

Excounty lab director wins lawsuit Fired worker spoke of office flaws

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By GEORGE FLYNN Copyright 1998 Houston Chronicle

A jury Monday returned a \$315,000 judgment against Harris County, ruling that the Medical Examiner's Office wrongly fired a DNA lab director for speaking out about abuses in the office. Dr. Elizabeth "Libby" Johnson, ousted in December 1996, gained the verdict. Her suit accused office supervisors of retaliating against her and violating her rights of free speech in reporting alleged cover-ups of evidence and sabotage in the lab. "I'm elated -- at last there is somebody listening," said Johnson, 37. "Twelve jurors heard the evidence and concluded that the county had been lying. I hope Commissioners Court is listening -- the citizens of this county deserve better than what they've been getting." Johnson testified she had a good work record in more than four years as a medical examiner's employee, until she alleged that the office and prosecutors had suppressed forensic evidence supporting the innocence of a capital murder defendant in 1995. She accused the office of bias toward law enforcement and prosecutors, and called for an investigation into allegations of the suppression of evidence and two instances of sabotage of tests in the lab. Officials of the Medical Examiner's Office said the accusations were unfounded. They said Johnson finally had to be dismissed because she refused to accept their legitimate supervision and policies and could no longer manage the caseloads in her lab. Assistant County Attorney Frank Sanders, the defense lawyer, said claims of cover-ups and evidence tampering were merely "red herrings" raised by the plaintiff to hide her employment problems. After a week of conflicting testimony, jurors deliberated less than two hours in the court of state District Judge Lamar McCorkle. They found that the firing came because Johnson made "in good faith, a report of a violation of law" to authorities. Jurors also ruled that a substantial factor in her ouster was her "exercise of protected First Amendment rights" of free speech. In the verdict, jurors said Medical Examiner Dr. Joye Carter and **Johnson's immediate supervisor, Dr. Ashraf Mozayani, were responsible for damaging Johnson.** The jury assessed \$15,000 in damages for lost wages and benefits, and \$300,000 in future compensation damages. "They put up all kinds of smokescreens and `rabbit trails,' but the jury saw through it all," said Johnson's attorney, Mark LaSpina. "It was a clear attempt by the county to make her look bad. She deserves compensation -- she's gone through hell in this." In final arguments, LaSpina left open the issue of damages for jurors. He said later that the \$1.5 million sought in the suit was a safeguard, in the event jurors returned a higher verdict than the one delivered Monday. McCorkle also ruled that Johnson's attorney's fees, which could run as high as \$130,000 or more, will be paid by the county. Sanders did not comment on the verdict, although an appeal is planned. **Witnesses for Johnson attacked Mozayani as the one intent on repeatedly pressuring Johnson with policies and criticism.** Carter had little direct involvement with Johnson. Johnson's complaints about evidence suppression and alleged office bias toward prosecutors began before Carter's arrival in July 1996, although Mozayani was a key aide brought in by Carter. The DNA lab director accused a co-worker and prosecutors of trying to cover up evidence of the possible innocence of capital murder suspect Joe Durrett in April 1995. Johnson said the office hid the existence of hair and

blood samples from the murder scene while Durrett languished in jail. He was acquitted by a jury last May. Johnson sought investigations by several law enforcement agencies. Harris County District Attorney John B. Holmes Jr. began a grand jury review of her DNA-testing methods after some police agencies criticized her work when it excluded their suspects in murder cases. Holmes declined to comment on the verdict Monday. He said he had worked to ensure that the Johnson grand jury review would remain secret so there would be no impact on her professional reputation. Sanders argued to jurors that Johnson had created her own professional credibility problems with her public statements to the news media. He said she left no choice for Mozayani when she refused requests to follow an established work schedule, to get approval for overtime and follow other policies. In a "mound" of memorandums, Johnson had regularly disparaged Mozayani and called her "ignorant" of crime lab operations, Sanders said. "All of these `reasons' are a bunch of bull" -- made up after-the-fact," LaSpina told jurors. "Dr. Johnson stuck her neck out for all of us. It is time we stick our necks out for her."

Medical Examiner fired for refusing to falsify evidence says she suspected a frame-up in case Prosecutors upset analysis didn't back theory

County pays her \$375,000 to settle whistleblower suit

County settles suit / Whistleblowing doctor gets \$375,000

Harris County agreed Tuesday to pay a former employee of the Medical Examiner 's Office \$375,000 and to drop the county's appeal of her successful whistleblower lawsuit.

Harris County Commissioners Court accepted County Attorney Michael P. Fleming's recommendation to settle the case with Dr. Elizabeth "Libby" Johnson. Johnson sued the county in March 1997, contending that Chief Medical Examiner Dr. Joye Carter wrongly fired her for reporting potentially illegal cover-ups and sabotage at the office.

A jury sided with Johnson in February and awarded her \$315,000 plus attorney's fees. **The county immediately appealed the verdict to the First Court of Appeals.**

Fleming said Tuesday that, in the intervening months, the county's bill has risen to \$453,000. With the potential that costs would rise and the unlikely prospect of getting the verdict overturned, Fleming suggested the county cut its losses.

Fleming proposed settling the case for \$375,000 and dropping the appeal - a suggestion Commissioners Court accepted unanimously Tuesday.

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