

## Firm Scores Back-to-Back Victories for Universities

By Adrianna Khoo

**B**ack-to-back victories for Gordon & Rees' San Francisco employment law practice have the regents of the University of California and Stanford University breathing a sigh of relief.

Both institutions faced wrongful-termination claims: One person alleged that the regents discriminated against him because of a mental disability, and the other claimed that Stanford retaliated against him after he complained that he was passed over for a promotion.

Gordon & Rees partner Michael Bruno and associate Andrew McNaught represented the regents, while partner Michael Lucey and associate Michael Laurenson represented Stanford University.

"The incredible fortuity of our employment group of probably eight or nine attorneys having four people ... in trial at the same time and having defense verdicts 24 hours apart is an unusual thing, no doubt never to be repeated," Laurenson says.

James Kelley filed suit against the regents, claiming they discriminated against his mental disability when they fired him July 2000.

The Alameda Superior Court found the project coordinator tasked with creating a new \$22 million campus incapable of performing the massive job when diagnosed with bipolar disorder. *Kelley v. Regents of the University of California*, 2002-045933 (Alameda Super. Ct., verdict Feb. 24, 2005).

Kelley claimed that the regents did not take reasonable steps to accommodate his mental disability, as the law requires, according to his attorney Dan Siegel of Siegel & Yee in Oakland. He wanted \$2.25 million in damages.

Kelley was charged in 1998 with creating a University of California campus in Washington, D.C., the first outside the state. The campus would serve as a new hub for students and researchers working in Congress, the Environmental Protection Agency, and the National Institute of Health, Bruno says.

But in the spring of 1999, Kelley began sending details of his personal life to his co-workers and even Gov. Gray Davis, Bruno says.

E-mails to engineers and architects working on the project included "what busses Kelley took, where the busses turned, what he ate, if he had an erection in the night time, drawings of where he slept and where his wife slept," Bruno says.

Kelley was placed on leave Oct. 25, 1999, as a result of the e-mails and evaluated by a doctor the next day, according to Siegel.

The doctor concluded that Kelley was not dangerous to others but was incapable of executing the enormous project ahead of him, according to Bruno.

Kelley was fired in July 2000 after his employers tried to contact his wife and doctor about other alternatives but to no avail, Bruno says.

But Siegel says that the university was required to do much more than take the doctor's conclusion at face value and that they didn't consult Kelley's personal physician.

"They should have done more than simply report to the university that he's disabled," Siegel says. "Under the law, if an employer believes an employee is disabled, they are obliged to engage in an interactive process to determine whether there is a reasonable accommodation to allow him to continue to work."

"They should have obtained permission to speak with Mr. Kelley's own doctor to see if there was a medical solution to his problem."

A change in medication probably would have allowed Kelley to keep functioning, Siegel says.

Kelley's own doctor, who had been treating him with Prozac for depression while he was on leave, considered Kelley mentally stable and discontinued the drugs at the end of 2000, Siegel says.

"But then there was no work, and the stigma of having been fired by a previous job for psychiatric problems puts him in a bind for finding new work," Siegel says.

The Feb. 24 defense verdict was followed the next day by Stanford University's victory against Edward Norwood, a former shipping and receiving manager.

Norwood alleged he was wrongfully terminated after he complained about being passed up for a promotion. *Norwood v. Leland Stanford Junior University*, C03-2424 (N.D. Cal., verdict Feb. 25, 2005).

Norwood worked for Stanford for 20 years as the manager of shipping and receiving and was in charge of supervising employees who physically shipped and handled products.



Photo by S. Todd Rogers

Gordon & Rees partners Michael T. Lucey and Michael D. Bruno won back-to-back defense verdicts in wrongful termination lawsuits for Stanford University and the regents of the University of California respectively.

Sandra Pickrom, who worked for the university for 19 years, was the shipping and receiving administrator in charge of the paperwork side of the department.

In March 2001, the university decided to combine the two jobs. Pickrom was promoted to the new position, while Kelley was to discuss with supervisors what his new role would be.

But Norwood refused to answer to Pickrom or any other superiors, Laurenson says.

In one instance, a supervisor attempted to resolve a yelling match between Pickrom and Norwood when Norwood "literally stood up, spun around like a ballerina with his arms in the air, mimicking Pickrom while she tried to talk," Laurenson says.

Norwood's attorney, sole practitioner John Taylor of San Francisco, did not return calls for comment. Norwood was suing for up to \$500,000, according to Laurenson.

Norwood received written notices and oral warnings for his alleged insubordination after he refused to discuss his job duties, according to Lucey.

But he claimed he didn't have to answer to superiors, because he was waiting for responses to employment complaints he filed with both Stanford University and the Department of Fair Employment and Housing, Lucey says.

"Just because someone has filed a complaint with the Department of Fair Housing and Employment doesn't mean that he doesn't have to do any work at all," Laurenson says. "That would defeat the whole purpose of having a grievance process."

The jury found that the school had warned Norwood sufficiently and held numerous meetings to talk about Norwood's duties, which served as ample efforts under the law to compromise with him until he was fired.