Federal Jury Verdict Reporter

The Most Current and Complete Summary of Federal Jury Verdicts

July 2006 | **Nationwide Federal Jury Verdict Coverage** | **2 FedJVR 7**

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Verdict of the Month

DEFAMATION/SEX DISCRIMINATION

Maine District - Portland

After a female stock broker was fired, her brokerage reported her to the NASD as having been let go for unauthorized trading – that reporting (which the broker called false) has blackballed her from the industry

Caption: *Galarneau v. Merrill Lynch*, 2:05-62

Plaintiff: Rufus E. Brown, *Brown & Burke*, Portland, ME and Michael A. Nelson, *Jensen Baird Gardner & Henry*, Portland, ME

Defense: Stephen E. Brown and Jeffrey A. Lee, *Maynard Cooper & Gale*, Birmingham, AL and Peter W. Culley, *Pierce Atwood*, Portland, ME

Verdict: $2,950,000 for plaintiff

Judge: George Z. Singal

Date: June 27, 2006

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then took $10,000 for monetary loss, but nothing for other compensatory damages. Punitives were valued at $275,000, the verdict totaling $285,000.

PREMISES LIABILITY

Louisiana Middle District - Baton Rouge

Plaintiff slipped at Lowe's in a puddle on the floor – sustaining a knee injury, the plaintiff targeted a variety of contractors involved in the construction of the building – at a summary jury trial, the plaintiff took a raw award in excess of $10,000,000

Caption: *Moorman v. Lowe's Home Centers*, 3:02-518

Plaintiff: Gary Ruth and Ray Orrill, *Orrill Cordell & Beary*, New Orleans, LA

Defense: Paul J. Politz, *Taylor Wellons Politz & Duhe*, New Orleans, LA for Lowe's
Harry J. Philips, Jr., *Taylor Porter Brooks & Philips*, Baton Rouge, LA for Omnova/GenFlex
Thomas J. Eppling, *Staines and Eppling*, Metarie, LA for All South Subcontracting
Leon A. Christ, Kenner, LA for United Services Mechanical

Verdict: $10,700,000 for plaintiffs assessed 55% to Lowe's 14 % to Omnova/Genflex and 1% to All South

Judge: Christine Noland

Date: May 24, 2006

Facts: James Moorman was at a Lowe's Home Center on 3-2-01. As he walked in the store, Moorman slipped in a puddle on the floor. He sustained a complex knee injury. It was surgically repaired.

In this diversity suit, Moorman linked his injury to a variety of defendants that stretched back to the store's construction in 1995. Cited in this negligence action were: (1) Lowe's as the operator of the store, (2) Omnova/Genflex, which installed faulty components in the leaky roof, (3) All South Subcontracting, which performed repairs on the roof, and (4) United Services Mechanical, another contractor involved in the construction.

The heart of plaintiff's case focused that not only did the roof leak, because of a combination of errors by the defendants, the leak was never repaired. It was noted that just two months before the fall, All South had done repair work on the roof. The defendants denied fault and minimized the claimed injury.

Injury: Knee

Jury Instructions/Verdict: The verdict in this summary jury trial was mixed on fault – it was assessed 55% to Lowe's, 14% to Omnova, 30% to All South and 1% to the plaintiff. United Services was exonerated. Then to damages, Moorman took a total of $10,700,000 – that included $5,000,000 for his suffering, plus $3,000,000 more for his wife's consortium interest. A summary jury trial, this result is not binding.

RACE DISCRIMINATION

Louisiana Eastern District - New Orleans

A black lawyer working as a career counselor at a law school alleged her hiring was an affirmative action ruse to maintain appearances for purposes of ABA accreditation

Caption: *Martin v. Loyola University*, 2:04-2712

Plaintiff: *Pro se*

Defense: Richard F. McCormack, *Irwin Fritchie Urquhart & Moore*, New Orleans, LA

Verdict: Defense verdict on liability

Judge: Daniel E. Knowles, III

Date: June 14, 2006

Facts: Belhia Martin was a graduate of the law school at Loyola University in New Orleans. She is black. Working in Baltimore, MD, she was recruited in May of 2002 to join the school as a career counselor. Particularly, she handled diversity issues for the school.

Loyola fired her in December of 2003. It cited that she was late for meetings and falsified expenses. Martin was replaced by two younger white workers.

Martin alleged in this suit that the firing represented an intersection of race and age discrimination as well as retaliation. [While still working, she had alleged discrimination.] To the heart of her claim, Martin considered her hiring a token exercise in diversity, designed by Loyola to respond to ABA criticism. The school denied her allegations.

Jury Instructions/Verdict: The jury rejected all of Martin's claims, including race and age discrimination, as well as retaliation. A defense judgment followed.

DEFAMATION/SEX DISCRIMINATION

Maine District - Portland

After a female stock broker was fired, her brokerage reported her to the NASD as having been let go for unauthorized trading – that reporting (which the broker called false) has blackballed her from the industry

Caption: *Galarneau v. Merrill Lynch*, 2:05-62

Plaintiff: Rufus E. Brown, *Brown & Burke*, Portland, ME and Michael A. Nelson, *Jensen Baird Gardner & Henry*, Portland, ME

Defense: Stephen E. Brown and Jeffrey A. Lee, *Maynard Cooper & Gale*, Birmingham, AL and Peter W. Culley, *Pierce Atwood*, Portland, ME

Verdict: $2,950,000 for plaintiff

Judge: George Z. Singal

Date: June 27, 2006

Facts: Deborah Galarneau worked as a stockbroker for Merrill Lynch – with the firm for fifteen years and the only woman in her office, Galarneau did well. Trouble started in 2003 when a customer alleged Galarneau had churned her account – that is she engaged in multiple bond transactions which resulted in a loss.

Merrill Lynch investigated and substantiated the allegations – beyond the churning, it also identified that Galarneau had exercised improper discretion in her trading. [It also paid $100,000 to settle the customer's complaint.]

Galarneau was fired in December of 2003. Following that firing, Merrill Lynch reported to the National Association of Security Dealers (NASD) that Galarneau had engaged in improper bond trading.

Following her firing and the reporting to the NASD, Galarneau has been essentially black-balled from her profession.

In this lawsuit, she alleged Merrill Lynch defamed her in the reporting. It was Galarneau's contention that the allegations were false – her trading was proper and was approved at every step. Beyond defamation, plaintiff also alleged discrimination. Merrill Lynch defended that plaintiff was properly fired – then to the reporting to the NASD, it postured that it was required by law to report the reason for her termination.

Jury Instructions/Verdict: Galarneau prevailed on both sex discrimination and defamation counts – this jury awarded her compensatory damages of $850,000, plus $2.1 million more in punitives. The verdict totaled $2,950,000.

MEDICAL NEGLIGENCE

Maine District - Portland

A family doctor was criticized for a delayed diagnosis of colon cancer

Caption: *Skidgell v. Bowlby*, 2:04-268

Plaintiff: William K. McKinley and Heather G. Egan, *Troubh Heisler*, Portland, ME

Defense: Christopher D. Nyhan and David J. Ekelund, *Preti Flaherty*, Portland, ME

Verdict: Defense verdict on liability

Judge: George Z. Singal

Date: May 31, 2006

Facts: Darlene Skidgell, then age 45, treated on 9-26-00 with a family doctor, Adair Bowlby. Despite a prior complaint of rectal pain (as seen by another doctor in Bowlby's group), Bowlby did not perform a rectal exam. Bowlby suspected hemorrhoids.

Six months later on 3-26-01, a colonoscopy revealed that Skidgell had cancer. It was surgically removed. Skidgell sued Bowlby and alleged that had she performed a rectal exam during the September visit, her result would have been better. That is, the aggressive cancer grew unchecked for six months, Skidgell having been lured to a false sense of security. There was also a criticism for failing to refer her to a gastroenterologist.

Bowlby defended that her care was proper and she did make a referral – however it was to a doctor outside Skidgell's network. It was then up to Skidgell, in Bowlby's estimation, to resolve the insurance problem. Then to the cancer, it was also the doctor's proof that the delay did not affect Skidgell's outcome.

Injury: Cancer not diagnosed

Experts:

Plaintiff Douglas Pohl, Pathology, Jupiter, FL
Jeffrey Miller, Oncology, Lewiston, ME

Defense Roger Renfrew, Family, Skowhegan, ME
Richard Krull, Oncology, Elizabeth, ME

Jury Instructions/Verdict: The doctor was exonerated at trial, this jury finding she was not negligent. A defense judgment followed.

Premises Liability - While shopping at a grocery, plaintiff slipped and fell on a wet floor – the disputed issue in this case was whether wet floor signs were posted or not

Micheaux v. Shoppers Food Warehouse, 8:05-2832

Plaintiff: Patricia M. Thornton, *Bacon Thornton & Palmer*, Greenbelt, MD
Defense: Christopher Dunn, *Decaro Doran Siciliano Gallagher & DeBlasis*, Lanham, MD
Verdict: Defense verdict on liability
Court: **Maryland - Greenbelt**
Judge: Jillyn K. Schulze
Date: 6-20-06

Evergreen Micheaux was shopping on 8-1-03 at the Shoppers Food Warehouse in College Park, MD. Near the produce section, Micheaux slipped on a wet floor. She sustained a soft-tissue shoulder, neck and knee injury – her medicals were $10,577.

Micheaux sued the store and blamed her fall on the failure to post signs warning of the wet floor – she particularly cited proof that a young employee, new on the job, had started mopping and failed to place a sign. The store raised fact disputes – that is, signs were placed and plaintiff fell because of her own inattention to an open and obvious condition.

The grocery store prevailed on liability and having so found, the jury didn't reach plaintiff's duties, apportionment or damages.

CAMPGROUND NEGLIGENCE

Massachusetts District - Boston

While at a campground, plaintiff suffered facial fractures when a dead tree fell on her tent

Caption: *Messana v. Acres of Wildlife Campground*, 1:04-11913

Plaintiff: John W. Collier, Cambridge, MA

Defense: Daniel Rapaport and David J. Ekelund, *Preti Flaherty*, Portland, ME

Verdict: Defense verdict on liability

Judge: Leo T. Sorokin

Date: June 8, 2006

Facts: Renee Messana was camping on 7-1-02 at the Acres of Wildlife Campground near Sleep Falls, ME. She had visited the campground many times before. While she was lying asleep in her tent, a nearby tree fell. It landed on the tent.

Messana was knocked out by the impact, suffering facial fractures in the process. She has since complained of both a hearing and smell impairment. In this suit, Messana targeted the campground, citing its failure to identify and remove dead trees. The tree in this case, she argued, was clearly barkless and clearly dead. The campground defended that it did an annual inspection, employees keeping a regular look-out for hazards.

Injury: Facial

Jury Instructions/Verdict: The verdict was for the campground on the negligence count and Messana took nothing.

FIRST AMENDMENT

Massachusetts District - Boston

A long-time police veteran was fired after going public with proof that there was widespread overtime abuse in the department

Caption: *Broderick v. City of Boston*, 1:02-11540

Plaintiff: Rosemary Curran Scapicchio, Boston, MA and Michael Reilly, *Tomassino & Tomassino*, Boston, MA

Defense: Christine M. Roach, *Roach & Carpenter*, Boston, MA and Mary Jo Harris, *Morgan Brown & Joy*, Boston, MA

Verdict: $1,002,000 for plaintiff

Judge: Richard G. Stearns

Date: April 26, 2006

Facts: In 2002, William Broderick was a twenty-five year veteran of the police force in Boston – he had also served as a union president. At that time, he went public with allegations that overtime abuse was widespread on the department – that is, officers were paid overtime for court appearances that were never made.

Following the exposure of the fraud, Broderick alleged that the police force, acting through its commissioner, began a campaign of retaliation to silence him. It ended with his firing in November of 2002. Ostensibly, Boston explained Broderick was fired because of his involvement in the discharge of his weapon – particularly, following the shooting, Broderick refused to submit to a psychiatric evaluation. [Believing he was being followed by unknown assailants, Broderick had discharged his weapon – no one was hit.]

Broderick believed the shooting was justified and the city's use of it to fire him was just a pretext to mask their retaliation. In this suit, he presented First Amendment and whistleblower claims. Boston defended that the plaintiff was let go solely because of the incident involving the shooting

Jury Instructions/Verdict: Plaintiff prevailed on both counts and took damages of $1,002,000 – that exclusively represented wage loss, this jury rejecting damages for emotional distress.

MEDICAL NEGLIGENCE

Michigan Eastern District - Bay City

A neurosurgeon was blamed for failing to promptly place a shunt on a brain cyst

Caption: *Long v. Adams*, 1:04-10042

Plaintiff: James E. Hullverson, Jr., *Hullverson & Hullverson*, Clayton, MO

Defense: Michael W. Stephenson, *Willingham & Cote*, East Lansing, MI

Verdict: Defense verdict on liability

Judge: Charles E. Binder

Date: June 16, 2006

Facts: Frank Long was treated in September of 2001 for an arachnoid cyst on his brain – a neurosurgeon, Dr. Mark Adams, performed a craniotomy. Following that procedure, Long went into respiratory arrest and sustained lingering effects related to a brain injury.

In this diversity suit, Long alleged negligence by not reoperating promptly on the cyst – it was argued he should have placed a shunt to relieve pressure from the cyst. Adams defended that a shunt was not needed and his care was proper.

Injury: Brain injury

Experts:

Plaintiff Edward Smith, Neurology

Defense Dennis Szymanski, Neurology

Jury Instructions/Verdict: The verdict on liability was for the doctor and Long took nothing.

Civil Rights - In a case of mistaken identity, the plaintiff, who is black, was arrested at his place of business after hours – at the time, a police officer was investigating a call that a black intruder was on the premises and released a police dog on the plaintiff

Abdullah v. Minneapolis Police, 0:04-4524

Plaintiff: David L. Shulman, Minneapolis, MN

Defense: Sydnee N. Woods, *Assistant City Attorney*, Minneapolis, MN

Verdict: Defense verdict on liability

Court: **Minnesota - Minneapolis**

Judge: Paul A. Magnuson

Date: 1-26-06

Akram Abdullah, who is black and of Ethiopian descent, worked in 2004 for Community Action of Minneapolis. On 7-25-04, the building was closed – he was still authorized to be on the premises to retrieve a table for his son's birthday party. As he entered the building, a call came into the police that a black intruder was on the premises.

Daniel Unguria of the Minneapolis Police responded to the call and began to investigate. Unguria found Abdullah in the building – there would be fact disputes about what happened next. From Unguria's perspective, he asked Abdullah to stop. Abdullah for his part never remembered hearing an order to stop.

Whether there was an order to stop or not, Unguria released his police dog – the dog attacked and bit Abdullah numerous times, leaving him with puncture wounds. For a brief time, Abdullah was handcuffed. In this suit, the plaintiff argued Unguria engaged in racial profiling – that is, besides being black, there was no reason to suspect he was a criminal. Unguria defended that he acted reasonably, only releasing the dog when Abdullah ignored his command.

The verdict was for the police officer on liability and Abdullah took nothing.

ENVIRONMENTAL TORT

Mississippi Northern District - Oxford

In a test case of a class of plaintiffs, a woman's death by cancer was linked to long-term environmental contamination by a nearby wood treatment plant

Caption: *Barnes v. Beazer East et al*, 3:03-60

Plaintiff: Andre Francis Ducote, Jackson, MS, David H. Hanchey, Hunter Wm. Lundy, James D. Cain, Jr., Lake Charles, LA, all of *Lundy & Davis*; Frank Thackston, *Lake Tindall*, Greenville, MS and J.P. Hughes, Jr., *Hughes Law Firm*, Oxford, MS

Defense: Cal R. Bunton, *Wildman Harrold Allen & Dixon*, Chicago, IL and Christopher A. Shapley and William E. Jones, III, *Brunini Grantham Grower & Hewes*, Jackson, MS and Reuben V. Anderson, *Phelps Dunbar*, Jackson, MS for Beazer East Chris W. Winter and Glen F. Beckham, Upshaw *Williams Biggers Beckham & Riddick*, Greenwood, MS for Illinois Central

Verdict: $845,000 for plaintiff assessed against Beazer East only; Defense verdict for Illinois Central

Judge: W. Allen Pepper

Date: May 12, 2006

Facts: This complex case involved the death of Sherrie Barnes – she died of breast cancer in 1998. Her estate linked her death to emission of noxious chemicals by the nearby Beazer East wood treatment plant in Grenada, MS. [For purposes of this report, this defendant will be referred to as Beazer East – it was acquired by Koppers in 1988.]

In terms of causation, Beazer East operated the plant since 1904 – it later sold off adjoining property that became the residential Tie Plant community. Barnes grew up in the neighborhood and lived her life there. The ongoing exposure to

the chemicals, as developed by her expert proof, led to her death. Plaintiff equated the contamination from the plant as equal to smoking twenty packs of cigarettes a day.

Then to liability, it was argued by the estate (there are other plaintiffs – Barnes operated as a test case) that Beazer East was indifferent to the release of its noxious chemicals – making matters worse, it conspired with Illinois Central Railways to cover up the contamination. Illinois Central, which was the principal customer of Beazer East, was also a defendant at trial – it was so intertwined with the operation that it had an office on-site.

Illinois Central first defended and minimized its involvement and denied any conspiracy. Similarly, Beazer East defended that throughout the operation of the plant, it was under continuous federal oversight. Then to the cancer, it was argued plaintiff's causal link was speculative and non-specific.

Injury: Death

Jury Instructions/Verdict: The verdict was mixed on liability – the jury found fault with Beazer East, but Illinois Central was exonerated. Then to damages and against Beazer East only, the estate took $850,000. [A conspiracy count was also rejected.]

Importantly, the jury continued and rejected finding the defendant acted with gross negligence – that foreclosed a consideration of punitive damages. A consistent judgment followed.

Post-Trial Motions: Beazer East has moved for a judgment as a matter of law – it has repeated arguments the proof was inadequate in making the causal link to plaintiff's injury. The motion is pending. Claims by other residents are also pending.

DISABILITY DISCRIMINATION

Missouri Eastern District - St. Louis

A hardware employee with a vision impairment alleged his employer failed to accommodate his disability – the company countered that the detail specific work of making keys and mixing paint fundamentally requires vision

Caption: *Taylor v. Branneky True Value Hardware*, 4:04-1328

Plaintiff: Herman L. Jimmerson, *Jimmerson Law Firm*, Clayton, MO

Defense: Philip C. Graham, *Helfrey Neiers & Jones*, St. Louis, MO

Verdict: Defense verdict on liability

Judge: Thomas C. Mummert, III

Date: June 14, 2006

Facts: Broderick Taylor was employed since 1985 at Branneky True Value Hardware – he performed a variety of tasks, including making keys and mixing paint. Over time, his vision began to suffer – he has retinitis pigmentosa, a progressive condition that has left him legally blind. He uses a walking stick and special sunglasses.

To the key event in this case, plaintiff met with representatives for Rehabilitation Services for the Blind. He then approached his employer about possible accommodations. At this time, employer generated a new job description – by its reading of the description, plaintiff could not be accommodated. His job tasks, by their very nature, making keys and mixing paint, require vision. He was fired in November of 2001.

Plaintiff thought the firing represented illegal disability discrimination – that is, he could continue performing his job with reasonable accommodations. As importantly, it was his belief the job description was fabricated in response to his request for accommodation and specifically designed to exclude him. Employer countered as above – Taylor couldn't perform the essential functions of the job because of his blindness.

Jury Instructions/Verdict: The verdict on liability was for the hardware store and plaintiff took nothing.

RACE DISCRIMINATION

Missouri Western District - St. Joseph

A black team manager at a security monitoring firm alleged her boss fired her because of her race – she noted that prior to the firing, he suggested she wore "ghetto outfits" among other racially insensitive remarks

Caption: *Harris v. ADT Security*, 5:04-6004

Plaintiff: Ellie Sullivant, *Sullivant Law Firm*, Independence, MO

Defense: Brandon M. Shelton, Indianapolis, IN and Grant D. Petersen, Tampa, FL, both of *Ogletree Deakins Nash Smoak & Stewart*

Verdict: Defense verdict on liability

Judge: Ortrie D. Smith

Date: April 7, 2006

Facts: Karen Harris, who is black, started working in 1997 for ADT Security Services. Promoted to team manager, she had a new boss, Dinesh Chard, in January of 2001. He is a Pacific Islander. Harris alleged Chard made racially insensitive remarks, indicating she wore "ghetto outfits" among other comments.

It became so bad that she took FMLA leave for emotional distress. Returning to work from leave, she was fired. ADT cited her integrity compromises in her evaluation of subordinates. Harris thought the proffered reason was just a pretext to mask Chard's racial hostility – it also represented retaliation. While on leave, he found her personal notebook. In it, she made comments highly critical of him, the firing then

representing retaliation for his anger at being so criticized. ADT and Chard denied the allegations.

Jury Instructions/Verdict: ADT prevailed on both discrimination and retaliation counts, Harris taking nothing. A defense judgment followed.

NEGLIGENT SUPERVISION

Montana District - Billings

Mother's boyfriend was blamed for the suffocation death of an infant – the boyfriend, it was alleged, a drug addict who had a revelation about needing a pure sacrifice, was indifferent to the girl's peril and delayed calling 911 even after finding her non-responsive

Caption: *Shields v. Anderson*, 1:04-141

Plaintiff: Alexander Blewett, III and Joseph P. Cosgrove, *Hoyt & Blewett*, Great Falls, MT

Defense: Randall G. Nelson and Jared S. Dahle, *Nelson & Dahle*, Billings, MT

Verdict: $600,000 for plaintiff

Judge: Richard F. Cebull

Date: June 30, 2006

Facts: McKenzie Shields, then seven months old, was at home on 2-16-03 with her mother – also in the house was mother's boyfriend, Scott Anderson. While mother talked on the phone, Anderson sat McKenzie on soft pillows.

A short while later, he noted she wasn't breathing. Instead of intervening, calling 911 or alerting the mother, Anderson did nothing – he even misrepresented her condition to the mother. A short time later the mother did find McKenzie. 911 was called but she could not be resuscitated. The cause of death was suffocation by positional asphyxia.

In this suit, the girl's father, Thomas Rackley, sued Anderson and blamed him for the death. A complex tale, Anderson had a history of drug use – while high on drugs in the fall of 2002, he had a divine revelation. In the revelation, he was told he needed a pure sacrifice. It was the father's theory that Anderson was involved in the girl's death – that included setting her on the soft pillows and then ignoring her peril. This was all done, the theory continued, to advance his odd revelation.

Anderson defended and denied any intent to harm the girl – it was his position the girl's death was most likely related to SIDS.

Injury: Death

Jury Instructions/Verdict: The verdict was for plaintiff on the negligence count – it rejected a charge that asked if Anderson acted with malice. Then to damages, the estate took $600,000 for father's consortium interest – lost earnings from the child were valued at zero. A consistent judgment followed.

Airplane Negligence - During a flight from Heathrow to London, the plaintiff was injured when her seat suddenly went into a full recline

Cahn v. Virgin Atlantic, 2:01-574

Plaintiff: *Pro se*

Defense: Christopher Carlsen, *Condon & Forsyth*, New York, NY

Verdict: Defense verdict on liability

Court: **New York Eastern - Central Islip**

Judge: Denis R. Hurley

Date: 5-30-06

The plaintiff in this case, Florence Cahn, was traveling on a Virgin Atlantic flight from London's Heathrow Airport to JFK. Mid-flight, Cahn recalled her seat suddenly went into a full recline. [She was in coach.] Cahn linked a back injury to this sudden recline.

In this lawsuit, Cahn alleged negligence by the airline. It disputed Cahn's version and denied fault. The verdict was for Virgin Atlantic and Cahn took nothing. A defense judgment followed.

FIRST AMENDMENT

New York Southern District - White Plains

An adjunct professor's duties were discontinued after he publicly protested a decision to let go a fellow English-as-a-Second-Language teacher – the college replied that the protests were disruptive in nature, not content and that in any event, plaintiff's speech did not touch a public concern

Caption: *Munroe v. Westchester Community College*, 7:04-6775

Plaintiff: John R. Lewis, Sleepy Hollow, NY

Defense: David S. Poppick, *Epstein Becker & Green*, Stamford, CT

Verdict: $1.00 for plaintiff

Judge: Charles L. Brieant

Date: June 15, 2006

Facts: Patrick Munroe was employed as an adjunct professor at Westchester Community College – he taught English-as-a-Second-Language (ESL) courses. In 2002, Munroe began a public protest of the firing of another ESL teacher. That included colorful protests in print, e-mail and at faculty meetings.

On 1-1-03, Munroe was not rehired. The college cited that his actions were disruptive and in any event, there were no speech issues implicated as his speech did not touch a matter of public concern. The trial court agreed and initially dismissed plaintiff's free speech claim – Munroe had argued that while his speech was certainly irksome to the college, it was protected.

Plaintiff appealed the dismissal. It was reversed on appeal and the matter returned for trial.