

THE NEUBERGER FIRM

ATTORNEYS AND COUNSELLORS AT LAW

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June 20, 2023

Via E-mail Only

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RE: Your Employee Chief John Devlin

Dear Members of the Town Council,

This office represents Police Chief John Devlin of the Town of Fenwick Island, Delaware. He has been your employee since September 1, 2020, when he replaced your prior Chief who had run afoul of the criminal law.

Chief Devlin was hired to enforce the “rule of law,” against the powerless ordinary citizen, as well as politically powerful elected officials. To paraphrase one commentator, the “rule of law,” is constitutional shorthand for the idea that everyone is treated the same under the law, everyone is held equally accountable to abiding by the law, and no one is given a free pass based on their politics, their connections, their wealth, their status or any other bright line test used to confer special treatment on the elite.

After our careful investigation it appears that his employment was terminated recently just seven days after he chose to enforce the rule of law against your Mayor who it appears has illegally had unlimited access to secure areas of the Police Department containing highly confidential and sensitive “Criminal Justice Information” which is strictly protected by Delaware and Federal law from unauthorized access and the risk of disclosure.

Your actions terminating Chief Devlin because he refused to violate the criminal and other statutory laws of this State violate (a) the “public policy” protections contained within the implied covenant of good faith and fair dealing of his contract, and also (b) the implied term of his contract that he apply the law evenhandedly to all citizens, opening the Town up to a State court breach of contract lawsuit for his lost wages and benefits. But, more importantly, his federal constitutional rights also have been violated which opens each of you personally up to a civil rights lawsuit in federal court for unlimited compensatory and punitive damages, as well as the attorney’s fees he will have to spend to obtain justice.

This letter is a demand that you reinstate Chief Devlin immediately and restore his contract through August 31, 2025.

I. THE FACTS

A. The Contract

The September 1, 2020 contract between the Town and Chief Devlin provides that when its initial one year term expired on August 31, 2021 that it “may be extended ... for up to two (2) additional renewal terms of two (2) years each,” (Para. 1) “provided Police Chief has received satisfactory employee performance reviews from the Town.” (Para. 15).

Clearly it is an implied term of this contract that continued employment would not be denied if the Police Chief enforces the rule of law equally among the powerless and the powerful.

This is corroborated by the fact that paragraph 16. A. of the agreement gives examples of reasons to terminate the contract during its two year term, such as criminal felonies or misdemeanors, theft, dereliction of duty, etc. The list does not state as a reason for termination enforcing the rule of law equally among the powerful and powerless.

B. The Failure To Renew At the End of the First Two Year Term

At the end of his first year of employment Chief Devlin was renewed for two years expiring August 31, 2023. His performance reviews were satisfactory, and indeed exemplary. In his last employee evaluation he received 48 out of 50 for his job approval. His department had received an award from the FBI, and in March 2023 the Town Council awarded him for 20 years service and a video recording demonstrates praise from the Mayor herself at that time.

Then after dark on April 23, 2023, at about 9:30 p.m., your Mayor entered two different

security codes on gaining entrance through two doors into the back of the Police Department into the areas where six secure computer stations were located containing highly confidential “Criminal Justice Information” relating to local and national criminal activity data and other sensitive information. It is presently unknown how many other times she has gained access into this highly confidential and secure area which is off limits to any non-police personnel, absent permission to be present while accompanied by a police official. On duty police officers then engaged the Mayor and escorted her out of the secure area.

The Mayor has publicly, and falsely, claimed she had authority to enter this secure area granted by Chief Devlin previously and that he himself had given to her the two door security codes for her personal use.

Under the many laws of the State of Delaware, and the United States, Chief Devlin was required to report this breach of security to appropriate State officials despite the fact the Mayor was a politically powerful person, and not just some citizen off the street. He had his subordinate timely report the security breach the next day on April 24th and ordered the two security codes be changed.

On April 24th and 25th the Mayor or her agent demanded the new security codes from Chief Devlin’s subordinate who was the security officer.

Seven days after the report of the security breach on April 24th, Chief Devlin on May 1st in writing was advised that the Town, acting through the entire Town Council, had decided not to renew for its second two year term its employment contract with the Chief. He has been sidelined since that date and his duties are executed by a Lieutenant. The temporal causal link between the report of the security breach and this termination is unmistakable.

C. Chief Devlin’s Refusal to Violate Multiple State Laws, Rules, Regulations and Public Policies and Why the Mayor’s Violations Had to Be Reported

1. Introduction to DELJIS.

The Delaware Criminal Justice Information System (“DELJIS”) is founded in Title 11, Chapter 86 of the Delaware Code and is the central state agency responsible for providing efficient and reliable development and operation of the hardware, software, network and database which comprise the Criminal Justice Information System (“CJIS”). The purpose of DELJIS is to serve the “need[s] of criminal justice agencies and courts of this State” while at the same time protecting “the right of individuals to be free from improper and unwarranted intrusions into their privacy.” 11 Del.C. § 8601; *see* 11 Del.C. § 8501(a). The exhaustive and highly intrusive private data contained within DELJIS is defined as “Criminal Justice Information” and “includes: criminal history record information; biographic data; biometric data; identity history; person, organization, property, or Division of Motor Vehicle data; case or incident history; and other data necessary for authorized agencies to make hiring decisions, perform their mission and enforce the laws of this State.” 11 Del.C. § 8602(11).

2. The Five Laws That Must Be Complied With At All Times

11 Del.C. § 8604 requires that all those accessing DELJIS are to comply in full with: (1) 11 Del.C. Chapter 86 (DELJIS); (2) 11 Del.C. Chapter 85 (State Bureau of Identification); (3) 11 Del.C. Chapter 5, subchapter III, Subpart k (Computer Crimes); (4) 21 Del.C. § 305(m) (Department of Motor Vehicle Records); and (5) the Rules and Regulations of DELJIS published by the Board of Managers under 11 Del.C. § 8605. **It is explicitly statutorily mandated that “All suspected or reported violations” of these five sources of law “shall be reported.”** 11 Del.C. § 8607.

3. The Stringent Security and Access Requirements and Prohibitions

Only authorized users who have been “appropriately vetted” and “granted access” by the Delaware Criminal Justice Information System Board of Managers are permitted to access DELJIS. 11 Del.C. § 8602(4); 11 Del.C. § 8603; 11 Del.C. § 8608(a); 11 Del.C. § 8610. Security and access requirements for DELJIS, and the information it contains from many sources, are stringent and extensive. They include:

- that “**access** to computer facilities, systems operating environments, data file contents” among many other things is “**restricted** to authorized agencies and authorized users,” 11 Del.C. § 8606(c)(3);
- that all DELJIS facilities “provide safe and **secure record storage**,” 11 Del.C. § 8606(c)(4);
- that all authorized agencies and authorized users “shall be responsible for the physical security of criminal justice information, or other such sensitive information, ... and such information **shall be protected from unauthorized access**, disclosure, or dissemination,” 11 Del.C. § 8606(c)(5);
- “Direct **access** to criminal justice information, or other sensitive information, **shall be available only** to authorized users essential to the proper operation of the CJIS,” 11 Del.C. § 8606(c)(6).
- An authorized agency is required to “[e]nsure the **security and confidentiality** of the data or information” it has access to, 11 Del.C. § 8611(c)(3);
- “Authorized Agencies are **responsible for notifying** the DELJIS Security Manager or designee **immediately** or as soon as practical **upon discovery** of an Authorized User’s **Improper Access or Breach**.” 1 Del. Admin. Code 1301-6.9.
- “The AC **must not permit** unauthorized Contractor employees to **access** CJI or systems supporting CJI **where access to CJI can be gained**.” 1 Del. Admin. Code 1301-7.1.3.5.

- “Contractors who improperly access or **become aware of improper access** of CJIS by another user, or by any other entity, **shall immediately report the violation** ... and shall cooperate with and assist in the conduct of any administrative investigation ...” 1 Del. Admin. Code 1301-7.2.7.
- “Authorized Users ... must conduct themselves in a manner that will **ensure the security, integrity, and confidentiality** of the information contained within the CJIS.” 1 Del. Admin. Code 1301-9.1.
- “Authorized Users who improperly access or **become aware of improper access** of CJIS by another user, or by any other entity, **shall immediately report the violation** ... and shall cooperate with and assist in the conduct of any administrative investigation...” 1 Del. Admin. Code 1301-9.7.
- Both **FBI Policy** and State rules “specify that **access** to criminal justice information and criminal history record information **is limited** only to Authorized Users.” (May 10, 2023 memo from DELJIS to Chief Devlin). It is the “Agency’s responsibility and obligation to implement the necessary measures to ensure their compliance with these policies as well as all applicable state and federal laws.” (Id.).
- The governing 2022 Delaware State Police User Agreement on security here is 11 pages long. It requires on page 5 that the computer terminals must be “installed and maintained in a secure area and to **restrict access to only authorized personnel.**”
- Finally, the General Assembly has made a specific statutory finding of the need “[t]o prohibit the improper dissemination of such information.” 11 Del.C. § 8501(b)(5).

4. Violation of Any of These Five Sources of Law is a Crime.

It is a **crime for any person** to violate any aspect of the five sources of law noted above. 11 Del.C. § 8608(e). Similarly, it is a **crime for an authorized agency** with access to DELJIS to do the same. 11 Del.C. § 8611(d).

It is a crime to provide access to criminal history information to an unauthorized person and it is similarly a crime for an unauthorized person to obtain or use such information. 11 Del.C. § 8523(d).

It is similarly a **crime to not “make any report** lawfully required of the person” under these laws. 11 Del.C. § 8523(a).

It is a crime to:

- access (or cause to be accessed) a computer system “without authorization,” 11 Del.C. § 932 (unauthorized access);
- access (or cause to be accessed) or otherwise use a computer system “to obtain unauthorized computer services ... or data,” 11 Del.C. § 933 (theft of computer services);
- “make[] ... an unauthorized display, use, disclosure or copy, in any form, of data” in a computer system, 11 Del.C. § 935(1) (misuse of computer system information).

See 11 Del.C. § 939 (Penalties for computer crimes).

5. Violation of These Laws is “Prima Facie Grounds for Removal From” Government Employment.

Under Delaware law, it “shall be prima facie grounds for removal from employment by the State or any political subdivision thereof” if the person is convicted of violating any of these prohibitions on the use or misuse of criminal history information. 11 Del.C. § 8523(e).

II. THE LAW

A. Your Actions Are A “Public Policy” Violation of the Implied Covenant of Good Faith & Fair Dealing.

The Delaware Supreme Court has long held that a wide variety of civil or criminal statutes duly enacted by the General Assembly are more than sufficient foundation to trigger the public policy protections from discharge contained within the implied covenant of good faith and fair dealing. Schuster v. Derocili, 775 A.2d 1029, 1036-37, 1040-41 (Del. 2001) (en banc)(citing numerous civil and criminal laws and also recognizing that professional rules can be the source of the same).

The numerous Delaware laws contained within the exhaustively detailed statutory scheme governing access to DELJIS and its many related components cited in section I.C. above more than satisfy the requirement of “a clear mandate of public policy” that has been “recognized by some legislative, administrative or judicial authority.” E.I. DuPont de Nemours and Co. v. Pressman, 679 A.2d 436, 441 (Del. 1996) (en banc).

Similarly, as Chief of your Police Department with legal responsibility for ensuring compliance with these many Delaware statutes on penalty of criminal conviction, Chief Devlin also satisfies the requirement that he “occupy a position with responsibility for that particular” public interest. Id. at 441-42.

Indeed, the Delaware Supreme Court has recognized that an employee's refusal to commit a crime, as Chief Devlin refused, more than satisfies the test. See Pressman, 679 A.2d at 442 n.13 (citing cases). In the Superior Court's words, "cases where an employee questions the legal propriety of the employer's conduct will satisfy the Pressman public policy standard." Addison v. East Side Charter Sch. of Wilmington, Inc., 2014 WL 4724895, *6 (Del.Super. Sept. 19, 2014).

B. The Rule of Law and Equal Application of the Law to All Citizens Was An Implied Contract Term.

As both the Delaware and U.S. Supreme Courts have long held, we are "a government of laws, and not of men," Marbury v. Madison, 5 U.S. 137, 163 (1803); Dorsey v. State, 761 A.2d 807, 821 (Del. 2000), which is one of the defining characteristics of our society.¹ In the U.S. Supreme Court's words –

No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.

Davis v. Passman, 442 U.S. 228, 246 (1979).

It cannot reasonably be contested that equal application of the law to all is a fundamental pillar and tenet of our system. Consistent with these principles, that a police chief is required to equally apply the laws to both the powerless and the powerful is an implied term of Chief Devlin's contract.

Just a few short months ago, the Delaware Supreme Court recently reaffirmed certain fundamental principles of contract interpretation under Delaware law –

even where a contract may be silent on its prohibition against certain bad behaviors, public policy mandates that we recognize an implied covenant of good faith and fair dealing in every contract governed by Delaware law, which requires a party in a contractual relationship to refrain from arbitrary or unreasonable conduct that has the effect of preventing the other party to the contract from receiving the fruits of the bargain. And notably, when a contract confers discretion on one party, the implied covenant requires that the discretion be used reasonably and in good faith.

¹ See Cooper v. Aaron, 358 U.S. 1, 23 (1958) (Frankfurter, J., concurring) ("The historic phrase 'a government of laws and not of men' epitomizes the distinguishing character of our political society. When John Adams put that phrase into the Massachusetts Declaration of Rights, pt. 1, art. 30, he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. 'A government of laws and not of men' was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power.").

Terrell v. Kiromic Biopharma, Inc., -- A.3d --, 2023 WL 3237142, *7 n.37 (Del. May 4, 2023) (cleaned up and internal citations omitted).

Consequently, all contracts with Chief Devlin contained the implied term that he would enforce the rule of law, against the high and mighty, and not just against those low on the social ladder. No citizen is entitled to untrammelled access to the area of DELJIS computer terminals and should a security breach occur criminal law requires that the breach be reported to State and even FBI officials for investigation, should they so wish. That one is an elected official is not a “get out of jail free pass” from laws that apply to all citizens to protect confidential data surrounded by important statutory privacy protections. Thus, it was a contract breach to non-renew Chief Devlin’s employment just seven days after he obeyed the criminal law and had your Mayor reported to the authorities.

For both of these breaches of contract, my client will be able to recover his full expectation damages, see, e.g. Pressman, 679 A.2d at 445-46, which includes his lost wages and benefits.

C. Public Employee Free Speech Retaliation

As our federal Circuit has held, “the public has a substantial interest in the integrity or lack of integrity of those who serve them in public office.” U.S. v. Smith, 776 F.2d 1104, 1114 (3d Cir. 1985). Chief Devlin’s reporting of the Mayor’s potentially criminal behavior in having repeated access to “Criminal Justice Information” and his refusal to cover up her access also will be held to be a violation of his free speech rights under the First Amendment to the U.S. Constitution.

Combating and disclosing a Mayor’s efforts to corrupt a police department by committing state law crimes by not guarding access to “Criminal Justice Information,” and allowing her access to security codes, is inherently a matter of concern to the public. “Disclosing corruption, fraud and illegality in a government agency is a matter of significant public concern.” Baldassare v. State of N.J., 250 F.3d 188, 196 (3d Cir. 2001). Our Circuit has long protected reports exposing illegality in law enforcement agencies.² This is because “[t]here is obviously a strong public interest in avoiding corruption of the officers who investigate corruption.” F.O.P., Lodge No. 5 v. City of Phila., 812 F.2d 105, 116 (3d Cir. 1987); see id. (“There is also a strong public interest in assuring the effectiveness of the officers who investigate vice and corruption”). In one court’s words –

Official corruption is a malignant cancer on the body politic, for which prosecution and publicity are strong cures. Prosecution of public corruption cases must be highly transparent so that the public will be aware of the governmental transactions at issue,

² See, e.g. id. (reporting of illegal actions in a county prosecutor’s office are protected); Shoemaker v. Allender, 520 F.Supp. 266 (E.D.Pa. 1981) (reports by a police officer to the FBI about illegal actions within the police department are protected).

which will allow members of the public to express opinions and exercise their right to petition and vote based on conclusions reached from the facts in the public record, regardless of the guilt or innocence of a particular defendant.

U.S. v. Kemp, 365 F.Supp.2d 618, 634 (E.D.Pa. 2005).

Apparently, the Town and its Mayor wish undermine the law enforcement function and have a police department subservient to the wishes of its Mayor and other elected officials. That is a slippery slope which can only lead to corruption. Independent police officers should not be subject to the demands of Town Council members when such demands infringe on independent police authority and violate the criminal laws. The First Amendment accordingly prohibits punishing Chief Devlin for opposing and exposing illegal demands on his department.

Each of you shall have to explain to a federal court and jury how you justified your vote to get rid of Chief Devlin. On our last occasion before a federal jury for a First Amendment retaliation case arising out of Sussex County, a federal court jury awarded a combined verdict of more than \$1,000,000 in total damages, which included \$50,000 in punitive damages against five members of the local school board in their individual and personal capacities to punish and deter them from their illegal conduct. (See Tabs A-B attached - Schreffler v. Mitchell, et al. (D.Del.) - Jury Verdict Sheet and story from the News Journal).

Thus, because of this retaliation that is illegal under federal law, my client will be able to recover not just his lost wages and benefits but also additional damages to compensate him for his emotional distress, injury to reputation and the humiliation he suffered.³ That is separate and apart from the punitive damages against each of you personally that will be recoverable.⁴ Finally, full attorneys fees and costs also will be awarded under 42 U.S.C. § 1988(b), which in my recent

³ See, e.g. Memphis Comm. Sch. Dist. v. Stachura, 477 U.S. 299, 307 (1986) (“To that end, compensatory damages may include not only out-of-pocket loss and other monetary harms, but also such injuries as impairment of reputation, personal humiliation, and mental anguish and suffering.”) (cleaned up); accord Allah v. Al-Hafeez, 226 F.3d 247, 250 (3d Cir. 2000); see also Bullen v. Chaffinch, 336 F.Supp.2d 342, 356 (D.Del. 2004) (upholding \$300,000 jury award against Delaware State Police Superintendent to compensate the plaintiffs for “injury to reputation . . . humiliation and emotional distress.”).

⁴ See, e.g. Springer v. Henry, 435 F.3d 268, 281-82 (3d Cir. 2006) (in a First Amendment retaliation involving a jury award of \$898,895 in damages arising out of non-renewal of a contract, rejecting as “unpersuasive” a defense the employee whistleblower could not recover because he had received “no assurance that his contract would have been renewed and that he was never promised that it would be,” and instead upholding a punitive damages award against an individual public official defendant); see also id. at 283 n.13 (observing Delaware law requires that if punitive damages are awarded against an individual public official defendant, that same public official must pay the entire damages award (both punitive and compensatory) out of their own pocket and their public employer is barred from indemnifying them).

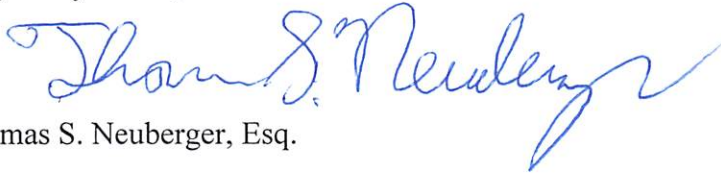
cases is often well over \$1,000,000.

Finally, as you may recall, some years ago after an exhaustive investigation and large number of Freedom of Information Act requests, the Delaware State News wrote a story which concluded that the State of Delaware's own legal fees were at least 1/3 higher than my own as it defended my lawsuits against it on behalf of various police officer employees. This means that if I spent \$1,000,000 in time prosecuting a case on behalf of a state trooper, the State paid its own attorneys \$1,333,333 for the same amount of time. This is additional financial exposure for you and your constituents.

III. DEMAND

Chief Devlin immediately should have his second two year contract reinstated through August 31, 2025 and be paid his full attorney's fees for our services to date.

Very Truly Yours,



Thomas S. Neuberger, Esq.

cc: Stephen J. Neuberger, Esq. (Via e-mail)
Chief John Devlin (Via e-mail)

Tab A

Stephen J. Neuberger

From: Stephen J. Neuberger <SJM@NeubergerLaw.com>
Sent: Thursday, March 3, 2005 8:01 AM
To: sjn@NeubergerLaw.com
Subject: 2005-03-03 - TNJ



<http://www.delawareonline.com/newsjournal/local/2005/03/03sussextechboard.html>

Sussex Tech board to pay \$1 million

Refusal to promote Carol C. Schreffler to superintendent found to be retaliation

By SEAN O'SULLIVAN / The News Journal

03/03/2005

A day after an assistant superintendent's attorney asked a federal jury to "send a message to other school boards not to mistreat loyal employees," its members awarded his client more than \$1 million in damages.

The jury of six, which deliberated two days, found the school board for Sussex Technical School District violated Carol C. Schreffler's constitutional rights by declining to promote her in October 2003.

Schreffler, the district's assistant superintendent, had argued in her lawsuit that the board refused to promote her because many members were angry that she cooperated in an investigation of former Superintendent George Frunzi. Frunzi pleaded guilty to official misconduct and resigned in 2002.

The jury agreed and awarded Schreffler \$176,533 for her economic losses, \$775,000 for emotional distress, the damage to her reputation and humiliation, and \$50,000 in punitive damages.

When the verdict was read, tears formed in Schreffler's eyes. Afterward, she hugged her attorney, Thomas Neuberger, and members of her family.

In a statement issued later, Schreffler thanked God, presiding U.S. District Judge Joseph Farnan and the jury "for upholding my faith in our legal system."

Members of the Sussex Tech school board would not comment beyond a prepared, printed statement expressing disappointment.

Neuberger immediately called on members of the school board named in the lawsuit to resign, saying the verdict showed they "corruptly supported the former superintendent who stole taxpayer money."

If they do not resign, he called on Gov. Ruth Ann Minner to remove them, "since they do not answer to the voters, but are appointed by her."

Minner's spokesman, Gregory Patterson, said the governor's office would review the decision.

School Board President Richard Lewis had supported Schreffler. He was not named as a defendant in the suit and Neuberger did not call for his ouster.

In his prepared statement, Lewis said he was disappointed in the verdict and while he had disagreed with his fellow board members about Schreffler, "I have always been convinced my colleagues on the board acted in good faith and without any retaliatory motive."

The attorney who represented the board, Frank E. Noyes, said the verdict sends a message that "regardless of how carefully a school board considers each candidate on his or her merits, a promotion decision made in good faith can still be subject to second-guessing in federal court by disappointed candidates."

Outside the courtroom, Noyes said the board will now have to consider its legal options, which could include an appeal.

During the weeklong trial in U.S. District Court in Wilmington, Schreffler testified that when Frunzi found out she was cooperating with investigators, he told her, "If you come after me, you better kill me, or I'll get you."

Neuberger argued to the jury that allies of Frunzi on the school board then carried out his revenge.

During the trial, Noyes told the jury that the board did not promote Schreffler because it had concerns about her "presumptuous" behavior and heard negative comments during interviews with underlings.

Noyes conceded that Schreffler was qualified to hold the position, but said the board made a judgment that current Sussex Tech superintendent Patrick Savini was the better candidate.

Neuberger argued that none of the so-called problems appeared in Schreffler's personnel file in a district career that spanned 23 years and saw her rise from guidance counselor to assistant superintendent.

Although the jury found Schreffler's rights were violated when the school board did not promote her in October 2003, it found that her rights were not violated when she was not promoted in May 2003.

That month, Schreffler and another were finalists for the superintendent position when the other candidate bowed out.

The board decided at that time to re-start the search process rather than promote Schreffler.

Contact Sean O'Sullivan at 324-2777 or sosullivan@delawareonline.com.

Tab B

Filed in open court on 3/2/05 03

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CAROL C. SCHREFFLER,

Plaintiff,

v.

CHARLES H. MITCHELL, individually
and in his official capacity as the
Vice President of the Board of
Education of the Sussex Technical
School District, JUDY L. EMORY,
TERESA G. CAREY, GREGORY W.
WILLIAMS, RANDALL O'NEAL, and JOHN
E. OLIVER, all individually and in
their official capacities as
members of the Board of Education
of the Sussex Technical School
District, and the BOARD OF
EDUCATION OF THE SUSSEX COUNTY
VOCATIONAL-TECHNICAL SCHOOL
DISTRICT,

C.A. No. 03-781-JJF

Defendants.

SPECIAL VERDICT

As part of your deliberations, please answer the following questions:

Retaliation For Free Speech

I instruct you that the Court has ruled that plaintiff has proven that she engaged in protected speech, that is, she spoke out on matters of public concern. Now answer these questions.

1. Has plaintiff proven by a preponderance of the evidence that her speech was a substantial or motivating factor in the decision not to promote her during the first round of candidate selection?

Yes _____

No X _____

[If you answered "Yes" to question 1, go on to question 2, if you answered "No" go to question 3.]

2. Have the defendants proven by a preponderance of the evidence that regardless of plaintiff speaking out, she still would not have been promoted anyway during the first round of candidate selection?

Yes _____

No _____

[If you answered "Yes" to question 2, go on to question 3. If you answered "No" go to question 5.]

3. Has plaintiff proven by a preponderance of the evidence that her speech was a substantial or motivating factor in the decision not to promote her on October 21, 2003?

Yes X

No _____

[If you answered "Yes" to question 3, go on to question 4, if you answered "No" to question 3 and "No" to question 1, your deliberations have ended.]

4. Have the defendants proven by a preponderance of the evidence that regardless of plaintiff speaking out, she still would not have been promoted anyway on October 21, 2003?

Yes _____

No X

[If you answered "No" to question 2, go on to question 5. If you answered "Yes" to question 4 and "Yes" to question 2 your deliberations are ended.]

Proximate Cause

5. Were the actions of the defendants the proximate cause of any damage to plaintiff?

Yes X

No _____

[If you answered "Yes" to question 5, go to question 6. If you answered "No" your deliberations are ended.]

Damages

6. What dollar amount will fairly compensate plaintiff for any economic losses suffered by her as a result of the violation of her rights?

\$ 176,533.

[Go on to question 7]

7. What dollar amount will fairly compensate plaintiff for any emotional distress, injury to reputation or humiliation suffered by her as a result of the violation of her rights?

\$ 775,000.

[Go on to question 8]

Punitive Damages

8. Do you find that any of the individual defendants acted recklessly, intentionally or maliciously with regard to plaintiff?

Charles H. Mitchell	Yes <u> X </u>	No <u> </u>
Judy L. Emory	Yes <u> X </u>	No <u> </u>
Teresa G. Carey	Yes <u> X </u>	No <u> </u>
Gregory W. Williams	Yes <u> X </u>	No <u> </u>
Randall O'Neal	Yes <u> X </u>	No <u> </u>
John E. Oliver	Yes <u> </u>	No <u> X </u>

If you answered "Yes," and you wish to exercise your discretion to award punitive damages, enter below what you believe to be the amount of punitive damages which you believe is appropriate to punish and deter each defendant's illegal conduct.

Charles H. Mitchell	\$ <u> 25,000.00 </u>
Judy L. Emory	\$ <u> 2,500.00 </u>
Teresa G. Carey	\$ <u> 2,500.00 </u>
Gregory W. Williams	\$ <u> 15,000.00 </u>
Randall O'Neal	\$ <u> 5,000.00 </u>
John E. Oliver	\$ <u> Ø </u>

[Your deliberations now have ended.]

THE FOREGOING IS THE VERDICT OF THE JURY.

EACH JUROR MUST SIGN BELOW

Barbara Sampson
Foreperson

Kelly Lawand
Juror

R. J. Paul
Juror

William McCole
Juror

William C. Mellow
Juror

Juror

Mary Anne Caputo
Juror

Dated:

3/2/05