

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE SUSAN ILLSTON, JUDGE

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 UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. Cr. 07-0732 (SI)  
 )  
 BARRY LAMAR BONDS, )  
 )  
 Defendant. ) San Francisco, California  
 ) Friday January 21, 2011  
 ----- ) (26 pages)

TRANSCRIPT OF PROCEEDINGS

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 TED W. CASSMAN

1 Friday, January 21, 2011

2 (11:15 a.m.)

3 (In open court; defendant present)

4 DEPUTY CLERK: Calling Criminal 07-732, United States  
5 versus Barry Bonds.

6 MR. PARELLA: Jeff Nedrow and Matt Parella for the  
7 United States.

8 THE COURT: Good morning.

9 MR. RUBY: Al Ruby for Mr. Bonds. May the record  
10 please reflect that Mr. Bonds is here this morning.

11 THE COURT: It may.

12 MS. ARGUEDAS: And Chris Arguedas for Mr. Bonds. Good  
13 morning.

14 MR. RIORDAN: Dennis Riordan for Mr. Bonds as well.

15 THE COURT: Good morning.

16 All right. We have on this morning some motions that  
17 I'll get to momentarily, but there are a couple of things I  
18 wanted to mention -- today is flitting by. One is I think a  
19 couple of years ago we may have discussed a jury questionnaire.  
20 I don't recall how we came out on it. But if that's something  
21 you want to do, the Commissioner normally needs 45 days or so  
22 lead time to mail it out. So, we could probably do that. But  
23 it would need to be geared up pretty quickly, so I don't know  
24 what your thoughts are.

25 MR. PARELLA: I think we did actually agree on a

1 questionnaire, ultimately. We'd be willing to engage in the  
2 same process. I don't know if he needs to be updated or what  
3 we need to do. But we're planning on sending out a new one,  
4 and we'll reach out to defense and see what their position is  
5 and see if we can get it to the Court in a timely fashion.

6 THE COURT: Do you remember what we did?

7 MS. ARGUEDAS: Yes. We had a questionnaire that we  
8 pretty much had agreed upon. And we had a procedure that we  
9 were going to use. We are still in agreement.

10 There is a point on it though that I wanted bring to  
11 your attention because -- I just want to bring it to your  
12 attention. Both sides are in agreement that we'd like to add  
13 to the bottom of the questionnaire at the place where the  
14 prospective juror would sign and it would say -- and I don't  
15 have the exact wording, but the essence of it would be: "I am  
16 aware that the Court has ordered that I not participate -- that  
17 I not search the Internet on the subject of Barry Bonds; I  
18 don't go on Facebook, I don't Twitter, I don't Tweet, I don't  
19 read anything between the time that I sign this questionnaire  
20 and the end of this process. And if I did, the Court has  
21 indicated that I would be in contempt of court and subject to a  
22 fine or a jail sentence."

23 So I want to bring that to your attention because it's  
24 a serious admonition from the Court. Both the government and  
25 we are proposing that you do that in order to try and have a

1 trial that -- in which the only evidence the jury is looking at  
2 is what has been legally admissible, and so we made it strong.  
3 But I wanted you to be aware of it.

4 THE COURT: Let me ask you this question, because this  
5 is what I don't remember from last time: Were we going to mail  
6 it out in advance or was that to be done on the first day?

7 MS. ARGUEDAS: No, it was to be the first day. The  
8 idea was they were going to come in, you were going to give to  
9 it them, the Jury Commissioner give to it them, fill it out  
10 that morning, we were going to get it that afternoon.

11 THE COURT: Is that right?

12 MR. PARELLA: That's correct, but I think they were  
13 going to come in on Friday.

14 THE COURT: Okay.

15 MR. PARELLA: And then we'd have the weekend to  
16 review. That language is -- we actually have the language  
17 hashed out I think in more detail, so we'll provide that to the  
18 Court.

19 THE COURT: I will take a look at that, and I'm not  
20 unwilling to do something like that if we're doing it on the  
21 short turnaround. If it had been mailed out a month and a half  
22 in advance, I'd be more concerned that it's just unenforceable.  
23 But this short time, we'd be able to do that.

24 MS. ARGUEDAS: Well, we were going to do it in the  
25 short way.

1 THE COURT: Okay. All right. So that would mean then  
2 that we -- so we would do it -- you said they'd get it on  
3 Friday, and then we'd come in and do the selection process  
4 Monday morning? Is that it?

5 MS. ARGUEDAS: I would think we would bring them in on  
6 a Friday, have them fill it out on a Friday.

7 THE COURT: And I was going to go talk to them,  
8 actually, I think.

9 MS. ARGUEDAS: Then we would -- I think we were going  
10 to have the parties take care of the xeroxing and all of that.  
11 And then we'd have it for the weekend, and then we'd pick the  
12 jury on Monday.

13 THE COURT: If that's what you've agreed on and if  
14 that's what I agreed on before, that sounds like a good plan to  
15 me. So that's -- I'll share that with David Weir, who's the  
16 Jury Commissioner, and let him know.

17 MR. PARELLA: Just to be clear, that Friday is  
18 March 18th. And the Court will be meeting with the potential  
19 jurors without counsel.

20 THE COURT: Yes. Although there will be a court  
21 reporter, but what I've done -- I don't believe in a criminal  
22 matter -- do you have my calendar? Thank you -- but I've done  
23 it in civil matters that have had issues with respect to  
24 publicity, is we have a court reporter there, we don't have the  
25 parties there or counsel there -- I'm not sure that's a

1 requirement, but that's how it's been done previously -- and  
2 just tell them that the selection process is being made, and  
3 give them the direct order about not doing research and looking  
4 things up and talking to people so that they get a direct --  
5 and tell them a little bit about how long the case would  
6 normally take. So...

7 MS. ARGUEDAS: In principle, I think we think that's a  
8 terrific idea, but let us consider the "without counsel".  
9 Maybe each side could send one person so it wasn't some  
10 overwhelming presence, but that we'd be present for --

11 THE COURT: I don't see any reason why that wouldn't  
12 work. I think, in this case, it might be awkward if the  
13 clients were there.

14 MS. ARGUEDAS: I understand.

15 THE COURT: Okay. So you'll get me that questionnaire  
16 form soon?

17 MS. ARGUEDAS: Yes.

18 MR. PARELLA: Yes.

19 THE COURT: The other question I had related to  
20 witness Mr. Anderson. I haven't to my knowledge heard anything  
21 from him lately. I take it the government is still interested  
22 in calling him as a witness?

23 MR. PARELLA: That's correct, your Honor.

24 THE COURT: And I would think that some time before  
25 the first day of trial we ought to find out from him: Should

1 he be called, whether he will testify?

2 MR. PARELLA: If you recall, we actually did that on  
3 the last go-through, and he stated: No.

4 THE COURT: It seems to me since that's two years ago  
5 now, Mr. Parella. We probably should do it again.

6 MR. PARELLA: We've heard nothing contradictory to  
7 that. We'll have him here, I guess on Friday -- would that be  
8 acceptable? The 18th, in other words?

9 THE COURT: I guess we could do it on the criminal  
10 calendar on Friday if you want. That's our busy day,  
11 generally. And then it would be my intention -- assume just  
12 momentarily that he indicates he's not planning to testify.  
13 Then I think you would still have to call him, when the trial  
14 has begun. And if he continues to refuse, then we'll deal with  
15 it at that point. That's what I think would happen.

16 MR. RUBY: Your Honor, if the Court please, could I  
17 suggest that as to calling him on the 18th, if the Court has an  
18 opening where we could do it a little sooner, not on this  
19 calendar, I think crowding ourselves that way -- you know, what  
20 if he has the flu? And the trial's supposed to start Monday?  
21 Since there doesn't seem to be any exigency, may I suggest  
22 please we do it a few days earlier?

23 THE COURT: We can do it anytime between now and then.  
24 I do think it ought to be close in time to the trial, though.

25 MR. RUBY: Sure. And we're -- obviously, we're all

1 available.

2 As far as calling him during the trial, of course we  
3 believe that that shouldn't be in front of the jury. And I  
4 don't know if anybody has a different view.

5 THE COURT: I don't disagree with you on that. But I  
6 do think we have to do it for those purposes.

7 MR. PARELLA: So how about March 4th? How would that  
8 be? I'm not sure if you want it on your criminal calendar or  
9 especially set or what.

10 THE COURT: It's fine with me. If you want to  
11 specially set it, we could do it late in the afternoon after  
12 trial someday. Whatever you want to do is fine.

13 MR. RUBY: Whatever is convenient to the Court and  
14 counsel. March 4th is fine.

15 THE COURT: What's the date of our pretrial  
16 conference?

17 MR. RUBY: March 1st.

18 THE COURT: Maybe we should just do it then.

19 MS. ARGUEDAS: That's good.

20 DEPUTY CLERK: We could set that for earlier, prior to  
21 the pretrial. Or wait, are we going to be in trial?

22 THE COURT: Looks like it. I don't think it should be  
23 any earlier than March 1st. So if you agree on a date between  
24 March 1st and the trial, that is fine with me. If you want to  
25 do it March 1st, that's fine with me. Just let me know.

1 MR. RUBY: Okay.

2 THE COURT: But I take it we'll need to get him here.  
3 So you figure out how that happens.

4 MR. PARELLA: And that brings another issue up about  
5 how, mechanically, to get him here. We don't think we can  
6 actually issue a trial subpoena for the pretrial. So what we  
7 would request is that the Court order that he appear -- we'll  
8 prepare an order, and we'll actually serve it as well --  
9 stating that he appear, for example on March 1st at 3:30, if  
10 that's when we agree. Is that acceptable?

11 DEPUTY CLERK: I think you'll need what they call a  
12 writ. So you might want to check into that. And are we for  
13 sure setting -- I'd like to set a date so we can -- I can put  
14 it in the calendar.

15 MR. PARELLA: We're already on the calendar for  
16 March 1st at 3:30, so that's fine with the government.

17 THE COURT: Is that all right with the defense?

18 MR. RUBY: That's fine, your Honor. I wonder if --  
19 he's represented by counsel, and I wonder if somebody ought to  
20 call his counsel just make sure he's in the country or --

21 DEPUTY CLERK: We can set it, and then if we need to  
22 move it, we can move it.

23 MR. RUBY: Great. Fine.

24 DEPUTY CLERK: Thanks.

25 THE COURT: And you might also consult with his

1 counsel whether he'll accept -- if he'll accept a subpoena.  
2 Then maybe you won't have to get involved with the writing  
3 process. You can talk about that.

4 MR. PARELLA: We'll reach out to him today.

5 THE COURT: He's always been cooperative in the past.  
6 I don't anticipate any problem.

7 Anything else before we get into the motions?

8 MR. RUBY: I'm afraid so. We were advised yesterday  
9 that the government is intending to seek a superseding  
10 indictment. And I won't comment, except that my request  
11 respectfully is that a case management conference be scheduled  
12 for as close in time as possible to the superseding indictment  
13 if the government is successful in doing this.

14 MR. NEDROW: If I may, your Honor, yes. It's because  
15 the defense expressly requested that Count 11, just that count,  
16 be amended, because after the last indictment in this case, the  
17 law changed. Of course, the *Thomas* case this Court presided  
18 over in this court. Since the law has changed since the last  
19 indictment, the defense pointed out that adding the single word  
20 "materiality" would be appropriate to the obstruction of  
21 justice count, and we've of course looked at the law that they  
22 called to our the attention and we agreed. So, adding that  
23 word, "materiality", to Count 11 seems judicious, and what we  
24 intend to do is do that.

25 We absolutely are confident that that doesn't provide

1 any basis to continue the trial date, and I guess we wanted to  
2 let the defense know that so everyone's on the same page that  
3 there is nothing beyond that, nothing beyond anything that's  
4 already been provided for years, and that there's just no  
5 reason to have any concern that's going to effect the trial  
6 date. And we've intended to bring that up today anyway, but I  
7 appreciate counsel raising it.

8 THE COURT: When do you anticipate you'll do this?

9 MR. PARELLA: I think we'll -- and we spoke briefly,  
10 counsel and I, earlier -- that if we had a case management or  
11 status date for February -- the week of February 14th. So  
12 maybe February 18th?

13 THE COURT: February 14th is when you're going to do  
14 it?

15 MR. PARELLA: No, it will be the prior week.

16 MR. NEDROW: Yes, we'll do it by -- we'll have it in  
17 hand by the time of that particular court date, your Honor.

18 THE COURT: Would that be agreeable?

19 MR. RUBY: Yes. For scheduling purposes? Yeah, as  
20 soon as they have it. If the Court has time for a quick case  
21 management conference, that would be great, sure.

22 THE COURT: I'm here that week. So...

23 MR. RUBY: Pardon me?

24 THE COURT: I'm here that week. If you want to set  
25 it, just set it.

1 MR. RUBY: What's convenient for your Honor?

2 THE COURT: I'm in trial, so it would have to be 3:30  
3 or 4:00.

4 DEPUTY CLERK: Just a status. Would it be lengthy?  
5 Because your calendar right now is very short, our regular  
6 criminal calendar.

7 MR. NEDROW: Wouldn't be lengthy. Just to touch base  
8 after the final charging instrument is prepared.

9 DEPUTY CLERK: We'll set it for February 18th at  
10 11:00, because right now our calendar is real light.

11 MR. RUBY: Your Honor, not to prolong this, the  
12 defense didn't request the superseding indictment. I'm sure  
13 that was a slip of the tongue. We have motions scheduled for  
14 February 11th concerning 11, among others. I wanted to make  
15 the Court aware of that.

16 MS. ARGUEDAS: I'm not available the 18th.

17 THE COURT: Well, if we're coming in anyway on the  
18 11th, will you have it done by then?

19 MR. PARELLA: We'll have it done by then.

20 MR. NEDROW: We'll have it done by then. And to be  
21 clear, the issue raised by counsel is the reason we're going to  
22 supersede, to clarify, and I appreciate the clarification.  
23 Thank you.

24 MR. PARELLA: Is that also at 11:00?

25 THE COURT: Yes.

1           Okay. The motions that we have for today are  
2 evidentiary ones. What I would like to do is give you a sense  
3 of my resolution at a relatively high level of the questions  
4 posed, and you can tell me what you would like to add to your  
5 papers that isn't already in your papers, and then we will  
6 proceed. I don't think that we will discuss today every single  
7 piece of paper that you've listed, but I'll give you my general  
8 sense of how those rulings will go.

9           First, there was a separate -- a motion concerning  
10 Mr. Hoskins. And I really have only one question on this, and  
11 it would be for you, Mr. Nedrow and Mr. Parella, the issues --  
12 the investigation proceeds in the district of Washington,  
13 right?

14           MR. PARELLA: We recused ourselves and referred the  
15 handling to the Western District of Washington U.S. Attorney's  
16 office, so the FBI agents were here, your Honor.

17           THE COURT: And my question is this: You've indicated  
18 in your papers that there was no quid pro quo, and I want to  
19 know how you know that.

20           MR. PARELLA: Well, subsequent to being informed that  
21 the matter was declined and upon request of the defense, I  
22 inquired of the AUSA -- and I know that I made no deal, and we  
23 made no deal here -- and he told me they made no deal there.  
24 And that's how I know.

25           THE COURT: So the answer is you asked. That's how

1 you know. Okay.

2 All right. With respect to the motion to conform  
3 evidence, it covers a lot of territory, as it's written, and my  
4 general view is the following:

5 With respect to the previously excluded evidence  
6 concerning the defendant, it was previously excluded. I do not  
7 find persuasive the government's suggestion that it needs to  
8 use it or could use it for the nonhearsay purpose of proving  
9 materiality. I think there are logical problems with whether  
10 it would prove materiality, but in any event, there are lots of  
11 ways the government can demonstrate materiality without using  
12 these documents, so I would continue to exclude those documents  
13 from this trial.

14 There is another category of documents that is titled  
15 something like "evidence allegedly concerning the defendant  
16 that was not excluded but which should be excluded under the  
17 reasoning of the prior order". In particular, there are some  
18 documents with respect to blood test logbooks. Frankly, I'm  
19 not exactly sure what they are, and if they relate only to the  
20 defendant, then they would remain excluded. I think there are  
21 some documents that have the names of other individuals on  
22 them, and perhaps the defendant's as well. When we get to  
23 trial, if another individual is testifying and can identify  
24 those documents, then they might well be admissible, as  
25 redacted. The prior motion only dealt with it from defendant's

1 point of view and based solely on the question of admissibility  
2 absent Mr. Anderson's testimony. If we have other evidence to  
3 identify the documents and provide the reasons for  
4 admissibility related to other individuals besides the  
5 defendant, then we'll just take that as it comes.

6           The next category I have is evidence regarding the  
7 defendant and other athletes previously excluded, at least in  
8 part; test results from Quest concerning the defendant and  
9 other athletes. Again, I'm not persuaded by the materiality  
10 argument, so to the extent, the only reason these would come in  
11 would be based on the materiality argument now being asserted  
12 by the government, then they would not be admissible. If there  
13 are other ways that they could come in, if they have other  
14 people's names on them and the other people can authenticate  
15 them, it might be a different matter.

16           Previously excluded evidence allegedly regarding other  
17 athletes. Again, if the other athletes come in and can  
18 identify the documents and the information, then the documents  
19 would be evaluated in light of the authenticating testimony.  
20 And they're not excluded on account of the prior order. The  
21 prior order, the problem was there was no authenticating  
22 testimony. But until we know who testifies and what they say,  
23 I can't at this time make ruling on those documents.

24           Specific references to the contents of excluded  
25 evidence allegedly regarding the defendant. Witnesses

1 discussing what they found at Mr. Anderson's residence.  
2 Certainly some testimony about the investigation at  
3 Mr. Anderson's residence and the fact that documents were  
4 seized will be permissible. I don't think testimony concerning  
5 specific documents that have been excluded from this trial  
6 would be admissible. And so it seems to me that these  
7 witnesses could testify broadly about what they did and where  
8 they went and why they thought then Mr. Bonds might have  
9 relevant evidence to present to the grand jury, but they can't  
10 testify to the content of documents that have otherwise been  
11 excluded from this trial.

12           Mr. Valenti the prosecution has proffered in a limited  
13 way. The content of Mr. Valenti's testimony and -- as  
14 proffered, I think it would be admissible. He, according to  
15 the government's offer, he would testify generally that he knew  
16 Anderson as a person, he provided blood and urine samples for a  
17 number of athletes, and that Anderson had a close relationship  
18 with Bonds and counted Bonds as one of his clients. Those  
19 things, if he knows them as a personal matter he may testify  
20 to, but he may not testify about the specific blood tests  
21 attributed to defendant, or the excluded evidence.

22           In general, with respect to the grand jury testimony  
23 by the defendant, which is the genesis of this litigation, and  
24 with respect to the indictment itself, I do not -- I will not  
25 admit or show to this jury grand jury testimony that

1 specifically relates to excluded documents. Whether the grand  
2 jury -- whether the -- whether your jury in this trial needs to  
3 get that whole grand jury transcript I think is an open  
4 question. As we all know, it's -- how we handle that is  
5 something that's handled on a case-by-case basis. As the  
6 government points out, in some prior trials, we did give the  
7 entire grand jury transcript to the jury. In those cases, it  
8 seemed to me that was the logical way to do it. Perhaps in  
9 this case it's not. They need to know the specific questions  
10 and the specific answers, but given the limitations we have  
11 based on the evidence, it may be that the grand jury doesn't --  
12 I mean, this jury doesn't need the whole transcript. They just  
13 may need chunks of it that will lead them up to the questions  
14 and answers that are part of this case.

15 But the bottom line of all that is: I do not want  
16 this jury to be read or to hear the transcript relating to  
17 documents that have been excluded from evidence.

18 And similarly, to the extent the indictment quotes  
19 documents that have been excluded from evidence, those  
20 quotations should not be provided to the jury either. And  
21 having looked at the places in the indictment where those  
22 references are made, it would be a simple matter to delete the  
23 text of the excluded document without altering the meaning very  
24 much. So I think that's how we should handle that.

25 Photographs of the excluded documents. I'm going to

1 reserve ruling on that. I will have to look at them and see  
2 what they amount to.

3 Other athletes. I think in general, if the other  
4 athletes testify in the manner and to the effect that the  
5 government has offered they will testify, that that's  
6 admissible evidence. Whether, if we had seven of them in a  
7 row, it would be cumulative or prejudicial on that account, I  
8 would certainly consider when the time comes. But in general,  
9 I'm not going to exclude their testimony from the trial. And  
10 that is how -- to the extent documents related to other  
11 athletes are offered up, I would anticipate they would be  
12 authenticating them to be admitted. So again, I'm not going to  
13 rule today on all these various documents you've listed, but if  
14 an athlete is allowed to testify and can authenticate a  
15 document that's relevant through his testimony, why then, we'll  
16 deal with it at that point.

17 I'm going to reserve ruling on the cash in the  
18 envelope. I don't feel like I know enough about that to rule  
19 on it at this time.

20 And the brown portfolio, I have no idea at all what  
21 the brown portfolio is. So I can't rule on that now either.

22 So that's where I'm starting, but I'll be glad to hear  
23 anything anybody wants to add.

24 MR. RIORDAN: Your Honor, the only thing I'd add at  
25 this point is that when we come to the athletes, this motion

1 has generally argued about materiality and the relevance of  
2 documents, testimony, to materiality. The athletes raise a  
3 completely -- also raise a completely different and separate  
4 question, which is: Could athletes testify to set a context  
5 about why the investigation took place, or why Mr. Anderson's  
6 residence was seized, information to that effect? That's one  
7 question.

8 Another question would be: Could the government offer  
9 that evidence to permit the inference that if Mr. Anderson  
10 distributed drugs to these other people, then he logically must  
11 have distributed them to Mr. Bonds? And that, we submit, is an  
12 absolutely impermissible inference, because you get into that  
13 403 area that the Court is very familiar with. Let's say you  
14 have a defendant who has committed other offenses on other  
15 occasions. Are they sufficiently similar to add probative  
16 value to the charge that he did act "X" on this occasion? It's  
17 a completely different matter if you are arguing that other  
18 athletes did something on another occasion, therefore, that's  
19 probative of whether Mr. Bonds did it.

20 THE COURT: I'm glad you're raising it because I  
21 think -- my own assessment is, if they're offering it to show  
22 that because Mr. Anderson behaved in this way toward other  
23 athletes, gave them dates, gave them times, gave them places,  
24 gave them pieces of paper, told them what he was doing, if he  
25 did it with other -- if that's what they wind up testifying to,

1 then I think that's material to whether or not Mr. Bonds's  
2 testimony is true.

3 MR. RIORDAN: Because I think it is doctrinally  
4 separate, your Honor. I think what we'll probably do -- we  
5 really haven't breached the 403 issue and similar offenses, and  
6 just at the --

7 THE COURT: Then you should have, Mr. Riordan, because  
8 this is a pretty important motion, and we spent a lot of time  
9 trying to figure out how this trial is going to look. And if  
10 you had a doctrinal reason why none of those other folks should  
11 testify, it would be good to let me know that now.

12 MR. RIORDAN: Well, your Honor, it is addressed in the  
13 reply brief. We do refer to --

14 THE COURT: Briefly.

15 MR. RIORDAN: -- McGraff. We do refer to the notion  
16 that this is a guilt by association. If other athletes acted a  
17 particular way, then Mr. Bonds acted a particular way. And we  
18 did submit some authority on that.

19 All I'm saying, your Honor, is that I think the -- it  
20 may not have received the attention that it should have,  
21 because it is really separate from the materiality issue, your  
22 Honor, which was the chief focus of that.

23 The government is intending to put in -- it has not  
24 yet filed any motions in limine on any evidentiary questions.  
25 We've tried to advance the consideration of those. We've set

1 some up for February 11th, your Honor. And I hear the Court,  
2 but I am inclined to try and provide the Court with some --  
3 well, the Court has sort of indicated that it's going to deal  
4 with that testimony on a case-by-case basis.

5 THE COURT: Absolutely.

6 MR. RIORDAN: So I think we'll have the opportunity to  
7 perhaps to address this.

8 THE COURT: So you will. But what I want you to know  
9 today is that my current thinking is that if, all things being  
10 equal, it would be okay for them to testify.

11 MR. RIORDAN: I appreciate that, your Honor. Thank  
12 you, your Honor.

13 THE COURT: Mr. Nedrow?

14 MR. NEDROW: Thank you, your Honor. Thank you. We  
15 very much appreciate the guidance. And again, we understand  
16 and respect the Court's rulings regarding the motion to exclude  
17 documents, and we appreciate the careful consideration of our  
18 arguments.

19 On the other athletes, we appreciate the Court's  
20 thoughts on that as well. We proffered that several athletes  
21 will testify Anderson provided them detailed instructions  
22 pertinent to the steroid admission, and explained to them that  
23 these were steroids, and how they were to be used, and that  
24 they weren't detectable. We do think that's pertinent to the  
25 required element of Mr. Bonds' knowledge: His remarks were

1 false.

2 The defense reply brief, frankly, is devoted to a  
3 lengthy discussion of Rule 403 and substantial prejudice, so  
4 it's our view that the argument has been raised regarding that.  
5 Probative evidence, of course, is always prejudicial, and it  
6 may be prejudicial as to Mr. Bonds' culpability, but the  
7 question's whether it's so substantially prejudicial it  
8 outweighs the public value. And, as the Court's well aware, we  
9 think it is, and we appreciate that as well.

10 THE COURT: Well, and that -- the specific caveat I  
11 had in mind is: How many and how much of this stuff, because  
12 it could become unfairly prejudicial if there were just too  
13 much of it.

14 MR. NEDROW: We appreciate that, your Honor. And of  
15 course our witness list is inclusive. And as things develop,  
16 there may be not the need to call all of them, and we'll  
17 certainly be aware of that as well during the course of the  
18 trial.

19 If I may make a couple of quick comments and a  
20 question: Regarding the agents being able to testify, the  
21 things they've done with the search warrant, our reason behind  
22 that is not to try and backdoor the Court's ruling regarding  
23 information on the documents. We didn't anticipate having an  
24 agent come up and say, Oh, look, here's what it said on the  
25 documents, as a way to get around the hearsay ruling. The idea

1 was to have the agents explain, We found items and documents  
2 that led us to continue this investigation, and it seems  
3 pertinent to the drug trafficking allegations, and led us to  
4 believe that it was appropriate to have Mr. Bonds testify in  
5 the grand jury -- along with, of course, many other athletes --  
6 and ask him questions about these items.

7 And what -- we appreciate the Court's intended ruling,  
8 and we'll be sensitive to that. Our hope is that we would be  
9 able to have the agents logically explain that we found items  
10 in a lawfully executed search warrant that led us down this  
11 path. And -- but we're not intending to go into the substance.  
12 In a way, that's going to be inconsistent with the Court's  
13 order.

14 Regarding the grand jury transcript, if I may request  
15 this: We, of course, have taken the position that the whole  
16 transcript ought to get in. We'd like to propose at some point  
17 our own proposed redactions. We think that defense did a good  
18 job in many ways, but there are some areas we thought were a  
19 little broad in terms of the things they wanted to redact.

20 THE COURT: Sure. Go ahead.

21 MR. NEDROW: We'd ask the opportunity to do that, if  
22 that's okay with the Court.

23 And with that, we're prepared to submit it. Thank you  
24 very much.

25 THE COURT: Okay.

1 MR. RIORDAN: Thank you, your Honor.

2 THE COURT: All right. So then we come back again on  
3 the 11th?

4 MR. RIORDAN: Yes.

5 MR. NEDROW: If I may ask one other scheduling thing  
6 regarding motions in limine. The Court's pretrial order, I  
7 think this is the standard language, does provide that we can  
8 provide motions in limine -- frankly, five days before the  
9 pretrial conference, under the Court's pretrial order. And I  
10 just wanted to clarify that with the Court. We're not going to  
11 have, you know, 50 or 70 or 80 pages of motions in limine, but  
12 it's possible as these things develop matters will come up.

13 THE COURT: Shall we set a better schedule?

14 MR. NEDROW: That's what I was going to ask. We'll go  
15 either way. I wanted to make sure there's no misunderstanding.  
16 The government has some motions in limine.

17 MR. RUBY: I didn't hear what your Honor said. I'm  
18 sorry.

19 THE COURT: I said should we set a better schedule,  
20 because the -- what's normally contemplated in criminal  
21 matters, that there are reasonably few and reasonably simple  
22 ones, and this may well be the exception to the rule, I don't  
23 know.

24 Do you want to say if you're going to file a motion in  
25 lim, filed by the 13th of February; any opposition filed by the

1 22nd of February; any reply be filed by the 24th of February;  
2 and hearing's March 1st? Will that work?

3 MR. NEDROW: That will be fine.

4 MR. RUBY: Yes.

5 MR. RIORDAN: Thank you, your Honor.

6 MS. ARGUEDAS: Your Honor, can we get an order from  
7 the Court that they'll file their proposed redactions by  
8 February 11, say?

9 MR. NEDROW: Sure, that would be fine. For the grand  
10 jury transcript?

11 MS. ARGUEDAS: Right.

12 THE COURT: Okay, sure.

13 DEPUTY CLERK: Did we ever get a trial estimate, a  
14 length?

15 MR. NEDROW: Your Honor, the question is: The  
16 estimated length of the trial.

17 THE COURT: Oh, yes.

18 MR. NEDROW: The government's estimate for its case in  
19 chief is no more than two weeks.

20 THE COURT: Do you have any idea of how long you might  
21 be?

22 MR. RUBY: Your Honor, I don't know what kind of trial  
23 they are planning for. Their estimate of two weeks -- which I  
24 believe your Honor's in session Monday through Thursday?

25 THE COURT: Right.

1 MR. RUBY: Eight days for this seems very fast. And I  
2 don't know how many questions they're going to ask. I think it  
3 will take longer because we may cross-examine some of their  
4 witnesses, and so it could take awhile.

5 THE COURT: Okay. And I would just like to mention to  
6 you, since you're all here, I have -- effectively, we have a  
7 month to do it. So there's plenty of time to try the case.  
8 However, I will be out of town during portions of that time.  
9 So I'm just mentioning that now so it won't come as an  
10 unpleasant surprise then.

11 MR. RUBY: Thank you, your Honor.

12 MR. NEDROW: Thank you, your Honor.

13 (Adjourned)

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18 CERTIFICATE OF REPORTER

19 I, Connie Kuhl, Official Reporter for the United  
20 States Court, Northern District of California, hereby certify  
21 that the foregoing proceedings were reported by me, a certified  
22 shorthand reporter, and were thereafter transcribed under my  
23 direction into written form.

24 

25 \_\_\_\_\_  
Connie Kuhl, RMR, CRR  
Monday, January 24, 2011