Barry Bonds Acquitted By Federal Appeals Court After 12 Year Legal Ordeal

Barry Lamar Bonds **was acquitted** of his 2011 obstruction of justice conviction by the U.S. Ninth Circuit Court of Appeals on April 22, 2015. The appeals court ruled the prosecution introduced insufficient evidence during Bonds' 2011 trial that he obstructed justice by his testimony to a federal grand jury in 2003.

During his twelve year legal ordeal that began in 2003, Bonds, a former major league baseball player, spent many millions of dollars defending himself. It is estimated the government spent over $5 million prosecuting him.

Bonds said in a statement after his acquittal: "Today's news is something that I have long hoped for. I am humbled and truly thankful for the outcome as well as the opportunity our judicial system affords to all individuals to seek justice. ... I am excited about what the future holds for me as I embark on the next chapter."

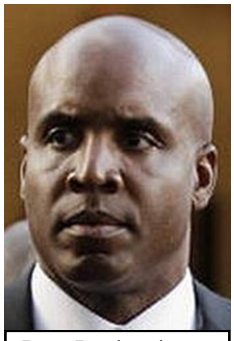
The opinions of the judges concurring with Bonds' acquittal echoed *Justice Denied's* assessment of his case in **its March 2011 article**, "The Persecution of Barry Bonds."

The federal government's targeting of Bonds began in 2003 when a federal grand jury was convened in San Francisco to investigate the sale of performance enhancing drugs ("PEDs") to athletes in order to determine whether the proceeds of the sales were being laundered to avoid the payment of federal taxes. The U.S. Attorney's Office believed that one of the athletes involved was Bonds.

Bonds was 39 when he was subpoenaed to testify before the grand jury, which he did on December 4, 2003. Bonds was granted immunity from prosecution for his testimony that was truthful. Bonds testified he didn't knowingly receive or use any substance containing human growth hormone, steroids, or any substance that required injection.

Four years later, in November 2007, a federal grand jury indicted Bonds on four counts of making false statements and one count of obstructing justice related to his grand jury testimony in 2003.

The 2007 baseball season was Bonds' last, because he did not play again after his indictment. He is Major League Baseball's single season and career leader in home runs.



Barry Bonds arrives at the federal courthouse in San Francisco on first day of his trial, March 21, 2011 (Sanchez,AP)

After more than three years of legal maneuvering, Bonds' trial began on March 21, 2011 in U.S. District Court in San Francisco.

The prosecution contended that Bonds trial wasn't about whether he possibly possessed or used steroids — but about whether he testified truthfully to the grand jury and obstructed justice.

The circumstantial case against Bonds for the four perjury charges was based on the allegation by the prosecution he wasn't truthful in testifying he didn't use PEDs, and that his former personal trainer Greg Anderson didn't provide him with PEDs. The government asserted that Anderson provided a number of athletes, including Bonds, with PEDs.

The alleged obstruction of justice violation, under Title 18 U.S.C. § 1503(a), was based on a rambling answer Bonds gave to a question by the U.S. Attorney, although he gave a definite denial immediately afterwards when he was specifically asked if he had used PEDs. Bonds' rambling answer was identified as "Statement C."

Anderson had been jailed on three occasions for a total of more than a year after being found in contempt for refusing to testify about Bonds during grand jury proceedings. When Anderson was called as a prosecution witness on the first day of trial testimony he refused to testify about Bonds. The judge found Anderson in contempt and ordered him jailed for the duration of Bonds' trial.

With Anderson jailed for contempt, and no government witness testifying from their personal knowledge that Anderson provided PEDs to Bonds, the prosecutions' circumstantial case was largely based on testimony a person's body gets bigger when they use PEDs and that Bonds got bigger as he neared the end of his career, "bad character" testimony that his behavior changed after he allegedly began using PEDs, and that his former personal trainer Greg Anderson provided PEDs to other people.

A star prosecution witness was Bonds' former girlfriend Kimberly Bell. Bell had an axe to grind because after their acrimonious breakup in 2003 she claimed that he reneged on his promise to buy her a house. The judge allowed Bell **to provide salacious** testimony about Bonds "bad" conduct during their relationship that included he was mean to her at times while they were together from 1994 to 2003, and that "his testicles were smaller and an unusual, different shape" before 2000. However, during her cross-examination she admitted there was no reduction in Bonds' sexual prowess. Bonds was known throughout his career that began in 1986 as one of the surliest players in baseball, so he was "mean" to people many years before his his alleged PEDs use.

The prosecution also introduced testimony by a San Francisco Giants equipment manager that in 2002 Bonds started wearing a hat that was size 7-3/8 to replace his previous size 7-1/4. The meaning of that is suspect because Bonds set the major league record for home runs in 2001 and he won his first of seven National League Most Valuable Player awards twelve years earlier in 1990.

The prosecutions' strategy was successful of presenting a case based on suspicion, innuendo, suspect witness testimony, and salacious "bad character" testimony as a substitute for actual evidence of criminal wrongdoing. On April 13, 2011 the jury convicted Bonds of obstruction of justice for his Statement C, but not of any of the false statement charges. One false statement count was dismissed at the governments request at the close of evidence and the jury deadlocked on the remaining three counts. The government declined to retry Bonds and those three counts were dismissed in August 2011.

The trial judge denied Bonds' post-verdict motion for acquittal on the obstruction count.

Bonds was sentenced to 30 days home confinement, two years supervised release, 250 hours of community service, and payment of a $4,000 fine. He completed his sentence.

One of Bonds' arguments in his appeal was the prosecution introduced insufficient evidence to prove his rambling Statement C constitutes obstruction of justice. In 2013 the majority of a three-judge panel in the U.S. Ninth Circuit Court of Appeals **affirmed his conviction** in *USA v. Bonds*, 730 F. 3d 890 (9th Cir. 2013).

The Ninth Circuit granted Bonds' petition for an *en banc* rehearing of the panel's ruling. On April 22, 2015, by a majority 10 to 1 vote, Bonds' conviction was reversed on the basis the prosecution introduced insuffi-

Bonds cont. on p. 14

Bonds cont. from p. 13

cient evidence that Statement C was material. The two paragraph unsigned *per curiam* (unsigned) ruling in *USA v. Barry Bonds*, No. 11-10669 (9th cir, 4-22-2015) **states:**

> During a grand jury proceeding, defendant gave a rambling, non-responsive answer to a simple question. Because there is insufficient evidence that Statement C was material, defendant's conviction for obstruction of justice in violation of 18 U.S.C. § 1503 is not supported by the record. Whatever section 1503's scope may be in other circumstances, defendant's conviction here must be reversed.
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> A reversal for insufficient evidence implicates defendant's right under the Double Jeopardy Clause. ... His conviction and sentence must therefore be vacated, and he may not be tried again on that count.

There were four concurring opinions filed. The primary opinion written by Circuit Judge Alex Kozinski **states in part**:

> The jury, however, found only one statement obstructive [in response to the question].
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> Q: Did Greg[, your trainer,] ever give you anything that required a syringe to inject yourself with?
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> ...
>
> A: That's what keeps our friendship. You know, I am sorry, but that—you know, that—I was a celebrity child, not just in baseball by my own instincts. I became a celebrity child with a famous father. I just don't get into other people's business because of my father's situation, you see.
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> ...
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> ... section 1503's coverage is vast. By its literal terms, it applies to all stages of the criminal and civil justice process, not just to conduct in the courtroom but also to trial preparation, discovery and pretrial motions.
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> ...
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> B. Because the statute sweeps so broadly, due process calls for prudential limitations on the government's power to prosecute under it. Such a limitation already exists in our case law interpreting section 1503: the requirement of materiality. ... the government must prove beyond a reasonable doubt that the charged conduct was capable of influencing a decision making person or entity—for example, by causing it to cease its investigation, pursue different avenues of inquiry or reach a different outcome.
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> ...
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> We start with the self-evident proposition that [Bond's] Statement C, standing alone, did not have the capacity to divert the government from its investigation or influence the grand jury's decision whether to indict anyone.
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> ...
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> The statement says absolutely nothing pertinent to the subject of the grand jury's investigation.
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> ...
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> Statement C communicates nothing of value or detriment to the investigation.
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> ...
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> On careful review of the record, we find insufficient evidence to render Statement C material.

Greg Anderson (Barry Bonds former personal trainer) (Bates for News)

Circuit Judge William Fletcher's concurring opinion agreed with reversing Bond's conviction, but on the radical basis that he was erroneously prosecuted for obstruction. Judge Fletcher wrote at length that the legislative history of the federal obstruction of justice statute establishes it was intended to only apply to obstruction by bribery or attempted bribery — which wasn't even alleged in Bonds' case. Judge Fletcher **is deeply concerned** about the breadth of activities criminalized by the government's view of the obstruction statute:

> In the government's view, any truthful answer given in the course of civil or criminal litigation, if intended to influence, obstruct, or impede the administration of justice, violates the omnibus clause. At oral argument, the government made terrifyingly clear the result of its reading of the statute. The government contended that the obstruction statute criminalizes a truthful but intentionally evasive or misleading answer to an interrogatory in civil litigation. *The government also contended that the statute criminalizes a truthful but intentionally evasive or misleading answer during appellate oral argument*:
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> ...
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> When asked how many San Francisco lawyers it planned to throw in jail, the government declined to specify.
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> ...
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> An appellate attorney who answers during oral argument, "I was not the trial attorney," sometimes knows what happened at trial but gives that answer in the hope that the judge will not pursue the matter. This attorney, too, may be a criminal.

Circuit Judge Stephen Reinhardt's concurring opinion agreed with reversing Bond's conviction, and asserted that the legislative history of the federal obstruction of justice statute supports that it only applies to out of court conduct, with perjury and contempt of court adequately covering in court conduct. **Judge Reinhardt wrote**:

> The problems created by the misuse of § 1503 by overeager prosecutors to punish witnesses for what they say in court are all too evident from the facts of this case. It is time for them to cease using that section as a substitute for vigorous cross-examination or for the criminal statutes that properly apply to in-court testimony.
>
> In short, *this case involves nothing more than an irrelevant, rambling statement made by a witness during the course of a grand jury investigation*. Statement C was not material and could not possibly have interfered with the due administration of justice. ... Bonds's conviction for obstruction of justice cannot stand and he may not be retried on the same charge.

The lone dissenter, Circuit Judge Johnnie Rawlinson primarily, **argued that** since the jury was correctly instructed about the elements of what constitutes obstruction of justice, and they found Bonds guilty, then the appellate court should defer to their judgment. He asserted that overturning the jury's verdict was impermissibly second-guessing of the jury and was contrary to the precedents in the 9th circuit and other federal circuits that establish Bonds' rambling Statement C constitutes obstruction of justice.

The government's last hopes are to request reconsideration of the ruling by all 29 Ninth Circuit judges, which has never been granted, or to seek U.S. Supreme Court review of the Ninth Circuit's reversal of Bonds' conviction. That could backfire because the Supreme Court could decide to use Bonds' case to clarify the reach of the obstruction of justice statute. That could include excluding its application to a situation where a witness gives a vague rambling answer to a question that is later clarified with a direct answer -- which is what Bonds did. That is an important issue to resolve because when interviewed after his acquittal, one of **Bonds' jurors said** there was confusion during their deliberation about whether he could be convicted for obstruction because

Bonds cont. on p. 15

Charles Placa Spends $10k To Be Exonerated For Getting Beach Access Key For His Disabled Daughter

Charles Placa has **been acquitted** after appealing his conviction of disorderly conduct while obtaining a key to unlock the handicap gate for access to the beach in Bradley Beach, New Jersey.

Placa is a consulting engineer who lives in Milford, Ohio with his wife Connie and daughter Laureen, who has cerebral palsy and uses a wheelchair. In July 2013 the Placa family traveled to Bradley Beach for a vacation, as they had every other year for about twenty years. Bradley Beach is on the Atlantic Ocean, about 70 driving miles south of New York City.

On July 29 Placa found the gate to the handicapped ramp to the beach locked. Placa talked to a beach-badge checker who pointed to the beach hut where the key was located. Placa went to the hut and opened the door that was marked "Employees Only." Inside the 72 year-old cashier was startled and told him he needed to go to the window. He did and she gave him the handicap gate key. After he left the cashier called the Bradley Beach Police Department and reported the hut had been broken into. When the police arrived she told them she thought Placa was going to rob her and that he cursed at her when he came into the hut.

Charles Placa after his acquittal (Andrew Ford, Asbury Park Press)

The boardwalk in Bradley Beach, New Jersey

The police arrested and handcuffed the 58-year-old Placa on the beach in front of his wife and daughter. His daughter became so hysterical that she fell out of her wheelchair, and had to be helped back in it by a lifeguard. Placa was charged with criminal mischief, disorderly conduct and defiant trespass.

Placa's case garnered publicity because it highlighted problems with handicap beach access, and Hamilton, New Jersey attorney Kelly Anderson Smith agreed to handle his case *pro bono*.

Even though Placa lived in Ohio and a trial would require him to travel the 630 miles to Bradley Beach, he refused to plea bargain, insisting he did nothing wrong.

Placa's bench trial was held on April 24, 2014. The prosecution's case was based on the cashier's testimony she was frightened when Placa came into the hut unexpectedly. **She testified**, "I was petrified. I had money in there. I thought he was coming in to rob me. … He said to me, 'Where is the (expletive) key for the ramp?'" On cross-examination she acknowledged Placa did not ask for any of the money that was kept in the hut.

Placa testified he entered the hut after a beach-badge checker pointed to it as where he could get the handicap gate key, but that he did not curse at the woman inside. **He stated**, "The only thing I told Vivian was I was disappointed what a parent has to go through to get his daughter on the beach." He also said she yelled at him to get out and go to the window, which he did, and he obtained the key. He said his daughter was very upset seeing him arrested and handcuffed by a police officer.

At the conclusion of the trial Judge Richard Thompson gave the attorneys three weeks to submit written summations and that he would then reach a verdict.

Four months later, on August 20, 2014, Judge Thompson acquitted Placa of criminal mischief and defiant trespass, but found him guilty of disorderly conduct. He fined Placa $106.

After his conviction Placa **told a reporter**, "I guess it was expected, based on the arrogance at the beach when they arrested me and the attitude of the beach staff in not wanting me to get on the beach. I guess you could have scripted this."

Placa appealed. Since he was tried in Municipal Court his appeal was heard in the Monmouth County Superior Court.

On December 12, 2014 Judge Francis Vernoia rejected the prosecution's argument Placa entered the beach hut in a hostile way, and acquitted him **in ruling**, "The court finds that when Mr. Placa entered the booth, he did nothing more than ask for the key to the access ramp."

After his acquittal Placa **told reporters**, "It's not about the money, It's about satisfaction. My daughter definitely didn't do anything wrong, and I know I didn't."

Laureen Placa **said of the incident**, "I was terrified. I didn't know what happened to my dad. This was the first time I ever saw my dad get arrested. I was in panic. I fell out of the beach chair. It was nuts."
Although Smith handled his case *pro bono*, Placa estimated he spent about $10,000 traveling four times from Ohio to New Jersey for court appearances, and his appeal.

Source:
Overturned conviction for man who wanted beach access, *Asbury Park Press*, December 14, 2014

Man who wanted beach access for disabled daughter found guilty, *Asbury Park Press*, August 20, 2014

A troubled day at the beach for family, *Asbury Park Press*, April 25, 2014

Bonds cont. from p. 14

he directly answered the question later in his testimony.

Prosecutions based on guilt by association and the type of shaky "evidence" that resulted in Bonds' conviction occur with variations every day all across the United States. It is not known why the U.S. Attorney's Office went after Bonds with such a vengeance, but he is just one of the innumerable innocent people victimized by what is more properly described as a persecution than a legitimate prosecution.

Click here to read the complete ruling in *USA v. Barry Bonds*, No. 11-10669 (9th cir, 4-22-2015) (The *per curiam* decision, the four concurring opinions,and the dissenting opinion.)

Sources:
USA v. Barry Bonds, No. 11-10669 (9th cir, 4-22-2015) (vacating conviction based on insufficient evidence)

USA v. Bonds, 730 F. 3d 890 (9th Circuit 2013) (Affirming conviction)

The Persecution of Barry Bonds, By Hans Sherrer, *Justice Denied*, March 28, 2011

Barry Bonds' obstruction conviction thrown out by appeals court, AP story, *USA Today*, April 22, 2015