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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 UNITED STATES OF AMERICA,)
16 Plaintiff,)
17 v.)
18 BARRY LAMAR BONDS,)
19 Defendant.)
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21
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Criminal No. CR 07-0732 SI

UNITED STATES' TRIAL
MEMORANDUM

Trial: March 21, 2011
Time: 8:30 a.m.
Court: Hon. Susan Illston

23 **I. Indictment/Introduction**

24 The defendant is charged in counts one through four of the third superseding indictment
25 with making false declarations before the grand jury in violation of 18 U.S.C. § 1623(a) and in
26 count five with obstructing justice in violation of 18 U.S.C. § 1503. In short, the defendant
27 testified before the grand jury on December 4, 2003, in connection with the Internal Revenue
28 Service – Criminal Investigation Division’s (IRS – CID) investigation into the distribution of

1 performance enhancing drugs and money laundering of the proceeds therefrom by Balco
2 Laboratories and individuals associated with Balco, including Greg Anderson, the defendant's
3 personal trainer at the time. During the investigation, agents developed evidence showing that
4 the defendant had connections with Balco and Anderson. Those connections included evidence
5 suggesting the defendant's use of performance enhancing substances with the assistance of Balco
6 and Anderson. Accordingly, the defendant was subpoenaed before the grand jury as a relevant
7 witness. The defendant appeared for his testimony on December 4, 2003, with his attorney. The
8 defendant requested and was granted limited immunity for his testimony that excluded any
9 immunity for making false statements. During the testimony, the defendant was asked, among
10 other things, about the extent of his relationship with Balco and Anderson and whether the
11 defendant had ever used steroids or other performance enhancing substances from Balco or
12 Anderson. The defendant provided knowingly false statements before the grand jury in response
13 to the aforementioned lines of inquiry including, but not limited to, that he never knowingly used
14 steroids or human growth hormone, and that neither Anderson nor anyone associated with
15 Anderson ever injected him with any substance. The defendant further provided numerous
16 intentionally evasive, incomplete, and misleading statements in response to questions on these
17 topics.

18 **II. Brief Summary of Proof Anticipated at Trial**

19 The evidence at trial will show as follows. On September 3, 2003, as part of its
20 investigation of the illegal steroid distribution activities of Balco Laboratories, the government
21 executed a search warrant at Balco's business premises in Burlingame, California. Federal
22 agents found documents indicating the illegal distribution of anabolic steroids and other
23 performance-enhancing drugs to dozens of athletes in a variety of sports.

24 Information gathered during the search at Balco, and developed separately in the
25 investigation, indicated that the defendant was a Balco client. At the time of the search, Victor
26 Conte and James Valente, another Balco employee, voluntarily provided statements in which
27 they identified the defendant's trainer, Greg Anderson, as a participant in the scheme. Based on
28 these statements and corroborating documents found during the search, agents requested and

1 received a separate search warrant for Anderson's residence. There, agents found approximately
2 \$60,000 in cash and other information indicating that Anderson was involved in the illegal
3 distribution of anabolic steroids. Anderson voluntarily provided a statement in which he
4 confessed to distributing anabolic steroids and other performance-enhancing drugs to several of
5 the athletes. When asked about the defendant, Anderson declined to provide any further
6 statements.

7 Based on his connections to Balco, the defendant received a grand jury subpoena in
8 connection with the investigation of the Balco defendants. Based upon representations by
9 counsel that the defendant would invoke his Fifth Amendment rights, the government procured
10 an order from the court, granting the defendant immunity from prosecution pursuant to 18 U.S.C.
11 § 6003 and compelling him to testify at the grand jury. The evidence at trial will show that the
12 defendant testified before the grand jury on December 4, 2003, in connection with the Balco
13 investigation. The defendant was asked about his relationships with Balco and Anderson, and
14 was specifically asked whether he had obtained steroids, human growth hormone, and other
15 drugs from Balco and Anderson. In response to this line of questioning, the defendant provided
16 numerous false, evasive, and misleading statements as set forth in the third superseding
17 indictment. The evidence will show that these false statements were material to the investigation
18 being conducted in the grand jury.

19 The evidence will show that the defendant tested positive in June of 2003 in connection
20 with Major League Baseball's 2003 drug testing program. It is also anticipated that several
21 witnesses, including the defendant's mistress, former personal assistants, and a former teammate,
22 will testify at trial about witnessing the defendant being injected and about statements the
23 defendant made admitting his use of steroids. Another witness will also testify about
24 incriminating statements by the defendant related to Anderson's steroid dealing. The defendant
25 made the statements approximately one month after the execution of the search warrant on
26 Anderson's residence.

27 The trial evidence will also show that in early 2003, Steve Hoskins, a former associate of
28 the defendant's recorded an in-person conversation with Anderson. Among other things, the

1 recording contains Anderson's discussion of injecting the defendant and other statements
2 consistent with the administration of anabolic steroids to the defendant.

3 Two expert witnesses will also testify. One of these experts is Dr. Larry Bowers, the
4 medical director for the United States Anti-Doping Agency, who will testify that steroid users
5 develop such symptoms as increased muscle mass, shrunken testicles, acne on the upper back,
6 moodiness, cysts, "puddling," and infections when injections are administered too often in the
7 same part of the body, and an erratic sexual drive. The government will introduce testimony
8 from several percipient witnesses close to Bonds who will testify that Bonds exhibited some or
9 all of these symptoms between approximately 1998 and 2003. Dr. Bowers will further regarding
10 the fact that it was illegal to distribute steroids without a prescription and an accepted medical
11 purpose in 2003, and to the means of administering the drugs. The government will also call Dr.
12 Don Catlin, one of the world's leading drug testing experts and the researcher who discovered
13 "the clear," also known as tetrahydrogestrinone or "THG." Dr. Catlin will testify that he tested
14 the defendant's urine sample submitted to Major League Baseball in 2003 and determined that
15 the sample was positive for THG and Clomid, an anti-estrogen drug typically used by steroid
16 users to "jump-start" the replenishment of natural testosterone following its suppression by the
17 use of anabolic steroids. In addition, Dr. Catlin will testify that the sample is positive for
18 exogenous, that is, foreign, testosterone, itself an anabolic steroid and controlled substance under
19 federal law.

20 **III. Evidentiary, Procedural & Legal Issues**

21 Many legal and procedural issues have been addressed in detail in the motions in limine
22 separately filed in this case. The government herein briefly addresses several additional legal
23 and procedural issues pertinent to this case.

24 1) The government respectfully requests that the Court reiterate its previously
25 entered order that the defense may not mention or cross-examine any witness with the TIGTA
26 report or the facts underlying it unless a basis for doing so is first established to the Court's
27 satisfaction outside the presence of the jury.

28 2) The government respectfully requests that the Court order any witnesses the

1 parties intend or contemplate calling at trial to be excluded from the courtroom during trial, with
2 the exception of Special Agent Novitzky, who will be seated at the government's counsel table.

3 3) The government herein confirms that it has communicated with counsel for Greg
4 Anderson, and that Mr. Anderson's counsel has confirmed that Mr. Anderson will attend the
5 March 1, 2011 pretrial conference in this case. As discussed in its separate filings, the
6 government intends to call Greg Anderson as a witness at trial. In the event Anderson refuses to
7 comply with the subpoena, the government will respectfully request that the Court immediately
8 conduct contempt proceedings and imprison Anderson until he either cures his contempt or the
9 trial ends, whichever occurs first.

10 4) Several government witnesses will be required to travel to San Francisco from out
11 of the area to testify at trial. At the end of a witness's testimony, it is common for parties to
12 request that the witness remain subject to recall. In the event the defense wishes to recall a
13 government witness, the government respectfully requests that the Court order that the defense
14 bear the costs of recalling the witness.

15 5) The government notes that, because a jury questionnaire will be used, the
16 government is not submitting proposed voir dire questions with this memorandum as normally
17 contemplated under the Court's pretrial order. If the Court nonetheless requests the submission
18 of voir dire questions, the government will submit such questions forthwith. The government
19 concurs with the previously-submitted defense request for a reasonable period of time for
20 attorney voir dire.

21 6) As the government's pretrial filings in this case are being submitted nearly a
22 month before trial, the government respectfully requests leave of court to amend its witness list,
23 exhibit list, and jury instructions as necessary in advance of trial.

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