

## **Trial Pros: Cooley's Mike Attanasio**

*Law360, New York (March 2, 2016, 1:16 PM EST)* -- Mike Attanasio is chairman of Cooley LLP's national litigation practice. He is an accomplished trial lawyer who has tried numerous cases to verdict as a federal prosecutor and defense lawyer. Attanasio was co-trial counsel for Roger Clemens in the baseball legend's trial on a six-count indictment alleging obstruction of Congress and perjury. Clemens was acquitted of all charges after a nine-week trial in the District of Columbia. Attanasio's cross-examination of prosecution witness Andy Pettitte, a former teammate of Clemens, was called a key turning point in the trial by several observers.



Michael Attanasio

Previously, Attanasio was named one of the Top 100 lawyers in California by the Daily Journal after his successful defense over two trials of a former Arthur Andersen partner accused by federal prosecutors with conspiracy and securities fraud in connection with the financial reporting of Peregrine Systems, a worldwide software company. From 1991 through 1999, Attanasio was a federal prosecutor in Washington, D.C., for the Public Integrity Section of the U.S. Department of Justice. He received several commendations from the Attorney General and various law enforcement agencies, including the Attorney General's John Marshall Award for Legal Achievement (Trial).

### **Q: What's the most interesting trial you've worked on and why?**

A: The trial defense of baseball legend Roger Clemens. The case involved an incredible range of subjects — beginning with baseball history and then extending to the controversy around performance-enhancing drugs in sports, congressional testimony that was watched by millions, all manner of colorful witnesses and even highly technical DNA evidence. I was co-trial counsel with Rusty Hardin, and I will never forget the experience of conducting my cross-examination of Roger's former teammate Andy Pettitte in front of a packed courtroom and a packed overflow media room, all while it was being "live tweeted" by reporters from ESPN and other media outlets. The trial ended with Roger's complete and well-deserved exoneration.

### **Q: What's the most unexpected or amusing thing you've experienced while working on a trial?**

A: Watching co-counsel and extraordinary trial lawyer Gene Iredale use a plate of appetizers in closing argument. During a two-month fraud trial filled with accounting minutiae, the main government witness had described in excruciating detail the circumstances of a key incriminating conversation. The conversation had allegedly occurred at a particular restaurant during a management retreat and involved a comment about a specific appetizer that had been served while the conversation was taking place. In the millions of pages of government discovery, I recalled seeing the actual catering form and menu for the event and handed it to Gene. On cross-examination Gene proved that the appetizer in

question was not even on the menu, much less on the catering form for the event. To drive the point home during closing, he brought a platter of appetizers into court and had some fun showing that among the shrimp, mini-quesadillas and other delicacies the appetizer in question was nowhere to be found. I'm still not sure how he got the platter through court security, but it was quite a visual.

**Q: What does your trial prep routine consist of?**

A: Trial preparation starts the moment we get the case. We begin thinking about our themes and how to prove them from day one. As we get closer to trial, my obsession becomes cross-examination outlines, which I prepare in great detail. The result is a detailed outline that I go over again and again. This serves two critical purposes. First, the well-prepared cross-examiner is able to maintain and control the pace of the questioning, never giving the witness room to breathe, a bit like a boxer who uses a relentless jab to set-up more powerful punches. Second, and perhaps counterintuitively, that level of preparation allows the cross-examiner wide freedom to listen carefully to the answers — I'm not forced to think about the next question because it's there if I need it — and go in new directions when a careless or inconsistent answer presents that golden opportunity. Some lawyers feel constrained by a rigorous outline; in my experience it is actually liberating.

**Q: If you could give just one piece of advice to a lawyer on the eve of their first trial, what would it be?**

A: Don't worry about the nerves and butterflies. They are to be expected, but they should motivate better preparation and can be converted to positive energy and controlled adrenaline. Always go to your courtroom in advance and, if possible, watch another trial in action. Get to know the lay of the land, where you will stand, what the judge likes and dislikes, and everything else you can about the "field of play." And of course preparation, preparation, preparation.

**Q: Name a trial attorney, outside your own firm, who has impressed you and tell us why.**

A: Rusty Hardin. Rusty is known for his persuasive and genuine people skills (some would say folksiness) but behind his extraordinary record of success is an incredible work ethic and hundreds of hours of preparation in every case. He literally lives and breathes for his clients and his trials, and it shows. He is also fearless, and I have never seen anybody better at embracing facts — even seemingly bad facts — and turning them to his advantage and to fit his narrative.

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