

Drug Testing in Sports

When Janis Joplin, John Belushi, and a number of other famous entertainers died of drug overdoses, many people were shocked and saddened. But the impact was not the same as when the University of Maryland's star basketball player, Len Bias, died from an overdose of cocaine. Joplin and Belushi were surely more famous, but Bias's death played on the front pages of newspapers for much longer and had a more marked policy impact, generating calls for an overhaul of athletic programs and for mandatory drug testing of athletes.

Perhaps we expect entertainers to live their lives more recklessly than the rest of us, so their drug abuse does not surprise us. But we tend to regard star athletes as more than entertainers. Nobody demands drug testing for actors or musicians, but even before Bias's death, a *Sports Illustrated* poll revealed that 73 percent of the respondents favored drug testing for athletes. Most university sports programs, along with professional baseball, football, and basketball, have instituted drug testing programs. Such programs have been criticized on the grounds that test results are often inaccurate and that testing programs invite abuse. A more fundamental question is whether, risks of error and abuse aside, such invasions of privacy can be justified. Why should athletes be singled out for this kind of scrutiny of their private lives?

Testing Student Athletes

Many people think we should regard athletes differently from other students and be especially protective of them. Red Auerbach, general manager of the Boston Celtics, the professional basketball team that drafted Len Bias the day before he died, expresses this view clearly. "I know that it's an invasion of privacy, but there comes a time when you've got to put this altruistic civil rights stuff down the toilet, find out who's using drugs and take it from there. Athletes are targets because of their leadership. Drug sellers approach them in 50 ways, because they know that if they get an athlete hooked, other students will say, 'Hey, if my hero does it, what the hell; I may as well do it, too.'"

Singling out athletes for such invasiveness of their private lives on the grounds that they are worshiped and emulated cannot be justified. Star athletes surely enjoy the publicity they receive, but they do not ask to be made into role models. Nor should university administrators be encouraging this kind of status. It is sad if youngsters' only collegiate heroes are sports figures. Administrators inadvertently support this state

of affairs by lavishly publicizing all the special requirements they place on their prominent athletes. They press upon athletes a role as special representatives of their institutions. This is hardly a way to encourage kids to leave a basketball court at least long enough to attend their classes. Perhaps universities should be using drug tests to call attention to their Phi Beta Kappas instead, thus reinforcing a healthier kind of role model.

Universities in some instances are requiring their athletes to be tested for performance-enhancing drugs like steroids, amphetamines, and pain killers, as well as for recreational drugs. (The major professional sports, interestingly, test only for the latter.) Universities can thus claim that their concern is for the health and well-being of their athletes, a concern for the athletes themselves. The pressures of competitive sports may place a heavy burden on such young adults, and they may, as Red Auerbach suggests, be a special target for campus drug pushers. There can be no objection to recognizing these problems, trying to avoid them, and offering help to the victims. It is surely tragic to see such gifted young people sacrifice their talents and risk their lives to drugs. But mandatory drug testing cannot be justified by compassion alone; a far better and less invasive strategy would be to de-emphasize the importance of college sports and reduce the pressures placed on student athletes.

Are there any other grounds for singling out collegiate athletes for such invasions of privacy? Some might point to their scholarships as a justification. It is reasonable to attach certain conditions to receiving scholarships; athletes must continue to play their sports, keep up their studies, and keep out of trouble. But these conditions should not include the kind of surveillance that drug testing involves. A scholarship is an award, not a contract. Student athletes are not allowed to bargain freely for salaries or for a share of the revenues they bring to the institution for which they play. Institutions that take advantage of financial need to subject student athletes to excessive scrutiny are exploiting the very young people they claim to be trying to help. Talented young scientists do not forfeit their rights to privacy when they accept academic scholarships, and neither do athletes.

Drug Testing in the Workplace

What about drug testing for professional athletes? Team owners often sign players to multi-year contracts at astonishing salaries. They have a proprietary interest

that individual performances not fall below salary-driven expectations, and so they are clearly concerned that these players perform to their full potentials. The public indirectly pays the players' salaries by their support of the game, which gives them a similar interest. Do these interests justify placing extraordinary demands on athletes? We pay the salaries of the musicians whose records we buy, too, but nobody much cares or thinks we ought to have a say in what *they* do with their personal lives.

How much intrusion into privacy and personal life is justified on economic grounds? In particular, do these reasons justify mandatory drug testing? We can begin to gain a better perspective on this issue by considering the question of drug testing in the workplace.

Spurred on at least in part by public concern over Len Bias's death and drug abuse in sports, President Reagan, in September 1986, issued an "Executive Order for a Drug Free Federal Workplace." The order announced that "The Federal Government, as the largest employer in the Nation, can and should show the way toward achieving drug-free workplaces." It expressed the government's concern for "the well-being of its employees" as well as for "the need to maintain employee productivity." The President, the Vice President, Cabinet members and their staffs, all belied up to the jar to be tested for drugs.

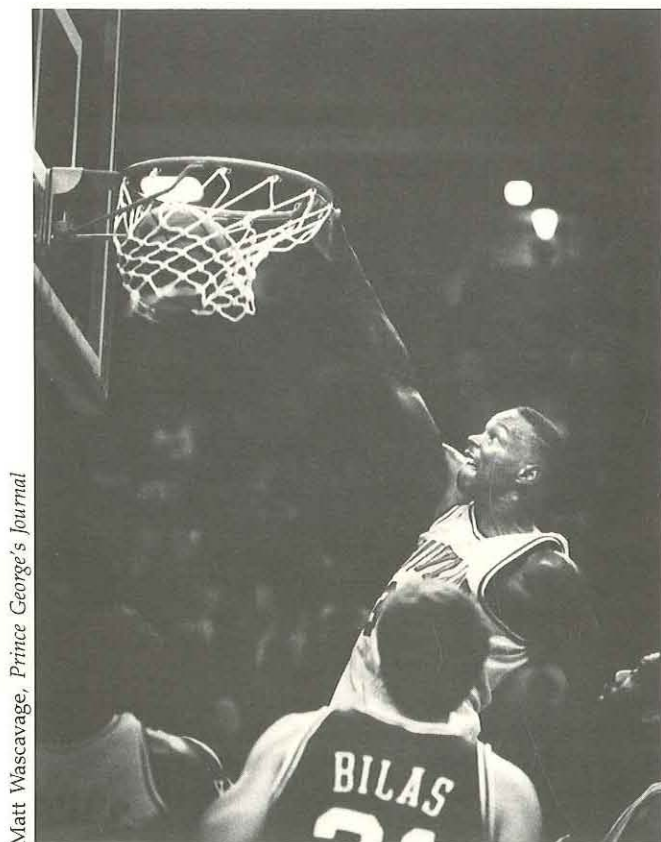
The government cannot order drug testing for all its

employees, however. It is barred by Fourth Amendment guarantees against unreasonable search and seizure, and the Supreme Court has ruled that extracting bodily fluids is an unreasonable search; therefore, the government must show that the conditions are exceptional, or else it must abide by due process guarantees and provide evidence showing probable cause that illegal activities are taking place. Thus, the President's Executive Order requires drug testing only for employees in "sensitive positions," where "danger to the public health and safety or national security... could result from failure of an employee adequately to discharge his or her position." But it invites private firms, which are not bound by Fourth Amendment restrictions, to require drug testing of all workers, whether or not their drug use might directly affect public health and safety.

The moral justification for this broader application of mandatory drug testing programs, however, is weak, especially when weighed against the risks of allowing such invasions of privacy. Consider first the interests of the workers. Drug testing programs are not aimed at the worst abusers; heroin and crack addicts are often not working, and those who are can likely be detected by less draconian means. Drug testing programs are targeted at moderate and light users, whose welfare may not need protecting at all. Many occasional users of illegal drugs manage to consume in ways that are not self-destructive. Not all drug users become heroin addicts; some go on to become senators or judges.

This is not to deny that even occasional use of drugs like marijuana may be bad for people. Smoking, drinking, and even wholesome American activities like jogging or eating apple pie can lead to unhealthy abuse. But the fact that some activities are bad or unhealthy for people does not itself justify paternalistic intervention. How many people would support monitoring to detect whether we are dulling our minds in front of our television sets in the evenings? The people most likely to be detected as drug users by mandatory testing in the workplace are not leading lives into which paternalistic intervention is justified.

Is drug testing justified on economic grounds? Productivity losses due to drug use are hard to measure, but the available data suggest that they are significant though not critical. It is estimated that in 1980 lost productivity and lost worktime due to drug abuse, together with treatment costs, amounted to \$27.2 billion. (By comparison, the similar costs of alcohol abuse in that year were more than twice that, or \$64.2 billion.) It isn't clear that workplace drug testing would reduce these costs, since it fails to reach hard-core drug users, and testing programs themselves are expensive. Several studies, moreover, including one by the National Institute on Drug Abuse, indicate that drug use appears to have peaked in the United States in 1979 and has been declining significantly since then. Historians argue that this kind of pattern is typical, that social concern about drug use increases in periods when drug use is decreasing.



Matt Wascavage, *Prince George's Journal*

The late Len Bias

But mightn't there be enormous potential for productivity gains by forcing even occasional and moderate users to adopt lifestyles that would make them more alert and efficient in their jobs? This concern brings us back to the reason suggested for mandatory drug testing in professional sports. If we are paying athletes millions of dollars, don't we have a right to insist that they perform to the best of their abilities? And don't employers have this right more generally?

They do not. Imagine a striving poet who works to support herself by composing the messages in greeting cards. Can we insist that she give her best creative efforts to her job? Clearly we cannot. So long as she does her job as well as expected or as well as others do it, she is giving it all we can demand. If you pay a lawyer \$150 per hour to represent you, you can demand that she give you the best work she can during that time, but not that she lose sleep at night thinking about your case or exercise in the morning so she will be a little sharper in court. Employers can demand that their workers try hard and do well enough, but that is all. We still have a right to our private lives, even when what we do with our own time has some effect on our work. Consider television again. Should we prohibit workers from watching "Nightline" or David Letterman? Surely staying up late to watch these shows impairs one's job performance the next day. Of course, drug use is illegal, while television viewing is not. But this in itself should not give our employers any special power over us. We do not generally empower employers to serve as a volunteer police force.

Are Professional Sports Special?

Although these general economic reasons do not justify mandatory drug testing, there are, nevertheless, other reasons that may carry weight in particular occupations or professions. The President's Executive Order appeals to reasons of this sort in calling for drug testing for workers in "sensitive positions." We should ask, therefore, whether special reasons exist that would justify drug testing for professional athletes.

For better or worse, professional sports is a unique kind of entertainment business. It provides its customers—predominantly male sports fans—with more than the recreational enjoyment of watching exciting matches and the exercise of great talent. Athletes are also heroes and fantasy figures. We fans spend countless hours of our own youths doing these same activities and imagining ourselves making game-winning plays in front of packed stadiums. We now find ourselves among the crowds watching those who are living out our fantasies, who succeeded in playing our childhood games better than the rest of us. We do not begrudge them their fame or their seven-figure seasonal salaries, because we are thrilled by their accomplishments. The youthful part—or the arrested development—of the typical sports fan allows him to identify with players and their teams and to relive his childhood fantasies. Sports fans care passionately, not when the home team wins, but when *our* team wins. "We're number 1."

League commissioners and presidents also overwhelmingly support drug testing, motivated by a concern with the economic health of the sport as a whole. They understand how fantasy and identification contribute to the popularity of professional sports. They know that profits rely heavily on maintaining a culture that ensures that players are suitable icons for fantasy. The image of the athlete is as important to the health of the business of sports as the excitement of play and competitive balance among the teams. Drug use is one of the many taboos of this culture. Athletes are pressured to be community-spirited; open homosexuality and even political activism are culturally discouraged; and so on.

The public sector is restrained from broad-based drug testing by constitutional guarantees; the private sector should refrain from a respect for the value we place on keeping our private lives private.

Whether enforcing this cultural code through pressure or invasive rules is morally acceptable is a vexing question. We seem to accept the propriety of holding some public figures (e.g., high government officials) to higher personal moral standards than others (e.g., musicians). We accept dress codes and restrictions on behavior in many professions, where there are good reasons for doing so. And what could be more personally invasive than the requirements imposed on those who would enter the priesthood? Perhaps enforcing the culture of the professional athlete can, after all, be shown to be essential to the health and profitability of professional sports. Nobody is required to become a professional athlete, and the economic benefits of polishing the image of the athlete fall to all those involved.

Conclusion

Workplace drug testing seems to be acceptable for workers in certain "sensitive positions": the risks to the public when air traffic controllers or Amtrak engineers are impaired in their performance by drug use may outweigh concerns about privacy. They may be justified for professional athletes, too, given the enormous importance of maintaining an image to the financial health of league sports and the enormous financial rewards reaped by the players themselves. But it is hard to make out a justification for mandatory drug testing of student athletes or of workers generally. The public sector is restrained from broad-based drug testing by constitutional guarantees; the private sector should refrain from a respect for the value we place on keeping our private lives private.

—Douglas MacLean