

EXHIBIT 2

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF COLUMBIA

3 UNITED STATES OF AMERICA .
 Plaintiff, .
 4 vs. . Docket No. CR 10-223
 .
 5 WILLIAM R. CLEMENS, . Washington, D.C.
 aka Roger Clemens, .
 6 . February 2, 2011
 Defendant. .
 7x

8 TRANSCRIPT OF MOTIONS HEARING

9 BEFORE THE HONORABLE JUDGE REGGIE B. WALTON

10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 For the Government: Steven J. Durham, AUSA
 Daniel P. Butler, AUSA
 13 U.S. ATTORNEY'S OFFICE
 555 Fourth Street, NW
 14 Washington, D.C. 20530

15 For the Defendant: Russell Hardin, Esquire
 16 RUSTY HARDIN & ASSOCIATES, P.C.
 1401 McKinney Street, Suite 2250
 17 Houston, Texas 77010

18 Michael Anthony Attanasio, Esquire
 COOLEY, GODWARD, KRONISH, LLP
 19 4401 Eastgate Mall
 San Diego, CA 92121

20 Court Reporter: Cathryn J. Jones, RPR
 21 Official Court Reporter
 Room 6521, U.S. District Court
 22 333 Constitution Avenue, N.W.

23 Proceedings recorded by machine shorthand, transcript
 24 produced by computer-aided transcription.

1 P R O C E E D I N G S

2 THE DEPUTY CLERK: Criminal Action Number 10-223,
3 United States of America versus Williams R. Clemens. Daniel
4 Butler and Steven Durham on behalf of the government and
5 Rusty Hardin and Michael Attanasio on behalf of the
6 defendant.

7 THE COURT: Good afternoon.

8 MR. BUTLER: Good afternoon, Your Honor.

9 THE COURT: Mr. Hardin, I was advised by
10 government counsel that at one point either you or someone
11 from your firm was involved in providing legal
12 representation to Mr. Pettitte; is that correct?

13 MR. HARDIN: It is, Your Honor.

14 THE COURT: Come up.

15 MR. HARDIN: You want me to come up?

16 THE COURT: Yes. And I assume there was some
17 legal advice that you provided to him?

18 MR. HARDIN: There were certainly an interview
19 with him in which he relayed certain information. I'm not
20 trying to be cutesie. I'm not sure I gave him any advice,
21 but we certain, we had about a six-day attorney/client
22 communication relationship.

23 THE COURT: And, obviously, I'm not going to ask
24 you regarding what those discussions were about, but the
25 information that you would have acquired from Mr. Pettitte

1 was that in any way disseminated to other counsel in this
2 case who are not a part of your firm?

3 MR. HARDIN: No, Your Honor.

4 THE COURT: And I assume that you'll be able to
5 continue to not reveal or certainly anybody from your firm
6 reveal that information to those other members of the
7 defense team?

8 MR. HARDIN: That's correct, Your Honor. And as
9 the Court may be aware Mr. Attanasio was specifically
10 retained by Mr. Clemens and I to try to deal with that
11 particular issue. And we've made certain that Mr. Attanasio
12 has not been told anything Mr. Pettitte ever told us. We've
13 had no contact with anybody else in Mr. Attanasio's firm.
14 And his firm is the only other firm connected with this.
15 We've not passed on -- we've arranged within the firm to
16 make sure none of the materials we have dealing with
17 Mr. Pettitte are shared with Mr. Attanasio.

18 THE COURT: And the government proposes that it
19 would be Mr. Attanasio who would conduct if Mr. Pettitte
20 testifies the cross-examination. Are you in agreement with
21 that?

22 MR. HARDIN: I am and have discussed it with my
23 client and he's aware of it and in agreement. And really
24 this issue we've started foresaw a year and a half ago. I
25 believe Mr. Attanasio joined the team around January or so

1 of 2010, specifically with this issue in mind.

2 THE COURT: I don't recognize everybody on the
3 team. You're not Mr. Attanasio?

4 MR. ATTANASIO: I am, Your Honor.

5 THE COURT: Oh, you want to come up, please.

6 MR. ATTANASIO: Sure.

7 THE COURT: Do you agree with everything that's
8 been represented about your lack of knowledge regarding any
9 information that Mr. Pettitte would have provided?

10 MR. ATTANASIO: Yes, Your Honor.

11 THE COURT: And you are confident that no
12 information that he provided to Mr. Hardin has been in any
13 way conveyed to you?

14 MR. ATTANASIO: That's correct, Your Honor.

15 THE COURT: Therefore, you have no basis for using
16 that information in the cross-examination of Mr. Pettitte if
17 he testified?

18 MR. ATTANASIO: That is correct, Your Honor.

19 THE COURT: Mr. Clemens. As I'm sure you
20 understand I've read the transcript from the prior
21 proceeding down in Texas. You have a right to have counsel
22 who is free of any potential conflict that might exist
23 between your interests and your rights and somebody else's
24 interests and rights, who that lawyer also had previously
25 represented. I'm sure you understand that?

1 THE DEFENDANT: I do understand that, Your Honor.

2 THE COURT: And, obviously, the problem that can
3 come up, and this is really theoretical because I don't know
4 exactly what Mr. Pettitte said to Mr. Hardin or his
5 associates. But, for example, if by chance when they talked
6 to him he did not reveal information that he would testify
7 about in this trial absent a conflict a lawyer who would
8 know about the lack of information having been provided
9 would be able to ask about that in order to suggest that the
10 witness now adding facts that weren't provided previously
11 that that's a suggestion that the witness is not being
12 truthful. I'm sure you understand that?

13 THE DEFENDANT: I do, Your Honor.

14 THE COURT: Or if they acquired some other
15 information that directly conflicted with his testimony they
16 then would be able to use that conflicting information,
17 again to suggest that the witness now is not being truthful.
18 You understand that?

19 THE DEFENDANT: I do, Your Honor.

20 THE COURT: And if anything of that nature did
21 occur then obviously Mr. Hardin or his associates can't
22 reveal that to Mr. Attanasio. And, therefore, he's not
23 going to have that at his disposal if theoretically that
24 type of information would exist. Do you understand that?

25 THE DEFENDANT: I understand that, Your Honor.

1 THE COURT: And if by chance that did occur, and
2 if at some later time that became known to you and that was
3 not used, you would not be able to raise that as an issue
4 later as a grounds, if assuming you were convicted in this
5 case, as a grounds for seeking to have your conviction
6 overturned. Do you understand that?

7 THE DEFENDANT: I do understand that, Your Honor.

8 THE COURT: So you're willing to waive any
9 potential conflict that might exist in reference to
10 Mr. Hardin as a result of his prior representation of
11 Mr. Pettitte?

12 THE DEFENDANT: That is correct, Your Honor.

13 THE COURT: Government have any questions?

14 MR. BUTLER: No, Your Honor, I think that's fine.

15 THE COURT: Okay. There's just one other thing I
16 need to reveal. I've talked to my staff about it. And I
17 feel it's not of significance, but I think probably more so
18 from the government's prospective I probably should. Years
19 ago when I was a city judge was out at an event and somebody
20 said something to me about a defendant in a case that I had.
21 And I didn't think it was of significance and I didn't
22 reveal that. It came out later. And the Court of Appeals
23 raked me over the coals for not having revealing it. So
24 when somebody says anything to me about somebody outside of
25 the courtroom I feel an obligation to let it be know so

1 counsel can factor that in as to whether there's going to be
2 some issue raised about my remaining as the Judge in the
3 case.

4 But a couple of months ago I was in my hometown.
5 I grew up in a small town in western Pennsylvania where Stan
6 Musial is from and Ken Griffin, Sr., who I grew up with and
7 played ball with. And he came to the event we were at. It
8 was a homecoming event. And he said oh, I see something to
9 the effect you are handling the Roger Clemens case. And I
10 said something, yes. And he said well, he's a good guy.
11 And I said I can't talk about the case.

12 That's all that happened. But, again, I feel
13 obligated when something of that nature occurs to reveal
14 that so that counsel can factor that in to their assessment
15 as to whether they want to make any type of motion.

16 MR. HARDIN: Are we allowed to say amen?

17 THE COURT: Yes -- say what?

18 MR. HARDIN: Are we allowed to say amen? We
19 obviously have no problems.

20 THE COURT: Government?

21 MR. BUTLER: Your Honor, we have, we know the
22 Court. We understand that the Court can be fair and
23 impartial in all circumstances and we have no objection.

24 THE COURT: Okay. Any other matters we need to
25 address today? Mr. Clemens, you can be seated.

1 MR. BUTLER: May I have one moment, Your Honor.

2 [Brief pause.]

3 THE COURT: And I might as a caveat I don't
4 believe in any way he was seeking to try and influence me
5 one way or the other. I just think it was a statement that
6 was made, you know.

7 MR. BUTLER: Just one matter, Your Honor. We
8 talked to Mr. Hardin about this. But the, because of
9 Mr. Hardin's prior representation of Mr. Pettitte there is
10 not just the privileged information but the duty to a former
11 client, those types of things which might limit Mr. Hardin's
12 comments in closing argument as to you know direct attacks
13 upon Andy Pettitte. I don't think it's going to be an
14 issue. We talked to Mr. Hardin about it.

15 That's all just a way of leading up to that we
16 will just to close the circle on this, Your Honor, we will
17 also seek and if it's all right with the Court just by way
18 of an affidavit from Andy Pettitte that he too waives any
19 potential conflict. But it would not just be a conflict as
20 to privileged information. He would waive a conflict as to
21 Mr. Attanasio cross-examining Mr. Pettitte, but that doesn't
22 give license to then a former attorney attacking
23 Mr. Pettitte.

24 I'm not suggesting Mr. Hardin would do that. But
25 that's just to give the Court a heads up that the affidavit

1 may address that issue. I think we can work out the issue
2 with Mr. Hardin in an appropriate fashion. As I said we've
3 talked with him today about it. And I don't think it's
4 going to be an issue, but I just want to -- I don't want any
5 issues to catch the Court unaware.

6 THE COURT: Any comment on that?

7 MR. HARDIN: I understand their sense of caution.
8 I don't think it's necessary to worry about that. We can
9 work out something. Throughout this litigation, of course,
10 the Court is not aware, we have never attacked Andy
11 Pettitte. I don't intend to participate in that. My guess
12 is is that final argument probably not even going to be
13 addressing Andy Pettitte. That would be reserved for
14 Mr. Attanasio also, but we haven't really thought our way
15 through that.

16 But the thing that he's raising I understand why
17 he's raising. He's explained it to me, but I don't intend
18 to be going after Andy Pettitte.

19 THE COURT: Any other matters?

20 MR. MUTHYALA: No, Your Honor.

21 THE COURT: Mr. Hardin, any other matters?

22 MR. HARDIN: Nothing, Your Honor. Thank you very
23 much.

24 THE COURT: Thank you.

25

1 [Thereupon, the proceedings adjourned at 2:20
2 p.m.]

3 CERTIFICATE

4 I, Cathryn J. Jones, an Official Court Reporter
5 for the United States District Court of the District of
6 Columbia, do hereby certify that I reported, by machine
7 shorthand, the proceedings had and testimony adduced in the
8 above case.

9 I further certify that the foregoing 9 pages
10 constitute the official transcript of said proceedings as
11 transcribed from my machine shorthand notes.

12 In witness whereof, I have hereto subscribed my
13 name, this the 4th day of February, 2011.

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Cathryn J. Jones, RPR
Official Court Reporter