

1 ALLEN RUBY (SBN 47109)
SKADDEN, ARPS, SLATE, MEAGHER, & FLOM LLP
2 525 University Avenue, Suite 1100
Palo Alto, CA. 94301
3 Telephone: (650) 470-4500
Facsimile: (650) 470-4570

4 CRISTINA C. ARGUEDAS (SBN 87787)
5 TED W. CASSMAN (SBN 98932)
ARGUEDAS, CASSMAN & HEADLEY, LLP
6 803 Hearst Avenue
Berkeley, CA 94710
7 Telephone: (510) 845-3000
Facsimile: (510) 845-3003

8 DENNIS P. RIORDAN (SBN 69320)
9 DONALD M. HORGAN (SBN 121547)
RIORDAN & HORGAN
10 523 Octavia Street
San Francisco, CA 94102
11 Telephone: (415) 431-3472
Facsimile: (415) 552-2703

12 Attorneys for Defendant
13 BARRY LAMAR BONDS

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

18 UNITED STATES OF AMERICA,) Case No. CR 07 0732 SI
19 Plaintiff,) **DEFENDANT’S MOTION IN LIMINE**
20 vs.) **ONE: RE TESTIMONY BARRED BY**
21 BARRY LAMAR BONDS,) **FEDERAL RULES 402, 403, AND 802**
22 Defendant.) Date: March 1, 2011
Time: 3:30 p.m.
Courtroom of the Honorable Susan Illston

23 _____
24 **INTRODUCTION**

25 Pursuant to a schedule set by the Court and parties, defendant Bonds now files his pretrial
26 motions in limine to be heard at the time of the pretrial conference on March 1, 2011. This lead
27 motion contains a series of objections to material contained in the discovery provided Mr. Bonds

1 by the government. The witnesses the government interviewed and called before the grand jury
2 included disgruntled ex-employees and a former girlfriend. Not surprisingly, the discovery is
3 replete with personal invective, rumor, and speculation. Quite apart from the dubious credibility
4 of such allegations, defendant submits that they are irrelevant, plainly more prejudicial than
5 probative of the issues in the case, and/or constitute inadmissible character evidence and hearsay.
6 Furthermore, the introduction of any evidence on what are at best tangential subjects would
7 require extensive rebuttal by Mr. Bonds, involving an undue consumption of the Court's time
8 and resources. The defendant has consulted with the government, which has declined to state that
9 it will not seek to introduce the material in question at trial.

10 Because the objections advanced below rest on common legal principles and are
11 straightforward, they are presented jointly in this motion. Mr. Bonds will raise other pretrial
12 objections that require a more extended factual discussion or legal analysis; for that reason, they
13 are presented in four separately captioned motions. Mr. Bonds' second motion addresses the
14 required limits on expert testimony proffered by the government concerning performance
15 enhancing substances; the third, limits on the government's proposed testimony by other athletes;
16 the fourth, the prohibition of expert or lay opinion testimony on the truth or falsity of Mr. Bonds'
17 grand jury testimony; and the fifth, the barring of any purported expert testimony by a
18 government witness not in compliance with the strictures of Rule 16.

19 **IN LIMINE OBJECTIONS**

20 **A. Reference to Mr. Bonds's Exercise of His Fifth Amendment Privilege :**

21 The defense will not object to the portions of the Grand Jury Transcript [hereafter "GJT"]
22 in which Mr. Bonds is informed that he has been immunized, but seeks an order striking as
23 irrelevant (FRE 402) and more prejudicial than probative (FRE 403) the language on page 7,
24 lines 21-25 of the GJT, wherein the AUSA reads from the immunity order: "Barry Bonds is
25 likely to refuse to testify on the basis of his Fifth Amendment privilege against self-incrimination
26" *See also Griffin v. California*, 380 U.S. 609 (1965); *Doyle v. Ohio*, 426 U.S. 610 (1976)

1 **B. Reference to Mr. Bonds' Comments on Race and Money:**

2 GJT 145, lines 3-9; FRE 402, 403, 404 (a)

3 **C. Speculation By Dr. Ting As To Whether Mr. Bonds Was on Steroids:**

4 Ting GJT at 46, 133 - FRE 402, 403.

5 Dr. Ting is a private physician who was Mr. Bonds' orthopedic surgeon.

6 Government Witness List, Dkt. #185, at 6. Dr. Ting testified that he did not know
7 whether Mr. Bonds was using steroids. Ting GJT, at 46.

8 **D. Speculation That Dr. Ting Overheard Greg Anderson Talking To Mr. Bonds
9 About Anabolic Steroids**

10 Ting GJT 93-94 - FRE 402, 403. Dr. Ting testified that he did not know what was
11 being discussed between Mr. Bonds and Anderson on the occasion in question. *Id.*

12 **E. Ting Testimony that Mr. Bonds Berated People**

13 Ting GJT, at 63 - FRE 402, 403, and 404(a).

14 **F. Any Reference to Dr. Ting's Sons and His Medical Board Problems:**

15 Ting GJT 96-97-FRE 402, 403

16 **G. Testimony that Steve Hoskins Obtained Prescription Medicines from Dr.
17 Ting:**

18 FRE 402, 403.

19 **H. Any Out of Court Statement Purportedly Made to Steve Hoskins By a Third
20 Party Which The Court Has Not Previously Ruled Admissible at a Hearing
21 Outside the Presence of the Jury:**

22 FRE 802.

23 **I. Testimony From Kathy Hoskins:**

24 The following testimony of Kathy Hoskins, the sister of Steve Hoskins, is
25 inadmissible under FRE 402, 403, and 404(a):

26 1. Statements Concerning Mr. Bonds' relationship with Pieret Aava and
27 Photographs of Her-

28 GJT, at 9; Ex. XX at ¶ 4. *Id.* at ¶¶ 25-29.

 2. Statements That Mr. Bonds Treated Greg Anderson Disrespectfully-

GJT, at 14-15; Ex. XX at ¶ 7.

- 3. Statements Describing Mr. Bonds' Relationship with His Wife-
Memorandum of Interview of Kathy Hoskins on February 22, 2006

J. Testimony from Kimberly Bell:

The following testimony of Kim Bell will be objected to under FRE 402, 403, and 404(a):

- 1. Statements that Mr. Bonds was Disrespectful and Abusive to Others-
Memorandum of Interview of Ms. Bell on February 14, 2005; Ex. XX at ¶ 11;
Bell GJT, at 56.
- 2. Statements As To Why Mr. Bonds Married Liz Bonds- Bell GJT, at 19; Ex.
XX at ¶ 2
- 3. Testimony that Mr. Bonds told Ms. Bell to Deposit Cash in Increments- GJT,
at 25-26. Bell GJT, at 60.
- 4. Statements that Mr. Bonds' Temperament Changed or that on One Occasion
He Threatened Violence- Bell GJT, at 40-42

Dated: February 14, 2011

Respectfully submitted,

SKADDEN, ARPS, SLATE, MEAGHER, &
FLOM LLP

ARGUEDAS, CASSMAN & HEADLEY, LLP

RIORDAN & HORGAN

By /s/ Dennis P. Riordan
Dennis P. Riordan

By /s/ Donald M. Horgan
Donald M. Horgan

Counsel for Defendant
Barry Lamar Bonds