

## Selecting Jury for Bonds Is Hard in Giants Country

By Juliet Macur

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When Barry Bonds broke Hank Aaron's career home run record in August 2007, he was cheered in San Francisco despite the suspicion of steroid use that clouded his achievement.

He played his final game for the Giants that September and was indicted two months later on charges that he knowingly lied in 2003 to a federal grand jury investigating the Bay Area Laboratory Co-operative steroids case.

Now Bonds is finally going to have his day in court. And fans who once cheered him may be among the 100 potential jurors for his perjury trial, which — after two years of delays — is set to begin next week in United States District Court in San Francisco. As lawyers on both sides winnow the pool to 12 jurors and 4 alternates, they will no doubt be wondering how many still hold Bonds dear.

"I don't think you'll see a lot of prospective jurors calling him a hero because all the publicity about Bonds since his retirement has been negative," said Howard Varinsky, a jury consultant based in the Bay Area who worked on the trials of Martha Stewart and Michael Jackson. "I'm sure he still has fans, but a lot of people have grown very ambivalent. So things have changed. He's disappointed a lot of people."

As Bonds kept a low profile on his lawyers' advice, the Giants, with a new crop of stars, won the World Series in 2010 for the first time in 56 years. Bonds made a rare appearance at AT&T Park to throw out a ceremonial first pitch during the playoffs, but he was not invited to the victory parade.

His current situation was unthinkable when he was regularly splashing home runs into McCovey Cove.

"It was a white-hot argument back then because people thought the government was going after our guy, our left fielder," Ray Ratto, a Bay Area sports columnist for the better part of 30 years, said. "But our lives have moved on since then. Right now, finding an impartial jury is not the impossibility it would have been had the trial been a few years ago."

On Thursday, the potential jurors for the Bonds trial — drawn from San Francisco and 14 other counties — will be asked to complete a 19-page questionnaire. During Monday's voir dire, the judge and the lawyers will initially question 50 of them in court. The potential jurors will remain anonymous until they are dismissed, the judge ruled Monday, to shield them from being contacted and possibly tainting the trial.

A recent draft of the questionnaire touches upon a range of subjects: lawyers in the case want to know the number of Giants games those people attended in the past five years and whether they or immediate family members ever participated in or coached an organized sport.

Have the prospective jurors ever had a problem with substance abuse or had any familiarity with Balco? Do they know about other cases of steroid use among athletes or the Mitchell report, the independent investigation into doping in baseball? A jury candidate's stance on government regulation of steroids use in professional sports could also be germane to the Bonds case.

Chris St. Hilaire, president of Jury Impact, a jury consulting company based in Costa Mesa, Calif., said that finding a juror without a predisposition toward Bonds would be a challenge.

"Finding someone who doesn't have an opinion about Barry Bonds is like finding a cowboy who doesn't have an opinion about a horse," he said, adding that the ideal juror is likely to be a casual fan who has heard of Bonds, but does not know much about him or the charges against him.

“You’d think that the perfect juror would be someone who loves baseball, but I think the worst juror for them would be a hard-core fan,” he said of what the defense might be looking for. “You want someone who can be swayed by the evidence, not by their agenda.”

St. Hilaire estimated that 85 percent of the jurors chosen would have opinions about Bonds going in and would not change their minds. The lawyers will be vying for the two or three jurors who will swing the vote, he said, and the process of choosing the panel is more complicated than one might think.

He said that the jury would be selected not by demographics but by psychographics — meaning the jurors’ personalities, values and interests — and that the information gathered by the questionnaires would be weighed as a whole.

From the prosecution’s point of view, being a Giants fan might not be enough reason to strike a person from the jury, St. Hilaire said. Perhaps that person did not like the negative publicity Bonds brought to the team. Or maybe he or she is a recovering substance abuser who tends to be less forgiving of drug users. Or maybe that potential juror has a child who looked up to Bonds as a role model.

“You want to know how they will apply their own personal experiences,” St. Hilaire said. “It’s more like a chess match than a checker game because you develop an opinion based on the totality of their answers.”

Bonds’s defense team and the prosecutors will have three days to pore over the questionnaires before the jury is selected Monday; the trial is expected to last more than two weeks. Varinsky, who said he knows the lawyers on both sides of the case, said they each had enlisted the help of jury consultants, which the government uses in only the most high-profile matters.

Both sides have much at stake: Bonds is charged with four counts of perjury and one count of obstruction of justice regarding his statements that he never knowingly took steroids. He faces a maximum 10-year prison sentence on each count.

“I can guarantee you that the jury selection is going to be about the steroids issue and people’s feelings about whether he’s being scapegoated,” Varinsky said.

Each side in this case is likely to get 15 to 30 minutes on Monday to address the prospective jurors; the judge, Susan Illston, will do most of the talking. The government can strike six jurors; the defense can reject 10.

Forty percent to 50 percent of the initial jury pool could be dismissed because of strong biases, said Ronald Beaton, a senior jury consultant with TrialGraphix who is based in the Bay Area. Another 40 percent might be excused because of hardships. So the lawyers could be choosing from a small group whose questionnaire answers, eagerness to be on the jury and body language will factor into the decision.

The prosecution might want to eliminate people who follow the strict letter of the law because the government’s case has its flaws, Beaton said. He added that the defense would probably welcome them.

Although lawyers are often wrong about a juror or two, Beaton said, they cannot afford to misjudge the leaders who can turn out to be holdouts or persuade others to take their side. These people are often identified by their professions or the leadership roles they take in other activities, like the PTA.

But in the end, jurors do not always act the way lawyers expect them to. The jury foreman in the 2008 trial of the former Olympic track coach Trevor Graham is one example.

Graham was charged with three counts of lying to federal agents investigating Balco. Prosecutors probably never expected Frank Stapleton, a 59-year-old small-business owner, to be the lone holdout on

one charge and one of two holdouts on another. Stapleton's refusal to find Graham guilty on two charges resulted in hung juries. Graham was convicted on the third.

Stapleton told reporters he hoped the conviction satisfied "the government's lust for blood."

In a telephone interview this week, William P. Keane, Graham's lawyer, said defense lawyers typically look for a potential juror "who is smart and who won't believe something just because the government lawyers say it's true."

"That's not always easy to find," he said.