

**TESTIMONY OF PAUL TAGLIABUE
COMMISSIONER, NATIONAL FOOTBALL LEAGUE
AND
EUGENE UPSHAW
EXECUTIVE DIRECTOR, NFL PLAYERS ASSOCIATION
BEFORE THE
SENATE COMMITTEE ON STEROIDS
SEPTEMBER 28, 2005**

Tagliabue: Thank you very much, Mr. Chairman and Senator Bunning and members of the Committee. The issues that the committee is considering today are very important and clearly merit the attention of Congress. Mr. Upshaw and I last appeared here some 18 months ago. We submitted a joint statement because while there are issues on which we disagree in other areas, at times quite sharply, this not one of them.

We currently have strong and effective programs in place to rid our locker rooms and playing fields of performance-enhancing drugs. Those policies were put in place as long as 18 or 20 years ago. But we have worked since then with leading institutions and scientists both in and out of government and continue to do so to have very strong programs and policies that deal with these issues.

We recognize that one of the committee's critical concerns is the extent of steroid and other substance use among young people. We have worked with topnotch universities and medical organizations to create materials contributed on the internet and elsewhere for some years to discourage the use of steroids, supplements and other drugs abused by young people. We have shared with the committee our "Play Safe" medical series, Coaching Academy publications and now, in conjunction with the National Institute on Drug Abuse, we are airing antisteroid advertisements on all of our network telecasts, other programming of our network partners and our own NFL Network.

I have been involved with youth sports my entire life. I was fortunate enough to go to college on an athletic scholarship, basketball. I wouldn't be here and wouldn't have the education I have if I had not been inspired by my heroes in basketball, football, baseball, hockey, track and field and other areas. So, I fully support and we fully support, as you know Mr. Upshaw has been involved with sports his whole life and he is more successful than I, but we both support what the committee's doing.

I can comment on specific aspects of the bills. I think our policies are in sync with all of the critical elements of the bills. Both bills call for random testing throughout the year. We have that. Both bills call for comprehensive lists of banned substances and methods. We have that. Both bills call for independent administration of a testing program. Under our program as you know, Mr. Chairman, no representative of the league, Players Association or any NFL member team has any role in determining who will be tested, when a player will be tested or how often he will be tested. It is institutionalized with outside parties and in large measure computerized and randomized with computer

technology. Both bills require the use of an independent certified laboratory. We have done that and we have funded them and we continue to fund new laboratories in this field. Both call for tough sanctions for violators. Our program embodies a strict liability approach under which players are strictly responsible for whatever is in their bodies and suspensions without pay are mandatory for all offenders.

We strongly believe in the strict liability approach rather than an intent approach. Consistent with the strict liability approach, a four-game suspension, 25% of the season without pay, is an effective substantial penalty for a first offense. We have had in almost 20 years of our program only two repeat offenders and both of those players retired from the game before they were suspended a second time. I believe this is a very telling measure of the effectiveness of both our testing and our discipline.

In our prepared statement we emphasize that we fully respect the congress' desire and prerogative to legislate. We would urge that it allow a collectively bargained program that meets the policies and goals of the statute to be exempted as allowed in some other areas of federal law. I would be pleased to take questions as will Mr. Upshaw.

Sen. McCain: Thank you, Commissioner. Welcome back Mr. Upshaw.

Upshaw: Thank you, Mr. Chairman. I join with the commissioner and we submitted a joint statement to emphasize how strongly we feel about this and why there is really no disagreement whatsoever when it comes to this issue of steroids and performance enhancing drugs. I would only like to add a couple of points to the commissioner's statement. That is the players in the National Football League strongly endorse this program, support this program and continue to believe that this program has been effective as it relates to the National Football League. We looked at the legislation and when we see one size fits all we see that the legislation should really address each individual sport but also allowing the collective bargaining process to come up with a solution that works and meets with what congress has, as the commissioner stated. We think we are doing a very good job in the National Football League. We have stayed on the cutting edge of change and changed our program. We do not wait for anyone else to act. We want it off the field because our players believe that anyone that uses drugs really cheats. There is no room for cheating in sports. It also affects the integrity of the game and integrity of the contest. We do not want cheaters and we will do whatever we have to do to keep it out. We have had unanimous support from players on this issue. Any time a player has tested positive you can't find one player in the NFL, and I will challenge you to do that, that supports having a cheater in the sport.

Sen. McCain: Commissioner Tagliabue, there is a program called Costas NOW and on HBO August 12, 2005 they interview Dr. James Short. Dr. James Short says that he gave a number of NFL Players anabolic steroids. Armen Keteyian, who was the one interviewing, said, "NFL laws are such that it is prohibited to take anabolic steroids while you play in the NFL. 'Yes I am fully aware of it'. Were you aware of it at the time you were prescribing steroids to NFL players? 'Possibly at some point'. How many NFL

players did you work with? 'Let's say one to two dozen'. Keteyian says I heard 18. Dr. Short: 'That would be somewhere in that range' Smile. If that is true, why haven't we had some detection of this kind of anabolic steroid use?

Tagliabue: Those players, Mr. Chairman, were engaged in a course of conduct to evade the detection. This is a unique substance, testosterone; it's a naturally appearing substance with a very complicated test. They were staying under the radar screen in effect. We have a report on this, a compressive report done by our investigators. We'd be glad to give it to you. Dr. Short has now been indicted. We are addressing the other issue in that situation.

Sen. McCain: Including the players who were implicated in BALCO? There were a number of baseball players implicated there as well.

Tagliabue: You mean football. That was a substance for which there was no test at the time. As soon as the test was known we applied the test not only to current players but to one year's worth of samples. We found no other violations of that THG substance. We were very aggressive in going back to test samples that were taken as long as a year earlier.

Sen. Allen: As I understand it, the NFL banned andro, they banned ephedra before the FTC, before the Office of Drug Control Policy, before the FDA or most recently we passed a law last year, which I sponsored, on ephedra, but you did that before Congress or these other agencies acted. Is that right?

Tagliabue: Yes, we banned andro seven years before it was banned by the federal government. We banned ephedra years before it was banned by anybody else and we have maintained our ban in light of federal court rulings that have challenged the FDA ban. So we have been very pro-active in those areas and others.

Sen. Allen: In your testimony, your joint testimony, you talk about this legislation, that it could actually lower the standards in the NFL and reduce the effectiveness of your drug program. Can you elaborate specifically how this legislation could weaken it?

Tagliabue: I feel, as I said earlier, that the strict liability approach is very important here and the player is responsible for anything in his body and any approach that gets into -- 'I didn't know, I didn't intend, I was told otherwise, I felt the doctor was reliable,' fill in the blank -- is very problematic. I've been in hearings over the years where it's been 'my sister the registered nurse who doped the Nyquil; it was my girlfriend who put the ephedra in my beer; it was this guy who came into my apartment to rob my stereo who put the andro in my Wheaties.' You can't have that. I noticed that Commissioner Stern, who referred to their program as a strict liability program, said the standard is -- you know it's wrong, kids know it's wrong, high school coaches know it's wrong, college people know it's wrong. You're obligated as an NFL player getting paid hundreds of thousands of dollars a year to know it's wrong and that's what our penalties are geared to and I think that is the most effective approach. I think we can mesh our approach with

the legislation and that's why we've suggested that a program like ours could be certified, hopefully, if it served all the purposes even though maybe every individual element might not be exactly the same. But we are comfortable with this legislation on the basis set forth in our statement.

Sen. Allen: Your joint statement said that a concept like what we have done in welfare reform, Mr. Chairman, is set certain standards and the states meet it and they are certified, so they do their own approach and those who do not meet the standard would be under the Federal Law of Dictates. Is that your understanding of not wanting to lower your standards because you all feel in the NFL that you exceed what is in this legislation?

Upshaw: I think our statement points that out, that we would be very comfortable with a certification procedure that allowed us to continue doing what we do because we strongly feel that it's working. So if we meet of all the standards we should be able to be certified out of it.