

**July 1, 1999.** United States District Court, District of Columbia.  
**Matthew F. FOGG, Plaintiff, v. Janet RENO, Attorney General of the United States, Defendant.** [No. CIV.A. 94-2814 - **April 28, 1998**] Presiding Trial Judge Thomas Penfield Jackson—**now deceased** > (PG-4) “**MEMORANDUM AND ORDER**” on Fogg’s jury verdict.

\*Over 30 witnesses testified for both sides at this trial lasting a month, many of them Fogg's fellow deputy U.S. marshals and other law enforcement officers.<sup>FN4</sup> They presented sharply contrasting assessments of Matthew Fogg as an effective and reliable law officer and leader. They also described a U.S. Marshals Service, however, that has labored in substantial racial turmoil for at least a decade, and in which racial identities are keenly felt. The perception is pervasive on the part of African-American members of the Marshals Service that they are less highly regarded and more is expected of them than of their white peers.<sup>FN5</sup> The Court concludes that the latter fact alone constituted sufficient evidence to support the jury's finding that Fogg had been exposed to a hostile racial environment and to justify its award of compensatory damages, irrespective of the validity of his accounts of bigotry directed at him personally. Since the verdict must be remitted to \$300,000, a sum well within a permissible range for general compensatory damages for emotional distress occasioned by years of racial tension in his workplace, the Court also concludes that it is unnecessary to decide whether Fogg's proof of special damages is sufficient to support a verdict in the amount of \$4 million.

<sup>FN4</sup>. No transcript of the trial was prepared, and the Court is obliged to reconstruct the evidence largely from memory and its trial notes.

<sup>FN5</sup>. The USMS concedes that Fogg presented evidence that the USMS in general has had a race problem. Three senior African-American managers in the USMS, U.S. Marshal Herbert Rutherford, Chief U.S. Marshal William Griffin, and Chief Deputy U.S. Marshal Donald Horton testified that **African-Americans are not treated fairly compared to their white counterparts.**

So it is as well with respect to plaintiff's multiple claims of particularized incidents of racial discrimination or retaliation post-November, 1991. For each of them the USMS offered a superficially plausible innocent explanation -- not all of them particularly laudable or reflecting favorably on the USMS, to be sure -- but plaintiff presented no direct evidence that any of them were pretextual in any respect, let alone a subterfuge for racial animus.<sup>FN6</sup> **Nevertheless the jury obviously inferred from the evidence of the endemic atmosphere of racial disharmony and mistrust within the USMS that all explanations were suspect, and that occult racism was more likely the reason than any other for Fogg's misadventures with the Marshals Service hierarchy.** <sup>FN7</sup> As the Court reads currently controlling law in this Circuit, such reasoning by a jury is permissible. [Barbour v. Merrill](#), 48 F.3d 1270, 1277 (D.C.Cir.1995); see also [Aka v. Washington Hospital Center](#), 156 F.3d 1284, 1289 (D.C.Cir.1998).

For the same reason the Court will also not disturb the jury's findings and verdict with respect to the post-November, 1991 incidents. <sup>FN6</sup>.