

## Govt Not Pursuing MLB Drug Test Results Deemed “Significant Victory” by Players Union

Written by Maury Brown

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In a victory, not only for MLB players, but for those concerned about the Fourth Amendment to the Constitution, the U.S. Justice Department announced on Friday, December 10, that the Government would not ask the United States Supreme Court to reverse a court of appeals ruling that the Government had illegally seized records regarding Major League Baseball’s 2003 survey-drug testing. The deadline for asking the Supreme Court to review the case – by filing a petition for certiorari – was Monday, December 13.

The decision by the Justice Department to drop the appeal means that the court of appeals ruling is now final, and that the records regarding the 2003 testing must remain confidential.

“We are pleased that the Government has decided not to pursue this case any further and to let this long legal battle end,” said Michael Weiner, Executive Director of the Major League Baseball Players Association. “Pursuant to the Collective Bargaining Agreement, the players were promised that these 2003 test results would be anonymous and confidential. We have always believed that the seizures were improper and violated the rights of the players and the MLBPA. The courts have agreed. This is a significant victory for our members and for our collectively bargained Joint Drug Program.”

In 2004, with search warrants that named just 10 players, the Government seized records regarding the 2003 MLB drug-testing for all Major League players. The MLBPA immediately contested the seizures, and later in 2004 three different federal district judges ruled in favor of the MLBPA and ordered the Government to return the materials.

The lengthy appellate process followed. Last September an eleven-judge panel of the Ninth Circuit Court of Appeals, by a vote of 9-2, issued a revised opinion confirming its previous ruling

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that the seizures were illegal and violated the Fourth Amendment, which protects citizens from unreasonable searches and seizures (for more see the January 2007 *Baseball Prospectus* article

[The Fourth Amendment, the MLBPA and the BALCO Investigation](#)

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The survey tests were collectively bargained between the players and the league to determine whether mandatory testing for PEDs would begin in 2004. If more than 5 percent of the players tested were positive for PEDs, the testing would begin. In 2003 1,438 players were tested, and 104 of them, or 7.23%, tested positive for steroids. Mandatory testing was then implemented in 2004. The 2003-2006 CBA stated that, "At the conclusion of any Survey Test, and after the results of all tests have been calculated, all test results, including any identifying characteristics, will be destroyed in a process jointly supervised by the Office of the Commissioner and the Association." The MLBPA, however, did not destroy the results and the government seized the information as part of the BALCO investigation. The matter has languished in the courts for years, and it is believed several names on the list were leaked to the media. It is not known whether any players plan to pursue legal action against the government in the case.

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