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Clemens faces feds' favorite tactic
Legal experts point to political overtones in trial

By **DAVID BARRON**
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In the wake of an indictment for perjury Thursday, Roger Clemens must defend himself against a statute that one prominent defense attorney says prosecutors are employing in the same fashion that they once used tax evasion, the crime that put Al Capone behind bars in the 1930s.

Harvard Law School professor Alan Dershowitz, noting recent perjury convictions of Illinois Gov. Rod Blagojevich and former vice presidential aide Lewis "Scooter" Libby, said perjury has become a favorite way to get convictions in high-profile cases.

Took on wrong senator

"It's not so hard to make a perjury charge," he said. "In the Libby and Blagojevich cases, it was the only one that stuck. You can't get them on the merits, so you get them for lying."

Jurors in Chicago this week were unable to reach a verdict on 23 of 24 counts against Blagojevich but convicted him of lying to the FBI.

Libby was sentenced in 2007 to 30 months for perjury and making false statements to officers investigating the leaked identity of a CIA agent; his sentence was commuted by President George W. Bush.

Both cases had political overtones, and Dershowitz said the Clemens case has them as well. He said Clemens guaranteed his indictment when he contradicted the conclusions of a report on the use of performance-enhancing drugs prepared for Major League Baseball by former Sen. George Mitchell, D-Maine.

"When you go against one of the most distinguished former senators," said Dershowitz, "you do it at great risk to yourself."

However, he said that since prosecutors sometimes "overreach," Clemens "has a good chance of winning this if he has the right legal advice."

Gerald Treece, a professor at South Texas College of Law, said the different manner in which Democrats and Republicans addressed Clemens during a congressional hearing at which he is accused of lying also indicates the political nature of the case.

"Indicting him for obstruction of Congress seems like a stretch," Treece said, "and it shows me that they really want to get him and the leadership really wants to get him."

He said some of his students also speculated about the role of race, noting the pending perjury trial of home run king Barry Bonds and referring to the Clemens case as a "white Barry Bonds case."

Richard Roper, a former U.S. attorney for the Northern District of Texas, said the likely "he said/he said" exchange between Clemens and his former trainer, government informant Brian McNamee, could be tough to prove if it is not backed by physical evidence.

Special treatment

However, Bill Mateja, a former assistant U.S. attorney who oversaw Justice Department probes into white collar crime, health care fraud and corporate fraud, said the case against Clemens may be easier to prosecute than the average perjury case because of the nature of his comments.

"They were made in front of Congress with the aid of a lawyer and with all the requisites of intent," Mateja said. "If the government has the goods to establish that it was a falsehood, and he knew it was false, they will be able to prove their case."

In his favor, though, is the fact that "he's Roger Clemens," said Houston attorney Dan Cogdell. "Celebrities are treated better in courtrooms than the rest of us, and that's a fact."

Cogdell said Clemens also will benefit from the talents of his lawyer, Rusty Hardin, and from the potential perception among the jury pool that prosecuting athletes during difficult economic times "may not be the highest and best use of our tax dollars."

But it could provide some high and quality drama, since Clemens is almost certain to testify, according to Houston attorney Philip Hilder.

"It will come down to his credibility," Hilder said.

david.barron@chron.com

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