

1 MELINDA HAAG (CABN 132612)  
United States Attorney

2 J. DOUGLAS WILSON (DCBN 412811)  
3 Deputy Chief, Criminal Division

4 MATTHEW A. PARRELLA (NYBN 2040855)  
JEFFREY D. NEDROW (CABN 161299)  
5 MERRY JEAN CHAN (CABN 229254)  
Assistant United States Attorneys

6 150 Almaden Boulevard, Suite 900  
7 San Jose, CA 95113  
Telephone: (408) 535-5045  
8 Facsimile: (408) 535-5066  
Email: jeff.nedrow@usdoj.gov

9 Attorneys for Plaintiff

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

13 UNITED STATES OF AMERICA, )  
14 Plaintiff, )  
15 v. )  
16 BARRY BONDS, )  
17 Defendant. )

No. CR 07-0732-SI

**UNITED STATES' OPPOSITION TO  
DEFENDANT'S MOTION IN LIMINE  
ONE: TO BAR TESTIMONY  
PURSUANT TO FEDERAL RULES 402,  
403, AND 802 (DOCKET #216)**

Date: March 1, 2011  
Time: 2:00 p.m.  
Judge: Honorable Susan Illston

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 Assistant United States Attorneys

5

6 150 Almaden Boulevard, Suite 900  
 San Jose, CA 95113  
 Telephone: (408) 535-5045  
 Facsimile: (408) 535-5066  
 Email: jeff.nedrow@usdoj.gov

7

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17 Defendant.	)	Date: March 1, 2011
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19	)	

20 **I. INTRODUCTION**

21 The defendant's four-page motion *in limine* seeks to exclude ten categories of evidence as

22 irrelevant under Fed. R. Evid. 402 or more prejudicial than probative under Fed. R. Evid. 403.

23 The motion does not explain what evidence the defendant believes should be excluded, but

24 simply lists grand jury transcript pages and interview reports,<sup>1</sup> without attaching these references.

25 The motion also makes virtually no legal argument for why these categories of evidence should

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27 <sup>1</sup> For the Court's convenience, the government attaches the referenced portions of grand

28 jury exhibits, grand jury transcripts and interview reports as government exhibits A-O to this opposition.

1 be excluded. Instead, the motion simply lists certain Federal Rules of Evidence with no  
 2 explication or analysis. These requests force the Court and government to guess at the  
 3 defendant's reasoning in making these requests.<sup>2</sup> The defendant's motion is therefore deficient  
 4 under the Criminal and Civil Local Rules and should be summarily denied.

5 Except with respect to the defendant's grand jury testimony, the United States does not  
 6 intend to admit the grand jury transcripts of its witnesses on direct examination. To the extent  
 7 the defendant's motion objects to the United States eliciting testimony from its witnesses that is  
 8 consistent with the cited grand jury transcripts and interview reports, the objections are ill-  
 9 founded and should be denied for the reasons developed in this opposition. Should the defendant  
 10 for the first time in his reply brief include specific facts and legal arguments, the government  
 11 respectfully requests the right to file a sur-reply addressing such newly-made arguments.

## 12 II. ARGUMENT

### 13 I. The defendant's motion does not comply with the Local Rules

14 The defendant's motion consists of a laundry list of categories of evidence that it  
 15 sweepingly dismisses as irrelevant or more prejudicial than probative. *See* Def. Mot. *In Limine*  
 16 One. This is insufficient under the Local Rules, which explicitly require "[a]rgument," citing  
 17 "pertinent authorities." Civ. L. R. 7-2(b)(4), 7-4; Crim. L. R. 47-2. Such argument permits the  
 18 Court and the government to understand – instead of guessing – what the nature of the  
 19 defendant's objection is and answer it. The defendant knows how to meet his burden and has  
 20 failed to do so here, unfairly shifting the burden to the government. The defendant's motion  
 21 should be summarily denied for deficiency and failure to comply with the Local Rules.

### 22 II. The defendant's objections lack merit

#### 23 A. The defendant's Fifth Amendment Privilege

24 At page 7 of the defendant's grand jury transcript, the prosecutor reads the defendant the  
 25 immunity order in this case. Paragraph 2 of that order states:

26 In the judgment of the United States Attorney, Barry Bonds is likely to refuse to testify

---

27  
 28 <sup>2</sup> For example, item F refers to Dr. Ting's "Medical Board Problems," but nowhere in the  
 cited transcript pages (Ting Grand Jury Transcript, Exhibit G, pp. 96-97) are said problems  
 mentioned.

1 on the basis of his Fifth Amendment privilege against self-incrimination . . .

2 Exhibit A (Bonds Grand Jury Transcript, p. 7); Exhibit B (Bonds immunity order).

3 Citing *Griffin v. California*, 380 U.S. 609 (1965), the defendant objects to this section of  
4 the immunity order as irrelevant under Fed. R. Evid. 402. The defendant further claims that the  
5 probative value of the immunity order is substantially outweighed by the danger of unfair  
6 prejudice.

7 A defendant's exercise of his Fifth Amendment in the grand jury is inadmissible at trial of  
8 the subsequent indictment, *United States v. Washington*, 431 U.S. 181 (1977), and it is  
9 axiomatic, under *Griffin*, that the government may make no reference at trial to a defendant's  
10 exercise of his Fifth Amendment rights. However, the significance of the immunity order in this  
11 case is not to highlight the defendant's exercise of his Fifth Amendment rights, but to explain to  
12 the jury the circumstances under which he testified, *i.e.*, under a grant of immunity that  
13 compelled his testimony but also shielded him from prosecution for any incriminating  
14 information he provided so long as he told the truth. The entire immunity order should be read to  
15 the jury in order to explain the full factual and legal context of the defendant's grand jury  
16 testimony.

17 The government only sought an immunity order based upon its understanding, through  
18 counsel, that the defendant would exercise his Fifth Amendment rights in the grand jury; had the  
19 defendant not indicated that he would exercise his Fifth Amendment rights, the government  
20 would not have obtained an immunity order compelling his testimony. Stripping the Fifth  
21 Amendment language out of the order will have the effect of artificially, and inaccurately,  
22 making it appear as if the defendant were compelled to testify without providing the underlying  
23 factual explanation for why an immunity order was required. The full language of the immunity  
24 order is accordingly required to make sense of its context, and it is relevant and has probative  
25 value. The Court's standard instructions will instruct the jury that it may not construe anything  
26 from the defendant's exercise of his Fifth Amendment rights at trial. Such an instruction is  
27 sufficient, and appropriate, to address the defendant's concern. Accordingly, the full text of the  
28 immunity order, including Paragraph 2, should be admitted.

1           **B.     The defendant's comments on race and money**

2           During the defendant's grand jury testimony, he testified at length about his close  
3 relationship with Greg Anderson and the assistance Anderson had provided him. This testimony  
4 resulted in the following question from a grand juror, and the following response from the  
5 defendant:

6           Q:     With all the money you make, have you ever thought of maybe building him a  
7 mansion or something?

8           A:     One, I'm black. And I'm keeping my money. And there's not too many rich  
9 black people in the world. And I'm keeping my money. There's more wealthy  
10 Asian people and Caucasian and white. There ain't that many rich black people.  
11 And I ain't giving my money up. That's why. And if my friends can help me,  
12 then I'll use my friends.

13 Bonds Grand Jury Transcript, p. 145 (Exhibit C).

14           The defense seeks to redact this passage from the defendant's grand jury testimony. The  
15 government opposes the proposed redaction. The subject of this litigation is the defendant's  
16 conduct in the grand jury, and redactions made to the grand jury transcript increasingly distort  
17 what occurred. The grand jury transcript in this case has already been substantially redacted  
18 through the elimination of the references to the excluded documents per the Court's prior ruling.  
19 The defendant should not be permitted to selectively redact additional sections, particularly when  
20 the statements are the defendant's own statements.

21           In addition, the references to the defendant's views on money are highly probative. The  
22 defendant's parsimony tends to show that his payments to Anderson were not the fruits of charity  
23 or friendship, but payments for specific services and products related to steroids. They also show  
24 that while the defendant might characterize Anderson and others as "friends," these were friends  
25 to be used. Thus, the response exhibits the attitude and control he had in his relationship with  
26 Anderson, which tends to show that Anderson would never administer steroids to the defendant  
27 without the defendant's knowledge.

28           The defendant's approach towards money also speaks to his motivation to testify falsely.  
The defendant realized tremendous financial gain from his steroid-enhanced athletic  
achievements; his stated concerns about money tie directly into his motivation to cover up the

1 role steroids had in his athletic achievement and the considerable financial benefits his  
2 achievements generated.

3 Finally, this passage of the defendant's grand jury testimony is relevant to demonstrate  
4 the defendant's contemptuous and disrespectful attitude towards the grand jury process, an  
5 attitude that the jury may conclude contributed to his decision to testify falsely rather than respect  
6 his oath to tell the truth. It is also relevant to the obstruction of justice count, in that it is one of  
7 numerous examples of the defendant providing an obstructive non-answer to a direct question  
8 regarding his relationship to Anderson.

9 Nothing about the defendant's comments about money are unduly prejudicial. The  
10 defense motion to exclude this passage should accordingly be denied.

11 **C. Dr. Arthur Ting's testimony regarding the defendant's use of steroids**

12 The defendant moves to exclude "speculation" by Dr. Arthur Ting, the defendant's  
13 personal physician, as to whether the defendant was using steroids. The pertinent passage of the  
14 testimony is as follows, at page 46 of Ting's Grand Jury Transcript (Exhibit D):

15 Q: Why didn't you bring it up with him [Anderson]?

16 A: I - - "cause I didn't know for sure if - -  
17 number one, I didn't know for sure if - - if - -  
18 that he was giving Barry steroids.

19 \* \* \*

20 Q: But you never directly asked him [Anderson],  
21 "Look... Are you giving Barry Bonds any sort of  
22 anabolic steroids?

23 A: No.

24 This testimony refers to Ting's decision not to confront Anderson, and has nothing to do  
25 with the defendant's stated motion regarding "speculation" by Ting as to whether the defendant  
26 was on steroids. However, Ting's suspicions that Anderson was giving steroids to the defendant  
27 are certainly relevant to the context in which Ting treated and observed the defendant. Similarly,  
28 the defendant's difficult behavior towards Ting (*see infra* Section E) also factored into Ting's

1 decision not to confront Anderson, and is relevant to resolve any confusion the jury might have  
2 about Ting's motivations. Ting's testimony along these lines at trial would be relevant and  
3 probative to the context of Ting's state of mind. It would not be unduly prejudicial. The  
4 defendant's motion to exclude such testimony should be denied.

5 **D. Ting's testimony re: steroid discussions between the defendant and Anderson**

6 The defense moves to exclude "speculation" by Ting as to his understanding of certain  
7 statements made by the defendant to Anderson (and not Anderson to Bonds, as the defendant's  
8 motion erroneously states).

9 The defendant's motion references Ting's grand jury transcript for this point (Exhibit E,  
10 Ting Grand Jury Transcript, pages 93-94), wherein Ting recounts an episode where he, the  
11 defendant, and Anderson were at the defendant's house awaiting the arrival of the defendant's  
12 father. Ting testified that he heard the defendant yell at Anderson not to talk to his (the  
13 defendant's) Dad about anything. Ting continued that he thought that Bonds's statement was  
14 referring to Anderson providing the defendant with steroids.

15 A lay witness may provide opinion testimony regarding the meaning of vague or  
16 ambiguous statements as long as the lay opinion is rationally based on the perception of the  
17 witness and helpful to the jury in acquiring a clear understanding of the witness's testimony or the  
18 determination of a fact in issue. Fed. R. Evid. 701; *United States v. Freeman*, 498 F.3d 893, 902  
19 (9th Cir. 2007); *United States v. Simas*, 937 F.2d 459, 465 (9th Cir. 1991).

20 On this point, Ting, although a medical doctor and surgeon who had treated the  
21 defendant for years, would be testifying to a lay witness opinion that was rationally based upon  
22 his own perceptions. Ting actually overheard the statements themselves. Further, he had  
23 observed the behavior of both Anderson and the defendant numerous times, both while they were  
24 together and separately. Ting also had treated the defendant over the course of a number of  
25 years, and that medical treatment certainly forms part of the rational basis for Ting's lay opinion  
26 as to the meaning of defendant's statement. *See Freeman*, 498 F.3d at 904-05 (finding lay  
27 witness's interpretation of ambiguous statements to be permissible under Rule 701).

28 Ting's opinion regarding the meaning of the defendant's statements to Anderson would

1 certainly be helpful to the jury in the determination of a fact in issue. The defendant's secrecy  
2 regarding his steroid use, shown by his command to Anderson to not discuss anything with the  
3 defendant's father, shows his knowledge of the nature of the substances he was getting from  
4 Anderson, and hence proves the falsity of his statements to the grand jury that he thought those  
5 substances were mere supplements and arthritis creams.

6 **E. Ting's testimony about the defendant's treatment of others**

7 The defendant moves to exclude testimony that the defendant "berated" people, Ting  
8 Grand Jury Transcript at p. 63, Exhibit F, pursuant to Fed. R. Evid. 402, 403, and 404(a).

9 At this portion of the grand jury transcript, Ting is testifying regarding Ting's medical  
10 treatment of the defendant. For instance, Ting testified that when he arrived at the defendant's  
11 house to examine the defendant's knee, the defendant withdrew his knee and confronted Ting.  
12 Ting stated, that "...he'll make you feel sort of stupid,"and, "-- he's waiting for you to do  
13 something so that he can criticize you." Exhibit E. Ting describes the defendant as a difficult,  
14 manipulative, and confrontational patient and directly links his experience of those traits of the  
15 defendant to his own decision not to confront the defendant with suspicions of steroid use.

16 Ting's testimony regarding his personal observations of the defendant's behavior, and in  
17 particular his ability to manipulate and bully others, is relevant and highly probative. It is  
18 reasonable to expect that the jury would be interested in whether the defendant's doctor  
19 discussed steroid use with him, and, if not, the reasons why. Far from causing confusion of the  
20 issues or misleading the jury, this evidence will actually put Ting's testimony into context and  
21 thereby give the jury a greater ability to assess his credibility. The factual occurrences contained  
22 within Ting's Grand Jury transcript are relevant under Fed. R. Evid. 402.

23 The defendant makes no showing that such relevant evidence should be excluded under  
24 Fed. R. Evid. 403. There is no unfair prejudice associated with the testimony. The rule providing  
25 for the exclusion of relevant evidence because of prejudicial dangers or considerations favors  
26 admissibility, while concomitantly providing the means of keeping distracting evidence out of  
27 the trial. *United States v. Hankey*, 203 F.3d 1160, 1172 (9th Cir. 2000); Fed. R. Evid. 403. Until  
28 and unless the defendant articulates a reason that the probative value of this evidence is

1 substantially outweighed by the danger of unfair prejudice, the testimony should be admissible.

2 **F. Ting's son's use of steroids and Ting's medical board status**

3 The defendant moves to exclude references to Ting's son (Exhibit G, Ting Grand Jury  
4 Transcript, pp. 96-97) and his "Medical Board Problems."

5 Ting testified to the grand jury that he became aware of tennis players testing positive for  
6 steroids from a supplement that his oldest son was also taking. Ting then inquired of Anderson  
7 whether BALCO could test urine for steroids. Upon learning that BALCO could do so, he  
8 worked with Anderson to have BALCO test his son's urine specimens. References to Ting's son  
9 as the motivation for learning whether BALCO could test urine specimens for steroids are  
10 necessary to prevent the jury from speculating that it was for some other, unstated motivation.  
11 Additionally, Ting's knowledge that BALCO could test the urine specimens for steroids (or have  
12 it tested) and that Anderson could facilitate same is relevant to the context in which Ting  
13 conducted his professional relationship with Anderson and the defendant.

14 The defendant supplies no reference for Ting's "Medical Board Problems." The  
15 government understands this reference to pertain to the fact that Ting has been subject to  
16 discipline by the California Medical Board based upon his conduct as a doctor. Such information  
17 may be relevant to explaining the manner in which Ting conducted himself with the defendant,  
18 and in particular the way Ting sought to ingratiate himself with the defendant and refrained from  
19 confronting him regarding his steroid use. The government believes this evidence may be  
20 relevant and therefore opposes the defense motion *in limine*. The defense should be required to  
21 specify with precision the information it seeks to keep out and its basis for doing so. The motion  
22 should accordingly be denied at this time.

23 **G. Steve Hoskins's testimony re: obtaining prescription drugs for the defendant**

24 The defendant apparently refers to testimony by Steve Hoskins that Hoskins obtained  
25 prescriptions for Viagra and Valtrex from Ting on behalf of the defendant. The defendant asserts  
26 that this violates Fed. R. Evid. 402 and 403, but once again supplies no analysis.

27 This evidence is relevant and probative, and should be admitted. Hoskins's role in  
28 obtaining prescription drugs for the defendant demonstrates that the defendant was willing to

1 obtain prescription medicines in a surreptitious manner. In a case where the defendant's  
2 knowledge of the true nature of the substances he willingly ingested is at issue, his past deceptive  
3 use of other medications, involving some of the same individuals involved in his steroid use, is  
4 highly probative. The evidence is also corroboration for Kimberly Bell's anticipated testimony  
5 that the defendant suffered sexual problems as a result of his steroid use.

6 The other side of the Fed. R. Evid. 403 equation is equally unavailing for the defendant,  
7 as there is no unfair prejudice arising from these facts. The simple fact is that the defendant was  
8 willing to lie about his medications. Furthermore, the use of a limiting instruction to the jury  
9 would alleviate any danger of misuse of this evidence. Hoskins's testimony on the subject  
10 should accordingly be admitted.

#### 11 **H. Third party statements made to Hoskins**

12 The government assumes that this motion asserts a blanket opposition to Steve Hoskins  
13 testifying regarding the statements of the defendant, Ting, Anderson, and others associated with  
14 the defendant during the period of time in which the defendant was taking steroids.

15 The government intends to call Hoskins to testify regarding the events he observed in  
16 connection with the defendant's knowing use of performance-enhancing drugs. Such testimony  
17 is directly probative of the defendant's knowing false statements in denying the knowing use of  
18 steroids, his denial of getting injections, and his denial that he obtained human growth hormone.  
19 The defendant's statements are admissions and therefore admissible under Fed. R. Evid.  
20 801(d)(2). Hoskins should further be permitted to testify regarding the statements of Ting and  
21 Anderson to the extent those statements are admissible under an exception to the hearsay rule, or  
22 fulfill the non-hearsay purposes of explaining Hoskins's actions and his course of conduct with  
23 the defendant. The government will be prepared to provide a basis for the admissibility of all  
24 statements to which Hoskins will testify at trial. The defendant's motion to exclude all such  
25 testimony as a peremptory matter should be denied, as the Court will need to hear the context and  
26 circumstances of Hoskins's testimony at trial in order to properly evaluate the government's  
27 bases for admitting any third party statements contained in Hoskins's testimony.

1           **I.       Kathy Hoskins’s testimony**

2           The defendant seeks to preclude portions of Kathy Hoskins’s testimony.

3                           **1.       Statements concerning the defendant’s relationship with**  
4                           **Pieret Aava; Aava’s photos**

5           Kathy Hoskins (hereafter, “K. Hoskins”) will testify that she had met one of the  
6           defendant’s girlfriends, named Pieret Aava. In the grand jury, K. Hoskins mentioned that the  
7           defendant showed her revealing photos of Aava on the Internet. K. Hoskins Grand Jury  
8           Transcript at p. 9 (Exhibit H). K. Hoskins also stated, in an interview with the government, that  
9           she had met Aava and understood the defendant to be in an intimate relationship with Aava.  
10           Exhibit J, K. Hoskins 2/22/06 Memorandum of Interview.

11           K. Hoskins should be permitted to testify that the defendant had a relationship with Aava,  
12           that she met Aava, and that the defendant showed her pictures of Aava. This evidence is relevant  
13           because at the time the defendant referred Steve Hoskins to the FBI, the defendant falsely told  
14           agents that he had no girlfriends, and that S. Hoskins’s statements to the contrary were untrue.  
15           K. Hoskins’s testimony regarding Aava is thus relevant to the defendant’s credibility in making  
16           the referral of S. Hoskins to the FBI.

17           Also, the fact that the defendant discussed Aava with K. Hoskins, and actually showed  
18           her photos of Aava, demonstrates that he was willing to share details of his personal life with K.  
19           Hoskins, and similarly gives context to her relationship with the defendant that will allow the  
20           jury to evaluate her credibility properly.

21           The government will not offer the photos of Aava themselves. However, a general  
22           description of their nature by K. Hoskins is relevant to the relationship that she had with the  
23           defendant and so again provides context for K. Hoskins’s testimony. The defendant’s  
24           willingness to show revealing photos of one of his mistresses to K. Hoskins shows that he was  
25           not reluctant to have her know intimate - and potentially damaging to his marriage - details of his  
26           life. Accordingly, the court should deny this part of the defendant’s motion in limine.

27                           **2.       Statements regarding the defendant’s disrespectful treatment**  
28                           **of Anderson**

          The defendant further objects to K. Hoskins’s testimony that the defendant treated

1 Anderson in a disrespectful manner by talking down to him “all the time” and verbally abusing  
2 him. Exhibit I, K. Hoskins Grand Jury Transcript, pp. 14-15.

3 This testimony is relevant and directly probative to the defendant’s knowingly false  
4 testimony and obstructive conduct in the grand jury. In the grand jury, the defendant depicted  
5 Anderson as a close friend and a person upon whom he relied. K. Hoskins’s testimony suggests,  
6 in fact, that Anderson was someone whom the defendant dominated and bullied. Her testimony  
7 is corroborated by numerous other witnesses and demonstrates that the defendant surrounded  
8 himself with people he could control. This evidence is directly relevant and probative to the  
9 defendant’s claim that he had no knowledge that the items Anderson was giving him were  
10 anabolic steroids. K. Hoskins’s testimony tends to prove that the defendant was knowingly  
11 testifying falsely when he claimed that he did not know the items he was getting from Anderson  
12 were steroids, because it is implausible that someone who was in a relationship where he was  
13 controlled and dominated by the defendant would “dose” the defendant with powerful illegal  
14 controlled substances, like steroids, without the defendant’s knowledge. In addition, the  
15 defendant’s depiction of Anderson as a “good friend” is misleading and obstructive when viewed  
16 in the context of his control and domination of Anderson. The testimony on this topic should  
17 accordingly be admissible.

18 **3. Statements describing the defendant’s relationship with his  
19 wife**

20 The defendant further objects to any testimony from K. Hoskins that the defendant was  
21 controlling of his wife. Exhibit J, K. Hoskins 2/22/06 Memorandum of Interview. For the same  
22 reasons as noted above, evidence of the defendant’s controlling nature, and tendency to surround  
23 himself with people he could control, is relevant to this case. Evidence of the defendant’s  
24 controlling nature is directly probative to the evidence that the defendant testified falsely when he  
25 portrayed himself as an innocent, naive dupe who took powerful steroids from Anderson without  
26 knowing what they were. The government should be able to elicit testimony that the defendant  
27 controlled others, and should be able to elicit from percipient witnesses what they observed  
28 regarding the manner in which the defendant exercised control over others.

1           **J.       Kimberly Bell's testimony**

2           The defense further objects to portions of the proposed testimony of Bell.

3                       **1.       Statements re: the defendant's treatment of others**

4           The defendant seeks to exclude Bell's testimony that the defendant is "mean," "berates  
5 people," and "parades them around in front of others." Exhibit K, Bell Grand Jury Transcript, p.  
6 56; Exhibit L, 2/14/05 Memorandum of Interview of Kimberly Bell.

7           As discussed above, this evidence is relevant and probative to the defendant's tendency to  
8 control people, and is therefore relevant to proving the falsity of the defendant's claims that he  
9 had no idea what Anderson was giving him. In addition, this evidence of the defendant's efforts  
10 to control other people is probative of his intent to obstruct justice, and his contemptuous and  
11 disrespectful attitude towards the grand jury and the grand jury process. The defendant's efforts  
12 to control his surroundings and the people around him are directly relevant to the allegations in  
13 this case, which are that the defendant tried to manipulate and deceive the criminal justice system  
14 through false statements and obstructive conduct in the grand jury. Testimony regarding his  
15 efforts to control people should accordingly be admitted.

16                       **2.       Statements on the defendant's marriage to Liz Bonds**

17           The defendant further objects to testimony that the defendant married Liz Bonds because  
18 she was black and would help him gain custody of his children from a prior marriage. Exhibit  
19 M, Bell grand jury transcript, p.19.

20           The government does not intend to elicit this testimony from Bell, and therefore does not  
21 oppose the defense request to exclude such testimony.

22                       **3.       Testimony on instructions to Bell to structure cash deposits**

23           The defense further objects to Bell's testimony that the defendant instructed her on how  
24 to structure cash deposits. Exhibit N, Bell grand jury transcript, p. 60.

25           This testimony should be relevant and admissible. The defendant is charged in this case  
26 with violating his oath in the grand jury and demonstrating a contempt for the legal system  
27 through knowing false statements and a calculated effort to obstruct the grand jury process.  
28 Evidence of his efforts to manipulate the financial reporting system through the structuring of

1 cash deposits is relevant to demonstrating his disrespect for the law and the attitude that rules do  
2 not apply to him.

3 The evidence is further probative and relevant to establishing Bell's close relationship  
4 with the defendant. The defense has clearly indicated its intent to challenge Bell's credibility  
5 regarding her relationship with the defendant, and her observations of him. Evidence that he  
6 trusted her to handle cash deposits, and to follow his instructions in this manner, is relevant to  
7 establishing that relationship. The government should be permitted to prove the close nature of  
8 the relationship given the defendant's stated intention to question that relationship.

9 **4. Statements re: the defendant's temperament, threat of violence**

10 The United States has independently moved *in limine* for the admissibility of Bell's  
11 testimony regarding the defendant's angry, threatening, and violent communications and conduct.  
12 Exhibit O, Bell Grand Jury Transcript, pp. 40-42.

13 The government's experts will testify that uncontrollable anger, also known as "roid  
14 rage," is a common side effect of steroid abuse, and can lead to conduct similar to the  
15 communications contained in the voice mail messages and the conduct Bell will describe. Such  
16 evidence is consistent with, and corroborates, the evidence provided by Bell and others that the  
17 defendant was a knowing steroid abuser. The evidence is accordingly probative and should be  
18 admitted.

19 If the Court declines to admit this evidence in the government's case-in-chief, the  
20 government should be permitted to use this evidence to rebut any claims by the defense that Bell  
21 threatened the defendant. In addition, if the defendant testifies, the government should be  
22 permitted to cross-examine him on this subject matter as a means of testing his credibility if he  
23 denies knowingly receiving and using steroids from Anderson.

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