

SEPTA Manager, General Counsel Called to Testify

Safety Director's Memo Calls

The Legal Intelligencer

By Claudia N. Ginanni

Of the Legal Staff

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"I can't believe what I'm hearing," Judge Frederica A. Massiah-Jackson said during a pause in Friday's contempt-of-court proceedings, at which eight SEPTA employees turned over reams of documents relating to the November 1996 escalator accident that tore a 4-year-old's foot off.

Witness after witness testified that nobody from SEPTA's legal department had ever asked for the documents, which were requested by the boy's lawyer but never produced during discovery; some of the papers turned up in the middle of the trial, at which Shareif Hall, now 7, and his mother won a jury verdict of \$51 million.

Among the most crucial of the documents came out of a Macy's shopping bag full of papers hauled into the courtroom by Assistant Director Stephen R. Krenzel. It was a routing memo from Cecil W. Bond Jr., SEPTA's assistant general manager for safety and security, that provided a list of recipients of the agency's May 15, 1997, accident investigation report on Hall's accident at the Cecil B. Moore subway stop of SEPTA's Broad Street Orange Line.

The routing memo indicated that both SEPTA's general manager, John K. Leary, and SEPTA's general counsel, G. Roger Bowers, received the report.

Earlier in the week, Deputy General Counsel Eileen Giordano Katz, denying that SEPTA's lawyers had concealed relevant documents from Hall's lawyers during discovery, testified that she hadn't known the report existed until it appeared at the trial.

Hall's lawyer, [Thomas A. Kline](#) of Kline & Specter, asked Massiah-Jackson to extend the hearing through today so that he could examine Leary and Bowers, whose names were linked with the accident investigation report for the first time Friday. She granted the request.

Another key document was brought to court by Robert M. Allman, who was SEPTA's director of systems safety when Hall's accident occurred.

The day the agency's accident investigation report was signed and circulated, Allman wrote a memo to his file stating that he had signed the accident report only "under verbal protest" because of his "extreme displeasure" at the way the investigation had been conducted.

Allman's memo to the file, as read into the record by Kline, said that even after they had asked for it, "critical physical evidence was withheld from investigators."

Safety Officer James Bahn, who was assigned to investigate the accident on the Cecil B. Moore escalator, later testified that he had never seen the physical evidence - just photos.

According to Allman, Bahn had complained to him about "the facts changing" in successive drafts of the report by SEPTA's director of safety and risk management, Russell Figueira.

Allman said that he advised Bahn to keep all the drafts in his files. He also said he had protested "to many people," including Figueira and Bond, about the conduct of the accident investigation.

"When the systems safety department doesn't have evidence, we can't complete an objective investigation," Allman said. "I, myself, as director of systems safety, never saw any of the evidence."

It was Kline's cross examination of Figueira, whom he called as a hostile witness during the trial, that revealed the existence of a file of undiscovered documents relating to SEPTA's escalators in general and Hall's accident in particular.

During the trial, Massiah-Jackson ordered Figueira to go to his office at 1234 Market St. to retrieve the file during the lunch recess.

According to Kline, Figueira had insisted at trial that he had poor recollection of the investigation of Hall's accident because he had been out of work with sciatica for months. Kline told reporters today that Allman's testimony about the back-and-forth dispute over the report called Figueira's poor memory into question.

Figueira appeared on the stand again Friday; his testimony was something of a verbal sparring match. He offered a memo titled "Escalator Accident Investigation" and then insisted that it was not about the accident investigation per se but instead was about the response to the accident.

Kline read the first sentence, beginning, "As you know, we are conducting an accident investigation into the accident at the Cecil B. Moore subway stop ...>"

Kline asked again if the memo was a document relating to the escalator accident at the Cecil B. Moore subway stop.

No, Figueira maintained; "It was about follow-up to the accident."

Another document Figueira brought to court Friday was a computer printout listing escalator-related incident claims for a span of several years.

"You can retrieve incidents from the claims department just by punching a couple of buttons on the computer?" Kline asked.

Many of the documents in the stacks of paper that began to accumulate on the evidence table were duplicates of one another.

Again and again, drafts of the accident investigation report, the final version of the report, and memos from before and after Hall's accident detailing the decrepit condition of SEPTA escalators in general and the Cecil B. Moore stop's elevator in particular appeared.

Each time, Kline asked the witness if he or she had ever been asked to produce the documents before. Each time, the witness responded that the first request for such documents came Thursday afternoon, the day before the witness appeared in court.

The records must not have been very hard to find, Kline said.

At one point, Kline stopped to address the court, saying he was afraid he'd need another table to hold all the evidence generated by the hearing. By way of contrast, he held up a slim sheaf of papers.

"This is all the documents we got in response to our discovery request," Kline said.

"That's all you got?" Massiah-Jackson said. "How many pages is that?"

Kline told her there were 44 pages of documents, not including photographs.

"And you didn't ask, 'Where's the rest?'" Massiah-Jackson said.

Assistant General Manager Bond, re-called to the stand at the end of the day, acknowledged to Kline that if Allman's complaints about the accident investigation were founded, Allman's memo to the file was "shocking."

Pasquale T. Deon, who chairs SEPTA's board of directors, announced last week that the agency had hired an independent panel of distinguished lawyers to investigate SEPTA's handling of the escalator-accident case.

The panel is to include retired U.S. District Judge Edward N. Cahn, retired Superior Court Judge D. Donald Jamieson and Carl E. Singley, a former dean of Temple Law School and a close advisor of Mayor-elect John Street.

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