

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

² Id.

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

³ Mitchell Report, at 258.

⁴ Mitchell Report at SR-4.

⁵ Mitchell Report, at 53-54.

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

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

⁶ Mitchell Report, at 276.

⁷ Mitchell Report, at SR-1.

⁸ Mitchell Report, at SR-4.

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

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

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

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

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

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

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

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

⁹ Mitchell Report, at SR-30.

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

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

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

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

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

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

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

¹⁰ Mitchell Report, at SR-4.

¹¹ Mitchell Report, at 308.