THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the U.S. District Court for the District of Oregon

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Program Announcement

Please join the Oregon District Court Historical Society Thursday, May 1, 2003 from 4:00 - 6: 00 p.m. at the 16th Floor Courtroom of the Hatfield Courthouse for the next "Famous Federal Cases" program. Entitled "Arguing before the United States Supreme Court," the program will consist of the leading scholar of Oregon cases that have been considered by the Court, Dr. Stephen Wasby, a federal judge and two distinguished Oregon attorneys who have argued before the Court. Judge James A. Redden will discuss Idaho ex rel Evans v. Oregon and Washington (1980); President David Frohnmayer of the University of Oregon will describe his experience arguing Whitley v. Albers (1986); Mr. Timothy Volpert of Davis Wright Tremaine will talk about Vernonia School District 47J v. Acton (1995). CLE credit is pending. Refreshments will be provided.

Employment

A waitress filed an action against her former employer alleging that the owner/ supervisor created a sexually hostile work environment and terminated her because of her pregnancy. Plaintiff claimed that the owner made numerous comments about her sex life, the sex life of her friends, her physical appearance and that of other women. After learning of her pregnancy, the owner spoke at length about his views on pregnant women, made comments about plaintiff's breasts, touched her stomach and teased her about getting fat. Plaintiff claimed that her work was made more difficult because she attempted to avoid the owner. She was terminated and filed an action seeking damages under ORS 659A, Title VII, and common law theories.

Judge Hubel denied a defense motion for summary judgment against all claims. The court found that the plaintiff's allegations of continuous, sexual comments were sufficiently severe and pervasive to state a hostile work environment claim. Judge Hubel also rejected defendant's assertion that plaintiff could not prove that the conduct was unwelcome because she never lodged a complaint; the court noted the absence of any direct Ninth Circuit authority on this point, but concluded that such a requirement made little sense in this context since plaintiff's supervisor was also the business owner and plaintiff indicated she did not complain because she feared termination.

Judge Hubel found genuine factual issues precluded summary judgment on plaintiff's claim wrongful termination and intentional infliction of emotional distress claims. The court noted that it is now well-established in this district that Title VII does not preclude a common law wrongful discharge claim. Parker v. Ritz, CV 02-343-HU (Opinion, Jan. 15, 2003).

Plaintiff's Counsel:

Sharon Stevens

Defense Counsel:

Anita Smith

Securities

Plaintiffs claimed that a company and a bank violated Section 10(b) and 20(a) fo the 1934 Securities and Exchange Act by making a false statement in a notice of redemption that caused plaintiffs to surrender their debentures when they were under no obligation to do so, thereby foregoing $56,500 in daily interest payments. Judge Garr M. King granted a defense motion to dismiss the action, without prejudice, for failure to plead scienter with the requisite specificity under the Private Securities Litigation Reform Act. Cox v. Viacom International, Inc., CV 02-1598-KI (Opinion, March 17, 2003).
Plaintiffs' Counsel:
Helen Dzuiba
Robert J. McGaughey
Defense Counsel:
Lori Irish Bauman

Civil Rights

Judge Ancer L. Haggerty held that a prison inmate who was not permitted to use a comb binding machine was deprived of his Fourteenth Amendment right to access to courts, given all of the circumstances presented. Plaintiff submitted a request to prison officials at the Snake River Correctional Institution to comb bind an over length brief that was due to be filed with the Supreme Court for plaintiff's appeal of his underlying conviction. Plaintiff presented evidence that he had been permitted to use the machine in the past and that his materials had to be bound under applicable Supreme Court rules. The prison administration denied the request five days after receipt; plaintiff missed his filing deadline and his appeal was dismissed as untimely.

Judge Haggerty rejected defendant's claim of qualified immunity and granted plaintiff's motion for partial summary judgment, reserving any damage issue for trial. Phillips v. Hust, CV 01-1252-HA (Opinion, March 21, 2003).
Plaintiff: Pro Se
Defense Counsel:
Leonard W. Williamson

Criminal Law

A prison inmate wrote threatening statements about the President and his family in an anger management workbook. The prison counselor notified the Secret Service. An agent then interviewed the defendant to assess the seriousness of the threat; the agent did not precede the interview with Miranda warnings. Approximately 6 months later, defendant attempted to mail a letter to the President which referenced his imminent death. Defendant was prosecuted for his attempts to mail the letter; the government introduced the earlier incidents to show context.

Judge James A. Redden held that the letter, standing alone, did not constitute a "true threat," because, while it referenced the President's death, it did so with the implication that it would be brought about by others (Osama, the Taliban, etc.). However, the court nevertheless found defendant guilty based upon the prior incidents which rendered the letter a threat in context. Judge Redden held that the workbook writings were not protected by the patient-psychotherapist privilege, but rather fell within the dangerous patient exception. The court also found that defendant's statements to the agent constituted new crimes and, as such, they were admissible despite the absence of Miranda warnings. United States v. Lincoln, CR 02-208-RE (Opinion, Jan. 9, 2003).
AUSA: Frank Noonan
Defense Counsel:
Michael Levine