

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ELIZABETH M. NELSON,)
)
 Plaintiff,)
)
 v.) No. 03-2671
)
 CHRISTIAN BROTHERS UNIVERSITY,)
 STANISLAUS SOBCZYK, and LOUIS)
 ALTHAUS,)
)
 Defendants.)

JURY INSTRUCTIONS

Ladies and gentleman of the jury, we have now come to the point in the case when it is my duty to instruct you in the law that applies to the case and you must follow the law as I state it to you.

As jurors it is your exclusive duty to decide all questions of fact submitted to you and for that purpose to determine the effect and value of the evidence.

You must not be influenced by sympathy, bias, prejudice or passion.

You are not to single out any particular part of the instructions and ignore the rest, but you are to consider all the

instructions as a whole and regard each in the light of all the others.

I. GENERAL INSTRUCTIONS

All Persons Equal Before the Law

In this case defendant Christian Brothers University is an educational institution. The fact that an institution is a party must not prejudice you in your deliberations or in your verdict.

You may not discriminate between institutions and natural individuals. Both are persons in the eyes of the law, and both are entitled to the same fair and impartial consideration and to justice by the same legal standards.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life. An institution is entitled to the same fair trial at your hands as a private individual. All persons, including institutions and other organizations, and individuals stand equal before the law, and are to be dealt with as equals in a court of justice.

While the Christian Brothers University is a defendant in this case, that does not mean that only the actions of the University as one body can be considered by you in determining its liability in this case. The University acts not only through the policies and decisions that it makes, but also through its designated employees, such as its deans, president and vice president, and others designated by the University to act on its behalf.

Pay close attention to the remainder of these instructions. As you apply subsequent portions of these instructions, you will have to determine whether or not individual University employees were authorized to act on behalf of the University.

Burden of Proof and
Consideration of the Evidence

I will now instruct you with regard to where the law places the burden of making out and supporting the facts necessary to prove the legal theories in the case.

When, as in this case, the defendants deny the material allegations of the plaintiff's claims, the law places upon the plaintiff the burden of supporting and making out her claims upon every essential element of the claim by the greater weight or preponderance of the evidence.

Preponderance of the evidence - - means that amount of factual information presented to you in this trial which is sufficient to cause you to believe that an allegation is probably true. In order to preponderate, the evidence must have the greater convincing effect in the formation of your belief. If the evidence on a particular issue appears to be equally balanced, the party having the burden of proving that issue - in this case, the plaintiff - must fail.

You must consider all the evidence pertaining to every issue, regardless of who presented it.

Weighing the Evidence

You, members of the jury, are judges of the facts concerning the controversy involved in this lawsuit. In order for you to determine what the true facts are, you are called upon to weigh the testimony of every witness who has appeared before you and to give the testimony of the witnesses the weight, faith, credit and value to which you think it is entitled.

You will note the manner and demeanor of witnesses while on the stand. You must consider whether the witness impressed you as one who was telling the truth or one who was telling a falsehood and whether or not the witness was a frank witness. You should consider the reasonableness or unreasonableness of the testimony of the witness; the opportunity or lack of opportunity of the witness to know the facts about which he or she testified; the intelligence or lack of intelligence of the witness; the interest of the witness in the result of the lawsuit, if any; the relationship of the witness to any of the parties to the lawsuit, if any; and whether the witness testified inconsistently while on the witness stand, or if the witness said or did something or failed to say or do something at any other time that is inconsistent with what the witness said while testifying.

These are the rules that should guide you, along with your common judgment, your common experience and your common observations gained by you in your various walks in life, in weighing the testimony of the witnesses who have appeared before you in this case.

If there is a conflict in the testimony of the witnesses, it is your duty to reconcile that conflict if you can, because the law presumes that every witness has attempted to and has testified to the truth. But if there is a conflict in the testimony of the witnesses which you are not able to reconcile, in accordance with these instructions, then it is with you absolutely to determine which of the witnesses you believe have testified to the truth and which ones you believe have testified to a falsehood.

Immaterial discrepancies do not affect a witness's testimony, but material discrepancies do. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

The greater weight or preponderance of the evidence in a case is not determined by the number of witnesses testifying to a particular fact or a particular set of facts. Rather, it depends

on the weight, credit and value of the total evidence on either side of the issue, and of this you jurors are the exclusive judges.

If in your deliberations you come to a point where the evidence is evenly balanced and you are unable to determine which way the scales should turn on a particular issue, then the jury must find against the plaintiff, upon whom the burden of proof has been cast in accordance with these instructions.

Direct and Circumstantial Evidence

There are two kinds of evidence - direct and circumstantial. Direct evidence is testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

Statements of Counsel

You must not consider as evidence any statements of counsel made during the trial. If, however, counsel for the parties have stipulated to any fact, or any fact has been admitted by counsel, you will regard that fact as being conclusively established.

As to any questions to which an objection was sustained, you must not speculate as to what the answer might have been or as to the reason for the objection, and you must assume that the answer would be of no value to you in your deliberations.

You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken out by the court. Such matter is to be treated as though you had never known it.

You must never speculate to be true any insinuation suggested by a question asked a witness. A question is not evidence. It may be considered only as it supplies meaning to the answer.

Totality of the Evidence

The jury may consider all evidence admitted in the case. Testimony and documents which the court allowed into evidence over a hearsay objection may be considered by you as evidence, on the same basis as all other evidence, for the purpose for which it was admitted. This, of course, is all for you, the jury, to decide.

Separate Consideration

Although there is more than one defendant in this case, it does not follow from the fact alone that if one is liable all are liable. Each party is entitled to fair and separate consideration of the case and is not to be prejudiced by your decision concerning the other party or parties.

This case involves allegations of retaliation and civil conspiracy. The claims of retaliation, in violation of Title IX, are made against all three of the defendants (Christian Brothers University, Stanislaus Sobczyk, and Louis Althaus) while the claims of civil conspiracy are alleged only against defendants Stanislaus Sobczyk and Louis Althaus. Although claims have been made against all the defendants, in our system of justice, it is your duty to separately consider the evidence as to each party and to return a separate verdict for each one. For each party, you must decide what the evidence establishes as to that particular party.

Your decision as to one party, whatever that decision is, should not influence your decision as to any of the other parties.

Each party is entitled to fair and separate consideration of his or its own case and is not to be prejudiced by your decision concerning the other parties.

II. STIPULATED FACTS

Stipulated Facts

Before the trial of this case, the parties agreed to the truth of certain facts in this action. As a result of this agreement, the plaintiff and the defendants entered into certain stipulations in which they agreed that the stipulated facts could be taken as true without the parties presenting further proof on the matter. This procedure is often followed to save time in establishing facts which are undisputed.

Facts stipulated to by the parties in this case include the following:

1. Plaintiff, Dr. Elizabeth M. Nelson, is a female employed by Christian Brothers University ("CBU") as an Associate Professor (Tenured) in the Department of Behavioral Sciences.
2. CBU receives federal funding through federal student loans, grants., etc. CBU also has received federal funding for research projects.
3. On or about September 18, 2002, a CBU student claimed she was sexually assaulted on campus by a classmate.
4. The student did not press criminal charges.

5. The student filed an official complaint with the Associate Vice President with Student Life, and the student asked plaintiff to assist her in proceeding with the complaint.
6. The student and plaintiff went to the Student Life office to obtain information about a disciplinary hearing.
7. On October 25, 2002, the ten-person student faculty disciplinary committee unanimously found the alleged perpetrator, who was a member of one of CBU's sports teams, not guilty.
8. On October 28, 2002, the student appealed the decision to Stanislaus Sobczyk ("Sobczyk"), the president of CBU.
9. On November 12, 2002, Sobczyk upheld the decision of the disciplinary committee.
10. In February of 2003, plaintiff made a presentation at the faculty assembly on CBU's sexual assault policies and procedures.
11. The president of the University met with several faculty members regarding the plaintiff's presentation to the faculty assembly.
12. The Rank & Tenure Committee met on March 7, 2003, to consider plaintiff's request for promotion.

13. The voting members of the Rank & Tenure Committee consisted of nine men and one woman. Althaus was a non-voting member of the Rank & Tenure Committee at this time. Kristen Pruitt, the Dean of the School of Arts, was the sole female member of the Rank & Tenure Committee.
14. Six members of the Rank & Tenure Committee recommended the promotion, and four faculty members recommended against promotion.
15. Reasons given not to support the plaintiff for promotion included plaintiff's presentation on sexual assault at the faculty assembly in February, 2003; plaintiff's lapse in professional judgment in presenting a case study of two current students; the quality of research into the background of the case studies; and the failure of the plaintiff to maintain the confidentiality which the students deserved.
16. Plaintiff received a letter dated March 12, 2003, from defendant Stanislaus Sobczyk informing her that her promotion had been denied based upon the mixed recommendation for promotion of the Rank & Tenure Committee and Louis Althaus' recommendation against the promotion at that time.
17. Plaintiff appealed the denial of her promotion to the Faculty Review Committee.

18. Dr. Marius Carriere, at the time, was the chairperson of the Faculty Review Committee at CBU. Jack Hargett, at the time, was the assistant to the Vice President of Academic Affairs.

III. GENERAL INSTRUCTIONS ON THE APPLICABLE LAW

Turning now to the legal theories in the case, it is my duty to tell you what the law is. If any lawyer has told you that the law is different from what I tell you it is, you must, of course, take the law as I give it to you. That is my duty. However, it is your duty, and yours alone, to determine what the facts are and after you have determined what the facts are, to apply those facts to the law as I give it to you, free from any bias, prejudice, or sympathy, either one way or the other.

In this case, plaintiff, Elizabeth Nelson, alleges retaliation in violation of Title IX of the Educational Amendments of 1972 and civil conspiracy.

Title IX - Retaliation

The plaintiff's first theory of recovery is for retaliation in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, et seq. Title IX provides that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance

Title IX has been interpreted to provide students at federally funded institutions the right to be free from sexual harassment and assault. Department of Education regulations provide that:

No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because [s/he] has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part.

Title IX prohibits sexual discrimination and/or harassment in educational programs that receive federal funding, either by the institution or any other individual within the institution. Title IX also protects any individual who complains about or helps investigate alleged violations of Title IX. Department of

Education regulations prohibit retaliation against participants in Title IX investigations.

It is not disputed that Christian Brothers University receives federal funding, and it is not disputed that individually named defendants are individuals within the institution.

You must decide whether plaintiff engaged in an activity or activities protected by Title IX. Opposing alleged violations of Title IX is protected activity under Title IX.

If you decide that plaintiff reasonably believed that the practices she opposed were a violation of Title IX, then you may find that she engaged in activity protected by Title IX.

The defendant does not need to prove that it acted lawfully or, specifically, that its actions with respect to the plaintiff were not motivated by unlawful retaliation. Instead, the plaintiff at all times has the burden of proving by a preponderance of the evidence that the defendant subjected her to an adverse employment action in retaliation for her protected activity.

The fact that the plaintiff has alleged that the defendant retaliated against her for her actions in complaining about or opposing alleged violations of Title IX, is not enough to hold the defendant liable under Title IX. The mere fact that any adverse employment actions may have occurred after the plaintiff complained of or opposed alleged violations of Title IX likewise is not enough, by itself, to establish a claim of unlawful retaliation under Title IX.

In order to recover on her retaliation claim against the defendant, the plaintiff must prove that the defendant intentionally discriminated against her for engaging in protected activity under Title IX. That is, the plaintiff must establish that she was subjected to an adverse employment action by the defendant because of her actions in complaining about or opposing alleged violations of Title IX.

To determine whether the plaintiff has met her burden, you should analyze the proof in the following manner. First, you must decide whether the plaintiff has established a prima facie case of unlawful retaliation. If you find that she has done so, then you must determine if the defendant has articulated a legitimate, non-retaliatory reason for its actions with respect

to the plaintiff. Finally, if you find that the defendant has stated such reason, then you must determine if the plaintiff has proven that the reason given by the defendant is a pretext and that the defendant in fact was motivated by unlawful retaliation.

Remember, at all times, that the ultimate question in a retaliation claim is whether or not the defendant took an adverse employment action against the plaintiff because she engaged in a protected activity.

To establish a prima facie case of unlawful retaliation, the plaintiff must prove, by a preponderance of the evidence, each one of the following elements:

1. Plaintiff engaged in an activity protected by Title IX;
2. The defendant knew she engaged in this protected activity;
3. Thereafter, the defendant took an employment action adverse to her; and
4. There was a causal connection between the protected activity and the adverse employment action.

The first three elements have been explained or are self-explanatory. I will now discuss the fourth element in more detail. The plaintiff must, of course, prove each of the elements by the preponderance of the evidence in the case.

To establish the fourth element of the prima facie case -- that there was a causal connection between the plaintiff's protected activity and any adverse employment actions -- the plaintiff must establish that her protected activity was a significant factor in the adverse employment action taken against her, but the plaintiff does not have to establish that it was the only reason. The mere fact that any adverse employment action may have occurred after the plaintiff engaged in protected activity is not sufficient, by itself, to establish that the protected activity was a significant factor in the adverse employment action.

If you find that the plaintiff has failed to prove any one of the four elements set out in these instructions, then you must find for the defendant. If you find that the plaintiff has proven each of the four elements by a preponderance of the evidence, then you must decide whether the defendant has given a non-retaliatory reason for the treatment of the plaintiff.

In other words, if the plaintiff proves each of the four elements of a prima facie case of unlawful retaliation by a preponderance of the evidence, then you must decide whether the defendant has given a non-retaliatory reason for its treatment of the plaintiff. The defendant can satisfy this requirement if it articulates a reason for its actions which does not violate Title IX. The defendant does not have the burden of proving that this was the reason for its actions or that its actions were motivated by an absence of unlawful retaliation. The burden of proving that the adverse employment action was in retaliation for the plaintiff's actions in complaining about or opposing alleged violations of Title IX remains at all times on the plaintiff.

If you find that the defendant has articulated -- that is, explained or otherwise produced evidence of -- a non-retaliatory reason for its adverse employment action against the plaintiff, then you must decide if the plaintiff has proven, by a preponderance of the evidence, that the non-retaliatory reason given by the defendant was merely a pretext for the real reason for the adverse employment action, which was unlawful retaliation.

The plaintiff may establish pretext by proving, by a preponderance of the evidence, that the reason given by the defendant for its actions either:

1. Has no basis in fact; or
2. Was not the actual reason for its actions; or
3. Is insufficient to explain the adverse action against the plaintiff.

Unless you find by a preponderance of the evidence that the defendant's stated reason for its actions was a pretext, and that the plaintiff actually suffered an adverse employment action in retaliation for her actions in complaining about alleged violations of Title IX, then you must find for the defendant.

In determining whether the reason given by the defendant for the adverse employment action is a pretext, the principal consideration is not whether that reason, in fact, is true or not true. Rather, the principal consideration is whether the defendant genuinely believed that the reason was true at the time it made the decision to take the adverse employment action against the plaintiff. A non-retaliatory reason for taking the

adverse employment action against an employee, if genuinely believed by the defendant, is not a "pretext" even if it ultimately is proven to be false, mistaken or poorly founded.

Employee at Will- Business Judgment

Under the law to be applied in this case, an employer, such as defendant Christian Brothers University, has the right to promote or not promote an employee, such as plaintiff Elizabeth Nelson, for a good reason, a bad reason, or no reason at all, as long as the decision not to promote is not motivated by the employee's protected Title IX activity. If you find that the defendant's decision to not promote the plaintiff in this case was not motivated by the plaintiff's alleged protected Title IX activity, then you must render a verdict for the defendant, even though you might feel that the defendant's actions were unreasonable, arbitrary, or unfair. You are not to focus on the soundness of the defendant's business judgment or to second guess its business decisions.

Civil Conspiracy

The second theory of recovery the plaintiff seeks is for civil conspiracy. The plaintiff alleges that defendants Stanislaus Sobczyk and Louis Althaus acted together to deny her a promotion.

A civil conspiracy is a combination between two or more persons to accomplish, by acting together, an unlawful purpose; or to accomplish a lawful act by unlawful means. There must be a common design, actions on each person's part, and an overt act. In a civil conspiracy, all conspirators have liability for all damages flowing from the conspiracy.

In order to recover under this theory, the plaintiff must prove all of the following elements by a preponderance of the evidence.

1. Two or more individuals agreed to do something that the law forbids;
2. The purpose of the conspiracy was to retaliate against the plaintiff, either directly or indirectly, because of her opposition to the defendants activities in violation of Title IX;
3. That the defendant you are considering joined in that agreement with the intent to advance the purpose of the conspiracy;
4. Defendants conspired because the plaintiff exposed violations of Title IX;
5. One or more of the defendants did, or caused to be done, an act in furtherance of the object of the conspiracy; and
6. Plaintiff must have suffered some injury as a result of the conspiracy.

In order to find against a defendant on the theory of civil conspiracy, you, the jury, must find the conspirator you are considering had the intent to accomplish a common purpose, and each conspirator knew of the others's intent. However, the agreement to conspire need not be formal, the understanding may be a tacit one, and it is not essential that each conspirator have knowledge of the details of the conspiracy.

Finally, it is a basic principle that each conspirator is responsible for everything done by his confederate which the execution of the common design makes probable as a consequence; in other words, each conspirator is liable for the damage caused by the other.

Please keep in mind that if you do not find that the defendant you are considering is liable under Title IX, then there can be no claim for civil conspiracy. However, if you do find that the defendant you are considering is liable under Title IX, you are not required to necessarily find that that defendant is also liable for civil conspiracy. You, the jury, may only find a defendant liable for civil conspiracy if you find that the elements of civil conspiracy, as set out in these instructions, have been established by the greater weight or preponderance of the evidence as to the defendant you are considering.

IV. DAMAGES

In this case, if you find in favor of the defendant you are considering, you will not be concerned with the question of damages against that defendant. But if you find in favor of the plaintiff against any defendant, you will be concerned with the question of damages. It is my duty to instruct you as to the proper measure of damages to be applied in that circumstance.

I shall now instruct you on the award of damages allowed under the law. The fact that I am giving you instructions on damages should not be considered an indication of any view of mine as to which party is entitled to your verdict. Instructions as to the measure of damages are given only for your guidance and are to be applied only in the event that you should find in favor of the plaintiff by a preponderance of the evidence, in accordance with the instructions that I have given you. If you decide that the plaintiff is not entitled to prevail with respect to her claims, you shall not answer any questions on the verdict form with regard to damages.

Compensatory Damages

The damages that you may consider are compensatory damages. Compensatory damages are awarded for the actual injuries suffered by the plaintiff because of the unlawful actions of a defendant.

If you do find in favor of the plaintiff, you may award a sum of money you believe will justly and fairly compensate the plaintiff for any damages you believe that she sustained as a result of any discrimination, retaliation, and/or civil conspiracy.

You shall award actual damages only for those injuries which you find that plaintiff has proven by a preponderance of the evidence. Moreover, you shall award actual damages only for those injuries which you find plaintiff has proven by a preponderance of the evidence to have been the direct result of conduct of the defendant you are considering.

In arriving at an award for damages, you may consider the following items of compensatory damage:

- worry, distress, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, humiliation, and embarrassment or shame.

There is no way to prove these types of damages with exactitude. A jury simply must make a determination based on a full evaluation of the evidence that the jury has before it, using common sense and your common experiences in life in determining a fair amount of compensation in the circumstances presented in the case.

In the determination of the amount of the award it will often be impossible for you to arrive at a precise award. It is, however, necessary to arrive at a reasonable award that is supported by the evidence offered by the plaintiff. There must be evidence presented at trial to support your award of general compensatory damages, for an award cannot be based on speculation or sympathy on your part.

The damages you award may include any costs or expenses incurred by the plaintiff as a result of the conduct of the defendant.

If you find a defendant responsible for injury to the plaintiff then you must determine an amount that is fair and reasonable compensation for damages. You may award compensatory damages only for damages or injuries that the plaintiff proves were caused by the defendant's allegedly unlawful conduct. The

damages that you award must be fair compensation - no more and no less.

Back Pay Damages

If you find that the defendant you are considering retaliated against plaintiff for her involvement in a Title IX investigation or opposition to Title IX violations, then you must determine an amount that would compensate her for the salary and other compensation that she would have earned or received if she had been promoted from associate professor to full professor. In computing money damages, you may not rely on speculation or guesswork. However, absolute precision is not required. You may make an estimate of the amount of money that will constitute just and reasonable compensation based on the facts that are before you. Remember, of course, that the burden of proof on the issue of damages is on the plaintiff in this case.

In this case, the measure of damages for lost wages and other compensation resulting from the unlawful acts of the defendant you are considering is the difference between the amount of money the plaintiff would have earned as a full professor and the amount she actually earned (as an associate professor).

If you find that the plaintiff was injured as a natural consequence of the conduct of the defendants in violation of Title IX or as a result of a civil conspiracy as charged, you must determine whether the plaintiff could thereafter have done something to lessen the harm that she suffered. The burden is on the defendants to prove, by a preponderance of the evidence, that the plaintiff could have lessened the harm that was done to her, and that she failed to do so. If the defendants convince you that the plaintiff could have reduced the harm done to her but failed to do so, the plaintiff is entitled only to damages sufficient to compensate her for the injury that she would have suffered if she had taken appropriate action to reduce the harm done to her.

Punitive Damages

The plaintiff has asked that you make an award of punitive damages, but this award may be made only under the following circumstances. You may consider an award of punitive damages only if you find that the plaintiff has suffered actual damage as a result of fault of the defendant you are considering and have made an award for compensatory damages.

The purpose of punitive damages is not to further compensate the plaintiff, but to punish the wrongdoer and deter others from committing similar wrongs in the future. Punitive damages may be considered if, and only if, the plaintiff has shown by clear and convincing evidence that a defendant has acted either intentionally, recklessly, maliciously, or fraudulently.

Clear and convincing evidence is a different and higher standard than preponderance of the evidence. It means that the defendant's wrong, if any, must be so clearly shown that there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.

A person acts intentionally when it is the person's purpose or desire to do a wrongful act or to cause the result.

A person acts recklessly when the person is aware of, but consciously disregards a substantial or unjustifiable risk of injury or damage to another. Disregarding the risk must be a gross deviation from the standard of care that an ordinary person would use under the circumstances.

A person acts maliciously when the person is motivated by ill will, hatred, or personal spite.

A person acts fraudulently when: (1) the person intentionally either misrepresents an existing material fact or causes a false impression of an existing material fact to mislead or to obtain an unfair or undue advantage; and (2) another person suffers injury or loss because of reasonable reliance upon the representation.

If you decide to award punitive damages, you will not assess an amount of punitive damages at this time. You will, however, report your findings to the Court.

If you, the jury, find that the conduct of the defendant you are considering, as determined under these instructions, was intentional, reckless, malicious, or fraudulent towards the plaintiff then indicate so in your response on the Verdict Form,

but do not indicate the amount of punitive damages you would award.

Of course, if you find that the actions of the defendant you are considering were not intentional, reckless, malicious, or fraudulent towards the plaintiff, then you should so indicate in your response on the Verdict Form.

Verdict Form

Finally, ladies and gentlemen of the jury, we come to the point where we will discuss the form of your verdict and the process of your deliberations. You will be taking with you to the jury room a verdict form which reflects your findings. The verdict form reads as follows:

[Read Verdict Form]

You will be selecting a presiding juror after you retire to the jury room. That person will preside over your deliberations and be your spokesperson here in court. When you have completed your deliberations, your presiding juror will fill in and sign the verdict form.

Your verdict must represent the considered judgment of each of you. In order to return a verdict, it is necessary that each of you agree to that verdict. That is, each of your verdicts 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 judgments. Each of you must decide the case for yourself, but do so only after an impartial

consideration of the evidence 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 evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

We will be sending with you to the jury room all of the exhibits in the case. You may not have seen all of these previously and they will be there for your review and consideration. You may take a break before you begin deliberating but do not begin to deliberate and do not discuss the case at any time unless all ten of you are present together in the jury room. Some of you have taken notes. I remind you that these are for your own individual use only and are to be used by you only to refresh your recollection about the case. They are not to be shown to others or otherwise used as a basis for your discussion about the case.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ELIZABETH M. NELSON,)
)
 Plaintiff,)
)
 v.) No. 03-2671
)
 CHRISTIAN BROTHERS UNIVERSITY,)
)
 Defendant.)

VERDICT FORM AS TO CHRISTIAN BROTHERS UNIVERSITY

1. Has plaintiff Elizabeth Nelson proven by a preponderance of the evidence all of the elements of her retaliation claim against defendant Christian Brothers University in violation of Title IX of the Education Amendments of 1972?

YES _____ NO _____

2. Has plaintiff proven by a preponderance of the evidence that she suffered lost wages or compensatory damages, such as emotional pain and suffering, including anguish, distress, fear, humiliation, shame or worry, which were proximately caused by the actions of defendant Christian Brothers University?

YES _____ NO _____

If your answer to Question NO. 2 is "YES," then under the instructions given to you, state the amount of compensatory damages that the plaintiff should be awarded from the defendant Christian Brothers University.

3. Under the laws given to you in these instructions, state the amount of compensatory damages, if any, that plaintiff Elizabeth Nelson should be awarded from the defendant Christian Brothers University.

Compensatory Damages:

\$_____

4. Under the laws given to you in these instructions, state the amount of lost wages, if any, that plaintiff Elizabeth Nelson should be awarded from the defendant Christian Brothers University.

Lost Wages:

\$_____

5. Has the plaintiff shown by clear and convincing evidence that defendant Christian Brothers University's actions against plaintiff were intentional, reckless, malicious, or fraudulent?

YES _____ NO _____

anguish, distress, fear, humiliation, shame or worry,
which were proximately caused by the actions of
defendant Stanislaus Sobczyk?

YES _____ NO _____

If your answer to Question NO. 3 is "YES," then under the
instructions given to you, state the amount of compensatory
damages that the plaintiff should be awarded from the defendant
Stanislaus Sobczyk.

4. Under the laws given to you in these instructions,
state the amount of compensatory damages, if any, that
plaintiff Elizabeth Nelson should be awarded from the
defendant Stanislaus Sobczyk?

Compensatory Damages:

\$ _____

5. Under the laws given to you in these instructions,
state the amount of lost wages, if any, that plaintiff
Elizabeth Nelson should be awarded from the defendant
Stanislaus Sobczyk?

Lost Wages:

\$ _____

6. Has the plaintiff shown by clear and convincing evidence that defendant Stanislaus Sobczyk's actions against plaintiff were intentional, reckless, malicious, or fraudulent?

YES _____ NO _____

PRESIDING JUROR

DATE

3. Has plaintiff proven by a preponderance of the evidence that she suffered lost wages or compensatory damages, such as emotional pain and suffering, including anguish, distress, fear, humiliation, shame or worry, which were proximately caused by the actions of defendant Louis Althaus?

YES _____ NO _____

If your answer to Question NO. 3 is "YES," then under the instructions given to you, state the amount of compensatory damages that the plaintiff should be awarded from the defendant Louis Althaus.

4. Under the laws given to you in these instructions, state the amount of compensatory damages, if any, that plaintiff Elizabeth Nelson should be awarded from the defendant Louis Althaus?

Compensatory Damages:

\$_____

5. Under the laws given to you in these instructions, state the amount of lost wages, if any, that plaintiff Elizabeth Nelson should be awarded from the defendant Louis Althaus?

Lost Wages:

\$_____

6. Has the plaintiff shown by clear and convincing evidence that defendant Louis Althaus's actions against plaintiff were intentional, reckless, malicious, or fraudulent?

YES _____ NO _____

PRESIDING JUROR

DATE

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 2. Pretext
 - b. Civil Conspiracy
 1. Elements
4. Damages
 - a. Compensatory Damages
 - b. Back Pay
 - c. Duty to Mitigate Damages
 - d. Punitive Damages
5. Instructions/Verdict Form/Selection of Foreperson
6. Verdict Must Be Unanimous/Duty to Discuss With Each Other
7. Verdict Forms