

Ninth Circuit Rules in Favor of MLBPA Over Seized 2003 Drug Testing Results

Written by Maury Brown
Wednesday, 26 August 2009 16:25



THIS IS BREAKING NEWS...

The United States Court of Appeals for the Ninth Circuit ruled 9-2 today that the federal government seizure of testing results from a joint MLB/MLBPA performance-enhancing drug “Survey Test” in 2003 was illegal. The test results were seized from Comprehensive Drug Testing of Long Beach, CA and Quest Diagnostics, Inc. in Las Vegas in April of 2004 during the BALCO investigation (see [United States v. Comprehensive Drug Testing](#)). A file directory deemed the “Tracey” directory on a computer at CDT that contained numerous subdirectories and hundreds of files was copied without a warrant at the direction of Agent Jeff Novitzky. The documents seized included a twenty-five-page master list of all MLB players tested during the 2003 season as part of the league’s Survey Test, and a thirty-four-page list of positive drug testing results for eight of the ten named BALCO players being investigated, as well as a spreadsheet of other players that were deemed to have tested positive at the time, the now infamous “list” of 104 players. Those names were to remain under court seal while the Ninth Circuit determined the legality of the seizure of the computer files. Players, such as Alex Rodriguez, Sammy Sosa, and David Ortiz who were part of the list have had their name leaked to the media, most notably to *The New York Times*

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Chief Judge Alex Kozinski, speaking for the majority, noted the damage that has been incurred upon the players whose names have been leaked, and to the process of collectively bargained drug testing.

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"The risk to the players associated with disclosure, and with that the ability of the Players Association to obtain voluntary compliance with drug testing from its members in the future, is very high. Indeed, some players appear to have already suffered this very harm as a result of the government's seizure."

The Survey Test in 2003 was conducted to determine the level of steroid use in MLB and whether mandatory testing would begin the following year.

A statement on the ruling was issued today by Major League Baseball Players Association Executive Director, Donald M. Fehr, and General Counsel, Michael Weiner.

"Today the United States Court of Appeals for the Ninth Circuit, sitting en banc, ruled in favor of the Players Association in the litigation regarding the government's seizure of the 2003 testing records.

"The Court has affirmed lower court rulings that the seizure of individual 2003 testing records violated the constitutional rights of the Players and of the Players Association. Anyone who leaks information purporting to contain those 2003 test results is committing a crime."

The statement concluded by saying, "We are very gratified by this decision, and hope that this will finally bring this long litigation to a close."

Reached for comment, Victor Conte, the former head of BALCO Laboratories said, "I have said that Novitzky has been using illegal tactics and not following the law since the day of the BALCO raid. He seems to just make up his own rules as he goes along. There needs to be a full investigation of Novitzky and his self-serving agenda. I know that he violated my rights and I believe he has done so with many others as well."

FOR MORE SEE:

- [United States v. Comprehensive Drug Testing](#) (appeal from Dec of 2006)

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- [Maury Brown Dresses Down Maury Brown on Releasing "The List"](#)
- [Dear Fan, You Don't Really Care About PEDs in Sports](#)
- [Transcript: Prepared Statement by Alex Rodriguez Spring Training 2009](#)
- [The Fourth Amendment, the MLBPA and the BALCO Investigation](#) (Baseball

Prospectus)

- [Report: Alex Rodriguez Tested Positive for Steroids in 2003](#)
- [Alex Rodriguez Admits to Using Steroids](#)
- [Sammy Sosa Reportedly Tested Positive for PEDs in 2003](#)
- [MLBPA Asks Court to Revisit Seized Records Decision](#)
- [MLBPA Releases Statement Explaining Why "Survey Test" Results Were Not Destroyed](#)



Maury Brown is the Founder and President of the [Business of Sports Network](#) , which includes The Biz of Baseball, The Biz of Football, The Biz of Basketball and The Biz of Hockey. He is available for hire or freelance

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