PrawfsBlawg
"Where Intellectual Honesty Has (Almost Always) Trumped Partisanship Since 2005"



« Yom Kippur, Sandy Koufax, and (the forgotten) Hank Greenberg | Main | Justice and fairness v. procedure »

**THURSDAY, SEPTEMBER 24, 2015**

## Settlement in Tolan v. Cotton

Last year, SCOTUS summarily reversed a grant of summary judgment against a plaintiff in a § 1983 action, concluding that the district court had impermissibly resolved disputed facts in defining the factual context for purposes of qualified immunity. I wrote about the case, arguing that, through some procedural confusion, it might indicate a new scrutiny of this sort of sub silentio fact-finding on qualified immunity.

SCOTUS remanded the case to the Fifth Circuit to reconsider whether other, undisputed facts supported qualified immunity; the Fifth Circuit sent it back to the district court. In September, the court granted summary judgment in favor of the city and sent the individual claim to trial, commenting that SCOTUS would not "be satisfied if we didn't take this case to trial." After one day of trial, the case settled for $ 110,000, a typical outcome for cases that do not go away on summary judgment and a typical settlement amount for a claim involving serious-but-not-life-threatening injuries. (H/T: Jonah Gelbach of Penn).

An interesting side note: Tolan sought to have District Judge Melinda Harmon recuse over comments she made at the pretrial hearing on the eve of trial. The basis for the motion was a newspaper article reporting

**Recent Posts**

Argument on ATS in Jesner v. Arab Bank

Zarda and the Trump Administration's Surprising (and Largely Unrecognized) Approach to Anti-Discrimination Principles

**E-mail Us About Prawfsblawg**

**Prawfs**

Follow Prawfs on Twitter

**Dan Markel**
(1972 - 2014)
Founder and Friend

**Ethan J. Leib**

Ethan's Home Page
Ethan's SSRN Page
*Deliberative Democracy in America*
*The Search for Deliberative Democracy in China*
*Privilege or Punish? Criminal Justine and the Challenge of Family Ties*
*Friend v. Friend*

**Paul Horwitz**

Paul's Home Page
Paul's SSRN Page
*The Agnostic Age*
*First Amendment Institutions*

Unconstitutional Intent and the Executive

Laptops are loud

JOTWELL: Mullenix on Symeonides on forum-selection clauses

How far we have come, in the wrong direction (Updated)

Against unity

Argument: Hamer v. NHSC

"Thanks, Iowa Supreme Court!"

On Not Thinking Much About History

Police as prosecutors

Gill and Congressional Authority (A Response to Prof. Morley)

The Overlooked Issue in Gill v. Whitford, the Supreme Court's Political Gerrymandering

on the conference; the article quoted Harmon as saying she was tempted to grant summary judgment on the individual claim, but read SCOTUS as hinting that the case should go to trial. The article also quoted her as saying she was "confident" and "had faith" in her opinion and thought she was right the first time.

The court rightly denied the motion. She stated that some of the statements were taken out of context and referred to the claim against the city, not the individual officer. Other statements involved legalities and interpretations of law, with no discussion of what material facts might be undisputed or not. Moreover, there is nothing improper with the judge stating that she continues to believe she was right about her initial summary judgment decision on the individual claim (the one SCOTUS reversed). My experience is that district judges always continue to believe they were right even after being reversed. But that does not impair their ability to apply and follow that decision, much less indicate favoritism or antagonism towards the party against whom they originally ruled. Otherwise, a case should be assigned to a new district judge whenever there is a reverse-and-remand, which would create all sorts of unworkable procedural problems in complex cases.

Posted by Howard Wasserman on September 24, 2015 at 09:31 AM in Civil Procedure, Constitutional thoughts, Howard Wasserman, Law and Politics | Permalink

**COMMENTS**

**POST A COMMENT**

**Verify your Comment**

**Previewing your Comment**

Posted by: |

**Rick Garnett**

Rick's Home Page

Rick's SSRN Page

**Matt Bodie**

Matt's Home Page

Matt's SSRN Page

**Steve Vladeck**

Steve's Homepage

Steve's SSRN Page

**Orly Lobel**

Orly's Homepage

Orly's SSRN Page

**Rick Hills**

Rick's Homepage

Rick's SSRN Page

**Howard M. Wasserman**

Howard's Home Page

Howard's SSRN Page

*Understanding Civil Rights Litigation*

**Lyrissa Lidsky**

Lyrissa's Homepage

Lyrissa's SSRN Page

**Sarah Lawsky**

Sarah's Home Page

Sarah's SSRN Page

**Daniel Rodriguez**