

TO: Judge
FROM: Donald
DATE: 3-8-84
RE: 83-406
Florence DeBoard v. American Motors Corp.

PC, Friday, 3-9-84, at 9:00.

Synopsis: This is a wrongful death action plff brings on behalf of her son, who was killed in a one-vehicle accident in Pike County in September of '82.

This action is based on theories of products liability, negligence, and breach of express and implied warranties.

Plff is seeking \$3 Million compensatory and \$3 Million punitive damages. It seems that plff's 16-year-old son was driving this 1980 Spirit, which left the road and hit a rock wall. The son died from injuries sustained in the accident.

Pending Motions: NONE.

Substantive Issues:

1. Was the AMC Spirit in a defective condition?
2. Was the AMC Spirit unreasonably dangerous?
3. Did the alleged defective condition contribute substantially to cause the plff's injuries?
4. Was the decedent contributorily negligent?
5. Is plff entitled to punitive damages?

Comments:

1. Both parties are prepared for the PC.

*Cut off
Pre trial
trial*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

LADIES AND GENTLEMEN OF THE JURY,
THE COURT INSTRUCTS YOU AS FOLLOWS:

Now that you have heard all of the evidence and the argument of counsel, it becomes my duty to give you the instructions of the Court concerning the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me. Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the Court, just as it would also be a violation of your sworn duty, as judges of the fact, to base a verdict upon anything other than the evidence in the case.

In deciding the facts of this case you must not be swayed by bias or prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and

impartially consider all of the evidence in the case, follow the law as stated by the Court, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. A corporate entity is entitled to the same fair trial at your hands as is a private individual. The law is no respecter of persons, and all persons, including corporate entities, stand equal before the law and are to be dealt with as equals in a court of justice.

When a corporate entity is involved, of course, it may act only through natural persons as its agents or employees; and, in general, any agent or employee of a corporate entity may bind the corporate entity by his acts and declarations made while acting within the scope of his authority delegated to him by the corporate entity, or within the scope of his duties as an employee of the corporate entity.

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case,

and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice.

In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

You may, in your determination of the facts of this case, consider both direct and circumstantial evidence. Direct evidence is the testimony of a witness who actually saw an event occur. Circumstantial evidence is proof of a chain of circumstances pointing to the occurrence of a fact or the existence of a fact. Direct evidence occurs where a witness testifies as to facts of his own knowledge, matters which he saw and heard, matters which came to him by virtue of his own senses and his own observation.

Circumstantial evidence, on the other hand, occurs where proof is given of facts and circumstances from which one may infer other connected facts which ordinarily follow in the common experience of mankind.

As a general rule, the law makes no distinction between direct and circumstantial evidence. Matters with reference to motive and intent usually must be established by circumstantial evidence.

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability, of each witness and the weight to be given to his testimony. In weighing the testimony of a witness you

should consider his relationship to the plaintiff or to the defendant; his interest, if any, in the outcome of the case; his manner of testifying; his opportunity to observe or acquire knowledge concerning the facts about which he testified; his candor, fairness and intelligence; and the extent to which he has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

The rules of evidence provide that if scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify and state his opinion concerning such matters.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is out weighed by other evidence, then you may disregard the opinion entirely.

A witness may be discredited or "impeached" by contradictory evidence, by a showing that he testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something or has failed to say or do something, which is inconsistent with the witness's present testimony.

If you believe that any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

The burden is on the plaintiffs in a civil action such as this to prove every essential element of his claim by a "preponderance of the evidence." A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a "preponderance of the evidence" merely means to prove that the claim is more likely so than not so.

In determining whether any fact in issue has been proved by a preponderance of the evidence, the jury may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them. If the proof should fail to establish any essential element of any of the plaintiffs' claims by a preponderance of the evidence, the jury should find for the defendants as to that claim.

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto, in other words, your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration of all the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Upon retiring to the jury room you should first select one of your number to act as your foreman or forewoman who will preside over your deliberations and will be your spokesman here in Court. A form verdict has been prepared for your convenience. The Court is requesting a special verdict in the form of a special finding upon each issue of fact.

You will take the verdict form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreman fill it in, date and sign it, and then return to the Courtroom.

If, during your deliberations, you should desire to communicate with the Court, please reduce your message or question to writing signed by the foreman or forewoman, and pass the note to the Marshal who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the Courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

In this case the plaintiffs claim damages alleged to have been sustained by them as the result of a deprivation, under color of state law, of a right secured to the 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, each of the plaintiffs allege that while the defendants were acting under a color of authority of the statutes of the Commonwealth of Kentucky as members of the Board of Education of Knott County, Kentucky, they subjected each of the plaintiffs to the deprivation of rights and privileges secured and protected to each of them by the Constitution and laws of the United States, namely the First Amendment, and the right of free speech, and the Fourteenth Amendment, the right not to be deprived of a property right, their contracts of employment, without due process of law.

You are instructed as a matter of law that under the Constitution of the United States every citizen has the right to certain protections of the law, that is, the right not to be denied property rights, such as an employment contract, without due process of law, and not to be denied his rights, privileges and immunities under the First and Fourteenth Amendments, including but not limited to, the exercise of free speech.

You are further instructed that Section 1983 of Title 42 of the United States Code provides that any citizen may seek redress in this Court by way of damages against any person or persons who, under color of any state law or custom, subjects such citizen to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States.

In order to prove his claim, therefore, the burden is upon each plaintiff to establish by a preponderance of the evidence in the case, each of the following elements:

1. That the defendants performed acts which operated to deprive the plaintiff of one or more of his federal Constitutional rights previously mentioned;

2. That the defendants as such officials then and there acted under the color of the authority of statutes of the Commonwealth of Kentucky;

3. That the defendants' acts were the proximate or legal cause cause of damages sustained by the plaintiffs.

Acts are done "under color" of the authority of a state, not only when the 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 authority," however, the unlawful act must be done while the official is purporting or pretending to act in the performance of his official duty; that is to say, the unlawful act 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 except for the fact that the person committing them was an official purporting to exercise his official powers.

The first aspect of each of the plaintiffs' claims is that his position within the Knott County School System was changed because of his expression of his political rights. That such penalizing procedure is a violation of a constitutional right, to free expression of one's political beliefs, "without due process of law". To be deprived of one's rights "without due process of law" means to be deprived of such right without authority of the law. Before the jury can determine, then, whether or not each of the plaintiffs was deprived by the defendants of his liberty "without due process of law," the jury must first determine from a preponderance of the evidence in the case whether the defendants committed the acts

alleged, and, if so, whether the defendants acted under the circumstances within or without the bounds of their lawful authority under state law. If the defendants acted within the limits of their lawful authority under state law, then the defendants could not have deprived the plaintiff of any right "without due process of law."

In that regard you are instructed that under the law of Kentucky, that no local school board superintendent shall recommend and no school board member shall knowingly vote for an expenditure in excess of the income and revenue of any year except for a purpose for which bonds have been voted or in case of an emergency declared by the State Board of Education. Kentucky Revised Statute 160.550. You are further instructed that the penalty for violation of this law includes removal of either the superintendent or the school board members or both from office. Kentucky Revised Statutes 160.990(5).

In determining whether the defendants had reason to abolish the positions of plaintiffs, Inmon, Click and Hall, in order to reduce a budgetary deficit confronted by the Knott County Board of Education, you may consider whether the acts of the defendants in abolishing the positions held by plaintiffs, Inmon, Click and Hall, were for the purpose of proper administration and control of the Knott County School System. You may also consider in determining whether

the defendants lawfully re-assigned plaintiffs, Brennan and Watts, to the positions of classroom teachers if such re-assignments were necessary for the proper administration and control of the Knott County School System.

The second aspect of the plaintiffs' claim is that they were punished for the free exercise of the freedom of speech and the free exercise of their political opinion. As previously stated, every citizen is protected by the Constitution against denial of free expression, and ordinarily, this means that a citizen may express his opinion without fear of reprisal.

If you find from a preponderance of the evidence that the plaintiffs' exercise of their First Amendment rights was a substantial or motivating factor in the defendants' decision to remove the plaintiffs from their administrative positions, then the defendants have acted unlawfully. However, if you believe from a preponderance of the evidence that the plaintiffs would have been removed from their administrative positions in any event due to the financial crisis within the Knott County School System even if the plaintiffs had never engaged in the constitutionally protected activities that I have described, then the plaintiffs are entitled to no relief and you shall find for the defendants.

Now, in summary, if you find from a preponderance of the evidence in the case, after applying these instructions of law, that any of the plaintiffs has proved his claim that his position reassignment was made "without due process of law"; or that it was done to punish any of the plaintiffs for the exercise of free speech, you will indicate that on the special verdict submitted to you by the Court. On the other hand, if you find that any of the plaintiffs has not proved any of his claims of Constitutional deprivation, then, of course, you will likewise indicate that on the special verdict submitted to you by the Court.

INTERROGATORY INSTRUCTIONS

INTERROGATORY NO. 1

Does the jury believe from the evidence that when the members of the Board of Education voted to abolish the position of Business Affairs Consultant held by plaintiff, Arthur Click, that their purpose was to punish him for his prior statements and belief?

Yes _____

No _____

INTERROGATORY NO. 2

If the answer to Number 1 above is yes, does the jury nevertheless believe from the evidence that when plaintiff, Click's, position was abolished that the defendants did so in order to decrease the budget deficit of the school system and that the Board Members would have reached the same decision to abolish plaintiff, Click's, administrative position regardless of his exercise of First Amendment rights?

Yes _____

No _____

INTERROGATORY NO. 3

Does the jury believe from the evidence that when the members of the Board of Education voted to abolish the position of Assistant Superintendent held by plaintiff, Ellis N. Hall, that their purpose was to punish him for his prior statements and belief.

Yes _____

No _____

INTERROGATORY NO. 4

If the answer to Number 3 above is yes, does the jury nevertheless believe from the evidence that when plaintiff, Ellis N. Hall's, position was abolished that the defendants did so in order to decrease the budget deficit of the school system and that the Board Members would have reached the same decision to abolish plaintiff, Hall's, administrative position regardless of his exercise of First Amendment rights?

Yes _____

No _____

INTERROGATORY NO. 5

Does the jury believe from the evidence that when the members of the Board of Education voted to abolish the position of Director of Buildings and Grounds held by plaintiff, Delmas Inmon, that their purpose was to punish him for his prior statements and belief?

Yes _____

No _____

INTERROGATORY NO. 6

If the answer to Number 5 above is yes, does the jury nevertheless believe from the evidence that when plaintiff, Delmas Inmon's, position was abolished that the defendants did so in order to decrease the budget deficit of the school system and that the Board Members would have reached the same decision to abolish plaintiff, Inmon's, administrative position regardless of his exercise of first Amendment rights?

Yes _____

No _____

INTERROGATORY NO. 7

Does the jury believe from the evidence that when members of the Board of Education voted not to renew the teaching contract of plaintiff, Robert Brennan, and voted later to assign him as a classroom teacher that their purpose was to punish him for his prior statements and beliefs?

Yes _____

No _____

INTERROGATORY NO. 8

If the answer to Interrogatory No. 7 is yes, does the jury nevertheless believe from the evidence that when the members of the Board of Education voted not to renew plaintiff, Brennan's, teaching contract and later voted to place him as a classroom teacher, that they would have reached the same decision regardless of his exercise of First Amendment rights based upon a budgetary deficit confronting the Knott County Board of Education and plaintiff, Brennan's, lack of seniority.

Yes _____

No _____

INTERROGATORY NO. 9

Does the jury believe from the evidence that when the members of the Board of Education voted to re-assign plaintiff, Dennis Watts, from his position as school principal to that of a classroom teacher, that their purpose was to punish him for his prior statements and beliefs?

Yes _____

No _____

INTERROGATORY NO. 10

If the answer to Interrogatory No. 9 above is yes, does the jury nevertheless believe from the evidence that when the members of the Board of Education voted to re-assign plaintiff, Dennis Watts, from school principal to classroom teacher, that they would have reached the same decision regardless of his exercise of his First Amendment rights based upon a budgetary deficit confronting the Knott County School System and plaintiff, Watts', lack of seniority?

Yes _____

No _____

Foreman

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

COURT'S INSTRUCTIONS TO THE JURY:

THE DEFENDANTS HAVE RAISED A DEFENSE OF "GOOD FAITH IMMUNITY." A DEFENDANT SUCH AS THESE SUED IN HIS INDIVIDUAL CAPACITY IN THIS TYPE OF CASE IS NOT LIABLE FOR VIOLATING A PERSON'S CONSTITUTIONAL RIGHTS IF HE ACTS IN GOOD FAITH, WITH REASONABLE BELIEF THAT HIS ACTIONS ARE LAWFUL. HOWEVER, WHERE AN INDIVIDUAL DELIBERATELY USES HIS LAWFUL AUTHORITY OR ACTS TO MALICIOUSLY INJURE ANOTHER, THEN THERE CAN BE NO DEFENSE BASED ON GOOD FAITH. IF YOU FIND BY PREPONDERANCE OF THE EVIDENCE THAT ANY OR ALL OF THE INDIVIDUAL DEFENDANTS ACTED IN GOOD FAITH, WITHOUT MALICE, AND WITH A REASONABLE BELIEF IN THE LAWFULNESS OF HIS ACTIONS, THEN THE LAW IS FOR THE DEFENDANTS AND YOU SHALL SO FIND.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

COURT'S INSTRUCTIONS TO THE JURY:

IN THE EVENT THE JURY MAKES A FINDING AND DETERMINATION THAT THE DEFENDANT OR DEFENDANTS HAS COMMITTED AN ACT OR ACTS CONTRARY TO TITLE 42 U.S.C., Section 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.

OF COURSE, THE FACT THAT I GIVE YOU INSTRUCTIONS CONCERNING THE ISSUE OF PLAINTIFF'S DAMAGES SHOULD NOT BE INTERPRETED IN ANY WAY AS AN INDICATION THAT I BELIEVE THAT PLAINTIFF SHOULD, OR SHOULD NOT, PREVAIL IN THIS CASE.

IN CONSIDERING THE ISSUE OF PLAINTIFF'S DAMAGES, YOU ARE INSTRUCTED THAT YOU SHOULD ASSESS THE AMOUNT YOU FIND TO BE JUSTIFIED BY A PREPONDERANCE 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 HIM WHOLE OR AS HE 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) EMOTIONAL DISTRESS, EMBARRASSMENT AND HUMILIATION

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 EMOTIONAL DISTRESS, EMBARRASSMENT AND HUMILIATION ALREADY SUFFERED BY HIM AND PROXIMATELY RESULTING FROM THE INJURIES IN QUESTION; (2) FOR ANY EMOTIONAL DISTRESS, EMBARRASSMENT AND HUMILIATION 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 EMOTIONAL DISTRESS, EMBARRASSMENT AND HUMILIATION 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 HE HAS SUFFERED. ANY SUCH AWARD SHOULD BE FAIR AND JUST IN LIGHT OF THE EVIDENCE.

(b) LOST EARNINGS

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 ANY LOST EARNINGS SUSTAINED IN THE PAST AS A DIRECT AND PROXIMATE RESULT OF THE ACTS OF THE DEFENDANTS, IF ANY.

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 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 HIM 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 AWARAD 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. _____

A). IS THE JURY ABLE TO FIND, BY A PREPONDERANCE OF THE EVIDENCE, THAT PLAINTIFF _____ SUSTAINED ACTUAL DAMAGES BY ANY OF THE DEFENDANTS? YES _____ NO _____

B). IF THE JURY'S ANSWER TO THE ABOVE INTERROGATORY IS "NO", IT SHALL PROCEED TO THE NEXT NUMBERED INTERROGATORY. IF THE JURY'S ANSWER IS "YES", THE JURY FINDS THAT PLAINTIFF _____ IS ENTITLED TO NOMINAL DAMAGES IN SOME NOMINAL AMOUNT AGAINST THE FOLLOWING NAMED DEFENDANT(S):

- (1) COY COMBS ? YES _____ NO _____
- (2) GRANT HONEYCUTT ? YES _____ NO _____
- (3) BERNICE MULLINS ? YES _____ NO _____
- (4) _____ ? YES _____ NO _____
- (5) _____ ? YES _____ NO _____

C). IF THE JURY'S ANSWER IS "NO" AS TO ALL DEFENDANTS, IT WILL PROCEED TO THE NEXT INTERROGATORY. IF THE JURY'S ANSWER IS "YES" AS TO ANY DEFENDANT(S), IT WILL INSERT THE SUM SO AWARDED IN THE PROPER SPACE BELOW, NUMBERED ACCORDING TO THE ABOVE LISTED DEFENDANTS:

- (1) _____ DOLLARS, AS NOMINAL DAMAGES.
- (2) _____ DOLLARS, AS NOMINAL DAMAGES.
- (3) _____ DOLLARS, AS NOMINAL DAMAGES.
- (4) _____ DOLLARS, AS NOMINAL DAMAGES.
- (5) _____ DOLLARS, AS NOMINAL DAMAGES.

(DATE)

(FOREPERSON)

(COMPENSATORY DAMAGES)

- (1) COY COMBS ? NO _____ YES _____ AMOUNT \$ _____ .
- (2) GRANT HONEYCUTT ? NO _____ YES _____ AMOUNT \$ _____ .
- (3) BERNICE MULLINS ? NO _____ YES _____ AMOUNT \$ _____ .
- (4) _____ ? NO _____ YES _____ AMOUNT \$ _____ .
- (5) _____ ? NO _____ YES _____ AMOUNT \$ _____ .

DATE _____

FOREPERSON _____

SPECIAL INTERROGATORY NO: _____

COMPENSATORY DAMAGES

A). IS THE JURY ABLE TO FIND, BY A PREPONDERANCE OF THE EVIDENCE, THAT PLAINTIFF _____ SUSTAINED, AS A RESULT OF THE ACT(S) OF ANY OF THE DEFENDANTS, EMOTIONAL DISTRESS? YES _____ NO _____?

B). IF THE JURY'S ANSWER TO THE ABOVE INTERROGATORY IS "NO", IT WILL PROCEED TO THE NEXT INTERROGATORY. IF THE JURY'S ANSWER IS "YES", THE JURY FINDS THAT THE PLAINTIFF _____ IS ENTITLED TO COMPENSATORY DAMAGES FOR EMOTIONAL DISTRESS IN THE FOLLOWING AMOUNT(S) AGAINST THE FOLLOWING DEFENDANT(S):

- | | | | | | | | | | | |
|-----|-------|-----------------|-------|---|----|-------|-----|-------|-----------|-------|
| (1) | _____ | COY COMBS | _____ | ? | NO | _____ | YES | _____ | AMOUNT \$ | _____ |
| (2) | _____ | GRANT HONEYCUTT | _____ | ? | NO | _____ | YES | _____ | AMOUNT \$ | _____ |
| (3) | _____ | BERNICE MULLINS | _____ | ? | NO | _____ | YES | _____ | AMOUNT \$ | _____ |
| (4) | _____ | | _____ | ? | NO | _____ | YES | _____ | AMOUNT \$ | _____ |
| (5) | _____ | | _____ | ? | NO | _____ | YES | _____ | AMOUNT \$ | _____ |

C). IS THE JURY ABLE TO FIND, BY A PREPONDERANCE OF THE EVIDENCE, THAT PLAINTIFF _____ SUSTAINED, AS A RESULT OF THE ACT(S) OF ANY OF THE DEFENDANTS, LOSS OF EARNINGS? YES _____ NO _____.

D). IF THE JURY'S ANSWER TO THE ABOVE INTERROGATORY IS "NO" IT WILL PROCEED TO THE NEXT INTERROGATORY. IF THE JURY'S ANSWER IS "YES", THE JURY FINDS THAT THE PLAINTIFF _____ IS ENTITLED TO COMPENSATORY DAMAGES FOR LOSS OF EARNINGS IN THE FOLLOWING AMOUNT(S) AGAINST THE FOLLOWING DEFENDANT(S):

SPECIAL INTERROGATORY NO: _____

COMPENSATORY DAMAGES

A). IS THE JURY ABLE TO FIND, BY A PREPONDERANCE OF THE EVIDENCE, THAT PLAINTIFF _____ SUSTAINED, AS A RESULT OF THE ACT(S) OF ANY OF THE DEFENDANTS, EMOTIONAL DISTRESS? YES _____ NO _____ ?

B). IF THE JURY'S ANSWER TO THE ABOVE INTERROGATORY IS "NO", IT WILL PROCEED TO THE NEXT INTERROGATORY. IF THE JURY'S ANSWER IS "YES", THE JURY FINDS THAT THE PLAINTIFF _____ IS ENTITLED TO COMPENSATORY DAMAGES FOR EMOTIONAL DISTRESS IN THE FOLLOWING AMOUNT(S) AGAINST THE FOLLOWING DEFENDANT(S):

- (1) _____ ? NO _____ YES _____ AMOUNT \$ _____ .
(2) _____ ? NO _____ YES _____ AMOUNT \$ _____ .
(3) _____ ? NO _____ YES _____ AMOUNT \$ _____ .
(4) _____ ? NO _____ YES _____ AMOUNT \$ _____ .
(5) _____ ? NO _____ YES _____ AMOUNT \$ _____ .

C). IS THE JURY ABLE TO FIND, BY A PREPONDERANCE OF THE EVIDENCE, THAT PLAINTIFF _____ SUSTAINED, AS A RESULT OF THE ACT(S) OF ANY OF THE DEFENDANTS, LOSS OF EARNINGS? YES _____ NO _____ .

D). IF THE JURY'S ANSWER TO THE ABOVE INTERROGATORY IS "NO" IT WILL PROCEED TO THE NEXT INTERROGATORY. IF THE JURY'S ANSWER IS "YES", THE JURY FINDS THAT THE PLAINTIFF _____ IS ENTITLED TO COMPENSATORY DAMAGES FOR LOSS OF EARNINGS IN THE FOLLOWING AMOUNT(S) AGAINST THE FOLLOWING DEFENDANT(S):

SPECIAL INTERROGATORY NO: _____

PUNITIVE DAMAGES

A). IS THE JURY ABLE TO FIND, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE ACT(S) OF ANY OF THE DEFENDANTS WERE DONE WILLFULLY, INTENTIONALLY, MALICIOUSLY, OR WITH CALLOUS AND RECKLESS INDIFFERENCE TO THE RIGHTS OF PLAINTIFF _____, SO AS ENTITLE HIM TO AN AWARD OF PUNITIVE DAMAGES AS WELL AS COMPENSATORY DAMAGES?

YES _____ NO _____

B). IF THE JURY'S ANSWER TO THE FOREGOING INTERROGATORY IS "NO", THE JURY WILL PROCEED TO THE NEXT NUMBERED INTERROGATORY. IF THE JURY'S ANSWER IS "YES", AS TO ANY DEFENDANT(S), THE JURY WILL INSERT THE SUM SO AWARDED AGAINST EACH DEFENDANT BELOW:

- (1) _____, _____ DOLLARS.
(2) _____, _____ DOLLARS.
(3) _____, _____ DOLLARS
(4) _____, _____ DOLLARS
(5) _____, _____ DOLLARS

DATE

FOREPERSON

MULTI-PARTY INSTRUCTION

THE JURY IS INSTRUCTED THAT THIS IS A MULTI-PARTY ACTION, THAT IS, THERE ARE MORE THAN ONE PLAINTIFF AND MORE THAN ONE DEFENDANT. THE JURY MAY FIND FOR NONE, ONE OR MORE OF THE PLAINTIFFS AGAINST ONE, ONE OR MORE OF THE DEFENDANTS.

Civil Action 82-03, BRENNAN ET AL V. KNOTT BD. OF EDUC (1983 action)

Motion by Defendants for Summary Judgment

Plaintiffs are, and were, employes of the Knott Co. Board of Education. Upon a change of school board personnel following the 1980 elections, the Board took various actions against the plaintiffs:

- A principals' employment as a principal was terminated.
- Four plaintiffs were demoted from administrative positions to teaching jobs.
- One plaintiff alleges that he was physically unable to handle the lower-level, lower-paying job he was assigned to and had to take a disability retirement.

Defendants assert that, due to a projected \$500,000 budget deficit, the administrative positions had to be pared, per recommendations of state supervisory agency in Frankfort. (one non-tenured plaintiff was simply terminated after one year with the Board). There doesn't seem to be any argument from plaintiffs that there were severe budget problems.

Plaintiffs argue that they publicly supported losing candidates, and that the newly elected members have taken these personnel actions in retaliation for their constitutionally protected political activities.

A leading case, Mt. Healthy, 429 U.S. 274 (1977), seems to say that political action must have been a substantial factor in the Board's personnel actions, and must be shown by plaintiff. However, once such a substantial factor has been shown to be a motivating factor in the board's actions, the Board must show that it would have reached the same decision in the absence of such showing.

Defendants deny knowing of plaintiffs' activities in the election.

I believe it will have to go to trial (jury demanded).

GLP

Civil Action 82-03 STATUS CONFERENCE

BRENNAN v. KNOTT BD. OF EDUC (political spoils)

Pre-Trial memos filed.

Depos continued to 8 October 1982

TO: Judge
FROM: Maggie
DATE: 22 March 1982
RE: Civil action # 82-03

ROBERT BRENNAN, et al. v. KNOTT CO. BD. OF EDUCATION, et al.
Preliminary Conference, Tuesday, 9:00

Yet another §1983 action from Knott County. We should probably develop some forms for these cases like for Social Security.. .

In this one, plaintiffs contend that, because of their political activities in opposition to the candidacies of the defendants who were elected to the Bd. of Ed., those new board members subsequently reassigned, demoted, or failed to renew the contract(s) of various of the plaintiff employees of the Knott County schools.

Defendants deny any political motivation, cite fiscal and other administrative problems to explain their personnel moves, and claim a qualified immunity such that good faith is a possible affirmative defense for them.