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‘Motive’ or ‘Animus’? Lessons From Appellate Practice

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The term “animus” is often used interchangeably with “motive” by lawyers and courts, but the two words have different meanings and connotations, and confusion between them can become an unnecessary complication. None of us needs any extra complications. So, practitioners may want to choose their words carefully.

Quick Hits

- Lawyers may want to avoid using the term “animus” when a case depends solely on “motive,” as employment statutes generally focus on actions taken “because of” a protected characteristic.
- The term “animus” can complicate legal cases unnecessarily, and its negative connotations are often irrelevant to the core issue of whether a decision was motivated by a protected characteristic.
- Courts and lawyers often use the term “animus” interchangeably with “motive,” but it is crucial to choose words carefully to avoid unnecessary complications in legal arguments.

There is reason for using the term “animus” when “motive” is meant. First, it sounds awkward to write, “the defendant was not motivated by retaliatory motive.” Substituting “animus” at the end sounds better. Second, there is authority for the proposition that “animus” can simply mean “motive” or “intent,” without any negative connotations. For example, according to *Black’s Law Dictionary*, “animus” is defined as “Mind; soul; intention; disposition; design”), and other dictionaries have similar definitions. Third, as the Supreme Court of the United States explained in a 2024 decision, *Murray v. UBS Securities, LLC*, evidence of “motive” evidence often also shows “animus,” even when one defines “animus” to include negative connotations, such as “prejudice” or “comparable hostile or culpable intent.” Supervisors motivated by an employee’s race seem likely to be harboring negative feelings about that the employee’s race.

All that said, lawyers may want to consider avoiding the term “animus” when the case depends only on “motive,” which it usually does. Employment statutes generally prohibit “discriminating” against an employee “because of” the employee’s protected characteristic. The Supreme Court pointed out in *Gross v. FBL Financial Services, Inc*., decided in 2009, that taking an action “because of” a protected characteristic means it was the “reason” for the decision?i.e., what motivated the decision. AndBlack’s Law Dictionary defines “Motive” as the “Cause or reason that moves the will and

induces action"). The Supreme Court also noted in *Gross*, as well as in *Bostock v. Clayton County, Georgia*, that 'because of" means that the prohibited reason must have actually made the difference in the sense of being a "but for" cause.

In short, the statutes prohibit employers from treating employees differently because of a protected characteristic, and they do so without regard to the decision's subtext, the Supreme Court further explained in *Murray*. That means "animus," defined with its negative connotations, is irrelevant. Thus, in *Murray*, it did not matter if the employer treated the whistleblowing employee differently because of a desire for revenge or because of a beneficent "belief that the employee might be happier in a position that did not have SEC reporting requirements." Similarly, when an employer treats women differently, it does not matter that it generally favors women or wants to protect them, the Court held in *Automobile Workers v. Johnson Controls, Inc*., a 1991 ruling. The opposite is also true. No matter how much ill will the decisionmaker had, a claim is not actionable if it made no difference in the decision made, the Court stated in *Hartman v. Moore*, a 2006 decision.

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