

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

CHRISTOPHER S. CYNOWA,	)	
	Plaintiff	
	)	
	)	No. 08 L 403
	)	
CSSS, INC., et al.,	)	
	Defendants.	

**PLAINTIFF'S EXHIBITS REPLY TO**  
**DEFENDANTS' RESPONSE MEMORANDUM IN OPPOSITION TO**  
**PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT**

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>	<b><u>Date Entered/Filed</u></b>
<b>A.</b>	Report of Proceedings, Vi. 1,	March 24, 2011
<b>B.</b>	Court Order	March 23, 2011
<b>C.</b>	Appearance and Motion to Dismiss p. 1	May 12, 2008
<b>D.</b>	Deposition Transcript for Michael Nikiforis	December 6, 2010
<b>E.</b>	Samples Correspondence between Defendants, Plaintiff and Hines Veterans Administration (a federal agency)	September, 2010 – January 2011
<b>F.</b>	Plaintiff's Corrected Supplemental Response and Second Amended Response to Defendants' First Set of Interrogatories.	September 23, 2010
<b>G.</b>	Statement of Special Process Server, Tim Marchese	February 25, 2008/ June 3, 2009 (filed)
<b>H.</b>	Plaintiff's Motion to Strike Defendants' Motion to Bar Witnesses	September 1, 2011
<b>I.</b>	Court Order Setting 213 Witness Disclosure Schedule	September 23, 2011
<b>J.</b>	Attorney Johnson Email to Attorney Duff re: Working of Discovery Production	September 1, 2001

*CHRISTOPHER S. CYNOWA vs.  
CSSS, INC., et al.*

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*REPORT OF PROCEEDINGS  
Vol. 1  
March 24, 2011*

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**CERTIFIED TRANSCRIPT**

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Min-U-Script® with Word Index

**PLAINTIFF'S  
EXHIBIT A**

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Page 3

1 STATE OF ILLINOIS }  
2 COUNTY OF C O O K } SS:  
3  
4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
5 CHRISTOPHER S. CYNOWA, }  
6 Plaintiff, }  
7 vs. } Case No. 08 L 000403  
8 CSSS, INC., (CLIENT SERVER  
9 SOFTWARE SOLUTION d/b/a  
10 CSSS.NET), LISA WOLFORD,  
11 WILLIAM F. SLATER, }  
12 Defendants. }  
13  
14  
15  
16 REPORT OF PROCEEDINGS had in the  
17 above-entitled matter before the HONORABLE MARCIA  
18 MARAS, Judge of said Court, on March 24, 2011,  
19 commencing at the hour of 11:02 a.m.  
20  
21  
22  
23  
24

1 MS. JOHNSON: Good morning, your Honor.  
2 THE COURT: Good morning.  
3 Okay. So I had this case before. If you  
4 could identify yourselves.  
5 MR. DUFF: Yes. Good morning, your Honor,  
6 Kevin Duff for the defendants.  
7 MS. JOHNSON: Theresa Johnson for the  
8 plaintiff, Christopher Cynowa.  
9 MR. BUSTAMANTE: Peter Bustamante also  
10 here for the plaintiff, your Honor, but I have no  
11 speaking role today.  
12 THE COURT: I was going to say, so feel  
13 free to sit down.  
14 MR. DUFF: Your Honor, also with us in the  
15 courtroom today is Mr. Haytham Faraj, who is my  
16 co-counsel, and my associate John Murray.  
17 MR. FARAJ: Good morning, your Honor.  
18 MR. MURRAY: Good morning.  
19 THE COURT: Did you bring anybody?  
20 MS. JOHNSON: Yes. With me, your Honor, I  
21 brought a friend and family member.  
22 THE COURT: Welcome.  
23 MS. JOHNSON: That's my mother.  
24 THE COURT: Oh, your brother?

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19  
20  
21  
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On behalf of the Defendants.

1 MS. JOHNSON: My mother and a friend.  
2 THE COURT: Oh, okay. Welcome to our  
3 courtroom. You have a wonderful daughter, and  
4 Mr. Duff is a wonderful lawyer, too. We had another  
5 motion from them before. And we have another  
6 observer, okay.  
7 And it's Cynowa, right?  
8 MS. JOHNSON: Cynowa.  
9 MR. DUFF: It's Cynowa actually.  
10 THE COURT: All right. So I did go  
11 through all these depositions and all the six  
12 supplemental sets of interrogatories and the answers  
13 that you had to the -- not to the affirmative  
14 defenses but where you admit, Mr. Duff, that all  
15 this stuff that Mr. Flanagan told Mr. Slater. And  
16 I've read Mr. Flanagan's statement. It's Noel  
17 Flanagan, right?  
18 MS. JOHNSON: Noel Flanagan.  
19 THE COURT: And his deposition where he  
20 says he didn't tell Mr. Slater anything.  
21 I've read Ms. Woldruff (phonetic) --  
22 MS. JOHNSON: Wolford.  
23 MR. DUFF: Wolford.  
24 THE COURT: -- Wolford, the CEO, says she

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1 knew nothing about this comment before the  
2 teleconference. Mr. Slater says otherwise.  
3 Mr. Carter says otherwise. Mr. Carter, is that his  
4 name?  
5 MR. DUFF: Carver.  
6 THE COURT: Carver, that used to be  
7 involved with her that is a former employee of CSS?  
8 MR. DUFF: CSSS.  
9 THE COURT: CSSS.  
10 So I'm prefacing that with how does that  
11 impact at all your privilege argument?  
12 And as to you, then, Ms. Johnson, how does  
13 Mr. Duff's statement in his reply that you didn't  
14 respond to the various counts and you've waived  
15 those arguments, I forget which ones, they're not  
16 the false light or -- per se or intentional  
17 infliction of emotional distress. I can't remember  
18 what they were exactly, but I'm digging them out  
19 here.  
20 There are nine counts, right, ten counts?  
21 MS. JOHNSON: There were ten altogether,  
22 your Honor.  
23 MR. DUFF: Ten.  
24 THE COURT: So on page -- I guess the

1 failing to respond.  
2 The first instance is on page 9 of our  
3 reply brief.  
4 THE COURT: Right. I know I read that.  
5 MS. JOHNSON: We --  
6 THE COURT: Okay. Hold on.  
7 MR. DUFF: And that has to do with the  
8 claims that the defendants imputed plaintiff's lack  
9 of ability or integrity in his job. That's  
10 Counts III, IV, VII and VIII.  
11 In addition to that --  
12 THE COURT: Okay. Stop there.  
13 Ms. Johnson?  
14 MS. JOHNSON: Your Honor, I would like  
15 to -- rather than going with his reply brief, I  
16 would ask that he identify specifically what was  
17 waived in the actual motion that he filed. I need  
18 to know where the reference is that he's referring  
19 to to determine how we've addressed that. I don't  
20 know what he's referring to.  
21 MR. DUFF: I'm happy to do that if it  
22 helps.  
23 MS. JOHNSON: It would help me.  
24 THE COURT: Okay. Go ahead.

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1 per quod you didn't reply to, right?  
2 MS. JOHNSON: Your Honor, as far as  
3 establishing the facts that would establish  
4 per quod, I believe we did. And, your Honor, do you  
5 want me to answer now or --  
6 THE COURT: Yeah. Because his reply brief  
7 said you talked about false light, you talked about  
8 defamation per se, qualified and absolute privilege,  
9 intentional infliction of emotional distress, but  
10 you didn't speak to counts blah, blah, and blah.  
11 Mr. Duff, help me out here. Which ones  
12 are you talking about?  
13 MR. DUFF: Yes, your Honor, there are a  
14 couple of places. For example --  
15 MS. JOHNSON: Could you tell me where they  
16 are? Because I was confused by his -- if he could  
17 specifically point out where he addressed that.  
18 MR. DUFF: Your Honor, if you see the  
19 references to the MAJS Investment case, I'll point  
20 your Honor to where we cite that in our reply brief.  
21 That's the case -- and I point that out because when  
22 you see the reference to that case, that's when  
23 we're identifying the fact that they have waived  
24 responding -- they've waived those arguments by

1 MR. DUFF: Okay. It's the -- if you --  
2 THE COURT: So she wants you to say, "We  
3 move for summary judgment on these counts."  
4 MR. DUFF: Yes. We move for summary  
5 judgment on Counts III, IV, VII and VIII on the  
6 basis that, as a matter of law, the alleged  
7 statement by Bill Slater to Officer Adrowski did not  
8 impute plaintiff's lack of ability or integrity in  
9 his job.  
10 That appears in our opening brief in --  
11 THE COURT: Page 9.  
12 MR. DUFF: -- on page 9, Section C2.  
13 That also appears in our reply brief on  
14 page 9, Section C2.  
15 MS. JOHNSON: Wait just a minute. Your  
16 Honor, could I have a moment?  
17 MR. DUFF: And that --  
18 THE COURT: Hold on. Let her get it,  
19 please.  
20 MS. JOHNSON: Okay. Could you give the --  
21 you said something page 9, C2, is that what you  
22 said?  
23 MR. DUFF: Section C2.  
24 THE COURT: You won't find the C, but it's

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1 No. 2. "Slater's alleged statement to  
2 Officer Adrowski did not impute Plaintiff's  
3 inability to perform or a want of integrity in his  
4 job."  
5 MS. JOHNSON: Your Honor, we need to put  
6 this in context. The context here is that we have a  
7 person who entered a room and made a statement that  
8 someone has a gun, and then went to Officer Adrowski  
9 and said he has a temper, trouble with coworkers and  
10 has a gun, and the gun is an AK-47, a repeater rifle  
11 that shoots numerous rounds of ammunition to kill  
12 people. That in and of itself, because it is  
13 defamatory per se, it imputes an inability to do a  
14 job enough that he would need to -- that they felt  
15 he needed to be terminated.  
16 THE COURT: So you're saying in your  
17 argument on defamation per se, one of the elements  
18 was words that impute criminal offense --  
19 MS. JOHNSON: Right. And also --  
20 THE COURT: -- inability to perform, want  
21 of integrity, that ipso facto if you're right and  
22 it's defamation per se, then you've addressed that  
23 issue?  
24 MS. JOHNSON: Yes, your Honor. And it was

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1 also thoroughly addressed in our motion to dismiss,  
2 which was our Exhibit 9, and it was referenced at  
3 the bottom of our page. It's arguments that were  
4 completely already made in our motion-to-dismiss  
5 exhibit.  
6 THE COURT: Well, for that argument,  
7 Judge Davis had the motion to dismiss, both the  
8 complaint and the -- you had a motion to strike the  
9 affirmative defenses; is that right?  
10 MS. JOHNSON: Uh-huh.  
11 THE COURT: I don't have that in front of  
12 me. You appended it --  
13 MS. JOHNSON: I did.  
14 THE COURT: -- but I'm dealing with the  
15 motion for summary judgment. So are you saying that  
16 your brief incorporated those arguments?  
17 MS. JOHNSON: I believe that we've  
18 established sufficient facts to establish that in  
19 fact it was imputing a lack of integrity in doing  
20 the job.  
21 THE COURT: Okay. She cited Catalano  
22 versus Pechous.  
23 MR. DUFF: Yes, your Honor. But the point  
24 here is that when a motion for summary judgment is

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1 made and an argument is made in support of that  
2 motion for summary judgment, and it's clearly set  
3 forth in the motion and the respondent fails to  
4 respond, under Illinois law -- and this is citing to  
5 the MAJS Investment case -- a failure to respond to  
6 an argument serves as a waiver of the argument.  
7 And so, first of all, there is no  
8 incorporation in the respondent's brief to the  
9 motion-to-dismiss arguments. But even if there  
10 were, as your Honor knows, this is a motion for  
11 summary judgment. It's subject to a different  
12 standard.  
13 There is no argument and there's no  
14 factual assertion in the plaintiff's response brief  
15 that says anything about the alleged statement by  
16 Bill Slater going to whether or not it imputed  
17 plaintiff's lack of ability or integrity in his job.  
18 And even if that were true, your Honor,  
19 even if there were that type of an argument, but  
20 there isn't, the fact of the matter is, the words  
21 that allegedly were used say nothing about the  
22 plaintiff's skills as a professional, nothing  
23 whatsoever.  
24 THE COURT: What about his integrity --

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1 MR. DUFF: It doesn't speak --  
2 THE COURT: -- on his job?  
3 MR. DUFF: It doesn't speak to his  
4 integrity on his job, your Honor. It doesn't say  
5 anything about his occupation. It doesn't say  
6 anything about his skills. It says nothing about --  
7 and even if we were to talk about -- well, frankly,  
8 that's it.  
9 But the bottom-line point here, your  
10 Honor, is we made that argument, and the plaintiff  
11 did not respond. And, therefore, under Illinois  
12 law, that argument has been waived by the plaintiff.  
13 MS. JOHNSON: Your Honor, I --  
14 unfortunately, plaintiffs [sic] cited 23 cases in  
15 his reply brief which I, of course -- the majority  
16 of which were cited for the first time just a few  
17 days ago. And I have, I thought, all of them with  
18 me, but unfortunately, I don't have the MAJS case in  
19 front of me. Oh, here it is. I take that back.  
20 Excuse me. If you could just give me a  
21 second.  
22 Your Honor, as much as I can tell, it  
23 appears that this is regarding a motion to dismiss.  
24 THE COURT: 482 is what is cited for the

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1 official. Do you have the official cite of the  
2 N.E.2d?  
3 MS. JOHNSON: Page 42 did you say?  
4 THE COURT: No, 482. Do you have  
5 175 Ill.App.3d or do you have the N.E.2d?  
6 MS. JOHNSON: I have the --  
7 THE COURT: Do you have the official?  
8 MR. BUSTAMANTE: She has the fast case  
9 document, your Honor.  
10 MR. DUFF: It's on the last page of the  
11 opinion if that helps, Theresa.  
12 MS. JOHNSON: Okay. Your Honor, the basis  
13 on a summary judgment motion is that to -- is  
14 whether or not there is a dispute of material fact,  
15 and we have set forth sufficient material facts to  
16 show that we have an opportunity to be heard at  
17 trial.  
18 The argument of whether he -- that there  
19 was an imputed -- whether or not the allegation --  
20 there was intentional infliction of emotional  
21 distress and whether or not we waived that  
22 argument --  
23 THE COURT: That's not it. It's his lack  
24 of ability or integrity on the job.

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1 MS. JOHNSON: Oh, I'm sorry, lack of  
2 ability and integrity to do the job. Your Honor,  
3 we're talking about a job that is a customer service  
4 job. We're talking about a job that involves  
5 working with coworkers in an office situation.  
6 It is -- it may not have been spelled out  
7 specifically, but there were sufficient facts to  
8 show that a person who's got -- or has an AK-47 and  
9 is believed to be dangerous is not someone who would  
10 be able to work in an office environment where he  
11 has to interact with people on a regular basis.  
12 I mean, it's intuitive to the nature of  
13 the accusation and the nature of the job itself.  
14 We're not waiving any argument.  
15 MR. DUFF: Your Honor, if I may respond?  
16 THE COURT: Uh-huh.  
17 MR. DUFF: Your Honor, the point here is  
18 that there's nowhere that the plaintiff can point in  
19 the response brief that he filed to respond to our  
20 argument in our motion that the alleged statement to  
21 Officer Adrowski did not impute plaintiff's  
22 inability to perform or want of integrity in his  
23 job.  
24 We didn't simply assert that. We actually

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1 made an argument. We argued it. We identified the  
2 language at issue.  
3 We cited to the Cody versus Harris case,  
4 okay. We made the argument that it has nothing --  
5 that there were no -- that the statement did not  
6 disparage plaintiff's skills as a systems engineer.  
7 We have further made the argument that the  
8 alleged statement did not mention plaintiff's job or  
9 professional skills; that even that -- and this is  
10 in our opening brief on page 9, again Section C2.  
11 We argued that this is not enough to prove  
12 defamation per se based on imputed inability or want  
13 of integrity in his job, citing the Cody versus  
14 Harris case.  
15 And in that case, the Seventh Circuit  
16 found that allegations that the plaintiff has a bad  
17 temper, is unable to control his anger, and lacks  
18 the integrity and judgment to resist getting revenge  
19 in an immature and vicious manner is not defamation  
20 per se.  
21 So even if we were to look at the language  
22 as to the plaintiff having confrontations with other  
23 members of the staff, under the law that we cited  
24 and the argument we made, that's not defamation per

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1 se.  
2 And I'll just -- not to belabor the point,  
3 your Honor, but there's absolutely no response to  
4 that argument in the plaintiff's brief. And if the  
5 plaintiff can't identify anywhere in his response  
6 brief that responds to that argument, it's waived.  
7 THE COURT: Final word. So in Counts III,  
8 IV, VII and VIII, you reallege all of the facts, and  
9 it's defamation per se because of lack of ability in  
10 a trade.  
11 MS. JOHNSON: Right.  
12 THE COURT: It's defamation per se in  
13 Count IV because of the written statement.  
14 MS. JOHNSON: Right.  
15 THE COURT: You allege that. And then in  
16 VIII, it's defamation per quod because it's imputing  
17 a lack of ability of the trade.  
18 MS. JOHNSON: Uh-huh.  
19 THE COURT: And then it's VIII -- I'm  
20 sorry, that's per quod.  
21 And then VII is oral versus written. So  
22 VII is oral publication. VIII is written.  
23 MS. JOHNSON: Your Honor, also -- oh, and  
24 you're --

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1 THE COURT: So his motion -- we're just  
2 talking procedural and legal arguments.  
3 He attacks via a motion for summary  
4 judgment those specific counts because your issue is  
5 that these imputed to plaintiff an inability to  
6 perform or want of integrity --  
7 MS. JOHNSON: Right.  
8 THE COURT: -- and the discharge of the  
9 duty, and you're asking for punitive damages,  
10 et cetera.  
11 MS. JOHNSON: Yeah.  
12 THE COURT: So he cited the Cody case  
13 which says loss of temper, outbursts, all that.  
14 Those are personal characteristics. They're not  
15 professional traits. That was in his motion.  
16 MS. JOHNSON: Right.  
17 THE COURT: Okay. So I am bringing it up  
18 because in your response, you don't have a section  
19 that refutes that, and those are four counts.  
20 MS. JOHNSON: Okay.  
21 THE COURT: And I read the deps that were  
22 appended to your brief and his briefs, and pretty  
23 much besides this and his temperament and his swear  
24 words and whatever, you don't have a case that

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1 counters Cody.  
2 MS. JOHNSON: Your Honor, could I have one  
3 minute?  
4 Your Honor, in our section on page 10 --  
5 THE COURT: Yeah.  
6 MS. JOHNSON: -- it's page 10 of our  
7 response brief. It says, "Words that impute  
8 criminal offense, disease which would exclude  
9 someone from society, inability to perform, or want  
10 of integrity in the discharge of duties of  
11 employment, and those prejudicing a party in his  
12 profession or trade are defamatory per se."  
13 He was -- the very statements prejudiced  
14 the plaintiff in his profession and trade. Whether  
15 they're determining --  
16 THE COURT: So that goes to IV and III, if  
17 anything. It's under defamation per se.  
18 MS. JOHNSON: Yes, your Honor.  
19 THE COURT: And she cites the case of  
20 Catalano versus Pechous, which we talked about  
21 earlier.  
22 MS. JOHNSON: Yes, your Honor.  
23 Your Honor, the --  
24 THE COURT: But there's nothing in VII and

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1 VIII that talks about per quod.  
2 MS. JOHNSON: Your Honor, there was --  
3 THE COURT: That case specifically talks  
4 about defamation per se, and I'm stretching it  
5 because you didn't have a section that addresses --  
6 when you respond to a motion for summary judgment --  
7 MS. JOHNSON: Right. No, I understand.  
8 THE COURT: Hold on. I'm making my  
9 record, please.  
10 MS. JOHNSON: Yeah.  
11 THE COURT: When you respond to a motion  
12 for summary judgment, you are supposed to --  
13 MS. JOHNSON: Address each issue.  
14 THE COURT: -- address each issue.  
15 MS. JOHNSON: I understand.  
16 THE COURT: And you lost track of it. So  
17 you're saying that, loosely, on page 10 of your  
18 brief --  
19 MS. JOHNSON: Yes.  
20 THE COURT: -- you cite the Catalano case,  
21 and it talks about words that impute criminal  
22 offense, but that's defamation per se. That's the  
23 heading.  
24 MS. JOHNSON: Right.

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1 THE COURT: Okay.  
2 MS. JOHNSON: And I believe that what  
3 happened here is that I was following the outline  
4 that the defendants had, and I don't -- I don't  
5 believe that they had it set out in a way that's  
6 easy to follow if I remember.  
7 THE COURT: But that doesn't matter.  
8 MS. JOHNSON: I understand.  
9 THE COURT: That's not my problem. That's  
10 not his problem.  
11 MR. DUFF: It's also not accurate. The  
12 heading for Section C2 specifically says that this  
13 is our argument.  
14 THE COURT: Okay. So -- do you just want  
15 to stay here?  
16 MR. BUSTAMANTE: Your Honor, yes, I would,  
17 but then I have to take my glasses off to read so  
18 I --  
19 THE COURT: We're spending an inordinate  
20 amount of time on this, and this is Response 101.  
21 MS. JOHNSON: Right. I understand that.  
22 THE COURT: I mean, I shouldn't be  
23 spending the last 20 minutes on this.  
24 He's right. With regard to the Catalano



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1 case and defamation per se, I'm going to give the  
2 benefit to the plaintiff here with regard to the  
3 fact that they cited Catalano for -- and I don't  
4 know down the road what's going to happen with  
5 defamation per se.  
6 But as to an inability to perform and a  
7 want of integrity, if it's words that impute a  
8 criminal offense under defamation per se on her  
9 response of 10, so that's III and IV. But I'm  
10 saying you're waiving VII and VIII because you  
11 didn't respond, okay.  
12 You-all -- you folks have this ten-count  
13 motion for summary judgment. You have an April 14th  
14 trial date. This is March 24th. And so --  
15 MS. JOHNSON: Your Honor, may I ask this  
16 one possibility? In the footnote of the beginning  
17 of our reference, we refer to Exhibit 9 which  
18 contains an entire argument in response to what he  
19 has cited.  
20 THE COURT: And that's a motion to  
21 dismiss, not a motion for summary judgment.  
22 MS. JOHNSON: Right. Right. I  
23 understand, your Honor. But we referenced --  
24 THE COURT: They're two different things.

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1 He cited a case that said they're two different  
2 things, if I recall correctly.  
3 MS. JOHNSON: Right. No, I'm not saying  
4 that they aren't two different things, but I'm  
5 saying that the same argument applies. And it's  
6 well spelled out in our motion to dismiss, which was  
7 an exhibit included with and referenced in our  
8 motion -- in our response.  
9 So, in other words, Exhibit 9 -- your  
10 Honor, there's also --  
11 THE COURT: And for the record, on page 1  
12 of the response, there is a mistake. There is an  
13 errata sheet --  
14 MS. JOHNSON: Right.  
15 THE COURT: I'm making my record, please.  
16 There is an errata sheet that corrects  
17 about ten typos and references that's part of this  
18 record. And it says on the footnote on the bottom  
19 of the page, see Plaintiff's Exhibit 7. That was  
20 corrected to be 9 if I recall correctly --  
21 MS. JOHNSON: Yes.  
22 THE COURT: -- is that right?  
23 MS. JOHNSON: Yes. Yes, that is correct,  
24 your Honor.

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1 THE COURT: Okay. So where is the  
2 incorporation of it into this argument language?  
3 I'm not trying to be picky but --  
4 MS. JOHNSON: No, no. I don't know that I  
5 actually said incorporated, but it was -- it was  
6 a -- may I ask my -- talk to my co-counsel?  
7 Okay.  
8 THE COURT: I'm reading page 9 of 25 of  
9 your motion, Ms. Johnson.  
10 MS. JOHNSON: Yes.  
11 THE COURT: Where are you talking about it  
12 under per quod? Where do you extensively talk about  
13 this?  
14 MS. JOHNSON: In paragraph 2 of this page,  
15 on page 9. "A per quod action requires allegation  
16 of extrinsic facts showing the defamatory nature of  
17 language as well as the allegation of specific facts  
18 establishing plaintiff's special damages. See  
19 Anderson. General allegations of damages such as  
20 damages to individual's health and reputation are  
21 sufficient to state a claim for defamation  
22 per quod." And then I reference to other cases.  
23 And I say here that at the bottom of the  
24 page, "Defendants' statements are defamatory per se

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1 for the reasons set forth above. However, even if  
2 defendants' statements are not defamatory per se,  
3 plaintiff's complaint includes the following  
4 allegation of specific facts and constitutes  
5 sufficient evidence extrinsic to state a claim for  
6 defamation per quod."  
7 "Plaintiff received a phone call on his  
8 cell phone from colleagues with whom he was  
9 friendly, Tushar Engreji and Michael Nikiforos, who  
10 told Plaintiff the word is spreading around VA  
11 employees that you kept a gun in your car and that  
12 you were going home, and you were going to come in  
13 and start shooting people when you got fired."  
14 "Since plaintiff's colleagues, Engreji and  
15 Nikiforos, informed Plaintiff that other coworkers  
16 and colleagues were afraid that Plaintiff would come  
17 back and shoot them, certainly no additional  
18 extrinsic facts are necessary to establish that the  
19 statements had defamatory meaning. Clearly  
20 plaintiff's former colleagues did not construe  
21 defendants' statements innocently. If they had  
22 thought that the comments were innocent, no one  
23 would have wanted the doors bolted."  
24 THE COURT: But this is per quod for lack



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1 of ability and integrity on the job, and there are  
2 other counts for something else, right?  
3 MS. JOHNSON: Yeah. And then there's  
4 defamation per quod for the --  
5 THE COURT: False light.  
6 MS. JOHNSON: Well, false light doesn't  
7 have defamation per quod. False light is just an  
8 issue of whether -- we did address -- I'm positive  
9 that we addressed the false light argument.  
10 THE COURT: You have slander. That's  
11 per se Count I.  
12 MS. JOHNSON: Oh, we're talking about --  
13 THE COURT: Count II you have defamation  
14 imputing a criminal offense, libel.  
15 Count III is this defamation per se. I  
16 said you're not waived on that.  
17 Count IV you're not waived.  
18 Count V is per quod with criminal offense  
19 of slander. That's what you're talking about where  
20 you just wrote the stuff.  
21 And then you have defamation per quod,  
22 criminal offense, libel. That's not what we're  
23 talking about.  
24 So what I just heard you read was with

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1 regard to those. This is per quod with regard to  
2 imputing a lack of ability --  
3 MS. JOHNSON: Right.  
4 THE COURT: -- in plaintiff's trade --  
5 MS. JOHNSON: Yes, yes, yes.  
6 THE COURT: -- profession or business.  
7 MS. JOHNSON: Yes, I do have it.  
8 THE COURT: Assuming that I would rule  
9 that you incorporated it, because you didn't, and  
10 assuming that the footnote is enough for the motion  
11 to dismiss, which it might not be --  
12 MS. JOHNSON: Would we be able to amend to  
13 incorporate it?  
14 THE COURT: No. This is a motion for  
15 summary judgment.  
16 MS. JOHNSON: Okay.  
17 THE COURT: So you're waived. I read  
18 that. It's waived. If I'm wrong, the appellate  
19 court will tell me.  
20 We have to move on here. There is a  
21 whole -- this -- you've put a ten-count complaint  
22 here.  
23 So that's the ruling on VII and VIII,  
24 okay. You waived those arguments for per quod,

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1 which were with regard to lack of ability and  
2 integrity on the job. Okay.  
3 MR. DUFF: Your Honor, may I move to the  
4 next instance?  
5 THE COURT: Yeah. We're changing now,  
6 Ms. Johnson.  
7 MS. JOHNSON: Okay.  
8 THE COURT: It's his motion. Now we're  
9 going to start. I addressed -- I asked you those  
10 questions --  
11 MS. JOHNSON: I know.  
12 THE COURT: -- because it wasn't -- I had  
13 read everything, and I didn't see it, so -- and I  
14 still don't think I see it. Okay.  
15 MR. DUFF: Your Honor, and I'd ask the  
16 Court's guidance here. I can start with my argument  
17 to give your Honor the reasons why you can grant the  
18 summary judgment in toto, and we can short-stop I  
19 think a lot of the remaining arguments. Or --  
20 THE COURT: Or I can tell you where I'm  
21 coming from --  
22 MR. DUFF: Or -- yeah.  
23 THE COURT: -- and you can address that.  
24 Why don't I do that because I think it's easier.

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1 This Mr. Slater -- so your point on  
2 absolute privilege, if I get it right, is that no  
3 matter if it turns out that he had absolutely no  
4 basis to -- and he just pulled this AK-47 argument  
5 out of his hat, it's still privilege because he told  
6 the police officer. Is that your argument?  
7 MR. DUFF: That is, your Honor.  
8 THE COURT: Okay.  
9 MS. JOHNSON: And, your Honor, our  
10 response to that is that we absolutely have to put  
11 this in perspective. If I were to just stand here  
12 right now with Kevin next to me or not Kevin next to  
13 me and go to the sheriff over there and say, you  
14 know, this attorney has had run-ins with the staff,  
15 with other attorneys in the past, and he's got a hot  
16 temper and he's got an AK-47, that security guard, I  
17 believe, would not take that lightly, and neither  
18 would you and neither would I. I would be  
19 evacuating the courtroom.  
20 Your Honor, it's easy to just toss it off  
21 and say, oh, it was just sort of a perfunctory thing  
22 that he did. It was not because there were -- we  
23 are allowed -- the IPI rules allow us to consider  
24 circumstantial evidence, and circumstantial evidence

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1 shows that Slater's actions are entirely  
2 inconsistent with his argument.  
3 And he argues -- or excuse me -- with his  
4 declaration. He declares that he had to -- you  
5 know, that he was afraid and that's why he involved  
6 the police. And Larry Carver said that Slater  
7 entered the room, made a statement that Cynowa had a  
8 gun. He didn't indicate anything about who had the  
9 gun -- who told him that or where he got the  
10 information.  
11 Larry Carver said we need to investigate.  
12 And Lisa Wolford, the owner, the supervisor of  
13 Slater, said no because Scott Theobald, who is the  
14 human resources manager who was also on this  
15 conference call, said we don't need to because this  
16 is an at-will situation, and when it's employment  
17 at-will, we don't have to investigate. Let's just  
18 fire this guy.  
19 And so they sent him with marching orders  
20 to go and do that. And he went and got a security  
21 guard. He gave this false information. He had  
22 nothing to substantiate it.  
23 He then -- he makes an --  
24 THE COURT: Okay. But that goes to

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1 qualified privilege and good faith, which is a  
2 different item.  
3 MS. JOHNSON: Your Honor --  
4 THE COURT: I'm talking absolute privilege  
5 now.  
6 MS. JOHNSON: Your Honor, if -- if -- I am  
7 very well familiar, and again, I've argued that very  
8 thoroughly in my motion to dismiss about the --  
9 THE COURT: Okay. But this is a motion  
10 for summary judgment now.  
11 MS. JOHNSON: Right. In the motion --  
12 yes, your Honor, I understand.  
13 THE COURT: Forget the motion to dismiss.  
14 MS. JOHNSON: Right. Right.  
15 THE COURT: It's a 2-615.  
16 MS. JOHNSON: Right.  
17 THE COURT: It was whether you pled  
18 correctly. We're into discovery closed --  
19 MS. JOHNSON: Right.  
20 THE COURT: -- motion to dismiss.  
21 MS. JOHNSON: Right.  
22 THE COURT: I have a question for you,  
23 though.  
24 MS. JOHNSON: Yes.

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1 THE COURT: What, if any, because it's not  
2 in Mr. Duff's and it's not attached to yours, what  
3 if any statement or deposition testimony exists for  
4 Mr. Padal -- is it Rudy Padal?  
5 MR. DUFF: Randy.  
6 MS. JOHNSON: Randy Padal.  
7 THE COURT: -- Randy Padal and the other  
8 person that you just read that paragraph from your  
9 motion to dismiss?  
10 MS. JOHNSON: Nikiforos and --  
11 THE COURT: Have their statements been  
12 taken?  
13 MS. JOHNSON: Your Honor, there were no  
14 depositions of those two people.  
15 THE COURT: Because one of his arguments  
16 is that the publication of this is that Mr. Cynowa  
17 was told this by the grapevine.  
18 MS. JOHNSON: Yes.  
19 THE COURT: You didn't take the -- there  
20 were no statements or no depositions from these  
21 other people that told him that?  
22 MS. JOHNSON: Your Honor, I did produce --  
23 I -- they -- I did produce in discovery information  
24 that I did interview them, and they stated that they

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1 heard this rumor in the office.  
2 The key here is that Mr. Slater in his  
3 declaration, which I believe is Exhibit 3 of the  
4 defendants' brief, states that he -- that Noel  
5 Flanagan gave him this information. And he also  
6 says that -- I'm sorry. My mind just went blank. I  
7 apologize.  
8 Could you repeat your question? I'm so  
9 sorry. I just lost my train.  
10 THE COURT: We're again talking  
11 absolute -- I think where you're going is more good  
12 faith. What's the basis for qualified privilege?  
13 There are questions of fact here. There  
14 is no question that what Wolford said, what Flanagan  
15 said, what -- the basis of this statement, you're  
16 looking at me like I'm crazy, quizzically, but I  
17 have read these depositions, and there are questions  
18 of fact.  
19 Flanagan says he never told Mr. Slater,  
20 right? Do you agree, Mr. Duff?  
21 MR. DUFF: I agree that there's an  
22 affidavit that says that, your Honor. But I also --  
23 THE COURT: You took his deposition,  
24 Flanagan, under oath, too, right?

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1 MR. DUFF: Yes, your Honor.  
2 THE COURT: And he said he never told him  
3 that?  
4 MR. DUFF: I don't believe he had that in  
5 response to any question we asked him. But I do  
6 know that there is a verified pleading where the  
7 plaintiff said that Flanagan was the source of the  
8 rumor, and there's also a sworn statement in an  
9 interrogatory answer where the plaintiff said that  
10 Flanagan was the source of the statement.  
11 So there are judicial admissions that are  
12 in the record, and what -- and as we cited case law  
13 on this very point, is the Dark case, the First  
14 District case, that says that when a matter is  
15 judicially admitted, it's taken out of the realm of  
16 where there's a need for any proof on it. It's a  
17 judicially admitted fact. There's no reason for the  
18 defendants to have to go and prove that fact at that  
19 point.  
20 But, your Honor, if I may --  
21 THE COURT: Unequivocal, uncontroverted,  
22 right? The standard is unequivocal, uncontroverted.  
23 MR. DUFF: And in this instance, there was  
24 never an amendment to the pleading. There was never

1 were made by these other people, just to give you a  
2 little gist of where I'm coming from.  
3 MR. DUFF: Then I misunderstood because  
4 our motion for summary judgment is based on the  
5 allegation that's in the complaint, and there's no  
6 allegation in the complaint and no --  
7 THE COURT: That's why I'm asking her --  
8 MR. DUFF: Okay. I understand. Okay.  
9 THE COURT: -- because she argued the  
10 statements --  
11 MR. DUFF: I misunderstood, then.  
12 THE COURT: -- that these people who have  
13 not been deposed, that you interviewed, there are no  
14 statements, you're arguing -- he brings up in his  
15 motion for summary judgment that you haven't amended  
16 the complaint. You don't use those statements from  
17 the grapevine as a basis, and that's why I'm asking  
18 you about any statements that were made because it's  
19 not in this record.  
20 MS. JOHNSON: Okay. Your Honor, I think  
21 I'm -- I personally am confused about what you just  
22 said. The complaint states -- I want to -- before I  
23 lose the thought, I have to address something  
24 Mr. Duff said.

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1 an amendment to the sworn interrogatories. Those  
2 were both sworn statements by the plaintiff in this  
3 case.  
4 MS. JOHNSON: Your Honor --  
5 THE COURT: Hold on.  
6 MR. DUFF: Your Honor, if I may on the  
7 absolute privilege issue?  
8 THE COURT: Yeah.  
9 MR. DUFF: I think we're getting far  
10 afield. We need to look at what this case is about.  
11 The pleading says that all of the claims  
12 are based on an alleged statement by Bill Slater to  
13 Officer Adrowski. All of the claims are premised on  
14 a statement to a police officer.  
15 The case that is absolutely dispositive of  
16 this issue is Morris versus Harvey Cycle. It is a  
17 First District 2009 decision.  
18 And in that case, that case repeats the  
19 Illinois law which provides that there is an  
20 absolute privilege with respect to statements made  
21 to police officers.  
22 THE COURT: That's why I'm asking her. I  
23 don't think it's gone far afield. That's why I'm  
24 asking her about these statements that supposedly

1 He stated that we said under oath in our  
2 amended complaint that Flanagan was the source of  
3 the rumor. We stated on information and belief that  
4 he was. And then when we deposed him and got his  
5 affidavit, we learned that he in fact wasn't. He  
6 denied it, and we dropped him from this lawsuit.  
7 THE COURT: I know that.  
8 MS. JOHNSON: And Mr. Duff is  
9 misconstruing that, and he's taking an allegation  
10 based on information and belief and saying that  
11 we've now admitted to that, and it's -- and I do  
12 have to go back now because we had a privileged  
13 document, which I believe is Exhibit 13 which you  
14 have, your Honor, and I don't.  
15 When I filed the motion for my amended  
16 complaint, Mr. Duff asked for it to be put under  
17 seal, and so it was put under seal. But the judge  
18 who -- but I was -- when Mr. Duff went into court  
19 and asked for that document to be put under seal,  
20 he -- the judge ruled that -- he said, well, she's  
21 able to plead on information and belief that  
22 Flanagan said this, and so I pled that on  
23 information and belief.  
24 And so thereafter, we dismissed

1 Mr. Flanagan because he denied in his deposition and  
2 in his affidavit that there was -- that he ever said  
3 these things.

4 And Mr. Duff is saying, and I don't  
5 believe he is correct in saying, that only the --  
6 only what's in the complaint can be considered  
7 because the summary judgment rule says that  
8 affidavits and other evidence can be considered in  
9 the summary judgment motion. And also, there's  
10 Civil Procedure Rule that allows you to amend your  
11 complaint even before trial or after trial.

12 So we would ask to amend our complaint to  
13 incorporate it if it's necessary. But the summary  
14 judgment rule says right here in one of the cases  
15 that Mr. Duff cited. In Financial Freedom versus --  
16 I don't know how to say it -- Kirgis, it says  
17 summary judgment is proper where when viewed in the  
18 light most favorable to the nonmoving party, the  
19 pleadings, the depositions, the admissions, and the  
20 affidavits on file reveal that there's no genuine  
21 issue of material fact and that the moving party's  
22 entitled to judgment as a matter of law.

23 It does not say that we're restricted to a  
24 complaint in that the complaint -- because when

1 It says --

2 MS. JOHNSON: It is verified. Oh, you  
3 know what, did I accidentally give you a page  
4 without --

5 THE COURT: It's not verified as to the  
6 additional allegations.

7 MS. JOHNSON: Uh-huh. I'm sorry, your  
8 Honor. If it isn't, it would be entirely just an  
9 accidental omission. It was not -- everything I  
10 have -- do we -- we'd have to -- here.

11 MR. DUFF: I don't think there's a dispute  
12 that it's verified, your Honor.

13 MS. JOHNSON: Yeah. It was verified.

14 THE COURT: I'm looking at it, plaintiff's  
15 verified amended complaint adding Noel Flanagan as  
16 defendant.

17 MS. JOHNSON: Right.

18 THE COURT: Now comes plaintiff, blah,  
19 blah, through the attorney pursuant to court order  
20 files the verified and adds the additional  
21 allegations as such. Okay. So --

22 MR. DUFF: In addition, your Honor, we  
23 actually filed a verified answer where we admitted  
24 those facts, and there was --

1 you're doing discovery, there is new information  
2 that's discovered. And if we need to conform our  
3 pleadings with the facts, we can do that, and I  
4 would ask leave of Court to do that.

5 But he cannot say that because --

6 THE COURT: Okay. So you're saying --

7 MS. JOHNSON: We're --

8 THE COURT: Hold on. So you said when  
9 they added Noel Flanagan, it was a verified  
10 pleading?

11 MR. DUFF: Yes.

12 MS. JOHNSON: Yes, it was.

13 THE COURT: A verified complaint?

14 MR. DUFF: Yes.

15 THE COURT: Okay. And that is No. 6.

16 MR. DUFF: Correct.

17 THE COURT: Plaintiff's verified amended  
18 complaint, okay. And it says on information and  
19 belief they told, on information and belief, on  
20 information and belief.

21 MS. JOHNSON: And that I incorporated the  
22 original complaint as --

23 THE COURT: And even though it says  
24 verified, is it verified? There is no verification.

1 THE COURT: I saw that. On page 2 --

2 MS. JOHNSON: Right.

3 THE COURT: -- you admit that Noel  
4 Flanagan said to -- is that what you're talking  
5 about?

6 MR. DUFF: No. It's the two pleadings  
7 together.

8 THE COURT: But you're saying that your  
9 answer, since you admitted it, is a judicial  
10 admission that he said, so it's true?

11 MR. DUFF: It takes that -- that matter is  
12 taken out of dispute. It becomes a judicial  
13 admission for which no further evidence is required.  
14 That's what the law provides.

15 THE COURT: I know what the law of --

16 MR. DUFF: I don't mean to preach.

17 THE COURT: I know what it means, but I'm  
18 looking at these documents to make sure that --

19 MR. DUFF: I understand.

20 THE COURT: -- that's what happened.

21 MR. DUFF: I understand.

22 THE COURT: I saw it. I have a yellow --  
23 my yellow sticky is on your answer, okay, where you  
24 admit that he did that, and I understand why you

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1 would admit that.

2 I'm looking again at the verified  
3 complaint at law, which is your exhibit, and this  
4 verified complaint at law does not have Flanagan on  
5 it.

6 The verified amended complaint adding him  
7 as defendant, which puts forth their allegations,  
8 doesn't have a verification as to the plaintiff on  
9 this part of it is what I'm saying.

10 MS. JOHNSON: But it was verified, your  
11 Honor. I believe it was just, well, an inadvertent  
12 omission. He doesn't deny that he received the  
13 verification for it.

14 THE COURT: Okay. So she verified  
15 information and belief --

16 MS. JOHNSON: Yes.

17 THE COURT: -- because of the sealed  
18 document. So what case do you have where there is  
19 an unequivocal -- is information and belief  
20 pleading, verified, unequivocal and -- it's an  
21 unequivocal admission. How is -- and on information  
22 and belief, because that's the standard you have.

23 For a judicial admission to be a judicial  
24 admission, it has to be clear, unequivocal, blah,

1 judicial admission can only be an uncontroverted,  
2 unequivocal statement that takes it out. That is  
3 what the black letter Hornbook case law says.

4 The fact that you admitted on information  
5 and belief to a fact that helps your case, no,  
6 that's not the law. I disagree with you  
7 wholeheartedly. It's a good argument, but it's not  
8 the law.

9 I agree with you; why would you verify it?  
10 But the effect of a verification on an equivocal  
11 statement does not make it true and does not admit  
12 it. And again, if I'm wrong, the appellate court  
13 will let me know.

14 Okay. So let's say you're wrong on that.

15 MR. DUFF: It doesn't matter if we're  
16 wrong on that --

17 THE COURT: Okay.

18 MR. DUFF: -- and this is where I started  
19 before. We need to start with what the complaint  
20 provides. This is a complaint which is based on a  
21 statement by Bill Slater to a police officer.

22 The Morris case --

23 THE COURT: It's not only to him, though.

24 MR. DUFF: Yes, it is.

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1 blah, blah.

2 So how does on information and belief, how  
3 is that unequivocal? It's on information and  
4 belief. I don't know why you would verify on  
5 information on belief. But how does that set --  
6 establish -- or satisfy the standard of a judicial  
7 admission? Uncontroverted, unequivocal.

8 MR. DUFF: It's uncontroverted because it  
9 was put in the record. The plaintiff did not need  
10 to verify that pleading, but the plaintiff chose to  
11 verify the pleading.

12 THE COURT: Okay. But what was the effect  
13 of it? They verified that they are equivocal.

14 MR. DUFF: And in addition to the fact  
15 that the plaintiff verified that, albeit on  
16 information and belief, the defendants admitted that  
17 in a verified pleading. That --

18 THE COURT: But that doesn't mean she did.

19 MR. DUFF: Well, it becomes a fact not in  
20 dispute. When it's pled and admitted --

21 THE COURT: No. I disagree with you  
22 wholeheartedly.

23 MR. DUFF: Okay. Well --

24 THE COURT: You can only admit -- a

1 THE COURT: Because there's a question of  
2 fact as to whether it was -- and to the effect of  
3 whether he told Carver, Wolford, Theobald,  
4 et cetera, on the conference call, he also made the  
5 statement there.

6 MR. DUFF: That's not in the pleading, not  
7 in the pleading, and that's my point.

8 THE COURT: Okay. So when the complaint  
9 says -- because that is, I'm sure, one of the facts,  
10 right?

11 MR. DUFF: There's no allegation in the  
12 pleading nor is there any answer in response to  
13 interrogatory No. 7 where the plaintiff at any time  
14 identifies any statement made by Slater to CSSS  
15 managers as a basis for any claim in the complaint.

16 MS. JOHNSON: Your Honor, because at the  
17 time that was not known because Larry Carver had not  
18 come forward as a witness. He came --

19 THE COURT: So let me ask you a dumb  
20 question. Why didn't you amend your complaint then?

21 MS. JOHNSON: Because --

22 THE COURT: Because he's moving for  
23 summary judgment --

24 MS. JOHNSON: Right. I understand.

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1 THE COURT: -- on the complaint as it  
2 exists right now. Again, this is 101 Summary  
3 Judgment.  
4 MS. JOHNSON: Because my -- because  
5 according to what the rule is, it doesn't specify  
6 that you have to amend your pleading. It says you  
7 take all the information together, the depositions,  
8 the admissions, and the affidavits.  
9 And now we have additional information,  
10 and if we have that additional information, we  
11 should be able to -- if you can amend after a trial  
12 to conform our proofs, I don't know why we shouldn't  
13 be able to amend, then.  
14 Because, your Honor, it says summary  
15 judgment is proper where when viewed in the light  
16 most favorable, you look at the pleadings, the  
17 depositions, the admissions, the affidavits on file.  
18 THE COURT: I know that law, too, just  
19 like I know the judicial admission law. Whether I  
20 apply it correctly or not, the appellate court will  
21 tell me. But that is all before summary judgment.  
22 MS. JOHNSON: Well, I didn't see any case  
23 that says that. And I don't recall of the cases  
24 that the defendant produced that it says that before

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1 summary judgment, it -- because the way the  
2 statement is repeated in so many cases that's the  
3 standard, frankly, I've never seen that stated in  
4 that way. I'm not --  
5 THE COURT: Because usually people amend  
6 their complaint.  
7 MS. JOHNSON: Right. I understand. But,  
8 your Honor, I saw no case to that effect.  
9 THE COURT: I know. But you've had this  
10 Carver deposition since when?  
11 MR. DUFF: June 2009.  
12 MS. JOHNSON: No, your Honor, since  
13 February of 2010.  
14 MR. DUFF: It was taken, I'm sorry, in  
15 July 2009.  
16 THE COURT: But you haven't had the actual  
17 deposition transcript?  
18 MS. JOHNSON: I didn't have the deposition  
19 transcript until February 2010.  
20 THE COURT: But that's not the answer to  
21 the question.  
22 MS. JOHNSON: No, I understand. I  
23 understand what you're saying.  
24 Your Honor, I've literally -- I've taken

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1 that at face value. It says taking all the evidence  
2 together, and that's the way I took it. All the  
3 evidence together shows that and --  
4 THE COURT: All the evidence together in  
5 the light most favorable to the complaint as it  
6 stands, do you have enough?  
7 The whole thing with summary judgment is  
8 he's saying you don't have facts to support your  
9 pleading. Not any pleading, in-the-future pleading,  
10 it's this pleading that you've said X, Y and Z.  
11 MS. JOHNSON: Right.  
12 THE COURT: And have you stated facts that  
13 if the defendant shows facts that are in  
14 controversy, then you get a chance to rebut those,  
15 et cetera.  
16 But it's have you made a prima -- have you  
17 enough here to make a prima facie case on this  
18 complaint, not any complaint.  
19 MS. JOHNSON: Your Honor --  
20 THE COURT: That's what the summary  
21 judgment law says.  
22 MS. JOHNSON: I understand what you're  
23 saying.  
24 THE COURT: And I'm supposed to look at it

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1 and see all the exhibits --  
2 MS. JOHNSON: All right.  
3 THE COURT: Hold on. I'm making my -- all  
4 the affidavits, everything together, does it fly.  
5 Okay?  
6 MS. JOHNSON: Okay.  
7 THE COURT: And there are legal issues.  
8 That's a whole different matter.  
9 MS. JOHNSON: Right.  
10 THE COURT: Okay. So --  
11 MS. JOHNSON: With that said, your Honor,  
12 I'm not aware of anything in the context of what you  
13 just stated that would preclude the veracity of the  
14 statement that Slater made these comments to others.  
15 Slater says, and I would like to go to  
16 Slater's declaration, if we could, please. It's  
17 exhibit -- I believe it's Exhibit 2 of the  
18 defendant. Slater says --  
19 THE COURT: But you're getting ahead of  
20 yourself.  
21 MS. JOHNSON: I'm sorry.  
22 THE COURT: Where in the complaint as it  
23 stands now --  
24 MS. JOHNSON: In the complaint as it



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1 stands now, Larry Carver was not added because my  
2 understanding of this is that you take all the  
3 information together. And we would ask for leave of  
4 court to amend because the evidence is clearly  
5 there. And it's -- and the exhibits that support it  
6 are here.

7 And there is case law that says that  
8 exhibits, you know, can be controlling. I mean, if  
9 the information is in the exhibits, we can't put  
10 form over fairness because the exhibits  
11 demonstrate -- Mr. Carver's deposition clearly  
12 demonstrates that there is a huge discrepancy  
13 between what Slater says happened and what we say  
14 what happened. And he was in their employ at the  
15 time.

16 So I would say that the fair thing to do  
17 would be -- because our exhibits support -- I did  
18 not quote case law to that effect. I'd like to  
19 brief that if I could. But I know for a fact in  
20 other cases that I have seen case law that says  
21 that, you know, you can look at the exhibits, and  
22 the exhibits can speak for themselves. The exhibits  
23 state --

24 THE COURT: Again, I know what summary

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1 this is defamation. There is a statement you are  
2 moving on.

3 MS. JOHNSON: Yes.

4 THE COURT: He is saying that your entire  
5 complaint as it stands is prefaced on the fact that  
6 the statement is the one to the police, the security  
7 guard at Hines, not anything else. That's --

8 MS. JOHNSON: No, that's not a correct  
9 assessment.

10 THE COURT: -- what we're talking about.

11 MS. JOHNSON: That is not a correct  
12 assessment, your Honor. And in the cases that  
13 Mr. Duff stated in his reply brief, in fact, and I  
14 need a moment to find it, there is a case that  
15 clearly says you do not have to have a verbatim  
16 statement of what the person said.

17 It was clear enough when Engreji and  
18 Tushar had a telephone conversation with Chris to  
19 let him know that this rumor was going around the  
20 office --

21 THE COURT: Where is that in your  
22 complaint?

23 MS. JOHNSON: Yeah. Okay.

24 THE COURT: That's the question I'm asking

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1 judgment law says, but it's -- whatever I said on  
2 the record stands. Okay.

3 MS. JOHNSON: Your Honor, can I -- Mr. --  
4 I'm sorry.

5 THE COURT: Can you point to anything in  
6 your facts, because Mr. Duff is saying it's not  
7 there, that has any indication that these statements  
8 from these coworkers are also what you're moving on?

9 Are you moving on the fact that the  
10 coworkers told him that? Is that part of your case?

11 MS. JOHNSON: Absolutely.

12 THE COURT: Okay. That's what I thought,  
13 but the complaint as it stands now doesn't say that.

14 MS. JOHNSON: That it was told to  
15 coworkers?

16 THE COURT: Where does it say that?

17 MS. JOHNSON: Your Honor, we're talking  
18 about my complaint, the amended complaint?

19 THE COURT: Yeah.

20 MS. JOHNSON: Okay. Will you restate your  
21 question.

22 THE COURT: I'm reading it. Hold on.

23 Just so you're clear, because you're  
24 looking at the record, Mr. Duff's argument is that

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1 you.

2 MS. JOHNSON: Okay. It's here. I --

3 THE COURT: All right. Number 40, that  
4 the plaintiff received a telephone call on his cell  
5 phone from colleagues spreading -- saying that word  
6 is spreading amongst the VA employees that you had  
7 or kept a gun in your car, blah, blah, blah.

8 MS. JOHNSON: And that you were going to  
9 start shooting people, and people were afraid, and  
10 they wanted the doors locked.

11 THE COURT: Okay. So he's saying that's a  
12 fact in your complaint.

13 MS. JOHNSON: Right, right.

14 THE COURT: And then when you go to the  
15 actual counts, you're saying you reallege all those  
16 facts in Section 2 --

17 MS. JOHNSON: Yes.

18 THE COURT: -- but you only specify the  
19 oral statements to Hines Officer Adrowski.

20 MR. DUFF: That's correct.

21 THE COURT: And because the statement that  
22 you're speaking of in paragraph 40 isn't in these  
23 counts --

24 MS. JOHNSON: But they're incorporated by



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1 reference.

2 THE COURT: Okay. So you say to that,  
3 Mr. Duff?

4 MR. DUFF: Two things. One, they're not  
5 in the counts.

6 Secondly --

7 THE COURT: Do you deny that it's  
8 incorporated in the facts of Section 2?

9 MR. DUFF: I recognize that there is a  
10 reference to incorporation. But if you look at how  
11 those counts are set up, and you look at the salient  
12 facts that are alleged as the basis for the claim --

13 THE COURT: Which are written statements,  
14 written statements.

15 MS. JOHNSON: Well, your Honor, there's  
16 claims for both written and oral.

17 MR. DUFF: But the oral statements that  
18 are the basis for the claim that are alleged in the  
19 counts are the alleged oral statement to  
20 Officer Adrowski.

21 In addition to that, your Honor, we served  
22 an interrogatory, which is interrogatory No. 7, in  
23 which we --

24 THE COURT: Okay. What exhibit is it?

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1 MR. DUFF: This would be Exhibit No. 18 --

2 THE COURT: Okay.

3 MR. DUFF: -- of the defendants' exhibits.

4 And if you turn to -- this is -- Exhibit 18 is the  
5 plaintiff's sworn responses to the defendants'  
6 interrogatories. And specifically interrogatory  
7 No. 7, which begins at the bottom of page 7 of 22 --

8 THE COURT: "For each statement that is  
9 the subject of your claims or alleged in your  
10 complaint that you claim were false, malicious,  
11 defamatory, placed in a false light, or caused  
12 you emotional distress, identify the precise words  
13 in the statement, who made the statement, all  
14 persons to whom the statement was made, and when the  
15 statement was made."

16 Okay. Now, the back of 18 is a  
17 verification by the plaintiff.

18 So do you have that in front of you,  
19 Ms. Johnson?

20 MS. JOHNSON: Yes.

21 THE COURT: All right. Make your point,  
22 Mr. Duff.

23 MR. DUFF: Nowhere in this interrogatory  
24 answer are any words identified with specificity and

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1 clarity, which is what Illinois law requires in a  
2 defamation claim, by any of the defendants to anyone  
3 other than Officer Adrowski.

4 MS. JOHNSON: Your Honor --

5 THE COURT: And it's --

6 MS. JOHNSON: Your Honor --

7 THE COURT: And this is October of 2010  
8 that you signed it, correct?

9 MS. JOHNSON: Whatever.

10 MR. DUFF: This is actually the sixth  
11 supplement to these responses to interrogatories.  
12 So there were at least six iterations of the  
13 plaintiff's responses to the defendants'

14 interrogatories where the plaintiff had an  
15 opportunity to provide us and tell us what  
16 statements are at issue in this case.

17 MS. JOHNSON: Your Honor, the statements  
18 that are at issue in the case -- again, we're going  
19 to -- we have to go with what is -- what is just.

20 The facts lay out that Tushar and  
21 Nikiforos heard that there was a gun. And there is  
22 case law here, and if I could have a minute to look  
23 at it, that says --

24 THE COURT: Sure. Take all the time you

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1 need.

2 MS. JOHNSON: -- it does not have to be an  
3 exact statement.

4 THE COURT: Take all the time you need.

5 MR. DUFF: Your Honor, while she is  
6 looking for that, could I interject? That's  
7 ultimately going to prove to be irrelevant because  
8 if you look at Exhibit 19, we've got yet another  
9 supplement to the plaintiff's interrogatory

10 responses. And in these responses, the plaintiff  
11 again has provided a supplementation to tell the  
12 defendants that with respect to Nikiforos and  
13 Engreji in particular, neither of them knows who  
14 told them that the plaintiff may have a gun.

15 So Nikiforos and Engreji having heard  
16 something through the grapevine is a red herring  
17 here because anyone in the world could have told  
18 them that. There is no allegation of fact that any  
19 of the defendants ever said anything to Tushar and  
20 Engreji or Michael Nikiforos. And the plaintiff has  
21 provided us with an interrogatory answer admitting  
22 that.

23 MS. JOHNSON: Your Honor, may I address  
24 that?

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1 THE COURT: Uh-huh.

2 MS. JOHNSON: Okay. First of all,  
3 Mr. Duff is not considering the fact that you can  
4 have circumstantial evidence. The Illinois Pattern  
5 Instructions state a fact or group of facts may,  
6 based on logic and common sense, lead you to the  
7 conclusion as to other facts. This is known as  
8 circumstantial evidence. A fact may be proved by  
9 circumstantial evidence.

10 For example, if you are in a building, and  
11 a person enters who is wet and is holding an  
12 umbrella, you might conclude that it is raining  
13 outside. Circumstantial evidence is entitled to the  
14 same consideration as any other type of evidence.

15 And our argument for this is that, more or  
16 less, what was stated about Tushar and Engreji was a  
17 paraphrase of something involving a gun, and the  
18 issue is a gun; that there's a gun and there was a  
19 danger of someone being harmed.

20 THE COURT: So you're saying that  
21 Slater -- you're saying Slater made up this fact.  
22 These are your allegations.

23 MS. JOHNSON: Right.

24 THE COURT: He made up the story about the

1 it at some point in time, but he doesn't really  
2 remember. I think that was the gist of it because  
3 it was four years later.

4 Your Honor, if you could go to the  
5 paragraph where in Slater's -- it's Defendants'  
6 Exhibit 2, Mr. Slater says -- I would like to start  
7 at paragraph 10, "Lisa Wolford communicated her  
8 decision to terminate Mr. Cynowa's employment to me  
9 on the evening of January 17, 2007. After that, I  
10 made arrangements so that a conference room would be  
11 available and so that Ms. Wolford and the other top  
12 CSSS management, including Larry Carver, Scott  
13 Theobald" --

14 THE COURT: A little slower, please, for  
15 the court reporter.

16 MS. JOHNSON: I'm sorry. -- "and Mac  
17 Ewell could be on the telephone for Mr. Cynowa's  
18 termination. Mr. Carver was Executive Vice  
19 President. Mr. Theobald was the Director of Human  
20 Resources. Mr. Ewell was Manager of Business  
21 Development. They were the top management of CSSS  
22 at the time. I also contacted Anthony Slatton, who  
23 functioned as an assistant supervisor at the VA, to  
24 arrange for him to be present at the termination

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1 AK-47, and somehow because Slater talked --

2 MS. JOHNSON: Slater --

3 THE COURT: -- because there's evidence in  
4 someone's -- I can't remember if it's Flanagan, I  
5 think it's his deposition, that says Slater was  
6 often talking to one employee about the other  
7 employee. And therefore, even though these people,  
8 Engreji, E-n-g-r-e-g-i [sic], and Nikiforos,  
9 N-i-k-o-f-o-r-i-s [sic], those two people, because  
10 we already know what Flanagan says, Engreji and  
11 Nikiforos don't have a clue who told them.

12 MS. JOHNSON: But they heard it.

13 THE COURT: Circumstantially you should be  
14 able to prove that the result of all those facts  
15 would lead a fact finder to say that Slater must  
16 have told someone?

17 MS. JOHNSON: Yes, your Honor. And if not  
18 Slater, then one of the other managers in the room.  
19 Because here's what I just want to say what he  
20 said --

21 THE COURT: Because Flanagan testified he  
22 didn't know anything until the plaintiff talked to  
23 him about it, right?

24 MS. JOHNSON: Or that he might have heard

1 meeting in person."

2 And, "Prior to the termination meeting,  
3 Noel Flanagan, another employee at the Hines VA,  
4 told me that Mr. Cynowa had a bad temper, could be  
5 dangerous, and possessed a gun, or words to that  
6 effect."

7 "Based on Flanagan's statement and my own  
8 experiences in dealing with Mr. Cynowa, I was  
9 concerned about a potentially aggressive or violent  
10 reaction from Mr. Cynowa upon his termination, which  
11 I believed to be a potential workplace safety  
12 issue."

13 And he says Ms. -- he -- in paragraph  
14 14 -- I'm jumping down -- it says in the second  
15 sentence of paragraph 14, "Hines VA Police Officer  
16 Bob Adrowski came to my office on January 18, 2007,  
17 prior to Mr. Cynowa's termination. Before we went  
18 to the conference room for the termination meeting,  
19 Officer Adrowski and I spoke privately" --  
20 "privately in my office," I stress. "While  
21 Officer Adrowski was in my office, he asked me what  
22 information I had about Mr. Cynowa."

23 So according to Mr. Slater, the only  
24 person that he ever said that to was to

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1 Officer Adrowski. And if that's the only person  
2 that he ever said that to, then we can --  
3 circumstantial evidence would suggest that someone  
4 on the CSSS management team, most likely Slater,  
5 apparently Slater, let that information leak out  
6 because two employees who were not managers knew  
7 that he had a gun and allegedly there was some  
8 threat of violence. And they could not have known  
9 that but for CSSS, someone there, Wolford or one of  
10 those managers or Slater, communicating that  
11 information because they were the only people who  
12 had it.

13 MR. DUFF: That's actually not accurate  
14 because, of course, the officer had it and the  
15 plaintiff had it. Because the day after the  
16 termination, the plaintiff went and got a copy of  
17 the police report which had the statement. So any  
18 of them could have spread this.

19 But that's really -- again, I think we're  
20 getting off point because --

21 THE COURT: We're not because I'm going --  
22 I'm reining you back in, okay?

23 MR. DUFF: Okay.

24 THE COURT: Because I have not forgotten

1 THE COURT: So throw all of that out of  
2 your -- you've already put it in your briefs.

3 She's saying that she had the facts -- in  
4 her facts she talked about these two guys telling  
5 him that they heard this, okay.

6 Then you counter, oh, no, she answered in  
7 18. Look at the answer.

8 I'm saying -- and then she said in her  
9 retort to Engreji and Nikiforos, those statements,  
10 okay, that the witness is -- and again, this is  
11 verified, what they're supposed to answer.

12 Okay. You say she didn't tell us about  
13 any other statements.

14 MR. DUFF: Correct.

15 THE COURT: I'm saying that's why I read,  
16 "See statements in the complaint and amended  
17 complaint of Christopher Cynowa's deposition." This  
18 is a motion for summary judgment.

19 So I'm saying -- she's saying that the  
20 facts are there. Then you say, no, she answered  
21 this interrogatory improperly because she didn't  
22 tell us that, correct?

23 MR. DUFF: Correct.

24 THE COURT: Right, okay.

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1 what the issue is.

2 MR. DUFF: Thank you, your Honor.

3 THE COURT: So with regard to the answer  
4 in 18 which states answer, "A. See the statements  
5 in the complaint and amended complaint of  
6 Christopher Cynowa's deposition," statements that he  
7 had an AK-47. All details are not yet known.

8 In his deposition he refers to the  
9 statements made to these people, yes or no, that he  
10 heard from them about this AK-47?

11 MR. DUFF: Not a statement by the  
12 defendants. There's no -- we're not -- and again,  
13 this is why I want to be clear here. On a motion  
14 for summary judgment, the Court's review is limited  
15 to the pleadings in the complaint.

16 If on the basis of the claims in the  
17 complaint the defendant is entitled to summary  
18 judgment, then summary judgment should be granted.

19 THE COURT: Let's save time --

20 MR. DUFF: Okay.

21 THE COURT: -- and assume because I'm  
22 wearing the robe, and I hate to say this, I know  
23 what the standards are, okay?

24 MR. DUFF: Okay.

1 MR. DUFF: Coupled with the fact that with  
2 respect to Nikiforos and Engreji, who were the only  
3 coworkers identified as having heard anything that  
4 was conveyed to the plaintiff, in Exhibit 19 --

5 THE COURT: Right.

6 MR. DUFF: -- the plaintiff said that  
7 Nikiforos and Engreji don't know who told them that.

8 So there's no statement that Nikiforos and  
9 Engreji can testify to --

10 THE COURT: But they didn't say they  
11 didn't hear it, right?

12 MR. DUFF: They said they don't know who  
13 told them, so they cannot --

14 THE COURT: Okay. So they're admitting  
15 they heard it?

16 MR. DUFF: Nikiforos and Engreji are  
17 saying they heard it.

18 THE COURT: They heard it.

19 MR. DUFF: Right.

20 THE COURT: And they heard it at the  
21 workplace?

22 MR. DUFF: That's not clear but -- that's  
23 not clear.

24 THE COURT: Okay.

1 MR. DUFF: But they say they heard it.  
2 THE COURT: Okay.  
3 MS. JOHNSON: They also said they heard it  
4 in the workplace.  
5 MR. DUFF: But the plaintiff's sworn  
6 interrogatory says that neither of them can identify  
7 who they heard it from. And for a defamation  
8 action, the defamatory statement must be identified  
9 clearly and with particularity so that the defendant  
10 can know what they're answering.  
11 THE COURT: Which she has. She's saying,  
12 yes, we've said what they heard.  
13 And you're saying that they have to say --  
14 these two people have to say who they heard it from.  
15 MR. DUFF: Correct.  
16 THE COURT: She's saying, no, that could  
17 be proven circumstantially.  
18 MR. DUFF: That's not correct.  
19 THE COURT: And it's not correct because  
20 why?  
21 MR. DUFF: It's not correct because a  
22 claim for defamation must clearly identify the  
23 specific defamatory statement complained of.  
24 "Without an allegation of specifically what was

1 coworkers who may have heard this rumor can't say  
2 who told them.  
3 So this could be -- that could be the  
4 basis for a claim against anyone let alone the  
5 defendants, and there is no way for the defendants  
6 to respond to that. That's why it's so vitally  
7 important to the defendants that we start with the  
8 pleading as the basis for determining whether or not  
9 the summary judgment motion is proper and should be  
10 granted.  
11 MS. JOHNSON: Your Honor, may I respond to  
12 that?  
13 THE COURT: Oh, yeah, you can respond.  
14 MS. JOHNSON: Okay. Your Honor --  
15 THE COURT: Because, with all due respect,  
16 he's right in a lot of ways, and these pleadings are  
17 all over the place. And you should have tied it up,  
18 and you haven't.  
19 So that's why it's 12:15, and I'm still  
20 listening to all of this because you jump around and  
21 answer here and answer there, and sometimes you've  
22 lost sight of what you're answering and what your  
23 goal is.  
24 He's saying is it true, do you agree that

1 communicated, it's impossible to know whether or not  
2 the communication gives rise to a cause of action  
3 for defamation." And what I just said is a verbatim  
4 quote from the First District's opinion in Heying  
5 versus Simonaitis.  
6 The plaintiff must identify who made the  
7 statement and must identify with specificity and  
8 clarity what was said and to whom it was said.  
9 Otherwise, there's no way for the defendants to  
10 determine what potential affirmative defenses they  
11 may bring.  
12 For example, if we don't know whether or  
13 not the statement was made to a police officer,  
14 okay, then we are unable to determine whether or not  
15 there might be an absolute privilege that applies to  
16 that.  
17 We don't know the circumstances in which  
18 this unidentified statement not provided -- not  
19 alleged in the complaint with specificity and  
20 clarity, we don't know what it is.  
21 We only have a vague reference to a rumor.  
22 But there is -- and in addition to that, the  
23 plaintiff has provided us with a sworn interrogatory  
24 response saying that the two witnesses who were

1 in defamation your burden is to prove who said what  
2 to whom? It's the communication, who made the  
3 communication, how is it published?  
4 MS. JOHNSON: And it was published -- it  
5 was published by Bill Slater in a police report, and  
6 it was published to a roomful of people in a  
7 conference call. And circumstantial evidence  
8 supports that because they were the only ones who  
9 controlled that information; that they were -- that  
10 Slater or other managers, someone at CSSS who had  
11 the exclusive control over the information leaked  
12 that information to the two parties who spoke to  
13 Mr. Cynowa.  
14 And -- and --  
15 THE COURT: And it could have been the  
16 plaintiff is what Mr. Duff said.  
17 MS. JOHNSON: It could not have been the  
18 plaintiff. It could not have been the plaintiff.  
19 THE COURT: Because?  
20 MS. JOHNSON: Because the plaintiff did  
21 not know that there was a rumor about him until he  
22 got his Freedom of Information Act report after he  
23 heard it from Tushar and Nikiforos.  
24 The sequence of events, your Honor, is

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1 that on August -- I mean, excuse me, on January 18,  
2 2007, he was terminated, left the building. He's  
3 walking to the car. He puts his hand in his pocket.  
4 Police officer says, "Do you have a weapon?" My  
5 client's puzzled, he goes, "Nah."  
6 He goes to the car. He says, "I'm  
7 reaching for a cigarette." He gets to the car.  
8 Officer says, "Do you have a weapon?" And he says,  
9 "No. I'm not -- I don't have a weapon." And he  
10 says, "And I certainly wouldn't" -- something like,  
11 "I wouldn't waste my time on that because I'm going  
12 to get a lawyer."  
13 And he then gets on a phone call with  
14 someone else, these two people, Engreji and  
15 Nikiforos, and they say, "Hey, man, did you hear the  
16 rumor going around the office?"  
17 My client did not know about the rumor,  
18 and he didn't have the police report to know what  
19 had been said. That was what prompted him to go  
20 get, through the Freedom of Information Act -- when  
21 he came to my office, he had a redacted Freedom of  
22 Information Act statement from the police officer  
23 with all the names taken out who the players were  
24 who said what. He had no idea until he got that

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1 that there was an issue of a gun.  
2 At that point I then asked for a  
3 nonredacted copy, got that, and that's how I got the  
4 names of the people involved and who were in the  
5 room and present at the time.  
6 So it is absurd for Mr. Duff to suggest  
7 that somehow my client could have started his own  
8 rumor when he didn't know about it until he found  
9 out when he got the Freedom of Information Act  
10 request.  
11 THE COURT: Okay. So the question is,  
12 getting back to absolute privilege, that if it's  
13 true that these statements to the two -- we'll call  
14 them the coworkers because I forget their names,  
15 Nikiforos and Engreji, if it's true that the  
16 plaintiff has incorporated that paragraph and you're  
17 wrong about the answer to interrogatory --  
18 Exhibit 18, interrogatory 7, that it doesn't  
19 incorporate the possibility of that statement which  
20 she put forth in the plaintiff's Section 2 facts;  
21 and if it's true that he didn't have the Freedom of  
22 Information request or hear about it from them until  
23 after they allegedly communicated this to him as to  
24 what the rumor at the office was, aren't there --

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1 because she's agreeing if it's only a case of what  
2 was said to Adrowski --  
3 MS. JOHNSON: Adrowski.  
4 THE COURT: -- Adrowski -- sorry with all  
5 these names -- Adrowski, you're right. You're  
6 saying as to what was said to Adrowski only, if that  
7 was the statement said to Adrowski that Slater  
8 didn't tell the other people on the conference call  
9 that could have communicated it to someone at the  
10 company, he's right, that's absolute. But there are  
11 questions of fact here.  
12 But using the premise of circumstantial  
13 evidence that a fact finder could put this testimony  
14 together and come to the conclusion that they had to  
15 have heard it from someone from CSSS, is that what  
16 you're saying?  
17 MS. JOHNSON: Your Honor, I agree with  
18 everything you've said with the exclusion of saying  
19 we do not agree that the statement was subject to  
20 absolute privilege because it was in a police  
21 report.  
22 And our reasoning for that is that the  
23 police report requirement requires that there be a  
24 suspected criminal activity, and they have asserted

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1 that they did not suspect any criminal activity.  
2 And, in fact, in their motion to dismiss, which is,  
3 again, in our pleadings, they said that they --  
4 that -- I've lost my point again.  
5 In their motion to dismiss, they said that  
6 they did not. They actually said that they did not  
7 suspect any criminal wrongdoing. And the absolute  
8 privilege standard applies to criminal wrongdoing,  
9 suspecting that there's a crime or something bad is  
10 going to happen.  
11 THE COURT: And you replied to that how,  
12 Mr. Duff?  
13 MR. DUFF: That whether or not the  
14 statement was false to the police officer is  
15 irrelevant. Morris versus Harvey Cycle actually  
16 says this.  
17 In that case, the people who made the call  
18 to call the police were -- the plaintiff alleged in  
19 that case that the report to the police was false,  
20 and they said that the report to the police was only  
21 made for the purpose of trying to collect some money  
22 and was only made for purposes of harassing the  
23 plaintiff.  
24 And in addition in that case, the Court



1 noted that the police themselves believed that the  
2 report was false. So --

3 THE COURT: And how do you jibe your  
4 argument with that, Ms. Johnson?

5 MS. JOHNSON: Could you repeat the case  
6 citation?

7 MR. DUFF: Harvey versus -- I'm sorry --  
8 Morris versus Harvey Cycle. It's the First District  
9 2009.

10 MS. JOHNSON: Is that in one of your prior  
11 pleadings?

12 MR. DUFF: Yes. It's in both our opening  
13 brief and our reply.

14 THE COURT: I'm trying to find it so I can  
15 give you the page.

16 MS. JOHNSON: Yeah, I'm trying to find the  
17 reference. That's --

18 MR. DUFF: In the brief, your Honor.

19 THE COURT: Morris versus Harvey Cycle is  
20 on page 5.

21 MS. JOHNSON: I was looking for the actual  
22 case, your Honor. I don't seem to have it. I've  
23 got all these cases here, but I'm not seeing that  
24 one.

1 investigation of an alleged crime. There was no --  
2 the defendants themselves did not believe that there  
3 was a crime going on. Slater did not believe there  
4 was a crime going on, and it's evident by the  
5 evidence, the surrounding facts of the case.

6 If you honestly --

7 THE COURT: And you also say on page 7  
8 that "our courts look as to whether the statements  
9 made to law enforcement officials are for purposes  
10 of instituting legal proceedings. If so, these  
11 statements are granted absolute privilege," and she  
12 cites Vincent and Starnes.

13 MS. JOHNSON: Yes. And, your Honor --

14 THE COURT: Allegations of criminal  
15 activities -- allegations of criminal activities are  
16 made to prosecuting authorities.

17 MS. JOHNSON: Right. And there is no  
18 alleged criminal activity. In fact, they went to  
19 the point of saying in their motion to dismiss that  
20 they didn't believe there was any -- and that's a  
21 judicial admission. They said we didn't believe  
22 there was a criminal activity going on. So it does  
23 not fall into that absolute privilege because they  
24 never believed there was a criminal activity.

1 THE COURT: He cites it for the premise  
2 that statements to law enforcement officials are  
3 absolutely privileged.

4 MS. JOHNSON: I have -- I believe that in  
5 our response brief, I think we address that.

6 THE COURT: You distinguish the Harvey  
7 case?

8 MS. JOHNSON: I don't know if we  
9 distinguish --

10 THE COURT: Page 6 you talk about, "In  
11 certain circumstances" --

12 MS. JOHNSON: I'm trying to --

13 THE COURT: -- "statements made to law  
14 enforcement officials are absolutely privileged."  
15 And you talk about Morris; that the Court instructs  
16 us that "defamatory statements that would otherwise  
17 be actionable will escape liability," and you bold;  
18 "when the conduct is to further an interest" --

19 MS. JOHNSON: Right.

20 THE COURT: -- "of social importance" --

21 MS. JOHNSON: Yes.

22 THE COURT: -- "such as the investigation  
23 of an alleged crime."

24 MS. JOHNSON: And there was no

1 And, furthermore, even if they hadn't said  
2 that in their motion to dismiss, which I can give  
3 you the reference to, it stands to reason that if  
4 anyone believed that someone actually had a bad  
5 temper and an AK-47, they would not allow the man to  
6 come in and sit at his desk from six in the morning  
7 until ten, have him go and say, hey, are you ready  
8 for me yet? I know you wanted to meet with me. And  
9 say, no, go back to your desk and sit back down and  
10 come back again. It's not credible.

11 There is a question of fact here. There  
12 is a question of fact of whether anyone should  
13 believe that his intention of reporting Chris to the  
14 police was in fact because he thought there was  
15 something of importance that had to be done that was  
16 of a criminal nature or if there was anything that  
17 was important.

18 In fact, one of the cases that Mr. Duff  
19 cites talks about the fact that it has to be  
20 something of paramount importance, I believe.  
21 Actually, it's the Krueger versus Lewis case. There  
22 is absolute privilege if something is of paramount  
23 importance.

24 "Paramount" is a very strong term, and

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1 Courts are very circumspect when they look at  
2 statutes and when they look at summary judgment  
3 motions to determine whether or not something -- we  
4 have to parse out the words very carefully. And  
5 "paramount" is, you know --

6 THE COURT: Well, it has to be determined  
7 as an issue as a matter of fact before a Court can  
8 determine whether as a matter of law absolute  
9 privilege applies. Is that what you're trying to  
10 say?

11 MR. BUSTAMANTE: Yes.

12 MS. JOHNSON: Yes.

13 MR. DUFF: And that's not the law.

14 THE COURT: Okay.

15 MR. DUFF: And this is what the First  
16 District has said in the Morris case. In that case,  
17 and I'm going to quote here, "Plaintiff argues that  
18 the statements here were not intended to institute  
19 legal proceedings." That's what the plaintiff's  
20 position was in the Morris case, okay.

21 And I'm further quoting. That's a -- I  
22 excised a little bit of language in the middle  
23 there, but that's on page -- it's 392 Ill.App.3d at  
24 405.

1 officer. You might be right, and you might be wrong  
2 because he just cited the Morris case where the  
3 facts were what he just said. I'm not going to  
4 repeat them or ask the reporter to repeat them.

5 So what do you say contra to that?

6 Because we're talking about the statement to the  
7 police officer. We're talking about Slater's  
8 statement to the hierarchy in the room that might  
9 have gone from Slater or someone else to these other  
10 people to get into the -- right?

11 MS. JOHNSON: Right.

12 THE COURT: So as to the police officer,  
13 come on, narrow this down. We've been at this for  
14 an hour and a half.

15 I'll tell you right now, as to qualified  
16 privilege, innocent construction, and intentional  
17 infliction of emotional distress, which I believe  
18 we've covered everything, I believe that there are  
19 questions of fact that I would deny this motion for  
20 summary judgment.

21 With regard to -- we talked about waiver  
22 of No. VII and VIII, which are the per quod versus  
23 lack of ability and integrity.

24 As to III and IV, those are based on

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1 On page 406 of that opinion, the Court  
2 notes, "The plaintiff here alleges a report of  
3 criminal activity to the police was not only false  
4 but was used to intimidate and exert pressure on her  
5 to cosign a loan and not to institute legal  
6 proceedings."

7 Despite those allegations in the Morris  
8 case, the Court said it's a statement to a police  
9 officer. It's absolutely privileged. And that's  
10 the issue here. It's not relevant --

11 THE COURT: That's the issue here if we're  
12 only talking about the statement to the police  
13 officer and not the statement -- because I'm not --  
14 where I'm going on this is that she has, I believe,  
15 to be fundamentally fair given this record and the  
16 fact that this plaintiff has alleged the facts about  
17 this statement from these coworkers, that taking the  
18 pleading in its totality, that even though -- and I  
19 tend to agree with her that circumstantially she  
20 might be able to prove that only CSSS people had  
21 this information.

22 So if you're -- let's say I'm wrong.  
23 Let's say I believe that, but I'm wrong. Then we're  
24 only looking at what the statement was to the police

1 ability and integrity, and you talk about per se,  
2 those are per se, defamation per se. And you're  
3 talking about crimes, right, is what you said on  
4 page --

5 MS. JOHNSON: Right.

6 THE COURT: -- on page 10, okay. Words  
7 that impute criminal offense.

8 Okay. So you're talking out of both sides  
9 here, Ms. Johnson. You're saying that we could use  
10 these words which impute a criminal offense to  
11 satisfy your ability and impairment of his ability  
12 on Nos. III and IV, but you can't use them for the  
13 statement to the police officer because it's not a  
14 crime. You have to have it -- how can you have it  
15 both ways? I don't understand that.

16 MS. JOHNSON: Well, your Honor, if I  
17 recall the way the brief was written from Mr. Duff,  
18 they pled in the alternative. I think they argued  
19 both ways themselves, and I just responded to that.

20 They -- I believe -- I don't have that  
21 cited right now in their brief, but I'm pretty sure  
22 that their brief said it wasn't a crime but --  
23 having an AK-47 wasn't a crime, but if it was a  
24 crime, then we're arguing this. And so I was



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1 responding to that.

2 THE COURT: But we're responding to the  
3 law now, to the Morris case, and he's saying -- and  
4 that's what I have -- I have to respond to the law,  
5 not what he says or what you say.

6 MS. JOHNSON: Right, right.

7 THE COURT: So I'm in a different  
8 category.

9 MS. JOHNSON: Right.

10 THE COURT: So he's saying the Morris case  
11 had statements that the genesis of those statements  
12 were for malice and whatever he cited from the case,  
13 and it was still found to be privileged because it  
14 was made to a police officer. And I haven't heard  
15 one word from you otherwise.

16 MS. JOHNSON: Okay.

17 THE COURT: Whether you have the case  
18 there or you don't have the case.

19 MS. JOHNSON: Okay. May I have a moment?

20 THE COURT: Please, please. Can we take a  
21 five-minute break?

22 MS. JOHNSON: Yes.

23 MR. DUFF: Yes, your Honor.

24

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1 And, Mr. Duff, to that regard --

2 MR. DUFF: I'd like to oppose that motion,  
3 your Honor.

4 THE COURT: And you can state your  
5 reasons.

6 MR. DUFF: I'd like the opportunity to  
7 file a written response to that motion, your Honor.

8 THE COURT: Okay. And as we discussed off  
9 the record, I'm going to deny that motion.

10 MR. DUFF: Okay.

11 THE COURT: That request, pardon me.

12 MR. DUFF: And the basis -- among the  
13 bases that I would put in a written response would  
14 be the fact that the amendment, one, it hasn't been  
15 described, so I don't know exactly what it's going  
16 to say. So I would need the opportunity to see the  
17 motion for leave to amend. I would need to see the  
18 proposed amendment so that I could formulate a  
19 proper response to that.

20 I believe that the basis for the motion  
21 would be something relating to these vague  
22 references to rumors that the coworkers heard as a  
23 basis for a claim for defamation.

24 But I believe that that amendment would be

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1 (Whereupon a recess was taken  
2 from 12:29 p.m. to 12:56 p.m.)  
3 (Discussion off the record.)

4 THE COURT: We've had an opportunity given  
5 how -- the record is going to reflect the last two  
6 hours of this disjointed argument, and I'm saying  
7 "disjointed" because I believe that this complaint  
8 has enough in it to allege Counts I -- however many  
9 counts with regard to a statement that was allegedly  
10 published to the coworkers, and it's not set out  
11 that way.

12 You're wrong on the motion -- Mr. Duff is  
13 correct, Ms. Johnson. You are wrong on the law of  
14 the motions for summary judgment, but it's my job to  
15 make sure that fairness dictates.

16 So as an inconvenience, an utter  
17 inconvenience to the defendant and --

18 MS. JOHNSON: And to me.

19 THE COURT: -- to the attorneys and to  
20 their clients, we need to strike the trial date of  
21 April 14th. Is that the date it is?

22 MR. DUFF: April 11th.

23 THE COURT: April 11th. Because you have  
24 at the 11th hour made an oral motion to amend.

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1 futile because the only evidence that has been  
2 proffered today by the plaintiff cannot prove that  
3 the defendants said anything that the coworkers  
4 allegedly heard.

5 So there's no basis -- and so as a result  
6 of this --

7 THE COURT: All right. You've persuaded  
8 me. I'm retracting what I said off the record.

9 I will allow you to file a motion for  
10 leave to amend because I have been, in essence in  
11 the last hour and a half, trying to put into words  
12 what you're trying to state as a cause of action  
13 because you have not done so, in my opinion, with  
14 regard to these coworkers.

15 So he's right. He's right. And now that  
16 he's said that, he's correct.

17 You should -- your feet should be to the  
18 fire. This is your case. You know your case, and  
19 you should have to attach to your motion for leave  
20 to amend what your intended amendment is so that he  
21 knows what he's talking about.

22 Because, again, for the last two tortured  
23 hours here, and I'm using that word describing my  
24 mental machinations of this case, it's oftentimes

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1 that you know what your case is and you know all the  
2 facts, but you lose the forest for the trees. And  
3 you might have lost the forest for the trees here.  
4 So I think it's fair to him to allow him  
5 to -- for you to put that in writing, your motion  
6 for leave to amend. We're going to strike that  
7 April 11th trial date, and I'm going to ask you if  
8 you can do that within the next seven days.  
9 MR. BUSTAMANTE: Two weeks?  
10 MS. JOHNSON: That's pretty tough.  
11 THE COURT: You need 14 days?  
12 MR. BUSTAMANTE: Yes, your Honor.  
13 THE COURT: Do you have a problem with  
14 14 days? You've got a note coming from your  
15 colleague here. Do you need to add anything else?  
16 MR. DUFF: Your Honor, I would not have a  
17 problem with 14 days to see that motion. I would  
18 want to have I think -- I would like to have 28 days  
19 to respond to that.  
20 THE COURT: Okay.  
21 MR. DUFF: And I don't know whether or not  
22 there will be a further briefing schedule on that.  
23 THE COURT: Would you need to reply?  
24 MR. BUSTAMANTE: (Indicating.)

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1 THE COURT: He's nodding his head yes,  
2 your colleague.  
3 MS. JOHNSON: Yes.  
4 THE COURT: Okay. Seven days to reply,  
5 then.  
6 MR. DUFF: Your Honor, there's a  
7 concern --  
8 MS. JOHNSON: Your Honor --  
9 THE COURT: Wait. He's speaking.  
10 MR. DUFF: -- from my client's standpoint  
11 that we've spent three years getting this case ready  
12 for trial; that there has been ample opportunity  
13 prior to this point for these amendments to take  
14 place.  
15 As your Honor knows, as I identified it, I  
16 had an interrogatory where I specifically asked for  
17 this information.  
18 THE COURT: You can put that in writing as  
19 a response.  
20 MR. DUFF: So, your Honor, you know --  
21 THE COURT: 2-616(b) is -- I mean,  
22 there --  
23 MR. DUFF: I guess my concern, and this is  
24 my point. My clients have gone to great lengths and

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1 have spent a lot of money --  
2 THE COURT: I know.  
3 MR. DUFF: -- to defend this case. And I  
4 believe that at this point the reason that they've  
5 spent all that money is because of the way that this  
6 case has been handled to this point.  
7 So I'd like the opportunity to file a  
8 motion to recoup the costs that my clients have had  
9 to incur to get the case to this point.  
10 THE COURT: If you want to file a motion  
11 in writing, I'll give you leave to do so. I'm not  
12 saying I would grant it. Obviously if you feel  
13 strongly --  
14 MR. DUFF: I'd like to at least have the  
15 opportunity to discuss that.  
16 THE COURT: I don't know what the basis  
17 would be, but I'll allow you to do so to file the  
18 motion. And in the flip of that, you would do that  
19 in 14 days?  
20 MR. DUFF: If we're going to file that  
21 motion, your Honor, we would.  
22 THE COURT: You're asking pursuant to  
23 219(c), for instance?  
24 MR. DUFF: Yes, your Honor.

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1 THE COURT: As some kind of a motion to  
2 dismiss or something?  
3 MR. DUFF: No, your Honor. Actually, your  
4 Honor, I believe --  
5 THE COURT: Motion for costs?  
6 MR. DUFF: It would be -- I believe it  
7 would be something along the lines of a motion for  
8 costs and sanctions, yes.  
9 THE COURT: Okay. Well, you do what you  
10 feel you need to do --  
11 MR. DUFF: We'll do that.  
12 THE COURT: -- given I'm allowing this to  
13 happen.  
14 MR. DUFF: I understand that.  
15 MS. JOHNSON: Your Honor, in this last  
16 reply brief, the defendants cited I think around 23  
17 cases in the reply brief. I don't feel that I can  
18 respond meaningfully to a -- I don't think I can  
19 reply because they're going to probably cite an  
20 entire new regime of cases, and I think 7 days would  
21 not be adequate for me. I'm a solo practitioner,  
22 and I just simply can't turn things around that  
23 quickly.  
24 THE COURT: So how much time do you need?

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1 MS. JOHNSON: I would like 14 days to do  
2 that.  
3 THE COURT: Okay. All right. So that's  
4 the plan. I'm really sorry to put anyone at -- I'm  
5 not intending this to be prejudicial. I am  
6 intending this to be at -- when this case is tried,  
7 if it does get tried, all the issues are out there,  
8 and it doesn't have to come back from the appellate  
9 court because I missed something or I should have  
10 construed something. I believe it's more efficient  
11 to do it this way even though we're, again, right  
12 before trial.  
13 So 14, 28, 14. That gives us 2, 6,  
14 8 weeks. So we're going to strike the April 11th  
15 trial date, and we're going to come back sometime in  
16 the ninth week which would be -- this could be off  
17 the record, too, housekeeping matter.  
18 (Discussion off the record.)  
19 THE COURT: The arguments stand to date on  
20 what was argued with regard to the motion for  
21 summary judgment. If it is allowed to be amended,  
22 this complaint, then I would give ample time to put  
23 any other arguments that you have in your motion for  
24 summary judgment.

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1 So originally I had told Mr. Duff I'm not  
2 going to be ruling on the defamation per se and the  
3 absolute privilege issue with regard to this police  
4 officer today. And I did say on the record about  
5 45 minutes ago, because it's 2 hours into the  
6 argument now, that there were -- I believe there  
7 were questions of fact with regard to the  
8 intentional infliction of emotional distress,  
9 innocent construction privilege -- or doctrine,  
10 qualified privilege, which would defeat the  
11 affirmative defense arguments.  
12 I'm taking that back so that we have a  
13 clean slate when we go forward on the amended motion  
14 for summary judgment, if you're allowed to amend  
15 your complaint.  
16 MS. JOHNSON: Your Honor --  
17 THE COURT: If you're not allowed to amend  
18 your complaint, then we'll go forward on what we  
19 have.  
20 MR. DUFF: Thank you, your Honor.  
21 MS. JOHNSON: Your Honor, am I allowed to  
22 amend my complaint as it pertains to all of the  
23 counts or only -- you're not ruling on any count  
24 today?

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1 THE COURT: I'm not ruling on any count,  
2 and I'm only allowing you to amend with regard to  
3 any allegation that flows from paragraph --  
4 Section 2 of the facts.  
5 MS. JOHNSON: Are we talking about the  
6 complaint now?  
7 THE COURT: The complaint as it stands,  
8 yes.  
9 MS. JOHNSON: Okay.  
10 THE COURT: Your Section 2 with regard  
11 to -- paragraph 40 of Section 2 with regard to the  
12 receipt of the plaintiff of a telephone call from  
13 his coworkers.  
14 MR. DUFF: Your Honor, could you specify  
15 what page that is because there's a number of  
16 repetitions of paragraph 40.  
17 THE COURT: Page 10 of 23, paragraph 40.  
18 MR. DUFF: Thank you. And no further  
19 amendments would be allowed?  
20 THE COURT: Right.  
21 MS. JOHNSON: So I cannot amend defamation  
22 per quod?  
23 THE COURT: That is -- that was with  
24 regard to waiver of the --

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1 MS. JOHNSON: Yeah, the waiver.  
2 THE COURT: That was the only decision I  
3 did make. And because it's a waiver issue in the  
4 brief -- do you want to come forward?  
5 MR. FARAJ: May we have a moment, your  
6 Honor, before we go on?  
7 THE COURT: Yeah. Yeah. Go take your  
8 moment.  
9 (Whereupon a recess was taken  
10 from 1:08 p.m. to 1:09 p.m.)  
11 MS. JOHNSON: Your Honor, we would ask for  
12 leave to amend our entire complaint.  
13 THE COURT: With regard to? You're not  
14 going -- at this point, I'm allowing you to amend  
15 the complaint only based on paragraph 40 and that  
16 statement that you have said is in this case with  
17 regard to that being the second statement that your  
18 complaint allegedly argues about a statement made  
19 orally or written about this issue.  
20 MR. DUFF: Thank you, your Honor.  
21 THE COURT: That's it. So if you can  
22 weave it into -- it might be all ten counts, but  
23 with regard to VII and VIII, there is nothing here  
24 that has anything to do with -- in your brief -- in

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1 your count, and there's nothing in this record that  
2 I'm changing with regard to paragraph 40 of  
3 Section 2 that has anything to do with lack of  
4 ability or integrity of the job. That statement in  
5 paragraph 40 doesn't go to lack of ability and  
6 integrity.  
7 MS. JOHNSON: Oh.  
8 THE COURT: So as to --  
9 MS. JOHNSON: You're holding that we have  
10 made no statements in our complaint that go to want  
11 of integrity?  
12 THE COURT: Not just your complaint. Your  
13 motion to -- you argued that the motion to dismiss  
14 which I in the argument read that you incorporated,  
15 you were talking about defamation per se, not  
16 defamation per quod.  
17 MS. JOHNSON: But in my complaint,  
18 defamation per quod is addressed, and I said that it  
19 imputes to him that he's not able to do his job  
20 without being violent.  
21 THE COURT: And what do you say to that?  
22 MR. DUFF: I say to that a couple things.  
23 One, it was waived because they didn't  
24 respond.

1 And it's our position that when and if we  
2 get to a point where we're rebriefing summary  
3 judgment on these same claims, that the plaintiff  
4 should not have a new opportunity to file a response  
5 because at this point having had that opportunity,  
6 the plaintiff has waived the argument on those  
7 issues.  
8 THE COURT: That's why I'm reserving it  
9 and not --  
10 MR. DUFF: I understand.  
11 THE COURT: So you could bring that issue  
12 up again.  
13 MR. DUFF: Thank you, your Honor.  
14 THE COURT: Because I don't know, frankly,  
15 if they're going to be able to be successful in  
16 doing this. I'm giving you the opportunity.  
17 MS. JOHNSON: Okay. So may I --  
18 THE COURT: Again --  
19 MS. JOHNSON: I guess I'm not clear on --  
20 if I amend, I'm not allowed to amend as pertaining  
21 to the counts related to VII and VIII?  
22 THE COURT: Yeah, you can but -- you can  
23 do whatever you want to do with regard to  
24 paragraph 40 of Section 2, page 10 of 23.

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1 Two, we cited the Cody case which is a  
2 Seventh Circuit case that says that that type of  
3 allegation is insufficient as a matter of law.  
4 So you should grant summary judgment on  
5 Counts III, IV, VII and VIII as a result because all  
6 four --  
7 THE COURT: Well, I wasn't going to -- I  
8 didn't on III and IV because of defamation per se.  
9 And with regard to VII and VIII, I'm  
10 reserving that for the future because I'm trying to  
11 put it in a status quo position.  
12 And your arguments will be received. I've  
13 heard them, and it's possible I'm going to rule the  
14 same way. But for right now, I'm reserving my  
15 decision on those, on the waiver issue because it  
16 could be a whole new brief.  
17 MR. DUFF: Sure, I understand. But the  
18 problem I have with that procedurally is that not  
19 only with respect to those counts as to the imputing  
20 a lack of ability in trade or profession, which is  
21 III, IV, VII and VIII, but there are additional  
22 bases that we pointed out in our motion for summary  
23 judgment, in particular our reply brief, where there  
24 was a waiver of arguments.

1 MS. JOHNSON: Right, right.  
2 THE COURT: Okay. Attempt whatever you  
3 need to attempt. It's a motion for leave to amend.  
4 MS. JOHNSON: Okay. But I'm asking --  
5 THE COURT: And he will be -- and that  
6 will be your -- I'm reserving. So right now, VII  
7 and VIII exist, all right.  
8 MS. JOHNSON: And I can't change them?  
9 That's what I'm trying to qualify. Am I allowed to  
10 change them?  
11 MR. BUSTAMANTE: Yes.  
12 THE COURT: Yes, you can. Thank you,  
13 Mr. Bustamante. You can based on what I said the  
14 parameters are, okay. That's very -- it's very  
15 narrow. It's the statement to the coworkers.  
16 That's it. You're not able to amend this whole ten  
17 counts with new things. It's just because you had  
18 the facts already, I believe, okay.  
19 And then he's going to argue what he  
20 argues, and you might not get to amend. I'm  
21 allowing it to be in writing, okay?  
22 MS. JOHNSON: Okay.  
23 THE COURT: Okay. Thank you for your  
24 time. Thank you, Ms. Reporter.

\*L\*100\*L\*\*F\*(312) 280-0825\*F\*

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1 I'm sorry that I disappointed you-all on  
2 not ruling today, but that's where I see it.  
3 MR. DUFF: Thank you, your Honor.  
4 (which were all the proceedings  
5 had or offered at said hearing  
6 of the above-entitled cause.)  
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	54:7	10:2;15:10;21:17;22:9; 20:23;8,15	7:11;39:22;42:14; 53:21;66:22;72:24	ahead (2) 7:24;48:19
[	23 (4) 12:14;88:16;91:17; 95:24	A	additional (6) 24:17;39:6,20;45:9; 10:94:21	AK-47 (9) 9:10;14:8;28:4,16; 58:1;62:7,10;76:5;80:23
[sic] (3) 12:14;58:8,9	24th (1) 21:14	ability (17) 7:9;8:8;11:17;13:24; 14:2;16:9,17;25:1;26:2; 27:1;79:23;80:1,11,11; 93:4,5;94:20	Address (7) 19:13,14;25:8;27:23; 35:23;56:23;74:5	albeit (1) 42:15
1	25 (1) 23:8	able (10) 14:10;26:12;36:21; 45:11,13;58:14;78:20; 93:19;95:15;96:16	addressed (7) 6:17;7:19;9:22;10:1; 25:9;27:9;93:18	allegation (12) 13:19;23:15,17;24:4; 35:5,6;36:9;44:11; 56:18;65:24;91:3;94:3
1 (1) 22:11	2-615 (1) 30:15	above (1) 24:1	addresses (1) 19:5	allegations (9) 15:16;23:19;39:6,21; 41:7;57:22;75:14,15; 78:7
1:08 (1) 92:10	2-616b (1) 86:21	absolute (16) 6:8;28:2;30:4;32:11; 34:7,20;66:15;70:12; 71:10,20;72:7;75:11,23; 76:22;77:8;90:3	adds (1) 39:20	allege (2) 16:15;82:8
1:09 (1) 92:10	28 (2) 85:18;89:13	absolutely (8) 16:3;28:3,10;34:15; 50:11;74:3,14;78:9	adequate (1) 88:21	alleged (16) 8:6;9:1;11:15;14:20; 15:8;34:12;53:12,18,19; 54:9;66:19;72:18;74:23; 75:1,18;78:16
10 (8) 18:4,6;19:17;21:9; 59:7;80:6;91:17;95:24	3	absurd (1) 70:6	admission (9) 40:10,13;41:21,23,24; 42:7;43:1;45:19;75:21	allegedly (6) 11:21;61:7;70:23; 82:9;84:4;92:18
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## IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Cynowa

v.

CSSS, et al.

No. 08 L 403

## ORDER

This matter coming to be heard on Defendants' motion for summary judgment, counsel for the parties having appeared, and the Court being advised in the premises: IT IS HEREBY ORDERED:

- (1) Defendants' motion for summary judgment is entered and continued to June 9, 2011, at 1:00 p.m. in Room 2006;
- (2) Plaintiff shall file a motion for leave to amend his complaint limited to the allegation about co-workers in Paragraph 40 on page 10 of 23 of his complaint by April 7, 2011;
- (3) Defendants shall respond to Plaintiff's motion for leave to amend by May 5, 2011;
- (4) Plaintiff shall file a reply on Plaintiff's motion for leave to amend by May 19, 2011.
- (5) Plaintiff's motion for leave to amend is set for hearing on June 9, 2011 at 1:00 p.m. in Room 2006;
- (6) The trial date of April 11, 2011 is stricken.

Atty. No.: 40151

Name: K. Duff

Atty. for: Δ

Address: 542 S. Dearborn St. Ste. 900

City/State/Zip: Chicago, IL 60605

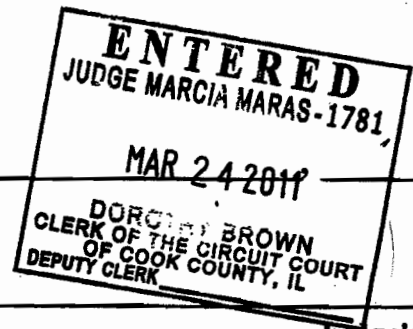
Telephone: 312-733-3950

ENTERED:

Dated:

Judge

Judge's No.



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

CLERK OF CIRCUIT COURT  
LAW DIVISION

MAY 12 PM 4:17

FILED-10

CHRISTOPHER S. CYNOWA,

Plaintiff

v.

CSSS, INC., et al.,

Defendant

No. 08 L 000403

Calendar: C - Judge Ronald S. Davis

**APPEARANCE**

- ☒ **GENERAL APPEARANCE** 0900 - APPEARANCE - FEE PAID; 0909 - APPEARANCE - NO FEE;  
0904 - APPEARANCE FILED - FEE WAIVED  
☐ **SPECIAL AND LIMITED APPEARANCE** 0905 - SPECIAL APPEARANCE - FEE PAID  
0906 - SPECIAL APPEARANCE - NO FEE  
☒ **JURY DEMAND** 1900 - APPEARANCE & JURY DEMAND FEE PAID; 1909 APPEARANCE & JURY DEMAND NO FEE

The undersigned enters the appearance of: ☐ Plaintiff ☒ Defendant

Defendants CSSS Inc., Lisa Wolford, and William F. Slater  
(INSERT LITIGANT'S NAME)

  
SIGNATURE  
for Rachlis Durham Duff & Adler, LLC

- ☒ **INITIAL COUNSEL OF RECORD** ☐ **PRO SE**  
☐ **ADDITIONAL APPEARANCE** ☐ **SUBSTITUTE APPEARANCE**

A copy of this appearance shall be given to all parties who have appeared and have not been found by the Court to be in default.

**ATTORNEY**

NAME: Rachlis Durham Duff & Adler, LLC

ATTORNEY FOR: Defendants

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ATTORNEY NUMBER: 40151

**PRO SE**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

INSURANCE COMPANY: \_\_\_\_\_

ATTORNEY NUMBER 99500

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PLAINTIFF'S  
EXHIBIT C-1

Firm No. 40151

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

CHRISTOPHER S. CYNOWA,

Plaintiff,

v.

CSSS, INC., et al

Defendants.

No. 08 L 403

**FILED-2**  
2008 MAY 12 PM 4:18  
CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
LAW DIVISION  
PROCTER & KERRY

**DEFENDANTS' COMBINED 2-615 & 2-619 MOTION  
TO DISMISS PLAINTIFF'S COMPLAINT**

Defendants CSSS, Inc., Lisa Wolford, and William F. Slater, move to dismiss Plaintiff's Complaint pursuant to 735 ILCS 5/2-615 & 2-619, and in support of their motion, state as follows:

**Allegations in the Complaint**

This cause of action follows the termination of Plaintiff's at-will employment by Defendant CSSS on January 18, 2007. (Compl., at 7, ¶¶ 24-27.) Prior to his termination, Plaintiff was a senior systems engineer assigned to perform computer services at the Hines VA Hospital of the U.S. Department of Veteran Affairs in Hines, Illinois ("Hines VA"). (*Id.* at 1, ¶¶ 1-2.) CSSS provides on-site computer support services to Hines VA Hospital under federal contract. (*Id.* ¶ 2.)

On January 18, 2007, Defendant William Slater, a CSSS site manager at the Hines VA Hospital, asked a Hines VA employee to call the Hines VA Police Office to request that the police stand-by during Plaintiff's termination. (*Id.* at 2, ¶ 5 & at 6, ¶ 19.) Hines VA Police Officer Bob Androwski was assigned to stand-by during Plaintiff's termination. (*Id.* at 6, ¶ 20.) Prior to Plaintiff's termination, while Officer Androwski

PLAINTIFF'S  
EXHIBIT C-2