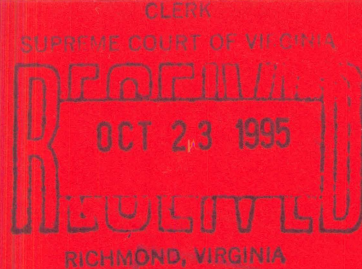


251 Va 254



IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 951184

CHARLES B. POULSTON, JR.,

Appellant,

V.

BOBBY ROCK,

Appellee.

JOINT APPENDIX

Larry A. Pochucha
BREMNER & JANUS
701 East Franklin Street
Suite 1500
P.O. Box 826
Richmond, VA 23207
(804) 644-0721

Counsel for Appellant

Dannie R. Sutton, Jr.
SUTTON & BARNARD
2222 Monument Avenue
Richmond, Virginia 23220
(804) 355-4623

Counsel for Appellee

Brief Printing Specialist, 1001 E. Main Street, Suite 210
Richmond, Virginia 23219, (804) 644-0700

TABLE OF CONTENTS

	<u>Page</u>
1. MOTION FOR JUDGMENT FILED JULY 6, 1993	1
2. GROUNDS OF DEFENSE FILED JULY 22, 1993	3
3. TRANSCRIPT OF TRIAL BEFORE THE HONORABLE MELVIN R. HUGHES ON JULY 14, 1994	4
Proceedings	7
Jury Voir Dire	21
Opening Statements by Mr. Pochucha	35
Opening Statements by Mr. Sutton	43
Testimony of E. W. Bolton	53
Testimony of Jimmy Greer	60
Testimony of Robert Hancock	81
Testimony of Mark Burleson	94
Testimony of Charles Poulston	101
Proceedings	109
Testimony of Charles Poulston	117
Proceedings	174
Testimony of Barbara Vanicki	194
Testimony of Steven Winder	200
Testimony of Gordon Hailey	207
Testimony of James Shaffer	234
Testimony of Carol Rock	238
Testimony of Marshal Harrell	248
Testimony of Bobby Rock	255
Testimony of Steven Winder	284
Testimony of Charles Poulston	286
Testimony of Edward Conklin	288
Proceedings	291
Court's Instructions to the Jury	304
Closing Argument by Mr. Pochucha	309
Closing Argument by Mr. Sutton	317
Rebuttal Argument by Mr. Pochucha	324
Verdict of the Jury	327
Motion to Set Aside	329

TABLE OF CONTENTS (Continued)

	<u>Page</u>
4. PLAINTIFF'S EXHIBIT NO. 3 - ANSWER TO INTERROGATORIES BY MR. ROCK	332
5. ORDER ENTERED JULY 15, 1994	334
6. DEFENDANT'S MOTION TO SET ASIDE VERDICT OR AWARD OF A NEW TRIAL FILED JULY 27, 1994	336
7. LETTER OPINION OF JUDGE HUGHES DATED AUGUST 8, 1994 . .	338
8. ORDER ENTERED AUGUST 8, 1994	343
9. PLAINTIFF'S NOTICE OF HEARING FOR RECONSIDERATION FILED DECEMBER 9, 1994	345
10. ORDER ENTERED MARCH 29, 1995	347
11. ASSIGNMENTS OF ERROR	349

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

CHARLES B. POULSTON, JR.,

Plaintiff,

v.

BOBBY ROCK,

Defendant.

Serve at: 3013 Broad Rock Boulevard
City of Richmond, Virginia

MOTION FOR JUDGMENT

Plaintiff, Charles B. Poulston, Jr., moves for judgment against defendant, Bobby Rock, on grounds and in the amount set forth below:

1. Plaintiff has been employed by DuPont Corporation for many years and has for many years enjoyed a reputation as an honest and upstanding employee of that company.

2. On or about the week of May 10, 1993, defendant contacted employees of the DuPont Corporation and maliciously and falsely issued a statement substantially as follows to the employees of the Dupont Corporation:

Charlie Poulston had personally given me aluminum bolts which were the property of DuPont Corporation and Charlie has fabricated a motorcycle part of cast iron out of DuPont materials and put that part on his motorcycle.

The above quoted remarks clearly impugn the honesty and integrity of plaintiff and imply that he is no better than a common thief and ought to be prosecuted as such.

3. The above quoted remarks are, from their usual construction and common usage, construed as insults and tend to incite violence and breach of the peace. Defendant knew said remarks were false, defamatory, slanderous and insulting and he made them with intent to injure plaintiff's good reputation.

Filed in the Clerk's Office this 19th day of July, 1993

A. M.-P. M.

Teste: IVA R. PURDY, CLERK

[Signature]

Writ Tax \$

Fee

L. A. S.

C. H. M. E.

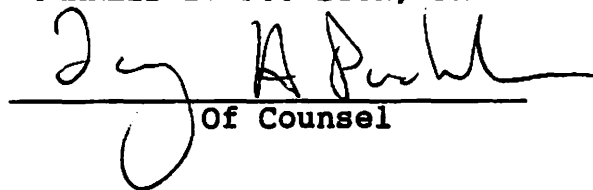
Total Paid

4. The above quoted remarks, from their common usage, are intended to place into question the ability of plaintiff to perform as an honest and competent employee. Defendant knew said remarks were false and made them with intent to injure plaintiff in the course of his employment.

5. As a proximate result of said false, malicious and insulting, defamatory and slanderous remarks, plaintiff has been caused to suffer humiliation, embarrassment, mortification, shame, vilification, ridicule, exposure to public infamy, disgrace and scandal, injury to his reputation and feelings and has been hampered in the conduct of his business and affairs. Much of this injury will endure permanently.

WHEREFORE, plaintiff, Charles B. Poulston, Jr., demands judgment against defendant, Bobby Rock, in the amount of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00), representing compensatory damages of FORTY THOUSAND AND NO/100 DOLLARS (\$40,000.00) and punitive damages of SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00) and his costs expended in this action.

CHARLES B. POULSTON, JR.


Of Counsel

Larry A. Pochucha, p.q.
BREMNER, BABER & JANUS
Suite 1500, 7th & Franklin Building
701 East Franklin Street
P. O. Box 826
Richmond, Virginia 23207
(804) 644-0721

V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

CHARLES B. POULSTON, JR.,

Plaintiff,

v. (Case No. 760CL93WO1804-00)

BOBBY ROCK,

Defendant.

GROUND OF DEFENSE

COMES NOW the defendant, Bobby Rock, by counsel, and for his Grounds of Defense to plaintiff's Motion for Judgment says as follows:

1. That he has no knowledge as to the truth or falsity of the allegations contained in paragraph numbered 1.

2. That the allegations contained in paragraphs numbered 2, 3, 4, and 5 are denied.

WHEREFORE, your defendant prays to be hence dismissed with his reasonable costs expended.

BOBBY ROCK

By Larry D. Catlett

Of Counsel

Larry D. Catlett, p.d.
2222 Monument Avenue
Richmond, VA. 23220

CERTIFICATE

I hereby certify that I have this 20^A day of July, 1993, mailed a true copy of the foregoing Grounds of Defense to Larry A. Pochucha, Bremner, Baber & Janus, PO Box 826, Richmond, VA. 23207, counsel for the plaintiff.

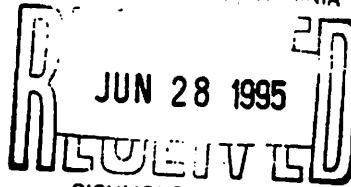
Larry D. Catlett
Larry D. Catlett

²
ABW

951184

CLERK
SUPREME COURT OF VIRGINIA

Page 1



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

CHARLES POULSTON, JR.

:

Plaintiff,

:

vs.

:

Case No.:

BOBBY ROCK

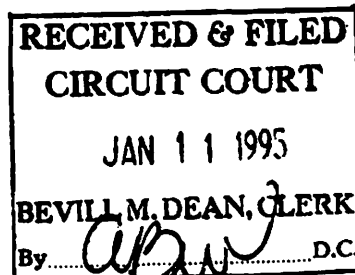
:

LW-1804

Defendant.

:

Complete TRANSCRIPT of the testimony and other incidents in the above, when heard on July 14th, 1994, commencing at 10:00 a.m., before Honorable Melvin R. Hughes, Judge.



ORIGINAL

1 APPEARANCES:

2 LARRY A. POCHUCHA, ESQ.

3 Bremner, Baber & Janus

4 701 East Franklin Street

5 Richmond, VA 23219

6 Counsel on behalf of the Plaintiff

7 DANIEL R. SUTTON, ESQ.

8 and

9 LARRY D. CATLETT, ESQ.

10 Catlett & Kaplan

11 2222 Monument Avenue

12 Richmond, VA 23220

13 Counsel on behalf of the Defendant

14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

	D	X	RD	RX
E. Bolton	50	54	57	
J. Greer	57	68	75	76
R. Hancock	78	84		
M. Burleson	91	94	97	
C. Poulston	98	139	168	
B. Vanichi (ph)	191	194	195	
S. Winder	197			
G. Hailey	204	219		
J. Shaffer	231	234		
C. Rock	235	240		
M. Harrell	245	250		
B. Rock	252	266		
S. Winder	281	282		
C. Poulston	283			
E. Conklin	285			

E X H I B I T S

PAGE

Plaintiff's Exhibit 1-----	121
Series of Fourteen Photographs	
Plaintiff's Exhibit 2 -----	123
Series of Four Photographs	
Plaintiff's Exhibit 3 -----	172
Mr. Rock's Answers to Interrogatories	
Plaintiff's Exhibit 4 -----	172
Mr. Rock's Responses to Interrogatories Questions 8 & 9	
Plaintiff's 5 -----	172
Affidavit of Service	
Defendant's Exhibit 1 -----	212
Series of Photographs	
Defendant's Exhibit 2 -----	212
Series of Photographs	
Defendant's Exhibit 3 -----	213
Bolt	
Defendant's Exhibit 4 -----	219
Photograph	

1 JULY 14, 1994

2 NOTE: The case was called at 10:00
3 a.m., the court reporter having been first duly
4 sworn, the trial proceeded, as follows:

5 MR. SUTTON: I believe Mr. Pochucha has
6 a motion.

7 THE COURT: We can take care of them
8 now while we're waiting for the jury.

9 MR. POCHUCHA: Judge, it's my motion
10 pertaining to a discovery matter. I had
11 submitted interrogatories to the defendant
12 requesting they identify persons with knowledge
13 of the facts and also provide a summary of that
14 knowledge. I didn't receive any response to
15 that. Approximately eight days prior to the
16 trial, I filed a motion and thereafter, I
17 received a discovery response which identified
18 the individuals but did not provide a summary
19 of the information that was elicited from those
20 individuals, and I had moved to exclude
21 testimony of all of those individuals.

22 Upon further consideration of that,
23 Judge, I think in order for this Court to
24 exclude that testimony, I would have been
25 required to come forward earlier with a motion

1 to compel and that the only relief I think
2 would be appropriate for the Court to provide
3 in response to my motion would be to continue
4 the case, and I don't want the case continued.
5 So accordingly, I withdraw the preliminary
6 motion.

7 THE COURT: All right.

8 MR. SUTTON: If it please the Court, if
9 the Court has had a chance to read my motion in
10 limine -- Your Honor, if I may, there's a
11 motion in limine filed before Your Honor. The
12 substance of it is that I anticipate and the
13 reason I anticipate this is because of the
14 deposition testimony taken of my client, Mr.
15 Rock, I anticipate Mr. Pochucha, plaintiff's
16 counsel, introducing evidence or evidence which
17 may give the innuendo or inference that Mr.
18 Rock has secreted assets or transferred assets
19 so as to avoid the payment of a judgment which
20 may or may not be rendered in this matter. I
21 feel like if this evidence were to be presented
22 before the jury in this case, a motion or an
23 admonition by Your Honor to disregard it would
24 so taint the jury and won't leave their mind.

25 What I'm scared is going to happen or

1 what I'm afraid is going to happen is that if
2 the jury should hear such things that it will
3 put into their mind an implicit admission on
4 the part of Mr. Rock that he is, in fact,
5 liable in this matter. So what I specifically
6 am asking Your Honor to do is to admonish
7 counsel not to put on any evidence or to
8 specifically exclude at this point any evidence
9 that Mr. Rock may or may not have transferred
10 or secreted assets subsequent to the filing of
11 this action.

12 Now, I understand that under the law of
13 defamation his assets are admissible as
14 evidence on punitive damages so the jury can
15 make a determination as to what a punishment
16 would be for him if the jury felt that punitive
17 damages were applicable in this matter. But
18 without putting the cart before the horse, I
19 feel it is very important that no evidence be
20 presented on behalf of the plaintiff saying or
21 giving the inference or innuendo that Mr. Rock
22 has implicitly made an admission of liability
23 in this matter. That is the substance of my
24 motion in limine, and I ask that you grant it.

25 THE COURT: All right. You did

1 mention, Mr. Pochucha, that one of the other
2 files available so you could see--

3 MR. POCHUCHA: The other file does
4 not relate to the secreting of assets.

5 THE COURT: I see.

6 MR. POCHUCHA: This is a slander case,
7 Judge. In fact, this Court heard the evidence
8 in the earlier case, and just a little
9 background--

10 THE COURT: It was about a painting
11 job.

12 MR. POCHUCHA: Right. Mr. Poulston
13 took his motorcycle to Mr. Rock to have it
14 painted and told him not to use a particular
15 product, Imron, by Mr. Rock--

16 THE COURT: Not yet.

17 MR. POCHUCHA: The evidence was that
18 Mr. Rock actually used this Imron product. Mr.
19 Poulston got the motorcycle back. As soon as
20 he took it out in the sun, it blistered and
21 destroyed the paint job. It's a question for
22 damages for having the motorcycle repainted.

23 The judgment was entered in this court.
24 The time for appeal passed. Payment wasn't
25 made within four months. The garnishment

1 summons was served upon Mr. Rock's bank
2 account, and the date that the garnishment
3 summons was severed on Mr. Rock he called
4 DuPont Corporation and told the gentleman who
5 answered the phone there, Mr. Bolton, that Mr.
6 Poulston had stolen stainless steel nuts and
7 bolts and used them to build Mr. Rock's
8 motorcycle. That's the slander that Mr.
9 Poulston was a thief and of course was working
10 and taking money from DuPont. DuPont officials
11 investigated that and found the allegations to
12 be unfounded.

13 THE COURT: The allegation that he took
14 what now, bolts?

15 MR. POCHUCHA: Stole stainless steel
16 nuts and bolts, as well as a cast iron part.
17 Mr. Poulston is an employee of DuPont.

18 THE COURT: Stainless steel bolts and
19 nuts from where?

20 MR. POCHUCHA: From DuPont.

21 THE COURT: And put those items on--

22 MR. POCHUCHA: Mr. Rock's motorcycle,
23 and that it was his practice to steal these
24 nuts and bolts from DuPont. The motorcycle
25 that they were allegedly installed on, Mr.

1 Rock's motorcycle, he sold. This case was
2 originally scheduled for trial in April, mid
3 April, and we took depositions at the end of
4 March and approximately two weeks prior to the
5 depositions he sold the motorcycle which
6 allegedly had the evidence of the stainless
7 steel nuts and bolts. I think that's proper
8 testimony.

9 In addition, in determining what his
10 assets are, I submitted financial
11 interrogatories requesting that he provide the
12 assets that he owned, as well as his sources of
13 income. He neglected to mention that he had
14 any rental income. We expect there to be
15 evidence that he holds out rooms for rent at
16 his residence. I would expect to offer that
17 testimony. He also testified that an El
18 Camino, which was sitting in his yard with a
19 for sale sign on it, wasn't his, that it was
20 somebody else's that he was going to sell. I
21 expect to elicit testimony from Mr. Rock that
22 that El Camino is actually titled in his name
23 now and he does own that.

24 I also inquired of Mr. Rock whether he
25 owns any property in Reedville. He said, no,

1 he didn't own any property in Reedville. I
2 have information to indicate that he does own
3 property there, along with his brother and
4 sister. In terms of secreting any assets,
5 those are the only items that I know about. I
6 think those are proper for purposes of
7 impeachment and also for purposes of showing
8 the true value of those assets.

9 THE COURT: Why do you need to show
10 that?

11 MR. POCHUCHA: We would allege that the
12 statement made to DuPont Corporation was made
13 with malice and that this is a proper case for
14 punitive damages and being a proper case for
15 punitive damages, in order to determine how
16 much to punish him, we have a right to show
17 what his wealth is.

18 MR. SUTTON: Your Honor, if I may very
19 shortly. I agree with Mr. Pochucha that he
20 can't put on evidence as to Mr. Rock's assets.
21 The substance of my motion is that he can't put
22 on any evidence so as to show that he secreted
23 assets or transferred assets--

24 THE COURT: I don't think he said he
25 would do that.

1 MR. SUTTON: If he's not going to do
2 that then I have no problem with that.

3 THE COURT: The only thing that he
4 mentioned about a disposition or a sale of an
5 asset was the bike, a motorcycle. The
6 allegation is that these bolts and nuts and
7 some other parts that were said to have been
8 taken from DuPont were placed on that vehicle
9 but the vehicle was sold.

10 MR. SUTTON: I don't see any problem
11 with him putting on that evidence, Your Honor.
12 I just don't want the innuendo that he's
13 selling off his property or giving away his
14 properties so that the jury may draw an
15 inference that he has implicitly admitted to
16 liability.

17 THE COURT: I don't think he plans to
18 do that.

19 MR. SUTTON: I don't think he does,
20 either, so I think we're all right.

21 THE COURT: All right. I'm going to
22 have the jury come in now. You ready now?

23 MR. SUTTON: Yes, Your Honor.

24 MR. POCHUCHA: Yes, sir.

25 NOTE: The prospective jury panel is

1 brought into the courtroom.

2 THE COURT: The case of Charles
3 Poulston versus Bobby Rock. Mr. Larry
4 Pochucha, you're representing Mr. Poulston, the
5 plaintiff. Are you ready to proceed?

6 MR. POCHUCHA: I am, Your Honor.

7 THE COURT: Are you Mr. Sutton?

8 MR. SUTTON: Yes.

9 THE COURT: Mr. Danny R. Sutton, Mr.
10 Larry Catlett, you both are representing Mr.
11 Rock?

12 MR. SUTTON: Yes.

13 THE COURT: Are you ready to proceed?

14 MR. SUTTON: Yes.

15 THE CLERK: Please answer as your name
16 is called. Anita Andrews.

17 PROSPECTIVE JUROR: Here.

18 THE CLERK: David Capen.

19 PROSPECTIVE JUROR: Here.

20 THE CLERK: Mary Dancey.

21 PROSPECTIVE JUROR: Here.

22 THE CLERK: Kesha Gaines

23 PROSPECTIVE JUROR: Here.

24 THE CLERK: Joy Gibrall.

25 PROSPECTIVE JUROR: Here.

1 THE CLERK: Robert Harris.
2 PROSPECTIVE JUROR: Here.
3 THE CLERK: Callie Jeter.
4 PROSPECTIVE JUROR: Here.
5 THE CLERK: Betty Kirby.
6 PROSPECTIVE JUROR: Here.
7 THE CLERK: Zonobia Meredith.
8 PROSPECTIVE JUROR: Here.
9 THE CLERK: Kenneth Myrick.
10 PROSPECTIVE JUROR: Here.
11 THE CLERK: Dierdre Robinson.
12 PROSPECTIVE JUROR: Here.
13 THE CLERK: Shirley Stanton.
14 PROSPECTIVE JUROR: Here.
15 THE CLERK: Robert Terry.
16 PROSPECTIVE JUROR: Here.
17 THE CLERK: James White, Jr..
18 PROSPECTIVE JUROR: Here.
19 THE CLERK: Tonya White.
20 PROSPECTIVE JUROR: Here.
21 THE CLERK: Shawna Willenborg.
22 PROSPECTIVE JUROR: Here.
23 THE CLERK: At this time as your name
24 is called, please have a seat in the jury box.
25 Number 1809, Robert Terry; Number 1966, Tonya

1 White; Number 1258, Zonobia Meredith; Number
2 1962, James White Jr.; Number 959, Callie
3 Jeter; Number 787, Robert Harris; Number 40,
4 Anita Andrews; Number 293, David Capen; Number
5 1982, Shawna Willenborg; Number 451, Mary
6 Dancey; Number 1738, Shirley Stanton; Number
7 1341, Kenneth Myrick, II; Number 668, Joy
8 Gibrall.

9 Would you all stand and raise your
10 right hands, please. Do each of you solemnly
11 swear or affirm you shall true and perfect
12 answers make to all such questions the Court
13 and counsel may ask of you, so help you God.

14 NOTE: The prospective jurors
15 acknowledge the oath.

16 THE CLERK: You may be seated.

17 THE COURT: Good morning, ladies and
18 gentlemen. The style of this case again is Charles
19 Poulston, plaintiff, versus Bobby Rock, the defendant.
20 The plaintiff is the gentleman nearest you there in the
21 blue suit. I guess we have two gentlemen with blue
22 suits. The gentleman now standing with the beard, if you
23 would stand, is the plaintiff in the case. To
24 Mr. Poulston's left is his attorney, Mr. Larry Pochucha.
25 That's the plaintiff's side in this case.

1 At the opposite table we have the
2 defense side. The gentleman in the light suit is
3 Mr. Bobby Rock, the defendant. To Mr. Rock's right is
4 Mr. Larry Catlett, his counsel; and to Mr. Catlett's
5 right is Mr. Danny Sutton, also his counsel. Those are
6 the parties and counsel in this case. Thank you,
7 gentlemen.

8 This case is a civil matter, ladies and
9 gentlemen, and in this case the plaintiff has alleged
10 that he's employed with the DuPont Corporation. He
11 states further and alleges that on or about the week of
12 May 10th, 1993, that the defendant, Mr. Rock, allegedly
13 contacted the employees of DuPont Corporation and
14 allegedly maliciously and falsely issued a statement to
15 the employees of the DuPont Corporation, which
16 essentially alleged and stated that Mr. Poulston had
17 given to Mr. Rock property of DuPont Corporation
18 consisting of various aluminum bolts and parts that were
19 then placed on a motorcycle, and that these properties
20 and parts placed on the motorcycle were taken without
21 authorization by Mr. Poulston and given to Mr. Rock and
22 placed on a motorcycle.

23 Further, Mr. Poulston alleges that
24 these remarks were slanderous, false and insulting and
25 intended to injure the plaintiff and his reputation. The

1 plaintiff alleges further that these statements that he
2 alleges that Mr. Rock made to his employer were, again,
3 as I mentioned, slanderous and caused him humiliation,
4 embarrassment and shame and ridicule and resulting in
5 damages which he seeks to recover by way of a money
6 judgment today.

7 The defendant has responded to the
8 allegations and has denied any knowledge of the truth or
9 falsity of the allegations made and denied any and all
10 allegations, denied that the statements were made, denied
11 that the plaintiff has suffered any injuries for which he
12 should be responsible and asked that judgment be entered
13 for him, the defendant. He takes that position as
14 against the plaintiff's position. So we have a
15 difference of opinion in dispute here between these
16 parties.

17 You, ladies and gentlemen, have been
18 brought here to serve potentially as jurors in the case.
19 I say potentially because there are thirteen of you in
20 the jury box now, and a number to hear a case such as
21 this is seven. So your number will have to be reduced
22 from thirteen to seven. That will be done when the
23 lawyers exercise their strikes. By that I mean they'll
24 have a sheet of paper provided to them on which there is
25 a list of all of your names. Starting with the

1 plaintiff's side, the plaintiff will strike a name from
2 the list. The paper will then go over to the defense
3 side, and the defendant's counsel will then strike a
4 name. The paper will go back and forth until each side
5 has stricken three names. That will give us six names.
6 Those six persons will be called out by the clerk and be
7 asked to resume their seats out in the audience. The
8 seven people remaining in the box will be the jury in the
9 case.

10 Just prior to doing that, I'm going to
11 ask you some questions. After I'm done asking you
12 questions, counsel may see fit to ask you some questions,
13 as well. The purposes of these questions are to arrive
14 at an impartial and unbiased jury.

15 Are any of you related by blood or
16 marriage to either of the parties in this case, to Mr.
17 Poulston or to Mr. Rock? Are any of you acquainted with
18 either of them? Are any of you employed, by any chance,
19 or any members of your family employed at DuPont
20 Corporation, which I believe is mostly down on Jefferson
21 Davis Highway? Are any of you sensible to any bias or
22 prejudice in this case? Have any of you expressed or
23 formed any opinion about this case? Do any of you have
24 any interest in the outcome of this case? Finally, do
25 any of you know of any reason, whatsoever, as to whether

1 or not you could give these parties a fair and impartial
2 trial according to the law and according to the evidence?
3 Mr. Pochucha, do you have any questions for the panel?

4 MR. POCHUCHA: I do, Your Honor. Good
5 morning, ladies and gentlemen. As Judge Hughes told you,
6 I'm Larry Pochucha. I'm with the law firm of Bremner,
7 Baber & Janus. Have any among you ever had occasion to
8 be represented by that firm, Bremner, Baber & Janus? Mr.
9 Sutton is with the law firm of Catlett & Kaplan. Have
10 any of you had occasion to be represented by that firm,
11 or are you familiar with that firm?

12 Mr. White, have you had occasion to be
13 represented by Mr. Catlett?

14 PROSPECTIVE JUROR: Yes.

15 MR. POCHUCHA: And how recently was
16 that?

17 PROSPECTIVE JUROR: Last year.

18 MR. POCHUCHA: Would that be Mr.
19 Kaplan, Mr. Catlett or Mr. Sutton?

20 PROSPECTIVE JUROR: Catlett.

21 MR. POCHUCHA: Having had Mr. Catlett
22 for your attorney, would that affect your
23 ability to sit here and listen to all the
24 evidence and make an impartial decision?

25 PROSPECTIVE JUROR: No.

1 MR. POCHUCHA: You don't feel you would
2 be more inclined to find in favor of Mr.
3 Catlett who is your attorney?

4 PROSPECTIVE JUROR: Not at all.

5 MR. POCHUCHA: Did you all part on good
6 terms?

7 PROSPECTIVE JUROR: Yes, we did.

8 MR. POCHUCHA: The witnesses, I'm going
9 to go through a series of names, and I would ask if any
10 of you are familiar with any of these witnesses. Just
11 raise your hand so I can know that and the Court and
12 counsel can. The witnesses that the plaintiff may call
13 will be Mark Burleson, Jimmy Greer, Ernest Bolton,
14 Steven Winder, Bob Hancock, Ed Conklin.

15 The witnesses it's anticipated that the
16 defendant will call would be Carol Rock, Gordon Haily,
17 the nickname of Boo Boo Hailey, Marshal Harrell, Michael
18 Magnuson, also known as Mickey Magnuson, James Shaffer,
19 Barbara Vanishi (ph). All on the panel knew none of
20 those folks?

21 You will hear testimony during this
22 case about people who have as their hobby the riding and
23 the building of motorcycles. Does that conjure up any
24 negative images for any of you? Do any of you have any
25 prejudice or bias either for or against people whose

1 hobby is riding and building motorcycles?

2 You also will hear testimony during the
3 course of this case that certain of the witnesses are
4 members of unions. Does the union membership have any
5 negative or positive feelings elicited among any of you?

6 Have any among you ever been a party to
7 a lawsuit, either as a plaintiff suing someone or as a
8 defendant having been sued? If you could keep your hands
9 there for just one moment.

10 Ms. White, were you a plaintiff or a
11 defendant?

12 PROSPECTIVE JUROR: Defendant.

13 MR. POCHUCHA: Having been a defendant
14 in a case, do you feel you would be more
15 sympathetic to a defendant being sued than you
16 would otherwise be? .

17 PROSPECTIVE JUROR: Um-um.

18 MR. POCHUCHA: And did that case go to
19 trial, or was that settled?

20 PROSPECTIVE JUROR: It was settled.

21 MR. POCHUCHA: Mr. White, were a
22 plaintiff or a defendant?

23 PROSPECTIVE JUROR: Defendant.

24 MR. POCHUCHA: Were you the party suing
25 someone else?

1 PROSPECTIVE JUROR: Yes.

2 MR. POCHUCHA: As a party suing someone
3 else -- Mr. Harris, I've got you marked. Thank
4 you, sir. As a party having sued someone, do
5 you feel you would be more favorable to a
6 plaintiff's side of a case or a defendant's
7 side of a case, or could you put that aside and
8 listen to all the evidence?

9 PROSPECTIVE JUROR: Yes.

10 MR. POCHUCHA: Mr. Harris, were you a
11 plaintiff? Were you the party suing somebody,
12 or were you being sued?

13 PROSPECTIVE JUROR: I was suing
14 somebody.

15 MR. POCHUCHA: Did that case go to
16 trial, or was it settled?

17 PROSPECTIVE JUROR: It was settled out.

18 MR. POCHUCHA: And now having gone
19 through that experience, do you feel you would
20 be more prone to favor one side or the other in
21 the lawsuit?

22 PROSPECTIVE JUROR: No.

23 MR. POCHUCHA: Mr. White, I neglected
24 to ask you whether your case was settled out of
25 court.

1 PROSPECTIVE JUROR: Yes.

2 MR. POCHUCHA: Mr. Myrick, were you a
3 plaintiff or a defendant?

4 PROSPECTIVE JUROR: I was a defendant.
5 Settled out of court.

6 MR. POCHUCHA: Having been a
7 defendant--

8 PROSPECTIVE JUROR: No, sir.

9 MR. POCHUCHA: Was there anyone I
10 missed who has been a party? Ms. Meredith?

11 PROSPECTIVE JUROR: Yes.

12 MR. POCHUCHA: Were you a plaintiff--

13 PROSPECTIVE JUROR: Defendant.

14 MR. POCHUCHA: Did that go to trial, or
15 was it settled out of the court?

16 PROSPECTIVE JUROR: Settled out of
17 court.

18 MR. POCHUCHA: Having gone through that
19 experience, do you think that would cause you
20 to favor one side or the other in the case?

21 PROSPECTIVE JUROR: No, I don't think
22 so.

23 MR. POCHUCHA: I would tell the ladies
24 and gentlemen of the jury, these questions, as the Judge
25 indicated to you, are intended to find out who is best

1 qualified. You're all qualified or you would not be
2 here. The only question is whether or not you have a
3 bias. We're both entitled to come forward with a clean
4 slate, so to speak, with no preconceived notions by
5 anyone to favor any side.

6 As the Judge instructed to you, this is
7 a case where the plaintiff would be asking for an award
8 of damages to compensate him for damage to his
9 reputation. Are there any among you who have
10 reservations about awarding monetary damages to someone
11 if you believe that their reputation has been damaged?
12 Do you feel that that's just an inappropriate way to
13 compensate someone, or do all of you feel it is the
14 appropriate way to compensate someone?

15 NOTE: The jury indicates in the
16 affirmative.

17 MR. POCHUCHA: This is also a case
18 where you will be requested to award what's known as
19 punitive damages. Punitive damages is not a sum for the
20 award of compensation to the injured party but a sum to
21 punish a guilty party and as a warning to others so that
22 other people and people in society generally won't do the
23 wrongful things that a person who is found guilty of
24 committing such an act would do. Do any of you have any
25 reservations about awarding a monetary sum in that

1 circumstance?

2 For instance, you might just feel that
3 if you award these punitive damages, even though they're
4 to punish the defendant who has wronged another person,
5 those damages are going to be awarded to the plaintiff.
6 Do any of you think that's wrong as a matter of
7 principle? All of you agree that that's an appropriate
8 way for us to make sure that society functions in a
9 smooth fashion?

10 Are there any among you who have lost
11 either a position or a possession as a result of a
12 misrepresentation or willful misrepresentation made by
13 another person? Are there any among you whose been
14 accused of making a willful misrepresentation about
15 another person, either about the reputation or about
16 their ownership of a possession?

17 Are there any among you who served
18 previously on the jury panel, either criminal or civil?
19 Ms. Andrews?

20 PROSPECTIVE JUROR: Yes.

21 MR. POCHUCHA: Was it criminal?

22 PROSPECTIVE JUROR: Criminal.

23 MR. POCHUCHA: Ms. Meredith?

24 PROSPECTIVE JUROR: It was like this.

25 MR. POCHUCHA: It was a civil?

1 MR. SUTTON: I'm sorry, Mr. Pochucha.

2 I didn't hear Ms. Harris's answer.

3 MR. POCHUCHA: I think it was a
4 criminal.

5 PROSPECTIVE JUROR: Criminal.

6 MR. POCHUCHA: One final question for
7 you. Are any of you under any extraordinary pressure or
8 emotional circumstance in your life that would make it
9 extraordinarily difficult for you to sit here and listen
10 to the evidence as it comes forward today? Any emergency
11 situation that you haven't told anybody about that makes
12 it just difficult for you to be here and pay attention?

13 PROSPECTIVE JUROR: My grandmother, she
14 died Monday and the funeral is the day after
15 tomorrow.

16 MR. POCHUCHA: Day after tomorrow?

17 PROSPECTIVE JUROR: Yes.

18 MR. POCHUCHA: And preparations are
19 being made in the family, and the family is
20 getting together today?

21 PROSPECTIVE JUROR: Yes.

22 MR. POCHUCHA: Had you asked previously
23 to be excused for cause as a result of that?

24 PROSPECTIVE JUROR: No, I didn't. I
25 didn't know if I could call in or not because I

1 know if you called the day before to find
2 out if you have to come in--

3 MR. POCHUCHA: Your Honor, in view of
4 that fact, I ask that Mr. Harris be excused for
5 cause.

6 THE COURT: Let Mr. Sutton ask his
7 questions, first.

8 MR. SUTTON: Judge, I have no questions
9 of the panel.

10 THE COURT: All right. Mr. Harris, the
11 question was would the fact that you've had
12 this event occur, is that going to distract you
13 from hearing this case if you were to sit
14 today?

15 PROSPECTIVE JUROR: No, it wouldn't.

16 THE COURT: All right. Ladies and
17 gentlemen, I'm going to ask that the counsel now proceed
18 with their strikes. By asking that, you'll see this
19 paper I mentioned being turned over to the plaintiff's
20 side. Both sides will start exercising their strikes.

21 Let me thank you all for being here.
22 Today is, what, the 14th, about mid way through the term
23 of court here. It's a Thursday, and I know you're all
24 Thursday people, so you've got two more Thursdays to go,
25 the 23rd and the 28th, before this ordeal is over. I

1 hope you don't really consider it as an ordeal. I expect
2 it's more of an inconvenience for you because you have to
3 come down here, you have to be taken away from what you
4 would ordinarily be doing work-wise or otherwise.

5 I hope you realize that being available
6 for jury duty is an important function. We have jury
7 trials because our laws provide for them, and it's a way
8 that our system, one way in our system, we can have
9 disputes resolved by having jurors sit and hear the case
10 to determine -- your function as a jury, by the way, as
11 jury members or as the jury will be to determine what the
12 facts are in the case and to apply the facts as you find
13 them to the instructions of law, which the Court will be
14 giving you later on during these proceedings.

15 When you are involved with jury duty,
16 as you are, and if you sit on a jury, we don't expect you
17 to forget your common sense or your experience in life in
18 evaluating this or any other case. There may be some
19 technicalities involved with the case which you may or
20 may not understand, particularly with respect to
21 objections to evidence that you may or may not hear.
22 There may be times that you'll be asked to step out of
23 the room when one side or the other makes an objection
24 and the Court is called on to rule on that objection.

25 Let me digress further and say that you

1 shouldn't regard that, the objections to evidence, as an
 2 attempt to keep something from you. In a way it really
 3 is, but objections are made based on evidentiary rules
 4 because the lawyers feel a rule of evidence is or may be
 5 violated and they object. My point in pointing that out
 6 to you is that you shouldn't regard that as an effort to
 7 keep something from you. Those rules of evidence have
 8 been developed over many years, and they control what can
 9 be presented to the fact finder, you, the jury. These
 10 ideas of evidence have really been drawn up over the
 11 years because of juries. It's to keep the jury on track
 12 about what the essential facts are in the case so we can
 13 have a decision and the parties can go on with their
 14 lives. Don't hold it against a side making an objection.
 15 My point was specifically that.

16 So when you are here for jury duty,
 17 despite what the law may involve, despite the fact that
 18 the law may be involved with technicalities, we don't
 19 expect, again, for you to forget your common sense. Use
 20 your common sense in evaluating this or any other case
 21 that you may hear.

22 Once the case gets started, once we
 23 determine who the jurors are in the case, the first thing
 24 we will do that will happen is that the lawyers will
 25 address you by way of an opening statement. They'll

1 stand before you and tell you then what the case is all
 2 about, what they expect the evidence to be in the case.
 3 Each lawyer will speak to you that way directly while the
 4 plaintiff will go first followed by the defense counsel.
 5 After that we'll then hear and see the evidence. The
 6 plaintiff will call his witnesses first, and those
 7 witnesses will be called and be questioned and then
 8 perhaps cross-examined by defense counsel. After the
 9 plaintiff has submitted all of his witnesses, the
 10 defendant will then have an opportunity to do likewise.
 11 The defendant will call his witnesses, and they'll be
 12 examined and they may be cross-examined by plaintiff's
 13 counsel in this instance.

14 After we've heard from all the
 15 witnesses in the case, there will be a time that the
 16 Court will have to spend with counsel to determine the
 17 instructions in the case. Now, the instructions in the
 18 case are the principles of law that govern this case.
 19 This is a civil case as has been mentioned. If this were
 20 a criminal case, we would be dealing with a different
 21 standard of proof then that applicable to this case, a
 22 civil case. If this were a criminal case, the standard
 23 of proof would be beyond a reasonable doubt. The
 24 Commonwealth would have to prove that the defendant was
 25 the guilty party and that the crime was committed and so

1 forth beyond a reasonable doubt.

2 This is a civil case. We're not
3 dealing with that standard. In a civil case the standard
4 is by way of a preponderance of the evidence. So that
5 will be explained by an instruction, along with some
6 other instructions relating to the elements and issues of
7 this case. Once they're determined, they'll be read to
8 the jury by the judge, by me, and after these are read
9 you'll hear from counsel again by way of a closing
10 argument. They'll stand before you then at the end of
11 the case and argue their client's position based on the
12 evidence that they believe has been presented in order to
13 persuade you to take the position of their clients.
14 After that you'll be asked to begin your deliberations in
15 the jury room, which is right behind you.

16 All right. With that, ladies and
17 gentlemen, if all those persons who won't be with us
18 today, thank you very much for coming.

19 THE CLERK: The following jurors please
20 have a seat in the rear of the courtroom. Joy
21 Gibrall, Robert Harris, Kenneth Myrick, II,
22 Shirley Stanton, Robert Terry, James White,
23 Jr..

24 NOTE: The above-mentioned jurors
25 returned to the gallery.

1 THE CLERK: Please stand and raise your
2 right hands. Do each of you solemnly swear or
3 affirm you will well and truly try the issue
4 tried in the case of Charles Poulston,
5 plaintiff, versus Bobby Rock, the defendant,
6 and a true verdict render, so help you God.

7 NOTE: The jury acknowledges the oath.

8 THE CLERK: All jurors not serving,
9 please report to the jury officer in the
10 hallway.

11 THE COURT: We're ready to proceed. If
12 any of you need to stop before we do proceed, we can do
13 that now and take a brief recess before we start,
14 otherwise, we'll proceed right with the case. Mr.
15 Pochucha, you ready to proceed?

16 MR. SUTTON: I have a motion to exclude
17 the witnesses from the courtroom.

18 THE COURT: Everyone who is in the
19 courtroom now who expects to be called as a
20 witness in this case, please step outside.
21 While you're outside, don't discuss your
22 testimony.

23 NOTE: The witnesses exit the
24 courtroom.

25 THE COURT: All right. Mr. Pochucha,

1 go ahead, sir, with your opening statement.

2 MR. POCHUCHA: Good morning, once
3 again, ladies and gentleman of the jury. This will be
4 the opening statement. It's my opportunity to give you a
5 brief preview of what we expect the evidence to be as we
6 move through the day of this trial. The way it proceeds
7 is the plaintiff will, as the judge indicated, first
8 we'll put on our evidence and the defendant will put on
9 evidence. Then the plaintiff will have an opportunity to
10 put on additional evidence merely to rebut or contradict
11 the evidence that the defendant has put on.

12 It's not a complicated case, ladies and
13 gentleman. What occurred here is that in 1991,
14 Mr. Poulston, the plaintiff, who is an avid motorcycle
15 rebuilder and his hobby is riding motorcycles, this is
16 one of the motorcycles that he built from the ground up,
17 what he does is he goes out and collects different parts,
18 goes to different bike shows, follows the Trading Post
19 and then he builds it from the ground up and then he'll
20 have someone paint it for him. He doesn't do the
21 painting.

22 He had built a motorcycle, and he had
23 had a special artist do a design on the tank. He knew
24 Mr. Rock did some painting on the side. Mr. Rock is also
25 involved with motorcycles, and he likes to ride them and

1 he's built them and he's painted vehicles as a hobby and
2 also to make some money. In any event, Mr. Poulston took
3 his motorcycle to Mr. Rock to have the finishing touches
4 put on, what's called a clear coat to protect what the
5 artist had done. He told Mr. Rock, look, the artist who
6 did this told me not to use Imron--it's a certain
7 product--it will have an adverse reaction with the
8 lacquer that's already on there, so don't use it. Mr.
9 Rock said okay. When Mr. Poulston went to pick up his
10 motorcycle, they talked about the price and what was used
11 and he saw, lo and behold, that Mr. Rock had used Imron
12 when he told him not to use it. They had a discussion
13 about that.

14 Mr. Rock said, it'll be all right, I've used it lots of
15 times. It'll be no problem. Mr. Poulston said, what are
16 you going to do if it's not all right? He said, don't
17 worry about it, it'll be all right.

18 He took the motorcycle out. The first
19 time he rode it to his place of employment at DuPont he
20 left it out in the sun, it totally cracked up, ruined the
21 whole paint job. He had to have the whole motorcycle
22 disassembled, sanded and scraped, repainted. He brought
23 an action to recover damages against Mr. Rock for the
24 cost to repaint the motorcycle. The case was tried here.
25 In fact, it was tried before Judge Hughes. A verdict was

1 rendered in favor of Mr. Poulston in the amount of
2 \$2,300. That was in January of 1993.

3 You have to wait 30 days to enter an
4 order because that person has a right to appeal their
5 case within 30 days before you can proceed with a
6 collection action. We waited 30 days, and Mr. Poulston,
7 through his attorney, contacted Mr. Rock's attorney and
8 said are you going to pay this voluntarily? There was
9 just never any response. So Mr. Poulston instructed his
10 attorney to proceed with garnishment proceedings.
11 Garnishment proceedings are a method by which a person
12 that has a judgment against another can attach the assets
13 of a judgment debtor, the person who owes the money. You
14 generally hear that being done with a person's wages.
15 Another thing that can be attached is a person's bank
16 account.

17 In Mr. Rock's case, Mr. Rock is on
18 disability and doesn't have a regular wage income but has
19 income from disability. He also has a bank account,
20 which Mr. Poulston was aware of. So Mr. Poulston's
21 attorney initiated action at Mr. Poulston's urging
22 against this bank account and attached the bank account
23 for the money that was owed. When that's done the
24 sheriff has to go or a process server, either one, to the
25 bank and serve a piece of paper on the bank and say

1 withhold this money from the bank account, send it to the
2 court. They also go to the judgment debtor, which in
3 this case is Mr. Rock, and say this is what is happening
4 to you, your bank account is being attached for this sum
5 of money.

6 On May the 7th, the private process
7 server went to Mr. Rock and gave him that piece of paper
8 that said Mr. Poulston is going to collect this money
9 from your bank account May the 7th of '93. On that same
10 day, Mr. Rock called the DuPont Corporation. He got a
11 hold of the Labor Relations people. He said Mr. Bolton,
12 I'm calling because I'm mad at Charlie Poulston. I want
13 to get him in trouble. I would like to see him fired.
14 He's a thief. He's stolen stainless steel nuts and
15 bolts, and he's stolen cast iron parts and used them to
16 make my motorcycle. The reason I'm calling is because I
17 want to get back at him.

18 Now, you'll also hear Mr. Poulston has
19 worked at DuPont Corporation for 24 years. His father
20 worked there for 40 years. He's a union steward. He's
21 in the welding shop. He's got a good job with a lot of
22 security. You'll also hear that theft is a firing
23 offense. You lose your job, you lose your pension, you
24 lose all your benefits. It's a very serious offense.
25 Mr. Bolton took it very seriously. He told Mr. Rock he

1 would get back to him. Mr. Bolton passed it on to a
2 Mr. Winder, who was the supervisor in the maintenance
3 department. Mr. Winder contacted Mr. Handcock, who was
4 the supervisor in the welding shop.

5 He went up and he told Mr. Poulston
6 that there was a serious matter that they needed to
7 discuss. He told him he needed union representation.
8 Mr. Poulston chose a man named Jimmy Greer, who is
9 president of the union who he chose to be his union
10 representative. They called him into the office. There
11 was a meeting before Mr. Winder, Mr. Handcock, Mr. Greer
12 and Mr. Poulston. He said, look, it's been alleged that
13 you've been stealing from the DuPont Corporation.
14 Mr. Poulston said that is ridiculous. Who did this
15 allegation come from? We're not going to tell you right
16 now. He said it's Rock. Well, we're not going to tell
17 you now, but it's alleged that you've been stealing. On
18 the spot Mr. Poulston said come to my house right now,
19 look in my garage, look everyone you want. I've not been
20 stealing.

21 Then Mr. Winder called Mr. Rock back
22 after having confronted Mr. Poulston to say, Mr. Rock, do
23 you have any evidence of this theft? Where did you hear
24 about it? Mr. Rock told Mr. Winder on the phone that no,
25 he had no stainless steel nuts and bolts. In fact, he

1 had been told this information by somebody else.
 2 Mr. Winder went back and said that unless you have more
 3 than that, that would have to be it. The case was
 4 basically closed as it pertained to Mr. Poulston
 5 officially, but there is a record at DuPont of this. As
 6 a result of these allegations, they changed the security
 7 procedures for a period of time at DuPont Corporation so
 8 everybody in the plant -- why did they change these
 9 security positions? Well, it's this guy named Charlie
 10 Poulston. The people that knew him for 24 years knew
 11 that this was most likely not true, but there were a lot
 12 of folks there who didn't know him. Even the ones that
 13 did know him he suffered constant ribbing for that for
 14 years. You'll hear him testify that a fellow asked him a
 15 couple months ago, hey, did you have your motorcycle in
 16 the motorcycle show? Is that the one that's sponsored by
 17 DuPont Corporation? Yes. Maybe it sounds a little
 18 humorous, but it's not. It's someone's good name.
 19 That's what you have to decide, and that's what the
 20 compensation is for.

21 We have to prove. We've got the
 22 preponderance. We've got the burden of proof by the
 23 preponderance of the evidence that that statement was
 24 false, that Mr. Rock knew it was false when he made it or
 25 made it in a reckless disregard for the truth. It was

1 false, and it was injurious to Mr. Poulston. You can
2 presume it was injurious if you find it was false because
3 it related to his on-the-job work. In order to award
4 punitive damages, you must also find, and we've got the
5 burden of proof, and by clear and convincing evidence,
6 which is more than a preponderance, more than 51 percent
7 but less than the sort of burden you have in a criminal
8 case, which is beyond a reasonable doubt, clear and
9 convincing evidence would make you feel relatively
10 certain about it that at the time that he made this call,
11 it was done with malice, it was done for an evil purpose.
12 The evil purpose was to get back at Mr. Poulston for a
13 supposed wrong that he had done to him and that wrong is
14 going to court and initiating an action to recover.
15 In Mr. Rock's mind, that was wrong.

16 That's about it. They will have, we
17 expect their evidence to be related somewhat to
18 Mr. Rock's financial condition. They'll bring his wife,
19 who I believe will testify paid the support. They've
20 identified another lady who I believe is a mother of a
21 child that Mr. Rock has, and she will testify. They've
22 got some folks from DuPont Corporation subpoenaed to be
23 here today. Frankly, I'm not sure exactly what they're
24 going to say. So I will listen to that as you hear it.
25 One thing that I am certain of is that when this evidence

1 is in, that there won't be any doubt in your mind about
2 what happened, about why Mr. Rock called the DuPont
3 Corporation, about the falsity of that statement and
4 about the necessity to award damages.

5 Every legal proceeding, whether it's
6 criminal or civil, involves a search for the truth. You
7 will find the facts. What you find the truth to be is
8 what the truth will be. In a criminal case it's
9 generally, well, was a crime committed, is this the
10 person that committed the crime. In an automobile
11 accident, it's who ran the red light. But here it's
12 really focused on truth and integrity and honesty, as to
13 Mr. Poulston's truth and integrity and honesty, which
14 will be decided by you, members of the jury.

15 At the conclusion of this case if you
16 find that he is a truthful and honest person with
17 integrity and that individuals should not go around and
18 likely undercut somebody and make accusations about
19 somebody, then you're going to have to punish Mr. Rock,
20 not just as a punishment to him for having done it but as
21 a warning to other people that they can't do that.

22 I ask you to keep an open mind, listen
23 to all the evidence. As I said, we'll put on our
24 evidence first. When the defendant comes I ask that you
25 pay close attention to all their witnesses. Observe the

1 witnesses on the stand, their demeanor, their motives for
2 testifying truthfully, their knowledge and then apply
3 your individual and collective wisdom. Thank you.

4 THE COURT: Mr. Sutton.

5 MR. SUTTON: May it please the Court,
6 Mr. Pochucha. Ladies and gentlemen of the jury, my name
7 is Danny Sutton. I represent Mr. Rock, seated here in
8 the gray suit, and this is my co-counsel, Larry Catlett.

9 Mr. Rock is here standing in trial in
10 front of you today being accused of defaming
11 Mr. Poulston. Now, you, ladies and gentleman, sit today
12 as the triers of fact and the judges of the creditability
13 of witnesses in the evidence that you hear today. I
14 would like to remind you at this point that what I say
15 and what Mr. Pochucha say is not evidence for you to
16 consider. The only evidence that you are to consider is
17 what you hear from this witness stand and any physical
18 evidence that may be presented to support either
19 Mr. Pochucha's case or my case.

20 There's been an allegation today that
21 Mr. Rock called Mr. Poulston's employer and said some
22 things about Mr. Poulston taking some stainless steel
23 bolts and making some plates from the welding equipment
24 at DuPont. These bolts were allegedly used in the
25 construction of a bike, a motorcycle that Mr. Poulston

1 and Mr. Rock and the third person, whom you'll hear some
2 testimony today from, by the name of Gordon Hailey. The
3 three of these gentleman were building a motorcycle, the
4 motorcycle that was to be a show motorcycle.

5 I'm almost embarrassed to stand here
6 today and try this case in front of you. The reason I
7 say that is this is basically a case of ill will, a case
8 of bad blood between Mr. Poulston and Mr. Rock. Ladies
9 and gentlemen, what we have here is two gentleman who
10 like to air their dirty laundry throughout the judicial
11 process. As Mr. Pochucha has so eloquently told you
12 right here, these gentlemen, at one time, had, I guess
13 what we would call a friendship. Mr. Poulston, in 1989,
14 and Mr. Rock and Mr. Hailey were building that
15 motorcycle. During that time, Mr. Poulston and Mr. Rock
16 developed some type of a relationship. I don't want to
17 term it a friendship. I don't know what to term it,
18 ladies and gentleman, but Mr. Poulston is confident
19 enough in Mr. Rock's abilities in painting motorcycles
20 that he asked him to paint something on his motorcycle,
21 and he did that. Well, Mr. Poulston wasn't happy with
22 what happened or the result of Mr. Rock's work and so Mr.
23 Poulston sued Mr. Rock, as you've heard already.

24 Well, I don't think it was explained to
25 you in detail as to how it actually happened.

1 Mr. Poulston sued Mr. Rock in general district court,
2 small claims court, here in the State of Virginia in this
3 very city and Mr. Rock prevailed. Mr. Rock won.
4 Mr. Poulston then exercised his option as given to him by
5 law to appeal that matter to the circuit court and was
6 actually heard in this very courtroom. At that hearing,
7 Mr. Rock was not represented by counsel. Mr. Poulston
8 was. Mr. Poulston prevailed and took a judgment out
9 against Mr. Rock.

10 Ladies and gentlemen, after that there
11 came a time when these gentleman could not stand the
12 sight of each other. They couldn't even stand to be in
13 the same room with each other. It got so bad that they
14 each had to get a court order that they would stay away
15 from each other. And you ask me why I'm embarrassed to
16 be here. Today you'll hear about that relationship.
17 You'll hear them air their dirty laundry.

18 Now, the trouble begins, ladies and
19 gentleman, after the circuit court appearance here in the
20 City where Poulston was given the judgment against
21 Mr. Rock and Mr. Rock's bank account was subsequently
22 attached. Mr. Rock, as the evidence will show you today,
23 lost faith in Mr. Poulston's ability to tell the truth,
24 ladies and gentlemen. If you recall, I told you that
25 Mr. Rock won the first time they went to court, but when

1 they retried the same case, Mr. Poulston won. According
2 to evidence that you will hear today, Mr. Poulston
3 changed his tune, ladies and gentlemen. He told a
4 different story upstairs.

5 You ask, why is that relevant? The
6 reason it's relevant is that prior to that when they were
7 building the motorcycle in Mr. Hailey's garage,
8 Mr. Poulston made some representations to my client. He
9 says, I can get you some stainless steel bolts for your
10 motorcycle. It may not have been those exact words.
11 Mr. Rock may have asked Mr. Poulston could he get him
12 stainless steel bolts. You ask why stainless steel bolts
13 as opposed to aluminum, as opposed to any other kind of
14 metal. Stainless steel, ladies and gentlemen, does not
15 rust. It last a very long time. The evidence will show
16 and Mr. Rock will tell you, you can buff stainless steel
17 and it becomes just as bright as chrome, and that's what
18 you want on a show motorcycle, a motorcycle that's going
19 to be in competition, a very flashy motorcycle.

20 During the building of this motorcycle,
21 Mr. Rock became aware that Mr. Poulston had the
22 availability to get stainless steel bolts. Stainless
23 steel bolts, as you'll also hear from the evidence today,
24 are very expensive. Five, six, seven dollars for one
25 bolt, as opposed to less than a dollar for a

1 non-stainless steel bolt. So Mr. Rock, trying to save
2 money, trying to build the best bike that he could,
3 seized the opportunity. He saw his chance to get
4 stainless steel bolts for what, ladies and gentlemen,
5 nothing, and that's what the evidence will show. He was
6 supplying bolts to Mr. Poulston for nothing.

7 Now, during the course of this time,
8 when they were building this motorcycle, there were
9 several people in and out of the garage when the
10 motorcycle was being built. Mr. Poulston, on several
11 occasions, as the evidence will show you today, gave
12 these bolts to Mr. Rock in the presence of others and
13 made a representation to him in some form or fashion that
14 do not worry about the cost, I can get you whatever you
15 need, that I can get them from work.

16 There will also be a time that you will
17 hear that a special plate had to be designed for this
18 show motorcycle. I'm not a motorcycle expert, so I'm not
19 going to try to explain it to you, but a special metal
20 plate had to be put on one of the wheels. This plate had
21 to be welded and cut and grinded down so the rough edges
22 would be gone and had to be specially cut from a welder.
23 Well, Mr. Poulston, after being given a template by
24 Mr. Hailey on how to make the design of the plate, told
25 Mr. Rock that I can make this plate for you. There will

1 be evidence today, ladies and gentlemen, to support the
2 fact that Mr. Poulston was making this plate at DuPont.

3 Now, getting back to the original
4 lawsuit, the lawsuit where Mr. Poulston sues Mr. Rock for
5 the painting of a motorcycle. It was after this lawsuit
6 that I said, ladies and gentlemen, Mr. Rock lost faith in
7 Mr. Poulston's ability to tell the truth. Mr. Poulston
8 had made representations to him that, one, it was all
9 right for him to give him stainless steel bolts from
10 DuPont and that he, in fact, had done so. He had also
11 made a representation to him that it was all right for
12 him to work on his personal property for himself and
13 friends at work.

14 I'm not going to sit here and try to
15 hide the fact that Mr. Rock was not upset when his bank
16 account was attached. But ladies and gentlemen, the
17 evidence will show you that Mr. Rock, after losing faith
18 in Mr. Poulston's credibility, made an inquiry. He
19 wanted to find out whether, that is, Mr. Rock, had stolen
20 property on his motorcycle. So yes, he calls down there.
21 He calls down to DuPont and talks. On May the 7th, 1993,
22 he calls DuPont and talks with Ernest Bolton. He tells
23 Mr. Bolton that one of his employees had supplied him
24 with stainless steel bolts and made a steel plate for his
25 motorcycle and that these materials had been supplied

1 from DuPont property and that this property was allegedly
2 given to this DuPont employee, Mr. Poulston, after
3 inventory. Mr. Rock, ladies and gentlemen, had no reason
4 to disbelieve that until he heard Mr. Poulston change his
5 story under oath here in this very court.

6 Now, we believe the evidence will show
7 certain things. It will show that Mr. Rock and Mr.
8 Poulston and Mr. Hailey built a motorcycle together. It
9 will show that Mr. Rock wanted some stainless steel
10 bolts, saw the opportunity to get some stainless steel
11 bolts and seized that opportunity when Mr. Poulston
12 presented that opportunity to him. I believe the
13 evidence will show that Mr. Rock was told by Mr. Poulston
14 that he was given these bolts after inventory and
15 Mr. Rock, in reliance upon that, had no reason to
16 disbelieve Mr. Poulston's allegation. I believe the
17 evidence will show, ladies and gentlemen, that on more
18 than one occasion Mr. Poulston supplied him with these
19 bolts.

20 I believe the evidence will show that a
21 special plate had to be made for this motorcycle and that
22 Mr. Poulston made the representation to Mr. Rock that he
23 would make it for him, not to worry about it. I believe
24 the evidence will show, ladies and gentlemen, that this
25 statement, this alleged defamatory statement, which has

1 brought us here today, was made after Mr. Rock felt that
2 Mr. Poulston no longer encompassed the ability to tell
3 the truth. I believe the evidence will show, and I know
4 it will show that Mr. Poulston called down to DuPont and
5 made some inquiries as to whether or not DuPont gives away
6 stainless steel bolts after inventory.

7 I believe the evidence will show that
8 Mr. Poulston has suffered no injury, no harm, whatsoever,
9 as a result of this. As you will hear today, he went
10 through an administrative hearing within DuPont, a
11 hearing from whom people who became aware of what
12 happened were only made aware of this through the
13 channels at DuPont, which had nothing to do with Mr.
14 Rock. Mr. Rock didn't call all these individuals and
15 tell him what happened between him and Mr. Poulston. It
16 was the representative, the initial person who took the
17 call at DuPont, who spread the word about Mr. Poulston.

18 Ladies and gentlemen, I believe and I
19 submit to you that the issue before you today and what
20 I'm going to ask you to do in listening to the evidence
21 is get inside Mr. Rock's head. I'm going to try to put
22 on a case today in which you will be inside Mr. Rock's
23 mind trying to figure out what he was thinking when this
24 was going on. I'm going to ask you to decide did
25 Mr. Rock know Mr. Poulston was telling him the truth,

1 that is, did he know the statement that he made to DuPont
2 was false when he made it; or when he made that
3 statement, that is, when Mr. Rock called to DuPont and
4 asked them do you give away stainless steel bolts and do
5 you allow your employees to work on their own property on
6 DuPont time, that he made that statement with reckless
7 disregard for the truth; or did Mr. Rock, believing that
8 statement to be true, that is, did Mr. Rock believe
9 what Mr. Poulston told him, did he lack reasonable
10 grounds to believe that. These are the questions that
11 you're going to have to answer today. Lastly, you need
12 to think about was Mr. Rock negligent, was he negligent
13 in ascertaining the real truth.

14 Ladies and gentlemen, Mr. Poulston is
15 the plaintiff in this matter and Mr. Rock is the
16 defendant. Mr. Poulston must prove his case today to you
17 by a preponderance of the evidence. As you'll find out
18 later on, ladies and gentleman, Mr. Poulston has asked
19 you to compensate him for this, for this case of ill
20 will, for this case of airing out dirty laundry. He's
21 asking you to give him \$100,000. He's asking you to
22 compensate him for his embarrassment and his humiliation
23 brought on by Mr. Rock's statements. Ladies and
24 gentlemen, listen to the evidence and see if there's a
25 scintilla of proof to that. He's also asking you to

1 punish Mr. Rock and make a statement to society that
2 these things should not go on.

3 Before you can do that, ladies and
4 gentleman, first you have to find out, again, you have to
5 put yourself in Mr. Rock's mind and decide did Mr. Rock
6 know the statements were false when they were made to
7 him. Did he know they were false when he called DuPont
8 when he was asking a question, or did he call DuPont with
9 a reckless disregard for the truth only to embarrass and
10 humiliate Charles Poulston.

11 Now, as we go through the trial, I'm
12 going to ask you to do several things. First of all, as
13 I've already asked you to do before, I'm going to ask you
14 to remember that what I say and what Mr. Pochucha says is
15 not evidence. The only evidence you ought to consider is
16 the evidence that comes from that stand and the evidence
17 that is presented physically to you. You'll also hear
18 some objections today. I don't want you to think that
19 Mr. Pochucha or myself is trying to hide something from
20 you, but the judicial--

21 THE COURT: I've explained that to the
22 jury, and you're arguing now. This is opening
23 statement. You're wasting time.

24 MR. SUTTON: Yes, sir. Lastly, ladies
25 and gentleman, I'm going to ask you to use your common

1 sense and remember that this is a case of ill will. It's
2 a case of bad blood. These gentlemen just don't like
3 each other, and I submit to you that if you use your
4 common sense and remember that this is nothing more than
5 a personality conflict, then you do nothing more than
6 find for Mr. Rock and I'm going to ask you to do that.
7 Thank you.

8 THE COURT: Call your first witness.

9 MR. POCHUCHA: Mr. E.W. Bolton, Your
10 Honor.

11 NOTE: Mr. Bolton was called into the
12 courtroom.

13

14 *****

15 E.W. BOLTON,
16 after having been first duly sworn,
17 testifies and says under oath as follows:

18 *****

19 DIRECT EXAMINATION

20 BY MR. POCHUCHA:

21 Q Mr. Bolton, would you state your name.

22 A Ernest W. Bolton.

23 Q What is your age?

24 A I'm 60.

25 Q And your educational background.

1 A I have a master's degree.

2 Q Where are you presently employed?

3 A DuPont.

4 Q What's the nature of your employment?

5 A I'm Labor Relations manager.

6 Q How long have you been so employed?

7 A 18 years.

8 Q And you were so employed on May the 7th
9 of 1993?

10 A Yes.

11 Q On that date, did you have occasion to
12 receive a telephone call concerning an employee of
13 DuPont?

14 A Yes.

15 Q Would you tell the ladies and gentleman
16 of the jury the name of the employee about whom the call
17 was made.

18 A Mr. Poulston.

19 Q And do you know who made the call?

20 A The gentleman who identified himself as
21 Bobby Rock.

22 Q Would you tell the ladies and gentleman
23 what the substance of the conversation was with Mr. Rock.

24 A Yes. The gentleman called me and told
25 me that he knew an employee at DuPont by the name of

1 Poulston who had taken stainless steel bolts from DuPont
2 and had also welded some parts on to his motorbike or
3 motorcycle. He also told me that he had painted a
4 motorcycle for Mr. Poulston. Mr. Poulston was unhappy
5 with the paint job, subsequently sued him and won a
6 \$2,000 settlement in that case and that he wanted to get
7 even with -- he wanted to get Mr. Poulston.

8 Q Did he state whether or not he had in
9 his possession any of the nuts and bolts?

10 A I don't remember if he said he had any
11 in his possession. I wrote it down, but I don't have the
12 notes in front of me. He did mention that he had had
13 some and that some of them had been put on to his -- or
14 some parts had been welded on to his motorcycle by
15 Mr. Poulston.

16 Q And did he tell you whether or not
17 anything in particular prompted his call?

18 A Yes. Again, he mentioned that he had
19 had a settlement of some \$2,000 against him because
20 Mr. Poulston had filed some kind of a suit against him
21 for the paint job and subsequently that's why he was
22 making the call.

23 Q Did he state whether or not he would
24 have made the call had Mr. Poulston not received such a
25 judgment against him?

1 MR. SUTTON: He's leading the witness.

2 THE WITNESS: I can tell you what he
3 told me.

4 THE COURT: The objection is sustained.

5 BY MR. POCHUCHA: (cont'd)

6 Q Did he make any statement to you
7 regarding the circumstances under which he made the call?

8 A I'm not certain of the question.
9 Again, he said to me that he was calling because he
10 wanted to get even with Mr. Poulston. I told him that we
11 take allegations that he was making to me very seriously
12 and that Mr. Poulston could lose his job if, in fact,
13 what he was telling me was the truth.

14 Q And what further involvement did you
15 have with this matter subsequent to the conversation?

16 A Well, first of all, I had him on the
17 speaker telephone and as he talked, I took notes. Once I
18 completed my conversation with the gentleman who called
19 me, I gave the notes to my secretary to put on my
20 electronic mail to Mr. Steven Winder, who was in our
21 maintenance section. I didn't know to whom Mr. Poulston
22 reported. I don't even know Mr. Poulston. But that was
23 basically the extent of my involvement in that case.

24 Q Subsequent to that conversation, did
25 you ever learn of the resolution of the investigation?

1 A Yes.

2 Q What was that resolution?

3 A Mr. Winder told me that he had
4 investigated--

5 MR. SUTTON: Objection as to what Mr.
6 Winder said.

7 THE COURT: Objection is sustained.

8 BY MR. POCHUCHA: (cont'd)

9 Q Did you make any further investigation?

10 A I did not. Once I sent my E-mail
11 message to Mr. Winder, I was no longer involved.

12 Q During the course of that telephone
13 conversation with Mr. Rock, did you understand that the
14 purpose of the call from Mr. Rock was to inquire and
15 obtain information from you, or did you understand that
16 the purpose of the call was to convey information to you?

17 A To convey information to me.

18 MR. POCHUCHA: Thank you, sir. No
19 further questions.

20

21 CROSS-EXAMINATION

22 BY MR. SUTTON:

23 Q Mr. Bolton, you took notes from
24 Mr. Rock's conversation with you, did you not?

25 A Yes, I did.

1 Q During the course of that conversation,
2 did Mr. Rock give you his telephone number?

3 A He gave me a telephone number. Yes.

4 Q Did he give you an address?

5 A I'm not certain. As I said, I took
6 notes, but I haven't refreshed my memory for -- in coming
7 in here I did not go over my notes again.

8 MR. SUTTON: May I approach the
9 witness?

10 THE COURT: Yes.

11 NOTE: A document is handed to the
12 witness by counsel.

13 BY MR. SUTTON: (cont'd)

14 Q I hand you that document and ask you,
15 does that refresh your memory?

16 NOTE: Witness peruses the document.

17 A Yes.

18 Q During the conversation with Mr. Rock,
19 did Mr. Rock, in fact, give you his address?

20 A Yes.

21 Q Did he give you his phone number?

22 A Yes.

23 Q Did he give you where you could contact
24 him at all times?

25 A Yes.

1 Q Did he tell you that the matter for
2 which he was calling you were bolts that were allegedly
3 given to Mr. Poulston after inventory?

4 A Yes.

5 Q Also in there did Mr. Rock also tell
6 you that he would be willing to submit to a lie detector
7 test to substantiate his story?

8 A He did.

9 Q Now, were you privy or were you part of
10 the hearing that took place with Mr. Winder and
11 Mr. Hancock and Mr. Greer?

12 A No, I was not.

13 Q Who did you tell about the telephone
14 conversation with Mr. Rock?

15 A I didn't tell, that is, verbally,
16 anyone. I sent a message to Mr. Steven Winder.

17 Q Would Mr. Winder have been made aware
18 of this telephone call had you not sent him that memo?

19 A He would not have. No.

20 MR. SUTTON: That's all the questions I
21 have, Your Honor.

22 THE COURT: All right. Thank you, Mr.
23 Bolton.

24 MR. POCHUCHA: May I ask one question?

25 THE COURT: All right.

REDIRECT EXAMINATION

BY MR. POCHUCHA:

Q Mr. Bolton, the notes that were just displayed to you by counsel, did you keep a permanent record of those?

A Yes.

THE COURT: Thank you, Mr. Bolton. You may step down. Your next witness.

WITNESS STOOD ASIDE

MR. POCHUCHA: Mr. Jimmy Greer, Your Honor.

NOTE: Mr. Greer was called into the courtroom.

JIMMY GREER,
after having been first duly sworn,
testifies and says under oath as follows:

DIRECT EXAMINATION

BY MR. POCHUCHA:

Q Mr. Greer, would you state your full name for the record.

1 A Jimmy Darryl Greer.

2 Q And your age.

3 A 41.

4 Q Would you tell the ladies and gentleman
5 of the jury what your educational background is.

6 A High school.

7 Q Where are you employed, sir?

8 A DuPont.

9 Q How long have you been so employed?

10 A This is my 23rd year.

11 Q Are you familiar with Mr. Charlie
12 Poulston?

13 A Yes, I am.

14 Q How do you know him?

15 A I've known Charlie since I've been
16 there for all 23 years doing the operation in the
17 maintenance.

18 Q During that period of time, have you
19 ever known Mr. Poulston's integrity or honesty to be
20 questioned?

21 A No, sir.

22 Q What are your duties at DuPont?

23 A Well, I'm a pipe fitter, but today I'm
24 the union president at DuPont.

25 Q As a union president, did you have

1 occasion to be involved with allegations of a theft that
2 was made pertaining to Mr. Poulston?

3 A Yes. I was called into a meeting with
4 Mr. Poulston and the supervisors, Bob Hancock and Steve
5 Winder, over an allegation that he had stolen some
6 property.

7 Q How did you come to be called into that
8 meeting?

9 A When they called Charlie in there, he
10 is allowed union representation, and he asked for me to
11 be his representative, so I understand.

12 Q Prior to stepping into that meeting,
13 did you know what the allegations were going to be?

14 A No, I didn't.

15 Q To your knowledge, prior to stepping
16 into that meeting, did Mr. Poulston know what the
17 allegations of the meeting were?

18 A No, sir.

19 Q Were you in a position to observe
20 Mr. Poulston when the allegations were first made?

21 A The allegations first made, I don't
22 know the time frame.

23 Q Well, who was involved in this meeting
24 that you went to?

25 A It was Bob Hancock, Steve Winder and

1 myself.

2 Q And there came a point in time during
3 that meeting when you were told by either Mr. Hancock or
4 Mr. Winder some information about Mr. Poulston?

5 A Yes, I did.

6 Q And when was that in the course of the
7 meeting? In the beginning?

8 A It started for a few minutes, and then
9 they explained what had happened. There had been a phone
10 call that was accusing Charlie of taking property from
11 DuPont.

12 Q And were you in a position to observe
13 Charlie at the time that he heard that statement made?

14 A Yes. He looked like he was very
15 surprised of anything happening.

16 Q And what statements, if any, did
17 Mr. Poulston make in response to that allegation?

18 MR. SUTTON: Your Honor, I'm going to
19 object to any self-serving statements. These
20 are hearsay statements that are not admissible
21 into evidence.

22 MR. POCHUCHA: This is not a question
23 of them being offered at this point in time for
24 the truth of whether or not they were made--

25 THE COURT: How are they relevant?

1 MR. POCHUCHA: They're relevant to
2 corroborate that we expect to tie them up when
3 Mr. Poulston testifies in terms of what was
4 said at this meeting in terms of relevance,
5 Number 1, in terms of the effect upon him.
6 Number 2, in terms of his response initially
7 after learning the allegation.

8 MR. SUTTON: Your Honor, Mr. Poulston
9 can testify to that when he takes the stand,
10 but what Mr. Pochucha is attempting to do is
11 bolster his own witness's testimony by the
12 testimony of Mr. Greer. Under the rules of
13 evidence, he cannot bolster his own witness's
14 testimony until that testimony has been
15 impeached.

16 THE COURT: Well, I suppose it could be
17 a prior inconsistent statement if he's
18 representing that when he testifies--

19 MR. POCHUCHA: I'll withdraw the
20 question.

21 THE COURT: All right.

22 MR. POCHUCHA: And proceed on another
23 line.

24 BY MR. POCHUCHA: (cont'd)

25 Q During the course of this meeting, what

1 was the exact allegation that was made?

2 A That Charlie had taken some stainless
3 steel bolts and installed them in the motorcycle of
4 another individual at that time that we didn't know. I
5 didn't know who the other individual was at that time.

6 Q Did you come to learn who that other
7 individual was?

8 A Since that time, yes, I have.

9 Q Who was it?

10 MR. SUTTON: Object, Your Honor. He
11 needs to lay some foundation as to his
12 knowledge.

13 BY MR. POCHUCHA: (cont'd)

14 Q As the union president, what was your
15 involvement with this investigation? What were you to
16 do?

17 A Normally, I'm called in to represent
18 somebody if there's going to be some kind of formal
19 action taken, which we have a write-up procedure which is
20 toward dismissal. This type of case, if the allegations
21 have been true, would be a dismissal-type case. I'm
22 brought in to defend the person at that time.

23 Q If the allegations were found to be
24 true and there would be a dismissal, would or would not
25 the pension benefits of the employee be terminated, as

1 well?

2 MR. SUTTON: Objection. Not only is he
3 leading the witness, but he's asking him to
4 speculate.

5 MR. POCHUCHA: That's not speculation
6 and it's not leading because I asked him would
7 or would not. It does not suggest the answer.
8 Secondly, he's a union representative who is
9 charged with the duty for knowing those. He
10 just said that he's the president of the union,
11 and that's his function is to--

12 MR. SUTTON: Your Honor, there's no
13 foundation to be able to -- that this witness
14 can testify as to what happened to Mr.
15 Poulston's pension would or should the
16 allegation have been true.

17 MR. POCHUCHA: I thought there was. If
18 the Court desires--

19 THE COURT: What's the use of it to the
20 jury on the issues in this case if that's the
21 case anyway?

22 MR. POCHUCHA: I think it goes to the
23 severity of the allegation that was made and to
24 the mental anguish that one would suffer. It's
25 one thing to face the loss of your job. It's

1 another thing to face the loss of your job and
2 pension and all your medical benefits.

3 MR. SUTTON: Your Honor, if that's the
4 case, he's asking this gentleman to testify as
5 to what Mr. Poulston would have felt, and he
6 cannot testify as to what Mr. Poulston would
7 have felt.

8 THE COURT: Well, if this happens or
9 could happen, it would be a basis to determine
10 whether or not Mr. Poulston was hurt as with
11 regard to being reasonable. The objection is
12 overruled.

13 BY MR. POCHUCHA: (cont'd)

14 Q Do you recall the question?

15 A You were talking about his pension.
16 Termination, you don't receive any pension until you're
17 age 62, and your pay is cut-off completely but of course
18 your pension is based on amount of years. He would not
19 receive anything at that time, he would receive it at age
20 62.

21 Q How about health insurance benefits?

22 A He would follow-out the month he was
23 terminated, and at that time his health insurance would
24 be terminated.

25 Q What other involvement did you have

1 with an allegation of theft, other than appearing at that
2 meeting?

3 A The only thing, I just heard some of
4 the talk that was going through the location. That's
5 basically it.

6 Q When you say heard talk that was going
7 through the location, you mean through your shop or
8 through the plant?

9 A Any time--

10 MR. SUTTON: Objection. He's leading
11 the witness again and asking for hearsay
12 statements.

13 THE COURT: I think that was leading.
14 Maybe you ought to repeat that question.

15 BY MR. POCHUCHA: (cont'd)

16 Q Where did you hear statements being
17 made?

18 MR. SUTTON: Again, I'm objecting.
19 He's assuming a fact that's not in evidence
20 that there were statements actually being made.

21 THE COURT: Statements about what?

22 MR. POCHUCHA: Madam court reporter,
23 would you read back the witness's last answer.

24 NOTE: The answer was read back by the
25 reporter.

1 MR. POCHUCHA: That's what I was
2 referring to.

3 THE COURT: Your objection is that the
4 question assumes something that's not in
5 evidence?

6 MR. SUTTON: Yes, Your Honor.

7 THE COURT: Objection is overruled.

8 A As being the union representative, when
9 I leave a meeting most of the time there's people
10 questioning me about what happened. There was some
11 people that looked like already had some knowledge of
12 what was going on. Did they accuse Charlie of stealing
13 something, or what's going on with the case? My
14 confidentiality, I will not do it, but a lot of people
15 already knew Charlie had been accused of stealing some
16 supplies.

17 Q Did they make any changes in the
18 security procedures as a result of these allegations or
19 at a time that it was the same time of the allegations
20 being made?

21 A I'm not sure I understand it. At the
22 time the allegations--

23 Q Well, at the time these allegations
24 were made was on or about May the 7th of '93; is that
25 correct?

1 A Um-hum.

2 Q Do you recall the amount of time that
3 transpired between May the 7th of '93 and the date you
4 went in there on that meeting?

5 A I don't know the exact dates at all.

6 Q When people at DuPont leave and go off
7 a shift, is there any sort of security to determine
8 whether or not they're leaving the plant with things that
9 they shouldn't be?

10 A There is a guard stationed at the gate.
11 If you're carrying anything, you have to open it up and
12 show it to him. Like your lunch box or a briefcase or
13 whatever you may have, you have to show it to the guard
14 as you leave to keep anybody from taking anything away
15 from DuPont. Yes.

16 Q Was there any change in that procedure
17 on or about the time that the allegations were issued
18 against Mr. Poulston?

19 A Not that I know of. No.

20 Q As the union representative, would you
21 or would you not follow through the investigation to its
22 conclusion?

23 A Yes, I would. If there's any further
24 investigation, I would be there. Yes.

25 Q And do you know as the union

1 representative how this investigation was concluded?

2 A They did not have any evidence of
3 Charlie taking anything away from the location.

4 Q And when is the last occasion that you
5 heard anyone mention this allegation had been made
6 against Mr. Poulston, outside of proceedings relating to
7 this legal proceeding?

8 A It's a few months ago. Just based on
9 the case coming up I was asked about it again.

10 Q Would that have been someone involved
11 as a witness here or someone outside of the witnesses?

12 A Someone outside of the witnesses. They
13 knew I had to come to court, so they were asking about
14 it.

15 Q From that meeting that occurred, did
16 anyone ever travel to Mr. Poulston's house?

17 A No. Charlie offered to let them go
18 check his garage, his house, anything they wanted to do
19 and they declined.

20 MR. POCHUCHA: Thank you, sir. I have
21 no further questions.

22

23 CROSS-EXAMINATION

24 BY MR. SUTTON:

25 Q Good afternoon. Sir, when you were

1 representing Mr. Poulston in the union -- was it a
2 hearing, formal hearing, is that what it was?

3 A Any time that somebody is called off
4 the job for anything, they are afforded union
5 representation, and Charlie asked for union
6 representation of me. So yes, just in a meeting.

7 Q And present at that meeting was
8 yourself, Mr. Poulston, Steven Winder and Mr. Hancock; is
9 that correct?

10 A Yes, sir.

11 Q Who is Mr. Hancock?

12 A Mr. Hancock is his first-line
13 supervisor. That's who he actually reports to.

14 Q Who is Mr. Winder?

15 A Mr. Hancock's boss.

16 Q And you were not made aware of the
17 allegations until you were told them at this meeting; is
18 that true?

19 A That is true.

20 Q And who told you that?

21 A It came out in the meeting. It was
22 either Winder or Hancock that explained that Charlie had
23 been accused of this.

24 Q Were you aware of how Mr. Winder and
25 Mr. Hancock were made aware of the allegation?

1 A During the meeting, they told us it was
2 through a phone call.

3 Q Was the phone call made to Winder and
4 Hancock, to your knowledge?

5 A Since that time I found out it was made
6 to Ernie Bolton.

7 Q In fact, it was Mr. Bolton who told
8 Mr. Winder about the phone call; is that not correct?

9 A As far as I know. That I don't know.

10 Q You said you've know Mr. Poulston for
11 23 years?

12 A Yes.

13 Q And you have a very high opinion of him
14 as both a person and employee of DuPont?

15 A Yes.

16 Q And I'm sure you still hold that
17 opinion today, do you not?

18 A Yes, I do.

19 Q When you heard this allegation, you
20 didn't believe it to be true, either, did you?

21 A No, sir.

22 Q And you referred earlier to -- there
23 was some testimony about a pension plan and what would
24 happen had Mr. Poulston been subsequently terminated from
25 his employment. Isn't it true, sir, that if you were to

1 retire today at the age of 41, you would not receive your
2 pension until the age of 62?

3 A That's correct.

4 Q If you were terminated today at the age
5 of 41, you would not receive your pension until the age
6 of 62; is that not correct?

7 A That is correct.

8 Q So, in fact, termination and retirement
9 have no bearing on when you receive your pension, you
10 receive your pension at the age of 62 no matter what?

11 A Well, you can retire at the age of 50
12 and receive a pension, but before that time it reverts to
13 age 62.

14 Q You said there are guards at the gate
15 who check you when you leave?

16 A Yes.

17 Q How many employees are there at DuPont?

18 A I would estimate 2,500 total employees
19 all around the clock.

20 Q Do they have three different shifts and
21 DuPont runs around the clock?

22 A Yes.

23 Q And 2,500 employees on one shift or
24 2,500 employees total?

25 A Total.

1 Q So approximately, maybe, a thousand
2 employees on a shift, depending on which shift it is?

3 A It's usually a larger amount of shift
4 on day work.

5 Q Because the management personnel--

6 A Management and technical and everybody
7 is there.

8 Q Is it your testimony the guards check
9 each and every person as they leave the gate?

10 A That is my testimony. Yes.

11 Q It is your testimony?

12 A Yes.

13 Q Do they go into your pockets and go
14 into your coats and all that?

15 A No.

16 Q They just ask you to open your lunch
17 box?

18 A Right.

19 Q You gave testimony where Mr. Pochucha
20 asked you had anybody asked you about this allegation,
21 and you said somebody asked you about it a few months
22 ago.

23 A You know, a few months ago I heard
24 about the case again coming up.

25 Q And they were asking you about coming

1 here to court today; is that not correct?

2 A Part of it. Part of it is was what
3 happened, but part of it was coming to court, what it was
4 about.

5 Q They were asking you about the court
6 case, itself?

7 A Some about the court case, the
8 allegations and all that.

9 Q Now, at the meeting, getting back to
10 the meeting you had with Mr. Hancock, Winder,
11 Mr. Poulston, himself, is there not a duty to keep those
12 meetings in confidence?

13 A Most definitely.

14 Q And would it be a cause for termination
15 if you or someone else were to breach that confidence to
16 an employee or a worker or anybody at DuPont?

17 A No.

18 Q You testified that individuals had
19 already became aware of the allegation that had been made
20 to Mr. Bolton before you went into the meeting?

21 A I don't know about the allegation of
22 Mr. Bolton, but they had been aware there was some
23 allegations made against Charlie, yes. Not before I went
24 in the meeting. After I came out, I started hearing
25 people asking questions about what happened.

1 Q So after you came out of the meeting,
2 and this was the first you had heard of it, people
3 started asking about what was going on with Mr. Poulston?

4 A Yes.

5 Q Do you remember what was said?

6 A Not 100 percent, no. They asked me,
7 and I do not breach confidentiality. They told me a lot
8 of things, and I do not always answer.

9 Q So you didn't tell them; that is right?

10 A Um-hum.

11 Q And Mr. Winder was sworn to
12 confidentiality; is that not correct?

13 A Mr. Winder is his own--

14 Q I'm not asking if Mr. Winder told them.
15 I'm asking is he under a duty to be confidential about
16 what goes on in a meeting?

17 A He should be, but I don't know of any
18 duty.

19 Q Is Mr. Hancock under a duty to not
20 breach the confidentiality of what happens in these
21 administrative meetings?

22 A I would hope so.

23 Q And of course you are, sir?

24 A Yes.

25 Q And so you don't know how these people

1 found out about that, do you?

2 A I do not.

3 MR. SUTTON: That's all I have, Your
4 Honor.

5
6 REDIRECT EXAMINATION

7 BY MR. POCHUCHA:

8 Q Is the amount of your pension dependent
9 upon the date of your retirement?

10 A The date of retirement. Total years
11 basically is what it is. It's also done on a system of
12 the P3, the best three years. If you were terminated
13 earlier, your pension would be greatly reduced.

14 Q Mr. Sutton asked you what people told
15 you about Charlie. What did they tell you?

16 A Some people--

17 MR. SUTTON: Objection as to what
18 people told him.

19 MR. POCHUCHA: Your Honor, Mr. Sutton
20 opened the door. He asked this question on
21 cross-examination.

22 THE COURT: As to what they told him?

23 MR. POCHUCHA: Yes, sir.

24 MR. SUTTON: I asked did you hear about
25 the allegations. I did not ask what those

1 allegations were, Your Honor. Now he's trying
2 to get into hearsay statements where I'd asked
3 were statements made.

4 THE COURT: The objection is overruled.

5 A They were asking me what was it that
6 happened with Charlie because Charlie doesn't go to the
7 office very often. Some people do. Some people even
8 asked me was he accused of stealing something, but it's
9 been a good while back. To tell you exactly
10 word-for-word, I couldn't do that.

11 MR. POCHUCHA: That's fine. I have no
12 further questions.

13
14 RE CROSS-EXAMINATION

15 BY MR. SUTTON:

16 Q Did any of these people ask you whether
17 or not Charlie was going to jail?

18 A No.

19 Q And they basically just wanted to know
20 what was going on?

21 A Well, may I elaborate for going to jail
22 for it? I don't know. DuPont would have to press
23 charges there. I don't know of anything about going to
24 jail.

25 Q From your conversation with them, did

1 these people tend to believe or disbelieve--

2 MR. POCHUCHA: I object. That calls
3 for speculation on the part of the witness.

4 THE COURT: Ask him if anyone told him
5 whether they believed--

6 BY MR. SUTTON: (cont'd)

7 Q Did anyone tell you whether they
8 believed these allegations or disbelieved these
9 allegations?

10 A They were just in a questioning mode.
11 I couldn't tell you whether they thought he did or he
12 didn't.

13 MR. SUTTON: That's all.

14 THE COURT: Thank you. Your next
15 witness.

16 MR. POCHUCHA: Bob Hancock.

17
18 WITNESS STOOD ASIDE

19
20 NOTE: Mr. Hancock was called into the
21 courtroom.

22 MR. POCHUCHA: Mr. Bolton and Mr.
23 Greer, I assume they're free to go. I have no
24 need to recall them.

25 MR. SUTTON: I have no need.

1 THE COURT: All right.

2
3 *****

4 ROBERT HANCOCK,
5 after having been first duly sworn,
6 testifies and says under oath as follows:

7 *****

8 DIRECT EXAMINATION

9 BY MR. POCHUCHA:

10 Q Would you state your full name for the
11 record.

12 A Robert L. Hancock.

13 Q And your age, sir.

14 A 51.

15 Q And your educational background.

16 A High school.

17 Q And would you tell the ladies and
18 gentleman where you're presently employed?

19 A DuPont.

20 Q How long have you been employed there?

21 A Almost 33 years.

22 Q And what are your duties there?

23 A I'm a maintenance supervisor.

24 Q And how long have you been a
25 maintenance supervisor?

1 A Almost 15 years.

2 Q Do you know the plaintiff, Charles
3 Poulston?

4 A Yes, sir, I do.

5 Q How long have you known him?

6 A Since he was about 18 years old.

7 Q Do you know his father?

8 A Yes, I do.

9 Q How do you know his father?

10 A I worked for him.

11 Q During the time you've known Charlie
12 Poulston, have you ever known his integrity or honestly
13 to be questioned?

14 A No, sir.

15 Q Did you come to learn of an allegation
16 of a theft that had been made concerning Charlie Poulton?

17 A Yes, sir.

18 Q How did you come to learn that?

19 A Through my immediate supervisor.

20 Q And who was that?

21 A Steve Winder.

22 Q And were you involved in the
23 investigation of that allegation?

24 A Yes, sir, I was.

25 Q Would you tell the ladies and gentleman

1 of the jury what involvement you had with the
2 investigation of the allegation.

3 A It was my responsibility to bring
4 Charlie in offering union representation and let him know
5 of the allegations that had been made against him and the
6 ramifications around such allegations.

7 Q Were you present at any meetings where
8 the allegations were presented to Mr. Poulston?

9 A Yes, sir, I was.

10 Q Was that the first meeting at which the
11 allegations were made known to Mr. Poulston or a later
12 meeting or do you know?

13 A It was the only meeting I know of.

14 Q Were you in a position to observe
15 Mr. Poulston when the allegations were made known to him?

16 A Yes, sir, I was.

17 Q Would you describe his demeanor upon
18 learning of the allegations.

19 A He smiled, laughed.

20 Q And what statements, if any, did he
21 make at that point?

22 MR. SUTTON: Again, same objection.

23 MR. POCHUCHA: Withdraw the question,

24 Your Honor.

25 BY MR. POCHUCHA: (cont'd)

1 Q Did you ever go to Mr. Poulston's home
2 or garage to see if there was any DuPont property there?

3 A No, sir.

4 Q Why not?

5 A It's not my responsibility.

6 Q Were you ever provided with an
7 opportunity to do that?

8 A No, sir.

9 Q What did the investigation of these
10 allegations entail?

11 A The allegations were made, and it was
12 our responsibility to ask Charlie about the allegations
13 and inform him of what could happen to him if they were
14 true.

15 Q Do you know how the investigation was
16 completed?

17 A Yes, sir.

18 Q And how was that?

19 A We asked Charlie about the allegations.
20 He adamantly denied them. We informed him of what could
21 happen to his job if something like that was true, and
22 that is an act of serious misconduct which could lead to
23 discharge.

24 Q Were any changes in the security at
25 DuPont made at or about the time of the allegation being

1 made against Mr. Poulston?

2 MR. SUTTON: I'm going to object unless
3 he can lay a foundation that this gentleman has
4 firsthand knowledge as to how the security
5 system works at DuPont. He can then ask that
6 question.

7 THE COURT: What's the relevance of
8 that anyway? DuPont is not the plaintiff here.

9 MR. POCHUCHA: The relevance would be
10 that as a result of these allegations, for a
11 period of time they doubled up the guards on
12 certain doors by doubling--

13 THE COURT: What's the relevance?

14 MR. POCHUCHA: By doubling up the
15 guards on certain doors, everybody in the plant
16 that went out those doors said, look, two
17 guards here, what's going on? Therefore, when
18 they inquired what was going on, what they
19 heard was allegations had been made about
20 Charlie Poulston having stolen property and
21 therefore, the knowledge of this allegation was
22 why it spread through the plant.

23 MR. SUTTON: Your Honor, until Mr.
24 Pochucha can put on some evidence to show that
25 that is exactly why they doubled up the

1 security and the people actually knew inside
2 the plant, besides the four gentlemen who were
3 at the administrative hearing, then that is not
4 relevant and he's not laid a foundation as to
5 present that evidence.

6 THE COURT: What is the question again?
7 Were there any--

8 MR. POCHUCHA: --increases in security
9 near the time the allegations were made.

10 THE COURT: I'm going to allow this.
11 Can you answer that question, sir?

12 THE WITNESS: Would you repeat it,
13 please.

14 THE COURT: Was there any increase in
15 security after this incidents?

16 THE WITNESS: Not to my incident.

17 BY MR. POCHUCHA: (cont'd)

18 Q How many gates are there for people
19 leaving the plant?

20 A Including the construction, there's
21 approximately five.

22 Q And are there guards on each of those
23 gates?

24 A Yes.

25 Q Is there one or two guards?

1 A Usually one.

2 Q During the time these--

3 A I beg your pardon. I've got to back up
4 on that. There are two, depending on the hours. We have
5 hours where there are guards on the gate. Regular hours
6 there are guards on the gates, but on off hours there are
7 not guards.

8 Q During May of 1993, was there ever a
9 period of time when there were more guards on the gates
10 than normal would be?

11 A Not to my knowledge.

12 MR. POCHUCHA: I have no further
13 questions.

14
15 CROSS-EXAMINATION

16 BY MR. SUTTON:

17 Q Mr. Hancock, you are Mr. Poulston's
18 immediate supervisor?

19 A Yes.

20 Q What area of DuPont is that?

21 A Field maintenance.

22 Q And you said you've known Mr. Poulston
23 since he was 18 years old?

24 A Yes.

25 Q And it's your testimony today that his

1 reputation for integrity and honesty is immaculate?

2 A To my knowledge.

3 Q And what are you basing that on?

4 A Inference, rumor, knowing his father,
5 knowing his uncles, him reporting to me.

6 Q Were you aware, sir, that he was jailed
7 for non-payment of child support?

8 MR. POCHUCHA: I object. That's
9 entirely an improper question.

10 MR. SUTTON: He has opened the door.
11 He has put this man--

12 MR. POCHUCHA: I would like to be heard
13 outside the presence of the jury.

14 THE COURT: Step back in the jury room,
15 please.

16 NOTE: The jury retires to the jury
17 room.

18

19

20

21

22

23

24

25

1 JURY ABSENT

2 MR. POCHUCHA: That is an improper
3 question. It is not based on truth in the
4 second place, and it is not a proper subject of
5 examination. It intends to be prejudicial, as
6 well.

7 MR. SUTTON: Your Honor, he has opened
8 the door. He's put this man on to testify as
9 to Mr. Poulston's integrity and honesty. I, as
10 counsel for Mr. Rock, have the ability or have
11 the right to cross-examine how he forms this
12 opinion and would it change should he know
13 certain facts.

14 THE COURT: Well, he says it's not
15 based on truth. Do you have any indication or
16 evidence that this, in fact, is the case?

17 MR. SUTTON: I have no evidence here
18 with me today. No.

19 THE COURT: Why do you ask the question
20 if you don't know if it's true or not?

21 MR. SUTTON: I've been informed by
22 co-counsel that is, in fact, the case from
23 previous proceedings involving Mr. Poulston.

24 THE COURT: But you've never seen any
25 court records?

1 JURY ABSENT

2 MR. SUTTON: No. I have no court
3 records or any physical evidence to
4 substantiate it. Only the proffer by
5 co-counsel.

6 THE COURT: Do you know where
7 co-counsel may have got it?

8 MR. SUTTON: Right here.

9 THE COURT: The question is, I think if
10 there's some basis for the question it perhaps
11 may be appropriate, but if it's just like have
12 you ever beat your wife or whatever--

13 MR. SUTTON: That's not what I'm
14 asking. Your Honor, if we can voir dire Mr.
15 Poulston and ask him whether or not that is, in
16 fact, true. If he wants to get up here under
17 oath and deny that fact, then I won't explore
18 it anymore.

19 THE COURT: Well, maybe you'll have an
20 opportunity to ask him that, but I don't know
21 if we ought to stop now and voir dire him over
22 this question. If there's no basis for it, if
23 there's no suggestion that this might be, in
24 fact, the case, I don't know if it would be a
25 proper thing to expose this issue. It may not

1 JURY ABSENT

2 be true. I would expect you've done some
3 investigation to track it down to see whether
4 or not there's a reasonable probability that
5 something like that did happen. But if there's
6 no such indication that it did, then it's
7 speculative and potentially prejudicial if
8 there's no linkage, no indication such a thing
9 occurred.

10 MR. SUTTON: Yes, Your Honor.

11 THE COURT: Bring the jury in.

12 MR. POCHUCHA: Judge, would the Court
13 advise the jury that the question is improper?

14 THE COURT: The question wasn't
15 answered. It was asked. Do you want me to
16 tell them to disregard the question.

17 MR. POCHUCHA: Yes.

18 THE COURT: All right. Bring the jury
19 in, if you would.

20 NOTE: The jury has returned to the
21 jury box.
22
23
24
25

1 JURY PRESENT

2 THE COURT: Ladies and gentlemen,
3 disregard counsel's last question. You can
4 proceed, Mr. Sutton.

5 BY MR. SUTTON: (cont'd)

6 Q Mr. Hancock, I asked you earlier or you
7 testified earlier, rather, that you felt that Mr.
8 Poulston was a person of high integrity and
9 unquestionable honesty; is that not correct?

10 A With my involvement with Charlie.

11 Q Has your opinion of him changed at all?

12 A No, sir.

13 Q Did you believe or disbelieve the
14 allegation once you found out what the allegation was?

15 A I didn't have an opinion either way.

16 Q As a result of the allegation, was
17 Mr. Poulston given a cut in pay?

18 A No.

19 Q Did he lose any benefits?

20 A No.

21 Q Did he lose any retirement?

22 A No.

23 Q Was he demoted?

24 A No.

25 MR. SUTTON: That's all the questions I

1 have.

2 MR. POCHUCHA: Nothing further for the
3 witness, Your Honor.

4 THE COURT: Thank you, Mr. Hancock.

5
6 WITNESS STOOD ASIDE

7
8 MR. POCHUCHA: I assume this witness
9 may be excused?

10 THE COURT: Yes, Mr. Hancock. You're
11 free to go if you wish. Counsel, it's almost
12 12:00. We'll take a brief recess here for 10
13 minutes. Ladies and gentlemen, during this
14 recess don't discuss the case. You can go to
15 the jury room or out in the hall, whatever you
16 wish.

17 (Break taken.)

18 THE COURT: Mr. Pochucha, your next
19 witness, sir.

20 NOTE: Mr. Burleson was called into the
21 courtroom.

MARK BURLESON,

after having been first duly sworn,
testifies and says under oath as follows:

DIRECT EXAMINATION

BY MR. POCHUCHA:

Q Would you state your full name.

A Mark Douglas Burleson.

Q Where do you reside?

A Where do I reside now?

Q Yes.

A 4248 Richmond Road.

Q Are you familiar with Mr. Poulston, the
plaintiff in this case?

A Yes, sir.

Q How did you come to know him?

A Through Mr. Rock.

Q How did you come to know Mr. Rock?

A I used to live at his house.

Q And for what period of time did you
live there?

A For about a year.

Q And did you have occasion to be present
at Mr. Rock's house when certain conversations took place

1 concerning the painting of the motorcycle?

2 A Yes, sir.

3 Q Did you testify in the case that
4 involved painting the motorcycle?

5 A Yes, sir.

6 MR. SUTTON: If I may, I don't
7 understand how this is relevant to what went on
8 with DuPont.

9 THE COURT: What is the relevance?

10 MR. POCHUCHA: Well, the whole reason
11 that the call was made it was because--

12 THE COURT: It may be. Why do you have
13 to hear from him?

14 MR. POCHUCHA: I'll tie that up if I
15 can have just a little--

16 THE COURT: Does he know something
17 about the allegations here today?

18 MR. POCHUCHA: He knows something about
19 the ill will that exists between the parties.

20 MR. SUTTON: Your Honor, we will be
21 glad to stipulate there is ill will, bad blood,
22 however Mr. Pochucha would like to define it,
23 between Mr. Rock and Mr. Poulston if that would
24 do away with this witness.

25 THE COURT: Are you willing to accept

1 that?

2 MR. POCHUCHA: No, sir. I prefer to
3 put on my -- it won't be long.

4 THE COURT: All right. Go ahead.

5 BY MR. POCHUCHA: (cont'd)

6 Q You testified both in general district
7 court and circuit court?

8 A No, just the one. I had to be in court
9 for the second time myself.

10 Q And did you have occasion to see
11 Mr. Rock subsequent to the judgment being entered against
12 him?

13 A Yes, sir.

14 Q And where was that?

15 A At Ryan's Steakhouse.

16 Q And do you recall about when that was?

17 A Not right off the top of my head.

18 Q Did Mr. Rock at that point in time make
19 any statements to you about Mr. Poulston?

20 A Yes. He come up to the salad bar and
21 had a knife under his plate and put it in my side and
22 said he was going to do bodily injury to me or kill me
23 and that he was going to do the same to Mr. Poulston.

24 Q And were you still living at his
25 residence at that point in time?

1 A No.

2 Q Did you ever see him subsequent to that
3 point in time?

4 A No.

5 MR. POCHUCHA: That's all the questions
6 I have at this time.

7

8 CROSS-EXAMINATION

9 BY MR. SUTTON:

10 Q Mr. Burleson, you're a former tenant of
11 Mr. Rock's?

12 A Yes, sir.

13 Q And he asked you to leave--

14 THE COURT: What is your name again?

15 THE WITNESS: Burleson.

16 A He got hostile when we come back. My
17 wife and I, we told him we were moving because we had
18 found an apartment.

19 Q Yes or no. Did he expel you--

20 MR. POCHUCHA: I object. He's not
21 allowed the witness to answer the question.

22 Q I asked him yes or no. Were you
23 expelled from Mr. Rock's premises?

24 A After we told him we were moving.

25 Q You're a former employee of him also;

1 is that not correct?

2 A If you want to call it that. He never
3 paid me.

4 Q Did you work at his motorcycle shop?

5 A Yes, sir.

6 Q Did he fire you or ask you to leave his
7 place of employment?

8 A No, he did not. I quit.

9 Q You quit. Was there not some bad blood
10 between you and Mr. Rock as to why you left his place of
11 employment?

12 A No, there was not. I told him I was
13 quitting because I had a girlfriend, and I didn't have
14 time to spend with her and I was no longer going to work
15 there.

16 Q Isn't it true Mr. Rock accused you of
17 stealing from him and that's the reason why you left?

18 A No, sir.

19 Q He never accused you of stealing from
20 him?

21 A No, sir.

22 Q Do you remember a break-in in one of
23 Mr. Rock's residence?

24 MR. POCHUCHA: This is--

25 MR. SUTTON: It goes to bias.

1 MR. POCHUCHA: --beyond the scope of
2 cross-examination. If Mr. Sutton cares to make
3 him his witness, that's another matter.

4 THE COURT: He's representing this goes
5 to whether or not the witness is bias,
6 prejudice against the defendant.

7 BY MR. SUTTON: (cont'd)

8 Q Do you remember a break-in at one of
9 Mr. Rock's residences?

10 A Yes, sir.

11 Q Was there not a file claimed with his
12 homeowner's insurance?

13 A Yes.

14 Q Did you not call his home insurance
15 carrier and tell him that this break-in was, in fact,
16 fabricated?

17 A Yes, sir. The break-in was fabricated.

18 Q Yes or no. Did you call his--

19 A Yes, I did.

20 Q Sir, at Ryan's Steakhouse, is it your
21 testimony that Mr. Rock took a knife and stuck it in your
22 side and threatened to do bodily injury to you at the
23 salad bar?

24 A Yes, sir.

25 Q And was Mr. Rock alone?

1 A No, sir. There was another person
2 setting over at another table. He went back and joined
3 after this happened.

4 Q Have you ever been convicted of a
5 felony?

6 A No, sir.

7 Q Have you ever been convicted of a
8 misdemeanor involving lying, cheating or stealing?

9 A No, sir.

10 MR. SUTTON: That's all I have.

11

12 REDIRECT EXAMINATION

13 BY MR. POCHUCHA:

14 Q Mr. Burleson, tell the ladies and
15 gentleman of the jury the circumstances of your having
16 called Mr. Rock's homeowner's insurance company.

17 A He sold his bike shop, and he had a
18 bunch of stuff in his jeep that he said was broken into.
19 About a month later, he brought me up behind his garage
20 and said, look, I kicked the door in and put a bunch of
21 parts under the back porch of the house to try to collect
22 more money because they weren't going pay for what was
23 stolen out of his truck. When we moved, I got to
24 thinking about it, that this wasn't right, that that's
25 why we're all paying higher premiums on our insurance.

1 MR. POCHUCHA: Thank you, sir.

2 THE COURT: Thank you, Mr. Burleson.

3 You may step down.

4 MR. POCHUCHA: I ask that Mr. Burleson
5 remain.

6 THE COURT: If you would step outside
7 and remain there and don't discuss your
8 testimony.

9

10 WITNESS STOOD ASIDE

11

12 MR. POCHUCHA: Mr. Poulston, Your
13 Honor.

14

15 *****

16 CHARLES POULSTON,
17 after having been first duly sworn,
18 testifies and says under oath as follows:

19 *****

20 DIRECT EXAMINATION

21 BY MR. POCHUCHA:

22 Q Mr. Poulston, would you state your full
23 name for the record.

24 A Charles Poulston, Jr..

25 Q What is your age?

1 A 43.

2 Q Would you tell the ladies and gentleman
3 of the jury what your educational background is.

4 A 12th grade.

5 Q How did you come to go to work at
6 DuPont?

7 A My father had been down there for 40
8 some years, and he said they had openings coming up. If
9 you want the job, come on down. So I applied and was
10 hired.

11 Q How old were you when you first went to
12 work there?

13 A 18.

14 Q And what was the first job that you had
15 there?

16 A I worked in the nylon denier room.

17 Q What is the nylon denier room?

18 A They make tire cord. In the denier
19 room you have to analyze it to make sure it had no
20 physical properties before it went to the customer.

21 Q Would you tell the ladies and gentleman
22 of the jury briefly what your course of advancement has
23 been at DuPont through the years.

24 A I worked in the denier room for
25 approximately three or four months. Then they had a

1 layoff at DuPont. I got called back to a lower paying
 2 job, which you progress and digress by seniority. The
 3 last in the gate is the first out of the gate. I spent
 4 like two or three months in the beaming area, which is a
 5 demotion. I was laid off for three months. I was
 6 rehired and brought back on a recall. I came back into
 7 the beaming area. I went to the denier room. Then I
 8 went in the service for six months. I came back. I came
 9 back as group force spinner in nylon spinning. I stayed
 10 there about two years. Then I was promoted by seniority
 11 and taking tests and went to the control lab which
 12 analyzes all the products for DuPont that are made. I
 13 stayed there two years, and I had the option to go to a
 14 higher paying job in the CP area. I stayed there six
 15 months, and an opening came up in maintenance. I went to
 16 maintenance in June of '76.

17 Q What do you do at maintenance?

18 A I was a pipe fitter for 13 years. I've
 19 been a welder for the last six or seven years.

20 Q Do you have any extra curricular
 21 activity that you were involved in at DuPont?

22 A I've been in Fabricated two or three
 23 years; safety committee, three years; 3,000 Day Club
 24 committee for the last four years.

25 Q What is the 3,000 Day Club committee?

1 A Anyone whose got 3,000 safe working
2 days is honorarily put into this committee or group.
3 Four times a year the company throws like a big picnic or
4 cookout. Only people in maintenance that are qualified
5 can go to it through this program.

6 Q Do you have any involvement with the
7 union?

8 A I've been a union steward for four
9 years in the welding shop.

10 Q What's a union steward?

11 A Basically, what Jimmy Greer was
12 earlier. He's president of the whole union. I'm like in
13 charge of welders. Any problems they have I try to help
14 out amongst themselves or with other areas. I take it to
15 my level, then I have to go to the director when it gets
16 out of my hands.

17 Q Does the company appoint you to that
18 position?

19 A Elected by your peers.

20 Q During the time that you've been at
21 DuPont, are you aware of any allegations, other than this
22 one that's been made by Mr. Rock, challenging your
23 honesty or integrity?

24 A No, sir.

25 Q Would you tell the ladies and gentleman

1 of the jury about what your involvement with motorcycles
2 is.

3 A I've ridden since I was 15 years old.
4 I built two from the ground up. It's just a hobby. I
5 enjoy working on them and riding on them.

6 Q Tell the ladies and gentleman of the
7 jury what this is.

8 NOTE: Counsel holds up a photograph.

9 A It's the last one I built.

10 Q And when you say built it, what did you
11 do to it to build it?

12 A You acquire parts from anywhere and
13 everywhere, just assemble it from boxes, whatever.

14 Q When you build a motorcycle like that,
15 is there any requirement that you keep receipts for your
16 materials?

17 A It is required by DMV that you have
18 receipts for any and all major items in order to have it
19 titled when you request a title for it.

20 Q I hand you this stack briefly. What is
21 that?

22 NOTE: The documents are handed to the
23 witness.

24 A Bolts, nuts and washers was in question
25 here. I went back through my receipts, which I've kept

1 since 1988, every receipt, and this is just a list of any
2 item that listed a nut, bolt, washer or car key which I
3 had purchased, which was chrome and not stainless steel.
4 I do have receipts for it.

5 MR. POCHUCHA: I move that this stack
6 of documents be moved into evidence
7 collectively as Plaintiff's Exhibit 1.

8 MR. SUTTON: Your Honor, I'm going to
9 object. First, I don't see the relevance.
10 Secondly, these are copies and not the
11 originals. They're hearsay evidence.

12 THE COURT: What are these again?

13 MR. POCHUCHA: These are receipts for
14 different parts, including nuts and bolts that
15 Mr. Poulston has bought over the years. The
16 allegation that Mr. Rock made of theft of nuts
17 and bolts from the DuPont Corporation,
18 stainless steel nuts and bolts, and this is--

19 MR. SUTTON: He's offering these
20 receipts for the truth of the matter. These
21 are copies of originals, which I don't know if
22 were manufactured from Mr. Poulston or Mr.
23 Rock, or anybody these receipts could have been
24 manufactured by. They're hearsay because he's
25 offering these receipts for what they stand

1 for, and he's offering them for the truth,
2 and--

3 THE COURT: Well, there has been no
4 evidence that they have been authenticated,
5 that they were receipts given by whomever, are
6 they? There's no one here to say that these
7 receipts were produced by whoever gave them,
8 are they?

9 MR. POCHUCHA: No, sir, but I don't
10 think in this instance what they are are to
11 identify. Plaintiff has gone through them and
12 marked in red, and I can have him go through
13 them individually and demonstrate to the ladies
14 and gentlemen of the jury which items represent
15 nuts and bolts that he's purchased. Well, let
16 me withdraw the motion to introduce it at this
17 time, Your Honor, and we'll go through them one
18 at a time if that's what's required.

19 THE COURT: I don't know what's
20 required. I mean, the objection in part was
21 that there's no evidence of their authenticity.

22 BY MR. POCHUCHA: (cont'd)

23 Q Hold up the first sheet that you have
24 there, and you have a red mark pointing out. What does
25 that red mark represent, Mr. Poulston?

1 A It indicates a part that was purchased;
2 that is, a chrome--

3 MR. SUTTON: Your Honor, I'm still
4 going to have to object to him testifying from
5 the receipts. First of all, these are receipts
6 pertaining to an alleged motorcycle that Mr.
7 Poulston has, and I fail to see the relevance
8 of that. Secondly, he's testifying from
9 hearsay, and that's what my objection is, that
10 these receipts are, in fact, hearsay unless he
11 can bring in somebody who actually issued the
12 receipt.

13 THE COURT: Ladies and gentlemen of the
14 jury, step back in the jury room, please.

15 NOTE: The jury retires to the jury
16 room.

1 JURY ABSENT

2 MR. POCHUCHA: Your Honor, if I may,
3 these documents, at this point in time, are not
4 being offered into evidence. The documents are
5 in Mr. Poulston's possession merely to refresh
6 his recollection in terms of the items that he
7 purchased and he paid for himself and exactly
8 what those items are. He's certainly entitled
9 to testify of his own accord as to the items
10 that he purchased. And certainly these items,
11 while not being offered into evidence, are
12 available to refresh his recollection of what
13 he purchased.

14 THE COURT: He never said he didn't
15 remember what he did.

16 MR. POCHUCHA: I can go through that,
17 Judge. You can see there's a stack of probably
18 25 to 30 documents.

19 THE COURT: May I see these.

20 NOTE: The documents are handed to the
21 Court.

22 MR. POCHUCHA: These are copies of the
23 copies.

24 THE COURT: Can't you just have him
25 testify that he bought these items on such and

1 JURY ABSENT

2 such a date? What did you do with regard to
3 acquiring parts and other implements for this
4 machine? What bike is this?

5 MR. POCHUCHA: These are probably
6 various bikes.

7 THE WITNESS: This is the same
8 motorcycle we were in here before on the paint
9 job.

10 THE COURT: I thought the allegation is
11 that Mr. Rock called DuPont and complained that
12 Mr. Poulston was taking parts from DuPont and
13 gave those same parts to Mr. Rock so that Rock
14 put them on his bike.

15 MR. POCHUCHA: That's right.

16 THE COURT: But now you've got him
17 testifying about parts he's acquired for his
18 own bike.

19 MR. POCHUCHA: Right. When he gets
20 these parts you don't use all the bolts.
21 They're the extras, the here and there, and he
22 accumulates them at his home. He will be
23 testifying in that regard, as well.

24 THE COURT: You've got him going back
25 into '91.

1 JURY ABSENT

2 MR. POCHUCHA: Right. That shows how
3 meticulous he is when someone is going to steal
4 bolts and keep records of their other bolts and
5 nuts that they buy for themselves back to '89.
6 That's the whole purpose for this testimony.
7 It's corroborative of the fact that the
8 statement is false. After all, we do have the
9 obligation to show that it's false. I accept
10 that, and the defendant does not have an
11 affirmative obligation to show that it's true.

12 MR. SUTTON: If I may, if Mr. Poulston
13 would like to go through those receipts and
14 pull out the ones where he actually bought
15 stainless steel bolts and have some relevance
16 to this case, I'll be glad to sit here while he
17 does that. The fact that he's showing receipts
18 for chrome bolts that he may or may not have
19 bought, his name is not even on a lot of these
20 receipts. And how do we know he just not
21 picked these receipts up from a friend or
22 picked them up from another place or whatever.
23 There's no foundation, whatsoever, first to
24 admit them--

25 MR. POCHUCHA: The question is not the

1 JURY ABSENT

2 admissibility of these documents at this point
3 in time. The question before the Court is
4 whether or not that Mr. Poulston can use these
5 to refresh his recollection in terms of
6 testifying as to what nuts and bolts he has
7 purchased over the years.

8 MR. SUTTON: I agree that he can use
9 this to refresh his memory, Your Honor, but my
10 objection then becomes what is the relevance of
11 it because we're talking about two different
12 motorcycles. If Mr. Poulston wants to testify
13 to the fact that he has built motorcycles and
14 when he builds them there are extra parts left
15 over, then he can testify to that. I think
16 that's all Mr. Pochucha can explore in regards
17 to this matter.

18 THE COURT: Well, I see. Why don't you
19 have him testify about what he has done -- I
20 see some of these receipts go back to '87.

21 THE WITNESS: When I was originally
22 carried in the office, it was explained to me
23 that I had been placing stainless steel bolts
24 on my motorcycle. That's why I offered to let
25 them go to my garage right then and look at it.

1 JURY ABSENT

2 That's why I got all of these receipts
3 together. I later found out I was accused of--

4 MR. POCHUCHA: Mr. Rock's testimony is
5 going to be, if he testifies as he did at
6 deposition, and that remains to be seen, that
7 his statement would be that Mr. Poulston got
8 stainless steel bolts all the time, just boxes
9 and boxes of them. It's not just a question of
10 him--

11 THE COURT: The allegation in the
12 pleading was that he got a specific set of
13 bolts and a plate or something, and he goes to
14 Rock and Rock put them on his bike.

15 MR. POCHUCHA: That's all he said at
16 the time of the call, but then in exploring
17 that what he's going to say is that Mr.
18 Poulston had a continuous pattern of getting
19 bolts. I expect he'll bring in a witness who
20 expects to corroborate his testimony and say,
21 yes, he gave him bolts, too, and these are
22 bolts that didn't go on the other motorcycle.

23 MR. SUTTON: If that be the case, Mr.
24 Pochucha can bring him back on rebuttal. At
25 this point, I don't see the relevance of any of

1 JURY ABSENT

2 those receipts.

3 THE COURT: Here's a receipt here,
4 April 25th, 1991, 1HBM/C Number 450208, \$79.95.
5 Are you going to have him testify about that,
6 or two frame cable clamps, \$29.95?

7 MR. POCHUCHA: Basically what I was
8 going to have him testify to, you'll see some
9 arrows in here. Those are things that had nuts
10 and bolts on them.

11 THE COURT: If you want to proceed in
12 this manner and given your objections about the
13 -- I think he can testify about what he did and
14 what he purchased.

15 MR. SUTTON: I agree.

16 THE COURT: And if you want to have him
17 walk through these and testify about what he
18 purchased on such and such a date, you can do
19 so. Just have him testify. If you want to
20 take the jury's time up with this, that's your
21 matter. You're just trying to show that
22 there's been a pattern and practice on his part
23 to buy parts for the machines and so forth.

24 MR. SUTTON: Your Honor, I just note
25 for the record that I feel like this is not

1 JURY ABSENT

2 relevant to this matter and duly note my
3 objection.

4 THE COURT: I'm told that they expect
5 Mr. Rock to testify that this has been a
6 practice that reached beyond and before the
7 specifics in the allegation, the specifics in
8 the defamatory allegation that he knew that Mr.
9 Poulston was taking things for years; is that
10 right?

11 MR. SUTTON: That has not been the
12 evidence so far. I think the evidence so far
13 presented by plaintiff has been that Mr. Rock
14 made a call to DuPont and said that I have been
15 supplied with stainless steel bolts.

16 THE COURT: Um, hum.

17 MR. SUTTON: And actually there's not
18 been any evidence that Mr. Rock made a phone
19 call. There's just been evidence of a phone
20 call. I don't see what the relevance is.

21 MR. POCHUCHA: I believe Mr. Bolton
22 testified--

23 THE COURT: What?

24 MR. SUTTON: I just don't see the
25 relevance of it.

1 JURY ABSENT

2 THE COURT: I understand your
3 objection, but he's representing that he
4 expects Mr. Rock to testify more broadly than
5 what the allegations are. I'm wondering if
6 that ought to be permitted over objection
7 because we ought to focus on what the
8 allegations are in this case. If Rock
9 testifies in a manner in which you described,
10 I'm wondering why you shouldn't object to it.
11 But if you say he won't, I don't know. I'll
12 have to deal with that when it comes. But the
13 way the issues are framed in this lawsuit, the
14 basis is obviously on the allegation. You've
15 only alleged a single incident of acquiring
16 bolts for this single bike and that bike was
17 Mr. Rock's. Now, to go back to '87 and talk
18 about a clamp that he bought for some bike of
19 his own or some other project which predated
20 this incident by six years, I question whether
21 that will go too far afield.

22 MR. POCHUCHA: Judge, I'll try to keep
23 it brief. I'm not going to go through each one
24 of these.

25 THE COURT: All right. Bring the jury

1 JURY ABSENT

2 back in.

3 NOTE: The jury returns to the jury
4 box.

5
6 JURY PRESENT

7
8 BY MR. POCHUCHA: (cont'd)

9 Q Mr. Poulston, during the course of your
10 working on motorcycles, how do you accumulate parts?

11 A Buying them at swap shows, flea
12 markets, motorcycle flea markets. Bike shows have new
13 and used parts for sale.

14 Q Do you follow any pattern in the
15 purchase of these parts?

16 A No, not basically a pattern, just
17 whatever you need is what you look for. You follow a
18 pattern of where you look, I would imagine.

19 Q Do you keep records of the parts that
20 you buy?

21 A Every part I buy.

22 Q Why do you do that?

23 A In case there's ever any question. I
24 have the part, how much it cost. I have invested in the
25 motorcycle. I have receipts to show you what I invested

1 in it.

2 Q That stack of documents you have in
3 your hands there, what are those documents?

4 A These are receipts for new items and
5 used items that I've purchased for this last motorcycle
6 you have the picture of in the process of building it
7 from back in 1987.

8 Q This one motorcycle? (Indicating.)

9 A Yes. This is not all of them. This is
10 just some that depict bolts, nuts, washers. There are
11 more at the house, but like I say, I had to go through
12 DMV where they put the stamp on it.

13 Q And are all the bolts, nuts and parts
14 that are represented on those documents, were they all
15 used on this motorcycle?

16 A At one time or another.

17 Q Did you have any extra that weren't
18 used?

19 A Yes.

20 Q What do you do with those?

21 A Put them in a box in the garage.

22 Q And what's the purpose for having them
23 in the box in the garage?

24 A I personally have had three accidents
25 on motorcycles in three years. When you go down and tear

1 up stuff, you always need to replace it. You take the
2 old stuff off and put it in a box and take the new bolts
3 out you had left over prior to that and you can then use
4 them.

5 Q Have you gone through those receipts to
6 determine how which of those receipts indicate that there
7 are bolts that were purchased and nuts?

8 A 90 percent of what is here indicate
9 bolts and nuts and washers.

10 Q And what period of time do those
11 records reflect?

12 A From 1987 until like 1992 or '93,
13 possibly '94.

14 Q And have you had occasion to take some
15 photographs of parts that you have at home?

16 A Yes, sir.

17 NOTE: Counsel peruses the photographs.

18 MR. SUTTON: Your Honor, may I
19 approach?

20 NOTE: Counsel approach the bench.

21 MR. SUTTON: I don't see the relevancy
22 of these pictures of the motorcycle that's in
23 question. I don't see what that has to do with
24 the statement.

25 MR. POCHUCHA: Those are the parts that

1 he has accumulated; and that if someone might
2 need the part, he gave it to him, and if he has
3 an extra, if he has a wreck, he uses those
4 parts.

5 THE COURT: I'm going to let him do it.

6 MR. SUTTON: I'm sorry?

7 THE COURT: I'm going to let him see
8 them.

9 MR. POCHUCHA: Your Honor, may I have
10 the witness approach the jurors so he may
11 display these photographs?

12 THE COURT: You may step out of the
13 witness box.

14 NOTE: At this time, the witness
15 approaches the jury box to display the
16 photographs.

17 BY MR. POCHUCHA: (cont'd)

18 Q Would you go through each of these
19 photographs briefly and hold them up and show the ladies
20 and gentleman of the jury the photographs and tell them
21 what they depict.

22 A This is just a box of bolts and parts
23 of the items. Sometimes you buy one part for a
24 motorcycle--

25 MR. CATLETT: Your Honor, I'm going to

1 note an objection to this type of procedure.
2 There's no reason for this man to have to be
3 over there showing the jury anything. He can
4 testify as to what's -- I would ask that the
5 jury can review them for themselves when they
6 have an opportunity to review them. I think
7 this is an unusual procedure. I don't think
8 it's a proper way to present the evidence.

9 THE COURT: Well, it's not an unusual
10 procedure for a witness to come out of the
11 witness box and go close up to the jury and
12 explain the evidence. The objection is
13 overruled.

14 MR. SUTTON: Your Honor, the problem I
15 have though is this is nonresponsive to any
16 question by Mr. Pochucha.

17 MR. POCHUCHA: I apologize for
18 interrupting Mr. Sutton, but my understanding
19 is that when there are two counsel at counsel
20 table that one of them will advance the
21 objections for a witness and not two of them at
22 the same time. If I'm mistaken, but I
23 understood that's--

24 THE COURT: What's your objection?

25 MR. SUTTON: I think Mr. Poulston's

1 testimony ought to be elicited from question
2 and answer instead of--

3 THE COURT: Why don't you ask him
4 questions.

5 BY MR. POCHUCHA: (cont'd)

6 Q Mr. Poulston, what does this picture
7 depict?

8 A An engine transmission. Just different
9 parts that are laying around ready to go on the
10 motorcycle that I've accumulated.

11 Q What does this picture depict?

12 A Some wrecked parts. These are just
13 like shock absorbers. For example, a \$150 pair. If
14 you've been in a wreck and you bend one of them, you can
15 keep the other one. It's just parts left over from other
16 bike wrecks.

17 Q What does this picture depict?

18 A Bunch of wrecked fenders. See the
19 damage here and here. (Indicating.) That was some tack
20 fenders that have damage on them from different wrecks
21 I've been involved in. I won't run them after they have
22 damage to them. I buy new ones. Some of my friends will
23 run them and just do the body work and put them on their
24 bikes if they need them. I keep them for whenever they
25 need them.

1 Q What does this photograph depict?

2 A The same thing.

3 Q What does this photograph depict?

4 A Boxes of chrome bolts, plates. Engine
5 parts, basically, that can be used.

6 Q And this photograph, sir, what does it
7 depict?

8 A The primary swing arm, trouble shocks,
9 different plates. Just different parts that can be used
10 on a motorcycle. Nothing wrong with them.

11 Q And this photograph, sir?

12 A This is my bike being put back together
13 last November. That is most of the pieces of my
14 motorcycle disassembled while it's being painted.

15 Q And this photograph, sir?

16 A Extra parts from wrecks--fenders,
17 primaries, fenders, mirrors, everything.

18 Q And this photograph, sir?

19 A Extra bolts, parts and nuts, an extra
20 carburetor. It's just inventory that I keep.

21 Q Look at the next few collectively
22 there, and tell the ladies and gentleman of the jury what
23 they depict.

24 A Transmission bolts, motors, belt
25 guards, chain guards, pistons. Anything that can be used

1 and a lot of my friends need I give it to them.

2 Q Where were all these photographs taken?

3 A In my garage.

4 MR. POCHUCHA: Your Honor, I move that
5 these--

6 THE COURT: They're received and marked
7 as Plaintiff's Exhibit 1.

8 MR. POCHUCHA: Fourteen photographs
9 will be introduced.

10 (Plaintiff's Exhibit 1, Entered.)

11 MR. POCHUCHA: (cont'd)

12 Q And do you sell those to other people,
13 or do you give them away, or do you do something else
14 with them?

15 A Basically if it's no good to me, I
16 don't see making nobody else pay for it.

17 Q Do any of the parts depicted on those
18 photographs come from DuPont Corporation?

19 A No.

20 Q Have you ever taken any stainless steel
21 bolts from DuPont Corporation, sir?

22 A No.

23 Q Did you ever tell Mr. Rock that you
24 took stainless steel bolts from DuPont Corporation?

25 A No, sir.

1 Q Did you ever tell anyone that you took
2 stainless steel bolts from DuPont Corporation?

3 A No, sir.

4 Q Did you use any stainless steel bolts
5 in your motorcycle?

6 A Only ones that came with separate
7 parts. Sometimes you purchase a part. It'll come with
8 stainless bolts. You run them until you go to the part's
9 store and buy chrome ones. You can buy each bolt and nut
10 and washer individually. They're like 75 cents or a
11 dollar a piece. I show my bike, as well as ride.

12 Q What involvement did you have with a
13 motorcycle that Mr. Rock owned?

14 A One of my friends, Gordon Hailey, was
15 actually starting to build a bike for Mr. Rock when I met
16 Mr. Rock. That's how I met him was through Gordon
17 Hailey.

18 Q What, if anything, did you do with that
19 motorcycle?

20 A I did provide some parts from my list
21 of supplies there--bolts, nuts, bracket--different things
22 that he needed that I had no use for. If Gordon needed
23 it, I gave it to Gordon.

24 Q Did you do any welding for him?

25 A I made a bracket for him at home. I

1 never welded it on his motorcycle. Any welding done on
2 his motorcycle was done by Gordon.

3 Q These four photographs, tell the ladies
4 and gentleman of the jury what those photographs depict.

5 NOTE: The witness displays the
6 photographs to the jury.

7 A Well, a welding machine, one gas driver
8 welding machine, a chop saw, which is used for cutting
9 metal--cutting, shaping, bending.

10 Q Where are those items located?

11 A In my garage.

12 Q And why do you have them in your
13 garage?

14 A That's where I do my work.

15 MR. POCHUCHA: I move that that series
16 of four photographs be introduced collectively
17 as Plaintiff's Exhibit 2.

18 THE COURT: All right.

19 (Plaintiff's Exhibit 2, Entered.)

20 NOTE: The witness has returned to the
21 witness box.

22 BY MR. POCHUCHA: (cont'd)

23 Q Where did you do the welding that you
24 did for Mr. Rock?

25 A In my garage.

1 Q Did you ever tell him that you did it
2 anyplace else?

3 A No.

4 Q Where did you get the parts, the piece
5 that you actually welded? Was it cast iron or steel?

6 A No. You can't fabricate cast iron.
7 You have to pour it. It was not cast iron. It was a
8 black iron bracket. It was made out of a flat piece of
9 plate, bent, shaped and drilled.

10 Q How would you describe your
11 relationship with Mr. Rock during the time that his
12 motorcycle was being constructed by Mr. Hailey?

13 A Got along just like any two people
14 would. We could be called friends at the time.

15 Q What involvement did Mr. Rock have with
16 actually building the motorcycle?

17 A He dropped the parts off. He never put
18 a wrench on them.

19 Q Who did the building of the motorcycle?

20 A Gordon Hailey did.

21 Q Why were you there?

22 A I'd been going over to see Boo Boo two
23 or three years prior to that. We hunted together. We
24 ran cars together. I went over there and helped him work
25 on things in his garage in my spare time.

1 Q Did there come a point in time when you
2 requested that Mr. Rock provide some painting services
3 for you?

4 A Mr. Rock, after my bike was completed,
5 art work was done on it. He suggested that he could do
6 the clear work on it. He had painted several items I had
7 seen that did look decent. So I agreed to let him paint
8 it.

9 Q And what was the outcome of that? What
10 happened when the paint job was finished?

11 A Well, he was instructed three different
12 times in front of three different people not to use
13 Imron. Imron will attack the art work and eat the paint
14 right up. He said, no problem. Upon picking it up, I
15 found out he had sprayed it with Imron. I asked him what
16 he was going to do when it messed up. He said it was not
17 going to mess up. The first day I ran it in the sun it
18 pulled all the paint right off the metal. I asked him
19 what he was going to do about it in front of the same
20 three witnesses that happened to be at his shop that day.
21 He said there's nothing he could do about it or intended
22 to do about it, and that was his attitude.

23 Q So what, if anything, did you do about
24 it?

25 A I carried him to court to pay for the

1 damages.

2 Q And did you testify in general district
3 court?

4 A Yes.

5 THE COURT: Why do we have to go back
6 into all of this? This is a claim for
7 defamation, and we should bring this case up to
8 the point that the evidence goes into that.
9 Why do we need to go back into all the other
10 matters? I understand it's background, but I
11 think the jury may have gotten the idea
12 already.

13 MR. POCHUCHA: In opening argument --
14 excuse me, Judge. I didn't mean to interrupt
15 you.

16 THE COURT: I'm finished.

17 MR. POCHUCHA: In opening argument,
18 counsel for the defendant alluded to the fact
19 that, didn't allude to it--

20 THE COURT: There was no objection as
21 to all that either. Now it seems that this is
22 taking up a lot of time, and you can either
23 stipulate or tell the jury that there was a
24 judgment. And by the evidence from the very
25 first witness, the statement described to Mr.

1 Rock explained why that statement was made, if
2 the jury wants to believe that the statement
3 was, in fact, made. So all that is in. We
4 don't need to go back into that other matter.
5 It seems to me it's wasteful.

6 MR. POCHUCHA: I'll see what happens on
7 the defense's case and save it for rebuttal if
8 that happens. With your admonition, I'll move
9 beyond that.

10 BY MR. POCHUCHA: (cont'd)

11 Q Would you tell the ladies and gentleman
12 of the jury when you first learned that an allegation had
13 been made that you had stolen items from DuPont
14 Corporation. When and where were you?

15 A It was May 10th. It was my birthday.
16 I was in the pipe shop cage with three other people
17 talking about the job. Bob Hancock, my immediate
18 supervisor, came in and he said I need to see you in my
19 office right now and you do need union representation.
20 He said, who do you want, Greer or Hop? That's the
21 director or president. I said, Greer. We went straight
22 to the office.

23 Q What was said to you in the office?

24 A Steve Winder was in there.

25 MR. SUTTON: Your Honor, I'm going to

1 object to what was said to him in the office.

2 MR. POCHUCHA: Your Honor, this is not
3 offering the truth of it at this point in time.
4 It's offered to really set the stage of what
5 has occurred here.

6 THE COURT: Any statements that the
7 witness is testifying to is not offered for the
8 truth of what was said but for the fact that
9 they were said. Go ahead.

10 BY MR. POCHUCHA: (cont'd)

11 Q You can proceed with what was said to
12 you.

13 A Steve Winder asked me or he informed me
14 that he had received a phone call from someone stating
15 that I had been charged with stealing stainless bolts and
16 nuts and placing them on my motorcycle and fabricating
17 stainless parts and putting them on my motorcycle. They
18 wanted to know what I had to say. I said, who called?
19 He said, I can't tell you who called. Well, I said, was
20 it an employee or nonemployee? They thought for a
21 minute. I don't know how to answer it. I said, a simple
22 yes or no would be sufficient. He said, well, it was a
23 nonemployee. I said, was his name Bobby Rock? He said,
24 well, I can't say right now. I said, well, if you want
25 to look at my bike and come to my house right now. They

1 elected not to come.

2 So I explained to them the situation
3 with the paint job and the lawsuit and the garnishment
4 and all this. At that point they just said that's it.
5 They blew it off. I said, who called? They still
6 wouldn't say who called. So later that evening Steve
7 approached me and he said you were right, it was Bobby
8 Rock that called. He said, in fact, he's waiting for me
9 to call him back now and give him the results of the
10 investigation as if they were going to fire me. This was
11 in front of the whole shop.

12 Q What was heard in the whole shop?

13 A Our last conversation.

14 Q And how many people, since that
15 conversation, have approached you and said anything,
16 whatsoever, about this incident of you being alleged to
17 have stolen--

18 A Just about everybody in the field
19 maintenance have heard about it, and they make comments
20 about it.

21 Q Like what kind of comments?

22 A Like the last bike show we had, I
23 always show my bike. It was down to be painted. It
24 wasn't completed. One of the guys in the sheet metal
25 shop wanted to know how come the bike wasn't in the bike

1 show. He said with the sponsorship you've got, you ought
2 to have been finished a long time ago. You've got DuPont
3 sponsoring you, ain't you? Just stuff like that that
4 you've got to deal with.

5 Q And you take that seriously?

6 A No, because I knew he was just joking.

7 Q What is the most recent time that
8 anyone has said anything to you about it?

9 A That was the most recent. That was
10 about a month ago. We had a bike show in Richmond.

11 Q Were you aware of the penalties that
12 would have accrued to you had the allegations been found
13 to have been true?

14 A That's immediate dismissal.

15 Q To your knowledge, were any security
16 procedures changed at DuPont at or around the time of
17 these allegations?

18 A Yes, sir.

19 MR. SUTTON: I'm going to object.

20 Again, there's no foundation here to say
21 whether or not this witness can testify as to
22 what the procedures are at DuPont for security;
23 and if they were changed, that it was a direct
24 result of this alleged allegation. We have
25 no--

1 THE COURT: Perhaps you ought to ask
2 him what are the procedures, what are the
3 security procedures.

4 MR. SUTTON: Your Honor, he's not in a
5 position to answer this.

6 THE COURT: What?

7 MR. SUTTON: This gentleman is not in a
8 position to even answer that question. He's a
9 maintenance operator at DuPont. He's not in
10 security and would have no idea as to what
11 their procedures are and why they would change
12 them if, in fact, they were changed.

13 THE COURT: He was there. He can see.
14 Go ahead.

15 BY MR. POCHUCHA: (cont'd)

16 Q How many entrances and exits are there
17 to the plant of DuPont, approximately?

18 A Approximately, five.

19 Q And what security do they have in the
20 normal course--

21 THE COURT: Again, DuPont is not a
22 party to this case. DuPont is not making any
23 claim for regress or damages as a result of
24 this alleged incident. Now, you say you will
25 tie this up, and that's on the basis that I'm

1 going to permit it.

2 A Five gates. They have a guard on the
3 gate 24 hours. We have two gates on our end of the plant
4 that is actually a guard shack with a small turnstile in
5 it. These two on the 8:00 to 4:30 shift, it does have a
6 guard, as well as a turnstile. Then you have two that is
7 strictly turnstile, no guards on a normal basis.

8 Q Was there any change in that at the
9 time of the allegation?

10 A During about the time this took place,
11 instead of one guard on the gates they had two. On the
12 turnstile they had one guard each, which is normally not
13 on the turnstile.

14 MR. SUTTON: I hate to object but
15 unless he can tie the allegations to the
16 changing of, if there was a change in the
17 security measures, that this is not relevant.
18 He has made no showing--

19 THE COURT: I don't know if it is
20 relevant if he could tie it. Mr. Pochucha
21 explained that there will be some evidence
22 about other's reaction in the supposed change
23 in security measures, which would reflect along
24 their view of the plaintiff in view of the
25 alleged defamatory statement.

1 BY MR. POCHUCHA: (cont'd)

2 Q Were any statements made to you by
3 others at DuPont concerning this increase in guards?

4 MR. SUTTON: Objection.

5 THE WITNESS: Yes. It was an
6 inconvenience.

7 MR. SUTTON: He's asking for hearsay
8 now.

9 THE COURT: Why isn't that hearsay?

10 MR. POCHUCHA: It's offered for the
11 truth not of what was said once again, Judge,
12 but the circumstances of it being said.

13 MR. SUTTON: What's the relevance of
14 it?

15 MR. POCHUCHA: The relevance of it is
16 the wide-spread nature of the allegations
17 against Mr. Poulston.

18 THE COURT: Go ahead. The objection is
19 overruled.

20 BY MR. POCHUCHA: (cont'd)

21 Q Were comments made to you by others
22 concerning these guards?

23 A Quite a bit. When you usually go into
24 the turnstile you're just supposed to put your pass up on
25 the electronic eye and go on out of it. You can file

1 right out. You've got 200 or 300 people trying to get
2 out of there. When you've got a guard standing there,
3 you've got to open your bag or briefcase. You've got 15
4 or 20 minutes getting out. I caught a little grief for
5 slowing down the exit in going home.

6 Q And the grief, how did they relate that
7 guard situation to you?

8 A I guess they'd already heard that I'd
9 been in the office and supposedly stealing.

10 Q What was the actual effect on you? How
11 did you feel about these allegations and about the
12 friends and people you know at DuPont ribbing you about
13 it?

14 A Well, when you work in a factory you
15 have to take ribbing, but your friends, the people you
16 know that you worked with 20, 24 years in my case, you
17 just write it off because you will ride one another.
18 People you don't know, it's a little different.

19 Q When you say it's a little different,
20 what do you mean?

21 A People that don't know you, the first
22 thing they do is believe what they hear.

23 Q Do you believe there's still people at
24 DuPont that still believe you're guilty of this?

25 MR. SUTTON: Objection. He's asking

1 him to speculate.

2 MR. POCHUCHA: I think that's proper in
3 this instance.

4 MR. SUTTON: The question is do you
5 believe there are people there that still
6 believe this. How does he know this without
7 speculating.

8 MR. POCHUCHA: That goes to his
9 mental impression and the anguish he suffered
10 as a result of this allegation having being
11 made. That's the present sense impression that
12 he has that goes to his state of mind.
13 Whenever someone tells a lie about a person,
14 there are going to be rumors.

15 THE COURT: What's the question again?

16 MR. POCHUCHA: Could you repeat the
17 question.

18 MR. SUTTON: Still rib--

19 MR. POCHUCHA: Still believe it's true.

20 THE COURT: Ask him if people still
21 believe it's true, how does he feel.

22 BY MR. POCHUCHA: (cont'd)

23 Q If people still believe this is true,
24 how does that affect you?

25 A Well, when you're around a bunch of

1 people you don't know and they've heard a rumor and they
2 think it's true because they don't know you, you can't be
3 comfortable around these people because they don't know
4 you and you don't know them.

5 Q Have you missed any time from work as a
6 result of these allegations?

7 A Just going to attorneys.

8 Q Have you had any additional contact
9 with Mr. Rock?

10 A Not by my choice.

11 Q Have you had any contact?

12 A Yes.

13 Q What contact has that been?

14 MR. SUTTON: Objection. What relevance
15 is that to the statement made by Mr. Rock that
16 is alleged in the motion for judgment?

17 MR. POCHUCHA: Are you stipulating that
18 Mr. Rock bears ill will toward Mr. Poulston?

19 MR. SUTTON: The stipulation that I was
20 willing to make is that there is ill will
21 between Mr. Poulston and Mr. Rock and Mr. Rock
22 and Mr. Poulston.

23 MR. POCHUCHA: You will not stipulate
24 that Mr. Rock bears ill will toward Mr.
25 Poulston by itself?

1 MR. SUTTON: I will stipulate there's
2 ill will between the two of them, but that is
3 not just unilateral on Mr. Rock's part.

4 MR. POCHUCHA: That's where it goes to.

5 MR. SUTTON: I still fail to see the
6 relevancy. The question before the Court--

7 THE COURT: The question is has he had
8 any contact with Mr. Rock since this alleged
9 incident; is that right?

10 MR. POCHUCHA: That's right.

11 THE COURT: Let's see what happens.
12 Have you, Mr. Poulston?

13 THE WITNESS: Twice. Actually, four
14 times.

15 BY MR. POCHUCHA: (cont'd)

16 Q What occurred on those occasions?

17 A The first time was when we were in the
18 courthouse up here I came up to get the check from the
19 garnishment for the paint job and he showed up. He
20 threatened me, threatened the clerk of the court and he
21 even had words with you at that time. After that we
22 filed a restraining order, and he said he would get even.
23 He would take care of me standing there in front of the
24 clerk and you. So a restraining order was served on him.

25 I went into CD's, which is a restaurant

1 bar that I frequent, to talk to some of my friends. I
 2 went to the restroom, and I came back out and Mr. Rock
 3 was setting beside my seat. I walked up and set down.
 4 He advised me that we needed to go outside and talk. I
 5 said, no. My attorney says we don't need to talk. You
 6 need to talk to your attorney and just go on away. After
 7 about 15 minutes of this, we need to go outside and talk.
 8 I got up and spoke to the manager. I said, I would like
 9 to have this guy removed. He's under a restraining
 10 order. He's not supposed to be in here talking to me.
 11 He said which guy is this?

12 MR. SUTTON: With all do respect, I
 13 fail to see the relevancy of any of this. The
 14 question before the Court is was the statement
 15 made to you at DuPont, was it made to you
 16 either with reckless disregard for the truth or
 17 was it made with malice. What happened
 18 subsequent to that statement has no bearing on
 19 Mr. Rock's state of mind at the time the
 20 statement was made.

21 BY MR. POCHUCHA: (cont'd)

22 Q Those incidents you described, were
 23 those made before or after the statement of Mr. Rock?

24 A The last one was after.

25 THE COURT: I tend to agree with you.

1 MR. POCHUCHA: That's as far as I need
2 to go with it.

3 THE COURT: The objection is sustained.

4 BY MR. POCHUCHA: (cont'd)

5 Q Do you bear any ill will toward
6 Mr. Rock?

7 A No, sir. If he will just stay in his
8 place and I'll stay in my mine and we won't have any
9 problem.

10 MR. POCHUCHA: That's all the questions
11 I have for Mr. Poulston at this time.

12 MR. SUTTON: Judge, may I see the
13 exhibits? Keep them straight.

14 NOTE: Counsel peruses the exhibits.

15

16 CROSS-EXAMINATION

17 BY MR. SUTTON:

18 Q These exhibits, these pictures you've
19 already shown the jury, 14 pictures, where were they
20 taken, sir?

21 A Look on the back. There's a date, I do
22 believe.

23 Q I don't see a date, sir.

24 A I said there may be. Prior to the
25 first time we went to court--

1 Q Prior to the first time--

2 A Which was back in March or April or
3 whatever.

4 Q March or April of what year, sir?

5 A This year.

6 Q This year? 1993?

7 A First time this court case came to
8 hearing.

9 Q And these are pictures of the parts you
10 allegedly give to friends when they need parts for their
11 motorcycle?

12 A That's correct.

13 Q Mr. Hailey and Mr. Rock were building
14 their motorcycle in 1989; is that not right?

15 A I started mine in '87.

16 Q I didn't ask when you started your
17 motorcycle. I asked when was Mr. Rock and Mr. Hailey
18 building their motorcycle.

19 A Approximately '89 after mine was
20 completed.

21 Q These pictures were taken in 1993,
22 according to your testimony right now; is that correct?

23 A Yes.

24 Q Were these pictures taken in
25 preparation for trial today?

1 A No, sir.

2 Q You automatically keep a photographic
3 record of all your inventory of parts, you lay it out and
4 take pictures of--

5 A I have pictures of everything in my
6 garage for insurance purposes.

7 Q Photographs of this welding equipment,
8 was this taken in anticipation of trial today?

9 A They were taken at the same time they
10 were.

11 Q In 1993?

12 A It's all taken in the same garage, same
13 place.

14 Q Sir, you first met Mr. Rock in 1989 at
15 Gordon Hailey's garage; is that not correct?

16 A That's not correct.

17 Q When did you meet him for the first
18 time?

19 A Approximately in '88.

20 Q '88. Does that have any bearing on
21 this case today?

22 A Does what?

23 Q The fact that you met him 1988?

24 A You asked--

25 Q My question was--

1 A Try to be a little more explicit.

2 Q You met Mr. Rock. He was building his
3 motorcycle in Mr. Hailey's garage?

4 A Incorrect.

5 Q Okay.

6 A I met Mr. Rock when Gordon Hailey and I
7 were putting one together in Mr. Hailey's garage.

8 Q Did there come a time when Mr. Hailey
9 was building a motorcycle for Mr. Rock?

10 A After the completion of the one we were
11 working on. Yes, sir.

12 Q Did you have an occasion to visit the
13 garage when Mr. Rock and Mr. Hailey would be there
14 working on Mr. Rock's bike?

15 A Yes, sir.

16 Q How many occasions would you estimate
17 that you came by there?

18 A I have no way of knowing because at the
19 time, Gordon and I were best friends, and I would go by
20 there two or three times a week.

21 Q Would Mr. Rock be there when you would
22 go by there two or three times a week?

23 A Not every time.

24 Q About how long did it take to build
25 this motorcycle? Do you know?

1 A About a year and a half.

2 Q During that year and a half, you went
3 by there two or three times a week to see Mr. Hailey?

4 A Sometimes more, sometimes less.

5 Q And there was several occasions that
6 Mr. Rock was there?

7 A Several. Not many, but several.

8 Q Did there ever come a time Mr. Rock
9 asked you about getting some bolts for him or some parts
10 for his motorcycle?

11 A No. Mr. Rock didn't ask me to do
12 anything for him.

13 Q Did Mr. Hailey ever ask you to get some
14 bolts or nuts?

15 A Yes, sir. Mr. Hailey, Boo Boo as we
16 call him, and I worked together on many things. He
17 worked with Dick Strauss. If I needed parts for my car
18 or truck, I would buy them through him. If he needed
19 parts for his motorcycle or whatever, if I had them, they
20 were his.

21 Q Was Mr. Rock ever present when
22 Mr. Hailey ever asked you to get any parts for him?

23 A He might have been there when he asked.
24 They were not when they were delivered.

25 Q Did you ever supply Mr. Hailey with any

1 stainless steel bolts or nuts?

2 A I'm sure during the process of our
3 friendship I have. Yes.

4 Q And did you ever supply Mr. Hailey any
5 stainless steel bolts and nuts in 1989?

6 A Sure because he used some of them on
7 Rock's bike.

8 Q So it's your testimony today that you
9 supplied Mr. Hailey the stainless steel bolts and nuts
10 that were used on Mr. Rock's bike; is that not correct?

11 A Possibly, yes.

12 Q Did you have an occasion to weld a
13 plate for this motorcycle?

14 A I've already testified yes to that.

15 Q And it's your testimony that you welded
16 this plate at your home with the welding equipment?

17 A Correct.

18 Q That is in those pictures?

19 A That's correct.

20 Q You didn't do any of this welding at
21 your job at DuPont?

22 A No, sir.

23 Q When you were first made aware of the
24 allegation, who approached you initially?

25 A Mr. Bob Hancock, my immediate first

1 line supervisor.

2 Q Had anybody within DuPont, any
3 employees, management or any other personnel, made any
4 statements to you about the allegations besides
5 Mr. Hancock?

6 A No. That was the first I heard.

7 Q And who was present at the meeting?

8 A Mr. Hancock, Steve Winder, my third
9 line supervisor, Jimmy Greer, union president and myself.

10 Q Did you tell anybody about the
11 allegation?

12 A No.

13 Q And is it your testimony that
14 Mr. Winder told you about the allegation in front of the
15 whole shop?

16 A No, sir. I did not say that. Only the
17 name of the person that called.

18 Q Well, what I'm asking you then is how
19 did the employees of DuPont find out that there had been
20 an allegation of theft on your part if everyone was sworn
21 to secrecy and Mr. Rock told no one about Bolton?

22 A I don't think anyone was sworn to
23 secrecy.

24 Q So are you saying that when Mr. Hancock
25 testified he was not sworn to secrecy at the union

1 meeting, he was lying or mistaken?

2 A No. I'm not calling him a liar. It is
3 a common courtesy that you don't go around and discuss
4 other people's business. Now, when you call third floor
5 in the main office, that is a quarter of a mile back to
6 the field maintenance shop. The message tripled from
7 there back. I don't know how it got out.

8 Q Well, as we've seen today, Mr. Bolton
9 was the only one that was originally notified; is that
10 not correct?

11 A He had the original notes.

12 Q And Mr. Bolton told Mr. Winder; is that
13 not correct?

14 A Mr. Bolton said he gave a notice to his
15 secretary. He put it in electronic mail.

16 Q Mr. Bolton wrote a memo to Mr. Winder?

17 MR. POCHUCHA: I'm going to object to
18 these questions. Mr. Sutton is asking Mr.
19 Poulston to speculate.

20 THE COURT: Mr. Bolton has testified,
21 and I don't know if he would know these except
22 for by virtue of what Mr. Bolton said this
23 morning.

24 THE WITNESS: Correct.

25 BY MR. SUTTON: (cont'd)

1 Q Did you tell anyone at DuPont about the
2 allegation?

3 A I didn't have to. They were already
4 telling me.

5 Q Did anyone who told you about it tell
6 you how they found out about it?

7 A I really didn't ask.

8 Q Now, do stainless steel bolts and nuts
9 from DuPont have any identifying marks on them?

10 A None that I'm aware of.

11 Q Did any of the stainless steel nuts and
12 bolts that you gave to Mr. Hailey have any identifying
13 marks on them?

14 A Just different grades or whatever.

15 Q What's the price of a stainless steel
16 bolt? Do you know?

17 A I couldn't tell you.

18 Q Have you bought any stainless steel
19 bolts and nuts lately?

20 A No. I buy chrome.

21 Q Is it your testimony that you never
22 bought stainless steel bolts?

23 A I have not bought stainless steel
24 bolts. I buy chrome-plated bolts to go on my bike, which
25 everything on there is chrome and I show it as chrome.

1 Q Where did you get the stainless steel
2 bolts that you provided Mr. Hailey?

3 A From these receipts. If you'll notice
4 Page 2, this is a handwritten receipt back in 1987
5 stamped by DMV where they verified it being a receipt and
6 used on a motorcycle. The last line it says sold used
7 Harley. Gas tank, \$125; exhaust and box of brackets,
8 bolts, mounts and junk, \$200.

9 Q So you're saying this is where you
10 acquired your stainless steel bolts?

11 A You can acquire anything in that box
12 that's listed as junk. I might not have needed all the
13 parts in it, but--

14 Q Can you pull out a receipt out of there
15 where it specifically says that you have a receipt for a
16 stainless steel nut or bolt?

17 A No, because I've never purchased one
18 new.

19 Q Sir, do you remember taking a
20 deposition in my office on March 29th, '94?

21 A In my Catlett's office.

22 Q And do you remember being asked, do you
23 purchase these stainless steel nuts and bolts?

24 A No. I don't remember that question.

25 Q I'll show you the deposition.

1 MR. SUTTON: May approach, Your Honor.

2 MR. POCHUCHA: Your Honor, that's not
3 the proper impeachment. He can read the
4 question.

5 THE COURT: Read the question to him.

6 NOTE: Mr. Sutton is reading from the
7 deposition transcript.

8 BY MR. SUTTON: (cont'd)

9 "Q Did you provide Mr. Hailey with
10 stainless steel nuts and bolts?"

11 MR. POCHUCHA: Can I have the page and
12 line reference.

13 MR. SUTTON: Page 10, Line 12.

14 BY MR. SUTTON: (cont'd)

15 "Q Did you provide Mr. Hailey
16 stainless steel nuts and bolts?

17 A I provided Mr. Hailey with any
18 items I have left over from my wreck and
19 accident, and I don't know whose bikes they
20 were on.

21 Q Did you purchase these stainless
22 steel nuts and bolts?

23 A Yes, sir, and my attorney has the
24 receipts."

25 Q Now, are these the receipts you're

1 referring to in that deposition? (Indicating.)

2 A Right there, the same receipt.

3 Q Show me on that receipt where it says
4 stainless steel nuts and bolts.

5 A It doesn't. Like I told you, you will
6 not find a receipt for a stainless steel bolt anywhere.
7 It's just boxes of bolts and nuts or whatever.

8 Q You've testified that as a result of
9 this allegation that you suffered some ribbing from your
10 friends.

11 A Quite a bit.

12 Q And ribbing is part of the job you've
13 testified to.

14 A True.

15 Q But it bothers you when people you
16 don't know give you a hard time at work; is that not
17 correct?

18 A Well, they don't give you a hard time
19 if they don't know you. You can hear them making
20 comments and statements when you go down the aisle.

21 Q After the allegation was made, did you
22 have to seek psychiatric help?

23 A No.

24 Q Did you have to seek the aid of a
25 medical doctor?

1 A No, only the union president.

2 Q Did you have to seek the aid of a
3 therapist?

4 A No.

5 Q Was your pay cut?

6 A No.

7 Q Did you lose any retirement?

8 A No.

9 Q Did you lose any other benefits?

10 A None.

11 Q Were you demoted?

12 A No.

13 Q In fact, the only out-of-pocket
14 expenses you had were your attorney's fees; is that not
15 correct?

16 A At this point in time.

17 Q Now, when someone wants to acquire a
18 part at DuPont, what is the procedure, sir?

19 A What do you mean acquire a part?

20 Q Let's assume for the moment that you
21 had to do a particular job. You're in maintenance or
22 welding, sir?

23 A I'm in the welding shop.

24 Q And you needed some parts to do a
25 particular job. Where would you get those parts from?

1 MR. POCHUCHA: I object for relevance
2 at this time.

3 THE COURT: What's the relevance of
4 this?

5 MR. SUTTON: Your Honor, what I'm going
6 to tie in is the fact that the testimony will
7 be that there were no persons regulating or
8 watching Mr. Poulston or any other people take
9 parts out of the shop when they needed a job,
10 which would go into the issue of truth or
11 falsity in that he had an opportunity--

12 THE COURT: All right. Gentlemen, I
13 think it's time to take a recess anyway. We'll
14 take a recess now for lunch. It's almost
15 quarter after 1:00 by that clock. Please
16 return here at 2:00. During this time, don't
17 discuss the case. Thank you.

18 (Lunch break taken.)
19
20
21
22
23
24
25

1 JURY ABSENT

2 THE COURT: Do you have a motion or
3 something?

4 MR. SUTTON: Yes.

5 THE COURT: I just want to know who had
6 it.

7 MR. POCHUCHA: Judge, if I can begin I
8 guess without -- Mr. Poulston will be right
9 here. Mr. Sutton has advised me that he
10 intends to go into the line of questioning that
11 deals with whether or not Mr. Poulston was held
12 in contempt with the court with a child support
13 matter. His justification for that is that it
14 somehow adversely reflects upon his character,
15 and we've placed his character in issue.
16 Certainly I think his reputation for telling
17 the truth has been an issue. My understanding
18 of private prior convictions is that it has to
19 be a felony or a misdemeanor involving lying,
20 cheating or stealing. This is none of that.
21 This is a contempt finding. It's just not
22 proper.

23 THE COURT: Contempt of what?

24 MR. SUTTON: Non-payment of spousal
25 support. That's what's alleged on the face of

1 JURY ABSENT

2 the show cause. What I'm attempting to offer
3 the Court, as an element of their prima facie
4 case, they have to show embarrassment,
5 humiliation of some sort, if there's no
6 out-of-pocket expenses so as to recover
7 compensatory damages in this matter. I'm going
8 to use this as a measure to ask on
9 cross-examination and test whether or not he
10 was actually embarrassed and humiliated because
11 of the alleged ribbing that he received from
12 people he does not know. I think this goes to
13 the issue of embarrassment and humiliation.
14 Did others find out about his jail sentence and
15 was he embarrassed and humiliated when they
16 found out about that. That's why I feel like
17 it's relevant. I'm not offering it to impeach
18 his ability to tell the truth, but it goes to
19 the issue of embarrassment and humiliation,
20 which they must show in order to recover
21 compensatory damages in this case.

22 THE COURT: Well, this is something you
23 want to ask him?

24 MR. SUTTON: Yes, sir. He has
25 testified that he's sensitive to what others

1 JURY ABSENT

2 think about his reputation, and that's why he
3 filed this motion for judgment.

4 THE COURT: It would seem then the
5 proper person or persons to ask that are these
6 others.

7 MR. SUTTON: That's what I attempted to
8 do but not allowed by this Court.

9 THE COURT: Well, I mean, you want to
10 explore something about what you just said, and
11 you then said you had no basis, other than what
12 you learned from co-counsel and you never
13 represented even the information you received
14 from co-counsel was such that there was
15 something there to explore. Now you have
16 something.

17 MR. SUTTON: Now I have it in-hand.

18 THE COURT: But I think the question as
19 it came up was not a question put to the
20 plaintiff, rather was one put to a witness.

21 MR. SUTTON: That's correct, Your
22 Honor.

23 THE COURT: And the issue now is
24 whether you ought to go into this with the
25 plaintiff?

1 JURY ABSENT

2 MR. SUTTON: That's correct, Your
3 Honor.

4 THE COURT: And if the gravity of a
5 defamation claim is to redress a hurt that one
6 may have because of one's reputation being
7 diminished, then reputation speaks to what
8 others may think of the plaintiff. And you
9 asked the plaintiff whether he was embarrassed
10 or humiliated by the contempt proceeding, that
11 really is of no -- this is a proper question to
12 be put to other people.

13 MR. SUTTON: Yes, Your Honor.

14 THE COURT: Because after all, the
15 defamation claim act goes to how one's own
16 standing in the community is put down. You can
17 tie it to that as to how others -- not the
18 plaintiff, himself.

19 MR. SUTTON: Yes.

20 MR. POCHUCHA: Perhaps we ought to
21 address this while we've--

22 THE COURT: How many other witnesses do
23 you have?

24 MR. POCHUCHA: That's it. I planned to
25 offer a few exhibits which we discussed, and

1 JURY ABSENT

2 that won't be a problem. Mr. Sutton just
3 indicated that it was his position that in the
4 course of my prima facie case I would need to
5 show evidence of actual damages in order to
6 recover a verdict. I take the position, Your
7 Honor, that this is a case of defamation, per
8 se, because it relates to his employment and
9 the damages are presumed and that's not a part
10 of the--

11 THE COURT: I've been thinking about
12 that very question, too, because there hasn't
13 been much about what damage or injury he
14 suffered in the community. And indeed, one
15 witness, Mr. Hancock, said that this assertion,
16 that this statement didn't affect him at all.
17 But this is, I think, a per se category.

18 MR. SUTTON: I agree. I think Mr.
19 Pochucha may have misunderstood what I was
20 saying. I agree that this is a defamation per
21 se case. However, there's four ways or there's
22 four types of compensatory damages you can
23 recover. There's out-of-pocket, which is not
24 relevant here. Damages are, of course,
25 presumed but they have to be relevant to the, I

1 JURY ABSENT

2 guess the humiliation or the embarrassment you
3 suffered as a result of the statement. I
4 haven't seen any of that so far is what I was
5 going to articulate to the Court. I think
6 we're getting ahead of ourselves.

7 THE COURT: Perhaps, we are. Perhaps,
8 we are. You gentlemen ready to continue?

9 MR. POCHUCHA: Yes.

10 THE COURT: Bring the jury in.

11 MR. CATLETT: I didn't mean to
12 interject too much. While we're still on the
13 subject, you've got two proffers you want to
14 make. One we can stipulate, I believe, which
15 is going to be the interrogatory showing his
16 assets.

17 MR. POCHUCHA: Yes, two assets.
18 There's an asset interrogatory and then there's
19 an interrogatory response of return statements
20 made.

21 MR. CATLETT: We're not going to have
22 any objection to stipulating to the
23 interrogatory response that relates to his
24 income, but we're going to object to any
25 introduction of any other document without

1 JURY ABSENT

2 proper authentication. So just to introduce an
3 interrogatory response, Judge, we would object
4 to that. If he wants to call the witness--

5 MR. POCHUCHA: I don't believe I have
6 to, Judge. I think they're admissible under
7 the rules of the court, specifically,
8 interrogatories--

9 THE COURT: Is that the only objection
10 you have?

11 MR. CATLETT: Yes, sir.

12 THE COURT: I think interrogatories can
13 come in as long as they're relevant. They're
14 part of the discovery in the case. Have you
15 introduced that picture of the motorcycle?

16 MR. POCHUCHA: If you want to hold on
17 to this. I'm afraid I might lose it.

18 MR. CATLETT: That's Mr. Poulston's.

19 THE COURT: Whose?

20 MR. POCHUCHA: That's Mr. Poulston's.
21 That's the one that was the subject in the
22 first case.

23 THE COURT: Is this a Harley Davidson?

24 MR. POCHUCHA: Yes, sir.

25 THE COURT: All right. I just wanted

1 JURY ABSENT

2 to look at it. Just personal, that's all. All
3 right. Let's proceed then. Let's have the
4 jury come in.

5 MR. POCHUCHA: Should I have Mr.
6 Poulston back on the stand?

7 THE COURT: Yes, sir. Mr. Sutton,
8 we'll have the jury come in and we'll continue
9 this.

10 NOTE: The jury returns to the jury
11 box.

12

13 JURY PRESENT

14

15 THE COURT: Ladies and gentlemen, we're
16 ready to proceed. Mr. Sutton.

17 MR. SUTTON: Yes, sir.

18 BY MR. SUTTON: (cont'd)

19 Q Mr. Poulston, if we could get back to
20 what we were talking about before the lunch break. Isn't
21 it true that if you need a part to do a job there are
22 certain portions or places in DuPont you go to get those
23 particular parts, a shop or some sort of inventory or
24 part's store or part's shop that you go to get nuts or
25 bolts or whatever you may need to do a job?

1 A Correct.

2 Q What is the procedure, sir, when you
3 have to get a part to do a particular job when you go to
4 these stores?

5 MR. POCHUCHA: Your Honor, I would
6 object on the grounds of relevance.

7 THE COURT: What is the relevancy?

8 MR. SUTTON: Your Honor, as I argued
9 before, I'm offering this testimony to show
10 that Mr. Poulston had the means and
11 availability to take parts out of DuPont
12 without going through channels.

13 THE COURT: Go ahead. The objection is
14 overruled.

15 BY MR. SUTTON: (cont'd)

16 Q Sir, could you answer the question.
17 The question was, if you wanted to get a part to do a
18 job, how would you go about getting that part?

19 A To begin with, all I do is go to the
20 welding shop and I grab my welding rods. That's all I
21 use. I'm a welder.

22 Q Do you know the layout of the other
23 shops in DuPont?

24 A I know every shop in DuPont. Yes.

25 Q Does the welding department have its

1 own shop?

2 A It is a shop within itself.

3 Q Does the maintenance department have a
4 shop, or is that part of the welding department?

5 A No. The maintenance building is broken
6 up into a pipe shop, a welding shop, a sheet metal shop
7 and carpenter shop.

8 Q Do each of those particular shops keep
9 parts for the day-to-day maintenance of their equipment
10 and needs of DuPont?

11 A No. It used to be whatever shop had
12 their own cage. Now they have gone to centralized cages
13 because they're reducing inventory.

14 Q Back in 1989, did each shop have their
15 own particular cage?

16 A Yes.

17 Q And when you wanted a part from a shop,
18 did you have to sign any kind of forms or make a formal
19 request to anyone to get those parts?

20 A Based on what you needed, whether it
21 was a normal stock item or whether it was a job you were
22 getting the order material on depends on how you received
23 your material.

24 Q If you wanted a big piece of equipment
25 for a large job, you would, of course, have to sign it

1 out?

2 A Correct.

3 MR. POCHUCHA: Your Honor, I would
4 object once again. I think the only question
5 here has to do with nuts and bolts and things.
6 Steel bolts and large equipment is not at
7 issue.

8 MR. SUTTON: I'll withdraw it.

9 THE COURT: All right.

10 BY MR. SUTTON: (cont'd)

11 Q If you wanted a nut and bolt or nuts
12 and bolts to do a particular job, would you have to see
13 someone to formally request that, or could you walk right
14 into the shop and take them out?

15 A You'd walk in and ask the cage man for
16 what you need.

17 Q Would you sign a requisition form or go
18 through any kind of formal paperwork to get those nuts
19 and bolts?

20 A No. You'd give them a work number and
21 prepare an order, and he would then credit what you take
22 to that job.

23 Q In fact, there are records kept of
24 every nut and bolt that is taken from the inventory?

25 A It's up to the cage man, but it is

1 supposed to be, yes, sir, so he can account each item
2 that goes and it can be charged to that area. Personally
3 they pay for it.

4 Q The stainless steel nuts and bolts that
5 you have admitted to supplying to Mr. Hailey, they were
6 not taken from DuPont, is that your testimony?

7 A No. They were purchased through these
8 receipts here. (Indicating.)

9 Q Have you ever had to use stainless
10 steel nuts and bolts while at your job with DuPont?

11 A Not in the last seven years that I've
12 been in the welding shop. I don't deal with bolts and
13 nuts.

14 Q Sir, do you know if there are any
15 identifying stamps or marks on the bolts and nuts from
16 DuPont?

17 A Not that I'm aware of.

18 Q Getting back to the disciplinary
19 hearing or the hearing where you were advised of these
20 charges. There were only four people present; is that
21 not correct?

22 A Correct.

23 Q And you didn't tell anyone else about
24 what happened at that meeting; is that correct?

25 A Correct.

1 Q And the only way that other people
2 found out about it is by this court proceeding; is that
3 not correct?

4 A I have no idea.

5 Q You have no idea how others found out
6 about it?

7 A No.

8 Q Is it true that other people at DuPont
9 are aware of this allegation besides the four people who
10 were present at the meeting?

11 A Quite true.

12 Q Are you aware of how they acquired this
13 knowledge, sir?

14 A No, I'm not.

15 Q Are you aware of Mr. Bolton telling
16 them anything about this?

17 A I didn't know him until this hearing.

18 Q Are you aware--

19 MR. POCHUCHA: I would object to the
20 continued questions. He's already stated that
21 he's not aware of how anybody else found out
22 about it. To go through Mr. Poulston, Mr.
23 Winder, Mr. Hancock and Mr. Greer serves no
24 purpose because he's already testified that he
25 doesn't know.

1 THE COURT: Do you have any other
2 questions about who?

3 MR. SUTTON: I'll move on, Your Honor.
4 I think I made my point.

5 BY MR. SUTTON: (cont'd)

6 Q You had some testimony that Mr. Winder
7 told you about this in front of the whole shop. I
8 believe what you were referring to was the fact that
9 Bobby Rock was the one who made the allegation.

10 A That was the statement I made.

11 Q And who was present when Mr. Winder
12 made this statement?

13 A It was about 30 people that work in the
14 pipe shop.

15 Q And Mr. Winder approached you?

16 A And we were talking one-on-one.

17 Q And can you tell me what that
18 conversation consisted of?

19 A He said you were right about who
20 called. I said, who called, because I wanted to hear the
21 name. He said, some guy named Mr. Rock. He said, in
22 fact, I've got to call him back now and let him know what
23 the investigation results were, were we supposed to fire
24 or keep you.

25 Q And he made this statement in front of

1 30 other people?

2 A Not standing like immediately there,
3 but we were just in the middle of the shop talking in
4 general.

5 Q And has any of those persons whom you
6 believe to have heard this statement by Mr. Winder ever
7 said anything to you about this allegation?

8 A Not due to that statement made in the
9 shop; but, in general, everybody in there knows everybody
10 in maintenance.

11 Q You've testified over and over that
12 people know about the allegation. How do you know that
13 people found about the allegation, Mr. Poulston?

14 A When they walk up and ask you how you
15 supposed to know, other than they know.

16 Q How did they gain knowledge?

17 A You tell me.

18 MR. POCHUCHA: Object. Asked and
19 answered.

20 MR. SUTTON: It hasn't been answered.

21 THE WITNESS: I don't have any idea.

22 MR. SUTTON: That's all I have at this
23 point, Your Honor. I reserve my right to
24 recall him for my case.

25 THE COURT: All right.

1 REDIRECT EXAMINATION

2 BY MR. POCHUCHA:

3 Q Mr. Sutton, when he questioned you
4 pertaining to your statement taken at depositions on Page
5 10 read from -- asked you the questions on Page 10 to
6 Page 17, it stopped at Page 20, I believe that it's
7 proper to go a little farther than that. Do you recall
8 this statement:

9 "Q Did you provide Mr. Hailey with
10 stainless steel nuts and bolts?

11 A I provided Mr. Hailey with any
12 items I had left over from my wreck and
13 accident. I don't know whose bike they went
14 on.

15 Q Did you purchase these stainless
16 steel nuts and bolts?

17 A Yes, sir, and my attorney has the
18 receipts.

19 Q What did you charge Mr. Hailey for
20 them?

21 A Not a single dime.

22 Q How much did they cost you?

23 A When you build a motorcycle from
24 the ground up by boxes of this and boxes of
25 that sometimes you get bolts and sometimes you

1 get--"

2 THE COURT: What are you doing? Mr.
3 Sutton is about to object here. What are you
4 doing?

5 MR. POCHUCHA: This is when he related
6 a portion of the transcript earlier in terms
7 of--

8 THE COURT: Who?

9 MR. POCHUCHA: Mr. Sutton on
10 cross-examination.

11 THE COURT: Um-hum.

12 MR. POCHUCHA: He did not allow Mr.
13 Poulston, he did not fully go through the
14 substance of the testimony that was made at
15 that point in time. In other words, he stopped
16 before he got to the answer that was given at
17 that time to--

18 THE COURT: Why don't you just read it
19 to the jury at the time -- let's finish him up
20 first. You have a right to read into evidence
21 any party's deposition or any part thereof.
22 Let's continue his examination. If you wish to
23 read any part or parts of the deposition of a
24 party into the evidence, I think make it clear
25 to the jury. It's not clear to me. If you

1 have any questions of Mr. Poulston, let's get
2 him finished.

3 BY MR. POCHUCHA: (cont'd)

4 Q Would you describe for the ladies and
5 gentleman of the jury what your relationship is with
6 Mr. Hailey who was mentioned.

7 A What my relationship is?

8 Q At the present time.

9 A We used to be best of friends. We
10 don't see one another anymore.

11 Q And what occurred to cause that falling
12 out?

13 A We had some confrontation over some
14 hunting property that I own and my father owns, and Ward
15 used to hunt with us. It just steamrolled into a big
16 argument. Nothing physical, we just parted our ways.

17 Q And how long ago was that?

18 MR. SUTTON: Your Honor, I don't see
19 the relevance of this at all.

20 THE COURT: Mister who?

21 MR. POCHUCHA: Mr. Hailey. He was
22 asked questions about Mr. Hailey on his
23 examination.

24 THE COURT: All right. Go ahead.

25 MR. POCHUCHA: Mr. Hailey was the

1 individual--

2 THE COURT: I remember.

3 BY MR. POCHUCHA: (cont'd)

4 Q In the past seven years, have you had
5 an occasion to receive any stainless steel nuts and bolts
6 for any purpose at DuPont?

7 A No. I'm in the welding shop.

8 MR. POCHUCHA: Thank you.

9 THE COURT: Thank you, Mr. Poulston.
10 You may step down, sir.

11
12 _____
13 WITNESS STOOD ASIDE

14 THE COURT: That's all you have, Mr.
15 Pochucha?

16 MR. POCHUCHA: Your Honor, I would like
17 to offer the following answers to
18 interrogatories of Mr. Rock where he was asked
19 to identify fully all his present assets,
20 including real and personal property, both
21 tangible and intangible, as well as to identify
22 fully any and all sources of his income.

23 THE COURT: All right. This was
24 stipulated?

25 MR. SUTTON: Yes. We'll stipulate to

1 that.

2 THE COURT: This will be admitted as
3 Plaintiff's Exhibit 3.

4 (Plandtiff's Exhibit 3, Entered.)

5 MR. POCHUCHA: And I would also like to
6 offer Mr. Rock's interrogatory responses to
7 Question Number 8 and Question Number 9.
8 Question Number 8, they speak for themselves on
9 the face of it, Your Honor.

10 THE COURT: All right. This will be 4.

11 (Plandtiff's Exhibit 4, Entered.)

12 MR. POCHUCHA: Also, I'd like to offer
13 the affidavit of service in the proceeding in
14 this case, the garnishment summons on Mr. Rock,
15 Case Number LU3072-1, Charles Poulston versus
16 Bobby Rock, which was served on him May 7th,
17 1993.

18 THE COURT: Any objection?

19 MR. SUTTON: None, Your Honor.

20 THE COURT: That's 5. Is that all you
21 have?

22 (Plandtiff's Exhibit 5, Entered.)

23 MR. POCHUCHA: I would like to read
24 certain testimony from Mr. Rock.

25 MR. SUTTON: Your Honor, I'm going to

1 object to the admission of the deposition
2 testimony. Under the rules, as I understand
3 them, they can be used for impeachment purposes
4 only. Mr. Rock is here to testify. If Mr.
5 Pochucha would--

6 THE COURT: That's not right. The
7 rules say that you can read the deposition of
8 any party for any purpose. Let me see. Let me
9 find it here. I've got this book here, and I
10 can't find my rules.

11 MR. POCHUCHA: 4:5, Your Honor.

12 THE COURT: I'm looking at 4:5. I
13 should know it. It's really Rule 4:7.
14 Deposition of a party, and I'm going to
15 paraphrase this, may be used by an adverse
16 party for any purpose. Is that the purpose?
17 Whose deposition is this?

18 MR. POCHUCHA: This is Mr. Rock's.

19 THE COURT: Right. Rule 4:7 (a) 3, and
20 the deposition of a party or anyone who at the
21 time of taking the deposition was officer,
22 director, manager or persons designated, so
23 forth, which is a party may be used by an
24 adverse party for any purpose. Go ahead.

25 MR. SUTTON: Your Honor, in light of

1 that, I'm going to object to him sitting there
2 reading the deposition to the jury. If he
3 would like to argue it and read it to them at
4 the closing argument, that's fine; but I object
5 to him sitting there reading the entire
6 deposition to the jury.

7 THE COURT: Well, are you going to read
8 the entire deposition?

9 MR. POCHUCHA: No, sir. Mr. Sutton
10 knows what I'm going to read to him. I'm
11 reading several lines on two pages that I just
12 advised him about 15 minutes ago.

13 THE COURT: He can read a part of it.

14 MR. POCHUCHA: Page 14, Line 10 through
15 14. This is a question of Mr. Rock.

16 BY MR. POCHUCHA: (cont'd)

17 "Q At the time that you told the
18 supervisor at DuPont that Mr. Poulston had
19 stolen those bolts, you knew that if they
20 believed that that he would be fired, didn't
21 you?

22 A I was hoping he would be fired."

23 MR. POCHUCHA: Page 15, Line 16 through
24 23.

25 "Q At the time you placed this call

1 to DuPont, that was the point in time that your
2 checking account was garnished, wasn't it?

3 A Correct.

4 Q You were angry that you were going
5 to have to pay Mr. Poulston some money as a
6 result of that other case, weren't you?

7 A Yes."

8 THE COURT: All right. Is that all you
9 have?

10 MR. POCHUCHA: It is, Your Honor.

11 MR. SUTTON: If I may, since
12 Mr. Pochucha has introduced the entire
13 deposition, I would like to read part of it to
14 the jury, if I may.

15 THE COURT: What part?

16 MR. SUTTON: Page 14, Line 15 and the
17 subsequent lines. Ladies and gentlemen, I'll
18 go back to the original lines that Mr. Pochucha
19 originally read to you.

20 "Q At that time you told the
21 supervisor at DuPont that Mr. Poulston had
22 stolen those bolts, you knew that if they
23 believed that that he would be fired, didn't
24 you?

25 A I was hoping he would be fired.

1 Q That's why you called him in the
2 first place, wasn't it?

3 A I didn't call for him to be fired,
4 but I called to see if they gave away stainless
5 steel bolts. I wanted to know the truth. When
6 I found out that he was stealing from them, I
7 called you first if you remember."

8 THE COURT: All right. With that,
9 ladies and gentleman, the plaintiff has rested
10 his case. Mr. Sutton, you ready to proceed?

11 MR. SUTTON: I have a motion, Your
12 Honor.

13 THE COURT: Step back in the jury room
14 a moment, please. There's something I need to
15 take up with counsel. This is just to give you
16 exercise to keep you alert.

17 NOTE: The jury retires to the jury
18 room.

19
20
21
22
23
24
25

1 JURY ABSENT

2 MR. SUTTON: Your Honor, I would have a
3 motion to strike. As we've discussed, I feel
4 like this is a defamation per se case in that
5 it involves impugning his reputation at his
6 place of business. Now, in order that they
7 recover, they have to show certain things.
8 Before I get into those elements and what they
9 are, under the leading case in Virginia,
10 Gazette v. Harris, 229 Virginia 1, the Supreme
11 Court says that at some point Your Honor has to
12 make a rulings as a matter of law as to whether
13 there was substantial danger to reputation
14 apparent because once you make that ruling then
15 that decides the elements that they have to
16 prove in regard to whether or not it is a
17 negligent standard or whether it is a New York
18 Times malice standard that has to be proven.

19 Now, before I make my argument, I was
20 wondering, is this the proper time that the
21 Court is going to make this ruling?

22 THE COURT: Ruling for what?

23 MR. SUTTON: Under the Gazette case, in
24 order that they recover they have to show that
25 a statement was made by the plaintiff about the

1 JURY ABSENT

2 defendant -- I take it back. It was a
3 statement made by the defendant about the
4 plaintiff and was, of course, published to a
5 third party. Now, the statement had to be
6 false. Now, if there is a substantial danger
7 to reputation apparent as ruled by Your Honor
8 as a matter of law, then it's a negligent
9 standard.

10 The last element of their prima facie
11 case is that the defendant either knows the
12 statement was to be false, or believing it to
13 be true lacking reasonable grounds for its
14 belief, or did he act negligent in failing to
15 ascertain the truth. That's the fifth element
16 of the case, should you rule that there is a
17 danger to Mr. Poulston's reputation apparent.

18 Now, if you don't rule that there is
19 danger to his reputation as parent, and since
20 this is a defamation per se case, then the New
21 York Times malice -- under New York Times
22 versus Sullivan, as articulated by the United
23 States Supreme Court in 1964, malice must be
24 shown and not a negligent standard as
25 articulated in the Gazette v. Harris by the

1 JURY ABSENT

2 United States Supreme Court in 1985. Now,
3 under New York Times malice, instead of showing
4 the negligent standard, they have to show that
5 either he knew the statement was false or that
6 he acted, that is, the defendant, acted with
7 reckless disregard for the truth. So what I'm
8 articulating to the Court is that there has to
9 be some kind of ruling on your part as to
10 whether there was apparent damage to Mr.
11 Poulston's reputation because if there is not,
12 they have to show malice.

13 THE COURT: Don't you have that in a
14 per se category such as you conceded applies
15 here?

16 MR. SUTTON: I conceded it's a per se
17 case. Under the Gazette v. Harris, 229
18 Virginia, Page 15, the Supreme Court says, "We
19 hold therefor that in an action brought by a
20 private individual to recover actual
21 compensatory damages for a defamatory
22 publication, the plaintiff may recover upon
23 proof by a preponderance of the evidence that
24 the publication was false, and that the
25 defendant either knew it to be false, or

1 JURY ABSENT

2 believing it to be true, left reasonable
3 grounds for such belief or acted negligently in
4 failing to ascertain the facts on which the
5 publication was made. Under this standard,
6 truth no longer an affirmative defense to be
7 established by the defendant. Instead, the
8 plaintiff must prove falsity, because he is
9 required to establish negligence with respect
10 to such falsity. In addition, we hold that
11 such liability may be based upon negligence,
12 whether or not the publication in question
13 relates to a matter of public or general
14 concern."

15 THE COURT: Is that a per se case?

16 MR. SUTTON: Yes, sir, it was. Also,
17 the Court went on to hold that as a matter of
18 law that the negligence standard should be made
19 applicable to both media and non-media
20 defendants as we have here. Now, under Gazette
21 the Supreme Court says that the trial court has
22 to rule at some point as to whether there is
23 substantial danger to his reputation because
24 that ruling in, itself, is what articulates
25 what the plaintiff has to prove. Do they have

1 JURY ABSENT

2 to prove New York Times malice, or do they
3 prove negligence under the Gazette v. Harris
4 standard? As I see it at this point, Your
5 Honor, at this point, needs to make a ruling
6 whether was there damage to his reputation,
7 because if there's not damage to his reputation
8 apparent then--

9 THE COURT: I thought with a per se
10 violation the damage to his reputation is
11 presumed.

12 MR. SUTTON: It is not presumed.

13 THE COURT: It's not presumed when you
14 attribute something, a crime, what are the
15 categories, a crime or something--

16 MR. SUTTON: Moral turpitude, unfit to
17 perform to duties.

18 THE COURT: Here you've got both
19 impugning of a crime to the plaintiff, as well
20 as impugning his integrity with respect or his
21 ability to perform his occupational job?

22 MR. SUTTON: I'm not disagreeing with
23 the Court. I also feel like it's a defamation
24 per se case. What I'm saying is that at some
25 point we have to make a determination of do

1 JURY ABSENT

2 they have to prove malice, that is, under New
3 York Times v. Sullivan, or do they have to use
4 the negligence standard under Gazette v.
5 Harris.

6 THE COURT: There's another case where
7 the Supreme Court has said that in Virginia
8 common law malice and New York Times malice is
9 the same.

10 MR. SUTTON: That's correct, Your
11 Honor, but common law has been, I guess,
12 reshaped by the Supreme Court. Richmond
13 Newspaper versus Lipscomb was a 1987 case
14 subsequent to the Gazette v. Harris case. It
15 says the judge must make a ruling as a matter
16 of law as to whether there exists a substantial
17 danger to reputation of character because that
18 is the crux as to whether or not malice has to
19 be proved or negligence must be proved. I
20 guess what we need to know is if the Court is
21 ruling if there has been substantial danger to
22 reputation apparent.

23 THE COURT: The only thing I note
24 before we hear from Mr. Pochucha is that what
25 you just read from Gazette seems to me to be

1 JURY ABSENT

2 speaking about a defamation claim after all the
3 evidence is in because it spoke about the
4 preponderance of the evidence and that at this
5 stage there's no burden, other than to survive
6 a motion to strike. Maybe that will be a
7 determination to be made at the end of the
8 case. I don't know.

9 MR. SUTTON: In light of that, I still
10 renew my motion to strike. I feel like the
11 plaintiff has not proved, even in the light
12 most favorable to them, that the defendant knew
13 the statement was false. The plaintiff
14 testified that he supplied Mr. Hailey with
15 bolts, the same stainless steel bolts, the same
16 gentleman who was building the bike. It is
17 from these representations that the defendant
18 formed the belief that Mr. Poulston was
19 supplying these bolts from DuPont.

20 There's been no showing that he acted
21 with a reckless disregard for the truth, or
22 that he failed to ascertain the truth before he
23 made those statements. In light of that, Your
24 Honor, I don't feel like they've met their
25 burden, nor have they shown any damages at this

1 JURY ABSENT

2 point. Although this is a per se case, they've
3 still got to show compensatory damages, which--

4 THE COURT: I was wondering about that.

5 MR. SUTTON: Humiliation, et cetera.
6 There's been no showing about out-of-pocket.

7 THE COURT: I've been wondering about
8 that, too. There's no hard evidence yet about
9 -- maybe Mr. Pochucha can clear us up on that.

10 MR. SUTTON: If you'll recall, I think
11 the crux of the case can be looked at from the
12 administrative hearing that was held by Mr.
13 Hancock, Mr. Winder, Mr. Poulston and Mr.
14 Greer. All of those gentlemen testified that
15 we were sworn to secrecy, that we had a duty of
16 confidentiality, that we cannot expose anything
17 that goes on within this hearing. Mr. Poulston
18 has testified several times that several people
19 in DuPont knew about what was going on here.
20 That only leaves the secretary who typed the
21 memo or Mr. Poulston for spreading the word.
22 The only contact made by Mr. Rock to DuPont was
23 the initial telephone call to Mr. Bolton.

24 As you can see and as you heard from
25 their own witnesses, they laughed at it, Mr.

1 JURY ABSENT

2 Poulston laughed at it and they blew it off and
3 nothing happened. He lost none of his
4 benefits. He lost no retirement. He was not
5 demoted. He lost nothing. The only thing that
6 he lost is his attorney's fees, and he
7 instigated this action. I don't feel like that
8 is a proper measure of damages.

9 Now, in order to get damages under this
10 case, they have to show either loss to his
11 business, which there has been done; and they
12 have to show injury to his reputation, which
13 all of his witnesses have testified to when
14 asked on cross-examination, did your opinion of
15 him as to his integrity and honesty change as a
16 result of this and their answer, no. Each and
17 every one of them. Mr. Poulston is the only
18 one whose testified to his reputation. As Your
19 Honor has articulated very well made,
20 reputation is perceived by third parties and
21 not yourself.

22 There are no actual out-of-pocket
23 losses which were caused by the statement. The
24 only thing that is left is his pain,
25 embarrassment, humiliation and mental

1 JURY ABSENT

2 suffering. There hasn't been a showing of any
3 mental suffering. He didn't miss a day of
4 work. They're trying to show that he was
5 humiliated because the security system was
6 evidently upgraded there, but I still find it
7 hard to believe that the allegation that was
8 held in such confidence between these four men
9 somehow leaked its way to security so that they
10 now doubled security and checked 1,000
11 employees when they leave DuPont Corporation.
12 The only embarrassment that he has shown is the
13 ribbing, quote/unquote, the ribbing that he
14 catches from people that he doesn't know. His
15 own supervisor said that when Mr. Poulston
16 heard of the allegation he smiled and laughed
17 and blew it off, quote/unquote.

18 Your Honor, there's been no showing of
19 pain, embarrassment, humiliation or any kind of
20 mental suffering so as to award compensatory
21 damages. Likewise, Your Honor, I ask you to
22 strike the case in regards to punitive damages.
23 In order that there be a finding of punitive
24 damages, there's got to be clear and convincing
25 evidence that the defendant knew the statement

1 JURY ABSENT

2 was false or he acted with willful and wanton
3 conduct and that he acted with reckless
4 disregard for the truth.

5 Your Honor, this is basically a case
6 where these gentlemen don't like each other. I
7 don't think it should have made it this far,
8 and I'm going to ask you to strike it and stop
9 wasting this jury's time.

10 MR. POCHUCHA: Your Honor, Mr. Sutton
11 misrepresents Gazette v. Harris in terms of the
12 court making a ruling. The ruling that Mr.
13 Sutton requested the Court to make is to be
14 made when you have a newspaper or publication
15 publishing something as First Amendment issue
16 is brought into play. The standard here is
17 clearly this is a defamation per se. Clearly,
18 the question is has a prima facie case been
19 made to show that the statement was false and
20 that Mr. Rock knew it was false when it was
21 made. Mr. Poulston's testimony certainly is
22 enough to carry today on that question because
23 it hasn't been rebutted at this point. He says
24 he never told Mr. Rock that, and in fact he
25 never took any stainless steel bolts from

1 JURY ABSENT

2 there.

3 The question of malice is also properly
4 before the Court. We have only to prove by a
5 preponderance of the evidence that the
6 statement was false, that Rock knew it was
7 false. Damages is presumed. He's testified
8 that his reputation has been affected, that
9 this is widespread. It's known by many people
10 at the DuPont Corporation. That is sufficient
11 to survive a motion to strike. It's sufficient
12 to carry to the jury for the jury to decide
13 what compensatory damages there are.

14 We've also clearly made a case for a
15 punitive damages case. It is in the punitive
16 damages case that malice must be shown by clear
17 and convincing evidence. What is malice but
18 ill will. The defendant stipulated that
19 there's ill will between the parties. It's
20 also doing an act for an improper purpose.
21 It's clear from Mr. Bolton's testimony that
22 when Mr. Rock called the DuPont Corporation,
23 his call was for the sole purpose of causing
24 trouble to Mr. Poulston, not to obtain any
25 information regarding whether or not the items

JURY ABSENT

on his motorcycle were stolen, but to attempt to cause trouble to Mr. Poulston. His own depositions say the same thing, that he wanted him to be fired. That is the reason that he called. It had nothing to do with conveying any information or obtaining any cost on his own behalf as to whether or not the items on his motorcycle were stolen.

So clearly we should prevail at this point on both of those issues. Those are the elements. They're very simple, and I think clearly the inferences are in favor of the plaintiff at this point in time. There's certainly plenty of evidence before the Court to bear that out. I point primarily to Mr. Bolton, also to Mr. Poulston, Mr. Greer and Mr. Hancock who have known Mr. Poulston for 23 years in one case and longer than that in the other.

THE COURT: All right. Anything else?

MR. SUTTON: No response.

THE COURT: Gentlemen, we have to remember, this is a motion to strike at the end of the plaintiff's case where the plaintiff

1 JURY ABSENT

2 enjoys the benefit of all favorable inferences.
3 I think with that benefit goes the favorable
4 inference, as I see it, on all the elements of
5 this claim in viewing it, as well as it is a
6 per se claim as agreed upon by the parties. I
7 think there's also evidence here to support
8 inferences favorably for the plaintiff at this
9 stage on the claim for punitive damages. I do
10 deny the motion to strike. Mr. Sutton, you
11 ready to proceed?

12 MR. SUTTON: Yes. Just note my
13 objection for the record.

14 THE COURT: Bring the jury in. Who is
15 your first witness?

16 MR. SUTTON: Barbara Vanichi (ph).

17 NOTE: The jury returns to the jury
18 box.

1 JURY PRESENT

2 NOTE: Barbara Vanichi was called into
3 the courtroom.

4
5 *****

6 BARBARA VANICHI,
7 after having been first duly sworn,
8 testifies and says under oath as follows:

9 *****

10 DIRECT EXAMINATION

11 BY MR. SUTTON:

12 Q Could you state your name for the
13 record.

14 A Barbara Vanichi (ph).

15 Q Your age.

16 A 32.

17 Q And do you know the defendant in this
18 matter, Bobby Rock?

19 A Yes.

20 Q And do you know the plaintiff in this
21 matter, Charles Poulston?

22 A Yes.

23 Q Are you also familiar with the
24 gentleman by the name of Gordon Hailey?

25 A Um-hum.

1 Q If I can turn your attention back to
2 1989. Were you involved with Mr. Rock at that time?

3 A Yes.

4 Q And during that time, was Mr. Rock
5 building a motorcycle?

6 A Yes.

7 Q And where was that motorcycle being
8 built?

9 A The second person's name, his garage
10 that you mentioned.

11 Q Would that be Mr. Hailey's garage?

12 A Yes.

13 Q Were you ever present in Mr. Hailey's
14 garage when this motorcycle was being built?

15 A A few times.

16 Q Did you ever see this gentleman present
17 at that garage when the motorcycle was being built?
18 (Indicating.)

19 A Yes.

20 Q Did you ever hear any conversation
21 between Mr. Rock and Mr. Poulston in regards to stainless
22 steel nuts and bolts?

23 A I heard a conversation, and I remember
24 seeing a nut and bolt together and it being held up in
25 the air.

1 Q Who was holding it up in the air?

2 A He was. (Indicating.)

3 MR. SUTTON: Let the record reflect
4 that she's pointing to Mr. Poulston, the
5 plaintiff.

6 BY MR. SUTTON: (cont'd)

7 Q What did Mr. Poulston say when he held
8 up this bolt?

9 A He said he could get some.

10 Q Who was he saying this to?

11 A (Indicating.)

12 Q Mr. Rock?

13 A Yes.

14 Q Did he give them any indication of what
15 type of bolt and nut this was?

16 A He mentioned it. I really didn't pay
17 much attention. I didn't care what kind it was.

18 Q Did he give any indication as to his
19 source of this nut and bolt?

20 A I remember, when it was at that context
21 or that exact moment, I remember him saying something
22 about working at DuPont.

23 Q Did he ever make any comment about
24 whether or not he could get the nut and bolt from DuPont?

25 A I don't recall, as far as--

1 MR. SUTTON: That's all I have, Your
2 Honor.

3
4 CROSS-EXAMINATION

5 BY MR. POCHUCHA:

6 Q You and Mr. Rock have a child together?

7 A Yes.

8 Q Does he have visitation privileges with
9 the child?

10 A None.

11 Q When is the last time he saw the child?

12 A November, two and a half years ago.

13 It'll be three years this coming November.

14 Q Have you advised my Rock of your
15 address?

16 A No.

17 Q Why not?

18 A I don't want him knowing where I live.

19 I made a clean effort to make sure he cannot locate where
20 I live.

21 Q You are not telling the ladies and
22 gentleman of this jury that Mr. Poulston ever said he
23 took anything from DuPont Corporation, are you?

24 A Not to my knowledge. No.

25 MR. POCHUCHA: Thank you.

1 MR. SUTTON: If I may.

2

3 REDIRECT EXAMINATION

4 BY MR. SUTTON:

5 Q Upon hearing the conversation between
6 Mr. Poulston and Mr. Rock, where did you believe the
7 bolts were coming from?

8 MR. POCHUCHA: Object, Your Honor.
9 That calls for speculation.

10 MR. SUTTON: No, it doesn't.

11 MR. POCHUCHA: It's outside the scope
12 of my cross-examination, as well.

13 MR. SUTTON: No, it's not. He asked
14 her specifically--

15 THE COURT: Out of the scope objection,
16 that aspect of the objection is overruled.
17 What's the other issue, Mr. Pochucha, if there
18 was one on your objection?

19 MR. POCHUCHA: She's already answered
20 the question. He asked her what she assumed,
21 not what was said. What she assumed calls for
22 speculation.

23 MR. SUTTON: I'm not asking her to
24 speculate, I'm asking her to tell the Court and
25 the jury what went through her mind at the time

1 she heard this conversation.

2 MR. POCHUCHA: That's not probative to
3 the jury.

4 THE COURT: What she may have thought
5 or heard, if anything, about what was said --
6 she can relate what she heard and saw, and she
7 has by her testimony. But what she may have
8 concluded or thought or her opinion about it is
9 of -- the jury can make its own determination
10 about what the evidence suggests. The
11 objection, therefore, is sustained.

12 MR. SUTTON: That's all I have.

13 THE COURT: Your next witness.

14 MR. POCHUCHA: May the witness be
15 excused?

16 THE COURT: Yes. You can go or remain,
17 whichever you wish.

18
19 WITNESS STOOD ASIDE

20
21 MR. SUTTON: Steven Winder.

22 NOTE: Mr. Winder was called into the
23 courtroom.

24

25

STEVEN WINDER,

after having been first duly sworn,
testifies and says under oath as follows:

DIRECT EXAMINATION

BY MR. SUTTON:

Q Sir, can you state your name for the
Court, please.

A Steven Winder.

Q Where are you employed?

A I work at DuPont.

Q How long have you been there?

A 29 years.

Q And what is your job title and--

A I'm a section maintenance manager.

Q And what does that involve?

A I'm in charge of field maintenance
organization, which has pipe fitters, welders and various
other crafts that do work across the site.

Q Sir, are you aware of whether or not
DuPont is in the business of keeping in their inventory
stainless steel nuts and bolts?

A Yes.

Q Do you put identifying marks on those

1 stainless steel--

2 A We do not.

3 Q If an employee wanted to get a
4 stainless steel nut or bolt from inventory, what would
5 they have to do?

6 A Go to a supply cage and get one.

7 Q Would they have to fill out any formal
8 requisition to get this stainless--

9 A No.

10 MR. POCHUCHA: I would object to this
11 line of testimony. The relevant period is in
12 1989.

13 BY MR. SUTTON: (cont'd)

14 Q The procedure for which you just
15 testified, was this in existence in 1989?

16 A In 1989, we probably had cage operators
17 which issued the supplies that the mechanics used.

18 Q But you're not sure of whether or not
19 you had cage operators then?

20 A I was not a part of the field
21 maintenance organization in 1989. I was in another job.

22 Q Sir, who communicated to you the phone
23 call made to Mr. Bolton?

24 A Mr. Ernest Bolton called me.

25 Q And who communicated the phone call to

1 Mr. Hancock?

2 A I did.

3 Q And was it Mr. Hancock who communicated
4 the phone call to Mr. Greer?

5 A Yes.

6 Q And you at some point held a hearing to
7 make a determination?

8 A We held a meeting to talk about the
9 allegations.

10 Q And present at that meeting was who,
11 sir?

12 A It was myself, Jimmy Greer, Bob Hancock
13 and Charlie Poulston.

14 Q And was Mr. Poulston reprimanded?

15 A Mr. Poulston, at the time we
16 investigated, said we had these allegations, and we told
17 him if there was a problem we would get back with him but
18 there was no reprimand at this time.

19 Q And what day was the meeting held, sir?

20 A Gosh, I believe it was May 11th.

21 Q And the call was made on what day, sir?

22 A I think it was the Friday before that.

23 Q May the 7th?

24 A Yes. It should be.

25 Q Was the matter concluded on May the

1 11th?

2 A The matter basically was concluded
3 unless we found some definite proof that there was a
4 problem. Mr. Poulston was told at that time we would get
5 back with him.

6 Q How long have you known Mr. Poulston?

7 A Probably since his employment with the
8 company.

9 Q And are you aware of his reputation in
10 the community?

11 A None, whatsoever. Only at work.

12 Q Has this allegation changed your
13 opinion of his reputation?

14 A No. He's been an excellent employee.

15 Q Is he still an excellent employee?

16 A Yes.

17 Q Is he still considered an excellent
18 employee even after the allegations?

19 A Yes.

20 Q Did he lose any pay?

21 A No.

22 Q Was he reprimanded?

23 A No.

24 Q Was he demoted?

25 A No.

1 Q Did he lose any of his retirement
2 benefits?

3 A No.

4 Q Sir, did there come a time when
5 Mr. Poulston asked you who made this allegation against
6 him?

7 A Yes, he did. He asked me the first
8 meeting we had.

9 Q Did you ever tell him who made the
10 allegation?

11 A I later went back and told him who had
12 made the allegations.

13 Q Where did you tell him who made the
14 allegation?

15 A I really don't remember.

16 Q Would it have been in the shop area
17 where he worked?

18 A It could have been.

19 Q Were there others present when you told
20 him this?

21 A I can't recall. It's been so long.

22 Q Do you recall the conversation?

23 A Not, whatsoever, really.

24 Q You recall talking to him?

25 A Sure. I usually talk to him every day.

1 Q Was it just the two of you talking?

2 A Potentially it could have been. I
3 don't remember.

4 Q Were there others around listening to
5 you or within earshot of your conversation?

6 A I really can't remember.

7 Q Sir, getting back to the hearing, the
8 union hearing where Mr. Poulston had to be represented.
9 Are those hearings held in confidence?

10 A Yes.

11 Q Did you communicate the findings or the
12 allegations of that hearing to anyone?

13 A Only to my boss and Mr. Ernie Bolton.

14 Q That was the only persons?

15 A That is the only two. Yes, sir.

16 Q To your knowledge, did Mr. Bolton
17 communicate this to anyone else besides yourself?

18 A Not to my knowledge.

19 Q To your knowledge, did Mr. Hancock
20 communicate this to anyone?

21 A No.

22 Q To your knowledge, did Mr. Greer
23 communicate this to anyone?

24 A Not to my knowledge.

25 Q There was a secretary who typed a memo

1 for Mr. Bolton; is that not correct?

2 A Probably so. I'm not sure. I remember
3 receiving the memo. I'm not sure if she typed it or
4 Ernest Bolton typed it.

5 Q To your knowledge, did the secretary
6 communicate the contents of the memo to anyone?

7 A Knowing her like I do, she would not.

8 MR. SUTTON: That's all I have, Your
9 Honor.

10 MR. POCHUCHA: No questions at this
11 time, but I would ask Mr. Winder to remain.

12 THE COURT: Thank you. You may step
13 down, sir. If you would remain outside, and
14 while you're outside, don't discuss your
15 testimony. Thank you.

16
17 WITNESS STOOD ASIDE

18
19 THE COURT: Next witness.

20 MR. SUTTON: J.D. Shaffer.

21 THE COURT: I'm told he's putting money
22 in his parking meter.

23 MR. SUTTON: Gordon Hailey.

24 NOTE: Gordon Hailey is called into the
25 courtroom.

GORDON HAILEY,

after having been first duly sworn,
testifies and says under oath as follows:

DIRECT EXAMINATION

BY MR. SUTTON:

Q Sir, could you state your name for the
Court, please.

A Gordon W. Hailey.

Q Spell your last name.

A H-A-I-L-E-Y.

Q And are you employed here in the City
of Richmond, sir?

A Yes.

Q Do you know the defendant in this
matter, Bobby Rock?

A Yes, I do.

Q Do you know the plaintiff in this
matter, Charles Poulston?

A Yes.

Q Did you have an occasion to build a
motorcycle with Bobby Rock?

A Yes, I did.

Q When was this motorcycle being built?

1 A I don't recall the year. A couple
2 years ago.

3 Q Would it be in 1989?

4 MR. POCHUCHA: Object, Your Honor, to
5 the leading form of the question.

6 THE COURT: Objection is overruled.

7 BY MR. SUTTON: (cont'd)

8 Q Would it be in 1989?

9 A It's possible.

10 Q And where was this motorcycle being
11 built?

12 A In my garage.

13 Q And was this just an ordinary
14 motorcycle or a special motorcycle?

15 A Custom built.

16 Q Why was it being custom built?

17 A Everything was hand-made on it.

18 Q And was this motorcycle for personal
19 use or for competition?

20 A Well, it was a personal bike put in a
21 bike show.

22 Q And what exactly happens at a bike
23 show?

24 A Well, they just put the bikes in them,
25 judge them, paint, custom.

1 Q And what are some of the criterias that
2 bikes are judged upon?

3 A Well, the paint jobs, how the wiring is
4 done, chrome, stuff like that.

5 Q Was chrome used on the bike that you
6 were building for Mr. Rock?

7 A A lot of chrome components were used.
8 Yes.

9 Q Was there any stainless steel used on
10 the bike?

11 A Yes.

12 Q What type of stainless steel was used
13 or--

14 A Bolts, stainless bolts, nuts, washers.

15 Q Sir, how long have you been riding
16 motorcycle?

17 A Probably about 15 years.

18 Q How long have you been building
19 motorcycles?

20 A Probably about 10.

21 Q Would it be fair to say that you're
22 familiar with the cost of parts on a motorcycle?

23 MR. POCHUCHA: I object.

24 MR. SUTTON: I'll rephrase it.

25 BY MR. SUTTON: (cont'd)

1 Q Are you familiar with the cost of parts
2 on motorcycles?

3 A Yes.

4 Q Sir, can you tell what is the average
5 cost of a chrome nut?

6 MR. POCHUCHA: Object to that, Your
7 Honor. This witness isn't qualified to testify
8 to that.

9 THE COURT: He said he's been building
10 bikes for 10 years. Objection is overruled.

11 BY MR. SUTTON: (cont'd)

12 Q What would be the average price of a
13 chrome nut?

14 A Well, they vary depending on what size
15 they are.

16 Q Pick a size and give me a price.

17 A Probably a five-sixteenths would be \$2
18 or \$3.

19 Q Would be the price of a chrome bolt?

20 A Depending on the size.

21 Q And pick a size and give me a price.

22 A It could be anywhere from \$5 to \$15.

23 Q Are stainless steel nuts and bolts more
24 expensive or less expensive than chrome nuts and bolts?

25 A Well, it depends on the bolt size

1 again.

2 THE COURT: The prices you just quoted,
3 are they for chrome or stainless?

4 THE WITNESS: Chrome.

5 BY MR. SUTTON: (cont'd)

6 Q If I had a five-sixteenths nut,
7 stainless steel nut, what would be the price of that?

8 A I couldn't tell you that.

9 Q Would it be more or less expensive than
10 a chrome nut?

11 A It could be more or less.

12 Q Did you use stainless steel in the
13 building of Mr. Rock's bike?

14 A Yes.

15 Q Did you buy these stainless steel--

16 A No.

17 Q Where did you get them?

18 A Mr. Poulston furnished them.

19 Q And how long did it take you to build
20 this motorcycle?

21 A Probably about a year, year and a half.

22 Q How many times per week would you work
23 on the motorcycle?

24 A A couple hours every day.

25 Q Would it be you by yourself, or would

1 it be you and Mr. Rock?

2 A A lot of times I done it by myself.
3 Sometimes Mr. Rock come over. Mr. Poulston come over
4 sometimes.

5 Q Was there ever an occasion where the
6 three of you were in your garage?

7 A I'm sure on numerous times.

8 Q During any of those occasions, did
9 Mr. Poulston have stainless steel nuts and bolts on his
10 person?

11 A Yes.

12 Q During any of those times, did he ever
13 give you those stainless steel nuts and bolts?

14 A Yes.

15 Q When he gave you these stainless steel
16 nuts and bolts, was this in the presence of Mr. Rock?

17 A I'm sure it has been.

18 Q How did you know they were stainless
19 steel nuts and bolts as opposed to chrome nuts and bolts?

20 A It's very obvious. When you're in the
21 business around automobiles and motorcycles you know the
22 difference.

23 Q Did you ever pay him for these
24 stainless steel nuts and bolt?

25 A No.

1 Q Did Mr. Rock ever pay him--

2 MR. POCHUCHA: Objection, speculation.

3 BY MR. SUTTON: (cont'd)

4 Q To your knowledge, did Mr. Rock pay him
5 for stainless steel nuts and bolts?

6 A Not that I know of.

7 Q Did Mr. Poulston ever tell you, sir,
8 the source of these stainless steel nuts and bolts?

9 A He told me he could get them at work.

10 Q And did you know where he worked, sir?

11 A Yes.

12 Q Where is that?

13 A DuPont.

14 Q Now, sir, you testified earlier that
15 this was a show bike or a custom bike for competition.

16 A Yes.

17 Q Was there anything else special that
18 had to be made for the motorcycle?

19 A Well, we done various custom deals on
20 it. We made little tabs to go on the back end of the
21 bike to customize it to make it unordinary from anything
22 else.

23 Q Sir, if I may, Your Honor. I hand you
24 two pictures, which I will call Defendant's Exhibits
25 collectively Number 1 for identification purposes and ask

1 you if you recognize it.

2 NOTE: Witness peruses the photographs.

3 A Yes.

4 Q What do those pictures have or what is
5 in that picture?

6 A A flat plate that was cut out and
7 welded on to the frame and molded.

8 Q Do you recognize the motorcycle?

9 A Yes.

10 Q Whose motorcycle is that?

11 A Mr. Rock's.

12 Q Is that the motorcycle that you and
13 Mr. Rock were building together?

14 A Yes, it is.

15 Q You were referring to a plate earlier.

16 A Um-hum.

17 MR. SUTTON: If I may publish these to
18 the jury.

19 THE COURT: All right.

20 NOTE: Counsel displays the photographs
21 to the jury.

22 THE WITNESS: When they look at it they
23 might not know what you're talking about.

24 MR. SUTTON: I move those into
25 evidence, unless there's an objection.

1 THE COURT: All right. They'll be
2 Defendant's 1 and 2.

3 (Defendant's Exhibits 1 & 2, Entered.)

4 BY MR. SUTTON: (cont'd)

5 Q Mr. Hailey, I'm handing you a nut and
6 bolt, which I'll call collectively as Defendant's Exhibit
7 2 and ask if you can identify that.

8 NOTE: The nut and bolt are handed to
9 the witness.

10 A Yes.

11 Q What is it?

12 A Stainless steel.

13 Q How does this bolt and nut compare to
14 the bolts and nuts supplied to you by Mr. Poulston?

15 A It's identical.

16 MR. SUTTON: I move this into evidence
17 as Exhibit 2.

18 MR. POCHUCHA: I would object to that.
19 It bears no relevance in this case.

20 MR. SUTTON: Your Honor, the witness
21 has just testified this bolt is identical to
22 those supplied to him by Mr. Poulston and used
23 on the building of Mr. Rock's motorcycle.

24 THE COURT: Mr. Pochucha.

25 MR. POCHUCHA: How does that aid the

1 jury in any inquiries, Judge? It's not tied
2 into DuPont. We don't know where it came from.

3 THE COURT: Well, to the extent that
4 this is like the type Mr. Hailey has testified
5 or given to him by Mr. Poulston and the other
6 evidence about the origin, the objection is
7 overruled. This will come in -- let me call
8 this Defendant's Exhibit 3, by the way, because
9 the pictures will be 1 and 2. Where are the
10 pictures?

11 (Defendant's Exhibit 3, Entered.)

12 BY MR. SUTTON: (cont'd)

13 Q If I can direct your attention to
14 Number 1, Defendant's Exhibit Number 1, can you explain
15 to the jury what this part is here. (Indicating.)

16 A Well, this is where the axle goes
17 through for your wheel, and all we did was added a little
18 plate on it for a decorative type item. It had to be
19 welded on and then molded.

20 Q Sir, was this a regular plate for this
21 type of motorcycle, or was this plate specially made?

22 A It was a handcrafted piece.

23 Q And who made this plate?

24 A Mr. Poulston had it made for me.

25 Q How did it come about that Mr. Poulston

1 was going to make this plate?

2 A I made a template, and he said he can
3 get it made for me and he did so.

4 Q Did you actually take a piece of paper
5 and draw this plate out on--

6 A A piece of cardboard like would come in
7 a new shirt.

8 Q Was Mr. Rock present when you did this?

9 A I think so.

10 Q Did Mr. Poulston tell you where he was
11 going to cut this?

12 A No.

13 Q Who welded the plate to the motorcycle?

14 A I did.

15 Q And how was the plate made?

16 A What do you mean how was it made?

17 Q How did you cut the plate? What would
18 entail making such a plate? Would it have to be cut?

19 A It would have to be cut out identical
20 to the pattern using the band saw or either a laser
21 cutter.

22 Q Sir, I hand you what has been marked as
23 Plaintiff's Exhibit Number 2, which are photographs of
24 equipment at Mr. Poulston's house. I ask you, sir, and
25 you can step up and look at them, could this equipment

1 make this part here, sir? (Indicating.)

2 MR. POCHUCHA: Your Honor, I would
3 object to that question. This witness hasn't
4 been qualified as an expert in the area of
5 welding, or nor has there been any foundation
6 laid regarding his expertise in cutting. In
7 fact, his testimony is he had someone else make
8 this piece.

9 MR. SUTTON: I believe his testimony--

10 THE COURT: He wasn't offered as an
11 expert, but he says he's been making bikes for
12 10 years, otherwise he said something else.
13 The objection is overruled. Go ahead, Mr.
14 Sutton.

15 BY MR. SUTTON: (cont'd)

16 Q My question to you is, could these
17 tools make the plate that was designed for this bike?

18 A No, it cannot.

19 Q And how did you arrive at that
20 conclusion, sir?

21 A Well, you couldn't do the fine cutting
22 with a torch or a welder.

23 Q And what exactly would you need to do
24 the fine cutting for this?

25 A A band saw to cut it out and a small

1 grinder to finish the product.

2 Q Now, when the plate was delivered to
3 you in its stage before being welded on to the
4 motorcycle, who brought it to you?

5 A Mr. Poulston.

6 Q And did he say where he had done the
7 work?

8 A No, he didn't.

9 THE COURT: Do you have those pictures?

10 MR. SUTTON: Yes, sir.

11 NOTE: The pictures are handed to the
12 Court.

13 BY MR. SUTTON: (cont'd)

14 Q You testified earlier Mr. Poulston told
15 you he was giving you the stainless steel bolts from
16 DuPont; is that correct?

17 MR. POCHUCHA: Object. That was not
18 what his testimony was.

19 THE COURT: Well, what did you say
20 about that, Mr. Hailey? Well, I have it in my
21 notes that plaintiff said he can get this
22 stainless steel at work.

23 MR. POCHUCHA: Could get it. That's
24 correct. He could get it, not that he did get
25 it.

1 THE COURT: You can ask him that on
2 cross-examination.

3 BY MR. SUTTON: (cont'd)

4 Q When Mr. Poulston made this statement
5 to you, sir, in regards to the source of his bolts and
6 nuts, was Mr. Rock present?

7 A Yes.

8 Q Sir, you and Mr. Poulston used to share
9 a friendship?

10 A Yes.

11 Q And did you ever have occasion to visit
12 his residence?

13 A Yes.

14 Q And did you ever have an occasion to
15 visit his residence in 1989?

16 A Yes.

17 Q Sir, was this equipment at his
18 residence in 1989, the photographs which have been marked
19 as Plaintiff's Exhibit Number 2?

20 NOTE: Witness peruses the photographs.

21 A This Lincoln welder was there, and his
22 cutting torches was there. I don't know about any of
23 this. (Indicating.)

24 Q Sir, has Mr. Poulston supplied you with
25 motorcycle equipment in the past?

1 A Bolts and nuts.

2 Q Has he supplied you with any equipment
3 similar to what is here in Plaintiff's Exhibit Number 1?

4 A He hasn't supplied me with any of that,
5 other than the fact when I built his bike some of this
6 stuff was used. (Indicating.)

7 Q Now, there's been some testimony about
8 a bike built by Mr. Poulston. Are you familiar about
9 that motorcycle?

10 A It's the same bike we built right
11 there.

12 MR. SUTTON: Where is that picture?

13 THE COURT: Here they are.

14 MR. SUTTON: No. This picture.

15 BY MR. SUTTON: (cont'd)

16 Q Is this the motorcycle you're referring
17 to?

18 NOTE: Witness peruses the photograph.

19 A Yes.

20 Q Did you build this motorcycle with
21 Mr. Poulston?

22 A The first time around. Yes, sir.

23 Q Did you use stainless steel nuts and
24 bolts on this motorcycle?

25 A Yes.

1 MR. SUTTON: I offer this as
2 Defendant's Exhibit Number 3.

3 THE COURT: I think this will be 4.
4 (Defendant's Exhibit 4, Entered.)

5 BY MR. SUTTON: (cont'd)

6 Q Have you ever been convicted of a
7 felony?

8 A No.

9 Q You understand what it means to be
10 under oath?

11 A Yes.

12 Q Are you telling the truth?

13 A Yes, sir.

14 MR. SUTTON: That's all I have, Your
15 Honor.

16
17 CROSS-EXAMINATION

18 BY MR. POCHUCHA:

19 Q Mr. Hailey, have you ever been
20 convicted of a misdemeanor involving lying, cheating or
21 stealing?

22 A No.

23 Q And where are you presently employed?

24 A Stock Car Products.

25 Q How long have you been employed there?

1 A Two years.

2 Q When is the last time you had any
3 communications with Mr. Poulston?

4 A A couple of years.

5 Q A couple of years?

6 A Um-hum.

7 Q You had a falling-out with him?

8 A Um-hum.

9 Q And what was the falling-out about?

10 A Well, really, the falling-out was his.
11 It was over a hunting deal supposedly. He got to the
12 point where he quit talking to me.

13 Q The hunting deal was that you were
14 hunting on land that was owned by him?

15 A No, sir.

16 Q Were you hunting on land that was owned
17 by his father?

18 A No, sir.

19 Q What was the nature of the dispute?

20 A He bought a piece of property in
21 Jetersville. Him and his father were going to hunt that
22 instead of the piece that had been rented behind where
23 his father owns a piece of land. So I rented it and told
24 him like we had always done, I hunted with them. They
25 never charged me to hunt on it. And in return now I'm

1 renting it and you can hunt on it all you want. Then I
2 carried my cousin up there, and we hunted on it. He
3 missed a big eight-point buck, and another boy told
4 Charlie about it and he got all mad about it.

5 Q Your cousins missed an eight-point
6 buck?

7 A Yes. Him and Charlie were talking.
8 The guy was going to build a house or something, and he
9 got to talking about it and he got all bent out of shape
10 about it. That's the reason he quit talking to me.

11 Q You never talked to him about it?

12 A I just stayed away from him.

13 Q And on direct examination, again,
14 getting right to these stainless steel bolts, I
15 understood you to say that Mr. Poulston told you he
16 could get those bolts at work?

17 A That's right.

18 Q Did he ever tell you that he did get
19 those bolts from his place of employment?

20 A Yes.

21 Q On how many occasions?

22 A Two or three times.

23 Q How many bolts?

24 A Over that period of our relationship
25 together, working together and everything. Yes.

1 Q Was that in what year?

2 A I don't recall.

3 Q You don't recall at all?

4 A No.

5 Q And were those times that he told you
6 spaced apart by a month or two, or were they spaced apart
7 by--

8 A Probably six or eight months apart.

9 Q Three times six or eight months apart?

10 A Yes.

11 Q And how many bolts did he give you each
12 time?

13 A I could not even tell you. I just had
14 a box there, and every time he had a few he just come on
15 through and threw them in the box. I never asked him
16 anything about where they come from after that.

17 Q When you say you never asked him about
18 where they came from, what are you referring to?

19 A After he told me he could get them at
20 work.

21 Q Did he tell you he could get them at
22 work one time or three times?

23 A Three times or more.

24 Q More than three times?

25 A Yes. It could have been.

1 MR. SUTTON: I object. This has been
2 asked and answered several times by Mr. Hailey.

3 THE COURT: I suppose. Go ahead.

4 BY MR. POCHUCHA: (cont'd)

5 Q How many more could it have been?

6 A I have no idea.

7 Q So every time that he brought you a
8 stainless steel bolt he told you it was from DuPont
9 Corporation?

10 A I didn't say every time.

11 Q Were there times that he brought you
12 stainless steel bolts that weren't from DuPont?

13 A How can I say they were or they
14 weren't.

15 Q So you don't really know whether they
16 were or not?

17 A Just like you right here when--

18 Q Sir, my question to you is, do you know
19 whether or not the stainless steel bolts were from the
20 DuPont Corporation?

21 A By his word yes.

22 Q On how many occasions by his word?

23 A Three or more.

24 Q And could it have been as many as six?

25 A It's possible.

1 Q Could it have been as many as 12?

2 A It could be.

3 Q Could it have been as many of 24?

4 A Whatever you want to make it.

5 Q So you really don't have any idea how
6 many times, do you?

7 A If I told you three or more times, then
8 that's what it is.

9 Q How many times have you had occasion to
10 testify in court on behalf of Mr. Rock?

11 A None.

12 Q None, never?

13 A None.

14 Q You never testified on behalf of
15 Mr. Rock?

16 MR. SUTTON: Asked and answered.

17 Q Is that correct?

18 A Do what?

19 THE COURT: He said none.

20 BY MR. POCHUCHA: (cont'd)

21 Q On how many occasions was the statement
22 by Mr. Poulston to you that stainless steel bolts came
23 from DuPont Corporation made to you while you were in the
24 presence of Mr. Rock?

25 A I have no idea.

1 Q Was it at least one?

2 A Yes. At least that.

3 Q Was it more than one?

4 A I don't know.

5 Q You don't know?

6 A No, I don't.

7 Q Could it have been as many as 20?

8 A At least one.

9 Q And where did that conversation take
10 place?

11 A At my garage when the bike was being
12 put together.

13 Q What did Mr. Poulston get in return for
14 giving you these purloined bolts?

15 A No payment.

16 Q Pardon?

17 A No payment.

18 Q No payment?

19 A No, because when I built his bike I
20 didn't charge him a dime to build it because it's a hobby
21 for me.

22 Q And his motorcycle, is it all stainless
23 steel bolts, this motorcycle?

24 NOTE: Witness peruses the photograph.

25 A It has stainless on it.

1 Q Where is the stainless on it?

2 A In various places.

3 Q Where are the stainless on it? Didn't
4 you build it, sir?

5 A Do you want me to point it out?

6 Q Yes, sir. Please do. Not to me, the
7 ladies and gentleman of the jury.

8 NOTE: Counsel approaches the witness
9 stand and displays a photograph to the witness
10 and jury.

11 A Any place right there. Fenders, any of
12 the brackets and fittings, pipes and stuff like that.
13 (Indicating.)

14 Q And do you know where those bolts came
15 from?

16 A Yes. Mr. Poulston.

17 Q Did he tell you whether or not those
18 bolts came from the DuPont Corporation?

19 A When he brought them in and throwed
20 them in the box, yes, they come from DuPont.

21 Q Did Mr. Poulston ever give you anything
22 for your personal use, other than the nuts and bolts?

23 A No.

24 Q Never gave you any Mustang wheels or
25 tires?

1 A No.

2 Q Never gave you any other motorcycle
3 parts?

4 A No.

5 Q When you went to Mr. Poulston's house
6 in 1989, where was his house?

7 A On Jessup Road with his father.

8 Q And did he have any motorcycle parts
9 there?

10 A I'm sure he did. He had his bike
11 because he got run off the road one time on the bike and
12 had to rebuild it.

13 Q Did he have any other parts, other than
14 just the motorcycle that he had there?

15 A Parts that he had replaced.

16 Q And do you know how Mr. Poulston went
17 about accumulating the parts to build that bike in the
18 first place?

19 A No, I don't. He bought it, as far as I
20 know.

21 Q He bought it?

22 A I think so.

23 Q Do you know where he bought it from?

24 A No, I don't.

25 Q Were you ever with him when he bought

1 any of them?

2 A Um-um.

3 Q Did you ever see any stainless steel
4 bolts that he said weren't from DuPont Corporation?

5 A Then, again, how would I know they
6 didn't come from DuPont, other than the ones that he
7 brought me and told me they had come from work.

8 Q And the ones that he said come from
9 work, how were they packaged?

10 A In a paper bag.

11 Q A paper bag?

12 A Brown paper bag.

13 Q Brown paper bag. About how many were
14 in there?

15 A A handful or so.

16 Q The same each time?

17 A Just about, yes.

18 Q Did he give you the whole bag, or did
19 he hold some back?

20 A He just dumped it in the box.

21 Q When did you first talk to Mr. Rock
22 about testifying in this matter?

23 A When the lawyers called me at my job.

24 Q Were you ever present with Mr. Poulston
25 and Mr. Rock when they discussed painting that

1 motorcycle?

2 A No, I was not.

3 Q You don't know anything about that?

4 A That's their business.

5 Q Do you know anything about it at all?

6 A All I know is it was painted.

7 Q I'm sorry?

8 A All I know is that it was painted.

9 Q Do you know if there was any problem
10 with the paint?

11 MR. SUTTON: I'm going to object.

12 THE COURT: Why you going into whether
13 there was any problem with the paint?

14 MR. POCHUCHA: Judge, may I approach
15 the bench.

16 NOTE: Counsel approach the bench.

17 BY MR. POCHUCHA: (cont'd)

18 Q Mr. Hailey, do you know anything at all
19 about the dispute that Mr. Poulston and Mr. Rock had
20 regarding the painting of this motorcycle?

21 A All I know is the bike was painted and
22 something about the clear coat was flaking off. Then the
23 next thing I know is that they was going to court for
24 that and that's all I know.

25 Q How do you know that?

1 A From word. I mean, I did build both of
2 them the bike, so, you know, you hear things back and
3 forth, bickering.

4 Q And how long have you known Mr. Rock?

5 A Probably about 13 or 14 years.

6 Q How did you come to know him?

7 A At a car show.

8 Q I'm sorry?

9 A At a car show.

10 Q How did you come to know Mr. Poulston?

11 A He bought a car from me.

12 Q And how long ago was that?

13 A Probably about 10, 15 years ago.

14 Q So you've known them both the same
15 time?

16 A Approximately a year or so apart.

17 Q Do you recall which you met first?

18 A No, not really.

19 MR. POCHUCHA: No further questions.

20 MR. SUTTON: No more questions.

21 THE COURT: Thank you. Mr. Hailey.

22 MR. SUTTON: He may be excused.

23 THE COURT: You're excused. You can
24 go, or you can remain. Thank you.

25

1 WITNESS STOOD ASIDE

2
3 THE COURT: We'll take a brief recess.

4 (Break taken.)

5 THE COURT: Your next witness.

6 NOTE: Mr. Shaffer was called into the
7 courtroom.

8
9 *****

10 JAMES SHAFFER,
11 after having been first duly sworn,
12 testifies and says under oath as follows:

13 *****

14 DIRECT EXAMINATION

15 BY MR. SUTTON:

16 Q Sir, would you state your name for the
17 Court, please.

18 A James Shaffer, S-H-A-F-F-E-R.

19 Q Are you employed?

20 A No. I'm retired now.

21 Q Retired from where?

22 A DuPont.

23 Q And how long did you work there, sir?

24 A 33 years.

25 Q Were you working there in 1989?

1 A I was.

2 Q What year did you retire?

3 A '92, February of '92.

4 Q What was your position at DuPont?

5 A I was a pipe cutter.

6 Q Sir, did you have an occasion to ever
7 have to get a part for a job from a shop at DuPont?

8 A I certainly did.

9 Q And if you had to get a part for this
10 job, what was the procedure that you went through?

11 A Well, I followed procedure of each shop
12 usually having what they call a cage setup and a cage
13 person. I would go and, you know, get a part. I'd go to
14 the cage or either I'd ask to go and get a nut and bolt
15 or whatever I had to get out.

16 Q Did you ever have to sign any formal
17 request or make a formal requisition of a part if you
18 needed it?

19 A Never.

20 Q Did you ever have an occasion to use a
21 nut and bolt in the operation of your job?

22 A Well, in my line of work, I would be
23 using more screws and all. I'd go to the carpentry shop
24 if we didn't have it in our shop.

25 Q If you wanted to get a screw or a small

1 item for carrying out the duties of your job, would you
2 walk in there and get it, or would you ask somebody for
3 it?

4 A If the cage man is there, I may ask
5 him. That would be more of because he was there. If he
6 wasn't, I would go ahead in the bin and get it. If he
7 was around, let's say, in that case, I'd just ask him for
8 it. Most times he would say just go get it out of the
9 bin.

10 Q Would he follow you to the bin and
11 watch you as you took the parts out of the bin?

12 A No, not necessarily.

13 Q Sir, in 1989, were their security
14 guards at the gates?

15 A There was.

16 Q Did these security guards check your
17 clothing or lunch boxes when you exited the gate?

18 A The security guards had the right to
19 check you at will. If they saw something that looked not
20 normal to them, then they had the right to check you.
21 They would check lunch boxes. They have checked the
22 lunch boxes before.

23 Q And do you know Mr. Poulston?

24 A Yes, I do.

25 Q And what is your opinion of his

1 integrity and honesty?

2 A I would have to say Mr. Poulston's
3 integrity and honesty is A-1, to the best of my ability.

4 Q And after hearing of this allegation,
5 has your opinion changed?

6 A Not really.

7 Q Sir, were you aware of whether or not
8 DuPont was in the business of carrying stainless steel
9 nuts and bolts in their shops?

10 A They've always carried stainless steel
11 nuts and bolts.

12 MR. SUTTON: That's all the questions I
13 have.

14

15 CROSS-EXAMINATION

16 BY MR. POCHUCHA:

17 Q Mr. Shaffer, do you know about how many
18 people work at DuPont?

19 A At one time they had 3,600.

20 Q About how many was left in '89?

21 A 3,300. 3,100 to 3,300.

22 Q Is it the sort of place that once a
23 rumor gets started it spreads pretty fast?

24 A I assume so.

25 Q You heard a number of rumors while you

1 were there over the years?

2 A I've heard a whole lot of rumors.

3 Q About people that you know and people
4 you don't know?

5 A True.

6 MR. POCHUCHA: Thanks. No further
7 questions.

8 THE COURT: Thank you. You may step
9 down. Your next witness.

10 MR. SUTTON: Carol Rock.

11

12 WITNESS STOOD ASIDE

13

14 NOTE: Carol Rock was called into the
15 courtroom.

16

17 *****

18 CAROL ROCK,
19 after having been first duly sworn,
20 testifies and says under oath as follows:

21 *****

22 DIRECT EXAMINATION

23 BY MR. SUTTON:

24 Q Ma'am, could you please state your name
25 for the record, please.

1 A Carol Rock.

2 Q And how old are you, ma'am?

3 A 33.

4 Q And your address.

5 A 3013 Broad Rock Boulevard.

6 Q And what is your occupation, ma'am?

7 A I'm an elementary art teacher.

8 Q And how long have you been employed in
9 that position?

10 A With the City of Manassas. I've been
11 employed three years.

12 Q You, ma'am, are married to Bobby Rock?

13 A Yes.

14 Q You're, in fact, his wife?

15 A Yes, sir.

16 Q Do you know Charles Poulston?

17 A Yes, sir.

18 Q If I can turn your attention to January
19 of 1993. Do you remember Mr. Rock being sued by
20 Mr. Poulston?

21 A Yes.

22 Q And do you remember what he was being
23 sued over?

24 A Yes.

25 Q And what was it, ma'am?

1 A Over a motorcycle.

2 Q And was it, in fact, over the paint
3 job?

4 A Yes. The paint job on the motorcycle.

5 Q Were you present at the hearing held in
6 this court over that matter, ma'am?

7 A Yes, sir.

8 MR. POCHUCHA: I object to this
9 testimony. I don't know what relevance it has.

10 MR. SUTTON: She heard Mr. Poulston
11 testify as to his relationship, and as I will
12 get into earlier, she heard testimony under
13 oath during that proceeding that Mr. Poulston
14 supplied Mr. Rock with stainless steel nuts and
15 bolts from DuPont.

16 THE WITNESS: Yes, I did.

17 MR. SUTTON: That's the relevance. I
18 was just laying a foundation.

19 THE COURT: The objection is overruled.

20 BY MR. SUTTON: (cont'd)

21 Q Ma'am, were you present here in January
22 of 1993 during the hearing of this matter?

23 A Yes.

24 Q And did you see this gentleman here
25 take the stand? (Indicating.)

1 A Yes.

2 Q And was he sitting in that chair right
3 there?

4 A Yes.

5 Q And before he took the stand, did he
6 raise his right hand?

7 A Yes.

8 Q Did he swear to tell the truth--

9 MR. POCHUCHA: I object to this line of
10 questioning. I will stipulate that on any
11 occasion in which Mr. Poulston testified he
12 took an oath to tell the truth.

13 BY MR. SUTTON: (cont'd)

14 Q During the time that he was on the
15 stand, did he testify as to his relationship with himself
16 and Mr. Rock?

17 A Yes.

18 THE COURT: His relationship with
19 himself?

20 BY MR. SUTTON: (cont'd)

21 Q I'm sorry. With Mr. Rock and
22 Mr. Poulston?

23 A Yes.

24 Q Okay.

25 THE COURT: Wait a minute. Who is

1 testifying?

2 MR. SUTTON: Mr. Poulston.

3 THE COURT: Did he testify about his
4 relationship with--

5 MR. SUTTON: He testified about his
6 relationship with Mr. Rock.

7 THE COURT: I see.

8 BY MR. SUTTON: (cont'd)

9 Q Did Mr. Poulston testify about how he
10 knew Mr. Rock?

11 A Yes.

12 Q Did they talk about building, a
13 motorcycle?

14 MR. POCHUCHA: All these questions are
15 leading. I haven't heard the witness convey
16 any information other than yes or no.

17 THE COURT: I think these are leading
18 questions.

19 BY MR. SUTTON: (cont'd)

20 Q Could you tell the jury what
21 Mr. Poulston's testimony was that day in regard to his
22 relationship with Mr. Rock.

23 A He said that on January 19th, when I
24 was in court here in this building, that he, in fact,
25 made two stainless steel plates from a template at his

1 place of work at DuPont and that he got bolts and nuts
2 from DuPont and he gave them to my husband to be used on
3 my husband's motorcycle. That is exactly what I heard
4 sitting right out there.

5 Q And when you say he, are you referring
6 to Mr. Poulston?

7 A I am. Charles Poulston.

8 MR. SUTTON: No further questions.
9

10 CROSS-EXAMINATION

11 BY MR. POCHUCHA:

12 Q Ms. Rock, you said your address is at
13 3013 Broad Rock Boulevard?

14 A Yes.

15 Q In the City of Richmond?

16 A Yes.

17 Q And you were employed as an art teacher
18 for the City of Manassas?

19 A Yes.

20 Q It's quite a commute, isn't it?

21 A I also have another residence, too,
22 because I work for the City of Manassas during the week,
23 and I come home on the weekends. I'm also here on
24 holidays and in the summer.

25 Q And the testimony that you just related

1 that Mr. Poulston gave in January of '93--

2 A Yes.

3 Q How is that related to the case that
4 was being heard by Judge Hughes, what context?

5 A Would you rephrase that again.

6 Q You just testified, did you not, that
7 Mr. Poulston said under oath in this courtroom before
8 this judge that he gave your husband bolts that were the
9 property of DuPont.

10 A Correct.

11 Q What were the circumstances of him
12 testifying to that?

13 A During this court case, they were
14 discussing a paint job that my husband had put on
15 Mr. Poulston's motorcycle. Mr. Pochucha, the lawyer,
16 asked Mr. Poulston how he knew Bobby. Mr. Poulston spoke
17 up and in his own words he said, well, I gave him every
18 nut and bolt on his motorcycle from work from DuPont.

19 Q Let me understand that, ma'am. It was
20 in response to my question to Mr. Poulston of how he knew
21 your husband. Mr. Poulston's response was, I gave him
22 every nut and bolt on his motorcycle from DuPont?

23 A You asked him had they ever been
24 friends, had they ever known each other before Bobby
25 painted the motorcycle, had they ever known each other

1 and he said, yes, I gave him every nut and bolt on his
2 motorcycle. He said that out loud, and he was looking at
3 the judge when he said it.

4 Q He said I gave him every nut and bolt
5 on his motorcycle?

6 A He said I gave him every nut and bolt
7 to his motorcycle from work from DuPont.

8 Q He said that all in the same sentence?

9 MR. SUTTON: Objection, Your Honor.

10 This has been asked and answered several times.

11 THE COURT: She's answered the
12 question.

13 BY MR. POCHUCHA: (cont'd)

14 Q You realize you're under oath here
15 today?

16 A Yes, sir, I do, and I'm a school
17 teacher. I am.

18 Q And did you discuss this statement that
19 Mr. Poulston had made with your husband?

20 A I'm sorry. What?

21 Q Did you discuss the statement that
22 Mr. Poulston made about these stainless steel nuts and
23 bolts with your husband?

24 A Had we ever discussed it?

25 Q Yes, ma'am.

1 A Why of course. We discussed the whole
2 case afterwards.

3 Q And were you present when your husband
4 made a call to the DuPont Corporation?

5 A Yes, I was home.

6 Q Were you in the same room with him?

7 A Yes.

8 Q And what did he say when he called the
9 DuPont Corporation?

10 MR. SUTTON: Objection, Your Honor.
11 This line of questioning is beyond the scope of
12 my direct examination. My examination was
13 tailored solely to Mr. Poulston's statement
14 made in January '93.

15 THE COURT: I believe it is. This
16 wasn't touched on in direct.

17 MR. POCHUCHA: For purposes of that,
18 I'll make her my witness.

19 THE COURT: All right.

20 MR. SUTTON: Your Honor, I'll have to
21 object. If he wants to call her in rebuttal
22 and make her his witness then. This is my
23 case, and he needs to limit his cross to my
24 direct.

25 THE COURT: If you wish to call her on

1 this at some other time. The only time
2 reserved for you now would be on rebuttal. You
3 can do so. You want to make her your witness
4 now?

5 MR. POCHUCHA: I think I've had quite
6 enough testimony from this witness.

7 THE COURT: Do you have any other
8 questions?

9 MR. SUTTON: No.

10 THE COURT: Thank you, Ms. Rock. You
11 may step down.

12 MR. POCHUCHA: I would ask that she be
13 excluded.

14 THE COURT: Ms. Rock, will you step
15 outside, please.

16
17 _____
18 WITNESS STOOD ASIDE

19 NOTE: Mr. Harrell was called into the
20 courtroom.

MARSHAL HARRELL,

after having been first duly sworn,
testifies and says under oath, as follows:

THE COURT: What is your name?

THE WITNESS: Marshal W. Harrell.

THE COURT: Are you Boo Boo?

THE WITNESS: No.

MR. SUTTON: That was Mr. Hailey.

DIRECT EXAMINATION

BY MR. SUTTON:

Q Sir, could you state your name for the
record, please.

A Marshal Warren Harrell.

Q Spell your last name.

A H-A-R-R-E-L-L.

Q Do you know Bobby Rock, sir?

A Yes.

Q Do you know Charles Poulston?

A I've seen him before.

Q Did you have an occasion to be in CD's
Restaurant with Mr. Rock?

A I did not go over there with him, but I

1 ended up there shortly after he got there.

2 Q Was Mr. Poulston in this restaurant,
3 also?

4 A Yes, sir.

5 Q And was there a confrontation, or what
6 happened between Mr. Poulston and Mr. Rock while you were
7 there?

8 A Well, Bobby was sitting on one of the
9 stools at the bar, and I don't believe he knew
10 Mr. Poulston was in there.

11 MR. POCHUCHA: I object. That calls
12 for speculation on the part of the witness.

13 THE WITNESS: Excuse me.

14 THE COURT: Just relate what you saw.

15 A Mr. Poulston come to the bar, sat next
16 to Bobby. Bobby sat there and told him I can't believe
17 that out of all the seats in here you're going to come
18 here and sit here next to me. Why did you tell them lies
19 in court about me? Why did you say these things? Bobby
20 stated that he was a liar and a thief and that he could
21 prove it. Bobby got hot, and he left and he went back
22 home.

23 Q After Mr. Rock left, did Mr. Poulston
24 remain?

25 A Yes, sir.

1 Q And was there someone sitting behind
2 him?

3 MR. POCHUCHA: Object to the leading
4 form of the questions, Your Honor.

5 THE COURT: I think that is leading.

6 BY MR. SUTTON: (cont'd)

7 Q Can you state whether or not
8 Mr. Poulston left after Mr. Rock left?

9 A No, sir, not before I did.

10 Q Did Mr. Poulston remain, or did he stay
11 after Mr. Rock left?

12 A He remained.

13 Q And was he alone, or was he with
14 someone?

15 A He was with someone.

16 Q Was he having a conversation with that
17 person?

18 A Yes.

19 Q And where were you sitting in
20 relationship to Mr. Poulston?

21 A I was still sitting at the bar right on
22 the stool.

23 Q And how close? If you could estimate
24 the number of feet, or pick something in here that would
25 relate to how close you were sitting to Mr. Poulston.

1 A About here to where Bobby is sitting.

2 Q And could you hear Mr. Poulston
3 speaking?

4 A Uh, huh.

5 Q And what did you hear Mr. Poulston say?

6 A Basically that the SOB couldn't prove
7 that he took shit and that something about another
8 lawsuit coming up, which I reckoned he meant this one.

9 Q Sir, do you know Mark Burleson?

10 A Yes. I don't know him personally, but
11 just like Mr. Poulston, I've seen him before on a
12 different occasion.

13 Q Has that gentleman testified in this
14 matter here today?

15 A Has he testified? Yes. He's already
16 been in.

17 Q Did there come a time when you--

18 MR. POCHUCHA: Object, Your Honor. It
19 appears to me there's going to be a leading
20 question. Sounds like an answer is suggested
21 as to what this witness did at some particular
22 point in time in some particular instance.

23 THE COURT: I didn't hear the question
24 but did there come a time.

25 BY MR. SUTTON: (cont'd)

1 Q Can you state whether or not you were
2 ever in Ryan's Steakhouse when Mr. Rock was present and
3 Mr. Burleson was present?

4 A Yes, sir.

5 Q And can you state whether or not you
6 witnessed a confrontation between Mr. Rock and
7 Mr. Burleson?

8 A Yes, sir, I did.

9 Q Where were you located when this
10 confrontation took place?

11 A Just about from here to the door.

12 Q And could you see what happened?

13 A I could see, but I could not hear that
14 conversation.

15 Q What did you see, sir?

16 A Bobby went to the salad bar and was
17 getting a salad. All of a sudden I saw him talking to
18 this guy up there, and I assumed he was a friend. I
19 didn't really know anything about it. Bobby come back to
20 the table, and he was upset and disturbed. He told me
21 that that was the gentleman who had testified against him
22 in the previous case and lied about the testimony. After
23 that, he didn't feel like eating. We didn't stay much
24 longer.

25 MR. SUTTON: That's all I have.

1 CROSS-EXAMINATION

2 BY MR. POCHUCHA:

3 Q Mr. Harrell, what's the nature of your
4 employment?

5 A Auto technician, also a mechanic as it
6 used to be called.

7 Q Who are you employed by?

8 A No one at the present time.

9 Q Has Mr. Rock promised to give you any
10 compensation to come here today?

11 A No, sir. Friends don't do that.

12 Q They don't?

13 A No, sir.

14 Q And have you ever done any work for
15 Mr. Rock?

16 A We've exchanged different types of
17 work. I build motors and do computer work, and I've
18 helped him out with a couple different engines and
19 computer problems he's had on his wife's car.

20 Q Have you ever been convicted of a
21 felony?

22 A No.

23 Q Ever been convicted of a misdemeanor
24 involving lying, cheating or stealing?

25 A No, sir.

1 Q What's your residence address?

2 A 3311 Meadowdale Boulevard.

3 Q And this incident you related in CD's--

4 A Uh, huh.

5 Q Mr. Rock made a statement that

6 Mr. Poulston was a liar and a thief?

7 A Correct.

8 Q And you were some distance away from
9 it, were you not?

10 A When the confrontation happened, I was
11 about from here to you.

12 Q So it was loud enough for you to hear?

13 A Yes, sir.

14 Q Loud enough for other patrons in the
15 restaurant to hear, as well; right?

16 A Yes, sir.

17 MR. POCHUCHA: Thank you. No further
18 questions.

19 MR. SUTTON: No further questions.

20 _____
21 WITNESS STOOD ASIDE

22
23 THE COURT: Your next witness.

24 MR. SUTTON: Bobby Rock.

25

BOBBY ROCK,

after having been first duly sworn,
testifies and says under oath as follows:

DIRECT EXAMINATION

BY MR. SUTTON:

Q Sir, can you state your name for the
Court, please.

A Bobby Lee Rock.

Q You're the defendant in this matter?

A Yes.

Q Sir, how old are you?

A 44.

Q Are you employed?

A No. I'm a disabled veteran.

Q Of what war?

A Vietnam.

Q And how are you disabled?

A Nerves.

Q Do you know Charles Poulston?

A Yes.

Q When did you first come to meet
Mr. Poulston?

A When I was building my motorcycle.

1 Q Where were you building your
2 motorcycle?

3 A At Gordon Hailey's garage.

4 Q Was Mr. Poulston ever present while you
5 were building the motorcycle over there?

6 A Quite a few times. Yes.

7 Q Can you tell the Court what transpired
8 or what interaction you had with Mr. Poulston in regards
9 to the motorcycle.

10 A I don't understand the question.

11 Q Did Mr. Poulston ever come by while you
12 were building the motorcycle?

13 A Yes..

14 Q Did he aid in the building of the
15 motorcycle?

16 A No.

17 Q What was his job in the building of the
18 motorcycle?

19 A He supplied all the stainless steel
20 bolts on the motorcycle.

21 Q How did he come to supply you with the
22 stainless steel bolts for the motorcycle?

23 A He would bring them in, take them out
24 of his pocket, of his pants pocket or coat pocket and
25 dump them in this box on the side in Hailey's garage and

1 I would take them.

2 MR. SUTTON: If I can see the
3 Defendant's Exhibit, which is a nut and bolt.
4 I think it's Number 3.

5 THE COURT: I put that in an envelope.

6 BY MR. SUTTON: (cont'd)

7 Q I hand you what has been marked as
8 Defendant's Exhibit Number 3, and ask if you recognize
9 this?

10 NOTE: Witness peruses the exhibit.

11 A Yes.

12 Q What is it?

13 A This is an actual piece off of the
14 motorcycle I kept when I sold it.

15 Q Where did you get that?

16 A This is from him.

17 Q Who is him?

18 A Charles Poulston.

19 Q And what type of metal is this?

20 A Stainless steel.

21 Q Have you ever been in the business or
22 owned a motorcycle shop?

23 A Yes. I have owned a motorcycle shop.

24 Q Did you supply that shop with
25 motorcycle parts and accessories?

1 A Just whatever part was available or
2 parts for a Harley Davidson.

3 Q Did you supply that shop with stainless
4 steel bolts?

5 A Could not get them nowhere.

6 Q Why is that?

7 A They only stock chrome bolts. You
8 can't get them from a Harley dealer.

9 Q What would be the average price of a
10 stainless steel bolt?

11 A That bolt right there would be \$6 or
12 \$7.

13 Q Is stainless steel more expensive than
14 chrome?

15 A That I don't know. I didn't pay for
16 none of these. Yes, I would say.

17 Q What's the difference between stainless
18 steel and chrome besides they are two different metals?

19 A Well, chrome has a tendency to pop, and
20 when you wash the motorcycle it has a tendency to rust if
21 you wash it once or twice.

22 Q Does stainless steel have a tendency to
23 rust?

24 A No, it doesn't. It has never rusted.

25 Q Why did you want to use stainless steel

1 bolts on your motorcycle?

2 A Because I built a show motorcycle, and
3 I didn't want no rust bolts on it.

4 Q When you say a show motorcycle, what do
5 you mean by that, sir?

6 A I just wanted the prettiest motorcycle
7 in Richmond. I took it to a show and actually won
8 trophies for it.

9 Q Were there other people present at
10 Mr. Hailey's garage besides yourself, Mr. Hailey and
11 Mr. Poulston during the--

12 A Barbara Vanichi (ph).

13 Q Was she the young lady that testified
14 here earlier today?

15 A Yes.

16 Q Did there ever come a time when you
17 asked Mr. Poulston to supply you with stainless bolts?

18 A I asked him where he could get them
19 from, where he got them from because I tried to get them
20 myself.

21 Q What was his response?

22 A He said I can get them.

23 Q Did he tell you where he was going to
24 get them?

25 A At first no, at first he didn't. I

1 asked him, I said, where you getting them from, and he
2 wouldn't tell me.

3 Q Did there ever come a time when he did
4 tell you?

5 A After I got to know him better as we
6 were building my motorcycle, yes, then he told me.

7 Q What did he tell you that was?

8 A He said from DuPont.

9 Q Did you ever have a reason to
10 disbelieve that?

11 A No, I didn't.

12 Q You painted a motorcycle for
13 Mr. Poulston; is that not correct?

14 A Yes, I did.

15 Q Tell me what happened with the paint
16 job.

17 A I don't know as of today. I've never
18 seen a motorcycle after it was painted.

19 Q Was there a controversy involved with
20 the paint job?

21 A He told me verbally, he met me
22 somewhere, he saw me somewhere and told me that the paint
23 job was cracking, was I going to fix it. I said, bring
24 it by the house, and I'll take a look at it. He never
25 brought it by the house. The next thing I know I've got

1 a lawsuit.

2 Q Were you, in fact, sued by
3 Mr. Poulston?

4 A Yes.

5 Q Where did he sue you, sir, what court?

6 A I believe it was general district court
7 first.

8 Q Here in the City of Richmond?

9 A Yes.

10 Q What was the outcome--

11 MR. POCHUCHA: I object to that. It's
12 not relevant.

13 MR. SUTTON: Mr. Pochucha has gone into
14 it all day. I feel like I can go into it a
15 little bit.

16 THE COURT: I don't see where it's
17 relevant. This is a defamation case.

18 MR. SUTTON: What is relevant, Your
19 Honor, is Mr. Rock is going to testify that Mr.
20 Poulston made inconsistent statements at those
21 two different trials which led him to believe
22 that Mr. Poulston may not have been truthful
23 with him--

24 THE COURT: About the bolts?

25 MR. SUTTON: Yes. That's what made him

1 call DuPont, and that's what--

2 THE COURT: All right.

3 BY MR. SUTTON: (cont'd)

4 Q What was the disposition of the first
5 case in general district court? Did you win or lose?

6 A I won.

7 Q And was the case appealed?

8 A Yes, it was.

9 Q Was it heard in this very court?

10 A Yes.

11 Q What was the outcome of that case?

12 A I didn't have an attorney, and I lost.

13 Q And did Mr. Poulston make different
14 statements downstairs in general district court than he
15 did here in circuit court?

16 A Yes, he did.

17 Q What did that lead you to believe?

18 THE COURT: Different statements about
19 what?

20 BY MR. SUTTON: (cont'd)

21 Q Did Mr. Poulston make different
22 statements about your agreement in regards to the paint
23 job in general district court than he did in circuit
24 court?

25 A Yes, he did.

1 Q What did that lead you to believe?

2 A That he wasn't telling the truth.

3 Q And as a result of that, did you call
4 DuPont?

5 A Yes, I did.

6 Q Why did you call DuPont?

7 A I called DuPont because the man lied so
8 much in the second trial that I wanted to see if these
9 bolts -- if he was lying about these bolts, too. So I
10 called DuPont, and I talked to a man who identified
11 himself as Mr. Bolton. I asked him, I said, do you all
12 give stainless steel bolts away to your employees and he
13 said--

14 MR. POCHUCHA: Object, Your Honor.

15 THE COURT: The objection is sustained.

16 BY MR. SUTTON: (cont'd)

17 Q Without telling me what Mr. Bolton--

18 A Well, I told him that there was an
19 employee there that gave me some stainless steel bolts
20 for my motorcycle.

21 Q Did you tell him what Mr. Poulston had
22 told you? Did you tell Mr. Bolton what Mr. Poulston had
23 told you about the stainless steel bolts?

24 A Yes.

25 Q What did Mr. Poulston tell you about

1 the stainless steel bolts, sir, how he could get them?

2 A He told me that at the end of inventory
3 that what was left over they would give or all they had
4 to do is go and ask for them.

5 Q Did he ever charge you for any of these
6 bolts?

7 A No.

8 Q Did you ever offer to pay him for any
9 of these bolts?

10 A No.

11 Q You mentioned earlier that this was a
12 show motorcycle.

13 A Yes.

14 Q Was a special plate made for this
15 motorcycle?

16 A Yes, it was.

17 NOTE: Counsel approaches the witness.

18 Q And can you point on this exhibit,
19 Exhibit Number 1, and show me the special plate that was
20 made. Show the jury.

21 A This end plate right here, the whole
22 bottom piece. (Indicating.)

23 Q And do you remember who designed that
24 plate?

25 A Charles Poulston.

1 Q Did someone make a template for
2 Mr. Poulston?

3 A Gordon Hailey.

4 Q Were you present when that template was
5 made?

6 A Yes.

7 Q Was Mr. Poulston present when that
8 template was made?

9 A Yes.

10 Q Did Mr. Poulston make any statements to
11 you as to where, when or how the template was going to be
12 made?

13 A He said he could make it at work on his
14 spare time.

15 Q When you say he--

16 A Charles.

17 Q How long after you asked him to make
18 the plate did you actually get the plate back from him?

19 A It's been so long. I would say between
20 five to seven days, I estimate.

21 Q Did you ever call Mr. Poulston or ask
22 him anything about when the plate was going to be
23 returned to you?

24 A Yes. I called DuPont at the welding
25 shop because I knew he worked in welding.

1 Q Who did you speak with?

2 A I asked to speak with Charles Poulston.

3 Q Did you, in fact, get someone on the
4 other line?

5 A Charles Poulston.

6 Q Did they identify themselves?

7 A Yes.

8 Q And who did they identify themselves
9 as?

10 A As Charles.

11 Q Can you tell me about that
12 conversation.

13 A I asked him when is the plate going to
14 be ready to weld on the motorcycle because it's holding
15 us up from putting the rear wheel on it. He said, I'm
16 working on it right now. He said, it'll be ready tonight
17 or tomorrow, and I got it the next day.

18 Q Sir, at any time did you have a reason
19 to disbelieve Mr. Poulston?

20 A No, I didn't.

21 Q And in your mind, sir, did you believe
22 that these bolts came from, the stainless bolts supplied
23 to you by him, came from DuPont, or where did you believe
24 they came from?

25 A I knew they came from DuPont. I didn't

1 know he was taking them.

2 Q Did you have any firsthand knowledge
3 that he was taking those bolts from DuPont?

4 A No. I wouldn't have took them.

5 Q What fact or what statement did you
6 base your belief that the bolts, in fact, were coming
7 from DuPont?

8 A After I got to know him, after it was
9 on my motorcycle, he told me that they came from DuPont,
10 but he never admitted to taking them.

11 Q Did you ever have any reason to
12 disbelieve him?

13 A No.

14 Q And did he ever make a statement to you
15 that, Bobby, they're not coming from DuPont, they're
16 coming from another source? Did he ever make any
17 statement like that?

18 A No.

19 Q And when did you first find out that it
20 was, in fact, improper to take bolts from DuPont?

21 A When I called DuPont and asked them if
22 they gave away stainless steel bolts, and they said no.

23 Q Now, Mr. Poulston got a judgment
24 against you in that trial in January of '93, did he not?

25 A Yes.

1 Q And he tried to garnish one of your
2 accounts?

3 A Yes.

4 Q And did it upset you?

5 A Yes.

6 Q Did you call DuPont the same day that
7 your account was garnished?

8 A I believe it was that day or the next
9 day.

10 Q Sir, let me ask you this. What made
11 you think in your mind that Mr. Poulston may not have
12 been truthful about the source of those bolts?

13 A I don't quite understand.

14 Q What made you believe that Mr. Poulston
15 may not have been truthful in telling you that the bolts
16 were given to him by DuPont?

17 A Well, he told me he got them from
18 DuPont after I got to know him. He never told me he was
19 stealing or taking them. He told me they were giving
20 them to him.

21 Q Was it the trial that made you
22 disbelieve this?

23 MR. POCHUCHA: Object, Your Honor.

24 He's leading the witness.

25 THE COURT: That is leading.

1 BY MR. SUTTON: (cont'd)

2 Q Was there anything that made you
3 disbelieve the fact that the bolts were being given to
4 him by DuPont?

5 A Yes. At the second trial, especially.
6 He had his friends come and lie for him about stories,
7 and I've heard then again today. I've never carried a
8 knife in my life for one thing. He just told some of the
9 stories, and he had his friends just lie for him about
10 the paint because he brought me paint to paint his
11 motorcycle.

12 MR. SUTTON: That's all the questions I
13 have, Your Honor.

14

15 CROSS-EXAMINATION

16 BY MR. POCHUCHA:

17 Q Mr. Rock, I understood you to say on
18 direct examination that these stainless steel bolts were
19 valued at about \$6 a piece; correct?

20 A I don't know. I never bought--

21 Q Did you state on direct examination
22 that they were valued at about \$6 a piece?

23 A Yes.

24 Q And you stated you had a motorcycle
25 shop and you couldn't obtain those stainless steel bolts;

1 right?

2 A That's right.

3 Q They were in scares supply?

4 A I couldn't get them. I tried.

5 Q You tried everything you could to get
6 them?

7 A Yes.

8 Q And they were a valuable commodity?

9 A Yes, sir.

10 Q And you wanted the ladies and gentleman
11 of the jury to believe that you believe that DuPont was
12 giving these stainless steel bolts, they were a valuable
13 commodity at \$6 a piece, and they were giving them away
14 to Charlie Poulston, that's what you believe?

15 A I guess.

16 Q Is that what you believe?

17 A Yes.

18 Q Why would DuPont Corporation give away
19 stainless steel bolts valued at \$6 a piece that you
20 couldn't even obtain on the open market?

21 MR. SUTTON: Objection. He's asking
22 him to speculate.

23 THE COURT: I think that is
24 speculative.

25 BY MR. POCHUCHA: (cont'd)

1 Q You also stated that Mr. Poulston lied
2 between the first trial and the second trial; is that
3 correct?

4 A Yes.

5 Q Would you tell the ladies and gentleman
6 of the jury what he said at the first trial item-by-item,
7 the first thing he said and how he changed that at the
8 second trial.

9 A At the first trial you asked questions
10 and all, and he said he didn't know that it was Imron
11 paint painted on his motorcycle. At the second trial you
12 told him, you said, what kind of paint was on the
13 motorcycle. He testified, Imron. He testified--

14 Q Excuse me. At the first trial he said
15 he didn't know it was Imrom?

16 A He didn't know it was Imron.

17 Q Hold on a second. If I can get the
18 Court's indulgence.

19 THE COURT: Counsel, why do we need to
20 go into the detail?

21 MR. POCHUCHA: It's not detail. The
22 Court has got the file there.

23 BY MR. POCHUCHA: (cont'd)

24 Q Do you recall receiving a bill of
25 particulars in that case, the first trial?

1 A Yes.

2 Q And that was done by Mr. Poulston,
3 himself, wasn't it?

4 A I don't recall.

5 MR. SUTTON: Your Honor, I'm going to
6 object to all of this.

7 THE COURT: I don't have the file here.

8 MR. POCHUCHA: It is, Judge. I've had
9 it brought up.

10 THE COURT: I don't have it here. It
11 might be on my desk.

12 BY MR. POCHUCHA: (cont'd)

13 Q Do you deny that you received a bill of
14 particulars in that case, a written statement of the case
15 of Mr. Poulston where he said that you used Imron when he
16 said you shouldn't in advance of the trial?

17 THE COURT: Why do we need to go into
18 points of inconsistencies. When this issue
19 came up on your objection, Mr. Sutton here said
20 that he would explore the inconsistencies as it
21 related to the nuts and bolts. When the
22 testimony came forward, nothing was mentioned
23 about inconsistencies on nuts and bolts on
24 direct. Now, I understand why you might want
25 to go into it on cross, but this is collateral.

1 It has nothing to do with the issues in this
2 case, what he may have said inconsistently
3 about the paint and all of that, Imron or not.
4 I'm just wondering why.

5 MR. POCHUCHA: It has to do with the
6 creditability of the witness. The witness just
7 testified just this moment, and the court
8 reporter can read it back, that at the first
9 trial Mr. Poulston said nothing about Imron.

10 THE COURT: I know he said that, and
11 I'm just questioning the validity of going into
12 those matters when they don't bear on the issue
13 of this defamation case.

14 MR. POCHUCHA: Judge, the main issue in
15 this case is the credibility of Mr. Rock versus
16 the credibility of Mr. Poulston, and if I can
17 show that Mr. Rock has just this moment
18 testified incorrectly before the jury then I
19 think it's relevant. I plan to do that by
20 showing that he received a written statement
21 from Mr. Poulston in advance of the trial
22 stating that he used Imron when he didn't, and
23 he says at this first trial he didn't even
24 mention Imron.

25 THE COURT: I think the witness was

1 referring to varying testimony, and you just
2 referred to pleadings for one thing. I don't
3 know.

4 MR. POCHUCHA: I understand.

5 THE COURT: I just wonder what the
6 value and usefulness of it is for the jury to
7 go into a case that went on a year and a half
8 ago, and there are alleged inconsistencies
9 between two courts about a paint job when this
10 case is about nuts and bolts and defamation.

11 BY MR. POCHUCHA: (cont'd)

12 Q Would you tell the ladies and gentleman
13 of the jury when you first became acquainted with
14 Mr. Poulston.

15 A I already testified to that.

16 Q Would you tell the ladies and gentleman
17 of the jury when you first became acquainted with
18 Mr. Poulston.

19 A It was at Gordon Hailey's garage.

20 Q What year?

21 A I believe '89.

22 Q You testified earlier that he gave you
23 all the nuts and bolts for your motorcycle?

24 A No, I didn't. I testified he gave me
25 all the stainless steel nuts and bolts.

1 Q On how many occasions did he give you
2 stainless steel nuts and bolts?

3 A Quite a few.

4 Q Do you have any estimate of the number?

5 A Whenever I needed a bolt, I'd just tell
6 him I needed this bolt and he'd bring it to me the next
7 day.

8 Q And did he bring it to you, or did he
9 take it to Gordon Hailey?

10 A Both.

11 Q Sometimes to you and sometimes to
12 Gordon Hailey?

13 A Right. Whatever I didn't need, he
14 would put in this box to the side.

15 Q What was he to receive in return for
16 that?

17 A Nothing at that time.

18 Q The date that you called DuPont
19 Corporation was the same date that the garnishment
20 warrant was served upon you; correct?

21 A I believe so. Yes.

22 Q And you called after receiving the
23 garnishment warning, did you not?

24 A No. Mr. Winder called me.

25 Q I'm talking about your call to

1 Mr. Bolton, sir.

2 A Yes. I called Mr. Bolton.

3 Q And that was on the same day you
4 received the garnishment?

5 A I believe.

6 Q And your call was after receiving the
7 garnishment summons?

8 A Yes.

9 Q And you were mad about the garnishment
10 summons?

11 A Yes.

12 Q And you called in order to get
13 Mr. Poulston fired if you could?

14 A No.

15 Q Did you hope that he would be fired?

16 A Yes, yes.

17 Q And what was the purpose of your call?

18 A Because the man lied so much in the
19 second trial and first trial, and then he turned around
20 and sued me after I painted his motorcycle for \$96, sued
21 me for 2,300 some dollars.

22 Q My question to you, sir, was what was
23 the purpose of your call to DuPont?

24 A That was it. Because the man sued me
25 fraudulently, actually.

1 Q What did you hope to accomplish from
2 your call?

3 A Well, he lied so much in the second
4 trial that I wanted to know if he lied about these bolts,
5 too. That's why I called. When they told me that they
6 don't give them away, that's when I started telling him
7 my story.

8 Q You had no intentions of telling your
9 story until you found out about whether or not DuPont
10 gave away the \$6 stainless steel bolts?

11 A When I talked to Mr. Bolton, I asked
12 him if they gave away stainless steel bolts to employees.
13 If that man, Mr. Bolton, had told me yes, I would have
14 said thank you very much.

15 Q Did you have a conversation with
16 Mr. Winder later?

17 A Mr. Winder called me back after having
18 some conference and said we find no allegations, we find
19 nothing. We just forget this. I believe that's what was
20 said or in those similar words.

21 Q Did you tell Mr. Winder that
22 Mr. Poulston had told you personally that he had taken
23 the bolts from DuPont?

24 A I don't recall that.

25 Q Did you tell Mr. Winder that

1 Mr. Poulston did not tell you that he personally had
2 taken--

3 A No. I'm sure I told Mr. Bolton, not
4 Mr. Winder.

5 Q Did you have a conversation with
6 Mr. Winder concerning whether or not Mr. Poulston had
7 taken the bolts?

8 MR. SUTTON: Your Honor, I'm going to
9 object. If he wants to impeach his testimony,
10 have Mr. Pochucha do it properly and present
11 the impeachable statement to Mr. Rock and let
12 him have a chance to either affirm or deny that
13 statement.

14 THE COURT: This is proper
15 cross-examination. Go ahead.

16 BY MR. POCHUCHA: (cont'd)

17 Q Can you answer the question?

18 A Repeat the question.

19 NOTE: The question was read back by
20 the reporter.

21 A Yes, I did. He called me back.

22 Q Did you tell him that Mr. Poulston had
23 told you himself that he had taken the bolts?

24 A No.

25 Q You did not?

1 A That Mr. Poulston had taken the bolts?
2 Did Mr. Winder say that, no.

3 Q Did you tell Mr. Winder that?

4 A I don't recall. It should be in the
5 depositions that were taken. I don't recall.

6 Q You don't recall. Do you recall
7 anything about your conversations with Mr. Winder?

8 A He just called me. He called me back
9 and told me that they're not going to do nothing. I just
10 said thank you very much.

11 Q Did you tell Mr. Winder it was your
12 opinion that Mr. Poulston was a thief and a liar?

13 A I don't recall that. If it was in the
14 DuPont deposition, if it was in there, I did.

15 Q Do you recall telling Mr. Winder that
16 you wanted to get even with Mr. Bolton?

17 A I might have said that. I don't
18 recall. It's been a year or so ago.

19 Q And where is the motorcycle that
20 allegedly has all these stainless steel nuts and bolts?

21 A I sold this motorcycle to a guy named
22 Deon. I advertised it in the trading post. He took one
23 look at it and bought it on the spot. This was about a
24 month ago, I believe.

25 Q And did you--

1 A And it can be brought to court. I know
2 the guy very well.

3 Q Did you ask him to bring it here today?

4 A No.

5 Q It's not here today?

6 A No.

7 Q Mr. Leake here today?

8 A No.

9 Q How much did Mr. Leake pay you for the
10 motorcycle?

11 A \$8,000.

12 Q And you've heard the recitation of the
13 events at CD's Restaurant. Is that Mr. Harrell? Did you
14 call Mr. Poulston a thief and a liar at CD's Restaurant?

15 A I'm pretty sure I did.

16 Q Did you challenge him to step out at
17 CD's Restaurant?

18 A No, I didn't. I left CD's.

19 Q Would you tell the ladies and gentleman
20 of the jury, you have filed an interrogatory response
21 that says you own a home with no lien on it. It's valued
22 at approximately \$80,000.

23 MR. SUTTON: Your Honor, the
24 interrogatories speak for themselves. We've
25 stipulated to that. He can argue that to the

1 jury at the proper time. I object.

2 THE COURT: Is that what the
3 interrogatory says?

4 MR. POCHUCHA: Yes, it is, Your Honor,
5 but that was a little while ago. I just want
6 to make sure it's not changed.

7 THE COURT: The jury will be getting
8 this in a little while.

9 BY MR. POCHUCHA: (cont'd)

10 Q Is there any change in your assets now,
11 what you own now as compared to what you owned?

12 A I own an El Camino. I originally
13 bought it from a friend of mine.

14 Q An El Camino?

15 A Yes.

16 Q That's the El Camino you were asked
17 about at depositions?

18 A Yes.

19 Q And you said you didn't own it at that
20 point?

21 A No. I financed it for Marshal Harrell
22 who is here. I financed it for him, and he couldn't make
23 payments on it, so I took it back.

24 Q You own the El Camino now. What's the
25 value of the El Camino?

1 A It cost \$1,600. I would say \$1,600.

2 Q And do you own any real estate, other
3 than the home that's mentioned on the interrogatory?

4 A No.

5 Q Or any interest in any real estate?

6 A No, I don't. I used to, but I sold in
7 -- me and my brother and sister in Reedville, when our
8 father past away, and we sold it last year, I believe it
9 was.

10 Q And have you ever been convicted of a
11 felony?

12 A No.

13 Q Have you ever been convicted of a
14 misdemeanor involving lying, cheating or stealing?

15 A No.

16 Q Who is Johnny Snow?

17 A Johnny Snow? I don't know.

18 Q You don't know him?

19 A No.

20 Q Never heard of him?

21 A No, I don't. Yes. He was the guy that
22 overheard some conversation that Mr. Poulston -- at the
23 second trial. Yes. We had gone to appeal it, but I
24 couldn't get in touch with the guy. He moved.

25 MR. POCHUCHA: If I can have just one

1 moment, Your Honor.

2 THE COURT: All right.

3 MR. POCHUCHA: With the Court's
4 indulgence, again I would like to ask just one
5 additional question about the difference in the
6 two trials on the previous paint job.

7 BY MR. POCHUCHA: (cont'd)

8 Q Isn't it true, Mr. Rock, that at the
9 first trial Mr. Poulston did not have a painter of
10 motorcycles and at the second trial he had a painter of
11 motorcycles to testify as to the value of the paint job?

12 A He promised \$300 to come to court and
13 testify. Yes.

14 Q And there was no expert testimony in
15 the first trial, was there?

16 A No.

17 THE COURT: Anything else?

18 MR. SUTTON: Defense rests, Your Honor.

19 THE COURT: Thank you, Mr. Rock. You
20 may step down, sir.

21 _____
22 WITNESS STOOD ASIDE

23
24 THE COURT: Anything else, Mr.
25 Pochucha?

1 MR. POCHUCHA: I call Mr. Winder, Your
2 Honor.

3 NOTE: Mr. Winder, recalled by the
4 Plaintiff, having been duly sworn,
5 testifies, as follows:
6

7 DIRECT EXAMINATION

8 BY MR. POCHUCHA:

9 Q Mr. Winder, did you have occasion to
10 speak on the telephone with Mr. Rock?

11 A Yes, I did.

12 Q Did you determine whether or not
13 Mr. Rock had in his possession any of the stainless steel
14 bolts that were allegedly taken from DuPont by--

15 A In the discussion with Mr. Rock, I
16 asked him if he had any screws or bolts that he could
17 identify as coming from DuPont, and he said no.

18 Q Did you ask Mr. Rock whether or not
19 Mr. Poulston had ever given him the nuts and bolts
20 directly, or they came from another source?

21 A He told me that he never got any
22 directly from Mr. Poulston, he always got them from
23 someone else.

24 MR. POCHUCHA: Thank you, sir.
25

CROSS-EXAMINATION

BY MR. SUTTON:

Q Mr. Winder, when you asked Mr. Rock about whether he had any nuts and bolts, you were referring to nuts and bolts that he could positively say came from DuPont with some kind identifying mark; is that not correct?

A Yes.

MR. SUTTON: That's all I have, Judge.

THE COURT: Thank you, Mr. Winder. Any need to hold Mr. Winder?

MR. POCHUCHA: No, sir.

THE COURT: You're free to go, sir.
Thank you.

WITNESS STOOD ASIDE

MR. POCHUCHA: Call the plaintiff back to the stand briefly again, Your Honor.

NOTE: Charles Poulston, recalled by the Plaintiff, having been duly sworn, testifies, as follows:

DIRECT EXAMINATION

BY MR. POCHUCHA:

Q Mr. Poulston, the plate that was made from Mr. Rock's motorcycle, where was that made?

A My garage.

Q What was it made off?

A Quarter inch black iron.

Q How did you cut it?

A Oxyacetylene torch.

Q Is the oxyacetylene torch pictured in the photographs you demonstrated today?

A Yes.

Q And are you familiar with the availability of stainless steel bolts?

A Yes.

Q And are they difficult to get now?

A They were never difficult to get if you wanted to pay for them.

Q In 1989, 1990?

A You could have bought them at Tom Brown's Hardware.

Q Do you know the cost of them?

A It's based on the size of bolt, nut, screw, lock, washer. It varies in prices. An inch or quarter inch bolt runs about \$1.38, \$1.27, in that range.

1 Q Did you ever tell Mr. Gordon Hailey
2 that you obtained stainless steel nuts and bolts from the
3 DuPont Corporation?

4 A No, I did not.

5 Q Your motorcycle, sir, any stainless
6 steel?

7 A Not one.

8 MR. POCHUCHA: That's all.

9 MR. SUTTON: No questions.

10 THE COURT: Thank you, Mr. Poulston.

11

12

13 WITNESS STOOD ASIDE

14

15 THE COURT: Anything else, Mr.

16 Pochucha?

17 MR. POCHUCHA: There was one more
18 witness. It'll be very brief. Mr. Conklin,

19 NOTE: Mr. Conklin was called into the
20 courtroom.

21

22

23

24

25

EDWARD CONKLIN,

after having been first duly sworn,
testifies and says under oath as follows:

DIRECT EXAMINATION

BY MR. POCHUCHA:

Q Please state your full name for the
record.

A Edward A. Conklin.

Q Are you friends with Mr. Poulston?

A Yes.

Q How do you know him?

A I've known him about five years, and
we're just acquaintances.

Q Do you know Mr. Rock?

A Yes.

Q How do you know him?

A The same way.

Q Did you have an occasion to be at CD's
Restaurant when that altercation occurred between
Mr. Poulston and Mr. Rock?

A Yes.

Q Do you recall which of the individuals
approached the other?

1 A Mr. Rock approached Mr. Poulston.

2 Q And what occurred when he approached
3 him?

4 A Invited him outside to settle a
5 dispute.

6 Q What did Mr. Poulston do?

7 A Refused.

8 Q Did Mr. Rock make any statements to
9 Mr. Poulston?

10 A None that I can remember.

11 MR. POCHUCHA: That's all I have.

12 MR. SUTTON: No questions.

13 THE COURT: Thank you, Mr. Conklin.

14 You may step down.

15

16 WITNESS STOOD ASIDE

17

18 THE COURT: Anything else?

19 MR. POCHUCHA: No, sir.

20 THE COURT: Ladies and gentlemen, that
21 completes all the evidence of the case. There's some
22 matters I need to take up with counsel outside your
23 presence. During this time, you can retire to the jury
24 room if you wish or to the hallway, whichever you may
25 wish. Remember, don't discuss the case.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NOTE: The jury exits the courtroom.

THE COURT: I see you exchanging
instructions.

MR. SUTTON: Your Honor, I would have a
motion before we get to that.

1 JURY ABSENT

2 THE COURT: Mr. Sutton.

3 MR. SUTTON: Your Honor, I would renew
4 my motion to strike at this point. As part of
5 the prima facie case, the plaintiff has to
6 prove beyond a preponderance of the evidence
7 that the defendant knew the statement was false
8 or that he acted with reckless disregard for
9 the truth. There's been uncontroverted
10 testimony here today that Mr. Poulston gave
11 those bolts and nuts and told Mr. Rock that he
12 was going to make that plate for him at DuPont
13 in the presence of two people.

14 THE COURT: Mr. Poulston testified that
15 he made plate in his garage.

16 MR. SUTTON: Correct.

17 THE COURT: Isn't that a difference of
18 opinion there that the jury would have to
19 decide?

20 MR. SUTTON: Well, Your Honor, at this
21 point the plaintiff has to meet their burden to
22 submit it to the jury, and they have not shown
23 -- I do not think there's an issue to present
24 to the jury as to whether or not Mr. Rock knew
25 that the statement was false. His testimony

1 JURY ABSENT

2 was that he received stainless steel bolts from
3 Mr. Poulston in the presence of Gordon Hailey
4 and at one time in the presence of Barbara
5 Vanichi (ph). Both of these people testified
6 and Mr. Hailey testified unequivocally that he
7 was told several times from Mr. Poulston that
8 the source of these nuts and bolts was DuPont.

9 Now, Mr. Rock did not have any means as
10 presented by the evidence today to verify or
11 check into the truth of these statements. The
12 only way that he could look into the truth of
13 these statements was to make an inquiry at
14 DuPont, which he did, which brought us here
15 today. So in light of that, Your Honor, the
16 plaintiff has not shown that the defendant
17 either knew the statements were false or that
18 he acted with reckless disregard for the truth
19 when he called DuPont because the testimony is
20 and the evidence is that he was making an
21 inquiry at that point as to whether or not
22 DuPont gives away stainless steel bolts and
23 let's their employees work on their own
24 property while on DuPont time. I think you
25 should strike it on those means, Your Honor.

1 JURY ABSENT

2 THE COURT: What's the evidence show
3 about whether or not Mr. Rock knew he was
4 making a false statement?

5 MR. POCHUCHA: Judge, the inquires in
6 this juncture is whether or not he knew it was
7 false or whether or not it was actually false.
8 Mr. Rock says that Mr. Poulston told him that
9 they gave him the bolts from DuPont. Mr.
10 Poulston says he never gave him any bolts from
11 DuPont. So therefore, the evidence, if you
12 believe Mr. Poulston, that that statement never
13 came to Mr. Rock at all, that it was false and
14 that he knew it was false, that he made it up,
15 that it just simply never occurred. It's not a
16 question of trying to prove here that if I can
17 prove that it was actually false and if the
18 jury believes he made that up and didn't have
19 any basis for it, then that's the same thing as
20 being false, isn't it?

21 THE COURT: I think that's a jury
22 question. I'm going to submit it to the jury.
23 Would you go over your instructions then. I'll
24 come back in about ten minutes.

25 (Break taken.)

1 JURY ABSENT

2 MR. POCHUCHA: May we approach?

3 THE COURT: Yes, please.

4 MR. SUTTON: Your Honor, I would submit
5 this to the jury. It's not from the Model Jury
6 Instructions, but it's stated directly from the
7 case that the measure of compensatory damages
8 has to be somewhat related the--

9 THE COURT: Related to the damages
10 sustained?

11 MR. SUTTON: Um-hum.

12 THE COURT: Has he objected?

13 MR. SUTTON: Yes, he has.

14 THE COURT: You object to this?

15 MR. POCHUCHA: I do, Your Honor.
16 There's another instruction which deals with
17 compensatory damages and sets it out. This
18 instruction would lead the jury to believe in
19 this instance that unless we have proved any
20 monetary loss, that there may be no
21 compensatory damages.

22 MR. SUTTON: I would disagree. There's
23 another compensatory damage instruction in
24 there which outlines how they can find
25 compensatory damages.

1 JURY ABSENT

2 THE COURT: Where is that?

3 MR. SUTTON: Right there, Your Honor.

4 (Indicating.)

5 THE COURT: If you find your verdict
6 for the plaintiff, this is one you're speaking
7 of?

8 MR. SUTTON: Yes, sir. There is a
9 leading case in Virginia on this which outlines
10 the standard and the measure of damages and how
11 that will be ascertained in this very case.
12 One of the cases that went up, four different
13 cases, one of the cases was sent back down and
14 remanded on a new trial because the Supreme
15 Court said that the amount of damages awarded
16 by the jury were not commensurate with the
17 actual damages shown; that is, the actual
18 embarrassment or humiliation experienced by the
19 plaintiff in this case. It says that the
20 proper measure of compensatory damages are to
21 be commensurate with that.

22 THE COURT: Why do we need that when we
23 have this which details what the plaintiff can
24 recover if these elements are shown?

25 MR. SUTTON: I feel like they need to

1 JURY ABSENT

2 know that they have a wide-range of discretion.
3 They can give them a dollar if they feel like,
4 a dollar will be satisfactory, or they can give
5 him a \$100.

6 THE COURT: Suppose they find that?
7 Let me hold that a minute. Is there any other
8 instructions?

9 MR. POCHUCHA: This one.

10 MR. SUTTON: I think we're at an
11 impasse as to what the proper standard to be
12 applied to the Court is, whether it's a malice
13 standard or negligence standard. I don't feel
14 like there's been any malice shown and
15 therefore, it shouldn't be submitted to the
16 jury.

17 MR. POCHUCHA: The difference between
18 those two, I thought, was the language in the
19 statement. You took yours out of the
20 pleading, and I based mine on the evidence.

21 THE COURT: Which--

22 MR. POCHUCHA: The defendant's is the
23 one in your left hand there.

24 THE COURT: This one? (Indicating.)

25 MR. POCHUCHA: Yes, sir.

1 JURY ABSENT

2 MR. SUTTON: And I took the language
3 straight from the motion for judgment.

4 MR. POCHUCHA: Judge, if I've got to
5 prove they took aluminum bolts--

6 THE COURT: Where is aluminum?

7 MR. POCHUCHA: What I might have in--

8 THE COURT: --stainless steel.

9 MR. SUTTON: Yes. If that's the case
10 then, I think what we can do--

11 THE COURT: Is this your instruction?

12 MR. SUTTON: Yes. I'll offer that if
13 you want to change aluminum to stainless steel,
14 but I don't want to offer this instruction.
15 (Indicating.) Defamation has to be made with
16 specificity and with particularized--

17 THE COURT: Statements.

18 MR. SUTTON: Yes, sir. I'm having
19 trouble getting the words out.

20 THE COURT: Why do you think this is
21 appropriate?

22 MR. POCHUCHA: Judge, I'm just tracking
23 the language of what the -- that Charlie
24 Poulston had stolen stainless steel bolts and
25 cast iron from DuPont.

1 JURY ABSENT

2 THE COURT: I'm going to change the
3 aluminum to stainless steel in this one and
4 give this instruction to the jury.

5 (Indicating.) Is there anything else?

6 MR. POCHUCHA: Judge, this issues
7 instruction, this is where you get into the
8 negligence. Number 5, Element Number 5, I
9 don't believe there's any question of
10 negligence in this case. It's either he made a
11 false statement and knew it was false or the
12 statement was true. That's the issue. It's
13 not a question of whether or not he negligently
14 -- that is my instruction, and I believe that
15 language pertaining to negligently making the
16 statement, failing to ascertain the facts
17 should be redacted out and it should be just a
18 pure question of whether or not--

19 MR. SUTTON: He knew it was false or
20 the reckless disregard for the truth. I don't
21 think it's a malice case, Your Honor. As it
22 was argued earlier with the law with Gazette,
23 there has to be a finding on your part that
24 there's substantial danger to reputation
25 apparent before actual malice had to be shown.

1 JURY ABSENT

2 THE COURT: So you object to this
3 negligent portion, Mr. Pochucha?

4 MR. POCHUCHA: I drafted it and offered
5 it. That's the only issues instruction. I
6 think that should come out, the language about
7 negligently. Mr. Sutton pointed that out to
8 me. I don't know what his other objection is
9 if we take that out.

10 MR. SUTTON: My objection is that
11 before we submit it to them on the issue of
12 actual malice, there has to be a determination
13 by the trial court as to whether the negligent
14 standard should be used or whether the malice
15 standard should be used, and there's been no
16 showing of malice here today.

17 THE COURT: Well, gentlemen, I think
18 that the jury could make a finding on this
19 evidence under either of those bases, and I'm
20 prepared to give them--

21 MR. POCHUCHA: That's fine with me.

22 MR. SUTTON: If you could mark it
23 somehow and note my objection.

24 THE COURT: You can tell the court
25 reporter what your objections are to it.

1 JURY ABSENT

2 MR. POCHUCHA: The last one, there are
3 two different instructions, Judge, pertaining
4 to prior inconsistent statements by witnesses
5 as composed to a prior inconsistent statement
6 by a party. The one that deals with the
7 witness we've agreed to, and that's in there,
8 and it just says it affects the weight of his
9 testimony. We don't believe that the prior
10 statement is true.

11 THE COURT: Do you object to this?

12 MR. SUTTON: Yes. I think that's an
13 incorrect statement of the law. A prior
14 inconsistent statement by either a party or a
15 witness only goes to the credibility of that
16 witness. A prior inconsistent statement cannot
17 be used for both impeachment purposes and to
18 prove that what he said was true.

19 MR. POCHUCHA: Judge, I believe that's
20 straight out of the book, Judge, without
21 modification. I think that the distinction is
22 that probably revolves around Massie versus
23 Firmstone that if they believe that the
24 defendant made or either party made a statement
25 earlier in the case, that that statement is

1 JURY ABSENT

2 going to be binding on that party.

3 THE COURT: That doesn't--

4 MR. POCHUCHA: That's a different
5 instruction. I think that's probably the
6 intent behind that distinction.

7 THE COURT: I thought this instruction
8 was something like it was -- came telling the
9 jury that this is merely a question of
10 credibility.

11 MR. POCHUCHA: There is one in there to
12 that effect that deals with witnesses.

13 MR. SUTTON: What this instruction says
14 that if a party has made an inconsistent
15 statement, then you can use that inconsistent
16 statement--

17 THE COURT: I'm trying to find the one
18 we say is already here. Here.

19 MR. POCHUCHA: Judge, they're both
20 straight out of the book.

21 MR. SUTTON: I have no objection to
22 this one. (Indicating.)

23 THE COURT: I understand. This one
24 that you've agreed on is different than--

25 MR. POCHUCHA: That's right.

1 JURY ABSENT

2 THE COURT: I think this covers
3 witnesses, which would apply to both witnesses
4 and the parties. We could amend this to say if
5 you believe from the evidence that a witness or
6 a party.

7 MR. SUTTON: That's fine with me.

8 MR. POCHUCHA: That would be all right,
9 Judge. I don't want to belabor the point.

10 THE COURT: All right. Is that all
11 except the one that I reserved judgment on?

12 MR. SUTTON: Yes, sir.

13 THE COURT: Any instruction I refused,
14 you should tender it up so I can mark it
15 refused for the record.

16 MR. POCHUCHA: You should have this
17 one. (Indicating.)

18 THE COURT: I should? I think this is
19 the one I was taking here.

20 MR. POCHUCHA: That's fine. The other
21 one is issues.

22 THE COURT: Where is the one that I
23 said I was going to decide?

24 MR. POCHUCHA: This one. (Indicating.)

25 THE COURT: I'm going to refuse this

1 JURY ABSENT

2 instruction. Defendant's A, refused.

3 MR. SUTTON: If you can just note my
4 objection.

5 THE COURT: I'm going to go back and
6 take about five minutes to get the instructions
7 collected.

8 MR. POCHUCHA: About 75 minutes to
9 argue?

10 THE COURT: 75 minutes? How much time,
11 really, do you think you need?

12 MR. SUTTON: I will take no more than
13 15 minutes, if that.

14 MR. POCHUCHA: I would say 20.

15 THE COURT: I'll be back at 5:30,
16 according to that clock.

17 (Break taken.)

18 NOTE: The jury has returned to the
19 jury box.

20

21

22

23

24

25

1 JURY PRESENT

2 THE COURT: All right. Ladies and
3 gentlemen, it's now time to have the instructions read.
4 After these are read, you'll hear from counsel again by
5 way of closing argument. After that I'll ask you to
6 begin your deliberations.

7 Ladies and gentlemen of the jury, you
8 are the judge of the facts, the credibility of the
9 witnesses, and the weight of the evidence. You may
10 consider the appearance and manner of the witnesses on
11 the stand, their intelligence, their opportunity for
12 knowing the true and for having observed the things about
13 which they testified, their interest in the outcome of
14 the case, their bias, and if any have been shown, their
15 prior inconsistent statements, or whether they have
16 knowingly testified untruthfully as to any material fact
17 in the case.

18 You may not arbitrarily disregard
19 believable testimony of a witness. However, after you
20 have considered all the evidence in the case, then you
21 may accept or discard all or part of the testimony of a
22 witness as you think proper.

23 You are entitled to use your common
24 sense in judging any testimony. From these things and
25 all the other circumstances of the case, you may

1 determine which witnesses are more believable and weigh
2 their testimony accordingly.

3 Your verdict must be based on the facts
4 as you find them and on the law contained in all these
5 instructions.

6 The issues in this case are, one, did
7 Bobby Rock make the following statement: "Charlie
8 Poulston has stolen stainless steel bolts and cast iron
9 from DuPont. Two, if he did, was it heard by someone,
10 other than Charlie Poulston? Three, is the statement
11 about Charlie Poulston? Four, is the statement false?
12 Five, did Bobby Rock know the statement to be false or,
13 believing the statement to be true, did Bobby Rock lack
14 reasonable grounds for such belief or act negligently in
15 failing to ascertain the facts on which the statement was
16 based? Six, if Charlie Poulston is entitled to recover,
17 what is the amount of his damage?

18 On these issues Charlie Poulston has
19 the burden of proof. Your decisions on these issues must
20 be governed by the instructions that follow.

21 When a party has the burden of proving
22 an issue by clear and convincing evidence, you must
23 produce evidence that creates in your minds a firm belief
24 or conviction that he has proved the issue.

25 The greater weight of all the evidence

1 is sometimes called the preponderance of the evidence.
2 It is that evidence which you find more persuasive. The
3 testimony of one witness whom you believe can be the
4 greater weight of the evidence.

5 The defendant claims that the alleged
6 defamatory statement was substantially true. Truth is a
7 defense to an action for defamation. If the statement
8 was substantially true, then the plaintiff cannot
9 prevail.

10 Before Charlie Poulston can recover
11 from Bobby Rock, he must prove that Rock made a statement
12 about him that was false and that Rock knew it was false.

13 A statement is defamatory if people in
14 the community understand the words in it, in their normal
15 usage, to mean that the plaintiff has committed the crime
16 of larceny or that Charlie Poulston lacks integrity or is
17 dishonest in performing the duties of his employment.

18 You have heard the evidence of the
19 circumstances of the case, including the source of the
20 information. You may consider this in mitigation of
21 compensatory or punitive damages.

22 Actual malice is a sinister or corrupt
23 motive such as hatred, personal spite, ill will, or a
24 desire to injury the plaintiff.

25 If you find that the plaintiff is

1 entitled to be compensated for his damages, and if you
2 believe by clear and convincing evidence that the
3 defendant made the statement with actual malice; that is,
4 he knew that they were false or he made them so
5 recklessly as to amount to a willful disregard for the
6 truth, then you may also award punitive damages to punish
7 a defendant for his actions and to serve as an example to
8 prevent others from making such statements in the future.

9 If you award punitive damages, you must
10 state separately in your verdict the amount you allow as
11 compensatory damages and the amount you allow as punitive
12 damages.

13 If you believe from the evidence that a
14 witness or a party previously made a statement
15 inconsistent with his testimony of this trial, the only
16 purpose for which the statement may be considered by you
17 is its bearing on the witness's credibility. It is not
18 evidence that what the witness previously said is true.

19 If you find that Charlie Poulston is
20 entitled to be compensated for his damages, and if you
21 further believe by clear and convincing evidence that
22 Bobby Rock made the statements with actual malice; that
23 is, he knew that they were false or he made them so
24 recklessly as to amount to a willful disregard for the
25 truth, then you may also award punitive damages to punish

1 the defendant for his actions and to serve as example to
2 prevent others from making such statements in the future.

3 If you award punitive damages, you must
4 state separately in your verdict the amount you allow as
5 compensatory damages and the amount you allow as punitive
6 damages.

7 If you find your verdict for the
8 Charlie Poulston, then in determining the amount of
9 damages to which he is entitled, you may take into
10 consideration all of the circumstances surrounding the
11 statement, the occasion of which it was made and the
12 extent of the publication, the nature and the character
13 of the insult, the probable effect on those that heard
14 the statement, and its probable and natural effect upon
15 Charlie Poulston's personal feelings and upon his
16 standing in the community and the business.

17 Your verdict should be for an amount
18 that will fully and fairly compensate him for: One, any
19 loss or injury to his business. Two, any insult to him
20 including any pain, embarrassment, humiliation, mental
21 suffering. Three, any injury to his reputation.

22 You shall return your verdict for the
23 plaintiff if he has proved by the greater weight of the
24 evidence that: One, the defendant made the following
25 statement: "Charlie Poulston personally gave the

1 stainless steel bolts, which were the personal property
2 of DuPont Corporation, and Charlie Poulston fabricated a
3 motorcycle part or cast iron out of DuPont materials and
4 put them on his motorcycle. Two, it was heard by
5 someone, other than the plaintiff. Three, it was about
6 the plaintiff. Four, it was false. Five, the defendant
7 knew the statement to be false or, believing it to be
8 true, did Bobby Rock lack reasonable grounds for such
9 belief and act negligently in failing to ascertain the
10 facts on which the statement was based?

11 You shall find your verdict for the
12 defendant if the plaintiff failed to prove any one or
13 more of the elements above.

14 The amount sued for is not evidence in
15 this case. You shall not consider it in arriving at the
16 amount of your verdict, if any. Mr. Pochucha.

17 MR. POCHUCHA: May it please the Court,
18 counsel. Ladies and gentlemen of the jury, I would thank
19 you for your attentiveness for a rather long day.
20 I must admit that I did not think we would be here this
21 long. The facts seemed to be a little clearer and
22 straight-forward, but it always turns out a little
23 different when you have two sides drawing out the
24 evidence.

25 It is a very important day in the life

1 of Mr. Poulston. A very serious allegation has been made
2 against him, and while some have made light of it and
3 even Mr. Hancock, for instance, said Mr. Poulston kind of
4 smiled when the allegation was made, it's not something
5 to be taken lightly. Twenty-four years of the man's life
6 is with the company. His father was there before him
7 over 40 years. His reputation. I'm not one to quote
8 chapter and verse, but in Ecclesiastes, Chapter 7, the
9 first verse says, "A good name is better than precious
10 ointment." The first 13 versus of that are very
11 interesting, but my wife said that they would be much to
12 lengthy, and I would bore you with that. I commend that
13 to you.

14 The point is that the truth is
15 important, and that's what we're here about, the truth,
16 that's what this inquiry is. Is it true that Charlie
17 Poulston took bolts, stainless steel bolts and gave them
18 to Mr. Rock? Why would he do that? What was his motive?
19 He didn't get anything for it. Mr. Rock said that they
20 were valued at \$6 a piece during this period of time.
21 That he couldn't get them when he ran his motorcycle
22 shop, but yet Mr. Poulston just gave them away to him,
23 and he believed that they were just given away to him.

24 That's not credible on the part of
25 Mr. Rock. It's clear what happened here. There was a

1 dispute between these parties about the paint job,
2 garnished Mr. Rock, prevailed in a fair trial in a court
3 of law. Mr. Rock, he wanted to get back at him, as he
4 said when he talked to Mr. Bolton and as he said when he
5 talked to Mr. Winder. I want to get even with him. What
6 was he going to do to get even with him? He was going to
7 tell a lie about him at his job and that's what he did.
8 He called to do that. Fortunately, it didn't go any
9 farther than that, but imagine a corporation the size of
10 DuPont. It's kind of like a small town and rumors grow.
11 Yes, we didn't bring a lot of people in here. Everybody
12 who testified in fact knew Charlie Poulston, and everyone
13 who testified said I didn't believe that Charlie Poulston
14 really stole these things and it hasn't tarnished his
15 reputation in my mind. What about all the other folks
16 there with this rumor?

17 MR. SUTTON: Your Honor, I'm going to
18 object. He needs to stick to the facts of the
19 case and not speculate as to what other people
20 might have thought.

21 THE COURT: Well, ladies and gentleman,
22 what the lawyers tell you at this stage is not
23 evidence in the case. You're to judge this
24 case based solely on the evidence and what the
25 witnesses have testified and the exhibits.

1 MR. POCHUCHA: I ask, ladies and
2 gentleman of the jury, for you to recall Mr. Greer's
3 testimony about the numbers of people who were aware of
4 this situation. I ask you to recall Mr. Poulston's
5 testimony about the numbers of people who came up to him
6 over a period of time. Those are the people that we're
7 referring to.

8 Why would this man jeopardize his
9 career. Let's talk about the proof that's before you.
10 What proof is there that stainless steel bolts or any
11 material was taken out of DuPont by Mr. Poulston. It is
12 the testimony of Mr. Rock who has a clear motive, and I
13 think all of you ladies and gentleman of the jury had an
14 opportunity to observe his demeanor and his motive for
15 telling the truth. It's obvious here that he's not
16 telling the truth. You heard what Ms. Rock says. She
17 said Mr. Poulston testified to that spontaneously in the
18 proceedings related to the paint job on that motorcycle.
19 Did that make any sense to anybody? I leave that for
20 your judgment.

21 Then you've got Mr. Hailey. Now, Mr.
22 Hailey said that it was on at least three occasions, and
23 probably more occasions, but he really couldn't tell you
24 how many, that these stainless steel bolts came from
25 Mr. Poulston. How did they come? That was probably one

1 of the things he was specific in. He brought them in
2 little brown bags. That's what I recall him saying.
3 What did Mr. Rock say about it when he came in? He
4 brought them in his pockets. They didn't get things very
5 straight. How is somebody going to come in here and
6 prove a negative.

7 Those instructions that the Court has
8 read to you will tell you that the testimony of a single
9 witness is enough to prevail if you find that witness
10 believable. It's up to you individually to apply your
11 judgment and your experiences and your common sense in
12 considering the testimony that you've heard from these
13 individuals and for you to determine whom you found more
14 believable.

15 Once you find that the statement was
16 false, then you'll have to consider what damages are
17 there. Did we prove to you that there were any
18 out-of-pocket damages? No. I readily admit that Mr.
19 Poulston did not get up here and say I spent "X" amount
20 of dollars as a result of this, or this cost me this
21 amount of dollars. No. There's no proof to that, but
22 the instruction tells you that you can award compensatory
23 damages for the mental anguish that he went through.
24 He's a strong fellow. He's not crying. He's not lying
25 awake nights. He didn't go to a psychiatrist. He didn't

1 go to a psychologist, but he gets that ribbing all the
2 time at work. He told you about that. Here it is five
3 years after this paint job and he's still got to live
4 with that. People at his employment are coming up to him
5 and people are still ribbing him just even a month ago.
6 This statement took place in May of '93, that's over a
7 year ago now, the statement of did DuPont sponsor your
8 bike today.

9 What about when he comes up for
10 election of union steward again. Those innuendos that
11 run around in a small town, that has an effect on him.
12 He's thinking about that. He told you that. He's
13 entitled to compensation for that. We've all had a new
14 car. You drive your new car out, it's real shiny and
15 it's just so beautiful and then you get that first
16 scratch, that first ding on it. It's never quite the
17 same, is it? It never really is. It might be fine for
18 you, but it's never quite the same. That's what's been
19 done to Mr. Poulston's good name at DuPont. It's got
20 that little tarnish on it now. It's not ruined, but it's
21 got tarnished and he's entitled to compensation for that.

22 Then you get to the issue of punitive
23 damages. Now, what are punitive damages? They're
24 defined in there. You can only award punitive damages if
25 you find that the statement was made with malice. What

1 is malice? Malice is ill will, spite. Is there any
2 question about Mr. Rock's ill will toward Mr. Poulston?
3 There shouldn't be because his attorney stipulated that
4 there's ill will between them and that that's what this
5 case is all about. Yes, it is about ill will, but it's
6 about a little more than that. You can have ill will and
7 you can keep it to yourself. In our society you can't go
8 out and try to ruin somebody, take away their livelihood,
9 take away their income and take away their name just
10 because you're mad at them. You need to find other
11 outlets. We need to show Mr. Rock that he has to find
12 those outlets.

13 How do we do that? There's only one
14 way you can punish him. You don't send people to jail
15 for this. That's not even a possibility. What you do is
16 punish them in their pocketbook. You've got, and you'll
17 have this with you. He doesn't work. He's on
18 disability, yet, he has an \$80,000 house with no lien on
19 it, \$90,000 in the bank, a \$15,000 Corvette automobile
20 that he didn't tell you about, the El Camino, he gets
21 \$2,000 a month from his disability and then other
22 interest funds. He said he had a motorcycle shop. What
23 happened to the assets of the motorcycle shop? Do you
24 see anything on here for furniture?

25 I would suggest to you in punishing

1 Mr. Rock that you have to look in terms of a percentage
2 of his net worth. You can't strip him for this. You
3 can't take it all. That wouldn't be right. What we're
4 here to do, after all, is what's right; but what is right
5 in this case is to punish him and make it sting. The
6 amount necessary to do that is up to you, but I suggest
7 that you look at his net worth and you take an amount
8 that will hurt and make him remember this and that other
9 people, when they think about calling someone to get them
10 booted out of their job, will think twice about it
11 because they'll hear about it.

12 Ladies and gentlemen of the jury, I
13 have the burden of proof in this case, but I'm confident
14 that the greater weight of the evidence shows that the
15 statement was false and Mr. Rock knew it to be false.
16 I'm also confident that by clear and convincing evidence
17 the ill will of Mr. Rock when he made the statement is
18 apparent.

19 I will have an opportunity to speak
20 with you on one more occasion. That opportunity will
21 only be to rebut the statements that were made by counsel
22 for Mr. Rock. But I do thank you for your attendance,
23 and I would like to ask you to remember one thing. When
24 you return to the jury room to consider your verdict, I
25 ask you to apply your own individual judgment to this

1 case and then share that individual judgment with your
2 fellow jurors. If something that happens out of that
3 collective wisdom, the truth and justice will result from
4 that, the most precious thing we have in this country.
5 Without a jury system, we'd be in big trouble. You are
6 the latest extension of the finest judicial system in the
7 world. You are the present day manifestation of that,
8 and I thank you for your attentiveness.

9 MR. SUTTON: May it please the Court
10 and counsel. Ladies and gentlemen of the jury, I had no
11 idea this case was going to last as long as it did, and
12 I'm sure you didn't either. But from the evidence and
13 the facts that we've heard today, I feel like it's a very
14 simple case, although very long-winded.

15 The issue, as I see it, and the only
16 issue, ladies and gentleman of the jury, is what I told
17 you at the beginning. Put yourself in Mr. Rock's mind.
18 Did Mr. Rock know the statement was false, or did he act
19 in a reckless disregard for the truth when he made the
20 phone call. Now, there's two types of truth, ladies and
21 gentleman. There's the truth that is the absolute truth;
22 that is, this is a black pen. But if I'm a blind man and
23 somebody hands a pen to me and tells me that it is a
24 brown pen and that I, not knowing any different, tell
25 someone that it is a brown pen, have I told a lie? I

1 have told the truth based upon what I know or based on
2 the facts that were given to me. Now, that is what
3 Mr. Rock did today. That is what Mr. Rock did on May
4 7th, 1993.

5 When he made the call to DuPont he
6 believed the statement to be true because he had no other
7 reason to believe that it was false. Now, you have two
8 options today. If you believe what Mr. Rock said and
9 what Mr. Rock's witnesses said and that is that
10 Mr. Poulston gave him stainless steel bolts and told him
11 that he gave him stainless steel bolts from DuPont, no
12 matter whether or not Mr. Poulston took those bolts from
13 DuPont or not, whether or not Mr. Poulston made that
14 plate at DuPont or not, if Mr. Rock believed that to be
15 true when he made the inquiry to DuPont, then you have no
16 choice under the law, ladies and gentleman, you have no
17 choice but to find for Mr. Rock.

18 Now, let's look at the plaintiff's
19 case. We had Mr. Bolton testify. He testified about
20 taking the phone call from Mr. Rock. We had Mr. Greer.
21 His union representative testified. He had no idea of
22 what went on here, and he was not informed of this until
23 Mr. Winder informed him of this who also informed
24 Mr. Hancock who was informed by Mr. Bolton.

25 Now, there's been evidence before you

1 today, scant evidence before you today, that DuPont is a
2 rumor mill and Mr. Poulston has been damaged by all the
3 ribbing that he takes from his co-employees. Well, let
4 me ask you this, ladies and gentleman, that I find hard
5 to believe. If Mr. Rock told one person, and that was
6 Mr. Bolton, Mr. Bolton was sworn to confidence and
7 secrecy. Mr. Winder was told by Mr. Bolton, and he, too,
8 was sworn to secrecy not to tell anybody. Mr. Hancock
9 was told by Mr. Winder, and he was sworn to secrecy.
10 Mr. Greer was told by Mr. Hancock, and he was sworn to
11 secrecy. There was a secretary in there somewhere, she
12 had to type a memo. How does 2,500 employees find out
13 that Mr. Poulston allegedly took some stainless steel
14 bolts or made a plate at work if one of those four who
15 testified they didn't tell anybody, how did these
16 employees find out?

17 I tell you, there's two ways. Either
18 Mr. Poulston told them or the secretary told them. I
19 don't think the secretary told them, ladies and
20 gentleman. I think you can see from the history between
21 those two gentlemen that they're two juveniles. You
22 ought to go back and come back and tell them both to sit
23 in the corner for awhile and make up. I think that would
24 be a proper disposition in this matter. I don't think
25 the law allows you to do that.

1 Let's look at the other witnesses who
2 testified today. Gordon Hailey, I submit to you, is the
3 most believable and uncontroverted witness who testified.
4 He unequivocally told you that Mr. Poulston told him on
5 several occasions that he supplied him with stainless
6 steel bolts that he got from work from DuPont. It was on
7 one or more of these occasions that Mr. Rock was present,
8 and it was on these occasions that Mr. Rock formed what
9 he believed to be the truth in his mind. That's
10 uncontroverted, ladies and gentleman. Barbara Vanichi
11 (ph) testified. She was there, sat on the stand. She
12 was in Gordon Hailey's garage when they were building the
13 bike when Mr. Poulston would show up with bolts. Ladies
14 and gentlemen, Carl Rock heard Mr. Poulston testify as to
15 the source of the bolts for him.

16 The metal plate, where was that made?
17 Mr. Poulston has testified that he made it at home.
18 Mr. Hailey, who has built motorcycles for years, looked
19 at the equipment that Mr. Poulston allegedly made this
20 plate with and said there was no way it could have been
21 made. There had to be special equipment to grind it and
22 smooth the edges. What I find even more appealing is the
23 testimony of Marshal Harrell. Marshal Harrell sat on the
24 stand and told you that he saw a run-in or an argument
25 between Mr. Poulston and Mr. Rock at the bar. Once

1 Mr. Rock left, Mr. Poulston chuckled and says that son of
2 a bitch ain't going to be able to prove shit. He's got a
3 lawsuit coming, and I'm going to sue him.

4 Ladies and gentlemen, you heard
5 Mr. Shaffer, a DuPont employee for 33 years, who said
6 that if you wanted a part, if you needed bolts, you
7 needed anything to do a job, you walked in and got it.
8 There was no formal requisitions to get parts. There's
9 no record of where these bolts came from. Mr. Poulston
10 didn't give Mr. Rock any statements or receipts as to
11 where he got these bolts, but yet he supplied them to him
12 and told him where he got them. He said he got them from
13 work. Mr. Rock had no reason to disbelieve Mr. Poulston
14 until January of last year. Mr. Poulston started making
15 contradictory statements under oath. It was at that time
16 that Mr. Rock began to question whether or not these
17 bolts were actually given to Mr. Poulston or Mr. Poulston
18 took them at his own freewill. We don't know where the
19 bolts came from, but we know where Mr. Rock thinks the
20 bolts came from.

21 Ladies and gentlemen, you've heard
22 several witnesses today who also testified that they've
23 known Charlie Poulston for 23 years or known Charlie
24 Poulston for several years and they've known him to be an
25 honest person, a person of high integrity and that it did

1 not change their opinion of him, whatsoever. Even when
2 Mr. Poulston heard this, he smiled and blew it off. The
3 plaintiff would have you believe that he anguished over
4 this night and day because he thought he was going to be
5 fired. I submit to you, ladies and gentleman, if he knew
6 this was not false, that he knew that he had not actually
7 taken those bolts from DuPont, then why did he have to
8 anguish over this night and day?

9 Mr. Poulston didn't lose any of his
10 wages. His pay wasn't cut. He didn't lose any of his
11 medical benefits. He wasn't demoted. He didn't lose any
12 of his retirement or any of his pension. This matter was
13 over with in four days on May the 11th when DuPont said
14 we have no way to prove or disprove this. The case is
15 closed. Now we're here today almost five years after the
16 bike was being built and at whose prodding? Mr.
17 Poulston. Mr. Poulston has got a suit in here today, not
18 Mr. Rock.

19 Ladies and gentlemen, I asked you
20 earlier in opening, and I'm asking you again, when you
21 review the evidence, use your common sense and put
22 yourself in Mr. Rock's mind. If you had heard the things
23 that Mr. Poulston said to Mr. Rock, would you have any
24 reason to disbelieve him? If you'd heard and saw
25 Mr. Poulston's actions when he supplied him with the

1 plate, would you have any reason to disbelieve him?
2 Mr. Rock even called Mr. Poulston once at work and asked
3 him when is my plate going to be done? He says, I'm
4 working on it right now and gave it to them two days
5 later.

6 Ladies and gentlemen, your job is to
7 look at the evidence in its totality. I submit to you
8 that after hearing the evidence presented by Mr. Hailey,
9 there is no way that you can say Mr. Rock did not form a
10 good faith belief that those bolts were actually from
11 DuPont. Mr. Poulston gave you an excuse. He didn't say
12 I was taking them away. He says they're giving them to
13 me after inventory. He gave himself something to hang
14 his hat on. He wouldn't have walked in there and said I
15 just walked out of DuPont with a pocket full of bolts.
16 He said they gave them to me after inventory. Mr. Rock
17 had no reason to disbelieve that, ladies and gentleman.

18 Now, they may have asked you to award
19 judgment in favor of the plaintiff. They've sued him for
20 \$40,000 compensatory damages and \$60,000 for punitive
21 damages. I tell you, ladies and gentleman, I submit to
22 each and every one of you that it would be a travesty for
23 you to award this man a dime. He has not been harmed.
24 He brought this on himself, and his credibility is in
25 question when you have three witnesses who have no reason

1 to lie, come up and tell you what Mr. Poulston told them,
2 as well as what they told Mr. Rock.

3 Ladies and gentlemen, the truth is the
4 ultimate defense in this matter. If you believe that
5 Mr. Poulston took those bolts and made that plate at
6 DuPont then you have to find for Mr. Rock. If you
7 believe that Mr. Rock had a good faith belief in what
8 Mr. Poulston was telling him, himself, then you've got to
9 find for Mr. Rock. Ladies and gentlemen, I submit to you
10 there is no other evidence, and you must go back in that
11 room and find for the defendant. I ask you to dismiss
12 it. Thank you.

13 MR. POCHUCHA: Mr. Sutton has just
14 emphasized that you heard testimony from numerous
15 witnesses that Mr. Poulston is a man of high integrity
16 and that he continued -- all those witnesses continued to
17 believe that he's a man high in integrity. At the same
18 time, he wants you to believe that a man he says is high
19 integrity is the same man who stole property from his
20 employer. That is the same sort of approach that
21 Mr. Rock takes to this case.

22 Consider Mr. Winder for just one second
23 in his testimony. Did he have a reason to lie or to be
24 untruthful with you. What did he tell you that Mr. Rock
25 told him when he called? He told him that Rock said he

1 learned from someone else that Mr. Poulston had taken the
2 bolts from DuPont. He also said he had no stainless
3 steel bolts left. Yet, he comes to court and tells you
4 this is where it is. That is the kind of individual that
5 we are dealing with, and that is why a stop has to be put
6 to it.

7 Now, counsel for the defense has on two
8 occasions now stated a specific amount of money which was
9 stated in the pleadings. That is the amount of money
10 that was stated in the pleadings. I haven't
11 intentionally not stated any amount of money because I
12 feel that the amount of money in compensation is
13 something that you all need to decide. I ask you to look
14 at all the facts, and I ask that you do one thing, which
15 I know you will do, and that is to return a fair and
16 equitable verdict. Thank you, ladies and gentleman of
17 the jury.

18 THE COURT: Ladies and gentlemen, it's
19 now time for you to begin your deliberations. You'll
20 have with you in the jury room the instructions that were
21 read to you. You'll have, as well, all the exhibits that
22 were entered in the evidence in the case. Thirdly,
23 you'll have a verdict sheet, a sheet of paper on which
24 you are to indicate your verdict.

25 When you go back to the jury room to

1 begin your deliberations, I suggest to you that the first
 2 thing you should do is select among you a person who
 3 would act as your foreman or forelady, whichever the case
 4 may be. There's one gentleman on the jury, so I have to
 5 say foreman. The rest of you are ladies. Whatever you
 6 decide, be it foreman or forelady, this person would more
 7 or less chair the meeting and help the group decide on
 8 the issues as you decide them. Once you arrive at a
 9 verdict, which must be unanimous, you must all agree on
 10 the outcome, I'll ask that you step back in the room and
 11 the person you've chosen as foreperson, I'll ask that
 12 individual to stand and read the verdict.

13 All right. If you'd all step out of
 14 the jury box now and retire to the jury room.

15 NOTE: The jury retired to the jury
 16 room to begin their deliberations at 6:00 p.m.,
 17 and returned with their verdict at 6:40 p.m..
 18

19 JURY PRESENT

20 THE COURT: The record should reflect
 21 that the ladies and gentleman of the jury have returned
 22 to the jury box. Ladies and gentlemen, have you reached
 23 a verdict?

24 THE FOREMAN: Yes.

25 THE COURT: Mr. Capen, do you have the

1 verdict form there?

2 THE FOREMAN: Yes, I do.

3 THE COURT: Would you be kind enough to
4 stand and read the verdicts.

5 THE FOREMAN: We, the jury, on the
6 issues joined, find in favor of the plaintiff
7 and award him compensatory damages of \$10,000
8 and punitive damages of \$25,000.

9 THE COURT: Thank you, sir. Are there
10 any motions before the jury is discharged?

11 MR. POCHUCHA: No, Your Honor.

12 MR. SUTTON: Yes, Your Honor. I would
13 like to poll the jury.

14 THE COURT: Ladies and gentlemen,
15 there's been a motion to poll the jury. The
16 Court will grant that motion. I'm going to ask
17 each of you individually whether or not the
18 verdict just read is your individual vote. Ms.
19 Andrews, is this your verdict?

20 JUROR ANDREWS: Yes.

21 THE COURT: Mrs. Jeter, is this your
22 verdict?

23 JUROR JETER: Yes.

24 THE COURT: Ms. Meredith, is this your
25 verdict?

1 JUROR MEREDITH: Yes.

2 THE COURT: Ms. White, is this your
3 verdict?

4 JUROR WHITE: Yes.

5 THE COURT: Ms. Willenborg, is this
6 your verdict?

7 JUROR WILLENBORG: Yes.

8 THE COURT: Ms. Dancey, is this your
9 verdict?

10 JUROR DANCEY: Yes.

11 THE COURT: Finally, Mr. Capen, is this
12 your verdict?

13 JUROR CAPEN: Yes.

14 THE COURT: All right. Ladies and
15 gentlemen, I want to thank you for your time
16 and attention in the case. I wish you all a
17 very pleasant evening.

18

19

20

21

22

23

24

25

1 JURY DISCHARGED

2 MR. SUTTON: Your Honor, I would have a
3 motion to set aside the jury's verdict as
4 contrary to the law and the evidence in the
5 case. There's been no showing that the damages
6 actually awarded by this jury is commensurate
7 with the damages actually shown, if any, by the
8 plaintiff in this matter. In light of that,
9 Your Honor, I would submit that the jury's
10 verdict is excessive and does not conform to
11 the evidence that was presented here today, as
12 there was no evidence as to damages except
13 those submitted by Mr. Poulston when he
14 testified that he was ribbed by people he did
15 not know. In light of that, as Your Honor has
16 already articulated yourself, you found it hard
17 to see any damages. I would ask that you remit
18 the verdict down.

19 THE COURT: Is your motion to set
20 aside?

21 MR. SUTTON: Set it aside, or in the
22 alternative, remit it to what this Court feels
23 is an appropriate verdict.

24 MR. POCHUCHA: Judge, I think it's
25 clearly an issue for the jury, and they've

1 spoken.

2 THE COURT: I'm going to take that
3 motion under advisement. What is this here?
4 This is a copy of a--

5 MR. POCHUCHA: That was one of the
6 exhibits. Right. This was a plaintiff's
7 exhibit.

8 THE COURT: I don't see any plaintiff's
9 exhibit--

10 MR. POCHUCHA: Well, I'll waive any
11 efficiency in sending that into the jury room,
12 Your Honor.

13 THE COURT: I'm sure you will. Let me
14 think about that motion, and I'll write you and
15 advise you then in writing. Thank you.

16 (Whereupon, court adjourned at 7:50
17 p.m.)

18
19
20
21
22
23
24
25

CERTIFICATE

VIRGINIA:

COUNTY OF HENRICO

I, DEBRA L. JOHNSON, hereby certify that I, having been duly sworn, was the Court Reporter in the Circuit Court of the City of Richmond, Virginia, on July 14th, 1994, at the time of the hearing herein.

I further certify that the foregoing transcript is a true and accurate record of the testimony and other incidents of the hearing herein.

Given under my hand this 11th day of November, 1994.



Debra L. Johnson, RPR

Notary Public for the State of Virginia at Large.

My Commission expires:

March 31st, 1998

V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

CHARLES B. POULSTON, JR.,

Plaintiff,

v.

BOBBY ROCK,

Defendant.

ANSWER TO INTERROGATORIES

COMES NOW the defendant, Bobby Rock, and answers the following interrogatories propounded to him by the plaintiff:

1. Identify fully all of your present assets, including, real property and personal property, both tangible and intangible.

ANSWER: house valued at approximately \$75,000.00 to \$80,000.00; bank account with an approximate balance of \$90,000.00 and a Corvette automobile valued at approximately \$15,000.00.

3. Identify fully any and all sources of income and gross amount of income received from each such source for the last ten (10) years, up to and including the present time.

ANSWER: Virginia Disability Benefits - \$1,955.00 per month and \$198.00 per month as interest on bank account.

4. Identify fully all of your outstanding obligations, including, but not limited to, mortgages, conditional sales contract obligations and promissory notes.

<u>ANSWER:</u>	child support.....	\$ 52.00	per month
	child support.....	\$ 350.00	per month
	child support.....	\$ 400.00	per month
	utilities, etc.....	\$ 300.00	per month
	food.....	\$ 600.00	per month
	oil.....	\$ 100.00	per month
	car.....	\$ 400.00	per month


BOBBY ROCK



The foregoing answers to interrogatories were subscribed and sworn to before me this 29th day of March, 1994, by Bobby Rock.

My commission expires: 8-31-95.

Vivian A. Temple
Notary Public

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

CHARLES B. POULSTON, JR.

PLAINTIFF

v.

Case No. LW-1804-3

BOBBY ROCK

DEFENDANT

O R D E R

THIS CAUSE came on July 14, 1994, and came the plaintiff in person and by counsel and came the defendant in person and by counsel, on plaintiff's Motion for Judgment, and the defendant having heretofore filed his Grounds of Defense herein, the issue is joined.

WHEREUPON came a jury, to-wit: Anita Andrews, David Capen, Mary Dancey, Callie Jeter, Zonobia Meredith, Tonya White and Shawna Willenborg, who were sworn to well and truly try the issues joined, a true verdict give according to the evidence and the law.

Thereupon, the plaintiff's evidence was presented. Defendant moved to strike plaintiff's evidence, which motion was taken under advisement.

Thereupon, the defendant's evidence was presented.

Thereupon, plaintiff's rebuttal evidence was presented. Defendant renewed his motion to strike plaintiff's evidence, which motion was overruled.

Thereupon arguments of counsel were heard. Defendant objected to the giving of certain instructions, which motion

was denied. After receiving instructions from the Court, the jury retired to their room to consult of their verdict and after some time returned into Court with the following verdict:

We the jury on the issues joined find in favor of plaintiff and award him compensatory damages of \$10,000 and punitive damages of \$25,000.

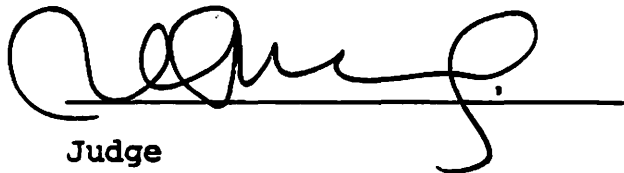
Foreman: /s/ David V. Capen

Date: 7/14/94

Whereupon, defendant moved to set aside the verdict for reasons stated in the record, which motion was taken under advisement.

This case is ORDERED continued generally.

Enter: 7/15/94


Judge

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
JOHN MARSHALL COURTS BUILDING

CHARLES B. POULSTON, JR.,

Plaintiff,

v. (Case No.: LW-1804)

BOBBY ROCK,

Defendant.

JUL 27 1994
[Signature]

MOTION TO SET ASIDE VERDICT
OR AWARD OF A NEW TRIAL

COMES NOW the defendant, by counsel, pursuant to Virginia Code §§ 8.01-383, 8.01-430 and 8.01-680 and moves this Honorable Court to set aside the verdict of the jury in favor of plaintiff and enter final judgment for defendant, or in the alternative remit the judgment to conform to the evidence presented to the jury, or in the alternative award a new trial, and in support of this motion says the following:

1. That considering the evidence in the light most favorable to the plaintiff, the judgment rendered by the jury is plainly wrong or without evidence to support it.

2. That the verdict of the jury was contrary to the law and evidence in this case and was without evidence to support it in that the jury's verdict was excessive and did not conform to the evidence of the case.

3. That the Court erred in failing to sustain defendant's motion to strike plaintiff's evidence at the conclusion of plaintiff's case.


4. That the Court erred in failing to strike plaintiff's

evidence at the conclusion of all the evidence.

5. That the Court erred in not granting defendant's instruction regarding how compensatory damages are to be computed as set out in Gazette v. Harris, 229 Va. 1, 325 S.E.2d 713, cert. denied, 472 U.S. 1032 (1985).

WHEREFORE, defendant moves that this Honorable Court set aside the jury verdict and enter final judgment for the defendant, or in the alternative remit the jury's verdict to conform to the law and evidence in the case, or in the alternative award the defendant a new trial.


BOBBY ROCK

By 
Of Counsel

Larry D. Catlett, Esquire
Dannie R. Sutton, Jr., Esquire
2222 Monument Avenue
Richmond, Virginia 23220
(804) 358-3131
(804) 355-4623
Counsel for defendant

CERTIFICATE

I certify that I have this 26th day of July, 1994, mailed a true copy of the foregoing Motion to Larry A. Pochucha, Esquire, BREMNER, BABER & JANUS, P.O. Box 826, Richmond, Virginia 23207-0826, counsel for Plaintiff.


DANNIE R. SUTTON, JR.

Circuit Court
OF THE
City of Richmond

MELVIN R. HUGHES, JR.
JUDGE

August 8, 1994

JOHN MARSHALL COURTS BUILDING
800 EAST MARSHALL STREET
RICHMOND, VIRGINIA 23219

Larry A. Pochucha, Esq.
Bremner, Baber & Janus
P. O. Box 826
Richmond, VA 23207

Larry D. Catlett, Esq.
Dannie R. Sutton, Jr., Esq.
Catlett & Kaplan
2222 Monument Avenue
Richmond, VA 23220

Re: Case No. LW-1804-3
Charles B. Poulston, Jr.,
v. Bobby Rock

Gentlemen:

This case was tried on July 14, 1994, before a jury which rendered a verdict for \$10,000 in compensatory damages and \$25,000 in punitive damages in plaintiff's favor for defamatory statements made by defendant. After the verdict, defendant moved the court to set aside the verdict, remit the verdict, or order a new trial on the grounds that the damages awarded were not supported by the evidence and were excessive. The court took the matter under advisement.

The facts giving rise to this defamation action are as follows. Plaintiff, Charles B. Poulston, Jr. and defendant, Bobby Rock, are acquaintances and custom motorcycles hobbyists. On January 19, 1993, this court awarded plaintiff judgment against defendant for negligently painting plaintiff's motorcycle. Plaintiff instituted garnishment proceedings against defendant to collect this judgment. On or about the week of May 10, 1993, defendant telephoned the labor relations' manager at DuPont Corporation, plaintiff's long-time employer, and stated that the plaintiff had stolen stainless steel nuts and bolts and cast iron from DuPont's inventory. Defendant further stated that plaintiff had given defendant these stolen items for use in assembling a custom motorcycle. Defendant stated that he wanted to "get" plaintiff in retaliation for plaintiff's actions to collect the judgment. These allegations were repeated to other employees and managers at DuPont. DuPont conducted an internal investigation which

Larry A. Pochucan, Esq.
Larry D. Catlett, Esq.
Dannie R. Sutton, Jr., Esq.
Page 2
August 8, 1994

uncovered no evidence of plaintiff's theft. Later, in separate incidents, at two local restaurants, defendant accused plaintiff to his face of being a liar and a thief. These remarks were overheard by others. Also plaintiff testified that at a later custom motorcycle show persons attending commented about the nuts and bolts accusations. At trial, witnesses for plaintiff testified that upon learning about defendant's telephone call to DuPont, plaintiff appeared not to take the matter seriously, and smiled and laughed about it. One person who informed plaintiff of defendant's allegation, plaintiff's union representative, testified that upon hearing of defendant's accusation plaintiff appeared surprised. Plaintiff's witnesses testified that they did not believe defendant's accusation, and had the same high regard for the plaintiff after the incident as before. One witness described plaintiff's integrity as "A-1," both before and after learning of defendant's accusation. Other witnesses testified that they had never questioned plaintiff's integrity or honesty both before and after the defendant's allegations. No witness testified that plaintiff's reputation had diminished in the slightest. Plaintiff testified that he neither stole the items nor told anyone that he had taken them. Defendant's accusation did not adversely affect plaintiff's employment status or cause diminution in his salary or benefits. No evidence was presented that plaintiff sought medical treatment or suffered any physical or emotional injuries as a result of defendant's actions although plaintiff testified that his fellow employees kidded him about the matter.

Defendant requests the court to set aside or remit the verdict, or order a new trial, arguing (1) that the compensatory damages are excessive, and (2) that the punitive damages award is excessive. The verdict will not be set aside unless it is so grossly excessive as to indicate the jury, in rendering it, was actuated by prejudice, passion, or corruption, or that they were misled by some mistaken view of the case. Boyd v Boyd, 116 Va. 326, 328, 82 S.E. 110 (1914). Whether the jury's award is excessive is a legal question addressed to the sound discretion of the trial court in the exercise of its supervisory power over verdicts to prevent a miscarriage of justice. Subs v. Cowden, 179 Va. 190, 198, 18 S.E.2d 275 (1942).

At common law, defamatory statements which are actionable per se include those which impute to a person the

Larry A. Pochur , Esq.
Larry D. Catlett, Esq.
Dannie R. Sutton, Jr., Esq.
Page 3
August 8, 1994

commission of some criminal offense involving moral turpitude, for which the party, if the charge is true, may be indicted and punished. Fleming v. Moore, 221 Va. 884, 889 (1981), cert. denied, 472 U.S. 1032 (1985). In the instant case, defendant's accusation that plaintiff had stolen property from his employer constituted an offense involving moral turpitude so as to be the subject of defamation per se. Where, as here, the defamation is actionable per se, damages for injury to reputation, humiliation, and embarrassment are presumed, and thus the plaintiff is not required to prove actual or pecuniary loss to recover compensatory damages. Great Coastal Exp., Inc. v. Ellington, 230 Va. 142, 151 (1985).

There is no fixed standard for measuring damages in a defamation action, Gazette, Inc v. Harris, 229 Va. 1, 13-14, cert. denied, Fleming v. Moore, 472 U.S. 1032 (1985), nor can damages be determined by any process of computation. News Leader Co. v. Kocen, 173 Va. 95, 103 (1939). Plaintiff is entitled to recover an amount which will fairly compensate him for the injury suffered. James v. Powell, 154 Va. 96, 117 (1930). In computing damages in defamation actions, the jury may consider the following factors: (1) all the facts and circumstances of the case, as disclosed by the evidence, Times Dispatch v. Zoll, 148 Va. 850, 857 (1927); (2) the nature and character of the charges; (3) the language in which they were expressed; (4) the occasion on which they were published; (5) the extent of their circulation; (6) the probable effect upon those to whose attention they came; (7) their natural and probable effect upon the plaintiff's feeling and the standing in the community in which he lives; (8) the pain, mortification and mental suffering inflicted upon the plaintiff; and (9) the injury of his reputation as a man and a citizen. James v. Powell, 154 Va. 96, 117 (1930) (libel per se action against publication which accused plaintiff of committing robbery); Snyder v. Fatherly, 158 Va. 335, 351 (1932) (slander per se action by employee against store owner and manager for accusing employee of stealing).

Under these principles, the court finds that the amount of compensatory damages awarded in this case is shockingly excessive. Plaintiff presented no proof that his reputation was even slightly diminished by defendant's defamatory statements. No inferences may be drawn from the proof that plaintiff's reputation was harmed or tainted in any way by the defamation. On the contrary, plaintiff's own witnesses testified that they did not believe defendant's accusation,

and held plaintiff in the same high esteem after learning of defendant's accusation as before. In addition, the evidence was devoid of proof that plaintiff suffered any pecuniary loss from the defamatory statements. Plaintiff remains employed at DuPont, suffered no diminution in salary, and is held in high regard by his fellow employees and superiors. Finally, plaintiff offered no evidence that he suffered any physical or emotional injury, save for some embarrassment sustained from good natured joking of his peers. Accordingly, the size of the compensatory damage award is without support in the evidence, and grossly in excess of the actual injuries suffered, and thus should be reduced to \$1,000.

The objective of punitive damages is to punish the wrongdoer and deter others from committing like offenses. The imposition of punitive damages is not favored generally and, "[b]ecause punitive damages are in the nature of a penalty, they should be awarded only in cases of the most egregious conduct." Owens-Corning Fiberglas Corp. v. Watson, 243 Va. 128, 144, (1992) (quoting, Phillip Morris Inc. v. Emerson, 235 Va. 380, 407 (1988)). The damages awarded should bear some reasonable relation to the real damages sustained, and to the measure of punishment required; otherwise, they indicate prejudice. Stubbs, supra, at 201. In order to award punitive damages, a jury must find that the defendant acted with actual malice toward the plaintiff or acted under circumstances amounting to a willful and wanton disregard of the plaintiff's rights. Virginia Model Jury Instruction I-205 (Michie 1993).

In the instant case, the jury could have reasonably found the requisite level of malice to justify an award of punitive damages. As for the amount of the damages, notwithstanding that some award was proper, the court finds that the award of \$25,000, in light of the purpose punitive damages are to serve, is excessive. The punitive damage award bears no reasonable relation to the real damages sustained by plaintiff. Accordingly, based both on the lack of evidence of real damage suffered and the reduction in the amount of the compensatory award, upon which the court is conditioning its denial of defendant's motion for new trial, the court will reduce the amount of punitive damages to \$2,500.

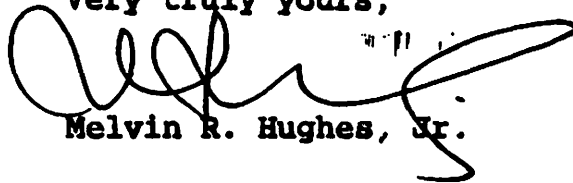
Thus, pursuant to §8.01-383.1 the Court hereby remits the award of damages by the jury to \$1,000 compensatory and

Larry A. Pochucha, Esq.
Larry D. Catlett, Esq.
Dannie R. Sutton, Jr., Esq.
Page 5
August 8, 1994

\$2,500 punitive or else there will be a new trial on all issues.

An order consistent with this ruling is enclosed, which notes plaintiff's exceptions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Melvin R. Hughes, Jr.", written over the typed name.

Melvin R. Hughes, Jr.

MRH, JR/n
Enclosure

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

CHARLES B. POULSTON, JR.

PLAINTIFF

v.

Case No. LW-1804-3

BOBBY ROCK

DEFENDANT

O R D E R

Pursuant to the Court's Order of July 15, 1994, and the jury, to-wit: Anita Andrews, David Capen, Mary Dancey, Callie Jeter, Zonobia Meredith, Tonya White and Shawwna Willenborg, who were sworn to well and truly try the issues joined, a true verdict give according to the evidence and the law, the jury returned into Court with the following verdict:

We the jury on the issues joined find in favor of plaintiff and award him compensatory damages of \$10,000 and punitive damages of \$25,000.

Foreman: /s/ David V. Capen

Date: 7/14/94

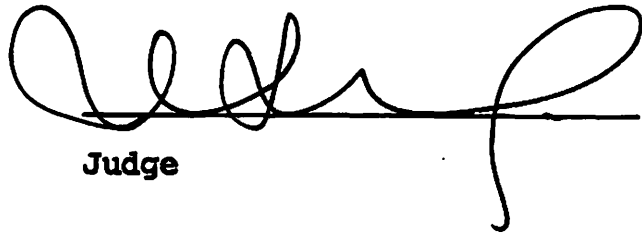
Whereupon, defendant moved to set aside the verdict for reasons stated in the record. The motion is sustained for the reasons stated in the Court's letter to counsel dated August 8, 1994.

It is therefore ORDERED that pursuant to §8.01-383.1, the Court hereby remits the award of damages by the jury to \$1,000 compensatory and \$2,500 punitive or else there will be a new trial on all issues.

The parties' exceptions are noted.

This case is continued generally.

Enter: 8/8/94

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

Judge

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

CHARLES B. POULSTON, JR.,

Plaintiff,

v.

Case No. LW-1804-4

BOBBY ROCK,

Defendant.

NOTICE

TO: Bobby Rock
c/o Larry D. Catlett, Esquire
Dannie R. Sutton, Jr., Esquire
2222 Monument Avenue
Richmond, Virginia 23220

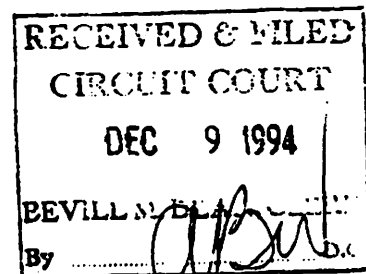
PLEASE TAKE NOTICE that on the 11th day of January, 1994, at 4:15 p.m., I shall appear before the Honorable Melvin R. Hughes, Jr., of the aforesaid court and move for the reconsideration of the finding of remittitur and entry of judgment on the original jury verdict or in the event such relief is denied the entry of an order accepting the remittitur under protest.

CHARLES B. POULSTON, JR.

By:

Larry A. Pochucha
Of Counsel

Larry A. Pochucha, p.q.
BREMNER, BABER & JANUS
7th & Franklin Building
Suite 1500
P. O. Box 826
Richmond, Virginia 23207
(804) 644-0721



CERTIFICATE

It is hereby certified that a true copy of the foregoing Notice was mailed, postage pre-paid, to Larry D. Catlett, Esquire, and Dannie R. Sutton, Jr., counsel for the defendant, at 2222 Monument Avenue, Richmond, Virginia 23220, on this 8th day of December, 1994.

Jay. A. Schul

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

CHARLES B. POULSTON, JR.

PLAINTIFF

v.

LW-1804-3

BOBBY ROCK

DEFENDANT

3013 BROAD ROCK BOULEVARD, RICHMOND, VA.

O R D E R

Pursuant to the court's orders in this case of July 15, 1994, and August 8, 1994, and further pursuant to the jury called to hear and decide the case, to-wit: Anita Andrews, David Capen, Mary Dancey, Callie Jeter, Zonobia Meredith, Tonya White and Shawwna Willenborg, and their verdict as follows:

We, the jury on the issues joined find in favor of plaintiff to award him compensatory damages of \$10,000 and punitive damages of \$25,000.

Foreperson: /s/ David V. Capen

Date: 7/14/94

And, whereupon the court sustained defendant's motion to set aside by order entered August 8, 1994, for the reasons stated in a letter to counsel dated August 8, 1994, and afterwards plaintiff's Motion to Rehear heard and argued on January 11, 1995, and thereafter taken under advisement.

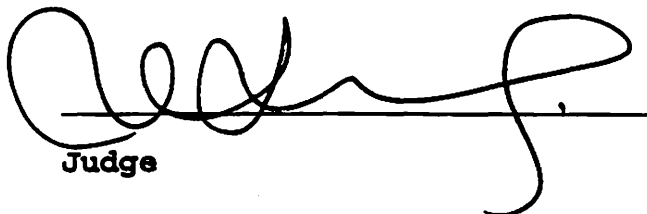
Now, therefore, the Motion To Rehear is Denied. Plaintiff will recover of the defendant the sum of One Thousand Dollars (\$1,000.00) in compensatory damages and Two Thousand Five Hundred Dollars (\$2,500.00) in punitive damages.

The parties' exceptions are duly noted.

And nothing further remaining to be done herein, it is ORDERED that his matter be stricken from the docket and placed among the ended causes of this court.

It is so ORDERED.

Enter: 3/29/95

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a long horizontal stroke that extends to the right. The signature is written over a horizontal line.

Judge

Assignments of Error

- a. The trial court erred by remitting the compensatory damages award from \$10,000.00 to \$1,000.00.
- b. The trial court erred by remitting the punitive damages award from \$25,000.00 to \$2,500.00.

Note: Appellee designated transcript of hearing from January 11, 1995 to be included in appendix, however no such transcript exist as part of the record.