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ATTORNEY INVOLVED IN BALCO CASE ADMITS LEAKING GRAND JURY TRANSCRIPTS IN STEROID CASE TO SAN FRANCISCO CHRONICLE

An attorney who formerly practiced in Sacramento and represented a criminal defendant in the Bay Area Laboratory Cooperative steroid prosecution admitted in court papers filed today that he leaked confidential grand jury transcripts of testimony from Major League Baseball players to the San Francisco Chronicle and sought to obstruct justice.

Troy L. Ellerman, 44, of Woodland Park, Colorado, has agreed to plead guilty to two counts of contempt of court, one count of obstruction of justice and one count of filing a false declaration with a federal court. Ellerman agreed to plead guilty to the four felony counts in a plea agreement filed today in United States District Court in San Francisco. It is expected the United States District Judge Jeffrey S. White will handle Ellerman's case, but no court dates have been scheduled.

Once the guilty pleas are entered in court, the Department of Justice intends to withdraw subpoenas issued to two San Francisco Chronicle reporters and to the Chronicle newspaper as part of the leak investigation undertaken by the Department at the request of the District Court. The government believes that Ellerman's guilty pleas will alleviate the need for the reporters to testify before the grand jury. The withdrawal of the subpoenas is expected to moot Judge White's previous decision to hold the reporters in contempt for refusing to comply with the grand jury subpoenas, a decision which the reporters have appealed to the 9th Circuit Court of Appeals.

The leak of the grand jury transcripts – specifically, the testimony of Tim Montgomery, Jason Giambi, Barry Bonds and Gary Sheffield – occurred during the prosecution of four defendants linked to the Bay Area Laboratory Cooperative. During this case, Ellerman represented defendant James Valente, who was the vice president of BALCO. Soon after an

indictment was returned in February 2004, the government agreed to provide the defendants with copies of the grand jury testimony of various athletes, including the four professional baseball players. Ellerman and others involved in the case signed a protective order that specifically prohibited them from disclosing the athlete's grand jury testimony to the press.

Despite the protective order, Ellerman allowed San Francisco Chronicle reporter Mark Fainaru-Wada to come into his law offices in June 2004 and take verbatim notes of Montgomery's grand jury testimony, according to the plea agreement. Fainaru-Wada and fellow reporter Lance Williams later used these notes as the basis of a newspaper story that detailed Montgomery's grand jury testimony.

After this story was published, Ellerman told United States District Judge Susan Illston, who was presiding over the BALCO case, that he was "angry" about the leak of grand jury testimony. Ellerman subsequently filed a declaration with the court, signed under penalty of perjury, stating that he "had no idea who provided information to the media concerning Mr. Montgomery's grand jury testimony nor why it was done."

According to the plea agreement, Ellerman also endeavored to obstruct the due administration of justice in October 2004 by filing a motion to dismiss the charges against Valente in the BALCO indictment. The motion claimed that "repeated government leaks of confidential information to the media [made] a fair trial practically impossible anywhere in the country." In this motion, Ellerman attributed the leak of Montgomery's grand jury testimony to the government, even though he knew he was responsible for the leak.

In November 2004, while the motion to dismiss the indictment was still pending, Ellerman disobeyed Judge Illston's protective order for a second time by allowing Fainaru-Wada to take verbatim notes of the grand jury testimony of Giambi, Bonds and Sheffield. This information was used to write several articles about the athletes in the Chronicle. Shortly after those articles were published, Judge Illston formally referred the matter to the United States Department of Justice to investigate. The Department assigned the matter to the United States Attorney's Office for the Central District of California, which for more than two years has investigated the leaks.

During the course of the investigation, after all other investigative leads were exhausted, a federal grand jury issued subpoenas to Fainaru-Wada and Williams, as well as to the Chronicle.

When the reporters refused to testify and to reveal the source of the leaks, Judge White found them in civil contempt of court in October 2006 and ordered them imprisoned. The Chronicle also refused to comply with the grand jury subpoenas and was ordered to pay a \$1,000-per-day fine. Both the reporters and the Chronicle appealed Judge White's ruling to the 9th Circuit Court of Appeals. The government agreed to a stay of the contempt sanctions pending appeal. Oral arguments in the appeals are scheduled for next month, but in light of the expected guilty pleas by Ellerman, the government anticipates that it will withdraw the subpoenas against the reporters and request Judge White to lift his contempt findings and sanctions. The government anticipates that this will moot the pending appeal.

This fall, a previously unknown witness approached the FBI offering to help prove that Ellerman was the source of the leaks. Since that time, the government has worked expeditiously to attempt to prove that Ellerman was the source of the leaks, which included interviewing Ellerman about the criminal conduct. On December 13, FBI agents confronted Ellerman at his home and he made admissions that could be used to prove his guilt.

Approximately three weeks ago, Ellerman's attorney contacted prosecutors and said that Ellerman was prepared to admit disclosing the grand jury testimony to Fainaru-Wada and to plead guilty to criminal charges. The plea agreement filed today is the result of negotiations over the past three weeks.

The plea agreement, which would be binding on Judge White, calls for a sentence of up to two years in prison for Ellerman, who reserves the right to ask to be placed on probation. Judge White may reject the plea agreement if he disagrees with the sentencing cap or other terms of the agreement, which would also give Ellerman the right to withdraw from the plea agreement.

In the plea agreement, the government acknowledges that Ellerman's decision to plead guilty has saved future government resources by resolving the leak investigation now, has saved the 9th Circuit Court of Appeals from having to consider and rule on the appeal filed by the reporters and the Chronicle, and has avoided the potential that Fainaru-Wada and Williams would serve time in prison.

The leak investigation was conducted by the San Francisco Field Office of the FBI.

The prosecutors in this case are Assistant United States Attorneys Michael J. Raphael (213-894-3391) and Douglas M. Miller (213-894-2216).