

### **Statement of Bernie Parrish**

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My book, *They Call It A Game*, published decades ago, had the subtitle, "***An indictment of the pro football establishment: how it manipulates and protects its billion-dollar monopoly at the expense of the players and the public.***" The only change through the years has been that the numbers are bigger.

I thank the Committee on the Judiciary, especially Chairman John Conyers, for holding this hearing. It reminds me of the Watergate era and two of my personal heroes, Senator Sam Ervin and Senator Phillip Hart. I was fortunate enough to met those political giants at a hearing , much like this one It focused on the NFL and abuses of anti-trust exemptions.

Here is what Senator Ervin had to say about the NFL's arrogant, illicit operation :

"Mr. President, I shall vote against the bill for two reasons. First, the bill makes it lawful for persons who operate professional ...football...clubs to do things for which other Americans are to be subjected to damages, fines, or imprisonment. Second, the bill makes every person in America who possesses skill in an athletic career the economic slave of those who are engaged in these sports on a professional basis for commercial gain. Senator Sam said this in 1965.

The NFL's approach is to perfect its Delay and Deny program following the tobacco industry's "Merchants of death business model". The NFL even uses the same law firm as the tobacco industry uses, Covington & Burling, the law firm who created the "Tobacco Council" to produce bogus studies and paid experts to testify that tobacco products does not cause cancer. It exactly parallels the way Covington & Burling partner, Paul Tagliabue, who as Commissioner of the NFL, created the "NFL's Mild Traumatic Brain Injury Committee." It functions as did the Tobacco Council, functioning to create a smoke screen of studies and organizing experts to deny that professional football causes concussions that lead to further complications, including early dementia. Taglibue installed Dr. Elliot Pellman, a graduate of Guadalajara's medical school in rheumatology. Pellman had no expertise whatsoever in brain injuries, mild or otherwise, as the MTBI Committee Chairman. *The New York Times* exposed Dr.. Pellman's padded resume and he subsequently resigned as chairman of the NFL MTBI Committee. However Dr. Pellman remains current NFL Commissioner Roger Goodell's filtered conduit of information on concussions and brain injuries from the MTBI Committee. Dr. Pellman has authored some 13 suspect studies on concussions and brain injuries and these have likely had an impact on youth football programs with possible life-threatening effects made more dangerous because of their tacit endorsement by the NFL.

After 50 plus years of professional football the NFL Commissioner and its players union have suddenly awakened and decided it is time to study the problem for a few more years or buy off those they can and try to discredit those they cannot, at least until the media heat cools off. The

NFLPA has been complicit and negligent on its own regarding player's injuries in general but especially about concussions and brain injuries. The NFLPA's Dr. Thom Mayer was employed part time being paid less than \$25,000 a year until I pointed out that you can't get much medical expertise for what they were paying Dr. Mayer. That email got him a big raise and now I understand he is the NFLPA's concussion expert, without brain injury portfolio. But the Delay and Deny program is carried out in large part by the players Gene Upshaw appointed representatives on the Bert Bell Pete Rozelle NFL Player Retirement Board. They include Tom Condon (a player's agent who also represented the late Gene Upshaw), Dave Duerson (a former NFL player and bankrupt business man crony of the late Gene Upshaw), and Jeff Van Note (an announcer for the Atlanta Falcons). This board made up of these three former players and three owner's board members plus Commissioner Roger Goodell were found by an appellate court to have "abused their discretion" in the Mike Webster case and are responsible for the many widely believed unjustified denials of disability claims.

Only four retired players were receiving disability for brain injuries at the time of the last Congressional hearings that is four out of 13,000 former NFL players. Only 317 total retired players out of 13,000 (now Goodell says 21,000 have played in the NFL so it is four and 317 out of 21,000) received disability for their football injuries but that number was moved up to 428 a couple months later when the Congressional Research Service (CRS) report was being compiled.

Facts and figures do not stand in the way of NFL spokesmen trying to convince the public or congress that the owners are generous to a fault. The recent NFL funded University of Michigan study of retired player circumstances says 86% of the older retired players own their own home and 92% have Medical insurance. There is no group in America unless it is highly selected that is made up of people 86% of who own their own home and 92% who have medical insurance (other than the publicly funded Medicare). Those numbers cited by the NFL are suspect as their speaking in percentages when the numbers are pitifully low when for instance a 25% benefit increase equals \$1.63 a day.

How reliable can any of that NFL telephone study of retired players be? Talking in percentages allows them to tout the \$1.63 a day increase to our pensions as a 25% increase, but it only shows how pitifully low the sub-poverty level actual pensions are. No announcement was made about Gene Upshaw's simultaneous \$10,000 **per day** compensation increase at about the same time. Our average pre 1982 pensions remain below poverty level. Goodell's PR gang deliberately make confusing statements that lead your committees and the public to believe the pre 1993 retired players receive the same benefits as today's players, which they should but don't.

Chairman Conyers, I applaud you for taking on this daunting task and risking the ire of the over privileged political contributors who own and operate the NFL. You have been a hero of mine for many years, and that continues today. This problem is not an easy one, and it cannot easily be separated from our Bert Bell/Pete Rozelle NFL player Retirement Plan because the owners have chosen to use our pension plan as their medical insurance, our/their player disability plan. When

no medical insurance company would cover their business, because football is too risky and injuries too frequent and severe to bet against, the owners had to come up with a different insurance plan, so they made it part of our player retirement (pension) plan. This created a competition between retirement and disability payments. The more and higher the disability payments the lower the amount available for pensions.

I was advised by your staff not to go into the pension and disability issues in my testimony, but to stick to the concussion and brain injury problems. When you know the whole story that is impossible to do.

Dealing with the NFL and NFLPA's collusive Delay and Deny operations means battling through their myriad of tobacco company type public relations stunts, phony expert's denials, purchased testimony, and illusions of representation. It means fighting their multi-million-dollar lobbying efforts directed against retired players and the public. They want you to keep your attention on new understanding of retired player issues, speeding up the administrative institutional process, the 88 Plan; which is a cheap out of court settlement for brain damage caused by playing football, retired player families are often so happy to get any help they are reluctant to say anything that might anger the tight-fisted owners who operate these public relations scams. Look at the shiny object I'm holding up in this hand while I pick you pockets with process, and procedure, and studies, and investigations and already taking care of that, talking to the NFLPA about that, talking to Dr. No (Ira Cassen) about that, that has to wait for the next Collective Bargaining Agreement, that has to wait, to wait, to wait, to wait, wait, wait, Delay until we can Deny...

John Updyke once said, "It is difficult to make some one understand when his salary depends on him not understanding." Like Roger Goodell, his staff and his bosses Covington & Burling led legal team.

After the June 2007 Congressional hearings Miki Yaris-Davis, Director of Benefits for the NFLPA, described seeing the retired players together is like watching a bunch of Maryland crabs scuttling along, "They're all injured, it's just a matter of degree."

The NFL's Delay and Deny program pushes the costs of concussions and NFL injury caused early dementia on Medicare, Social Security and Medicaid amounts to medical fraud and abuse operation that has kept billions of dollars in the NFL owner's bank accounts that should have been paid out by NFL owners for the medical treatment of their employees injuries sustained playing in the NFL.

The NLRB has ruled the retired players are cannot be part of the NFLPA's bargaining unit, therefore it is fair to say Congress has left us with no way to protect our interests except through litigation. Congress could correct this with legislation giving retired players a vote making retired players an equal voting part of the bargaining unit

As Gene Upshaw repeated many times retired players are not in the bargaining unit, The NFLPA, the (union) does not represent retired NFL players. The “new” NFL Alumni Assoc is a hoax, another illusion of representation being perpetrated on retired players by Commissioner Roger Goodell. He is using a small group of former players, his favored courtiers to try to install a clone of Gene Upshaw in a position to block retired players for Goodell and his masters. These courtiers collect various personal favors while helping Goodell carry out some rather clumsy amateurish Divide and Conquer strategies to keep from dealing with the key issues.

Congress needs to insure that:

- 1) There is an Increase in the NFL retirement to match that of Baseball;
- 2) NFL Disability plan is rewritten to deal with the unique problems of professional football including concussions and all brain injury problems related playing NFL football;
- 3) There is a one time reparations payment to the players who played under the most dangerous helmet to helmet crack back, cut block, clothes lining crack back, head slap rules, suffering concussions, neck and spine injuries playing with inferior equipment who established the NFL as America’s foremost sport, now an \$8 billion a year sport’s business.
- 4) That the Office of Safety and Health Administration (OSHA) has jurisdiction to oversee the operation of the NFL.
- 5) That the study of concussions and brain injuries in sports is overseen by the National Institutes of Health (NIH).

Anyone who joins the Goodell-Martin NFL Alumni Association looking for representation is being foolish.

On the morning of the 2006 midterm elections at 10:01 AM it was confirmed that the Democrats had gained control of both the Senate and the House. At 10:30 AM I received a 32 page email from Mr. Gerald Toner, Chief of Labor Racketeering, apologizing for holding my complaints about the NFL and NFLPA since June 2006 then telling me I had not specifically cited the laws violated therefore he was forwarding my complaints to Elizabeth Bond in the Department of Labor and Toner then told me I should get a lawyer and sue the NFLPA. I did and won \$28.1 million for over 2000 retired players who backed me that this two-year ordeal. Legal maneuvering and the usual lawyer deal making, coupled with the usual NFL NFLPA type collusion unfairly cut another 11,000 retired players out of the case in what I believe to be a flawed trial followed by a very tainted trial settlement deal. Ms Bond has already been dancing us around for several frustrating years on the labor violations before I complained to Mr. Toner.

I worked for months helping to draft the bill to rescind the NFL's shield behind which they hide their misdeeds and abuse of retired players and the public. The draft bill was attached to my October 26, 2009 statement to this Committee and includes most of my suggestions intertwined with others ideas on how to write such a bill. The American Needle case pending before the United States Supreme Court is the most important case to the players and the public ever. Eric

Holder defended the NFL and won this case when he was at Covington & Burling. Now the Solicitor General is calling for it to be remanded to the lower appellate court that ruled originally in the Holder's old NFL client's favor. Of course, Mr. Holder should remove himself from asserting any influence in the American Needle v. NFL case.

For more detailed information on disability and other retired player issues go to [Dave Pear.com](http://DavePear.com) website it has a library of information and adds commentary from all sides to it daily.