seasons is:

Before 1982	\$250
1982 through 1992	255
1993 and 1994	265
1995 and 1996	315
1997	365
1998 and later seasons	470

For example, a player who plays NFL football for 10 seasons beginning in 1998 is guaranteed a pension at age 55 of \$4,700 per month (\$470 x 10 seasons), which is \$56,400 per year, for the rest of his life.

If he takes his pension at age 65—normal retirement age for many under Social Security—the benefit rises to \$147,711 each year for the remainder of his life.

Past pensions have been increased four times since 1993.

For the oldest players, Benefit Credits went from \$60 prior to the 1993 CBA to the current level of \$250 due to the NFLPA's efforts in collective bargaining.

For current players, Benefit Credit levels went from \$150 prior to the 1993 CBA to the current level of \$470 in collective bargaining.

In 1993, "Pre-59ers" began to receive pensions for the first time.

The Retirement Plan was created in the early 1960s. In the 1993 CBA, the NFLPA, under Mr. Upshaw, fought for these forgotten former Players who played before 1959, and won them the right for the first time to a vested pension. In CBAs after 1993, their benefit has more than tripled.

Before the 1993 CBA, these players were receiving a "stipend" of \$60 per season that was not guaranteed. They were bumped up to a guaranteed pension of \$80 per season in 1993. That \$80 has since increased to \$250.

The 1993 CBA added 854 former players and 65 beneficiaries to the Retirement Plan.

Some players receive a smaller than usual pension because they elected to take their pensions many years before retirement age.

Because a player who starts payments at age 45 (instead of 55) will receive benefits for more years, his age-55 benefit is actuarially reduced by more than 50 percent in this situation, since they will receive their pension for ten more years.

The option of taking Retirement Plan benefits early (prior to age 55) is no longer available to current players. The bargaining parties eliminated it in 1993 because it was detrimental to retired players.

- Because of legal requirements, the option continues to be available to all players who played a season prior to 1993.
- Players continue to take their pensions early, even though they are warned that doing so will result in a reduction.

Some players receive a small pension because they elected to take a "Social Security Adjustment".

Many former players voluntarily chose to front-load their retirement benefits by electing a "Social Security Adjustment" form of benefit, in which the majority of their retirement benefit is paid prior to age 62, with only a token benefit starting age 62.

The idea behind this concept is that Social Security benefits would make up all or part of the difference. In the 1970s, the players at that time asked for and obtained this option.

Electing this option dramatically reduces the retirement benefits of players when they reach 62.

Other reasons why some players are receiving smaller than usual pensions.

Some players are divorced, and must share all or a substantial part of their retirement benefit with an ex-wife.

Many players who complain about the size of their monthly pension benefits have at least one, and often a combination, of the factors described above reducing their monthly benefits.

B. Second Career Savings Plan: First 401(k) Plan in Pro Sports.

2 for 1 Match

Beginning in a player's second year, all *pre-tax* contributions are matched at a rate of \$2 for every \$1 a player puts in, up to \$20,000.

Players can make pre-tax contributions up to the IRS limit (\$15,500 for 2007).

Players who do not contribute any of their own money receive a more modest Club contribution.

Prior to the 1993 CBA, no professional sport had a pension plan of this type. Gene's efforts in the 1993 CBA established this Plan.

The assets of the Savings Plan have grown from \$0 in 1993 to over \$800 million.

C. NFL Player Annuity Program

In collective bargaining in 1998, Mr. Upshaw fought for and won a new defined contribution plan, the NFL Player Annuity Program. This Program also provides deferred compensation to players, as early as age 35.

Players receive contributions based on the following schedule:

- in their second and third years, \$5,000;
- in their fourth year, \$55,000; and
- in subsequent years, \$65,000.

After the law was changed in 2006, Mr. Upshaw persuaded the NFL in the 2006 CBA to contribute most of this money in a tax-favored form.

The total assets of the Annuity Program have grown from \$0 in 1998 to about \$340 million.

V. Health Care Benefits

A. *Five Free Years of Post-Career Medical Coverage*: After the recent 2006 CBA extension, all vested players now receive 5 years of *free* post-career medical coverage for themselves and their families.

- In a recent 12 month period, Active Players paid \$11.5 million to provide this coverage to former Players. This coverage has been improved repeatedly since the 1993 CBA.

B. *Pre-Tax Deposits Into Health Reimbursement Accounts (\$25,000 per year/ \$300,000 max)*: The 2006 CBA created a new plan that can be used by former players to pay for medical benefits or medical coverage after their 5 years of free coverage ends.

Eligible players (playing in 2004 and after) are credited (*i.e.*, as if deposited pre-tax into their own accounts) with accounts valued at up to \$300,000 (\$25,000 per season up to the maximum of \$300,000) that can be used exclusively to pay their medical expenses (including insurance premiums) and the medical expenses of their family members.

The player can use account to pay medical expenses—without paying taxes, throughout his life, and if any amounts are left over at his death, the account passes to his eligible beneficiaries.

C. *88 Plan*: The 2006 CBA also created a new and innovative medical benefit exclusively for former Players with dementia. This plan is called the “88 Plan,” in honor of former Baltimore Colts player and Hall of Fame member John Mackey, whose jersey number was 88.

As far as we know, this is the first plan in the country that provides special benefits for employees who are afflicted with dementia, even when that dementia occurs decades after their employment has ceased.

In May of this year, NFLPA Executive Director Gene Upshaw and Harold Henderson of the NFL Management Council were honored by the Alzheimer’s Association in New York for this achievement.

Although this Plan began in February 2007, it has already paid out over \$500,000 in benefits. Like all other benefits for active and former players, this cost is paid for by the active players.

As of mid-September 2007, the 88 Plan had received 79 applications. 15 are pending. Out of the remaining 64, 60 have been approved, an approval rate of 94 percent.

VI. Other Charitable Retired Player Programs

Widows and Surviving Children Benefits: Under the 2006 CBA, the NFLPA was able to triple the benefits paid to widows and surviving children of former NFL Players.

Players Assistance Fund: In addition to all of the above benefits, the Players Association has long had a fund, called the “Players Assistance Fund,” that provides up to \$20,000 to players in need. Last year alone the Players Assistance Fund paid over \$1 million to 146 players in need, and provided almost \$500,000 for scholarships and grants to charities.

Retired Players Medical and Assistance Fund: The NFLPA/NFL recently-formed “Alliance” to coordinate medical support services for retired players in need of care—comprised of the NFLPA Players Assistance Trust (PAT), the NFL Alumni Association’s Dire Need Fund, and the Hall of Fame Enshrinee Assistance Fund. In July 2007 these groups established an initial \$7 million unified fund to pay for joint replacement surgeries and to address other financial hardships of retired players. Additional funding will be provided by current and retired players, and NFL clubs. The joint replacement surgeries will be available at no cost to retired players without insurance or with financial need. The NFLPA/NFL are in the process of identifying 10–15 medical centers across the country to provide these surgeries.

Senator DORGAN. Mr. Upshaw, thank you very much for being here and for your testimony.

Commissioner Goodell, welcome. You may proceed.

**STATEMENT OF ROGER GOODELL, COMMISSIONER,
NATIONAL FOOTBALL LEAGUE**

Mr. GOODELL. Chairman Dorgan, thank you. I know—members of the Committee, I know that we're pressed for time, so I'll move as quickly as I can.

Good morning, and thank you for inviting me to appear today and testify on this very important subject. We, in the NFL, strive to do everything in a responsible and comprehensive fashion, and we can only benefit from objective, thoughtful reviews of our policies and our programs.

I am joined here today by Harold Henderson and Dennis Curran, both who have been deeply involved in the development administration of player benefit programs for the past two decades. If you have any questions regarding individual cases, I'm certain that they, or one of Mr. Upshaw's colleagues, could respond better than I can today.

I'm also joined by Jim Irsay, the owner of the defending Super Bowl Champion, Indianapolis Colts, who, like all NFL owners, has a keen interest in the welfare of our NFL alumni and has grown up in the NFL, just like I.

I recently completed my first year as Commissioner. I have spent a considerable amount of time with retired players and listening to their views. And, while I would candidly acknowledge that we would have more work to do, I want to outline both the steps taken thus far and the framework within which we are approaching this issue, going forward.

I begin from a premise which I think no one seriously disputes: the men who played professional football decades ago deserve our respect and recognition, and their contributions to our game must never be overlooked. I honor them, and neither I, nor the NFL clubs, will turn our backs on them. And this is not Gene Upshaw's problem alone, nor is it the NFL's. The responsibility for helping retired players belongs to all of us—NFL owners, the union, current and retired players, and me, as Commissioner. I must be compassionate, creative, and responsible.

We are proud of the fact that player benefits steadily improved over time. While many businesses have terminated their pension plans, or turned them over to the Federal Pension Guaranty Board, we have both negotiated steady increases in our benefits and agreed to apply those increases on a retroactive basis. In the last 10 years, owners have increased their obligations by roughly \$400 million, virtually all of which has been for the benefit of retired players. Our disability plan offers a range of benefits, including active football, inactive, and football degenerative, total and permanent disability benefits and line-of-duty partial disability benefits. We recently added another benefit, which Gene spoke about, known as the 88 Plan, which provides up to \$88,000 per year for former players suffering from dementia, without requiring proof that the dementia is football-related.

Benefits available under our disability plan have also grown substantially over the past 15 years. The football-related total and permanent disability benefit is now \$224,000 per year. An active play-

er whose total and permanent disability is not related to football, but, rather, to an automobile accident or some other off-the-field incident, receives \$134,000 per year. Former players with football-related degenerative disabilities receive \$110,000 per year. These payments continue as long as he remains disabled.

Players with at least 3 years of experience are eligible for benefits, even if the disability is not football-related. Eligible players can still apply for football degenerative benefits for up to 15 years after they retire from the NFL. The NFL plan provides for payment of disability benefits on a retroactive basis, so players are not prejudiced if there are delays in the application and administration process. And NFL disability benefits are not offset by medical or workers' compensation payments. We believe these features, far from being exclusionary, demonstrate our commitment to providing fair and generous benefits to players and their families. And the record bears them out. Since 2000, we have paid more than \$110 million to players from the 1960s to the present who qualified for disability benefits.

Like you, I have heard concerns expressed about red tape and the complexity of the application process. We have taken recent steps to address that problem, and I think there is more we can do. We have tried to ensure that the standards by which disability claims are evaluated are clear and understandable, and, therefore, more easily and evenly applied. Decisions regarding line-of-duty disability are based on standards developed by the American Medical Association. We also recently agreed to expand the standards for determining total and permanent disability. If a player has been determined to be eligible for disability benefits by Social Security, that will also apply for NFL disability payments.

Our retirees have my personal commitment to continue the effort to identify and implement any reasonable procedural changes that would allow disability determinations to be made more quickly and reliably. And Gene and I have agreed to work hard on this issue.

This does not mean that every person who seeks disability benefits will, or should, receive them. And it does not mean that mean, even if approved, every applicant will receive the amount he requests. But we will continue to strive to help those who need benefits or other support.

Apart from addressing the workings of the disability plan, we have recently taken some additional steps to address specific needs of former players. Earlier this year, we joined the NFL Players Association, the NFL Alumni Association, and the Pro Football Hall of Fame to establish an Alliance to bring together different groups seeking to help retired players in need. As a first step, we agreed to create a fund, set initially at \$7 million, to fund two specific medical initiatives. First, to provide full or partial funding of hip, knee, or shoulder replacement surgery and related rehabilitation for former players at a network of leading hospitals throughout the country that can guarantee quality care. Second, to provide an expanded national program of cardiovascular risk screening and education for former players. Apart from these two programs, we are also exploring ways of providing support for older players in need of assisted-living arrangements and other specific medical needs.

Finally, we are expanding our outreach efforts to better identify former players with special needs so that our alliance can provide financial assistance to those proud former players and their families, who are sometimes hesitant to ask for assistance. As needed, our alliance will provide additional funding for these initiatives.

Some of the leaders addressing this issue—former players like Jerry Kramer or Hall of Famers Coach Ditka, Willie Lanier, and Merlin Olsen—have met with us, and continue to do so. Today, there are approximately 4,900 NFL retired players eligible to receive disability benefits. Like many groups of that size, the circumstances vary widely. Fortunately, the vast majority remain active and productive, and do not need to be involved in the disability system. But we remain proud of the comprehensive and improving package of benefits provided to players, and we will continue working to do as much as possible to help those in need.

Thank you for the opportunity to testify before your committee today.

[The prepared statement of Mr. Goodell follows:]

PREPARED STATEMENT OF ROGER GOODELL, COMMISSIONER,
NATIONAL FOOTBALL LEAGUE

Chairman Dorgan, Chairman Inouye, Vice-Chairman Stevens, and Members of the Committee:

Good morning and thank you for inviting me to appear today and testify on this important subject. I do not believe that this subject is, or should be, immune from Congressional scrutiny. To the contrary, the National Football League has always strived to conduct itself in the public interest, and to do everything in a first-class way. We can only benefit from objective, thoughtful reviews of our policies and programs. And so I welcome the opportunity to be with you today.

I am joined here today by Harold Henderson, our Executive Vice President of Player Programs, and Dennis Curran, our Senior Vice President and labor relations counsel. Both Mr. Henderson and Mr. Curran have been deeply involved for the past two decades in collective bargaining, including on player benefits, and in the administration of these benefit programs by the joint NFL/NFL Players Association Retirement Board.

I recently completed my first year as Commissioner of the NFL. During that year, I have spent a considerable amount of time with retired players and on the concerns raised by a number of them. And while I would candidly acknowledge that we have more work to do, I want to outline both the steps taken thus far, and the framework within which we are approaching this issue going forward.

In that context I should add that I cannot comment on the specifics of any individual case. In my role as Commissioner, I have not read the disability claims files, and I am not qualified to speak to the medical and legal issues raised in any individual case. Although I appoint one half of the Trustees on the Retirement Board, those Trustees act in a fiduciary capacity and I never discuss pending cases with them. Insofar as you may have questions regarding individual cases, I am certain that Mr. Henderson or Mr. Curran, or one of Mr. Upshaw's colleagues, could respond better than I can today.

In considering the subject of benefits for retired players, I begin from a premise which I think no one seriously disputes—the men who played professional football decades ago deserve our respect and recognition, and their contributions to our game must never be overlooked. I honor them and their achievements and neither I nor the NFL clubs will turn our backs on them.

Second, while it might be tempting to say—as some have—that this is Gene Upshaw's problem to solve, that is neither fair nor accurate. The responsibility for addressing the needs of retired players belongs to all of us. The retired players, the current players, the clubs, Gene as head of the Union, and I as the Commissioner—all of us have a role to play. We will continue to address this issue in a way that is compassionate, creative, and realistic.

Third, just as it would be wrong to say this is Gene Upshaw's problem to solve, it would be wrong to say that the NFL can or should solve the problem by itself. While some may not believe this, the fact is that we cannot solve every problem of

every type that has been identified, and certainly not in a way that will satisfy everyone. NFL clubs currently spend close to 60 percent of their gross revenues on player benefits and salaries. Our clubs contributed almost \$150 million last year to finance medical, disability, and retirement benefits for former players, and during the term of our current collective bargaining agreement, we project that our clubs will spend more than \$700 million to fund just this package of player benefits. Owners are responsibly addressing these concerns, but they are simply not in a position to absorb significant incremental costs.

In meetings with Committee and personal staff, our office and the NFLPA have provided you with a comprehensive summary of the benefits provided to retired players. Those benefits have steadily improved over time, and among the benefits available to a player who retires from the NFL today are all of the following:

- A defined benefit pension plan with a benefit that is geared only to years of service, not to the player's earnings. If a player with 10 years of service begins to receive his pension at age 55, he receives \$56,000 per year; if he waits until age 65, he receives \$147,000 per year. These amounts have grown steadily, and pension benefits have been increased in each new collective bargaining agreement over the past 15 years. For example, a player who retired 25 years ago—in 1982—and who begins to receive his pension at age 55 has seen his pension benefit credit more than double since he retired as a result of increases agreed to in collective bargaining.
- At a time when companies all over America—many of which are considerably larger than the NFL—have terminated their pension plans or turned them over to the Federal pension guaranty board, we have both negotiated steady *increases* in our benefits, *and* agreed to apply those increases on a *retroactive* basis. In our most recent agreement in 2006, we agreed to increase pension obligations by more than \$200 million. In the last 10 years, we have increased those obligations by roughly \$400 million—virtually all of which has been for the benefit of retired players. I think everyone would agree that this is a substantial additional commitment by our member clubs to former and current players.
- We also offer a 401(k) plan, in which player contributions are matched on a 2:1 basis by the clubs up to \$20,000 per year. Players have access to these funds as early as age 45.
- A player annuity plan, under which eligible players receive an NFL contribution of \$65,000 per year to provide transition income to players. They have access to these funds as early as age 35.
- Five years of post-career medical care and a health reimbursement account of up to \$300,000 for use later in life.
- A lump sum severance benefit paid upon retirement from the NFL based on the number of seasons played.

We also, as the Committee knows, have a disability plan which offers a range of benefits, including Total & Permanent, Football degenerative, and “Line of Duty” benefits. We recently added another benefit, known as the “88 Plan,” which provides up to \$88,000 per year for former players suffering from dementia, without requiring proof that the dementia is football related. For other categories of disability, the benefits range from \$18,000 per year to \$224,000 per year, depending on the nature and severity of the disability. These benefits are in addition to any state workers' compensation. In addition, not all disability benefits are based on a complete inability to work.

Benefits available under the disability plan have also grown substantially over the past 15 years. An active player who qualifies for football-related Total & Permanent disability has seen his annual benefit increase from \$48,000 in 1993 to \$224,000 today. An active player whose Total & Permanent disability is *not* related to football has seen his annual benefit grow to \$134,000. And former players with football-related “degenerative” disabilities have seen their annual benefit grow from \$75,000 in 1993 to \$110,000 today. These are annual amounts paid to the player as long as he remains disabled.

Our disability plan has a number of features that make it unique and superior to many other plans. I am told that most American workers have no employer-provided disability benefits. A report released last month by the Labor Department showed that barely 3 out of every 10 workers in the private sector have access to long term disability coverage. In certain sectors of the economy that might be perceived as higher risk, the rate of coverage is ever lower.

The NFL Plan covers all players with at least three seasons of experience (four years for players retiring before 1993) and provides for benefits even if the disability

is *not* football-related. With as few as 3 years of NFL experience, a former player can receive benefits from the NFL disability plan even if his disability results from a car accident, a fall at home, or some other everyday cause. Moreover, eligible players can still apply for football degenerative benefits for up to 15 years *after* they retire from the NFL.

The NFL Plan provides for payment of disability benefits on a *retroactive* basis, so players are not prejudiced by delays in the application and administration process. A player who is approved will receive benefits retroactive to his date of application. If the disability precedes the application, the player can receive up to 42 months of benefits on a retroactive basis. And, finally, NFL disability benefits are not offset by medical or workers' compensation payments, or any other NFL benefits, such as injury protection or severance pay. As the Committee knows, the workers' compensation system provides lifetime medical and other benefits to players. NFL disability benefits are in addition to any payments received from those systems.

We believe these features, far from being exclusionary, demonstrate our commitment to providing fair and generous benefits to players and their families. And the record bears that out—since 2000, we have paid more than \$110 million to players from the 1960s to the present who qualified for disability benefits.

Like you, I have heard concerns expressed about “red tape” and the complexity of the application process. We have taken recent steps to address that problem, and I think there is more we can do. One area of frustration is the Plan’s “Initial Claims Committee.” This arises out of new regulations adopted by the Labor Department in 2002. At the time these regulations were being considered, we filed comments with the Department noting that these regulations would likely have the effect of *slowing down* decisions on disability claims, and urged that they *not* be adopted. As we said at the time, because of the sometimes complex nature of disability decisions, including the need to have medical examinations completed by neutral physicians, and the reports analyzed within 45 days, the new rules “will only force faster denials.” The requirements imposed by the Labor Department have had the unintended consequence of making the application process longer and more complex, *as our people feared at the time they were proposed.*

In the future, we can look more closely at how we decide which cases need to be reconsidered. The statistics show that an overwhelming number of recipients are approved to continue their benefits, which rather strongly suggests that we may not need to review and reconsider cases as often as we have in the past. We have begun that process by reducing the frequency of medical re-evaluations from annually to once every 3 years for players receiving Total & Permanent disability payments.

When decisions need to be reconsidered at the Board level, we will begin making decisions outside of the Retirement Board’s quarterly meetings. Thus once an application is complete, or additional medical evaluations have been received, the Board can consider and vote on the application by fax or e-mail. This simple change will allow more expedited processing of applications.

Finally, we have tried to ensure that the standards by which disability claims are evaluated are clear and understandable, and therefore more easily applied. As one example, decisions regarding “Line of Duty” disability, which is a partial disability arising from football, are based on standards developed by the American Medical Association. We also recently agreed to expand the standards for determining Total & Permanent disability by incorporating the medical findings of the Social Security Administration. If a player has been determined to be eligible for disability benefits by Social Security, no separate medical assessments will be needed. Instead, the determination of the Social Security Administration will govern the former player’s medical eligibility for NFL disability benefits. Our retirees have my personal commitment to continue the effort to identify and implement any reasonable procedural changes that would allow disability determinations to be made more quickly and reliably. To that end, we have enlisted the assistance of independent counsel and benefit consultants to advise us on best practices with respect to disability plans and to recommend steps we can take to improve the administration of the Plan.

This does not mean that every person who seeks disability benefits will, or should, receive them. That needs to be understood by all parties. Disability benefits are meant to assist people who cannot work, not simply that they can no longer play professional football. No disability plan, whether sponsored by a private insurer, by an employer, or by the Federal Government, provides benefits to anyone who applies. And it does not mean that, even if approved, every applicant will receive the amount he requests. But we will continue to strive to do better, and to be seen as doing better.

I now want to address certain allegations about the manner in which decisions are made on disability applications. The administration of the disability plan is gov-

erned by Federal law and by regulations established by Federal agencies. The Plan operates as required under those regulations, including the use of an Initial Claims Committee, neutral physicians, and the associated time limits. The people who make decisions act as fiduciaries, who are obligated to follow the law and the terms of the Plan.

There are those who claim that disability applications are nonetheless denied as a result of some sort of grand labor-management conspiracy. This claim assumes that an extraordinary number of people—myself, my predecessor, Gene Upshaw, the Trustees, the Plan Administrator, the neutral doctors, Plan counsel, and their various staffs—have all agreed to deny benefits without regard to whether an applicant actually qualifies.

Those who adhere to this theory also dismiss that Federal courts throughout the country have upheld the Retirement Board's decisions in 24 of the 25 cases that have been litigated. The critics explain that away by saying that the standard of review is too deferential, ignoring that the standard is set by Federal law, not by the NFL, and is consistently applied in reviewing decisions by benefit plan administrators and fiduciaries in all sectors of the American life.

But no matter how deferential the standard of review may be, no court would defer to a decision tainted by collusion or conspiracy. The simple reality is that no such claim has ever been proved and no court has ever made such a finding. These charges are as cynical as they are unfounded, and the Committee should not dignify them here.

There is one other myth about decision-making that should be dispelled—that being that many players are either denied benefits altogether, or forced to endure extraordinary delay, because the Union and management trustees routinely divide 3–3 on applications. There is no basis whatsoever for this suggestion. In fact, since the Initial Claims Committee was put into place in 2002, it has deadlocked on only *six* claims in a line-of-duty disability and only 32 cases of Total & Permanent Disability. Every other claim filed—almost 600 claims—was decided unanimously, one way or another.

Where claims are appealed to the Retirement Board, the same is true. The Board seldom splits in its votes. And even *if* there is a split in the Retirement Board, the case is referred to a neutral physician, called the Medical Advisory Physician. That doctor's report is final and binding. That report decides the case—*not* the Union trustees or the Management Trustees.

Apart from addressing the workings of the disability plan, we have recently taken some additional steps to address specific needs of former players.

Earlier this year, we joined with the NFL Players' Association, the NFL Alumni Association, and the Pro Football Hall of Fame to establish an "Alliance" to bring together the different groups seeking to help retired players. *As a first step*, we have agreed to create a fund, set initially at \$7 million, to fund two specific medical initiatives.

First, to provide full or partial funding of hip, knee or shoulder replacement surgery and related rehabilitation for former players at a network of leading hospitals throughout the country.

Second, to provide an expanded national program of cardiovascular risk screening, and education for former players.

Apart from these two programs, we are also exploring ways of providing support for players in need of assisted living arrangements, and other specific medical needs.

Finally, we are expanding our outreach efforts to better identify former players with special needs, so that our Alliance can provide financial assistance to those proud former players and their families who are sometimes hesitant to ask for assistance.

We recognize that this is not a short-term problem. Some of the leaders addressing this issue—former players like Jerry Kramer or Hall of Famers Willie Lanier and Merlin Olsen—have met with us and continue to do so. I am sure that together we have the resources, creativity and determination to make a real difference in the lives of our former players.

There are today approximately 8,000 active and retired NFL Players. Like many groups of 8,000 people, their circumstances vary widely. We are proud of the comprehensive and improving package of benefits provided to players, and we will continue working to do as much as possible to help those in need.

Thank you for the opportunity to testify before your Committee today.

Senator DORGAN. Commissioner Goodell, thank you very much for being here, and for your statement.

Mr. Mike Ditka, from—player, coach, Chicago Bears.
Mr. Ditka—

**STATEMENT OF MIKE DITKA, MEMBER, NFL HALL OF FAME;
FORMER NFL PLAYER, CHICAGO BEARS, PHILADELPHIA
EAGLES, DALLAS COWBOYS; AND FORMER HEAD COACH,
CHICAGO BEARS, NEW ORLEANS SAINTS**

Mr. Ditka: Whatever.
[Laughter.]

Mr. DITKA. Mr. Chairman and distinguished members of the Committee, I'm—I appreciate you being here, but I'm not sure I really understand it. The Congress of the United States of this great country has a lot more important things to do than this. And it's a shame that it's come to this. But it has come to this.

I want to clarify one thing. We've had one of my former players take some pretty good potshots, and that seems to be his nature. I'm not mad at anybody, especially this man or that man. The system's broken. Fix it.

Football—and listen to me—football owes me nothing. Not a thing. But I owe everything I have in life to this great game. From high school to college to professional, I've been able to participate as a player, an assistant coach, a head coach, for almost 50 years in this League, and now I'm an expert, I get to talk about it. That's pretty interesting.

The system is broke, fix it. They know what's broke, they know how to fix it. We're not talking about the money. Everybody knows the money's there. Fix the system. Don't make proud men beg. Don't make 'em jump through hoops. They have dignity. Let people live out their lives with some respect, that's all I'm asking. I'm not asking for an increase in my pension, as has been mentioned. Nobody cares about that stuff. And it was thrown up, what I get in my pension. I also waited to age 65 to get it. That—I'm entitled to that. I played in this game. But the guys who—these players, today, say, "Well, they're doing—they're making all these contributions to the former players." They should. The former players are the reason this League is what it is, not the total reason, they're not the whole of it, they're part of it. The players today are only the keepers of a great game. The makers of a great game came a long time ago, and will continue to come, long after these guys are gone. Just let them live out their life with a little bit of respect.

We started a Hall of Fame Assistance Dire Need Fund about 8 years ago from a golf tournament I have. We've been giving money to former Hall of Famers—or Hall of Famers, and, actually, former players who aren't Hall of Famers. And we've been helping 'em out. It's a little, here. It's \$10,000, it's \$5,000, it's \$2,500—it's no big deal, but it helps out. They need the help. And they're not—they don't even know where to go to get other help.

Now, maybe this is being—they're being made more aware of the situation and how to get help. But all we're saying is, hey, you know, nobody's mad at anybody. I'm grateful. I just think—this shouldn't be happening. I really mean that from the bottom of my heart. You people have more important things to do than what we're doing. And I hope it doesn't come down to—any decisions you have to make, I want you to hear the story. The League—this man

is a good man, he's got a good heart. Gene Upshaw, I'm sure, is a good man with a good heart. Do the right thing. Fix the system. Quit arguing about it. Everybody'll go away. And—especially me, because I didn't "chose" this, it chose me, believe me. This is not what I'm looking to be doing, believe me.

So, I just want to tell you, I have no charts to show you, if—you'll be grateful of that.

[Laughter.]

Mr. DITKA. Thank you for your time, and I do apologize. I mean it.

[The prepared statement of Mr. Ditka follows:]

PREPARED STATEMENT OF MIKE DITKA, MEMBER, NFL HALL OF FAME; FORMER NFL PLAYER, CHICAGO BEARS, PHILADELPHIA EAGLES, DALLAS COWBOYS; AND FORMER HEAD COACH, CHICAGO BEARS, NEW ORLEANS SAINTS

Chairman Inouye, Subcommittee Chairman Dorgan, Ranking Member Stevens, Subcommittee Ranking Member DeMint, Members of the Committee and distinguished guests, my name is Mike Ditka. I played for the Chicago Bears and the Dallas Cowboys from 1961 to 1972. I also was an assistant coach for the Cowboys and the head coach of the Bears 1985 Super Bowl championship team. Since 1992, I have been involved in broadcasting of NFL games as a color commentator and analyst, as well as other business ventures. I have been fairly successful and, at the outset, I'd like to clarify that nothing could interest me less than the size of my own NFL pension. I am here today on behalf of many other retired NFL players who have not been as fortunate as I in the years since their retirements because the injuries they received playing the game of football prevented them from making a living.

For some time, now, I have been involved in charitable efforts to aid disabled and economically challenged NFL retirees through nonprofit organizations such as the Gridiron Greats and the Mike Ditka Hall of Fame Trust. For some time, these and other organizations have picked up the slack left by an NFLPA that does not do enough for disabled retired players and an ownership that seeks to avoid doing anything at all, both of which seem to have handed the operations of the Plan to an aggressive litigation firm charged with delaying or denying every legitimate claim that players bring forth. What these charities do, all they can do, is place a band-aid upon the huge wound these other groups are, at best, ignoring by minimizing it's gravity and keeping it's true extent secret. We will continue to do this work as long as the problem exists. But we will also continue to point out the responsibility the other parties I've mentioned have for perpetuating and worsening this problem, and their corresponding duty to shoulder the burden of fixing it *before* those who suffer under the current system conveniently die and reduce the excess financial burden upon the Plan's funds.

I'd like to address the question of disability pensions under the Bert Bell Retirement Plan. It is hard to say what is more disturbing: what we know, or what we don't know. What we know is bad enough. To start with, the Plan provides disability benefits to too few players (no more than 200 or so, although this statistic often goes up or down in statements by the Plan's lawyers). According to the Plan, there are more than 7,000 retired players who are entitled to receive some kind of retirement benefit. (The actual number is probably significantly higher, but I'll use 7,000 here to describe the Plan as generously as I can.) This means that, *at most*, 3 or 4 percent of retired players are receiving any kind of disability benefit. And this is in a game that pushes most players out of the league within a few years—often due to injury (the average playing career is around 3.5 years). It is a collision sport, not merely a contact sport, which is probably the most violent public spectacle since the gladiatorial games. So the idea that only three or four out of every 100 retired players are entitled to ANY kind of disability benefit (not just the top level, but any kind at all) just clashes with common sense.

On top of that, look at the number of retired players who have received disability benefits for brain injuries caused by multiple concussions. Again, according to statements by the Plan's lawyer in Sunday's *Charlotte Observer*, there have only been four—ever, in *history!* One of them was Mike Webster. And the Plan's representatives claim not to know the number of players who have applied for disability due to such injuries. Anyone who has played the game, especially in the recent past when it was often played on a concrete parking lot covered with a quarter-inch layer

of indoor-outdoor carpeting called “Astroturf”, will tell you that NFL football often results in concussions and that players commonly receive multiple concussions over the course of their careers. Again, the idea that only four men who have ever played pro football have had disabling brain injuries just doesn’t make a lot of sense.

Why don’t more players receive the disability benefits they need? There are lots of answers, starting with the bargaining process between the union and the NFL. Gene Upshaw described his attitude toward the retired players last year, when he told a newspaper that retired players “don’t hire me and they can’t fire me. They can complain about me all day long.” It’s possible that the union leadership doesn’t push harder for fair disability benefits because they think it might mean less for current players. But part of the job of union leadership is to explain to current players that they could be ex-players next week or next month, as a result of injuries or salary cap decisions. It’s actually in the interests of current players to push hard for fair, generous disability benefits—and to get that money from both the team owners and from current players.

Look at it this way: the Plan says that retired players receive only \$20 million per year in disability benefits today. The players’ share of revenues under the salary cap system is about \$4 billion a year. Tripling the disability payments to \$60 million—an increase of \$40 million—would be only 1 percent of the players’ total share. If the players and the owners each gave an extra .5 percent of the player’s current share for disability pensions, they could easily cover this amount.

Another big barrier to fair disability benefits is the way the Bert Bell Plan is run. We’ve heard the same stories from too many retired players to chalk this up to complainers, the way the Plan would like to have it. All claims are reviewed by two office staff who possess no relevant skills for reviewing disability claims. If they deadlock, the claim is denied. None of the members of the Retirement Board have any medical training, and several of them have close ties to the union president—including the agent who negotiated Mr. Upshaw’s \$7 million contract. The Plan will delay decisions over and over again—Mike Webster’s case took 4 years before he had a final decision. Often these delays are so that the Plan can request multiple reports from doctors in the same specialty or closely related ones—“doctor shopping” is the right word for it. We all know that if you ask for enough medical opinions, someone will eventually find that there is no disability, or disability at a lower level. And the Plan spends extraordinary amounts on its attorneys—\$3.15 million last year. In fact, that’s almost one-sixth of what the Plan claims it spent on all disability payments. Once again, those numbers just don’t add up.

All of this suggests that, under the Bert Bell Plan, the main emphasis is on minimizing the benefits paid out, not on making sure it’s done fairly. The website for the Plan’s lawyers has boasted about how many times they have defeated claims by retired players. But the number of lawsuits suggests that something is broken in the Board’s procedures. According to the Plan’s attorneys, it has been sued by almost one-quarter of the retired players whose claims were denied. This is not the sign of a healthy process.

If you want to get an idea of how the Plan really works, take a look at the Mike Webster case. Here was a guy who started almost 250 games for the Steelers, and played every offensive down for six straight seasons. He wasn’t called “Iron Mike” for nothing. He played when the head slap was legal, and probably had thousands of serious hits to his head and dozens of concussions. He couldn’t work after he retired, and was hired by the Kansas City Chiefs as a favor. His friends told the pension plan’s investigator that he wasn’t right mentally and never held a job. But the Bert Bell Plan told Mike that his brain injuries weren’t the direct result of playing football, and told him that he wasn’t disabled until years after he retired. They ignored the opinion of their own doctor, and refused to look at the evidence from Mike’s doctors. And it took so long to decide his claim that he died in 2002 before the Plan had made a final decision.

After he filed suit, the first judge who looked at the case said that given the overwhelming evidence, the Bert Bell Plan had probably acted in bad faith. Did the Plan pay Mike’s children then? No. They appealed. And this time it was three judges in a Court of Appeals that said the Plan had ignored the unanimous medical evidence. They said it would require a “leap of faith” to agree with the Plan. And so the Plan paid hundreds and hundreds of thousands of dollars in attorneys’ fees to fight the case, and also paid for the time that Mike’s attorneys spent pursuing it. That helps explain why the Bert Bell Plan ran up a \$3.5 million bill for attorneys last year—money that could have gone to injured players. And even today, just a week ago, representatives of the Players Association claimed that Mike Webster was actually working after he retired from football. That’s not true, and they *know* it.

I’ve talked about some of the things we know about the Bert Bell Plan. But it’s just as important to point out what we don’t know, and what I hope this Committee

can help find out through the hearing and oversight process. Right now, the Plan gives out virtually no information about the number of players receiving disability benefits, how many people get each type of benefit, even the total dollars paid out each year for disability. The information that gets handed out by the Plan—only in response to Congressional and media scrutiny—is fragmentary and unreliable. What we really need is full disclosure by the Bert Bell Plan of all the key information behind the disability benefits, so that the retired players, and the union, can negotiate for better procedures, changes in the way the Plan is administered, and more money for disabled retirees. I hope that this kind of necessary disclosure is one result of this Committee's work, and I look forward to working with you so that the great men who built this league can lead lives of dignity after their retirement.

Senator DORGAN. Mr. Ditka, thank you very much.

The baseball folks said no one has any business holding hearings on steroids, either.

Mr. DITKA. Yes.

Senator DORGAN. But the fact is, because there were hearings on steroids, the changes were made in baseball in a very significant and a very positive way. Perhaps public pressure is important when you're talking about people's lives, people who can't get up and walk in the morning, and so on. So, I understand, I don't—my preference is that—although there is an antitrust exemption and various things, my preference is that Congress do nothing more than hold hearings and applying some pressure, and, perhaps, through that approach, we'll get to the right result.

Mr. Gale Sayers, Chicago Bears, Hall of Fame.

STATEMENT OF GALE EUGENE SAYERS, MEMBER, NFL HALL OF FAME; AND FORMER NFL PLAYER, CHICAGO BEARS

Mr. SAYERS. Thank you, Mr. Chairman, members of the Committee, distinguished guests.

My name is Gale Sayers. I was a running back for the Chicago Bears from 1961—1965 to 1971, when my career ended as a result of a knee injury. I have since had rewarding careers in athletic administration and sports marketing. I started a computer business, in 1983, which has grown into a major provider of technology products and services. In short, I'm a man truly blessed by God and life, like my friends, Mike Ditka and Gene Upshaw.

I'm not a typical NFL retiree who has suffered through the disability process we discuss today. As a board member of a charity that helps retired players, however, I have seen many horror stories. I am here for those who are not as lucky as I was. I'm also here as a member of the NFL family who is worried about the effects of—our broken disability system is having on the entire game. At its best, football is a family, but extreme success has strained its relationships. Today, the NFL is a \$7-plus billion industry, yet it still struggles to do right by the retired players whose sacrifices built this game.

I believe this failure is at the core of a general crisis in the game. You've been hearing about the symptoms almost every day. What family can remain healthy if its younger players are convinced that every dollar spent on the health of its elders is a dollar out of their pockets? Does that message promote the respect among generations that support rules of good conduct? Doesn't this attitude endorse the selfish behavior we observe in some young players? The current disability system routinely bars retired players from fair access to

disability payments that offer a minimum standard of care. This is not the way a family works, and is not the face the NFL should be—to—should present to the world, to the other families that pay for the tickets, the TV subscriptions, the hotdogs and jerseys.

I do not blame anyone for this failed system, but we will all share the blame if we don't pull together and fix it now, while these players are still alive and in need.

I heard Gene speak about his efforts to obtain more benefits for retirees. I take him at his word. But whatever has been done to date has not been enough, because the problem is still there. He, the NFLPA, and today's players must do more. I've also heard a statement attributed to Mr. Goodell that the owners see this 40:60 revenue split with the active players as so generous that they cannot do more for retired players. I'm glad to hear him say that, you know, the owners take, you know, a stake in helping the retired players.

This problem belongs to the entire NFL family, including the owners. As for the charitable efforts that retired players have engaged in for the disabled among us, they will continue. We will all know when we've done enough, because the problem will simply not exist anymore. Until then, there is responsibility to take and work to do. Some legislative action might help this situation, but today I want to make a more immediate appeal to the Committee. Please help us try to fix this problem. You call this an oversight hearing, and I think that's just what we need. At its best, football is a family with no need for an overseer, where bargaining power is not an issue. But, in this new rich NFL, bargaining power is crucial, and the retired players have none without your help. I don't ask you to play for our side, only keep the game fair and keep it going until the job is done. I ask this committee to take oversight over a bargaining process among all of the parties represented at this table by asking for periodic reports to the Committee on our progress, perhaps every 30 days or so. If you do this, I think we can get the job done.

For my part, if you will be the referee, I promise to give you my best game.

Thank you for your consideration and for your oversight on this very important subject.

[The prepared statement of Mr. Sayers follows:]

PREPARED STATEMENT OF GALE EUGENE SAYERS, MEMBER, NFL HALL OF FAME;
AND FORMER NFL PLAYER, CHICAGO BEARS

Chairman Inouye, Subcommittee Chairman Dorgan, Ranking Member Stevens, Subcommittee Ranking Member DeMint, Members of the Commerce Committee and distinguished guests, my name is Gale Sayers. I was a running back for the Chicago Bears from 1965 to 1971, when my career ended as a result of a knee injury. I have since had rewarding careers in athletic administration and sports marketing, until I launched a business in 1983, which has grown into a major provider of technology products and services. In short, I am a man truly blessed by God and life, like my friends Mike Ditka and Gene Upshaw. Like them, as well, I am not at all a typical NFL retiree who suffered a career-ending injury and then suffered again through the current disability process that is the subject of today's hearing. But my own blessings bring responsibilities, and I am here for those who were not as lucky as I was, many of whom have gone through that unfortunate experience. As a board member of a charity that helps retired players, I have heard many of their horror stories and I want that system reformed. Moreover, as Mike has often said, football owes us nothing and we owe football everything. I agree. So, as I see it, I am here

for football, too—a game I love and a family I love. As a member of that family, I am worried about the effects our broken disability system is having on the fabric of the entire game. I call football a family because that's what it has always been at its best. Now, families don't always get along perfectly. Ask my old friend and teammate, Dick Butkus, about negotiating a contract personally with our old coach and owner, George Halas, as was the common custom in my day, and you might hear a response that I would not dare put in writing before the eyes of the Senate. If, however, you were to speak harshly of Mr. Halas yourself, Dick would jump to the defense of "Papa Bear" the way any of you would respond if a stranger criticized a member of your own family. The violent nature of our game makes us pull together like family members. When someone is playing hurt, we all know in the locker room. We protect the secret so he won't be vulnerable, and we watch his back during the game in an effort to protect him from further injury. Like a family, we watch out for one another.

Extreme financial success can put strain on any family's relationships. The football family is no exception. Today, the NFL is a \$7-plus billion per year industry, yet it still struggles to do right by the retired players whose blood, sweat and sacrifice built the game. Sometimes it seems as if football has been torn apart by its own success. I believe that is what has happened with the NFL today. I also believe that the failure to address this disability issue is at the core of a more general crisis in the game. You've been hearing about the symptoms of that crisis almost every day recently. But what family can remain healthy if its senior members are thought of as a useless burden on its budget? Or if its younger members accept the idea that every dollar spent on the health of their elders is a dollar out of their pockets? Will that family engender respect among its generations and a sense of authority to support rules of good conduct or common sense? If this disrespect for the history of the game, which is embodied in its retired players, is allowed to continue unchallenged, if generations of older players continue to be seen as expensive and irrelevant, can anyone be surprised if the recent displays of selfishness, irresponsibility, even of criminality, continue to be exhibited by growing numbers of young players? When families break down in this way, such behavior is always the result.

When I came into the league, older players and retired players were, generally, treated with respect and seen as sources of authority and wisdom. Reverence for them inspired reverence for the game itself, its history, its rules and the need to project some image of integrity to the fans who, believe it or not, look to football as more than just a game on the field. This reverence for the people who built the game is no longer common and the results are on display everywhere. I'm not saying my generation of players was a bunch of angels or that the current one is the opposite—far from it. I see a young man like Ladanian Tomlinson or Peyton Manning and I know there is still a sense of stewardship and honor alive among the current generation. But that ethic is coming under greater attack today than ever before and exclusive worship of the bottom line is eroding the strength the game derives from the extended family culture it was founded upon generations ago. We need to turn that around and we must begin that effort today.

We at this table, all members of football's family, must pull together and fix this disability problem. If we fail to do so, I believe we will continue to see more and more signs of moral and social decay in our game. If we succeed, however, I believe many good things will follow. I truly believe we can pull together as a family and save our game, but I am also certain that we will need the help of this Committee to do so, as I will explain.

The current disability system routinely bars retired players from fair access to disability payments that offer a minimal standard of care. The word often heard is that the inconvenient "problem" of disability will eventually pass away—a nice way of saying that the retirees themselves will conveniently die. This is *not* the way a family should work and it is not the face the NFL should present to the world—to the other families that pay for all the tickets, the TV subscriptions, the hot dogs and the jerseys. A game worth over \$7 billion per year owes the fans that support it something more than just a mirror held up to all of society's problems. Much is given to this game, so much should be expected of it, I would argue, and the game and its players should be held up to a *higher* standard. My friend Charles Barkley once famously said, "I am not a role model." He meant that as a caution to society at large not to hold up athletes up as heroes. I agree with that warning wholeheartedly, but I do not agree that athletes, as public figures, and the games that benefit from presenting their images to the world, do not have a special burden of responsibility to the public. This is not something we choose, it is something that is thrust upon us as and we must accept some sense of responsibility because, frankly, children are watching. Their parents should pay heed to Charles' warning and

teach their children accordingly, but it is our responsibility and the game's to act as if they cannot.

The image this disability issue projects to the public is beneath the dignity of the NFL and it must come to an end before it damages our relationship of trust with the fans. I do not blame any single person for this failed system, whether at this table or elsewhere, but we will all share the blame if we don't pull together and fix it now, while these players are still alive and in need. If we do not do so, if we simply allow this problem to "solve" itself by waiting for a generation of gravely injured retirees to die before they can succeed in claiming disability support to which they have a right, then the stain upon the game and its history will never be removed.

I have heard Gene speak of his efforts to obtain more benefits for retirees. I take him at his word. But whatever has been done to date has not been enough because the problem is still with us. He, the NFLPA and today's players must do more to fund this system adequately.

I have also heard a statement attributed to Mr. Goodell that the owners consider their 40-60 revenue split with the *active* players to be so generous that they cannot do more regarding disability for *retirees*. I want to believe that this was a misunderstanding or misquote and I hope he will correct it here today. But if it is a true reflection of the owners' sentiments, then it is an absolutely inadequate response and an evasion of responsibility to the game and the people who built it into the financial success the owners enjoy today. As Gene has often pointed out, neither the ownership nor the NFLPA directly represented the interests of retired players in collective bargaining, so the revenue split produced by that bargaining offers the owners no shield whatsoever from their responsibilities to disabled retirees.

No, this problem belongs to the *entire* NFL family and the owners are not exempt from their proportionate share. I'm glad the NFL has hired a "crisis manager," but I disagree with their definition of this "crisis" if it simply means that they might have to spend some more money on healthcare for the men who helped build their fortunes. The crisis, to me, is this broken system that dishonors our game by compounding the injuries suffered in honest competition by its retired players, and "managing" this crisis must not mean finding ways for the NFL owners to evade their responsibilities. This is not just another stadium that will be built with public money if the owners threaten to leave town. This is a system that demoralizes, shames, bankrupts, injures and, at the extreme of its cruelty, even kills people. *Everyone* is responsible for a share of curing this misery.

I thank the NFL and the Players Association for proposing their new "Alliance" plan. It is an important step in that it is a public recognition that this serious problem exists. As a substantive response to the problem, however, it falls far short. That was predictable since, unfortunately, virtually none of the people on the retirees' side of the ball who have worked on this issue for years were invited to contribute to that proposal. Perhaps because the collective bargaining process has habituated them to think this way, the NFL and the NFLPA are, unfortunately, accustomed to keeping the retirees locked out of actual discussions concerning their fate. As such, as was done with this plan, they simply hand us a plate that we didn't order and tell us to eat it with full enjoyment. This is not an adequate way to construct a plan for the retirees care and, therefore, this plan is not as good as the one we could have hammered out together. We must do better. We can. To do so, we must come together and negotiate. For that, as I said, we will need the help of the Senate.

As for the charitable efforts in which we retired players have engaged for the sake of our NFL family members, as Mike has said, they will continue. We must do more, too, and we will. But such private charity is a mere band-aid upon this enormous systemic problem. It cannot ever substitute fully for responsible engagement with the problem on behalf of the rest of the NFL family, the owners and the NFLPA, which are obviously not doing enough. We will all know when we've done enough because the problem will simply not exist anymore. Till then, there is responsibility to take and work to do.

But funding this system adequately is not the only problem that must be addressed. The unfairness of the system's procedures must be reformed immediately, before they do further harm to retirees and their families. Inconsistent and arbitrary administration of retirement benefits is common under the Plan and the tragic consequences are everywhere. Because of weaknesses in the Employee Retirement Income Security Act, which is the Federal employee benefits law regulating employee benefit plans, including the Plan, and the Federal Labor Management Relations Act, which regulates collective bargaining, those practices have been allowed to continue. I would direct the Committee's attention to the letter provided it by my fellow Kansas Jayhawk alumus and running back for the San Francisco 49ers.

Miami Dolphins and Green Bay Packers, Delvin Williams, for a fuller discussion of these issues and an example of the punitive lengths to which the representatives of the disability plan have gone in litigation against a disabled player who dared to pursue his rights in court. Because that letter treats these issues in detail, I have attached it to this testimony as an “addendum” and ask the Committee to accept it into the record as an extension of my own remarks.

Here are but some of the problems I see in the Plan, as it exists today, which I hope can be addressed in negotiation or, failing that, through legislative action:

1. There is no one on the Retirement Board of anyone with a sufficient incentive either adequately to represent the interests of the disabled retired players or to ensure that benefits are provided uniformly and objectively. Indeed, there are inherent conflicts of interest among members of Retirement Board in favor of the owners of the NFL teams and the active players.
2. Many severely disabled retired players have had their valid disability benefit claims denied because there is no objective oversight over the actions of the Retirement Board and its staff and the members of the Retirement Board have inherent conflict of interests in their service to the participants in the Plan.
 - a. Representatives on the Retirement Board who are appointed by the owners of the NFL teams recognize that denying benefits to the disabled retired players will minimize future contributions to the Plan by the NFL teams.
 - b. Representatives on the Retirement Board appointed by the Union have included among them agents of active players who do not represent retired players. If the executives of the union are inherently more concerned with the active players who re-elect them as executives, they lack sufficient incentive to look out for the best interests of the disabled retired players, which is their charge under ERISA. If those Union representatives are more concerned with the pay for the active players, they will also recognize that denying benefits to the disabled retired players will minimize current and future payments for their clients.
 - c. Gene has often said that the Union has negotiated new benefits for retired players, even though he does not represent them, and that the active union employees have “subsidized” those benefits. He has not, however, sufficiently emphasized that these benefits are, in fact, also for the current players and that, once those benefits are established, the Union has a moral and legal obligation to ensure that they are administered objectively and uniformly among both current players and retirees. That has not happened. If the Committee would request and obtain data concerning the actual relative distribution of these funds, the full picture would become clear and public, as it should be.
3. The Retirement Board and its staff have not been required to prescribe, publish or adhere to objective standards for determining the eligibility for benefits under the Plan or to publish Plan changes in a timely manner.
4. There is no adequate administrative help for applicants, many of which have brain injuries and corresponding short-term memory loss due to multiple concussions, to fill out applications and proceed through the process. Simply posting application information on a website, without the availability of objective, real-time human help, is a particularly egregious shortcoming in the context of such injuries, which are common among ex-NFL players. Moreover, since the NFL has frequently argued that players have not sent in their paperwork (a claim which stretches credulity when referring to totally disabled people who have little else to depend upon but a successful application, but which is nevertheless conveniently impossible to disprove in the absence of better record-keeping safeguards), these interactions should be recorded and an evidentiary chain firmly established to keep the process honest.
5. The time for processing of claims is inordinately long. Plan representatives have often quoted an “average” processing time of 18 months, which is interminable in itself if one is disabled, but if the Committee could look behind this “average” time to a true distribution of processing times (considering that many claims are disallowed almost instantaneously), I believe it would find that the processing of claims actually meriting the largest levels of compensation takes a much longer period. Those that cannot be denied immediately are, thus, often delayed inordinately. This, again, is particularly egregious because, by the NFL’s own computations, the average ex-player lives to an age of only 55, with linemen averaging only 52. [It should be noted that these figures have been used historically by the Plan’s representatives to urge ex-players to take retire-

ment at an earlier age, which results in dramatically lower levels of compensation]. This convergence of facts has given rise to a popular characterization of the Plan's tacit strategy as "Delay, Deny and Hope They Die."

6. There is no adequate deference given to medical opinion in the entire process. As noted above, Plan medical experts are routinely undermined and circumvented after they have made a disability finding in favor of a retired player. Moreover, as in the case of Brent Boyd, non-Plan experts have been specifically enlisted to overturn the decision of Plan doctors who made disability findings. Medical expertise functions as sword to deny disability, but it is no shield against the aggressive strategies of administrative denial and, if necessary, litigation by the Plan staff and the Groom Law Group.

7. All numerical data associated with the Plan is non-public and inaccessible, making misrepresentations by the Plan's representatives common and not immediately arguable. How many retirees are there? The Plan's own representatives have given numbers ranging from 8,000 to 13,500, seemingly dependant upon which number was more advantageous under the circumstances. How many receive disability payments? At a hearing earlier this year before the Administrative Law Subcommittee of the House Judiciary Committee, Plan representatives said 317. Later, they amended this to 428. On information and belief, which is as good as we can get with respect to such unpublished data, the number is actually less than 200. Crucially, at what *levels have people been compensated?* (Again, like the "average" claim processing time, what is the *distribution?*). This has never been answered. How many have applied for disability predicated upon brain injuries resulting from concussions? As recently as this Friday, Plan representatives told Senate staff that *they did not know this number—this even though the NFL is supposedly seeking to implement a new, progressive policy to protect players from the effects of concussions.* How many have been successful in obtaining disability based on concussions? According to a statement by Attorney Douglas Ell of the Groom Law Group to a reporter, that number is *four (4)*—for the most violent game since the Roman Arena, often played on a surface consisting of concrete covered with a quarter-inch layer of indoor-outdoor carpeting called "Astroturf", which was incorporated in stadium construction to save on grounds-keeping bills, without regard to the havoc it visited on men's bodies. If that number is accurate, the Committee can draw its own conclusions about the adequacy of the Plan's protections. *I implore the Commerce Committee, consistent with its oversight function, which is the reason for this hearing, to seek extensive and complete data on all aspects of the Plan, its procedures and its funding. The truth, which has been artfully and thoroughly hidden to date, is in these numbers. Without the thorough examination and publication of these data by the Committee, any private negotiations held in an attempt to solve this problem cannot bear fruit.*

8. The NFL Retirees have no bargaining power to negotiate an end to this inequitable situation without the continuing oversight of the Senate. The collective bargaining entities, the NFL and the NFLPA, do not and cannot represent the retired players. Indeed, as noted above, the Plan representatives have not even fulfilled their fiduciary and representative duties to the retired players with respect to the distribution of pension and disability distributions. *The light of common day and, with it, the power of public and governmental scrutiny of this process is the only bargaining power available to the NFL Retirees. Nevertheless, if the Committee would continue its oversight of this issue and demand regular reports of negotiating progress by the parties represented at this hearing, the NFL Retirees would like to engage the collective bargaining entities in a true negotiation in an effort to settle this matter privately, without the need for specific legislative relief. I therefore ask the Committee to exhort the parties to come together in such a negotiation immediately after this hearing and to subject that process to your regular oversight in the form of such periodic reports, which we propose be produced to the Committee every 30 days from the date of this hearing.*

Some legislative actions might help this situation but today I want to make a more immediate appeal to the Members of the Commerce Committee: please help us pull together as a family and try to fix this problem ourselves.

You've called this an "oversight" hearing. I like that word. I think that's just what we need. As I've said, at its best, football is a family, with no need for an overseer, where "bargaining power" is not an issue. But in this new rich NFL bargaining power is crucial and the retired players have none without your help. I don't ask you to play for our side, only to keep the game fair and keep it going until the job is done. We need a referee. I think that if this Committee would ask the parties

to come together, starting tomorrow, and negotiate a true solution to this problem, and if it would take oversight of a bargaining process among the owners, the Players Association and representatives of the retired players, with each party making periodic reports to the Committee about the progress of those negotiations every thirty days or so, we should be able to get this job done ourselves. I ask this Committee to take such oversight and to request and publish all numbers and data necessary to a fair negotiation, so that one can go forward. I am told the most effective mechanism to obtain such data is a study and report by the Government Accountability Office. I respectfully request that such a study be performed and such a report be written. If you do these things, I think we in the NFL family can get this job done and clean an ugly stain upon our great game before it becomes permanent. For my part, if you will be referees, I promise you my best game.

Thank you for your consideration and for your oversight of this important subject.

Senator DORGAN. Mr. Sayers, thank you very much.

I wish all of you could have heard testimony previously before this committee at other times and other occasions, when pediatricians would come forward and tell us that these young kids, taking a look at baseball and football players, idolizing these players, are finding ways and searching for ways to become a 300-pound lineman while in high school. So, when people say to me—or the issue of steroids in baseball—when people say to me, “Well, Congress has no business in any of these areas.” My preference is that be the case, but if Congress can play a role, in my judgment, for applying some pressure and shining some light on what’s wrong and how to fix it, perhaps Congress will do something very important, not just for players and former players, perhaps for young kids, who are going to come through this system to be the future of baseball and football and other professional sports.

So, let me make a comment. As a result of oversight hearing, I’m not particularly anxious or interested in legislating. It seems to me that professional football players and owners control a big pot of money, very substantial pot of money. The profits and salaries and ticket prices are very substantial, frankly. And it seems to me that they ought to find a way—when I say “they,” I’m talking about owners and players and all those involved in this professional sport—ought to find a way to use the substantial amount of money that exists in this industry to respond to these issues.

Now, let me ask one opening question, then I’m—in deference to my colleagues, I want them to be able to ask questions before we have a time problem.

The one question I would ask, of Mr. Goodell and Mr. Upshaw, is this. I come to this knowing very little about it. I’ve done a lot of reading about it in preparation for this hearing. But if I were in your two seats, and I heard the testimony in the first panel, I would say, “Gotta be something wrong here.” There’s a former football player that goes to a third doctor, after the first two have said, “Look, you’ve got a problem here, a very serious medical problem,” and the third doctor doesn’t look at the brain scan and says, “No, you’re OK.” I would look at that, and I would say, “Boy, there is something broken, and we ought fix it.”

Give me your assessment of what we hear today at this panel.

Mr. GOODELL. Well, Senator, let me respond to that first, and then Gene can respond.

I agree with you—and Gene and I have talked about this—that there has got to be a better system, there has got to be a way to improve our system to be more responsive to players that have in-

juries. We have made some changes in the short term. I have changed out two of the trustees, not because they were fiduciarilly—irresponsible—but because I felt it was time to get fresh thinking. In addition, we have tried to address this issue on a more regular basis; rather than quarterly meetings, we're meeting on a much more regular basis, and our staffs are working on this in between the quarterly meetings.

In addition, we have looked to outside counsel, independent counsel, that we are—that are experts in this area—I am not—but what we could do to try to make the system more intelligent, more responsive and fair.

So, I think we are looking at what to do. I would agree with you that, when you hear these stories, it is difficult, and you want to be responsive.

Senator DORGAN. And, while you answer, Mr. Upshaw—and, Mr. Goodell, you may want to comment—*Charlotte Observer*, this weekend, reported that there are only four retired players who have received total and permanent disability. That's just counterintuitive to everything you would expect would be the case with respect to professional football. Is that a right—is that an accurate number? And, if so, do you find it as counterintuitive as I do?

Mr. UPSHAW. To receive active T&P—total and permanent—it would have to be like the player that just experienced that this weekend, or this past weekend, in Buffalo, a player that is totally and permanent, on the field—or applies for total and permanent within 6 months after the injury. There are four, and there are other players that are receiving total and permanent, that have become age 55, that are now getting a retirement benefit, not a total-and-permanent benefit. Our system provides that, once a player becomes 55 years old, he then switches from disability to retirement, but he still continues to get the higher of the two benefits.

Senator DORGAN. Senator Klobuchar?

Senator KLOBUCHAR. Thank you, Senator Dorgan.

And thank you—I was listening to Mr. Ditka and thinking back to those old days when my dad was a reporter. He was actually friends of these players when Norm Van Brocklin was in our living room, getting into a fistfight with my father, and when the players used to practice on a field formerly owned by the Animal Rescue League.

Mr. DITKA. I got in a fistfight with Norm Van Brocklin.

Senator KLOBUCHAR. That's what I figured.

[Laughter.]

Senator KLOBUCHAR. But what I remember most is that it was a different time in the game, and there was less money, and now a lot of those players are old and they're injured.

And I guess my question of you, Mr. Goodell, is just—I've heard about the differences between National Football League and the other leagues, and, when considered as a percentage of league revenue, how does the amount that football spends on disability payments, retired players, compared to the amount spent by other sports leagues?

Mr. GOODELL. It's a very good question. We have looked at that. And when we look at our entire retirement benefits, versus baseball, we think they are comparable. We have more players in the

NFL, we have less, obviously, than Major League Baseball. We have more revenues, we have a different cost structure. But we do look at that, and we want to make sure that we are treating our players in the same fashion, or better—hopefully better—than other leagues.

When you look at it in isolated cases with respect to, potentially, just a disability case or a pension case, there will be differences. But when you look at the entire scope of benefits for players, we think they're comparable.

Senator KLOBUCHAR. But I'm curious about why, just until recently, you didn't accept the determination, for Social Security purposes, of disabled, that you didn't use that as your standard. And you said you recently agreed—in your testimony today—to accept as totally and permanently disabled any player determined to be disabled for purposes of Social Security, why wasn't that done before? And what difference has that made now?

Mr. GOODELL. Well, I've only been in this position for 1 year, but it's something Gene and I talked about 6 months ago, and, frankly, agreed to 6 months ago. If a individual is already qualified under the Social Security standard, we should move the process forward quickly and allow them to qualify under our disability program, and we have done that.

Senator KLOBUCHAR. Mr. Ditka, did you want to respond?

Mr. DITKA. Yes, I only want to say one thing. You know, I—delivering mail, working as a mechanic, being a newscaster, what—football is completely different. I mean, I don't want to bring it up. You know, we have a 12-year window to file for disability. You know, the average career of a football player is less than 4 years, or right under 5 years or something. You have to be 4 years to be vested. OK, supposing a guy comes into—21, 22—he's out at 28, 29. Nothing shows up before he's 41. Very normal. And then things start showing up. I'm not sure I understand it. You know, it's fine to sit here and say, "Oh, we have ERISA law, we have Social Security, we're tying it in. This is all"—this is an exception. Football is an exception. It is not a contact sport, it's a collision sport.

This young man, the other day, did nothing but make a tackle, and he almost lost his life. Those things happen. The first week of the NFL season this year, you've got five guys, I think, that are out for the year. It's tough. It—you've got 200-, 300-pound bodies flying around at great speeds. It's different than delivering mail or working in a factory or building cars. You can't tie it into Social Security the way everybody wants to do. It's a different thing.

Senator KLOBUCHAR. Thank you, Mr. Ditka. And I just want to end, so I can let Senator McCaskill go, by saying—we talked a little bit about, why should Congress be looking at this? And Mr. Sayers was talking about how football is a family. Well, it's a very public family. And I think the way that we treat people with disabilities—people are watching this—the way we treat people that have built, basically, an empire for others to profit from, people are watching this.

So, thank you.

Senator DORGAN. I mentioned the *Charlotte Observer* article, the four retired players, total and permanent disability, that was for brain injuries caused by multiple concussions. So, I wanted to

make that point, because there has been testimony today, and it relates to what Mr. Ditka suggested, that this may show up 10, 15, or 20 years later.

Senator McCaskill?

Senator MCCASKILL. Thank you, Mr. Chairman.

I also want to mention—he's not here, but I want to mention Fred Arbanas. Fred and I served together on the county legislature for a number of years. I've watched his body fall apart. I've watched him going from a very proud man who's recognized everywhere in Kansas City for all the right reasons to basically not being able to do much before noon, because it takes him that long to get his body moving.

I want to ask a couple of questions. It's my understanding, Mr. Upshaw, that the money that is given over to the pension and disability fund is, in fact, negotiated by the Players Association, and it is set aside at the negotiation, and it is, in fact, their money.

Mr. UPSHAW. Yes.

Senator MCCASKILL. Then, why is it three and three? Why do the owners have just as much say on how that money is being spent as the players? If that money has already been negotiated away from the owners, and that belongs to the players, then why do they get to veto, by a 3-3 vote, a disability finding that the players decide is valid?

Mr. UPSHAW. Because the plan operates under the Taft-Hartley laws, and the Taft-Hartley laws give both the players and the owners an equal vote.

Senator MCCASKILL. Well, do you need us to amend the Taft-Harley players—

Mr. UPSHAW. I think I suggested—

Senator MCCASKILL.—to allow—

Mr. UPSHAW.—I suggested that as—

Senator MCCASKILL. OK.

Mr. UPSHAW.—part of—one of the solutions.

Senator MCCASKILL. So, it seems to me that it—you know, it's almost like you negotiate to try to get this money, and this comes off the top, I understand.

Mr. UPSHAW. Yes.

Senator MCCASKILL. This isn't a line item on people's paycheck.

Mr. UPSHAW. No.

Senator MCCASKILL. This is off the top. And if that's the case, and you worked hard to negotiate, it seems to me you ought to be here asking that—and demanding for this legislation on behalf of the Players Association, that the players have the ability to decide what former players are entitled to disability, under what circumstances.

Mr. UPSHAW. Well, that's why we end up with a 3-3 vote. We do have unanimous votes from time to time, but there is no dispute over the facts in a unanimous vote, either for an approval or for a denial. But, in a lot of cases there are 3-3 votes, which is no reason whatsoever for a player—the former players to vote against another player if he qualifies. There are a lot of players that file claims that do not qualify.

Senator MCCASKILL. Mr. Goodell, would you have any problem with that, if we amended the Taft-Hartley, to allow, under these

circumstances, since the money has been negotiated away from the owners at the bargaining table, would there be any problem with the people that have negotiated for that making the decision as to how the money was going to be spent?

Mr. GOODELL. Well, I'd make a couple of points, Senator. First off, and most importantly, anything that would improve the system, that is responsible to do for the parties, we would consider. Most importantly. Second of all, it somewhat implies that we have been a negative influence in this circumstance, and I don't believe we have. I think the facts don't support that.

Senator MCCASKILL. Well, I think it—

Mr. GOODELL. Second of all—

Senator MCCASKILL.—I think that 3-3 votes are tough. I think 3-3 votes are tough.

Mr. GOODELL. But the facts are, there haven't been that many 3-3 votes, and what happens is, the process is set up through Federal regulations and through the law that it would go on to see an independent doctor. And, ultimately, it goes to an independent doctor, who makes the final decision. And we have had some cases that have been taken and litigated. We've had 25. Twenty-four have returned back in favor of the retirement board; only one was reversed.

Senator MCCASKILL. I know what's involved in filing a Federal lawsuit, and I don't think we want to make these guys have to go to Federal court—

Mr. GOODELL. I agree with that.

Senator MCCASKILL.—to do this.

Mr. GOODELL. And—

Senator MCCASKILL. I—let me—because I don't have much time. I don't mean to cut you off. But the other area I really wanted to cover here was the LOD disability, the line-of-duty disability. I mean, you're going to have a whole lot of these players that are going to have a line-of-duty disability, particularly if you talk about orthopaedic needs. I mean, I got a new knee this year, and, I've got to tell you, I never played a day of football, and it hurts, and it's a pain, and I'm limping around here today, and I—and, you know, I was just a cheerleader in high school, for gosh sakes. Nobody—

[Laughter.]

Senator MCCASKILL. Nobody was—no 300-pound linemen were flying at me—well, I'll take—well, no—

[Laughter.]

Senator MCCASKILL. I—in all seriousness, the idea that an LOD disability has to be—you have to apply within 48 months—I mean, 4 years—if you've got a guy that's retiring at 27 or 28 because of a minor injury or for some other reason, or just doesn't make it the next year, gets cut, I mean, you're asking that orthopaedic, serious surgery, to show up within 4 years? I just think that is wildly unreasonable. And are you in favor of extending the LOB—LOD disability to a filing period that would be much longer than 4 years? Is that something that you all would object to? Mr. Upshaw?

Mr. UPSHAW. No, we wouldn't object to it at all. Matter of fact, we've actually increased that. It used to be 36 months, and it's been increased to where it is today. But the line-of-duty disability is not the last place that you can go. We have players that come

in on a line-of-duty, and then move up the chart to degenerative, which will now let you into the door, which Mike talked about, is 15 years. So, 15 years after you leave the game, you can still apply for a—that disability.

Before 1993, we had none of these disabilities. All of these improvements, we've made since 1993. So, we're not opposed to that, but we also have another total-and-permanent disability that Brent Boyd is getting, that someone that doesn't qualify for anything in our plan can still get a disability, even though it was not caused by football. So, if you get hit by a bus, and you come back and file for disability under this plan, you can receive it. That is what Brent Boyd is getting, because the doctor said—not Mr. Ell; Mr. Ell is not the doctor, he is the attorney that represents the plan that is—he's co-counsel to the plan—the doctor said Brent Boyd did not—you couldn't connect one concussion in 1980 to his present condition today.

Senator McCASKILL. Total-and-permanent is different than partial. And you're going to have a lot more partials than you're going to have total-and-permanent. And 4 years is not enough. I think, as a show of good faith, you ought to get busy and get that fixed. What Mr. Ditka said is correct, this is common sense. Take care of these guys. They're taking care of us, they're taking care of the Players Association officers that are here, their colleagues are going to be in the same position in 15 years as Conrad Dobler and Fred Arbanas and all the other great heroes that are here.

And thank you all for being here, and I appreciate the answers to my question.

Senator DORGAN. Senator McCaskill, thank you very much. Senator Nelson?

**STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA**

Senator NELSON. Thank you, Mr. Chairman.

I can't help but come to the table to note the difference between the NFL and Major League Baseball on the question of handling some of the former players. It was this Senator that had to get right in the middle of it with regard to the compensation for the members of the old Negro Leagues in Major League Baseball. And it has been slowgoing with Major League Baseball, and there has been a recognition of that. I'm grateful we don't have those issues before us here today, and I thank you for that.

Now, the question that occurs to me is, Why should there not be a medical doctor on either one of those boards?

Mr. UPSHAW. Well, we don't have a medical doctor on the board, but we rely on the medical evidence that's presented by the player, both the board doctors and any evidence that the player might bring from his doctor.

Senator NELSON. Mr. Goodell?

Mr. GOODELL. I would respond to that, Senator, by saying that the board is not making a medical decision, they are taking the information from medical doctors who examine the players, who take all of their medical records, make an evaluation, and make a recommendation to the board. I'm not opposed to it. We would have

to find a representative. But I believe that's the best explanation I can give you today.

Senator NELSON. Does anybody else want to comment on that?

Mr. DITKA. Why not take it away from 'em completely, the owners and the Players Association—take it totally away from 'em and create a board, completely independent—completely independent, made up of medical people. And then, if they turn it down, then there must be a reason to turn it down. But when these other people turn it down, people think there is an ulterior motive for turning it down. That's all I ask. Make it completely independent and see what happens.

Mr. GOODELL. Senator, if I might add, then if it moves down the process of being a 3-3 tie, it goes to an independent doctor, and it's binding—whatever that doctor's decision is, it is binding, so it is ultimately made by a doctor, if there is a dispute amongst the Retirement Board.

Senator NELSON. Mr. Chairman, is that a vote?

Senator DORGAN. Yes.

Senator NELSON. Well, then I'll just conclude by saying that, you know, one of the phoniest problems that we have, over and over, is the question of disability for veterans. And they go through all of these disability claims procedures that are quite extensive. Maybe we ought to take a lesson from the experience that we try to determine the degree of disability with our veterans and have that be a lesson to apply here.

Thank you.

Senator DORGAN. Senator Nelson, thank you very much.

A vote did start at 12, noon, and I would normally ask if we could stand in recess, but, because there is a vote following this, it would require at least a half-hour recess, and I don't want to inconvenience you. All of you who have testified today have come here and provided, I think, some real assistance in giving us your perspective of what's happening.

It seems to me there is something that's not connected here. I don't know what it is, exactly, but something's not connected. Something is not working the way it should work. And, as I indicated earlier, there is plenty of money around. I watch football from a living room, but I understand what ticket prices are, I understand what owners' profits are, generally, from what I read, and I understand how much some of these contracts, some players, are. And so, there is plenty of money around. It seems to me that sufficient money should be available to provide the kind of assistance that is necessary for those that helped build this professional sport, called football. I think it is, perhaps, the most widely watched professional sport in our country. And my guess is, most of those who would hear stories, or read about them in the newspaper, as is frequently the case, or hear the testimony today, would be flabbergasted that there are people who spent their lives in this professional sport and are now living in poverty, are now living in a circumstance where they can't find the kind of healthcare that they need, or the kind of medical assistance they need.

We will certainly evaluate the testimony and try to consider what kinds of things might be available. And I think, Mr. Commissioner and Mr. Upshaw, you, I hope, will take a look. What I'm

going to do is, I'm going to send you two packets, like this, individual letters from former players. I would think that, in this business, in this industry—I know you will want to go through it and understand it and then evaluate, what is it here that's wrong? how do we fix it?

So, I thank all of you very much for your willingness to come to this hearing.

This hearing's adjourned.

[Whereupon, at 12:12 p.m., the hearing was adjourned.]

A P P E N D I X

SUPPLEMENTARY INFORMATION PROVIDED BY EUGENE "MERCURY" MORRIS, FORMER
NFL PLAYER, MIAMI DOLPHINS AND SAN DIEGO CHARGERS

The Black Paper: A Response to the Claims Set Forth in the NFLPA's "White Paper"

I have been asked to address the specific content of the document produced by the joint efforts of the two collective bargaining parties, the NFLMC and the NFLPA. The NFLPA "White Paper" was prepared for the September 18th hearing on Capitol Hill before the Senate Committee on Commerce, Science, and Transportation. The content, however, is virtually the same as the NFLPA written statement submitted for the June 26, 2007 hearing before the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee. My statement in response to the remarks made by Douglas Ell at the House hearing addresses most of the issues "repackaged" and reintroduced in the September 18, 2007 hearing and I refer the reader to that statement. I will address some of the issues that require clarification as to the factual content of the declarations made in the White Paper the NFLPA has distributed both to traditional media and Internet-based news outlets. The NFLPA has also initiated a "new" campaign called: "The Truth Squad: Fact vs. Fiction," which I will show is neither substantively new nor factually accurate in the following paragraphs.

In keeping with the theme "fact vs. fiction," I respond on behalf of the NFL Retired Players whom I have represented involving disability and retirement issues. For the record I have, on three (3) different occasions since 2001, been successful in recovering disability benefits that had been arbitrarily taken by the retirement board from Players who were qualified under the Plan's Terms.

I have over 21 years of experience in dealing with this group, who cast themselves as caretakers of the retired Players' future welfare as fiduciaries, in the role of trustees to the Plan, governed by ERISA Law.

I have watched the evolution of the language of the Plan, I can say with absolute explicit facts and evidence that fiduciary misconduct has occurred and it is documented by the very words of the author of the White Paper.

For the record, the term "White Paper" is defined as a detailed or authoritative report. The following is a quote from a docketed Bar Complaint filed against a former Groom Counsel, John McAllister, for lying to a Plan participant. Mr. McAllister is no longer on the Case and has left the Groom Law Group.

If you have information but it's misinformation, the best you can be is misinformed, if someone is allowed to perfect a concept based upon that misinformation, then what you have is a misconception.

It is with that premise in mind that I set forth my response to the White Paper in this "Black Paper", the title of which describes the ironic distance between what the NFLPA asserts to be true, pure and "white" and the actual practices and policies inherent in their administration of the Plan's disability provisions.

Page 4, paragraph one of the White Paper states: "*Active Players pay for all benefits.*"

That statement is categorically false according to the Plan's own terms. The Bert Bell/Pete Rozelle Plan document at page 10, paragraph 3, Article 3.2 states the following:

The sources of revenue to be used to satisfy *any* contribution obligation of the employer *will be exclusively within the control of the employers.*

Webster defines the term "exclusive" as "limiting or limited to possession control or use by a single individual or group."

It is clear that the active Players in fact *do not* contribute to the fund under ERISA that is governed by the Plan's terms; therefore the statement made in the "White Paper" regarding Player contributions to the Plan is fiction not fact.

Sec. 3.1of the Plan states that, “a contribution to the trust will be made by the employers.” Players do not contribute to the ERISA-governed fund.

Another statement from the White Paper, made in paragraph “three” page 4, declares that, “the cost of benefits to former Players comes from the active Players side of the table”. That statement is also false and misleading.

Under ERISA law and the Plans terms, there is no “active Players side of the table,” in fact there is no “table,” there are only fiduciary responsibilities to do two things:

1. Pay benefits.
2. Pay expenses.

Under ERISA Law, the language of the Plan, at one time, did have specific instruction as to the course of conduct of the trustees of the Plan regarding specific language under Sec. 404; that defines the duties of those trustees who accept that fiduciary responsibility by Law and operate under the spirit and the letter of the intention of the Plan’s terms.

The White Paper states that the active Players each gave up \$82,000.00 in salary for medical, disability and retirement benefits.

That statement is misleading because it implies that currently active Players are paying medical and disability benefits for retired Players, which is false. See Sec. 3.2 page 10, Plan Document.

From the White Paper, page 5, paragraph one, Mr. Ell seems to imply that “pension for the Retired Players” significantly increased four (4) times, and their benefits “have since been more than tripled.”

Webster’s defines the term “significant” as: Having the meaning of a noticeably or measurably large amount.

Clearly the amount involved here is large only if expressed in relative terms. If the benefits for retired Players were in fact increased 4 times and “triple” the amount they were originally, then the resulting \$250 per month, per credited season only shows up as a “large amount” when compared with the paltry size of the original pension benefit.

In 2002, in a collective bargaining negotiation, a new retirement benefit increase of a \$100-per-month per credited season was initiated. As I detail in my response to Doug Ell’s House testimony, however, in 2004 the same collective bargaining parties devised a “new” benefit paying each current Player \$200 each and *every time he steps on the field*.

The collective bargaining parties in 1993 “segregated” themselves from the retired Players. This has now grown into a full-fledged “business within a business.” The disability benefits, in fact, *have* dramatically improved, however, *not* for the retired Players. The statement involving “significant increase over the years” by the two (2) collective bargaining parties is false and misleading because it omits what the NFLPA did for the current Players in the 2004 CBA extension.

“The most generous and flexible disability in professional sports.”

However “generous” the collective bargaining parties say these benefits are, the fact is these “benefits” are not accessible to the Players without their meeting complicated requirements. Moreover, even if they are able to do so, the bottom line still rests upon the judgment of the Trustees as to whether or not a person with a disability is “able to work”—a judgment that is entirely up to their discretion, rendered according to a criterion itself is so vague that it has no specific definition. How can a doctor, untrained in occupational therapy, make a determination on a person’s ability to work in a 25-minute office visit? Moreover, if the theoretical capacity to work *any* job is the *de facto* standard, as experience would suggest it is, and it is subject to the unfettered discretion of the retirement board in application, does this standard have any meaningful function other than to exclude virtually every applicant?

Since my personal involvement with this process began, I have seen the administrative complexities grow steadily to the point where the average Player applying for benefits must now meet technical requirements that involve a mountain of red tape designed to make the Player seeking benefits either give up or sue the Plan. If he has the tenacity to sue, then The Groom Law Group reaps the true “benefits” of this system—litigation to the tune of almost \$20 million over the last 6 years against retired Players pursuing their rights. Yet, when questioned about the make up of the “legal team” in question, Mr. Ell says; *“Oh we try to keep the lawyers down to an absolute minimum.”* And those “few guys” make millions.

Ironically, the suggestion to “give up” often comes from the NFLPA representatives. When you examine the actions of the retirement board you get a completely different perspective about what they are trying to accomplish, which in no way accords with the standard of what a “prudent person acting in a like capacity and fa-

miliar with such matters would use in the conduct of an enterprise of like character with like aims,” which is their charge in the Plan document in words that are mirrored in the specific language of Sec. 404 of ERISA.

The Groom Law Group, by its own admission, changed the terms of the Plan to exclude the specific language that would permit the “circumstance” in which a fiduciary could make a decision to spend an amount that would rectify the disparity in value between the benefits of the current Players and the benefits of the retired Players. Under ERISA, the fiduciaries are to “minimize the risk of large losses unless under the circumstances, it is clearly prudent *not* to do so.” ERISA, Sec. 404(C).

This specific language appears in the Bert Bell Plan at Sec. 8.20. It also appears in the Bert Bell/Pete Rozelle Plan. Somewhere between 1998 and September 2005, however, the Groom Law Group changed the language of the Plan. This language now appears under Duty and Care, Sec. 8.2 of the Plan. The new plan states:

Except that the retirement board and the DICC will follow the terms of the Plan.

This changed the ERISA language from Sec. 404 of the ERISA code—a change, in itself, which violates ERISA Law.

By law, you cannot change the terms of a Plan that contains ERISA guidelines. Yet that is exactly what the NFLPA did at Groom’s suggestion. Groom claims that, “they (Groom), do not make decisions regarding benefits,” yet Doctor Alfred J. Tria, the first neutral Medical Advisory Physician (MAP), states in the Public Record, that Groom chastised him for qualifying a Player under Line of Duty. In 1989, I was the first Player qualified by Dr. Tria under Line of Duty Disability. I was sent to Dr. Tria due to a deadlock of the retirement board pursuant to the Plan’s terms. The Owner-Members rejected the qualification even though it was final and binding on the retirement board, which violated the Plan’s Terms.

I will focus on several issues of material fact that are not in dispute in the applicable language of the Plan’s Terms. These specific facts contradict what is presented in the NFLPA White Paper on behalf of both collective bargaining units.

On page 5, under “*Disability Benefits Overview*,” the White Paper states:

Point 1: The award process investigates whether a Player is *able to work*. (Emphasis added).

The question would be why the “extent of the disability” is *not* considered first. ERISA states that the retirement board must carry out its duties in a manner that considers the Player’s interest first, with the secondary inquiry being “what caused the Player’s disability?”

But this clear ERISA requirement again is construed as an “opinion” and the retirement board reserves the right to disregard *any* medical finding that does not support the agenda of the retirement board trustees who, as representatives of the collective bargaining unit, not surprisingly have established a record of disqualifying Players seeking any type of disability unless that Player is a “friend of the NFLPA.”

The Doug Betters Case is illustrative of this point.

Doug Betters was paralyzed in an accident while skiing in 1998. Doug, retired from the NFL in 1988 because of back and neck injuries. When Doug applied for disability, he was denied because the retirement board trustees, with no expertise in the medical field and no expertise in spinal chord injuries, declared that Doug Betters did not get hurt while playing football: “he got hurt skiing”. An unlicensed opinion thus became a denial of disability to a classified quadriplegic with no improvement and continued degeneration.

Doug is paralyzed and has been in a wheelchair since 1998. He receives a pension equal to his retirement. Doug is entitled to the active non-football disability. Doug receives something called an “inactive” disability benefit, which is equal to his retirement benefit. They call it a disability benefit, but his check comes from the retirement fund. Inactive disability is a fictional term-of-convenience used to categorize Players in a manner so that they cannot obtain a class of benefits that pay more. (If you have an “inactive” driver’s license can you drive?)

In 1989, the retirement board said, “Traditionally, we use Darryl Stingley as a test case for the total and permanent disability.”

Tom Condon assured Doug that “there was nothing to worry about!” The retirement board vote was 6 to 0, unanimous against a paralyzed Player. In a retirement board quarterly meeting, Bill Bidwell, the owner of the Arizona Cardinals, theorized that paralyzed players in wheel chairs could “sell pencils on the street corner”—a form of gainful employment that would presumably preclude the disbursement of disability benefits.

The third category of analysis is “*When the disability began*.” This issue is at the heart of the Mike Webster case, in which the Court declared that it was an “abuse

of discretion” by the retirement board to refuse to assign Webster the proper “effective date” on which the disability began.

This, too, is an area of contention, having roots as far back as 1984, documented in explicit detail revealed in the minutes of the Retirement Board meetings.

Under the Bert Bell Plan, the language *was* clear that disability began according to the physician’s report, which asked the question of the MAP “Date of Disability?” (The answer was to be determined by the Doctor.)

That question has appeared for the last 30 years on the form to be filled out by the MAP. As stated by the White Paper, the MAP’s decision was final and binding on the retirement board.

This became a problem for the collective bargaining units because it meant that a Player could collect a payment that was retroactive back to the date of disability, which meant that a Player’s accrued disability benefit could pay as much as 15 years in retroactive payments.

The Groom Law Group removed the “*date of disability*” space from the Doctor’s report form. This gives the retirement board the “contrived discretion” to construe the “effective date” to be *any date they choose*, as opposed to correctly using the Physician’s date of disability on the physician’s form. All this was done to control the amount of the retroactive portion of the disability benefit, which the Trustees were obligated to pay in full.

I sent a letter to Commissioner Roger Goodell detailing the specific facts and evidence that The Groom Law Group violated Sec. 302 of the ERISA code, as described in my complaint sent to the Commissioner on June 4th, 2007 titled “Fiduciary Misconduct.”

For the record, the Commissioner has stated the following: *We will continue to do what we have always done, rely on the facts.*

However, in this particular case the Commissioner has ignored “the facts” and has refused to act under the Integrity Clause of the NFL Bylaws. This clause allows the Commissioner to rectify almost any situation concerning the NFL.

To date, however, he has refused to investigate any wrongdoing by the Management, the people who put him in that office as Commissioner of the NFL.

The next issue is on page 10, titled: “*Disability application and award procedure*”.

I have addressed this issue in my response to Doug Ell’s written testimony on June 26, 2007, however, I will make an additional comment concerning the “truth” and regarding the “facts” surrounding the “neutral physician”. In the White Paper the author repeatedly declares the importance of the neutral physician, yet on page 15, bottom paragraph, Mr. Ell describes to a Federal investigator “exactly” what is the real role of the neutral physician, Mr. Ell contradicted his own words in the White Paper regarding the responsibilities of the neutral physician. Mr. Ell states:

Neutral physicians have no authority and are simply instructed to report their best medical findings.

Unless, as in the case of Don Bessilieu, the retirement board uses the “opinion” and medical findings of the neutral physician to *disqualify* the Player, then the “neutral physician’s” opinion is used by the disability claims committee member (one person) to disqualify the Player who was already receiving disability benefits for 5 years, as was the case with Don Bessilieu.

I can say that the description of the responsibilities declared by the author of the White Paper regarding the neutral physician is false. Any evidence to support the contention in the White Paper would also be false. Mr. Ell told a Department of Labor investigator exactly the opposite of what appears in the White Paper. One of the two statements by Mr. Ell is a false statement made to a government investigator, a criminal violation.

Page 11, “*Appeal Rights*”.

This section is a perfect example of the “deception” described in the White Paper as “Appeal Rights”.

First of all, appeal rights depend on various situations concerning exactly what is being appealed and who is appealing. One case in point is when a Player is denied by the DICC and it is the Player’s *initial disability claim*, the retirement board must follow the decisions made by the DICC, which amounts to a circle, with no possible way of overcoming the denial, because Groom has changed the language of the Plan from Sec. 8.2 which says:

Except that the retirement board will follow the decisions made by the Disability Initial Claims Committee.

Prior to this change, for over 45 years, Sec. 8 of the Bert Bell Plan and the Bert Bell/Pete Rozelle Plan both stated:

The retirement board will have the power to decide claims (except that the retirement board will follow the decision made by the Medical Advisory Physician. [whose decision will be final and binding on the retirement board]).

The retirement board now uses whatever language “fits” the denial. This section of the Plan’s Terms was changed in order to accommodate the retirement board’s ability to have what would appear to be “absolute discretion”¹ and authority over the outcome of disability determinations.

In the White Paper under “*appeal rights*” the author declares that the retirement board gives *no deference to the decisions made by the DICC, a patently false statement*. The evidence points to the Groom Law Group as the principal architect and administrator of the attempt to control the disability process on behalf of the two collective bargaining units.

The specific language in the Plan’s Terms under Sec. 8.2 of the new Plan document makes that declaration false and the premise declared in the White Paper fiction. In fact, the majority of the three topics I have reviewed in this “Black Paper” all contain “fiction” in their premises and falsehood in their factual content.

I have, in the details contained in my 26-page response to Doug Ell’s written testimony on June 26, and the White Paper written for the September 18, 2007 hearing provided a significant amount of facts and evidence to support the contention that misconduct has occurred at the hands of the authors of the White Paper.

There are numerous misstatements of fact that I have not addressed, all of which point to the same conclusion . . . “Fraud” is defined by Webster as:

- A. Deceit, trickery, intentional perversion of the truth in order to induce another to part with something of value or to surrender a legal right.
- B. An act of deceiving or misrepresenting: A trick. One who is not what he pretends to be. An imposter. One who defrauds. Cheat. One that is not what it seems to be or is represented to be.
- C. Synonym . . . Deception.

I have presented some of the ABCs of the White Paper, which may well be misleading and fraudulent in its design.

I welcome any effort by the NFLPA or the NFLMC to refute *any* of the statements contained in the Black Paper.

Sooner or later the truth about the “Truth Squad” will become clear in the form of facts vs. fictions, which will spell themselves out in *black* and *white*.

Submitted to the Members of the Committee on Commerce, Science and Transportation of the U.S. Senate to aid in their oversight of this issue, and to the NFLPA for its analysis and response.

P.S. I am waiting for your response.

JOINT RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY
HON. JOHN D. ROCKEFELLER IV TO THE NATIONAL FOOTBALL LEAGUE (NFL) AND
THE NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION (NFLPA)

Question 1. Identify each of the 6 members of the Retirement Board (the “Board”), the person(s) who selected each member to serve on the Board, and the reason each member was chosen for such service.

Answer. The Retirement Board is composed of seven members. Three voting members are appointed by the NFL Players Association (“NFLPA”) and three voting members are appointed by the NFL Management Council (“NFLMC”). The Commissioner of the NFL is an ex-officio, non-voting member. The Commissioner’s designee, NFLMC Executive Vice President Harold Henderson, presides at all meetings of the Retirement Board.

The Retirement Board members appointed by the NFLMC are:

- William Bidwill, Owner, Arizona Cardinals, appointed by Terry Bledsoe, former NFLMC executive.
- Clark Hunt, Owner, Kansas City Chiefs, appointed by Harold Henderson, Executive Vice President.

¹This specific language was changed under the Bert Bell Plan at Sec. 8.4: “*The Retirement Board will have the broadest discretion permitted by the Act.*” This is the protective language of ERISA. This means, where there is “no permission there is no discretion.” In 1995 Groom changed the Plan’s Terms to exclude the specific language that restricted the retirement board’s ability to act “outside” the Plan’s Terms. In 1995 they removed ERISA governing terms and replaced them with their own made up authority.

Dick Cass, President, Baltimore Ravens, appointed by Harold Henderson, Executive Vice President.

During the last 5 years, Taylor Smith, Owner, Atlanta Falcons, and Eddie Jones, President, Miami Dolphins, also served on the Retirement Board. Each was appointed by Harold Henderson.

The Retirement Board members appointed by Gene Upshaw on behalf of the NFLPA are three retired veteran NFL players:

Tom Condon, who played 12 years in the NFL from 1974–1985;

Jeff Van Note, who played 17 years in the NFL from 1970–1986; and

David Duerson, who played 11 years in the NFL from 1983–1993.

Tom Condon and Jeff Van Note were appointed prior to 2002. Dave Duerson was appointed in 2006. Len Teeuws, deceased, preceded Mr. Duerson on the Retirement Board.

The NFLMC and NFLPA appointments are made based on ability, interest in, and familiarity with employee benefit plans, the investment process, collective bargaining history, and/or player welfare, and their knowledge of the types of injuries that NFL Players may incur. In addition, the members agree to carry out the terms of the plan and to accept personal fiduciary liability.

The NFLPA and the NFLMC may name a proxy for each of the members they have appointed, for any meeting for which that member is unavailable.

Question 2. Identify each member of the Disability Initial Claims Committee (the “DICC”), the person(s) who selected each member to serve on the Committee, and the reason each member was chosen for such service.

Answer. The Disability Initial Claims Committee (“DICC”) consists of two members—one appointed by the NFLPA and one appointed by the NFLMC. The NFLPA appointed Chris Smith and the NFLMC appointed Mary-ann Fleming. Mary-ann Fleming is an employee of the NFLMC, Manager of Player Benefits, and was chosen for her familiarity with NFL players and benefits after agreeing to carry out the terms of the plan. Harold Henderson and Director of Player Benefits Valerie Cross selected Ms. Fleming for the NFLMC. Chris Smith is Assistant Director of Benefits at the NFLPA. Ms. Smith was chosen for her familiarity with NFL players and benefits and her knowledge of the types of injuries that NFL Players may incur, after agreeing to carry out the terms of the plan. Executive Director Gene Upshaw and Director of Benefits Michele Yaras-Davis selected her for the NFLPA.

Both Chris Smith and Mary-ann Fleming have served on the DICC since it was created, pursuant to regulations of the Department of Labor, in 2002.

Question 3. Explain the process for choosing members of both the DICC and the Board.

Answer. The Bert Bell/Pete Rozelle NFL Player Retirement Plan designates the NFLPA and the NFLMC as having the authority to appoint and to remove the voting members to the Retirement Board and to the DICC. The Executive Vice President who leads the NFLMC exercises this authority with respect to NFLMC appointments. The Executive Director of the NFLPA exercises this authority with respect to NFLPA appointments.

Question 4. State the total amount paid for disability pensions from both the Bert Bell/Pete Rozelle Plan and the NFL Supplemental Disability Plan (together, the “Plans”).

Answer. Below are the total amounts of disability benefits paid by the Bert Bell/Pete Rozelle NFL Player Retirement Plan and NFL Player Supplemental Disability Plan for the full calendar years 2002 through 2006 and for 2007 through November, based on records provided by the Player Benefits Office. These amounts may differ from the amounts reported for Plan Years (April 1 to March 31).

Year	Amount
2002	\$14,856,632
2003	15,882,616
2004	16,934,525
2005	18,237,320
2006	20,266,009
2007 (through November)	19,981,483
Total	\$106,158,585

The figures above include all payments to players deemed to be totally and permanently disabled, including payments to these players after they attain normal retirement age, and payments for line-of-duty disability benefits.

Question 5. State the total number of players receiving disability payments, broken down by category (*i.e.*, Active Football, Football Degenerative, Line of Duty, etc.).

Answer. The following table, based on records provided by the Player Benefits Office, shows the average number of former players paid for each kind of disability benefit per month for each calendar year 2002 through 2006 and for 2007 through November 2007.

Year	Line of duty	Active football	Active non-football	Football degenerative	Inactive	Retirement continuation
2002	93	5	12	65	50	44
2003	96	6	11	71	45	49
2004	109	5	10	75	46	57
2005	122	5	10	81	47	63
2006	144	5	9	85	46	71
2007 (through 11/07)	158	5	9	87	46	76

Question 6. Please provide a breakdown of these categories into types of injury (*i.e.*, Concussion, Spinal injury, Joint Replacement, etc.).

Answer. Awards of line-of-duty disability benefits for orthopedic impairments are based upon a qualifying percentage impairment of one or more of the cervical spine, lower extremity, lumbar spine, thoracic spine, upper extremity or whole body, using a system developed by the American Medical Association. Awards of total and permanent (T&P) disability benefits are based on whether a player is able to work, taking into account all facts and circumstances. The Player Benefits Office automated record system records the decisions of the DICC and the Retirement Board, but not the underlying types of injury or impairment.

Question 7. State the process for choosing doctors or other healthcare providers who are eligible to administer medical examinations to claimants for consideration by the DICC or the Board. Identify any qualifications which are considered or required for such service.

Answer. Neutral physicians are selected by the Retirement Board. The Retirement Board is advised by two prominent orthopedic surgeons, who are not neutral physicians, and who recommend Board-certified orthopedists of exceptional quality who have substantial experience with the orthopedic problems of athletes. If a non-orthopedic neutral physician is needed in a particular location, then, pursuant to a procedure set up by the Retirement Board, the nearest orthopedic neutral physician is asked to recommend a highly qualified physician with the needed medical specialty in that area.

Medical Advisory Physicians are selected by mutual agreement of the NFLPA and the NFLMC, pursuant to section 11.4(a) of the Retirement Plan. Medical Advisory Physicians are Board-certified orthopedists who previously were Plan neutral physicians, or are physicians of exceptional quality in other specialties.

Question 8. State the process for removing doctors or other healthcare providers from the list of those eligible to administer medical examinations to claimants for consideration by the DICC or the Board. [Next question is not limited to 5 years] Identify every doctor/health care provider who has been removed from that list, and the reason(s) for such removal.

Answer. A neutral physician can be removed at any time by the Retirement Board. A Medical Advisory Physician can be removed at any time jointly by the NFLPA and NFLMC, or 30 days after the NFLPA or NFLMC gives written notice of the Medical Advisory Physician's removal to the other party, the Medical Advisory Physician, and the Retirement Board.

The automated record system of the Player Benefits Office does not record the reason why a particular neutral physician is no longer being used. The reasons include:

- The physician has died or retired,
- The physician has voluntarily elected not to be active,
- A physician was needed on occasion in a specific location and was used so that a player would not have to travel,

- A physician was needed on occasion to evaluate a specific type of injury or medical condition of a player, and
- The physician did not perform the requested tasks in a timely manner.

Exhibit A* is a list of neutral physicians furnished by the Plan Office who have performed evaluations for the Retirement Board since 1985 but who are not currently performing evaluations for the plan.

*(All exhibits mentioned are retained in Committee files.)

Question 9. Identify every change in or amendment to the Plan Document, or in the rules or procedures governing disability claims, or in the benefits offered by the Plans in the past 3 years (e.g., use of a Social Security standard, the "88 Plan"). State the reason for each such change. Produce a current copy of the Plan Document, and any rules, regulations, or guidelines which are used to administer the Plan Document.

Answer. Exhibit B contains the Retirement Plan amendments adopted from 2004 to the present, and Exhibit C contains the current Retirement Plan Document and a listing of all amendments to that document. Exhibits D and E contain the NFL Player Supplemental Disability Plan and the 88 Plan, respectively, and all amendments to those plans from 2004 to the present.

Question 10. State the mean and median time between initial filing of an application for disability benefits, and (a) decision by the DICC, as well as (b) decision on appeal by the Board.

Answer. The Player Benefits Office automated record system does not maintain the information needed to calculate the mean and median time taken by the DICC to make an initial decision or the Retirement Board to decide an appeal. In particular, the time taken for the applicant to respond, and to provide any additional information or to be examined, is not tracked.

Question 11. [Next question is not limited to 5 years] Identify every case in which the Board or the DICC has requested more than one medical examination of a claimant by a Plans-selected doctor in the same specialty, and state the reason for each such request.

Answer. Exhibit F lists the cases for which the Retirement Board referred an applicant to a second medical examiner, based on records provided by the Player Benefits Office. This examiner is referred to as the "Medical Advisory Physician" (MAP). Such referrals are generally made when there is uncertainty or ambiguity in the medical records presented to the Retirement Board. The referral is made at the option of three or more Retirement Board members. The specific reason for each referral is not in the automated record system of the Player Benefits Office.

In addition, in rare cases, a player has been referred to an examining physician in the same specialty, below the MAP level, when the initial examination was unclear or inadequate for any reason. The number of times this has occurred is not available on the Player Benefits Office system.

Finally, in 2002, the Disability Initial Claims Committee selected 14 applicants for line-of-duty disability benefits to be reexamined. The purpose of these reexaminations was to measure their impairments using a rating system developed by the American Medical Association.

Question 12. Identify any training or education provided to members of the DICC or the Board in order to perform their duties. Provide a copy of any documents which are used by them to administer the Plans or to decide claims or appeals, other than the case files submitted by individual claimants.

Answer. As indicated in the answers to questions 1 and 2, the members of the DICC and the Retirement Board were selected based on their ability and their interest in employee benefit plans, among other factors. The members of the DICC have attended numerous seminars on employee benefit issues. The members of the Retirement Board are extensively briefed for 2 days at each quarterly meeting. Other meetings on special topics and conference calls occur as needed throughout the year. In addition to the plan documents provided in response to question 9, the DICC and the Retirement Board use a variety of forms to help them administer the Plans. These forms are in Exhibit G.

Question 13. Explain the role of Sarah Gaunt in the DICC and the Board's consideration of individual claims and appeals.

Answer. Sarah Gaunt is Plan Director of the Bert Bell/Pete Rozelle NFL Player Retirement Plan. In this capacity, she performs ministerial functions including maintaining records and presenting documents, such as disability applications, physician reports, and other documents, to the DICC and Retirement Board. She has no discretionary authority or discretionary responsibility in the administration of the Plan, including the determination of disability benefits or the evaluation of med-

ical reports, nor any discretionary control with respect to the management of the Plan or its assets.

Question 14. [Next question is not limited to 5 years] Explain the role of the Medical Advisory Physician in the decision of individual claims or appeals. Identify each case in which the Medical Advisory Physician was asked to address a claim or appeal, and the role played by the Physician in each case.

Answer. Section 8.3(a) of the Retirement Plan, which is reproduced below, describes the role of the Medical Advisory Physician:

“If the voting members of the Retirement Board are deadlocked with respect to a decision as to (1) whether a claimant medically is substantially prevented from or substantially unable to engage in any occupation or employment for remuneration or profit within the meaning of Section 5.2, or (2) whether an applicant meets the requisite percentage disability requirements to be eligible for line-of-duty disability benefits, the Retirement Board may by an affirmative vote of three voting members submit such disputes to a Medical Advisory Physician for a final and binding determination regarding such medical issues.”

Exhibit F contains the requested list of cases, based on records provided by the Player Benefits Office.

Question 15. With respect to the summary table provided at p. 16 of the 6/26/07 written testimony of Douglas Ell before the House Committee on the Judiciary Subcommittee on Commercial and Administrative Law, please state the following:

a. In the line identified as “Approved at initial stage,” please state whether this includes claims which were approved for any benefits of any kind, or whether it includes only claims in which the entire benefit sought (*i.e.*, Active Football) was approved. Also state whether it includes claims in which the DICC or the Board awarded a retroactive date later than was sought by the claimant. For example, if a claimant sought a retroactive date of 11/02, and was awarded a date of 11/04, was that counted as an approval or a denial?

b. In the line identified as “Approved on appeal,” please provide the same information. Does this include cases in which the appeal resulted in any change in the benefits awarded or the retroactive date, or does it include only claims in which the claimant was awarded both the benefits and the retroactive date requested?

Answer. The table provided at page 16 of the June 26, 2007 written testimony of Douglas Ell lists claims and appeals as “approved” if disability benefits of any kind were awarded at that level. The table does not capture the complexities of effective dates or categorization. At each level, a claim is listed as “approved” if disability benefits of any kind were awarded at that level, whether or not the participant was awarded all the benefits for which he applied, and whether or not a retroactive award was made. Cases listed on appeal are cases where no benefit was awarded at the initial level.

Question 16. Is it true that you plan to use Social Security standards for disability approval? And what does that mean?

Answer. The NFLMC and the NFLPA have agreed to amend the Bert Bell/Pete Rozelle NFL Player Retirement Plan such that an eligible player who is receiving Federal Social Security disability benefits will be considered to have met the Retirement Plan’s standards for total and permanent disability. Such a player will not, during the period he is receiving Social Security disability benefits, be required to further demonstrate that he is totally and permanently disabled. The Retirement Board will determine the level of total and permanent disability benefit to which he is entitled.

Question 17. What is the “four point” plan that will try to simplify approval process for disability benefits?

Answer. We do not know to what “four point” plan you refer. The NFLPA and the NFLMC are, however, taking a number of steps in cooperation with the Retirement Board and the DICC in order to streamline our process as much as possible under the Federal rules protecting plan participants. The NFL has hired independent benefit consultants and independent counsel to identify best practices that could be incorporated into the administration of the plans. In addition, as described in the answer to question 16, the Plans will now recognize the Federal Social Security determination of disability for eligible players. The bargaining parties have asked the DICC and the Retirement Board if they could meet more often, and more frequent meetings should take place soon.

Question 18. What is the “Coalition” planned by Mr. Goodell and Mr. Upshaw in the July meeting with retired players “that will try to ease suffering among former players”? What will it do?

Answer. The “coalition” that we have planned has also been referred to as the “Alliance” and is described in the answers to questions 19 and 20 below.

Question 19. What is the new assistance program that will be created to address several critical issues drawing from the league, union and “charities affiliated with pro football” called the “Alliance”?

Answer. The NFL, the NFLPA, the Pro Football Hall of Fame and the NFL Alumni, Inc. have come together to form an alliance to help former NFL players in need. We have established a new charitable foundation called the NFL Player Care Foundation. The Foundation has been established “to provide relief to the disadvantaged and distressed, with preference to former players in the NFL, including, but not limited to, the support, promotion or funding of medical and other healthcare or assistance and improvement of the quality of life.”

The Foundation has a number of projects it will immediately pursue. The Foundation will provide, to former players in need, substantial financial assistance for the costs associated with the new NFL Player Joint Replacement Benefit Plan, a plan for retired NFL players who need joint replacements, and will also provide necessary rehabilitation care after joint replacement surgery. The Foundation also provides free cardiovascular screening and referral services for former players, and is also exploring long term care and other assistance for former players.

Question 20. How does the Coalition plan to continue studying ways to improve benefits for the pioneers of the NFL?

Answer. The NFLMC and the NFLPA continually monitor, through many sources both personal and institutional, such as the NFL Alumni, the Pro Football Hall of Fame, and the NFL Clubs, all of which employ former NFL players, the status and condition of former players, both “football-related” and the normal process of aging. Each and every CBA between the NFLPA and the NFLMC has addressed and provided significant additional past service benefits for former players, mostly from improvements to the pension plan. We are interested not only in the condition of former players but in continually improving the care and environment for current players. The Alliance and Player Care Foundation are also exploring long term care and other assistance for former players and we expect to announce initiatives in these areas in the near future.

Question 21. In a Sept. 13 RTT News story about the likely life-altering spinal injury received by Buffalo Bills tight end Kevin Everett in a game a week ago says he will receive compensation from the National Football League Players Association, an organization that has come under fire recently from retired football players. Is it the NFLPA who determines benefits under the current plan?

Answer. The NFLPA does not decide claims for benefits. In accordance with regulations of the Department of Labor, initial claims for disability benefits are decided by the DICC, whose members are described in the answer to question 2. Appeals of disability claims are decided by the Retirement Board, whose members are described in the answer to question 1. For benefits other than disability benefits, please refer to the table contained in the answer to question 22.

We understand that the reference to compensation in the news story refers to disability benefits under the Plan. In the event Mr. Everett applies for disability benefits, the Disability Initial Claims Committee and Retirement Board will address that claim under its normal claims procedures.

Mr. Everett is receiving his entire salary and all medical care under his player contract at this time, and will be eligible for other collectively bargained benefits, including pension, disability benefits, 401(k), continuing medical benefits, injury protection, a health reimbursement account and a severance benefit.

Question 22. Can we clear up which sources are responsible for which benefits? NFLPA? Retirement Plan? Worker’s Compensation? New benefits in the 2006 CBA imply that some of the benefits do not include the older retired players. Is that true?

Answer. The collective bargaining agreement (“CBA”) between the NFLPA and the NFLMC provides retirement, medical, disability, and other benefits to active and former players. The 2006 CBA included large increases in the benefits for older retired players; for example their pensions were increased by 25 percent. The benefits provided to players, and which players are eligible for which benefits, are summarized below.

Since 1993, the NFLPA and the NFLMC have agreed four times in bargaining to increase retirement and disability benefits.

Plan/Program	Responsible entity	Benefits players on or after ¹
Retirement Benefits (Retirement Plan)	Retirement Board	All NFL Players
Death Benefits (Retirement Plan)	Retirement Board	All NFL Players
Total and Permanent Disability Benefits (Retirement Plan)	Retirement Board	All NFL Players
Line-of-Duty Disability	Retirement Board	All NFL Players
Group Insurance ²	NFLMC	1970 Forward
Severance Pay	NFLMC	1982 Forward
Retiree Medical	NFLMC	1993 Forward
Savings Plan (401(k)Plan)	Savings Board	1993 Forward
Total and Permanent Disability Benefits (NFL Player Supplemental Disability Plan)	Disability Board	1993 Forward
Annuity Program	Annuity Board	1998 Forward
88 Plan	88 Board	All NFL Players
NFL Player Health Reimbursement Account Plan	HRA Board	2004 Forward
Cardiovascular Health Program	NFLPA/NFL Alliance	All NFL Players
Joint Replacement Surgery	NFLPA/NFL Alliance	Approved for Implementation
Assisted Living Program	NFLPA/NFL Alliance	Approved for Implementation
Workers' Compensation	NFL Clubs	All NFL Players

¹This column indicates which NFL players are eligible for these benefits by year of play. In some cases, vesting or other eligibility requirements may apply.

²For active players, group insurance includes life, medical, and dental benefits. For vested former players, group insurance includes medical and dental benefits for 5 years after their NFL careers end.

COMBINED RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY
HON. TRENT LOTT AND HON. DAVID VITTER TO ROGER GOODELL

Question 1. In oral and written testimony before the Committee, several witnesses stated that conflicts of interest impair the fair operation of the Retirement Board, because those who appoint the Board will gain economically if the Board rejects disability claims. What is your response?

Answer. Simply put, there is no evidence to support their claim. The Retirement Board operates in accordance with Federal law as defined by the Taft-Hartley and Employee Retirement Income Security Acts, and as supplemented by regulations issued by the Department of Labor and Internal Revenue Service. Board members and staff make decisions, as they are required to do, based on the terms of the Disability Plan and based on the medical evidence submitted by an applicant for benefits and by one or more neutral physicians. In cases where the Retirement Board is unable to reach a decision on a particular application, the matter is referred to a third neutral physician (called the "Medical Advisory Physician"), whose medical decision is final and binding on the Board.

The collective bargaining parties, the NFL and the NFLPA, are committed to delivering the negotiated benefits, have budgeted ample funds to do so, and have appointed Board members and staff who are directed to do so. No member of the Board or staff has an economic incentive to do otherwise.

Question 2. As to the inference of collusion between the appointing authorities and the Retirement Board, I note that dissatisfied former players can appeal Board decisions to court. Although courts have been deferential to the decisions of the Retirement Board trustees and the trustees of other plans, would collusion between the trustees and the appointing authority be a basis to overturn a Board decision? Has any court anywhere found evidence of such collusion or a similar violation of the trustees' fiduciary duties?

Answer. Collusion between the trustees and the appointing authority would be a basis for a court to overturn a Board decision. We submit that no court would defer to a decision tainted by collusion. That said, of the 25 occasions on which decisions of the Board have been challenged in Federal court, the Board's decision has been upheld in 24 of those cases. In no case—including the one case that did not uphold the Board's decision—was there any finding or credible evidence of collusion, either among the Trustees themselves, or between the Trustees and the party appointing them to the Retirement Board.

Question 3. It has been suggested that since disability and retirement benefits are paid from the current players' portion of league revenues, management should sup-

port leaving administration of the Plan strictly to the players. What is your response? Further, are management-appointed trustees an obstacle to the fair and proper administration of the Plan?

Answer. While it is true that disability and retirement benefits are negotiated and treated as part of the portion of NFL revenues assigned to players generally, that is not the same as saying that these are the current players' funds, and we do not agree that they are. Rather the bargaining parties, in budgeting a sum of money for benefits, have agreed again and again to earmark amounts for retired players, thus allowing both parties to participate in addressing the needs of former players.

Joint management-labor administration of benefit plans has been part of Federal law for six decades, and is well recognized as being consistent with and in furtherance of Federal labor policy. Far from being an obstacle to the fair administration of benefit plans, such joint administration serves important interests, including developing support from management for those benefit plans, and ensuring that unions—which, after all, have the statutory duty of representing the interests of current workers who comprise the bargaining unit—do not ignore the needs of retirees. Further, as I testified, clubs do not believe that the needs of retired players are simply a “problem” for the union to “solve.” Instead, the needs of retired players are a concern of both the clubs and the union, and of current and retired players alike.

Not only are the management-appointed trustees *not* “an obstacle to the fair and proper administration” of player benefits, the management trustees contribute valuable business and investment insight, administrative capacity and employer perspective to the process. Moreover, the overwhelming number of decisions of the Retirement Board are unanimous, reflecting the fact that both management and labor trustees administer the plan fairly, and in accordance with its terms and the medical evidence presented in each case.

Question 4. Several witnesses complained that the Plan and its operations are opaque and difficult to understand. Are there steps you have taken or can take to simplify plan operations and make them more transparent? If legal requirements obstruct your ability to streamline the plan, do you recommend modifications to address these obstructions?

Answer. As I testified, we will continue our effort “to identify and implement any reasonable procedural changes that would allow disability determinations to be made more quickly and reliably.” We have engaged independent counsel and benefit consultants to advise us in this regard, particularly with respect to identifying best practices in the administration of disability plans outside professional sports. We have attempted to ensure that the standards for making decisions are clear and understandable. The Retirement Board relies on standards developed by the American Medical Association for deciding partial disability, or “Line of Duty” cases. And we recently agreed to incorporate the medical findings of the Social Security Administration in deciding cases of total and permanent disability. Thus, if a player has been found to be totally and permanent disabled by Social Security, that finding will govern the player’s medical eligibility for NFL disability benefits.

Much of the complained-of complexity is the result of the complex Federal statutory and regulatory scheme that governs benefit plans. We continue to believe, as we advised the Department of Labor in 2002, that the regulations governing the operation of the Initial Claims Committee have not served the process well and have in fact delayed the adjudication of benefit claims. We submitted extensive comments to the Labor Department when this requirement was first proposed addressing this subject.

Question 5. Several witnesses alleged that the Plan “doctor shops” in order to find physicians who will deny disability claims or promote conflict in medical evidence that will create a basis to deny claims. What is your response?

Answer. This claim is without substance. For example, the orthopedic doctors, who evaluate most of the claims, were identified by two acknowledged leaders in the profession, and not by the Plan administrators, the parties, or the trustees on the Retirement Board. Doctors are chosen based on their skills and experience. The Plan maintains, particularly for orthopedic issues, a national network of neutral physicians.

No doctor has been retained because of any record of hostility toward disability claims, and no doctor has been dismissed because of a history of decisions favorable to disability claimants. The neutral physicians are obligated to follow the terms of the Plan, and to apply well-recognized standards, such as those established by the American Medical Association (in cases of partial disability or “Line of Duty” claims). In cases involving claims of total and permanent disability, the Plan will

accept medical findings of the Social Security Administration and will not require separate medical exams in those cases.

In addition to the report(s) prepared by the neutral physician(s), the Plan will always consider medical evidence submitted by a player's physician, as well as medical records from the Player's club. Players are free to submit their own medical records to the neutral physicians who examine them. Because the Plan's fiduciaries are obligated to make decisions based on medical evidence, players applying for disability claims have an opportunity to supplement the record and ensure that it is complete and accurate.

Question 6. The Committee notes that you and the NFL Players Association have formed an "Alliance" of programs designed to help former players in need. Please describe the current status of the Alliance and how you see it evolving.

Answer. The Alliance is made up of the NFL, the NFL Players Association, NFL Charities, the NFL Alumni Association and the Pro Football Hall of Fame. We are actively seeking the support of other interested parties, including the Gridiron Greats, the group endorsed by Coach Ditka. The five parties currently part of the Alliance have each agreed both to initial funding commitments, as well as to further fundraising efforts to ensure that there will be adequate resources available to carry out its program.

The Alliance is currently focusing on several specific medical projects to benefit retired players. Those projects include joint replacement surgery and rehabilitation, which will be provided free or at reduced cost at leading medical centers throughout the country. A second initiative involves comprehensive cardiovascular health screening and education, which will be provided at no cost to retired players under the oversight of the League's Medical Committee on Cardiovascular Health. A third initiative involves identifying a network of assisted living facilities throughout the country that will provide favorable access to retired players in need of these services.

Apart from these initiatives, the Alliance is exploring other targeted medical services and ways of providing various forms of supplemental health insurance to retired players and their families.

Finally, the Alliance is committed to coordinating all of the different services offered by its various members. Doing so will allow us more effectively to communicate to retirees and their families and identify those in need. By pooling our financial and administrative resources, we can better achieve our goal of providing help to retired players in need in a timely, confidential, and dignified way.

Question 7. If the standard for awarding Total and Permanent disability claims is that the former player is substantially unable to work, what programs do you have to assist former players who do not meet this standard but who suffer from football-related injuries?

Answer. The Disability Plan offers both total and permanent disability and partial disability benefits. Retired players who are able to work but nonetheless have a disability may seek partial disability or "Line of Duty" benefits. (They may also seek workers' compensation benefits.) As I testified, we are considering further measures with respect to partial disability benefits, including expanding the time in which retired players may apply for Line of Duty benefits to make that benefit available to a greater number of retired players. In addition, the Plan offers a total and permanent disability benefit based on football degenerative conditions, so if a player becomes unable to work within 15 years of his retirement from the NFL, he may still apply for and receive a total and permanent disability benefit.

Question 8. Former players have said that they have insufficient input into the benefit programs that affect them. Understanding that they are not parties to the Collective Bargaining Agreement because they are not members of the bargaining unit, will you establish a process by which the concerns of former players can be expressed and heard?

Answer. As the question recognizes, Federal labor law requires the clubs to bargain with the NFL Players Association as the representative of *current* employees. Nonetheless, the parties to the NFL-NFLPA Collective Bargaining Agreement have an admirable and consistent record of steadily *increasing* benefits and of applying those increases on a *retroactive* basis. In the last ten years, the clubs have assumed additional retroactive benefit obligations of nearly \$400 million.

We are acutely aware of the concerns of retired NFL players. We have consulted with them and will continue to do so, through the Alliance, the Hall of Fame, the Alumni Association, the many former players who currently work in and around the NFL, and in other ways. While it may not be possible to satisfy all of the desires of retired players, we will continue to work to ensure that we have a complete un-

derstanding of their concerns. We are committed through these and other mechanisms to listen to the concerns expressed by former players.

Question 9. What are the current and accurate figures regarding the number of players who have applied for disability benefits, and the number who have been approved?

Answer. The information set forth in the NFLPA "White Paper," which was filed as part of the hearing record, shows that from July 1993, roughly 1,052 people have applied for disability benefits. Of that number, 428 applications have been approved, 576 applications have been denied, and the remaining 48 applications are pending.

