

# Artists Win Race Discrimination Suit Against ABC Judge Rules Network and Wilmer, Cutler Lawyers Concealed Evidence, Misdled Court

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In an opinion that chastises ABC and its Washington lawyers for "flagrant misconduct," a federal judge yesterday ruled that two black employees of ABC News won their race discrimination case against the television network by default because the company and its counsel concealed evidence and deliberately misled the court.

U.S. District Judge Royce C. Lamberth found that the actions of ABC and its Washington law firm, Wilmer, Cutler & Pickering, "mandates imposition of the most severe sanctions for abuse of the judicial process."

The suit, brought in 1986 by graphic artists Michele E. Shepherd and LaRue Graves in the network's Washington bureau, alleged that the network discriminated against the two on the basis of their race. They sought \$10 million in damages. Lamberth did not rule on how much the artists will receive, leaving that for a future hearing.

The case is "a victory of David against Goliath," said Mark Lane, an attorney for the plaintiffs. "Often, people who take on giant companies think they don't have a chance—and they don't."

Lamberth, who wrestled with his decision for nearly three years, imposed the ultimate penalty against a

defendant who violates judicial procedures by declaring victory for the other side before the case has been tried. Such rulings are extremely rare, according to legal experts. Judges usually impose fines as sanctions in such cases.

Legal ethics expert Stephen Gillers of New York University called the ruling "quite remarkable," noting that there probably are fewer than five such judgments in federal courts a year. "It's even more remarkable because of the involvement of a firm of the caliber of Wilmer, Cutler—the bluest of the blue chips," he said. "Judges tend to be tolerant of lawyer misconduct."

When the discrimination case was about to go to trial in 1989, Lane alleged that ABC had failed to disclose that it surreptitiously sent a management spy to a meeting of minority employees at the Washington bureau during which the artists' grievances were discussed.

Lamberth then held four days of hearings into Lane's allegations. In his ruling yesterday, he said it was impossible not to conclude that ABC had sent the spy to the meeting and then prepared an internal memo from the informer's notes.

The judge also noted that ABC and its lawyers were unable to produce the memo, written by the informant's supervisor in Washington and sent to four senior network officials in New York. ABC Vice President Anita

Hecht, Lamberth said, "could provide no explanation whatsoever as to how *four separate documents* containing original date stamps could have disappeared."

Moreover, Lamberth rebuked ABC and its lawyers for failing to respond to "impressive evidence" of misconduct. The judge said ABC "substantiated" witnesses who did not recall circumstances which they should have recalled, witnesses who remembered nothing on cross-examination but who were willing to adopt the prearranged line of the defendants. . . . The defendants and their counsel have taken substantial and inappropriate actions to prevent the emergence of the facts."

"We believe this ruling is a mistake," said Julie Hoover, a spokeswoman for ABC, which merged in 1986 with media giant Capital Cities Inc. "The judge has apparently drawn the most egregious conclusion from our inability to produce an original document."

"We are confident that there was absolutely no misconduct by counsel in this case," said a spokesman for Wilmer, Cutler.

A. Stephen Hur Jr., the lead attorney on the case at Wilmer, Cutler, declined to comment on the ruling.

"The judge's opinion hinged on one piece of disputed testimony concerning an employee's recollection of a brief event that took place four years earlier. We think the conclusion the

court reached was incorrect," the firm's spokesman said.

Lamberth's ruling said that ABC and its lawyers consistently denied that ABC management had evidence that senior personnel coordinator Robert Sam had been sent by management to spy on the minority employees' meeting. Lamberth called the assertions a deliberate attempt by the defendants to deceive the court.

Sam signed a false statement, prepared by the law firm, stating that there was no discussion of the Shepherd case at the meeting, according to the ruling. The testimony of Carol Ornes, another ABC official, "was characterized by evasiveness, equivocation, inconsistencies, lapses of memory and outright untruths," Lamberth's ruling said.

Shepherd, who still works in the bureau, contended she was given an oppressive work schedule as a result of race and sex discrimination. Graves sued for reinstatement to his job and back pay, claiming he was fired after participating in the 1985 meeting of minority employees at the Washington bureau, where he and Shepherd were the only black employees in the graphic arts department. Neither could be reached for comment yesterday.

A Wilmer, Cutler spokesman said the firm is considering all of its options, including an appeal of the case.

Staff writer Paul Farhi contributed to this article.