GIS Va. 155

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JAN 11 1974
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

Record No. 730772

GULF RESTON, INC., *Plaintiff in Error*

v.

MRS. CHARLES J. ROGERS, Executrix of the Estate of Charles J. Rogers, Deceased,

and

PROSPECT INDUSTRIES, INC., *Defendants In Error*

APPENDIX

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

Page

Motion for Judgment 1

Order Dated March 23, 1973 2

Motion To Set Aside the Verdict of the Jury and To Enter Judgment for the Defendant Gulf Reston, Inc. or, in the Alternative, Grant a New Trial or a Remittitur 4

Order Dated May 18, 1973 6

Notice of Appeal and Assignment of Error 7

Writ of Error 9

Instruction F 9

Instruction H 10

Instruction I 10

Transcript 11

Plaintiffs' Witnesses:

Roger Bockman—Direct 35

—Cross 40

Elmer C. Burch—Direct 22

Lefton Foltz—Direct 53

William C. Fordyce—Direct 29

Betsy Jessup—Direct 11

—Cross 17

—Redirect 21

Mrs. Charles J. Rogers—Direct 65

—Cross 79

—Redirect 85

—Recross 87

Page

Judith Churchill Rogers—Direct 93
Catherine Steirert—Direct 90
Hillary Sumner—Direct 42
—Cross 48
—Redirect 49
—Recross 50

Defendant's Witnesses:
Elmer Burch—Direct 130
—Cross 152
—Redirect 173
Willie Hardy—Direct 103
—Cross 116
Mrs. Charles Rogers—Direct 174
—Cross 176

Plaintiffs' Rebuttal Evidence:
Mrs. Charles J. Rogers—Direct 181

Verdict 191

IN THE

Supreme Court of Virginia

Record No. 730772

GULF RESTON, INC., *Plaintiff in Error*

v.

MRS. CHARLES J. ROGERS, Executrix of the Estate of Charles J. Rogers, Deceased,

and

PROSPECT INDUSTRIES, INC., *Defendants in Error*

APPENDIX

Motion for Judgment

To: THE HONORABLE JUDGES OF THE SAID COURT

COMES Now the Plaintiff, Mrs. Charles J. Rodgers, by counsel, and moves this Honorable Court for judgment and award of execution against the Defendants, Gulf Reston, Inc. and Prospect Industries, Inc., in the sum of Seventy-Five Thousand Five Hundred Dollars ($75,500) based on the following causes of action.

1. That on Monday, September 7, 1970, at approximately 6:30 p.m. the decedent, Charles J. Rodgers, was on the balcony of his apartment in the process of preparing for a barbecue that evening.

2. That at the same time and place aforesaid, the said apartment was owned by and under the control of the Defendant, Gulf Reston, Inc., and the decedent was a tenant in the said apartment.

3. That at the same time and place aforesaid, the Defendant, Gulf Reston, Inc., had contracted with the Defendant, Prospect Industries, Inc., to do certain repair and maintenance work on the roof of the aforesaid apartment and for some time prior thereto the said Defendant, Prospect Industries, Inc., had been working on the roof.

4. That at the same time and place aforesaid, the Defendants, Gulf Reston, Inc. and Prospect Industries, Inc., were under a duty to maintain the apartment project free of hazardous conditions.

5. That at the same time and place aforesaid, prior thereto the Defendant, Prospect Industries, Inc., through its agents, had left several cans of gilsonite on the aforesaid roof and had also left

ladders leaning up against the aforesaid apartment, which conditions had existed for some time and which were known to exist by both Defendants.

6. That at the same time and place aforesaid, both Defendants knew or should have known for some time that minors were playing on the roof and that occupants of the apartments had advised the Defendants of this fact and had asked that steps be taken to correct the situation.

7. That at the same time and place aforesaid, the Defendants failed to take any corrective action to prohibit the minors from gaining access to the roof even while the repair work to the roof was being done.

8. That at the same time and place aforesaid, the Defendant, Prospect Industries, Inc., was acting as an agent for and on behalf of the Defendant, Gulf Reston, Inc.

9. That at the same time and place aforesaid, as a direct result of the breach of the Defendant's duty, certain minors caused the gilsonite aforesaid to be poured upon the decedent.

10. That as a direct result of the aforesaid negligence of the Defendants, the decedent died on September 18, 1970.

WHEREFORE, the Plaintiff, Mrs. Charles J. Rodgers, moves for judgment and award of execution against the Defendants, Gulf Reston, Inc. and Prospect Industries, Inc., in the sum of Seventy-Five Thousand Five Hundred Dollars ($75,500) together with interest and costs in her behalf expended.

Order

Heretofore on the 22nd day of January, 1973, came the plaintiff, Mrs. Charles J. Rogers, Executrix of the Estate of Charles J. Rogers, deceased, by her counsel, Thomas O. Lawson, and the defendants, Gulf Reston, Inc., and Prospect Industries, Inc., by their counsel, George C. Towner, Jr.; and

Thereupon came a panel of thirteen jurors which was sworn on its *voir dire* and was found free from exception and from which panel each side struck three.

Thereupon came the panel of seven which was sworn as a jury as the law directs for the trial of this case.

Whereupon counsel for all parties made opening statements and counsel for the plaintiff proceeded to introduce her evidence. At the conclusion thereof, counsel for the defendants, out of the presence of the jury, moved the Court to strike the evidence of the plaintiff as to both defendants, which motion was argued by counsel and which

motion was denied by the Court, to which ruling the defendants, by counsel, duly objected.

Thereupon the case was adjourned for the day.

Thereupon at 10 a.m. on January 23, 1973, counsel for the defendants again out of the presence of the jury set forth an additional ground for the motion to strike which was argued by counsel. Said motion was again denied.

Thereupon in the presence of the jury the defendants proceeded to introduce their evidence and the plaintiff introduced her rebuttal evidence and at the conclusion thereof the defendants renewed their motion to strike the plaintiff's evidence which motion was denied by the Court.

Thereupon out of the presence of the jury, the instructions were argued by counsel.

Thereupon the jury returned to the jury box and was introduced by the Court and after hearing closing arguments of counsel the jury retired to its room to consider its verdict. After a time the jury returned into court and presented the following verdict, to-wit:

> "We the jury on the issue joined in the case of Mrs. Charles J. Rogers, Executrix of the Estate of Charles J. Rogers, Deceased, vs. Gulf Reston, Inc. and Prospect Industries, Inc., find for the plaintiff against Gulf Reston, Inc. only and fix damages as follows:
>
> "I. Under paragraph 2 of Instruction 3 amount $25,000 to be proportioned as follows:
>
> to Mrs. Charles J. Rogers $20,000
>
> to Judith Rogers, Daughter $4,000
>
> "II. Under paragraph 2 of Instruction 3, amount $50,000 to be proportioned as follows:
>
> to Mrs. Charles J. Rogers $50,000
>
> "III. Under paragraph 3 of Instruction 3, amount $538.31."
>
> /s/ William W. Clardy, Foreman
>
> "We, the jury, on the issue joined in the case of Mrs. Charles J. Rogers, Executrix, Estate of Charles J. Rogers vs. Gulf Reston, Inc. and Prospect Industries, Inc. find for the Defendant, Prospect Industries, Inc."
>
> /s/ William W. Clardy, Foreman

The defendants made no objection in the form of the verdict nor asked that the jury be polled.

Thereupon the jury was discharged.

Whereupon the defendant, Gulf Reston, Inc., by counsel, moved the Court for leave to file post-verdict motions.

Thereupon the Court directed that any post-verdict motions should be filed in writing on or before the 6th day of February, 1973.

Thereupon Edward C. O'Connell entered his appearance on behalf of the defendant, Gulf Reston, Inc.

Thereupon on the 5th day of February, 1973, counsel for Gulf Reston, Inc., moved the Court for additional time within which to file post-verdict motions, which motion was granted and the Court directed that any post-verdict motions should be filed on or before the 5th day of March, 1973.

And the Clerk of the said Court is hereby directed to issue certified copies of this Judgment Order to all counsel of record.

And This Cause Is Continued.

Entered This 23rd day of March, 1973.

Motion To Set Aside the Verdict of the Jury and To Enter Judgment for the Defendant Gulf Reston, Inc. or, in the Alternative, Grant a New Trial or a Remittitur

The defendant Gulf Reston, Inc., moves the Court to set aside the verdict of the jury in this matter and in the alternative to (a) enter a judgment on behalf of the defendant Gulf Reston, Inc., or (b) order a new trial on the issue of liability; or (c) enter judgment that the defendant Gulf Reston, Inc., is jointly liable with the defendant Prospect Industries, Inc. to the plaintiff; or (d) order a new trial on the issue of damages alone; or (e) order a remittitur, upon terms, of so much of the damages assessed by the jury as are improper; or (f) grant such other relief as the Court shall deem proper.

As grounds for the requested relief, the defendant Gulf Reston, Inc., states as follows:

1. The Court erred in refusing to grant The Motion To Strike made by the defendant Gulf Reston, Inc. at the close of the plaintiff's case.

2. The Court erred in refusing to grant the Motion To Strike made by the defendant Gulf Reston, Inc., at the close of all the evidence.

3. The verdict of the jury was contrary to the law and the evidence.

4. The verdict of the jury was excessive.

5. The Court erred in granting plaintiff's Instruction Number 3.

6. The Court erred in granting plaintiff's Instruction Number 4.

7. The Court erred in granting plaintiff's Instruction Number 6.

8. The Court erred in granting plaintiff's Instruction Number 9.

9. The Court erred in granting plaintiff's Instruction Number 10.

10. The Court erred in granting plaintiff's Instruction Number 14.

11. The Court erred in refusing to grant defendant's Instruction Number D as offered.

12. The Court erred in granting defendant's Instruction Number D, as amended.

13. The Court erred in refusing to grant defendant's Instruction Number F as offered.

14. The Court erred in granting defendant's Instruction Number F, as amended.

15. The Court erred in refusing to grant defendant's Instruction H.

16. The Court erred in refusing to grant defendant's Instruction I.

17. The Court erred in admitting into evidence the photograph of the plaintiff's decedent. (Transcript, Volume I, Page 104.)

18. The Court erred in admitting into evidence the testimony of the witness, Mrs. Charles J. Rogers as is set forth in the Transcript, Volume I, page 113.

19. The Court erred in admitting into evidence the testimony of Dr. Cassidy as is set forth in the Transcript, Volume I, page 119.

20. The Court erred in admitting into evidence the testimony of Dr. Cassidy as is set forth in the Transcript, Volume I, page 129.

21. The Court erred in admitting into evidence the testimony of Dr. Cassidy as is set forth in the Transcript, Volume I, page 148.

22. The Court erred in refusing to admit into evidence the correct question directed to the witness Elmer Birch [sic] as is set forth in the Transcript, Volume II, page 39.

23. The Court erred in refusing to admit into evidence the testimony of Mr. Elmer Birch [sic] as is set forth in the Transcript, Volume II, Page 40.

24. The Court erred in sustaining the objection to the argument made by counsel for the defendant, Gulf Reston, Inc., as is set forth in the Transcript, Volume II, page 149.

25. The Court erred in commenting to the jury as is set forth in the Transcript, Volume II, page 158-160.

26. The Court erred in refusing to grant a mistrial by virtue of the comments made by the Court as is set forth in the Transcript, Volume II, page 161.

Final Order

This matter came on to be heard on the 22nd day of January, 1973, upon the motion for judgment heretofore filed, upon the various answers and pleadings filed by the respective parties, upon the trial with a jury as set forth by a certain Order heretofore entered by this Court on March 23, 1973, upon the verdict of the said jury and the filing of various motions by counsel for the defendants, after having duly considered oral argument of counsel and various memoranda of law submitted by counsel, and after further having been considered by the Court that these motions should not be granted, it is hereby

ADJUDGED and ORDERED that the motion by defendant Gulf Reston, Inc., to set aside the verdict of the jury and enter judgment for the defendant or in the alternative to grant a new trial or further in the alternative a remittitur, are each hereby denied, and it is further

ADJUDGED and ORDERED that the jury's verdict be affirmed and that judgment be entered against the defendant Gulf Reston, Inc., in the amount of Seventy-Five Thousand Five Hundred Thirty-Eight and 31/100 Dollars ($75,538.31) with costs and interest from January 23, 1973, to which judgment and ruling of the Court the exception of the Defendant Gulf Reston, Inc., is hereby noted, and it is further

ADJUDGED AND ORDERED that the jury's verdict in favor of the Defendant Prospect Industries, Inc., is hereby affirmed, and it is further

ADJUDGED and ORDERED that execution or further action on the judgment herein entered be suspended for a period of four months and thereafter until the Supreme Court of Virginia acts upon a Petition for Appeal if the same should be filed as indicated by the Defendant, Gulf Reston, Inc., within the said four months and provided further that this suspension shall not become effective unless the defendant, or someone on its behalf, shall enter into bond with corporate surety qualified to do business in the State of Virginia in the sum of $100,000.00 conditioned as the law directs, within thirty (30) days from entry of this judgment, and it is further

ADJUDGED and ORDERED that the transcript of this hearing be made a part of the record.

And the Clerk of this Court is hereby directed to issue certified copies of this Final Order to counsel of record.

THIS ORDER IS FINAL.

ENTERED this 18th day of May, 1973.

(Sgd) Lewis D. Morris, Judge

Notice of Appeal and Assignment of Error

Notice is hereby given that defendant, Gulf Reston, Inc., appeals from the Final Order of this Court granting judgment in favor of plaintiff against this defendant and affirming the jury's verdict in favor of co-defendant, Prospect Industries, Inc. entered the 18th day of May, 1973, and announces its intention of applying to the Supreme Court of Virginia for a Writ of Error and Supersedeas.

Assignment of Error

1. The Court erred in failing to enter judgment notwithstanding the verdict in favor of defendant Gulf Reston, Inc.

2. The Court erred in failing to grant a new trial as to all parties on the issues of liability and damages.

3. The Court erred in failing to grant judgment notwithstanding the verdict that co-defendant Prospect Industries, Inc., was jointly liable to plaintiff with defendant Gulf Reston, Inc.

4. The Court erred in failing to order a new trial as to the issue of the damages due plaintiff from Gulf Reston, Inc. alone.

5. The Court erred in failing to order a remittitur, on terms, of so much of the damages awarded as were excessive.

6. The Court erred in denying the Motion to Strike made by the defendant Gulf Reston, Inc. at the close of the plaintiff's case.

7. The Court erred in denying the Motion to Strike made by the defendant Gulf Reston, Inc., at the close of all the evidence.

8. The Court erred in affirming and entering judgment upon the verdict of the jury which was contrary to law and the evidence of the case.

9. The Court erred in entering judgment upon the verdict of the jury which was excessive.

10. The Court erred in granting plaintiff's Instruction Number 3.

11. The Court erred in granting plaintiff's Instruction Number 4.

12. The Court erred in granting plaintiff's Instruction Number 6.

13. The Court erred in granting Plaintiff's Instruction Number 9.

14. The Court erred in granting plaintiff's Instruction Number 10.

15. The Court erred in granting plaintiff's Instruction Number 14.

16. The Court erred in refusing to grant defendant's Instruction Number D as offered.

17. The Court erred in granting defendant's Instruction Number D, as amended.

18. The Court erred in refusing to grant defendant's Instruction Number F as offered.

19. The Court erred in granting defendant's Instruction Number F, as amended.

20. The Court erred in refusing to grant defendant's Instruction H.

21. The Court erred in refusing to grant defendant's Instruction I.

22. The Court erred in admitting into evidence plaintiff's Exhibit 20, the photograph of the plaintiff's decedent. Transcript, Volume I, Page 104.

23. The Court erred in admitting into evidence the testimony of the witness, Mrs. Charles J. Rogers as is set forth in the Transcript at Volume I, page 113, lines 4 through and including 13.

24. The Court erred in admitting into evidence as evidence from an expert cardiologist, the testimony of Dr. Cassidy as is set forth in the Transcript, Volume I, page 117, line 12 through and including page 159, line 13.

25. The Court erred in admitting into evidence the opinion testimony of Dr. Cassidy regarding cause of death as is set forth in the Transcript, Volume I, page 129, line 8, through and including page 156, line 15.

26. The Court erred admitting into evidence the testimony of Dr. Cassidy as is set forth in the Transcript, Volume I, page 148, line 6, through and including page 152, line 14.

27. The Court erred in refusing to admit into evidence the correct question directed to and the proper answer of the witness Elmer Birch [sic] as is set forth in the Transcript, Volume II, page 39, line 2 through and including page 39, line 5.

28. The Court erred in refusing to admit into evidence the testimony of Mr. Elmer Birch [sic] as is set forth in the Transcript, Volume II, Page 40, line 16, through and including page 41, line 1.

29. The Court erred in sustaining the objection to the argument made by counsel for the defendant, Gulf Reston, Inc., as is set forth in the Transcript, Volume II, page 149.

30. The Court erred in commenting to the jury as is set forth in the Transcript, Volume II, page 158-160.

31. The Court erred in refusing to grant a mistrial by virtue of the comments made by the Court as is set forth in the Transcript, Volume II, page 161.

Writ of Error

Upon the petition of Gulf Reston, Inc., a writ of error and supersedeas is awarded it to a judgment rendered by the Circuit Court of Fairfax County on the 18th day of May, 1973, in a certain motion for judgment then therein depending, wherein Mrs. Charles J. Rogers, executrix of the estate of Charles J. Rogers, deceased, was plaintiff and the petitioner and another were defendants.

And it appearing that a suspending and supersedeas bond in the penalty of $100,000, conditioned according to law, has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, no additional bond is required.

This writ of error, however, is limited to the consideration of assignments of error Nos. 7, 8, 20 and 21 which read as follows:

"7. The Court erred in denying the Motion to Strike made by the defendant Gulf Reston, Inc., at the close of all the evidence."

"8. The Court erred in affirming and entering judgment upon the verdict of the jury which was contrary to law and the evidence of the case.

"20. The Court erred in refusing to grant defendant's Instruction H.

"21. The Court erred in refusing to grant defendant's Instruction I.

On further consideration whereof, it is order that the parts of record to be printed or reproduced in the appendix are to be limited to those parts of the record germane to assignments of error Nos. 7, 8, 20, and 21, and the briefs to be filed shall be limited to such discussion as is relevant to the assignments of error upon which this writ of error is awarded.

The petition for writ of error is refused as to the remaining assignments of error.

Instruction F

The Court instructs the jury that the defendants, Gulf Reston, Inc. and Prospect Industries Inc. are not responsible for the acts of the trespassers who allegedly poured paint on Mr. Rogers unless in the exercise of reasonable care they should have reasonably foreseen that said acts would occur. If you believe by a preponderance of the

evidence that in the exercise of reasonable care the defendants or either of them should have foreseen that the trespassers would go on the roof and pour paint on Mr. Rogers, then and in that event they are liable to Mr. Rogers' estate only if Gulf Reston, Inc. failed to exercise reasonable care to prevent the trespassers from going on the roof and Prospect Industries, Inc. failed to exercise reasonable care in removing paint from the roof which resulted in paint being poured on Mr. Rogers.

If the plaintiff fails to prove by a preponderance of the evidence that the pouring of the paint by trespassers on the roof was foreseeable, and that the defendant Gulf Reston, Inc. did not exercise reasonable care to prevent trespassers from going on roof, then the plaintiff is not entitled to recover from Gulf Reston, Inc.

If the plaintiff fails to prove by a preponderance of the evidence that the pouring of the paint by trespassers on the roof was foreseeable, and that the defendants, Prospect Industries, Inc. failed to exercise reasonable care in removing paint from the roof which resulted in paint being poured on Mr. Rogers, then the plaintiff is not entitled to recover from Prospect Industries, Inc.

LDM

Instruction H

The Court instructs the jury that the defendant Gulf Reston, Inc., was under no duty to the plaintiff to prevent persons from going onto the roof of the apartment house in question.

Wagnor v Baccheciampe [sic]

143 SE 2d 907

LDM

Instruction I

The Court instructs the jury that Gulf Reston, Inc. was under no duty to protect a tenant against criminal activities of 3rd persons.

LDM

1 PLAINTIFFS' EVIDENCE

2 BETSY JESSUP,

3 having been first produced and sworn was called for

4 examination and testified as follows:

5 DIRECT EXAMINATION

6 QUESTIONS BY MR. LAWSON:

7 Q Ma'am, would you state your full name and

8 address?

9 A My former address?

10 Q Your address at the present time.

11 A My name is Betsy Jessup and my address is

12 2907 Normanstone Lane, Northwest, Washington, D. C.

13 Q And how long have you lived at that address?

14 A Six months.

15 Q Prior to that, where did you live?

16 A I lived in Atlanta, Georgia for a year.

17 Q Now, directing your attention to August 28 of

18 1970, could you tell us where you were living at that

19 time?

20 A 1646 Chimney House Road in Reston.

21 Q Now, I'll show you some photographs, or a

22 photograph actually, referring to Plaintiffs' Exhibit 2,

23 and ask you if you can tell us where, on that photograph

1 the - - your apartment would have been located?

2 A It was one of these two (indicating). This

3 apartment right here (indicating).

4 Q Are you able to tell from the photograph - -

5 A (interrupting): Yes, now I can.

6 Q (continuing): - - where the various apartments

7 are located?

8 A I can at this point because I can recognize it

9 on the picture.

10 I can recognize where my apartment is located

11 because of the furniture outside of the apartment right

12 here (indicating). So this is my apartment right here

13 (indicating).

14 THE COURT: Could you have her mark that?

15 WITNESS INDICATES ON PHOTOGRAPH

16 A It is this building right here (indicating).

17 MR. TOWNER: Your Honor please, might I ask that

18 the witness indicate - - we are dealing here with

19 roofs, and each of these apartments has a different

20 roof, if she could count in from the end, it would

21 facilitate the Jury and the Court and Counsel - -

22 Q (Mr. Lawson interrupting): Let me ask you,

23 counting in from the end, do you recall which was your

1 apartment?

2 A This is my apartment right here (indicating)

3 this one right here (indicating).

4 MR. TOWNER: Would you indicate how many that

5 was, Mr. Lawson?

6 WITNESS: The sixth one.

7 Q (Mr. Lawson continuing): The sixth one from

8 the lake?

9 A From the lake.

10 Q Now, at that tim , August 28, could you tell us

11 whether or not you recall seeing men on the roof that were

12 doing some repair patch work?

13 A Yes. At that time, I had stayed home from

14 school, I mean from work because I was sick, and during

15 the day, I had gone outside because it had been nice and

16 I saw men working on the roof. I didn't know what they

17 were doing. During the day, they were going up and down

18 the ladder which was right outside my apartment window.

19 Q Outside your apartment window?

20 A Yes.

21 Q Do you recall seeing men going up and down this

22 ladder?

23 A Yes, I did.

1 Q Now, do you recall how long that ladder stayed
2 at that place?
3 A Well, it was a number of weeks, because I noted
4 that it had been there after I saw the men there that day.
5 I didn't see any more activity on the roof all the week-
6 end or during the week, when I would leave late or come home
7 early, whatever, and so I was disturbed by the fact that
8 the ladder was out there for such a length of time.
9 Q Was August 28th the last day you saw men working?
10 A Yes.
11 Q Did you see the ladder there after that date?
12 A Yes, I did. It was - -
13 Q (interrupting): And it was where, where did
14 you see the ladder?
15 A It was outside my window and it remained in the
16 same spot for a good amount of time.
17 Q What did you do, did you do anything about the
18 fact the ladder was there?
19 A Yes, I had assumed, since at the time the
20 cable TV people were putting the cable in the apartments,
21 I had assumed it was the cable TV people, but I didn't
22 know exactly what they were doing, so I called the
23 cable TV and I believe I called Gulf Reston, although I am

1 not definitely certain that I did call Gulf too.

2 Q Now, do you recall the Labor Day weekend?

3 A Yes, I do.

4 Q And do you recall what you were doing on that

5 weekend?

6 A I was sailing on the Bay.

7 Q And when did you leave town?

8 A I left on Friday afternoon, after work.

9 Q This would have been the Friday before the

10 Labor Day weekend holiday?

11 A Yes.

12 Q Will you tell us where you saw the ladder on that

13 weekend?

14 A Yes, it was there when I left because I remember

15 looking as I left.

16 Q All right. Now, when did you come back?

17 A On Monday evening around 10:00 P.M.

18 Q And did you notice the ladder at that time?

19 A It was right there beside my window at the time,

20 on the ground, propped up against the window.

21 Q And what is that area that you refer to?

22 A There is an area directly outside the window

23 that was an ivy bed and also a flower bed. So it was lying

1 in the ivy bed, propped, you know, against the wall right
2 there.
3 Q Now, going back prior to August 28, now, were
4 you ever aware of the fact that there were people on the
5 roof, not the workmen, but people on the roof?
6 A Yes, well, we had some difficulty with that.
7 There was, from time to time, kids in the evening
8 running around, you know, the roofs on Chimney House Road,
9 either on the Plaza side or on the townhouse side.
10 Q Would you tell us how long this had been going
11 on?
12 A Oh, I don't know. I had moved there in January of
13 that year, so I had experienced it and I had known about
14 it probably prior to that also.
15 Q I mean, of your own personal knowledge, what
16 period of time?
17 A Say from January of 1970 on until that day,
18 you know, between January and September.
19 Q Now, again referring to Plaintiffs' Exhibit
20 Number 2, you might hold this up, if you will, referring
21 to the roofs, will you indicate which area you are speaking
22 about?
23 A In this area (indicating) and here (indicating) and

1 also on the townhouse roofs down this way (indicating).

2 There were some right here (indicating) I, at one

3 time myself, had an apartment right here (indicating) on

4 the second story and I had a townhouse apartment - -

5 a two story apartment, and I could hear people running

6 on the roofs and there were people up there.

7 Q Could you tell us what the ladder looked like?

8 A It was an aluminum ladder that you would see that

9 painters use. I believe it was an extension ladder if I

10 am not mistaken.

11 Q Now, do you know the Rogers? Did you know

12 Mr. Rogers?

13 A I had met Mr. and Mrs. Rogers on one occasion.

14 I did not know them well.

15 Q You did not?

16 A No.

17 MR. LAWSON: That is all the questions I have.

18 THE COURT: Cross examine.

19 CROSS EXAMINATION

20 QUESTIONS BY MR. TOWNER:

21 Q Is it Miss Jessup?

22 A Miss, yes.

23 Q Mr. Lawson asked you about the ladder on the 28th

1 of August and you indicated that you were - - you testified
2 that the ladder was up there on the 28th of August.
3 How are you certain of that particular date?
4 A Well, I had been - - it had been prior to that
5 that the ladder had been put there, and I am sure the
6 ladder was there on the 28th, because I had stayed home
7 from work the week of the 20th, sometime during that
8 time, so I had been home and had seen the workmen on
9 the roof, and I know that it was not moved from that
10 time, prior to that and up to that time. So it was there
11 and it hadn't been moved from the time they started
12 working until through Labor Day, because I remember seeing
13 it.
14 Q Are you saying that the ladder was never taken
15 down once they started working?
16 A No, not in my area. They had started work down
17 at the other end and had worked up and then when they
18 got outside my window they stopped.
19 Q You say at the other end, which end are you
20 referring to?
21 A The side toward the Lake. I am not sure which
22 way they worked, to be honest with you. I do remember
23 activity in the area, but I remarked that the ladder

1 remained so long outside my window.

2 Q I see. You saw workmen going up and down the

3 ladder?

4 A Yes, I did.

5 Q And it is your recollection that at the time

6 you left to go sailing, the ladder was still up?

7 A Yes, it was still up.

8 Q When did you leave to go sailing?

9 A Friday, after work, I came home, met my friends

10 that lived across the lake, then we took off Friday

11 afternoon for the Bay before dark.

12 Q Before dark?

13 A Yes.

14 Q In the afternoon?

15 A I can only tell you it was habit, because I went

16 almost every weekend and normally I would go before seven

17 or eight o'clock in the evening.

18 Q Do you recall the precise time that you left?

19 A No, I don't recall the precise time.

20 Q Now, did you go sailing the weekend prior to that?

21 A I cannot recall exactly. I would imagine I did

22 because this was, as I say, my habit. I sail quite often

23 in the summer. I cannot tell you definitely, though.

1 Q How, you indicated that there were occasions when
2 you were aware that there were people on the roof?
3 A Yes.
4 Q How many occasions did you yourself personally
5 see people on the roof?
6 A Oh heavens. I can think of two or three, there
7 were possibly more, but definitely I can remember two
8 occasions.
9 Q And what period of time space were those two?
10 A This was during the summer months, so it was
11 June.
12 I lived in the apartment, the second unit from
13 the lake and that is when I personally heard them on the
14 roof and then sometime after that I saw them again on the
15 townhouse side, you know, walking up and down the townhouse
16 roof.
17 Q Well, at the times that you saw them, how many
18 times were they on the apartment area?
19 A Well, they were - - as I said, I couldn't recall
20 precisely. I believe there were two occasions, as I said,
21 those two or three times I saw them.
22 Q What did you do upon those two occasions?
23 A I didn't actually do anything. I was at the time

1 working with the Gulf Reston, with this type thing and
2 the company came to us more than anything else so that I
3 couldn't - - I didn't call Gulf, I didn't do anything else.
4 Q You say you had no knowledge of the incident on
5 September 7, on Labor Day?
6 A No, I was not there then.
7 MR. TOWNER: I have no further questions.
8 THE COURT: May this witness be excused?
9 MR. LAWSON: I have one other question.
10 REDIRECT EXAMINATION
11 QUESTIONS BY MR. LAWSON:
12 Q As I understand it, you were working with the
13 volunteer group at that time, is that right?
14 A Yes.
15 Q And for how long prior had you been working there?
16 A I was working there in June, 1970.
17 Q June of '70?
18 A Yes.
19 Q Had there been complaints about these incidents,
20 and I am referring just to the peopl being on the roof?
21 A Yes, there had been a lot of them.
22 Q And was Gulf Reston advised of that?
23 A Yes, they were advised, I believe, as I recall.

1 MR. LAWSON: Thank you, that's all the questions
2 I have of this witness.
3 THE COURT: Any redirect?
4 MR. TOWNER: Will your Honor indulge me just
5 one minute?
6 THE COURT: Sure.
7 MR. TOWNER: I have no further questions.
8 THE COURT: May the witness be excused?
9 MR. TOWNER: I have no objection.
10 THE COURT: Miss Jessup, you will be excused at
11 this time.
12 (Witness is excused.)
13 ELMER C. BURCH,
14 having been first duly sworn was called for examination
15 and testified as follows:
16 DIRECT EXAMINATION
17 QUESTIONS BY MR. LAWSON:
18 Q Sir, will you state your full name and address
19 please?
20 A Elmer C. Burch, 11481 Water View Cluster,
21 Reston, Virginia.
22 Q You are employed by Gulf Reston, is that correct?
23 A I am employed by Gulf Reston.

1 THE COURT: Is your last name Burch?

2 WITNESS: Burch, B-U-R-C-H.

3 Q (Mr. Lawson continuing): And what is your job

4 with Gulf Reston?

5 A My present title is Director of Property

6 Management.

7 Q And at the time of this incident, what was

8 your employment?

9 A At that time, my title was Director of Maintenance

10 and Services.

11 Q Director of what?

12 A Maintenance and Services.

13 Q All right. Prior to September 7, the date of

14 this incident, how long had you been so employed?

15 Did you have that same job for an extended period

16 of time prior to September 7th, 1970?

17 A Yes, basically, I have had that same job since

18 March 1, 1965.

19 Q Now Mr. Burch, would it be fair to say that

20 you were aware of people, kids getting on the roof of

21 the Chimney House Road apartments?

22 A That is correct.

23 Q Now, I am referring to prior to September 7, the

1 date that this incident occurred, is that right?

2 A That is correct.

3 Q And you had knowledge of this. Would it be

4 fair to say, Mr. Burch, for at least six months prior to

5 September 7th, that you had been aware of unauthorized

6 people on Chimney House Road?

7 A For more than six months, yes.

8 Q More than six months before?

9 A Right.

10 Q And hadn't you received complaints, calls,

11 from people that were living in the apartments? You had

12 been advised about the situation?

13 A I had been advised that people had been on the

14 roof, yes.

15 Q All right, sir. As a matter of fact, didn't

16 you have problems with the fiddling with the lights on

17 the apartments shown there, the Village Square Apartments?

18 Hadn't you had problems along that line?

19 A Yes, lights that were focusing on the fountain.

20 Q Right. Some of these vandals would take the

21 lights and shine them into the apartments?

22 A I don't know about shinning them into the

23 apartments, but they would shine them away from the area of

1 the fountain.

2 Q And this happened on several occasions, isn't

3 that true?

4 A Yes.

5 Q And you or your agent would have to go up there

6 and straighten the lights out, isn't that true?

7 A That is correct.

8 Q Now, also you were aware that there were un-

9 authorized personnel on the roof, that jumped from the

10 roof into the lake, is that correct?

11 A Yes.

12 Q I'll show you Plaintiffs' Exhibit 2 and ask you

13 to indicate on there where those incidents occurred?

14 A They jumped from this point here (indicating)

15 down into the lake.

16 Q Approximately how high would that be?

17 A Approximately forty feet to the water.

18 Q Did that come by way of a complaint, or what?

19 A I don't know that it was a complaint per se,

20 but it was reported to me that there were idoits jumping

21 off the roof into the lake, and somebody was going to get

22 badly hurt.

23 Q You learned of this incident the day after it

1 occurred, isn't that correct? I am referring to the
2 incident of the pouring of the paint, the substance on
3 Mr. Rogers.
4 A Yes.
5 Q And you went to the scene, is that correct?
6 A That is correct.
7 Q And isn't it true that you found this aluminum
8 ladder lying on the flower garden, the flower box?
9 A Yes, I saw a ladder lying on the flower box, if
10 you will.
11 Q Well, you heard the young lady who was here
12 earlier, and you would in general agree with the location
13 of where she said she saw it, is that right?
14 A Yes.
15 Q And it was lying on the ground against the wall?
16 A Yes.
17 Q And as I understand it, you were aware of the
18 fact that August the 28th was the last day that, approximately,
19 these employees worked on the project?
20 A No.
21 Q You say you were not aware?
22 A I was not aware that August the 28th was the last
23 day that they had worked there.

1 Q All right. But in any event, you knew that
2 sometime prior to the Labor Day weekend they had stopped
3 working there?
4 A No, sir.
5 Q You didn't know that?
6 A No, sir.
7 Q All right. Now, you were the one, as I under-
8 stand it, that entered into this contract with Prospect
9 Industries?
10 A That is correct.
11 MR. TOWNER: He entered into it, Mr. Lawson,
12 on behalf of his employers.
13 MR. LAWSON: That is understood.
14 Q (Mr. Lawson continuing): And it is your
15 responsibility to enter into these contracts for your
16 employer, is that correct?
17 A Yes.
18 Q As part of your duties?
19 A Yes, sir.
20 Q All right, sir. Would it be fair to say that
21 you had overall supervision of that job? It is your
22 responsibility to see that the roofs are patched, isn't
23 that right?

1 A It was my responsibility to see that the leaks
2 were stopped.
3 Q They were checked, right?
4 Now, after you observed the ladder on the ground,
5 you contacted representatives of Prospect Industries, didn't
6 you?
7 A Yes.
8 Q And what did you ask them?
9 A I informed them that the material had been
10 poured over Mr. Rogers and I wanted to know from them how
11 the material could be removed, what was its solvent, what
12 was the solvent for it.
13 Q Now, didn't you also, Mr. Burch, ask them why
14 they had left the stuff up there, didn't you ask them that
15 question?
16 A I probably did.
17 Q Well, Mr. Rogers - - excuse me, Mr. Burch, just
18 to be sure, I refer you to your deposition taken February
19 29, 1972, page 20 of the deposition, and I have asked you
20 if you had contacted Prospect Industries and this was
21 after the incident, and I had asked you:
22 "What was the essence of that conversation with
23 Prospect Industries" and your answer was, "Why did

1 leave the stuff up there?"

2 Is that correct?

3 A Yes.

4 Q And as I understand further, you don't recall

5 what they said to you?

6 A No.

7 MR. LAWSON: I have no further questions, your

8 Honor.

9 THE COURT: Do you wish to examine at this

10 time, Mr. Towner?

11 MR. TOWNER: Not at this time.

12 (Witness is excused.)

13 WILLIAM C. FORDYCE,

14 having been first produced and sworn, was called for

15 examination and testified as follows:

16 DIRECT EXAMINATION

17 QUESTIONS BY MR. LAWSON:

18 Q Will you state your full name please?

19 A William C. Fordyce.

20 Q Where do you live?

21 A 1159 North Shore Drive, Reston, Virginia.

22 Q And you are employed by Gulf Reston, is that

23 correct?

1 A Yes.

2 Q How long have you been so employed?

3 A Since February, it will be four years.

4 Q Four years?

5 A Yes.

6 Q All right. You became aware of the fact that

7 an accident occurred on Labor Day weekend, September the

8 7th - - September the 9th, is that correct, two and a half

9 years ago?

10 A Yes, sir.

11 Q Where the paint substance was poured over on

12 Mr.Rogers, is that correct?

13 A Yes, sir.

14 Q And you were employed by Gulf Reston at that

15 time?

16 A Yes, sir.

17 Q And you had been for what, roughly two years?

18 A Roughly two years.

19 Q All right. Now sir, at that time, what was your

20 job, and I am referring to the time of this incident?

21 A I was custodian of Heron House.

22 Q Is Heron House, it would be the one right across

23 the lake?

1 A The one right across the lake.

2 Q All right. Referring to Plaintiffs' Exhibit 4,

3 if you would, hold it up.

4 Are you all able to see this?

5 Q (Mr. Lawson continuing): Indicate if you will,

6 where the Heron House would be located.

7 A It would be located back over to this side.

8 (indicating)

9 Q The opposite side from the lake?

10 A Yes.

11 Q Now, in your job what were your responsibilities,

12 what were you charged, what responsibilities did you have?

13 A Well, cleaning the apartments when they were

14 reoccupied, that's on Chimney House Road and the highrise.

15 Q Chimney House Road would be the apartment where

16 this accident occurred, is that right?

17 A Yes.

18 Q So if anybody would call you about problems with

19 their apartments, it would be your responsibility to take

20 care of them?

21 A If it was something that I could take care of.

22 Q Right. And you were under Mr. Burch, isn't that

23 correct?

1 A Well, yes, kind of for Mr. Burch, but I worked
2 under the resident manager at the highrise.
3 Q But your overall superior would be Mr. Burch?
4 A Yes.
5 Q The resident manager at that time was Miss Beth
6 Bain, is that right?
7 A That's correct.
8 Q All right. And she was where, where did she
9 reside, in the Chimney House Road apartments?
10 A No, in the highrise.
11 Q In the highrise?
12 A Um-hum.
13 Q But her responsibility also included Chimney
14 House Road?
15 A That's right.
16 Q Now, prior to this incident on September 7th,
17 you had received a couple of complaints in regard to the
18 ladder being up against the wall, is that correct?
19 A Yes.
20 Q And that was from who, Mr. Bockman, Roger Bockman?
21 A Roger Bockman.
22 Q And it was your understanding that the ladder was
23 leaning up against the wall, isn't that correct?

1 A Yes, sir.

2 Q And this would be two or three or possibly four

3 days before September 7th?

4 A I don't remember just how many days, but it was

5 a couple of days before, I know.

6 Q You never took the ladder down though, did you?

7 A Not right then, right.

8 Q As a matter of fact, isn't it true that you

9 and Mr. Bockman took the ladder down after this incident

10 occurred, isn't that correct?

11 A Yes.

12 Q And you and Mr. Bockman laid the ladder down

13 on the flower bed?

14 A Yes, sir.

15 Q Right against some buildings, isn't that correct?

16 A No, it was off from the building against the wall,

17 see, there was a brick wall there.

18 Q Didn't you lay it on the flower bed?

19 A Yes.

20 Q And the flower bed has a wall around it?

21 A Yes.

22 Q Now, isn't it correct Mr. Fordyce to say,

23 that you had seen the Prospect Industries' men using this

1 particular ladder, going up and down?

2 A Not on this end of the block here, Chimney House

3 Road, but down on the other end I had seen them.

4 Q Using the ladder going up and down?

5 A Yes, going up and down.

6 Q And you were aware sir, that during this time

7 people were working on the roof?

8 A They had been working.

9 Q They had been, excuse me.

10 A Yeah, had been.

11 Q And it has been agreed that August 28 was the

12 last day that they worked there?

13 A I couldn't swear to that.

14 Q All right. And wouldn't it be fair to say

15 Mr. Fordyce that you also had received complaints from

16 people prior to September 7th that there were unauthorized

17 personnel being on the roof of the Chimney House Road

18 apartment?

19 A Lots of times when I was over there to do some

20 work somebody would say the kids was on the roof last night.

21 Q Right.

22 A And all I could do was tell Miss Bain about it

23 and then she would call up somebody about it.

1 Q Right. And you had received these complaints
2 over an extended period of time prior to September the
3 7th, isn't that true?
4 A Well, I received some. I couldn't say how many
5 because I don't know.
6 Q Would it be over a period of six months prior
7 to that?
8 A Oh, I guess it would.
9 MR. LAWSON: All right. That's all the
10 questions I have.
11 THE COURT: Cross examine.
12 MR. TOWNER: No questions.
13 THE COURT: May this witness be excused?
14 MR. TOWNER: No, sir, I would like for him to
15 remain.
16 THE COURT: All right, report back to the witness
17 room and do not discuss your testimony.
18 WITNESS: All right.
19 (Witness temporarily excused.)
20 MR. LAWSON: Call Roger Bockman.
21 ROGER BOCKMAN,
22 having been first produced and sworn, was called for
23 examination and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. LAWSON:

Q Mr. Bockman, would you state your name please?

A Roger Bockman.

THE COURT: How do you spell the last name?

WITNESS: B-O-C-K-M-A-N.

Q (Mr. Lawson continuing): Where do you live, Mr. Bockman?

A 1648 Chimney House Road.

Q And this would be in what is known as the Chimney House Road Apartment complex?

A Correct.

Q How long have you lived at that address?

A A little over four years.

Q All right, sir. Now, you personally have no knowledge of, but you became aware of an incident which occurred on Labor Day weekend two and a half years ago, is that correct?

A I don't know the exact time. I know it sequentially.

Q It was over the Labor Day holiday, is that correct?

A To the best of my knowledge, yes.

1 Q Now, during that time and I'm going back to
2 prior that time now, Mr. Bockman did you happen to see a
3 ladder in the area near the apartment?
4 A You mean prior to my knowledge of the accident?
5 A Yes, sir.
6 A Yes. I did.
7 Q And where was that ladder?
8 A It was in front of the Jessup's apartment, which
9 is the one next to ours.
10 Q All right.
11 A There is a divider there, a brick facing that
12 amounts to, well, less than two feet from our window.
13 Q All right sir. now, where was this ladder, that
14 was going to be my next question.
15 A Well, the ladder was resting on the building.
16 Actually, on the header at the top of the building, directly
17 above Jessup's bedroom.
18 Q All right, sir. Now, when did you - - strike
19 that.
20 During the time that you observed the ladder,
21 were workmen going up and down the ladder?
22 A In the beginning, I noticed some workmen up on
23 the roof doing something, and then some days later I noticed

1 a workman or two going up the ladder and a truck they
2 operated from out in front.
3 Q Now, did there come a time when the men stopped
4 going up and down this ladder?
5 A Yes.
6 Q And what happened to the ladder?
7 A It stayed there as far as I know, unless some-
8 body took it out at night and put it back up again.
9 Q Could you observe the ladder every day?
10 A To the best of my recollection, I do not recall
11 any time that it came down from the time that I observed
12 the workmen there until we took it down.
13 Q That was my next question, how did the ladder
14 come down.
15 A I helped Bill Fordyce, or he helped me take it
16 down.
17 Q And Mr. Fordyce, he is the gentleman that just
18 testified?
19 A Yes, we just passed each other.
20 Q What did you do with the ladder, sir?
21 A We put it on the patio, which is above the side-
22 walks, and it is on the same level that the ladder was
23 resting on, about six feet from its mounted position and we

1 just laid it on its side.

2 Q Would this be like a flower bed arrangement in

3 front of the apartment?

4 A Yes, like a walkway, and we put it on the other

5 side of that, the sidewalk side, but that is about five

6 feet above the sidewalk.

7 Q Now, prior to the time that you took the

8 ladder down, had you said anything to Mr. Fordyce about

9 the ladder?

10 A Yes, I think we discussed it, well, at least

11 once some days earlier, before we took it down.

12 Q I'm sorry.

13 A Well, yes, I talked to Bill about it before we

14 took it down, several days before.

15 Q What did you tell him, what was the purpose of

16 your conversation?

17 A Well, I told him that apparently there was no one

18 using the ladder right now, it looked like it has been

19 long enough and it should come down and that probably we

20 should take it down, because, you know, whoever put it up

21 there wasn't going to take it down.

22 Q Speak up.

23 A Yes, so as far as I know, talking to him about it

1 was all the action we had to take until we decided to
2 take it down ourselves.
3 Q All right sir. Now, prior to this incident
4 which occurred Labor Day weekend were you aware of
5 unauthorized persons seen on the roof of the Chimney House
6 Road apartments?
7 A That's a long time back. People were up on the
8 roof after that time, I believe, from time to time, not
9 necessarily in that area. As I recall, they were probably
10 up there before that time too.
11 As far as I was aware, they would get up and
12 put out the lights on the fountain on the Plaza and then
13 they would have to go up and fix them.
14 Q And this was prior to that occasion?
15 A I can't, it was right around that period of
16 time. I can't be sure it was prior to that time.
17 MR. LAWSON: That's all the questions I have,
18 your Honor.
19 THE COURT: Any cross examination?
20 CROSS EXAMINATION
21 QUESTIONS BY MR. TOWNER:
22 Q Mr. Bockman, at the time that you took the
23 ladder down wer you aware - - you and Mr. Fordyce, were

1 you aware of the incident that occurred to Mr. Rogers?

2 A I was not, and if Bill was, I wasn't aware of

3 that. We didn't talk about it.

4 That was not the basis for taking the ladder

5 down.

6 I was not aware of it.

7 Q Was it taken down at your suggestion, or at

8 his suggestion?

9 A As I recall, he was coming home at the time and

10 I said, "Let's take this thing down." So we did.

11 Q And n ither of you communicated to one another

12 any knowledge of the incident involving Mr. Rogers?

13 A That's right, and from my view, for the reason

14 that I wasn't aware of it for some days later, more than

15 one day.

16 Q When you refer to incidents of people on the

17 roof, particularly now with reference to the time

18 prior to the Labor Day weekend, 1970, do you recall

19 personally seeing anybody on the roof other than these

20 workmen?

21 A Now, that is prior to - -

22 Q (interrupting): Labor Day, 1970.

23 A I guess I would have to say not that I recall.

1 MR. TOWNER: All right. I have no further
2 questions.
3 MR. LAWSON: That's all the questions I have
4 of this witness. May this witness be excused?
5 MR. TOWNER: Yes, certainly.
6 THE COURT: You will be excused.
7 (Witness is excused.)
8 MR. LAWSON: Call Miss Sumner.
9 HILLARY SUMNER,
10 having been first produced and sworn, was called for
11 examination and testified as follows:
12 DIRECT EXAMINATION
13 QUESTIONS BY MR. LAWSON:
14 Q Will you state your name?
15 A Hillary Sumner.
16 THE COURT: How do you spell the last name?
17 WITNESS: S-U-M-N-E-R.
18 Q Hillary, how old are you at the present time?
19 A Fourteen, I think.
20 Q No, how old are you at the present time.
21 A I am sixteen.
22 Q Sixteen?
23 A Um-hum.

Q All right. And do you recall an incident on the Labor Day weekend of 1970?

A Yes.

Q And was that on a Monday, Labor Day holiday?

A Yes.

Q Would you tell us where you had been just prior to that incident, this accident that you saw?

A I was at my friend's house, by Chimney House Road.

Q Now Hillary, I'll show you a photograph which has been identified as Plaintiffs' Exhibit Number 1 and ask you if you can show us on that where you were prior to the accident.

A Right in this house here (indicating).

Q Would you just put an X on there.

(Witness marks exhibit.)

Q (Mr. Lawson continuing): As indicated on the photograph, X marks the apartment that she had been in prior to the incident.

MR. TOWNER: I object to that answer Mr. - - if your Honor please, I don't think that is the apartment, I think she said she was at somebody's private home.

MR. LAWSON: Well, it's a townhouse.

1 MR. TOWNER: Well, I think there is a difference.

2 THE COURT: Well, let's say X marks the building.

3 MR. TOWNER: Yes, sir.

4 Q (Mr. Lawson continuing): All right. Now, would

5 you tell us what you did when you left this townhouse, this

6 person's house?

7 A Well, I started walking up, because my brother

8 was picking me up at the top of the hill to take me home.

9 Q Would you hold that picture up and indicate to

10 the Jury where you were walking to.

11 A Walking up that road (indicating).

12 Q All right, which path, what route of travel,

13 would you indicate to the Jury on the photograph.

14 Would you come down before the Jury and just

15 indicate the path, the route that you followed?

16 (Witness demonstrates to Jury.)

17 MR. TOWNER: Mr. Lawson, could I have the

18 witness indicate with a pen or a line, the line of

19 travel that she took?

20 Q (Mr. Lawson continuing): Indicate Hillary, if

21 you will, the points that you stopped, the point where you

22 became aware that something was actually happening.

23 (Witness indicates on photograph.)

1 Q Put an X at that point, if you will?

2 (Witness indicates on photograph.)

3 MR. LAWSON: Take a felt pen and mark on there.

4 (Witness indicates on photograph.)

5 Q Okay and also put an X back on the townhouse.

6 (Witness indicates on photograph.)

7 Q Now, when you got to the point that is marked

8 with the X on the road, will you tell us what you observed?

9 A I heard a bunch of yelling and I turned around

10 and looked and saw the man with the silver paint on him.

11 Q You say he was yelling, could you elaborate any

12 further on that, what he was doing?

13 A He was screaming.

14 Q And where was he standing at that time?

15 A Right by the barbecue.

16 Q Now Hillary, I show you a photograph, Plaintiffs'

17 Exhibit Number 9, and ask you if you can tell us whether

18 or not that is the scene, or that is the apartment you

19 saw him standing at?

20 A Yes.

21 Q Would you indicate to the Jury where he was?

22 A Right here (indicating).

23 Q Again, it might be helpful if you would come down

1 before the Jury and mark off with the felt tipped pen
2 the location in which you saw him.
3 (Witness indicates on photograph.)
4 Q I further show you Plaintiffs' Exhibit 10 and I
5 ask you if you will mark on that where you saw the man.
6 (Witness indicates on photograph.)
7 Q Was he standing at that place?
8 A Yes.
9 Q Other than the fact that you saw this man
10 standing there covered with paint, did you see anything
11 else at that time?
12 A Yes, I saw a man on the roof running, going real
13 fast away from it.
14 Q And which way was he headed; which way was he
15 going?
16 A Toward my friend's house.
17 Q And where was he running at the time?
18 A On top of the roof.
19 Q Again, I show you Plaintiffs' Exhibit Number 1 and
20 I ask you to come down in front of the Jury and mark on
21 the photograph where you saw the man and the path which he
22 followed.
23 (Witness indicates on photograph.)

1 Q And where did he go after you saw him running
2 down the roof?
3 A He went down the ladder.
4 Q When you saw this man standing on the roof, what
5 did you see him do?
6 A He went down the ladder.
7 Q All right. And in what fashion, would you
8 describe that to us?
9 A Well, fairly fast.
10 Q And what did he do after that?
11 A He ran toward the woods.
12 Q Would you tell us what he looked like?
13 A Light hair, blondish; a mustache.
14 Q And could you tell us approximately, could you
15 estimate his age, how old he was?
16 A In the young twenties, I think.
17 Q And could you describe his dress and appearance?
18 A Bluejeans.
19 Q All right. Did you see anyone else on the roof
20 at that time?
21 A No I did not.
22 Q Now, do you know the man that you saw covered
23 with the paint? Had you ever seen him before?

1 A No.

2 Q And do you know the Rogers, this lady here

3 (indicating)? Did you know her at all? Had you ever

4 seen her prior to this morning?

5 A No, I had not.

6 MR. LAWSON: That's all.

7 THE COURT: Cross examine.

8 CROSS EXAMINATION

9 QUESTIONS BY MR. TOWNER:

10 Q Hillary, you had left your friend, you had walked

11 up the sidewalk to the point where you had marked the X,

12 and you heard the cry, the noise.

13 A Yes.

14 Q At any time prior to that, had you seen anyone

15 on the roof?

16 A No, I did not.

17 Q Do you know of your own knowledge how this

18 person got up on the roof?

19 A No.

20 Q Did you see the person on the roof doing anything?

21 A No.

22 Q And when you first saw that person on the roof,

23 that person was running away, was he running or walking on

on the roof?

A Running.

Q And you followed him and observed that person travelling all the way to the ladder and down the ladder?

A Yes.

Q Do you know th idenity of the person on the roof?

A No.

Q Did you eventually lose sight of this person?

A Yes.

Q What, if anything, did you do after this?

A I went back over where the man was.

Q To where?

A To where the man was, Mr. Rogers.

MR. TOWNER: I have no further questions.

THE COURT: All right, any further redirect?

MR. LAWSON: Yes.

REDIRECT EXAMINATION

QUESTIONS BY MR. LAWSON:

Q Hillary, would you tell us the length that this man's hair was?

A It was about right here (indicating).

Q About midway or two-thirds of the way down the

1 neck, yes.

2 Q And the color of the hair again.

3 A Blonde.

4 MR. LAWSON: That's all the questions I have.

5 MR. TOWNER: I have one other.

6 RECROSS EXAMINATION

7 QUESTIONS BY MR. TOWNER:

8 Q Did the police investigate this incident?

9 A Yes.

10 Q Did you give a statement to them and tell them

11 what you saw?

12 A Yes.

13 Q Did you give a description of the individual to

14 the police at that time?

15 A No.

16 Q Is there any reason that you can give a description

17 today and you didn't give one to the police?

18 A They didn't ask me, at the time.

19 Q They didn't ask you for a description?

20 I see.

21 MR. TOWNER: I have no further questions.

22 THE COURT: Anything further?

23 MR. LAWSON: No, your Honor, that's all the

1 questions I have.

2 THE COURT: May she be excused?

3 MR. TOWNER: Yes, sir.

4 JUROR: Your Honor, may I have one clarification

5 on one of the lines on this photograph please?

6 There is a separate line here and I don't

7 understand why that is.

8 THE COURT: Is there any objection to the

9 clarification?

10 MR. LAWSON: No, your Honor.

11 THE COURT: How about you, Mr. Towner?

12 MR. TOWNER: Let me take a look at it.

13 MR. LAWSON: He wants to know what this means

14 here (indicating).

15 JUROR: Why is it a separate line?

16 MR. TOWNER: Well, let's ask the witness.

17 Q (Mr. Lawson continuing): Hillary, could you

18 explain to the Jury, you have a double line, a line

19 going across (indicating) would you tell us what that

20 means, if anything?

21 A It doesn't mean anything I just showed him up

22 on the roof.

23 MR. LAWSON: This line right here, (indicating).

1 WITNESS: I just did that accidentally with
2 the pen.
3 THE COURT: All right.
4 MR. TOWNER: Did you intend that to be a solid,
5 continuous line from the point where it begins over
6 to the area where you indicated the ladder was?
7 WITNESS: Yes.
8 THE COURT: Does that clarify it?
9 JUROR: Yes.
10 THE COURT: May this witness be excused?
11 MR. TOWNER: Yes.
12 (Witness is excused.)
13 MR. TOWNER: Could we approach the bench?
14 THE COURT: Sure.
15 WHEREUPON THE FOLLOWING WAS OUT OF THE
16 HEARING OF THE JURY
17 MR. TOWNER: I would just like to renew my
18 objection to Mr. Foltz's testimony. I would really
19 like to have Mr. Lawson indicate to the Court exactly
20 what the testimony is going to be, because I am,
21 in a certain sense, speculating as to what he is
22 going to say.
23 THE COURT: I think it would be proper for him to

* * * * *

1 MR. LAWSON: I am referring to the objects that
2 were left on the roof.
3 MR. TOWNER: I don't really see - - it seems to
4 me that the question here is whether these people
5 were exercising reasonable care.
6 I don't know, but I really think that the whole
7 issue that they are going to have to make the decision
8 is were these people negligent and I think that is
9 up to the Jury and not to an expert.
10 THE COURT: Well, I am going to overrule your
11 objection and allow him to testify.
12 You may state your objection.
13 MR. TOWNER: I would state my objection to his
14 testimony on the grounds stated and I would add to that
15 the point of negligence.
16 WHEREUPON THE FOLLOWING WAS IN THE
17 HEARING OF THE JURY
18 THE COURT: Call your next witness.
19 MR. LAWSON: Call Mr. Foltz.
20 LEFTON FOLTZ,
21 having been first produced and sworn was called for
22 examination and testified as follows:
23

1 DIRECT EXAMINATION

2 QUESTIONS BY MR. LAWSON:

3 Q Will you state your name and address please?

4 A Lefton Foltz, 4731 Spence Avenue, Falls Church.

5 THE COURT: How do you spell that please?

6 WITNESS: L-E-F-T-O-N, the first, F-O-L-T-Z.

7 Q (Mr. Lawson continuing): By whom are you

8 employed?

9 A County of Fairfax.

10 Q And what is your job with Fairfax County?

11 A At the present time I am Construction Safety

12 Engineer.

13 Q And how long have you held that job, sir?

14 A Since July, 1969.

15 Q All right, sir, and prior to that, what was your

16 job?

17 A Prior to that I was Building Inspector for a

18 little better than three years, and then I was a

19 Supervisor over the Building Inspector for two years,

20 approximately.

21 Q Of the three years?

22 A Five.

23 Q Five, I'm sorry, a total of five years. And that

1 was also with Fairfax County?

2 A Yes, sir.

3 Q In your job that you have had for a period of

4 years, Mr. Foltz, tell us, in general, what your duties

5 and what your responsibilities are.

6 A As a County employee?

7 Q In your job.

8 A At present?

9 Q At present, and also the five years that you

10 were a Building Inspector.

11 A Well, the first five years with the County it

12 was my duty to travel from job to job to make inspections

13 on construction. These inspections were to conform to

14 approved plans and specifications.

15 Anything that I might catch that the engineers

16 didn't catch in our office, I was to bring them to their

17 attention.

18 These things were to conform with both the

19 basic building code, which is our Fairfax County Building

20 Code. That was for a little better than three years,

21 and then the two years, or approximately two years that I

22 was a Supervisor, I was assigned to half of the County

23 and I had seven men working under me, and when they ran into

1 any problems, I would go to their job with them to get
2 it straightened out.
3 Q Now, in July 1969, you took on your present job,
4 is that correct?
5 A That's correct.
6 Q What were your responsibilities in that job?
7 A Well, my responsibilities now are to go from
8 job to job, any place in Fairfax County, to see that there
9 is adequate protection, safety precaution for the workmen
10 and the public.
11 Q All right, sir, that has been your responsibility
12 then for - -
13 A (interrupting): Three and a half years.
14 Q (continuing): - - four years, or whatever.
15 All right, sir. Now, during these years that you had
16 been doing these various jobs, various duties have been
17 carried out, had you had occasion to inspect and be on
18 the job site when various repair work was being done to
19 roofs?
20 A Definitely. You name anything and I have been on
21 it in Fairfax County in construction.
22 Q Tell me approximately how many roofs you might
23 have had occasion to inspect in this vicinity?

1 A Oh, golly, it would be hundreds.

2 Q All right, sir. Now, would it be fair to say

3 then that you are faily knowledgeable as to what the

4 custom and practice is among these people, these

5 contractors?

6 A Oh, yes.

7 Q Now, are you familiar with the Gulf Reston area?

8 A Yes.

9 Q Are you familiar with the Chimney House Road

10 apartments?

11 A Yes, this is by the Village Center.

12 Q I show you two photographs, Plaintiffs' Exhibit

13 1 and Plaintiffs' Exhibit Number 2, and ask you if you

14 are able to tell us whether you know what those scenes

15 are that are represented in those scenes?

16 A Part of these are business establishments on the

17 lower level in the horseshoe shape building, and there

18 are apartments on the second story, and there are some

19 townhouses there I believe, also.

20 Q You have been to those areas there?

21 A Yes, sir.

22 Q Now, based upon your responsibility in your

23 job Mr. Foltz, and also your knowledge of what the custom

1 and practice is, can you tell us what the custom and
2 practice is among people who do this type of work, in
3 other words, repairing, patching on top of roofs, the
4 same type you see in the pictures, what the custom and
5 practice is in the event that a job has been done, in
6 other words they have completed the work, what the custom
7 and practice is?
8 A Clean it up.
9 MR. TOWNER: Your Honor please, I want to object
10 to the question I don't think there is any testimony
11 before the Jury and the Court that the job was
12 completed. I think the question is improper.
13 THE COURT: I think the objection is well taken
14 at this time.
15 MR. LAWSON: All right, your Honor.
16 Q (Mr. Lawson continuing): The same question,
17 Mr. Foltz, what is the custom and practice in the trade,
18 in the event there is going to be a lapse of several days,
19 of at least a week before any further work would be done
20 on a particular job, and referring to that work being
21 done as shown on the photographs, what would be the
22 custom and practice in the trade in regards to the
23 leaving of paraphenalia, tools, barrels, paint, things of

1 that nature on the job site?

2 MR. TOWNER: Excuse me, if your Honor please.

3 I don't understand that the qualifications that

4 Mr. Foltz has with respect to being a building

5 inspector, qualifies him to testify what the custom

6 and practice is for a builder, in terms of the

7 activities, means and methods that the builders use

8 to conduct their business.

9 He hasn't indicated that his job as a building

10 inspector was to see that the buildings which he

11 inspected were being constructed in accordance with

12 the Code, the Fairfax County Building Code.

13 I don't think he has shown any expertise in the

14 area of competence into which Mr. Lawson wishes to

15 inquire.

16 MR. LAWSON: Your Honor, I don't think counsel

17 recalls what the evidence was. This witness has

18 stated that safety was one of the most important,

19 major factors of his job, and that he does have

20 knowledge, not of what his job is as such.

21 I am offering this witness as knowledgeable as to

22 what the custom and practice is in that trade.

23 He may have been a man who hasbeen employed in this

1 particular type of work, or an independent
2 contractor, but he is going to the weight of the
3 evidence now.
4 This man has stated that he does know what the
5 custom and practice is in the trade, and that is
6 the reason that I called this witness.
7 MR. TOWNER: I think the custom and practice
8 in the trade, if your Honor please, is dealt with
9 by people who are in the trade, I mean, as to what
10 people in the business do.
11 MR. LAWSON: I don't know who would be more
12 knowledgeable than a man who has inspected
13 hundreds of job sites, and this is what he stated,
14 and has the responsibility of seeing that it is
15 done properly.
16 THE COURT: I am going to sustain his objection,
17 Mr. Lawson. The objection is well taken at this time.
18 I don't think that the foundation has been laid
19 for this particular question.
20 Q (Mr. Lawson continuing): Well, Mr. Foltz, have
21 you had personal knowledge of this particular type of work,
22 referring to the patching of roofs, do you know what is
23 involved in that type of work?

1 A Normally, yes.

2 Q And how many years have you had familiarity with

3 that type of work?

4 A Well, I have been associated with construction

5 work all my life, so, thirty years.

6 Q So, have you ever had occasion to be involved

7 with that type of work sir?

8 A Roof repair?

9 Q Yes.

10 A No.

11 Q Just you personally?

12 A I have installed roofs myself.

13 Q But you haven't actually been involved with - -

14 A (interrupting): With repairing? No.

15 Q All right. Have you had occasion to work on

16 job sites where this particular work was being done?

17 A Before I was an Inspector?

18 Q Yes.

19 A Yes.

20 Q All right, sir. Being an Inspector, have you

21 ever had occasion to work with those people doing work

22 on the roofs?

23 A I have worked around them and have been associated

1 with them on construction work.

2 Q Have you had the responsibility to inspect that

3 particular job site?

4 A Yes, as a County Building Inspector, yes, and

5 as safety.

6 Q And as a Safety Inspector?

7 A Right.

8 Q And again, the question that I asked you, are

9 you knowledgeable as to what the custom and practice is

10 in that particular trade?

11 MR. TOWNER: Your Honor please, I still object.

12 I don't think the witness has qualified himself

13 to testify what the custom and practice is.

14 He has observed roof repairs, but I don't

15 believe this witness is in a position to say, what

16 Mr. Lawson is getting him to say or attempting to

17 get him to say, is how the people in the roof repair

18 business do their work.

19 THE COURT: I'll sustain his objection,

20 Mr. Lawson.

21 I don't think the proper foundation has been

22 laid to answer the question which has been propounded.

23 MR. LAWSON: All right, your Honor, I'll ask

1 one more further question.

2 Q (Mr. Lawson continuing): Mr. Foltz, do you

3 have knowledge of what is involved in the roof repair

4 business?

5 A It depends on the nature of the repair. Yes,

6 I have knowledge of it. It depends on the type of it.

7 Q And have you had occasion in your responsibilities

8 to inspect the various stages of the work that was being

9 done?

10 A Definitely.

11 Q Then let me ask you the question again, that

12 you are knowledgeable in the details of the working of

13 the roof repair business?

14 A Yes.

15 MR. LAWSON: Your Honor, I will submit on the

16 basis of that that this individual has testified that

17 he has personal knowledge of what the details of

18 this particular type of work involves, and that he

19 is knowledgeable as to the custom and practice

20 and the details of that work.

21 Now, as to what counsel might ask him on

22 cross examination will simply go to the weight

23 of that evidence, for example, whether or not he has

1 gotten up and patched the roofs and done this sort
2 of thing himself.
3 Your Honor, I will submit that that does not
4 go to whether the evidence should be introduced,
5 it may only go to the weight of the evidence. I
6 would submit that a contractor who actually does the
7 work through his agent, may have never picked up a
8 hoe, or may never have picked up a can and never
9 actually done the work, but the question is, does
10 he himself have knowledge of what is involved, the
11 procedural steps involved with the patching of a
12 roof and so on.
13 I will submit that if that witness can say that,
14 I will submit that he is qualified, and I think this
15 witness has stated that.
16 THE COURT: I'll sustain his objection, Mr. Lawson.
17 I don't think he is qualified.
18 MR. LAWSON: Well, I would like to except to the
19 Court's ruling on the basis of the previous statement.
20 That's all I have of this witness.
21 MR. TOWNER: I have nothing.
22 THE COURT: May this witness be excused?
23 MR. TOWNER: Yes, sir.

* * * * *

THE COURT: May this witness be excused?

MR. TOWNER: Yes, your Honor.

THE COURT: I think this would be a good time to take the noon recess and we will take it at this time.

WHEREUPON AT THIS POINT IN THE PROCEEDINGS AND AT 12:40 PM, THE NOON RECESS WAS TAKEN AFTER WHICH TIME AND AT 1:50 P.M. THE FOLLOWING PROCEEDINGS WERE HAD.

MRS. CHARLES J. ROGERS'

having been first produced and sworn, was called for examination and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. LAWSON:

Q Mrs. Rogers, will you state your full name to the Court please and your address?

A Mrs. Charles Rogers, 1638 Chimney House Road, Reston.

Q Mrs. Rogers, this is the same apartment that you lived at at the time the accident occured, is that correct?

A That's correct.

Q Pardon?

1 A Yes.

2 Q Now, there have been some exhibits, particularly

3 Plaintiffs' Exhibit Number 1 and I ask you to indicate

4 on there where your apartment is located.

5 Hold it up so the Jury can see and point it

6 out to the Jury.

7 A This apartment with the white (indicating).

8 Q If you would Mrs. Rogers, you might put an R,

9 since there are several red markings, an R on that apart-

10 ment, if you would please.

11 (Witness indicates on Exhibit.)

12 Q Mrs. Rogers, I further show you Plaintiffs' Exhibit

13 Number 10 and ask you if you can tell us what that

14 photograph represents?

15 A Yes, that is our apartment, the front entrance

16 and patio, the front door of our apartment.

17 This is my kitchen window (indicating).

18 Q And finally, Plaintiffs' Exhibit Number 9,

19 again, if you would, hold that up and if you would,

20 identify that for the Jury, please.

21 A Yes, this is our apartment right here (indicating).

22 This is the way I saw the boys get up on the roof.

23 Q Okay. We will go into that in a minute.

1 Now, Mrs. Rogers what is your age at the
2 present time?
3 A Fifty-seven.
4 Q And you are, of course, the widow of Charles
5 Rogers, is that correct?
6 A That's correct.
7 Q And how long have you and Mr. Rogers been married?
8 A We would have celebrated our thirty-second
9 wedding anniversary the November after he died.
10 Q And would you characterize your marriage as a
11 happy one or what?
12 A Very happy, very much so.
13 Q Now, Mrs. Rogers, would you tell us what you
14 were doing, what you and your husband were doing on
15 September the 9th, the day the accident actually occurred,
16 tell us what you were doing.
17 MR. TOWNER: It was September th 7th, wasn't it?
18 WITNESS: It was September the 7th.
19 Q (Mr. Lawson continuing): I have been transposing
20 that all through this trial; September the 7th.
21 A There was a festival going on down on the Plaza,
22 we had been down there to see that. Then we came home and
23 decided that we would cook steaks on the grill out on the

1 patio, which we did, and I fixed the rest of the dinner
2 in the house.
3 And then I went out and sat on the wall around
4 there and Charles was sitting in the chair while he was
5 fixing steaks and we were having a drink.
6 At the time that we were sitting there doing
7 this is when we saw the boys climb up on the roof. And I
8 noticed them first and I looked and I said to my husband
9 and I said, "Those kids are going to break their necks."
10 He looked and saw them and he called to them and
11 told them that the place was being supervised by the
12 police and that they might get in trouble and that they
13 better, you know, get down. And they just sort of stuck
14 their tongue out at us and disappeared.
15 Q Now, the area you indicated you mentioned you
16 referred to the photograph, particularly the photograph
17 marked Plaintiffs' Exhibit 9, will you hold that up and
18 show it to the Jury and indicate where you saw the young
19 men.
20 A There are steps that go up to this apartment
21 here (indicating) and this is a flowerbox that protrudes
22 slightly (indicating).
23 They went up on their balcony, stepped on the

1 flower box, grabbed the edge of the roof and swung them-
2 selves onto the roof.
3 But after they disappeared, we didn't hear
4 any more and we sort of forgot about it, because we
5 finished cooking the steaks, went inside and had dinner.
6 And then Judy went up to her room, our daughter
7 was with us and she went on up to her room for something
8 and I went into the kitchen to clean up.
9 Charles went back out and sat on the patio,
10 because it was nice out and he was watching the crowd
11 around - -
12 Q (Mr. Lawson continuing): Let me interrupt you
13 there.
14 How much time elapsed from the time you saw these
15 boys until the time the paint was poured on your husband?
16 A I estimate it, I think roughly somewhere around
17 an hour, by the time we had taken the steaks in, had our
18 dinner and he had come back out and all, I would say
19 about an hour.
20 Q Would you tell us what they looked like?
21 A Well, they were - - one was a blonde and one
22 was a brunette. They both had long hair. The blonde's
23 was long and stringy, about to his shoulders, and the

1 brunette, his hair looked like it had been teased,
2 almost like an Afro hairdo. They both had beards and
3 the blonde wore gold rimmed, sort of octagonal shaped
4 glasses.
5 They had on nothing but dungarees; they were
6 bare footed; they were naked above the waist; they were
7 very skinny, with what I call sort of bone skinny, and
8 they were very dirty.
9 Q All right. Now, you had gone inside and you
10 said that your husband was outside, could you tell us
11 where he was outside?
12 A He was sitting on the patio, near where the
13 grill was, where the solid wall was with the chair sort of
14 tilted back against the wall.
15 Q I show you two photographs marked Plaintiffs'
16 Exhibit 15 and 14 and I ask you if you can describe what
17 those show?
18 A Yes, these are the chairs that were there, the
19 one that he was sitting in and where the grill was.
20 Q Is there anything on that chair, the one that
21 is depicted?
22 A Yes, it is covered with the Gilsonite.
23 Q All right. And when were these photographs taken?

1 A They were taken just a few days after it happened.
2 Q All right. Now, as you were inside the apartment,
3 could you then tell us what occurred?
4 A I was in the kitchen, and of course, I had the
5 water running and everything and there was so much noise
6 going on outside anyway, but all of a sudden I heard
7 Charles scream and Judy came practically falling down the
8 steps, running so hard and yelling at me, "Mom, it's
9 Pop."
10 And then she got out there and I got out there
11 and he was standing there just in a state of almost shock.
12 We didn't know - - we looked at him and we were
13 running back and forth getting towels and things, trying
14 to - -
15 Q (Mr. Lawson interrupting): Let me interrupt.
16 Describe his appearance at that time.
17 A He was literally coated from the top of his head
18 to his feet with the paint. And it had saturated his
19 clothes and even his skin under his clothes was coated with
20 it.
21 We tried to wipe it off his face and away from
22 his eyes and wipe it off of him as fast as we could, but
23 we couldn't, we weren't getting very far and he told me to

1 call an ambulance and the police, which I did.

2 I know I - - I was barefooted at the time and

3 I was running through the stuff. We left silver foot-

4 prints all over the house, running back and forth.

5 It burned my feet, and he said it burned his

6 skin. We were trying to wipe it off as fast as we could

7 and I left Judy helping him while I went in and called the

8 police and called the Rescue Squad.

9 Q Did any of the paint or this substance, whatever,

10 get on the grill?

11 A Oh, yes, the grill was covered with it.

12 Q What happened?

13 A And it ignited and flared and flamed. And if my

14 husband had one fear, or phobia that you could call it in

15 his whole life, it was fire.

16 Q How far away was he from the grill?

17 A He was about, no more than a foot and a half

18 away from the grill. I think it was a miracle that it

19 didn't ignite him.

20 Q What happened when the substance hit the grill?

21 A Th. flame s shot up above the top of the roof.

22 It wasn't evidentally that much that hit the grill,

23 thank goodness, because it was a momentary flare-up - -

1 flash, and it didn't continue to burn.

2 Q Then after you went in to call the Rescue Squad,

3 then what happened?

4 A Well, we kept trying to wipe it off of him and

5 then he started to shake and I went in and got a blanket

6 and wrapped him in the blanket until the Rescue Squad

7 got there and took him.

8 And I wanted to go with them and he told me

9 no to stay home and talk to the police, and try to get

10 this stuff cleaned up. From the way it had hit the grill,

11 it looked like it was inflammable and it was so deep all

12 over our patio, that the sooner we could get it away from

13 there to prevent any fire occurring, why, the better off

14 we would be.

15 Q Now, going back just a moment, Mrs. Rogers,

16 when you first came out, did you observe anything else

17 other than your husband at that time? Did you observe

18 the roof of your apartment at that time?

19 A No, I was too busy taking care of Charles.

20 I didn't see the boys run away; I didn't see the

21 cans on the roof. I did look up and see where it was coming

22 from. It was down the wall of the apartment.

23 Q All right. Mrs. Rogers, I'll show you a couple

1 other pictures, Plaintiffs' Exhibit Number 13, Number 12,
2 this is 11, 17, 16, and ask you if you recognize those
3 and what is represented in those photographs?
4 A Yes.
5 Q All right. Tell me what they are, and refer to
6 the number please if you will, on the back.
7 A All right. Number 13 shows where it was poured
8 over the edge of the roof and the splashing down the
9 wall.
10 Q When were these pictures taken, again, the same
11 time the others were taken?
12 A They were all taken at the same time, yes.
13 And then number 12 shows it further down the wall.
14 Number 11 shows the same thing, only from a
15 further away distance, to encompass the whole thing in
16 one.
17 Number 16 is the chair that he was sitting in.
18 Q What is the substance on the chair?
19 A The Gilsonite.
20 Number 17 shows the grill and how it was
21 splattered.
22 Q Now, going back to prior to the accident Mrs.
23 Rogers, how long had you lived in that apartment?

1 A We moved into that apartment on the first of
2 July, 1966.
3 Q And you have lived ther ever since that time?
4 A And we have lived there ever since.
5 Q Now, do you recall whether you ever saw or
6 had knowledge of people, unathorized people being on the
7 roof of the apartment?
8 A Yes, many times.
9 Q Now, could you give us some idea of about how
10 often this occurred, and I am talking about prior to this
11 incident now.
12 A Oh, I'd say - - it's hard to say. At least
13 half a dozen or more times in spasmotic periods.
14 We would report it and they'd just get after
15 them; it would stop for a while. Then it would start,
16 some little incident and it would start again. They
17 were varying in ages.
18 Q All right. Now, you referred to the area where
19 you say you saw these particular boys go up on the roof.
20 To your knowledge, had that ever been used before for that
21 purpose?
22 A Yes, that seemed to be able to find the way, for some
23 reason, kids seemed to find one way, why, if they could

1 climb up on something, that's it.

2 I don't know whether there were other ways that

3 they got up there, I'm sure there must have been, but

4 I had seen it used more than once.

5 Q Would it be characterized as common knowledge

6 that that is the way it was used, that was used?

7 MR. TOWNER: I object, your Honor.

8 THE COURT: Objection sustained.

9 Q (Mr. Lawson continuing): Now, on any of these

10 occasions, I'm talking about prior to the incident, did

11 you ever contact Gulf Reston regarding people being on

12 the roof?

13 A Yes.

14 Q Do you recall specifically who you contacted?

15 A Well, I called, I think I called Mrs. Lynch a

16 couple of times, who was in charge of the rental property.

17 And then when we got a regular resident manager, I called

18 Miss Bain, who was our resident manager.

19 Q Do you recall approximately how many times you

20 called these ladies?

21 A Not really.

22 Q Would it have been more than once, a series of

23 times?

1 A Three or four times.

2 Q And these were the resident managers for

3 Gulf Reston?

4 A Yes.

5 Q Do you recall any specific instances involving

6 people on the roof prior to the accident?

7 A You mean the one about the boys?

8 There was one, I was shopping on the Plaza,

9 I guess it was in - - I'm not sure of the time, I know it

10 was summer time and it was during the day.

11 And I was on the Plaza and there was a group

12 of young boys that had gotten up there, I'd say around

13 ten - twelve. They were having a ball, filling bags of

14 water and dropping them on the Plaza.

15 It just so happened that Mrs. Lynch, who was

16 one of the managers, came out of the bank just about

17 the time they were dropping them, and she put a quick

18 stop to it.

19 Q All right. She saw them?

20 A Right.

21 Q Do you remember any other instances particularly

22 involving lights on the roof?

23 A Yes.

1 MR. TOWNER: Your Honor, I object. I think he
2 is suggesting particular areas of testimony.
3 If she remembers any other incidents, that's fine,
4 but to Mr. Lawson to lead the witness by suggesting
5 - -
6 THE COURT (interrupting): I sustain the
7 objection.
8 Q (Mr. Lawson continuing): All right. Mrs. Rogers,
9 do you recall any other incidents involving unauthorized
10 persons on the roof?
11 A We had problems with them getting up there
12 playing with the lights.
13 I know this was at that time, around that time
14 when we were having - - they were having fun changing
15 the lights to go everywhere but where they were supposed
16 to go.
17 It was at that time that I complained about
18 the fact that they had put a hole in my roof and I had
19 a leak in my roof from it.
20 Q Now, when did these, all these events that
21 you related occur?
22 A They occurred during the summer before - -
23 Spring and summer before the accident happened.

[Volume I, p.98]

* * * * *

[Volume I, p. 106]

1 MR. LAWSON: That's all the questions I
2 have at this time, your Honor.
3 CROSS EXAMINATION
4 QUESTIONS BY MR. TOWNER:
5 Q Mrs. Rogers, the two boys that you saw, you
6 saw them climbing up on a planter, on the roof?
7 A Yes.
8 Q And there were two of them?
9 A There were two of them.
10 Q Now, do you recall the comments that your
11 husband made to them?
12 A Yes, he told them that no one was supposed to
13 be on the roof; that there was a security patrol that
14 patrolled the area and that they might get in trouble if
15 they were caught on the roof and he thought that they
16 ought to get down.
17 Q And were you able to estimate the age of these
18 young men?
19 A I would say in their early twenties.
20 Q Early twenties?
21 A Yes. I don't think they could have had the
22 beards that they had if they had been any younger.
23 Q What response, if any, did they make to your

1 husband's comment?

2 A They just stuck their tongue out at us, didn't

3 say anything and ran the other way.

4 Q They didn't say anything?

5 A No.

6 Q They didn't come back down?

7 A No.

8 Q And you estimate that it was an hour, the

9 lapsed time between that and the incident of the pouring

10 of the paint?

11 A I would say about that, yes.

12 Q Now, you have indicated that at the time of

13 the incident that you were in the kitchen?

14 A Yes.

15 Q Is there a window in the kitchen that enables you

16 to look directly onto this area?

17 A Well, the patio is here (indicating) and the

18 two kitchen windows are sort of to the side of it,

19 but I can look from the kitchen windows, yes, out into

20 that area.

21 Q Could you see your husband from where you were

22 standing at the time of the incident?

23 A From where I was in the kitchen, I could not see

where he was sitting, but when he jumped, all of a sudden he was standing over on the ivy bed right outside the kitchen window.

Q I see. Now, you have indicated that there were some flames, did you actually see the flames yourself?

A No.

Q You made that comment, how do you know that there were flames, was this a statement that your husband made to you?

A That was the statement my husband made to me.

Q I see.

A Plus there were quite a few other people - - there were an awful lot of people around there because of the festival on the plaza, and some of the others made comments that that is what had attracted their attention in the first place.

Q I see. Now following your observations of the boys on the roof, did you or your husband communicate that information to Gulf Reston?

A No, there was nobody to communicate with. It was the Labor Day holiday and you just couldn't reach anybody. All you got was an answering service, a recorded answering service when you tried to call.

1 Q Did you try that?

2 A Yes.

3 Q You called that day following the incident?

4 A Oh, yes.

5 Q Were the security patrols down on the Plaza

6 area?

7 A Well, I don't know if they were on the Plaza

8 area, but they were in the area.

9 At that time they were using a K-9 patrol

10 and they were in the area, because one of the K-9 patrol-

11 man came over right after it happened while we were waiting

12 for the police and the aubulance, and he was quite upset

13 about what happened, and he kept saying if that ambulance - -

14 Q (interrupting): Well, - -

15 THE COURT (interrupting): You cannot say - -

16 MR. TOWNER (interrupting): You cannot testify

17 as to what they said.

18 WITNESS: Right.

19 Q But somebody did come over?

20 A Yes.

21 Q Now, did either you or your husband after you

22 saw the people go on the roof - - strike that question.

23 Had you known that they were in the area before

1 you observed the boys that were on the roof from being
2 down around the festival?
3 A I don't remember.
4 Q Did you or your husband make any attempts to
5 go down to the Plaza area to find - -
6 A (interrupting): No.
7 Q (continuing): - - or attempt to find - -
8 A (interrupting): No.
9 Q Now, I think you have indicated you saw people
10 on the roof approximately six times during the period of
11 time between when you first moved in in July 1, 1968,
12 until September 7, 1970, when this incident occurred?
13 A It could have been more, but that is approximately
14 what I said.
15 Q I see. Now you indicated that you were aware
16 that your husband had a condition known as hypertension?
17 A Yes.
18 Q Was he on any kind of a diet as a result of
19 that?
20 A A salt free diet, but other than that, nothing,
21 no special foods or anything like that. It's just that
22 I used very little salt. No salt after it was cooked and
23 very little in the cooking. Mostly I used a salt substitute.

1 But he had a medication that the doctor had
2 given him, and other than that, he had not indicated to
3 me that Charles should be on any kind of special diet
4 or anything.
5 Q I see. Now, you didn't accompany him to the
6 hospital?
7 A No.
8 Q And your daughter later went there, I assume with
9 the family car and some clothes and picked him up to
10 bring him back?
11 A Right. She followed as soon as she could.
12 Q This was on a Monday, did he go to work on
13 Tuesday?
14 A Yes.
15 Q Did he work, to your knowledge, on every work
16 day subsequent to the incident?
17 A Yes.
18 Q You made mention of - - strike that.
19 You indicated that the night prior to his death
20 that he had worked late at the office?
21 A He had stayed for a conference at the office,
22 and I guess it was about eight or eight-thirty when he
23 got home.

1 Q To your knowledge, was there any - - did he
2 communicate to you any knowledge regarding any problem
3 at work during that week?
4 A No. In fact, he mentioned to me that he was
5 rather pleased with the way one particular job he was
6 handling was going.
7 Q You don't know of your own personal observation
8 whether the two men that you saw going up on the roof,
9 whether either one or both of them were the ones that
10 poured the - -
11 A (interrupting): Not from my personal observation,
12 no.
13 MR. TOWNER: That's all I have at this time.
14 THE COURT: Further redirect.
15 REDIRECT EXAMINATION
16 QUESTIONS BY MR. LAWSON:
17 Q Mrs. Rogers, you were asked a statement on
18 redirect, whether you had tried to call the people at
19 Gulf Reston.
20 A That's right.
21 Q And I believe your answer was that you had gotten
22 the answering service.
23 Did you ultimately ever get anyone? Did you

1 ever call anyone with Gulf Reston?

2 A Yes, I made the mistake of calling Mr. Magnes,

3 who was President.

4 By that time, I was rather hysterical, and you

5 should never call anybody you don't know when a woman is

6 hysterical, it gets them all - - I didn't get any - - I

7 told them what had happened, that I felt the stuff was

8 highly inflammable and I was concerned about fire and

9 I didn't know what to do, that all I had gotten were

10 recorded answering services from everybody else and he

11 just told me that there wasn't anything that could be

12 done about it until the morning and to stop bothering

13 him.

14 MR. TOWNER: Your Honor please, I would object

15 to this and ask that it be stricken. I don't

16 believe it is responsive.

17 I don't even know who the gentleman is that

18 she is referring to, but I think this is highly

19 inflammable and prejudical, and I do think it is

20 improper.

21 We are dealing with something that happened

22 after the incident.

23 MR. LAWSON: Well, he brought up the question, he

1 asked her on cross examination, I think I certainly
2 have the right to go into it.
3 THE COURT: I'll overrule the objection.
4 I think you opened the line there Mr. Towner
5 when you asked her if she contacted or attempted
6 to contact someone else.
7 Q (Mr. Lawson continuing): Mrs. Rogers, one
8 further question.
9 When you were outside, did you ever - - did
10 you observe the roof at all? I'm talking about now,
11 when you went outside in response to your husband's
12 screams?
13 A No.
14 Q You did not?
15 A No.
16 MR. LAWSON: That's all the questions I have,
17 your Honor.
18 THE COURT: Any further recross.
19 RECROSS EXAMINATION
20 QUESTIONS BY MR. TOWNER:
21 Q This first call that dealt with the answering
22 service, was it a recorded answering service?
23 A It was a recorded answering service.

1 Q What did it tell you to do?

2 A It said that the offices of Reston were closed

3 and to call back Monday morning, I mean the next morning,

4 Tuesday morning.

5 Q Was there an emergency number that you were

6 aware of?

7 A No. I tried every number in the book that I

8 had.

9 We have a little Reston book, and I tried every

10 number that I had, and all I got was a recorded answering

11 service.

12 Q When did you do this?

13 A Right after they took Charles to the hospital.

14 Q But in terms of reporting the boys, when did

15 you do that?

16 A I reported it to the police when they came.

17 Q I see. Was this the Fairfax County police?

18 A The Fairfax County police.

19 Q I see. Now, I thought you indicated in your

20 testimony earlier that when you and your husband saw the

21 boys on the roof, that you called someone.

22 A I tried to call Gulf Reston and nobody was there.

23 I tried to call Gulf Reston, and I had forgotten

which number I called, but as I say I got a recorded answering service. And then after the incident, I started over again and I went down as many numbers as I had, and all I was getting was the recorded answering service, and offices are closed for the holidays, please call at eight o'clock Tuesday morning.

Q To your knowledge, there was no live answering service - -

A (interrupting): No.

Q (continuing): - - people taking messages.

A No. If there had been a live answering service, I could have at least explained to them what had happened and asked for an emergency number to call, or asked them what to do, but all I was getting was a recorded answering service.

Q Well, I'm talking about the time before the incident.

A Hum?

Q Before the spilling of the paint.

A When I called about the boys?

Q Yes.

A No, it was on a recorded answering service.

MR. TOWNER: That's all.

[Volume I, p. 116]

* * * * *

[Volume I, p. 175]

(Witness is excused.)

CATHERINE STEIERT,

having been first produced and sworn was called for examination and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. LAWSON:

Q Will you state your full name and address please?

A Catherine Steiert, 1636 Chimney House Road, in Reston.

Q That is in Gulf Reston, is that correct?

A Yes.

Q You are next door neighbors to the Rogers?

A Yes I am.

THE COURT: How do you spell your last name?

WITNESS: S-T-E-I-E-R-T, the old German way.

Q (Mr. Lawson continuing): Ma'am, you are employed by Fairfax County?

A That's correct.

Q The School Board?

A Yes.

Q Now how long have you known the Rogers?

A I moved in next to them in October, 1966.

* * * * *

[Volume I, p. 180]

1 certainly not shaking. A very pleasant, easy going person.

2 Q Now Mrs. Steiert, did you have occasion to - -

3 strike that.

4 Prior to the incident of September 7th, did you

5 have knowledge of unauthorized persons being on the roof

6 of the apartment?

7 A Oh, yes.

8 Q And how long had you lived at the apartments

9 prior to September 7th, I think you stated that already.

10 A Well, since '66, so it would be about four -

11 five years.

12 Q And you said that you had been aware of un-

13 authorized persons up on the roof, did you actually

14 observe this yourself on occasion?

15 A Oh, yes, and we would run out whenever this would

16 happen. Usually there would be other neighbors out also

17 and the men always took care of it.

18 Q Was this something that occurred over an

19 extended period of time?

20 A It had been happening shortly after I arrived and

21 still happened occasionally.

22 Q Now, do you recall any specific instances that

23 occurred that you observed on the roof?

1 A You mean recall - -

2 Q (interrupting): I'm sorry, prior to September 7th,

3 were there any particular instances that you observed and

4 had knowledge of ?

5 A Yes, I can recall for instance one day, and

6 this would have to be mainly weekend, because, of course,

7 I am working during the day, but we have catherdal

8 ceilings in our living room, which means that the roof,

9 when anyone is on there, it echos all through the apartment

10 and you are very aware when someone is on the roof, and I

11 remember running out after hearing someone clopping across

12 the roof and the men on both sides were out and one of

13 of them managed to call the boys and get them down.

14 I couldn't give you a date, but I certainly

15 remember this happening.

16 Q Ma'am, do you recall, prior to September 7th,

17 that you had contacted Gulf in regard to this, the

18 unauthorized personnel on the roof?

19 A Well, they usually happened weekends and when I

20 called, because I have no number, there is no number that

21 we can call directly, unless you wanted to call the person

22 at their apartment. There is a lady who has been in charge

23 the last few years. I called the police.

1 Q All right. At any time, did you ever call
2 Gulf in regard to these, do you recall, prior to
3 September 7?
4 A I don't ever recall them being available at the
5 time these things happened, so that I always had to call
6 the police.
7 MR. LAWSON: That's all the questions I have,
8 your Honor.
9 THE COURT: Cross examine?
10 MR. TOWNER: We have no questions.
11 THE COURT: May the witness be excused?
12 MR. TOWNER: Yes.
13 (Witness is excused.)
14 MR. LAWSON: Call Miss Rogers please.
15 JUDITH CHURCHILL ROGERS,
16 having been first produced and sworn was called for
17 examination and testified as follows:
18 DIRECT EXAMINATION
19 QUESTIONS BY MR. LAWSON:
20 Q Would you state your full name?
21 A Judith Churchill Rogers.
22 Q And where do you live?
23 A 4884 McArthur Boulevard, Northwest, Washington.

1 Q And this is your mother, Mrs. Rogers, sitting
2 next to me at the table?
3 A That's right.
4 Q And your father was Charles Rogers, is that
5 correct?
6 A That's right.
7 Q September 7th of '70, were you at home on that
8 day?
9 A That's correct.
10 Q Would you explain why you happened to be there
11 that particular day?
12 A Well, I was living at home at that time and I
13 was working downstairs in the Restaurant on the Plaza,
14 but I was working evenings, so I was there during that
15 time.
16 Q All right. What actually was your full time
17 advocation at that time?
18 A Well, right then I was waiting to see if I got
19 into Graduate School, into Veterinarian School at the
20 University of Georgia.
21 Q And you now work at what, NIH?
22 A That's right.
23 Q Now, will you tell the Jury what occurred

1 at your parents apartment on September 7th, 1970, tell us
2 what you observed and what you heard?
3 A Well, it was after dinner. We had cooked out
4 on the grill that day. My father was outside, my mother
5 was downstairs and I was upstairs in my bedroom, I had
6 gone up to get something.
7 And I heard this scrambling, loud thumping
8 noise on the roof, and then I heard my father calling,
9 "Churchill, Churchill" and then I ran downstairs.
10 Q Is Churchill your mother's name?
11 A That's correct.
12 And I ran outside as he was standing there
13 covered with this silver paint type stuff and it was all
14 over the place, on the sidewalk, on the plants, on the
15 furniture and everything, and there were a group of
16 people gathering that had been milling around in the
17 parking lot.
18 Q Could you describe to the Jury how your father
19 reacted that you observed at that time?
20 A He seemed pretty much, sort of in shock I'd
21 say. He was not totally confused, but he was extremely
22 upset. He really didn't know what to do, so I ran back
23 in and tried to grab something like towels or something to

1 try to wipe the stuff of f him.

2 Q All right, and then what did you do?

3 A We discovered that this wasn't going to get

4 it off so my mother called for am ambulance and they

5 came, and they had no idea what to do either, so they

6 just said they would take him into the hospital and see

7 what they could do.

8 Q Did you go to Fairfax Hospital?

9 A That's right. I took a fresh change of clothing

10 with me for him and went into the Emergency Room there

11 at the hospital.

12 Q And how long were you at the hospital - - well,

13 strike that.

14 How long was your father at the hospital, if

15 you know?

16 A I couldn't say. I know it was hours, but how

17 many I don't know.

18 Q All right. Did you observe your dad there during

19 that time?

20 A Yes, I did. I saw him when I got there. By the

21 time I got there they had most of the paint off of him.

22 There was still some on him and they said they were going

23 to put him in the shower and try to get the rest of it off.

Q All right. And then how long did he stay there after they had actually gotten the paint off of him?

A Well, it was quite a while. They put him in a wheel chair and just sat him in the hall and one of the doctors came out and spoke to me and said he wasn't going to let him go until his blood pressure had gotten down to within normal range.

Q And then after a passage of time, you took your dad home?

A That's correct.

Q Can you describe your dad, how he acted, his general appearance at that time?

A Well, he was very gittery and he spoke to me concerning the fire. He said that was what- -

MR. TOWNER (interrupting): Your Honor, please.

Q (Mr. Lawson continuing): Don't go into details of the conversation.

A Okay.

Q You had conversations with him, just tell the Jury how he acted, his general appearance and demeanor during that time.

A Okay. Well, he was just gittery and shakey and he didn't say very much.

1 contrast in your dad's demeanor and appearance after the
2 accident as opposed to prior to the accident.
3 A Yes. As I say, before the accident he was a calm
4 person and then afterwards, I mean, you could just see
5 his hands shake, his voice shake and most of the time that
6 would happen.
7 And in particular, it would get worse if you
8 mentioned anything that had to do with the accident.
9 Q Now, prior to September 7th Judy, do you of
10 your own knowledge know of an incident involving un-
11 authorized persons in the roof of the apartment?
12 A To my knowledge yes, I could hear them.
13 Q Do you recall, was this over an extended period
14 of time?
15 A It would be off and on for at least a year prior
16 to that.
17 Q Now again, jumping back, when you went outside
18 the day that the incident occurred and you observed your
19 father standing there, did you observe the wall and the
20 roof of the apartment and the exterior of it?
21 A Yeah, the wall, the wall of our house, right?
22 Yes.
23 Q Did you observe the ceiling, did you look up to

1 the top of the roof?

2 A No, I didn't even look up.

3 Q Did you observe anyone around at that time?

4 A Besides the people that were gathering around?

5 No.

6 Q Now, prior to the accident, do you recall any

7 specific incidents involving unauthorized persons on the

8 roof of the apartment, project?

9 MR. TOWNER: I think that question was asked.

10 MR. LAWSON: I asked her if she was aware or

11 had knowledge of unauthorized persons on the roof.

12 I am now asking her specifically as to the time.

13 THE COURT: Objection sustained.

14 MR. TOWNER: That she observed?

15 MR. LAWSON: That she personally had knowledge of,

16 yes.

17 MR. TOWNER: That she observed?

18 MR LAWSON: That she observed, had knowledge of.

19 Q (Mr. Lawson continuing): That you observed

20 yourself.

21 A You mean that I saw personally on the roof?

22 Q Yes.

23 A I didn't see them myself.

1 Q And the incident that you are referring to you
2 heard them on the roof?
3 A I heard them talking and I heard them walking
4 around.
5 Q All right. Now, would you characterize as
6 best as possible the relationship between your parents
7 prior to the incident?
8 A Well, I would say it was very close.
9 Whenever they were off from work they were with
10 each other and during the working hours they would call
11 each other during the day.
12 If they had an argument, it was always argued
13 out, you know, there was no continuing gripe between them
14 at any time.
15 Q And you are an only child, is that correct?
16 A That's correct.
17 MR. LAWSON: That's all the questions I have.
18 MR. TOWNER: I have no questions of this witness,
19 your Honor.
20 THE COURT: You may be excused.
21 MR. LAWSON: You have no objection to her being
22 excused?
23 MR. TOWNER: No, sir.

[Volume I, p. 189]

(Witness is excused.)

MR. LAWSON: Your Honor, that is the Plaintiffs' case.

THE COURT: Very well, members of the Jury we have a matter to take up and we will be in recess.

WHEREUPON AT THIS POINT IN THE PROCEEDINGS AND AT 4:35 P.M. A TEMPORARY RECESS WAS DECLARED FOR THE JURY, DURING WHICH TIME AND OUT OF THE HEARING OF THE JURY THE FOLLOWING PROCEEDINGS WERE HAD

ORAL MOTION OF DEFENDANTS AT THE CLOSE OF PLAINTIFFS CASE

MR. TOWNER: Your Honor, please, on behalf of both the Defendants in this case, I would like to move to strike the evidence in this case.

If I can, I would attempt to deal first in terms of Prospect Industries and then separately in terms of Gulf Reston.

THE COURT: All right.

MR. TOWNER: In terms of Prospect Industries - -

MR. LAWSON (interrupting): Your Honor please I wonder if I might just interrupt. This is off

* * * * *

[Volume I, p. 235]

1 recess while I consider your Motion.

2 WHEREUPON AT THIS POINT IN THE PROCEEDINGS

3 AND AT 5:40 P.M. A TEMPORARY RECESS WAS

4 DECLARED, AFTER WHICH TIME AND AT 6:25 P.M.

5 THE FOLLOWING PROCEEDINGS WERE HAD OUT

6 OF THE HEARING OF THE JURY

7 THE COURT: I am going to deny your Motion

8 as to both Defendants.

9 MR. TOWNER: I think the record will show

10 that the argument I made in an attempt to

11 persuade the Court, and I will stand on that

12 argument.

13 WHEREUPON AT THIS POINT IN THE PROCEEDINGS

14 AND AT 6:25 P.M. THE EVENING RECESS WAS

15 DECLARED AND THIS COURT WAS IN ADJOURNMENT

16 FOR THE DAY

17 [Volume I, p. 235]

18

19

20

21

22

23

* * * * *

[Volume II, p. 6]

1 don't have any objection.

2 THE COURT: Let's take that up later when

3 we have a recess. I don't know whether they can

4 consider that.

5 MR. LAWSON: Very well.

6 MR. TOWNER: Very well, your Honor.

7 WHEREUPON THE FOLLOWING WAS IN THE

8 HEARING OF THE JURY

9 DEFENDANT'S EVIDENCE

10 WILLIE HARDY,

11 being first produced and sworn was called for examination

12 and testified as follows:

13 DIRECT EXAMINATION

14 QUESTIONS BY MR. TOWNER:

15 Q Will your state your name and address?

16 A My name is Willie Hardy; my home address is

17 508 Tarpley Road, Richmond, Virginia.

18 THE COURT: Did you say William?

19 WITNESS: Willie.

20 Q (Mr. Towner continuing): By whom are you

21 employed?

22 A Prospect Industries.

23 Q And on - - during the month of August, of 1970,

1 were you employed by Prospect Industries?

2 A That's right.

3 Q Now, did you have occasion during the month of

4 August to be working in some apartments, or on the roof

5 of some apartments being owned by Gulf Reston, Incorporated,

6 in Reston on Chimney House Road?

7 A Yes, I did.

8 Q And what was your role in that work?

9 A I was the job superintendent.

10 Q And what work was Prospect Industries doing

11 on the roof?

12 A Roof recap.

13 Q Explain to the members of the Jury what was

14 involved in that?

15 A Well, first we have to remove the gravel and

16 then flash the roof.

17 Q What does flash the roof mean?

18 A Flashing the roof means working the area

19 between the horizontal and the vertical, plus we were

20 doing patch work.

21 Q Now, what would you do to - - well, first of

22 all, how did you get up on the roof?

23 A By ladder.

1 Q Now, who owned this ladder?

2 A Prospect Industries.

3 Q What type of ladder was it?

4 A A forty-foot, no, a twenty-foot extension

5 aluminum ladder.

6 Q Now, I show you here a diagram Mr. Hardy and

7 I ask you if you can identify this diagram.

8 A Yes.

9 Q What does it show?

10 A Are you talking about the roofs we worked on?

11 Q What does the diagram overall show?

12 A Roofs of Reston.

13 Q Was this area where you worked?

14 A Yeah, this is the area where I worked

15 (indicating).

16 Q Now, would you come down here and show the

17 Jury, would you indicate to them the roofs that you

18 were working on immediately prior to August 28?

19 A I worked on these (indicating).

20 Q There are some numbers, one, two, three, when

21 were those put on?

22 A The numbers?

23 Q Yes, the numbers, do you recall?

1 A I don't recall.

2 Q Were they put on at the time your deposition

3 was taken?

4 A I don't recall.

5 Q Now, you have heard testimony here that some

6 aluminum paint known as Gilsonite was left on the roof,

7 is that correct?

8 A Correct.

9 Q All right. Now, would you describe the

10 container that the paint was in?

11 A Five gallon container.

12 Q What was it - - what was the approximate size

13 of the container?

14 A About twelve-fourteen inches in diameter;

15 around.

16 Q And how tall was it?

17 A About 16 inches.

18 Q Did the container have a lid on it?

19 A Yes.

20 Q Now, in order to gain access to the roof, did

21 you - - you say you used the ladder?

22 A That's right.

23 Q All right. Now, th se are the three roofs that

1 you worked on (indicating)? Is that correct?

2 A Yes.

3 Q Now Mr. Hardy, looking at the diagram, the

4 roofs, the three roofs that you worked on, what numbers

5 from the end of the building is that?

6 A You want the number of the apartment?

7 Q No, how many roofs in were they?

8 A Five.

9 Q So you were working on roofs number six, seven

10 and eight in from the end?

11 A Right.

12 Q Now, I show you Defendants' Exhibit Number 1

13 and ask you would you indicate to the Jury on that which

14 roof on that picture corresponds to six, seven and eight?

15 THE COURT: You mean Plaintiffs' Exhibit 1?

16 MR. TOWNER: No, this is Defendant's A, and

17 the picture is Plaintiffs' Exhibit Number 1.

18 THE COURT: That's right, you said Defendants'

19 Exhibit Number 1.

20 WITNESS: I was working this roof, this one

21 and this one (indicating).

22 Q (Mr. Towner continuing): Okay. Now, you

23 have heard testimony that the last day that Prospect

1 Industries worked on those roofs was on August 28, 1970,
2 is that correct?
3 A Correct.
4 Q All right. Now, did you and your crew leave
5 this paint on the roof on that day?
6 A Correct.
7 Q All right. Now, which of those roofs did
8 you leave it on?
9 A We left it on Number 2.
10 Q Number 2, now that would be which roof from
11 the end?
12 A That would be the seventh roof.
13 Q Okay. Would you indicate that to the Jury?
14 A It would be this roof (indicating).
15 Q And that is indicated on the photograph by
16 being a very dark color?
17 A Right.
18 Q All right. Would you return to the witness
19 chair please?
20 Just a minute, one other question.
21 With respect to the ladder did you - - would
22 you indicate to the Jury as to which roof the ladder
23 was directed to?

1 MR. LAWSON: What time are you talking
2 about, Mr. Towner?
3 Q (Mr. Towner continuing): Well, during the
4 course of time that you were there working on these
5 three roofs.
6 A The ladder was on number three roof.
7 Q Yes.
8 A The ladder was beside number three roof.
9 Q So number three roof would be one roof closer
10 to the lake than number two roof.
11 MR. LAWSON: I object to counsel leading
12 the witness. I haven't objected so far but I
13 think he has been leading the witness and I
14 would object to it.
15 MR. TOWNER: Your Honor, I think it is just
16 a matter of saving time and I think it is
17 permissible under the scope of examination.
18 That's all, if you will have your seat.
19 THE COURT: Well, I won't rule on this
20 question, but let's not lead the witness,
21 Mr. Towner.
22 MR. LAWSON: You said number three roof?
23 WITNESS: Yes.

1 Q (Mr. Towner continuing): Now, would you tell
2 the members of the Jury, Mr. Hardy, what actions you
3 and your men would take when you - - strike that.
4 Were you on the site more than one day?
5 A Yes, I was.
6 Q Now, would you tell the members of the Jury
7 what you would do with your equipment when you left
8 the job site each day?
9 A Well, all the trash would go in containers.
10 After all the men is down off the roof, the
11 last two men come down always take the ladder down.
12 Q All right. Now, on the 28th day of August,
13 was the ladder taken down?
14 A Yes, it was.
15 Q And where was the ladder placed?
16 A We would take the ladder down and two men would
17 walk it across the yard. And there was a retaining wall
18 facing the apartment we was working on, and there was a
19 light pole and a tree and we would always put the
20 ladder between that light pole and the tree, down on
21 the sidewalk level.
22 Q So you would - - would you come down here
23 Mr. Hardy, please, and I show you Plaintiffs' Exhibit 7

and ask you to identify on that photograph to the members of the Jury the tree and the light pole that you are referring to.

A This is a tree (indicating) and here is the light pole(indicating).

Q And do I understand that the ladder was placed between those, the tree and the light pole and the wall?

A Right.

MR. LAWSON: Have him mark, if you will, with an X on the tree and maybe put an L on the light pole.

Q (Mr. Towner continuing): Will you mark on the photograph Mr. Hardy, where you and your men placed the ladder?

(Witness indicates on photograph.)

Q All right. Will you take the stand again please.

Now Mr. Hardy, at the time you left the job on August 28th were you finished with the work?

A No, we wasn't.

Q Would you tell the members of the Jury what work remained.

A We had to cope the flash work with this aluminum

1 paint.

2 Q All right. Is there any reason why it was not

3 done on August 28th?

4 A Yes, because you have from ten to fifteen days'

5 waiting period for the material to dry.

6 Q Now, when you say material what material do you

7 mean?

8 A I mean the material used for the flash work,

9 it's called Licromat.

10 MR. LAWSON: I'm sorry.

11 A The material used for the flash work is

12 called Licromat.

13 Q And it has to dry?

14 A It has to cure.

15 Q Cure?

16 A Yes.

17 Q And then after it is cured, this paint is applied?

18 A Right.

19 Q Now, at any time while you were on this job,

20 did you observe any individuals, any people, other than

21 you and your men, on the roof?

22 A No, I did not.

23 Q Were you told by anyone, whether Gulf Reston or

1 anyone, that people other than yourself were on the roof?
2 A No, I wasn't.
3 Q Were you aware that anyone other than yourself
4 had access to the roof?
5 MR.LAWSON: I would object to that question.
6 WITNESS: No.
7 MR. LAWSON: I don't see how he could possibly
8 answer that.
9 THE COURT: I'll overrule that.
10 MR. LAWSON: As to his own knowledge.
11 THE COURT: Yes, as to his own knowledge, that's
12 right.
13 MR. LAWSON: Right, sir.
14 Q (Mr. Towner continuing): What was the - -
15 strike that.
16 How much of the contents of the can of paint
17 remained on the roof at the time that you left it on
18 August 28th?
19 A About four and a half gallons.
20 Q And could you tell us, how much, when full, it
21 would weigh?
22 A How much it would weigh?
23 Q Yes.

1 A Between thirty-five and forty pounds.

2 Q All right. And you say it was left on, I believe

3 you indicated, roof number two.

4 A Yeah.

5 Q Now, where on roof number two was it left?

6 A When we leave the roof at night, expecting to

7 go back, we always store material - -

8 MR. LAWSON (interrupting): Excuse me, Mr. Hardy.

9 I object to what they normally do.

10 THE COURT: Yes, what happened on this occasion.

11 I'll have to sustain his objection.

12 Q (Mr. Towner continuing): Mr. Hardy, you can't

13 tell the Jury what you normally do, you have to tell them

14 what you did do on the 28th.

15 Since the question was, where did you leave

16 the paint, the Gilsonite, on that roof on that day?

17 A As close to the center of the roof as possible.

18 Q What was the reason for leaving it in that

19 position?

20 A We leave the material in that position so that

21 it won't just fall or happen to roll away from the spot

22 where we put it.

23 Q Now, did you return - - strike that.

1 Did you become aware of an incident involving the
2 pouring of Gilsonite from - - the pouring of Gilsonite
3 on an individual subsequent to your leaving the work site?
4 A Would you repeat that again?
5 Q Yes. Did someone ever tell you about the
6 incident that we have been talking about here, about
7 Mr. Rogers having the paint poured on him?
8 A Yes, someone told me.
9 Q And had you gone back to the job site prior
10 to hearing about that?
11 A Well, I had been to Reston, but I didn't
12 go exactly to the job site.
13 Q Well, did you ever go back to see the area
14 where the paint had been poured?
15 A I seen it, I seen that area, but I didn't go
16 back especially to see that.
17 Q But did you see it before you heard about the
18 incident or after?
19 A It was probably after.
20 Q So that the next time you went back to the
21 Chimney House Road area there was this paint on the wall?
22 A Right.
23 Q Now, at that time, did you observe the ladder?

1 A No.

2 Q Did you see the ladder?

3 A No.

4 Q Do you, of your own knowledge know what had

5 happened to the ladder?

6 A No.

7 Q Have you or your men gone back to the roof to

8 finish the painting, or did you or your men - -

9 strike that.

10 Did you, or men under your control, ever go

11 back to finish the painting on the roof?

12 A No, we didn't.

13 MR. TOWNER: I have no further questions.

14 THE COURT: Cross examine?

15 MR. LAWSON: Yes, your Honor.

16 CROSS EXAMINATION

17 QUESTIONS BY MR. LAWSON:

18 Q Now, you have indicated Mr. Hardy, on the

19 diagram Mr. Towner has referred to that the ladder was

20 left up against, I believe, an apartment that is marked

21 on that particular diagram or plat, as apartment number

22 three, is that correct?

23 A Correct.

1 Q Now, did the ladder stay there the entire
2 time you were working on that particular job site, or
3 was it moved around from place to place?
4 A No.
5 Q Pardon?
6 A It stayed there.
7 Q You are saying it - -
8 A (interrupting): It didn't stay up against the
9 roof. I'm saying, that that ladder didn't go any further
10 than the three roofs we were working on.
11 Q No, what I am asking is when you have the
12 ladder up against the building, was it up against the
13 apartment as indicated number three?
14 A Yes, it was.
15 Q Okay, so what you are saying then is that
16 you never moved the ladder then from that spot?
17 A Right.
18 Q So you would go up the same place to go to the
19 other places where you were working?
20 A Right.
21 Q All right. Now, when you would - - strike that.
22 How many days had you worked there prior to
23 August 28th?

1 A I don't remember.

2 Q Well, would it have been at least a week or

3 longer?

4 A Could have been a week or longer.

5 Q And would it be fair to say that you were out

6 there all the time?

7 A Well, most of the time I was there.

8 Q Most of the time?

9 A Yes.

10 Q Now, by that, what do you mean?

11 During an eight hour day, would you be there

12 every day on the job site?

13 A I would be there every day.

14 Q All right. But you wouldn't be there the

15 entire day?

16 A Right. Sometimes in the middle of the day I

17 would have to go and pick up materials and things.

18 Q And would it be possible that at the end of the

19 day you would not be there?

20 A No.

21 Q You would always be back at the site at the

22 end of the day?

23 A That's right.

1 Q Now, are you able to recall that August the 28th
2 was the last day that you were on the job site?
3 A Yes.
4 Q You are able to recall that at this time?
5 A Yes.
6 Q And you are saying that the ladder was up
7 against apartment number three during that time?
8 A During that day.
9 Q And do I understand you to say that you left
10 the paint on apartment number two or three? I'm sorry,
11 I mean number two, is that correct?
12 A That's correct.
13 Q And the ladder, you are saying, was left up
14 against Apartment number three, as indicated?
15 A Right.
16 Q Did you take the ladder down that day, did
17 you yourself take the ladder down?
18 A I didn't touch the ladder myself. As I said,
19 when the last two men come off the roof, that is the two
20 men that tak the ladder down, but I was present when
21 it was taken down.
22 Q All right. Are you saying that you actually
23 saw the men take the ladder down?

1 A Right.

2 Q You saw them take it down?

3 A Right.

4 Q And you are saying that you actually saw them

5 take it and place it, as indicated on this Plaintiffs'

6 Exhibit Number 7, between the light pole and the

7 tree?

8 A Yes.

9 Q Where the L is located?

10 A That's right.

11 Q So then, as I understand it, while you were

12 working on the job site, whether it was a week, or

13 however many days, you never took the ladder away from

14 the job site, is that correct?

15 A No.

16 Q You always left it there at the site?

17 A That's right.

18 Q Now, up until August the 28th you always came

19 back to the job site every day, each day, is that right?

20 A Each day, yes.

21 Q All right.

22 A Well, no, I wouldn't say each day, because if

23 it rained or something like that then we wouldn't come back.

1 Q Now, are you sure about where the can was
2 located, are you sure that you left the can on apartment
3 number two.
4 A Sir, I am quite sure.
5 Q Pardon me?
6 A Yes, sir, I am sure.
7 Q Now Mr. Hardy, do you recall when your deposition
8 was taken on February 24 of last year?
9 A Ask me that again?
10 Q Do you recall when we took your depositinn in
11 your employer's office?
12 A Yes.
13 Q It was back on February 24?
14 A Yes.
15 Q And referring to page 38 - - in other words,
16 that was about a year ago that we took your deposition?
17 A Right.
18 Q And starting on page 37 and going over to page
19 38 I had asked you as to where the paint had been
20 left on the roof, and going over to page 38, I ask
21 you to read the two lines that are underlined there.
22 MR. TOWNER: Ask him to read the whole thing,
23 Mr. Lawson.

1 MR. LAWSON: All right.

2 WITNESS: You read it.

3 THE COURT: Why don't you read the question,

4 Mr. Lawson.

5 MR.TOWNER: Read it to him and ask him if that

6 is what he testified. I think that is the proper

7 procedure.

8 THE COURT: I suggest you read it to him and

9 then read the answer and ask him if that was his

10 answer.

11 MR. LAWSON: Yes, sir.

12 Q (Mr. Lawson continuing): Well, I will have to

13 back up to about half way down page 37:

14 "Is that what would be unit number three

15 indicated on this plat, the paint, referring

16 to the paint can, yes?"

17 The answer, "yes".

18 "Question. What unit was it on?"

19 "I'm not going to say for sure, you

20 know, because it has been a long time, as I

21 said before, but the paint was left on this

22 roof."

23 "Apartment number three, or unit number three?"

1 "Right."

2 "Okay."

3 "We seen the paint on the wall and

4 it was down in this area some place."

5 "Whatdo you mean by down in this

6 area some place?"

7 "As I say, I can't indicate exactly

8 where, but it was down in this area

9 (indicating)."

10 "In other words, you are not saying

11 it was on one, two or three, but on

12 the three units that are marked?"

13 "I am not sure, but I know it

14 wasn't on this one or this one (indicating)."

15 "You mean three or two?"

16 "Yes."

17 "Is it possible it could have been on

18 one or some other unit?"

19 "Yes, it could have been."

20 Is that correct, Mr. Hardy?

21 MR.TOWNER: Will you go on please? Excuse

22 me Mr. Lawson, would you read.

23 MR. LAWSON: "It's possible it could have been

1 here or further over."

2 "By here, you mean number one?"

3 "Number one."

4 "Or it could have been on one of the

5 other units, is that correct?"

6 "Yes." But I believe it was further

7 over than number one, I am not too sure."

8 Is that correct?

9 A That's correct.

10 Q So your answer is you really can't tell us

11 positively where the paint was left, can you?

12 A Come to think of it, after I talked to you all

13 that night, I did remember that the paint can was on

14 number two.

15 Q But at the time you took the deposition, which

16 was over a year ago, you did not independently recall,

17 is that correct?

18 A At that time I wasn't thinking very clearly,

19 maybe.

20 Q All right, sir. Now Mr. Hardy, you were also

21 asked by counsel as to whether you saw or knew of

22 unauthorized persons being on the roof during the times

23 that you worked on the job site. As I recall, your answer

1 was that you didn't see unauthorized persons on the roof,
2 is that correct?
3 A That's correct.
4 Q Are you saying, sir, that you did not in fact
5 see any children or other people on the roof?
6 A Not children, no.
7 Q Pardon?
8 A No, no children on the roof.
9 Q Well, maybe the better word would be unauthorized
10 persons, obviously your own workers, but I am talking
11 about unauthorized persons.
12 MR. TOWNER: If your Honor please I am going
13 to object to the characterization, because I think
14 it is a question of people.
15 I don't see how Mr. Hardy knows if the people
16 are authorized or unauthorized. I think if he had
17 seen people on the roof, I think that is a proper
18 question.
19 THE COURT: I think that would be proper,
20 in other words, any other persons other than
21 his employees.
22 MR. LAWSON: Any other persons other than
23 your employers, your employees,

1 A Well, if I did, I don't remember.

2 Q All right, sir. So you are not positively

3 stating to the Jury that you didn't see anyone on the

4 roof, is that correct?

5 A Well, actually, what I am trying to say is that

6 I didn't see anyone on the roof, but if I stated sometime

7 in the past that I did, well then, you know, I just forgot

8 about it.

9 I didn't see anyone on the roof.

10 Q Well, it's more an absence that you are

11 able to recall at this time, Mr. Hardy, is that correct?

12 That you don't recall whether you did or didn't see

13 people on the roof?

14 A I didn't see anyone on the roof other than

15 our personnel.

16 Q Is that what you are telling us?

17 A Yes, that is what I am saying.

18 Q Again referring to your deposition on pages 44

19 and 45, this is the same deposition taken a year ago:

20 "Do you recall, of your own knowledge, ever

21 seeing anyone on the roof that was not authorized to

22 be there, by that I mean children, or anyone else? "

23 Your answer:

1 "Well, if I did, I didn't pay
2 much attention to it."
3 "You didn't pay any attention to
4 it?"
5 "Right."
6 "Are you saying that you don't
7 recall?"
8 "I don't recall."
9 "You don't recall at this time?"
10 "No."
11 Is that a correct statement, sir?
12 A I'm sorry, I didn't hear you.
13 Q I say, is that a correct statement that you
14 gave us about a year ago?
15 A Well, as I am telling you, I didn't see anybody
16 on the roof other than authorized personnel.
17 Q All right, sir. Now, as I understand it, sir,
18 on direct examination you stated that the reason you
19 did not go back to the job sit on August 28th - -
20 MR. TOWNER: I object to that question. There
21 is no testimony that he didn't go back to the job
22 site on August 28th, he stated he was there on
23 August 28th.

1 MR. LAWSON: I'm sorry, did I say - - I meant
2 after.
3 Q (Mr. Lawson continuing): As I understand
4 Mr. Hardy, you stated on direct examination that you
5 didn't return to the job site after August 28th, is that
6 correct?
7 A I didn't go directly to the job site, no.
8 Q And as I understand on direct examination you
9 stated that the reason you didn't go back was that
10 because the paint, or whatever it was, had to cure, is
11 that correct?
12 A The Licromat that we put down on the flashing
13 had to cure.
14 Q You stated you knew then there would be a lapse
15 of around ten or fifteen days before you would go back
16 to the job site?
17 A No, because we had other work there. There
18 was still some patch work that had to be done.
19 Q All right, sir. Well, how many days did you
20 expect would elapse before you would go back on August
21 28th?
22 At that time, how many days did you figure
23 were going to lapse before you had to go back and finish

1 up whatever you had to do?

2 A Well, at that time, I figured we would go back

3 the next working day.

4 Q Which would have been Tuesday?

5 A Which would have been Tuesday.

6 Q Which was on a Friday, which would have been

7 approximately a lapse of four days?

8 A Yes.

9 Q Not Tuesday, I'm sorry, I'm thinking of the

10 Labor Day weekend.

11 On August 28th, which was on a Friday, you

12 would have gone back on a Monday, is that correct?

13 A Right, correct.

14 Q Okay. And you obviously didn't go back on

15 that Monday, right?

16 A We didn't.

17 Q Can you tell us why?

18 A No, I really can't tell you why because there

19 is quite a few reasons why we didn't go back.

20 Q Well now, if you can't, just answer my question.

21 Can you tell us at this time why you didn't go

22 back to the job site?

23 A No, I can't.

1 Q As a matter of fact, there was a lapse from
2 the 28th of August to the time of this incident, roughly
3 nine to ten days, during which time you never went back
4 to the job, is that right?
5 A Right.
6 Q And when you left, you left the paint can on
7 the roof some place and you left the ladder there?
8 A Yes.
9 MR. LAWSON: That's all the questions I have.
10 THE COURT: Any redirect?
11 MR. TOWNER: No, sir.
12 (Witness is excused.)
13 ELMER BURCH,
14 having been previously sworn was called for examination
15 and testified as follows:
16 DIRECT EXAMINATION
17 QUESTIONS BY MR. TOWNER:
18 Q Mr. Burch, I believe you indicated on
19 examination when you were called by Mr. Lawson as a
20 witness that you had been employed by Gulf Reston since
21 I believe, 1966?
22 A March 1, 1965.
23 Q '65. And have your duties, during that period

1 of time, involve the security and protection of the
2 property owned by Gulf Reston.
3 A Yes. I, my duties, from the time I was
4 employed at Reston until the present time, do involve
5 the security.
6 Q Now, in the course of your testimony you
7 indicated that you, as being in charge of security, were
8 aware that there were individuals on the roof, on occasion,
9 at the Chimney House Road building - -
10 A (interrupting): Yes.
11 Q (continuing): - - is that correct?
12 Now, first of all, were those individuals
13 authorized to be there?
14 A No, the individuals that I referred to were
15 trespassers.
16 Q What means of access were there to the roofs
17 of the Chimney House Road project, what possible means
18 of access were there?
19 A Somebody either had to bring a ladder, which
20 is what my men, when they went up on the roof or any
21 contractors' men went up on the roof, they brought a
22 ladder.
23 But it was reported to me, although I never

1 witnessed the actual act, that they climbed up on a
2 planter and pulled themselves up over the coping in a
3 location that is directly over the passageway from the
4 Chimney House Road project into the Plaza.
5 Q Would it be possible to get onto the roof from
6 one of the apartment buildings through a window?
7 MR. LAWSON: Your Honor, I would have to object
8 to what is possible. I don't see how this witness
9 knows of his own knowledge whether somebody actually
10 gained access by that means.
11 THE COURT: I think he would be able to tell
12 whether or not somebody could get access onto the
13 roof.
14 I'll overrule your objection, I think he can
15 testify to that.
16 MR. LAWSON: All right, sir.
17 WITNESS: I think it is possible, in the same
18 vain that it is possible for people to climb up
19 on the planter.
20 It is a hazardous thing to do, but it is
21 possible for somebody to go out a window and up
22 to the roof.
23 Q All right. Now, is the Chimney House Road the

1 only area owned by Reston, Gulf Reston in that - - in
2 Reston?
3 A No, Reston itself started out with about 6,400
4 acres owned by the predecessor to Gulf Reston, Incorporated.
5 As parcels of that land are developed, they
6 are sold in part, some are leased, but in that Lake Anne
7 area, for example, there are 47 townhouses that are
8 owned by individuals; there are 3 apartment complexes
9 that are owned by Gulf Reston, and an office building
10 owned by Gulf Reston and the Plaza itself is owned by
11 Gulf Reston.
12 Chimney House Road is partially owned by
13 Gulf Reston and partially owned by a cluster association.
14 The land across Chimney House Road, part of it
15 is owned by a church and part by the Reston Homeowners
16 Association.
17 The property line per se in Lake Anne Center
18 are very very confusing.
19 Q Now, would you tell us what your knowledge
20 is - - strike that.
21 Did you have knowledge of - - prior to September
22 7, 1970 of trespasses being on the property owned by
23 Gulf Reston during the time - - during the course of your

1 employment up to September 7?

2 A Yes, we had trespassers. In fact, that was

3 about the only way we could successfully prosecute

4 people, even though we were convinced that they were

5 doing other acts, that in the Court we charged with

6 trespass, because this was something we had success

7 prosecuting.

8 We had legal advice that this would stick.

9 Lake Anne - -

10 MR. LAWSON (interrupting): I object to all

11 this. I don't know what what he did as to the

12 prosecution would have to do with the issues in

13 the case at Bar.

14 THE COURT: How would it be relevant, Mr. Towner?

15 MR. TOWNER: Your Honor please, I think it

16 goes to the standard of care of this particular

17 Defendant, in terms of dealing with trespassers,

18 that is what we are dealing with in this case,

19 are trespassers on the roof, and I think it will

20 be for the Jury to determine what standard of care

21 Gulf Reston exercised, whether it exercised reasonable

22 care under the circumstances. They are entitled

23 to know the circumstances under which they had to act.

1 I think that one of the circumstances was
2 that, in terms of dealing with trespassers,
3 that people might be guilty of other things,
4 but that was the only method that they had of
5 dealing with these people.
6 I think that will be developed as being a
7 very relevant part of how they attempted to deal
8 with this type of problem.
9 MR. LAWSON: Your Honor, as to what counsel
10 may have advised them and as to what they may
11 have done in order to prosecute people for other
12 types - -
13 THE COURT: Well, that would certainly be
14 objectionable, Mr. Towner, I think, any advise
15 he may have received.
16 He can testify as to what he did in order
17 to protect the property.
18 MR. LAWSON: I don't have any problem with
19 that.
20 Q (Mr. Towner continuing): All right. Were
21 charges ever placed against trespassers if they were
22 apprehended?
23 A Yes, I think I - - I would say at least fifty

1 charges of trespassing were placed.

2 Q Did convictions result as a result of those

3 charges?

4 A To some extend. Juvenile Courts are quite

5 lenient.

6 MR. LAWSON: Your Honor, I would have to object

7 to that, for the reason that - -

8 THE COURT: I will have to sustain it. I think

9 he could testify as to what he did, what steps he

10 took.

11 MR. TOWNER: I would note my exception, if

12 your Honor please.

13 I think he is entitled to tell the ability

14 of what they are able to do to deal with the problem.

15 It is very relevant here, if your Honor please.

16 I think it is very relevant for this Jury to

17 know to what efforts Gulf Reston went to protect

18 the people there and what success they had with

19 it. If they weren't having any success with a

20 particular procedure, I think that is relevant to

21 what is happening. I am not attempting to use this

22 evidence or this testimony to prove that a trespass

23 was committed by - - at a particular time or at a

1 particular place, but we are dealing with
2 procedures that this firm undertook to exercise
3 reasonable care.
4 We have been charged here with failure to
5 exercise reasonable care to protect against tres-
6 passers, and I think this Jury is entitled to hear
7 what we did.
8 THE COURT: Well, he has testified to that,
9 in other words, that they did bring charges on
10 some fifty charges, some fifty charges were made,
11 but what happened after it came to Court I don't
12 think would be relevant in this hearing.
13 MR. TOWNER: Note my exceptions to that,
14 your Honor, because I think it is relevant in
15 terms of whether they are able to utilize that.
16 Q (Mr. Towner continuing): Were there any other
17 types of incidents that you had to deal with involving
18 trespassers and what trespassers did.
19 A We had vandalism and theft. I think primarily
20 vandalism and theft were the major areas. Thefts of
21 refrigerators, of pipe, of street signs, you know,
22 anything from $5.00 to $6,000 worth of copper pipe.
23 Vandalism, defacing signs; driving automobiles over golf

1 courses, things of that nature.

2 MR. LAWSON: Your Honor, they are talking

3 about all the different problems that Gulf Reston

4 had on the whole entire project and I can't see

5 what bearing that had on this proceedings.

6 MR. TOWNER: If your Honor please, I think

7 it is very relevant.

8 I mean, we are talking here and the charge

9 has been made that we didn't exercise reasonable

10 care to keep people off the roofs.

11 MR. LAWSON: That's right, people on the roofs.

12 We are not talking about people driving cars over

13 the golf courses, or maybe somebody might have

14 been shot a mile or so away from Mr. Rogers apartment.

15 I mean, I don't see what bearing that has on

16 this situation.

17 MR. TOWNER: The bearing it has, if your Honor

18 please, is that there were a variety of incidents

19 a variety of problems that had to be dealt with

20 by Gulf Reston, and in particular by Mr. Burch.

21 I think Mr. Burch is entitled to show what

22 the variety of those problems were, so that one

23 could judge and evaluate the dangers, if any, that

1 existed and the steps that he took, the quality
2 one might say of the steps that he took could
3 very well be influenced by these other dangers.
4 MR. LAWSON: Your Honor, as to what he did
5 on this particular cite with this particular
6 problem, that is what we are dealing with, not
7 driving cars on the golf course or some place
8 else within the project.
9 THE COURT: I'll sustain his objection,
10 Mr. Towner. I don't see that it is relevant.
11 Q (Mr. Towner continuing): Well, with respect
12 to the Chimney House Road apartment complex and the
13 buildings and businesses associated therewith, would
14 you tell us what problems you encountered in that area
15 during the course in time that you were in charge of
16 security?
17 A In the Lake Anne area, which is what this
18 total complex is called, we had vandalism, graffti
19 painted; decorative items that were put on walls torn
20 off at business establishments; water fights, snow ball
21 fights; frisbee playing; roudy activity, as it were, in
22 the Plaza area; in the evenings, tremendous congregations
23 of young people in their cars on Chimney House Road

1 so that the apartment tenants and home owners couldn't
2 even get to their apartments and some of the apartment
3 tenants were sometimes afraid of walking out of their
4 apartments at night.
5 Q All right. Now, what steps, over the course
6 in time that you had been in charge of security, did you
7 - - strike that.
8 You have also mentioned in the course of
9 your examination by Mr. Lawson that there were also
10 incidents of people being on the roof?
11 A Right.
12 MR. LAWSON: I think he has answered that
13 question three times. I don't mean to interrupt
14 you, but I think he has answered the question.
15 THE COURT: I think this is the fourth time.
16 I think he has answered that several times.
17 Q (Mr. Towner continuing): All right. In
18 terms of the totality of incidents involving this
19 particular area, would you indicate to the members of
20 the Jury what the relationship of incidents involving
21 the roof bore to the totality of incidents that occurred
22 in the Chimney House Road area?
23 A The people on the roofs were a very minor

1 part of the total number of problems in the area from
2 people.
3 There were relatively few incidents reported
4 of people on the roof of this particular building or on
5 other roofs in comparison with the number of complaints
6 from congregating of people, vandalism on the Plaza and
7 that type of thing.
8 Q All right. Now, would you tell us over the
9 period of time that you were there what steps, up to
10 September 7th, 1970, what steps were initiated by
11 Gulf Reston, and other groups, if that is pertinent
12 to deal with these incidents, including the incidents
13 on the roofs.
14 A When I came there in March of 1965, a security
15 company was engaged with two patrol cars to patrol the
16 areas that were under construction. At that particular
17 time there were two business and two houses occupied.
18 I can't remember the exact time when they
19 discontinued that company's services and hired our own
20 security people in our own vehicles to patrol at that
21 time, because there were no residents to speak of.
22 They were primarily watching construction sites for
23 theft.

1 Q For what, sir?

2 A For theft.

3 Q Yes, sir.

4 A After we had our own security forces for

5 a while and encounted problems of manning, we hired

6 Burns Detective Agency to patrol. We later changed to

7 the K-9 Protective, or K-9 Security Company, I think it

8 is.

9 I think that it was when we had Burns that

10 we started putting men on foot in the Plaza, and that

11 continued with the K-9 people.

12 At all times, from roughly 1966, we started

13 working with Fairfax Police trying to get additional

14 police coverage. At the beginning we were working under

15 the McLean Sub-Station and a cruiser would go through

16 occasionally. Later we were successful in getting a

17 cruiser assigned to the Reston area. This is when the

18 jurisdiction was covered by the Chantilly Sub-Station

19 after that was opened.

20 Q Did Gulf Reston bear the cost of any of this?

21 A We bore the cost of all of it, except for the

22 duty cruiser out of McLean or out of Chantilly.

23 Q You said that it was a police cruiser?

1 A Yes.

2 Q From the Fairfax County police?

3 A The police officers were operating the police

4 cruisers.

5 Q Who paid the police officers?

6 A Well, when they were working out of McLean and

7 Chantilly at the beginning, they were on the County

8 payroll. Later on, I cannot be sure whether this was

9 prior to September 7th or not, we started hiring off duty

10 police officers.

11 MR. LAWSON: I would object to the testimony

12 unless he can state when it occurred, your Honor.

13 Certainly, if it was after September 7th

14 it would have no bearing on this.

15 THE COURT: This was prior to September 7?

16 MR. LAWSON: I believe he stated that he

17 couldn't say.

18 THE COURT: No, I say I would have to sustain

19 it unless he can say it occurred prior to September

20 7.

21 Q (Mr. Towner continuing): Can you respond to

22 that Mr. Burch?

23 A I have no date to hang it on.

1 Q Could it have been prior to September the
2 7th?
3 MR. LAWSON: I think he is just trying to
4 pull himself up by his boot straps. He knows
5 what his answer is.
6 THE COURT: He said he didn't know.
7 Q (Mr. Towner continuing): At this time, were
8 you still employing the K-9 group?
9 A On September 7th, 1970, we were still employing
10 the K-9 personnel. I believe at that time we had one
11 foot patrolman in the Plaza and one roaving patrol in
12 a vehicle, who check d in with the Plaza man.
13 On occasion, we had the second roaving
14 patrolman when we felt there was going to be something
15 unusual.
16 Q Did these individuals have the power of arrest?
17 A Only as citizens. They are not deputized in
18 any way, they do not carry guns. They have uniforms and
19 billy clubs, but basically they were civilians with
20 our authority - - Gulf Reston's authority to charge in
21 Gulf Reston's name.
22 Q Based on your observation, did that, being, as
23 you were, in charge of the security aspects, did that

1 handicap your effectiveness?

2 THE COURT: Don't answer that.

3 MR. LAWSON: I think that calls for a

4 conclusion on this witness' part.

5 I mean, I think the ramification of it

6 are just way too far spread.

7 I certainly would object to it on those

8 grounds.

9 Whether it is effectiv or whether it is

10 not, I think it is a Jury question.

11 THE COURT: I think it is up to the Jury

12 to determine whether or not this had some

13 basis for being handicapped.

14 MR. TOWNER: I would respectfully submit

15 if your Honor please, that this is like asking

16 a doctor, if you applied some kind of drug on the

17 blood or mercurochrome, would this, in your

18 opinion - - in your observation, did this

19 help cure the wound.

20 Now, I think that he is in that position,

21 he is in charge of security, and he knew that the

22 people did not have the power of arrest, and I

23 think that that is a proper question for him, based

1 upon his position as to whether this impeded
2 his work in maintaining security.
3 THE COURT: I'll overrule your objection,
4 Mr. Lawson.
5 Q (Mr. Towner continuing): Go ahead and answer
6 the question.
7 A Would you repeat it?
8 WHEREUPON THE REPORTER READ BACK THE
9 LAST QUESTION
10 "Based on your observation, did that,
11 being as you were, in charge of security
12 aspects, did that handicap your effectiveness?"
13 A No.
14 THE COURT: This was the fact that they did not
15 have the power of arrest.
16 WITNESS: Definitely, because they could not
17 arrest, and had to call Fairfax County police in
18 order to affect the arrest and couldn't effectively
19 detain anyone. They were not truely effective in
20 quelling disturbances.
21 Q Now, during your course in time in being in
22 charge of security, did you get periodic reports from
23 various concerns that were employed or utilized by Gulf

1 Reston concerning their activities?

2 A All companies that we employed, and at the

3 time we had our own employees, we required daily reports

4 of what went on.

5 Q Were you ever made aware of anyone trespassing

6 on the roof of the Chimney House Road project?

7 A No.

8 MR. LAWSON: Your Honor, I would have to

9 object. I think the question is leading and I

10 think it is a violation of the hearsay rule.

11 THE COURT: Yes, but he said he never was

12 made aware of it. I will have to overrule your

13 objection.

14 Q (Mr. Towner continuing): Were you ever made

15 aware, Mr. Burke, of any injuries sustained by any

16 persons as a result of trespassers on the roof of the

17 Chimney House Road project?

18 MR. LAWSON: I think it is leading the

19 witness, if your Honor please.

20 THE COURT: I'll overrule your objection.

21 WITNESS: So far as I have ever been informed,

22 with exception of the incident in question, there

23 had been no injuries due to trespass on any roof,

1 including the Chimney House Road.

2 Q On the day in question, September 7, 1970,

3 were there means available whereby tenants could

4 communicate with the security patrol, directly or

5 indirectly?

6 A With the security patrol, no. With a

7 representative of Gulf Reston, yes.

8 Q Would you explain to the Jury how that could

9 be done?

10 A On July 4 of 1970 we moved our corporate office

11 into another location. At that time we consolidated all

12 telephones in Reston on one switchboard and had off

13 premise extension to all apartment projects and all the

14 other activities.

15 We connected two lines to an answering service,

16 that's the Herndon-Reston-Sterling Answering Service in

17 July, 1971.

18 If people called Gulf Reston, Incorporated they

19 called on one line, which happened to be 471-4810 and

20 the answering service answered and said, "Gulf Reston".

21 Maybe they wanted a salesman, maybe they wanted an

22 apartment; maybe they wanted something else.

23 If they wanted the emergency service which dealt

1 with tenants in the apartments, possibly home owners,
2 because this was also the answering service for Reston
3 Air Conditioning Corporation, they called 471-4825, and
4 the same answering service answered it.
5 This answering service had a radio to call the
6 duty man and inform him of the nature of the call and
7 location, so that he could respond.
8 We had from May 15 to October 15 - -
9 MR. LAWSON: From when, I'm sorry?
10 WITNESS: May 15th to October 15.
11 MR. LAWSON: What year is he talking about?
12 WITNESS: From 1966 until 1972, twenty-four
13 hour coverage.
14 It just happened that we have an air conditioning
15 company that has to be manned twenty-four hours
16 a day by a person who is competent for handling the
17 normal type apartment and industrial emergencies and
18 is the first response in an emergency call.
19 THE COURT: But you indicated May 15 to
20 October 15, which year are you speaking of?
21 WITNESS: Each year from 1967 to the present.
22 THE COURT: Oh, I see, that particular time
23 is of each year?

1 WITNESS: Yes, sir.

2 Q (Mr. Towner continuing): Were these phones

3 in working order September 7, 1970?

4 A Yes, sir.

5 Q To your knowledge Mr. Burch, was Gulf Reston,

6 or any of its agents or employees aware that the Gilsonite

7 paint had been left on the roof of the Chimney House

8 Road project prior to September 7, 1970?

9 A To my knowledge, I was not aware and none

10 of my employees informed me that they were aware.

11 Q During the course of your role as security,

12 Director of Security, you say that there were charges

13 filed for trespassing?

14 A Yes, sir.

15 Q What type of charges were they? Where were

16 the charges filed?

17 A Well, adults, with adults we went to McLean

18 before a Justice of the Peace; with juveniles, we came

19 down here some place.

20 MR. LAWSON: Your Honor, again I would have

21 to object to the same line of questioning. We

22 have gone into what they have done, but as to

23 follow-up, the follow-up as to what they did, who

1 was charged, what they were charged with, the
2 details of that, I don't see what the bearing is
3 on the issues we have here today.
4 THE COURT: I don't think the charges which
5 they made, if they made charges would be relevant
6 to this proceeding.
7 MR. TOWNER: I am not asking that, your Honor,
8 I am trying to indicate the nature of the charge.
9 I can rephrse the question more simply.
10 Q (Mr. Towner continuing): Were criminal charges
11 charged against these individuals that were apprehended?
12 A I don't know whether prosecuting for trespass is
13 criminal or not. That is what we - - I just went down
14 and told them what happened and filled out the papers.
15 Now, what the Justice of the Peace and the
16 juvenile people did, I don't know.
17 Now, I don't know whether that is considered
18 criminal or not.
19 MR. TOWNER: That's all the questions I have.
20 THE COURT: Cross examine?
21 MR. LAWSON: Yes, your Honor.
22
23

1 CROSS EXAMINATION

2 QUESTIONS BY MR. LAWSON:

3 Q Mr. Burch, the work that Prospect Industries

4 was doing on the roof at Chimney House Road, you were

5 aware that that work was in progress?

6 A Yes.

7 Q And is it fair to say that you knew they had

8 been working on those roofs for quite some period of time?

9 By that I mean at least a week or longer, isn't

10 that correct, prior to this incident?

11 A I knew that they had been working on the roofs

12 in Chimney House area for quite some time.

13 Actually, we had done several roofs in that

14 area from, I believe, June on.

15 Q All right. June, July, August, September, you

16 are talking about three to four months you had knowledge

17 that employees of Prospect Industries were working on

18 th. roof?

19 A Various roofs, yes.

20 Q Would it be fair to say that you had seen this

21 yourself, that you had been by and seen tools and so forth

22 and were aware of the fact that they were working?

23 A Yes.

1 Q Now you mentioned earlier that you - - I
2 assume you never went up actually on the roofs yourself,
3 is that correct?
4 A No, I did not.
5 Q So as to what they had up on the roof, you are
6 saying, that you of your own knowledge don't know.
7 A No.
8 Q Now, you heard Mr. Fordyce who is one of your
9 employees, he works for Gulf Reston, is that right?
10 A He is a Gulf Reston employee.
11 Q You heard him state that he was aware of the
12 ladder being up against the building for two to three
13 days prior to the incident?
14 A That's right.
15 Q You heard him state that?
16 A That is what he said, yes.
17 Q You heard him also state that he was asked by
18 at least one of the witnesses to take the ladder down
19 prior to the incident, isn't that right?
20 A That's what his testimony was.
21 Q Did he ever report that to you?
22 Did Mr. Fordyce ever mention the fact to you
23 that the ladder was there?

1 A No, Mr. Fordyce did not report to me.

2 Q He never did report that to you?

3 A Pardon me?

4 Q I'm sorry.

5 A When I say report, he didn't report in a

6 supervisor - employee sense to me; he didn't communicate

7 to me his request for any type of action.

8 His direct superior was the resident manager

9 at Heron House, whose name was Beth Bains, all of his

10 reporting was to her.

11 Q All right. And you heard him state that he

12 told Beth Bains about this?

13 A Yes.

14 Q And she was the one that he was responsible to?

15 A Correct.

16 Q Now Mr. Burch, you mentioned about the emergency

17 number and the answering service that you had, and

18 specifically, I don't recall the exact dates, but I think

19 you said that it was July to October that you had, you

20 particularly had the twenty-four hour answering service,

21 is that correct?

22 MR. TOWNER: I believe the testimony was - -

23 THE WITNESS (Interrupting): In July, 1970,

1 July 4, 1970.

2 Q (Mr. Lawson continuing): Right.

3 A (continuing): - - we moved our corporate

4 offices, and as of that date, these two lines were put

5 into effect.

6 Q July and it ran to October?

7 A No, it's continuing, it's still answering.

8 Q Well, didn't you mention that for purposes of

9 air conditioning service that you had a separate line?

10 A No, we have a duty man on twenty-four hours a

11 day, seven days a week from May 15 to October 15.

12 Q I see.

13 A From October 15 to May 15 we don't have twenty-

14 four hour a day, seven day a week coverage, we have

15 something less than that.

16 Q Now, you had one man on duty, is that what you

17 are saying, twenty-four hours a day?

18 A There was one man on duty twenty-four hours a

19 day - -

20 Q (interrupting): From May until October.

21 A (continuing): - - from May 15 to October 15,

22 at least. Other people might have been on duty in addition,

23 but a guaranteed one.

1 Q What was his function? To work on the air
2 conditioning?
3 A His function was to take care of the air
4 conditioning plant in respond to emergency calls.
5 Q Now, you heard Mrs. Rogers state that on the
6 date this incident occurred she called the answering
7 service and she got a recorded answer.
8 Have you at any time used that type of an
9 answering service where it would be a recorded answer
10 that the calling party would hear?
11 A Prior to July 4, 1970, we had a recorder
12 on the emergency number where, if th man was out on
13 another call, it picked it up, so that he could get the
14 message when he got back.
15 This was the type that says - -
16 Q (interrupting): Well, what I am asking is - -
17 MR. TOWNER: Let the witness finish his answer.
18 MR. LAWSON: Well, he has answered the question.
19 MR. TOWNER: Well, I think he is entitled to
20 finish his answer.
21 MR. LAWSON: I simply asked him if he had the
22 recording on call and if he used that, your Honor.
23 I asked him if that was the type of service and if

1 they ever had that in effect, and he said yes,
2 that is what the question was.
3 MR. TOWNER: I don't think that is the
4 answer at all. I think he is entitled to give
5 a clear answer, if your Honor please.
6 MR. LAWSON: Well, I think on redirect
7 examination if he wants to go into it, he can,
8 but I think I am entitled to cross examine him.
9 MR. TOWNER: But you are not entitled to
10 have your own answer, Mr. Lawson.
11 MR. LAWSON: I am entitled to have him answer
12 my question.
13 THE COURT: All right, I will have no argument
14 between counsel.
15 I don't think he has finished his answer,
16 Mr. Lawson and I am going to entitle him to
17 finish his answer.
18 MR. LAWSON: The only question I ask your
19 Honor was whether they had that type of service
20 in effect.
21 THE COURT: And he is trying to tell you what
22 they had. I think he can tell you what kind of
23 service he had.

1 Q (Mr. Lawson continuing): Did you have that
2 type of service in effect?
3 MR. TOWNER: Your Honor, I want him to answer
4 the previous question, if your Honor please.
5 MR. LAWSON: Your Honor, I am going to give
6 the witness the opportunity if Mr. Towner will
7 stop interrupting me.
8 MR. TOWNER: Well, I am going to interrupt
9 because I want the Court Reporter to read back
10 the last question that Mr. Lawson asked him
11 and let the witness answer that question.
12 MR. LAWSON: I think the witness has
13 answered the question.
14 THE COURT: I think he has answered it. Go
15 ahead.
16 Q (Mr. Lawson continuing): What I asked you
17 Mr. Burch, was whether or not you ever had this type
18 of recorded answering service in effect, and I believe
19 your answer was yes, is that correct?
20 A Prior to July 4, 1970, on the emergency
21 number, we had a recorded answering service which stated,
22 when the call went through, that this was the Reston
23 Mechanical Service, and that at the sound of the tone

1 if they would leave their name and telephone number,
2 it would be responded to as soon as the man returns.
3 Q All right, sir. Now on Labor Day, did you
4 have this type of service in effect at that time?
5 A No.
6 Q You are stating what Mrs. Rogers stated is
7 not correct, is that what you are telling us?
8 A That is correct, I am stating that she is
9 in error.
10 Q Right. What you are telling us is that what
11 you had in effect at this time was a separate contractor,
12 as I understand. In other words, it was not an
13 employee of Gulf Reston, is that correct?
14 A That's correct.
15 Q So whatever you have learned, you have learned
16 from them, isn't that correct?
17 In other words, you didn't know this of your
18 own knowledge as to what was actually being done on
19 September 7, isn't that correct?
20 A I know our telephone, I make the deals with
21 the telephone company - - are tied into her switchboard,
22 and in that respect, I knew that she was connected.
23 Q What I am saying sir, is that the answering

1 service was not an employee of Gulf Reston, isn't that
2 correct?
3 A That's correct.
4 Q And you had been told by somebody else that
5 that was what the service was that they had in effect on
6 Labor Day isn't that right? In other words, it didn't
7 come through you, to you from one of your employees at
8 Gulf Reston?
9 A I don't quite understand what you are saying.
10 I know - -
11 THE COURT: If you don't understand the
12 question, let him ask another question that
13 you do understand. Don't attempt to answer any
14 question that you don't understand.
15 Q (Mr. Lawson continuing): Let me rephrase the
16 question.
17 As I understand what you are saying is that
18 the parties that were reponsible for giving this
19 emergency answering service, was a separate individual
20 entity. In other words, it was a separate corporation,
21 individual, group of persons, or what?
22 A Yes.
23 Q (continuing): - - not a Gulf Reston employee,

1 isn't that correct?

2 A They were responsible for answering the

3 telephone that was called when somebody called the

4 emergency service, yes.

5 Yes, there was another, not corporate entity,

6 it was an individual, I think, who was responsible for

7 answering that telephone.

8 Q And not a Gulf Reston employee?

9 A That is correct.

10 MR. LAWSON: Your Honor, I would move to

11 strike his answer with regard to what was the

12 practice on this particular day, because obviously

13 it would be hearsay.

14 Those parties would be available as to what

15 practice was actually in effect at this time.

16 This gentleman has only been informed,

17 possibly from other persons, and not even a

18 Gulf Reston employee.

19 I think it is the practice and procedures

20 that are internal in the corporation. I think

21 possibly as to knowledge and so forth, that

22 would be one thing, but he is talking about the

23 actions of someone else who is not a party and not

1 even an employee.

2 For that reason, I move to strike his answer.

3 THE COURT: I'll overrule your objection.

4 I think he is in a position to know what type of

5 service was being used.

6 He is responsible for seeing that these

7 matters are taken care of. I'll overrule your

8 objection.

9 MR. LAWSON: I'll except to the Court's

10 ruling.

11 Q (Mr. Lawson continuing): Now Mr. Burch,

12 you have stated that you had previously - - strike

13 that. You have stated that you had private guards over

14 a period of time, a period of years actually, and you

15 had Burns Agency and also you had your own employees,

16 and then at the time this incident occurred, you had

17 an outfit called K-9, or whatever their name was, isn't

18 that correct?

19 A Yes.

20 Q And the K-9 was a private sub-contractor, isn't

21 that correct?

22 A That's correct.

23 Q And you say you knew these people didn't really

1 have any authority, in terms of making an arrest and
2 what not?
3 A That is correct.
4 Q I think your answer was on direct examination
5 that you knew, over a period of time, that this
6 handicapped you in trying to protect the property and
7 the lives of people and so forth in the Lake Anne area,
8 isn't that correct?
9 A That's correct.
10 Q And you had known that for quite some period
11 of time, that this was a handicap to your operation?
12 A Correct.
13 Q All right. Now, just talking about the general
14 village area, or the Lake Anne area as shown on these
15 photographs, and particularly photograph Plaintiffs'
16 Exhibit Number 1, I'm talking about the area down below,
17 this entire area (indicating) would it be fair to say
18 Mr. Burch you had knowledge for a long period of time
19 that this was an area where people did congregate and
20 walk around this area, isn't that true, the Plaza area?
21 A That is correct.
22 Q That was the whole concept, was to encourage
23 people to be there and to walk around the area, and to be

1 in the Plaza area, isn't that correct?

2 A That is correct.

3 Q And so, Gulf Reston for a long period of time

4 had knowledge of the fact that there would be people

5 walking around and being on the sidewalks, coming and

6 going in and out of the shops and so forth, isn't that

7 true?

8 A That is correct.

9 Q Now, you also were asked, Mr. Burch, about

10 the possibility, the question as counsel phrased it,

11 the possibility of somebody climbing from a window onto

12 the roof.

13 Do you personally have any knowledge of any

14 individual ever having done that in this area, I'm

15 talking about the Chimney House Road apartments.

16 A No, I did not personally see anybody climb

17 from a window onto the roof or from a planter onto the

18 roof.

19 Q Right, sir. Did anyone ever report to you the

20 fact that somebody had climbed up onto the roof from

21 the window?

22 A No.

23 Q So, to your knowledge, you know of no one then,

1 isn't that true that ever gained access to the roof
2 from climbing from a window?
3 A No.
4 Q All right. And as I understand it then the
5 one way, or the main way that you had knowledge of,
6 and this would be prior to this incident was climbing
7 up onto the planter, I think is the way - -
8 A (interrupting): Yes.
9 Q (continuing): - - onto the roof?
10 MR. TOWNER: Your Honor please, I would object
11 to the question on this basis, that I think Mr. Burch
12 has indicated that he, of his own personal
13 observation, has never seen anyone get up on the
14 roof.
15 Now, I think he has testified that there
16 are ways, a ladder, the planter and through the
17 window.
18 Mr. Lawson uses the phrase knowledge. I
19 think there is an implication that knowledge is
20 being used as observation, that whatever knowledge
21 Mr. Burch has of people being on the roof is
22 obviously hearsay, because he saw none of it
23 by his own testimony.

1 THE COURT: He had testified that it had
2 been reported - - the knowledge came to him by
3 way of reports, in other words. You are saying
4 that by virtue of his knowledge, he can't say
5 he saw it with his own eyes?
6 MR. TOWNER: No, I am saying that the question
7 isn't proper, in that it implies observation.
8 The witness has stated that he didn't
9 observe anybody personally go up on the roof.
10 THE COURT: It might be a question of
11 sematics, so I will sustain the objection.
12 You might rephrase the question.
13 MR. LAWSON: Your Honor, I am not talking
14 about what he actually observed himself, I am
15 talking about his knowledge. Counsel has gone
16 into that issue, and in this particular incident,
17 that is very important as to what knowledge the
18 corporation had.
19 THE COURT: Well, I think you can ask him how
20 this came to his attention, in other words.
21 He is complaining of the use of the word
22 knowledge.
23 I'll sustain the objection on that basis and

1 ask you to rephrase your question.

2 Q (Mr. Lawson continuing): Well, you were advised

3 by your own employees, were you not sir that one of the

4 - - probably the primary way that unauthorized persons

5 had gained access to the roof was by climbing up onto

6 the planter and going up on the roof from there, isn't that

7 correct.

8 A That is correct.

9 Q Now, hold up this photograph if you will, and

10 I am showing you Plaintiffs' Exhibit Number 9 and ask

11 you if that photograph represents that planter that

12 you are referring to?

13 A That is a picture of the planter.

14 Q Point to it if you would please.

15 (Witness indicates.)

16 Q Come down in front of the Jury please, I think

17 it would be helpful.

18 A This light colored area is the planter. There

19 are stairways, you can just see the edge of them

20 here (indicating) coming up to this level.

21 This is the single apartment level (indicating)

22 and this is the passageway (indicating) underneath.

23 They walked up here (indicating) stepped up here

1 (indicating), then it was reported to me that they
2 could reach, and this distance between here and
3 here (indicating) is about five feet, they could reach
4 up to the coping and pull themselves up.
5 Q All right. Now, as I understand it, you had
6 that knowledge prior to Labor Day weekend, is that
7 correct?
8 A That's correct.
9 Q Now, you mentioned, gaining access by a ladder.
10 Do you know of any other means, was it ever reported
11 to you, any other means of access to the roof, was it
12 ever reported to you any other means the way these
13 unauthorized persons ever got up on the roof?
14 A No, no reports of anyone seeing anybody getting
15 up on the roof any other way.
16 Q Other than through these means here?
17 A That is correct.
18 MR. LAWSON: That's all the questions I have,
19 your Honor.
20 THE COURT: Redirect?
21 MR. TOWNER: No, sir, I believe that is all.
22 (Witness is excused.)
23 THE COURT: Let's take about a ten minute recess.

1 WHEREUPON AT THIS POINT IN THE PROCEEDINGS
2 AND AT 11:35 A.M. A TEMPORARY RECESS
3 WAS DECLARED AFTER WHICH TIME AND AT
4 12 NOON, THE FOLLOWING PROCEEDINGS WERE
5 HAD OUT OF THE HEARING OF THE JURY.
6 THE COURT: Gentlemen, on this question of
7 pecuniary loss, taking up a few cases, Pugh
8 versus Yearout, 212 Va. 591, which attempts
9 to define the word pecuniary loss and the
10 word dependent, it says that - - it's
11 interpretation is that it is dependency
12 in the sense of being dependent upon someone,
13 however, it could be partial or it could be
14 total.
15 So therefore, we have in this instance,
16 testimony that she was married to him, they
17 were living in the apartment together, which
18 certainly would be a partial dependence, and
19 I think he would have a right, the Defendant
20 would have a right to come in and to call her
21 as a witness, for the purpose of showing just
22 how much dependency there was, and what the
23 extent of that dependency was.

1 So I will permit you to call her for that
2 purpose.
3 MR. TOWNER: Your Honor suggested that at
4 the time of our conference that there may be
5 some stipulation. All I am going to ask
6 Mrs. Rogers is what were her earnings, over
7 the period of time, you know, average earnings
8 in the two or three years prior to her husband's
9 death, and did the family utilize those earnings
10 for the support, for the overall support, and
11 I think I am stuck with whatever she tells me.
12 I'm sure she is going to tell the truth,
13 but whatever her average earnings were. I
14 presume that her answer was that they used the
15 totality of the family income for family needs.
16 THE COURT: It might be best to call her and
17 put her on the stand, because Mr. Lawson may want
18 to cross examine her with respect to your questions.
19 MR. TOWNER: Okay. All I am suggesting is that
20 if I am correct in my assumption, then we can do it
21 by stipulation.
22 MR. LAWSON: Well, I think if you are going into
23 that type of questioning, then I think she certainly

1 has the right to explain possibly what that money
2 was used for. And as your Honor inferred, this
3 is apparently what that case said.
4 THE COURT: This is a case at 212 Va. a very
5 recent case.
6 MR. LAWSON: I don't object to what her income
7 is, obviously, but I think he should call her and
8 give her an opportunity to explain what that money
9 was used for.
10 Further though I do think the Court should
11 advise the Jury that the legal duty of the husband
12 to support his wife is an absolute duty, it is
13 not a qualified that if she makes X number of
14 dollars, that he doesn't have to contribute over
15 and above that certain amount.
16 I don't want the Jury to be confused to
17 think that just because this lady had enough
18 energy and interest to work, that that in any
19 way takes away from his responsibility to take
20 care of her.
21 THE COURT: Well, this case pretty well goes
22 into the case of dependency and says that it is
23 a question of the dependency as such, in other words,

and so I think the Jury would have the right to weigh whatever evidence she may give with respect to her income and her income and how the income was used, as to whether or not she was partially dependent, not at all dependent or totally dependent, so I think I would grant him the right to call her.

MR. LAWSON: As long as she would have the right to explain, is all I am asking.

THE COURT: Oh, sure, in other words, I think she has the right to tell.

This is the only thing, he is calling her to show that she was not totally dependent upon him, and I think he has the right to do that.

MR. TOWNER: I have one more question that I want to ask Mr. Burch - -

THE COURT (interrupting): Well let's get the Jury down.

MR. TOWNER (continuing): Then I'll ask Mrs. Rogers.

THE COURT: Let's bring the Jury down.

WHEREUPON THE FOLLOWING WAS IN THE PRESENCE OF THE JURY

1 THE COURT: Members of the Jury, counsel
2 has requested leave to ask additional questions
3 of this witness.
4 ELMER C. BURCH (recalled)
5 REDIRECT EXAMINATION
6 QUESTIONS BY MR. TOWNER:
7 Q Mr. Burch, in the cross examination of you,
8 Mr. Lawson asked the question as to your knowledge of
9 the difficulties, the lack of ability to arrest people
10 which caused your security forces over the period of
11 time that you were there, and you acknowledge yes, you
12 were aware of that.
13 Now, my question to you sir, is what steps,
14 if any, did you personally take to correct that situation
15 prior to September 7, 1970?
16 A I personally contacted the Captain of the McLean
17 Sub-Station on numerous occasions as part of Gulf Reston;
18 talked to Colonel Durr of Fairfax County Police and
19 some of his associates or subordinates.
20 Q Without going into - - did you make any
21 requests of them?
22 A We requested additional police protection for
23 Reston, over the course of - -

1 Q (interrupting): Prior to September 7th.

2 A Yes. Over the course of '65, '66, '67, '68 and

3 '69, I think they increased their patrols from spasmatic

4 to one police patrol in the Reston area on all shifts.

5 We also had a meeting with Colonel Durr,

6 Bob Horan, Ed Prichard, Esquire, the fourth I think was

7 Supervisor Martha Pennino.

8 Q What was the purpose of that meeting?

9 A To discuss property concept, ways of dealing

10 with vandalism, trespass, that type of thing in the

11 context of the Reston community and the type of

12 ownerships that are in Reston.

13 MR. TOWNER: That's all I have. Thank you.

14 THE COURT: Anything further?

15 MR. LAWSON: I have no further cross examination.

16 (Witness is excused.)

17 MR. TOWNER: I'll call Mrs. Rogers.

18 MRS. CHARLES ROGERS,

19 having been previously sworn was called for examination

20 and testified as follows:

21 DIRECT EXAMINATION

22 QUESTIONS BY MR. TOWNER:

23 Q Mrs. Rogers, prior to your husband's death, were

1 you employed?

2 A Yes.

3 Q How long had you been employed?

4 A I got my real estate license in January of

5 '64, and started part time selling real estate, and

6 went to full time when I went to work for Reston in

7 the summer of '64.

8 Q Could you tell the members of the Jury what

9 your average earnings were, say for the two or three years

10 prior to your husband's death, average per year?

11 A Well, of course they varied considerably in

12 real estate, but I would say somewhere just under

13 eight thousand.

14 Q I see. Now in terms of the activities that

15 you and your husband undertook during those years

16 immediately preceeding his death, how were the funds that

17 you earned utilized?

18 A My money was never used to support the family.

19 It went directly into a savings account. For the four

20 years prior to my husband's death, it paid for the

21 education of our daughter at Duke University.

22 Q That was your earnings?

23 A Yes, and some of his. Whatever went into the

1 savings paid for hers, but my salary was never touched
2 for living, it was strictly savings and toward Judy's
3 education.
4 MR. TOWNER: I see. Thank you. I have
5 no further questions.
6 CROSS EXAMINATION
7 QUESTIONS BY MR. LAWSON:
8 Q Mrs. Rogers, your daughter, as I understand
9 it, had gotten through college just prior to your
10 husband's death?
11 A That's right.
12 Q Would you tell us what you and your husband
13 planned to do with the money you were earning during
14 that period of time?
15 A You mean after she graduated?
16 Q That's correct.
17 A Well, we talked about it after we got home
18 from her graduation. Charles was very happy that she had
19 gotten her degree. He said that if she wanted to go
20 on graduate work, why, that was her decision, but from
21 now on, my money that went into a savings account, we
22 could use - - he was starting - - that year he was
23 starting to get three weeks vacation, and he said from

1 now on we were going to take our three weeks vacation
2 altogether and we were going to travel, and that any
3 money I had made would go for our travelling.
4 Q You meantioned your average income during that
5 roughly two year period prior to your husband's death of
6 $8,000 a year.
7 Are you talking in terms of gross or net that
8 you earned?
9 A That was gross.
10 Q That was gross? Then that would be something
11 less than that, the net?
12 A Right.
13 Q Do you recall approximately what that was?
14 A No, I don't. I mean, there were so many different
15 types of expenses and we had a man that worked that all
16 out for us.
17 There was at least a couple thousand dollars of
18 that that came off of that, I guess, for expenses.
19 MR. LAWSON: That's all th questions I have.
20 THE COURT: At the time of your husband's death,
21 was your daughter living at home?
22 WITNESS: Yes, sir.
23 THE COURT: Was he supporting her in any way?

1 WITNESS: Yes.

2 THE COURT: In what form?

3 WITNESS: Well, she lived with us and she

4 had a part time job at Reston in the restaurant

5 downstairs and she wasn't making much money, so

6 he was paying for her room and board, things like

7 that, clothes, while she was waiting to find out

8 if she could get into graduate school.

9 We gave her a car for graduation.

10 THE COURT: Is she going to graduate school?

11 WITNESS: No, she finished - - she couldn't

12 get - - she tried to get into veterinary school, and

13 found out there is an awful lot of prejudice that

14 didn't get her in, but she went to Fairfax Hospital

15 instead and studied medical technology.

16 She is now a medical technologist in clinical

17 pathology at NIH.

18 THE COURT: And she is self sustaining at this

19 time?

20 WITNESS: Right.

21 THE COURT: And has been for how long?

22 WITNESS: Since the middle of August she started

23 earning her own money.

1 Actually, she started earning it and I told
2 her to save a little. She moved into her own
3 apartment the first of December, and has really
4 been on her own, I guess, since the first of
5 December.
6 THE COURT: And your husband indicated that
7 had she wished to go to graduate school he would
8 see that she went there?
9 WITNESS: Well, he said he would help her,
10 but he said - - there are so many - - she could
11 get a student loan to help her, there were a lot
12 of ways, there were a couple of scholarships and
13 things like that that were - - there were a lot of
14 ways you could do it that wouldn't put the full
15 burden of carrying graduate school on us.
16 THE COURT: You all have any other questions?
17 MR. LAWSON: In view of the questions that the
18 Court has asked, yes.
19 FURTHER CROSS EXAMINATION
20 QUESTIONS BY MR. LAWSON:
21 Q You said that at the end of the year she
22 moved into her own apartment?
23 A Yes, December 1st.

1 Q December 1st of '72?

2 A Right.

3 Q Who supported her and maintained her up until

4 that time?

5 A Me, after Charles' death.

6 MR. LAWSON: Right. That's all the questions

7 I have.

8 THE COURT: How about you Mr. Towner, do

9 you have any further questions?

10 MR. TOWNER: No, sir.

11 THE COURT: You may step down.

12 (Witness is excused.)

13 MR. TOWNER: That is the Defendants' case,

14 your Honor.

15 THE COURT: Any rebuttal evidence?

16 MR. LAWSON: Mrs. Rogers, would you just

17 turn around and go right back to the stand, I

18 just want to ask her one short question.

19 PLAINTIFFS' REBUTTAL EVIDENCE

20 MRS. CHARLES J. ROGERS,

21 having been previously sworn was recalled for rebuttal,

22 and testified as follows:

23

1 DIRECT EXAMINATION

2 QUESTIONS BY MR. LAWSON:

3 Q Mrs. Rogers, you heard Mr. Burch state on
4 direct and also on cross examination in regard to the
5 phone service that was available, the emergency phone
6 service that was available, lines were available and persons
7 could be contacted on emergency basis, and I asked him
8 whether or not your statement was correct that you had
9 gotten a recorded answer, and that this occurred on
10 September 7th.

11 Now, I ask you again, will you tell us exactly
12 what occurred when you did attempt to call and use the
13 emergency service?

14 A When I called - -

15 Q (interrupting): I'm talking now about before the
16 incident of the paint being poured on your husband, and
17 of course, also afterwards.

18 A Now, before, I think it was - - I don't remember
19 exactly, but I think it was - - the only person I tried
20 to call before, when I saw the boys up on the roof and
21 thought I should report it, the only person I tried to
22 call was Miss Bains and I did not get any answer at all,
23 so I let it go.

1 After the accident happened, Charles told
2 me to stay home and take care of things and get everything
3 done that could be done. Then I tried to call the
4 emergency service, and I did try to call the switchboard
5 and I tried to call Mr. Burch. I didn't get any answer
6 when I called Mr. Burch, but when I called the other two
7 I got a recording. It said, "Due to the Labor Day holiday,
8 these offices are closed. Please call after 8:00 a.m.
9 Tuesday."
10 I know that for a fact, because if I had just
11 gotten a human being to tell, to answer me back, to tell
12 me point blank that they couldn't do anything, I would
13 not have been near as upset as I was getting a recording
14 that I couldn't even talk back to.
15 MR. LAWSON: That's all I have.
16 THE COURT: Any cross examination?
17 MR. TOWNER: No.
18 THE COURT: Any additional rebuttal evidence?
19 MR. LAWSON: No, that is all the evidence I
20 have.
21 (Witness is excused.)
22 WHEREUPON THE FOLLOWING WAS OUT OF THE
23 HEARING OF THE JURY

1 THE COURT: Are you planning to renew
2 your motion at this time?
3 MR. TOWNER: Yes, sir.
4 THE COURT: I assume it would be on the same
5 basis and grounds as before?
6 MR. TOWNER: Yes, sir. I would say I would
7 think it would be quite similar.
8 In terms of Prospect Industries, I would again
9 reiterate the point I made then.
10 THE COURT: Then I am going to deny your
11 Motion, and I will note your exception.
12 WHEREUPON THE FOLLOWING WAS IN THE
13 HEARING OF THE JURY
14 THE COURT: Members of the Jury it's about
15 the time for taking the noon recess and we will
16 take it now. During this time we, counsel and I
17 will be working on the Instructions this will take
18 some time so the Jury will be excused until two-
19 thirty.
20 WHEREUPON AT THIS POINT IN THE PROCEEDINGS
21 AND AT 12:45 P.M. THE NOON RECESS WAS DECLARED
22 AFTER WHICH TIME AND AT 4:10 P.M. THE FOLLOWING
23 PROCEEDINGS WERE HAD OUT OF THE HEARING OF THE JURY

BOBBY McCUNE BLOCK, SHORTHAND REPORTER, 5600 MARBLE ARCH WAY, ALEXANDRIA, VIRGINIA 22310

* * * * *

[Volume II, p. 91]

1 situation.

2 THE COURT: 13 was granted.

3 14 was granted as amended.

4 MR. TOWNER: If your Honor please, this

5 Instruction 14 and mine, or my Instruction F,

6 are offered only on the basis of the refusal of

7 the other Instruction which dealt with the duty

8 of Prospect Industries - - Gulf Reston, Incorporated.

9 Since I don't believe that the duties are as

10 the Court has indicated, I must object to the

11 Instruction on that basis.

12 THE COURT: Defendants' Instruction A was granted

13 without objection.

14 B was withdrawn.

15 C was granted without objection.

16 D was granted with exception.

17 MR. TOWNER: I believe the word sole cause is

18 the proper phraselogy, and particularly where we

19 are dealing with the medical probability, I believe

20 sole cause is the proper language.

21 THE COURT: E was granted.

22 F was granted.

23 MR. TOWNER: I want to except to it in that

Instruction F is only given because the Court has refused H and I which dealt with the duty of Gulf Reston and Prospect Industries, and since I don't believe it is the law that these are the duties, I have to object.

THE COURT: And then F was granted without exception.

H was refused.

MR. TOWNER: H is in a non-typed form and word for word reads:

"The Court instructs the Jury that the Defendant Gulf Reston, Inc. was under no duty to the Plaintiff to prevent persons from going onto the roof of the apartment house in question."

Wagman versus Baccheciampe, 143SE2d 907, a Virginia case.

I object to the refusal on the grounds that it is a correct statement of the law.

THE COURT: I was refused.

MR. TOWNER: I reads that:

"The Court instructs the Jury that Gulf Reston Inc. was under no duty to protect a

1 tenant against criminal activities of
2 third persons."
3 I believe again that is a correct statement
4 of the law.
5 THE COURT: J was granted as amended.
6 WHEREUPON AT THIS POINT AND AT 4:35 P.M.
7 THE FOLLOWING PROCEEDINGS WERE HAD IN
8 THE HEARING OF THE JURY
9 THE COURT: Members of the Jury, the Court
10 will read you the Instructions. Now, this is
11 the law that is to be applied to the facts that
12 you heard from the witnesses on the witness stand.
13 After I have read the Instructions, of course,
14 counsel will have the final argument. After they
15 have finished arguing, of course, then you will
16 retire to the Jury Room. You will take with you
17 the Instructions and all the Exhibits.
18 The first thing you should do when you get
19 to the Jury Room is to appoint one of yourselves
20 to act as foreman. That person will lead you in
21 all your deliberation, and will sign the verdict
22 form. You will be given after you have reached
23 your verdit. Of course, your verdict must be

* * * * *

[Volume II, p. 111]

1 INSTRUCTION NO. F

2 The Court instructs the jury that the def ndants,
3 Gulf Reston, Inc. and Prospect Industries Inc. are not
4 responsible for the acts of the trespassers who allegedly
5 poured paint on Mr. Rogers unless in the exercise of
6 reasonable care they should have reasonably foreseen that
7 said acts would occur. If you believe by a preponderance
8 of the evidence that in the exercise of reasonable care the
9 defendants or either of them should have foreseen
10 that the trespassers would go on the roof and pour
11 paint on Mr. Rogers, then and in that event they are
12 liable to Mr. Rogers' estate only if Gulf Reston, Inc.
13 failed to exercise reasonable care to prevent the
14 trespassers from going on the roof and Prospect
15 Industries, Inc. failed to exercise reasonable care in
16 removing paint from the roof which resulted in paint
17 being poured on Mr. Rogers.

18 If the plaintiff fails to prove by a preponderance
19 of the evidence that the pouring of the paint by
20 trespassers on the roof was foreseeable, and that the
21 defendant Gulf Reston, Inc. did not exercise reasonable
22 care to prevent trespassers from going on roof, then
23 the plaintiff is not entitled to recover from Gulf Reston, Inc.

If the plaintiff fails to prove by a preponderance of the evidence that the pouring of the paint by trespassers on the roof was foreseeabl , and that the defendants, Prospect Industries, Inc. failed to exercise reasonable care in removing paint from the roof which resulted in paint being poured on Mr. Rogers, then the plaintiff is not entitled to recover from Prospect Industries, Inc.

LDM

[Volume II, p. 112]

* * * * *

[Volume II, p. 117] REFUSED

INSTRUCTION NO. H

The Court instructs the jury that the defendant Gulf Reston, Inc., was under no duty to the plaintiff to prevent persons from going onto the roof of the apartment house in question.

Wagnor v Baccheciampe

143 SE 2d 907

LDM

REFUSED

1 INSTRUCTION NO. I

2 The Court instructs the jury that Gulf Reston,
3 Inc. was under no duty to protect a tenant against
4 criminal activities of 3rd persons.

5 LDM

6

7 [Volume II, p. 118]

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

* * * * *

[Volume II, p. 179]

THEREAFTER, AND AT 7:55 P.M. THE FOLLOWING PROCEEDINGS WERE HAD

THE CLERK: Members of the Jury, have you reached a verdict in this case?

FOREMAN: Yes, we have.

THE CLERK: Is the verdict unanimous?

FOREMAN: Yes, it is.

THE CLERK:

VERDICT (#5)

We, the jury, on the issue joined in the case of Mrs. Charles J. Rogers, Exectrix, Estate of Charles J. Rogers vs. Gulf Reston, Inc. and Prospect Industries, Inc. find for the plaintiff against:

Gulf Reston, Inc., only

~~Prospect Industries, Inc., only~~

~~Gulf Reston, Inc. and Prospect Industries, Inc.~~

(Select one of the abov - strike out others) and fix damages as follows:

I Under Paragraph 1 of instruction 3

Amount: $25,000

To be proportioned as follows:

"We the jury on the issue joined in the case of Mrs. Charles J. Rogers, Executrix of the Estate of Charles J. Rogers, Deceased v Gulf Reston, Incorporated and Prospect Industries, Incorporated find for the plaintiff and against

Gulf Reston, Incorporated only

~~Prospect Industries, Incorporated only~~

~~Gulf Reston, Incorporated and Prospect Industries, Incorporated~~

(select one of the above and strike out others)

and fix damages as follows:

I. Under papargraph 1 of Instruction 3 amount $25,000 to be proportioned as follows:

to Mrs. Charles J. Rogers $20,000

to Judith Rogers, daughter $5,000.

II. Under paragraph 2 of Instruction 3, amount $50,000 to be proportioned as follows:

to Mrs. Charles J. Rogers, $50,000

to Judith Rogers, daughter _____.

III. Under paragraph 3 of Instruction 3, amount $538.31.

/s/ William W. Clardy

Foreman.

To Mrs. Charles J. Rogers $20,000

To Judith Rogers, Daughter $5,000

II Under Paragraph 3 of Instruction 3

Amount: $538.31

/s/ William W. Clardy
Foreman

THE COURT: Members of the Jury I assume by your verdict you find there is no liability on the part of Prospect Industries and you found against Gulf Reston, only?

THE FOREMAN: That is so.

THE COURT: I will have to ask you to return to the Jury Room and bring back a verdict with respect to Prospect Industries only, on the other form.

THE FOREMAN: I'm sorry, your Honor, I neglected to do that.

WHEREUPON THE JURY RETIRED, AFTER WHICH, UPON THEIR RETURN THE FOLLOWING PROCEEDINGS WERE HAD

THE CLERK: "We, the jury, on the issue joined in the case of Mrs. Charles J. Rogers, Executrix, Estate of Charles J. Rogers vs. Gulf Reston, Inc. and Prospect Industries, Inc.

find for the Defendant, Prospect Industries, Inc.

/s/ William W. Clardy
Foreman

THE COURT: Is there any objection to the form of verdict?

MR. TOWNER: Not that I am aware of at this time, your Honor.

THE COURT: Do you wish the Jury polled?

MR. TOWNER: No, sir.

THE COURT: Members of the Jury you will be excused at this time. Thank you very much for your services.

WHEREUPON AT THIS POINT AND AT 8:10 P.M., THESE PROCEEDINGS WERE CONCLUDED

[Volume II, p. 181]