

# Lessons in Employment Law (and Cooking Grits) From "My Cousin Vinny"

by Dennis J. Merley - Monday, March 18, 2019



Hollywood often gains inspiration from real life situations but how often does real life mirror classic scenes from the movies? That happened recently when a federal appeals court invoked the iconic cross-examination scene from "My Cousin Vinny" to rule in favor of the National Labor Relations Board (NLRB) in an unfair labor practice [case](#).

Here's how this gritty courtroom drama unfolded.

## Setting the Scene

Novato Healthcare Center challenged the NLRB's finding that they unlawfully fired four union supporters just two days before a union election. The validity of their challenge rested on the credibility of their supervisor's testimony that she spotted the four sleeping on the job.

Employees on the night shift at Novato's long term care facility are allowed to sleep during their 10-minute breaks and also during their 30 minute meal breaks. Supervisor Teresa Gilman testified that she arrived for work one morning between 3:50 and 4:00 a.m. (long after meal breaks were taken) and began making the rounds of the nursing stations. She said she visited each of the three stations two or three times and found the four employees sleeping continuously. She even took a photo of two of them that was timestamped at 4:21 a.m.

Based on Gilman's findings, the facility terminated all four employees. The union filed unfair labor practice charges with the NLRB, claiming that the four employees were known supporters of the union and had been targeted because of it. The NLRB found against the company, leading Novato to appeal to the US Court of Appeals for the D.C. Circuit.

## Action!

Cut to “My Cousin Vinny,” a 1992 film about 2 young men from New Jersey standing trial in a small town Alabama courtroom for murder. Attorney Vinny Gambini (played by Joe Pesci) was cross-examining witness Bill Tipton on how much time had passed from the time that he saw Vinny’s nephew Bill enter the Sac-O-Suds convenience store and the time he heard a gunshot. Tipton had testified that it was only five minutes because he saw Bill enter the store as Tipton was beginning to make himself a breakfast of eggs and grits and that he heard the gun shot just 5 minutes later, leading to the following **exchange**:

*Q. Well, how much time was they in the store?*

*A. Five minutes.*

*Q. Five minutes? Are you sure, did you look at your watch?*

*A. No.*

*Q. Oh, oh, I’m sorry, you testified earlier that the boys went into the store, and you had just begun to make breakfast, you were just ready to eat, and you heard a gunshot. So obviously it takes you five minutes to make breakfast.*

*A. That’s right. . . .*

*Q. Do you remember what you had?*

*A. Eggs and grits.*

*Q. Eggs and grits. I like grits too. How do you cook your grits? You like ‘em regular, creamy, or al dente?*

*A. Just regular, I guess.*

*Q. Regular. Instant grits?*

*A. No self-respecting Southerner uses instant grits. I take pride in my grits.*

*Q. So, Mr. Tipton, how could it take you five minutes to cook your grits, when it takes the entire grit-eating world twenty minutes?*

*A. I don’t know. I’m a fast cook I guess.*

*Q. I’m sorry. Are we to believe that boiling water soaks into a grit faster in your kitchen than in any place on the face of the earth?*

*A. I don’t know.*

*Q. Well, perhaps the laws of physics cease to exist on your stove? Were these magic grits? . . .*

*Q. Are you sure about that five minutes? . . .*

*A. I may have been mistaken.*

## Take Two

Back to Gilman, who testified that while driving to work, she stopped at a stop sign and saw a clock reading 3:50 a.m. She arrived shortly thereafter, made her rounds and saw the four sleeping employees. On cross examination, the NLRB’s attorney asked Gilman what she did after looking at the clock at 3:50 and learned that she:

- drove three more blocks to the facility, stopping at another stop sign along the way;
- parked her car and walked into the facility;
- walked to her office where she logged on to her computer and checked her emails

- walked to the kitchen where she checked the temperature logs for a refrigerator, a walk-in refrigerator and a walk-in freezer; then checked all the labels and dates of the items in the refrigerators;
- walked to and through the break room, where she used the restroom and then collected some union-opposition campaign flyers;
- walked back to her office and read the flyers;
- walked down the hallway toward Nursing Station 4, peeking in rooms along the way; and
- finally arrived at Station 4 where she first encountered the sleeping employees.

The union's attorney then got her shot and, summoning up her "inner Vinny", engaged in the following cross examination of Gilman:

*Q. So it's your testimony that it only took [10] minutes to drive from the 7-Eleven [near the first stop sign], park, to go into your office, to log onto your computer, to check your email, go to the bathroom, use the restroom, clean up the break room a little bit of these flyers, and go through all the procedures that [you] went through . . . in your kitchen.*

*A. [S]o roughly I would still say about five — it wasn't that long, you know.*

*Q. It wasn't that long. . . . So I'm trying to figure out from that time, driving, going through another stop sign, parking, getting in, unlocking your door, putting everything down, everything you did between there and when you first saw people sleeping, are you sure it was only ten minutes or less? Or could it have been 15 or 20 minutes?*

*A. No, it could not have been 15 or 20 minutes . . . .*

*Q. Isn't it true you're just not sure how long it took you to get from the stop sign to [] Station 4?*

*A. Well, to me it seemed like everything that I was doing, it seemed like about 10 minutes had passed.*

*Q. But you never looked at a clock to make sure that's correct?*

*A. Correct.*

While not quite as dramatic as Vinny's grits-related ambush, it was enough for the Appeals Court to explicitly cite the critical cinematic exchange set forth above and then concur with the earlier ruling that Gilman's testimony about the timing of her activities was "unlikely and unbelievable due to the length of time she allocated to each task she completed" before happening upon the sleeping employees.

The Court therefore upheld the determination that the company had failed to prove that they were not motivated by anti-union animus in firing these four employees.

## Bottom Line

We learn three very important lessons from this case:

1. Employers need to do a quality investigation of all alleged wrongdoing that might lead to discipline and termination;
2. Employers should think very critically about how their evidence will hold up to intense scrutiny; and
3. “My Cousin Vinny” remains a delightful movie that is well worth watching again.

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