

**STEROID USE IN PROFESSIONAL
AND AMATEUR SPORTS**

HEARING

BEFORE THE

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

UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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MARCH 10, 2004
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ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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STEROID USE IN PROFESSIONAL AND AMATEUR SPORTS

WEDNESDAY, MARCH 10, 2004

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. John McCain, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

The CHAIRMAN. Good morning. The purpose of this hearing is to examine not only whether the drug testing procedures of professional and amateur sports organizations serve the best interest of the organizations, their players, and their respective sports, but whether they serve the best interest of the public.

I welcome the witnesses who are appearing before the Committee today, and I thank those who made special arrangements to be here.

As Chairman of this Committee, which has oversight authority over amateur and professional sports, and, more importantly, as a parent, let me be clear, there are real consequences to demanding anything less than clean professional and amateur sports. The failure to insist on stringent drug-testing policies damages the integrity of the games, calls into question records set by those suspected of using performance-enhancing drugs, and puts in peril the health of the athletes who play the games. But most worrisome is the poor example set by professional and amateur athletes in the eyes of the kids who idolize and emulate them.

Some may have doubts about the powerful effect that athletes have on the lives of kids. Let me remind them of the five-fold increase in the sales of androstenedione, known as andro, that occurred after Mark McGwire admitted to using the substance in 1998 while chasing Roger Maris' home-run record.

As everyone here knows, the health consequences associated with the use of steroids and other dangerous performance-enhancing substance are dire. Medical experts warn that the effects on kids include stunted growth, scarring acne, hormonal imbalances, liver and kidney damage, as well as an increased risk of heart disease and stroke later in life. Psychologically, steroids have been associated with increased aggression, suicide, and a higher propensity to commit serious crimes.

That said, I am not naive about the pressures of professional and world-class amateur sports. Successful athletes are, by their nature, extremely competitive and always on the lookout for what gives them a performance edge. Just as important, financial concerns make drug-testing policies a distant second, behind the bottom line of all parties involved. But it's clear that we've reached a tipping point in the doping debate, where the use of performance-enhancing drugs can no longer be brushed aside. How exactly we deal with this doping epidemic is something I'm looking forward to discussing with the witnesses and with others.

Let me raise one recent example of the type of the activity that concerns me. Recently, there have been volumes of press reports concerning a small laboratory in San Francisco that was raided by law enforcement. The U.S. Attorney's Office in Northern California alleges that the company, known as BALCO, was supplying performance-enhancing substances to prominent professional and amateur athletes. It's been reported that BALCO provided substances to athletes that were specially designed to evade positive drug-test results.

These reports have raised several disturbing questions. For example, should we be concerned that we may be sending an Olympic team to Athens later this year that we know is comprised of athletes who cheated? Will the home runs hit this summer owe their distance to talent and training, or to steroids? Will we be able to look at players who have shrunk noticeably since the end of last season without indicting those players in our minds? Will records in both professional and amateur sports continue to fall to those who covet success over merit, to those who deserve, at the very least, an asterisk next to their name in the record books?

Whatever the answers to these questions are, no reasonable person would disagree that using a performance-enhancing substance to gain a competitive edge over an opponent is cheating. Sports organizations that allow athletes to cheat through weak drug-testing regimes are aiding and abetting cheaters. This cheating, and the negative effect it has on the integrity of our games and our athletes, is shameful.

Each of you, and particularly major league baseball, has a legitimacy problem. As your athletes get bigger and stronger, the credibility of your product in the eyes of the public gets weaker. I'm hopeful that this hearing will be the first step toward clearing the cloud of suspicion that moves ominously over your sports.

I thank the witnesses, again, for being here. I ask the Committee, because we have very important witnesses, to make their opening statements brief.

Senator Rockefeller? Brief opening statements, please.

**STATEMENT OF HON. JOHN D. ROCKEFELLER IV,
U.S. SENATOR FROM WEST VIRGINIA**

Senator ROCKEFELLER. Mr. Chairman, you said it, Roger Maris still holds the home-run record. I've been a baseball fan since I was 6 years old, and there's no question in my mind about that.

I'm grateful for the people who are here. I should say, in honesty, that my son has the good fortune of being married to the daughter of Commissioner Tagliabue, and I'm also—if I said anything about

him this morning, I was going to praise what the NFL is doing, but I'm not going to say that, but I just wanted that record to be clear.

I agree with the Chairman that what this does is very bad, the use of steroids, other performance-enhancing drugs, they have no place, at any time, ever, in baseball. It's interesting that we've just come to this. It's like a national explosion all of a sudden. And sometimes the Congress is late to that, but when the Congress gets to it, it usually is fairly serious about it.

I know that there are a lot—and most, the great majority of, athletes don't do that. But, nevertheless, I have to notice that an enormous number of major league baseball players tested positive for steroid use. It's about ten times that of the Olympic athletes. The NFL's positive rate is one-tenth of 1 percent, about 10 to 12 players a year out of 2,500 tested. And I could go on, on that.

Major league baseball doesn't test in the off season. How can that possibly be? That's when the training goes on. Baseball players are tested only twice each year. So, you know, that's easy to work around.

I blame the union. The union, I think, over the years has been very destructive on this. They're not helpful. I blame management. I blame the administration of the league for not cracking down on what is such an obvious problem, which is an embarrassment to the United States, which is hurtful to fans all over the country, and which is a terrible thing for the young people of our country. And I also blame the agents and the doctors.

For those various reasons, I would conclude simply by saying that *USA Today's* baseball weekly reported that one out of every three players who tried out for the 2000 United States Olympic baseball team, mostly college and minor league players, tested positive for steroids. That's disgusting. That's disgraceful. That's shameful. But it is true. Steroids used by professional Olympic athletes goes down to the college and, as the Chairman said, "on down and down."

I also believe it is true that minor league baseball has a very different program, and they're much more aggressive. Major league baseball is much more aggressive than minor league baseball. And it interests me that the minor league baseball, as far as I know, is not represented by the union; hence, my concern on that subject.

Mr. Chairman, I'll have more in my questions, but I wanted to express my great displeasure, as a fan, as an American, and as a Senator, for what is going on, particularly in major league baseball.

And, obviously, the breaking of a guy's neck last night in hockey is a different subject, but that is not what we're here for today.

Senator BROWNBACK. Senator Allen?

**STATEMENT OF HON. GEORGE ALLEN,
U.S. SENATOR FROM VIRGINIA**

Senator ALLEN. Thank you, Mr. Chairman. I think this is a very timely hearing. Yesterday, this Committee was discussing legislation dealing with the halftime show at the Super Bowl. Today, we're dealing with why people care about watching the Super Bowl, and that's actually football, and the integrity of the game. The reason people care about football is they love to see the players, they love to see the teams, they love the strategies, the tactics, the of-

fensive plays, the defense, and the adjustments, the motivations, and the performance. In football, Mr. Chairman, and, indeed, in professional sports, since the days of desegregation and integration of sports, why Americans love sports and team sports is they are a meritocracy. Everyone has an equal opportunity to compete and succeed based on their own hard work, their own self discipline. The coaches, as far as the judge of talent, the deployment of plays, strategies, tactics, and all the rest. But it is all on what everyone loves to call a level playing field.

This issue of steroids, the illegal use of steroids, threatens the essence of the games that we so much admire and love. And, as the Chairman said, in your very eloquent, strong remarks, which I completely agree with, this is affecting three levels. Number one, the integrity of the game, which is absolutely essential for people to enjoy it, for it to have credibility. You talked about an asterisk next to certain records. You know, you may be a question mark. There may be an "Rx" next some of these records, particularly in baseball, as Senator Rockefeller mentioned. But really the concept of fair play, honesty, and integrity are at stake.

Second, as the Chairman said, the message to young people. Sports are highly competitive, but you want to have it in such a way that the young people aspiring to be football players, basketball players, baseball—which ends up being all over the world—hockey, any of these sports, it's important that youngsters recognize the importance of fair play, of self discipline, and doing it without performance-enhancing drugs.

And, third, darn it, the unions, in my view—and I certainly do believe the NFL Players Union—the unions ought to care about the health of their players, of their members. I cannot imagine any sort of a union, supposedly representing the players, who would want to shorten, literally shorten, the lives of players because of the competitive edge—in a roundabout way, they are responsible for what they take into their bodies, but in competition some of them are forced or induced, encouraged, or have to, just to compete, take these drugs and, thereby, lessen and shorten their lives.

We have many great witnesses here, Mr. Chairman. The one who's especially an outstanding one for perspective here is Gene Upshaw, an outstanding player, Hall of Fame player. He understands the temptations, the competition, what it means to compete and succeed, and he did it the right way. He is also the one, and people like him, who will be able to get that message to youngsters that this is the way to have a successful career.

And so I thank you, Mr. Chairman, for having this hearing. I thank our witnesses, look forward to their testimony and cross-examination, as well.

The CHAIRMAN. Thank you very much.
Senator Dorgan?

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

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

A few years ago, in June, I held a hearing—I chaired a hearing—and you, Mr. Chairman, were there at the time. It was a Subcommittee meeting of this Commerce Committee. And we did it on

this subject. And I must say, regrettably, little has changed in this two-year period.

I went back last evening to re-read the transcript of that hearing, because we have some of the same people here today who testified 2 years ago. And, you know, I almost—you read the papers and read the journals about what's going on with respect to these scandals of performance-enhancing drugs and steroid use, and you remember the little boy's plaintive cry, "Say it ain't so, Joe."

This is a wonderful game, with remarkably gifted athletes. And I don't, for the life of me, understand why some in baseball, the Players Union and others, have—again I get this from my re-reading the testimony last evening—why they have decided that they will not test for performance-enhancing drugs, as they do in football.

We will have, I think, testimony today from some wonderful witnesses. I'm going to ask some questions based on my re-reading of the transcript, last year—two years ago. And let me say, again, the reason this hearing is important—yes, it's about the health of athletes, but it's also about a doctor testifying, 2 years ago at this table, who said fifth-graders are now seeking out and using these kinds of performance-enhancing drugs—fifth-graders, sixth-graders, eighth-graders. Why? Because they see others do it, and that's the way you get to the big leagues. And the fact is, if we don't put a stop to this, and if we don't decide to tell the American people, and have baseball tell their players, that this is a game that's free of performance-enhancing drugs, it's free of steroids, then we'll ruin this game, and we'll ruin the health of a whole lot of kids that look up to the stars in this game.

The CHAIRMAN. Senator Burns?

**STATEMENT OF HON. CONRAD BURNS,
U.S. SENATOR FROM MONTANA**

Senator BURNS. Thank you, Mr. Chairman. And thanks for this hearing.

Let me associate myself with the remarks of my Chairman. I don't think anybody could have put it any better, and there's no doubt that this issue has risen to the level of intensity of the hearing that we had yesterday. And, of course, everybody knows what that was; that was halftime at the Super Bowl this year.

The CHAIRMAN. We have a lot of fun on this Committee.

Senator BURNS. Yes, we sure did.

[Laughter.]

Senator BURNS. I've never seen so much confusion in my life, and we all voted that way, too.

And what I would say, both instances tend to denigrate the dual roles that athletes play in our society. It is that that concerns me most. Athletes must assume the responsibility of being a role model, just as he or she was blessed with great athletic ability, they are paid well, way above anything that we can conceive in this country, and yet some opt to be thugs. And the responsibilities of the role that they have are shirked by the athletes. They disregard the message that they send, and they should be denied the access to the pedestal that they have sought.

It just absolutely astounds me sometimes how people can make so darn much money, and they say, you know, all the crime that we have in our country starts with the poor people, in areas of great poverty. Well, you know, I don't buy that, because I think we have the same problem at the highest levels of our income, especially with our paid athletes.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.
Senator Breaux?

**STATEMENT OF HON. JOHN B. BREAUX,
U.S. SENATOR FROM LOUISIANA**

Senator BREAUX. Thank you very much, Mr. Chairman. And thank all of our witnesses for being with us.

Some might ask, well, why is Congress involved in this at all? I mean, why not let the industry and the sports authorities take care of this problem internally? Why is Congress even looking at this? And I think the answer is that when something as important as professional sports are in this country, when the subject becomes dominant, not who's got the best batting average or who's been traded or who's likely to win, but the subject becomes, obsessively, who's taking drugs and who's not, who's cheating and who's not, who's doing illegal things and who's not, then that becomes an interest that permeates outside the sport itself. It becomes a national issue. It becomes an issue of concern to the American public and the American people. And I think that we have reached a point where the discussion of the use of steroids in particular, and enhancing drugs in general, have become so pervasive, particularly in professional athletics, like baseball, that it is a true national issue. And I think Congress has a responsibility to say that, look, it's not just negotiation between the union and the owners. It's more than that. It's a national sport that's televised over the national airways, and literally millions and millions of people are affected by the activities of professional athletes and their performance of their duties and their jobs.

So it is—steroids are cheating, steroids are illegal the way they're being abused and used. And I think the general public has an interest, a legitimate interest, in doing what is essentially necessary to prevent this. And I think that this hearing is extremely important in that regard.

Thank you.

The CHAIRMAN. Thank you, Senator Breaux.
Senator Sununu?

**STATEMENT OF HON. JOHN E. SUNUNU,
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator SUNUNU. Thank you, Mr. Chairman.

The reluctance of the acceptance of a rigorous system of testing for steroids, it affects the integrity of the game, it affects the credibility of everyone involved. But to Senator Breaux's question about the national implications, it affects the health of all of the players in the professional system. It has significant health impacts in the long term on all of those that look to professional athletes as role

models. And I think that's the fundamental reason that we're here today.

The Chairman's done a great job of putting together a very strong panel, and I look forward to the testimony.

The CHAIRMAN. Senator Lautenberg?

**STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. Thanks, Mr. Chairman.

First of all, I want to make sure that credit is given to the state of New Jersey, where baseball was invented. And_____

Senator BIDEN. Are you claiming steroids?

[Laughter.]

Senator LAUTENBERG. Steroids? No, we didn't have—we ate spaghetti and meatballs, and that did it for us.

[Laughter.]

The CHAIRMAN. Senator Lautenberg, we have a five-minute rule here.

Senator LAUTENBERG. Well, if I'm going to debate Senator Biden_____

[Laughter.]

The CHAIRMAN. That would be a long debate.

[Laughter.]

Senator LAUTENBERG. The subject is really a critical one. And, Mr. Chairman, I will spare the audience and the Committee by asking that my full statement be included in the record.

The CHAIRMAN. Without objection.

Senator LAUTENBERG. But I do want to say a couple of things. Number one is, while I am shocked, as the rest of my colleagues are, at baseball's apparent leniency to the use of steroids and precursor drugs. And it's hard to understand why it is we can't get it stopped. And if the union is concerned about the rights of the ballplayers, we ought to talk about that. But, on the other hand, baseball is really a public endeavor, and that's what we want to do. We want to engage the fans and engage television and engage so many different parties to watch it. And then we talk about the terrible effects of steroids and what it does to children who are induced by their view of the glamour of the sport to taking these things. It's an outrage.

And I know that it's very hard—I did a lot of anti-smoking legislation—to say, you know, if you start now, it feels good, but if you can look ahead a few years, which is very tough, then you put that aside and you say, "Well, we'll give it a try." And the notion that a ballplayer—in any of the sports, a player can extend their contract life by a year or two when the stakes are so high is very tough to fight. But it's a fight we have to win. It's a fight that we can no longer accept as part of the norm.

And while I would hope that the parties can all agree that we ought to get together on this fight, I would say to baseball and our friend, Bud Selig, you've got to have a program, an education program, just like we did with tobacco, just like we did with other things, to inform the players about what, ultimately, harm they do to themselves and their families if they continue with this.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Lautenberg.
The CHAIRMAN. Senator Smith?

**STATEMENT OF HON. GORDON H. SMITH,
U.S. SENATOR FROM OREGON**

Senator SMITH. Thank you, Mr. Chairman.

I, as with other colleagues, would like to be associated with your opening remarks. I'm here at this hearing because of a lifelong love of the game of baseball. In fact, as I was reflecting this morning, coming to work, one of the earliest memories I have of life was watching Mickey Mantle beat my beloved Washington Senators in Griffith Stadium, with a home run that he hit out of the park. I grew up with these legends, and admired them, and am distressed now, having watched so many games with my children, and thrilled to watch the great records of Babe Ruth and others fall in our time, only to wonder now if those record-breaking feats deserve an asterisk by them.

I'm deeply concerned about the health of our game. I don't understand why the minor leagues have a higher standard than the major leagues. And I would plead with all who love baseball, players and owners, to respond to this issue of integrity and its impact not just on their game, but on the children of this country. I understand the need for privacy. But, in the balance, integrity for this game, for the future, I think, is the weightier issue.

Thank you.

The CHAIRMAN. Thank you.
Senator Fitzgerald?

**STATEMENT OF HON. PETER G. FITZGERALD,
U.S. SENATOR FROM ILLINOIS**

Senator FITZGERALD. Thank you, Mr. Chairman.

I just want to say that I have a 12-year-old son, whose—well, he's almost 12—whose life, at this stage, is baseball and other sports. And he's heard the rumors of steroid use by some of the stars that he admires so much, but he refuses to believe them. He always tells me, "Dad, they're just lifting weights." And I'm glad he thinks that way, because I want him to have heroes in life.

But I'm not sure that the Players Union, with their position, understands the damage they could be doing by not allowing a tougher drug-testing policy in the major leagues. We have to have it. I would think probably 70 or 80 percent of the players themselves would favor a tougher drug testing policy.

And I'm anxious to hear from Mr. Fehr, of the Players Union, why it is that he's taken such a strong stance against a tough drug-testing policy, because I fear he's really hurting the game of baseball, and I'd like him to reconsider and go down the route that the NFL players have.

So, with that—and thank you, Mr. Chairman, for doing this hearing.

The CHAIRMAN. Thank you, sir.

We're pleased to have Congressman Sweeney and Senator Biden. And I would remind both that we have a five-minute rule here. We're pleased to have you be here today with us, and we thank you.

And if it's OK with you, Mr. Sweeney, we always start with the oldest witness here. I'm sure you understand.

[Laughter.]

The CHAIRMAN. You understand that?
Senator Biden?

Mr. SWEENEY. I'm happy to defer.

**STATEMENT OF HON. JOSEPH BIDEN,
U.S. SENATOR FROM DELAWARE**

Senator BIDEN. Mr. Chairman, Senator Hollings, who I've spoken to earlier this morning, and my colleagues, thank you for having this hearing to examine the use of performance-enhancing drugs in professional and in amateur sports. And thank you for allowing me to testify.

In a moment, Mr. Chairman, as I told you yesterday, I—it's truly coincidental, but my university, University of Delaware, my alma mater, won the National Football Championship in Division 2, and they're all down here today, and some will be here. And I think it's kind of interesting that, you know, we have, for example, a couple young All Americans that are going to be here, a kid named Mondo Davis, a kid named Sean Bliler, and a lot of other kids who have broken their backs and their necks and are proud of their accomplishments.

And I think back when I, in 1990, introduced the first anti-steroid bill, back in the days when I was Chairman of the Judiciary Committee, and it was to make anabolic steroids illegal. And we had the same kind of thing, Mr. Chairman; nobody would come forward, like the Players Union now are the last holdouts, until Joe Paterno, who was then in his heyday and winning, was the only coach, I might add—the only coach of a major university who was willing to come and sit at this table in the Judiciary room and say, "This is wrong. This is wrong. There should be a law." None of the athletic coaches, the majority of the college coaches didn't want to come forward. They didn't want to be the ones. And they'd say to me, privately, "Look, if we're going outlaw these across the board, OK, but if I come along and I have a strict policy and I got my kid a tackle who busts his rear-end and he's 275 pounds, and he looks across the line and there's a kid who is 320 pounds and all muscle, and looking at him, and he says, 'I know that kid didn't work any harder than me, and I know he's going to kick my rear end at the snap of the ball, because he's got 50 pounds on me, and a helluva lot more muscle mass, and I've done everything I can.' So what do I do? My kid then says, 'This doesn't make any sense. I'm going to use them, too.'"

And so, so far so good, we passed the law, after a lot of screaming and shouting, and, with your help and a number of other people here, voted for it.

And then what happened? Designer drugs, in effect. Along came the precursors, and we found out that there are other ways to get around this law. And I was angered by this, as was the Chairman of the Committee, Senator Hatch and Senator Stevens and others. We all joined together, including Congressman Sweeney, in the House, and we introduced legislation to make THG, andro, and a number of other substances subject to the same rules that anabolic

steroids are subject to. And under this legislation, which will—using these products to be flat illegal.

And, Mr. Chairman, we can go through, and I will not—I will not bore you with it, because all of you know as well as I do the negative health effects on the continued use of steroids, anabolic steroids, and the precursors. And we know how it damages our young kids. And so we make the case, and I made the case in 1990, this is a health issue.

But you know what, John? I realize it's a health issue alone. This is a values issue. This is a values issue. My friends in baseball—I usually side with the union because, Mr. Selig, I love, but I wish the hell he'd get a real commissioner, you know, and I have real disagreements with you all, and I have real disagreements about how—but the union is wrong here. They're wrong here.

Baseball is a national pastime, but it is the repository of the values of this country. When we want to define—when we want to define to a foreign country what we're about, and you're going to show a film, what would you go show? You'd show the basketball film "Hoosiers" or you'd show, you know, "The Natural" or you would show something that reflects what every American feels in their gut, their being, every fiber of them, that this is the ultimate meritocracy, the United States of America.

You know, Winston Churchill said that England's future was determined more on the playing fields of Eton than it was at any academy, and there's truth to that, Mr. Chairman. You know it. I know you well. I know you well. And this wells up from the tip of your toes right to the base of your brain. And all of you know it. There's something simply un-American about this. This is about values, it's about our culture, it's about who we define ourselves to be.

And, last, I must tell you, I thought, in undergraduate school and in college, I was a pretty good athlete. But, you know what? I think to myself, as a small kid—I was light at the time, and I was pretty good, and I wonder—I now find myself, not only as a Senator, resentful of what some athletes are doing to the sport, but I find myself angry—angry in my gut. Because these are the same guys who would have taken me out—taken me out—not because they had more God-given natural talent than me, but because they enhanced, with artificial means, their capacity. That is simply wrong. That is a blot on the culture of this country.

And you know all the statistics on health, John, and all of you do, and we should talk about that, but just so you know, a Kaiser Family study shows that the majority—catch this—that more than half the kids in America, the age of your son, Senator, believe now that their heroes use steroids. That's a poll. Half our children believe—believe—that the athletes behind me use steroids. What a helluva commentary on what's happening in this country.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Biden, it's always entertaining as well as enlightening to have you with us.

[Laughter.]

The CHAIRMAN. And we appreciate you being here, and we very much appreciate your passion and your dedication. We thank you.

I wish that I could say that I was a good high school athlete.

Mr. Sweeney?

**STATEMENT OF HON. JOHN E. SWEENEY,
U.S. REPRESENTATIVE FROM NEW YORK**

Mr. SWEENEY. Thank you, Mr. Chairman. Let me thank you and the Members—

The CHAIRMAN. Senator Biden, I know you have to leave, so—I appreciate the fact that you came.

Senator BIDEN. Thank you.

Mr. SWEENEY. Let me thank you and Members of the Committee for conducting this hearing, and thank you profusely for allowing me to participate.

I think at the core of this hearing and at the core of this debate is the notion of, Where is American sports in our culture? What role does it play? And your recognizing that, I think, moves this debate along in a significant fashion, and one that is long overdue.

I'm not here just as a Member of the other body, who happens to, with all due respect, Senator Lautenberg, represent the home of baseball, or part of the home of baseball, along with Sherry Bohlert, at Cooperstown. I'm not just here as a Member of Congress, who represents the home of the winter Olympic sports movement in Lake Placid, New York. I'm not here as just a Member, who represents the home of horse racing in Saratoga. And other Members will debate any of those issues, in terms of where they're the home of. I'm really here as a parent. And it is by means of explaining my involvement and how I became the original Member of the other body to introduce the Anabolic Steroid Control Act.

I'll tell you about a story, about several years ago, in which I was in the weight room with one my teenage children, working out, as we try to routinely do, he mentioned to me that he was then training for baseball and/or football practice in the off season. And a number of his classmates, colleagues, and friends were talking about the use of andro and/or another steroid precursor in order to build themselves up, to give themselves the edge that they needed to make the team, make the starting lineup, and/or become a star in that field. And his simple comments to me were, "Dad, how bad can it be? It's gotta be good; they're selling it over the counter. I can go down to the GNC, I can go to Wal-Mart, I can go anywhere where I have to go and buy this stuff. Somebody's had to have checked this out. And how bad could it be? Mark McGwire, after all, used it to set the records he set, and we believe many other players are involved."

It started me on a journey in which I went to those experts in all of those places that I happen to be lucky enough to represent, and the real facts and the real information became more apparent as we got involved in the process. It led to the introduction of the legislation. We recognized that this wasn't just about American sports; it was about healthcare, it was about the health risks associated with it. And, as Senator Biden pointed out, it is about the culture, it is about ethics; and, therefore, it's pretty critical.

The lines of fair play are blurred by the prevalence of steroid precursors and designers steroids, which have been developed by manufacturers simply to avert and avoid the good work that you all did a decade ago to try to protect the interests of the American public.

Athletes have become more creative in turning to these substances, such as andro, as you pointed out, Mr. Chairman, and its muscle-building cousins. These performance enhancers are the equivalent of illegal steroids—we need to be very clear about that—which you have already outlawed, and they should be treated as such.

The consequences for steroid abuse then, therefore, in my opinion, must become severe enough to act as a deterrent, and that's what your hearing, I think, is all about, and I really want to salute you.

I will conclude, because I've got to go over to the other body and be involved in a couple of other hearings. But the integrity of sports rests on the ability of players to compete fairly, free of suspicion. And athletes that have gained an edge by taking performance-enhanced substances hurt their sport. And, more importantly, I hope the message of all of our debate here is that they hurt society.

Parents in this day and age are looking for influences on their children that are positive, and they're very tough to find, as your hearing yesterday certainly pointed out. We need to take action here in Congress. We need to step forward. Because this isn't simply about sports. This is—the emphasis really has to be—that this is very much about our kids, the health of our kids, and what kind of culture we want to develop.

Let me conclude by saying the National Institute on Drug Abuse pointed out several years ago that about 3 percent of junior high school students had already taken steroids. If you can imagine the impact on the adult, developed body, imagine the impact on the developing adolescent body of our children. This is a compelling national issue. That's why there is this attention. And I salute all of you for taking the lead this year in moving this bill forward and moving this legislation forward. And I thank you for the opportunity.

The CHAIRMAN. Thank you very much. Thank both of you for coming. And we appreciate very much you taking the time to be with us.

Our next panel is Mr. Allan H. Selig, who is the Commissioner of Major League Baseball; Mr. Donald Fehr, who is the Executive Director and General Counsel of Major League Baseball Players Association; Mr. Gene Upshaw, who's the Executive Director of the National Football League Players Association; Mr. Terrence Madden, who is the Chief Executive Officer of the United States Anti-Doping Agency; and Mr. Paul J. Tagliabue, who is the Commissioner of the National Football League. Please come forward.

I'd like to thank the witnesses for taking time from their schedule. I know that this was an inconvenience for all witnesses to be here today. I understand that Mr. Fehr is recovering from surgery, as well, and we thank you for appearing before this Committee, and we feel that your appearance is justified.

We'll begin with you, Mr. Madden.

**STATEMENT OF TERRY MADDEN, CHIEF EXECUTIVE OFFICER,
UNITED STATES ANTI-DOPING AGENCY**

Mr. MADDEN. Thank you, Senator.

Mr. Chairman, Members of the Committee, good morning. My name is Terry Madden. Today, I come to you as the CEO of the United States Anti-Doping Agency, which has been recognized by Congress as the independent national anti-doping agency for Olympic and Paralympic sport in the United States.

While USADA has recently received increased attention for our role in the BALCO investigation, as many of you know we have been working for more than 3 years to protect and preserve the health of athletes, the integrity of competition, and the well-being of sport through the elimination of doping.

The use of performance-enhancing drugs in sport creates an atmosphere of coercion, where clean athletes who do not want to take drugs feel compelled to do so to succeed. In this age of multi-million-dollar rewards for sport success, the siren call of drugs is even more alluring. This problem is not confined to a single sport, a single country, a small number of athletes, or an isolated group of unethical chemists. It affects every sport, and threatens to undermine the integrity of athletics as a whole. It also sends the message that cheating is acceptable, and allows drug users to become role models for our Nation's youth.

While some claim doping is a victimless violation of the rules, the true victims of doping are the athletes who wish to compete in clean sport and are denied this opportunity, as well as the public who is defrauded by athletic performances dependent on the use of drugs. Unfortunately, without a strong anti-doping system in place, the accomplishments of clean athletes can be unfairly tainted by the doping behavior of a few.

The purpose of the United States Anti-Doping Agency Anti-Doping Program, which was developed with the assistance and approval of Olympic-movement athletes, is to protect all athletes by deterring the use of drugs in the 45 Olympic, Paralympic, and Pan American game sports. While there are many components to a successful anti-doping program, the most fundamental is the athletes' knowledge that their use of prohibited substances and methods can be detected, and that penalties for breaking the rules are significant.

An effective doping program begins with a sample-collection plan that includes appropriately timed, year-round, no-advanced-notice testing. The plan must provide for the collection of samples at the time that athletes most benefit from doping, and must be flexible and responsive to evolving doping techniques. A drug-testing program is ineffective if athletes know during what times of the year they will be tested, or are given sufficient notice of the test to take steps to alter samples in order to avoid detection.

An effective program also must be built around a comprehensive list of categories of prohibited substances and methods. One lesson reinforced by THG in the BALCO investigation is that programs must incorporate sufficient flexibility to deal with the creation and use of designer drugs. Unlike workplace or drugs-of-abuse testing, the Olympic movement list of categories of prohibited substances and methods is extensive. Therefore, the continued dedication of resources to the testing laboratories that are charged with developing and validating testing methods for this wide array of substances is an important aspect of deterrence.

An effective and credible program also combines defined sanctions of sufficient magnitude to deter drug use with a fair means of imposing such sanctions. In the Olympic movement, the sanction for a first steroid offense is a two-year suspension. A second steroid offense results in a lifetime ban. Because of the severity of these sanctions, USADA's adjudication system includes numerous protections for athletes to ensure that only athletes who are guilty of a doping violation are sanctioned.

Significantly, while USADA believes the privacy rights of individuals accused of doping violations must be respected, no individual's right should outweigh the rights of all athletes to compete in clean sport and to be assured that those who break the rules are appropriately sanctioned. USADA also believes that to protect the rights of all athletes, an anti-doping program should be transparent by allowing for an independent review of the effectiveness and fairness of each aspect of the program.

Another important component is the education of athletes as to why healthy competition is important, and why taking the uninformed health risks associated with prohibited substances is a bad choice. The achievements in sport, like the achievements in life, should be the result of hard work, commitment, and dedication. We agree strongly with the President, who stated, in his State of the Union Address, that achieving success through drugs sends the message that character doesn't count.

In developing our educational materials, USADA has benefited from our interaction with Character Counts in their Pursuing Victory With Honor Program. Reaching your goals through strength of individual character and by making the right decisions are at the core of what USADA has emphasized in our One Hundred Percent Me Program for elementary school students.

Finally, an effective program must devote significant resources to research for the detection of new doping substances and techniques, and the pursuit of scientific excellence in doping control. To this end, USADA has funded pioneering work in such areas as the effort to develop a test for human growth hormone. Our international symposium, in 2002, took a comprehensive approach to the issue of increased oxygen transport, and led to research, the results of which are beginning to close all of the approaches to blood doping.

Most recently, USADA has supported research at several laboratories regarding the newly detected designer steroid, THG. USADA is also strongly committed to furthering research regarding the health risks associated with long-term use of prohibited substances, including human growth hormone.

Since its inception, just over 3 years ago, USADA has worked hard to show the world that the United States Olympic movement athletes compete clean. We believe that the USADA program contains all of the important elements of a comprehensive and effective testing program, and we continue to work each day to improve our system to further protect clean athletes. Specifically, we are focused on increasing the numbers of no-advance-notice tests that we perform. We are also seeking to improve our ability to systematically identify and sanction those athletes and other individuals who

are engaged in the effort to create designer substances, or otherwise gain an advantage over athletes who are competing clean.

USADA believes that stemming the use of drugs in sports is necessary to preserve the integrity of sport in this Nation. Athletes, including America's children, who dream of athletic stardom, have a fundamental right not to be put in a position where they believe they must use drugs to effectively compete. USADA is dedicated to protecting that right, and welcomes the opportunity to work with any sport that is committed to the cause of drug-free sport.

We thank you, Mr. Chairman and Members of the Committee, for this opportunity to share our convictions on this important topic.

[The prepared statement of Mr. Madden follows:]

PREPARED STATEMENT OF TERRY MADDEN, CHIEF EXECUTIVE OFFICER,
UNITED STATES ANTI-DOPING AGENCY

Mr. Chairman, members of the Committee, good morning, my name is Terry Madden. Thank you for the opportunity to testify. Today I come to you as the CEO of the United States Anti-Doping Agency, which has been recognized by Congress as the independent, national anti-doping agency for Olympic and Paralympic sport in the United States. While USADA has recently received increased attention for our role in the BALCO investigation, as many of you know, we have been working for more than three years to protect and preserve the health of athletes, the integrity of competition, and the well-being of sport through the elimination of doping.

The use of performance-enhancing drugs in sport creates an atmosphere of coercion where clean athletes, who do not want to take drugs, feel compelled to do so to succeed. In this age of multi-million dollar rewards for sports success, the siren call of drugs is even more alluring. This problem is not confined to a single sport, a single country, a small number of athletes or an isolated group of unethical chemists. It affects every sport and threatens to undermine the integrity of athletics as a whole. It also sends the message that cheating is acceptable, and allows drug users to become role models for our Nation's youth.

While some claim doping is a victimless violation of the rules, the true victims of doping are the athletes who wish to compete in clean sport and are denied this opportunity, as well as the public who is defrauded by athletic performances dependent on the use of drugs. Unfortunately, without a strong anti-doping system in place, the accomplishments of clean athletes can be unfairly tainted by the doping behavior of only a few.

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An effective program begins with a sample collection plan that includes appropriately timed, year-round, no-advance-notice testing. The plan must provide for the collection of samples at the time that athletes most benefit from doping and must be flexible and responsive to evolving doping techniques. A drug testing program is ineffective if athletes know during what times of the year they will be tested or are given sufficient notice of the test to take steps to alter samples in order to avoid detection.

An effective program also must be built around a comprehensive list of categories of prohibited substances and methods. One lesson reinforced by THG and the BALCO investigation, is that programs must incorporate sufficient flexibility to deal with the creation and use of "designer drugs." Unlike workplace or drugs-of-abuse testing, the Olympic Movement list of categories of prohibited substances and methods is extensive. Therefore, the continued dedication of resources to the testing laboratories that are charged with developing and validating testing methods for this wide array of substances is an important aspect of deterrence.

An effective and credible program also combines defined sanctions of sufficient magnitude to deter drug use with a fair means of imposing such sanctions. In the Olympic Movement the sanction for a first steroid offense is a two-year suspension.

A second steroid offense results in a lifetime ban. Because of the severity of these sanctions, USADA's adjudication system includes numerous protections for athletes to ensure that only athletes who are guilty of a doping violation are sanctioned. Significantly, while USADA believes the privacy rights of individuals accused of a doping violation must be respected, no individual's right should outweigh the rights of all athletes to compete in clean sport and to be assured that those who break the rules are appropriately sanctioned. USADA also believes that to protect the rights of all athletes an anti-doping program should be transparent, by allowing for an independent review of the effectiveness and fairness of each aspect of the program.

Another important component is the education of athletes as to why healthy competition is important and why taking the uninformed health risks associated with prohibited substances is a bad choice. The achievements in sport, like the achievements in life, should be the result of hard work, commitment, and dedication. We agree strongly with the President who stated in his State of the Union address that achieving success through drugs sends the message that character doesn't count. In developing our educational materials, USADA has benefited from our interaction with Character Counts and their "Pursuing Victory with Honor" program. Reaching your goals through strength of individual character and by making the right decisions, are at the core of what USADA has emphasized in our "100 percent Me" program for elementary school students.

Finally, an effective program must devote significant resources to research for the detection of new doping substances and techniques and the pursuit of scientific excellence in doping control. To this end, USADA has funded pioneering work in such areas as the effort to develop a test for human growth hormone. Our international symposium in 2002 took a comprehensive approach to the issue of increased oxygen transport and lead to research, the results of which are beginning to close all of the approaches to blood doping. Most recently, USADA has supported research at several laboratories regarding the newly detected designer steroid THG. USADA is also strongly committed to furthering research regarding the health risks associated with long term use of prohibited substances, including, human growth hormone.

Since its inception just over three years ago, USADA has worked hard to show the world that United States Olympic Movement athletes compete clean. We believe that the USADA program contains all of the important elements of a comprehensive and effective testing program and we continue to work each day to improve our system to further protect clean athletes. Specifically, we are focused on increasing the numbers of no-advance-notice tests that we perform. We are also seeking to improve our ability to systematically identify and sanction those athletes and other individuals who are engaged in the effort to create designer substances or otherwise gain an advantage over athletes who are competing clean.

USADA believes that stemming the use of drugs in sports is necessary to preserve the integrity of sport in this Nation. Athletes, including America's children who dream of athletic stardom, have a fundamental right not be put in a position where they believe that they must use drugs to effectively compete. USADA is dedicated to protecting that right and welcomes the opportunity to work with any sport that is committed to the cause of drug-free sport. We thank you, Mr. Chairman and members of the Committee, for the opportunity to share our convictions on this important national topic.

The CHAIRMAN. Thank you, Mr. Madden. In behalf of many Americans, we're deeply appreciative of the outstanding work you and your organization do, and we'll be calling on you in the future, because this issue is not going away.

Welcome, Mr. Upshaw.

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

Mr. UPSHAW. Thank you, Mr. Chairman.

Mr. Chairman and Members of this Committee, my name is Gene Upshaw. I am the Executive Director of NFL Players Association, the labor union that represents all NFL players in collective bargaining.

As you know, Commissioner Tagliabue and I have submitted a joint statement to the Committee, which I understand is being made part of the hearing record.

I want to take this opportunity to emphasize a few points that are particularly important to NFL players. Our support of the league's program, including random testing and prompt discipline for violators, is not a new development. For more than a decade, we have worked closely with the league to rid our game of steroids and similar performance-enhancing drugs.

We have not supported this program because players like taking drug tests, or because they like being suspended. We have done so because NFL players and the people we represent want to make it clear that we believe in a strong and an effective anti-steroid program, that it's good for players and it's good for the game.

Why has this issue been the highest priority for NFL players? First, these substances threaten the fairness and integrity of the game on the field. To allow the use of steroids and banned stimulants would not only condone cheating, but also compel others to use them to remain competitive.

Second, we have a responsibility to protect our players from the demonstrated adverse health effects of steroids and banned substances. Medical literature is replete with linking these substances to a wide range of serious health problems.

Third, we take our role in educating and leading young people very seriously. The use of performance-enhancing drugs is dangerous, and sends the wrong message that there are shortcuts to success, and that performance at any price is more important than integrity. The NFL program tells those involved in football at intercollegiate, high school, and youth levels that the use of performance-enhancing substances is not the way to play and succeed in football.

We have closely worked with the league to ensure that the program involves more than simply testing and discipline; we have insisted that the program retain the leading medical and laboratory experts, and that decisions are based on science and fact, and not on supposition and whim.

We have emphasized the importance of education in keeping our players from even trying the banned substances. Each year, as part of the year-long—I mean, week-long rookie symposium, new NFL players receive comprehensive information about the dangers of performance-enhancing drugs. We work on our veterans in a year-round training program.

During the season, all of our players have access to a 24 hour 800 number, which provides detailed information to players about steroids and related substances. And long before the government moved to ban ephedra, we worked with the league first to advise our players strongly to discourage the use of ephedra, and then we banned it altogether.

Despite the efforts that we have made to eliminate steroids and performance-enhancing drugs from football, there are those in America and elsewhere who will seek to beat the system by designing and producing illicit substances and inappropriately affect athletic performance while escaping detection.

THG is the latest substance to attract wide attention. The league's intensive random testing began in early October, through the end of the season, and did not identify any player using THG, and we have no information suggesting that significant numbers of players have used it in the past. We will continue our efforts to confirm this belief.

Today, new challenges are being presented by improper use of human growth hormones. We will continue to work with NFL and other interested parties to ensure that we have a strong and effective program.

Mr. Chairman, thank you for your leadership on this issue. I will be pleased to answer any questions that you and others may have at the end of the hearing.

[The joint prepared statement of Mr. Upshaw and Mr. Tagliabue follow:]

PREPARED STATEMENT OF PAUL TAGLIABUE, COMMISSIONER, NATIONAL FOOTBALL LEAGUE AND EUGENE UPSHAW, EXECUTIVE DIRECTOR, NFL PLAYERS ASSOCIATION

Mr. Chairman and members of the Committee:

We are, respectively, the Commissioner of the National Football League and the Executive Director of the NFL Players Association, the labor union that represents all NFL players in collective bargaining.

We have submitted this joint statement to emphasize that, whatever other issues management and labor may disagree upon, there is complete agreement between us on this: steroids and other performance enhancing substances have no place in our game, or anywhere in sports. For many years, we have been committed to keeping them out of the NFL, and we will continue to work together and with government and private parties to help remove them from American life.

In recent weeks, this subject has again received renewed attention. The President's comments in his State of the Union address, combined with the recent indictments in connection with the BALCO case, have focused a wide audience on the use of performance enhancing substances in sports, and have brought to the forefront what many observers have come to recognize—that this is both an ongoing challenge and one that is likely to be more complex and difficult to address successfully.

In the NFL, we have been focused on these issues of performance-enhancing substances since the late 1980s. The League's then-Commissioner, Pete Rozelle, instituted both educational and disciplinary programs in the late 1980s to deter the use of performance-enhancing substances by NFL players and to eliminate them from our game.

Educational efforts have led both our teams and our players to support strong measures, developed jointly by the League and the Players Association, to eliminate these illicit substances from NFL football—and to send a message to others in football at the intercollegiate, high school and youth levels that the use of performance-enhancing substances is not the way to play or succeed in football.

Against this backdrop, we strongly support S. 1780, the Anabolic Steroid Control Act of 2003, which you have co-sponsored, Mr. Chairman. This bill would expand the definition of steroids and precursors as controlled substances and increase the penalties associated with distribution of these substances. We understand that a companion bill has been introduced in the House of Representatives, and we will strongly support that bill as well.

We are pleased to appear today to offer the Committee a description of the NFL's Policy and Program on Anabolic Steroids and Related Substances. That program has been in place for more than a decade, and is the most comprehensive in professional sports today. Our results confirm that the program is very effective. It reflects a strong and ongoing commitment on the part of both our organizations, backed by substantial financial investments, top scientific resources, and more than a few tough decisions.

The NFL began testing players for steroids in 1987; started suspending violators in 1989; and instituted in 1990 a year-round random testing program, including during the off-season, backed by immediate suspensions for any violation. The program has strong features to deter evasion, including suspension for players testing positive for masking agents or who attempt to dilute their urine to beat the tests.

Players who test positive are subject to up to 24 unannounced tests per year, including during the offseason. They remain subject to this frequent, year-round testing for the remainder of their careers.

We also recognize the importance of staying current, and have consistently expanded our own list of prohibited substances—in the past three years, nearly 20 additional substances have been added to the banned list. Those included ephedra, which we prohibited three years ago. As the Committee knows, the Federal government is now in the process of banning that dangerous supplement.

Why has this issue been among the highest priorities of the NFL and its players? First, these substances threaten the fairness and the integrity of the game on the field. To allow the use of steroids and banned stimulants would not only condone cheating, but also compel others to use them to remain competitive.

Second, we have a responsibility to protect our players from the demonstrated adverse health effects of steroids and other banned substances. Medical literature is replete with research linking the use of these substances to a wide range of serious health problems.

Third, we take seriously our role in educating and leading young people. As President Bush said, the use of performance-enhancing drugs is dangerous and sends the wrong message that there are shortcuts to success and that performance at any price is more important than integrity.

The key provisions of our policy are:

- An annual test for all players plus unannounced random testing in and out of season. We test players on all teams each week of the season, conducting more than 9,000 tests a year for steroids and related substances.
- A list of more than 70 prohibited substances, including anabolic steroids, steroid precursors, growth hormone, stimulants and masking agents. This list is continually revised and expanded.
- A mandatory four-game suspension (25 percent of the regular season) without pay upon a first violation. A second violation would result in a six-game suspension and a third would ban a player for a minimum of one year. Players cannot return to the field until they test clean and are cleared for play.
- Strict liability for players who test positive. Violations are not excused because a player says he was unaware that a product contained a banned substance.
- Education of players and teams about the program through literature, videos, a toll-free hotline and mandatory meetings.

The consistent application of these core tenets has resulted in the recognition of the NFL's policy as the most effective in professional sports. Over the past five seasons, less than 1 percent of our players (a total of 25) have violated our steroid program and been suspended. In short, virtually all of our players get the message and participate in the NFL without using anabolic steroids or other performance-enhancing substances.

When our steroid testing lab—the U.C.L.A. Olympic Analytical Laboratory—our banned substance list and started officially testing for it on a uniform basis on Oct. 6. Since then, we have randomly tested more than 3,000 player urine samples and there have been no THG positives.

We spend \$10 million a year on our steroid and drug programs, including the funding of research to identify new substances and improve testing. To date, we have invested close to \$100 million on this initiative. And we are prepared to do more if necessary.

Despite the efforts that we and others in sport have made to eliminate anabolic steroids and other performance-enhancing drugs from our athletic competitions, there are those in America and elsewhere who will seek to beat the system by designing and producing illicit substances that inappropriately affect athletic performance while escaping detection. THG is only the latest such substance to become a controversial issue and attract wide attention.

Over the years we have worked very hard with specialists and the scientific community to minimize the potential for such evasion, and we believe that our efforts have been successful. With respect to THG specifically, our extensive random tests during the past football season—from early October through the end of our season this January—did not identify any NFL player as using THG, and we have no information suggesting that any significant number of NFL players used THG before this past season. But we will continue our efforts to confirm this belief with reliable test results.

As announced earlier this week, we have partnered with the United States Anti-Doping Agency to establish a new research and drug testing laboratory at the Uni-

versity of Utah. This lab will work closely with Utah's highly respected Center for Human Toxicology, which is renowned for its forensic analytical toxicology expertise.

Today new challenges are being presented by the improper use of human growth hormone and the continuing advance of gene therapy and genetic manipulation.

Both the government and private sectors must aggressively address these challenges. If not, the secret designers of new illicit substances will slog on, and the future will bring more high-profile grand jury investigations, health risks to young people and dishonor to sports.

Mr. Chairman, we in the NFL thank you for your leadership on this issue, and we appreciate the opportunity to testify today.

The CHAIRMAN. Thank you very much, Mr. Upshaw. We appreciate your testimony.

Mr. Tagliabue, I know you all have a joint statement. Do you have any additional comments?

Mr. TAGLIABUE. I do, Mr. Chairman. I thought I would—

The CHAIRMAN. Fine.

Mr. TAGLIABUE.—describe our program briefly.

The CHAIRMAN. Sorry you weren't here yesterday, by the way.

Mr. TAGLIABUE. Well, I'd be glad to answer questions about that, too.

STATEMENT OF PAUL J. TAGLIABUE, COMMISSIONER, NATIONAL FOOTBALL LEAGUE

Mr. TAGLIABUE. Thank you for inviting us to appear today to discuss what the league is doing to get steroids and other performance-enhancing substances out of football.

When I say "the league," I mean the entire league, including, especially, our players. As you know, Mr. Upshaw and I have submitted a joint statement. We've done so because there is complete agreement between us to enforce our strong program to ensure that steroids and other performance-enhancing substances have no place in our game.

We also strongly support S. 1780, the Anabolic Steroid Control Act of 2003, which you have cosponsored, Mr. Chairman. This bill would expand the definition of steroids and precursors as controlled substances, and increase the penalties associated with distribution of these drugs.

The league's program on anabolic steroids and related substances is the most comprehensive in professional sports today. It has been in place since the late 1980s. The key provisions, in summary, are as follows.

First, an annual test for all players, plus unannounced random testing in and out of the season. We test players on all teams each week of the season, conducting more than 9,000 tests a year for steroids and related substances.

Second, a list of more than 70 prohibited substances, including not just steroids, but steroid precursors, growth hormone, stimulants, and masking agents. The list is continually revised and expanded.

Third, a mandatory four-game suspension, 25 percent of our regular season, and 25 percent of a player's salary without pay upon a first violation. A second violation would result in a six-game suspension. We're happy to say we have not had any repeat offenders with a six-game suspension. And a third violation, if it were to occur, would ban a player for a minimum of one year. Players sus-

pended cannot return to the field until they test clean and are cleared for play by professionals. Players testing positive are subject to being tested up to 24 times a year for as long as they remain in the National Football League.

Fourth, we have strict liability for players who test positive. Violations are not excused because a player says he was unaware that a product contained a banned substance or that a product was mislabeled.

Finally, we have education of players and teams about the program through literature, videos, seminars; as Gene said, a toll-free hotline throughout the season; and mandatory team meetings. And I would say that I think the education has been extremely powerful. And our players, beginning in the late 1980s and the early 1990s, came to understand the very, very negative aspects of using steroids, and they have been among the strongest advocates and supporters of a very strict program.

Our results confirm that our program is very effective. Over the past five seasons, just to take one example, we've only had 25 players who have violated our program and been suspended. This is far below 1 percent. When our steroid testing lab, the UCLA Olympic Analytical Lab, informed us last fall of the new designer steroid, THG, and also informed us that a test had been developed for THG, we immediately added it to our banned list, and started testing for it on a uniform basis in the first week of October. Since then, we've randomly tested more than 3,000 players for THG, and there have been no positives.

We spend, currently, \$10 million a year on our steroid and drug programs, including the funding of research to identify new substances and improved testing. To date, throughout the last decade, we have invested close to \$100 million on this initiative, and we are prepared to do more if necessary.

We just announced, earlier this week, a program that has been in the works for about the past year, where we will partner with USADA to establish a new research and drug-testing lab at the University of Utah. This lab will work closely with Utah's highly respected Center for Human Toxicology.

Mr. Chairman, thank you, again, for having us here today, and certainly Gene and I will be prepared to answer any questions that you or other Members of the Committee might have.

The CHAIRMAN. Thank you, sir.

Mr. Fehr, welcome.

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

Mr. FEHR. Thank you, Mr. Chairman.

I apologize in advance if my voice drops, or something else. As you indicated, I had surgery a little less than 2 weeks ago. It turns out to have been the same problem now confronting the Attorney General, for whom I have great sympathy, and certainly hope that he is able to recover his strength and equilibrium a little more quickly than I have been. But I'll do my best here this morning.

I appreciate the Committee's interest in, and concern about, the issue of the unlawful use of steroids, which has led to this hearing. So let me begin by restating the position that I articulated in the

hearing that Senator Dorgan, I believe, referred to in the opening statements some 20 months ago, “We neither condone, nor support, the use by players, or by anyone else in this country, of any unlawful substance or the unlawful use of any legal substance. Both are wrong.”

Let me also interject, as we begin, a note of caution. Each of us should take care not to treat unsubstantiated media reports—a lot of us in this room are in the public eye and understand those things happen—as if they were proven fact. Unfair accusations about individuals can inflict damage which cannot be remedied. For that reason, among others, I will not discuss issues with respect to any particular individual, and I would urge the Members of the Committee to adopt a similar approach.

Let me talk a little bit about what’s transpired in baseball, historically, and, in particular, since the hearing that was held in June of 2002. As I indicated at that time, the use of unlawful steroids—excuse me, the unlawful use of steroids was then a subject of ongoing collective bargaining between the association and the clubs.

The issue of drug treatment and prevention isn’t a new one to baseball. It had a joint drug agreement beginning with drugs of abuse back in the mid 1980s, until it was terminated by Commissioner Ueberroth. And, subsequent to that, we had developed, without a formal agreement, a program dealing with those substances, which has, as a practical matter, eliminated those matters as issues of contention between the parties. And you haven’t heard about them in a very long time. The emphasis of that agreement was on treatment and prevention. The provisions were designed to encourage and assist players to address any use or misuse problems that they might be experiencing.

During those early discussions, the subject of what I’ve referred to in my written statement as “suspicion-less testing” of players—that is to say, testing without cause—was raised by the clubs, and opposed by us. We thought then, and believe now, that the testing of an individual, not because of anything he or she is suspected to have done by anyone, but merely because he or she is a member of a particular class, is simply at odds with fundamental principles of which we in this country have long and rightly been proud.

In high school, I think all of us learn that you’re not guilty until you prove yourself innocent. It’s the other way around. And we also learn that, absent compelling safety considerations, we don’t invade the privacy of someone, or do a search or a seizure, without substantial cause related to that individual. Of course, the Fourth Amendment’s protection against unreasonable searches and seizures is not directly applicable to the private employment setting, but we submit that the principles which lie behind it should not lightly be put aside. Nevertheless, as I had indicated, we continued to work on those other issues.

What have we done in the last couple of years? As I indicated a moment or two ago, in September of—excuse me, in the summer of 2002, we were confronting the issue of allegation of widespread use of—unlawful use of anabolic steroids. And the issue of suspicion-less testing was an issue which arose in those discussions. That logjam was eventually broken in response to a proposal made

by the Players Association in what was, I believe, by everyone, regarded as a significant concession. And that was that we would do two things. We would, in addition to the educational programs, which had been ongoing for an extended period of time, and which were made part of the record in the June 2002 hearing, that we would do a survey test of players. And if a threshold was met, that would translate into identified testing of players. If that threshold was not met, it would not. At that time, we were talking about newspaper reports of up to 85 percent use of steroids by major league players.

The survey testing was conducted in 2003. Despite some suggestions to the contrary, and some of which were alluded to by opening statements of Members of the Committee, players did not know when the tests were to be administered. The timing of the tests wasn't determined by the Commissioner's office or by our office. The results were not even analyzed, much less predetermined, as some reporter had suggested; rather, they came back from the lab, and, as soon as they did, with an indication that somewhere between 5 and 7 percent of the tests had returned positive, which has to do with interpretation, it was promptly announced, and we moved to identified testing.

As a result, in 2004, all players will be tested on an unannounced basis, identified with the use of—the unlawful use of steroids, without any requirement that it be shown that the individual being tested—that there is any basis to believe that he has committed any inappropriate activity. Any player who tests positive will be evaluated by what we call our Health Policy Advisory Committee, or HPAC, which will then follow that individual, and can and, I suspect, will subject that individual to periodic further testing. If there are any further positive tests, a series of progressive discipline would be imposed.

In addition to that, players remain, quite apart from this, subject to for-cause testing; that is to say, if any club or central office official has information which causes him to believe that a player may be unlawfully using steroids, it can refer the matter to HPAC. And if HPAC believes that there's evidence to support those allegations, it can order testing, it can order treatment, it can order a series of exams for that individual, quite apart from the random testing that I have previously referred to.

We think this agreement is fair, carefully constructed, and balances important interests. It was agreed to after extensive discussion with the players, as I indicated, in June 2002. Over the following 6 weeks, I met with every club to discuss all issues, including this one.

Will it work to stop it? I think it will. I don't know whether it will. We'll know. And empirically, we will know the answer to that. We won't have to guess about it.

Let me just make a couple of closing comments. It's very easy, I think, for people to assert that any clean player should simply announce that he should be—he's willing to be tested by anybody, anytime, anyplace, for anything, including, one supposes, a reporter showing up at his door on Christmas morning, which is a suggestion a reporter has made to me. We think that such arguments gloss over other interests, serious interests, worthy of attention.

While it sometimes seems as if considerations get lost in the ever louder discussion, every one of us has an interest in preventing unwarranted invasions of privacy, every one of us has an interest in making sure we do not turn on its head the fundamental precept that someone is innocent until proven guilty, not the other way around, and that those who agreed to voluntarily participate in testing programs should have some reasonable expectation of privacy and confidentiality, as is the case in virtually all testing programs across the country. Such interests are worthy of protection, even in the workplace, and even in the workplace of professional athletes.

And let me conclude by making a couple of comments about the Dietary Supplements Act and the current legislation. It's not part of my initial opening remarks, but it's been raised by the panel members and by Senator Biden and Representative Sweeney.

As I suggested, in June 2002, and repeat here today, the public policy of this country, as represented by the laws passed, I believe unanimously, 10 or 11 years ago by this Senate and the House of Representatives, and signed by President Clinton, is that if a substance is a natural substance, it can be marketed unless and until the government decides there's something wrong with it. That turned on its head, as I understand it, previously existing law, which suggested, and, I submit, not unreasonably, that before you go market something for somebody to take, there ought to be some testing to determine whether or not it's safe and efficacious for the purpose for which it's designed. That's the public policy of this country.

Major league players are not children, and I'm not their parents. They have the same responsibility that others do. But I repeat to you what I said then, and I urge you to reconsider the law, top to bottom. If that's not good public policy, change it. That's all you have to do.

And I suggest further that if the Congress of the United States decides, as it has up through and including today, that androstenedione is safe enough to be sold freely on the store's shelves anywhere in this country and within blocks of this hearing room, then if that's not appropriate for the safety of Americans, change it. If it is, then you can't expect professional athletes to suggest that they somehow are different than anyone else, and they can't go into a store and buy something that anyone else can buy. Change the law.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Fehr follows:]

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

Mr. Chairman and members of the Committee:

My name is Donald M. Fehr, and, as the members of this Committee know, I am privileged to serve as the Executive Director of the Major League Baseball Players Association. I appear today in response to the Chairman's invitation to testify with respect to the drug treatment and prevention program in Major League Baseball, specifically as it relates to substances which are considered to be performance-enhancing.

I appreciate the Committee's interest in and concern about the unlawful use of steroids which led to this hearing. Let me begin by re-stating the MLBPA's position,

articulated last before this Committee in June, 2002. The Major League Baseball Players Association neither condones nor supports the use by players, or by anyone else, of any unlawful substance, nor do we support or condone the unlawful use of any legal substance. I cannot put it more plainly: both the use of any illegal substance and the illegal use of any lawful substance are wrong.

Permit me also to offer a note of caution. While there is no dispute that this is a very serious issue, each of us should take care not to treat unsubstantiated media reports and rumors as if they were proven fact. Anyone who lives in the public eye should recognize the damage that an unfair accusation can inflict. For this reason, among others, I will not discuss these issues with respect to any particular individual, and I urge the Members of the Committee to adopt a similar approach.

As I indicated in June of 2002, use of unlawful steroids was then a subject of ongoing collective bargaining between the Players Association and the Major League Clubs. That round of bargaining produced a new Basic Agreement between the parties in September of that year. Before turning to that agreement, it may be helpful to briefly describe the history of such issues in our bargaining relationship.

The matter of drug treatment is not new to major league baseball. Nor is the demonstrable willingness of the parties—the Players and the Clubs—to address the issue, despite significant differences over the means that may be appropriately employed to confront the shared goal of the elimination of unlawful drug use in the sport. Two decades ago, in response to a growing concern about the alleged use of cocaine by players, the parties undertook extensive, and at times contentious, negotiations which resulted in the first Joint Drug Agreement in the major professional sports. The emphasis of that agreement was on treatment and prevention, and its provisions were designed to encourage and assist players to address any chemical use or misuse problems they might be experiencing.

During those negotiations, the subject of suspicionless urine testing of players was advocated by the Clubs, and opposed by us. We thought then—and believe now—that the testing of an individual, not because of something he is suspected to have done, but simply because he is a member of a particular class, is at odds with fundamental principles of which we in this country have long and rightly been proud. It is not up to the individual to prove he is innocent, especially of a charge of which he is not reasonably suspected. Moreover, one should not, absent compelling safety considerations, invade the privacy of someone without a substantial reason—that is, without cause—related to that individual. While the 4th Amendment's protection against unreasonable searches and seizures is not directly applicable to the private employment setting, the important principles on which it is based should not be lightly put aside. The Clubs then, as they do now, articulated a different view (echoed by much of the media).

This fundamental disagreement did not, however, stop the parties from continuing to work toward the shared goal of the elimination of the illicit use of drugs by players. Over the years, even in the aftermath of the termination of that first Joint Drug Agreement, the parties forged a working relationship that eliminated contested cases in this once volatile, highly charged, area. We have been able to do that with a program that emphasizes education, not punishment, that includes progressive, not draconian, discipline, and that includes individual cause-based, not suspicionless, testing—in other words, a program consistent with basic principles of due process.

This history is notable because it provides a needed context for the latest round of bargaining. Coming into the negotiations that produced the September, 2002 Basic Agreement, the parties sought to respond to a new problem in the sport—reports of widespread use of anabolic steroids. How did the parties bridge the 20 year old divide between them on the subject of suspicionless testing? By agreeing to a Players Association formulation for what can only fairly be regarded—and I can assure you was regarded by the Clubs—as a significant concession by the Association. In essence, we proposed to break the decades old deadlock on suspicionless testing by agreeing to a triggering mechanism; an unannounced anonymous test of not simply every player in the bargaining unit, but 120 percent of them (*i.e.*, 20 percent of the players were tested twice). A total of 1438 tests were conducted in an 1198 player group, a ratio of actual tests to the number of individuals eligible to be tested that we understand far exceeds the norm in most other testing regimes. If more than 5 percent of those 1438 tests came back positive, the Players Association would recede from its decades long opposition to suspicionless testing of all players, which would then begin and continue. Unless the number of positives fell below 2.5 percent over two consecutive years. If, conversely, the trigger was not met, the Clubs would recede from their position, with the important qualification that the triggering mechanism would remain in place for each successive year of the Agreement.

A few points should be made about the conduct of the 2003 survey testing. Despite some contrary suggestions in the media, players did not know when the tests were to be administered. Nor was the timing of the tests determined by the Commissioner's Office, or by the Players Association. The 2003 survey results were not even analyzed, much less predetermined (as one reporter had suggested) by the parties. Rather, the parties simply received from the testing administrators, through the laboratory which conducted the tests, a report of the numerical results. It is in the nature of drug testing that test results can sometimes require interpretation by the administering scientists, and the 2003 survey presented a few such instances. Yet, literally within hours of receipt of the test results as delivered by the laboratory, both parties agreed, and then promptly announced, that somewhere between 5 and 7 percent of the tests—not of the players, but of the tests—were positive.

Under the agreement we reached, this result means that, starting in 2004, all Players will be tested on an unannounced, identified basis for the unlawful use of steroids, without any requirement that cause related to the individual to be tested be shown. But, just as the 2003 survey was decried as illegitimate while being undertaken, the 2004 programmatic testing is already being criticized before the first test has even been conducted. Much of the criticism may be simply uninformed; in other cases it proceeds from dissatisfaction with this or that provision of our agreement.

A Player who tests positive will be evaluated by the joint Health Policy Advisory Committee (HPAC). After that evaluation, HPAC will prescribe a Treatment Program for the Player, which can subject him to further testing. The Player is then subject to the progressive discipline set forth in the Basic Agreement, which calls for increased levels of suspensions without pay, or substantial fines, for any subsequent positive test result, or violation of his Treatment Program. For example, a second positive can result in a suspension of 15 days, which in an average case will result in the loss of almost \$200,000. It also should be understood that positive tests triggering the increased levels of discipline could be tests required by the Treatment Program, and not merely the next round of testing for the bargaining unit.

Moreover, Players are always subject to for-cause testing, in addition to the suspicionless testing now in place. If any Club or central office official has information that gives him reason to believe a Player is unlawfully using steroids, it can refer the matter to HPAC, which may order diagnostic testing if it believes it appropriate to do so. If HPAC determines the claim has merit, it can prescribe a Treatment Program, and, as noted, that Program may include further testing.

The Agreement we made is fair, carefully constructed, and balances important interests on both sides. It was agreed to by the Association after a full airing of the problem, various possible remedies, and the risks and benefits of each approach. Every Player had ample opportunity to voice his views on all sides of the issue.

We believe the program has worked, is working, and will continue to do so. We recognize, however, that it is the passage of time, and only that, which will tell us whether our program represents a meaningful and appropriate response to the unlawful use of anabolic steroids in the sport. If it does not, the labor law provides avenues to address any shortcomings.

It is easy, I submit, for someone outside of baseball, or any other sport for that matter, to criticize our agreement. There seems to be a notion on the part of some that any "clean" player should be willing to be tested at any time or place or in any manner and frequency an employer or third party might choose. And, the argument continues, the failure to advocate that approach evidences a lack of concern for the health of the player, or appropriate concern for the well-being of any youngster who may seek to emulate the player.

Such arguments gloss over other interests at stake worthy of attention. While it sometimes seems as if such considerations get lost in the ever louder discussion, each of us has an interest in preventing unwarranted invasions of privacy. Every one of us has an interest in making sure we do not turn on its head the fundamental precept that people are innocent until proven guilty, not the other way around. Moreover, those who agree to voluntarily participate in a testing program, especially those in the public eye, are entitled to some expectation of privacy and confidentiality. Such interests are worthy of protection, even in the workplace; even in the workplace of professional athletes.

Under the National Labor Relations Act the negotiation of terms and conditions of employment is committed to good faith collective bargaining between employers and the organizations selected by and representing employees. The agreement reached in September, 2002, is a product of that process. (As I indicated to you twenty months ago, this issue was discussed and debated by and with the players on every club in the several weeks following my appearance here.) We continue to believe that collective bargaining is the appropriate forum for consideration and res-

olution of these issues. One of the premises of our labor laws is that solutions devised by the parties in the workplace are more likely to be workable and enduring, precisely because forged by those parties, rather than by others outside that relationship, no matter how well intentioned they may be. Though many question our choices, the Association exists, in part, to protect and defend those we represent against assertions of power over the players as a group, or individually, and to act in a manner consistent with a variety of their interests. It is our charge under the law, and we take it very seriously.

But I can hear the shouts now: "Baseball is different." Because major league baseball players are highly paid, or because baseball is part of the fabric of life in this country, talk about basic American principles, including free collective bargaining, is considered inappropriate, or misplaced, or simply glossed over, because "baseball is different." I do not decry such notions, because I recognize what prompts them, a deep affection for the game itself. So, let me conclude with a couple of observations.

First, we share, with the owners and the fans, the goal of a game free of the unlawful use of drugs, but we believe this goal not only can be, but must be, attained with proper respect, not just for the game, but for the players as well. Now a society goes about fulfilling its aspirations may say more about it than the aspirations themselves.

Second, and finally, love it as many fans, owners, and members of this Congress do, after representing major league players for nearly 27 years, I can say without reservation that no one cares more deeply about the game than those who play it. Yes, some fans, some owners, some members of Congress, may care as much about baseball as those who have devoted their lives to playing it. But not one cares an ounce more.

I will be pleased to try to answer any questions.

The CHAIRMAN. Thank you very much, Mr. Fehr. I probably don't disagree with anything that you said. I'd like to refer you to negotiations between the owners and players in 2002 with respect to a drug-testing policy. John Walters, the director of the White House Office of National Drug Control Policy, said, quote, "This seems to be a situation where the crucial parties, the players, and the owners don't seem to want to take responsibility for the part they have to play. There's a way to handle this problem that's been proven, that works, and that's drug testing, serious drug testing. If you don't want to address it now, you'll have to address it later. And if you don't address it now or later, the sport becomes a fraud."

We're here today because the sport is about to become a fraud in the minds of the American people. You have a serious public relations problem here.

Commissioner Selig, would you commit today to revisit the 2002 Collective Bargaining Agreement for the purpose of adopting a drug-testing policy that is at least as stringent as the NFL policy?

Mr. SELIG. I'd like to read my—Mr. Chairman, I'd like to read my statement first.

The CHAIRMAN. Would you answer that question first?

Mr. SELIG. The answer is yes. But I would now like to read my statement. Yes.

The CHAIRMAN. Yes, sir.

Mr. SELIG. Yes.

The CHAIRMAN. I'm sorry. I apologize for—

Mr. SELIG. OK.

The CHAIRMAN.—interrupting you.

Mr. SELIG. The answer is, unequivocally, yes.

**STATEMENT OF ALLAN H. SELIG, COMMISSIONER,
MAJOR LEAGUE BASEBALL**

Mr. SELIG. Thank you, Mr. Chairman.

One of my primary policy objectives, as the commissioner of baseball, is to eliminate the use of performance-enhancing substances in our great game. I'm committed to the idea that baseball must have a program on performance-enhancing substances that is consistent with accepted international standards for sports, so that we can remove the cloud that, fairly or unfairly, has been cast over our sport and its athletes.

My commitment on this issue is longstanding. In 1999, long before BALCO or the well-publicized allegations of steroid use by former players, I convened a meeting of my senior staff, respected experts, and team physicians to discuss the issue of performance-enhancing substances and to develop a strategic approach for dealing with that issue.

Over a period of a few weeks, we developed and began to implement a four-point strategic plan. First, we felt it was important to eliminate steroid use before players reached the major leagues. Because we do not have a collective bargaining obligation in the minor leagues, I was able quickly to develop and implement, unilaterally, in the spring of 2001, the first ever minor league drug policy. That policy has been amended and updated each year. In its present form, it is consistent with the highest international standards, and I hope to have a similar policy in the major leagues.

The key features of the minor league policy include a comprehensive ban on all performance-enhancing substances, including steroids; year-around, unannounced random testing of minor league players; immediate 15-game suspensions without pay for first-time offenders, and escalating discipline thereafter; a strict liability approach under which athletes are held accountable for any substance found in their bodies, regardless of the intent or the source. Last year, we conducted nearly 5,000 tests in the minor leagues.

Second, we committed ourselves to a comprehensive educational program on performance-enhancing substances. As we speak, baseball's medical experts are engaged in a tour of all 30 spring-training camps to meet with players and explain the serious health issues associated with the use of performance-enhancing substances. This spring, in conjunction with the Partnership for a Drug Free America, major league baseball will produce two public-service announcements that will air on our national broadcast and will be made available to all 30 clubs for use in their local market. These spots explain the dangers of performance-enhancing substances, especially to young people.

Third, we decided to become active supporters of legislative efforts to increase the regulation of performance-enhancing substances masquerading as so-called nutritional supplements. Just this past week, Congressman John Sweeney, of course, who was here this morning, conducted a press conference at my office in New York to publicize the introduction of legislation to regulate precursors, such as andro, and designer steroids, such as THG. We have supported the Hatch-Biden bill, which also regulates precursors and was cosponsored, of course, by Chairman McCain.

The fourth and most difficult part of our strategy was to make the problem of performance-enhancing substances a bargaining priority in our negotiations with the MLBPA. The MLBPA approached

our 2002 negotiation with a longstanding and deep-rooted philosophical objection to drug testing of any type. Baseball had to deal with this opposition in an extraordinarily difficult labor-relations environment. As I'm sure you will recall, baseball experienced a crippling strike in 1994 and 1995. As the 2002 negotiation approached, the clubs were still feeling the economic effects of the strike, and the mere prospect of bargaining caused a number of Senators, Congressmen, the media, millions of fans to express grave concern about the possibility of another work stoppage.

In this difficult environment, the clubs held to their commitment to address the problem of performance-enhancing substances. Mr. Angelos, of the Baltimore Orioles, who was a member of our Labor Negotiating Committee, and who is here with me today, can attest that the drug testing was probably the most contentious issue throughout the process. And the new drug agreement was one of the last issues resolved in the hours of continuous bargaining before the MLBPA strike deadline in August 2002.

Ultimately, the agreement we accepted on drugs was a compromise. We obviously accepted less than we wanted, because, in my judgment as the commissioner, we had pushed the MLBPA as far as it would go without a strike. And, equally important, the clubs, whatever their conviction, were profoundly concerned about the impact of another strike.

Compromise or not, the new joint drug agreement is an important step forward on the issue of performance-enhancing substances. Baseball administered over 1,400 random drug tests in the major leagues last year, and we'll administer a similar number this year. There is anecdotal evidence that the testing has had the desired prophylactic effect. Going forward, players will be subject to suspensions without pay that will impose tremendous economic penalty.

As important as this step is, I realize we have much work to do. We need more frequent and year-around testing of players. We need immediate penalties for those caught using illegal substances. We need a program that bans all performance-enhancing substances, regardless whether the substances are categorized as steroids or nutritional supplements. We need a program that will meet accepted international standards and allow for the continued internationalization of the game.

The MLBPA has been made aware of our desire to strengthen the joint drug agreement to address growing concerns about performance-enhancing substances. It goes without saying that this issue will be a priority in our next negotiation. But I understand the need to act now, without sacrificing the rights and protections secured by the MLBPA in the last agreement.

It is imperative that the MLPBA leadership and the players join me in a cooperative effort to restore the faith of the fans in our game and its great players.

Thank you very much.

[The prepared statement of Mr. Selig follows:]

PREPARED STATEMENT OF ALLAN H. SELIG, COMMISSIONER,
MAJOR LEAGUE BASEBALL

One of my primary policy objectives as the Commissioner of Baseball is to eliminate the use of performance-enhancing substances in our great game. I am committed to the idea that Baseball must have a program on performance-enhancing substances that is consistent with accepted international standards for sport so that we can remove the cloud, that fairly or unfairly, has been cast over our sport and its athletes.

My commitment on this issue is long-standing. In 1999, long before BALCO or the well-publicized allegations of steroid use by former players, I convened a meeting of my senior staff, respected experts and team physicians to discuss the issue of performance-enhancing substances and to develop a strategic approach for dealing with that issue. Over a period of a few weeks, we developed and began to implement a four-point strategic plan.

First, we felt it was important to eliminate steroid use before players reach the Major Leagues. Because we do not have a collective bargaining obligation in the minor leagues, I was able quickly to develop and implement unilaterally in the spring of 2001, the first ever minor league drug policy. That policy has been amended and updated each year. In its present form, it is consistent with the highest international standards and I hope to have a similar policy in the Major Leagues.

The key features of the minor league policy include:

- A comprehensive ban on all performance-enhancing substances including steroids, stimulants, ephedra, precursors, masking agents, and diuretics.
- Year-round unannounced random testing of minor league players.
- Immediate fifteen (15) game suspensions without pay for first time offenders and escalating discipline thereafter.
- A strict liability approach under which athletes are held accountable for any substance found in their bodies regardless of intent or the source.

Last year, we conducted nearly 5,000 tests in the minor leagues and the program is being expanded to cover the Dominican and Venezuelan summer leagues this year.

Second, we committed ourselves to a comprehensive educational program on performance-enhancing substances. At my direction, we assembled an outstanding group of medical professionals to supervise our program. As we speak, those professionals are engaged in a tour of all thirty spring training camps to meet with players and explain the serious health issues associated with the use of performance-enhancing substances. This spring, Major League Baseball and the Partnership for a Drug Free America have agreed to conduct a campaign to alert young people to the dangers of steroids through Public Service commercials to be aired during this season on both national and local telecasts of Major League games. An important component of our annual Rookie Career Development Program, conducted jointly with the Players Association, is an educational session on the dangers of performance-enhancing substances. And, we have partnered with the Center For Drug Free Sport to provide our minor league players with access to a 24-hour a day, 7-day a week 800 number that deals with questions on performance-enhancing substances.

Third, we decided to become active supporters of legislative efforts to increase the regulation of performance-enhancing substances masquerading as so called "nutritional supplements." Just this week, Congressman John Sweeney conducted a press conference at my office in New York to publicize the introduction of legislation to regulate precursors such as androstenedione and designer steroids such as THG. We have also supported the Hatch Biden Bill, which is similar legislation co-sponsored by Chairman McCain, as well as legislative and administrative efforts to ban ephedra. More generally, Major League Baseball has advocated a wholesale overhaul of the Dietary Supplement Health and Education Act so as to create a more active role for the Federal government in protecting the American consumer, and particularly the youth of America, from dangerous products sold as nutritional supplements.

The fourth and most difficult part of our strategy was to make the problem of performance-enhancing substances a bargaining priority in our negotiations with the Major League Baseball Players Association ("MLBPA"). The MLBPA approached our 2002 negotiations with a long-standing, deep-rooted philosophical objection to drug testing of any type. Baseball had to deal with this opposition in an extraordinarily difficult labor relations environment. As I am sure you will recall, Baseball experienced a crippling strike in 1994—1995 during which I appeared before Congress on a number of occasions to address concerns about our private labor dispute and the

on-going player strike. As the 2002 negotiations approached, the Clubs were still feeling the economic effects of the strike and the mere prospect of bargaining caused a number of Senators, Congresspersons, the media and millions of fans to express grave concern about the possibility of another work stoppage. In fact, I testified in hearings before the Subcommittee on Anti-trust of the Senate Judiciary Committee on November 21, 2000 and before the Committee on the Judiciary of the House of Representatives on December 6, 2001.

In this difficult environment, the Clubs held to their commitment to address the problem of performance-enhancing substances. One of the first written proposals made by the Clubs in the winter of 2002 was on drug testing. The topic was probably the most contentious issue throughout the process, and the new drug agreement was one of the last issues resolved in the hours of continuous bargaining before the MLBPA strike deadline in August of 2002.

Ultimately, the agreement we accepted on drugs was a compromise. We accepted less than we wanted because, in my judgment as the Commissioner, we had pushed the MLBPA as far as it would go without a strike and, equally important, the Clubs, whatever their convictions, were profoundly concerned about the impact of another strike.

Compromise or not, the new joint drug agreement is an important step forward on the issue of performance-enhancing substances. The MLBPA abandoned its complete opposition to random testing. Baseball administered over fourteen hundred random drug tests in the Major Leagues last year and will administer a similar number this year. There is anecdotal evidence that the testing has had the desired prophylactic effect. Going forward, players will be subject to suspensions without pay that will impose tremendous economic penalties. And, if our legislative efforts on precursors and designer steroids are effective, such substances will automatically be added to our banned list.

As important as this step is, I realize that we have work to do. We need more frequent and year-round testing of players. We need immediate penalties for those caught using illegal substances. We need a program that bans all performance-enhancing substances regardless of whether the substances are categorized as steroids or nutritional supplements. We need a program that will meet accepted international standards and allow for the continued internationalization of our game.

The MLBPA is well-aware of our desire to strengthen the Joint Drug Agreement to address growing concerns about performance-enhancing substances. It goes without saying that this issue will be a priority in our next negotiations. But I understand the need to act *now* and we have suggested to the MLBPA a number of creative ways for the institution to move forward immediately, and without sacrificing the rights and protections secured by the MLBPA in the last agreement. I am hopeful that the MLBPA leadership and the players will join me in a cooperative effort to restore the faith of the fans in our game and its great players.

The CHAIRMAN. Thank you very much, Commissioner. And I apologize for short-circuiting you there.

Mr. SELIG. It's all right.

The CHAIRMAN. But in response to my question, you are prepared to revisit the 2002 collective bargaining agreement for the purpose of adopting a drug-testing policy that is at least as stringent as the NFL policy? You're prepared to do that?

Mr. SELIG. I would like to use our minor league policy, which I believe I just articulated, Mr. Chairman. But the answer to you is, unequivocally, yes.

The CHAIRMAN. Mr. Fehr, I'd like to ask you the same question. Are you prepared to revisit, immediately, the 2002 collective bargaining agreement, with the owners, for the purposes of adopting a drug-testing policy that is at least as stringent as the NFL policy?

Mr. FEHR. Let me say a number of things in response to that, Mr. Chairman. First of all—

The CHAIRMAN. You might start out with yes or no.

Mr. FEHR. Mr. Chairman, the agreement that we now have contains provisions for ongoing review. Those'll be done.

Second, if commissioner and the clubs have ideas that they want to broach with us, that they would like us to consider. All parties are obviously free to do that, and we will be pleased to entertain what they have to say.

Third, I do not now, nor have I ever, predetermined or made pre-judgments as to the results of discussions.

Fourth, I agree with the commissioner that the program we've adopted, I think, has had, based on anecdotal evidence to date, as he just indicated, substantial effect, and I believe we will see, over the course of this year, much more dramatic effects.

No one's opposed to having continued discussions. We don't bargain in public, and we don't predetermine the results of those discussions.

The CHAIRMAN. I don't understand why you wouldn't agree that a policy as stringent as the NFL's would be a standard that you wouldn't commit to adhering to.

Mr. FEHR. Mr. Chairman, let me try and respond in the following way. We believe that things, concepts, principles, like not being required to prove innocence of something about which an individual is not suspected, is an important thing. We don't treat it lightly. We don't treat lightly the notion of searches without cause.

We have made, I submit, a substantial compromise. If further compromises are needed, we're certainly willing to talk about those, and we'll see. I am not prepared, however—

The CHAIRMAN. You don't believe that further compromises are needed?

Mr. Madden, are you familiar with the drug-testing policy of major league baseball?

Mr. MADDEN. Sir, I'm no expert. I'm familiar with it.

The CHAIRMAN. Do you think it's stringent enough?

Mr. MADDEN. No, sir. I don't believe it has any of the elements I described earlier. They don't have out-of-competition, year-round testing, their list is obviously short. It has to be an illegal item to be tested for. It just has none of the elements. It's not a transparent program.

The CHAIRMAN. I note that first drug violation for an Olympic athlete is a two-year ban; for the National Football League, it's four games without pay; and for major league baseball, I am informed it's counseling, with pay.

Commissioner Selig, reports indicate, and your testimony confirms, that there was a fear among the owners, during the 2002 collective bargaining process, that things would break down and lead to a strike. In fact, a high-ranking official from your office was quoted as saying, quote, "When it got down to the drug-testing issue, we had to decide, 'Should we take a strike for this,' which would have been deadly to the game." He asserted, on one hand, he'd like to see a zero-tolerance policy with result to drug use in baseball, but the issue was treated as nothing more than a bargaining chip at the end of your collective bargaining, and ceded to the Players Union, for fear of a strike.

Mr. SELIG. Well, Senator McCain, what happened—there's a lot of history here. We, obviously, had dealt with the problem. We had instituted this problem in the minor leagues. We had begun the educational program. We had done all the other things. The indus-

try and many of its member clubs were, frankly, in a weakened state, and I was concerned about that. When we got down to the wee hours of the morning, and it was obvious that we were not going to get the kind of drug program that I had hoped to get, I had to make a judgment. This was a compromise, it was not—it did not reflect, at all, using this as a chip. On the contrary, we just felt that, at that time, given the pressure on us from many places, including Washington, to not to have a work stoppage, that I felt, at that point, that it was time to move on. And hopefully we can make that look good by making the necessary adjustments now that we have to make.

The CHAIRMAN. Mr. Upshaw, recently Mr. Orza said, “Let’s assume steroids are a very bad thing to”—Mr. Orza is the chief operating officer of major league baseball—quote, “Let’s assume steroids are a very bad thing to take. I have no doubt that they are not worse than cigarettes.” I’d like you to comment on that. And, Mr. Orza was asked—when referring to the harmony that the NFL enjoys with its Players Association, Mr. Orza stated, quote, “Some other unions do it differently, but they value peace more than justice, in my estimation.” Would you like to respond to those two statements by Mr. Orza?

And the reason why I ask that, Mr. Upshaw, is because it indicates a certain contempt that is really remarkable.

Mr. UPSHAW. Well, I would first start by saying I was present when he made those comments, and I know why he made them, but I don’t agree with them. I believe, in our sport, our players were the leaders in this area. They demanded that we get it out of football, period, end of discussion. “We want zero tolerance. We don’t want it in the game. We’re not concerned about privacy. We’re not concerned about search and seizure. I know the guy over there is using it, and I want it out of the game.” And that’s what we did.

But we were also doing it in a way that was very, very comprehensive. We wanted testing that was random. We wanted it year round. We wanted confidentiality. We felt that was important. We wanted education. And we wanted penalties. And together with the NFL, we worked out a program that we feel at least we’re addressing the issue in a way that it helps our players, and we’re making the right examples for the youth that are watching what we do. And it gets right to what makes our game what it is, the integrity of the game. And that’s the real reason.

The CHAIRMAN. Thank you very much, Mr. Upshaw.

Mr. Fehr and Mr. Selig, all I can say to you is, this issue has reached the level where the President of the United States discusses it at a State of the Union message to the American people. Your failure to commit to addressing this issue straight on and immediately will motivate this Committee to search for legislative remedies. I don’t know what they are, but I can tell you and your players that you represent the status quo is not acceptable. And we will have to act in some way, unless the players at Major League Players Association acts in affirmative and rapid fashion, and I very, very, very much regret to say that, because I don’t think we have any business doing it.

But as all Members have stated here, the integrity of the sport, and the American people, demand a certain level of adherence and standards that, frankly, is not being met at this time. And, again, I regret to say that, and I say it with all respect to both you and the Commissioner.

And I'll be glad to hear a response from you, or move to the next Senator.

Mr. SELIG. Well, from my standpoint and the club's standpoint, Mr. Chairman, I agree with that. This is a problem that needs to be addressed for a number of reasons, a myriad of reasons. And as I said in my prepared remarks, it needs to be addressed now. I think there are health reasons, there are competitive issues, and I'm very hopeful that we can address the problem very expeditiously. And I, frankly, can't disagree with anything you just said.

The CHAIRMAN. Mr. Fehr?

Mr. FEHR. Well, just very briefly, let me say again there are provisions in the agreement that call for periodic review. We'll certainly honor those. We're certainly willing to sit down and discuss any new and different ideas and to look at matters in light of new information.

I believe that the program that we instituted has had some effect, and I believe that over the course of this year, even if no modifications are made, that will be borne out. It'll be a matter of empirical knowledge. We won't have to guess about it. If it's not, that, in and of itself, would suggest that the fundamental premise that it works is wrong.

The CHAIRMAN. Thank you, sir. Thank you for appearing today, and we hope you get well soon.

Mr. FEHR. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Dorgan?

Senator DORGAN. Mr. Chairman, let me say that I'm profoundly disappointed at the news that in the last couple of years we've made very little progress. I think this testing program is a baby-step. Perhaps a baby step in the right direction, but as the Chairman indicated, you can be found in baseball today, through this testing program, taking steroids, and you don't miss a game, as I understand it. I mean, you get counseling. I don't—I just don't understand why there has been so little progress, and let me ask a couple of questions.

First of all, Mr. Commissioner, did you propose, in the collective bargaining process, the type of rigorous testing program that you have imposed in the minor leagues? Did you propose that in your bargaining with the Players Union?

Mr. SELIG. The answer, Senator Dorgan, is yes, we did. It was probably, if not the most—well, I think it was the most contentious issue, and, in fact, I think Mr. Angelos, as I said in my prepared remarks today, would certainly agree with that. There was a lot of emotion, there was a lot of intensity. And the answer to your question is, we knew then, and I knew, Senator Dorgan, from having talked to a lot of the team doctors and many medical people, we need a policy like we have in the minor leagues. And so the answer to your question is yes, we—

Senator DORGAN. So you proposed a policy of the type you have in the minor leagues or of the type they have in the NBA or the NFL. At this point, let me ask Mr. Fehr a question.

Mr. McCain asked you a question two years ago in the hearing. He said, "Can you assure this Committee this will be a very, very important item of discussion?"—talking about drug testing. And you said, "I have no hesitancy about doing that, for two reasons, one of which is, the players are going to insist on it."

Here's a *USA Today* poll that says "79 percent of the players want drug testing." Now, I would ask, Did you consult with the players? And if 79 percent, 80 percent of the players want drug testing, how do we end up with a testing program that provides no penalties, that is occasional, and that resembles—has no resemblance at all to the NFL or the NBA or others? I don't understand how this happens.

Mr. FEHR. A couple of things. First of all, the laws provide that each bargaining unit and the employers in that industry bargain with respect to that industry, and that's what we do. That's what every organization does. Second, when I left here after that hearing, in June, I met, over the next 6 weeks, more or less, with every team, individually, for hours. All issues in collective bargaining were discussed. The issue of steroids, in general, and what testing program should be negotiated and what should be the elements, in particular, was discussed at significant length in every meeting.

What came out of that was a position to say, OK, we have long held the view that there should not be testing without cause. We have had testing where cause can be shown, for two decades, but that we would recede from that. We'll take a survey and find out if this is right. That's what we did. The results came back. We have—

Senator DORGAN. Can you share that survey?

Mr. FEHR.—receded from that position.

Senator DORGAN. Would you share the results of that survey with this Committee? You said you took a survey. Is that—

Mr. FEHR. Sure, that was the survey test that was done in 2003. That's been publicly announced, that I referred to in my earlier testimony.

Senator DORGAN. Now, let me—you mentioned suspicion-less testing. And as you did, Mr. Fehr, I'm thinking to myself, Have you just missed most of what I've been reading and most of what America has been reading that causes us to believe there's a serious problem? There is a major and growing problem. We all understand that. So the discussion about testing is not about suspicion-less testing, in my judgment.

And let me make another point. You said to us about privacy, "This is an issue about privacy." And you said, "We, as"—you didn't quite say it this way—"We, as public officials, that know about the issue of privacy." And we do. No question about that. The standard is generally that if what you do in private doesn't affect your public performance, it's private. But in baseball, in athletics, the taking of steroids in private is designed specifically to affect your performance in public. Specifically for that. There cannot possibly be a privacy issue here, in my judgment.

And so with respect to suspicion-less testing or privacy issues, I just don't understand it. I think, it seems to me, that it is in the interest of every baseball player in this country. And I might reference Curt Schilling, for whom I have great admiration. A few of them are speaking out, saying, "We want testing. We don't want this cloud of suspicion hanging over our wonderful sport." I just don't understand why this is even part of collective bargaining. With this cloud of suspicion, the answer ought to be, "Absolutely, let's have testing, remove this cloud and get back to playing baseball and not talking about banned substances and taking of steroids."

Mr. FEHR. Two or three things. First of all, the privacy issue essentially comes about not in the way you suggest. The general philosophical principle, if you will, that I've alluded to a couple of years ago, and I allude to now, is this. If I have no reason to suspect you, as an individual, of having done anything—I have no reason to suspect that, no evidence, no circumstances which would suggest that something is there—as an individual, then it's not up to me to make accusations, and it's not up to me to ask you to prove yourself innocent, and it's not up to me to do a search of your body or your house or your telephone records or anything else that you have.

Where you have cause, of course, that changes. In the Fourth Amendment context, when we're dealing with the government, we usually refer to it as probable cause. That's the context of that issue. That's an important American value. And we ought not to lose sight of it, I suspect.

Second, what happened was that notwithstanding that long-held and deeply felt belief—that if you have cause, you should test; and otherwise, not; and we have had testing for cause for a long time—then what the players agreed to was to recede from that if evidence of the problem can be demonstrated. We did the test. We found out empirically. We receded from it. And testing without cause is now commencing.

Senator DORGAN. Mr. Fehr, my time is about expired, but I think—first of all, all of you have common interest in the success of sports and the exhibition of these wonderful athletes who make a living playing football or basketball or baseball. I must say that I think it will serve the interest of the athletes, serve the interest of sport in this country for all us to recognize there is a very significant problem.

There is a book titled "The Tipping Point." And I must say that we've reached a tipping point on this issue. There's no going back. We've got a problem. And it seems to me the owners and the players must solve it.

You said, two years ago, this must be solved by baseball. You said that—if I may conclude—that this has to be solved within baseball. Well, the difficulty with that is, if, in the collective bargaining process in baseball, they're trying to impose a system that exists in the minor leagues and in many other of the major league sports, and you're saying no, it's not going to get solved. It's only going to get solved, in my judgment, when the players understand it's in their interest to solve it. If 80 percent of them believe that, then that ought to be reflected in the policies of baseball, with re-

spect to testing for steroids and banned substances. And I regret that it's not. And I think the quicker you get to that point, the quicker you put this behind you.

Mr. Chairman, thank you.

The CHAIRMAN. Senator Allen?

Senator ALLEN. Thank you, Mr. Chairman.

Let me first address you, Mr. Fehr. You heard the testimony of Gene Upshaw, former football player, who has the perspective of the love of the game, who also played the game, understands how important that is for the players. And in it he talked about the integrity of the game, the health of the players, and the message that there should not be any shortcuts to success, which is important for young people.

Baseball's a different sport than football, and there's not the contact and the hitting, so speed matters, and running the bases, and hand and eye coordination is very important, but it's not a collision sport and a contact sport, as is football. But would you agree in these principles that Mr. Upshaw enunciated and espoused, and would you not also agree that using steroids or these substances does—it can—can disrupt the natural competitive balance of sports? Your sport, in particular, of baseball, that you represent the players?

Mr. FEHR. First of all, I've known Gene for—Gene Upshaw for a very long time, probably a quarter of a century. We have had, and I suspect always will have, an extremely good and respectful relationship. He understands, as I do, that his job is to represent his players within the confines of whatever collective bargaining arises in his sport, as it is mine in mine.

Second, there is no question, as I said before, as I said in 2002, that the use of unlawful steroids or the unlawful use of any substances is inappropriate and ought not to be permitted. There are two questions which flow from that. The first one is, If that's true, what is the appropriate way to go about doing it, and what principles are important enough to be considered and looked at, given the nature of the problem, the circumstances present, and anything else which is relevant to the issue? The second thing you look at is the public policy of the United States.

Now, let me focus on androstenedione for a moment. I am certainly not a doctor, I'm not a research biologist, I don't have that background; nor do I work day to day on this program in baseball, as Mr. Selig will tell you, that's primarily—

Senator ALLEN. If you could, speed up your answer. We have 5 minutes, and—

Mr. FEHR. All right. It is—well, go ahead.

Senator ALLEN. Well—

Mr. FEHR. Androstenedione has been demonstrated, I think, by the research that I have been made aware of, to be bad, but particularly bad in connection with children. It ought not to be used by anyone. It is legal to be used by them and to be purchased by them. That's a decision that was made here.

Senator ALLEN. All right, but I'm going to—because we're short—I understand, and I understood the—

Mr. FEHR. I apologize for the length.

Senator ALLEN. No, that's OK, because you made the point that—gosh, if something's so awful, don't allow regular citizens, non-athletes, non-professional athletes, to use it. But if you'd just look, it's such a stark difference in attitude, where, in my view—you bring up the Fourth Amendment and the privacy rights and so forth, but you do have a responsibility, a contractual responsibility as a player to that team franchise, to the business that is organized as a league, as well as one that is an ethical one. You look at the situation in NFL, and, as Mr. Upshaw said—look, they didn't wait around for the government to fiddle around and go through hearings and debates and procedures and committees to figure out what to do with ephedra. They stopped it. They saw it as a problem. They didn't wait for the government to do it.

Your approach, unfortunately, seems to be a completely different one. And I understand, for minor league baseball, as far as the Commissioner is concerned, that it is—you're not under the collective bargaining agreement, understand what you would like to see done.

Now, let me ask you this. In listening to Mr. Upshaw and Commissioner Tagliabue, but particularly Mr. Upshaw, he said the players wanted this to be done. Why can you not allow, for example—this may be a solution—all the players in major league baseball to vote on whether they want to have a program—maybe it's like minor league baseball or something commensurate with the NFL Players—or the NFL agreement? Why not allow the players, who do want to play, who want to make those contracts—they earn it, it's a short time—I make no apologies or—I make no criticism of any athlete to get what he or she can get in the marketplace; that's free market, and owners and leagues make a lot of money off these TV contracts—but the point is, why not let them vote on this so that no one is getting that competitive advantage over them with these substances?

Mr. FEHR. The players approve of every position that we take in bargaining in the overall collective bargaining agreements that we reach. We couldn't reach them otherwise.

Senator SMITH. Well, do you let the players vote? All the players? Or just player reps?

Mr. FEHR. No, all the players vote to ratify the agreements.

Senator SMITH. Fine. But could you let them vote on the specific issue of random drug testing, following the principles that Mr. Madden talked—which are logical principles of drug testing.

Mr. FEHR. We don't submit to a vote—ideas in the abstract. It comes up in the connection with bargaining. But let me assure you, Senator, that the notion that somehow the players are divorced from the union that represents them is simply wrong.

Senator SMITH. How can you figure that the NFL players have such a view for the integrity of the game, for their own health, and also caring a great deal about the message it sends to young people, who they want to keep the game going in future generations, how can there be such a divergence in that ethical or that sentiment of the players in major league baseball from what you find in the NFL?

Mr. FEHR. I don't speak to NFL players, Senator. I understand that, you know, you're right to a certain extent, football is a contact

sport, and mass times velocity—or mass times acceleration equals force. They made the judgments in their collective bargaining relationship they believed were the appropriate ones to make. Players in baseball did also. If that mindset changes in the players, they will change. If, in discussions we have, either in the short term or the long term, suggest otherwise, that will change. If it turns out that the program we've put into place does not have the effect that we thought it would, if the incidence of use does not fall dramatically, as I expect it will, then that would suggest we've been wrong, and we'll go and do something else.

Senator ALLEN. My time is up. I have a lot more questions.

Thank you. Thank you all for appearing.

The CHAIRMAN. Senator Breaux?

Senator BREAU. Thank you, Mr. Chairman. And thank all of the panel witnesses.

Mr. FEHR, do you think that the use of illegal steroids is cheating?

Mr. FEHR. Yes.

Senator BREAU. Do you think that employers have the right to do random, unannounced testing of players that they employ?

Mr. FEHR. In a non-union situation, management has the right to impose whatever it wants to. In a bargaining situation, all terms and conditions have to be bargained. The employees have an opportunity to participate in that. That's what unions are all about. That's why we have the labor laws.

Senator BREAU. Is the position of your union to support the random, unannounced testing of your members?

Mr. FEHR. The position of this union is that we made an agreement which provided, last year on a survey basis, and going forward this year, and into the future, that there would be random, unannounced testing of the players. That will take place.

Senator BREAU. Is there a limitation on how often it can be—they can be tested under the random system you now support?

Mr. FEHR. Yes. There's a limitation in the current—there is a limitation in the current agreement, for random. There is no limitation for for-cause.

Senator BREAU. There's no limitation what? I'm sorry.

Mr. FEHR. For for-cause testing. So that, for example——

Senator Breau: Yes, I understand that. But what's the limit on how often you can do the random testing?

Mr. FEHR. It would be done at an undetermined time, and it will be different for everybody. It'll go on from the beginning of the season to the end——

Senator BREAU. But how many times could a player——

Mr. FEHR.—of the season. Once per year.

Senator BREAU.—be tested? I'm sorry?

Mr. FEHR. It's once per year, although the test is of two parts, separated——

Senator BREAU. So a player knows that he could be tested only once in an entire year?

Mr. FEHR. Unless there's cause, under this agreement.

Senator BREAU. Oh, well, sure if there's cause. My, God, he got his hand in the cookie jar; I would hope so.

What is the difference, Mr. Madden, between the NFL testing program and the baseball testing program? I think the Chairman went into that, but what would the baseball program have to do different in their testing to achieve what the NFL has accomplished?

Mr. MADDEN. Not being an expert in either program, they'd need to do year-round, out-of-competition, no-notice testing. They'd have to have significantly more serious sanctions. They'd have to be transparent, announcing a ballplayer, when he does test positive and they go through their adjudication procedures. And they'd need to test for a complete list of prohibited substances.

Senator BREAUX. Mr. Fehr, the President—thank you, Mr. Madden—the President has called for a summit, I think, of the leaders of all of the major sports leagues. The stories that I have read is that major league baseball is the only one that has resisted participating in that summit, for the reason, in the press reports, that you feel it's a collective bargaining matter and shouldn't be the proper subject of a summit. I mean, how can you, as representing something that is truly a national sport, with all of the national attention given to this, say, "Look, we're so insular that we're going to not acknowledge that we have a responsibility to the public, to even participate in a public summit called by the President of the United States?"

Mr. FEHR. Mr. Chairman—or, sorry, Mr. Senator, there was one article to that effect. I believe it was a *Washington*—

Senator BREAUX. And is that correct—

Mr. FEHR.—*Post* article.

Senator BREAUX.—or not correct?

Mr. FEHR. I will explain. That article contained a specific quote from Gene Orza, saying he couldn't imagine the circumstances under which we would not participate. What we know about a proposed summit of the representatives of all the leagues comes from a representative of major league baseball on the Hill. That's what we know.

Senator BREAUX. Well, you all have not been contacted by anybody—

Mr. FEHR. I've not been contacted—

Senator BREAUX.—in the Administration at all?

Mr. FEHR.—by anybody at the White House or the Executive Department with respect to attending a meeting of that type.

Senator BREAUX. OK. Suppose you got an invitation from the President to attend, with the other major league sports representatives, a White House summit. Would you do so, without setting out any preconditions about even attending a summit on this issue?

Mr. FEHR. I expect so, sure.

Senator BREAUX. The answer would be yes?

Mr. FEHR. Uh-huh.

Senator BREAUX. Uh-huh?

Mr. FEHR. Yes.

Senator BREAUX. OK. It's hard to write the "uh-huh" down.

Mr. FEHR. I'm sorry. As I indicated before, if my voice drops, I apologize.

Senator BREAUX. Do you think that it is appropriate for an employer to punish an individual employee if the random test shows a positive report on the use of illegal drugs?

Mr. FEHR. Yes, consistent with two things, one of which is principles of just cause, which are traditional in collective bargaining agreements, and, second would be with any agreements that were reached as to what the level of discipline would be.

Senator BREAUX. So if the collective bargaining agreement reaches an agreeable standard as to the degree of punishment, that's acceptable, but not outside—

Mr. FEHR. Oh, of course.

Senator BREAUX.—those agreements. Do you think that baseball has a problem? I mean, I think you've heard, from all of us up here, that that has pointed to what we perceive to be a problem that is more unique to baseball with the use of illegal steroids than in the other professional sports. Do you think that major league baseball has a problem that is unique, or do you think that you're not any different from the other major league public sports in this country?

Mr. FEHR. I'm not personally familiar with the circumstances of what takes place in the other professional sports, and I don't want to comment on their situations. That's up to their representatives.

In baseball, if you will recall 2 years ago, there were suggestions of use of 85 percent of the players, or very large numbers. The testing that came back was obviously disappointing. It was more than 5 percent. That triggered the unannounced testing that we'll have now, which I expect and hope will reduce it drastically, if it doesn't eliminate it altogether. That's about the best way I can answer it, Senator.

Senator BREAUX. Thank you.

The CHAIRMAN. Senator Sununu?

Senator SUNUNU. Thank you, Mr. Chairman.

Mr. Fehr, do you believe that the use of a corked bat by a major league baseball player constitutes cheating?

Mr. FEHR. It's against the rules, sure.

Senator SUNUNU. Do you think that the Federal Government should take action to regulate and restrict the production, sale, and distribution of cork?

Mr. FEHR. I don't know whether they do or not, but, no, I do not think they should. But the Federal Government does take action with respect to what substances can be sold lawfully.

Senator SUNUNU. Mr. Madden, how long have you been involved in testing for Olympic athletes?

Mr. MADDEN. Our organization started up in October 2000, the day after the Sidney games ended.

Senator SUNUNU. Is testing done for, and do the regulations that you've worked to enforce, restrict the use of over-the-counter products, medications, you know, for cold and flu and other elements that are found in those medications?

Mr. MADDEN. Yes. You can test positive in certain situations. The penalties are much more lenient. They run, basically, a warning, in most sports. So they're much more lenient for over-the-counter medications. If you're talking the dietary supplements, which can involve andro being slipped into the supplement, that, again, would

fall under the steroid category, and that would be an initial two-year ban.

Senator SUNUNU. So there are significant restrictions put in place for lawfully sold, over-the-counter products. Just because something is lawfully sold doesn't mean that the U.S. Olympic Committee or the International Olympic Committee advocates that it be allowed to be used in sport.

Mr. MADDEN. No, sir. It would be a two-year penalty if you're caught with a steroid in your system.

Senator SUNUNU. I was struck by the number that Senator Dorgan put out. I think it came from a newspaper article, and we don't believe everything we read in the papers, but it suggested that nearly 80 percent of the players wish to have a comprehensive system put in place in baseball. That's not the current situation, as we've heard.

Mr. Fehr, though, for those players that wish to undertake voluntary tests in order to clear their name, show with confidence to their public or their fans that they don't use any performance-enhancing drugs, will the Players Association interfere or discourage their undertaking of voluntary testing?

Mr. FEHR. First of all, any player in our organization that wants to say anything is, of course, free to do so. We don't have any gag rules. Any player that wants to go to a physician and be tested for anything at a private physician is free to do so.

Senator SUNUNU. Mr. Selig, it wasn't clear to me—or I've heard contradictory things about the knowledge of the timing of the tests that were administered. To what extent was the timing of the testing set beforehand?

Mr. SELIG. I'm sorry, what time—

Senator SUNUNU. The timing of the tests. Did the players know when the tests were going to be administered, or not?

Mr. SELIG. No, they did not. It was unannounced, and it was, as specifically documented here, one time a year. And then they were done.

Senator SUNUNU. Well, Mr. Fehr, for those players that are concerned about being put at a competitive disadvantage, or being accused falsely, or being tainted by the numbers that came out in the testing. If, you know, 5 to 7 percent are testing positive, that casts suspicion on every player. Fortunately or unfortunately, this does. That's the facts that we're dealing with. What is the Players Union doing to protect the interests of those that are concerned about either that taint or about the competitive disadvantage clean players are being put at?

Mr. FEHR. What will take place under the current agreement, as it now is in place, is that this year there will be unannounced testing, not on a survey basis, on an identified basis. Anyone who is positive will be identified. He will then know that he's in—he's been found, I guess is an appropriate way to put it. I expect that will stop it. To the extent that that doesn't, you then have the progressive penalties that I made mention to, and that the Commissioner referred to in his statement. And I expect that, if there are no changes, that what you will see over the course of this year is a drastically reduced incidence of positive tests from what we saw on the survey last year.

Senator SUNUNU. And, finally, do you agree with the statements of Gene Orza that equated the concerns and severity or risks associated with steroid use with cigarette smoking?

Mr. FEHR. Mr. Chairman, I was—I'm sorry—Senator, I was not present—I was still home recovering when Gene made those alleged remarks. What I have been advised was that he was asked a question something like, "Shouldn't you prohibit anything that might be harmful?" And the response was, "There's no doubt at all that tobacco is harmful." There's no doubt at all that over—this is—I'm speaking now—that over the last period of time, it's been a major public health issue. It's, nevertheless, lawful, should the employer test for tobacco. Beyond that, Mr. Orza will have to speak for himself.

Senator SUNUNU. Well, I think that answer brings us back to two fundamental points. One is the suggestion that it should just be a question of banning harmful activities, like taking a risk in playing off-season basketball, when maybe that's not best for your career in baseball. Or smoking. Those are one set of things that might not be healthful to you. And there are another set of things that are both unhealthy, but also create a competitive advantage, an inappropriate competitive advantage, and one that undermines the integrity and the credibility of the game and the athletes that are participating in that game. Those are two very different things.

And, second, I will conclude by also underscoring this distinction that what should be the guide in administering tests or setting regulations is just what's legal or not legal, because there are a lot of very legal products, situations that still might undermine the integrity of the game, might constitute cheating, and certainly could be used in the right way to create a performance enhancement that, again, undermines the credibility and the integrity of the game.

Mr. FEHR. It is one thing, I submit, to suggest that the debate doesn't end by a statement that something is lawful or that something is unlawful. It is quite something else, I believe, to suggest that that should not be considered. And the question is, Do you consider it? And if so, to what extent? And how do you go about it?

I would remind you, Senator, in this country—well, let me go back. I don't remember if you were here at that hearing, but at the hearing that Senator Dorgan referred to, 2 years ago, there was an individual here—I believe a coach or a doctor from someplace in the Southwest, perhaps Arizona—who brought with him bottles and bottles and bottles and bottles of what were, under the law, nutritional supplements, which he urged and pleaded everyone to do something about. And I encouraged people to do that.

That's a judgment that Congress will make. But when the Congress says 9-year-olds can walk into a store, and it is legal for a pharmacist to buy this, then the question becomes whether it's the role of the labor organization to say to an individual that you somehow can't do what that child can do. It doesn't mean that child should be allowed to do it. But that's not a decision that I make or that my union makes. That's a decision which is made here.

The CHAIRMAN. Could I ask Commissioner Tagliabue to respond to that question that was asked? Because this is a very important point here that's being made in this hearing.

Mr. TAGLIABUE. Yes, I think this is a really fundamental difference between the way we view this and the way Mr. Fehr is viewing it. We feel—myself, as the Commissioner, and Mr. Upshaw, as the Executive Director of the Players Association, and my constituents, which are owners and coaches, and his constituents, who are the players—we recognize that we have a unique universe of individuals, both in terms of what they do, in terms of physical exertion, playing a game that Senator Allen has described as a collision sport, and what they represent, for themselves and to others, and that, to be specific, they engage in extreme physical activity, not unlike the military, and we have consulted with the military and the Department of Defense scientific community on many of these health issues. Second, it's about integrity of the competition, as Mr. Upshaw emphasized and Senator Sununu just alluded to. And also it's the fact that tens of millions of young people are watching how they compete and whether the game has integrity.

So when it comes to substances like andro, like ephedra, like testosterone, and epitestosterone, which appear naturally in the body, our medical and scientific advice has been, despite the fact that those may be legal for me or Senator Allen to take as a weight-loss supplement, for instance, in the case of ephedra, or his wife or my wife to take as a weight-loss supplement, it is not safe for an NFL player engaged in NFL activities to take those substances, so we ban them.

It's part of a broader philosophy that we have where we have tried—management and the Players Association and the players—to identify a wide area where we have a common interest in the medical, health, and safety of our players and their game. And we view it as a win-win, not as a win-lose. It's a zero-tolerance, as Gene said, not a zero-sum negotiation.

And what we have done in this area, we are striving to do with medical care, generally. There are many, many issues broadly in the area of medical care, part and parcel of the healthcare issues that Congress has been dealing with, where we're trying work together, not as adversaries. So I think it's a set of fundamentally different premises that underlies our program.

The final thing I would say is that, alluding to the question you asked Mr. Upshaw, he is second to nobody when it comes to employee rights, civil rights, and privacy rights. He not only heads our union, he's a member of the AFL-CIO Executive Council. And for someone in another sport, or another sport union, to have the type of innuendo that you alluded to earlier is incredibly unfair.

The CHAIRMAN. Mr. Upshaw, do you have anything to add in response to Mr. Sununu's question?

Mr. UPSHAW. I would just support what Commissioner Tagliabue just said. And we might be interested in the labor peace. We're also interested in justice, and it's not "just us."

The CHAIRMAN. Thank you, sir.

Senator Lautenberg?

Senator LAUTENBERG. Thank you, Mr. Chairman.

And there are two things that I want to bring up very quickly. One is to reestablish my assertion that baseball was developed in the state of New Jersey. It was 1846—no, I don't remember the year, but I read about it—when a game was played at the Elysian Field, the first organized baseball game, A.

B, is that there was a statement made here that I think was a little unfair, by a very good friend of mine, about the position of the Commissioner of baseball, and the gentleman who sits here and who occupies that. As far as I know, and I know Bud Selig quite well, and I also know the general arena that baseball is in. I think that there has been a substantial enhancement in the interest of the game, and I think that the permanency of your position ought to be decided by the owners, as it presently is, and not in a Congressional hearing.

And I would ask you, Mr. Selig, Mr. Fehr said that random testing is now going to be the routine, and going to be done regularly, randomly. Hasn't he made, therefore, a declaration that all's well and that the union is going to—the Players Union is going to get into the program as has been requested?

Mr. SELIG. Well, Senator, thank you for those words. And I—let me say about this, the reason we entered a deal, I think has now been articulated. I said I had spent a lot of time talking to team physicians and others, so I hope the answer to your question is that we need to revisit this.

The thing I've worried about—that's one thing about this job, you spend a lot of sleepless nights and wake up a lot in the middle of the night worrying about things—I worry, quite candidly, that—I think this problem, as has been described to me by people who I consider to be medically expert in this field, is so serious that I don't want someday, long after I'm done being Commissioner, whenever that is, that people will say, "You all knew something about it, and you didn't do something about it." And so I'm not going to rest, quite frankly, until we've dealt with this problem in a way that I now think it needs to be dealt with.

Senator LAUTENBERG. So are you asking just for a more formal understanding? If Mr. Fehr said, "OK, we'll put it into our contract"—and I'm not urging you to do anything except to observe that you're out of step with a lot of other people here in the room—would you think that would be satisfactory, the random testing that Mr. Fehr is—

Mr. SELIG. Well, I think what we need is a program, Senator Lautenberg, exactly like we have the minor leagues or the NFL has. But I keep going back to our own minor league program, because that really deals with everything that's been said here today. You get penalized right off the bat, there is random testing all year round. There are so many things. There are health issues that are raised. But clearly—and everybody has raised those issues—there are integrity issues.

Look, the athletes of today are magnificent, and they've done well. And it breaks my heart to see even a shadow of doubt cast. That's why it's a program that I think, in the end, everybody benefits from.

Senator LAUTENBERG. I thank you for that. And, again, being conscious of the time available here, I would, then, ask Mr. Fehr,

Does your position against more severe drug testing meet with your players' demand, in general?

Mr. FEHR. Let me respond to that by beginning with a reaction to one of the things that you said in your question to the Commissioner. I did not say, and I don't want my remarks here to be interpreted as saying "all's well." What I have said is that following the hearings in 2002, we took a number of steps, which we believe will work. That will be determined empirically. We won't have to guess about it. We will know. And if it isn't, then that would call for doing something else.

With respect to—I'm sorry, Senator, what was the second part of your question?

Senator LAUTENBERG. That's all right. Would—

Mr. FEHR. I apologize.

Senator LAUTENBERG.—the fact that you offered—and I think I heard you correctly, that there would be a program established for random testing. And my question to the Commissioner was, "OK, does that meet the"—

Mr. FEHR. Oh.

Senator LAUTENBERG.—"the requirement?"

Mr. FEHR. I—

Senator LAUTENBERG. And, you know, I don't want to be an arbiter here, and try to make peace among you. But the one thing I think that fails to register in your comments, Mr. Fehr, is, you are in the public domain, and that changes the rules for the game. And I would ask you this, Do you believe that it's appropriate to go to a high school in—pick anyplace—and ask the students to submit to drug testing where they know that there is a drug problem in the area? Is that a reasonable thing to—

Mr. FEHR. Senator, there will be, first of all, in response to your first question, as quite agreed, random testing. If there are other ideas, or circumstances suggest we ought to go further, you look at those. And we're certainly prepared to sit down and do that.

With respect to high schools and so on, you have a circumstance in which local districts need to decide what's best for them, and you are dealing with children. And there is no doubt at all, as I alluded to in my prior statements, that the documented harm from steroids or steroid precursors, which are fully lawful in this country, to individuals who are not yet grown is much more pronounced and potentially immediate than it is to adults or adult males. And, of course, what steps need to be taken should be taken. I don't have a—

Senator LAUTENBERG. Well, is that—

Mr. FEHR.—I don't have a position on—

Senator LAUTENBERG. Well, because—

Mr. FEHR.—testing of high school students.

Senator LAUTENBERG. I'll interrupt you here to speed the process along and just say that that is without cause, is it not? Is that an appropriate program that has no causal relationship, to go ahead and find out what's happening to these youngsters and what they're—in order to protect their health. To me, it's akin to the argument you make on the other side that says, "Well, we don't want to do this without cause."

I think it's fair to say that, again, in the public domain you have a unique obligation to bring a picture to the young people of the country that, yes, sports is not only honorable and a way to make a living, a good living, or a helluva lot of money, as Joe Biden would have said, but the fact of the matter is, you don't have the liberty of showing an abuse of health effect or something that enhances one's performance compared to others. You can't take that kind of an advantage. You can't start before the gun goes off in a track event.

And I will conclude with this question. When you talk about collision sports or contact sports, are track and field in that category, of contact or collision?

Mr. FEHR. Not that I know of. I was referring entirely to——

Senator LAUTENBERG. OK. You——

Mr. FEHR.—Senator Allen's comment.

Senator LAUTENBERG. Do you, therefore, then, approve of what the Olympic Committee does to ensure that the athletes that are presented don't use steroids?

Mr. FEHR. I don't represent them, and they have to make those decisions for themselves. That's up to them.

Senator LAUTENBERG. OK. So, Mr. Fehr, what I hear from you—and I don't speak for my colleagues, obviously—is kind of a shadow representation here that says, “Well, we've got to obey the players' wishes. We have to protect their privacy.” But I don't hear the public interest being talked about there. I don't hear you saying, “Look, it's good for you and your family, in the final analysis.” I don't hear you saying that there are programs that warn players about the ultimate consequence of their taking drugs.

Mr. FEHR. First of all, as the Commissioner indicated, for many years educational programs have been in place. And my memory is, although it's a little foggy, that that was put into the record specifically in the hearing that was held in December—sorry, in June 2002. There's no question about that.

Second, my personal advice to players—and while I never discuss individual conversations with players, they have a right to keep that confidential, but since this is a general advice, has been very simple and of long standing and without equivocation. Nobody ought to be using anything under any circumstances without a doctor or an appropriate medical professional engaged in providing that person care, determining that something should be done, and following it, and watching it. And they're all obligated to do things which are legal, and legal only. I have no hesitancy about that, across the board.

Senator LAUTENBERG. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Fitzgerald?

Senator FITZGERALD. Mr. Fehr, thank you for coming here today, just 2 weeks after surgery. I gather you had your gall bladder removed? You said the same——

Mr. FEHR. I sure hope it isn't there.

[Laughter.]

Senator FITZGERALD. OK. Well, we all wish you a speedy recovery. And understand that our tough questions here in no way diminish our hopes for your good health.

Mr. FEHR. Thank you, Senator.

Senator FITZGERALD. I did want to follow up on a couple of questions that have been asked. Now, I know when Senator Sununu asked you whether you thought it was cheating to use a corked bat, you said yes, you thought it was cheating. Do you think it's cheating to use andro?

Mr. FEHR. That's a determination which I think is resolved in collective bargaining. The agreement we have, so far—

Senator FITZGERALD. Doesn't ban andro.

Mr. FEHR.—does not. It does not. Because—

Senator FITZGERALD. So you don't think it's cheating.

Mr. FEHR. It is not something that the players have, thus far, chosen to ban. That's correct.

Senator FITZGERALD. So it wouldn't be cheating to use andro. And you also noted that andro is not banned by Federal statute. Is that correct?

Mr. FEHR. Yes. And our agreement specifically provides, among other things, that any anabolic substance which is added to Schedule 3, or any anabolic substance—I think I have this right—which may not lawfully be obtained, automatically becomes prohibited.

Senator FITZGERALD. So your collective bargaining agreement makes reference to our Federal statutes.

Mr. FEHR. In that case, yes.

Senator FITZGERALD. In that case. But our Federal statutes don't ban cork bats, for example. We have no Federal law against using a cork bat, correct? But, nonetheless, that is a violation of your internal rules in major league baseball. So, in that regard, baseball's—

Mr. FEHR. That's correct. I'm sorry, Senator.

Senator FITZGERALD.—baseball's adopting rules that are tougher than Federal laws. Is that correct?

Mr. FEHR. Sure. Of course that's correct. Now, having said that, the one part that's missing from that equation is that the public policy of the United States has, in fact, spoken to this issue.

Senator FITZGERALD. OK. And you're saying with respect to cork bats, we haven't spoken, is that right?

Mr. FEHR. And I don't believe you should.

Senator FITZGERALD. OK. And we haven't spoken with respect to whether you can put Vaseline on a baseball when you're pitching.

Mr. FEHR. Not to my knowledge.

Senator FITZGERALD. But that is against your rules, because it's against your internal rules. You have internal rules in baseball, as football has internal rules. You don't look to Congress to decide what's a penalty and what's not. And you don't look—baseball doesn't look to Congress to decide what's a legal pitch or an illegal pitch, or a legal bat or an illegal bat. But with the case of drugs, you do have this policy that you look to us to adopt some kind of public policy to give you guidance. Why the discrepancy on the drugs and the rest of your rules?

Mr. FEHR. The best way I can answer that, I suspect, is as follows. The Congress of the United States unanimously, I believe—I know it was unanimous in the Senate—changed the law 10 or 11 years ago, and it said that we believe, unless the Federal Government, either by Congressional action or administrative rule, decides otherwise, that substances which are called nutritional sup-

plements—and androstenedione, I believe, legally is one—may be sold and used by anyone. That was a decision this Congress made. It is one thing to say we aren't bound by those rules, that's correct. It's quite something else again, I believe, to suggest that we should not pay attention to them at all, and pretend they aren't there.

Senator FITZGERALD. Well, but cork or Vaseline can be sold or used by anyone, too, under our statutes, isn't that correct?

Mr. FEHR. I think that's correct, but I suspect that most people would agree that dietary supplements act as a more significant piece of legislation than something about cork bats would be.

Senator FITZGERALD. OK. Now, Senator Sununu also asked you whether a player could voluntarily submit to his own test, and you said that any player could—there would be nothing to stop them from going to their physician and having a drug test. Is that correct?

Mr. FEHR. That's correct. Any one of us can do that.

Senator FITZGERALD. Now, in a February 26 article in *Newsday*, John Hamond describes Gary Sheffield's willingness to take a voluntary test, and his sudden reversal in his desire to take the test. In an article published in the *New York Post* on the same day, Gary Orza, speaking on behalf of Major League Baseball Players Association, stated, quote, "I told him there will be no drug test. I told him it would be in violation of the collective bargaining agreement if he took the test."

Now, do you stand by Mr. Orza's statement in the *New York Post*? Is it a violation of the collective bargaining agreement for Gary Sheffield to take a test of his own accord?

Mr. FEHR. No, it is not. The question is, Is it something that is insisted upon by management which is inconsistent with the collective bargaining agreement? I would also observe two things.

Senator FITZGERALD. So Gary Sheffield could go take a test and report those results to the press.

Mr. FEHR. He can do whatever he wants if it's not coerced. And—

Senator FITZGERALD. Barry—

Mr. FEHR.—having said that—

Senator FITZGERALD.—Barry Bonds and everyone else, if the press wants to—

Mr. FEHR. Having—

Senator FITZGERALD.—challenge them to go take a test, they could go—

Mr. FEHR. Having said that, Senator, let me go back to where I came in. There's a reason I don't want to discuss individuals. And the reason is that Mr. Sheffield, whose name has been publicly reported in connection with the investigation of BALCO in San Francisco, public reports indicate that he's been—that he is both represented by counsel, and that he has been, along with everyone else there, either in conversations with appropriate government officials, or asked to testify before a grand jury. I don't know what his circumstances are. I would not hazard to comment. It would be entirely inappropriate for me to do that.

Senator FITZGERALD. But you have no problem with any player, who feels his integrity has been impugned, taking a drug test and releasing the results to clear his or her name.

Mr. FEHR. There is no legal impediment to doing that. The Players Association couldn't prohibit it if it wanted to. Having said that—

The CHAIRMAN. Was Mr. Orza wrong, then?

Mr. FEHR. I don't know that Mr. Orza said that. It doesn't sound right to me, and I wasn't there.

The CHAIRMAN. If Mr. Orza said that, was he wrong? If he said it?

Mr. FEHR. The position is as I've just stated it.

Now, let me make just one further observation. Somebody referred to this as values issues. And I think that, to a large extent, that that's—that there's a lot to that. Is it an appropriate value to say to someone, "I don't have any reason to suspect you've done anything wrong, but I will assume you have, unless you prove to me to the contrary"? That, I suggest, is not an irrelevant question.

The CHAIRMAN. Thank you.

Senator Nelson, and then Senator Allen has one additional question.

In deference to your health situation, we will then conclude the hearing. We thank you, and we hope we haven't done you any permanent damage.

Mr. FEHR. My doctor said I'm likely to be very tired, but I should recover, so thank you.

The CHAIRMAN. Thank you.

Senator Nelson?

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

Senator NELSON. Thank you, Mr. Chairman. And thank you, again, for your leadership on important issues facing this country, as you have often brought to this Committee. One that comes to mind, we always—we don't always win, but we sure get the subject out there and get it discussed, and I'm thinking of global warming. So thank you for your leadership.

I want to—I think this issue has been well discussed, and, Mr. Fehr, I think you know where everybody's coming from, and you get the consensus here of the intensity of the feeling.

Rather than continue the line of questioning, I want to offer, first of all, a compliment to Mr. Tagliabue on his strong response to the halftime ceremony at the Super Bowl. I have an interest in this, in that the Super Bowl's going to be Jacksonville, Florida, next year, and we don't want that kind of halftime. And what I'm saying reflects the values of Florida, and particularly of Jacksonville. And so thank you for the strong stand that you've taken.

Mr. TAGLIABUE. Thank you. I was discussing this with the owner of the Jaguars yesterday.

Senator NELSON. And I want to thank Commissioner Selig. We have had a meeting, earlier this morning, Mr. Chairman, about an issue that I've been discussing with him and his representatives for now 3 years, having to do with the pension that has not been given to the old Negro League baseball players. And the Commissioner had taken the initiative, back in 1997, recognizing that—what the Negro League players had offered to the game and offered a pension at \$10,000 a year, but, in offering that—and this is where I

have had the discussions with him—because so many of these old Negro League players, who were so good, live in Florida—they're now retired, and I have had several meetings with them—but a lot of them didn't get compensated because what was agreed to in 1997 was that they had had to have played in the major leagues after the majors were integrated, in 1947, and they had to have played for 4 years; when, in fact, the majors were not integrated when Jackie Robinson broke the color barrier. But, instead, it took almost 12 years later, until 1959, that all of the teams had integrated.

And so, in pointing out that inequity, and asking him to address this, on what is now only about 120 of these Negro League players left. We're losing them every year. We lost 22 this past year. And so Mr. Selig has said to me this morning that he's coming forth within a month, within 30 days, to offer a specific solution that these remaining Negro League players will get compensation. And I want you to know how much I appreciate that. I look forward to seeing it.

And I want to ask you, who should I continue to meet with over the next 4 weeks of this period to get updates on your thinking? And what else must I do to help facilitate your proposal, Commissioner Selig?

Mr. SELIG. Jonathan Mariner and Rob Manford, from our office, I think will, in the interim—before you and I get together. They'll be working on it as early as tomorrow, and they'll give you updates in the interim. And I'll be glad when, frankly, we have this whole issue resolved, which we will, hopefully very expeditiously.

Senator NELSON. Is there anything more that I need to do to help facilitate this process as you—

Mr. SELIG. Not at—

Senator NELSON.—make your final proposal?

Mr. SELIG. well, not at the moment. There may be some things in the interim, but not at the moment. We want to look at all the numbers and people, and then—and we'll be back to you very quickly.

Senator NELSON. Thank you.

Mr. SELIG. Thank you.

Senator NELSON. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Allen has one additional question and then we'll conclude the hearing.

Senator ALLEN. Thank you. There's a two-minute warning here. Thank you, Mr. Chairman.

One, I want to very much commend the NFL Players Association and the league for their leadership, and the leadership in sending the message to young people. You involved the players in it. My son has a Jerry Rice jersey and Tim Brown jersey, and his heroes are like them, and Derrick Brooks. They are the ones that get the message to the kids. Others are a little older, folks like Darryl Green and Jim Kelly. When I was a kid, it was Deacon Jones and Roman Gabriel and Brig Owens and folks like that. But it's really key, Mr. Chairman, to have the players involved, because they're the ones who are the role models. And I thank you, Mr. Upshaw, and the league, for working in that way to get that message to young people that this is the way you compete, honestly and fairly.

On the specific legislation which brought us here on this issue, Senate Bill 1780, I have not signed on to it. I'm still a free agent, so to speak, on it. Listening to all these arguments, and, gosh, how are you going to have a definition of anabolic steroids and provide all this research and education activities, my question to you all—to you, Mr. Upshaw, and Commissioner Tagliabue—is, I don't mind signing on to things, but you like to do things that are actually going to have an impact. Insofar as NFL is concerned, you don't wait around for laws. Passing such a law might actually make people feel like we have done something. But, as a practical matter, the passage of this law—and say President Bush signs it into law, what impact would that be if the leagues—whether it's major league baseball or whether it's the National Hockey League, or whether it's the NBA—what difference would that make unless it's actually going to be enforced by the sort of credible random drug testing that you all have in the NFL?

Mr. TAGLIABUE. Well, first of all, I think it would send an equally powerful message to—equivalent to the message that a Derrick Brooks or a Jerry Rice sends. Second, I think that the potential for a criminal sanction for people who are suppliers or distributors or inventors or creators of new steroids, would be very important. And as we've seen recently, that is a current challenge, and it's going to be a future challenge. And so I think it would—it might not have significant effect on what we do, because we've tried to stay ahead of the science and prohibit things that are legal, but I think it would be very important. That's why we support it.

Mr. UPSHAW. I would just like to add to that since you understand what we're trying to do in the NFL, I don't see any reason now for you to hesitate about signing on to this bill, because it is a winner, and you should be part of it.

The CHAIRMAN. Mr. Madden, go ahead.

Mr. MADDEN. Senator, this bill would be for the children and women in our nation, the youngsters. We're already ahead of it right now. We're testing for those substances now. This is to get the stuff off the shelves that my 10 year old can go in and buy that we don't know what the health issues are going to be in the future for all the children, all the teenagers taking this. This bill is directed to children, to women, and that should be the full brunt of the bill. It's a health issue.

The CHAIRMAN. Commissioner Selig?

Mr. SELIG. I would urge you to pass it as soon as possible. Yes, it would be helpful to us in everything we've discussed today. We don't have to go back over that. But it is a health issue. It is an issue that the more of this we do, the more you bring it to the public—yes, it's helpful to us internally, but it's helpful to this country, and it needs to be done quickly.

The CHAIRMAN. Mr. Fehr?

Mr. FEHR. Just very briefly. We certainly have no objection to the bill. And I phrase it that way for the following reason. The judgments about the science in connection with safety of sale of products to the general public is committed here, not to us. That objection to the side, my view, personally—and I'm sure it's shared by virtually all, if not all, players—is that there ought to be nothing available without the kind of rigorous scientific testing which

would demonstrate, first of all, that it's safe, or safe under whatever conditions are appropriate for over-the-counter medicines, if that's the way it goes, and that it actually does what it says it does, and doesn't do something else.

You have another problem. You have the problem of whether or not a lot of nutritional supplements are, in fact, contaminated. What I mean is, they have stuff in them that isn't there.

If there is opposition to this bill, if there is opposition to that general concept, I don't know where it is. And I'm sort of astonished that it's still puttering along. Hopefully, it won't be. I certainly don't detect any indication from anybody on this Committee that they would have any problem.

The CHAIRMAN. The opposition comes from the people who make it.

Senator ALLEN. Thank you.

Senator BROWNBACK. I take it that Senator Allen will be a co-sponsor.

Senator ALLEN. When Gene Upshaw says so. He's calling the snap count here.

Finally, to Mr. Fehr, you wouldn't mind if there were a major league baseball team around here, would you?

[Laughter.]

The CHAIRMAN. Senator Smith?

[Laughter.]

Senator SMITH. To that point, I believe the national game should be in the Nation's capital.

Senator ALLEN. Or nearby.

[Laughter.]

Senator SMITH. I say that as an Orioles fan, but—

Thank you, Mr. Chairman. Just a brief comment.

Mr. Fehr, I know you don't feel well, and I wish you a speedy recovery. And I know that this hearing has probably not been a lot of fun, and a lot of anxiety that goes with it. But I hope, in the Chairman's calling this hearing, that it'll make your job easier to make this change, because I think it's critical that these other systems, the minor league system in baseball, the NFL example, is a worthy one. And I understand, frankly, your feeling of the hypocrisy of a legal product that shouldn't be available to players, but I really think the law is important, but the law is the lowest common denominator of what we can agree on up here. And, frankly, our ideals ought to be above the law. And I think, ideally, baseball should live up to the standards that will protect the health of the players and the integrity of the game. And that's all I wanted to say.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

It's traditional to ask the witnesses, after a long hearing like this, if they'd like to make any closing comments, beginning with you, Commissioner Tagliabue.

Mr. TAGLIABUE. I would only say thank you for your support and for giving us the opportunity to be here today.

The CHAIRMAN. Thank you for being here.

Mr. Upshaw?

Mr. UPSHAW. Thanks for your support, and we look forward to passage of that bill.

The CHAIRMAN. Thank you.

Mr. Madden?

Mr. MADDEN. Senator, with the President's leadership and this Committee's leadership, this might be the last best chance to stop doping in all sports, Olympic and all the professional leagues. Thank you for letting us be here.

The CHAIRMAN. Mr. Madden, our hopes are with you in the upcoming Olympic games and the preparation for it. And thank you for what you do.

Commissioner Selig?

Mr. SELIG. Thank you, Mr. Chairman, for this hearing. I have hopes that this will lead to a solution to the problems that have been so articulated here today. And I can assure you that we will not rest until those problems are solved. So we thank you for this hearing.

The CHAIRMAN. Thank you.

Mr. Fehr?

Mr. FEHR. Two things. First of all, I appreciate the kind comments of a number of Members of the Committee about my personal situation.

Second, while I don't know many of the Members of this Committee very well, that's not true with respect to the Chairman. He and I have known each other for a very—well, I guess it's a longer time than we probably want to acknowledge at this point.

With respect to your comments, I believe, you know, Senator Nelson, as the Chairman knows, I understand his comments at the beginning of this hearing, and I understand the mood which was reflected by the remainder of the hearing.

Thank you.

The CHAIRMAN. Thank you very much. This hearing is adjourned. [Whereupon, at 12:35 p.m., the hearing was adjourned.]