Federal Jury Verdict Reporter

The Most Current and Complete Summary of Federal Jury Verdicts

June 2006 **Nationwide Federal Jury Verdict Coverage** **2 FedJVR 6**

Notable Verdicts in The June 2006 Issue

Verdict of the Month

PRODUCTS LIABILITY

Massachusetts District - Worchester

A research scientist blamed an infection after accidentally sticking herself with a needle that contained a tainted rat immunoglobin that had rat flu – the maker of the immunoglobin countered that even if it did have rat flu, it would only cause the flu in a rat

Caption: *Butler v. Sigma-Aldrich*, 4:02-40238

Plaintiff: Timothy P. Wickstrom, *Tashjian Simsarian & Wickstrom*, Worchester, MA

Defense: Joseph J. Leghorn and J. Christopher Allen, *Nixon Peabody*, Boston, MA

Verdict: Defense verdict on causation

Judge: Timothy S. Hillman

Date: May 10, 2006

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Index by State

Auto Negligence - The defendant rear-ended the plaintiff when he dropped his phone to the floorboard and went to retrieve it – he then prevailed on liability

Pennick v. Wilkinson, 2:05-26

Plaintiff: Henry Sanders and Kindaka Sanders, *Chestnut Sanders Sanders Pettaway & Campbell*, Selma, AL

Defense: Alex L. Holtsford, Jr. and Jeffrey G. Hunter, *Nix Holtsford Gilliland Higgins & Hitson*, Montgomery, AL

Verdict: Defense verdict

Court: **Alabama Middle - Montgomery**

Judge: Mark E. Fuller

Date: 4-7-06

There was a rear-end crash on 6-11-03 on the Norman Bridge Road in Montgomery. Ronald Wilkinson crashed into Edward Pennick – Pennick was then in a rental car. The collision occurred as Wilkinson looked away from the road for his cellphone – it had fallen to the floorboard.

Pennick did not report an injury at the scene – he in fact drove on to his home in Atlanta, GA. He has since treated for soft-tissue symptoms and a spinal stenosis. In this diversity action, Pennick sought damages from Wilkinson.

Wilkinson defended first on fault that it was reasonable for him to look away from the road and pick up his phone – a simple rear-ender, Wilkinson thought, did not equate to negligence. The defense also diminished damages, noting that (1) there was no injury at the scene, and (2) Pennick had a history of similar symptoms.

Deliberating liability, causation and damages, the verdict was for Wilkinson, the plaintiff taking nothing. The actual verdict form does not indicate on which basis the defendant prevailed. Pennick has since moved for a new trial – the motion was denied.

Employment Retaliation - A defense verdict from 2002 was reversed on an instruction error – tried again nearly four years later, the verdict was again for the defendant

Campbell v. Civil Air Patrol, 2:99-0002

Plaintiff: Jay Lewis and Carol R. Gerard, *Law Offices of Jay Lewis*, Montgomery, AL

Defense: David J. Middlebrooks and Sally B. Waudly, *Lehr Middlebrooks Price & Vreeland*, Birmingham, AL

Verdict: Defense verdict on liability

Federal: **Alabama Middle - Montgomery**

Judge: Lyle E. Strom

Date: 3-21-06

For many years, Brian Campbell was a volunteer employee of the Civil Air Patrol (CAP). It is a civilian adjunct to the Air Force, operating as a non-profit. While it uses more than 50,000 volunteers, CAP only has 200 or so full-time employees. In 1997, Campbell started full-time as a Cadet Registrar.

The following May, there was trouble at CAP, Lori Swanson complaining of sexual harassment. It led to litigation. In response to the lawsuit, CAP sought to limit discussion of the topic. Paul Albano, CAP's director, ordered that employees refrain from discussing the lawsuit.

That August, a male employee made comments about the lawsuit. They tended to support CAP's position in the litigation. In response and consistent with the no-talking policy, the employee was fired.

On 10-12-98, Campbell tested the policy sending a scathing e-mail across CAP's intranet. Potentially, it was received by as many as 50,000 people. In this e-mail, Campbell was highly critical of CAP, supporting Swanson's allegations of sexual harassment, calling CAP management despotic.

The next day, Paul Brooks, the assistant director of CAP, called in Campbell to discuss the e-mail. Campbell confirmed he was the author. Three days later, he was out of work, Albano and Brooks making the decision to fire him due to the violation of the aforementioned policy.

In response, Campbell filed a lawsuit against CAP, alleging a variety of civil rights counts. Only one survived to trial, a Title VII violation predicated on CAP opposing his right to oppose unlawful activity, here the purported sexual harassment. As CAP was not a state actor, it prevailed on other counts. Also sued was the Air Force, which was dismissed via summary judgment, playing no role in CAP's employment process.

CAP defended the merits and argued the firing was speech-neutral. Namely, Campbell lost his job because he discussed the litigation in any form, a violation of the rule. The best evidence for CAP was that another employee was fired for violating the same policy, even though his comments supported CAP. Plaintiff took a different tack, that his firing was because of the content, opposing his employer's unlawful practice.

This case first came to trial in August of 2002. The jury concluded that the Civil Air Patrol had retaliated, but exculpated it finding that it would have taken the same action anyway. Campbell appealed.

The 11th Circuit reversed in July of 2003 – it concluded it was error to give a mixed-motive instruction as the Civil Air Patrol conceded Campbell was fired because of the e-mail.

Back to Montgomery, Judge Ira DeMent, who presided in the first trial, entered a judgment for the Civil Air Patrol. The court concluded the appellate issue was not preserved, Campbell having failed to raise it in a post-trial motion.

Campbell appealed again. DeMent was reversed for the second time. The 11th Circuit explained that DeMent was not free to ignore its holding writing that the matter was properly raised and/or that the Civil Air Patrol waived the matter.

The verdict was for the Civil Air Patrol, the jury rejecting the retaliation count. Interestingly, the court gave the jury a mixed-motive charge. [This was the same issue upon which the 11th Circuit had reversed, although the jury did not reach it, finding there was no retaliation]

Pending is Campbell's JNOV motion that has noted that as the first verdict decided retaliation, the matter did not need to be relitigated. In a barebones order, Strom denied the motion. Plaintiff has since appealed.

Gender Discrimination - A male social worker alleged he was denied promotion because of his gender

Stuart v. Jefferson County, 2:02-2237

Plaintiff: Coker B. Cleveland, *Cleveland Law Firm*, Birmingham, AL and M. Brandon Walker, *Gentle Pickens & Turner*, Birmingham, AL

Defense: Felicia M. Brooks, *Alabama Department of Human Resources*, Montgomery, AL

Verdict: Defense verdict on liability

Court: **Alabama Northern - Birmingham**

Judge: Virginia Emerson Hopkins

Date: 4-27-06

Thomas Stuart was hired in 1980 as a social worker for Jefferson County – in 1992 he became a welfare supervisor. In that role, he handled food stamp distribution.

In June of 2001, Stuart sought a promotion. He was passed over, the department head, Caro Shanahan, selecting a female for advancement. Since that promotion, Shanahan has since advanced nine female employees. No men have been promoted.

Stuart sued Jefferson County and alleged he was denied promotion because of his gender. If prevailing, he sought an award of compensatory and punitive damages. Shanahan defended her hiring decisions that they were based solely on merit.

The verdict was mixed but for the government – the jury first found that Stuart had been denied promotion, but further concluded his gender was not a motivating factor in that decision. That ended the deliberations and Stuart took nothing. A defense judgment followed.

Religious Discrimination - A Muslim convert was fired two days after the tragic events of 9-11-01 – his employer cited that he had quarreled with a co-worker, the co-worker having suggested that the U.S. should bomb all Arabs

Staffney v. M.D. Henry, 2:03-3005

Plaintiff: Victor R. Spencer, Birmingham, AL

Defense: Fern H. Singer, *Baker Donelson Bearman Caldwell & Berkowitz*, Birmingham, AL

Verdict: Defense verdict

Court: **Alabama Northern - Birmingham**

Judge: T. Michael Putnam

Date: 3-7-06

Eddie Staffney started working in 1995 for M.D. Henry. The company makes electrical substation packaging. A year later, Staffney converted to the Muslim faith. That conversion was well-known to his co-workers and until 9-11-01, it was not a problem.

That status changed with the tragic events of the airplane attack on America by mostly Saudi jihadists. Many at M.D. Henry were angry, including Gary Grimes. It was his suggestion that in dealing with the situation, the U.S. ought to bomb all the Arabs.

Staffney responded and urged caution – he thought that before all the Arabs were bombed, it would make good sense to first found out who was responsible for the attack. Grimes disagreed and told Staffney, "Fuck you."

Thereafter M.D. Henry bigwigs conducted an investigation in the apparent heated discussion between Grimes and Staffney. A decision was made that because of the workplace disruption, Staffney had to go. He was fired on 9-13-01. [Grimes was not fired.]

Following these events, Staffney sued and alleged he was fired because of his religion. A simple case, Staffney flatly denied that he had argued with Grimes – in fact, it was Grimes who had cursed him. Staffney also noted that while he was fired, Grimes kept his job.

That religion motivated the firing decision, Staffney further noted that following 9-11-01, his co-workers spread rumors about him. They included falsely attributing remarks to Staffney that he said he was (1) of Palestinian descent, and (2) trying to raise funds for Osama Bin Laden. If Staffney prevailed, he sought compensatory and punitive damages.

M.D. Henry defended the case that Staffney's religion had nothing to do with the decision – instead he was let go for having caused a disruption.

The verdict was mixed, but ultimately for M.D. Henry – the jury found that Staffney was fired because of his religion, but exonerated the employer by further finding that it would have discharged him anyway. A defense judgment ended the case.

Civil Rights - Plaintiff alleged that in serving a warrant, a joint drug task force failed to knock and announce their presence

Howell v. PANT, 3:04-2280

Plaintiff: Charles Anthony Shaw, Prescott, AZ

Defense: Thomas A. Lloyd, *City of Prescott*, Prescott, AZ for City of Prescott Police
James M. Jellison, *Schleier Jellision & Schleier*, Phoenix, AZ for Yavapai County
Larry J. Crown, *Jennings Haug & Cunningham*, Phoenix, AZ for City of Prescott Valley Police

Verdict: Defense verdict on liability

Court: **Arizona - Phoenix**

Judge: Frederick J. Martone

Date: 4-27-06

A search warrant was served in Prescott, AZ early on the morning of 3-5-03. Acting on a tip that Robert and Patti Howell were selling marijuana from their home, PANT, an acronym for Prescott Area Narcotics Task Force descended with a search warrant. The team included policemen from the City of Prescott, the Yavapai County Sheriff and the City of Prescott Valley.

There would be disputes about how the warrant was served. Robert recalled there was no knock and announce – the police just broke down the door. Robert heard the commotion and fired a weapon at the police, believing they were intruders. Realizing who it was, Robert dropped his gun. As it turned out, there was no marijuana.

In this broad-based claim, the Howells alleged the warrant was secured by judicial deception. The trial court bifurcated this component to state court. The only claim that advanced to trial was the claim the service of the warrant was unconstitutional, the police having failed to knock and announce.

PANT defended that they did knock – thereafter they waited eight seconds. The rush was explained as when searching for marijuana, if the police wait too long after the knock, the

contraband will be destroyed.

While the verdict was not a made a part of the record, the judgment indicates all the defendants were exonerated and there was no award of damages. The state court claim is still pending.

INVASION OF PRIVACY

Arkansas Eastern District - Little Rock

In a case of mistaken identity, a black shopper was suspected and detained because she resembled a shoplifter – released 20 minutes later, the plaintiff later sued and allege the incident represented racial stereotyping

Caption: *Crutchfield v. Dillard's*, 4:02-74

Plaintiff: Richard L. Mays and Arkie Byrd, *May Byrd & Associates*, Little Rock, AR and Cletus P. Ernster, III and Mickey L. Washington, Houston, TX and Dennis C. Sweet, III, *Sweet & Freese* Jackson, MS

Defense: Marie B. Miller and Derrick M. Davidson, *Gill Elrod Ragon Owen & Sherman*, Little Rock, AR and James M. Simpson and Martin A. Kasten, *Friday Eldredge & Clark*, Little Rock, AR

Verdict: Defense verdict on liability

Judge: George Howard, Jr.

Date: April 27, 2006

Facts: Stephanie Crutchfield, who is black, shopped on 7-12-99 at Dillard's department store in Little Rock's Park Plaza Mall. As she perused plus-size fashions, she was approached by a mall security officer, an off-duty deputy sheriff that was moonlighting – Crutchfield was led through the store and then interrogated. As Crutchfield protested her innocence, she was rudely told to shut up.

Crutchfield remembered being held twenty or thirty minutes. It seems that Crutchfield resembled a shoplifting suspect. When store security became confident, she was not a criminal, Crutchfield was released. Dillard's postured the detention was reasonable – it also disputed the length, indicating plaintiff was held only five minutes.

Following these events, Crutchfield filed a federal suit that alleged negligence, outrage and invasion of privacy. [These were the only counts that survived to trial.] It was her position that besides being black, she shared nothing in common with the shoplifter, the store having engaged in illegal racial stereotyping. Dillard's defended as above – the detention was reasonable, short and Crutchfield was treated respectfully.

Jury Instructions/Verdict: Crutchfield's three counts were rejected by this Little Rock jury and she took nothing. A consistent judgment followed for Dillard's.

Race Discrimination - A black game ranger in Arkansas alleged a hostile racial environment existed

Jones v. Arkansas Game & Fish, 3:04-30

Plaintiff: Larry J. Steele, Walnut Ridge, AR

Defense: James F. Goodhart, *General Counsel*, Little Rock, AR and Charles W. Reynolds, *Dover Dixon Horne*, Little Rock, AR for Arkansas Game & Fish
Scott M. Shively, *Cross Gunter Witherspoon & Galchus*, Little Rock, AR for individual defendants

Verdict: Defense verdict on liability

Court: **Arkansas Eastern - Jonesboro**

Judge: William R. Wilson, Jr.

Date: 5-18-06

Johnnie Jones, who is black, started working in 1998 for the Arkansas Game & Fish Commission. A wildlife technician, he was assigned to the Brake Wildlife Area – in 1999, he had filed a wage grievance. He thought that came back to haunt him in 2003 when he was transferred to the Black River Wildlife Area.

In the new post, Jones experienced racial harassment – that included jokes and slurs. While an apparently lateral move, Jones believed it was retaliation for his earlier complaint. [The hostile environment existed not just from co-workers, but also from citizens.] In this suit, he alleged both retaliation and hostile environment.

Employer defended that there was no retaliation – the transfer was lateral and was done to accommodate labor needs. It also denied any racial harassment.

Game & Fish prevailed at trial on both the retaliation and hostile environment claims, Jones taking nothing. A defense judgment followed.

Civil Rights - Plaintiff's girlfriend called the police and told them that they would find him intoxicated on drugs at a certain address – plaintiff was there and appeared unsteady not because he was drunk, but rather because of a neurological condition that caused him to have an unsteady gait

Wiley v. Simi Valley Police, 2:04-4413

Plaintiff: David S. Miller and Constance N. Zarkowski, Westlake Village, CA

Defense: Donald R. Beck, *Manning & Marder*, Los Angeles, CA

Verdict: Defense verdict on liability

Court: **California Central - Los Angeles**

Judge: Margaret M. Murrow

Date: 3-10-06

Christopher Wiley quarreled with his girlfriend on 7-11-03. She later called the police and indicated he would soon be arriving at her home – she also indicated that Wiley would be high on cocaine and pills. The dispatch went out to the Simi Valley Police. They came to the address and Wiley soon arrived.

He appeared intoxicated as the girlfriend promised – his gait was unsteady. Wiley was arrested by the awaiting officers and charged with public intoxication. Despite his pleas for help, he was not provided treatment. Held for eighteen hours, the criminal case was dismissed.

It turned out that Wiley was not intoxicated – he then suffered