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

Tuesday, January 15, 2008

**House of Representatives,
Committee on Oversight and
Government Reform,
Washington, D.C.**

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Committee Hearings

of the

U.S. HOUSE OF REPRESENTATIVES



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4 OF STEROIDS IN MAJOR LEAGUE BASEBALL

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6 House of Representatives,

7 Committee on Oversight and

8 Government Reform,

9 Washington, D.C.

10 The committee met, pursuant to call, at 9:31 a.m., in
11 Room 2154, Rayburn House Office Building, Hon. Henry A.
12 Waxman [chairman of the committee] presiding.

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

17 Staff Present: Phil Schiliro, Chief of Staff; Phil
18 Barnett, Staff Director and Chief Counsel; Karen Lightfoot,
19 Communications Director and Senior Policy Advisor; Brian
20 Cohen, Senior Investigator & Policy Advisor; Michael Gordon,

21 Senior Investigative Counsel; Steve Glickman, Counsel; Earley
22 Green, Chief Clerk; Teresa Coufal, Deputy Clerk; Caren
23 Auchman, Press Assistant; Ella Hoffman, Press Assistant;
24 Zhongrui "JR" Deng, Chief Information Officer; Leneal Scott,
25 Information Systems Manager; Kerry Gutknecht, Staff
26 Assistant; William Ragland, Staff Assistant; Miriam Edelman,
27 Staff Assistant; David Marin, Minority Staff Director; Larry
28 Halloran, Minority Deputy Staff Director; Jennifer Safavian,
29 Minority Chief Counsel for Oversight and Investigations;
30 Keith Ausbrook, Minority General Counsel; Steve Castor,
31 Minority Counsel; Patrick Lyden, Minority Parliamentarian &
32 Member Services Coordinator; Brian McNicoll, Minority
33 Communications Director; Benjamin Chance, Minority Clerk; Ali
34 Ahmad, Minority Deputy Press Secretary; Jill Schmalz,
35 Minority Professional Staff; and John Ohly, Minority Staff
36 Assistant.

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

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

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

47 The Hooten and Garibaldi families were frustrated that
48 baseball wasn't doing more to confront its role in a growing
49 epidemic. For our part, this committee made it clear to the
50 players and owners that they needed to take steps and major
51 ones to deal with this problem. The first was to
52 dramatically strengthen the league's testing program for
53 performance-enhancing drugs. The second was to investigate
54 the extent of steroid use.

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

62 | baseball's official policy.

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

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

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

84 | The Mitchell report also makes it clear that everyone in
85 | baseball is responsible. The owners, the Commissioner, the
86 | union and the players. Despite that shared responsibility,

87 | most of the media attention over the past month has focused
88 | on the players. They are the face of the game, and they are
89 | the ones our kids emulate.

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

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

106 | Three years ago, we initiated an investigation into
107 | testimony that Rafael Palmeiro provided on March 17, 2005.
108 | Mr. Palmeiro testified that he never took steroids. Several
109 | months later, he has tested positive for Winstrol, a powerful
110 | steroid. As part of that investigation, we interviewed
111 | Miguel Tejada for relevant information. A transcript of that

112 interview has never been made public out of respect to Mr.
113 Tejada's privacy. But in that interview, Mr. Tejada told the
114 committee that he never used illegal performance-enhancing
115 drugs and that he had no knowledge of other players using or
116 even taking or talking about steroids.

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

124 [The information follows:]

125 ***** INSERT 1-1 *****

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

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

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

148 And I want to read from the Mitchell report about what
149 happened next: "Hallinan told us that the Perez incident
150 could have been the 'single most important steroids

151 investigation' he conducted, but to his disappointment, he
152 was not given permission to interview the Major League
153 players named by Perez."

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

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

166 The good news is, I believe baseball is now taking
167 steroids use seriously and making fundamental changes. In
168 2005, Commissioner Selig and Don Fehr, the head of the
169 players union, voluntarily reopened bargaining. To their
170 credit, they worked together to make baseball steroid policy
171 one of the toughest in sports. I might say that in 2005 I
172 had my doubts at whether Mr. Selig and Mr. Fehr would rise to
173 this occasion, but I want to commend them both for the
174 leadership that they have been showing. And in the wake of
175 the Mitchell report, Mr. Fehr accepted responsibility and

176 | said: "in retrospect, we should have done something sooner."

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

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

192 | Without objection, that will be the order.

193 | [The information follows:]

194 | ***** INSERT 1-2 *****

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

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

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

209 [Prepared statement of Chairman Waxman follows:]

210 ***** INSERT 1-3*****

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

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

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

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

233 We want this because we know those who aspire to
234 athletic stardom look up to those who have achieved it and
235 often emulate their methods. We want young athletes to

236 understand there are no shortcuts to success, that excellence
237 has to be the product of physical exertion not pharmacology.
238 In true sport, the road to achievement is paved with hard
239 work, dedication and focus; not "the clean," "the clear," or
240 Human Growth Hormone.

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

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

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

261 | a long way.

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

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

278 | But they are just part of a far wider culture in a sport
279 | that values home runs and victories over fair play. The
280 | report confirms that active participation or passive
281 | acquiescence and drugging cannot coexist with the
282 | responsibility to set a proper example for those stepping up
283 | the lower rungs of the ladder of athletic success. In other
284 | words, while 2 years ago we hoped otherwise, our work here is
285 | definitely not done. Stiffer penalties and stepped-up

286 enforcement have caused some players to back off of steroid
287 use. Unfortunately that progress has created a strong,
288 perverse incentive to develop substances that can't be
289 detected by current testing regimes.

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

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

303 Not surprisingly, rates of steroid use go up as the
304 athletic stakes get higher. Steroid abuse by high school
305 seniors seeking that extra edge to earn a college scholarship
306 is twice that of eighth graders where the goal is merely to
307 catch the eye of a high school coach. Over the past 5 years,
308 more teens have come to believe steroids are dangerous, but
309 the percentage of those who actually disapprove of
310 performance-enhancing drugs remains sadly unchanged. The

311 | myth of youthful invulnerability, the allure of athletic
312 | success and the rationale that every one else is doing it
313 | combine to drive an intoxicating culture that won't be
314 | countered effectively with slogans, posters and half-hearted
315 | enforcement programs.

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

323 | Already the Commissioner has ordered all recommendations
324 | that he believes did not require union approval to be
325 | implemented immediately. This means drug tests and
326 | background checks for clubhouse personnel. It means clubs
327 | will maintain a log of all packages sent to Major League
328 | ballparks; that they'll distribute and post Major League
329 | Baseball's policy on prohibited substances. Perhaps most
330 | significantly, it means the 24-hour notice of steroid testing
331 | will be eliminated. These are encouraging first steps, but
332 | that is all they are, first steps.

333 | We also commend Mr. Fehr for standing ready to discuss
334 | further amendments to the collective bargaining agreement.
335 | He leads a union that too often has been, frankly,

336 intransigent and uncooperative. We know some of the measures
337 suggested in the report--for example, that baseball should
338 hire an independent firm to conduct testing--will not be easy
339 to sell. But he has helped his members see the writing on
340 the wall which says this: Baseball needs to fix the problem,
341 change this culture, alter how it does business with regards
342 to steroids, Human Growth Hormone and all matter of dangerous
343 performance-enhancing drugs or--and this is a promise not a
344 threat--Congress will do it for you.

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

354 For example, he urged the Commissioner to establish an
355 office with enhanced authority to investigate and report the
356 use of performance-enhancing drugs. Major League Baseball
357 already responded last week, announcing creation of a new
358 department of investigations. The recommendations and
359 actions appear to be sound, but I understand the union chief
360 believes the devil will be in the details. How will the new

361 office's powers be? How will it work with the players to
362 accomplish its goal? Has baseball effectively reorganized
363 itself in setting up this office, or has the sport simply
364 reshuffled the deck chairs in response to a scandal, like we
365 often do in Congress?

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

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

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

386 | that is still hovering over baseball.

387 | From this moment, we begin to look into steroids in
388 | sports and how their use affects impressionable young
389 | athletes. Our efforts on this issue have been bipartisan.
390 | From the beginning our committee has come together in a sense
391 | of cooperation and team work that continues to this day. And
392 | in that spirit, we look forward to a frank and constructive
393 | discussion today on how to clean up baseball. When
394 | commentators talk about the importance of chemistry in the
395 | locker room, that is not what they had in mind.

396 | Thank you, Mr. Chairman.

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

400 | Senator Mitchell, you have an outstanding record as a
401 | member of the Senate and the leader of the Senate, and I
402 | could go through your many accomplishments, but you may have
403 | achieved even more since you left the Senate as an
404 | international statesman. You're well-known for your work in
405 | bringing divided groups together. Brought people together in
406 | Northern Ireland, and brought Democrats and Republicans
407 | together on this committee, and I thank you for that. You've
408 | done a great job, and I know how difficult it is to do a job
409 | without subpoena power when we were in the minority. But we
410 | worked together on this committee to use what powers we have

411 | to accomplish the important things that need to be
412 | accomplished. So I thank you for your work, and I'm pleased
413 | you're here.

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

418 | [Witness sworn in.]

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

421 | STATEMENT OF THE HONORABLE GEORGE MITCHELL, FORMER UNITED
422 | STATES SENATOR

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

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

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

437 | I begin with a summary of our conclusions. The illegal
438 | use of steroids, Human Growth Hormone and other
439 | performance-enhancing substances by well-known athletes may
440 | cause serious harm to the user. In addition, their use
441 | encourages young people to use them. Because adolescents are
442 | already subject to significant hormonal changes, the abuse of
443 | steroids and other such substances can have more serious

444 adverse effects on them than on adults. Many young Americans
445 are placing themselves at serious risk. Some estimates
446 appear to show a recent decline in steroid use by high school
447 students. That is heartening. But the most recent range of
448 estimates is from about 2 percent to 6 percent. Even the
449 lower figure means that hundreds of thousands of
450 high-school-aged young people are illegally using steroids.
451 It is important to deal with well-known athletes who are
452 illegal users, but it is at least as important, perhaps even
453 more so, to be concerned about the reality that hundreds of
454 thousands of our children are using these substances. Every
455 American, not just baseball fans, ought to be shocked by that
456 disturbing truth.

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

466 Since then, the Major League clubs and the Players
467 Association have agreed to a number of improvements to the
468 program, including stronger penalties that have increased its

469 | effectiveness. The current program has been effective in
470 | that detectable steroid use appears to have declined.
471 | However, many players have shifted to Human Growth Hormone,
472 | which is not detectable in any currently available urine
473 | test.

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

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

493 | Knowledge and understanding of the past are essential if

494 | the problem is to be dealt with effectively in the future.
495 | But being chained to the past is not helpful. Baseball does
496 | not need and cannot afford to engage in a never-ending search
497 | for the name of every player who used performance-enhancing
498 | substances.

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

509 | The Commissioner was right to ask for this investigation
510 | and this report. It would have been impossible to get
511 | closure on this issue without it or something like it. It is
512 | appropriate to acknowledge, Mr. Chairman, that it was you and
513 | this committee who originally suggested that such an inquiry
514 | be conducted. But it is now time to look to the future, to
515 | get on with the important and difficult task that lies ahead.

516 | I urge everyone involved in Major League Baseball to join in
517 | a well planned, well executed and sustained effort to bring
518 | the era of steroids and Human Growth Hormone to an end, and

519 | to prevent its recurrence in some other form in the future.
520 | That's the only way this cloud will be removed from the game.

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

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

541 | I recommended that the Commissioner strengthen
542 | pre-existing efforts to keep illegal substances out of Major
543 | League Baseball clubhouses by logging and tracking packages

544 shipped to players at Major League ballparks; conducting
545 background checks and random drug tests on clubhouse
546 employees; and adopting policies to ensure that allegations
547 of a player's possession or use of performance-enhancing
548 substances are reported promptly to the department of
549 investigations. I also recommended that club personnel with
550 responsibility affecting baseball operations be required to
551 sign annual certifications that they have no unreported
552 knowledge of any possible violation of Major League
553 Baseball's drug prevention policy. The Commissioner has
554 implemented all of these recommendations.

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

564 Third, although it is clear that even the best
565 drug-testing program is by itself not sufficient, drug
566 testing remains an important element of a comprehensive
567 approach to combat illegal use. The current program was
568 agreed to in 2006 and will remain in effect until 2011. Any

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

586 Finally, I hope that the Commissioner, the clubs and the
587 Players Association will have a reasonable time and
588 opportunity to consider and discuss these recommendations
589 with their members and constituents and to reach their own
590 conclusions about their implementation. My report
591 demonstrates I'm not an apologist for either the Commissioner
592 or the Players Association. But in fairness, I think we
593 should recognize what they have done to address this problem.

594 As noted in my report, prior to the 2002 negotiations, the
595 Commissioner took several key steps to lay the foundation for
596 an agreement on the mandatory drug-testing program, including
597 in early 2001 he convened a meeting of several respected team
598 physicians, during which they shared their own experiences
599 and concerns about the use of steroids by Major League
600 players. That year, he unilaterally imposed a drug-testing
601 program for Minor League Players which he could do because
602 Minor League Players are not represented by the Players
603 Association. In 2002, after detailed negotiations, the
604 Players Association agreed to the Commissioner's proposal for
605 a mandatory random testing program in the Major Leagues. To
606 their credit, this was a significant step by the Players
607 Association because, as I noted earlier, they had for many
608 years opposed such a program.

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

619 | Mr. Chairman, members of the committee, I was asked to
620 | conduct an inquiry and to report what I found as accurately,
621 | as fairly and as thoroughly as I could. I've done so to the
622 | best of my ability, and my work has been completed. Now it
623 | is up to the Commissioner, the clubs and the players to
624 | decide how they will proceed. Their actions over the past 6
625 | years have demonstrated that they can address this problem
626 | through the collective bargaining process. I hope you will
627 | encourage and give them the opportunity to do so again.

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

632 | [Prepared statement of Mr. Mitchell follows:]

633 | ***** INSERT 1-4 *****

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

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

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

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

653 Mr. MITCHELL. Thank you, Congressman. In my report, I
654 noted that, for many years, baseball has had a policy
655 requiring the disclosure of information about the use of
656 performance-enhancing substances. And making possible severe
657 penalties in the form of fines for those who fail to comply
658 with that policy. We found, however, that very large numbers

659 | of persons involved in baseball were unaware of the policy,
660 | and even many who were aware did not follow it. We also
661 | found that no one has ever been fined for failure to comply
662 | with that policy. As a consequence--included as part of our
663 | recommendations, and they are found in the report--we suggest
664 | that there be a written policy at the Major League level, MLB
665 | level, which is distributed to all of the clubs, setting
666 | forth the process to be followed when information is
667 | available that should be reported and also that every club so
668 | have a policy widely distributed, posted, and made known to
669 | all employees about the process to be followed when such
670 | information is available and should be reported.

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

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

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

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

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

702 Mr. MITCHELL. In my report, I included an analysis of
703 the known provisions of all of the programs, a point-by-point
704 comparison. It is clear that, in terms of penalties, Major
705 League Baseball has the strongest program. The penalties are
706 the stiffest when measured in proportion to the length of
707 season and other indicia. With respect to the operations of
708 the program, we did not have access to the other programs,

709 other than that which has been publicly described about them.
710 And I caution anyone in attempting to make comparisons based
711 solely on the published data about the programs. It really
712 does require a detailed analysis and in depth knowledge of
713 the actual manner in which the programs are operated to be
714 able to conduct the kind of comparison which I think you're
715 seeking.

716 Chairman WAXMAN. Thank you, Mr. Towns.

717 Mr. Davis.

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

730 The Players Association responded in a November 20th
731 letter that the players had been informed that you would
732 provide them with the evidence if they consented to the
733 interview. Your letter talks about an opportunity to

734 | respond. The Players Association talks about being provided
735 | with evidence if they consented to an interview. I guess my
736 | question is, was a player required to consent to an interview
737 | to see the evidence against them?

738 | Mr. MITCHELL. Yes.

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

742 | Mr. MITCHELL. That's correct.

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

746 | Mr. MITCHELL. Yes.

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

750 | Mr. MITCHELL. I can't speak for the players. I did not
751 | communicate with any current players directly. And if I
752 | might, I would be glad to give a more detailed explanation,
753 | Congressman Davis, when you complete your question.

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

755 | Mr. MITCHELL. Well, from the first day of this
756 | investigation to the last, I was consistent in my public
757 | statements that players would have the opportunity to meet
758 | with me and, at that time, I would disclose to them all of

759 | the evidence that I had and give them an opportunity to
760 | respond. On March 30, 2006, the day I publicly accepted this
761 | assignment, I said, I quote, We'll provide those whose
762 | reputations have been or might be called into question by
763 | these allegations an opportunity to be heard.

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

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

784 all of the players declined to be interviewed.

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

803 Five weeks later, the Players Association responded in a
804 letter on behalf of those players. The letter stated in part
805 that some have been in direct contact with you. On behalf of
806 the others, we report that they continue to respectfully
807 decline your request. And those that had been in contact
808 with us declined the request through other lawyers almost

809 without exception. That is, according to the Players
810 Association, all of the current players about whom
811 allegations were received were contacted twice; once in the
812 summer and early fall of 2007, and then between October and
813 November of 2007, and each time they declined my invitation
814 to meet and talk with me. At your request, Mr. Chairman,
815 I've supplied all of this correspondence to the committee.

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

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

830 Mr. MITCHELL. Yes, one former player retained his own
831 lawyer who contacted us and asked to come in and meet with
832 me. I met with him and his lawyer. He told us that he had
833 in fact purchased performance-enhancing substances illegally

834 as had been alleged by Kirk Radomski, one of the witnesses
835 whom we interviewed. He told us however, that he had not
836 used them. I asked him whether he had any evidence to
837 support or corroborate his statement. He said that he had,
838 and he provided that evidence to us. We conducted an
839 independent investigation and concluded that he was telling
840 the truth and that we therefore made the decision not to
841 include him in the report. Now, I'm not clear whether you're
842 talking about current or former players.

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

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

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

848 Chairman WAXMAN. Thank you, Mr. Davis.

849 Mr. Cummings.

850 Mr. CUMMINGS. Senator Mitchell, I want to first of all
851 thank you for an outstanding report. And I have for a long
852 time been a great admirer of yours, your integrity and
853 your--what you bring to public life is just incredible. I
854 want to just kind of refocus us a little bit. Senator
855 Mitchell, this committee held hearings on this issue of
856 steroid abuse in Major League Baseball in 2005. One of our
857 most powerful witnesses at that hearing was Donald Hooten,
858 the father of Taylor Hooten, a teenage ballplayer who

859 committed suicide after taking steroids. Mr. Hooten is in
860 the audience at this hearing. Frank and Brenda Marrero are
861 also here today. Unfortunately, their son, too, Efrain, also
862 committed suicide after taking steroids in an effort to
863 become a better athlete. I noticed that when you talked
864 about your findings, the number two finding went to the whole
865 issue of children and the fact that it could have--the
866 steroids and illegal substances could have an effect--very
867 detrimental effect on children. This committee, Senator, as
868 you probably know, got a lot of flack back in 2005 when we
869 took a look at Major League Baseball and its handling of
870 steroids. And we are receiving similar criticism even today.
871 People are saying, Why are you getting involved in that?
872 But I want to take a moment to remind everyone why we're here
873 in the first place. We are here--we started this because of
874 our youngsters. We first took a look at the issue of
875 steroids upon learning of the deeply troubling Centers of
876 Disease Control Prevention study that said 1 in 16 students
877 reported using steroids. This was almost three times the
878 amount who reported using steroids 10 years ago. And I can
879 tell you that steroid use is, as you said, extremely
880 dangerous. And I think as I listen to you, I want you to
881 help us with this. You talked about ending the era of
882 steroids. You also talked about the--how our children are
883 affected. Your recommendations I know were going to the

884 League, but I'm just wondering, if the bottom line--see, I
885 don't worry so much about the players because they're
886 millionaires. I worry about the kids who are impressionable,
887 who are going to those stores on the weekend using their
888 allowance to buy these substances. That is what I worry
889 about. I worry about the kids in my neighborhood, whose only
890 dream, they think the only dream they have is to become a
891 Major League athlete and buying this stuff. And so I guess
892 what I'm asking is, if we--and we have a program say in
893 Baltimore called Powered by Me. And what it does, it works
894 with coaches and the clergy and so many others, parents, to
895 try to get parents--kids to stay off steroids.

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

898 I want to thank you, Peter.

899 But I guess what I'm saying is, if we're going to end
900 it--are you looking at some kind of amnesty for these players
901 so they can perhaps turn around and help our children. I
902 mean, what did you have in mind? And these people who--you
903 know--one of the dilemmas that we find ourselves in is that
904 the people have committed a crime, as you said, gone against
905 baseball policy. And at this critical moment, what message
906 do we send if we were to grant some type of amnesty, and is
907 the benefit of stopping here and saying, okay, you did it,
908 we're going to put that aside, but we are going to go

909 forward, is there--you know, is there a benefit to doing
910 that? And how do you--what is your feeling about the way, if
911 any, Major League Baseball should help our children, because
912 the fact is that a lot of damage, Senator, has already been
913 done? It has already been done. There are kids right now
914 who have got in their backpacks some of these very
915 substances, and they're going to be probably using them
916 today, God forbid. But that is a fact. And it is based a
917 lot upon the folk that they were trying to emulate. So I
918 know that is a packed question. But if you'd try at it,
919 please.

920 Mr. MITCHELL. I'm happy to do so, Congressman. First,
921 it is not a consequence that I began my remarks with a
922 reference to the dangers of steroid use by young people. I
923 believe that to be the most shocking fact that I uncovered in
924 the course of this, uncovered in the sense of my knowledge.
925 It was obviously known before, but it is not widespread. And
926 I tried hard in every public appearance that I've made and
927 will continue to do so to call attention to that fact. The
928 fact that hundreds of thousands of American youngsters are
929 using steroids ought to be a wake up call to every American,
930 whether they're sports fans or baseball fans or not.

931 Secondly, let's be clear, this goes far beyond baseball,
932 way, way beyond baseball. Baseball players are not the only
933 persons who are role models for young people. All

934 professional athletes are. Entertainers are. Political
935 leaders are. It is a broad societal issue that--of which
936 baseball is only a part. Could I answer the second part, Mr.
937 Chairman, about--

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

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

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

958 Third, more than half of the people mentioned in my

959 | report are no longer in Major League Baseball, and therefore,
960 | the Commissioner has no authority to discipline them even if
961 | he wanted to do so.

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

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

982 | Chairman WAXMAN. Thank you, Mr. Cummings. Let me
983 | announce that because of the time constraints, we won't

984 recognize any members who have not come to the hearing up to
985 this point to ask questions, and I'd like to ask each member
986 to stay strictly within the 5-minute time frame even to
987 anticipate that the answer may be part of the 5 minutes; not
988 5 minutes and then a further 5 minutes for the answer itself.

989 [10:31 a.m.]

990 RPTS MERCHANT

991 DCMN MAYER

992 Mr. BURTON. Thank you Mr. Chairman.

993 It's nice to see you again, Senator.

994 Mr. MITCHELL. Thank you, Congressman.

995 Mr. BURTON. I would like to start off by saying, I hope
996 every sport and every commissioner of every sport and all the
997 leaders of the sports will recognize that this is a problem
998 that's very pervasive. And I hope that they'll all take
999 their lead from baseball and football and start making sure
1000 that they stop steroid use and other drug use in their sports
1001 so that we don't have to have these kinds of hearings.

1002 I don't like to see Congress doing this. This doesn't
1003 seem to be something I think Congress should be doing.
1004 Nevertheless, I think it is useful, especially if it gets the
1005 message out to all sports figures and high-profile figures
1006 that they should not be involved in this.

1007 I just have two questions for you, Senator, and then
1008 I'll let my colleagues ask the rest of them.

1009 First of all, some of the sportscasters have asked why
1010 did you give the owners an advance copy of the report and not
1011 give it to the Players Association.

1012 Mr. MITCHELL. No owner received an advance copy of the
1013 report, Congressman. Under the agreement I reached with the
1014 Commissioner at the outset, I provided to the Commissioner's

1015 office a copy of the report because the Commissioner is
1016 legally bound to maintain confidentiality of certain
1017 information with respect to the drug testing program under
1018 the agreement between baseball and the Players Association.
1019 The Commissioner wanted, and I believe appropriately, to be
1020 able to review the report to make certain that I did not
1021 inadvertently disclose any information in violation of his
1022 legal obligation to maintain its confidentiality. He
1023 reviewed the--his attorneys and others reviewed the report on
1024 that basis. There were no material changes in the report as
1025 a result. To the best of my knowledge no owner saw the
1026 report. And certainly it was not my intention, in complying
1027 with that agreement, that the report go to the owners.

1028 Mr. BURTON. Along the same lines, the chief
1029 investigator of the Pete Rose case, John Dowd, said that he
1030 was surprised that there was a refusal by you and your staff
1031 not to make public to the AP and other news people documents
1032 that were referenced in your footnotes.

1033 I would just like to know what the response is to that.

1034 Mr. MITCHELL. Certainly.

1035 We received and requested a number of documents, a total
1036 of 115,000 in all in the course of the investigation, from
1037 others for use in connection with the investigation.

1038 Our investigation is over, my work is completed, and the
1039 responsibility for the disclosure of those documents rests

1040 | with the persons who are the owners and possessors of the
1041 | document. And those who seek them we simply directed to the
1042 | persons who own and possess the documents.

1043 | Mr. BURTON. Thank you, Senator.

1044 | I yield back my time, Mr. Chairman.

1045 | Chairman WAXMAN. Thank you very much, Mr. Burton.

1046 | Mr. Tierney.

1047 | Mr. TIERNEY. Thank you, Senator. Thank you for your
1048 | report and for your time here today.

1049 | I understand, Senator, one of the key features of any
1050 | drug testing policy is the medical use exemption. And
1051 | athletes who have a legitimate need for a particular banned
1052 | substance or banned drug are allowed to apply for an
1053 | exemption in order to use that, and baseball has that kind of
1054 | a policy, as well, as I think the Olympics do. That's an
1055 | important exemption, but people are always concerned that it
1056 | will be abused, obviously, that somebody is going to use that
1057 | exemption as an excuse to get their hands on a performance
1058 | enhancing drug.

1059 | I understand that you attempted to obtain, in order to
1060 | evaluate information on medical use exemptions, that
1061 | information from the Major League testing program, but didn't
1062 | get it. Why did you ask for it?

1063 | Mr. MITCHELL. For the very reason stated in your
1064 | question: to attempt to satisfy ourselves that the program

1065 | was being properly operated.

1066 | There have been published reports involving other
1067 | programs, suggesting that the use of therapeutic use
1068 | exemptions has been a mechanism to avoid the purposes of the
1069 | program; and that's the reason we sought the information.

1070 | Mr. TIERNEY. Now, I understand that you were able to
1071 | obtain them. You didn't have subpoena power, which--it is
1072 | remarkable that you did such a thorough report without that,
1073 | and I commend you for that. This committee did ask the
1074 | league for that information, and to their credit, they gave
1075 | the information to the league. And interestingly enough, one
1076 | of the largest number of players receiving exemptions were
1077 | those that sought it for treatment of attention deficit
1078 | disorder.

1079 | There were drugs like Ritalin and Adderall. My
1080 | understanding is that these are stimulants, similar to
1081 | amphetamines. Some athletes think that they are performance
1082 | enhancers. They're listed by baseball as prohibited
1083 | stimulants. Ritalin is classified as a Schedule II
1084 | controlled substance. According to the Federal Drug
1085 | Association these ADD drugs can cause sudden death, stroke,
1086 | heart attack and adverse psychiatric effects.

1087 | In 2006, ADD drugs were not a major issue. It appears
1088 | that only 28 medical exemptions were granted; but in 2007,
1089 | over 100 major baseball players received medical-use

1090 | exemptions for these types of drugs. That's almost eight
1091 | percent of all players saying they had a medical use
1092 | exemption for an ADD drug.

1093 | This would appear to be an exceptionally high
1094 | percentage, somewhat over 8 percent, or eight times rather,
1095 | the percentage of regular adults taking ADD medication in our
1096 | population.

1097 | I would like to know what your reaction is to that.

1098 | Mr. MITCHELL. Amphetamines were not part of our
1099 | investigation; they were outside the mandate of our
1100 | investigation. So I don't have any knowledge of the
1101 | information that you just provided.

1102 | Mr. TIERNEY. I understand that you weren't able to get
1103 | the information.

1104 | Mr. MITCHELL. I would prefer not to comment until I saw
1105 | the full details, Congressman. I don't know anything other
1106 | than what you just stated. And since it was not part of our
1107 | investigation, I don't have any comment at this time.

1108 | Mr. TIERNEY. I appreciate that. And perhaps we'll save
1109 | the questions for the league and for the Players Association.

1110 | I don't think we have enough information right now, either,
1111 | on that. We will probably want to explore it more.

1112 | But I think it's certainly concerning that you have
1113 | eight times the adult population in our society using it in
1114 | baseball, and so we'll explore it a little bit more with

1115 | them. Thank you.

1116 | Mr. MITCHELL. Thank you.

1117 | Chairman WAXMAN. Thank you, Mr. Tierney.

1118 | Mr. Shays.

1119 | Mr. SHAYS. Thank you, Senator, for your investigation.

1120 | This is almost surreal to me. I first want to compliment the
1121 | chairman and ranking member for holding this hearing and for
1122 | working so closely together. And they worked closely
1123 | together when the now ranking member was the chairman.

1124 | And I want to agree with now-Ranking Member Davis when
1125 | he said this is not the most important issue facing the
1126 | country, but it is still a very important issue. What I
1127 | wrestle with is, and why I feel this is surrealistic is why
1128 | should cheaters, why should cheating be a matter of
1129 | collective bargaining?

1130 | In 1919, the Chicago Blackhawks scandal, you had eight
1131 | players; you had a shortstop, two pitchers, two fielders, a
1132 | first baseman, a utility man, a third base. When they tried
1133 | to throw the Chicago White Sox, playing Cincinnati Reds, they
1134 | were booted out for life. You didn't have a commissioner at
1135 | the time.

1136 | You had a commission, because the American League and
1137 | National League were formed in '03. So now we get a
1138 | commissioner because of this scandal, and they took decisive
1139 | action because of cheating. They didn't do anything other

1140 | than fire them, get rid of them and send a huge message.

1141 | So tell me why cheating should be a matter of collective
1142 | bargaining.

1143 | Mr. MITCHELL. It has been settled law in the United
1144 | States for more than 20 years that drug testing in the
1145 | workplace is a subject of collective bargaining in those
1146 | employer/employee situations where a recognized bargaining
1147 | unit exists.

1148 | Mr. SHAYS. But isn't there a difference?

1149 | The purpose of these drugs is not to give pleasure; it's
1150 | to give them an unbelievable advantage over the other
1151 | players. It means they get to play and someone else doesn't
1152 | get to play. It means, if you're a pitcher, you have an
1153 | advantage over the hitter; if you're a hitter, you have an
1154 | advantage over the pitcher and so on.

1155 | This is cheating, isn't it?

1156 | Mr. MITCHELL. It is indeed. I've described it as such.

1157 | Mr. SHAYS. So what I wrestle with is maybe the issue of
1158 | extracting blood and the testing process. But it doesn't
1159 | seem to me that the penalty should be a matter of collective
1160 | bargaining. It strikes me, if you cheat, that supersedes the
1161 | issue of drugs. It's an issue of cheating.

1162 | So what I wrestle with, and I'm wondering if you have
1163 | the same issue yourself, don't you see a difference between
1164 | someone taking a drug for pleasure and someone taking a drug

1165 | so that they can cheat?

1166 | Mr. MITCHELL. Yes, I do, and I described that in my
1167 | report. There is a difference and it's a significant
1168 | difference. And taking a performance-enhancing substance to
1169 | gain an unfair competitive advantage is a serious form of
1170 | cheating in addition to being a violation of the law.

1171 | Mr. SHAYS. I'll just say what the irony of this for me,
1172 | as well, is because of the Blackhawks scandal, we established
1173 | a commissioner so that they would take, or he or she would
1174 | take, decisive action. And yet we have a circumstance where
1175 | we banned steroids in 1991, but didn't have a testing process
1176 | until 2003. And when we were asking in our hearing nearly 3
1177 | years ago what the procedures were, they basically said, they
1178 | weren't in writing.

1179 | Then we found out they were in writing. But they said
1180 | it was a draft. And then when we got to see what was in
1181 | writing and it wasn't a draft, it was a suspension or a fine.

1182 | So someone could pay a fine and you would never know about
1183 | it.

1184 | Let me ask you about Mr. Palmeiro. This case seems to
1185 | describe to me a continued failure on the part of the
1186 | Commissioner and Major League Baseball to come to grips with
1187 | this issue. Was he found to have taken drugs before he hit
1188 | his 3,000th hit?

1189 | Mr. MITCHELL. I'm sorry, before what?

1190 Mr. SHAYS. He had his 3,000th hit--Mr. Palmeiro. Is
1191 this a case you're familiar with?

1192 Mr. MITCHELL. I'm familiar with the case. But the test
1193 concluded that steroids were present in his system. I don't
1194 know whether a test can tell precisely when the steroids were
1195 placed into his system.

1196 Mr. SHAYS. I'll end with this, because I can ask the
1197 next panel. What I will want to ask the next panel is, when
1198 was he found to have taken the drug, the drugs, was it before
1199 or after he had concluded his 3,000th hit?

1200 Mr. MITCHELL. He was tested before he received his
1201 3,000th hit.

1202 Mr. SHAYS. And it was a positive test?

1203 Mr. MITCHELL. Yes.

1204 Mr. SHAYS. And Major League Baseball kept it quiet
1205 until he hit his 3,000th hit; is that correct or not?

1206 Mr. MITCHELL. That I don't know. Someone behind me is
1207 saying "no," so I think that's a question for Major League
1208 Baseball.

1209 Chairman WAXMAN. Mr. Shays, your time has expired and
1210 we're on a very tight schedule.

1211 Ms. Watson.

1212 Ms. WATSON. I want to thank the Chair and the ranking
1213 member for your efforts to thoroughly investigate the topic
1214 of illegal steroid and hormone abuse in Major League

1215 | Baseball. I also want to commend Mr. Selig, because the
1216 | Mitchell Report is an important tool for the MLB, especially
1217 | for the reason that you, Senator Mitchell, conducted your
1218 | investigation independently and released the report, unedited
1219 | by the Commissioner's office or the players' union.

1220 | And again, I want to caution that, although
1221 | comprehensive, that Mitchell Report is most exhaustive--it's
1222 | not completely exhaustive of the situation. So in an effort
1223 | to take this to another level, I want to focus on the
1224 | responsibility that Major League sports groups, high-profile
1225 | athletes and the leaders in our society have to the general
1226 | public.

1227 | They must be held accountable to the message we send to
1228 | other athletes, college students, impressionable high school,
1229 | young adults and small children, and people serving in a
1230 | position of authority and leadership. And this includes
1231 | sports personalities whom young people seek to emulate in
1232 | every way. And our media-saturated society must always be
1233 | critically aware of the consequences of their action and
1234 | statements.

1235 | Now, Major League Baseball does have well-intentioned
1236 | programs in the field, and I want you to comment. I'll just
1237 | make my statement, and whatever time we have left, Senator, I
1238 | would like you to comment.

1239 | For example, the Compton, California-based legacy of the

1240 | late Congresswoman, Juanita Millender-McDonald, a dear friend
1241 | and a really competent colleague--thanks to the partnership
1242 | of Congresswoman Millender-McDonald and Jimmie Lee Solomon,
1243 | who is here, and Baseball Commissioner Bud Selig and Major
1244 | League Baseball--built its first baseball academy for urban
1245 | minority children. There is nothing like it anywhere else in
1246 | the country. And on the campus of Compton Community College
1247 | the baseball academy brings 2,000 Los Angeles area youth per
1248 | year to play ball, study academics and learn a vocation.

1249 | And I look forward to the program's expansion into my
1250 | neighboring district in the center of Los Angeles--we call it
1251 | South Central Los Angeles. And this is a very positive
1252 | program, but illegal drugs in sports must be eradicated for
1253 | the messages to truly sink in with our youth. And so I would
1254 | like to see some push behind the proliferation of such a
1255 | program.

1256 | In the remaining time, would you comment? And thank you
1257 | so very much for your dedication and your work.

1258 | Mr. MITCHELL. Thank you for your kind remarks.

1259 | I wholeheartedly endorse your suggestion that such
1260 | programs gain support and proliferate around the country. It
1261 | is of critical importance.

1262 | Reference was earlier made to Don Hooton, who is here; I
1263 | met with him, I've listened to his message. He's gone
1264 | through it painfully, as have other families who are here. I

1265 | think it is a very serious problem, and it can't be solved
1266 | solely by the professional leagues themselves.

1267 | That's the point I tried to make earlier. This goes far
1268 | beyond baseball or any one organized sport. It's a broad,
1269 | societal issue and will require a broad response at every
1270 | level of society. And grassroots programs of the type you
1271 | described at Compton are just what's needed all around the
1272 | country.

1273 | Ms. WATSON. Thank you so much, Senator.

1274 | Chairman WAXMAN. Thank you, Ms. Watson.

1275 | Mr. Souder.

1276 | Mr. SOUDER. Thank you, Mr. Chairman.

1277 | I have a few questions that go to the fundamental
1278 | question of whether baseball can, in fact, regulate itself;
1279 | and I want to ask several of them. If you can't give a full,
1280 | complete answer, then perhaps you could answer for the record
1281 | so it's part of a complete record.

1282 | Mr. MITCHELL. I'll do that, Congressman.

1283 | Mr. SOUDER. One challenge is this, a code of
1284 | protection, this wall of silence that you were met by players
1285 | was a horrific and terrible role model for Americans all over
1286 | this country and kids, because we could not prosecute any
1287 | drug abuse in America if Americans followed the pattern that
1288 | baseball players did; that drug abusers and drug dealers
1289 | being protected in this way doesn't help the drug abuser and

1290 | it harms potentially innocent people, and calls into question
1291 | really how you do collective bargaining when they wouldn't
1292 | respond to you, they won't respond to Major League Baseball.

1293 | I mean, literally one either former or current player
1294 | coming forth is a humiliation. If that were followed by
1295 | other Americans, we would be in a disaster in our society.

1296 | Now, a couple of things. You mention on page 309, just
1297 | before you wind up, that there were other trainers, Kirk
1298 | Radomski had mentioned that. There were probably others that
1299 | came through. It's pretty clear that the major breakthroughs
1300 | came because of the BALCO investigation. There was really no
1301 | legal breakthrough. You didn't have subpoena power. You
1302 | didn't have the ability to grant immunity, which we usually
1303 | work with in narcotics cases.

1304 | Do you believe that we can actually find out--because
1305 | most of this stuff is 2 years old, not because we have any
1306 | proof that it's not ongoing; it's because that's when BALCO
1307 | investigations lost our key people--can this be done without
1308 | the Justice Department and find out whether it's going
1309 | currently, or not currently if you don't have immunity and
1310 | you don't have the ability to subpoena, to find out even
1311 | what's happening currently?

1312 | The second part of my question is, did you in the course
1313 | of--and this goes to management culpability, obviously the
1314 | abuser's abuser--but did you look through e-mails and

1315 | discussions with the management to find out what they knew,
1316 | whether they were discussing it, whether they had, in fact,
1317 | some knowledge that they didn't come forth, because there
1318 | really wasn't a lot of that.

1319 | You allude to the fact that everybody was involved in
1320 | this. But if, in fact, under pressure, management can't be
1321 | trusted to make the decision, this becomes a huge challenge
1322 | in how we go forward.

1323 | Similarly, with the trainers, the trainers, it's clear
1324 | from the statement about Radomski, they are under the
1325 | employment of the managers, not under the collective
1326 | bargaining agreement of labor. Did any of them come forth?
1327 | If they didn't come forth, why wasn't their management
1328 | pushing them to come forth?

1329 | I have heard from many sports writers in the first round
1330 | and in this round, who say they saw the stuff in the locker
1331 | room, they know the trainers were there. Why wouldn't they
1332 | talk, because they weren't part of the collective bargaining
1333 | agreement?

1334 | Mr. MITCHELL. We interviewed over approximately 700
1335 | witnesses. A very large number of them were employees of
1336 | Major League Baseball clubs, who were required to participate
1337 | in interviews as a condition of their employment. And they
1338 | included many of the persons in the categories that you
1339 | described.

1340 As I note in my report, quite a number of witnesses
1341 provided testimony that we judge to be not credible in the
1342 sense that many said, "I didn't know anything about
1343 steroids," "I never saw anything," "This is the first
1344 discussion I've ever had involving it." but a large number
1345 came forward. And we also talked to a large number of former
1346 persons in the employment categories that you described.

1347 And so I think the comments made that the report is not
1348 exhaustive in the sense that it does not include every single
1349 person who used steroids, I don't think it is ever possible
1350 to get to that level. It does provide a substantial basis
1351 for describing the era as it exists.

1352 One final comment, Congressman, on the issue of trainers
1353 and other medical personnel. I repeat what I said earlier:
1354 They are subject to certain legal and ethical constraints on
1355 what they can and cannot disclose about persons whom they
1356 serve in that capacity. And that has to always be taken into
1357 account in trying to achieve the proper balance.

1358 Mr. SOUDER. Can that be done--because of HIPA and all
1359 that type of thing, can that be done in any format other than
1360 the Department of Justice? In fact, won't that come up in
1361 future baseball enforcement?

1362 Mr. MITCHELL. It's very difficult to do in the absence
1363 of the power of compulsion.

1364 I prosecuted at the State level. I was the United

1365 States attorney for Maine and a Federal Judge and I've now
1366 been through this experience, and I can tell you, there's a
1367 huge difference between conducting an investigation when you
1368 can compel testimony and documents and when you have to
1369 simply ask for them. A huge difference.

1370 Chairman WAXMAN. Thank you, Mr. Souder.

1371 Mr. Lynch.

1372 Mr. LYNCH. Thank you, Mr. Chairman and the ranking
1373 member.

1374 Thank you, Senator. And as an Irish-American, I
1375 appreciate all your great work in Northern Ireland as well,
1376 although I find it difficult to accept the analogy to what
1377 we're doing here.

1378 Let's go back to the previous point about the difficulty
1379 of an investigation without the ability to compel. You had
1380 very limited tools at your disposal. And still I am quite
1381 impressed with the amount of information that you've come up
1382 with here. Could I ask you what percentage of your report or
1383 what portion of your report would you consider the result of
1384 the assistance given to you in your commission by Mr.
1385 Radomski and Mr. McNamee.

1386 Mr. MITCHELL. We made no effort to categorize it in
1387 percentage terms on that basis.

1388 Mr. LYNCH. Well, let me put it in the inverse then.
1389 How successful do you think you would have been without it?

1390 Mr. MITCHELL. Not as successful as we were with them.

1391 Mr. LYNCH. All right. Here's what I'm getting at.

1392 You conducted this as a voluntary investigation. From
1393 this side of the dais this is an investigation regarding the
1394 Controlled Substances Act, the Federal Controlled Substances
1395 Act; and you were compelled to conduct this investigation
1396 without tools, without the subpoena power, without the
1397 ability to plea bargain. And it seemed to me in reading the
1398 report that a lot of information came down, a lot of people
1399 were named as a result of what Mr. Radomski and what Mr.
1400 McNamee brought forward.

1401 Now, their testimony, unlike what you were trying to
1402 compel, was not voluntary. They cooperated as part of their
1403 plea bargain agreement. And so my first question to you is,
1404 how fruitful or how worthwhile do you think a further
1405 investigation might be conducted by someone else, but with
1406 the aid of the ability to subpoena, with the prospect of
1407 criminal charges, and with the ability to plea bargain?

1408 Mr. MITCHELL. I respectfully do not agree that this was
1409 an investigation into the Controlled Substances Act. That
1410 was a necessary part of it, since many of the acts involved
1411 violated that law and other laws. But this is a private
1412 investigation conducted for a private entity, Major League
1413 Baseball, in an effort to--first, to respond to the request
1414 of the chairman of this committee and the committee as a

1415 whole, and secondly to lay the foundation for policies to
1416 reduce or eliminate the use of such substances in the future.

1417 Let me just say that it is the policy of the United
1418 States Government, and has been for many years, not to
1419 prosecute individual users of some illegal substances, but to
1420 concentrate prosecutorial resources on manufacturers,
1421 distributors and dealers. That's the case today.

1422 In the last few years 250 professional baseball players
1423 have been publicly identified as having tested positive in
1424 drug tests and suspended, most of them in the minor leagues,
1425 because that program has been going on longer, some in the
1426 major leagues. Not a single one has been prosecuted, not a
1427 single one, even though the evidence was public and known.
1428 That's because we have pursued a policy in this country for
1429 decades that we ought to be concentrating on the distributors
1430 and the dealers.

1431 Now, if Members of Congress believe that is a wrong
1432 policy, then of course it is within their power to pursue a
1433 change in that policy. But if you do that, you will go back
1434 to the arguments made 20, 30, 40 years ago when this policy
1435 was first initiated about how best to allocate scarce
1436 government and prosecutorial resources.

1437 Mr. LYNCH. In yielding back my time, Senator, I just
1438 want to say that I think there's a distinct difference
1439 between these individuals, these professional athletes

1440 represented by counsel, that have agents, that have a lot of
1441 resources who are not unwittingly being induced to use these
1442 drugs but are seeking them out for a decided advantage. This
1443 isn't some drug pusher going into a neighborhood preying on
1444 adolescents.

1445 These are adults. These are people who have the
1446 resources, the skills, the ability to discern what is good
1447 for them and what is not good for them. And they are
1448 deciding to use these drugs at a decided advantage because
1449 there's a monetary incentive there, distinct monetary
1450 incentive for them to cheat.

1451 And I will yield back my time. Thank you, Senator.

1452 Mr. MITCHELL. Thank you, Congressman.

1453 Chairman WAXMAN. Thank you, Mr. Lynch.

1454 Mr. Turner.

1455 Mr. TURNER. Thank you, Mr. Chairman.

1456 And thank you, Senator, for all your work on this. And
1457 I want to echo the comments of those who have gone before me
1458 on this panel that the most important issue is how this
1459 reflects to our kids and how, from this, their views are
1460 formed of drug use.

1461 In using your analogy on Northern Ireland, you indicated
1462 that what we need to do in this is turn the page, get it
1463 behind us and go forward. But you also said that the Players
1464 Association was largely uncooperative. In order to turn the

1465 | page we have to at least have an agreement on shared values.

1466 | But yet you have great optimism that that could be done.

1467 | Could you explain that to me?

1468 | Mr. MITCHELL. Yes. I did say the Players Association
1469 | was largely cooperative in my investigation. I also said
1470 | that in 2002 the Players Association reversed its
1471 | long-standing policy of opposition to a mandatory random drug
1472 | testing program and agreed to one, the program that exists
1473 | today. That was a very significant step forward, and I think
1474 | they ought to get credit for that, as well as concern about
1475 | the other aspect of it.

1476 | I also pointed out that since 2002 the Players
1477 | Association and the Commissioner and the clubs, on the other
1478 | hand, have agreed to a number of steps to improve and
1479 | strengthen the program even though they were not obligated to
1480 | take them up, because the collective bargaining agreement had
1481 | not expired. It's a policy of the United States to encourage
1482 | collective bargaining agreements when employees are
1483 | represented by unions. And to ensure stability, economic
1484 | stability, once an agreement is entered into, the parties are
1485 | not obligated to take up any of the provisions until the
1486 | agreement expires, notwithstanding that both sides have made
1487 | significant changes, some of which, Congressman, came to
1488 | light in the course of our investigation. As we would report
1489 | it to them and ask them questions about it, they took steps

1490 | to correct it on an ongoing basis.

1491 | Mr. TURNER. Thank you, Senator, because I do think that
1492 | with all the work that has been done--and our chairman and
1493 | ranking member need to be congratulated and, of course, for
1494 | your work--there does have to be some focus on the future and
1495 | what changes are being made so that we do have an ability to
1496 | have a different message to our kids. And I appreciate your
1497 | work to help accomplish that.

1498 | Mr. MITCHELL. Thank you, Congressman.

1499 | Chairman WAXMAN. Thank you very much.

1500 | The Chair now recognizes Mr. Yarmuth.

1501 | Mr. YARMUTH. Thank you, Mr. Chairman.

1502 | Chairman WAXMAN. Before you begin, Mr. Yarmuth, Senator
1503 | Mitchell, I know you hoped to get out by 11:00. We have five
1504 | members, and there are some important issues that we still
1505 | want--my colleagues want to cover. If you would give us
1506 | another 20 minutes, I would appreciate it.

1507 | Mr. MITCHELL. Yes, that's fine. I will, Mr. Chairman.

1508 | Chairman WAXMAN. Thank you.

1509 | Mr. YARMUTH. Thank you for your report, although I must
1510 | say as the Representative of Louisville, Kentucky, I'm
1511 | disappointed the report didn't deal with the performance
1512 | enhancing qualities of the Louisville Slugger. I'm sure you
1513 | will take that up at a further time.

1514 | Mr. MITCHELL. There has been a lot of speculation about

1515 bats in recent years, as you know.

1516 Mr. YARMUTH. But I do want to focus on the issue of the
1517 concept of performance enhancing, because you mentioned in
1518 your testimony--you said, the players apparently
1519 believe--they took HGH because they apparently believe that
1520 it enhanced their ability to recover from injuries and to
1521 combat fatigue. And I think I'm focused, as some of the
1522 other Members are, Congressman Cummings and others, on the
1523 impact, the influence on our young people.

1524 And I'm sure that our young people are looking at this
1525 whole issue of performance enhancement and looking at Barry
1526 Bonds and some of the other players who have been named and
1527 saying, I can hit more home runs, I can throw faster pitches.

1528 And I'm sure you're familiar with the op-ed piece that was
1529 in the New York Times right after your report came out to a
1530 sociologist, and a statistician analyzed all the players
1531 mentioned in your report and found out that there was no
1532 discernible statistical difference between their performance
1533 before and after they were identified as having taken these
1534 enhancement substances. And, in fact, there was a slight
1535 drop-off, if anything.

1536 So I'm wondering whether in the course of your
1537 investigation you felt that we really knew enough about what
1538 these substances really did. Because in terms of providing
1539 education for our kids, if in fact there is no performance, I

1540 mean in terms of batting average or ERA or those types of
1541 statistics, maybe the kids would be less prone to use them if
1542 we really found out that there wasn't any quantitative
1543 difference in their performance.

1544 Would you comment on that, please?

1545 Mr. MITCHELL. I believe that the subject is very
1546 complicated. And as often happens in life, a phrase has
1547 entered into the universe of vocabulary of our society,
1548 "performance enhancing substances." if you look at and talk
1549 to the players who use them, you find that the motives, while
1550 they ultimately involve performance, don't always do so in an
1551 immediate sense.

1552 A lot of it is recovery time, recovery from injury,
1553 recovery from strenuous workouts, the ability to work out
1554 more often. A lot of it is psychological: It made me feel
1555 good. Each of us is familiar with that effect. When you
1556 walk in to give a speech before 5,000 people at a convention,
1557 you know if you're feeling good you're going to do a much
1558 better job than if you're not. There is a huge placebo
1559 effect all throughout American medicine, not just in terms of
1560 athletes or performance enhancing substances.

1561 So I think the subject is more complicated than a simple
1562 phrase represents.

1563 However, I think there is also, on the other side,
1564 substantial evidence that in at least some individual cases

1565 | performance was enhanced as a consequence. It might have
1566 | been psychological, it might have been recovery. I happen to
1567 | think, having tried to play baseball myself as a young man,
1568 | that anybody who makes it to the major leagues is a highly
1569 | talented person. You have to be a great athlete to get to
1570 | the major leagues in the event.

1571 | So I don't think anybody who gets to the big leagues
1572 | needs a steroid or some other drug to be able to hit or throw
1573 | or field a baseball. What they were looking for was a
1574 | competitive advantage in a highly competitive situation.

1575 | In my report, we quote one player who said one of the
1576 | biggest gripes is this other guy is taking steroids and he's
1577 | taking my spot on the roster. And so I think it's more
1578 | complicated than the phrase itself suggests. And as so often
1579 | happens in life, the motives of the individuals who take them
1580 | are not always identical; indeed, some of them cite different
1581 | reasons for taking different substances.

1582 | Mr. YARMUTH. Thank you, Senator. I yield back.

1583 | Chairman WAXMAN. Thank you, Mr. Yarmuth.

1584 | Mr. McHugh.

1585 | Mr. MCHUGH. Thank you, Senator. Like all my colleagues
1586 | I deeply appreciate not just this work, but all the work
1587 | you've done in an amazing career.

1588 | In both your written, as well as your presented
1589 | testimony here today, you talked about, in your words, a

1590 "truly independent administrator." I wonder if you could
1591 define for the record what you mean by that, particularly
1592 with respect to the current administrative approach by Major
1593 League Baseball.

1594 Mr. MITCHELL. Currently, all of the professional--the
1595 major professional sports in the United States operate their
1596 programs in a way that retains significant authority in the
1597 league and the Players Association. For example, in baseball
1598 the person who holds the title of independent program
1599 administrator may be dismissed at any time by either party
1600 for any reason or for no reason.

1601 That person does not have authority over important
1602 elements of the program: the testing regime, in season and
1603 off season, the laboratories to be used to analyze the
1604 results, a range of issues. So while he has the title,
1605 "independent program administrator," I do not believe that he
1606 qualifies as independent as that term is understood in terms
1607 of best practices in the field today.

1608 I cited a couple of examples, but I also said--and I
1609 believe this--that the test is not the form adopted or the
1610 words used to describe it; the test is the substance of the
1611 authority that the person actually has. And that's what the
1612 two parties, the Players Association and Major League
1613 Baseball, the clubs, have to decide on what to do.

1614 They're perfectly capable of devising an alternative

1615 | method so long as it truly meets the test of independence.
1616 | And I don't think you'll be able to answer that until you see
1617 | which process they adopt. There are models now which exist
1618 | outside of baseball, which I cited.

1619 | Mr. MCHUGH. Thank you. I would certainly agree with
1620 | your observation that both Major League Baseball and the
1621 | Players Association have come a long way and have acted in a
1622 | forward leaning way to implement many of the provisions of
1623 | your report.

1624 | Have you had a chance to sit down with Major League
1625 | Baseball and the Players Association to talk about the
1626 | remaining provisions in your report? Do you intend to do
1627 | that, if you have not? And whether you have or have not, how
1628 | do you view the likelihood of all of your recommendations
1629 | being implemented in a timely manner?

1630 | Mr. MITCHELL. I've spoken by telephone twice with each,
1631 | with the Commissioner and with Mr. Fehr, prior to today and
1632 | have talked with them; and in both cases we agreed that we
1633 | would talk in the future.

1634 | I have to say that I'm torn. My work is completed, and
1635 | I'm trying hard to get back to other things in my life. So I
1636 | don't want to appear here to be volunteering to continue my
1637 | participation any longer. But I certainly will do anything
1638 | that I'm asked.

1639 | My understanding is that they have begun discussions on

1640 | the issues within their jurisdiction. And as I noted in my
1641 | remarks, the Commissioner has unilaterally adopted the
1642 | recommendations that I made, which he had the authority to
1643 | act upon unilaterally.

1644 | Mr. MCHUGH. So you're optimistic that the entire report,
1645 | in due course, will be implemented?

1646 | Mr. MITCHELL. This is not an easy issue. Let's just
1647 | look at the facts. There are 30 clubs, there are dozens of
1648 | officials. You have constituents. The Commissioner has
1649 | constituents. There are 1,200 Major League players. They're
1650 | scattered all over the world. They won't be getting together
1651 | until some time in February or March at spring training.

1652 | Mr. Fehr has constituents. So just as you go home on
1653 | weekends and hold town meetings and consult with your
1654 | constituents and try to get a sense of what they're feeling,
1655 | they've got to do what is, in essence, the same thing. And I
1656 | think they ought to be given the opportunity to do that, and
1657 | then see what they can accomplish. And then
1658 | everybody--members of the committee, members of the public,
1659 | members of the press--will have a chance to judge and
1660 | evaluate what they've done.

1661 | Mr. MCHUGH. Thank you, Senator.

1662 | Thank you, Mr. Chairman.

1663 | Chairman WAXMAN. Thank you, Mr. McHugh.

1664 | Ms. Norton.

1665 Ms. NORTON. Thank you, Mr. Chairman. And thank you
1666 particularly for the rigorous follow-up on this issue.

1667 We all appreciate what you've done, Senator Mitchell;
1668 and as I hinted to you before the hearing, in your spare
1669 time, Congress could undoubtedly use your services with a few
1670 disputes I could name. I'm particularly pleased that your
1671 report has come up before baseball returns to Washington this
1672 spring.

1673 I want to ask you a question about the naming of names,
1674 which I think is one of the most valuable parts of your
1675 report. And you named 90 players who, you alleged, used
1676 steroids and human growth hormone. It's interesting to note
1677 that few have denied the allegation since. I'm going to ask
1678 you about one who has. And to their credit some have come
1679 forward to say that they indeed were involved in such use.

1680 I would like to give you an opportunity to respond to
1681 the criticism, however, to the naming of players; and some
1682 have alleged that you had too little corroboration. In doing
1683 so, could you tell us what standard of evidence you used in
1684 deciding when to name players and when not to name players?
1685 Were there some you did not name because you did not think
1686 that they had met whatever standard you were using?

1687 Mr. MITCHELL. I carefully reviewed and considered all
1688 of the information that we received about the purchase, the
1689 possession, or the use of performance enhancing substances by

1690 Major League Baseball players. We received information from
1691 a wide variety of sources. And, of course, in every instance
1692 we attempted to establish the truthfulness of the information
1693 that we received before anything was placed in our report.

1694 Since the Commissioner had made clear from the outset
1695 that he wanted this report to be public, we obviously
1696 understood that our responsibility was to learn as much as we
1697 could and to make public that which we could in response to
1698 the mandate to accurately, fairly, and thoroughly provide all
1699 the information possible.

1700 Now, we received information from so many sources that
1701 it would take far more than time permits here in this limited
1702 time to deal with every single source of information. Some
1703 of it was documents, some of it was cancelled checks, mailing
1704 receipts, admissions by persons. A significant number of
1705 persons admitted the allegations over the course of time;
1706 some of it, as has been noted previously, came from the
1707 testimony of two men, Kirk Radomski and Brian McNamee.

1708 Ms. NORTON. Let me ask you, Senator, because I think
1709 those are precisely the kinds of sources we would expect you
1710 to use under the circumstances. But let me ask you about the
1711 most controversial name in your report, perhaps, Roger
1712 Clemens, a seven-time Cy Young Award winner who, you say, was
1713 a user of steroids and human growth hormone. Now we see Mr.
1714 Clemens coming out and strongly denying these allegations and

1715 | doing so publicly.

1716 | Why do you think he refused your invitation to talk to
1717 | you before the release of the report?

1718 | Mr. MITCHELL. I do not know why. As I stated earlier,
1719 | Congresswoman Norton, we followed the legal process which we
1720 | were required to follow; and that is notification of
1721 | then-current players through the Players Association. As I
1722 | described earlier--and I will not repeat so as not to take up
1723 | all of your time--the way it turned out, there were two
1724 | letters that--

1725 | Ms. NORTON. Obviously, he hasn't told you and he hasn't
1726 | told us. That's why I wondered.

1727 | But could I ask you about Mr. McNamee on whom you relied
1728 | heavily, for him and perhaps others. Why do you believe that
1729 | Mr. McNamee was a credible witness, and have you learned
1730 | anything since the report that would lead you to reassess
1731 | your conclusions regarding this credibility that you found in
1732 | Mr. McNamee's allegation?

1733 | Mr. MITCHELL. Since the report was issued, Andy Pettite
1734 | has said that Mr. McNamee's statements about him were true.
1735 | So they confirmed the testimony.

1736 | Ms. NORTON. And you believe he was a credible--you
1737 | believe he was credible on Roger Clemens, why?

1738 | Mr. MITCHELL. Well, let me describe the process.

1739 | We made every effort to establish the truthfulness of

1740 his testimony. Through his attorney he entered into a
1741 written agreement with the United States Attorney's Office
1742 for Northern California. That agreement provides that
1743 McNamee will cooperate with that office. No truthful
1744 statements can be used against him in any Federal prosecution
1745 by that office. If, however, he should be untruthful in any
1746 statement made pursuant to that agreement, he may be charged
1747 with criminal violations, including making false statements,
1748 which is a felony.

1749 As part of his cooperation with the U.S. Attorney's
1750 Office and at his request, Mr. McNamee agreed to be
1751 interviewed by me and my staff and to provide truthful
1752 information. I interviewed him three times, once in person,
1753 twice by telephone. His personal lawyer participated in each
1754 of the interviews. Also participating were Federal
1755 prosecutors and agents from the FBI and the Internal Revenue
1756 Service. I told him at the outset of each interview that I
1757 wanted nothing but the truth, no exaggeration, no minimizing,
1758 just tell the truth.

1759 Also, on each occasion Mr. McNamee was informed by the
1760 Federal officials present that if he made any false
1761 statements during these interviews, he would subject himself
1762 to further criminal charges.

1763 Chairman WAXMAN. Senator Mitchell, let me--

1764 Mr. MITCHELL. I just want to make one final statement.

1765 Thus, Mr. McNamee had an overwhelming incentive to tell
1766 the truth. And I'll just finish, Mr. Chairman.

1767 The third and last interview was in early December 2007,
1768 just before we released the report. The purpose was to make
1769 absolutely certain that we had accurately understood and
1770 reported his statements to us; and to make certain that we
1771 achieved that objective, a senior member of my investigative
1772 staff read to him verbatim the portions of the report that
1773 were attributed to him.

1774 At the conclusion of the interview, as we had at the
1775 beginning, we reminded him that all we wanted was the truth.
1776 We asked him if he was completely comfortable with the truth
1777 and accuracy of the statements which would be included in the
1778 report, and he said that he was. He had a couple of minor
1779 suggestions which had no material effect on the report, and
1780 we proceeded on that basis.

1781 And, as noted, I asked Mr. Clemens to meet with him to
1782 give him an opportunity to respond to the allegations, and he
1783 declined.

1784 Chairman WAXMAN. Thank you, Ms. Norton.

1785 Senator Mitchell, in other words, despite the public
1786 presentation by Mr. Clemens that the testimony was not
1787 accurate, you continue to feel comfortable with Mr. McNamee's
1788 credibility?

1789 Mr. MITCHELL. We believe that the statements provided
1790 to us were truthful.

1791 Chairman WAXMAN. Thank you very much.

1792 Ms. McCollum.

1793 Ms. MCCOLLUM. Thank you, Mr. Chair.

1794 Senator, if players using these drugs constitute
1795 cheating, and owner and league officials knew about the use
1796 of these illegal drugs, as is clear from the report, then it
1797 would appear for more than a decade millions of baseball fans
1798 were subject to fraud, fixed games played by big drug users
1799 that illegitimately altered the outcome of the games.

1800 It's my opinion we're here in the middle of a criminal
1801 conspiracy that defrauded millions of baseball fans, billions
1802 of dollars over the past 15 years. If baseball is simply
1803 another form of entertainment, like going to a concert or
1804 attending a professional wrestling match, which an audience
1805 attends solely for pleasure, and they do not attend under the
1806 presumption of some form of fair athletic competition, then
1807 there would be no difference between Barry Bonds and Britney
1808 Spears.

1809 But, in fact, Major League Baseball is sold as a
1810 legitimate competition in which the outcome of the game is
1811 dedicated in a field of transparency wherein every fan can
1812 watch it. The fact that league officials, owners, players
1813 and players union all knew of the massive illegal drug abuse

1814 | problem that existed, and continues to exist, with the use of
1815 | human growth hormones demonstrates to me fraud to millions of
1816 | baseball fans. Every fan who has bought a ticket to see the
1817 | game for the past 20 years has been witness to a fraud.

1818 | Baseball is sold as America's game: hometown, apple
1819 | pie. But, in fact, it appears that it has been rooted in
1820 | cheating for profit. The more home runs hit, the more fans
1821 | in the seat, the more money in owners' pockets and the bigger
1822 | salaries for players.

1823 | Major League Baseball is filled with lawbreakers and
1824 | coconspirators who ignore the problem and actively fuel the
1825 | problem.

1826 | In your report you mention two items which I would like
1827 | you to elaborate on. David Segui of the Baltimore Orioles on
1828 | September 24, 2004 told his general manager, Jim Beattie,
1829 | that he was going to go see a doctor in Florida to obtain
1830 | human growth hormone. This information was related to the
1831 | second Orioles general manager, Mike Flanagan, so two of the
1832 | top Orioles executives knew about this drug use. And your
1833 | report notes that no one in the Orioles organization reported
1834 | this admission of use of growth hormone to the Commissioner's
1835 | office.

1836 | You also discuss another incident, one surrounding Greg
1837 | Anderson and Barry Bonds' personal trial. The Giants
1838 | trainer, Stan Conte, raised concerns about Anderson supplying

1839 | players with steroids to the team's general manager, Brian
1840 | Sabean.

1841 | So my question to you is, what did these individuals do
1842 | with this information? For example, did Brian Sabean take
1843 | this information and ask to have Mr. Anderson investigated?
1844 | You spoke to the Giants' owner; what did the Giants' owner
1845 | tell you about this? Did Mr. Beattie or Mr. Flanagan give
1846 | you any insight as to why they failed to report this very
1847 | important information to the Commissioner?

1848 | To your knowledge, has anyone else in the Orioles
1849 | organization who knew about the use of human growth hormones,
1850 | what have they done?

1851 | And I thank you for your work on this, because I want to
1852 | get America's game back on track.

1853 | Mr. MITCHELL. Let me state as a general matter at the
1854 | outset, Congresswoman, that I very much share the concern
1855 | that you expressed about the use of a performance enhancing
1856 | substance in baseball. But I think we all have to recognize
1857 | that this goes far beyond baseball and it goes far beyond the
1858 | Morton era.

1859 | One of the things I did in preparation for this
1860 | investigation was to read some of the history, and you can go
1861 | back to the original Olympics, many thousands of years ago,
1862 | to find allegations of people in competitive sports using
1863 | material to try to gain a competitive advantage. So I think

1864 | we should be clear, this is not unique to baseball, this is
1865 | not unique to the Morton era, this has existed for a very
1866 | long time.

1867 | Chairman WAXMAN. Senator Mitchell, let me interrupt you
1868 | because we're trying to help you get to your train. Could
1869 | you address the specific question? Then we have one last
1870 | question.

1871 | Mr. MITCHELL. We don't have any more knowledge about
1872 | the incident that you referred to, other than we put what we
1873 | knew into the report, and we have no information that any
1874 | other Orioles official was aware of the allegations.

1875 | Chairman WAXMAN. Thank you very much.

1876 | Mr. Welch.

1877 | Mr. WELCH. Thank you, Mr. Chairman.

1878 | Senator Mitchell, I agree with the wisdom of your
1879 | judgment to look forward, not look backwards. I also agree
1880 | with your report that the minority of players who used these
1881 | drugs violated Federal law and baseball policy and distorted
1882 | the fairness of the game. The question I have is this.

1883 | Do you believe that a Major League baseball player who
1884 | did use performance enhancing drugs and is the holder of a
1885 | Major League baseball record--most home runs, most batter
1886 | struck out, most stolen bases--should be stripped of that
1887 | record?

1888 | Mr. MITCHELL. Congressman, I've done several of these

1889 | investigations, and in every instance I've been invited to
1890 | express opinions that go far beyond my mandate and far beyond
1891 | my authority and, therefore, I have adopted and pursue a
1892 | policy of restraint.

1893 | I answered the questions I was asked to answer in the
1894 | report. It really is not my responsibility, nor do I have
1895 | any special knowledge or insight that entitles my opinion to
1896 | have greater weight than yours or any other fan on the
1897 | subject you express. That's the responsibility of other
1898 | officials; that's where it should rest, and I think that I
1899 | should limit myself to what I was asked to do, which I've
1900 | done.

1901 | Mr. WELCH. Just a few questions about the role of Major
1902 | League Baseball itself.

1903 | According to your report, the 1998 winter meetings, Dr.
1904 | Millman, Robert Millman, the medical director of Major League
1905 | Baseball, gave a presentation that focused on the benefits,
1906 | not the risks of taking testosterone, a steroid.

1907 | Can you elaborate on why the medical director would be
1908 | doing this, which appears to be completely in conflict with
1909 | the policy?

1910 | Mr. MITCHELL. I'm not able to elaborate. We made
1911 | repeated attempts by telephone, by certified mail and
1912 | otherwise to contact Dr. Millman. He did not respond. And,
1913 | therefore, we were unable to ask him about that and some of

1914 | the other information contained in the report.

1915 | Mr. WELCH. There are a couple of other incidents in
1916 | your report of apparent complacency by Major League Baseball.

1917 | When the Florida Marlins were presented with steroids that
1918 | were found in the locker of Ricky Bones, that was not
1919 | reported; in fact, the steroids were returned to him.

1920 | Another case where the personal trainer of Juan
1921 | Gonzalez, as you know an MVP, was caught by Canadian customs
1922 | with syringes. Do you know what happened in that situation?

1923 | Mr. MITCHELL. What we found out we put in the report.
1924 | Beyond that, we don't have any information. I think it's
1925 | fair to say that, as we described in the report, the baseball
1926 | policy requiring reporting of information was not widely
1927 | known or understood and not widely followed during the era
1928 | described.

1929 | Mr. WELCH. Your report does provide examples of Major
1930 | League Baseball having what I think could be called a
1931 | "culture of silence"; the desired teams to win games at all
1932 | costs, and the historic inability of the Commissioner's
1933 | office to take the problem seriously for longer than it
1934 | should have.

1935 | Any comments on the role of Major League Baseball in,
1936 | essentially through this action and inaction, aggravating
1937 | what was already a very dangerous situation?

1938 | Mr. MITCHELL. I made my comments, Congressman, in the

1939 | report and in my opening statement, and I thought about those
1940 | words and believed they best and most accurately and most
1941 | fairly characterized the circumstance.

1942 | Mr. WELCH. I yield my time. Thank you.

1943 | Chairman WAXMAN. Thank you very much, Mr. Welch. I do
1944 | want to point out that Mr. Davis has been sitting here a long
1945 | time, and I regret the fact that he's not going to be able to
1946 | have time to ask any questions.

1947 | Mr. MITCHELL. Is this the last one?

1948 | Chairman WAXMAN. Yes.

1949 | Mr. MITCHELL. Go ahead, Mr. Davis.

1950 | Mr. DAVIS OF ILLINOIS. Thank you very much, Mr.
1951 | Chairman. And I want to thank you for your continuing probe
1952 | of these great issues of significance to the American people.

1953 | Senator Mitchell, I want to commend you and your
1954 | colleagues for the tremendous work that you've done in
1955 | preparing this report. And I certainly appreciate your
1956 | giving me these last opportunities.

1957 | It is my feeling that Major League Baseball has failed
1958 | miserably in policing itself relative to the use of illegal
1959 | drugs and the proliferation of performance enhancing
1960 | substances by Major League baseball players.

1961 | The report that you have put together implies certain
1962 | things to me. My question is, do you think that the report
1963 | suggests that Major League Baseball has the inability to

1964 | actually police itself, or is it going to require further
1965 | legal legislative action to get beyond the discussions and
1966 | get beyond where we are to something actually being done
1967 | that's going to stop the proliferation?

1968 RPTS KESTERSON

1969 DCMN NORMAN

1970 [11:30 a.m.]

1971 Mr. MITCHELL. I do not believe that the report leads to
1972 the conclusion that Major League Baseball is incapable of
1973 policing itself. To the contrary, I believe that what has
1974 happened in baseball is quite similar to what has happened in
1975 almost every other sport, including the Olympics: a slow
1976 start to recognize the problem; an ineffective beginning; but
1977 gradually an effort increasing in intensity and effectiveness
1978 that I believe can be successful. I think it is very
1979 important that you don't take one sport and think that it is
1980 unique in that respect. You go back over the Olympics, you
1981 go over all the other sports; they've gone through the same
1982 process of trial and error, getting started, trying to figure
1983 out what to do.

1984 So I believe that in the past 5 years, beginning with
1985 the adoption of the mandatory random drug testing program and
1986 continuing through a series of changes and improvements in
1987 that program in an effort to make it more effective to the
1988 contrary, MLB and the Players Association have demonstrated
1989 an ability to deal with the problem, not as effectively as I
1990 or you would like, not as effectively as they'd like.

1991 And since the problem is dynamic, it is constantly
1992 changing. At this very moment, in various parts of the

1993 world, there are people trying to figure out ways to make new
1994 drugs that will enhance performance and not be detectable.
1995 You have to keep at it and you have to adopt the best program
1996 and you have to be flexible. I believe they can do it. I
1997 hope they will.

1998 Mr. DAVIS OF ILLINOIS. Let me just ask, how cooperative
1999 would you say that the officials of Major League Baseball
2000 were during your investigation and how cooperative were the
2001 Players Association?

2002 Mr. MITCHELL. The commissioner was fully cooperative.
2003 The clubs were cooperative. The Players Association was
2004 largely uncooperative.

2005 Mr. DAVIS OF ILLINOIS. Thank you very much, Senator.

2006 Chairman WAXMAN. You've been very generous with your
2007 time and we very much appreciate your work and your
2008 presentation to us. The committee is now going to take a
2009 10-minute break before we call forward our next panel.

2010 [Recess.]

2011 Chairman WAXMAN. The committee will reconvene. Our
2012 next two witnesses need no introduction to this committee.
2013 Commissioner Bud Selig and the President of the Players
2014 Association, Don Fehr, have testified before and are the
2015 leaders of Major League Baseball. Don Fehr has led the
2016 Players Union since 1985 and Bud Selig has been baseball's
2017 Commissioner since 1992. They both are familiar with our

2018 | committee rules and we welcome you today. And as you know,
2019 | we swear in all of the witnesses. I'd like to ask if you'd
2020 | both stand and raise your right hand.

2021 | [Witnesses sworn.]

2022 | Chairman WAXMAN. The record will indicate our witnesses
2023 | answered in the affirmative. We're pleased to have you here
2024 | and we're looking forward to your presentation and the
2025 | opportunity to ask questions.

2026 | Mr. Selig, why don't you get started first? There is a
2027 | button on the base of the mike. Be sure it is on.

2028 | Mr. FEHR. Mr. Chairman, if it is green, it is on?

2029 | Chairman WAXMAN. Yes.

2030 | STATEMENT OF ALLAN H. "BUD" SELIG, COMMISSIONER, MAJOR LEAGUE
2031 | BASEBALL

2032 | Mr. SELIG. I would like to thank the Chairman, the
2033 | Ranking Member and the committee members for inviting me to
2034 | testify today. I have a number of people with me today that
2035 | I'd like to introduce. First our advisor, Dr. Gary Green of
2036 | UCLA, one of America's leading experts on performance
2037 | enhancing substances; Steve Pasierb from the Partnership for
2038 | a Drug Free America; Donald Hooten who has been here before,
2039 | the head of the Taylor Hooten Foundation; Peter Angelos, the
2040 | owner of the Baltimore Orioles who has been at the table for

2041 | the last two rounds of labor negotiations; Randy Levine, the
2042 | President of the New York Yankees; and Stan Kasten, the
2043 | President of the Washington Nationals.

2044 | On March 30, 2006, I asked Senator Mitchell to conduct a
2045 | comprehensive investigation of the illegal use of performance
2046 | enhancing substances in baseball. I decided to do this
2047 | investigation so that no one could ever say that baseball had
2048 | something to hide, because I certainly did not. Baseball
2049 | accepts the findings of this investigation and baseball will
2050 | act favorably on its recommendations.

2051 | Before I turn to the Mitchell report it is important to
2052 | recall the progress we have made. Baseball now has the
2053 | strongest drug testing program in professional sports. Our
2054 | penalty structure is the toughest; we have year-round
2055 | unannounced testing, including testing on game days both
2056 | before and after games. We use the Olympic-certified
2057 | laboratories in Montreal and UCLA for our testing and the
2058 | day-to-day administration has been delegated to an
2059 | independent program administrator. A whole generation of
2060 | players has grown up under our strict Minor League testing
2061 | policy which is entering its eighth season. As a result of
2062 | all of this, steroid use in baseball today has dropped
2063 | dramatically from more than 90 violations in the 2003 survey
2064 | test to just 2 steroid positives in 2006 and 3 in 2007.

2065 | This improvement is similar to what we've observed in

2066 | our Minor League program, where positive test results
2067 | declined from 9 percent in 2001 to less than 1 1/2 of 1
2068 | percent in 2007.

2069 | Nonetheless, I felt a need to appoint Senator Mitchell
2070 | to deal with the past. Nothing is more important to me than
2071 | the integrity of the game of baseball. Baseball needed to
2072 | fully, honestly, and publicly confront the use of performance
2073 | enhancing substances by players. I knew that an
2074 | investigation would be an extraordinarily difficult
2075 | undertaking. I knew that an investigation would be painful
2076 | for all of those associated with the sport. No other sport
2077 | had confronted its past in such a way, but I knew that
2078 | baseball must undertake that journey in order to preserve the
2079 | integrity of our game and maintain credibility with the
2080 | millions of baseball fans throughout the world.

2081 | This investigation had a second purpose as well. I'm
2082 | committing to keeping Major League Baseball's program the
2083 | strongest in professional sports. Indeed, Senator Mitchell
2084 | confirmed that our current program has been effective and the
2085 | detectable steroid use appears to have declined. But I knew
2086 | from experience that the development of a state-of-the-art
2087 | drug program requires continual evaluation and refinement.
2088 | My desire was for Senator Mitchell to provide us with
2089 | recommendations and insights to help make additional progress
2090 | in the ongoing battle against the illegal use of performance

2091 | enhancing substances in sports.

2092 | I gave Senator Mitchell complete independence to conduct
2093 | the investigation, to consider any evidence that he deemed
2094 | relevant, and to follow that evidence wherever it may lead.
2095 | It is extremely unusual to afford a third party such
2096 | unfettered discretion to conduct an investigation and to
2097 | make findings public. Yet I believe that such extraordinary
2098 | steps were necessary to satisfy my goal of conducting the
2099 | most exhaustive and credible investigation of this subject
2100 | that was within my power as the Commissioner.

2101 | As a lifelong baseball fan, I am deeply saddened and
2102 | disappointed by the conduct of the players and many other
2103 | individuals described by the Senator in his report. On the
2104 | other hand, as the Commissioner of Baseball, with the
2105 | responsibility for protecting the integrity of the game for
2106 | future generations, I'm optimistic that Senator Mitchell's
2107 | report is a milestone step in dealing with baseball's past
2108 | and the problems caused by these dangerous and illegal
2109 | substances in both amateur and professional sports.

2110 | Senator Mitchell's report, including his 20
2111 | recommendations, which I fully embrace, help point a way
2112 | forward as we continue the battle against the illegal use of
2113 | performance enhancing substances. I want to be clear that I
2114 | agree with the conclusion reached by Senator Mitchell in his
2115 | report, including his criticisms of baseball, the union and

2116 | our players. I have personally agonized over this a thousand
2117 | times, and what could have been done differently, and I
2118 | accept responsibility for everything that happens in our
2119 | sport.

2120 | However, as Senator Mitchell found in his report, by
2121 | August 1998, when the discovery of andro in Mark McGwire's
2122 | locker, we immediately took a number of steps to lay the
2123 | foundation for bargaining a joint drug program in the 2002
2124 | negotiations that included random testing for steroids.
2125 | These steps included efforts to improve regulation of dietary
2126 | supplements such as andro and the introduction of a steroid
2127 | education program.

2128 | In addition, in 2001 I unilaterally implemented a drug
2129 | testing program in Minor Leagues which prohibits all Schedule
2130 | III steroids and required random drug testing. After
2131 | contentious negotiations in 2002, we finally reached an
2132 | agreement that led to the first mandatory drug testing
2133 | program in baseball. I am proud of what we've done, but in
2134 | hindsight, we should have done it sooner. The compromise we
2135 | reached with the players in the 2002 drug program was not
2136 | perfect. As Senator Mitchell reported, it was a necessary
2137 | first step towards achieving the tough drug program that is
2138 | in effect today.

2139 | And as Senator Mitchell recognized, our program has
2140 | evolved since that time. In January 2005, with the agreement

2141 | of the Players Association, we revised the drug program to
2142 | add 17 substances as prohibited substances, including the
2143 | addition of Human Growth Hormone. We also increased the
2144 | penalties for positive tests.

2145 | In March 2005, with the support of this committee, I
2146 | sought the Players Association agreement to further increase
2147 | penalties to a 50-game suspension for first-time offenders,
2148 | 100-game suspension for second-time offenders, and a
2149 | permanent ban for third-time offenders. I also proposed
2150 | adding stimulants, including amphetamines, as banned
2151 | substances. After months of difficult negotiations, the
2152 | Players Association accepted my proposals in November of
2153 | 2005.

2154 | I fully support each of the 20 recommendations for
2155 | improving our program that Senator Mitchell included in his
2156 | report. Almost all his recommendations that do not require
2157 | bargaining with the Players Association have already been
2158 | implemented. Just last week we issued written policies that
2159 | require all clubs to adopt the uniform written policy for
2160 | reporting information about possible substance abuse
2161 | violations and certify to the Commissioner's Office that such
2162 | policies have been complied with; require all Major and Minor
2163 | League clubs to establish a system to log every packet sent
2164 | to players at its facilities; require background checks to be
2165 | performed on all clubhouse personnel; and require all

2166 | clubhouse personnel to be randomly drug tested.

2167 | Also last week, we established the Department of
2168 | Investigations to deal with the investigation of drug use.
2169 | Headed by well-credentialed former law enforcement officers
2170 | who are here today, who combine to bring over 50 years of
2171 | experience, the Department has established a hotline for the
2172 | anonymous reporting of information concerning the use of
2173 | prohibited substances and has already made initial contacts
2174 | with law enforcement agencies to pursue continued
2175 | cooperation. Although the legal issues are more significant,
2176 | we'll also be developing a program to require top prospects
2177 | to the Major League draft to submit to drug testing before
2178 | the draft.

2179 | Senator Mitchell also recommends certain changes to the
2180 | joint drug program that clearly require agreement of the
2181 | Players Association. In the weeks since the release of his
2182 | report, we've discussed each of these recommendations with
2183 | the Players Association. We have already agreed to eliminate
2184 | the 24-hour notice that drug testing collectors had given to
2185 | the clubs. We have not yet reached an agreement on the other
2186 | points, but I certainly will continue to press for an
2187 | agreement to revise the program to adopt all of Senator
2188 | Mitchell's recommendations.

2189 | I'm committed to a program that provides adequate
2190 | year-round unannounced testing. As Commissioner, I recognize

2191 | that baseball is a social institution. Part of our
2192 | responsibility is to young people. We have been working
2193 | closely with the Partnership for Drug Free America and the
2194 | Taylor Hooten Foundation to educate America's youth and their
2195 | parents about the dangers of performance enhancing
2196 | substances. It is essential that we not only investigate and
2197 | enforce our policy, but that we educate our players
2198 | concerning the dangers posed by the use of these substances.

2199 | Senator Mitchell noted an improved educational program
2200 | about the dangers of substance use are critical to any effort
2201 | to deter performance enhancing substance use. Increasing
2202 | awareness of the dangers of these issues is important not
2203 | only for the health of the athletes but also to protect the
2204 | health of amateur athletes and our Nation's youth, who
2205 | themselves strive to be better on the field of play.

2206 | As Senator Mitchell described in his report, for the
2207 | past decade, MLB has conducted educational programs for
2208 | players in the Major and Minor Leagues during spring
2209 | training. We've stepped up these efforts in recent years,
2210 | striving to find ways to make these programs more effective
2211 | in reaching the players.

2212 | For example, in 2003, I hired Dr. Gary Green, who is
2213 | seated right here. Former director of UCLA's intercollegiate
2214 | drug testing program, chairman of the NCAA's subcommittee on
2215 | Drug Testing and Drug Education, and a USADA panel member to

2216 | develop and implement educational programs and materials on
2217 | performance enhancing substances.

2218 | Using Senator Mitchell's recommendations as a guide,
2219 | we're making even further improvements to our educational
2220 | program. Senator Mitchell's report feels there are those who
2221 | are intent on cheating and will continue to search for ways
2222 | to avoid detection such as turning to the use of HGH, Human
2223 | Growth Hormone, which is not detectable in a urine test. I'm
2224 | committed to stop the use of HGH in our sport.

2225 | Along with the National Football League, baseball is
2226 | funding an effort by Dr. Donald Catlin, one of the leading
2227 | drug experts in the world, to develop a urine test for HGH.
2228 | We'll be convening a summit of the best minds in sports and
2229 | science to develop a strategy to address the use of HGH by
2230 | players.

2231 | Just recently, we've joined with the United States
2232 | Olympic Committee, USADA, and the National Football League in
2233 | a new long-term program of research on performance enhancing
2234 | substances. Our initial commitment is for \$3 million in
2235 | funding when a valid, commercially available and practical
2236 | test for HGH becomes reality. Regardless of whether the test
2237 | is based on blood or urine, baseball will support the
2238 | utilization of that test.

2239 | I'm also here to ask for your assistance in this fight.
2240 | The illegal use of performance enhancing substances is a

2241 | problem for baseball, but is a social problem that extends
2242 | well beyond this sport or, frankly, any sport. We welcome
2243 | your participation in attacking the problem at its source.

2244 | There are a number of bills that have been introduced
2245 | that we wholly support, including Representative Lynch's
2246 | bill, H.R. 4911; Senator Schumer and the Senate bill 877;
2247 | Senator Grassley, Senate bill 2470; and Senator Biden's bill,
2248 | Senate bill 2237. I'd like to personally thank
2249 | Representative Lynch for introducing the bill that would make
2250 | HGH a Schedule III controlled substance, which I believe is
2251 | an important legislative initiative.

2252 | Even prior to the issuance of the Mitchell report, we
2253 | had made great strides in reducing the number of players who
2254 | used performance enhancing substances. I'm confident by
2255 | adopting Senator Mitchell's recommendations, constantly
2256 | working to improve our drug program regardless of the effort
2257 | of the cost, by pursuing new strategies to catch cheaters,
2258 | and by enhancing our educational efforts we can make
2259 | additional progress in our ongoing battle against the use of
2260 | performance enhancing substances in baseball.

2261 | The lessons from the past serve only to strengthen my
2262 | commitment to make the Major League Baseball program the
2263 | strongest and most effective in sports.

2264 | Thank you, Mr. Chairman. I ask that a copy of my entire
2265 | written statement be made part of the record.

2266 Chairman WAXMAN. Thank you very much, Mr. Selig. Both
2267 of your written statements will be made part of the record in
2268 their entirety.

2269 [Prepared statement of Mr. Selig follows:]

2270 ***** INSERT 3-1 *****

2271 Chairman WAXMAN. Mr. Fehr, we're pleased to welcome you
2272 and we are looking forward to hearing from you.

2273 Mr. FEHR. Thank you, Mr. Chairman. Chairman Waxman--

2274 Chairman WAXMAN. Would you pull the mike a little
2275 closer? Thanks.

2276 Mr. FEHR. Is that better?

2277 Chairman WAXMAN. Yeah.

2278 STATEMENT OF DONALD M. FEHR, EXECUTIVE DIRECTOR, MAJOR LEAGUE
2279 BASEBALL PLAYERS ASSOCIATION

2280 Mr. FEHR. Chairman Waxman, Ranking Member Davis, and
2281 members of the committee. As you know, my name is Donald
2282 Fehr and I serve as the executive director of the Major
2283 League Baseball Players Association, And I appreciate the
2284 opportunity to speak with you today.

2285 As I've previously testified before many committees, but
2286 specifically this one 3 years ago, playing Major League
2287 Baseball requires talent, drive, intelligence, determination
2288 and grit. Steroids and other unlawful performance enhancing
2289 drugs have no place in the game and we neither support nor
2290 condone the use of such substances by players or by anyone
2291 else.

2292 We cannot change but we can learn from the past.

2293 | Baseball's problem with performance enhancing substances was
2294 | bigger than I realized. We understood that a number of years
2295 | ago when we began the testing programs. In retrospect,
2296 | action should have been taken and probably could have been
2297 | taken sooner. Players Association accepts its share of
2298 | responsibility for what happened and, as I indicated at my
2299 | press conference following the issuance of Senator Mitchell's
2300 | report, so do I.

2301 | Since our first joint drug agreement in 2002, and in
2302 | particular since we appeared before this committee some 3
2303 | years ago, we have worked vigorously to rid the game of
2304 | performance enhancing substances, and the evidence regarding
2305 | steroids indicates, I believe, that we've been largely
2306 | successful. On behalf of the players, I reaffirm the
2307 | commitment to continue that effort.

2308 | Today we believe we have the best program in
2309 | professional sports. It is a program that members of this
2310 | committee and other Members of Congress praised when it was
2311 | agreed to and implemented. It is independently administered
2312 | as state-of-the-art random unannounced testing procedures,
2313 | and we use the universally acclaimed WADA-certified Olympic
2314 | lab in Montreal to analyze the samples. The penalties, as
2315 | indicated, have been the toughest in professional sports and
2316 | it is a program, as Senator Mitchell indicated, that we've
2317 | worked to improve. Over the last 2 years, even after the

2318 | 2005 amendments, without any fanfare or controversy, we've
2319 | agreed on several improvements.

2320 | Which brings me to Human Growth Hormone. This is a
2321 | difficult and perhaps a unique challenge. There are
2322 | currently no valid blood or urine tests for HGH. So what can
2323 | be done and what have we done?

2324 | First, we banned HGH. We've agreed to test for it as
2325 | soon as a scientifically valid urine test exists. We also
2326 | have procedures which allow for players to be disciplined or
2327 | suspended based on evidence other than a positive test, and
2328 | players have been suspended on that basis. It is the
2329 | so-called nonanalytical finding, so should a scientifically
2330 | accurate, commercially viable blood test become available,
2331 | we'll consider it in good faith. But as Senator Mitchell
2332 | noted in his report, the blood tests now being developed may
2333 | be of limited practical utility. And while the union has
2334 | warned players for years of the risks associated with HGH and
2335 | other of the substances, the parties can do more by way of
2336 | education.

2337 | We've recently discussed with the Commissioner's Office
2338 | having medical experts meet with players early this season to
2339 | warn of dangers posed by HGH and other bad substances to
2340 | reinforce that message. But we can't do it alone. Abuse of
2341 | Human Growth Hormone, as I think the Commissioner and Senator
2342 | Mitchell have already mentioned, is not just a baseball

2343 | problem; it is not even much of a sports problem. All one
2344 | has to do to appreciate this is to go on to the Google Web
2345 | site, maybe after this hearing, and type in the words, "Where
2346 | can I buy HGH?" we did this a few days ago and we got
2347 | 349,000 hits in a quarter of a second. Ads for Human Growth
2348 | Hormone and related substances can be found widely
2349 | distributed in periodicals that everybody reads.

2350 | Representative Lynch and others have introduced
2351 | legislation to reclassify HGH as a Schedule III drug, making
2352 | its treatment comparable to anabolic steroids. I assume that
2353 | appropriate consideration will be given by the Congress to
2354 | that bill.

2355 | Consideration might also be given to taking action in
2356 | some form against the unlawful online sales in marketing of
2357 | HGH and other of such substances.

2358 | Finally, as I have previously suggested, perhaps the
2359 | Congress should examine whether the Dietary Supplement Health
2360 | and Education Act, DSHEA as it is commonly known, is being
2361 | adequately enforced. One of the members from the panel in
2362 | his opening statement, or in one of the questions, suggested
2363 | to kids buying stuff in stores. To the extent that that is
2364 | true--and I think it is--that means it is available in
2365 | stores, and legally.

2366 | Senator Mitchell and his law firm were hired to write a
2367 | report and he served his client well. But I ask you to

2368 remember that this was a unilateral action taken by
2369 management. As a result, we had no choice but to act as
2370 unions are required to act by Federal law, to represent our
2371 members in connection with an investigation with potential
2372 disciplinary consequences. If we had done otherwise, we
2373 would have violated our statutory duty of fair
2374 representation. Even so, while the conduct of the
2375 investigation was ongoing, we continued to discuss
2376 improvements in our program with the owners. Most of the
2377 media reaction to the report has focused on individual
2378 players and what they are alleged to have done. That is
2379 understandable. But I would ask you also to recognize that
2380 the report contains no new allegations of improper drug use
2381 in 2006 or 07 when the current program was in effect. In
2382 those 2 years, we administered some 6,500 tests with only
2383 five positive results for steroids. I think it is clear our
2384 program is working well with respect to steroids which are
2385 capable of being detected.

2386 I recognize that many of you hope that I will today
2387 endorse all of Senator Mitchell's recommendations. With
2388 respect, I ask that you adopt his suggestion that the parties
2389 be allowed time to discuss what can and should be done. You
2390 can be assured that you have my commitment both on behalf of
2391 the organization and personally that the players will discuss
2392 all of those recommendations. We have already begun those

2393 meetings and they will need to be expanded to include not
2394 only staff, but players and the Commissioner, as I'm sure
2395 he'll want an opportunity to express his views directly to
2396 the players. Unfortunately, the situation has been muddied a
2397 bit by the Commissioner's unilateral imposition of some of
2398 the recommendations. He did so even though these unilateral
2399 changes affect our members and even though we have never
2400 declined to discuss any potential improvements. In addition,
2401 the suggestion is there that we should once again reopen our
2402 bargaining agreement. It goes without saying that no union,
2403 and no management for that matter, takes lightly the
2404 suggestion by the other party that it should reopen the
2405 agreement before the term ends. The contract is the
2406 lifeblood of the union. This makes the process somewhat more
2407 difficult. But we're committed to pushing forward
2408 notwithstanding that.

2409 There are some subjects that we intend to raise in
2410 addition to what Senator Mitchell has proposed. We want to
2411 make certain that every Major League club has throughout its
2412 organization thoroughly vetted and qualified strength and
2413 conditioning personnel. We believe that unproven allegations
2414 against players should not be aired publicly and that
2415 fundamental protections of due process should be strictly
2416 adhered to. And we'll suggest that Minor League players who
2417 currently do not have a neutral decision-maker with respect

2418 | to an alleged violation of the Minor League program should
2419 | have that opportunity if they wish to challenge a failed
2420 | test.

2421 | We also hope to build on one of Senator Mitchell's
2422 | recommendations. Baseball can do a better job of educating
2423 | its players and educating the public, and that specifically
2424 | includes the children that so many of the members here today
2425 | have mentioned. Telling our Nation's kids that drugs will
2426 | destroy them is only half the battle. And I went to college
2427 | in the 1960s, and we had been telling people that for all of
2428 | my adult life, and we're still struggling with it. So
2429 | perhaps the focus ought to be shifted, in addition to that,
2430 | to something else, because the Nation's high school athletes
2431 | and their parents will still aspire to scholarships and want
2432 | to pursue their athletic dreams. So knowing what to do is as
2433 | important and perhaps more important than being told what not
2434 | to do.

2435 | Perhaps players can lead the way in developing
2436 | nutrition, strength, flexibility and wellness routines and
2437 | educating America's youth in that regard. And in an era in
2438 | which we hear a lot about so-called childhood obesity,
2439 | perhaps that is a more powerful idea than we can yet
2440 | appreciate.

2441 | Let me just summarize and I'll conclude. There is no
2442 | new evidence in the Mitchell report of steroid use in 2006 or

2443 2007. That does not excuse or condone what happened before
2444 that; but it is, I think, relevant to an examination of the
2445 steps we've made. Human Growth Hormone is a problem both
2446 within sports and generally. There is not yet a test, but
2447 we'll consider in good faith any valid and effective test
2448 which is developed. And we've agreed that if compelling
2449 evidence exists, a violation of our program can be found even
2450 though there is no positive test.

2451 We have not refused to discuss improvements in our
2452 program. We will not do so here. We'll not refuse to
2453 discuss them here. We're committed to discussing Senator
2454 Mitchell's recommendations in good faith and look forward to
2455 receiving specific proposals from the Commissioner.

2456 Last, we've made progress and I think great progress,
2457 especially after the amendments we agreed to in 2005. But
2458 let me come back to what I began with. In retrospect, action
2459 should have and could have been taken sooner. As an
2460 institution, the Players Association bears some of the
2461 responsibility to that. As its leader, so do I.

2462 Thank you, Mr. Chairman.

2463 Chairman WAXMAN. Thank you very much, Mr. Fehr.

2464 [Prepared statement of Mr. Fehr follows:]

2465 ***** INSERT 3-2 *****

2466 Chairman WAXMAN. To start off the questioning, the
2467 Chair would like to recognize Mr. Towns for 5 minutes.

2468 Mr. TOWNS. Thank you very much, Mr. Chairman, for
2469 holding this hearing. There has been considerable
2470 discussions on the problem that Senator Mitchell had in
2471 obtaining cooperation from individual players and the Players
2472 Association. It appeared that there was a wall of silence;
2473 that people were not allowed to talk or come forward with
2474 information. And in some instances they said the trainers
2475 were not allowed to talk. And then, of course, some
2476 information came forth that trainers were providing the
2477 steroids. So why would there be this code of silence?

2478 Do you support this, Mr. Fehr?

2479 Mr. FEHR. Thank you for the question. I think it is
2480 something that came up before and deserves an appropriate
2481 answer. We are obligated to represent the players in
2482 connection with the disciplinary investigation. I think that
2483 is why Senator Mitchell recognized in his press conference
2484 that what we did was, quote, largely understandable, closed
2485 quote. And those were his terms.

2486 Where you have a management investigation with potential
2487 discipline, employment consequences, we have an obligation to
2488 give the players appropriate advice as to what that could be
2489 and what the effect of what they say is. We asked if
2490 discipline would be imposed, and we did not get an answer

2491 that it would not be. Further--and this made it very
2492 difficult--this process was complicated because there were
2493 ongoing criminal investigations in San Francisco, in Albany
2494 and elsewhere, and I assume others, that we don't know
2495 anything about and shouldn't know anything about. I believe
2496 that Senator Mitchell had ongoing relationships with those
2497 offices. He has indicated as much. Therefore, we had to
2498 advise players that nothing they said was privileged and that
2499 if the authorities wanted it, they could compel him to
2500 provide it; that there would be possible discipline; and to
2501 do something which ordinarily a union need not do, which is
2502 to advise players that they may need to secure individual
2503 counsel before they made their individual decisions as to
2504 whether or not to speak to Senator Mitchell. It is a
2505 difficult situation, and that is about the best way I can
2506 describe it.

2507 Mr. TOWNS. What are you going to do in the future to
2508 change this? Are you working to change this in terms of the
2509 code of silence, because as long as you have this, there is
2510 going to be this problem that people are going to feel that
2511 you're not addressing it in a very vigorous manner.

2512 Mr. FEHR. I can guess what I can tell you is this: We
2513 would have--and any union would have--obligations to
2514 represent their members and to give them appropriate legal
2515 advice. We hope that the programs that we're working on will

2516 | put us in the position so that questions as to whether there
2517 | is a code of silence becomes largely not central in any
2518 | future situation. If there are future investigations and we
2519 | have an opportunity to discuss the parameters and the
2520 | conditions of those before they get started, I don't know
2521 | what would happen. But that was not an opportunity we were
2522 | afforded here.

2523 | Mr. TOWNS. Mr. Selig, it is my understanding that
2524 | Senator Mitchell wanted to get data from players' medical
2525 | records. For example, he wanted data that would show whether
2526 | there were trends in medical records that might indicate the
2527 | level of steroid use. This information would not have
2528 | identified individual players. We understand if you're going
2529 | to identify them, that that is a problem. But this
2530 | information would not have identified individual players, but
2531 | his staff said that the clubs delayed providing this evidence
2532 | for so long that it became too late to use it.

2533 | Mr. SELIG. Well, that was--I think Senator Mitchell
2534 | would tell you right from the start that the clubs were
2535 | remarkably cooperative in every way and I, frankly, didn't
2536 | give them any alternative.

2537 | Having said that, there were some clubs who felt that
2538 | there were some State laws that prevented them from doing it.
2539 | There were other people that were concerned about it. In
2540 | the end, though, we did reach agreement. It took a long

2541 | time, but I believe in the end we resolved those problems,
2542 | but--so I think that they did get the information that they
2543 | required. It did take a long time because, frankly, the
2544 | clubs' lawyers, individual lawyers, had a lot of questions
2545 | and were very difficult. But we kept going until we were
2546 | able to satisfy all the individual clubs. We have 30 clubs
2547 | and 30 outside lawyers and all in different States, and State
2548 | laws are different. I can remember there was some problems
2549 | with Florida law and Texas law and other things. So it took
2550 | a long time to resolve those, Congressman.

2551 | Mr. TOWNS. Let me put it this way. Senator Mitchell
2552 | indicated that there was a tremendous code of silence. Do
2553 | you support that code of silence?

2554 | Mr. SELIG. Well, I don't think Senator Mitchell said
2555 | that he had any problem with that so-called code of silence
2556 | from the club standpoint or from our office. In fact, he
2557 | said over and over again, and he has told me over and over
2558 | again, that we cooperated in every way. I told him the
2559 | fateful day I called him in late March and said, "You'll have
2560 | complete cooperation. You go wherever you want to go,
2561 | wherever you want to--I want you to find out what happened,
2562 | why it happened, and how it happened." and I think that he
2563 | did, and he did largely because of the cooperation we got.

2564 | No, I don't--of course, I don't support a code of
2565 | silence, not in any way, shape, form or manner.

2566 Chairman WAXMAN. Thank you, Mr. Towns. Mr. Davis.

2567 Mr. DAVIS OF VIRGINIA. Thank you very much.

2568 Commissioner Selig, thanks for moving forward in this.

2569 It has been sort of easy after you reached your collective

2570 bargaining agreement to sweep it under the rug and say that

2571 is the end of it. And you didn't and you let the chips fall

2572 where they may. And I wish they had fallen differently, and

2573 I know you do too. But it is what it is and we need to move

2574 on.

2575 I understand from some of the press reports you are

2576 weighing some disciplinary action in some cases; is that

2577 correct?

2578 Mr. SELIG. That is correct, Congressman.

2579 Mr. DAVIS OF VIRGINIA. Do you have any criteria or give

2580 us any clue into kind of what you are looking at?

2581 Mr. SELIG. No, I can't, because I'm the judge in this

2582 case. So I'm sensitive. But what I said to you on December

2583 13th and what I'd say to you again today, I have great

2584 respect for Senator Mitchell and I know his feeling on this

2585 subject, but I'm going to review each one of these matters,

2586 management and players, on a case-by-case basis. I'm getting

2587 a lot of information from him.

2588 There is other information yet, Congressman Davis, and

2589 then I'll make my decisions as I move ahead.

2590 Mr. DAVIS OF VIRGINIA. Thank you. I know you note--you

2591 | stated that Senator Mitchell was given unfettered access to
2592 | any information that was within your control. Were there any
2593 | instances in which you or the clubs denied Senator Mitchell
2594 | access to information?

2595 | Mr. SELIG. None that I know of. Absolutely none.

2596 | Mr. DAVIS OF VIRGINIA. Mr. Fehr, what would you have
2597 | liked Senator Mitchell to have done differently?

2598 | Mr. FEHR. I think that had I been conducting such an
2599 | investigation, I might have approached it differently. I
2600 | might have had some preliminary conversations. I might have
2601 | tried to see if there were some ways it could be approached
2602 | other than by someone who is legally a management lawyer
2603 | doing an investigation.

2604 | Having said that, the biggest gripe that I think I have
2605 | and the players have is that I would have preferred that at
2606 | some point before he issued a report, if he was going to
2607 | write something about Don Fehr, that under the circumstances
2608 | and the seriousness of it, he would have sent Don Fehr and
2609 | his lawyer, if he had one, a letter: I intend to say the
2610 | following about you. This is why I'm going to say it, this
2611 | is your last chance to tell me.

2612 | He didn't do that. He has explained why he thought it
2613 | was the appropriate way to do it, the manner in which he
2614 | proceeded. I would have done it differently.

2615 | Mr. DAVIS OF VIRGINIA. Have you and the Commissioner

2616 | had any discussions between yourselves, or has it been at the
2617 | staff level, about the report and substantively how you're
2618 | going to proceed from here?

2619 | Mr. FEHR. The Commissioner and I had a very brief
2620 | discussion out in Arizona right before the new year when we
2621 | met to talk about another important issue. What followed
2622 | that was a meeting of staff, which occurred last week, to
2623 | begin to set the ground rules and explore what we needed to
2624 | talk about. And what we're going to be trying to do now is
2625 | figure out when we can have other meetings, and that is a
2626 | little complicated because this is the busiest time of the
2627 | year and it is hard to get hold of players. They are
2628 | negotiating contracts, they are in workout routines, and
2629 | they're spread.

2630 | But I hope we will have those meetings put together in
2631 | the very near future and then we'll begin the process in a
2632 | more formalized way.

2633 | Mr. DAVIS OF VIRGINIA. Is it safe to assume, then, that
2634 | you and the Commissioner and your staffs will take this
2635 | report and meet on each aspect of it and see where you can
2636 | come to closure and have some discussions off camera about
2637 | implementing this?

2638 | Mr. FEHR. Yes. I'd expect that we'd discuss, as I hope
2639 | I indicated in my opening statement, all of the
2640 | recommendations and any other matters which come up that

2641 | would be relevant to those discussions.

2642 | Mr. SELIG. I'd add, Congressman Davis, we've done the
2643 | ones that we felt we should. And I would hope that, frankly,
2644 | we have this all completed before spring training.

2645 | Mr. DAVIS OF VIRGINIA. Commissioner, let me ask you:
2646 | In the game of shadows, it was reported that Barry Bonds'
2647 | trainer, Greg Anderson, was either tipped off about when
2648 | Bonds was to be tested or he was able to figure it out. As I
2649 | understand it, Major League Baseball looked into that
2650 | allegation.

2651 | What did you learn? How was Anderson able to determine
2652 | when Bonds' test would occur? Or was that just an
2653 | allegation?

2654 | Mr. SELIG. As far as I know, that was just an
2655 | allegation. Obviously--one thing that Senator Mitchell said
2656 | today--and I know in the last decade plus, I've learned a
2657 | lot. This is an evolutionary process. And I think with each
2658 | time we are able to tighten this program and maybe do
2659 | something that we should have done X years ago, that makes it
2660 | better. As far as I'm concerned, that is an allegation. I
2661 | don't have any evidence of that. But it is impossible today,
2662 | it has been impossible now for quite some time, and we need
2663 | to continue to strengthen the program so that even people
2664 | can't make those allegations.

2665 | Mr. DAVIS OF VIRGINIA. Okay. Thank you.

2666 Chairman WAXMAN. Thank you, Mr. Davis. Mr. Cummings.

2667 Mr. CUMMINGS. Thank you very much, Mr. Chairman.

2668 Mr. Selig, I want to join the Chairman in thanking you.

2669 You know, a lot of people complain about this committee

2670 taking on this role. But, I mean, what we've seen done in

2671 Major League Baseball has been quite a bit and I think it has

2672 been very good. Also thank you for asking Senator Mitchell

2673 to do this investigation.

2674 One of the things that concern me is a few minutes ago

2675 in answering Congressman Towns' questions, he was talking

2676 about this whole code of silence. And Senator Mitchell also

2677 told us that the clubs refused to allow their trainers to

2678 provide information about the steroid use of the individual

2679 players. And I understand that the clubs claim that there

2680 was a, quote, trainer/player privilege, which I've never

2681 heard of. And maybe that is a new concept in the law. This

2682 obviously made it much more difficult for the Senator to do

2683 his job.

2684 Are you familiar with that? Is that something new?

2685 Mr. SELIG. You know, I've heard the discussion. Let me

2686 just talk about trainers, if I may, Congressman, just for a

2687 second. I started meeting with the trainers and team

2688 doctors. I just had a meeting on January 9th with 12 team

2689 trainers. So I've become very familiar, they're very

2690 professional, they--and they have really briefed me as

2691 | thoroughly as one could the last 7 or 8 years. Rob Manfred
2692 | of our staff is there. They did it again. I think that only
2693 | when there were issues that either the club lawyers felt--and
2694 | I'm talking about the individual club lawyers--felt that they
2695 | were compromising themselves in terms that they would have to
2696 | describe to you. But other than that, every trainer that
2697 | they wanted to interview, they interviewed. And I think the
2698 | trainers were--at least told me they were very forthcoming.
2699 | So I don't think that--unless you have a situation where
2700 | there is something that the trainer had that was--that would
2701 | violate some type of law, I think that they were very
2702 | forthcoming.

2703 | Mr. CUMMINGS. Keep your voice up. I want to make sure
2704 | we hear you.

2705 | The two of you have a long history with baseball. Mr.
2706 | Selig, you've been a team owner, a baseball executive, for 40
2707 | years. You've been Commissioner since 1994.

2708 | Mr. Fehr, you've been head of the Players Association
2709 | since 1986, for decades now. You all have been the two most
2710 | powerful men in the sport. We all agree that we need to
2711 | focus on the future, and we will do that. But this scandal
2712 | happened under your watch. I want that to sink in. It did.

2713 | I have a very simple question. Do you all accept, you
2714 | all, you individually, accept responsibility for this
2715 | scandal, or do you think there was nothing you could do to

2716 prevent it?

2717 Mr. Fehr, why don't you go first?

2718 Mr. FEHR. Thank you, Representative. I'm thinking a
2719 minute because I don't want to--I could talk for a long time
2720 in response to that question and I know we don't want to do
2721 that.

2722 Let me simply say as follows. If the question is, did
2723 we or did I appreciate the depth of the problem prior to the
2724 time that we began to work on it hard, the answer is no. If
2725 the question is, should we have? Perhaps we should have. It
2726 is a failure that we didn't and it is a failure that I
2727 didn't. We can't change that. There were a lot of things
2728 going on. But if your question more generally is, do the
2729 individuals who have responsibility for negotiating the
2730 agreements on both sides bear responsibility for what took
2731 place for a failure to get at it sooner, as I indicated in my
2732 opening statement, of course we do.

2733 Mr. CUMMINGS. Mr. Selig.

2734 Mr. SELIG. Sure. What I would say to you, as I said in
2735 my statement, I thought about this thousands of times. I've
2736 been in this sport all of my adult life. I agonize over that
2737 because I consider myself, in the end, a baseball man. In
2738 the nineties, you know, hindsight is always very beneficial.
2739 I watch things. I have reread all the articles that Senator
2740 Mitchell had. I take responsibility for everything. So

2741 let's understand that. I take it for all the goods things
2742 that have happened to make the sport as popular as it is
2743 today, and when we talk about something, I guess there is no
2744 question about that. I've agonized.

2745 But I would also remind you--and who knows how long this
2746 has gone on? The Senator said over 20 years, which is well
2747 before me. I was then the owner of the Milwaukee Brewers.
2748 We have come a long way and in a difficult environment. My
2749 Minor League program, Congressman, is going into its eighth
2750 year. So all the great young players in this sport have now
2751 been tested 8 years. And do I wish we had reacted quicker?
2752 Should we have? Yes, one can make a compelling case and
2753 I've--I do a lot of introspective thinking and I'll
2754 second-guess myself. But as far as responsibility, of course
2755 all of us have to take responsibility, starting with me.

2756 Mr. CUMMINGS. Thank you very much, Mr. Chairman.

2757 Chairman WAXMAN. Thank you very much, Mr. Cummings.

2758 Mr. Souder.

2759 Mr. SOUDER. Thank you. I want to thank Mr. Selig and
2760 Mr. Fehr for having taken some steps. And I believe that
2761 this report and the follow-up are additional steps. But I
2762 don't know. And what many of us are asking is, would they
2763 have been taken if BALCO hadn't occurred? Would they have
2764 been taken if the hearings here hadn't occurred? The
2765 leadership part is missing. It tends to be waiting until

2766 | potentially the law is coming, and then trying to fend the
2767 | law off.

2768 | Let me ask a couple of questions, Mr. Selig. Are you
2769 | looking at gene doping?

2770 | Mr. SELIG. I'm sorry. I didn't hear you.

2771 | Mr. SOUDER. Are you looking at gene doping, genetic
2772 | alteration? As a potential testing question, are you looking
2773 | at gene doping, genetic doping.

2774 | Mr. SELIG. We've hired the best experts that we can.
2775 | And we certainly will look at that.

2776 | Mr. SOUDER. Mr. Tagliabue, when we asked him that
2777 | question 3 years ago, said this is the greatest potential
2778 | challenge and the NFL was looking at this. It raises a
2779 | fundamental question. Are you looking at ways that people
2780 | disguise steroids, such as cream, vitamin B-12, what things
2781 | can be mixed, and will there be penalties for those?

2782 | Mr. SELIG. Let me again--because this is all an
2783 | evolutionary process, the answer is yes. Dr. Green, who is
2784 | sitting behind me, is one of the leading experts in the
2785 | country. We have the two gold standard labs--Christian
2786 | Ayotte, whom I wish were here today but isn't, the head of
2787 | the Montreal lab and--and between he and Gary Green and all
2788 | the other experts that we have, all the team doctors who I
2789 | meet on a regular basis, we need to continue to be vigilant,
2790 | there is no question about it. When we think we have a

2791 | problem solved, there are chemists working--creating new
2792 | products out there.

2793 | Mr. SOUDER. Are you looking at--I worked in 1989 for
2794 | Senator Coats when we drafted the first drug testing laws on
2795 | what was allowed for athletes in high school. And what laws
2796 | have been upheld by the courts--it isn't probable cause,
2797 | because you don't know, but it is potential cause. In other
2798 | words, if the students are repeatedly late for school, if
2799 | they drive a car, if there are certain erratic behavior
2800 | changes, you can do testing.

2801 | Are you looking specifically at when you see changes in
2802 | performance, in key categories where they are tripling from
2803 | one year, then you do extra testing?

2804 | Mr. SELIG. Well, we are--you know, we have the program
2805 | now. We test as frequently as we can. If there are reasons
2806 | to test more, we're willing and able to do that.

2807 | Mr. SOUDER. Are statistical changes potentially one of
2808 | the reasons?

2809 | Mr. SELIG. Are what?

2810 | Mr. SOUDER. Are statistical anomalies potentially a
2811 | reason?

2812 | Mr. SELIG. That is something that the independent
2813 | administrator would have to do. But I--yes--

2814 | Mr. SOUDER. I agree that would be something in due
2815 | process. But it is a question. But I raise some of these

2816 | questions because the problem with an evolutionary process
2817 | and--Mr. Fehr, there is a distinct difference here between
2818 | due process of penalties, of making sure that the tests are
2819 | accurate and what should be tested. And I'd like that--for
2820 | you to comment on that. Every time there is a new variation,
2821 | does this mean it has to be negotiated? Or in between labor
2822 | agreements, can there be decisions that this is being added
2823 | to the list as long as there is process from your
2824 | perspective?

2825 | And the second thing is, why do both of you feel that
2826 | not only baseball but all professional sports should be
2827 | different than the Olympics? What is your criteria for
2828 | saying that we have this restriction on the Olympic
2829 | performers who--they aren't kids either. Many of them are
2830 | just as old. They get all kinds of contracts. They may not
2831 | be paid for performance at the Olympics, but they certainly
2832 | are paid athletes at this point. In fact, Professional
2833 | Basketball plays in the Olympics.

2834 | I'd like you to finish with that question. And also,
2835 | what do you do in between labor agreements?

2836 | Mr. FEHR. Perhaps let me begin. To answer your last
2837 | question first, under the labor law that--when you're between
2838 | agreements, the terms of your preexisting agreement continue
2839 | by law, unless and until somebody does something, there is a
2840 | strike or a lockout or a unilateral change or a new agreement

2841 | is reached. So the period in between is not an issue.

2842 | Secondly, with respect to gene doping, I don't remember
2843 | precisely the audience that I spoke to. This is a number of
2844 | years ago now. But I think I told the group, and got people
2845 | sort of sitting up straight, that gene doping will make what
2846 | we see now look quaint. And the reason that it will make it
2847 | look quaint is if it is done right--my understanding is that
2848 | people are trying to develop it so that it will be done in
2849 | utero and you would be penalizing something for someone--for
2850 | something his parents did at the time that he was still being
2851 | carried by his mother. That is a very serious issue. And I
2852 | don't pretend to have a handle on the ethical or scientific
2853 | or policy questions that relate to that. But it is a very
2854 | difficult issue.

2855 | Secondly, with respect to mixed and disguised
2856 | substances, all I can tell you is that the laboratory we use
2857 | believes it can find those. We do add substances in between
2858 | agreements. If something becomes unlawful under Federal law
2859 | it is added automatically, as androstenedione was when the
2860 | law was passed in 2005. And we get lists of masking agents
2861 | and diuretics and all the rest of it from the lab that they
2862 | can test for.

2863 | With respect to due process issues--if I can do this
2864 | very succinctly. Where there is an alleged violation, there
2865 | has to be an opportunity to challenge that, an appropriate

2866 | adversary hearing, with neutral decision-makers, with
2867 | whatever arguments are appropriate to be made by the
2868 | individual, so that it can be considered to be a fair
2869 | hearing.

2870 | One of the difficulties with the report we have is that
2871 | if Senator Mitchell had said Don Fehr did X, used this
2872 | particular drug unlawfully, I don't have a hearing, I don't
2873 | confront witnesses, I can't cross-examine anybody. The most
2874 | I can do is be interviewed by the same person who is the
2875 | investigator, the prosecutor, and in that case would be the
2876 | judge or the jury. That is inconsistent with most
2877 | fundamental notions of due process.

2878 | On the Olympics, I can say as follows. They have to do
2879 | what's best, what they think is best. The athletes are not
2880 | really represented. We have to do what we think is best and
2881 | the test will be whether we're successful in eradicating
2882 | these drugs, as we believe the evidence has shown that we
2883 | have been in the last several years with respect to
2884 | detectable steroids.

2885 | I'll give you one example of how it works the other way.
2886 | This is not my first experience with Senator Mitchell on an
2887 | investigative panel. He and I were two of the five members
2888 | of the U.S. Olympic Committee's panel that investigated the
2889 | Salt Lake City bribery scandal and the report that was
2890 | written. And we made a series of recommendations that the

2891 USOC adopted in large part as to how they should change their
2892 practices. Suffice it to say, the IOC had enormous
2893 difficulties with our even raising the issue to them. They
2894 did make some changes, but grudgingly. Cultures are
2895 different.

2896 Chairman WAXMAN. The gentleman's time has expired. Mr.
2897 Tierney.

2898 Mr. TIERNEY. Thank you, Mr. Chairman.

2899 Gentlemen, thank you for being here today. I want to
2900 take up a train of thought that I had at the earlier session
2901 with Senator Mitchell. And that is that we had asked the
2902 League for some information on exemptions from the drugs on
2903 that. And just looking at the raw numbers here, 2006, the
2904 total number of players that were subjected to testing was
2905 1,356. And there were 35 therapeutic-use exemptions granted.
2906 Of those, 28 were for ADD or ADHD medications.

2907 In 2007, that number jumped significantly. Of the 1,354
2908 players tested, therapeutic-use exemptions granted were 111,
2909 of which 103 were ADD or ADHD medications.

2910 Now, that would make that almost eight times the normal
2911 adult usage in our population amongst baseball players. Does
2912 that have any significance to either of you gentlemen as
2913 something we ought to be looking at? Have we set up
2914 procedures to look for anomalies like this and then determine
2915 what we're going to do about it?

2916 Mr. FEHR. Let me respond to that, and I appreciate your
2917 asking the question since you did raise it with Senator
2918 Mitchell. Thank you for doing so. First of all,
2919 therapeutic-use exemptions are granted by the independent
2920 program administrator. He must have, in order to do that,
2921 appropriate medical documentation from an appropriate doctor
2922 who has conducted a legitimate examination, and he is free to
2923 question that individual to secure more recommendations or
2924 any of the rest of it. He is a physician. He is expert in
2925 sports medicine. To go--and I believe that Senator Mitchell
2926 did interview him with respect to the procedures he utilizes
2927 to determine whether therapeutic-use exemptions will be
2928 granted. No problems were reported by Senator Mitchell in
2929 that regard.

2930 As to your more general questions--

2931 Mr. TIERNEY. I think the problem with that is Senator
2932 Mitchell didn't have the information that we had. You could
2933 ask him about the procedures, but he didn't have this data to
2934 look at.

2935 Mr. FEHR. I'm coming to that.

2936 As to your more general question, I'm not familiar--I
2937 accept what you say about the use in the adult population. I
2938 suspect, from some personal exposure I've had to hyperactive
2939 kids, that the use of such drugs among young adults by
2940 prescription may be significantly larger than it is in the

2941 | general adult population.

2942 | Having said that, I don't know that to be true. What I
2943 | would expect is that if Dr. Smith believes that we have
2944 | anomalies which should be investigated and looked into more
2945 | closely, he would do three things: He'd tell us that; he'd
2946 | look into it more closely with the doctors granting the
2947 | exemptions and the players; and if he thought there were
2948 | changes that should be made, he would so recommend them. And
2949 | as Senator Mitchell pointed out, we have not had a
2950 | recommendation that he made that has not been adopted.

2951 | Mr. SELIG. If I can add to that, because I've asked the
2952 | same question over and over. You have to start with two
2953 | things here. Number one, the player gets a prescription at
2954 | the local level. The player playing for the Chicago Cubs and
2955 | the Milwaukee Brewers, that doctor there gives him that.
2956 | Then Dr. Smith reviews all of that. So they've been
2957 | through--it's been through two levels of medical research. I
2958 | mean, the examination and why and how. And if Dr. Smith
2959 | accepts it, I guess that we do too. It is within the limit
2960 | of the adult population, overall population. It is a little
2961 | higher, but it did go up. And we are reviewing that right
2962 | now, trying to break down exactly why it happened and how it
2963 | happened.

2964 | Interestingly enough, in my meeting with the trainers,
2965 | that was one of the major subjects last week: why, how? And

2966 everybody has had a different view of it, and I was
2967 fascinated by that view. So we just need to keep working at
2968 it. And I guess hopefully after we conduct our review with
2969 all of the team physicians and Dr. Smith and all of the team
2970 trainers, we'll be able to give you a better answer to that.

2971 Mr. TIERNEY. Just out of curiosity, is it perceived to
2972 be a performance enhancement, the ADA drugs? Are they
2973 perceived to be a performance enhancement to begin with.

2974 Mr. FEHR. Oh, sure. If they are not appropriately
2975 medically prescribed, yes, then they are prohibited.

2976 Mr. SELIG. That's right. And remember it has to go, as
2977 I said, through two levels of doctors. Our independent is
2978 the last one. But you'd hope that a doctor in Kansas City or
2979 Philadelphia or anywhere else is only prescribing it if he
2980 feels it is medically necessary.

2981 Mr. TIERNEY. Well, I take it from your comments, Mr.
2982 Selig, you do have a system set up to look at anomalies like
2983 this and then you are in this instance looking into it and--

2984 Mr. SELIG. Absolutely. No question about it. This is
2985 one that needs to be dissected.

2986 RPTS MERCHANT

2987 DCMN BURRELL

2988 [12:40 p.m.]

2989 Chairman WAXMAN. Thank you, Mr. Tierney.

2990 Mr. Burton.

2991 Mr. BURTON. Thank you, Mr. Chairman. I just have one
2992 question of Mr. Fehr. I was interested in your answer about
2993 due process. And I wonder, you probably talked to a number
2994 of the players, I wondered why some of the players didn't
2995 come in. Was it because they had not been apprised of the
2996 allegations against them and they thought if they went in
2997 they would immediately be looked upon in this media age as
2998 guilty of something by virtue of the fact that they showed
2999 up, and is that why they declined, and so they were darned if
3000 they do and darned if they don't, because if they went in it
3001 would look like there might be something that was against
3002 them, and if they didn't go in ultimately when the report
3003 came out they would be judged guilty before they had a chance
3004 to defend themselves?

3005 Mr. FEHR. I guess I would have a couple of responses to
3006 that. First of all, because we are giving legal advice we
3007 wanted to make sure that an attorney retained by the Players
3008 Association to give that advice was conversing with the
3009 individual players about these subjects, and so it wasn't me
3010 that did that. Having said that, I think that it is probable

3011 | that there was some players that had some concerns in those
3012 | regards. My guess is, because I don't know what the bases of
3013 | individual decisions were that were made by the players and
3014 | their individual counsel, but my guess is that it was the
3015 | totality of the circumstances that was involved; it was the
3016 | investigation, possible employment consequences, general
3017 | reluctance to get wrapped up in something, concern that they
3018 | didn't have precise information as to what the allegations
3019 | were before they went in, worry about various criminal
3020 | investigations that were ongoing which they might get called
3021 | even as a witness or somebody to talk to Senator Mitchell,
3022 | and the lack of privilege that would apply, added to the fact
3023 | that there's no process to resolve in any meaningful way what
3024 | happens after an allegation is made. I suspect that it would
3025 | be very difficult for most attorneys to recommend that their
3026 | clients go in under that basis.

3027 | Mr. BURTON. Let me just follow up real quickly. In the
3028 | future if there's an allegation against a baseball player, do
3029 | you think it should be changed so that they're apprised of
3030 | the allegations against them before some kind of report like
3031 | this comes out so they have a chance to prepare and be able
3032 | to defend themselves?

3033 | Mr. FEHR. Yes. I would hope that one of the subjects
3034 | that we would discuss in our upcoming meetings would be
3035 | whether we can agree that in the future there will be an

3036 | opportunity for a procedure to challenge in a formal way, in
3037 | some sort of a neutral to make a decision before matters are
3038 | raised publicly. Whether players would take advantage of
3039 | that would depend on the individual player and the individual
3040 | circumstance at the time. Each decision is going to be fact
3041 | bound.

3042 | Mr. BURTON. Thank you. I yield my balance to Mr.
3043 | Shays. Did you want to go further?

3044 | Mr. FEHR. No. I just said I appreciate your question.

3045 | Mr. SHAYS. I thank the gentleman for yielding. Mr.
3046 | Fehr, you continually say we have to do what is best. But
3047 | it's clear to me that involves what is best for the players.
3048 | You have an obligation you feel as the representative of the
3049 | players. What I want to ask is what obligations do the
3050 | players have and Major League Baseball Players Association
3051 | have to the fans and to the public at large, particularly our
3052 | young people, what are the obligations there?

3053 | Mr. FEHR. I think that I can best respond in the
3054 | following way. They have an obligation, and this is not
3055 | necessarily in order of priority. But they have an
3056 | obligation, first of all, to comply with the law and not
3057 | suggest to anyone that they're different and don't have to or
3058 | shouldn't have to or that it's okay. Secondly, that to the
3059 | extent they can they should be in a position to help educate
3060 | people both as to what not to do, but as I said in my other

3061 | statement, perhaps it would be better as to what they should
3062 | do. Third, as a group you can make certain statements. As
3063 | an individual who is called before a tribunal or an
3064 | individual or who may be challenged with wrongdoing, that
3065 | individual faces an entirely different set of circumstances
3066 | and theoretically facts of which he has some knowledge and
3067 | people making accusations. What he should do in the context
3068 | of that case is going to depend on what the situation is,
3069 | what the best advice is he can have and what he ultimately
3070 | decides to do.

3071 | Mr. SHAYS. I would like to ask the same question to Mr.
3072 | Selig. What obligations does Major League Baseball have to
3073 | the public at large, the fans, the public at large and to our
3074 | young people in particular?

3075 | Mr. SELIG. Congressman Shays, we have an enormous
3076 | responsibility. There is no question. I have often said in
3077 | my long career that we're a social institution, we have
3078 | enormous social responsibilities. One of the reasons that I
3079 | decided to do the George Mitchell report, and I thought long
3080 | and hard about all the consequences, various people that
3081 | could do it, is that I felt that we had an obligation to. We
3082 | had toughened our program, we had taken care of the present
3083 | and the future, but we had an obligation to go back and have
3084 | somebody take a look at what happened so it would be a road
3085 | map for the future, for people who came after me and for

3086 | other people. But we also, I felt, had an obligation to our
3087 | fans. There is no question that the impact of this sport
3088 | socially in this country is enormous and that is really our
3089 | primary responsibility.

3090 | So that's why I did the Mitchell report even though
3091 | there were a lot of people on all sides who didn't like it
3092 | and didn't like somebody doing it. I felt given the fact I
3093 | never wanted anybody to say what were you hiding, why
3094 | wouldn't you let somebody look at it. And I heard it when I
3095 | was here. And it was an absolutely very fair concern. And I
3096 | finally said to myself, this is going to be a painful journey
3097 | but it's a journey we're going on, and I would do it again
3098 | today.

3099 | Chairman WAXMAN. The gentleman's time has expired.
3100 | Before I recognize Ms. Watson, who will be the next
3101 | questioner, the two of you talked about the medical exemption
3102 | issue and your reviewing it. Would you keep us apprised of
3103 | your decision making in that area?

3104 | Mr. SELIG. Absolutely.

3105 | Mr. FEHR. Yes, of course.

3106 | Chairman WAXMAN. Ms. Watson.

3107 | Ms. WATSON. Thank you so much, Mr. Chairman. And I
3108 | want to thank the Commissioner and Mr. Fehr for being as
3109 | forthcoming as you have been. And I know that one of the
3110 | concerns with the Mitchell report was that they felt that

3111 | there was not enough off-season testing. And I know the two
3112 | of you have grappled with how do we meet this issue head on.
3113 | And according to Senator Mitchell, baseball only conducts 60
3114 | off-season tests each year. And this means that the average
3115 | league baseball player will go their whole entire career
3116 | without being tested even once in the off-season process.
3117 | And so first to the Commissioner, Mr. Selig, do you agree
3118 | with Senator Mitchell that more off-season testing is needed,
3119 | and I'll ask Mr. Fehr the same thing, and I would like to
3120 | have you go into your views about what actually is needed.

3121 | Mr. SELIG. Yes. The fact of the matter is that if you
3122 | were to ask me today what would I do if I could change the
3123 | program today, we need more testing, more year-round testing.

3124 | There is no question in my mind that that would strengthen
3125 | the program. So I not only agree with Senator Mitchell, but
3126 | I agreed with it even before Senator Mitchell made that
3127 | observation and did his investigation. So yes, there is no
3128 | question that more testing and off-season testing would be
3129 | very helpful.

3130 | Mr. FEHR. For my part, one of the things which came out
3131 | of the Mitchell report was the players were told the number
3132 | of off-season tests. Prior to that time they didn't know how
3133 | many there were going to be. They didn't know whether there
3134 | would be few or there would be many. As far as they knew
3135 | that was going to be up to the people that draw the names out

3136 | of a hat to determine who is going to be tested. One of the
3137 | things that Senator Mitchell suggested, and I may not have
3138 | this precisely right, I didn't review this part of it
3139 | overnight, was that perhaps the number of tests in season and
3140 | off season in terms of how they are divided should not be
3141 | static and should be changeable and all the rest of it, and
3142 | that probably bears some examination.

3143 | Ms. WATSON. That goes right to something that Jeff
3144 | Kent, who is the second baseman, as you know, for the Los
3145 | Angeles Dodgers and a former Most Valuable Player, and he
3146 | stated that baseball never conducts tests, testing in the
3147 | post season. And I understand that there was some testing in
3148 | 2007, but it was limited. And so can you give me an estimate
3149 | of the testing in 2007 and what you feel as to whether it's
3150 | efficient or not?

3151 | Mr. FEHR. Sure. I can get the precise numbers after
3152 | the hearing if there's an interest. But we began testing in
3153 | the post season I believe in 2007. And we do what is
3154 | traditional in team sports. As I understand it, a number of
3155 | people from each team are tested during that process. I
3156 | don't know the precise numbers. But one of the improvements
3157 | we made since 2005 was to increase, was to provide for
3158 | testing in October.

3159 | Mr. SELIG. Yes, we did test--

3160 | Mr. FEHR. Excuse me, I'm sorry. I'm told it was both

3161 '06 and '07.

3162 Mr. SELIG. We did test in the post season last year,
3163 that's correct.

3164 Ms. WATSON. It appears from what the two of you have
3165 said that the players possibly are under a misunderstanding
3166 and they feel that there is no opportunity for post-season
3167 testing. How would you comment?

3168 Mr. FEHR. Well, I hope they're not under that
3169 misunderstanding, because if they are and they use drugs that
3170 they shouldn't, then the likelihood is that they're going to
3171 be caught by the testing procedures. But part of my job is
3172 to try and make sure that players understand what the rules
3173 are. And if there's been a failure there that's one of the
3174 things we can emphasize in our spring training meetings.

3175 Ms. WATSON. And probably they ought to be under more
3176 scrutiny. If this is something that's really widespread I
3177 would say leadership needs to inform them that random testing
3178 after the season is something that you're going to see
3179 happen. And I would hope that we would get word of your
3180 follow-up on post-season testing prior to another hearing
3181 like this.

3182 And thank you two for your input. We appreciate it. I
3183 yield back my time.

3184 Chairman WAXMAN. Thank you very much, Ms. Watson.

3185 Mr. Lynch.

3186 Mr. LYNCH. I thank the gentleman for yielding.
3187 Commissioner and Mr. Fehr, I just want to say at the outset
3188 that a lot of progress has been made, and I want to
3189 congratulate you both on that. I remember the last hearing
3190 we were looking at a collective bargaining agreement that
3191 actually allowed a player to leave in the middle of his urine
3192 test and then come back an hour later for no apparent reason.
3193 It also allowed players to pay a \$10,000 fine rather than be
3194 suspended, which I thought was a slap on the wrist. All that
3195 has changed, and it has changed because of the collective
3196 bargaining agreement and the whole collective bargaining
3197 process that you've engaged in. And I want to congratulate
3198 you on that, and I think it needs to be said here publicly.

3199 But look, I'm a former union president, and I've
3200 negotiated a fair number of contracts myself. And I always
3201 viewed, even though I was representing Iowa, which was a heck
3202 of a lot less well paid I guess than the union members you're
3203 representing, I always felt that the--well, I was always one
3204 of the biggest advocates for a drug-free workplace. And I
3205 felt that was my rightful position, representing the best
3206 interests of the people that I represented.

3207 And I do want to just note one thing. This Mitchell
3208 report, which was well done, did note one bit of new
3209 information. And I think it deserves recognition by both of
3210 you. And that is he said in the report that while steroid

3211 use was down considerably, and that's a good thing, he said,
3212 HGH is on the rise, it is on the rise. Now, I think that
3213 deserves some type of acknowledgement in your agreement. And
3214 I respect the sanctity of the collective bargaining
3215 agreement. But here is information we didn't have when you
3216 sat down. And I know this current agreement goes from 2007
3217 to 2011. December of 2011, that's the next time, unless we
3218 reopen this agreement, that's the next time we're going to be
3219 presented with an opportunity to change the drug testing
3220 protocol in this agreement. And, you know, I know that Gary
3221 Wadler, who testified last time we were here about the fact
3222 that HGH blood testing was used at the Athens Olympics in
3223 2004. And that's the World Anti-Doping Agency, a fairly
3224 reputable outfit regarding drug testing. And I just think
3225 there's a way here to get at that. We know it's on the rise,
3226 we know it's being used in the sport, we've got to get at it.

3227 So I'm going ask each of you, we know it's a problem,
3228 there's some testing protocols. Oh, and I just want to get
3229 at, I understand Mr. Fehr's comments earlier on. You're
3230 saying there's no valid testing protocol right now that's
3231 commercially available. I think Mr. Wadler, Dr. Wadler,
3232 would disagree with that. And you're saying that you don't
3233 want to test for it until something is out there. And here
3234 is my response to that. Number one, you banned it in your
3235 agreement. It says HGH is a banned substance under your

3236 | current collective bargaining agreement, but you're not
3237 | testing for it. All I'm saying is test for it now, test for
3238 | it now, get the blood samples, okay. And when the test
3239 | becomes commercially effective, if that's your objection,
3240 | we'll be able to test these retroactively. And I bet you, I
3241 | just know that these players, if they know they're being
3242 | tested for HGH you'll see the incidence of use drop just like
3243 | you did with steroids when we started testing for that.

3244 | Mr. SELIG. Congressman Lynch, if I can just add, I
3245 | don't disagree with much of what you said. Our deal with the
3246 | USOC, which you probably read about last week, that's exactly
3247 | what this is about. There's no question, and I agree with
3248 | Senator Mitchell, the use of HGH is on the rise. In my
3249 | meetings with trainers and doctors, frankly, that's a subject
3250 | that I spend a lot of time on. What I would say to you today
3251 | is that according to our experts, one of whom, Dr. Green, is
3252 | sitting right behind me, there is no commercially available
3253 | test today. Maybe there will be one in 2 or 3 months. I can
3254 | speak from our perspective, because I am so concerned, I'm
3255 | frustrated by HGH and the lack of a test. It has been--you
3256 | know, we're funding Dr. Catlin with the National Football
3257 | League, we've done a lot of other things. I cannot tell you
3258 | my level of frustration about this. So if there comes a test
3259 | that's available, as I said in my statement, I think that we
3260 | would have to have very meaningful, expeditious discussions

3261 | because I believe that if we're serious about it, and I think
3262 | we all are, that we would adopt that test, and we would adopt
3263 | it as soon as it's available. So as for the storing of these
3264 | things--

3265 | Mr. LYNCH. Commissioner, I guess you're missing my
3266 | point. I'm saying if we take the samples now.

3267 | Mr. SELIG. I'm going to get to that right now.
3268 | According to the people that I've talked to and we've talked
3269 | to Dr. Green, Chris Ayotte, the head of the Montreal
3270 | laboratory, there has been a feeling that storing samples is
3271 | not practical. I'm not a medical expert. Frankly, if there
3272 | is a way to do it I'm not adverse to doing that. But I've
3273 | taken the best medical advice that I can get from people, and
3274 | they tell me that at least for the moment that is not the way
3275 | to do it. Look, if I really felt that there was a way to do
3276 | it and it would really do what you say it would do, and I
3277 | believe that may be right, of course we would do it. So I
3278 | have to be guided by the head of the labs and everybody else.
3279 | And if they think it's doable, then it's something that we
3280 | will seriously consider, absolutely.

3281 | Mr. LYNCH. Fair enough, Mr. Commissioner. Mr. Fehr.

3282 | Mr. FEHR. Thank you. First of all, I don't know
3283 | personally whether Senator Mitchell is right that players
3284 | have switched to HGH because we had workable testing for
3285 | steroids. It certainly wouldn't surprise me. That's an old

3286 | story in athletics, where people move on to the next
3287 | available drug. And I indicated in my testimony in response
3288 | to other questions things which I think we can do about that.
3289 | I am not aware of any test or any protocol that says you can
3290 | store and then test at a later time. And it troubles me to
3291 | do that. And I would just remind everybody, although I don't
3292 | want to bring unnecessarily someone else into a hearing, we
3293 | had issues, "we" meaning this country, had issues with stored
3294 | samples that were looked at years later in Lance Armstrong's
3295 | case in France. So all I can tell you is that when a
3296 | scientifically valid and effective test is available or some
3297 | other procedure that the medical experts tell us we can rely
3298 | on then we have to look at it very hard and we will.

3299 | Chairman WAXMAN. The gentleman's time has expired.

3300 | Mr. Shays.

3301 | Mr. SHAYS. Thank you. I feel Major League Baseball is
3302 | in a different place now than in 2005. You do have three
3303 | strikes and you're out, except for the fact that you can
3304 | petition 2 years later. And I'm going to want to know why
3305 | you should be able to petition 2 years later after you've had
3306 | that third strike. I want to know specifically do either of
3307 | you see a difference between cocaine and heroin use versus
3308 | steroids and enhanced drugs as it relates to baseball.

3309 | Mr. FEHR. I'll take that first since Bud took the last
3310 | one. I think yes, in one very specific way, and that is that

3311 | one category of drugs is--can or is alleged or is believed to
3312 | effect the play of the game on the field and the others do
3313 | not, so far as I know. And that is a significant difference
3314 | and it suggests why you can have different approaches to that
3315 | kind of an issue.

3316 | Mr. SHAYS. Commissioner, do you have the same answer?
3317 | If it is, I'll go to the next one.

3318 | Mr. SELIG. Look, the cocaine--and by the way this sport
3319 | had a terrible cocaine problem in the '80s and unfortunately
3320 | there was no testing as a result of that. But the steroids
3321 | and HGH are enhancing as opposed to the others, which are
3322 | recreational.

3323 | Mr. SHAYS. So basically you see a difference. And so
3324 | what I get to is the issue of collective bargaining. I don't
3325 | know how you have collective bargaining for cheating. And
3326 | that's what I wrestle with more than anything else. I don't
3327 | know, Mr. Fehr, how you can even make the argument in the
3328 | sense that your players should be allowed to cheat once,
3329 | twice, three times before they're kicked out. It's
3330 | inconceivable to me and I think to other people as well. So
3331 | tell me why a player should be allowed to cheat three times.

3332 | Mr. FEHR. The best way I can respond, Congressman, I
3333 | suppose in the short time we have is as follows: Under the
3334 | law we're supposed to negotiate all terms and conditions of
3335 | employment. Discipline and increasing levels of discipline

3336 | for repeat violations is a traditional method which is
3337 | utilized in collective bargaining agreements all across the
3338 | country in sports and out of sports and has been for longer
3339 | than I've been alive. In our case the way I look at it is we
3340 | want to have a program which stops the use, but does not
3341 | destroy, if you can reform people and avoid having repeat
3342 | problems, their careers. And therefore we think that this
3343 | works. The Commissioner proposed three strikes, as you know,
3344 | back in 2005 and we agreed to it.

3345 | Mr. SHAYS. Why should someone be allowed to reform when
3346 | they're cheating? In other words, that's what I don't get.
3347 | It seems to me it's a different kind of drug. One they're
3348 | taking because they want to cheat, they want to have an
3349 | advantage. I don't know about its addictive nature, but it
3350 | strikes to me as a huge difference. It would strike me then
3351 | that your argument could be the Black Sox of 1919 should have
3352 | been allowed three strikes before they were kicked out.
3353 | Because it's the same difference and it's the same thing.
3354 | That's kind of how I'm seeing it. Mr. Selig, how do you see
3355 | it?

3356 | Mr. SELIG. I'll answer it from my--look, we have--today
3357 | the three strikes you're out is the toughest program in
3358 | American sports. My father always used to say to me, nothing
3359 | is ever good or bad except by comparison. Having said that,
3360 | in a perfect world, Congressman Shays, I would like a tougher

3361 program. But this is a subject of collective bargaining and
3362 this where we are and this is the best that we could do, and
3363 we came a long way.

3364 Mr. SHAYS. I hear you and I appreciate what you did in
3365 the minor leagues for taking a stronger action. And, Mr.
3366 Fehr, I understand you're going to speak for your players,
3367 you're going to represent them to the best of your ability.
3368 The consequence is though that you are really saying to the
3369 players that they can cheat three times, and you are arguing
3370 that they should be allowed to. That's the way I'm left with
3371 it.

3372 Mr. FEHR. I think you and I have a disagreement on
3373 that, Congressman. But I can assure you of this. I can't
3374 envision the player, and I've never met him, who believes
3375 that the public disclosure of a steroid violation is
3376 something which is anything other than of enormous
3377 consequence. And maybe that's why we haven't had to repeat
3378 it once. I hope we don't. If we do it will be tougher.
3379 Thank you.

3380 Chairman WAXMAN. Thank you, Mr. Shays.

3381 Mr. Yarmuth.

3382 Mr. YARMUTH. Thank you, Mr. Chairman. Commissioner, the
3383 Mitchell report details in a number of places incidents in
3384 which club personnel appear to have been complicit in at
3385 least enabling the violations of some of the rules. In one

3386 case we know or we heard that club personnel actually
3387 returned steroids to a player after he had found it. We
3388 talked about the penalties being imposed upon the players for
3389 violations. What plans do you have to hold club personnel
3390 accountable for incidents in which they may be complicit in
3391 the violation?

3392 Mr. SELIG. For the same reason that I said that
3393 baseball is a social institution with enormous social
3394 responsibilities I plan to evaluate the club personnel in the
3395 same way I'm doing the players. There is no question that if
3396 there were club personnel, and there have been some pretty
3397 serious accusations there, if those people are guilty of
3398 doing what was said they are doing, they will face discipline
3399 and very significant discipline.

3400 Mr. YARMUTH. Thank you for that. I would like to pursue
3401 a discussion I had with Senator Mitchell about the issue as
3402 to whether we really know enough about the effects of the
3403 substances we're talking about. And again I wanted to make a
3404 distinction between the legality issue and the competitive
3405 advantage issue. I'm talking strictly about the competitive
3406 advantage issue. We've heard a lot about what you just
3407 mentioned, the distinction between cocaine and steroids. And
3408 you said one is performance enhancing and one is not. And
3409 yet as I said, there is some evidence at least that there is
3410 no, at least statistically there's no competitive

3411 | enhancement. So my question is do we really know enough to
3412 | say that taking steroids or HGH improves a player's
3413 | competitive position any more than chewing tobacco does, any
3414 | more than chewing on sunflower seeds does, or anything else
3415 | they might put in their body to relax them or to stimulate
3416 | them? I ate up boxes of Wheaties as a kid. I know Wheaties
3417 | don't do it. But do we have enough evidence to really make
3418 | these types of determinations?

3419 | Mr. FEHR. I'm sorry, the question was directed to you.

3420 | Mr. SELIG. My answer to that would be yes, I think
3421 | there is enough evidence that using performance enhancing
3422 | drugs gives a player an advantage. I've talked to a lot of
3423 | doctors, I've talked to our own people, I've talked to other
3424 | team doctors, I've talked to trainers about it. Yes, I think
3425 | there is. And I'll tell you what else it does when you think
3426 | about it. It attacks the integrity of the sport. You have
3427 | some people doing something that others aren't. And even if
3428 | one could make a case that, well, really it doesn't help, I
3429 | happen not to agree with that, and I think there's a lot of
3430 | medical evidence that would support that. The fact of the
3431 | matter is that that's something you just can't tolerate. And
3432 | as I said to Senator Mitchell way back when, I wanted him to
3433 | create a road map, that was my reason, a road map which will
3434 | show us, which will take history, and using the way I love to
3435 | use history to try to educate us for the future, and you get

3436 | into an integrity problem. And so as far as I'm concerned I
3437 | don't have a scintilla of doubt that the use of performance
3438 | enhancing drugs is a very serious matter for this sport at
3439 | its core, at its core.

3440 | Mr. YARMUTH. Mr. Fehr, do you have the same conclusion?

3441 | Mr. FEHR. Let me say a number of things. First of all,
3442 | I approach it this way. The use of such substances in a
3443 | fashion not authorized by law is unlawful. That's where you
3444 | start.

3445 | Secondly, players use it for a lot of mixed motives,
3446 | including to recover and to help train better, as Senator
3447 | Mitchell indicated. But undoubtedly there are players, and
3448 | perhaps most of them, who use it because they believe it has
3449 | such effects whether it does or not.

3450 | Third, we did a study jointly with Major League Baseball
3451 | about a decade ago as to whether or not androstenedione built
3452 | muscle mass. And what the study indicated, if I remember it
3453 | correctly, I haven't looked at it in a long time, is if you
3454 | take dosages in the amounts recommended on the bottle nothing
3455 | much happens. If you take it in much larger amounts,
3456 | however, you do build muscle mass in a fashion which would
3457 | otherwise have to be duplicated by more traditional methods
3458 | of exercise and diet.

3459 | Fourth, and to go back to the kids issue, regardless of
3460 | its effect on adults, and we do draw distinctions between

3461 children and adults in this country for a lot of issues, but
3462 the evidence is clear that it's bad for children. And that's
3463 something we need to pay some attention to.

3464 The last thing I'll say, and I want to stress that I am
3465 saying this because I'm using a bit in response to your
3466 question, I am not saying it because it represents a position
3467 of the Players Association or even one that I advocate, but I
3468 have wondered given the anecdotal suggestion about ability to
3469 recover better if some of these things are used, whether in
3470 fact there are therapeutic doses which could be administered
3471 to people who have--elderly people with broken hips. I
3472 mentioned that because we had an experience in my family with
3473 that recently. That would be helpful, and I don't know
3474 whether any of that research has been done. But that's a
3475 musing on my part.

3476 Chairman WAXMAN. The gentleman's time has expired. The
3477 Chair wants to recognize himself to follow up on some of the
3478 points raised.

3479 Commissioner Selig, I want to ask you about the BALCO
3480 scandal. Senator Mitchell explored the scandal and the role
3481 of the management of the San Francisco Giants in great
3482 detail. What he learned provides a case study of everything
3483 that went wrong with baseball management's approach to
3484 reports of steroids use. As early as 2000 the Giants trainer
3485 Stan Conte expressed concerns about the presence of Greg

3486 Anderson in the Giants locker room, but he received no
3487 support from General Manager Brian Sabean to have him
3488 removed.

3489 In 2001, another Giants trainer, Barney Nugent, raised
3490 concerns about Anderson with Kevin Hallinan, the head of
3491 Baseball Security Office. And Mr. Hallinan promised to do
3492 something about this. He did nothing.

3493 In 2002, Stan Conte reported to Giants general manager,
3494 Brian Sabean, that he believed Greg Anderson was selling
3495 steroids to players. Mr. Sabean did not confront Mr.
3496 Anderson or Barry Bonds about these allegations. He did not
3497 take steps to have Mr. Anderson removed from the clubhouse,
3498 and he did not report Conte's concerns to anyone in the
3499 Giants organization or in the Commissioner's office.

3500 Finally, in September 2003 a search warrant was executed
3501 on Mr. Anderson's residence and it became public that
3502 Anderson was under investigation for steroid distribution.
3503 Only then was Anderson barred from the Giants clubhouse. And
3504 even at this point Mr. Sabean never reported to the
3505 Commissioner's office that anyone in the Giants organization
3506 had raised concerns about Mr. Anderson.

3507 Commissioner Selig, Stan Conte did the right thing here,
3508 he warned Brian Sabean repeatedly about Anderson's ties to
3509 steroids, but Mr. Sabean never did a thing about it. Instead
3510 he seemed to go out of his way to allow the suspicious

3511 | behavior to continue. How do you account for Mr. Sabean's
3512 | behavior and at the very least should Sabean have reported
3513 | the suspicion to your office?

3514 | Mr. SELIG. Well, it's a subject that I'm familiar with,
3515 | Mr. Chairman, because I ran a club for almost 30 years, and I
3516 | understand the sanctity of a clubhouse and who should get in
3517 | and should not get in. There should not have been anybody in
3518 | clubhouses. We now have done that. We sent a trainer's
3519 | letter out in 2003 telling people that the clubhouses now
3520 | would be carefully watched. They are, we've changed all
3521 | that. But this is one of the matters that frankly is under
3522 | review and under discussion. You've raised a very valid
3523 | point. It's a point of great concern to me. The fact of the
3524 | matter is why anybody is ever in a clubhouse, other than the
3525 | trainer, is beyond my comprehension. And I have 30 years of
3526 | practical experience.

3527 | Chairman WAXMAN. Do you think Sabean should have
3528 | reported this to the Commissioner's office?

3529 | Mr. SELIG. Of course.

3530 | Chairman WAXMAN. Senator Mitchell--

3531 | Mr. SELIG. I don't really want to say any more because
3532 | it is a matter that I have under review, but the answer to
3533 | your last question is yes.

3534 | Chairman WAXMAN. Senator Mitchell also interviewed
3535 | Giants owner, Peter McGowan, about his actions with regards

3536 | to reports that Barry Bonds was using steroids. McGowan told
3537 | Mitchell that he asked Barry Bonds this question in 2004.
3538 | Quote, I've really got to know, did you take steroids? Mr.
3539 | McGowan said that Mr. Bonds admitted that he had taken
3540 | substances that he later found out to be steroids. According
3541 | to Senator Mitchell, 2 days after his interview with Mr.
3542 | McGowan, Mr. McGowan's lawyer called and said that Mr.
3543 | McGowan had misspoke about this conversation with Mr. Bonds.
3544 | Commissioner Selig, what do you think was going on here? Do
3545 | you think the Giants owner had any knowledge or at least
3546 | suspicions that Barry Bonds was taking steroids? What do you
3547 | think Mr. McGowan's lawyer meant, lawyers meant when they
3548 | said that Mr. McGowan had misspoke?

3549 | Mr. SELIG. Mr. Chairman, again, it's a matter under
3550 | review, but it's something that I'll have to look into. But
3551 | I can tell you right now I've already started to look into it
3552 | and I will continue.

3553 | Chairman WAXMAN. Well, this incident shows why it's
3554 | important for baseball's management to take the problem of
3555 | steroids seriously. It's possible that the BALCO scandal
3556 | could have been averted had Brian Sabean and Peter McGowan
3557 | acted in a responsible fashion. Instead they seemed more
3558 | intent on protecting Barry Bonds. And it seems clear that
3559 | Brian Sabean violated baseball rules by failing to report
3560 | information about alleged steroid use to the Commissioner's

3561 office. And Peter McGowan's answer to Senator Mitchell's
3562 questions don't seem to clarify his role at all. Will Sabean
3563 be sanctioned by your office? What about Mr. McGowan or the
3564 Giants organization?

3565 Mr. SELIG. Well, I'm going to give you the same answer.
3566 And I think you'll understand since I'm the judge that it's
3567 one of many matters under review.

3568 Chairman WAXMAN. Well, it's easy to blame the players
3569 for the entire steroid problem, but the Mitchell report shows
3570 that the blame runs much deeper. There was a culture
3571 throughout baseball to just look the other way when it came
3572 to responding to reports of steroid use.

3573 I thank you for your responses. Mr. McHenry.

3574 Mr. MCHENRY. Thank you, Mr. Chairman. To be honest
3575 with you, Mr. Chairman, I don't think that Congress' proper
3576 role is to mediate disputes between those that make tens of
3577 millions of dollars and those that make hundreds of millions
3578 of dollars. And to be honest with you, the substance of this
3579 hearing is really about the images that your players are
3580 sending to our youth. To be honest with you, Canseco,
3581 McGwire, Sosa, Palmeiro, it's not really about their health
3582 and well being we're talking about. We're talking about the
3583 sanctity of the game that we love. But more importantly the
3584 images we're sending to those kids in high school, they want
3585 to be professional ball players that seek it, that crave it,

3586 | that look up to these guys as heroes. And so my questions
3587 | are going to be about that, centered around that. And that's
3588 | my main concern here, is the images we're sending to our
3589 | youth. I know there are questions about your social
3590 | responsibility. But it goes beyond professional athletes.
3591 | It goes beyond the Players Association and the owners. But
3592 | the actions you took in 2005 were good. You have a tough
3593 | testing program. We want to make sure it remains strong.
3594 | But it did take a long time for you to get there.

3595 | My question to you, Mr. Fehr, what responsibility does
3596 | the Players Association have for the health and well being of
3597 | your members?

3598 | Mr. FEHR. I think for the health and well being of our
3599 | members, is that your question?

3600 | Mr. MCHENRY. Yes.

3601 | Mr. FEHR. I think a couple of things. Obviously we're
3602 | concerned about that. Obviously it's our role to try to
3603 | educate players as best we can.

3604 | Mr. MCHENRY. How do you educate them?

3605 | Mr. FEHR. You talk to them, you have doctors talk to
3606 | them, you warn them.

3607 | Mr. MCHENRY. Do you have programs that do that?

3608 | Mr. FEHR. Yes, we have some. And we've already had
3609 | before you came into the room some discussion about the fact
3610 | that we've had at least one meeting in which we discussed

3611 | enhancing that beginning early this season.

3612 | Mr. MCHENRY. Do you think, Mr. Selig, Mr. Fehr, your
3613 | actions in 2005 have been enough?

3614 | Mr. SELIG. I'm sorry, that question?

3615 | Mr. MCHENRY. Do you think your actions in 2005 have
3616 | been enough?

3617 | Mr. SELIG. We've made enormous progress. I do want to
3618 | keep saying that. Look, this is a process evolving. We need
3619 | to do more. There are things that I think we can do, I think
3620 | that we can do them together in some cases, and we need to
3621 | expand our educational program. One of the things I have to
3622 | say today that I'll never forget as long as I live is Donald
3623 | Hooton's presentation with the Garibaldis. I sat over there
3624 | and it stunned me. And I think Mr. Hooton will tell you, I
3625 | called him the next morning. He didn't believe it was me, so
3626 | we had to go through 2 minutes of that. But the fact of the
3627 | matter is for our own people it's a tough enough situation,
3628 | and it attacks the integrity of the sport and everything
3629 | else. But the message that we send is critical. And I have
3630 | since talked to a lot of athletic directors, coaches,
3631 | football and basketball and other sports and baseball, and
3632 | there's no question that we need to tighten this program and
3633 | we need to continue to tighten this program. And so I agree,
3634 | you know I agree with Senator Mitchell over and over, this is
3635 | an evolutionary thing. And we can't rest because we don't

3636 | know what else is out there, and that's what we need to do.

3637 | Mr. MCHENRY. Mr. Fehr, why was the union so hesitant to
3638 | allow the adoption of an anti-steroid policy? The Major
3639 | League Baseball did it unilaterally with the minor leagues in
3640 | 2001. And it took 5 years for there to be an effective
3641 | testing policy to the point where you're--quoting the
3642 | newspaper, we're still in discussions. Why is that? Why did
3643 | you hesitate adopting an anti-doping policy?

3644 | Mr. FEHR. The question I think is more appropriately
3645 | put, why did we oppose mandatory random testing prior to
3646 | 2002, which we did. And the reason why I've previously
3647 | testified--I'll try and succinctly respond to your question
3648 | today--I believed, the players believed, that fundamental
3649 | principles of probable cause bore a role here. That before
3650 | you did a search or invaded the privacy of an individual you
3651 | ought to have cause related to that individual to do that.
3652 | It became apparent a year after or some months after the 2001
3653 | program was introduced in the minor leagues, with revelations
3654 | about Ken Caminiti and so on in the spring of 2002, that that
3655 | approach may have not been as well thought through as we
3656 | thought it would. And as I testified at this committee in
3657 | 2005 we had a lot of discussions and we decided that the best
3658 | approach was to test it empirically. And we did a survey
3659 | test. And the survey test came back significantly higher
3660 | than I believed it would, and certainly than I hoped it

3661 | would. We then went to program testing. I thought at the
3662 | time that the testing we had in effect in 2004 would probably
3663 | have done the trick with respect to steroids. A lot of
3664 | people didn't, including a lot of members of this committee.
3665 | And so we took the additional steps. And since 2002 we have
3666 | modified the agreement, sometimes formally, sometimes
3667 | administratively, in a number of requests, in a number of
3668 | different respects, including recently, and I expect that to
3669 | continue.

3670 | Mr. MCHENRY. Mr. Selig.

3671 | Mr. SELIG. One of the virtues of the Mitchell report
3672 | for me was to point out again, even though we had done all
3673 | these things, how much more we had to do, which answers your
3674 | basic question. That this thing is changing so rapidly that
3675 | we not only will continue to do it, but we need to look
3676 | forward and do more.

3677 | Mr. MCHENRY. A final comment.

3678 | Chairman WAXMAN. The gentleman's time has expired.

3679 | Mr. MCHENRY. A final comment. You need to think about
3680 | the youth here and the images you're sending to them. And a
3681 | follow-up question for both of you, a simple yes or no. Do
3682 | you two feel complicit in the rise of steroid use in Major
3683 | League Baseball?

3684 | Mr. FEHR. As I indicated in my testimony, we didn't pay
3685 | enough attention to it soon enough. If that fits your

3686 | definition of "complicit," then the answer is yes.

3687 | Mr. SELIG. I said in my testimony and my statement and
3688 | again today I'll take responsibility. I take it for all the
3689 | great things that have happened in the last 16 years. I'll
3690 | certainly taking it for that. And that's why I wanted the
3691 | Mitchell report, because it would show me and show the people
3692 | who come after me a road map of what maybe they should have
3693 | done under the circumstances.

3694 | Chairman WAXMAN. Thank you, Mr. McHenry.

3695 | Ms. Norton.

3696 | Ms. NORTON. Thank you, Mr. Chairman. First, I would
3697 | like to commend both of you on the progress you've made,
3698 | especially since our hearings. In my view, the most
3699 | important recommendation in Senator Mitchell's report is his
3700 | recommendation, and I'm going to quote him, for an entity
3701 | with, quote, exclusive authority over all aspects of the
3702 | formulation and administration of the drug program.
3703 | Commissioner Selig, you mentioned in your testimony an
3704 | independent program administrator. I would like to know what
3705 | your version of an independent entity would look like. And
3706 | to ask Mr. Fehr what his thoughts are concerning a completely
3707 | independent drug testing program.

3708 | Mr. SELIG. Well, I'll give my answer first. I think
3709 | since we've been here we're much more independent, we have
3710 | two of the gold standard labs on the North American continent

3711 | in Montreal and UCLA. We have Dr. Brian Smith from the
3712 | University of North Carolina, who Dr. Green had recommended
3713 | to us. I think that everybody involved in the program will
3714 | tell you that nobody has overturned any of his decisions, so
3715 | he has been independent. It's a matter that we'll continue
3716 | to review. But I think frankly based on the results, and
3717 | we've gone into it in very significant detail and surrounded
3718 | these with the best labs and the best people whose
3719 | reputations are impeccable, and Dr. Smith I think if he were
3720 | here today would tell you that he has been independent, and
3721 | it's up to us to make sure that he is.

3722 | Ms. NORTON. Mr. Fehr.

3723 | Mr. FEHR. Thank you, Congresswoman. Let me begin by
3724 | stating something which is obvious to labor lawyers, but
3725 | perhaps in this day and age isn't as well known. Under the
3726 | law we have the legal right, but more importantly the
3727 | responsibility to negotiate all terms and conditions of
3728 | employment.

3729 | Ms. NORTON. You don't have to go--I taught labor law,
3730 | Mr. Selig. I'm asking you a question.

3731 | Mr. FEHR. I apologize.

3732 | Ms. NORTON. Because I'm aware of--I have great respect
3733 | for collective bargaining. It was one of the subjects I
3734 | taught at Georgetown Law School. I'm asking what your views
3735 | are?

3736 Mr. SHAYS. You blew that one.

3737 Mr. FEHR. It would appear so, yes.

3738 Ms. NORTON. What your views are, your personal views
3739 are, however you arrived at that. And you're talking about
3740 someone who respects the collective bargaining process, not
3741 somebody who thinks we or anybody ought to override it. What
3742 are your views of a completely independent drug testing
3743 program?

3744 Mr. FEHR. Let me try again. I believe that there
3745 should be an independent program administrator. We have one,
3746 as has been indicated. None of his recommendations have been
3747 other than complied with. Senator Mitchell indicated, and I
3748 agree with, in his report, and I agree with it, that there
3749 are a number of different alternatives that might be
3750 considered the precise formula that would be adopted, needs
3751 to be decided in bargaining--I haven't closed yet--on the
3752 kinds of recommendations that I will make to the players as
3753 to what changes make sense. We do expect to get some
3754 proposals from the Commissioner's office. And we'll look at
3755 it in good faith and we'll let you know what we come up with.

3756 Ms. NORTON. I appreciate that answer. And by the way,
3757 I understand the position you're put in. I'm not asking you
3758 to bargain at the witness table. I do want to indicate that
3759 you have a terrible burden, Mr. Fehr, because you do
3760 represent players. There's no way for players to feel good

3761 | about any kind of additional oversight. I understand that
3762 | entirely.

3763 | Mr. FEHR. I appreciate that.

3764 | Ms. NORTON. However, from your point of view nothing
3765 | would be better than to take this issue off the table. If
3766 | you want to talk about a deterrent effect. Imagine the
3767 | deterrent effect of knowing that an independent entity having
3768 | nothing to do with anybody, not just doctors or scientists
3769 | whom you trust, is who is going to conduct these random
3770 | tests. Then the union does not have to worry about
3771 | grievances where they've got to represent the player no
3772 | matter what. It's out of your hands. And therefore I must
3773 | ask you, what would be your objection to adopting the world
3774 | and U.S. anti-doping agency standards in baseball after all
3775 | you've gone through just to get this off the table, to
3776 | imagine the effect of regaining almost instantly the
3777 | credibility that baseball has lost the trust just in time for
3778 | the Nationals to come to Washington?

3779 | Mr. FEHR. I think they would say they're already here,
3780 | but we are having a new stadium. Let me just try and
3781 | respond. I don't think my responsibilities are consistent
3782 | with doing something just to get it off the table. Our
3783 | responsibilities are to do two things. We have to negotiate
3784 | what we think is a fair and appropriate program.

3785 | Ms. NORTON. Mr. Fehr, I said a deterrent effect.

3786 Mr. FEHR. No, I understand.

3787 Ms. NORTON. If you want to go with grievances for the
3788 players from here to kingdom come, then be my guest.

3789 Mr. FEHR. All I can tell you is that I believe we can
3790 and have and will continue to achieve that deterrent effect,
3791 and we'll see where these discussions take us. And I'm sure
3792 that this committee--

3793 Ms. NORTON. Well, let me ask Mr. Selig if he would at
3794 least consider a totally independent. I mean, that's one of
3795 the recommendations. You say you supported all 20
3796 recommendations. He knew what you all have just said to me,
3797 he knew about the vast improvement that you've already done
3798 and still he said you needed a totally transparent
3799 independent commission. Mr. Selig, what would be your
3800 response to at least considering that?

3801 Chairman WAXMAN. Your time has actually expired, but I
3802 would like to let the witnesses answer the question. Your
3803 time has expired to ask questions, but we would like to hear
3804 your response to the question.

3805 Mr. SELIG. I really believe, as I said to you earlier,
3806 that this program is working in an independent way. But it's
3807 a very fair question and it's one we will closely evaluate
3808 because we need to be totally and completely independent.

3809 Ms. NORTON. Thank you.

3810 Chairman WAXMAN. Thank you very much.

3811 Mr. Davis.

3812 Mr. DAVIS OF ILLINOIS. Thank you very much, Mr.
3813 Chairman. The focus of this committee's work on baseball has
3814 mainly been with regards to its drug testing policy. But
3815 Senator Mitchell notes that improvements to the drug testing
3816 program by itself will not be sufficient and that the
3817 Commissioner's office should place a higher priority on the
3818 aggressive investigation of nonanalytical evidence; that is,
3819 evidence of possession on youths. Commissioner Selig, you
3820 acted quickly on this recommendation, and I commend you for
3821 it, because on Friday of last week you appointed a new Office
3822 of Investigations for your office. Could you tell us the
3823 purpose of that office and what it's intended to do?

3824 Mr. SELIG. I can. That was I think Senator Mitchell
3825 found in the course of our history, Congressman, that we
3826 didn't have enough of an independent arm, so to speak, just
3827 doing investigation which would help us overall. So we've
3828 taken two people. One is a former deputy police chief in New
3829 York, the other an FBI man for over 30 years. They're here
3830 today. They have over 53 years of experience in law
3831 enforcement. They are to track every possible rumor,
3832 everything that's said on this subject, so that I can say to
3833 myself and to people in baseball and to all of you we now
3834 have a department that will do nothing but that so that
3835 nothing escapes us. And that will be their primary and

3836 | really sole responsibility.

3837 | Mr. DAVIS OF ILLINOIS. Mr. Fehr, let me ask you, will
3838 | the Players Association cooperate fully with this new office
3839 | and urge players to do the same?

3840 | Mr. FEHR. One of the difficulties I have in responding
3841 | is I don't yet know what the department is going to do, I
3842 | don't know what techniques it's going to follow. It's my
3843 | understanding that the protocols have not yet been developed.

3844 | One of the things we've indicated to the Commissioner we
3845 | would like to talk about is how is this going to work. We
3846 | have developed, for example, procedures to handle
3847 | investigations for the nonanalytical positives that have
3848 | resulted in suspensions the last several years. I don't know
3849 | whether there will be differences or not. I can't evaluate
3850 | it until we look at that. I certainly hope that we're going
3851 | to be in a position to say at the end of the day that we'll
3852 | represent our players in connection with any such
3853 | investigations. But the investigations are going to be
3854 | conducted in a way which does not suggest there are
3855 | fundamental problems with it. We'll let you know.

3856 | Mr. DAVIS OF ILLINOIS. Earlier this morning Senator
3857 | Mitchell indicated that he did have some faith and confidence
3858 | that baseball would be able to adequately police itself.
3859 | Could the two of you tell me what as a team that you expect
3860 | to do that you have not already done that's going to

3861 vindicate this kind of faith that the Senator expressed?

3862 Mr. SELIG. Well, in the case of the department these
3863 people's sole responsibility really will be to investigate
3864 all these things. They won't have to go through layers of
3865 people. I think the Senator was a little bit troubled by
3866 that. There are people with, as I said, 53 years of law
3867 enforcement experience. So that they will be, they will not
3868 only be in touch with all the law enforcement departments
3869 everywhere where all our franchises are, but here in
3870 Washington and everything else, and that is their job now and
3871 it is a big one. So that we can never again say, well, we
3872 didn't know or this guy told this guy somebody else or labor
3873 said this to security and security said this. They will
3874 report to Mr. DuPuy, the President of Major League Baseball,
3875 directly and there will be no question about it. And as I
3876 said, both of these very well-trained people will do nothing
3877 but follow this subject in every way, shape, form and manner.

3878 Mr. FEHR. Congressman, in all the years I've been in
3879 baseball and in the 30 odd years I've known the Commissioner
3880 I don't think anybody has ever previously referred to us as a
3881 team, either actual or potential.

3882 Mr. DAVIS OF ILLINOIS. Nor will they again.

3883 Mr. FEHR. Given the conflicting interest that our
3884 relative constituencies have, especially in the economic
3885 matters, and the adversarial nature of the collective

3886 | bargaining process that our law enshrines, it may not happen
3887 | again.

3888 | Mr. Selig may be right. All I can tell you is this.
3889 | Since the strike in '94/'95, which was horrible and ugly and
3890 | ended as a result of an injunction as a result of unfair
3891 | labor practices and it took a long time to get an agreement
3892 | afterwards, there's been a change in the relationship. We
3893 | were able to reach agreements in 2002 and in 2006, although
3894 | not without difficulty, but without stoppages and without the
3895 | last time around threats of stoppages. We have been able to
3896 | negotiate agreements dealing with performance enhancing drugs
3897 | and to amend those a number of times, both administratively
3898 | and formally. What I can tell you is that we should be in a
3899 | position to cooperate where we can. Where we can't, where
3900 | the constituencies differ, I assume that we'll have to work
3901 | those out. That's the nature of bargaining. But the object
3902 | is to cooperate where we can and minimize the areas of
3903 | dispute. From my part I had a long time with a lot of
3904 | disputes with Major League Baseball. I'm willing to have
3905 | another one if we have to. That's far from my first choice.

3906 | Mr. DAVIS OF ILLINOIS. Thank you very much, Mr.
3907 | Chairman. And I just hope that you can find enough common
3908 | ground to protect and preserve not only the integrity of the
3909 | game, but also to promote the public interest and send the
3910 | right signals and the right messages to our young people.

3911 Thank you very much.

3912 Chairman WAXMAN. Thank you, Mr. Davis.

3913 Mr. Sarbanes.

3914 Mr. SARBANES. Thank you, Mr. Chairman, for holding the
3915 hearing. You all have been very patient and you'll be glad
3916 to know you're getting towards the end here. I'm highly
3917 sensitized of this issue recently for a couple of reasons.
3918 One is a few weeks back I introduced legislation that would
3919 create a foundation to support the President's Council on
3920 Physical Fitness and Education, which I hope will take the
3921 lead with others in a campaign nationally that we have to
3922 undertake to combat the use of steroids. But in the process
3923 I've been visiting a lot of youth sports programs, and so
3924 forth, around my district over the last few weeks just to
3925 promote the mission of the President's Council and have seen
3926 firsthand obviously the impact that professional athletes
3927 have. I mean, the posters that are on the walls, the
3928 comments of the kids. And so the effect that that modeling
3929 has on them is I think obvious to all of us.

3930 The other thing is a little thing that happened
3931 yesterday. My 14-year old son loves baseball. He wants to
3932 play baseball. He's been playing it. So I thought I would
3933 help him get in shape for the baseball season that's coming
3934 up and went out and bought him one of these push-up things
3935 where there's a piece of equipment, there's a tape that comes

3936 | with it. So last night we went down to watch the tape. It
3937 | seemed innocent enough. But at the end of it the person on
3938 | the videotape said, so what you need is three things, you
3939 | need equipment, you need this instruction booklet on how to
3940 | make sure your form is good, and then of course you need
3941 | these supplements that you can go buy too. So that pretty
3942 | much drove it home. This was last night at 9:00. So I was
3943 | ready for the hearing just based on that.

3944 | There seem to be three categories of athletes that we're
3945 | talking about. One of those who are not using any
3946 | performance enhancing drugs, and it sounds like it requires
3947 | quite a bit of discipline to resist it. The second group
3948 | would be those who are doing it and don't care. They've just
3949 | decided that it's all about the detection, if they can escape
3950 | detection they will, and they'll use these drugs to get a
3951 | competitive advantage. And then I think there's a group in
3952 | the middle which has been described which are the athletes
3953 | who say I don't want to do this, but if I'm losing out
3954 | competitively to these other folks who aren't being taken to
3955 | task I'm not just going to sit idly by, and so they get
3956 | pulled into it.

3957 | Now, what I'm curious about is how can we move the
3958 | culture away from this notion that you don't do it because
3959 | you don't want to be detected, which leaves you open to the
3960 | arrival of new nondetectable drugs to sort of undermine the

3961 effort? How can we get to a culture of clean? Do you have
3962 any confidence that the enforcement mechanisms that you've
3963 implemented and will agree to implement further going forward
3964 can actually lead to that so that those who don't use and
3965 those who don't want to use but are can take over the game in
3966 a positive way and drive that culture? So it's not about
3967 whether you're getting detected or not, it's about doing the
3968 right thing. I don't want to sound naive about it, but can
3969 we get to that point where that's the sort of cultural norm?
3970 How much confidence do you have in that, both of you?

3971 Mr. SELIG. Well, I would say that I have a lot more
3972 confidence than I did 3 years ago. All of our educational
3973 programs that go out, baseball with the Partnership for a
3974 Drug-Free America and the Hooton Foundation have spent an
3975 enormous amount of time and money and we're getting the
3976 message across. Now, with all the internal things we're
3977 doing in baseball to change the culture, and I think the
3978 culture has been changed in a lot of ways, maybe even more
3979 than we know, but I would hope that all the things that we've
3980 done, just think all the things in the last week of the
3981 Mitchell recommendations about certifying from trainers and
3982 checking packages and doing all the things that support the
3983 new department, which I think is going to be very important,
3984 I think today everybody in this sport, and I'm talking on the
3985 field and off the field, has a much clearer understanding

3986 | that this culture not only needs to be changed, is changing
3987 | and is changing dramatically. We just got to keep the
3988 | pressure on, to be frank with you. Yes, I'm optimistic that
3989 | we can do that. And in fact we have to do it. We have no
3990 | other choice. This must be done.

3991 | Mr. FEHR. I guess from my part I hope we can. I think
3992 | we're moving and have made some big strides in that
3993 | direction. I have no doubt that this or other committees of
3994 | the Congress will be interested in whether history proves out
3995 | that we have. And we'll see. Our task is to keep working at
3996 | it.

3997 RPTS BINGHAM

3998 DCMN MAGMER

3999 Mr. FEHR. But let me address one thing you said, which
4000 is--to me is of really enormous importance. You talked about
4001 your son's seeing a video that said he should take
4002 supplements. If any of you haven't done it, please go to the
4003 drugstore or GNC or somewhere else and look at what is up on
4004 the shelf. Every tree, every grass, every bush, every
4005 mineral, everything else anybody has ever heard of is there.

4006 When I mentioned in my prepared testimony in my opening
4007 remarks that one of the things that may bear consideration is
4008 a review of the Dietary Supplements Act, DSHEA, to see if it
4009 makes sense, so that we don't, in effect, advertise to kids.
4010 Because, as Senator Mitchell has said, as the Commissioner
4011 said, as I have said any number of times, this is a very wide
4012 problem.

4013 And I will just give you one example of it. I will hand
4014 it up to the committee when we are done.

4015 This is an ad in the Continental Airlines magazine. We
4016 saw it coming down here. It says, "Choose life, grow young
4017 with HGH, the reverse aging miracle."

4018 It is one thing to say that athletes should do whatever
4019 they can, and we don't question that. But if the messages
4020 generally are not consistent with that, especially to kids,
4021 we have a really tough road to hoe. And so I hope that

4022 | people would consider that.

4023 | Mr. SELIG. The public service announcements that we are
4024 | doing with the Partnership for a Drug-Free America which
4025 | shows what it does to people's bodies, that needs to go on at
4026 | every level.

4027 | As I said earlier, I've talked to a lot of people in
4028 | college sports and high school sports and other things, and
4029 | there is no question, and hopefully, out of all this,
4030 | baseball can be a leader in doing exactly what you are
4031 | asking, and that is to send a right message.

4032 | Mr. FEHR. If I could apologize and ask your indulgence
4033 | for 30 more seconds. If you go to young people's athletic
4034 | programs, one of the messages you will see most consistently
4035 | delivered in any variety of ways will be, you are not big
4036 | enough, you are not strong enough, you are not fast enough.
4037 | Do something about it. And the kids want to.

4038 | In wrestling, we approach this in different ways. We
4039 | have things like weight classes. We don't otherwise. If the
4040 | message is going to be in the main competitive team sports
4041 | that most people are not big enough, strong enough or fast
4042 | enough, that makes it even more difficult. And I haven't got
4043 | a clue as to how to attack that, because that is what the
4044 | coaches want.

4045 | Mr. SARBANES. Thank you.

4046 | My time is up, Mr. Chairman. I appreciate it. I would

4047 | just say that I hope that the public is watching not just as
4048 | fans of baseball but also does some self-reflection as
4049 | parents and coaches and things about the messages that we are
4050 | sending and how we can participate in this campaign to turn
4051 | around steroid use.

4052 | Chairman WAXMAN. Thank you very much, Mr. Sarbanes; and
4053 | Mr. Selig, Mr. Fehr, I thank you so much for your patience
4054 | and your willingness to be here.

4055 | Senator Mitchell described a pretty sad and in many ways
4056 | depressing history of baseball in the era of steroids, but he
4057 | also laid out a road map. And I appreciate the fact that
4058 | both of you are willing to consider those recommendations in
4059 | that road map so that we can get beyond where baseball has
4060 | been in the past. I think we have made progress, but we
4061 | still have a ways to go.

4062 | I thank you very much for your leadership, your efforts;
4063 | and I hope we can hear continued good news from both of you
4064 | about this subject.

4065 | Mr. SELIG. Thank you very much.

4066 | Mr. FEHR. Thank you very much.

4067 | Chairman WAXMAN. Before we close, I want to ask
4068 | unanimous consent to put in the record a statement by the
4069 | Marreros. If it is not already in the record, we want to
4070 | make sure they are able to put their statement in the record
4071 | on behalf of the Efrain Anthony Marrero Foundation.

4072 | Without objection, that will be the order.

4073 | [Prepared statement of Frank and Brenda Marrero

4074 | follows:]

4075 | ***** INSERT 5-1 *****