

**TESTIMONY OF PAUL TAGLIABUE
COMMISSIONER, NATIONAL FOOTBALL LEAGUE
AND
HAROLD HENDERSON
EXECUTIVE VICE PRESIDENT–LABOR RELATIONS,
NATIONAL FOOTBALL LEAGUE
BEFORE THE
SUBCOMMITTEE ON COMMERCE, TRADE
AND CONSUMER PROTECTION
OF THE COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES**

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Chairman Stearns and Members of the Subcommittee:

The issue that the Subcommittee is considering today – the use of steroids and other performance-enhancing drugs in professional sports – is an important one that merits thoughtful attention by Congress. It is an issue that spans a wide range of concerns: the health of athletes who use these substances, the values that are promoted or debased by the use of these substances, and the proper roles of government and the private sector in combating their use.

For two decades, the National Football League (“NFL”) has had very strong programs in place to eliminate from all teams the use of performance-enhancing drugs. No one in the medical, scientific, research or sports community has had all the answers. But we have invested in research and development and we have worked with leading institutions, top scientists and others to seek to stay ahead of an ever-changing curve. The NFL’s policies, which have included prompt and stiff sanctions for violators, have addressed these issues in a firm and constructive

way. Today the quickening pace of new developments in medicine and science, including genetics, heightens the challenges that we all face.

In these efforts, we have had strong support and active participation in all of our programs by the NFL Players Association (“NFLPA”), the collective bargaining representative of NFL players. Together, we intend to continue to have very strong policies and programs to deal with the scientific, medical, ethical, competitive and legal questions likely to result from the ever-escalating availability of body-changing, performance-enhancing, and eventually even gene-altering substances in our society.

We have produced to the Subcommittee detailed information about the structure and operation of our program.

Outside of professional sports, the availability and the use of steroids and other performance-enhancing substances continues to be a severe problem. These issues need to be addressed by effective criminal and regulatory prohibitions and by the prosecution and punishment of those who continue to make such substances readily available in our society, including to young people. This is particularly important when institutions such as high schools and other youth organizations do not have the resources necessary to address these challenges.

1. THE NFL’S PROGRAM ON ANABOLIC STEROIDS AND PERFORMANCE-ENHANCING SUBSTANCES.

More than twenty years ago, in 1983, Commissioner Pete Rozelle notified all NFL players that anabolic steroids fell squarely within the League’s prohibitions against the abuse of drugs and that steroids had serious adverse health effects. In 1987 and 1988, the League began testing for steroids to obtain a documented understanding of the extent of steroid use among NFL

players. And in 1989, the NFL instituted discipline for steroid use, with heavy suspensions imposed on players testing positive for these substances.

In testimony given in May 1989 to the Senate Judiciary Committee, Commissioner Rozelle explained the basis for the League's more stringent approach:

“The fundamental responsibility of [the Commissioner] is to protect, as best he can, the integrity of the game he oversees and the public's confidence in it. In my view, steroid use both threatens that integrity and confidence and presents other significant problems as well.

“Our measures are designed to promote common sense, fair play, and good health. If they do no more than generate an increased awareness among athletes at all levels of the potential risks of using steroids, our program will have been a modest success. . . . [But] we hope our new measures will be a much larger success, and a significant step toward eradicating these drugs from our sport.”

In August 1989, Commissioner Rozelle issued the first suspensions of NFL players for positive tests for steroids, and a Federal Court in the Nation's Capital upheld the suspensions as within the Commissioner's authority under the collectively-bargained disciplinary principles then in place in the League.

In the NFL's submission to the Federal Court in support of that ruling, the League underscored the negative health and competitive aspects of steroid use for NFL players, and also emphasized the responsibility of the League and its players to set a proper example for America's youth on these matters. In part, the League's submission explained:

“[F]ans cannot be expected to purchase tickets to games tainted by steroids. [In addition,] the image of the NFL and its players is critically important to the young people of our Nation who, for good or ill, emulate their sports heroes. Commissioner Rozelle's affidavit explains the basis for this concern, and makes reference to arbitration and court decisions that underscore its legitimacy. In this connection, it is not surprising that the NFL Players Association has never challenged the importance of maintaining the image of the NFL or of NFL players.”

Shortly after becoming Commissioner in late 1989, Commissioner Tagliabue instituted a number of changes in the League's substance abuse programs and relationships. These changes took account of the need for greater investment in specialized resources and increasingly varied and sophisticated testing techniques in order to deal with the growing array of substances that were creating both competitive issues and adverse health effects for NFL players. These changes included year-round random, unannounced testing for all players; retaining new medical and scientific advisors to oversee the administration of the policy; and moving the testing to two laboratories certified by the International Olympic Committee. All of our testing is now at the WADA-certified lab at UCLA.

In 1993, the key elements of the League's program were agreed to by the NFL Players Association in collective bargaining. Since then, the League and the NFLPA have met regularly to review the workings of the program and ensure that we remain proactive in responding to developments in science and technology, doping control research and the policies of other organizations. For example, in 1997, we added a number of steroid precursors to the list of banned substances, including androstenedione and DHEA. The former was not made a controlled substance by Congress until last year; the latter remains a legal substance.

In December 2000, the Program's jointly-retained medical advisor, Dr. John Lombardo, issued a "Health Alert" to all NFL players regarding Ephedra. We began testing for it in 2001, and discipline was imposed for any positive Ephedra test starting in 2002. As a result of a recent federal court decision, the status of Ephedra under FDA regulations is uncertain.

We have also pioneered the use of new and improved testing techniques. As new types of so-called "designer drugs" are discovered, we move promptly to address them. For example, when the designer steroid THG was identified in 2003, the League re-tested more than 2000

urine specimens – every specimen in the UCLA lab’s possession – to ensure that no significant use of this substance would avoid detection and disclosure. And our policy has from the outset incorporated a “related substances” provision, to ensure that minor chemical changes do not escape the prohibitions of our program. This longstanding feature of our program is reflected in the WADA and United States Anti-Doping Agency (“USADA”) guidelines.

We have continued our policy of investing in research and development by entering into a partnership with the USADA to establish a new laboratory at the Center for Human Toxicology at the University of Utah. We expect this laboratory to be operational later this year, and once it receives appropriate certification, it will be available to professional and amateur sports organizations for both testing and research.

This process of continual examination and improvement has continued into 2005. In our most recent meetings, the League and the NFLPA agreed to the following improvements in our program dealing with performance-enhancing substances, which will take effect this season:

- To reduce the threshold for a positive Testosterone test from the current 6:1 Testosterone/Epitestosterone ratio to a ratio of 4:1. This is the standard adopted by the WADA earlier this year.
- To increase number of times a player can be randomly tested during the offseason from 2 to 6.
- To add additional substances to the list of banned substances.
- To codify the League’s ability to re-test specimens for designer steroids and other substances that may have evaded detection.

Under our current program, more than 9000 tests for steroids and other prohibited substances are conducted each year. These include a mandatory unannounced test for all players during training camp; random, unannounced tests of seven players on each of the League’s 32 teams each week throughout the preseason and regular season; weekly, random, unannounced

tests of each playoff team through the Super Bowl; and approximately 1600 offseason tests which, like the regular season tests, are conducted on a random, unannounced basis. The selection of players for random testing is determined independently by the Program's Medical Advisor, who uses a computer-based selection system specially designed for this purpose. No representative of the NFL, the NFLPA, or any NFL team has any role whatsoever in determining who will be tested. No representative from any team has any role in determining when a test is positive; once a violation is confirmed, discipline is imposed, subject to a player's right of appeal; and teams have no notice that one of their players has tested positive until the player has been notified of disciplinary action.

In this respect, it is important to understand what a four-game suspension, which has been the discipline for first offense, means in the NFL. It takes the player entirely out of the lineup -- and out of the locker room -- for one-quarter of our regular season. In other leagues, this would be the equivalent of a 20 or 40 game suspension. If a suspension begins late in the season, it will carry into the playoffs. Any suspended player likewise loses a quarter of his annual salary. Suspended players also may be required to forfeit some or all of their signing bonuses. And insofar as they have the opportunity to earn performance bonuses, a loss of four games will almost certainly place those performance targets out of reach.

In addition to these penalties, a player who tests positive is subject to reasonable cause testing on an unannounced basis 24 times a year. One indication of the effectiveness of this combination of measures is that we have only had two players test positive a second time; both chose to retire rather than accept an even longer suspension and the accompanying public embarrassment.

2. GROWTH HORMONE AND TESTOSTERONE.

Two other matters related to the scope and effectiveness of the League's testing programs also deserve mention. The key issues here relate to current limitations of testing science and laboratory capabilities.

The first is the subject of Human Growth Hormone ("HGH"). We have prohibited this substance since 1991. Currently, there is no readily available urine test for HGH. A blood test was first used at last summer's Olympic games in Athens, where 300 of the more than 11,000 athletes who competed in the Games were tested. No athlete tested positive. Currently, no lab in the United States is certified by WADA to conduct these tests, although we are advised that this will certainly change, and perhaps soon. We are currently evaluating our next steps with respect to growth hormone and will continue to consult with experts in the field, including those associated with other leading sports organizations. As scientific developments warrant, we will be prepared to adjust our own policies, as we have consistently done in the past.

The second matter involves Testosterone and the Carolina situation that has been in the media in recent weeks. If, as has been suggested, players were using substances for which no test was available, or were using a substance at levels that were calibrated to escape detection under existing NFL test protocols, they would have avoided a positive test under either our program or those administered by other leading sports anti-doping organizations.

These matters are under investigation by both our office and by Federal law enforcement authorities. We are proceeding deliberately and with due respect for the government's investigation. Until those reviews conclude, it is inappropriate to comment on the specifics of any individual player.

Currently, we are addressing testosterone issues in two respects. First, to take account of the evolving consensus as to test protocols for the Testosterone/Epitestosterone ratio, we are lowering the threshold for a positive test from a ratio of 6:1 to a ratio of 4:1. Second, we are developing a program to review player tests over time to identify unusual changes in player T:E ratios, even if they are below the 4:1 threshold. Significant deviations would then result in more detailed medical review, reasonable cause testing and other responses.

3. SUMMARY OF THE NFL'S VIEWS ON H.R. 1862.

We understand that a principal reason for these hearings is to consider whether a uniform national policy should be put in place to govern testing and discipline by professional sports organizations for any abuse of steroids and other performance-enhancing substances. We have carefully reviewed H.R. 1862, and would respectfully urge that it not be enacted into law in its present form. We believe that the bill, at least insofar as it relates to the National Football League, is unnecessary; that it would unwisely supercede and effectively repeal the National Labor Relations Act and the authority of the National Labor Relations Board over important terms and conditions of player employment in professional sports; and that it potentially risks undermining the effectiveness of the anti-substance abuse programs that we have had in place for more than 15 years.

The bill would not improve upon the NFL's current program. We test for a broad list of steroids, other performance-enhancing drugs, and masking agents. We review our program regularly and revise it on an annual basis. Our testing protocols are administered by an independent, jointly retained physician who is not employed by the NFL or any NFL team. All of our testing is performed at the UCLA Olympic Laboratory – an independent lab that is certified by the WADA and other major certifying bodies. We have year-round random testing

in the NFL with substantial penalties for players who test positive. While the WADA recently cut its out-of-competition testing in half for Olympic athletes, we have expanded the number of off-season tests to which NFL Players are subject. Unlike WADA, we do not distinguish between in-season and out-of-season by permitting the use of certain substances in the off-season but prohibiting them during the season. In short, the drug testing program in the NFL is not a “problem” that needs federal legislation in order to be “fixed.”

In several respects, we believe that a federalized drug testing program is less desirable than the collectively-bargained approach that exists in the NFL. First, we do not believe there is any demonstrated basis for supplanting collective bargaining as the appropriate means for addressing these issues. If any professional sports organization believes it has been faced with a refusal to bargain in good faith on these issues, it should seek relief before the National Labor Relations Board as federal law provides.

Second, a uniform system for all sports will necessarily fail to account for the differences among sports organizations in structure, length of season, number of players, average career length, and program cost. One risk is that the uniform program will have a “least common denominator” element that actually lowers standards in some sports leagues. As one example, the bill would only require that players be tested once per year. Under our policy, some players are randomly tested as often as 10 times a season – far more than would be required under the bill. Over time, this provision may thus become a basis for viewing less comprehensive testing programs as effective, or for lowering the current level of testing or otherwise diluting the terms of the current collectively-bargained program.

Third, our collectively-bargained approach allows for a more rapid and certain response to developments in doping and anti-doping technology. As one example, in 1997, the NFL and

NFLPA agreed to include Androstenedione as a banned substance. Players testing positive for Andro were suspended. But it was not until 2004 that Congress designated Andro as a controlled substance. Had we been required to wait for the Secretary of Commerce to make such a determination, as Section 3 of H.R. 1862 appears to contemplate, NFL players might have been able to use Andro without penalty for years longer than was the case under our current program. The Secretary is obligated to follow traditional rulemaking procedures, meaning that the process can be cumbersome and protracted, particularly when compared to the process by which the NFL and NFLPA have expanded the list of banned substances over the past decade.

A second such example involves Ephedra. As noted earlier in my statement, the NFL and NFLPA determined to include Ephedra as a prohibited substance at the start of the 2001 season. NFL players testing positive for Ephedra are suspended. The FDA eventually implemented a ban on Ephedra but its rules were sharply limited by a federal judge's decision last month. Agreements between the NFL and the Players Association are not subject to these kinds of court challenges. Indeed, under the National Labor Relations Act, courts give great deference to these kinds of employer-employee agreements. Regulations issued by the Secretary of Commerce are, by nature of the notice and comment and judicial review provisions in the Administrative Procedure Act, necessarily subject to lengthy administrative procedures, court challenges, and potential revision or invalidation by a single federal judge. They may also be subject to challenge under provisions of state law that are not applicable in the context of collectively-bargained agreements. And once Congress federalizes drug testing in sports, and replaces collective bargaining under the National Labor Relations Act with statutory and regulatory mandates, there can be no assurance that even agreed-upon provisions that exceed

federal minimums will be respected by the courts. Nor would the anti-injunction provisions of the Norris-LaGuardia Act necessarily continue to apply.

Fourth, simply incorporating the WADA list of prohibited substances is likely to be overbroad in some respects and under-inclusive in others. For example, WADA prohibits such substances as beta blockers and erythropoietin (EPO). The former, used to slow the heart rate and reduce muscle tremor, has been seen in sports such as archery, golf and rifle; the latter has been seen in more extended endurance events, such as cycling. There is simply no indication from our independent medical experts that either has been used or would be effective in professional football, and a requirement to test for them would almost certainly be a costly misuse of medical and laboratory resources. By contrast, the WADA does not currently prohibit synephrine, a stimulant banned and tested for in the NFL.

Fifth, the penalties required by the bill are excessive in the context of professional football. As we explained earlier, a four-game suspension, combined with ongoing testing, works. From any perspective --financial, competitive, and reputational -- it is a substantial penalty. There have been virtually no repeat offenders in the NFL. A two-year suspension, in the context of a sport where the average career length is less than four years, is therefore both unnecessary and disproportionate. It would diminish the substantial support that the League's steroid program currently has among players and could lead to demands to reduce testing in a way that sharply limits the number of players detected and disciplined.

It also bears mention that other drug testing organizations, such as USADA and WADA, currently do not impose a mandatory two-year suspension for every athlete who tests positive for every prohibited substance. Rather, the two-year sanction is more properly viewed as a maximum penalty. In 2004, fully one-third of the Olympic-level USA athletes testing positive

for a substance prohibited by the USADA were not suspended. A significant number received no more than a public warning. Under our policy, players are held to a strict liability standard – claims of inadvertent or unintentional use are expressly precluded as defenses and are not considered as mitigating circumstances for discipline.

Finally, Section 6 of the Bill calls for various studies and reports relating to the Bill's effectiveness. The first such report would address "the effectiveness of the regulations prescribed pursuant to this Act" in the context of professional sports. How will such effectiveness be measured? Cynical critics of the NFL program claim that it is not effective because there are relatively few positive tests – demanding, in effect, that the League "prove a negative." But the US Anti-Doping Agency, using the same lab and similar testing procedures, identified only 9 athletes who tested positive for steroids in 2004. Does that mean that USADA has an ineffective program? Or does the relatively low number of positive tests instead mean that, within the limits of existing science, doping control efforts are in fact effective? We believe the evidence sharply supports the latter conclusion. What will be the standard of effectiveness under H.R. 1862?

These are but a few examples of the issues that would be raised if the NFL's policy more closely reflected the provisions of H.R. 1862. We genuinely respect the concern that underlies the bill, but we believe that the NFL has demonstrated a long and genuine commitment to combat the use of performance-enhancing drugs in football. Federalizing that program under the direction of the Secretary of Commerce will not further the Subcommittee's goals.

If the Subcommittee determines nonetheless to proceed with legislation, we would urge that it do so deliberately. Rather than proceed on an accelerated basis, we would suggest that the

Subcommittee conduct further in-depth discussions to narrow the areas of potential difficulty and focus the application of the bill more precisely.

4. THE NFL'S PROGRAMS TO COMBAT USE OF PERFORMANCE-ENHANCING SUBSTANCES BY YOUNG PEOPLE.

We recognize that one of the Subcommittee's primary concerns is the extent to which young people are using steroids today. This has been one of the primary factors underlying the NFL's programs as well.

Among athletes and coaches, where we can influence behavior, we make an aggressive effort to discourage the use of steroids, supplements and drugs of abuse. As one example of this, we have worked with leading institutions in medicine and sports to create reliable guides on fitness, nutrition, safety and conditioning – entitled “Play Safe! The NFL Youth Football Health and Safety Series.” This four-volume series, which was first distributed in 2003, gives players, coaches, parents and the public general information on football-specific health and safety issues in a clear, easy-to-understand format. Needless to say, this series emphasizes that the use of performance-enhancing substances, and/or other drugs of abuse, is unacceptable.

By partnering in the publication of this series with leading academic and public service organizations, we have sought to ensure that this series will be regarded as definitive and independent and also widely distributed and used. The series editor is Dr. Barry Goldberg, the Director of Sports Medicine at Yale University Health Services and Clinical Professor of Pediatrics at Yale University School of Medicine. The series is produced in partnership with the American College of Sports Medicine, the American Red Cross, the National Athletic Trainers Association, and the Institute for the Study of Youth Sports at Michigan State University.

Two of the four volumes of this series deal with matters of direct interest to this Subcommittee. One volume specifically discusses “Strength and Conditioning” and offers practical, step-by-step techniques to build strength, endurance and flexibility, improve performance and decrease risk of injury – all without steroids or other substances. Another volume in the series entitled “Health Concerns for Young Athletes” has an entire section on substance abuse and specific warnings about steroids, including the following:

“There should not be any controversy about steroid use in sports; nonmedical use is illegal and banned by most, if not all, major sports organizations.”

“The use of anabolic-androgenic steroids to enhance performance is not only illegal, it is dangerous.”

This series has been distributed nationwide in both print and on-line editions and has been furnished to the Subcommittee. It has been furnished to high school football programs throughout the country and to our NFL National Youth Football Partners network, which includes the Boys and Girls Clubs of America, Jewish Community Centers Association, Police Athletic Leagues, Pop Warner, and the YMCA, among others. The entire series is available free of charge on NFLHS.com, a popular high school football website sponsored by the NFL. The site also includes articles and Q&A sessions between a former NFL coach and high school players on various topics, including the dangers of steroids and drug use. NFL representatives and other professionals also address these issues at our annual NFL Youth Football Summit in Canton, Ohio and youth football coaches throughout the country receive our NFL Coaching Academy Playbook, which includes a chapter devoted to health and safety issues that gives specific advice to football coaches on the dangers of steroids and steps coaches can take to detect and deter drug use by their players.

USA Football, a not-for-profit advocacy and educational organization jointly endowed by the NFL and the NFLPA, has made a wide array of resources available to parents, coaches and players across the nation. The USA Football website contains articles on steroids and drugs of abuse, and USA Football is making this a key focus of its health and safety programs for 2005, including at its Huddle 2005 national conference next month. The message is always the same – to play football in a way that is safe, within the rules, and without use of artificial performance-enhancing products.

The NFL's recognition that a strong anti-steroids policy may positively affect the conduct of our Nation's youth is not of recent vintage; in fact, it dates back at least to the late 1980s. In the same 1989 testimony before the Senate Judiciary Committee to which we earlier referred in this statement, Commissioner Rozelle emphasized precisely this point:

“The third risk of anabolic steroid use by adult athletes, as dangerous as the other two, is its potential effect on the youth of America. Whether NFL players like it or not, they are role models. I worry about the young athlete, still in his formative years, who emulates his favorite college or pro football star by taking a drug he believes to be a harmless source of size and strength. Equally worrisome is the youngster who recognizes the risks, but ignores them and looks beyond to the rewards of a larger physique and possibly a professional contract.

“In 1987, the NFL produced a video tape on the harmful effects of steroids featuring a discussion among our drug advisor, the medical officer for the United States Olympic Committee, an expert from the American College of Sports Medicine, and two team physicians from the NFL. This tape was made available for showing to our own players, and 450 copies of it have been distributed throughout the country by the National State High School Coaches Association.”

So the question remains, what accounts for the levels of steroid use by high school students and what can we do about it?

First, steroids, growth hormones, and similar substances are freely available – almost on demand – in the retail marketplace or over the Internet. As the Subcommittee knows, we live in

an era of borderless electronic commerce and the global Internet pharmacy. A web search for “buy steroids” yields a large number of Internet sites where one can buy a wide range of steroids. The most difficult problem appears to be deciding where – not how – to buy steroids. The same is true of growth hormones, where one of the first sites identified in response to a search for “buy human growth hormone” offered customers the chance to “Buy 2 and Get 3rd Free.” These substances are freely marketed as cure-alls, promising youth, vigor, enhanced social standing, freedom from disease, improved personal appearance, and the like. Apart from the Internet, magazines, newspapers, faxes and other print materials advertise a wide variety of steroids, growth hormones, and similar products.

Second, there are substantial media pressures that lead adolescents to use steroids or “body shaping drugs.” Dr. Linn Goldberg, who testified before the Committee at an earlier hearing, has decried the extent to which steroid use has become acceptable among advertisers, who suggest their product is “on steroids” – i.e., bigger, faster, better. As Dr. Goldberg asks, “Could anyone imagine marketing strategy that [suggests] that their product is ‘on’ any other drug of abuse, like cocaine, LSD or marijuana?”

Third, high school students evidently assume that there is very little risk of detection except perhaps by attentive parents or a well-informed school or athletic official. Our own research has disclosed no state in which there is mandatory testing of athletes for steroids, although a number of states are looking at instituting such programs. A survey of high schools conducted by the National Federation of State High School Associations in 2003 showed that fewer than 4 percent tested students for steroids. Generally, where testing has been proposed, it has been rejected, as occurred recently in California. Given budget constraints and other pressures, this is not surprising. For example, the same 2003 survey found that of school

districts that do not have drug testing, 54 percent cited budget concerns as the reason. Yet these circumstances leave a large gap in the state and local educational infrastructure that might serve to address issues of concern to the Subcommittee.

Fourth, the use of steroids is probably as prevalent among non-athletes as it is among athletes, and the use of steroids is not limited by age or gender to high school boys. It evidently continues to be true that the “perfect body” remains something that many high school students strive for, and drug testing of professional athletes is likely to have a very limited influence on many high school students if their levels of self-esteem and peer acceptance drive their behavior.

Research presented at a 2004 meeting of the Endocrine Society found that while both athletes and non-athletes used both anabolic steroids and body shaping drugs, “student athletes were less likely to use steroids, alcohol, cocaine, cigarettes, pseudoephedine and diet pills” than were non-athletes. Dr. Goldberg’s studies showed “an increase in anabolic steroids use among high school non-athletes, which may be one of the reasons for the national increase in steroid use among teens.” This appears to be true among both boys and girls.

It is questionable whether the same approaches that affect behavior of athletes will work for non-athletes. In testimony given in March before this Committee, Dr. Goldberg cited research suggesting that special programs, called ATLAS and ATHENA, which are targeted separately to high school boys and girls, could lead to significant reductions in all types of drug use, including anabolic steroids.

5. CONCLUSION.

Our challenge going forward will be to ensure that our research is current, that adequate resources are available to support programs proven to be effective with young people, including

non-athletes, and that sports organizations remain firm in their commitment to clean competition at all levels.

Thank you for inviting us to appear today. We will be pleased to answer any questions.