



## Phatak v. Dean (5th Cir.)

Topics Covered: Professional Liability, Abusive Litigation Against Physicians

### Issue

The issue in this appeal is whether a medical examiner who prepared an incorrect autopsy report should be immune from prosecution in a civil rights lawsuit.

### AMA Interest

The AMA supports efforts of state medical societies to deter abusive lawsuits.

### Case Summary

Noel T. Dean, the plaintiff, asserted that he was wrongfully indicted and tried for the murder of his wife, Shannon Dean, because of misconduct by the county medical examiner, by the city police department, and by their employees.

On July 29, 2007 Noel and Shannon became involved in a dispute. Shannon reached into a dresser drawer and pulled out Noel's gun. Shannon was killed with a gunshot wound to her head.

Noel then called the police. First on the scene was a detective from the Houston Police Department Detective. Noel told the detective that Shannon had shot herself. However, the detective's report indicated that Noel had probably shot her.

On July 31, 2007, Harris County Assistant Medical Examiner Darshan R. Phatak, MD, heard the detective's theory of the case. Phatak then autopsied Shannon. After the autopsy, he consulted with two of his colleagues in the Medical Examiner's Office. Following such investigation and consultation, he prepared an autopsy report, which listed Shannon's cause of death as "Homicide."

After completion of the autopsy report, Noel was indicted, arrested, and tried for Shannon's murder. Initially, the trial resulted in a hung jury.

Noel was retried. The prosecution called Phatak as a witness, and Noel's lawyer subjected him to vigorous cross-examination. Following this cross-examination, the Medical Examiner's Office reconsidered its report. In less than an hour, the office amended the report to change the cause of death from "Homicide" to "Undetermined." The Harris County prosecutors then dismissed the charges against Noel.

Following dismissal of the criminal charges, Noel sued Harris County, the City of Houston, the police detective, Phatak, and two other medical examiners in the United States District Court for the Southern District of Texas for violation of his civil rights by submitting an incorrect and biased autopsy report. This, in turn, led to his arrest and the criminal lawsuits against him, which, he claimed, infringed his rights under the Fourth Amendment (unreasonable seizure), Sixth Amendment (deprivation of liberty without a fair trial under due process of law), and

Fourteenth Amendment (also deprivation of liberty without a fair trial under due process of law). He sought monetary damages.

Phatak asserted he was entitled to qualified immunity against suit and moved for summary judgment. He claimed that he should be immunized unless he had submitted an intentionally false autopsy report or had been deliberately indifferent to whether his report was false. The trial judge held there was sufficient evidence to find that Phatak had been deliberately indifferent to the correctness of his report. He denied the motion for summary judgment.

Phatak has appealed to the Fifth Circuit, and further trial court proceedings have been stayed pending the outcome of the appeal. Briefing has been completed in the Fifth Circuit, and oral argument was heard on December 6, 2017.

### **Litigation Center Involvement**

The Litigation Center, along with the Texas Medical Association and other health care organizations filed an *amicus* brief to support Dr. Phatak.

United States Court of Appeals for the Fifth Circuit brief