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Book Review: Game of Shadows

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GAME OF SHADOWS

Mark Fainaru-Wada & Lance Williams

[New York, New York: Gotham Books, 2006]

332 Pages

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[W]ith few exceptions, the more than three dozen athletes who appeared before the grand jury admitted taking steroids . . . all to run faster, jump higher, hit the ball farther, and, ultimately, make more money. Some of the confessions were grudging and evasive. Others were extremely forthcoming. It came down to the same thing: Competitive sports, it turned out, was part mirage, a game of shadows.¹

On August 7, 2007, Barry Bonds hit a monstrous, 435-foot shot into the right-center field seats at Pac Bell Park.² As he watched the ball sail into the night, Bonds took his 756th jaunt around the bases, eclipsing Hank Aaron as Major League Baseball's (MLB) home-run king.³ Bonds' accomplishment, while celebrated by some, has been openly criticized by both fans and the media alike, as well as commentators throughout MLB and professional sports, because of the superstar's alleged steroid use.⁴ Perhaps the mixed emotions are simply a fitting end to a home run chase that has been mired in controversy since Bonds was within reach of Aaron's thirty-three-year-old record. One thing remains clear. While few would disagree that Barry Bonds is the antithesis of America's golden boy, who on his best day is only indifferent to the media and MLB fans, few can find any hard evidence that Bonds has ever taken steroids.⁵

However, often the lines between Bonds the juicer and Bonds the jerk seem to blur, and Bonds' truculent personality may be at least part of the

1. MARK FAINARU-WADA & LANCE WILLIAMS, *GAME OF SHADOWS* 197 (2006).

2. *Bonds New King of Swing After 756th Home Run: Controversial Slugger Passes Aaron, Says 'Record Not Tainted at All,'* MSNBC.COM, Aug. 8, 2007, <http://www.msnbc.msn.com/id/20169917>.

3. *Id.*

4. *Duke Anthropology, Law Professors Suggest Why Public Ambivalent About Bonds' Home-Run Chase*, May 29, 2007, http://www.dukenews.duke.edu/2007/05/bonds_tip.html.

5. See Dave Sheinin, *A New Grand Jury Impaneled for Bonds*, WASH. POST, July 21, 2006, at E5. While Bonds was recently indicted on charges that he lied about knowingly using steroids, Bonds' case has only recently entered Federal District Court. Jorge L. Ortiz, *Bonds Pleads Not Guilty to Perjury, Obstruction*, USATODAY.COM, Dec. 7, 2007, http://www.usatoday.com/sports/baseball/2007-12-07-bonds-arraignment_N.htm.

reason he has been so strictly scrutinized by skeptics as a steroid user. Mark Fainaru-Wada and Lance Williams, in their book *Game of Shadows*,⁶ do just that, buffering what is mostly circumstantial evidence that Bonds took steroids with sobering descriptions of Bonds' unlikable personality.⁷ While the circumstantial evidence against Bonds seems damning, it is at the same time not wholly conclusive; and yet, casual readers may find themselves personally convicting Bonds as a juicer simply because he is presented as baseball's villain. At the same time, the authors gloat ad nauseam over what can only be described as their complete disregard for legal process and the secrecy that underlies any federal grand jury proceeding.⁸

Although *Game of Shadows* repeatedly refers to Barry Bonds as a steroid user, the authors base their conclusions almost entirely on circumstantial evidence. For instance, much of what the authors know about Barry Bonds' steroid use came from secondary sources. Fainaru-Wada and Williams repeatedly cite to their personal conversations with both Kimberly Bell, Bonds' ex-girlfriend, regarding what Bonds supposedly told her he took,⁹ and with federal Internal Revenue Service (IRS) agent Jeff Novitzky,¹⁰ regarding what Victor Conte supposedly confessed to during the raid of Conte's Bay Area Laboratory Cooperative (BALCO).¹¹ However, neither conversation about Bonds was ever recorded, and, in that way, the authors base many of their conclusions on a game of "he said, she said."¹²

Also, both sources may very well have an axe to grind. Kimberly Bell's relationship with Bonds ended badly when Bonds began seeing other women and then stopped payments on a house he had originally purchased for Bell in

6. FAINARU-WADA & WILLIAMS, *supra* note 1.

7. *See id.* at 28.

8. *See id.* at 228.

9. *Id.* at 73. BALCO, a "nutrition" lab founded by Victor Conte and located in northern California, became the subject of a 2003 federal grand jury investigation for supplying some of the biggest names in sports with steroids and banned substances. *See* Sheinin, *supra* note 5. While not all of the athletes originally implicated in the BALCO scandal have admitted to or been found guilty of steroid use, many of them have. *See* Bob Kimball & Beau Dure, *BALCO Investigation Timeline*, USATODAY.COM, Apr. 10, 2007, <http://www.usatoday.com/sports/balco-timeline.htm>.

10. Agent Jeff Novitzky was responsible for leading the raid of Victor Conte's BALCO lab and collecting much of the evidence that led to the eventual conviction of BALCO founder Victor Conte, BALCO Vice President Jim Valente, and trainer Greg Anderson. *See* FAINARU-WADA & WILLIAMS, *supra* note 1, at 179-81.

11. *Id.* at 178-79.

12. However, many readers may never discover this at all because the authors, while stating that Bonds took steroids repeatedly and with conviction throughout the book as if it has been conclusively shown, hide their sources in a hastily-written source index at the back of the book, abbreviating many of their citations while only vaguely referring to others. *See generally id.* at 285-90.

Arizona.¹³ Likewise, Novitzky is portrayed by the authors, perhaps unknowingly, as having a distaste for Bonds and the superstar's disrespect for the media and fans.¹⁴ In that way, both sources are not only secondary, but also suspect.

Perhaps the most damning evidence the authors present is Barry Bonds' grand jury testimony,¹⁵ which was released to them illegally by defense attorney Troy Ellerman.¹⁶ According to the authors, Bonds testified that he may have unknowingly taken designer steroids The Cream and The Clear¹⁷ when offered them by Greg Anderson, but he actually thought the substances were flaxseed oil and an ointment designed to help him relax.¹⁸ While the authors maintain that Bonds' testimony all but conclusively shows that he took steroids, Bonds has never actually tested positive. Until he does test positive, or until it can be proven conclusively that he has taken steroids in the past, Bonds should not be convicted based on circumstantial evidence alone.

Also, on February 15, 2007, Ellerman pled guilty to obstructing justice for leaking the grand jury documents to Mark Fainaru-Wada and Lance Williams.¹⁹ However, because Fainaru-Wada and Williams were allowed only to take detailed notes and were not given the documents outright, the federal grand jury testimony has remained out of the public domain.²⁰ Therefore, readers are left to rely largely on the authors' own deciphering of the contents of the grand jury testimony and do not have access to those documents directly. In this way, the legitimacy of the authors' claims

13. *Id.* at 148.

14. *See id.* at 166.

15. *Id.* at 202.

16. *See* Kimball & Dure, *supra* note 9. Troy Ellerman was a California attorney who briefly represented both Conte and Valente in their defense against the BALCO allegations. *Lawyer's Guilty Plea Gets BALCO Reporters Off Hook*, USATODAY.COM, Feb. 15, 2007, http://www.usatoday.com/sports/2007-02-15-balco-lawyer-guilty-plea_x.htm. In that regard, he was allowed to view documents containing the grand jury testimony of Bonds and other athletes allegedly linked to BALCO, which he then leaked illegally to Fainaru-Wada and Williams. *Id.* As part of a plea agreement, Ellerman agreed to spend two years and nine months in prison and pay a \$60,000 fine for leaking the testimony. Paul Elias, *BALCO Leak Agrees to Maximum Sentence*, WASHINGTONPOST.COM, July 5, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/05/AR2007070501652.html>. He also voluntarily gave up his license to practice law in California. *Id.*

17. "The Clear" is a steroid cocktail consisting of a variety of anabolic steroids. *Bonds Testified that Substances Didn't Work*, ESPN.COM, Dec. 4, 2004, <http://sports.espn.go.com/mlb/news/story?id=1937594>. "The Cream" is a masking agent that when taken conjointly with The Clear makes The Clear undetectable by modern drug tests. *See id.*

18. *See* FAINARU-WADA & WILLIAMS, *supra* note 1, at 202.

19. *Id.*

20. Bob Egelko, *Lawyer Admits Leaking Balco Testimony*, S.F. CHRON., Feb. 14, 2007, at A1.

concerning Bonds' testimony cannot be substantiated.

Despite lacking conclusive evidence linking Bonds to steroids, *Game of Shadows* exposes Bonds unsavory personality in a sobering fashion, hoping that readers will persecute Bonds as a steroid user simply because he is unlikable. For example, the authors go into great and gory detail regarding the abusive relationship between Bonds and Kimberly Bell.²¹ According to the authors, Bonds would bombard Bell's answering machine with angry messages threatening to kill whoever she was with, assuming she must be cheating on him when he could not get ahold of her.²² The authors also highlight Bonds' jealousy of Mark McGwire during the slugger's 1998 pursuit of Roger Maris' home run record,²³ while peppering the story with instances of Bonds' inappropriate reactions to the media and to fans.²⁴ Whether fact or fiction, each anecdote of Bonds' unlikable personality is used as a mirage, designed to trick careless readers into concluding that Bonds took steroids, not because the evidence proved he did, but because he is an unlikable person.

Perhaps more disturbing is the fact that by capitalizing on the grand jury testimony that was leaked to them illegally,²⁵ Fainaru-Wada and Williams exploit the sanctity and secrecy associated with federal grand jury investigations. The danger in abusing the legal process to such an extent is that future prosecutors may be encouraged to wage a public witch-hunt against suspects by leaking their grand jury testimony before it is decided whether or not to prosecute those suspects.²⁶ Despite this, Fainaru-Wada and Williams brag ad nauseam about their cunning circumvention of the legal system and their unwillingness to cooperate with the judge who asked them to disclose their source.²⁷

If anything positive can be said about *Game of Shadows*, it would be that its authors tell an engaging story. Fainaru-Wada and Williams manage to

21. See FAINARU-WADA & WILLIAMS, *supra* note 1, at 83-84.

22. *Id.* at 84. One of Bell's answering machine tapes, turned over to Fainaru-Wada and Williams by Bell, allegedly captured Bonds saying, "If I don't know where you are, then a niggah's going to kill somebody, good-bye." *Id.*

23. *Id.* at 110-11.

24. *Id.* at 29-31.

25. See FED. R. CRIM. P. 6(e)(3)(A)(iii). Disclosure of these documents will render the discloser in contempt of court. FED. R. CRIM. P. 6(e)(7).

26. See Diane M. Allen, Annotation, *Relief, Remedy, or Sanction for Violation of Rule 6(e) of Federal Rules of Criminal Procedure, Prohibiting Disclosure of Matters Occurring Before Grand Jury*, 73 A.L.R. FED. 112 (2007).

27. See FAINARU-WADA & WILLIAMS, *supra* note 1, at 228. If Ellerman had not come forward and confessed to leaking the testimony, both authors would have been held in contempt of court and likely jailed and fined for not disclosing their source. *Id.*; see also *In re Grand Jury Subpoenas (Fainaru-Wada)*, 438 F. Supp. 2d 1111, 1122 (N.D. Cal. 2006).

engross the reader in a captivating tale of the BALCO lab in northern California, the acting hub of the largest steroids scandals to rock professional and amateur sports, setting the implications of steroid abuse against an interesting backdrop.²⁸ The story is complete with villains, heroes, human relationships, tragedy, and irony—everything you would expect from a great novel, or at least a good soap.

The villains come in different shades with varying degrees of villainy. Greg Anderson, the boyhood friend of Bonds who later became his trainer and allegedly his steroids dealer,²⁹ is probably the most tragic figure.³⁰ Never prone to play big-league ball, Anderson moves to California to become a gym rat and Bonds' personal trainer.³¹ The authors describe Anderson as a loyal friend, easily manipulated, but so needing to be a part of something greater that he would do anything for his professional athlete clients—Jason Giambi, Gary Sheffield, and, of course, Barry Bonds.³² If anything, Anderson becomes a product of his environment, and the reader feels at least some pity for him despite his role as a steroids dealer in the BALCO conspiracy.³³ On the other hand, Bonds is portrayed as the perfect villain, representing everything evil in professional sports.³⁴

At the same time, relationships unravel. Marion Jones leaves her husband, United States shot putter C.J. Hunter, for her fellow sprinter and training partner Tim Montgomery after Hunter is discovered to have used steroids.³⁵ Both Jones and Montgomery were also BALCO clients, and each had a

28. In this regard, the book is misleading to a non-reader who only glances at the cover, and in that way is somewhat inaccurate. Although the book approaches 300 pages in length, the authors could never write that much based on the information they obtained from their sources, which implicate Bonds and the other BALCO clients as steroid users. However, if a passerby only looked at the cover of the book, with its looming picture of Barry Bonds next to Jason Giambi, he or she may think the authors have compiled a voluminous collection of damning evidence against Bonds, when in all reality that is not the case.

29. See FAINARU-WADA & WILLIAMS, *supra* note 1, at 62-64.

30. *Id.* at 64. Not long after Greg Anderson's high-school coach told him he would never play professional baseball, Anderson's girlfriend was killed when a drunk driver ran a stop sign and collided with her pickup truck. *Id.* His father was also killed over a card game when Greg was a child. *Id.* at 60.

31. *Id.* at 64-65.

32. Evidencing the trainer's loyalty, Greg Anderson is currently imprisoned at a federal correctional facility for contempt of court for refusing to testify about his relationship with Bonds before a federal grand jury. Bob Nightengale, *Conte Remains in Game: BALCO Founder, Still Selling Supplements, Blasts MLB Steroid Policy*, USA TODAY, July 9, 2007, at 1C.

33. Anderson served three months after pleading guilty to distributing steroids and money laundering charges in 2005 as fallout from the 2003 BALCO grand jury investigation. *Id.*

34. See FAINARU-WADA & WILLIAMS, *supra* note 1, at 147.

35. *Id.* at 99-100.

subsequent fallout with Conte.³⁶ The story goes on to describe the ruinous result that each sprinter's involvement with BALCO has on their respective careers.³⁷ Bonds and Sheffield, originally friends, also have a falling out,³⁸ which could best be described as an inevitable conclusion given each athlete's combative persona.

In the middle of all of this is Victor Conte, a present-day Doctor Frankenstein who wants nothing more than to manufacture the perfect athlete.³⁹ Conte is portrayed as a narcissistic control freak,⁴⁰ as is Bonds,⁴¹ and the reader can follow the parallelism between the two characters as the book progresses and they eventually and inevitably meet. Finally, many of these characters, including Bonds and Conte, converge onto the federal courthouse in San Francisco for the 2003 BALCO grand jury investigation, a scene reminiscent of an early twentieth century mob trial.⁴² In this way, Fainaru-Wada and Williams weave real life occurrences into an engaging story.

In the end, *Game of Shadows*, although a good read, plays its own game of smoke and mirrors. While the novel is more fact than fiction, and while many of the athletes implicated by the authors have either tested positive for or admitted to using banned substances,⁴³ the case against Barry Bonds still

36. *Id.* at 100. Both Tim Montgomery and Marion Jones were BALCO athletes. *Jones Pleads Guilty, Admits Lying About Steroids*, MSNBC.COM, Oct. 5, 2007, <http://www.msnbc.msn.com/id/21138883>. Jones admitted in October 2007 to using performance enhancers after pleading guilty to lying to federal prosecutors about the issue. *Id.*

37. *See* FAINARU-WADA & WILLIAMS, *supra* note 1, at 100.

38. *Id.* at 131-32.

39. *See id.* at 95-97. The authors portray Conte as a mad scientist, concocting personalized steroid cocktails for his athletes. *Id.* One such cocktail that Conte designed for sprinter Tim Montgomery required mixing the undetectable steroid "The Clear" with human growth hormone, insulin, adrenaline, and EPO. *Id.* EPO is a prescription drug that stimulates the body's production of red blood cells, thereby increasing endurance. Jon Sarche, *Sprinter Michelle Collins Accepts Four-Year Doping Ban*, USATODAY.COM, May 19, 2005, http://www.usatoday.com/sports/olympics/summer/track/2005-05-19-collins-doping_x.htm.

40. *See* FAINARU-WADA & WILLIAMS, *supra* note 1, at 53-54.

41. *See id.* at 81-83.

42. *Id.* at 196. Reporters flocked to the courthouse to snap photos of many top professional athletes, as they prepared to take the stand as witnesses against BALCO and Victor Conte. *Id.* Some athletes became openly hostile, and former Oakland Raiders running back Tyrone Wheatley even chopped the hand of a photographer after warning him, "[T]ake a picture, I'll fucking mess you up." *Id.*

43. Track stars Tim Montgomery, C.J. Hunter, Kelli White, Justin Gatlin, and others have all tested positive for steroids, with at least Tim Montgomery among those directly related to BALCO. Amy Shipley, *M. Jones Failed Drug Test in June*, WASH. POST, Aug. 19, 2006, at E1. Jason Giambi and Bill Romanowski have each admitted to taking steroids through BALCO. Nightengale, *supra* note 32.

remains mostly circumstantial, albeit *nearly conclusive*. Regardless of how badly baseball purists want to see the game cleansed of steroids, and perhaps its selfishness as well—with the records of Aaron and others returned to their sanctity—it is time to let the judicial processes we have come to rely on act in due course, no matter how painstaking that may seem. Barry Bonds is not, and likely will never be, a loveable or even likeable persona. And, Barry Bonds may very well have cheated the game of baseball and its fans. But until we know beyond a shadow of a doubt either way, *Game of Shadows* will continue to deceive readers by blurring the distinction between the two.

Jeremy J. Geisel