



Granich - Opening Argument

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(Brief pause.)

MR. GRANICH: May I, Judge?

THE COURT: You may proceed whenever you are ready.

MR. GRANICH: Thank you, very much.

OPENING ARGUMENT ON BEHALF OF PLAINTIFF

BY MR. GRANICH:

Hi. You came here last Tuesday and you were picked to do a job. Maybe you didn't even want this job. But you were picked. And for seven days, including today, you came through snow and cold and you came here for seven days to do your job. When you came here to do your job, what did you see? You saw a room full of people doing their job.

Katie wrote down every word that was said. Josh, Sarah, Scott did his job. Tiffany did her job. Rita did her job. Joe tried to write down everything I said no matter how fast I talked. Katie, who is back there working right now, Judge St. Eve and a guy downstairs who is really nice who checked me when I came in, Ted.

You saw all of us doing our jobs because these five individuals, each and every one of them on June 11th, 2006, chose not to do theirs because they didn't want to. Because they couldn't be bothered to. Because they wanted to push the responsibility off to someone else.

We're all here doing our jobs because they, each one of them, chose not to do theirs. And those choices that they

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1 made on June 11th cost Patricia Cobige her life and cost
2 Maurice Cobige his mother.

3 Ladies and gentlemen, let me say a word about their
4 job. They're police. It's a hard job. It's a thankless job.
5 And we have to treat them with respect because we need them.
6 But, ladies and gentlemen, we also have to give them the
7 respect of treating them equally.

8 You know that statue of justice, ironically a woman,
9 she's blindfolded. And she's blindfolded because everybody
10 who steps in front of her is equal, whether you're a police
11 officer or a taxi driver. If you're a taxi driver and you
12 drive unreasonably and smash into someone's car and cause
13 harm, the law is going to hold you responsible for that.

14 These officers are the same as any one of us. They
15 do their job. They don't do their job. This case is not
16 about being against the police. It's simply whether these
17 police did their job to serve and protect on June 11th.
18 That's what this is about.

19 Let's go back to your job. You have two jobs. The
20 first is to decide the facts from the evidence. And Judge
21 St. Eve is going to give you jury instructions that tell you
22 what evidence is. It's exhibits and it's testimony. And,
23 ladies and gentlemen, deciding the facts from the testimony in
24 this case, it's a hard job because there was a lot of
25 testimony from that witness stand.

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1 So, getting through the wheat from the chaff,
2 figuring out what was fact and what was testimony, takes a lot
3 of work. So, the second job you have, ladies and gentlemen,
4 is once you figure out what those facts are, apply the law.
5 And this is the law (indicating). This is the law. You're
6 going to get it. You're going to go through it. You can read
7 each one. I'm going to focus on a little of it while I speak
8 this morning.

9 So, figuring out the facts from the evidence. As I
10 said, there was a lot of testimony. Unfortunately, in seven
11 days there were very few facts coming from that witness stand.

12 Ladies and gentlemen, I think because there are so
13 many witnesses in this case, it might help you to draw a line
14 and put all the witnesses on that line. On one side of that
15 line are all the Chicago police officers you heard testify and
16 Dr. Santucci, who is being paid by the City of Chicago. So,
17 on one side of the line is everybody who gets paid by the City
18 of Chicago, and on the other side of the line is everybody
19 else.

20 Let's look at the facts and the evidence. By the
21 way, ladies and gentlemen, one of your jobs when you listen to
22 all these witnesses, the jury instruction will tell you you
23 must decide whether the testimony is truthful of each witness.
24 And the law gives you -- and you'll get this instruction --
25 five factors to consider. How do you know if someone is

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1 telling you the truth? Five factors.

2 First factor, the ability and opportunity for the
3 witness to see, hear and know the things they're testifying
4 about. Were they there? Is a witness there? Did they have
5 the opportunity to observe and to see?

6 Second factor, a witness' memory.

7 Third factor, any interest, bias or prejudice a
8 witness may have.

9 Third factor, a witness' intelligence.

10 Next factor, the manner of a witness while
11 testifying; how they appear, their manner when they testify.

12 And last but not least, the reasonableness of their
13 testimony in light of all the other evidence in the case.

14 So, let's use these factors on both sides of the line
15 with all these different witnesses. Let's start on the right
16 side of the line, people who are not being paid by the City of
17 Chicago. The deputies. Deputy Lindsey, Deputy McCoy. Let's
18 look at their testimony with these factors.

19 First factor, were they there? Did they have the
20 ability to see, hear and know what they're talking about?
21 They told you they worked that day. They were there.

22 Their memory. Both Deputy McCoy and Deputy Lindsey
23 told you, yeah, we remember Patricia Cobige. She was doubled
24 over in pain, she couldn't walk unassisted, and she said it
25 felt like her stomach was bleeding. That was their memory of

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1 that day.

2 Their interest, bias or prejudice. They're law
3 enforcement personnel. They're like these guys. What
4 interest do these deputies have in this case? They spent 15
5 minutes with Patricia Cobige three-and-a-half years ago. What
6 interest does a sheriff whose job it is to guard prisoners to
7 help a prisoner out?

8 They told you what they remember because it's true.
9 They have no interest in this case. They have no bias. They
10 just told you what happened honestly from that witness stand.
11 And, ladies and gentlemen, you're going to get a chart from
12 Mr. Jebson with lots of colors and time.

13 But remember the really important time period here,
14 June 11th, 2006, when Patricia Cobige woke up and was brought
15 to the courthouse, because that's where we have a major
16 factual dispute. That's where we have a major argument
17 between this table and that table.

18 Everybody at this table (indicating) says June 11th
19 in the morning she was fine, totally normal. That's not what
20 the deputies said at that exact time. They said she couldn't
21 stand up straight. They said she couldn't walk unassisted.
22 They said she said it felt like her stomach was bleeding.

23 What about their intelligence and manner while
24 testifying? You saw those two women. They were intelligent.
25 They were clear. Their manner and demeanor was excellent.

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1 The reasonableness of their testimony in light of all
2 the other evidence in the case. Were they reasonable? They
3 saw a woman who couldn't stand up straight. They saw a woman
4 who said she was in pain. What did they do? Take this woman
5 to a doctor.

6 By the way, think about this, ladies and gentlemen.
7 They said she was sick. They said she was in obvious pain and
8 needed to see a doctor. She didn't get to a doctor, and what
9 happened to her? She died. They weren't just reasonable.
10 They were right.

11 And Deputy Lindsey and Deputy McCoy didn't go to
12 Harvard or Yale. They're not expert physicians. They're not
13 cardiologists. They saw a woman in obvious pain and did the
14 reasonable thing: Get her to a doctor.

15 Remember every one of these witnesses said how
16 shocked they were when they heard she died? Like that line
17 from Casablanca in the middle of a gambling floor when he
18 says, "I'm shocked, there's gambling going on here." They all
19 said they were shocked.

20 Do you remember Officer Dimalanta? I was so shocked.
21 The last time I was with Mrs. Cobige, she was being rejected
22 for a medical reason. Reasonable. The deputies, ladies and
23 gentlemen, were not only reasonable, they were right.

24 Barbara Flores is on the right side of that list.

25 Oh, by the way, one other thing with the deputies,

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1 because Mr. Jebson is going to make a big point about this:
2 Well, the deputies didn't identify Dimalanta. Ladies and
3 gentlemen, keep in mind -- and I'm going to come back to
4 this -- this is not a criminal trial. You don't have to prove
5 something beyond a reasonable doubt. You're not going to
6 convict them.

7 What did Deputy Lindsey tell you about how she got
8 the right officer to take Patricia Cobige back? Because
9 there's a bunch of police officers there. How did she say she
10 called them? By their number. 25, you got a prisoner. What
11 was probably the only true thing Officer Dimalanta said
12 yesterday? How do you know that you have a prisoner coming
13 back? What did he tell you? Oh, the deputy called "25." And
14 remember what he said about that deputy? Man, woman, I don't
15 know.

16 Deputy Lindsey and Officer Dimalanta and a jury
17 instruction I'll get to in a minute about an inference and
18 circumstantial evidence will show you there's no dispute who
19 dropped off Patricia Cobige and who took her away from the
20 courthouse. Officer Dimalanta, undisputed; Officer
21 Czarniecki, undisputed.

22 Let's go to Barbara Flores. Barbara Flores told you
23 that morning she was, what? Doubled over in pain, couldn't
24 walk unassisted. That's what Deputy Lindsey said, and there's
25 no connection between these people. They don't work in the

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1 same building. They don't know each other. They've never
2 spent any time together.

3 And, ladies and gentlemen, as you're going through
4 witnesses to try to figure out who you believe, see if
5 witnesses mesh. See if what they say is corroborated by other
6 people. What Barbara Flores said was corroborated by two
7 deputies who don't know her.

8 Who else is on the right side of that list?
9 Dr. Fintel. He came in here and he told you LVH. Patricia
10 Cobige had a heart condition thousands of people in this
11 country have and don't even know it.

12 And by the way, ladies and gentlemen, the defendants
13 are going to say, well, she just dropped dead. Remember what
14 Dr. Fintel said about that? If everybody with an enlarged
15 heart that had heart disease dropped dead suddenly, he'd have
16 a whole lot less patients. That's not what happened. He told
17 you that's extremely unlikely. What's much more likely is
18 that someone with LVH that gets it triggered could go into a
19 fatal arrhythmia.

20 Well, doctor, what's the trigger? Pain that goes
21 unrelieved. He explained to you how she died. She had LVH.
22 She suffered hours of unrelieved pain. The adrenaline caused
23 her heart to stop. He explained it.

24 He also explained to you, ladies and gentlemen, she
25 didn't have to die. Just an emergency room, just a couple

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1 painkillers and this woman would be here and we wouldn't be
2 here. Simplest test. Just get her to an emergency room.
3 She'd be here. Simplest thing in the world.

4 And, then, there's Dr. Segovia who performed the
5 autopsy and made the findings that she did. That's the right
6 side of the line.

7 Let's go to the other side of the line, all the
8 people being employed by the City of Chicago. Let's begin at
9 the beginning, Officer Dimalanta and Officer Czarniecki.
10 Remember in opening statement I said that his speech was, "I'm
11 not taking you to a hospital," and they disagree with that.

12 What did he tell you the speech was? Oh, I didn't
13 tell them I wouldn't take them to the hospital. I told them
14 to tell me who is sick, because I'm not going to take you to a
15 hospital." That's what both of them said. That's what all of
16 them said.

17 The minute somebody says to a squadrol driver "I'm
18 sick," we don't take you. Why not? Well, because it doesn't
19 make sense. It's much better that two police cars get taken
20 off the street instead of somebody who is actually driving by
21 a hospital stops for ten minutes. For \$79,000 a year, you can
22 stop at a hospital for 20 minutes and read a magazine.

23 Officer Dimalanta -- let's look at these factors with
24 Officer Dimalanta. His memory. He doesn't remember male or
25 female. He doesn't remember much about the date. He doesn't

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1 have specific memory of that date. Do you remember he said
2 that: "I don't have a specific memory of that morning."

3 His bias or interest. Well, all of them told you
4 that. He might, maybe, possibly, could lose his job. Does
5 that give him a reason to maybe fudge his testimony a little
6 bit, to maybe not be a hundred percent truthful in his memory?

7 What did he say about that conversation with the
8 deputy at the County? Cramps. Anything else? Well, there
9 was something about when she was being searched and somebody
10 touched her, an injury, pain. It was cramps. Menstrual
11 cramps.

12 He's the one that started that word "cramps." That's
13 not what Patricia Cobige said. That's not what the deputies
14 said. In fact, Deputy Lindsey told you that she made Patricia
15 Cobige tell him to his face, "Tell him what you told me."

16 "It feels like I'm bleeding from my stomach."

17 Why did Lindsey make sure that Patricia Cobige told
18 him? So, there wouldn't later be any, oh, she told me she had
19 a headache.

20 MR. JEBSON: Judge --

21 BY MR. GRANICH:

22 She told me to --

23 MR. JEBSON: -- I'm going to object. There's no
24 evidence that Officer Lindsey told Officer Dimalanta. It's
25 the exact opposite of that.

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1 THE COURT: Ladies and gentlemen, your recollection
2 of what the evidence is in this case is what controls. These
3 are just closing arguments. What the lawyers are saying to
4 you now, that is not evidence.

5 You may proceed.

6 MR. GRANICH: Thank you, Judge.

7 BY MR. GRANICH:

8 You heard Deputy Lindsey say, "I made Patricia Cobige
9 tell the officer who responded when I said '25'. Tell him
10 what you told me so there would be no mistake."

11 So, what does he do? Oh, it's menstrual cramps. By
12 the way, ladies and gentlemen, we heard in this courtroom,
13 menstrual cramps don't hurt. Somebody ought to tell those
14 people at Midol that. What are they making that pill for?

15 His intelligence and manner while testifying. You
16 saw Officer Dimalanta yesterday. You can make that decision
17 for yourselves.

18 The reasonableness of his testimony. I respected her
19 rights. She didn't want to go to the hospital. I respected
20 those rights. She wanted to stay there and not go back with
21 him. She begged him, "Please, leave me here" because she knew
22 what was going to happen if he took her back. She knew she
23 wasn't going to a doctor.

24 If he respected her rights so much, she wanted to see
25 the judge, he knows how to get her back to the judge. Take

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1 her to St. Anthony's five blocks away, get a doctor to clear
2 her, if she's okay, and bring her back. But do you remember
3 his testimony? I've done this procedure taking someone to
4 county 300 times.

5 How do you get them back if they're rejected?

6 Oh, I don't know.

7 But you've done it 300 times, man.

8 I don't know.

9 Is he being honest with you? He doesn't know his
10 job?

11 The reasonableness of his testimony. "Oh, I'd have
12 taken her if she would have just said the word 'hospital.'"
13 Hospital? Hospital? No? Okay. Is that reasonable?

14 He didn't take her to the hospital because he was so
15 busy doing something else. No, he wasn't. I asked him. What
16 did you do after you dropped Patricia Cobige off? Did you
17 have something important to do? No.

18 Officer Czarniecki is the next one down that line.
19 Officer Czarniecki.

20 Officer Czarniecki, how was she walking?

21 Normal.

22 Officer Czarniecki, she was wearing leg irons.

23 Oh, well, she was walking normal for leg irons.

24 Officer Czarniecki, those leg irons were chained to
25 another woman.

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1 Oh, she was walking normally with synchronized
2 walking.

3 That must be a new Olympic sport I missed while
4 preparing for this trial, synchronized walking. Thanks,
5 Officer Czarniecki, your memory, also no good.

6 Your interest. He maybe, possibly, could, doesn't
7 want to lose his job.

8 His intelligence and manner while testifying. Again,
9 you saw it.

10 His reasonableness while testifying. Yeah, I heard
11 cramps, cramps. I was shocked when she died because the last
12 time I saw her, I was taking her away from a place that
13 rejected her for a medical reason driving by hospitals and she
14 died. I was shocked.

15 Who is next? Diaz. Diaz is special. I gave Diaz a
16 chance. Do you remember? Do you remember my first questions
17 to her? Diaz, you were the only one who tried to help. You
18 were the only one who tried to get Patricia Cobige to a
19 hospital, right? I gave her a chance. I held out my hand to
20 her, and she made a choice right in front of you, a choice to
21 go down with this ship.

22 But the reason I held out my hand was because she had
23 already testified -- she had already given her story under
24 oath. She already had told us the truth. That's why I kept
25 bringing up what she had said before. Because it was the

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1 truth.

2 And by the way, ladies and gentlemen, you're going to
3 get a jury instruction about that. You may consider
4 statements given by a party -- Diaz -- under oath before trial
5 as evidence of the truth of what was said.

6 She told you the truth in here. She told you in this
7 courtroom Patricia Cobige came back. She put her in the cell.
8 She said she was sick. At 1:45, Officer Diaz said she heard
9 Patricia Cobige calling out and she went to her. And after
10 she went to Patricia and found out the pain was getting worse,
11 what did she do? She went to Lawler. And Lawler called
12 Motzny for the second time. And when there was no answer,
13 Lawler went and looked for Motzny and came back and said "No."
14 Diaz told you that she signed that log "okay," "okay," "okay,"
15 but she told you she knew it wasn't okay.

16 She told you that Patricia Cobige never used the word
17 "cramp." That was what Lawler wrote down because that's what
18 Dimalanta started -- cramps. Patricia Cobige never said
19 cramps. The deputies never said cramps. That's their word.
20 Diaz told you that.

21 Diaz told you she told the next watch, "Please make
22 sure your sergeant gets her to a hospital. Make sure your
23 next sergeant does the right thing." Diaz told you all that.
24 If she would have just taken my hand, I would have told you to
25 let her go. I gave her my hand. And she chose to join them.

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1 Her interest, her bias. Same thing. She maybe,
2 possibly, could lose her job.

3 Her intelligence and manner while testifying, again,
4 you saw that.

5 The reasonableness of her testimony, you saw that,
6 too.

7 And what happened when Diaz was done testifying?
8 Lawler, her partner for years, got up there and said, oh,
9 Diaz, she's got it all wrong. Remember a moment ago, ladies
10 and gentlemen, I told you when you're trying to decide whether
11 you believe people if the stories mesh. When two people
12 sitting at the same table start pointing fingers at each
13 other, that's a problem if you're trying to believe both of
14 them, because you can't believe both of these women because
15 they don't. Lawler told you, oh, Diaz has got it wrong.

16 Does she? What did Lawler tell you? 1:45? Oh, she
17 didn't call out. She was fine. I talked to her. She was
18 fine. Lawler says she was fine at 1:45. Diaz says she's
19 calling out in pain. There's a problem at that end of the
20 table. These women have got to get their stories straight.
21 It's difficult to keep a story straight when you're making it
22 up as you go along.

23 Lawler, her memory. I don't remember. I don't
24 remember. Her interest, again, maybe, possibly, could lose
25 her job. Her intelligence and the manner of testifying, you

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1 saw that.

2 Reasonableness of her testimony. She's saying to you
3 that Diaz is not telling you the truth. She was fine. She
4 was fine. She was fine. Did any of these people know she
5 died? I think the words they're looking for is not fine.
6 Natural. Isn't that what you say at a funeral? Don't she
7 look natural. Not fine.

8 What else did Lawler tell us? Lawler told us that
9 Sergeant Motzny, when she went to Motzny -- by the way, if
10 Ms. Cobige was fine, why did Lawler go look for Motzny to ask
11 about the hospital if she's so fine? But what did she tell us
12 that Motzny says? Not now, third watch will do it. Motzny
13 doesn't remember that.

14 Let's talk about Sergeant Motzny because I have an
15 admission to make. I like Sergeant Motzny.

16 MR. JEBSON: Objection.

17 THE COURT: Sustained.

18 BY MR. GRANICH:

19 Sergeant Motzny is a good cop. He comes from cops.
20 But he blew this one. What was the first mistake he made? He
21 trusted Dimalanta. He told you what Motzny would say: I told
22 Dimalanta if she's sick, take her. Totally smart, totally
23 cop. If she's sick, take her. He trusted Dimalanta. Maybe
24 Motzny was talking too fast and Dimalanta didn't get it.

25 Sergeant Motzny's first mistake was trusting

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1 Dimalanta. But then she came back to the 25th District.
2 Motzny's second mistake was he didn't check. He didn't check
3 to make sure Dimalanta was making the right choice. How far
4 away was Motzny at 11:30 from Patricia Cobige? One, two,
5 three, four, five. That's all he had to do. He just had to
6 go around the corner and see for himself.

7 You heard Buslik, the captain. If somebody comes
8 back from a medical, go check them out. That's all he had to
9 do. He asked Lawler, who is that? Oh, that's the one who
10 came back. Is she okay? Yeah, she's okay. He not only
11 trusted Dimalanta -- bad choice; he trusted Lawler, another
12 bad choice. Lawler doesn't even trust Diaz.

13 Motzny is the sergeant. You heard them all testify.
14 They don't say boo without checking with Motzny. Motzny's the
15 one responsible and he blew this one. He just didn't check on
16 the people underneath him. He delegated his responsibility to
17 people that he shouldn't have. He should have just checked.
18 He knows them. We just met them. Would you check the work of
19 Dimalanta and Lawler?

20 MR. JEBSON: Objection.

21 THE COURT: Sustained.

22 BY MR. GRANICH:

23 Motzny needed to check and he didn't.

24 And by the way, ladies and gentlemen, he doesn't
25 remember whether he told Lawler let third watch do it. But

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1 what did Sergeant Dickey tell us? Sergeant Dickey told us
2 that Motzny said, "Yeah, you have one coming back. She may
3 need a hospital." He doesn't even tell Dickey her name.

4 What do you call that game on the street with the
5 three cards? Three-card Monte? Sergeant Motzny made Dickey
6 play Three-card Monte with a woman. And she guessed wrong.
7 She guessed the pregnant woman. Oops. By the way, they
8 didn't get the eight-month pregnant woman to the hospital
9 either, but --

10 MR. JEBSON: Objection.

11 THE COURT: Sustained.

12 BY MR. GRANICH:

13 Motzny, Lawler, Diaz, Czarniecki, Dimalanta, they all
14 made choices. Dimalanta and Czarniecki made a choice every
15 time they drove by a hospital. All those hospitals that
16 Lawler doesn't know exists, they made a choice when they drove
17 by St. Anthony's not to stop. They made a choice when they
18 rolled by Mt. Sinai. They made a choice at every hospital
19 they passed.

20 Diaz made a choice. She knew. She knew that
21 Patricia Cobige had to go. And when Motzny said no, she could
22 have just called 911. She didn't have to do anything. Pick
23 up a cup of coffee, call 911. Diaz just could have waited
24 around to tell Sergeant Dickey. You met Sergeant Dickey last
25 night. She would have done it. If Diaz would have just

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1 waited for Sergeant Dickey, we wouldn't be here.

2 Lawler made a choice to lie to you badly and do
3 nothing for Patricia Cobige. And Motzny made choices not to
4 walk five feet, not to check on the people that he was giving
5 responsibility to and he also, just to be on the safe side,
6 could have just called 911. They all made choices.

7 Just a couple other jury instructions about witnesses
8 you should keep in mind -- oh, excuse me.

9 There's a whole lot of other police officers on that
10 list. Milovich. Remember both Lawler and Diaz said
11 Milovich -- we told Milovich. What did Milovich get up there
12 and say? I don't remember being told anything. Hartford: I
13 wasn't told anything.

14 We're not suing all these other officers, ladies and
15 gentlemen, because we can't prove they knew.

16 MR. JEBSON: Objection.

17 THE COURT: Sustained.

18 MR. GRANICH: We know one thing, ladies and
19 gentlemen. We can show and we have showed you that each one
20 of these defendants knew that Patricia Cobige was rejected.
21 Diaz told you they knew her pain was getting worse. They all
22 knew. That's why they're here.

23 Jury instructions, ladies and gentlemen, that will
24 help you, you may find the testimony of one witness or a few
25 witnesses more persuasive than the testimony of a larger

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1 number.

2 On the right side of the list, there's only three or
3 four. On the other side of the list, how many officers did we
4 hear from? 15? Again, Mr. Jebson's going to have a beautiful
5 chart. He'll have them all there. His chart kind of reminds
6 me of the logbook. I feel like the logbook was a witness in
7 this case. The logbook. "Okay," "okay," "okay," "okay,"
8 "okay." Diaz told you she signed "okay" and she knew it
9 wasn't.

10 By the way, all of them testified do you put in the
11 logbook if someone is sick? Oh, no, that messes it up. Look
12 how nice all the "okay"s look. Why would we actually put down
13 what's going on? One officer, I think it was Milovich, said
14 the "Conditions" is about the conditions of the lockup. Like
15 they need new paint on the floor or something? The logbook.
16 A joke.

17 You're going to get another jury instruction, the law
18 does not require that we call every person that might have
19 knowledge. We could have called every single person who was
20 in the lockup. We didn't. We don't have to. Just witnesses
21 that are honest and credible who testify well. We did that.

22 Okay. Now we know the facts from the testimony. Now
23 let's go to the law. Because that's your second job. Once
24 you figure out the facts, apply the law to those facts.

25 First law, what's our burden? We're the plaintiff.

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1 We have a burden. But like Judge St. Eve told you at the
2 beginning of the trial, this is not a criminal case. I'm not
3 here to convict them. I don't have to prove this case beyond
4 a reasonable doubt. No, no, no. Preponderance. You're going
5 to get it.

6 What does preponderance of the evidence mean? It
7 means more likely true than not true. More likely true. Are
8 the deputies more likely true than defendants who can't even
9 keep a story straight, who can't even keep their own story
10 straight? Did our witnesses prove what we need to prove more
11 likely true? Yeah, we did.

12 Preponderance, you'll get it. You'll read it.

13 Common sense. We asked you to leave everything
14 personal outside those doors. Good experiences, bad
15 experiences. We ask you for your common sense. Use it on
16 this case. It will make your job really quick.

17 Also talks about an inference. You can make an
18 inference. And that's connected to the next jury instruction,
19 circumstantial evidence. There's no snow on your car when you
20 go to sleep. You wake up in the morning and there's snow on
21 your car. You didn't see it snow, but circumstantial evidence
22 can tell you, well, there wasn't snow there last night.
23 There's snow on my car now. Gee, it must have snowed.

24 Ladies and gentlemen, that's extremely important in
25 this case for two reasons. One, as Mr. Jebson objected,

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1 Deputy Lindsey -- and by the way, if she wanted to lie, she
2 could have just said him. She told you the truth. I called
3 25 and a guy said 25. That's what he said. Circumstantial
4 evidence.

5 Remember, this isn't a criminal trial. We don't have
6 to prove them guilty beyond a reasonable doubt. The inference
7 and the circumstantial evidence will tell you that Deputy
8 Lindsey gave Patricia Cobige to Dimalanta.

9 It's another reason why circumstantial evidence is
10 important.

11 There's an empty chair right here. I didn't even
12 notice until right now. That's Patricia's chair. She
13 couldn't be here when they were putting false words in her
14 mouth. You can use circumstantial evidence. She said she was
15 in pain. She said she was getting worse.

16 MR. JEBSON: Objection. That's improper argument.

17 THE COURT: Sustained.

18 BY MR. GRANICH:

19 You can use circumstantial evidence on this case.

20 Next jury instruction, proximate cause. When I say
21 the words "proximate cause," I promise you, ladies and
22 gentlemen, every lawyer in this room cringes because we
23 remember in law school how many months we talked about those
24 two words.

25 MR. JEBSON: Objection.

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1 THE COURT: Sustained.

2 BY MR. GRANICH:

3 Ladies and gentlemen, you're going to get a jury
4 instruction on proximate cause. I'll read it to you and then
5 I'll explain it.

6 "When I use the expression 'proximate cause,' I mean
7 that cause which in natural or probable sequence produced the
8 injury complained of. It need not be the only cause, nor the
9 last or nearest cause. It is sufficient if it occurs with
10 some other cause acting at the same time which in combination
11 with it causes injury."

12 Yikes. What this means, ladies and gentlemen, is
13 they didn't have to kill her. Her heart stopped. Why did her
14 heart stop? Why did her heart stop? Because the pain caused
15 her heart to stop. They didn't get her to a hospital when she
16 was in pain. Proximate cause.

17 Now let's get to the claims, what we're actually
18 doing here. First claim, very important. In this case,
19 plaintiff, Maurice Cobige, the administrator of his mother's
20 estate and himself, have a claim under federal law, 1983,
21 failure to provide medical care, two points. Failure to
22 provide her with medical care -- and they didn't; that's
23 undisputed, they didn't get her to a hospital -- was
24 objectively unreasonable under the circumstances. The law
25 will give you a definition of what "objectively unreasonable"

1 is.

2 When you're considering it, you can consider if they
3 were given notice of her medical need. Everyone at this table
4 was on notice that she was rejected and had a medical need.

5 Whether by word or observation. The deputies told
6 you you could see it, and they also told these officers
7 rejected.

8 The seriousness of her need balanced against the
9 scope of the requested treatment. What was the scope of the
10 requested treatment? An emergency room. That's what she
11 needed. Painkillers. That's the scope of the requested
12 treatment against her medical need. She was doubled over in
13 pain.

14 And last but not least, the interests of the police
15 department, including administrative and investigatory
16 interests. When these guys drove by those hospitals, they
17 weren't working on a murder case. They weren't doing anything
18 else important.

19 By the way, you also heard that it makes more sense
20 for the squadrol to go to a hospital while they're driving by
21 one than to make two cars come off the street and do it. It
22 makes sense. Their conduct, ladies and gentlemen, was
23 objectively unreasonable. You know that because the deputies
24 did the reasonable thing.

25 Oh, the second thing we have to prove is that it

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1 caused harm. Their unreasonable conduct caused harm.

2 Dr. Fintel told you what not getting her to an emergency room
3 caused. Her death. Harm? We have the ultimate harm here.

4 Next, Illinois law, wrongful death. That's about
5 Maurice Cobige, loss of society. Wrongful death. We have to
6 prove wilful and wanton conduct, that their conduct was wilful
7 and wanton and the law defines it.

8 When I say wilful and wanton, I mean a course of
9 action which shows actual or deliberate intention or utter
10 indifference to conscious disregard for the safety of Patricia
11 Cobige.

12 This case is a poster child for utter indifference
13 and conscious disregard. We've proved wilful and wanton by a
14 preponderance of the evidence.

15 That she was injured. We know she was injured. And
16 that their failure to act was the cause. They didn't take
17 care of the pain. The pain stopped the heart. The heart
18 dies.

19 We're also asking, ladies and gentlemen, for, under
20 state law, intentional infliction of emotional distress. We
21 have to prove that their conduct was extreme and outrageous.
22 What's extreme and outrageous? The law tells you. Something
23 not tolerated in a civilized community. You don't lock
24 someone in a cell and, when they tell you their pain is
25 getting worse, ignore them. We don't do that in a civilized

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1 society. Their conduct was extreme and outrageous.

2 Ladies and gentlemen, I just finished the easy part,
3 liability. You know this. I didn't have to do all this. You
4 know everything I just said. We have proved by a
5 preponderance of the evidence that they knew of her need, that
6 they acted unreasonably, that they acted wilfully and wantonly
7 and because of all that, she died a death on the floor. She
8 didn't have to. Liability, easy.

9 Now let's go to the hard part, damages. You're going
10 to get instructions on damages. The first instruction you're
11 going to get is when you get to the question -- when you have
12 gotten past the question of liability, you may not deny or
13 limit the plaintiff's right to damages resulting because of a
14 pre-existing condition which rendered Patricia more
15 susceptible.

16 She had a bad heart. They have to take her as they
17 find her. That pain -- they didn't know the pain would kill
18 her. That's not what the law says they have to know. If
19 she's got a bad heart and you don't do what's reasonable and
20 she dies, you're responsible for it.

21 MR. JEBSON: Judge, that misstates the law.

22 THE COURT: Ladies and gentlemen, at the end of the
23 case, I will instruct you on what the law is, and the Court's
24 instructions are what govern here in terms of the law.

25 BY MR. GRANICH:

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1 The next jury instruction you're going to get is
2 about compensatory damages. There are two forms of damages.
3 Let's talk about them quickly. Compensatory is what will
4 fairly compensate plaintiff for any injury she sustained. And
5 remember, and be clear about this, ladies and gentlemen, the
6 only time you can consider their personal worth is punitive,
7 not compensatory. We'll get to punitive in a minute.

8 With compensatory, the only thing you can consider is
9 the amount of her injury, pain and suffering, loss of life.
10 Remember the statute of justice, the blindfolded lady? What's
11 she holding in her hand? A scale, balance. Compensate, make
12 equal.

13 The law is going to tell you that, by the way, you
14 shouldn't guess. But the law will tell you, however, that
15 doesn't mean that compensatory damages are restricted to the
16 actual loss of money. They may include both physical and
17 mental aspects, even if they are not easy to measure.

18 That's why this is the hard part. How do you measure
19 the damages in this case. You've got to weigh them. What's
20 the weight? What can you consider? Under federal law, you
21 can consider her pain and suffering and her loss of life.

22 Let's talk about pain and suffering for a moment. It
23 felt like her stomach was bleeding for hours. She died on the
24 floor of a cell, a death we don't give animals in a civilized
25 society. That's the pain she suffered.

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1 Emotional. She begged not to go with them because
2 she knew. She was like a hiker out in the woods who gets
3 injured when there's no one around for miles. She laid there
4 on that floor knowing she wasn't getting to a doctor. That
5 was the emotional pain she suffered.

6 That physical and emotional pain, how much does that
7 weigh? What did she lose? She lost her life. What's your
8 life?

9 MR. JEBSON: Objection. Improper argument.

10 THE COURT: Sustained.

11 BY MR. GRANICH:

12 She lost her life. You have to determine how much
13 that weighs on the scales.

14 MR. JEBSON: Same objection.

15 THE COURT: Overruled.

16 BY MR. GRANICH:

17 Next, under Illinois law, wrongful death, loss of
18 society. You're going to get an instruction about loss of
19 society. That's Maurice. Loss of society is going to be
20 defined for you. I mean the mutual benefits Maurice received
21 from his mother's continued existence including love, care,
22 companionship.

23 Maurice told you about the last time he saw his
24 mother. It wasn't an important day. It wasn't a wedding or
25 anything. They just spent a couple hours together. Ladies

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1 and gentlemen, in life, it's not always the most important
2 days. It's the time in between that you spend with people.

3 He lost that forever.

4 Care. A mother's care. Do you remember what Maurice
5 said when he was living with his mom in his twenties? It was
6 great. She made me breakfast in the morning. I felt like I
7 was a kid. Mother's care. Do you remember those turkey legs?
8 It's a silly thing. But that's what he remembers of his
9 mother. And he's lost that forever. Love. A mother's love.
10 There are many different kinds of love in the world, ladies
11 and gentlemen, but a mother's love is unique.

12 I've tried to figure this out. And maybe it's
13 because at some point a mother and a child are one person; and
14 even when the child leaves the mother, there's always a
15 connection forever. He's lost that forever.

16 How much does that weigh?

17 Ladies and gentlemen, when you are thinking of
18 compensatory damages, what makes this equal, you will
19 understand. When you factor in all that weight, you'll
20 understand why we are asking you for a guilty verdict in the
21 amount of \$5 million in compensatory damages.

22 Last but not least, punitive damages, when you can
23 actually consider, when you're allowed to consider the
24 personal worth of these defendants. Once again, let's go to
25 that lady of justice. She's got a balance in one scale. What

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1 does she have in the other hand? A sword. That's what
2 punitive damages are. And you're going to get an instruction.
3 The purpose of punitive damages are to punish a defendant for
4 their conduct, to serve as an example or warning not to engage
5 in similar conduct.

6 And you can only find punitive damages on the federal
7 claim, 1983. That's all. And you can only find punitive
8 damages if their conduct was malicious or in reckless
9 disregard of their rights.

10 Dimalanta is still giving his speech. You've got to
11 send a message to these people that what they did was wrong,
12 and you've got to make sure they don't do it to anyone else.
13 Pull out the sword.

14 But we have no interest in harming these people
15 personally. There's been enough harm here. They have
16 children, they have homes, they work hard. We have no
17 interest in causing them personal harm. Give them a punitive
18 damage award, a thousand dollars, just enough like a ticket a
19 police officer gives you when you do something wrong, just
20 enough so that they know. Don't destroy them. Don't harm
21 them. Don't kill them. Just let them know what they did was
22 wrong.

23 Ladies and gentlemen, I talked a lot about jobs. I
24 was given a job by this guy (indicating). My job was to right
25 a wrong. My job was to get a guilty verdict on every one of

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1 these defendants. And today with your help, I'm going to do
2 my job.

3 Thank you.

4 THE COURT: Thank you, Mr. Granich. We will take our
5 morning break.

6 (Jury out.)

7 THE COURT: The speaker you wanted is over here.

8 MS. O'CONNOR: Thank you, your Honor.

9 THE COURT: So, you can get set up.

10 Did you have anything you wanted to raise?

11 MR. JEBSON: No.

12 MR. FRIEDMAN: Your Honor, do you --

13 THE COURT: And do you --

14 MR. FRIEDMAN: Do you have -- we have, I think, about
15 10 minutes by my count.

16 THE COURT: About 10 minutes left. 10, 12 minutes
17 left.

18 MR. FRIEDMAN: Great. Thank you.

19 THE COURT: I raised the issue with you yesterday
20 about the compensatory damages and should we itemize them. In
21 light of the issue today about loss of life, are you still --
22 is your position still do not itemize?

23 MR. JEBSON: Don't itemize, yes.

24 THE COURT: Okay.

25 I will let you know when I come out.