

d49Va 353

(26)

W & L LANTAGNE
LAW LIBRARY
AUG 1 1 1994
U.S. DEPOSITORY
0530 B

IN THE
Supreme Court of Virginia

RECORD NO. 940602

CLERK
SUPREME COURT OF VIRGINIA
RECORDED
SEP 26 1994
RETURNED
RICHMOND, VIRGINIA

MARK SCHNUPP,

Appellant,

V.

ANDRE L. SMITH,

Appellee.

JOINT APPENDIX
Volume I

Wyatt B. Durette, Jr.
Barrett E. Pope
Van C. Ernest
**DURRETTE, IRVIN, LEMONS
& BRADSHAW, P.C.**
20th Floor
600 East Main Street
Richmond, Virginia 23219
(804) 780-0505

Counsel for Appellant

David P. Baugh
Attorney at Law
223 South Cherry Street
Post Office Box 12137
Richmond, Virginia 23241
(804) 643-8111

Counsel for Appellee

Table of Contents

Volume I

	<u>Page Number</u>
Motion for Judgment filed 9/10/92	1
Amended Motion for Judgment filed 7/22/93	9
Motion in Limine filed 10/22/93	16
Transcript of Trial heard before the Honorable Melvin R. Hughes, Jr. on 10/25/93	22
Testimony of Mabel Irving	141
Testimony of Mark Schnupp	144
Testimony of Cynthia Goss	188
Testimony of Eric Bowers	232
Testimony of Florence James	253
Testimony of Robert Ragin	255
Testimony of Andre Smith	282
Testimony of Patrice Smith	350

Table of Contents

Volume II

Page Number

Transcript of Trial heard before the Honorable Melvin R. Hughes, Jr. on 10/26/93	358
Testimony of Sheila Smith	394
Testimony of D. C. Williams	413
Testimony of Michael Kurisky	443
Testimony of Eric English	452
Testimony of Mark Ambrozy	482
Testimony of Linwood Bennett	490
Testimony of Ann Ball	502
Testimony of Brett Ramsey	526
Testimony of Mark Schnupp	537
Testimony of Andre Smith	574
Instructions filed 10/26/93	677
Memorandum in Support of Defendant's Motion to Set Aside the Jury Verdict as Contrary to the Law and the Weight of the Evidence dated 11/5/93	696
Plaintiff's Memorandum in response to Defendant's Motion to Set Aside the Jury Verdict dated 11/12/93	714
Defendant's Reply Memorandum in Support of Motion to Set Aside the Jury Verdict dated 11/18/93	734

Page Two

Letter Opinion of Judge filed 1/20/94 744

Judgment Order entered 1/20/94 754

Exhibits

Plaintiff's No.:

1 - Incident Report 756

2 - Police Report 760

Defendant's No.:

1 - Counselling Report 761

2 - Police Notes 762

24-343

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

John Marshall Courts Building

ANDRE L. SMITH,

Plaintiff,

v.

MARK SCHNUPP,

Serve:

501 North Ninth Street
Richmond, Virginia 23219

and

JOHN DOE ONE (1),

and

JOHN DOE TWO (2),

and

JOHN DOE THREE (3),

and

JOHN DOE FOUR (4),

Defendants.

MOTION FOR JUDGMENT

COMES NOW, ANDRE L. SMITH, hereinafter referred to as plaintiff and moves for judgement against defendants, MARK SCHNUPP, JOHN DOE ONE (1), JOHN DOE TWO (2), JOHN DOE THREE (3), and JOHN DOE FOUR (4), jointly and severally, on the grounds and in the amounts as hereinafter set forth:

COUNT ONE-UNLAWFUL SEARCH AND SEIZURE

1. That at all times pertinent to the cause of action,

the defendants were members of the Richmond Bureau of Police and cloaked in the powers of a police officer under the laws of the Commonwealth of Virginia and the City of Richmond, Virginia.

2. That at all times pertinent to this cause of action plaintiff was a citizen of the Commonwealth of Virginia and the City of Richmond, Virginia.

3. That on or about August 21, 1992, in the City of Richmond plaintiff was operating a vehicle in the City of Richmond.

4. That while operating the vehicle mentioned in paragraph 3, above, plaintiff, and the vehicle which he was driving, were stopped by defendants: JOHN DOE ONE (1), JOHN DOE TWO (2) and JOHN DOE THREE (3).

5. That during the stop of the vehicle mentioned in paragraph 4, above, defendants: JOHN DOE ONE (1), JOHN DOE TWO (2) and JOHN DOE THREE (3), drew their firearms and placed plaintiff in fear of his life and health.

6. That during the stop mentioned in paragraph 4, above, plaintiff was subjected to a search of his person and property in which he enjoyed a reasonable and constitutionally cognizable expectation of privacy.

7. That the stop of plaintiff and the consequential search of plaintiff's person and property in which he enjoyed a reasonable and constitutionally cognizable expectation of privacy was without probable cause and violative of his rights under the Constitution of the Commonwealth of Virginia and § 19.2- 59, Code

of Virginia.

8. That the actions of JOHN DOE ONE (1), JOHN DOE TWO (2) and JOHN DOE THREE (3) were in reaction to instructions and false information given to them by another unknown officer: JOHN DOE FOUR (4).

9. That the actions of the officers were evidenced by excessive and unnecessary force and violence in that the officers had received no information which would lead an impartial and detached officer to feel that his life was threatened or that he could utilize deadly force with the information given to the defendants: JOHN DOE ONE (1), JOHN DOE TWO (2) and JOHN DOE THREE (3), which amounted to the reasons for stopping and detaining plaintiff.

10. That as a direct and proximate result of the actions contained in paragraphs 1 through 9, inclusive, plaintiff has been subjected to embarrassment, humiliation and ridicule, anguish and the loss of and invasion of privacy, such damages being the basis of Count One of this cause of action.

11. That the actions of the officers, to-wit: JOHN DOE ONE (1), JOHN DOE TWO (2) and JOHN DOE THREE (3), in stopping the plaintiff, drawing weapons and subjecting, to search, his person and property in which he enjoyed a reasonable and constitutionally cognizable expectation of privacy, was with willful and wanton disregard for the rights of Plaintiff.

12. That as a direct and proximate result of the actions above described Plaintiff has been injured in the amount

of TWO HUNDRED FIFTY THOUSAND DOLLARS AND 00/100 CENTS (\$250,000.00) in actual damages and SEVEN HUNDRED FIFTY THOUSAND DOLLARS AND 00/100 CENTS (\$750,000.00) in punitive damages, and for such amount now sues.

COUNT TWO-ASSAULT

13. Plaintiff hereby incorporates by reference, as if set forth fully in this part of the pleading, paragraphs 1 through 12, inclusive.

14. That plaintiff was subjected to the unlawful assault upon his person: that is, that he was subjected to a threatening act, either directly or indirectly, by JOHN DOE ONE (1), JOHN DOE TWO (2), JOHN DOE THREE (3), and JOHN DOE FOUR (4), and placed in reasonable and serious fear of physical bodily injury.

15. That the actions of defendants as described in paragraph 14, above, were undertaken by each defendant with a willful, wanton and reckless disregard for the physical safety of plaintiff and his rights as a citizen of the United States and the Commonwealth of Virginia.

16. That as a direct and proximate result of the unlawful assault described in paragraph 14, above, plaintiff has suffered fear and anguish, such damages being the basis of Count Two of this cause of action.

17. That as a direct and proximate result of the actions described in paragraphs 14 and 15, above, plaintiff has been injured in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS

AND 00/100 CENTS (\$250,000.00) in actual damages and SEVEN HUNDRED FIFTY THOUSAND DOLLARS AND 00/100 (\$750,000.00) DOLLARS in punitive damages, and for such amount now sues.

COUNT THREE-FALSE ARREST

18. Plaintiff hereby incorporates by reference, as if set forth fully in this part of the pleading, paragraphs 1 through 17, inclusive.

19. That plaintiff was subjected to a use of force, by word and action, directly and indirectly, by JOHN DOE ONE (1), JOHN DOE TWO (2), JOHN DOE THREE (3), and JOHN DOE FOUR (4), to a false arrest, that is, an intentional restriction of his freedom of movement without legal right.

21. That the actions of defendants as described in paragraph 19, above, were undertaken by each defendant with a willful, wanton and reckless disregard for the physical safety of plaintiff and his rights as a citizen of the United States and the Commonwealth of Virginia.

22. That as a direct and proximate result of the actions described in paragraphs 19 and 20, above, plaintiff has suffered humiliation, fear and embarrassment, such damages being the basis of Count Three of this cause of action.

23. That as a direct and proximate result of the actions described in paragraphs 19 and 20, above, Plaintiff has been injured in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS AND 00/100 (\$250,000.00) DOLLARS in actual damages and SEVEN HUNDRED FIFTY THOUSAND and NO/100 CENTS (\$750,000.00) in punitive

damages, and for such amount now sues.

COUNT FOUR - DEFAMATION

24. Plaintiff hereby incorporates by reference, as if set forth fully in this part of the pleading, paragraphs 1 through 23, inclusive.

25. That defendant, MARK SCHNUPP, did publish to others, including but not limited to plaintiff's employer and personnel with whom defendant worked and was employed, a false statement directly concerning plaintiff and accusing plaintiff. The statement reasonably intended to convey to recipients of such statement that plaintiff had committed a felony offense.

26. That defendant, MARK SCHNUPP, did publish to others, including but not limited to plaintiff's employer and personnel with whom defendant worked and was employed, a false statement directly concerning plaintiff and accusing plaintiff. The statement reasonably intended to prejudicially effect plaintiff in his work.

27. That the actions of defendant, MARK SCHNUPP, as described in paragraphs 25 and 26, above, were undertaken by defendant with a willful, wanton and reckless disregard for the physical safety of plaintiff and his rights as a citizen of the United States and the Commonwealth of Virginia.

28. That as a direct and proximate result of the actions described in paragraphs 25 and 27, above, plaintiff has been injured in the amount of FIVE HUNDRED THOUSAND DOLLARS AND 00/100 CENTS (\$500,000.00) in actual damages and SEVEN HUNDRED

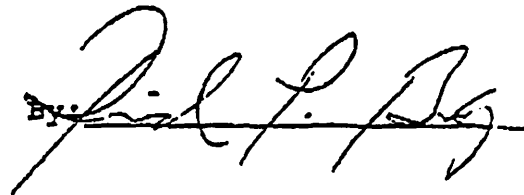
FIFTY THOUSAND AND 00/100 CENTS (\$750,000.00) in punitive damages, and for such amount now sues.

WHEREFORE, premises considered, plaintiff now moves for judgement against defendants MARK SCHNUPP, JOHN DOE ONE (1), JOHN DOE TWO (2), JOHN DOE THREE (3), and JOHN DOE FOUR (4), jointly and severally, in the amount of ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS 00/100 CENTS (\$1,250,000.00) in actual damages and THREE MILLION DOLLARS AND 00/100 CENTS (\$3,000,000.00) in punitive damages and his costs in his behalf expended.

TRIAL BY JURY IS DEMANDED.

Respectfully submitted,

ANDRE L. SMITH

By: 

David P. Baugh
Attorney for Plaintiff
223 S. Cherry Street
P. O. Box 12137
Richmond, Virginia 23241
(804) 643-8111

COMMONWEALTH OF VIRGINIA



CIRCUIT COURT CITY OF RICHMOND - LAW
800 EAST MARSHALL STREET
RICHMOND VIRGINIA 23219
(804) 780-6536

TO MARK SCHNUPF

501 NORTH NINTH STREET
RICHMOND, VA. 23219

CASE NO. 760CL92003435-00

Pager
783-3105
(h) 740-3671
(w) 780-4516

NOTICE OF MOTION FOR JUDGMENT

YOU ARE HEREBY NOTIFIED THAT UNLESS WITHIN TWENTY-ONE (21) DAYS AFTER SERVICE OF THIS NOTICE OF MOTION FOR JUDGMENT ON YOU, RESPONSE IS MADE BY FILING IN THE CLERK'S OFFICE OF THE COURT A PLEADING IN WRITING, IN PROPER LEGAL FORM. JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT.

DONE IN THE NAME OF THE COMMONWEALTH OF VIRGINIA ON SEPTEMBER 14, 1992

CLERK: IVA R. PURDY

BY: _____

[Signature]
CLERK/DEPUTY CLERK

ATTORNEY NAME: DAVID P. BAUGH
223 SOUTH CHERRY STREET
RICHMOND, VA. 23220

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

John Marshall Courts Building

ANDRE L. SMITH,
Plaintiff,

v.

MARK SCHNUPP,
service address:
501 North Ninth Street
Richmond, Virginia 23219
and

D. C. WILLIAMS,
service address:
501 North Ninth Street
Richmond, Virginia 23219
and

ERIC ENGLISH,
service address:
501 North Ninth Street
Richmond, Virginia 23219
and

MICHAEL KURISKY,
service address:
501 North Ninth Street
Richmond, Virginia 23219
Defendants.

AMENDED MOTION FOR JUDGMENT

COMES NOW, ANDRE L. SMITH, hereinafter referred to as Plaintiff and moves for judgement against defendants, MARK SCHNUPP, D. C. WILLIAMS, ERIC ENGLISH, and MICHAEL KURISKY, jointly and severally, on the grounds and in the amounts as hereinafter set forth:

COUNT ONE-UNLAWFUL SEARCH AND SEIZURE

1. That at all times pertinent to the cause of action, the defendants were members of the Richmond Bureau of Police and cloaked in the powers of a police officer under the laws of the Commonwealth of Virginia and the City of Richmond, Virginia.

2. That at all times pertinent to this cause of action Plaintiff was a citizen of the Commonwealth of Virginia and the City of Richmond, Virginia.

3. That on or about August 21, 1992, in the City of Richmond Plaintiff was operating a vehicle in the City of Richmond.

4. That while operating the vehicle mentioned in paragraph 3, above, Plaintiff, and the vehicle which he was driving, were stopped by defendants: D. C. WILLIAMS, ERIC ENGLISH, AND MARK KURISKY.

5. That during the stop of the vehicle mentioned in paragraph 4, above, defendants: D. C. WILLIAMS, ERIC ENGLISH AND MARK KURISKY, drew their firearms and placed Plaintiff in fear of his life and health.

6. That during the stop mentioned in paragraph 4, above, Plaintiff was subjected to a search of his person and property in which he enjoyed a reasonable and constitutionally cognizable expectation of privacy.

7. That the stop of Plaintiff and the consequential search of Plaintiff's person and property in which he enjoyed a reasonable and constitutionally cognizable expectation of privacy

was without probable cause and violative of his rights under the Constitution of the Commonwealth of Virginia and § 19.2- 59, Code of Virginia.

8. That the actions of D. C. WILLIAMS, ERIC ENGLISH AND MICHAEL KURISKY, were in reaction to instructions and false information given to them by MARK SCHNUPP.

9. That the actions of the officers were evidenced by excessive and unnecessary force and violence in that the officers had received no information which would lead an impartial and detached officer to feel that his life was threatened or that he could utilize deadly force with the information given to the defendants, D. C. WILLIAMS, ERIC ENGLISH, AND MICHAEL KURISKY, which amounted to the reasons for stopping and detaining Plaintiff.

10. That as a direct and proximate result of the actions contained in paragraphs one through 10, inclusive, Plaintiff has been subjected to embarrassment, humiliation and ridicule, anguish and the loss of and invasion of privacy, such damages being the basis of Count One of this cause of action.

11. That the actions of the officers, to-wit: D. C. WILLIAMS, ERIC ENGLISH AND MICHAEL KURISKY, in stopping the Plaintiff, drawing weapons and subjecting, to search, his person and property in which he enjoyed a reasonable and constitutionally cognizable expectation of privacy, was with willful and wanton disregard for the rights of Plaintiff.

12. That as a direct and proximate result of the actions above described Plaintiff has been injured in the amount of TWO HUNDRED FIFTY THOUSAND and no/100 (\$250,000.00) DOLLARS in actual damages and SEVEN HUNDRED FIFTY THOUSAND and NO/100 (\$750,000.00) DOLLARS in punitive damages, and for such amount now sues.30

COUNT TWO-ASSAULT

13. Plaintiff hereby incorporates by reference, as if set forth fully in this part of the pleading, paragraphs 1 through 12, inclusive.

14. That Plaintiff was subjected to the unlawful assault upon his person: that is, that he was subjected to a threatening act, either directly or indirectly, by D. C. WILLIAMS, ERIC ENGLISH AND MICHAEL KURISKY, and placed in reasonable and serious fear of physical bodily injury.

15. That the actions of defendants as described in paragraph 14, above, were undertaken by each defendant with a willful, wanton and reckless disregard for the physical safety of Plaintiff and his rights as a citizen of the United States and the Commonwealth of Virginia.

16. That as a direct and proximate result of the unlawful assault described in paragraph 14, above, Plaintiff has suffered fear and anguish, such damages being the basis of Count Two of this cause of action.

17. That as a direct and proximate result of the actions described in paragraphs 14 and 15, above, Plaintiff has

been injured in the amount of TWO HUNDRED FIFTY THOUSAND and no/100 (\$250,000.00) DOLLARS in actual damages and SEVEN HUNDRED FIFTY THOUSAND and NO/100 (\$750,000.00) DOLLARS in punitive damages, and for such amount now sues.

COUNT THREE-FALSE ARREST

18. Plaintiff hereby incorporates by reference, as if set forth fully in this part of the pleading, paragraphs 1 through 17, inclusive.

19. That Plaintiff was subjected to a use of force, by word and action, directly and indirectly, by D. C. WILLIAMS, ERIC ENGLISH AND MICHAEL KURISKY, to a false arrest, that is, an intentional restriction of his freedom of movement without legal right.

20. That the actions of defendants as described in paragraph 19, above, were undertaken by each defendant with a willful, wanton and reckless disregard for the physical safety of Plaintiff and his rights as a citizen of the United States and the Commonwealth of Virginia.

21. That as a direct and proximate result of the actions described in paragraphs 19 and 20, above, Plaintiff has suffered humiliation, fears and embarrassment, such damages being the basis of Count Three of this cause of action.

22. That as a direct and proximate result of the actions described in paragraphs 19 and 20, above, Plaintiff has been injured in the amount of TWO HUNDRED FIFTY THOUSAND and no/100 (\$250,000.00) DOLLARS in actual damages and SEVEN HUNDRED

FIFTY THOUSAND and NO/100 (\$750,000.00) DOLLARS in punitive damages, and for such amount now sues.

COUNT FOUR - DEFAMATION

23. Plaintiff hereby incorporates by reference, as if set forth fully in this part of the pleading, paragraphs 1 through 23, inclusive.

24. That defendant, **MARK SCHNUPP**, did publish to others, including but limited to Plaintiff's employer and personnel with whom Plaintiff worked and was employed, a false statement directly concerning Plaintiff and accusing Plaintiff, that would reasonably intended to convey to recipients of such statement that Plaintiff had committed a felony offense.

25. That defendant, **MARK SCHNUPP**, did publish to others, including but limited to Plaintiff's employer and personnel with whom defendant worked and was employed, a false statement directly concerning Plaintiff and accusing Plaintiff, that would reasonably intended to prejudicially effect Plaintiff in his work.

26. That the actions of defendant, **MARK SCHNUPP**, as described in paragraphs 25 and 26, above, were undertaken by defendant with a willful, wanton and reckless disregard for the physical safety of Plaintiff and his rights as a citizen of the United States and the Commonwealth of Virginia.

27. That as a direct and proximate result of the actions described in paragraphs 25 and 27, above, Plaintiff has been injured in the amount of **FIVE HUNDRED THOUSAND and no/100**

(\$500,000.00) DOLLARS in actual damages and SEVEN HUNDRED FIFTY THOUSAND and NO/100 (\$750,000.00) DOLLARS in punitive damages, and for such amount now sues.

WHEREFORE, premises considered, Plaintiff now moves for judgement against defendants MARK SCHNUPP, D. C. WILLIAMS, ERIC ENGLISH AND MICHAEL KURISKY, jointly and severally, in the amount of ONE MILLION TWO HUNDRED FIFTY THOUSAND and NO/100 (\$1,250,000.00) DOLLARS in actual damages and THREE MILLION AND NO/100 (\$3,000,000.00) DOLLARS in punitive damages and his costs in his behalf expended.

Respectfully submitted,

ANDRE L. SMITH

By: 

David P. Baugh
Attorney for Plaintiff
223 S. Cherry Street
P. O. Box 12137
Richmond, Virginia 23241
(804) 643-8111

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND
John Marshall Courts Building

ANDRE L. SMITH,)	
)	
Plaintiff,)	
)	
v.)	Case No. 76-CL-92U03435-00
)	
MARK SCHNUPP, et al.,)	
)	
Defendant.)	

MOTION IN LIMINE

COMES NOW defendant, Mark Schnupp, by counsel, and moves this Court for the entry of an order precluding plaintiff Andre' L. Smith from offering at trial an Investigative Report prepared by defendant on August 25, 1992, and any other evidence of allegedly defamatory statements made by defendant after August 21, 1991. In support of his Motion, defendant submits the following Memorandum.

MEMORANDUM IN SUPPORT OF THE MOTION IN LIMINE

Preliminary Statement

In the present dispute, plaintiff alleges that defendant made false and defamatory statements to other individuals regarding plaintiff's actions, thereby causing plaintiff to suffer damages. The only date mentioned in plaintiff's Motion for Judgment is "on or about August 21, 1992." Motion for Judgment, Para. 3.

It is undisputed that on that date defendant, a City of Richmond police officer, was participating in a surveillance of suspected drug dealers in a high drug trafficking area of Richmond when he observed plaintiff driving an ARA Services ("ARA") van.

After observing the van, defendant radioed a "take down unit" which consisted of three police officers in a squad car parked nearby. The take down unit proceeded to stop and search plaintiff and his passenger as well as the vehicle itself approximately three blocks from defendant's surveillance position.

It is also undisputed that on August 21, 1992, defendant communicated to Cynthia Goss, an ARA employee, that the ARA van was in this particular area, was stopped and searched by police officers, and was occupied by plaintiff and a passenger. ARA terminated plaintiff during his next working day, August 24, 1992.

The day following plaintiff's termination, August 25, 1992, defendant received a telephone call from an ARA employee. The employee specifically asked defendant to submit a written account of the events that took place on August 21, 1992. In response to the telephone call and after first obtaining approval from his supervisor, defendant drafted an Investigative Report dated August 25, 1992 (the "Investigative Report"), which is the subject of this Motion and is attached hereto as "Exhibit A."

Argument

Defendant moves to have the Investigative Report and any other evidence of alleged defamation occurring after August 21, 1992 excluded from evidence at trial for the following reasons. First of all, August 21, 1992 was the only date on which defendant "publish[ed] to others, including but not limited to plaintiff's employer and personnel with whom defendant worked and was employed" Motion for Judgment, Paras. 25, 26 (emphasis added). The

subsequently written Investigative Report of August 25, 1992 represented an entirely separate incident not included in the pleadings of this case. In Irvine v. Barrett, 119 Va. 587, 89 S.E. 904 (1916), the Supreme Court of Virginia held that an amended motion for judgment was barred by the statute of limitations because it identified an incident of alleged slander that was separate and unique from the slander that was the subject of the original suit.

It would seem plain on principle that no matter on how many separate occasions one may utter slanderous words about another (though all may refer to the same transaction) each slander constitutes a new cause of action. A fortiori must that be true where the subsequent slanderous words are essentially different from those spoken in the first instance, and on another occasion, and to another person.

119 Va. at 591.

As in Irvine, the words of the Investigative Report are different than those of the oral report given by defendant on August 21, 1992, which is the subject his Motion for Judgment. For the Investigative Report to have any relevance, plaintiff would have to have alleged additional facts and associated damages.

Secondly, the Investigative Report is protected under a qualified privilege. "A communication, made in good'faith, on a subject matter in which the person communicating has an interest, or owes a duty, legal, moral, or social, is qualifiedly privileged if made to a person having a corresponding interest or duty." Great Coastal Express v. Ellington, 230 Va. 142, 334 S.E.2d 846 (1985) (quoting Taylor v. Grace, 166 Va. 138, 144, 184 S.E. 211,

213 (1936)). In the present case, both defendant and the management of ARA shared a common interest, and at least a moral and social duty, in determining the reason for the ARA van being present in the high drug trafficking area and involved in a police search. This is especially true for defendant where his communications regarding the location of the van and the reasons for the police action were "made under color of his office." City of Mullens v. Davidson, 133 W.Va. 557, 57 S.E.2d 1, 6 (1949) (allegedly slanderous statements made by on-duty police officer to shopkeeper were qualifiedly privileged), cited with approval in Elder v. Holland, 208 Va. 15, 22, 155 S.E.2d 369 (1967). Furthermore, defendant drafted and sent the Investigative Report to ARA at the request of ARA. See H.E. Crawford Co. v. Dun & Bradstreet, 241 F.2d 387 (4th Cir. 1957) (specifically requested credit reports written by defendant, who was in the business of collecting and disseminating such information, would prima facie fall within the scope of privileged communications if provided to one having a corresponding interest or duty). Due to the privileged nature of the Investigative Report and the absence of any evidence that the privileged was abused, as a matter of law it cannot serve as the basis of a defamation action.

Conclusion

Based on the foregoing reasons, defendant respectfully moves this Court to enter an Order precluding plaintiff from using the Investigative Report or any other evidence of alleged defamation occurring after August 21, 1992.

MARK SCHNUPP

By Van C Ernest
Of Counsel

Joseph B. Benedetti
Van C. Ernest
DURRETTE, IRVIN, LEMONS & FENDERSON, P.C.
600 East Main Street, 20th Floor
Richmond, Virginia 23219
(804) 780-0505

CERTIFICATE OF SERVICE

I hereby certify that true and correct copy of the foregoing Motion in Limine and Memorandum in Support of the Motion in Limine was telecopied and hand-delivered to David P. Baugh, Esquire, Post Office Box 12137, 223 South Cherry Street, Richmond, Virginia 23241, counsel for the plaintiff, this 22nd day of October, 1993.

Van C Ernest

f:vce\schnupp\limine.mot

RICHMOND BUREAU OF POLICE
STRIKE FORCE

Investigative Report.

Date Typed: 8-25-92

This report deals with the investigation of (Suspect) ARA Services van

Date of Investigation - 3-21-92

Location of investigation - 900 North 26th Street

This investigation was conducted by (Officers/Detectives) Strike Force

This report prepared by (Officer/Detective) Schnupp

On 3-21-92 members of Richmond Bureau of Police were conducting a surveillance in the 900 block of North 26th Street. A subject was identified as the target of the surveillance(this subject was dealing crack cocaine). At approx. 1531 hours(3.31pm) a ARA Services van entered the surveillance area and stopped in the 900 block. The van had two occupants,(both black males) and was bearing license plates Lka-792. the target of the surveillance approached the passenger of the van and exchanged cocaine for money. The van then left the area. All the information was relayed to a take down unit which stopped the vehicle in the area of 25th and Wenable Street. Upon searching the occupants and the vehicle for the cocaine it was determined that the cocaine was destroyed prior to the Officers making the stop.

All these events occurred North of the James River in an area that is now an active drug spot.

If any further information is needed please don't hesitate to call the Strike Force office at 780-4516 or 8573.

NOV 20 1992

Schnupp EX. 1 Id ✓ E
CARL W. GIRARD



1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

3
4 ANDRE L. SMITH

5 vs.

6 MARK SCHNUPP, et al.

)
)
) LU 3435-1
) VOLUME I
)
)

7
8 October 25, 1993

9
10 **COPY**
11

12
13 Transcript of trial in the above, when heard
14 before The Honorable Melvin R. Hughes, Jr.

15
16
17
18
19
20 COOK & WILEY, INC.
21 Registered Professional Reporters
22 Post Office Box 14582
23 Richmond, Virginia 23221
24 (804) 359-1984
25

1 APPEARANCES:

2
3 David P. Baugh, Attorney at Law
4 223 South Cherry Street
5 P.O. Box 12137
6 Richmond, Virginia 23241
7 Counsel for the plaintiff

8 Joseph B. Benedetti, Attorney at Law
9 Van C. Ernest, Attorney at Law
10 Durette, Irvin, Lemons & Fenderson
11 600 East Main Street, 20th Floor
12 Richmond, Virginia 23219
13 Counsel for the defendant
14
15
16
17
18
19
20
21
22
23
24
25

COOK & WILEY, INC.

I N D E X

PAGE

OPENING STATEMENT

By Mr. Baugh

102

By Mr. Benedetti

111

PLAINTIFF'S EVIDENCE

MABEL IRVING

Direct Examination by Mr. Baugh

120

MARK SCHNUPP

Direct Examination by Mr. Baugh

123

Cross-Examination by Mr. Benedetti

166

CYNTHIA GOSS

Direct Examination by Mr. Baugh

167

Cross-Examination by Mr. Benedetti

208

ERIC BOWERS

Direct Examination by Mr. Baugh

211

Cross-Examination by Mr. Benedetti

220

Redirect Examination by Mr. Baugh

232

FLORENCE JAMES

Direct Examination by Mr. Baugh

234

ROBERT RAGIN

Direct Examination by Mr. Baugh

239

Cross-Examination by Mr. Benedetti

250

Redirect Examination by Mr. Baugh

260

ANDRE SMITH

Direct Examination by Mr. Baugh

261

Cross-Examination by Mr. Benedetti

287

Redirect Examination by Mr. Baugh

323

I N D E X
(Continued)

PAGE

PATRICE SMITH

Direct Examination by Mr. Baugh

330

E X H I B I T S

Plaintiff's 1	Ms. Goss's notes, four pages	199
Plaintiff's 2	Officer Schnupp's typed report	199
Defendant's 1	Employee Counseling Report	224

COOK & WILEY, INC.

1
2
3 MR. BENEDETTI: I had filed interrogatories
4 with the plaintiff and in early October we
5 received a response to my damages request. And
6 our interrogatories asked that the plaintiff
7 state in the manner in which he had been
8 damaged, and state the basis for his demand of
9 an award for \$500,000 in compensatory damages.

10 And the answer I got was, "The figure of
11 \$500,000 was a figure determined by my lawyer
12 based upon his assessment of my damages and the
13 value of the wrong I have suffered. I do not
14 know how that figure was determined. I am not a
15 lawyer."

16 Our motion is that if that is his response,
17 then he has no basis for proving any damages to
18 this court today, because he has said that he
19 doesn't know what his damages are and strictly
20 his lawyers do as to what his damages are.

21 Further than that, it puts us in a position
22 where we don't know how to prepare for the
23 cross-examination. It puts us in a position
24 where whatever comes out of the plaintiff's
25 testimony today about his damages is brand

1 spanking new to us.

2 The purpose of discovery, as counsel well
3 knows, is to respond as best he can to the
4 question related to anything that we asked as
5 appropriate. Obviously he thought it was
6 appropriate and agreed it was appropriate,
7 because he made no objection to that particular
8 interrogatory.

9 If this case is allowed to go forward based
10 on some kind of answer like that, then I suggest
11 to the Court that we're telling the bar
12 association of the city of Richmond that it's
13 okay, when you get an interrogatory from the
14 opposing party, to come back with this kind of
15 answer, "That's strictly within the knowledge of
16 my lawyer. I don't have any knowledge of it.
17 Therefore I can't answer the question." That is
18 very bad press and I'm sure Mr. Baugh is well
19 aware of that. He knows the rules as well as
20 anybody who practices before this Court. And I
21 submit to the Court that we're in a position now
22 where we have no indication as to what the
23 damages are.

24 THE COURT: What would your request be in
25 that regard then?

COOK & WILEY, INC.

1 MR. BENEDETTI: Specify the manner in which
2 you were damaged.

3 MR. BAUGH: Summary judgment, Your Honor.

4 MR. BENEDETTI: And state the basis for
5 your demand of an award of 500,000.

6 THE COURT: Wait. What is your motion?

7 MR. BENEDETTI: Summary judgment.

8 THE COURT: All right.

9 MR. BAUGH: To respond briefly, Your Honor,
10 one, this motion in limine, I don't know when it
11 was filed. I got it off my fax machine at 11:00
12 last night. I was working at home Saturday and
13 yesterday. I went in last night to work for a
14 while. I went in the xerox room where the fax
15 machine was and this was there.

16 The interrogatory was served in October, we
17 responded that way. I will tell the Court, one,
18 there was no objection filed to the response
19 until sometime this weekend. Additionally this
20 is a defamation case. And the Court is well
21 aware under the law of slander, one, if we can
22 prove slander per se and we have alleged
23 commission of a crime involving moral turpitude,
24 then there is a presumption of damages, and they
25 need not be proven.

1 THE COURT: What is the crime?

2 MR. BAUGH: The officer accused my client
3 of participating in a drug transaction,
4 narcotics transaction.

5 THE COURT: That's not a crime.

6 MR. BAUGH: It is a felony, Your Honor.
7 And I believe that case law indicates that a
8 high crime, or a crime for which a person could
9 be imprisoned, versus jail, would qualify as
10 slander per se. There is a presumption.

11 Additionally, the Court is well aware in a
12 defamation case that embarrassment, humiliation,
13 and those subjective feelings, you need not
14 prove a specific amount.

15 And then lastly concerning notice, we have
16 alleged in our motion for judgment that as a
17 consequence of the police officer's actions
18 which we allege come out to defamation, that he
19 suffered embarrassment, humiliation, and the
20 other subjective feelings which are compensable
21 under the defamation common law which the
22 Commonwealth of Virginia follows.

23 So for those reasons, Your Honor, because,
24 one, there was no objection. Number two, that
25 is a correct answer because of the nature of a

COOK & WILEY, INC.

1 defamation case, that that is an adequate
2 answer. And then lastly I have never heard of
3 an objection to a response for interrogatory
4 serving as a basis for summary judgment. It was
5 properly pled, the law covers it, and it's
6 accurate.

7 MR. BENEDETTI: It is correct, of course,
8 that if he can prove defamation per se that the
9 damages of humiliation and embarrassment and so
10 on are properly assessable by a jury in a
11 reasonable amount. But specifically I asked him
12 to tell me how he had been damaged. If he was
13 damaged by embarrassment, why didn't he say so.
14 If he was damaged by loss of his job, why didn't
15 he say so. If he had to consult a psychiatrist
16 or a counselor, or his neighbors indicated that
17 his reputation had been dispersed, he should
18 have said so.

19 Our position, of course, is -- and it is
20 his position that we have defamed his client by
21 accusing him of a crime. But the evidence will
22 show clearly that we did not accuse him of
23 anything related to possession of narcotics as
24 he suggests.

25 I know this is an extreme remedy under this

1 situation, but I suggest to the Court that if
2 this kind of response is allowed to be approved
3 by the Court, I think that a message is going to
4 go out to the bar association in the city of
5 Richmond that it's okay to avoid responding to
6 the interrogatories because nothing is going to
7 happen. I believe that the remedy in this case
8 is granting the summary judgment motion.

9 THE COURT: Well, my concern, gentlemen, is
10 that this is all carrying around a link in the
11 game, if you will. The interrogatories were
12 propounded, I think, in October. This is
13 October 25th.

14 MR. BENEDETTI: Yes, sir.

15 THE COURT: And we require that these
16 discovery matters be over 30 days before trial.
17 And they certainly weren't responded to well
18 within days of the trial date, I think,
19 apparently.

20 MR. BENEDETTI: Yes, sir. They were
21 responded to in early October.

22 THE COURT: I agree, I think the answer
23 is objectionable. But apparently the
24 interrogatory, you get the answer you got. And
25 not before now objecting to it, maybe you didn't

1 have time. And the reason I suppose you didn't
2 have time was because they were propounded
3 rather late.

4 I agree with the objection. It is
5 objectionable. The answer should have been
6 answered. But other than employment, is he
7 going to claim, the plaintiff, that he lost
8 employment?

9 MR. BAUGH: Yes, sir.

10 THE COURT: Is he seeking lost wages and
11 that sort of thing?

12 MR. BAUGH: He is reemployed.

13 THE COURT: But there's no dollar wage
14 figure you're going to present to the jury?

15 MR. BAUGH: No, there is not.

16 THE COURT: He's not going to ask for
17 compensation?

18 MR. BAUGH: And further I want to point out
19 the question says, "Specify in what manner you
20 have been damaged and state the basis for your
21 demand of an award for \$500,000." If you check
22 the pleadings, you'll find that we were quite
23 specific in the motion for judgment as to the
24 manner of the damages.

25 THE COURT: Well, I mean if you were there

1 you could have been, should have been in your
2 response. But, again, the response is too late
3 and that was because the request was too late.

4 MR. BENEDETTI: Well, we hand carried these
5 to Mr. Baugh's office about 3:00 Friday
6 afternoon. And we have been exchanging papers
7 right up to the last minute, so this is nothing
8 unusual.

9 THE COURT: Well, we encourage counsel to
10 be cooperative. That's fine as far as it goes.
11 But when a problem develops, it's hard to place
12 the blame on either one of you. In this
13 instance, I think this is all coming about just
14 too late. I'll deny the motion.

15 MR. BENEDETTI: Will you limit the damages
16 to the humiliation and embarrassment?

17 THE COURT: To humiliation and
18 embarrassment? He mentioned nothing other than
19 subjective things that he's seeking recovery on.

20 MR. BAUGH: No dollar figure on lost wages,
21 but we did say loss of his employment.

22 THE COURT: Well, I don't know how that
23 might translate into dollars.

24 MR. BAUGH: My client is not going to
25 allege a specific amount.

1 THE COURT: Well, loss of employment is the
2 core of his complaint?

3 MR. BAUGH: Yes, sir.

4 THE COURT: That he was -- well, other than
5 embarrassment and humiliation, those types of
6 things, I guess. But I don't know. We'll have
7 to take a look at that when we get down the
8 road.

9 MR. BENEDETTI: Mr. Ernest is going to
10 present our motion in limine.

11 THE COURT: All right.

12 MR. BAUGH: Thank you, Judge.

13 MR. ERNEST: Your Honor, I'm Van Ernest
14 with Durette, Irvin, Lemons & Fenderson. We
15 have two motions in limine regarding evidence
16 that the plaintiff plans on bringing into trial
17 this morning.

18 The first one regards three commendations,
19 military commendations that the plaintiff
20 received during service in the National Guard
21 and the Army. Two of them, there are two
22 commendation medals, and I believe an
23 achievement medal as well. We would like to
24 keep these out just because we do not believe
25 that they represent character, or good

character, of the plaintiff.

The only way in Virginia to bring in reputation of character is to demonstrate the reputation in the community. Opinion evidence is not admissible and also specific acts are not admissible, or course of conduct is not admissible to prove character, to prove good character. Therefore, what the plaintiff is left with is to prove character by reputation in the community.

Now, we argue that these commendations are not reflective of reputation in the community. They were granted in the military setting. They really are separate and above an ordinary peacetime civilian community. Furthermore, there is really no moral quality that they demonstrate. Now, moral quality is a definition of character. In order to get these awards, they're more reflective of that aptitude than basically how well he performed his job in the military, in a military setting, and they do not reflect -- his character was not tested in order to receive these awards.

Now, we wish to keep them out just because we believe they would be prejudicial. They are

COOK & WILEY, INC.

1 being submitted to influence the jury that the
2 plaintiff in this case is a war hero or some
3 type of patriot, which is valid to a degree, but
4 it is not reflective of reputation in the
5 civilian community, in the community where he
6 worked for ARA, his company.

7 MR. BAUGH: Your Honor, we're willing to
8 concede that we will not raise it during opening
9 and we will not raise it until there has been a
10 conference outside the presence of the jury to
11 determine admissibility, if that would help.

12 THE COURT: All right. That might help.
13 What else do you have?

14 MR. ERNEST: The second motion in limine
15 regards a written statement. Now, there were
16 two incidents of defamation here, or alleged
17 defamation, and these are all undisputed. The
18 first one occurred on August 21st where the
19 defendant in this case radioed that he had
20 witnessed some type of transaction involving
21 this ARA van which the plaintiff was driving.
22 He radioed to a takedown unit which then stopped
23 and searched the van. The defendant then went
24 on to telephone the plaintiff's employer,
25 explaining to him basically where the van was,

1 when he had seen it and explaining why it had
2 been stopped. This was August 21st, 1992.

3 On August 24th, 1992 which is the following
4 Monday, the plaintiff was terminated from his
5 employment at ARA. The 25th, which is the day
6 following his termination, the defendant, the
7 police officer in the case, wrote a police
8 report, and at the request of ARA human
9 resources, corporate headquarters in
10 Philadelphia, sent a police report explaining
11 again where the van was sighted, why it was
12 stopped. We would like to keep the written
13 statement, the written police report, out of the
14 evidence.

15 THE COURT: Where did the police report go?

16 MR. ERNEST: It went to human resources
17 department in Philadelphia.

18 THE COURT: Of ARA?

19 MR. ERNEST: Exactly. Presumably through
20 the ARA, local ARA corporation here in Richmond.

21 Now, the two reasons to keep it out is the
22 only date alleged in the case is August 21st.
23 And that is the only date that the plaintiff is
24 alleging that the defendant police officer, Mark
25 Schnupp, made statements which included but not

1 limited to the plaintiff's employer, which is
2 ARA, and the personnel with whom defendant
3 worked and was employed -- presumably that would
4 be the officers of the takedown unit -- so that
5 the August 21st statements, oral statements,
6 were the only ones alleged in the complaint.
7 They're the only ones that took place on the
8 21st of August.

9 Now, the case of Irvine v. Barrett, the
10 Virginia Supreme Court decided that, "It would
11 seem plain on principle that no matter on how
12 many separate occasions one may utter slanderous
13 words about another (though all may refer to the
14 same transaction), each slander constitutes a
15 new cause of action. A fortiori must that be
16 true where the subsequent slanderous words are
17 essentially different from those spoken in the
18 first instance, and on another occasion, and to
19 another person."

20 In this circumstance the words of the
21 written statement are different than the words
22 of the original verbal statement, so the libel,
23 in other words, the alleged libel is different
24 than the alleged slander.

25 Furthermore, it would be confusing to the

jury. Presumably the bulk of the damages in this case are special damages arising from the plaintiff losing his job. The written statement went out after the plaintiff lost his job. So by allowing the written statement in, that opens up the possibility that the jury, if they find a written statement more libelous or more defamatory than the original statement on the 21st which led to the termination, that they may backlash and actually award damages based on something that occurred after damages were incurred by the plaintiff.

The second reason to keep the statement out relates to privilege. And we're going to ask you to make a ruling on privilege in general, so I guess you could rule or Mr. Baugh could argue on the basis of being two separate statements at this point, and then we could address the matter of privilege.

THE COURT: Well, tell me why it's privileged. Which one are you claiming is privileged?

MR. ERNEST: Actually we're claiming both communications are privileged. So the more relevant reason to keep the written statement

1 out, the statement of the 25th out, is because
2 it was a different episode of alleged
3 defamation. Everything is privileged. Both
4 communications are privileged because of common
5 interest, also common social duty between the
6 police officer, Mark Schnupp, and the
7 plaintiff's employer, ARA.

8 The definition of a privileged
9 communication -- or this is actually a qualified
10 privileged communication, meaning that by
11 showing abuse of privilege you can still bring
12 in the defamation. "A communication made in
13 good faith on a subject matter in which the
14 person communicating has an interest or owes a
15 duty, legal, moral or social, is qualifiedly
16 privileged if made to a person having a
17 corresponding interest or duty."

18 In this case both Officer Schnupp and the
19 ARA representatives had a common interest in the
20 ARA van, an interest of why it was in a high
21 drug trafficking area, a common interest why the
22 van was stopped, and the result of that stop.

23 Furthermore, the City of Mullens v.
24 Davidson, which was a West Virginia case that
25 was adopted by the Virginia Supreme Court,

1 states that a statement made by a police officer
2 under the color of his office is a qualifiedly
3 privileged statement.

4 THE COURT: Where did that case come from?

5 MR. ERNEST: That's a West Virginia case.
6 It was adopted or cited with approval in Irvine
7 v. Barrett -- no, I'm sorry.

8 MR. BAUGH: Elder.

9 MR. ERNEST: I don't have --

10 MR. BAUGH: Elder.

11 THE COURT: Irvine v. Barrett is a Virginia
12 case.

13 MR. ERNEST: No. The Elder case is the one
14 that cites the City of Mullens v. Davidson,
15 essentially adopts a West Virginia definition of
16 defamation.

17 THE COURT: All right.

18 MR. ERNEST: And I don't believe you have a
19 copy of the Elder case.

20 THE COURT: I don't have a copy of anything
21 at this point. Why didn't we bring this up
22 earlier?

23 MR. ERNEST: Why didn't we bring the
24 privilege up earlier?

25 THE COURT: Yes.

1 MR. ERNEST: It's appropriately dealt with
2 as a question of law prior to the trial. I
3 don't think this is --

4 THE COURT: Well, this is prior to the
5 trial. It's the morning of the trial.

6 MR. ERNEST: Right.

7 THE COURT: But I can't think of anything
8 that would preclude you or prevent you from
9 bringing this up two months ago.

10 MR. ERNEST: Well, to overcome the
11 privilege, Your Honor, the plaintiff would have
12 to prove by clear and convincing evidence of
13 actual malice, which is defined as New York
14 Times malice, that is an identical standard that
15 they need to overcome for what our theory of the
16 law is for the defamation. So it's not a matter
17 of the plaintiff not being on notice of what his
18 burden of proof would be, because his burden of
19 proof under privilege, to overcome qualified
20 privilege, is identical to the burden of proof
21 to overcome that if the officer knew of the
22 falsity of his statement and/or show reckless
23 disregard for the truth, that is also a clear
24 and convincing evidence standard.

25 THE COURT: Well, what's your request on

1 this motion?

2 MR. ERNEST: The request regarding the
3 privilege, we just request since it is a
4 question of law according to the Great Coastal
5 case, Great Coastal v. Ellington, since it is a
6 question of law it needs to be established prior
7 to trial, or it should be established prior to
8 trial. It would direct the course of the trial
9 and certainly it would affect the manner in
10 which the evidence is presented.

11 THE COURT: Well, if it's a privilege there
12 would be no evidence. The case is over.

13 MR. ERNEST: That's not correct. It's
14 actually a qualified privilege. So by showing
15 by clear and convincing evidence, that the
16 plaintiff could demonstrate by clear and
17 convincing evidence the privilege was abused,
18 which is actually an actual malice standard,
19 includes reckless disregard for the truth --

20 THE COURT: Well, then isn't this a matter
21 for the jury? Isn't this a matter based on the
22 evidence?

23 MR. ERNEST: It becomes a different
24 question. It's a different question whether
25 if there is defamation and this is a qualified

1 privilege, it doesn't matter unless the police
2 officer abused the privilege. It is an
3 entirely --

4 THE COURT: Which the plaintiff can show
5 by --

6 MR. ERNEST: Clear and convincing evidence.

7 THE COURT: New York Times malice.

8 MR. ERNEST: Actually to demonstrate abuse
9 of privilege, it's a combination of New York
10 Times malice and actual malice, or common law
11 malice, which includes ill will --

12 THE COURT: Right.

13 MR. ERNEST: In other words, the plaintiff
14 can overcome the abuse of privilege by New York
15 Times malice, which is essentially reckless
16 disregard of the truth, or the plaintiff can
17 overcome the privilege by showing ill will or
18 hatred or some other personal motive which is
19 your basic common law malice.

20 THE COURT: All right. Go ahead.

21 MR. ERNEST: So the question of privilege
22 would certainly affect opening statements.
23 It would affect how the evidence is presented.
24 Again, it would be geared toward showing abuse
25 of privilege versus -- we will have a

1 disagreement on the jury instructions as well as
2 to what standard of defamation needs to be met.
3 Should it be a mere showing of falsity or a
4 negligent disregard of the truth or should it be
5 falsity or reckless disregard of the truth. The
6 defendant will argue one, the plaintiff will
7 argue the other. But if you find --

8 THE COURT: Why should it be reckless
9 disregard for the truth?

10 MR. ERNEST: That gets into -- defamation
11 law in Virginia is somewhat confusing and it's
12 certainly complicated. There is a threshold
13 step that the judge needs to decide as a matter
14 of law whether a statement presents a
15 substantial threat to reputation. If you make a
16 ruling that it does present a substantial threat
17 to reputation, then a negligence standard
18 applies to the plaintiff, meaning the plaintiff
19 only needs to prove that the statement was
20 false; that the defendant knew it was false or
21 was negligent in ascertaining whether or not it
22 was true.

23 Now, if your initial ruling on the
24 threshold issue is that this statement on its
25 face does not present a substantial harm to

COOK & WILEY, INC.

1 reputation, then the defendant's preferred
2 instruction would go in which is that the
3 statement was false and the defendant either
4 knew it was false or recklessly disregarded the
5 truth, so it's a higher standard.

6 All of that becomes irrelevant, though, if
7 you determine that both these communications
8 were privileged, because then the only standard
9 that applies is the abuse of privilege standard
10 which is the combination of New York Times
11 malice and common law malice.

12 THE COURT: All right. What else do you
13 have, Mr. Ernest?

14 MR. ERNEST: That's it.

15 THE COURT: All right. I just don't
16 understand why you couldn't have brought this up
17 a month or two ago. It would seem to me that
18 you would have known enough about the case to
19 know what statements were alleged and made and
20 what ways they were communicated or published,
21 both in the oral setting first and then in the
22 writing.

23 This is a good issue, one that I would like
24 to have had time to examine. But in the press
25 of what we have to do this morning, I don't

1 know. We're 45 minutes late in starting this.

2 MR. BAUGH: Just very briefly, Your Honor.
3 Saturday I spent all day in the library pulling
4 these cases. First, I disagree on one fact.
5 The pleading does not allege that on a given
6 date the statement was made; it says on or about
7 a given date. Because we knew of other
8 communications, didn't know when the lawsuit was
9 filed. And the Court is well aware that the
10 language "on or about" -- I know that in
11 criminal law "on or about" has been extended to
12 six months providing there is no lack of notice.

13 Additionally, Your Honor, you will notice,
14 and it will come out in the evidence, that as
15 early as this spring when Mr. Schnupp was
16 deposed, the document, the August 25th
17 statement, was identified. So, one, we're
18 saying that we are not bound. "On or about" can
19 be a period of time.

20 Additionally, counsel alleges that this
21 second statement should be a separate cause of
22 action because it is essentially different. I
23 believe the testimony will indicate the police
24 officer made a call to the employer August 21
25 and said your car did this and your driver did

COOK & WILEY, INC.

1 A, B, C and D.

2 THE COURT: What is supposed to be the
3 claim? The car was in a drug area, or the
4 truck?

5 MR. BAUGH: Not only was the truck in a
6 drug area. The police officer told the ARA
7 employer that he observed a drug dealer approach
8 the vehicle and sell drugs and receive money to
9 the passenger while they were in the ARA truck.
10 And conversely, of course, that my client, the
11 driver and ARA employee, aided and abetted by
12 stopping the vehicle and participating in this
13 drug transaction and then left. That was the
14 August 21 phone call or the gist of it.

15 On August 25 that statement was
16 memorialized. And the only additional fact
17 according to the witness will be that the first
18 phone call involved drugs, and the written
19 letter were the same facts except for the
20 alleged cocaine. And I will -- because I read
21 this I'll cite --

22 THE COURT: What he refers to as alleged,
23 is that the investigative report?

24 MR. BAUGH: Yes, it's labeled investigative
25 report.

1 THE COURT: I see.

2 MR. BAUGH: And I will call the Court's
3 attention, again, quoting from Irvine, they had
4 two different statements made on two different
5 days. They do not purport to have been spoken
6 at the same time and place or the same person.
7 Here we have the same place and person. "And
8 could not have been intended merely to amplify
9 the language imputed to the defendant in the
10 original declaration with the view of setting up
11 the same cause of action in a different phase."

12 In this instance the evidence will indicate
13 that the written report amplifies the original
14 statement. And there is no difference. And so
15 for that reason we would submit it need not be a
16 separate cause of action.

17 Additionally, Your Honor, and I'm cutting
18 through some other issues, but even if it should
19 be a separate cause of action, and I would
20 submit it would not be, because if the defendant
21 prevails on the first one I believe he would
22 have an excellent chance of showing res judicata
23 bar on the second statement. And that is the
24 test for whether they're separate causes of
25 action. More importantly, there is nothing

COOK & WILEY, INC.

1 about whether or not a second cause of action
2 will have any impact on admissibility.

3 If the second statement is an amplification
4 of the first, or if the second statement can be
5 offered as evidence to show intent, motive and
6 all those other subjective criteria, then it's
7 admissible. And we're submitting that, one,
8 it's an ongoing statement that occurred on or
9 about that time period. It is merely an
10 amplification of the first and, regardless, it's
11 not grounds for inadmissibility for a motion in
12 limine. Even if it should have been pled
13 separately, we're submitting it should not have
14 been. That doesn't affect admissibility. It is
15 still admissible if there is evidence contained
16 in it or evidence from which a jury can
17 determine intent. And we would submit that they
18 do and that's why it's being offered.

19 And then lastly, it was a long Saturday at
20 the library and there are a bunch of cases. But
21 I would submit that the position of the
22 defendant is putting forward that you can't put
23 this in; it should have been a second cause of
24 action. Irvine versus Barrett, B-a-r-r-e-t-t,
25 which I have a copy of, is clearly

1 distinguishable from the facts in this case.

2 Oh, and then lastly and more importantly,
3 if it's qualified privilege, as the Court is
4 well aware, "Occasionally a case will arise in
5 which because of sharp and substantial conflicts
6 in the testimony as to the facts upon which the
7 claim of privilege rests, the question as to
8 whether the particular occasion was privileged
9 becomes a mixed question of law and fact."

10 I assume that because the defendant chose
11 not to raise the issue, that he agreed with me
12 that it would be a mixed question. And that
13 this Court cannot determine whether or not the
14 threshold burden of their being able to assert
15 privilege has been met. And of course there is
16 insufficient evidence of whether or not there is
17 an abuse or anything like that. It's a mixed
18 question of law and fact. I'm reading from the
19 jury instructions book I brought with me, but --
20 and they cite Bragg, B-r-a-g-g, versus Ellmore,
21 E-l-l-m-o-r-e, 152 Virginia 312.

22 We would agree, Your Honor, that this
23 motion is either way too late or way too early.
24 It is too late to present evidence for the Court
25 to make a determination, or it's too early in

COOK & WILEY, INC.

1 the trial to present evidence until the Court
2 can make a determination.

3 MR. BENEDETTI: Just for a moment, Your
4 Honor, I would say that the pleadings plead
5 privilege. If there's any delay in bringing
6 this to the Court's attention, then it's my
7 responsibility, it seems to me, that a motion in
8 limine is appropriate at pre-trial. And this,
9 of course, is pre-trial.

10 The issue is very simple. There's no
11 disputing the facts. On August 21st, 1992
12 Officer Schnupp was on duty as a police officer.
13 He observed something that occurred in the 900
14 block of North 26th Street involving an ARA van.
15 What he observed caused him to radio the
16 takedown team, and the takedown team stopped the
17 vehicle, searched the occupants, and then let
18 them go.

19 Now, the only evidence is, the undisputed
20 evidence is that the police officer then called
21 ARA Services and reported to them that at a
22 certain time on a certain day, this was the same
23 day, he observed an ARA van in the 900 block of
24 North 26th Street and inquired whether or not a
25 vehicle bearing license number so-and-so

1 belonged to them. They answered in the
2 affirmative. He then asked if they knew the
3 plaintiff in this case and they said yes. And
4 then he stated that he observed a passenger in
5 the van exchange something with a third party.

6 Now, the version of Officer Schnupp is
7 slightly different than the person who received
8 the the call. The person who received the call
9 says the passenger got out of the van,
10 approached the third party and they exchanged
11 something, and got back in the van and the van
12 drove away. Based on that, Officer Schnupp
13 suggests that the vehicle be stopped and be
14 searched.

15 Officer Schnupp's version is the passenger
16 did not get out of the van, but that the target,
17 the drug dealer, approached Andre Smith, the
18 plaintiff in this case, and words were
19 exchanged. And then the target walked around
20 the van. And then according to Officer Schnupp
21 the passenger took from the target objects,
22 white objects, and in exchange gave him
23 currency. And based on that he stopped the van.

24 Now, his responsibility --

25 THE COURT: That's Officer Schnupp's?

COOK & WILEY, INC.

1 MR. BENEDETTI: That's Officer Schnupp's
2 version. The only difference being is that the
3 passenger got out of the van, according to Cindy
4 Goss who received the call. Officer Schnupp's
5 version is the passenger did not get out of the
6 van.

7 THE COURT: Right, but Ms. Goss's version
8 is --

9 MR. BENEDETTI: I'm sorry?

10 THE COURT: Is it Goss?

11 MR. BENEDETTI: Goss, G-o-s-s.

12 THE COURT: Goss. Ms. Goss's version is
13 not as detailed as the officer's.

14 MR. BENEDETTI: It's not as detailed. As a
15 matter of fact, she will say that the word
16 "drugs" was only mentioned in the fact that this
17 was a high drug crime area, and that's a fact
18 that's admitted by the plaintiff. She says that
19 the officer said they exchanged "something."
20 Officer Schnupp says he observed white objects.

21 THE COURT: And then he said he saw
22 currency?

23 MR. BENEDETTI: That's right.

24 THE COURT: All right.

25 MR. BENEDETTI: As I said, he made the

1 call. At that time he had a duty and a
2 responsibility to do the follow-up
3 investigation, to see if the vehicle was stolen,
4 see if the vehicle was in its proper place.
5 They certainly had a duty or interest in knowing
6 where their van was on a particular date at a
7 particular time. The privilege attaches at
8 least to that portion of it. He had a duty to
9 call or interest in calling; she had a duty or
10 interest to receive the call. So we have a
11 qualified privilege at that point.

12 Beyond that, if he can show that we have
13 abused the privilege by saying certain things,
14 then he wins and he gets you to put in his
15 evidence. But at that point we've got a
16 qualified privilege, and on that basis we say
17 that this written statement should not come in.

18 MR. BAUGH: Briefly, Your Honor, one, if
19 Mr. Benedetti's statement of law is correct,
20 then it would be all right for me to call some
21 stranger's wife and say, "By the way, do you
22 know your husband was at some gay bar last night
23 dancing until 2:00 in the morning with a bunch
24 of guys, because I have an interest in him and
25 I know you'd be interested in letting him know."

COOK & WILEY, INC.

1 That does not assert the privilege.

2 In addition, Your Honor, I believe the
3 testimony of Ms. Goss would be the very first
4 conversation. Included in the questions were
5 did he ever ask you if he had any trouble with
6 your employee, my client, or you thought he
7 might be using drugs or anything like that. He
8 asked me that, yes. Did he ask you if Andre
9 Smith might have been using drugs. Yes, he did.
10 That was during the first communication.

11 We would submit, Your Honor, that the
12 second communication is merely an amplification
13 of the allegations that were made in the first.
14 And drugs were mentioned and Ms. Goss will so
15 testify.

16 And we would additionally submit that just
17 because someone might be interested in a
18 possible allegation of illegal, that does not
19 amount to a privilege. Just because this
20 officer -- the question is this. Ms. Goss and
21 this officer do not have the same interests and
22 they do not have the same concerns. And this is
23 not a public concern and, as such, it cannot
24 amount to privilege. It was not in discharge of
25 any recognized police duty.

1 THE COURT: Well, shouldn't he be concerned
2 about where the vehicle is and whether it's
3 properly there?

4 MR. BAUGH: No trouble with that. We would
5 submit that that part, in all probability --
6 well, even then, does an officer have a duty --

7 For instance, if a police officer stops a
8 car at 11:00 at night, and I'm driving it and
9 the car is registered in my wife's name, is it
10 in discharge of that officer's duty to call my
11 wife and ask her do you know where your husband
12 is with a car that's registered in your name?

13 THE COURT: Well, in order to determine
14 whether or not the vehicle was properly where it
15 was or whether the vehicle is stolen or not or
16 whatever, wouldn't it be incumbent upon him to
17 call the owner?

18 MR. BAUGH: Your Honor, I believe the
19 evidence would indicate from Mr. Schnupp's
20 mouth, one, he never ran a 1028 to determine
21 whether the vehicle was stolen. Number two, he
22 never asked the takedown team to inquire whether
23 or not the vehicle was stolen. Number three, it
24 did have ARA written on the side. And number
25 four, my client was wearing a very unattractive

COOK & WILEY, INC.

1 brown ARA uniform complete with hat. And
2 further, the takedown unit called back to the
3 officer and told him that the driver was an ARA
4 employee before the phone call was made.

5 THE COURT: I don't know, gentlemen. I
6 just don't know what the facts are in the matter
7 and I think we'll have to hear the case. I just
8 don't know what happened until I hear what
9 happened. I can only do that when we hear the
10 case, but I'll take that motion under
11 advisement. I'm going to ask the jury to
12 come in.

13 Where's the plaintiff?

14 MR. BAUGH: Oh, my investigator went to
15 get him.

16 MR. BENEDETTI: Is the ruling that you deny
17 the motion in limine to exclude the written
18 statement?

19 THE COURT: Well, I'm not going to deny it.
20 I'm going to take it under advisement. If it
21 comes in, I'll ask the jury to disregard it.

22 For that matter, where is the defendant?

23 MR. BENEDETTI: He's out in the hall.

24
25 (Jurors enter courtroom.)

1 THE COURT: All right. The case of Andre
2 L. Smith versus Mark Schnupp. Mr. Baugh, are
3 you representing Mr. Smith, the plaintiff?

4 MR. BAUGH: Plaintiff is ready, Your Honor.

5 THE COURT: Mr. Benedetti and Mr. Ernest,
6 you both represent Mr. Schnupp?

7 MR. BENEDETTI: And we're ready, Your
8 Honor.

9 THE COURT: Call the jury.

10 THE CLERK: Please answer when your name is
11 called. Patricia Brown, Margaret Byrne, Dennis
12 Cheeley, Vickie Crawley, Sharon Dove, Jacqueline
13 Curl, Ellen King, Frank Moore, Janet Procida,
14 Jack Proctor, Charles Shannon, Cassandra
15 Shields, Delores Smith, Alan Ware, Janis
16 Carrell, Helen Thomas.

17 As your name is called, will you please
18 proceed to the jury box.

19 Number 249, Margaret Byrne. Number 211,
20 Patricia Brown. Number 1502, Delores Smith.
21 Number 940, Ellen King. Number 879, Jacqueline
22 Curl. Number 298, Dennis Cheeley. Number 452,
23 Sharon Dove. Number 376, Vickie Crawley.
24 Number 1475, Cassandra Shields. Number 1462,
25 Charles Shannon. Number 1316, Janet Procida.

1 Number 9-1712, Alan Ware. Number 1318, Jack
2 Proctor.

3
4 (Jury panel sworn.)
5

6 THE COURT: Good morning, ladies and
7 gentlemen. The style of this case again is
8 Andre Smith, plaintiff, versus Mark Schnupp.
9 The plaintiff, Mr. Smith, is seated at the far
10 table there. The gentleman with the suit on is
11 Mr. Smith's counsel, Mr. David Baugh. And to
12 Mr. Baugh's left again is the plaintiff, Mr.
13 Andre Smith.

14 At the near table we have the defense side
15 of the case. The person nearest you is Mr.
16 Joseph Benedetti, who is counsel for Mr.
17 Schnupp. To Mr. Benedetti's left is Mr. Van C.
18 Ernest who is also serving as counsel for Mr.
19 Schnupp. And guess who's left. Mr. Schnupp,
20 the defendant, is at the table on the far end.
21 So those are the parties in the case.

22 This is a civil action, ladies and
23 gentlemen. And in this matter basically, and
24 I'll let counsel explain to you a little further
25 about the details of this, but the plaintiff has

1 alleged that Mr. Schnupp is a police officer.
2 That beginning August 21, 1992, that Officer
3 Schnupp defamed him in some way which will be
4 described later on by the evidence or the
5 counsel when they make their statements.

6 Officer Schnupp has entered a pleading
7 denying any defamation on his part and denying
8 that the plaintiff is entitled to any damages
9 from him for these alleged incidents and has
10 asked that the judgment be entered in his favor,
11 just like the plaintiff is asking that judgment
12 be entered in his favor. But Officer Schnupp
13 has denied any involvement, claims he is not
14 responsible, and asks that judgment be entered
15 for him.

16 Just prior to getting started, however,
17 we'll have to determine which of you will serve
18 as the jurors in this case. If any of you have
19 been counting, which I doubt, there are 13 of
20 you now assembled in the jury box. The number
21 to hear a case such as this will be seven, so
22 your number will have to be reduced from 13 to
23 seven.

24 Before that's done I'm going to ask you
25 some questions. And after I'm done asking you

COOK & WILEY, INC.

1 questions, counsel here may see fit to ask you
2 some questions as well. The purpose of these
3 questions is to arrive at an impartial and
4 unbiased jury, a jury which, of course, the
5 parties are entitled to under our law.

6 Now for the questions I have for you. Are
7 any of you related by blood or marriage to
8 either of the parties in this case, to Mr. Smith
9 here or to Officer Schnupp?

10 Are any of you members of the police
11 department or are any members of your family
12 connected with the Richmond city police
13 department? Any law enforcement agency, I
14 should ask?

15 DR. PROCTOR: I have relatives who are with
16 the police department in Roanoke.

17 THE COURT: Ms. Smith?

18 MS. SMITH: My nephew is a state trooper.

19 THE COURT: Do any of you have any interest
20 in the outcome of this case?

21 Have any of you expressed or formed any
22 opinion in this case?

23 Are any of you sensible of any bias or
24 prejudice in the case? That is, are you for or
25 against any side of the case knowing what you

1 know, which is not much admittedly?

2 And finally, is there any reason whatsoever
3 why you could not give these parties a fair and
4 impartial trial according to the law and
5 according to the evidence?

6 Yes, Ms. Smith?

7 MS. SMITH: I'm just nervous. I'm scared
8 to death just being here.

9 THE COURT: Really?

10 All right, Mr. Baugh.

11 MR. BAUGH: Good morning. The Court has
12 already introduced me. My name is David Baugh.
13 And normally I practice criminal law here in
14 the city of Richmond, but I'm going to be
15 representing the interests of Andre Smith today.
16 I have a few questions as the Court has
17 indicated.

18 First, how many of you have ever served on
19 a jury before? That's Ms. Brown? When was
20 that?

21 MS. BROWN: Maybe about seven or eight
22 years ago or something like that.

23 MR. BAUGH: And what type of case was it,
24 criminal or civil?

25 MS. BROWN: Civil.

1 MR. BAUGH: What type of civil case, you
2 recollect?

3 MS. BROWN: Lawsuit.

4 MR. BAUGH: Without telling me what your
5 verdict -- was it here in this building?

6 MS. BROWN: Yeah. John Marshall Courts
7 Building.

8 MR. BAUGH: Without telling me what your
9 verdict was, was a verdict reached?

10 MS. BROWN: Uh-huh.

11 MR. BAUGH: Now, of course, having been in
12 a civil jury, you understand that the standard
13 is like preponderance. It's not beyond a
14 reasonable doubt like in a criminal case. In
15 order to win, the plaintiff in this case only
16 has to show by a preponderance of evidence that
17 he should win. You understand? It's not like
18 the complicated criminal stuff. Thank you.

19 How many of you personally have any law
20 enforcement experience? Shore patrol, air
21 patrol, military police, any law enforcement
22 experience?

23 How many of you have any past military
24 experience? All right. It's Dr. Proctor?

25 DR. PROCTOR: Yes.

COOK & WILEY, INC.

1 MR. BAUGH: What type of medicine do you
2 practice?

3 DR. PROCTOR: Internal medicine.

4 MR. BAUGH: And your military experience?

5 DR. PROCTOR: Navy and Naval Reserves.

6 MR. BAUGH: When did you leave the
7 Reserves?

8 DR. PROCTOR: Three years ago.

9 MR. BAUGH: And your highest rank attained?

10 DR. PROCTOR: Captain.

11 MR. BAUGH: Was that here in this area?

12 DR. PROCTOR: Yes.

13 MR. BAUGH: Mr. Ware, you raised your hand?

14 MR. WARE: Yes.

15 MR. BAUGH: What type of military service
16 do you have?

17 MR. WARE: Army guard, '77 to '84.

18 MR. BAUGH: Army guard?

19 MR. WARE: Yes.

20 MR. BAUGH: What did you do for them?

21 MR. WARE: I was battallion and radio chief.

22 MR. BAUGH: And your highest rank attained?

23 MR. WARE: Sergeant.

24 MR. BAUGH: E-1?

25 MR. WARE: E-5.

COOK & WILEY, INC.

1 MR. BAUGH: And Mr. Shannon, you raised
2 your hand?

3 MR. SHANNON: Yes.

4 MR. BAUGH: Your prior military service?

5 MR. SHANNON: U.S. Navy.

6 MR. BAUGH: When?

7 MR. SHANNON: '74 to '84.

8 MR. BAUGH: Where did you serve?

9 MR. SHANNON: Mostly in Europe.

10 MR. BAUGH: Highest rank attained?

11 MR. SHANNON: E-5.

12 MR. BAUGH: What did you do for them?

13 MR. SHANNON: Communications officer.

14 MR. BAUGH: What is the equivalent of E-5
15 in the Navy, what do you call it?

16 MR. SHANNON: I don't remember.

17 MR. BAUGH: Dr. Curl?

18 DR. CURL: Yes.

19 MR. BAUGH: Dr. Curl, what was your branch
20 in the service?

21 DR. CURL: Army Reserves.

22 MR. BAUGH: When did you serve?

23 DR. CURL: I'm currently in the Army
24 Reserves.

25 MR. BAUGH: How long have you been in?

1 DR. CURL: Six years?

2 MR. BAUGH: And your rank, you're a
3 captain?

4 DR. CURL: Captain.

5 MR. BAUGH: Do you serve locally?

6 DR. CURL: No, out in Norfolk.

7 MR. BAUGH: Dr. Proctor, you indicate you
8 have friends who are police officers in Roanoke.
9 How often would you see them, sir?

10 DR. PROCTOR: I guess once or twice a year.

11 MR. BAUGH: What do they do for the Roanoke
12 Police Department?

13 DR. PROCTOR: One of them is -- I think
14 he's the second tier from the chief. I think
15 they call him a commander. And he has two sons
16 who are police officers.

17 MR. BAUGH: What do the two sons do, street
18 officers?

19 DR. PROCTOR: Well, they vary. Juvenile
20 and traffic. The job changes from time to time.

21 MR. BAUGH: So you have had occasion to
22 discuss with them or all of them or some of them
23 what they do in law enforcement?

24 DR. PROCTOR: Yes. I've heard stories.

25 MR. BAUGH: And also, Ms. Smith, you

COOK & WILEY, INC.

1 indicate your nephew was a state trooper. Where
2 does he serve?

3 MS. SMITH: Here.

4 MR. BAUGH: In Richmond?

5 MS. SMITH: Yes.

6 MR. BAUGH: And what is his name?

7 MS. SMITH: Everett Pettaway.

8 MR. BAUGH: Do you ever have occasion to
9 sit down with him and discuss his work, what he
10 does and stuff like that?

11 MS. SMITH: On occasion when he first got
12 into it, but not usually.

13 MR. BAUGH: How long has he been in?

14 MS. SMITH: About 10, 12 years.

15 MR. BAUGH: Because this is a defamation
16 case, we're talking about injury to character --
17 embarrassment, humiliation, things like that.
18 There are going to be no medical bills, no
19 doctor bills, nothing like that.

20 Are there any of you who feel that if the
21 Court were to instruct you that you can award
22 damages for embarrassment, humiliation, any of
23 you who could not award monetary damages if
24 someone was embarrassed, humiliated?

25 That was easy. Three of you. Mr. Cheeley,

1 you know Mr. (unintelligible)?

2 MR. CHEELEY: Yes.

3 MR. BAUGH: How well do you know him?

4 MR. CHEELEY: Pretty well. He was my boss.

5 MR. BAUGH: Oh, okay, because --

6 MR. CHEELEY: I know he has a son.

7 MR. BAUGH: A police officer who is going
8 to be involved in this case in some way or
9 another, I'm sure.

10 MR. CHEELEY: I don't know him personally.

11 MR. BAUGH: You don't know the officer?

12 MR. CHEELEY: No.

13 MR. BAUGH: You know his father?

14 MR. CHEELEY: Right.

15 MR. BAUGH: And you work?

16 MR. CHEELEY: Right.

17 MR. BAUGH: Would you have difficulty if
18 you were called upon to find that someone might
19 not have told the truth?

20 MR. CHEELEY: Would I have difficulty with
21 that? No, none whatsoever.

22 MR. BAUGH: Now, you also raised your hand
23 about having difficulty awarding monetary
24 damages for embarrassment and humiliation. You
25 don't think there should be --

COOK & WILEY, INC.

1 MR. CHEELEY: I suffer embarrassment and
2 humiliation every day of my life.

3 MR. BENEDETTI: Your Honor, please, I hate
4 to interrupt, but I think the correct statement
5 of the law is the law provides that under
6 certain circumstances, and I think the question
7 ought to focus on that as opposed to whether or
8 not there ought to be some concern about --

9 MR. BAUGH: I'll do that.

10 THE COURT: All right.

11 MR. BAUGH: If you find under the
12 circumstances of this case that because of what
13 this officer did this man has been embarrassed,
14 humiliated, held in low esteem by his colleagues
15 and co-workers, would you have difficulty
16 awarding monetary damages for that?

17 MR. CHEELEY: I think I would. I think it
18 has to be more than embarrassment.

19 MR. BENEDETTI: I think the correct
20 question should be if the law provides for such
21 damages, would you have. I hate to interrupt,
22 but I think that's the appropriate question.

23 MR. BAUGH: That's not correct, Your Honor,
24 and only in certain circumstances there are
25 presumptions of damages.

1 THE COURT: Well, Mr. Benedetti, when you
2 have an opportunity you can ask that question
3 more specifically if you like.

4 MR. BAUGH: Ms. Procida?

5 MS. PROCIDA: Correct.

6 MR. BAUGH: You're an architect?

7 MS. PROCIDA: That's correct.

8 MR. BAUGH: And you have the same
9 difficulty that Mr. Cheeley would?

10 MS. PROCIDA: Yes, I would.

11 MR. BAUGH: Do you wish to amplify that
12 any?

13 MS. PROCIDA: No. Well, I think name
14 calling is something that went out with
15 children. And anything that -- I just don't
16 think that people should be awarded money for --

17 MR. BAUGH: Before I ask you --

18 MS. PROCIDA: -- embarrassment.

19 MR. BAUGH: If it were to be proven to you
20 by a preponderance of the evidence that the
21 police officer made a false statement to this
22 man's employer and as a consequence he was
23 terminated, lost his job on that day, and was
24 out of employment for some three months and
25 still has not completely recovered to where he

COOK & WILEY, INC.

1 was, would you have difficulty awarding monetary
2 damages?

3 MS. PROCIDA: That's putting it in a
4 different situation.

5 MR. BAUGH: Mr. Cheeley?

6 MR. CHEELEY: Yes. That's putting it in a
7 different situation.

8 MR. BAUGH: Mr. Shannon?

9 MR. SHANNON: I agree.

10 MR. BAUGH: Thank you. I believe there
11 will be two types of damages. One is
12 compensatory damages. Compensatory damages will
13 be damages for pain, embarrassment, humiliation,
14 whatever.

15 The law also provides for punitive damages,
16 if the Court presents it to you, wherein damages
17 can be awarded to punish the person who has
18 caused the harm and to warn others not to do it.
19 Do any of you disagree with the concept of
20 punitive damages, damages over and above
21 compensatory damages?

22 Dr. Proctor, you have a disagreement with
23 that? Oh, all doctors do. Have you ever been
24 involved in a lawsuit, sir?

25 DR. PROCTOR: No.

1 MR. BAUGH: Any of you ever been involved
2 in a lawsuit?

3 MS. PROCIDA: I sued somebody.

4 MR. BAUGH: Where was that, here in the
5 city?

6 MS. PROCIDA: No. It was in New York.
7 It was an attorney.

8 MR. BAUGH: Any others have disagreement
9 with punitive damages? Ms. Dove?

10 MS. DOVE: I was involved in a lawsuit.

11 MR. BAUGH: You were involved in a lawsuit
12 also? And when was that?

13 MS. DOVE: They didn't sue me. Last year.

14 MR. BAUGH: What was it?

15 MS. DOVE: It was an auto accident.

16 MR. BAUGH: Have any of you ever been
17 represented by Mr. Benedetti's firm? They have
18 a bunch of lawyers over there? Thank you. I
19 should have asked that earlier.

20 The defendant in this case is a police
21 officer and was a police officer on the day the
22 statements were made. And there will be other
23 police officers testifying. Are there any of
24 you that would be more prone to believe the word
25 of a police officer than you would another

COOK & WILEY, INC.

1 citizen? Mr. Shannon?

2 MR. SHANNON: Yes, sir.

3 MR. BAUGH: So as we start off you have a
4 presumption that a police officer is more likely
5 to tell the truth?

6 MR. SHANNON: Absolutely.

7 MR. BAUGH: If you were instructed that
8 that is inappropriate and you cannot, that it
9 would be wrong, prejudging credibility, are you
10 convinced you could put that inclination out of
11 your mind?

12 MR. SHANNON: No.

13 MR. BAUGH: Motion? I'll offer?

14 THE COURT: Well, just complete the rest of
15 your questions, Mr. Baugh, and we'll go on.

16 MR. BAUGH: Thank you, Mr. Shannon.

17 Am I correct then assuming that the rest of
18 you would not, that you would not, presume or
19 assume that a police officer is telling the
20 truth or is more likely to tell the truth than
21 an ordinary citizen? Is that correct?

22 Am I correct then that there are those of
23 you on the panel who actually believe that it is
24 possible for police officers to tell a falsehood
25 even under oath?

1 Are there any of you who will be less
2 likely to believe Mr. Smith if it turns out that
3 he's an hourly employee, just an ordinary
4 person, not of any particular means?

5 Are there any of you who would feel that
6 because Mr. Smith is not a person of great
7 wealth, that his reputation is not worth as much
8 as another man or woman?

9 This is going to be a very, very difficult
10 case, because I believe based upon the evidence
11 that there will be one unique aspect of your
12 verdict. As you sit here, I'm convinced that as
13 a consequence of your verdict you're going to
14 have to find one of these two men is not telling
15 the truth and is going to tell a falsehood under
16 oath. One of the two.

17 Knowing that, are there any of you that
18 doubt your ability to render a verdict if it
19 requires your coming in here and telling either
20 a police officer or just an ordinary citizen in
21 the presence of their friends and family and
22 whatever that we do not believe you are telling
23 the truth? Does that cause discomfort to the
24 point that you don't think you could be fair and
25 impartial? You would lean one way or the other

COOK & WILEY, INC.

1 because of the verdict?

2 We anticipate this trial will be finished
3 today. And we will all move as deliberately as
4 possible, but it is a very important case. And
5 I'm sure when we get into it you'll understand
6 the dimension of it. Are there any of you that
7 have any pressing personal business or something
8 that's going on in your personal lives or
9 professional lives, recognizing that everyone
10 has obligations, but that you think it would
11 affect your ability to patiently listen to all
12 the evidence in this case and to render a fair
13 verdict and not be driven by concerns for time
14 or something like that?

15 MS. PROCIDA: I'm self-employed and I have
16 a lot of clients that I have to think about
17 right now.

18 MR. BAUGH: But if we promise to finish it
19 today and we do not waste your time? I mean do
20 you have like appointments at 2:00, and a
21 building's going to fall over if you're not
22 there?

23 MS. PROCIDA: No. I did not make any
24 appointments today.

25 MR. BAUGH: I'm confident we'll finish. In

1 light of the fact that we're confident, is that
2 going to cause you any more unnecessary burden
3 than anyone else here?

4 MS. PROCIDA: It's believing that it's
5 going to finish today.

6 MR. BAUGH: You sued the attorney, am I
7 correct?

8 MS. PROCIDA: (Nods head.)

9 MR. BAUGH: Are there any questions, now
10 that you know a little bit about the case? And
11 when I finish, Mr. Benedetti can ask you some
12 questions. You now have an idea about --
13 probably this is one of the most important
14 things you're ever going to do in your life.
15 Now knowing about that, are there any factors
16 that you believe I should have brought up, any
17 questions, any statements that you want to make?

18 THE COURT: The jury doesn't ask questions,
19 Mr. Baugh.

20 MR. BAUGH: I'm sorry. Any statements you
21 would like to make?

22 THE COURT: They don't make statements
23 either, sir. They just respond to your
24 statements.

25 MR. BAUGH: Yes, sir. Then I'll make it

1 all-encompassing. Recognizing that we are
2 trying to find a jury here that will be fair and
3 impartial and that all of you have different
4 experiences and different obligations and
5 different lifestyles, is there anything that
6 I should have brought up?

7 THE COURT: You have to ask a specific
8 question, not invite a question from them, sir.

9 MR. BAUGH: Is there any factor that you
10 believe would impact upon your ability to be
11 fair and impartial during the trial of this
12 cause? Thank you. Pass.

13 MR. BENEDETTI: I certainly recognize that
14 sitting on a jury panel on a Monday morning,
15 it's a beautiful day outside, not at all what we
16 would like to be doing. And I presume that none
17 of you have any enthusiasm about being possibly
18 on this panel that's going to decide whether or
19 not the officer's telling the truth or whether
20 Mr. Smith is telling the truth.

21 But I don't have very many questions for
22 you. I just want to know if any of you have
23 ever been arrested or if any members of your
24 family have ever been arrested?

25 MR. BAUGH: Objection, Your Honor. I would

1 submit that being arrested is not a basis for
2 determining whether or not they can serve on a
3 jury panel. Merely being accused by the
4 government does not impact on a person's ability
5 to serve. Convictions are one thing. Arrests,
6 I would object to.

7 THE COURT: Mr. Benedetti, any comment?

8 MR. BENEDETTI: I would develop it if
9 someone said they had been arrested.

10 THE COURT: Have any of you ever been
11 arrested or any member of your family been
12 arrested, immediate family?

13 MR. SHANNON: (Raises hand.)

14 MR. BENEDETTI: And were you convicted of
15 anything?

16 MR. SHANNON: I got the charge reduced.

17 MR. BENEDETTI: Were you convicted of a
18 misdemeanor?

19 MR. BAUGH: Your Honor, perhaps we should
20 do this at side-bar.

21 MR. BENEDETTI: And what misdemeanor were
22 you convicted of?

23 MR. BAUGH: Your Honor, I would ask that we
24 do this at side-bar.

25 THE COURT: Do you have any other questions

1 other than that?

2 MR. BENEDETTI: None.

3 THE COURT: Would you ask your next
4 question?

5 MR. BENEDETTI: Are you sensitive to any
6 bias or presence against a police officer who's
7 exercised his judgment and discretion of his
8 duty with respect to an incident that occurred?

9 MR. CHEELEY: (Raises hand.)

10 MR. BENEDETTI: What is your bias?

11 MR. CHEELEY: Well, my bias is a statement
12 was made by the trooper that arrested me that I
13 resisted arrest when I did not.

14 MR. BENEDETTI: So you recall a situation
15 that happened some time ago? When was that?

16 MR. CHEELEY: I can't remember. It was at
17 least ten years ago.

18 MR. BENEDETTI: More than ten years ago.
19 And you would be sensitive to the possibility
20 that the officer might make a statement that was
21 not true?

22 MR. CHEELEY: I guess I would be sensitive
23 to it.

24 MR. BENEDETTI: Would you believe that
25 because he is a police officer he might make a

1 statement that is not true?

2 MR. CHEELEY: It happened to me.

3 MR. BENEDETTI: Would you promise to give
4 Officer Schnupp --

5 MR. CHEELEY: Sure.

6 MR. BENEDETTI: -- all the consideration as
7 to whether or not he's telling the truth if you
8 were selected to be on the panel?

9 MR. CHEELEY: Yes.

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

11 THE COURT: Ladies and gentlemen, the jury
12 room is right behind you, if you would all
13 please step back in the jury room for a moment.
14 And remember the seats you had before you left,
15 because I'll ask that you take those seats when
16 you return.

17
18 (Jury panel exits courtroom.)
19

20 THE COURT: If anyone else in the room is
21 here for jury duty, if you would please step
22 outside for a moment and wait outside until
23 you're called back in. Thank you.

24 Mr. Baugh, you had a motion?

25 MR. BAUGH: We have two motions. One as

COOK & WILEY, INC.

1 to Mr. Shannon, Juror Number 1462. Works at
2 NationsBank. Indicated that he, irregardless of
3 instructions of the Court, would have
4 presumption concerning credibility as it would
5 pertain to the police officer. Would impact on
6 the issue of credibility concerning his
7 prejudice.

8 Additionally, Your Honor, we would have a
9 strike as to Dr. Proctor for cause. He has
10 indicated that he has -- I guess I should have
11 recognized that as a physician he has
12 significant disagreement with the law concerning
13 punitive damages, and that he has prejudice that
14 has been indicated. For those two, Your Honor,
15 we have shown cause and ask that they be struck.

16 THE COURT: Mr. Benedetti, you have any
17 reaction to either one of these motions or both?

18 MR. BENEDETTI: My comment is about Mr.
19 Shannon. I think Mr. Shannon was being very
20 honest with the Court. I believe that although
21 he said that he would be more inclined to
22 believe the police officer, he would certainly
23 listen to the evidence. And he did not respond
24 either to the Court's question about fair and
25 impartial verdict or to Mr. Baugh's question

1 along the same lines that he would not do his
2 best to render a fair and impartial verdict.

3 I think that it's a matter of common
4 knowledge that police officers have a duty to
5 the citizenry. People have a lot of confidence
6 in them and they normally tend to believe them
7 when they say something. I don't think there's
8 any difference with that.

9 THE COURT: Bring out Mr. Charles Shannon.

10 Good morning again, Mr. Shannon. In answer
11 to one of counsel's questions concerning the
12 credibility of a police officer, I believe you
13 said you would take the word of a police officer
14 over that of the citizen, or something to that
15 effect, did you not?

16 MR. SHANNON: Yes.

17 THE COURT: Would you have any trouble
18 following the Court's instructions if with
19 respect to credibility you were to sit on this
20 jury, that is that you are to judge a witness,
21 no matter what their occupation, equally and
22 fairly according to the evidence and judge their
23 testimony as to credibility and apply that
24 standard to everyone who testifies?

25 MR. SHANNON: I don't know. I would

1 probably side with the police officer.

2 THE COURT: Do you have any other
3 questions?

4 MR. BAUGH: No, Your Honor.

5 THE COURT: Do you, Mr. Benedetti?

6 MR. BENEDETTI: The judge's question was
7 very long. Assuming that you had an opportunity
8 to hear the evidence, and the evidence suggested
9 that you and one or the other was lying, however
10 you believe that the private citizen was telling
11 the truth, would you then render your verdict?

12 MR. BAUGH: Objection, Your Honor. That
13 would be irrelevant. The question is not how
14 would he ultimately decide it. The question is
15 as we start now, prior to the introduction of
16 evidence, is there a leaning or predisposition
17 as to the issues. Mr. Benedetti's question is
18 when it's all over. That's not the question.

19 THE COURT: I tend to agree with that, Mr.
20 Benedetti. The question is right now does he
21 give any more credit to the word of a police
22 officer as opposed to anyone else without even
23 hearing anything?

24 MR. SHANNON: Yes.

25 THE COURT: Your answer is yes?

1 MR. BENEDETTI: I think his answer to that
2 is yes. Perhaps we should also ask would you
3 render a fair and impartial verdict. There's
4 also yes to that. I presume that he's willing
5 to listen to the evidence and make a decision
6 after he hears it.

7 THE COURT: Well, you want to put that as a
8 question?

9 MR. BENEDETTI: Is that correct?

10 MR. SHANNON: Repeat that, please.

11 MR. BENEDETTI: Would you be willing to
12 listen to the evidence and then judge to the
13 best of your ability at the conclusion of the
14 evidence and render a fair and impartial
15 verdict?

16 MR. SHANNON: Yes, I would, but I'm biased.

17 MR. BENEDETTI: Will you state that bias
18 again?

19 MR. SHANNON: I would believe a police
20 officer before I would believe a citizen.

21 THE COURT: Mr. Shannon, thank you very
22 much, sir. I'll ask that you step out into the
23 hallway with the rest of the jurors. Thank you,
24 sir.

25 MR. BAUGH: Your Honor, are you going to

1 admonish the juror not to discuss with the other
2 jurors?

3 THE COURT: Mr. Shannon, don't discuss what
4 we've been talking about with the other people.
5 Thank you, sir.

6 MR. SHANNON: You're welcome.

7 THE COURT: Bring out Dr. Proctor.

8 Doctor, I think you said in answer to one
9 of the questions by counsel that you did not
10 agree with punitive damages; is that correct,
11 sir?

12 DR. PROCTOR: That's correct.

13 THE COURT: If you were chosen to be on
14 this jury, could you follow the Court's
15 instructions which would be the law in the case?

16 DR. PROCTOR: I think I could follow the
17 Court's instructions.

18 THE COURT: And if one of those
19 instructions concerns punitive damages, could
20 you follow that instruction?

21 DR. PROCTOR: If I were instructed to award
22 punitive damages?

23 THE COURT: Well, you're not going to be
24 instructed to award anything. You'll be
25 instructed to consider the law applicable to the

1 facts in the case, and some of that law may be
2 the law of punitive damages.

3 DR. PROCTOR: I think I probably could.
4 I guess my opposition is that I don't think a
5 plaintiff should receive punitive damages. They
6 should be awarded to the state or someone else
7 rather than the plaintiff.

8 THE COURT: I see.

9 Mr. Baugh, you have any questions?

10 MR. BAUGH: Dr. Proctor, I don't mean to
11 put words in your mouth, but am I assuming that
12 as we start off now, you would have a leaning
13 against punitive damages?

14 DR. PROCTOR: I would lean against it, yes.

15 MR. BAUGH: Would it be a safe assumption
16 that in order to justify punitive damages, you
17 would probably require more of me than another
18 juror might? You have a leaning against that
19 aspect of the law?

20 DR. PROCTOR: Well, I'm not sure that
21 requires more than making some judgment.

22 MR. BAUGH: Sir, do you disagree with that
23 law?

24 DR. PROCTOR: Pardon me?

25 MR. BAUGH: Do you disagree with the law

COOK & WILEY, INC.

1 concerning punitive damages?

2 DR. PROCTOR: I guess I do, yes.

3 MR. BAUGH: And as you state here now, you
4 are convinced that you can divorce yourself from
5 that predisposition?

6 DR. PROCTOR: I think so. I'm not -- I
7 think so.

8 MR. BAUGH: But you're not sure, is that
9 what you were going to say?

10 DR. PROCTOR: I guess you could say that.

11 MR. BAUGH: Thank you, sir. No further
12 questions.

13 MR. BENEDETTI: At some particular time, if
14 the Court should read an instruction, give you
15 an instruction to agree that relates to punitive
16 damages and says this is the law, could you
17 follow the law?

18 DR. PROCTOR: I think I would certainly try
19 to follow the law, yes.

20 MR. BENEDETTI: That's all.

21 THE COURT: Thank you. Doctor, step back
22 in that room, if you would. Thank you very
23 much.

24 Any argument?

25 MR. BAUGH: Well, I salute Dr. Proctor's

1 candor. And he has been candid. And, of
2 course, we both asked good questions. But, Your
3 Honor, he has indicated unequivocally he has a
4 predisposition against a certain aspect of the
5 law. And even though he was asked by my count
6 five times, he could not state that he would
7 follow the law. I believe the word was "I
8 probably would." I submit that is far below the
9 standard necessary for inclusion on a jury.

10 MR. BENEDETTI: If Your Honor please, I
11 believe what he correctly stated was that he did
12 not object to punitive damages so long as they
13 were awarded to the state or someone other than
14 to the plaintiff. He doesn't think the
15 plaintiff ought to profit by it. On the concept
16 of punitive damages, he has no objection to it.
17 He says he can follow as strongly as he could,
18 because he seems to be saying I think I could, I
19 think I would, that he would follow the Court's
20 instructions. And if in this case a punitive
21 damages instruction was given, he would follow
22 it.

23 THE COURT: Anything else, Mr. Baugh?

24 MR. BAUGH: Just briefly, Your Honor, the
25 standard simplistically -- and I don't know the

COOK & WILEY, INC.

1 federal case on it, but unless the Court is
2 convinced as we stand here now that this man is
3 going to follow the law and he has not a
4 predisposed inclination one way or the other, he
5 must be struck. And in my estimation he does
6 not have that clear view.

7 THE COURT: Gentlemen, I'm not convinced
8 that this juror is willing to look at this
9 question fairly and impartially. Therefore, the
10 motion as to Dr. Proctor is granted. Ask Dr.
11 Proctor to step back out here.

12 Dr. Proctor, thank you, sir. If you would,
13 would you join the other jurors out in the
14 hallway, sir, and I'll be calling you back in
15 in just a few moments. Thank you very much.

16 Mr. Benedetti, did you have a motion?

17 MR. BENEDETTI: No, I do not.

18 THE COURT: Madam Clerk, call two new
19 jurors to replace Dr. Proctor and Mr. Shannon.

20 THE CLERK: Frank Moore and Janis Carrell.

21 THE COURT: Take a seat in the front row,
22 if you would.

23
24 (Two jurors sworn.)
25

1 THE COURT: Ms. Carrell and Mr. Moore,
2 you've both been present in the courtroom this
3 morning, have you not? You heard me identify
4 the case, the parties, counsel, and describe a
5 little bit about what happened. I think you
6 heard pretty much about all of the questions
7 that were put to the panel as a whole. And you
8 probably got from that, I hope, a better idea
9 about what the case is about. I'm going to ask
10 each of you now the questions I asked, and then
11 after that counsel may ask you some questions as
12 well.

13 Are either of you related by blood or
14 marriage to either of the parties in this case,
15 Mr. Smith or Officer Schnupp?

16 Have either of you expressed or formed any
17 opinion about this case?

18 And I know this is a question that counsel
19 is going to ask you, and I will ask you, are
20 either of you members of any law enforcement
21 agency, or any members of your family?

22 MS. CARRELL: My brother is a Richmond city
23 police officer.

24 THE COURT: Do either of you have any
25 interest in the outcome of this case?

COOK & WILEY, INC.

1 Are either of you sensible to any bias or
2 prejudice in the case?

3 Are you for or against either side right
4 now? I expect you to be for or against somebody
5 after you hear the case. That's what you're
6 brought here for.

7 And finally, do either of you know of any
8 reason whatsoever as to whether or not you could
9 give these parties a fair and impartial trial
10 according to the law and the evidence? Thank
11 you.

12 Mr. Baugh, you have questions for these
13 two?

14 MR. BAUGH: Ms. Carrell, Mr. Moore, my name
15 is David Baugh.

16 You said your brother is a police officer?

17 MS. CARRELL: Yes.

18 MR. BAUGH: And what is his name?

19 MS. CARRELL: Paul Wilhelm.

20 MR. BAUGH: What does he do for the police
21 department?

22 MS. CARRELL: He is a traffic officer.

23 MR. BAUGH: And how often do you visit with
24 your brother?

25 MS. CARRELL: Well, I don't go to his house

1 as much as he comes to my house.

2 MR. BAUGH: Do you ever have occasion to
3 discuss work with him?

4 MS. CARRELL: Occasionally.

5 MR. BAUGH: Ma'am, I notice you were
6 sitting in the back there and listening to the
7 questions attentively. With what you now know a
8 little bit what this case is about, do you have
9 any doubts concerning your ability to be fair
10 and impartial in a lawsuit between a citizen and
11 a police officer who serves in the same police
12 department?

13 MS. CARRELL: To be honest, I think that I
14 would tend to believe the policeman before I
15 believed a citizen that I knew nothing else
16 about.

17 MR. BAUGH: So as you start off now, when
18 it comes to the issue of credibility, the police
19 officer has some amount of -- you're leaning
20 towards him?

21 MS. CARRELL: Yes.

22 MR. BAUGH: So am I correct that because
23 the plaintiff is not a police officer, then of
24 course the inverse would be true, you would not
25 be as likely to believe him? He would start off

1 with a burden?

2 MS. CARRELL: That's true.

3 MR. BAUGH: Greater than ordinary burden.
4 Would I be correct in assuming if other police
5 officers testified, there would be a cumulative
6 effect if three or four officers said the same
7 thing?

8 MS. CARRELL: I think if three or four
9 people said the same thing, I would believe
10 them.

11 MR. BAUGH: But it would be greater if
12 there were three or four police officers?

13 MS. CARRELL: Yes.

14 MR. BAUGH: If your verdict necessitated
15 your stating publicly that you believe a police
16 officer made a falsehood, told a lie, do you
17 think that might influence your verdict? Would
18 you have to avoid making that decision?

19 MS. CARRELL: Oh, no. I mean my brother is
20 not perfect, nor is anyone else.

21 MR. BAUGH: Which might give you a certain
22 advantage. As we start out here now,
23 recognizing that we want a fair trial and we
24 don't want to prejudge any of the issues
25 including credibility, am I correct that you

1 would be more prone to believe the police
2 officer simply because that person is a police
3 officer?

4 MS. CARRELL: Yes.

5 MR. BAUGH: Thank you.

6 Now, Mr. Moore, sir, what is a utility
7 executive?

8 MR. MOORE: I'm a vice president for the
9 power company.

10 MR. BAUGH: Okay. And, sir, do you have
11 any law enforcement experience?

12 MR. MOORE: No, sir.

13 MR. BAUGH: Any military experience?

14 MR. MOORE: No, sir.

15 MR. BAUGH: Would you be more likely to
16 believe the word of a police officer merely
17 because that person is a police officer?

18 MR. MOORE: No, sir.

19 MR. BAUGH: We've also talked a little bit
20 about -- and you were also in the courtroom, I
21 didn't see you.

22 MR. MOORE: I was here.

23 MR. BAUGH: Do you have any disagreement
24 with the law concerning punitive damages,
25 awarding damages, if necessary or if required,

1 to punish someone for doing something that they
2 shouldn't have done?

3 MR. MOORE: Punitive damages, I think,
4 would have to be very, very blatant before I
5 would typically agree.

6 MR. BAUGH: If the Court were to give you a
7 written instruction as to what factors you
8 should consider, and if those factors were
9 present, that would be your option, are you
10 confident you could follow the Court's
11 instruction?

12 MR. MOORE: Yes, sir, I believe I could.

13 MR. BAUGH: And if you do have a personal
14 view that would cause you to have personal
15 leanings, could you suppress that personal view
16 and follow the law as given to you by the Court?

17 MR. MOORE: I would certainly try to follow
18 the law.

19 MR. BAUGH: And I don't mean to be
20 persistent, but I must ask you. As you sit here
21 now, not would you try, would you do it?

22 MR. MOORE: Yes, sir, I would.

23 MR. BAUGH: Do you believe that it is
24 possible that a police officer would commit a
25 falsehood?

1 MR. MOORE: Yes, sir.

2 MR. BAUGH: Thank you. No further
3 questions.

4 MR. BENEDETTI: Ms. Carrell, do you believe
5 it's possible that a police officer would commit
6 a falsehood?

7 MS. CARRELL: My brother has told some
8 lies, I think, during our childhood.

9 MR. BENEDETTI: In your formative years?

10 MS. CARRELL: (Witness nods head.)

11 MR. BENEDETTI: You've stated to the Court
12 that you would fairly and impartially try this
13 case if you were selected to be on the panel.
14 Are you sensitive that you could not do that
15 because the defendant is a police officer?

16 MS. CARRELL: No. I think I could make an
17 unprejudiced decision based on the evidence.
18 Although I do admit that without any
19 consideration otherwise, a policeman telling a
20 statement (unintelligible) that I know nothing
21 else about, I would have second thoughts.

22 MR. BENEDETTI: This is not because your
23 brother's a policeman, this is the way you've
24 been brought up?

25 MS. CARRELL: That's right. I was always

1 told that the policeman was your friend and you
2 could trust him.

3 MR. BENEDETTI: That's all.

4 THE COURT: Ms. Carrell and Mr. Moore,
5 thank you. If you would both step back in that
6 room and take the same seats you had before you
7 left when you return. Thank you.

8 MR. BAUGH: Motion to remove Ms. Carrell,
9 Your Honor. You want argument?

10 THE COURT: Well, just tell me what you
11 have in mind.

12 MR. BAUGH: Same thing. Predisposition.
13 And this is a straight credibility case.

14 MR. BENEDETTI: I don't see any
15 predisposition. She said that's the way she's
16 been brought up, that officers are our friends.
17 But she's willing to give a fair and impartial
18 hearing to both sides and make a decision based
19 on that.

20 I think that if you ask any of those people
21 here on the panel, do they have a
22 predisposition, unless they've had some run-in
23 with the law, as the gentleman said back there,
24 because the officer lied to me or lied about me,
25 they would say I've been taught that the officer

1 is my friend. And I think that's exactly what
2 was reflected in Ms. Carrell's statement.

3 THE COURT: Ask her to step back out here.

4 Ms. Carrell, it seems someone had the same
5 problem I had. The last question I asked you,
6 Ms. Carrell, was that -- or you may have said
7 that at the end point I took it to mean that if
8 you have one person who is a citizen testifying
9 one way and a police officer testifying the
10 other, because of your upbringing you would tend
11 to believe the police officer. That's after
12 you've heard what might be involved, isn't that
13 correct?

14 The question now, though, is are you
15 willing or are you able to give these parties
16 equal treatment in terms of their credibility
17 from the beginning? That is, do you have any
18 predisposition right now before the case is
19 heard?

20 MS. CARRELL: No. I have no idea what
21 happened.

22 THE COURT: Well, having no idea what
23 happened --

24 MS. CARRELL: Oh, no. Well, I mean --

25 THE COURT: Are you predisposed right

1 now --

2 MS. CARRELL: No, I'm not predisposed,
3 not to either side at this time.

4 THE COURT: But after you've heard
5 everything and if it was more or less on an
6 equal footing --

7 MS. CARRELL: Right.

8 THE COURT: -- if the testimony was
9 diametrically opposed, then you would
10 automatically --

11 MS. CARRELL: All things being equal,
12 I would side with the police officer.

13 THE COURT: All right.

14 Any other questions?

15 MR. BAUGH: In light of that, I have no
16 questions.

17 MR. BENEDETTI: I have no questions. But I
18 do want to say to the Court that of course
19 that's what the case law is all about.

20 THE COURT: Ms. Carrell, step back in the
21 jury room, please. Thank you.

22 MR. BENEDETTI: She would have no
23 predisposition. But if it was all equal and she
24 would decide that the police officer is telling
25 the truth, the burden is on the plaintiff to

1 prove. If he doesn't prove it to her, then she
2 decides whether or not, you know.

3 MR. BAUGH: Your Honor, we prove it with
4 the evidence. The witness has just said I would
5 be more prone to believe that person's testimony
6 because he's a police officer than this person.
7 I'm not saying that she is malicious. I'm not
8 saying that. I know that people in the South
9 have been taught for years that the government
10 is the good guys and all those things they teach
11 in civics class. However, as it stands out now,
12 the same standards that we had for Dr. Proctor,
13 had he been here now, based upon the answers
14 given, the unfettered and the truthful answers
15 of Ms. Carrell, is the Court convinced that she
16 is going to start off with the parties being
17 even as to all issues of controversy and
18 credibility?

19 THE COURT: Well, she said --

20 MR. BAUGH: And her last answer was --

21 THE COURT: Didn't she say from the
22 beginning she would have to hear the case?

23 MR. BAUGH: Yes, Your Honor. However, the
24 Court then zeroed in on that afterwards. The
25 issue is as we start now. And that's the

1 only -- we're not allowed to try the case on
2 voir dire. As we start out, do you have a
3 predisposition concerning the issue of
4 credibility. And she has stated yes. In fact,
5 all things being equal, as we start off now I
6 am more prone to believe this person, because he
7 is a police officer, than I am this person who
8 is a citizen. And while it may be
9 understandable to some, it is not the law. And
10 they cannot serve.

11 If they were to come in here and say I'd be
12 more predisposed to believe a Republican than a
13 Democrat, and that was an issue of controversy,
14 then they could not serve. Black or white, male
15 or female, they could not serve. She has
16 indicated. She can't serve.

17 THE COURT: Anything else, Mr. Benedetti?

18 MR. BENEDETTI: She has not indicated that
19 she could not serve. She has indicated that she
20 has a predisposition. But she said to me in my
21 question, yes, I believe he can lie. Yes, I
22 will give these people an equal treatment. I am
23 not predisposed to anything at this point in
24 time. And if it's all equal at the end, I'm
25 going to decide in favor of the police officer.

1 And that's the way the case should be. And
2 that's a very honest, very straightforward
3 answer. No reason to discharge this lady for
4 cause, because as I suggested to the Court, and
5 I'm sure the Court agrees with this, that all of
6 us are predisposed, because police officers are
7 our friends, to believe them over a citizen at
8 this point in time.

9 THE COURT: Depends on the case. Depends
10 on the evidence in a given case. The motion as
11 to Ms. Carrell is granted. Ask Ms. Carrell to
12 step out, if you would.

13 Ms. Carrell, thank you very much. Ma'am,
14 if you would step outside in the hallway. Thank
15 you.

16 We have one more juror. Call that juror.

17 THE CLERK: Helen Thomas.

18
19 (Juror sworn.)
20

21 THE COURT: Good morning, Ms. Thomas. You
22 were present in the courtroom, were you not,
23 when the case was called and the parties were
24 identified, their counsel and so forth? And I
25 think you heard most, if not all, of the

COOK & WILEY, INC.

1 questions that were put to the panel as a whole,
2 did you not?

3 MS. THOMAS: Correct.

4 THE COURT: And from that you've
5 determined what the case is about, have you not?

6 MS. THOMAS: Correct.

7 THE COURT: Let me ask you some questions
8 now. And after I'm done, counsel may see fit to
9 ask you some questions as well.

10 Are you related by blood or marriage to
11 either of the parties in this case?

12 MS. THOMAS: No, sir.

13 THE COURT: Are you sensible to any bias or
14 prejudice in this case?

15 MS. THOMAS: I have a problem with the
16 case. I'm being honest. You want me to be
17 really honest. No one's going to like what I
18 say, but I have a problem with this kind of
19 case.

20 THE COURT: All right. Do you have any
21 interest in the outcome of this case?

22 MS. THOMAS: No, sir.

23 THE COURT: Have you expressed or formed
24 any opinion about this case?

25 MS. THOMAS: Only from what I've heard

1 already. I mean I didn't come in with one,
2 but --

3 THE COURT: All right. Do you know of any
4 other reason whatsoever as to whether you could
5 give these parties a fair and impartial trial
6 according to the law and according to the
7 evidence?

8 Well, let me ask you, do you have an
9 opinion about the case now without having heard
10 the evidence?

11 MS. THOMAS: I guess I have an opinion
12 about this type of a case.

13 THE COURT: What is that opinion?

14 MS. THOMAS: I'm a nurse and I work in a
15 hospital. And several times I've been
16 questioned by attorneys when people were maybe
17 trying to have a lawsuit. And I guess I just
18 feel like there are a lot of people -- now, this
19 might not be this case, but sometimes people are
20 looking, I don't know, trying to make an issue
21 out of something that maybe isn't an issue.

22 THE COURT: All right.

23 MS. THOMAS: It wasn't like this was a car
24 accident and boom, you can see things.

25 THE COURT: Do you have any questions,

1 Mr. Baugh?

2 MR. BAUGH: Ms. Thomas, do you work in the
3 E.R.?

4 MS. THOMAS: No. I work in the O.R. area
5 of the hospital.

6 MR. BAUGH: What hospital?

7 MS. THOMAS: St. Mary's Hospital.

8 MR. BAUGH: Any friends, family relatives
9 who are police officers?

10 MS. THOMAS: No.

11 MR. BAUGH: As you sit here now,
12 recognizing that credibility will always be an
13 issue, can you safely say that you would not be
14 predisposed simply because that person is a
15 police officer?

16 MS. THOMAS: You know, I'm going to be real
17 honest. I think if it was two people and I
18 didn't know which one it was, I'm going to
19 believe the police officer.

20 MR. BAUGH: If the Court were to instruct
21 you, and as you sit here now you are not to
22 consider that at this juncture, you view them as
23 equals, do you doubt your ability to --
24 recognizing that we're not just out on the
25 street, we're in a courtroom.

1 MS. THOMAS: I know. I could maybe -- I
2 mean I could try as hard as I could that, you
3 know, every person has the potential to be a
4 lying person, but I guess I'm someone that
5 believes that every person -- I was on honor
6 council in college.

7 MR. BAUGH: Which college?

8 MS. THOMAS: University of Virginia. I was
9 on the honor council.

10 MR. BAUGH: Ma'am, as you sit here now,
11 looking at this young man and looking at this
12 young man, do you view them as -- this man being
13 a police officer right here?

14 MS. THOMAS: No.

15 MR. BAUGH: Can you view them with equal
16 credibility?

17 MS. THOMAS: Right now they just look like
18 two persons.

19 MR. BAUGH: If you know that person to be
20 a police officer, you are not predisposed to
21 believe him right now more than you would be
22 predisposed to believe this man?

23 MS. THOMAS: I don't think I understand.

24 MR. BAUGH: As you sit here now,
25 recognizing that we're not like in the street

1 but in a court of law, as you look at these two
2 people, do you view this person as more credible
3 than you would this person right now?

4 MS. THOMAS: No.

5 MR. BAUGH: Thank you. No further
6 questions.

7 MR. BENEDETTI: No questions.

8 THE COURT: All right. Ms. Thomas, thank
9 you, ma'am. If you would step back in that
10 room.

11 MS. THOMAS: I'm sorry. This is hard.

12 THE COURT: Are we ready for the jury,
13 gentlemen?

14 MR. BAUGH: Yes, sir.

15 THE COURT: All right. Bring the jury in.

16
17 (Jury panel enters courtroom.)
18

19 THE COURT: Thank you, ladies and
20 gentlemen, for your patience. I will now call
21 on counsel to exercise their strikes. And what
22 will happen now is that you'll see the bailiff
23 handing a piece of paper to the plaintiff's
24 side. That paper will be first given to the
25 plaintiff's side. And after Mr. Baugh does

1 something on that paper, which I'm going to
2 explain to you, the paper will then go over to
3 the defense side and they'll do something to it.
4 And the paper will go back and forth until each
5 side is done with it.

6 But what they'll be doing is they will
7 strike a name from the list. That paper is a
8 list of all of you similar to this. And
9 starting with the plaintiff, the plaintiff will
10 strike a name and the paper will go over to the
11 defense side, as I mentioned. The defendant
12 will strike a name and they will go back and
13 forth until each side has stricken three names.

14 Remember, I mentioned that there are 13 of
15 you in the jury box, and the number to hear a
16 case such as this is seven. So three on each
17 side will give us six, and six from 13 is seven,
18 and that remaining number will be the jury in
19 this case.

20 I'm a bit surprised at some of the
21 responses I've heard with respect to one
22 question. That had to do with whether or not
23 any of you had been on a jury before. I think
24 Ms. Brown indicated she had been on a jury. But
25 this is now October 25th. I think we're in the

1 fourth week of this term of court, and none of
2 you have served on a jury thus far this month?
3 Have any of you --

4 MS. THOMAS: Your Honor, the first two
5 Mondays --

6 THE COURT: Well, that question wasn't
7 asked of you, have you served on a jury. The
8 first two Mondays were what?

9 MS. THOMAS: Were holidays.

10 THE COURT: Right. Ms. Dove?

11 MS. DOVE: Last week.

12 THE COURT: I see, all right. Well, we
13 find that, as I mentioned before to other
14 jurors, people like yourself who are called for
15 jury duty serve anywhere from two to three
16 times. So some of you will make that average,
17 I suppose, if you miss this case or even if you
18 serve on this case, because as you know this is
19 the last week of your jury duty. Are all of you
20 aware of that? Everybody's nodding like mad.
21 I'm sure that's not unwelcome news to you.

22 But I hope, despite the inconvenience this
23 may have caused you by being here today and on
24 other days that you've been brought here, being
25 here is a very important function that goes

1 along with being a citizen in the community. We
2 have jury trials, of course, because our laws
3 allow for it. There are provisions both in the
4 federal constitution and in the state
5 constitution allowing for trial by jury. And
6 the right was put there by the founding fathers,
7 because they thought it was a very fundamental
8 right to be preserved by the constitution
9 because of experiences that they had principally
10 in the country from which we draw from most of
11 our jurisprudence. So that right of the jury
12 trial has been preserved there ever since the
13 founding of this country. And it's a very
14 fundamental, important right.

15 And one of the reasons why we have voir
16 dire, which is actually French, means "to speak
17 the truth," but the questions counsel have been
18 asking you are aimed at determining, as I
19 mentioned, an unbiased and impartial jury, a
20 jury to which the parties are entitled, as I
21 mentioned, under the law.

22 Well, since most of you have not had the
23 experience, I will tell you now a little bit
24 about what will happen once the trial gets under
25 way. For those six of you, this won't have any

1 application because you won't be here, but
2 perhaps you might find this to be informative.

3 To begin with, the first thing is the
4 lawyers will talk to you by way of opening
5 statement. They'll stand before you and tell
6 you what they expect the evidence to be in the
7 case. They'll describe what they expect to
8 prove. Both counsel will speak to you in that
9 way beginning with plaintiff's counsel, followed
10 by defense counsel.

11 After we've heard from both counsel by way
12 of an opening statement, we will then hear and
13 see the evidence. The plaintiff will go first,
14 of course. The plaintiff will call his
15 witnesses. Those witnesses will be put under
16 oath, be asked questions by direct examination.
17 And after direct examination is over, counsel
18 for the other side, the defendant, will have an
19 opportunity then to conduct any
20 cross-examination.

21 After we've heard from all the plaintiff's
22 witnesses, we will then hear from the defense
23 side in the case. And similarly the defense
24 will call witnesses. Those witnesses we will
25 put under oath, will be asked questions by way

1 of direct examination. And after that's
2 concluded, counsel for the other side, in this
3 instance will be the plaintiff, will have an
4 opportunity then to conduct cross-examination.

5 After we've heard from all the witnesses in
6 the case by way of evidence, the Court will go
7 over instructions with counsel. These
8 instructions will be the principles of law that
9 govern this case and they will be determined
10 outside of the presence of the jury. And after
11 they're determined the jury will be brought back
12 in the room, and counsel will address you again,
13 this time by way of closing arguments. The
14 Court will read the instructions to you and then
15 you'll hear from counsel again by way of closing
16 arguments. And after that, the jury will be
17 asked to begin its deliberations in the jury
18 room, the room you've already become familiar
19 with.

20 All right. I see we're ready. For those
21 persons who won't be with us today, thank you
22 very much for coming.

23 MR. BAUGH: We have a motion before the
24 jury is struck, Your Honor.

25 THE COURT: Ladies and gentlemen, I'll have

1 to ask you to step back in the jury room.

2
3 (Jury panel exits courtroom.)
4

5 THE COURT: Mr. Baugh?

6 MR. BAUGH: Your Honor, we would have a
7 Batson-like motion at this time. The plaintiff
8 has struck Mr. Moore, one of the alternates
9 pulled up, who indicated a disagreement with
10 punitive damages. However, when pressed he said
11 he believed he could.

12 We also use a strike for Ms. Thomas who had
13 the credibility issue. She was extremely
14 candid.

15 We also struck Mr. Ware. From 1977 to 1984
16 he was a member of the Mississippi National
17 Guard, a concern that I have considering the
18 nature of this case.

19 The defense struck Mr. Cheeley,
20 C-h-e-e-l-e-y, who works for Federal Reserve.
21 Also indicated trouble with a police officer and
22 I can understand that strike.

23 The defense also struck Ms. Brown and Ms.
24 Shields. Ms. Brown, Juror Number 211, Ms.
25 Shields, Number 1475. Ms. Brown answered only

1 one particular question, and that was my
2 question concerning her prior experience in a
3 civil lawsuit seven to eight years ago. And Ms.
4 Shields was asked no individual questions.

5 And we would submit that -- oh, both of
6 these people are African-Americans. The only
7 thing, they weren't asked any questions. One
8 works as a customer service rep and the other is
9 a hair stylist, and we have their ages and we
10 have their addresses. And other than that, Your
11 Honor, I would submit there are no objective
12 reasons. And the Court is well aware that the
13 state of the law at this time is that individual
14 citizens have a right to serve on a jury and not
15 be struck because of inappropriate reasons.

16 We would submit that we have met the
17 threshold burden and would ask that the defense
18 now be called upon to give neutral reasons for
19 striking Ms. Brown and Ms. Shields. And if such
20 reasons cannot be given, we would ask that they
21 be compelled to restrike.

22 THE COURT: Mr. Benedetti?

23 MR. BENEDETTI: Am I going to be required
24 to give reasons?

25 THE COURT: Yes, sir. Under the rule, the

1 case is Batson versus Kentucky, (unintelligible)
2 versus Ohio, and Edmonds versus Louisiana.

3 MR. BENEDETTI: I struck Mr. Cheeley for
4 obvious reasons. Mr. Cheeley was the gentleman
5 who said the state police officer lied about
6 what he had done at the time of his arrest.

7 I struck Ms. Shields, because, although she
8 didn't answer counsel's questions, she was very
9 active nodding her head. And I was not pleased
10 with the way she responded to the questions
11 about whether or not she would believe a police
12 officer over and above somebody else.

13 THE COURT: Did she respond to any of those
14 questions orally or --

15 MR. BENEDETTI: Yes. The question was
16 would you have a tendency to favor the statement
17 made by the police officer as opposed to the
18 statement made from the plaintiff. And she
19 shook her head.

20 THE COURT: Oh, she didn't make any oral
21 statements?

22 MR. BENEDETTI: She made no oral statement
23 but she shook her head, as did Ms. Brown. This
24 is also a jury without any prior experience
25 except for Ms. Brown, and that's the reason I

1 struck her.

2 I prefer that the jury either have a number
3 of persons who have prior service or persons who
4 have no service. And that way a person who has
5 participated at some time prior in a jury
6 decision is more inclined to be the leader of
7 the jury. I think that that issue or that
8 decision ought to be to the group as opposed to
9 someone who would step forward and say I've got
10 prior experience. And that's the reason. It
11 has nothing to do with any other reasons.

12 MR. BAUGH: For purposes of the record,
13 Your Honor, I would like to point out I did not
14 see Ms. Shields's response. But I would state
15 for the record that Mr. Benedetti did not
16 question Ms. Shields on whether or not she would
17 have a predisposition to believe one side more
18 than the other, and additionally Mr. Benedetti
19 never asked any of the panel whether or not they
20 had prior jury service. As we stand here now,
21 Mr. Benedetti never asked Mr. Moore or Ms.
22 Thomas whether or not they had prior jury
23 service. And if that's standard, we would
24 submit that he would have asked them and he did
25 not. I would submit, Your Honor, that both of

1 these are issues about which the defense did not
2 make inquiry.

3 As the record appears now, there is nothing
4 to support the position put forward by the
5 defense that, one, prior jury service is a
6 concern; or two, that the degree of response
7 given by Ms. Shields, the gesturing response or
8 the inaudible response in response to my
9 questioning was of significant magnitude to
10 justify them making inquiry. For those reasons,
11 Your Honor, we submit they are not sufficient
12 and ask that they restrike.

13 THE COURT: Frankly, gentlemen, I don't
14 remember what Ms. Shields was doing when these
15 questions were asked. Ms. Brown did say she had
16 prior jury service. I think Ms. Dove said she
17 had prior jury service this term or quarter, I
18 believe. Both of these individuals are female,
19 is that right?

20 MR. BAUGH: Yes, sir.

21 THE COURT: I know Ms. Brown -- I can't
22 remember who she is.

23 Do you have any other comment,
24 Mr. Benedetti?

25 MR. BENEDETTI: I have no other comment.

1 Obviously I have to strike somebody, because we
2 have 13 jurors and we can only use seven. I
3 have to strike somebody.

4 THE COURT: But there's an overlay on all
5 that now by the Supreme Court of the United
6 States, Batson, and now applicable to this case,
7 Edmonds versus Louisiana.

8 MR. BENEDETTI: I can appreciate that. I
9 have to have some basis upon which to strike
10 someone, and I have explained to the Court what
11 the basis was. I suggest to the Court that I
12 have a responsibility to my client to make some
13 consultation with him and with other counsel,
14 which I did. I expressed my viewpoint to him,
15 he agreed with me, and that is the basis for
16 which they were struck. And that is the only
17 reason they were struck.

18 THE COURT: Now, Ms. Brown, if I may, she
19 was stricken because she's had prior jury
20 duty?

21 MR. BENEDETTI: And because her nodding or
22 rather shaking her head in response to the
23 question related to whether or not there would
24 be any preference on her part as to whether or
25 not she would believe a police officer or

1 whether she would believe a private citizen.

2 THE COURT: She nodded her head in the
3 affirmative or in the negative?

4 MR. BENEDETTI: She shook her head that she
5 would not believe a police officer over a
6 private citizen.

7 It's my view, as I've expressed to the
8 Court several times, that the great majority of
9 the people, because they are taught that a
10 police officer is our friend, would normally say
11 yes to that question.

12 THE COURT: And as to Ms. Shields, she
13 was nodding her head as well?

14 MR. BENEDETTI: She nodded her head. She
15 did not participate other than nod her head.

16 THE COURT: Would you say as to Ms. Brown
17 that the reason for her reactions to the
18 question about credibility were more priority
19 than the question of her prior jury duty?

20 MR. BENEDETTI: Well, I didn't consider
21 that before now, but I guess so.

22 THE COURT: Again, Ms. Shields, we've got
23 the issue of nodding the head, is that right?

24 MR. BENEDETTI: That's correct.

25 THE COURT: Do you have any other comment,

1 Mr. Baugh?

2 MR. BAUGH: Just briefly, Your Honor. A
3 moment ago Mr. Benedetti did not mention a
4 concern about Ms. Brown nodding her head. He
5 only had a problem with Ms. Shields nodding her
6 head. However, again, after those questions
7 were asked by me -- and I did not see that
8 response. But after Mr. Benedetti noticed her
9 response, he chose not to question and he should
10 have.

11 THE COURT: Well, whether he should have, I
12 don't know. What makes these motions difficult
13 for the Court in my view is that the Court has
14 to make some determinations, and that by
15 necessity that's what I'm directed to do by the
16 cases I've just cited.

17 I don't remember any nodding or shaking of
18 the head by either one of these venire persons.
19 However, I recognize each lawyer is an officer
20 of the court. And if he made a decision based
21 on the answers to the credibility, demeanor of
22 the witnesses about credibility, I think that's
23 within his province to make the call he made
24 with respect to this strike. Accordingly the
25 motion is overruled.

COOK & WILEY, INC.

1 Gentlemen, we'll take a brief recess.
2 Well, we have to have the jury come out and have
3 them sworn.

4 Bring the jury in.

5
6 (Jury panel enters courtroom.)
7

8 THE CLERK: As your name is called, please
9 be seated back in the courtroom. Helen Thomas,
10 Alan Ware, Frank Moore, Cassandra Shields,
11 Dennis Cheeley, and Patricia Brown.
12

13 (Jurors sworn.)
14

15 THE COURT: Ladies and gentlemen of the
16 jury, and forgive me in advance if I say to you
17 throughout "ladies and gentlemen." Ladies of
18 the jury, we'll take a brief recess now for
19 about ten minutes or so. And during this time
20 you can go back to the jury room or to the
21 hallway. Don't discuss the case with anyone.
22

23 (Brief recess.)
24
25

1 JURY IN

2
3 THE COURT: Mr. Baugh, are you ready?

4 MR. BAUGH: Yes.

5 THE COURT: Mr. Benedetti, are you ready?

6 MR. BENEDETTI: Ready, Your Honor.

7 THE COURT: All right.

8 MR. BAUGH: May it please the Court,
9 ladies, this is the part of the trial called
10 opening statement. It is merely not evidence.
11 Just trying to give you an idea of what the
12 evidence will show.

13 I will start off by telling you that to
14 possess narcotics in the Commonwealth of
15 Virginia is a felony offense. It is a crime for
16 which a person can go to prison from one to ten
17 years. To aid and abet, to help someone else to
18 get or use or to acquire cocaine is also a
19 felony, and it carries the same punishment.

20 The evidence will show that Mr. Andre Smith
21 worked for ARA. It's a company and they have
22 coffee services. And he's worked for them for
23 some four years. He's married, the evidence
24 will show. He has children, he owns a house.
25 He's just an ordinary hourly person who works.

COOK & WILEY, INC.

1 He has worked for ARA for some four, four and a
2 half years. The only time that he was not there
3 was when he went away to the military for one
4 year. The evidence will indicate that his job
5 involves driving around in a van with a beeper
6 on and fixing coffee machines and dropping off
7 coffee.

8 Now, the evidence will also show that on
9 August the 21st of 1992, last year, he went and
10 got his hair cut in his company van. He then
11 went over and picked up his friend, Mr. Robert
12 Ragin, R-a-g-i-n. Mr. Ragin lives over on
13 Church Hill. My client, Mr. Smith, lives on
14 Southside. He went over to pick him up, because
15 the two of them were working on a snack truck he
16 was fixing. He bought a truck from ARA and the
17 two of them were going to fix it up and sell
18 snacks out of it.

19 He and Mr. Ragin came down 30th, went over
20 to 26th Street, drove down 26th Street, turned
21 up, were going over to Venable Street, when
22 suddenly a police car pulled up behind them with
23 lights on. Four police officers jumped out with
24 guns, took the two of them out of the van.

25 Mr. Smith was at that time wearing his ARA

1 uniform. The truck had ARA written on the side
2 of it. The police officers held them at
3 gunpoint, searched the van, had him open his
4 mouth, looked in his mouth, had them take off
5 their shoes. Held them out there for some 20
6 to 25 minutes, found nothing, and let them go.

7 Mr. Smith was upset, but he went on home
8 with his friend. He had a load of wood in the
9 back, they were going to fix the truck.

10 The reason that stop took place is because
11 Mr. Schnupp, who's a police officer, he was
12 sitting up in a building, and according to him
13 he observed this defendant drive the vehicle and
14 stop.

15 Your Honor, I don't know if there's some
16 witnesses in the courtroom. We would move to
17 exclude if it's not too late.

18 THE COURT: Everyone who's present in the
19 courtroom now who expects to testify, please
20 step outside in the hallway. Don't discuss your
21 testimony with anyone nor allow anyone to
22 discuss it with you.

23 MR. BAUGH: Unbeknown to Mr. Smith, Officer
24 Schnupp is going to testify that he was upstairs
25 in a building on the second floor of an

1 abandoned building looking down. He will tell
2 you that he had been there for some time that
3 day. And during that time he was with another
4 officer named Mr. Ambrozy, A-m-b-r-o-z-y, who's
5 also an officer. They were working different
6 windows.

7 This officer will tell you that he saw
8 someone he thought was a drug dealer dealing
9 drugs in that block, and he will tell you he
10 watched three transactions occur. One person
11 rode up on a bike, a young woman approached him
12 on foot, and some other car came up. And he
13 actually saw the drug transactions. He's also
14 going to testify that he then saw the ARA van
15 come into that street.

16 Now, testimony is going to be that Mr.
17 Smith used to live on North 26th Street. And
18 whenever he's over in that part of town, he
19 stops and speaks to the people, says hi to the
20 old people who live there. And we brought one
21 of them today to testify, Miss Irving.

22 But this officer says while he was up there
23 he saw the van come and the van stopped. And he
24 will tell you that he watched this drug dealer
25 walk over to the driver, Mr. Smith, and say

1 something. He will then tell you that he saw
2 the drug dealer walk around to the other side,
3 pull out a Lifesaver vial, empty what appeared
4 to be crack cocaine into his hand. The
5 passenger picked some out, the passenger gave
6 the drug dealer money, and the van drove away.

7 Mr. Smith and the passenger of the car
8 said, "No, that's not true. We did not do
9 that." Mr. Smith will tell you, in fact, "I'm
10 in the National Guard. I'm a sergeant. I'm
11 subject to periodic drug screenings. I don't
12 use drugs. I'm not around people who use
13 drugs."

14 So there's a question of did it really
15 happen. But then it gets worse. Mr. Schnupp
16 then upon himself decided to call ARA and tell
17 them, "By the way, do you know where your truck
18 is? It's in a high drug area." And then he
19 went on to tell them that he witnessed a drug
20 transaction occur in the truck.

21 Mr. Schnupp will tell you, "Well, the
22 reason I did that was to find out it might have
23 been stolen." But also I believe Mr. Schnupp
24 will tell you he never ran a radio check to see
25 if it was stolen. He never told the officers

1 who stopped the vehicle to check if it was
2 stolen. He never told them to check the
3 registration to see if it was stolen. It had
4 ARA written on the side, and the man in an ARA
5 uniform, but he's going to tell you he called to
6 see if the car was stolen. But not only did he
7 tell them to check if it's stolen, even though
8 this person is an employee of yours, he then
9 went on to tell them about the drug transaction
10 that he said he saw.

11 Mr. Smith doesn't know this. On Monday
12 morning he comes to work and he's fired. He has
13 worked there for four years. He has a wife, a
14 mortgage, a car, children. He is fired.
15 Period, dot. He is told.

16 Now, I will tell you this. "Mr. Smith,"
17 they say, "look. We're firing you because you
18 had other people in the vehicle and you're not
19 supposed to have other people in the vehicle."
20 He will tell you that no, that's not true. He
21 will also tell you that there is no official
22 policy like that.

23 He will also tell you that he was not
24 allowed to give his version. In fact after he
25 was terminated they had someone escort him from

1 the building. In fact I believe his employer or
2 one of his supervisors will tell you that he was
3 not allowed to give his side. He told them, he
4 said, "No, I didn't have anybody in the car with
5 me." He didn't call the police to find out if
6 there was a report that he was terminated.
7 However, not only did Mr. Schnupp make this
8 statement over the phone and get him fired, but
9 then Mr. Schnupp prepared a report, a written
10 report, on August the 25th, four days later.

11 Now, Mr. Schnupp will tell you no, there's
12 not supposed to be a report, because nobody was
13 arrested. After all these other things -- by
14 the way, they arrested nobody out there that day
15 in any of these transactions -- he took it upon
16 himself to write a report and he mailed it to
17 ARA.

18 And the evidence will indicate that this
19 man, who was then making about \$800 every two
20 weeks, was out of work for three months. He
21 filled out four to six applications every day
22 for three months. He went to one to two
23 interviews every day for three months. They
24 were getting ready to buy a new house. That
25 fell through. They got behind in their

COOK & WILEY, INC.

1 mortgage, they got behind in their car note.
2 And he kept looking for a job.

3 Eventually he got another job. He now
4 works for Avis. But before, he was working from
5 7:00 to 3:30 in the afternoon, and now he has to
6 work evenings. And he's going to testify and
7 his wife is going to testify and one of his
8 daughters will testify that as a consequence of
9 this, not only did he lose his job, but he's not
10 there to see his children anymore. He only sees
11 them on weekends now, because he works every
12 evening. He's not there to help them with their
13 homework.

14 And all of this because Mr. Schnupp took it
15 upon himself to call. And he said he checked to
16 see if a vehicle was stolen, but he went way
17 beyond that. And we plan to prove to you by the
18 preponderance of the testimony that Mr. Smith
19 did not stop that van that day, that no drugs
20 were sold or possessed in that van that day, and
21 that that statement was false.

22 Now, the burden will be upon us to show
23 malice. I will tell you this. If you find that
24 the statement was false when it was made, that
25 will be evidence of malice. Further, if you

1 find the statement was false and this man made
2 it with a reckless disregard -- he didn't care
3 what happened to this person, even if he was a
4 stranger he didn't care -- that's defamation.

5 Mr. Smith, the evidence will indicate, is
6 not some rich lawyer or doctor. He's just an
7 ordinary hard-working person whose wife works
8 for Liberty Mutual Insurance. He works in an
9 hourly job. And since that time, since August
10 of 1992, he has not made the same salary that
11 he's made. He has to work nights now in order
12 to support his family. He does not get to spend
13 the time with his family anymore.

14 And more importantly the witnesses from ARA
15 will tell you right now that, yes, we worked
16 with him for four years. And we had no trouble
17 with him, he's a great guy, and all of this.
18 And they will tell you when Mr. Schnupp told us
19 that he was a police officer and that he saw
20 this man involved in a drug transaction, we
21 believed him. And they will tell you that as
22 they sit there now, this man they view as
23 someone involved in drugs right now to this day,
24 and he still suffers from that, they will sit
25 there right now and they will tell you that, "As

COOK & WILEY, INC.

1 we sit here now, even though we know him, we
2 view him as a criminal."

3 Ladies, that is defamation and that is
4 injury. And at the conclusion we will submit to
5 you that you will find that he has been
6 humiliated, he has been embarrassed, he has
7 suffered. His family has suffered. He has
8 suffered because of his inability to deal with
9 his family or to support them in the way that he
10 wants. And we will ask you for compensatory
11 damages.

12 We will also ask you for punitive damages,
13 to warn other people that you cannot play with
14 people's lives like this. If you know something
15 is false or you have a reckless disregard for
16 whether or not it is false, you cannot repeat
17 it. Thank you.

18 MR. BENEDETTI: I'm here to tell you that
19 the facts are not like you have just heard.
20 Officer Schnupp is assigned to what they call
21 the firearms and drug section of the Richmond
22 Police Department. They call it the strike
23 force, and he's been assigned there for a
24 certain period of time.

25 Prior to that he had worked foot patrol in

1 the area of the 900 block of North 26th Street
2 on Church Hill in the city of Richmond. And
3 during the time that he was on foot patrol, he
4 knew that there was this abandoned warehouse in
5 the corner there. And so he went up into the
6 warehouse and got into one of the areas where
7 there is covering over the window. And he pried
8 it back a little bit so that he could observe
9 from there activity occurring on the street
10 below him.

11 Mr. Smith, Mr. Baugh's client, will tell
12 you that he lived in that area for quite a
13 while. And he characterizes it, as I do and as
14 Officer Schnupp does and as many of the people
15 who live in that area who have to put up with
16 this nonsense, as a high drug traffic area.

17 On the particular day of August the 21st
18 the strike force was assigned to routine patrol
19 investigation and so on. Officer Schnupp and
20 Officer Ambrozy decided to put a stakeout into
21 this abandoned warehouse. And they were there
22 for some period of time observing people who
23 were loitering on the street, on the sidewalk,
24 or in this lot beside the empty warehouse, who
25 they believe to be drug dealers. It's not

COOK & WILEY, INC.

1 unusual in a high drug traffic area that you can
2 purchase what they call drive-by drugs. If
3 somebody knows where the dealer is located, and
4 the dealers like to locate themselves in the
5 same place routinely so that somebody who is
6 their customer will know where to find them,
7 will come by and purchase from them.

8 On this particular day there were several
9 persons who were occupied in what they believed
10 to be dealing drugs, specifically crack cocaine.
11 Crack cocaine, you'll hear from the evidence, is
12 a very small piece of cocaine, smaller than the
13 size of an aspirin. It sells on the street for
14 about \$10 apiece.

15 On that particular day at about 3:25 p.m.,
16 and that's a significant time, Officer Schnupp
17 observed this ARA van drive up and stop in the
18 middle of the block at a point where he could
19 observe what was taking place. It is true that
20 Officer Schnupp will testify that one of the
21 persons that he thought was a dealer walked over
22 and said something to Andre Smith, a person he
23 learned later to be Andre Smith, and then left
24 Andre Smith and went around and supposedly made
25 a transaction with the passenger in that

1 vehicle.

2 Assisting Officer Schnupp and Officer
3 Ambrozy is what they call a takedown force.
4 Now, these are people who actually make the
5 arrest, although if Officer Schnupp observed the
6 illegal conduct, he becomes the person
7 responsible for that particular case.

8 Officer Schnupp radioed to the takedown
9 force, which was located only two or three
10 blocks away out of sight in what they call the
11 strike force parking lot, and described to them
12 what had taken place. Officer Williams, who you
13 will hear from, took notes on what he had to
14 say. And what he said was an ARA van with two
15 black males in it, transaction, 900 block of
16 North 26th Street.

17 And so eventually in a very short period of
18 time several blocks later, they got in behind
19 the van, turned the lights on, the van stopped.
20 The officers approached the van. They pulled
21 their weapons out. They did, because if you
22 read the papers, I'm sure --

23 MR. BAUGH: Objection. That's
24 inadmissible, Your Honor.

25 MR. BENEDETTI: I'll continue without

COOK & WILEY, INC.

1 reference to your reading the newspapers or
2 watching television.

3 Out of an abundance of precaution, the
4 officers pulled their weapons and approached the
5 vehicle. They took the two persons out of the
6 van and searched them. Officer English, who
7 you'll hear from, searched the van and he will
8 tell you that the van has many places for very
9 small objects the size of an aspirin. They
10 found nothing and they let the people go on
11 their way.

12 Officer Schnupp continued where he was but
13 eventually returned to his office, returned to
14 his location where the strike force is located.
15 And called first ARA Refreshments, which is the
16 people who sell sandwiches and so on, and
17 learned that that was not the proper number. So
18 he called ARA Services, which is the coffee
19 service, and he inquired as to whether or not
20 the license number on the vehicle belonged to
21 them, and they said yes. Then he inquired about
22 Andre Smith. And they said yes, he was a driver
23 there.

24 He then explained that the vehicle was
25 located at about 3:25 in a high drug trafficking

COOK & WILEY, INC.

1 area, that he did observe the passenger exchange
2 something. This is according to the person who
3 received the call. Exchanged something with a
4 person who happened to be on the corner, and
5 then they drove off. The vehicle was stopped
6 and searched. There was no mention made of any
7 drugs at that particular time with the exception
8 of the fact that he called it a high drug
9 trafficking or high drug crime area. And as
10 I've told you already, Mr. Smith will agree that
11 that is a high drug crime area, having lived
12 there for a number of years.

13 Subsequent to that, when Andre Smith came
14 to work on Monday he was terminated. Ms. Goss,
15 who was an acting superintendent or acting
16 branch office manager at that time, had prepared
17 an employee conference form. And had written in
18 there that Andre Smith on August the 21st was on
19 company time off of his route doing personal
20 business with a passenger in the van. And gave
21 the reason for his termination, what I have just
22 said.

23 Now, she arrived at this decision after.
24 On Friday afternoon she called the manager of
25 that office, who happened to be in the hospital

1 giving birth, and asked her what she should do.
2 The manager suggested that she call their human
3 relations person, which she did, who suggested
4 that they call the area manager, which she did.
5 The opinion of her manager, her human relations
6 person, and the area manager was that Andre
7 should be terminated for the reasons that I have
8 said. That contrary to the regulations for
9 persons who operate ARA vehicles, he was away
10 from his job. That is, he was off of his route
11 at a time when he was supposed to be working for
12 the company. He was on personal business and
13 that he had a passenger in the van, and those
14 are the reasons that he was discharged.

15 The telephone call is as I have described
16 it. And that is the passenger got out of the
17 van -- this is according to Ms. Goss who was the
18 acting manager. The passenger got out of the
19 van, made an exchange of something with a third
20 party and got back in the van. That's what she
21 heard. Later in response, and you will hear
22 this because she gave a deposition that Mr.
23 Baugh requested of her, that he did inquire
24 whether or not she suspected that Andre Smith
25 was using drugs, and she said, "Not as far as

1 I know." And that was the extent of it.

2 And we're going to suggest to you that it
3 is the officer's responsibility to do exactly
4 what he did. If the van was stolen, that was a
5 reason he should call. But as he will tell you,
6 many times somebody will steal something when
7 somebody else has walked away from it
8 temporarily. And so ARA would not know it was
9 stolen, the Department of Motor Vehicles would
10 not know it was stolen. There would be no
11 report to the police that it was stolen. And he
12 wanted it verified that that truck belonged to
13 them, and that person that he identified as
14 driving it had some relationship to it.

15 Now, on Monday, Andre Smith was fired.
16 Mark Schnupp was not on duty on Monday. On
17 Tuesday he received a call from ARA, first from
18 Cindy Goss and then from the manager, both
19 requesting at the request of the headquarters in
20 Philadelphia that he provide for them a written
21 account of what had transpired for their file.
22 He went to his supervisor, Sergeant Bennett, and
23 he said, "Sergeant Bennett, I have a request
24 from ARA that I write this. Is it okay?"
25 He said, "Okay. It's your case."

COOK & WILEY, INC.

1 And so he wrote to them that he had
2 observed this vehicle with two black males and
3 had stopped and that they had exchanged money
4 for cocaine. But that between the time that he
5 reported this to the takedown unit and the time
6 that the unit was stopped, that the cocaine had
7 been destroyed. At least it could not be found.
8 And that's solely what he said.

9 Now, counsel has told you what he thinks.
10 And he knows, of course, because he told you
11 he's a criminal lawyer, as am I, that possession
12 is a felony. But you have to prove certain
13 things to prove possession. And the law says
14 very clearly that the fact that there is
15 contraband, that is illegal drugs, in a vehicle
16 owned or operated by someone is no presumption
17 that they possess that cocaine. I'm suggesting
18 to you that when the target walked up to Andre
19 Smith, Andre Smith either said no, not me, I'm
20 not interested in that. Logically that's what
21 he did say, because the man walked around to the
22 man who did have some interest in it. And
23 that's exactly what Mark Schnupp said. He did
24 not accuse Andre Smith of anything except the
25 fact that he was in a high drug trafficking

COOK & WILEY, INC.

1 area. And Mr. Smith will tell you that he knows
2 that that is a high drug trafficking area.
3 That's all.

4 THE COURT: Who is your first witness?

5 MR. BAUGH: Mark Schnupp.

6 THE COURT: How long will he be?

7 MR. BAUGH: I'd say 30, 40 minutes. Your
8 Honor, I can call one witness out of turn, very
9 short. Call Miss Mable Irving.

10

11

12 MABLE IRVING, the witness, called by the
13 plaintiff, first being duly sworn, testifies as
14 follows:

15 DIRECT EXAMINATION BY MR. BAUGH:

16

17 Q Ma'am, would you please state your full
18 name?

19 A Mable Irving.

20 Q Miss Irving, I'm going to ask you to speak
21 up so all the gentlemen over here can hear you.
22 Where do you live?

23 A Let me get my breath. 26th Street.

24 Q That's in Richmond?

25 A Yeah.

1 Q Church Hill?

2 A Church Hill.

3 Q Do you know the plaintiff in this case,
4 Mr. Andre Smith?

5 A Yeah.

6 Q How long have you known him?

7 A About 30 years, something like that.

8 Q And how do you know him?

9 A Very well.

10 Q Did he used to live up there?

11 A Yeah, across from me.

12 Q Does he live there now?

13 A No.

14 Q Do you see him?

15 A Once in a while he drop by.

16 Q When he drops by, for what reason does he
17 drop by?

18 A Well, we been friends for a long time.

19 Q Do you know his mother?

20 A Yeah. His mother and his grandmother.

21 Q Has he ever come by with his children?

22 A Yeah, two or three times.

23 Q Do you ever see him just drive through
24 there or does he slow down and speak to you?

25 A No. Every time he come by to see me.

1 Q Now, would he normally drive his own car?

2 A Yeah.

3 Q Has he ever visited you in his company car?

4 A If he have, I haven't seen the truck up
5 there. I seen he was in his car.

6 Q Am I correct, ma'am, that in the summertime
7 you like to sit outside?

8 A Yeah.

9 Q And sometimes people drive by and just
10 chat?

11 A Right.

12 Q And Andre Smith is one of those people?

13 A Right.

14 Q Is there anything unusual about his coming
15 by to check to see if you're there?

16 A Oh, no. We're friends. Ever since he been
17 small we been friends.

18 Q Does he have other friends up there besides
19 you?

20 A Well, we did when he was growing up, but I
21 don't know about now.

22 Q Thank you, ma'am.

23

24 MR. BAUGH: Pass the witness.

25 MR. BENEDETTI: I have no questions.

1 THE COURT: Thank you, Miss Irving. You
2 may step down.

3 Ladies of the jury, we'll be taking a
4 luncheon recess. It's 1:00. And I was hoping
5 to perhaps have a shorter lunch period, but
6 there's something I need to do, so please come
7 back at 2:00. And during this time don't
8 discuss the case.

9
10 (Luncheon recess.)

11
12 MR. BAUGH: Mr. Mark Schnupp, please.

13
14
15 MARK SCHNUPP, the defendant, called by the
16 plaintiff, first being duly sworn, testifies as
17 follows:

18 DIRECT EXAMINATION BY MR. BAUGH:

19
20 Q Please state your full name for the Court
21 and the record, spelling your last name,

22 A I'm Mark Richard Schnupp, spelled
23 S-c-h-n-u-p-p.

24 Q Mr. Schnupp, are you employed?

25 A City of Richmond, police department.

1 Q And, of course, you're the defendant in
2 this case?

3 A That's correct.

4 Q You understand that I represent Mr. Smith?

5 A That's correct.

6 Q Now, before we go anywhere else, is it
7 unlawful to possess narcotics?

8 A Yes.

9 Q Is it a felony?

10 A Yes.

11 Q Further, is it unlawful to help someone
12 else to aid and abet someone else to possess drugs?

13 A Yes, sir.

14 Q If I help someone by driving them and
15 stopping the car and helping them to acquire drugs,
16 have I committed a crime?

17
18 MR. BENEDETTI: Objection. I think that's
19 a question for a judge or court or a jury to
20 decide. It's certainly not up to Mr. Schnupp,
21 because there's nothing in the code that
22 specifies that such is a crime.

23 MR. BAUGH: Withdrawn.

24

25 Q Aiding and abetting, describe it. What is

1 aiding and abetting?

2 A Depends on -- I'm not sure if I understand
3 your question. In what circumstance?

4 Q No. I'm saying is aiding and abetting a
5 crime. You said yes. What do you mean when you say
6 aiding and abetting is a crime? To aid and abet
7 someone is to do what?

8 A Is to help somebody.

9 Q So if someone were to help someone to
10 commit a crime, that would be a crime in and of
11 itself, right?

12 A Unless you give me a specific example,
13 Mr. Baugh, I cannot answer that question for you.

14 Q If I were to drive someone someplace so
15 they could get drugs, stop the vehicle so they could
16 talk to a drug dealer, keep the vehicle stopped so he
17 could talk to someone that I recognize as a drug
18 dealer, wait while that person purchases drugs and
19 then take him someplace, that would be aiding and
20 abetting, wouldn't it?

21 A From personal experience I've never
22 arrested anyone for that.

23 Q I didn't ask you that.

24 A My answer would be I do not know the answer
25 to that.

1 Q So have you ever arrested anyone for aiding
2 and abetting in a drug transaction?

3 A No, sir.

4 Q How long have you been a police officer?

5 A Approximately three years.

6 Q And prior to that what did you do for a
7 living?

8 A I was a bartender at a restaurant and then
9 was a manager at a restaurant.

10 Q What restaurant?

11 A Black-eyed Pea.

12 Q Where was that?

13 A In Northern Virginia.

14 Q So then you decided to become a police
15 officer?

16 A I had wanted to be a police officer for
17 several years.

18 Q For how long?

19 A Ever since I was a little kid.

20 Q And you've always wanted to grow up to be a
21 police officer?

22 A Correct.

23 Q Are you married?

24 A No, sir.

25 Q You own a home?

1 A No, sir.

2 Q Have a mortgage?

3 A No, sir.

4 Q Have any children?

5 A No, sir.

6 Q What is your approximate salary as a police
7 officer?

8 A 28,000 a year.

9 Q High school graduate?

10 A Yes, sir.

11 Q You're not required to have any more
12 schooling than that?

13 A Not that I'm aware of. Not at the time
14 when I applied.

15 Q You do have what, a year of college?

16 A I have an associate's degree.

17 Q When did you get that?

18 A Last spring.

19 Q Now, you said that this particular area,
20 calling your attention to August 21st, you said the
21 area of 26th Street is a high drug area?

22 A Yes, sir.

23 Q Are there a number of high drug areas over
24 in Church Hill?

25 A Yes, sir.:

- 1 Q Many of them?
- 2 A Yes, sir.
- 3 Q Are there a number of them in Mosby Court?
- 4 A Yes, sir.
- 5 Q Fairfield Court?
- 6 A Yes, sir.
- 7 Q Whitcomb Court?
- 8 A Yes, sir.
- 9 Q Ginter Park?
- 10 A I'm not sure where Ginter Park is.
- 11 Q Carytown?
- 12 A There are drugs sold everywhere in the city
- 13 if that's what you're asking me.
- 14 Q Are there some places where drugs are sold
- 15 more frequently than others?
- 16 A Not that I know. I know that drugs are
- 17 sold everywhere in the city.
- 18 Q So is your testimony now that no place is
- 19 more of a high drug area than any other place?
- 20 A There are areas that I know where I work
- 21 that I know where a lot of drugs are sold only
- 22 because I work there. But I also know other areas
- 23 where a lot of drugs are sold, but I don't have
- 24 personal knowledge of that.
- 25 Q But there are a lot of places in the city

1 that could be described as high drug places?

2 A Yes, sir.

3 Q And many of them are in Church Hill?

4 A In the city.

5 Q Yes. And many of them are in Church Hill?

6 A In the city.

7 Q Now, on August the 21st, am I correct, sir,
8 that you were in an abandoned building?

9 A That's correct.

10 Q On the second floor?

11 A That's correct.

12 Q On 26th Street in the 900 block?

13 A Yes, sir.

14 Q Did you have permission to go in there?

15 Did you talk to the owner, a Mr. Jonathan?

16 A It was an abandoned building.

17 Q You mean it isn't owned by anyone?

18 A Not that I know of.

19 Q Well, did you check?

20 A No, sir.

21 Q And you and Mr. Ambrozy went up there, am I
22 correct?

23 A Yes, sir.

24 Q And about how long were you up there that
25 day?

1 A I would say approximately an hour to an
2 hour and a half.

3 Q And this was in August?

4 A Yes, sir.

5 Q I assume it's not air conditioned?

6 A No, sir.

7 Q And many of the windows were covered up,
8 am I correct?

9 A No, you're not correct with that.

10 Q Oh, you didn't have to peel something out
11 of the way to look?

12 A In one window I had to, but not all the
13 windows.

14 Q Now, would you handle one part of the
15 building and Mr. Ambrozy would handle another, or
16 would you move around or what?

17 A Officer Ambrozy was situated more to the
18 front of the building and I was off to the side.

19 Q Now, on August 21st, about how long had you
20 been there before you saw a first something you
21 considered to be a drug deal?

22 A I'd say about five minutes.

23 Q And the person that you saw -- because you
24 saw someone on the street that you had seen before?

25 A Excuse me?

1 Q Had you seen someone on the street that you
2 recognized before?

3 A I believe one of them was someone I
4 recognized before, yes, sir.

5 Q And how many people were out there dealing
6 that day?

7 A There were two established targets, and
8 then three other --

9 Q Established targets? What does that mean?
10 They were found to be in possession of drugs?

11 A No, sir.

12 Q They were suspected targets?

13 A That's correct.

14 Q And you witnessed a number of what you
15 considered to be transactions, am I correct?

16 A That's correct.

17 Q Now, the first one involved what, a woman
18 walking up?

19 A I believe so, yes, sir.

20 Q And she was on foot?

21 A That's correct.

22 Q And which one of your two suspected targets
23 did she speak with? We'll call them Target A and
24 Target B.

25 A A gentleman in a Miami Dolphins T-shirt.

1 Q And the gentleman in the Miami Dolphins
2 T-shirt, had you seen him before?

3 A No, sir.

4 Q And she walked up to him. And what did you
5 see happen with the gentleman in the Miami Dolphins
6 T-shirt?

7 A The two engaged in a short conversation at
8 which time she handed him a piece of U.S. currency.
9 He opened up a small plastic clear bottle, which I
10 recognized to be the type that Lifesavers candy come
11 in now. He took the money from her and then gave her
12 one of the white items that was in the container.

13 Q Now, how close to these people were you
14 when you say you saw them?

15 A I was up on the second floor, approximately
16 15 to 20 to 30 feet away.

17 Q Maybe no farther than this lady here in the
18 purple sweater?

19 A I'd say probably a little bit further than
20 that.

21 Q And you actually saw the substance that
22 came out, right?

23 A Yes, sir.

24 Q How long had you been with the strike force
25 at that time?

1 A Two years.

2 Q Now, was that woman arrested?

3 A No, she was not.

4 Q Was the person that you saw make the deal
5 arrested at that time?

6 A No, sir.

7 Q Was he ever arrested?

8 A No, sir.

9 Q What was the next deal you saw?

10 A I believe it was a gentleman who had come
11 up on a bicycle?

12 A What did he do, did he go to the same
13 target?

14 A Yes, sir.

15 Q And did he likewise hand somebody some
16 money and get something?

17 A Yes, sir.

18 Q And within 15, 20 feet of you where you
19 could see it?

20 A Yes, sir.

21 Q Did you overhear their conversation?

22 A No.

23 Q Let me guess. He wasn't stopped either,
24 was he?

25 A No, sir.

1 Q Now, the third one was a Volvo, right?

2 A I believe so.

3 Q And where did that car park, right in front
4 of you?

5 A Yes, sir.

6 Q And were you able to look down and observe
7 the transaction?

8 A Yes, sir.

9 Q And which target was this with?

10 A I believe the second individual.

11 Q And what did the second individual have on?

12 A I don't recall at this point.

13 Q And, again, did this person have drugs?

14 A The target?

15 Q Yes.

16 A Yes, sir.

17 Q What did he have them in?

18 A Same item.

19 Q A Lifesaver thing?

20 A Yes, sir.

21 Q Now, have you ever made a residue case?

22 A Excuse me?

23 Q Have you ever made a residue case?

24 A Yes, sir.

25 Q Am I correct, for the ladies of the jury,

1 that a residue case is sometimes you arrest someone
2 with just the package and there's just like powder or
3 leftover in the case, am I right?

4 A Yes, sir.

5 Q And you send that to the lab?

6 A Yes, sir.

7 Q And if it comes back positive that person
8 gets convicted, right?

9 A That's right.

10 Q In fact if you think there's residue in
11 what appears to be an empty container, you normally
12 arrest them, am I correct?

13 A Yes, sir.

14 Q Now, this Volvo, what happened to it? Did
15 it drive away?

16 A No, sir.

17 Q Was it stopped?

18 A No, sir.

19 Q Was anyone in that car arrested?

20 A No, sir.

21 Q The second target, was he arrested?

22 A No, sir.

23 Q So how much longer was it before the ARA
24 van showed up?

25 A I'd say maybe about ten minutes, five

1 minutes.

2 Q Now, when the ARA van drove up did you
3 recognize it as a commercial vehicle?

4 A I recognized it as some type of a business.

5 Q It had ARA written across the side of it,
6 didn't it?

7 A Yes, it did.

8 Q And you're saying it stopped right in front
9 of you, am I correct? I mean you could look through
10 the driver's window into the passenger's window,
11 you're telling this jury, right?

12 A That's right.

13 Q And you're telling us that you saw
14 someone -- well, what did the target do? Which
15 target was it?

16 A It was the gentleman in the Miami Dolphins
17 T-shirt.

18 Q And what did he do?

19 A He stepped up from where he was sitting on
20 the curb. He walked over to the driver of the
21 vehicle and exchanged -- I could just hear their
22 voices, but I couldn't make out what they were
23 saying, at which time he went around to the passenger
24 side of the vehicle. He positioned himself in a way
25 that I could see him through the driver's side of the

1 window, and I could just see the front part of the
2 passenger of the vehicle. He was shorter than the
3 van's window was from where he was talking, so he had
4 to hold his hand up to the window of the van, at
5 which time the passenger and the target exchanged
6 money for items that were inside these, again, small
7 clear plastic vials.

8 Q And you saw the target pour out some little
9 white rocks?

10 A That's correct.

11 Q That you assumed were crack cocaine?

12 A I believed to be crack cocaine.

13 Q And you were able to look right through and
14 see all three of these people?

15 A That's correct.

16 Q Because if the takedown unit had made an
17 arrest it would be your case, right?

18 A I would be the lead investigator. We would
19 all be involved in the case.

20 Q And you would also have to be the one to
21 testify against the guy who's selling it, am I
22 correct?

23 A That's correct.

24 Q Because there was nobody else up there to
25 see that transaction? Mr. Ambrozy didn't see it, did

1 he?

2 A He just saw the van stop. He didn't see
3 the transaction.

4 Q So you paid attention to what people looked
5 like, right?

6 A That's correct.

7 Q Was the driver wearing a brown hat and an
8 ugly brown shirt with ARA on the driver's side of it?

9 A No, not that I could see.

10 Q Isn't one of the reasons you're doing this
11 so you can watch what happens so you can come to
12 court and testify, "I saw that person"?

13 A No, sir. I didn't see the driver do
14 anything. As I stated, I was watching the passenger
15 of the vehicle.

16 Q What did the passenger look like? Would
17 you recognize him?

18 A No, sir. I just knew him from --

19 Q If you can't recognize --
20

21 MR. BENEDETTI: If Your Honor please, I
22 would ask counsel to allow the witness to answer
23 the question before he starts another question.

24 THE COURT: Did you complete your answer?

25 THE WITNESS: No, sir. I wish he'd ask the

1 question again.

2 MR. BAUGH: I've forgotten what the
3 question was.

4

5 Q So one of the reasons you were there was to
6 see who the passenger was so you could testify
7 against him, right?

8 A My job was to watch the passenger and the
9 target and determine whether or not I thought a
10 narcotics transaction had taken place.

11 Q But, sir, aren't you later, if one does
12 take place, supposed to make an arrest or see an
13 arrest is made to testify?

14 A That's correct.

15 Q And isn't one of the questions you have to
16 ask when you go to court, isn't someone going to ask
17 you, do you see the person in the court that bought
18 or sold those drugs, aren't you supposed to answer
19 that question?

20 A Yes, sir.

21 Q And you're supposed to answer it, right?

22 A That's correct.

23 Q Well, were you observing so you could
24 answer that question?

25 A Yes, sir.

1 Q Now, would you recognize the passenger if
2 you saw him again?

3 A No, sir.

4 Q Now, when was the takedown team in
5 position?

6 A They were, as far as I know, in position at
7 the time that I called in the ARA van.

8 Q Well, did you call them in on the first
9 girl?

10 A No, sir.

11 Q Did you call them in on the guy on the
12 bicycle?

13 A I didn't call them in on any of the first
14 three.

15 Q Let's talk about that. The Volvo, did you
16 get a tag?

17 A No, sir.

18 Q The Volvo was in a high drug area, wasn't
19 it?

20 A Yes, sir.

21 Q Did you run the tag so you could call
22 whoever to see if it was stolen?

23 A No, sir. As I stated to you, I did not
24 have any information related about the first three
25 transactions I saw take place.

1 Q I'm asking whether or not you checked the
2 tag on the Volvo to see if it was stolen?

3 A No, sir.

4 Q Now, after you witnessed what you say you
5 saw with the ARA van, first, as you sit here now do
6 you know if any other officer observed the
7 transaction that you're saying you observed?

8 A No, sir.

9 Q You're saying you don't know or no other
10 officer observed it?

11 A I just know that Officer Ambrozy was the
12 only one who was up there with me. He saw the van
13 stop, but he did not see anything after that.

14 Q You didn't call him and tell him, "Look at
15 this"?

16 A He was standing right next to me. I didn't
17 have to do that.

18 Q But he didn't see it?

19 A No, because from where he was the van was
20 blocking his view of the passenger.

21 Q By the way, carrying a Lifesaver container,
22 people use that all the time, don't they? You see
23 all kinds of Lifesaver containers?

24 A I see Lifesaver containers being used to
25 house narcotics is all I see them used for.

1 Q Now, is your testimony you actually saw the
2 target pour drugs out into his hand so the passenger
3 could look them over and buy them?

4 A That's correct.

5 Q Then you called somebody else and said stop
6 this vehicle?

7 A That's correct.

8 Q And you watched the vehicle go down to the
9 corner, turn and go about one or two blocks, then you
10 lost him?

11 A No, sir.

12 Q Okay.

13 A The vehicle was stopped in the middle of
14 the block. It drove southbound until it reached the
15 stop sign approximately 50 yards, at which time it
16 turned right onto P Street -- O Street. At that time
17 it went another 50 yards and stopped at another stop
18 sign. At that time it started to go across 25th at
19 which time I saw the takedown unit come in right
20 behind it, and I told them that's the vehicle right
21 in front of you. I described it, so I never lost
22 sight of it until the time our takedown team was able
23 to stop it.

24 Q Now, you couldn't observe when they pulled
25 out the vehicle, could you?

1 A When they left?

2 Q Yes, after they left. When the takedown
3 team got them out, did you observe that?

4 A Oh, no. I didn't see while they were
5 stopped.

6 Q Did they call and tell you they couldn't
7 find anything?

8 A I found out -- after a couple of minutes I
9 radioed back to them to find out what the situation
10 was, and they told me at that time they had not found
11 anything yet.

12 Q Did you tell them, "By the way, check to
13 see if the vehicle is stolen"?

14 A No, sir.

15 Q There are certain things that street
16 officers look for in a stolen car, am I correct?
17 Like a broken glass pane, that would be consistent
18 with stolen, wouldn't it?

19 A In some situations.

20 Q A torn out lock?

21 A In some situations.

22 Q Lack of registration?

23 A In some situations.

24 Q Did you tell any of the officers on the
25 takedown team, "By the way, I think that van might

1 be stolen, check it"?

2 A No, sir.

3 Q But you did think it might be stolen, am I
4 correct?

5 A No, sir. My testimony was I had no contact
6 with them after the van was stopped. And I only
7 asked them one time what they had found, and from
8 that point I had no further contact with them.

9 Q But, sir, when you first contacted them,
10 when you told them to stop the truck, you told them
11 to check for drugs, you never told them that you
12 suspected it might be stolen?

13 A That's correct.

14 Q Then you asked them for the status of it,
15 am I correct? The status of the stop, if they found
16 anything?

17 A That's correct.

18 Q And they told you nothing?

19 A That's correct.

20 Q At that time did you tell them, "Before you
21 let him go, check to see if that vehicle is stolen"?

22 A No, sir. I don't tell the officers how to
23 conduct their business.

24 Q Well, did you have a suspicion that it
25 might be stolen?

1 A No, sir.

2 Q When you first saw it, you didn't have any
3 concern that it might be stolen?

4 A My concern at that point was that the
5 individual on the passenger's side of the vehicle had
6 bought narcotics, and that's why the vehicle was
7 stopped.

8 Q That's nice, sir. Answer my question. My
9 question was at that time, sir, you had no concern
10 that the vehicle was stolen, am I correct?

11 A That's correct.

12 Q Now, what is the radio call for running a
13 stolen car check? What is that, a 1020?

14 A 1027 or 1029.

15 Q So you mean you guys even have a lingo, a
16 buzz word or a phrase that will tell people to check
17 to see if something's stolen, run a 1027, run a 1029
18 on a vehicle?

19 A It's not a buzz word. Just common police.

20 Q Okay. Now, if it were proven to you that
21 this was the man that was driving the vehicle, is it
22 your testimony as you sit here now that that man
23 stopped that vehicle and allowed someone else to
24 purchase drugs?

25 A Undoubtedly he stopped the vehicle.

1 Undoubtedly the passenger of that vehicle purchased
2 narcotics. There's no doubt in my mind. It's been
3 my experience for the last two years in narcotics
4 work.

5 Q Now, how long after this did you call ARA?

6 A Our surveillance ended at approximately
7 4:30 that day. We were working day shift which we
8 got off at 5:00. I got back to the office at 4:30.

9 Q What time did you call ARA?

10 A That's what I'm trying to explain to you.
11 I got back around 4:30 to the office. And after
12 talking with D.C. and getting the notes from him,
13 I called probably around quarter to 5:00.

14 Q Did you ask any officers if the driver was
15 wearing an ARA uniform?

16 A No, I did not.

17 Q Did you tell those officers you were
18 concerned at that time the vehicle might be stolen?

19 A I had started to discuss it with them, that
20 based on what I had seen that it might have been a
21 possibility that individuals in that vehicle did not
22 belong there.

23 Q Well, did you ask the officers when they
24 stopped if there was registration in the vehicle?

25 A No.

1 Q Did you ask them if there was registration,
2 whether or not the registration matched the name on
3 the driver's license or if the guy had an ARA ID card
4 or anything like that? Did you ask them anything
5 like that?

6 A No, sir. Just examining registration would
7 not tell me if a car is stolen. That has nothing to
8 do with it.

9 Q Let me ask you this. Did you think the
10 Volvo was stolen?

11 A No.

12 Q What was different about the Volvo that
13 made you think the van might be stolen and the Volvo
14 wasn't?

15 A What was different between the Volvo and
16 the van?

17 Q That made you think one might be stolen and
18 one wasn't?

19 A Both reasons were that they were in a high
20 drug area buying narcotics.

21 Q So every time a vehicle drives through an
22 area which you call a high drug area, which is most
23 places in the city, you suspect that vehicle is
24 stolen?

25 A No, sir, that's not what I said.

1 Q Well, how often do you call in on a vehicle
2 to see if it's stolen?

3 A Every time it's stopped.

4 Q Every time you stop a vehicle you call in
5 to see if it's stolen?

6 A That's correct.

7 Q How often do you call an employer of a
8 commercial vehicle?

9 A This was my first experience with one of
10 those. My first time.

11 Q So then there came a time when you called
12 ARA. And did you ask them if their vehicle was
13 stolen?

14 A When I first called, I called, I guess, the
15 wrong division. I was given --

16 Q No. The question I asked is --

17 A Well, I have to explain it, see.

18 Q No, sir. The question that I'm asking is
19 not who you spoke to or how you spoke to --
20

21 MR. BENEDETTI: Your Honor, please, I
22 object. The witness is entitled to answer the
23 question, then explain the answer which he is
24 trying to do. But counsel continues to
25 interrupt him and I object to it.

1 MR. BAUGH: Your Honor, the answer was
2 nonresponsive.

3 THE COURT: Ask the question, if you will.
4

5 Q Sir, did you call in to ARA and ask them
6 was the truck stolen?

7 A At a certain point, yes, I did.

8 Q And during any of those conversations did
9 you ask the person with whom you spoke if the person
10 driving the vehicle might be using drugs? Did you
11 ask that question?

12 A No, I did not.

13 Q Did you ask them if Andre Smith might be
14 using drugs?

15 A No, sir, I did not.

16 Q Now, did you tell them about where the
17 vehicle had been?

18 A Yes, sir, I did.

19 Q Did you also tell them about what you
20 perceived to be a drug transaction?

21 A No, sir, I did not.

22 Q The only thing you're saying you told them
23 about was questions about title of the vehicle and
24 you never mentioned anything about drugs or a drug
25 transaction?

1 A If you would give me a chance to explain --

2 Q No, sir. The question is this. Did you
3 mention anything about drugs or a drug transaction
4 during the phone calls on Friday the 21st?

5 A Told them we were conducting a narcotics --

6 Q No, sir.

7

8 MR. BAUGH: Your Honor, nonresponsive.

9 I have asked him whether or not he mentioned
10 drugs.

11 THE COURT: Can you answer that question?

12 THE WITNESS: Not in the way he's posing it
13 to me, Your Honor, I cannot.

14

15 A I told them that we were conducting a
16 narcotics surveillance. But I didn't know who the
17 lady was I was speaking to at the time, whether or
18 not she knew the two in the van, so I was very
19 careful with what I was saying to her until I could
20 determine whether or not she knew who I was talking
21 about.

22 Q After you found out who she knew you were
23 talking about --

24 A She did not in that initial phone call know
25 for a fact.

1 Q At any time on Friday the 21st, did you
2 mention drugs?

3 A I said the words "narcotics surveillance."

4 Q At any time did you mention that you had
5 observed what you perceived to be a drug transaction?

6 A Between a passenger and a target.

7 Q And you told them that the driver stopped
8 the vehicle so the target could go over there, right?
9 Did you tell them that?

10 A I told her --

11 Q Wait a minute. Time out. You did tell the
12 person about what you had seen the passenger do with
13 drugs?

14 A I did not mention the word "drugs."

15 Q What word did you use then?

16 A I told them that we were conducting a
17 narcotics surveillance in the 900 block of North 26th
18 Street. A van with ARA and the license plate I
19 described stopped in the 900 block, that a target
20 approached the passenger. And then based on what I
21 saw, the van was stopped by our takedown team.

22 Q Did you ask her was the vehicle stolen?

23 A She --

24 Q No. The question was did you ever ask her
25 was the vehicle stolen?

1 A I asked her if she knew if the vehicle was
2 under her command.

3 Q Sir, I ask you, did you ever ask her was
4 the vehicle stolen?

5 A No, sir, I did not.

6 Q At the time you made the call you had the
7 name of the driver, didn't you?

8 A That's correct.

9 Q Did you ask her whether Andre L. Smith was
10 operating that vehicle?

11 A Did I ask her if he was operating it?

12 Q Yes, sir.

13 A No, I did not.

14 Q Did you ask her whether or not he was
15 supposed to be operating that vehicle?

16 A No, I did not.

17 Q Did she tell you Andre Smith was supposed
18 to be operating that vehicle?

19 A No. She said she wasn't sure who he was.

20 Q Now, police officers do things. Y'all
21 write reports, don't you?

22 A That's correct.

23 Q Now, was a report written on the girl who
24 came up and you said you witnessed the transaction?

25 A No.

1 Q Because no arrest was made, am I correct?

2 A That's correct. That's one of the reasons.

3 Q And did you make a report on the guy on the
4 bicycle?

5 A No, sir.

6 Q Because no arrest was made?

7 A That's right.

8 Q Later after all this was through, did you
9 stop the guys with the little vials?

10 A One of them.

11 Q Was he stopped, I mean detained?

12 A To the best of my knowledge, he was, yes,
13 sir.

14 Q Anything found on him?

15 A No, not that I -- I didn't stop him, but I
16 was told nothing was found on him.

17 Q So no drugs on him either. Was a report
18 written on that?

19 A No.

20 Q Was one of the reasons because there was no
21 arrest made?

22 A Yes, sir.

23 Q Was an arrest made in the ARA van?

24 A No, sir.

25 Q But you wrote a report on that one, didn't

1 you?

2 A Yes, sir.

3 Q Now, had they asked for that report, you
4 would not have written it, am I correct?

5 A If who would have asked for it?

6 Q Unless ARA had asked for that report, you
7 would not have written it, am I correct?

8 A That's correct.

9 Q And the only reason they asked for it was
10 because you had called them and told them, am I
11 correct?

12

13 MR. BENEDETTI: Objection. He doesn't

14 know --

15 MR. BAUGH: Withdrawn.

16 MR. BENEDETTI: -- why they asked for it.

17 MR. BAUGH: Withdrawn.

18

19 Q When you spoke to whoever it was on the
20 phone on Friday, did they seem to know what you were
21 talking about?

22 A You'll have to make your --

23 Q Well, did you identify yourself as a police
24 officer?

25 A Yes, sir.

1 Q And you told them you were working on this
2 drug and firearm strike force?

3 A That's correct.

4 Q Well, when you told them that, did you
5 think they might fire him?

6 A Told them what?

7 Q When you told them on Friday about what you
8 had observed, didn't you think they might fire this
9 guy, whoever he is?

10 A No, sir. I didn't know --

11
12 MR. BENEDETTI: Objection. What he thinks
13 is of no consequence.

14 MR. BAUGH: Yes, it is, Your Honor. His
15 intent is thee consequence.

16 THE COURT: Objection is overruled.

17
18 Q Didn't you think that the people, if this
19 guy really did work for them, they might fire him
20 when you tell them, "Hey, I'm from the drug and
21 firearm strike force. We're doing a drug
22 surveillance. Your vehicle's seen up here. There's
23 some stuff going on between the passenger and
24 somebody"? Didn't you think they might fire him or
25 did you care?

1 A I didn't think that they would fire him.
2 I didn't say anything derogatory about the driver of
3 that vehicle. I made no statement about the driver.
4 Only thing I said was the van was stopped in the 900
5 block.

6 Q And it's your testimony that you never
7 asked them whether or not there was a problem with
8 Andre Smith using drugs in that conversation?

9 A I never asked them if he used drugs.

10 Q Now, when you wrote the report that you
11 wrote, did you think that might get him fired?

12 A No, sir. Again, I wasn't making any
13 statements towards him.

14 Q Sir, you keep saying that. It is your
15 testimony that if someone aids and abets another
16 person in committing a crime, that's a crime, right?

17 A In some circumstances, yes, it is.

18 Q And eventually when you wrote the report,
19 you stated that the driver stopped --

20
21 MR. BENEDETTI: Your Honor, please, I
22 object to any reference to this report until
23 such time as the Court rules on pre-trial
24 motions in limine.

25 MR. BAUGH: Withdrawn.

1 Q Sir, after you had the first conversation
2 on the telephone, did they call you back and ask you
3 to give them a written report about what you had told
4 them?

5 A Yes, sir.

6 Q So this written report was an extension of
7 the conversation you had on the 21st, am I correct?
8 This was a memorialization of that conversation?

9 A It was just a synopsis of what happened.

10 Q Yes, but this written report is about the
11 phone call that you made?

12 A No, sir. It was about what took place.

13 Q Okay. You discussed what took place, you
14 say, on the 21st, am I correct?

15 A That's correct.

16 Q And then they asked you to give them a
17 written report about what you told them, am I
18 correct?

19 A That's correct.

20 Q And this report is the written report about
21 what you told them, am I correct?

22 A On the telephone?

23 Q This is about the same transaction, isn't
24 it?

25 A No, sir. The conversation on the 21st and

1 the 25th were completely -- they were not as direct
2 as that one on the 25th was.

3 Q Is that the report?

4 A Yes, it is.

5 Q You recognize this as the report that you
6 typed with your own two fingers on August 25th, 1992?

7 A That's correct.

8 Q And you mailed it to ARA?

9 A Yes, sir.

10
11 MR. BAUGH: Your Honor, we ask this be
12 marked as Plaintiff's Number 1. May I publish
13 it to the jury?

14 THE COURT: Have you seen this, Mr.
15 Benedetti?

16 MR. BENEDETTI: Yes, sir, I've seen it.
17 And subject to the Court's ruling on the issue
18 that was addressed in the motion in limine, I
19 have no objection at this time except for that
20 already expressed.

21 THE COURT: Mr. Baugh, I'm going to receive
22 this right now. Do you need to publish this
23 right now for the jury?

24 MR. BAUGH: Not at this moment. I can
25 always recall Mr. Schnupp, but I would ask that

1 it be marked with plaintiff's tags.

2 THE COURT: I want to withhold judgment on
3 this first until later. Go ahead.

4

5 Q Now, Mr. Schnupp, when you made this phone
6 call did you even care what happened to the driver of
7 that vehicle?

8 A I'm not sure if I understand your question.

9 Q Well, it's your testimony now you're saying
10 you didn't think he did anything wrong?

11 A He did not do anything wrong.

12 Q And you never asked anybody about his using
13 drugs and you never made such an allusion, am I
14 correct?

15 A An allusion?

16 Q You never alluded to the possibility he had
17 done something illegal?

18 A No, sir. The only person I asked about,
19 again, was the passenger of that vehicle.

20 Q And the reason for calling was to see if
21 the vehicle was stolen, am I correct?

22 A There were two reasons I called.

23 Q Yes?

24 A First was a check to see if not only was
25 the vehicle stolen but to see if those people were

1 authorized to operate that vehicle, and to tell the
2 people at ARA why the vechicle stopped because a
3 large crowd had gathered once the vehicle was
4 stopped.

5 Q Well, crowds always gather around cars when
6 police come out with their guns and stuff?

7 A Not all the time.

8 Q How about that? You take that to mean they
9 might have guns?

10 A No, sir.

11 Q But you knew they were going to jump out
12 with guns drawn?

13 A They conduct themselves in the way they
14 feel necessary. Any felony stop, you're allowed to
15 draw your gun.

16 Q Wait. Who told you that you're allowed to
17 draw your gun whenever you suspect --

18 A No one's ever told me that. That's how we
19 conduct ourselves.

20 Q No, but you said you were allowed. Are you
21 telling me as an officer under Patrick versus South
22 Carolina it's your understanding of the law that you
23 can draw a weapon and point it at someone's head if
24 you suspect they're engaged in felonious activity?

25 A That's not what I said.

1 Q Okay. So it is not just determined by what
2 the officer thinks? That is determined by the law,
3 am I correct, whether or not a weapon can be used?

4 A All I can tell you is those officers
5 reacted the way they thought was necessary. I did
6 not tell them to do anything.

7
8 THE COURT: He wasn't there.

9 MR. BAUGH: All right. Thank you.

10
11 Q As you sit here now, are you of the
12 impression that this defendant over here was using a
13 company vehicle on Friday, August the 21st, 1992 to
14 help someone else buy drugs?

15 A Do I think he was helping that person do
16 it?

17 Q Yes.

18 A All I know is whether he knew of it or
19 not -- I can't answer your question if you'll
20 interrupt me, Mr. Baugh. I'd like to answer your
21 question, but I can't if you keep interrupting me.

22 Q No, no. The question is very simple and
23 please answer it. I'm asking you for your
24 impression. And if you wish to explain it further,
25 you may. The question is as you sit here now and you

1 look at this man, understanding that he was driving
2 the vehicle, are you of the impression that he helped
3 someone else to acquire drugs?

4 A All I know is he was driving a vehicle and
5 someone who was in it stopped to buy drugs.

6 Q And it's your impression that he --

7 A Whether or not he knew what was going on I
8 cannot tell you that for sure, because he can say one
9 thing or another. But it's my impression that he
10 drove the vehicle and was stopped in the 900 block,
11 that a person who was under surveillance for
12 distribution of narcotics approached the passenger of
13 that vehicle and sold him narcotics.

14 Q And that person would have been three feet
15 away?

16 A That's correct.

17 Q Because the van, I mean it was an ordinary
18 old step van, correct?

19 A That's correct.

20 Q And you were able to look from 15 to 20
21 feet away and actually see the substance in the man's
22 hands?

23 A That's correct.

24 Q And this man would have been only three
25 feet away?

1 A That's correct.

2 Q Did you happen to observe what the driver
3 was looking at while this transaction was taking
4 place?

5 A No, sir. My attention was between the
6 target and the passenger of the vehicle.

7 Q Did you know this man before that day?

8 A No, sir.

9 Q When you made either the phone call or when
10 you wrote this memo, this investigative report, did
11 you have any concern or care what might happen to him
12 as an employee of ARA?

13 A If you're asking me what my intent was --

14 Q No, I didn't ask you that. I asked you did
15 you have any concern for what might happen to him?

16 A Sure. I never wanted to do anything wrong
17 to him.

18 Q You did have a concern?

19 A Excuse me?

20 Q What were you concerned about?

21 A I'm telling you that my concern -- I wasn't
22 out to hurt anybody, if that's what you're asking me.

23 Q What do you mean, hurt? You weren't out to
24 hurt him how? How might you hurt him?

25 A You're the one that's asking me that

1 question.

2 Q No. The question I asked you, did you have
3 a concern. You said you didn't want to hurt him.
4 I'll ask you again. Did you have a concern over what
5 might happen to him?

6 A No, sir.

7 Q You just didn't care?

8 A I wouldn't say that.

9 Q Well, how would you describe the degree of
10 your concern?

11 A I was investigating something that I
12 thought needed investigating.

13 Q Which was whether the vehicle was stolen?

14 A See if the vehicle was stolen, see if the
15 two occupants belonged there, to allow ARA to know
16 why the vehicle was stopped.

17 Q This stolen vehicle thing, by the way, it's
18 not written down anywhere, is it? You didn't write
19 down anywhere this vehicle might be stolen, did you?

20 A No, sir. It was in my head.

21 Q And you didn't talk to any other officer?
22 In fact the first time you even came with this idea
23 that it might be stolen is after you got sued, right?

24 A No, sir. That's not true at all.

25 Q Well, who before you got sued did you tell,

1 "I thought that vehicle might be stolen"? Name a
2 person.

3 A I discussed it in the office with the other
4 officers on staff.

5 Q Who were the other officers?

6 A Officers Williams, English and Kurisky were
7 there.

8 Q And you told them, and they will come in
9 and so testify as far as you know that you told them,
10 "I think that vehicle might be stolen"?

11 A I can't answer that.

12 Q Well, the question was who did you tell
13 between the time that this happened and the time you
14 got sued?

15
16 MR. BENEDETTI: Your Honor, please, he has
17 answered the question. I see no need for
18 badgering the witness further and I object.

19 MR. BAUGH: Your Honor, he did not answer
20 the question. He said, I don't know. I asked
21 him who. He said he came up with it before.
22 I'm asking who did you tell it to. He said the
23 officer. I said did you tell the officer. He
24 said I don't know.

25 THE COURT: I thought he said I told those

1 three officers.

2 MR. BAUGH: Yes. And I asked him did you
3 tell the three officers that you thought that
4 vehicle was stolen, and he said I don't know.
5 So I'll ask again.

6

7 Q Did you tell those three officers before
8 you were sued that you thought that vehicle might be
9 a stolen car?

10 A I discussed it with them, yes, sir.

11 Q By the way, today is October the 25th.
12 Since August the 21st, 1992 and today, have you ever
13 run a check on the computer to see if that vehicle
14 was reported stolen ever?

15 A No, sir, I did not. Again --

16 Q Okay, thank you.

17

18 MR. BAUGH: Pass the witness.

19

20

21 CROSS-EXAMINATION BY MR. BENEDETTI:

22

23 Q Mark, how long have you been assigned to
24 the strike force?

25 A Two years.

1 Q What exactly does the strike force do?

2 A We enforce street level narcotics --

3
4 MR. BAUGH: Object, Your Honor. This is
5 clearly outside the scope of direct. If counsel
6 wishes to recall for his own, I'd have no
7 objection to that at a later time.

8 THE COURT: Well, the objection to that one
9 question is overruled. Go ahead, Mr. Benedetti.

10 MR. BENEDETTI: If the objection is going
11 to be repeated, then I would not care to
12 cross-examine him at this time and call him as
13 my witness.

14 THE COURT: All right.

15 MR. BENEDETTI: I'm trying to save time.

16 THE COURT: Thank you.

17 MR. BAUGH: Ms. Cynthia Goss, please.

18
19
20 CYNTHIA GOSS, the witness, called by the
21 plaintiff, first being duly sworn, testifies as
22 follows:

23 DIRECT EXAMINATION BY MR. BAUGH:

24
25 Q You're Miss Cynthia Goss?

1 A Yes.

2 Q And you are employed at ARA?

3 A Yes.

4 Q And you were so employed on August 21st,
5 1992?

6 A Yes, sir.

7 Q And Andre Smith worked there at that time?

8 A Yes, sir.

9 Q On August 21st, 1992 did you get a phone
10 call from someone stating he was a police officer?

11 A Yes, sir.

12 Q And did you have more than one conversation
13 with that person that day, on August 21st?

14 A Not that day, no. Only one conversation
15 that day.

16 Q Did you ever have another telephone
17 conversation with that same officer?

18 A I tried to call the police officer back,
19 yes.

20 Q Did you ever speak with him again?

21 A No.

22 Q So you only had one telephone conversation
23 with the officer that called you on Friday the 21st?

24 A Yes, sir.

25 Q Ma'am, did that officer ask you in that

1 first conversation if you were having any trouble
2 with your employee or you thought that the employee
3 might be using drugs or anything like that?

4 A No.

5 Q Ma'am, do you recollect giving a deposition
6 on June the 17th of this year?

7 A Yes.

8
9 MR. BAUGH: Reading Lines 9 through 13.

10 MR. BENEDETTI: On Page?

11 MR. BAUGH: Page 9.

12
13 Q Read the question and the answer.

14 A The question is, "Have you had any trouble
15 with your employee if you thought he might be using
16 drugs or anything like that?"

17 Q And your answer was?

18 A He asked me that and I said yes. Then he
19 asked if Andre might have been using drugs. "Yes."

20 I don't remember that. As a matter of
21 fact, I was --

22 Q Ma'am, on that first conversation did the
23 police officer mention the word "drugs"?

24 A He said drugs, general drugs.

25 Q And what did he tell you he had seen

1 concerning drugs?

2 A He said he saw my van and he asked me the
3 license plate number. We confirmed that. He said he
4 saw my van in a high profile drug area with a driver
5 and a passenger. The passenger got out, went up,
6 exchanged something with some people on a corner,
7 got back into the van.

8 Q Now, ma'am, not only did he tell you that
9 but while he was telling you that you wrote it down,
10 didn't you?

11 A Uh-huh.

12 Q You kept notes on August the 21st as to
13 what the officer told you he had seen?

14 A Yes.

15 Q And you gave us a copy of those notes?

16 A Yes.

17 Q And during the conversation, do you
18 recollect the officer who you now know to be Mark
19 Schnupp telling you over the phone, one, in the gist
20 of that that he suspected that drug activity was
21 afoot in your vehicle?

22 A Right. He said that he was on a stakeout.

23 Q And he told you and you wrote down in your
24 notes?

25 A He told me the whole story first and then I

1 made him repeat the whole story so that I could write
2 everything down.

3 Q And on both times he told you he witnessed
4 the passenger get out of the vehicle, go over and
5 make the drug transaction in plain view, and then get
6 back in the vehicle?

7 A He said he saw the passenger get out and
8 exchange something.

9 Q He mentioned drugs, though, didn't he?

10 A He mentioned drugs in the conversation, but
11 he didn't say that he thought he went out and
12 exchanged something for drugs. He said it was a drug
13 stakeout.

14 Q Tell me what else he said in that
15 conversation wherein a drug transaction could have
16 occurred. Any other contact between the occupants of
17 that van and any other person?

18 A (Witness shakes head.)

19 Q Based upon that conversation, did you
20 assume that was where the drug transaction occurred?

21
22 MR. BENEDETTI: Objection as to what she
23 assumed. The issue is what was said.

24 MR. BAUGH: No, Your Honor. Innuendo
25 derived from common use words.

1 THE COURT: Well, the jury isn't charged
2 with determining innuendo. The objection is
3 sustained.
4

5 Q Now, during this first conversation did he
6 ever ask you was the vehicle stolen?

7 A He asked me if the vehicle was stolen.

8 Q Ma'am, how many times have you spoken to
9 Mr. Benedetti?

10 A Probably twice.

11 Q And he wasn't present during your
12 deposition, was he?

13 A No.

14 Q Ma'am, referring again to Page 9, Lines 2
15 through 3, "Did he ask you if the vehicle was
16 stolen," what was your answer?

17 A "No."

18 Q Ma'am, I'll ask you again. Did he ask you
19 in the first conversation whether or not your vehicle
20 was stolen?

21 A He asked me if my van could have been
22 stolen.

23 Q Wait a minute.

24 A I asked him -- he gave me the license plate
25 number. I said that was our van. He asked me if I

1 knew Andre Smith and I said yes.

2 Q And you told him he was an employee of
3 yours?

4 A Yes, I did.

5 Q And then he asked you if the vehicle was
6 stolen?

7 A I don't remember, sir. It's 10, 15 months
8 ago. I don't exactly remember the conversation now.

9 Q Wait a minute, ma'am. You gave this
10 deposition under oath, remember? You raised your
11 hand to tell the truth?

12 A Yes. And I'm trying --

13 Q Do you recollect being asked the question
14 about whether or not this officer discussed with you
15 whether or not the vehicle was stolen on that date?
16 Do you remember that question?

17 A I don't remember the question.
18

19 MR. BENEDETTI: Your Honor, please, I think
20 he's trying to impeach his own witness. And if
21 that's the case, then I object to that.

22 MR. BAUGH: Surprise, Your Honor. I've got
23 a transcript right in front of me and she's
24 giving me a different answer and that is an
25 exception.

1 THE WITNESS: Also the transcript that you
2 have right in front of you I've read it over
3 several times, and it's exactly like it was when
4 we sat down and talked.

5
6 Q Who gave you the deposition? Who gave you
7 a copy of the transcript?

8 A Joe Benedetti.

9 Q Mr. Benedetti?

10 A Yes.

11 Q Now, I never came back and gave you this,
12 did I?

13 A Right, because I waived my right.

14 Q Did Mr. Benedetti give this to you so you
15 could review it before you came to court today?

16 A Yes.

17 Q Mr. Schnupp's lawyer?

18 A Yes.

19 Q And you don't remember reading that line
20 when you reviewed it?

21 A I didn't say that particular line, but I
22 know that there are several questions in there that
23 were not questions that were asked of me, that my
24 answers do not go with the questions that are asked
25 in that.

1 Q Well, ma'am, I'm going to offer your notes
2 and I'll ask you, in your notes under August 21,
3 Friday at 5:00, are there any notes in here where
4 anyone asked you about whether or not the vehicle was
5 stolen. And you can review your handwritten notes,
6 if you like, and you tell me if on your August 21
7 notes you see any words where that man asked you
8 about if the vehicle was stolen.

9 A (Witness reads notes.) No.

10 Q And so if I were to ask you, based on your
11 notes, were you asked if the car was stolen, your
12 answer would be the same as it appears --

13 A Right, no.

14 Q -- in your deposition under oath, am I
15 correct?

16 A Exactly.

17 Q As a consequence of this telephone
18 conversation with the person you now know to be a
19 police officer, you later got a written report, am I
20 correct?

21 A Yes.

22 Q Ma'am, as you sit here now, you worked with
23 this man for how many years?

24 A I think it's a total of about three years.
25 I'm not quite sure how many years it is. I know it

1 was a couple years, maybe close to three.

2 Q And you would see him probably every day?

3 A Yes.

4 Q In fact several days of work a week you
5 were his direct supervisor?

6 A For a couple hours in the morning, yes.

7 Q And he worked directly under you? He took
8 orders?

9 A Sometimes, yes.

10 Q Well, orders he got, he got them from you
11 when he was working in the warehouse, right?

12 A Yes, uh-huh.

13 Q And you are familiar with his family?

14 A Yes.

15 Q And his military experience?

16 A Yes.

17 Q And him as a person?

18 A Yes.

19 Q Based upon what that officer told you over
20 there, as you look at that man do you believe that
21 this man participated in a drug transaction?

22

23 MR. BENEDETTI: Objection. I would say the
24 witness does not have any business telling us
25 what she believes whether or not he participated

1 in a drug transaction.

2 THE COURT: What does her belief have to do
3 with it?

4 MR. BAUGH: Extent of damages, Your Honor.
5 If this woman -- if words from that man caused
6 this woman to hold this man as anything but a
7 law abiding citizen, then that is a damage.
8 That is the basis of defamation, that it is
9 believed.

10 MR. BENEDETTI: That is not the question.
11 Do you believe that he was using drugs is the
12 question.

13 MR. BAUGH: The question -- that is not the
14 question I asked.

15 MR. BENEDETTI: What was the question you
16 asked?

17 MR. BAUGH: I said, ma'am, based upon what
18 this man told you, as you view Mr. Smith, do you
19 believe -- I'll use it that way -- do you
20 believe that on August 21, 1992 he participated
21 in a drug transaction.

22
23 A I don't know what Andre was doing on the
24 21st. I know that the policeman called me and that
25 I believe what the policeman said over the phone.

1 I have not heard from Andre.

2 Q Ma'am, do you remember during the
3 deposition on Page 11 my asking you, "When you say
4 you believed him, you were under the impression, one,
5 that the vehicle was there," to which you answered
6 yes?

7 A Uh-huh.

8 Q "Number two, the passenger was in the
9 vehicle?"

10 "Yes."

11 "Number three, the passenger was buying
12 drugs?"

13 Your answer was yes.

14 "Number four, Mr. Smith was either with him
15 or participating in the drug purchase?"

16 And you said yes. Am I correct?

17 A Right. Andre was there. Andre was
18 obviously doing something he wasn't supposed to do
19 for a policeman to call me.

20 Q And what was that thing that you were
21 concerned about that he was doing?

22 A He was in an area he was not supposed to be
23 in and he was not supposed to have a passenger in the
24 van.

25 Q The fact that an alleged drug transaction

1 went on, that didn't bother you?

2 A Yes, sir. All of that bothered me.

3 Q Did you pass that on to your supervisors,
4 Ms. Burt, Mr. Foley, Ms. Love?

5 A My direct supervisor is Ann Ball, which was
6 in the hospital having twins, and I called her first
7 to find out what to do.

8 Q Ma'am, the question is did you talk to
9 Ms. Burt, Mr. Foley and Ms. Love?

10 A Yes, I did.

11 Q And during those conversations did you
12 indicate that the vehicle was involved in a drug
13 transaction?

14 A I told them that the vehicle was observed
15 in a high drug profile area.

16 Q Did you tell them that someone in that
17 vehicle with Andre Smith driving it stopped and made
18 a drug purchase? Did you tell them that?

19 A I told them exactly what the police officer
20 told me, that they had seen Andre and a passenger in
21 the area and that they saw something pass between
22 their hands. That's exactly what I told them.

23 Q And then after that they asked you about
24 whether or not Andre Smith used drugs, am I correct?

25 A My superiors?

1 Q No. After you heard this from Mr. Schnupp,
2 after Mr. Schnupp asked you if Andre Smith had a drug
3 problem?

4 A I don't remember.

5 Q Ma'am, we can go back to your deposition
6 again. Did he ask you if Andre Smith might have been
7 using drugs? Remember answering --

8
9 MR. BENEDETTI: Your Honor, we've been
10 through this once. He read her the lines from
11 Page 9. She said that that's not accurate what
12 she said or she doesn't remember that. This is
13 just a repetition.

14 MR. BAUGH: Your Honor, I'm asking a new
15 question. And it refers back to this, but
16 there's a new question here.

17 THE COURT: Is this a different part?

18 MR. BAUGH: No, same part, but I'm asking
19 her a different question. I'll withdraw it.

20
21 Q Mr. Smith came to work on Monday, didn't
22 he?

23 A Yes.

24 Q And you gave him some things to do?

25 A He knows what he has to do when he comes

1 in. He just goes right over to washing the pots.

2 Q And he washed pots for how long?

3 A Two hours.

4
5 THE COURT: Excuse me. Dd you say washing
6 pots?

7 THE WITNESS: We're a coffee service and we
8 have to wash the pots.

9 THE COURT: Oh, all right.

10
11 Q Now, at that time while he was doing the
12 pot washing, you already know that he needs to be let
13 go, don't you?

14 A I don't know the final decision.

15 Q No, I didn't say the final decision. But
16 you know on that day he is going to be told to leave
17 the building?

18 A Probably.

19 Q Well, who was going to tell him?

20 A Not me.

21 Q Who was to tell him?

22 A His supervisor which was Eric Bowers and
23 Brett Ramsey.

24 Q Does Eric Bowers also work for you?

25 A Yes. Not for me, no. He works with me.

1 He's the service manager.

2 Q Who made the decision that Mr. Smith was to
3 be let go that day?

4 A Flo Love.

5 Q And when did she call and tell you that?

6 A She told me that on Friday afternoon.

7 Q So you knew on Friday before he came in on
8 Monday and started washing pots he was going to be
9 let go on Monday, right?

10 A When the original manager called back to
11 say okay, that's what we were to do.

12 Q By the way, while he was there cleaning
13 pots, did you also get a contribution from him for
14 Ann Ball's maternity present?

15 A I don't remember, sir.

16 Q And then you had him escorted from the
17 building?

18 A Yes. Well, we were told to do that by
19 corporate attorneys.

20 Q Did you ever give Mr. Smith, your employee
21 of some three years, the opportunity to explain
22 himself?

23 A I personally was not in on the termination
24 of Andre.

25 Q I didn't ask about that. I asked whether

1 or not you as his supervisor --

2 A No.

3 Q -- ever gave him --

4 A No. I was told that there was no room for
5 discussion and that he was to be terminated.

6 Q So based upon what you told them, he was to
7 be terminated, he wasn't going to get even a chance
8 to deny it or anything. That was it, right?

9 A That's what my superiors told me, yes, sir.

10 Q And that was based upon what you told them?

11 A Right.

12 Q Ma'am, when Mr. Schnupp told you whatever
13 it was he told you August the 21st, did you know he
14 was a police officer?

15 A Yes. He identified himself as a police
16 officer, drug officer.

17 Q And you called back and checked on who he
18 was?

19 A Yes.

20 Q And you believe him, don't you?

21 A Yes.

22 Q You still believe him?

23 A Yes.

24 Q And you've never given Andre Smith the
25 chance to explain, have you?

1 A No.

2 Q Now, you knew that Andre Smith had a house
3 and a mortgage and a car and kids and all that stuff,
4 didn't you?

5 A It was not up to me to give Andre a chance,
6 sir. I was only the one who was asked to do all the
7 paperwork.

8 Q Well, let me ask you this. As his friend,
9 did you ever say, "Mr. Smith," or Andre, whatever you
10 call him, "is this true?" Or did you automatically
11 believe it because a police officer said it?

12 A No.

13 Q Did you believe it because the police
14 officer said it?

15 A Yes.

16 Q Ma'am, I don't think I've ever asked you
17 this question before. Was there a written policy at
18 the time that Andre Smith was terminated concerning
19 use of the vehicles at ARA?

20 A As in the driver's policies, like about how
21 they're supposed to maintain their vehicles?

22 Q No, about who could be in them. Did ARA
23 have a written policy?

24 A They had a written policy that they're not
25 supposed to have passengers.

THE COURT REPORTER 1-800-233-3040 LASER STOCK FORM B

1 Q Did they have this policy back on August
2 21st, 1992?

3 A For Andre?

4 Q For the ARA employees?

5 A Yes.

6 Q Now, ma'am, you know I talk to my client.
7 Isn't it true that you have allowed your husband to
8 drive an ARA van and move your furniture?

9 A I had authorization.

10 Q Who gave you the authorization?

11 A My general manager.

12 Q Isn't it true also that you have given
13 authorization? Ms. Florence James would use a
14 vehicle on the weekend three to four times a month?

15 A Uh-huh.

16 Q And in fact she has brought her sister to
17 work with her?

18 A And they worked for me for the day, yes.

19 Q But passengers are allowed to ride in the
20 vehicle?

21 A They came to work and worked with her.
22 That was different.

23 Q Does Eric Bowers take vehicles home?

24 A On occasion, yes.

25 Q When Mr. Smith is driving the van he's not

1 working for you, is he?

2 A No.

3 Q Who's he working for?

4 A Eric Bowers.

5 Q So Eric Bowers determines when he can take
6 the vehicle home, doesn't he?

7 A Uh-huh.

8 Q And further Mr. Smith carries a beeper,
9 so if Mr. Bowers needs him he can call him?

10 A Right.

11 Q And if a coffee pot needs servicing on the
12 weekend you call him, right?

13 A Well, we rarely had that happen.

14 Q No, but you can call him on weekends if he
15 takes the beeper home with him?

16 A Normally Eric would take care of the
17 weekend things.

18 Q And further it is not uncommon for this man
19 to drive the van home, is it?

20 A No.

21 Q Now, you have a customer in Church Hill,
22 don't you? Lucky's convenience store, \$300 a week?

23 A Lucky's convenience store?

24 Q Yes.

25 A No.

1 Q You did not on August 21st, 1992 have a
2 Lucky's convenience in Church Hill?

3 A We don't have Lucky's convenience stores.

4 Q You didn't have in '92?

5 A I don't think so.

6 Q Did you tell the officer that this man was
7 off his route and he had no accounts in Church Hill?
8 Did you tell him that?

9 A Yes. I don't believe that we had any
10 accounts in Church Hill.

11 Q Did you ever check to see if you had any
12 accounts or did you ever ask him what he was doing,
13 or did you just fire him because some cop told you
14 he was doing something he wasn't supposed to do with
15 drugs?

16 A I didn't fire him, sir. I got permission
17 and I called everybody --

18 Q You got permission to do what?

19 A I got permission to find out what I was
20 supposed to do.

21 Q Ma'am, did you ever suggest to your
22 superiors that this is a good employee and he's got a
23 wife and kids and mortgage, let's hear his side?
24

25 MR. BENEDETTI: Your Honor, I believe this

1 question is far and away from what the issues
2 are in this case and I object.

3 THE COURT: I believe it is. Objection
4 sustained.

5 MR. BENEDETTI: And ARA, as far as I know,
6 is not a defendant in this case.

7
8 Q Well, ma'am, everything that you did and
9 everything ARA did was predicated on what that man
10 told you, right?

11 A Yes, sir.

12 Q And you didn't do anything wrong, because
13 you believed what he told you, right?

14 A Uh-huh.

15 Q And in fact you still believe as you sit
16 here now what he told you, right?

17 A Uh-huh.

18

19 MR. BAUGH: Your Honor, we would ask to
20 have marked --

21

22 Q Did you recognize these notes that I handed
23 you before as copies of your original notes?

24 A Yes, I did.

25 Q And they were given to us during the

1 deposition --

2 A Yes, sir.

3 Q -- consisting of four pages? At the top it
4 says August 21, '92, Friday, 5:00, ending on 8/24,
5 10:45 a.m.?

6 A Yes, sir.

7
8 MR. BAUGH: Your Honor, we'd offer these as
9 Plaintiff's B.

10 MR. BENEDETTI: I have no objection.

11 THE COURT: All right. These will be
12 received as plaintiff's next exhibit.

13
14 Q Did there later come a time when you were
15 given a written report?

16 A From the police officers?

17 Q From anybody.

18 A I have a written report from the police
19 officers.

20 Q And how did you come to have that?

21 A I called to ask for something in writing
22 that Flo Love asked me to get.

23 Q And you wanted something in writing about
24 what?

25 A About what went on that day.

1 Q Did you ask anyone about the officer's
2 suspicion that the vehicle might be stolen?

3 A I'm sorry?

4 Q Never mind, withdraw that. You've seen
5 that report, haven't you?

6 A Uh-huh.

7 Q There's nothing in that report that
8 indicates the vehicle might be stolen?

9 A No.

10 Q When you received that report, however, am
11 I correct that this report is merely a continuation
12 of a telephone call actually?

13 A It's a little more detailed than a
14 telephone conversation.

15 Q But there's nothing radically different,
16 am I correct?

17 A No. The conversation on the telephone just
18 said drugs in general, and that piece of paper says
19 cocaine. That's the only difference.

20 Q So when you got this report they talk about
21 the word "cocaine," am I correct?

22 A Yes.

23 Q And further the report says --
24

25 MR. BAUGH: Your Honor, I would ask for

1 leave to read --

2 MR. BENEDETTI: I'll object.

3 MR. BAUGH: No, Your Honor. I'm asking for
4 leave at this time to go beyond the motion in
5 limine and I'll show the Court the line.

6 THE COURT: What is your objection,
7 Mr. Benedetti?

8 MR. BENEDETTI: The objection is that the
9 Court has yet to decide whether or not this is a
10 privileged matter. And if it's privileged, then
11 this document is not going into evidence. If
12 that's the case and you're allowing him to read
13 it in anticipating overruling the motion in
14 limine, I'm sure the Court is not led to do that
15 at this point in time.

16 THE COURT: What do you want to do now?

17 MR. BAUGH: I want her -- there's a
18 sentence in there that I want her to read,
19 because there's an exact description of what
20 allegedly occurred.

21 THE COURT: (Judge reads transcript.)
22 I'm not sure what you're speaking of.

23
24 (Side-bar conference.)
25

1 THE COURT: Ladies, would you please step
2 back into the jury room. Thank you.

3
4 JURY OUT

5 THE COURT: Now, Mr. Benedetti, your
6 objection again is what? This ought not to come
7 in, because it establishes a qualified
8 privilege?

9 MR. BENEDETTI: That's right. And it's
10 also because this is perhaps a potentially
11 separate incident altogether of defamation.

12 THE COURT: Apart from the conversation?

13 MR. BENEDETTI: That's correct. That's
14 correct. That's why it ought to be excluded,
15 because it's a privileged matter.

16 Also at the time that this was written,
17 you'll notice it was dated August 25th, 1992.
18 That's when it was typed. The witness has not
19 yet said when she received it, but the alleged
20 defamation that caused the firing took place on
21 the 24th, the day before this was written.

22 THE COURT: I thought it took place on the
23 21st.

24 MR. BENEDETTI: Excuse me?

25 THE COURT: I thought it was the 21st.

1 JURY OUT

2 MR. BENEDETTI: The 21st was the incident.
3 The 24th was the firing, which was the Friday to
4 the Monday, he was fired on Monday. This was
5 typed on Tuesday and mailed and not received
6 probably until Thursday. The witness has not
7 testified to that but probably on Thursday. It
8 bears no relationship to anything except the
9 fact that he's trying to extend it as an
10 example. Our suggestion is this is a separate
11 incident altogether.

12 THE COURT: What is this, by the way?

13 MR. BAUGH: Those are her handwritten
14 notes. There should be four pages.

15 THE COURT: All right. Well, so this was
16 developed the day after he was terminated?

17 MR. BAUGH: Yes, Your Honor. However, if
18 I might, my client's damages do not end as a
19 consequence of merely his being terminated. As
20 the witness has pointed out, this writing, this
21 is an extension, an amplification of the
22 telephone conversation. That is what she has
23 said.

24 Further, that is what Mr. Schnupp has
25 testified to, that that writing is an extension

1 JURY OUT

2 or an explanation of a telephone call as is
3 cited in her --

4 MR. BENEDETTI: It's not what they said.
5 They deny that it was an extension.

6 THE COURT: Well, she did say the only
7 difference between the report and today was the
8 word "cocaine."

9 MR. BAUGH: That's right.

10 MR. BENEDETTI: If the Court reads it
11 you'll see that's not what she testified to.
12 There are other differences in it also.

13 THE COURT: Perhaps so.

14 MR. BAUGH: But Your Honor --

15 THE COURT: Haven't you sustained damages
16 by virtue of the original publication on Friday?

17 MR. BAUGH: No, sir, because one of the
18 damages we can have is hurt, humiliation and all
19 this. And I believe I'll proffer that he was
20 not terminated on the 24th. He was, quote, put
21 in the street. And he was not officially
22 terminated and told he could not come back until
23 Thursday or Friday when it was received. And
24 that when he was called and told to bring in his
25 uniforms, you are gone. Then he made

COOK & WILEY, INC.

1 JURY OUT

2 application at that time for benefits and all
3 that sort of stuff. But he was paid from the
4 24th through the 29th.

5 THE COURT: Did he come back, Ms. Goss?

6 THE WITNESS: He came back to our office on
7 that week, one of the -- like Wednesday or
8 Thursday to talk to Jim Foley, our regional
9 manager.

10 THE COURT: And the purpose was for
11 reinstatement, wasn't it?

12 THE WITNESS: Was to try to get
13 reinstatement.

14 THE COURT: Well, when he left on that --

15 THE WITNESS: On that Monday he didn't come
16 back to work, no.

17 THE COURT: Did you tell him he was
18 terminated?

19 THE WITNESS: No. I only did the paperwork
20 and his supervisor told him of the termination.
21 He read all our notes and everything to Andre,
22 and then they gave him some time to explain
23 himself.

24 MR. BENEDETTI: There is a further document
25 that has not yet been introduced that she's

1 JURY OUT

2 referring to now, and that's something called
3 Employee Counseling Report and it's dated
4 8/24/92. That will come into evidence at some
5 point in time.

6 THE COURT: Well, if the company didn't
7 take any action, I assume it didn't take any
8 action because of this report, that is the
9 action had already been taken?

10 MR. BENEDETTI: That's correct.

11 MR. BAUGH: No, it is not, Your Honor. My
12 client was not officially terminated -- he was
13 not told he could not come back, because on the
14 24th my client made a telephone call to the
15 police in an effort to get himself reinstated.
16 It was not accomplished completely.

17 MR. BENEDETTI: It may be inappropriate to
18 be proper in evidence with the witness on the
19 stand, and that's what he's doing. This says
20 very clearly --

21 THE WITNESS: That's considered a
22 termination paper.

23 MR. BENEDETTI: Contrary to what he just
24 said.

25 THE COURT: Well, you contend that he was

1 JURY OUT

2 not fired on that Monday. He was fired when?

3 MR. BAUGH: My client's testimony was he
4 was put in the street on Monday and he was not
5 officially terminated until that document was
6 received.

7 THE COURT: What document? Oh, this
8 document?

9 MR. BAUGH: The investigative report,
10 which, Your Honor, we'll still submit as an
11 explanation of the first transaction. It would
12 certainly be admissible. Even if the Court
13 finds there are no damages attendant to that, it
14 is still admissible as evidence of intent and
15 motive of the first statement, and it certainly
16 explains the first statement.

17 This witness has just testified that is no
18 different from the telephone conversation except
19 in this one the word "cocaine" is used and in
20 the first the generic term "drugs" was used.

21 THE COURT: Any comment?

22 MR. BENEDETTI: The comment is what I
23 previously made rises and falls on the oral
24 statement. His argument now is that's merely an
25 extension of the oral statement. I'm saying

COOK & WILEY, INC.

1 JURY OUT

2 this took place after all the damages were
3 sustained and it should be refused.

4 THE COURT: Well, that might be your view,
5 defendant's view, but their view is different.
6 I think the jury ought to have benefit of both
7 views.

8 MR. BENEDETTI: Your Honor, we'll reserve,
9 until all the evidence is in, decision on that,
10 that other documents we'll show you other than
11 that have been proffered to the Court. If the
12 Court's facing any decision on the proffer, then
13 I would suggest that it's inappropriate.

14 THE COURT: Well, I often make decisions on
15 proffer. I mean you have a different view on
16 when the damages, if any, were sustained. They
17 have their view as to when they were sustained
18 based on the facts. It would seem to me that's
19 a matter for the jury to determine, whether or
20 not this writing led to anything or whether or
21 not the company acted on the first advice they
22 got from the officer.

23 MR. BENEDETTI: Well, I'm suggesting if
24 that's the reason that you're allowing this to
25 come in, the evidence has yet to come in as I

1 JURY OUT

2 have suggested to show that the termination took
3 place on Monday the 24th, and the document that
4 we're discussing now, the investigative report,
5 was not even written until the 25th.

6 THE COURT: I understand that, but they
7 have a different view of that apparently. You
8 expect testimony to be different as well, so
9 this is the stuff of which cases are made.

10 MR. BENEDETTI: I won't prolong it. Just
11 note my exception.

12 THE COURT: Gentlemen, I've marked the
13 notes as Plaintiff's Exhibit 1. Are you moving
14 to have the document entered as you did before?

15 MR. BAUGH: Yes.

16 THE COURT: Notes will be Plaintiff's 1.
17 The report is Plaintiff's 2.

18
19 (Ms. Goss's notes, four pages,
20 were marked for identification
21 as Plaintiff's Exhibit 1.)

22
23 (Officer Schnupp's typed report
24 was marked for identification
25 as Plaintiff's Exhibit 2.)

(Brief recess.)

JURY IN

Q The statement we just introduced, the written statement, are you saying the only significant difference between the written statement and the oral statement that you received from the officer was that the oral statement used the word "drugs" and in this one he used the word "cocaine"?

A Yes.

Q Now, also it says in here, "Upon searching the occupants of the vehicle for the cocaine, it was determined that the cocaine was destroyed prior to the officers making the stop."

Did you ever question the officers? How could you tell it was destroyed? Did you ever ask them anything about it?

A No.

Q Don't you think it was a little bit weird they don't know where it is, that they assumed it was destroyed?

A I didn't think --

MR. BENEDETTI: Your Honor, what the witness may think is not an issue.

COOK & WILEY, INC.

1 MR. BAUGH: The rationale being -- I'll ask
2 the question.

3
4 Q Ma'am, did you believe everything he told
5 you because he was a police officer?

6 A Yes.

7 Q And because the police officer said this,
8 it all makes sense to you?

9 A Yes.

10 Q Now, as a consequence of the telephone call
11 concerning Andre Smith, did your impression of him
12 change on that day?

13 A No, my impression didn't change of him.
14 I was shocked.

15 Q And you were shocked why? Because of his
16 involvement in a drug transaction?

17 A Because he was over there in Church Hill
18 where he wasn't supposed to be, and what the officer
19 told me was very shocking.

20 Q Wait. What did the officer tell you that
21 was shocking other than he was over there?

22 A That he was in a high drug profile area.

23 Q Doing what?

24 A That he was just there.

25 Q It didn't bother you that they say that the

1 passenger in his vehicle got out and bought drugs?

2 A Yes. It bothered me that there was a
3 passenger in the van and he knew that was against
4 company policy.

5 Q Ma'am, did it bother you that there was an
6 allegation that the van had stopped so the passenger
7 could buy drugs?

8 A All of it bothered me, yes.

9 Q Was that one of the things that bothered
10 you?

11 A Yes.

12 Q Did you communicate the allegation of drug
13 involvement to your superiors? Was that one of the
14 things you told them about?

15 A Yes. I told them exactly what the police
16 officer told me.

17 Q And this is exactly the same except the
18 word "cocaine" is used where "drugs" was used before?

19 A Yes.

20 Q Now, as you sit here right now, do you
21 believe on August the 21st, 1992, that that man drove
22 a vehicle and stopped it so someone could buy drugs?

23 A I believe that he drove the van into where
24 the police officers said he was, and that there was a
25 passenger in the van and that the passenger got out

1 and exchanged something. I believe that, because
2 that's what the police officer told me.

3 Q Ma'am, this doesn't say "something." This
4 says "bought cocaine." The question I'm asking you,
5 ma'am, is not very difficult. As you sit here now,
6 do you believe that that man, your employee, drove a
7 vehicle so that someone could buy cocaine?

8 A I believe that he drove the truck over into
9 the area, yes.

10 Q Ma'am, do you believe he stopped the
11 vehicle so that a cocaine transaction could occur?

12 A I don't know what he did when he got there,
13 sir.

14 Q Ma'am, I know you weren't there. Based on
15 what this officer told you -- it's not real hard,
16 ma'am. Based on what this officer told you, do you
17 believe that Mr. Smith did this so that this person
18 could buy drugs?

19 A (Witness shrugs.)

20 Q Ma'am, do you or don't you?

21 A I believe Andre was in an area that he
22 wasn't supposed to be in, that he had a passenger,
23 the passenger got out and bought something, maybe
24 exchanged something, got back in. Yes, if Andre was
25 there --

1 Q And what does this say this something was?

2 A Cocaine. That's what that paper says, yes.

3 Q Well, do you believe that?

4 A Yes, if -- yes.

5 Q If what? If what?

6 A Yes, the police officer told me that.

7 Q No. You said yes, if what? That if the
8 police officer told you that, you believe it?

9 A Yes.

10 Q And you still believe it?

11 A Yes.

12 Q Almost a year and some months later, you
13 still believe that about him?

14 A Yes.

15

16 THE COURT: Ms. Goss, do you believe that
17 that was Mr. Smith's purpose?

18 THE WITNESS: I don't know what Mr. Smith's
19 purpose was over in there. Mr. Smith never --
20 to tell you the truth, Judge, I was very shocked
21 that Mr. Smith did not call back in that Friday
22 afternoon to tell me that he was stopped by a
23 police officer. I couldn't believe that he went
24 the whole weekend not calling in to tell anybody
25 this. If I were stopped by a police officer --

1 MR. BAUGH: Objection.

2 THE WITNESS: -- I would call in to my
3 superior. I find that hard to believe.

4
5 Q Did you have to respond to employment
6 services when he made application for benefits?

7 A Yes.

8 Q Did you have to pay him --

9 A I don't know. All that was handled through
10 corporate.

11 Q How many times have you met with Mr.
12 Benedetti?

13 A On two occasions.

14 Q When were they?

15 A They were very recently. I believe it was
16 last week or the week before last. It's been very
17 crazy at work. We don't have a manager right now.

18 Q And he gave you a copy of the deposition at
19 that time?

20 A Yes.

21 Q Did he give you any other copies of any
22 other depositions?

23 A No. I believe that's all he gave me was
24 that big book, the one that you made me read from.

25 Q Was anyone else present when you talked to

1 him?

2 A Just myself and him.

3 Q Have any of the other police officers come
4 to see you?

5 A No.

6 Q During the time that you worked with Andre
7 Smith, were you ever suspicious that he might be
8 involved in drug activity?

9 A No.

10 Q And everything that's contained in this
11 written report, you relayed to your employers?

12 A Yes, sir.

13 Q You told them all of those things?

14 A I told them everything, yes.

15 Q Is it your testimony here today that
16 because this police officer alleged that Mr. Smith
17 was driving a vehicle and sitting there stopped so
18 someone else could buy drugs, are you telling me that
19 did not play a part in either your assessment of this
20 man now or your decision to pass on his termination?

21 A The termination was none of my business.

22 Q I know that, ma'am. Let me put it this
23 way. You told your superiors about the drug stuff,
24 right?

25 A I told my superiors everything that was in

1 those notes.

2 Q Did you think the drug allegations were
3 germane to whether or not he should be kept there?

4 A I'm sorry. I don't understand.

5 Q Did you think the drug allegations were
6 important in determining whether or not he should
7 keep his job? You thought they would be important
8 to his boss?

9 A I thought all the information would be
10 important.

11 Q Including the drug stuff?

12 A Including the drug stuff.

13 Q Thank you. Ma'am, you don't really believe
14 that he would stop and let someone buy drugs in a
15 van, do you?

16 A I said I was shocked.

17 Q You don't really believe that, do you?

18 A I believe what the police officer said.

19 Q Thank you.

20
21 MR. BAUGH: Pass the witness.

22 MR. BENEDETTI: May I see Plaintiff's
23 Number 1?

24 THE COURT: Yes.

1 CROSS-EXAMINATION BY MR. BENEDETTI:

2
3 Q Ms. Goss, you testified that you listened
4 to Officer Schnupp and then you asked him to repeat
5 it again and then you made notes of what he said, and
6 this is Defendant's Number 1, Page 1?

7
8 THE COURT: Call it Plaintiff's.

9
10 Q Plaintiff's Number 1 is what you wrote
11 down?

12 A Yes, sir.

13 Q Would you read it into the record?

14 A The whole page?

15 Q Yes.

16 A "I received a call from Mark Schnupp that
17 our van, license plate number LKA-792, with our
18 driver Andre L. Smith was seen at 3:25 in a high
19 profile drug area at 900 North 26th Street. He was
20 observed pulling up to this location and a passenger
21 got out on the passenger's side, went to the
22 location, gave people something and received
23 something in return. And this person known as Robert
24 B. Ragin, Jr. got back into the van and they drove by
25 the officer, Mark Schnupp. He recorded the license

COOK & WILEY, INC.

1 plate of the van, called in to the police dispatcher,
2 and the police officers stopped the van at 3:30 p.m.
3 and searched the van and the occupants to find
4 nothing. They then were let off with a warning. The
5 officer also asked Andre what he was doing in the
6 company van in this area. Andre responded he was off
7 the clock at this time. Andre Smith was under Eric
8 Bowers on this particular day and scheduled to work
9 until 4:00 p.m. with half an hour for lunch."

10 Q And the rest of the document, Page 2 and
11 Page 3 and Page 4, is of what you did afterwards, is
12 that correct?

13 A Yes, uh-huh.

14 Q The question was asked of you, I guess it
15 was asked this way, that you never had given Andre a
16 chance to explain. Has Andre ever come to you with
17 an explanation?

18
19 MR. BAUGH: Objection, Your Honor, to the
20 use of Andre. It's Mr. Smith.

21 MR. BENEDETTI: Excuse me?

22 MR. BAUGH: He is not a juvenile.

23
24 Q Has Andre Smith ever come to you with an
25 explanation?

1 A After Andre was terminated on Monday the
2 24th, he just came in for a couple minutes to say
3 that he couldn't believe all this was happening.
4 And I told him that I couldn't talk to him.

5 Q Did he deny that he was off his route?

6 A I don't know. I didn't talk to him about
7 any of that.

8 Q None of that?

9 A No. He talked to Eric Bowers and Brett
10 Ramsey.

11 Q At the time that he said he couldn't
12 believe that this was happening, did he ask that he
13 be reinstated?

14 A He said something about that. I told him
15 he'd have to talk to Jim Foley or Ann Ball and that I
16 couldn't help him.

17 Q Did he then make an appointment with Jim
18 Foley?

19 A I don't think he did at that time, no.
20 I think he might have called back and wanted -- he
21 might have called back to talk to Jim Foley.

22 Q Do you know when that was?

23 A It was in the next day or next two days.

24 Q And did Andre Smith ever come back to work?

25 A No.

1 MR. BENEDETTI: I have reserved the right
2 to call this witness as my own witness at a
3 future time.

4 MR. BAUGH: No objection.

5 THE COURT: Thank you, Ms. Goss. You may
6 step down.

7 Who's your next witness?

8 MR. BAUGH: Call Eric Bowers.

9
10
11 ERIC BOWERS, the witness, called by the
12 plaintiff, first being duly sworn, testifies as
13 follows:

14 DIRECT EXAMINATION BY MR. BAUGH:

15
16 Q Please state your full name.

17 A Donald Eric Bowers.

18 Q Would you spell your last name?

19 A B-o-w-e-r-s.

20 Q Mr. Bowers, you work for ARA Services?

21 A Uh-huh.

22 Q You have to say yes or no.

23 A Yes.

24 Q Is that the kind of uniform you normally
25 wear?

1 A Yes.

2 Q Is that the kind of uniform that Andre
3 Smith was wearing when he worked there?

4 A His was a little different.

5 Q How was it different?

6 A Had the stripes on it, white with brown
7 stripes.

8 Q He had that ARA sign over his left breast?

9 A Yes.

10 Q Near the side the driver's window would be
11 on?

12 A Yes.

13 Q Now, were you there on August the 24th at
14 ARA that morning?

15 A Was that the Monday or Friday?

16 Q Monday.

17 A Monday morning, yes.

18 Q As far as some of the time, Mr. Smith would
19 work under your supervision, am I correct?

20 A Yes.

21 Q And that would be doing servicing?

22 A Yes.

23 Q Do you know if ARA have any accounts in
24 Church Hill?

25 A Fair Play, yes.

1 Q What's Fair Play?

2 A Fair Play Convenience, right there at
3 Mosby. Right across the street from Mosby school.

4 Q Now, when the day would start would you
5 give him a list of things to do?

6 A Yes.

7 Q And if things came in would you contact him
8 on the beeper?

9 A Yes.

10 Q What time was he free to go off the clock?

11 A If he did not take a lunch, he was free to
12 go, I believe, at 3:30.

13 Q Now, what if he had completed all his work
14 and there was nothing on the beeper, would he just
15 wait around for you to call him?

16 A No. He returned to shop and fixed coffee
17 brewers. We always had something to do.

18 Q Now, on the 24th were you told why he was
19 being put in the street?

20 A That morning I came in and, yes, she told
21 me what she had heard.

22 Q Who's she?

23 A Cindy.

24 Q What did she tell you?

25 A She told me that a police officer had

1 called ARA on Friday and instructed her that Andre
2 was over someplace where he wasn't supposed to be and
3 that I had to fire him.

4 Q She told you that you had to fire him
5 Monday morning?

6 A Monday morning.

7 Q Did she mention something about drugs?

8 A Yes.

9 Q What did she tell you about drugs?

10 A I believe she said the police officer had
11 called and said that Andre was over at Church Hill
12 buying or selling or something with drugs. I can't
13 remember everything.

14 Q And what reason did she give you that she
15 was going to terminate him?

16 A I believe it was for using a company
17 vehicle or being in a place where he didn't have
18 business.

19 Q Now, that's not that uncommon at ARA,
20 is it?

21 A No, not really.

22 Q And you were kind of surprised that he was
23 being terminated for that reason, weren't you?

24 A Yes.

25 Q In fact what did you tell her when she told

1 you that was the reason?

2 A Well, I just told her that I didn't believe
3 that that was happening. I mean --

4 Q That what was happening, that he was being
5 terminated?

6 A Being terminated for something like that.

7 Q Was he permitted to take the vehicle home?

8 A On that day, yes.

9 Q Do other people there use vehicles?

10 A Yes.

11 Q Has Ms. Goss used your vehicle?

12 A My vehicle? No, she hasn't used my
13 vehicle.

14 Q Has she ever come to you or Ann Ball ever
15 come to you and gotten your key to use the vehicle?

16 A Yes.

17 Q Did you give her the key?

18 A Yes.

19 Q Did she drive the vehicle?

20 A I believe so. I didn't see her driving,
21 but --

22 Q Well, who drove it away?

23 A Well, I don't know. I took another vehicle
24 and went home myself.

25 Q You took another ARA vehicle and went home?

1 A Yes. I'm in charge of all the vehicles.

2 Q Can you describe to us who decides whether
3 or not he takes the vehicle home, you or her?

4 A Well, I leave it to his discretion. I mean
5 if he's finished and he's on that side of the river,
6 there's no need of him coming all the way back to the
7 shop and having his wife come and pick him up. He
8 just go on home.

9 Q Was Andre Smith given permission to explain
10 what happened?

11 A Well, he talked to me and he explained to
12 me what happened.

13 Q Did he say anything about drugs?

14 A No.

15 Q Did he even know at that time there had
16 been an accusation he had been involved in drug
17 activity?

18 A I don't believe he did, no.

19 Q And further did you escort him from the
20 building?

21 A Yes.

22 Q Why did you escort him from the building?

23 A Because that's what Cindy had told me that
24 I had to do.

25 Q For what reason? Were you afraid he was

1 going to steal something?

2 A I have no reason why. That's what she said
3 that corporate said I had to do.

4 Q As you sit here now, do you believe that
5 Andre Smith was involved in a drug transaction in any
6 way, shape or form?

7 A No.

8 Q If a police officer came in and swore under
9 oath "I saw him," and Andre Smith swore "I didn't,"
10 who would you believe?

11 A Well, I'd have to believe Andre.

12 Q How many years did he work there?

13 A He came there, I guess, two. Two years.

14 Q Was he ever late or a chronic tardy person?

15 A No, never.

16 Q Did he ever miss any time from work?

17 A No.

18 Q Did he make any indication to you that
19 would cause you to be concerned he might be doing
20 drugs?

21 A No.

22 Q Borrowing money, off the clock a lot,
23 coming in late, disheveled appearance, anything like
24 that?

25 A No.

1 Q Based on the conversations that you had
2 with the people at ARA, was the allegation of drugs a
3 factor in his termination?

4 A Of the final thing, no, it wasn't. But the
5 first day that happened, Monday, when he was telling
6 me about it, I believe it was a little bit.

7 Q When you mean the final thing, that's not
8 the reason they wrote down?

9 A That's not the reason they wrote down.

10 Q But the reason they were talking about was
11 what reason? The reason they were talking about
12 firing him was what?

13 A Because of being over where he was. And I
14 believe the drugs had something to do with it, but
15 that's just my opinion.

16 Q Did you ever give him a chance to explain?
17 I mean did he say, "I didn't do it"?

18 A Well, he told me that he went and got his
19 hair cut. And when he left to get his hair cut,
20 that's when he got pulled. And he didn't think
21 nothing of it. He went on home.

22 Q He told you he didn't have anyone in his
23 car?

24 A True.

25 Q But you now know that's false?

1 A Right.

2 Q But that was after he had been told he was
3 being terminated for having someone in the car with
4 him?

5 A Right.

6 Q When he was told that was the reason he was
7 being terminated, did he seem a little prejudiced
8 like "they can't be firing me for driving somebody
9 around"? Did he have that sort of reaction?

10 A Yeah. He was shocked.

11 Q Were you shocked?

12 A Yes, I was.

13 Q Did you think that was the real reason?

14 A (No verbal response.)

15 Q Or did you think it was a fabricated
16 reason?

17
18 MR. BENEDETTI: Objection, Your Honor.

19 MR. BAUGH: Withdraw that.

20 MR. BENEDETTI: Please, Judge.

21 MR. BAUGH: I've withdrawn it.

22 THE COURT: Mr. Benedetti?

23 MR. BENEDETTI: He said he withdraws it.

24 MR. BAUGH: I've withdrawn it.

25

1 Q Have you changed your policy about whether
2 or not you ride somebody in your vehicle?

3 A Oh, yes, sir.

4 Q Because of this?

5 A Yes.

6 Q But before that would you say you would
7 allow other people to ride in your vehicle?

8 A Yes. I've given my father a ride.

9 Q Do you know whether or not Mr. Smith has
10 picked up his wife at work in the company van?

11 A I don't know that, but if he did it was
12 fine with me.

13 Q Did anyone ever ask you if Andre Smith was
14 not to have other people in the vehicle? Did Cynthia
15 Goss ever ask you that?

16 A No, no.

17
18 MR. BAUGH: Thank you. Pass the witness.
19
20

21 CROSS-EXAMINATION BY MR. BENEDETTI:
22

23 Q On Friday, the 21st of August 1992, you
24 were Andre Smith's supervisor, weren't you?

25 A Yes.

1 Q Is that the reason that you were called to
2 do the firing?

3
4 MR. BAUGH: Objection, Your Honor. That
5 calls for a conclusion as to why he was called.

6 THE COURT: The objection is overruled.
7

8 Q Answer the question.

9 A Repeat that again.

10 Q On Monday the 24th the reason that you were
11 called in to do the firing is because you were a
12 supervisor of Andre Smith?

13 A Yes.

14 Q Was Brett Ramsey also called in?

15 A Yes, he was.

16 Q And what was his relationship to Andre
17 Smith at that time?

18 A None. He's just -- he's in the sales. And
19 the only three managers there at that time was myself
20 and Brett Ramsey and Cindy. And Cindy had told me
21 that I had to do the chopping job and Brett had to
22 witness it.

23 Q And so the two of you went in a room with
24 Andre and gave him the information?

25 A First it was done in the back of the

1 warehouse, because Andre was back there working. And
2 when I went back to talk to Andre, Brett followed me
3 back. And we talked there first and then I believe
4 we went up front.

5 Q And did you go into somebody's office?

6 A I think it was the front office, Ann Ball's
7 office.

8 Q She was away on maternity leave?

9 A Yes.

10 Q And you had a document, something called an
11 Employee Counseling Report?

12 A It was something that Cindy had wrote down.
13 It was written in hand. It wasn't typed.

14 Q I show you a document and ask if you can
15 identify it?

16 A Yeah, I think this is it.

17 Q Is that the document that you had that
18 morning?

19 A I think.

20 Q And is it prepared by Cindy Goss?

21 A Yes.

22 Q And is it signed by you?

23 A Yes, it is.

24 Q Who else is it signed by?

25 A It says Ann Ball per Cindy Goss.

1 Q And what's the date of that?
2 A August 24th, 1992.
3 Q Is there a place for the employee's
4 signature on that?
5 A Yes, sir.
6 Q And what is written in there?
7 A "Does not want to sign."
8 Q Does it say Andre Smith?
9 A No, it does not say Andre Smith.
10 Q Read that document, would you?
11 A "Friday afternoon, 8/21 1993. Andre was in
12 location that was not part of our territory during
13 business hours and had passenger with him that was
14 not ARA employee. This is clearly" -- I really can't
15 read this writing -- "against," I think, "company
16 guidelines for use of ARA vehicles and agreement of
17 driver policy. It is the company's decision at this
18 time to terminate Andre Smith."

19
20 MR. BENEDETTI: Thank you. I'd like to
21 introduce that as defendant's exhibit.

22 MR. BAUGH: No objection.

23 THE COURT: All right. This will be
24 Defendant's Exhibit 1.
25

1 (Employee Counseling Report was
2 marked for identification as
3 Defendant's Exhibit 1.)
4

5 Q Are there guidelines for the use of company
6 vehicles?

7 A Yes, there is.

8 Q Is it something that is discussed by the
9 person, the manager of vehicles or manager of drivers
10 with the drivers?

11 A Well, to be honest with you, it never has
12 come up and it has not been discussed until after
13 this incident.

14 Q Is there not a printed form that describes
15 what drivers are supposed to do with vehicles that
16 are being used for personal use and so on?

17 A There is now.

18 Q There was not before?

19 A Well, I'm sure there was, but it was never
20 presented to us.

21 Q So this was never discussed by you with
22 Andre?

23 A Excuse me?

24 Q This was never discussed by you as manager
25 of the drivers with Andre Smith, one of your drivers?

1 A Well, we've always said, "Don't go out and
2 have no accident."

3 Q Did you say, "Don't go out and put
4 passengers that aren't ARA employees in the vehicle"?

5 A I can't remember if I did that or not.

6 Q Did you say, "Don't go off your route and
7 don't use your vehicle for personal use unless you're
8 authorized"?

9 A Well, I tell everybody to use your common
10 sense not to use it.

11 Q I think you mentioned that Cindy Goss had
12 used company vehicles. She's come to you and gotten
13 them, right?

14 A Well, she didn't have to come to me,
15 because the way my shop is there's a board with all
16 the keys hanging there, and she just come on in and
17 get the key and I wouldn't know anything about it.

18 Q But what you said was that they came to you
19 and asked permission to get the keys?

20 A That was Ann Ball. They wanted to use my
21 truck for her move.

22 Q But Cindy Goss has taken the keys and used
23 vehicles without any authorization, is that what
24 you're saying?

25 A Yes. She mentioned that she did.

1 Q Well, you don't know whether she asked Ann
2 Ball or not, do you?

3 A I don't know.

4 Q Can you use vehicles without being
5 authorized?

6 A I can use any vehicles, but I don't use
7 them for my own personal use.

8 Q And why don't you use them for your own
9 personal use?

10 A Because I don't want a thing like this to
11 happen to me.

12 Q Did you ever use them for your own personal
13 use?

14 A I have before this, yes.

15 Q And who did you ask whether you could or
16 not?

17 A Ann Ball.

18 Q Andre never drove himself to work except
19 rarely, did he?

20 A I think most of the time he driven there
21 his wife drops him off. Or if he had the truck he
22 drove himself to work.

23 Q But if he didn't have the truck his wife
24 drove him to work?

25 A I believe so.

1 Q Are you familiar with the family?

2 A Yes.

3 Q Did his wife work?

4 A Yes.

5 Q Where did she work?

6 A Insurance company.

7 Q You know where?

8 A Out in Innsbrook. I think it was Liberty
9 Mutual.

10 Q At Innsbrook?

11 A Cox Road. If that's Innsbrook, yes.

12 Q Yes, that's Innsbrook. If she brought him
13 to work did she also pick him up?

14 A Yes.

15 Q Do you know what time she came to pick him
16 up?

17 A Well, I take it for granted it was 4:30,
18 because usually I give him what he has to do in the
19 morning, and I'll take what I do and we might not see
20 each other that day. Sometimes I be out until 6:00,
21 7:00.

22 Q Now, how do you get the service orders that
23 you assign to your drivers each day?

24 A The people calls in. It's taken down by
25 either Cindy or a girl named Rhonda, which I don't

1 believe was there at the time.

2 Q Are these orders used in asking whether
3 coffee machines are to be serviced or to purchase
4 supplies?

5 A Andre was in sort of a tight spot, because
6 usually in my department it's just to fix the machine
7 if there's a problem with it or, like I said, to be
8 cleaned. Andre was doing both. I mean he was
9 delivering coffee and picking up equipment.

10 Q He was also picking up equipment?

11 A And picking up.

12 Q Well, on that day, the 21st, he was
13 supposed to be picking up equipment, wasn't he?

14 A I really can't remember.

15 Q Do you recall the service orders for that
16 day?

17 A No, I don't. I recall what I had to do.

18 Q Do you recall whether or not Andre Smith's
19 service orders were turned in that day?

20 A I'm sure they were, or else they wouldn't
21 know where they were.

22 Q You recall signing a service order for
23 Andre Smith for service at Philip Morris on Stockton
24 Street?

25 A For me to sign it?

1 Q Yes, sir.

2 A No.

3 Q You don't recall that?

4 A No, not signing his service orders. As far
5 as his work being complete?

6 Q That's correct.

7 A I don't think so.

8 Q Now, if the service was completed, that is
9 all the service orders for a particular day were
10 completed prior to 3:30, what should the driver do
11 with the vehicle?

12 A If he finishes up early, like I said,
13 there's enough to do at the shop. You can go back to
14 fixing brewers.

15 Q Andre Smith was not authorized to go home
16 before 3:30 at any time, was he?

17 A Well, that's another common sense. If he's
18 somewhere near his house and he wants to eat lunch,
19 he can stop by his house and eat lunch.

20 Q But he only has half an hour for lunch,
21 doesn't he?

22 A Most of us had an hour, but he had certain
23 hours be set up with Ann Ball, so I guess it's 30
24 minutes to an hour.

25 Q 30 minutes to an hour?

1 A 30 minutes to an hour. I don't know.

2 Q I believe you testified in answer to Mr.
3 Baugh's question if he finished at 3:30, then he was
4 free for the rest of the day?

5 A Yes, if he didn't -- well, then it's an
6 hour for lunch. Everybody has an hour now. I
7 believe it's the same thing with him. If he gets off
8 at 4:30 and he don't take a lunch and he finishes at
9 3:30, he's free to go.

10 Q Suppose he gets off at 4:00. Does he get
11 an hour for lunch or a half hour?

12 A Doesn't make any difference. If he does --
13 I don't know what the agreement with him and Ann was
14 as far as his hours go, but it's usually an hour.
15 That's what I get, an hour every day. If I don't
16 take my hour lunch, I can leave an hour early. In
17 other words, 30 minutes is 30 minutes.

18 Q Suppose someone did not take a lunch on a
19 particular day, and let's just say a half hour lunch,
20 and they finished their work before 3:30, what should
21 they do? Should they go home or should they return
22 to the shop?

23 A Well, if he's supposed to get an hour off
24 and he only took 30 minutes off --

25 Q My question was suppose there is somebody

1 who only has half an hour for lunch by agreement with
2 the employer, and their assigned hours are 7:30 to
3 4:00 in the day, and they finish all their service
4 orders before 3:30, what should they do, return to
5 the shop?

6
7 MR. BAUGH: Objection to what they should
8 do, Your Honor.

9
10 Q Is that what they're required to do?

11 A Not really a requirement, but that's the
12 common sense thing. If you finish up early, you
13 should go back to the shop. Or he can clean the van
14 or he can do a little bit of trouble shooting. We
15 have a lot of accounts at Philip Morris. He can go
16 and check on another account.

17 Q How many drivers do you have on an hourly
18 basis?

19 A I wouldn't know that.

20 Q You don't know what the financial
21 arrangements are with your employees?

22 A No.

23 Q You don't know what the financial
24 arrangements were with Andre Smith?

25 A No.

1 Q You don't know what his hours were?

2 A Yeah, sort of. I know his hours with me
3 was from 9:00 until the time he got off which was
4 4:30.

5 Q Are you sure of that?

6 A No, I'm not. I just know my hours.

7 Q That's all I have.

8

9

10 REDIRECT EXAMINATION BY MR. BAUGH:

11

12 Q Mr. Bowers, briefly, am I correct in
13 assuming from your answers that there's a lot of
14 trust between you guys?

15 A Yes.

16 Q And you sort of just do what you have to
17 do?

18 A I know he was going to do what I told him
19 to do.

20 Q If you had to do something in the middle of
21 the day personal, would you just go do it? Stop at
22 the bank or get a haircut, would you go ahead and do
23 it?

24 A Yes.

25 Q Did you have any objection to his doing it?

1 A No.

2 Q Are you familiar with the term, to
3 paraphrase, "cover your butt"?

4 A Yes.

5 Q Did you get the impression that this
6 termination was somebody covering their butt?

7

8 MR. BENEDETTI: Your Honor, please, I don't
9 know his impression has anything to do with this
10 case and I object.

11 MR. BAUGH: Let me put it another way.

12

13 Q Does this document concerning about being
14 out of your territory, does this address all the
15 concerns that were voiced to you by management
16 concerning his activities on Friday the 21st or did
17 they also discuss drug activity?

18 A I believe drugs was in it.

19 Q So the drug allegation stuff is not in
20 here, is it?

21 A No.

22 Q And Mr. Smith didn't want to sign it
23 because -- did he tell you this was --

24 A Right.

25 Q The term was "this is B.S."?

1 A Yes.

2 Q Did he tell you that?

3 A Yes, he did.

4 Q Is that why he refused to sign it?

5 A That's why he refused to sign this.

6 Q Do you believe this is a B.S. reason for
7 him being terminated?

8 A Yes.

9

10 MR. BAUGH: Thank you. Pass the witness.

11 No further questions.

12 THE COURT: Anything else, Mr. Benedetti?

13 MR. BENEDETTI: No, sir.

14 THE COURT: Thank you, Mr. Bowers. You may
15 step down.

16 MR. BAUGH: Call Ms. Florence James.

17

18

19 FLORENCE JAMES, the witness, called by the
20 plaintiff, first being duly sworn, testifies as
21 follows:

22 DIRECT EXAMINATION BY MR. BAUGH:

23

24 Q Please state your full name.

25 A Florence Elizabeth James.

1 Q Ms. James, did you work for ARA?

2 A Yes, I did.

3 Q What is your status concerning ARA now?

4 A Oh, at the moment I'm not working with ARA.

5 I got hurt January of '91 and I'm on workmen's comp.

6 Q You broke your ankle?

7 A Yes, I did.

8 Q And you're being retrained now?

9 A Yes, I am.

10 Q During the time you were there who did you
11 work for?

12 A Primarily when I first started I worked for
13 Francine Johnson. And then she left and Cindy Goss
14 was my immediate supervisor.

15 Q What did Cindy Goss start as, a driver?

16 A Yes, she did.

17 Q Just like Mr. Smith?

18 A Yes.

19 Q And then she worked her way into what?

20 A To warehouse manager.

21 Q Now, during the time that you worked there,
22 did you ever see a written policy concerning
23 vehicles?

24 A No.

25 Q Did you take vehicles home personally?

- 1 A Yes, several times.
- 2 Q Did you ever ask people?
- 3 A Yes. I had their permission.
- 4 Q But you didn't have keys?
- 5 A No.
- 6 Q You had to ask for keys?
- 7 A That's right.
- 8 Q Was it a big thing?
- 9 A No.
- 10 Q What reason would you give? "I need a car"
- 11 for what reason?
- 12 A Because I didn't have transportation.
- 13 Q Oh, really?
- 14 A I mean during the period when I first
- 15 started there, I lost my transportation. It was like
- 16 maybe two or three miles to the bus stop from where
- 17 the company was, so I would just ask that I could use
- 18 the car.
- 19 Q Everybody else just used cars there?
- 20 A If they asked for it. It was no problem.
- 21 Q Now, some people had vehicles all day?
- 22 A Right.
- 23 Q So they didn't have to?
- 24 A That's right.
- 25 Q And further do you know about Ms. Goss or

1 Ms. Ball using vehicles?

2 A Yes. They used them.

3 Q For personal?

4 A I remember an occasion I think Cindy moved
5 furniture. I'm not really sure exactly when it was,
6 but if they wanted to it was no problem. They just
7 would take the keys and whatever.

8 Q Now, you've had a lot of trouble with your
9 ankle, haven't you?

10 A Yes, I have.

11 Q And you've had lots of trouble getting
12 around?

13 A Yes, I have.

14 Q Tell me what your relationship with
15 Mr. Smith was.

16 A Well, Mr. Smith, when he started, I was
17 already working there. And we just became warehouse
18 buddies as we do with everything. And we talk for a
19 little while, go about our business, and I'll go home
20 or whatever.

21 Q What time did you get off?

22 A What time I leave? I leave at 4:00.

23 Q And do the drivers get off before you?

24 A Sometime the drivers do. They get off
25 anywhere between 1:00 and 6:00. Depends how heavy

1 their load was that day.

2 Q So when they'd get off depends how heavy
3 their load is?

4 A That's right.

5 Q Sometimes they'd get off as early as 1:00
6 if they didn't have a heavy load?

7 A That's right.

8 Q Now, since you've been out ill, has Andre
9 Smith visited you?

10 A Yes, he has.

11 Q He just comes by and chats?

12 A He came back from Desert Storm and found
13 out what had happened to me. He came out and visited
14 me, and I've seen him maybe twice last year or so.

15 Q What do you know about him?

16 A I just know he's a good family man and, you
17 know, all around fellow, nice guy.

18 Q Did you ever hear an allegation that he was
19 involved in a drug transaction?

20 A No.

21 Q Did you ever hear that allegation was made?

22 A No. I didn't even know anything about it.
23 Andre never to me seemed that type of guy. He just
24 was all about working, his children, his wife.
25 That's the kind of person he was.

1 Q And you were hurt while he was off at
2 Desert Storm?

3 A Yes, I was.

4 Q But he was a driver, right?

5 A Yes.

6 Q And it was your understanding drivers got
7 off when they were finished with their work?

8 A That's right.

9
10 MR. BAUGH: Pass the witness.

11 MR. BENEDETTI: I have no questions.

12 THE COURT: Thank you, Ms. James. You may
13 be excused.

14 MR. BAUGH: Call Robert Ragin.

15
16
17 ROBERT RAGIN, the witness, called by the
18 plaintiff, first being duly sworn, testifies as
19 follows:

20 DIRECT EXAMINATION BY MR. BAUGH:

21
22 Q Please state your full name for the Court
23 and the record and spell your last name.

24 A My name is Robert B. Ragin, R-a-g-i-n.

25 Q How old a man are you?

1 A 36 years old.

2 Q Do you know the plaintiff in this case,
3 Mr. Andre Smith?

4 A Yes, I do.

5 Q How long have you known him?

6 A I guess since about 12 or so.

7 Q Since you were about 12?

8 A Yeah.

9 Q Where do you live?

10 A I live on 30th Street.

11 Q And where did he live when he was 12?

12 A On 26th and O in the apartments.

13 Q Did you go to the same school?

14 A No. See, he and my brothers went to
15 school. I'm older than all of them.

16 Q I see. Now, calling your attention to
17 August the 21st -- well, wait. Have you ever ridden
18 in the ARA van?

19 A No.

20 Q Have you ever ridden in it at all?

21 A No, sir.

22 Q Were you in it on August the 21st?

23 A Yes, sir.

24 Q On August the 21st why were you in that
25 van?

1 A Because we had been working on a food truck
2 that he had bought from ARA, and we was, you know,
3 putting stuff on the shelves.

4 Q What were you going to do?

5 A Like a thing where you go over where the
6 kids that play on playgrounds and all of that,
7 football.

8 Q Who paid for the truck?

9 A He did.

10 Q And who was going to operate it?

11 A He was.

12 Q What were you going to do with it?

13 A Be his helper.

14 Q And you also do carpentry work?

15 A Yes, sir.

16 Q And you have done work on his home?

17 A Yes, sir.

18 Q In his home, I mean?

19 A Yes, sir.

20 Q And what were you doing with the van, this
21 snack truck?

22 A Well, we was having problems, because we
23 had worked so hard. The motor, we worked on that.
24 So then we had to get a thing, like we had to have
25 water on it for doing the hot dogs. So we was trying

1 to put water on it so you could wash your hands so it
2 be sanitary like.

3 Q Who actually did the buying of the wood to
4 install these things in the truck?

5 A Oh, he did everything.

6 Q And did you go pick the wood out?

7 A No.

8 Q On August the 21st, the day you were
9 stopped by the police, did he pick you up by your
10 house?

11 A Yes, sir.

12 Q And where were y'all going?

13 A To his house.

14 Q For what reason?

15 A To work on the truck like we always do.

16 Q Was he getting off work?

17 A He was off work.

18 Q About what time do you remember this was?

19 A Well, he picked me up about -- I say about
20 five minutes to 4:00, 4:00, something like that.

21 Q And that was at your house?

22 A That was at my house.

23 Q Now, you're on North 30th Street with all
24 the roses in the front yard, am I correct?

25 A Yeah.

1 Q And you have three clocks in the kitchen?

2 A I got three in the kitchen, one in the
3 front room and all the way down the hall.

4 Q Did he knock on the door or beep the horn?

5 A I knew he was coming. I was waiting for
6 him.

7 Q And you recollect it was almost 4:00 when
8 he picked you up?

9 A Something like that.

10 Q Where did y'all go?

11 A Went on heading on up toward the Southside.

12 Q Now, if you had never ridden in the van
13 before, had he ever picked you up in another vehicle?

14 A His regular car.

15 Q And about how often had that happened?

16 A Every time he got to do some work.

17 Q Why did he go down 26th Street?

18 A Because every time he come, if he was in
19 his regular car, these people be watching in the
20 neighborhood? We get laughed at.

21 Q On this day did you drive down 26th Street?

22 A Yes, we did.

23 Q Were you in the van?

24 A Yes, sir.

25 Q Was he in his ARA uniform?

1 A Yes, sir. He had his shirt on.

2 Q Is that an air conditioned van?

3 A No, sir.

4 Q Windows open?

5 A Windows open.

6 Q Where were you sitting?

7 A In the passenger seat.

8 Q Did that vehicle stop going down 26th
9 Street?

10 A No, sir.

11 Q Did anyone come up to you and sell you
12 drugs?

13 A No, sir.

14 Q How old are you?

15 A 36 years old.

16 Q Have you ever been charged with a drug
17 offense?

18 A No, sir.

19 Q You have gone 36 years without ever being
20 charged with a drug offense?

21 A Yes, sir.

22 Q Now, how far after you left 26th Street was
23 it that the police stopped you?

24 A We went and made a right on O Street and we
25 got to 25th Street and crossed over toward 24th

1 Street. We was almost at the end of the block. Next
2 thing I know, he said, "Police are behind us." So
3 they put on their light. So I figured in my mind,
4 he's starting, you know, to put on brake lights or
5 something like that. So he pulled right on around
6 the corner. Next thing I know when he stopped the
7 van, here come the police cars and throw the gun in
8 my face and hollering and screaming.

9 Q Did they actually have the gun pointing at
10 you?

11 A When I turned my face like this, the gun
12 was sticking me dead in my mouth.

13 Q What happened then?

14 A What you think? Wouldn't you be scared?

15 Q What did you do then?

16 A So then I was doing what they say. Hold
17 your hands up, you know, trying to figure out what's
18 going on.

19 Q Did they get you out of the car?

20 A They got me out of it.

21 Q Were you searched?

22 A Yes, sir.

23 Q Were you handcuffed?

24 A No, sir.

25 Q Were you kept by the car?

1 A Yes, sir.

2 Q Did they search it?

3 A They searched it.

4 Q Did they tell you why they were doing it?

5 A No, sir, until afterwards.

6 Q What did they tell you afterwards?

7 A After I took out ID and, you know, calling
8 in and getting all that, so I asked them, I said,
9 "Why did you stop us?" So the real young police
10 officer, he stopped us, because some guy named Shoop
11 (sic), he was in the 700 block of 26th Street at East
12 End social service building, and he done observe us
13 go through that block.

14 Q They told you that he was in the 700 block,
15 not the 900 block?

16 A That's right. He was in the 700 block of
17 26th Street in the East End social service building
18 and he observed us drive through that block.

19 Q Through the 700 block, not the 900 block?

20 A No. We drove through 900 block, but that's
21 where he was supposed to have been at.

22 Q And you hadn't been on the 700 block, had
23 you?

24 A No.

25 Q How long would you say they kept you out

1 there searching you?

2 A Long as they go through procedure. They
3 kept going in the van.

4 Q Were they shouting things at you?

5 A Yeah. They was, you know, kept saying
6 stuff, you know, trying to pick at stuff like that.

7 Q What do you mean, trying to pick?

8 A They're throwing slurs, like this and this
9 and that. I figure it don't matter.

10 Q Did any of them talk about the fact that
11 one of them used to work at ARA?

12 A Yes, one of them did say that.

13 Q What did he say about that?

14 A He made fun. He said, "I used to work at
15 ARA. You ain't making no money," and stuff like
16 that.

17 Q And was this a white officer or a black
18 officer?

19 A It was a white one. The black officer
20 never said nothing.

21 Q Did they pat you down?

22 A Yes, they did.

23 Q They put their hands inside your collar
24 and --

25 A They did everything.

1 Q Any drugs found?

2 A Nothing.

3 Q How far would you say you had driven in
4 minutes from the time you left 26th Street until the
5 time the police pulled you over?

6 A Cost me five minutes to me, because it
7 happened so fast it scared me to death.

8 Q Now, the police came in behind you?

9 A Came from behind.

10 Q Could you see them any way except looking
11 in the mirror?

12 A No, couldn't see them.

13 Q Did you ever stick your head out and look
14 back at them and eat something?

15 A No, sir.

16 Q Did anyone ever accuse you of eating any
17 drugs?

18 A No, sir.

19 Q Every time Mr. Smith comes over to get you
20 either in his car or whatever, did he always stop on
21 26th Street and talk to the old people?

22 A He always ride through there. See, we see,
23 you know, the old neighborhood. We always do that.

24 Q Did you see people out there that day?

25 A Yes, sir.

1 Q Did you or he speak to anybody, wave to
2 anybody?

3 A Nothing but the ladies always sitting in
4 their chairs.

5 Q Did you stop at all?

6 A No. Kept on going.

7 Q Have you ever known him to be involved in
8 any narcotics transactions, drug transactions?

9 A No, sir.

10 Q In fact am I correct, sir, I didn't know at
11 the time, but you have a relative who's a very famous
12 police officer?

13 A Yeah.

14 Q Called Radar Ragin?

15 A Yes, sir.

16 Q Did anybody ever ask you was the vehicle
17 stolen?

18 A Well, that's what they said he said, but we
19 ain't never seen him. This is the first time we seen
20 this one right here and he wasn't there.

21 Q He wasn't there? Did you have any money on
22 you?

23 A Yeah, they took money out of my pocket. I
24 had about \$25 on me.

25 Q Anything else you have on you other than

1 your \$25?

2 A That's all.

3 Q Thank you, sir.

4
5
6 CROSS-EXAMINATION BY MR. BENEDETTI:

7
8 Q Did you say you had known Andre Smith for
9 12 years or since he was 12?

10 A I said since he was 12.

11 Q You been friends?

12 A See, my younger brother got killed, you
13 know, and my other brother. He knew all my brothers
14 and my whole family.

15 Q But at some point in time you began to do
16 some work for him?

17 A Well, I do work for everybody. I go around
18 doing their work.

19 Q You started doing some work for him at some
20 point in time, didn't you? Do you remember when that
21 was?

22 A What do you mean, like towards the truck?

23 Q When you first started doing some work,
24 didn't you do some work on his house?

25 A That was after the truck.

1 Q Oh, after the truck?

2 A Yeah.

3 Q So the first thing you did for him was the
4 truck?

5 A The truck. He was working on the truck for
6 a long time.

7 Q Do you remember you and I had a chance
8 to talk about this case one time before in taking
9 depositions?

10 A Yes, sir.

11 Q And you told me that the material that you
12 were using for that truck he had bought?

13 A That's right.

14 Q Were you hauling that on that ARA truck
15 that day?

16 A He had some stuff on that truck that day.

17 Q Some of that lumber that you were going to
18 use?

19 A Well, I couldn't say, because he had a lot
20 of stuff on the truck that was going to go toward
21 working on that truck.

22 Q Did you take it home and work on that
23 truck?

24 A We been working on the truck.

25 Q Did he drop off the ARA vehicle to do that?

1 A We did some before we did it. We started
2 messing with this big jimmy wheel thing that goes on
3 the top of the truck, and tried to figure out how to
4 put holes and sit up there and bolt it down.

5 Q I see. How long do you suppose you worked
6 on that truck?

7 A It was dark when we finished.

8 Q How many months did you work on it? One
9 month, two months?

10 A No. For a long time.

11 Q Six months?

12 A Man, it was a long time. I just can't say,
13 but it was a long time. From the motor part to
14 putting this stuff in the back part, for the
15 generator part even down to the gallon, putting the
16 paint and all, oh, it was a long time.

17 Q You were going to put running water on
18 there too, weren't you?

19 A Yes, sir.

20 Q Did you do that?

21 A No, sir.

22 Q Didn't put the running water on it?

23 A No, sir.

24 Q Did you ever put the truck to work?

25 A Yes, sir.

1 Q When was that?

2 A See, I can't say, because I don't know the
3 dates out there for that.

4 Q Was it after you got stopped on 24th
5 Street?

6 A Was it afterwards?

7 Q Yes.

8 A For the truck to be working?

9 Q Yes.

10 A Yes, sir.

11 Q You had it in operation after that?

12 A Yes, sir.

13 Q Was it during the summer months?

14 A It was kind of warm.

15 Q Kind of warm? You don't know if it was
16 summer or not?

17 A Well, I mean it was a year ago. I'm trying
18 to remember everything that I can. That's what I'm
19 saying.

20 Q Do you remember how many days you worked on
21 the truck?

22 A Every day since he had to get that truck,
23 he put it in front of his house.

24 Q Did you help him every day?

25 A Every time that he was off, yes, sir.

1 Q You helped him every day?

2 A Every time he was off, he come and get me
3 and I worked on that truck for him.

4 Q Can you guess how many days a week?

5 A No. Like on the days off, like the
6 weekends, we get a six-pack of regular beer and we
7 try and figure out why it won't go past 15 miles an
8 hour, because it never gets speed, so we just kept
9 working on it. Then we get some more friends, they'd
10 work on it. Everybody was trying to put it together.
11 That's what it was.

12 Q Did you charge him for what you did?

13 A No, sir.

14 Q You didn't charge him?

15 A No, sir.

16 Q And after you got the truck running you
17 worked on the truck?

18 A Yes, sir.

19 Q So you consider yourself a friend of his?

20 A Yes, sir.

21 Q Have you talked with Mr. Baugh about this
22 case before today?

23 A No, sir. He came by, asked me questions
24 like you did, but that's all.

25 Q Do you know when that was?

1 A No, sir, can't say, but I know it was on a
2 Saturday. I know that much.

3 Q Have you talked to Andre Smith about this
4 case?

5 A No, sir.

6 Q Haven't talked to him at all?

7 A He works. Andre works hard, man.

8 Q So you haven't talked to him about this
9 case at all?

10 A No, sir.

11 Q Even during the time you were working on
12 the truck?

13 A When we working on the truck, this case was
14 not even then.

15 Q I thought you said you worked on it summer
16 of 1992?

17 A That's right. But I mean when the case
18 came along, we had already been working on the truck.

19 Q So you didn't talk about it at all?

20 A No, we didn't talk about no case.

21 Q Now, tell me, I'm not sure I understood
22 this business about Officer Schnupp was in the 700
23 block of North 26th Street?

24 A That's what his own police officers told
25 us, because I said what did you stop us for. They

1 said officer was in the 700 block of 26th Street in
2 the East End social service building, seen us drive
3 through 26th Street. I ain't never seen him. Today
4 first time I seen him right there.

5 Q You mean he said that they stopped you
6 because somebody in the 700 block of North 26th
7 Street said they saw you driving on 26th Street?

8 A They told us his name and everything.

9 Q But he said they saw you driving on 26th
10 Street?

11 A They said -- that's what they said. They
12 said they saw us drive through there. That's what
13 they told us.

14 Q They didn't say they saw you stop on 26th
15 Street?

16 A No, sir.

17 Q They saw you driving through?

18 A That's what they said.

19 Q One police officer said that?

20 A Yes. One of them young ones, because
21 wasn't none of them older than me.

22 Q And you said on this day, the 21st, the day
23 that you got stopped, there were some ladies sitting
24 out in front of those apartments at O Street and
25 26th?

1 A Yeah. There's a lady that always sit there
2 with the drunks, and she sit there in that chair on
3 the corner with the drunks all the time.

4 Q And did you wave at this lady and just kept
5 on going?

6 A Waved at her and kept on going.

7 Q Did you see any fellows up in the middle of
8 the block, one with a Miami Dolphins T-shirt on?

9 A No, sir, because they was drunks. We just
10 rode through. When we got to the corner, the drunks
11 and all them was right there like they always be
12 right there.

13 Q Nobody in the middle of the block?

14 A I didn't pay that no mind.

15 Q May have been somebody there, but you don't
16 know?

17 A It could have. I just didn't pay them no
18 mind.

19 Q Did you say one of the officers said he
20 wanted to know if your vehicle was stolen?

21 A No. They didn't say that. Like when they
22 stopped us and they did all what they did to us, I
23 was scared and I was asking them why did they stop
24 us. And that's what they said. He said Officer
25 Schnupp in the 700 block of 26th Street and East End

1 social service building said he saw us driving
2 through 26th Street, and he's the one that told them
3 to stop us. That's what they told us.

4 Q Did he say he thought the vehicle was
5 stolen?

6 A I don't know. They were going crazy to me,
7 man. I don't know.

8 Q But when you were searched, all your
9 pockets were turned out, weren't they?

10 A Well, they searched me.

11 Q Did they make you pull out your pockets?

12 A They did. They did everything.

13 Q They pulled your pockets?

14 A They did everything.

15 Q Did they say open your mouth?

16 A They did all that.

17 Q They say open your mouth?

18 A They told me open my mouth.

19 Q They say take off your shoes?

20 A They told me to do everything. They
21 searched me.

22 Q Did you take off your shoes?

23 A I did everything they asked.

24 Q Did they look down your socks?

25 A No, they ain't do all that. They just

1 searched me.

2 Q Did anybody inspect the inside of the van?

3 A Yes, they did.

4 Q Who was that?

5 A See, I could point to him better than I can
6 say, because I don't know their names and stuff. But
7 the tall white guy, he was searching on the steering
8 wheel part, and the other one. But the black guy, he
9 was the last one that did all the searching and stuff
10 too. But he was just standing there watching, you
11 know, watching out back with the gun stuffed in my
12 face. He was watching out back. But the other one
13 on my side, he put his gun in me. And he went up
14 there and started searching and going on through
15 everything. So he came up. When he came up, that's
16 when the black guy came and he started searching and
17 everything. So then by that time the tall one, he
18 had went to the car and just called it in and came
19 back. So then everybody just standing around, so he
20 started making jokes. That's when he said, "Oh, you
21 ain't making no money. I used to work for ARA."

22 Q This is a tall white officer?

23 A Yeah. He was the tall one.

24 Q Tall white officer?

25 A Yeah, tall white officer.

1 Q He's the one who said he used to work for
2 ARA?

3 Q I don't know. That's what he said. I'm
4 just going by what he said.

5 Q And he didn't ever say he saw you coming
6 out of a high drug crime area?

7 A Everywhere in Church Hill is like that to
8 me.

9 Q Is 26th Street a high drug crime area?

10 A I can't say, because I don't hang around
11 there. See, if I hang there I could say, but I don't
12 hang on 26th Street.

13 Q You remember when you gave me the
14 deposition I asked you that question, if the 900
15 block of North 26th Street was a high drug crime area
16 and you said yes?

17 A And I told you every street in Church Hill
18 is a high drug crime area. That's what I told you.
19 Look at your papers, that's what I said.

20 Q That's all.

21
22
23 REDIRECT EXAMINATION BY MR. BAUGH:

24
25 Q Did any man approach the vehicle and the

1 vehicle stopped and he put something in your hand?

2 A No, sir.

3 Q Thank you.

4
5 MR. BAUGH: Pass the witness.

6 THE COURT: Thank you, sir. You may step
7 down.

8 MR. BAUGH: Call Mr. Smith.

9
10
11 ANDRE SMITH, the plaintiff, called on his own
12 behalf, first being duly sworn, testifies as follows:

13 DIRECT EXAMINATION BY MR. BAUGH:

14
15 Q Please state your name for the record.

16 A Andre L. Smith.

17 Q How old a man are you?

18 A 35.

19 Q Up until sometime in August of 1992 where
20 did you work?

21 A I worked for ARA.

22 Q Doing what?

23 A I had a number of positions. I cleaned all
24 the pots for the vehicles, I took the incoming
25 supplies, I shipped for UPS, and I also repaired

1 equipment.

2 Q Now, part of the day you worked for
3 Ms. Goss?

4 A Only on Tuesdays and Thursdays.

5 Q And the rest of the time you worked for
6 Mr. Bowers?

7 A Yes, that's correct.

8 Q Now, on Monday, August 24th, the first two
9 hours you worked, who did you work for?

10 A The first two hours I worked for Cindy
11 Goss.

12 Q On Monday too?

13 A On Monday.

14 Q I thought it was just on Tuesdays.

15 A Well, that Monday I had to put a CSX order.
16 It was already printed up, the paperwork was stuck on
17 the board, so I pulled the 200 cases.

18 Q Who gave you that order?

19 A Cindy Goss.

20 Q So for the first two hours on Monday the
21 24th you were reporting to her?

22 A Yes.

23 Q She was your boss for those two hours?

24 A For those two hours.

25 Q Now, prior to that how many years had you

1 worked for them?

2 A Okay. First I worked doing the
3 refreshments for a year. Then I went to the coffee
4 system. They referred to persons who referred me
5 over to the coffee side, so I was with them for three
6 years.

7 Q Did you work continuously for them?

8 A Yes.

9 Q Were you ever gone?

10 A No, except for Desert Storm 12 months.

11 Q Did they hold your job for you?

12 A Yes.

13 Q You went to Desert Storm as what, you were
14 a soldier?

15 A Yes. Communications.

16 Q Guardman?

17 A Yes. I was in the Guard at the time.

18 Q How long had you been in the Guard?

19 A For seven years.

20 Q What was your rank?

21 A I was sergeant, E-5.

22 Q Now, as a sergeant are you subjected to
23 periodic drug screenings?

24 A At all times.

25 Q They could just walk in and take --

1 A Yeah. I could be called in to take a drug
2 screening.

3 Q Are you a married man?

4 A Yes.

5 Q How long have you been married?

6 A 15 years.

7 Q Children?

8 A Three.

9 Q Ages?

10 A Thirteen, nine and five.

11 Q Where do you and your wife live?

12 A We stay in south Richmond.

13 Q Now, during the time that you worked for
14 ARA, did you ever pick up your wife in a company
15 vehicle?

16 A Yes.

17 Q Have you ever transported personal items,
18 groceries or anything personal, in the company
19 vehicle?

20 A Yes, I have.

21 Q Do you know of other people who have done
22 it?

23 A Yes.

24 Q Was it a matter of routine?

25 A Well, just when you needed a vehicle and

1 you needed to transport something.

2 Q Anybody ever tell you you couldn't do that?

3 A No, they didn't.

4 Q When did you get off?

5 A If I didn't take a lunch -- and I heard
6 different people say the hours. My hours was from
7 7:30 to 3:00 if I didn't take a lunch. Other than
8 that it was from 7:30 to 4:00. That was me and Ann
9 Ball's agreement.

10 Q Now, you were working for the Guard at this
11 time?

12 A Yes.

13 Q And drawing that salary?

14 A Uh-huh.

15 Q And you were working for ARA. Now, what's
16 this snack truck thing?

17 A Well, I was going to run the snacks on the
18 weekends, because most of the kids in the
19 neighborhood, even with the police departments they
20 have football teams. But it was no kind of vending
21 or nothing for the kids. No sodas, no activity. So
22 I was going to form a truck, not drug-infested, not a
23 neighborhood truck, but for those kids. And that's
24 what I was going to use it for.

25 Q On August 21st what time did you get off

1 work? What time in your estimation did you stop
2 working?

3 A I stopped working -- my last call was
4 Stockton Street.

5 Q Stockton Street?

6 A Right there at Philip Morris, 19th and
7 Stockton. We was pulling up a coffee machine.

8 Q Who's we?

9 A Well, I'm saying ARA sent me with the truck
10 to pull out the coffee machine, because that branch
11 had moved back to -- what was it? I don't know
12 whether they was from Petersburg or not.

13 Q What time did you finish pulling that
14 machine?

15 A Around about 3:25, 3:30.

16 Q Then where did you go?

17 A I went to the barber shop on Venable.

18 Q Now, Venable is on the north side?

19 A No.

20 Q Where is Venable?

21 A Runs parallel.

22 Q Oh, sorry. And you got a haircut?

23 A Yes.

24 Q Then where did you go?

25 A From there down to 30th Street.

1 Q About what time did you get there?

2 A I'd say I arrived on 30th Street about
3 quarter to 4:00.

4 Q And had you already called to pick up Mr.
5 Ragin or were you just going to drop the machine and
6 pick him up?

7 A Well, he knew the time I was going to get
8 there. I told him around quarter 'til, ten to 4:00,
9 so he would be looking for me.

10 Q Did you go in the house or --

11 A No. Once I pulled up, he came in -- you
12 know, he was sitting on the porch.

13 Q What did you do then?

14 A Well, he put his saw in his bag in the
15 vehicle. And I already had other items that I had,
16 you know, like wood that they didn't use at the shop.
17 I had it in there with the coffee machine.

18 Q Then what happened?

19 A From there we proceeded to Q and took a
20 right, went to 26th. I said, "Well, let me stop here
21 and see if Miss Mable and everybody sitting out."

22 Q Was Miss Mable out there?

23 A No, she wasn't.

24 Q And Mr. Ragin knows some older lady who
25 sits out there with the drunks?

1 A No. That's not Miss Irving, because, see,
2 she's disability. Her legs and stuff messed up.

3 Q Did you see anyone there you knew?

4 A No, I didn't.

5 Q Did you stop?

6 A No, I didn't.

7 Q When you got to the corner what did you do?

8 A I took a right, went across 25th, took a
9 right on 24th, which P Street goes into Venable.
10 Before I could get to the end of 24th, when I looked
11 in the rear view, that's when I seen the police
12 vehicle.

13 Q This is with the blue lights?

14 A Blue lights, yeah.

15 Q What happened then?

16 A Well, apparently two officers had already
17 got out, dismounted the vehicle from the right side.
18 I never seen them. When I looked up, the two weapons
19 was in the passenger side in his face. And I was
20 telling him, "Don't move. Cooperate."

21 Q How close were these guns to his face?

22 A If he was to turn his head, he could have
23 touched the nine millimeter.

24 Q There were two guns that close?

25 A That's correct.

1 Q You ever had a gun pointed at your face?

2 A Ain't never been that close to me since I
3 left Desert Storm.

4 Q What happened then after they pointed the
5 two guns at you?

6 A After they pointed to him, they told him to
7 get out first. They told him, "Get out, get out."

8 And I was saying, "Hey, what did we do?"

9 So they told me dismount. The other
10 officer at that time had proceeded to the left. So
11 when I told him to open the door, because he had the
12 weapon in his hand, I said, "You want me out? You
13 can see my hands, you open the door. I'll dismount
14 the vehicle."

15 Q Were you scared?

16 A Yes.

17 Q Why were you scared?

18 A Because of the simple fact I didn't see no
19 badges at all was showed. All I seen was civilian
20 clothes.

21 Q What happened then?

22 A Then after --

23 Q Who opened the door?

24 A The officer opened the door and I stepped
25 out, and then he turned me to face the vehicle.

1 Q And then what happened?

2 A Then he continued, you know, started to
3 search.

4 Q Tell me how he searched you.

5 A First he wanted me to unbuckle my pants and
6 then, you know, I didn't. I said, well --

7 Q He told you to drop your pants?

8 A No. He was, you know, trying to feel in
9 the stomach lining of my belt.

10 So I told him, "You make your move and I'll
11 keep my hands where you can see them," because no
12 badges were still shown at that time. All I seen was
13 civilian clothes and a police car.

14 So all I did was told him, "You make the
15 move. You do whatever you want to do to me, because
16 you got control."

17 Q After that what else did they check?

18 A They told me unbuckle my shoes, you know.
19 He felt all around in the bottom and backs of the
20 shoes.

21 Q He told you to unbuckle your shoes?

22 A You know, untie the shoes and went through
23 the socks and everything.

24 Q What about your pockets?

25 A Yeah, turned my pockets inside out.

1 Q Did they look in your mouth?

2 A Yeah. Told me to open my mouth.

3 Q They told you to open your mouth?

4 A You know, roll your tongue around, make
5 sure you didn't swallow nothing.

6 Q He told you to open your mouth and roll
7 your tongue around?

8 A Yeah. They was on both sides. They had
9 two, one on each side.

10 Q Then what happened? How long did they keep
11 you there?

12 A I say about 15, 20 -- I'm saying 15, 20
13 minutes.

14 Q After they searched you and they searched
15 Mr. Ragin, what did they do?

16 A Okay. He radioed somebody. They said,
17 "Search them good," because then that's when they
18 went on the inside lining of Mr. Ragin's pants.

19 Q They put their hands inside his pants?

20 A No. He had sweats under, you know, hole-y
21 jeans. So they pulled that part down and went on the
22 inside to make sure they searched him again after
23 they searched him the first time to make sure. And
24 what was going through my mind at the time was why
25 they searching him like this.

1 Q Did they search the vehicle?

2 A They searched the vehicle too.

3 Q And what parts did they search?

4 A In around the floor boards, up on top of
5 the dash, and then got some corner slots where I keep
6 all of my paperwork at.

7 Q And they searched all of that?

8 A Yeah.

9 Q When it was over did they find anything?

10 A No, they didn't.

11 Q What did they tell you?

12 A At the time that we stood there, the
13 officer, you know, he worked for a vending company.
14 I didn't specifically hear no ARA. He said he worked
15 for a vending company. He know we didn't make any
16 money. But I was telling my partner, "Stay calm and
17 don't say a word." I said, "Don't say anything."

18 Q You had been in the Army how long?

19 A Been in the Army 16 years. I took an early
20 retirement.

21 Q Now, did they make fun of you while you
22 were there?

23 A Other than, you know, just trying to start
24 a normal argument, you know, because nothing was
25 found. We didn't know what was looked for until it

1 was over with.

2 Q Did they tell you why they had stopped you?

3 A He'd mentioned that we was in there for
4 drugs. "We know why you was there. We'll get you
5 the next time," and those were his only words.

6 Q Was there some conversation about where you
7 had been, what street or what hundred block you had
8 been in?

9 A No.

10 Q Or where someone had seen you from?

11 A The only thing that was mentioned was that
12 we was observed from the 700 block.

13 Q What building?

14 A The social service office sits in the 700
15 block. And that was all he said, that's what he
16 mentioned to me. And then even Jim Foley mentioned,
17 you know, the 700 block. Jim Foley mentioned that
18 too. See, even in the deposition, no one asked me.
19 They told me that I was seen from the 900 block.

20 Q But they told you that day you were seen
21 from the 700 block?

22 A 700 block.

23 Q And the only building in the 700 block
24 facing 26th Street was the --

25 A Social service.

1 Q -- East End social service building?

2 A Yeah.

3 Q Then they let you go?

4 A They let me go.

5 Q Anybody say anything?

6 A Didn't say nothing.

7 Q Did you walk away? They put their guns
8 away?

9 A Yeah.

10 Q And what did you do?

11 A We got in the vehicle and pursued on.

12 Q Have you ever been stopped before?

13 A Yes.

14 Q You ever been searched like that?

15 A Not like that, but I had guns drawn on me
16 for mistaken identity.

17 Q And when was that?

18 A That was about six months before that.

19 Q You were let go then?

20 A Yeah.

21 Q Where were you?

22 A Right there coming down from the house at
23 7-Eleven. The store had been robbed and we had a
24 vehicle that matched the description. Three officers
25 jumped out, pointblank range, you know, and took him

1 out, gave him his driver's license. He's not the
2 guy. See, they had a lot of swat team through there,
3 they were in civilian clothes. Shoot, anybody can
4 steal a police car. I mean if, you know, you look at
5 it, that's what really scared me was these were the
6 policemen.

7 Q So you went on and worked on the van at
8 home?

9 A Yeah.

10 Q On Monday morning what time did you go in?

11 A I got there about 7:30.

12 Q And you worked for a couple hours. Anybody
13 tell you there was something wrong?

14 A No. I was going to talk to Eric Bowers --

15 Q And then what happened?

16 A -- and mention to him that I had been
17 stopped.

18 Q You told Eric Bowers?

19 A Yes.

20 Q You didn't tell Cindy Goss?

21 A No, because I didn't work for her.

22 Q When you were driving the van, you worked
23 for Eric Bowers?

24 A Yes.

25 Q When you were working in the warehouse --

1 A I worked for Cindy.

2 Q So you told Eric Bowers you had been
3 stopped by the police?

4 A Yes.

5 Q When did you find out someone had alleged
6 you had been involved in a drug transaction?

7 A When Eric come in at night he went up
8 front, so they brought me back. You know, I'm still
9 in the warehouse, so they calling me into the office.

10 So when I got in he said, "Hey, you know,
11 you're being fired. Cindy took a call from the
12 police officer saying that you had drugs and you was
13 in an area you weren't supposed to be."

14 Q Did he mention drugs? He said you had been
15 connected with drugs, or what was the word you used?

16 A He said she took a written statement that
17 she didn't give him mentioning that I had been
18 stopped for drugs.

19 Q Stopped for drugs?

20 A Yes. And a person had dismounted the
21 vehicle on the right side, went up to somebody,
22 purchased the drugs, got back in the vehicle, and
23 then we pursued it on. But that wasn't in the
24 dismissal for the termination.

25 Q Why didn't you accept their reason for

1 termination?

2 A Because everybody else use vehicles for
3 personal use.

4 Q How much were you making at that time?

5 A I was getting commissions, because I was
6 doing so many jobs. I was getting about 800 every
7 two weeks.

8 Q Was your wife working at that time?

9 A Yeah.

10 Q What was she making?

11 A Close to what I was getting.

12 Q On the 24th, Monday, what did they tell you
13 to do?

14 A On that Monday when I come to work, you
15 saying on the dismissal part?

16 Q Yeah, the dismissal part.

17 A Okay. There was no rebuttal from me. I
18 couldn't explain anything. The letter was read.
19 There was no room, you know, for me to tell my side.
20 At that point they was to take me to the rear of the
21 building. All my belongings, all the tools, keys, or
22 whatever I had, and wait at the back of the building
23 for a ride home.

24 Q Now, was it your understanding that your
25 job was completely over at that time?

1 A At that time it was completely over.

2 Q Now, was there some discussion about how
3 you could go about getting your job back?

4 A The next day.

5 Q Who did you talk to?

6 A Eric Bowers called me and said Jim Foley
7 was on his way to Richmond and he would be there
8 Wednesday. Jim Foley come in. He investigated
9 Wednesday. He didn't make a determination of
10 dismissal if nothing could be in writing. Once they
11 received a letter Thursday when I called back, Cindy
12 said, "I have been informed you were terminated," you
13 know, "you're dismissed."

14 Q Now, at that time you were working 7:30
15 until whenever you were finished in the afternoon?

16 A 4:00 in the afternoon.

17 Q Monday through Friday?

18 A Yeah.

19 Q And then you worked around the house?

20 A Yes.

21 Q With your family?

22 A Either on the truck or in the house.

23 Q You had weekends off?

24 A Yeah.

25 Q And you got to spend time with your family?

COOK & WILEY, INC.

1 A Yes.

2 Q Your daughters, one is in the eighth grade
3 now?

4 A Yes.

5 Q You did their homework with them?

6 A Yes. I used to help them with math,
7 science, whatever, artwork, anything I could help
8 with. Make it easy on my wife.

9 Q How long were you out of work?

10 A About three months.

11 Q During that time what did you do to find
12 work?

13 A What I did was took a temporary job with
14 Interim, and I was running sawblades and pressing
15 machines for the Army. And I worked Pony Express
16 at night, so I was coming from one job and --

17 Q Why did you have to work two jobs?

18 A Just to pay my rent. I mean to be able to
19 survive at the point where I was up when I left ARA.

20 Q And how many hours a day were you working
21 at that time?

22 A I say around 20, 22.

23 Q Hours a day?

24 A Yeah, because, see, I stayed at Pony until
25 12:00 at night.

1 Q And what time did you go to Interim?

2 A I be there at 6:00 in the morning.

3 Q You filled out job applications?

4 A Yes, a number of jobs.

5 Q Where would you get those?

6 A I went to the unemployment and filled out
7 for like carpenters, UPS.

8 Q How many applications would you fill out in
9 a given day or a given week?

10 A Anywhere from three to four a day.

11 Q How many interviews would you get?

12 A About two a day.

13 Q And you had time to go to those as well?

14 A Yeah.

15 Q How many vehicles did you have?

16 A Just one. And the truck -- well, I put the
17 truck up for sale.

18 Q The van?

19 A Yeah, so I could pay off everything within
20 that three months that I got behind.

21 Q You were getting ready to put that van in
22 the street when you got fired, right?

23 A Yes.

24 Q Had you already paid for the insurance on
25 it?

1 A Yes.

2 Q And the business license?

3 A Yes.

4 Q What did that come to?

5 A Right about 3600.

6 Q But then because you didn't have time
7 anymore you had to get rid of it?

8 A Yeah. I couldn't afford to may that
9 insurance, because you had to buy a \$30,000 policy
10 before I sell the food.

11 Q Do you now make as much money as you were
12 making before?

13 A No.

14 Q Where are you working now?

15 A I work for Avis.

16 Q You work weekends?

17 A I work 2:00 to 11:00 and some weekends.

18 Q 2:00 in the afternoon to 11:00 at night?

19 A Uh-huh.

20 Q When you get home where are your children?

21 A Asleep.

22 Q By the time you get up your children are
23 gone to school?

24 A They already gone to school.

25 Q How about your wife?

1 A She's been in the hospital a lot. She just
2 got out within a month. But other than that normally
3 scheduled, she would be gone too, so I really
4 wouldn't get to see her until after 12:00.

5 Q Does it bother you that people think you
6 were involved in a drug transaction?

7 A That's the most problems I got.

8 Q Did Cindy Goss tell you that she thought
9 you were involved in a drug transaction?

10 A She told Eric Bowers that I was guilty,
11 I did it and I'm fired. That was her exact words.

12 Q She used the word "guilty"?

13 A Guilty.

14 Q Guilty of what?

15 A That's what I said.

16 Q Did anyone ever confront you about the drug
17 activity? Did she tell you or did she have --

18 A No. They called me in a separate office.
19 She never confronted me.

20 Q Have you ever used cocaine, sir?

21 A No. .

22 Q On August the 21st, 1992 did you stop that
23 vehicle in the 900 block of North 26th Street?

24 A No, I did not.

25 Q Did anyone approach that vehicle and give

1 anything to anyone?

2 A No, sir.

3 Q Did anyone ever tell you they thought the
4 vehicle was stolen?

5 A No, they didn't.

6 Q When you tried to tell people that you
7 didn't participate in any drug activities, did Eric
8 say anything?

9 A Well, he knew I wasn't involved in no
10 drugs, in no drug trade or nothing of that nature,
11 but the only stipulation he had was they release me.

12 Q Do you feel funny now when you see these
13 people you used to work with, they accuse you of
14 being involved in drugs?

15 A No, I don't.

16 Q Does it bother you they think you're guilty
17 of drug activities?

18 A That bothers me.

19 Q During the three months you were off, like
20 on Sundays, would you talk about it?

21 A Not really, because I was trying put it out
22 of my mind. But my wife and my kids, that's the part
23 that hurt me the worst.

24 Q Your daughter found out you had been
25 accused of being involved in drugs?

1 A Yes. I told her.

2 Q Which daughter was that?

3 A My oldest one.

4 Q Patrice?

5 A Yes.

6 Q Did you tell her it's not true?

7 A Yes. She knows I'm not involved so she
8 wouldn't believe anything from the outside, because
9 she sees what's at home. And you don't have kids
10 with top grades that she get with the drugs.

11 Q Do you know why Mr. Schnupp did this?

12 A I don't have no apparent reason.

13 Q Sir, Officer Schnupp has testified under
14 oath that on August the 21st, 1992 you stopped that
15 vehicle and were involved in a drug transaction.
16 Is he telling the truth?

17 A No, he's not.

18 Q Prior to that time had anyone ever
19 complained or commented about you using vehicles for
20 personal use or taking time off to get a haircut or
21 anything like that?

22 A No, they haven't.

23 Q Would you believe at this stage that in the
24 afternoon when you were finished with your route, you
25 could take off if you wanted to?

1 A That's it.

2 Q And did you do that the whole time you were
3 there?

4 A The whole time.

5 Q Do you know if the other drivers did that?

6 A Yes, they did. If you can finish your
7 route at 10:00, you can leave.

8 Q Did anyone ever pull you in and inform you
9 of an automobile policy that you couldn't use the
10 truck for personal use and all that sort of stuff?

11 A The only policy that was directed to me was
12 on my route. If you was responsible for the coffee
13 machines, the cleanliness and satisfy the customer,
14 that was it. Nothing about the vehicle.

15 Q Oh, by the way, who did you buy the van
16 from?

17 A I bought it from Ann -- well, Ann Ball was
18 in charge, but it was an ARA vehicle. And they sold
19 me the vehicle and I paid for it out of, you know,
20 until the certificate came. I paid 200 out of each
21 check for three months.

22 Q As a consequence of your being accused
23 of being involved in drug activity and getting
24 terminated, have you recovered from this yet?

25 A No, I haven't.

1 Q How have you not recovered?

2 A The mental aspect of working. In my
3 military career I never made a statement unless it
4 could be proved. That's what hurt me the most. I
5 was proven guilty without a charge.

6 Q Did you tell Eric Bowers that you didn't
7 have nobody in the car?

8 A Yeah. Well, I told him I did have -- I
9 didn't have anybody in the vehicle, because it
10 wouldn't have made -- I was all ready to pass
11 judgment when I walked in the office. There was no
12 room for me to voice my opinion. All they did was
13 read off what was given to him and I was escorted to
14 the rear of the building.

15 Q Did you call the police?

16 A Yes, I did.

17 Q And why did you call the police afterwards?

18 A I figured maybe military -- well, not
19 military, but I thought maybe -- Miss Allen
20 (phonetic) said, "Well, give them a call to
21 Investigator (unintelligible)." See if it was
22 permissible for an officer to be able to write this
23 statement, or assuming you have been in an activity,
24 which he wasn't. And all I was doing was trying to
25 get my job back. I knew there wasn't no drugs. I

1 knew the vehicle didn't come to a complete stop. And
2 I know I didn't have nobody get out of that vehicle
3 and have nobody approach that vehicle for drugs.
4 That's what hurt me the most. Not that I was in the
5 area. And if it was different for everybody else
6 would be fired for being somewhere they wasn't
7 supposed to, I would have walked away with my head in
8 the air knowing I made the mistake. But to walk away
9 being charged with something that you wasn't guilty
10 for, I couldn't walk away from that.

11
12 MR. BAUGH: Pass the witness.

13
14
15 CROSS-EXAMINATION BY MR. BENEDETTI:

16
17 Q Did you just tell the ladies of the jury
18 that you deny that there was somebody in your truck
19 when Eric Bowers and Brett Ramsey talked to you on
20 Monday morning?

21 A I didn't deny to Brett Ramsey. I denied to
22 Eric Bowers. And like I said in the deposition, I
23 did not tell Eric Bowers anything at that time. They
24 told me that I was dismissed.

25 Q After they told you you were fired, did you

1 deny there was a passenger in your vehicle?

2 A To them, yes.

3 Q Why?

4 A Why? Because I mean I didn't have to prove
5 anything at that point. I wanted to get a lawyer and
6 I told him what happened, and I had somebody in the
7 vehicle with me at that time. I didn't feel that was
8 anywhere for them to find me.

9 Q But you told the ladies of the jury for, I
10 guess, 10 or 15 minutes that it's perfectly all right
11 to take a vehicle and use this or drive that for
12 not-ARA employees. Isn't that what you said?

13 A Yes. But they didn't ask me directly.

14 Q But you told them on Monday morning you had
15 a passenger in that vehicle when you were stopped,
16 didn't you?

17 A I was not signing the statement. I told
18 them I wasn't signing the statement. I didn't tell
19 them -- they didn't even ask if there was somebody in
20 the vehicle. I said, "I'm not signing the statement.
21 If I'm fired, escort me out."

22 Q So you're telling me now that you did not
23 tell them anything about --

24 A I never told them anything, if anybody was
25 in the vehicle at all.

1 Q Did you call the police and tell the police
2 officer that you didn't have anybody in the vehicle?

3 A Yes, I did.

4 Q Why?

5 A I was trying to see on my side where did
6 they have grounds to fire me at, because of a letter
7 that was received from a police officer that was
8 false anyway.

9 Q I'm not sure I understand that. Would you
10 try that again? You said because you were trying to
11 get a report from the police department, you told
12 them that you didn't have anybody in the vehicle.
13 Is that what you said?

14 A No. What I'm saying is when I called
15 investigating bureau, okay, I was saying if they had
16 grounds to fire me, you know, not knowing the
17 situation, nothing was found on the block -- and yes,
18 I told them I didn't have anybody in the vehicle,
19 because at that time I felt, well, this might be the
20 same situation. I mean I was in a no-winning
21 situation as it was. I said, well, if it's going to
22 go this way let me go get a lawyer, so that way I can
23 prove my innocence.

24 Q So let me get it straight now. You told
25 the police department when you called Monday after

1 you had been fired that there was nobody in your van
2 when you got stopped?

3 A Yeah, because after -- excuse me. After
4 the question that was asked of me, I didn't feel that
5 they were going to help me and that was it. Case
6 closed. I didn't talk to them anymore after that.
7 I told them I didn't have anybody in the vehicle with
8 me, but I felt the weight of the conversation that
9 they were not there to help me.

10 Q And you deny that you told either Eric
11 Bowers or Brett Ramsey that you did not have anybody
12 in the van?

13 A I didn't have anybody in the van. That's
14 what I told them.

15 Q You told them you did not have anybody in
16 the van?

17 A That's right, yes.

18 Q But today you're telling the ladies in the
19 jury that you did have somebody in the van?

20 A Yes.

21 Q That's different from what you told Eric
22 Bowers and what you told the police department?

23 A Yes, because at the time I was trying to
24 save my job.

25 Q When you and I discussed this case in my

1 office on September the 7th, 1993 I showed you this,
2 what's called guidelines for use of ARA vehicle?

3 A You did.

4 Q Were you able to identify that?

5 A No, I wasn't. I told you that I had never
6 seen that form and I don't know anything about that
7 form. It's never been presented to me. That's what
8 I told you that day.

9 Q But you looked at this form while we were
10 there, didn't you?

11 A Uh-huh, yes.

12 Q And you told me this form was different
13 from the form that you signed?

14 A Yes, because the form that I signed was
15 only for the rep. It wasn't for the, you know,
16 entire fleet. It was just for if you're running
17 coffee, what your responsibilities were.

18 Q Do you recall me asking you what was
19 different about it?

20 A What you mean?

21 Q You recall me asking you what was different
22 between this form and the form that you signed?

23 A No. I did not tell you I remember signing
24 any form of that nature. That's what I told you.

25 Q Now, I'm going to refer to beginning on

1 Line 25 on Page 20 of the deposition of September the
2 7th, and ask you to read to the ladies of the jury
3 beginning with my question to you on Line 23 and
4 continuing on over to Line 24, turning to the next
5 page.

6 A "I'm going to show you, it's titled
7 'Guidelines for Use of ARA Vehicles.'"

8 Q And that was this document, right?

9 A Yes, that's the document.

10 Q Okay.

11 A (Witness reads document.) I guess. I
12 don't remember signing it. It's worded different.

13 Q It's worded different, okay. Go ahead.

14 A "It's charged" -- oh, "it's changed. I
15 have been there for four years. The one I seen was
16 a little different than that."

17 Q And then what was the next question?

18 A "Yes, sir. How different, do you know?"
19

20 MR. BAUGH: Your Honor, I hate to rise and
21 object, but under the best evidence rule, if
22 they have a copy of a driving statement that
23 this man was shown, I would ask they present it.
24 Under the best evidence rule, if there is such a
25 statement and it is signed, then I would ask him

1 to present it. But if the document is not here,
2 it is not proper.

3 MR. BENEDETTI: I would like to finish with
4 this portion of the thing before I address that.
5 I think I'm going to introduce this which is an
6 unsigned copy, the only copy that I have, but it
7 is according to him a little bit different from
8 the one he signed. That's a part of corporate
9 records and not available to me.

10 MR. BAUGH: Your Honor, corporate records
11 are available under subpoena duces tecum.
12 That's a court order from this Court to anybody
13 including the corporation for those documents.
14 There's no indication that document was even in
15 existence at the time he worked there. Under
16 the best evidence rule, before this line of
17 questioning continues, show the man the piece of
18 paper he signed. I mean he's met with those
19 people at least two or three times. He could
20 have asked them for it.

21 MR. BENEDETTI: The documents as far as I
22 understand are in Pennsylvania and not available
23 to me. I have asked for the documents. I have
24 not received them. I'm relying on this
25 witness's statement that there is a signed

1 document that is a little bit different or a
2 little different from this document.

3 MR. BAUGH: But, Your Honor, unless we know
4 what that document contains --

5 THE COURT: Let me see that.

6 MR. BAUGH: Thank you.

7 THE COURT: (Judge reads document.) Well,
8 there's no dispute that it's company rules not
9 to have passengers. Is there a dispute about
10 that?

11 MR. BAUGH: There's a dispute. Your Honor,
12 in my opinion that rule was not in effect when
13 this man worked there. And further, based on
14 Mr. Bowers's testimony, no one ever sat down and
15 told him what the rules were concerning people
16 in the vehicles. He said it was common sense
17 how they worked. There were no rules.

18 THE COURT: Well, I guess that's a factual
19 question. But if the objection is best evidence
20 rule, that goes with whether or not the contents
21 of the writing are in dispute. But whatever the
22 writing is, there doesn't seem to be any dispute
23 that there has been a policy written sometime
24 that drivers can't --

25 MR. BAUGH: Your Honor, there's been no

1 testimony that such a policy exists in this
2 trial that I have heard. No one. Eric Bowers
3 said he did not and he said he never
4 explained --

5 THE COURT: What about Ms. Goss?

6 MR. BAUGH: Ms. Goss, it has already been
7 explained, works in the warehouse. She does not
8 have anything to do with this man's driving.
9 When he worked with the drivers, he worked for
10 Eric Bowers, according to Eric Bowers, according
11 to him and according to Ms. Goss.

12 MR. BENEDETTI: The plaintiff has said that
13 he signed the document for use of ARA's vehicle.
14 This document is a little different, so there is
15 such a document he admits that he signed.

16 THE COURT: Did you ever sign such a
17 document?

18 THE WITNESS: I told him at the deposition
19 that it was a form. And like I'm saying now,
20 it's related to the routes. It's not a vehicle
21 policy for the fleet. It's no policy for the
22 fleet.

23 MR. BENEDETTI: If I may read this into the
24 record?

25 THE COURT: All right. What is it?

1 MR. BENEDETTI: It's on Page 20 of the
2 deposition of Andre Smith taken on September
3 7th, 1993.

4 MR. BAUGH: Objection to anything being
5 read into the record in the presence of the
6 jurors. I mean if it's going to be refreshing
7 his recollection, he's showed it to him, he's
8 explained it.

9 MR. BENEDETTI: I asked the witness to read
10 it. He has not read it.

11 THE COURT: Is that this witness's
12 statement?

13 MR. BAUGH: Yes, sir.

14 MR. BENEDETTI: That's his statement.

15 THE COURT: Do you want to present it to
16 him?

17 MR. BENEDETTI: I asked him to read it. He
18 didn't read it. I don't know why he didn't read
19 it. I would like to read it in.

20 MR. BAUGH: Your Honor, if it's going to be
21 a reflection of the witness's recollection,
22 under the rules of evidence the witness must be
23 shown the document. He can be asked, "Do you
24 remember being asked these questions? Do you
25 remember giving these answers?" And he can

1 answer yes or no. If he says, "I do not
2 remember," you can say, "Read this document.
3 Does it refresh your recollection?" Then he can
4 be asked again. If that's not true, then
5 perhaps he can be impeached by it.

6 But as it stands now this man has just told
7 this jury, "The only document I signed had to do
8 with fixing coffee machines and what I had to do
9 on my route."

10 There was no discussion about vehicles.
11 That's what I thought I heard. I'm getting old,
12 but I could have sworn I heard that.

13 THE COURT: Are you trying to use this as
14 a prior inconsistent statement or to refresh his
15 recollection?

16 MR. BENEDETTI: I'm trying to refresh his
17 recollection. He has told me again that the
18 document he signed was not this document but one
19 similar to it. And that's exactly what he
20 testified to when he was before me on discovery.

21 THE WITNESS: And I didn't deny it. I told
22 him.

23 MR. BAUGH: Answer his question.

24 THE COURT: Did you read this passage in
25 the deposition?

1 THE WITNESS: Yes, I did.

2 THE COURT: Is that your statement?

3 THE WITNESS: Yes, sir.

4 THE COURT: Well, he adopts the statement
5 as his own.

6 MR. BENEDETTI: It needs to be in the
7 record.

8 THE COURT: But if the statement is
9 consistent with what he said previously, you're
10 contending that it's not consistent with what he
11 said today?

12 MR. BENEDETTI: He said today that the only
13 thing he ever signed was something that had to
14 do with maintenance of the vehicle or something
15 of that nature. Now, on the deposition and
16 again today he said that this is the document I
17 showed him, which is a little different from the
18 document he signed. And this document has to do
19 with use of the vehicle.

20 MR. BAUGH: Your Honor, the problem is "a
21 little different." "A little different" is not
22 the definitive term. It is not a word of art.
23 That doesn't mean anything. That is not a
24 statement that is a proper predicate for
25 impeachment.

1 MR. BENEDETTI: And I asked him how
2 different, and he explained how different.

3 THE COURT: In the deposition? Well, ask
4 him today how different.

5 MR. BAUGH: Yes.

6
7 Q I'd ask you to begin on Line 6 --

8
9 MR. BAUGH: Judge, that's not what the
10 order was.

11 THE COURT: Well, ask him today how
12 different.

13
14 Q How different is this from the statement
15 that you signed?

16 A It was a note attached to that and it
17 stated more or less on the vehicle and your route
18 as far as running the coffee route, like, you know,
19 fixing another machine, cleaning another machine.
20 It was like three to four pieces of paper stapled
21 together, but it was just for your specific route.
22 That's why I said it was a little different.

23 Q Did the statement that you signed also
24 contain some prohibitions against the personal use
25 of the vehicle?

1 A Just stated, you know, the upkeep of the
2 vehicle, you know, your coffee pots, you know, what
3 you would be wrote up for. It wasn't followed. Like
4 I said, I don't remember that form and it could have
5 been attached. And like I said in the deposition, it
6 could have been in that form or a little different.
7 That's all I said.

8 Q But you did sign it?

9 A Yes, sir.

10 Q And the statement that you signed as far as
11 you knew had only to do with maintenance of the
12 vehicles?

13 A And the route.

14 Q And the route?

15 A Yes, sir.

16 Q And did you tell me that the difference on
17 the deposition was that the only thing different
18 between this and what you signed was that there was
19 no mention made that you could be discharged for
20 violation?

21 A It was don't dismissal for no violation,
22 you know, having nobody in the vehicle.

23 Q You need to answer the question. The
24 question was did you tell me on the day that you gave
25 depositions that the little difference between this

1 form right here and the form that you signed was that
2 there was no mention of your being discharged?

3 A Being dismissed?

4 Q Yes.

5 A For that form.

6 Q And that was the only little difference?

7 A That was it..

8 Q And the form that you signed was different
9 only in that aspect that there was a possibility that
10 you would be discharged?

11 A Yes, but that was for my particular route,
12 my responsibilities.

13 Q I don't understand that. What was for
14 that?

15 A It was a form stating on your
16 responsibilities as a driver, as an operator. And it
17 was four forms stapled together. I remember signing
18 those forms, but I couldn't remember if this form was
19 attached to those forms or not. I signed one of the
20 forms on the front and there was three other copies
21 on the back, and it was basically for your operation
22 as an ARA driver.

23 Q And you didn't read the other forms?

24 A I didn't say I didn't read them.

25 Q Were the other forms concerning use of the

1 vehicle?

2 A Just my route. Just my route.

3 Q It said nothing about you can't put people
4 not employed by ARA in the vehicle?

5 A No, sir. I didn't see that on that form.

6 Q You didn't see that?

7 A No, sir.

8 Q Well, can you explain to me why you said
9 the only difference was that they could discharge you
10 for that?

11 A (No verbal response.)

12 Q Let the record show the witness is silent.
13 Why were you fired?

14 A Why were I fired?

15 Q Yes.

16 A For having somebody in the vehicle with me
17 and being in an unauthorized area.

18 Q And why are you suing Officer Schnupp?

19 A Why? Because of the drug part, saying that
20 I had scored drugs in an area which I did not.
21 That's the part that I know didn't take place.

22 Q But you have heard Cindy Goss testify
23 today, haven't you?

24 A Yes, I did.

25 Q Have you seen the statement that she wrote?

1 A I heard of the statement, but I haven't
2 seen it.

3 Q You didn't see that thing that she wrote
4 when she was talking to Mark Schnupp on the
5 telephone?

6 A No. I seen the printed copy that came in
7 Thursday that was typed up from the officer.

8 Q You've seen that?

9 A I never seen Cindy's version of what she
10 had wrote from him on the telephone. When they came
11 in, they presented that one form to me -- which had
12 Eric sat down and Brett Ramsey sat down and said, you
13 being in an unauthorized area with somebody's
14 vehicle. That was the only form. Nothing was ever
15 shown, but I had heard it was a letter that Cindy had
16 wrote on the side stating everything she had got from
17 the officer, and they was waiting on something in
18 print that Thursday to release.

19 Q You have never read her notes?

20 A No, I haven't.

21 Q And if I told you that the notes didn't
22 accuse you of being involved in a drug transaction,
23 would you still think you ought to be suing Mark
24 Schnupp?
25

1 MR. BAUGH: Objection, Your Honor. The
2 documents -- I'd ask again publish it to the
3 jury and let the jury see if there's an
4 accusation of drug involvement. And further I
5 would refer the Court to Ms. Goss's testimony.
6 She was told by that man that he was involved in
7 a drug transaction, and the only thing different
8 was the use of the word "cocaine." And she said
9 it from that statement. So that is a
10 hypothetical, it's not predicated upon pertinent
11 facts, and we object to it.

12 MR. BENEDETTI: He can object to it, but
13 it's an improper objection, because the facts of
14 this case --

15 THE COURT: The jury will be able to see
16 this. They can make a determination.

17 MR. BAUGH: Thank you.

18 THE COURT: Well, I say that to both of
19 you. He said he didn't know about it, but you
20 can go ahead and question.

21 MR. BENEDETTI: I withdraw the question.

22 THE COURT: The objection is overruled.

23 MR. BAUGH: Note my exception.

24 MR. BENEDETTI: Thank you.

25

1 Q Will you answer the question?

2 A Could you repeat the question.

3
4 THE COURT: What was the question?

5
6 Q The question was, you said --

7 A Should I still --

8 Q I'm sorry?

9 A You said should I still be suing him?

10 Q Yes.

11 A Would I?

12 Q Yes.

13 A Yes.

14 Q If he didn't accuse you of anything?

15 A If he didn't?

16 Q Accuse you of being involved in a drug
17 transaction?

18
19 MR. BAUGH: Your Honor, I have to object to
20 the relevance of this. If he didn't? We're
21 saying he did.

22 THE COURT: I know he's saying you did, but
23 the questioning so far that this lady may not
24 have said that in her writing --

25 MR. BAUGH: Your Honor, we're not

1 predicating this solely on the writing.

2 THE COURT: Well, that's the way this came.

3 MR. BAUGH: Then, Your Honor, we would
4 object to it being totally irrelevant to
5 everything, because Ms. Goss just got on the
6 stand and talked about people getting out of
7 vehicles, the word "drugs" was used, all kinds
8 of stuff she testified to.

9 Now, in the statement it says passenger got
10 out and gave something and received something.
11 But the document which allegedly explained that
12 conversation goes way beyond that. And further
13 you heard the testimony of Mr. Bowers when he
14 was told. That is speculation.

15 MR. BENEDETTI: Counsel fails to point out
16 that the telephone call was on the 21st, that
17 the document clearly says that on the 21st she
18 contacted her superiors which she has testified
19 to. The last contact with her superior, with
20 Mr. Foley who authorized -- or not authorized
21 but who approved of the prior recommendation,
22 was at 7:30 on the morning of the 24th. The day
23 that he was fired was approximately 10:00 in the
24 morning.

25 So the statement dated the 25th has no

1 bearing or no relationship on what was said that
2 caused his firing. And I'm saying that assuming
3 that she said nothing about drugs involving you,
4 would you still be suing Mark Schnupp.

5 THE COURT: I think based on the testimony
6 that that's an appropriate question. The
7 objection is overruled.

8 Go ahead. Answer that question, if you
9 can, Mr. Smith.

10
11 Q Can you answer that question?

12 A Yes.

13 Q You would still be suing Mark Schnupp?

14 A Yes.

15 Q Do you think that you were wrongfully
16 fired?

17 A Yes, I do.

18 Q Why aren't you suing ARA?

19
20 MR. BAUGH: Objection. That calls for a
21 legal conclusion. I would tell the Court that I
22 advise counsel this is an at-will state.

23 THE COURT: It is.

24 MR. BAUGH: And he has no cause of action
25 to fire you because they don't like the color of

1 your eyes.

2 THE COURT: Well, are you saying --

3 MR. BENEDETTI: May the witness answer the
4 question?

5 THE COURT: Well, is your question why
6 isn't he pursuing a claim against --

7 THE WITNESS: You want me to answer?

8 THE COURT: Wait a minute. Is your
9 question aimed at why isn't he suing ARA for
10 defamation or some improper termination?

11

12 Q For improper discharge?

13 A Because when I went to my lawyer he told me
14 that I couldn't sue ARA because Cindy Goss took
15 orders from higher up, so it was too many people
16 involved in that chain to pinpoint one person's
17 action, but we could prove by that letter.

18 See, Monday I was released. Jim Foley was
19 notified. Eric Bowers called me Tuesday. I wasn't
20 fired until Thursday until they received the actual
21 letter.

22 Q But you weren't allowed to go back on
23 Tuesday or Wednesday, were you?

24 A No, but they paid me from Monday to
25 Thursday.

COOK & WILEY, INC.

1 Q But you weren't allowed to go back, were
2 you?

3 A No, I wasn't.

4 Q You said you went to Church Hill to get a
5 haircut and you went to pick up Robert Ragin. Those
6 purposes were solely for your personal benefit,
7 weren't they?

8 A Yes.

9 Q Did you get prior approval to do that?

10 A No, I didn't.

11 Q And you told us that you went to work at
12 7:30 and got off at 3:00 if you had no lunch, is that
13 right?

14 A I told you I rode to work at 7:30.
15 Normally I get off at 4:00. If I don't take a lunch,
16 I can get off at 3:00.

17 Q So you have an hour for lunch?

18 A Yeah.

19 Q Is that different from what you told me
20 when I took your deposition?

21 A It's -- I told you it depended on when I
22 get off. At the deposition I say I get off at 4:00
23 normally.

24 Q On Page 6 of the deposition, Line 21, at
25 the end of the line --

1 A It's either -- if I'm going in at 7:30, I
2 work until 4:00. Either I can get off and take the
3 3:00 or the 3:30. There was never -- it's never the
4 same, because if my trouble calls go up until 3:00, I
5 can say, okay, I'm going to go ahead and take my 30
6 minutes now. It's at your discretion. So, you know,
7 either it's 3:30 or 3:00.

8 Q Were you paid by the hour?

9 A Say that again?

10 Q Were you paid by the hour?

11 A Well, see, I got commission on different
12 days and involved with have to put up a sheet. I got
13 commission for the coffee, I do the warehouse for UPS
14 with commission. Then I had a base of, you know,
15 amount which --

16 Q You were an hourly employee, weren't you?

17 A (Witness nods head.)

18 Q And you got paid as long as you worked by
19 the hour, and if you sold something you got a
20 commission on what you sold, is that right?

21 A Uh-huh.

22 Q How many hours a day were you normally paid
23 for?

24 A I couldn't tell you that.

25 Q And so you're saying you can get off at

1 3:30 or you can get off at 3:00?

2 A Yeah.

3 Q And whose decision is that, yours?

4 A If I'm through with everything, that's all
5 I need, because they say even if you on the coffee
6 run or whatever, if you finish at 2:00, if you finish
7 on -- I mean it's no set time.

8 Q Is that different from what you told me
9 when you gave your deposition on September 7th?

10 A Normally it's 4:00 --

11 Q Answer the question.

12 A Yes, sir. Normally it's --

13 Q Is it different from what you told me on
14 September the 7th?

15 A I told you I come in at 7:30 and I get
16 off -- if I don't take a lunch, normally on my days
17 on with Eric Bowers it's 3:30.

18 Q That's what you told me? Is that what you
19 told me?

20 A Yes, sir.

21 Q Let me read you what you said. "My last
22 trouble call was at Stockton Street at Philip Morris.
23 And if I don't take a lunch I get off at 3:30."

24 And on Page 8 I asked you what time you go
25 to work. You said, "I go in at 7:30."

1 And continued on Page 9, "You work until
2 4:00, four o'clock?"

3 "Yes. 7:30 to 4:00."

4 7:30 to 4:00 with a half hour for lunch,
5 right?

6 A It depended on what I got to do. If it's
7 nothing else left at 3:00, no more trouble calls to
8 do, I mean I'm through for the rest of the day. It's
9 no set time on that lunch period.

10 Q Well, tell me what time did you finish your
11 last service call on Stockton Street on August the
12 21st?

13 A Around 3:25, right around 3:30.

14 Q Right around 3:30. And you said you went
15 and got a haircut?

16 A Yeah.

17 Q You were on the south side of the river
18 about ten blocks from your home, weren't you, when
19 you finished your last call?

20 A Yeah. That's Stockton.

21 Q Royall Street where you live is about ten
22 blocks from Stockton?

23 A From Stockton.

24 Q But instead of going home you went across
25 the river, came back across the river, up 17th Street

1 up on Church Hill to Venable and Mosby where you got
2 a haircut?

3 A Yeah, because I was off.

4 Q And then you drove to 30th Street and
5 picked up Robert Ragin, and then you came down the
6 900 block of 26th Street?

7 A Yes.

8 Q Can you tell me, is anything different
9 before when I asked you these questions in
10 depositions about anybody being seen in the 700
11 block?

12 A You didn't ask me.

13 Q I didn't ask you that?

14 A You said I was observed from the 900 block.
15 You never said --

16 Q And you said you drove through the 900
17 block of North 26th Street?

18 A Yes.

19 Q And about what time did you drive through
20 there?

21 A I give it anywhere -- right at 4:00, a
22 little after 4:00.

23 Q What time did you say you got a haircut?

24 A I went in the barber shop around 3:30.
25 See, okay, from Stockton Street I'm going to tell you

1 that route.

2 Q First tell me how long it takes to get from
3 Stockton Street to Venable and Mosby?

4 A Take me about maybe five, ten minutes.

5 Q That's across the river, isn't it?

6 A Yes, sir.

7 Q And you use 95?

8 A Yes, sir -- no, no, no.

9 Q Didn't use 95?

10 A No.

11 Q Which bridge did you come?

12 A Coming across the 14th Street, go back
13 through the Bottom and then come right up 17th and
14 hit Venable. That's the way I come.

15 Q Yes, but when you were on Stockton Street
16 where do you go to get across the bridge? How far
17 you have to go to get across the bridge?

18 A Not far, because the building I was in was
19 the 701 building which is not in the main Philip
20 Morris building. East Coast sits right here on Hull,
21 and parallel to that is Edmond Street. I come out
22 right there, took a right to get to 14th street, went
23 through the Bottom and came right up 17th to Mosby.

24 Q So you're saying you got there about 3:30
25 to get a haircut?

1 A Yes. All I get is the normal. Cut it off
2 and go.

3 Q Did you have a watch?

4 A Yes, I did.

5 Q Got one now?

6 A No. I broke it at work.

7 Q You then drove to 30th Street. How long
8 did that take you?

9 A From right there on the Bottom, ain't no
10 more than six to seven minutes at the most. You're
11 going straight up.

12 Q So you got the haircut at 3:30. It took
13 you about 15 minutes to get a haircut, that's quarter
14 to 4:00. That's six minutes you were there, about
15 ten minutes to 4:00?

16 A What, to get the haircut?

17 Q At Ragin's house?

18 A I got there about right around ten or five
19 'til at his house.

20 Q And then you picked him up right away, came
21 on down 26th Street which is about six, eight blocks?

22 A Yes.

23 Q So you were there right around 4:00?

24 A Right at close to 4:00. It could have been
25 ten after. I don't know.

1 Q These are all guesses on your part?

2 A Yeah, that's all guesses.

3 Q Only thing you know for sure is you looked
4 at your watch when you left Stockton Street?

5 A To make sure that I was off.

6 Q And you were off at 3:30 on that day, it
7 was 3:25?

8 A You know, it could have been. I mean 3:25
9 or whatever, five minutes earlier.

10 Q When you left Stockton Street, could you
11 have gone home and gotten your own personal vehicle?

12 A I don't have a personal vehicle.

13 Q I thought you said you had a --

14 A All I had was one vehicle and that was the
15 one my wife drive.

16 Q You made arrangements with her that you
17 were not going to be there when she came to pick you
18 up?

19 A Say that again?

20 Q Had you made arrangements with your wife on
21 that Friday?

22 A She knows on Fridays that I keep the
23 company vehicle on the days that I have the company
24 truck.

25 Q So you'd keep the step van every Friday

1 over the weekend when you were working with ARA?

2 A Yes. Every weekend all weekend. But I
3 wouldn't drive it. Once it's home it's parked.

4 Q Did you ever hear Eric Bowers say if you
5 finish before 3:30 you should have brought the van
6 back?

7 A I mean I heard him say it, but it was at my
8 discretion. He knew I didn't have a ride home and
9 that's what I do on Monday, Wednesday and Fridays.
10 I keep the vehicle.

11 Q So you kept the van every weekend?

12 A I'm saying on the days I worked for him,
13 Mondays, Wednesday and Fridays.

14 Q Do you think that Eric Bowers didn't go to
15 your defense on --

16
17 MR. BAUGH: Objection, Your Honor. "Do you
18 think that Eric Bowers didn't go to your
19 defense"? That is rank speculation and
20 conjecture.

21 THE COURT: What's that got to do with --

22 MR. BAUGH: Also asking him to comment.

23 MR. BENEDETTI: I'd like to finish the
24 question. Then he can object all he wants to.

25 MR. BAUGH: The part that was finished was

1 objectionable. He's asking to comment on the
2 credibility of another witness's testimony and
3 that cannot be done.

4 THE COURT: Well, that certainly can't be
5 done. Why do we need to go into this now?

6 MR. BENEDETTI: He's complaining -- he's
7 saying now he can use the van anytime he wants
8 to, that his boss said that he expected him to
9 come in with the van.

10 I'm asking him if he thought that his boss
11 who says he should have come in with the van was
12 really so generous, why he didn't come to his
13 defense on Monday when he was fired.

14 THE COURT: Well, isn't that asking him to
15 get into Mr. Bowers's mind?

16 MR. BENEDETTI: That's correct. That's
17 correct, I guess.

18 MR. BAUGH: Could we ask the jury to
19 disregard all of that, please, because that was
20 prejudicial and irrelevant.

21 THE COURT: Well, ladies, the question on
22 the floor -- what is the question, Mr.
23 Benedetti?

24 MR. BENEDETTI: I'm sorry?

25 THE COURT: What is the question?

1 MR. BENEDETTI: The question was do you
2 think that he failed you when he didn't come to
3 your defense on Monday morning.

4 THE WITNESS: You want me to tell you?

5 THE COURT: I don't think I want you to
6 tell me.

7
8 Q When you were driving down the 900 block of
9 North 26th Street, did you observe anybody with a
10 Miami Dolphins T-shirt on?

11 A No, I didn't.

12 Q Did not? But you've told me previously
13 that this was a high drug crime area, didn't you?

14 A Yes. That whole area is. I stated that.

15 Q You recognize that was a high drug crime
16 area?

17 A Yes. It always been.

18 Q The east side of that street at the corner
19 of P Street has an abandoned warehouse, doesn't it?

20 A Yes, it does.

21 Q Two-story warehouse?

22 A Yes.

23 Q Do you know who owns that?

24 A No, I don't. Not by name.

25 Q Do you know what used to be there?

1 A I used to play in that building.

2 Q And next to that is an empty lot?

3 A Yes, it is.

4 Q Pretty good sized lot?

5 A Yeah.

6 Q And then next to that going down to the
7 corner are three small apartment buildings?

8 A Yes.

9 Q And you used to live in one of those?

10 A In the first one.

11 Q And that's where this lady that came in,
12 she lives in one of those still, doesn't she?

13 A Yes, the one right behind.

14 Q And that's the reason you go down that
15 street whenever you go into that area, so you can
16 say hello to those people you used to live near?

17 A Well, anybody that's sitting out there.
18 It's not one particular person. It's more older
19 people that's still in that area. But if they
20 sitting out under a tree or something, I stop and
21 talk to them.

22 Q If you were on 30th Street and you wanted
23 to go to Royall Street, you would not have had to go
24 to 26th Street, would you?

25 A No. I would have still --

1 Q You could have gone on down P Street and
2 picked up Venable and gone on your way?

3 A I would have still went the same way I did,
4 down Q, took a right and went down 26th.

5 Q Maybe I'll ask it this way. That's not the
6 most direct route to get where you were going?

7 A No, sir.

8 Q So you could have gone down and picked up
9 P where P was going right across?

10 A Yes, sir.

11 Q But you came back for a particular reason?

12 A Yes.

13 Q You've heard everybody say that they were
14 shocked when they got this telephone call, and you
15 say you were shocked when you got fired. And you're
16 telling us that as a result of that that you didn't
17 get a chance to work about three months. And that
18 you finally got a job, you had to work two jobs to
19 make the same amount of money you were making before.
20 And that you're embarrassed by the fact that people
21 think you were guilty of something, that they think
22 that you're guilty of dealing in drugs, and you blame
23 Officer Schnupp for that?

24 A Yes, I do.

25 Q Everything I've said is the way you feel

1 about it?

2 A Yes.

3 Q And everything that's happened to you. And
4 all of that is Officer Schnupp's fault? And the
5 reason is because he said that you stopped in the 900
6 block of North 26th Street on August 21st and you say
7 you didn't stop. Isn't that what this case is about?

8
9 MR. BAUGH: Objection, Your Honor. That is
10 so outlandish as to be impermissible. This case
11 is not just about an allegation -- the witness
12 has testified that she was informed that he had
13 stopped and participated in a drug transaction.
14 To just isolate a portion of it is impermissible
15 and outside the evidence, and I object to it.
16 It is assuming a fact not in evidence and that
17 is the only issue.

18 MR. BENEDETTI: In response I would suggest
19 again that the evidence that related to the 21st
20 day of August of 1992 is not as counsel keeps
21 stating it to be. He's relying on something
22 that happened after the incident involving the
23 termination of this man. And he repeatedly
24 refers to that and the answer that he got from
25 Ms. Goss related to what is in that, which is

1 not related to this man when he was terminated.

2 THE COURT: Well, go ahead. Ask the
3 question.

4 Can you answer that question, Mr. Smith?
5 You remember the question?

6
7 Q The fact that you disagree with whether or
8 not you stopped on North 26th Street, he says you
9 did, you say you didn't?

10 A No. I said I never stopped on 26th Street.
11 He's saying that I did.

12 Q And you're saying you didn't?

13 A Yeah.

14 Q And that's what this case is all about?

15
16 MR. BAUGH: Objection, Your Honor. That is
17 calling for a legal conclusion. That is not
18 what this case is all about.

19 MR. BENEDETTI: I withdraw the question.

20 THE COURT: All right.

21
22
23 REDIRECT EXAMINATION BY MR. BAUGH:

24
25 Q Sir, did someone accuse you of stopping a

1 car and allowing someone to buy some drugs?

2 A Yes.

3 Q Who was the first person who told you you
4 had been accused of doing that?

5 A The first person?

6 Q Who told you?

7 A Who told me was Eric Bowers.

8 Q Eric Bowers told you that he had been told
9 that you had stopped and participated in a drug
10 transaction?

11 A Yes, he did.

12 Q What did he tell you exactly?

13 A He said that a gentleman approached the
14 vehicle -- well, a gentleman on the passenger side
15 approached somebody on the sidewalk or whatever. Was
16 putting some -- took a capsule, shook the cocaine in
17 his hand, and then got back in the vehicle and we
18 pursued on.

19 Q That's what Eric Bowers told you on the
20 24th?

21 A Uh-huh.

22 Q And did he tell you where he got that from?

23 A Yes, he did.

24 Q Who?

25 A Cindy Goss.

1 Q And did you find out where Cindy Goss got
2 it from?

3 A She got it from Officer Schnupp.

4 Q Officer Schnupp. Now --

5
6 MR. BENEDETTI: I'm going to object to any
7 further hearsay testimony. I've let this go
8 twice now, but --

9 THE COURT: We've been over this.

10 MR. BAUGH: Thank you.

11
12 Q Other than that allegation, did anything
13 else unusual happen that day or anything different
14 than what you normally do on Mondays, Wednesdays,
15 Fridays, other than the fact it was alleged you were
16 involved in a drug transaction?

17 A That was different.

18 Q That was the only thing different?

19 A That was the only thing different.

20 Q And that started all of this?

21 A That's it.

22
23 MR. BAUGH: Pass the witness.

24 MR. BENEDETTI: No further questions.

25 THE COURT: Ladies, please step back in the

jury room for a moment. Thank you.

JURY OUT

THE COURT: Mr. Baugh, how many other witnesses do you have?

MR. BAUGH: I have the wife on damages, Your Honor, the daughter on two or three questions.

THE COURT: Is that Sheila Smith?

MR. BAUGH: Yes, sir.

THE COURT: That's the wife?

MR. BAUGH: Yes.

THE COURT: And after that?

MR. BAUGH: I'm resting.

THE COURT: How many witnesses do you have, Mr. Benedetti?

MR. BENEDETTI: When I started I had 13. I think he's called one, so I guess 12.

THE COURT: Will Mrs. Smith be here tomorrow?

MR. BAUGH: Yes, sir.

THE COURT: What about the daughter, she's supposed to be in school?

MR. BAUGH: I'll put her on now.

THE COURT: Yes. I think apparently we

COOK & WILEY, INC.

1 JURY OUT

2 won't be able to complete the case depending on
3 how far we go. So I'm thinking that after this
4 witness, perhaps we'll just adjourn for the
5 evening and come back tomorrow. I have another
6 case scheduled, but obviously we won't be able
7 to get to it. I've been thinking about starting
8 tomorrow early if we can. Can you have your
9 witnesses here at 8:00?

10 MR. BAUGH: I can have Mrs. Smith here at
11 8:00.

12 THE COURT: Can you start at 8:00,
13 Mr. Benedetti?

14 MR. BENEDETTI: Yes, sir.

15 THE COURT: I will bring the jury back out
16 now and tell them what the scheduling is, about
17 the 8:00 hour. Ready to proceed? Bring the
18 jury back in.

19
20 JURY IN

21 THE COURT: Ladies, it's a little past
22 5:30, and I'm told that there are two other
23 witnesses that plaintiff has before the
24 plaintiff would rest his case. And there's
25 maybe other matters attendant to the case, as it

COOK & WILEY, INC.

1 may seem clear. And because of the hour,
2 there's one short witness we could take now
3 before adjourning for the evening, but this
4 would mean we have to come back tomorrow
5 morning.

6 I'm thinking, in the interest of time,
7 though, coming back tomorrow, we could get
8 started early, at 8:00. If that's agreeable
9 I think that's how we should proceed.

10 That's a problem for you?

11 MS. PROCIDA: I'm self-employed and I have
12 meetings with clients tomorrow. And I was also
13 told by the attorneys that we probably would not
14 go beyond today.

15 THE COURT: Well, I think they told that to
16 all of us. But sometimes these start a little
17 late, which wasn't the fault of counsel
18 necessarily. And we'll have to complete the
19 case. What are your ideas about completing the
20 case?

21 MS. PROCIDA: I mean I've got to see
22 people.

23 THE COURT: What time are your
24 appointments?

25 MS. PROCIDA: I have one in the morning and

COOK & WILEY, INC.

1 one in the afternoon.

2 THE COURT: What time in the morning?

3 MS. PROCIDA: Basically around 9:00.

4 THE COURT: How long will that take?

5 MS. PROCIDA: I have a project to deliver
6 tomorrow.

7 THE COURT: How long will your appointment
8 be?

9 MS. PROCIDA: It depends on how long the
10 client needs me.

11 THE COURT: You have no idea or can you
12 give me an estimate of how long it will take?

13 MS. PROCIDA: Could be an hour, hour and a
14 half.

15 THE COURT: You have to confer with this
16 client about a project and deliver the project?

17 MS. PROCIDA: My client is the state, state
18 agency, and I have a project due tomorrow.

19 THE COURT: Does that mean it will take
20 more time than usual because it's the state? I
21 mean I don't know.

22 MS. PROCIDA: You don't seem to understand.
23 When you have a client, you've got to serve your
24 client. I'm not going to lose my client.

25 THE COURT: You've got to serve this jury

1 and this court in this matter. That's the other
2 concern.

3 MS. PROCIDA: I'm willing to stay here
4 tonight. I don't know how the other jurors
5 feel.

6 THE COURT: We have a number of other
7 witnesses to do in the case if we could proceed,
8 but I don't know if we will be able to complete
9 the case tonight.

10 MS. PROCIDA: Well, by now I can't even
11 call my clients to tell them I can't be there.

12 THE COURT: Ladies, we'll proceed with this
13 one witness and then adjourn for the evening.
14 And the case will start tomorrow morning at
15 11:00.

16 Call your next witness, Mr. Baugh.

17 MR. BAUGH: We call Patrice Smith.

18
19
20 PATRICE SMITH, the witness, called by the
21 plaintiff, first being duly sworn, testifies as
22 follows:

23 DIRECT EXAMINATION BY MR. BAUGH:

24
25 Q What's your name?

1 A Patrice Smith.
2 Q How old are you?
3 A Thirteen.
4 Q Where do you go to school?
5 A (Unintelligible) elementary school.
6 Q What grade are you in?
7 A Eighth.
8 Q Who's that man over there?
9 A My father.
10 Q Where do you live?
11 A On Royall.
12 Q Do you remember last year when your father
13 lost his job?
14 A Yes.
15 Q How long was he home?
16 A All day.
17 Q Did there come a time that he found another
18 job?
19 A Yes.
20 Q How was he acting when he wasn't working?
21 A Upset.
22 Q What was he upset about?
23 A Because he lost his job.
24 Q Did your family have trouble with money?
25 A I really don't know.

1 Q When your father used to work at ARA, would
2 he be home in the evenings?

3 A Yes.

4 Q Would he work with you?

5 A Uh-huh.

6 Q With his new job does he do that?

7 A No.

8 Q Why not?

9 A Because he's not there in the evening.

10 Q Do you understand that if he could get a
11 job where he could be home he would?

12 A Yes.

13 Q Last year before he lost his job at ARA,
14 how often would he help you with your homework?

15 A Once or twice.

16 Q And he also worked on the famous snack
17 truck outside?

18 A Yes.

19 Q Did you ever go outside and help him on the
20 famous snack truck?

21 A Yes.

22 Q How long did the famous snack truck stay
23 out there?

24 A Not that long.

25 Q Do you understand what somebody accused

1 your father of doing?

2 A Yes.

3 Q Did you ever think that he had something to
4 do with drugs?

5 A No.

6 Q What is your understanding of what he was
7 accused of doing?

8 A Having drugs in his truck.

9 Q Did that make you mad?

10 A Yes.

11 Q Did you ever believe he did that?

12 A No.

13 Q Did your father get mad because other
14 people did believe it?

15 A No.

16 Q Did your father used to bring the ARA truck
17 home?

18 A Sometimes.

19 Q There was no big thing with that, was
20 there?

21 A No.

22 Q Other than the fact that he's alleged to
23 have drugs in his truck, do you know what else they
24 said he did?

25 A He had another person in the truck.

1 Q Have you ever ridden in that truck?

2 A No.

3 Q Did they tell you where he was when he
4 allegedly had these drugs?

5 A Yes.

6 Q Where was that?

7 A On P Street.

8 Q Is your father okay now?

9 A Yes.

10 Q Does he still work as much as he used to?

11 A Yes.

12 Q If you had your choice, would you rather he
13 worked back there or work where he is now?

14 A Back there.

15 Q Why?

16 A Because I see him more often.

17

18 MR. BAUGH: Pass the witness. Thank you.

19 MR. BENEDETTI: No questions.

20 THE COURT: Thank you, Miss Smith. You may
21 step down.

22 Ladies, that completes all the evidence for
23 today. We'll start tomorrow morning at 11:00.

24 And during this evening, don't discuss this case
25 with anyone nor allow anyone to discuss it with

1 you. That includes family members, friends,
2 anyone you may come in contact with.

3 And if by chance -- and I don't know if
4 this is so, but this is sort of a standard
5 admonition. If there's anything about this case
6 in the media, such as newspapers, television,
7 which I'd really rather not that it would be,
8 but if that happens, just turn away from it and
9 don't watch or read it. See you here tomorrow
10 morning at 11:00. Thank you.

11
12 JURY OUT

13 THE COURT: Mr. Benedetti, in light of our
14 conversation earlier, do you want to bring on
15 your motion?

16 MR. BENEDETTI: Now?

17 THE COURT: No. Later tomorrow morning.

18 MR. BAUGH: Whatever is convenient for you.

19 MR. BENEDETTI: Since he hasn't rested, I
20 guess we'd have to take it under advisement.

21 THE COURT: Well, I thought that Mr. Baugh
22 was allowing you to proceed.

23 MR. BAUGH: Because the last witness is
24 only damages.

25 THE COURT: I can hear it at the end of the

1 day. The court reporter reminded me of our
2 conversation here and wondered if she had to be
3 here earlier than 11:00.

4 MR. BENEDETTI: I'll be happy to take it up
5 earlier.

6 THE COURT: Let's say 10:00.

7
8 (Court adjourned, to be continued
9 October 26, 1993 at 10:00 a.m.)

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COOK & WILEY, INC.

CERTIFICATE OF COURT REPORTER

I, Debbie Bleichman, hereby certify that I, having been duly sworn, was the Court Reporter in the Circuit Court of the City of Richmond, Virginia, on October 25, 1993, 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 10th day of February 1994.



Debbie Bleichman
Registered Professional Reporter

My Notary Commission expires:
June 30, 1997