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IN RE: MARKET STREET BUILDING COLLAPSE

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

- - -

IN RE: : JULY TERM, 2013
: :
MARKET STREET BUILDING : NO.: 00720 - Lead Case
COLLAPSE LITIGATION : :
: Consolidated Cases:
: :
: 130600987; 130601108;
: 130601235; 130601236;
: 130601353; 130601363;
: 130601379; 130601453;
: 130601752; 130700678;
: 130801874; 130900159;
: 130901429; 130901903;
: 131201233; 140602818;
: 140702440; 150600013;
: 150600196;

- - -

Wednesday, January 25, 2017
Jury Trial - Afternoon Session

- - -

Courtroom 653, City Hall
Philadelphia, Pennsylvania

- - -

BEFORE: THE HONORABLE M. TERESA SARMINA J.,
And a jury

1 IN RE: MARKET STREET BUILDING COLLAPSE

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13:15:49 2 (Court reconvened at 1:50 p.m.)

13:48:21 3 THE COURT: Good afternoon. If we
13:48:22 4 could bring out our jury, please.

13:49:17 5 If everyone could make sure your cell
13:49:19 6 phone is turned off. If you're thrown out
13:49:21 7 because your cell phone is on, you will not be
13:49:24 8 permitted back in.

13:50:23 9 THE COURT CRIER: May I, Your Honor?

13:50:25 10 THE COURT: Yes, thank you.

13:50:26 11 THE COURT CRIER: Everyone please
13:50:27 12 remain seated as the jury enters the courtroom.

13:50:29 13 Jurors.

13:50:36 14 (The jury enters the courtroom at this
13:50:39 15 time.)

13:51:05 16 THE COURT: Good afternoon, ladies and
13:51:07 17 gentlemen.

13:51:07 18 THE JURY: Good afternoon, Your Honor.

13:51:08 19 THE COURT: Before we get started with
13:51:10 20 Mr. Richard Sprague's closing argument, I
13:51:13 21 wanted to address two points with you.

13:51:15 22 First, prior to Mr. Snyder's closing,
13:51:21 23 all counsel knew that Mr. Roth would not be in
13:51:24 24 the courtroom and that he had a very valid
13:51:26 25 reason for it. So you should not consider his

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13:51:29 2 absence in any way against Mr. Roth. I believe
13:51:29 3 that some of you may have looked where Mr. Roth
13:51:32 4 has been sitting and there was an empty chair
13:51:34 5 there. So you're not to hold that against Mr.
13:51:36 6 Roth in any way.

13:51:37 7 Also, during Mr. Snyder's closing
13:51:40 8 arguments he addressed Mr. Wigrizer on more
13:51:43 9 than one occasion by name and gesture. On at
13:51:46 10 least one of those occasions Mr. Snyder
13:51:49 11 incorrectly attributed certain statements to
13:51:52 12 Mr. Wigrizer, specifically statements, or
13:51:55 13 arguments, relating to John Mondlak, Allen
13:51:58 14 Greenberger, or to the legal duty or acts of
13:52:00 15 L&I. Mr. Wigrizer never made such statements,
13:52:03 16 and you will disregard those arguments made by
13:52:06 17 Mr. Snyder as referencing Mr. Wigrizer.

13:52:12 18 With that, Mr. Sprague, we will hear
13:52:14 19 your closing argument.

13:52:18 20 MR. R. SPRAGUE: First, can everybody
13:52:20 21 hear me?

13:52:21 22 THE JURY: Yes.

13:52:21 23 MR. R. SPRAGUE: May it please the
13:52:23 24 Court and all counsel, I'm a fellow that all of
13:52:31 25 you saw sitting back there for four-and-a-half

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13:52:35 2 months. I'm the fellow that hasn't spoken to
13:52:42 3 you, and I'm the fellow that's going to talk to
13:52:45 4 you now.

13:52:46 5 I have an hour and 40 minutes. I
13:52:49 6 probably won't use all of it, but I want to
13:52:53 7 talk to you from my heart. And it's important
13:53:00 8 that each of you realize the appreciation to
13:53:09 9 this group. I've been in front of many juries.
13:53:15 10 This has been over four-and-a-half months. You
13:53:21 11 have sat. You have been interested. You paid
13:53:27 12 attention. When they've had those innumerable
13:53:33 13 sidebar conferences up there, usually jurors
13:53:36 14 go, My God, another conference. There's been
13:53:41 15 smiles on your faces. You chat while you're in
13:53:45 16 the jury box, and I think I echo for all
13:53:48 17 counsel here, in my experience, you're
13:53:53 18 remarkable.

13:53:55 19 Having said that, I also want to say
13:54:01 20 that you have been witnesses to great lawyers.
13:54:10 21 Every one of these lawyers, we may have been on
13:54:13 22 opposite sides, but when you think about this
13:54:18 23 case after your duties are over, you're going
13:54:22 24 to reflect you had a rare opportunity to see
13:54:28 25 top-notch lawyering. Every one of these

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13:54:32 2 lawyers has been, in my opinion, stupendous.
13:54:41 3 Great. And you have literally sat as though
13:54:46 4 you're watching a Broadway play here presented
13:54:49 5 in front of you. And you got to understand,
13:54:56 6 all of us lawyers -- that includes me -- we're
13:55:01 7 actors. You hear loud, thunderous voices. You
13:55:10 8 hear witnesses yelling back, "You're a
13:55:12 9 blusterer." He's no blusterer. He knows how
13:55:20 10 to perform to be effective in front of a jury.
13:55:24 11 In fact -- he won't like it -- he's a pussy
13:55:28 12 cat, in fact.

13:55:30 13 And the other lawyers that you've heard
13:55:32 14 here have been outstanding. Both sides. And I
13:55:38 15 think that when this is all done, while we
13:55:44 16 appreciate you, I think you should appreciate
13:55:49 17 what you have been able to sit and observe of a
13:55:56 18 first-rate trial.

13:55:58 19 It's also important that you realize
13:56:07 20 and you know way back when you were selected,
13:56:10 21 over 42 percent of people who are called for
13:56:15 22 jury service in Philadelphia don't even bother
13:56:19 23 to appear. Just think of that. And how many
13:56:27 24 when they were called on that original panel,
13:56:32 25 as soon as they heard -- and you weren't told

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13:56:35 2 initially four-and-a-half. You were told three
13:56:39 3 months, maybe. But how many hands went up on
13:56:44 4 that panel of people who said, "We can't
13:56:48 5 serve." And you, you're extraordinary. And
13:56:55 6 you came and you have served.

13:57:00 7 But with that service, and I want to
13:57:02 8 emphasize this so much, comes doing your duty,
13:57:12 9 and doing your duty under the oath that you
13:57:17 10 have sworn as jurors. In this case, Her Honor
13:57:25 11 has sworn as a judge to render justice and Her
13:57:32 12 Honor has done her job in this trial. She has
13:57:38 13 lived up to her oath. Lawyers may not have
13:57:41 14 agreed on various rulings, but that's
13:57:44 15 unimportant. Her Honor has shown each and
13:57:48 16 every one of you that when you take an oath,
13:57:53 17 you live up to that oath. Every one of these
13:57:56 18 lawyers here has taken oaths as lawyers, and
13:58:05 19 every one of them has lived up to their oath
13:58:08 20 and has represented their client fully.

13:58:11 21 And each one of you -- and before I get
13:58:16 22 to you, I also want to give credit in this case
13:58:20 23 to Mr. Hardaway, who has lived up to his oath.
13:58:26 24 He's a wonderful court officer. Mr. Purnell,
13:58:30 25 and I lost the name of the other officer. But

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13:58:33 2 I thank him, too.

13:58:34 3 THE COURT: Mr. Massitelli.

13:58:36 4 MR. R. SPRAGUE: That's it. Thank you,
13:58:37 5 Your Honor.

13:58:38 6 She's always there to help out. But
13:58:43 7 they also have oaths in terms of being in
13:58:47 8 charge of the jury and they have lived up to
13:58:51 9 it.

13:58:54 10 And now this case, this part of this
13:58:56 11 case is going to go into your hands. And it is
13:59:01 12 so important, God, so important, that you live
13:59:07 13 up to your oath. Your oath is to render
13:59:11 14 justice, to deliberate fairly, fully, not in
13:59:26 15 any way having race, sex, or anything of that
13:59:30 16 nature, enter into your deliberations. Each
13:59:34 17 one of you swore individually, when you were
13:59:37 18 selected, that you will decide the facts of
13:59:41 19 this case on the facts. And from my
13:59:50 20 observations, sitting back there for
13:59:52 21 four-and-a-half months, you're going to live up
13:59:55 22 to that.

13:59:56 23 It may be hard. It's been hard on
14:00:02 24 everybody. When you come to deliberate, you
14:00:08 25 don't give any regard to what you think may be

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14:00:11 2 felt by people out there. You don't give any
14:00:16 3 regard to what you think the newspapers may
14:00:19 4 say. They weren't in here, and you know how
14:00:23 5 many times they get the facts wrong. You are
14:00:27 6 the judge of the facts and you are to decide
14:00:31 7 them honestly. And when you do, and you go
14:00:39 8 home, you breathe that air and you'll feel you
14:00:47 9 have accomplished what is so important.

14:00:53 10 You know, people here the other day,
14:00:55 11 they gave you quotes. I want to give you a
14:00:58 12 quote. It came from a President of the United
14:01:10 13 States as he was leaving office. His last
14:01:13 14 speech to all of us, which he said, "I believe
14:01:20 15 in this country. I believe in the American
14:01:22 16 people." What great words. And I want to add
14:01:30 17 to them. I believe in the jury system. It is
14:01:36 18 the jury system that is made up of the American
14:01:42 19 people, and you now represent the American
14:01:47 20 people and our system of justice. And when you
14:01:55 21 retire for your verdict, live up to where you
14:01:59 22 stand and represent for all of us so we may be
14:02:07 23 truly proud that that verdict is an honest
14:02:12 24 verdict.

14:02:13 25 Now, we have heard an awful lot in this

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14:02:24 2 case. Four-and-a-half months of it. I would
14:02:29 3 suggest much of it was not necessarily that
14:02:38 4 much on point. Much of it could have been
14:02:42 5 shortened, but we're stuck with what we got.
14:02:45 6 But what is this case about? Let's think about
14:02:49 7 it. We know that on Wednesday, June 5, 2013,
14:03:03 8 there was a horrible, horrible catastrophe in
14:03:08 9 this city. Let nobody, don't think anybody on
14:03:15 10 the defense understates that horrible
14:03:22 11 catastrophe. People were killed, injured
14:03:28 12 seriously, who were totally innocent. There's
14:03:34 13 nothing that they did that was in any way their
14:03:39 14 fault. This was a terrible catastrophe of
14:03:43 15 totally innocent people, suffering. And one
14:03:54 16 would be inhuman not to feel the agony those
14:04:03 17 people have suffered, their families and the
14:04:05 18 survivors. And I think for a moment of
14:04:15 19 silence, as we all think of them.

14:04:25 20 But we have to understand with a
14:04:29 21 horrible catastrophe, what is it that we're in
14:04:33 22 court about? Not to decide, Hey, there's a
14:04:41 23 horrible catastrophe. What is the cause of the
14:04:48 24 catastrophe? That is one of the issues for
14:04:53 25 you, the jury. What is the cause of it? And,

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14:04:59 2 secondly, who is responsible? Those are the
14:05:11 3 two basic questions. They can talk all they
14:05:14 4 want about this part of a building, that part
14:05:17 5 of a building. I go to sleep and I dream about
14:05:20 6 poles falling down. They can talk all they
14:05:24 7 want about that, but the bottom two questions
14:05:26 8 are what caused this catastrophe in which so
14:05:31 9 many innocent people suffered and who caused
14:05:38 10 it?

14:05:38 11 Now, I heard in their opening a
14:05:50 12 reference by the plaintiffs saying they want
14:06:01 13 justice, but do they? I really suggest when
14:06:08 14 you think of the approach that's been taken in
14:06:12 15 this court, no way do they want justice. They
14:06:18 16 seek revenge, and revenge can blind you.
14:06:24 17 Revenge can have you just reach out to get
14:06:29 18 people, whoever you can get, to say they're
14:06:36 19 responsible, whether they had anything to do
14:06:39 20 with it or not.

14:06:41 21 I mean, just think for a second. If
14:06:47 22 someone out there had been walking on Market
14:06:52 23 Street that day, they might be in this dock
14:06:56 24 here, sued, for in some way violating a duty,
14:07:05 25 and, therefore, they got to pay for lawyers

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14:07:07 2 sitting over there. Just think, we got Jack
14:07:16 3 Higgins. What have you heard about Jack
14:07:19 4 Higgins's -- his lawyers sit back here -- in
14:07:21 5 this whole case? What do they have on Jack
14:07:28 6 Higgins? They end up saying Jack Higgins, this
14:07:30 7 architect for The Salvation Army, should have
14:07:32 8 done more than what he was hired to do. Why in
14:07:37 9 the world was Jack Higgins sued? Ask
14:07:42 10 yourselves that. Are they just reaching out to
14:07:46 11 just get more people? Anybody that they can
14:07:50 12 reach out to who's responsible?

14:07:53 13 Why in the world do they shoot -- sue
14:07:58 14 Mrs. Basciano, the wife of Mr. Basciano?
14:08:03 15 What's she got to do with it? She was standing
14:08:08 16 there on that day of the 5th. She's not an
14:08:12 17 owner of STB. Got nothing to do with the
14:08:15 18 realty company. She was standing there. But
14:08:19 19 they sued her, too.

14:08:20 20 THE COURT: Mr. Sprague, do not argue
14:08:22 21 facts not in evidence.

14:08:24 22 MR. R. SPRAGUE: I believe that is in
14:08:25 23 evidence in questions that Mr. Sprague had
14:08:29 24 asked.

14:08:30 25 THE COURT: All right. It's the jury's

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14:08:32 2 recollection which will control.

14:08:34 3 MR. R. SPRAGUE: See, the judge and I
14:08:36 4 disagree, but she does her duty.

14:08:41 5 We also know they sued two other
14:08:45 6 corporations, the buildings that were the other
14:08:51 7 side of the Hoagie City. Why'd they sue them?
14:08:54 8 Those are two separate corporations. They're
14:08:59 9 no longer in the case now. Why'd they sue
14:09:02 10 them? Reaching out just to try to grasp in
14:09:05 11 their net anybody that they can. That's not to
14:09:10 12 say there wasn't reason to sue some of the
14:09:14 13 people that are here. They would have reasons
14:09:17 14 for suing others. But when you go out to
14:09:23 15 deliberate, you got to consider that as well.

14:09:25 16 Now, members of the jury, you also have
14:09:38 17 to understand, as I said earlier, we lawyers
14:09:43 18 are part of this spectacle that is being put on
14:09:49 19 in front of you. When a lawyer stands over
14:09:52 20 here and yells at a witness, "Admit you're
14:10:02 21 lying. Turn to that jury. Tell them you just
14:10:04 22 made that up."

14:10:08 23 That's very dramatic, and it's done to
14:10:16 24 really make an impression on you. It is done
14:10:22 25 to get the thought process in your own mind,

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14:10:27 2 Gee, a lawyer wouldn't be saying that. He must
14:10:30 3 know he's lying. But you've heard Her Honor
14:10:33 4 tell you time and time again, it's not the
14:10:39 5 questions by the lawyers. These lawyers -- me,
14:10:44 6 we can ask anything we want. We're not bound
14:10:48 7 by anything. It's that witness who's on the
14:10:51 8 stand. He's the one that swore to tell the
14:10:54 9 truth, not the lawyer.

14:10:56 10 And that's why Her Honor has told you
14:10:59 11 time and time again, it's not the question.
14:11:05 12 That lawyer can ask whatever he wants. You got
14:11:08 13 to focus on what the answer is. And that's
14:11:12 14 very important, because a number of questions
14:11:15 15 really were, if you look at the answers, those
14:11:20 16 questions were meaningless.

14:11:23 17 I also spoke about us being actors. My
14:11:28 18 dear friend over here knows that in general if
14:11:32 19 you just stand in one spot and you're going on
14:11:36 20 for a long, long time, you kind of get dazed.
14:11:41 21 You move your attention. You start to look
14:11:44 22 away over there, up there. But he's learned
14:11:48 23 that -- he does it very effectively -- if you
14:11:52 24 walk -- I can't do it because I'm blocked in
14:11:54 25 here -- but you all know walking serenade,

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14:11:59 2 walking from here all the way around here and
14:12:02 3 back, that's part of the act. It's part of
14:12:07 4 what's done to say, Boy, they'll keep their
14:12:11 5 eyes on me because I'm moving. You got to
14:12:14 6 understand it that way.

14:12:16 7 In fact, except for Mr. Wigrizzer over
14:12:19 8 there who today is wearing a blue shirt but
14:12:25 9 yesterday was wearing a white shirt, you'll
14:12:29 10 know that every lawyer here, except me, in
14:12:35 11 arguing to you is wearing a white shirt. How
14:12:39 12 come? Ain't that a remarkable coincidence?
14:12:43 13 All these lawyers, white shirts. Because
14:12:46 14 there's a folklore, there's a myth among
14:12:48 15 lawyers that if you wear a white shirt, that
14:12:52 16 will sort of convey truthfulness. Well, that's
14:12:56 17 a lot of baloney. It's not the clothes that
14:13:02 18 the lawyer wears. It's the content of the
14:13:06 19 evidence that matters.

14:13:09 20 Now, just the other day, yesterday, and
14:13:18 21 you got to be very careful here. And just to
14:13:23 22 show you what I'm talking about, Mr. Wigrizzer
14:13:27 23 made a claim that there was a plan to a
14:13:35 24 dangerous case on June 2nd, 2013, and it came
14:13:41 25 from Mr. Basciano. In fact -- and this is all

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14:13:52 2 in evidence. It's in front of you. By the
14:13:54 3 way, I do want to tell you, I said at the
14:13:57 4 beginning I'm going to talk to you from my
14:13:59 5 heart. I'm not presenting to you one slide.
14:14:07 6 I'm going to talk to you. I'm not presenting
14:14:10 7 to you any diagrams. You've seen them. You
14:14:15 8 don't need to keep seeing them over and over,
14:14:18 9 in my view. Now's the time to talk to you.

14:14:25 10 But in terms of that claim by Mr.
14:14:28 11 Wigrizer, Mr. Marinakos said -- and I'm reading
14:14:32 12 from an e-mail of his -- "This is our thought
14:14:40 13 with the chimney. We will take our building
14:14:44 14 down."

14:14:45 15 Remember that? That's what Mr.
14:14:47 16 Wigrizer referred to and said that was from Mr.
14:14:51 17 Basciano. In fact, the testimony, on a
14:14:57 18 question by Mr. Snyder, and this was a
14:15:10 19 question. "Now, you mentioned yesterday there
14:15:14 20 was part of this e-mail from June 2nd, where it
14:15:17 21 said that Mr. Basciano had been there that
14:15:20 22 weekend and seemed pleased with the progress;
14:15:26 23 is that correct?

14:15:26 24 "ANSWER: Yes."

14:15:28 25 Then -- this of Mr. Marinakos.

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14:15:30 2 "QUESTION: And then you said that it
14:15:32 3 was our thought, our thought" -- which is what
14:15:38 4 Mr. Wigrizer tried to tell you was with Mr.
14:15:41 5 Basciano and his plan. "And then you said that
14:15:44 6 it was our thought that we would take the
14:15:46 7 building back to the chimney and then go to L&I
14:15:51 8 and have them cite The Salvation Army for what
14:15:55 9 you called a dangerous case, correct?"

14:16:00 10 Remember, he went on and on about how
14:16:03 11 terrible that was and how disgusting that was
14:16:04 12 and Mr. Basciano? But what was the answer?

14:16:10 13 "And then when you said it was our
14:16:12 14 thought, who are you talking about?"

14:16:15 15 The answer, "Well, this information was
14:16:20 16 relayed by Mr. Campbell and Mr. Wagenhoffer."

14:16:28 17 Not Mr. Basciano. Now, you know, I
14:16:33 18 should also say to you that in my talk with,
14:16:40 19 you ladies and gentlemen, I'm going to refer to
14:16:46 20 what I say is the law and I'm going to read
14:16:51 21 from testimony and I'm going to read my notes
14:16:54 22 at certain parts. But let me make it clear, I
14:16:58 23 do not deliberately misstate the law. I do my
14:17:05 24 best, but I'm a human being and I'm not
14:17:08 25 necessarily always correct. The law you will

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14:17:13 2 get from the Court and you will follow the
14:17:17 3 instructions of the Court as to the law. If
14:17:20 4 I've said something in the law and the Court
14:17:24 5 says something different, strike out what I
14:17:28 6 said. You follow what Her Honor tells you.

14:17:32 7 Secondly, you've been told over and
14:17:37 8 over that the facts are for you. And even when
14:17:42 9 I read from testimony or read from my notes,
14:17:49 10 that still doesn't bind you. If you have
14:17:52 11 different recollections, you stick to your
14:17:55 12 recollections.

14:17:57 13 And by the way, you're not inhuman
14:18:04 14 people. You're not from Mars or somewhere.
14:18:07 15 There's none of you, not one of you who could
14:18:09 16 remember everything in this case. No way. The
14:18:12 17 whole theory of our jury system is that when
14:18:16 18 you get back in that jury room and you
14:18:20 19 deliberate, what one may have forgotten another
14:18:24 20 will recall. And it's when you put together
14:18:27 21 your combined, combined recollection, those are
14:18:33 22 the facts that will govern this case. And I
14:18:37 23 want to remind you that in those deliberations,
14:18:41 24 you fully express what you believe and recall.

14:18:47 25 Now, as I said, in this case, the basic

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14:18:54 2 two questions: What caused the collapse and
14:18:59 3 who's responsible for it?

14:19:04 4 I also want to read to you two other
14:19:07 5 quotes before I get into that. Mr. Mongeluzzi
14:19:15 6 asked Mr. Basciano when he was on the stand --
14:19:18 7 by the way, Mr. Wigrizer tried to make it look
14:19:21 8 like Mr. Basciano came to court wanting to just
14:19:28 9 get sympathy from you. They called him. They
14:19:33 10 put him on the stand. He didn't come here
14:19:35 11 because he just was wallowing, just wanting to
14:19:39 12 get on the stand and get sympathy from you.
14:19:42 13 They put him on. And Mr. Mongeluzzi asked
14:19:46 14 him, "Don't you think it's the victims of this
14:19:49 15 collapse that have gone through hell, sir?"

14:19:54 16 And Basciano's response, and I'm sure
14:19:58 17 that you may have forgotten many things, it's
14:20:00 18 one -- does somebody have to go --

14:20:04 19 THE COURT: No.

14:20:05 20 MR. R. SPRAGUE: Okay. I wasn't sure.

14:20:08 21 And Mr. Basciano's response, and I'm
14:20:11 22 sure it's one of the things you all remember,
14:20:14 23 he sort of broke down on the stand, and said,
14:20:20 24 "This is exactly why I'm going through hell.
14:20:25 25 When poor people die. I'm brokenhearted about

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14:20:29 2 it. I'm brokenhearted about it. I'm

14:20:34 3 brokenhearted."

14:20:36 4 And he had to leave the stand.

14:20:39 5 By the way, there is nobody that wanted

14:20:51 6 anybody to die. You can say what you want

14:20:53 7 about Mr. Benschop. You can say what you want

14:20:57 8 about Mr. Campbell. You can say what you want

14:21:00 9 about Mr. Marinakos. You can say what you want

14:21:06 10 about Mr. Basciano. You can say what you want

14:21:10 11 about the people from The Salvation Army. Mr.

14:21:14 12 Higgins I said has no business even being here.

14:21:20 13 But it is clear to all of you that not

14:21:24 14 one of them, whatever it is that they did, did

14:21:26 15 it trying to harm people. The deaths that

14:21:33 16 resulted, resulted from what we're going to go

14:21:35 17 into. But nobody, nobody in this case tried to

14:21:40 18 harm a single soul. Nobody in this case tried

14:21:45 19 to have people killed. Nobody in this case

14:21:48 20 tried to cause deliberately a catastrophe.

14:21:54 21 Now, let's go through some of the

14:22:03 22 points that are important. And we should

14:22:10 23 start, I would suggest, with Mr. Benschop. And

14:22:15 24 keep this in mind. There is not one expert,

14:22:23 25 not one who didn't tell you, under oath, that

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14:22:30 2 what Benschop did caused the collapse.

14:22:36 3 Now, you may have heard people say,
14:22:38 4 Well, that was the straw that broke the camel's
14:22:41 5 back, saying, I guess, Mr. Basciano's mother
14:22:47 6 and father were at fault because they had him
14:22:50 7 as a child and that then went and produced what
14:22:53 8 finally happened here. They say, Oh, that's
14:22:58 9 what the cause was from hiring who they did.
14:23:02 10 But they all agree. And of course the other
14:23:06 11 words were, with Benschop, it was like having a
14:23:10 12 bull in a China shop. There is not one who
14:23:14 13 doesn't tell you that what Benschop did on that
14:23:19 14 morning of June 5 was the cause of the collapse
14:23:28 15 when it, in fact, happened.

14:23:30 16 What else do all of you know? You
14:23:38 17 know, a big deal was made of the guilty plea of
14:23:50 18 Benschop. It's unfortunate in the sense that
14:23:53 19 what he did led to these deaths and he had to
14:23:56 20 pay a penalty.

14:23:58 21 What about Mr. Campbell? And we're
14:24:01 22 going to get into it in greater detail. Yes, I
14:24:07 23 know a jury convicted Mr. Campbell, but if you
14:24:13 24 accept certain testimony, Mr. Campbell was
14:24:20 25 seduced, was seduced by an architect named

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14:24:25 2 Plato Marinakos. And we'll go into those
14:24:29 3 details. And what else do we know? That Plato
14:24:34 4 Marinakos was able to get a deal from the
14:24:38 5 district attorney's office here in
14:24:41 6 Philadelphia, where he got immunity and
14:24:47 7 testified and convicted -- helped convict Mr.
14:24:53 8 Campbell and sent him to prison. Maybe Mr.
14:24:57 9 Campbell is the one that should have got that
14:24:59 10 immunity and the wrong one was prosecuted, as
14:25:04 11 we'll go into as we hear testimony in this
14:25:06 12 case.

14:25:10 13 Let's first take up what Benschop did.
14:25:35 14 This is from testimony in this case. Benschop,
14:25:41 15 on the video that was presented to you. The
14:25:45 16 question was made -- was asked, "You made the
14:25:49 17 decision to use your excavator on June 4th and
14:25:54 18 June 5th when The Salvation Army was opened for
14:25:57 19 business, correct?

14:26:00 20 "ANSWER: Yes, I did.

14:26:04 21 "QUESTION: And because of what you
14:26:06 22 did, because of the fact that you used your
14:26:09 23 excavator on June 5th, that's why those people
14:26:13 24 died, isn't it?

14:26:18 25 "ANSWER: Yes, I did."

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14:26:22 2 Let's continue.

14:26:26 3 "QUESTION: If you had been there" -- I
14:26:36 4 want to make sure it's the right witness I'm
14:26:37 5 reading here. Yes. This is testimony through
14:26:43 6 the video of Griffin Campbell.

14:26:47 7 "QUESTION: If you had been there on
14:26:50 8 June 5, 2013, and saw Mr. Benschop -- Benschop
14:26:55 9 start to move towards those columns to try and
14:26:59 10 take them out, what would you have done?

14:27:03 11 "ANSWER: That's a dangerous situation
14:27:06 12 there.

14:27:08 13 "QUESTION: Would you have done
14:27:10 14 something?

14:27:11 15 "ANSWER: Yes. I probably would have
14:27:14 16 went in The Salvation Army and notified them
14:27:21 17 and I would've called Plato."

14:27:25 18 Why would Campbell have called Plato,
14:27:28 19 by the way? And we'll get into it as we go
14:27:31 20 along, because Mr. Campbell's testimony is he
14:27:35 21 took this job of bringing -- of demolishing
14:27:42 22 these buildings at the suggestion of Mr.
14:27:47 23 Marinakos. Remember, Mr. Marinakos -- as I
14:27:51 24 said, we'll get into it -- told Mr. Campbell,
14:27:56 25 Hey, I got this lined up for you. Mr. Campbell

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14:27:59 2 said he didn't know even what to bid. And it
14:28:05 3 was Plato Marinakos who told him exactly the
14:28:10 4 figure.

14:28:10 5 By the way, they make so much to-do
14:28:14 6 about what they say is the low figure. You got
14:28:19 7 to understand it from a prosecutor's
14:28:24 8 standpoint. Mr. Marinakos wanted Mr. Campbell
14:28:30 9 to be the contractor. He wanted Mr. --
14:28:35 10 Marinakos wanted Mr. Campbell to work with him.
14:28:39 11 This is a big job. They're going to be
14:28:42 12 building buildings, offices, shops, whatever.

14:28:50 13 And by the way, think of Mr. Campbell,
14:28:55 14 a guy -- he didn't grow up with a daddy already
14:29:03 15 in the business that he's going to rise and get
14:29:07 16 into, or a granddaddy who's in that same
14:29:11 17 business that is giving him all the benefits
14:29:15 18 that they have. Mr. Campbell was in the street
14:29:20 19 and he worked his way up. And give the guy
14:29:24 20 credit, for as he worked from one lowly job to
14:29:31 21 another, cleaning up, street cleaning, here and
14:29:34 22 there, getting into construction and getting
14:29:36 23 his own people to work for him. And, yes, they
14:29:39 24 sneer at him and call him inept and
14:29:42 25 incompetent. But he was coming up in the world

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14:29:46 2 and he meets Mr. Marinakos who uses him,
14:29:51 3 seduces him. You know, they sneer about that
14:29:56 4 money. Mr. Marinakos, who wanted Plato to get
14:30:00 5 this job, he knows he's dealing with a
14:30:03 6 businessman, Mr. Basciano. And they try to
14:30:08 7 say, Oh, isn't it terrible? He took the low
14:30:11 8 price. How many business people, if they think
14:30:19 9 they've got somebody that's competent, don't
14:30:21 10 take the low price? How many people out there,
14:30:25 11 sitting here in this courtroom, and out in
14:30:28 12 wherever, if they've got a contractor coming in
14:30:33 13 to do work for them and they got bids from some
14:30:37 14 and they're satisfied that the lowest bid is
14:30:42 15 somebody that, based on what they've heard they
14:30:45 16 want to accept, you think they go and say, No,
14:30:49 17 I want to pay \$500,000? Come on, you're
14:30:53 18 kidding yourself. And they know it.

14:30:57 19 So getting back to what we have here --
14:31:01 20 and by the way, you know, when I heard Mr.
14:31:12 21 Clain speak to you this morning, the part of
14:31:15 22 his speech where he dealt with the cause of the
14:31:17 23 accident, that was great. I thought he stole
14:31:21 24 my own speech, it was that good.

14:31:23 25 (Laughter.)

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14:31:24 2 MR. R. SPRAGUE: But where he's talking
14:31:26 3 about Mr. Marinakos, as though he's such an
14:31:29 4 innocent little lamb, I suggest we depart from
14:31:36 5 him here as go through the testimony.

14:31:40 6 But getting back to my quotes that I
14:31:44 7 was reading to you -- I got so many papers I
14:31:53 8 got to find where they are. Another quote -- I
14:32:04 9 want to read to you another question. Mr.
14:32:10 10 Campbell, by again Mr. Mongeluzzi.

14:32:14 11 "QUESTION:" -- to Campbell, in front of
14:32:20 12 you -- "Did you -- and I'm talking about back
14:32:25 13 then, not now, did you trust that Plato
14:32:30 14 Marinakos, the owner's representative for STB,
14:32:34 15 did you trust him that he knew what he was
14:32:38 16 doing when he told you what to do?"

14:32:44 17 And what was Mr. Campbell's, I think,
14:32:47 18 pathetic answer to that question? This guy
14:32:51 19 that's trying to work his way up in the world?

14:32:55 20 Campbell's answer, "I think I trusted
14:32:59 21 him a little bit more than I should have."

14:33:03 22 Well, think of that as we go on with
14:33:06 23 this testimony here. And I'm reading -- I got
14:33:27 24 to put my glasses on. I apologize for that.

14:33:34 25 This was questions of their expert,

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14:33:40 2 plaintiffs' experts, Mr. Estrin.

14:33:47 3 "QUESTION: The building collapsed at
14:33:53 4 10:41 because the structural integrity of the
14:33:57 5 building was further robbed by Mr. Benschop,
14:34:02 6 correct?

14:34:03 7 "ANSWER: No. Mr. Benschop imposed a
14:34:08 8 force, an external force at the top of the east
14:34:13 9 wall which induced the lateral movement in the
14:34:16 10 east wall to the west. And had that building
14:34:20 11 been stabilized structurally, what he was doing
14:34:24 12 would not have caused that wall to topple.

14:34:28 13 "QUESTION: Yes, sir. The building was
14:34:31 14 in the condition it was in, correct?

14:34:34 15 "ANSWER: Yes.

14:34:36 16 "QUESTION: When Mr. Benschop acted on
14:34:39 17 June 5th, his actions caused the building to
14:34:44 18 collapse, correct?

14:34:46 19 "ANSWER: Yes.

14:34:51 20 "QUESTION: So all this talk about the
14:34:55 21 force and the fact that he was chipping on the
14:34:59 22 east wall, you agree that on June 5th, his
14:35:03 23 chipping on the building caused the building to
14:35:05 24 collapse, correct?

14:35:07 25 "ANSWER: He was -- well, you know, the

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14:35:11 2 old adage about a thousand straws that broke
14:35:13 3 the camel's back.

14:35:17 4 "Sir, yes or no?

14:35:20 5 "ANSWER: I'm answering your question.
14:35:24 6 It is not the thousand straws that broke the
14:35:27 7 camel's back. It's the last one. The last
14:35:38 8 one."

14:35:38 9 And then the question, "Yes, sir. If
14:35:41 10 there was no last one, this building would have
14:35:43 11 still been there June 5th, 2011, at 10:41,
14:35:48 12 correct? That's if there was not the last act
14:35:51 13 by Benschop.

14:35:52 14 "ANSWER: That is correct."

14:35:56 15 There's no question about it.

14:36:05 16 Now, let me have the plea. Excuse me
14:36:41 17 one second here.

14:36:42 18 THE COURT: Mr. Sprague, you can use
14:36:43 19 the bar of the court, if you wish, if that
14:36:47 20 would be helpful.

14:36:48 21 MR. R. SPRAGUE: Thank you, Your Honor.
14:36:49 22 As always, helpful.

14:36:50 23 Things don't always go the way you
14:37:08 24 want. There was testimony in this case, which
14:37:14 25 I hope you remember. It was the video of Mr.

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14:37:20 2 Benschop where he's asked questions about what
14:37:24 3 he did on that date, June 5. And he relates
14:37:33 4 how he was using his excavator. He's
14:37:37 5 testifying and he's answering questions in
14:37:40 6 terms of he saw all of these joists coming
14:37:48 7 down. He saw the pinnings down. He doesn't
14:37:52 8 know how they came down. And, yes, he said he
14:37:56 9 was responsible for that collapse. That's also
14:38:00 10 his testimony.

14:38:01 11 Now, let's go from Mr. -- by the way,
14:38:09 12 he also testified, and I'm not going to read it
14:38:12 13 to you now. I hope you recall it. That he --
14:38:15 14 he says that the reason he was doing that --
14:38:23 15 ripping things apart was because he was told by
14:38:29 16 Mr. Campbell to do it. I don't know if you
14:38:32 17 recall that. And Mr. Campbell disputes that.
14:38:36 18 Mr. Campbell said, "No, he told me he needed
14:38:40 19 some money that day and could I give him some
14:38:43 20 work to do that day. And I told him, Well,
14:38:47 21 fine. Use your excavator just to pick up some
14:38:50 22 metal."

14:38:51 23 We're back on track here.

14:38:55 24 Let me read again from testimony.

14:39:04 25 "QUESTION:" -- this is of Mr. Benschop

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14:39:07 2 in that video.

14:39:09 3 "QUESTION: Mr. Campbell also testified
14:39:13 4 that he told you, okay, Sean, you can get down
14:39:17 5 there. You can use your machine, but you can
14:39:21 6 only pick up metal and put it in the dumpster.
14:39:28 7 Did I tell you that -- did he tell you that?

14:39:33 8 "ANSWER:" -- by Mr. Benschop -- "He
14:39:36 9 didn't told me that. He didn't told me that,
14:39:41 10 are you going to run a machine all day to pick
14:39:44 11 just metal up.

14:39:48 12 "QUESTION: What was the plan for
14:39:53 13 Wednesday? What was it that you were supposed
14:39:57 14 to do or the plan was and who told you that?

14:40:02 15 "ANSWER:" -- by Benschop -- "Griffin
14:40:09 16 say he want me to take down the left wall. He
14:40:12 17 said go there and take down the left wall
14:40:16 18 because his guys take some of the bricks down
14:40:19 19 from The Salvation Army so he say go ahead and
14:40:23 20 take down the left wall. And when you finish
14:40:27 21 taking the left wall down, you load the metal
14:40:31 22 into the dumpster."

14:40:32 23 Then we have Griffin Campbell. I'm not
14:40:43 24 reading it all, but his testimony was in no way
14:40:48 25 did he tell Benschop to use that excavator on

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14:40:52 2 the wall. He was giving him work that day and
14:40:56 3 he just wanted him to pick up metal.

14:41:00 4 Now, members of the jury, none of you
14:41:03 5 were there. None of them were there. I wasn't
14:41:07 6 there. How do we decide? Because you have to
14:41:13 7 decide between them, because this gets to the
14:41:17 8 responsibility of Benschop and the
14:41:21 9 responsibility of Campbell. How do you decide
14:41:27 10 when one is saying this and the other is saying
14:41:29 11 that? There's no magic wand that you have.
14:41:33 12 Nobody gives you a lie detector test to use.
14:41:37 13 You got -- here's where you got to do your own
14:41:41 14 thinking.

14:41:42 15 Now, what do we know? Now, we got
14:41:49 16 Campbell who says just pick up metal and put it
14:41:52 17 in the dumpster. Benschop says, "No, he told
14:41:56 18 me to use that excavator on the wall." But
14:42:01 19 don't we also know there was a dumpster brought
14:42:06 20 there that morning? Who arranged for the
14:42:12 21 dumpster? Mr. Campbell. Doesn't that support
14:42:18 22 Mr. Campbell when he says, "I told Benschop,
14:42:24 23 Yeah, you can come and do some work, but use
14:42:27 24 your excavator only to pick up metal and put it
14:42:29 25 in the dumpster and I have arranged for the

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14:42:32 2 dumpster to be there at 11 a.m." And the
14:42:36 3 dumpster was there. That's -- you know when
14:42:39 4 you have to analyze cases, it's not all spoon
14:42:43 5 fed to you. You got to do your own analysis
14:42:45 6 and your own thinking. So right now, when you
14:42:50 7 got to weigh who's telling the truth, I would
14:42:52 8 say that suggests more on Mr. Campbell's side
14:42:56 9 because that's why he arranged for a dumpster
14:43:03 10 to be there.

14:43:04 11 What else do we know? I'm going to
14:43:13 12 jump to one area that I'm just dying to talk to
14:43:16 13 you about. Remember -- I almost laugh as I'm
14:43:22 14 going to get into this area, so pardon me.

14:43:25 15 Members of the jury, I was going to say
14:43:28 16 at the beginning, if you've learned anything in
14:43:33 17 this case, experts are a dime a dozen. But the
14:43:37 18 words shouldn't be a dime a dozen. The words
14:43:42 19 should be hundreds of thousands of dollars for
14:43:45 20 each of them. Call yourself an expert, and you
14:43:47 21 can say what you want. And as you see in this
14:43:52 22 case, and part of what I suggest should have
14:43:56 23 been entertaining to you, everybody had their
14:43:58 24 experts. There's -- if there's an expert on
14:44:03 25 that side, there's an expert on that side.

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14:44:09 2 Back and forth they go.

14:44:13 3 But just the fact that somebody calls
14:44:16 4 themselves an expert doesn't mean that's God
14:44:22 5 speaking to you from up high and we got to take
14:44:26 6 it and accept it. I mean, if you really look
14:44:29 7 at what these experts said, from my view, you
14:44:37 8 can almost discard them, because what every one
14:44:44 9 of you have, and maybe those experts don't
14:44:50 10 have, is common sense. When you left home and
14:44:58 11 came into this jury box, you didn't leave your
14:45:03 12 common sense at home. But look at what these
14:45:07 13 experts said. I don't -- I won't even bother
14:45:10 14 reading one, because I'm sure you remember. By
14:45:14 15 the way, I'm terrible with names, so forgive me
14:45:17 16 if I just refer to them and don't bother with
14:45:20 17 the name. Names don't mean that much.

14:45:23 18 But remember there's an expert from
14:45:25 19 Indiana, I think he was, who made the claim and
14:45:29 20 said to you he's an expert under oath. Well,
14:45:34 21 STB -- since that chimney on The Salvation Army
14:45:38 22 was a problem, STB has the right to go onto The
14:45:48 23 Salvation Army's property, up on the roof, do
14:45:54 24 what they want there, cut the chimney down
14:45:58 25 without any agreement whatsoever by The

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14:46:00 2 Salvation Army.

14:46:03 3 Members of the jury, I can't think of a
14:46:06 4 better way to get shot here in Philadelphia, if
14:46:10 5 you just go on your neighbor's property and
14:46:13 6 say, Hey, I'm doing some work on my house and
14:46:16 7 some expert from Indiana told me I can go right
14:46:20 8 up there and take care of the problem and
14:46:22 9 nothing you can do about it. That's the kind
14:46:28 10 of testimony you got.

14:46:30 11 Another expert, without reading it,
14:46:37 12 suggested, when it was pointed out, they were
14:46:41 13 saying, the plaintiffs, that, Hey, Mr. Basciano
14:46:43 14 and Simmonds, they could see that there were
14:46:48 15 these OSHA violations. And then it came out,
14:46:54 16 Well, how would they have seen it? Because
14:46:58 17 they weren't there. The answer then came from
14:47:04 18 their expert. And that expert's name, by the
14:47:11 19 way, was Rust. I'm not sure whose expert. He
14:47:24 20 wasn't ours but he might have been Salvation
14:47:27 21 Army's.

14:47:27 22 But what was that expert's statement in
14:47:30 23 terms of Basciano and Simmonds? Well, they
14:47:33 24 were sent pictures, these pictures that were
14:47:38 25 taken -- and by the way, if you use these

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14:47:41 2 little cameras, you look at the size of those
14:47:44 3 pictures. They're not like you saw them on
14:47:47 4 that screen here. Don't think that for a
14:47:49 5 second. They're little things that size.

14:47:53 6 But their expert is saying that
14:47:55 7 Basciano and Simmonds, all they had to do was
14:47:59 8 look at those pictures that were sent to them
14:48:02 9 and they would see the OSHA violations. Comes
14:48:04 10 over, Hot dog, we got Basciano and Simmonds
14:48:07 11 now. Because they could see that.

14:48:12 12 One, it ignores the testimony of
14:48:14 13 Basciano and Simmonds. They didn't know --
14:48:18 14 they didn't know -- I just went blank on the
14:48:23 15 word OSHA. They didn't know OSHA from a hole
14:48:30 16 in the wall. They didn't know anything about
14:48:32 17 it.

14:48:34 18 Even if the picture was the size of
14:48:37 19 that screen, they're supposed to look at it and
14:48:43 20 know OSHA violations when they testified to
14:48:45 21 you. They don't know OSHA at all. So when an
14:48:49 22 expert says, Well, they knew of OSHA violations
14:48:52 23 because they're sent pictures, he ignores all
14:48:56 24 together the testimony of those two. They
14:48:59 25 don't know OSHA at all.

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14:49:02 2 You have heard OSHA being presented
14:49:06 3 here, and you've heard what they presented to
14:49:10 4 suggest to the jury that these two people knew
14:49:14 5 they were violating OSHA because they were sent
14:49:17 6 pictures when they don't know what OSHA is and
14:49:21 7 don't know any of its regulations. It's
14:49:24 8 absurd. That's the kind of testimony that
14:49:28 9 these experts are giving you.

14:49:30 10 Why do I say that? Because in our
14:49:46 11 case, they're saying Mr. Basciano is in some
14:49:55 12 way responsible for what occurred. You don't
14:50:00 13 need more argument or testimony from me how
14:50:05 14 this accident, this catastrophe occurred.
14:50:08 15 There is no doubt that this building was being
14:50:12 16 put up not from a safety standpoint.

14:50:16 17 And by the way, what did Mr. Campbell
14:50:19 18 tell you when he said he took this job? Mr.
14:50:22 19 Marinakos also told him, Campbell, because
14:50:29 20 Campbell recognized this was too big a job for
14:50:32 21 him. But Marinakos says, Don't worry. I'll
14:50:38 22 take care of you. I'll tell you what to do.
14:50:42 23 By the way, with all their talking about how
14:50:46 24 terrible Mr. Campbell is, keep in mind, members
14:50:51 25 of the jury, before we get to Hoagie City, even

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14:50:56 2 under the crappy, crappy instructions by
14:50:59 3 Marinakos -- by Mr. Marinakos, Mr. Campbell had
14:51:07 4 taken down four buildings successfully. He
14:51:11 5 took down The Forum Theater. He took down a
14:51:15 6 building behind it. I don't remember the
14:51:17 7 number of it. He took down the two buildings
14:51:21 8 at 2102 and 4.

14:51:26 9 And by the way, when they attack Mr.
14:51:31 10 Basciano, what had he seen before they get to
14:51:35 11 work on Hoagie City? Mr. Campbell, the general
14:51:43 12 contractor, even given that he's being directed
14:51:48 13 by Marinakos, has taken down four buildings
14:51:51 14 successfully. Keep that in mind.

14:51:55 15 Now, let's get back to an important
14:52:02 16 principle in this case. And when I said
14:52:07 17 earlier you got to have the courage to do the
14:52:09 18 right thing, independent of what you feel out
14:52:12 19 there from the public or friends or anybody
14:52:14 20 else.

14:52:15 21 There's a general feeling that when
14:52:19 22 you're the owner of property, and something
14:52:22 23 happens on your property to the next property,
14:52:25 24 you're automatically liable. Well, as you'll
14:52:30 25 hear from the Court in instructions, that's not

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14:52:33 2 quite true. They've referred to if you've got
14:52:37 3 an employee -- and I don't remember which
14:52:41 4 lawyer said it yesterday. But one of them
14:52:43 5 said, When you have an employee, you're
14:52:47 6 responsible for everything that he does. Well,
14:52:51 7 that's a bunch of hokum. Just think of it.
14:52:56 8 You have an employee and he goes out and robs a
14:53:01 9 bank. Do you think you're responsible for his
14:53:04 10 robbing the bank just because he's your
14:53:06 11 employee? Of course not. If he does something
14:53:11 12 that is outside of what he's been employed for,
14:53:15 13 you're not responsible for that. It would be
14:53:19 14 foolish for the law to say everything he does
14:53:21 15 you're responsible for.

14:53:23 16 But more importantly, and the other
14:53:26 17 principle, you've been hearing the words of an
14:53:29 18 independent contractor. What in the world is
14:53:36 19 an independent contractor? It's somebody who
14:53:40 20 has his own business, who has his own
14:53:46 21 profession, who has his own workers. He may or
14:53:49 22 he may not do it himself.

14:53:52 23 When you call -- I'm sure we all
14:53:55 24 sometimes have this problem. We got to call a
14:53:58 25 plumber for the bathroom, for the toilet. That

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14:54:04 2 plumber isn't your employee. When you call and
14:54:09 3 ask for the plumber to come, he's not becoming
14:54:14 4 your employee. He's an independent contractor.
14:54:16 5 He's got his own business, and it's up to him
14:54:20 6 then to fix the toilet.

14:54:22 7 Now, let's say you call this plumber,
14:54:28 8 we all do, and he does a crappy job. And as a
14:54:38 9 result, the water from the toilet keeps
14:54:43 10 flowing, keeps -- runs over the toilet and on
14:54:47 11 your bathroom floor. And then it leaks and it
14:54:50 12 goes downstairs on the neighbor's apartment and
14:54:54 13 God knows what happens there. You're not
14:54:58 14 responsible. The one that's responsible for
14:55:02 15 that is the plumber. He's an independent
14:55:06 16 contractor, and he is responsible for his own
14:55:13 17 fault and his own negligence.

14:55:15 18 Now, the only exception to that, which
14:55:19 19 is what they're, in their desperation to find
14:55:24 20 anybody and everybody accountable, the only
14:55:29 21 exception, if when you called that plumber you
14:55:34 22 already knew that he is the world's worst
14:55:38 23 plumber. Everywhere he goes, he screws it up
14:55:44 24 and toilets run over and you still call him,
14:55:49 25 then you're going to be responsible because you

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14:55:53 2 were negligent in bringing him on. And that's
14:55:59 3 what they're hanging their hat on here,
14:56:02 4 basically, in terms of STB and Mr. Basciano.

14:56:05 5 Now, you've heard over and over in this
14:56:14 6 case "reasonable." What's reasonable? Was
14:56:17 7 this a reasonable thing to do? When people
14:56:26 8 need a doctor, do you think they run to some
14:56:31 9 Blue Book, some granddaddy or some father? No.
14:56:39 10 It's by word of mouth. Everybody knows it.
14:56:42 11 Everybody out there knows it. You usually use
14:56:48 12 who? Your family doctor. Or you have friends
14:56:52 13 who've told you that they've gone to doctor X
14:56:55 14 or doctor Y. And you have a comfort level in
14:57:00 15 your friend. If someone needs a doctor for
14:57:07 16 their child, do you think they run to a Blue
14:57:10 17 Book and flip through the pages? And say,
14:57:15 18 Ah-Ha, let's see Dr. So-and-so. I'll pick him
14:57:21 19 out. No. They talk to friends, if they don't
14:57:24 20 know already of one.

14:57:25 21 You go to people on -- if you're in an
14:57:28 22 apartment -- get back to my plumber. If you
14:57:31 23 don't already have word or know yourself about
14:57:34 24 a plumber, you'll ask like the superintendent
14:57:38 25 of the apartment, Do we have a plumber here?

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14:57:41 2 Do you have a plumber to recommend? And if
14:57:46 3 that's the superintendent that you deal with
14:57:49 4 and you have faith in, do you think when that
14:57:51 5 plumber comes in, you say, Hey, wait a minute.
14:57:55 6 That toilet, that's running, but by God, you
14:57:59 7 sit down here and I want to know where you went
14:58:04 8 to school. You better tell me that. And I
14:58:08 9 want to know who else's toilets you worked on.
14:58:15 10 The whole time your toilet is running there.
14:58:17 11 And you don't do that and you know you don't do
14:58:24 12 it. What is reasonable is that you were told
14:58:28 13 by the superintendent here at the building
14:58:31 14 that's who we use, so you use him.

14:58:36 15 Let me give another illustration.
14:58:42 16 Everybody goes to a doctor, to a dentist. Do
14:58:47 17 they go to a Blue Book for it? No. They go on
14:58:55 18 the basis of what they've heard from people
14:59:00 19 that they are comfortable with, that they rely
14:59:04 20 on. You know that. Everybody knows that. And
14:59:07 21 how many people -- I can't ask them to raise
14:59:11 22 their hands out there -- but the answer will be
14:59:14 23 zero. How many people out there, when they go
14:59:18 24 to a doctor's office for the first time, say,
14:59:22 25 Doctor, I want you to show me your certificate

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14:59:28 2 that you're licensed here in Pennsylvania? You
14:59:32 3 know nobody does that. How many go to that
14:59:38 4 doctor's office, when they've been recommended
14:59:40 5 by a friend, or it's a family doctor, and say,
14:59:45 6 I want to see where you graduated. Before I
14:59:49 7 hire you, I want to know the last 10 patients
14:59:54 8 that you worked on so I can interview them.

14:59:59 9 That's in never-never world. You know
15:00:02 10 what that world is? That's a world that was
15:00:05 11 referred to in an opening speech here by Mr.
15:00:10 12 Sprague. That's the Monday morning
15:00:12 13 quarterback. It's very easy, after something
15:00:16 14 has happened, and you're fighting in some way
15:00:19 15 to get something done, to then say, Oh, you
15:00:23 16 should have done this back then.

15:00:26 17 You know, there are cases here in
15:00:28 18 Philadelphia of mothers who walked on the north
15:00:31 19 side of the street with their child. And there
15:00:35 20 was a gang warfare there and the child was shot
15:00:39 21 and killed. I guess these lawyers would then
15:00:42 22 attack that mother, Why didn't you walk on the
15:00:46 23 south side of that street? What made you walk
15:00:48 24 on the north side? That's great to do after
15:00:51 25 the fact. I'm sure that mother agonizes for

1 IN RE: MARKET STREET BUILDING COLLAPSE

15:00:55 2 the remainder of her days why she didn't walk
15:00:59 3 on the south side. That's Monday morning
15:01:09 4 quarterbacking. Was there any wrong, anything
15:01:16 5 out of reason with her walking on the north
15:01:17 6 side? No.

15:01:18 7 In this case, as you have heard, Mr.
15:01:20 8 Marinakos was a distinguished member of the
15:01:29 9 architectural group here in Philadelphia. He
15:01:35 10 told Mr. Basciano and Mr. Simmonds that he had
15:01:46 11 worked with Mr. Campbell.

15:01:49 12 By the way, it's interesting, Mr.
15:01:52 13 Clain, when he showed you that letter, didn't
15:01:55 14 read to you the part where he said, "Lots of
15:02:01 15 demolition experience." But the testimony
15:02:06 16 shows that Marinakos told Basciano and Simmonds
15:02:12 17 that Campbell had years, years of experience.
15:02:19 18 It was untrue, but Basciano didn't know that.
15:02:26 19 You can't hold Basciano responsible if the guy
15:02:32 20 that's worked for him, has worked for him for
15:02:35 21 over two years, has lied to him. Didn't tell
15:02:45 22 Basciano that Campbell is relying on me to tell
15:02:51 23 him what to do. It would have been a different
15:02:56 24 story. But that goes to Marinakos's
15:02:59 25 responsibility.

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15:02:59 2 Did the owner act reasonably when he,
15:03:04 3 on the basis of a trusted architect here in
15:03:09 4 Philadelphia -- remember, Basciano, Simmonds,
15:03:13 5 they live up in New York. Yes, they come down
15:03:16 6 here. Simmonds was down here twice during this
15:03:19 7 whole thing. But the guy who worked for them
15:03:23 8 for two years was Mr. Marinakos, a
15:03:30 9 distinguished architect, as you heard. Why
15:03:32 10 would they have reason to disbelieve him? Of
15:03:36 11 course they would accept what he said, and,
15:03:39 12 therefore, when they go through, Did you
15:03:42 13 question Mr. Campbell? That's like the thing
15:03:44 14 with the doctor. If you have reason to go to
15:03:47 15 this doctor on the basis of a friend, you don't
15:03:50 16 go and sit and ask him all those questions.
15:03:53 17 You're happy that you're there and you hope he
15:03:56 18 does his best to treat your child.

15:03:58 19 In addition, keep in mind, members of
15:04:09 20 the jury, and I said that in the case of Mr.
15:04:16 21 Campbell, I suggest that the wrong guy got a
15:04:22 22 pass out of the jail. It should have been
15:04:25 23 Plato Marinakos, because not only did he lie to
15:04:29 24 Basciano and Simmonds, he was getting money
15:04:34 25 kicked back from Campbell. And why did

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15:04:38 2 Campbell play along? I mean, think of
15:04:43 3 Campbell. You got to have sympathy there.
15:04:47 4 Owes \$300,000 to the bank, was struggling. So
15:04:52 5 somebody that comes along and says, Hey, I got
15:04:57 6 you this job. Why wouldn't Campbell jump on
15:05:03 7 that? And not only does Campbell tell you that
15:05:07 8 Marinakos said, "I got you the job." You know,
15:05:13 9 Marinakos denies that he gave the figures to
15:05:17 10 Campbell. Campbell says, "No, he gave me those
15:05:21 11 figures." Again, when you say two people are
15:05:26 12 lying, who do you look to? How do you decide
15:05:29 13 it? Who drew up the final contract?
15:05:32 14 Marinakos. Did Marinakos have a good reason to
15:05:38 15 have those other two prices high? Sure. That
15:05:45 16 was further push on Basciano to take the lower
15:05:48 17 price. Not for less quality of work, but for
15:05:51 18 what he thought would be good work by somebody
15:05:56 19 competent.

15:05:59 20 And they go through. "Did you question
15:06:01 21 Campbell?" Well, of course they didn't,
15:06:03 22 because they relied on Mr. Marinakos. Mr.
15:06:09 23 Marinakos is here, his lawyer, good lawyer, Mr.
15:06:14 24 Clain, doing a bang-up job for his client. Mr.
15:06:22 25 Marinakos got a free pass out of jail from the

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15:06:25 2 district attorney's office, which was wrong.
15:06:33 3 They're asking for a free pass out of court,
15:06:40 4 out of court from you. Don't give him that
15:06:42 5 pass.

15:06:43 6 And finally, with regard to Mr.
15:06:47 7 Campbell, you know, we've heard all these
15:06:53 8 experts come in, and I've made some reference
15:06:56 9 to -- in a sarcastic manner to the people who
15:07:04 10 talk about, Oh, I went into the business with
15:07:05 11 my daddy and my granddaddy. Mr. Campbell
15:07:09 12 didn't have that. Mr. Campbell existed more
15:07:13 13 with the life that exists here in this city and
15:07:16 14 was struggling to make a go of it. And he got
15:07:19 15 sold down the river here. And, yes, a jury
15:07:23 16 heard his case. Juries are not always correct
15:07:31 17 in what they do.

15:07:32 18 I want this jury to be correct. Let me
15:07:36 19 go through with you some points in the verdict
15:07:44 20 sheet, because as you have heard, you're going
15:07:50 21 to be given a sheet with a load of questions,
15:07:53 22 and boiling it down -- the kind of questions
15:07:57 23 you heard with the others -- is STB negligent
15:08:02 24 in the selection of Campbell? Well, they
15:08:08 25 weren't negligent. They followed a

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15:08:09 2 recommendation of somebody they thought they
15:08:12 3 could trust.

15:08:13 4 Were they negligent in the selection of
15:08:20 5 Marinakos? What did they know other than good
15:08:22 6 things? He worked for them for two years. By
15:08:26 7 the way, who put himself down as the owner's
15:08:30 8 rep, without any talk with them? Marinakos put
15:08:32 9 himself down there.

15:08:33 10 You're going to see a question on
15:08:35 11 retained control. Where was the retained
15:08:39 12 control here? Keep in mind when they talk
15:08:43 13 about access, the basic contract for Campbell
15:08:49 14 and Marinakos was demolishing these buildings,
15:08:52 15 including the Hoagie City. They were shocked.
15:08:57 16 They didn't know that that chimney belonged to
15:09:01 17 The Salvation Army. But what was the concern?
15:09:03 18 Had nothing to do with the contract of STB.

15:09:08 19 If some brick -- some stuff fell on The
15:09:13 20 Salvation Army, they were concerned they'd be
15:09:16 21 sued. They weren't looking at, Is the whole
15:09:22 22 building to collapse? They're thinking of some
15:09:26 23 pieces here and there. So the whole reason for
15:09:29 24 access and the concern by STB, the concern by
15:09:34 25 The Salvation Army was, Let's get pictures of

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15:09:39 2 what exists now so you can't claim later that,
15:09:43 3 Hey, that pipe that's now broken, was broken as
15:09:50 4 a result of what we're doing in the demolition.

15:09:54 5 So there's no retained control in terms
15:09:56 6 of the contract. And if you look at testimony,
15:10:00 7 if you have it read back to you, because my
15:10:03 8 time is getting short, Mr. Campbell testified
15:10:08 9 under oath, in front of you, that there was no
15:10:13 10 direction ever, ever, ever from STB, Basciano,
15:10:21 11 or Simmonds with regard to the directions,
15:10:27 12 methods and that of his construction work. He
15:10:29 13 got his instructions, which STB didn't know
15:10:33 14 about, from Marinakos. So your answer in
15:10:38 15 retained control should be no.

15:10:41 16 Outrageous conduct. There's going to
15:10:48 17 be two questions on that. As I said at the
15:10:50 18 beginning, nobody intended what happened,
15:10:55 19 happened. There's no outrageous conduct in any
15:11:01 20 way. So your answer should be "no" to that.

15:11:04 21 I have a final comment, which really
15:11:07 22 doesn't involve STB or Basciano, who I say
15:11:15 23 acted properly at all times, had an absolute
15:11:20 24 right to rely on Marinakos. And if you deem
15:11:25 25 Marinakos in some way to become their agent,

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15:11:30 2 there's a principle that if the agent goes
15:11:32 3 outside the area of agency, you're not
15:11:37 4 responsible for him. There's no evidence, no
15:11:40 5 way that Basciano, STB, Simmonds, know that
15:11:47 6 Marinakos was getting paid, was, in fact,
15:11:51 7 directing Campbell as to what to do.

15:11:55 8 But I want to take one final comment
15:11:58 9 having to do with The Salvation Army. I submit
15:12:04 10 to you that the evidence is pretty clear -- by
15:12:10 11 the way, I forgot. When I was talking about
15:12:14 12 those warnings and the nonsense from this
15:12:17 13 expert, remember there was an expert that told
15:12:20 14 you it's not a warning unless it also tells you
15:12:23 15 how to handle it. And I think there were three
15:12:26 16 things before it's a warning. Just think of
15:12:31 17 that. A stop sign is not a warning because it
15:12:36 18 doesn't tell you what to do about it.

15:12:38 19 I mean, these experts think they can
15:12:40 20 tell you anything and you're going to sit there
15:12:42 21 like lambs and just eat up the guff that they
15:12:46 22 give you. Don't fall for that.

15:12:48 23 Getting back to The Salvation Army, I
15:12:56 24 submit to you it is very clear that what
15:13:01 25 Simmonds wrote in those e-mails -- and I don't

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15:13:04 2 have time and I'm not going through them. You
15:13:07 3 remember them, of all the threats to the
15:13:09 4 public, this and that. Simmonds, one, did not
15:13:14 5 know what he's talking about because he doesn't
15:13:16 6 know anything about construction. He said so.
15:13:19 7 It's in his testimony. And, secondly, he
15:13:23 8 wasn't even down here to see what was
15:13:25 9 happening. So you know no matter what they
15:13:28 10 want to make of that as though it's true
15:13:33 11 warnings, that's a lot of baloney.

15:13:35 12 But there is one issue that is for you,
15:13:40 13 and I cannot suggest the answer in this to you,
15:13:43 14 because I've pondered this myself. Even
15:13:50 15 accepting that The Salvation Army did not get
15:13:52 16 warnings, in the sense that they weren't true,
15:14:00 17 they did get these things, which unfortunately
15:14:06 18 turned out to be right. But the fact that it
15:14:09 19 turned out to be right doesn't make them
15:14:11 20 legitimate when they were given. But when you
15:14:14 21 get -- if -- if somebody is in their home, if
15:14:19 22 I'm in my home and I have my grandchildren with
15:14:23 23 me and I know my neighbor is taking down his
15:14:30 24 house, and I all the sudden get from him -- or
15:14:37 25 I don't care who, somebody, saying, Hey, your

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15:14:42 2 neighbor's taking down his house in a crappy,
15:14:44 3 crazy manner. It can cause damage to me. It
15:14:50 4 can cause damage to life, people. And I
15:14:56 5 remember my grandchildren. Even if I think
15:14:58 6 that guy's a nut, do I just sit at home and
15:15:04 7 play Tiddlywinks with my grandchildren, or do I
15:15:10 8 take that extra step and make pretty damn sure
15:15:21 9 that there's no danger to my house? That's a
15:15:25 10 question for you dealing with The Salvation
15:15:28 11 Army.

15:15:29 12 I want to thank you for your attention.
15:15:34 13 This is the only time I've spoken to you in
15:15:39 14 this whole trial, but it's a pleasure on my
15:15:43 15 side, my part. I mean, just looking at you
15:15:48 16 all, the attention you give is heartwarming.
15:15:53 17 Thank you very much.

15:15:54 18 THE COURT: Thank you. We'll take a
15:15:57 19 break for the jury.

15:15:59 20 THE COURT CRIER: Everyone please
15:16:00 21 remain seated as the jury exits the courtroom.

15:16:01 22 Jurors, please come with me.

15:16:04 23 (The jury exits the courtroom at this
15:16:06 24 time.)

15:16:53 25 THE COURT: Yes, Mr. Clain. Yes, Mr.

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15:17:05 2 Clain.

15:17:05 3 MR. CLAIN: May we have a sidebar,
15:17:06 4 please, Your Honor?

15:17:08 5 THE COURT: Yes, we may.

15:18:00 6 (Discussion was held at sidebar as
15:18:05 7 follows:)

15:18:05 8 THE COURT: Yes, Mr. Clain.

15:18:09 9 MR. CLAIN: Your Honor, we move for a
15:18:11 10 mistrial. Mr. Sprague just told this jury that
15:18:16 11 Mr. Marinakos should be in jail and not Mr.
15:18:21 12 Campbell. He has personally --

15:18:23 13 MR. WIGRIZER: Can you speak up? The
15:18:26 14 jury is not here.

15:18:27 15 MR. CLAIN: He provided a personal
15:18:30 16 opinion that the proof of Mr. Marinakos had
15:18:33 17 been proved beyond a reasonable doubt that he
15:18:36 18 belongs in prison. He was talking about
15:18:38 19 criminal guilt. That is absolutely improper
15:18:40 20 and impermissible in a civil litigation. That
15:18:44 21 should never have been offered as the
15:18:47 22 opinion -- it wasn't even his opinion. He
15:18:49 23 stated it as a fact.

15:18:51 24 In addition, he said that Mr. Marinakos
15:18:55 25 got a free pass out of jail, which was wrong.

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15:19:00 2 And let's see. We also have him referring more
15:19:06 3 than once to the fact that Mr. Marinakos is
15:19:11 4 privileged, has a daddy who allows him
15:19:14 5 privilege. At first it was a generalized
15:19:17 6 reference. It was hard to pick up, but I made
15:19:18 7 a note.

15:19:19 8 THE COURT: I thought it was the
15:19:21 9 experts who had their daddies? I could be
15:19:23 10 wrong.

15:19:23 11 MR. CLAIN: The first time it was in
15:19:25 12 the context that made me believe he was
15:19:27 13 referring to Mr. Marinakos, but it was not
15:19:30 14 crystal clear. The second time he mentioned
15:19:32 15 it, he was referring to Mr. Marinakos as having
15:19:35 16 a daddy of now --

15:19:37 17 THE COURT: When was the second time?
15:19:40 18 Shortly before the end?

15:19:41 19 MR. CLAIN: It wasn't too long before
15:19:42 20 that, so that's correct.

15:19:44 21 THE COURT: So when I have Ms. Soule
15:19:46 22 look for it --

15:19:47 23 MR. CLAIN: I would expect it would be
15:19:49 24 near the end.

15:19:50 25 The fact is that Mr. Marinakos did have

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15:19:51 2 a distinguished father. He was not a design
15:19:55 3 professional.

15:19:55 4 THE COURT: Did the jury ever hear
15:19:57 5 that?

15:19:58 6 MR. CLAIN: There was no evidence
15:19:59 7 whatsoever.

15:20:00 8 THE COURT: So how would they then have
15:20:02 9 deduced that he was referring to Mr. Marinakos?

15:20:05 10 MR. CLAIN: He said Mr. Marinakos's
15:20:06 11 daddy.

15:20:07 12 THE COURT: Okay. We'll look for it.

15:20:07 13 MR. CLAIN: Because even more
15:20:10 14 important, or equally important, there is
15:20:12 15 nothing in the record so that Mr. Sprague was
15:20:15 16 introducing to this jury facts about Mr.
15:20:18 17 Marinakos's background and privilege, which
15:20:21 18 we've heard all this discussion about haves and
15:20:23 19 have-nots. And now it's, Oh. It plays directly
15:20:29 20 into this entire racially tinged, Oh, look, the
15:20:32 21 unfortunate scrappy, building his own life out
15:20:35 22 of -- with his own hands. Mr. Campbell is in
15:20:38 23 jail improperly, while the connected, mightily
15:20:43 24 educated architect is sitting in this courtroom
15:20:47 25 and he's got connections with his daddy. And

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15:20:51 2 it is absolutely improper. It is so over the
15:20:55 3 top and outrageously prejudicial that there's
15:21:00 4 no cure for that. You cannot suck that out of
15:21:03 5 their brains as they prepare. We can't even
15:21:06 6 vitiate with months of wading through testimony
15:21:09 7 and hope they'll forget it, not that I think
15:21:11 8 you would.

15:21:12 9 They're going to be sitting and
15:21:14 10 deliberating with these things ringing in their
15:21:15 11 head that Mr. Marinakos should be in jail.
15:21:17 12 That he's a privileged rich kid who seduced Mr.
15:21:23 13 Campbell. Now, okay, the seduced. That's
15:21:26 14 argument. That was charming. I withheld the
15:21:31 15 chuckle about that.

15:21:32 16 THE COURT: So when was it that --
15:21:34 17 evidence in this case was introduced about Mr.
15:21:37 18 Marinakos's father being an esteemed -- if it
15:21:40 19 was introduced, I have completely forgotten it,
15:21:44 20 as I have forgotten many other things because
15:21:46 21 it has been a very long trial. As Mr. Sprague
15:21:48 22 indicated to the jury, you cannot have every
15:21:51 23 single fact in your head, and I don't have
15:21:52 24 every single fact in my head. Who introduced
15:21:56 25 testimony about Mr. Marinakos's father?

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15:21:58 2 MR. R. SPRAGUE: I never said a word
15:21:59 3 about his father.

15:22:00 4 THE COURT: I'm not saying you, today.

15:22:02 5 MR. GREINER: There's no testimony.

15:22:03 6 THE COURT: Mr. Dmochowsky, is there
15:22:06 7 any evidence that you can recall, and I know
15:22:08 8 you weren't here all the time --

15:22:08 9 MR. DMOCHOWSKY: Quite a lot.

15:22:09 10 THE COURT: But I don't know if you
15:22:10 11 reviewed every transcript. When and by whom
15:22:15 12 was evidence introduced about Mr. Marinakos
15:22:17 13 having a daddy who was -- we all have a daddy.
15:22:20 14 The question is who? Who's your daddy? So my
15:22:27 15 question is, was that evidence even there so
15:22:29 16 that when Mr. Sprague, when that is read to us,
15:22:33 17 I don't know if that connects to the jury
15:22:34 18 going, Yeah, his big daddy who is so esteemed,
15:22:38 19 you know. Yes or no. Do you recall such
15:22:40 20 testimony, Mr. Dmochowsky?

15:22:41 21 MR. DMOCHOWSKY: I don't recall it.

15:22:43 22 THE COURT: Mr. Clain, do you remember
15:22:45 23 such evidence being presented about Mr.
15:22:46 24 Marinakos's father to begin with?

15:22:49 25 MR. CLAIN: Absolutely not.

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15:22:50 2 MR. R. SPRAGUE: Your Honor, I agree
15:22:51 3 with that. I never referred to Marinakos's
15:22:54 4 father --

15:22:54 5 THE COURT: We're going to ask the --

15:22:57 6 MR. R. SPRAGUE: If Marinakos is there,
15:23:00 7 it was a slip of the tongue.

15:23:00 8 THE COURT: Ms. Soule will be asked to
15:23:04 9 look for what exactly was said.

15:23:06 10 MR. CLAIN: I think "daddy" is the key
15:23:07 11 word to look for.

15:23:09 12 THE COURT: Who else?

15:23:11 13 MR. WIGRIZER: I have a motion. Alex
15:23:13 14 Wolfington testified --

15:23:15 15 MR. CLAIN: If I may finish?

15:23:16 16 MR. WIGRIZER: Sorry.

15:23:17 17 MR. CLAIN: I got quite a list here.

15:23:19 18 THE COURT: I don't think you went to
15:23:21 19 Catholic school.

15:23:22 20 MR. CLAIN: I did not, Your Honor. I
15:23:24 21 have many friends who did.

15:23:26 22 THE COURT: I can see your little
15:23:28 23 scratchy. I would have had my hands smacked
15:23:28 24 down. You're lucky.

15:23:31 25 I thought we weren't introducing

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15:23:31 2 references to "God," Mr. Sprague? You said

15:23:34 3 "God all mighty up" there, something like that.

15:23:36 4 MR. R. SPRAGUE: It just fit in with my
15:23:38 5 mood, with the moment.

15:23:39 6 THE COURT: So I guess that motion or
15:23:41 7 objection from before is, therefore, withdrawn.

15:23:43 8 Go ahead, Mr. Clain. What else do you
15:23:46 9 have?

15:23:46 10 MR. CLAIN: There was also a claim that
15:23:48 11 Mr. Campbell said the job was too big for him.
15:23:52 12 In fact, he was asked if the job was too big
15:23:56 13 for him. He said no. Now, admittedly, he
15:23:59 14 said, no, I had help from the architect. What
15:24:02 15 he said is I told Mr. Marinakos it's the
15:24:04 16 biggest job I ever had. There's a big
15:24:06 17 difference between the job being big --

15:24:08 18 THE COURT: As I said yesterday, and as
15:24:10 19 I said today, it's closing arguments. Every
15:24:11 20 single word with every comma in place, every
15:24:16 21 grammatical perfect thing --

15:24:17 22 MR. R. SPRAGUE: And also I said to the
15:24:19 23 jury, I will do my best to recall. There may
15:24:23 24 be an error. It's your recollection.

15:24:24 25 THE COURT: You did say that.

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15:24:25 2 MR. CLAIN: Understood, Your Honor. I
15:24:27 3 don't mean to be -- the major points.

15:24:30 4 THE COURT: I understand. You're
15:24:31 5 listening closely on behalf of your client.

15:24:34 6 MR. CLAIN: And the other is very
15:24:37 7 clearly a disputed fact about a bribe issue Mr.
15:24:44 8 Marinakos vehemently denies about which there
15:24:48 9 has been no testimony other than --

15:24:51 10 THE COURT: There was testimony. Why
15:24:52 11 is it not argument?

15:24:54 12 MR. CLAIN: Because it was not
15:24:55 13 presented as argument. It was presented as
15:24:57 14 fact. We made a record. I understand the
15:24:59 15 crucial point is the suggestion to this jury of
15:25:03 16 criminal liability of that man.

15:25:05 17 THE COURT: Okay.

15:25:07 18 MR. WIGRIZER: Are you done?

15:25:09 19 MR. CLAIN: Yes.

15:25:10 20 MR. WIGRIZER: May I make my motion,
15:25:12 21 Your Honor?

15:25:14 22 THE COURT: Let me ask Mr. Hardaway to
15:25:17 23 quiet down in the courtroom.

15:25:17 24 Mr. Hardaway, can you tell the people
15:25:31 25 to please hold it down? I can't hear.

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15:25:31 2 MR. WIGRIZER: Judge, Mr. Sprague said
15:25:35 3 that Lois Basciano and 2132 was previously
15:25:41 4 served, you know, obviously not a good
15:25:43 5 implication for us.

15:25:44 6 THE COURT: I did interject, saying I
15:25:46 7 don't remember that being part of the actual
15:25:48 8 trial. I think it was withdrawn before we
15:25:52 9 started trial.

15:25:53 10 MR. WIGRIZER: It was.

15:25:53 11 THE COURT: Then the discussion had to
15:25:55 12 do with whether or not the husband/wife spousal
15:26:01 13 privilege --

15:26:03 14 MR. WIGRIZER: It was very complex,
15:26:05 15 Your Honor.

15:26:05 16 THE COURT: But she was no longer a
15:26:07 17 defendant.

15:26:07 18 MR. WIGRIZER: If we can agree that
15:26:09 19 there's an instruction to the jury that they
15:26:11 20 should disregard any statement about Lois
15:26:13 21 Basciano, 2132 and 2134 --

15:26:16 22 THE COURT: 2132 and 34 were in the
15:26:19 23 case.

15:26:20 24 MR. GREINER: They were in the case.

15:26:21 25 MR. WIGRIZER: So was Lois Basciano.

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15:26:23 2 THE COURT: Not after we started.

15:26:24 3 MR. WIGRIZER: He said that we were
15:26:29 4 wrong for suing Lois Basciano, 2132 and 3134.
15:26:34 5 What --

15:26:35 6 THE COURT: They were in the case at
15:26:37 7 the beginning. But when we swore this jury in,
15:26:38 8 she was no longer in.

15:26:40 9 MR. WIGRIZER: He didn't make that
15:26:41 10 distinction.

15:26:42 11 THE COURT: That evidence is -- that
15:26:44 12 fact of her having been a defendant is not in
15:26:46 13 evidence. 2132 and 34 were in the case, and I
15:26:52 14 see that as a difference.

15:26:53 15 MR. WIGRIZER: Will you admonish Mr.
15:26:56 16 Sprague, or at least instruct the jury that he
15:26:59 17 should not have made reference to Lois
15:27:01 18 Basciano?

15:27:02 19 THE COURT: Do you have evidence, Mr.
15:27:03 20 Greiner?

15:27:03 21 MR. GREINER: Your Honor, I know what
15:27:04 22 you're looking for. Regardless, Your Honor,
15:27:04 23 you did instruct Mr. Sprague in front of the
15:27:07 24 jury to not refer to evidence that's not in the
15:27:09 25 record. That's --

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15:27:12 2 MR. WIGRIZER: That's vague. That
15:27:13 3 doesn't refer to the problem.

15:27:14 4 MR. GREINER: It was right after it was
15:27:16 5 brought up.

15:27:16 6 MR. WIGRIZER: Judge, he suggested we
15:27:19 7 picked on this poor, nice elderly woman.

15:27:22 8 MR. R. SPRAGUE: You did from the very
15:27:23 9 beginning. You sued her.

15:27:25 10 MR. WIGRIZER: There's no distinction
15:27:27 11 here, judge.

15:27:28 12 THE COURT: You also sued Cresci, also
15:27:31 13 sued Simmonds.

15:27:32 14 MR. GREINER: We didn't get to all
15:27:33 15 that.

15:27:34 16 THE COURT: He had time.

15:27:35 17 MR. R. SPRAGUE: Judge, I was nice
15:27:37 18 enough not to do that.

15:27:39 19 MR. WIGRIZER: Those are the kind of
15:27:41 20 friends I need.

15:27:43 21 THE COURT: You can't bring facts that
15:27:45 22 are not in evidence before the jury.

15:27:46 23 MR. GREINER: Your Honor, our
15:27:47 24 recollection was that it was -- we are looking
15:27:49 25 for it -- that's what Mr. Sprague was told.

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15:27:51 2 MR. R. SPRAGUE: My recollection was
15:27:52 3 that Tom Sprague, on examination, brought out
15:27:55 4 about Lois.

15:27:56 5 MR. WIGRIZER: Can I make my record,
15:27:58 6 Judge?

15:27:58 7 THE COURT: About her having been a
15:28:00 8 defendant?

15:28:01 9 MR. GREINER: Being sued, yes. We're
15:28:03 10 looking at the record, Your Honor.

15:28:05 11 THE COURT: I'm surprised you don't
15:28:06 12 have it memorized, Mr. Greiner?

15:28:08 13 MR. GREINER: Your Honor, I had no idea
15:28:11 14 what Mr. Sprague was going to say. I didn't
15:28:14 15 know -- I was not ready to fact-check anything
15:28:16 16 that he just said.

15:28:17 17 MR. R. SPRAGUE: I guarantee nobody
15:28:19 18 knew what I was going to say.

15:28:20 19 MR. GREINER: I'm sure Mr. Sprague
15:28:21 20 didn't know what he was going to say.

15:28:24 21 MR. WIGRIZER: Judge, we were --
15:28:29 22 because she was identified by Griffin Campbell
15:28:31 23 on a diagram as an owner, and we wanted to get
15:28:34 24 to the bottom of that so that we were sure
15:28:36 25 before the statute that we sued all parties we

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15:28:38 2 could sue. They then threatened us with a
15:28:42 3 Dragonetti action, in response to which we
15:28:44 4 resolved the matter by agreeing to take her
15:28:46 5 deposition, which we did, and then we let her
15:28:49 6 out.

15:28:49 7 So if he wants to say we frivolously
15:28:52 8 sued Lois Basciano, then we're entitled to
15:28:54 9 explain to the jury why.

15:28:55 10 THE COURT: My only issue is the facts
15:28:57 11 that are in evidence. Nobody put in that she
15:29:00 12 got actually sued and then got let out. You
15:29:02 13 could have done that.

15:29:04 14 MR. GREINER: I don't know if I did or
15:29:05 15 not, Your Honor.

15:29:06 16 MR. R. SPRAGUE: Can I say, a lawyer,
15:29:08 17 who is a good lawyer, is going on rebuttal. If
15:29:12 18 they want to put something in, as long as it's
15:29:15 19 accurate, fine.

15:29:16 20 MR. WIGRIZER: I'll withdraw the motion
15:29:18 21 with respect 2132 and 34. And if we can say
15:29:21 22 something about the fact that we were accused
15:29:23 23 of frivolously suing --

15:29:25 24 MR. R. SPRAGUE: I don't agree with
15:29:26 25 that.

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15:29:27 2 THE COURT: I think I interrupted him
15:29:28 3 and said that he's not -- you know, you're not
15:29:31 4 allowed to argue facts not in evidence, and so
15:29:34 5 I will instruct them that Mrs. Basciano is not
15:29:37 6 a defendant in this case.

15:29:39 7 MR. WIGRIZER: And never was.

15:29:40 8 MR. GREINER: That's not true.

15:29:43 9 THE COURT: She was.

15:29:45 10 MR. MONGELUZZI: Am I allowed to talk
15:29:46 11 about why we sued Mrs. Basciano?

15:29:48 12 THE COURT: Irrelevant.

15:29:49 13 MR. GREINER: It's going to make it
15:29:50 14 worse, Bob.

15:29:52 15 MR. MONGELUZZI: I don't respond? He's
15:29:54 16 allowed to bring it up, and I can't even say
15:29:57 17 this is why. He says we sued poor Mr. Higgins.
15:30:01 18 We can't say why.

15:30:03 19 MR. R. SPRAGUE: I will not object,
15:30:13 20 listening to what Mr. Wigrizer said. What you
15:30:16 21 want to do is bring up Mrs. Basciano was sued
15:30:22 22 because of what you said, and when you learned
15:30:25 23 otherwise you withdrew the suit. That's what
15:30:28 24 you just said.

15:30:28 25 THE COURT: That you believed to be an

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15:30:30 2 owner.

15:30:31 3 MR. WIGRIZER: She was identified in a
15:30:32 4 diagram drawn by Griffin Campbell as an owner.
15:30:35 5 That's why we named her.

15:30:37 6 MR. R. SPRAGUE: I will agree with what
15:30:38 7 I just said.

15:30:40 8 MR. STERN: Mr. Sprague, would you add
15:30:41 9 to that "to the satisfaction of all the parties
15:30:44 10 concerned?" Because it was agreed upon.

15:30:46 11 MR. R. SPRAGUE: I will add that.

15:30:48 12 MR. MONGELUZZI: What do you mean?

15:30:49 13 MR. STERN: If this is agreeable. In
15:30:51 14 other words, it's understood.

15:30:53 15 MR. R. SPRAGUE: She was brought in as
15:30:54 16 a defendant. She was identified as an owner.
15:30:57 17 When you learned that she was not an owner, to
15:31:00 18 the satisfaction of all parties, it was
15:31:02 19 withdrawn. That's what I'm willing to do.

15:31:07 20 MR. MONGELUZZI: I think what I would
15:31:09 21 rather do is have us check the record to see
15:31:12 22 whether or not. And if we find out, then when
15:31:14 23 they come back Monday you can tell them there's
15:31:16 24 no facts in evidence.

15:31:17 25 MR. GREINER: Fine. We're looking

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15:31:19 2 right now, Your Honor.

15:31:19 3 THE COURT: Was there anything else?

15:31:21 4 Mr. Werley, it looked like you had something.

15:31:22 5 MR. WERLEY: I did not.

15:31:24 6 MR. R. SPRAGUE: He wanted to

15:31:25 7 compliment me.

15:31:26 8 THE COURT: Mr. Clain has made his

15:31:27 9 motion for a mistrial. What do you have to say

15:31:32 10 about that, Mr. Sprague?

15:31:33 11 MR. R. SPRAGUE: I think everything I

15:31:34 12 said was appropriate. I oppose the motion for

15:31:40 13 a mistrial.

15:31:41 14 MR. MONGELUZZI: I assume I can --

15:31:42 15 THE COURT: Although you think all your

15:31:44 16 other ones are valid?

15:31:45 17 MR. R. SPRAGUE: Yes.

15:31:46 18 MR. MONGELUZZI: I assume I can make

15:31:47 19 the same argument regarding Mr. Basciano and as

15:31:50 20 to why he wasn't charged. The same claim they

15:31:54 21 made for Mr. Marinakos. As Mr. Snyder would

15:31:56 22 say, "True?"

15:31:58 23 MR. GREINER: Mr. Mongeluzzi, he didn't

15:32:00 24 receive immunity like your client did.

15:32:03 25 MR. CLAIN: I understand Mr.

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15:32:05 2 Mongeluzzi's point, but I don't think making
15:32:07 3 the ruling wider and expanding the net over of
15:32:12 4 unconvicted criminals is going to solve the
15:32:15 5 problem.

15:32:15 6 MR. R. SPRAGUE: I'm not agreeing to
15:32:16 7 anything you say.

15:32:17 8 MR. CLAIN: I know that you're not.
15:32:19 9 Let me make my record. The point is that there
15:32:22 10 is prejudice that can't be graced. The jury
15:32:25 11 was told, when I suggested Mr. Marinakos was
15:32:28 12 not an idiotic man, that that was too much of
15:32:32 13 an expression of opinion. It has just -- I
15:32:34 14 don't think that prejudiced anybody. This man
15:32:38 15 had been accused of being a criminal.

15:32:52 16 THE COURT: Well, your motion for a
15:32:53 17 mistrial is denied. Is there anything that you
15:32:56 18 propose that I tell the jury to mitigate any
15:32:59 19 possible prejudice that you believe is there?

15:33:03 20 MR. CLAIN: First, Your Honor, I don't
15:33:05 21 believe that it is --

15:33:07 22 THE COURT: I know you don't. I said
15:33:09 23 mitigated.

15:33:10 24 MR. CLAIN: Without --

15:33:11 25 THE COURT: So you rather have me say

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15:33:12 2 nothing; is that your choice?

15:33:15 3 MR. CLAIN: No, Your Honor, I do want
15:33:16 4 to say we preserve the mistrial motion, even if
15:33:19 5 there is an instruction.

15:33:20 6 THE COURT: Okay.

15:33:21 7 MR. CLAIN: On appeal we will say this
15:33:22 8 whole trial should be thrown out because of
15:33:24 9 that statement.

15:33:24 10 THE COURT: Okay.

15:33:25 11 MR. CLAIN: But I do not have, on the
15:33:27 12 top of my head, what should be said. Perhaps
15:33:30 13 it could be said at the end of Mr. Mongeluzzi's
15:33:32 14 while we work something out.

15:33:34 15 THE COURT: So you're asking that I
15:33:35 16 delay it?

15:33:36 17 MR. CLAIN: For just a bit.

15:33:40 18 THE COURT: That's fine.

15:33:41 19 MR. MONGELUZZI: Delay discussing this?

15:33:43 20 THE COURT: What, if any, instruction I
15:33:45 21 would give.

15:33:45 22 MR. WERLEY: For the record, I join in
15:33:47 23 opposition to the motion for mistrial.

15:33:50 24 THE COURT: Thank you.

15:33:53 25 MR. MONGELUZZI: I say we get moving,

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15:33:55 2 Your Honor.

15:33:56 3 MR. WIGRIZER: I would ask Mr.
15:33:58 4 Mongeluzzi not get charged for the time it
15:34:01 5 takes for Mr. Sprague's misstatement.

15:34:03 6 THE COURT: We're not doing that right
15:34:04 7 now.

15:34:04 8 (A short recess occurred.)

15:34:04 9 (The following took place in open court
15:38:16 10 in the presence of the jury:)

15:38:16 11 THE COURT: If everyone can be seated.

15:38:19 12 THE COURT CRIER: Your Honor, may I?

15:38:20 13 THE COURT: Yes.

15:38:21 14 THE COURT CRIER: Everyone please
15:38:22 15 remain seated as the jury enters the courtroom.

15:38:27 16 Jurors.

15:38:30 17 (The jury enters the courtroom at this
15:38:46 18 time.)

15:39:11 19 THE COURT: You may proceed, Mr.
15:39:13 20 Mongeluzzi.

15:39:13 21 MR. MONGELUZZI: Thank you.

15:39:14 22 May it please the Court, the legendary
15:39:25 23 and renowned Dick Sprague. When it was time
15:39:29 24 for STB and Mr. Basciano to protect the public
15:39:36 25 by choosing an experienced, licensed and safe

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15:39:43 2 contractor, they chose the unlicensed and
15:39:50 3 inexperienced Griffin Campbell.

15:39:53 4 But when it came time to come into this
15:39:58 5 courtroom to protect themselves, they chose the
15:40:08 6 legendary Dick Sprague. When it was time for
15:40:13 7 them to spring out a structural engineer, on
15:40:18 8 June 4th or before, as they put there in their
15:40:22 9 own e-mail -- if you could bring that up, Mr.
15:40:25 10 Sterling. First one. It's 90. "To protect
15:40:38 11 the public," they brought in nobody. When it
15:40:46 12 came time to protect themselves in this
15:40:49 13 courtroom, they brought in Dr. Abboud, a
15:40:54 14 renowned structural engineer -- you can take
15:40:59 15 that down -- who they paid \$290,000 to.

15:41:07 16 When it was time for them to choose a
15:41:10 17 demolition contractor and to pay for safety,
15:41:18 18 they chose to go with the lowest bidder around.
15:41:25 19 And when it came time to protect themselves, in
15:41:30 20 this courtroom, from these claims, they brought
15:41:34 21 in experts who they spent hundreds and hundreds
15:41:39 22 and hundreds of thousands of dollars for.

15:41:43 23 When it came time for The Salvation
15:41:51 24 Army, being warned of a demolition danger, to
15:41:54 25 bring in somebody, who understood demolition

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15:41:59 2 and its dangers, they brought in nobody. And
15:42:04 3 when it came time to protect themselves in this
15:42:08 4 courtroom, they brought in Wendell Rust and
15:42:11 5 they paid him hundreds of thousands of dollars
15:42:13 6 to do it.

15:42:14 7 When it was time for them to
15:42:18 8 investigate e-mails and letters, and the
15:42:27 9 hearing, the vision, the things that their
15:42:30 10 employees saw, heard, felt and feared, they did
15:42:35 11 no investigation to protect the public. But
15:42:41 12 when it came time to protect themselves in this
15:42:44 13 courtroom, they investigated you. And that's
15:42:49 14 why Mr. Snyder stood up and went person by
15:42:54 15 person about where you work and what you do.
15:42:59 16 It proves that The Salvation Army is a
15:43:03 17 sophisticated organization and corporation with
15:43:09 18 the wherewithal and the knowledge of how to
15:43:13 19 investigate things. And they did it to protect
15:43:16 20 themselves, but they didn't do it to protect
15:43:20 21 their employees and the men and women who came
15:43:24 22 to shop there.

15:43:26 23 And when it comes time to walk through
15:43:33 24 that door with a jury verdict, remember these
15:43:37 25 defendants and what they did back then and what

1 IN RE: MARKET STREET BUILDING COLLAPSE

15:43:40 2 they did now. When it was time for STB and
15:43:46 3 Basciano to ask Mr. Campbell four simple
15:43:50 4 questions, they asked him nothing. But when it
15:43:54 5 was time to come into this courtroom and
15:43:56 6 protect themselves, Mr. Greiner asked
15:44:00 7 thousands. When it was time for The Salvation
15:44:09 8 Army to hire an attorney regarding this
15:44:14 9 demolition situation, they hired Steve Nudel.
15:44:18 10 When it was time to protect themselves in this
15:44:21 11 courtroom, they hired the best defense attorney
15:44:23 12 in Philadelphia: Jack Snyder. And with every
15:44:29 13 question asked, with every document he put on
15:44:33 14 the screen, with every exhibit that he showed
15:44:36 15 you, with every blowup that they did, you have
15:44:39 16 to ask yourself, Why didn't they do it then?
15:44:48 17 And why are they doing it now? Because both of
15:44:53 18 these defendants did nothing and cared nothing
15:45:00 19 about the safety of the men and women who
15:45:03 20 shopped and donated to that store or worked
15:45:06 21 there. And both defendants now come into this
15:45:09 22 courtroom, doing the very things that they
15:45:13 23 should have been doing before.

15:45:15 24 It's interesting that both Mr. Snyder
15:45:27 25 and Mr. Sprague began their speeches by talking

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15:45:33 2 about the jury. Not two blocks from this
15:45:41 3 courtroom, the Thomas R. Kline Trial Advocacy
15:45:46 4 Center, law school named for Mr. Stern's
15:45:51 5 partner and my good friend, on the ground
15:45:59 6 floor, where lawyers will be taught about the
15:46:03 7 rights of people for redress, there is carved
15:46:13 8 into the floor for everyone to see when they
15:46:17 9 talk through that door, the right to a trial by
15:46:22 10 jury is in violet. It cannot be taken away
15:46:30 11 from us. It is one of our most important and
15:46:34 12 cherished fundamental constitutional rights.
15:46:41 13 Why? Because you get to decide. It is not
15:46:48 14 what somebody else thinks who's in the
15:46:50 15 government. It is not what somebody else
15:46:55 16 thinks from another organization. It's what
15:47:04 17 you think.

15:47:04 18 You have more than 500 years of
15:47:08 19 experience, and I am certain that you have
15:47:14 20 celebrated birthdays while we've been here. We
15:47:18 21 started in the waning days of summer. We
15:47:22 22 worked our way through the fall. There is an
15:47:27 23 ice skating rink outside of City Hall.

15:47:39 24 Generally, I think when lawyers thank
15:47:42 25 the jury, for the most part, they come in and

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15:47:45 2 serve for a week. I think they're sort of
15:47:48 3 pandering. Not in this case. Not in this
15:47:50 4 case. Your service has been extraordinary.
15:47:55 5 You see, because the thing that you have, and
15:48:00 6 the thing that is the most important tool that
15:48:06 7 you have is your life experience. You see, you
15:48:09 8 don't need training to figure out whether
15:48:12 9 someone's credible or not. You do it every
15:48:15 10 day. You do it in your work. You do it at
15:48:17 11 home. You do it with your family. And you get
15:48:21 12 to understand, is someone on the level or not
15:48:26 13 on the level? And those are valuable traits.
15:48:33 14 You notice everything. Like when a lawyer
15:48:35 15 knocks over his soda and the judge doesn't see
15:48:38 16 it, but you did.

15:48:45 17 Sorry, Your Honor.

15:48:47 18 And you know that when you're in this
15:48:52 19 courtroom for so long, the truth seeps out.
15:48:57 20 Remember that moment with Mr. Pomponi. The
15:49:01 21 truth seeps out. It has to, over so long a
15:49:07 22 period of time with so much questioning.

15:49:09 23 I want to talk to you, because Mr.
15:49:16 24 Sprague brought it up about the plaintiffs in
15:49:19 25 this case. Mr. Sprague got up and told you

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15:49:25 2 that the plaintiffs in this case have brought
15:49:28 3 this for revenge. Revenge. That's what he
15:49:36 4 told you. And although I admire and respect
15:49:42 5 him, I will tell you, Mr. Sprague, you are dead
15:49:47 6 wrong. The families of the people who were
15:49:51 7 killed in this collapse and the ones who
15:49:53 8 survived did not bring this for revenge. They
15:49:57 9 didn't bring it for sympathy. They've had
15:49:59 10 plenty. They have walked into this courtroom,
15:50:02 11 and for many sat here every day in this
15:50:07 12 courtroom, not for revenge. They came here for
15:50:13 13 justice. They trusted and relied upon another
15:50:19 14 institution: The Salvation Army. Because all
15:50:23 15 of them were there for that reason. And now
15:50:30 16 for a second time, they trust a different
15:50:33 17 institution, and that's you.

15:50:40 18 Mr. Sprague, I thought it was
15:50:44 19 interesting, for his first 21 minutes 24
15:50:49 20 seconds, didn't say anything about the evidence
15:50:52 21 in this case. Told you he wasn't going to be
15:50:57 22 presenting any slides or diagrams or anything
15:51:02 23 like that because they -- pardon the pun --
15:51:09 24 demolish his theories of defense.

15:51:13 25 He told you, "You've heard this so much

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15:51:21 2 we dream about poles falling down." So do the
15:51:29 3 victims, Mr. Sprague, and the families of those
15:51:33 4 who were killed have even worse dreams.

15:51:37 5 He claimed that we're all actors.
15:51:50 6 That's not true, Mr. Sprague. Do not confuse
15:51:56 7 theatrics with passion for the people you
15:52:01 8 represent. There were people who were killed
15:52:07 9 and injured. And this isn't an act and it's
15:52:11 10 not a play. This was a real life horror.

15:52:20 11 Let's talk about STB's claims first.

15:52:31 12 43. What are we now? A safe
15:52:35 13 demolition project starts with selecting a
15:52:38 14 knowledgeable safety property manager.
15:52:41 15 Knowledgeable and safe owner's representative.
15:52:43 16 Knowledgeable and safe demolition contractor.

15:52:46 17 Grew up playing baseball. Strike 1,
15:52:52 18 strike 2, strike 3. The blind leading the
15:52:57 19 blind leading the blind. Mr. Estrin told you
15:53:04 20 that this project became dangerous the day they
15:53:11 21 appointed Plato Marinakos -- you can take that
15:53:15 22 down -- as the owner's representative.

15:53:21 23 He made the first mistake of appointing
15:53:24 24 Mr. Simmonds who didn't know, pardon the
15:53:29 25 phrase, a darn thing about what he was doing.

1 IN RE: MARKET STREET BUILDING COLLAPSE

15:53:38 2 He didn't know anything about demolition. He
15:53:41 3 didn't know how to select a demolition
15:53:44 4 contractor. But remember when he told you, I
15:53:47 5 know how to select a security guard. I know
15:53:50 6 how to select a doorman. Yeah. You call up
15:53:53 7 and you ask for a resume and recommendations.

15:53:57 8 This wasn't rocket science. It started
15:54:01 9 with him and then it went to Mr. Marinakos.
15:54:06 10 And I'm going to go through the questions with
15:54:08 11 you, because you're going to be given a 36
15:54:14 12 question quiz and you've had four-and-a-half
15:54:18 13 months of school. So you're going to get a
15:54:24 14 sneak peek at the exam. So let's go over it.

15:54:27 15 Slide 231.

15:54:30 16 Were they negligent in the selection of
15:54:36 17 Plato Marinakos as the owner's representative?
15:54:39 18 Darn straight they were. He'd never done it
15:54:42 19 before.

15:54:46 20 Slide 47.

15:54:47 21 "You'd never been an owner's
15:54:52 22 representative on a demolition contract before,
15:54:53 23 true?

15:54:54 24 "ANSWER: True."

15:54:55 25 Slide 48.

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15:54:57 2 He told you who was responsible for
15:55:09 3 selection.

15:55:10 4 Let's go back to slide 231.

15:55:15 5 Were they negligent in the selection of
15:55:18 6 Plato Marinakos as an owner's representative?

15:55:22 7 The answer to that is yes. They picked someone
15:55:24 8 who had never been an owner's representative

15:55:26 9 before. The contract required the owner's

15:55:27 10 representative to know OSHA. Plato Marinakos

15:55:29 11 didn't know anything about OSHA. Plato

15:55:32 12 Marinakos had never been an owner's

15:55:34 13 representative in a demolition project before

15:55:36 14 and he had no major demolition experience.

15:55:38 15 Pick somebody else. They made the wrong

15:55:42 16 choice.

15:55:43 17 And when we get to the judge's

15:55:45 18 instructions -- and everybody's told you listen

15:55:49 19 to her, not us -- you're going to get a charge

15:55:53 20 about negligent selection. And what I believe

15:55:56 21 it's going to say is if they negligently select

15:56:01 22 someone, they are responsible for that person's

15:56:07 23 negligence. If they negligently select Plato

15:56:14 24 Marinakos, they are responsible for Plato

15:56:19 25 Marinakos's negligence.

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15:56:20 2 So when Her Honor gets to that jury
15:56:23 3 charge about negligent selection, I ask that
15:56:28 4 you listen really, really carefully. And you
15:56:32 5 could also ask the Court to have it read back
15:56:35 6 later on if you're not sure about it.

15:56:38 7 So all of the negligence of Plato,
15:56:41 8 we'll submit -- and I'll talk about this
15:56:43 9 later -- we believe is the responsibility of
15:56:47 10 the people who negligently select him. And it
15:56:50 11 makes sense.

15:56:52 12 Let's go to the selection of Griffin
15:56:57 13 Campbell. We all know that Campbell was
15:57:01 14 incompetent. STB's own expert said he was
15:57:06 15 incompetent. He'd never done this before. Two
15:57:08 16 burned out rowhomes. No license. No
15:57:11 17 equipment.

15:57:12 18 Mr. Sprague talked about them
15:57:15 19 putting -- that Mr. Benschop was a bull in a
15:57:20 20 China shop and Mr. Campbell is the one who
15:57:24 21 brought him in. They hired the bull. They put
15:57:33 22 the bull in the China shop and then they
15:57:36 23 complain when the China gets crushed and
15:57:40 24 demolished. That's their fault.

15:57:45 25 And he tries to explain away and give

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15:57:49 2 you this analogy that this is like a plumber
15:57:51 3 fixing a toilet. No, it's not, Mr. Sprague.
15:57:55 4 This isn't a leak that somebody can slip on.
15:58:00 5 This is a sophisticated demolition project that
15:58:04 6 could kill and maim and crush people. And that
15:58:10 7 requires a different standard of care. And Mr.
15:58:12 8 Estrin told you and your common sense tells you
15:58:15 9 that. This isn't going to the dentist. If I
15:58:18 10 go to the wrong dentist and he drills -- does
15:58:22 11 something wrong, it's not going to kill 7
15:58:25 12 people and injure 12 others. This is a totally
15:58:28 13 different situation.

15:58:30 14 And there is a reason why, regarding
15:58:33 15 this potent claim, Mr. Sprague didn't bring it
15:58:36 16 up for the first hour, because there's no
15:58:41 17 defense to it.

15:58:42 18 So if we could go back to that slide
15:58:44 19 with the jury verdict question, Mr. Sterling,
15:58:47 20 if you could find that.

15:58:54 21 Check it off for Plato. And when you
15:58:57 22 get to Griffin Campbell, I want you to do the
15:58:59 23 same thing. They talk about relying upon Mr.
15:59:04 24 Campbell for means and methods. And do you
15:59:07 25 remember Mr. Simmonds' testimony?

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15:59:09 2 You can take that down. Slide 58.

15:59:16 3 It would not be reasonable to rely upon
15:59:20 4 the inexperienced and incompetent contractor to
15:59:23 5 perform means and methods. Right?

15:59:31 6 That's right. And we know. We know.

15:59:34 7 So that what do they say? We relied upon
15:59:38 8 Plato? Mr. Clain handled that pretty well
15:59:42 9 today. It wasn't Plato's decision. It was Mr.
15:59:46 10 Basciano's decision. Mr. Marinakos told you
15:59:55 11 that Mr. Basciano had final approval. Mr.
15:59:57 12 Basciano, he was only making a recommendation.
16:00:00 13 It was their responsibility to vet the witness.
16:00:04 14 It was their responsibility to ask the
16:00:05 15 questions.

16:00:09 16 Mr. Basciano testified, "Did you
16:00:12 17 approve Griffin Campbell as the contractor in
16:00:15 18 this case?

16:00:16 19 "I approved it. I want to make it
16:00:17 20 clear that I relied on Thom Simmonds, my
16:00:21 21 property manager, that looked at it."

16:00:24 22 And Mr. Basciano, in this courtroom, in
16:00:28 23 front of you, told you, "You would have
16:00:31 24 expected Thom Simmonds to have screened Griffin
16:00:34 25 Campbell?

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16:00:34 2 "I assume so.

16:00:35 3 "You mean you would assume he was going
16:00:37 4 to sign the contract. He's going to make sure
16:00:39 5 the man is qualified, correct?

16:00:41 6 "ANSWER: I would agree."

16:00:42 7 And in the most damning testimony --
16:00:45 8 slide 75 -- that Mr. Basciano gave on
16:00:49 9 cross-examination.

16:00:51 10 "So you wouldn't have expected your
16:00:52 11 right-hand man to take the basic step of
16:00:56 12 picking up the phone and talking to the
16:00:58 13 contractor that you're going to rely upon?

16:01:01 14 "I would like -- I would hope he would
16:01:04 15 have done that.

16:01:04 16 "Okay.

16:01:05 17 "ANSWER:" -- he volunteers. Not some
16:01:07 18 lawyer's trick question. "We wouldn't be
16:01:10 19 sitting here today.

16:01:12 20 "That's right, sir. We wouldn't be
16:01:16 21 sitting here today if he had picked up the
16:01:18 22 phone, talked to Griffin Campbell and found out
16:01:20 23 that his sole experience was tearing down two
16:01:23 24 burned out rowhomes on Erie Avenue; is that
16:01:26 25 right?"

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16:01:26 2 Slide 76.

16:01:29 3 "A hundred percent right."

16:01:33 4 And they are responsible. There's no
16:01:35 5 doubt about it. When you get to that jury
16:01:38 6 verdict question as to whether they negligently
16:01:43 7 selected Griffin Campbell and whether that was
16:01:45 8 the cause of the accident, of course it was, no
16:01:48 9 matter how you slice it. And I'm going to come
16:01:51 10 to this a little later.

16:01:52 11 One of two things happened. Either
16:01:55 12 Griffin Campbell followed what Basciano told
16:01:59 13 Marinakos to do -- and I think that you can
16:02:02 14 infer that -- because of the pressure and
16:02:06 15 followed the plan. Or if you believe Mr.
16:02:08 16 Marinakos that conversation didn't take place,
16:02:11 17 and then Campbell did it because he was totally
16:02:14 18 incompetent and he didn't even know what he was
16:02:16 19 doing.

16:02:16 20 So it doesn't matter. It doesn't
16:02:20 21 matter. The cause of the accident, the cause
16:02:24 22 of the collapse is because Griffin Campbell
16:02:30 23 didn't know what he was doing. And think about
16:02:32 24 the men who were out there that day and the
16:02:36 25 days before. June 2nd, June 3rd, June 4th,

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16:02:40 2 June 5th. Who was most at risk? The building
16:02:43 3 was going to fall down. It was them. They
16:02:47 4 didn't even know it. That's how clueless they
16:02:52 5 were to demolition hazards. They didn't even
16:02:55 6 understand the peril that had been created.

16:03:00 7 Mr. Basciano told us everything we
16:03:05 8 needed to know when we asked him the question,
16:03:09 9 "Have you ever made a choice" -- slide 79.
16:03:18 10 "Have you ever, ever chosen a contractor or
16:03:21 11 bidder based upon the quality of their work
16:03:24 12 rather than their prices?

16:03:26 13 "ANSWER: No."

16:03:28 14 You get what you pay for. And what you
16:03:30 15 pay for, under what Her Honor, I believe is
16:03:33 16 going to instruct you, is that if you
16:03:35 17 negligently select Plato and you negligently
16:03:38 18 select Campbell, you bought their negligence.
16:03:42 19 That's the price you pay.

16:03:45 20 Mr. Sprague told you, Well, they took
16:03:58 21 down four buildings successfully. Well, we
16:04:01 22 know, because we went through it in detail,
16:04:04 23 that when they took down the Forum, it was done
16:04:10 24 in violation of OSHA. It was done in violation
16:04:14 25 of ANSI. And they were trying to rip down that

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16:04:16 2 big wall which had been left there. And we
16:04:18 3 know, when they took down 2132, 2134, there
16:04:23 4 were violations of OSHA and ANSI, because they
16:04:27 5 were ripping down a building. And we know that
16:04:32 6 Mr. Sprague said that that was done
16:04:35 7 successfully. So one has to wonder what STB
16:04:39 8 and Basciano's definition of success is. And I
16:04:42 9 think the evidence in this case is their
16:04:45 10 definition of success is to break the law,
16:04:48 11 violate OSHA, violate ANSI, violate the
16:04:52 12 Philadelphia code, and not get caught.

16:04:59 13 The illegal beginning of the permit.
16:05:02 14 That was a success. A blatant violation that
16:05:04 15 they talk about in the e-mails. That's
16:05:08 16 successful? No, it's not.

16:05:10 17 Let's talk a little bit about the
16:05:15 18 project. Mr. Snyder talked about in closing --
16:05:22 19 247, Mr. Sterling.

16:05:24 20 I showed you all these pictures. April
16:05:26 21 29th, blah, blah, blah. Remember this May 1st
16:05:30 22 photo, we went over it last week with Dr.
16:05:33 23 Caulfield? The sunlight photo, I call it. You
16:05:35 24 know what this is about. He was claiming that
16:05:38 25 the floors above hadn't been removed. Are you

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16:05:40 2 kidding me? There's light shining through.
16:05:46 3 This is the second floor. This proves that the
16:05:49 4 third and fourth floor were removed. And if
16:05:52 5 there were joists on the third and fourth
16:05:54 6 floor, you don't think that there would be
16:05:55 7 different joists patterns and shadows shown in
16:05:58 8 this photograph? Come on.

16:06:00 9 This project was dangerous in May and
16:06:04 10 it got more and more dangerous. They violated
16:06:11 11 federal law. The project was in violation --
16:06:16 12 96, please. I'm sorry. Let's go to 97.

16:06:21 13 We showed you the federal law. Didn't
16:06:24 14 have a wall section more than one story in
16:06:29 15 existence on a demolition project. Why?
16:06:31 16 Because the wall could fall over. You can't --
16:06:34 17 we showed you the other safety provision.
16:06:36 18 Federal law. You can't leave -- you can't
16:06:44 19 demolish more than one story at the same time.
16:06:48 20 Why? Because of Jenga. Because when you pull
16:06:50 21 stuff out of the bottom, the top becomes more
16:06:52 22 unstable. You don't need to be a demolition
16:06:54 23 genius to figure that out.

16:06:57 24 And this project -- and it's important
16:06:59 25 not only for STB, but for The Salvation Army,

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16:07:03 2 because you know our theory. Mr. Sprague I
16:07:09 3 think said it very well. When you get e-mails,
16:07:13 4 you got to go check it out. The people who
16:07:18 5 were in the store that day are just as precious
16:07:20 6 as his precious grandchildren. And so we have
16:07:29 7 proven to you, with photographs, that this
16:07:34 8 project was in violation of federal law. You
16:07:39 9 can infer it on May 1st and we could prove it
16:07:42 10 to you proof positive May 16th, when Mr. Estrin
16:07:50 11 showed you and went through the OSHA
16:07:53 12 violations. And there were 20 of them.

16:07:57 13 Now, some of them, I admit, weren't
16:08:00 14 causative. They had to do with housekeeping.
16:08:02 15 They had to do with fall protection. But they
16:08:05 16 told anybody who went out and looked that this
16:08:08 17 project was dangerous because these are safety
16:08:13 18 regulations. And the definition, if you
16:08:17 19 violate safety regulations, then the project is
16:08:22 20 unsafe.

16:08:26 21 There's a thing about photographs,
16:08:29 22 unlike witnesses. They don't forget, they
16:08:36 23 don't lie and they don't change their story.
16:08:39 24 And that's why the most compelling evidence in
16:08:44 25 this case that there was a danger. So

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16:08:46 2 Salvation Army and Mr. Snyder didn't bother to
16:08:48 3 address. Why? Because he knows it's a danger
16:08:52 4 to the heart of The Salvation Army defense.

16:08:55 5 Who stood up and told you that this
16:08:59 6 project violated OSHA? Remember I went through
16:09:01 7 with them? May 21, May 22, May 23. I took
16:09:06 8 them every single day. You probably got sick
16:09:09 9 and tired of me. "Please, Mr. Mongeluzzi, you
16:09:11 10 got to go through every day?"

16:09:15 11 It broke the law every day. There are
16:09:19 12 four laws having to do with demolition. There
16:09:29 13 is the OSHA law. That's federal law. There
16:09:34 14 are the ANSI regulations. That's an American
16:09:36 15 national standard. There is the city code and
16:09:40 16 there is the International Building Code.

16:09:42 17 They violated everything. They
16:09:45 18 violated the International Code. That's a
16:09:47 19 worldwide code. They violated the American
16:09:51 20 National Standard. They violated federal law
16:09:53 21 and the city code. What code didn't they
16:09:56 22 violate? I mean, unless there's other codes in
16:09:59 23 other galaxies we don't know about, they
16:10:02 24 violated every possible code regarding
16:10:04 25 demolition you could possibly imagine. The

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16:10:08 2 Salvation Army would have known that if they
16:10:09 3 had investigated this.

16:10:11 4 So let's get to June 2nd. You've seen
16:10:26 5 this photo a lot. It seems Mr. Sterling has
16:10:29 6 taken ill, so I'm going to have to go back to
16:10:33 7 the old fashioned way and just use -- oh. 23,
16:10:39 8 please.

16:10:41 9 You know this. And what do we know
16:10:44 10 from this? We know there's three stories of
16:10:48 11 unsupported wall there. Two stories here. Two
16:10:51 12 stories on this side. We know that the fourth
16:10:55 13 floor is partially demolished. The third floor
16:10:58 14 is partially demolished. The second floor is
16:11:00 15 partially demolished. The first floor is
16:11:02 16 partially demolished. We know that this
16:11:04 17 violates federal law. It violates national
16:11:07 18 standards. There's no sidewalk protection, no
16:11:09 19 roof protection. This photo proves
16:11:12 20 conclusively it violates everything. And The
16:11:17 21 Salvation Army would have known that.

16:11:18 22 I'm going to pop around a little bit
16:11:21 23 here. There's going to be some other questions
16:11:26 24 for you to decide regarding STB and Mr.
16:11:34 25 Basciano, whether they retained control. And

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16:11:36 2 we spent a lot of time on that. And we know
16:11:38 3 they did. They took over means and methods.
16:11:41 4 Griffin Campbell wasn't on a single e-mail.
16:11:45 5 Who was? Tommy Simmonds. Tommy Simmonds is
16:11:48 6 Richard Basciano's employee. Everything he did
16:11:52 7 binds both Mr. Basciano and STB Corporation for
16:11:57 8 which he signed as an agent. Everything Thom
16:12:01 9 Simmonds did is on behalf of both STB and
16:12:05 10 Richard Basciano.

16:12:06 11 Mr. Basciano was there. Who told us
16:12:09 12 that? Do you remember when they called Tariq
16:12:11 13 Henry? STB called him as their witness. Mr.
16:12:15 14 Basciano called Tariq Henry. What did he say?
16:12:17 15 He said Mr. Basciano was standing there and he
16:12:22 16 told you, and Mr. Sprague stood up, talked
16:12:26 17 about when Mr. Basciano was cross-examined. He
16:12:31 18 said, "I've lived through hell."

16:12:38 19 No, Mr. Basciano, the survivors lived
16:12:43 20 in hell. And the people who died, died in
16:12:48 21 hell. They want to blame it all on Sean
16:12:58 22 Benschop and Griffin Campbell.

16:13:00 23 So when it comes to whether you find
16:13:04 24 their conduct -- if we could go to slide 233 --
16:13:09 25 hold them accountable. Was it extreme and

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16:13:11 2 outrageous? Of course it was. Everything they
16:13:15 3 did, from the illegal permit beginning to the
16:13:18 4 dangerous case e-mail. Everything that they
16:13:22 5 did was extreme and outrageous. Check that
16:13:26 6 off. Was it outrageous? Malicious, wanton,
16:13:30 7 willful, or oppressive, or shows a reckless
16:13:33 8 indifference to the interests of others? What
16:13:36 9 could be more recklessly indifferent than what
16:13:39 10 they did? And hold him, and when it comes to
16:13:45 11 234, Mr. Basciano's own negligence. He does
16:13:50 12 business through a d/b/a. Was it a cause of
16:13:57 13 harm? Darn straight it was. Was it extreme
16:14:02 14 and outrageous, his conduct? Yes, it was.
16:14:07 15 Find them both responsible, both Mr. Basciano
16:14:14 16 and them.

16:14:16 17 Then you're going to come to Plato.
16:14:25 18 235.

16:14:31 19 Do you think that Mr. Marinakos and I
16:14:33 20 got along real well in this courtroom? Do you
16:14:38 21 think that Mr. Higgins and I got along real
16:14:41 22 well in this courtroom? I deposed him for five
16:14:45 23 days. I took him on in this courtroom, and I'm
16:14:49 24 going to tell you something. Was he negligent?
16:14:52 25 Darn straight.

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16:14:56 2 But under the law, if he is negligently
16:15:00 3 selected, and he was, that negligence goes on
16:15:09 4 the people who negligently selected him. So
16:15:13 5 this is me, the guy who went after him, telling
16:15:18 6 you, take that negligence and put it on STB.

16:15:23 7 Griffin Campbell. 236. Was he
16:15:32 8 negligent? It's already going to be checked
16:15:34 9 off. And, again, he was negligently selected.
16:15:39 10 Whatever negligence you put on Griffin Campbell
16:15:42 11 goes to the person, if you find negligent
16:15:45 12 selection, it goes to them. Put it on STB.

16:15:47 13 I want to talk to you a little bit
16:15:49 14 before I go into The Salvation Army.

16:15:59 15 If we could pull up slide 39, please.

16:16:04 16 This building was slowly robbed of its
16:16:07 17 lateral stability. Sean Benschop was told to
16:16:10 18 show up. He came in on June 1st and he was
16:16:13 19 told that you're going to take the building
16:16:15 20 down from front to back. And that's exactly
16:16:17 21 what he did. Remember they talked about it's
16:16:19 22 outrageous that he was chipping at the eastern
16:16:22 23 wall? Remember that? This morning. It
16:16:24 24 couldn't have been anticipated. Unbelievable.
16:16:28 25 But that's what he did on Sunday. And that's

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16:16:31 2 what he did on June 4th, where he chipped away
16:16:36 3 at the rest of the wall and ripped all of the
16:16:38 4 joists and remaining columns out of here. This
16:16:44 5 wasn't something that just happened on June
16:16:47 6 5th, where he took out two columns -- I'm
16:16:49 7 sorry. Eight out of 900 joists. They are
16:16:55 8 turning the principle on its head. He was the
16:16:58 9 straw that broke the camel's back.

16:17:00 10 If someone comes in here and demolishes
16:17:02 11 that column right there, right there above the
16:17:05 12 bench, again and again and again, and weakens
16:17:08 13 it and weakens and weakens it. And then I come
16:17:10 14 in and I lean against it at sidebar, they would
16:17:14 15 claim that I'm responsible. In fact, that was
16:17:17 16 a slow, steady cancer that started in early May
16:17:22 17 or late April and it grew and they removed the
16:17:27 18 lateral supports.

16:17:29 19 So when they just tell you it's Sean
16:17:32 20 Benschop's responsibility, they are wrong. And
16:17:34 21 by the way, that goes on STB. He wouldn't have
16:17:39 22 been there unless they had not picked Griffin
16:17:43 23 Campbell.

16:17:49 24 Mr. Sprague said the dumpster obviously
16:17:52 25 was there because they were going to put metal

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16:17:54 2 in it. What metal? What is he talking about?
16:17:58 3 I don't know what he's been looking at, but you
16:18:01 4 know what was happening. You know what they
16:18:03 5 did on the 4th and on the 2nd and what they
16:18:06 6 were continuing to do on the 5th. They were
16:18:09 7 tearing the building down from front to back
16:18:10 8 and they were chipping away at the eastern wall
16:18:13 9 because the workers didn't understand enough to
16:18:15 10 figure out that if you take away the rest of
16:18:17 11 the eastern wall, it may collapse to the
16:18:20 12 interior. And Mr. Clain told you that the
16:18:25 13 western wall didn't have anything to do with it
16:18:28 14 because it was the building that was collapsed.
16:18:31 15 Oh, no. That's where the victims were. That's
16:18:34 16 what crushed them, was the western wall.

16:18:38 17 Okay. Let's turn to The Salvation
16:18:46 18 Army. Salvation Army, when we get to
16:18:52 19 negligence, and there's going to be a
16:18:54 20 negligence question. The Salvation Army, this
16:18:58 21 Court is going to tell you, is a corporation
16:19:00 22 and they get judged like any other person. And
16:19:03 23 that's fair. They shouldn't be judged
16:19:05 24 differently because they're a corporation. How
16:19:08 25 would that be fair?

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16:19:09 2 My law firm is a corporation.

16:19:12 3 Shouldn't be judged any differently than a

16:19:14 4 person. But my law firm counts. It's one

16:19:19 5 person. And I got to be responsible for what

16:19:27 6 happens, whether it's my partner or my

16:19:29 7 associates, or the other workers. And when we

16:19:35 8 have knowledge, you're one person. So when you

16:19:38 9 look at this reasonable person, you got to say

16:19:42 10 to yourself, What did The Salvation Army do?

16:19:45 11 Remember Major Deitrick's e-mails?

16:19:50 12 Almost every one had at the bottom, "The only

16:19:53 13 preparation for tomorrow is the right use of

16:19:57 14 today."

16:20:00 15 If only you had followed that, Major

16:20:04 16 Deitrick, we wouldn't be sitting here today.

16:20:08 17 Mr. Snyder told you, and I wrote this

16:20:11 18 down, The Salvation Army had no idea what was

16:20:13 19 going on. That's not correct. Because you

16:20:20 20 have to judge the whole person. See, they want

16:20:26 21 to split upper command and the store employees

16:20:30 22 as if they are two different groups and two

16:20:33 23 different organizations. Oh, no. When it

16:20:37 24 comes to The Salvation Army, that one person

16:20:42 25 received the e-mails about the hazard.

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16:20:45 2 Received the letter about the hazard. Claims
16:20:49 3 that they had an agreement that there wouldn't
16:20:52 4 be demolition being done, but they knew that
16:20:54 5 demolition was being done because they saw it
16:20:57 6 with their own eyes and they heard it with
16:20:59 7 their own ears and they felt it in vibrations.
16:21:01 8 That's what the whole Salvation Army knew.

16:21:07 9 The whole Salvation Army knew, from Mr.
16:21:10 10 Higgins, that there had to be pedestrian
16:21:12 11 protection for the safety of the men and women
16:21:14 12 who shopped there, donated there, and worked
16:21:18 13 there. And that whole Salvation Army knew that
16:21:22 14 that safety rule was being violated, and they
16:21:25 15 could care less. Mr. Higgins sent them an
16:21:28 16 e-mail on May 21, telling them perimeter
16:21:31 17 protection is required, pedestrian protection
16:21:34 18 is required. And he sent them photos
16:21:36 19 documenting it. And they could care less.

16:21:42 20 So Mr. Snyder said, "What's the
16:21:47 21 standard of care?" As if The Salvation Army --
16:21:51 22 and he said, "What is it, safety?" And then he
16:21:58 23 laughed. Yeah, Mr. Snyder, it's safety.
16:22:02 24 That's the standard, because lives matter. And
16:22:09 25 our experts came in and they gave you very

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16:22:12 2 common sense understanding.

16:22:14 3 What is it? If there's a hazard, you
16:22:19 4 have to investigate the hazard. And if it's
16:22:22 5 there, you got to remediate the hazard.

16:22:28 6 We had some good laughs about my
16:22:30 7 analogy and my good friend Vinnie at the
16:22:33 8 supermarket. You're chuckling. But it's
16:22:36 9 common sense.

16:22:37 10 See, The Salvation Army was told
16:22:40 11 there's a spill in aisle 4. And Mr. Snyder
16:22:45 12 says, if they got e-mails saying there's a
16:22:50 13 spill in aisle 4, or you're a storekeeper with
16:22:54 14 280 retail outlets in the northeast alone and
16:22:57 15 you get an e-mail saying there's a tree from
16:23:00 16 another property that's leaning over and could
16:23:02 17 fall and kill people. Dr. Purswell tells us,
16:23:12 18 as Mr. Sprague aptly noted, that's not a
16:23:14 19 warning because it doesn't tell you the
16:23:16 20 consequences of the act.

16:23:18 21 And they brought in a guy, who was a
16:23:22 22 professor in the field of ergonomics. That's
16:23:26 23 ergonomics? My response to that is ergonomics
16:23:33 24 schmergonoics. Are you kidding me? If Dr.
16:23:39 25 Purswell was in that supermarket, he would say,

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16:23:43 2 Vinnie, don't go to aisle 4, because they
16:23:46 3 didn't tell us what the consequences would be
16:23:48 4 if someone could fall. He would tell us, I
16:23:50 5 didn't tell you how to clean it up, to bring a
16:23:52 6 mop, so it doesn't qualify as a warning and,
16:23:55 7 therefore, you shouldn't do anything about it.

16:23:57 8 And every one of us know from when we
16:24:03 9 were a kid, you spill something on the floor,
16:24:06 10 clean it up. Why? Because somebody can slip
16:24:12 11 in it and get hurt. And the danger is
16:24:14 12 magnified in a demolition because we're not
16:24:17 13 talking about slipping on water in a
16:24:19 14 supermarket. We're talking about a demolition
16:24:21 15 collapse that could cause hundreds of tons of
16:24:25 16 brick and concrete to come down. That was the
16:24:30 17 magnitude of the risk.

16:24:32 18 246, please.

16:24:40 19 Mr. Snyder showed you this. Remember
16:24:46 20 this? "Danger took the weekend off." And I
16:24:51 21 questioned his expert, his expert, Wendell
16:24:55 22 Rust.

16:24:56 23 Slide 245.

16:25:01 24 Remember he admitted to us it was in
16:25:03 25 violation of OSHA safety standards?

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16:25:07 2 "And in between May 22nd and May 31st,
16:25:10 3 the OSHA hazard didn't take off the weekend or
16:25:13 4 the holiday, did it? It was still there; true?

16:25:16 5 "True.

16:25:16 6 "And it was then still there on June
16:25:18 7 1st and June 2nd and June 3rd and June 4th,
16:25:21 8 right?"

16:25:22 9 Go back to 246.

16:25:26 10 This photograph. The Salvation Army
16:25:32 11 still doesn't get it. There was a danger to
16:25:35 12 life and limb, and they didn't do a darn thing
16:25:42 13 about it. And their slide, showing someone
16:25:47 14 laying on the beach, represents The Salvation
16:25:52 15 Army and their response to a hazard that they
16:25:55 16 were told about and their employees feared.

16:25:58 17 Take that down.

16:26:00 18 They read it. They saw it. They heard
16:26:05 19 it. They felt it. They feared it and they
16:26:07 20 knew it.

16:26:08 21 First of all, it was there. There has
16:26:15 22 been no evidence from anybody that says that
16:26:19 23 the project wasn't dangerous and wasn't in
16:26:23 24 violation of OSHA.

16:26:24 25 What's their big argument? Big

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16:26:27 2 argument has been, Well, it wasn't going to
16:26:30 3 fall down at that minute. So imagine that
16:26:33 4 there's a bridge that connects New Jersey to
16:26:44 5 Philadelphia and it's got a crack in it. And
16:26:47 6 it's not going to fail right away. But that
16:26:51 7 crack is getting worse. Their experts, and
16:26:57 8 these defendants, would tell you don't shut the
16:27:02 9 bridge down, even though it might collapse as
16:27:05 10 it gets worse. Keep it open until it's
16:27:10 11 imminently dangerous. Let's stop it a minute
16:27:17 12 before we think it's going to collapse.

16:27:19 13 Did they ever tell you when they would
16:27:21 14 have stopped the project? Did they ever bring
16:27:25 15 in anybody to tell you, Yeah, maybe by June
16:27:30 16 4th. Dr. Purswell admits by June 4th, if there
16:27:33 17 was an excavator, it should have been shut
16:27:36 18 down. I'm going to show that you testimony.

16:27:39 19 That's not the standard. The Court
16:27:44 20 isn't going to tell you in the charge, Ah, the
16:27:47 21 only time you have to respond to safety of it
16:27:50 22 is if it's imminently dangerous. That's not
16:27:53 23 reasonable. It's not what people do.

16:27:56 24 If a sign is deteriorating above a
16:28:01 25 commercial store, you don't wait until it falls

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16:28:05 2 down. If it's got eight bolts, you don't wait
16:28:09 3 until seven of them are broken. That tells you
16:28:15 4 about their safety philosophy, which is, We
16:28:20 5 don't care about people because we don't care
16:28:24 6 about safety. That's what their conduct has
16:28:27 7 shown in this case.

16:28:30 8 So we know that the project actually
16:28:39 9 was dangerous. We know it did violate OSHA.
16:28:43 10 We know it did violate ANSI. We know it did
16:28:47 11 violate the International Building Code, and we
16:28:49 12 know it did violate the city code at the time
16:28:51 13 the e-mails were sent and at the time the
16:28:56 14 letter was sent.

16:28:58 15 So we know that they got the e-mails
16:29:02 16 and there actually was a spill in aisle 4, and
16:29:07 17 they're still telling you we shouldn't have
16:29:09 18 done anything and we were reasonable, even
16:29:13 19 though we were told, even though it existed.

16:29:15 20 And that doesn't matter what other
16:29:24 21 people thought. They keep blaming other
16:29:27 22 people. Well, Mr. Mondlak wasn't concerned.
16:29:31 23 Mr. Mondlak was a city official. He got
16:29:34 24 e-mails indicating there was a danger and a
16:29:37 25 threat to life and limb, and he did nothing

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16:29:41 2 about it. You think he was going to come into
16:29:45 3 here, into this courtroom and say, You know
16:29:46 4 what? You're right. I want to admit, as a
16:29:50 5 government official, in the most horrible
16:29:53 6 catastrophe in Philadelphia history, I believed
16:29:54 7 it.

16:29:55 8 Nobody is going to say that. That's
16:29:57 9 why every single person who was on those
16:30:00 10 e-mails and on those letters has ran the other
16:30:04 11 way. They have run from them, because they
16:30:08 12 don't want to be tarred with 7 deaths and 12
16:30:11 13 injuries. And maybe, maybe, maybe it's their
16:30:21 14 unconscious doing it. Maybe that's the way
16:30:24 15 they need to remember it so they could get up
16:30:28 16 in the morning and get through the day.
16:30:31 17 Because to get up in the morning for anybody
16:30:33 18 who was on those e-mails and letters, and say
16:30:36 19 to yourself, as you look into the mirror every
16:30:38 20 day when you know there are families, as you
16:30:41 21 walk to your breakfast table, who have an empty
16:30:44 22 chair there, maybe that's the way you process
16:30:48 23 it in your brain to be able to go to get
16:30:59 24 through the day.

16:31:00 25 So Mr. Snyder spent a lot of this trial

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16:31:07 2 on the five questions. There are five
16:31:09 3 questions. Isn't it interesting there's been
16:31:12 4 so much talk about questions and then your
16:31:14 5 homework is to fill out 37 questions, huh?
16:31:18 6 Ironic. And I want to talk about that a little
16:31:23 7 bit.

16:31:23 8 Well, they didn't answer our five
16:31:26 9 questions. So what? There were two things
16:31:32 10 that were contained in the e-mails and the
16:31:34 11 letters. There were questions and there was
16:31:40 12 expressions of danger. They're two separate
16:31:43 13 things.

16:31:44 14 If I get an e-mail from my neighbor and
16:31:48 15 it says there's a danger. A tree is going to
16:31:53 16 fall into your yard and kill the people who are
16:31:57 17 coming to your party on Saturday. And I send
16:32:02 18 them a letter back -- because he says, I need
16:32:05 19 access to your yard to be able to remove the
16:32:06 20 tree. And then I send him a letter back
16:32:12 21 saying, What part of my yard do you need? What
16:32:14 22 sort of equipment is going to come in? Is it
16:32:16 23 going to tear up my lawn? What time are these
16:32:18 24 people going to come? How long are they going
16:32:20 25 to be there? It's reasonable.

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16:32:22 2 But it's not reasonable to invite
16:32:24 3 people to the party if I don't get an answer to
16:32:27 4 the question, because I am then knowingly
16:32:32 5 exposing them to danger, and that's exactly
16:32:34 6 what The Salvation Army Corporation did. They
16:32:36 7 knowingly and intentionally exposed people to
16:32:42 8 danger. That was the choices that their upper
16:32:46 9 command made.

16:32:48 10 And then he talks about, Well, we
16:32:53 11 responded in a really fast period of time. So
16:32:57 12 what? Like if you guys filled out all the
16:33:00 13 questions in eight minutes, that's a good
16:33:04 14 thing. No. The fact that they responded in
16:33:08 15 such a short period of time to e-mails and
16:33:11 16 letters, which expressed danger, shows you that
16:33:13 17 they could care less. You know what this was
16:33:19 18 about. There was bad blood between these
16:33:23 19 parties because of a failed building swap. And
16:33:28 20 they didn't like Thom Simmonds and they weren't
16:33:31 21 going to do anything to cooperate, even if it
16:33:36 22 put the people who were at the store in peril.

16:33:42 23 I told you that this was a game of
16:33:47 24 chicken. I talked about those movies from the
16:33:52 25 50s with the two guys who are driving the cars

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16:33:55 2 at each other and they're coming closer and
16:33:57 3 closer and closer to this catastrophic head-on
16:34:02 4 collision, and I suggested that that's what The
16:34:06 5 Salvation Army and STB were doing. I was
16:34:09 6 wrong. Because in the game of chicken, both
16:34:14 7 people are at risk. But the game of chicken
16:34:18 8 was being played between STB and The Salvation
16:34:24 9 Army upper command, and neither of them were in
16:34:28 10 the car and in the zone of danger. No. The
16:34:32 11 people who were in that car, which were being
16:34:36 12 driven by somebody else, with risks they didn't
16:34:39 13 know about, were the victims of this collapse.
16:34:44 14 You know what these defendants did? You know
16:34:46 15 what The Salvation Army did? They took away
16:34:50 16 their choice. They gambled on their lives.
16:35:06 17 And they didn't give them the information that
16:35:09 18 they had.

16:35:12 19 I told you they knew it, because they
16:35:15 20 knew protection wasn't there. It actually
16:35:17 21 existed. They got the e-mails and the letters
16:35:20 22 about it and the people at The Salvation Army
16:35:22 23 store, who testified, who were sitting here in
16:35:25 24 this courtroom, they saw it. They heard it.
16:35:27 25 They felt it.

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16:35:28 2 How much time do I have?

16:35:30 3 MR. GOODMAN: 52 minutes.

16:35:35 4 MR. MONGELUZZI: We've got a lot to
16:35:37 5 talk about Salvation Army's credibility in this
16:35:40 6 case. I think it's a major issue. You're
16:35:45 7 really smart and you get it.

16:35:48 8 You know, they say even though there
16:35:53 9 are different people in the store and they have
16:35:55 10 different days off, and even though they were
16:35:57 11 being asked questions, months, if not years
16:35:59 12 afterwards. Well, this one said the sound
16:36:04 13 started week-and-a-half and this one said it
16:36:05 14 was two weeks and this one heard it on the roof
16:36:07 15 and this one heard it on the wall.

16:36:11 16 Doesn't that tell you that they're
16:36:13 17 telling the truth, right? Or would you think
16:36:17 18 they were telling the truth if they came in, as
16:36:20 19 if they were following the script, where every
16:36:24 20 single one of them said the same exact thing?
16:36:29 21 That's what they said. You know what that
16:36:33 22 code's for. That code's for attacking the
16:36:37 23 workers of The Salvation Army who were sitting
16:36:40 24 there, saying that they weren't credible. And
16:36:45 25 it was interesting, wasn't it, that they said

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16:36:50 2 that about the store employees but not about
16:36:52 3 upper command.

16:36:54 4 What else was very curious? How about
16:36:57 5 none of them would say the building collapsed?
16:37:01 6 Remember that? All of them said the building
16:37:04 7 was pushed over or knocked over. I find that
16:37:09 8 curious. Because everybody else has said it's
16:37:11 9 a collapse. Why didn't they say that? Because
16:37:15 10 the word "collapse" -- "uncontrolled collapse"
16:37:19 11 is in the letter. So all the upper command
16:37:22 12 people came in and refused to use the word
16:37:25 13 "collapse". And all of The Salvation Army
16:37:28 14 experts came in and refused to use the word
16:37:33 15 "collapse."

16:37:35 16 And then there was these other things,
16:37:38 17 all of them said there was an agreement
16:37:39 18 regarding no demolition on May 10th, even
16:37:44 19 though nobody from STB ever said that. Even
16:37:48 20 though they all conveniently couldn't remember
16:37:50 21 who said it on the television. Even though
16:37:54 22 it's not in the e-mail that Mr. Wolfington
16:38:00 23 created, and even though their own employee
16:38:03 24 sent an e-mail moments letter, saying it stated
16:38:07 25 there are no commitments. But they claim there

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16:38:10 2 was a commitment.

16:38:12 3 Why would they all say that? Why would
16:38:15 4 they have people come in and say there was no
16:38:17 5 demolition between May 22nd and June 1st, which
16:38:23 6 you watched Dr. Purswell get demolished on.

16:38:28 7 And then Dr. Caulfield, who is in the
16:38:31 8 courtroom, who was testifying the next day, who
16:38:34 9 had put in his report that there was no
16:38:38 10 demolition between May 22nd and June 2nd, all
16:38:43 11 of a sudden backed off. Why did all The
16:38:47 12 Salvation Army people say that? I'll tell you
16:38:50 13 why. Because when they heard, saw, felt, read,
16:38:56 14 knew that there was a hazard, it is outrageous
16:39:03 15 not to investigate. It is inexcusable not to
16:39:08 16 investigate.

16:39:09 17 So they came up with the story -- well,
16:39:12 18 let me put it this way. I submit to you that
16:39:16 19 the evidence will show that that was a story to
16:39:25 20 defend their inexcusable conduct. All of them.
16:39:32 21 All of them following the same script, and one
16:39:38 22 of the questions you're going to have to think
16:39:40 23 about is who is the script writer?

16:39:48 24 Mr. Snyder indicated -- took on these
16:39:57 25 employees.

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16:39:59 2 251.

16:40:00 3 He showed you these slides. Never saw
16:40:05 4 an excavator. Only saw it doing this. Doesn't
16:40:07 5 recall seeing, hearing, or feeling an
16:40:10 6 excavator. They all came in and said they saw
16:40:13 7 demolition. They all saw demolition. You
16:40:16 8 know, the thing that The Salvation Army said
16:40:19 9 there's an agreement not to do. So The
16:40:21 10 Salvation Army knew, assuming you believe in
16:40:22 11 this -- I'll use their language -- so-called
16:40:25 12 agreement, that it wasn't being followed.

16:40:28 13 Next. 250.

16:40:31 14 These are the things in black that Mr.
16:40:39 15 Snyder tells you. But he didn't tell you the
16:40:42 16 testimony, "Worried when she heard noise in
16:40:44 17 mid-May. Heard brick and debris in walls.
16:40:47 18 Heard loud noise, shaking of building."

16:40:50 19 What about feeling? Let's look at Mr.
16:40:52 20 Snyder's slide on feeling.

16:40:56 21 249.

16:40:56 22 Didn't feel vibrations. Falling
16:41:03 23 debris. Said, Oh, my God, it's going to fall.
16:41:06 24 Told OSHA he never felt walls or floors
16:41:11 25 shaking. Felt obvious vibrations in the wall.

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16:41:13 2 Nothing ever fell or was damaged. She actually
16:41:15 3 testified she felt the floor shaking. So what
16:41:17 4 he showed you was not accurate.

16:41:19 5 Why does he want to do that?

16:41:22 6 You can take that down.

16:41:23 7 Because he knows that's what The
16:41:28 8 Salvation Army knew. There was no escaping it.
16:41:34 9 They are employees of The Salvation Army. They
16:41:36 10 knew that. The Salvation Army didn't take care
16:41:39 11 of them and it didn't take care of the
16:41:41 12 customers.

16:41:44 13 248.

16:41:45 14 He told you no employees ever felt
16:41:51 15 unsafe. This blocked it up. Sorry. Mr.
16:42:02 16 Goodman made the slide while we were working.
16:42:04 17 I'm going to put that one down.

16:42:06 18 Let's look at the actual testimony of
16:42:11 19 the workers. Nadine White. 197-A.

16:42:19 20 "Did you discuss the shaking with your
16:42:21 21 colleagues and co-workers?

16:42:22 22 "Yes, with my co-workers.

16:42:24 23 "And could you summarize what type of
16:42:26 24 things you would discuss about the shaking?

16:42:28 25 "We would talk about how, like, the

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16:42:30 2 building was shaking, like, every day the
16:42:32 3 shaking and whatever. And like -- we would
16:42:34 4 like -- like kind of joke about it.

16:42:36 5 "What would you joke about?

16:42:39 6 "It might cave in."

16:42:40 7 Those are the nervous fears of people
16:42:46 8 who knew something was wrong. And let me tell
16:42:48 9 you something. They're smart people. They're
16:42:54 10 salt of the earth people. They weren't even
16:42:56 11 given the benefit of the e-mails. You're going
16:43:00 12 to have to decide what a reasonable person
16:43:04 13 thinks about if they had gotten those e-mails
16:43:06 14 saying that there was going to be an
16:43:08 15 uncontrolled collapse, that people were going
16:43:10 16 to get killed. And then they felt and they saw
16:43:12 17 and they heard what they were feeling, seeing,
16:43:15 18 and hearing. It would have been a totally
16:43:17 19 different situation.

16:43:18 20 Rodney Geddis. 188.

16:43:23 21 "Did you or any other employees express
16:43:29 22 concern about the way the building was being
16:43:32 23 demolished next door?

16:43:33 24 "Yes. I thought the building was going
16:43:35 25 to collapse because of the way they were

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16:43:39 2 connected to each other.

16:43:40 3 You know that chimney was connected.

16:43:43 4 And we don't know -- there's no evidence in

16:43:45 5 this record as to when the stucco was put up,

16:43:49 6 which bound that chimney to the Hoagie City

16:43:51 7 building. But they were indeed intertwined as

16:43:56 8 Siamese twins. And that's why you could feel

16:43:59 9 the vibration and that's why it was dangerous

16:44:02 10 and that's why it was unsafe, particularly when

16:44:05 11 you have a four-story structure up above a

16:44:08 12 one-story store, because demolition is

16:44:12 13 dangerous because there can be an uncontrolled

16:44:17 14 collapse.

16:44:18 15 By the way, throughout this trial, in

16:44:22 16 another script, they kept talking about

16:44:26 17 uncontrolled collapse of part or loose debris.

16:44:31 18 2136-38 is in a partial state of demolition,

16:44:37 19 and there's a risk of an uncontrolled collapse

16:44:41 20 of part or loose debris. Part of 2136-38

16:44:48 21 Market Street. Part of the building

16:44:51 22 uncontrollably collapsing is a danger and a

16:44:55 23 hazard and is unsafe. And not to do anything

16:45:01 24 about it and to, in fact -- we're going to talk

16:45:05 25 about it in a little bit -- invite people in

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16:45:08 2 and have a sale day so that there are even more
16:45:10 3 people there, is unconscionable.

16:45:15 4 Margarita Augusto. 189.

16:45:22 5 "But you weren't concerned for your
16:45:24 6 safety, were you?

16:45:25 7 "Yes. Always was --

16:45:26 8 "You were?

16:45:27 9 "-- concerned for my safety.

16:45:29 10 "QUESTION: So you were concerned that
16:45:31 11 something at that demolition site would somehow
16:45:34 12 hurt you; is that right?

16:45:35 13 "ANSWER: Correct.

16:45:37 14 "Were you worried that something at
16:45:39 15 that demolition would hurt one of the patrons
16:45:41 16 of The Salvation Army?

16:45:42 17 "Correct.

16:45:43 18 "When did that worry begin?

16:45:44 19 In May."

16:45:46 20 Take that down.

16:45:48 21 She is the manager of The Salvation
16:45:50 22 Army. They are one person. The Salvation Army
16:45:55 23 had safety concerns in May, going back to the
16:46:01 24 month before this collapse, for the safety of
16:46:04 25 the people who worked there and the safety of

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16:46:06 2 their patrons. That is their agent. That is
16:46:11 3 their employee. It's why Mr. Snyder has tried
16:46:15 4 to duck that issue throughout this trial. But
16:46:21 5 there's no ducking now. It is uncontradicted.

16:46:28 6 Then they talk about the June 4th
16:46:31 7 meeting between her and Mr. Pomponi. We spent
16:46:34 8 a lot of time about it. And he talked to you
16:46:36 9 today about Mr. Pomponi, what a great guy he
16:46:39 10 was. Remember Mr. Pomponi, when I
16:46:42 11 cross-examined him regarding his route to The
16:46:46 12 Salvation Army? And it just so happens he
16:46:47 13 didn't turn off the Schuylkill, get on 676,
16:46:51 14 about a hundred feet, come down 23rd Street,
16:46:53 15 take a left and be at The Salvation Army
16:46:56 16 building, having hit one light -- two lights.
16:47:01 17 But instead drove all the way past, down to
16:47:05 18 Penn, took a left on South Street, so that he
16:47:08 19 could catch 12 lights on the way back.
16:47:12 20 Curious? See, the other route would have put
16:47:15 21 him right in front of The Salvation Army
16:47:17 22 building.

16:47:18 23 But regardless of whether or not you
16:47:22 24 believe Mr. Pomponi and his credibility and her
16:47:25 25 credibility is up to you, it doesn't matter.

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16:47:30 2 Either Margarita Augusto and Ralph Pomponi knew
16:47:35 3 or just Margarita Augusto knew. What
16:47:38 4 difference does it make? Either the manager
16:47:42 5 and the store supervisor knew or the manager
16:47:46 6 knew. One person, The Salvation Army. They
16:47:53 7 knew and it is uncontradicted.

16:47:56 8 So let's bring up Dr. Rust. I want to
16:48:06 9 go to the hazard again. 223.

16:48:10 10 This is his trial testimony. "This site
16:48:11 11 was in violation of OSHA, on May 21; true?

16:48:14 12 "True.

16:48:17 13 "May 31st?

16:48:18 14 "True.

16:48:18 15 "Between May 22nd and May 31st?

16:48:21 16 "True.

16:48:22 17 "June 2nd and June 3rd?

16:48:24 18 "True."

16:48:25 19 Next slide. 224.

16:48:27 20 Remember he would use the word
16:48:29 21 "indisputable" or "indisputably." He and I had
16:48:33 22 a little fun with that. It is indisputable
16:48:35 23 that the photographs -- remember I told you
16:48:38 24 photographs don't lie. They don't forget and
16:48:42 25 they don't change their story.

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16:48:44 2 "Between May 21, 22, 29, 31st, June
16:48:51 3 1st, 2nd, 3rd, 4th, 5th, show indisputably that
16:48:55 4 the OSHA regulation was violated. There were
16:48:58 5 OSHA violations. Any person who had reason
16:49:02 6 portension, who had come out there, would have
16:49:05 7 known it was in violation of federal law. I
16:49:08 8 agree with that.

16:49:09 9 "The whole purpose of having safety
16:49:11 10 laws for demolition projects is to prevent the
16:49:14 11 very type of catastrophe that occurred here;
16:49:16 12 true?

16:49:17 13 "True. I would agree with that."

16:49:20 14 It could have been stopped even moments
16:49:24 15 before. All they had to do, talk to you
16:49:27 16 before, take that down. Hazard. Was there
16:49:30 17 one? Indisputably. By the way, do you
16:49:34 18 remember who Dr. Rust was an expert for? It's
16:49:38 19 The Salvation Army's expert. That's their guy.
16:49:42 20 Their guy told you indisputably that there was
16:49:46 21 safety violations. And had they been -- so
16:49:51 22 there were safety violations, they were told
16:49:54 23 about safety violations. They were told about
16:49:56 24 hazards, I should say. They knew it. They
16:49:59 25 felt it. They saw it. They have a duty to

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16:50:01 2 investigate.

16:50:02 3 So what did they do? Right. Spill in
16:50:07 4 aisle 4. Vinnie. Go look in aisle 4.

16:50:13 5 So what do they do? They hire Jack
16:50:17 6 Higgins and they send Mr. Higgins to the wrong
16:50:19 7 store. They don't send him, after getting
16:50:24 8 e-mails and letters, saying the demolition of
16:50:26 9 Hoagie City is posing a hazard. There could be
16:50:29 10 an uncontrolled collapse that could cause
16:50:31 11 damage, threat to life and limb and kill
16:50:35 12 people. So they get warned about the hazard
16:50:36 13 for the Hoagie City building. Where do they
16:50:37 14 send Mr. Higgins? They send him to The
16:50:41 15 Salvation Army building so that they could
16:50:44 16 prepare themselves for property damage
16:50:47 17 lawsuits. There is a spill in aisle 4 and they
16:50:51 18 send him to aisle 5. That's reasonable care?
16:51:03 19 They selected the wrong guy and sent him to the
16:51:06 20 wrong place.

16:51:07 21 227.

16:51:08 22 So when it comes time, were they
16:51:12 23 negligent in the selection of Jack Higgins?
16:51:14 24 Yes. Do you find the negligent selection of
16:51:17 25 Higgins was a factual cause? Yes.

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16:51:20 2 Why? Because they sent him to the
16:51:23 3 wrong building. And if they had sent the right
16:51:26 4 person to the right building, they would have
16:51:28 5 known it was dangerous and unsafe and they
16:51:31 6 could have done something. What could they
16:51:32 7 have done? They could have filed the
16:51:34 8 injunction that both Mr. Clain and Mr. Snyder
16:51:37 9 talked to you about. They could have walked
16:51:39 10 into court and said, This is dangerous. Shut
16:51:41 11 it down. Bam. Stopped. And every one of
16:51:45 12 their witnesses, experts told you if it had
16:51:48 13 been stopped, even if it had been stopped a
16:51:51 14 minute before, it wouldn't have fallen down at
16:51:54 15 that moment.

16:51:54 16 Let's go to Jack Higgins. 238.

16:52:00 17 Now, Mr. Higgins and I went at it.
16:52:07 18 Remember? He's the guy who called me bombastic
16:52:11 19 and theatrical within the first three minutes
16:52:14 20 of cross-examining him. There was no love
16:52:18 21 lost.

16:52:18 22 But Mr. McCarthy was right. We don't
16:52:23 23 say that he was negligent. And there was no
16:52:27 24 testimony regarding his negligence, if any, to
16:52:33 25 have been a cause of the accident, because they

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16:52:35 2 sent the wrong guy to the wrong building. If
16:52:38 3 they had sent him to the right building, they
16:52:41 4 defined his scope of work, I stand up and tell
16:52:44 5 you, he was responsible. He should have
16:52:47 6 understood the OSHA violations, assuming that's
16:52:51 7 what he sent them there to do.

16:52:55 8 And then they hired Mr. Nudel. Mr.
16:52:57 9 Nudel didn't do any investigation. Mr. Nudel
16:53:00 10 just worked on the access agreement.

16:53:04 11 And what is the access agreement and
16:53:07 12 all the information that's gone back, back and
16:53:09 13 forth on it? They want to get on the roof to
16:53:15 14 protect the roof. They want to get on the roof
16:53:17 15 to deal with the chimney. That's why. And The
16:53:22 16 Salvation Army never cooperated. They wanted
16:53:24 17 to get on the roof to protect the roof and
16:53:29 18 something going through the roof and to protect
16:53:30 19 The Salvation Army's property, and more
16:53:34 20 importantly the safety of the people inside,
16:53:36 21 and The Salvation Army wasn't going to be
16:53:39 22 bothered to cooperate.

16:53:43 23 So when we talk about investigation,
16:53:49 24 they send the wrong person to the wrong store.
16:53:54 25 They hire a lawyer that doesn't have anything

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16:53:57 2 to do with investigating this. Well, what
16:54:01 3 about upper command? What did they do from May
16:54:08 4 9th through June 6th? Did they go to the
16:54:18 5 store? They're sitting here in this courtroom.
16:54:25 6 They showed up, when it was time for The
16:54:31 7 Salvation Army to protect themselves from this
16:54:32 8 lawsuit. But when it was time to protect the
16:54:37 9 people, the men and women who were working
16:54:41 10 there, the customers who shopped and donated
16:54:45 11 there, Major Deitrick, Major Cranford, Mr.
16:54:53 12 Fraser, Colonel Raines were nowhere to be
16:55:03 13 found. Those members of the Army were missing
16:55:08 14 in action.

16:55:13 15 So the fact that they didn't
16:55:33 16 investigate known hazards, the fact that they
16:55:46 17 sent an architect to go document their building
16:55:54 18 to perfect property damage claims is
16:56:00 19 outrageous.

16:56:05 20 Remember we showed you the deplorable
16:56:08 21 conditions that those workers had to work in?
16:56:12 22 The ceiling tiles falling down, the stained
16:56:15 23 walls. They were hoping to get those paid for
16:56:22 24 by somebody else, and they turned their back on
16:56:27 25 the safety of the men and women who were going

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16:56:30 2 to be affected by it. And that is intolerable
16:56:37 3 and inexcusable.

16:56:39 4 What are some of the other credibility
16:56:54 5 defenses they've had? How about the trusting
16:56:58 6 the untrustworthy defense? Oh, we didn't trust
16:57:02 7 them. Oh, when it came to the demolition
16:57:04 8 agreement, we trusted them. When it came to
16:57:06 9 this, we didn't trust them. When it came to
16:57:08 10 that, we trusted them.

16:57:11 11 You're going to have to decide for whom
16:57:16 12 is there a real reason not to trust, because
16:57:29 13 there was a magnitude of risk, and they knew
16:57:32 14 it, and that's one of the issues in this case.
16:57:34 15 There was a magnitude of risk because, people
16:57:39 16 could get killed and people could get harmed.
16:57:44 17 And there could be bells that would chime. And
16:57:49 18 that's the magnitude of the hazard that they
16:57:56 19 ignored.

16:58:02 20 They said -- it's their next
16:58:09 21 credibility thing. Well, there was only going
16:58:11 22 to be hand demolition. When did hand
16:58:13 23 demolition become safe? Remember that June 2nd
16:58:17 24 photo? There's three stories of unsupported
16:58:19 25 wall. It was done by hand.

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16:58:21 2 Remember I asked Mr. Rust the question,
16:58:25 3 "Does the wall remember, the freestanding wall
16:58:30 4 remember whether its joists were taken out by
16:58:33 5 hand or machine?" It's just as dangerous.
16:58:35 6 Hand demolition doesn't matter. Mr. Snyder
16:58:39 7 said it's just trying to throw people off. It
16:58:43 8 could kill and injure just as well.

16:58:47 9 So it's important for them to
16:58:49 10 communicate. Did they? Mr. Fraser.

16:59:09 11 160.

16:59:11 12 "After you received information about
16:59:14 13 code requirements for protecting pedestrians,
16:59:18 14 did you ever supply any of that information to
16:59:20 15 anyone that worked at 2140 Market Street?

16:59:26 16 "No."

16:59:27 17 This upper command made conscious,
16:59:32 18 intentional decisions not to communicate the
16:59:38 19 information. This isn't a case where they
16:59:44 20 forgot. Oh, geez. I was going to send them
16:59:48 21 the e-mails. I forgot about that. That is
16:59:53 22 carelessly or negligently failing to supply
16:59:59 23 information. These were conscious, knowing,
17:00:06 24 and intentional decisions.

17:00:09 25 And what did Dr. Purswell, The

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17:00:12 2 Salvation Army's own expert say about this?

17:00:15 3 220.

17:00:17 4 "It was fine for the haves who weren't
17:00:22 5 in the zone of danger to withhold information
17:00:26 6 from the have-nots who were within the zone of
17:00:29 7 danger of getting injured and killed. Right?

17:00:31 8 "I didn't say that it was okay for that
17:00:33 9 to happen."

17:00:34 10 Because it isn't okay. So what should
17:00:36 11 they have done? You're warned about this stuff
17:00:43 12 and it actually exists. You send someone out
17:00:45 13 there who knows what they're doing. They had
17:00:48 14 plenty of resources, and you know that from
17:00:50 15 what happened here. They could have done it.

17:00:52 16 So -- if you're being warned of a demo
17:00:56 17 hazard, you bring out a demo guy like they
17:00:58 18 brought out, Dr. Rust. Or you send out -- even
17:01:01 19 if they had sent out Mr. Higgins. Remember
17:01:03 20 what Mr. Higgins told you? "I'd been out there
17:01:06 21 June 2nd. Shut down two blocks. Suicide."
17:01:14 22 They could have had him monitor it.

17:01:17 23 When it was time for them to monitor
17:01:22 24 this project for safety, after being warned of
17:01:26 25 danger to protect the public, they didn't send

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17:01:32 2 out anybody. But when it came time to monitor
17:01:38 3 this trial, Salvation Army had people here
17:01:43 4 every day. Where were you when you were
17:01:52 5 needed?

17:01:53 6 Mr. Higgins himself said it was a
17:02:03 7 disaster waiting to happen.

17:02:05 8 How much time do I have?

17:02:08 9 THE COURT: 24 minutes.

17:02:09 10 MR. MONGELUZZI: Thank you, Your Honor.

17:02:11 11 We know Salvation Army is one person.

17:02:18 12 We know, Mr. Snyder's own slide, that they knew

17:02:23 13 that an excavator was out there. They saw it.

17:02:26 14 May not have seen it ripping it down. They're

17:02:28 15 going into work. But they knew it was there.

17:02:38 16 It's a giant excavator. How could you not know

17:02:41 17 it was there? What did Dr. Purswell say, in

17:02:44 18 response to one of Mr. Stern's questions?

17:02:47 19 219. Blow up that bottom here.

17:02:51 20 "If you're talking about June 4th, and

17:02:53 21 you see somebody out with an excavator working

17:02:57 22 at it, that probably would have raised enough

17:03:01 23 concern that you would have shut the store?

17:03:06 24 "Yes."

17:03:10 25 But they didn't close the store.

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17:03:19 2 Mr. Snyder published the testimony of
17:03:22 3 our expert. "Did Cranford, Pomponi and Augusto
17:03:28 4 fulfill their responsibility to keep their
17:03:29 5 customers safe on June 5th?

17:03:31 6 "ANSWER: Did they? No, they didn't."

17:03:38 7 I don't blame Ms. Augusto. She told
17:03:42 8 you she didn't know she could close the store.
17:03:49 9 And she should have been trained better. It
17:03:53 10 was shocking, shocking that they don't have
17:04:01 11 e-mail that goes to the people in the store.
17:04:03 12 It was shocking that in the last year they had
17:04:05 13 not held a single safety meeting. That is
17:04:09 14 outrageous with a chain that has 280 stores.
17:04:16 15 It was shocking that they brought in a safety
17:04:18 16 professional who works at Stauffers of Kissel
17:04:23 17 Hill -- Kissel Hill -- who has 12 stores and
17:04:27 18 has a safety professional. That tells you
17:04:31 19 everything you need to know about the Salvation
17:04:34 20 Army's commitment to safety.

17:04:36 21 226.

17:04:45 22 Mr. Snyder is right. This is one of
17:04:49 23 the critical questions in the case. Do you
17:04:52 24 find that The Salvation Army intentionally
17:04:54 25 misrepresented and or intentionally failed to

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17:04:57 2 disclose a material fact? Yes.

17:05:01 3 Do you find that the intentional

17:05:03 4 misrepresentations and/or intentional

17:05:06 5 disclosures were a factual cause in bringing

17:05:09 6 out harm? The answer to that is yes.

17:05:13 7 Their witnesses admitted. Their

17:05:16 8 experts admitted. Mr. Parsons -- we can take

17:05:19 9 that down -- admitted that if you open your

17:05:22 10 store, it's a representation that the store is

17:05:25 11 safe. And they knew it was not. Their manager

17:05:28 12 knew it was not. And they opened their store

17:05:32 13 and they invited people in. And when you put a

17:05:38 14 sign and you make it a sale day and you know it

17:05:40 15 is dangerous, that is an intentional

17:05:44 16 misrepresentation, or an intentional

17:05:49 17 nondisclosure.

17:05:51 18 They didn't forget to tell the

17:05:55 19 customers. They made an intentional decision

17:06:00 20 not to tell them. And would it have been

17:06:06 21 something that was important to the average

17:06:08 22 consumer? You're going to have to ask

17:06:11 23 yourself, would the average consumer want to

17:06:13 24 know that the store has been warned there can

17:06:16 25 be an uncontrolled collapse, there's a threat

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17:06:18 2 to life and limb? Lives can be lost. The
17:06:21 3 people at the store think it's dangerous that
17:06:23 4 the customers could be harmed and that they
17:06:29 5 feared the demolition and feared that the roof
17:06:32 6 or wall may cave in. Is that something that
17:06:35 7 the average consumer would want to know before
17:06:39 8 they walked through the door? Check that off
17:06:41 9 "yes." And that may be the most important
17:06:45 10 question in the case.

17:06:46 11 There's going to be another question
17:06:57 12 about The Salvation Army's conduct, and that is
17:07:04 13 slide -- let's go to slide 150 first, last
17:07:12 14 thing on this.

17:07:14 15 "Those customers that go into that
17:07:16 16 store, they had every reason to believe that
17:07:18 17 store was safe for them to shop, correct?

17:07:20 18 "Yes.

17:07:20 19 "They would expect that if someone had
17:07:22 20 reason to know there was danger associated with
17:07:25 21 that store, or potential danger, then by golly,
17:07:30 22 they would expect them to tell them about it.
17:07:32 23 They have every reason to expect that, right?

17:07:35 24 "Yes."

17:07:35 25 That's the representation that you make

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17:07:37 2 when you open the store.

17:07:39 3 And it is 229.

17:07:46 4 Was The Salvation Army's conduct
17:07:49 5 outrageous? Yeah. When you get warned of a
17:07:52 6 hazard and you send the architect to document
17:07:55 7 the property damage that you know is coming,
17:07:58 8 that is outrageous. It is malicious and it is
17:08:02 9 oppressive and it is recklessly indifferent to
17:08:06 10 the people who were coming in the store. And
17:08:11 11 check that "yes."

17:08:12 12 228.

17:08:13 13 And when it comes time to determine
17:08:17 14 whether their conduct was extreme and
17:08:20 15 outrageous in this case, it was. Safety
17:08:24 16 matters. And when you think about oppressive,
17:08:39 17 I don't know if you remember this. The first
17:08:43 18 slide I put up -- and I had the honor of being
17:08:48 19 the first lawyer to speak to you and I have the
17:08:53 20 honor of being the last lawyer to speak to you.
17:08:55 21 The first thing we showed you was the SEPTA
17:08:58 22 video and the second thing was a dictionary
17:09:03 23 definition of "accident." And I told you that
17:09:10 24 this was no accident, because an accident is
17:09:14 25 something that can't be foreseen and can't be

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17:09:17 2 predicted. And this was foreseen and this was
17:09:22 3 foreseeable and this was predicted.

17:09:27 4 Oppression. Unjustly inflicting
17:09:32 5 hardship, especially on a subordinate group.
17:09:40 6 And that would be the customers.

17:09:42 7 You're going to have to come to an
17:09:47 8 apportionment.

17:09:47 9 239.

17:09:50 10 Apportionment is a fancy word for how
17:09:52 11 you whack up the percentage of causal fault.
17:09:55 12 And you're actually going to have to do it
17:09:57 13 twice, because you're going to have to do it
17:10:01 14 one time with The Salvation Army in the
17:10:02 15 equation and you're going to have to do it a
17:10:06 16 second time. And that's for the customers in
17:10:08 17 the store.

17:10:09 18 And then you're going to have to do it
17:10:10 19 a second time, the next question, where The
17:10:14 20 Salvation Army isn't in the equation for their
17:10:15 21 employees. There's no reason for you to worry
17:10:18 22 about that.

17:10:18 23 I want to start with this one: The
17:10:24 24 people who came to the store that day didn't
17:10:26 25 come there because of STB. They didn't come

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17:10:30 2 there because of Richard Basciano. They came
17:10:33 3 there because of The Salvation Army. That is
17:10:40 4 the company that owed them a duty. That is the
17:10:44 5 company who knew about the risk. That is the
17:10:47 6 company that knew that the store was unsafe.
17:10:51 7 That was the corporation that they were relying
17:10:56 8 and trust on.

17:10:58 9 And so on this one, and this is about
17:11:08 10 bringing about the harm to the plaintiffs.
17:11:12 11 Those plaintiffs were harmed because they
17:11:14 12 relied on The Salvation Army. And we can't
17:11:20 13 suggest specific percentages for this. But for
17:11:26 14 these victims, it was The Salvation Army who
17:11:32 15 they were overwhelmingly relying upon for their
17:11:35 16 safety.

17:11:36 17 STB and Basciano, I told you they're
17:11:41 18 responsible. What I tell you, by the way,
17:11:47 19 doesn't matter. I submit, the evidence shows
17:11:53 20 that they're responsible. And we talked about
17:11:54 21 if they negligently selected Mr. Marinakos, we
17:11:57 22 ask that that percentage that flowed from that
17:12:00 23 negligent selection be put where it belongs.
17:12:04 24 And if Mr. Campbell was negligently selected,
17:12:08 25 then the negligence that flows from that

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17:12:10 2 negligent selection be put where it belongs.

17:12:14 3 Sean Benschop was following orders. He
17:12:20 4 was told to rip the building down from front to
17:12:22 5 back. I said in the opening, it was the plan,
17:12:30 6 not the man. It was the plan that was bad.
17:12:33 7 Nobody came in and told you he accidentally hit
17:12:36 8 something on the eastern wall that he didn't
17:12:38 9 want to hit. He was following what he was told
17:12:41 10 to do.

17:12:41 11 If you put that back up. 239.

17:12:49 12 Mr. Higgins. I think everybody here
17:12:54 13 who's spoken has said doesn't deserve to be
17:12:59 14 held accountable. Mr. Sprague told you that.
17:13:01 15 Mr. Snyder didn't say anything about it. And I
17:13:04 16 told you they sent the wrong guy to the wrong
17:13:06 17 building, although I went after him pretty
17:13:09 18 hard. Not on liability. On credibility
17:13:11 19 regarding his issue regarding whether there was
17:13:14 20 demolition on May 20th. I went after him hard
17:13:17 21 on that. But that's credibility, not
17:13:21 22 liability.

17:13:22 23 There is a second apportionment, which
17:13:26 24 is at 240. The Salvation Army is not on this.
17:13:36 25 So when it comes to the employees of The

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17:13:41 2 Salvation Army, you then have to add up
17:13:43 3 everybody's percentage and get to a hundred.
17:13:45 4 The earlier one you have to do the same thing.
17:13:48 5 You have to keep -- The Salvation Army, we
17:13:50 6 submit should be in that, and that has to add
17:13:53 7 up. Both of them have to add up to a hundred.
17:13:56 8 This one doesn't have The Salvation Army in it.
17:13:59 9 And this is a separate apportionment. That
17:14:01 10 doesn't mean you have -- you now have to say,
17:14:04 11 Okay, the employees, we're not putting The
17:14:10 12 Salvation Army in this.

17:14:14 13 THE COURT: Ten minutes left.

17:14:22 14 MR. MONGELUZZI: Yes, Your Honor.

17:14:27 15 You're going to remember this case for
17:14:35 16 the rest of your life. I know we all will. It
17:14:41 17 will stick with you. All of us until the day
17:14:47 18 we die. And we'll all have different memories
17:14:53 19 about what we remember. Everybody might have a
17:14:58 20 different one. See, for me, the most symbolic
17:15:04 21 moment that captured everything that went on,
17:15:12 22 all of the parties, what they were really like,
17:15:23 23 was when I was cross-examining Major Deitrick
17:15:28 24 and he turned to us and said, "I pray for the
17:15:34 25 victims every night." And I walked across the

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17:15:44 2 courtroom from over here to the bar, and said
17:15:48 3 to him, "What are their names?"

17:16:06 4 "I couldn't remember." And then he
17:16:08 5 stammered, "I prayed for them generally. I
17:16:13 6 read them at the time."

17:16:16 7 Major Deitrick, they're important
17:16:18 8 enough to remember.

17:16:20 9 241.

17:16:24 10 Their names are Margarita Augusto and
17:16:28 11 Shirley Ball and Linda Bell and Betty Brown and
17:16:33 12 Bernard DiTomo and Rodney Geddis and Felicia
17:16:39 13 Hill and Rosemary Kreutzberg and Maria Plekan
17:16:44 14 and Jennifer Reynolds, Richard Stasiorowski and
17:16:50 15 Nadine White. The ones that didn't make it:
17:16:53 16 Anne Bryan, Roseline Conteh, Borbor Davis,
17:16:59 17 Kimberly Finnegan, Juanita Harmon, Danny
17:17:04 18 Johnson, Marry Simpson.

17:17:13 19 I started this rebuttal off by saying
17:17:15 20 when it came time. It has now come time. It
17:17:28 21 is your time. They came here for justice. And
17:17:36 22 we ask you to give it to them. We'll be
17:17:44 23 waiting.

17:17:45 24 THE COURT: Members of the jury, it is
17:17:50 25 now 5:17, and I am going to excuse you until

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17:17:54 2 Monday morning when I will give you my final
17:17:58 3 charge and then send you to deliberate.

17:18:00 4 As you know -- I told you this earlier,
17:18:05 5 today or yesterday, that even though you're now
17:18:09 6 at the closing argument phase, that you still
17:18:12 7 cannot talk amongst yourselves about the case.
17:18:15 8 You're also not permitted to communicate in any
17:18:18 9 way, shape, or form about the case or about
17:18:21 10 your service as a juror in the case. So you're
17:18:22 11 not permitted to text, or tweet, or go on any
17:18:25 12 social networking sites, or e-mail, or call
17:18:29 13 either to receive any information from anyone
17:18:32 14 or to impart information to anyone. You're not
17:18:36 15 permitted to do independent research looking up
17:18:39 16 anything on your own or asking someone to do it
17:18:43 17 on your behalf. So you cannot go on the
17:18:45 18 internet or to the more traditional forms of
17:18:48 19 research.

17:18:49 20 You're also required, and as I urged on
17:18:52 21 Monday morning when I spoke to each of you
17:18:54 22 individually, to take extra measures to make
17:18:57 23 sure that you're isolated from any of the
17:19:00 24 perhaps increased media coverage that might be
17:19:03 25 out there right now about the case. As you

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17:19:05 2 know, the only source of your information
17:19:07 3 should be the information that we all hear when
17:19:11 4 we are here together in the courtroom and you
17:19:13 5 are in the presence of the Court with the
17:19:15 6 attorneys and the parties present.

17:19:17 7 And, lastly, you're not permitted to go
17:19:20 8 to any location that has been testified to
17:19:23 9 during the course of the trial.

17:19:24 10 I will ask that you be here at 9:30 on
17:19:27 11 Monday morning. My charge will probably take
17:19:31 12 an hour, give or take a little bit. And then I
17:19:37 13 will send you to deliberate. Lunch will be
17:19:39 14 provided for you. If you don't like the kinds
17:19:41 15 of lunches that have been provided, you're free
17:19:43 16 to bring your own. As you know, you have a
17:19:45 17 refrigerator there. But you will -- other than
17:19:47 18 perhaps for a cigarette break accompanied by
17:19:50 19 someone, you probably will not be out and about
17:19:52 20 during the luncheon hour. So your time will be
17:19:57 21 spent in the jury room doing deliberations for
17:19:59 22 as long as it takes you.

17:20:00 23 So particularly for those of you who
17:20:04 24 may choose to go to work tomorrow or Friday,
17:20:08 25 again, be extra vigilant, because even though

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17:20:12 2 you haven't been listening to any media
17:20:14 3 coverage or being exposed to it, your workmates
17:20:18 4 may have been and probably have been. So maybe
17:20:21 5 having something on you right from the
17:20:23 6 beginning that says "do not talk to me" so that
17:20:25 7 you can continue to abide by the Court's
17:20:27 8 instructions. If anyone should come up to try
17:20:30 9 to tell you something, tell them stay away.
17:20:32 10 And so I send you out with those cautions, and
17:20:35 11 we will see you on Monday morning.

17:20:39 12 Thank you and enjoy your weekend.

17:21:09 13 THE COURT CRIER: Everyone please
17:21:10 14 remain seated as the jury exits the courtroom.

17:21:12 15 Jurors, please come with me.

17:21:18 16 (The jury is excused at 5:21 p.m.)

17:21:48 17 THE COURT: Do I need to see counsel?

17:21:49 18 MR. HARE: Yes, Your Honor.

17:21:51 19 MR. CLAIN: Yes, Your Honor.

17:21:53 20 MR. MONGELUZZI: Can we take a break
17:21:54 21 before we do that, Your Honor?

17:21:55 22 MR. GREINER: Your Honor, I need to get
17:21:56 23 out of here, so if you could address it now.

17:21:58 24 THE COURT: I assume he needs to powder
17:22:00 25 his nose.

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17:22:02 2 MR. MONGELUZZI: Yes, Your Honor. It
17:22:03 3 should take me three minutes.

17:22:04 4 MR. GREINER: I can wait three minutes.

17:22:05 5 THE COURT: Mr. Mongeluzzi, did you
17:22:06 6 want to use the one in the back?

17:22:06 7 (A short recess occurred.)

17:22:06 8 (Discussion was held at sidebar as
17:23:34 9 follows:)

17:23:34 10 THE COURT: Okay. So I know some of
17:23:37 11 you may have some objections to stuff. Before
17:23:39 12 it slips my mind, based on Mr. Sprague's
17:23:41 13 closing, I did want to ask -- and we had sort
17:23:44 14 of talked about it vaguely before, Mr.
17:23:48 15 Greiner -- are we going to need, or is it
17:23:50 16 appropriate to have an instruction on scope?
17:23:52 17 He made some comments, and I don't know if -- I
17:23:54 18 know you have objections, so we're going to
17:23:56 19 address those in great detail, but I am trying
17:23:59 20 to get all my instructions together. He talked
17:24:01 21 about whether somebody was acting outside -- I
17:24:02 22 think Mr. Marinakos, whether he had --

17:24:04 23 MR. GREINER: That is something we have
17:24:06 24 asked for, Your Honor.

17:24:07 25 THE COURT: Well, so --

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17:24:08 2 MR. GREINER: It's something we had
17:24:09 3 asked be on the verdict sheet as well.

17:24:10 4 THE COURT: Well, I will want to see
17:24:12 5 your instruction -- proposed instruction on
17:24:14 6 scope.

17:24:14 7 MR. GREINER: You already have it.

17:24:16 8 THE COURT: I don't know if I do or
17:24:17 9 not.

17:24:18 10 MR. GREINER: I'll make sure you have
17:24:19 11 it by Friday.

17:24:20 12 THE COURT: I think when we went
17:24:21 13 through the last version, it was not something
17:24:23 14 that was addressed, and I am going -- we can
17:24:28 15 get into the rest of the charge on Friday when
17:24:29 16 we meet, but I did want to address that.

17:24:32 17 You can take it off.

17:24:34 18 MR. MONGELUZZI: Thank you, Your Honor.
17:24:36 19 It got hot.

17:24:37 20 THE COURT: Yes, Mr. Greiner.

17:24:39 21 MR. GREINER: First and foremost, Your
17:24:41 22 Honor, you may remember that this was just two
17:24:44 23 days ago, that at the end of the day, I believe
17:24:48 24 it was, or near the end of the day, I had
17:24:52 25 raised an issue in terms of the argument on

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17:24:55 2 negligent selection, and that --

17:24:57 3 THE COURT: About no vicarious
17:24:59 4 liability?

17:24:59 5 MR. GREINER: In fact, Your Honor, this
17:25:00 6 is exactly what I said.

17:25:01 7 THE COURT: This is the due care
17:25:03 8 instruction.

17:25:03 9 MR. GREINER: Right. "As we told you
17:25:04 10 before, and we'll get back to this when we get
17:25:07 11 to the instruction, it's not the law that if
17:25:09 12 you negligently select an independent
17:25:11 13 contractor that you are vicariously liable for
17:25:14 14 their negligence." And you said, Your Honor,
17:25:16 15 "No. You have direct liability."

17:25:18 16 And then, Your Honor, there is a
17:25:20 17 discussion that Mr. Goodman weighed in on. And
17:25:22 18 I said, Your Honor, keep this in mind for
17:25:25 19 closings, because they're going to argue
17:25:28 20 something that is contrary to what the law is.
17:25:31 21 They're going to argue something --

17:25:33 22 THE COURT: It wasn't -- I kind of
17:25:35 23 remember it was Mr. Mongeluzzi who said that
17:25:37 24 any time a contractor picks someone negligently
17:25:41 25 that they are responsible for their -- they

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17:25:45 2 sort of stand in the same shoes as the
17:25:47 3 contractor they selected. So I see this as
17:25:50 4 something that is in dispute and that -- if
17:25:53 5 we're not meeting tomorrow, and I don't care if
17:25:55 6 we do or not, but we might have a lot to do on
17:25:58 7 Friday then. I'm happy to meet tomorrow, just
17:26:00 8 not at 9 a.m. because I think it's going to be
17:26:02 9 a little crazy.

17:26:04 10 That I will want both sides to have
17:26:06 11 research. If you want to -- to give me
17:26:09 12 whatever cases you have on whether there is
17:26:12 13 vicarious liability or not. I know Mr. Greiner
17:26:14 14 has -- Mr. Hare, actually, I think has said it
17:26:17 15 more than you, even though you did say it.

17:26:20 16 MR. GREINER: We said it repeatedly.
17:26:21 17 We've given you case law. In fact, you agreed
17:26:23 18 with me in the courtroom, Your Honor.

17:26:24 19 THE COURT: Because I've been reading a
17:26:25 20 lot of different things, but I think also
17:26:28 21 didn't necessarily disagree. I know there's
17:26:30 22 two things that previously had been argued were
17:26:32 23 vicarious liability that Mr. Hare has
17:26:34 24 repeatedly said, No, it's not. And it's
17:26:37 25 confusing. It is confusing.

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17:26:39 2 MR. GREINER: Even if it is vicarious
17:26:41 3 liability, it is totally inappropriate.

17:26:42 4 THE COURT: I don't think it would go
17:26:43 5 on the verdict sheet and that it would get
17:26:47 6 transferred on to them.

17:26:48 7 MR. GREINER: That's the point, Your
17:26:49 8 Honor.

17:26:49 9 THE COURT: That's one of the questions
17:26:50 10 I had here, and so it might be in my
17:26:51 11 instructions that I need to be particularly
17:26:53 12 clear to the jury. I said does it go -- so
17:26:58 13 then it would be -- would there be zero under
17:27:01 14 Marinakos and zero under Campbell, because they
17:27:03 15 already added it in? Or is it something that
17:27:06 16 assuming it was vicarious, assuming for
17:27:09 17 purposes of this discussion that it would go on
17:27:10 18 the verdict sheet, however they apportion it,
17:27:13 19 and then it would get molded if there was
17:27:15 20 vicarious liability.

17:27:16 21 So that was the question I just wrote
17:27:18 22 for myself as well. I don't think Mr.
17:27:21 23 Mongeluzzi was correct. And I have to admit,
17:27:23 24 I've never done an apportionment such as this
17:27:26 25 one. There have been little apportionments,

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17:27:27 2 but nothing as complex and involved as here.

17:27:31 3 And I don't know that it would get done, as Mr.

17:27:33 4 Mongeluzzi was suggesting, that take theirs and

17:27:35 5 add it on already and then we don't know what

17:27:38 6 part was whose. So that was a question that I

17:27:41 7 had as well.

17:27:41 8 MR. GREINER: Your Honor, it's not a

17:27:42 9 question. That was Mr. Mongeluzzi being dead

17:27:45 10 wrong and he knew it. He knew that that's a

17:27:47 11 molding issue if there was vicarious liability.

17:27:50 12 He's trying to nullify the jury here.

17:27:52 13 THE COURT: The question is --

17:27:54 14 MR. GREINER: Your Honor, we're raising

17:27:55 15 a motion for a mistrial.

17:27:56 16 THE COURT: That's denied.

17:27:57 17 MR. GREINER: You're not even going to

17:27:59 18 allow me --

17:28:01 19 MR. ROTH: Excuse me. The Court has

17:28:02 20 made a ruling. This is the second day in a row

17:28:04 21 where it feels like Mr. Greiner, to this

17:28:07 22 lawyer, is very aggressively approaching the

17:28:08 23 Court. I think it's inappropriate. I

17:28:10 24 recognize the Court can address herself and

17:28:12 25 take care of herself. But as an officer of the

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17:28:14 2 court, this is repeated interruptions of the
17:28:16 3 Court and moving forward to her. The hand
17:28:19 4 gestures are inappropriate.

17:28:20 5 THE COURT: I think that we have talked
17:28:21 6 about an apportionment instruction, and none
17:28:24 7 has been settled upon. And I think that that
17:28:28 8 will be one of the other things that will be
17:28:30 9 very key. I might very well say, You were told
17:28:32 10 to do the following and that's not how you do
17:28:34 11 it. This is exactly how you would do it. And
17:28:36 12 so that anybody's negligence that you find you
17:28:41 13 put it on the sheet and the rest will be left
17:28:42 14 for me.

17:28:43 15 So I will want a proposed almost final
17:28:47 16 instruction to get circulated between now, and
17:28:50 17 that certainly is something that we can do on
17:28:51 18 Friday morning.

17:28:53 19 What else do you have?

17:28:54 20 MR. GREINER: I take issue with Mr.
17:28:56 21 Roth's statement on the record, uncontradicted
17:28:57 22 by the Court, that I was somehow being
17:29:00 23 aggressive towards Your Honor. I don't believe
17:29:01 24 that I was.

17:29:02 25 THE COURT: The other day I think you

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17:29:04 2 were a little disrespectful, but it's the heat
17:29:07 3 of the moment. I didn't tell you to tone it
17:29:09 4 down or anything else. I know that you respect
17:29:12 5 the Court. I know that you're an officer of
17:29:15 6 the court. But I didn't feel like you were
17:29:17 7 about to assault me.

17:29:19 8 MR. GREINER: I don't think that I was
17:29:20 9 either.

17:29:20 10 MR. ROTH: This is a repeated practice,
17:29:22 11 and, Your Honor, I didn't want it to continue.
17:29:24 12 I also started by saying, "It's this lawyer's
17:29:26 13 observation." That's all. You can take
17:29:28 14 issue -- counsel can take issue however they
17:29:31 15 wish to. I want to put that on the record.

17:29:33 16 MR. GREINER: Your Honor, that's the
17:29:34 17 problem. It goes on the record. The record is
17:29:37 18 a piece of paper, and Mr. Roth's statements are
17:29:39 19 factually incorrect. And I would think that
17:29:42 20 the Court would have stated that if somehow I
17:29:44 21 was abusing the Court, or somehow being
17:29:47 22 inappropriate, you would have said so on the
17:29:48 23 record.

17:29:48 24 So I would take issue with Mr. Roth
17:29:50 25 making an incorrect statement on the record to

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17:29:52 2 somehow impugn this attorney from this
17:29:54 3 attorney's perspective.

17:29:55 4 THE COURT: You were sounding extremely
17:29:57 5 annoyed with the Court.

17:29:59 6 MR. GOODMAN: I join Mr. Roth's
17:30:00 7 statements.

17:30:00 8 THE COURT: But I take it that it's in
17:30:02 9 the heat of the last moments of the case, and
17:30:04 10 so I wasn't taking it personally. And so, you
17:30:07 11 know, we're in the back here. We are alone.

17:30:11 12 Ms. Cohen, if you wanted to come up,
17:30:12 13 come up.

17:30:13 14 And so what else do you have?

17:30:16 15 MR. GREINER: My point was that I had
17:30:18 16 not even made the basis for my mistrial motion
17:30:20 17 and you already denied it.

17:30:21 18 THE COURT: Yes.

17:30:22 19 MR. GREINER: I wanted to make that on
17:30:24 20 the record. If you want me to do it now, I can
17:30:25 21 do it now, or I can do it another time.

17:30:26 22 THE COURT: No, no. Make it now.

17:30:27 23 MR. GREINER: Your Honor, I believe
17:30:27 24 that it's already been the ruling of this Court
17:30:29 25 that this is a -- if it was a negligent

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17:30:34 2 selection argument, that it's not a vicarious
17:30:37 3 liability issue, it's a direct liability issue.
17:30:40 4 And I put it on the record two days ago,
17:30:43 5 saying, Your Honor, be aware of this.

17:30:44 6 THE COURT: For closing arguments.

17:30:45 7 MR. GREINER: Remember this for closing
17:30:46 8 arguments when this comes up. I put the
17:30:48 9 plaintiffs on notice that if this comes up, we
17:30:51 10 will raise it at that time. Of course, it came
17:30:53 11 up.

17:30:54 12 Mr. Mongeluzzi is one of the most
17:30:56 13 well-respected and intelligent and effective
17:31:00 14 attorneys in the city. He clearly knows that
17:31:04 15 you don't ask a jury to mold a verdict before
17:31:07 16 it's actually given. He knows that it's
17:31:09 17 inappropriate to tell them to apportion the
17:31:12 18 liability that they need to assign to a
17:31:14 19 specific person or entity. He knows that that
17:31:18 20 was incorrect. He was trying to take the
17:31:20 21 decision out of the jury's hands and out of
17:31:22 22 Your Honor's hands, particularly because if
17:31:24 23 he's right about vicarious liability, that's
17:31:26 24 going to be something the Court does. But,
17:31:29 25 unfortunately, he tried to take it out of your

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17:31:31 2 hands. He tried to put it into the hands of
17:31:33 3 the jury. That's incorrect. And he knew it.
17:31:35 4 He's trying to nullify the jury. It can't be
17:31:37 5 cured.

17:31:38 6 At this point, the last person who
17:31:40 7 spoke was Mr. Mongeluzzi. And even if you tell
17:31:42 8 them differently, they're going to be sitting
17:31:45 9 on this for four days, thinking that they're
17:31:46 10 going to put Mr. Marinakos's responsibility on
17:31:49 11 us, even though, remember, he is not even a
17:31:52 12 servant. And then Mr. Campbell's
17:31:54 13 responsibility on us, even though he is also
17:31:56 14 not a servant.

17:31:57 15 So, therefore, Your Honor, for all of
17:31:59 16 those reasons, because of what we believe was
17:32:00 17 an intentional action in terms of trying to
17:32:03 18 mislead the jury and take away the province of
17:32:06 19 the Court, that you must grant a mistrial.

17:32:09 20 THE COURT: All right. I already made
17:32:11 21 my ruling. By the way, if you had wanted me to
17:32:14 22 address the jury so that they wouldn't sit on
17:32:17 23 it for four days, you certainly could have
17:32:20 24 said, Your Honor, before you address the jury,
17:32:23 25 Could we please see you? Obviously, you were

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17:32:25 2 not looking for me to give them any cautionary
17:32:28 3 charge.

17:32:29 4 MR. GREINER: No, Your Honor.

17:32:30 5 THE COURT: Exactly.

17:32:31 6 MR. GREINER: I knew this would not be
17:32:32 7 decided now.

17:32:33 8 THE COURT: Okay.

17:32:34 9 MR. GREINER: I knew this would --

17:32:36 10 THE COURT: You can't say they're going
17:32:37 11 to sit on it for four days. You could have
17:32:39 12 perhaps obviated the sitting on it for four
17:32:41 13 days had there been something -- I'm not saying
17:32:43 14 that there is something I could have said, but
17:32:45 15 if there was, it certainly was taken out of my
17:32:47 16 hands by you not saying anything.

17:32:49 17 MR. GREINER: Your Honor, you're not
17:32:51 18 even suggesting that you would make such an
17:32:52 19 order.

17:32:52 20 THE COURT: I don't know if I would.

17:32:54 21 MR. GREINER: So what's the point?

17:32:55 22 THE COURT: The point is always that
17:32:58 23 you make your record. That you ask to meet.
17:33:01 24 If I say no, then you can certainly say, like,
17:33:03 25 Hey, now they're sitting on it for four days

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17:33:05 2 and shame on you.

17:33:07 3 MR. GREINER: I believe I made my

17:33:07 4 record, Your Honor.

17:33:08 5 THE COURT: Basically shame on me then

17:33:09 6 if I turned you down. And then it might be

17:33:12 7 like I could have cured it. The appellate

17:33:14 8 court might say, She could have cured it and

17:33:17 9 she didn't, even though she was asked to.

17:33:20 10 So when you don't even ask me then

17:33:22 11 whether or not I ultimately end up doing or

17:33:23 12 would do it is beside the point. We're always

17:33:27 13 objecting -- or nowadays you all are making

17:33:29 14 objections. And you do that because you have a

17:33:31 15 record to protect. Anything else?

17:33:33 16 MR. HARE: Yes, Your Honor.

17:33:35 17 THE COURT: I was asking Mr. Greiner.

17:33:37 18 Sorry if I wasn't clear.

17:33:38 19 MR. HARE: I have three points, Judge.

17:33:40 20 First, plaintiff's counsel told the jury that

17:33:42 21 we investigated them to uncover what it is they

17:33:46 22 do for a living. You recall the opening part

17:33:48 23 about responding to Mr. Snyder's --

17:33:50 24 THE COURT: I think it was fair

17:33:51 25 comment. It was going back to -- first of all,

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17:33:54 2 all of you had the juror questionnaires. So
17:33:58 3 you -- in fact, I think, amongst all the
17:34:01 4 paperwork that I collected, I think my staff
17:34:03 5 had found somewhere along there something from
17:34:05 6 Mr. Weiss having done research -- it might not
17:34:08 7 have been you. But on someone who had looked
17:34:13 8 into the background of jurors, and I thought --
17:34:15 9 and we just got rid of it all. I don't know if
17:34:18 10 we shredded them all or not. It was -- you
17:34:20 11 have the information. Nowadays with Google,
17:34:22 12 people look people up. If it looks like it's
17:34:23 13 the same guy or woman, or their profession.
17:34:26 14 It's part of what's done. I mean, the D.A.'s
17:34:29 15 office always looks to see whether people have
17:34:31 16 criminal convictions or not.

17:34:33 17 MR. HARE: That's our point. They gave
17:34:35 18 us that information. We didn't investigate.
17:34:36 19 They don't know everything Your Honor is
17:34:38 20 describing. This suggests intimidation of
17:34:40 21 jurors.

17:34:42 22 THE COURT: If you investigated --

17:34:42 23 MR. HARE: No. They gave us the
17:34:42 24 information.

17:34:43 25 THE COURT: I got my thing from Steve

1 IN RE: MARKET STREET BUILDING COLLAPSE

17:34:45 2 Cozen. Wasn't that due yesterday? Or was his
17:34:48 3 due today?

17:34:48 4 MR. GOODMAN: Mr. Cozen said he needed
17:34:52 5 an extra day.

17:34:52 6 MR. HARE: Judge, this was information
17:34:54 7 you provided. We didn't do any investigation.
17:34:55 8 That is clearly suggestive of intimidation that
17:34:58 9 we went out and explored these people, detailed
17:34:59 10 backgrounds. They don't know anything Your
17:35:02 11 Honor just described about how this process
17:35:03 12 works.

17:35:03 13 THE COURT: You're not limited in what
17:35:05 14 you research based on what I gave you was a
17:35:08 15 name.

17:35:09 16 MR. HARE: That's not true, Judge.
17:35:15 17 This was not at all clear. The suggestion was
17:35:17 18 we investigated. That was the word that was
17:35:19 19 used. We didn't make that word up, Judge.
17:35:21 20 They don't know any of this stuff. They gave
17:35:23 21 us information. We didn't investigate
17:35:25 22 anything. So to suggest that is intimidating,
17:35:28 23 in our view, suggesting that we're probing
17:35:30 24 around suspiciously digging in to them. We
17:35:33 25 request a curative instruction that we did not

1 IN RE: MARKET STREET BUILDING COLLAPSE

17:35:35 2 investigate. We reviewed the information the
17:35:37 3 Court provided us about them. There's no
17:35:39 4 investigation.

17:35:40 5 MR. MONGELUZZI: I believe that's an
17:35:41 6 investigation, Your Honor. If you go back
17:35:43 7 through the --

17:35:45 8 MR. SNYDER: Oh, please.

17:35:45 9 MR. MONGELUZZI: Please don't cut me
17:35:46 10 off, Mr. Snyder.

17:35:46 11 THE COURT: We're hearing from Mr. Hare
17:35:47 12 right now. He's on this question, so for right
17:35:50 13 now, Mr. Snyder, you can -- thank you.

17:35:52 14 MR. MONGELUZZI: For them to go back
17:35:55 15 through the juror questionnaires is an
17:35:56 16 investigation. They had to be turned in and
17:36:00 17 destroyed.

17:36:01 18 THE COURT: Are you becoming Hare'ish?

17:36:05 19 MR. MONGELUZZI: They had to be turned
17:36:06 20 in and destroyed. Mr. Snyder went through --
17:36:10 21 something I've never seen in a court -- every
17:36:13 22 single juror's occupation and naming some of
17:36:17 23 the places that they worked at. The Salvation
17:36:20 24 Army and their lawyers obviously investigated
17:36:23 25 that, learned that. It was important

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17:36:26 2 information to them, and I think it was fair
17:36:28 3 comment, Your Honor, regardless of where they
17:36:30 4 got it from.

17:36:32 5 THE COURT: That's what I just said.
17:36:33 6 If you want to draft something that you would
17:36:36 7 want me to give. I'm not saying I would give
17:36:37 8 it, but I would look at it and I may or may not
17:36:40 9 give it.

17:36:43 10 MR. HARE: We have two more.

17:36:45 11 MR. T. SPRAGUE: On that point, Your
17:36:46 12 Honor, I mean, I did no investigation, but I do
17:36:49 13 remember Juror No. 1 being an attorney and
17:36:52 14 musician. That just sticks, I believe, in
17:36:55 15 everybody's heads.

17:36:57 16 I also --

17:36:58 17 THE COURT: He also said artist.

17:36:59 18 MR. T. SPRAGUE: I thought it was
17:37:01 19 attorney/musician. But I also remember the one
17:37:06 20 juror saying he worked as a landscaper for the
17:37:10 21 Phillies. That stuck with me. I have done no
17:37:12 22 investigation.

17:37:14 23 THE COURT: No. But it might be
17:37:16 24 because I think disclosed to all of you that --
17:37:21 25 who's the guy who used to be a judge, starts

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17:37:23 2 with an S?

17:37:24 3 MR. MONGELUZZI: Styles.

17:37:25 4 THE COURT: Styles. Thank you. Judge
17:37:27 5 Styles had called me to say, Look, can he go to
17:37:30 6 work when you guys are off? I promise nobody
17:37:32 7 will talk to him. I had disclosed that, so
17:37:35 8 that might be part of why you remember that as
17:37:37 9 well.

17:37:37 10 MR. T. SPRAGUE: My only point is that
17:37:39 11 I think that basic information was something
17:37:41 12 that was fully disclosed during the voir dire
17:37:44 13 process without there being any additional
17:37:46 14 investigation.

17:37:46 15 THE COURT: I have to say, I was
17:37:48 16 astounded when Mr. Snyder did it. As I
17:37:51 17 indicated, I didn't really focus on it until I
17:37:53 18 heard Phillies -- landscaper for the Phillies.
17:37:56 19 I was like what? And so I've never heard
17:38:00 20 someone on either side go through and let the
17:38:03 21 jurors know, you know, here's who you all are
17:38:07 22 and whatever.

17:38:08 23 MR. MONGELUZZI: Let the record reflect
17:38:10 24 that Mr. Sprague was able to recall two out of
17:38:13 25 the 16 people.

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17:38:14 2 THE COURT: Let me also say --

17:38:16 3 MR. MONGELUZZI: Which would be 12.5
17:38:18 4 percent.

17:38:18 5 THE COURT: The bulk of my years were
17:38:20 6 on the criminal side, and it would be a
17:38:22 7 complete Shonda for it to happen on the
17:38:25 8 criminal side. And people would have a cow
17:38:27 9 because jurors, especially in the homicide
17:38:29 10 program, feel extremely intimidated even being
17:38:32 11 there. So maybe it's a different world in
17:38:34 12 civil. I could certainly poll my civil judges
17:38:36 13 to see if attorneys do this routinely or ever.

17:38:40 14 And that might -- if you want me to do
17:38:42 15 that, I will be happy to poll them. And when
17:38:45 16 you give me your suggested curative instruction
17:38:49 17 to give to them, that might be something for me
17:38:51 18 to weigh in with. I certainly wouldn't reach
17:38:54 19 out to ask them otherwise.

17:38:56 20 MR. HARE: Thank you, Your Honor.

17:38:56 21 THE COURT: Did you want me to do that?

17:38:58 22 MR. HARE: To reach out to them?

17:38:59 23 THE COURT: To the judges sitting in
17:39:01 24 civil to see if attorneys who have appeared
17:39:03 25 before them have ever gone through the list of

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17:39:07 2 jurors to --

17:39:09 3 MR. SNYDER: Maybe I can think of some
17:39:10 4 of the judges that I've been before over the
17:39:11 5 last ten years that I've done in every case
17:39:13 6 with objection.

17:39:14 7 THE COURT: So this is what you do.

17:39:15 8 MR. SNYDER: That's what I do. Yes.

17:39:17 9 THE COURT: Well, why don't you give me
17:39:19 10 those? Send them to Mr. Evans.

17:39:22 11 MR. SNYDER: I'll try to think of them.
17:39:22 12 Mr. Stern may remember that Lawrence Green case
17:39:24 13 where I did it.

17:39:26 14 THE COURT: We don't need to digress
17:39:27 15 right now. We'll be here another 20 minutes.
17:39:30 16 What else do you have?

17:39:30 17 MR. HARE: Our second point, Judge, is
17:39:32 18 that plaintiffs' counsel said -- I wrote this
17:39:34 19 down -- said none of our --

17:39:36 20 THE COURT: Just because we write
17:39:37 21 things down, and I did wait until the very end
17:39:40 22 to say it to you all. Just because we write
17:39:42 23 things down doesn't mean we got it right.

17:39:43 24 MR. HARE: I was joking about that. I
17:39:46 25 didn't actually write it down. He said none of

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17:39:50 2 our upper command used the word "collapse."

17:39:52 3 Okay. And just on our little cell phones here

17:39:55 4 we found at least six instances where upper

17:39:58 5 command was used --

17:39:58 6 THE COURT: I'm not getting into that.

17:40:00 7 I think that's fair argument.

17:40:02 8 MR. HARE: Judge, you gave a curative

17:40:03 9 instruction because Mr. Snyder said "Wigrizer"

17:40:05 10 instead of "Roth" and didn't even tell them

17:40:06 11 that Roth said it. He said, "None of our upper

17:40:09 12 command," as part of this argument about an

17:40:11 13 action plan and the scripting. You'll recall,

17:40:13 14 after standing here saying that he's not

17:40:15 15 targeting the lawyers, he told the jury, I

17:40:18 16 leave it to you who scripted the action plan.

17:40:21 17 He said it. You know he said it. I submit the

17:40:23 18 record is going to reflect that.

17:40:25 19 So to then say that none of them would

17:40:27 20 use the word "collapse" following this action

17:40:29 21 plan, when at least now I think we're up to

17:40:32 22 eight instances, clearly is prejudicial. So if

17:40:34 23 misspeaking a lawyer's name requires --

17:40:37 24 THE COURT: It wasn't the pure

17:40:38 25 misspeaking of his name, as if he had said this

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17:40:41 2 is the guy who argued for this witness, or
17:40:46 3 cross-examined this witness as opposed to this
17:40:48 4 is -- it's not that. It was that he was
17:40:50 5 impugning his credibility tied in with that.

17:40:54 6 MR. HARE: Saying Wigrizer said
17:40:55 7 something Roth said, Judge --

17:40:57 8 THE COURT: Yes.

17:40:58 9 MR. HARE: It was replacing a name.

17:41:00 10 THE COURT: No. It had to do with the
17:41:01 11 credibility of Mr. Wigrizer.

17:41:02 12 MR. HARE: You could have said that and
17:41:03 13 said, But Mr. Roth did say it.

17:41:05 14 So the point is if that required a
17:41:07 15 curative, Judge, to suggest that we scripted
17:41:09 16 our upper command's testimony so none of them
17:41:11 17 said "collapse" when we're up to eight
17:41:14 18 instances where they said it is a factual
17:41:16 19 misstatement that clearly requires a curative,
17:41:18 20 in our humble opinion, Judge.

17:41:20 21 I mean, to suggest that we scripted all
17:41:24 22 this so none of them would use the word
17:41:26 23 "collapse" scrupulously, when, in fact, a lot
17:41:29 24 of them did repeatedly, is a significant attack
17:41:31 25 on our credibility, Judge, and whether we

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17:41:34 2 scripted anything, which is, as you know, we've
17:41:36 3 objected to this whole action plan idea.

17:41:38 4 THE COURT: Of course.

17:41:39 5 MR. MONGELUZZI: Your Honor, why
17:41:40 6 doesn't Mr. Hare send me that information? We
17:41:45 7 will also poll -- my whole argument is they
17:41:47 8 keep using "pushed over." We'll poll all the
17:41:50 9 times they refer to it as "pushed over."

17:41:52 10 MR. SNYDER: That's kind of clever,
17:41:53 11 isn't it?

17:41:54 12 THE COURT: Let's not address each
17:41:56 13 other, Mr. Snyder. We're still going to keep
17:41:58 14 things at a civil tone, even though we're at
17:42:01 15 sidebar and all alone in the courtroom.

17:42:03 16 MR. HARE: We will circulate all the
17:42:05 17 instances where this word came up.

17:42:07 18 The final thing, Judge, is they pulled
17:42:08 19 a dictionary definition of oppression out,
17:42:10 20 after we have asked repeatedly for you to give
17:42:12 21 them a definition of intent. He just read a
17:42:15 22 dictionary definition into the record of
17:42:17 23 oppression, when that's something you're
17:42:19 24 actually going to charge on. So we need a
17:42:21 25 curative, Judge.

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17:42:21 2 THE COURT: On oppression? I'm
17:42:23 3 charging on oppression?

17:42:24 4 MR. HARE: You're charging on standard
17:42:25 5 for punitives.

17:42:26 6 THE COURT: Okay.

17:42:27 7 MR. HARE: We can't just interject
17:42:27 8 definitions, or we would have done it,
17:42:29 9 obviously. He picked up a dictionary. We
17:42:32 10 would have done that with "intent," Judge. So
17:42:34 11 we clearly need an instruction that you are to
17:42:36 12 disregard anything that's not in this record.
17:42:39 13 And it's Mr. Mongeluzzi's view, based on any
17:42:41 14 outside document, of what a legal term means.
17:42:44 15 Because it is a term of art here. This is very
17:42:47 16 important.

17:42:47 17 THE COURT: It is.

17:42:48 18 MR. HARE: It's a punitive standard.

17:42:50 19 MR. MONGELUZZI: I don't know the
17:42:50 20 definition of oppression is in Pennsylvania
17:42:54 21 law. That's the reason I said it.

17:42:55 22 THE COURT: If you find it in the case
17:42:57 23 law, or in either the restatement, or in any
17:43:01 24 other statute, or whatever definition --
17:43:05 25 definitory statute, then I will compare that to

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17:43:09 2 whatever Mr. Mongeluzzi said.

17:43:11 3 MR. HARE: What about intent in the
17:43:13 4 restatement?

17:43:14 5 THE COURT: I have written myself a
17:43:15 6 note for my law clerk to give me the definition
17:43:18 7 of intent. I'm going to look at it again. I'm
17:43:23 8 going to have him send me a few things.

17:43:25 9 MR. MONGELUZZI: If there is something
17:43:27 10 that says --

17:43:29 11 THE COURT: The instructions are not
17:43:30 12 closed and nothing else is coming in. Okay.
17:43:33 13 And, in fact, I still have in my book here
17:43:36 14 something about OSHA. I don't know if that's
17:43:39 15 completely out or what is coming in. And I
17:43:42 16 have the charge from Mr. Clain to put into my
17:43:44 17 notebook, which I told him I would, regarding
17:43:48 18 crimen falsi.

17:43:48 19 So they haven't closed yet. Okay.
17:43:52 20 They're very close, because Monday morning is
17:43:54 21 just around the corner.

17:43:56 22 MR. HARE: The point is the closing,
17:43:57 23 Judge, not the charge. He read a legal
17:44:00 24 definition into the record, suggesting --

17:44:01 25 THE COURT: He read a definition.

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17:44:02 2 MR. HARE: Of a legal term.

17:44:04 3 THE COURT: It's also wanton. It's a
17:44:06 4 legal term. Wanton.

17:44:08 5 MR. HARE: Judge, we agree. We think
17:44:09 6 they should all be defined by you. Not lawyers
17:44:12 7 standing up and giving definitions.

17:44:14 8 THE COURT: They are all the common
17:44:16 9 sense meaning.

17:44:17 10 MR. HARE: Wanton.

17:44:17 11 THE COURT: I think so.

17:44:18 12 MR. HARE: He just didn't know what
17:44:19 13 oppression was. Wanton is a commonly known
17:44:22 14 term?

17:44:22 15 THE COURT: He's never been oppressed.

17:44:25 16 MR. MONGELUZZI: I skipped the
17:44:27 17 oppressors and oppressed slide, Your Honor. I
17:44:30 18 say that jokingly.

17:44:32 19 MR. STERN: Not every word in a given
17:44:34 20 jury instruction involves a legal term.

17:44:36 21 THE COURT: They often have their
17:44:38 22 common sense meaning, which when I read through
17:44:40 23 them, and I remember the argument that you all
17:44:42 24 had had before. It's why are we giving a
17:44:45 25 definition for the very last one about whether

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17:44:48 2 it was reckless, or in reckless disregard, or
17:44:51 3 which one are we going to use? And they wanted
17:44:53 4 reckless conduct. And it was the other
17:44:55 5 discussion about -- and so -- and that one
17:44:59 6 there is a legal definition for. I don't
17:45:01 7 remember you saying, Here's the definition for
17:45:03 8 wanton, Judge. Here's the definition for this.
17:45:05 9 Here's the --

17:45:06 10 MR. HARE: Just intent.

17:45:08 11 THE COURT: They are all things that
17:45:09 12 are read to the jury. If there's a legal
17:45:12 13 definition for each and every one, and I'm
17:45:14 14 reading each and every one, then I think you
17:45:18 15 would be the first one to say, Mr. Hare, that I
17:45:20 16 should be giving them all those definitions.

17:45:22 17 MR. HARE: That you should, not
17:45:23 18 plaintiff's counsel.

17:45:24 19 THE COURT: You haven't given those to
17:45:25 20 me. Where did you give them to me where they
17:45:29 21 define "wanton" and all the other words that --

17:45:29 22 MR. HARE: The Fair Share Act uses one
17:45:31 23 word: Intentional. That's the whole case
17:45:33 24 here, Judge. That's what we're talking about.
17:45:34 25 So we asked for a definition of that. Wanton

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17:45:36 2 is irrelevant to The Fair Share Act.

17:45:38 3 THE COURT: Okay. Then oppression is
17:45:39 4 irrelevant.

17:45:40 5 MR. HARE: No, it's not. It's relevant
17:45:41 6 to punitive damages. He stood up and read a
17:45:43 7 definition that was not in the evidence.
17:45:45 8 Closings are about the evidence. Period. So
17:45:50 9 you can't stand up and read something that's
17:45:51 10 not part of the evidence. That's it.

17:45:53 11 MR. MONGELUZZI: Your Honor --

17:45:54 12 THE COURT: That part is true.

17:45:56 13 MR. MONGELUZZI: I think -- by the way,
17:45:58 14 I did not read from the dictionary the
17:46:02 15 definition of oppression.

17:46:04 16 MR. SNYDER: What did you read from?

17:46:05 17 MR. MONGELUZZI: I picked up the
17:46:06 18 dictionary and talked about the meaning of
17:46:08 19 words, and the first thing that I used was
17:46:11 20 "accident." Okay. I didn't open the
17:46:13 21 dictionary and say "oppression." So --

17:46:16 22 MR. SNYDER: It's on a piece of paper.
17:46:18 23 Handing dictionary up. That's different.

17:46:20 24 MR. MONGELUZZI: Here's my response. I
17:46:22 25 am unaware of anything in Pennsylvania law that

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17:46:26 2 defines oppression, which is one of the
17:46:29 3 elements that can satisfy punitives. If Mr.
17:46:32 4 Hare tells you the courts have defined
17:46:35 5 oppression, or they have defined all of these
17:46:39 6 combined as requiring this, and I was wrong,
17:46:43 7 then he'll submit that to you. And I'd say
17:46:45 8 okay. Give a curative instruction.

17:46:47 9 But if there is no definition of
17:46:49 10 oppression, is the jury just supposed to make
17:46:52 11 it up with no help, no guidance, no nothing?

17:46:56 12 MR. HARE: This is our whole point. He
17:46:58 13 stood up and read a definition. I don't know
17:46:59 14 if it was from a dictionary or what. When we
17:47:01 15 asked for intent, it's actually a very relevant
17:47:03 16 term in this case.

17:47:04 17 THE COURT: Then I misunderstood your
17:47:06 18 initial argument that you were making on this
17:47:08 19 issue, Mr. Hare. So Mr. --

17:47:13 20 MR. GOODMAN: Which we opposed the
17:47:15 21 definition of intent the other day.

17:47:16 22 THE COURT: That's besides the point.

17:47:18 23 Then why, Mr. Mongeluzzi, were you
17:47:20 24 defining something for them that has not been
17:47:22 25 in evidence in the case? Instead of submitting

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17:47:24 2 to me and asking, Would you please include
17:47:27 3 amongst your definitions and your charge the
17:47:28 4 following?

17:47:29 5 MR. MONGELUZZI: Because we have
17:47:30 6 discussed everyday words all the time with the
17:47:33 7 jury.

17:47:33 8 THE COURT: But you just said that's
17:47:35 9 not an everyday word.

17:47:36 10 MR. MONGELUZZI: I think oppression is
17:47:37 11 an everyday word. I used the common definition
17:47:41 12 of what oppression is.

17:47:42 13 THE COURT: I think this will take a
17:47:43 14 little more discussion.

17:47:44 15 Mr. Clain, did you have something else?

17:47:46 16 MR. CLAIN: Your Honor, to follow up on
17:47:48 17 the earlier sidebar and our motion for a
17:47:50 18 mistrial based upon Mr. Sprague's claim that
17:47:53 19 Mr. Campbell should not be in prison and that
17:47:56 20 Mr. Marinakos should. The Court asked if we
17:48:00 21 wanted a curative instruction in addition to
17:48:03 22 preserving our appellate rights.

17:48:05 23 THE COURT: Until -- well, you're right
17:48:09 24 to object and not lose that in terms of your
17:48:12 25 appellate rights until we meet on Friday or

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17:48:15 2 tomorrow. Whenever we're meeting. I said,

17:48:16 3 Yes. We don't have to do it all this second.

17:48:19 4 MR. CLAIN: Correct, Your Honor. We

17:48:20 5 know now what our response to that is.

17:48:22 6 THE COURT: You don't want one.

17:48:24 7 MR. CLAIN: We don't want one. The

17:48:26 8 violation is so egregious that we don't think

17:48:29 9 it can be cured or even ameliorated by any kind

17:48:33 10 of instruction. In fact, to bring it up again

17:48:35 11 will simply deepen the wound.

17:48:38 12 THE COURT: Did Mr. Greiner leave?

17:48:41 13 MR. T. SPRAGUE: Yes. He had something
17:48:42 14 to go to.

17:48:43 15 MR. CLAIN: The very same issue with
17:48:47 16 respect to Mr. Sprague's references to having a
17:48:51 17 connected daddy to help you through the world.

17:48:54 18 THE COURT: You were going to check the
17:48:55 19 record to see if there had ever been anything
17:48:58 20 said about your client's father.

17:49:00 21 MR. CLAIN: Your Honor --

17:49:02 22 MR. WIGRIZER: No. It was in a
17:49:03 23 deposition of Alex Wolfington where the fact
17:49:06 24 that his father worked for the Mercy Health
17:49:09 25 System in Conshohocken and got him his first

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17:49:12 2 job. That's not on the record.

17:49:13 3 MR. T. SPRAGUE: Your Honor, I can tell
17:49:14 4 you, even though he didn't mention Estrin by
17:49:18 5 name, that, I have no doubt, is a reference to
17:49:22 6 Estrin, because remember, Estrin testified that
17:49:26 7 his father and grandfather were in the business
17:49:29 8 and that's how he learned the trade.

17:49:32 9 THE COURT: No. I understood -- in my
17:49:34 10 head that's who I was thinking of in terms of
17:49:36 11 the experts, but Mr. Clain maintains, and the
17:49:39 12 record will bear out whether or not it was --
17:49:43 13 that Mr. Sprague said Mr. Marinakos is amongst
17:49:47 14 those individuals whose daddy had helped them.
17:49:50 15 And if you find it before we get to it, please
17:49:52 16 kindly tell us where exactly in the record it
17:49:55 17 is.

17:49:56 18 But, anyway, you're not asking for a
17:49:58 19 curative instruction. I may or may not end up
17:50:01 20 giving one anyway, and I may not be addressing
17:50:07 21 this until after the jury comes back with its
17:50:10 22 verdict. Because how do I know if this was
17:50:16 23 maybe strategy, so that if Marinakos is out of
17:50:19 24 the case then his name isn't anywhere on the
17:50:21 25 verdict sheet. And, therefore, that knocks out

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17:50:23 2 some other claims. And if maybe a new trial is
17:50:28 3 warranted for you, I'm going to see first how
17:50:30 4 the jury rules. Maybe it will all be moot.

17:50:33 5 I'm not necessarily addressing
17:50:36 6 everything today, or Friday, or even Monday.

17:50:39 7 So that might be, you know, as I was
17:50:42 8 thinking through, Well, why was this all
17:50:44 9 brought up and how does it play out? Those
17:50:46 10 were some of my thought processes, which may or
17:50:49 11 may not be accurate. So I don't even know.

17:50:52 12 So it was just quick thinking in
17:50:54 13 between breaks, because it's my job also to
17:50:57 14 listen to the closings closely so that if I do
17:51:01 15 have to interrupt someone to not do something
17:51:03 16 or another, I need to do that, or to keep track
17:51:08 17 of the time.

17:51:09 18 MR. CLAIN: I wanted to point out, Your
17:51:10 19 Honor, we do not have the resources to purchase
17:51:13 20 these transcripts on a daily basis. We just
17:51:16 21 don't have the money. So --

17:51:18 22 THE COURT: Then I'm going to direct
17:51:19 23 Mr. Sprague, the Sprague firm to look for the
17:51:24 24 part in the record where Mr. Sprague may have
17:51:31 25 said -- I think it was close to the end --

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17:51:34 2 about having their daddies, et cetera. And it
17:51:38 3 was my feeling, but maybe from having heard it
17:51:40 4 the first time that he said it, that he was
17:51:42 5 referring to all the experts and who got along
17:51:47 6 and how they came up through things. If
17:51:49 7 there's any mention about Mr. Marinakos having
17:51:51 8 been in that same sort of profile, then you
17:51:56 9 will disclose where that is, and any other
17:51:58 10 attorney is welcome to join in that search as
17:52:00 11 well.

17:52:00 12 MR. T. SPRAGUE: Your Honor, I'll do
17:52:02 13 better. I'll provide Mr. Clain with the
17:52:04 14 transcript.

17:52:04 15 THE COURT: You're not allowed.

17:52:08 16 MR. T. SPRAGUE: I am if Your Honor
17:52:09 17 permits me.

17:52:14 18 THE COURT: I've always looked out for
17:52:15 19 my court reporters. They work as hard as you
17:52:17 20 all do. They're entitled to their remuneration
17:52:23 21 as well.

17:52:23 22 MR. GRUTZMACHER: They're paying for
17:52:25 23 your billable rate or just you pay for the
17:52:25 24 transcripts, Mr. Clain.

17:52:26 25 MR. T. SPRAGUE: Even as I said, I have

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17:52:28 2 no doubt, Your Honor, that when he was
17:52:30 3 referring to father and grandfather, granddaddy
17:52:32 4 in the business, that was with respect --

17:52:35 5 THE COURT: You'll find the cite and
17:52:37 6 you'll circulate whatever the blurb is so Mr.
17:52:40 7 Clain has the benefit of that blurb. And if
17:52:42 8 that's what it is, that's what it is. And at
17:52:44 9 least that aspect of your objection will be
17:52:47 10 null. You may have thought you heard it a
17:52:49 11 certain way, and maybe that's not what is
17:52:51 12 there. Maybe the slight insinuation was left
17:52:53 13 there, because things were juxtaposed, but that
17:52:55 14 doesn't mean that it's clear enough to grant
17:52:57 15 you any sort of instruction.

17:53:00 16 MR. CLAIN: That is why I would ask for
17:53:02 17 all of the daddy references to be given to us,
17:53:05 18 because the first one I think was contextual
17:53:07 19 and you'd have to figure it out. I believe the
17:53:09 20 second one was more direct.

17:53:11 21 MR. T. SPRAGUE: I'm happy to do that.

17:53:18 22 THE COURT: Yes, Mr. Brennan.

17:53:18 23 MR. BRENNAN: I'll be brief. We are
17:53:20 24 not going to address this tonight, but the
17:53:23 25 Higgins move for directed verdict at this point

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17:53:25 2 in time. And I won't get into the argument,
17:53:27 3 because I know Your Honor is going to address
17:53:28 4 it at a later point in time. But if anyone --
17:53:30 5 I understand the plaintiffs' position. They've
17:53:31 6 made a nonsuit. They reversed it. I
17:53:34 7 understand their position with regard to
17:53:35 8 appellate rights. But if any of the defendants
17:53:37 9 are going to present law or evidence in this
17:53:38 10 case against the Higgins motion for directed
17:53:40 11 verdict, I expect them to have it Friday. I
17:53:42 12 need to protect rights, Mr. Higgins' rights for
17:53:45 13 the wrongful uses of process.

14 (Court adjourned at 6:00 p.m.)

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2 CERTIFICATE

3
4
5 I hereby certify that the proceedings
6 and evidence are contained fully and accurately
7 in the notes taken by me on the trial of the
8 above cause, and that this copy is a correct
9 transcript of the same.

10
11
12 Megan M. Soule, RMR, CRR
13

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