609 P.2d 314, 318–19 (1980) (citations omitted).

Judgment n.o.v. may be granted only when, viewing the evidence in the light most favorable to the party who secured the jury verdict, and giving that party the benefit of all reasonable inferences from the evidence, there can be only one reasonable conclusion—that the moving party is entitled to judgment notwithstanding the adverse verdict. *See Eastern Auto Distributors, Inc. v. Peugeot Motors of America*, 795 F.2d 329, 338 (4 Cir.1986). The district court denied NBW's motion for judgment n.o.v. on the ground that there was sufficient evidence of malice on the part of NBW to justify the jury's award of punitive damages. We disagree. True, there was evidence at trial of some rather inaccurate and intemperate language on the part of Spielman and of NBW's counsel [6] but given Pearson's cavalier treatment of the assets of Keys Corporation, followed by his removal to Nevada, we do not doubt that Spielman and NBW's counsel had good cause to suspect the worst. In any event, with the provocation that they had, we do not think that the language of Spielman and NBW's counsel can support the conclusion that NBW acted with the "desire to do harm for the mere satisfaction of doing it" or "in reckless disregard of possible results." We therefore reverse the district court's denial of NBW's motion for judgment n.o.v.

AFFIRMED IN PART AND REVERSED IN PART.

6. There was evidence, politely characterized, that NBW's former counsel said that NBW was going to squeeze Pearson to death.

Florhline A. PAINTER, Plaintiff–Appellant,

v.

Larry R. HARVEY, Defendant–Appellee.

and

The Town of Luray Police Department; Jerry M. Schiro, Chief of Police; The Town of Luray; The Luray Town Council, Defendants.

Florhline A. PAINTER, Plaintiff–Appellee,

v.

Larry R. HARVEY, Defendant–Appellant.

and

The Town of Luray Police Department; Jerry M. Schiro, Chief of Police; The Town of Luray; The Luray Town Council, Defendants.

Nos. 87–2203(L), 87–2210.

United States Court of Appeals, Fourth Circuit.

Argued Oct. 6, 1988.

Decided Dec. 19, 1988.

Arrestee brought civil rights claim against arresting officer, alleging use of excessive force in making arrest. Officer counterclaimed, asserting that plaintiff slandered and libeled him by filing fabricated complaint about circumstances of her arrest with town council, and by distributing her complaint to local news media. The United States District Court for Western District of Virginia, James H. Michael, Jr., J., 673 F.Supp. 777, entered judgment on a jury verdict for officer on plaintiff's civil rights claim, and in officer's favor on defamation counterclaim. Plaintiff appealed and officer cross-appealed. The Court of Appeals, Wilkinson, Circuit Judge, held that: (1) officer's defamation counterclaim was compulsory, and thus came within an-

had used excessive force during her arrest, all in violation of 42 U.S.C. § 1983.

Harvey counterclaimed against Painter for defamation. He alleged that Painter had falsely claimed that she was molested or raped during the November, 1984 arrest, and had submitted a false summary of the circumstances of her arrest to the Luray Town Council the following April. Harvey's version of events was starkly at variance with that of Painter. He testified that when he and Painter arrived at the jail, he noticed that Painter had opened her blouse, exposed one of her breasts, and had removed her shoes, panty hose, and underpants. Jerry Shiro, the former chief of police of the Luray Police Department, stated that the *Page News and Courier* article had created serious embarrassment for Harvey with the public, his fellow police officers, and members of the Town Council.

The case was tried before a jury. The jury found for Harvey on Painter's § 1983 claim. The jury also found in Harvey's favor on the defamation counterclaim, awarding compensatory damages of $5,000.00 and punitive damages of $15,000.00. Painter moved to set aside the verdict on the grounds that the court lacked subject matter jurisdiction over the counterclaim. Harvey moved for attorney's fees. The district court denied both motions. Painter appeals and Harvey cross-appeals.

II.

The sole question on Painter's appeal is the nature of Harvey's counterclaim. If the counterclaim is compulsory, it is within the ancillary jurisdiction of the court to entertain and no independent basis of federal jurisdiction is required. If the counterclaim is permissive, however, it must have its own independent jurisdictional base. 6 C. Wright & A. Miller, Federal Practice and Procedure § 1409 (1971 and 1988 Supp.). Since Painter and Harvey are both citizens of Virginia, and Harvey asserts no federal question, the designation of the counterclaim is critical.

In defining a compulsory counterclaim, Fed.R.Civ.P. 13(a) provides in pertinent part that:

> A pleading shall state as a counterclaim any claim which at the time of serving the pleadings the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim.

Fed.R.Civ.P. 13(b), in contrast, provides that:

> A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

We hold that defendant's counterclaim is compulsory and that the district court properly exercised jurisdiction over it.

III.

In *Sue & Sam Mfg. Co. v. B–L–S Const. Co.*, 538 F.2d 1048 (4th Cir.1976), this circuit suggested four inquiries to determine if a counterclaim is compulsory: (1) Are the issues of fact and law raised in the claim and counterclaim largely the same? (2) Would res judicata bar a subsequent suit on the party's counterclaim, absent the compulsory counterclaim rule? (3) Will substantially the same evidence support or refute the claim as well as the counterclaim? and (4) Is there any logical relationship between the claim and counterclaim? *Id.* at 1051–1053. A court need not answer all these questions in the affirmative for the counterclaim to be compulsory. *Id.* at 1053; *see also Hospital Building Co. v. The Trustees of Rex Hospital*, 86 F.R.D. 694, 696 (E.D.N.C.1980). Rather, the tests are less a litmus, more a guideline.

Although the tests are four in number, there is an underlying thread to each of them in this case: evidentiary similarity. The claim and counterclaim both involved witness testimony directed toward the same critical event. Indeed, in applying the four *Sue & Sam* tests, the district court invariably returned to the same place. As to inquiry (1), the district court noted that: "The central issue in both the