



For Immediate Release

New York, NY, Monday, February 09, 2009 ... Major League Baseball Players Association Executive Director, Donald M. Fehr, today issued the following statement in response to questions raised concerning recent reports about the 2003 testing program.

“We are issuing this statement today to respond to two questions that have been raised in the last few days in connection with reports about Alex Rodriguez and the 2003 MLB testing program. First, it has been asked why the results from our 2003 survey tests were not destroyed before they were seized by the government in the spring of 2004. The short answer is that in November, 2003, before that could take place, a grand jury subpoena for program records was issued.

“In mid-November 2003, the 2003 survey test results were tabulated and finalized. The MLBPA first received results on Tuesday, November 11. Those results were finalized on Thursday, November 13, and the players were advised by a memo dated Friday, November 14. Promptly thereafter, the first steps were taken to begin the process of destruction of the testing materials and records, as contemplated by the Basic Agreement. On November 19, however, we learned that the government had issued a subpoena. Upon learning this, we concluded, of course, that it would be improper to proceed with the destruction of the materials.

The fact that such a subpoena issued in November 2003 has been part of the public record for more than two years. See, U.S. v. CDT, 473 F3d at 920 (2006), and 513 F3d at 1090 (2008) (both opinions have now been vacated). Other subpoenas followed, including one for all test results.

“Over the next several months we attempted to negotiate a resolution of the matter with the United States Attorneys Office for the Northern District of California. During that time we pledged to the government attorneys that the materials would not be destroyed. When the government attorneys refused to withdraw its subpoena for all 2003 test results, we decided to ask a judge to determine to what the government was entitled. See, 473 F3d at 944, and 513 F3d at 1118. On the same day we were filing our papers with the court, the government attorneys obtained a search warrant and they began seizing materials the following day. Pursuant to that search warrant which named only 10 individuals, the government seized records for every baseball player tested under our program, in addition to many records related to testing in other sports, and even records for other (non-sport) business entities.

“Later in 2004 three federal district judges in three different judicial districts ruled that the government’s seizures were unconstitutional under the Fourth Amendment and ordered the government to return all the materials seized (except for those related to the 10 players listed in the original search warrant). The government appealed and the matter is still pending before the United States Court of Appeals for the Ninth Circuit. On December 18, 2008, the case was reargued before an en banc panel of Ninth Circuit judges.

“The second question that has been raised in recent days is whether Gene Orza or any other MLBPA official was engaged in improper “tipping” of players about 2004 tests. As we have said before, there was no improper tipping of players. Any allegations that Gene Orza or any other MLBPA official acted improperly are wrong. This issue was raised last year by Chairman Waxman of the House Government Reform Committee following the issuance of the Mitchell Report, and last July I sent him a ten-page letter clarifying the record on this subject. The letter is a public document (<http://oversight.house.gov/documents/20080703114405.pdf>). In that letter, I describe certain privileged conversations MLBPA attorneys conducted in September 2004 with members whose names appeared on certain government lists. It should be noted that the Commissioner’s Office was aware that such conversations were taking place, and in fact those conversations were conducted pursuant to an agreement between the MLBPA and the Commissioner.”

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