

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

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

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

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

I begin with a summary of our conclusions.

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

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

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

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

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

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

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

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

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

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

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

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

Summary of recommendations

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

The recommendations focus on three areas.

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

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

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

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

The Commissioner has implemented all of these recommendations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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