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Attorneys for Mark Fainaru-Wada  
and Lance Williams

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re GRAND JURY SUBPOENAS TO  
MARK FAINARU-WADA AND  
LANCE WILLIAMS

Case No. CR-06-90225 MISC-JSW

**AFFIDAVIT OF EVE B. BURTON IN  
SUPPORT OF THE MOTION TO QUASH  
SUBPOENAS BY MARK FAINARU-WADA  
AND LANCE WILLIAMS**

Date: August 4, 2006  
Time: 9:00 a.m.  
Place:  
Judge: Hon. Jeffrey S. White

1 STATE OF NEW YORK )  
2 )ss.:  
3 COUNTY OF NEW YORK )

4 Eve B. Burton, being first duly sworn, deposes and says:

5 1. I am Vice President and General Counsel for The Hearst Corporation, 1345  
6 Avenue of the Americas, 10th Floor, New York, New York 10105, Telephone: 212-649-2000,  
7 and attorney for Mark Fainaru-Wada and Lance Williams in this matter. I am also attorney for  
8 the *San Francisco Chronicle*, a Hearst publication (the "*Chronicle*"). I am fully familiar with the  
9 facts set forth herein and make this affidavit based on my personal knowledge unless otherwise  
10 stated. The exhibits attached to this affidavit are true and accurate copies of the documents cited  
11 herein.

12 2. A true and correct copy of the "Subpoena to Testify Before Grand Jury" to The  
13 San Francisco Chronicle Custodian of Records issued on application of the United States of  
14 America, Debra Wong Yang, United States Attorney, dated April 18, 2006 (the "Chronicle  
15 Subpoena"), is attached hereto as Exhibit 1.

16 3. A true and correct copy of a May 31, 2006 letter from me on behalf of the  
17 *Chronicle*, to Brian D. Hershman, Esq., concerning the Chronicle Subpoena, is attached hereto as  
18 Exhibit 2.

19 4. A true and correct copy of a June 2, 2006 letter from Brian D. Hershman, Esq., to  
20 me on behalf of the *Chronicle*, concerning the Chronicle Subpoena, is attached hereto as Exhibit  
21 3.

22 5. A true and correct copy of a June 9, 2006 letter from me on behalf of the  
23 *Chronicle*, to Brian D. Hershman, Esq., concerning the Chronicle Subpoena, is attached hereto as  
24 Exhibit 4.

25 6. A true and correct copy of a June 12, 2006 letter from Brian D. Hershman, Esq.,  
26 to me on behalf of the *Chronicle*, concerning the Chronicle Subpoena, is attached hereto as  
27 Exhibit 5.

28 7. A true and correct copy of a June 19, 2006 letter from me on behalf of the

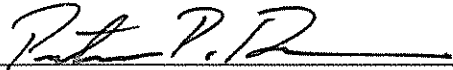
1 *Chronicle*, to Brian D. Hershman, Esq., concerning the Chronicle Subpoena, is attached hereto as  
2 Exhibit 6.

3  
4 

5 Eve B. Burton

6  
7 Sworn to before me this

8 7<sup>th</sup> day of July, 2006

9  
10  
11 

12 PETER P. RAHBAR  
13 Notary Public, State of New York  
14 No. 02546044045  
15 Qualified in New York County  
16 Commission Expires ~~July 17, 2009~~  
17 Aug 26, 2006

# **EXHIBIT 1**

AO 110 (Rev. 12/89) Subpoena to Testify Before Grand Jury

2002R01568  
GJ 08-1

# United States District Court

NORTHERN DISTRICT OF CALIFORNIA

TO: Custodian of Records  
San Francisco Chronicle  
901 Mission Street  
San Francisco, CA 94103

## SUBPOENA TO TESTIFY BEFORE GRAND JURY

SUBPOENA FOR:

PERSON  DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE

United States District Court  
Federal Building & Courthouse  
450 Golden Gate Avenue  
San Francisco, CA 94102

COURTROOM

Grand Jury Room A, 17th Floor

DATE AND TIME

May 11, 2006 at 9:30am

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

Please see Attachment A

Please see additional information on reverse

This subpoena shall remain in effect until you have complied with its requirements or until it is superseded by the court or by an officer acting on behalf of the court.

U.S. MAGISTRATE JUDGE OR CLERK OF COURT

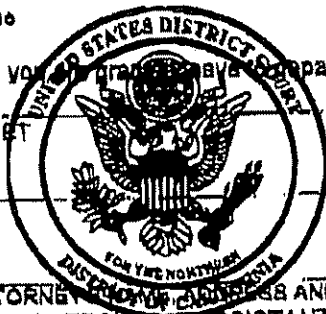
**RICHARD W. WIEKING**

(By) Deputy Clerk

*Richard W. Wieking*

This subpoena is issued on application of the United States of America

DEBRA WONG YANG  
United States Attorney



DATE

April 18, 2006

ATTORNEY FOR THE GOVERNMENT AND PHONE NUMBER:

BRIAN HERSHMAN, ASSISTANT UNITED STATES ATTORNEY  
U.S. Attorney's Office, 312 North Spring Street  
Los Angeles, CA 90012 (213) 864-5786  
SA Daya Carr (415) 663-7542

If not applicable, enter "none"

**ATTACHMENT A**

- (1) The grand jury transcript in Grand Jury Investigation Number 2002R01596 which was the subject of the June 24, 2004 story in the San Francisco Chronicle entitled "Sprinter admitted use of BALCO 'magic potion'";
- (2) The grand jury transcript in Grand Jury Investigation Number 2002R01596 which was the subject of the December 2, 2004 story in the San Francisco Chronicle entitled "Giambi admitted taking steroids";
- (3) The grand jury transcript in Grand Jury Investigation Number 2002R01596 which was the subject of the December 3, 2004 story in the San Francisco Chronicle entitled "Sheffield's side/Sluggor testified Bonds told him to use 'the cream' and 'the clear,' saying 'Don't ask any questions, just trust me'";
- (4) Any other grand jury transcripts in your possession pertaining to Grand Jury Investigation Number 2002R01596;
- (5) Any original packaging in which you received any such transcripts; and
- (6) Any information in your possession regarding the identity of the individual or individuals who provided the Chronicle a copy of any grand jury transcript pertaining to Grand Jury Investigation Number 2002R01596, or who disclosed information about the content of any such witness' grand jury testimony.

AO 110 (Rev. 12/88) Subpoena to Testify Before Grand Jury

**RETURN OF SERVICE<sup>1</sup>**

RECEIVED BY SERVER	DATE	PLACE
SERVED	DATE	PLACE

SERVED ON (PRINT NAME)

SERVED BY (PRINT NAME)	TITLE
------------------------	-------

**STATEMENT OF SERVICE FEES**

TRAVEL	SERVICES	TOTAL

**DECLARATION OF SERVER<sup>2</sup>**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on \_\_\_\_\_ Date \_\_\_\_\_ Signature of Server \_\_\_\_\_

\_\_\_\_\_  
Address of Server

Additional Information

<sup>1</sup>As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.

<sup>2</sup>Fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal Rules of Civil Procedure; Rule 7(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rules 17(b) Federal Rules of Criminal Procedure).

# **EXHIBIT 2**





*The Hearst Corporation*

Eve Burton  
**Vice President and  
General Counsel**

Office of General Counsel  
959 Eighth Avenue  
New York, New York 10019

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Fax 212 649 2035

Direct Line: 212-649-2045  
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Larry M Loeb  
Mark C Redman  
Calvin Stemer  
Debra S Weaver  
**Senior Counsel**

Barry S Agdern  
Alden Dunning  
Carolene S Eaddy  
Kristina B Findikyan  
Bridgette Fitzpatrick  
Robert J Hawley  
Audra Kutjowski  
Timothy E Ladin  
Alan E Lewis  
Aimee Nisbet  
Justin Peacock  
Peter P Rabbar  
Jonathan Strota  
Lily J Wound

Catherine A Boston  
**Secretary**

Harvey I. Lipton  
**Of Counsel**

May 31, 2006

**VIA FACSIMILE AND FIRST CLASS MAIL**

Brian D. Hershman, Esq.  
Assistant United States Attorney  
Central District of California  
1300 United States Courthouse  
312 North Spring Street  
Los Angeles, CA 90012

Re: Grand Jury Subpoena to San Francisco Chronicle Custodian  
of Records, dated April 18, 2006 (N.D. Cal.)

Dear Mr. Hershman:

I represent the *San Francisco Chronicle* ("*Chronicle*"). I write on behalf of the *Chronicle* concerning the above-referenced grand jury subpoena. The *Chronicle* objects to the subpoena to the extent that it seeks material shielded from disclosure by the reporter's privilege recognized under the First Amendment to the United States Constitution as well as the federal common law, Fed. R. Evid. 501, and specifically reserves all rights with respect thereto. Notwithstanding and without waiving the foregoing, the *Chronicle* has performed a diligent search of its records and hereby responds that it has no documents responsive to the subpoena in its possession, custody or control.

Sincerely,

Eve Burton

# **EXHIBIT 3**



## U. S. Department of Justice

*United States Attorney  
Central District of California*

Brian D. Hershman  
Assistant United States Attorney  
(213) 894-5796

1300 United States Courthouse  
312 North Spring Street  
Los Angeles, California 90012

June 2, 2006

Via Facsimile

Chris Morvillo, Esq  
Morvillo, Abramowitz, Grand, Jason & Silberberg, P.C  
565 Fifth Avenue  
New York, New York 10017


Re: In re Grand Jury Proceedings

Dear Mr. Morvillo:

I am writing in response to the letter dated May 31, 2006 from Eve Burton detailing the San Francisco Chronicle's response to the grand jury subpoena issued on or about May 5, 2006. Ms. Burton indicates that the Chronicle does not have any responsive documents. As I indicated during our phone call, I do not believe this is accurate as I believe the Chronicle is in possession, custody and control of e-mails responsive to the subpoena. In particular, I believe that the Chronicle is acting as its own Internet Service Provider and therefore e-mails on the server (or back up servers) are responsive to the subpoena. As I informed Mr. Shapiro, it is unclear whether the Chronicle is taking the position that it is not in possession, custody or control of the server, that there are no responsive documents on the server, or that the Chronicle simply did not consider the e-mails in responding to the subpoena. Please clarify the Chronicle's position so that we may litigate the matter, if necessary.

Sincerely,

DEBRA WONG YANG  
United States Attorney

  
BRIAN D. HERSHMAN  
Assistant United States Attorney

cc: David Shapiro (via facsimile)

# **EXHIBIT 4**



*The Hearst Corporation*

*Eve Burton*  
**Vice President and  
General Counsel**

*Office of General Counsel*  
959 Eighth Avenue  
New York, New York 10019

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*Fax 212 619 2035*

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Direct Fax: 212-649-2041  
Email: eburton@hearst.com

*Jonathan R. Donnellan*  
*Larry M. Loeb*  
*Mark C. Redman*  
*Cathlin Stamer*  
*Debra S. Weaver*  
**Senior Counsel**

June 9, 2006

*Barry S. Agdern*  
*Alden Dunning*  
*Carolene S. Eaddy*  
*Kristina E. Flindkyan*  
*Bridgette Fitzpatrick*  
*Robert J. Hawley*  
*Andra Kujawski*  
*Timothy E. Ladin*  
*Alan E. Lewis*  
*Almee Nisbet*  
*Justin Peacock*  
*Peter P. Rabbar*  
*Jonathan Strota*  
*Lily J. Wound*

**VIA FACSIMILE AND FIRST CLASS MAIL**

Brian D. Hershman, Esq.  
Assistant United States Attorney  
Central District of California  
1300 United States Courthouse  
312 North Spring Street  
Los Angeles, CA 90012

*Catharine A. Boston*  
**Secretary**

Re: In re: Motion to Quash Grand Jury Subpoenas to Lance Williams and Mark Fainaru-Wada

*Harney L. Lipton*  
**Of Counsel**

Dear Mr. Hershman:

I write with regard to the subpoena served by the United States on The San Francisco Chronicle and, in particular, in response to your letter to our counsel, Chris Morvillo, of June 2, 2006 as further clarified by your discussions with Chris on Wednesday, June 7, 2006. By responding to your inquiries the Chronicle does not intend to and does not waive its objections to your subpoena specifically set forth in my letter of May 31, 2006 and continues to reserve all of its rights with respect thereto.

Notwithstanding the foregoing, I wanted to clarify our response to the subpoena in light of the questions you raised in your letter and the points you discussed with Chris. The Chronicle is not taking the position that we are not in possession, custody or control of our server. We agree with you that emails on our server are in our possession, custody and control and we hereby confirm that we did review email to determine whether there were any documents responsive to your subpoena. There are none.

We understand from Chris that the Government is in possession of emails from one of the defendants indicted in the BALCO case and that you have specifically asked why copies of those emails in our possession, custody or control have not been produced in response to the subpoena. Let me be entirely clear. Those emails are not responsive to your subpoena which we read to be seeking, and which Mr. Morvillo confirms you agree is seeking, any documents in our possession, custody or control revealing the identity of

the individual or individuals who provided the reporters with grand jury transcripts. We fully appreciate that if the emails you discussed with Chris were to or from the individual or individuals who may have provided the reporters with the grand jury transcripts they would likely be responsive to the subpoena.

Sincerely,

A handwritten signature in black ink, appearing to read "Eve Burton". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Eve Burton

cc: Christopher Morvillo, Esq.  
David Shapiro, Esq.

# **EXHIBIT 5**



## U. S. Department of Justice

*United States Attorney  
Central District of California*

Brian D. Hershman  
Assistant United States Attorney  
(213) 894-5796

1300 United States Courthouse  
312 North Spring Street  
Los Angeles, California 90012

June 12, 2006

Via Facsimile

Chris Morvillo, Esq.  
Morvillo, Abramowitz, Grand, Iason & Silberberg, P.C.  
565 Fifth Avenue  
New York, New York 10017

Re: In re Grand Jury Proceedings

Dear Mr. Morvillo:

I am writing in response to the letter dated June 9, 2006 from Eve Burton ("the letter") regarding the San Francisco Chronicle's response to the grand jury subpoena issued on or about May 5, 2006, as well as to follow up on our telephone discussion of June 9, 2006, regarding the letter.

As I informed you, based on my review of the letter and our discussion during our telephone conversation, it appears to me that: (a) the Chronicle agrees that e-mails on the server potentially are responsive to the subpoena; (b) the Chronicle has reviewed e-mails on the server that include the e-mails between Victor Conte and Mark Fainaru-Wada I discussed with you Friday;<sup>1</sup> (c) the Chronicle agrees that such e-mails would be responsive to the subpoena if the e-mails were to or from the individual or individuals who provided the reporters with the grand jury transcripts; and (d) nevertheless, the Chronicle has no documents it believes are responsive to the subpoena. Please confirm that my understanding is correct.

As I informed you during our telephone conversation, the government believes documents and e-mails may be responsive to the subpoena even if not "to" or "from" the individual or individuals who actually delivered the grand jury transcripts, if they are "to" or "from" an individual who aided or abetted and/or caused a third person or intermediary to deliver the transcripts to the reporters. Please let me know if you agree with this and it has been considered in arriving at the conclusion that the Chronicle has no documents it believes are responsive to the subpoena.

---

<sup>1</sup> If this turns out not to be the case because the Chronicle has not maintained on its server documents dating back to January 2004, I believe that the FBI has software to recover such data. Please confirm that the Chronicle was able to review e-mails from the relevant time frame.



Re: In re Grand Jury Proceedings

June 12, 2006


Page 2

Finally, as we also discussed during our telephone conversation, I am requesting that you confirm with the Chronicle that the transcripts were not provided by an "anonymous" source. As I informed you, the legal issues related to "anonymous" sources are distinct from those relating to "confidential" sources. To the extent the reporters would testify that the source of the transcripts was "anonymous," I believe, as I informed you, that we should notify the Court so that the Court may evaluate that information in ruling on the pending motion.

Please feel free to call me if you have any questions about the foregoing.

Sincerely,

DEBRA WONG YANG  
United States Attorney



BRIAN D. HERSHMAN  
Assistant United States Attorney

# **EXHIBIT 6**



*The Hearst Corporation*

*Eve Burton*  
**Vice President and  
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*Larry M. Loeb*  
*Mark C. Redman*  
*Calvin Stemer*  
*Debra S. Weaver*  
**Senior Counsel**

June 19, 2006

*Barry S. Agdern*  
*Alden Dumming*  
*Carolene S. Eaddy*  
*Kristina E. Findikyan*  
*Bridgette Fitzpatrick*  
*Robert J. Hawley*  
*Audra Kujawski*  
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*Alan E. Lewis*  
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*Justin Peacock*  
*Peter P. Rabbar*  
*Jonathan Strota*  
*Lily J. Wound*

**VIA FACSIMILE and FIRST CLASS MAIL**

**Brian D. Hershman, Esq.**  
Assistant United States Attorney  
Central District of California  
1300 United States Courthouse  
312 North Spring Street  
Los Angeles, CA 90012

Re: Grand Jury Subpoena to San Francisco Chronicle Custodian of Records,  
dated April 18, 2006 (N.D. Cal.)

*Catherine A. Bostron*  
**Secretary**

*Harvey L. Lipton*  
**Of Counsel**

Dear Mr. Hershman:

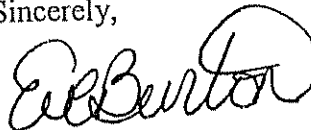
I write in response to your letter dated June 12, 2006. Again, by responding to your letter the Chronicle does not intend to and does not waive its objections to the Government's subpoena specifically set forth in my letter of May 31, 2006 and continues to reserve all its rights with respect thereto.

Notwithstanding the foregoing, I want to be sure you have no doubts about what I have represented. The San Francisco Chronicle has no documents in its possession, custody, or control that are responsive to your subpoena. We have considered each and every one of your most recent questions and repeat that the Chronicle has no responsive documents. In response to your suggestion that we contact the Court regarding our characterization of the facts or law, there is no need. What we have represented is in all respects accurate.

In light of the complete and accurate response we have made to your subpoena, I assume this changes significantly the factual basis on which your Office issued the subpoenas to the reporters and the Chronicle. As Chris and David suggested to you on the telephone, I would like to come to Los Angeles to meet with you and George Cardona to see if I might convince you that with the facts you now have, as a matter of policy, the costs of seeking these reporters' testimony is outweighed by any benefits that may accrue

to the Government. If you are willing and you believe it might be at all productive, I would suggest the week of July 10<sup>th</sup> or 17th, 2006. We will give you a call to see if you are willing and if we can arrange a time that works for you and George.

Sincerely,

A handwritten signature in black ink that reads "Eve Burton". The signature is written in a cursive, flowing style with a large, circular flourish at the end of the word "Burton".

Eve Burton

cc: Christopher Morvillo, Esq.  
Dave Shapiro, Esq.