

PRESIDENT'S PAGE

Anthony Tarricone

Jamie Leigh Jones, a 20-year-old clerical worker for Halliburton Co., was surprised to arrive in Baghdad in July 2005 and find that she would be housed in a barracks with 200 men. She had been told she would share a safe trailer with another woman.

Immediately, she was subjected to gross sexual harassment. In response to her complaints to management, she was told, "Go to the spa." On her third day in Iraq, she was drugged and brutally gang-raped by several Halliburton employees. She suffered, among other injuries, torn pectoral muscles that required surgical repair.

After the assault, Jones was kept under armed guard in a storage container, with limited ability to communicate or seek medical care. Eventually, she was able to reach her father by telephone. He sought the help of Rep. Ted Poe (R-Tex.), who intervened and secured Jones's safe return to the United States.

Jones, represented by AAJ member Todd Kelly of Houston, filed suit against Halliburton in federal court in Texas. The company moved to compel arbitration, citing a clause in the contract that Jones signed as a condition of employment. It provided:

You . . . agree that you will be bound by and accept as a condition of your employment the terms of the Halliburton Dispute Resolution Program which are herein incorporated by reference. You understand that the Dispute Resolution Program requires, as its last step, that any and all claims that you might have against employer . . . , including . . . any and all personal injury claim[s] arising in the workplace . . . must be submitted to binding arbitration instead of the court system.

Knowing that the district court already had enforced this arbitration clause against another victim of sexual assault, Kelly sought the assistance of the Center for Constitutional Litigation (CCL)—the Washington, D.C., law firm that is on retainer with AAJ to provide assistance with legal matters that affect the constitutional rights of access to courts and trial by jury.

CCL Vice President and Senior Litigation Counsel John Vail appeared before the district court, won a ruling that sexual assault claims should not be sent to arbitration, and suc-

cessfully defended Halliburton's appeal to the Fifth Circuit, which found that however broad the arbitration clause, it "certainly stops at Jones's bedroom door." (*Jones v. Halliburton Co.*, 583 F.3d 228, 239 (5th Cir. 2009).)

The Fifth Circuit decision led Sen. Al Franken (D-Minn.) to sponsor legislation barring defense contractors from using arbitration clauses to cover up rape. It also led to something all good litigators covet: a trial date.

Series of successes

CCL, under the direction of its president, Robert Peck, has amassed an amazing record of success challenging damages caps and other forms of restrictions on access to justice all across the country—sometimes working directly with AAJ-affiliated state trial lawyer organizations, and sometimes retained privately by AAJ members, but always focused on matters that affect access to justice beyond the individual case.

In addition to the *Jones* case, CCL's 2009 victories include:

- *Philip Morris USA, Inc. v. Williams*. The U.S. Supreme Court refused to disturb a \$79.5 million punitive damages award against tobacco giant Philip Morris on behalf of the widow of a deceased smoker. The ratio of punitive damages to the underlying compensatory damages far exceeded what had previously been upheld by the Court. (129 S. Ct. 1436 (2009).)
- *Putman v. Wenatchee Valley Medical Center*. The Washington Supreme Court invalidated Washington's certificate of merit requirement in medical malpractice cases on grounds that it violated separation of powers and unduly restricted access to the courts. (216 P.3d 374 (Wash. 2009).)
- *Missouri Alliance for Retired Americans v. Department of Labor and Industrial Relations*. The Missouri Supreme Court held that workers excluded from the workers' compensation system by newly enacted restrictions were entitled to pursue negligence claims for damages through the court system. (277 S.W.3d 670 (Mo. 2009).)
- *Mensing v. Wyeth*. The Eighth Circuit ruled that failure-to-warn cases against manufacturers of generic drugs are not preempted by federal law and that generic manufacturers must revise their labels when there is evidence of a serious hazard associated with a drug. (2009 WL 4111209 (8th Cir. Nov. 27, 2009).)

Because of the great work of CCL and Jamie Leigh Jones's attorneys in Texas, she will have her day in court. This victory for civil justice parallels AAJ's ongoing efforts to put

an end to mandatory arbitration clauses in nursing home and other consumer contracts.

CCL is our ally on many fronts in securing access to justice for the people. We are fortunate to have the extraordinary talents of its lawyers as a resource for AAJ members.