

# Leichtman v. WLW Jacor Communications, Inc.

(Anti-Smoking Advocate) v. (Radio Station)  
92 Ohio App.3d 232, 634 N.E.2d 697 (1994)

ONE WHO IS PRESENT AND ENCOURAGES OR INCITES THE COMMISSION OF A BATTERY CAN BE HELD LIABLE FOR THE BATTERY JUST AS THE ONE COMMITTING THE ACTUAL BATTERY WILL BE



■ **INSTANT FACTS** An anti-smoking advocate brought suit for battery against a radio talk-show host when the host intentionally blew cigar smoke into his face.

■ **BLACK LETTER RULE** A battery is committed when one person intentionally blows cigar smoke into another's face.

## ■ PROCEDURAL BASIS

Certification to the Court of Appeals of Ohio of a trial court dismissal of a battery count, stemming from the intentional blowing of smoke into an anti-smoker's face.

## ■ FACTS

Leichtman (P), a self-proclaimed "nationally known" anti-smoking advocate, was invited to appear on the WLW Bill Cunningham radio show on the date of the Great American Smokeout. He was invited for the purpose of discussing the harmful effects of smoking and breathing second-hand smoke. While Leichtman (P) was in the studio, Furman, another WLW (D) talk-show host, lit a cigar and repeatedly blew smoke in Leichtman's (P) face "for the purpose of causing physical discomfort, humiliation and distress."

## ■ ISSUE

Does intentionally blowing smoke into another's face for the purpose of harassing the other constitute a battery?

## ■ DECISION AND RATIONALE

(Authoring Judge Not Stated) Yes. Leichtman (P) contends that Furman's (D) intentional act constituted a battery. In determining whether a person is liable for battery, the Ohio Supreme Court has adopted the rule that "[c]ontact which is offensive to a reasonable sense of personal dignity is offensive contact." The word "offensive" has been defined as "disagreeable or nauseating or painful because of outrage to taste and sensibilities or affronting insultfulness." Furthermore, tobacco smoke, as a particulate matter, has the physical properties capable of making contact. When Furman (D) intentionally blew cigar smoke in Leichtman's (P) face he committed a battery. No matter how trivial the incident, a battery is actionable, even if damages are only one dollar. With respect to Cunningham (D), at common law, one who is present and encourages or incites the commission of a battery by words can be equally liable as a principal. With regard to WLW (D), an employer is not legally responsible for the intentional torts of its employees that do not facilitate or promote its business. While we do not approve of trivial lawsuits, absent circumstances that warrant sanctions for frivolous appeals, we refuse to limit one's right to sue. Reversed.

**Analysis:**

*Leichtman* addresses the “contact” aspect of battery. Under the general definition of battery, there must be some contact or the “touching” of the victim by the one committing the battery. In this case, the court found contact even though Furman never actually touched Leichtman’s body with his own because “tobacco smoke, as a particulate matter, has the physical properties capable of making contact.” This is in the vein of cases holding that a bullet from a gun or a rock thrown from the hand are extensions of the person pulling the trigger or holding the rock. In this case, the smoke particles were considered an extension of Furman, and were therefore capable of being used to commit a battery. *Leichtman* also briefly addresses the issue of liability for one who incites another to commit a battery, holding that Cunningham, who apparently encouraged the smoke blowing, could be held liable for the battery along with Furman.

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■ **CASE VOCABULARY**

OFFENSIVE: Offensive contact is that contact which is “disagreeable or nauseating or painful because of outrage to taste and sensibilities or affronting insultfulness.”