

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

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WILLIAM ROGER CLEMENS,

Plaintiff,

-against-

BRIAN McNAMEE,

Defendant.
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4:08-cv-00471
Judge Keith P. Ellison

**DECLARATION OF
EARL S. WARD**

Earl S. Ward declares, under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an attorney licensed to practice law in the state of New York.
2. Beginning in June 2007, I represented Brian McNamee in connection with the United States Attorney for the Northern District of California's investigation into the distribution of anabolic steroids and human growth hormone.
3. During the course of that investigation, Mr. McNamee was told that he was not a target of the investigation but he could become a target if he chose not to cooperate.
4. Mr. McNamee cooperated with federal investigators. He met with and was interviewed by Assistant United States Attorney ("AUSA") Matthew Parrella and Special Agents Jeff Novitzky, Erwin Rogers, and Heather Young.
5. During the interview, AUSA Parrella told Mr. McNamee that, as part of his continuing cooperation with federal investigators which was necessary to avoid becoming a target, Mr. McNamee had to speak to the Mitchell Commission.

6. Federal investigators arranged a date and time for the meeting between the federal investigators, the Mitchell Commission, and Mr. McNamee. Subsequently, federal investigators contacted me to inform me of the meeting.

7. Mr. McNamee attended the meeting, accompanied by me. Also present were AUSA Parrella and federal Special Agents.

8. Mr. McNamee was told that he could face federal prosecution (pursuant to 18 U.S.C. § 1001) if he made any false statement during his interview with Senator Mitchell.

9. During the meeting with the Mitchell Commission, both the AUSA and the Special Agents asked questions of Mr. McNamee: They asked Mr. McNamee to provide details and elaborate on statements which Mr. McNamee had made at previous meetings with federal investigators regarding the use and distribution of distribution of anabolic steroids and human growth hormone in Major League Baseball.

10. AUSA Parrella's declaration confirms my testimony. He declares that he told Mr. McNamee that "he was not a target of the investigation, but that his witness status would be subject to review if he chose not to co-operate," and he "told McNamee that speaking to the Mitchell Commission was part of his co-operation with the investigation in order to maintain his witness status." Parrella Decl. ¶¶ 3-4. AUSA Parrella further confirms that Mr. McNamee's statements to the Mitchell Commission were made under the threat of prosecution for false statements, federal investigators arranged the time and location of the interviews, and federal investigators participated in the interviews. *Id.* ¶¶ 4-5.

11. I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: December 18, 2008
New York, NY



Earl S. Ward