

# Spotlight

## JURY FINDS DISCRIMINATION OCCURRED DURING A PLURALISM-TRAINING WORKSHOP.

*Fitzgerald v. Mountain States Tel. and Tel. Co.*, U.S. Dist. Ct., D. Colo., No. 90-Z-236, Sept. 23, 1992.

*America is woven of many strands;  
our fate is to become one, and yet many.*  
—Ralph Ellison

Laurie Fitzgerald, a Caucasian woman who worked as an independent consultant, participated in a training workshop for the employee pluralism program of U S West Communications, Inc. The five-day workshop was designed to identify people qualified to lead workshops in the company's four-year pluralism training program.

Participants were required to relate life experiences contributing to their commitment to workplace pluralism. The "ground rules" were confidentiality and honesty. Fitzgerald told of her romance with an African-American man and the difficulties they faced because of isolation from the African-American community. When she became emotional at the end of her story, Aaron Hazard, an African-American participant, hugged her.

Debra Sapp, the African-American directing the workshop, allegedly became hostile to Fitzgerald and later allegedly made a racially disparaging remark to her. Sapp also purportedly told Hazard she would direct work to him only if he disassociated himself from Fitzgerald.

At the workshop's conclusion, Fitzgerald was terminated from the program. Hazard was categorized as qualified to conduct the company's training sessions but was never offered work.

Fitzgerald and Hazard wrote to U S West asking it to investigate Sapp's conduct. Although they were never contacted by U S West during its investigation, they received a letter stating that after a thorough inquiry, the company found no basis for their complaints.

Outraged, Fitzgerald and Hazard contacted ATLA attorney Robert J. Truhlar and attorney Kathryn Miller of Littleton, Colorado. They agreed to represent Fitzgerald and Hazard in a suit against U S West. Plaintiffs alleged that defendant had refused to do business with them on the basis of race in violation of 42 U.S.C. § 1981. The statute has been interpreted as making it unlawful for anyone to refuse to contract with another person on the basis of race or racial associations. Plaintiffs also claimed U S West had failed to adequately investigate Sapp's conduct.

Defendant denied that Sapp had (1) made the alleged remarks and (2) decided not to retain plaintiffs' services based on racial considerations. Defendant argued that it

had denied work to Fitzgerald based on performance.

At trial, to prove defendant had wrongfully discriminated against plaintiffs, counsel questioned the nature and timing of Sapp's remarks about Fitzgerald's performance. Counsel introduced evidence that Sapp had told other workshop leaders after the first day that Fitzgerald would not make it through the class. Counsel then told the jury that Fitzgerald had not really performed on the first day except to tell of her relationship.

Counsel introduced evidence to show that Sapp's negative view toward Fitzgerald was motivated by something other than her performance. For instance, counsel showed the jury a document, prepared by Sapp at the end of the training session, in which she listed each participant in a category of "ready" or "not ready." The document revealed that Sapp had created a separate category for Fitzgerald only, entitled "services not needed." Counsel also presented evidence that after the five-day class, Sapp had referred to Fitzgerald as "Laurie Franklin."

Unexpectedly, testimony by Jan Fincher, a pluralism training manager for U S West, also helped plaintiffs prove their claims. She testified that Hazard had not been given any consulting contracts because he supported Fitzgerald in her discrimination claim. This amounted to an admission at trial because Fincher explained that it made no sense to hire a business associate of someone who was bringing discrimination charges against the company.

Fincher, who was responsible for the investigation, also admitted that she had never asked Sapp—who served as the primary investigator—whether she had made racial remarks to Fitzgerald during the training class.

Because there was no indication during voir dire that any juror had ever had an interracial romance, counsel faced a challenge in explaining the dynamics of an African-American woman's negative reaction to a Caucasian woman who had had such a relationship. To overcome this obstacle, plaintiffs presented the testimony of a psychologist who had extensive experience in African-American studies. He testified that Sapp's actions were consistent with a social phenomenon in which African-American women become angry at Caucasian women who have romantic relationships with African-American men.

The jury awarded about \$2.35 million. Fitzgerald received about \$1.29 million, including \$250,000 emotional distress damages, and \$500,000 punitives. Hazard received \$1.06 million, including \$250,000 emotional distress damages, and \$500,000 punitives.

Counsel says the verdict will send a message to employers that this type of conduct will not be tolerated.

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