

**STATEMENT OF
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BEFORE THE HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM
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In a perfect world, those of us privileged enough to work in Major League Baseball would have been aware of the use of steroids from the minute it became an issue among our players. In a perfect world, the leadership of Major League Baseball would have had the unfettered right to deal with the problem of performance enhancing substances as soon as we became aware of that problem. Unfortunately, we do not live in a perfect world.

In his statement to the Committee, Commissioner Selig describes the progress that Baseball has made on the issue of steroids in recent years and the new policy that we began implementing on March 3, 2005. That policy is the product of collective bargaining with the Major League Baseball Players Association ("MLBPA"). Major League Baseball continues to believe that Congressional review of a portion of a private collective bargaining agreement is contrary to the national labor policy that Congress established in 1935. Because the Committee does not share our view in this regard, we are present here today and my goal is to provide the Committee with some historical context that must be considered in evaluating this portion of our collective bargaining agreement with the MLBPA.

Major League Baseball has been called in front of a number of Congressional

committees in recent years to answer questions about the use of performance enhancing substances by players. In the testimony presented to the various committees by Major League Baseball, one theme has been clear: drug testing is a mandatory subject of collective bargaining with the MLBPA. This theme should not be viewed as an excuse or complaint by Major League Baseball. It is simply a statement of fact.

I am sure that every member of the Committee is well aware that the system of collective bargaining created by the National Labor Relations Act is, by design, an incremental process. The law creates a framework for mandatory negotiation, but no outside party or governmental agency has the authority to dictate a substantive result. Because the process is essentially consensual, the agreements that emerge necessarily reflect a balancing of different interests and are often not as forceful as those that can be produced by a different process or in a different legal framework.

Moreover, Baseball's collective bargaining has had its own unique dynamics and limitations. Most of you will recall the long players' strike in 1994 and the series of Congressional hearings convened to pressure the sport into a settlement. Major League Baseball made a comprehensive proposal on steroid testing during that round of bargaining. It was a sound proposal that reflected foresight on the part of the leadership of the game. But, as those of you who were around in 1994 will remember, the priority was resolving the economic issues facing the game and getting the game back on the field. No one believed that there was significant steroid use in the game at that time.

Within the context of a collective bargaining relationship imposed by federal law, Baseball and the MLBPA have made steady and important progress on steroids in recent years. The 2002 Basic Agreement allowed the industry to move forward with drug testing at the Major League level for the first time. The 2003 survey testing put to rest the parties' disagreement over the scope of the problem. More important, the contract's creative approach moved the game directly into disciplinary testing in 2004, rather than waiting for the next round of negotiations. This winter, the bargaining parties moved forward with the fight against steroids and reopened their contract for the first time in history. The parties proceeded to negotiate a stiffer policy, even though positive rates had declined sharply in 2004.

Major League Baseball has openly admitted that its policy on steroids in the 1990's was inadequate and inappropriate. During that period, however, the federal government's policy on performance enhancing substances was also deeply flawed. In 1994, Congress passed the Dietary Supplement Health and Education Act ("DSHEA"), which essentially deregulated the nutritional supplement industry. Steroid precursors, such as androstenedione (which was developed for use by the East German Olympic team) were made available to consumers, including children, over the counter. DSHEA gave legitimacy to the performance enhancement industry and allowed athletes who used products such as andro to argue that they were not cheating because the products were "legal." The legality of products such as andro also complicated the process of drug testing. For example, athletes who inject testosterone are detected by a test that shows an abnormally high ratio of testosterone to epitestosterone in the body, or a high "T/E ratio."

Because andro causes the body to produce additional testosterone and can elevate the T/E ratio, andro users can be difficult to distinguish from those who are illegally injecting testosterone.

Late last year, Congress, with the full support and at the urging of Major League Baseball, passed the Anabolic Steroid Control Act of 2004 and corrected the flawed federal policy on steroid precursors. Within weeks, Baseball and the MLBPA implemented a new drug policy banning these dangerous substances. In fact, it seems fair to observe that as the nation has become more aware and less tolerant of the use of performance enhancing substances by athletes, Major League Baseball and the MLBPA have responded to this shift with progressively more effective policies.

Before closing, I would like to address two topics that have been raised by members of the Committee in discussions leading up to this hearing. The first is the independence of Baseball's drug testing program. Contrary to some assertions, every aspect of Baseball's drug program, with the exception of the actual imposition of discipline, is controlled by parties independent of Major League Baseball and the MLBPA. The selection of players to be tested, the dates of the testing, the selection and supervision of collectors and the observation of players providing samples are all functions controlled by an outside, independent company. The new random component of the program is completely unpredictable and Clubs have no advance notice of when a particular player will be tested. The actual testing of samples and interpretation of results are performed by the Olympic laboratory in Montreal that is certified by the World Anti-

Doping Agency. In fact, our program is run with more independence than those in other professional sports where league employees collect samples and “captive” labs have been used.

Second, Baseball has been and will be committed to funding research to combat the proliferation of performance enhancing substances. In 1998, in the wake of revelations of andro use by high-profile players, Major League Baseball and the MLBPA funded a seminal study at Harvard University. That study produced the first medical evidence establishing that andro can, like an anabolic steroid, increase muscle mass. Currently, Baseball is in discussions with the WADA-certified laboratory at UCLA (which does our minor league testing) about providing additional funding for research directed at the development of a urine test for human growth hormone. Contrary to published reports, there is not an available, verified test for HGH, even with a blood sample. Therefore, our efforts to develop a urine test are vital.

In closing, I can tell you from extensive personal experience that Commissioner Selig has a long-term, deep commitment to the goal of eliminating steroids in Baseball and we will work tirelessly to reach that goal.