

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM PART 34

-----X
GREGORY SCOTT,

Plaintiff,

- against -

KOSOVA PROPERTIES INC., HAMDI NEZAJ,
SHPEND NEZAJ, LAZER PLUNAJ,

Defendant.

-----X
INDEX NO. 155225/16

60 Centre Street
New York, New York
January 30, 2025

BEFORE:

THE HON. DAKOTA RAMSEUR, J.S.C.

And a Jury

APPEARANCES:

FOR THE PLAINTIFF:

THE BASIL LAW GROUP, P.C.
125 West 31st Street #19-b
New York, New York 10001
BY: ROBERT J. BASIL, ESQ.
DAVID A. COHEN, ESQ.

FOR THE DEFENDANTS:

McELROY, DEUTSCH, MULVANEY & CARPENTER LLP
225 Liberty Street, 36th Floor
New York, New York 10281
BY: JOHN P. COOKSON, ESQ.
A. AUGUSTUS LaSALA, ESQ.

ALSO PRESENT: GREGORY SCOTT, Plaintiff

JACK L. MORELLI
Senior Court Reporter

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1 (Jury not present)

2 THE COURT: We're going to get on the record and
3 we'll let you do your appearances.

4 MR. BASIL: Robert Basil and David Cohen, for
5 the plaintiff, from Basil Law Group.

6 MR. COOKSON: John Cookson, McElroy, Deutsch,
7 Mulvaney & Carpenter, for the defendants, Kosova, Shpend
8 and Hamdi Nezaj.

9 THE COURT: So, let me ask you before we start,
10 you want to talk first about it and then get on the
11 record?

12 (Discussion held off the record)

13 THE COURT: Thank you. So, now that everybody
14 agrees that we have the jury instructions from PJI 1:20
15 all the way to PJI 1:30 without objection, to the extent
16 that defense counsel agreed to plaintiff's 1:26 A, and
17 plaintiff's agreed to the defendants' 1:25 C.

18 So now the first objection is going to be PJI
19 1:55. So, you were saying, counsel.

20 MR. COHEN: Yes, Your Honor. Plaintiff objects
21 to 1:55, because this Pattern Jury Instruction requires
22 language to be inserted into the charge, very specific
23 language relevant to this case and it has not been done.
24 And our position is it's too late at this time. It would
25 take a vast amount of time to do that. And counsel should

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1 have provided that to the Court.

2 THE COURT: Yes. To be clear, if I could just
3 clearly read 1:55 into the record. PJI 1:55. "Testimony
4 has been introduced that plaintiff, defendant made a
5 statement to A D plaintiff at the time, place, concerning
6 material fact. Plaintiff, defendant, denies that he, she,
7 made such a statement, or that he or she made such a
8 statement, but says" -- and then there is the blank,
9 that's the edit that plaintiff is alluding to the
10 evidence. "If you find that the plaintiff, defendant made
11 such a statement that he, she, thereby admitted material
12 fact," that has to be inserted, "you may consider that
13 statement as evidence of," again, facts have to be stated,
14 "of negligence, liability, under the contract as examples.

15 "In deciding whether such a statement was made,
16 you will apply the rules I have already given you about
17 the evaluation of testimony. You may accept either
18 parties' version of what happened in whole or in part, or
19 you may accept the part of the version given by both in
20 deciding how much weight you will give to the statement,
21 if any. You can consider," and then, again, you have to
22 insert whatever, yada, yada. And then it says,
23 "plaintiff's condition at the time the statement was made,
24 the words used, the person to whom the statement was made,
25 the time that passed between the making of the statement

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1 and the occurrence." This is a parentheses where I have
2 to add the facts about the occurrence. "All of the other
3 circumstances and conditions existing at the time and
4 place, and the other facts in evidence, as well as the
5 reasonableness of the plaintiff's, defendants' explanation
6 of the statement. You may consider the statement to be
7 conclusive and binding on plaintiff, defendant," but it
8 has to be edited, "or you may warrant altogether or you
9 may give it greater weight between the two extremes as you
10 find proper under all the circumstance."

11 So, that's the statement. So, that's the
12 objection and that does require substantial editing. And
13 I didn't have notice of this, so I'm saying that I don't
14 have the proper edit now.

15 MR. COOKSON: In the midst of the trial it's
16 hard to say what testimony might come out that would fit
17 into this.

18 THE COURT: Good. With that said, that means
19 that you think that this statement is going to pertain to
20 a statement that defendant, defendants say and not what
21 the plaintiff is saying?

22 MR. COOKSON: Well, the plaintiff hasn't
23 testified yet.

24 THE COURT: We know what he's going to say based
25 on all the thing that we've already discussed. You're the

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1 one who doesn't know they are going to present a case.
2 You're the one who doesn't know what your clients are
3 going to say. So, we know what the plaintiff is going to
4 say from the attorneys based on our conferences.

5 I just want to make sure, does the edits involve
6 the plaintiff or just the defendants? Because you're
7 asking for it. Again, you're asking for this charge,
8 correct?

9 MR. COOKSON: Yes.

10 THE COURT: And you would be in a better
11 position to speak for your clients.

12 MR. COOKSON: But this, this is for admissions.
13 Admissions come from the adversary, not from my client.
14 If my client said something that they want to use this
15 for --

16 THE COURT: That's what I'm saying. What is it
17 that you anticipate that they are going to use this for?

18 MR. COOKSON: To put in something of an
19 admission from the plaintiff.

20 THE COURT: And what is that admission going to
21 be?

22 MR. COOKSON: How do I know? He has to testify
23 first. It's testimony that has been introduced. It's
24 not --

25 THE COURT: So, I think the jury charges I

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1 propose, because you anticipate and know and even I know
2 what you think you're going to use this for. But it's
3 okay. So, to the extent that you want to wait until after
4 the plaintiff testifies, which means that you're not going
5 to give me this edit until when? Because the jury, the
6 way our timetable is, means they are coming in tomorrow
7 for instructions. So, you're going submit this to me
8 tonight?

9 MR. COOKSON: I would have to.

10 THE COURT: I guess the jury is going to have to
11 come in late again tomorrow. Is this premature? Because
12 I don't want to keep going through this all day.

13 MR. COOKSON: Why don't we revisit it after he
14 testifies.

15 THE COURT: Okay, I don't want to waste all the
16 time we have, because any time is precious. So we'll
17 table this one, the 1:55 based on what the defense counsel
18 is saying, and we'll move to the next objection. Off the
19 record.

20 (Discussion held off the record)

21 THE COURT: State what you just stated for the
22 record. And just so you know, I'm not going to repeat all
23 this. I'm going to say, as previously discussed on the
24 record yesterday, or whenever, and there it is. So that's
25 why I'm putting it on the record now.

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1 MR. COOKSON: I'm going to withdraw that.

2 THE COURT: Great. So, just for the record, PJI
3 1:56 is withdrawn. Okay. Next objection.

4 MR. COHEN: Yes, 1:64 burden of proof, clear and
5 convincing evidence. Both parties submitted 1:23, burden
6 of proof, which has a preponderance of the evidence
7 burden.

8 THE COURT: I'm sorry you said one point?

9 MR. COHEN: Well, the objective --

10 THE COURT: I didn't hear the number. You said
11 both parties had submitted the burden of proof, one point?

12 MR. COHEN: 1:23. And that's for a
13 preponderance of the evidence.

14 THE COURT: That is correct, I do have that
15 included. And that was incorporated as a pattern jury
16 charge. That was not objected to and agreed to by both
17 parties.

18 MR. COHEN: Right, Your Honor. The defendants
19 are proposing that the jury be charged with 1:64, which is
20 a clear and convincing evidence. So, we object to that.

21 THE COURT: Counsel.

22 MR. COOKSON: The reason for that is, the burden
23 is on the plaintiff to prove and to give examples. And
24 one of those examples is malice. Malice is an element of
25 the malicious prosecution.

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1 THE COURT: Let me ask you this. Why don't we
2 pick the one we're going to use, the 1:23 or the 1:64. It
3 sounds repetitious when I read the instructions. I never
4 realized that until I'm in the mix of reading it and
5 everything always sounds so familiar. So maybe if we take
6 out the 1:23, we can get specific to the 1:64. Because
7 malice is an element to one of the -- go ahead.

8 MR. COHEN: Well, we don't have a problem with
9 having one jury instruction on the burden of proof.

10 THE COURT: That's what I'm asking.

11 MR. COHEN: But the place to start would be
12 1:23. Because with the exception of the one element in
13 malicious prosecution, all of the other elements the
14 plaintiff has a preponderance of the evidence burden.

15 THE COURT: Right. So, what I'm saying is, you
16 guys need to come up with something that is one burden of
17 proof charge that satisfies the legitimate concern, that
18 they want the malice reflected in one of the charges, and
19 give me the writing.

20 MR. COHEN: Yes, Your Honor, I think that we
21 could probably do that.

22 THE COURT: Do that. That's your assignment.
23 Bring that back tomorrow and do it on your downtime.
24 That's where we are from whether you take it from 1:23, I
25 need that number.

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1 So as of now we have to amend the record to say
2 that 1:23 might be coming out or 1:64 might be coming out.
3 Either way we're going to be done with one.

4 MR. COOKSON: Well, we're going to hold both?

5 THE COURT: That's what I'm saying, so what I
6 indicated earlier --

7 MR. COOKSON: It will be one instruction with
8 malice and clear and convincing for malice, and
9 preponderance of the evidence for the other two?

10 MR. COHEN: For --

11 THE COURT: My point is, you're going submit
12 something. And whatever you submit is going to be
13 whatever charge we're going to read for the burden of
14 proof, whether we call it 1:23 or 1:64. But we're not
15 going to have both. I'll give that when you're done with
16 it. I don't want to talk about how you're going to do it,
17 just do it and come to agreement to the extent that you
18 can, and I'll put my final touch on it tomorrow. And if
19 you want to do it during lunchtime, do it today. Okay,
20 and that's 1:23 versus 1:64.

21 Okay, what's your next objection?

22 MR. COHEN: Plaintiff objections to 1:66, which
23 is an instruction for evidence admitted for limited
24 purpose, credibility of nonparty witness. Your Honor,
25 that refers to --

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1 THE COURT: I'm sorry, you're going to withdraw
2 this one, counselor.

3 MR. COOKSON: I'm sorry, Your Honor, I want to
4 look at it again.

5 (Pause)

6 MR. COOKSON: No, there was no written statement
7 by Mr. Noyes. So, yes, I will withdraw that.

8 THE COURT: Thank you.

9 What's the next one?

10 MR. COHEN: Plaintiff objects to 1:78, which is
11 stipulation of facts. Unfortunately, it's not applicable
12 here because we don't have a stipulation.

13 THE COURT: The defense counsel is going to
14 withdraw this, yes?

15 MR. COOKSON: Yes. When we submitted this, you
16 don't know what's going to happen so.

17 THE COURT: I understand. I want it clear for
18 the record, so this is withdrawn.

19 MR. COHEN: 1:79 is judicial notice of fact. I
20 would say, granted, the trial isn't over yet. But thus
21 far, the Court has not taken judicial notice of facts.
22 I'm not anticipating that, unless counsel has something.

23 MR. COOKSON: Perhaps the certificate of
24 disposition that shows that the case --

25 THE COURT: I'm not going to take judicial

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1 notice of that because you stated it in your opening.

2 That it wasn't decided on the merits, it was 30.30.

3 MR. COOKSON: The decision says on it 30.30,
4 speedy trial.

5 THE COURT: You're not going to dispute that.
6 Okay, this is what I'm going to say. You can even bring a
7 civil case, unless it was dismissed on 30.30. So, I don't
8 know why we're giving it to the jury. Why do they need
9 know? What is that an element of?

10 MR. COOKSON: Well, it's much different than if
11 he had gone to trial and been acquitted.

12 THE COURT: Because of what?

13 MR. COOKSON: Because it was a procedural
14 dismissal.

15 THE COURT: So you said that. What I'm saying
16 is, that you said that. So, to the extent that you want
17 to use that to say he wasn't really injured or it wasn't
18 that serious, it's not a -- that's your argument. But
19 asking me to take judicial notice, you're right, that I
20 can take judicial notice of the outcome. But I just don't
21 want to put any unnecessary weight on something and make
22 it more curious than it is. And you have it in the
23 record. I don't think that I need to take judicial notice
24 of it.

25 MR. COOKSON: I put it in there because I wasn't

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1 sure what was going to come in.

2 THE COURT: I want to maintain an objection for
3 the record, because that is a type of document that a
4 Court could take judicial notice of. I'm not inclined to
5 do so in this case, because I think that it imposes an
6 unnecessary weight on it to the jury.

7 But nobody is disputing that, you know what I
8 mean? It's a fact, you're right. It was dismissed 30.30,
9 it's procedural. Now, if they said something that
10 contradicted that, I would immediately make an instruction
11 to the jury to emphasize that there are based on the
12 procedure of 30.30. But that's not the case. There is no
13 issue here. You know what I mean?

14 MR. BASIL: Your Honor, Mr. Cookson and I have
15 agreed that that particular exhibit, which is our
16 Exhibit 6, is going into evidence by consent. So the jury
17 will have, if they want to be able to look at it, there is
18 no need for judicial notice.

19 THE COURT: I'm going to let him have an
20 objection if the case goes up, that he asked for it. So,
21 I'm now taking this charge out. And for the record, it's
22 PJI 179.1. So, we'll have that as the Court overruled
23 defendants' objection. Is that okay, counselor? Is that
24 how you would like that to reflect?

25 MR. COOKSON: That's fine. Go ahead.

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1 THE COURT: Next.

2 MR. COHEN: Plaintiff objects to 193 which is --

3 THE COURT: Who is this person, defense counsel
4 Mr. Cookson? What do you say to that?

5 MR. COOKSON: I have not yet heard that someone
6 was compensated to be here, so I would withdraw it.

7 THE COURT: Thank you.

8 All right, what's your next objection?

9 MR. COHEN: The next objection is -- well, 194,
10 which is the use of a --

11 THE COURT: I don't think that we used that yet.

12 MR. COHEN: Right, Your Honor. This was
13 something that probably could have been given prior to
14 the --

15 THE COURT: I don't know prior to. Sometimes
16 it's not used, that's why I stopped doing that.

17 MR. COHEN: Well, let me say this. At this
18 point no prior deposition testimony has been used, if
19 there is prior.

20 THE COURT: Based on our conversations, I don't
21 think that anybody is going to have a reason to use it.

22 Do you anticipate using it?

23 MR. COOKSON: I might.

24 THE COURT: Well, somebody remind me to take it
25 out later then, because I'll get on a roll and start

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1 reading and be in the midst of it and realize, oh, that's
2 not even applicable. And we'll say to be determined. And
3 that's going to PJI 194, use of a pretrial deposition
4 upon trial.

5 Next objection, please. Thank you.

6 MR. COHEN: Well, the only objections that we
7 have, Your Honor, would be to the defendants proposed
8 instructions for malicious prosecution and for --

9 THE COURT: Let me put a pin there, because
10 that's where the juju is going to come out.

11 Let me start from where we are now, and listen
12 intently so I don't leave anything out from either of your
13 sides. Because after the objections we just discussed and
14 put on the record, we are now up to PJI 210, common law
15 standard of care. I'm going to assume that's plaintiff's
16 request.

17 MR. COHEN: 210, I believe that was our --

18 THE COURT: Okay, good. I don't have an
19 objection from defense counsel. I'm going in the order to
20 make sure.

21 Are you okay?

22 MR. COOKSON: Well, I've had a difficult time
23 kind of following because they didn't do it the way they
24 usually do it.

25 THE COURT: You know what? I've taken the

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1 liberty of just printing out another packet that I was
2 going to use as a court exhibit. Do you want me to give
3 it to you or you already have it?

4 MR. COOKSON: I have it. If we're going to go
5 by numbers and I'm allowed to look at these --

6 THE COURT: Assuming it's up to date, sure, go
7 ahead.

8 MR. COOKSON: 2:10.

9 THE COURT: Yes, sir. It's in their packet.
10 But I didn't use their packet, because I already have my
11 own format. But if you go through the plaintiff's, you'll
12 see that they have it in their submissions. Even if they
13 don't have the sheet like the way you did it and prefer,
14 they have it still in their submission.

15 MR. COOKSON: Okay.

16 THE COURT: Just for the record, while we're
17 looking, I'm going to say what it says. "Negligence
18 requires both a reasonably foreseeable danger of injury to
19 another and conduct that is unreasonably in proportion to
20 that danger. A person is only responsible for the results
21 of his or her conduct, if the risk or injury is reasonably
22 foreseeable. The exact occurrence or exact injury does
23 not have to be foreseeable. But injury, as a result of
24 negligent conduct, may be" -- excuse me, "may not be."

25 I'm going to start from the semicolon. "But

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1 injury as a result of negligent conduct must be not merely
2 possible, but probable. There is negligence if a
3 reasonably prudent person could foresee injury as a result
4 of his or her conduct, and acted unreasonably in the light
5 of what could be foreseen. On the other hand, there is no
6 negligence if a reasonably prudent person could not have
7 foreseen any injury as a result of his or her conduct, or
8 acted reasonably in the light of what could have been
9 foreseen."

10 You have it? I want to make sure that you saw
11 that.

12 MR. COOKSON: Yes, that's fine. And I want it
13 to be clear, that we're going to be -- the jury has to be
14 instructed that the negligence standard applies to the
15 negligent hiring.

16 THE COURT: Do you have a charge you're
17 proposing? Like what's the number you're talking about?
18 Because I'm not writing a charge. And if you're offering
19 a charge, this charge doesn't require edits. And I want
20 to make sure that when you say that the jury has to be
21 instructed, what exactly are you asking me to read?

22 One thing I don't do is, I don't mess with the
23 jury charges too much because that's reversible error a
24 lot. So, if you have something you want to present, you
25 need to present it.

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1 MR. COOKSON: All I'm saying is, that the
2 negligence standard only applies to the negligent hiring
3 cause of action, that's all.

4 THE COURT: And I said what I said, so then
5 that's the record. So, I guess this stays in.

6 MR. COHEN: What I would suggest is that we
7 could work with Mr. Cookson and agree to a jury
8 instruction that says that this only applies to the
9 negligent hiring claim, so there is no confusion.

10 MR. COOKSON: Because the other two are
11 potential --

12 THE COURT: No, no, I need convincing. To the
13 extent that you two are going to work on it, you'll get
14 back to me. And so there is some things to bring back
15 like the other. So, this is 123 and 126 to be reserved.
16 And you're going to come back with edits, okay.

17 So continuing with the order that I have. After
18 212 I have 270 proximate cause. And I believe that's on
19 the defendants' list.

20 MR. COHEN: It's on ours too, Your Honor.

21 THE COURT: Okay, I didn't use your version
22 because I already had it in my binder. But there were no
23 edits, so we leave it as it is. So, is that a problem?

24 MR. COHEN: No, Your Honor.

25 THE COURT: Okay. The next one that I have that

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1 I would read is, 2:235. And this reads, "Conduct of
2 another employer, employee, scope of employment." This is
3 plaintiff's, and that was provided in the packet, as I'm
4 sure you see.

5 MR. COOKSON: No, it didn't. It went from 270
6 to 277.

7 MR. COHEN: 235.

8 THE COURT: 2:235.

9 MR. COHEN: Yes. Actually one thing that we did
10 do, is we have our jury instructions numbered. So it's
11 plaintiff's jury instruction number 12.

12 MR. COOKSON: I don't have your jury instruction
13 numbered.

14 THE COURT: That's just how they numbered it on
15 top.

16 MR. COOKSON: Oh, up there.

17 THE COURT: That's how they did theirs. Off the
18 record.

19 (Discussion held off the record)

20 THE COURT: Back on the record. All right, so
21 there that is. You see that, right?

22 MR. COOKSON: Yes, that's a very standard charge
23 for employer, employee. So, I don't object to it.

24 THE COURT: Great. So, the next one I have
25 after Pattern Jury Instruction 2:235 that was modified and

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1 not objected to is?

2 MR. COHEN: 237.

3 THE COURT: Yes, is 2:237 modified, regarding
4 liability for the conduct of another, employer, employee,
5 rule for tort. Are you good with that?

6 MR. COOKSON: Yes.

7 THE COURT: Great. I just have to make a
8 notation on something. Because you have that format with
9 the way you printed, it prints on the other side. So when
10 I fill up the pages, I have what you already have and I
11 have to make sure that I don't read that. It's just
12 editing. So that's why I'm taking a little longer than
13 normal. Okay, great. So Patterned Jury Instruction 2:237
14 as modified is acceptable without objection.

15 Next one I have, PJI 2:240, "Liability for the
16 conduct of another, negligent supervision, hiring or
17 retention." And that's modified.

18 MR. COHEN: It's only modified to the extent
19 that the names of the parties are --

20 THE COURT: I want to make sure that that's
21 clear for the record, that what I'm reading during this
22 trial is already modified.

23 Is that without objection, sir?

24 MR. COOKSON: I'm sorry, Your Honor. Could we
25 just go back to 237, because I didn't realize that it was

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1 modified.

2 THE COURT: Okay. Going back to PJI 2:237.

3 Yes, this is the liability of the conduct of another,
4 employee or employer, willful tort, which reads, "Even
5 know applied employers acts was intentional, the employer
6 is nonetheless responsible for plaintiff's damages, if you
7 find that the employee was acting in furtherance of the
8 employer's business and within the scope of the employee's
9 authority."

10 MR. COOKSON: We just took the word "reckless"
11 out?

12 MR. COHEN: Yes.

13 MR. COOKSON: Okay, I just wanted to know the
14 modification.

15 THE COURT: So, we maintain that that is
16 acceptable as modified. And going back to the modified
17 PJI 2:240, "Liability of the conduct of another, negligent
18 supervision, hiring or retention of employee." Yes, I'm
19 going to read it. "Liability for the conduct of another,
20 negligent supervision, hiring or retention of employee."

21 Okay, counselor Mr. Cookson.

22 MR. COOKSON: Again, if counsel could tell me
23 what the modification is.

24 THE COURT: It's here in the --

25 MR. COHEN: The only modifications that were

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1 made, were putting in the names of the employer, the
2 individual defendants.

3 MR. COOKSON: Where is --

4 MR. COHEN: Are you looking at 2:240?

5 MR. COOKSON: Yes.

6 MR. COHEN: The third paragraph. "If you find
7 that the defendant, Kosova Properties' employees" --

8 THE COURT: Counselors, is there somebody
9 here -- is anybody we need to be concerned about hearing
10 this?

11 MR. COOKSON: No.

12 THE COURT: So what's the status now, Mr.
13 Cookson, with this charge?

14 MR. COHEN: Mr. Bliss we discussed earlier.

15 THE COURT: So, he should step outside. Mr.
16 Cookson, did you have an objection regarding this?

17 MR. COOKSON: I got distracted, sorry.

18 (Pause)

19 MR. COOKSON: Well, they give examples in the
20 pattern charge about incompetence issues, propensities,
21 bad decisions given to horseplay. And they have inserted
22 those terms in reference to Shpend Nezaj and Lazer Plumaj
23 specifically.

24 THE COURT: I'm not understanding what you're
25 saying. Is there an objection to the proposed edits?

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1 What are you doing?

2 MR. COOKSON: The charge seems to follow the
3 pattern charge. But I'd like at least an opportunity to
4 work with them to see if we can straighten that out.

5 THE COURT: Okay.

6 MR. COHEN: We're agreeable to that.

7 THE COURT: We'll just add this to the list.
8 This is going to be PJI 2:240 as modified, added to the
9 list to be reserved and discussed further, along with the
10 previous two that we discussed.

11 What's the next one? The next charge I have is
12 PJI 2:277 as modified by plaintiff.

13 MR. COOKSON: What number is that one?

14 MR. COHEN: It's number 18.

15 MR. COOKSON: Mine says, "damages."

16 MR. COHEN: Yes, that's it.

17 MR. COOKSON: Your Honor, at least as to
18 malicious prosecution, that charge talks about the actual
19 damages that you can recover.

20 THE COURT: I'm not trying to be difficult when
21 I say this, and I hear what you're saying. But what are
22 you asking me to do? You're telling me this charge is not
23 relevant? Are you telling me you need edit it? Like I
24 need to know to the extent that you want to discuss this,
25 what are we discussing?

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1 Is the jury here.

2 COURT OFFICER: No, four of seven.

3 THE COURT: So, while he's looking at, I'm going
4 to read the charge. This is Pattern Jury Charge 2:277
5 modified as it reads: "Damages. My charge to you on the
6 law of damages must not be taken as a suggestion that you
7 should find for the plaintiff. It is for you to decide on
8 the evidence presented and the rules of the law I have
9 given you, whether the plaintiff is entitled to recover
10 from the defendant. If you decide that the plaintiff is
11 not entitled to recover from the defendant, you need not
12 consider damages. Only if you decide that the plaintiff
13 is entitled to recover will you consider the measure of
14 damage. If you find that the plaintiff is entitled to
15 recover from the defendant, you must render a verdict in a
16 sum of money that will justly and fairly compensate the
17 plaintiff for all losses resulting from the injuries and
18 disabilities he sustained."

19 MR. COOKSON: I don't see the modification.
20 What was the modification?

21 THE COURT: Okay, is there no objection? No
22 objection?

23 MR. COHEN: I obviously made a mistake here.

24 THE COURT: No objection?

25 MR. COOKSON: No.

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1 THE COURT: Did you go through these before
2 today?

3 MR. COOKSON: I went through some of them. I
4 didn't realize --

5 THE COURT: So, that's it.

6 The next one that I have is, yes, Pattern Jury
7 Instruction 2:277 A. Again, it says modified. It's
8 regarding damages. Comment by counsel during closing
9 remarks. Is it, in fact, modified?

10 MR. COHEN: It's modified only to list Gregory
11 Scott as the plaintiff. I believe that's the only
12 modification.

13 THE COURT: Okay, great. So, do you have an
14 objection to that, Mr. Cookson?

15 MR. COOKSON: I had a problem with this, I know
16 I did.

17 THE COURT: I know, I'm listening.

18 MR. COOKSON: I know you're listening, judge.

19 (Pause)

20 THE COURT: While he's looking I'm going to
21 clarify something for myself. 2:240, "Liability for the
22 conduct of another, negligent supervision, hiring or
23 retention." I took that out. That is one that you're
24 going to reserve to edit collectively. Do you have that
25 in your notes?

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1 MR. COHEN: That is 2:240?

2 THE COURT: 2:240.

3 MR. COHEN: 240?

4 THE COURT: Yes, 2:240.

5 MR. COHEN: Yes.

6 THE COURT: Reserved. Okay, I indicated that on
7 your copy of the sheet. Thank you.

8 Mr. Cookson.

9 MR. COOKSON: What I was thinking about when I
10 read this, this is in the section of PJI called
11 "Negligence actions," and it speaks to damages. But as I
12 said in the malicious prosecution section, which is not in
13 the negligence field, it's in the intentional tort. It
14 also discusses damages and describes what kind of damages,
15 to me, what kind of damages are available in a malicious
16 prosecution case.

17 I realize the lines are blurred because we have
18 these three distinct theories. It's not a nice, simple
19 negligence case where something is being judged by the
20 same standard. And I'm not sure that the damages are
21 always the same and therefore, I raised that.

22 THE COURT: I'm not sure what you're raising.
23 Again, I'm not trying to be difficult. I want to know
24 what he's saying. Your objection to come in, you want
25 time to edit. What do you want?

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1 MR. COOKSON: I think that I can live with this
2 if the malicious prosecution charge goes in.

3 THE COURT: Well, both of you are going to --
4 just to be clear, there is definitely going to be a
5 malicious prosecution charge. What that's going to read
6 as, obviously we're going to have to discuss in detail.
7 Because I think that you both see competing interests, I
8 think. So, I guess that this is without objection this is
9 coming in, malicious prosecution. So, thank you for that
10 review.

11 The next one I'm going to discuss is PJI 2:284,
12 damages, personal injuries, emotion distress and physical
13 consequences thereof. That was plaintiff's. So, I'm
14 asking you, Mr. Cookson, did you have an objection?

15 MR. COOKSON: I don't have an opinion until I
16 hear what the damages are.

17 THE COURT: So, the way that this charge reads,
18 I'm going to read this charge in the record, because I
19 don't think that you have to wait. Let me read the
20 charge. "If you find that the plaintiff is entitled to
21 recover from the defendants, you must also include in your
22 verdict, damages for the mental suffering, emotional and
23 psychological injury and any physical consequences
24 resulting from the emotional distress caused by the
25 wrongful act of the defendants."

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1 So, yeah, whatever plaintiff testifies to,
2 whatever he says, to the extent that you already know that
3 he's asking for money, I don't see how that charge doesn't
4 come in.

5 MR. COOKSON: You're right, it says if you find.

6 MR. COHEN: Yes.

7 THE COURT: Okay, so great. That charge is
8 going to be included. Wonderful. So, that's the record
9 and just if I could just briefly recap to make sure that
10 we're on the same page, because I'm anticipating we're
11 going to take a break soon.

12 What I have is, we agree for the charges of the
13 PJI from 120 to 122. Reserve the issue to discuss burden
14 of proof, to the modification as it is pertains to 1:23,
15 versus 1:64. We agree on PJI 1:24 to 1:30.

16 Regarding PJI 1:55, general instruction
17 admission by party statement, we're reserving. Regarding
18 PJI 1:56 is withdrawn. And just for the record, that is
19 general instruction, admission by a party by conduct.

20 Regarding PJI 1:64, as previously mentioned that
21 would be addressed with burden of proof as it pertains to
22 1:23, and that was modified. Regarding PJI 1:66, evidence
23 submitted for a limited purpose, credibility, that's
24 reserved.

25 There is no issue with PJI 1:70, direct and

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1 circumstantial evidence. Regarding PJI 178, 1:78,
2 stipulation of facts, that was withdrawn. Regarding PJI
3 1:79 judicial notice of facts during trial, the Court will
4 overrule the defendants' objection. Excuse me, the Court
5 overruled the defendants' objection, and we made a record
6 of the objection.

7 MR. COOKSON: Well, this was my charge, so.

8 MR. COHEN: It was plaintiff's objection.

9 THE COURT: The Court overruled the plaintiff's
10 objection. The record was made to preserve the
11 defendants' status. Yes, thank you.

12 PJI 1:92, interested witness remains. PJI 1:93,
13 interested witness as it pertains to compensation of fact
14 witness is withdrawn. PJI 1:94, to be determined. That's
15 regarding the pretrial deposition upon trial.

16 PJI 2:70, proximately caused remains. Regarding
17 PJI 270, proximate cause in general.

18 What is this? Sorry, on your paper, defense
19 counsel, you have PJI 2:70 proximate cause in general on
20 the second page, but you also had it on the first page and
21 I didn't understand the distinction between the two. I
22 didn't bring that up when we first talked about it, but I
23 don't think that there is a difference. So, I mention and
24 I apologize about that. But it doesn't matter, to the
25 extent that I believe that you all agree that that's in.

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1 2:70, proximate cause is in. So, regarding PJI 2:240,
2 liability for the conduct of another, negligent
3 supervision, hiring, is reserved.

4 Now, the big one that we have to discuss, we're
5 going to take a break before we discuss it, it's going to
6 take a lot. We're going to discuss now PJI 3:50,
7 malicious prosecution. So, with that said, I want to ask
8 you something. When I went on Westlaw I see that you both
9 call this 3:50, defense counsel, you call it something
10 else. When I go to Westlaw I see that it's 3:50,
11 intentional torts, misuse of legal procedure, malicious
12 criminal prosecution. 3:50 A, intentional torts, misuse
13 of legal procedure, malicious civil prosecution.

14 To the extent that I think that we're using
15 different books or different editions, I want to make sure
16 that the wording mirrors the statute. I printed out, I
17 printed out for you all. Can you just -- I want you to
18 see how I saw the way that the charge reads without any
19 edits, so we can see when we start talking about all the
20 numerous edits you each made to this charge respectively.

21 So, I want you to look at that and I'm going to
22 come back in a minute.

23 (Short recess taken)

24 THE COURT: We're going discuss the malicious
25 prosecution because that's the big one. We'll start with

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1 the plaintiff's version. We'll note your objection or if
2 you have a recommendation on how you want to discuss this,
3 because clearly we have two conflicting versions of this
4 charge. And I'm not sure how to make it one. If you two
5 think that you can discuss it together and add it to your
6 reserve list and come back with something else, I'll add
7 it to your list for the false arrest and malicious
8 prosecution, and we can revisit it. But that's a serious
9 task, because you would have to come back with something
10 that doesn't take too long tomorrow, because I don't want
11 to keep jurors waiting.

12 So, I'm happy for you to take the time if you
13 can do it, because this is the big charge.

14 MR. COHEN: I don't want to overpromise to the
15 Court that we're going to be able to agree, Your Honor.

16 THE COURT: All right. So, any recommendations
17 on how you want to start this discussion? I say that we
18 start with the plaintiff's version because of the burden,
19 and we work from there. But there is no way for me to
20 reconcile with two versions, there just isn't. So, is
21 there any recommendations, objection, suggestions,
22 objections based already on what I said in terms of the
23 plaintiff's version.

24 MR. COHEN: Number ten is where -- Your Honor,
25 just by way of background. When I drafted this, the

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1 instruction, it was based on the pleadings where --

2 THE COURT: Do we have everybody?

3 COURT OFFICER: Six out of seven.

4 THE COURT: I'm sorry, you said something, did
5 you say something, Mr. Basil? Mr. Cohen, Mr. David Cohen,
6 like why is my colleague sending me over his worksheet.

7 MR. COHEN: I'm sorry, I withdraw that.

8 THE COURT: And personal property, false arrest,
9 that's only because that's what came first in the order,
10 the way you printed it in your instruction. And it was
11 marked as 3.5. That's what made me go to the original, in
12 terms of reading of the charge, it's a little different.
13 "So, as you have heard, the plaintiff, Dr. Gregory Scott,
14 seeks damages for false arrest. Dr. Scott claims that the
15 defendant caused him to be arrested for the crime of
16 criminal mischief in the 4th Degree, and caused him to
17 sustain damages."

18 So, Mr. Cookson, you have a different second
19 sentence, right? Your second sentence is, "A person
20 commits a false arrest" --

21 THE COURT: We're on false arrest? I'm sorry,
22 we were on false arrest and then malicious, and then went
23 to malicious prosecution.

24 THE COURT: When I read the instruction, which
25 one did you want me to read first, malicious prosecution

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1 or false arrest? I put it in the order. I think that you
2 have false arrest first, the plaintiff.

3 MR. COHEN: Yes, Your Honor.

4 THE COURT: Okay. So, I'm keeping the second
5 sentence that the plaintiff has.

6 Okay, so the next sentence, "A person commits
7 false arrest if he or she intentionally, and without the
8 right to do so, caused the arrest or takes into custody
9 another person who is aware of the arrest and does not
10 consent to it."

11 Mr. Cookson.

12 MR. COOKSON: The only addition I made to that
13 is, I pulled it out of the Pattern Jury Instructions, it
14 may have been the commentary. Which adds the language,
15 "Where the arrest is made by the officer not of his or her
16 own volition, but to carry out the defendants' request,
17 which is" --

18 THE COURT: I must be in the wrong spot.

19 MR. COOKSON: You're asking about mine?

20 THE COURT: I'm reading plaintiff's. I'm going
21 sentence by sentence and then I'm going to course at the
22 same time. That's how I'm doing it. Is there a different
23 method that you all want to do? Because it's really
24 difficult to reconcile these things. Because you omit a
25 lot of things, just basic information. And you didn't

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1 have the defendants in yours, so then you did the red
2 lining, which I can appreciate. So, I'm trying to go
3 through all of this at the same time.

4 So, thus far I still like the last sentence I
5 just read, the third sentence of plaintiff's.

6 MR. COOKSON: It's just kind of the way that it
7 was arranged. My first paragraph, second sentence says,
8 "A person commits a false arrest" --

9 THE COURT: Your what paragraph?

10 MR. COOKSON: It's my first paragraph, but it's
11 the second sentence.

12 THE COURT: What in your first paragraph are you
13 saying about that?

14 MR. COOKSON: What am I saying about it?

15 THE COURT: Are you saying that a person commits
16 a false arrest if he or she intentionally is -- where are
17 you saying that is?

18 MR. COOKSON: In my charge.

19 THE COURT: Okay, I'm going to say this again.
20 It is really difficult to reconcile these together. So,
21 because I'm reading the plaintiff's, each sentence I'm
22 asking you what's wrong with each sentence.

23 MR. COOKSON: Okay.

24 THE COURT: I have to take somebody's and start
25 with somebody's. But to me, plaintiff has more information

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1 and yours does a lot of general. You use words like
2 "instigate" and instigate doesn't incorporate everything.

3 So, I want to go by plaintiff's and start with
4 that. So, where we are in this instance, you have a
5 better understanding of what you wrote last night. I just
6 read it for the first time this morning. So, I haven't
7 had an opportunity to really absorb it. You know better
8 than I'm reading the sentence, which part you want to edit
9 in that section. And I don't say that as a critique to
10 you or to be critical, just as a fact where we are and how
11 we're trying resolve this.

12 So, what I did you thus far is, I read the first
13 paragraph from plaintiff's and I read the second one and
14 those are fine to me thus far. Please don't hesitate to
15 tell me because to me it can get confusing.

16 MR. COOKSON: The second paragraph is not bad.
17 And the third paragraph does more of what mine does in the
18 first paragraph in terms of --

19 THE COURT: So, we're going to start reading the
20 third paragraph in plaintiff's now. "In addition, one who
21 instigates or directs an arrest or detention made by
22 police officers is liable, therefore the arrest is made
23 not of his or her own volitions, but to carry out the
24 defendants' request. Such a person is not liable if he or
25 she merely gives information to the officer, leaving it to

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1 the officer to act or not to act as her and her or she
2 did" --

3 MR. BASIL: It's supposed to be he or she.

4 THE COURT: So to add "as he." So, that's an
5 acceptable sentence to me.

6 MR. COOKSON: Yes, that's fine.

7 THE COURT: So, with these cases, I'm not sure
8 why these cases are here. You're going to read these
9 cases?

10 MR. COHEN: No, Your Honor. Sometimes the Court
11 likes to see, because this is from the commentary in the
12 patterned charge. So, it's just so that those are the
13 cases that --

14 THE COURT: I'm going to move to the next
15 paragraph now, okay?

16 MR. COHEN: We don't expect you to read the case
17 citations, Your Honor.

18 THE COURT: Great. The next paragraph, "Dr.
19 Scott claims that the defendant Hamdi, instigated or
20 directed his arrest or detention made by police officer,
21 without a warrant for the criminal mischief in the 4th
22 Degree, for breaking a window at the apartment building
23 Dr. Scott resides."

24 That reads perfectly to me. What's the problem
25 with that?

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1 MR. COOKSON: I don't think that it clearly
2 reflects what the testimony has been.

3 THE COURT: Well, to the extent that -- go
4 ahead.

5 MR. COOKSON: So far the testimony has been that
6 Lazer Plumaj on his own summoned the officers and caused
7 the arrest or set the arrest in motion.

8 THE COURT: Let me interrupt, and I'm so sorry.
9 To the extent that the paragraph starts with "Dr. Scott
10 claims," "Dr. Scott claims," it is just a contention. And
11 to the extent that plaintiff's wrote that part, I think
12 that they are in the position to know what this guy is
13 going to say on the stand here. And I'm going to give you
14 a little bit more credit to write what you think that your
15 people are going to say when we get to it, because it's
16 coming. But I'm not in a position saying that I think
17 what their contentions are.

18 Now, if you think that it's premature at this
19 time that paragraph two what the contingents are, I'll
20 reserve that. But when you want to incorporate what was
21 said thus far by the witnesses, you want to add more facts
22 to the sentence? So, what's your proposal?

23 MR. COOKSON: Well, my proposal is my
24 submitted --

25 THE COURT: So far. What part in your

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1 submission addresses this paragraph? That's what you're
2 forgetting. That's how you have to do it when I say do
3 it. You have to articulate on the record when I read a
4 section, what you were trying to amend it to say and why.
5 And I will tell you --

6 COURT OFFICER: They are here.

7 THE COURT: Unfortunately, we can't do that at
8 this time, the jury is here. So, we're going to start and
9 continue our trial. Is the witness here?

10 MR. COOKSON: Yes.

11 THE COURT: Your client is here? Okay, great.
12 So, yes, we will put a pin where we are.

13 MR. COHEN: Your Honor, could we have two
14 minutes?

15 THE COURT: Absolutely, I'm sorry. Take all the
16 time you need.

17 MR. COOKSON: I would like to use the men's
18 room.

19 THE COURT: Absolutely, absolutely, absolutely.

20 THE COURT: Don't forget, we have to discuss the
21 verdict sheet. So we have a day before us. Thank you.

22 (Short recess taken)

23 COURT OFFICER: All rise. Jury entering.

24 (Jury present)

25 THE COURT: Good morning. You can all sit down.

H. NEZAJ - BY PLAINTIFF - DIRECT/MR. COHEN

1 Counselor, your witness.

2 MR. COHEN: Good morning, Your Honor. Plaintiff
3 calls Hamdi Nezaj.

4 THE COURT: Thank you.

5 THE COURT CLERK: Please raise your right hand.

6 **H A M D I N E Z A J ,**

7 **Called as a witness by the Plaintiff, was first duly**
8 **sworn or affirmed and testified as follows:**

9 THE WITNESS: Yes, I do.

10 THE COURT CLERK: Thank you. Please state your
11 name for record.

12 THE WITNESS: Hamdi Nezaj.

13 THE COURT CLERK: Please spell your name.

14 THE WITNESS: H A M D I N E Z A J, last name.

15 2126 Muliner Avenue Bronx, New York.

16 THE COURT CLERK: Thank you. You may be seated.

17 Judge, the witness is sworn.

18 THE COURT: Good morning.

19 THE WITNESS: Good morning.

20 THE COURT: I want to tell you a couple of
21 things. Please when you speak, speak into that mic so we
22 can hear you, because acoustics in the room are horrible.

23 THE WITNESS: I'll try.

24 THE COURT: That's all I can ask. Also, listen
25 to the question asked. If you can answer in yes or no, do

H. NEZAJ - BY PLAINTIFF - DIRECT/MR. COHEN

1 so. These are very trained lawyers, they will follow up.
2 If you don't understand the question, say so and I will
3 have whoever is asking you the question, to rephrase the
4 question.

5 THE WITNESS: Okay.

6 THE COURT: If you don't know the answer, you
7 just say you don't know. If you don't remember, say you
8 don't remember. But distinguish between the two because
9 they are not the same.

10 THE WITNESS: Okay.

11 THE COURT: Thank you so much. Again, speak
12 into the mic. You can push it forward if you need to.
13 Whichever way is convenient and comfortable for you.

14 You can begin.

15 DIRECT EXAMINATION

16 BY MR. COHEN:

17 Q Good morning, sir.

18 A Good morning.

19 Q Are you familiar with a company called Kosova
20 Properties, Incorporated?

21 A Yes, I am.

22 Q And what is your position in that company?

23 A I'm the officer, I'm the owner.

24 Q You're the owner of the company?

25 A Yes.

H. NEZAJ - BY PLAINTIFF - DIRECT/MR. COHEN

1 Q Are you the sole owner of the company?

2 A Yes.

3 Q Is that your son sitting over there in the courtroom,
4 your son?

5 A Yes.

6 Q Shpend?

7 A Shpend.

8 Q Is he an owner of the company?

9 A He's my son.

10 Q My question is, is he an owner of the company?

11 A I'm the owner of the company. Shpend is my son.

12 Q So, am I correct that he's not an owner of the
13 company?

14 A Well, on the paper I'm an officer and owner of Kosova
15 Properties Inc. Shpend is my son. So, he has no official
16 position. He's my son.

17 Q Sir, as the judge said, please just try to answer my
18 question. I'll ask you one more time.

19 Is your son an owner of the company?

20 A I don't know him as an owner. I know he's my son.

21 Q I'm sorry. Did you say --

22 A I do not know him as an owner, he is my son.

23 Q Thank you, sir. Kosova Properties owns an apartment
24 building at 83 Park Terrace West, is that correct?

25 A Yes.

H. NEZAJ - BY PLAINTIFF - DIRECT/MR. COHEN

1 Q How long have you owned that property, sir?

2 A Since 1976.

3 Q How many rental units does it have?

4 A Thirty-eight apartments.

5 Q I'm sorry?

6 A Thirty-eight apartments.

7 Q Thirty-eight apartments?

8 A Yes.

9 Q Do you know the plaintiff Greg Scott who is sitting
10 here?

11 A Yes, I do.

12 Q And does he lease an apartment at 83 Park Terrace
13 West?

14 A He lives on 83 Park Terrace West, apartment 3 A.

15 Q Do you know what apartment he leases?

16 A 3 A.

17 Q And how long has Mr. Scott lived in the building?

18 A I don't remember the years. I don't know how many
19 years.

20 Q More than ten years?

21 A More than ten, more than probably 18 or 19 or
22 something like that, I don't know.

23 Q How many bedrooms are in Dr. Scott's apartment?

24 A Two bedrooms.

25 Q Do you know how much Dr. Scott pays each month in

H. NEZAJ - BY PLAINTIFF - DIRECT/MR. COHEN

1 rent for his apartment?

2 A I don't remember the numbers.

3 Q Is Dr. Scott's apartment a rent stabilized apartment?

4 A Yes, it is.

5 Q And does that mean that because it's rent stabilized
6 that you're limited in the amount that you can raise the rent
7 on an annual basis?

8 A The rent gets raised whenever the rent stabilization
9 laws allow me to do.

10 Q Do you know what the market price is for Dr. Scott's
11 apartment?

12 A Do I know what?

13 Q The market price.

14 A No, I don't.

15 Q Now, you testified about your son. Would you agree
16 that Shpend has a special relationship with Kosova Properties
17 because he is your son?

18 A I don't know if I can call it special relation. I
19 know that he's my son and he works when something is needed.

20 Q Well, would you agree that he had a special
21 relationship to Kosova Properties by virtue of the fact that
22 he's your son?

23 MR. COOKSON: Objection to the form.

24 A I did not hear you.

25 THE COURT: What did you say?

H. NEZAJ - BY PLAINTIFF - DIRECT/MR. COHEN

1 MR. COOKSON: I said objection to form, Your
2 Honor.

3 THE COURT: Do you understand the question?

4 THE WITNESS: I did not hear him.

5 THE COURT: I'm going to ask him to repeat it
6 and then I'm going to ask you to tell me if you understand
7 it.

8 Would you prefer that it's read back or would
9 you like to repeat or rephrase right now?

10 MR. COHEN: I will rephrase it.

11 Q Does your son help you because you are his father?

12 A In my culture, yes.

13 Q Does your son have a position within the building?

14 A I don't know what do you mean by position?

15 Q Does he have a title?

16 A I never named him with that. I don't understand.

17 Q Does he have the authority to act on behalf of Kosova
18 Properties in your absence?

19 A Yes.

20 Q And you authorized Shpend to act on behalf of Kosova
21 Properties if you are not there, is that correct?

22 A If I'm not there? Yes.

23 Q So, if you're not at the building, your son has the
24 authority to make decisions on behalf of Kosova Properties, is
25 that correct?

H. NEZAJ - BY PLAINTIFF - DIRECT/MR. COHEN

1 MR. COOKSON: Objection.

2 THE COURT: Overruled.

3 MR. COOKSON: I'm just asking.

4 THE COURT: Overruled.

5 MR. COOKSON: A time period, that's all.

6 THE COURT: Overruled.

7 Q Please answer the question.

8 A I think that you have to speak a little bit louder.
9 I'm 79 years old and my ears are not doing the way they are
10 supposed to be.

11 Q I will try my best, sir.

12 MR. COHEN: Could you read back the question.

13 THE COURT: Yes.

14 (Record read)

15 A Correct.

16 Q In 2015 who was the superintendent at 83 Park Terrace
17 West?

18 A Year 2015?

19 Q Yes, sir.

20 A Lazer. And in Albanian it's Lazur, in English Lazer.

21 Q And what is his last name?

22 A I don't remember.

23 Q Is it P L U M A J, Plumaj?

24 A Say that again.

25 Q P L U M A J.

H. NEZAJ - BY PLAINTIFF - DIRECT/MR. COHEN

1 A Plumai [phonetic].

2 Q That was his name?

3 A Yes, yes.

4 Q You hired Lazer Plumaj to be your superintendent for
5 83 Park Terrace West, correct?

6 A Right.

7 Q And Lazer was hired by the corporation Kosova
8 Properties, correct?

9 A By me.

10 Q Well, was he hired by your corporation?

11 A The corporation cannot be by itself. It was hired by
12 me, by Hamdi.

13 Q So, are you testifying today that he wasn't hired by
14 your corporation?

15 A I'm saying I hired him.

16 Q Sir, do you recall giving testimony under oath at a
17 deposition in this case?

18 A I did not hear what you, what was the question again.

19 Q My question was, do you recall giving testimony under
20 oath in this case previously in a deposition?

21 A I don't remember. That's long time ago.

22 MR. COHEN: Your Honor, may I present the
23 witness with --

24 THE COURT: Listen, I want to say something.
25 This microphone is usually good but I think it's the

H. NEZAJ - BY PLAINTIFF - DIRECT/MR. COHEN

1 angle. Because I see you leaning over. I'm asking if you
2 can do this, see if you have a better side. So the fares
3 can carrying you're a different podium. Can you move it
4 off and talk.

5 Is there something that you can do to bring
6 yourself closer to that microphone, whether that means
7 move the podium. Is that better? I don't know, talk.

8 MR. COHEN: Can you hear me now, sir?

9 THE COURT: That's much better. I know it's a
10 little bit awkward, but if you don't do that we're going
11 to keep going back and forth because I can't hear you. So
12 we'll try this for a while. You can also use that table.
13 But, again, I want you to be comfortable. But we'll see
14 how this works for now.

15 MR. COHEN: Thank you, Your Honor. Your Honor,
16 may I?

17 THE COURT: Yes. I'm sorry, one more thing
18 briefly, briefly. Let's go talk inside.

19 (Discussion held off the record in the robing
20 room)

21 THE COURT: So, ladies and gentlemen, just
22 briefly. We're going to stipulate to a particular fact
23 that you can take as true and not in dispute. Where Hamdi
24 hired Lazer Plumaj, he hired him as an employee of Kosova
25 Properties. That is not in dispute, thank you?

H. NEZAJ - BY PLAINTIFF - DIRECT/MR. COHEN

1 Continue. Move on.

2 MR. COHEN: Thank you, Your Honor.

3 Q Did you hire Lazer to be your superintendent for the
4 building?

5 A Yes.

6 Q Where did you meet Lazer?

7 A I met Lazer in a hardware store in Broadway and 180
8 something -- 182nd Street, 183rd or 184th, I'm not too sure.

9 Q Did you say you met him in a hardware store?

10 A Hardware store.

11 Q In fact, did you meet him at a bar?

12 A Did I meet him where?

13 Q At a bar while you were drinking?

14 A No. I said that at that time because the attorney
15 kept annoying me with questions how did he meet him. Where did
16 I meet him. Why did he meet him.

17 Q Are you talking about at your deposition?

18 A Yeah.

19 Q Do you recall what you answer was at your deposition
20 to that question?

21 A I remember that I said that, yes.

22 THE COURT: Counsel, please come in the back.

23 (Discussion held off the record in the robing
24 room)

25 THE COURT: Okay, counsel, proceed.

H. NEZAJ - BY PLAINTIFF - DIRECT/MR. COHEN

1 Q So, if I understand your testimony correctly, sir,
2 you were not telling the truth at your deposition, is that
3 correct?

4 A I was annoyed by the attorney. And then I said I met
5 him in a strip club bar. Which I never been in my life. I
6 have no time to go to strip clubs.

7 Q Let me ask you this, judge, before you gave your
8 deposition you were sworn to tell the truth, correct?

9 A Yes.

10 Q And, in fact, you did not tell the truth in that
11 deposition with regard to where you met Lazer, is that correct?

12 A I was annoyed by the attorney.

13 Q I'm not asking you that. I'm asking you, did you
14 tell the truth when you were sworn to tell the truth during
15 your deposition, where you met Lazer?

16 A At that time, yes, I did not tell the truth at that
17 time.

18 Q You did not tell the truth at that time, correct?

19 A Yes.

20 Q Did you meet Lazer at a strip club?

21 A No. What kind of club?

22 Q A strip club?

23 A That's where I said I did not tell the truth at that
24 time.

25 Q You did not tell the truth during your deposition,

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1 correct?

2 A At that time.

3 Q Well, what do you mean "at that time"? When you were
4 under oath on that question?

5 A Right.

6 Q And that was because you were annoyed at the lawyer?

7 A I was annoyed by the attorney.

8 Q And as a result you gave untruthful answers?

9 MR. COOKSON: Objection.

10 THE COURT: Overruled.

11 Q You can answer the question.

12 A What was the question again?

13 Q The question was, because you were annoyed by the
14 lawyer, you gave untruthful answers during your deposition?

15 A Untruthful, yes.

16 Q And you were sworn to tell the truth, correct?

17 A Yes.

18 Q And you're sworn to tell the truth today?

19 A Yes.

20 Q So, how do we know that you're going to tell the
21 truth today?

22 A I don't know how you would know that.

23 Q Sir, are you annoyed with my questions?

24 A If I'm annoyed?

25 Q Yes, are you annoyed with my questions?

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1 A Well, you're asking me the same question over and
2 over and over again.

3 MR. COHEN: With the Court's indulgence for a
4 moment.

5 THE COURT: Sure.

6 (Counsel conferring)

7 (Pause)

8 Q Before you hired Lazer to be the superintendent for
9 the building, did you conduct a background check on him?

10 A Did I do what?

11 Q Did you conduct a background check on him?

12 A No.

13 Q Why not?

14 A I never did the background check on supers.

15 Q So, is it fair to say that it's your policy not to
16 conduct background checks for supers?

17 A It's not my policy. I did not see it needed at that
18 time.

19 Q Do you need to do that now when you hire somebody, do
20 you run a background check on them?

21 A Now it might be needed.

22 Q But when you hired Lazer you said that it wasn't
23 needed?

24 A At that time, no.

25 Q Did you contact any of his prior employers?

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1 A No.

2 Q And why is that?

3 A Because I saw some of his work that he did.

4 Q What, pictures?

5 A Yeah.

6 Q Wouldn't it have been helpful to have contacted his
7 employers to see what kind of a worker he was?

8 A At that time I didn't see that it was needed to
9 contact.

10 Q Was there sometime later that you think that it might
11 have been a good idea to have asked his employers about the
12 work that he performed for them?

13 A I don't understand the question.

14 Q I'll of strike that question.

15 Sir, does Kosova Properties have an employee manual?

16 A I don't understand it.

17 Q Do you know, have you ever heard of the term employee
18 manual?

19 A No.

20 Q Like essentially a book or a pamphlet that has the
21 policies of the company, do you have anything, was there such a
22 document that Kosova Properties had?

23 A No.

24 Q And why is that?

25 A I didn't need it. First of all, I never ask supers

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1 to write everything that they do.

2 Q In fact, Lazer did not keep a superintendent's log,
3 is that correct?

4 A I don't know what he kept.

5 Q You testified at your deposition that he did not keep
6 any documents?

7 A I don't know what he kept, so.

8 Q You don't know what he kept? Well, let me ask you
9 this, as the owner of Kosova Properties did you request that
10 Mr. Lazer keep documents or logs?

11 A No.

12 Q Was your son Shpend, was he involved in the hiring of
13 Lazer?

14 A Can you repeat the question again.

15 Q Was your son involved in the hiring of Lazer?

16 A I don't understand the question.

17 Q Well, would it be fair to say that you hired him
18 yourself without delegating that to anybody else?

19 A I still don't understand the questions.

20 Q Do you know what I mean by delegating something?

21 A Do I know why what?

22 THE COURT: I want you to rephrase the question.
23 Use a different word.

24 Q Did your son help you decide whether to hire Lazer?

25 A Asked me to decide?

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1 Q Or did he help you decide?

2 A Yes.

3 Q Did you authorize your son to hire Lazer as the
4 superintendent?

5 A I had the final word.

6 Q I'm sorry, I didn't hear you.

7 A I had the final word.

8 Q You had the final word. Now, you were the super of
9 83 Park Terrace West at one point, correct?

10 A I was the super when I bought the building, yes. I
11 was the owner, I was the super, I was everything.

12 Q You could have trained Lazer to be the super, is that
13 correct?

14 A I don't understand what, what is the question, sir?

15 Q I'll rephrase the question.

16 Did you train Lazer to be the super of the building?

17 A Things that he did not know I show him how to do
18 things, and he did not know.

19 Q Sir, you have no records regarding the hiring of
20 Lazer, correct?

21 A I don't understand the question.

22 Q I mean, you do not have any written documents
23 regarding the hiring of Lazer?

24 A No.

25 Q Not a single document, right?

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1 A I have no documents, no.

2 Q And is that because you keep all that information in
3 your head?

4 A At that time I was young and I had a lot of things in
5 my head, yes.

6 Q Am I also correct that you don't have files on each
7 tenant in the building?

8 A I don't have what?

9 Q Any files, any paper files regarding the tenants?

10 A I have leases of the tenants.

11 Q But other than that, you do not have any other
12 documents, correct?

13 A No.

14 Q Sir, you're aware that in September of 2015 a window
15 was broken in the building?

16 A Yes.

17 Q And you're aware that Dr. Scott was arrested for
18 that, you're aware of that?

19 A Dr. Scott was what?

20 Q You're aware that he was arrested by the police for
21 that?

22 A I heard that.

23 Q Now, sir, prior to the time that the window was
24 broken, you had a very low opinion of Dr. Scott, is that
25 correct?

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1 A First I did not hear the question. And I don't know
2 what --

3 Q I'll say the question again.

4 Before the window was broken, you had a very negative
5 opinion of Dr. Scott, correct?

6 A I had opinion?

7 Q You had a very negative opinion regarding Dr. Scott,
8 isn't that fair to say?

9 A No.

10 Q That's not true?

11 A I had no opinion about Dr. Scott.

12 Q And in your deposition you said that --

13 MR. COOKSON: Objection.

14 MR. COHEN: Well --

15 THE COURT: I didn't hear the question.
16 Frankly, I didn't hear the question. You didn't complete
17 the question, so it's hard to see --

18 MR. COOKSON: He said, in the deposition you
19 said, and that's when I objected.

20 MR. COHEN: I can show him the transcript.

21 MR. COOKSON: Well, that's --

22 THE COURT: Okay. Can you rephrase. Do you
23 have a question you would like to ask without reference to
24 the dep?

25 MR. COHEN: Regarding the deposition.

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1 THE COURT: Do you have a question you want to
2 ask without referencing the dep first, deposition first.

3 MR. COHEN: I already asked it.

4 THE COURT: Ask another question first before
5 you make reference to a deposition.

6 MR. COHEN: Yes, Your Honor.

7 THE COURT: Thank you.

8 Q Your negative opinion of Dr. Scott preceded the
9 broken window incident for many years, is that correct?

10 A No.

11 MR. COHEN: May I ask --

12 THE COURT: Okay.

13 MR. COHEN: May I approach the witness?

14 THE COURT: Sure. Just what we discussed in the
15 back, sure.

16 THE WITNESS: I don't have my glasses with me.

17 MR. COOKSON: Your Honor, before we start this
18 can we just have a quick sidebar?

19 THE COURT: We're going to take another break.
20 You can looking over.

21 Did you give the witness something to review?

22 MR. COHEN: Yes, I gave him the page of the
23 deposition.

24 THE COURT: Okay. Before we go in the back, can
25 you direct him what area you want him to read while we go

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1 in the back.

2 Q Sir, I would ask you to read on page 202 of your
3 deposition, beginning from line six through line 18.

4 THE COURT: You understand? You don't need
5 this.

6 THE WITNESS: No, I read that.

7 THE COURT: Okay, I'll be back.

8 (Discussion held off the record in the robing
9 room)

10 Q Sir, I've handed you a copy of your deposition
11 transcript. Do you recall giving testimony under oath on May
12 1st, 2018?

13 A That's what it says here.

14 Q Again, at that time you were sworn to tell the truth,
15 correct?

16 A Correct.

17 Q The last question I asked you, let me ask you this
18 question. Prior to the time that the window was broken, you
19 had a very low opinion of Dr. Scott?

20 A That's what it says here, yes. That's what it says
21 here.

22 Q But you just testified before that you had no
23 opinion?

24 A I had an opinion on him for certain things.

25 Q For what?

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1 THE COURT: Certain.

2 Q Your very low opinion of him, you had that for a long
3 time, is that correct?

4 A That's what it says there.

5 Q And when you gave that testimony at your deposition,
6 that was the truth, wasn't it?

7 A That's what it says here.

8 Q But my question is, when you made that statement
9 under oath, that was a true statement, correct?

10 A Correct.

11 Q At some point you found out that Dr. Scott was
12 arrested for breaking the window, is that right?

13 A Can you repeat the question.

14 Q At some point you found out that Dr. Scott was
15 arrested for breaking the window?

16 A That window, yes.

17 Q And when you found out that Dr. Scott was arrested
18 for breaking the window, that made you feel good, correct?

19 A That means I what?

20 Q When you found out that Dr. Scott was arrested for
21 breaking the window, it made you feel good?

22 A I don't know what make me feel. I don't remember
23 then what make me feel. I don't remember then.

24 Q Well, would it be helpful to look at your deposition
25 to refresh your recollection?

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1 A I don't understand what you're saying at all.

2 Q Let me ask you this, when you found out that Dr.

3 Scott broke the window, how did you feel?

4 A How did I feel then?

5 Q Yes.

6 A I felt like he broke the window.

7 Q And did it make you feel good that he was arrested?

8 A Not because the window was broken, no, that was
9 damage in my property. It did not make me feel good.

10 Q What made you feel good was the fact in Dr. Scott was
11 arrested, is that fair to say?

12 A I heard that he was arrested after.

13 Q You've already testified that you had a very low
14 opinion of him. You wanted him out of the building, isn't that
15 correct?

16 A No, that's not correct.

17 Q You were aware that Dr. Scott and some of the other
18 tenants formed a tenants' association, is that true?

19 A I heard that.

20 Q You heard that. And that was before the window was
21 broken, wasn't it?

22 A I don't know if it was before or after, I don't know.

23 Q And you were not happy with the fact that Dr. Scott
24 was forming a tenants' association, correct?

25 A I heard that he tried to form tenants' association.

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1 Q My question, sir, is, you were not happy about the
2 fact that Dr. Scott was trying to form a tenants' association,
3 correct?

4 A I heard that, that he tried to form a tenants'
5 association.

6 Q My question was, you were not happy about that,
7 correct?

8 A Sir, I heard that he tried to form the tenants'
9 association.

10 THE COURT: I need you to rephrase the question.
11 Rephrase the question.

12 Q When you heard that Dr. Scott was forming a tenants'
13 association, that was something that you did not like, is that
14 fair to say?

15 A Something that I did not what?

16 Q Something that you did not want or -- yes, you did
17 not want that?

18 A No, I did not like.

19 Q You didn't like having a tenants' association,
20 correct?

21 A There was no need for tenants' association.

22 Q So, because there was no need for a tenants'
23 association, was that one of the reasons why your opinion of
24 Dr. Scott was so low?

25 A My opinion of Dr. Scott was low when one time I went

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1 with prospective tenant for one apartment and I showed the
2 tenant.

3 MR. COHEN: Your Honor, he's not responding to
4 the question.

5 MR. COOKSON: Objection.

6 THE COURT: Overruled. Continue.

7 A And I showed the tenant the apartment. The tenant
8 liked the apartment. Was very happy with what I had to offer
9 him. And I went downstairs to show him the laundry room. And
10 Dr. Scott was in the laundry room with some one or two more
11 tenants there. And he start yelling at, screaming at me about
12 laundry room service. Then I lost the tenant. And when I left
13 the laundry room he said, I don't want to live in this kind of
14 building.

15 MR. COHEN: Move to strike. Hearsay.

16 THE COURT: Overruled.

17 Q Let me ask you the question again, and I would
18 appreciate if you could respond to my question. And that is,
19 you said that there was no need for a tenants' association,
20 right?

21 A Right.

22 Q And Dr. Scott was trying to organize a tenants'
23 association, right?

24 A I don't know what he was trying to do.

25 Q You just testified that he was trying to organize a

H. NEZAJ - BY PLAINTIFF - DIRECT/MR. COHEN

1 tenants' association?

2 A I don't know for what reason he was trying to
3 organize tenant association.

4 Q I'm not asking you what his reason was. My question
5 is, that when he was organizing the tenants' association, that
6 was one of the reasons why you said you had a very low opinion
7 of Dr. Scott, isn't that right?

8 A Right.

9 Q I'm sorry, that's right?

10 A Right.

11 Q Now, with Lazer being the superintendent of the
12 building, did he have authority to take certain actions on
13 behalf of the building?

14 A Did he have authority to do what?

15 Q To take certain actions on behalf of the on behalf of
16 Kosova?

17 A For the repairs, yes.

18 Q And I would take it that as superintendent, he would
19 inspect the building to make sure that everything was in order?

20 A To check the building when he was around, yes.

21 THE COURT: I'm sorry, can you read back.

22 Q Are you aware that Lazer told the police that Dr.
23 Scott broke the window?

24 A I heard after the window was broke.

25 Q Right. But you did hear that Lazer told the police

H. NEZAJ - BY PLAINTIFF - DIRECT/MR. COHEN

1 that Dr. Scott broke the window?

2 A I heard that he called the police.

3 Q And you also heard that he told the police that he
4 saw Dr. Scott break the window?

5 A I don't know what he told the police, I wasn't there.

6 Q At the time that the window was broken you believed
7 Lazer's accusation that Dr. Scott broke the window, correct?

8 A Do I believe what?

9 Q We'll take it in pieces. At the time that the window
10 was broken, when you first learned that the window was broken
11 and that Dr. Scott was arrested for breaking the window, you
12 believed that Lazer, Lazer's accusation that Dr. Scott broke
13 the window was true?

14 A Yes.

15 Q And you still believe Lazer's accusation was true,
16 correct?

17 A Yes.

18 Q What is Kosova's policy when a tenant commits a
19 crime?

20 A There is no written policy.

21 Q So there is, you said there is no written policy. Is
22 there an oral policy?

23 A The oral policy is if somebody does something that
24 they don't supposed to do, to let me know.

25 Q To let you know?

H. NEZAJ - BY PLAINTIFF - DIRECT/MR. COHEN

1 A Yes.

2 Q Is the policy to let you know before they call the
3 police?

4 A No, the policy is to let me know, if they can reach
5 me, to let me know that this was done.

6 Q But isn't the policy of Kosova Properties that if an
7 employee believes that a tenant has committed a crime, to
8 report it to the police?

9 A I don't know all that.

10 MR. COHEN: Your Honor, I would like to show the
11 witness what has been marked as plaintiff's Exhibit 1.
12 May I approach?

13 MR. COOKSON: I know that we addressed this
14 before. Just over objection.

15 THE COURT: As we discussed previously.

16 MR. COOKSON: That's correct.

17 (Witness perusing)

18 THE COURT: Can you see that?

19 THE WITNESS: No, not even what you give me will
20 help, the light.

21 THE COURT: The light is not an issue. Are you
22 sure you can't read it with this?

23 THE WITNESS: I'm a hundred percent sure.

24 Q Sir, I've handed you what's been marked --

25 THE COURT: He can't see it to read it. Is the

H. NEZAJ - BY PLAINTIFF - DIRECT/MR. COHEN

1 sentence identified? I'd like it to write it and print it
2 in a bigger font.

3 THE WITNESS: Yes, if somebody reads it.

4 THE COURT: If not, I'll write it in a bigger
5 font.

6 Q My first question is, if you turn to page three you
7 see there is a signature. Is that your signature?

8 THE COURT: He says that he can't read it. Can
9 you look at page three at least, I think that you can
10 identify your signature.

11 THE WITNESS: That's my signature.

12 THE COURT: Yes, thank you.

13 Q Sir, I'm going to read something from the first page
14 of this document.

15 THE COURT: I apologize I have to interrupt.
16 Did we mark this into evidence as an exhibit? Did we
17 premark this as an exhibit?

18 MR. COOKSON: It's marked as plaintiff's Exhibit
19 1 on the document.

20 THE COURT: I want to make sure that it's clear
21 for the record.

22 MR. COOKSON: Not marked here.

23 THE COURT: This is stipulated, it's going to be
24 plaintiff's Exhibit 1, it's in evidence. Just for the
25 record to be clear. Thank you. Now keep talking about

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1 it.

2 MR. COOKSON: Can we just authenticate what it
3 is. He's saying that we're reading from page three.

4 THE COURT: Right, he's in the process of doing
5 that. Before you, just to be clear, we're not setting a
6 foundation because we stipulated that this is going into
7 evidence.

8 MR. COOKSON: I understand.

9 THE COURT: Great. Thank you.

10 Q Sir, I'm reading from the page, it has the heading is
11 Kosova Properties. And at the bottom of the page is numeral
12 one. It's the second page of the exhibit, and I'm going to
13 read a sentence that says, "We have never encountered such
14 means of annoyance by a tenant and do not know of any other way
15 to handle it" --

16 THE COURT: I need you to go slow. I need you
17 to go very slow.

18 MR. COHEN: Yes, Your Honor.

19 THE COURT: Start from the begin slowly and
20 loudly.

21 THE WITNESS: Exactly.

22 Q "We have never encountered such means of annoyance by
23 a tenant and do not know of any other way to handle it except
24 to call the authorities to report it."

25 THE COURT: You to need it read again.

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1 THE WITNESS: I don't understand.

2 THE COURT: Okay.

3 THE COURT: Let's read it one more time so he
4 can hear it again, and then you can ask the question.
5 Just read it one more time and very slowly.

6 Q "We have never encountered such means of
7 annoyance" --

8 THE WITNESS: Such means what?

9 THE COURT: Annoyance. Tell us if you can't
10 hear what he's reading, that's important. If you can't
11 hear what he's reading, let us know so he can reread it
12 and loudly.

13 Q "We have never encountered such means of annoyance by
14 a tenant, and did not know of any other way to handle it except
15 to call the authorities to report it."

16 My question, sir, is, these are your words from your
17 signed letter, correct?

18 A Yeah, I signed.

19 Q The window was broken in September of 2015, is that
20 correct? Well, I'll ask you, do you remember?

21 A If I remember, I mean, I don't know the exact what
22 month, what --

23 Q Well, let's say that it was in the later part of
24 2015.

25 A Yes.

H. NEZAJ - BY PLAINTIFF - DIRECT/MR. COHEN

1 Q And Lazer stopped working for Kosova Properties in
2 early 2017, is that correct?

3 A I don't remember the dates and the months, I don't.

4 Q But was he -- did he continue to work for the company
5 after the window was broken?

6 A I don't know when he left. I don't remember the
7 dates and the months, I don't.

8 THE COURT: Counselor, is that a fact that we
9 can stipulate to?

10 MR. COOKSON: I'm sorry, I didn't hear that.

11 THE COURT: What date did the defendant, the
12 super leave?

13 MR. COOKSON: I think that it was about two
14 years later.

15 THE COURT: I'm sure that we can stipulate to
16 that as soon as we get the exact date. Ask your next
17 question and we'll stipulate to that.

18 Q So, Lazer continued to work at the building for more
19 than a year after the broken window incident, correct?

20 A He continued to work. I don't know for how long,
21 but.

22 Q Now, Lazer wasn't, he wasn't fired, right?

23 A No.

24 Q He left voluntarily, correct?

25 A He left on his own.

H. NEZAJ - BY PLAINTIFF - DIRECT/MR. COHEN

1 Q After he left his employment, have you had any
2 contact with him?

3 A No.

4 Q Do you know where he currently resides?

5 A No.

6 Q Have you attempted to find out where he lives?

7 A No.

8 Q After Dr. Scott was arrested, did you talk with the
9 police?

10 A Did I do what?

11 Q Did you talk with the police?

12 A I did not talk to the police.

13 Q Did you talk with the DA's office?

14 A No.

15 Q Did you say anything under oath about Dr. Scott's
16 criminal case?

17 A Did I say what?

18 Q Did you say anything under oath about Dr. Scott's
19 criminal case?

20 A I don't remember.

21 Q You don't remember?

22 A No.

23 THE COURT: I'm sorry, do you know what the term
24 means "under oath"? Do you know what he means by that?

25 THE WITNESS: Yeah.

H. NEZAJ - BY PLAINTIFF - CROSS/MR. COOKSON

1 THE COURT: Okay, great. I just want to make
2 sure.

3 MR. COHEN: One moment, Your Honor.

4 (Counsel conferring)

5 Q Do you know if your son, Shpend, spoke with the
6 police regarding the broken window?

7 A I don't know. He did handle more, he knows more
8 about this than I do. But I don't know if he talked to the
9 police, I don't.

10 Q After the broken window incident and after Dr. Scott
11 was arrested, did you request that an investigation be done
12 regarding the incident?

13 A No.

14 (Counsel conferring)

15 Q Did Shpend tell you what happened regarding the
16 incident, regarding the window?

17 A Yeah, he told me that he, according to the super,
18 according to Lazer, that Mr. Scott broke the window.

19 MR. COHEN: Thank you, sir.

20 THE COURT: Anyone need a break? Great.

21 MR. COOKSON: Let's see if we can make it to the
22 podium.

23 THE COURT: Try to speak into the mic.

24 CROSS-EXAMINATION

25 BY MR. COOKSON:

H. NEZAJ - BY PLAINTIFF - CROSS/MR. COOKSON

1 Q Good afternoon, Hamdi. Do you mind if I called you
2 Hamdi?

3 A That's what I like. Everybody calls me Hamdi. The
4 entire building, everybody.

5 Q Where were you born?

6 A In January 15, 1946, in Albania.

7 Q In Albania. And when did you come to the United
8 States?

9 A Say that again.

10 Q When did you come to the United States?

11 A 1967, '66, '67.

12 Q What kind of schooling have you had in your life?

13 A Well, the schooling I had in Kosova, in Albania.

14 Q And how far did you get? Did you go to the
15 university or --

16 A Well, from Kosovo, from Albania I went to Kosova when
17 I was two years old, not even two years old. And then I stayed
18 in Kosova for 18 years, 18 and a half years.

19 Q And when you came to the United States, where did you
20 come?

21 A I was in Italy for about eight months.

22 Q And after that?

23 A Cannes [sic] before I came here.

24 Q And when you came here, where did you come?

25 A I came to New York, in Arthur Avenue in Bronx.

H. NEZAJ - BY PLAINTIFF - CROSS/MR. COOKSON

1 Q And did you come with members of your family or by
2 yourself?

3 A No, no, I had my wife with me and I had cousins and
4 uncles. One uncle and cousins.

5 Q And when you arrived, did you begin working?

6 A I start working the following day.

7 Q And what kind of work did you start doing the
8 following day?

9 A Piano work.

10 Q You mean not playing the piano, building them, fine
11 tuning them?

12 A Yeah, tuning them, making them. Even doing what I
13 did not know much about pianos.

14 Q How long did you do that?

15 A About eight, nine months, eight months.

16 Q And then you moved onto something else?

17 A Well, at that time I had another job.

18 Q What was the other job?

19 A The other job was in 46 Street for Gotham Ring
20 Company.

21 THE COURT: What is that, Gotham ring, R I N G?

22 THE WITNESS: Yeah.

23 Q How is it that you came to own buildings?

24 A Well, I used to live with my cousins and my uncle.
25 So when we came here, we were 17 people in the family.

H. NEZAJ - BY PLAINTIFF - CROSS/MR. COOKSON

1 THE COURT: I'm sorry, 17 people?

2 THE WITNESS: Seventeen people in one family.

3 THE COURT: In one family.

4 A And we were together. We lived together, we eight
5 together. We had, we rented one apartment, two bedroom, and
6 that's how we started.

7 Q Rented?

8 A Rented, yes.

9 Q So, as time went along and the family expanded?

10 A Well, after two, three years we put some money
11 together and we bought a piece of property on Elm Place by
12 Fordham Road in Bronx. It was 13 apartment building. We paid
13 about \$7800 at that time down payment. We borrowed more than
14 half of the money from people that we knew, because I didn't
15 have, my salary at that time was \$47 a week.

16 Q By that time you hadn't bought a building yet or had
17 you?

18 A Not Elm Place, no.

19 Q So, just moving along, how did you get to the point
20 where you were able to buy a building?

21 A Well, I lived with my wife, we separated after a
22 while because the family expanded. And then I start to work in
23 different jobs. I was working for nine and a half years 32
24 hours a week. So, I saved some money, I borrow some money from
25 people that I knew. That's how Albania community does things

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1 at that time. Did things at that time.

2 Then I heard that this building came on market. It
3 was owned by an elderly couple. And one of the brokers told me
4 that this property is in market. I heard that Mr. Aaron
5 Ziegelman, one of the biggest owners at that time in Manhattan,
6 bought the property around 9:00. When he went to close it,
7 around 9:00 for X amount of money. And sold it to me around
8 10:30, 11:00 for, I paid \$37,800 or \$37,500, plus I got the
9 mortgage from him. That's how he used to operate. I got three
10 mortgages, wraparound mortgages. And I moved in the building.
11 I start to work. And I had two and a half jobs. I start to
12 work in the building.

13 Q That's the building that we're talking about?

14 A That's the building, 83 Park Terrace West.

15 Q So, when you moved in you were the super, you were
16 everything?

17 A I was everything, yes. I was the porter, I was the
18 super, I was whatever is needed.

19 Q And as the years went along did the building
20 remaining more or less a family business?

21 A Yes.

22 Q How many full-time employees does the building have
23 that work in the building every day?

24 MR. COHEN: Objection.

25 A Now or then?

H. NEZAJ - BY PLAINTIFF - CROSS/MR. COOKSON

1 MR. COHEN: When?

2 Q 2015.

3 A I had a part-time super. That means that he was
4 working full time somewhere else. And before he went to work
5 he took care of what is needed to be taken care of. And after
6 he came from work, he took care of what was needed to be taken
7 care of.

8 Q And in 2015 that was Lazer?

9 A Lazer, yes.

10 Q And does Lazer have an apartment at the building?

11 A Yes.

12 Q And is that how he was compensated for the work that
13 he did?

14 MR. COHEN: Objection. Leading.

15 THE COURT: I apologize. Your objection is?

16 MR. COHEN: Leading.

17 THE COURT: I'll allow it. Continue.

18 Q You can answer.

19 A At that time?

20 Q At that time 2015.

21 A Yes.

22 Q Was the compensation he got from Kosova an apartment?

23 A He had an apartment and I paid for gas and
24 electricity.

25 Q But he was otherwise a tenant in the building as

H. NEZAJ - BY PLAINTIFF - CROSS/MR. COOKSON

1 well?

2 A Well, he had the apartment downstairs, super's
3 apartment.

4 Q Now, there was a lot made of how you came to meet
5 Lazer and that you said something in your last deposition about
6 it because you were annoyed by what the lawyers were doing and
7 saying, is that correct?

8 A That is correct, yes.

9 Q And the implication was that if you lied then, you
10 must have lied throughout the deposition. Is that true?

11 MR. COHEN: Objection.

12 THE COURT: Sustained.

13 Q Did you lie again after that comment about --

14 A No, I did not. But I told, he got me to a position
15 with the same question, where did you meet. I meet people
16 every day. And I said I met him. He said, where did you meet
17 him? I got annoyed and I said in a strip club. Which I regret
18 that I said. But I said just to get at him the way that he was
19 attacking me with questions.

20 Q Understood. What would you say that Lazer's job
21 responsibilities at the building were?

22 A Well, he's supposed to clean; mop; broom; mop; clean;
23 change washers; take garbage out twice a week. And if there
24 are any washers that need to be done or fix that he can do it,
25 he's supposed to do it.

H. NEZAJ - BY PLAINTIFF - CROSS/MR. COOKSON

1 Q Would you say that most of what he does is not
2 skilled labor?

3 A Well, most of it does, it's things that he was hired.
4 The building, after I left the building, I took care of
5 everything. The building was in good shape, was well
6 maintained. And it shows that probably for 30, 40 years, I
7 would say 30 plus years, I had zero violations in the building,
8 zero. That means not too many buildings in New York have a
9 zero violation. Because if somebody called me for something,
10 even if it was 10:00, it was 10:00, but I was there.

11 Q Now, how would you describe Lazer's job performance
12 during the time that he was living and working there?

13 A I was happy with the work that he did. But I guess
14 that he was not too happy, that's why he left. And most of it
15 was because Mr. Greg Scott.

16 Q What do you mean by that?

17 A Well, he would complain something, and he would go to
18 do the work and Mr. Greg Scott will just annoy him.

19 I had that situation a couple times with him myself.
20 When I went to do, to inspect, he requested sink, bathroom sink
21 to be, the faucet to be fixed, to be changed, to be fixed. And
22 I said I cannot fix this, I'm going to change this. And I was
23 checking --

24 MR. COHEN: Objection.

25 THE COURT: I'm sorry?

H. NEZAJ - BY PLAINTIFF - CROSS/MR. COOKSON

1 MR. COHEN: Objection. Hearsay. He's
2 testifying to an out-of-court statement for the truth of
3 the statement.

4 THE COURT: Yes, yes, he did.

5 Try not to say what people tell you. Try not to
6 say.

7 MR. COHEN: Your Honor, I move to strike that
8 portion.

9 THE COURT: You can strike it. You can strike
10 it. Sure, we're going to have to strike that.

11 Next question.

12 Q When Dr. Scott was attempting to form a tenants'
13 association, do you know for what reason he was doing that?

14 A I was just guessing he was not happy.

15 THE COURT: I'm sorry, that's sustained. You
16 have an objection?

17 MR. COHEN: Yes, objection. Objection. Calls
18 for speculation.

19 THE COURT: Thank you. Next question.

20 Q The letter that counsel had you read from or he read
21 to you, I can't remember how it happened, was a response to a
22 complaint that had been made against you, correct? Not you
23 personally, but Kosova?

24 A I think so, yes.

25 Q Do you remember what the context of what he read to

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1 you was? By that I mean, what was the event that prompted you
2 to say this?

3 MR. COHEN: Objection. We talked about this,
4 Your Honor. If he wants to open the door to this --

5 THE COURT: I'll allow it. You can answer.

6 MR. COOKSON: You want me to rephrase?

7 THE COURT: What are you trying to read, the
8 same sentence?

9 MR. COOKSON: Yes, just give me one second, it's
10 hard to read.

11 THE COURT: Can we listen to it and you can tell
12 me if this is the sentence. "We have never encountered
13 such means of annoyance by a tenant and did not know of
14 any other way to handle it, except to call the authorities
15 to handle it." Is that the sentence?

16 MR. COOKSON: Yes.

17 THE COURT: Is that accurate?

18 MR. COOKSON: Yes, I believe that's accurate.

19 THE COURT: Do we agree that's an accurate
20 receipt of the sentence at issue?

21 MR. COHEN: Yes, Your Honor.

22 MR. BASIL: Yes.

23 THE COURT: Did you hear me?

24 THE WITNESS: I heard you.

25 THE COURT: Should I read it again?

H. NEZAJ - BY PLAINTIFF - CROSS/MR. COOKSON

1 THE WITNESS: I don't understand.

2 THE COURT: So, this is a sentence that was read
3 to you and I just reiterated it. Thank you.

4 Do you have a question?

5 MR. COOKSON: I was going to read from the
6 sentence above.

7 THE COURT: Counsel.

8 MR. COOKSON: I'm sorry?

9 THE COURT: Counselor, no, you're not. Pursuant
10 to what? We'll talk in the back.

11 Does anybody need a break? We'll take a five
12 minute break.

13 COURT OFFICER: All rise.

14 (Jury exits)

15 (Short recess taken)

16 COURT OFFICER: All rise.

17 (Jury present)

18 THE COURT: Thank you for the break, we
19 appreciate it.

20 Just a friendly reminder that you're still under
21 oath. You can ask your questions.

22 CROSS-EXAMINATION

23 BY MR. COOKSON: (Continued)

24 Q When Dr. Scott attempted to form a tenants'
25 association, did you do anything about it?

H. NEZAJ - BY PLAINTIFF - CROSS/MR. COOKSON

1 A No.

2 Q And why did you feel that a tenants' association was
3 not necessary?

4 A Because there was nothing wrong with the building.

5 Q What were the attitudes of the tenants in terms of
6 how you ran the building?

7 MR. COHEN: Objection.

8 THE COURT: Sustained.

9 A Every single tenant --

10 THE COURT: I'm sorry, don't answer the
11 question. Next question.

12 Q Did you form relationships with your tenants? Did
13 you know them on a personal level?

14 A I know every tenant. I knew every tenant by name,
15 how long they been here. Not exactly the days or months. But
16 most of my tenants are there more than 30 years.

17 Q What, if anything, do you know about the facts that
18 led up to Dr. Scott's arrest, if any? Personal knowledge, what
19 personal knowledge do you have about what led up to the arrest,
20 what happened to the case?

21 A I don't know much about the case. I know that he got
22 arrested. Most of the things were handled at that time by my
23 son, Shpend.

24 MR. COOKSON: Okay, thank you very much.

25 THE COURT: All right. Any redirect?

H. NEZAJ - BY PLAINTIFF - REDIRECT/MR. COHEN

1 MR. BASIL: Your Honor, do we have that
2 stipulation.

3 THE COURT: Sure. We're going to put a
4 stipulation on the record.

5 MR. BASIL: The stipulation is that at the
6 beginning of this case there was a different attorney than
7 the one you see here today. The attorney for all
8 defendants, including the witness, was an attorney named
9 Claude Castro.

10 THE COURT: So, just as before, the stipulation
11 is a fact that you can take as given, as true.

12 REDIRECT EXAMINATION

13 BY MR. COHEN:

14 Q Sir, was Claude Castro your attorney in this case?

15 A Not that I know.

16 Q So, you're saying that you don't know who your
17 attorney was?

18 A I this case was Julian Kaufman, if I'm correct.

19 Q And isn't it true that prior to Mr. Kaufman
20 representing you, you were represented by Mr. Castro?

21 A Not on this, no.

22 (Counsel conferring)

23 Q You heard the stipulation that, in fact, Mr. Castro
24 was your attorney in the case?

25 A Not on this case, no.

H. NEZAJ - BY PLAINTIFF - REDIRECT/MR. COHEN

1 Q I'm asking you, do you know what a stipulation is?

2 A [No response]

3 Q A stipulation is an agreement --

4 THE COURT: Excuse me. I didn't hear the answer
5 to that question.

6 Do you know what a stipulation is?

7 THE WITNESS: So, kind of agreement between --

8 Q Fair enough. An agreement in this case, an agreement
9 between Mr. Scott and your counsel, or Mr. Scott's counsel and
10 your counsel. And the stipulation was that you were
11 represented by Mr. Castro. Does that refresh your recollection
12 that he was your lawyer?

13 A Mr. Castro, not that I know that Mr. Castro had to do
14 anything with this case, sir.

15 Q Okay. You're saying that he had nothing to do with
16 this case?

17 A Say that again?

18 Q You said, is your testimony that Mr. Castro had
19 nothing to do with this case?

20 A Not that I know. I don't think that Mr. Castro had
21 to do anything with this case.

22 Q Counsel asked you regarding some statements that you
23 made in your deposition specifically regarding where you met
24 Lazer. And you said that you gave false answers because you
25 were annoyed by the lawyers, correct?

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1 A Yes, I was annoyed by the lawyer, by the attorney the
2 way he was asking me questions.

3 Q So, if you were under oath to tell the truth, does
4 that mean that if you're annoyed by some questions that the
5 lawyers asked you, you don't have to tell the truth?

6 A At that time even my attorney, Julian Kaufman me
7 asked me, why did you say that? And I said, I was annoyed by
8 the attorney, the way that he was asking me.

9 Q After you gave your deposition testimony you had an
10 opportunity to correct the record, is that true?

11 A I did not pay too much attention to after.

12 MR. COOKSON: Your Honor, I object. Do you want
13 to, we can go in the back.

14 (Discussion held off the record in the robing
15 room)

16 Q Sir, your deposition was taken in May of 2018. So in
17 the almost seven years since you testified at your deposition
18 regarding how you met Lazer, during that period of time you
19 have not made any attempt to correct that testimony until
20 today?

21 MR. COOKSON: Objection.

22 THE COURT: Overruled. You can answer.

23 A I didn't pay attention to it. At that time my
24 attorney said, why did you say that? And I said, I'm annoyed
25 by the attorney, the way that he was asking me.

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1 Q I'm sorry, I didn't mean interrupt. Are you done
2 answering?

3 A Yes.

4 MR. COHEN: Thank you, that's all the questions
5 I have.

6 THE COURT: Thank you so much, sir. Be careful
7 going down the stairs.

8 (Witness excused)

9 THE COURT: So, I think that this is a good time
10 to break for lunch. I'm going to ask the jury to make
11 sure that you come back on time, 2:15. Make sure that
12 you're in the room at 2:15 so we can get started. I'll
13 have the attorneys come back at 2:00. Thank you.

14 COURT OFFICER: All rise. Jury exiting.

15 (Jury not present)

16 THE COURT: Let's pick up where we were
17 regarding the malicious prosecution. We have 15 minutes.
18 Is there anything else that we need to discuss in terms of
19 this testimony, the testimony this afternoon?

20 MR. BASIL: Dr. Scott, that's the end.

21 THE COURT: I don't know if we're going to
22 finish, I want to.

23 MR. BASIL: I think that we were on 3.5.1, false
24 arrest.

25 MR. COOKSON: Can I just have two seconds to

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1 talk to them before they leave?

2 THE COURT: Yes, yes, yes.

3 (Pause)

4 THE COURT: So, we agree that we are up to Dr.
5 Scott's claims that the defendants, that sentence is the
6 one, two, three, fourth paragraph. You agree to that
7 paragraph as well, correct, because it's Dr. Scott's
8 claims?

9 MR. COOKSON: I don't know why we need "without
10 a warrant."

11 MR. COHEN: That was just from the Pattern --

12 MR. COOKSON: That they wouldn't have needed a
13 warrant.

14 MR. BASIL: We can, I have no problem getting
15 rid of "without a warrant."

16 THE COURT: We agree we're going to take out the
17 wording "without a warrant."

18 MR. BASIL: What paragraph is that?

19 MR. COOKSON: Yours, four.

20 THE COURT: I thought you said you agreed, I'm
21 sorry.

22 So, the next paragraph. "Responsibility for
23 unlawful arrest or detention is incurred not only by the
24 person making it, even though acting as attorney."

25 MR. COHEN: That was just from the pattern

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1 Instructions. That comes out.

2 THE COURT: What are we agreeing to take out?

3 MR. BASIL: "Even though acting as attorney."

4 THE COURT: Mr. Cookson.

5 MR. COOKSON: I'm good with taking that out.

6 THE COURT: Okay, from the top. "Responsibility
7 for an unlawful arrest or detention is incurred by the
8 person make it or by his or her employer, if the act is
9 within the scope of employment, and on the latter
10 question, the employer's rules relating to making arrest
11 admissible."

12 MR. COOKSON: Well, they are certainly not that.

13 THE COURT: What are we crossing out here?

14 MR. BASIL: "The employer's rules." We've just
15 been litigating that.

16 MR. COHEN: We talked about that, that was that
17 one sentence there.

18 MR. BASIL: The lack of policies, that stays in.

19 MR. COOKSON: Well, the way that this is
20 written, it's as though they have a written policy on
21 making arrests.

22 MR. BASIL: Okay.

23 MR. COOKSON: And they are admissible.

24 THE COURT: I'm sorry, what is your objection
25 based on this?

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1 MR. COOKSON: There were no rules. If there is
2 rules, then fine.

3 THE COURT: The whole purpose -- actually, I do
4 not want to say plaintiff's position. But what do you
5 think the purpose of that one sentence was for?

6 MR. COOKSON: To get him to say that.

7 THE COURT: What is the effect of the one
8 sentence and why would this not be why that one sentence
9 is important?

10 MR. COOKSON: Which one sentence?

11 THE COURT: The one sentence that we read, that
12 we had the plaintiff read from the letter. That's exactly
13 what -- what do you think the purpose of the one sentence
14 is that was read from the letter this morning?

15 MR. COOKSON: Well, the implication of it and
16 why I objected at the time.

17 THE COURT: You mean this time. Just to be
18 clear, why you're objecting right now, not at the time,
19 right now. We're on the record right now.

20 Let me reread this again so the record is very
21 clear. The part that I understand you to object to is,
22 "and on the latter question the employer's rules relating
23 to making arrested are admissible."

24 So, you're going to have to explain to me why I
25 think that this should come out in light of the one

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1 sentence that the witness-landlord just read.

2 MR. COOKSON: You let them read it and I will
3 deal with it in summation or some other way.

4 MR. BASIL: So, there is no objection?

5 THE COURT: Well, it's no, it's over his
6 objection.

7 MR. COOKSON: It's over my objection.

8 THE COURT: He wants to maintain an objection
9 for the record.

10 So, the ruling is, that that sentence comes in
11 because the basis is the one sentence from the letter that
12 was read by the witness, Mr. Hamdi, the witness Hamdi,
13 that was the whole purpose of that statement. And the
14 only way that I think that that might appease the
15 situation, is that we, maybe we can consider a different
16 rule. Because as it's read, it's not the rule so much,
17 it's a statement to something that occurs.

18 So, if you're objecting to the rule, rule, the
19 word rule, are you -- I believe that that is something
20 that I can accept for you to change that rule, whether you
21 call it a policy, procedure. But there is definitely
22 enough evidence to have that read.

23 MR. COOKSON: How about the employer's actions
24 relating to making arrests?

25 MR. COOKSON: I don't know.

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1 THE COURT: You want to say that the employers
2 in this case, that there was a statement he read, and on
3 the latter question there was an employer's statement, and
4 then read the statement. And then say, relating to making
5 arrests are admissible. So you know exactly what you're
6 relying on. You can insert the statement there.

7 MR. BASIL: I would prefer not to.

8 THE COURT: They could take it from other facts
9 in the case. So, I'm not, again, if you guys can't come
10 to an understanding about the -- but this stays in. But
11 while I think that you don't want to use the statement,
12 will you keep the word rule? That also can confuse the
13 jury too because you'll have such an ambiguous law. Off
14 the record.

15 (Discussion held off the record)

16 THE COURT: Back on the record. So, over the
17 defendants' objection, that statement stays as is. And of
18 course, we're not going to read the cases. Which brings
19 us to the next paragraph, defendant Kosova's Properties,
20 Hamdi Nezaj, Joey Nezaj and Lazer Plumaj, admit that Dr.
21 Scott was arrested, and that the police officer did not --
22 we'll take out "did not have a warrant," was arrested.
23 But say that under the circumstances the arrest was --
24 this is yours.

25 MR. BASIL: I understand.

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1 THE COURT: This is yours.

2 MR. BASIL: I understand.

3 THE COURT: No, they don't. So, what are you
4 talking about?

5 MR. BASIL: They seem to take a different
6 position.

7 THE COURT: I don't know the question. What
8 establishes that fact?

9 MR. BASIL: That there was lawful?

10 MR. COHEN: To answer your question, Your Honor,
11 this was written before the testimony based on the
12 pleadings and the depositions that they --

13 THE COURT: Now we heard the testimony today.
14 So, what are you saying? Come on.

15 MR. COHEN: So, I'm saying that the language in
16 this part of the proposed charge --

17 THE COURT: So, let's fast forward to the last
18 word in the sentence "arrested," and everything after that
19 is crossed.

20 MR. COHEN: That's fine

21 THE COURT: Do we agree?

22 MR. COOKSON: I think in this paragraph the
23 "admit" should be replaced by "acknowledged."

24 THE COURT: It's the same thing, it's a synonym.

25 MR. COOKSON: Then why can't we use my word?

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1 THE COURT: Because omit, like court, you want
2 to say testify to? We're going to go with synonyms, why
3 not just be accurate, testified to. So there is no room
4 for confusion. I don't care -- there is no problem with
5 that, correct?

6 MR. BASIL: If you want testify to?

7 THE COURT: Well, if we are going to start
8 changing synonyms for what they are, to the extent they
9 accurately reflect what they testified to.

10 MR. COOKSON: They admitted they knew about it.
11 They found out about it.

12 THE COURT: So, there you go.

13 MR. COOKSON: There I go, because they weren't
14 there.

15 THE COURT: Well, but there is a dispute in
16 fact. So, okay, that's why you want it now?

17 MR. COOKSON: Yes.

18 THE COURT: Okay, just a minute.

19 (Pause)

20 THE COURT: Okay. That's accurate, that he
21 testified that they were aware of the arrest. That they
22 know of the arrest.

23 MR. BASIL: Instead of admit? I'm not clear.

24 THE COURT: He's taking an exception to the
25 admit. So now I'm looking for a word that's accurate,

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1 that satisfies his concern. It's a legitimate concern.

2 MR. BASIL: Okay. Was aware, that's fine.

3 THE COURT: Was aware covers it, right, Mr.

4 Cookson? And it's were aware, because it's plural.

5 MR. COOKSON: Well, I'm just --

6 THE COURT: Go ahead.

7 MR. COOKSON: I don't want --

8 THE COURT: What's your proposal? What's your
9 alternative. I know what you don't want. What were you
10 suggesting?

11 MR. COOKSON: It's more of a time thing.

12 THE COURT: I need to know what you're
13 suggesting as an alternative. So, it's 1:00. I have to
14 go. Have a good lunch.

15 MR. COOKSON: Had been --

16 THE COURT: We have to go. We'll talk about it
17 when we get back. Thank you. I lost track of time. We
18 have to go.

19 MR. COHEN: What time?

20 THE COURT: 2:00.

21 (Luncheon recess taken)

22

23

24

25

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1 A F T E R N O O N S E S S I O N

2 THE COURT: I'm going to go on the record. The
3 defendants Kosova Properties, Hamdi, Joey, Lazer, and this
4 is where the issue is, I propose "we're aware that
5 Dr. Scott was arrested." Is that sufficient?

6 MR. BASIL: We're good with that.

7 THE COURT: I think that's a good.

8 MR. COOKSON: Okay.

9 THE COURT: It takes away the word omit. Okay,
10 good.

11 The next paragraph, the defendants must prove
12 that they had a reason cause for believing that both a
13 crime had been committed and that doctor Scott had
14 committed it.

15 MR. COOKSON: I would object to that. That
16 certainly applies to Lazer, since he's the one who
17 supposedly saw it.

18 THE COURT: I disagree. I think that's the
19 issue of the fact for the jury.

20 MR. COOKSON: How can my individual
21 defendants --

22 THE COURT: Because part of the -- I'm sorry.
23 The reason why I can't just limit it to defendant Lazer,
24 is because the other part of the cause of action is
25 pertaining to the hiring, retention, supervision of

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1 Mr. Lazer as an employee.

2 MR. COOKSON: But there has been no testimony
3 that Lazer was the employee of either of the Nezaj's.

4 THE COURT: I'm so sorry. The individuals, the
5 individuals.

6 MR. COOKSON: Yes.

7 THE COURT: As individuals, that's what you
8 mean, versus the property?

9 MR. COOKSON: Correct.

10 THE COURT: What do you say to that?

11 MR. BASIL: I think that everybody agrees that
12 Lazer was an employee of Kosova, period.

13 THE COURT: So, you agree? Period.

14 MR. BASIL: Yes.

15 THE COURT: So, what he's saying is, how are we
16 going to address this, that where it says defendants, he
17 wants it to say the defendant, the K property, Kosova
18 Property and --

19 MR. BASIL: Your Honor, we have claims for false
20 arrest against --

21 THE COURT: Right, that's the other claim.
22 Right -- I talked over you. Finish what you said for the
23 record.

24 MR. BASIL: So, we have a claim about false
25 arrest for not just Lazer, but for Joey and by extension,

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1 respondeat superior by Kosova. In addition, Dr. Noyes
2 testified the first moment of trial, that Joey said that
3 he was there when there was the arrest. That's the
4 testimony. An admission, if you will, from Joey, whether
5 the jury wants to believe that or believe Joey, who says
6 that he wasn't there; that's for the jury.

7 But it's certainly evidence that Joey is a
8 potential false arrest defendant and thereby, since Joey
9 works for Kosova, and Lazer works for Kosova, Lazer is --
10 Kosova is also an appropriate defendant for this.

11 MR. COOKSON: I don't recall Noyes saying that
12 Joey was there for the arrest. I don't think that Noyes
13 was there for the arrest. How would he know?

14 THE COURT: Someone testified that, I can't
15 remember who testified, that while in the police car Joey
16 was right there. Who is that? Who testified to that?

17 MR. BASIL: Nobody yet.

18 THE COURT: How do I know that?

19 MR. BASIL: Probably my opening statement.

20 THE COURT: So, this is the point to that,
21 though. Just like for the same reason why I said that the
22 retention -- I'm sorry, the supervision of the employee,
23 which is why the property is at issue, false arrest makes
24 the individual at issue. Because the jury can infer or
25 believe one of the factual relations, whenever it comes

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1 out, that Joey was right there. Or regardless of that,
2 just based on the testimony, that he's an employee and
3 he's going to do the bidding of his boss.

4 MR. COOKSON: What do you mean by that? What do
5 you mean, he's going to do the bidding? We're talking
6 about Joey now, right?

7 THE COURT: I'm talking about Joey, that's
8 correct.

9 MR. COOKSON: Do the bidding of his boss by
10 what?

11 THE COURT: Don't deviate this part, because I
12 already gave the other example that Joey was present at
13 the time of the event. So, don't pick the one that might
14 sound great, pick the one that you know might come out.
15 Joey was present during the time of the arrest. That
16 alone is sufficient.

17 MR. BASIL: Your Honor, may I quote from the
18 transcript that we just received from our gracious court
19 reporter?

20 THE COURT: I don't think so. Just that fact
21 alone was sufficient, correct, about Joey.

22 MR. COOKSON: It depends if he was downstairs
23 after the arrest had taken place and had nothing to do
24 with the arrest.

25 THE COURT: Again, that's a fact for the jury.

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1 What are you going to read, sir?

2 MR. BASIL: "Sir" -- this is the question that
3 was asked to Dr. Noyes.

4 "QUESTON: "Sir, if I understand your testimony,
5 Joey told you that he saw Dr. Scott break the window?"

6 "ANSWER: Yes."

7 THE COURT: There we are. That is, meaning that
8 we already have the testimony based on where the jury
9 could infer that Joey knew about the arrest and might have
10 had some responsibility for the arrest.

11 Yes, so over the defendant counsel's objection,
12 the defendants will be, what, the property K, Joey --

13 MR. BASIL: I don't think we really have a case
14 against Hamdi, given his testimony.

15 THE COURT: I didn't say Hamdi. So, we're
16 saying, the Property K, Kosova. Not -- Joey and defendant
17 L.

18 MR. BASIL: Lazer.

19 THE COURT: Yes. This is what that's going to
20 pertain to. And this is over your objection, sir, or do
21 you agree, Mr. Cookson?

22 MR. COOKSON: I'm just looking for which --

23 THE COURT: So, it's the defendants Kosova
24 Properties, I want to say Shpend --

25 MR. COOKSON: Where this troubles me is, they

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1 haven't heard yet --

2 THE COURT: Regardless of what they haven't
3 heard, based on what was read and is sufficient.

4 MR. COOKSON: I mean, in the charge --
5 withdrawn. Never mind. Thank you.

6 THE COURT: So, thank you.

7 "So, the defendants Kosova Properties, Shpend
8 Nezaj and Lazer Plumaj, the defendants K Property, Joey
9 Nezaj and Lazer Plumaj, must prove that they had a
10 reasonable cause to believe in that both a crime had been
11 committed, and Dr. Scott had committed it." So, the
12 burden is on the other side in this charge? "The
13 defendant must prove that they had a reasonable" -- off
14 the record.

15 (Discussion held off the record)

16 THE COURT: Back on the record. I'm concerned,
17 because the way that this reads it's the burden of the
18 defendants. I don't like that and I want you to go back
19 to the original charge. That's why I printed that out for
20 us to always make reference back to it. Where do you get
21 that from? Why is this a defendants' burden? Does that
22 come from the charge?

23 MR. BASIL: That's their defense, Your Honor.

24 THE COURT: Okay. This is to address an
25 affirmative defense.

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1 MR. BASIL: Their defense is, they had a
2 legitimate reason for believing that Dr. Scott did the
3 wrong thing.

4 THE COURT: Well, again, I'm -- "must prove." I
5 want to understand something. In the charge does it read
6 anything like that? Where did that word come from?
7 Because we're in the charge of false arrest.

8 MR. COHEN: I took it from the charge.

9 THE COURT: Mr. Cookson, you didn't bring this
10 up, but I want to make sure you understand that this would
11 be accurate, that the defendants would have this.

12 MR. COOKSON: Yes, it seems to me that the
13 burden is on them to prove that we did not have probable
14 cause.

15 THE COURT: I'm sorry, you said that the burden
16 would be on who?

17 MR. COOKSON: Should be on the plaintiff.

18 THE COURT: I'm saying where did you get this
19 wording from, plaintiff? Why is it phrased this way? I'm
20 concerned about that always.

21 MR. COHEN: It's from the standard jury charge.

22 THE COURT: That's what I want to know. Let me
23 go find my copy.

24 What does it say in the standard jury charge?
25 Read it. Read it. I printed it out on that big font for

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1 us. Where is the wording in the charge originally that
2 you see that?

3 MR. COHEN: I'm looking for it, Your Honor.

4 THE COURT: This is why I gave you those
5 printouts. You should probably look at that again and see
6 the original wording. This is exactly what triggered it,
7 from which made me print this.

8 MR. COOKSON: Is this 3.5?

9 MR. COHEN: Yes, it is.

10 MR. COOKSON: Well, 3.5 to me is --

11 THE COURT: What do you mean this is 3.5, false
12 arrest.

13 MR. COOKSON: But if you read the charge, it's
14 all about police officers.

15 MR. COHEN: But there is a supplemental charge.

16 MR. COOKSON: There is a supplemental, and
17 that's called false imprisonment.

18 MR. COHEN: I should say there is a section that
19 talks about individuals being liable.

20 MR. COOKSON: It's 3.5.1.

21 THE COURT: I just need to know. I want to keep
22 you focused on the question where we are. Where that
23 language is. I'm concerned about the burden.

24 So, if you can't show me where you got it, let's
25 tweak it right now. Because I'm disturbed by that

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1 language. I don't like it and I'm not going to use it
2 exactly like that, unless you can show me the basis.

3 I bet you guys appreciate that printout now,
4 right? You thought it was for nothing.

5 We're going to see if the jury is here. We're
6 going to put a pin there on that one, because you guys
7 look like you need to do some investigation. And if you
8 can't come up with something satisfactory to me, I might
9 have to take out that entire paragraph.

10 MR. BASIL: We'll look.

11 THE COURT: So, just remember how we're leaving
12 this. So, unfortunately it's not defense counsel's
13 objection, it's my concern. Okay, so this is to be
14 revisited.

15 Let's go to the next one, maybe we'll have more
16 success with the next paragraph, okay?

17 (Discussion held off the record)

18 THE COURT: We're going start the trial again.
19 We'll just resume later.

20 (Pause)

21 COURT OFFICER: All rise. Jury entering.

22 (Jury present)

23 THE COURT: Thank you for coming back so
24 punctual. We appreciate that.

25 MR. BASIL: Your Honor, plaintiffs call Gregory

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1 Scott.

2 THE COURT CLERK: Please raise your right hand.

3 G R E G O R Y S C O T T , P H D ,

4 Called as a witness by the Plaintiff, was first duly
5 sworn or affirmed and testified as follows:

6 THE WITNESS: I do.

7 THE COURT CLERK: State your name for the record
8 and spell it.

9 THE WITNESS: Gregory Scott. G R E G O R Y
10 S C O T T., 83 Park Terrace West, apartment 3 A., New
11 York, New York 10034.

12 THE COURT CLERK: Thank you. You may be seated.
13 Judge, the witness is sworn.

14 THE COURT: Thank you so much.

15 I know that you were here the whole time, but
16 let me just tell you keep your voice up and listen to the
17 question asked. And if you can answer the question yes or
18 no, please do so. If you don't understand the question,
19 say you don't understand, and I will have whoever is
20 asking you the question rephrase the question. If you
21 don't remember, say you don't remember. If you don't
22 know, say you don't know. But distinguish between the two
23 because they are not the same. Thank you.

24 DIRECT EXAMINATION

25 BY MR. BASIL:

G. SCOTT - BY PLAINTIFF - DIRECT/MR. BASIL

1 Q Good afternoon, Dr. Scott. Dr. Scott, were you
2 arrested on September 16th 2015 for breaking a window at 83
3 Park Terrace West?

4 A Yes.

5 Q And did you break the window?

6 A No.

7 Q I want to delve into your personal background a
8 little so the jury can get to know you. I want to not
9 necessarily take it in sequence.

10 First of all, would you explain to the jury your
11 academic career.

12 A How many minutes do I have?

13 Q Let do this, you graduated from college somewhere,
14 right?

15 A University of California at Irvine.

16 Q When was that?

17 A I was 30, 31.

18 Q And how old are you now?

19 A Seventy-four.

20 Q And what was your furthest level of education?

21 A PhD in philosophy, University of Toronto, 1991.

22 Q 1991?

23 A Yes.

24 Q And since that time have you been employed in the
25 academic field?

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1 A Since '91, yes. I taught first at Texas Tech and I
2 was a full time. Also a philosopher at St. Mary's in Halifax.
3 And then the University of Ottawa for two years. And then I
4 came back to New York, took a position as what's called a
5 post-doc fellowship at Princeton under one of the most famous
6 scholars in the record, Sarah Brody, who does Aristotle's
7 Metaphysics. But simultaneously I was directing the doctoral
8 program of Dance Education at NYU, because I also have a ballet
9 background in addition to the philosophy.

10 So, I was doing those in parallel, because the
11 post-doc did not pay. The directorship paid but as an adjunct.
12 So, I also had to teach to supplement my income, \$30,000 a
13 year, in the New School University. I taught Philosophy of Sex
14 and Philosophy of Art, which were very popular courses. And I
15 taught at the School of Continuing Education at NYU, The
16 Meaning of Life for five years, which is a very popular course.
17 And that took me to almost 2001 for academic.

18 Q Currently, are you retired are you an employee
19 somewhere?

20 A So, I'm semi-retired. I left official positions, I
21 left -- so, IBM, I went full time with IBM in 2001 because also
22 had a computer background. So for 15 years worked for IBM
23 teaching job, our web services and the hybrid cloud.

24 And in 19 -- I wish it was 19. In 2016 I retired. I
25 had turned 66. I wanted to go back to philosophy. So, I

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1 formed my own imprint, Print On Demand Books. And I have
2 published five books since then. One now being supported by
3 specialists on three continents in five languages, that
4 underscore -- that revolutionized western aesthetics stemming
5 from Plato and Aristotle, with philosophy of literature, drama
6 and dance.

7 Q Now, you mentioned IBM, that was a career, if you
8 will, that had nothing or little to do with the study of
9 philosophy, correct?

10 A Little.

11 Q We'll go with little. And other than those two
12 careers, were you ever a landlord?

13 A Yes.

14 Q And when was the first time that you were a landlord?

15 A In Alaska when I was 19 and a half, I was on the
16 basketball team at the University of California at Riverside.
17 So, I first started, before I became a landlord, what got me
18 into being a landlord is, I got tired of working in work study
19 and cleaning towels for the gym and cleaning floors. So,
20 somebody told me, go into real estate, you can make money. So
21 I got a real estate license at 18 and a half.

22 And my best friend -- then I moved to Santa Barbara,
23 but my best friend went to Alaska where I became a landlord.
24 And he said, he was working on one of the fishing boats, very
25 dangerous, making a lot of money. And he said, Greg, come up,

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1 I'll give you the money and we'll buy these two houses. You do
2 the renovations because you have the knowledge -- you'll learn
3 it, and then we'll sell them. And that's what I did. So, I
4 was a landlord at 21 years old in Kodiak, Alaska, and then
5 Santa Barbara.

6 Q Okay. So, after this landlord experience in Kodiak,
7 Alaska, were you ever a landlord again in another geographical
8 location?

9 A Five unit apartment house in Santa Barbara. And then
10 when I was finishing a doctorate, a house in Toronto also.

11 Q And as a landlord, did you also do the work that
12 we've heard about in this trial that a super does?

13 A And even more. I took a college electrical
14 engineering at the community college in Kodiak when I was 20,
15 and wired up the house there. And then I learned how to do
16 plumbing, carpentry, roofing, which I did, I did on the other
17 pieces of property.

18 Q Now, I want to get into your history with the
19 building that's at issue in this case, 83 Park Terrace. When
20 did you move in?

21 A 1998. It was three months before I got the lease,
22 because I sublet from another professor. And then Hamdi gave
23 me the full lease.

24 Q And what floor did you rent?

25 A 3 A, third floor.

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1 Q What is 3 A, what kind of apartment is that?

2 A It's a two bedroom, a thousand square feet, one
3 bathroom.

4 Q And there has been a lot of talk about a window that
5 was broken. Where was the window in -- by the way, did you
6 continuously rent 3 A from 1998 to the present.

7 A If you count a subtenant when I went away for 14
8 months legally, 2017 to 2018 I was away. So, a subtenant was
9 living in the building, but it was still my lease with my
10 responsibility. And then from October 2021 to October 2023 I
11 did a second legal sublet. But apart from that, yes,
12 continuous.

13 Q My point is, you never occupied a different apartment
14 in 83 Park Terrace West, right?

15 A No. No.

16 Q In relationship to the window that was, we all agree
17 was broken, where is that from the third floor? How do you get
18 to that window?

19 A So, there are six apartments on the floors usually.
20 Up going from the ground is five and the next have six units in
21 each up to the sixth floor. So, I'm on the street side, which
22 is east. And there is, there is a long hallway, 60, 80 feet
23 long hallway. And right in the middle is the stairwell, the
24 one and only stairwell in the building.

25 So, I go out of my apartment, take a left and

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1 immediately go right down the stairwell. And if I go down to
2 the second -- so, one and a half flights to the landing is
3 where the window was that had a hole in it on the date that
4 we've been talking about.

5 Q And then if you continue down toward the ground?

6 A Seven more stairs down to the lobby and you get down
7 and all the mailboxes are right here on your right. And you go
8 to the left and you get to the front door of the building.

9 Q Now, since you moved in in 1998, you have spent 17
10 years in the building before the incident of the broken window,
11 correct?

12 A Correct.

13 Q During those 17 years, how would you describe your
14 relationship with the defendants?

15 A Generally it was good. Generally. Minor quibble or
16 two about water not being -- when it was off they didn't post
17 and little niggling things like that. But nothing to cause me
18 to start a tenants' association for 17 years. And I got along
19 well with them.

20 Q Now, we heard testimony that your apartment is a
21 rents regulated apartment, what does that mean to you?

22 A So, in New York City, some of the jurors surely will
23 know but in case you don't, there are two different kinds of
24 rent regulated apartments. There is a rent controlled and rent
25 stabilized, and there are significant differences. I have a

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1 rent stabilized one, which means that, leaving aside rent
2 control which is not us, every year the rent guidelines board
3 add, on average, zero to four or five percent for the increase.
4 And the landlord can then push that amount up when we sign the
5 renewal leases.

6 Q To your knowledge, is your current rent at market,
7 below market or above market.

8 A Well, one has to be clear here. Do you mean market
9 in general or do you mean market for rent stabilized buildings?

10 Q Market. Let's put it this way, if you moved out
11 would the new tenant be paying the same rent that you are
12 paying, to your knowledge?

13 A Okay, that's a different question from the market
14 value. But, so there are now great restrictions on the
15 landlord in terms of how much he can increase the rent when a
16 new tenant moves in. The laws changed in June, July 2019.
17 Before there were various formulae, so that if somebody had
18 been there for 15 years, like many right across from me, almost
19 the same layout, same two bedroom, it goes for \$2700 now. I
20 pay, now I pay officially 1392, even though my lease, the
21 increases since 2015 have taken it up to 1505, because I'm on
22 rent reduction, given what the landlord has done to me. So if
23 you ask me how much my rent is, I have to give you this
24 qualified answer. That, you know --

25 MR. COOKSON: Objection.

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1 THE COURT: Sustained.

2 Q So, have you obtained monetary vantages from the fact
3 that your apartment is rent regulated?

4 A Yes, I pay a substantially less amount than somebody
5 who is not in a rent stabilized building or rent control would
6 pay.

7 Q Now, let's talk about the individual defendants.
8 Hamdi Nezaj.

9 THE WITNESS: May I say something? Nezai
10 [phonetic].

11 MR. BASIL: He's correcting my pronunciation.

12 THE WITNESS: Out of politeness.

13 THE COURT: That's all you can say. Just answer
14 the questions asked of you.

15 THE WITNESS: Yes, out of politeness. It's
16 usually A J in their language is pronounced like an I.
17 So, Nezai [phonetic]. Just to be respectful to them and
18 their culture.

19 MR. BASIL: In that case, I will say just Hamdi
20 so I don't butcher it again.

21 Q So, to your knowledge, is Hamdi the sole owner of
22 Kosova Properties?

23 A Yes.

24 Q And that Kosova Properties owns 83 Park Terrace West?

25 A Yes.

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1 Q And that Hamdi is the person that collects your rent?

2 A Yes.

3 Q And that's been the same since you moved in in 1998?

4 A Yes.

5 Q And tell me how your relationship with Hamdi has
6 evolved over the past time 17 -- well, let's start up to the
7 time of your arrest. How was your relationship with Hamdi
8 during that 17 year period?

9 A So, when I started off it was very good. He liked
10 me. I'd been there for three months. I once teased him when I
11 first moved in and said, hey, you have a 220 volt plug.
12 Remember, I wired houses. And I said, no, you don't. And they
13 have said something about it in their testimony, so let me add
14 to it. And I said, I'll bet you a six pack of beer that you
15 have it. And he said, I don't drink. And so he saw that I
16 knew something and we laughed. And from that point he gave me
17 the lease. And from that point on it was pretty good. There
18 was a dispute about a roommate I had in 2009, he tried to have
19 me evict her. I had to get a lawyer. But then that got
20 settled down, my lawyer sent her the letter. And so then I had
21 other roommates too until, really until 2015 when all the stuff
22 started happening.

23 Q Now, his son that we've used his nickname of Joey.
24 When did you first meet Joey? Knowing that you started your
25 tenancy in 1998.

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1 A I'm sure that it was sometime shortly thereafter or
2 in the early 2000. I mean, he would occasionally come. He
3 was, he's been around the building ever since I was there or
4 shortly thereafter.

5 Q And let me go onto the Lazer. Who was Lazer Plumaj?

6 A Lazer Plumaj was brought in, I don't know the legal
7 situation, but he moved in around January of 2015 after the
8 previous tenant -- previous super left.

9 Q And then he became the new super, correct?

10 A Right.

11 Q So, what was the relationship that you observed
12 between Joey and Lazer as far as authority, business employee?

13 A The same as Joey had with, they had had two supers
14 during my whole tenure there. One for about four years if I
15 recall, and one for about, that would have been one for about
16 10 or 12 years. And Joey always managed the super. Sometimes
17 he would compliment them to me and sometimes he would criticize
18 them to me. So, he was always in control of the supers.

19 Q Now, do you recall Joey testifying yesterday? Were
20 you here for that testimony?

21 A I recall him testifying.

22 Q So, do you recall Joey testifying that there were no
23 problems in the building and no violations?

24 A I do.

25 Q And is that accurate testimony?

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1 A Absolutely not.

2 Q So, you have personal knowledge of problems in the
3 building?

4 A Yes.

5 Q You have personal knowledge of violations?

6 A Yes.

7 Q What do you mean by violations?

8 A There are two kinds. Again, to be clear, there is
9 one from what's call DHCR, Department of Housing and Community
10 Renewal. They are the government organization that takes care
11 of rent stabilized apartments. There is also what's called
12 HPD, Housing Preservation and Development, I think. But that's
13 landlord-tenant court.

14 So, when somebody says L and T court, as Joey did,
15 they mean landlord-tenant. That's the same as HPD court. So,
16 each of them can give violations and can give orders to the
17 landlords to solve the violation. So, sometimes they overlap a
18 little and sometimes they have distinct areas of
19 responsibility.

20 Q And were you previously involved in reporting
21 problems or violations to these entities?

22 A Yes.

23 Q And can you estimate how many times?

24 A Well, there is also a third agency that you can
25 report to, that's 311. If you file a -- so, if you count 311

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1 also, it's in the, at least in the, anywhere from I would say
2 20 to 45 over, gosh, now maybe 50.

3 If we're talking about 2015 on, okay, then I would
4 say about anywhere from 25 to 50, I mean. So many I of just
5 almost quit.

6 Q So, between the time that you moved in and the time
7 of the broken window, can you estimate how many times you made
8 records of violations in the building?

9 A Well, I started then around when I got serious
10 because of what I saw them doing. And it was around the middle
11 of 2015. That's when I really started being active and in
12 trying to get them to obey the law.

13 MR. COOKSON: Objection.

14 THE COURT: Overruled.

15 Q Now, so when you started to get serious, as you just
16 testified, was that -- there was some testimony about buzzers,
17 do you recall that testimony?

18 A I recall Joey saying that they were only out for four
19 to five days in early, it was around February, it was in
20 February 2015.

21 Q And did you get involved in that dispute at all?

22 A Absolutely.

23 Q And what was your -- let me back that up.

24 Did you get involved in that problem at all?

25 A Yes, but to solve it.

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1 Q So, did you have interaction with Joey in an effort
2 to solve it?

3 A Yes, I offered, we were still on good terms. Because
4 I wired up houses before and I said to him, when I was working
5 at home a lot of time for IBM and the buzzers were out for
6 already four, five days, and I went and he said there is
7 somebody has a buzzer stuck in their apartment. And I thought
8 this is very strange. And as somebody who wired houses, this
9 made no sense. So I thought, okay, let's see. So I went to
10 him and I said, let me pull out my volt meter, Joey, and we'll
11 just pull the panel and touch the wires and figure out --

12 Q So, the sum and substance is, you made efforts to
13 help Joey. How was that received?

14 A He shot me down and said, that's not how you do it.
15 And then I knew something was fishy.

16 Q During this period of time when you got serious, as
17 you testified, was there an incident about changing locks and
18 the keys, or was that at a different time?

19 A No, that was right at the beginning of when I got
20 serious and, in fact, it was why I started the tenants'
21 association. Because by law, I'm entitled to three keys as the
22 leaseholder who has a wife and a legal roommate, working adult
23 roommate.

24 So, they changed the locks on the building on
25 July 26th, 2015. He came to the door. We had a conversation,

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1 which I recorded. And he only gave me two keys. And I told
2 him I'm going to the police because you're locking out the
3 third roommate who won't be able to get in. And I went to the
4 police and they said it's a civil matter.

5 So, I had to start, now go to the courts, which I
6 did, DHCR. And that's when I started the tenants' association.

7 Q Let me understand. You said that you told somebody
8 that you were going to go to the police?

9 A I told Joey when he would not give me the third key,
10 as I'm handing him I.D. and information about the new roommate
11 who we -- the older roommate had just left about 25 days
12 before. By law, you only have to give the landlord 30 day
13 notice.

14 MR. COOKSON: Objection, Your Honor, to Mr.
15 Scott interpreting and telling the jury what the law is.

16 THE COURT: So, I'm going to sustain this
17 objection. The law does have a layman usage. However, in
18 order to not confuse the jury suggesting this, because
19 you're using the word "law" that you're accurate or expert
20 in it. Perhaps we should talk about it in terms of the
21 venue in which he tried to resolve his issues in
22 litigation.

23 MR. BASIL: Thank you, Your Honor. We can do
24 that.

25 Q So, the bottom line of this key situation is, that

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1 you did inform Joey that you were going to go to the police if
2 it wasn't resolved favorably, correct?

3 A Yes.

4 Q And did Joey have any reaction?

5 A He told me that he was not accepting the I.D. of the
6 new roommate. That I would have to go to the Bronx to see
7 Hamdi and get permission to have a roommate. So, he was not
8 giving me the third key. And that's, at that moment I said,
9 then I'm going to the police because you're locking my roommate
10 out.

11 Q You said that this key incident was either the reason
12 or a reason for beginning the tenants' association, correct?

13 A Primary reason, yes.

14 Q Primary reason, thank you.

15 So, the tenants' association was going to have other
16 tenants as mentioned, as you had contemplated, right?

17 A Yes.

18 Q So, were you aware of any other tenants who were
19 involved in forming the tenants' association?

20 A Yes.

21 Q And who was that?

22 A A woman named Caitlyn Napolitano.

23 Q And did you have interaction with Caitlyn Napolitano
24 about starting up a tenants' association?

25 A Yes, because I had heard about her and I introduced

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1 myself and we agreed to do it together.

2 Q Were you aware of any problems that either Ms.
3 Napolitano or other tenants were having with the management at
4 the time you decided to form the tenants' association?

5 MR. COOKSON: Objection.

6 THE COURT: I'll allow that answer to that
7 question.

8 A Yes, they were trying to get --

9 THE COURT: No, we're just going to stay at yes.

10 THE WITNESS: Sorry.

11 A Yes, I am aware. I was aware.

12 Q So, was part of your decision to form a tenants'
13 association to help the other tenants in the building or just
14 yourself?

15 A Everyone, myself and the others too.

16 Q Now, when was the first time you informed anyone at
17 Kosova that you were going to form a tenants' association?

18 A Directly to Hamdi on September 14, 2015, two days
19 before the arrest, by phone, recorded.

20 Q And what about Joey, did you ever inform Joey that
21 you intended to form a tenants' association?

22 A Yes, on March 2nd --

23 Q Yes?

24 A Sorry, yes.

25 Q Just answer the question.

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1 So, when did you inform Joey for the first time that
2 you intended to form a tenants' association?

3 A On March 2nd 2015.

4 Q And did Joey have any reaction to the information you
5 gave him that you intended to form a tenants' association?

6 A He said, quote, "If you do that, Lucky and two others
7 will come over and you will be gone. And we have -- and we can
8 get into your apartment at any time," unquote.

9 Q Did you understand who Lucky was?

10 A Yeah, he's a brother.

11 Q How did you understand the statement that you just
12 made?

13 A Death threat.

14 Q You were here during Dr. Noyes' testimony, correct?

15 A Correct.

16 Q And you heard Dr. Noyes say that he didn't want to go
17 public with joining the tenants' association?

18 A Yes.

19 Q And you remember why, what Dr. Noyes said about why
20 he didn't want to go --

21 A Quote, "Fear of retaliation," unquote.

22 Q Did you have fear of retaliation?

23 A If I started the tenants' association? Of course.

24 Q And beyond the, what you termed the death threat, did
25 you fear any other kinds of retaliation from Kosova?

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1 A Different actions like turning off the water, many
2 things that the landlord can do to you when you're in their
3 building. Yes, legal actions, taking away the key, as it
4 turned out.

5 Q So, at the time you received what you believed to be
6 the death threat, how long between that time in March and the
7 time that you actually had formed the tenants' association, how
8 much time had elapsed?

9 A I started the tenants' association at the end of July
10 because that's when the third key was denied me and they had
11 changed the locks. And so it was right then that Caitlyn and I
12 met and we were formulating it and canvassing the tenants
13 through the month of August. And the official mission letter
14 was on August 26, 2015.

15 Q And just can you summarize the contents of that
16 official mission document dated August 26 of 2015?

17 A Basically it was we wanted a safe building, one in
18 which the tenants' rights were protected. But also, one in
19 which the landlord would have it easier because they could just
20 deal with us and help take care of problems. And we didn't
21 want it to be a vicious, antagonistic relationship. But we
22 were not going to have our rights trampled on.

23 MR. COOKSON: Objection, Your Honor. Just
24 answer the question.

25 THE COURT: Overruled. I'll allow it.

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1 A And if I can add one more sentence to the summary.

2 Q Let me just clarify that you're answering the
3 question. My question is, do you recall the contents of the
4 mission statement letter that was dated August 26 of 2015. And
5 so if you have something to add?

6 A Yes, in general.

7 Q And you completed your answer or is there more?

8 A Your question is somewhat vague. If you're asking me
9 whether I remember the nine different points that were given, I
10 would have to go back and read it. But in general, it was
11 advice to other tenants.

12 Q Did you try to hide the fact that you had formed a
13 tenants' association from Kosova?

14 A No.

15 Q How did you inform other tenants that a tenants'
16 association had been formed?

17 A So, some of the members who had signed the mission
18 newsletter, there were five. We copied it and then we slipped
19 it under doors of the units.

20 Q Would that include Lazer's door?

21 A If we knew that somebody was helping the landlord,
22 there are a couple of tenants that have supported the landlord
23 for years, for whatever reason, and so we did not, I can give
24 you their name, but, so there are about three or four doors
25 maybe that we did not put it under, but everyone else got it.

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1 THE COURT: So, just as a friendly reminder,
2 listen to the question asked and try to answer that
3 question. If you can answer it yes or no, try to do so.

4 THE WITNESS: Okay.

5 Q So, let's take them one by one. Let's start with
6 Hamdi. Did you ever orally inform Hamdi that there was a
7 tenants' association before the broken window incident?

8 A Yes.

9 Q And when was that?

10 A September 14, 2015.

11 Q That's two days before the broken window?

12 A Yes.

13 Q And so what was the information that you gave Hamdi
14 about the tenants' association?

15 A I told him that we had formed it, that we hoped to
16 not have an antagonistic relationship. But if he did not obey
17 the law, we would do everything in our legal power to get our
18 rights, including having painting done at the required
19 intervals. And I noted to him, that do you really want your
20 painting costs to go up?

21 Q There has been testimony about you recording
22 conversations. You've heard that testimony?

23 A Oh, yes.

24 Q Did you record this conversation with Hamdi?

25 A Yes.

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1 Q So, would you describe that conversation with Hamdi
2 where you first informed him that there was a tenants'
3 association as friendly or something else?

4 A Well, the tone of it was kind of friendly but firm on
5 both sides, okay?

6 Q Now, let's go with onto Joey. When was the first
7 time after the death threat that you informed Joey that you
8 were forming a tenants' association or had formed the tenants'
9 association?

10 A I don't recall me ever saying to him personally. I
11 assumed that once all the mission newsletters went out and his
12 father had been told, that it was just common knowledge then
13 that there was a tenants' association. And I didn't really
14 want to speak to him anymore after he gave me what I considered
15 to be a death threat. So I stayed away from him.

16 Q Before, in the four days before the broken window
17 incident, did you attempt to leave any messages for either
18 Hamdi or Joey about what you were up to?

19 A I left messages for Hamdi on the morning that I was
20 arrested because -- I'll stop.

21 Q Okay, very good.

22 A I'm learning.

23 Q We're all trainable eventually.

24 THE COURT: How are you doing? Do you need a
25 drink?

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1 THE WITNESS: Just my hamstring is cramping so I
2 need stretch out the back of my knee. There is not much
3 room in this.

4 THE COURT: First of all, any you need to
5 stretch, please do so.

6 THE WITNESS: Thank you.

7 Q Okay. As far as leaving messages for Joey, did you
8 leave any messages for Joey on or about the day that you were
9 arrested, on his voice mail?

10 A Only his super ego called Lazer.

11 Q So, whether he's the super ego or not, did you leave
12 a message for Lazer on or about September 16th 2015?

13 A I left three, September 14, 15 and the morning of the
14 16th.

15 Q And there was also some testimony from Joey about a
16 sparking light switch, do you recall that?

17 A Yes.

18 Q Was there a sparking light switch in your apartment
19 on or about the week of your arrest?

20 A Yes.

21 MR. COOKSON: Objection. Leading. Constant
22 leading.

23 MR. BASIL: It's in evidence.

24 THE COURT: Watch how you phrase the question.

25 Q You heard the testimony about a sparking light

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1 switch?

2 A Yes.

3 Q Do you know anything about a spark being light
4 switch?

5 A Yes.

6 Q What do you know?

7 A Around September 12th, 13th, it's actual not only a
8 light switch, it's a combination outlet and light switch next
9 to it. And it's in the kitchen. And when you flick it I would
10 see that a third of the time you can see the little spark on
11 the inside. Having wired houses I know this is a dangerous
12 situation and it could lead to an electrical fire in the walls,
13 and that not always do the breakers get triggered by it.

14 Q So, were you concerned about this situation?

15 A Yes. My unit might burn down, yes.

16 Q So did you report this switch situation to anyone at
17 Kosova as -- leave it at that.

18 A Yes. I wrote it down on the clipboard that is
19 outside the super's apartment in the basement the first day.
20 No response. I called then on the 14th and Lazer promised to
21 have it fixed. Never showed up. I called him on the 15th and
22 I said, this is not only dangerous for my unit, but the
23 building. Well, it's fireproof -- the building might suffer,
24 not just me. And then also, again, no response. Finally on
25 the 16th I left a message for him and I called Hamdi and I left

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1 a message for him on his machine, which I have record.

2 Remember, I record all this stuff. And I said, I left a
3 message on his office machine saying, there is a sparking fire
4 switch. It needs to be fixed and Lazer is not doing it.

5 Q Now, you also heard testimony about the fire
6 department in relationship to the sparking light switch, do you
7 remember that testimony?

8 A If it's about me warning them I would call the fire
9 department by 8:30 that night if they didn't fix it, if that's
10 the testimony, then --

11 Q Well, let's talk about that. Did you have any
12 discussion or leave messages with anyone at Kosova about
13 calling the fire department because of the sparking light
14 switch?

15 A I would have to go back and listen to the recording
16 the morning of the 16th as to whether I warned Hamdi that if he
17 didn't have it fixed, I would go to the fire department. I
18 certainly said it to Lazer around between 6:00 and 6:45 that
19 evening near the mailboxes.

20 Q Why don't you, in pieces, we're going to take you
21 through where you were and what you did on September 16th 2015,
22 all right?

23 A Yes.

24 Q It's the morning of September 15 -- no, it's the
25 morning of September 16, what were you doing?

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1 A I got up with my wife, she went to work. Director of
2 an ad agency. She left about 7:45 to 8:00, normal time.
3 Walked down the stairs. I worked for IBM. Mostly I worked out
4 of home at that point. At my desk in big master bedroom.

5 So, I worked for IBM and I received an e-mail. Shall
6 I continue or you want to go piece by piece?

7 Q So, your wife went to work but you stayed at the
8 apartment?

9 A Yes.

10 Q Now, in the morning you never walked by the window?

11 A In the morning, well, is noon the morning?

12 Q No. So, did at some point -- I'm in charge of this.
13 At some point in time did you get a message that there was a
14 broken window?

15 A Yes, around 11:24 a.m.

16 Q And why do you know the time so particularly as
17 11:24?

18 A Just because it was imprinted on my memory, given
19 everything that happened that day and after, and I've had to
20 refer to it so many times.

21 Q And you've relived that day many times?

22 A Yes.

23 Q So, at 11:24 a.m., what information did you receive,
24 if any, about a broken window?

25 A Dr. Noyes, sent me an e-mail.

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1 MR. COOKSON: Objection.

2 THE COURT: Continue. That's overruled.

3 A Dr. Noyes sent me an e-mail and said, Greg, did you
4 see --

5 THE COURT: Sustained. Next question.

6 Q After Dr. Noyes communicated whatever he
7 communicated, what did you do next?

8 A I waited about half hour until lunchtime. And then I
9 went down the stairway to the landing between the first and
10 second floor and I saw a hole in the window and noticed no
11 glass on the floor. So, it wasn't my responsibility as head of
12 the tenants' association I want, so, I went back up to work
13 again.

14 Q Now, when was the next time that you left your
15 apartment?

16 A Approximately 6:00, because that's 5:45, 6:00,
17 because that's the timing I normally work until.

18 Q When you left your apartment, where did you go?

19 A Down to get my mail.

20 Q And did you walk by the window?

21 A Yeah, but, again, no glass. So, I didn't think that
22 the tenants' association had to like try to enforce it because
23 there was no danger.

24 Q But it was still broken?

25 A Oh, yeah, there was a hole in it.

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1 Q So --

2 A Three-quarters of an inch approximately. About the
3 size of a copper pipe.

4 Q Now, you descend to the lobby?

5 A To the mailboxes, right.

6 Q And why are you going to the mailbox?

7 A To pick up my mail.

8 Q And while you're down there in the lobby picking up
9 your mail, do you meet with anybody?

10 A Lazer comes in the front door and we say hi to each
11 other.

12 Q Again, about what time is this?

13 A Around 6:00'ish to 6:14, 6:15 at the latest, I
14 believe.

15 Q So, you meet with Lazer, is there anybody else in the
16 lobby?

17 A No.

18 Q So, when you meet with Lazer, do you have a
19 discussion with him?

20 A Yes.

21 Q What was your side of the discussion? What were you
22 trying to communicate to Lazer?

23 A The first part was, when are you going to fix the
24 dangerous light switch?

25 Q And did Lazer have any response to that?

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1 A Ignored it and pointed to this hole in the window
2 because we were both standing right at the mailboxes, and you
3 can see it seven steps up. And he started railing against this
4 hole in the window. So, we had a discussion about the hole.

5 Q How long did the discussion take place before you
6 left the lobby?

7 A The whole discussion took, I would say, about two
8 minutes.

9 Q Now, doing the hole discussion, did Lazer ever say
10 anything to indicate that he thought you had broken the window?

11 A No.

12 Q Did he ever say anything to indicate that he knew who
13 broke the window?

14 A No.

15 Q Did he ever say anything about what he intended to do
16 about the broken window?

17 A I believe he said that he would get the police on
18 them.

19 Q And did that concern you?

20 A No. In part because I had my recorder going. I was
21 taping the whole thing.

22 MR. COOKSON: Objection.

23 THE COURT: Overruled.

24 Q Have you completed your description of the
25 conversations between you and Lazer at the time you went down

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1 to check your mail or is there more?

2 A There is more. Because the discussion caused Joey's
3 wife to come out of his apartment 1 D, which is six feet away
4 from the mailboxes. She asked whats happening? And I said,
5 normally Joey is a good super. And by that I mean that he's
6 hard working, he seems to be concerned. He's shy. He's a nice
7 guy. Always had a good relationship. He appreciated my tips.

8 So I said normally he's good, but now he's not fixing
9 this sparking light switch. Are you guys crazy? And then she
10 went back in. And then I said to him have it done by 8:30 or
11 else I'm calling the fire department. And then I went back
12 upstairs.

13 Q So, you go back upstairs to your apartment. How are
14 you dressed when you entered your apartment?

15 A I don't know if I was in long pants and still like a
16 business shirt, because sometimes we have like web conferences
17 during the day like for IBM and my colleagues. I was technical
18 consultant. So, I don't remember if I was still in that or
19 whether I had already changed into a shirt and shorts to
20 workout. Because once I got back up, my regiment is I started
21 working out. So, I might have then waited until I got back up
22 to be in my T-shirt and shorts to exercise.

23 Q And what was, in your mind, the next significant
24 event that happened on that evening?

25 A About 7:00'ish, 7:15, the door is knocked upon and I

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1 thought, great, an electrician is coming.

2 Q And the knock on the door, did you open the door?

3 A Yeah, I was happy.

4 Q Okay, and was it an electrician?

5 A No.

6 Q Who was it?

7 A Two police officers, senior officer, blonde hair
8 woman, and like a rookie who never said anything.

9 Q And that rookie was what, male or female?

10 A Male.

11 Q So you're now at the door, there is two policemen,
12 did they come into the apartment?

13 A No.

14 Q What, if any, of the policemen say anything to you?

15 A What do you have to say for yourself.

16 Q Which policeman said that?

17 A The blonde. She's the only one who ever talked
18 during that whole --

19 Q Did you have a response about, what did you have to
20 say for yourself?

21 A I said, what are you talking about?

22 Q So, did the police explain what they were talking
23 about?

24 A Well, then immediately she said, you broke the
25 window.

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1 Q And did you say, sure I did?

2 A My immediate response was, or she said something like
3 either he or the super or they said you broke the window. So
4 maybe singular. So I said, he's lying.

5 Q So after this conversation, whatever the contents are
6 that you recall, do the police do anything next?

7 A As soon as I said he's lying, she said step out, turn
8 around.

9 Q And when you stepped out and turned around, did
10 anything happen?

11 A Well, they first handcuffed me.

12 Q Okay. And after they handcuffed you did they do
13 anything else with you?

14 A They called out from to the stairway, they say come
15 on out. And Joey and Lazer step out from where they were
16 hiding in the stairwell. And they say, both of them say, yes,
17 that's the guy.

18 Q So what you just testified to, am I correct that this
19 was from your personal observation at the time?

20 A Absolutely.

21 Q And your personal observation at the time was that
22 Joey was in the stairwell with Lazer?

23 A Yes.

24 Q And that Joey and Lazer both said that's the guy?

25 A Yes.

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1 MR. COOKSON: Objection.

2 THE COURT: Overruled.

3 Q Again, by the time this has all occurred, what time
4 of the day is it, give or take?

5 A By the time that they handcuffed me they said around
6 7:15 -- they did not say that, I'm sorry. It was around, I'm
7 guessing, around 7:15.

8 Q Now, did the police do any more questioning of you?

9 A No.

10 Q Did the police do any questioning of Joey?

11 A Not in front of me.

12 Q Did the police do any questioning of Lazer?

13 A Not in front of me.

14 Q Okay, so now you're on the third floor and you're
15 handcuffed?

16 A Yes.

17 Q What happens next?

18 A They demand I get my I.D. but not anything else. So
19 they step in with me. I have to grab my wallet but leave
20 everything, including my money behind, and only the I.D. And
21 then they start to lock the door.

22 Q And how are you dressed at this point?

23 A At that point I have Nike shorts and a T-shirt.

24 Q Do you have a pocket in that shorts?

25 A Does that have?

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1 Q Withdrawn. So now you're outside of your apartment.
2 You're -- I'm sorry.

3 A No.

4 Q You're still inside the apartment?

5 A Yes.

6 Q And what happens inside the apartment next?

7 A As they start to lock the door as we go out, I begged
8 them, because they're leading me out, so I assume that I'm
9 being taken down to the police car which had turned out to be
10 true. And I'm begging them to not take me to jail right away
11 because my third building key had been taken away from me on
12 July 26th, a month and a half before. And so my room, our
13 roommate had a key and my wife and I shared a key, because we
14 knew each other's schedule. And I told the police, my wife
15 will not be able to get into the building. So can you, can we
16 wait until she's back and then take me away. And they said,
17 yes, but in the police car. So they took me down to the police
18 car. They locked the door and took me down to the police car.

19 Q Am I correct that they walked you down the stairs?

20 A Oh, God, the elevator is right next to my apartment
21 but I don't recall whether, I was just so stunned that I don't
22 remember whether we walked, which is a normal way I go, or
23 whether -- I don't remember.

24 Q Well, at that point in time after you had been
25 arrested, if you will, handcuffed, and were unsure about

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1 whether your wife was going to be able to get in the apartment,
2 how would you describe your state of mind?

3 A Anxious, greatly anxious, scared for her.

4 Q Okay. So now --

5 A Mad that I'm being arrested.

6 Q Fair. So now, am I correct that you end up down in
7 the lobby, either you came down the stairs or the elevator.
8 And who is in the lobby at the time you get there?

9 A I believe that Joey and Lazer were behind me
10 following as the police took me through the lobby and put me
11 right into the police car.

12 Q You understand that Joey has testified under oath
13 that he wasn't there, do you understand that?

14 A Yes.

15 Q So, you're in the lobby and you say Joey and Lazer
16 have followed down. So, there is the two police people, you,
17 Joey and Lazer. Is anybody else in the lobby that you know of?

18 A Only the blonde police woman and Joey were in the
19 lobby as I got into the car. Lazer continued with another
20 associate of Albania, yeah -- I'm sorry, of Kosova. And Lazer
21 went 15 yards away to the stoop next door and sat on that stoop
22 with the other guy from Kosova.

23 And I was led out immediately in handcuffs to the
24 backseat of the police car. And the male officer named
25 Moscoso, stayed with me. And it was Joey and the blonde police

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1 woman who were in the lobby right by the front door that been
2 propped open. So, they were, I was near the sidewalk. You
3 step up, I don't know, 20 feet. They were there talking while
4 I was waiting in the police car for my wife to get back.

5 Q While you were in the police car were you able to
6 observe what Joey was doing?

7 A He was talking to the blonde police woman.

8 Q Was that out in the street, was it --

9 A In the lobby by the front door, just 20 feet away
10 from the car. So, right by the sidewalk of the front door.

11 Q Could you hear what he, Joey, said?

12 A No.

13 Q Did you hear what the police person said?

14 A No.

15 Q How long was the conversation between Joey and the
16 police person after you had been handcuffed and put into the
17 back of the vehicle?

18 A It was the whole time that I was there until my wife
19 came walking up.

20 Q And can you approximate how much time?

21 A Ten to 15 minutes.

22 Q Now, at some point in time while you're in the back
23 of the car, did you observe your wife appearing?

24 A Yes, we could see her coming, walking up the
25 sidewalk. And she walks by Lazer and the other guy and

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1 actually says hello to him, not knowing what's going on. And
2 then she continues the final 15 yards. And then I say to
3 Moscoso, that's my wife. And at that point he calls his senior
4 officer, the blonde police woman, and they come and they
5 start -- they ask, is that your husband? And she said, yes.
6 And then they start asking her -- they basically say, they say
7 a few things and they take her away and then come back. And
8 one of the things they say, well, he broke, something like he
9 broke a window a little while ago or an hour ago or something
10 like that. And she was stunned and said, how can that be? I
11 saw it broken.

12 Q Before you get there. Could you hear your wife
13 speaking from where you were sitting in the back of the car?

14 A Oh, yeah.

15 Q And could you hear what the policeman, police woman
16 was saying to her while you were in the back of the car?

17 A Yes.

18 Q And?

19 A For the first part.

20 Q For any part.

21 A At least the first part.

22 Q And when your wife observed you in that situation,
23 how would you describe her state of mind that you could
24 observe?

25 A She was --

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1 MR. COOKSON: Objection.

2 THE COURT: Phrase it a different way, please.

3 Q Did your wife, when she saw you in that situation,
4 appear to you to be upset?

5 A Very.

6 Q Did she appear to be very anxious?

7 A Yes.

8 Q Did she appear to be under stress?

9 MR. COOKSON: Objection.

10 THE COURT: Overruled.

11 A Yes.

12 Q And you could hear some of what your wife was saying
13 to the police?

14 A Yes.

15 Q What did your wife say to the police?

16 MR. COOKSON: Objection.

17 THE COURT: Sustained.

18 MR. BASIL: Your Honor, may I?

19 THE COURT: Yes, in the back.

20 MR. BASIL: That's fine.

21 (Discussion held off the record in the robing
22 room)

23 THE COURT: Okay.

24 Q Dr. Scott, we were, before that short break, we were
25 talking about your wife's conversation with the police when you

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1 were handcuffed in the back, you remember that?

2 A Yes.

3 Q What do you recall your wife saying to the police
4 while she was near the police car where you were handcuffed?

5 A She was shocked when they said he broke a window. I
6 think that they said with a hammer then at that point. And she
7 said --

8 MR. COOKSON: Objection.

9 THE COURT: Overruled. Continue.

10 A She said, because they said just an hour before.
11 They actually gave a time, whereas when the police woman
12 originally had arrested me at my door all she said was, you
13 broke the window. And I'm going, what?

14 Q But going back to your wife.

15 A Then because they said to her in the last hour he
16 broke the window, she said --

17 MR. COOKSON: Objection.

18 THE COURT: Still overruled.

19 A How can they be? I saw it broken when I left for
20 work this morning, which was around 8:00. So, she had seen a
21 hole in the wall [sic] and assumed that that's what they were
22 talking about, a window broken in the --

23 Q And could you observe the police reaction to that
24 statement?

25 A Yes, because Moscoso in the back --

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1 Q I don't think that we've identified Moscoso.

2 A He's a policeman in the back seat with me.

3 THE COURT: I'm sorry, what did you say?

4 MR. BASIL: Policeman in the back seat.

5 Q The question is, did you observe a police reaction?

6 A Yes.

7 Q And what was that reaction you observed?

8 A They were shocked.

9 MR. COOKSON: Objection.

10 THE COURT: I'm sorry, did you say something?

11 MR. COOKSON: I said objection.

12 THE COURT: Overruled.

13 Q And what made you believe that the police were
14 shocked?

15 A Moscoso was a very nice guy. Again, I think that he
16 was a rookie because he never said anything, she controlled
17 everything. We're in the back of the police car and he's
18 asking me about teaching at NYU, that's as we're waiting. He's
19 actually talking to me, we're having a nice little
20 conversation, although I'm like, should I be having a nice
21 conversation when I'm in handcuffs? But he was very nice and
22 so I was gracious and I answered a few questions.

23 And he said, he suggested that they were going to
24 take me all the way down to Chambers Street with the big
25 holding cell, which means from the northern tip of Manhattan

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1 all the way down to Chambers Street, where all the violent, I
2 found out later, all the violent criminals and everyone who is
3 arrested that day, that's where they are. So, that was the
4 extent of the conversation.

5 Q Dr. Scott, let me refocus you.

6 A Right.

7 Q You testified that you thought that you observed that
8 the police were shocked. Why were you able to testify that,
9 from your observation, you concluded that the police were
10 shocked?

11 A Their expression on their faces.

12 Q And is that one police person, two?

13 A Both.

14 Q After your wife had this conversation, did you
15 observe what happened with your wife next?

16 A So, either they gave her the key and let her go
17 directly up -- no, because I remember they left her alone with
18 me just for 30 seconds or a minute while they went and had a
19 private conversation. And then they came back and that's why I
20 just told you about going to Chambers Street, because they
21 said, we're just going to take you to the 34th Precinct
22 instead.

23 THE COURT: Let me interject. When you said
24 they, just to clarify for the record, who the "they" is.

25 THE WITNESS: The two officers.

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1 THE COURT: Thank you.

2 Q When you heard your wife explain to them that she had
3 seen the broken window earlier, much earlier in the day, did
4 you believe you were going to be released?

5 A I thought for sure. She's telling -- they said I
6 broke it an hour before, she's telling them that she saw a
7 broken window -- at the least I thought they will double check
8 to see if there is more than one broken window. But that
9 conversation didn't even come up.

10 So I thought, of course, oh, my God, I said to her
11 while they were having their private conversation, I said, Eva,
12 this is so wonderful. I had no idea, that you have just saved
13 me.

14 Q And how long after the Eva, you just saved me
15 conversation did the car start whisking you toward the police
16 station?

17 A They came back in 30 seconds and they said, we're
18 taking you the 34th. At that point they definitely gave her
19 the key and she went up.

20 Q So at that point, what was your mental state?

21 A Oh, then I was, I thought I was living in an
22 alternate universe. I was just completely befuddled. I had so
23 many conflicting emotions, like how can this be? Anger,
24 disbelief.

25 Q Had you ever been arrested before?

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1 A Not --

2 THE COURT: A yes or no.

3 THE WITNESS: No.

4 Q So, where did the police car take you?

5 A To the 34th Precinct, which from the 217th where I am
6 at 83 Park Terrace West, it's 181st and Broadway.

7 Q Can you estimate how long that is in miles?

8 A I walked it a number of times, it must be a good
9 mile, mile and a half, if not two.

10 Q So, you arrive at the 34th precinct, what happened
11 next?

12 A They take me to a jail cell. They tell me that they
13 are going to give me a DAT, which is short for Desk Appearance
14 Ticket. Which means after everything is processed, I sign
15 promising under oath to show up for the Criminal Court
16 appearance, and then they will release me at that point. So, I
17 don't have to go to Chambers Street. And then I'm going out.
18 So, they then tell me, they make me, I was wearing sandals so I
19 don't have shoelaces, but they made me take my Nike short, the
20 string --

21 Q Drawstring?

22 A Drawstring. They make me take it off because they
23 were afraid I might hang myself. It's for suicide prevention
24 or maybe they thought that I was going to put it around the
25 other prisoner who was there, I don't know. They just made me

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1 take it off. And I thought that they were going to give it
2 back to me, but they cut it in half.

3 And so I just sat and did all the processing,
4 fingerprinted, photographed, for three hours.

5 Q So, you were fingerprinted?

6 A Yes.

7 Q You were mugshotted?

8 A Yes.

9 Q Did they tell you how long you were going to have to
10 wait?

11 A No.

12 Q So, at that point in time you didn't know whether it
13 was going to be an hour or much, much longer, correct?

14 A Correct.

15 Q How was your mental state at that point?

16 A Fraught. Again, conflicting emotions. Just
17 wondering how can this happen. Why are they believing -- and
18 then I didn't trust them because of what they did. And I
19 wanted to show them an e-mail that would have, and actually I
20 did at the end, I showed it to Moscoso, that would have stopped
21 them from arresting me. But they wouldn't, they took the phone
22 away from me and wouldn't let me do anything, so.

23 Q Did you have any thought in your head about why
24 either Lazer or Joey or anyone at Kosova would have made that
25 report against you?

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1 MR. COOKSON: Objection.

2 THE COURT: I'm going to allow it. Go ahead.

3 A So, I was such a good tenant that I knew, and from
4 the lease and so forth, I knew that the only way they could get
5 me out of the apartment is if I committed some crime, which
6 would give them legal justification for getting me out. And
7 so --

8 MR. COOKSON: Objection.

9 THE COURT: Don't use the word "legal."

10 A Okay, justification. I knew that they needed some
11 justification to get me out, and that a crime was one of them
12 because I would be breaking the lease. And so I immediately I
13 thought of course, given everything that happened that we now
14 talked about for the last 45 minutes of my testimony, they're
15 trying to get me out.

16 Q To your observation did anyone from Kosova come down
17 to the 34th Precinct while you were there?

18 A No.

19 THE COURT: Did anyone from where?

20 MR. BASIL: Kosova.

21 THE COURT: Okay, thank you.

22 Q So, this jail cell you were in, can you describe it?

23 A Not the Hilton.

24 Q What was it?

25 A I would say 12 to 16 feet, you know, just concrete.

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1 A slab that you sit on, locked up. You're looking, there is
2 another cell next to it and you're looking to the processing
3 area.

4 Q Were was there a toilet facility?

5 A Not in it.

6 Q Were you alone or were you with others?

7 A There was another man in it.

8 Q Among the stressful events in your life, somewhat
9 long life, how would you rank this ordeal that you just
10 described to us as far as other stressful events?

11 A Second.

12 Q Second? How old were you at the time?

13 A Sixty-five.

14 Q So, at some point in time on September 16, did you
15 get released?

16 A After about three hours, yes.

17 Q And what was that process?

18 A So, after I did all the processing and I signed under
19 oath this DAT, where you promise under a threat of, I guess it
20 would be threat of arrest, to appear in Criminal Court, they
21 gave me that useless draw string -- yeah, they gave it back to
22 me. They gave me back my phone. Moscoso escorts me to the
23 front door and basically says out. So --

24 Q What is the state of your Nikes as you're pushed out
25 the door?

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1 A Well, I'm holding onto them, otherwise I didn't want
2 to show everyone my underwear so, even though I'm proud of my
3 physique, my training, still, it's not the time to show my
4 backside.

5 Q So, do you walk home, do you get a ride home, what
6 happens?

7 A Well, I have no money so basically it was -- I
8 started to walk and then I think I got, I had my phone, so
9 started to walk because I like walking. But I think that I did
10 take a cab. I think eventually at some point I got to, after a
11 few blocks I called, I stopped a cab. I called my wife. I
12 said I'm on the way home. I don't have any money, so you have
13 to come down and pay the cab. And so that's what happened. I
14 got there and called her again and she came down and paid.

15 Q And when you finally got home, what was your wife's
16 emotional state that you observed?

17 A So, she was so upset about the death threat from
18 March, which had scared her greatly, to the point where we had
19 to buy a bar for our master bedroom door at night because --

20 Q We'll get into that maybe later.

21 A She was greatly scared, wondering what was happening
22 to me. So concerned about me.

23 Q How long had you been married at that time?

24 A We met in 2011 and got married in March 2013, so
25 almost two and a half years.

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1 Q So, at that point are you done with the criminal
2 process?

3 A Absolutely not. As I said, I had signed to appear in
4 Criminal Court a month later, which I had to do. I pled not
5 guilty with -- and then I was --

6 Q Let me stop you there. So, you had an appointment
7 about a month later?

8 A A month later.

9 Q Where was the appointment?

10 A Criminal Court, right next door to here somewhere.

11 Q 100 Centre?

12 A Probably.

13 Q So, you appeared down there. Did you have to hire a
14 lawyer?

15 A Yes.

16 Q So you and the lawyer are at 100 Centre. What
17 happens?

18 A It's very quick once you get in front of the judge.
19 You're basically saying guilty, not guilty. So we say not
20 guilty.

21 Q So, you appeared in front of a judge that day?

22 A Yes.

23 Q And the judge asked you whether you wanted to plead
24 guilty or not guilty?

25 A Yes.

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1 Q And you pled not guilty?

2 A Yes.

3 Q And then were you able to go home?

4 A Yes.

5 Q So, at that point were you done with the process?

6 A No.

7 Q What happened next in the process?

8 A I had to come back again to Criminal Court.

9 Q About how much time later?

10 A About sometime in November, December of 2015.

11 Q So, this whole time you're still under a criminal
12 charge?

13 A Oh, yes.

14 Q So, the next time that you're in court did you have
15 to hire a lawyer?

16 A The same lawyer, yes.

17 Q And did you appear in front of the judge that day?

18 A Yes.

19 Q And was it similar to the first day?

20 A A little bit different. Now the DA offered me what's
21 called ACD, Adjournment in Contemplation of Dismissal.

22 Q Did he explain to you what an ACD was?

23 A Yes.

24 Q What did he explain to you?

25 A That if I pled guilty and stayed out of trouble for

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1 six months, then they'd either close the case or something, and
2 then I don't have to go forward with it. But I don't know if
3 it's still in my record or what. But it wasn't even an issue.

4 Q Well, did you discuss this offer with your attorney?

5 A For all of three seconds.

6 Q So, whatever your attorney said, you didn't care?

7 A I was not going to, I was not going to be in that
8 situation.

9 Q Okay. So now your second appointment is over and you
10 go home, right?

11 A For the moment, yes.

12 Q Are you done with the criminal process?

13 A No.

14 Q What happens next?

15 A I have to go back again.

16 Q So, you go back again. What happens this time?

17 A That's February 2nd 2016.

18 Q Okay. What happens on February 2nd 2016?

19 A The DA says, Your Honor, 30-30, which --

20 Q Did your lawyer explain to you what a 30-30 was?

21 A That I don't recall. Not before, but as soon as it
22 was said, it was immediately stated.

23 Q Well, what was the result of this announcement by the
24 DA that it's a 30-30 or whatever?

25 A The DA was dropping the charge.

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1 Q So that on that date was the charge dropped?

2 A Yes.

3 Q So, you were never convicted of a crime, correct?

4 A Correct.

5 Q But during the entire period between September 16 and
6 February 2nd you were under a criminal charge?

7 A Absolutely.

8 Q So, this process of being accused of a crime,
9 arrested, jailed, released but not cleared, over the course of
10 four and a half months, what impact did that have on your life?

11 A It consumes you completely. In part, because you
12 don't know whether the powerful DA will end up prosecuting you.
13 So from morning to night you're just trying to find a lawyer to
14 begin with. And you don't know criminal lawyers, you're an
15 academic. Your wife, you're freaking out about what else they
16 might do to you. And your life is consumed by it until they
17 finally say, you're off the hook, 30.30.

18 Q During this four and a half month period is anything
19 happening with the tenants' association?

20 A I kept it going, yeah. We, we being the other
21 members and myself, Dr. Noyes editing privately some of the
22 stuff to make it more gentle to everyone and not be
23 antagonistic. He was very good at that, so that people didn't
24 get the wrong impression. We were just trying to be a calm
25 tenant organization that was protecting rights, and we were not

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1 out to destroy a landlord.

2 So, there were some other issues that came up and
3 other newsletters that went out. And I wanted my apartment
4 painted. So, I basically required the landlord to paint it.
5 It was long overdue. Had not been painted in 17 years. And I
6 don't want to say by law because I might get in trouble, but --

7 Q You will.

8 A But normally, how shall I put this, normally the
9 convention is that they are required to paint every three
10 years. So it had not been painted in 17 years. So, I demanded
11 they do it. And I had to go to the HPD court, the other
12 Housing Court, to file an action and pay, in order to get that
13 taken care of. That was December. And there were other issues
14 with the apartment, problems, mold, and stuff that they --

15 MR. COOKSON: Objection. Post-accident, I
16 believe.

17 THE COURT: Is it?

18 MR. BASIL: I don't know, Your Honor.

19 THE COURT: Well, well, obviously I don't know.

20 THE WITNESS: I'm sorry, post.

21 THE COURT: I don't want you to mention any
22 alleged problems that you had with the building that's
23 after the arrest. Thank you. Next question, please.

24 Q Dr. Scott, when you were in court yesterday did you
25 hear, I know you use the term Joey because it's easier for me,

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1 talk about some work he had done in your apartment 20 years ago
2 when he was a young man?

3 A Yes.

4 Q Was that testimony truthful?

5 A No.

6 Q Did anything happen in your apartment with Joey 20
7 years earlier from the incident?

8 A Anything?

9 Q Yes. Did Joey come to your apartment when he was a
10 young man and do work for you?

11 A Twenty years ago, no.

12 Q And did you hear Joey testify about the buzzer
13 situation?

14 A Yes.

15 Q Do you recall how long Joey said that the buzzers
16 were out in the building?

17 A He said I believe either three to four or four to
18 five. I think that it was three to four.

19 Q And was that accurate testimony?

20 A No.

21 Q And so was it longer or shorter?

22 A Longer.

23 Q This is from your personal knowledge?

24 A Yes.

25 Q He talked about a building that was no problems or

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1 violations, correct?

2 A Yes.

3 Q And were there lights on the stairwell going back to
4 the time that you were first a tenant at the building?

5 A No.

6 Q And were there lights in the stairwell at the time
7 you were arrested?

8 A No.

9 Q Had you complained about the fact that there were no
10 lights during the time from 1998 until 2015?

11 A Yes.

12 Q Were there any problems with the mailboxes in the
13 lobby during 2015?

14 A Yes.

15 Q So, that's another problem that was not mentioned by
16 Joey in his testimony, correct?

17 A Yes.

18 Q You have personal knowledge of the mailbox problem?

19 A Yes.

20 Q Can you briefly describe what the mailbox problem
21 was?

22 A Some of them wouldn't even close, much less lock,
23 because they were so old.

24 MR. BASIL: Your Honor, may I have a couple of
25 minutes?

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1 THE COURT: Absolutely. I'll give the jury a
2 break. You want to move around, stretch?

3 How long do you need, counsel?

4 MR. BASIL: About ten minutes to study.

5 THE COURT: Yes, you can go to your room.

6 COURT OFFICER: All rise. Jury exiting.

7 (Jury exits)

8 (Short recess taken)

9 COURT OFFICER: All rise. Jury entering.

10 (Jury present)

11 THE COURT: Thank you.

12 Yes, please. You may continue.

13 Q Dr. Scott, the fact that you were arrested back in
14 September 2015, at that time you were working for IBM?

15 A Correct.

16 Q Did you disclose to IBM the fact that you had been
17 arrested?

18 A Yes.

19 Q And were you concerned about that disclosure?

20 A Yes and no.

21 Q And give me the no part.

22 A I had worked with these technical consultants
23 globally, mostly from some Asian, American, they knew me for a
24 number of years. IBM is a very ethical company. And I say
25 this as somebody who taught business ethics at the university.

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1 And it's important to be honest, because that's how you last
2 for 120 years and people trust you.

3 So, they knew me. And so generally, they thought
4 that something was strange here. So that's the no part.

5 Q And what was the yes part?

6 A Well, theoretically, they thought, who knows, we
7 don't know Greg Scott personally, we know him from business.
8 What, you know, is it theoretical that he could have done this?

9 So, you could see that there was always this bit of
10 critical doubt in their mind.

11 Q And did you miss any time from IBM because of the
12 criminal activity?

13 A Yeah, when I had to go to Criminal Court especially.
14 We would sometimes have international meetings on a number of
15 days a week and that's how they found out, because I couldn't
16 attend one, I was in Criminal Court. And they said why, my
17 manager said, why weren't you here? And I was honest and I
18 said, because I was joking with him a little bit, and I said,
19 I'm a criminal.

20 Q By the way, you testified that you had to hire an
21 attorney. How much did you spend on your criminal attorney?

22 A 1500.

23 Q How did you perceive, before your arrest, your
24 reputation at 83 Park Terrace South with the other tenants?

25 A I assume you mean Park Terrace West, not south.

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1 Q Yes.

2 A My reputation with the other tenants? I got along
3 with, I venture to say, all the tenant up until the middle of
4 2015.

5 Q Were you concerned that your arrest and report for
6 why you were arrested was going to hurt your reputation with
7 the other tenants?

8 A Well, certainly, especially after some of them would
9 not talk to me and so on and so forth.

10 Q Was your testimony that some of them wouldn't talk to
11 you after you had been arrested?

12 A Correct.

13 Q And were any of those tenants that wouldn't talk to
14 you, previously friendly with you?

15 A Yes.

16 Q And did that disturb you?

17 A Yeah, yes.

18 MR. BASIL: I don't have any more questions, Dr.
19 Scott.

20 THE COURT: Thank you. So, let me, because it
21 is 4:22, since we're clearly coming back, did you want to
22 wait until tomorrow to begin?

23 MR. COOKSON: Sure.

24 THE COURT: All right. You have eight minutes
25 with that said. We will resume tomorrow. You stay so I

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1 could talk to you.

2 Ladies and gentlemen, tomorrow at 9:30.

3 MR. BASIL: We're at your command, Your Honor.

4 I'm not sure what we're doing initially, if
5 we're having a conference or having a witness.

6 THE COURT: I'm going to say 10:00 again.

7 COURT OFFICER: All rise. Jury exits.

8 (Jury exits)

9 THE COURT: You can step down and you can sit
10 down over there.

11 (Witness steps down)

12 THE COURT: So, we will resume what we were
13 discussing. I'm going to let the reporter go, because
14 maybe I could flesh through some things and then make the
15 record all nice again. If I can't, he doesn't need to
16 stay for another ten minutes to back and forth.

17 (Trial adjourned to Friday, January 31, 2025 at
18 10:00 a.m.)