

TESTIMONY OF DEMAURICE SMITH  
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BEFORE THE COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES  
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Good Morning Chairman Conyers, Ranking Member Smith and Members of the Committee. My name is DeMaurice Smith and I represent the players, both current and former, of the National Football League.

As Executive Director, my number one priority is to protect those who play and have played this game. There is no interest greater than their health and safety. Let me say this again: Safety of the Players is Paramount.

Mr. Chairman, you and this Committee deserve immense credit and appreciation for consistently bringing this issue of concussions and brain trauma in the sport of football to the forefront. This Committee and this Hearing will be a turning point on this issue. My hope is that this day will serve as a marker denoting the day that we are committing ourselves to finding the right answer. It will influence not only this game at the professional level, but the one that so many of us love for our players in College, High School and Youth Football.

I have one simple declaration on behalf of those who play and those who played this game:

WE ARE COMMITTED TO GETTING THE RIGHT ANSWERS, TO WORK WITH EVERYONE WHO HAS THE GOAL OF PROTECTING OUR PLAYERS AND TO SERVE AS A MODEL FOR FOOTBALL AT EVERY LEVEL.

Given that commitment, I acknowledge that the Players Union in the past has not done its best in this area. We will do better.

To men like John Mackey and Brent Boyd and to families of Mike Webster and Andre Waters, and those organizations that stand with us, I commit and we commit to this as our mission. We will not fail them.

Both myself and the current and retired players of the National Football League are committed to getting this answer right. I was elected by the Board of Player Representatives in March of this year. Since that time we have taken the following bold and innovative steps to address this issue:

- In May 2009, we created the NFL Players Association Concussion and Traumatic Brain Injury (TBI) Committee, to address two critical issues: 1) the diagnosis, treatment and

prevention of concussions and TBI in active players; and 2) the long term, cumulative effects of isolated or repetitive TBI in NFL players as patients and how these effects can be reduced or eliminated. This Committee, funded by the players, will act as a “super-conductor” of current and future studies and is charged with one overarching goal: TO GET THE RIGHT ANSWER.

- Two weeks ago, I met with all of the Chapter Presidents and Steering Committee members who represent the Retired Players of the National Football League. This 40 person congress of former players that represent the NFL Retired Players Association, an organization with over 25 years of history, embraced the creation of the NFL Players TBI Committee and joined our call to have the NFL release all aggregate medical information that would aid current and retired players.
- Several players have dedicated their bodies to medical science in the effort to provide researchers with the best information and research to aid those who will play the game in the future.
- For the first time ever, the Players Association’s Medical Director Dr. Thom Mayer is present at every meeting, including Collective Bargaining meetings that deal with player health and safety. He will chair the Players TBI Committee.
- Finally we, the players, will not bargain for medical care; we will not bargain for health and safety; and we will not bargain for basic provisions of the law as patients. We will continue to work with the League but medical care is not and will never be a Collective Bargaining issue.

While all players understand that professional football is a violent game, we must do our best to keep them informed of the game’s potential consequences. Yes, it is true that professional football players are the best, most well-conditioned athletes in the world, but even those blessed with tremendous athletic gifts are vulnerable to severe injuries. Traumatic brain injuries represent some of the most severe injuries known to affect football players. Furthermore, the long-lasting effects of these injuries can be devastating.

### **Overview**

The game of football is America’s passion, as it is often discussed, analyzed and debated 24 hours a day, seven days a week and discussions focusing on the business of football are becoming increasingly popular – just ask anyone who participates in a fantasy league; however, the science of football is rarely discussed or scrutinized. Perhaps the catalysts for the current spotlight on the potential effects of traumatic brain injuries are the recent study conducted by the University of Michigan Institute for Social Research on former NFL players and an article in *GQ* entitled, “*Game Brain*”. However, during the last five years, there were other significant articles by Alan Schwarz of the New York Times and Peter Keating of ESPN.

The University of Michigan Study (September 10, 2009) indicated that dementia, Alzheimer’s disease and other memory-related diseases are 19 times more likely to afflict former NFL players ages

30-49 and 5 times more likely for ages 50 and older. This study did not administer cognitive tests or conduct neurological examinations, instead only asked whether the player had been diagnosed with “dementia, Alzheimer’s disease or other memory-related disease”.

This however, was not the first study on this issue. While this is the first NFL-accepted study that demonstrated a connection between on-field injury and post career mental illness, there have been studies over the last decade highlighting that fact. Unfortunately, the NFL has diminished those studies, urged the suppression of the findings and for years, moved slowly in an area where speed should have been the impetus. For example, in 2002, Dr. Bennet Omalu, a neuropathologist, studied the brains of several former NFL players and concluded that all suffered from chronic traumatic encephalopathy (“CTE”). Subsequently, Dr. Omalu wrote a paper entitled “Chronic Traumatic Encephalopathy in a National Football League Player” for submission to *Neurosurgery*, a medical journal; the paper was reviewed by several experts and published in July of 2005. NFL Drs. Casson, Pellman and Viano, all members of the NFL’s Mild Traumatic Brain Injury (MTBI) Committee, wrote a letter to the editor, demanding a retraction of Dr. Omalu’s paper. The paper was not ultimately retracted and, in fact, *Neurosurgery* later published a second paper by Dr. Omalu on the same topic.

### Action

While there is greater cooperation between the NFL and the Players Association through the NFL’s MTBI Committee, the players believe that it is important to have an objective Committee that is free from any appearance of conflict of interest. The players know that:

- The former Chairman of the NFL’s MTBI Committee was a rheumatologist by training when he requested a retraction of the Neurosurgery paper by Dr. Omalu;
- The letter demanding the retraction of such paper, a copy of which I have here, described the study of former players’ brains as “completely wrong”; and
- The NFL had a similar response regarding Dr. Bailes and Kevin Guskiewicz’s study conducted by the University of North Carolina Center for the Study of Retired Athletes that concluded that players who had suffered multiple concussions were three times more likely to suffer from clinical depression. A member of the NFL’s MTBI Committee, then chaired by Dr. Elliot Pellman, called that study “virtually worthless”.

Between 2000 and 2008, there have been hundreds of studies highlighting this issue. I believe that the NFL MTBI Committee has reviewed many of them, but as we learn more about this issue, one thing becomes clear: the days of denigrating, suppressing, and ignoring the medical findings must come to an end. We need to share the right information, embrace the right researchers and collectively find the right answers.

Here is what we are committed to do:

First, through the Players' TBI Committee, we will objectively and honestly embrace all of the studies and evidence so that we can craft a roadmap that leads to preventative measures. There are 2 studies currently underway – the NFL MTBI study on retired players and their ongoing data on concussions and the UNC study. We will look to verify the scientific relevancy of these studies, provide any information that is necessary to ensure a successful review and carefully evaluate and disseminate any findings. We will also renew our request to the NFL to provide the injury data and analyses from the NFL for 2006, 2007 and 2008. We believe this information will not only improve our knowledge about this issue and these injuries sustained by our players, but assist us in developing safety initiatives. The NFL has long been privy to this information alone and hopefully, after repeated requests for the information, we will be rewarded with their compliance.

Second, we will use the Players Concussion and TBI Committee as a “superconductor” to commission, evaluate, follow and disseminate ongoing research. The Committee will be comprised of current and former NFL Players, TBI researchers and physicians with expertise in neurologic injuries. I have asked many of the doctors previously rejected by the NFL to serve on this Committee because they are scholars, respected by their peers and experts in their field. I am proud to say that the following doctors have agreed to join the players and me in this effort: neurosurgeons and/or neurologists: Drs. Bailes, Cantu, Watson and Ling; neuropathologists: Drs. Davies, McKee and Omalu; neuropsychiatrists: Drs. Liketsos and Wise; neuropsychologists: Drs. Lovell and Guskiewicz; and NCAA team physician, Dr. Bytomski. Elements to be addressed by our Committee include specific research into traumatic head injuries, the education and awareness of football players at all levels, diagnosis and management of such injuries, including sideline care in the event of a head trauma, preventive measures and scrutiny of the rules of football in an effort to increase the safety of the playing conditions.

Third, the Committee will work with the NFL to consistently review the procedures for the diagnoses of players and the decision about when a player who suffers a head trauma should return to play.

Fourth, we will seek to improve the coverage provided by the 88 Plan and aggressively reach out to our former players to assist them in any way we can. Currently, the 88 Plan only covers dementia. We should look to expand its coverage to a wider array of mental and psychologically debilitating conditions such as traumatic brain injury, severe depression and other neurological diseases.

Fifth, the NFL and the NFLPA need to become the leading voices to college, high school, and youth leagues about the issue and the steps that can be taken to minimize the risks of concussion and brain trauma. We can do this only if we have access to the information already collected by the NFL from our players. It is not too much to ask that the players, from whom this information is collected, benefit from the use of this information. I believe that while we are here to discuss traumatic brain injuries, the information collected by the NFL team owners could be valuable for researchers investigating a myriad of medical conditions such as arthritis, joint deterioration, Alzheimer's, aging, physical rehabilitation and recovery from injuries. We, along with our partners such as USA Football, are

committed to educating the youth on the safety of football, as we know that young football players look to the professionals for guidance.

The NFLPA will look to other studies but will also commission studies to augment and further existing research. This is a new era of commitment, education and accountability and we will not miss an opportunity to keep our players safe.

### **Benefits and Other Aid**

The 88 Plan (the "Plan"), effective February 1, 2007, was collectively bargained by the NFLPA and the NFL Management Council, after an aggressive push by the NFLPA. The plan provides benefits to players with dementia, as defined by the Plan. The Plan was named in honor of John Mackey, who wore the number 88 and was diagnosed with dementia. A player is eligible for this benefit if he is vested due to credited seasons or if he has received total and permanent disability and if the player's condition meets the Plan's definition of dementia. Sylvia Mackey, wife of John Mackey, is the quintessential testament as to why this Plan was a necessity. In speaking with her, I realize that all of the negotiating is well worth it when we can assist one of our player pioneers and see that he is cared for by us, especially when there were no other resources.

To apply for the benefits of the Plan, a player or his proxy must submit an application to the Plan Board. The Board has six voting members, three of whom are selected by the NFLPA and three of whom are selected by the NFL Management Council. The current NFLPA-appointed 88 Plan Board members are all former NFL players and NFLPA officers. Once an application is approved, the 88 Plan Benefits Administrator collects, processes and pays claims for the beneficiaries.

There are a variety of costs covered by the Plan, within limits, including institutional and home care, physician services, medical equipment and prescription medication. It is important to note that the maximum payment differs between players that are institutionalized and those that are receiving home care from an unrelated third party; the maximum is \$88,000 per Plan year for institutionalized care and \$50,000 per year for non-institutionalized care. The benefits are payable for the duration of the dementia but are reduced by the amount of any total and permanent disability benefits paid under certain provisions of the Bell/Rozelle Retirement Plan.

Improvements to the existing 88 Plan, such as increasing the maximum annual payment from \$88,000 to \$100,000, due to the rising cost of health care and eliminating the difference in the benefit between home care and institutional care, are also being considered. I also will commission a study of whether we should expand the coverage of the 88 Plan to include other neurological degenerative diseases. Additionally, the funding of future studies is imperative to our continuous education on the effects of head injuries. The National Institute of Health or a similar agency is positioned as an objective candidate to conduct such a study.

We cannot emphasize enough that we have to get this issue right. It is not simply to ensure the safety of our NFL players; it is so our efforts will set the standard for the sport as a whole and potentially prevent injuries in youth, high school and college football as well.

I thank you for this opportunity to testify before the Committee and I look forward to answering your questions.