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Commentary: Abuse of Grand Jury Process and Media Caused by Bias Tragedy

Usually when someone dies the family and friends of that person are the only ones who are affected. When a young person dies the loss is more painful because of the promise that will never be realized. When a public figure, young or old, dies the corresponding loss expands to those who knew that person through the media.

The death of Len Bias from a cocaine overdose was a deep, personal loss to his family and friends and to those who followed his basketball career. As an athlete, Bias looked towards a bright future with the Boston Celtics of the National Basketball Association and the millions of dollars such a career would bring him after his college career, in which he was probably the best collegiate basketball player in the country. As an individual, Bias was respected by many in the community. His great potential made the loss more difficult for all those involved.

The wounds left in the wake of Bias' death have not been allowed to heal. The media has seized upon the circumstances surrounding Bias' death and has attempted to portray the University of Maryland as a school concerned more with athletic success than academic success. Further, the media has suggested that the University is completely ignorant of the needs of student-athletes. The states attorney for Prince Georges County, while campaigning for re-election, took advantage of the scandal hungry media and abused the grand jury process along the way.

During his last semester at the University of Maryland, Bias failed to earn a single academic credit, flunking three courses and dropping two. Bias' academic failure coupled with the fact that four of his twelve teammates on the Terrapin Basketball team flunked out of school at the end of the Spring 1986 semester has led many media commentators to opine that the University, the athletic department and basketball coach, Lefty Driesell, have neglected the needs of the athletes on the basketball team. The fact that Bias, and in all likelihood several other members of the team who flunked out, failed to attend class on a regular basis is more indicative of those individual students' unwillingness to do schoolwork than any problems with University policy. The

University cannot compel any student to attend class. While it is true that student-athletes, particularly basketball players, have travel schedules that make it difficult for them to have perfect class attendance, it is also true that many non-athletes who are students have work or extra-curricular schedules that create similar demands on their time. A university should not be expected to coddle certain students just because they are athletes.

The University of Maryland offers a good education to all of its students. The same offer for academic achievement that is extended to non-athletes, who are students, is extended to athletes who are students. The academic successes of ex-Maryland basketball players Tom McMillen (a Rhodes Scholar), Len Elmore (currently a student at Harvard Law School) and others indicate that a scholarship basketball player at a school with a "Top Twenty" basketball program can excel on the court and in the classroom. The fact that many of Maryland's current basketball players do not do well in school reflects more on their unwillingness to accept the offer of a good education than the University's failure to provide it. Athletes should be judged no differently as students than non-athletes. When non-athletes fail to succeed in school they shoulder the blame for their own failure. Student-athletes should be viewed in the same way. The University of Maryland offers all its students the opportunity for a good education, it is up to the individual student to seize that opportunity.

One of the reasons why the publicity surrounding the University of Maryland and Bias was a fixture in the local media for so long was the wide-ranging grand jury investigation orchestrated by Arthur A. Marshall, the state's attorney for Prince Georges County. Marshall was in the midst of campaigning for the Democratic nomination during the Bias grand jury proceedings that started in August of 1986. While his zest for media attention during the grand jury hearings may not have been politically motivated it seems to have had a negative impact on his campaign, as he was defeated in the September 9 primary by Howard University Law School Professor Alexander Williams, Jr.

Grand juries serve the criminal justice

process of our society in two ways. First, grand jury proceedings are secret. Only the judge, the states attorney, witnesses and the grand jury are involved and all of those parties have a duty to observe the secrecy of the proceeding by not speaking with the media or anyone else concerning the hearings. This secrecy allows the grand jury to observe and hear a great deal of material that would not ordinarily come into evidence in a trial without unfairly damaging the reputation of witnesses or potential defendants. Because the grand jury is a "secret" proceeding, material that would be considered inadmissible at trial and possibly violative of a potential defendant's rights can be heard and analyzed by the grand jury to see if the state could put together a case against that person. The second function of a grand jury is to stand between the overzealous prosecutor and the accused to determine whether the charges are based on reason.

The grand jury process in the Bias hearing has been abused and the two functions of the grand jury virtually ignored. Marshall, whether to bolster his campaign or in spite of it, cast aside the "sword and a shield view" of a grand jury's function noted in *In Re Grand Jury, January 1969*, 315 F. Supp. 662, 671 (D.C. Md. 1970) in favor of a soapbox from which he could disregard the duties of his office and level accusations based on little more than his personal opinion.

Grand juries have broad investigative powers to determine whether a crime has been committed and who has committed it. *In Re Special Investigation No. 281*, 299 Md. 181, 473 A.2d 1 (1984). After the grand jury failed to indict Driesell, Lee Fentress (Bias' agent) and Bob Wagner (Bias' high school coach) on obstruction of justice charges, Marshall was quoted in the *Washington Post* as stating, "It's (allegedly advising people to clean up Bias' room on the night he died before the police arrived) not necessarily criminal but it's wrong." Marshall also stated that Driesell knew of a player who had a drug problem over a year before Bias' death and that he and the Maryland coaches knew players had tried to circumvent school drug tests. Perhaps Marshall's statements are true, perhaps they are false. In either event Marshall dis-

regarded the secret nature of grand jury hearings by speaking with reporters and made statements calculated to cause embarrassment to Driesell, Fentress, Wagner and others, and circumvented the precise evils the grand jury process seeks to avoid. Marshall continued his personal attack on Driesell and Fentress by telling reporters that Driesell's behavior should be looked at by the University and that Fentress' conduct should be reviewed by the bar association of Washington, D.C., of which he is a member.

In September, Marshall told the Baltimore Sun that the grand jury would hear testimony involving ". . . general conditions at the University of Maryland." Marshall also stated that he did not anticipate any more indictments. While the grand jury has broad investigative powers, a cavalier general investigation surely goes beyond even the broad parameters within

which a grand jury works. Furthermore, if Marshall anticipates no more indictments, why was the grand jury still impaneled? Grand juries investigate crimes. If Marshall did not know of or expect to find any evidence of crimes, then the grand jury should not have been called on to look into the "general conditions at the University of Maryland." If there are problems at Maryland, they would be investigated best by the school itself or a committee appointed by the governor.

Clearly, both the media and Marshall capitalized on the death of Bias. When a public figure as popular as Bias dies of a drug overdose there is an opportunity to sell papers, raise ratings, and maybe even become a celebrity yourself.

The attack by the media on the University of Maryland was unfair, but not libelous. The only remedy for an institution or person in such a situation is to wait for

people to grow tired of the issue and hope that the damage is not too severe. The comments made by Marshall concerning Driesell, Fentress and others are also without remedy to those directly injured. While Marshall's loss in the primary election does not compensate those injured by his indiscretions, it does indicate that the public, just as they will grow tired of an unfair focus by the media, will not tolerate those who abuse their office.

—Andrew M. Battista

Andrew Battista is the Managing Editor of the Law Forum and will be graduating from the University of Baltimore School of Law in December of 1986.

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