

N3k3fra2

Summation - Mr. Rudin

1 our heads, get ready to hear the plaintiff's summation. Don't  
2 discuss the case. Keep an open mind.

3 (Jury excused)

4 THE COURT: Okay. Take a break. We printed some  
5 pages from the charge. So you're right, there has to be a  
6 charge on joint and several liability. I assume it's your  
7 contention that everybody is jointly and severally liable for  
8 everything that happened to your client.

9 MR. RUDIN: Yes, your Honor.

10 (Recess)

11 THE COURT: The way this thing has worked out timing  
12 wise, because of the way this thing has worked out timing wise,  
13 we're going to do like a 45-minute lunch break before I charge.  
14 I don't want to interrupt the charge, and it's too long. Okay.

15 You can all sit down. I want to spend some time on  
16 these verdict forms. So, okay.

17 Nicely done as always, Mr. Francolla.

18 (Jury present)

19 THE COURT: Okay. Have a seat. So, we have heard the  
20 closing arguments from the defendants. And now we will hear  
21 the closing arguments on behalf of the plaintiff.

22 MR. RUDIN: Thank you, your Honor.

23 Judge McMahon, counsel, court staff, Mr. Fraser,  
24 ladies and gentlemen of the jury. I would like to thank you  
25 for your attention during this trial. The fact that you

N3k3fra2

Summation - Mr. Rudin

1 remained so alert when I cross-examined Ms. Flaherty on Friday  
2 was very gratifying to me.

3 A lot of the information has been thrown at you during  
4 a brief period, during the last week. I hope my summation will  
5 help you make sense of it all.

6 Our burden, as Judge McMahon will instruct you, is to  
7 prove the elements of our claims by a preponderance of the  
8 evidence. That is, if you are convinced by the evidence it is  
9 51 percent likely our claims are true, we win.

10 It is a civil, not a criminal case. I submit we've  
11 reached a much higher level than 51-49 but 51 would be enough.

12 The judge will instruct you on judging witness  
13 credibility. Some the factors include does the story make  
14 sense, is it corroborated by other evidence or contradicted,  
15 does the witness contradict himself. Does he have a motive or  
16 reason to lie.

17 I will begin using these factors to examine the  
18 defendants' story that puts you Jawaun Fraser in prison, and to  
19 show the story is false. I will discuss the only evidence they  
20 can cite for their side, Jawaun's parole interviews. And  
21 finally, I'll discuss the *Brady* claims and the issue of  
22 damages. I'll certainly discuss the mass of evidence that  
23 Mr. Francolla's summation completely ignored.

24 First of all, the elements of evidence fabrication are  
25 listed in the slide we'll show to you. Evidence was fabricated

1 by a defendant, it was likely to influence a jury, it was given  
2 to a prosecutor, and it resulted in the defendant being  
3 deprived of his liberty.

4 Well, there is no question that evidence the  
5 defendants gave to the prosecutor was likely to influence a  
6 jury. There is no issue that it was given to the prosecutor,  
7 and there is no question, since it was the only evidence of  
8 guilt, that it caused the defendant to be deprived of his  
9 liberty. So the sole issue is whether or not any or all of the  
10 defendants fabricated evidence.

11 And of course there is also no question that  
12 Mr. Fraser, that Jawaun was deprived of his liberty. He went  
13 to Rikers Island for several days after he was arrested and  
14 before he obtained his release. The rest, what happened after  
15 that, during the prosecution, the ultimate result of the  
16 prosecution that he was convicted at trial, is all a  
17 consequence of the initial wrongdoing.

18 If you find that the defendants' fabricated evidence,  
19 and gave it to the prosecutor, and you know for a fact that  
20 Mr. Fraser was deprived of his liberty, then that's the claim,  
21 it's completely made out, and the rest of all is what the law  
22 calls consequential damages. It is the result of that  
23 wrongdoing, all reasonably foreseeable that the evidence was  
24 fabricated and caused his initial loss of liberty would later  
25 on be used at trial to cause his conviction.

1           Now let's address the elephant in the room first,  
2 whether Jawaun was selling drugs that night, the linchpin of  
3 their so-called defense.

4           All the evidence, except for his own coerced statement  
5 at two parole hearings, shows he was not selling drugs. UC 84  
6 conceded it Mr. Regina conceded it. Diane Smith said it.  
7 Jawaun, of course, testified to it. No drugs or buy money were  
8 found on him. He didn't come from the location where Diane  
9 supposedly was calling her dealer. He lived on the other side  
10 of the Jacob Riis Houses. But regardless, it's a nonissue.  
11 It's a distraction and a smoke screen. Jawaun was never  
12 charged with selling drugs. He was only charged with robbery.  
13 Your job is to determine whether that charge was false. The  
14 drug seller label is a smear to dehumanize him as someone who  
15 isn't worthy of having rights. It's an unfortunate  
16 continuation by the defense lawyers of the dehumanization  
17 process their clients began when they made Jawaun one of the  
18 five bodies they picked up that night and framed him for a  
19 robbery he didn't commit.

20           Now we have to show that each of the defendants is  
21 responsible for the evidence fabrication. We can't just paint  
22 them with a broad brush, and we don't. To begin, all three  
23 defendants were present at the incident. All met afterwards in  
24 the post-tac meeting to discuss it, after which most of the  
25 false documents were prepared. They played varying roles in

1 preparing the false documents and in making false oral  
2 allegations to the ADA, which I'll now discuss.

3 UC 84 prepared a false DD5 containing a detailed set  
4 of lies attempting to show Jawaun forcibly robbed him of his  
5 identification and \$20 in buy money. That's PX, or Plaintiff's  
6 Exhibit, 9. His false story became the basis for the criminal  
7 court complaint signed by Regina. That's PX 6.

8 UC 84 told the false story to the ADA at various  
9 times, causing the prosecution. Regina prepared numerous forms  
10 falsely accusing Jawaun of robbery, including the prisoner  
11 pedigree sheet, PX 151; and arrest report, PX 2; evidence  
12 vouchers, PX 5; and the criminal complaint itself, PX 6. He  
13 also told his false story to the prosecutor before arraignment  
14 and throughout the case.

15 Del Toro and Regina together prepared the evidence  
16 voucher for the ID, PX 5, claiming that Regina found the ID,  
17 and it was arrest evidence for the robbery. But as I'll  
18 discuss more later, Del Toro was right there when Regina claims  
19 that he searched Jawaun and found the ID, and Del Toro was in a  
20 position to see that he did not find the ID. So Del Toro knows  
21 the document was false. He knows all along that the evidence  
22 voucher he helped prepare was false. He could have blown the  
23 whistle on his lying colleagues, but he did not.

24 Let's discuss UC 84 and Regina's false robbery story.  
25 The only witness who claims knowledge of the alleged robbery is

N3KHFra4

Summation - Mr. Rudin

1 UC 84. He prepared that DD5 and he told ADA Sangermano and he  
2 testified to you that Diane Smith said she would call a drug  
3 dealer and used her phone to do so. Jawaun then angrily  
4 accosted him, accused him of being a cop. Angrily demanded his  
5 ID and money, grabbed them from him, photographed his ID,  
6 wouldn't give the items back, put them in both of his pants  
7 pocket, and threatened him verbally and physically by  
8 repeatedly balling his fists.

9 According to UC 84's DD5 and to the criminal court  
10 complaint, Jawaun then called over the group of six men who  
11 were nearby and they came over, yelling and screaming, to aid  
12 him in the robbery. According to UC 84, after he gave a  
13 distress signal and Del Toro, Regina, and the other cop backups  
14 moved in, the crowd yelled, Cops.

15 After that Jawaun put his hands in his pants as if to  
16 draw a gun, took his hands out, balled up his fists again, told  
17 UC 84 he was going to get him good, and rather than flee from  
18 UC 84 and the onrushing cops, he rushed at UC 84 and started to  
19 grapple with him. Only when he was about to be grabbed by  
20 Del Toro and Regina, according to UC 84, did he flee.

21 After Jawaun was arrested two blocks away, according  
22 to Regina, he found the ID card in Jawaun's pocket and more  
23 than \$100 in cash. UC 84 alleges he told Regina at the scene,  
24 right after the arrest, that Jawaun had taken the buy money and  
25 the ID, which supposedly led to Regina, Del Toro, and UC 84

1 searching the area for the buy money, searching high and low  
2 throughout the projects, and anything else Jawaun might have  
3 dropped.

4 Ladies and gentlemen, this story is a cartoon. It is  
5 an insult to your intelligence and a lie that UC 84 and Regina  
6 said to your face in this court under oath. That story makes  
7 absolutely no sense. It is absurd that Jawaun would do these  
8 things to someone he suspected from the very beginning was an  
9 undercover cop undoubtedly backed up by a support team.

10 Balling up his hands and fists and reaching into his  
11 pocket even after he knew that there were cops around him, that  
12 UC 84 was a cop, it would have been suicidal. This was 2014.  
13 Jawaun knew and you know what happens when cops think a suspect  
14 in the street is about to draw a weapon on them or physically  
15 threatens the police. Why would he rob a cop of his ID and  
16 \$20? Why would this proud young man have done any of these  
17 things three days after taking this picture, having finished  
18 school and landed the job of his dreams paying him a good  
19 salary, with his first paycheck already having been cashed?  
20 Why would he do this with \$128 in a pocket, a child to care  
21 for, and on the way to buy medication for his mother's migraine  
22 headache? Why, if his intent from the outset is to rob the  
23 cop, would he stop to take a picture of the ID before stealing  
24 it? Why would they then rush at UC 84 and attack him when the  
25 crowd was yelling "cops" and when other cops were coming in

1 into the undercover's aid when you would think, if this was a  
2 robbery, he'd be trying to get away? Why, when he was being  
3 chased by a horde of police on foot and in cars, would he have  
4 discarded the only thing of value he took in the robbery, \$20,  
5 but keep a worthless ID card when he knew he had a picture of  
6 it anyway?

7 Let's talk about consistency and corroboration or,  
8 should I say, inconsistency and lack of corroboration. There  
9 are numerous reasons, which I'll go through roughly in the  
10 order of events, that prove the police story to be false and  
11 Jawaun's testimony to be true.

12 First, contrary to UC 84's definite testimony, Diane  
13 Smith, their witness, testified she had no phone and made no  
14 calls.

15 Second, Regina said UC 84 and Jawaun -- Regina said  
16 that he saw UC 84 and Jawaun talking, but contrary to UC 84's  
17 testimony and his DD5, it "looked like normal conversation."

18 Testimony in trial at page 262, line 2:

19 "Q. OK. Why wouldn't you or why didn't you -- why wouldn't  
20 you or why didn't you move in prior to the point of a distress  
21 signal was made by UC 84?

22 "A. Because to what I was observing wasn't -- didn't look --  
23 you know, it didn't look bad. It looked just like normal  
24 conversation."

25 And then at page 237, line 7:



N3KHFra4

Summation - Mr. Rudin

1 "Q. Were they just standing there in your estimation?

2 "A. Yes.

3 "Q. You thought they were just doing their own thing, talking,  
4 right?

5 "A. Yes."

6 Regina saw a group of about six males nearby, but they  
7 just standing there, doing their own thing. They weren't doing  
8 any of the things that UC 84 told you.

9 And remember that Regina and Del Toro were there for  
10 the purpose of watching everything that UC 84 did. Regina  
11 testified that he would move when UC 84 moved to make sure he  
12 had -- constantly keep him in his sight. And that was  
13 Del Toro's job, too. So when they contradict UC 84 about every  
14 important aspect of his story, you know that UC 84 was not  
15 telling the truth.

16 Third, UC 84 contradicted himself. He contradicted  
17 his DD5 and the criminal court complaint that Jawaun called the  
18 other men over to help him. This is at page 97 of the  
19 transcript in this case, line 3:

20 "Q. Right. So the truth is you don't know whether Mr. Fraser  
21 was with that group or not, right?

22 "A. Right.

23 "Q. And the truth is you never saw him physically standing  
24 with that group of people, right?

25 "A. I did not.

1 "Q. You don't recall Mr. Fraser saying anything to that group  
2 of people, right?

3 "A. I don't recall, no."

4 This is now page 99:

5 "Q. Before I move on, you agree that this criminal court  
6 complaint is not accurate, right?

7 "A. Other than the part with the other individuals approaching  
8 me, it's accurate. It's just the other individuals, I don't  
9 remember ever saying that they approached me."

10 "I don't remember ever saying that they approached  
11 me," except that's what he wrote in his DD5 and that's what was  
12 in the criminal court complaint. And you know that that aspect  
13 of the criminal court complaint, which elevated a simple  
14 robbery, a D felony robbery into a C felony robbery was false.  
15 You know that that allegation made Jawaun now have to face a  
16 15-year possible sentence, not a seven-year sentence. Those  
17 allegations were admittedly false.

18 Fourth, UC 84 contradicted himself, he contradicted  
19 his DD5, and the criminal court complaint alleging that Jawaun  
20 demanded both his money and ID or he would fuck you up. He  
21 admitted to you that in his prior testimony, he contradicted  
22 his DD5 and the complaint. This is at page 103, line 11:

23 "Q. You didn't even say he asked for money?

24 "A. During the deposition, no.

25 "Q. You didn't even say he asked for your ID?

1 "A. During the deposition, no."

2 And now, at page 105:

3 "Q. When you told the story at trial, you claimed what he said  
4 was do you have ID on you, right?"

5 "A. Yes."

6 Not that it was demanded from him. He can't tell the  
7 same story twice because he's making it up.

8 Fifth, contrary to UC 84, Regina didn't see Jawaun do  
9 anything violent or aggressive. He didn't see Jawaun do  
10 anything violent or aggressive. He didn't see him ball up his  
11 fists, didn't hear anyone screaming or cursing, even though he  
12 was only 50 feet away. You saw -- I measured that out when I  
13 was cross-examining him. That's not a very far distance. He  
14 didn't say there was anything in between him and UC 84. He had  
15 a perfectly good view, and from 50 feet he could certainly hear  
16 yelling and screaming if it really happened.

17 And neither did Del Toro. He didn't see that, and he  
18 said he could hear things. And he didn't hear any yelling or  
19 screaming either. Their testimony proves that UC 84's story is  
20 false.

21 The only reason Regina rushed in was not that he saw  
22 anything that struck him as alarming, but that UC 84 gave a  
23 distress signal. He admitted that after that point he saw them  
24 tussling or grappling, but that it was consistent with UC 84  
25 trying to grab Jawaun's phone away from Jawaun. It was

1 consistent with Jawaun's story.

2 Regina and Del Toro testified they did not see Jawaun  
3 reach into his waistband and into his pants as if to draw a  
4 weapon. They thus refuted this outlandish claim in UC 84's DD5  
5 and in the false testimony he gave to you.

6 Sixth, a horde of cops chased Jawaun, but no one,  
7 including Del Toro and Regina, saw him drop anything. He  
8 didn't have any buy money on him. None was found. As Regina  
9 acknowledged, the money simply disappeared.

10 Seventh, the evidence shows that Regina's and  
11 Del Toro's claim that they searched for the buy money was  
12 false. Regina had copies of the buy money and testified when  
13 they questioned him that they also had physically marked it.  
14 So if UC 84 had told him that Jawaun had stolen the money, he  
15 could have easily confirmed that Jawaun still had that money.  
16 They wouldn't have had to search high and low throughout the  
17 housing complex. But he admitted he didn't check. Indeed,  
18 Regina testified at the hearing in the criminal case that UC 84  
19 never told him about any buy money being stolen. That's a  
20 fundamental part of UC 84's story.

21 This is how the questioning came out at this trial:  
22 "Q. Isn't it a fact that the undercover never told you that  
23 Mr. Fraser had stolen money from him, right?

24 "A. No."

25 He denies it, and then what comes is the impeachment.

1 It shows that his testimony is false. Page 27 of the pretrial  
2 hearing, please, line 7. Now, I'm reading from the pretrial  
3 hearing:

4 "Q. Did the undercover ever say Mr. Fraser had stolen from  
5 him, had stolen money from him?

6 "A. No."

7 "Did you give that testimony?

8 "A. Yes."

9 Did you ever hear the defense counsel ask him to  
10 explain that testimony, to explain how he could possibly have  
11 given that testimony? No, there's no explanation for it except  
12 that his story that he told you is untrue.

13 He also testified at the same proceeding what he was  
14 looking for during the so-called search of the housing complex,  
15 but in that testimony, he omitted anything about the buy money.  
16 The buy money, it's the buy money and the ID that supposedly  
17 were stolen and that they were interested in recovering, but he  
18 omits anything about the buy money.

19 Page 248 of the trial transcript in this case:

20 "Q. Didn't you testify at the suppression hearing, when you  
21 went back to look, what you were looking for?

22 "A. Anything" --

23 I'm sorry. When he was questioned at the suppression  
24 hearing, he was asked this question:

25 "Q. When you went back to look, what were you looking for?

N3KHFra4

Summation - Mr. Rudin

1 "A. Anything, really.

2 "Q. Drugs?

3 "A. Drugs, weapons, you know, contraband."

4 "Did you give that testimony? Were you asked those  
5 questions and give those answers?

6 "A. Yes.

7 "Q. You didn't say anything about looking for money, right?

8 "A. No."

9 The only thing that mattered and that's not what they  
10 were looking for? They knew that Jawaun didn't have any buy  
11 money on him because he didn't steal it. To explain away that  
12 he had it, they had to concoct a story that he must have  
13 dropped it and that they searched for it high and low. That  
14 story was false.

15 Eighth, UC 84 and Regina also lied to you, just as  
16 they lied to the prosecutor, about the claim absolutely  
17 essential to their case that Jawaun had UC 84's ID card in his  
18 pocket. That was the other object they accused him of robbing.  
19 Contrary to his statements to the ADA, his prior testimony, and  
20 his testimony at this trial, Regina admitted at his deposition  
21 that he did not find any ID card. Page 257:

22 "Q. At any point from when the undercover first interacted  
23 with the female to when the undercover gave a distress signal,  
24 did you lose sight of the undercover?

25 "A. No."

1                   And now comes the important question:

2           "Q.  When you searched the black male, what did you find in his  
3           pockets?

4           "A.  He had personal property of the cell phones and U.S.  
5           currency.

6           "Q.  That's it?

7           "A.  Yes."

8                   "Do you recall being asked those questions and giving  
9           those answers?

10          "A.  Yes."

11                   Did you hear defense counsel when they got up to  
12          question their client to explain that inconsistent testimony?  
13          Not a word because he couldn't explain it.  It absolutely  
14          refutes their case.

15                   Even in the grand jury, immediately after the  
16          incident, Regina didn't initially say they found the ID card.  
17          He had to be reminded to say it by the ADA.  This is at  
18          page 259:

19          "Q.  Do you recall that when you testified in the grand jury,  
20          initially you did not say anything about recovering an  
21          identification, and you only gave that testimony after the  
22          prosecutor had to remind you about the identification?

23          "A.  No, I don't remember that.

24          "Q.  Let's go to the grand jury testimony."

25                   And then I'm reading from the grand jury transcript.

N3KHFra4

Summation - Mr. Rudin

1 "Q. What, if anything, did you recover from the defendant?

2 "A. U.S. currency and cell phone.

3 "Q. Did you recover anything else belonging to the  
4 undercover?"

5 And then you said "the undercover's ID card."

6 "Do you remember being asked those questions and  
7 giving those answers?

8 "A. Yes."

9 Did you hear any questioning from Mr. Francolla or  
10 Ms. McGuire to their client to explain that testimony? Not a  
11 word.

12 Ninth -- before I get to ninth, let me just make the  
13 point that this is the most important evidence in the case, but  
14 he kept forgetting to say it. Why? Obviously because it's not  
15 really in his memory, because it didn't happen. The story to  
16 the DA was false.

17 Ninth, Regina admits he was trained to fully document  
18 the details of an arrest and search because otherwise, as the  
19 NYPD training materials state, jurors like you wouldn't believe  
20 him. He acknowledged he was specifically trained to include  
21 important details like which pocket important evidence is found  
22 in. This is at page 202 of the trial transcript. Yet he did  
23 not document anything about the search. He cannot tell you  
24 which pocket he supposedly found the ID in even though the ID  
25 is the only physical evidence in the entire case, the very



1 thing they claim was robbed.

2           Indeed, Regina's paperwork disproves his false claim  
3 that he found the ID in Jawaun's possession. Look at the  
4 prisoner pedigree sheet. This is a document he said he filled  
5 out at the scene of the arrest. He told you it's supposed to  
6 document whatever evidence he found and put in the envelope,  
7 but it said only phones, nothing about ID. This was a  
8 document, though, that he prepared before the post-tac meeting  
9 at the precinct, before they all met to concoct a story. All  
10 the other documents were prepared later. In this document, he  
11 reminded himself to voucher the phones because that was the  
12 whole object here. The phones had the photograph of the ID,  
13 but he didn't remind himself to voucher any ID because he  
14 hadn't found it.

15           Let's look at Regina's arrest report, PX 4. It  
16 checked "no" regarding whether the victim's personal  
17 information was taken or possessed. Wasn't the ID card  
18 personal information of the victim, of UC 84? And it states  
19 that the arrest was without further incident. Wasn't the  
20 discovery of the ID in a search following the arrest, the  
21 discovery of the stolen property, an important incident? He  
22 had no explanation for why he omitted the discovery of the ID  
23 from these reports and also from his memo book.

24           Del Toro, meanwhile, admitted the, normally, he would  
25 put in the evidence voucher where the item was found, but

1 there's nothing in the evidence voucher about where the item  
2 was found.

3 Tenth, Regina testified that Del Toro, Patane, and Lee  
4 were right next to him and could observe the search. This was  
5 brought out at page 251 of this trial transcript:

6 "Q. In fact" --

7 And notice I'm going through the trial transcript.  
8 You didn't hear them go through the trial transcript.

9 "Q. In fact, you, Detective Lee, Lieutenant Patane, and  
10 Detective Del Toro were all standing together when you  
11 conducted the search, right?

12 "A. Yes.

13 "Q. And you understood that they could observe what was  
14 happening, right?

15 "A. Yes."

16 Yet Del Toro told you he didn't see any ID card  
17 recovered. He didn't even tell him -- tell you that Regina  
18 told him at the scene that he found it. This is remarkable.  
19 Regina finds the undercover ID on Jawaun after a chase, but  
20 then he just quietly puts it in an envelope and doesn't mention  
21 it to Del Toro. What a crazy story. And there's no police  
22 documentation and no testimony that any of the other officers  
23 present saw Regina find the ID either, even though they were  
24 right there. Regina's story, central to the prosecution, was  
25 false.

1           Eleventh, Regina testified they are trained to  
2 immediately voucher evidence, but he waited until nearly three  
3 hours after the tac meeting and his conversation with UC 84 at  
4 the precinct to voucher it. He waited until after UC 84 made  
5 more undercover buys leading to more arrests and returned to  
6 the precinct where he could then give Regina his ID card,  
7 having found it at the scene after Jawaun dropped it. It was  
8 only after that meeting of the whole team, according to  
9 Del Toro, that he received the Xerox of the undercover ID to  
10 voucher for Regina.

11           Twelfth, UC 84 told you he was scared and this was a  
12 frightening incident. And Del Toro told you that after what he  
13 called an undercover rescue, they'd normally return to the  
14 precinct. But now you know that, in fact, they went out and  
15 made another arrest of another body and five minutes later of  
16 two more bodies. I don't know how they made a case against two  
17 bodies in five minutes, but anyway, the point is that doesn't  
18 sound consistent with what you'd expect them to do after a  
19 highly unusual and traumatic undercover rescue, if one really  
20 occurred.

21           Thirteen, they easily could have gotten surveillance  
22 video. The Jacob Riis projects is a high-crime area and was  
23 heavily surveilled, but they never bothered. They didn't want  
24 such evidence to be preserved. It would prove their story  
25 false.

1           Let's now talk about their motive to make up a false  
2 story. UC 84 downplayed it, but Regina admitted it in detail.  
3 UC 84 feared his cover was blown. After eight years his  
4 undercover career might be over. It might be dangerous for his  
5 safety. Jawaun having the phone was dangerous for him, or so  
6 he believed.

7           You saw the remarkable NYPD recruit training about the  
8 strong temptation police officers feel to commit perjury to  
9 cover up unlawful arrests. This training was given in all the  
10 police academy training materials and court appearance guides  
11 from 2006 to 2015 which are all in evidence. I went through a  
12 couple of them in my examinations. Here it wasn't just one  
13 search that was at stake. It was, in their view, the fate of  
14 UC 84's undercover career. If they didn't charge Jawaun,  
15 they'd have to release his phone with the photo on it.

16           Regina admitted it. Page 230:

17 "Q. So on that day, to protect UC 84, you had to gain  
18 possession of Mr. Fraser's cell phone, correct?

19 "A. Yes.

20 "Q. To protect UC 84, you had to be able to keep the cell  
21 phone, right?

22 "A. Yes."

23           And he admitted to you elsewhere in his testimony that  
24 if they did charge Jawaun with a crime and they had to release  
25 him, they'd also have to release his cell phone, and so they

1 had to make the story stick.

2 Just parenthetically, Mr. Francolla argued to you that  
3 you'll be instructed not to draw inferences from witnesses who  
4 did not testify. But you also should not draw any inferences  
5 or conclusions about why other police officers who were present  
6 are not on trial too.

7 Jawaun's story made more sense and was corroborated by  
8 Regina, Del Toro, and Diane Smith. In other words, all the  
9 witnesses in this case other than UC 84 basically showed that  
10 Jawaun is telling the truth and that UC 84 was not.

11 Jawaun was 18. He was a father and a son finishing  
12 his first week of work at his dream job. He had long since  
13 outgrown his 16-year-old drug dealing days, days that were  
14 inexcusable, but that's not the issue in this case. Kids make  
15 mistakes, particularly kids growing up in that environment.  
16 But he was someone who was going to escape that environment.

17 His mother was a lifelong schoolteacher who had raised  
18 three children mostly alone and even got a graduate's degree at  
19 the same time. She had a headache that fateful evening and  
20 asked her son after he came home from work to go to the store  
21 to get her medication. Were they precise about the exact time  
22 when everything happened nine years ago, about everything that  
23 Jawaun did before he left for the store besides taking a  
24 shower? Maybe they weren't precise enough, but that doesn't  
25 prove that the story isn't true.

1 Jawaun encountered Diane Smith who asked him for drugs  
2 for the man on the bench. He said no, he had no drugs, to get  
3 away from him. This was the life he had put behind him. He  
4 told her he believed the man was a cop. He testified the man  
5 kept stepping in his path, persisting in trying to buy drugs  
6 from him. Diane Smith, called by the defendants, corroborated  
7 that Jawaun told her to get away, that the man appeared to be a  
8 police officer, and that the man persisted in asking Jawaun for  
9 drugs.

10 She also corroborated Jawaun's testimony that he  
11 hadn't sold her drugs for many, many months. I think she even  
12 said years. Jawaun testified, as he was about to get away from  
13 the man, the man said, I know you, and where he -- and where  
14 you and your mother live, which drew Jawaun back in and led to  
15 the ID card incident.

16 Diane corroborated that UC 84 told her and Jawaun that  
17 he knew each of them, contradicting UC's testimony that he  
18 would never do that. Diane Smith testified that this happened.  
19 Diane Smith testified that Undercover 84 told her that he knew  
20 where she lived, and he told -- I'm sorry, that he knew her and  
21 that he knew Jawaun, too. Meanwhile, UC 84 admitted that he  
22 would get apartments in target buildings to infiltrate target  
23 communities. This is such important testimony that he  
24 admitted. Page 60:

25 "Q. Wary" --

N3KHFra4

Summation - Mr. Rudin

1           It was tough to draw it out of him, but we got it all:

2       "Q. Wary subjects are people that are reluctant to speak with  
3       you, right?

4       "A. Yes.

5       "Q. People that are skeptical of you?

6       "A. Yes.

7       "Q. Is it fair to say you are constantly looking for creative  
8       ways to get people to speak you?"

9           "No," he says.

10      "Q. Well, one of the things you've proposed is getting an  
11      apartment in a building in a certain neighborhood so you can  
12      convince people that you live in their neighborhood, right?

13      "A. We were sometimes offered apartments in SRO, single  
14      occupancy room, hotels. They will offer us apartments to prove  
15      that you live there, because only individuals that live there  
16      are allowed into the buildings.

17      "Q. You do that so you can convince people in the neighborhood  
18      that you live in the neighborhood, right?

19      "A. Correct.

20      "Q. You have come up with different ways to gain access to  
21      buildings that you are not allowed in, right?

22      "A. Yeah, that's one of the ways, is getting an apartment.

23      "Q. That's one of the ways that you have been praised for  
24      finding creative ways to get wary people to talk to you, right?

25      "A. I don't recall specific praise for that, but, yes, I've

N3KHFra4

Summation - Mr. Rudin

1 done that.

2 "Q. You've suggested getting an ID card for like a shelter so  
3 you can come in and out of the shelter so people see you in the  
4 neighborhood, right?

5 "A. I haven't suggested it, but I have had an ID card for that  
6 reason."

7 Did he actually have an apartment in Jawaun's building  
8 or another one nearby? Surely he made it part of his job to  
9 know as much as he could about who lived in the community. He  
10 was working in this community for eight years. He had made  
11 hundreds of buys in this community. He was part of the  
12 narcotics division. There were intelligence in the narcotics  
13 division. They collected information. It was UC 84's business  
14 to know the community and know the people in the community.  
15 Did Jawaun, who's admitted drug dealing, fall under a previous  
16 investigation and become known to UC 84? Did the detectives --  
17 did UC 84 find out in whose apartment he lived? Did Diane tell  
18 UC 84? Any of these scenarios are possible.

19 Regina and Del Toro both corroborate that Jawaun, as  
20 he testified, was not acting in an aggressive or combative way,  
21 just talking. Del Toro corroborates that Jawaun was holding  
22 out the ID and taking a picture. Neither defendant saw him put  
23 anything in his pocket like Jawaun says. Both officers  
24 corroborate Jawaun's account that he did not ball up his fist  
25 or reach into his pants. Regina admitted that the grappling



1 you saw was consistent with UC 84 grabbing for Jawaun's phone,  
2 just like Jawaun told you. Del Toro did not see Jawaun find an  
3 ID in Jawaun's pocket, corroborating Jawaun that he didn't have  
4 it. And as Jawaun testified, he dropped it before he ran.

5 All the police witnesses corroborated Jawaun's  
6 testimony that Jawaun was not selling drugs that night as I  
7 discussed earlier, and so did Diane Smith, their witness, too.

8 In sum, the evidence is overwhelming that the police  
9 story was false. It makes no sense. It's full of  
10 contradictions. The officers contradict each other. They  
11 contradict themselves. Their story is totally uncorroborated.  
12 They have a strong motive to lie. Jawaun's testimony refuting  
13 their lies is true.

14 So what are their defenses to evidence fabrication?  
15 They said in their opening statement that a criminal jury  
16 convicted him and want you to think the only thing different  
17 now is our knowledge of the eight additional lawsuits, but  
18 that's not true. We presented evidence to you that Geoffrey  
19 Stewart, the defense attorney at trial, never had the results  
20 of civil deposition testimony and civil document discovery that  
21 he did not have at the criminal trial. Yes, the lawsuits and,  
22 equally important, the time to put it all together. He  
23 testified that whatever limited documents he received, he  
24 received immediately before jury selection. Then he had to  
25 select a jury and give his opening statement and then get right

1 into the witness testimony. How could any attorney, no matter  
2 how skilled, make full use of such material under those  
3 circumstances?

4           Anyway, a New York State judge has overturned Jawaun's  
5 conviction because he did not get a fair trial. You are  
6 judging this matter fresh based upon the evidence you have  
7 heard.

8           Second, you heard Mr. Francolla argue, basically, why  
9 would these cops have lied? Why would they have made up a  
10 false story about Jawaun? Why didn't they make up a better  
11 story? First of all, you know why they lied, to get that phone  
12 and to punish this young man for running from him.

13           How are they risking anything by making up this story?  
14 You heard them each testify to having been involved in hundreds  
15 or even thousands of arrests, but each has testified that over  
16 nearly 20 years they testified at trial in only a handful of  
17 trials. Most people take plea bargains and don't go to trial.  
18 They're not at risk of the documents that they've produced  
19 being produced because you heard that those documents are only  
20 produced right at the time of jury selection.

21           Jawaun was offered two and a half years, and most  
22 defendants, innocent or guilty, would be tempted to accept such  
23 a deal rather than risk 15 years in prison. These cops never  
24 thought this case would ever get to trial, let alone receive  
25 the scrutiny it's getting in this courtroom.

1           Why would they not make up a better story?  Arrogance?  
2  They thought they were invincible and would never be  
3  challenged.  They thought no one would question them or believe  
4  some black kid from the street over them.

5           Third -- well, the defense made a big deal in their  
6  opening that Jawaun just got lucky when his conviction was  
7  vacated, and he must be guilty because he pleaded to the big  
8  crime of disorderly conduct.  That's what a constitutional  
9  violation is, luck?  Was he lucky to spend two years in prison  
10 on an unconstitutional conviction?  They got their guy  
11 Sangermano to say it's a crime, too, that's disorderly conduct,  
12 until Judge McMahon questioned him and he stopped misleading  
13 you and he admitted that it's not a crime but a violation, the  
14 equivalent of a traffic ticket.

15           Jawaun accepted the equivalent of a traffic ticket so  
16 he wouldn't have to keep coming back to court, missing work,  
17 and possibly having to undergo another traumatic trial, and so  
18 it doesn't contradict his testimony that he didn't commit a  
19 robbery.

20           And now, fourth and finally, I get to their main  
21 argument, the parole hearing transcripts.  Jawaun admitted  
22 selling drugs that night, being selfish and greedy, and he used  
23 the terminology used by the parole commissioners referring to  
24 his crime, and he used the word "robbery."  So let's look at  
25 what led up to these two hearing.

1           Jawaun was sent to Lakeview Shock Correctional  
2 Facility. He was beaten into the ground. He was brainwashed  
3 to think of himself as a criminal, to accept his crime. The  
4 goal was to destroy the person he had been and to build up a  
5 new person. So long before the parole hearing he had been  
6 conditioned to express himself in terms of his crime, his  
7 robbery, his offense, or else he'd be severally punished.

8           But the system had not yet fully broken Jawaun. He  
9 refused in his initial parole paperwork to admit guilt for the  
10 robbery, and so he was denied parole directly from Shock for  
11 the very reason that he had not shown remorse for his crime.  
12 They decided he needed more rehabilitation, and so he was sent  
13 to Greene Correctional Facility.

14           You heard in vivid painful detail the so-called  
15 rehabilitation he received at Greene. He was housed in a  
16 60-man dorm with murderers and rapists. He slept on a metal  
17 slab with just two sheets. Inmates slept with skully caps  
18 pulled over their faces to protect against slashings in their  
19 sleep. There were daily knifings and stabbings, beatings and  
20 assaults. The inmates essentially policed themselves and were  
21 left to kill and maim each other. He lived in fear every  
22 minute that that would happen to him.

23           People were attacked by surprise. One week there were  
24 57 slashings. The fear of going to sleep, the fear of going to  
25 the bathroom, the constant fear you could bump into someone or

1 look at him the wrong way and then have to worry about being  
2 killed in your sleep, day after day after day after day after  
3 day after day after day after day of this torture.

4 And then the visits. You look forward to the visits  
5 as the only good thing in your life, and then you have to see  
6 the pain in your loving mother's face when she describes having  
7 been searched under her underwear and humiliated, how your  
8 little kids were searched. And then after a visit when you're  
9 about to go back inside, to have to listen to your babies  
10 crying, Daddy, why can't you come home?

11 And you see your son walk for the first time, but  
12 you're in prison, and you feel like you failed your kids as a  
13 father. And it's so awful that you beg your mother not to come  
14 anymore, but she knows you need her and, even more than that,  
15 to see your children. And she keeps coming and enduring the  
16 humiliation to not allow the system to destroy your  
17 relationship with your kids.

18 And then you come to your parole hearing and you've  
19 already been denied once. And you're on work release, but you  
20 know that if you break any one of their demanding rules, you  
21 could go right back to Greene, or not break a rule but be  
22 falsely accused. God know's that's happened to you before.  
23 You're facing the potential for four more years of prison for  
24 something you didn't do and the loss of more precious years  
25 with your young children, years and experiences you can never

1 make up. And you're told by everyone that you must admit your  
2 alleged crime and not disagree with the commissioners. If you  
3 don't say you're sorry, you'll be sorry you didn't say you're  
4 sorry.

5 And you're just 21 years old, and with no attorney to  
6 advise you or object to the accusatory questions, there's no  
7 judge present to make sure the questioning is fair, you're  
8 nervous and intimidated and you're brought in shackles to a  
9 six-by-eight or eight-by-ten gloomy, windowless room, locked  
10 inside. And three faces appear on a screen and fire questions  
11 at you for six to eight minutes. And your life, your life, is  
12 at stake, your children are at stake, and you react as best as  
13 you can. You plan to admit what you really did and not admit  
14 what you didn't, but it's impossible to walk that line, and you  
15 start debasing yourself and groveling and saying whatever comes  
16 to your mind to save yourself.

17 But when they finally ask for your confession  
18 specifically to robbing the money and the ID, you steel up your  
19 courage to deny it. And then it's over, and you're denied  
20 parole because you haven't shown sufficient contrition. And  
21 three months later it happens again.

22 Now, Mr. Francolla went through in great detail  
23 excerpts from the parole hearing to try to create the  
24 impression that Jawaun really was a drug dealer or that  
25 somehow, by not denying that there was a robbery or that there

1 was -- that he demanded or asked for ID, that he was  
2 admitting that he was guilty of robbery. But he didn't read to  
3 you this passage, page 563 from the trial transcript:

4 "Q. But did you state, give you money -- give me your money  
5 and ID?

6 "A. No, ma'am. This was actually a buy-and-bust operation.  
7 The undercover actually was trying to purchase drugs from me at  
8 that time."

9 "Did you give that testimony in your parole hearing?

10 "A. Yes, sir, I believe so."

11 When he was asked specifically whether he took money  
12 by force and an ID, he denied it.

13 And when it's over, these two extraordinarily  
14 high-stakes stressful inquisitions, Jawaun doesn't even know  
15 quite what he said or exactly why he said it. And then four  
16 and five years later he's shown the transcript at a deposition  
17 and grilled by a very experienced and skillful attorney for the  
18 City about every word that appears there, and about whether  
19 questions and answers he doesn't clearly remember are stated  
20 accurately in the transcript. You're being asked to draw  
21 conclusions from isolated excerpts that Mr. Francolla read into  
22 the record without being there and knowing the rapidity of the  
23 question. Did you hear how slowly and nicely Mr. Francolla  
24 read the questions? That doesn't reproduce the actual  
25 atmosphere at this awful, stressful hearing where Jawaun Fraser

1 was basically being tried for his very freedom.

2 Now, there's no evidence in the record about what was  
3 in the commissioners' minds when they decided the third time to  
4 finally grant Jawaun parole, but we do know Jawaun had an  
5 incredible prison record, totally inconsistent with the picture  
6 they're trying to paint. Not one infraction, not one ticket.  
7 He was made a peer leader at Greene. One of two out of 60  
8 inmates given that responsibility. And he finished all his  
9 programs. And so it appears the commission finally could see  
10 his humanity, and they gave him parole, even though he never  
11 admitted the acts making up his alleged robbery.

12 You know it was untrue he was selling drugs that  
13 night. I've already shown that to you. You know that's  
14 untrue. UC 84 admitted it was untrue. Regina admitted it's  
15 untrue. Diane Smith said it was untrue. And you know I've  
16 shown you already there was no robbery. You know he had to say  
17 what he said, and it's sad that the defendants, through their  
18 lawyers, will try to use the parole hearings to justify the  
19 wrongs that they committed that put Jawaun in that situation.

20 You've all heard about coerced confession cases. To  
21 the extent Jawaun admitted things at his hearings, it was not  
22 voluntary. It was begging for his life. You shouldn't hold it  
23 against him. Quite to the contrary. The human humiliation of  
24 it is part of his damages.

25 One final point. Like the other parties to this case,



1 Jawaun submitted to a lengthy deposition where the defendants'  
2 lawyers were free to ask him anything they wanted. You didn't  
3 hear at this trial a single contradiction about the events of  
4 October 21, 2014, between his testimony at the deposition and  
5 his testimony here at this trial, just about the parole  
6 hearing. Compare that to the police officer defendants who  
7 testify for a living and don't have to grovel before parole  
8 commissioners. It's night and day. We have proven evidence  
9 fabrication against each defendant by a preponderance of the  
10 evidence.

11 Let's talk now about the *Brady* claim against the  
12 individuals, and I'd like to really emphasize this. The *Brady*  
13 claim is almost like you're participating in a second trial.  
14 It's almost like -- to some extent it's a different record.  
15 The issue in evidence fabrication is whether you find by a  
16 preponderance of the evidence that Jawaun -- that the  
17 defendants fabricated evidence, but the issue as to the *Brady*  
18 violation is whether or not favorable information was withheld,  
19 knowingly or recklessly, that was material to the outcome of  
20 the trial where the prosecution had the burden of proof beyond  
21 a reasonable doubt. Jawaun Fraser did not have any burden to  
22 prove himself innocent. He was entitled to listen to the  
23 evidence from the prosecution and to challenge that evidence  
24 and to try to show there was a reasonable doubt.

25 So they're wrong when they say that the only issue in

1 this case is whether we've proven by a preponderance of the  
2 evidence that Jawaun Fraser was framed. We believe we've  
3 proven that. But as to the *Brady* violation, the issue is  
4 whether the evidence that was not disclosed in the criminal  
5 case likely would have created a reasonable doubt in the minds  
6 of at least one juror so that Jawaun would not have been  
7 convicted. It's focusing on the prosecution's case and whether  
8 there was a reasonable doubt about that case. It's not  
9 focusing on whether or not Jawaun could have proven himself  
10 innocent at the criminal trial, which is not what happens at  
11 criminal trials in this country. The prosecution has the  
12 burden of proof. All the defense has to show is that there's a  
13 reasonable doubt or convince at least one juror that there is a  
14 reasonable doubt so there could not be a unanimous verdict  
15 against him.

16 Let's talk first about the issue of knowingly failed  
17 to disclose. Judge McMahon will define "knowingly" for you,  
18 acting intentionally or by avoiding knowledge by essentially  
19 burying your head in the sand or through recklessness. There,  
20 I submit to you, is no real issue about knowledge. This isn't  
21 some hypothetical case where an officer was not served with a  
22 lawsuit or didn't know about a lawsuit. You heard them  
23 bringing that up over and over and over again, some officers  
24 aren't served with lawsuits, some don't have lawyers who answer  
25 for them and don't know about their lawsuits.

1           But that's not this case. All four of UC 84's  
2 lawsuits were answered by an attorney for the City. You know  
3 an attorney for the City cannot answer for a police officer  
4 unless the officer has requested representation, which UC 84  
5 did in this case, so he knew. There's proof of service of all  
6 four lawsuits on Del Toro, and two were answered. So you know  
7 that he knew.

8           Plus the City's witness, NYPD director Katie Flaherty,  
9 on Friday testified that commanding officers at every precinct  
10 were supposed to train officers that they were required to know  
11 their lawsuits, and if they needed more information, they could  
12 email Ms. Flaherty. She has a database with lawsuits, lawsuits  
13 that the City answered, lawsuits that the officers asked for a  
14 lawyer for, lawsuits maybe where for some reason maybe the  
15 officer wasn't even served, but the lawsuit still might be  
16 relevant to their credibility. They had them all.

17           So here the officers knew if they couldn't remember  
18 all their lawsuits, they could easily find out and tell the  
19 ADA. They could find out by emailing Ms. Flaherty. However,  
20 none of them testified they needed any help. None of them  
21 testified they had forgotten any of their lawsuits. If they  
22 did, they are liable for deliberately failing to ask  
23 Ms. Flaherty for the information they were required to  
24 disclose.

25           Sangermano's practice, he testified, was to ask each

1 police witness for lawsuits, and Regina testified that he was  
2 asked. So it's obvious that UC 84 and Del Toro would have been  
3 asked, but they did not disclose the lawsuits, otherwise  
4 Sangermano testified he would have found those lawsuits and  
5 disclosed them to the defense.

6 You know from ADA Sangermano, who obviously is on  
7 their side in this case, that he didn't learn about the  
8 lawsuits because he wasn't told by the officers, and that's why  
9 he didn't disclose them. The only lawsuits he knew about for  
10 UC 84 and Del Toro were two for UC 84 that his paralegal  
11 happened to find in a routine search, and he knew of none for  
12 Del Toro.

13 The specific circumstances also show that it's not  
14 credible that the detectives didn't remember the lawsuits.  
15 UC 84 was sued twice, May 15, 2015, and June 10, 2015. That's  
16 within two months and within half a year of Jawaun's trial.  
17 That is, within half a year of Jawaun's trial, in the span of  
18 really one month, he was sued twice. And he was sued in 2013,  
19 only two years before the trial, and 2011, only four years  
20 before the trial.

21 And in the June 10, 2015 case, the *Wright* case, which  
22 is at PX 38A, the facts were remarkably similar to Jawaun's  
23 case. The complaint alleged that UC 84 arrested the plaintiff  
24 at Avenue D and Sixth Street, right near the Jacob Riis Houses,  
25 after the complainant -- after the plaintiff warned another

1 person he was with that UC 84 was a cop. That person bought  
2 drugs from UC 84. But to get even, to teach a lesson to the  
3 person who called out UC 84 for being a cop, UC 84 arranged to  
4 have him arrested too.

5 How could he not remember that case so similar to the  
6 allegations in this case? How could he not remember that case  
7 where he was served with a lawsuit four or five months before  
8 the trial of Jawaun in 2015?

9 And as for Del Toro, he was sued three times in  
10 2089 -- I'm sorry, he was sued three times in 2009, within four  
11 months, from June through October, and again in 2012. Even now  
12 you heard him, he still recalls the lawsuit after all these  
13 years in which, memorably, he gave a deposition. So if he  
14 remembers that now, obviously, he remembered it in 2015, but he  
15 didn't tell the prosecutor.

16 Let's talk about materiality, which is really the only  
17 issue for you to decide. The rest is so obvious.

18 Judge McMahon will instruct you regarding materiality  
19 to consider whether the evidence, if disclosed, would be likely  
20 to cause even one of 12 jurors to have a reasonable doubt and  
21 not convict. You heard this was an exceedingly close criminal  
22 case. The jury acquitted on the top charge, and it only  
23 convicted after initially reporting that it was deadlocked on  
24 both charges. They were deadlocked. They told the judge we're  
25 having so much trouble that we cannot decide this case, and so

1 the judge had to give a special charge to the jury urging them  
2 to try to resolve their differences, and only then did they  
3 finally convict, only of the lesser charge.

4 You heard Geoffrey Stewart's testimony. He might not  
5 use two suits, but eight or ten would be totally different.  
6 The impact of questions about so many specific fact patterns,  
7 even if the cops tried to deny each one, would cause one or  
8 more jurors to disbelieve the denials. That was his belief.  
9 He was deprived of the opportunity to make a strategic decision  
10 during the trial about how to use and whether to use those  
11 lawsuits because he was deprived of the lawsuits. He was  
12 deprived of the information.

13 He told you that his usual practice and experience was  
14 to use lawsuits when he knew of a large number of lawsuits. He  
15 told you he did it in at least two cases, but he also told you  
16 he believed he probably did it more than twice. And they  
17 suggest to you, he tried a lot of cases, but he only did it  
18 twice or maybe a few times more than twice? That somehow  
19 proves that the lawsuits in this case were not material. Well,  
20 how many cases did he have that officers were sued so many  
21 times? You think that happens in a lot of cases? It's  
22 extraordinary in this case that they're sued so many times.

23 And how do we know if there were other cases where  
24 officers were sued a lot of times that it was disclosed by the  
25 DA? How do we know the officers in those cases told the DA

1 about their lawsuits? You heard the testimony that it wasn't  
2 until 2014, at the earliest, that the NYPD did anything at all  
3 to get out the question of disclosing civil lawsuits. I'm  
4 going to discuss with you that I don't think what they did was  
5 enough, but that was the first time they ever did anything.

6 For nearly 50 years, more than 50 years from when the  
7 *Brady* case was decided until 2014, they did absolutely nothing.  
8 So how do you know that their officers were disclosing their  
9 civil lawsuits to DAs before 2015? How do you know how many  
10 cases Mr. Stewart had to make that decision in? You do know  
11 from a very honest and credible witness that he knows that if  
12 he learned about eight or ten lawsuits rather than two, he  
13 would have used them, and he thinks they would have made a  
14 difference.

15 It took some chutzpah for Sangermano to degrade  
16 defense lawyers for losing things. His suggestion that  
17 Mr. Stewart actually received 11 more lawsuits involving  
18 Regina, so he had 13, and he didn't use 13, so his testimony  
19 that he would have used eight or ten is not truthful. It takes  
20 some nerve for him to degrade a defense lawyer for -- defense  
21 lawyers for losing things and to suggest that he really turned  
22 over those 11 lawsuits when he violated the basic training of  
23 his office to make a record of *Brady* disclosures.

24 He's to blame if there's any issue about this at all.  
25 He tried to suggest that civil lawsuit information is never

1 useful because he's never seen a defense attorney use it, but  
2 even UC 84 told you that he's been cross-examined before about  
3 his lawsuits. And Stewart, Mr. Stewart, of course, testified  
4 that he's done it multiple times. If such lawsuits are not  
5 material, then why was the *Garrett* case decided the way it was?  
6 And why did the judge in Jawaun's case overturn his conviction  
7 for the failure to turn over lawsuit information?

8 And don't forget when evaluating where Sangermano is  
9 coming from, he's the prosecutor whose failure to disclose the  
10 Regina lawsuits caused the conviction to be overturned. He had  
11 some nerve coming in here so smug, self-righteous, and  
12 sanctimonious.

13 Contrary to Sangermano, Katie Flaherty, despite being  
14 so obviously invested in defending the City, testified that  
15 even the NYPD considers a handful of lawsuits significant.  
16 They were considered before approving transfers and promotions.  
17 Just three in 12 months would cause an officer to be evaluated  
18 for possible special monitoring or six in five years.

19 Now, you heard Mr. Francolla testify on the issue of  
20 materiality that these lawsuits really wouldn't have made any  
21 difference. Mr. Stewart wouldn't have used them. I mean, they  
22 were so innocuous. Well, in the *Wright* case, as I mentioned to  
23 you a moment ago, the undercover was accused of orchestrating  
24 the arrest of an innocent person because that person had the  
25 temerity to try to warn his friend that the undercover -- that



1 the undercover was an officer. And Mr. Francolla suggested to  
2 you that in that lawsuit there weren't any allegations that he  
3 did anything dishonest.

4 Well, first of all, at paragraph 27 of that lawsuit,  
5 the allegation is that this poor guy spent five months in  
6 prison, in jail, before all the charges against him were  
7 dismissed when a jury found him not guilty. Then at  
8 paragraph 40, the lawsuit alleges defendants withheld  
9 exculpatory evidence from the district attorney. And then at  
10 paragraph 46, defendants misrepresented and falsified evidence  
11 throughout all stages of the criminal proceedings. That's  
12 Exhibit 38A.

13 Then, as to Del Toro, there's the *Murray* case. I  
14 mentioned to you a moment ago that, obviously, he knew about  
15 the *Murray* case because he still remembers it to this day. In  
16 the *Murray* case, paragraph 13 alleges that defendant Del Toro,  
17 along with a couple of other -- along with one other police  
18 officer, deliberately and maliciously prosecuted plaintiff  
19 Donnell Murray, an innocent man, without any probable cause  
20 whatsoever by filing or causing a felony complaint to be filed  
21 in the criminal court of the City of New York for the purpose  
22 of falsely accusing the plaintiff of violations of the criminal  
23 laws of the state of New York. Paragraph 14, that Del Toro and  
24 his codefendant deliberately provided false and/or incomplete  
25 information to the District Attorney's Office to induce

1 prosecution of the plaintiff. And at paragraph 16, as a result  
2 of this conduct, plaintiff was deprived of his liberty and  
3 suffered the humiliation, mental anguish, indignity, and  
4 frustration of an unjust criminal prosecution.

5 Then they suggest that maybe the undercover -- I'm  
6 sorry, maybe Del Toro didn't remember the *Sanchez* case, PX 17,  
7 or that that wasn't material. That's an extraordinary case  
8 where Del Toro and other officers allegedly barged into an  
9 apartment without a warrant while this 15-year-old plaintiff, a  
10 15-year-old girl, was attempting to get dressed. She heard  
11 them bang on the door and eventually break the door and enter  
12 the apartment, and while she was undressed to -- trying to get  
13 dressed, she heard them continue to bang on the door and break  
14 the door in and enter the apartment. And while the plaintiff  
15 was undressed, approximately four male officers who were  
16 holding riot shields entered her bedroom and pinned her down on  
17 to the bed. And while she was held by the officers, she was  
18 pinned down for five to six minutes, and then they asked her  
19 her age and if anyone else was home. And she informed them she  
20 was 15 years old and no one else was home. And then they  
21 handcuffed the plaintiff, which caused plaintiff to drop her  
22 towel, and she was standing naked in handcuffs while the  
23 officers continued to interrogate her for approximately five  
24 minutes.

25 And then she was -- You forgot that one? That's not

1 material? Mr. Stewart couldn't have used that effectively to  
2 challenge his credibility?

3 We have proven by a preponderance of the evidence  
4 knowledge, materiality, and causation. You should award Jawaun  
5 for all his damages caused by his unfair conviction.

6 And now turning to *Monell* liability. The best  
7 evidence of the City's attitude about compliance with *Brady*  
8 came out of its own lawyer's mouth during her opening  
9 statement. Jawaun was lucky to have his conviction overturned  
10 for a *Brady* violation, as if it's a mere inconsequential  
11 technicality. This was totally dismissive of the importance of  
12 *Brady*, but it certainly reflected the attitude of her clients.

13 He was lucky, I suppose, in a sense that I don't think  
14 she was thinking of. He was lucky that the *Brady* violation was  
15 discovered at all. Remember that *Brady* material is information  
16 the prosecution fails to disclose, and by definition it's  
17 information the defense doesn't have at trial. They don't know  
18 about it. So had Jawaun not been lucky to have an excellent  
19 appellate attorney find the information several years later,  
20 the violation would never have been discovered, and he still  
21 would be a convicted felon. And unfortunately, the discovery  
22 was too late to shorten his time in prison and on parole.

23 We've proven that the NYPD commissioner and other  
24 policymaking officials were deliberately indifferent leading up  
25 to Jawaun's trial about whether officers complied with their

1 *Brady* obligations. For 51 years, when *Brady* was decided in  
2 1963 until 2014, there was no written *Brady* policy or mention  
3 of it in any training materials given to officers. For 51  
4 years they adopted no disclosure policy. This was just  
5 incredible malfeasance. Think of what *Brady* is. *Brady* is  
6 evidence of innocence or evidence that may so discredit a  
7 police officer that a jury might not or would not convict.  
8 That a person who does not deserve to go to prison may not go  
9 to prison. For 51 years they so trivialized *Brady* in their  
10 minds that they didn't tell -- they didn't have any policy and  
11 they didn't train officers about their obligations for 51  
12 years.

13 And then in 2014, the *Garrett* decision comes down from  
14 the New York Court of Appeals making clearer still that civil  
15 lawsuit information has to be disclosed. And then, this is  
16 unbelievable, the department adopted a definition of *Brady* that  
17 defeated such disclosure. It defined *Brady* as extending only  
18 to exculpatory evidence indicative of complete innocence.  
19 Complete innocence, not a word about impeachment.

20 (Continued on next page)

21  
22  
23  
24  
25

1 MR. RUDIN: They defined out of the *Brady* obligation  
2 what the New York Court of Appeals had just told them had to be  
3 disclosed.

4 You heard that definitively established in the  
5 deposition testimony we read from Mr. McNally, an NYPD  
6 representative. This was an unlawful policy. This unlawful  
7 written policy wasn't changed until January 2017, too late for  
8 Jawaun, who was in Greene Correctional Facility by that time.

9 No wonder, in view of this unlawful policy, police  
10 officers like UC 84 and Del Toro didn't take their obligations  
11 seriously.

12 Katie Flaherty claims she began telling commanding  
13 officer and roll call officers to discuss with line officers  
14 they had to disclose impeachment and civil lawsuit information  
15 beginning sometime in 2014. That she told -- that she told  
16 them -- that's the commanders -- to tell officers they had to  
17 know their lawsuit history, but there was no follow up to make  
18 sure this occurred or that the officers followed any such  
19 instruction.

20 Indeed, Stella Urban, one of the representative  
21 witnesses who gave a deposition admitted there was no process  
22 for supervisors to make sure that officers were properly  
23 disclosing their lawsuit information to prosecutors. This at  
24 page 420 of the trial transcript.

25 Ms. Flaherty claims she told commanding officers to

N3K3FRA4

Summation - Mr. Rudin

1 tell line officers, including detectives, that they could, if  
2 they wished, e-mail her to find out additional information.  
3 The legal bureau as you heard had a comprehensive database.  
4 She admits she could have made a rule they had to contact her.  
5 But she didn't.

6 The NYPD could have proactively provided the  
7 information to every testifying officer in every case, or  
8 direct them to the DA's Office, but they elected not to do any  
9 of these things. They could have prevented virtually all human  
10 error. They could have prevented the consequence of officers  
11 forgetting in good faith. Instead they were passive. They  
12 allowed violations like in this case to happen.

13 While Ms. Flaherty claims she began training  
14 detectives directly, she admitted it wasn't until 2015 or 2016.  
15 And critically, Detectives Regina and Del Toro both told you  
16 they received no such training. So much for the claimed  
17 comprehensiveness of the training program.

18 The uncontradicted evidence in the record also is that  
19 no officer has ever been disciplined for failing to disclose  
20 civil lawsuit information, and that includes the officers in  
21 this case. Only you have the power to discipline them. The  
22 police department has no interest in it. So there was no  
23 supervision and no discipline. Another signal to officers that  
24 the department didn't take this seriously.

25 The NYPD took this extraordinarily lax attitude about

1 *Brady, Giglio*, and civil lawsuit disclosure, even though it  
2 knew its officers had such a history of perjury that it felt  
3 compelled to repeatedly tell them in training materials not to  
4 commit perjury. Imagine that. You think, you never -- you  
5 don't hear witnesses told when they take the witness stand not  
6 to commit perjury. We all understand what it means to take an  
7 oath. To tell the truth. Yet they had to tell police officers  
8 over and over and over again in bold face and capital letters  
9 to resist the temptation to commit perjury.

10 I would say, by the way, if they are tempted to commit  
11 perjury in order to defend an arrest they make of some body  
12 they picked up in the street, imagine the temptation to commit  
13 perjury if it's necessary to save the undercover career of UC  
14 84.

15 You also heard from Mr. McNally's deposition that the  
16 withholding of impeachment information, according to the New  
17 York Police Department, they knew it, was a leading cause of  
18 wrongful convictions.

19 How many individuals are in prison wrongfully today  
20 because the NYPD allowed its officers not to disclose their own  
21 lawsuit histories or other impeachment information before 2017?  
22 You must hold New York City liable so that doesn't continue to  
23 happen to others.

24 Finally, damages. The damages in this case, which  
25 they didn't address at all, are enormous. Jawaun was

1 prosecuted on fabricated evidence. He went through the trauma  
2 of a prosecution for a year. 15 to 20 pretrial court  
3 appearances. Trial. Conviction. The horror of conviction for  
4 something you didn't do, and the horror of sentencing, of being  
5 sentenced to two to six years in prison. Then he suffered two  
6 horrific years in prison followed by a year of strict parole  
7 supervision.

8 He went through the horrible experience at Rikers  
9 Island followed by boot camp, where they tried to completely  
10 strip him of his pride and humanity. He then had the gruesome  
11 exposure to prisoner violence at Greene, having to live every  
12 minute of his life on guard to avoid situations that could  
13 become deadly or to avoid being killed or maimed for no reason  
14 at all.

15 He had no privacy, he had no companionship, he had no  
16 romantic or sexual relationships, he had no entertainment, he  
17 had no freedom of movement, he had no ability to control his  
18 own life. He couldn't pursue his career goals. He had to  
19 debase and humiliate himself at two parole hearings, having to  
20 admit to things he truthfully denied for three years and he  
21 knew he hadn't done.

22 Worst of all, he couldn't be a real father to his two  
23 adorable children, and missed out on that special time of life  
24 when your children are young and you are the world to them.

25 All this happened in his most formative years, when



1 many of you or your children were in college, years 18 to 21.  
2 For four years he was a convicted felon, losing jobs, being  
3 turned down for apartments, his right to travel substantially  
4 limited.

5           You heard what a day in that life was like at Greene  
6 Correctional Facility. Waking up very early before other  
7 inmates were up and able to attack you. Going to sleep late  
8 after they all went to sleep. Eating the awful food. Being  
9 vigilant every moment not to bump another person or to make eye  
10 contact so you don't rub someone the wrong way and end up being  
11 shanked. Having to answer at all times to the corrections  
12 officers. Having to take programs against violence and drug  
13 use you don't want or need. Having to watch your back in the  
14 shower and having to watch inmates stab or slash each other.  
15 And then when you are allowed a visit, seeing your children  
16 having grown without you, seeing them cry when you leave.  
17 Seeing your mother's anguish after she's been violated by  
18 guards searching her under her underwear.

19           How many thousands of dollars a day would you want to  
20 go in for one of those days when you are sure it would be  
21 follow by more and more years.

22           MR. FRANCOLLA: Objection.

23           THE COURT: Overruled.

24           MR. RUDIN: Assuming you'll survive each day, when you  
25 know that at any minute your life could change forever or even

1 end. When you know you'll never come out the same person  
2 mentally and emotionally.

3 Jawaun became withdrawn, lost relationships, felt  
4 uncomfortable around his own family, almost can't bear to visit  
5 his mother because he would have to go back to the Jacob Riis  
6 projects where all this happened. Has avoided public  
7 transportation and closed in areas, fears police. The scars  
8 will live with him forever.

9 Would \$10,000 be enough for each such day? Three and  
10 a half million dollars a year?

11 You are the conscious of the community and I trust you  
12 to come up with an appropriate figure that tells Jawaun and  
13 tells the police officer the value of three years of his life  
14 and of everything that's followed.

15 No, UC 84; no, Detective Del Toro; no, Detective  
16 Regina, Jawaun Fraser is not just a body. His life matters.

17 I don't want to overlook the economic damages, the  
18 \$224,000 in lost wages and benefits including interest, and the  
19 \$13,000 in legal fees.

20 Punitive damages. Then I'll be done. What these  
21 detectives did to this young man, this man of limitless  
22 potential who was scarred for life, is unconscionable. They  
23 must be punished for it. There must be a consequence. You  
24 cannot put them in jail like Jawaun. You can appropriately  
25 punish them through punitive damages. Punitive damages are

N3K3FRA4

1 essential to deter them and others from doing the same thing to  
2 other Jawauns. Anything less than a seven figure amount per  
3 officer would give the wrong message. Your message should be  
4 loud and clear. Make sure they and their police colleagues  
5 never forget this lawsuit. Thank you very much.

6 THE COURT: Okay. So, we've heard the closing  
7 arguments. I'm going to give you from now until 1:30 to have  
8 your lunch. We ordered lunch, I believe, and it should be  
9 there. It is there. And take a stretch. And be back in the  
10 jury room at 1:30 ready to go to law school. And that will  
11 probably take about an hour to an hour and 15 minutes, which is  
12 not going to leave a lot of time for deliberations this  
13 afternoon, given my unfortunate but longstanding commitment at  
14 Columbia. But, it will get you started.

15 Don't discuss the case over lunch. There is a missing  
16 piece. It's right here. I'm going to read it to you after  
17 lunch. Keep an open mind. All right? Keep an open mind for  
18 another just another couple of hours and then you can start to  
19 close it. All right? Have a good lunch.

20 (Jury excused)

21 THE COURT: Okay. I will see you probably about 1:25.

22 (Recess)

23 (Continued on next page)

24

25