



## AMERICAN SOCIETY OF NEWSPAPER EDITORS

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September 15, 2006

The Hon. Jeffrey S. White  
United States District Court  
Northern District of California  
450 Golden Gate Ave. (Courtroom 2, 17th Floor)  
San Francisco, CA 94102

Re: Grand Jury Subpoenas to Mark Fainaru-Wada and Lance Williams;  
Case #CR06-90225MISC JSW

Dear Judge White:

The American Society of Newspaper Editors (ASNE) writes to you in support of San Francisco Chronicle reporters Mark Fainaru-Wada and Lance Williams, who will be before your court on Thursday, September 21 on charges of contempt for failing to reveal the identity of a confidential source who provided them with transcripts of grand jury testimony.

As the nation's largest association of newspaper editors, representing approximately 750 members throughout the United States, Latin America and Canada, we ask that you strongly consider the damage a contempt finding would do to the fundamental right of freedom of the press that is a cornerstone of our democracy. We hope that you will recognize the First Amendment and the editorial independence it protects by refusing to enforce the contempt charge; if you must formally hold these reporters in contempt of court, we ask that any punishment take into account the benefit realized by the public through the accurate, timely reporting of these journalists.

The deterrent effect of a severe criminal penalty would be felt not only by these two reporters but by a society made poorer by the loss of future vigorous reporting in the public interest. Mark Fairanu-Wada and Lance Williams should rightfully be added to the list of reporters whose efforts have bettered our society throughout history by truth-telling. Their contribution to the public good has been immense.

I stand by my statement from August 17, 2006, two days after the reporters' Motion to Quash Subpoenas was denied, that their reporting was "an exemplar of public service. It is journalism that brought to light problems in major league baseball that prompted adoption of new rules to curb the use of performance enhancing drugs."

Despite the obvious importance of confidential sources, neither editors nor reporters like to rely on them. As my colleague Mike Fancher of The Seattle Times wrote in a July 11, 2004 column explaining his newspaper's use of unnamed sources in an investigative report on airport security: "The Times tries to avoid anonymous sources in its stories. Readers don't trust such reporting, and experience shows the press makes its worst mistakes when it routinely permits sources to speak off the record. The exception for us is when vital information can be brought to light only if we pledge confidentiality to the people who know it. That's the case today."

Editors, including our colleagues at the San Francisco Chronicle, take very seriously the responsibility of making a decision to promise confidentiality to a source. That is reflected clearly in the publication, following a conference the Society convened last year, of the booklet "Anonymous Sources: Pathways and Pitfalls." (A copy of this report is enclosed.)

To impose a harsh penalty on Mssrs. Fainaru-Wada and Williams would eradicate the positive evolution of this issue that has been occurring in newsrooms across the country in the past few years. Your exercise of judicial discretion would have several positive ramifications. You would be reminding the Department of Justice that it must resolve to follow its own guidelines that favor limited use of subpoenas issued to reporters to testify in court. You would be consistent with years of tradition at the state and federal levels. You would be helping to uphold America's stature in the world as a beacon of free speech and free press principles.

Mainly, however, you would be helping to protect editorial discretion to the greatest extent possible, a key goal of the First Amendment.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Zeeck", with a long horizontal stroke extending to the right. The signature is written over the typed name and title.

David A. Zeeck  
President

Enclosure