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Officer Robert Brown.

ALSO PRESENT:
DTI Court Reporter
Ben Stanson, Videotechnician
Steven Grant, Videotechnician
Attorney Paul Esposito

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1 case.
2 And what I confirmed basically what
3 the lawyers told me on Friday -- and again, I
4 appreciate the lengthy discourse on it, which I
5 needed or I wouldn't have made you stay that late.
6 According to Ziarko, it's
7 well-established that willful and wanton acts may be
8 found where the tortious conduct was intentional.
9 The Contribution Act is basically an
10 equitable doctrine. Actually, the restatement second
11 of torts characterizes conduct as either negligent,
12 reckless or intentional.
13 IPI 14.01, reads "When I use the
14 expression 'willful and wanton conduct' I mean a
15 course of action which shows actual or deliberate
16 intentional of harm or if not intentional shows an
17 utter indifference or conscious disregard for the
18 person's own safety and the safety of others."
19 Okay. So after reading through all of
20 this, I see that the defendants are entitled to bring
21 this contribution act.
22 It was Jackson's intentional action.
23 It wasn't the person seeking contribution, which is
24 different from the Ziarko situation.

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1 THE COURT: I want to thank you all again for
2 giving me a course on Friday about The Contribution
3 Act and willful and wanton and intentional and all of
4 those things.
5 What I did over the weekend was read
6 back through The Contribution Act, read back through
7 the IPI, a better edition than the book that I had,
8 which is contemporary. And I read through a number
9 of cases that were frankly mentioned in the IPI.
10 And as Mr. Rogers had pointed out one
11 of the prime cases is the Ziarko, Z-i-a-r-k-o, versus
12 Sue Line Railroad 161, IL App., 267 1994 case; The
13 Gerill, G-e-r-i-l-l, Corporation versus J.P.L.
14 Hargrave Builders 128, IL 2nd 179, 1989 case; Henry
15 versus St. John Hospital 138 -- I'm bragging about
16 the cases I read -- 138 IL App. 553, a 1990 case.
17 The Boston Material Service Corporation, 125 IL. App.
18 3rd 1053, a 1984 case; the Joe and Dan International
19 Corporation versus U.S. Fidelity, 178 IL App. 3rd
20 741, which is a 1988 case, Macnning versus Barton,
21 it's a 1994 case, 264 IL App. 3rd, 952. The Burke
22 versus Rothchild Liquor Mart, 1992 case, 148 IL app
23 2nd 429. And The People versus Brochman,
24 B-r-o-c-h-m-a-n, case 148 IL 2nd 260, which is a 1992

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1 I realize that Illinois courts are
2 kind of split over when both people have committed
3 intentional torts or when the contribution seeker has
4 committed intentional torts act, so that's not the
5 case here, so they're allowed to bring their
6 contribution act claim. What else do I need to say
7 about that?
8 I need to make sure it confirms to
9 what is required in the IPI. Okay. And I need to
10 make sure that I read it separately from the other
11 jury instructions. I'm not going to take a break or
12 anything, but I'm going to pause, but we need to
13 explain maybe what's going on in a sentence or
14 something just so it differentiates between -- I can
15 imagine a lot of our jurors will gleaned over
16 listening to all these jury instructions.
17 I which I could copy Judge Donnelly
18 and read it like a Shakespearian sonnet or something,
19 but I don't have the Chutzpah to try to do that this
20 morning.
21 MR. ESPOSITO: Or the time.
22 THE COURT: Or the time it would have been fun.
23 I have a couple other issues to deal
24 with.

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1 MR. ROGERS: I understand you're ruling and I
 2 don't want to argue the issue.
 3 THE COURT: Thank you so much for letting me
 4 borrow this.
 5 MR. ROGERS: Absolutely.
 6 THE COURT: I requested to buy us one.
 7 MR. ROGERS: This is a two-and-a-half page
 8 short memorandum and Motion to Strike the
 9 Contribution Claim. It more or less memorializes
 10 what we were arguing on Friday.
 11 THE COURT: Okay.
 12 MR. ROGERS: It cites two things which were not
 13 referenced by the Court now, which I think go into
 14 not whether you're going to allow the contribution
 15 claim, which I understand your ruling, but how you
 16 apply it.
 17 First off, it cites the contribution
 18 statute at Section 4, which is a section that the
 19 defendants had not cited to you and a section the
 20 Court did not reference.
 21 I quoted it in my motion, and what it
 22 says is rights -- it's entitled "Rights of Plaintiff
 23 Unaffected."
 24 And it reads:

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1 "A plaintiff's right to
 2 recover the full amount of his judgment
 3 from any one or more defendants subject
 4 to liability and tort for the same
 5 injury to person or property or for
 6 wrongful death is not affected by the
 7 provisions of this act."
 8 It's my expectation at some point
 9 after judgment -- should we be fortunate enough to
 10 get a judgment -- that they would attempt to apply
 11 any apportionment to that judgment.
 12 And Section 4 Of the Contribution Act
 13 says that the plaintiff's judgment against the
 14 defendant toward tort fees is not affected; meaning,
 15 that the contribution recovery merely says where that
 16 defendant can go seek contribution for what they owe.
 17 Again, it doesn't apply to they would
 18 claim -- go to the contribution to the Estate of
 19 Joseph Jackson.
 20 I also cite Unzicker v. Kraft Food
 21 Ingredients court case at 203 IL 2nd 64.
 22 In essence, it reiterates in that case
 23 that nothing in The Contribution Act affects a
 24 plaintiff's right to recover full damages from any

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1 one or more defendants.
 2 So I just wanted to memorialize that
 3 and the motion seeks a ruling at some point that,
 4 again, any result they obtain on the contribution
 5 claim does not apply or affect our ability to recover
 6 any verdict we should attain from Allied-Barton.
 7 MR. ESPOSITO: Your Honor, I did so the
 8 research too over the weekend. And here's our memo.
 9 And it says a couple things. Of
 10 course, you now ruled that the contribution claim is
 11 viable, which means, Joseph Jackson is on the verdict
 12 form.
 13 The question --
 14 MR. ROGERS: I think she said on the
 15 counterclaim verdict form.
 16 MR. ESPOSITO: Yeah, the counterclaim verdict
 17 form, exactly.
 18 The questions, I think we were left
 19 with when we left on Friday evening were what are we
 20 doing about Chambers and Brown. And this memo sets
 21 out, I think pretty clearly, with Supreme Court case
 22 law, with Appellate Court case law, that a master and
 23 servant are deemed to be one. They're unified.
 24 They're considered consolidated and unified.

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1 And that, therefore, comes down and
 2 applies. Remember the 600-17 instruction that we
 3 tendered. That is fully supported by the law.
 4 Everything -- if Brown and Chambers
 5 are found to be negligent, Allied-Barton has to eat
 6 that negligence, so the Court has recognized that we
 7 are a unified one.
 8 That supports, number one, the 600-17
 9 instruction that we tendered and I have given you
 10 alternates because you asked for alternates, but that
 11 supports to that point.
 12 Larry is correct that The Contribution
 13 Act does not prevent him from collecting his full
 14 judgment.
 15 THE COURT: Right.
 16 MR. ESPOSITO: If we are going to be found
 17 viable, we are not going to be able to say "You can't
 18 collect it from us" except -- except Section 2-1117,
 19 which is applicable -- which is applicable, which
 20 post-dated The Contribution Act. And which says "in
 21 fairness to a minimally responsible person" and this
 22 is the case that Larry cited.
 23 "In fairness to a minimally
 24 responsible person." And the legislature defined

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1 minimally responsible is under 25 percent.
 2 In fairness to that person, if their
 3 proportionate share of liability is under 25 percent,
 4 then their liability is several only. And we will
 5 owe the full amount of a several judgment against us,
 6 which is our proportionate share. That's how the law
 7 operates.
 8 The laws recognized even as to Section
 9 2-1117 that when there is agency, when there is a
 10 concert of action, those parties in those
 11 relationships are deemed as one party for purposes of
 12 2-1117. Fault cannot legally be a portion between
 13 them, ergo is one.
 14 So it all comes back to the
 15 proposition that we were talking about on Friday
 16 night, and that is on that verdict form, the
 17 contribution form will show two people to whom fault
 18 must be allocated: AlliedBarton, which must be
 19 responsible for all the negligence that would be
 20 established as to itself, Chambers and Brown. That's
 21 the one party. The other party is Joseph Jackson.
 22 And that, that determination will then affect Section
 23 2-1117.
 24 MR. ROGERS: Brief reply. I don't believe

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1 MR. ROGERS: He's attempting to apply a
 2 different statute utilizing The Contribution Act.
 3 I don't want to the waste the Court's
 4 time because again.
 5 THE COURT: I can consider that.
 6 MR. ROGERS: After the verdict.
 7 MR. ESPOSITO: We wanted to give you the law
 8 because we wanted to show you what we believe is
 9 going to be the result after the verdict.
 10 MR. ROGERS: So I did want to say to the Court
 11 again that if you use an example of why it's
 12 illogical: Contribution actions as we, as you have
 13 read over the weekend and knew, can be pursued
 14 independent of --
 15 THE COURT: Right.
 16 MR. ROGERS: -- of an existing action.
 17 So to believe that logic would say
 18 that the plaintiff can have a trial, obtain a verdict
 19 against the defendant, and some six months or a year
 20 later when some contribution result is obtained,
 21 they're successful on a contribution claim, they can
 22 come back to plaintiffs' claim and apply that for
 23 purposes of apportionment. And that's not the law.
 24 That's illogical.

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1 you're taking the position that has to be decided
 2 pre-verdict?
 3 MR. MOTZ: We believe it does.
 4 MR. ESPOSITO: Well, I think what I'm saying
 5 is, ultimately, this Court is the going to see the
 6 verdict and it's going to have to enter a judgment.
 7 And when the verdict comes down, if our judgment is
 8 under 25 percent, you're now aware of how that's
 9 going to be applied. That clearly is going to be
 10 applied after the verdict is over and after the
 11 verdict is rendered because that's the first time we
 12 are going to know a portion.
 13 MR. ROGERS: All right. We disagree that the
 14 percentage as determined on The Contribution Act
 15 would be applied either by the jury or by the Court
 16 post-verdict.
 17 Again, statute is plain that The
 18 Contribution Act determinations do not -- they
 19 un-affect the plaintiff's right to recover. It's
 20 statutory. They cited no case law to support what he
 21 just argued, not one case.
 22 MR. ESPOSITO: I --
 23 MR. ROGERS: Let me finish.
 24 MR. ESPOSITO: I'm sorry.

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1 But what the contribution claim is
 2 doing is saying for whatever degree of liability we
 3 as the defendant have to the plaintiff, you share in
 4 that and you owe us X percentage as determined to be
 5 the cases.
 6 The other thing I would point out is
 7 the defendant cherry-picks who they want to sue in
 8 contribution, which alters, manipulates and changes
 9 the percentages. As an example, by not including
 10 Brown, by not including Sidney Chambers, and just in
 11 a hypothetical the MB Realty defendants, their
 12 percentage of the responsibility -- although, they're
 13 not liable because of the settlement -- there's no
 14 determination as to what percentage, if any, they
 15 contributed to the incident, so the percentages
 16 because simply by virtue of who they pursue in
 17 contribution are skewed and altered. And that's
 18 discussed in the case law.
 19 So the Court again will have a chance
 20 to delve into that issue potentially after the
 21 verdict. I think we agree it's not something that
 22 has to be decided now.
 23 MR. MOTZ: We don't actually agree on that,
 24 your Honor. This is black letter law. And Counsel's

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1 cases that they cite also stand exactly for what we
 2 are saying. 211-17 says if we are less than 25
 3 percent, we only pay severely for our share.
 4 Counsel is misplaced in talking about
 5 cherry-picking. The NACA and MB Real estate
 6 defendants settled extinguishing any right that we
 7 have to go after them.
 8 But under the law, we are entitled to
 9 the setoff of their settlement. That's the remedy
 10 that we get under the law.
 11 This has to be decided because
 12 judgment is going to enter probably very shortly
 13 after, if not minutes after, the verdict is returned.
 14 This is black letter law 211-17.
 15 Counsel is not reading everything in
 16 concert. The judgment after 211-17 applies is what
 17 he's entitled to.
 18 So if we get a 10 percent fault
 19 allocation, we are only severely responsible for
 20 10 percent of the total judgment. That's the way the
 21 law reads. That's the effect of having a third-party
 22 defendant in this matter.
 23 And I believe we need an answer to
 24 this right now. And I know Mr. Esposito has a couple

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1 of points he wants to make.
 2 MR. ESPOSITO: Your Honor, it is not our
 3 position that we opine a defendant can go to trial,
 4 decide to bring in the loop and decide later to bring
 5 contribution actions and allocate fault in a way
 6 that's pleasing to him and now go back to the
 7 plaintiff and say "Hey, Mr. Plaintiff, I don't owe
 8 you all that money, you know, that the jury told you
 9 that I owed you."
 10 A defendant, like a plaintiff, has to
 11 make certain decisions. If a defendant feels that he
 12 is minimally responsible for the total fault in the
 13 case, then defendant better be filing a contribution
 14 claim, and so this jury can resolve all these issues
 15 together.
 16 Now -- so -- and that's what we have
 17 done here. We filed a contribution claim and allowed
 18 the jury to resolve all of these things together.
 19 Now, Larry says that we are
 20 cherry-picking. But I have to remind the Court that
 21 Joseph Jackson was a party defendant --
 22 THE COURT: Oh, I know. I remember all this.
 23 MR. ESPOSITO: -- until the start of trial and
 24 then all of a sudden he's out of the case.

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1 Now, Larry makes the other point: Why
 2 haven't we sued -- why haven't we included NACA.
 3 Well, plaintiff settled with NACA. And once there
 4 was a settlement made in good faith -- you entered
 5 the good faith finding -- we can cannot by
 6 operational law bring a counterclaim against NACA.
 7 THE COURT: Right.
 8 MR. ESPOSITO: Now, why haven't we brought a
 9 contribution claim against Brown and Chambers? The
 10 which law I cited in the memo makes that very clear;
 11 we cannot file a contribution claim against our
 12 servant. That is the Illinois law.
 13 So who are we left with? We are left
 14 with Joseph Jackson precisely the guy who they sued
 15 in contribution. And Allied name goes on the form,
 16 Joe Jackson's name goes on the form. That's it.
 17 MR. ROGERS: I disagree. He just gave me his
 18 brief, your Honor. They're agreeing that a judgement
 19 gets entered -- I'm sorry -- that a verdict will be
 20 rendered based upon your ruling that the counterclaim
 21 will be considered and then I think we just have to
 22 decide about their --
 23 THE COURT: Well, when I see the percentage --
 24 I don't know. None of us knows what the jury is

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1 going to do in this case.
 2 MR. ROGERS: Right.
 3 THE COURT: But from everything that I read Mr.
 4 Esposito is correct.
 5 Counsel, believe me, I spent the
 6 weekend reading this stuff.
 7 Another thing I see in this is it
 8 wasn't brought timely. I disagree with you on that.
 9 In a lot of the cases that I read, it was brought
 10 during the trial of the action that was considered
 11 timely, so since I see that here.
 12 I'm trying to phrase this right. I'm
 13 agreeing with defense on this issue of the
 14 percentage. We will see what happens in terms of
 15 what the jury verdict is.
 16 MR. ROGERS: On the position of applying the
 17 percentage to the verdict?
 18 THE COURT: Yeah.
 19 MR. ROGERS: We have not even brief --
 20 THE COURT: You want to brief that. I will
 21 give you a chance to brief it then. Okay.
 22 MR. ROGERS: He just handed me a brief
 23 apparently argue --
 24 THE COURT: We have got time. I'm letting you

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1 know kind of what my reading is, but I will read a
2 brief and you've changed my mind before.
3 MR. ESPOSITO: Your Honor, we tendered you an
4 alternate verdict form. And what the verdict form
5 does -- I have given it to Larry. I gave it to him
6 on Saturday.
7 What the verdict form does is over our
8 objection, it conforms the verdict form to how the
9 plaintiffs have set it up in terms of the elements of
10 damage and of the itemization in terms of the form
11 all that kind of stuff.
12 But if you remember, plaintiffs' form
13 do not have a contribution determination on the
14 verdict form. Our form has added that.
15 THE COURT: And that's what I'm going with.
16 MR. ESPOSITO: Has added that.
17 So plaintiffs will have their
18 itemizations in the order the they want it. We will
19 have the contribution information as we believe it
20 should be. I understand the Court has now ruled.
21 THE COURT: Yes.
22 There was an issue on Friday about
23 whether plaintiffs were planning to play the portion
24 of the 911 tape. Is that a mute issue? You were

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1 going to check.
2 MR. ROGERS: I did. And we do want to play a
3 portion of the 911 tape.
4 THE COURT: Counsel, I'm not going to allow it.
5 I can't do it.
6 MR. MOTZ: Thank you, your Honor.
7 THE COURT: And the reason is even though it
8 was admitted into evidence --
9 MR. ROGERS: Can I tell you what I wanted to
10 play?
11 THE COURT: Counsel, I already -- you can tell
12 me, Counsel, but I'm not wavering -- is not only did
13 I allow the five minutes that I allowed, then I
14 allowed something to be replayed, so I already
15 extended it. And as much as defense -- because it's
16 something that was admitted into evidence and can't
17 be replayed because of the prejudicial effect and the
18 affect on the jury hearing that.
19 Again, just tell me what you want to
20 tell me.
21 MR. ROGERS: Are you saying the basis of your
22 ruling that we cannot play a portion of the 911 tape
23 is the prejudicial effect?
24 THE COURT: Basically, yes.

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1 MR. MOTZ: I think it's also the motion
2 consistent with your ruling our motion in limine, I
3 want to say 55, but I could be wrong on the number.
4 THE COURT: Let me listen to Mr. Rogers on
5 that.
6 MR. MOTZ: Sure.
7 MR. ROGERS: What we largely wanted to play is
8 the absence of gunfire during the time period that
9 the door was pulled off to show that Mr. --
10 THE COURT: Brown.
11 MR. ROGERS: -- Brown was not fired upon.
12 So it's largely absence of gunfire.
13 And I would think that out of anything that would be
14 less prejudicial and less, you know, alarming to the
15 jury. So it was mainly for purposes of that.
16 So our plan was to play what a gunshot
17 sounds like on a recording and then to play about 45
18 seconds after the doors come off to show that there
19 are none.
20 So, again, it would be largely
21 silence, but for the mumblings of Ms. Murphy -- not
22 mumblings --
23 THE COURT: I know.
24 MR. ROGERS: But for her statements on the

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1 record. So, again, I don't think that's prejudicial.
2 THE COURT: Wasn't that the section that
3 you -- what was the section that I allowed five
4 minutes.
5 MR. MOTZ: They played it twice.
6 THE COURT: I thought that was it.
7 MR. MOTZ: That was it. And they played that
8 section twice.
9 MR. ROGERS: Well, excuse me, Counsel. She's
10 asked me a question.
11 It's our position that your Honor
12 allow us to play for impeachment purposes the absence
13 of any gunfire during that time period.
14 And we cannot for the first time --
15 well, we needed to present that in evidence in our
16 case in chief.
17 So in order to argue the case, we
18 would like to present the evidence from our case in
19 chief in front of the trial to the jury, so that's
20 why we think it would be proper to allow us to play
21 that in closing again. It's about a minute total
22 maybe less than a minute to show that there were no
23 shots fired around that timeframe.
24 MR. MOTZ: They played it twice, your Honor.

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1 We object.
2 THE COURT: Counsel, I'm not going to let you
3 play it.
4 MR. MOTZ: Thank you.
5 THE COURT: I'm sorry.
6 Do we have anything else.
7 MR. ESPOSITO: I think we --
8 MR. ROGERS: I think we should look
9 specifically at the instruction that he proposed to
10 make sure that we --
11 MR. MOTZ: We haven't addressed the 60.01
12 instructions.
13 MR. ESPOSITO: There were a few instructions we
14 didn't get to yet.
15 MR. ROGERS: Well, the verdict form is the most
16 important one. So let's look at the verdict form.
17 MR. ESPOSITO: Okay.
18 THE COURT: Somebody needs to let your office
19 know that they can't play the 911 tape.
20 MR. ROGERS: Kitty can send that e-mail.
21 THE COURT: Okay. Off the record.
22 (Whereupon, there was an
23 off-the-record discussion.)
24 THE COURT: Let me ask you this: In this case

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1 when The Contribution Act starts, wouldn't it make
2 sense to put a caption above it called "The
3 Contribution Act."
4 MR. MOTZ: That's not the way the IPI reads.
5 THE COURT: It's not the way it reads.
6 MR. ESPOSITO: If you look at IPI 614.
7 THE COURT: Okay. I have to look at it.
8 MR. ESPOSITO: It's one --
9 THE COURT: It's one without any kind of
10 delineation?
11 MR. ESPOSITO: Right.
12 THE COURT: Okay. I will stick with the IPI,
13 Guys.
14 MR. ROGERS: You wanted all the signature lines
15 on one page?
16 THE COURT: Yeah.
17 MR. ROGERS: We will modify this to make it
18 fit.
19 THE COURT: And stapled to one verdict form so
20 we don't have a floating verdict form.
21 MR. ROGERS: Yeah, and do you want "Verdict
22 Form A" continued at the top? You asked me to do
23 that.
24 THE COURT: Yeah, I do.

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1 MR. ROGERS: You do. Okay.
2 THE COURT: Mr. Kotin, has anybody had a chance
3 to look at this?
4 MR. ROGERS: That's ours, right?
5 MR. ESPOSITO: Just to confirm here because my
6 notes are sketchy on this. These top three names on
7 the top, that's how you wanted them to show, right?
8 THE COURT: Yes.
9 MR. ESPOSITO: Okay.
10 MR. ROGERS: This is Plaintiff's Instruction
11 No. 40. It's actually the Court's Instruction
12 No. 40; meaning, we are drafting something that
13 conforms to the Court's instructions, and it lists
14 the we have reviewed it collectively.
15 THE COURT: Okay.
16 MR. ROGERS: And Counsel agrees with the
17 language. We need to get the signature lines on the
18 same page, so there will be some space adjustments.
19 MR. ESPOSITO: And just for the record that
20 with the understanding that we objected to some of
21 those line items, and that's the --
22 MR. ROGERS: The Court's instruction.
23 MR. ESPOSITO: Right.
24 MR. ROGERS: Over your objections and over our

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1 objections.
2 MR. ESPOSITO: Right.
3 THE COURT: Come on in. Okay.
4 Now, that we have taken care of the
5 verdict form, we have given you the 617 instruction
6 and we did alternates on that because you had
7 requested them. Okay. They're coming up. Okay.
8 Grab some chairs.
9 If you go back to our Instruction 44.
10 .44A, 44B, the 44 was what we were talking about on
11 Friday.
12 THE COURT: Okay.
13 MR. ESPOSITO: This is on our packet, your
14 Honor.
15 THE COURT: I just don't have the numbers on
16 the bottom.
17 MR. ESPOSITO: You want to use mine.
18 THE COURT: You want to switch?
19 MR. ESPOSITO: Actually, that is your set.
20 Those are defense instructions.
21 THE COURT: Okay. I thought I already -- I
22 didn't rule on this.
23 MR. ROGERS: I thought you denied it.
24 THE COURT: I thought I granted it in terms of

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1 The Contribution claim.
2 MR. ROGERS: Just so the record is clear this
3 instruction says "if you find for the plaintiffs and
4 against the defendants in returning your verdict as
5 to the contribution claim of AlliedBarton and Robert
6 Brown, you will consider AlliedBarton, Robert Brown
7 and Sidney Chambers as one party."
8 So we object to that because it
9 contradicts the other instructions that say they're
10 separate parties to be treated separately and
11 independently. We think this is confusing, even as
12 drafted and should be denied.
13 MR. ESPOSITO: Your Honor, I think the
14 instruction on the separateness dealt with the
15 plaintiffs.
16 What you're looking -- 44 is what I
17 tendered. 44A, which is immediately behind it, is an
18 alternate that you requested. 44B is also an
19 alternate that you requested. You didn't request it
20 specifically, but you said "Give me some alternates."
21 THE COURT: I know, I said that. For purposes
22 of Contribution Act, 44 is correct. That's what I
23 have.
24 MR. ESPOSITO: Okay. Then we'll stay with 44.

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1 MR. ROGERS: 44? Not 44A.
2 THE COURT: Correct.
3 You guys as long as you're moving
4 chairs, there might be some --
5 MR. MOTZ: No, no. The deputy just said no
6 more moving chairs. She said it's a liability for us
7 lawyers to be moving chairs. She's calling the
8 office of the building. They're going to bring
9 people up.
10 THE COURT: Okay. What if they're on wheels?
11 MR. MOTZ: What Dan and I have done is I was
12 taking chairs from the hallway and the deputy told me
13 to stop.
14 THE COURT: Okay.
15 MR. ESPOSITO: 44, yeah.
16 MR. ROGERS: Your Honor, Mr. Esposito and I
17 were just discussing 44A.
18 THE COURT: Okay.
19 MR. ROGERS: You just referenced 44.
20 THE COURT: 44, right.
21 MR. ROGERS: 44 says "in contradiction to other
22 instructions." 44 says "for purposes of these
23 instructions, you will consider AlliedBarton, Robert
24 Brown and Sidney Chambers as one defendant."

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1 Other areas of the instructions say
2 "that you are to treat and consider these claims and
3 defenses separate."
4 THE COURT: Counsel, I know. This is what we
5 talked about Friday.
6 What I was saying for 44 was that it
7 has to be read in conjunction with The Contribution
8 Act -- I mean, with contribution claim.
9 MR. ROGERS: They are not.
10 THE COURT: It's different --
11 MR. ROGERS: I thought you said on Friday --
12 THE COURT: Okay.
13 MR. ROGERS: -- that they would reference The
14 Contribution Act in the instruction, which he does do
15 in 44A.
16 THE COURT: Let me see.
17 MR. ROGERS: So he qualifies that instruction
18 to only apply to the contribution claim in 44A.
19 THE COURT: You know what, maybe that's the
20 better way to do it.
21 MR. ESPOSITO: Okay. Understanding, of course,
22 that we are not waiving anything under 2-1117. But
23 if this helps them answer the verdict form -- if this
24 helps them to deal with the verdict form, then I

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1 think it can be given as modified.
2 THE COURT: Yeah.
3 MR. ESPOSITO: It is under the contribution
4 series. You know, I recognize that.
5 THE COURT: I know. I know and you guys
6 probably know this, these things are in no special
7 order. There are no page numbers.
8 So when I get them back, they're all
9 out of order, so I wouldn't want something floating
10 that applies to the plaintiff claims. I think it's
11 fair and makes sense to add to the contribution claim
12 on there.
13 MR. ESPOSITO: That was my sense of what you
14 were saying on Friday that you were a little
15 concerned about that aspect of it. I thought that's
16 what --
17 THE COURT: You're right.
18 MR. ESPOSITO: -- you were driving at.
19 MR. ROGERS: So are you granting to 44A over
20 our objection? We object to 44 and 44A, are you --
21 THE COURT: I'm granting 44A over your
22 objection.
23 MR. ROGERS: Okay. And your Honor, this
24 reiterates the point I was making about putting

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1 "contribution claim" at the top of the contribution
 2 portion to delineate that from the other claim. So
 3 then we renew that on Verdict Form A just at the top
 4 you put "contribution claim."
 5 MR. ESPOSITO: I don't think it's necessary.
 6 The IPI doesn't call for it. I think the instruction
 7 makes it clear that we are dealing with the
 8 contribution claim here -- the verdict form, I should
 9 say.
 10 THE COURT: This says: "As to the contribution
 11 claims brought by AlliedBarton."
 12 MR. ESPOSITO: Yeah, that's correct.
 13 THE COURT: No, I'm going to keep that the way
 14 it is.
 15 MR. ESPOSITO: So we have a few more
 16 instructions that you've got them there.
 17 At the end of the instructions, we
 18 tendered some 60.01 instructions.
 19 THE COURT: Okay.
 20 MR. ESPOSITO: I think there is four of them,
 21 that relate to Mr. Jackson's conduct. And as you
 22 know, 60.01 allows the --
 23 THE COURT: The statute.
 24 MR. ESPOSITO: -- us to cite statutes as

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1 they were violated. You struck that from our issues
 2 instructions.
 3 They're now seeking to introduce 60.01
 4 instructions that there has been absolutely no
 5 testimony on whatsoever. And not only that, they
 6 want to introduce them has Court's instructions
 7 referencing them as having the force of law in the
 8 State of Illinois.
 9 So this is highly prejudicial to the
 10 plaintiffs. It is not supported by the evidence in
 11 the case. And it would be error, we would suggest
 12 reversible error, to instruct the jury on the 60.01
 13 instruction criminal statutes in the State of
 14 Illinois. They also are incomplete as presented.
 15 THE COURT: Let me say something, the reason I
 16 didn't allow the post orders and rules and regs in
 17 the jury instructions is because violation of those
 18 is not violation of statutes. It's different.
 19 I know there is some outlier cases
 20 with the specific facts of that case, so that was the
 21 basis of my ruling on that issue.
 22 MR. ROGERS: We didn't submit them as 60.01 as
 23 if those policies, procedures or post orders were
 24 statutes.

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1 evidence.
 2 MR. ROGERS: So the 60.01 instructions, your
 3 Honor, cover issues in areas that were not the
 4 subject matter of the case, not introduced in the
 5 case. These are criminal statutes. Criminal
 6 statutes that should not be introduced before this
 7 jury. They're meant to do nothing but confuse the
 8 jury. As an example, Allied-Barton's Instruction
 9 No. 47 --
 10 THE COURT: Okay.
 11 MR. ROGERS: -- talks about kidnapping.
 12 When has this jury ever heard about
 13 kidnapping?
 14 THE COURT: They have heard "hostage" as you
 15 pointed out over and over and over again. So they
 16 have heard "hostage" so...
 17 MR. ROGERS: This doesn't say "hostage." This
 18 says "kidnapping." So it would lead them to
 19 speculate that this Court is instructing them that in
 20 some way, shape or form a kidnapping is at issue. So
 21 this should be denied. It's conclusive.
 22 You did not want us to reference the
 23 violations of post orders and master security officer
 24 policies and procedures when there was clear evidence

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1 THE COURT: That's true.
 2 MR. ROGERS: We presented them as components of
 3 our 20.01 instruction, which is our claim, our claim
 4 that AlliedBarton violated its own policies and
 5 procedures, which under the case law is proper and
 6 can be considered in determining negligence.
 7 THE COURT: Okay. Let me hear from Mr. Motz.
 8 MR. MOTZ: Your Honor, first the 20.01 issue,
 9 the issues instructions, were correctly ruled on with
 10 Counsel's claim.
 11 With regard to 60.01 instructions,
 12 Counsel -- I think the Court will remember every
 13 single witness from Tenton, Hauri, Kennedy, Brown,
 14 Jenkins, McGoey, they all referenced the various
 15 criminal acts that Mr. Jackson --
 16 THE COURT: Just a second I have to respond to
 17 this. It has to deal with jurors coming in.
 18 MR. MOTZ: Okay. I'm looking through the
 19 testimony. I believe this is -- it was either
 20 Kennedy or Hauri on the 28th talked about kidnapping
 21 in regard to the overall state of mind with regard to
 22 Brown.
 23 MR. ROGERS: Can he read the language just
 24 so --

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1 MR. MOTZ: And specifically I believe 12/01 was
2 McGoey:
3 "Q. Can we agree that
4 Mr. Jackson was a trespasser on
5 the post orders of AlliedBarton?
6 "A. I guess in the classic sense, yes.
7 Once he made his criminal demand, that
8 would be one the lesser included crimes.
9 "Q. And what would be the other
10 crimes?
11 "A. Well, kidnapping. Whatever
12 statues apply in the State of Illinois,
13 when you threaten somebody with a
14 firearm and threaten them with death."
15 This kidnapping has been repeatedly
16 brought up in this trial.
17 The other -- with regard to the other
18 60.01s, it's -- I know the various, including Hauri
19 and Kennedy admitted that he committed murder; hence,
20 why our 60.01 is out there.
21 All of the evidence supports the
22 giving of these 60.01 instructions.
23 REPORTER: Your Honor.
24 MR. MOTZ: All of the evidence in this case

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1 supports giving a 60.01 instructions, which are
2 not -- it's to educate the jury what the criminal law
3 is to show evidence of Mr. Jackson's negligence.
4 All four of these are proper. They
5 are complete with regard to the evidence in this
6 case. They're clear distinct statement of the law.
7 They should be given.
8 THE COURT: Let me read them.
9 MR. ROGERS: Before you read through them, I
10 would suggest you read also the discussion about
11 60.01 instruction.
12 And what it says, your Honor, is, it
13 talks about legislation that affects the standard of
14 care. Okay. The issue the jury is deciding.
15 This jury is not deciding any criminal
16 issues. This jury -- you don't even see any
17 reference whatsoever to the use of criminal statutes
18 in the Illinois Civil Jury Instructions, the IPI Jury
19 Instructions For Civil Cases. It talks about the use
20 of ordinances and statutes for purposes of
21 determining the standard of care. These have no
22 application whatsoever.
23 They draw undue influence from Joseph
24 Jackson and his criminal actions when the jury is not

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1 deciding about his criminal actions. Wholly
2 improper.
3 MR. MOTZ: We would --
4 MR. ROGERS: They also know that they're
5 abbreviated agree. They don't cite the whole
6 statute.
7 MR. MOTZ: Your Honor -- I'm sorry. Are you
8 finished.
9 MR. ROGERS: Yes.
10 MR. MOTZ: With regard to the 60.01
11 instruction, this is commonplace. If it was a
12 traffic accident case --
13 THE COURT: Are you sure this is appropriate to
14 put in a jury trial?
15 MR. MOTZ: Oh, absolutely.
16 MR. ROGERS: It absolutely is not.
17 THE COURT: One of the things that is going
18 through my mind is it's a lesser standard in a civil
19 case --
20 REPORTER: Your Honor, I'm not sure.
21 MR. MOTZ: Your Honor, I believe I was actually
22 speaking at this point.
23 THE COURT: I'm inclined to let it in. Don't
24 let me get reversed on this. I'm saying it's a

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1 lesser standard in a civil case.
2 MR. ROGERS: Right.
3 So these are criminal statutes that
4 have a higher standard, which you're introducing
5 allowing them to reference in a civil case and the
6 jury is not deciding them at all. They have no
7 opportunity --
8 MR. MOTZ: Your Honor --
9 MR. ROGERS: -- to even decide whether there
10 was kidnapping in this case.
11 THE COURT: Let me think about this one.
12 MR. ROGERS: Can you read this, Judge.
13 THE COURT: I have a problem with the murder
14 one, kidnapping one less so.
15 MR. ESPOSITO: If I may say one thing, your
16 Honor, if I could say one thing to add to this
17 conversation?
18 THE COURT: Yeah.
19 MR. ESPOSITO: We are not asking the jury to
20 resolve questions of murder or kidnapping or use of a
21 weapon, and those types of things.
22 What we are saying here by this
23 instruction is the State of Illinois by law has
24 deemed certain things to be very serious in nature,

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1 the very types of things that are involved in these
 2 instructions.
 3 And the jury needs to know that in
 4 order to when they're ultimately allocating fault to
 5 be able to weigh the conduct of Jackson, weigh the
 6 conduct of AlliedBarton.
 7 The conduct is at two different
 8 levels, and that's something that the jury is allow
 9 to take into consideration when it determines what
 10 the ultimate degrees of fault are of each of the two
 11 people on the verdict form.
 12 MR. ROGERS: So, your Honor, the
 13 instruction -- just to read a portion of the
 14 introduction for 60.01, it says:
 15 "Instructions concerning
 16 violations of the statute ordinance
 17 or administrative regulation should not
 18 be given unless the evidence is adequate
 19 to support a finding that that violation
 20 actually occurred." Okay.
 21 There 60.01, in its basic form --
 22 THE COURT: I'm hearing you Counsel.
 23 MR. MOTZ: What are you reading?
 24 MR. ROGERS: I'm reading 47.

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1 There was in force in the State of
 2 Illinois at the time of the occurrence in question a
 3 certain statute that provided that A, a person
 4 commits the offense of aggravated kidnapping when he
 5 or she commits kidnapping and colon dot, dot, dot,
 6 they delete, don't reference 1 through 5, okay. So
 7 it's incomplete.
 8 MR. MOTZ: We can show you the rest of the
 9 statute.
 10 THE COURT: How much is there?
 11 MR. ROGERS: Then lists No. 6, "commits the
 12 offense of kidnapping while armed with a firearm."
 13 And then they bottom, your Honor,
 14 that's important. Read -- the 60.01 statute says if
 15 you decide that Joe Jackson violated the statute.
 16 Counsel just said the jury is not
 17 being asked to decide if they violated it.
 18 The instruction says they are to
 19 consider whether it was violated.
 20 If you decide that Joe Jackson
 21 violated the statute on the occasion in question,
 22 then you may consider that fact together with all
 23 other facts --
 24 THE COURT: Okay.

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1 MR. ROGERS: -- to what extent, if any, Joe
 2 Jackson was negligent. So they want you to consider
 3 the violation of a criminal statute that's incomplete
 4 and deciding whether it was negligent. It's
 5 improper.
 6 THE COURT: Okay.
 7 MR. MOTZ: I know Mr. Esposito wants to say
 8 something, so I'll be brief.
 9 There is no dispute in this case for
 10 these four instructions that Joe Jackson did violate
 11 these statutes. There is no question about that.
 12 Their own experts admit murder. The
 13 evidence is in the case of kidnapping. These are
 14 all -- this is what the evidence shows in the case.
 15 This goes to whether or not Joe
 16 Jackson was willful and wanton. That is the question
 17 the jury is deciding. These statutes color and aid
 18 the jury in determining that question.
 19 If that's what the law states, 60.01
 20 is proper when the evidence supports the giving of
 21 these statutes. And there is no dispute in this
 22 case. All Counsels referenced this during opening
 23 statement. And by "Counsel" I mean plaintiff Counsel
 24 said "murder." And there is no doubt that these are

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1 all enforced.
 2 If Counsel's concern about the
 3 brevity. You know, we can show you the whole
 4 statute. It's specifically when you basically pick
 5 them. When you do this. And it's clear the way
 6 these have been presented, it's what is concordant
 7 with the facts that have been presented.
 8 Over to you.
 9 MR. ESPOSITO: Sure. What I was going to say,
 10 your Honor.
 11 MR. ROGERS: What is this double teaming?
 12 THE COURT: I have had double teaming
 13 throughout this trial on every side except Mr. Kotin.
 14 MR. ESPOSITO: All I was going to say, your
 15 Honor, iis under the statutes, if you look at the
 16 statutes, pick any particular one of those, they
 17 provide various ways in which a defendant could be
 18 found to have violated the statute.
 19 There were some that weren't cited in
 20 there because they're totally irrelevant to this
 21 case. We picked the areas where we believe there was
 22 relevance of the criminal violation, the nature of
 23 the criminal violation to what we're dealing with in
 24 the case. That's why there's those gaps.

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1 I believe the notes on use of 60.01
2 also indicate you don't have to do the whole statute;
3 in fact, you can even paraphrase the statute. What
4 we did here was quoted the relevant portions of the
5 statute. So I think that is okay.
6 You know, the other point is simply,
7 we are not asking any juror to find -- to make a
8 criminal reasonable doubt determination.
9 But I think you can look at the
10 evidence, the videos and hear all the testimony and
11 everything you heard, I think you can say as a
12 threshold matter -- I think we can all say threshold
13 matter -- if Joe Jackson was at 26th and Cal. and
14 was put on trial, he would lose on all of those.
15 THE COURT: Okay. Let me go back.
16 I'm not going to allow them in. And
17 the reason is -- the reason is, not just that they're
18 not complete, but I don't want the jury to get hung
19 up on deciding is this first-degree murder is this.
20 MR. MOTZ: But --
21 THE COURT: That's what -- you know what, I
22 don't want it to be a distraction, Counsel.
23 MR. MOTZ: It's not a distraction and this is
24 absolutely --

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1 THE COURT: I think that it is.
2 MR. MOTZ: It's not.
3 And the example that I used earlier,
4 it is commonplace in negligence cases where there is
5 a violation -- for instance, an automobile accident,
6 I can't tell you how many cases I have seen when the
7 plaintiff's tender a 60.01 instruction under the
8 Illinois Motor Vehicle Code to say you violated the
9 statute, you know, in cases where there is a D --
10 THE COURT: Counsel, that's true.
11 MR. MOTZ: And that's why these should be
12 given. There is no question about it. It's still
13 the same criminal standard.
14 THE COURT: Counsel, I'm not going to give it.
15 MR. ROGERS: Your Honor, your ruling is that
16 AlliedBarton instructions 47, 48, 49, and 50 are
17 denied?
18 THE COURT: Those are the statutes?
19 MR. ROGERS: Yes.
20 THE COURT: Okay. Yes.
21 MR. ROGERS: Paul, I just want to clarify --
22 I'm kidding. I'm kidding.
23 Your Honor, B45.01, I wanted to make
24 sure the Court has that instruction and it's been

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1 given. Plaintiffs' 27 is the one that I believe
2 should be given.
3 MR. ESPOSITO: We give out the 600 series,
4 Larry.
5 I thought the Court ruled when you
6 retire to the jury room, you know, that instruction?
7 I think you gave our instruction on that.
8 MR. ROGERS: But that instruction --
9 MR. ESPOSITO: And you told me to remove the
10 boxes and I removed the boxes.
11 THE COURT: I remember that. But what is the
12 issue? What do we still have?
13 MR. ROGERS: I don't think you definitively
14 determined which instruction on deliberation needs to
15 be given, which is we submitted B45.01 plaintiffs'
16 Instruction No. 27.
17 And I think you have to look at the
18 two instructions and make a definitive instruction.
19 MR. ESPOSITO: Now, we submitted -- I think you
20 have mine, Judge?
21 THE COURT: 45.01, "when you retire to the jury
22 room."
23 MR. ESPOSITO: If you go to my 613.
24 THE COURT: Okay.

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1 MR. ESPOSITO: And as we were saying on Friday,
2 which we believe is still true today because we are
3 dealing with a contribution action also that the
4 cases involve for purposes of the verdict form in the
5 contribution series.
6 THE COURT: All right. I know you said you
7 would take the boxes out. I thought that was kind of
8 interesting. But anyway let's leave it like that.
9 MR. ROGERS: So this instruction that they
10 submitted is improper.
11 As an example, it says --
12 THE COURT: You know what, I think the
13 Plaintiffs' 45.01 -- Counsel.
14 REPORTER: Your Honor.
15 MR. ROGERS: I thought I heard you say you're
16 going to give Plaintiffs' about 45.01, which is
17 Plaintiffs' 27.
18 MR. ESPOSITO: Over our objection, your Honor.
19 And then you're denying our 613?
20 THE COURT: Those are the statutes?
21 MR. ESPOSITO: No, 613.
22 THE COURT: Yes. I'm sorry, guys. Yes, I am
23 denying it.
24 MR. MOTZ: What are they giving?

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1 MR. ESPOSITO: This is the one "when you retire
2 to the jury room," you know, that instruction.
3 MR. MOTZ: Oh, okay. You had the verdict form
4 up. I got confused and scared.
5 MR. ESPOSITO: No.
6 THE COURT: When are you guys going to sit down
7 and decide what order this is all going to come in.
8 MR. ESPOSITO: Here is what I would propose,
9 your Honor --
10 MR. ROGERS: Did you submit a verdict form that
11 was?
12 REPORTER: Your Honor.
13 MR. ESPOSITO: Here's what I would suggest,
14 your Honor, that Larry has an argument to give. I
15 would like to sit down with Kitty, if I can and she
16 and I can conform and fill out the verdict forms with
17 the clean instructions so that --
18 MR. ROGERS: You and I should work out the
19 order.
20 MR. ESPOSITO: The Court can work out the
21 order.
22 THE COURT: I don't want to work out the order.
23 I will approve something or settle a dispute.
24 MR. ROGERS: Okay.

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1 (Whereupon, the following
2 proceedings were had in open
3 court, in the presence and
4 hearing of the jury.)
5 THE COURT: Okay.
6 Good morning, members of the jury.
7 I know you heard all of the evidence
8 in this case, but trial is not quite over. I think I
9 told at the beginning, I don't expect you to remember
10 everything I told you days ago, but at this time the
11 lawyers have an opportunity to make their final
12 arguments to you. Those are called closing
13 arguments. Okay.
14 The lawyers are not giving you
15 testimony, but what they say is not evidence;
16 however, they're going to refer to evidence that you
17 have heard during the course of this trial.
18 Okay. You all sat there and taken
19 notes and paid attention and you will recognize the
20 evidence in this case.
21 And with that, we are ready to start.
22 Plaintiffs go first, and then the Defense.
23 Mr. Power?
24

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1 MR. ESPOSITO: I just want to make sure you had
2 a consolidated packet of your instructions and our
3 instructions.
4 MR. ROGERS: Okay. She wants us to do the
5 order.
6 MR. MOTZ: I think something needs to be done
7 here because Paul is leaving at lunch because he has
8 to catch a flight.
9 THE COURT: I know.
10 MR. ROGERS: You and I can do it. She just
11 wants us to do the order.
12 THE COURT: We'll have some time --
13 MR. MOTZ: I was thinking that he and Kitty can
14 make the first glance and then you and I can sit
15 down.
16 MR. ROGERS: Kitty cannot do the order of jury
17 instructions. She's my assistant.
18 THE COURT: You know, I will approve it. I
19 don't want to run out of time with all the stuff.
20 MR. ROGERS: There should be a break right at
21 lunch or something.
22
23
24

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1 CLOSING ARGUMENT
2 BY
3 MR. POWER:
4 May it please the Court, Counsel, Counsel,
5 Plaintiffs.
6 Ladies and gentlemen of the jury, this
7 is an opportunity where we get to address you and sum
8 up what we believe the evidence has shown.
9 You should base any verdict based on
10 the evidence from the witness stand, as well as the
11 instructions on law the Court will give you at the
12 end of the case.
13 Now, first of all, I want to thank you
14 for your service in this case. It's not easy to give
15 up your life for three weeks or so and come in here
16 and listen to this civil dispute issue.
17 As you can see, this is isn't a
18 criminal case. It's a civil case to resolve the
19 differences.
20 A little history in respect to the
21 right of trial by jury.
22 It started in England after the Magna
23 Carta came over to the States before we became the
24 United States and we had colonies. Each of the

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1 colonies that had a right to trial by jury in the
 2 Constitution. And then at a certain point in time,
 3 the English took away a right to trial by jury in
 4 civil cases.

5 So the Englishmen appointed by the
 6 king would resolve disputes. And you can imagine
 7 what happened when there was a colonist versus an
 8 Englishman and a dispute was decided by a person
 9 appointed by a king. That was in large part the
 10 reason for the revolution; that, and The Stamp Act,
 11 which taxed people without representation into the
 12 colonies.

13 So in April before the revolution in
 14 1776 when Patrick Henry gave his wonderful speech, in
 15 wonderful order where he said "Give me liberty or
 16 give me death." And the English were moved by that
 17 and they sued for peace, but they would not restore
 18 the right to a civil trial by jury and the war began.
 19 And that's how we ended up.

20 After The Constitution, Jefferson and
 21 Madison and others insisted on the Bill of Rights,
 22 which needed to include a right to trial by jury.
 23 And here you're carrying on that function that
 24 Jefferson and Madison had long envisioned to decide

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1 disputes in civil cases.

2 And I appreciate all your attention in
 3 this matter. It wasn't easy. There was all these
 4 side bars. I apologize on my occasion, and on behalf
 5 of my clients. I have a little cold here, so I hope
 6 everybody can hear me.

7 This matter began on December 8, as
 8 you know, 2006. 63B-005.

9 Like any other day, we have breakfast
 10 at the McKenna's. Mike went down to work at 500 West
 11 Madison.

12 Take it down, Steve.

13 He was meeting with Dr. Danzig.

14 Little did he know that somewhere in the late
 15 morning, early afternoon, we know probably somewhere
 16 around noon or so -- if you put that up Steve, 204 --
 17 I believe, we see Mr. Chambers sees a man he
 18 describes who is looking like his puppet. He has a
 19 hat on, a white envelope.

20 And as you can see, this is around
 21 12:02, a man loitering throughout the building.

22 That's good, Steve.

23 Now, this is Mr. Chambers.

24 Mr. Chambers admits that he sees him for about 2 or 3

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1 minutes by the elevator. It looked like his puppet
 2 and he seemed to be lost.

3 Now, what does "lost" mean?

4 I think you probably heard plenty.

5 You seen plenty based on your own policies. Lost
 6 equals suspicious.

7 And when someone is suspicious that
 8 means they're supposed to be questioned. They're
 9 supposed to be asked "May I help you?" "Why are you
 10 here?" None of that was done.

11 Two or three hours later, Mr. Chambers
 12 says he sees him again by the elevator, same place.
 13 Does nothing. Nothing again. And then later you
 14 have seen the encounters on the video where he comes
 15 up, goes over to Ms. Rosario asks for the pass to the
 16 30th floor -- she testifies to the 30th floor -- and
 17 he doesn't have an ID, fumbles around a couple times
 18 with his wallet, and then he walks away.

19 Now, Mr. Chambers and Mr. Brown are
 20 watching this happen. And he goes down the
 21 escalator. Mr. Chambers walks away. And before he
 22 goes on the elevator, he actually stops and listens.

23 I think he was casing a way to get in
 24 and he saw Mr. Brown as an easy mark because you know

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1 he's standing there listening, because he not only
 2 goes down quickly, but he sees this is the kind of
 3 guy I think he thought that he might actually bring
 4 him upstairs.

5 So he comes right back up. And then
 6 he hands him an envelope. And we saw the envelope.
 7 And Mr. Brown says he didn't read it, but it had
 8 writing on it. We don't see any writing on this
 9 envelope. There is no white note that he told us
 10 about in his deposition. There has never been a
 11 white note that has been found. And then he tells
 12 him "I want you to take me upstairs." He wants to go
 13 upstairs.

14 And at that time, we know if he had
 15 read his lessons, he's supposed to move away 6 feet
 16 for some distance, and he's supposed to ask him,
 17 "Sir, what are you looking for?" "What do you need?"
 18 And he's supposed to get away because you don't want
 19 him to be controlling you.

20 And then Mr. Chambers comes along and
 21 he said, Mr. Jackson said "Get rid of him." And he
 22 said, "I put on my best act to get rid of him."
 23 Now, why would you put on your best
 24 act to get rid of him? Mr. Jackson was right.

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1 Mr. Jackson was right.
2 And Mr. Chambers, who had seen him a
3 number of times before, was very suspicious, very
4 suspicious. And he actually, if you remember the
5 video, he sees him walking towards the mid-rise. And
6 if we put the clip of the mid-rise and high-rise, he
7 watches him walk -- he comes up, there is no one over
8 on the high-rise that takes you right to 38.
9 Mr. Chambers approaches, comes around.
10 Now he's supposed to be a highly suspicious, that's
11 what he said. Mr. Jackson is right there. Now, he
12 watches him walk towards the mid-rise; no attempt to
13 delay; no attempt to talk to him to deescalate.
14 There is code numbers, Code 10, that we heard from
15 Mr. Jenkins, there is a Code 4. Mr. Brown is not
16 aware of any code numbers. They have no distress
17 code. And he double-swipes him right through, with
18 all these people here.
19 Now, if you were concerned about the
20 people on the 3rd floor, wouldn't you have gone to
21 the right and say, the way to 38, the upper floors,
22 is to the right where nobody is. And then you could
23 decide to do something else.
24 Instead, he did nothing. He even said

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1 he put on the most convincing act to try to convince
2 Mr. Chambers that there wasn't a problem.
3 I think it's pretty pathetic myself.
4 You're supposed to be a security guard and that's
5 what you do? That's your security guard?
6 Little do any of us know, what
7 training people have when they fix our cars, when
8 they fix our elevators, when they guard our
9 buildings, we don't know that. We presume, because
10 maybe they have a good name, they have a good
11 reputation, that they know what they're doing.
12 In this case, you're a tenant in the
13 building, you didn't pay -- you didn't pay to have a
14 greeter.
15 Counsel said in opening statement,
16 these guards were greeters. You didn't hear that
17 much anymore, did you?
18 Greeters with handcuffs? They acted
19 like -- he acted like a greeter, that's for sure. He
20 acted like a greeter. He didn't know what he was
21 doing.
22 Now, I don't mean to deprecate one's
23 lack of education. Thomas Edison never finished high
24 school. All right. But Thomas Edison read. He

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1 learned. He was interested in learning. That's one
2 of the reasons why there is criteria in terms of
3 minimum standards because, number one, you want to
4 make sure someone can read; number two, you want to
5 make sure that they can read their lessons, they can
6 understand their lessons, they can pass their tests;
7 they can do their job, so you set up minimum
8 qualifications. Those were not met, pursuant to the
9 contract. Mr. Brown did not have a high school
10 degree diploma or GED. That was a minimum standard
11 by contract.
12 And then worse is, that he didn't even
13 read Lesson 7. Lesson 7. Workplace Violence. He
14 told you "I didn't read it." I didn't know anything
15 about Paula (sic) Jones.
16 There was also a lesson he was tested
17 on dealing with an aggressive visitor. That's
18 another lesson he was tested on. He flunked.
19 October 6, 2006. Did they remediate him at all? Did
20 they do any other testing to make sure he knew what
21 he was doing? No.
22 Because we looked at those records,
23 and those records reflect that as of July 6, 2006, he
24 had had no testing; he had no training sessions. He

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1 had nothing, nothing.
2 And who they said was the account
3 manager, the account manager, Mr. Chambers, was not
4 the account manager. He was actually the shift
5 supervisor, who they told us was account manager, but
6 he wasn't promoted until January.
7 And that could, maybe not, explain the
8 void why there was no training, why there was no
9 testing well beyond the quarterly.
10 We look at Contract No. 1 and 2, there
11 was a difference between the contracts. And you see
12 when you get into Contract 2, which was applicable at
13 the time, it adds:
14 "To insure the safety of all
15 persons on the property."
16 That was added to Contract 2.
17 Now, on Contract 1, it did provide for
18 1020, it did provide for "two officers will monitor
19 access to the elevator tower banks from 6:00 a.m. to
20 6:00 p.m. Monday through Friday."
21 Now, this apparently was taken out of
22 Contract 2, but we do know there was a section --
23 we'll come back to that in a moment --
24 But in Contract 1, Corporate Level

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1 Expectations, which is 2C2 still provided that they
2 expected that the security company look out for the
3 safety and protection of life.
4 So that was a corporate expectation in
5 Contract 1, as well as Contract 2. But Contract 2,
6 in addition, picked up a duty, so they had a duty
7 that they assumed to protect people.
8 And if we go to the bottom of 2, the
9 first page, they were "To provide a competent and
10 well-trained on-site supervisor for performance of
11 the contract duties at all times when said contract
12 duties were being performed and to maintain a
13 continuing employee training program, to insure
14 maximum efficiency and performance of the contract
15 duties and to insure the safety of all persons on the
16 property."
17 Now, Exhibit A to that in 2-013 talks
18 about standards of conduct:
19 "Accordingly, it is agreed that
20 said service provider employee shall
21 meet high standards of appearance and
22 demeanor and shall at all times treat
23 customers and employees, visitors and
24 vendors with the utmost courtesy and

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1 respect."
2 Then if we get to B under "Operational
3 Duties and Responsibilities" of Contract 2, they talk
4 about:
5 "Responding to all alarm conditions
6 and any other indications of suspicious
7 activities, monitor access due and
8 enforce all access control procedures
9 including identification of personnel
10 and control and entry and exits to the
11 property and vital areas in accordance
12 of owner's expectations.
13 "Use reasonable effort to deter
14 persons observed attempting to gain
15 unauthorized access to the property."
16 "Use reasonable efforts."
17 "Respond to suspicious incidents
18 whether discovered by owner or tenants
19 and take reports on items that are
20 installed or damaged to the building.
21 When necessary and deemed appropriate,
22 follow incidents to their conclusion."
23 Did Mr. Chambers following this
24 through to conclusion?

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1 When he watched a gentleman,
2 Mr. Jackson, that had no ID -- they're supposed to
3 have their ID on their person. He had no ID. You
4 saw him get turned away. You saw him loitering
5 around the building since late morning, early
6 afternoon and never questioned him at all.
7 And then, to watch him walk away with
8 Mr. Brown without doing a thing.
9 Did he follow incidents to their
10 conclusion? Of course not. All he had to do was
11 take a couple more seconds. And if he didn't want to
12 follow and go towards them and ask them about that
13 suspicious package -- that we will go over in a
14 moment -- he didn't want to ask him about that. He
15 could have gone on lockdown, right? He could have
16 done that. He could have called for lockdown. He
17 could have called 911. There are all kinds of things
18 he could have done. Gone over the PA system. He did
19 nothing. Mr. Chambers did nothing. He walked away.
20 And somehow, the fact that they claim
21 that they fired him, well, we didn't hire him. We
22 didn't fire him. He's their agent. They're
23 responsible for his conduct. I don't know what the
24 implication here is, but they are responsible for his

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1 negligence, for not doing anything that entire day,
2 nothing. They're responsible for Mr. Brown's
3 negligence for not doing anything that entire day.
4 In addition, H says:
5 "Respond to and provide assistance
6 to security-related situations in
7 conformance with common sense and good
8 judgment and in keeping with the owner's
9 policies and procedures."
10 Now, if we go to 2014 mandatory
11 training, mandatory. This is mandatory. This is
12 their contract.
13 "Service provider shall provide
14 24 hours of supervised on-the-job
15 training, as well as 16 hours of
16 pre-employment classroom training.
17 "The cost shall be born by service
18 provider and shall be included in the
19 stated billing agreement. Owner/manager
20 reserves the rights of all training
21 and interviewing all candidates.
22 "Additional training: Service
23 providers shall provide quarterly
24 training -- quarterly training -- to all

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1 building security personnel.
2 "Costs shall be born by service
3 provider and should be included in
4 stated billing rate.
5 "Additional training sessions
6 shall be a minimum of 4 hours per guard,
7 per quarter; training topics shall be
8 pre-approved by owner and cover
9 materials; such areas include
10 as life safety, terrorism, CPR, handcuffs.
11 "All training should be completed
12 before the end of the quarter."
13 But we know that didn't happen in
14 Mr. Brown's case. He hadn't had any training since
15 July 6th. The testing that they did, he flunked,
16 which included workplace safety.
17 "Required training will test
18 guards' knowledge of company and building
19 procedures, technical systems, report
20 writing, policy, procedure, life safety
21 and post orders.
22 "Training should also include
23 telephone protocol, how to answer
24 and take an accurate message and

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1 face-to-face encounter training.
2 "How to speak courteously face to
3 face procedures. Encounter training.
4 Scenario training.
5 That's what Mr. Hauri was talking
6 about.
7 They should do scenario training, act
8 out when someone approaches you saying they have a
9 weapon, what do you do? They did none of that, ever.
10 The contract required it.
11 And then if we go to 2-016, where the
12 contract required possess a high school diploma, GED
13 or equivalent, well, they say that it wasn't required
14 in Contract 2 to have two guards there -- but in
15 Contract 1, when they talked about in terms of
16 standby people, in Contract 1, they talked about six
17 people, and in Contract 2, they had eight people.
18 The duties were enhanced between the contracts.
19 Now, the Court is going to instruct
20 you on the law. For example, circumstantial
21 evidence.
22 What is circumstantial evidence?
23 Well, we know, for example, Mr. Chambers said he saw
24 Mr. Jackson earlier in the day. And then Counsel

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1 told you in opening, he wasn't here or he wasn't
2 there earlier in the day.
3 And then they show video showing when
4 he entered later at around just before 3:00 or so and
5 then we showed video around noon, which corroborated
6 what Mr. Chambers said.
7 We are corroborating, by
8 circumstantial evidence, that there is a gentleman
9 that appears to look just like Mr. Jackson from their
10 cameras with a hat on, with an envelope. So that
11 corroborates circumstantially what Mr. Chambers had
12 to say under oath. He's there in person. Whatever
13 they did to him, they did to him. Whether it's fair
14 or not fair. That's not on us. My clients didn't
15 even know who Mr. Chambers was. He only worked there
16 two years.
17 So I can see why they want to move
18 away from Mr. Chambers because he didn't follow any
19 of the orders. He didn't follow any of the policies.
20 He didn't follow any of the procedures. It makes
21 sense. But they hired him. They later fired him.
22 It's not on us. He admitted to these things under
23 oath. They certainly were not in his interest to say
24 that, you know, that actually own up to some things.

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1 He made mistakes. He was negligent. That can
2 happened.
3 In this case there were profound
4 consequences to his negligence. There were profound
5 consequences to Allied-Barton's negligence in not
6 training people to hire people that weren't
7 qualified, in hiring people that didn't read lessons
8 and not making sure they read their lessons, to have
9 no remediation after they flunked their test.
10 Life and death is at stake here in
11 these buildings. And they did nothing to ensure that
12 Mr. Brown knew what he was supposed to do, even as he
13 got up here after numerous sessions of preparation,
14 he thought that he was supposed to only stand 2 to 3
15 feet away from an aggressive person.
16 No, it's 6 feet. And I think I showed
17 you on numerous instances in their own lessons, 6
18 feet, 6 feet, 6 feet. It makes sense because you
19 want to have reaction time. You want to keep some
20 distance. You want to remain in control. And that's
21 what Mr. Hauri said. He never wanted -- if someone
22 says, you know, "I have a gun. Come in the alley
23 with me. I'm going to rob you. I won't harm you,"
24 well, you don't go in the alley.

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1 Even Mr. Jenkins admitted there is
2 fight or flight. Saying just what Mr. Hauri said,
3 but he said he didn't know the level of Mr. Brown's
4 training that whether he would know about fight or
5 flight or not, but you can't give in control.
6 Now, someone has a gun to your head,
7 they have a gun to your head. At that moment there
8 is not much you can do when you have a gun to your
9 head. But you have to start thinking, what am I
10 going to do because it's likely the consequences are
11 not going to be good no matter what.
12 But if you don't have a gun in your
13 head and you saw the restraint policy, the restraint
14 applied in this case, and applied in this case for
15 what reason? Because there wasn't a weapon that was
16 shown. Down on the 3rd Floor, there wasn't a weapon
17 that was shown. And the weapon was not shown, I
18 believe, until he got up to the top -- until he got
19 up to the office because when he talked to the
20 Chicago Police, he said nothing about that. He said
21 nothing about that to the police.
22 The first thing you tell a police
23 officer is that, you know, obviously, "He stuck a gun
24 on me on the 3rd Floor, showed me a gun on the 3rd

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1 Floor. He forced me into the elevator by showing me
2 a gun." That would be the first thing to say,
3 especially when you have three people that were
4 killed. And that was not said at all to the Chicago
5 Police at all.
6 Now, in terms of instructions, I
7 talked about circumstantial evidence, but, you know,
8 you're going to hear a jury instruction regarding
9 life expectancy. Michael McKenna had 23.1 years to
10 live; that would be the average life expectancy of a
11 58-year-old.
12 Now, when you think about that time,
13 that would take you back to the beginning of
14 President Clinton's first term in office. How much
15 time has passed? That was the time that he should
16 have had with his young son and his wife and his
17 older kids.
18 All that time gone because of their
19 failure to properly train and hire people that didn't
20 know what they were doing; that didn't do anything.
21 That's the bottom line.
22 When you think about it, Chambers did
23 nothing the whole day. Brown hadn't seen him
24 earlier, but from the time he first said to Brown

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1 "I've got a gun," he did nothing. He did nothing.
2 He did nothing to deter. They did nothing to delay.
3 They did nothing to deescalate. And that's
4 throughout all their lessons, it talks about
5 deescalating.
6 If you get in the elevator, you may be
7 in trouble, if someone really does have a gun. He
8 didn't know he actually had a gun until he got in the
9 elevator, at least if you take his word at it, but
10 you're going to go upstairs and you know you're not
11 the target.
12 And Detective Tenton talked about
13 that. He was -- he had a target. And that target
14 became lawyers, but he wasn't targeting people on the
15 3rd Floor. And Mr. Hauri said at the end of the day
16 he was likely would walk away from it. Because if
17 you get in a fight on the 3rd Floor, you're never
18 going to get up to 38. You're going to probably get
19 arrested.
20 And what did he do when Ms. Rosario
21 turned him away? He walked away because you've got
22 to do something on 3. You have to prevent him from
23 getting up to 38.
24 And what happened? He went completely

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1 bonkers on 38. On the elevator, he told Mr. Brown he
2 owed him \$1,000. And then all of a sudden when he
3 went crazy, the escalation occurred, it was \$30, \$50
4 million. He went into complete psychosis at that
5 time. And that is textbook. That's what they tell
6 you in their own books. It's textbook. You
7 deescalate. If you go up there, it's going to
8 escalate, who knows what's going on to happen? And
9 we know what happened.
10 Now, in their own books, and you've
11 seen that already, in nine out of ten times, if they
12 handled it correctly and appropriately and correctly
13 from the beginning, this doesn't happen. Nine out of
14 ten times in their own materials that's what they
15 teach.
16 So if Brown and/or Chambers did what
17 they were taught to do, this would never have
18 occurred.
19 If Brown had known Code 10, the signal
20 Code 10, he said he would have done it. If he had
21 just given Code 10. Chambers said that's what they
22 used. And actually Mr. Jenkins said that's what they
23 used Code 10, over the radio, as well as
24 face-to-face, Code 10. Code 10.

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1 Did Chambers have to, if he didn't
2 want to use the restraint policy, which he could have
3 he could have pulled him right over 25 feet away to
4 the control room and called for lockdown.
5 We heard lockdown on the 911 tapes.
6 And the lockdown -- it's right in there in their
7 policies -- Chambers admitted, Chambers could have
8 called for lockdown. Brown didn't even know in the
9 post orders, workplace violence, Code 10. He didn't
10 even know Code 10. I mean, what kind of training is
11 this with our life and health is at stake?
12 And Mr. McGoey said as far as he's
13 concerned if someone comes up to a security officer
14 and says "I've got a gun and a bomb, take me to the
15 top floor," you do it. That's what he said. You may
16 recall him saying that.
17 You take -- can you imagine a security
18 system like that? You take them to the top floor?
19 He's badmouthing codes.
20 Dr. Kennedy devoted his life to
21 distress codes. He says when they started it, it was
22 lost to antiquity. He talked about the Indian codes
23 from the Cherokees from World War I and World War II.
24 The Indians with smoke signals, all codes.

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1 All they needed is a simple code. All
2 they need is to train Mr. Brown on Code 10. Nothing.
3 Absolute negligence on all their parts. And that's
4 why we are here.
5 Now, you are the judges of the
6 credibility of witnesses, whether they're to be
7 believed or not believed, that's for you to decide.
8 When they hire a witness come in all
9 the way, for example, from California and testifies
10 at a deposition and trial testimony for a plaintiff
11 and all the other 70-some depositions and trial
12 testimonies for the defense, you judge the
13 credibility of that witness because they're here to
14 give an opinion, and that's why they were hired.
15 Now, you want to look at 5-548. This
16 was the incident report. Remember, Mr. Brown said in
17 his deposition that he did -- filled out an incident
18 report and then later he tried to deny it. And then
19 he owned up to it because it was under oath and we
20 played it, where he said he didn't fill out an
21 incident report. And this is from their own MSO
22 investigative reporting, when an incident happens a
23 security officer must create an incident report to be
24 complete with all the correct and accurate facts.

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1 He's never seen that incident report
2 that he did a day or two after the occurrence, nor
3 have we.
4 So there is a jury instruction that if
5 a party to this case has failed to offer evidence
6 with those powers to produce --
7 MR. PATTON: I will object to this.
8 THE COURT: Counsel.
9 MR. POWER: I thought it was given.
10 THE COURT: No.
11 MR. PATTON: Move to strike.
12 THE COURT: I will strike those last comments.
13 Counsel, will start again.
14 MR. POWER: He testified under oath that he
15 filled out an incident report. And he never produced
16 it. Never looked at it again. We never saw it. He
17 was supposed to do an incident report and he didn't
18 do it, so we do know he gave a police report.
19 We do know he gave a statement to the
20 police on the day of the occurrence where it says:
21 "Offender attempted to go to the
22 38th Floor. Was sent away because he
23 had no ID. Returned and showed him the
24 note. Told him he a gun. Took him to

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1 38th floor. Entered office. Asked for
2 McKenna. Locked door with chain. McKenna
3 in a meeting. Walked out in the hallway.
4 And offender asked where McKenna was and
5 then put gun to her head. Woman got
6 McKenna out of the room. Offender said
7 he owed money. Offender shot McKenna.
8 Officer ran down the hallway and shot again.
9 Security guards came and knocked down door.
10 Ran with Security to stairwell to the 37th
11 floor, and took elevators down."
12 Nowhere in here does he talk about a
13 gun being pulled on him in an elevator.
14 Now, typically if someone's going to
15 talk about why they submitted, you would say when
16 they showed a gun, pulled a gun. He says, he pulled
17 a gun out in the office. Earlier he said he told him
18 he had a gun. And I think that's consistent with the
19 evidence in this case. Be that as it may, he didn't
20 see a gun at the earliest until he got into the
21 elevator.
22 So in respect to the bag inspections.
23 If we go to 5-193, carrying a concealed weapon.
24 These are things that they see every day. Crimes

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1 they see every day; carrying concealed weapons.
2 These are things that are supposed to be on the
3 lookout for.
4 If you go to 5-196. If you talk about
5 one of the most important things is the planning, at
6 the bottom:
7 "Most importantly, do you know
8 what to do when someone tries to
9 violate your work site? Access
10 control procedures? You need to know."
11 What did Brown know? He knew nothing.
12 He didn't deter. He didn't delay. He didn't try to
13 deescalate. He didn't know the codes. He was not
14 prepared. He had absolutely no preparation and
15 that's why we're here.
16 If we go to 5-917:
17 "Watch for suspicious and
18 unknown people." What are you supposed to
19 do? "Ma'am, can I help you with something? This is
20 private property. Can I ask you what you're looking
21 for?" You're supposed to question them. Chambers
22 did none of that.
23 5-198, "Loitering:
24 People who are standing around

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1 not appearing to be conducting any
2 legitimate business."
3 That's Mr. Jackson throughout that
4 whole day.
5 5-199, "What to look for: Lopsided or
6 uneven envelopes."
7 That takes us to that point in time
8 with Mr. Brown. I thought it was like this when
9 Mr. Chambers approached them. I thought he had his
10 hand in the bag like this, which may seem obvious,
11 but he said, No, it was like this. And he said it
12 was bulky like this, and he was within 1 foot of me
13 hugging me, hugging me.
14 And Chambers said, it was suspicious
15 that he was 1 foot away from him. He's supposed to
16 be 6 foot. But this -- and they're supposed to be
17 checking for lopsided or uneven envelopes.
18 And what did he do? He walked away.
19 He didn't call 911. Didn't call for lockdown. Brown
20 didn't know about Code 10. What kind of building is
21 this? What kind of security system is this? What
22 were they paying for?
23 People do get in buildings where there
24 is very little security; you can walk right in, you

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1 don't get passed; you got a greeter there, and you
2 have lower rent. It's cheaper.
3 But when you get in a building, as
4 their own expert said, is equivalent to Sears Tower
5 or a first-class building, you're paying higher
6 rents. There is a certain expectation and they
7 didn't meet it.
8 Now, we look at Post Order Exhibit
9 No. 6 at the top, we talked about what they said
10 regarding preparation, being prepared, right at the
11 top. "The key to managing a crisis is preparation."
12 How were they prepared? They had no
13 distress code. Code 10, Mr. Brown didn't know about
14 it. Mr. Brown just was going to take him upstairs
15 and hoped that Mr. Jackson would just forcibly get
16 his money back.
17 Well, I have been taught, you know,
18 hope for the best, plan for the worst.
19 How are you hoping someone is going to
20 forcibly, and if he had a gun -- we didn't know if he
21 had a gun at that time -- but if had a gun, forcibly
22 get his money back and everything would be
23 hunky-dory. That's absurd. It's absolutely absurd.
24 It's contrary to the whole training of a security

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1 officer. The whole training of a security officer is
2 to be prepared, to deter, delay, deescalate. He did
3 nothing.
4 Here where it says: Nearly in every
5 crisis situation, the frontline member, the
6 receptionist, she did her job. She turned him away,
7 which is proof that he wasn't going to try to barge
8 through there. He was going to trying to get there,
9 but she turned him away; she did her job.
10 And then it was Mr. Brown. In nine
11 out of ten cases, a person's initial response will
12 determine the success or failure with dealing with a
13 crisis. Each member of the team must carefully
14 understand his or her role.
15 That role should never be, I'm just
16 going to bring him up to a floor and have at it
17 because he lost his best opportunity. He not only
18 had Ms. Rosario's eyes. He had the security officer
19 in the control booth, 25 to 50 feet away, who could
20 call 911, who could assist, get the Metra police up
21 there, who could get the Chicago police there. He
22 had Mr. Chambers and himself. And he had a camera
23 right there.
24 Once you take him off to the elevator,

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1 there is no cameras the rest of the way. You're at
 2 his mercy. You lost complete, complete control.
 3 And why he would ever take him to the
 4 mid-rise, where all those people were, it doesn't
 5 take you to 38, rather than the high-rise, I'll never
 6 know; except that he wasn't protecting people on the
 7 3rd Floor by taking a person that claimed he had a
 8 gun.
 9 Now in 6013, it talks about in their
 10 post orders that Mr. Brown is required to know Code
 11 10. He didn't know it.
 12 And 6038, it talked about every person
 13 had to have identification for access beyond the 3rd
 14 Floor. And, A:
 15 "To politely, but firmly explain
 16 it's company policy not to allow
 17 anyone into the facility without
 18 proper identification."
 19 6039: "Continually watch for
 20 unusual events, loitering.
 21 6, question suspicious persons:
 22 Example, people who seem lost. Ask one
 23 of the following questions: 'May I help
 24 you?' 'Are you lost?' 'Do you have

1 company-required identification?'
 2 "If you do not receive a
 3 satisfactory answer from the person,
 4 respond in a firm and polite manner
 5 that he's on private property and must
 6 comply with company policies and
 7 procedures, and ask the person to leave
 8 if they have no official business."
 9 So Mr. Chambers did none of that,
 10 ever. Mr. Brown did none of that. They were
 11 negligent for not following the required policies and
 12 procedures of the building, for not knowing the
 13 policies and procedure of the building.
 14 I would assume if Mr. Chambers knew
 15 it, he would have done something or requested
 16 something while he's loitering around the building
 17 for hours.
 18 Now, 6042, No. 7, talks about "Issue a
 19 visitor and identification pass and instruct him to
 20 keep it visible while at the facility."
 21 So Mr. Chambers, not only saw him get
 22 turned away, he would have seen that he had no ID on
 23 him when he was heading towards the mid-rise
 24 elevators.

1 6046, talks about how employees and
 2 visitors are not allowed to bring restricted items in
 3 the facility, including weapons.
 4 Now, remember Mr. Danzig said, well,
 5 he's an 80-some-old-guy and Mr. Danzig talked about
 6 how he lost his little knife. They took his knife
 7 away. This guy Jackson has a knife, a gun; he has
 8 chains and he's got a hammer and somehow he has that
 9 suspicious package and somehow no one questions him
 10 at all. They take Mr. Danzig's penknife away from
 11 him. And somehow Jackson -- I can't -- it's hard to
 12 fathom. It's hard to fathom what's going on there.
 13 Now, a person on 6-051 is a trespasser
 14 if they're loitering or if they're attempting to
 15 enter a restricted area above the 3rd Floor, trying
 16 to get the person to cooperate. If they don't
 17 cooperate, you ask for assistance from another
 18 officer or supervisor. They did nothing. They did
 19 none of this. They followed none of their post
 20 orders.
 21 Then if we go to 6, Use of Restraints.
 22 If they didn't want to the use the restraints, call a
 23 Code 10. Of course, Brown didn't know it. But he
 24 did know about the system. Chambers knew about the

1 system, the PA system. Go to that system. Call for
 2 a lockdown. Do something. But they have two big
 3 guys. Chambers 6'4", 270, Brown is 6 foot 2, 305 and
 4 he's never going to have that around again. He's
 5 never going to have that unless he takes him up in
 6 the elevator.
 7 But the Use of Restraints Policy, a
 8 felony crime had been committed; they can see that;
 9 witness by a security officer applies. All Chambers
 10 had to do, if Brown had called Code 10, is call the
 11 police. They call 911. Call the control room. Call
 12 the police while Brown is handcuffing him. Someone
 13 should be restraining him. He has not displayed any
 14 type of weapon. He hadn't displayed a weapon at that
 15 time.
 16 At least two security officers were
 17 present. They were. And a security officer has
 18 verified the above. He would have. All he had to
 19 say was "Code 10, claims he has a gun."
 20 Brown moves to restrain him; Chambers
 21 calls control; get Metra Police, get Chicago police.
 22 That's all they had to do.
 23 Now, the lessons that he failed
 24 included emergency situations dealing with aggressive

1 people, workplace violence, that was the test he did
2 on October 6, 2006. And he failed, failed that test
3 and they did nothing to remediate him.
4 Now, negligence is the failure to do
5 something that a reasonably careful person would do
6 under a similar circumstance.
7 It's for you to decide whether or not
8 the -- Brown was negligent in not reading his
9 lessons, not knowing what to do not knowing, not
10 knowing the codes, not following the post orders, all
11 those things. Of course, it was.
12 Mr. Chambers was negligent in not
13 questioning Jackson from the beginning, not talking
14 to him about "Why are you here? What are you doing
15 here? It's private property."
16 Now, at the end, at the end of all
17 this to say "What is this package you have here,
18 sir?" "What are you doing? You were declined entry?
19 Who are you coming here to see?" Not questioning
20 him.
21 If Chambers was trained, then all of
22 them go into the control room. Lock it down. Call
23 the police. Do something. Don't walk away. Don't
24 walk away and let Brown abandon his post. There is

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1 no one on the 3rd Floor now. No one. Who is mining
2 the store? No one.
3 Now, it was the defendants' duty to be
4 free from negligence.
5 Now, when we talk about causation,
6 they like to say "Oh, he was a hostage. He was a
7 hostage. He was a hostage." This could have been
8 handled early on by Chambers; it could have been more
9 appropriately handled by Brown based on the evidence
10 that you heard in this case. But it's -- in terms of
11 proximate cause, the plaintiff has a burden of proof
12 more probably true than not that the defendant, one
13 or more of the defendants were negligent, and that
14 negligence was a proximate cause of the injuries and
15 deaths in this case.
16 So what does that mean, proximate
17 cause? It means that that is a cause that in the
18 natural order of ordinary events produces the scenes
19 of plaintiffs' injuries, right. What does that mean?
20 It may not be the only cause nor the last or nearest
21 cause, if it is sufficient or if it combines in
22 another cause resulting in the injury. Meaning, that
23 the last cause is the shooting, but if there was a
24 cause that was not the last or the nearest, but in

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1 combination led to the injury and deaths, it meets
2 the burden of proximate cause.
3 That means the last cause, it doesn't
4 have to be the last cause like the shooting, if that
5 negligence was an earlier cause, which in combination
6 led to the injuries and death, that means proximate
7 cause has been established.
8 And we know it has been established
9 because nine out of ten times had they done their
10 job, this would not have occurred; the shooting would
11 not have occurred.
12 So if they had done -- if earlier on,
13 they had done their job, people would not be dead.
14 Mr. Jackson would likely be in jail or would have
15 left and hopefully had gotten some help for whatever
16 was going on with him. That would have been the
17 preference, but that is what proximate cause is.
18 Now, in terms of the charges of
19 negligence, each of the plaintiffs have charges of
20 negligence, and they are A through S, and I'm not
21 going to repeat each and every one of these charges
22 of negligence.
23 And all you have to do is find one,
24 one or more, to be found, based on the evidence, that

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1 the defendants were negligent, and then you go to
2 damages.
3 So it says in "terms of charges," the
4 plaintiffs charge that the defendants, Mr. Brown,
5 Mr. Chambers, AlliedBarton -- they are the agents and
6 employees, so any actions by Brown or Chambers are
7 actions attributable to AlliedBarton; they're
8 responsible for them.
9 So of all the allegations: Failing to
10 insure the safety of all persons on the property,
11 including Michael McKenna, Allen Hoover, Paul Goodson
12 and Ruth Leib. Violation of the security contract.
13 Failure to provide adequate security personnel, so
14 you will see on and on and on.
15 If the plaintiff proves just one of
16 those, the verdict should be for the plaintiff, so
17 you will have those to look over inside.
18 I think there is no question that the
19 defendants were negligent for numerous reasons based
20 on the evidence in this case. And you can look at
21 your notes and rely on your memories, and I think
22 there is no question the verdict should be for the
23 plaintiff and against the defendants.
24 Now the burden of proof, it's more

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1 probably true than not. It's not what's called
2 beyond a reasonable doubt. It's the preponderance;
3 meaning, they say if a the blind lady of justice
4 carrying the scales of justice, if a feather were to
5 come down on the one scale and tip it ever so
6 slightly, plaintiff has met the burden of proof.
7 It's more probably true than not. That's the burden
8 of proof, that the defendants were negligent, their
9 negligence proximately caused the injuries or deaths
10 in this case.
11 Now, can we get to -- when we get to
12 damages in this case, we talk about the loss of life,
13 the loss of normal life. By loss of normal life, I
14 mean a temporary or permanent diminished ability to
15 enjoy life, this includes a person's inability to
16 pursue pleasurable aspects of life.
17 Now, there is also other damages,
18 which I won't get into it. In respect to the loss of
19 society, conscious pain and suffering, emotional
20 distress. You heard the testimony in this case.
21 Now, regarding the emotional distress,
22 now, you heard Detective Tenton testify, he said that
23 Michael was initially, obviously, when you get hit in
24 the head, you're probably stunned, that maybe you're

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1 not making motion much like if you get a concussion
2 at a football game; you get stunned and knocked out
3 momentarily, but he's shot in the head, so maybe he
4 didn't make any sound until Detective Tenton got up
5 there. I don't know that.
6 But Ruth Leib left right away and
7 Detective Tenton testified as to the screams, the
8 moans for 35, 40 minutes. And one allows to recover
9 for that. And they allow a recovery for that because
10 they don't want a defendant to negligently cause
11 someone to suffer in the manner in which he suffered
12 and then just walk away from it. And that's our law.
13 That's our law.
14 Now, if you don't believe Detective
15 Tenton, what he testified to here, then you should
16 not have an award for loss of normal life and pain
17 and suffering and emotional distress experienced by
18 Michael McKenna. It all rests on whether or not on
19 Detective Tenton and the medical people. Lay people
20 are not allowed to testify as to the conclusion of
21 conscious pain and suffering.
22 So that's why when the medical
23 examiner said initially in her deposition, "Based on
24 the autopsy alone, I cannot say that there was pain

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1 and suffering." But she said the nature of the wound
2 into the area of the brain that it was, the temporal
3 lobe, that would not preclude pain and suffering.
4 That is an area of the brain that deals with auditory
5 processing and vision and not to consciousness.
6 So you heard Detective Tenton testify,
7 and he even, as I brought out with the medical
8 examiner, he even told the lawyers not to mention it
9 to the family because when you hear someone died,
10 screaming and moaning, for 35, 40 minutes, it's not a
11 way anyone would imagine to want to die. But the law
12 allows for compensation for that pain and suffering
13 and that emotional distress for someone who should
14 have lived 23.1 years until Jonah was 25, but to die
15 in this manner, these are the last 35, 40 minutes of
16 his life.
17 And the Court has taken judicial
18 notice that the definition of "screaming" to give a
19 long loud piercing cry or cries expressing excitement
20 or emotion or pain.
21 Well, in respect to incapacitation, if
22 you're incapacitated, you can't do what you normally
23 do, what you're being asked to do or much of
24 anything. To incapacitate someone is to cause him or

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1 her to not be able to function normally. There is no
2 question that Michael was incapacitated.
3 And then to "moan," to make a long low
4 sound expressing physical or mental suffering.
5 That's what "moan" means.
6 So there is no question what the
7 definition is and why you're screaming and why you're
8 moaning. The issue is in this case is Detective
9 Tenton to be believed under oath, and I believe he
10 is.
11 And I know that -- I told them I'm not
12 going to go there, that Dr. Raphael said "Oh, my
13 children scream," I don't think the screaming by
14 Michael McKenna were screams of pleasure. They were
15 screams of pain and suffering of distress, knowing
16 the likely outcome in respect to his death.
17 Now, in this case, it would be great
18 if you, the jury, can say "We the jury, find for the
19 plaintiff and Michael McKenna is now coming back to
20 life. We restore Michael McKenna to you." That's
21 not going to happen, obviously.
22 If we go back to the Old Testament,
23 "We the jury find for the plaintiff now inflict on
24 the defendants what was inflicted on Michael

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1 McKenna." Well, that's not our system of justice
2 here.
3 Our system of justice is making the
4 family whole for taking away, taking away Michael
5 McKenna, by not making sure he was one of the nine
6 out of ten who lived. They didn't.
7 So if you believe Officer Tenton, I
8 believe that the pain and suffering, and I recommend,
9 it's for you to decide, should be conscious pain and
10 suffering 3 to \$5 million. These are my
11 recommendations.
12 For emotional distress experienced 2
13 to \$4 million. And the loss of a normal life
14 experienced, 2 to \$4 million.
15 There is also the benefits, the goods,
16 the services, that's \$609,527.00. That's what
17 Dr. Linke testified to.
18 Now, now, in respect to wrongful death
19 cases in Michael McKenna's death, the community has
20 suffered, everyone has suffered, friends, neighbors,
21 but the law does not allow recovery for those people.
22 The law limits the recovery in a case like this to
23 the -- in Michael's case to lineal descendents, which
24 include the adult children, as well as Suzanne and

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1 Jonah. We have Matthew, Warren and Amber and we have
2 Suzanne and Jonah. So there is five people.
3 You will on the loss of society
4 component, you will be instructed on loss of society,
5 but the loss of society component is for five people.
6 And then the Judge decides how it's to be allocated
7 amongst the five, pursuant to our laws.
8 But the law, when a person leaves
9 children and a wife, the law recognizes there is some
10 substantial loss, some substantial pecuniary loss and
11 that if some substantial pecuniary loss is recognized
12 and it limits it to the few that can recover.
13 And Michael McKenna, the type of
14 person he was, even the lady on the 911 tapes, which
15 I would like to play the 911 tapes, your Honor.
16 THE COURT: Counsel, I made a ruling on that.
17 MR. POWER: I understand.
18 So on the 911 tapes even the lady,
19 Mrs. Murphy, talked about we have to save this man,
20 what a wonderful people he was. You heard what Ruth
21 had to say about Michael, all the charitable bike
22 rides he did for various causes. Michael worked to
23 live. He didn't live to work.
24 He wasn't a -- at this time in his

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1 life, he was devoting himself to his wife and to his
2 new son and he was still devoted to his older
3 children, and he loved them very much.
4 And if I could just show you one clip
5 about how Jonah should have had Michael until he was
6 25 and he lost him at 2. He was devoted to his wife.
7 He was devoted to Jonah. He was devoted to his older
8 children. I would suggest for loss of society
9 between 28 and \$30 million to the family to be
10 divided amongst the five pursuant to whatever the
11 Court determines. The Court will determine how it
12 would be split up.
13 But I would suggest that because this
14 is a person who was concerned about others, even to
15 the point, as Ruth described, when he came out --
16 now, if you can imagine, if you have a security guard
17 accompanying a guy with a gun, and the security
18 guard, according to him, is saying this fellow with
19 the gun is a friend of Michael McKenna's before,
20 obviously, he pulled a gun, but saying that, then he
21 pulls a gun.
22 Can you imagine your feeling, how you
23 feel when you're leaving the office, and this
24 security guard is misrepresenting a fact; not only

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1 feel betrayed, you've got the security guard on the
2 side with the fellow with the gun, so you come out
3 there -- now, this is a guy that said -- Ruth had a
4 gun to her head -- "Why does this have to happen on
5 my watch?" This is a guy who is only worried about
6 himself. He's only worried about himself.
7 Now, he comes out here and he's
8 trying, according to Ruth, say "Listen, I'm by
9 myself," because Jackson is saying "Who else is with
10 you?" "I'm by myself. Those lawyers do not work with
11 me." He knows he's likely a goner, and he was, but
12 he was trying to protect all those other lawyers in
13 that suite. That's the type of guy Michael McKenna
14 was.
15 And what was the type of guy security
16 officer AlliedBarton hired, the guy who is saying
17 "Why does this have to happen on my watch?" Look at
18 the contrast.
19 Ladies and gentlemen, I appreciate
20 your time here today, and thank you for your
21 attention.
22 THE COURT: Thank you, Counsel. Everybody
23 okay? You need a washroom break. Okay. Let's take
24 five minutes.

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1 (Whereupon, a recess was taken.)
 2 THE COURT: Mr. Rogers.
 3 MR. ROGERS: Thank you, your Honor.
 4 CLOSING ARGUMENT
 5 BY
 6 MR. ROGERS:
 7 May it please the Court, Mrs. McKenna, Ms. Leib
 8 Mr. Goodson, Counsel, Counsel.
 9 Ladies and gentlemen of the jury, is
 10 it acceptable to you that a security company
 11 contracts to provide the protection of life and the
 12 security of individuals, is paid to provide that
 13 service, fails to follow its own policies, fails to
 14 follow its own procedures, fails to follow its own
 15 post orders and as a result of that, three innocent
 16 individuals at work are killed and one is shot and
 17 seriously injured? That's the question you have to
 18 decide here today.
 19 It's an awesome responsibility on your
 20 part, but trust me when I tell you that it is very,
 21 very important to both sides, both the plaintiffs and
 22 the defendants in the case.
 23 Before I get into what I believe the
 24 facts has shown in the case and the evidence has

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1 shown, like Mr. Power, I want to thank you and I want
 2 to sincerely thank you for what you have done over
 3 the last, approximately, 30, 35 days or so of your
 4 lives. We understand, trust me, that this has been a
 5 big block of time; you have put a lot of your
 6 personal responsibilities, a lot of your personal
 7 tasks that you wanted to do in your personal lives
 8 aside to sit here and hear evidence, sometimes over
 9 and over again, but to hear evidence about our lives
 10 and the lives of our clients, the impact that
 11 December 8th had on their lives, and now to decide,
 12 to decide facts, to decide evidence, and to render a
 13 verdict.
 14 Mr. Power touched upon the history of
 15 the civil justice system and the right to trial by
 16 jury, and I won't go through that, but I do want to
 17 say here in America, we don't let people in robes
 18 decide our disputes. We don't let them summarily
 19 lock people up in criminal cases. And when we have
 20 civil disputes, we let our citizens decide, everyday
 21 people who come before both sides, who agree to be
 22 fair, who agree to be reasonable and agree to decide
 23 the dispute based upon evidence, not bias, not
 24 prejudice, not personal feelings about the system,

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1 like it or hate it, but to abide by the system,
 2 follow the Court's instruction and decide the case
 3 based on the evidence.
 4 And as lawyers, we have the privilege
 5 of representing individuals who can't stand in front
 6 of you and talk about their case.
 7 Trust me, if Mrs. Hoover or Mrs.
 8 McKenna or Ms. Leib or the Goodsons could talk to you
 9 directly and say this is how this impacted me and
 10 affected me, they would love to do that, but they
 11 trust in their lawyers and they trust in the system
 12 and they trust in the Court to instruct you to make
 13 an unbiased decision, based upon the evidence.
 14 So as lawyers, we want to make sure we
 15 don't miss anything. We want to make sure you
 16 understand the importance of the issues that we think
 17 are important. We want to put it in front of you, so
 18 that it's as clear as can be.
 19 So I apologize on behalf of myself, I
 20 apologize on behalf of the lawyers representing the
 21 plaintiffs and even the defendants if some of it has
 22 gotten repetitious for you, but we know that when we
 23 stand and talk to you, we are not talking for
 24 ourselves; we are talking for the people who are

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1 sitting here. We want to make sure that their voices
 2 are heard and their claims are presented and all of
 3 the issues and all of the evidence is being
 4 considered.
 5 In opening statement, the Court
 6 instructed you is not evidence. It's what an
 7 attorney expects the evidence will show over the
 8 course of a trial.
 9 And a trial, I like to say is like a
 10 puzzle, because rarely does one person hold every
 11 piece of a puzzle; meaning, the facts of what
 12 happened in the incident, the training, and
 13 expectations of the security officers and then the
 14 testimony. All of those pieces of evidence come
 15 together from different witnesses and different
 16 pieces of evidence, and you are responsible for
 17 pulling those all together and answering the
 18 questions that will be presented to you at the end of
 19 the case by the Court.
 20 Mr. Power touched upon a lot of that,
 21 but I wanted to present to you as succinctly as I can
 22 what I think a couple of things you should focus on
 23 within the body of information we provided you.
 24 Let me start with where the case

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1 started with and how AlliedBarton got there. How did
2 AlliedBarton get to the 500 West Madison and become
3 the entity responsible for securing and protecting
4 the lives and safety of individuals? And that
5 started with a contract. It started with their
6 agreement to do that -- not the plaintiffs telling
7 them to do that. Their acceptance of the
8 responsibility and duty to protect life and the
9 safety of individuals in that building.

10 You heard testimony from Mr. Jenkins,
11 the director of security, that they were the subject
12 matter expert brought in to provide that security.

13 I would like to point to Exhibit 2
14 about the corporate expectations, what was expected
15 from AlliedBarton:

16 "The service provider shall
17 provide security personnel and
18 services to operate, supervise and
19 assist in the administration of the
20 premises security program as determined
21 by the owner for the safety and
22 protection of life."

23 It's not an obligation or
24 responsibility that the McKennas or Hoovers or Leibs

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1 or the Goodsons placed on AlliedBarton. It's what
2 they agreed to do. As the subject matter security
3 experts, they agreed, contracted to provide security
4 for the safety and protection of life.

5 You heard a lot of evidence about how
6 they do that. You heard about security officer
7 handbooks. I'm showing you Plaintiffs' No. 19 for
8 identification. The information provided to their
9 security officers to explain to them how to begin to
10 prepare themselves to do their job. You heard what
11 they call the master security officer lesson book.
12 That's the lesson book AlliedBarton prepared, as the
13 subject matter experts, to convince this building
14 that they could do what they contracted to do,
15 protect, provide security for the safety and
16 protection of life. This is how good we are. This
17 is what we do. The contract.

18 Then you heard about the post orders.
19 The post orders are supposed to be property-specific
20 about providing security. And you heard about this
21 building. They were very proud to tell you about
22 100,000 plus people that come through the building
23 and that there are food courts and security up on the
24 3rd Floor for the private tenant spaces.

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1 AlliedBarton provided security for
2 that entire property.

3 And on that 3rd floor, that tenant
4 space above, they were responsible for access
5 control, access control. That was managed, as you
6 heard from the evidence, through a series of steps.
7 One involving a concierge or visitor center, where
8 you either -- where you were entered in the system;
9 meaning, a tenant had authorized you to come up or
10 you had your own ID badge that you could swipe
11 through.

12 And the security officers were
13 responsible, AlliedBarton was responsible for
14 managing that area, making sure that only authorized
15 individuals made it up above the 3rd Floor, above the
16 3rd Floor where Mr. McKenna, Mr. Hoover, Ms. Leib and
17 Mr. Goodson were all going about their regular day
18 working.

19 Let's talk about the post orders, the
20 property-specific post orders. Let's go to the first
21 page of Exhibit 6 please.

22 Mr. Power showed you this, but I think
23 it's important.

24 "Hire us, we can protect life, the

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1 safety of individuals. We have trained
2 individuals. We even have specific post
3 orders for your property that we will
4 develop to carry out our obligation
5 because we know that the key to
6 managing a crisis is preparation,
7 preparation.

8 "Difficult situations requiring a
9 quick confident response are a normal
10 occurrence in asset management."

11 It's not our words, ladies and
12 gentlemen. These are their words.

13 "Difficult situation." No question
14 about it. Robert Brown was in a difficult situation,
15 but that is exactly why AlliedBarton was hired to be
16 prepared and have security officers to have an access
17 control system that was prepared for difficult
18 situations, requiring a quick and confident response.

19 "Proper handling can avert or
20 minimize a situation and prevent it from
21 escalating into a crisis."

22 Let's talk about that a little bit.
23 Let's just be fair and reasonable about what this
24 evidence has shown about how this escalated to a

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1 crisis.

2 You heard all types of lawyer talk

3 about people getting shot on the 3rd Floor, and I was

4 protecting individuals on the 3rd Floor. But let's

5 think about the evidence and what it has shown about

6 the 3rd Floor and Jackson's actions.

7 And we make no excuses for Jackson.

8 Okay. He was the exact type of person Allied was

9 hired to keep away and protect the individuals from.

10 But what did Jackson, when he

11 presented up to the concierge desk -- strike that.

12 When he first came up the escalator,

13 he first went to a security officer, and he was

14 directed to the concierge desk. The concierge did

15 their job, they checked the system to see if he was

16 in the system. He was not in the system and/or did

17 not produce an ID to be cleared and they did not

18 authorize him to go up the stairs.

19 You saw the video, I won't show you

20 again. He fumbled through his wallet a couple of

21 times. Then what did he do? He walked back to the

22 security officer, Mr. Brown.

23 Mr. Brown was engaged in what appears

24 to be, from the video, a casual conversation with

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1 "A. Yes.

2 "Q. And you remember that, don't

3 you?

4 "A. yes.

5 "Q. Okay. And you remember

6 at the time you saw the man standing

7 next to Officer Brown in his hands in

8 his pockets; is that correct?

9 "A. Yes.

10 "Q. Okay. The report says, 'I

11 walked around to the front and asked

12 the gentleman if there is a problem.

13 "So you spoke directly to the;

14 man that was talking to Mr. Brown; is

15 that correct?

16 "A. Yes, I did.

17 "Q. And when you spoke to the

18 man, you walked to the front of the

19 man; is that correct?

20 "A. I was in between the two of

21 them, the security officer and the man.

22 "Q. Okay. But you were facing --

23 "A. I facing them.

24 "Q. -- the man. Were you also

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1 maybe a tenant, who knows who it was. He doesn't

2 know. And Jackson just stood there around in the

3 back. He didn't pull out a gun. He didn't rush him.

4 He didn't try to sneak past him, and then he went

5 down the escalator.

6 A couple of seconds later, he came

7 back up the escalator. And I think the evidence

8 showed that he went down and immediately turned

9 around and came back up. He went right back up to

10 Mr. Brown.

11 And when he went up to Mr. Brown this

12 time, he approached him on the side. And

13 Mr. Chambers, Mr. Chambers, his supervisor, saw him

14 and he went over there and he confronted them. And

15 he said to them, "Is there a problem?" Why did he do

16 that? He did that. He told you in his admissions.

17 Let me turn to the admissions

18 beginning with the first one.

19 "Page 61, it goes on to say on

20 the way back to the control room at

21 approximately 14:45, I saw the same

22 man standing unusually close to

23 Officer Brown with his hands in his

24 pockets. Do you see that?

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1 facing Mr. Brown?

2 "A. Yes.

3 "Q. Okay. So you were facing

4 both of them and you asked the gentleman,

5 not Mr. -- not Officer Brown, you

6 asked the gentleman if there is a problem;

7 is that correct?

8 "A. Yes.

9 "Q. And did the gentleman say

10 anything to you?

11 "A. No, he didn't.

12 "Q. Okay. Officer Brown answered

13 you for him answering no.

14 "A. Right.

15 "Q. Is that right?

16 "A. That's correct.

17 "Q. And that's what you remember?

18 "A. Yes.

19 "Q. Now, this gentleman that you

20 asked, was there a problem, you had

21 seen him earlier that day; is that correct?

22 "A. Yes.

23 "Q. Where did you first see him

24 that day?

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1 "A. Downstairs in the retail area.
2 "Q. Okay. And that would be on
3 ground level?
4 "A. Or (sic) ground level, yes."
5 Security officer Chambers, and I don't
6 know, hopefully you recall the testimony, he said
7 because he had seen him down in the 1st Floor retail
8 area, not once but twice in the area of the elevators
9 looking lost, when he saw him on 3, he was suspicious
10 of him.
11 Suspicion is exactly what these master
12 security officer policies and procedures and the post
13 orders tell them to look for, these suspicious
14 people. And he went over to them and he directed a
15 question to them, "Is there a problem?" And Brown
16 answered.
17 And the testimony he provided was, he
18 was suspicious because he had seen him multiple times
19 and most people go from A to B in that building. You
20 come there, do your business and you leave, and this
21 man is loitering for hours. Secondly, he had been
22 denied access by the concierge, yet he then had
23 approached Brown.
24 Third, he was standing usually close

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1 to Brown; and fourth, Brown he directed a question
2 'Is there a problem' to Mr. Jackson and Brown
3 answered quickly. He was suspicious of him by his
4 own admission.
5 AlliedBarton acts through the actions
6 of its employees, Brown and Chambers.
7 What did he do? He was suspicious.
8 Did he do what you would expect a reasonably careful
9 security officer to do under those circumstances?
10 And I'm talking about Chambers. And I ask you to
11 play the clip.
12 MR. PATTON: Your Honor, I have an objection.
13 I would like a sidebar.
14 THE COURT: Okay.
15 (Whereupon, the following
16 proceedings were heard
17 in chambers, outside of
18 the presence and hearing
19 of the jury.)
20 MR. PATTON: Judge, this is absolutely
21 inappropriate to play trial testimony. You can't
22 take a transcript and start cherry-picking the trial
23 testimony in front of this jury.
24 They can talk about the admissions.

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1 They can argue the admissions, but you can't get up
2 there and start playing videotape that has been
3 admitted in this case as trial testimony. You can't
4 get up and read a transcript and start reading the
5 pages to the jury. That's inappropriate.
6 MR. ROGERS: These were admissions. These were
7 admissions. We can read admissions.
8 THE COURT: This is something -- there is
9 nothing different than what the jury has already seen
10 during the course of the trial?
11 MR. ROGERS: No.
12 THE COURT: Your point is they saw it during
13 the course of the trial and it's trial testimony?
14 MR. POWER: It's still an admission. You can
15 read admissions.
16 THE COURT: See, and you were complaining about
17 double-teaming earlier.
18 I will allow it in if you stuck right
19 to the admissions and things that have already been
20 heard by the jury.
21 MR. PATTON: Judge, just for the record, we
22 object to this and renew our motion before barring
23 these admissions to be played to the jury.
24 THE COURT: Counsel.

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1 MR. PATTON: I will have further motions when
2 we are done with this.
3 (Whereupon, the following
4 proceedings were had in open
5 court, in the presence and
6 hearing of the jury.)
7 THE COURT: Okay. Mr. Rogers.
8 MR. ROGERS: Can I have a ruling, your Honor?
9 THE COURT: The objection is overruled.
10 MR. ROGERS: He was suspicious of Mr. Jackson.
11 He was suspicious of how close he was standing to
12 Mr. Brown. He knew he had been denied access. He
13 had seen him down on the lower floor a couple of
14 different times looking lost. And Brown answered a
15 question that was directed at Jackson.
16 And what did Chambers do? And did he
17 do what you would expect a reasonably careful
18 security officer charged with protecting life,
19 charged with the safety of individuals to do? Let's
20 see what he did.
21 Can you go back to the clip.
22 MR. PATTON: I will renew my objection.
23 THE COURT: Okay. Counsel, that will be
24 overruled.

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1 MR. ROGERS: Here we see Jackson approaching
2 Brown and we see Chambers coming into the scene
3 walking toward them because he's suspicious of them.
4 He walks around them. He stands in
5 front of them. He directs a question, as he told
6 you, not me, because of his suspicions.
7 He's standing there next to Brown.
8 And Brown and Jackson begin to walk toward the
9 turnstiles and what does he do? Stop it right there.
10 He watches. He watches a man he admittedly was
11 suspicious of, a man he knew had been denied entry, a
12 man he had seen around the building for hours when
13 most people go from A to B, and he watched them walk
14 toward the turnstiles and up to the 38th floor.
15 Is that what this contract required
16 AlliedBarton to do? Is that what this security
17 handbook expected security officer to do? Is that,
18 when you see suspicious individuals, what you're
19 supposed to do?
20 This is Chambers, ladies and
21 gentlemen, the supervisor. All they wanted to talk
22 to you about is him being a hero and Brown being a
23 hero. This is video, video evidence showing you what
24 he did and did not do.

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1 And we know, because Brown told you
2 and we know what happened, that it escalated. And it
3 gets right back to their post orders.
4 Let's go back to Exhibit 6 on the
5 first page. That paragraph right there.
6 "In nearly every crisis situation,
7 a front-line member of the staff,
8 security guard, will be the first person
9 to come in contact with the crisis."
10 That's true. It's true. It's not my
11 statement. It's not Mr. Power's statement. It's not
12 Mr. Kotin's statement. It's Allied-Barton's
13 statement. It's their post orders for the building
14 at 500 West Madison Street.
15 Now, in nine out of ten cases, that
16 person's initial response will determine the
17 building's success or failure in dealing with the
18 crisis; thus, it is very important that each member
19 of the team carefully understand his or her role.
20 Know what to do. Respond.
21 So you heard about duress codes. You
22 heard about restraint systems. You heard about 6
23 feet away. Why did you hear about all of those
24 things? Because there may not be any one way to deal

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1 with a crisis. There can be multiple ways, but if we
2 go back to the video, this is not the way.
3 I want you to pay close attention to
4 what Mr. Chambers does after he watches them walking
5 toward the turnstile. He watches. They're going
6 toward the turnstiles.
7 Playing it, I think it starts around
8 minute 7. Advance it a little bit, if you could.
9 What does he do? He walks away. He
10 walks away and goes down the turnstiles.
11 That's what the security supervisor
12 did despite his suspicions of the man, despite
13 Mr. Brown telling you that he's standing next to me
14 like this. I don't know whether it's like this, like
15 this, but I know that if somebody has their hand in
16 an envelope and you're a security officer, you would
17 reasonably expect you to inquire, question and do
18 something other than walk away because situations
19 escalate to crises if you don't respond
20 appropriately.
21 Can you pull up 5-196, the bottom
22 portion.
23 So what you have to decide largely is
24 if it's okay to contract to do something, put on a

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1 dog and pony show about how good you are at it and
2 how good your guys are, but then when the situation
3 arises neither you nor your security officers know
4 what to do.
5 What do I mean by that? Duress codes.
6 You heard testimony that in hospitals when a nurse or
7 a doctor has a difficult patient or someone, they
8 will say "Can you page Dr. Strong." That's a key to
9 get the security officer. You know, in your own
10 homes -- strike that.
11 Personal security system at homes,
12 your alarm goes off, they call you. If you don't
13 give the right code back, then they send the
14 authorities.
15 Duress codes have been around forever.
16 How can you be this top-notch worldwide security
17 company that supposed to know what to do and your guy
18 is suspicious standing in front of another security
19 officer and they don't know what to do? There is no
20 duress code.
21 They say now it's a hands-off policy
22 even though they carry handcuffs. They can recall
23 the elevators right there at the concierge desk. You
24 heard Mr. Jenkins say it. All you have to do is

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1 right there at the concierge desk recall the
 2 elevators to 1. You can recall the 31st elevator.
 3 Jackson told them where he was going. Recall the
 4 elevators.
 5 Get on the PA system. Get on the PA
 6 system and say "We have an intruder that's going
 7 through the building, lock your doors until we can
 8 identify the problem." But to walk away is not the
 9 exercise of ordinary care when you've contracted to
 10 protect life and the safety of individuals in a
 11 building.
 12 Mr. Jackson, as I think you know
 13 thought he had an ingenious idea. He went to a
 14 patent lawyer, Mr. McKenna. Mr. McKenna did
 15 everything right. He researched it and found out
 16 that, in fact, the idea had already been patented.
 17 And for some strange reason, Mr. Jackson didn't get
 18 it. He thought it was stolen, and he held this
 19 grudge for years, apparently, against Mr. McKenna.
 20 But again, he didn't bum-rush the 3rd
 21 Floor and security when he was turned away from the
 22 concierge, he turned and went away.
 23 When he was responded to, as the
 24 policies tell you to respond, he didn't get

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1 aggressive and shoot up the 3rd Floor, he went away.
 2 He went away. That's why the nine out of ten times
 3 the first response will avoid crisis.
 4 And they want to -- you will receive
 5 some instructions regarding a counterclaim asking you
 6 to apportion responsibility between Allied-Barton's
 7 negligence and Joseph Jackson's intentional criminal
 8 contact. And I'm suggesting to you, they are not
 9 comparable. They are not.
 10 When you buy an umbrella to protect
 11 you from rain and the umbrella collapses, and you get
 12 wet, is it the rain's fault? Is it the cloud's
 13 fault? It's the umbrella's fault, the manufacturer
 14 of the umbrella.
 15 AlliedBarton was responsible for
 16 protecting the life and safety of individuals in that
 17 building from what? From criminals, people who would
 18 cause harm, people who would threaten the safety,
 19 people who would threaten the lives of tenants.
 20 Till now, because of your failure to
 21 follow your policies and your procedures and your
 22 post orders and abide by your contract and to blame
 23 the thing -- and I mean to call it a thing -- because
 24 we don't know what was going on his mind -- to blame

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1 the thing that you were charged to protect against is
 2 ludicrous.
 3 What were you hired to do? To the
 4 extent you entertain any percentage of responsibility
 5 for Joseph Jackson, listen to AlliedBarton, put up
 6 the first page of the post orders.
 7 They told you nine out of ten times,
 8 if they responded correctly, they did what the policy
 9 said, the crisis would be averted. 90 percent of the
 10 time. They did not do it here. They bear 90 percent
 11 of the responsibility. Should you entertain at all
 12 Joseph Jackson and his intentional conduct and
 13 attempt to compare it to their negligence.
 14 Joseph Jackson paid the price he
 15 should pay. He was held accountable for his vicious
 16 criminal acts. AlliedBarton is trying to avoid
 17 theirs by pointing to his, the very acts they were
 18 hired to protect and guard against. You're smart
 19 people. You have heard the evidence.
 20 You will receive an instruction from
 21 the Court on proximate cause. Joseph Jackson was the
 22 criminal cause. He pulled the trigger that harmed
 23 these individuals -- killed these individuals and
 24 harmed Ms. Leib.

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1 But what the law recognizes, and
 2 Mr. Power touched upon it, is that multiple things
 3 can lead to cause injury and harm. And you will be
 4 deciding proximate cause. This is not a criminal
 5 case. It's not a criminal case.
 6 MR. PATTON: I object to the argument. It's
 7 not the law of proximate cause.
 8 THE COURT: I'm going to sustain the objection.
 9 Mr. Rogers, you want to rephrase it.
 10 MR. ROGERS: I will, your Honor.
 11 THE COURT: Okay.
 12 MR. ROGERS: You will receive an instruction
 13 about proximate cause. I believe the Court will
 14 instruct you "When I use the expression 'proximate
 15 cause' I mean a cause that a natural or ordinary
 16 cause of events produce the decedents' and
 17 plaintiffs' injuries. It need not be the only cause
 18 nor the last or nearest cause it is sufficient if it
 19 combines with another cause resulting in the injury.
 20 It's the little kid that gets bit by
 21 the vicious dog in front of the house because the
 22 owner left the gate open. The dog did the biting,
 23 but the owner is responsible for securing it,
 24 protecting individuals from the vicious dog.

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1 Proximate cause. It need not be the last nor the
 2 nearest, it can work in combination with other
 3 events. That's the law that I believe the Court will
 4 instruct you, and that you all have agreed to follow
 5 in deciding the case.
 6 Scenario training, I think we went
 7 over it face-to-face. Encounter training was
 8 mentioned as described within the contract.
 9 Is it reasonable to expect a security
 10 company who commits to protect against -- the
 11 protection of life and safety of individuals to do
 12 some scenario training with their security officers
 13 about what you do if someone comes in and tells you
 14 to take them upstairs? Knowing what to do, isn't
 15 that what they say they will do as AlliedBarton?
 16 We heard nothing about any scenario
 17 training whatsoever that was provided to Mr. Brown,
 18 Mr. Chambers or anyone else. Nothing.
 19 Have a duress code. Utilize the Code
 20 10, whatever you have. Do something. Incoming
 21 packages. Incoming packages, let me point to that
 22 and I will move off the topic. "Incoming and
 23 outgoing package instruction."
 24 If you could move to the rest of that

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1 and go to the next page and highlight Paragraph 8.
 2 Mr. Jackson had refused to cooperate
 3 about what is in that bag, the one with his hand in
 4 it. And he's suspicious of it.
 5 "Do not attempt to physically
 6 retrain the individual unless lives
 7 are endangered."
 8 Brown told you, he was impeached
 9 multiple times. He thought Jackson wanted to
 10 forcibly go upstairs with a gun and get money.
 11 Shouldn't he reasonably know lives are in danger? I
 12 think he even admitted that fact. That's exactly
 13 when you're authorized to restrain.
 14 Wouldn't we expect a reasonably
 15 careful security officer in the exercise of ordinary
 16 care who committed to protection of life and liberty
 17 (sic) -- and safety to do something.
 18 Your Honor, if I may, I would like to
 19 excuse Mrs. Hoover.
 20 MRS. HOOVER: What do you want me to do.
 21 MR. ROGERS: I'm going to talk about your
 22 husband.
 23 MRS. HOOVER: Oh, I'm sorry.
 24 MR. ROGERS: Let me first tell you that it's

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1 been an honor and pleasure to represent Ms. Louise
 2 Hoover and to represent her family; her son, Allen,
 3 and her daughter, Annette. They are good people.
 4 They are fine people.
 5 To have someone who works within your
 6 profession and trusts you with something as sensitive
 7 as this is an awesome responsibility, and I don't
 8 take it lightly.
 9 And over the last several years, she
 10 has waited for her day in court, like the McKennas,
 11 like the Goodsons. And her husband, Allen Hoover,
 12 was a heck of a guy. He was a lawyer's lawyer. He
 13 reinvented himself at 68 years old -- 66 years old.
 14 I'm sorry.
 15 And decided he didn't like golf. He
 16 didn't want to get out on the links. He loved what
 17 he did. And he was going to work and reinvent
 18 himself and be that much more engaged.
 19 You heard from his secretary. And
 20 trust me, secretaries don't always like the guys they
 21 work with, but you heard from Mrs. Murphy, and she
 22 testified through the reading of her deposition that
 23 he wasn't slowing down, he was working harder,
 24 working harder.

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1 When his kids were young, he would
 2 bring Annette down with him to work. When the kids
 3 got older, he spent his time with Louise at their
 4 cabin on the weekends, enjoying his wife and pursuing
 5 his passion, the study of law and practice of law.
 6 They paraded someone in here to tell
 7 you that Allen Hoover would be done practicing at
 8 71-years-old. The man who told you that was
 9 71-years-old and told you he had two more years to go
 10 himself. Allen Hoover, I would suggest to you, was
 11 not done at 71.
 12 You heard from Dr. Linke, a professor
 13 emeritus from the University of Illinois, he
 14 testified to you about Allen Hoover's family's lost
 15 income as a result of his death. He told you he
 16 projected seven years, that he would work to age 73.
 17 And he estimated the lost earnings to Louise Hoover,
 18 as a result of her husband's death, \$3,562,593.00.
 19 That's not accounting for benefits and services
 20 associated with it. That's just earnings. That's
 21 not accounting for increases in his rate or hourly
 22 rate.
 23 When you heard the economist who
 24 testified in front of you tell you his rate went up

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1 in the last year. And in 2018, he's going to
2 increase his rate even further.
3 This is just Allen Hoover's salary.
4 That's what seven years of income, that's what that
5 loss looks like for this family. And that's aside
6 from the noneconomic losses; meaning, we suggest are
7 the most significant losses people sustain with
8 suffering.
9 Starting with Allen Hoover, himself,
10 as well as Louise, Annette and Allen, Jr., Allen
11 Hoover's estate is here representing his injury
12 before death. His injury before death. That claim
13 does not die with him. It is here for you to
14 consider.
15 You heard testimony about how
16 Mr. McKenna cried in pain. You heard testimony about
17 how he screamed and moaned. Well, no one witnessed
18 what Allen Hoover went through. No one witnessed it.
19 And his injury was to his neck and he was shot in his
20 neck, he was shot in his neck, the bullet went into
21 his spinal column and paralyzed him. He fell on his
22 face, bruising the bridge of his nose from his
23 glasses, and gradually over the next 5 to 10 minutes,
24 from his paralysis, he lost the ability to move air,

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1 his ability for his heart to beat, and he slowly
2 gradually lost consciousness and he died. That claim
3 is before you as much as any other claim you are here
4 to decide.
5 Allen Hoover is here. We are speaking
6 for him, for his injury. For his loss of a normal
7 life, we would ask to you award a figure between 1
8 and \$2 million.
9 For his conscious pain and suffering,
10 we would ask you to award a figure for Allen Hoover
11 between 2 and \$3 million.
12 For the emotional distress that Allen
13 Hoover experienced, we would ask you to award a
14 figure between 3 and \$4 million.
15 For the loss of society, that's the
16 loss of the relationship he shared with Allen, Jr.,
17 and the relationship he shared with Annette, and I
18 would suggest to you, most importantly, the love,
19 care, affection and loss that Louise has sustained.
20 She lost her life partner. She's in her golden
21 years, and she feels burden to ask her son to come
22 and fix something in the house. He has his own life.
23 He has his own family. She feels burdened to need
24 him to bring her downtown because she doesn't know it

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1 as well as her husband did and he does. She feels
2 burdened such that she doesn't even go to the cabin
3 they shared and went to every weekend. She hasn't
4 gone in the last 10 years.
5 Allen Hoover had an estimated life
6 expectancy of just over 17 years. For that 17 years,
7 I would ask you to award between 17 and \$21 million.
8 Thank you for your kind attention.
9 I'm sure that you will give my colleagues and the
10 defendants the same kind attention.
11 When the defendants step up, have them
12 answer questions about why it's acceptable not to do
13 what your post orders say, what your MSO policies say
14 and why you don't have to comply with the very
15 contract you agreed to comply with.
16 Thank you for your time.
17 THE COURT: Thank you, Counsel.
18 Everybody doing okay.
19 Mr. Kotin. Okay.
20 CLOSING ARGUMENT
21 BY
22 MR. KOTIN:
23 May it please this Court, Counsel, Ms. Leib,
24 John, Roger.

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1 Ladies and gentlemen of the jury, I'm
2 not going to stand here and repeat everything that
3 you just heard. You know this case.
4 And I'm of the sense that you're ready
5 to decide this case, but I want to briefly discuss
6 one concept about liability, and then I need to talk
7 to you about Paul Goodson.
8 Let's look past the conduct of Sidney
9 Chambers and Robert Brown on that day, December 8th.
10 And let's talk specifically about the
11 negligence of AlliedBarton, the company, the national
12 security services company.
13 You learned that Officer Robert Brown
14 never graduated high school, and that was a company
15 requirement. Maybe Officer Brown should never have
16 been hired for the security job in the first place.
17 You heard that Officer Brown failed a
18 test on an important MSO lesson related to issues
19 directly regarding this case. Maybe somebody should
20 have retained him on those issues.
21 Officer Brown didn't know Code 10.
22 Maybe someone should have taught him Code 10 or what
23 if Code 10 wasn't the appropriate duress code for
24 this situation, well, then come up with another one;

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1 a different word, a signal, a button on your radio, a
2 silent alarm in the guard's pockets. See, that's all
3 AlliedBarton, Folks.
4 And what about scenario training,
5 Mr. Jenkins, their witness, last Thursday told you
6 "training is paramount," he said. And that includes
7 face-to-face training and scenario training. And our
8 expert Ronald Hauri said the same thing.
9 It happens in all walks of life. In
10 Driver's Ed classes, they teach kids what to do when
11 your car is sliding on ice. Firefighters learn how
12 to evacuate people from burning buildings. New
13 pilots learn about crash landings. And they all
14 learn these things praying that the real situation
15 will never happen in real life, but they're prepared
16 to respond to it in case it does.
17 Now, Folks, this is a giant building.
18 It has a train station at the bottom with 100,000
19 commuters everyday, 3,000 tenants up in the
20 high-rise, government offices, law offices.
21 Is it so unfathomable that there is
22 going to be an angry citizen or an angry client that
23 might show up with a weapon intent on harming
24 somebody upstairs? Of course that's not

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1 unfathomable.
2 Shouldn't a reasonably safe security
3 services company charged with protecting the lives of
4 the people in the building, teach its security
5 officers how to respond and what to do if somebody
6 shows up with a gun? Pretty simple.
7 Have a different code. Have a button.
8 Have a silent alarm. Use that PA system and put the
9 building on lockdown.
10 When Detective Tenton got to the
11 building, that lockdown message was going. I asked
12 their expert, Mr. McGoey, about that and he said that
13 that wasn't practical. In fact, he said that wasn't
14 protocol. It would be too disruptive to so many
15 people in that building to put the whole place on
16 lockdown. I suppose it might be disruptive to some
17 of those tenants, but not to these three families,
18 not to Mrs. Leib. That's all I'll say.
19 But now I need to talk to you about
20 someone we haven't heard about in quite a while, more
21 than a week, Paul Goodson. There he is. It's
22 Exhibit 6608.
23 Now, who was Paul Goodson? His
24 brother, Roger, told you all about Paul's background.

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1 I'm not going to rehash all of that.
2 But I kind of like what Ruth Leib told
3 you about her coworker, Paul. She told you that Paul
4 watered the plants and he delivered the mail, and he
5 organized the library. She told you that he put up
6 the Christmas tree every year. Ruth told you that
7 Paul worked part-time just trying to live a full
8 life. He enjoyed flower arranging. He had a real
9 connection with Mr. McKenna because Paul had lived in
10 Japan and both of Mr. McKenna's older sons lived in
11 Japan. And then Ruth described Paul as a lovely,
12 kind and compassionate man. And I think that
13 probably says it all.
14 Now, I need to talk a little bit about
15 what Paul experienced on that day before he died.
16 And this is not a pleasant conversation. You've
17 heard it before. I suggested to John and to Roger
18 this morning that maybe they want to step out when we
19 talk about this, but they want to be here, and that's
20 their right.
21 It started, Jackson's first encounter
22 with Paul Goodson, as Ruth Leib told you, in the copy
23 room, when Ruth had been shot in the foot and
24 Mr. Hoover had been shot in the neck. And that's

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1 when Jackson grabbed Paul and pulled him out of the
2 room. And Ruth told you that she was scared and Paul
3 was scared. That's probably pretty obvious.
4 You heard Detective Tenton describe
5 the next encounter between Jackson, when Paul was
6 grabbed. And that was in the lobby of wood phillips.
7 And Paul was grabbed and pulled around
8 the corner before he was shot, it's been so long, you
9 remember I asked Detective Tenton to come down from
10 the witness stand and demonstrate on me how Paul was
11 dragged around the corner.
12 And then I asked him that silly
13 question "In your experience, have you seen people
14 experiencing emotional distress in crisis like this?"
15 And he said "Yes." And Paul Goodson was experiencing
16 that distress.
17 So that ladies and gentlemen, in and
18 of itself, that in and of itself is emotional
19 distress, which is emotional distress which you'll
20 see on the verdict form is line item right here that
21 Paul Goodson is entitled to be compensated for.
22 But that's not all, because then when
23 Paul was pulled around the corner and he was shot,
24 that's also part of his claim.

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1 Dr. Cogan, the medical examiner.
 2 Again, it's been weeks, right? He was here and he
 3 told you that the bullet went through Paul's head on
 4 the left side and came out the right side. And he
 5 told you that Paul Goodson did not die right away.
 6 The stippling on his skin indicated it was a
 7 close-range shot, within a couple of inches.
 8 And he explained to you that when he
 9 examined Paul's body, he was able to determine what
 10 happened before Paul died. He aspirated blood into
 11 his lungs and it caused asphyxia, suffocation. He
 12 vomited and gastric contents also went into his lungs
 13 and caused asphyxia.
 14 Dr. Cogan told you that Paul bit his
 15 tongue before he died and that he lost a lot of
 16 blood, which indicated to him that his heart
 17 continued beating.
 18 "Doctor, would these injuries
 19 cause pain?" "Yes."
 20 And then he added that the asphyxia
 21 and the suffocation would also be in his words "be
 22 very distressing."
 23 "Based on your years of
 24 experience, Doctor, do you have an

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1 opinion as to whether Paul Goodson
 2 might or could have actually felt
 3 pain after the bullet entered his head?
 4 "Yes."
 5 Ladies and gentlemen, when Paul
 6 Goodson was grabbed and pulled and that had to be
 7 horrifying. And then he was shot and lived for
 8 several minutes before dying. And you know that's
 9 not the way it's supposed to end, right?
 10 He was 78-years-old. He's not a young
 11 man. And I suppose that perhaps when a person gets
 12 to be that age, they might start thinking about when
 13 the end comes. Maybe he would have lived another 8.8
 14 years, which is the life expectancy of Paul,
 15 according to the Federal Government. Maybe he would
 16 have lived to 103, like his mother. We don't know.
 17 But what we do know is that it was not supposed to
 18 end this way.
 19 People talk about death, right? And
 20 they talk about good deaths. You know, the old man
 21 who dies at home peacefully in bed surrounded by his
 22 family. I cannot imagine a more opposite way of
 23 going than Paul Goodson experienced on that
 24 December 8th.

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1 Ladies and gentlemen, for conscious
 2 pain and suffering that Paul experienced that day and
 3 for the emotional distress he experienced before he
 4 died, I suggest to you 2 to \$4 million would be fair
 5 compensation.
 6 Let me change subjects for a minute
 7 and talk about a loss that's easier to contemplate.
 8 It's a loss that is easier to contemplate because
 9 it's a loss of these men. And you had a chance to
 10 meet the men that are involved.
 11 The loss of society experienced by
 12 Roger and John Goodson, and even Howard Goodson, for
 13 the loss of Paul's life. Here are the Goodsons. You
 14 have seen that picture before.
 15 And what is the loss of society?
 16 Well, the Judge is going to read you the instruction
 17 the law, which defines loss of society. It's right
 18 here. It's a helpful description of what is meant by
 19 society. And I could go through this and I could
 20 probably try to attach a value to each word that's
 21 used as the definition, but I think, in my mind, loss
 22 of society really comes down to one word, and that's
 23 relationships. The loss of a relationship that these
 24 men had with their big brother, Paul.

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1 Now, you know relationships between
 2 siblings, in this case, brothers, is something that
 3 is really very special.
 4 Most people don't know another human
 5 being as long as they know their brothers and
 6 sisters. Think about that. Our parents usually die
 7 before we do. Children don't come along until we're
 8 older. People don't usually meet their spouses until
 9 they're older.
 10 But brothers are together from birth
 11 all the way until death, and you just hope that that
 12 comes from old age.
 13 Roger told you about his relationship
 14 with Paul, how they grew closer in the last years of
 15 his life. When Roger retired from the Federal
 16 Government after 30-plus years, Paul flew out there
 17 to Washington where they had the retirement party.
 18 Roger told you about those annual
 19 Goodson and Hale family reunions and how it was
 20 terrific when everybody was well and he brought the
 21 baked goods and taught Roger to love baking and then
 22 he told you how the trips became more unscheduled or
 23 more frequent when times got tough or people got
 24 sick. Roger called Paul Goodson the family

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1 caregiver.

2 And it was Paul who arranged that trip

3 just months before he was killed with John and Roger

4 and Paul to fly to California to be with Howard

5 because he was ill.

6 I asked Roger what he misses most. He

7 told you he misses seeing Paul, but what he really

8 misses is Paul seeing his kids. You have seen this

9 picture. That's Uncle Paul with Rogers kids and

10 Roger's wife. I asked Roger about him. He said, I

11 never had a friend, somebody I associate with,

12 someone I know more than Paul. That's his loss of

13 society.

14 And then you met John. And John told

15 you about their ritual on every Saturday morning of

16 talking to each other. And he told you about the

17 visits to Uncle Foster at the VA in Milwaukee, about

18 visits to mother and Mary in Indiana.

19 He told you how Paul loved to paint.

20 And how he did that painting or portrait of the

21 church where their dad was the minister. And before

22 Paul died, they presented that painting to the church

23 and it still hangs there.

24 John told you about his relationship

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1 day goes by that he doesn't think about his brother,

2 Paul. And he misses not seeing him, but what he

3 really misses is knowing he's not there when he needs

4 him. And that goes back to that caregiver, Paul

5 Goodson. Can't you get a sense of Paul Goodson was

6 and what he meant to this family?

7 So, Folks, what's the value of the

8 loss of society. What is the value of the loss of

9 this relationship to these men? And we need to

10 acknowledge that these folks were not young. Paul

11 was 78-years-old, and he may have died of old age in

12 the next nine years or maybe not.

13 But those final years are that much

14 more precious to these folks. And that's probably a

15 hard concept to understand when we are not at that

16 stage of life.

17 But someone once told me a story about

18 it, which I think does put it in perspective. They

19 said, imagine a little five-year-old boy with an ice

20 cream cone. A big double scoop ice cream cone and

21 that boy is licking away at the ice cream, and it's

22 flying all over the place, he has ice cream on his

23 face and on his shirt. And you say to that

24 five-year-old boy, "Hey, little guy, that ice cream

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1 with John's kids. Paul's relationship with John's

2 kid. 66004. The middle is John's daughter Judy with

3 her son. Paul had a great relationship with her.

4 And John told you about the visit that

5 he and his wife had to Chicago just six days before

6 Paul was killed. They had coffee and they had lunch

7 and they went to see Paul's office at woods phillips.

8 John told you he cherished that visit because it was

9 the last time he saw his brother.

10 And then he told you about that

11 strange feeling he had on Friday, December 8th, that

12 he needed to talk to his brother. And that was

13 strange because it was a Friday and not a Saturday.

14 He kept calling and he couldn't reach him. And then

15 finally, at 9:00 o'clock that night, he called Paul's

16 apartment and spoke to a Chicago police officer who

17 broke the news. And then John had to make the calls

18 to his brothers.

19 He told you how he told his brother

20 Howard, and how Howard broke down. And he told you

21 how hard it was on Howard to cope with the loss of

22 brother during the final nine months of Howard's

23 life.

24 Now, John finally told you that not a

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1 looks good. Can I have a lick?" And he'll say,

2 "Sure." But then imagine when he gets down to the

3 very bottom of that cone and there is one little bite

4 left, one little dollop of ice cream left. And if

5 you say to that little boy "Hey, can I have the last

6 bite of your ice cream cone?" "No way."

7 Such is the final years of a person's

8 life. Such is the final years of a brotherly

9 relationship.

10 Ultimately, Folks, it's obviously up

11 to you. But I suggest to you that fair compensation

12 for Roger and John and for Howard for those nine

13 months for their loss of society of their brother,

14 Paul, and even the loss of benefits and services,

15 that's the caregiver in Paul, I suggest to you that 7

16 to \$9 million is fair compensation.

17 On behalf of the Goodson family, thank

18 you so much for your time and attention, not just

19 this morning, but through this entire lengthy trial.

20 The Goodsons look forward to your verdict.

21 THE COURT: Thank you. Counsel.

22 Let's break for lunch.

23 I'm sorry. James, go ahead.

24 Mr. James Power.

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1 CLOSING ARGUMENT
2 BY
3 MR. JAMES POWER:
4 May it please the Court, Counsel, Ms. Leib,
5 Mr. Goodsons, Counsel.
6 Some buildings offer security while
7 others do not. Some buildings that do offer security
8 employ a single guard to sit behind a desk in the
9 lobby and wave at the familiar faces that come and
10 go, while others, like the building at 500 West
11 Madison, employ numerous guards to staff the lobby
12 and whose job it is to not only prevent unauthorized
13 people from gaining access, but more importantly, to
14 protect the life and safety of those authorized to be
15 in the building. That was the contract that
16 AlliedBarton entered into with the building
17 management at 500 West Madison.
18 Under that contract, the guards were
19 not greeters. They were not doormen. And they
20 certainly were not simply friendly faces that could
21 provide direction. They were there for the
22 protection of life. That was the contract
23 AlliedBarton agreed and entered into, and it was that
24 contract that required them to prevent people exactly

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1 like Joseph Jackson from gaining access and
2 accomplishing what he accomplished on that day.
3 Now, it is important that we discuss
4 what Ruth Leib went through on that day because it's
5 what she lives with everyday.
6 For Ruth, December 8, 2006 was a day
7 like any other normal day, that's how it started.
8 She woke up. Made sure her daughter was getting
9 ready for school and said goodbye to her husband
10 before she left for work, where for the past 16 years
11 she had worked for the kindest and most caring
12 person, let alone, employer, she had ever known.
13 When she arrived at the building, she
14 passed through security like everyone else before
15 proceeding up to the 38th floor. Once inside, she
16 encountered Michael, who always greeted her with a
17 friendly smile and welcoming hello. With that, Ruth
18 set off to accomplish the tasks for the day.
19 Now, as you heard, Ruth Leib did not
20 have the greatest home life. Her husband's
21 disability left him unable to work and barely able to
22 get out of bed, so because of that Ruth is
23 responsible for both their financial, as well as the
24 parental obligations of her household. That

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1 instability caused Ruth stress, but as you heard her
2 say, life happens.
3 You see prior to December 8th, Ruth
4 was able to handle the happenings of life. She was a
5 high functioning, highly competent hard worker who
6 was making the best of what she could for herself and
7 her children.
8 Now, there was one aspect of Ruth's
9 life that served for her outlet when the stress from
10 her personnel life started to become overwhelming,
11 that aspect was the work she did with Michael
12 McKenna.
13 As her best friend, Mike was Ruth's
14 sounding board. When things at home became
15 increasingly stressful, as a father himself, Mike
16 offered advice and guidance as Ruth attempted to
17 manage the day-to-day aspects of her personal life.
18 As her employer, the responsibilities
19 that Mike had entrusted in Ruth gave her that sense
20 of importance and confidence and trust that she
21 needed.
22 Also, Mike allowed Ruth to be there
23 with her children and to take the time off necessary
24 so she could be a part of her life. Simply put:

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1 Mike was a rock of stability in Ruth's life. In a
2 moment that all changed.
3 The confusion for Ruth set in when she
4 first entered the lobby and was informed by the
5 security officer with the man he was with, Joe
6 Jackson, was an old friend of Michael McKenna's and
7 needed to see him.
8 From there, the confusion turned to
9 terror as the subsequent events unfolded. One, the
10 man produces a chain from a bag he was carrying and
11 begins to lock the door. Two, a gun is displayed.
12 It's taken out and he approaches Ruth taking aim at
13 her head. Three, with the gun inches from her head,
14 Jackson demands that she bring Mike to the lobby at
15 the explicit threat of death.
16 As she told you, none of this seemed
17 real. As it unfolded, she could not believe what was
18 happening. And then at that moment, a statement,
19 "Why is this happening on my watch?" That reality
20 set in for Ruth. This was not a drill or a training
21 exercise. No one was going to stop this man from
22 shooting her in the head if she did not comply.
23 She told you she remembers looking at
24 the security officer frozen, doing nothing in

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1 response to the man who was holding the gun to her
2 head.
3 As she said, she could not believe
4 this was happening. She could not believe no one had
5 done or was doing anything about it. She complied.
6 She hoped Mike would be able to diffuse the
7 situation, but Mike McKenna never had a chance.
8 Her best friend, confident, her rock,
9 they held hands as they walked together from the
10 conference room into the lobby. Within seconds Ruth
11 watched as Jackson raised the gun that minutes
12 earlier had been pointed to her own head, and then
13 she watched in terror as this time he pulled the
14 trigger.
15 She screamed as her best friend, her
16 mentor, her boss fell to the floor. Unable to truly
17 process what she had just witnessed, Ruth stumbled
18 out of the lobby to find a place to hide. When she
19 found a secretarial desk and began to crawl beneath,
20 she sensed a horrible presence behind her.
21 Words would never adequately express
22 the horror that she experienced as she turned to find
23 the presence she felt was that of Jackson was
24 standing over her, pointing the gun at her head.

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1 Nor could words express the terror she
2 felt as she pleaded with Jackson for her life, to
3 watched as he scanned her body with his gun deciding
4 whether or not she should live or die or whether he
5 should take aim. Then BAM. The pain, the searing
6 pain she felt as the bullet tore through her foot,
7 breaking bones before fragmenting, left as a forever
8 reminder of the horrors that she went through that
9 day.
10 Then the altered sense of reality that
11 followed, being waved into the docket room by Paul
12 Goodson, where he was hiding with Allen Hoover. The
13 terror as Jackson found her once again, along with
14 the others in their hiding place, and bearing witness
15 to the this catastrophe. Watching Allen paralyzed
16 from Jackson's bullet fell to the floor. No person
17 should ever have to witness the things that Ruth
18 witnessed on that day.
19 This never should have happened. Joe
20 Jackson should have never made it up to the 38th
21 floor. This never should have happened. If Brown
22 was not prepared to wrestle with Mr. Jackson on the
23 3rd Floor, then he should not have been working in a
24 building where AlliedBarton had agreed to protect

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1 life. That's on AlliedBarton.
2 Understandably, ladies and gentlemen,
3 because of the things she witnessed and went through
4 on that day, Ruth's life was forever altered as a
5 result.
6 Now, what is PTSD? PTSD relates to
7 how our mind processes and stores memory in
8 life-threatening situations. All human beings have a
9 natural instinct for self-preservation, so when we go
10 through a traumatic experience in which our lives are
11 threatened, our brain ties and creates a powerful
12 connection between the emotions that we felt and our
13 memories of the event.
14 Now, as you heard Dr. Clayton explain,
15 the memories themselves are not complete memories,
16 but rather stored as fragments of the whole. The
17 fragments become what are referred to, as you heard,
18 triggers.
19 The triggers could be anything from
20 the smell of a room to the color of a person's
21 T-shirt. These triggers are powerful, however, that
22 the presence of one alone is enough to send that
23 person right back to the place and cause them to
24 experience the same fear, anxiety -- fear, anxiety

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1 and panic that they went through on the day of the
2 traumatic event as if it was happening again.
3 Now, for Ruth these triggers can be
4 something as seemingly benign as the elevator doors
5 closing or passing a construction site, where the
6 sounds of a nail gun reminds her of the shooting or
7 someone walking down the street behind her. Every
8 one of these normal occurrences, things me or you
9 would encounter without a second thought, are
10 sufficient to send Ruth into a state of panic.
11 In addition to the triggers, you heard
12 Ruth experiences what are referred to as intrusive
13 memories. These are memories of the event, which
14 without a moment's notice come flooding back. When
15 this occurs a person is inconsolable. They fall into
16 a state of panic and anxiety over which they have no
17 control.
18 As you heard, Dr. Clayton explain, the
19 panic attacks caused by these memories are too
20 powerful to be controlled even with medicine.
21 Instead they have to run their course.
22 You also heard about the restless
23 nights and being constantly tired, but only able to
24 get two to three hours of sleep, how Ruth moved from

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1 bed to couch, hoping that the change of scenery will
 2 in some way help to quell the fear and anxiety which
 3 otherwise prevents her from getting a full night's
 4 rest.

5 Truly, Ruth's life is now controlled
 6 by the events on December 8, 2006. The fear and
 7 anxiety resulting from the events on that day limits
 8 her from going out and enjoying the world; how her
 9 life, what she described as full, has become small,
 10 much smaller as a result of this experience.

11 Now, you also heard about the
 12 tinnitus, which she experiences everyday. That's the
 13 ringing in the ears.

14 The ringing in her ears presents
 15 itself any time there is no noise present to drowned
 16 it out.

17 You heard this symptom of PTSD for
 18 Ruth serves as kind of a fear and anxiety barometer
 19 that fluctuates in severity over the course of a day,
 20 but is not and will never leave her. Indeed, it is
 21 present when she quiets herself when she goes to
 22 sleep at night and when she wakes. It is ever
 23 present.

24 It's a way that her mind now copes

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1 on that day.

2 Now, not to forget, there is also the
 3 inability to concentrate and the memory problems that
 4 she now suffers from. You all heard Dr. Kreiner
 5 explain prior to the shooting, Ruth was able to fully
 6 function competently at the highest levels. She had
 7 a remarkable memory. I believe Dr. Clayton described
 8 it as a hell of a memory. She could concentrate on a
 9 task and maintain focus until it was completed.

10 Now, a woman who has worked since she
 11 was 16-years-old is unemployed. She can no longer
 12 function at the capacity required to perform the job
 13 she was trained to do. And one can imagine how
 14 frustrating that can be.

15 Now ladies and gentlemen, I could go
 16 on about all of the issues both mentally and
 17 physically that Ruth now suffers as a result of what
 18 happened on the 38th floor, but I'm confident that
 19 you have heard all the evidence and recognize the
 20 significance of the evidence.

21 Simply put, in the past 11 years,
 22 there has not been a single day that has gone by in
 23 which the memories or experiences from that day have
 24 not reared its ugly head in one form or another,

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1 with the trauma by attempting to protect herself. As
 2 you heard Dr. Clayton explain, it's an ever present
 3 and constant reminder of the threats of the gun
 4 shots, the trauma she experienced. It serves to keep
 5 her hypervigilant and alert, so at least in her mind,
 6 no one else can harm her.

7 You also heard about the depression
 8 that stems not only from the fact that she witnessed
 9 these horrible events, but that which comes from the
 10 guilty feels from leading Mike out from the
 11 conference room. That's something she lives with
 12 everyday.

13 The idea that she is somehow
 14 responsible for Mike's death because she retrieved
 15 him after Jackson pointed a gun within inches of her
 16 head and demanded that she get him at the explicit
 17 threat of death. The guilt she feels, asking the
 18 question, "Why did I live while the others died?"

19 There is no answer to that question
 20 other than the reassurance that this was not her
 21 fault.

22 But the pain, the unimaginable burden
 23 that she carries feeling that responsibility remains
 24 constant. She can never forget how helpless she was

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1 whether it is the tinnitus, the intrusive memories,
 2 the panic, the pain, the cramping that she feels in
 3 her foot, these are all conditions that she has lived
 4 with and will continue to live with everyday for the
 5 rest of her life. They will be ever present and will
 6 never leave her.

7 Now, you will be asked to return a
 8 verdict. And if you choose to return in favor of
 9 Ms. Leib, there will be four categories of damages.
 10 First is loss of normal life. That's loss of normal
 11 life experienced in the past and reasonably certain
 12 to be experienced in the future. This includes the
 13 loss of her best friend. The loss of the stability
 14 that her work provided, the memory loss, the living
 15 everyday with the ringing in her ears, the small
 16 world which she described as her house, the
 17 three-block-away coffee shop and the grocery store
 18 that she's now confined to. The inability to
 19 concentrate and focus, the panic attacks.

20 For loss of normal life, we would ask
 21 that you would return a verdict of 1 to \$2 million.

22 For the pain and suffering experienced
 23 in the past and reasonably certain to be experienced
 24 in the future, this includes the pain, not only from

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1 the day of the occurrence, but the six months in
2 which she was nonweightbearing on her foot, the 30 to
3 50 pieces of shrap metal that remain to this day and
4 will forever remain in her foot and the cramping she
5 testified she experiences in her foot.

6 For the pain and suffering, we ask
7 that you return a verdict between 600 and \$800,000.

8 Now, for the emotional distress
9 experienced in the past and reasonably certain to be
10 experienced in the future, this includes the
11 posttraumatic stress, the fear, the anxiety that
12 comes as a result, the depression, the loss of hope,
13 as well as the guilt, the survivor guilt, that
14 question she lives with everyday "Why did I live
15 while the others died?"

16 For the emotional distress, we ask
17 that you return a verdict between 4 and \$5 million.

18 And, finally, for the lost earnings.
19 You heard Ms. Ruth (sic) testify that she was making
20 less -- when she was working for Mr. McKenna, she was
21 making approximately \$50,000 a year for the years of
22 tax returns that have been admitted into evidence.

23 The evidence shows that in 2009, she
24 was making less than \$20,000. 2010 to 2013, she made

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1 less than \$10,000. And from 2014 to 2017, which is
2 the last year we are making a claim for lost
3 earnings, you heard that she had no earned income.

4 So based on what she was making and
5 what she would have been making had this not
6 occurred, we ask that you return a verdict in the
7 amount of lost earnings of \$390,000.

8 These are just my recommendations,
9 ladies and gentlemen. And if you return a verdict in
10 favor of my client, you're free to award more or
11 less. That is your choice. It's your decision to
12 make. But that is what I believe the evidence has
13 shown.

14 Thank you for your time.

15 THE COURT: Thank you, Counsel. Okay. It's
16 ten to 1:00. Let's that lunch break till ten to
17 2:00. Okay.

18 (Whereupon, a lunch recess
19 was taken.)

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