



“We’ve Only Just Begun...” - The Carpenters

While the *Lords of the Diamond* and MLB players are congratulating themselves for amending the sport’s drug testing policy for the third time, storm clouds are looming on the horizon. As much as both sides hope, and indeed proclaim, the issue of illegal drug use in baseball is behind them, the federal government is poised to take action guaranteed to keep the issue on the front pages.

The feds are on the verge of winning a legal battle that will give prosecutors the opportunity to question all 104 MLB players who tested positive in a drug testing “survey” conducted in 2003. Lest anyone forgot, under pressure from management and Congress, players agreed to a one-year test that guaranteed anonymity and precluded penalties for positive results. All players were tested once, and 240 players were tested randomly a second time.

If less than 5% of the tests came back positive, drug testing in the sport would cease. If more than 5% of the tests were positive, a full-scale drug testing procedure would be implemented. When 7.23% of the tests came back positive, drug testing in baseball was here to stay.

Under the agreement authorizing the survey, the test results were supposed to be destroyed. But the leadership at MLBPA headquarters, viewed in some quarters as the best and sharpest minds in the labor movement, slipped on their reputation. They made no effort to destroy the test results until the government – in the process of serving a search warrant as part of the BALCO investigation - hit the lottery.

## Drug Issue in MLB Far From Over

Written by Jordan I Kobritz  
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The feds seized a disk that contained, among other things, the names of all the players who tested positive in 2003. The government claimed the information was obtained legally, under the “plain view” exception to the Fourth Amendment. The union – joined by MLB – sued to keep the records confidential. Unfortunately for the players, the courts have ruled for the government at every step in the litigation and a final appeal will only postpone the inevitable.

Sometime in the next year or so, the government expects to begin hauling each of the 104 players before a grand jury. The goal is not to punish the players, as if the embarrassment of public disclosure won't be punishment enough. Prosecutors will be asking questions designed to determine how and from whom the players obtained their illegal drugs. Get ready for the Mitchell Report redux, only this time with proof that's admissible in a court of law.

After adopting every recommendation in the Mitchell Report, you could excuse the owners and players for their smugness. The parties would like nothing better than to be left alone to count their respective millions. But that's unlikely to happen. Count on the media to uncover – and publicize – the name of each and every player who tested positive.

As for the thrice-amended drug testing policy, there's little to get excited about. Sure, the number of tests has increased, including twice as many tests during the offseason. An independent administrator will make the system more transparent. And the penalties are the strongest in U.S. professional sports. But that's all for show.

The fact remains that the drug testing program has the teeth of an infant. No blood testing whatsoever. No test for HGH. No possibility of 24/7, 365 day random testing.

And yet both sides are congratulating themselves as if they had just captured Bin Laden.

Look, no drug program will succeed in catching everyone who's cheating, just as no CPA can design an auditing program to catch every person who's guilty of embezzlement. But if the parties were truly committed to ridding the sport of illegal drugs, this isn't the system that would have been adopted. The program currently in place is designed to maximize favorable PR without infringing on the players' so-called privacy rights. And perhaps more importantly, to keep Congress at bay.

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From those perspectives, the system seems to be working just fine, thank you. But anyone with a modicum of common sense can see right through the charade. And lest either the owners or the players think the drug issue is dead, the truth can be found in the title of The Carpenter's song.

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