

1 THE DEPUTY CLERK: Recalling for the record,  
2 United States v. Joseph R. Price, 2008 CF1 27068; Dylan  
3 Ward, 2008 CF1 26996; and Victor Zaborsky, docket 2008 CF1  
4 26997.

5 THE COURT: And all counsel who were previously  
6 here are still here, and also all three defendants are  
7 here.

8 Mr. Grimm, would you like to open?

9 MR. GRIMM: Yes, Your Honor. Good afternoon.

10  
11 **OPENING STATEMENT ON BEHALF OF DEFENDANT PRICE:**

12 MR. GRIMM: Your Honor, the government's theory  
13 in this case is unequivocally, absolutely not supported by  
14 any evidence, fantastic. Mr. Price was one of Robert  
15 Wone's best friends. There is no motive, there is no  
16 reason why he would harm him, let someone harm him, see  
17 someone harm him, then cover it up, then ask Mr. Price --  
18 or ask Mr. Ward and Mr. Zaborsky to help him collectively  
19 to conceal this information from the police.

20 The government has floated some idea that it's  
21 someone, someone, we don't know who now almost four years  
22 later, someone close to the family, and that someone could  
23 be Michael Price, someone who has got an alcohol and  
24 perhaps a drug problem, a likely victim, but here goes.  
25 Mr. Price on that night, in response to Detective Waid:

1 "Was anything taken from your home?" by Detective Waid.  
2 "Mr. Price: You know my brother, who is out there --"  
3 referring to outside in the parking lot -- "is a great  
4 guy. He's a recovering alcoholic. He's been positive for  
5 10 years, F'd around with all kinds of drugs and has put  
6 me through the wringer a few times and, like, you know,  
7 the car would disappear with the TV. You know, literally  
8 take his own car and give it to a drug dealer and get  
9 drugs. You know what I mean? So I believe anything is  
10 possible like that."

11               Within several hours of this happening,  
12 Mr. Price told the police about his brother and said,  
13 "He's outside. If you want to go talk to him, talk to  
14 him." In addition to the hours and hours and hours of  
15 Mr. Price answering questions, ridicule, jokes because  
16 essentially, Your Honor, what happened in this case is the  
17 police essentially got married and essentially infatuated  
18 early on with a theory that wasn't perhaps based on  
19 evidence but, unfortunately, it was based in part on  
20 ignorance; in other words, as one detective said to  
21 Mr. Price: "Why in the world is a straight man coming  
22 over the house of three gay men?"

23               Question of another detective: "Joe, did you  
24 like Mr. Wone, I mean sexually? Was Mr. Wone gay?"

25               There's no one looking into the hard core facts

1 of this case of what happened. It's summations and  
2 innuendo, and that's where the case took off right there  
3 and then quickly got into the hands of the medical  
4 examiner, Your Honor, who is not board certified, who made  
5 conclusions that are not based on science, on biology or  
6 pathology.

7 But going back to the beginning, there is no  
8 reason in the world why Mr. Price would hurt his good  
9 friend, Mr. Wone, starting back in 1991 when he met Mr.  
10 Wone at William & Mary, where Mr. Price was a tour guide  
11 on campus and met Mr. Wone's parents and Mr. Wone. That  
12 friendship was bonded then. It became stronger over time.  
13 Mr. Price the government talks about is a person who Mr.  
14 Wone and his wife invited over his house for dinner; that  
15 Mr. Wone and Mr. Price founded the 13 Club. Mr. Wone and  
16 Mr. Price went to nonprofit dinners together for Quality  
17 Virginia in Richmond, Virginia, an organization Mr. Price  
18 chaired that had to do with obtaining equal housing and  
19 equal housing rights for gay and lesbians.

20 In fact, when the Court considers the character  
21 of Mr. Price by itself, just his character alone, putting  
22 aside the facts, it simply overpowers. The Court would  
23 have to have a reasonable doubt just based on the  
24 relationship and the character of Mr. Price and the  
25 strength of his relationship with Mr. Wone at Mr. Wone's

1 30th birthday party, which Mr. Price helped organize,  
2 offering his house, a bartender, food, down to the  
3 candles. This is the person he either killed or he  
4 watched killed, let the killer get away and then according  
5 to the government covered up, which we will get to in some  
6 detail.

7           This is the Mr. Price they are talking about.  
8 Invited to Mr. Wone and Mrs. Wone -- Kathy Wone's --  
9 wedding. Invited to their house to dinner, invited to  
10 their own house for dinner. Mr. Price, as the Court will  
11 find out right here in this picture at Mr. Wone's 30th  
12 birthday party, where surprise, surprise, so to speak,  
13 Mr. Price is giving the toast. Thank gosh it isn't Mr.  
14 Price giving the opening here because we'd be here for  
15 days. He can talk. He is a know-it-all. That doesn't  
16 mean because he is some -- out of three people who live in  
17 a home, he's got the biggest mouth. He knows what to do.  
18 He's just an initiator. He is the person that talks the  
19 most. It doesn't mean that someone is involved in  
20 obstruction of justice and concealing crimes that happened  
21 to his -- one of his best friends or involved in a murder  
22 because he happens to talk a lot.

23           I would ask the Court to pay close attention in  
24 this case to what happened in the first 24 hours because  
25 that's where things and facts and conclusions got skewed

1 in this case, Your Honor.

2 Simultaneously with Mr. Price talking to the  
3 police, Mr. Price said "search my house" and the police  
4 erred on the side of caution and actually got a warrant at  
5 three o'clock in the morning. Did they find evidence that  
6 Mr. Price was involved in a cover-up or concealing or  
7 suppressing some evidence in misleading the police to go  
8 someplace else? Absolutely not. In fact, it wasn't for  
9 lack of trying. There is Mr. Price's house right there.  
10 And no one is complaining here. It's a homicide case, so  
11 sometimes you have to take extraordinary measures that  
12 just involves, unfortunately, destruction of someone's  
13 house. No one is maintaining that that's intentional.

14 As this is going on, Mr. Price is being talked  
15 to, and within the next day, Dr. Goslinoski is looking at  
16 Mr. Wone's remains. But 111 fingerprints taken from that  
17 house, over 180 blood samples, suspected blood samples.  
18 Not a single return of anything positive for blood, other  
19 than what's on the bed that Mr. Wone was in. The Court  
20 will hear from experts, but it's essentially all common  
21 sense. No swipe marks, no wipe marks, no blood drops, no  
22 velocity shots, no blood being wiped up, no detergents, no  
23 cleaners, no Lysol, no Mr. Clean, no anything. They  
24 searched and took U-Joint traps, lint traps, water from  
25 the outside drain, water from inside the house, a dozen

1 pieces of drywall, flooring, stairs, baseboards, floors,  
2 doors, door frames, cabinet doors and cabinet handles all  
3 examined. No detergent, no cleaning, no blood, no  
4 evidence of blood being wiped up. And you will hear from  
5 an expert that in a case like this, if someone cleans up,  
6 evidence will be found, whether it's a drop, whether it's  
7 a fingerprint. From this room, from this very room that  
8 Mr. Wone was in, four latent prints that don't belong to  
9 Mr. Price, Mr. Zaborsky, Mr. Ward or Mr. Wone. Four taken  
10 out of this room that night, lifted and compared later on.

11           The knife. Government's theory that this knife  
12 is the plant knife that came out of this butcher block  
13 set. This knife is a replica of a knife that was taken  
14 out of a knife box set in Mr. Ward's room. There is a  
15 knife box set with a missing knife. If you were to look  
16 at this knife, this type of knife which the government  
17 obtained a replica of, fits in perfectly. So this, in  
18 fact, is the working knife.

19           Now, if the Court could just work with me on a  
20 minute here. So the government's theory is that the  
21 intruder known to all three defendants comes in the house.  
22 He goes to Mr. Ward's room, knocks on the door,  
23 apparently. Mr. Ward lets him in. He takes a knife from  
24 Mr. Ward's room, stabs Mr. Wone, then leaves. Does he  
25 leave the knife? well, apparently not so because every

1 nook and cranny in that house was searched, and this  
2 knife, which there will be a full explanation for, is not  
3 found. So, after the intruder leaves, someone close to  
4 the family, someone who we don't know, one of the  
5 defendants or all the defendants get a knife out of their  
6 own knife block set, with insignia and writings and  
7 markings that could only be matched to this knife block  
8 set, and then take blood from Mr. Wone and with a towel  
9 transfers blood to a knife that does nothing but tie all  
10 three men to a first degree murder. It is the only  
11 explanation one would have.

12           It doesn't confuse the police. It is no  
13 different than committing a murder with a firearm,  
14 throwing it in the Potomac River, then the police coming  
15 up to you and you run into a gun store buying a gun and  
16 putting it in your lap of the same caliber. That is the  
17 government's theory. One would be compelled to find a  
18 reasonable doubt, Your Honor, based on that fact alone.

19           In fact, the back gate is locked, this gate.  
20 This is going out the back door of the house. The back  
21 door of the house has a back gate. The outside of the  
22 gate, in order to gain entrance -- once you've parked your  
23 car at the end of work and come in -- in order to get in,  
24 you would need to get in with a key. This gate, according  
25 to the police, was locked. So, therefore, the murderer,

1 who has a key according to the government, maybe Michael  
2 Price, who Mr. Price essentially ratted on within hours,  
3 stops after he commits this murder, or she commits this  
4 murder, or they committed this murder, closes the gate,  
5 stops, take the key out and then locks the gate. I submit  
6 to Your Honor, that is the theory that the government has  
7 proposed in this case, and it is simply fantastic.

8 Mr. Price, as he told the police, heard a chime, woke up,  
9 ran downstairs with his partner, found his good friend  
10 dead, essentially at that moment, did what he could.

11 Everyone responds to traumatic events differently. Come  
12 is screaming some is sullen, some is shocked. Tried to  
13 aid, based on the 911 dispatcher's instructions.

14           The blood on the towel, completely consistent.  
15 And I agree with Mr. Kirschner, you don't need an expert.  
16 Completely consistent with compressions of someone laying  
17 down on their back, blood goes through to the other side.  
18 They are not, as described by the government, gaping  
19 holes. There's stab wounds in that individual, but they  
20 are not gaping holes that hit any major artery or vein  
21 that was on the surface that would have resulted in  
22 excessive amounts of bleeding.

23           The amount of bleeding, completely consistent,  
24 entirely consistent with someone being stabbed laying on  
25 their back. I'll just touch on Dr. Goslinoski. Well, he



1 had no signs of struggle. There was no movement. He had  
2 no defensive wounds. Completely consistent with someone  
3 being stabbed in their sleep. The wounds are  
4 self-sealing, according to no less than four doctors, two  
5 of them forensic pathologists. The knife goes in, the  
6 knife comes out. It cleans itself on the way out. The  
7 wound seals itself on the way out because that's the way  
8 the body works. So unless a vein or artery is hit,  
9 there's not going to be excessive amounts of bleeding.  
10 All three stab wounds were like that.

11 Now, we're on to Dr. Goslinoski. Just to end on  
12 the fact that Mr. Wone was sleeping when he was stabbed.  
13 The government pointed out that his wallet, watch, keys,  
14 all his essentials right around on the desk, including  
15 this pink plastic item which contains his mouth guard,  
16 which was in his mouth and found at the medical examiner's  
17 office, a mouth guard that he inserted right before he  
18 went to sleep.

19 Court's indulgence, Your Honor. (Pause)

20 Dr. Goslinoski, she would have, according to  
21 her, expected to find more blood. She would have expected  
22 to find defensive wounds. We are discussing the opinion  
23 of someone who is not board certified, whose opinions, in  
24 fact some of her opinions, have been refuted by the  
25 government's own forensic pathologist, Dr. Fowler from

1 Baltimore. But Dr. Goslinoski, Your Honor, at the time of  
2 death, the amount of time that Mr. Wone would have lived  
3 is a critical factor in this case. Government maintains  
4 he was alive for some period of time, Mr. Price and his  
5 cohorts apparently watching Mr. Wone die and not doing an  
6 absolute thing about it, completely contrary to almost 16  
7 years of a relationship where Mr. Price had with Mr. Wone,  
8 including not three months before this, Mr. Ward,  
9 Mr. Price and Mr. Zaborsky driving to Oakton, Virginia, to  
10 see Mr. Wone's wife, Kathy Wone, who had just had surgery,  
11 the type of friend that when his wife was having surgery,  
12 Mr. Wone asked Mr. Price if he would be willing to donate  
13 blood in the event, although she didn't, in the event his  
14 wife needed blood.

15 Dr. Goslinoski says could have lived up close  
16 to, including, for 10 minutes. The evidence, Your Honor,  
17 the medical evidence -- this is not a matter of opinion,  
18 this is a matter of fact -- it is completely and entirely  
19 contrary to forensic pathology known to anyone who has  
20 ever opened a book. Mr. Wone -- this is from Dr.  
21 Goslinoski's report -- Mr. Wone, for all intents and  
22 purposes, Your Honor, was dead at four seconds. There is  
23 no question about it. If they are pushed, they would say  
24 five.

25 Two doctors in this case, Dr. Najam, associate

1 director of cardiac surgery at George Washington Hospital,  
2 Dr. Andrew Wechsler, the head of cardiothoracic surgery at  
3 Drexler Hospital, both say, after examining the  
4 photographs, the autopsy report -- and actually Dr. Najam,  
5 at the medical examiner's office, with the consent of  
6 Dr. Pierre-Louis exactly, examined Mr. Wone's heart.  
7 Unequivocally to a man, independent of one another, that  
8 Mr. Wone died of a cardiac tamponade. I think the  
9 government referred to these things, unfortunately, as  
10 distractions. This is what the man died of. I can't, I  
11 simply can't, make it up.

12           Mr. Wone's stab wound designated number 1 -- of  
13 course, no one knows the order -- but three stab wounds in  
14 rapid succession would have rendered him dead within four  
15 or five seconds. Here's the reason. The heart, as the  
16 Court knows, most important function in the body is the  
17 fact that it is simply a pump. That's all it does. It  
18 pumps when we're awake, it pumps when we're asleep, it  
19 pumps when we're running, it pumps when we're standing, it  
20 pumps when we're sleeping. Its job is to get oxygen to  
21 the body.

22           The number 1 use of oxygen in Mr. Wone's body  
23 and all of us is our brain, putting aside me for a moment,  
24 but in fact, it's our brain. Mr. Wone was stabbed, stab  
25 wound designated number 1 in the autopsy report -- don't

1 know the order, just designated as 1 -- through the third  
2 and fourth intercostal ribs, goes right through his  
3 pericardial sac, right through the aorta group, which at  
4 the heart everyone agrees is a pump. That is essentially  
5 the hose leading out of the heart which sends oxygenated  
6 blood all over the body. Hole right through the aorta  
7 route, through the other side, severs the descending  
8 coronary artery. The injury to the aorta group and the  
9 coronary artery, independently of themselves, would have  
10 rendered him unconscious within seconds. The severing of  
11 the aorta group, though, would lead to what his doctors  
12 diagnosed or cardiac surgeons diagnosed as a cardiac  
13 tamponade. Without getting into all the details,  
14 essentially the aorta group gets severed, the pericardial  
15 sac fills up with blood. When the blood has nowhere to  
16 go, since the pericardial sac is self-sealing, the blood  
17 turns into the heart and essentially collapses the heart,  
18 all the arteries. Mr. Wone was immediately dead. He  
19 wasn't around, he wasn't thrashing. He wasn't able to  
20 fight. He wasn't able to jump out the window. He wasn't  
21 leaving defensive wounds, so there's no sign of a struggle  
22 because he died immediately.

23           The government's theory is, however, Your Honor,  
24 that contrary to what Mr. Price, Mr. Wone's good friend;  
25 Mr. Zaborsky, Mr. Wone's good friend; Mr. Ward, also a

1 good friend of Mr. Wone; Mr. Zaborsky and Mr. Price also a  
2 friend of Kathy Wone, in addition, that they would do this  
3 to Mr. Wone and leave his wife a widow. Why? There is  
4 just no reason. Mr. Kirschner: "Well, they do these  
5 things for bizarre reasons." So the three of them, in  
6 whatever time that the government says that they have,  
7 this is what they pulled together.

8 They get a knife -- Thank you. Sorry, Your  
9 Honor.

10 THE COURT: No problem.

11 MR. GRIMM: Getting over Mr. Connolly's cold  
12 that he, of course, never gave to me but --

13 THE COURT: Just blame him for everything.

14 (General laughter.)

15 MR. GRIMM: I'll be sweating to death. At any  
16 rate, thanks for the suit, Tom.

17 (General laughter.)

18 The defendants, in order to conceal this crime,  
19 get a knife from their own butcher block, they transfer  
20 blood from Mr. Wone. I mean graphic, just something out  
21 of -- something a sociopath would do, put it on a knife  
22 from their own house. Then according to the government,  
23 there is a delay. Then there is everyone gets together on  
24 a story. And here's the story. Let's say he was killed  
25 with a knife from our own house. We won't say anything

1 about the knife from Dylan's room. where that is, one  
2 doesn't know.

3 Then they don't take -- in the time they have,  
4 they think of transferring blood to a knife from their own  
5 house. No one takes his wallet and throws it out the  
6 window. No one takes his cash and throws it in the alley.  
7 No one takes his keys, no one takes his mouth guard, no  
8 one takes a pen, no one take a briefcase, no one steals  
9 the man's shoes to make it look like it.

10 Did the three of them come up with a story?  
11 Let's say it was an African-American man. Let's say it's  
12 a white man. Let's say we saw the man running down the  
13 stairs. The story collectively from them, which would  
14 necessarily be nothing but the truth, would be we heard a  
15 chime, we ran downstairs; we didn't see anyone. Easy fact  
16 that it would have been impossible for the police to  
17 disprove. We saw someone walk out the back door. All of  
18 them say it; impossible to disprove. wallet, watch, keys,  
19 everything, Mr. Wone had an enemy. Things that are  
20 impossible to disprove.

21 All of these things, Your Honor, does their  
22 story make sense? Am I standing here wishing that  
23 Mr. Price saw someone; that Mr. Zaborsky saw someone? Of  
24 course. What they told the police, Your Honor, is what  
25 happened. In the amount of time they have, they plant a

1 knife in the room right next to the bed? Now, I am being  
2 careful with statements because I thought that these  
3 statements are not admitted for the truth, although this  
4 morning I heard some facts that would suggest that the  
5 facts, statements were being admitted for the truth. So,  
6 I'm actually not waiving that issue, Your Honor, of what  
7 the government maintained prior to trial.

8           Getting back to the two cardiac surgeons, Your  
9 Honor, who will testify that Mr. Wone unequivocally would  
10 have died, perhaps fortunately for Mr. Wone --

11           THE COURT: I'm sorry to interrupt, Mr. Grimm,  
12 but what -- I know that there's a lot of attention being  
13 paid to how long he would have lived after that,  
14 particularly that single stab wound.

15           MR. GRIMM: Yes.

16           THE COURT: Can you tell me why that's so  
17 important? I'm obviously missing something here, and I  
18 just want to know.

19           MR. GRIMM: Yes. Yes, Your Honor, because  
20 Dr. Goslinoski was saying he would have lived up to 10  
21 minutes. That's why --

22           THE COURT: And what's the idea of what would  
23 have happened in the 10 minutes?

24           MR. GRIMM: Sure. There would have been  
25 defensive wounds, there would have been running.

1 THE COURT: So this is to explain the lack of  
2 movement?

3 MR. GRIMM: Yes.

4 THE COURT: I see.

5 MR. GRIMM: Yes. And I'm sorry that wasn't  
6 clear. Dr. Goslinoski has seen this picture and found it  
7 to be too sterile; there should be more blood, there  
8 should be thrashing, the cover should have been knocked  
9 over.

10 THE COURT: Thank you for explaining.

11 MR. GRIMM: I didn't cover that, Your Honor.

12 Court's indulgence.

13 (Pause.)

14 Mr. Zaborsky makes a -- in response to  
15 Mr. Price, makes a 911 call. Of course, we wait to hear  
16 it. I would ask the Court to listen, which I know the  
17 Court will in a discriminating fashion to the testimony of  
18 the police officers who create this aura of suspicion --  
19 Mr. Price would stare at people, Mr. Price was doing the  
20 talking. I mean if the government wants to stipulate that  
21 Mr. Price was the one doing the talking, he is the one  
22 doing the talking. Believe me, there's no one that talks  
23 more than me. It's hard to get a word in edge-wise. But  
24 does that indicate a conspiracy? Does that indicate --  
25 remember what we talked about before. When did this idea



1 hatch? When did it come together? Who talked about it?  
2 What evidence is there that all three men sat down on the  
3 stairs and said, "When the police comes, this is what we  
4 are going to do"?

5 Your Honor, Mr. Price, Mr. Zaborsky and  
6 Mr. Ward, this is really the nature of the relationship  
7 that they had with Mr. Wone, their friend. The government  
8 alleges in the indictment, Your Honor, and I know -- this  
9 is something I could never get away with, a jury reading  
10 the indictment, but I guess I'll take advantage -- might  
11 be half interesting. The primary object of the conspiracy  
12 was for the defendants to conceal from the authorities and  
13 others the true circumstances surrounding the murder of  
14 Robert Wone. When did that happen? When was the  
15 discussion? I understand that conspiracy by nature  
16 happens in secret, but there is usually some inferential  
17 evidence that would suggest that.

18 whispering and people staring at each other  
19 across the room. I understand that 2 and 3 are out. In  
20 an effort to avoid detection and mislead law enforcement  
21 authorities, they endeavored to orchestrate the crime  
22 scene to make it appear as an intruder had entered through  
23 the back door of the residence. There is no  
24 orchestrating. If the Court listens to the 911 call, Mr.  
25 Zaborsky says to the 911 operator, who says go downstairs,

1 he said, "I'm afraid to go downstairs. Maybe the person  
2 is still inside the house." Then when he goes downstairs,  
3 you can hear him engaging with EMS worker Baker and a  
4 police officer, where Mr. Zaborsky says, "I think they  
5 came in the back door." So right there he is actually not  
6 on the 911 call talking to the dispatcher, but the phone  
7 must be down.

8 Almost through, Your Honor.

9 THE COURT: That's okay. Take your time.

10 MR. GRIMM: The defendants individually, or in  
11 combination, used the white, cotton towel. The Court will  
12 learn more about cotton fibers in this case than it cares  
13 ubiquitous. There are just white cotton fibers or white  
14 cotton fibers, whether it's from jeans, whether it's from  
15 khaki pants or whether it's from a white towel. Their  
16 evidentiary value, according to an article written by an  
17 FBI, a current FBI examiner, is that they have little, if  
18 any, forensic value because they just exist in the air.  
19 But these are the white cotton fibers that were apparently  
20 placed on the knife while someone was trying to put blood  
21 on the knife, which would, of course, find you nowhere  
22 other than in the D. C. Jail if you were going to do  
23 something like that.

24 The defendants constructed and coordinated and  
25 fabricated a story to tell law enforcement. It's the

1 same. It's the same, the 911 call. Mr. Price. The EMS  
2 worker walked up. "I heard a scream." It goes on that  
3 Mr. Price failed to tell Homicide about all the people who  
4 had keys to the house. Interesting, Your Honor. He just  
5 told Detective Waid in a videotaped interview about his  
6 brother. He told the police about the contractors, about  
7 the maids, about the tenants who had keys. He was doing  
8 everything in his power to help. He's talked to the  
9 police for six hours that night; over the next month and  
10 days willingly agreed to have his house searched; over the  
11 next month, days and years provided DNA to the police at  
12 their request. Next years - fingerprints to the police,  
13 hair to the police.

14 Mr. Price, Your Honor, wanted to get to the  
15 bottom of who murdered his friend, Robert Wone. He did  
16 nothing to stop the police. All he did was tried to aid  
17 the police. It's unfortunate that the police got facts  
18 skewed early on and never -- and just never retreated from  
19 that.

20 Your Honor, at the end of this case, I would ask  
21 the Court to conclude that based on the evidence, even  
22 before one would even get to the defense case, the  
23 government has not met their burden of finding Mr. Price  
24 guilty of conspiracy to obstruct justice in this case or  
25 evidence tampering. The evidence is overwhelming. There

1 is no reason in the world why he would hurt his friend,  
2 Robert Wone, let somebody hurt him and then cover that up.

3 Thank you, Your Honor

4 THE COURT: Thank you. Mr. Schertler.

5 MR. SCHERTLER: Your Honor, would you give me  
6 just a minute to set up my props and maybe get rid of some  
7 of Mr. Grimm's?

8 THE COURT: Yes.

9 MR. SCHERTLER: Your Honor, good afternoon.

10 THE COURT: Good afternoon.

11 MR. SCHERTLER: I originally thought it would be  
12 good morning, but here we are.

13

14 **OPENING STATEMENT ON BEHALF OF DEFENDANT WARD:**

15 MR. SCHERTLER: Judge, trials are supposed to be  
16 based on evidence, evidence that is supposed to prove  
17 facts, and I respectfully submit that the government's  
18 opening statement was nothing more than a series of  
19 assumptions, speculation and innuendo. There is no  
20 evidence that you heard in the government's opening  
21 statement of who did what, when, how or where. It's a  
22 pattern of guesswork that creates an incredible story.  
23 And while I take issue with the entirety of the  
24 government's what I call incredible story, even  
25 Mr. Kirschner admitted that the evidence does not clearly

1 show what happened after Mr. Wone arrived at Swann Street.

2           The evidence, and I emphasize the word  
3 "evidence" in this case, will show you that these three  
4 men are completely innocent, that they committed no crime.  
5 I know the prosecutors in this case and I have a great  
6 deal of respect for them. I came from where they sit now.  
7 But the evidence will also show you that the prosecution  
8 in this case is a misguided one. It is one that has been  
9 and continues to be based on faulty assumptions,  
10 speculation and innuendo, and it's based on certain expert  
11 opinions that you will see during the course of this trial  
12 are simply wrong.

13           Let me say at the outset that nothing can  
14 compare to the tragic death of Robert Wone. Our hearts go  
15 out to his family and his friends, and that's true for  
16 Mr. Price, Mr. Ward and Mr. Zaborsky. But I'm telling you  
17 that these three men are victims, as well. What the  
18 evidence will show you is that they have been wrongly  
19 accused of crimes that they did not commit, and this has  
20 been nothing less than a living nightmare for them.  
21 You've heard this from Mr. Grimm, and I won't repeat it.  
22 They didn't harm Robert Wone. He was their friend. They  
23 had absolutely no conceivable reason to harm him, and they  
24 didn't cover up for whoever did murder him. They had no  
25 conceivable reason to do so.

1           You will hear the evidence from a variety of  
2 people that know these three men and know Robert Wone.  
3 And you've seen the pictures. The picture that you have  
4 in front of you is a surprise birthday party that  
5 Mr. Price, Mr. Ward and Mr. Zaborsky planned for Robert  
6 Wone's 30th birthday party, and they planned it with Mrs.  
7 Kathy Wone. You will hear that a short time before this  
8 occurred, Mr. Ward, Mr. Price and Mr. Zaborsky went to  
9 Kathy Wone's home to meet with her, to bring her books and  
10 movies because she was recuperating from hip replacement  
11 surgery.

12           You're going to hear a lot of evidence in this  
13 case. You're going to hear from the people that know the  
14 three defendants and know Mr. Wone, you're going to hear  
15 from all the police officers and the detectives and the  
16 evidence technicians that conducted the investigation, and  
17 you're going to hear from a variety of expert witnesses.  
18 You're going to hear a lot of evidence, but it's not going  
19 to answer any questions about who murdered Robert Wone and  
20 why. Suffice it to say that it wasn't any of these three  
21 men, and equally important, the evidence simply does not  
22 establish the government's allegation that they engaged in  
23 any kind of cover-up. In fact, as you go through the  
24 evidence, the government's theory in this case turns logic  
25 and common sense on its head.

1           There's one thing that I agree with with the  
2 government, and that's that Robert Wone was tragically  
3 stabbed and killed the night of August 2, 2006. We are  
4 here for one reason. We are here because the prosecutors  
5 and the police have unfairly and wrongly refused to  
6 consider, from the very beginning, the possibility that  
7 Robert Wone was killed by an outside intruder. You will  
8 see from the statements they closed their eyes, the police  
9 closed their eyes to that possibility within hours of  
10 beginning the investigation, and that's why we are here.

11           I submit that the evidence is going to show you  
12 that they are wrong. They have not investigated the case.  
13 The evidence will show you they have not investigated this  
14 case the way you are supposed to with an open mind, trying  
15 to provide all explanations, trying to solve it. They  
16 have, instead, investigated this case by trying to create  
17 evidence to fit a preconceived theory that these three men  
18 are somehow involved in a cover-up of Robert Wone's  
19 murder; they are involved in the cover-up of a murder that  
20 the police simply can't solve. And that is wrong in every  
21 respect.

22           As unusual or as improbable or as hard to  
23 believe as the government might think it is, this crime  
24 was committed by an outside intruder unknown to Joe Price,  
25 Victor Zaborsky and Dylan Ward. Mr. Kirschner walked

1 through his intruder scenario, and he dismissed -- early  
2 in his opening statement, he dismissed the lack of a  
3 motive or evidence of a lack of motive in this case for  
4 the cover-up, and I think his words were "We can't see why  
5 people do things."

6           The same applies to the intruder theory. We  
7 don't know what an intruder was thinking. We can't see  
8 into his mind. We don't know what he was looking for.  
9 Mr. Kirschner talked about jumping that seven-foot fence  
10 in the back of 1509 Swann Street. You are going to see  
11 evidence that in October of 2008, somebody did precisely  
12 that. Somebody committed a burglary at 1509 Swann Street  
13 by jumping that fence into the backyard to steal bicycles.  
14 We got that evidence from the government.

15           There is no -- we talked about pollen in August,  
16 August 2nd. There is no pollen in August. I don't know  
17 what those police officers were out there looking for.  
18 What we do know is that you will see pictures taken by the  
19 police of an upside down garbage can that's abutted next  
20 to a shed; and if you climb that garbage can and get onto  
21 the shed, you can easily jump over the fence into the  
22 backyard of 1509 Swann Street. And on top of that shed is  
23 a pair of sunglasses that's simply unexplained, consistent  
24 with the outside intruder theory.

25           If you go through this house, and you'll see all



1 the pictures, some of which you have already seen, there  
2 is nothing on the first floor that a burglar would take.  
3 That TV set that Mr. Kirschner pointed out, that thing is  
4 bolted down into the cabinets. You would need a wrench  
5 and a screwdriver to get it out of there. I don't think  
6 burglars -- and even expert witness Dave Sergeant on his  
7 burglary MO, "I'm not sure you're going to see a lot of  
8 burglaries where they're taking the Cuisinarts and other  
9 kitchen utensils. That's not what burglars are looking  
10 for.

11           Your Honor, we don't know what he was thinking.  
12 Did the burglar know something about the inside of the  
13 home? Did he know that that front bedroom that Robert  
14 Wone was staying in that night was an office and it would  
15 be a room that wouldn't be occupied? Was he waiting in  
16 the alley, looking at the back of the house, and did he  
17 see Dylan Ward's light go out because Dylan Ward's room  
18 abuts the back of the house?

19           If the chime went off and the burglar heard it  
20 as he walked in that back door, it concerned the burglar  
21 and the first thing he sees is a butcher block full of  
22 knives, and he picks out a knife. Now, speculation,  
23 conjecture, Mr. Kirschner has a theory as to what knife he  
24 would have picked out and what knife he wouldn't have  
25 picked out, and I'm not sure how we get there without

1 evidence, but it makes sense that a burglar hearing a  
2 chime would pick out a knife, he goes upstairs. He's not  
3 pounding the steps. You're going to see Mr. Baker.  
4 Mr. Baker, the EMT technician, is a big man, and he might  
5 have been pounding up the steps. But that's not what a  
6 burglar is doing. Maybe that burglar knew that that front  
7 office was generally unoccupied this particular night, and  
8 that's what he was looking for, to get credit cards or  
9 cash that Mr. Price kept there.

10           We go on to more conjecture in the intruder  
11 theory. Mr. Kirschner has a theory about the stab wounds  
12 and the angle of the stab wounds, based on the sharp end  
13 and the flat end; that under his scenario, the burglar  
14 with the knife had to walk around the bed and stab  
15 Mr. Wone from the other side. That's all speculation and  
16 conjecture. There are dozens of ways that that burglar  
17 could have had that knife and that burglar could have  
18 stabbed Mr. Wone. For Mr. Kirschner to pick out one  
19 particular theory is not evidence, it's speculation.

20           His conclusion that this wasn't a  
21 spur-of-the-moment stabbing, as Mr. Grimm has described  
22 it, because somebody walks into that room and unexpectedly  
23 finds Robert Wone there, in a room where they didn't  
24 expect to find him, to say otherwise, to say that this is  
25 not a spur-of-the-moment stabbing, that that's the

1 government's conclusion in this case is sheer speculation.  
2 There is no evidence to back it up.

3           How the defendants react when the EMT  
4 technician, Mr. Baker, arrives on the scene? Mr.  
5 Kirschner said a few things, and you will hear the  
6 evidence. On the 911 call, when the EMT technician walks  
7 in, you can hear Mr. Zaborsky say to the EMT technician,  
8 "Please go upstairs to the second floor. He's up there."  
9 You will hear it. The government filed a pleading a  
10 couple weeks ago, where they conceded it's on the 911 tape  
11 and that they were mistaken when they had originally said  
12 that Mr. Zaborsky didn't respond to the EMT technician.  
13 Their case has been based on faulty assumptions from day  
14 one.

15           You will hear that when Mr. Baker went up to the  
16 second floor, he asked Mr. Ward what happened. Mr. Ward  
17 pointed to the bedroom where Mr. Wone was, the thing you  
18 would you expect Mr. Ward to do. Now, different people  
19 react differently to a shocking event, and all three of  
20 these men -- Mr. Price, Mr. Ward and Mr. Zaborsky -- are  
21 in shock that this has happened in their house to their  
22 good friend. They can't believe it. For the government  
23 to turn around and try to imply, ah, we have the evidence  
24 of the cover-up, look how they responded to the EMT  
25 technician, it's sheer conjecture. Not only is it sheer

1 congestion but it simply doesn't make any sense.

2           Begin with this fact, and I submit to the Court  
3 it's a compelling one. There is simply no evidence of any  
4 motive or reason for these men to either harm Robert Wone  
5 or cover up for the person who did it. There is no motive  
6 to cover up, no motive to tamper with evidence, plant  
7 knives. There is no motive to lie to the police about  
8 what happened. And the government's contention to the  
9 contrary is nothing more than sheer speculation. There is  
10 not one iota of evidence to support it.

11           Mr. Kirschner said murder and motive don't  
12 always go hand in hand, and I agree. They don't always go  
13 hand in hand. You may have evidence that somebody  
14 committed a murder, and you may not know why, but you've  
15 got to have some evidence that something happened. I  
16 think I posited to the Court in motions arguments a few  
17 days back or last week that if you have six people that  
18 see a defendant walk up to a victim and shoot him six  
19 times, you've got evidence that that man committed a  
20 crime. You may not know why, you may not be able to show  
21 the motive, but you've got evidence that he did it.  
22 Motive can be evidence of identity. We all know that. It  
23 can link a person to the commission of a crime. In this  
24 case, Mr. Kirschner has neither.

25           You are going to hear from a number of people

1 that know these three gentlemen, and you are going to hear  
2 about their relationship. The government distorts that  
3 relationship. It makes it sound as though Mr. Price is in  
4 control of Mr. Ward and Mr. Zaborsky. And they turn  
5 around, and they want to introduce this evidence of that  
6 burglary that occurred in October of 2008, and I submit to  
7 you that if anything, that burglary, that evidence that  
8 they want to get in shows exactly the opposite. What it  
9 shows is that in that particular situation, when Michael  
10 Price had come in and burglarized their home, it's  
11 Mr. Ward and Mr. Zaborsky who said to Mr. Price we're  
12 going to report that, and the next day they report it. It  
13 doesn't fit. It doesn't provide evidence for the  
14 government's theory of this case.

15 As I have seen the government's theory winnowed  
16 down, I think it was referred to, we have two claims, none  
17 of which, I submit, makes logical sense, and none of which  
18 is supported by reliable evidence. First is the claim  
19 that we have heard a lot about, that they planted a knife;  
20 that all three, one, some combination of the three planted  
21 a knife from their own home to make it look like it was  
22 the murder weapon. I think Mr. Kirschner's words were the  
23 knife was an important feature, a corner of their cover-up  
24 and orchestration. They claim that one, two, three of the  
25 defendants put blood on the towel, then wiped the knife in

1 blood from Mr. Wone. Took blood from Mr. Wone, put it on  
2 the towel, wiped the knife through the towel so that it  
3 would have blood on it to make it look like it was the  
4 murder weapon. This defies all common sense. I think Mr.  
5 Grimm brought it up. Why, if you are able to successfully  
6 get rid of the murder weapon, which is the government's  
7 assumption, and so that nobody can find it despite the  
8 three-week search of the home and the places around the  
9 home, that nobody can find that murder weapon, they were  
10 so good that they got rid of the murder weapon, then  
11 you're going to take a knife from your kitchen and plant  
12 it as the murder weapon? I mean if they really wanted to  
13 -- if they're as good as Mr. Kirschner thinks they are,  
14 wouldn't they have said, "Let me get rid of the murder  
15 weapon. We'll just say the intruder took it." Isn't that  
16 the logical story to come up with? It just make no sense.

17 But what the evidence is going to show you,  
18 including the expert testimony, is that the knife the  
19 police recovered in that bedroom was, in fact, the knife  
20 that was used to stab Robert Wone. Your Honor, I think  
21 Mr. Kirschner showed you the -- an enlarged version of the  
22 knife as it was found on that night stand in the room  
23 where Robert Wone was. Well, modern technology and the  
24 marvels of computer, you can blow it up even larger, which  
25 we have done. And, Judge, when you look at this picture,

1 I agree you're not going to need a blood pattern expert to  
2 tell you that this knife is the knife that was used to  
3 stab Robert Wone. You will hear the expert tell you about  
4 all the things that they found on this knife and that it's  
5 completely consistent. Even the government's blood  
6 pattern expert, Mr. Spalding, would say that the blood  
7 pattern on this knife is completely consistent with it  
8 being used to stab Mr. Wone.

9           Mr. Kirschner spoke about the hair and fiber  
10 expert, Mr. Deedrick. And with all due respect, I think  
11 that Mr. Kirschner had it wrong. The hair and fiber  
12 expert, Mr. Deedrick, took 12, 12 colorless cotton fibers  
13 from the blade of that knife. He then had one sample of  
14 white, colorless -- they call it colorless or white --  
15 colorless fibers from the towel, the known sample, and  
16 another sample of colorless cotton fibers from the shirt.  
17 There is no distinction between the grey tee shirt and the  
18 white towel, in terms of the colorless cotton fibers that  
19 they shed.

20           As Mr. Grimm said, it is well established and  
21 accepted in this scientific community among trace evidence  
22 experts that you cannot make any distinctions between  
23 colorless cotton fibers. You can't tell the difference  
24 between the 12 colorless cotton fibers that Mr. Deedrick  
25 took off the blade of that knife to the towel or to the

1 grey shirt. They all look the same.

2 Now, Mr. Deedrick apparently went a little  
3 further and did what he calls a fluorescence test, and we  
4 will show you the results of his fluorescence test. All  
5 the fibers from the knife, from the tee shirt and the  
6 towel all fluoresce the same. No hair and fiber expert  
7 could make any distinction between where those fibers on  
8 that knife came from. They can't say they didn't come  
9 from the tee shirt that Mr. Wone was wearing when that  
10 knife was used to stab him.

11 when I refer to prosecutorial speculation and  
12 innuendo, I think the cutlery set is a perfect example.  
13 It was found some days after the murder was committed  
14 stored away in a closet in a bedroom where Mr. Ward  
15 stayed. The prosecution says that there was a knife  
16 missing from this set. And you can see it. This is a  
17 three-set cutlery set. It looks like kind of a  
18 Thanksgiving carving set. You've got a nice, big carving  
19 knife, you've got the fork, and then there is a smaller  
20 area for the paring knife.

21 First, the government claims that this knife  
22 could be consistent, along with thousands of others,  
23 including the knife that has the blood and the tissue on  
24 it that was found on the nightstand could be consistent  
25 with the wounds that Mr. Wone suffered. That's what their



1 own medical examiners will say. Their medical examiners  
2 will say that they can't tell the difference between  
3 whether it was this knife or supposedly the knife that was  
4 missing from this cutlery set.

5 Now, there is no evidence to connect this  
6 cutlery set or the knife that's supposedly missing from  
7 the set to the murder. There is no evidence to even say  
8 that the knife that the police didn't find in this cutlery  
9 set was ever in the Swann Street home at any time in this  
10 box. This is speculation and innuendo. But more than  
11 that, when I spoke of the prosecution not investigating  
12 this case correctly, not investigating this case with an  
13 open mind to try to find out what really happened -- let's  
14 find the explanations; let's explore it -- not conducting  
15 an open-minded investigation, this cutlery set is a prime  
16 example. The cutlery set is 30 years old. It's a wusthof  
17 set. You will see the government has some exemplars of  
18 knives that supposedly fit in here, but the fact of the  
19 matter is you can't buy the knife that fits in here any  
20 more. They stopped making the knife that would go into  
21 this set 20 years ago.

22 So, we have a wusthof knife that happens to fit  
23 in this cutlery set. Now, you will see, and the  
24 government I don't think will dispute, that this wusthof  
25 knife is a 12cm 4066 knife that goes into this set. And,

1 Your Honor, what you're going to see when you look at the  
2 evidence carefully is that the writing on this knife, on  
3 the blade of the knife matches precisely the writing that  
4 you see on the blade of the big carving knife that's in  
5 the set. And the fact of the matter is, if you were  
6 buying any wusthof set today, or frankly within the last  
7 15 or 20 years, you would never see that similarity in  
8 writing because they changed the pattern. So, this is the  
9 knife that belongs in this set. The problem is that this  
10 knife was not in this set the night the murder occurred.  
11 This knife was never in the home at Swann Street. It was  
12 never in the District of Columbia. The knife that belongs  
13 to this set was never here. It was 3,000 miles away in  
14 Seattle, Washington.

15           If you look at the box, it's got names on it.  
16 It's got an address that looks like it was sent to  
17 somebody. This knife set changed hands three times before  
18 it got to the Swann Street home. The police had it. They  
19 had the names. They could have called. They never  
20 investigated it. What happened is they looked in the  
21 closet, they found that this knife set had been stored  
22 there and it had a knife missing. Bingo! Let's stop  
23 right there because we don't need to go any further.  
24 Doesn't this just fit our theory of the case perfectly,  
25 the missing knife?

1           Your Honor, this knife has nothing to do with  
2 the murder of Robert Wone; it has nothing to do with any  
3 kind of cover-up. They didn't investigate other  
4 explanations and other possibilities. They found that set  
5 with the missing knife, and they stopped.

6           Mr. Wone was stabbed three times in the chest by  
7 that knife, and you will hear that one of those wounds, as  
8 Mr. Grimm described, a wound which severed his aorta,  
9 incapacitated him instantly and would have killed him  
10 within seconds after that. The idea that the government  
11 has espoused in the past that somehow Mr. Wone lived for  
12 some period of time afterwards simply defies what the  
13 experts, the cardiac surgeons who deal with the heart day  
14 in and day out, will tell you.

15           The timing of his death, I submit to you, is  
16 important because what the government wants you to believe  
17 is that he was killed with a knife, stabbed, and that  
18 these three men somehow came upon it, discovered it, and  
19 then they had to engage in all of these machinations to  
20 cover it up and to plant the knife and to come up with a  
21 story that they were going to tell police. So we've got  
22 to have some significant period of time between the time  
23 that Mr. Wone is stabbed and dies and when they called the  
24 police. That didn't exist. The scientific evidence will  
25 show you that Mr. Wone was stabbed minutes, if not less,

1 before that 911 call was made.

2 Second. The government's second claim in this  
3 case, as you've heard Mr. Kirschner say, is that the  
4 statements given by Mr. Ward, Mr. Price and Mr. Zaborsky  
5 when they were interviewed by the police that night are  
6 not true. The government is not going to introduce those  
7 statements for the truth of the matter asserted because  
8 the government's claim is they were all part of a  
9 conspiracy, they were all contrived and fabricated.

10 I submit, as part of the defense of Mr. Ward,  
11 that they are true. All three men told the police the  
12 truth about what happened that night. There was no  
13 conspiracy. There was no fabrication of stories. You,  
14 all of us in this room, have a tremendous amount of  
15 experience with statements, especially videotaped  
16 statements. You're going to see these statements for  
17 yourself on videotape. Your Honor --

18 THE COURT: I don't think that you get to offer  
19 them as true.

20 MR. SCHERTLER: Your Honor, I believe that --  
21 well, the government --

22 THE COURT: So I don't know that you should be  
23 arguing to me that they are true. I don't think you get  
24 to offer them for that purpose.

25 MR. SCHERTLER: Your Honor, I believe that the

1 gravamen of the government's case against the defendants  
2 is that the statements that they gave to the police that  
3 night were lies. We must be entitled to defend our  
4 clients by being able to show that they were true, that  
5 they aren't lies.

6 THE COURT: So in other words, you think that  
7 I'm going to be hearing evidence that would suggest that  
8 they are not false, in other words. That I will be  
9 hearing from the evidence in this case that the statements  
10 are not false, as the government claims, but in fact true?

11 MR. SCHERTLER: Yes. And I think the government  
12 can always take the position that in terms of establishing  
13 their burden of proof --

14 THE COURT: I understand.

15 MR. SCHERTLER: -- they're not going to use it,  
16 but I, you know -- we have to be able to defend and say  
17 that the evidence will show you that those statements are  
18 true. And one of the ways we evaluate the statements,  
19 just as you evaluate the testimony of any witness on the  
20 stand, is you look at it yourself. You look at the  
21 demeanor of the person, you look at the kinds of questions  
22 that are being asked and how they answer those questions.  
23 And I submit that when you see that evidence of how they  
24 responded on these videotapes, you will judge it for  
25 yourself, but they are credible.

1           These are three men who have never before been  
2 to a police station. Dylan Ward has never even had a  
3 traffic ticket. They have never been interrogated by the  
4 police, but they are taken down that evening separately in  
5 different cars to the station. They are put in separate  
6 locked rooms, so that they have no communication with  
7 anybody on the outside except for those interrogating  
8 detectives, and they are kept there all night and  
9 interrogated for hours and hours and hours. And you know  
10 and I know, Mr. Kirschner knows that in our experience,  
11 these individuals are put through the proverbial wringer  
12 by those detectives. They accuse -- the detectives  
13 accused these three men, each of them, of being involved  
14 in the murder of Robert Wone. They accuse them of things  
15 like trying to gay him up. They accuse them -- they tell  
16 them that they are going to jail and that a gay man won't  
17 be able to survive in the D. C. Jail. The police lie to  
18 them, and they tell them that they have proof of who  
19 committed the murder. The police lie to them and tell  
20 each of them that the others are in the process of  
21 confessing, so you might as well confess too.

22           You will hear and see each of them as they are  
23 threatened, accused and lied to by the police on these  
24 videotaped interrogations, and what you are going to see  
25 is separately, not having any contact with one another,

1 they all respond the same way, in a logical way that you  
2 would expect a truthful person to respond. "Look, I'm  
3 telling you the truth. I am telling you everything I  
4 know. I don't have anything to hide. There is nothing  
5 else I can tell you" over and over and over again. If  
6 these men weren't telling the truth, they would have  
7 broken that night. There is only one reason for the way  
8 they respond to those questions. They are telling the  
9 truth.

10 And, you know, as Mr. Grimm described to you,  
11 and I won't go into more detail, we always use our common  
12 sense in evaluating the evidence. If they were going to  
13 come up with a story, if they were as good as Mr.  
14 Kirschner and the government has said they are, in terms  
15 of this contrivance and this conspiracy, they would have  
16 come up with a story where you say, "I heard the intruder  
17 going down. I saw him leaving out the back door. I saw  
18 him jump over the fence." And then why, why plant the  
19 knife, when the easiest thing to do would have been to say  
20 the man who came in and stabbed Mr. Wone took his knife  
21 out with him; the murder weapon is not here?

22 Your Honor, I've been at this business for  
23 almost 30 years, and I've never been involved in a case in  
24 which I believe as I do here that the totality of the  
25 evidence demonstrates more compellingly the innocence of

1 the three men on trial and the fact that the prosecution's  
2 case is just plain wrong. I don't have the answers about  
3 what happened to Robert Wone that night. Joseph Price,  
4 Dylan Ward and Victor Zaborsky don't have the answers.  
5 And frankly, neither do the police and the prosecutors.  
6 But the one thing that I can tell you is that after you  
7 hear all the evidence in this case, it simply does not  
8 support the allegations that have been made against these  
9 three men.

10 The prosecution's theory is riddled with holes,  
11 and it simply makes no sense. They didn't cover up or  
12 lied to the police. They told the truth. That's what the  
13 evidence will show. And these are -- as you will hear  
14 from the evidence, these are good and decent men. They  
15 are not guilty, and we are going to ask at the end of the  
16 case that you find them not guilty and give them their  
17 lives back. Thank you.

18 THE COURT: why don't we take a break now for 15  
19 minutes and be back at 20 of?

20 (Court recess. 3:27 p.m. - 3:40 p.m.)

21 THE COURT: Mr. Connolly.

22

23 OPENING STATEMENT ON BEHALF OF MR. ZABORSKY:

24 MR. CONNOLLY: May it please the Court, Tom  
25 Connolly on behalf of Mr. Zaborsky. Your Honor, the



1 government's case against Mr. Zaborsky rests entirely on  
2 one supposition, and that is whatever happened to Mr. Wone  
3 that evening, whatever happened, Mr. Zaborsky had to have  
4 known; he had to have known what happened, and so when he  
5 talked to the police, when he said he did not know what  
6 had happened to Mr. Wone, he must have been lying. That  
7 is the supposition behind the government's case.

8           It is not evidence. In fact, it has from the  
9 very beginning and remains today a theory chasing  
10 evidence. The evidence presented in this proceeding will  
11 show that Mr. Wone -- excuse me -- Mr. Zaborsky simply  
12 does not know what happened to Mr. Wone that evening. He  
13 has no idea. He told the truth to the police. He told  
14 them everything he knows, and everything he told them was  
15 the truth.

16           Powerful evidence of Mr. Zaborsky's innocence  
17 comes from the 911 call, and I was hoping that you would  
18 allow it in the government's opening. I assume you're not  
19 going to allow me to play it for you in my --

20           THE COURT: I mean, I'm going to hear it in the  
21 evidence. I've read the transcript, and I know what it  
22 says.

23           MR. CONNOLLY: Your Honor, it's a chilling call.  
24 It's a call from a person who has seen a horrendous event,  
25 seen his buddy wounded and is doing everything he can to

1 summon an ambulance for help for Mr. Wone. It is a call  
2 from a person begging the EMTs, the operator, to get there  
3 as soon as possible, and it is a call that ends with Mr.  
4 Zaborsky outside the house pleading with the EMT, pleading  
5 "Please hurry. Please hurry. My friend is upstairs.  
6 He's been stabbed. Please hurry." That's not a call made  
7 from somebody who is engaging in a cover-up, it's a call  
8 from somebody who has experienced a horrific event, and  
9 his natural reaction is both to panic and to seek  
10 assistance.

11 Now, Mr. Kirschner suggested that there's a few  
12 inconsistencies in the 911 call; and since you haven't  
13 heard it yet, before you hear it, I want to clear up a few  
14 of those. I think, frankly, he is wrong, and I think the  
15 911 call will verify my version of events. Mr. Kirschner  
16 says that when the EMT arrived, that Mr. Zaborsky was  
17 talking on the telephone and that he didn't direct any  
18 language to the EMT. In fact, you will hear on the tape,  
19 itself, that Mr. Zaborsky is screaming to the EMT "Help  
20 us. Please hurry." That's on the call, itself.

21 Mr. Kirschner said that Mr. Zaborsky was  
22 somewhat inconsistent on seeing the knife and whether it  
23 was from the home and that his memory was cloudy. In  
24 fact, what Mr. Zaborsky said was, he made the 911 call  
25 from the third floor after he had seen this horrific

1 scene, Robert on the second floor, went up and made the  
2 911 call, came back down with a phone in his hand and saw  
3 it again. So when he was asked about the knife and what  
4 was cloudy, what he was telling the police officer is he's  
5 cloudy about whether he saw the knife the first time upon  
6 the scene or the second time, after he had come down from  
7 the third floor. That's what he was cloudy about.

8 Mr. Kirschner made a point about the towel and  
9 applying pressure. Again, Mr. Zaborsky went upstairs and  
10 got the towel, came down to the second floor and handed  
11 the towel to Mr. Price and then was asked, "Have you  
12 gotten a towel" as he was applying pressure. There's no  
13 second towel; there's no missing towel here. They're  
14 talking about the same thing because Mr. Zaborsky is in  
15 transit when he's talking to the 911 operator.

16 The evidence in this case will show that the 911  
17 call was made by Mr. Zaborsky, was made within moments of  
18 him seeing Robert Wone injured, and the forensic evidence  
19 will back that up. There is no delay in the 911 call  
20 whatsoever.

21 Now, the next thing you've heard, and you've  
22 heard about this somewhat already, is that when the EMTs  
23 arrive and the firefighters arrive and the police arrive,  
24 the three gentlemen are downstairs in the living room --  
25 two on the couch, one on a chair. And what we know about

1 Mr. Zaborsky from that scene is he's crying inconsolably.  
2 He's crying inconsolably. He's not engaging in a  
3 cover-up, he's grieving a friend who he's just now learned  
4 they lost. He is crying inconsolably. That's what the  
5 evidence is going to show, not that he's engaging in a  
6 cover-up or in a story with anybody.

7 Now, the other most powerful evidence of Mr.  
8 Zaborsky's innocence are his statements that he makes to  
9 the police. You will hear there are three separate  
10 videotape statements that night - one with Detective  
11 Lewis, one with Detective Kasul, and one with Detective  
12 Waid the next morning.

13 Now, Judge, I know that you will pay careful  
14 attention to those tapes, and I know you'll read Mr.  
15 Zaborsky's demeanor, his body language and everything  
16 else, whatever a trier of fact does in determining whether  
17 somebody is telling the truth or not, but I would ask you  
18 to take particular care to not just what Mr. Zaborsky says  
19 but what he doesn't say. He does not say that he saw an  
20 intruder. He does not say that he heard footsteps. He  
21 does not say that the intruder looked like such and such  
22 or had this description or this build. He doesn't say  
23 anything like that. In fact, Judge, when he is offered  
24 lifelines, when Detective Lewis says, "well, I think this  
25 could be a suicide, as much as your theory of the

1 intruder. I think it could be a suicide," what does he  
2 say? He doesn't take the lifeline. He says no, that  
3 didn't happen.

4           When Detective Lewis asked him: Is there  
5 anything missing? Now, these are facts that could be not  
6 easily disproven, but he easily could have said, yes, cash  
7 is gone, jewelry is gone. "No, Detective, no, I don't see  
8 anything missing. I don't see any jewelry, I don't see  
9 any cash. I know I left my computer bag downstairs. It's  
10 not very expensive, the computer, but an intruder wouldn't  
11 know that."

12           When he's asked by Detective Lewis, "well, what  
13 about the fence?" Detective Lewis says, "That fence is  
14 seven feet high." Mr. Zaborsky says, "I think it's nine  
15 feet." I mean this is not a guy, in telling the statement  
16 to these detectives, that he was trying to sell them on  
17 anything. He was just answering a question. But you will  
18 see every time he's thrown a lifeline, he pushes it back  
19 because he's just answering questions. He simply does not  
20 know what happened.

21           What he told the detectives is, "I think it was  
22 an intruder". well, why would you say that?" Because if  
23 I wake up at night in my house and someone is dead, I'm  
24 not going to assume it's my wife or children who did it.  
25 That's the natural assumption, somebody coming up with a

1 dead body. When he talks to Detective Waid later that  
2 morning, Detective Waid says, "I thought You said you  
3 think it's an intruder. Do you know it's an intruder or  
4 is that an assumption?" Mr. Zaborsky frankly said,  
5 "That's an assumption. I don't know what happened. I  
6 assume it was an intruder. I can't imagine Joe or Dylan  
7 doing this." He wasn't lying in any way. He was  
8 answering questions. He was not advocating. He wasn't  
9 saying, "That was my assumption."

10 Now, I've told you that there are three  
11 interviews -- Detective Lewis, Detective Waid. In between  
12 those interviews, Detective Kasul interviews about 20  
13 minutes long. The government informed me on Friday that  
14 they don't want to introduce that videotape.

15 THE COURT: Of Detective Kasul?

16 MR. CONNOLLY: Detective Kasul. And I think the  
17 reason they don't want to is because this is the one  
18 that's really the most accusatory. This is when you have  
19 a detective getting in Victor's face, "You are going to  
20 jail. Other guys are ratting you out."

21 MR. KIRSCHNER: I'm going to object, Your Honor.  
22 It's not being introduced. I don't think the defense can  
23 introduce it.

24 THE COURT: Well, the defense possibly can  
25 introduce it, and I can discuss that with you later, but

1 assuming it's a rule of completeness thing.

2 MR. CONNOLLY: Your Honor, I think the Henderson  
3 case --

4 THE COURT: And I assume you are offering it to  
5 disprove the falsity of the other statements as evidence  
6 offered --

7 MR. CONNOLLY: I'm not offering anything for the  
8 truth of the matter asserted. I'm offering this evidence,  
9 demeanor, to show that when the allegation is that they  
10 are lying, this is counter evidence of them not lying.

11 THE COURT: And we can discuss it later, but  
12 I'll hear you talk about it.

13 MR. CONNOLLY: I'm sorry. Will you hear me?

14 THE COURT: You may.

15 MR. CONNOLLY: Okay. And, Judge, this is the  
16 one that's the most accusatory. This is the one that's in  
17 your face - one of you guys did it; one of you guys is not  
18 going home; one of you is going to get arrested; it's time  
19 to talk; you're not going to do well in jail. And each  
20 and every time, Victor never waivers. He says, "I don't  
21 know. I didn't do anything. I don't know anything." So  
22 I don't think you can make a determination of the demeanor  
23 through the entirety of these tapes without seeing how Mr.  
24 Zaborsky handles himself to Detective Kasul. And when you  
25 look at his demeanor in that setting, you will see this is

1 a man who doesn't know anything, and he is simply  
2 answering the questions in the only way he can, which is  
3 the truth.

4 I know Mr. Grimm and Mr. Schertler have already  
5 covered the knife issue with you, but let me just say in  
6 short here; at the end of the case, at the end of the  
7 evidence, you will come to believe that the knife on the  
8 nightstand is, in fact, the knife used in the murder and  
9 that there is not a plant knife in this case. Not only is  
10 the theory fundamentally illogical, the forensic evidence  
11 will bear out that the knife on the night stand is not  
12 planted, it is the knife used in the murder.

13 Judge, Victor Zaborsky is a son and he is a  
14 father. He has had a spotless life so far. There is  
15 nothing in his background or his character that would  
16 suggest that he would ever harm anybody or ever suggest  
17 that he would cover up a crime of any kind, particularly  
18 not one involving a friend.

19 Robert Wone, likewise, was a wonderful person by  
20 all accounts. His death was a tragedy. How Victor  
21 Zaborsky felt that evening, he feels today. But this case  
22 has to be decided, obviously, upon the evidence, and there  
23 is no evidence that Victor Zaborsky did anything wrong,  
24 anything wrong or that he knows what happened with Robert  
25 Wone. So at the end of this case, I'm going to come back



1 to you and ask you to return the only true verdict on the  
2 evidence, which is not guilty on all counts.

3 THE COURT: Thank you.

4 Mr. Kirschner, we could hear from a witness.  
5 It's only four o'clock.

6 MR. KIRSCHNER: Your Honor, we could get started  
7 with Katherine Wone, if you would like. Her testimony is  
8 fairly lengthy. We're at the Court's pleasure.

9 THE COURT: Why don't we start?

10 MR. KIRSCHNER: Sure.

11 Thereupon,

12 **KATHERINE WONE,**

13 Having been called as a witness on behalf of the  
14 Government, and having been first duly sworn by the Deputy  
15 Clerk, was examined and testified, as follows:

16

17 **DIRECT EXAMINATION**

18 **BY MR. KIRSCHNER:**

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. Could you please introduce yourself to the judge  
22 and spell your first and last names for the reporter?

23 A. I'm Katherine Wone, and my name is spelled

24 K-A-T-H-E-R-I-N-E; last name is W-O-N-E.

25 Q. And, Ms. Wone, Robert Wone was your husband;