
Clemens Retrial Is Likely
by: Laurie Johnson

Roger Clemens got a surprise ending to his perjury trial after prosecutors introduced inadmissible evidence and the judge declared a mistrial. But one local law professor says the "Rocket" will likely end up in court again.

The former Astro and Houston resident was on trial for allegedly lying to Congress about whether he used performance-enhancing drugs.

The trial was barely underway when the judge declared a mistrial after prosecutors played a videotape that included inadmissible comments from a witness.

University of Houston Assistant Law Professor Adam Gershowitz says it was a serious blunder:

"It's a surprising mistake. They should certainly know better and they should have looked more carefully at the tape that they were introducing into evidence and made sure it complied with the judge's ruling."

Gershowitz says it's unlikely prosecutors included the forbidden evidence on purpose.

Judge Reggie Wilson will hold a hearing on September 2 to determine if Clemens can be tried a second time without violating double jeopardy protections.

"The general rule is that following a mistrial, usually there is a second trial. So usually a mistrial results from a hung jury, sometimes it results from misconduct, by and large a second trial is allowed. Sometimes when the mistrial is because of egregious prosecutorial misconduct, a judge will bar a second trial and forbid it. But that's unusual. So if you're betting, I think the odds are that there will be a retrial."

Gershowitz says if there is a second trial, the defense now has an idea of what kind of case the prosecution will make. Clemens is charged with six counts of lying to Congress.