



United States v. Roger Clemens

Roger Clemens was one of the most dominant pitchers in the history of Major League Baseball. He is an 11-time All-Star and a two-time World Series champion. He won seven Cy Young Awards during his career, more than any other pitcher in the history of the game.

From Congress to the Courtroom

In December 2007, former United States Senator George J. Mitchell released the “Mitchell Report,” the culmination of his investigation into the use of performance enhancing drugs in Major League Baseball. The Mitchell Report alleged that Clemens had used anabolic steroids and human growth hormone during three seasons in his 23-year career. Clemens firmly denied these allegations publicly and under oath before Congress. After Clemens’ denials under oath, the Department of Justice launched a perjury investigation.

In August 2010, a federal grand jury indicted Clemens on six felony counts of perjury, false statements and obstruction of Congress. Clemens hired renowned trial attorney Rusty Hardin and Cooley Partner Michael Attanasio to defend him. Hardin and Attanasio have a professional relationship dating back to 1997 when Attanasio was a federal prosecutor in the Department of Justice.

Clemens pleaded not guilty. Trial began in July 2011, but a mistrial was soon declared after the prosecutors displayed evidence to the jury that the judge had ruled inadmissible. The retrial began in April 2012. During the nine-week trial in Washington, D.C., the jury heard testimony from 46 witnesses including Clemens’ former peers on the field, his wife, Debbie Clemens, and his former strength coach and principal accuser, Brian McNamee.

All-Star Cross-Examination

Brian McNamee’s testimony, which spanned five days, was at the center of the government’s case. He testified that he had injected the former all-star pitcher with performance-enhancing drugs on several occasions. Hardin’s cross-examination of

PERSPECTIVES

“Brian McNamee defines reasonable doubt.”

– Cooley Partner Mike Attanasio

From Closing Argument

“That question is going to live in cross-examination lore forever...”

– Former Federal Prosecutor

Quoted in the *New York Post*

“I put a lot of hard work into that career.... It’s been a hard five years. I’m very thankful.”

– Roger Clemens

RESULT

After five years of controversy, Roger Clemens was cleared of all felony charges arising from his 2008 appearance before Congress in which he denied ever using performance enhancing drugs. The acquittal marked a complete rejection of the prosecution’s case and ended a long ordeal throughout which the baseball legend was often treated harshly in the court of public opinion.



McNamee thoroughly and repeatedly discredited the witness, leaving one juror to ask why McNamee should be believed when his story had changed so many times. Attanasio hammered the point home in closing, stating that McNamee was “the only witness ever in the history of the world who says he gave or saw an injection to that man. You saw how hard the FBI looked for corroboration. Brian McNamee defines reasonable doubt.”

Another turning point in the trial came during the testimony of Andy Pettitte, a former teammate and friend of Roger Clemens. During cross-examination by Attanasio, the Yankee pitcher conceded that there was a “50-50” chance he might have misheard what the prosecution had contended was a “confession” by Clemens that he had used human growth hormone. As one former federal prosecutor observed in press accounts after the verdict: “That question is going to live in cross-examination lore forever, because you just don’t take a risk like that unless you’re pretty ballsy and it pays off. To have the guts to ask that question and have it play in your favor, that makes him a cross-examination superstar.”

Clean Sweep for Clemens

The jury spent only ten hours in deliberation, after which it found Clemens not guilty on each and every charge. The resounding acquittal marked a complete rejection of the prosecution’s case and ended a long ordeal throughout which the baseball legend was often treated harshly in the court of public opinion. “I put a lot of hard work into that career,” said Clemens when he addressed the crowd gathered outside the courthouse. “It’s been a hard five years,” he continued. “I’m very thankful.”

COOLEY TEAM



Michael Attanasio
+1 858 550 6020
mattanasio@cooley.com