

ROCKET PITCHES A NO HITTER; DOJ WHIFFS A GOLDEN SOMBRERO+2



Six up, and
six down for
William
Roger
Clemens.
From Jim
Bambach at
Newsday:

Former Yankees pitcher Roger Clemens was acquitted Monday on all six counts in his trial on charges he lied to Congress when he denied using performance-enhancing drugs, ending a 4 1/2-year battle to clear his name.

The jury deliberated for less than 12 hours before reaching a verdict, capping a two-month trial at which 46 witnesses appeared, including the wives of Clemens and accuser Brian McNamee.

Yep, six counts alleged, six counts acquitted on. Not a hit on any of them. And if the jury deliberations had not have been broken up by a weekend, the verdict may well not have taken even the nine plus hours it did. From the clear call of the unanimous verdicts, I would also hazard a guess that the jury may not even have been out the short time it was but for the fact lead Clemens defense attorney Rusty Hardin opened a wee door in cross-examining the tainted prosecution star witness Brian McNamee, allowing for, eventually superfluous, rebuttal evidence

to come in by the DOJ to try to bolster their flawed criminal witness McNamee. Even that was clearly nowhere enough for the wise jury.

The entire substantive DOJ case flowed through two discredited and sham witnesses, Brian McNamee and the always questionable Fed Investigator Jeff Novitsky. If they were not discredited before, let the record reflect they are now.

More from Bambach:

Clemens' attorney Rusty Hardin called his client "a helluva man."

"This is a celebration for us," Hardin said. "Let me tell you something. Justice won out."

The loss was a blow to the Justice Department and the prosecution, which last year caused a mistrial on the second day of the trial.

Prosecutors declined to comment on their way out of the courthouse.

Yes, the Brave Sir Robin like crack prosecutors at DOJ so ethically turned their heads and fled like Sir Robin. Brave Sir Robin.

The focus, though, is easy to peg on Brian McNamee, and *does* he deserve it. But, remember, the single person who pushed this puppet theater, in addition to George Mitchell and corporate interest, Bud Selig, was Jeff Novitsky. One still wonders if the story of the MLB, IRS, DEA, HOS/GRC(Waxman/Congress) and Novitsky "workgroup" will ever be fully disclosed; but the surface appearance is not all that attractive.

But, hey, let's not re-cover what has already been said. Here is how I described the gig in February of 2008:

First off, if the Federal government thinks Roger Clemens was seriously

involved in steroid and HGH use and promulgation, investigate and prosecute him. But the government doesn't give a rat's ass about that, they are hot after Clemens because he had the audacity to challenge the God/Petraeus like Mitchell report. And make no mistake about it, if you can't believe the Clemens portion of the Mitchell report, you have to wonder about the the whole thing (save for a few general recommendations) and the quality of work that went into it. As I said below in the comments, the Congress is vested in the Mitchell report Very heavily, because they think it was the implementation of their last little dog and pony show with McGwire, Sosa and Palmeiro (by the way, you don't see any of those guys being hammered like Clemens do you?) and because George Mitchell is very close to many in the Congressional leadership including, most notably, Henry Waxman. This is all about bucking up the Mitchell report and, additionally, the work of Novitsky, who is in the middle of the whole mess and the Barry Bonds portion, whom they are dying to nail.

The main issue that bugs the bejeebies out of me on this mess is a concept in criminal law known as "parallel prosecution". Simply put, what this means is multiple prosecutions, by multiple coordinated governmental entities, of one individual, at the same time, usually in an effort to gain advantage over him or deny his ability to effectively defend himself. There are many examples of this in the law, the layman simply doesn't think about it in those terms, so never really grasps the implications. One common example in drug crimes is the attempt by the government to civilly seize and forfeit the defendant's property so that he has to give testimony and answer questions in

order to keep his property while they are prosecuting him on the underlying criminal case where, of course, he has a 5th Amendment right to silence and to make the government prove his case. The problem with this is that the government is using an artifice to breach the defendant's 5th Amendment right against giving testimony against himself. If he doesn't stand in and give testimony and subject himself to full examination, he loses his property because of an alleged crime he has not even been convicted on; if he does fight, he is opening himself up to examination that can be used against him.

This is the problem with the Clemens scenario. Clemens was the big fish in the Mitchell report



and, make no mistake about it, Mitchell needed a big fish for his report, and preferably a white one to offset some of the complaints made about the major focus on Barry Bonds in the past. It is my understanding that Mitchell did not originally want to name individuals in his report, but did so after being urged very strongly by congress and MLB to do so. The second that Clemens exercised his right to say "Hey, that's not right, I am innocent", the weight of the world was reigned down on him. He immediately was accused of lying and became the subject of discussions of criminal charges because he was challenging the credibility of the mighty Mitchell report. But Clemens was not afforded the

opportunity to have the Government put up or shut up with their evidence against him and to have his right to test that evidence for weight and veracity. Instead, he was immediately under the combined microscope of the IRS, FBI, DEA and the Department of Justice (yes they are all actively involved in this; you just don't hear about it). Then, to top it off, the United States Congress starts getting in on the act and compelling testimony under oath. Before he has ever been charged with any crime. All because he had the audacity to say "I am not guilty". And all of this, at the time of the Mitchell Report, was based on the unsubstantiated tales of a known, proven liar and suspected rapist, with no physical evidence and no corroboration. That is pretty chilling if you ask me.

Evidence counts, and this is always where the real evidence, put to even the most fundamental test, has led. I'll be honest, for the worthy job the inestimable Rusty Hardin did on this case, the one huge thing he did wrong was to open the door on cross-ex of the government's witnesses, most notably McNamee for allowance of rebuttal confirmation of McNamee's alleged honesty as to other MLB players such as Andy Pettitte and Chuck Knoblauch. But the jury clearly, and unequivocally, drew a judgment on where the credibility was between McNamee and Novitsky on the one hand, and Roger Clemens, on the other hand. The vote was the latter, and not the former.

The DOJ went six with Roger Clemens and the Rocket no-hit them. And William Roger Clemens hung a Golden Sombrero+2 on the DOJ. Hang that picture with John Edwards, Ted Stevens and Barry Bonds. Not real flattering for the PIN-Heads at DOJ.

[As a well deserved thanks, I would like to point out Jim Baumbach of Newsday, Mike

