

1 MELINDA HAAG (CASBN 132612)
United States Attorney

2 BRIAN J. STRETCH (CASBN 163973)
3 Chief, Criminal Division

4 MATTHEW A. PARRELLA (NYSBN 2040855)
JEFFREY D. NEDROW (CASBN 161299)
5 JEFFREY R. FINIGAN (CASBN 168285)
Assistant United States Attorneys
6

7 450 Golden Gate Avenue
San Francisco, California 94102
8 Telephone: (415) 436-7232
Facsimile: (415) 436-7234
9 Email: jeffrey.finigan@usdoj.gov

10 Attorneys for Plaintiff

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.)
20)
21)

No. CR 07-0732 SI

PROPOSED JURY INSTRUCTIONS

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

22 The government respectfully requests that the Court charge the jury with the following
23 jury instructions referenced and attached hereto in addition to those already identified in the
24 Court's Order for Pretrial Preparation.

25 Depending on the evidence adduced at trial, some of the instructions included herein may
26 not be appropriate, and some additional instructions may be required. Leave is respectfully
27 requested to include such other additional instructions, or modifications of the attached
28 instructions, as may become appropriate during the course of the trial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: October 15, 2010

Respectfully submitted,

MELINDA HAAG
United States Attorney

/s/

MATTHEW A. PARRELLA
JEFFREY D. NEDROW
JEFFREY R. FINIGAN
Assistant United States Attorneys

TABLE OF JURY INSTRUCTIONS

**NINTH CIRCUIT
MODEL JURY**

<u>NO.</u>	<u>INSTRUCTIONS</u>	<u>DESCRIPTION</u>	
1	1	1.12	OUTLINE OF TRIAL
2	2	2.2	BENCH CONFERENCES AND RECESSES
3	3	2.3	STIPULATED TESTIMONY
4	4	2.4	STIPULATIONS OF FACT
5	5	2.5	JUDICIAL NOTICE
6	6	2.7	TRANSCRIPT OF RECORDING IN ENGLISH
7	7	3.12	SEPARATE CONSIDERATION OF MULTIPLE COUNTS
8	8	3.16	CORRUPTLY (18 USC § 1503)
9	9	4.1	STATEMENTS BY DEFENDANT
10	10	4.3	OTHER CRIMES, WRONGS OR ACTS OF DEFENDANT
11	11	4.9	TESTIMONY OF WITNESSES INVOLVING SPECIAL CIRCUMSTANCES – IMMUNITY, BENEFITS, ACCOMPLICE, PLEA
12	12	4.17	OPINION EVIDENCE, EXPERT WITNESS
13	13	5.6	KNOWINGLY
14	14	7.6	COMMUNICATION WITH COURT
15	15	8.112	FALSE DECLARATION BEFORE GRAND JURY
16	16	Special #1	OBSTRUCTION OF JUSTICE
17	17	Special #2	ACTIVITIES NOT CHARGED
18	18	Special #3	EVIDENCE OF OTHER ACTS OF DEFENDANT OR OTHER ACTS OR STATEMENTS OF OTHERS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8.112 FALSE DECLARATION BEFORE GRAND JURY OR COURT

(18 U.S.C. § 1623)

The defendant is charged in Counts 1 through 10 of the indictment with having made a false declaration in violation of Section 1623 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant testified under oath before a grand jury;

Second, the testimony was false;

Third, the testimony was material to the grand jury before which he testified; and

Fourth, the defendant knew that the testimony was false and material to the matters before the grand jury.

A statement was material if it had a natural tendency to influence, or was capable of influencing, the decision of the decision-making body to which it is addressed.

1 **SPECIAL INSTRUCTION #1**

2 **COUNT 11—OBSTRUCTION OF JUSTICE**

3 (18 U.S.C. § 1503)

4 The defendant is charged in Count 11 with obstruction of justice in violation of 18 U.S.C.
5 § 1503. In order for the defendant to be found guilty of Count 11, the government must prove
6 each of the following elements beyond a reasonable doubt:

- 7 1. The defendant corruptly, that is, for the purpose of obstructing justice,
8 2. Obstructed, influenced, or impeded, or endeavored to influence, obstruct,
9 or impede, through one of the below-listed statements;
10 3. The grand jury proceeding in which defendant testified;
11 4. The statement was material to the grand jury before which defendant
12 testified; and
13 5. The defendant knew that the statement was material to the grand jury
14 before which defendant testified.

15 A statement was material if it had a natural tendency to influence, or was capable of
16 influencing, the decision of the decision-making body to which it is addressed.

17 You must agree upon at least one of the following statements to have obstructed,
18 influenced, or impeded the grand jury, or to have been made for the purpose of obstructing,
19 influencing, or impeding the grand jury.

- 20 1. The Statement Contained in Count One
21 2. The Statement Contained in Count Two
22 3. The Statement Contained in Count Three
23 4. The Statement Contained in Count Four
24 5. The Statement Contained in Count Five
25 6. The Statement Contained in Count Six
26 7. The Statement Contained in Count Seven
27 8. The Statement Contained in Count Eight
28 9. The Statement Contained in Count Nine

1 10. The Statement Contained in Count Ten

2 11. Statement A

3 Q: Now, had you said during that conversation that you - - or had you denied
4 ever taking steroids, now, with what you've seen today, do you feel comfortable as you sit here
5 today saying that you have never taken steroids?

6 A: I feel very comfortable, very comfortable.

7 12. Statement B

8 Q: But is it your testimony that the "G" and the "test" don't reference anything
9 that you were taking from Mr. Anderson?

10 A: This just doesn't seem right. I don't know what this is. I've never seen this, and
11 it's just odd. There's - I mean, for anybody who's here that has some kind of recollection of
12 steroids, I mean, this would be an odd way of doing things, I would believe.

13 Q: Why?

14 A: Just from my own thinking, you know, they go in cycles, don't they? And
15 everyone stays on a normal - this doesn't seem - this seems really odd and irregular to me.

16 Q: Okay. Well, there are, of course, days where it's indicated that one is to be
17 taking it and then days with Xs through them which are presumably off days; right?

18 A: Yeah, I mean, I'm not overly naïve, but I don't think you would do something
19 and then - I mean, aren't you supposed to do this every day or every other day and every once a
20 week or something like this? And you go through a cycle thing? This is too irregular. It just
21 seems odd to me. That's all I'm saying, it just seems real odd.

22 Q: Can you tell of any reason why Greg would have written "G" or "test" and
23 things like that on a calendar with you initials on it if he wasn't giving you growth hormone and
24 testosterone?

25 A: I can't answer that. Maybe he ran out of paper. I don't know.

26 Q: I'm sorry. I didn't - - I'm not sure I understood your answer.

27 A: I said I don't know why. I don't know why.

28 13. Statement C

1 Q: Let me move on to a different topic. And I think you've testified to this. But
2 I want to make sure it's crystal clear. Every time you got the flax seed oil and the cream, did you
3 get it in person from Greg?

4 A: Yes.

5 Q: Is that fair?

6 A: Yes.

7 Q: And where would you typically get it? Where would you guys be when
8 he would hand it to you generally?

9 A: In front of my locker, sitting in my chair.

10 Q: Did he ever come to your home and give it to you?

11 A: Oh, no, no, no. It was always at the ballpark.

12 14. Statement D

13 Q: Did he tell you what he was going to test them for?

14 A: I believe it was the same thing for the blood, the blood and the thing are the
15 exact same thing. So, I didn't ask him.

16 Q: I'm not asking what you believed or what you asked him. I'm asking what he
17 told you. Did he tell you –

18 A: I can't recall, I cannot recall.

19 Q: So you don't know whether or not he mentioned what –

20 A: I cannot recall specifics, no, not at all.

21 15. Statement E

22 Q: ...Do you remember how often he recommended to you about, approximately,
23 that you take this cream, this lotion?

24 A: I can't recall. I don't – I wish I could. I just can't . . . I just know it wasn't
25 often. I just think it was more when I was exhausted or tired than like a regular regimen. You
26 know, it was like if I was really sore or something, really tired...that's – that's --- that's all I can
27 remember about that.

28 Q: ... would you say it was more or less often or about the same as the amount of

1 times you took the liquid, the flax seed oil, the thing you understood to be flax seed oil?

2 A: I don't know. I never kept track of that stuff. I'm sorry. I didn't sit there and
3 monitor that stuff.

4 16. Statement F

5 Q: Did Greg ever give you anything that required a syringe to inject yourself
6 with?

7 A: I've only had one doctor touch me. And that's my only personal doctor.
8 Greg, like I said, we don't get into each others' personal lives. We're friends, but I don't – we
9 don't sit around and talk baseball, because he knows I don't want – don't come to my house
10 talking baseball. If you want to come to my house and talk about fishing, some other stuff, we'll
11 be good friends, you come around talking about baseball, you go on. I don't talk about his
12 business. You know what I mean? ...

13 Q: Right.

14 A: That's what keeps our friendship. You know, I am sorry, but that – you know,
15 that – I was a celebrity child, not just in baseball by my own instincts. I became a celebrity child
16 with a famous father. I just don't get into other people's business because of my father's
17 situation, you see...

18 17. Statement G

19 Q: Did Greg ever give you testosterone in injectable form for you to take?

20 A: No.

21 Q: Would you have taken it if he gave it to you?

22 A: He wouldn't jeopardize our friendship that way.

23 Q: And why would that – you're very clear that that would jeopardize your
24 friendship. Why would that jeopardize your friendship?

25 A: Greg is a good guy. You know, this kid is a great kid. He has a child.

26 Q: Mm-hmm.

27 A: Greg is – Greg has nothing, man. You know what I mean? Guy lives in his car
28 half the time, he lives with his girlfriend, rents a room so he can be with his kid, you know? His

1 ex takes his kid away from him every single five minutes. He's not that type of person. This is
2 the same guy that goes over to our friend's mom's house and massages her leg because she has
3 cancer and she swells up every night for months. Spends time next to my dad rubbing his feet
4 every night. Our friendship is a little bit different.

5 18. Statement H

6 Q: Now, earlier this year, February of this year, do you recall – were you giving
7 him blood samples at that time, say, in February of this year? Do you remember giving him blood
8 samples or urine samples?

9 A: February back – I can't recall. I don't know.

10 Q: Okay.

11 A: I don't know. That's too far back for me to know.

12 Q: I'm talking about this year.

13 A: Talking February.

14 Q: February of this year.

15 A: It's December.

16 Q: Right. I understand.

17 A: I don't recall February – if I gave him blood in February.

18 19. Statement I

19 Q: Can you think of any reason why Victor Conte would be referring your urine
20 sample to go out and get tested for steroids?

21 A: This doesn't have Barry Bonds's name on it. So, I'm not assuming that this is
22 mine. That's what you just stated.

23 Q: Right.

24 A: Okay.

25 Q: Right.

26 A: This could be anybody's. Okay? So, that's not fair.

27 Q: Well, we've discussed already, but let me re-clarify why I'm asking you that,
28 because we do have this other document with –

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A: I see –

Q: You understand... Can you think of any reason why Victor Conte would refer your urine to get tested for steroids?

A: I have no idea.

Q: Have you heard, before today, anyone suggest that your urine or blood samples were submitted or tested by BALCO Laboratories, Victor Conte, etc., for steroids?

A: Was – was my urine test for – no.

Q: This is the first you've heard of this suggestion?

A: No. This is the first I've ever heard of this (indicating). I know that they sent samples out for people in the gym and things like that for testing of steroids and stuff like that. You know, and hospital tests. I mean, I know that.

Q: Let me rephrase my question. My question is, have you ever heard about BALCO or Victor Conte submitting your urine or blood samples to test for steroids? Have you ever heard about that before?

A: No, I – no, no, no.

Q: From anyone?

A: We had a test just this year for baseball, which everyone knows. It's a program. Supposed to be all anonymous.

Q: Excuse me for interrupting Mr. Bonds.

A: I'm just telling you.

Q: My question is not about baseball. My question is about BALCO and Victor Conte.

A: I don't talk to Victor Conte.

Q: So, the answer is –

A: No.

Q: – this is the first you've ever heard of that suggestion?

A: Of me, yes.

20. Statement J

1 Q: And you wouldn't talk about issues relating to steroids with him, would you?

2 A: Like I said, I mean, if you want to talk about me, the players probably talk
3 about it more than anybody. You know, your normal friends, everyday people, I mean, you bring
4 it up in conversation. If you're talking about pushed on me or saying "you should," no.

5 Q: My question goes back –

6 A: Conversations, possibly, yes.

7 Q: My question goes back to you and Mr. Anderson, not other players, not other
8 people. Just conversations and contacts between yourself and Mr. Anderson. When [the
9 prosecutor] asked you a while ago about that subject matter in relation to this investigation, you
10 said" "We didn't talk about any of that stuff," basically, relating to this investigation, steroids, or
11 whatever?

12 A: Right.

13 Q: Mr. Anderson and you would not talk about that. You didn't want to talk
14 about that. Is that right?

15 A: I don't want to know anything. That's exactly right.

16 21. Statement K

17 Q: Okay. Had you ever taken flaxseed oil, by the way, before:

18 A: I never asked Greg. When he said flaxseed oil, I just said "Whatever." It was
19 in the ballpark.

20

21 Q: Right

22 A: You know, in front of everybody. I mean, all the reporters, my teammates. I
23 mean, they all saw it. I didn't hide it. I didn't hide, I didn't hide anything. I mean, I didn't
24 question anything when he—you know, if I'm at the ballpark or something—you know, trainers
25 come up and say: "Hey Barry, try this." I don't really question it, move on. You know?

26 22. Statement L

27 Q: And during the course of that conversation or interview, did the subject matter
28 come up about what Mr. Hoskins, the individual that you mentioned, what he might say about

1 you?

2 A: No, I don't recall any of that.

3 Q: Did - - were you asked during that interview, do you recall having been asked,
4 whether you had ever taken steroids?

5 A: I don't recall that conversation coming up.

6 Q: Okay. In fact, you said you had never ever taken steroids; is that right?

7 A: I - - I - I - I don't know what I talked to them about. But I don't believe that
8 was any of the conversation.

9 Q: To your knowledge, that was never mentioned in the conversation at all?

10 A: Not that I know of.

11

12

13

14

15 U.S. v. Thomas, 612 F.3d 1107, 1128-1131 (9th Cir. 2010).

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SPECIAL INSTRUCTION #2
ACTIVITIES NOT CHARGED

The defendant is on trial only for the crimes charged in the second superseding indictment, not for any other activities.

SPECIAL INSTRUCTION #3

**EVIDENCE OF OTHER ACTS OF DEFENDANT OR ACTS AND STATEMENTS
OF OTHERS**

You are here only to determine whether the defendant is guilty of the charges in the second superseding indictment. Your determination must be made only from the evidence in the case. The defendant is not on trial for any conduct or offense not charged in the second superseding indictment. You should consider evidence about the acts, statements, and intentions of others, or evidence about other acts of the defendant, only as they relate to this charge against this defendant.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28