

## **Keker & Van Nest Scores Victory for Major League Baseball Players Association**

8/26/09 (San Francisco, Calif.)—In a sweeping victory for the Major League Baseball Players Association (MLBPA), the U.S. Court of Appeals for the Ninth Circuit ruled Wednesday that federal investigators unlawfully seized drug testing records and urine samples of hundreds of professional athletes.

Writing for a majority of the court, sitting en banc, Chief Judge Alex Kozinski concluded the government showed a “callous disregard” of the Fourth Amendment by exceeding the scope of search warrants issued in conjunction with a federal investigation into steroid use by professional baseball players. “This was an obvious case of deliberate overreaching by the government in an effort to seize data as to which it lacked probable cause,” Kozinski wrote.

Keker & Van Nest partner Elliot Peters, lead attorney for the MLBPA, praised the decision. “We’re very pleased that, like all three district judges below, nine of the eleven judges on the en banc panel agreed that the government’s searches and seizures were unconstitutional,” Peters said.

In 2004, federal agents obtained a search warrant for records pertaining to 10 baseball players who allegedly had ties to the Bay Area Lab Cooperative (BALCO), an organization that the government was investigating for suspected steroid distribution. During a search of a drug testing facility in Long Beach, Calif., however, agents seized and promptly reviewed drug testing records for hundreds of Major League Baseball players who were not named in the warrant. Agents also seized urine samples from a facility in Las Vegas.

Later that year, Peters, along with Keker & Van Nest partner David Silbert and Coleman & Balogh partner Ethan Balogh, convinced three federal judges that the government had violated the players’ Fourth Amendment rights, and secured orders that the materials must be returned. In January 2008, a divided three-judge panel of the 9<sup>th</sup> Circuit reversed those orders in part. Wednesday’s ruling vacates that decision and upholds the lower court orders.

Peters said Wednesday’s ruling is not only a victory for the players, but for the Fourth Amendment itself. But he also noted that the ruling repairs only some of the damage that the illegal searches and seizures has caused.

“As the majority recognized, the government’s illegal actions have already harmed a number of people by generating purported leaks of the seized testing results,” Peters said. “Any actual leak of the seized materials is a crime, and we will do everything possible to ensure that the people responsible are identified and prosecuted.”