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ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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### MEMORANDUM

February 27, 2008

To: Democratic Members of the Committee on Oversight and Government Reform

Fr: Chairman Henry A. Waxman

Re: Referral of Roger Clemens

Earlier today, Ranking Member Tom Davis and I sent a letter to Attorney General Michael Mukasey asking that he investigate whether Roger Clemens committed perjury and made knowingly false statement during the Committee's investigation of the use of steroids and performance-enhancing drugs in professional baseball. This referral prompted several members to ask for more information about the basis for the referral.

Ranking Member Davis and I did not prepare a joint document explaining the basis for the referral. My thinking on this issue, however, was influenced by a memorandum that my staff prepared for me analyzing Mr. Clemens's testimony.

As additional background on today's action, I am enclosing with this memorandum a copy of this staff analysis. I hope it will be of assistance to you as you evaluate this issue.

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**MEMORANDUM**

**February 26, 2008**

To: Chairman Henry A. Waxman  
Fr: Majority Staff  
Re: Testimony of Roger Clemens

You asked for an analysis of the credibility of the testimony of Roger Clemens in his February 5, 2008, deposition and his February 13, 2008, appearance before the House Oversight and Government Reform Committee. In response to your request, this memorandum summarizes seven sets of assertions made by Mr. Clemens in his testimony that appear to be contradicted by other evidence before the Committee or implausible.

**I. MR. CLEMENS'S TESTIMONY THAT HE HAS "NEVER TAKEN STEROIDS OR HGH"**

In his deposition and at the Committee's hearing, Mr. Clemens repeatedly denied that he has taken steroids or human growth hormone. During his deposition on February 5, 2008, Mr. Clemens testified that "I have not used steroids or growth hormone"; "I am just making it as possibly as clear as I can. I haven't done steroids or growth hormone"; and "I never used steroids. Never performance-enhancing steroids" or "human growth hormone."<sup>1</sup> Mr. Clemens also testified during his deposition that he had never "possessed" or "seen" anabolic steroids or human growth hormone.<sup>2</sup> During his testimony at the Committee's hearing on February 13, 2008, Mr. Clemens made similar statements, including the following: "Let me be clear. I have never taken steroids or HGH"; "Brian McNamee has never given me growth hormone or

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<sup>1</sup> House Committee on Oversight and Government Reform, *Deposition of William Roger Clemens*, 9, 10, 24-25 (Feb. 5, 2008).

<sup>2</sup> *Id.* at 101-03.

steroids”; and “this man [Mr. McNamee] has never given me HGH or growth hormone or steroids of any kind.”<sup>3</sup>

The Committee received three pieces of evidence that call Mr. Clemens’s testimony into question: (1) the testimony of Mr. Clemens’s former strength and conditioning coach, Brian McNamee; (2) the testimony and affidavit of Mr. Clemens’s former teammate, Andrew Pettitte, and the affidavit of Mr. Pettitte’s wife, Laura Pettitte; and (3) Mr. Clemens’s medical records.

**A. The Testimony of Brian McNamee**

In his deposition and in the Committee’s hearing, Mr. McNamee testified that he personally injected Mr. Clemens with steroids and human growth hormone on several occasions in 1998, 2000, and 2001. During his deposition on February 7, 2008, Mr. McNamee testified that he injected Mr. Clemens with the steroid Winstrol “maybe 16 to 20” times in 1998, with testosterone “more than six and less than 10” times and HGH “eight to 12 or eight to 20” times in 2000, and with testosterone and nandrolone “8 to 14” times in 2001.<sup>4</sup>

Additionally, Mr. McNamee testified at the Committee’s hearing on February 13 that “[d]uring the time that I worked with Roger Clemens, I injected him on numerous occasions with steroids and human growth hormone.”<sup>5</sup> Mr. McNamee also made this statement at the hearing:

[M]ake no mistake, when I told Senator Mitchell that I injected Roger Clemens with performance-enhancing drugs, I told the truth. I told the truth about steroids and human growth hormone. I injected those drugs into the body of Roger Clemens at his direction.<sup>6</sup>

Mr. McNamee has a history of misleading investigators. He admitted to the Committee that he lied to the police in a criminal investigation in Florida in 2001.<sup>7</sup> He also admitted that he withheld evidence from federal prosecutors investigating steroid use by professional baseball players.<sup>8</sup> According to Mr. McNamee, he took those actions to protect others.<sup>9</sup>

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<sup>3</sup> House Committee on Oversight and Government Reform, *Hearing on the Mitchell Report: The Illegal Use of Steroids in Major League Baseball, Day 2*, 110<sup>th</sup> Cong., 25, 104, 139 (Feb. 13, 2008).

<sup>4</sup> House Committee on Oversight and Government Reform, *Deposition of Brian McNamee*, 14, 21, 22, 51-52 (Feb. 7, 2008).

<sup>5</sup> *Hearing on the Mitchell Report: The Illegal Use of Steroids in Major League Baseball, Day 2*, 28.

<sup>6</sup> *Id.* at 30.

<sup>7</sup> *Id.* at 32.

<sup>8</sup> *Id.* at 59-60.

<sup>9</sup> *Id.* at 32, 60.

In this case, however, Mr. McNamee's testimony is bolstered by the deposition testimony of Andrew Pettitte and the transcribed interview of Chuck Knoblauch, another former teammate of Mr. Clemens. Mr. McNamee testified that he injected both Mr. Pettitte and Mr. Knoblauch with human growth hormone.<sup>10</sup> Both Mr. Pettitte and Mr. Knoblauch confirmed Mr. McNamee's testimony that he injected them with human growth hormone.<sup>11</sup> There is little reason to believe that Mr. McNamee would provide truthful testimony about Mr. Pettitte and Mr. Knoblauch, but false testimony about Mr. Clemens.

There is also other evidence that lends corroboration to Mr. McNamee's testimony. In his deposition with Committee staff, Mr. McNamee testified about a conversation he had with one of Mr. Clemens's agents, Jim Murray, in 2003 or 2004. This conversation occurred after Major League Baseball had conducted what were supposed to be anonymous drug tests of baseball players, including Mr. Clemens. Mr. McNamee testified that after learning of news reports that the test results could become public, he met with Mr. Murray because he "feared that he [Mr. Clemens] might test positive."<sup>12</sup> Mr. McNamee described calling Mr. Murray to set up this meeting, described the Starbucks in Manhattan where it occurred, and described how Mr. Murray "took note after note and asked question after question about Roger's steroid use."<sup>13</sup>

On January 31, 2008, Committee staff conducted an interview of Mr. Murray, in which Mr. Murray confirmed many details of this meeting. Although Mr. Murray could not remember certain details, he stated that he remembered Mr. McNamee calling to set up the meeting, remembered that it occurred in a coffee shop in New York, and remembered Mr. McNamee "saying something about drug test results, having knowledge of the drug test results."<sup>14</sup>

In addition, the Committee obtained a copy of an e-mail sent by Mr. McNamee to Mr. Murray on January 3, 2007, in which Mr. McNamee described a conversation he had with "Jeff Novitki [sic], the FBI/IRS agent," who is investigating steroid use by athletes. In this e-mail, Mr. McNamee asked Mr. Murray to assure Mr. Clemens and Mr. Pettitte that "I WAS NOT OFFICIALLY TALKED TO AND WILL NEVER BE, I WILL NEVER BETRAY MY CLIENTS AND I WANT THEM NOT TO WORRY ABOUT BEING AROUND ME."<sup>15</sup>

#### **B. The Testimony and Affidavit of Andy Pettitte and Affidavit of Laura Pettitte**

In his deposition with the Committee, Mr. Pettitte testified that Mr. McNamee injected

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<sup>10</sup> *Deposition of Brian McNamee*, 31, 89, 217.

<sup>11</sup> House Committee on Oversight and Government Reform, *Deposition of Andrew Pettitte*, 11-20, 97 (Feb. 4, 2008); House Committee on Oversight and Government Reform, *Interview of Edward Charles Knoblauch*, 6-12 (Feb. 1, 2008).

<sup>12</sup> *Deposition of Brian McNamee*, 147.

<sup>13</sup> *Id.* at 149.

<sup>14</sup> House Committee on Oversight and Government Reform, *Interview of James Joseph Murray IV*, 26 (Jan. 31, 2008).

<sup>15</sup> E-mail from Brian McNamee to Jim Murray (Jan. 3, 2007) (emphasis in original).

him with HGH in 2002 and that Mr. Pettitte injected himself with HGH in 2004. Mr. Pettitte also testified in his deposition that he remembered a conversation in 1999 or 2000 in which Mr. Clemens admitted using human growth hormone.<sup>16</sup>

Mr. Pettitte was asked during his deposition whether he had “any doubt” about his recollection:

Committee Staff: You recollect a conversation with Mr. Clemens. ... Your recollection is that he said he was taking human growth hormone?  
Mr. Pettitte: Yes.  
Committee Staff: And you have no doubt about that recollection?  
Mr. Pettitte: I mean, no. ... [H]e told me that.<sup>17</sup>

Mr. Pettitte also provided the Committee with a sworn affidavit. This affidavit gave Mr. Pettitte an opportunity to express his recollection clearly and without the pressures of a deposition. He stated in the affidavit:

In 1999 or 2000, I had a conversation with Roger Clemens in which Roger told me that he had taken human growth hormone (“HGH”). This conversation occurred at his gym in Memorial, Texas. He did not tell me where he got the HGH or from whom, but he did tell me that it helped the body recover.<sup>18</sup>

Mr. Pettitte remembered a second conversation with Mr. Clemens about human growth hormone that took place in 2005. In his affidavit, he wrote:

In 2005, around the time of the congressional hearings into the use of performance enhancing drugs in baseball, I had a conversation with Roger Clemens in Kissimmee, Florida. I asked him what he would say if asked by reporters if he ever used performance enhancing drugs. When he asked what I meant, I reminded him that he had told me that he had used HGH.

Roger responded by telling me that I must have misunderstood him; he claimed that it was his wife, Debbie, who used HGH.

I said, “Oh, okay,” or words to that effect, not because I agreed, but because I wasn’t going to argue with him.<sup>19</sup>

According to Mr. Pettitte, his first conversation with Mr. Clemens occurred in 1999 or 2000. Both Mr. Clemens and Mr. McNamee stated to the Committee that Mr. Clemens’s wife

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<sup>16</sup> *Deposition of Andrew Pettitte*, 20-25, 98.

<sup>17</sup> *Id.* at 98.

<sup>18</sup> *Affidavit of Andy Pettitte* (Feb. 8, 2008).

<sup>19</sup> *Id.*

did use HGH, but did not do so until 2002 or 2003.<sup>20</sup> This timeline would appear to rule out the possibility that Mr. Clemens could have been referring to his wife's use of HGH in the first conversation with Mr. Pettitte. Furthermore, Mr. Pettitte testified that prior to the 2005 conversation, Mr. Clemens never told him that his wife had used HGH.<sup>21</sup>

During his deposition, Mr. Pettitte told the Committee that he told his wife, Laura Pettitte, about his conversations with Mr. Clemens. His wife also submitted an affidavit to the Committee. This affidavit confirmed that Mr. Pettitte told Mrs. Pettitte about both his conversations with Mr. Clemens. According to Mrs. Pettitte's affidavit:

In 1999 or 2000, Andy told me that he had had a conversation with Roger Clemens in which Roger admitted to him using human growth hormone ("HGH").

A few years later, I believe in 2005, Andy again told me of a conversation with Roger Clemens about HGH. Andy told me that he had been thinking that if a reporter asked him, he would tell the reporter of his own use of HGH in 2002. He said that he told Roger Clemens this and asked Roger what he would say if asked.

Andy told me that in this 2005 conversation, Roger denied using HGH and told Andy that Andy was mistaken about their earlier conversation. According to Andy, Roger said that it was his wife, Debbie, who used HGH.<sup>22</sup>

Mr. Pettitte also recalled two conversations with Mr. McNamee in which Mr. McNamee confirmed that Mr. Clemens used HGH and told Mr. Pettitte that Mr. Clemens used steroids. According to Mr. Pettitte's affidavit, shortly after the 1999 or 2000 conversation with Mr. Clemens about HGH:

I spoke with Brian McNamee. Only he and I were parties to the conversation. I asked Brian about HGH and told him that Roger said he had used it. Brian McNamee became angry. He told me that Roger should not have told me about his use of HGH because it was supposed to be confidential.<sup>23</sup>

The other conversation took place in Mr. Pettitte's home in 2003 or 2004. In this conversation, Mr. McNamee told Mr. Pettitte that "he had gotten steroids for Roger."<sup>24</sup> Mr. Pettitte was asked whether he had "any reason to think" that Mr. McNamee "wasn't being straight with you about that."<sup>25</sup> He replied: "No. ... I had no reason to think that."<sup>26</sup>

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<sup>20</sup> *Deposition of William Roger Clemens*, 175-77; *Deposition of Brian McNamee*, 117-20.

<sup>21</sup> *Deposition of Andrew Pettitte*, 27.

<sup>22</sup> *Affidavit of Laura Pettitte* (Feb. 8, 2008).

<sup>23</sup> *Affidavit of Andy Pettitte*.

<sup>24</sup> *Deposition of Andrew Pettitte*, 31.

<sup>25</sup> *Id.* at 33.

<sup>26</sup> *Id.*

In his deposition, Mr. McNamee independently confirmed two conversations with Mr. Pettitte that appear to be the same conversations described by Mr. Pettitte. Mr. McNamee testified that he recalled a conversation in Mr. Clemens's gym in which Mr. Pettitte told Mr. McNamee that Mr. Clemens had admitted using human growth hormone.<sup>27</sup> Mr. McNamee was unsure of the exact date, but said this conversation could have occurred in 2000.<sup>28</sup>

Mr. McNamee also described a second conversation with Mr. Pettitte that occurred in 2004 during a workout with Mr. Pettitte. According to Mr. McNamee, he believed that Mr. Pettitte was aware of steroid use by Mr. Clemens. Mr. McNamee told the Committee: "I had a conversation with Andy in 2004. ... [Mr. Pettitte] knew that Roger was taking steroids and growth hormones."<sup>29</sup>

### C. The Medical Evidence

On December 12, 2007, investigators working for Mr. Clemens secretly taped an interview of Mr. McNamee. During this interview, Mr. McNamee asserted that "Roger got an abscess through shooting steroids."<sup>30</sup> In his deposition, Mr. McNamee provided a similar account. He told the Committee that after he injected Mr. Clemens with the steroid Winstrol in 1998, Mr. Clemens developed an abscess on his buttocks from the steroid injections.<sup>31</sup> Mr. McNamee again confirmed this account in his testimony before the Committee.<sup>32</sup>

The Committee asked for medical records to confirm whether Mr. Clemens had developed such an injury in 1998. A July 28, 1998, medical record from the Blue Jays states that Mr. Clemens "started complaining of right buttocks soreness" and that the "diagnosis was a small collection of blood below the surface of the skin."<sup>33</sup> The July 28 record also stated: "Roger received a B-12 injection approximately 7-10 days ago into his right buttocks from Dr. Taylor at the Skydome."<sup>34</sup> A July 30 record described Mr. Clemens's injury as a "palpable mass."<sup>35</sup> A second medical record from August 4 indicates that Mr. Clemens also had a palpable mass on his left buttocks.<sup>36</sup>

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<sup>27</sup> *Deposition of Brian McNamee*, 29-31.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 224.

<sup>30</sup> Rusty Hardin and Associates, *Interview of Brian McNamee*, 39 (Dec. 12, 2007).

<sup>31</sup> *Deposition of Brian McNamee*, 103-06.

<sup>32</sup> *Hearing on the Mitchell Report: The Illegal Use of Steroids in Major League Baseball*, Day 2, 76-77, 86.

<sup>33</sup> Toronto Blue Jays, *Injuries Report, Clemens, William* (July 28, 1998).

<sup>34</sup> *Id.*

<sup>35</sup> Toronto Blue Jays, *Physician Visits Report, Clemens, William* (July 30, 1998).

<sup>36</sup> Toronto Blue Jays, *Treatments Report, Clemens, William* (Aug. 4, 1998).