

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

COURT'S INSTRUCTIONS TO THE JURY -

HOT PURSUIT

"HOT PURSUIT" IS A CHASE OR IMMEDIATE PURSUIT WITHOUT SUBSTANTIAL INTERRUPTION. AN OFFICER HAVING PROBABLE CAUSE TO MAKE AN ARREST AND IN "HOT PURSUIT" OF ONE ENDEAVORING TO AVOID SUCH ARREST MAY GO UPON PRIVATE PROPERTY FOR THE PURPOSE OF EFFECTING SUCH AN ARREST.

DAMAGES

IN THE EVENT THE JURY MAKES A FINDING AND DETERMINATION THAT THE DEFENDANT HAS COMMITTED AN ACT OR ACTS CONTRARY TO TIELE 42 U.S.C. §1983, AND THAT, AS A DIRECT AND PROXIMATE RESULT OF SUCH ACTS, THE PLAINTIFF HAS BEEN INJURED. . . THEN THE JURY MUST MAKE A FINDING AND DETERMINATION WHETHER OR NOT THE PLAINTIFF SUFFERED ANY DAMAGE BY REASON OF SAID INJURIES.

IN CONSIDERING THE ISSUE OF PLAINTIFF'S DAMAGES, YOU ARE INSTRUCTED THAT YOU SHOULD ASSESS THE AMOUNT YOU FIND TO BE JUSTIFIED BY APREPONDERANCE OF THE EVIDENCE AS FULL, JUST, AND REASONABLE COMPENSATION FOR ALL OF THE PLAINTIFF'S DAMAGES, NO MORE AND NO LESS. DAMAGES MUST NOT BE BASED ON SPECULATION BECAUSE IT IS ONLY ACTUAL DAMAGES -- WHAT THE LAW CALLS COMPENSATORY DAMAGES -- THAT ARE RECOVERABLE.

ON THE OTHER HAND, COMPENSATORY DAMAGES ARE NOT RESTRICTED TO ACTUAL LOSS OF TIME OR MONEY; THEY COVER BOTH THE MENTAL AND PHYSICAL ASPECTS OF INJURY -- TANGIBLE AND INTANGIBLE. THEY ARE AN ATTEMPT TO RESTORE THE PLAINTIFF, THAT IS, TO MAKE HER WHOLE OR AS SHE WAS IMMEDIATELY PRIOR TO SAID INJURIES.

I.

ACTUAL - COMPENSATORY DAMAGES

YOU SHOULD CONSIDER THE FOLLOWING ELEMENTS OF DAMAGE TO THE EXTENT YOU FIND THEM PROVED BY A PREPONDERANCE OF THE EVIDENCE, AND, EXCEPTING AS STATED IN THE INSTRUCTION ON DAMAGES, NO OTHERS:

(a) MENTAL PAIN, SUFFERING, AND ANGUISH

IF YOU SHOULD FIND THAT THE PLAINTIFF IS ENTITLED TO DAMAGES FOR THIS ELEMENT, YOU WILL AWARD A SUM WHICH WILL COMPENSATE THE PLAINTIFF REASONABLY FOR (1) ANY MENTAL PAIN, SUFFERING, AND ANGUISH ALREADY SUFFERED BY HER AND PROXIMATELY RESULTING FROM THE INJURIES IN QUESTION; AND (2) FOR ANY MENTAL PAIN, SUFFERING, AND ANGUISH WHICH YOU FIND FROM THE EVIDENCE IN THE CASE IS REASONABLY CERTAIN TO BE SUFFERED IN THE FUTURE FROM THE SAME CAUSE.

NO EVIDENCE OF THE VALUE OF SUCH INTANGIBLE THINGS AS MENTAL OR PHYSICAL PAIN AND SUFFERING HAS BEEN OR NEED BE INTRODUCED. IN THAT RESPECT, IT IS NOT VALUE YOU ARE TRYING TO DETERMINE, BUT AN AMOUNT THAT WILL FAIRLY COMPENSATE THE PLAINTIFF FOR THE DAMAGES SHE HAS SUFFERED. ANY SUCH AWARD SHOULD BE FAIR AND JUST IN LIGHT OF THE EVIDENCE.

(b) MEDICAL EXPENSE

IF YOU SHOULD FIND THAT THE PLAINTIFF IS ENTITLED TO DAMAGE FOR THIS ELEMENT, IN ARRIVING AT THE AMOUNT OF THE AWARD, YOU SHOULD INCLUDE:

(1) THE REASONABLE VALUE, NOT EXCEEDING THE ACTUAL COST TO THE PLAINTIFF, OF ANY EXAMINATION, ATTENTION AND CARE BY PHYSICIANS AND SURGEONS AND OTHERS SHOWN BY THE EVIDENCE IN THE CASE TO HAVE BEEN REASONABLY REQUIRED AND ACTUALLY GIVEN IN THE TREATMENT OF THE PLAINTIFF, AND

(2) ANY REASONABLE AND NECESSARY EXPENSES TO THE PLAINTIFF FOR MEDICAL, SURGICAL, HOSPITAL, AND OTHER SERVICES AND CARE AND SUPPLIES, WHICH YOU FIND FROM THE EVIDENCE IN THE CASE ARE REASONABLY CERTAIN TO BE REQUIRED IN FUTURE TREATMENT OF THE PLAINTIFF, AS A PROXIMATE RESULT OF THE INJURY IN QUESTION.

II.

NOMINAL DAMAGES

ONCE A DEPRIVATION OF A CONSTITUTIONAL RIGHT HAS BEEN FOUND, A JURY, IN ITS DISCRETION, MAY AWARD NOMINAL DAMAGES IN SOME NOMINAL SUM SUCH AS ONE DOLLAR, ALTHOUGH THE JURY IS UNABLE TO FIND THAT THE PLAINTIFF HAS SUSTAINED SUBSTANTIAL ACTUAL DAMAGES.

III.

PUNITIVE DAMAGES

THE PLAINTIFF ALSO CLAIMS THAT THE ACTS OF THE DEFENDANT WERE DONE WILLFULLY, INTENTIONALLY, OR WITH CALLOUS AND RECKLESS INDIFFERENCE TO PLAINTIFF'S RIGHTS, SO AS TO ENTITLE HER TO AN AWARD OF PUNITIVE DAMAGES IN ADDITION TO COMPENSATORY DAMAGES.

IF YOU FIND FOR THE PLAINTIFF, AND IF YOU FURTHER FIND THAT THE DEFENDANT DID ACT WITH MALICE, WILLFULNESS, OR CALLOUS AND RECKLESS INDIFFERENCE TO THE RIGHTS OF OTHERS, THE LAW WOULD ALLOW YOU, IN YOUR DISCRETION, TO ASSESS PUNITIVE DAMAGES AGAINST THAT DEFENDANT AS PUNISHMENT AND AS A DETERRENT TO OTHERS.

(a) "MALICE"

AN ACT IS DONE "MALICIOUSLY" IF PROMPTED OR ACCOMPANIED BY ILL WILL OR SPITE OR A GRUDGE TOWARD THE PERSON AGAINST WHOM THE ACT WAS DIRECTED.

(b) "WILLFULNESS"

AN ACT IS DONE "WILLFULLY" IF DONE VOLUNTARILY AND INTENTIONALLY, AND WITH THE SPECIFIC INTENT TO DO

SOMETHING THE LAW FORBIDS; THAT IS TO SAY, WITH BAD PURPOSE EITHER TO DISOBEY OR TO DISREGARD THE LAW.

IF YOU FIND THAT PUNITIVE DAMAGES SHOULD BE ASSESSED AGAINST THE DEFENDANT, YOU MAY CONSIDER THE FINANCIAL RESOURCES OF THE DEFENDANT IN FIXING THE AMOUNT OF SUCH DAMAGES.

IF YOU FIND FOR THE PLAINTIFF AND AWARD HIM ACTUAL OR COMPENSATORY OR NOMINAL DAMAGES, YOU MUST DECIDE WHETHER IT APPEARS FROM A PREPONDERANCE OF THE EVIDENCE IN THE CASE THAT THE ACTS AND CONDUCT OF THE DEFENDANT TOWARD THE PLAINTIFF, AT THE TIME AND PLACE IN QUESTION, WERE MALICIOUSLY, OR WANTONLY, OR OPPRESSIVELY DONE; AND, IF SO, WHAT AMOUNT, IF ANY, OF PUNITIVE AND EXEMPLARY DAMAGES SHOULD BE ADDED TO THE AWARD OF ACTUAL OR COMPENSATORY OR NOMINAL DAMAGES.

IF YOU DO NOT FIND THAT PLAINTIFF SUSTAINED ANY ACTUAL OR COMPENSATORY DAMAGES, YOU MAY THEN AWARD THE PLAINTIFF NOMINAL DAMAGES AND ALSO SUCH PUNITIVE OR EXEMPLARY DAMAGES, IF ANY, AS YOU THINK ARE WARRANTED UNDER THESE INSTRUCTIONS.

YOU MAY AWARD PUNITIVE OR EXEMPLARY DAMAGES IN ADDITION TO ACTUAL, OR COMPENSATORY, OR NOMINAL DAMAGES, OR YOU MAY AWARD ACTUAL, COMPENSATORY, OR NOMINAL DAMAGES WITHOUT PUNITIVE DAMAGES, ALL IN ACCORDANCE WITH THE FACTS WHICH YOU FIND AND IN ACCORDANCE WITH THE COURT'S INSTRUCTIONS.

SPECIAL INTERROGATORY NO. _____

The jury is unable to find, by a preponderance of the evidence that the Plaintiff, Mona Miller, sustained substantial actual damages. However, the jury finds that the plaintiff is entitled to nominal damages in some nominal amount against the defendant, Dommie Acciardo.

Yes _____ No. _____.

If the jury's answer is no, it will proceed to the next interrogatory; if the jury's answer is yes, it will insert the sum, so awarded:

Nominal damages \$ _____

FOREPERSON

Date: _____

SPECIAL INTERROGATORY NO. _____

The jury finds by a preponderance of the evidence that the plaintiff Mona Miller incurred medical expense as a direct and proximate result of the acts of the defendant, ~~Bonnie~~ Bonnie Acciardo, at the time and place contained in the evidence and awards damage against the said defendant.

Yes _____ No _____

If the jury's answer is no, it will proceed to the next interrogatory; if the jury's answer is yes, it will insert the sum, so awarded, in the appropriate blank:

Medical Expense \$ _____

(The total amount of medical expense to be awarded, if any, may not exceed the total amount contained in the evidence of

_____)

FOREPERSON

DATE: _____

SPECIAL INTERROGATORY NO. _____

The jury finds by a preponderance of the evidence that the plaintiff, Mona Miller, endured mental pain, suffering, and anguish as a direct and proximate result of the acts of the defendant at the time and place contained in the evidence, and awards damage against the said defendant.

Yes _____

No _____

If the jury's answer is no, it will proceed to the next interrogatory; if the jury's answer is yes, it will insert the sum, so awarded, in the appropriate blank:

MENTAL PAIN, SUFFERING AND ANGUISH:

\$ _____

FOREPERSON

DATE: _____

SPECIAL INTERROGATORY NO. _____

The jury finds by a preponderance of the evidence that the plaintiff, Mona Miller, in addition to the actual or nominal damages, is entitled to an award of punitive damages by reason of the acts of the defendant, Dommie Acciaro, at the time and place in the evidence:

Yes _____

No _____

If the jury's answer is no and all other interrogatories have been answered, dated, and signed, the jury will report to the Court; if the jury's answer is yes, it will insert the sum, so awarded, in the appropriate blank:

PUNITIVE DAMAGES: \$ _____

N

FOREPERSON

DATE: _____

DAMAGES

IN THE EVENT THE JURY MAKES A FINDING AND DETERMINATION THAT THE DEFENDANT HAS COMMITTED AN ACT OR ACTS CONTRARY TO TITLE 42 U.S.C. §1983, AND THAT, AS A DIRECT AND PROXIMATE RESULT OF SUCH ACTS, THE PLAINTIFF HAS BEEN INJURED. . . THEN THE JURY MUST MAKE A FINDING AND DETERMINATION WHETHER OR NOT THE PLAINTIFF SUFFERED ANY DAMAGE BY REASON OF SAID INJURIES.

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SPECIAL INTERROGATORY NO. _____

The jury is unable to find, by a preponderance of the evidence that the Plaintiff, Mona Miller, sustained substantial actual damages. However, the jury finds that the plaintiff is entitled to nominal damages in some nominal amount against the defendant, Dommie Acciaro.

Yes _____ No. _____.

If the jury's answer is no, it will proceed to the next interrogatory; if the jury's answer is yes, it will insert the sum, so awarded:

Nominal damages \$ _____

FOREPERSON

Date: _____

SPECIAL INTERROGATORY NO. _____

The jury finds by a preponderance of the evidence that the plaintiff Mona Miller incurred medical expense as a direct and proximate result of the acts of the defendant, Bonnie Acciardo, at the time and place contained in the evidence and awards damage against the said defendant.

Yes _____ No _____

If the jury's answer is no, it will proceed to the next interrogatory; if the jury's answer is yes, it will insert the sum, so awarded, in the appropriate blank:

Medical Expense \$ _____

(The total amount of medical expense to be awarded, if any, may not exceed the total amount contained in the evidence of _____)

FOREPERSON

DATE: _____

SPECIAL INTERROGATORY NO. _____

The jury finds by a preponderance of the evidence that the plaintiff, Mona Miller, endured mental pain, suffering, and anguish as a direct and proximate result of the acts of the defendant at the time and place contained in the evidence, and awards damage against the said defendant.

Yes _____ No _____

If the jury's answer is no, it will proceed to the next interrogatory; if the jury's answer is yes, it will insert the sum, so awarded, in the appropriate blank:

MENTAL PAIN, SUFFERING AND ANGUISH:

\$ _____

FOREPERSON

DATE: _____

SPECIAL INTERROGATORY NO. _____

The jury finds by a perponderance of the evidence that the plaintiff, Mona Miller, in addition to the actual or nominal damages, is entitled to an award of punitive damages by reason of the acts of the defendant, Dommie Acciaro, at the time and place in the evidence:

Yes _____ No _____

If the jury's answer is no and all other interrogatories have been answered, dated, and signed, the jury will report to the Court; if the jury's answer is yes, it will insert the sum, so awarded, in the appropriate blank:

PUNITIVE DAMAGES: \$ _____

N

FOREPERSON

DATE: _____

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

VS:

PRETRIAL MEMORANDUM FOR PLAINTIFF

DOMMIE L. ACCIARDO, et al,

DEFENDANTS.

* * * * *

MAY IT PLEASE THE COURT:

I. JURISDICTION OF THE COURT

Jurisdiction of the Court is the same as stated in the preliminary memorandum for Plaintiff, a copy of which is hereto attached as Exhibit "A".

II. KING OF ACTION

This is a civil rights action, arising out of the wrongful, improper, and unwarranted arrest, detention, seizure, and false imprisonment and punishment of the Plaintiff by Defendants.

III. STATEMENT OF FACTS

The statement of facts of this case have not changed since the filing of the preliminary memorandum (copy hereto attached), except that some additional facts have come to light, including the following:

At the time Defendant, Acciardo, ~~for~~ saw, and then arrested Plaintiff, she had been a passenger in a truck, which had pulled off the highway onto a private driveway, and the owner of the private property informed Defendant Acciardo that they were on private property and that he had no right to arrest the Plaintiff. Deposition of Dommie L. Acciardo, pages 3-5, page 24.

When and after Defendant, Acciardo, arrested Plaintiff for public intoxication, on private property, he did not give her any sobriety test such as a "bumper" or "walk the line" test, although he could have done so. Deposition of Acciardo, pages 27 & 28. Also, Defendants did not give Plaintiff any blood test or breathalyzer test or any other tests by which any objective determination could be made as to the level of her intoxication, if any.

(Plaintiff has at all times strenuously denied being intoxicated or even having had any alcoholic beverages whatsoever upon the occasion in question).

Defendant, Acciardo admitted at his discovery deposition that he didn't know whether Plaintiff was on private or public property at the time he arrested her, yet he went ahead and arrested her and saw that she was placed in the county jail. Deposition of Acciardo, page 24, question 193.

When Plaintiff asked Trooper Acciardo why she was being arrested, the Trooper replied "because of who you are with".

When arrested, Plaintiff was in the company of her cousins, Steve Howard and Paul Howard.

At his deposition, Acciardo first testified that other than Carl Howard's father, brother and sister "other than that, I am not acquainted with any " of the members of Carl Howard's family. Deposition of Acciardo, page 24, question 195.

However, upon further questioning, Acciardo admitted that he was in fact acquainted with Carl Howard's wife, and was dating Carl Howard's wife at the time of this incident. Deposition of Acciardo, page 25.

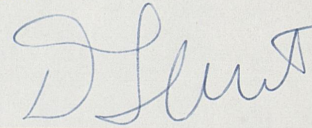
IV ISSUES OF LAW (Substantive)

No additional issues of law have arisen, since the filing of the preliminary memorandum.

V ISSUES OF LAW (Procedural)

No issues of procedural law have arisen.

Respectfully submitted,

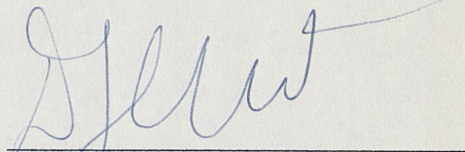


DAVID LEMASTER
ATTORNEY FOR PLAINTIFF
95 Main Street
Paintsville, Kentucky 41240
(606) 789-6531

CERTIFICATION

This is to certify that I have this date mailed a true and correct copy of the foregoing to the Hon. James Hogg, Attorney at Law, Jackson, KY 41339; Hon. Blake Page, Page & Clay, Attorneys at Law, Winchester, KY 40391; and to the Hon. Dan Jack Combs, Combs & Lester, Attorneys at Law, Pikeville, KY 41501.

DATED: This the 11th day of June, 1982.



ATTORNEY AT LAW

COPY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

VS: PRELIMINARY MEMORANDUM FOR PLAINTIFF

DOMMIE L. ACCIARDO;
GEORGE LEE, Individually and
as Chief of Police for the City
of Jackson, Kentucky; THE CITY
OF JACKSON, KENTUCKY, a Municipal
Corporation; TALBERT TURNER,
Individually and as Jailer of
Breathitt County, Kentucky,

DEFENDANTS.

MAY IT PLEASE THE COURT:

I. Jurisdiction of the Court.

Jurisdiction of the Court is founded upon 42 USC, Section 1983 and 28 USC, Section 1343 (c), and is based upon the unlawful, wrongful, and improper arrest, detention, seizure, imprisonment and punishment of Plaintiff by the Defendants, each of whom were acting under color of State Law, and each of whom in such capacity violated the rights of Plaintiff.

All parties are residents of the Eastern District of Kentucky and all acts pertinent herein occurred in the Eastern District of Kentucky, in Breathitt County.

II. Kind of Action.

This is a civil rights action, arising out of the wrongful, improper and unwarranted arrest, detention, seizure and false imprisonment and punishment of the Plaintiff by the Defendants.

III. Statement of Facts.

On March 8, 1980, the Defendant, Dommie L. Acciardo, a Kentucky State Police Trooper, without probable cause, and without a warrant, arrested the Plaintiff and transported her to Jackson, Kentucky, and did not inform Plaintiff of the reason he was arresting and detaining her, and when asked by the Plaintiff as to what she had done or why she was being arrested, Defendant, Acciardo replied it was because of who she was with. Said Defendant further falsely detained and imprisoned Plaintiff and delivered her at Jackson, Kentucky into the custody of Defendant, George Lee, the Police Chief or acting Police Chief of the City of Jackson, Kentucky, who then falsely and without cause imprisoned and transported her to the Breathitt County Jail, where he personally forced her into a cell at the said jail, and there acting in concert with the Defendant, Talbert Turner, Breathitt County Jailer, locked the Plaintiff inside a cell in the Breathitt County Jail against her will, and forcibly and falsely and unlawfully imprisoned and detained her against her will for a number of hours on March 8, 1980, without a warrant or other process and without anyone having informed her of the nature of the charge against her. Plaintiff had committed no crime whatsoever. Plaintiff was treated inhumanely at the said jail, and was not furnished with proper food or lodging and the jail was cold, dirty, filthy and filled with nauseous odors, lacked sufficient bed clothing, and there was no matron or other female guard present, and Plaintiff was kept confined within the view of a

male prisoners. Plaintiff, a female, begged to be released from her cell long enough to use the telephone and the restroom, but the only toilet facilities made available to her were a filthy, unclean, unsanitary toilet in the jail cell in which she was confined, which was in view of those present at the jail. Plaintiff's health was impaired and she was prevented from exercising properly her normal bodily functions, and as a result of this experience she was physically, mentally and emotionally harmed. The actions of the Defendant, George Lee, were in effect the actions of the City of Jackson, Kentucky, a municipal corporation, because his actions consisted of a pattern of persistent practice, sufficiently known to and approved by the officers and governing body of the City of Jackson to constitute a custom or usage of authoritative-ness, and as Police Chief or acting Police Chief, the said George Lee executed policy statements and decisions adopted by the said city, and was a person whose edicts and acts may fairly be said to represent the official policy of the City of Jackson, Kentucky.

Many hours after her incarceration, Plaintiff was taken into a courtroom and orally informed that she was being charged with being drunk, which she immediately and fully denied, whereupon she was released. At no time relevant hereto did Plaintiff have any alcoholic beverages of any kind or nature whatsoever, and there was no basis upon which anyone could possibly have concluded that she was drunk or even drinking.

IV. Issues of Law (Substantive).

The deprivations and indignities suffered as a result of her false imprisonment in the Breathitt County Jail are redressable under Section 1983, as violations of her Eighth Amendment right to be free from cruel and unusual punishments. Schmitt -v- Crist, 333 F. Supp. 820 (E.D. Wisc., 1971).

The City of Jackson is liable to the same extent as Defendant, George Lee, as Chief of Police. Monell -v- Department of Social Services, 436 US 658, 56 L. Ed. 2d, 611, 98 S. Ct. 2018 (1978).

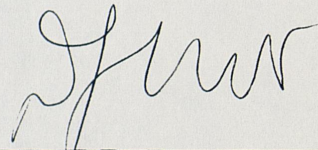
The constitutional right to liberty embraces a right to be free from false imprisonment and it can be safeguarded in actions under Section 1983. Ford -v- Wells, 347 F. Supp. 1026 (E.D. Tenn., 1972).

Good faith is no defense to a section 1983 action based upon the false imprisonment of a Plaintiff by a law enforcement officer. Bryan -v- Jones, 519 F. 2d 44 (C.A. 5, 1975).

V. Issues of Law (Procedural).

Plaintiff knows of no pending issues of procedural law.

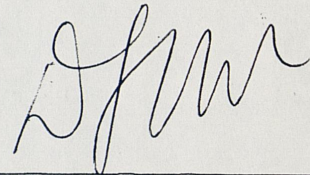
Respectfully submitted,



DAVID LEMASTER
ATTORNEY FOR PLAINTIFF
95 Main Street
Paintsville, Kentucky 41240
(606) 789-6531

CERTIFICATION

This is to certify that I have this date mailed a true and correct copy of the foregoing PRELIMINARY MEMORANDUM FOR PLAINTIFF, to the Honorable Blake Page, Page & Clay, Attorneys at Law, Fifth Floor, McEldowney Building, Winchester, Kentucky 40391; Counsel for Defendant, Dommie L. Acciardo; Honorable James Hogg, Attorney at Law, Jackson, Kentucky 41339; Honorable Dan Jack Combs, Combs & Lester, Attorneys at Law, 207 Caroline Avenue, P.O. Drawer 551, Pikeville, Kentucky 41501, Counsel for all other Defendants in the action, this the 30th day of September, 1981.



ATTORNEY AT LAW

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

VS:

PLAINTIFF'S LIST OF WITNESSES

DOMMIE L. ACCIARDO, et al,

DEFENDANTS.

* * * * *

Comes now Plaintiff by counsel and hereby propounds the following list of proposed witnesses to be called at the trial of this action.

(1) Mona Miller, the Plaintiff in this case, will testify generally as to all aspects of the case, including all of the allegations contained in the Complaint.

(2) Carl Howard, will testify concerning the events surrounding, and both before and after, the arrest of the Plaintiff, and also as to the background and relationships between himself and the Defendant, Acciaro, including the fact that the Defendant, Acciaro, was dating the witness' wife at the time of the incident in question.

(3) Steve Howard, can testify as to events surrounding the arrest and imprisonment of Plaintiff.

(4) Willie Chaney, can testify that the place at which Plaintiff was arrested was private property belonging to the witness.

(5) Everett Combs can testify as to the condition of the Breathitt County jail, and that it was unfit for human habitation.

(6) Boyd Noble can testify as to the disposition of the alleged "charge" against Plaintiff in the Breathitt District Court.

(7) Tom Howard, Circuit Court Clerk of Breathitt County, who will testify and present exhibits concerning the citation filed in his office.

(8) Marge Morrison, City Clerk of Jackson, Kentucky will testify concerning the status of George Lee, and will present records from her office as exhibits.

(9) Bo Hays, character witness for Plaintiff, Mona Miller.

(10) Jay Staton, character witness for Plaintiff, Mona Miller.

(11) Carolyn Williams, character witness for Plaintiff, Mona Miller.

(12) Gay Shepherd, character witness for Plaintiff, Mona Miller.

(13) Talbert Turner, Defendant, to be called on cross-examination.

(14) Dommie L. Acciardo, Defendant, to be called on cross-examination.

(15) George Lee. Defendant, to be called on cross-examination.

(16) Dr. David Coghe, a Psychiatrist to testify about the condition of Mona Miller as a result of her false arrest and imprisonment and its aftermath.

(17) Ross Spears, Chief of Police of the City of Paintsville, Kentucky, to give expert testimony as to proper police procedures.

(18) Norma Watkins, mother of Mona Miller, who may be called to testify about the effects of the ordeal upon Mona and other matters.

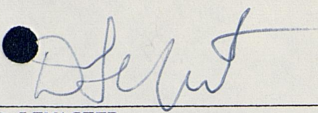
(19) Ishmael Watkins, a prisoner in the Breathitt County jail during the time Mona Miller was confined there, to testify about the condition of the jail and about Mona Miller's condition, and other matters.

(20) Joan Howard, who was married to Carl Howard, but was dating Dommie L. Acciardo at the time of the arrest in question, to testify about her relationship with Dommie L. Acciardo and other matters leading up to the arrest of Carl Howard.

(21) Paul Watkins, step-father of Mona Miller, who can testify as to conversations with the Defendant, George Lee, concerning the incident in question.

(22) James Gay, Commander of the Hazard Kentucky Post of the Kentucky State Police, or his designate, to testify as to calls received on the night preceeding the arrests in question by the Kentucky State Police Post, and also to present logs and other records of such calls.

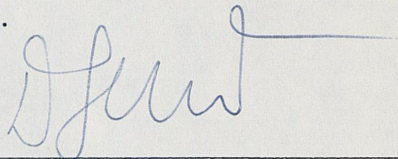
The qualifications of the two expert witnesses, Dr. David Coghe, and Chief Ross Spears are attached hereto as exhibits "A" and "B" respectively.


DAVID LEMASTER
ATTORNEY FOR PLAINTIFF
95 Main Street
Paintsville, Kentucky 41240
(606) 789-6531

CERTIFICATION

This is to certify that I have this date mailed a true and correct copy of the foregoing to Hon. James Hogg, Attorney at Law, Jackson, KY 41339; Hon. Dan Jack Combs, Combs & Lester, Attorneys at Law, 207 Caroline Avenue, Pikeville, KY 41501; Hon. Blake Page, Page & Clay Attorneys at Law, Fifth Floor, McEldowney Building, Winchester, KY 40391.

DATED: This the 11th day of June, 1982.


ATTORNEY AT LAW

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

VS: QUALIFICATIONS OF DR. DAVID COGHE

DOMMIE L. ACCIARDO, et al,

DEFENDANTS.

* * * * *

Received M.D. degree from West Virginia University in 1967, internship at Norfolk General Hospital, Norfolk, Virginia 1968, licensed in West Virginia and licensed in Kentucky since 1970. Commanding officer of a general medical facility and rated flight surgeon in the armed forces in Korea in 1968-1970, residency at University of Kentucky Medical Center 1970-1974, completed adult and child psychiatry training at University of Kentucky Medical Center in 1974, engaged since 1974 in the practice of adult and child psychiatry at Lexington, Kentucky, is board certified by the American Board of Psychiatry and Neurology.

EXHIBIT "A"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

VS:

QUALIFICATIONS OF ROSS SPEARS

DOMMIE L. ACCIARDO, et al,

DEFENDANTS.

* * * * *

Served as Deputy Sheriff in Elliott County, Kentucky.

Served as Military Policeman in United States Army.

Served as Kentucky State Police.

Since 1974 has served as Chief of Police of Paintsville, Kentucky.

EXHIBIT "B"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 81-27

MONA MILLER, PLAINTIFF,

VS: FACTUAL MATTERS FOR STIPULATION

DOMMIE L. ACCIARDO, et al, DEFENDANTS.

* * * * *

Comes now Plaintiff, Mona Miller, and hereby lists the following factual matters she is willing to stipulate:

- (1) At all times relevant to the arrest of Plaintiff, the Defendant, Dommie L. AcciarDO was a Kentucky State Police Trooper and acted under color of state law.
- (2) At all times relevant hereto, George Lee was a City Police Sargeant, second in command to the Mayor, as Commander and Chief of the Police Force, of the City of Jackson, Kentucky, and acted pursuant to color of state law.
- (3) At all times relevant hereto, Talbert Turner, was the County Jailer of Breathitt County, Kentucky and acted pursuant to color of state law.
- (4) George Lee on May 8, 1980 was the co-highest ranking officer of the Jackson City Police Force, below the Mayor.
- (5) George Lee at the time of his actions complained of herein with a person who edicts, actions, and commands may be fairly said to represent those of the City Council and other policy making bodies of the City of Jackson, Kentucky and the City of Jackson, Kentucky itself.
- (6) Plaintiff, Mona Miller, was placed under arrest by Defendant, Dommie L. AcciarDO in Breathitt County, Kentucky.
- (7) Plaintiff at the time of her arrest was not under the influence of alcohol, and had not consumed any alcoholic beverages.
- (8). Plaintiff, at the time of her arrest, was not violating any law.
- (9) Plaintiff had not violated any law prior to the time of her arrest.

(10) Plaintiff was arrested by Defendant upon private property.

(11) Defendant's arrest of Plaintiff was against her will and over her objection.

(12) Defendant, Acciardo, detained Plaintiff and transported her against her will to the City Hall at Jackson, Kentucky.

(13) Plaintiff was not permitted to use the telephone while under arrest.

(14) Plaintiff was taken from the City Hall of Jackson, Kentucky to the Breathitt County Jail by Defendant, Acciardo, accompanied by Defendant, Lee.

(15) Plaintiff was placed in a jail cell at the Breathitt County jail by George Lee, forcibly, and with the assistance and approval of Defendant, Acciardo.

(16) Plaintiff was never given a copy of a citation, nor was she ever informed in writing of the charge against her, nor was there ever issued any warrant for her arrest.

(17) Plaintiff was never properly informed of the charges against her.

(18) Plaintiff was denied access and permission to use the telephone at the Breathitt County Jail.

(19) Plaintiff was unable, because of the lack of proper facilities at the jail, to safely and in a sanitary manner satisfy her bodily needs.

(20) The cell where Plaintiff was kept in the Breathitt County Jail and imprisoned against her will was filthy and not fit for human use or habitation.

(21) The cell where Plaintiff was kept in the Breathitt County Jail was so constructed and equipped as to render it impossible for Plaintiff to use the toilet facilities without being observed by any person who may have been standing outside her cell.

(22) Plaintiff, throughout her incarceration, repeatedly begged to be permitted to stay outside the filthy cell, all to no avail.

(23) Plaintiff, throughout her incarceration, repeatedly begged to be permitted the use a clean restroom, all to no avail.

(24) Plaintiff, as a result of her arrest and imprisonment has suffered permanent, physical damage and permanent psychological damage.

(25) Before the acts of Defendants complained of herein, Plaintiff had never previously been placed in jail, or arrested, or charged with the commission of any crime.

(26) Plaintiff was and is a sober law-abiding citizen.

(27) No officer ever performed any test for sobriety or blood alcohol content upon the Plaintiff throughout the entire incident in question.

(28) During and as a result of her incarceration, Plaintiff became very upset and disturbed, and yelled for the jailer but her calls for help were never responded to.

(29) There was no probable cause for the arrest, detention and imprisonment of Plaintiff by Acciardo, Lee and Turner.

(30) Talbert Turner breached his duties as Breathitt County Jailer inasmuch as he failed to provide a safe, clean, sanitary cell for Plaintiff, fit for human habitation.

(31) At the time Plaintiff was taken before a judge or commissioner of the Breathitt District Court, no formal charge had been filed against her.

(32) At the time of Plaintiff's release from custody was ordered, no formal charge had been lodged against her, although the Breathitt District Court commissioner informed her that the State Police Trooper was charging her with public intoxication.

(33) The citation filed by Trooper Acciardo was not filed until after all charges against Plaintiff had been dismissed by the Breathitt District Court.

(34) At the time of his arrest of Plaintiff and Carl Howard, the Defendant, Acciardo, was dating Carl Howard's wife.

(35) Mona Miller is a cousin of Carl Howard.

(36) Mona Miller was innocent of any crime, and her arrest was the result of her having been caught in the middle of a romantic triangle between Carl Howard, Carl Howard's wife, and Defendant, Dommie L. Acciardo.

(37) The City of Jackson, Kentucky is a municipal corporation.

(38) The City of Jackson, Kentucky is a fourth class city, under the laws of Kentucky.

(39) Jackson is the seat of Breathitt County and is within the Eastern District of Kentucky.

(40) Although he could have done so, Trooper Acciardo did not give any sobriety test - "bumper" or "walk the line" test to Plaintiff at the time he arrested her.

(41) At the time he arrested Plaintiff, Acciaro did not know whether she was on private property or public property.

(42) When he arrested Plaintiff, the landowner informed Acciaro that they were all on private property.

(43) The charge ultimately placed against Plaintiff by Acciaro was public intoxication.

(44) Under Kentucky's Form of Municipal Government, the Mayor of a fourth class city is the commander and chief of its police force.

(45) As of March 8, 1980, no person stood in rank between the mayor of the City of Jackson, Kentucky and George Lee.

(46) George Lee is a person whose edicts may fairly be said to represent official policy of the City of Jackson, Kentucky and his actions of accompanying prisoners arrested by State Troopers to the County Jail, was known to the Mayor of the City of Jackson.

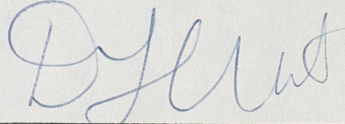
(47) As of March 8, 1980 no one held the title of "Chief of Police" of the City of Jackson, Kentucky.

(48) As of March 8, 1980, George Lee functioned as the equivalent of the "Chief of Police" of Jackson, Kentucky, and was the de facto Chief of Police of Jackson, Kentucky.

(49) At the time ^{Def.} he arrest Carl Howard and Mona Miller, the woman he was dating, Joan Howard, was still married to Carl Howard.

(50) All parties to this action are residents and citizens of the Eastern District of Kentucky and this court has jurisdiction to try this case.

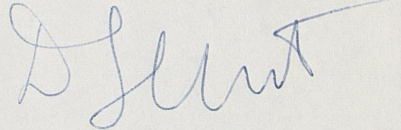
Propounded this the 11th day of June, 1982.


DAVID LEMASTER
ATTORNEY FOR PLAINTIFF
95 Main Street
Paintsville, Kentucky 41240
(606) 789-6531

CERTIFICATION

This is to certify that I have this date mailed a true and correct copy of the foregoing to the Hon. James Hogg, Attorney at Law, Jackson, KY 41339; Hon. Dan Jack Combs, Combs & Lester, Attorneys at Law, Pikeville, KY 41501; and to the Hon. Blake Page, Page & Clay, Attorneys at Law, Winchester, KY 40391.

DATED: This the 11th day of June, 1982.



ATTORNEY AT LAW

Judge's Copy

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

VS:

PLAINTIFF'S REQUEST FOR INSTRUCTIONS

DOMMIE L. ACCIARDO;
GEORGE LEE, Individually and
as Chief of Police of the City
of Jackson, Kentucky; THE CITY
OF JACKSON, KENTUCKY, a Municipal
Corporation; TALBERT TURNER, Individually
and as Jailer of Breathitt County, Kentucky,

DEFENDANTS.

* * * * *

Comes now the Plaintiff, by counsel, and hereby requests the Court
to instruct the jury in accordance with the proposed instructions attached
hereto.

DAVID LEMASTER
ATTORNEY FOR PLAINTIFF
95 Main Street
Paintsville, Kentucky 41240
(606) 789-6531

CERTIFICATION

This is to certify that I have this date delivered a true and
correct copy of the foregoing to the Hon. Michale F. Johnson, Attorney at
Law, and to the Hon. Blake Page, Attorney for Defendant, Dommie L. Acciaro,
this the 8th day of July, 1982.

ATTORNEY AT LAW

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

VS:

11/3 tendered court refused
INSTRUCTION NO. 4

DOMMIE L. ACCIARDO;
GEORGE LEE, Individually and
as Chief of Police of the City
of Jackson, Kentucky; THE CITY
OF JACKSON, KENTUCKY, a Municipal
Corporation; TALBERT TURNER, Individually
and as Jailer of Breathitt County, Kentucky,

DEFENDANTS.

* * * * *

The Plaintiff in this case, Mona Miller, claims damages for personal injuries and physical and mental pain and suffering, embarrassment, humiliation and shame, alleged to have been suffered or sustained by her as a result of the deprivation, under color of state law, customs and usages, of rights and privileges and immunities secured to Plaintiff, both by the Constitution of the United States, and by an act of Congress providing for equal rights of all persons within the jurisdiction of the United States.

Specifically, Plaintiff alleges that on or about March 8, 1980 in the County of Breathitt, State of Kentucky, Dommie L. Acciaro, Defendant herein, was a Kentucky State Trooper acting under color of state law, and while acting under color of state law, the Defendant knowingly subjected Plaintiff to the deprivation of rights, privileges, and immunities secured and protected to her by the Constitution and laws of the United States, namely, the Constitutional right not to be deprived of her liberty, not to be deprived of her liberty without due process of law, by falsely and wrongfully arresting, detaining, imprisoning and incarcerating Plaintiff and also the right not to have cruel and unusual punishments inflicted on Plaintiff, by unlawfully lodging and confining Plaintiff and causing Plaintiff to be treated inhumanely, in the Breathitt County jail, which said jail was allegedly, dirty, filthy, filled with nauseous odors, without sufficient bedclothing to make Plaintiff comfortable, and was unfit for human use and habitation; all to Plaintiff's damage in the sum of \$175,000.00.

Plaintiff further alleges that the acts of the Defendant as alleged were maliciously, and wantonly, and oppressively done; and, by reason thereof, Plaintiff asks for an award of \$200,000.00 as punitive and exemplary damages, in addition to the actual or compensatory damages claimed by her.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

11/15 tendered

VS:

INSTRUCTION NO. 2

DOMMIE L. ACCIARDO:
GEORGE LEE, Individually and
as Chief of Police of the
City of Jackson, Kentucky; THE CITY OF
JACKSON, KENTUCKY, a Municipal Corporation;
TALBERT TURNER, Individually and as Jailer
of Breathitt County, Kentucky,

DEFENDANTS.

* * * * *

Section 1983 of Title 42 of the United States Code provides that any inhabitant of this Federal District may seek redress in this Court, by way of damages, against any person or persons who, under color of any law, statute, ordinance, regulation, or custom, knowingly subject such inhabitant to the deprivation of any rights, privileges, or immunities, secured or protected by the Constitution or laws of the United States.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

VS:

This is tendered
INSTRUCTION NO. 3 *refused*

DOMMIE L. ACCIARDO;
GEORGE LEE, Individually and as
Chief of Police of the City of
Jackson, Kentucky; THE CITY OF
JACKSON, KENTUCKY, a Municipal Corporation;
TALBERT TURNER, Individually and as Jailer
of Breathitt County, Kentucky,

DEFENDANTS.

* * * * *

This statutes just outlined to you comprises one of the civil rights
act enacted by the Congress under the Fourteenth Amendment to the Constitution
of the United States. The Fourteenth Amendment to the Constitution provides
that:

"No state shall make or enforce any law which shall
abridge the privileges or immunities of citizens
of the United States; Nor shall any state deprive
any person or life, liberty or property, without
due process of law; Nor deny to any person within
its jurisdiction the equal protection of the laws".

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

VS:

INSTRUCTION NO. A

*7/15
Tordental
refused*

DOMMIE L. ACCIARDO; GEORGE LEE, Individually and
as Chief of Police of the City
of Jackson, Kentucky; THE CITY OF
JACKSON, KENTUCKY, a Municipal Corporation;
TALBERT TURNER, Individually and as Jailer
of Breathitt County, Kentucky,

DEFENDANTS.

* * * * *

As stated before, the Fourteenth Amendment to the Federal Constitution provides that no state shall deprive any person of his liberty without due process of law. The "liberty" of the individual, which the Federal Constitution thus secures and protects, is not an absolute and unqualified freedom or privilege to do as one pleases at all times and under all circumstances; but it is always subject to reasonable restraints, including, of course, such restraints as are imposed by law.

The Plaintiff in this case, in common with the Defendant and with all other persons under the protection of our Constitution, have the legal right at all times not to be deprived, without due process of law, of any liberty secured and protected to her by the Constitution or laws of the United States.

Unless the evidence in the case leads the jury to a different or contrary conclusion, the presumption is that the law has been obeyed. However, your decision in this case shall be based solely upon the facts of the case and the instructions given you by the Court, and you are the sole judges of the facts.

The Plaintiff had the liberty and right to be free from unlawful or false imprisonment, including the right to be free from imprisonment for an alleged crime she did not commit. Additionally, Plaintiff had the right not to have cruel and unusual punishment imposed upon her during the time she was confined and jailed, regardless of whether her confinement was lawful or unlawful.

To be deprived of liberty "without due process of law" means to be deprived of liberty without authority of the law. Before the jury can determine, then, whether or not the Plaintiff was deprived by the Defendant.

of her liberty under the Federal Constitution, "without due process of law", the jury must determine, from a preponderance of the evidence in the case, whether the Defendants or any of them knowingly did the acts alleged, and, if so, whether, under the circumstances shown by the evidence in this case, the Defendants acted within or without the bounds of their lawful authority under state law.

For if the Defendant acted within the limits of his lawful authority under state law, then the Defendants could not have deprived the Plaintiff of any liberty "without due process of law", since the Court finds and instructs you that the state law applicable in this case meets the requirements of the Federal Constitution.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

VS:

7/15 tented
5 refused
INSTRUCTION NO. 5

DOMMIE L. ACCIARDO;
GEORGE LEE, Individually and
as Chief of Police of the City
of Jackson, Kentucky; THE CITY
OF JACKSON, KENTUCKY, a Municipal
Corporation; TALBERT TURNER, Individually
and as Jailer of Breathitt County, Kentucky,

DEFENDANTS.

* * * * *

The issues to be determined by the jury in this case are these:

(1) When he knowingly arrested and detained Plaintiff, while acting under color of state law, or local custom, as he admits having done at the time and place alleged, did the Defendant act outside the bounds or limits of his lawful authority under Kentucky state law?

If your unanimous answer to this question (1) is "no", the jury should return a verdict in favor of the Defendant; but if your unanimous answer is "yes" then you have a second issue to determine, namely:

(2) Did the Plaintiff suffer deprivation of liberty without due process of law, as that phrase is explained in these instructions, by reason of the illegal acts and conduct of the Defendant?

If your unanimous answer to this question (2) is "no", the jury should return a verdict in favor of the Defendant; but if your unanimous answer is "yes", then the jury should return a verdict in favor of the Plaintiff for such actual or compensatory damages as you find, from a preponderance of the evidence in the case, were proximately caused by any acts of Defendant, which were done outside the bounds of his lawful authority.

If you find for the Plaintiff, and award her actual or compensatory damages, you must decide whether it appears from a preponderance of evi-

dence in the case that the acts and conduct of the Defendant toward the Plaintiff, at the time and place in question, were maliciously, or wantonly, or oppressively done; and, if so, what amount, if any, of punitive and exemplary damages should be added to the award of actual or compensatory or nominal damages.

If you do not find the Plaintiff sustained any punitive or compensatory damages, you may then award the Plaintiff nominal damages and also such punitive or exemplary damages, if any, as you think are warranted under these instructions.

You may award punitive or exemplary damages in addition to actual, or compensatory, or nominal damages, or you may award actual, compensatory or nominal damages without punitive damages, all in accordance with the facts you find and the Court's instructions.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

VS:

INSTRUCTION NO. 6

*ITTS
Tendered
refused*

DOMMIE L. ACCIARDO; GEORGE LEE, Individually and
as Chief of Police of the City
of Jackson, Kentucky; THE CITY OF
JACKSON, KENTUCKY, a Municipal Corporation;
TALBERT TURNER, Individually and as Jailer
of Breathitt County, Kentucky,

DEFENDANTS.

* * * * *

Acts are done "under color of . . . law" of a state, not only when state officials act within the bounds or limits of their lawful authority, but also when such officers act without and beyond the bounds of their lawful authority. In order for unlawful acts of an official to be done "under color of any law", however, the unlawful acts must be done while the official is purporting or pretending to act in the performance of his official duties; that is to say, the unlawful acts must consist in an abuse or misuse of power, which is possessed by the official only because he is an official; and the unlawful acts must be of such a nature, and be committed under such circumstances, that they would not have occurred but for the fact that the person committing them was an official, purporting to exercise his official powers.

As you will note, the Federal Statute which the Defendants are alleged to have violated, covers not only acts done by an official done color of any state law, but also acts done by an official under color of any ordinance or regulation of any county or municipality of the state, as well as acts done by an official under color of any regulation issued by any state, or county or municipal official, and even acts done by an official under color of some state or local custom.

So, the phrase "under color of state law" includes acts done under color of any state law, or county or municipal ordinance, or any regulation issued thereunder, or any state or local custom.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

VS:

INSTRUCTION NO. 7

*IT IS
tendered
7 refused*

DOMMIE L. ACCIARDO; GEORGE LEE, Individually and
as Chief of Police of the City
of Jackson, Kentucky; THE CITY OF
JACKSON, KENTUCKY, a Municipal Corporation;
TALBERT TURNER, Individually and as Jailer
of Breathitt County, Kentucky,

DEFENDANTS.

* * * * *

In order to prove her claim against the Defendant, Dommie L. AcciarDO the burden is on the Plaintiff to establish, by a preponderance of the evidence in the case, the following facts:

FIRST: That the Defendant, AcciarDO, falsely arrested and detained the Plaintiff, as alleged;

SECOND: That the Defendant, AcciarDO, then and there acted under color of some law of the state of Kentucky;

THIRD: That the Defendant, AcciarDO's, acts and conduct deprived the Plaintiff of her Federal Constitutional right, not to be denied or deprived of her liberty, without due process of law as that phrase is defined and explained in these instructions; and

FOURTH: That the Defendant, AcciarDO's, acts and conduct were the proximate cause of injury and consequent damage to the Plaintiff.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 81-27

MONA MILLER,

IT IS
8 refused

PLAINTIFF,

VS:

INSTRUCTION NO.

DOMMIE L. ACCIARDO;
GEORGE LEE, Individually and
as Chief of Police of the City
of Jackson, Kentucky; THE CITY
OF JACKSON, KENTUCKY, a Municipal
Corporation; TALBERT TURNER, Individually
and as Jailer of Breathitt County, Kentucky,

DEFENDANTS.

* * * * *

At the time and place he arrested Plaintiff, the Defendant, Acciardo, acted within the bounds or limits of his lawful authority under Kentucky state law, if, and only if, at the time and place of said arrest Mona Miller was both:

- (1) Intoxicated; AND
- (2) On public property at a public place.

If at the time and place he arrested her, Mona Miller was not intoxicated, or if at the time and place he arrested her Mona Miller, even though intoxicated, was on private property, then under the law the Defendant, Dommie L. Acciardo, falsely arrested Plaintiff and acted outside the bounds and limits of his lawful authority under Kentucky state law and you shall find for the Plaintiff and against the said Defendant.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

VS:

INSTRUCTION NO. 9

*It's
tendered*
9 refused

DOMMIE L. ACCIARDO;
GEORGE LEE, Individually and
as Chief of Police of the City
of Jackson, Kentucky; THE CITY
OF JACKSON, KENTUCKY, a Municipal
Corporation; TALBERT TURNER, Individually
and as Jailer of Breathitt County, Kentucky,

DEFENDANTS.

* * * * *

Damages must be proved as any other issue in this case; that is, Plaintiff must prove by a preponderance of the evidence the nature and extent of her damages.

If your verdict is for the Plaintiff, and you find she is entitled to an award of damages, you will determine from a preponderance of the evidence the amount of money which will fairly and reasonably compensate her for actual injury caused by the Defendant.

In determining the measure of damages, if any, you shall take into consideration the nature and extent of Plaintiff's injury or damage, the effect upon her health, the outrage, mental suffering, shame, humiliation, and ridicule, she suffered, *and probable medical expenses not to exceed \$ 2,700.00.*

Where a person's civil rights are violated, that person injured thereby is entitled to recover substantial damages, although the only damages suffered by the person is a result of mental anguish. Substantial damages are damages of real worth and importance, of considerable value, as opposed to nominal damages, which are assessed to satisfy a bare legal right.

In assessing any damages you may award to Plaintiff, you shall consider both any pain, suffering and mental anguish already suffered by her and proximately resulting from the injury in question; and also any pain, suffering, mental anguish, which you find from the evidence in the case she is reasonably certain to suffer in the future from the same cause.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

*11/5
tendered
refused*

VS:

INSTRUCTION NO. 10

DOMMIE L. ACCIARDO;
GEORGE LEE, Individually and
as Chief of Police of the City
of Jackson, Kentucky; THE CITY
OF JACKSON, KENTUCKY, a Municipal
Corporation; TALBERT TURNER, Individually
and as Jailer of Breathitt County, Kentucky,

DEFENDANTS.

* * * * *

In addition to actual damages, the law permits the jury, under certain circumstances, to award the injured person punitive and exemplary damages, in order to punish the wrong-doer for some extraordinary misconduct, and to serve as an example or warning to others not to engage in such conduct.

If the jury should find from a preponderance of the evidence in the case that the Plaintiff is entitled to a verdict for actual or compensatory damages; and should further find that the act or omission of the Defendant, which proximately caused the actual injury or damage to the Plaintiff, was maliciously, or wantonly, or oppressively done; then the jury may, if in the exercise of discretion they unanimously choose so to do, add to the award of actual damages such amount as the jury shall unanimously agree to be proper, as punitive and exemplary damages.

An act or failure to act is "maliciously" done, if prompted or accompanied by ill will, or spite, or grudge, either toward the injured person individually, or toward all persons in one or more groups or categories of which the injured person is a member.

An act or failure to act is "wantonly" done, if done in reckless or callous disregard of, in difference to, the rights of one or persons, including the injured person.

An act or failure to act is "oppressively" done, if done in a way or manner which injures, or damages, or otherwise violates the rights of another person with unnecessary harshness or severity, as by misuse or abuse of authority or power, or by taking advantage of some weakness or disability, or misfortune of another person.

Whether or not to make any award of punitive and exemplary damages, in addition to actual damages, is a matter exclusively within the province of the jury, if the jury should unanimously find, from a preponderance of the evidence in the case, that the Defendant's act or omission, which proximately caused actual damage to the Plaintiff, was maliciously, wantonly, or oppressively done; but the jury should always bear in mind that such extraordinary damages may be allowed only if the jury should first unanimously award the Plaintiff a verdict for actual or compensatory damages; and the jury should also bear in mind, not only the conditions under which, and the purposes for which, the law permits an award of punitive and exemplary damages to be made, but also the requirement of the law that the amount of such extraordinary damages, when awarded, must be fixed with calm discretion and sound reason, and must never be either awarded, or fixed in amount, because of any sympathy, or bias, or prejudice with respect to any party to the case.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

VS:

INSTRUCTION NO. 11

Refused

DOMMIE L. ACCIARDO; GEORGE LEE, Individually and
as Chief of Police of the City
of Jackson, Kentucky; THE CITY OF
JACKSON, KENTUCKY, a Municipal Corporation;
TALBERT TURNER, Individually and as Jailer
of Breathitt County, Kentucky,

DEFENDANTS.

* * * * *

Intent ordinarily may not be proved directly because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer a person's intent from surrounding circumstances. You may consider any statement made or act done or omitted by a party whose intent is in issue, and all other facts and circumstances which indicate his state of mind.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is for you to decide what facts have been established by the evidence.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

VS:

INSTRUCTION NO. 12 *refused*

DOMMIE L. ACCIARDO;
GEORGE LEE, Individually and
as Chief of Police of the City
of Jackson, Kentucky; THE CITY
OF JACKSON, KENTUCKY, a Municipal
Corporation; TALBERT TURNER, Individually
and as Jailer of Breathitt County, Kentucky,

DEFENDANTS.

* * * * *

If you find that the Plaintiff is entitled to a verdict in accordance with these instructions, but do not find that the Plaintiff has sustained substantial (actual) damages, then you may return a verdict for the Plaintiff in some nominal sum such as \$1.00 (on account of actual damages).

The award of a nominal sum on account of actual damages would not preclude your awarding punitive damages in such amount as you deem appropriate, if you do find that the award of punitive damages is justified under these instructions.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

VS:

FORM OF VERDICT

N. J. J. J.

DOMMIE L. ACCIARDO;
GEORGE LEE, Individually and
as Chief of Police of the City
of Jackson, Kentucky; THE CITY
OF JACKSON, KENTUCKY, a Municipal
Corporation; TALBERT TURNER, Individually
and as Jailer of Breathitt County, Kentucky,

DEFENDANTS.

* * * * *

We, the jury, in the above-entitled action, unanimously find in favor of the Plaintiff, Mona Miller, and against the Defendant, Dommie L. Acciardo, and assess the Plaintiff's actual or compensatory damages in the sum of \$ _____.

In addition to the actual damages awarded above, we, the jury, unanimously award the Plaintiff, Mona Miller, punitive and exemplary damages in the sum of \$ _____, against the Defendant, Dommie L. Acciardo.

This the _____ day of July, 1982

FOREMAN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 81-27

MONA MILLER,

PLAINTIFF,

VS:

INSTRUCTION NO. 13 *referred*

DOMMIE L. ACCIARDO;
GEORGE LEE, Individually and
as Chief of Police of the City
of Jackson, Kentucky; THE CITY
OF JACKSON, KENTUCKY, a Municipal
Corporation; TALBERT TURNER, Individually
and as Jailer of Breathitt County, Kentucky,

DEFENDANTS.

* * * * *

An injury or damage is proximately caused by an act or failure to act whenever it appears from the evidence in the case that the act or omission having substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result for a reasonably probable consequence of the act or omission.

This does not mean that the law recognizes only one proximate cause of an injury or damage, consisting of only one factor or thing, or the conduct of only one person. On the contrary, many factors or things, or the conduct of two or more persons, may operate at the same time, either independently or together, to cause injury or damage; and in such case each may be a proximate cause.

Civil action #81-27 MONA MILLER vs. DOMMIE ACCIARDO, et al.

FACT SUMMARY FOR VOIR DIRE PURPOSES:

Ladies and gentlemen of the jury, the case you are about to hear concerns an incident which happened in early March of 1980, in the Wolverine area of Breathitt County.

State trooper Dommie Acciardo, who is a defendant in this case, arrested three people for intoxication. The three people were Carl Howard, Stephen Howard, and Mona Miller. Mona Miller is the plaintiff in this case.

Trooper Acciardo took these people to the Jackson, Kentucky, police station. You will hear testimony concerning what happened when they got there, and the testimony will involve George Lee, who was Breathitt County Sheriff at the time, and Talbert Turner, who was Breathitt County Jailer at the time. Both George Lee and Talbert Turner are defendants in this case, along with Trooper Acciardo.

Ms. Miller has sued these three individual defendants in connection with her arrest and treatment after she was arrested and jailed. She has also sued the City of Jackson, Kentucky, itself, concerning the conditions in the Breathitt County Jail.

The plaintiff Ms. Miller will contend that she was wrongfully arrested and that she was mistreated when she got to Jackson and to the jail. The defendants, Mr. Acciardo, Mr. Lee, and Mr. Turner, will contend that Ms. Miller's arrest was proper and that she was treated fairly and properly at the jail, the same as any other person jailed there.

Miller V. Accardi 84

to any present statutory responsibility given to state departments.

HISTORY: 1980 c 188, § 220, eff. 7-15-80
1978 H 607, § 86; 1974 S 112, Art VI, § 87, H 393, § 43; 1972 S 318, § 2; 1968 H 603, § 3

222.033 Repealed

HISTORY: 1978 H 607, § 584, eff. 6-17-78
1972 H 515, § 11

ALCOHOLISM TREATMENT AND REHABILITATION

222.210 Department's functions as to alcoholism

Note: See Master Volume for section in effect until 7-1-82.

The department shall coordinate matters affecting alcoholism in the Commonwealth, shall establish and conduct a program for the treatment of intoxicated persons and alcoholics, including juveniles and young adults, their rehabilitation and the prevention of alcoholism in cooperation with public and private agencies, business and industry, and shall provide technical assistance and consultation services whenever required. The department may adopt rules and regulations to carry out its powers and duties under this chapter. The department shall be responsible for assuring that the following services are available and shall utilize community mental health centers and existing facilities and services available within the private sector whenever possible:

- (1) Detoxification services on a twenty-four hour basis in or near population centers which meet the immediate medical and physical needs of intoxicated persons, including necessary diagnostic and referral services;
- (2) Medical and hospital services which are available on a twenty-four hour basis and which, whenever possible, are provided in existing general hospital facilities;
- (3) Rehabilitation services, including family care, residential aftercare and appropriate therapy;
- (4) Inpatient psychiatric services for those alcoholics whose diagnosis reflects serious alcoholic-related mental disturbances which, whenever possible, shall be conducted with services available in the department; and
- (5) Training programs for professional and nonprofessional workers in the field of treatment and rehabilitation of alcoholics and intoxicated persons.

The department shall not grant its approval for the establishment or maintenance of a treatment facility, in any jail, house of correction or institution operated by the bureau of corrections, unless such facility meets the standards and procedures set forth in this chapter.

HISTORY: 1980 c 254, § 12, eff. 7-1-82
1972 H 515, § 4

Note: See Master Volume for section in effect until 7-1-82.

CROSS REFERENCES

Organized alcohol programs licensed or approved by department, 902 KAR 3:007

222.230 Licensing of treatment facilities

CROSS REFERENCES

Licensing procedures, 902 KAR 3:010

OAG 72-244. There is no statutory system for licensing alcohol and drug counselors as such. However, such nonprofessionals cannot impinge upon the professions in such practice; and they cannot deceive the public.

222.232 Voluntary application for treatment

(1) Any intoxicated person or any alcoholic may apply for voluntary treatment directly to a treatment facility.

(2) Subject to rules adopted by the department, the administrator in charge of a treatment facility may determine who shall be admitted for treatment. If a person is refused admission to a treatment facility, the administrator, subject to rules adopted by the department, shall refer the person to another treatment facility for treatment if possible and appropriate.

(3) If a person receiving inpatient care leaves a treatment facility he shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator in charge of the treatment facility that the person is an alcoholic who needs further treatment, the department shall arrange for assistance in obtaining supportive services and residential facilities.

HISTORY: 1980 c 254, § 3, eff. 7-1-82

222.234 Alternative methods of dealing with intoxicated person

(1) Any intoxicated person may present himself voluntarily or be brought to a treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he consents to such help, may be assisted to his home, a treatment facility, by the police or the emergency service unit.

(2) A person who appears to be incapacitated by alcohol in a public place shall be escorted by the emergency service unit, or taken into protective custody by the police and forthwith brought to an appropriate treatment facility for treatment. The emergency service unit, in escorting an incapacitated person and in taking him to a treatment facility, or the police in detaining such a person, shall make every reasonable effort to protect the health and safety of the incapacitated person. The escorting or detaining personnel may take reasonable precautions for their own personal protection. Protective custody under this section is not an arrest and no entry or other record shall be made to indicate that the person has been arrested or charged with an offense as defined in KRS 500.080(11). For purposes of this section a person may be taken to a place of detention and detained there only until he is no longer incapacitated, and only if no treatment facility for emergency treatment is available. If an incapacitated person, who has been detained for a period of eight (8) hours, is still apparently incapacitated, he shall be taken without delay by the detaining personnel to a treatment facility for medical evaluation.

(3) A person who is no longer incapacitated after de-

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HISTORY:

tion, and is not admitted to a treatment facility or referred to another facility, and who has no funds, may be taken to his home, if any. If he has no home, he may be assisted in obtaining shelter.

(4) If a client is admitted to a treatment facility pursuant to this section, his family shall be notified as promptly as possible unless the client requests otherwise.

(5) The police or members of the emergency service unit who act in good faith in compliance with the provisions of this section shall be deemed to be acting in the course of their official duties.

HISTORY: 1980 c 254, § 4, eff. 7-1-82

222.236 Emergency treatment

(1) An intoxicated person who presents a danger or threat of danger to self, family or others as a result of intoxication, or is incapacitated by alcohol may be admitted to a treatment facility for emergency treatment. For the purpose of this section "danger" or "threat of danger to self, family or others" shall mean a threat of substantial physical harm upon self, family or others, including actions which deprive self, family or others of the basic means of survival including provisions for reasonable shelter, food or clothing.

(2) An independent physician, spouse, guardian, or relative of an intoxicated person, or any responsible person may make a written application for admittance of an intoxicated person to a treatment facility for emergency treatment. The application for admittance shall state the specific facts to support the need for emergency treatment and shall be accompanied by an independent physician's statement certifying that he has examined the intoxicated person not less than two (2) days prior to the date of application for admittance to a treatment facility for emergency treatment. No physician employed by the admitting treatment facility or the department shall be eligible to be the certifying physician.

(3) Pursuant to the approval of the application for admittance to the treatment facility by the administrator of such facility, the person shall be brought to the facility by a peace officer, emergency service unit, the client's spouse, the client's guardian, or any other interested person including the client himself. The client shall be retained at the facility to which he was admitted, or transferred to another appropriate public or private treatment facility until discharged under subsection (5) of this section.

(4) The administrator of the treatment facility shall refuse an application if in his opinion the application and certificate fail to sustain the grounds for admittance.

(5) When on the advice of the medical staff the administrator determines that the grounds for admittance no longer exist, he shall discharge a person admitted under this section. No person admitted under this section shall be detained in any treatment facility for more than seventy-two (72) hours.

(6) A copy of the written application for admittance and of the independent physician's certificate, and a written explanation of the client's rights, including the right to counsel, shall be given to the person within twelve (12) hours after admittance by the administrator, who shall provide a reasonable opportunity for the person to obtain and consult counsel.

HISTORY: 1980 c 254, § 5, eff. 7-1-82

222.237 Emergency service units

(1) The department or any city or county may establish emergency service units. Existing governmental personnel may be utilized for this purpose. Members of an emergency service unit shall be capable of providing first aid in emergency situations and shall transport intoxicated or incapacitated persons to their homes and to treatment facilities.

(2) The secretary shall adopt rules for the establishment, training, and conduct of emergency service units.

HISTORY: 1980 c 254, § 6, eff. 7-1-82

222.240 Repealed

HISTORY: 1980 c 254, § 13, eff. 7-1-82
1972 H 515, § 7

Note: See Master Volume for section in effect until 7-1-82.

222.260 Repealed

HISTORY: 1980 c 254, § 13, eff. 7-1-82
1972 H 515, § 9

Note: See Master Volume for section in effect until 7-1-82.

222.270 Confidential record of treatment; client's rights

Note: See Master Volume for section in effect until 7-1-82.

(1) The administrator of each treatment facility shall keep a record of the treatment afforded each client, which shall be confidential and shall be made available only upon proper judicial order, whether in connection with pending judicial proceedings or otherwise.

(2) Any client shall have the right to have a physician retained by him examine him, consult privately with his attorney, receive visitors, and send and receive communications by mail, telephone and telegraph. Such communications shall not be censored or read without consent of such client. The foregoing shall not limit the right of the administrator, subject to reasonable rules and regulations of the department, to prescribe reasonable rules governing visiting hours and the use of telephone and telegraph facilities.

HISTORY: 1980 c 254, § 8, eff. 7-1-82
1972 H 515, § 10

Note: See Master Volume for section in effect until 7-1-82.

CROSS REFERENCES

Standards for protection of client rights, 902 KAR 3:020

222.310 Hospitals required to treat alcoholism

(1) As used in this section "hospital" shall mean a health facility licensed as such by the Kentucky health facilities and health services certificate of need and licensure board pursuant to the provisions of KRS 216B.040.

(2) No hospital shall refuse to admit and treat on the

RULE 5. TRIAL COMMISSIONERS OF THE DISTRICT COURT

Table of Rules

Rule	
5.000	Scope.
5.010	Appointment.
5.020	Qualifications and Terms of Office.
5.030	Powers.
5.040	Temporary Assignment in Another County.
5.050	Disqualification.
5.060	Service as Attorney.
5.070	Retirement and Removal.

RULE 5.000 SCOPE

Rule 5 applies to all trial commissioners of the district court.

RULE 5.010 APPOINTMENT

In each county in which no district judge resides the chief judge of the district shall appoint a trial commissioner. Every other trial commissioner shall be appointed by the chief judge of the district upon certification of the necessity therefor by the Supreme Court, which certification shall be initiated by a request from the chief judge of the district stating the circumstances requiring the appointment.

RULE 5.020 QUALIFICATIONS AND TERMS OF OFFICE

Each trial commissioner shall be a resident of the county for which he is appointed, shall be an attorney if one is qualified and available at the time of such appointment, and shall serve at the pleasure of the chief judge of the district during the remainder of his current term of office.

RULE 5.030 POWERS

Subject to review by the chief district judge or by another judge of the district designated for that purpose by the chief judge, in the county for which he is appointed a trial commissioner shall have, unless otherwise specified in the certificate of necessity authorizing his appointment, the authority of a district judge with respect to the following:

- (a) In criminal cases,
 - (i) To issue search warrants and warrants of arrest;

TRIAL COMMISSIONERS OF DIST. CT. Rule 5.040

(ii) To examine any charge and commit the defendant to jail or hold him to bail or other form of pretrial release; and

(iii) to accept a plea of guilty, at the time the charge is examined, and impose sentence for any offense punishable only by fine of \$500 or less;

(b) In juvenile cases,

(i) To hear and determine if children in custody should be held in detention;

(ii) To conduct preliminary inquiries, informally adjust juvenile cases, and cause juvenile petitions to be brought;

(iii) To order physical and mental examinations of children before the juvenile court; and

(iv) To issue orders for the temporary custody of children whose welfare is threatened under emergency conditions;

(c) In probate matters,

(i) To admit to record or reject any will offered for probate;

(ii) To appoint executors and administrators of wills and estates, and to fix and approve bond as required;

(d) In civil proceedings,

(i) To authorize orders of attachment and garnishment and writs of possession; and

(ii) To conduct judicial sales if so authorized by the chief judge of the district;

(e) To issue writs of forcible entry and detainer and warrants of restitution;

(f) To issue orders of involuntary hospitalization of mentally ill persons for periods not exceeding seven days or as may be otherwise limited by statute; and

(g) To compel the attendance of witnesses and the production of evidence with respect to any proceeding before him.

As amended effective March 1, 1978.

RULE 5.040 TEMPORARY ASSIGNMENT IN ANOTHER COUNTY

A trial commissioner may be temporarily assigned by the chief judge of the district to serve in any county within the district and shall, while so serving, have the same authority as in the county of his residence.

TO: Judge
FROM: Maggie
DATE: 24 June 1982
RE: Civil #81-27

MONA MILLER v. DOMMIE ACCIARDO, et al.

§1983 against Jackson city officials & a state trooper

Pre-trial conference 9:00 Friday

- Since PC:
1. Notice of pltff to depose defts and to depose Jackson city clerk (and for clerk to bring w/ her all records relating to Jackson chief of police and all city council minutes).
 2. Filing of PTC material.

PTC Material filed:

1. For pltff:
 - a. memo
 - b. witness list & statement of testimony substance
 - c. list of ~~expert~~witnesses with addresses & qualifications for some.
 - d. factual "stipulations" pltff is willing to make. (They're actually nothing more than statements of pltff's case - no concessions at all.)
2. For Jackson defts:
 - a. memo
 - b. witness list & statement of testimony substance
3. For state trooper deft:
 - a. witness list w/ statement of testimony substance.

THINGS WE'VE LEARNED SINCE PC:

1. A little more of what pltff says was going on:

Pltff had said that, when she asked the officer why she was being arrested, he said, "because of who you're with."

We now know that pltff will contend that the arresting officer was carrying on an affair with the wife of one of the other people in the truck, Carl Howard, pltff's cousin.

Also, it appears that pltff will try to show that the officer who arrested pltff for drunkenness in a public place knew that they were on private property at the time. Also, she'll say she denied intoxication but was never given a sobriety test.

2. We don't have transcripts of the defts' depositions, but pltff claims AcciarDO admitted:
 - a. not knowing whether they were on public or private property, and
 - b. that he was dating pltff's cousin's wife at the time.

PENDING MATTERS:

- 1. (See "Legal Issues - Procedural" in defts' memo, #27 in file)

The 3 Jackson defts (police chief, jailer, and city itself), in their answers, said the usual:

"The Complaint fails to state a claim against Defendant . . . upon which relief can be granted."

They never said any more about it. No motion to dismiss. No reiteration of the claim of deficiency. No elaboration on why they thought the complaint was deficient.

Until PC . . .

In PC memo, Herman Lester argues the insufficiency of the complaint to state a civil rights claim, "requesting" that the complaint be dismissed. Still no motion.

In PTC memo for these defts, Michael Johnson "again . . . takes issue with the plaintiff's complaint." and he again "requests" that you dismiss the complaint.

RECOMMENDATION:

I can't see construing a memorandum argument as a motion on something as serious as a 12(b)(6) attack on a complaint. Besides, the complaint states a cause of action, as I see it.

So: *I'd either tell these three defts to get in a Rule 12(b)(6) motion to dismiss, adequately supported, and then overrule it because the complaint does state a claim

OR

I'd construe the "request", although made in a memorandum, (which isn't even a pleading!), as a motion to dismiss, and then overrule it.

Bottom line: I just can't see raising 12(b)(6) in a memo.

But, since it's a serious allegation, I guess the issue has to be addressed by the Court in some way.

- 2. I'd ask plttff whether she's going to file the depositions she took of the defts. She's filed the one she took of the Jackson city clerk.

TO: Judge
FROM: Maggie
DATE: 11 February 1982
RE:

MONA MILLER V. DOMMIE ACCIARDO, et al.

Preliminary conference today, 9:30

TYPE OF ACTION: §1983 action against a state trooper, Breathitt County Sheriff, Breathitt County Jailer, and the City of Jackson, Ky.

PLAINTIFF'S STORY: That, when she was an 18 year-old girl, the state trooper arrested her without telling her why she was being arrested, that the trooper and the sheriff took her to the county jail where they and the jailer threw her into a cell, still not telling her why, and left her there for several hours in a cell not fit for human habitation, where she was in constant view of the male residents of the jail, where she had no place to take care of her necessary bodily functions, (this being complicated by the fact that she was having her period at the time), and that, in all that time, the only thing anyone said to her by way of explanation was that she was arrested "because of who she was with." She maintains that she had not been drinking, and that she was denied repeated requests for the chance to make a phone call.

DEFENDANTS' STORY: That the state trooper, with probable cause based upon plaintiff's actions, arrested her for public drunkenness, that the trooper and the sheriff took her to the county jail where she was treated completely fairly, that she was fully aware of why she'd been arrested; basically, they deny her story.

THE CASE: The state trooper counter-claimed that plaintiff had damaged his reputation, but you dismissed his counter-claim, (#12 in the file). All the parties have filed their memos. Nobody contests jurisdiction. Defendants claim a qualified immunity. Defendant city of Jackson, of course, denies that there was any sort of plan to treat people the way plaintiff claims she was treated, that the city had any such policy . . . All the defendants are proper §1983 parties.

ASSIGNED FOR PRELIMINARY CONFERENCE AT PIKEVILLE, KENTUCKY

ON OCTOBER 13, 1981 AT 9:30 A.M.

February 11, 1982 at 9:30 AM

PIKEVILLE CIVIL NO. 81-27

MONA MILLER

170 DAVID LEMASTER ✓

VS:

DOMMIE L. ACCIARDO, ET AL

170 JAMES HOGG ✓
DAN JACK COMBS
120 BLAKE PAGE ✓

PRELIMINARY CONFERENCE

JURY DEMAND PLAINTIFF

- 3/4/81 #1 COMPLAINT
- 3/25/81 #2 SEPARATE ANSWER of deft Talburt Turner
- #3 SEPARATE ANSWER, of deft George Lee
- #4 SEPARATE ANSWER, of deft City of Jackson
- 4/7/81 #7 SEPARATE ANSWER, of deft, Dommie L. Acciaro

Discovery - 11 June