

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SALVATORE ZICCARELLI,	)	
	)	
Plaintiff,	)	
	)	Case No. 17 C 3179
v.	)	
	)	Hon. John J. Tharp
THOMAS J. DART, Sheriff of Cook County,	)	
Illinois and COOK COUNTY, ILLINOIS, a	)	
Municipal Corporation and Body Politic,	)	
	)	
Defendants.	)	

EXHIBIT 2

Trial Transcripts

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SALVATORE ZICCARELLI,

Plaintiff,

-vs-

THOMAS J. DART, Sheriff of
Cook County, Illinois,

Defendant.

Case No. 17 C 03179

Chicago, Illinois
March 11, 2024
9:04 a.m.

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - VOLUME 1
BEFORE THE HONORABLE JOHN J. THARP, JR., and a Jury

APPEARANCES:

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1 (Proceedings heard in open court:)

2 THE COURT: We'll go ahead and call the case for a
3 couple of matters. It's case 17 CV 3179, Ziccarelli versus
4 the Sheriff's Office of Cook County, Illinois.

5 Counsel, put your appearances on the record, please.

6 MR. J. FLAXMAN: Good morning. Joel Flaxman and
7 Kenneth Flaxman for the plaintiff. Mr. Ziccarelli is just
8 walking into the courtroom.

9 THE COURT: All right. Good morning, Mr. Ziccarelli.

10 THE PLAINTIFF: Good morning.

11 MS. ORI: Good morning. Kathleen Ori for defendants.

12 MS. HASAN: Good morning. Nazia Hasan also for
13 defendant.

14 THE COURT: Good morning. All right. We'll --
15 again, we should have copies of the jury questionnaires for
16 you, hopefully by about 10:00 o'clock or so, and we'll get
17 those to you. I have draft verdict forms available, and I
18 wanted to give those to you. You can look those over. We'll
19 obviously discuss that if anyone has any issues with those.
20 Do you want to...

21 All right. And the other thing I wanted to address
22 before we get started was, I tweaked the statement of the case
23 that I will give to the jury -- or state to the jury to
24 reflect that we're not going to be having evidence of -- with
25 the exception of the late 2015 application for FMLA leave,

1 we're not getting into the prior year application.

2 So the paragraph that talked about those prior FMLA
3 applications, I've tweaked to read as follows: "The
4 plaintiff, Salvatore Ziccarelli, was employed by the Sheriff's
5 Office of Cook County as a correctional officer at the Cook
6 County Jail. In late 2015, the sheriff's office authorized
7 Ziccarelli to take intermittent FMLA leave. In 2016,
8 Ziccarelli submitted an FMLA leave request, and the sheriff's
9 office approved it. During this time, Wylola Shinnawi was the
10 Cook County Sheriff's Office FMLA manager."

11 MR. K. FLAXMAN: There's a -- our exhibit, I don't
12 know what the number is, has -- there are two applications
13 that we feel should be before the jury. The first was signed
14 by Ms. Shinnawi in January of 2015, and there's another one in
15 late 2015 that wasn't signed by -- we don't know who it was
16 signed by. But I think it's important to show that
17 Ms. Shinnawi had knowledge of Mr. Ziccarelli and approved his
18 FMLA.

19 THE COURT: Well, why do we need the early January
20 one if we've got the later one?

21 MR. K. FLAXMAN: That's the one she signed, in
22 January of 2015. And she's going to testify, I believe, that
23 she's the decision maker which means, I think, that she
24 reviewed the papers and concluded that they satisfied the FMLA
25 requirements, the requirements for FMLA leave.

1 THE COURT: The -- we talked about the application, I
2 think it was agreed Exhibit No. 4, dated December 29th, 2015,
3 approving the leave request. Why do we need something a year
4 earlier than that?

5 MR. K. FLAXMAN: Because it was signed by
6 Ms. Shinnawi who's going to testify that -- about her
7 conversation with Mr. Ziccarelli, that she read it. She has
8 personal knowledge of his application, of his maladies, and
9 she approved it.

10 THE COURT: Is there any dispute about that? I mean,
11 who issued this approval in -- on December 29th of 2015 if not
12 Ms. Shinnawi?

13 MR. K. FLAXMAN: We have -- we don't know. There's
14 a -- I'm not sure if it's illegible or if we couldn't find it
15 on the form or if we don't have that document.

16 MS. HASAN: Your Honor, if I may, we don't have a
17 2' -- approval for 2016 that looks like Joint Exhibit 3. What
18 we do have is Joint Exhibit 4 which is the approval form. So
19 there isn't a person's signature, but Ms. Shinnawi has
20 testified in her deposition that she was not the person.
21 There was another person that worked with her and -- as an
22 FMLA coordinator named Griselda Lobato who did the paperwork
23 for 2016.

24 THE COURT: Okay.

25 MR. K. FLAXMAN: I think her testimony was somewhat

1 ambiguous and uncertain about whether she actually approved it
2 or not in 2015, but we know she approved it in January of
3 2015. Her signature is on the form, and I think we should be
4 allowed to question her about that form.

5 THE COURT: Well, what was the application for -- in
6 January of 2015?

7 MR. K. FLAXMAN: The same as in 2' -- the same as in
8 December of 2015, but I think we're using it not to show that
9 he had PTSD then as much as to show that she reviewed and
10 approved his form.

11 MS. HASAN: Your Honor, the application for 2015 is
12 not part of the documents. It's only the approval form for
13 2015. The 2016 application that we're -- that's at issue is
14 Joint Exhibit 4. We don't -- Ms. Shinnawi does have knowledge
15 of the 2015 application. However, your Honor previously ruled
16 that the prior applications are not relevant to the 2016
17 matter.

18 THE COURT: Right. That's why we're having this
19 discussion, but I think it is relevant that Ms. Shinnawi had
20 knowledge of the -- a condition that Mr. Zicarelli was
21 applying for and being granted leave for. If the -- if
22 Exhibit 4 doesn't establish that and -- I mean, it would be
23 one thing if Ms. Shinnawi was going to acknowledge or is going
24 to acknowledge -- and perhaps she is. You can confirm or
25 correct me on that.

1 But if Ms. Shinnawi was going to confirm in her
2 testimony that she understood that Mr. Zicarelli was
3 authorized leave in 2016 as reflected in this document, she
4 understood that when she was having the conversation with him,
5 then that seems adequate, but if she can't -- if she's not
6 going to unequivocally acknowledge that, then I think there's
7 a basis to introduce the earlier 2015.

8 MS. HASAN: We are fine with that, your Honor, the
9 2015 document. It's marked as a joint exhibit.

10 THE COURT: Well, which -- what are you fine with?

11 MS. HASAN: Fine with introducing that Ms. Shinnawi
12 was aware that Mr. Zicarelli had a medical condition. That's
13 her testimony.

14 THE COURT: All right. We'll leave it at this,
15 Mr. Flaxman, or Messers. Flaxman. If there is any ambiguity
16 or need for clarification about Ms. Shinnawi's knowledge of
17 his application and his approval of FMLA leave for 2016, raise
18 it -- that you think requires introduction of the earlier
19 exhibit, you can raise that at -- off the record at sidebar,
20 and I'll likely grant that consideration if it is, in fact.

21 But if she unequivocally says, "Yes, I understood he
22 was on FMLA leave" consistent with Exhibit 4, then I don't
23 think we need another earlier exhibit or FMLA application. So
24 we'll leave it at that for the moment.

25 Okay. So but any problem then with respect to the

1 tweaking of the language in the statement of the case? I'll
2 read it to you again: "The plaintiff, Salvatore Ziccarelli,
3 was employed by the Sheriff's Office of Cook County as a
4 correctional officer at the Cook County Jail. In late 2015,
5 the sheriff's office authorized Ziccarelli to take
6 intermittent FMLA leave in 2016. During this time, Wylola
7 Shinnawi was the Cook County sheriff's office FMLA leave
8 manager."

9 Any problem with that?

10 MR. K. FLAXMAN: Not from plaintiff.

11 MS. ORI: Not from defendant.

12 THE COURT: Okay. Does anybody else have anything we
13 need to take up this morning?

14 MR. J. FLAXMAN: Your Honor, one other issue was
15 about the witnesses, that there's -- besides Mr. Ziccarelli
16 and Ms. Shinnawi, the defendants are intending to present two
17 witnesses, two other witnesses. Based on the Court's ruling
18 on the evidence, it's plaintiff's position that there's --
19 they're not going to offer any relevant testimony.

20 THE COURT: Okay. You've got to explain more,
21 please.

22 MR. J. FLAXMAN: Sure. One of them is Rosemarie
23 Nolan who has been disclosed as having knowledge of
24 plaintiff's FMLA and having knowledge and information of the
25 contents of the documents that they produced in

1 Mr. Zicarelli's FMLA file. We don't see any -- those
2 documents are going to come in, the few that we're talking
3 about, in Mr. Zicarelli's testimony and Ms. Shinnawi's
4 testimony. So we don't see a need for Ms. Nolan --

5 THE COURT: What's this witness' name?

6 MR. J. FLAXMAN: Rosemarie Nolan.

7 MS. HASAN: Your Honor, we disclosed her as having
8 knowledge of the sheriff's office policies and procedures, and
9 we've already made a motion in limine about that -- or sorry.
10 The Court has already denied the motion in limine about the
11 relevance of those issues. That's what she's testifying
12 about.

13 THE COURT: All right. She can -- the existence of
14 policies and procedures is relevant to understanding
15 Ms. Shinnawi's testimony about the conversation and evaluating
16 that testimony. So to that extent, it's relevant. Talking
17 about prior year applications again would not be relevant, and
18 I trust you're not going there.

19 MR. J. FLAXMAN: The second witness is Amar, A-m-a-r,
20 Patel, P-a-t-e-l. Our understanding is that the defense are
21 going -- well, what he's disclosed as is that he has knowledge
22 regarding the percent of employees who have FMLA benefits. So
23 our understanding is that it's an attempt to show the sheriff
24 follows the law for other people and gives other people FMLA
25 benefits. We don't know the relevance of that to

1 Mr. Zicarelli.

2 MS. ORI: So Omar Patel produced, he ran the report
3 which is Defendant's Exhibit 14, the FMLA snapshot as of
4 August 2nd, 2016. He can lay the foundation for how he put
5 this report together. And this exhibit shows that roughly
6 one-third of sheriff's office employees are approved for FMLA
7 in 2016. It shows that applying for FMLA is something that is
8 routine, policies, there are policies to handle this amount of
9 FMLA applications.

10 THE COURT: Well, I have to agree with the plaintiff.
11 The fact that the sheriff's office grants FMLA leave to other
12 individuals doesn't tell us whether there was an issue with
13 respect to Mr. Zicarelli. This is evidence of prior
14 approvals and applications not just of Mr. Zicarelli but of
15 people we know nothing about. For that evidence to be
16 relevant or rebutted or contested, the plaintiff would have to
17 be able to get into the particulars of the individual
18 circumstances of the people who were on FMLA leave, and as
19 I've indicated, we're not going to be doing that. We're
20 focused on this application and what was said and done with
21 respect to this application.

22 So unless there's some other basis for relevance,
23 this Exhibit 14 isn't coming in.

24 MS. ORI: I mean, it shows the volume of -- it's like
25 a foundation. It's a business record. It lays the foundation

1 for how the --

2 THE COURT: A business record has to be relevant.

3 MS. ORI: It shows the volume of FMLA applications.

4 Ms. Shinnawi will testify that she reviewed hundreds of
5 applications a year in her time, and this shows how -- the
6 numbers.

7 THE COURT: But this does -- for all we know
8 Ms. Shinnawi said, you know, "We've already given FMLA leave
9 to 1700 people this year. I'm done granting FMLA leave." I
10 understand that's not probably likely, but it doesn't tell us,
11 it's not probative of whether the particular circumstances of
12 the plaintiff Ms. Zicarelli -- excuse me, Ms. Shinnawi
13 addressed the situation as the plaintiff describes or as the
14 defendant describes. That's what's relevant, not that the
15 defendant has or has not granted FMLA leave for a lot of other
16 people in the past.

17 That's -- that's been the focus of our discussions on
18 certainly the first session of our pretrial conference, and I
19 hew to the ruling that I made at that point. What's relevant
20 here is what was said and done with respect to this
21 application, not other applications of Mr. Zicarelli and
22 certainly not other applications of people we know nothing
23 about. So that's not coming in.

24 MR. K. FLAXMAN: With respect to Ms. Nolan's
25 testimony, could we revisit that after you've heard from

1 Ms. Shinnawi? We might --

2 THE COURT: Yes.

3 MR. K. FLAXMAN: Thank you.

4 THE COURT: That's what I'm indicating. If you still
5 think you need that exhibit, you can raise it with me, and
6 we'll address it based on what Ms. Shinnawi has testified
7 about. If she testifies unequivocally that, "Yes, I knew
8 about this leave that's documented in Exhibit 4, I'm aware of
9 that even though my signature is not on it, I saw that, had
10 access to that when I was talking with Mr. Zicarelli," then
11 you're not going to need that additional exhibit.

12 MR. K. FLAXMAN: I was referring to testimony by
13 Ms. Nolan that -- about what the policies are. If
14 Ms. Shinnawi says -- well, I mean, we're going to have a
15 dispute about whether she followed the policies, and we're not
16 trying the policies. We're trying what she did in response to
17 Mr. Zicarelli's inquiry. But I think this will be more clear
18 after you've heard from Ms. Shinnawi and perhaps from
19 Mr. Zicarelli.

20 THE COURT: All right. Well, we'll leave it, if
21 there's an issue you want to raise, raise it in a timely
22 manner.

23 MR. K. FLAXMAN: Thank you.

24 MS. ORI: If we're going to revisit rulings, I would
25 like to revisit your ruling on Plaintiff's Exhibit 2, their

1 damages which I believe is now Exhibit 1.

2 THE COURT: All right. Well, just for the record,
3 Ms. Ori, we're not revisiting. We're reiterating rulings I've
4 already made. But what's your point?

5 MS. ORI: So the Seventh Circuit held that it was
6 unreasonable for Mr. Ziccarelli to resign, to retire. That
7 was an unreasonable action. He is now seeking damages for the
8 same amount of time he would have if he had still had a
9 constructive discharge claim. I think it's -- the instruction
10 says that the conduct has to directly relate to the sheriff's
11 office conduct in order to get damages.

12 THE COURT: Yes.

13 MS. ORI: Because Mr. Ziccarelli engaged in an
14 unreasonable act, as a matter of law I don't believe he can
15 seek damages for seven years of back pay. Additionally,
16 Mr. Ziccarelli is receiving his pension now, so he could not
17 be receiving his pension and his salary at the same time.

18 THE COURT: Well, he's not claiming pension. If
19 there's an argument to be made that you want to make on --
20 with respect to damages that the damages, he wouldn't have
21 received salary after X date because he was receiving a
22 pension at that point in time, that sounds like fair game to
23 me, but the point with respect to damages at all is what we
24 covered in the pretrial conference on Friday morning. And as
25 I explained at that point in time, I understand there's

1 tension between what the Seventh Circuit ruled with respect to
2 the retaliation claim and the constructive discharge and that
3 claim and what it said in -- with respect to the interference
4 claim.

5 The best we can do, as I said on Friday, is I'm going
6 to see what -- we're going to instruct the jury, I think
7 properly, that the claimed damages have to be directly caused
8 by the alleged interference, and we will see where the jury
9 takes that. And based on the fully developed factual record
10 that we will have at the conclusion of the trial, if the
11 defendant thinks that -- you know, if there's a verdict for
12 the plaintiff and the defendant thinks that the damage award
13 is inappropriate for some reason, you can file a Rule 50
14 motion or a motion for remitter.

15 I'm not sure exactly what the proper procedural
16 mechanism is to address that question, but in the first
17 instance, the court of appeals treated the interference claim
18 as not being definitively decided as to what damages could be
19 obtained. That's the best interpretation I can get about the
20 paragraph about considering snowballing consequences. The
21 Seventh Circuit expressed skepticism about claiming damages of
22 that sort. I share it. But the Seventh Circuit did not say
23 that it was, as a matter of law, beyond the ken that the
24 defendant might be entitled to such damages.

25 So I'm not going to rule as a matter of law prior to

1 having a fully developed factual record that the plaintiff
2 could not qualify for lost wages damages if the jury concludes
3 that his version of the conversation with Ms. Shinnawi and the
4 actions that followed that conversation are the credible
5 account of that episode.

6 If the jury is -- if the jury concludes that that is
7 the credible understanding of that conversation, then we have
8 to address the question of what damages would be directly
9 caused by the sheriff's office interfering with
10 Mr. Zicarelli's exercise of his FMLA requirements. We'll
11 have to hear Mr. Zicarelli's testimony as to why he resigned
12 in lieu of taking other options that were available to him,
13 and it's on that basis that I will ultimately consider, if
14 there's a need to, the propriety of the damages awarded if
15 there are any damages awarded.

16 So that's as clear as I can state it at this point in
17 time. I think that's consistent with what we said on Friday
18 morning. So I'm not going to bar the evidence of damages at
19 this juncture.

20 All right. Anything else?

21 Okay. Again, in hopefully a half hour or so, we'll
22 have the copies of the jury questionnaires and we'll get
23 going. So please don't wander off too far. Okay.

24 All right. We're in recess.

25 (Recess from 9:28 a.m. to 10:10 a.m.)

1 THE COURT: Counsel, any issues? We're going to go
2 get the jurors. Before we do that, anything else we need to
3 discuss right now?

4 MR. K. FLAXMAN: Not from plaintiff, your Honor.

5 MS. ORI: No.

6 THE COURT: Okay. All right. Alberta, if you would
7 bring the jurors in, we will get started.

8 MS. ORI: Judge, we don't have 12.

9 (Pause.)

10 THE COURT: It may be -- I'm not sure. We'll confirm
11 this, but I think juror 12 has already raised an issue about
12 his ability to speak English, and I think that's why we don't
13 have a questionnaire for him. I'm going to -- we'll ask the
14 group those questions, but if it is juror No. 12 who didn't
15 complete a questionnaire on that basis, I would likely just
16 excuse him at that point in time. Does anybody have any
17 objection to that?

18 MS. HASAN: Okay.

19 THE COURT: All right.

20 (Pause.)

21 THE COURT: 12 is the individual who raised an issue
22 about not speaking English, so we will confirm that and then
23 excuse him.

24 (Proceedings heard in open court. Venire in.)

25 THE COURT: Please be seated.

1 Good morning, ladies and gentlemen. Welcome to
2 federal court. My name is Judge Tharp, and I'm going to
3 preside over the civil trial that you are here for today.
4 We're going to go through a process this morning of selecting
5 a jury to hear this case.

6 The first thing I want to do is make sure that our
7 list matches up with how you are seated in the courtroom so we
8 know whose responses go to which individuals here. We have
9 juror number one, Ms. Maldonado. Is that correct?

10 PROSPECTIVE JUROR: Correct.

11 THE COURT: And then down at the other end, let's
12 see, two, four, six, seven -- Mr. Graham there?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: All right. And then do we have
15 Ms. Quail?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: All right. And I think that would take
18 us to Mr. Lawrence. All right. And then Ms. Miras. Okay.
19 And Ms. Pugh. And then at the tail end of the list,
20 Ms. Hamodeh. Okay. All right. I think we're in the correct
21 order.

22 The first thing I need to do, folks, or the next
23 thing I need to do I have some general questions to ask you
24 about your eligibility to serve on the jury. If you have
25 information responsive to these questions, please raise your

1 hand and we'll follow up further.

2 First, is there anyone here who has difficulty
3 understanding and speaking English?

4 All right. And, sir, how do you pronounce your last
5 name?

6 PROSPECTIVE JUROR: Roman.

7 THE COURT: Your last name is Roman?

8 PROSPECTIVE JUROR: Majchrowicz.

9 THE COURT: Majchrowicz. All right. And you had
10 indicated before coming into the courtroom to some of the
11 staff that you have a problem speaking or writing English?

12 No, you don't have a difficulty with that?

13 Did you complete a written questionnaire?

14 All right. Do you understand the questions I'm
15 asking you?

16 Do you have a job? Are you employed?

17 Okay. Counsel, pursuant to our previous discussion...

18 All right. Mr. Majchrowicz, I apologize if I'm
19 mispronouncing that, we're going to excuse you from jury duty
20 today.

21 Alberta, would you point him back to the jury room on
22 the second floor?

23 THE CLERK: Yes.

24 THE COURT: All right. Anyone else who has
25 difficulty understanding or speaking English?

1 Okay. Is there anyone here who is not at least 18
2 years of age?

3 Is there anyone here who is not a United States
4 citizen?

5 Is there anyone here who has not resided in the
6 Eastern Division of the Northern District of Illinois for at
7 least the past year? What, I'm sure you're asking yourself,
8 is the Eastern Division of the Northern District of Illinois.
9 It consists of the following counties: Cook County, Lake,
10 Kane, DuPage, Kendall, Will, Grundy, and LaSalle counties.

11 Has everyone here lived in one of those counties for
12 at least the past year?

13 Okay. All right. Ms. Rone, would you please swear
14 our panel in? We're going to keep you running this morning.

15 THE CLERK: Yes, no problem.

16 Would you please stand and raise your right hand?
17 (Venire sworn.)

18 THE CLERK: Thank you. You may be seated.

19 THE COURT: All right. Ladies and gentlemen, you're
20 here because our Constitution guarantees the right to a jury
21 trial in most civil cases. That's in the Seventh Amendment to
22 the Constitution which is part of the Bill of Rights. And the
23 Seventh Amendment goes on to say that no fact tried by a jury
24 shall be otherwise reexamined in any court of the United
25 States. And what that means is that the jury is the group

1 that decides the facts and determines what happened. The
2 jury's role is absolutely critical to our system of justice.
3 It's so critical that it was included in the original Bill of
4 Rights along with our other most basic and fundamental
5 constitutional protections.

6 We all have to do our part to make sure that we can
7 continue to have a judicial system that guarantees our right
8 to a fair trial before a jury of our peers. Because of the
9 importance of this role, we try to make sure the jurors who
10 decide the case start out with no advanced feelings about the
11 case or about the parties. This morning we're going to go
12 about the process of selecting a jury that, so far as
13 possible, is a fair and impartial jury in this particular
14 case.

15 This case is entitled Salvatore Ziccarelli versus the
16 Sheriff's Office of Cook County, Illinois. This case involves
17 a federal statute known as the Family and Medical Leave Act,
18 or FMLA. The statute allows employees to take up to 12 weeks
19 of unpaid, job-protected leave in a 12-month period for
20 certain family and medical reasons. The plaintiff, Salvatore
21 Ziccarelli, was employed by the defendant, Sheriff's Office of
22 Cook County, as a correctional officer at the Cook County
23 Jail.

24 In 2015, the sheriff's office authorized
25 Mr. Ziccarelli to take intermittent FMLA leave in 2016.

1 During this time, Wylola Shinnawi was the Cook County
2 Sheriff's Office FMLA leave manager. In September of 2016,
3 Mr. Ziccarelli spoke with Ms. Shinnawi on the telephone.
4 Their conversation was not recorded. The parties disagree
5 about the contents of this conversation.

6 Shortly after this conversation, on September 20th of
7 2016, Mr. Ziccarelli resigned from employment as a
8 correctional officer. Mr. Ziccarelli contends that
9 Ms. Shinnawi discouraged him from taking FMLA leave and that
10 this caused him to resign. The sheriff's office denies this.

11 Now, based on that very brief description of this
12 case, is there anyone who thinks that they know or have heard
13 anything about this particular case?

14 All right. I'm going to now ask the lawyers and the
15 parties to represent -- or to introduce themselves so you know
16 who's who here in the courtroom, and we'll start with the
17 plaintiffs.

18 Counsel?

19 MR. J. FLAXMAN: Good morning, everyone. My name is
20 Joel Flaxman. Kenneth Flaxman is sitting next to me at the
21 table and our client, Salvatore Ziccarelli, is sitting next to
22 him.

23 THE COURT: All right. And for the sheriff's office?

24 MS. ORI: Good morning. My name is Kathleen Ori.
25 I'm with Nazia Hasan and sheriff's office representative

1 Yolanda Delgado.

2 THE COURT: All right. Thank you.

3 Is there anyone here who thinks you know either of --
4 any of the lawyers or the party representatives here today?

5 All right. I'm going to read you a brief list of
6 names that you may hear from or about during the course of
7 this trial, and I'll ask you at the end of this list whether
8 you might know any of these folks: Wylola Shinnawi, Rosemary
9 or Rosemarie Nolan.

10 I'm sorry. Whoever's got a phone beeping.

11 MS. HASAN: I'm sorry.

12 THE COURT: Thank you.

13 Rosemarie Nolan or Amar Patel. Anyone think you know
14 any of those individuals?

15 Okay. Before we go further, I want to touch on some
16 broad fundamental principles of law that apply in all civil
17 jury cases both to help you understand the role that you may
18 be called upon to play if you're selected as a juror in this
19 case and to understand the questions that you've responded to
20 or may be asked to respond to as we go forward.

21 This case has been brought by what is called a
22 complaint filed by the plaintiff against the defendant. A
23 complaint is not evidence nor does it create any inference
24 that a defendant did what the plaintiff claims or is liable to
25 the plaintiff in any way. Just as a plaintiff has the right

1 to come to court to bring a suit, a defendant has the right to
2 come to court to defend itself.

3 It's important to understand at the outset that a
4 plaintiff who makes a claim or a defendant who asserts what we
5 call an affirmative defense has the responsibility for proving
6 his or her or its claim or affirmative defense by what is
7 called a preponderance of the evidence. This is a different
8 standard than the standard that applies in criminal cases and
9 with which you may be more familiar.

10 In criminal cases, a defendant must be proved guilty
11 beyond a reasonable doubt. That is not the standard in a
12 civil case. In a civil case like this one, the standard of
13 proof is preponderance of the evidence. And what
14 preponderance of the evidence means is that when you have
15 considered all the evidence presented by or that bears on an
16 issue, you must be persuaded that the proposition advanced is
17 more probably true than not true. So preponderance of the
18 evidence means the issue that you're considering based on the
19 evidence that's presented that bears on that issue, you must
20 determine whether it is more probably true than not true.

21 Now, in an important sense, the jurors are the judges
22 in this case. That's because the jurors are the judges of the
23 facts. You are the sole judges of the credibility of the
24 witnesses, which is to say whether or not the witnesses are
25 telling the truth, the weight to be given to their testimony,

1 and the weight to be given to any exhibits that are received
2 into evidence.

3 My role as the judge in the case is different. I
4 don't decide the facts. I am the judge of the law, and at the
5 end of the case after the jury has heard all of the evidence
6 and the arguments of counsel, I will instruct the jury as to
7 the law that applies in this case. It is a juror's absolute
8 duty to accept the law as defined in the Court's instructions
9 and to follow those instructions.

10 Now, as we go about trying to make sure that the
11 jurors who are going to hear this case will be fair and
12 impartial and render a just verdict, our first step is to find
13 out a little bit of information about each of you. This is
14 not an attempt to pry into your personal lives, but we do need
15 some information so that the lawyers and the Court can make
16 judgments about your ability to serve as a juror in this
17 particular case. The first step in this process of selecting
18 the jury was the completion of the written questionnaires you
19 were given earlier this morning in the jury assembly room.
20 Now in the courtroom phase of this process, I will ask some of
21 you follow-up questions to those responses on the written
22 questionnaire.

23 If I call your name, please come up to the witness
24 stand which is here to my right. There are -- there's a
25 microphone there. Please scooch up as close as you can to the

1 microphone and speak directly into the microphone.

2 Now, as I said, this process isn't about prying into
3 your personal lives, but if there is any question that's asked
4 that you're uncomfortable answering in front of everybody and
5 you want to limit your answer to the Court and the parties
6 that have to evaluate the information, let me know that, and
7 we have a process we call a sidebar where you can answer that
8 question in a manner, with the aid of some technology, that
9 will only allow counsel, the parties, and the Court to hear
10 your answers. So if you're concerned about responding to a
11 question and would like to use the sidebar process, let me
12 know that, and we will certainly accommodate that.

13 All right. Ms. Maldonado, would you start us out,
14 please, right here.

15 Good morning, ma'am.

16 PROSPECTIVE JUROR: Good morning.

17 THE COURT: All right. And I understand from your
18 questionnaire that you are presently a full-time student in
19 college?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Where do you attend college?

22 PROSPECTIVE JUROR: College of Lake County.

23 THE COURT: All right. Can you speak into that
24 microphone? You can pull it down closer to you if you want.
25 And I'm sorry. I didn't hear. Where do you attend college?

1 PROSPECTIVE JUROR: College of Lake County.

2 THE COURT: Okay. And how -- where are you in your
3 college journey, what year?

4 PROSPECTIVE JUROR: It's my second year.

5 THE COURT: Do you have a major?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: What are you majoring in?

8 PROSPECTIVE JUROR: Dance.

9 THE COURT: Okay. And are you in a class schedule
10 presently? Are you on a break of any sort at this point in
11 time?

12 PROSPECTIVE JUROR: Yeah, I'm currently in classes.

13 THE COURT: Okay. And what is your class schedule
14 typically during the week?

15 PROSPECTIVE JUROR: I have classes on Tuesday and
16 Thursdays and Wednesdays.

17 THE COURT: All right. So if you were to serve on
18 the jury, you would be -- would you have to miss class?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: All right. The nature of your major,
21 dance, is that -- do you actually dance or is it --

22 PROSPECTIVE JUROR: Yes, I do dance.

23 THE COURT: -- more academic?

24 PROSPECTIVE JUROR: It's both.

25 THE COURT: You responded to a question that asked,

1 that indicates that jurors must follow the instructions of the
2 law that the Court provides whether they agree with them or
3 not, and you indicated you might have some difficulty
4 following the instructions of law.

5 Can you explain that a little bit?

6 PROSPECTIVE JUROR: I just think that sometimes us
7 jurors also have our opinions.

8 THE COURT: Well, as I've indicated, the jury does
9 ultimately have the opinion and makes the decision about
10 whether the burden of proof in the case has been established
11 and whether the defendant is liable to the plaintiff or not.
12 So in that sense, the jury does -- is entitled to its
13 opinions, and that's exactly what we ask a jury to do. But
14 before the jury can understand whether the claim is valid
15 under the law depends on the instructions of law that govern
16 that area of the law, and that's what I mean by the
17 instructions that the Court will give you as a juror.

18 With respect to the law that applies in the case that
19 you're asked to apply to the evidence presented during the
20 case to decide the facts, do you believe you would have any
21 difficulty following those legal instructions?

22 PROSPECTIVE JUROR: No.

23 THE COURT: All right. Thank you, ma'am.

24 Mr. Arguello. Good morning, sir.

25 PROSPECTIVE JUROR: Good morning.

1 THE COURT: All right. What's the nature of your
2 current employment?

3 PROSPECTIVE JUROR: Employed by DM Merchandise.

4 THE COURT: And what do you do?

5 PROSPECTIVE JUROR: Forklift driver, a little bit of
6 everything.

7 THE COURT: Okay. You work on, like, a loading dock,
8 receiving dock?

9 PROSPECTIVE JUROR: No. I'm more stocking, putting
10 away, bringing. Every day is different. I may have to label
11 certain things.

12 THE COURT: Okay. How long have you been doing that
13 work?

14 PROSPECTIVE JUROR: I've been -- I've been working
15 there for four years and about six months, but I recently had
16 a change of work duties.

17 THE COURT: All right. What are you presently doing?

18 PROSPECTIVE JUROR: Just basically stocking. I do
19 operate a forklift.

20 THE COURT: Okay. What did you do before you
21 started?

22 PROSPECTIVE JUROR: Before, I was in charge of the
23 stocking team which I was the lead.

24 THE COURT: Okay. Did you supervise people?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Did you have any responsibility for
2 evaluating the performance of --

3 PROSPECTIVE JUROR: No.

4 THE COURT: -- individuals?

5 PROSPECTIVE JUROR: Nothing like that. Just give
6 direction and mostly following up with my manager what is to
7 be done, a daily task or weekly.

8 THE COURT: Okay. And you mentioned your spouse and
9 daughter are both self-employed. What do they do?

10 PROSPECTIVE JUROR: That's correct. My wife has her
11 own beauty shop. She basically cuts hair, paints hair, and my
12 daughter is a -- just recently joined her, but she's more in
13 the facial. So my daughter does facials, and my wife does
14 hair.

15 THE COURT: Okay. They work in the same shop?

16 PROSPECTIVE JUROR: Together, yes.

17 THE COURT: Okay. You indicated that you have a
18 friend and someone on your wife's side of the family that work
19 in law enforcement?

20 PROSPECTIVE JUROR: That's correct.

21 THE COURT: What department or agency?

22 PROSPECTIVE JUROR: My wife's cousin is a police
23 officer in Cicero. And I used to have a coworker when I was
24 in the Boy Scouts working as a district executive, his name is
25 Caleb, and he works in Elk Grove.

1 THE COURT: As I described to you already this
2 morning, this case involves a claim by the plaintiff who is a
3 former correctional officer at the Cook County Jail against
4 the Sheriff's Office of Cook County.

5 Do you think your relationship with your -- the
6 individuals that you just identified as law enforcement
7 officers would impact your ability to weigh the evidence in
8 this case one way or the other?

9 PROSPECTIVE JUROR: Not at all.

10 THE COURT: All right. And in response to a
11 question, and I think this was probably due to some poor
12 wording on my part, but we asked you if you find that the
13 plaintiff has not proved his claim by a preponderance of the
14 evidence, would you be able to return a verdict in favor of
15 the defendant. If not, please explain. And you indicated,
16 "No, so you must be able to provide evidence to prove."

17 By that, do you mean if the plaintiff fails to prove
18 his claim with evidence that you would support a verdict or
19 could sign a verdict in favor of the defendant?

20 PROSPECTIVE JUROR: Can you repeat that again? I got
21 lost.

22 THE COURT: Yes. It gets a little confusing.

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Do you understand that the plaintiff has
25 the burden of proof with respect to his claim?

1 PROSPECTIVE JUROR: Correct.

2 THE COURT: All right. If he fails to present
3 evidence sufficient to satisfy the preponderance of the
4 evidence standard, would you be able to say, "I find the
5 defendant not liable"?

6 PROSPECTIVE JUROR: Correct.

7 THE COURT: Okay. All right. Thank you, sir.

8 Ms. Ashbrook? Good morning, ma'am. How are you?

9 PROSPECTIVE JUROR: Good. Thanks.

10 THE COURT: All right. And you -- you're a retired
11 librarian; is that correct?

12 PROSPECTIVE JUROR: I'm a retired librarian, one of
13 my jobs, yeah.

14 THE COURT: Okay. Are you presently working in some
15 other job?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Okay. What other significant employment
18 have you had besides librarian?

19 PROSPECTIVE JUROR: I was a library director for
20 eight years.

21 THE COURT: Okay. And as a library director, were
22 you the senior person in charge of a library facility or
23 multiple facilities?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Was it one or more?

1 PROSPECTIVE JUROR: I had two different jobs at two
2 different libraries as a library director.

3 THE COURT: Okay. As library director, did you have
4 occasion -- I assume you supervised other individuals?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: All right. Did compliance with
7 attendance policies and things like that fall within your
8 purview as librarian or library director?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Do you have any familiarity with the
11 FMLA and --

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: -- addressing FMLA requests?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: All right. During your work as a library
16 director, did you have occasion to grant FMLA?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Did you have occasion to deny FMLA?

19 PROSPECTIVE JUROR: No.

20 THE COURT: This is a case, as you've heard, that
21 involves a claim based on FMLA -- well, based on the FMLA. Do
22 you think your experiences as a library director would affect
23 your ability to evaluate the claim fairly and impartially?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: All right. And why is that?

1 PROSPECTIVE JUROR: Oh, I'm sorry. No, it wouldn't
2 affect.

3 THE COURT: All right. You could evaluate the claim
4 fairly and impartially?

5 PROSPECTIVE JUROR: Uh-huh.

6 THE COURT: Would you base your verdict in the case
7 on the evidence presented in this case as opposed to your own
8 experiences dealing with FMLA issues?

9 PROSPECTIVE JUROR: I believe I would.

10 THE COURT: Would you have any difficulty following
11 the Court's instructions about the FMLA?

12 PROSPECTIVE JUROR: No.

13 THE COURT: All right. And you indicated that you
14 previously served on a jury about six years ago in a criminal
15 case.

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Was that here in Cook County?

18 PROSPECTIVE JUROR: No. Kane County.

19 THE COURT: Kane County. What was the nature of the
20 criminal charge?

21 PROSPECTIVE JUROR: Drug possession.

22 THE COURT: Did the jury deliberate in that case? I
23 don't want to know a verdict, but did the case reach
24 deliberations?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Were you selected as the foreperson of
2 the jury?

3 PROSPECTIVE JUROR: No.

4 THE COURT: And you understand as I've already
5 mentioned this morning that the burden of proof in a criminal
6 case is significantly higher than the burden of proof in a
7 civil case?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: All right. And you indicated in response
10 to a question that you have some relatives who have had some
11 mental disability or illness that they have had to address.
12 Have you been -- had to serve as a caregiver for anyone
13 suffering from any mental illness?

14 PROSPECTIVE JUROR: Not suffering from any mental
15 illness.

16 THE COURT: Is there anything in your experience and
17 observations of your relatives who have had to address mental
18 issues that you think would affect your ability to be a fair
19 and impartial juror?

20 PROSPECTIVE JUROR: No.

21 THE COURT: In response to one of the questions, one
22 of the questions asked if you were satisfied if you found that
23 the plaintiff met his burden of proof, the question asked
24 would you have any objection or hesitation in awarding
25 substantial money damages if those damages are supported by

1 evidence in the law, and you responded "no."

2 PROSPECTIVE JUROR: Maybe I didn't understand that
3 question.

4 THE COURT: All right. And again, I apologize. We
5 often have problems with these questions because they sort of
6 involve double negatives.

7 So if you conclude that the plaintiff has proved his
8 claim by a preponderance of the evidence and presented
9 evidence to establish that he is, therefore, due for
10 substantial money damages, would you be able to sign a verdict
11 that awarded him those damages?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Okay. And by the flip side of that coin,
14 if you were -- if you concluded that the plaintiff had not met
15 his burden of proof, would you be able to sign a verdict in
16 favor of the defendants?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Okay. All right. Thank you, ma'am.
19 Mr. Patel.

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Good morning, sir.

22 PROSPECTIVE JUROR: Good morning.

23 THE COURT: All right. And you indicated that you
24 went to -- studied and completed your highest level of
25 education in India?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: All right. What level within the Indian
3 school structure did you achieve?

4 PROSPECTIVE JUROR: Bachelor of commerce and also
5 maritime law.

6 THE COURT: I'm sorry. Could you say that again?

7 PROSPECTIVE JUROR: Bachelor of commerce and m law,
8 lawyer.

9 THE COURT: "M low"?

10 PROSPECTIVE JUROR: Maritime law. It's a lawyer.

11 THE COURT: Okay. You were a lawyer?

12 PROSPECTIVE JUROR: Not, only just one year.

13 THE COURT: Okay. All right. And was there a
14 specific area of law that you studied during that one year?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Given your experience having some
17 academic training in the law, would you have any difficulty
18 following the instructions of law that you're given in this
19 case?

20 PROSPECTIVE JUROR: No.

21 THE COURT: And what do you presently do for a
22 living, sir?

23 PROSPECTIVE JUROR: Beg your pardon? Repeat it
24 again, please.

25 THE COURT: Do you have a job presently?

1 PROSPECTIVE JUROR: No. I'm retired.

2 THE COURT: Retired?

3 PROSPECTIVE JUROR: Uh-huh.

4 THE COURT: All right. What kind of work did you do
5 before you retired?

6 PROSPECTIVE JUROR: Report on assistant clerk.

7 THE COURT: Assisted a clerk?

8 PROSPECTIVE JUROR: Uh-huh.

9 THE COURT: In what kind of business?

10 PROSPECTIVE JUROR: It's a Walgreen pharmacy next
11 door.

12 THE COURT: And did you work in corporate
13 headquarters, or did you work in an actual --

14 PROSPECTIVE JUROR: No, just regular store.

15 THE COURT: Okay. How long did you work at
16 Walgreens?

17 PROSPECTIVE JUROR: Almost 30 years.

18 THE COURT: Did you supervise other employees?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: All right. Did you have to administer
21 any sort of aspect of employee attendance or sick leave or
22 those kinds of issues?

23 PROSPECTIVE JUROR: No.

24 THE COURT: All right. Same question that I just had
25 to ask Ms. Ashbrook. I apologize again for the confused

1 wording, but you understand that the plaintiff has the burden
2 of proof with respect to his claim?

3 PROSPECTIVE JUROR: No.

4 THE COURT: You don't understand that?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Okay. If you conclude at the end of the
7 trial that the plaintiff has proved his claim by a
8 preponderance of the evidence and proved that he suffered
9 damages as a result of that claim, would you be able to sign a
10 verdict in the plaintiff's favor that called for substantial
11 money damages?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: All right. And the flip side of that
14 question is, if you concluded that the plaintiff had not
15 proved his claim by a preponderance of the evidence, would you
16 be able to sign a verdict in favor of the defendant?

17 PROSPECTIVE JUROR: That's no.

18 THE COURT: I'm sorry?

19 PROSPECTIVE JUROR: No.

20 THE COURT: All right. Let's go through this one
21 more time. If you conclude that the plaintiff failed to
22 produce evidence to support his claim by a preponderance of
23 the evidence --

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: -- would you be able to find in favor of

1 the defendant?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Okay. And if the plaintiff meets his
4 burden, you would be able to find in favor of the plaintiff;
5 is that correct?

6 PROSPECTIVE JUROR: That's yes.

7 THE COURT: Okay. All right. Thank you, sir.

8 PROSPECTIVE JUROR: You're welcome.

9 THE COURT: Ms. Mavric de Beltrami. Good morning,
10 ma'am.

11 PROSPECTIVE JUROR: Good morning.

12 THE COURT: All right. And you are a lawyer?

13 PROSPECTIVE JUROR: I am.

14 THE COURT: And where do you practice?

15 PROSPECTIVE JUROR: I practice for the -- here in
16 Chicago for the Metropolitan Tribunal of the Archdiocese of
17 Chicago.

18 THE COURT: What is the Metropolitan Tribunal?

19 PROSPECTIVE JUROR: It's a court of the Catholic
20 church here in Chicago. And I studied law in Buenos Aries,
21 Argentina.

22 THE COURT: Did you study ecclesiastical law?

23 PROSPECTIVE JUROR: I studied civil law. Then I
24 specialize in canon law throughout the years. And canon law
25 is practiced all over the world.

1 THE COURT: All right. You've indicated that you've
2 previously taken FMLA leave.

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: About how long ago was that?

5 PROSPECTIVE JUROR: Probably -- I believe it's maybe
6 two years or three years, two years probably.

7 THE COURT: Okay. And how long a period did you have
8 on FMLA?

9 PROSPECTIVE JUROR: I think -- it was about two month
10 maybe or three month at the most.

11 THE COURT: Is there anything about your experience
12 in applying for or taking that FMLA leave that you think would
13 prevent you from fairly evaluating the evidence with respect
14 to someone else's claim?

15 PROSPECTIVE JUROR: No.

16 THE COURT: All right. If you concluded that the
17 plaintiff proved his claim by a preponderance of the evidence
18 and presented evidence that he was entitled -- or suffered
19 damages as a result of the conduct at issue in his claim,
20 would you be able to find in favor of the plaintiff and award
21 substantial money damages?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: And on the flip side of that question, if
24 you concluded the plaintiff did not meet his burden of proof,
25 would you be able to find in favor of defendants?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: All right. Thank you, ma'am.

3 PROSPECTIVE JUROR: May I ask a question?

4 THE COURT: Yes, you may.

5 PROSPECTIVE JUROR: Listening to the other -- on the
6 question about whether we have family members, or I don't know
7 if there was also friends that are members of the law
8 enforcement, I just remembered as I -- my daughter recently, I
9 don't know if that would apply, she works for the Department
10 of Homeland Security, and she took this position just recently
11 with the Embassy of the United States in Buenos Aries.

12 THE COURT: Okay. And do you think the fact that
13 your daughter works for a law enforcement agency would bear on
14 your evaluation of the evidence in this case?

15 PROSPECTIVE JUROR: No.

16 THE COURT: All right. Thank you, ma'am.

17 PROSPECTIVE JUROR: You're welcome.

18 THE COURT: All right. Ms. Patel. Good morning,
19 ma'am.

20 PROSPECTIVE JUROR: Good morning.

21 THE COURT: All right. What do you -- what's your
22 current employment, ma'am?

23 PROSPECTIVE JUROR: I'm a senior executive assistant
24 for AAR.

25 THE COURT: And what is AAR?

1 PROSPECTIVE JUROR: They work with aerospace, so
2 government and commercial airplane, selling and buying planes
3 and maintenance on planes.

4 THE COURT: Okay. In your role as senior executive
5 assistant, are you -- do you have any involvement in
6 administering attendance policies, sick leave, things like
7 that?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Okay. And your spouse works for
10 Navistar?

11 PROSPECTIVE JUROR: Correct.

12 THE COURT: What's the nature of his employment?

13 PROSPECTIVE JUROR: Similar to mine but trucks, semi
14 trucks and buses, so buying and maintenancing parts for
15 trucks.

16 THE COURT: Okay. All right. And you've had FMLA
17 leave before in your career?

18 PROSPECTIVE JUROR: Correct.

19 THE COURT: Would your experience in applying for and
20 obtaining FMLA leave affect your ability to fairly evaluate
21 the claim of someone else with respect to FMLA leave?

22 PROSPECTIVE JUROR: No effect.

23 THE COURT: All right. And with respect to your
24 childcare issues, do I understand correctly you don't have an
25 issue this week --

1 PROSPECTIVE JUROR: Correct.

2 THE COURT: -- but if the case carried on.

3 PROSPECTIVE JUROR: Right.

4 THE COURT: All right. And though you indicated you
5 feel strongly about FMLA and its need for parents and
6 families, would you be able to base your verdict on the
7 evidence presented in the trial as opposed to your --

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: -- generally favorable view of FMLA?

10 PROSPECTIVE JUROR: Correct, yes.

11 THE COURT: All right. Thank you, ma'am -- oh, I'm
12 sorry, ma'am. Can you come back up, Ms. Patel?

13 PROSPECTIVE JUROR: I think I answered that one
14 wrong.

15 THE COURT: I forgot to look. Okay.

16 PROSPECTIVE JUROR: I think I did it backwards.

17 THE COURT: If you conclude the plaintiff proves his
18 case by a preponderance of the evidence and presents evidence
19 that he suffered damages as a result --

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: -- would you be able to find in favor of
22 the plaintiff and award substantial money damages?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: The flip side is, if you conclude that
25 the plaintiff has not proved his case, would you be able to

1 find in favor of the defendants?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Thank you.

4 Mr. Graham? Good morning, sir.

5 PROSPECTIVE JUROR: Pleasant good morning, sir.

6 THE COURT: And what's the highest level of formal
7 education you completed, sir?

8 PROSPECTIVE JUROR: Degree, but I'm from Jamaica, so
9 the degree is not from here.

10 THE COURT: Okay. Was it a college degree?

11 PROSPECTIVE JUROR: High school degree.

12 THE COURT: High school degree. And what -- you're
13 presently employed. What do you do?

14 PROSPECTIVE JUROR: Self-employed, and I also work on
15 the Navy base.

16 THE COURT: I'm sorry. I didn't hear the first.

17 PROSPECTIVE JUROR: Self-employed. I have a little
18 limousine company, and I work at the Navy base.

19 THE COURT: Okay. Up at Glenview or Great Lakes?

20 PROSPECTIVE JUROR: Great Lakes.

21 THE COURT: Okay. All right. Same question that's
22 tripping everybody up here for you, so I'll just -- rather
23 than try to read the question again, if you conclude, if
24 you're a juror in this case and you conclude that the
25 plaintiff has proved his case by a preponderance of the

1 evidence and has proved that he suffered damages as a result,
2 would you be able to return a verdict in the plaintiff's favor
3 that called for the award of substantial money damages?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Flip side, if you conclude that the
6 plaintiff has not proved his case by a preponderance of the
7 evidence, would you be able to return a verdict in favor of
8 the defendant?

9 PROSPECTIVE JUROR: Yes, I would.

10 THE COURT: Okay. That's all we need. Thank you,
11 sir.

12 Ms. Quail? Good morning, ma'am.

13 PROSPECTIVE JUROR: Good morning.

14 THE COURT: All right. You've got a bachelor's
15 degree in environmental policy and behavior?

16 PROSPECTIVE JUROR: Correct.

17 THE COURT: But you're not presently working?

18 PROSPECTIVE JUROR: I do contract work, but I don't
19 currently have a contract.

20 THE COURT: Have you worked in that field at some
21 point in time?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: On more than a contract basis?

24 PROSPECTIVE JUROR: Yes, yes. I was full-time work
25 through the Field Museum being an environmental educator

1 working with Chicago public school students and teachers.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: I do that now. I work for the
4 Field Museum on a contract basis, and my contract is supposed
5 to be starting after I finish my jury duty.

6 THE COURT: Okay. And you've had FMLA leave at some
7 point in your career?

8 PROSPECTIVE JUROR: Yes. 11 years ago.

9 THE COURT: About how long did you have leave?

10 PROSPECTIVE JUROR: It was two to three weeks.

11 THE COURT: Was there anything in your experience in
12 taking that leave or applying for that leave that you think
13 would affect your ability to fairly evaluate the plaintiff's
14 claim in this case?

15 PROSPECTIVE JUROR: No.

16 THE COURT: All right. I think we tripped you up on
17 the same question that's getting everybody, so let me just ask
18 you, if you serve as a juror and you conclude that the
19 evidence presented in the case establishes the plaintiff's
20 claim by a preponderance of the evidence and the plaintiff
21 presents evidence that he suffered damages as a result, would
22 you be able to return a verdict that awarded the plaintiff
23 substantial damages?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: The flip side is if you concluded that

1 the evidence did not prove that the defendant -- the
2 plaintiff's claim by a preponderance of the evidence, would
3 you be able to return a verdict for the defendant?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: All right. Thank you, ma'am.

6 PROSPECTIVE JUROR: Thank you.

7 THE COURT: Ms. Pawar -- or Mr. Pawar. Excuse me.

8 All right. Good morning, sir.

9 PROSPECTIVE JUROR: Good morning.

10 THE COURT: All right. What is it as your present
11 employment, sir?

12 PROSPECTIVE JUROR: I'm a senior advisor for the
13 Economic Security Project, and I also oversee OKAY Cannabis,
14 which is a multiunit social craft dispensary operation.

15 THE COURT: What's the Economic Security Project?

16 PROSPECTIVE JUROR: We are a national think tank that
17 works on policies such as guaranteed income, the child tax
18 credit, and antimonopoly policy.

19 THE COURT: All right. Have you presently served as
20 an alderman?

21 PROSPECTIVE JUROR: I did.

22 THE COURT: Okay. About what timeframe was that?

23 PROSPECTIVE JUROR: 2011 through 2019.

24 THE COURT: You indicated that I guess a
25 cousin-in-law works in law enforcement. Would that affect

1 your ability to fairly evaluate the evidence in a case where
2 the plaintiff is a law -- former law enforcement officer and
3 the defendant is the sheriff's office?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Do you think that your work as an
6 alderman would affect your ability to evaluate the evidence
7 between those parties fairly and impartially?

8 PROSPECTIVE JUROR: No.

9 THE COURT: As an alderman, did you have any role or
10 connection to the governance of Cook County as a governmental
11 entity?

12 PROSPECTIVE JUROR: No. I mean, we interfaced with
13 the County but --

14 THE COURT: Separate entities.

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: The City and the County.

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: All right. I seem to have tripped
19 everyone up on this question.

20 PROSPECTIVE JUROR: Yeah.

21 THE COURT: If you serve as a juror and you conclude
22 that the plaintiff has proved his case by a preponderance of
23 the evidence and has presented evidence that he suffered
24 damages as a result of the conduct at issue in the case, would
25 you be able to return a verdict of -- including substantial

1 damages on behalf of the plaintiff?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: The flip side is, if you conclude that
4 the plaintiff has not proved his claim by a preponderance of
5 the evidence, would you be able to render a verdict in favor
6 of defendant?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: All right. Thank you, sir.

9 PROSPECTIVE JUROR: Thank you.

10 THE COURT: Ms. Minchin. Good morning, ma'am.

11 PROSPECTIVE JUROR: Good morning.

12 THE COURT: All right. You work for the Howard
13 Elliott Collection?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: What is that?

16 PROSPECTIVE JUROR: It is a decorative mirror and
17 home accessory manufacturer.

18 THE COURT: And what do you do for them?

19 PROSPECTIVE JUROR: I'm project manager.

20 THE COURT: So is that involved in developing or
21 products?

22 PROSPECTIVE JUROR: Basically, I am liaison between
23 the factories and the properties who are buying mirrors and
24 decorative accessories like hotel properties and things like
25 that to get the projects moving.

1 THE COURT: Okay. Do you supervise other employees?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Do you have any role in the
4 administration of employee attendance policies?

5 PROSPECTIVE JUROR: I do not.

6 THE COURT: Some of the questions, you didn't put any
7 answer. Should I construe that as a negative answer?

8 PROSPECTIVE JUROR: As it didn't apply.

9 THE COURT: All right. And you've had FMLA leave
10 previously?

11 PROSPECTIVE JUROR: I believe I have.

12 THE COURT: All right. Your memory is sketchy?

13 PROSPECTIVE JUROR: I either very much considered it
14 or did take it during when I was recovering from my pregnancy.

15 THE COURT: Anything that you recall about that
16 experience that you think would affect your ability to be fair
17 and impartial?

18 PROSPECTIVE JUROR: No.

19 THE COURT: All right. And congratulations, you're
20 one of the few that could decipher my unintelligible question.
21 Thank you, ma'am. That's all.

22 Mr. Ocampo. K good morning, sir.

23 PROSPECTIVE JUROR: Good morning.

24 THE COURT: All right. And you indicate you're
25 employed, but you didn't tell us what you do.

1 PROSPECTIVE JUROR: I work for Chicago Beverage
2 Systems. I'm a truck driver.

3 THE COURT: Truck driver?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: For Chicago Beverage?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Okay. Do you -- where is your territory
8 that you deliver?

9 PROSPECTIVE JUROR: I cover Lincoln Park, Lakeview,
10 Roscoe Village.

11 THE COURT: Okay. All city of Chicago?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Do you supervise anyone in your position?

14 PROSPECTIVE JUROR: No.

15 THE COURT: All right. And you've indicated that
16 you -- how long have you worked in that job?

17 PROSPECTIVE JUROR: Seven years.

18 THE COURT: Okay. And during your term of employment
19 as a truck driver for Chicago Beverage, you have had occasion
20 to take FMLA leave?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: All right. About how long ago was that?

23 PROSPECTIVE JUROR: Four years ago.

24 THE COURT: About how long was the period of leave
25 that you took?

1 PROSPECTIVE JUROR: One month.

2 THE COURT: Okay. Is there anything you recall about
3 that experience of taking or applying for that leave that you
4 think would affect your ability to be fair and impartial in
5 this case?

6 PROSPECTIVE JUROR: No.

7 THE COURT: All right. Let me ask you about the
8 responses to the same questions that have tripped most people
9 up. If you are a juror in this case and you listen to the
10 evidence and you conclude that the evidence proves the
11 plaintiff's claim by a preponderance of the evidence and the
12 plaintiff presents evidence that he suffered damages as a
13 result of that conduct, would you be able to return a verdict
14 that included substantial damages in favor of the plaintiff?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: If, on the other hand, you conclude that
17 the evidence does not support the plaintiff's claim by a
18 preponderance, would you be able to return a verdict in favor
19 of the defendant?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: All right. Thank you, sir.

22 PROSPECTIVE JUROR: Thank you.

23 THE COURT: Mr. Merino-Cortes. Good morning, sir.

24 PROSPECTIVE JUROR: Good morning.

25 THE COURT: All right. You work for Highland Baking

1 Company. What do you do for them?

2 PROSPECTIVE JUROR: I work at Highland Baking, and
3 what I do is I'm a parts technician and an actual technician
4 on the lines and in the process of an engineer.

5 THE COURT: So you repair, maintain the equipment
6 used to bake the goods?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Okay. Do you supervise anyone?

9 PROSPECTIVE JUROR: I do not. I did that at my
10 previous job.

11 THE COURT: What was that job?

12 PROSPECTIVE JUROR: It was in the same company but it
13 was a different department, and it was for -- what was it?
14 I'm sorry. It was for shipping. Sorry.

15 THE COURT: Okay. About how many people did you
16 supervise?

17 PROSPECTIVE JUROR: Over 20, approximately about 35.

18 THE COURT: All right. And how long did you have
19 that position at the company?

20 PROSPECTIVE JUROR: I did that for seven years.

21 THE COURT: Okay. So your job as an engineer is
22 relatively new?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Okay. In your prior position where you
25 supervised employees, were you involved in administering

1 attendance policies, sick leave policies, things like that?

2 PROSPECTIVE JUROR: No, I did not.

3 THE COURT: If someone was absent, though, how --
4 would you be involved in that in any way?

5 PROSPECTIVE JUROR: So at our job, we have a hotline.
6 And they answer a questionnaire. And all we do is receive
7 emails, and we would forward it to HR.

8 THE COURT: Okay. But you weren't -- you wouldn't be
9 involved in any decision making about --

10 PROSPECTIVE JUROR: No.

11 THE COURT: -- granting leave or denying leave?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Okay. Same question I'm asking everybody
14 here: If you serve as a juror in this case and you find that
15 the evidence presented in the case supports the plaintiff's
16 claim by a preponderance and that the plaintiff has presented
17 evidence that he suffered damages as a result of the conduct
18 at issue in his claim, would you be able to return a verdict
19 in favor of the plaintiff even if it included an award of
20 substantial damages?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: All right. Flip side, if you conclude
23 that the plaintiff has not proved his claim by a preponderance
24 of the evidence, would you be able to return a verdict for the
25 defendant?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Okay. Thank you, sir.

3 PROSPECTIVE JUROR: Thank you.

4 THE COURT: Mr. Lawrence. Good morning, sir.

5 PROSPECTIVE JUROR: Good morning.

6 THE COURT: All right. You indicated you have some
7 college. Did you have a field of study?

8 PROSPECTIVE JUROR: It's kind of broad. I mean,
9 physics, a little bit of business, but more so just general
10 topics.

11 THE COURT: Okay. And what do you presently do for
12 employment?

13 PROSPECTIVE JUROR: Yeah, I put "partially employed"
14 there because -- I'm not sure you can hear me or not --
15 because I actually had been working as a banquet assistant at
16 a restaurant up until about December when it got kind of slow
17 times and then went to pick up some extra work hours. My
18 buddy's doing snow removal, and we got hit about three months
19 ago pretty hard for a weekend where I thought I broke my arm.
20 I must have strained or tore some muscle ligaments in my arm,
21 so I haven't been able to work for the last two and a half
22 months.

23 And but actually, I was doing painting briefly with
24 my friend just doing some kind of pickup work, you know,
25 because I'm thinking about maybe not even going back to that

1 restaurant, you know, on a whole...

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: That's currently where I'm at.

4 THE COURT: All right. You have done a variety of
5 different jobs since college?

6 PROSPECTIVE JUROR: I would say so, yeah.

7 THE COURT: Okay. And you mentioned that there are
8 adults who reside with you who are employed. What kind of
9 work or what are they retired from doing?

10 PROSPECTIVE JUROR: That would be, like, since I was
11 just kind of falling on hard times, I'm back at home. So my
12 dad unfortunately got forced into retirement through two
13 strokes that he had a couple years ago, but then my mom is
14 still fully employed as a district manager at Breakthru
15 Beverage.

16 THE COURT: All right. When you worked as a manager
17 at L.A. Fitness, you supervised employees at that time?

18 PROSPECTIVE JUROR: Uh-huh, yeah.

19 THE COURT: Did you -- did that include administering
20 or managing employee attendance policies and sick leave,
21 things like that?

22 PROSPECTIVE JUROR: Yeah, yeah. I would be the one,
23 you know, kind of situating the schedule, double-checking if
24 anybody needed vacation time. If anybody was calling in sick,
25 it would be my job to kind of make that note, let the VPs know

1 as far as work flow, did you get your calls in, did you send
2 your emails. You know, we do recaps with the district VPs the
3 next day who already knew those numbers, so you couldn't
4 really lie to them.

5 THE COURT: Did you have any involvement with
6 administering FMLA --

7 PROSPECTIVE JUROR: No.

8 THE COURT: -- requests?

9 PROSPECTIVE JUROR: That would just be kind of like
10 into something probably internally through email if I had to
11 do it at all and kind of just run it up the ladder.

12 THE COURT: All right. The same question I've been
13 asking just about everybody. If you serve as a juror in this
14 case and you find that the plaintiff has proved his claim by a
15 preponderance of the evidence and has presented evidence that
16 he suffered damages as a result of that conduct, would you be
17 able to return a verdict including substantial damages on
18 behalf of the plaintiff?

19 PROSPECTIVE JUROR: Yeah.

20 THE COURT: And the flip side is, if you conclude
21 that the plaintiff failed to present evidence sufficient to
22 prove his claim by a preponderance, would you be able to find
23 and return a verdict in favor of defendant?

24 PROSPECTIVE JUROR: Uh-huh, yes. I'm curious what I
25 wrote if not that.

1 THE COURT: It's, the wording in the questionnaire,
2 it's entirely my fault.

3 All right. You indicated that you'd be able to
4 follow the instructions of law that the Court provides so long
5 as nothing challenges your personal ethic or moral code. Can
6 you explain that further? Do you have some concern about --

7 PROSPECTIVE JUROR: Well --

8 THE COURT: -- legal instructions that you might
9 receive?

10 PROSPECTIVE JUROR: No, no, it's just more or less, I
11 mean, there's gaps and considerations in any kind of
12 situation. Now, irrespective of what the law might say about,
13 you know, if somebody making a left turn where there's a "no
14 left turn" sign, they would do that routinely, should they be
15 fined? Maybe, but again, there's just particular things in
16 particular situations that, you know, sometimes you need to
17 consider the ethical bearing as well as the law and maybe not
18 necessarily put one in front of the other.

19 THE COURT: Well, if you concluded that the law
20 supported the plaintiff's claim but ethically you thought that
21 there was some issue with the plaintiff's claim, would you be
22 able to apply the law, or would you apply your own ethical
23 code?

24 PROSPECTIVE JUROR: That would have to be relatively
25 based on the things considered at the time.

1 THE COURT: All right. But you can imagine there
2 would be some situations where you would --

3 PROSPECTIVE JUROR: Yeah, I just know that, like,
4 some laws are out of date, for instance, you know, like -- I'm
5 just saying like older, like, situations I'm thinking about,
6 hearing cases and stuff like that about old, like, you know,
7 like an -- I follow cryptocurrencies, for instance. So when I
8 hear them, like, talking about bringing in, like, old
9 investment laws, you know, into, like, the current day and age
10 and not all of them being compatible because technology is a
11 little bit different now than what the laws were able to offer
12 as far as code of conduct. Sometimes things need to be
13 revised. But I'm guessing this probably wouldn't fall into
14 anything too technical.

15 THE COURT: I'm certainly not aware that this case
16 would involve anything relating to cryptocurrencies.

17 PROSPECTIVE JUROR: Oh, I know, but I saying as far
18 as --

19 THE COURT: I know you're just providing an example.

20 PROSPECTIVE JUROR: Uh-huh.

21 THE COURT: Give me your best --

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: -- anticipation that --

24 PROSPECTIVE JUROR: Yes, I assume there --

25 THE COURT: -- when we -- let me finish the question.

1 If you concluded that, you know, "The judge says the law that
2 we apply in this case is X, Y, Z, but those instructions don't
3 consider this other moral issue or ethical issue that I see in
4 this case," would you be able to nevertheless follow the
5 instructions of law, or would you -- do you think that you
6 would follow your own ethical compass?

7 PROSPECTIVE JUROR: It would depend. More or less,
8 I'd follow the law. It would have to be a very extreme set of
9 circumstances for me to consider, like, am I ethical higher
10 bound.

11 THE COURT: Okay. Thank you, sir.

12 PROSPECTIVE JUROR: No problem.

13 THE COURT: Ms. Miras? Good morning, ma'am.

14 PROSPECTIVE JUROR: Good morning.

15 THE COURT: You're presently working at a florist?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Do you supervise any individuals there?

18 PROSPECTIVE JUROR: No.

19 THE COURT: You indicated you have a brother-in-law
20 who is a sheriff.

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: Do you know where he works as a sheriff?

23 PROSPECTIVE JUROR: I do not.

24 THE COURT: Do you know if it's in the local area or
25 somewhere out of state?

1 PROSPECTIVE JUROR: They live in Chicago.

2 THE COURT: But you don't know which sheriff's
3 office, which county he works for?

4 PROSPECTIVE JUROR: No, sir.

5 THE COURT: All right. And you indicated it's been
6 quite a while since you've had any contact with your
7 brother-in-law?

8 PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: So I take it the fact that your
10 brother-in-law is a sheriff, do you think that would affect
11 your ability one way or the other to evaluate the evidence in
12 this case?

13 PROSPECTIVE JUROR: No.

14 THE COURT: All right. The same question I'm asking
15 everyone. I think I got you too.

16 If you serve as a juror and you find that the
17 evidence introduced in the case supports the plaintiff's claim
18 by a preponderance and the plaintiff presents evidence that he
19 was damaged or incurred damages as a result of that conduct,
20 would you be able to return a verdict for the plaintiff even
21 if it called for substantial damages?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: And the flip side is, if you conclude
24 that the evidence in the case does not support the plaintiff's
25 claim, would you be able to return a verdict for the

1 defendant?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: All right. Thank you, ma'am.

4 Mr. Seguin. Good morning, sir.

5 PROSPECTIVE JUROR: Good morning.

6 THE COURT: All right. You work in the IT field; is
7 that correct?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: And the company you identified, SAIC, can
10 you tell me what that is?

11 PROSPECTIVE JUROR: Sure. It's -- I'm basically a
12 government contract worker. I work for the Army right now.
13 We're on an Army contract.

14 THE COURT: All right. Have you ever done any work
15 for the -- for Cook County?

16 PROSPECTIVE JUROR: No.

17 THE COURT: All right. And you're actually on FMLA
18 leave presently?

19 PROSPECTIVE JUROR: I think so. It's technically
20 paid leave through SAIC but in their notes, it says it's --
21 like, it counts for FMLA too. If I were to take that, the
22 time that I'm getting is counted against that 12 weeks of
23 FMLA, I believe.

24 THE COURT: Okay. And you recently had a baby,
25 that's the reason for your leave?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Anything that you experienced in
3 connection with your application for or being on FMLA leave
4 that you think would affect your ability to be fair and
5 impartial?

6 PROSPECTIVE JUROR: No.

7 THE COURT: And what city do you presently live in?

8 PROSPECTIVE JUROR: Frankfort.

9 THE COURT: Okay. Thank you, sir.

10 Ms. Cervencik.

11 PROSPECTIVE JUROR: Cervencik.

12 THE COURT: Cervencik. Good morning, ma'am.

13 PROSPECTIVE JUROR: Good morning, sir.

14 THE COURT: All right. You indicated you've worked
15 for your employer for the past six years. What's the nature
16 of your -- that business?

17 PROSPECTIVE JUROR: We manufacture flap disks at this
18 place.

19 THE COURT: Flap disks?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: What is a flap disk?

22 PROSPECTIVE JUROR: It's a round disk. It's used for
23 grinding, and it's got little coated flaps on it. You use it
24 on a right-angle grinder.

25 THE COURT: All right. I'll take your word for that.

1 PROSPECTIVE JUROR: Trust me.

2 THE COURT: Okay. So your company makes those items?

3 PROSPECTIVE JUROR: Yes. Plus we distribute
4 abrasives and welding products.

5 THE COURT: All right. And you've worked for them
6 for about six years?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: What do you do specifically?

9 PROSPECTIVE JUROR: I'm the purchasing manager for
10 abrasives and customer service, assistant to the CEO, whatever
11 else you need.

12 THE COURT: Okay. And in those various roles that
13 you play at the company, do you supervise others?

14 PROSPECTIVE JUROR: No. There's only four of us in
15 the office including the CEO.

16 THE COURT: Okay. All right. You indicated that
17 you've been involved in a prior lawsuit relating to a car
18 accident. About how long ago was that?

19 PROSPECTIVE JUROR: That had to be at least 20 years
20 ago.

21 THE COURT: And the lawsuit that resulted, were you
22 the plaintiff or the defendant?

23 PROSPECTIVE JUROR: I was the plaintiff.

24 THE COURT: And was that lawsuit ultimately settled?

25 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: Is there anything about your experience
2 as bringing a lawsuit -- where was that lawsuit filed?

3 PROSPECTIVE JUROR: Will County.

4 THE COURT: Will County. Is there anything about
5 your experience with filing and pursuing that lawsuit in Will
6 County that you think would bear on your ability to be a fair
7 and impartial juror in this case?

8 PROSPECTIVE JUROR: No.

9 THE COURT: All right. You indicated that in a prior
10 job, you worked for a company that terminated you when you
11 called in sick.

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Do you think that that experience would
14 affect your ability to be fair and impartial in a case where
15 the issues involve matters of attendance or leave?

16 PROSPECTIVE JUROR: No. This guy was just a jerk.

17 THE COURT: "This guy" being your --

18 PROSPECTIVE JUROR: My manager.

19 THE COURT: -- manager at the time?

20 PROSPECTIVE JUROR: Yeah. It has nothing to do with
21 the place I worked at. It was just the manager.

22 THE COURT: Okay. And you would not hold that
23 against either of the parties here --

24 PROSPECTIVE JUROR: No.

25 THE COURT: -- what happened on that occasion?

1 PROSPECTIVE JUROR: Neither one of them were that
2 guy, so...

3 THE COURT: All right. You might have a problem
4 if --

5 PROSPECTIVE JUROR: That guy, yes.

6 THE COURT: -- was one of the parties, but otherwise
7 you're okay.

8 PROSPECTIVE JUROR: I'm cool with it.

9 THE COURT: Okay. All right. Thank you, ma'am.

10 PROSPECTIVE JUROR: Thank you.

11 THE COURT: Mr. Pugh -- or Ms. Pugh. Excuse me.

12 While we wait for Ms. Pugh to get up here, how is
13 everybody doing in terms of restroom break or that kind of
14 thing?

15 A PROSPECTIVE JUROR: Yes, pretty soon.

16 THE COURT: All right. We'll finish Ms. Pugh, and
17 we'll take a short break.

18 Good morning, ma'am.

19 PROSPECTIVE JUROR: Good morning.

20 THE COURT: All right. And you have a degree in
21 psychology and biology; is that correct?

22 PROSPECTIVE JUROR: I do.

23 THE COURT: All right. And what do you presently do
24 for employment?

25 PROSPECTIVE JUROR: I am a donor relations

1 coordinator at a multinational humanitarian organization, so I
2 encourage people with excess wealth to donate their money for
3 widows and orphans and victims of natural disasters.

4 THE COURT: How long have you been doing that?

5 PROSPECTIVE JUROR: Six years -- five years.

6 THE COURT: And do you supervise other employees in
7 that role?

8 PROSPECTIVE JUROR: I do not.

9 THE COURT: All right. You mentioned that you have a
10 daughter who was involved in a lawsuit against a university or
11 college.

12 PROSPECTIVE JUROR: Correct.

13 THE COURT: Okay. Is that lawsuit complete, in the
14 past or is that --

15 PROSPECTIVE JUROR: It's in the past, yes.

16 THE COURT: Okay. Was there anything -- that was
17 your daughter's lawsuit. Were you involved in the lawsuit in
18 any way?

19 PROSPECTIVE JUROR: No, I wasn't.

20 THE COURT: Okay. Is there anything about that
21 experience that you were aware of or encountered that you
22 think would affect your ability to be a fair and impartial
23 juror?

24 PROSPECTIVE JUROR: No.

25 THE COURT: All right. You mentioned in a previous

1 job, though, you did supervise some individuals?

2 PROSPECTIVE JUROR: I was the team leader of a group
3 of school counselors.

4 THE COURT: Okay. School counselors, were those high
5 school level?

6 PROSPECTIVE JUROR: It was a K through 12 private
7 school, so it was K through 12 counselors.

8 THE COURT: Did you have any role in administering
9 attendance policies or leave policies?

10 PROSPECTIVE JUROR: No.

11 THE COURT: All right. You indicated that someone
12 close to you had suffered from anxiety and depression. Is
13 there any --

14 PROSPECTIVE STUDENT: I mean, they were my college
15 students, and I think 98 percent of them have anxiety when
16 they have exams. And when they have someone who passed away,
17 they have -- they experience some depression, so just to be
18 honest, that's how I answered it.

19 THE COURT: Okay. Understanding that, you weren't
20 privy to any specific diagnoses or treatment protocols or
21 things like that?

22 PROSPECTIVE JUROR: No. These were my children's
23 diagnosis telling me that they have anxiety and depression
24 because of their situation.

25 THE COURT: Okay. All right. Same questions that

1 I've been asking most others. If you serve on the jury and
2 you find that the plaintiff -- that the evidence presented
3 during the trial supports the plaintiff's claim by a
4 preponderance and the plaintiff presents evidence that he
5 suffered damages as a result of that conduct, would you be
6 able to return a verdict in the plaintiff's favor even if it
7 required or called for substantial damages?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: If you concluded that the evidence
10 presented at trial did not prove the plaintiff's claim by a
11 preponderance of the evidence, would you be able to find in
12 favor of the defendant?

13 PROSPECTIVE JUROR: I would.

14 THE COURT: All right. Okay. Thank you, ma'am.

15 PROSPECTIVE JUROR: You're welcome. Thank you.

16 THE COURT: All right. Folks, we'll take a short
17 restroom break. The restrooms are out in the hallway. Please
18 don't discuss matters about this case over the break amongst
19 yourselves or with anyone else you might encounter in the
20 hallway or the restroom.

21 It's important -- and for those of you who end up on
22 the jury, you'll hear me say this many, many times. It's
23 important that everything you learn about this case and think
24 about this case comes from what happens in the courtroom, not
25 outside the courtroom. So please don't discuss matters

1 amongst yourselves. Once we pick the jury, those of you who
2 are not on the jury will be free to go and discuss whatever
3 you want. Those of you on the jury will be able to talk about
4 the case afterwards to the extent you wish but while the case
5 is pending, please don't discuss it at all.

6 Let's take ten minutes, and we'll start up at about
7 10 to noon. And we're moving very expeditiously, so to the
8 extent we can keep you oriented, I would expect that we'll
9 pick -- we'll be in a position to pick the jury by early
10 afternoon at the latest.

11 Okay. So take ten minutes. Line up outside the
12 courtroom when you're done, and Alberta will bring you back
13 in.

14 (Venire out.)

15 MR. K. FLAXMAN: Can we take up one quick point?

16 THE COURT: Absolutely. Have a seat.

17 MR. K. FLAXMAN: Thank you. As we've been -- as
18 you've been doing jury questioning, I've been reflecting on
19 the last ruling about Ms. Shinnawi. And my question is, could
20 I ask her just on the one page of the 2014 FMLA, "Is that your
21 signature, did you approve this FMLA application," without
22 going into what his diagnosis was or anything, just the fact
23 that she approved it.

24 THE COURT: Why?

25 MR. K. FLAXMAN: To show that she knows -- that she

1 had personal involvement with him before this phone call that
2 came up.

3 THE COURT: I think between asking about the December
4 2015 and potentially the January 2015, I think that's going to
5 be more than adequate to establish that she had some knowledge
6 that he had prior FMLA.

7 MR. K. FLAXMAN: I don't understand how she's going
8 to know about his prior knowledge when he called up. She's
9 going to say, "I looked in the database and saw that he had X
10 days left, but I didn't look at his application."

11 THE COURT: Well, raise it after we have the
12 testimony on direct, and if there's some relevance to it
13 that's not cumulative, I'll consider it.

14 MR. K. FLAXMAN: All right. Thank you.

15 MS. ORI: With regards to the questions you are
16 asking, some of the jurors have indicated they've been
17 terminated in the past for time and attendance. You just
18 asked No. 17 about that, but there have been others. I don't
19 know if you're going to go back and --

20 THE COURT: Well, there's a few that -- well, didn't
21 say they've been terminated for time --

22 MS. ORI: For being tardy, I think, is one of them I
23 saw. No. 14 was terminated for being tardy.

24 THE COURT: Okay.

25 MS. ORI: And No. 2 was terminated for coming late to

1 work, so also for being tardy.

2 THE COURT: 2 and 14?

3 MS. ORI: 2 and 14, yes.

4 THE COURT: Okay. We'll follow up on those.

5 MS. ORI: Thank you.

6 THE COURT: Okay. We'll take a break. If counsel or
7 the parties want to use the restroom in the jury room -- is
8 that open, Alberta?

9 THE CLERK: Yes.

10 THE COURT: So you don't have to encounter the folks
11 in the bathrooms out on the public side, you're welcome to do
12 that. So let's be ready to go at 10 'til.

13 (Recess from 11:43 a.m. to 11:54 a.m.)

14 THE COURT: Please be seated.

15 All right. Ms. Hansen? Good morning, ma'am.

16 PROSPECTIVE JUROR: Good morning.

17 THE COURT: What is your current employment, ma'am?

18 PROSPECTIVE JUROR: So I'm a licensed clinical social
19 worker. I have two jobs. I'm a manager in the case
20 management department at a managed care organization here in
21 Illinois, and I work part-time as a therapist at a private
22 practice.

23 THE COURT: Okay. And in your employment in the case
24 management department, do you supervise others?

25 PROSPECTIVE JUROR: Yes, I do.

1 THE COURT: About how many people?

2 PROSPECTIVE JUROR: I have two direct supports and
3 about 30 indirect right now.

4 THE COURT: And in your supervision of those folks,
5 are you involved in administering the company's attendance and
6 leave policies?

7 PROSPECTIVE JUROR: I wouldn't say I administer but
8 rather enforce. All leaves are -- go through HR and a
9 third-party vendor, and I just follow what I'm told.

10 THE COURT: Okay. All right. You indicated that
11 you've had to fire people before.

12 PROSPECTIVE JUROR: Yes, I have.

13 THE COURT: Without getting into too much detail,
14 what were the basic reasons or causes for the --

15 PROSPECTIVE JUROR: Poor job performance.

16 THE COURT: All right. Was that based on your
17 evaluations or the evaluations of others or both?

18 PROSPECTIVE JUROR: Some, my evaluation and some
19 based on standard metrics for productivity.

20 THE COURT: All right. And you had a job more than a
21 decade ago where you were terminated?

22 PROSPECTIVE JUROR: Yes, I was.

23 THE COURT: All right. And that was based on what
24 you believed to be --

25 PROSPECTIVE JUROR: I had gone to human resources

1 because -- this was working in a nursing home. My
2 administrator instructed me to lie to the Illinois Department
3 of Public Health, and I would not do so and reported her for
4 that.

5 THE COURT: All right. Was there any litigation
6 or --

7 PROSPECTIVE JUROR: No.

8 THE COURT: -- anything else that followed that
9 termination?

10 PROSPECTIVE JUROR: No. I was happy to be out of
11 there.

12 THE COURT: Okay. Do you think that that experience
13 would affect your ability to be a fair and impartial juror in
14 this case?

15 PROSPECTIVE JUROR: No, not at all.

16 THE COURT: All right. Have you -- in your work
17 where you supervised others, have you been involved in any way
18 in evaluating, approving, enforcing requests for FMLA leave?

19 PROSPECTIVE JUROR: Not for evaluating and approving,
20 no. Facilitating an application for FMLA but again, that goes
21 through our human resources department and a third-party
22 vendor.

23 THE COURT: Do you think that your -- the experience
24 you've had addressing FMLA requests would be -- would affect
25 your ability to be fair and impartial?

1 PROSPECTIVE JUROR: No.

2 THE COURT: And you yourself have had FMLA leave in
3 the past?

4 PROSPECTIVE JUROR: Yes, for maternity leave.

5 THE COURT: Okay. About how long ago was that?

6 PROSPECTIVE JUROR: 21-plus and 17-plus years ago.

7 THE COURT: Okay. All right. And let me just ask
8 you the same question I've been trying to clarify for
9 everybody in case people were confused by the question. If
10 the -- if you serve as a juror and find that the plaintiff --
11 that the evidence supports the plaintiff's claim by a
12 preponderance of the evidence and the plaintiff presents
13 evidence that he has suffered damages as a result, would you
14 be able to return a verdict in favor of the plaintiff even if
15 it called for the payment of substantial money damages?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: The flip side, if you determine that the
18 evidence did not support the plaintiff's claim by a
19 preponderance, would you be able to return a verdict in favor
20 of the sheriff's office?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: All right. Thank you, ma'am.

23 PROSPECTIVE JUROR: Thank you.

24 THE COURT: Mr. Shy?

25 PROSPECTIVE JUROR: Ms.

1 THE COURT: Or Ms. Excuse me. Good morning, ma'am.

2 PROSPECTIVE JUROR: Good morning.

3 THE COURT: All right. You presently work for Sharp
4 Electronics?

5 PROSPECTIVE JUROR: Correct.

6 THE COURT: What do you do for them, ma'am?

7 PROSPECTIVE JUROR: I'm the national director of
8 engineering.

9 THE COURT: Okay. And have you been in that position
10 throughout your tenure with Sharp?

11 PROSPECTIVE JUROR: I was promoted to that position
12 in November of this year and previously was in a regional
13 position.

14 THE COURT: Okay. What did you do before you worked
15 for Sharp?

16 PROSPECTIVE JUROR: I owned my own MSP company, IT
17 consulting.

18 THE COURT: When you say MSP, what is that?

19 PROSPECTIVE JUROR: Managed service provider. We
20 provided IT consulting for companies for their IT needs,
21 networking, cybersecurity products and services.

22 THE COURT: Okay. In your current or past positions,
23 have you supervised other employees?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Does that include administering company

1 policies with respect to attendance and leave and that sort of
2 thing?

3 PROSPECTIVE JUROR: Just monitoring attendance, so if
4 there's any issues that are brought up, it's brought to my
5 attention, but as far as administering FMLA, that's always
6 through HR.

7 THE COURT: Okay. All right. You said you had some
8 experience with the DuPage County Sheriff's Office, not the
9 Cook County Sheriff's Office. Anything about that experience
10 that you think would affect your ability to be fair and
11 impartial to the Cook County Sheriff's Office?

12 PROSPECTIVE JUROR: No, not at all.

13 THE COURT: All right. And I take it, that episode
14 was related to the mental health condition of the individual
15 that you were involved with?

16 PROSPECTIVE JUROR: That is correct.

17 THE COURT: Do you -- your experience with dealing
18 with that individual who had mental health issues, do you
19 think that that would affect your ability to be a fair and
20 impartial juror in a case involving FMLA leave requests?

21 PROSPECTIVE JUROR: No, sir.

22 THE COURT: And you yourself have taken FMLA leave in
23 the past?

24 PROSPECTIVE JUROR: Yes, I have.

25 THE COURT: And that was in conjunction with the

1 birth of children?

2 PROSPECTIVE JUROR: Correct.

3 THE COURT: And the work commitments that you
4 mentioned next Thursday and Friday, is that Thursday and
5 Friday of this week or --

6 PROSPECTIVE JUROR: Next week.

7 THE COURT: -- the following week?

8 PROSPECTIVE JUROR: The following week.

9 THE COURT: All right. Thank you, ma'am.

10 PROSPECTIVE JUROR: Thank you.

11 THE COURT: Mr. Padilla. Good morning, sir.

12 PROSPECTIVE JUROR: Good afternoon.

13 THE COURT: Or good afternoon. Thank you. I stand
14 corrected. Okay. You've worked for Blue Cross Blue Shield
15 for a couple of years. What do you do for them?

16 PROSPECTIVE JUROR: Yeah. I've been working for
17 three years now. I'm a business analyst.

18 THE COURT: Okay. And do you supervise others in
19 that position?

20 PROSPECTIVE JUROR: I do not.

21 THE COURT: Do you have any responsibility or
22 involvement in client services?

23 PROSPECTIVE JUROR: Yes, indirectly.

24 THE COURT: How so?

25 PROSPECTIVE JUROR: I work with a sales team, so I

1 kind of work alongside to kind of create and share all the new
2 contracts, like all of the paper material.

3 THE COURT: All right. And you mentioned that you
4 have previously been a juror in a civil case.

5 PROSPECTIVE JUROR: That was actually criminal, yeah.

6 THE COURT: Oh, it was criminal.

7 PROSPECTIVE JUROR: Yes. Sorry.

8 THE COURT: About how long ago was that?

9 PROSPECTIVE JUROR: Probably, like, eight years.

10 THE COURT: Where was the case filed, do you know?
11 Was it here in Cook County?

12 PROSPECTIVE JUROR: Yeah. It was, like, by the Cook
13 County Jail, yeah.

14 THE COURT: And do you remember the general nature of
15 the crime that was being tried?

16 PROSPECTIVE JUROR: Very vaguely.

17 THE COURT: All right. What do you recall?

18 PROSPECTIVE JUROR: The person was arrested for, I
19 think, possession of a gun, I believe.

20 THE COURT: Okay. And you mentioned that a verdict
21 was reached. I don't want you to tell me what the verdict
22 was, but were you the foreperson of the jury?

23 PROSPECTIVE JUROR: I was the alternate.

24 THE COURT: You were an alternate. So did you not
25 deliberate --

1 PROSPECTIVE JUROR: No.

2 THE COURT: -- with the jury?

3 Okay. Anything about your experience as a juror in
4 that case that you think would affect your ability to be fair
5 and impartial here?

6 PROSPECTIVE JUROR: No.

7 THE COURT: All right. Thank you, sir.

8 PROSPECTIVE JUROR: Thank you.

9 THE COURT: I'm sorry, Mr. Padilla. I didn't -- I
10 hadn't flipped the questionnaire over.

11 PROSPECTIVE JUROR: Yes, I think that question got
12 me.

13 THE COURT: All right. First off, you indicate your
14 sister's boyfriend is a police officer.

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Do you think -- do you have much contact
17 with your sister's boyfriend?

18 PROSPECTIVE JUROR: Yes, yeah.

19 THE COURT: You see him periodically?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Okay. Anything about -- or does the fact
22 that your sister has a boyfriend who is a police officer, do
23 you think that would affect your ability to be fair and
24 impartial to either of the parties here?

25 PROSPECTIVE JUROR: No.

1 THE COURT: All right. And you mentioned when your
2 father broke his foot, he had FMLA leave or you did?

3 PROSPECTIVE JUROR: He did.

4 THE COURT: Okay. And is there anything that you
5 experienced in connection with that injury or leave that you
6 think would bear on your ability to be a fair and impartial --

7 PROSPECTIVE JUROR: No.

8 THE COURT: -- juror?

9 If you serve on the jury and you conclude that the
10 evidence supports the plaintiff's claim and the plaintiff
11 presents evidence that he suffered substantial damages as a
12 result of that claim, would you be able to return a verdict
13 for the plaintiff that provides for special -- significant
14 damages?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Flip side, if you conclude that the
17 evidence does not support by a preponderance of the evidence
18 the plaintiff's claim, would you be able to find in favor of
19 the sheriff's office?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Okay. Now we're done. Thank you.

22 Ms. Defrances -- Defrancesco.

23 PROSPECTIVE JUROR: Defrancesco.

24 THE COURT: Defrancesco. Good afternoon.

25 PROSPECTIVE JUROR: Good afternoon.

1 THE COURT: All right. And it might just be a little
2 difficulty deciphering handwriting. What is your present job,
3 ma'am?

4 PROSPECTIVE JUROR: A cashier at 7-Eleven.

5 THE COURT: Oh, okay. And you've been doing that
6 for --

7 PROSPECTIVE JUROR: For way long.

8 THE COURT: A long time. Okay.

9 PROSPECTIVE JUROR: I like the neighborhood and
10 everything.

11 THE COURT: And you mentioned you've previously been
12 a juror. About how long ago was that?

13 PROSPECTIVE JUROR: Over 20 years ago or more. I
14 think it was, like, a traffic accident.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR: It was so long ago. Yeah, they
17 reached a verdict.

18 THE COURT: Okay. Anything about that experience
19 serving on a jury that -- previously that you think would
20 affect your ability to do so today?

21 PROSPECTIVE JUROR: I could -- I'm all good.

22 THE COURT: Okay. In your position at 7-Eleven, did
23 you ever -- or do you have to supervise other employees?

24 PROSPECTIVE JUROR: Oh, no.

25 THE COURT: All right. And you indicated, I guess

1 you've previously been laid off from time to time.

2 PROSPECTIVE JUROR: Yeah. Like, I used to work at
3 different jobs, like the zoo, this and that, Brookfield Zoo.
4 They had layoffs. They would only have you work, like, during
5 the summer and it was, like, part-time, so you've been off,
6 yeah.

7 THE COURT: Okay. So not being terminated from the
8 job --

9 PROSPECTIVE JUROR: No.

10 THE COURT: -- but the job basically --

11 PROSPECTIVE JUROR: Yeah, just lack of -- you come
12 back.

13 THE COURT: -- no longer existing.

14 PROSPECTIVE JUROR: Yeah.

15 THE COURT: Okay. All right. And let me just ask
16 you the same question I'm asking everybody. If you serve as a
17 juror and you conclude the evidence supports the plaintiff's
18 claim by a preponderance of the evidence preponderance of the
19 evidence and the plaintiff presents evidence that he suffered
20 damages, would you be able to return a verdict in favor of the
21 plaintiff even if you concluded that substantial damages
22 should be awarded?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: All right. If you concluded that the
25 evidence in the case did not support the plaintiff's claim by

1 a preponderance, would you be able to return a verdict for the
2 sheriff's office?

3 PROSPECTIVE JUROR: Yeah.

4 THE COURT: You had a little hesitation. Are you not
5 sure?

6 PROSPECTIVE JUROR: A little, like, shy. I'm sorry.

7 THE COURT: Okay. All right, ma'am. Thank you.
8 That's all I need.

9 Mr. Skube.

10 PROSPECTIVE JUROR: Skube.

11 THE COURT: Good afternoon, sir.

12 PROSPECTIVE JUROR: Hi.

13 THE COURT: All right. You are self-employed as a
14 freelance artist; is that correct?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: All right. And has that been your
17 principal employment for some time?

18 PROSPECTIVE JUROR: Yes. It's what I went to school
19 for, so about 20 years or so.

20 THE COURT: All right. And your spouse works as an
21 in-house lawyer for a company?

22 PROSPECTIVE JUROR: Yes, for JLL.

23 THE COURT: What is JLL?

24 PROSPECTIVE JUROR: Jones Lang LaSalle.

25 THE COURT: Oh, okay. The property manager?

1 PROSPECTIVE JUROR: Uh-huh.

2 THE COURT: Do you know what area of the law she
3 focuses in?

4 PROSPECTIVE JUROR: Not specifically. She's just,
5 whatever the company needs her to do.

6 THE COURT: Would you have -- if you're on the jury
7 in this case, one of the instructions would be not to discuss
8 the case with anyone. Would you have any difficulty not
9 discussing the case with your lawyer wife until the case was
10 over?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Okay. All right. You mentioned that you
13 or someone close to you has been involved previously in a
14 class action litigation.

15 PROSPECTIVE JUROR: Yeah, just the usual, like, data
16 breaches and things like that for --

17 THE COURT: Have you -- how have you been involved?

18 PROSPECTIVE JUROR: Just signed up because, like,
19 whatever company it was.

20 THE COURT: All right. So you got some notice in the
21 mail or --

22 PROSPECTIVE JUROR: Yeah, that kind of thing.

23 THE COURT: -- email saying you might be a member of
24 this class?

25 PROSPECTIVE JUROR: Yeah.

1 THE COURT: Okay. And have you received proceeds
2 from litigation like that?

3 PROSPECTIVE JUROR: Yeah, very small amounts.

4 THE COURT: Okay. Anything you've experienced in
5 connection with those -- that lawsuit or those lawsuits that
6 you think would bear on your ability to be fair and impartial
7 here?

8 PROSPECTIVE JUROR: No.

9 THE COURT: All right. You mentioned that you have
10 been a -- if I'm reading this correctly, a CG lead at an
11 in-house graphics department.

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: What is CG? Computer graphics?

14 PROSPECTIVE JUROR: Computer graphics.

15 THE COURT: Okay. And you supervised others at
16 that -- in that job?

17 PROSPECTIVE JUROR: Yeah, just a few.

18 THE COURT: All right. Did you -- did your
19 supervision include administering company policies about leave
20 or attendance, that kind of thing?

21 PROSPECTIVE JUROR: Nothing like that.

22 THE COURT: All right. And you indicated you've been
23 laid off previously from a position?

24 PROSPECTIVE JUROR: Yeah, a long time ago, 19 years.

25 THE COURT: Was that a layoff in the sense of the

1 position was -- or a cutback in employees, or were you
2 terminated?

3 PROSPECTIVE JUROR: Yeah, half the company was laid
4 off.

5 THE COURT: Okay. You indicated you have a brother
6 who has a recent diagnosis of mental illness?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Anything that you've learned or
9 experienced in connection with that diagnosis or dealing with
10 your brother that you think would affect your ability to be a
11 fair and impartial juror in a case involving an FMLA request?

12 PROSPECTIVE JUROR: No.

13 THE COURT: All right. You indicated you've taken
14 paternity leave. Your wife's taken maternity leave before.
15 Were those paid leaves?

16 PROSPECTIVE JUROR: Mostly paid. I took an extra
17 week unpaid.

18 THE COURT: All right. Was that pursuant to FMLA, or
19 do you know?

20 PROSPECTIVE JUROR: I don't know if it fell under
21 that. I just thought I should put that down. I didn't have
22 any problems getting it.

23 THE COURT: Okay. Anything about your experience
24 taking leaves from your employer, whether paid or unpaid, that
25 you think would bear on your ability to be fair and impartial

1 in this case?

2 PROSPECTIVE JUROR: No.

3 THE COURT: All right. The same question for
4 everybody here. If you find at the conclusion of the trial
5 that the evidence supports the plaintiff's claim by a
6 preponderance and that the evidence -- the plaintiff has
7 produced evidence that he suffered damages as a result of the
8 conduct at issue, would you be able to return a verdict in
9 favor of the defendant -- plaintiff even if the verdict was
10 for substantial money damages?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: The flip side, if you conclude that the
13 evidence does not support the plaintiff's claim by a
14 preponderance of the evidence, would you be able to find in
15 favor of the sheriff's office?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Okay. Thank you, sir.

18 Ms. Anderson? Good morning, ma'am.

19 PROSPECTIVE JUROR: Good afternoon, Judge.

20 THE COURT: Thank you. Okay. You've got an MBA, and
21 you work for -- what's the company's name?

22 PROSPECTIVE JUROR: Midtronics.

23 THE COURT: And what does Midtronics do?

24 PROSPECTIVE JUROR: We make car battery testers.

25 THE COURT: Okay. And what do you specifically do

1 for the company?

2 PROSPECTIVE JUROR: I'm a product manager.

3 THE COURT: And as a product manager, do you
4 supervise others?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Do you have any involvement in
7 administering the company's attendance and leave policies?

8 PROSPECTIVE JUROR: No.

9 THE COURT: All right. You indicated that you or
10 someone close to you had complained about unfair employment
11 practices previously. Was that you or someone else?

12 PROSPECTIVE JUROR: Me.

13 THE COURT: Okay. About how long ago was that?

14 PROSPECTIVE JUROR: Two years ago.

15 THE COURT: Okay. And do I understand that you
16 are -- you don't know how or what action, if any, was taken in
17 response to your complaints?

18 PROSPECTIVE JUROR: No, because it was an informal
19 complaint, and I left the company shortly after.

20 THE COURT: All right. Did you leave the company of
21 your own volition, or was it related to your --

22 PROSPECTIVE JUROR: Yes, I --

23 THE COURT: Was it related --

24 PROSPECTIVE JUROR: I got a new job, so I left.

25 THE COURT: Not so -- you left not --

1 PROSPECTIVE JUROR: I didn't get fired.

2 THE COURT: -- not because -- or because of what
3 happened at the company that caused you to --

4 PROSPECTIVE JUROR: Oh, no.

5 THE COURT: -- file the complaint in the first place.

6 PROSPECTIVE JUROR: No.

7 THE COURT: Okay. Different company, new job, better
8 job?

9 PROSPECTIVE JUROR: Yep, higher salary. I actually
10 was offered two roles before I left, so I was considering
11 staying. I ended up getting a promotion.

12 THE COURT: All right.

13 PROSPECTIVE JUROR: Your Honor, I think I answered
14 one of the questions regarding the lawsuit incorrectly.

15 THE COURT: Okay. Let me see. You indicated that
16 you had not been involved in a lawsuit.

17 PROSPECTIVE JUROR: Yes, and I have.

18 THE COURT: Okay. What kind of lawsuit was that?

19 PROSPECTIVE JUROR: It was a debt obligation lawsuit,
20 and we ended up settling.

21 THE COURT: All right. Were you the plaintiff or the
22 defendant?

23 PROSPECTIVE JUROR: Defendant.

24 THE COURT: And the claim was you owed somebody
25 money?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: All right. And the case settled?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Was it actually filed in court?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Where, what jurisdiction?

7 PROSPECTIVE JUROR: Cook County.

8 THE COURT: Okay. About how long ago was that?

9 PROSPECTIVE JUROR: Like maybe eight years.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR: Nine years.

12 THE COURT: Anything you recall about that experience
13 of being a litigant in that case that you think would affect
14 your ability to be fair and impartial in this case?

15 PROSPECTIVE JUROR: No.

16 And I'm in child support.

17 THE COURT: I'm sorry?

18 PROSPECTIVE JUROR: Custody court.

19 THE COURT: Oh, you've been -- have something in --

20 PROSPECTIVE JUROR: Something in --

21 THE COURT: -- family court?

22 PROSPECTIVE JUROR: Yeah.

23 THE COURT: Relating to child custody?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: All right. Does it involve your

1 children?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: About how long ago was that?

4 PROSPECTIVE JUROR: This year.

5 THE COURT: Okay. Is it still ongoing --

6 PROSPECTIVE JUROR: Last year.

7 THE COURT: Is that litigation still going?

8 PROSPECTIVE JUROR: We reached a judgment last year,
9 so...

10 THE COURT: All right. So you're not having any more
11 court proceedings?

12 PROSPECTIVE JUROR: I don't, but there is some other
13 proceedings with the other party owing his attorney, so I
14 think they're still going.

15 THE COURT: Okay. But that doesn't involve you?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Okay. Anything you experienced in
18 connection with that litigation that you think would affect
19 your ability to be fair and impartial here?

20 PROSPECTIVE JUROR: No.

21 THE COURT: You indicated that you have -- you were
22 terminated once from a high school job.

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Was that like a summer job?

25 PROSPECTIVE JUROR: No. I worked during the school

1 year, and I had to leave for a summer program, math and
2 science program. And I guess they didn't have a record of my
3 leave, so I was terminated.

4 THE COURT: You were leaving regardless?

5 PROSPECTIVE JUROR: Yes. I was in Massachusetts when
6 they called me, so I had gone already.

7 THE COURT: So it was a matter of notice to your
8 employer that you were leaving?

9 PROSPECTIVE JUROR: So at the time, I submitted my
10 leave request. And I don't know the timing, but leading up to
11 me leaving for the program, we got a new store manager, and so
12 that store manager on, I think, my last actual day told me
13 that she had no record of my leave and that if I didn't come
14 in to work the following day that I would be fired.

15 THE COURT: Okay. So but you had submitted a leave
16 request?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Was it a leave request under the FMLA, or
19 was it just a leave request that, "I'm going to be in this
20 program" --

21 PROSPECTIVE JUROR: Yeah.

22 THE COURT: -- "and I won't be able to work"?

23 PROSPECTIVE JUROR: I don't think it was under FMLA.

24 THE COURT: Okay. How long were you anticipating
25 being gone?

1 PROSPECTIVE JUROR: The whole summer, so like three
2 months.

3 THE COURT: But then the point of your leave request
4 was that you wanted to come back --

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: -- and resume your position?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: And they said you could not do that --

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: -- because you didn't provide notice?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: All right. But you had provided notice?

13 PROSPECTIVE JUROR: Yes, I did. It was a phone call,
14 so I don't know if it was official or not, but...

15 THE COURT: Anything about that experience that you
16 think would affect your ability to be fair and impartial here
17 where the claim involves a claim requesting leave?

18 PROSPECTIVE JUROR: No.

19 THE COURT: You think you could be fair to the
20 plaintiff and the defendant?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: All right. You indicated in response to
23 a question that -- well, let me ask this, the same question
24 I've been asking everybody. If you conclude that the evidence
25 in the case supports the plaintiff's claim by a preponderance

1 of the evidence and the evidence includes evidence that the
2 defendant suffered damages as a result of the conduct at
3 issue, would you be able to return a verdict for the plaintiff
4 even if it called for payment of substantial damages?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: The same question on the flip side. If
7 you conclude that the evidence does not support the
8 plaintiff's claim by a preponderance, would you be able to
9 return a verdict in favor of the sheriff's office?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: All right. Now, in response to that, the
12 flip side question there, you indicated that you already find
13 it hard to believe otherwise. What were you referring to?

14 PROSPECTIVE JUROR: Just I guess in my experience in
15 working in corporate America how employees sometimes are taken
16 advantage of by the system.

17 THE COURT: And do you have a belief at this point in
18 time, not having heard the evidence in the case, that the
19 plaintiff probably was taken advantage of by the employer?

20 PROSPECTIVE JUROR: Well, I can't say I have that
21 belief because I haven't seen the evidence, so...

22 THE COURT: So when you see the evidence, do you
23 think you could base your verdict on the evidence as opposed
24 to your preexisting belief or your leaning toward one side?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: You think you can do that?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: All right. And I don't need to know
4 exactly where, but how long does it take you to get from the
5 courthouse to where you have to pick up your daughter?

6 PROSPECTIVE JUROR: About 20 minutes.

7 THE COURT: And what time do you have to be there to
8 pick her up?

9 PROSPECTIVE JUROR: By 6:00.

10 THE COURT: Okay. All right. Thank you, ma'am.
11 Mr. Green? Good afternoon, sir.

12 PROSPECTIVE JUROR: Good afternoon.

13 THE COURT: All right. You're currently employed as
14 a Realtor?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: How long have you been doing that?

17 PROSPECTIVE JUROR: A little over seven years.

18 THE COURT: What did you do before you became a
19 Realtor?

20 PROSPECTIVE JUROR: I was a -- well, I'm an old dude,
21 so I've done various jobs. Right before that, I was a sales
22 manager.

23 THE COURT: What kind of company?

24 PROSPECTIVE JUROR: It's the fashion industry. It
25 was based in New York. I was there for 17 years.

1 THE COURT: Okay. Did you supervise others?

2 PROSPECTIVE JUROR: Yes, four other people.

3 THE COURT: All right. Were those salespeople?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Okay. Were you involved in administering
6 or managing the company's attendance or leave policies?

7 PROSPECTIVE JUROR: No. That was done through HR.

8 THE COURT: And you indicated you're currently the
9 chairperson for Galewood Neighbors, Inc. What is that
10 organization?

11 PROSPECTIVE JUROR: That's my neighborhood
12 association.

13 THE COURT: So --

14 PROSPECTIVE JUROR: It's more than just me.

15 THE COURT: Are you on a board?

16 PROSPECTIVE JUROR: Yes. I'm the chairperson for the
17 board.

18 THE COURT: Okay. You mentioned that you've been a
19 defendant in a suit that was brought by somebody, I take it,
20 you were dealing with in your capacity as a Realtor?

21 PROSPECTIVE JUROR: Yes. Right when I had first
22 started, it was a civil suit.

23 THE COURT: Where was the suit filed?

24 PROSPECTIVE JUROR: At Cook County.

25 THE COURT: But it settled?

1 PROSPECTIVE JUROR: Yeah. It didn't go to court. It
2 settled before.

3 THE COURT: Anything about your experience being a
4 defendant in that case that you think would affect your
5 ability to be a fair and impartial juror?

6 PROSPECTIVE JUROR: No.

7 THE COURT: All right. You could be fair to the
8 plaintiff here?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: All right. You indicated you previously
11 had been terminated from a job where this -- as part of a
12 downsizing of the sales department. About how long ago did
13 that occur?

14 PROSPECTIVE JUROR: 2016.

15 THE COURT: Okay. And anything about that experience
16 that you think would affect your ability to be fair and
17 impartial?

18 PROSPECTIVE JUROR: No.

19 THE COURT: All right. And if you find that the
20 evidence in the case supports the plaintiff's claim by a
21 preponderance of the evidence and there's evidence that the
22 plaintiff suffered damages as a result of that conduct, would
23 you be able to return a verdict including substantial damages
24 for the plaintiff?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: If you conclude that the evidence does
2 not support the plaintiff's claim by a preponderance, would
3 you be able to return a verdict for the sheriff's office?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Thank you, sir.

6 Last but not least, Ms. Hamodeh.

7 PROSPECTIVE JUROR: Hamodeh.

8 THE COURT: Hamodeh. Good afternoon, ma'am.

9 PROSPECTIVE JUROR: Good afternoon.

10 THE COURT: All right. And you presently work for
11 Blue Cross Blue Shield?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: All right. What did you do before
14 working for Blue Cross?

15 PROSPECTIVE JUROR: I worked as a registered nurse in
16 Advocate Health Care.

17 THE COURT: Okay. Any particular area that your
18 practice as a nurse focused on?

19 PROSPECTIVE JUROR: Cardiology.

20 THE COURT: And what do you do now for Blue Cross
21 Blue Shield?

22 PROSPECTIVE JUROR: I'm a case manager. I'm --

23 THE COURT: What does that mean exactly?

24 PROSPECTIVE JUROR: So I work with elderly and
25 disabled members with government programs to fill in their

1 healthcare gaps and allow them to live in their homes longer
2 by providing government services.

3 THE COURT: Okay. Do you supervise others in that
4 role?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Do you have any involvement in the
7 administration of any attendance or leave policies?

8 PROSPECTIVE JUROR: No.

9 THE COURT: All right. And you have been involved in
10 a couple of civil cases?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Were those here in Cook County?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Can you tell me the nature of those
15 claims just generally, not the details? But were they traffic
16 accidents? Were they --

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: -- contract --

19 PROSPECTIVE JUROR: It was a traffic accident.

20 THE COURT: Both of them?

21 PROSPECTIVE JUROR: I don't remember -- really recall
22 the second one, but the first one, yes, was a traffic.

23 THE COURT: Were you the party bringing the suit or
24 defending against the claim?

25 PROSPECTIVE JUROR: I wasn't in the case. I was a

1 juror on those cases.

2 THE COURT: You were a juror on those cases?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Okay. Did you reach verdicts in both
5 cases?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Okay. Were you the foreperson in either
8 of those cases?

9 PROSPECTIVE JUROR: No.

10 THE COURT: And those cases were both civil cases?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Okay. Anything about your experience
13 serving as a juror on those cases that you think would affect
14 your ability to be fair and impartial?

15 PROSPECTIVE JUROR: No.

16 THE COURT: All right. You've previously had FMLA
17 leave?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: About how long ago?

20 PROSPECTIVE JUROR: Most recent was about three years
21 ago.

22 THE COURT: You've had it previous to that as well?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: All right. About how long did you spend,
25 take FMLA leave?

1 PROSPECTIVE JUROR: 12 weeks.

2 THE COURT: Okay. Anything about your experience in
3 applying for or taking FMLA leave that you think would affect
4 your ability to fairly evaluate the legitimacy of someone
5 else's --

6 PROSPECTIVE JUROR: No.

7 THE COURT: -- FMLA claim?

8 PROSPECTIVE JUROR: No.

9 THE COURT: All right. As I've asked just about
10 everybody, if you are on the jury and you find that the
11 evidence supports a claim, the claim advanced by the plaintiff
12 and the plaintiff also presents evidence that he has suffered
13 damages as a result of the conduct at issue, would you be able
14 to return a verdict in favor of the plaintiff even if it
15 required you to award substantial damages?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: The flip side, if you conclude at the end
18 of the trial that the evidence does not support plaintiff's
19 claim by a preponderance of the evidence, could you render a
20 verdict in favor of the sheriff's office?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: And you mentioned childcare issues. Are
23 your children -- how do you provide childcare normally?

24 PROSPECTIVE JUROR: So my parents help with the
25 little one, and the older one's usually in school, but even

1 after school -- I have a child with ADHD, so it's a little bit
2 difficult to manage her with just one parent at home.

3 THE COURT: What's your normal work schedule?

4 PROSPECTIVE JUROR: So I actually do telecommute, so
5 I am able to drop her off and pick her up after school. So I
6 work about 8:00 to 4:30 or 7:00 to 3:30.

7 THE COURT: And who's watching your children
8 presently?

9 PROSPECTIVE JUROR: Right now, the little one is with
10 my mom.

11 THE COURT: All right. Thank you, ma'am.

12 Ms. Arguello -- or Mr. Arguello, could I ask you to
13 come back to the witness stand for just a moment?

14 Thank you. I neglected to ask you, your
15 questionnaire responded to a question indicating that you had
16 once been terminated for coming late to work.

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: About how long ago did that take place?

19 PROSPECTIVE JUROR: That would be probably about 13
20 years ago.

21 THE COURT: All right. Was that an issue with one
22 time being late, or was there --

23 PROSPECTIVE JUROR: Oh, it was continuous.

24 THE COURT: Did you feel that the termination was
25 justified or unjustified?

1 PROSPECTIVE JUROR: I think it was justified.

2 THE COURT: Is there anything that -- about that,
3 being terminated on that basis that you think would affect
4 your ability to be a fair juror in this case?

5 PROSPECTIVE JUROR: No.

6 THE COURT: You wouldn't hold it against the employer
7 in this case?

8 PROSPECTIVE JUROR: No.

9 THE COURT: All right.

10 PROSPECTIVE JUROR: Like I said, it was justified. I
11 was continuously coming in. There was no interest really,
12 so...

13 THE COURT: All right. Thank you.

14 And, Mr. Lawrence, can I ask you to come back up?
15 Thank you, sir. You too -- and I missed this -- had indicated
16 that you had been terminated on, I take it, one occasion for
17 being tardy; is that correct?

18 PROSPECTIVE JUROR: Yeah. Similar timeframe, oddly
19 enough, around 13 years ago or so.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR: But same principle.

22 THE COURT: Do you remember the specific job?

23 PROSPECTIVE JUROR: Yeah. Yeah, I do.

24 THE COURT: What was that?

25 PROSPECTIVE JUROR: It was back when I was working at

1 Binny's back in, like I said, about 2011 or so.

2 THE COURT: Okay. And was this in response to one
3 tardiness or what they contended was a pattern?

4 PROSPECTIVE JUROR: It was kind of a pattern. It
5 was, new management came in. Once it was kind of like a
6 nominal, nobody really cared and all of a sudden new
7 management came in and they cared.

8 THE COURT: Okay. Anything about that experience and
9 being terminated on that occasion that you think would prevent
10 you from being a fair party, fair to the employer in this
11 case?

12 PROSPECTIVE JUROR: I don't think so.

13 THE COURT: Thank you, sir.

14 PROSPECTIVE JUROR: I was going to say, I also did
15 mention on there that my cousin is a cop in Evanston.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR: Also no bearing on any kind of an
18 opinion.

19 THE COURT: All right. We have a former law
20 enforcement officer and a law enforcement agency.

21 PROSPECTIVE JUROR: Yeah.

22 THE COURT: Do you think the fact that you have a
23 cousin who is a police officer would bear on your evaluation
24 between the two?

25 PROSPECTIVE JUROR: No. I just wanted to make sure

1 it was on record.

2 THE COURT: Okay. Appreciate it. Okay. Thank you,
3 sir.

4 All right. Ladies and gentlemen, what we're going to
5 do is we're going to take a lunch break. We'll take about a
6 45-minute break. In the neighborhood of this building --
7 well, first off, there's a cafeteria on the second floor that
8 you're welcome to visit. There are fast food restaurants in
9 every direction within a block here, so you can get something
10 quick to eat if you're so inclined.

11 I'm going to ask you to come back and be back out in
12 the hallway at 1:30, and we should be -- I may have a little
13 bit of follow-up for some of you, but we'll basically be ready
14 to tell you who is going to be on the jury at that time or
15 very shortly after 1:30.

16 It's important again not to discuss the case amongst
17 yourselves. Do take your bags or purses with you, your
18 belongings with you, but please be back -- we're on the 23rd
19 floor at the north end of the building -- at 1:30. And we
20 should finish up jury selection very shortly thereafter.

21 Thanks for your attention and patience so far.

22 All rise.

23 (Venire out.)

24 THE COURT: Okay. Any other follow-up that anybody
25 is looking for?

1 MR. K. FLAXMAN: None from plaintiff, your Honor.

2 MS. ORI: None from defendant.

3 THE COURT: Okay. Then why don't you take ten
4 minutes, figure out your challenges for cause. I'll hear
5 plaintiff's first, but I'll hear from both sides as to who
6 you're challenging before I rule. And then once we've done
7 that, I'll give you a few minutes to figure out who you want
8 to use your peremptories on. We'll get that done, and then we
9 can take a lunch break and resume at 1:30. So ten minutes,
10 let's reconvene.

11 And just so everybody is clear, we're clearly
12 opening, doing our openings and plaintiff is calling your --
13 starting your case. And we will go close, as close to 5:00
14 o'clock as it makes sense to go. If we finish a witness at 10
15 to 5:00, we're not going to start a new witness, but we're
16 going to -- if we finish a witness at 4:30, we might, so be
17 ready to go.

18 All right. Thank you.

19 (Recess from 12:42 p.m. to 12:56 p.m.)

20 THE COURT: Back on the record.

21 All right. Addressing challenges for cause, I'll
22 hear first from the plaintiff.

23 MR. K. FLAXMAN: If we could just have a second.

24 Juror No. 1 indicated that she was concerned about
25 missing school. And we believe that she would be distracted

1 while sitting as a juror and, therefore, we ask that she be
2 excused for cause.

3 THE COURT: All right. I know I said I was going to
4 hear everything, but do you have any objection?

5 MS. ORI: I mean, I think that it's only going to be
6 one or two days. She doesn't have school today, so maximum
7 she's missing two days of school. I don't think that's --
8 jury duty is an inconvenience, but I don't have a strong...

9 THE COURT: Well, I actually asked her this thinking
10 along those lines, but she's a dance major and it's not just,
11 you can't just make it up looking at a video. There's a
12 physical component to it. So I'm going to grant the motion
13 and exclude her for cause given her school schedule. So 1 is
14 out.

15 MR. K. FLAXMAN: Thank you.

16 No. 4 seemed to have an English problem, English
17 language spoken problem.

18 THE COURT: I did not notice anything in that regard,
19 but let's -- we'll put him on the plaintiff's challenge for
20 cause?

21 MR. K. FLAXMAN: Yes.

22 THE COURT: Okay. What else have you got?

23 MR. K. FLAXMAN: No. 7 was sleeping during jury
24 selection. We could hear him snoring over here.

25 THE COURT: All right. I'm sorry. No. 7?

1 MR. K. FLAXMAN: That's correct.

2 THE COURT: I can't believe anyone would fall asleep
3 during that riveting process. All right. Any others?

4 MR. K. FLAXMAN: No. 14 who had a problem with
5 following your law or his ethical concepts of law. I think --
6 I wrote down, "more or less I would follow the law."

7 THE COURT: Oh, right. All right. That's No. 14.

8 MR. K. FLAXMAN: That concludes plaintiff's
9 challenges, your Honor.

10 THE COURT: Okay.

11 MR. K. FLAXMAN: Hold on. I'm told that I skipped
12 one.

13 MR. J. FLAXMAN: No. 16 reported that he had not
14 gotten a good night's sleep because of his newborn and
15 couldn't focus.

16 THE COURT: All right. Defendant?

17 MS. ORI: The only one that was not mentioned was
18 No. 24.

19 MR. K. FLAXMAN: I don't think we're going to get to
20 No. 24, your Honor, but we would like No. 24 to be seated
21 first.

22 THE COURT: Ah, yes, I imagine you would. All right.
23 So 1, I've granted. And 4, 7, 14, and 16, you're not
24 objecting to?

25 MS. ORI: No.

1 THE COURT: Okay. So we'll grant 1, 4, 7, 14, and
2 16.

3 And the issue is 24. I don't think we're getting to
4 24 either. I definitely noted what Mr. Flaxman identified as
5 why they would like 24. She was leaning toward the plaintiff.
6 She pretty much expressly said that. She did, however, say
7 that she would -- notwithstanding that initial orientation,
8 she would be able to return a verdict for the defendant. And
9 I give her some credit for candor in acknowledging her initial
10 bias. She was, I think, very thoughtful and careful about her
11 statements. So I'm not going to strike her for cause. She'll
12 still be in the pool.

13 But that means we have struck 1, 4, 7, 14, 16, and
14 also No. 12 who was the gentleman who didn't speak English,
15 although I wasn't entirely sure that he didn't speak English
16 since he seemed to only understand questions that were going
17 to get him out of the courtroom, but nevertheless.

18 So the challenges for cause granted will be 1, 4, 7,
19 12, 14, and 16. That's six challenges for cause. There's
20 going to be at most six peremptory challenges, so that takes
21 you to nine. There's going to be eight jurors. That takes
22 you to 17. So probably any peremptory usage above 17 will be
23 unnecessary, but do what you want.

24 MS. ORI: Thanks for the math.

25 MR. K. FLAXMAN: I think it's higher. I think it's

1 eight jurors plus six peremptories.

2 MS. ORI: That's 14.

3 THE COURT: Six peremptories, eight jurors is 14.

4 Oh, and -- how did I do that math?

5 MS. HASAN: 20.

6 MR. J. FLAXMAN: 20.

7 THE COURT: Yes, so anything above 20.

8 So take a few minutes, figure out your peremptories.

9 Again, each side gets three. If you strike the same person,
10 you've still used up a peremptory.

11 MS. ORI: May we take a few minutes, your Honor?

12 THE COURT: Yes.

13 MS. ORI: Okay. Thank you.

14 (Recess from 1:04 to 1:11 p.m.)

15 THE COURT: Okay. Just take a piece of paper, write
16 down the juror numbers that you're exercising your
17 peremptories against.

18 Okay. The plaintiff is striking jurors 3, 15, and
19 20, and the defendant is striking no one. So striking 3, 15,
20 and 20. That means our eight jurors should be Mr. Arguello,
21 Ms. Mavric de Beltrami, Jessica Patel, Elizabeth Quail,
22 Ameya Pawar, Noelle Minchin, Erik Ocampo, and Juan
23 Merino-Cortes. So that's juror No. 2, juror No. 5, juror
24 No. 6, No. 8, No. 9, No. 10, No. 11, and No. 13.

25 Anybody disagree? Good?

1 MS. HASAN: Okay.

2 THE COURT: Okay. All right. Then we'll reassemble
3 at 1:30. I'll give preliminary instructions to the jurors and
4 we'll -- Alberta will take them to get settled in the jury
5 room for a few minute, and we should be ready to open, if not
6 before, by 2:00 o'clock.

7 Anything else? All right. See you in 20 minutes --
8 15 minutes.

9 (Recess from 1:15 p.m. to 1:30 p.m.)

10 (Change of court reporters.)

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1 (The following proceedings were had in open court:)

2 THE COURT: Are we ready to go?

3 As soon as the jurors are ready, Alberta.

4 (Brief pause.)

5 THE CLERK: All rise.

6 (Prospective jurors enter.)

7 THE COURT: Please be seated.

8 All right. Ladies and gentlemen, thank you very much
9 for your punctuality. We are prepared to advise you as to who
10 has been selected as jurors in this case.

11 If I call your name, you are a juror and should
12 remain seated.

13 If I don't call your name after I have identified all
14 the jurors, you will be free to leave the courtroom and go
15 back to the second floor of this building where you will get
16 further instructions about whether you have to call in at all
17 again this week for jury duty.

18 If you are not selected to sit on this jury, I hope
19 you won't be too terribly disappointed.

20 (Laughter.)

21 THE COURT: And I hope you won't think that your time
22 here has not been needed or valuable to us. We need to call
23 in a significantly larger group than we use as jurors so that
24 we can make sure that the jurors who are going to hear this
25 particular case are going to be fair and impartial.

1 Just because you have not been selected for this jury
2 does not mean anyone here thinks that you are not a good
3 person or a fair and impartial person, but we have to make a
4 cutoff of who's going to be on the jury and who's not. We try
5 to do that in an informed manner.

6 So I want to thank you all. Whether you are selected
7 to serve on the jury in this case or not, thank you because
8 you are performing a vital public service by being here,
9 showing up, and being available to exercise this very, very
10 important civic duty. So thank you all for being here today.

11 All right. The folks who are going to be our jurors
12 in this case are: Mr. Arguello, Ms. Mavric De Beltrami,
13 Ms. Patel, Ms. Quail, Ms. Pawar, Ms. Minchin, Mr. Ocampo, and
14 Mr. Merino-Cortes.

15 If I called your name, you are a juror. Just sit
16 tight.

17 If I didn't call your name, please collect up your
18 belongings, report down to the second floor, and you will get
19 further instructions there. And thank you again.

20 All rise.

21 (Prospective jurors exit.)

22 THE COURT: Okay. Please have a seat, folks.

23 You have been selected as the jury. The very first
24 thing we have to do is swear you in as the jurors.

25 Alberta.

1 THE CLERK: Sorry. Would you please stand again and
2 raise your right hand.

3 (Jurors sworn.)

4 THE CLERK: Thank you. You may be seated.

5 THE COURT: All right. Ladies and gentlemen, you
6 have now been sworn as the jury to try this case. By your
7 verdict, you will decide the questions of fact that arise
8 during this trial based on my instructions of law at the close
9 of the trial.

10 It's important that you give careful attention to the
11 testimony and the evidence as it is received and presented for
12 your consideration, but you should keep an open mind, and you
13 should not form or express any opinion about the case one way
14 or the other until you consider your verdict after having
15 heard all of the evidence, the closing arguments of the
16 attorneys, and my instructions to you on the applicable law.

17 As to those instructions, I am going to give you some
18 preliminary instructions to aid you as you listen to the
19 presentation of evidence.

20 As jurors, you have two duties.

21 Your first duty is to decide the facts from the
22 evidence in the case. That is your job as the jury and yours
23 alone.

24 Your second duty is to apply the law that I give to
25 you to the facts that you find, and you must follow the

1 instructions I give you during the trial even if you disagree
2 with them. Each of the instructions is important, and you
3 must follow all of them.

4 You must perform these duties fairly and impartially.

5 Nothing I say now and nothing I say or do during the
6 trial is meant to indicate that I have any opinion about what
7 the facts are or about what your verdict should be.

8 During the trial, I may ask witnesses questions
9 myself. Do not assume that because I ask questions that I
10 hold any opinion on the matters I asked about or on what the
11 outcome of the case should be.

12 In this case, the plaintiff, Salvatore Ziccarelli, is
13 an individual.

14 The defendant, the Sheriff's Office of Cook County,
15 Illinois, is a governmental entity.

16 All parties are equal before the law. The plaintiff
17 and the defendant are entitled to the same fair consideration.

18 As I told you already, this is a civil case, not a
19 criminal case. The standard of proof in a civil case is
20 preponderance of the evidence. When I say a particular party
21 must prove something by a preponderance of the evidence, what
22 I mean is that when you have considered all the evidence that
23 bears on a proposition, you must be persuaded that the
24 proposition is more probably true than not true.

25 The evidence in the case consists of the testimony of

1 the witnesses, the exhibits that are admitted into evidence,
2 and any stipulations that the parties may reach.

3 A stipulation is just an agreement between the
4 parties about what the testimony of a particular witness might
5 be or about a particular fact.

6 I may also take judicial notice of certain facts that
7 are not subject to reasonable dispute. An example of
8 something like that would be that February 12th, 2017, was a
9 Sunday.

10 Nothing else is evidence. That means that anything
11 you see or hear outside the courtroom is not evidence and must
12 be entirely disregarded. I don't expect any media coverage of
13 this trial, but my admonition includes any press, radio,
14 Internet, or television reports that you may see or hear.
15 Such reports are not evidence, and your verdict must not be
16 influenced in any way by that kind of publicity.

17 Second, questions and objections or comments by the
18 lawyers are not evidence. Lawyers have a duty to object if
19 they believe a question is improper. You should not be
20 influenced by any objections, however, and you should not
21 infer from my rulings that I have any view as to how you
22 should decide the case.

23 The lawyers' opening statements and closing arguments
24 are not evidence. Their purpose is to discuss the issues and
25 the evidence. If the evidence as you remember it differs from

1 what the lawyers say about it, it's your memory that counts.

2 If I tell you to disregard any testimony or exhibits
3 or I strike any testimony or exhibits from the record during
4 the trial, that testimony or exhibits are not evidence and
5 must not be considered.

6 During the trial you will be permitted but are not
7 required to take notes. In deciding whether to take notes,
8 please understand that you will not have a transcript of the
9 trial during your deliberations. Jurors must rely on their
10 recollections of the evidence presented during the trial.

11 If you take notes during the trial, you may use them
12 during deliberations to help you remember what happened during
13 the trial. You should use your notes only as aids to your
14 memory, however. Any notes that you or others take are not
15 themselves evidence.

16 All of you should rely on your independent
17 recollection of the evidence, and you should not be unduly
18 influenced by the notes of other jurors. Notes are not
19 entitled to any more weight than the memory or impressions of
20 each juror.

21 At the end of the trial your notes will be destroyed,
22 and no one will be permitted to read them.

23 You should use common sense in weighing the evidence
24 and considering the evidence in light of your own observations
25 in life.

1 In our lives, we often look at one fact and conclude
2 from it that another fact exists. In law, as in life, we call
3 that an inference.

4 A jury is allowed to make reasonable inferences, but
5 any inference you make must be based on the evidence in the
6 case.

7 You may have heard the phrases "direct evidence" and
8 "circumstantial evidence."

9 Direct evidence is proof that does not require an
10 inference, such as the testimony of someone who claims to have
11 personal knowledge of a fact.

12 Circumstantial evidence is proof of a fact or a
13 series of facts that tends to show that some other fact is
14 true. In other words, circumstantial evidence is evidence
15 that requires an inference.

16 As an example, testimony from a witness who says, "I
17 was outside a minute ago, and I saw it raining," that is
18 direct evidence that it is raining.

19 The observation of someone entering a room carrying a
20 wet umbrella is circumstantial evidence that it is raining.

21 The law makes no distinction between the weight to be
22 given to either direct or circumstantial evidence. You, the
23 jury, decide how much weight to give to any evidence. In
24 reaching your verdict, you should consider all the evidence in
25 the case, including circumstantial evidence.

1 You as the jury must decide whether the testimony of
2 each of the witnesses is truthful and accurate in part, in
3 whole, or not at all. You must also decide what weight, if
4 any, you give to the testimony of each witness.

5 It's important that you give careful attention to the
6 testimony and the evidence as it is received and presented for
7 your consideration, but you should keep an open mind, and you
8 should not form or express any opinion about the case one way
9 or the other until you consider your verdict together after
10 having heard all of the evidence, the closing arguments, and
11 my instructions to you on the applicable law.

12 During the trial you must not communicate with anyone
13 about this case or provide information to anyone about the
14 case. You can't even discuss the case with your fellow jurors
15 until I have told you that you may begin your deliberations.

16 You cannot talk to anyone in person or on the phone,
17 correspond with anyone, electronically communicate with anyone
18 about the case. All forms of communication are subject to
19 this restriction, including email; text messaging; instant
20 messaging; blogging; posting on social media and network
21 platforms like Facebook, X, Threads, Tumblr, Instagram, or
22 Snapchat.

23 You may not use any electronic device, such as a cell
24 phone or computer or a tablet to communicate with anyone about
25 this case.

1 If anyone attempts to communicate with you about the
2 case through any of the methods I have listed or any others,
3 you should inform them that you are not permitted to discuss
4 the case with anyone during the trial. If they persist, you
5 should inform me at the first opportunity.

6 Once the trial concludes, you will be able to discuss
7 the case with anyone you wish. But until then, you cannot
8 discuss it with anyone other than your fellow jurors and then
9 only once your deliberations begin.

10 Also, you must not conduct any independent research
11 about this case by any means. So you may not use any printed
12 or electronic source to look up any information about the
13 case.

14 You should not consult any reference materials or
15 search the Internet to obtain information about the case or
16 the individuals who are involved in the case.

17 You may not do any personal investigation. You may
18 not visit any of the places involved in the case or create
19 your own demonstrations or reenactments of the events that are
20 the subject of the case.

21 The reason that you cannot investigate or communicate
22 with anyone about the case is that it is critically important
23 to the fairness of this proceeding that you decide the case
24 based solely on the evidence presented in this courtroom,
25 which is the only evidence that will have been seen and heard

1 by all of your fellow jurors as well as the parties in this
2 case.

3 Permitting communications or investigation outside
4 the courtroom would jeopardize the fairness of these
5 proceedings because your judgment might then be based on
6 information that is not reliable, that the parties have not
7 had a chance to respond to. It may be inadmissible for some
8 other reason.

9 Now, if you are sitting there saying, "Okay, surely
10 this is boilerplate, and he doesn't mean that we can't go home
11 and talk to our spouse or significant other about the trial,
12 tell them what's going on," that is exactly what I mean. No
13 conversation means no conversation.

14 When the trial is over, you will be able to talk
15 about the case all you wish or not at all, as you wish. But
16 until then, it's important, for the reasons I have just been
17 through, that you don't discuss the case, you don't get
18 reactions from people about what you have heard, things like
19 that, because then your decision might be based not on
20 evidence presented during the court proceeding but outside of
21 court, and that is not evidence.

22 All right. Some other instructions regarding
23 logistics rather than the law.

24 As I indicated, you will be able to take notes if you
25 wish. You are not required to take notes. But if you wish to

1 take notes, you will be able to do that. Alberta will give
2 you notepads for that purpose. You are free to take them in
3 and out of the jury room during the course of the trial and
4 take whatever notes you feel are appropriate. Again, no one
5 will read your notes.

6 When you come in each day -- we have two elevator
7 banks in this building. The south side of the building is the
8 side of the building on Jackson Boulevard across the street
9 from Dunkin' Donuts and Garrett's Popcorn. I am going to ask
10 you to use that bank of elevators that's on that side of the
11 building as opposed to the ones on this side of the building,
12 which are closer to Adams.

13 The lawyers, the parties, court staff are going to
14 try to use the north bank of elevators. I am going to have
15 you use the south bank of elevators in an effort to minimize
16 the uncomfortable situation where you might find yourself
17 getting on an elevator with another person that you have been
18 instructed not to talk to.

19 If you do forget and take the wrong elevator or
20 somebody else forgets and takes the wrong elevator, don't
21 panic. Just don't talk. Again, the point is, we want to
22 minimize anything that will potentially affect your evaluation
23 of the evidence in the case.

24 Everybody here is a nice person. You are civil. You
25 wish people a good morning, things like that. Try to refrain

1 from being quite as nice during the courses of this
2 proceeding. All right?

3 Our daily schedule. At the end of the afternoon
4 today, I will let you know when you need to be back in the
5 jury room tomorrow morning ready to go.

6 I don't -- as we told you in the questionnaire, I
7 don't anticipate this to be a lengthy trial. It's possible
8 that the evidence in the case could finish as early as
9 tomorrow or possibly on Wednesday. I can't make you any
10 guarantees about that. Trials often have surprises or
11 problems crop up with availability of witnesses or people that
12 might delay us, but that's my best guess right now. So it
13 will be a brief trial.

14 But our normal schedule will be basically something
15 on the order of starting at about 9:30 in the morning and
16 going until 5:00 o'clock in the afternoon. You can count on
17 not going later than 5:00 o'clock. So if you have
18 transportation scheduling to take care of, I assure you that
19 we will not stay past 5:00 o'clock on any day, including
20 today.

21 There may be -- when we finish the presentation of
22 the evidence, depending on what time that is, we may break for
23 the day and come back in the morning for the closing arguments
24 and instructions of law. But we will see how it goes. But I
25 do expect this to be a relatively brief trial.

1 All right. What we are going to do is, Alberta, my
2 courtroom deputy, will show you the jury room. You will be
3 able to put your belongings in there. They will be secure
4 there. That's a secure area.

5 And then you will come back out. We will start the
6 trial with the opening statements of the lawyers. Again,
7 those are not evidence. They are simply statements to orient
8 you to what the lawyers expect the evidence in the case is
9 going to be.

10 Once the lawyers have given their opening statements,
11 we will begin with the presentation of evidence. That will
12 happen this afternoon.

13 The plaintiff has the burden of proof in the case.
14 The plaintiff will present his evidence first.

15 Once the plaintiff has concluded the presentation of
16 his evidence, the defense has the opportunity to present
17 evidence as well.

18 Depending on how things go, there might be an
19 opportunity for what we call a rebuttal case by the plaintiff.
20 That depends on a number of circumstances.

21 Once the evidence has been presented in the case, I
22 will instruct you as to the law that applies in the case, you
23 will hear the closing arguments of the lawyers telling you why
24 they think the evidence and the law favors their position, and
25 then you will retire to deliberate on a verdict and try to

1 return a verdict as to the defendant's claim, whether the
2 defendant is liable or not liable for that claim.

3 All right. So that's how we will proceed. Alberta
4 will take you into the jury room. You can get settled there.
5 And we will come back out in about 10 minutes and get started.

6 All rise.

7 (Jury out at 1:54 p.m.)

8 THE COURT: All right. Anything we need to address?

9 MR. K. FLAXMAN: Does your Honor have a rule about
10 cross-examination of a witness called as an adverse witness?

11 THE COURT: Yes. I think we talked about this.
12 Cross-examination will be -- will not be restricted by scope.
13 You may have redirect. They may have cross-examination that
14 goes beyond your scope on direct, but we are not going to call
15 them as adverse witnesses and call them again. Okay?

16 MR. K. FLAXMAN: Thank you.

17 THE COURT: All right. About five minutes and we
18 will kick off.

19 (A brief recess was taken at 1:55 p.m.)

20 THE COURT: Is everybody ready to go?

21 (No response.)

22 THE COURT: As soon as they are ready.

23 (Brief pause.)

24 (Jury in at 2:05 p.m.)

25 THE COURT: All right. Please be seated.

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1 Ladies and gentlemen, we will begin with opening
2 statements. We will hear first from the plaintiff.

3 Mr. Flaxman.

4 OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

5 MR. J. FLAXMAN: Thank you, your Honor.

6 Thank you to all of you for bearing with us this
7 morning and into the afternoon.

8 We already introduced ourselves earlier, but I will
9 do it again because we have been here for a few hours.

10 Sitting at the end of the table over there
11 (indicating) is Salvatore Ziccarelli.

12 Stand up, Sal.

13 Sal is the plaintiff in this case.

14 My name is Joel Flaxman -- you can have a seat -- and
15 Kenneth Flaxman. We both represent Sal.

16 This is my chance to talk to you and give you an
17 introduction to the case.

18 Judge Tharp just told you that what I am telling you
19 is not evidence. It's an overview. The evidence is what you
20 are going to hear from the witness stand. It's what you will
21 see on the screens and the exhibits. And we are going to get
22 to that pretty quickly. So you will hear from the witnesses
23 later today. We don't -- the lawyers don't get a chance to
24 come and talk directly to you until after all that evidence is
25 presented.

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1 So let me do that. Let me give you that overview of
2 the evidence.

3 Sal is going to talk to you and tell you a little bit
4 about himself. He is going to say who he is, where he comes
5 from.

6 You will hear that he started working as a
7 correctional officer at the Cook County Jail in 1989.

8 After his long career in the jail, by 2016, he was
9 still working there, but he was suffering from a variety of
10 medical problems. One of the medical problems you will hear
11 us talk about a lot is called posttraumatic stress disorder.
12 We are probably going to say "PTSD." That stands for
13 posttraumatic stress disorder.

14 Because of Sal's PTSD, there were days that he was
15 unable to work. That was okay. He was approved to take time
16 off as he needed. He had submitted the right paperwork to the
17 sheriff's office. They had approved him to take time off as
18 needed under what's called the Family and Medical Leave Act.
19 You have probably heard about that already today. We will
20 call it the "FMLA."

21 Under the FMLA, employees get to take up to 12 weeks
22 of leave per year, and they get to keep their jobs.

23 The leave doesn't have to be paid, but the way that
24 Sal was taking it when he worked for the sheriff is that he
25 would call and say, I need to take the leave. He would get

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1 the time off, and he would be compensated out of his sick pay.

2 You are going to see some of the records that show
3 that he took that time, that show that he used his sick leave.
4 And you will get some of an understanding of how that system
5 worked.

6 In 2016, there came a time when Sal's doctor told him
7 that he needed more than just this as-needed time off. He
8 needed to take off eight weeks to get treatment for his PTSD.

9 What Sal did when he got this prescription from his
10 doctor is, he called the HR department to talk to the FMLA
11 leave manager. That was a person named Wylola Shinnawi. Sal
12 is going to tell you he called Ms. Shinnawi to find out how
13 many FMLA leave time he had left.

14 And what Sal will testify is that Ms. Shinnawi told
15 him, "You've already taken a lot of FMLA leave. If you take
16 more, you will be disciplined."

17 Sal is going to explain that, even though he knew he
18 had some time left, hearing this from the FMLA leave manager
19 discouraged him from taking any more FMLA leave time.

20 We are going to ask you at the end of the trial to
21 find that this statement from Ms. Shinnawi interfered with
22 Sal's exercise of his rights under the FMLA.

23 Ms. Shinnawi is going to give a different take on
24 what was said during the call. You, the jury, are going to
25 hear from both sides. The Judge has explained how it's up to

1 you to judge the evidence.

2 What we will ask you to consider is that there is no
3 recording of the call. Sal didn't take notes about it.

4 Ms. Shinnawi didn't take notes about it.

5 The objective evidence we have about what happened on
6 the call is the next step, and Sal is going to testify about
7 that.

8 After he had this phone call, he resigned from the
9 sheriff's office. He is going to explain to you that he felt
10 that he had no choice but to resign because he didn't want to
11 be fired for taking more leave.

12 So we are going to ask you to find that this
13 conversation is what discouraged Sal from taking the FMLA
14 leave. We are going to ask you to find that the conversation
15 is what caused him to resign. And what we are going to ask
16 you to conclude is that the only reason he would take that
17 drastic step of resigning is if the conversation had gone the
18 way Sal is going to tell you that it went.

19 The last thing that we will present evidence about --
20 and then I will talk to you again later -- is the damages that
21 Sal is seeking.

22 I mentioned that when he took FMLA leave, he could
23 use his sick time to get compensated for the time he was off
24 from work.

25 Because he was discouraged and because we will ask

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1 you to find that he was discouraged from taking that time, he
2 wasn't able to use that sick leave. He didn't get paid for it
3 when he resigned. So that's one thing we will be asking for
4 is compensation for that unused sick leave. We will explain
5 the numbers. It comes out to about \$15,000.

6 The other type of damages we will talk about are the
7 salary that Sal gave up by leaving the sheriff's office from
8 the years 2017 until -- through 2023 to today. That's over
9 \$500,000. And we will talk about those figures in more
10 detail. And we hope that -- we will ask you to conclude that
11 that amount and the amount for the sick time is the
12 appropriate amount to compensate Sal for the conduct that you
13 will hear described.

14 I'm going to conclude there. I want to thank you in
15 advance for what I know is going to be important time that you
16 are giving up to be here. Thank you again for that time and
17 for your attention over what we expect to be not a very long
18 trial.

19 Thank you.

20 THE COURT: Thank you, Mr. Flaxman.

21 Counsel for the defense.

22 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

23 MS. HASAN: The plaintiff, Mr. Zicarelli, had a rash
24 response to a typical and informative conversation about his
25 FMLA time remaining.

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1 He had one phone conversation with one person at the
2 sheriff's office that lasted all of five minutes. That one
3 person, Wylola Shinnawi, was the FMLA leave manager and is now
4 retired after serving in that role for 15 years at the
5 sheriff's office.

6 She dealt with hundreds of employees every year about
7 their FMLA leave. She talked to several people, both on the
8 phone and in person -- that's part of her daily duties -- just
9 about FMLA.

10 As you have already heard, the FMLA is a federal law
11 that allows eligible employees up to 12 weeks of unpaid leave
12 during a 12-month period if they have a qualifying serious
13 medical condition. Twelve weeks is equal to 60 days, which is
14 equal to 480 hours. That's just simple math.

15 You will hear Ms. Shinnawi testify. She will tell
16 you that plaintiff called her once in September 2016.
17 Plaintiff asked about taking a leave that exceeded the amount
18 of FMLA time available to him. She gave him accurate and
19 factual information.

20 She told him he cannot take more FMLA than what he
21 had available based on the math. She told him that he had
22 already taken some FMLA in 2016 and did not have enough FMLA
23 time to cover eight more weeks based on the math.

24 Yet you will hear from plaintiff that his response
25 was to abruptly quit. Plaintiff now wants to blame

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1 Ms. Shinnawi for his decision to quit. That is why we are
2 here today.

3 Members of the jury, my name is Nazia Hasan. I,
4 along with my cocounsel, Kate Ori, represent the Cook County
5 Sheriff's Office. Also seated at counsel table is Yolanda
6 Delgado, a representative of the sheriff's office.

7 The sheriff's office has about 6,000 employees and is
8 the primary law enforcement office for the county.

9 The sheriff's office provides three main services:

10 First, operating the Cook County Jail.

11 Second, providing security for courts and county
12 buildings.

13 Third, providing police services for unincorporated
14 areas of Cook County.

15 As you heard, plaintiff was a correctional officer in
16 the Cook County Jail and worked from 1989 until he quit in
17 September 2016.

18 Ms. Shinnawi will further tell you that her sole job
19 was to discuss and explain the FMLA process to employees and
20 review and approve requests for FMLA leave.

21 She will tell you that she told plaintiff that he
22 should talk to his supervisor or chain of command about what
23 other leave options he may have.

24 She had one phone conversation with him.

25 Ms. Shinnawi gave plaintiff accurate and factual responses

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1 when he asked what could happen if he took eight additional
2 weeks of FMLA leave when he only had a little over four
3 remaining. She told him that was not up to her, and
4 Attendance Review Unit would get involved and handle any
5 unauthorized absences. They never spoke about leave again.

6 Ms. Shinnawi will explain that plaintiff never
7 submitted an application for any leave around the time of
8 their conversation.

9 You will hear testimony from plaintiff. He will
10 probably tell you that he suffered from medical conditions.
11 You won't hear anyone contest that.

12 He will tell you he had unused sick time and vacation
13 time when he quit. You won't hear anyone contest that.

14 He will tell you that he did not talk to a supervisor
15 about taking other types of leave.

16 He will tell you that he didn't talk to Ms. Shinnawi
17 again or anyone else at the sheriff's office before he
18 abruptly quit.

19 You will hear from Rosemarie Nolan, a former human
20 resources director at the sheriff's office. She will tell you
21 about the sheriff's FMLA leave policy and how the sheriff's
22 office handled leave requests. She will also tell you about
23 the sheriff's office's unauthorized absence policy.

24 You will see the type of report that Ms. Shinnawi
25 looked at during her five-minute phone conversation with

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1 plaintiff. It's called a Time Tracker report.

2 You will see the sheriff's FMLA leave policy and
3 unauthorized absence policy.

4 You will see the type of form used to request FMLA
5 leave that the sheriff's office uses that plaintiff did not
6 submit in September 2016.

7 Plaintiff will tell you he worked for the sheriff's
8 office for 27 years. He will tell you he knew the rules. He
9 knew the sheriff's office had policies and how they worked.
10 He had applied for FMLA, and the sheriff's office approved his
11 request. Yet after one informational phone call with
12 Ms. Shinnawi, he quit.

13 He had approved FMLA leave. He just didn't have
14 enough to cover eight more weeks. That's the math. You only
15 get 12 weeks.

16 Plaintiff will tell you that the sheriff's office
17 interfered with his ability to take FMLA leave even though his
18 single interaction was a five-minute phone call with
19 Ms. Shinnawi, even though he never submitted a written
20 request, even though he quit his job.

21 He wants you to blame his decision to quit on his
22 phone conversation with Ms. Shinnawi. He wants the sheriff's
23 office to pay him for the consequences of his decision.

24 After you have heard all the evidence, we ask that
25 you find in favor of the sheriff's office and against

1 Mr. Zicarelli, the plaintiff.

2 THE COURT: Thank you, Ms. Hasan.

3 Plaintiff may call your first witness.

4 MR. K. FLAXMAN: Ms. Shinnawi.

5 THE COURT: Ma'am, step right up here, please.

6 Before you sit down, would you please raise your right hand.

7 (Witness sworn.)

8 THE COURT: Please be seated.

9 WYLOLA SHINNAWI, PLAINTIFF'S WITNESS, SWORN

10 DIRECT EXAMINATION

11 BY MR. K. FLAXMAN:

12 Q. Good afternoon, ma'am.

13 Could you state your name and spell your last name
14 for us, please.

15 A. Wylola Shinnawi. My last name is spelled S-h-i-n-n-a-w-i.

16 Q. And did you formerly work for the sheriff of Cook County?

17 A. Yes, I did.

18 Q. What was your last position?

19 A. FMLA manager/coordinator.

20 Q. Were you in charge of FMLA applications?

21 A. Yes.

22 Q. When you stopped working at the sheriff, did you retire?

23 A. Yes, I did.

24 Q. Is retiring different than quitting?

25 A. Yes.

1 Q. Could you tell us the difference, please.

2 A. When you quit, you just walk out the door. You give
3 notice and walk out.

4 I retired. There was a set date. I went through a
5 retirement process. And at which point, you know, you start
6 receiving your pension.

7 Q. Did your pension increase as you worked more time with the
8 sheriff?

9 A. Well, they take money out of your check every payday
10 towards your pension.

11 Q. And do you get it back plus -- did you get back more than
12 what you put in when you retired?

13 A. Right now I'm just using what I put in.

14 Q. Do you eventually get back more than what you put in?

15 A. I don't know. I don't work on the pension board. They
16 handle that.

17 Q. Before you worked for the sheriff, what kind of work did
18 you do?

19 A. I worked for a financial institution.

20 Q. Were you like an administrator assistant?

21 A. Yes, to an executive director.

22 Q. Before you started working, did you go to school?

23 A. Yeah, I went to school.

24 Q. What's the -- did you graduate from college?

25 A. I started student teaching.

1 Q. So you have a degree in substitute teaching?

2 A. Yes.

3 Q. And you found that there was work that you enjoyed more
4 than substitute teaching?

5 A. Well, actually being a teacher was my mother's idea, not
6 mine. So I went my own way.

7 Q. And you ended up working for the sheriff?

8 A. Uh-huh.

9 Q. Now, back in 2016, was it your -- were you a person or the
10 person who decided whether or not an application submitted by
11 a correctional officer for FMLA leave would be approved?

12 A. Yes.

13 Q. And actually you were the person who approved the
14 applications?

15 A. I always had helpers -- helpers, assistants.

16 Q. Were you the chief?

17 A. I was the main one.

18 Q. And did you ever approve FMLA leave for Salvatore
19 Ziccarelli?

20 A. I'm sure I did in the past.

21 Q. Now, to get FMLA leave, is there a form that the employee
22 has to fill out?

23 A. Yes.

24 Q. Before you testified here today, did you get a chance to
25 look at the forms that we have marked as joint exhibits?

1 A. I glanced at them.

2 Q. I think one of the forms is Joint Exhibit 4.

3 MR. K. FLAXMAN: Could I move that into evidence at
4 this time, your Honor?

5 THE COURT: Any objection?

6 MS. HASAN: No objection. It's a joint exhibit.

7 MR. K. FLAXMAN: Could we try to put that on the
8 screen? If we have Mr. -- it's on the laptop, which is
9 plugged in.

10 (Brief pause.)

11 MR. K. FLAXMAN: I think it's --

12 THE COURT: There we go.

13 MR. K. FLAXMAN: It's not there.

14 THE COURT: It's not there yet. It's not in
15 evidence.

16 MR. K. FLAXMAN: Are we on?

17 THE COURT: It's being displayed to the witness. You
18 have asked to admit it.

19 What's the defense position?

20 MS. HASAN: We have no objection to the admission of
21 this evidence as a joint exhibit.

22 THE COURT: All right. This is -- Joint Exhibit 4 is
23 admitted.

24 (Joint Exhibit 4 was received in evidence.)

25 MR. K. FLAXMAN: May we publish it, please?

1 THE COURT: You may.

2 MR. K. FLAXMAN: Thank you.

3 BY MR. K. FLAXMAN:

4 Q. Are you able to see what's been marked as Joint Exhibit 4?

5 A. Yes.

6 Q. Are you able to read it on your screen, or do you have to
7 make it bigger?

8 A. No. It's fine.

9 Q. Could you tell us what the first page of this exhibit is?

10 A. This is a designation notice for Family and Medical Leave
11 Act.

12 Q. Is this first page the approval form --

13 A. Yes.

14 Q. -- from the sheriff's office?

15 A. Yes, it's an approval form that we were using at one
16 point.

17 Q. What's the date of this form?

18 A. December 29th, 2015.

19 Q. Now, there is an "X" next to language, Because your
20 leave -- the leave you will need will be unscheduled.

21 What does that mean?

22 A. It means probably he applied for intermittent leave, which
23 is days here and there, but he doesn't know exactly. He can't
24 say, "Oh, February 12th I'm going to be off." It can be at
25 any point in that one month.

1 Q. If Mr. Ziccarelli needed to take four weeks off for a
2 medical reason, would he have to submit a new form?

3 A. Yes. This one is approved for intermittent.

4 Q. I missed -- you trailed off. I missed what you said.

5 A. Yes, he would have to submit a new form.

6 Q. What would the new form be?

7 A. Well, he would request a single period of absence, not
8 intermittent.

9 Q. Would that have to be supported with a --

10 A. Yes.

11 Q. -- a doctor's record?

12 A. Yes.

13 Q. If we turn to Page -- 1, 2, 3 -- 4 of the exhibit, is that
14 a form that says, "Certification of healthcare provider for
15 employee's serious health condition, Family and Medical Leave
16 Act"?

17 A. Yes.

18 Q. This is the form, is it not, that Mr. Ziccarelli's
19 physician filled out for intermittent leave after
20 December of 2015?

21 A. I would have to see the second page.

22 MR. K. FLAXMAN: All right. Could we go back to
23 Page 2, please.

24 BY MR. K. FLAXMAN:

25 Q. Is that the page you would like to look at?

1 A. He is again requesting intermittent leave.

2 Q. Is that the box that's checked at the bottom where it
3 says, "An intermittent leave:"?

4 A. Yes.

5 Q. Am I correct that he -- what was he requesting in
6 intermittent leave?

7 A. This one?

8 Q. Yes.

9 A. He is requesting intermittent leave. His doctor is
10 recommending three to seven days per month, one to eight hours
11 per episode.

12 Q. And if he wanted to take FMLA leave for a single period of
13 absence from a start date to an end date --

14 A. Uh-huh.

15 Q. -- would he need a form where that box above "intermittent
16 leave" was checked?

17 A. Yes, he would have checked "a single period of absence."

18 Q. Now, have you ever looked at Mr. Ziccarelli's time
19 records?

20 A. Only when asked to. I don't really look at his time
21 records. That's payroll.

22 MR. K. FLAXMAN: Could we have Exhibit --

23 BY MR. K. FLAXMAN:

24 Q. Let me ask you to look at what's going to be on the screen
25 as Exhibit 5.

1 MR. K. FLAXMAN: And I would -- this is a joint
2 exhibit. I would move the introduction into evidence of the
3 joint exhibit.

4 THE COURT: Any objection?

5 MS. HASAN: If she can testify that she has seen this
6 document.

7 BY MR. K. FLAXMAN:

8 Q. Could you look at --

9 MR. K. FLAXMAN: May I, your Honor?

10 THE COURT: Lay a further foundation.

11 MR. K. FLAXMAN: Sure.

12 BY MR. K. FLAXMAN:

13 Q. Could you look at the bottom right of that Exhibit 5 where
14 it says "Printed by."

15 A. Uh-huh.

16 Q. Is that a "Yes"?

17 A. Wait. I'm sorry. Yes.

18 Q. And whose name is next to that?

19 A. That's my name.

20 MR. K. FLAXMAN: We move the introduction into
21 evidence of the exhibit.

22 MS. HASAN: No objection.

23 THE COURT: All right. Joint Exhibit 5 is admitted.

24 (Joint Exhibit 5 was received in evidence.)
25

1 BY MR. K. FLAXMAN:

2 Q. Could you tell us what Exhibit 5 is, please.

3 A. This is a timesheet that has been completed by payroll.
4 Occasionally we will print one out to look at somebody's time.
5 But other than that, it's useless to me.

6 Q. Let me ask you to look at Page 4 that starts with
7 July 24th of 2016.

8 Do you see that?

9 A. Okay. Yes.

10 Q. Now, in that box for July 24th, 2016, there is an "A."
11 Underneath the "A" is eight hours.

12 What does the "A" mean?

13 A. He took a regular sick day.

14 Q. And then 7/25 it says "FMLA/A."

15 What does that mean?

16 A. He took an FMLA sick day.

17 Q. The next day, 7/26/2016, what does that show?

18 A. It appears he worked that day.

19 Q. And the next day, July 27th, he was absent for eight
20 hours?

21 A. He took a regular sick day that day.

22 Q. And the 28th, he took --

23 A. FMLA sick day.

24 Q. Excuse me?

25 A. FMLA sick day.

1 Q. Now, if we go all the way to the right on that row, do you
2 see the number 528.05?

3 A. Yes.

4 Q. That's the number of paid sick days that are available to
5 him at the beginning of that week; is that right?

6 A. I believe that's in hours.

7 Q. Okay. And then if we go to the next row down, the number
8 of hours for sick time is 483.76?

9 A. Yes.

10 Q. Does that mean that he was getting paid for time that he
11 was taking off?

12 A. Those hours are just counting how much sick time he has
13 used.

14 Q. I'm having trouble hearing you. I'm sorry. Can you talk
15 closer to the microphone maybe.

16 A. All right. You said 528. Then it went to 483.75.

17 The sick time he took from 8/7 to 8/20 I believe was
18 subtracted from the 528, and he has 483 left.

19 Q. So when he would take FMLA leave time, he would get paid
20 for it; is that right?

21 A. If he attached benefit time to it.

22 Q. Now, do you remember talking with Mr. Ziccarelli in
23 August of 2016?

24 A. Yes.

25 Q. Do you remember the date that you spoke with him?

1 A. No, I do not.

2 Q. Was that phone call in person or on the phone or some
3 other way?

4 A. It was on the phone.

5 Q. When you took that phone call, were you at your desk as
6 the FMLA coordinator?

7 A. Yes.

8 Q. Do you remember whether it was in the morning or the
9 afternoon?

10 A. No. I don't remember.

11 Q. Did you take any -- did you record the phone call?

12 A. No.

13 Q. Did you take any notes after the phone call?

14 A. I don't believe I did.

15 Q. Did you write a memo to -- did you send an email to anyone
16 about the phone call?

17 A. I spoke with my director.

18 Q. Who's your director?

19 A. I'm not sure. It was either Karen Tann or Rebecca
20 Reiersen.

21 Q. Do either of those still work for the sheriff?

22 A. No. Neither.

23 Q. When you spoke to Mr. Ziccarelli, did you tell him that if
24 he wanted to take continuous time off for FMLA leave, he would
25 have to submit a new form?

1 A. Yes, I believe I did.

2 Q. Now, you testified about this -- about your conversation
3 with Mr. Zicarelli sometime before testifying today; is that
4 right?

5 A. At a deposition.

6 Q. Excuse me?

7 A. It was a deposition.

8 Q. Can you tell us what a deposition is.

9 A. That's when you meet with the lawyers -- his lawyer, he
10 was there, I was there, my lawyers. We were asked questions,
11 and it was all taken down by a court reporter.

12 Q. And before you were asked questions and answered
13 questions, were you sworn to tell the truth?

14 A. You know, I don't remember.

15 Q. Well, were you trying to tell the truth at the deposition?

16 A. Yes.

17 Q. And did you in fact tell the truth at the deposition?

18 A. Yes.

19 Q. Did you have a chance to look at your deposition --

20 A. Yes.

21 Q. Let me finish my question.

22 -- before testifying here today?

23 A. Yes.

24 Q. When you reviewed your deposition, did you see your answer
25 where you said, "I told Mr. Zicarelli that he would have to

1 fill out a new form if he wanted to take continuous time off,
2 FMLA"?

3 A. No.

4 Q. As a matter of fact, that's not in your deposition; isn't
5 that right, ma'am?

6 A. The lawyer didn't ask me that.

7 Q. Let me ask the question again.

8 When you looked through your deposition before
9 testifying here today, you did not see your answer -- any
10 answer saying, "I told him he needed a new form"?

11 A. No.

12 Q. That's because you didn't say that at your deposition;
13 isn't that right, ma'am?

14 A. No, that is not right.

15 Q. Well, could you -- if I give you your deposition, could
16 you point out to us where you said that, that, "I told him he
17 needed a new form"?

18 A. His attorney did not ask me that question.

19 Q. Excuse me?

20 A. His attorney did not ask me that question.

21 Q. Well, that isn't my question, ma'am.

22 My question was: Did you say that at your deposition?

23 And you said, "No."

24 Is that right?

25 A. I said, "No."

1 Q. And you're saying -- didn't your attorney ask you: Could
2 you tell us exactly what you said to Mr. Zicarelli and what
3 he said to you?

4 A. From the telephone conversation?

5 Q. Right.

6 A. He asked me -- no. He informed me he wanted to take --
7 maybe it was eight weeks' leave.

8 Q. We are talking about the lawyer or Mr. Zicarelli?

9 A. This is what Mr. Zicarelli said to me in the conversation
10 on the phone.

11 Q. Let's go back to the beginning so we can all be straight
12 about this.

13 This is the phone conversation you had -- was it
14 sometime in August of 2016?

15 A. I believe so.

16 Q. And you don't remember whether it was the morning or the
17 afternoon; is that right?

18 A. No. It was daylight.

19 Q. It was daylight?

20 A. Yeah. It was daylight.

21 Q. And you don't have any notes that you made of the phone
22 call?

23 A. No, I do not.

24 Q. A call came through to you.

25 What's the first thing that you heard spoken to you

1 on that phone call?

2 A. It was Mr. Ziccarelli. He told me who he was.

3 Q. Well, when you said, "He told me who he was," what exactly
4 did he say?

5 A. He said, "This is Salvatore Ziccarelli." And he said, "I
6 need to take a leave."

7 Q. Did he tell you who he worked for?

8 A. Yes.

9 Q. What words did he use?

10 A. He said, "I work for the sheriff, and I want to know how
11 many FMLA hours. I have to take a leave."

12 Q. Now, when you were working as the FMLA coordinator, did
13 you work for correctional officers who worked for the sheriff?

14 A. Yes.

15 Q. Did you work for the Sheriff's Police?

16 A. Yes.

17 Q. Did you work for Court Services?

18 A. Yes.

19 Q. Is there another division of people who work for the
20 sheriff who can take FMLA leave?

21 A. Civilians.

22 Q. Okay. And did Mr. Ziccarelli tell you that he was a
23 civilian?

24 A. No. He told me he was a correctional officer.

25 Q. Okay. And he said, "My name is Sal Ziccarelli. I'm a

1 correctional officer."

2 Did he tell you where he's assigned?

3 A. No, I don't believe he did.

4 Q. Did he tell you how long he had been working for the
5 sheriff?

6 A. No, he did not.

7 Q. Did he tell you his employee number?

8 A. Yes, he did.

9 Q. And did you look anything up when he gave you that
10 information?

11 A. I pulled him up in Time Tracker.

12 Q. Now, what's Time Tracker?

13 A. Time Tracker is a database that payroll inputs all the
14 information into. You can look in there and see the -- it
15 counts FMLA, and you can see how many hours he has used, how
16 many hours he has left.

17 Q. Did you look at anything else while you were speaking to
18 Mr. Zicarelli?

19 A. No.

20 Q. All right. Let me show you what's previously been marked
21 as Joint Exhibit No. 1, which might take a minute to get.

22 (Brief pause.)

23 BY MR. K. FLAXMAN:

24 Q. Is this what you mean when you said you looked at Time
25 Tracker?

1 A. Yes.

2 MR. K. FLAXMAN: We move the introduction into
3 evidence of Joint Exhibit No. 1 and ask to publish it to the
4 jury.

5 THE COURT: Any objection?

6 MS. HASAN: No objection.

7 THE COURT: All right. Joint Exhibit No. 1 is
8 admitted.

9 (Joint Exhibit No. 1 was received in evidence.)

10 BY MR. K. FLAXMAN:

11 Q. Now, did you print this out back when you spoke to
12 Mr. Zicarelli, or did you look at it on the screen?

13 A. I looked at it on the screen.

14 Q. When you looked at it on -- this one says, "Employee in a
15 nonpayable status."

16 Do you know what that means?

17 A. It could mean one of two things. I'm not sure. This is
18 generated through payroll. It means that he is not being
19 paid -- whatever.

20 Q. So when you looked at it on the screen, did it say,
21 "Employee in a nonpayable status"?

22 A. Yes, it says that up there.

23 Q. Excuse me?

24 A. Yes, it does say it on there.

25 Q. No. When you looked at it back in September of 2016, did

1 it say, "Warning: Employee in a nonpayable status"?

2 A. I don't remember.

3 Q. Okay. And underneath that it has Mr. Ziccarelli's name
4 and his start date and some other information about him; is
5 that right?

6 A. Yes.

7 Q. And then there is something that says, "RDO effective
8 date."

9 Do you know what that means?

10 A. "RDO" is his regular day off.

11 Q. What does it mean to have a regular day off on
12 November 9th of 2014?

13 A. It means he did not work that day. It was his off day.

14 Q. Well, do correctional officers get one off day a week?

15 A. No. I believe they get two.

16 Q. Do you have any idea why this form says his RDO is
17 11/9 of 2014, and the form is written -- printed sometime --
18 let me ask you another question.

19 If you look at the bottom right, does that say
20 December 13th of 2017?

21 A. Yes, it does.

22 Q. Is that when the form was printed out?

23 A. Most likely.

24 Q. Excuse me?

25 A. Yes.

1 Q. Now, do you have any idea why it says, "RDO effective date
2 11/9/2014," on a form that's printed out more than three years
3 later?

4 A. I don't know where you are looking on this form.

5 Q. Well --

6 A. I don't see what you see. Oh, I see it.

7 Q. Do you see where it says, "Position ID, accrual date,
8 business unit"?

9 A. I don't know. Their RDOs changed. So maybe that was when
10 his RDO started, on 11/9/14. This is payroll-generated. I
11 don't know.

12 Q. When you looked at it back when you spoke to
13 Mr. Ziccarelli, did you look at the information that says
14 "FMLA information"?

15 A. That is what I looked at.

16 Q. And what does it show for 2016?

17 A. He was approved 1/28/16 through 1/28/17. And he
18 currently, at that point, had used 304 hours.

19 Q. And it also shows FMLA time for previous years; is that
20 right?

21 A. Right.

22 Q. And those years go back to 2009 and 2007 and then 2007; is
23 that right?

24 A. 2004, 2007, yes.

25 Q. Could you show us or tell us where it says that -- did I

1 hear --

2 Could you tell us where it says that it was
3 intermittent FMLA leave?

4 A. Right underneath the dates.

5 Q. "INT/S"?

6 A. Right.

7 Q. Okay. And he had intermittent leave in 2016, 2015, 2014,
8 2013, and 2012, and 2011; is that right?

9 A. Yes.

10 Q. Did you tell Mr. Ziccarelli how to get a form to convert
11 his intermittent FMLA leave to continuous FMLA leave?

12 A. He never asked me.

13 Q. As a matter of fact, you never discussed applying for
14 continuous FMLA leave with Mr. Ziccarelli; isn't that right?

15 A. Yes, I did.

16 Q. What would Mr. Ziccarelli have had to do to apply for
17 continuous FMLA leave?

18 A. He would have just had to have a health provider form
19 filled out again requesting a single period of absence and
20 sent it to me.

21 Q. And it's your testimony today that you told him that's
22 what he had to do?

23 A. Yes, I did.

24 MR. K. FLAXMAN: Could I have a minute, your Honor?

25 THE COURT: Yes.

1 (Counsel conferring.)

2 MR. J. FLAXMAN: There is some red marking on the
3 screen. I don't know what machine that's coming from.

4 (Brief pause.)

5 BY MR. K. FLAXMAN:

6 Q. I am going to ask you some questions about your
7 deposition. And I will hand you, after showing it to your
8 counsel, a copy of it.

9 MR. K. FLAXMAN: If I may?

10 THE COURT: You may.

11 (Document tendered to counsel.)

12 BY MR. K. FLAXMAN:

13 Q. I am handing you what we've agreed is a copy of your
14 deposition. And it's two-sided, so you're warned.

15 (Document tendered to the witness.)

16 BY MR. K. FLAXMAN:

17 Q. Now, if you look at Page 4 of the deposition, it starts
18 out by saying, "Wylola Shinnawi, a defendant herein, having
19 been first duly sworn."

20 Do you see that?

21 MR. K. FLAXMAN: I don't think we should be
22 publishing it, or is that your procedure?

23 THE COURT: You should not be publishing it. It's
24 not in evidence.

25 MR. K. FLAXMAN: That's what I thought.

1 THE COURT: Well, you can proceed.

2 MR. K. FLAXMAN: Thank you.

3 BY MR. K. FLAXMAN:

4 Q. Do you see where it says that?

5 A. On what page?

6 Q. The first page, "Witness sworn." It should be a 4 at the
7 top right.

8 A. I don't see that on my Page 4.

9 MR. K. FLAXMAN: May I approach?

10 THE COURT: You may.

11 BY MR. K. FLAXMAN:

12 Q. Let me direct your attention to Page 5 where it says,
13 "Whereupon, the witness was duly sworn."

14 I think I might have given you the wrong document.
15 Excuse me.

16 (Brief pause.)

17 MR. K. FLAXMAN: May I?

18 THE COURT: You may.

19 (Document tendered.)

20 BY MR. K. FLAXMAN:

21 Q. I am handing you what is now a copy of your deposition.

22 Do you see on the first page where it says that you
23 are having been duly first sworn?

24 A. Yes, I do.

25 Q. After having read that, do you have a recollection that

1 when you started testifying at the deposition, you raised your
2 hand and said, "I agree that everything I'm going to say today
3 is the truth," or words to that effect?

4 A. Yes.

5 Q. Thank you.

6 And then at the deposition, the lawyer for
7 Mr. Zicarelli, was that me or was that somebody else?

8 A. It was somebody else.

9 Q. Okay. He asked you:

10 "What did Mr. Zicarelli say when you said he did not
11 have sufficient FMLA leave available to him?"

12 MS. HASAN: Objection. Improper impeachment.

13 MR. K. FLAXMAN: I'm not impeaching. I am just
14 directing her to where we are.

15 MS. HASAN: Could you direct us as well, please.

16 THE COURT: I am going to sustain the objection.

17 Let's go to a sidebar for just a moment.

18 (The following proceedings were had at sidebar:)

19 THE COURT: Can everyone hear me?

20 MR. J. FLAXMAN: Yes, your Honor.

21 THE COURT: All right. What's the objection?

22 MS. HASAN: I objected based on improper impeachment.

23 THE COURT: Based on the substance of the alleged
24 impeaching statement or --

25 MS. HASAN: He hasn't identified what statement he is

1 contesting she misstated in her deposition. We are lost as to
2 where we are going with this.

3 THE COURT: Yes, we are.

4 MR. K. FLAXMAN: Could we have a five-minute break,
5 your Honor?

6 THE COURT: To what end?

7 MR. K. FLAXMAN: So I can regroup. I am not -- I was
8 not prepared for her answer that, I told him about -- you have
9 to submit a new form.

10 I think I would be able to impeach her, but I would
11 like five minutes to try to get that together.

12 THE COURT: All right. We will take a break until
13 3:00 o'clock.

14 MR. K. FLAXMAN: Thank you.

15 (End of sidebar proceedings.)

16 THE COURT: Ladies and gentlemen, we are going to
17 take a brief break. I will ask you to be ready to come back
18 into the courtroom at 3:00 o'clock, and we will resume.

19 All rise.

20 Ms. Vaisey will take you out.

21 (Jury out at 2:53 p.m.)

22 THE COURT: Okay. Starting back up at 3:00 o'clock
23 promptly.

24 MR. K. FLAXMAN: Thank you, your Honor.

25 (A brief recess was taken at 2:53 p.m.)

1 THE COURT: Are we ready to bring the jury back?

2 MR. K. FLAXMAN: Thank you.

3 (Brief pause.)

4 THE CLERK: All rise.

5 (Jury in at 3:01 p.m.)

6 THE COURT: All right. Please be seated.

7 Thank you, ladies and gentlemen. We are ready to
8 resume with direct examination.

9 MR. K. FLAXMAN: Thank you, your Honor.

10 BY MR. K. FLAXMAN:

11 Q. Let's go back to your phone call with Mr. Ziccarelli.

12 After he identified himself and told you his name and
13 told you where he worked, could you tell us as best you can
14 what you recall he said next.

15 A. Well, I said, "How can I help you?"

16 He said he would -- his physician is recommending
17 eight weeks for him to be off work.

18 And then I pulled him up in Time Tracker, and I saw
19 he did not have enough FMLA hours for eight weeks.

20 I said, "You can use the remainder of what you have
21 left, and then you would have to use sick time."

22 Q. So is it your testimony that he could have used his
23 remaining FMLA leave time for a continuous --

24 A. Yes.

25 Q. -- time off?

1 A. Yes.

2 Q. Even though he only had intermittent time, he could take
3 the full --

4 A. Well, no. He would have to turn in a new form for
5 continuous leave.

6 Q. You didn't say that, did you?

7 A. On the phone I did.

8 Q. Well, could you tell us again what the first thing is you
9 told Mr. Zicarelli after you looked him up in Time Tracker?

10 A. I told him he had 176 hours left that he could use for his
11 single period. After that, he would have to use his own
12 benefit time.

13 Q. Now, 160 hours is four weeks?

14 A. 76.

15 Q. Excuse me?

16 A. I think he had 176 hours left.

17 Q. That's four weeks and --

18 A. About.

19 Q. -- 12 hours?

20 A. Approximately.

21 Q. And then after you told him he only had 172 hours, what
22 did Mr. Zicarelli say to you?

23 A. He said, "Well, I need it all for FMLA."

24 Q. You have to -- could you talk into the microphone for me.
25 I'm really sorry.

1 A. He said he needed FMLA for the whole period of time.

2 Q. And then you told him, "I can't give you more time"?

3 A. Yes.

4 Q. And he said, "I need the time"?

5 A. Yes.

6 Q. Did you ever talk to him about the attendance unit?

7 A. Yes, I did.

8 Q. Could you tell the ladies and gentlemen of the jury what
9 the attendance unit is.

10 A. It's called "attendance review," and they review people's
11 time forwarded to them from payroll.

12 Q. Does the sheriff have a policy against people -- employees
13 abusing sick time?

14 A. I believe he does.

15 Q. Is it an abuse of sick time to take a sick day before and
16 after a regular day off?

17 A. I don't know. That's not under my purview.

18 Q. That wasn't my question, ma'am.

19 You know, don't you, that the sheriff has a policy of
20 abusing sick time, and the attendance unit checks to see that
21 people don't abuse sick time?

22 A. Yes.

23 Q. Do you know what happens to someone who abuses sick time?

24 A. No.

25 Q. At your deposition do you remember being asked at Page 22,

1 Line 14:

2 "Did you have any further conversation with
3 Mr. Ziccarelli?"

4 And your answer was, "I don't believe so."

5 MS. HASAN: Objection. Improper impeachment.

6 THE COURT: Sustained.

7 BY MR. K. FLAXMAN:

8 Q. You only spoke to Mr. Ziccarelli once; is that right?

9 A. Yes.

10 Q. Did you know about Mr. Ziccarelli's medical condition that
11 justified the grant of FMLA leave?

12 A. I wasn't aware. At that time, I did not approve his FMLA.
13 Someone else read it.

14 Q. Did you ever approve Mr. Ziccarelli's leave?

15 A. For years before.

16 Q. One year before?

17 A. I don't know how many times I approved it, but I know that
18 I did a couple times.

19 Q. The condition that he had the year before was going to
20 last, according to the physician, for the rest of his life;
21 isn't that true?

22 A. Sometimes physicians put on there "lifetime."

23 Q. And you knew what that condition was the year before when
24 you approved Mr. Ziccarelli's FMLA leave request, didn't you?

25 A. Yes.

1 Q. And what was that condition, ma'am?

2 A. I don't remember.

3 MR. K. FLAXMAN: May I attempt to refresh the
4 witness' recollection with the --

5 MS. HASAN: Objection. Relevance.

6 MR. K. FLAXMAN: -- Joint Exhibit 4?

7 MS. HASAN: I apologize.

8 Objection. Relevance.

9 THE COURT: Sidebar.

10 (The following proceedings were had at sidebar:)

11 THE COURT: What's the relevance, Mr. Flaxman?

12 She said she previously approved him for FMLA leave.

13 She just doesn't recall the specifics.

14 What's the relevance of the specifics?

15 MR. K. FLAXMAN: Well, her memory right now is in
16 question. We are trying to place it in question, that it's
17 being very selective and that it's remembering things that
18 were never spoken before.

19 She approved the application in January of 2015, and
20 she read it over, and she knows what it is.

21 THE COURT: Okay. You can -- well, I'm inclined,
22 Ms. Hasan, to allow him to refresh recollection with the
23 January 2015, but that's as far back as we go.

24 MS. HASAN: Again, the relevance --

25 THE COURT: You can respond to that.

1 MS. HASAN: Sorry.

2 The relevance of the condition your Honor has already
3 ruled, not admissible. And that's all this document would
4 serve a purpose for.

5 THE COURT: Both sides mentioned the fact that she
6 was -- that the issue was PTSD. I don't think that that is
7 problematic in and of itself. We are not making this case a
8 trial about PTSD, but I will allow the question as to the
9 January 2015 application that was signed by -- approved by
10 Ms. Zicarelli.

11 MR. K. FLAXMAN: Ms. Shinnawi.

12 THE COURT: I'm sorry. Ms. Shinnawi.

13 MS. HASAN: Thank you.

14 (End of sidebar proceedings.)

15 (Counsel conferring.)

16 MR. K. FLAXMAN: We will move on, your Honor. I'm
17 sorry.

18 (Counsel conferring.)

19 MR. K. FLAXMAN: Could I -- I would like to -- is it
20 up for the witness? I would like to show --

21 THE COURT: Yes, it is.

22 MR. K. FLAXMAN: Excuse me?

23 THE COURT: Yes, it is.

24 MR. K. FLAXMAN: Thank you.

25

1 BY MR. K. FLAXMAN:

2 Q. Ma'am, could you look at what's in front of you. It's
3 called Joint Exhibit 3.

4 That has your signature on it; is that right?

5 A. Yes.

6 Q. That's your approval of the FMLA application for 2015; is
7 that right?

8 A. Yes.

9 Q. When you approved it, did you look at the application for
10 FMLA leave that Mr. Zicarelli had submitted that year?

11 A. Yes. I'm sure I did.

12 Q. And did you review what the doctor said?

13 A. Yes.

14 Q. If I showed that to you now, do you think that might
15 refresh your recollection about what you knew back in 2015?

16 A. Yes.

17 THE COURT: Mr. Flaxman, you have got it on the
18 screen.

19 MR. K. FLAXMAN: I can't hear you, your Honor. I'm
20 sorry.

21 THE COURT: You have got it on the screen. She can
22 look at it.

23 MR. K. FLAXMAN: I don't have the next -- okay.

24 BY MR. K. FLAXMAN:

25 Q. Let me show you on the screen this Joint Exhibit 2.

1 Do you see that?

2 THE COURT: I'm sorry. You were just asking her
3 about Joint Exhibit 3.

4 MR. K. FLAXMAN: I know.

5 BY MR. K. FLAXMAN:

6 Q. Was Joint Exhibit 2 the documents you reviewed when you
7 approved FMLA leave in 2015 in Exhibit 3?

8 A. That's the first page.

9 Q. Okay. And if we look at Page 3 -- Page 2 of
10 Joint Exhibit 2, that's the doctor's statement about
11 Mr. Zicarelli's ailments?

12 A. Yes.

13 Q. After looking at that, does that refresh your recollection
14 about what Mr. Zicarelli's ailments were?

15 A. Yes.

16 Q. What were Mr. Zicarelli's ailments?

17 A. I can't -- HIPAA.

18 Q. Excuse me?

19 A. Do you want me to read what's wrong with him?

20 THE COURT: No, ma'am.

21 If looking at the documents has refreshed your
22 recollection, you can answer the question based on your
23 recollection.

24 If you still don't have a present recollection, then
25 you should not read the document.

1 BY THE WITNESS:

2 A. Yes, it refreshes my recollection.

3 BY MR. K. FLAXMAN:

4 Q. And what is your present recollection?

5 A. That he has health issues.

6 Q. And were those health issues PTSD?

7 A. Yes.

8 Q. And was that a condition that the physician thought was
9 going to last for his lifetime?

10 A. Yes.

11 Q. Now, you knew Mr. Ziccarelli's condition when you spoke to
12 him in August of 2016; is that right?

13 A. Yes.

14 Q. You knew that he had PTSD?

15 A. Not at the time of the phone call. I later looked.

16 Q. You didn't remember having approved his -- am I correct
17 that you didn't remember having approved his application for
18 FMLA leave in year --

19 A. In 2015? No, I did not remember.

20 Q. To have a present recollection of the fact that he has
21 PTSD, what did you have to do? Did you have to look at
22 documents?

23 A. Yes.

24 Q. About how many FMLA applications did you work on a year
25 back in 2016?

1 A. I would say I looked at at least between five and ten a
2 day.

3 Q. Did you work 250 days a year?

4 A. I'm not exactly sure how many days I worked a year.

5 Q. Didn't you work more than 200 days a year? Didn't you,
6 ma'am?

7 A. Most likely.

8 Q. What did you look at, if anything, to refresh your
9 recollection about telling Mr. Ziccarelli that he would have
10 to reapply for continuous FMLA leave if he wanted to take
11 other than intermittent leave?

12 A. I didn't look at -- I looked at his hours and what he had
13 left, and I told him he could take the remaining hours.

14 Q. That wasn't my question, ma'am.

15 When you testified here today that you recalled
16 telling Mr. Ziccarelli that, "If you want to take continuous
17 FMLA leave, you have to file a new form," what did you look at
18 to refresh your recollection about that?

19 MS. HASAN: Objection. Misstates testimony.

20 THE COURT: I'm going to sustain the objection. You
21 can --

22 BY MR. K. FLAXMAN:

23 Q. Did you look at anything --

24 THE COURT: -- rephrase the question.
25

1 BY MR. K. FLAXMAN:

2 Q. Did you look at anything to refresh your recollection
3 about having told Mr. Ziccarelli that, "You have to reapply
4 for continuous FMLA leave"?

5 A. There was no need.

6 Q. And why was that, ma'am?

7 A. Because I already knew he had an approved FMLA running.

8 Q. That wasn't my -- but my question is: Are you testifying
9 here today that you have a vivid recollection that back in
10 August of 2016, you told Mr. Ziccarelli that if he wanted to
11 take continuous FMLA leave, he would have to fill out a new
12 form?

13 Is that your testimony today?

14 A. Yes.

15 Q. August of 2016 was almost eight years ago; is that right?

16 A. Yes.

17 Q. Did you look at anything to refresh your recollection
18 about having told that to Mr. Ziccarelli?

19 MS. HASAN: Objection. Asked and answered.

20 THE COURT: Overruled.

21 BY THE WITNESS:

22 A. I don't understand the question.

23 BY MR. K. FLAXMAN:

24 Q. Did you do anything to help you remember what you told
25 Mr. Ziccarelli -- what word for word you told Mr. Ziccarelli

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1 back in August of 2016, eight years ago?

2 A. No, I did not look at anything. I remembered.

3 Q. You remembered it.

4 Did you remember it the same way that you remembered
5 he had PTSD?

6 A. (No response.)

7 MR. K. FLAXMAN: I have nothing further, your Honor.

8 THE COURT: Cross-examination.

9 MS. HASAN: Your Honor, Ms. Shinnawi is also our
10 witness, and we had an agreement to cover our --

11 THE COURT: Yes. Technically you are on cross,
12 but --

13 MS. HASAN: Yes. Okay.

14 THE COURT: -- the prior ruling stands.

15 MS. HASAN: Thank you.

16 CROSS-EXAMINATION

17 BY MS. HASAN:

18 Q. Ms. Shinnawi, when did you retire from the Cook County
19 Sheriff's Office?

20 A. December 30th, 2022.

21 Q. And how old were you when you retired?

22 How old are you now?

23 A. I'm 74.

24 Q. How long did you work at the Cook County Sheriff's Office?

25 A. Sixteen years.

1 Q. Do you remember when you started?

2 A. September 6th, 2006.

3 Q. What was your first job at the sheriff's office?

4 A. I was assistant to Zelda Whittler, who was the
5 undersheriff.

6 Q. And as an assistant, what were your duties?

7 A. Secretarial duties, book meetings, talk to clients, scan
8 her phone calls, go to the county board meetings with her.

9 Q. What was your next job at the sheriff's office?

10 A. In about eight months, I was moved into HR.

11 Q. And what was your job in HR?

12 A. FMLA.

13 Q. When you say "FMLA," you mean the Family --

14 A. Family and Medical Leave Act.

15 Q. -- and Medical Leave Act?

16 Can you summarize what the FMLA allows employers to
17 do?

18 A. Okay.

19 Q. I'm sorry. Allows employees to do?

20 A. Okay. If you meet the requirements, federal law states
21 that you can get 12 weeks, 60 days, or 480 hours per year --
22 per calendar year to use for medical purposes that is
23 protected leave.

24 Q. When you were working with FMLA, you had a title of FMLA
25 coordinator?

1 A. Uh-huh.

2 Q. And you also had a title of FMLA manager?

3 A. Correct.

4 Q. Was there any difference between those two jobs?

5 A. No.

6 Q. In performing that job, what were your duties?

7 A. I would receive -- send out applications to employees.

8 Employees would send the applications back to us. And at that
9 point, we would review their application. If they met all the
10 requirements and their doctor filled out the form correctly,
11 we would then approve them for FMLA for one year, and we would
12 input everything into the system.

13 Q. When you say "one year," you would approve them for one
14 year?

15 A. We were at a calendar year at that point in time. So from
16 the day you were approved to the same date a year going
17 forward, your FMLA was good, but you would have to reapply
18 every year.

19 Q. And there was a maximum time available to employees?

20 A. 480 hours.

21 Q. Can you describe your typical day as FMLA coordinator or
22 manager.

23 A. Receiving applications, reviewing applications, calling
24 doctors for clarification, sending some applications back for
25 clarification. We never deny. We always send back for

1 clarification. Ultimately it's done correctly, and we approve
2 it.

3 Also, there were tons of phone calls. People called
4 me all the time for clarity. They called me to find out how
5 many FMLA hours they had used and how many they had left. And
6 then there were certain reports. And then there were meetings
7 here and there.

8 Q. So can you estimate how many phone calls you received a
9 day?

10 A. Anywhere from five to eight.

11 Q. Did you receive training for the FMLA position?

12 A. Yes, I did.

13 Q. Who trained you?

14 A. I was trained by the director of HR, Rosie Nolan, and her
15 assistant, Finola Keegan.

16 Q. Can you describe the type of training you received.

17 A. Well, they sat with me. They explained the form to me.
18 They sat with me when new forms came in. We went over the
19 forms together. And then I would do the paperwork.

20 Then I would turn everything back over to normally
21 Finola. She would review everything I had done. If she
22 thought things weren't sufficient, she corrected them, and she
23 made me redo the form. And then, finally, I would give it to
24 her again. Then she would say, "Okay." And that went on for
25 maybe a year and a half.

1 Q. When you say she would check, what was she checking for?

2 A. She was checking -- I would do, say, an approval form.

3 Then she would go back through the whole application and see
4 if the employee had done everything correctly and then if I
5 had done my form correctly.

6 Q. Would she also double-check the hours that an employee had
7 or anything like that?

8 A. Uh-huh. She was very thorough.

9 And then, I went to seminars.

10 Q. What kind of seminars?

11 MR. K. FLAXMAN: Objection.

12 THE COURT: Limit it to -- let's narrow this and move
13 on to something of more substance.

14 MS. HASAN: Okay.

15 BY MS. HASAN:

16 Q. Did you review the sheriff's office FMLA leave policy as
17 part of your training?

18 A. Yes.

19 Q. Are you familiar with that policy?

20 A. Pretty much.

21 MS. HASAN: Can I show -- I have identified
22 Defendant's Exhibit 1 as that policy. May I show the witness?

23 THE COURT: You may.

24 MR. K. FLAXMAN: Could we have a sidebar about this?

25 (The following proceedings were had at sidebar:)

1 THE COURT: Go ahead.

2 MR. K. FLAXMAN: Thank you.

3 I'm not sure where we are going with this that's
4 relevant to the case.

5 THE COURT: We have discussed several times already
6 that the existence of policies is relevant to Ms. Shinnawi's
7 testimony and is context for whether she was more or less
8 likely to have misadvised or incompletely advised
9 Mr. Zicarelli about the situation with his leave request. So
10 we have addressed this already.

11 MR. K. FLAXMAN: I think we are getting into showing
12 that she acted in accordance with the policy and the policy is
13 good, which I don't think is the law. But if your Honor said
14 we ruled on it, I'll stand on my previous objection.

15 THE COURT: We are getting into an area where it is
16 relevant to what Ms. Shinnawi did and the credibility of her
17 testimony as to whether there were written policies in the
18 sheriff's office that governed the FMLA program and whether it
19 was her practice to follow this program. That's relevant to
20 her credibility.

21 MR. K. FLAXMAN: Thank you, your Honor.

22 (End of sidebar proceedings.)

23 THE COURT: The objection is overruled. You may
24 continue.

25 MS. HASAN: Thank you.

1 MS. ORI: I have it on my screen.

2 BY MS. HASAN:

3 Q. Can you see the document on your screen, Ms. Shinnawi?

4 A. Yes.

5 Q. Are you familiar with this document?

6 A. Yes, I am.

7 THE COURT: This is marked what, Ms. Hasan?

8 MS. HASAN: Defendant's Exhibit 1.

9 BY MS. HASAN:

10 Q. Were you familiar with this policy when you were making
11 decisions about FMLA?

12 A. Yes.

13 MR. K. FLAXMAN: Objection. The policy is dated
14 2007, and we are talking about 2016.

15 THE COURT: All right. You need to elicit more
16 foundation.

17 BY MS. HASAN:

18 Q. Do you know if this was the policy in place at the
19 sheriff's office in 2016?

20 A. It was when I left. It's still -- yes.

21 Q. It was still the policy in 2022?

22 A. Uh-huh. Yes.

23 Q. And does this policy help you determine what you are to do
24 with FMLA applications?

25 MR. K. FLAXMAN: I object to leading.

1 THE COURT: I will sustain that objection.

2 BY MS. HASAN:

3 Q. How did you use this policy in your work?

4 A. To refer back to the sheriff's office policies. These are
5 general orders.

6 Q. Did you refer to this policy when making decisions?

7 A. Yes, I did.

8 Q. Earlier you described that there are two different types
9 of FMLA.

10 One is intermittent?

11 A. Right.

12 Q. Can you describe what intermittent leave involves?

13 A. When someone is approved for intermittent leave, their
14 doctor has recommended a certain amount of time that they may
15 need to be off every month or every week. If you have
16 migraines, you may need to be off twice a month for three
17 days. So the doctor, according to your past history, he will
18 write on the form how much time he thinks you may need off for
19 your condition. And it's days here and there usually for
20 intermittent.

21 Q. And then there is another type of FMLA leave?

22 A. Yes.

23 Q. Can you describe it?

24 A. It's a single period of absence, which would be a block of
25 time which someone would use if they were having a surgery or

1 maternity, things that will take a couple weeks.

2 Q. In looking at the policy that's in front of you --

3 A. Yes.

4 Q. -- what do you understand the sheriff's office
5 responsibility to be with regard to FMLA?

6 MR. K. FLAXMAN: Objection.

7 THE COURT: I am going to sustain the objection to
8 the extent it's predicated on the policy or the particular
9 document, which has not been moved into evidence. But you can
10 reframe the question as to her knowledge.

11 MS. HASAN: Thank you.

12 BY MS. HASAN:

13 Q. What do you know about what the sheriff's office's
14 obligations are under the FMLA?

15 MR. K. FLAXMAN: Objection. This is opinion.

16 THE COURT: Overruled.

17 You can answer.

18 THE WITNESS: Thank you.

19 BY THE WITNESS:

20 A. The sheriff's obligation is to see that people, when they
21 meet the requirements for FMLA and they have completed the
22 forms, that they are allowed to take off their medical time
23 FMLA hours as to how much they need.

24 And it's a protected leave. So you cannot be
25 disciplined. You cannot be in trouble with any other

1 department if your leave is registered as an FMLA leave. They
2 won't hold it against you for promotion or anything else.

3 BY MS. HASAN:

4 Q. And what do you understand the employee's responsibility
5 to be?

6 A. It's to fill out their forms correctly, follow the
7 guidelines, keep track of how much time they are using, and
8 when their time is used up, not to use it any further until
9 they can reapply again. And they have to call in in a timely
10 manner.

11 Q. Is that understanding in accordance with your
12 understanding of the policy?

13 A. Yes.

14 MS. HASAN: Your Honor, I would like to move into
15 evidence Defendant's Exhibit 1.

16 MR. K. FLAXMAN: We object.

17 THE COURT: I'm going to sustain the objection to the
18 entirety of the policy. We can revisit the question of
19 whether that could be redacted in some fashion, but I assume
20 there is more information in there than has just been
21 elicited.

22 MS. HASAN: Okay. I won't pursue anymore questions
23 about the policy. Thank you.

24 BY MS. HASAN:

25 Q. Did you have a consistent process for handling FMLA

1 requests?

2 A. Yes.

3 Q. Can you describe the process?

4 A. The process would be that they would -- we would hand out
5 the applications to employees. They would get them filled
6 out, bring them back to us. We would review them. We would
7 check how many hours they had worked in the previous year and
8 if they had worked the previous year.

9 You are not allowed to take FMLA unless you have
10 worked one year and during the course of that year worked
11 1,250 hours.

12 Q. Mr. Flaxman asked you about how many applications you
13 handled during your time at the sheriff's office?

14 A. During my whole 16 years?

15 Q. Well, so you said you handled maybe five to ten a day?

16 A. Right.

17 Q. Every day?

18 A. Right.

19 Q. Over all 15 years?

20 A. Yes.

21 Q. Trying to do the math in my head right now.

22 (Brief pause.)

23 BY MS. HASAN:

24 Q. So that would be between 1,000 and 2,000 per year?

25 A. Yes.

1 Q. Over 15 years?

2 A. Yes.

3 Q. Approximately how many sheriff's office employees are
4 there?

5 A. The last time I checked, there were roughly around 6,000.

6 Q. Did that number go up and down in any range?

7 MR. K. FLAXMAN: Objection.

8 THE COURT: Grounds?

9 MR. K. FLAXMAN: Relevance.

10 THE COURT: Sustained.

11 BY MS. HASAN:

12 Q. During your 15 years working on FMLA applications, do you
13 know if any employees ever complained about the way you
14 treated them?

15 MR. K. FLAXMAN: Objection.

16 THE COURT: Sustained.

17 BY MS. HASAN:

18 Q. Let's move on to talking about your interactions with
19 Mr. Ziccarelli.

20 Do you know Mr. Ziccarelli?

21 A. Not personally.

22 Q. How do you know him?

23 A. As an employee of the sheriff's office.

24 Q. Did you -- you have spoken to him. We talked about that?

25 A. Yes.

1 Q. Now, there has been some discrepancy about whether that
2 conversation was in August or September of 2016?

3 A. Okay.

4 Q. Do you remember either way?

5 A. No.

6 MR. K. FLAXMAN: I object to the form of the question
7 and counsel testifying.

8 THE COURT: Overruled.

9 BY MS. HASAN:

10 Q. Do you remember if it was August of 2016 or September of
11 2016 when you spoke with him?

12 A. I don't remember.

13 Q. Do you remember the phone conversation?

14 A. Yes, I do.

15 Q. Why do you remember the phone conversation?

16 A. Because I had to talk about it so many times, and it was
17 an issue that never had happened to me before in all my years
18 there.

19 Q. What do you mean?

20 A. People call me all the time, several times a day, asking
21 me how many FMLA hours they have, how many they have left,
22 what they should do, and 99 percent of the time they are very
23 grateful. Mr. Zicarelli was not.

24 Q. What do you mean he was not grateful?

25 MR. K. FLAXMAN: Objection.

1 THE COURT: Overruled.

2 BY THE WITNESS:

3 A. When I explained to him how many hours he had left and
4 that he didn't have enough to cover the whole time period, he
5 became argumentative with me. He became belligerent. He kept
6 insisting that I do something. And I told him my hands are
7 tied. I can't. And we just kept going back and forth. I
8 never hang up on people, so he hung up on me.

9 BY MS. HASAN:

10 Q. You said that you kept going back and forth?

11 A. Uh-huh.

12 Q. Do you remember what the back and forth was about?

13 MR. K. FLAXMAN: I object to the form of the
14 question.

15 THE COURT: Overruled.

16 BY THE WITNESS:

17 A. Well, when I told him he only had 176 hours left, he did
18 not have enough FMLA hours to use for the whole time period, I
19 told him, "You can use the 176, but you got to take sick time
20 or apply for disability." And he would have to go through his
21 chain of command to get those things approved, not me.

22 BY MS. HASAN:

23 Q. Describe what you mean when you say he had to go through
24 his chain of command.

25 A. Well, if he wanted to use -- I'm only allowed to approve

1 FMLA hours. So in order to have regular sick time approved,
2 he would have to go through his chain of command, which is --
3 he worked in a division with a sergeant, a lieutenant, a
4 captain, and ultimately the superintendent. So he would have
5 to go through them to get regular sick time approved for a
6 block.

7 Q. So "chain of command" is basically his supervisors?

8 A. Uh-huh.

9 Q. Do you know what eight weeks of time is in FMLA hours?

10 A. 320 hours, I believe, and he had 176.

11 Q. How did you know he already had taken FMLA in 2016?

12 A. When I looked in Time Tracker, it showed me how many hours
13 he had used already.

14 MS. HASAN: And this document is already in evidence.
15 If we can show the witness and the jury Joint Exhibit 1.

16 BY MS. HASAN:

17 Q. So Joint Exhibit 1 we previously discussed was printed at
18 the end of 2017?

19 A. Uh-huh.

20 Q. And you printed the document?

21 A. Yes.

22 Q. When you were on the phone with him, was this the document
23 that you referred to?

24 A. Yes.

25 Q. And the reason that you looked at this was to figure out

1 how much time he had left?

2 A. Yes.

3 Q. Did you look at this document for any other reason?

4 A. No.

5 Q. Did he tell you why he needed to take eight weeks of
6 leave?

7 A. I believe he referred to some kind of treatment that his
8 doctor wanted him to do.

9 Q. Did he ever follow-up with any further information?

10 A. No. He never called me again. I advised him to go
11 through his chain of command or go to employee assistance, and
12 maybe they could help him.

13 He certainly had enough sick hours left to use. I
14 don't know why he didn't.

15 Q. How did you know he had sick hours left?

16 A. Because after we got off the phone, I looked it up.

17 Q. Earlier you said that you told him he couldn't take more
18 FMLA. What did you mean?

19 A. Well, once you use your 480, you cannot take anymore.
20 That's all you are allowed per calendar year. So you can't
21 use FMLA again until you reapply at the end of your approved
22 year.

23 Q. Did you tell him he would be disciplined if he took any
24 FMLA time?

25 A. Well, he asked me what would happen if he took FMLA

1 anyway. So I told him that payroll would see that he took an
2 FMLA day. Payroll can also see how many FMLA hours you have.
3 When payroll sees that you don't have the number of hours to
4 support your day off, they will mark you "FMLA unapproved."
5 When payroll sees that you have unapproved time, they forward
6 it to attendance review, and there they make decisions on
7 discipline. I do not.

8 Q. Is attendance review part of the HR department?

9 A. I don't know if it's under the umbrella of HR. I don't
10 believe so. We are all separate. We are separated from each
11 other. I am in employee services under HR.

12 Q. And you had no overlap with attendance review?

13 A. No. Once it goes to payroll, I have nothing to do with
14 that. It's their decision what to code him. I didn't send it
15 to attendance review. That's not my decision.

16 Q. Do you know if the sheriff's office has a policy about
17 attendance review or unauthorized absences?

18 MR. K. FLAXMAN: Objection. Foundation.

19 THE COURT: I will sustain it as to foundation. You
20 can ask foundational questions as a prelude.

21 BY MS. HASAN:

22 Q. Are you familiar with the policies of the sheriff's
23 office?

24 A. Those that pertain to me and what I am doing.

25 Q. Are you familiar with the policies related to employee

1 issues?

2 A. A little bit. I just kind of know what happens sometimes,
3 but I'm not sure. If something goes to attendance review, I
4 know they normally call the person in because I've had -- they
5 call them in and talk to them.

6 Q. Can you describe what you mean?

7 A. When one of the people in attendance review see
8 information from payroll that this employee is overusing their
9 sick time or they have unapproved marks on their attendance
10 card, attendance and review will first call them, and they
11 will bring them up for a consultation. And that's as much as
12 I know.

13 Q. Do you know what the consultation involves?

14 A. To discuss what's going on with you. Why are you doing
15 your time like this?

16 Q. And FMLA is not part -- your FMLA job was not part of
17 that?

18 A. No. No.

19 Q. Did you ever tell me Mr. Zicarelli he would be fired if
20 he took the rest of his FMLA time?

21 A. No, I did not tell him he would be fired.

22 Q. Did you ever mention the word "termination" in your call?

23 A. No, I did not tell him. I just told him
24 payroll/attendance review. And they make those decisions. I
25 have nothing to do with that.

1 Q. You just answered his questions about FMLA?

2 A. Uh-huh.

3 Q. How did you find out that Mr. Zicarelli left the
4 sheriff's office or quit?

5 A. I got a call to put together a file for him, an FMLA file.
6 And then when I couldn't find it, I went into another
7 department, and I asked them did they have it. And they told
8 me he --

9 MR. K. FLAXMAN: Objection to hearsay.

10 THE COURT: Overruled on that ground.

11 BY MS. HASAN:

12 Q. Go ahead.

13 A. Okay. So I was looking for his file. It wasn't in my
14 files, so I went next door. I also -- part of employee
15 services, same department. And I asked the girls there. I
16 said, "Do you have Zicarelli's file?" And the one girl who
17 does retirements told me, "Oh, he retired, so his file is over
18 here."

19 Q. Do you remember approximately when that conversation was?

20 A. No. Maybe sometime in September, October, you know, like
21 that.

22 Q. Of what year?

23 A. 2016.

24 Q. So shortly after he left?

25 A. Yeah. I don't know how quickly he took -- usually when we

1 look for files and they want everything, it's something going
2 on with that employee. So that's how it all started when he
3 first went to court.

4 MS. HASAN: Nothing further.

5 THE COURT: Redirect.

6 MR. K. FLAXMAN: Thank you, your Honor.

7 REDIRECT EXAMINATION

8 BY MR. K. FLAXMAN:

9 Q. Did I hear you correctly say that, "Part of my job is to
10 give out forms"?

11 A. Uh-huh.

12 Q. You have to say "Yes" or "No" for the reporter.

13 A. Yes. Sorry.

14 Q. What kind of forms was it part of your job to give out?

15 A. We had forms there for the employees. One was an employee
16 form to fill out, and the other was the healthcare provider
17 form. We would give those five pages to every employee who
18 requested them.

19 Q. And did you give one of those forms to Mr. Zicarelli in
20 2016?

21 A. No, I did not. I think they were online at that time.

22 Q. So you don't give out forms up until the time you retired.
23 You had stopped sometime. Is that what you are saying now?

24 A. In the course of my work there, they improved it and put
25 things online.

1 Q. Do you know when they were put online?

2 A. No.

3 Q. Okay. I think I also heard you say that, "I have had to
4 talk about this so many times."

5 Do you remember that?

6 A. Yes.

7 Q. What was "this" that you had to talk about?

8 A. Well, when they first requested the file from me and I
9 took it to the director --

10 Q. Let's go back. Who's "they"?

11 A. I am assuming legal requested the file from us.

12 Q. Well, somebody requested the file. And then, did you find
13 the file in that --

14 A. I did find --

15 Q. -- what you were telling us about before?

16 A. Yes, I did.

17 Q. Did you talk about what happened then?

18 A. I took it in to the director, and we discussed it.

19 Q. Who's -- what's the director's name?

20 A. It was either Karen Tann or Rebecca Reiersen. I don't
21 remember.

22 Q. Was anybody else there?

23 A. No, I don't believe there was.

24 Q. Did you take any notes at the meeting?

25 A. No, I did not take any notes.

1 Q. Did they tell you that Mr. Zicarelli has filed a lawsuit
2 saying that you told him if he took more FMLA leave time, he
3 would be fired?

4 A. No, they did not tell me that.

5 Q. Did anybody ever tell you that?

6 A. Nobody put it in those words.

7 Q. That's the first time you talked about this.

8 When is the next time you talked about Mr. Zicarelli
9 and his phone call with you?

10 A. Before the deposition.

11 Q. The deposition was back in 2018; is that right?

12 A. I believe so.

13 Q. It's about two years after Mr. Zicarelli resigned; is
14 that right?

15 A. Yes.

16 MS. HASAN: Objection. Misstates --

17 BY MR. K. FLAXMAN:

18 Q. What's the next time after --

19 THE COURT: Hold on. Hold on.

20 MS. HASAN: Objection. Misstates the evidence.

21 MR. K. FLAXMAN: I didn't hear what she said.

22 THE COURT: She said the question misstates the
23 evidence.

24 Ladies and gentlemen, questions are not evidence, as
25 I have told you. The characterizations of counsel of the

1 evidence are not controlling. It's your memory and
2 recollection of the evidence that counts.

3 Go ahead, counsel.

4 BY MR. K. FLAXMAN:

5 Q. Your answer to that question, which was in evidence, was
6 that the deposition was about two years after Mr. Zicarelli
7 resigned; is that right?

8 A. I'm not sure. I don't know.

9 Q. Was it the next day?

10 A. I don't know.

11 Q. Was it last week?

12 A. The deposition?

13 Q. Right.

14 A. No.

15 Q. Is there anything you could look at that would refresh
16 your recollection of when the deposition was?

17 A. The date on the deposition paper.

18 Q. The date -- what?

19 A. I don't know. Is there a date on the deposition paper?

20 Q. Yeah. It says taken January 12th, 2018.

21 A. Okay.

22 Q. So that's a year and a half after Mr. Zicarelli resigned?

23 A. Yes.

24 Q. When is the next time you had to talk about this,
25 Mr. Zicarelli's phone call with you?

1 A. After the deposition I discussed it again with my
2 director.

3 Q. And when was that? Same day?

4 A. No. Maybe two days later.

5 Q. You didn't take any notes about that conversation, did
6 you?

7 A. No.

8 Q. You didn't write any memos about that conversation?

9 A. No.

10 Q. As a matter of fact, you never wrote a memo to anyone --
11 your director or somebody working for the sheriff -- about
12 your recollection of your conversation with the sheriff; is
13 that right?

14 A. My director took notes.

15 Q. Excuse me?

16 A. My director took notes.

17 (Counsel conferring.)

18 BY MR. K. FLAXMAN:

19 Q. Which notes did your director take -- of which
20 conversation did your director --

21 A. Every conversation.

22 Q. Excuse me?

23 A. Every conversation we had, she would be writing things.

24 Q. The director worked for the sheriff; is that right?

25 A. Right.

1 Q. Do you know what the director did with those notes?

2 A. No.

3 Q. So when is the next time you spoke about your conversation
4 with Mr. Ziccarelli?

5 A. Intermittently here and there our director would ask me if
6 I had heard anything or -- I don't know how many times this
7 has been to court, but I have been aware that it's been back
8 and forth.

9 Q. I think I heard you say -- and I don't want to misstate
10 the evidence -- that you knew how much time off Mr. Ziccarelli
11 had when he called you back in September of 2016; is that
12 right?

13 A. Yes.

14 Q. And you knew that from Time Tracker; is that right?

15 A. Yes.

16 Q. Do you remember at your deposition at Page 26 -- it starts
17 at Page -- the question starts at Page 25.

18 "Good" -- no. Wrong question.

19 Okay. The question starts at Page 26, Line 10.

20 "Okay. And you knew that he had medical leave time
21 available?"

22 And your answer was: "No."

23 And the question was: "To him?"

24 And then your answer was: "No, I do not know what
25 their time is that they have."

1 Do you remember that question and that answer?

2 A. Yes.

3 Q. That's different than what you testified here today, isn't
4 it, ma'am?

5 A. I went back and looked.

6 Q. So you testified falsely at the deposition?

7 A. No. I didn't know at that time.

8 Q. But you know now; is that right?

9 A. I do.

10 Q. Wasn't that Time Tracker marked as an exhibit at your
11 deposition, and you had a chance to look at it then?

12 A. But that's only regarding FMLA hours.

13 Q. So -- okay.

14 Now, do you know anything about the sheriff's policy
15 about compassionate leave?

16 A. Yes, I do. I know there is compassionate leave.

17 Q. What did you tell Mr. Ziccarelli about compassionate
18 leave?

19 A. I wasn't aware of compassionate leave at that time.

20 Q. Well, it had been in existence since at least 2012; isn't
21 that right?

22 A. Yes, but I wouldn't have handled it.

23 Q. Well, how did you learn about compassionate leave?

24 A. My director told me.

25 Q. When did your director tell you?

1 A. Someone had called and asked about it, so I went to her.

2 Q. When Mr. Ziccarelli called and asked about getting extra
3 leave, you didn't ask your director about compassionate leave,
4 did you?

5 A. Because he did not state "compassionate leave."

6 Q. You know now that compassionate leave is where the sheriff
7 says, "You can take up to a year off for serious medical needs
8 and you could come back"?

9 A. Uh-huh.

10 Q. Is that right?

11 A. Yes.

12 Q. And you didn't tell Mr. Ziccarelli about that; is that
13 right?

14 A. I didn't know about compassionate leave.

15 Q. You didn't know to ask your director, "Is there
16 anything" --

17 THE COURT: Counsel, let the witness finish her --

18 MR. K. FLAXMAN: I'm sorry.

19 THE COURT: -- answer before asking another question.

20 MR. K. FLAXMAN: I'm sorry.

21 BY THE WITNESS:

22 A. If I had known about it. The director handles that. I
23 don't. Everyone is referred to the director for that.

24 BY MR. K. FLAXMAN:

25 Q. Well, is there anything that stopped you from going to the

1 director in 2016 and saying, "I have a correctional officer
2 who needs to go into an eight-week program for mental health
3 reasons. He have doesn't have enough FMLA leave time. Is
4 there anything that we can do for him?"

5 A. I would have taken it all to her, but I did tell him to go
6 to employee assistance. Employee assistance would have told
7 him about compassionate leave.

8 Q. Did you ever work in employee assistance?

9 A. No, but I worked with them sometimes.

10 Q. So you don't know what they would have told him. You are
11 just guessing; isn't that right?

12 A. I just know they are there to help the employees.

13 Q. Did you mention attendance review to Mr. Ziccarelli?

14 A. When he asked me what would happen if he took unapproved
15 FMLA.

16 Q. Did you tell him that attendance review reviews sick time
17 abuse?

18 A. I told him payroll sends it to attendance review.

19 Q. What did you tell him about attendance -- I'm sorry if I
20 interrupted you. Did I interrupt you?

21 A. (No response.)

22 Q. What did you tell Mr. Ziccarelli about attendance review?

23 A. I told him payroll would decide if it goes to attendance
24 review or not, not me.

25 Q. Well, did you ever mention -- did you tell him that if he

1 takes more FMLA -- more leave than he is entitled to under
2 FMLA, his case will go to attendance review?

3 A. I told him it would go to payroll first, and payroll would
4 code it. I don't code.

5 Q. Now, you looked at your deposition before you testified
6 here today, didn't you?

7 A. Yes.

8 Q. Did you see anything which was incorrect when you reviewed
9 it?

10 A. It looked okay to me.

11 Q. Well, do you remember at Page 27 you were asked at
12 Line 19:

13 "And did you mention anything about him being subject
14 to discipline in the phone conversation?"

15 And your answer was: "Just attendance review."

16 And the question was: "And what did you say?"

17 "I said attendance review issues discipline and
18 things like that. I have nothing to do with that."

19 Do you remember those questions and those answers?

20 A. Yes, I do.

21 Q. So is it your testimony today that you did not mention
22 attendance review to Mr. Zicarelli back in August or
23 September of 2016?

24 MS. HASAN: Objection. Mischaracterizes testimony.

25 THE COURT: Again, ladies and gentlemen, the

1 questions and characterizations by counsel are not evidence.
2 If they are inconsistent with the evidence that has been
3 elicited, you should use your own recognition of the evidence
4 as opposed to the characterizations by counsel.

5 BY MR. K. FLAXMAN:

6 Q. Did you remember -- as you sit here now, is it your
7 recollection that you told Mr. Ziccarelli attendance review
8 will look at it, or did you tell him payroll will look at it?

9 A. I told him both.

10 Q. You didn't tell him that, "Payroll will refer you to
11 attendance review," did you?

12 A. I told him payroll will code him, and then what they code
13 goes to attendance review.

14 Q. Well, did you tell Mr. Ziccarelli that he would be subject
15 to attendance review if he took off extra time?

16 A. What I told him was it would go to payroll. They code,
17 and attendance review makes a decision on what payroll has
18 coded.

19 Q. That wasn't my question.

20 Did you tell Mr. Ziccarelli that he would be subject
21 to attendance review if he took more time than he was allowed
22 under FMLA?

23 A. No.

24 Q. Did you suggest to Mr. Ziccarelli that he talk to his
25 doctor about a four-week inpatient program?

1 A. No.

2 Q. Why not?

3 A. Because I already told him he could do the four weeks.

4 Q. Excuse me?

5 A. It was a given that he could do four weeks.

6 What did you put? .8 hours or something?

7 Q. Well, are you telling us he could use four weeks of
8 intermittent FMLA time continuously in one bunch?

9 A. He could use it as a single period of absence.

10 Q. And he wouldn't have to apply for (unintelligible) fill
11 out the form?

12 A. All his doctor had to do was even -- I would have allowed
13 a note if he had sent a note to me saying, "Let him use these
14 four weeks."

15 Q. Did you tell him that?

16 A. Yes, I told him to use those hours.

17 Q. You told him he could talk to his doctor about a four-week
18 program?

19 A. He wanted eight weeks.

20 Q. My question, ma'am, is: Did you tell him --

21 A. I said --

22 Q. -- "Talk to your doctor about a four-week program"?

23 A. Yes.

24 Q. Excuse me?

25 A. I told him to use the hours he had left.

1 Q. My question is --

2 A. I don't remember verbatim what I said.

3 MR. K. FLAXMAN: Can I have a minute, your Honor?

4 THE COURT: You may.

5 (Counsel conferring.)

6 BY MR. K. FLAXMAN:

7 Q. Did you tell Mr. Ziccarelli that if he wanted to use more
8 than his FMLA leave time for leave, he would have to use up
9 his FMLA leave time first?

10 A. I don't understand that question. He is talking to
11 me regarding --

12 Q. Did you tell Mr. Ziccarelli he has to use up other types
13 of leave if he -- did you tell Mr. Ziccarelli he had to use up
14 his FMLA leave time before he could use his sick time?

15 A. If he wanted to.

16 Q. Did you tell him that that would trigger an attendance
17 review?

18 A. No.

19 MR. K. FLAXMAN: One second.

20 (Counsel conferring.)

21 BY MR. K. FLAXMAN:

22 Q. Did you use the words in talking to Mr. Ziccarelli, "My
23 hands are tied"?

24 A. No.

25 Q. Did you tell him, "You have to take sick time or go on

1 disability if you want more time off than what the FMLA time
2 is"?

3 A. Yes, I did.

4 Q. Did you tell him he would have to go through his chain of
5 command?

6 A. Yes.

7 Q. Did he tell you that his chain of command told him to talk
8 to you?

9 A. I don't remember that.

10 Q. You said that Mr. Zicarelli was not polite with you when
11 you told him he -- when you told him whatever it was you told
12 him; is that right?

13 A. Uh-huh. Yes.

14 Q. Did that make you dislike him?

15 A. No.

16 Q. Did that make you think he was in a mental health crisis
17 and needed help?

18 A. No.

19 Q. Why not?

20 A. Because I was just dealing with his hours. He didn't tell
21 me anything about his mental health condition.

22 Q. But you knew from his previous application that he had
23 PTSD, didn't you?

24 A. Not at that moment in time. I didn't know what his
25 condition was. And he didn't tell me why he needed the eight

1 weeks.

2 Q. He told you that his doctor told him to take eight --

3 A. That's all he said.

4 Q. -- get into an eight-week program?

5 A. Right.

6 THE COURT: Counsel and Ms. Shinnawi, you can't speak
7 over each other.

8 Counsel, let the witness finish her answer before
9 asking another question.

10 Let the lawyer finish his questions before answering,
11 ma'am.

12 THE WITNESS: Okay. Sorry.

13 MR. K. FLAXMAN: I'm sorry, Judge.

14 I'm sorry for speaking over you.

15 I have no further questions.

16 THE COURT: All right. Anything further?

17 MS. HASAN: Nothing further.

18 THE COURT: All right. Ms. Shinnawi, you may step
19 down.

20 We are going to excuse this witness from further
21 questioning?

22 MS. HASAN: Yes.

23 THE COURT: All right. You are released as a
24 witness.

25 THE WITNESS: Okay. Thank you.

1 (Witness excused.)

2 THE COURT: The plaintiff may call your next witness.

3 MR. J. FLAXMAN: Plaintiff calls Salvatore
4 Zicarelli.

5 THE COURT: Mr. Zicarelli, would you please stand
6 and raise your right hand.

7 (Witness sworn.)

8 THE COURT: Please be seated.

9 SALVATORE ZICCARELLI, PLAINTIFF HEREIN, SWORN

10 DIRECT EXAMINATION

11 BY MR. J. FLAXMAN:

12 Q. Good afternoon.

13 Could you introduce yourself to the jury and tell
14 them your full name, please.

15 A. My name is Salvatore Zicarelli.

16 Q. Mr. Zicarelli, where were you born?

17 A. Evergreen Park, Illinois.

18 Q. And where do you live now?

19 A. In Chicago Ridge, Illinois.

20 Q. Did you go to high school in Evergreen Park?

21 A. Sorry. I went to high school at Lyons Township High
22 School in La Grange.

23 Q. What year did you graduate?

24 A. 1981.

25 Q. What did you do after high school?

1 A. I went to college, associate in art in -- over in College
2 of DuPage, and then I went to Northern Illinois University.

3 Q. What did you study at Northern Illinois?

4 A. Physical education, corporate fitness.

5 Q. Was that to -- did you say "physical education"?

6 A. Corporate fitness, yes. Both. My minor was corporate
7 fitness, and my major was physical education.

8 Q. And what was your first job after college?

9 A. In corporate fitness, I ran a Chicago health club, which
10 was Bally's at the time. I was their person who ran their
11 gyms.

12 THE COURT: Mr. Zicarelli, could you pull that
13 microphone a little closer.

14 THE WITNESS: Sure.

15 THE COURT: Thank you.

16 BY MR. J. FLAXMAN:

17 Q. What year are we talking about when you ran the gyms for
18 Bally's?

19 A. 1985.

20 Q. And how long did that job last?

21 A. Until they went under or about to go under. Then I left.

22 Q. Do you remember what year that was?

23 A. That year was -- actually, I left before they actually
24 went over because I knew they were going to go ahead and fall.
25 I left in 1989 to go with the sheriff's department. And I

1 think they fell in 1992. I think they were taken over by
2 LA Fitness.

3 Q. So in 19 -- I'm sorry.

4 What year did you start working for the sheriff's
5 office?

6 A. 1989.

7 Q. And that's the Cook County Sheriff's Office, right?

8 A. Yes, sir.

9 Q. Okay. What was your first job for the Cook County
10 Sheriff?

11 A. Correctional officer. I started as a cadet. That was an
12 officer at the Cook County Sheriff's correctional department.

13 Q. And have you served as -- or did you continue serving as a
14 correctional officer for a number of years after 1989?

15 A. Yes, sir.

16 Q. As we sit here today, you are no longer employed by the
17 sheriff's office?

18 A. Yes, sir.

19 Q. What was your last year at the sheriff's office?

20 A. 2016.

21 Q. And what was your last position?

22 A. External operations.

23 Q. Can you tell us what external operations is?

24 A. Kind of a specialty spot. It's where you're basically --
25 a vest, gun. You're actually outside on the street. You're

1 taking over -- all Chicago police and everyone, police, within
2 the West Side, South Side, North Side, if there is any kind of
3 custody takeover, you stay in there. If there has been any
4 kind of homicides -- if someone ends up in the hospital,
5 that's your job to be there and make sure they don't go
6 anywhere until you transport them to the jail.

7 Also, there are several things that you do as an
8 external operation officer.

9 Q. But the gist is that you were doing -- you were guarding
10 prisoners but not inside the jail, right?

11 A. Correct.

12 Q. But before you went to external operations, you had worked
13 inside the jail?

14 A. Yes, sir.

15 Q. Let me talk to you about your -- when you left the jail.
16 And I want to show you an exhibit. It's Joint Exhibit 6.

17 Do you see a document on your screen now?

18 A. Yes.

19 Q. What does it say at the top left?

20 A. Can you make it a little bigger?

21 Q. Yeah.

22 A. Thank you.

23 It has my name and the department.

24 Q. And above your name what does it say?

25 A. "Exit interview."

1 Q. Is this a document that you completed when you were ending
2 your employment with the sheriff?

3 A. Yes, sir, it was.

4 MR. J. FLAXMAN: Your Honor, I move the entry of
5 Joint Exhibit 6 into evidence.

6 MS. ORI: No objection.

7 THE COURT: All right. Joint Exhibit 6 is admitted.

8 (Joint Exhibit 6 was received in evidence.)

9 MR. J. FLAXMAN: We ask to publish the exhibit.

10 THE COURT: Yes. Okay.

11 BY MR. J. FLAXMAN:

12 Q. Mr. Ziccarelli, next to your name, do you see a date?

13 A. There is something blocking it right now. Okay. Date,
14 yes, sir. Go ahead.

15 Q. Can you read the date that's next to your name?

16 A. 9/20/16.

17 Q. Is that when you left the sheriff's office?

18 A. I believe so, sir. Yes, sir.

19 Q. About halfway down there is a section that says, "Reason
20 for termination."

21 Do you see that?

22 A. Correct. I see it.

23 Q. Okay. On one side there is "voluntary resignation" and
24 one side there is "discharged."

25 Which side is the date on for this form?

1 A. The left side is where the date is 9/20/16.

2 Q. Is that for voluntary resignation?

3 A. It says "voluntary resignation," yes, sir.

4 Q. Okay. And we're going to get into the background of that.

5 But lower down there is a box checked.

6 Do you see that?

7 A. Yes, sir.

8 Q. And what's checked?

9 A. "Retired."

10 Q. All right. And underneath that, do you see it says,

11 "explanation required"?

12 A. Yes, sir.

13 Q. And underneath that, do you see what's written in by hand?

14 I'm sorry?

15 A. Yes, sir, I see that.

16 Q. What does it say?

17 A. "Retirement."

18 Q. And do you see your signature on the "employee" line?

19 A. Yes, sir.

20 Q. And there's -- again, the date is on there, too?

21 A. Yes, sir.

22 Q. And what's that date?

23 A. 9/20/16.

24 Q. Now, one thing we looked at on this document is, it said

25 the words "voluntary resignation."

1 Did you see those?

2 A. I see that, yes.

3 Q. Did you consider your retirement to be voluntary?

4 A. No, it wasn't voluntary.

5 Q. Why did you retire?

6 A. I retired because I was forced to retire because I was
7 going to get fired.

8 Q. What do you mean?

9 What would happen to make you get fired?

10 A. If I used my time -- and I used it intermittently, all of
11 my time. I never asked for eight weeks. And I was doing what
12 the doctor -- my doctor, my physician, ordered me --
13 everything the licensed doctor ordered me to do. And I've got
14 in a conversation where I would be disciplined and fired.
15 Never been written up in 25 years, so, I mean, nothing -- I
16 had done nothing wrong ever.

17 Q. Let's back up and give that some background.

18 You heard from the testimony earlier that we were
19 talking about your FMLA leave.

20 Do you know what that means?

21 A. Yes, sir.

22 Q. And we saw that for several years in the 2010s, you had
23 been approved to take FMLA leave, right?

24 A. Yes, sir.

25 Q. After you were approved to take FMLA leave, how would it

1 work? How would you take that leave?

2 A. The FMLA, I would always take it with pay. I would never
3 take it to -- to use the FMLA unless I had time that I can use
4 it. That's what I wanted to do, because I didn't want to
5 abuse anything with FMLA.

6 So I used my time in conjunction with the FMLA. So
7 that way also I was paid because I had so many hours. I have
8 always worked many hours, and I've stayed without abusing any
9 kind of time.

10 Q. Let me show you another exhibit.

11 MR. J. FLAXMAN: Could you put Joint Exhibit 4 up,
12 please.

13 I believe this exhibit is already admitted.

14 THE COURT: It is.

15 BY MR. J. FLAXMAN:

16 Q. Do you see Joint Exhibit 4 up on your screen?

17 A. Yes, sir.

18 Q. Do you see your name at the top of that?

19 A. I do.

20 Q. And do you see -- what's the date on this?

21 A. December 29th, 2015.

22 Q. And lower down, do you see a checkbox for your FMLA leave
23 request is approved?

24 A. Yes, sir.

25 Q. And then lower down, do you see another X for something?

1 A. I see the X. "Because of the leave you will need"; is
2 that correct??

3 Q. Yeah. Could you read to us what it says after that X.

4 A. Yeah. "Because of the leave you need, you will be
5 unscheduled -- it will be unscheduled. It will not be
6 possible to provide the hours, days, or weeks that will be
7 counted against your FMLA entitlement at this time. You have
8 a right to request this information once in a 30-day period
9 (if a leave was taken in the 30-day period). Approved INT/S
10 January 28, 2016, up to seven episodes a month, up to one day
11 per episode."

12 Q. Did you understand what INTS -- "INT/S" meant?

13 A. It means one day at a time. It means not a whole time --
14 a whole week. It means only increments I believe that it's
15 called.

16 Q. Okay. And when one of those time periods came up that you
17 needed to take leave, how did you tell your employer, the
18 sheriff, that you needed to take leave?

19 A. What you do is you -- I'm sorry, sir. Go ahead.

20 Q. I finished. I'm sorry.

21 A. I would make a phone call an hour before, notify them that
22 I need FMLA medical, and then it was therefore handled from
23 there.

24 Q. Okay. And you mentioned that you could take -- use your
25 sick leave to get compensated for that time?

1 A. Yes, sir.

2 Q. Would you do that on the same phone call?

3 A. Yes, sir.

4 Q. And was it your practice to normally use your sick time
5 when you took FMLA leave?

6 A. My practice, yes, sir.

7 Q. But you knew that you didn't have to?

8 A. No, sir.

9 Q. You did know that?

10 A. Did know what?

11 Q. Did you know that you could have taken the leave without
12 being compensated?

13 A. If I took FMLA leave, in order to get compensated and
14 paid, you would have to have medical time on the books first.
15 You would have to have earned time that you earned. Yes, sir.

16 MR. J. FLAXMAN: If we go to the next page of this
17 exhibit and scroll down -- I think it's the next page after
18 that and after that. That was it. Page No. 6 of 8.

19 We could take this exhibit down.

20 BY MR. J. FLAXMAN:

21 Q. Was one of the conditions you -- what were the conditions
22 you needed FMLA leave for?

23 A. PTSD -- extreme PTSD.

24 Q. And was a doctor treating you for PTSD?

25 A. Yes, sir.

1 Q. All right. At some point in 2016, did your needs for your
2 PTSD change?

3 A. Got dramatic.

4 Q. I'm sorry?

5 A. Got dramatic, yes.

6 Q. Okay. And what -- did your doctor give you a new
7 prescription?

8 A. Yeah, medications -- three medications, prescriptions.
9 Several things he gave -- several medications and several --
10 he told me what I needed to do to follow his orders.

11 Q. And what were the doctor's orders?

12 A. Well, he wanted me actually to -- to leave the department.
13 He wanted me to go to disability, and I did so.

14 Disability said, "Well, you have to use all your
15 time."

16 Went back to him and notified him. He stated to me,
17 "Use your FMLA, and you take everything from there." Okay.
18 And I did so. I tried to do this. I tried to do everything
19 in conjunction with what my physician ordered me. And I did
20 everything he ordered me to do on that.

21 Go ahead, sir.

22 Q. Okay. And what was your -- what was the prescription your
23 doctor -- what was the treatment your doctor wanted you to
24 get?

25 A. He wanted me to get some hospitalization, but I never

1 brought up anything about eight weeks or anything.

2 Q. I'm not -- I'm going to get to the conversation with
3 Ms. Shinnawi.

4 I'm asking you, did your doctor tell you what the
5 specific treatment was that he wanted?

6 A. He thought hospitalization would be best for me.

7 Q. And did he tell you how long hospitalization should be?

8 A. Eight weeks.

9 Q. And after the doctor told you that, did you contact
10 somebody in the HR department at the Cook County Jail?

11 A. Yes, I did.

12 Q. Did you talk to the FMLA person at the sheriff's office?

13 A. Yes, sir.

14 Q. Who was that person?

15 A. Shinnawi.

16 Q. Was it Ms. Shinnawi?

17 A. Shinnawi, yes.

18 Q. Why did you call Ms. Shinnawi?

19 A. I just needed to know how much time I have left so I can
20 extinguish that.

21 Q. Okay. And when did you call her?

22 A. It was during my shift. So it was time -- it had to be a
23 time of -- a period of 3:00 to 11:00. So she was still there.
24 It had to be in the afternoon sometime because I was on my
25 assignment when I called her, and that's what she -- when she

1 told me that.

2 Q. Okay. Before we get to what she told you, so the time of
3 day would be after 3:00 o'clock?

4 A. Afternoon, yes, sir.

5 Q. All right. And this is in 2016.

6 Do you recall the month?

7 A. I don't recall the month.

8 Q. Okay. Based on the document you looked at that showed you
9 ended your employment at the jail in September -- on
10 September 20th, 2016, can you tell when you called her?

11 A. Yeah. It was prior to that conversation that I actually
12 exit out.

13 Q. Was it within a week of that conversation?

14 A. I believe so.

15 Q. All right. So can you tell me what you said to
16 Ms. Shinnawi?

17 A. All I said was, "Salvatore Ziccarelli, Badge No. 14229,"
18 give her an employee number. "I'm with external operations.
19 I'm seriously ill. My doctor wants me to take the rest of my
20 FMLA. How much do I have left?" That was the end of the
21 conversation.

22 Q. Well, that was the end of -- that was what you told her?

23 A. That's all.

24 Q. Okay. But she responded to you?

25 A. Yes, she did.

1 Q. And what did she tell you?

2 A. "You used serious amount of time of FMLA. Do not use any
3 more or you will be disciplined."

4 Q. Okay. And when she said "disciplined," what did you
5 understand her to mean?

6 A. Fired.

7 Q. I'm sorry?

8 A. Fired.

9 Q. Did Ms. Shinnawi tell you, you needed to apply to take
10 more FMLA leave on a continuous basis?

11 A. No, sir.

12 Q. Did she tell you that you should contact employee
13 assistance about your need for leave?

14 A. No, sir.

15 Q. Did she tell you how many hours of FMLA leave you had
16 left?

17 A. No, sir.

18 Q. So she was telling you don't take a single hour more; is
19 that right?

20 A. Yes, sir.

21 Q. Were you familiar with the sheriff's policies about
22 misusing sick leave and FMLA?

23 A. Absolutely. Many days at -- go ahead, sir.

24 Q. And how did you learn about those?

25 A. The sheriff would continuously at roll call send memos to

1 the supervisors letting them know that they will be terminated
2 if they abuse their time.

3 Q. Did you say anything else to Ms. Shinnawi during that
4 phone call?

5 A. No. That was it. That was the end of the conversation.

6 Q. Were you angry during the conversation?

7 A. I was very, very, actually, quiet. Told her I'm very
8 sick, in serious need to know how much time I need. "Please
9 tell me how much time." I used the word "please." I was very
10 polite.

11 Q. Did you take any notes about that conversation?

12 A. No, sir, I did not.

13 Q. After that phone call, did you take more FMLA leave?

14 A. After that phone call, I immediately called my union --
15 the only recall you have when you have a situation of a
16 problem like this, thinking of the word "discipline" of being
17 fired -- called my union, spoke with Andrew, Dennis Andrew,
18 the union -- he said, "I can't do anything for you,
19 Mr. Zicarelli, until you're fired."

20 Q. Do you need a drink of water? I can hear your voice
21 scratching. You okay?

22 A. Fine.

23 Q. And did you, after the conversation with Ms. Shinnawi,
24 take any more FMLA leave?

25 A. No, sir, I did not. I don't believe at that time I did,

1 because I was -- that threat caused me to have a nervous
2 breakdown, basically.

3 Q. Okay. Without getting into your nervous breakdown, can
4 you tell us what you did after the conversation with
5 Ms. Shinnawi?

6 A. As I said before, I spoke with the union. And then, from
7 there, the union told me I would have to wait to get fired.
8 So instead of endangering others' lives and mine, I discharged
9 out.

10 Q. Were you able to take leave to get the eight weeks of
11 medical treatment that was recommended by your doctor?

12 A. No. I had no more insurance.

13 Q. Let me put back up on the screen Joint Exhibit No. 6.

14 Do you see at the top right there is a line that says
15 "date of hire"?

16 A. Yes, sir.

17 Q. Okay. That's what you told me before, that you started
18 working there in 1989?

19 A. Yes, sir.

20 Q. And the next line is "last date paid."

21 What date is that?

22 A. 9/20/16.

23 Q. Okay. And the next line says "vacation pay."

24 Do you see that?

25 A. Yes, sir.

1 Q. Okay. And does it list -- what does it list on that line?

2 A. 220 hours point 7.

3 Q. Was that your -- were those your vacation hours left?

4 A. Yes, sir.

5 Q. And then there's something next to that that says 200 --
6 that says "CE."

7 Do you see that?

8 A. Overtime. 276 hours overtime point 75.

9 Q. Okay. And when you completed this paperwork and stopped
10 working for the sheriff, were you compensated for those hours
11 of vacation pay and the overtime pay?

12 A. Yes, sir.

13 Q. When you stopped working, did you also have sick time
14 remaining?

15 A. Sick time was -- yes, sir.

16 Q. And were you paid for that sick time?

17 A. No, sir.

18 MR. J. FLAXMAN: I'm going to put up
19 Joint Exhibit No. 5. I think it's also already in evidence.
20 I want to go to Page 6 of that exhibit.

21 (Brief pause.)

22 BY MR. J. FLAXMAN:

23 Q. This shows a few different pay periods on that page.

24 Do you see that?

25 A. Yes, sir.

1 Q. The second line is pay period No. 22.

2 Do you see it?

3 A. Yes, sir.

4 Q. And it shows in the first day a payout for those hours of
5 vacation time and a payout for those overtime hours.

6 Do you see that?

7 A. Yes, sir.

8 Q. And if you go all the way to the right, does it show how
9 many hours of sick time you had at that time?

10 A. Yes, sir.

11 Q. How many hours is that?

12 A. 414 hours and 60 -- 414 hours point 85.

13 Q. Okay. If you had continued working for the sheriff, you
14 could have used that sick time to cover FMLA leave, right?

15 A. Absolutely.

16 Q. But because of the way you left, you didn't get any
17 compensation for those 414.85 hours.

18 Well, do you recall what your hourly wage was at this
19 time in 2016?

20 A. I don't recall, but it was about -- I know I made the
21 limit. The most you could make, I was making.

22 Q. Is there a strict formula for the salary of a correctional
23 officer?

24 A. At the year 25 years -- after you put 25 years in, you are
25 at 74,000.

1 Q. As a correctional officer, were you a member of a union?

2 A. Yes, sir.

3 Q. And does the union negotiate your salary?

4 A. Yes, sir.

5 Q. Do you know what a collective bargaining agreement is?

6 A. When you ask do I know, what are you -- in regard to what
7 part of that CBA?

8 Q. Yeah. Okay. You know that the union negotiates a
9 collective --

10 A. Yes, sir.

11 Q. -- bargaining agreement --

12 A. CBA does, yes, sir.

13 Q. And let me just ask the whole question before you answer.
14 Okay?

15 A. Okay.

16 Q. Do you know that the union negotiates a collective
17 bargaining agreement with the sheriff?

18 A. Yes, sir.

19 Q. And contained in that is tables for your salary?

20 A. Yes, sir.

21 Q. Okay. I am going to put up Plaintiff's Exhibit No. 3. I
22 will just ask you to look at the front page.

23 (Counsel conferring.)

24 BY MR. J. FLAXMAN:

25 Q. There is an exhibit up on the screen. Can you read what

1 the first line says?

2 A. "Collective bargaining agreement."

3 Q. And does it say it's --

4 A. Cook County Sheriff's -- I'm sorry. Right there. "Cook
5 County/Cook County Sheriff's as joint employers."

6 Q. And if you go to the bottom, do you see a stamp on it?

7 A. I do.

8 Q. What does the stamp say?

9 A. "Approved by the board of Cook County Commissioners."

10 Q. What's the date?

11 A. October 7th, 2015.

12 MR. J. FLAXMAN: We move for the admission of
13 Plaintiff's Exhibit 2.

14 THE COURT: Any objection?

15 MS. ORI: No objection.

16 THE COURT: All right. This is Plaintiff's 3?

17 MR. J. FLAXMAN: What is it marked as? 2 or 3?

18 MR. K. FLAXMAN: 2.

19 MR. J. FLAXMAN: Plaintiff's Exhibit 2. I'm sorry
20 for the confusion about that.

21 THE COURT: Plaintiff's 2 is admitted.

22 (Plaintiff's Exhibit 2 was received in evidence.)

23 BY MR. J. FLAXMAN:

24 Q. If you turn to Page 90 in that exhibit, are these -- is
25 this a pay table that we were talking about before?

1 A. Yes, sir.

2 Q. Okay. Does it say at the top who this is the pay scale
3 for?

4 A. Yes, sir, it does.

5 Q. Who is it for?

6 A. Schedule III (unintelligible) Human Resources, Teamsters
7 700, corrector -- Cook County correctional officers.

8 Q. Okay. And this has several steps.

9 Does that correspond to --

10 A. Yes, sir. I was a little bit off. It's \$76,265 annually.

11 Q. Okay. Let me just make sure I get the whole question out.

12 Does this show several steps that correspond to a
13 correctional officer's seniority?

14 A. Correct.

15 Q. Okay. And in 2016, which column on this chart did you
16 fall into?

17 A. 76,265, column -- the last column at the end.

18 Q. Okay. And the number you just read, that was the
19 yearly --

20 A. Yearly.

21 Q. -- pay?

22 A. Yes, sir.

23 Q. Okay. And what was your hourly pay?

24 A. \$36 and sixty-six, six.

25 Q. Okay. And do you remember that the sick leave was 414.85

1 hours?

2 A. I'm sorry. Sick leave?

3 Q. The remaining sick leave we talked about was 414.85?

4 A. Yes, sir, it is.

5 Q. Okay. If I give you a calculator, can you tell us the
6 total, or should we --

7 A. It's approximately 1500. 400 times that would be 15,000.

8 MR. J. FLAXMAN: Could I approach and give him a
9 calculator?

10 THE COURT: You may.

11 (Tendered.)

12 BY MR. J. FLAXMAN:

13 Q. Can you tell us what 414.85 hours at \$36.666 per hour
14 totals up to?

15 A. 15,885. Maybe I did it wrong. I think it's like, yeah,
16 15 --

17 Q. All right. Just hit "clear," and I will read the numbers
18 to you one more time.

19 A. 15,000. That's what I -- fifteen, eight, five, six, six.

20 Q. Start again.

21 A. That's go again.

22 Q. 414 --

23 A. Let me clear this real quick. Where is the "clear"
24 button? Okay. Here we are right here. That's not clearing
25 it. Okay.

1 Q. 414.85.

2 A. 414?

3 Q. 414.85.

4 A. Okay. Point 1 -- point 185.

5 Q. Point 85. Start over.

6 A. Okay. Go ahead.

7 Q. 414 --

8 A. 414 --

9 Q. Point 85 --

10 A. Point 85 --

11 Q. -- times --

12 A. -- times --

13 Q. -- 36 --

14 A. -- 36 --

15 Q. -- point 666.

16 A. -- point 666.

17 Q. Read us the total.

18 A. 15,021 -- \$15,210.

19 Q. And that's the total value of the sick time, correct?

20 A. Yes, sir.

21 Q. In addition to losing that sick time, what else did you
22 lose when you left your employment at the sheriff's office?

23 A. I lost my optional pension I maxed out in. I lost
24 6 percent for every year that I wasn't 60 years old. I had
25 almost 30 years in. It was either 60 years old or 30 years.

1 That was supposed to be how it worked for the retirement.

2 Q. To get the maximum pension, you needed 30 years?

3 A. Yes, sir.

4 Q. And how many years had you worked?

5 A. I worked 20 -- 1989 to -- 27.

6 Q. And are you getting a pension today?

7 A. I'm getting a small -- the pension that I -- it's
8 preserved.

9 Q. What's the amount you receive?

10 A. 2,000 a month.

11 Q. And it would be a higher amount if you had worked those
12 30 years?

13 A. Oh, yeah. Yeah. Plus my optional.

14 Q. In addition to the pension, you also would have -- if you
15 had remained at the sheriff's office, you would have earned
16 income the following year, right?

17 A. Absolutely.

18 Q. And if we look back at that chart that's still up, your
19 yearly salary was -- what was your yearly salary?

20 A. \$76,265.

21 Q. Okay. Starting in 2017, you have been out of work for the
22 sheriff for seven years; is that right?

23 A. Yes, sir.

24 Q. All right. Can you do the math again to tell us what
25 76,265 --

1 A. 76,265 point --

2 Q. -- times seven.

3 A. -- times seven.

4 Are you going -- 79 you have here.

5 Q. I'm sorry?

6 A. The paper says 79. Am I going through that?

7 Q. No. You should be on the page before. The 76.

8 A. It's not there, but go ahead with the -- what is it?

9 76 -- what?

10 Q. I'm sorry. The number we looked at before was what was
11 effective at the time of your resignation?

12 A. 76 --

13 Q. Bear with me. I'm looking now at Page No. 91.

14 Do you see that on your screen?

15 A. 91. I see it.

16 Q. And that says that it's effective December 1st, 2016,
17 right?

18 A. Yes, sir.

19 Q. Okay. So -- and what's the yearly income on that page?

20 A. \$77,981.

21 Q. Okay. Can you tell us what that would be over seven
22 years?

23 A. Okay. So 77 -- (unintelligible).

24 (Brief pause.)

25

1 BY THE WITNESS:

2 A. 93,000 -- I got 93,000.

3 BY MR. J. FLAXMAN:

4 Q. Let's try again.

5 A. Unless I'm not doing something right.

6 Q. Let's do it again.

7 MR. K. FLAXMAN: Could we have a minute, Judge?

8 BY MR. J. FLAXMAN:

9 Q. 77 --

10 THE COURT: I'm sorry?

11 MR. K. FLAXMAN: Could we have a minute to try to get
12 this organized?

13 THE COURT: No. Keep -- continue.

14 BY MR. J. FLAXMAN:

15 Q. 77,981 --

16 A. 981. Okay.

17 Q. -- times seven years --

18 A. Times seven.

19 Q. Yeah.

20 -- equals?

21 A. 54. That can't be right, though.

22 Q. Read the number, please.

23 A. Okay. 54 -- 54 -- sorry. \$54,586. That's what -- it
24 can't be right.

25 Q. Is it 545,000?

1 A. Yes, it's -- huh? Oh, 500,000. Okay. I'm sorry. The
2 points were --

3 THE COURT: Hold on. Mr. Ziccarelli, hold on,
4 please.

5 Counsel, we will do the math offline. You can argue.
6 You want to point out the figures where they are, but we don't
7 need to go through this exercise with the calculator.

8 MR. J. FLAXMAN: Okay. Thank you, your Honor.

9 I have one more point on the math, but I won't do the
10 computation.

11 BY MR. J. FLAXMAN:

12 Q. Mr. Ziccarelli, you said you were getting \$2,000 a month
13 for your pension?

14 A. Yes, sir.

15 Q. When -- what month and year did you start receiving that?

16 A. January 2018.

17 Q. January 2018?

18 A. Yes, sir.

19 Q. Okay.

20 (Counsel conferring.)

21 MR. J. FLAXMAN: I'm going to put up on the screen
22 another plaintiff's exhibit. This hasn't been admitted yet.

23 THE COURT: What's it marked?

24 MR. J. FLAXMAN: This is marked Plaintiff's Exhibit 4.

25 MS. ORI: I have a different list of exhibits.

1 MR. J. FLAXMAN: I'm sorry?

2 MS. ORI: This was not something that was in the
3 pretrial order.

4 MR. K. FLAXMAN: These are the renumbered from
5 yesterday.

6 MS. ORI: This was not an exhibit that was disclosed
7 in the pretrial order.

8 (Counsel conferring.)

9 THE COURT: Are we ready to proceed?

10 MR. J. FLAXMAN: We are ready.

11 BY MR. J. FLAXMAN:

12 Q. Do you see Plaintiff's Exhibit 4 on the screen?

13 A. Yes.

14 MR. J. FLAXMAN: Can you scroll up to the top.

15 BY MR. J. FLAXMAN:

16 Q. Is that another collective bargaining agreement?

17 A. Yes, sir.

18 Q. And if you go down, do you see a stamp on it?

19 A. Yes, sir.

20 Q. What's the date of the stamp?

21 A. January 17th, 2018.

22 MR. J. FLAXMAN: We move Plaintiff's Exhibit No -- 4?

23 MR. K. FLAXMAN: Yes.

24 MR. J. FLAXMAN: -- into evidence.

25 THE COURT: Do you have an objection?

1 MS. ORI: I do have an objection. I think this was
2 maybe Plaintiff's Exhibit 5, and we objected to relevance.

3 (Brief pause.)

4 THE COURT: I don't see a reference in my notes to
5 Plaintiff's Exhibit 5.

6 Is this Plaintiff's Exhibit 4 or 5?

7 MR. K. FLAXMAN: We renumbered them. It was -- in
8 the original pretrial order we just excerpted two pages from
9 the collective bargaining agreement. It seems like improper
10 just to do the two pages, and we are offering the whole
11 thing just for those two pages.

12 THE COURT: So you have got -- Plaintiff's Exhibit 4
13 is just -- is the entire exhibit or only two pages?

14 MR. K. FLAXMAN: Well, and the numbering is changed
15 since the pretrial order, because some exhibits have been
16 withdrawn.

17 THE COURT: All right.

18 Ladies and gentlemen, we are going to stop here for
19 today. We will get this kind of thing squared away on our
20 clock, not on your clock.

21 I will remind you. Your friends and family are going
22 to be curious about how you spent your day at the Dirksen
23 building. You are free to tell them how fortunate you are to
24 be serving public in this vital role, but you can't talk with
25 them about the substance of the case. You can't tell them

1 what the case is about, anything about the case other than the
2 fact that you are here for a couple of days. I have explained
3 why. It's very important that you continue to abide by those
4 instructions.

5 It's also important to keep an open mind. We are not
6 done yet. This isn't going to be a lengthy trial, but we are
7 not done with the evidence or the instructions or the
8 arguments yet. So keep an open mind. Don't come to any
9 conclusions at this point.

10 I'm going to ask you to be back in the jury room at
11 9:15 tomorrow morning. We will get started no later than
12 9:30.

13 We appreciate your punctuality. We will try to do
14 the same. We are only as punctual as the least punctual of
15 you because we can't start without all of you. Okay? So
16 please remember that when you are -- I know some of you aren't
17 probably used to navigating the Loop, so leave yourself a
18 little extra time to get in the building.

19 Have a very good evening. We will see you tomorrow.

20 Please leave your notebooks in the jury room. Don't
21 take those home with you. They will be waiting for you
22 tomorrow morning.

23 All rise.

24 (Jury out at 4:47 p.m.)

25 THE COURT: You can step down, Mr. Zicarelli.

1 All right. What is the issue here?

2 MS. ORI: We objected to the collective bargaining --
3 what he had identified as the salary from 2017, 2019, and 2023
4 from the CBA for relevance.

5 THE COURT: It goes to his damages claim.

6 MS. ORI: But I did not -- I didn't think that the
7 CBA -- the excerpts that he talked about, I didn't think that
8 that was relevant.

9 THE COURT: All right. That's overruled.

10 Let's be clear, though, when you are putting up an
11 exhibit what it is. If it's an excerpt or something that
12 differs from -- in some fashion, we need to flag that and make
13 sure that there is not a problem with it. I don't want to
14 spend time arguing and quibbling in front of the jury about
15 whether we have got two pages or what's the exhibit number or,
16 for that matter, doing math on a calculator, which can be done
17 offline.

18 What you can do is put your variables into evidence.
19 Identify them in the record. And then you can rely on the
20 calculator and the calculated values during closing argument.

21 All right. We are going to -- we will finish up with
22 Mr. Zicarelli in the morning. And then, is plaintiff calling
23 anyone else?

24 MR. K. FLAXMAN: No.

25 THE COURT: Okay. You are planning to call whom?

1 MS. ORI: Rosemarie Nolan.

2 THE COURT: All right. And she was -- she is one of
3 the supervisors that Ms. Shinnawi reported to?

4 MS. ORI: Yes.

5 THE COURT: Okay. It sounds like we are going to be
6 finished with the evidence in the morning easily. All right.
7 Then you need to be prepared to close tomorrow afternoon.

8 MR. K. FLAXMAN: We could probably close before
9 lunch.

10 THE COURT: Well, then be ready before lunch.

11 We do have to instruct the jury. Ariana -- not
12 Ariana. Ms. O'Brien, the clerk who was on this case until
13 this morning when she had a bit of an accident, should have
14 sent out -- I believe sent out to you a corrected version,
15 based on our pretrial conference on Friday, of the jury
16 instructions.

17 Make sure you go through those tonight. Anything
18 that you don't bring to my attention first thing in the
19 morning, it's going to be too late to fix. So if you have any
20 other issues -- and I'm not anticipating substantive issues at
21 this point, but if there are any other typos or errors of any
22 sort that you see, please highlight those for me. We will get
23 that finished up in the course of the day.

24 So we will finish the witnesses. My practice is to
25 do the instructions before closing arguments. Then we will do

1 closings. Depending on the timing, maybe it will be before
2 lunch. Maybe it will be right after lunch. We will see how
3 that goes.

4 Any other questions logistically?

5 MR. K. FLAXMAN: None from plaintiff, your Honor.

6 MS. ORI: No.

7 THE COURT: All right. Mr. Zicarelli, you are on
8 the stand under oath subject to cross-examination. You may
9 not discuss the substance of your testimony with your lawyers.

10 THE PLAINTIFF: Yes, sir, your Honor.

11 THE COURT: Okay. We will see you -- let's be here
12 ready to go at 9:00 o'clock in the morning.

13 All right. We are adjourned.

14 (An adjournment was taken at 4:51 p.m.)

15 * * * * *

16 C E R T I F I C A T E

17 We, Judith A. Walsh and Frances M. Ward, do hereby
18 certify that the foregoing is a complete, true, and accurate
19 transcript of the proceedings had in the above-entitled case
before the Honorable JOHN J. THARP, JR., one of the judges of
said court, at Chicago, Illinois, on March 11, 2024.

20 /s/ Judith A. Walsh, CSR, RDR, F/CRR March 27, 2024

21 /s/ Frances M. Ward, CSR, RPR, FCRR March 27, 2024

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23 United States District Court
Northern District of Illinois
Eastern Division

24

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SALVATORE ZICCARELLI,

Plaintiff,

-vs-

THOMAS J. DART, Sheriff of
Cook County, Illinois,

Defendant.

Case No. 17 C 03179

Chicago, Illinois
March 12, 2024
10:02 a.m.

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - VOLUME 2
BEFORE THE HONORABLE JOHN J. THARP, JR., and a Jury

APPEARANCES:

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1 (Proceedings heard in open court, jury out:)

2 THE CLERK: Calling case 17 CV 3179, Ziccarelli v.
3 Dart, et al.

4 THE COURT: Would counsel put your appearances on the
5 record, please.

6 MR. J. FLAXMAN: Good morning. Joel Flaxman for the
7 plaintiff.

8 MS. ORI: Good morning. Kathleen Ori for defendant.

9 MS. HASAN: Good morning. Nazia Hasan also for
10 defendant.

11 THE COURT: All right. Good morning.

12 All right. Did we get straight what Plaintiff's
13 Exhibit 2 or 3 or what the problem was?

14 MR. J. FLAXMAN: I think we do have it straight. If
15 it's easier, I can provide paper copies to everybody.

16 The Exhibit 2, which I think was moved into evidence,
17 is the collective bargaining agreement dated 2015.

18 MS. HASAN: Okay.

19 THE COURT: And what we can use is just the pages
20 we're referring to.

21 MS. ORI: Okay. And that's the collective
22 bargaining -- the 2012 to 2017 CBA?

23 MR. J. FLAXMAN: Yes.

24 THE COURT: I'm sorry, Ms. Ori. I --

25 MS. ORI: I just want to make sure this is Exhibit --

1 MS. HASAN: Plaintiff's 2.

2 MS. ORI: Plaintiff's 2. Okay.

3 I would like you to put in the whole CBA. That's
4 what the original -- according to this exhibit list that
5 plaintiff provided for the pretrial order, he indicated -- it
6 was Plaintiff's Exhibit 3, but he indicated it was going to be
7 the whole collective bargaining agreement, not just the wages.
8 I would also like to use the collective bargaining agreement.

9 THE COURT: All right. Are you going to have an
10 objection to other material in the collective bargaining
11 agreement?

12 MR. J. FLAXMAN: No, we're not. I don't --

13 THE COURT: All right. Just --

14 MR. J. FLAXMAN: Unless it's a relevance issue.

15 THE COURT: Unless it's what?

16 MR. J. FLAXMAN: Unless there -- it's a relevance
17 issue in terms of the exhibit that we didn't move the whole
18 thing in.

19 THE COURT: Well, all right. Then Plaintiff's 2 is
20 going to be a two-page exhibit, excerpt from the collective
21 bargaining agreement.

22 You can move the agreement in --

23 MS. ORI: Okay.

24 THE COURT: -- in your case.

25 MR. J. FLAXMAN: It's a -- we have it as a three-page

1 just with the cover and two tables.

2 THE COURT: Okay. All right. That's fine.

3 MR. J. FLAXMAN: Do you want me to hand up a paper
4 copy for the Court?

5 THE COURT: Yeah. Just come here. Thank you.

6 All right. So we'll pick up at that point with
7 Mr. Ziccarelli's testimony.

8 MR. J. FLAXMAN: And there's going to be two other
9 collective bargaining agreement excerpts that --

10 THE COURT: From the same? More recent --

11 MR. J. FLAXMAN: No, from two other agreements.

12 THE COURT: Okay.

13 MR. J. FLAXMAN: And I -- we've had excerpt issues
14 and numbering issues so I have paper copies of those that I
15 will show on the screen. But if I could hand up and also hand
16 the other side, I hope we will have everything straight.

17 THE COURT: Okay.

18 All right. Now, with respect to the jury
19 instructions, has anybody noted any corrections that are
20 needed?

21 MR. J. FLAXMAN: There are a few things that I think
22 are optional that I don't know if you need us to flag, like
23 the "if I asked a witness a question."

24 THE COURT: Yeah. We'll wait until things are
25 complete --

1 MR. J. FLAXMAN: And judicial notice.

2 THE COURT: -- for anything like that.

3 I did remove the brackets on the prior inconsistent
4 statement instruction since we did have some impeachment in
5 that regard yesterday.

6 MR. J. FLAXMAN: The only other issue, and you may
7 tell me this has already been ruled on, is in the elements
8 instruction, we had asked that the jury be instructed that the
9 first two elements are not disputed.

10 THE COURT: You can argue that. I'm not going to put
11 that in the instructions.

12 MR. J. FLAXMAN: Okay. And is it -- can I put on the
13 screen that instruction when I'm doing closing?

14 THE COURT: Yeah, certainly.

15 MR. J. FLAXMAN: Okay.

16 THE COURT: I mean, make sure it's a clean page. It
17 may have bracketed material that may not make it in -- well --

18 MR. J. FLAXMAN: Which version should I use?

19 THE COURT: You're talking about for argument?

20 MR. J. FLAXMAN: Correct.

21 THE COURT: I'm going to instruct the jury before
22 argument so you'll have the clean -- we'll have some break so
23 if there's need to have a page of the instructions that are,
24 you know, further edited to remove brackets or whatever, we'll
25 have a chance to do that.

1 MR. J. FLAXMAN: Okay.

2 THE COURT: All right. Anything from the defense?

3 MS. ORI: Just to be clear, for the elements of the
4 FMLA interference claim, it's four prongs.

5 THE COURT: Four prongs.

6 MS. ORI: Okay.

7 THE COURT: Okay. And the verdict form we passed out
8 yesterday morning. Anybody have any comments or problems with
9 that? We tried to make it as simple as possible.

10 All right. Hearing nothing?

11 MS. ORI: No, not from us.

12 THE COURT: All right.

13 Mr. Flaxman, did you have anything?

14 MR. J. FLAXMAN: I'm sorry. Let me look. I think
15 the answer is no.

16 No, nothing else.

17 THE COURT: Okay. All right. As soon as we have the
18 jurors here, we will get underway. Where is your partner?

19 MR. J. FLAXMAN: He should be here momentarily too.

20 THE COURT: Okay. All right.

21 So let me know when we're ready to go, Alberta.

22 THE CLERK: Okay. Will do.

23 (Recess had from 9:14 a.m. to 9:39 a.m.)

24 THE CLERK: All rise.

25 (Jury enters.)

1 THE COURT: All right, folks. Please have a seat.

2 Good morning. We are going to continue with the
3 direct examination of the plaintiff, Mr. Ziccarelli.

4 Mr. Ziccarelli, would you come back up to the witness
5 stand, please. And I'll remind you you remain under oath.

6 THE WITNESS: Yes, sir.

7 THE COURT: All right. Have a seat, please.

8 SALVATORE ZICCARELLI, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN,
9 DIRECT EXAMINATION (Resumed)

10 BY J. FLAXMAN:

11 Q. Good morning, Mr. Ziccarelli.

12 A. Good morning.

13 Q. Yesterday I showed you an exhibit on the screen that was
14 admitted into evidence. I'll put it up again.

15 MR. J. FLAXMAN: I'd ask to publish Exhibit No. 2 to
16 the jury.

17 THE WITNESS: It's the collective bargaining
18 agreement.

19 BY MR. J. FLAXMAN:

20 Q. Okay.

21 A. Go ahead.

22 Q. And I'll go to the next page to be looked at. Do you
23 recall we looked at this page showing a pay scale that was
24 effective December 1, 2015?

25 A. Yes, sir.

1 Q. And you said -- where did you fall on this chart?

2 A. At the end of the pay scale of the department as \$76,265.

3 Q. Okay. That was based on your seniority?

4 A. Correct.

5 Q. Okay. And I'll go to the next page of Plaintiff's Exhibit

6 No. 2, page number 91. Do you see the effective date for this

7 pay scale?

8 A. Yes, sir.

9 Q. And what's that?

10 A. \$77,981.

11 Q. You see at the top it states the effective date of this

12 scale?

13 A. Yes, sir.

14 Q. And what is the effective date?

15 A. Effective date, December 1, 2016.

16 Q. Okay. I'm going to take that exhibit down, and I will put

17 up another exhibit that has not yet been admitted.

18 Do you see on your screen what's marked Plaintiff's

19 Exhibit 5?

20 A. Yes, sir.

21 Q. And what is that?

22 A. That is the collective bargaining agreement between -- is

23 that what you're asking, the whole line, the whole outline?

24 Q. Sorry. Can you speak up? What is the first page of this

25 document, sir?

1 A. The whole outline, the collective bargaining agreement
2 between the Brotherhood of Teamsters Local 700 and the Cook
3 County Sheriff's employees.

4 Q. And does it have a date range?

5 A. Yes, November December 1, 2017, to November 30, 2020.

6 Q. And was this the agreement that covered you as a -- or I'm
7 sorry.

8 Was this the agreement that covered correctional
9 officers?

10 A. Correct, yes, sir.

11 MR. J. FLAXMAN: We move the admission of Plaintiff's
12 Exhibit 5.

13 THE COURT: Any objection?

14 MS. ORI: No objection.

15 THE COURT: All right. Plaintiff's 5 is admitted.

16 (Plaintiff's Exhibit No. 5 was received in evidence.)

17 MR. J. FLAXMAN: Okay. And may we publish to the
18 jury?

19 THE COURT: Yes.

20 BY MR. J. FLAXMAN:

21 Q. I'm going to go on your screen to what is page 86 of
22 Plaintiff's Exhibit 5. And do you see this is another pay
23 scale?

24 A. Correct.

25 Q. And at the top right, do you see the effective date?

1 A. Yes, sir.

2 Q. And what's the effective date?

3 A. December 1, 2018.

4 Q. And, again, are you at the tenth step on the farthest to
5 the right?

6 A. Yes, sir.

7 Q. And if you had been working effective -- if you had been
8 working after December 1, 2018, what would the yearly salary
9 have been?

10 A. \$79,541.

11 Q. Did you say hours or dollars?

12 A. Dollars.

13 Q. I'm sorry?

14 A. Dollars.

15 Q. Okay. The next page, page number 87 of this document, do
16 you see the effective date of this one?

17 A. Yes, sir.

18 Q. And what's the effective date?

19 A. June 1, 2019.

20 Q. And for a correctional officer with your seniority, what
21 would the salary have been effective June 1, 2019?

22 A. \$81,132.

23 Q. Okay. And now I'll go to the next page. And this is
24 another pay chart?

25 A. 82,754.

1 Q. And what's the effective date on this one?

2 A. June 1, 2020.

3 Q. So as of June 1, 2020, a correctional officer with your
4 seniority would have had what yearly income?

5 A. \$82,754.

6 Q. Okay. We can take that down, and I will show you one more
7 exhibit.

8 Putting on the screen for you Plaintiff's Exhibit 7.

9 Can you see that that's another collective bargaining
10 agreement?

11 A. Yes, sir.

12 Q. And what's the date range for that one?

13 A. December 16 --

14 Q. Sorry.

15 A. -- 2021.

16 Q. That's the date that it was approved?

17 A. Yes, sir.

18 Q. And it covers -- what's the range that it covers?

19 A. I'm sorry. December 1, 2020, to November 30, 2024.

20 Q. And this is another bargaining agreement that covers
21 correctional officers, correct?

22 A. Correct.

23 MR. J. FLAXMAN: Okay. We move the admission of
24 Plaintiff's Exhibit No. 7.

25 THE COURT: Any objection?

1 MS. ORI: No objection.

2 THE COURT: All right. Plaintiff's 7 is admitted.

3 (Plaintiff's Exhibit No. 7 was received in evidence.)

4 MR. J. FLAXMAN: May we publish to the jury?

5 THE COURT: Yes.

6 BY MR. J. FLAXMAN:

7 Q. You have -- that's the cover page you just looked at,
8 correct?

9 A. Yes.

10 Q. Okay. I'm going to move to page -- what is marked as page
11 103. And is this another pay scale?

12 A. Yes.

13 Q. And what's the effective date?

14 A. May 31, 2021.

15 Q. Okay. And this one has -- would you fall in the tenth
16 step for this one too?

17 A. Yes, sir.

18 Q. Okay. Do you know why it has a grade 17 and a grade 18?

19 A. I'm not very sure.

20 Q. Okay. Do you know which grade you would have been?

21 A. I don't recall.

22 Q. Okay. What's the yearly salary for grade 17?

23 A. Grade 17 is \$86,712.

24 Q. And the grade -- the yearly salary for grade 18?

25 A. \$92,891.

1 Q. Okay. Now let's go to page 104. Do you see on the top
2 when this table was effective?

3 A. I'm assuming 20- --

4 Q. Sorry. I'll make it bigger. It's a little hard to see at
5 the top of that chart -- at the top of that page.

6 Can you read it?

7 A. Effective date June 1, 2022?

8 Q. Yes. And the yearly salary for grade 17?

9 A. Grade 17 is \$90,213.

10 Q. And grade 18?

11 A. \$96,642.

12 Q. Okay. The last page is page 105. And when -- is this
13 another pay chart?

14 A. \$92,469 -- \$99 -- 99,058.

15 Q. And what's the effective date on this chart?

16 A. June 1, 2023.

17 Q. Okay. The \$92,469 is for grade 17?

18 A. Yes, sir.

19 Q. \$99,058 was for grade 18?

20 A. Yes, sir.

21 Q. Okay. We can turn off those exhibits.

22 I wanted to go back to the phone call you described
23 with Ms. Shinnawi. You remember we talked about that
24 yesterday?

25 A. Yes, sir.

1 Q. Okay. What was your goal when you called Ms. Shinnawi?

2 A. To complete what my physician orders were, and those
3 orders were to extinguish your FMLA and then --

4 THE COURT REPORTER: Excuse me. Could you speak up a
5 little bit?

6 THE WITNESS: Extinguish your FMLA and then continue
7 with all of your time, and I want you then to go onto a
8 permanent disability.

9 BY MR. J. FLAXMAN:

10 Q. And before you spoke to Ms. Shinnawi, had you talked to
11 anybody else at the jail about the need to extinguish your
12 FMLA?

13 A. No, sir. That's just between myself and also the --
14 Shinnawi. She is the director/coordinator of that.

15 Q. Okay. What about outside, did you talk to anybody who
16 worked for the county or for pensions about the need to
17 extinguish your FMLA?

18 A. No, I just know the fact that you extinguish your FMLA.
19 You can do that as you decide on how you do that, with what
20 you have in your power.

21 Q. Okay.

22 A. In your means.

23 Q. And you told us before the doctor wanted you to take eight
24 weeks off; is that right?

25 A. Yes, sir.

1 Q. And you knew that you didn't have eight weeks of FMLA
2 remaining?

3 A. Correct.

4 Q. And how did you learn that you needed to extinguish your
5 FMLA before you could take disability?

6 A. I went to the disability department as instructed by my
7 physician, notified them the situation. And they said well,
8 now you need to take everything you have, and then you can
9 could back, grab the -- take the paperwork we have and you
10 will submit it to your doctor and he submits it to us.

11 Q. So if you had extinguished your FMLA, you would have then
12 used disability?

13 A. Then I would have extinguished everything else I had and
14 go on disability, yes, sir.

15 Q. Did you ever consider taking sick leave in addition?

16 A. I considered, but I know that all the memos that have been
17 put out by the sheriff in previous -- in my employment was
18 giving me the understanding and all officers the understanding
19 that you will be terminated if you abuse that time.

20 Q. And just so I'm clear, what was the reason that you were
21 never able to take disability leave?

22 A. I wasn't able to do and follow everything that was
23 instructed to me to do so because I wasn't able to first
24 extinguish all my FMLA.

25 Q. And why weren't you able to extinguish all of your FMLA?

1 A. As much I had. I wasn't given the correct understanding
2 that I wanted to know how much I had only, not to know that I
3 was going to be disciplined or be fired.

4 Q. Okay. And if you hadn't been told you were going to be
5 disciplined or fired --

6 A. I would have continued.

7 Q. I'm sorry?

8 A. I would have continued to take my FMLA.

9 Q. Okay.

10 MR. J. FLAXMAN: Nothing further.

11 THE COURT: Counsel.

12 CROSS-EXAMINATION

13 BY MS. ORI:

14 Q. Good morning, Mr. Ziccarelli.

15 A. Good morning, ma'am.

16 Q. You testified yesterday that the phone call with
17 Ms. Shinnawi, you said you asked, How much time do I have
18 left, and she said, Do not take any more time. That was your
19 testimony yesterday, correct?

20 A. Correct.

21 Q. Okay. And this phone call lasted only a few minutes?

22 A. It only lasted a little, yes, a few minutes, not even
23 maybe approximately two minutes, three minutes.

24 Q. Okay. You didn't tell your supervisors about this phone
25 call?

1 A. No. No, I did not.

2 Q. Okay. I'm going to pull up Joint Exhibit 6, which is the
3 exit interview. This is already into evidence.

4 When you went for this exit interview, you were told
5 how you could get other health insurance, correct?

6 A. I was told that you can get COBRA, I believe.

7 Q. Okay.

8 A. That's it. That's all I was told.

9 Q. Just waiting for the exhibit to show up. There it is.

10 Can you see it?

11 A. Yes, ma'am.

12 Q. Okay. And so there's a checkbox that said -- explained
13 how to get other insurance?

14 A. Correct.

15 Q. Okay. And you were also paid for all of your unused
16 vacation time?

17 A. Yes, ma'am.

18 Q. And you were paid for your comp time?

19 A. Yes, ma'am.

20 Q. And so you also knew that you wouldn't get paid for your
21 sick time when you retired?

22 A. I was aware of that.

23 Q. Okay. And between the time you had the telephone call
24 with Ms. Shinnawi and the time you resigned, you were not
25 disciplined?

1 A. No, ma'am.

2 Q. But you took FMLA time after you talked to Ms. Shinnawi?

3 A. After I talked to her I took FMLA?

4 Q. Yes.

5 A. Okay. Well, I still had FMLA, so I used a little bit
6 before I got fired, or thought I'd get fired.

7 Q. And you were not disciplined for taking FMLA?

8 A. I don't know. I wasn't -- no, I was not.

9 Q. You were never disciplined for taking FMLA?

10 A. No, ma'am.

11 Q. Now, your phone --

12 MS. ORI: You can take that exhibit off. Thank you.

13 BY MS. ORI:

14 Q. Your phone call with Ms. Shinnawi, that was not the first
15 time you had interacted with her, correct?

16 A. First time.

17 Q. It was the first time?

18 A. Yes, ma'am.

19 Q. You had submitted FMLA paperwork to her though, correct?

20 A. Right. Correct.

21 Q. Okay. And she had approved your FMLA time?

22 A. Correct.

23 Q. Her job was to approve FMLA time?

24 A. Correct.

25 Q. Okay. And her job is to keep track of your FMLA time?

1 A. Correct.

2 Q. Ms. Shinnawi only approves FMLA time?

3 MR. J. FLAXMAN: Objection. Foundation.

4 THE COURT: Overruled.

5 BY THE WITNESS:

6 A. I believe so.

7 BY MS. ORI:

8 Q. Okay. She had never approved your request to use vacation
9 time?

10 A. No, only FMLA is what I want from her. I'm asking what
11 time I had, how much I had left.

12 Q. Okay. And I'm saying she never approved your vacation
13 time?

14 A. No, no vacation.

15 Q. She never approved your sick time?

16 A. No. No, ma'am.

17 Q. As FMLA manager, Ms. Shinnawi worked in human resources?

18 A. That's where she worked, yes, ma'am.

19 Q. Okay. And you talked about attendance review and
20 discipline. Attendance review is not in the human resources
21 department, correct?

22 A. I don't believe I said anything in regards to attendance
23 review and discipline aren't my words. Did I say something --
24 did I give that -- did I give that statement? I don't believe
25 I did.

1 Q. All right. The discipline unit, that would not be in
2 human resources. That would not be Ms. Shinnawi's purview,
3 correct?

4 A. Not of my knowledge.

5 Q. Okay. Ms. Shinnawi never disciplined you?

6 A. No, she did not.

7 Q. When you used sick time or vacation time as a correctional
8 officer, you need to go through your chain of command?

9 A. No, ma'am. You don't.

10 Q. How do you get approval for sick time?

11 A. You just use your sick time until you extinguish your sick
12 time.

13 Q. Okay. Do you know who signs off on your time?

14 A. Again, when you use your sick time, you just use it until
15 there's no more sick time left.

16 Q. Is there a timekeeper who is tracking your time?

17 A. Yes, there is.

18 Q. Okay. And is that through your chain of command?

19 A. No, it's not. It's through someone else. I don't -- I
20 have never inquired that.

21 Q. Okay. When you go on vacation, do you need to seek
22 approval through your chain of command?

23 A. You put a three-part form in asking to have your vacation
24 because you bid for that particular time because of your
25 seniority.

1 Q. Okay. Who was your chain of command?

2 A. At that time there were two lieutenants. One lieutenant
3 was a lieutenant -- well, I don't remember the exact -- how I
4 say the name. I forgot the two lieutenants' names. I know
5 that there were two lieutenants.

6 Q. Okay. After you talked to Ms. Shinnawi, you did not go to
7 your two lieutenants and ask to use your vacation time?

8 A. No, because I needed to do as instructed, is first
9 extinguish my FMLA time.

10 Q. All right. You just testified about that. You said that
11 the disability pension told you you needed to extinguish your
12 FMLA time?

13 A. All times, and my doctor said you first start with your --
14 utilize first with your FMLA so nothing happens with you in
15 regards to termination, first use this and then we'll go from
16 the next step.

17 Q. Okay. When you say you talked to disability pension, are
18 you talking about the Cook County pension board?

19 A. Wherever I was instructed to go when I went downtown was
20 the disability department. I'd never been there before. This
21 would be the first time I would go.

22 Q. Okay. The Cook County pension board is different than the
23 Sheriff's Office, correct?

24 A. I believe so, yes.

25 Q. Okay. And so you're saying that the Cook County pension

1 board told you you had to exhaust your FMLA leave before you
2 could go on disability?

3 A. Everything, all my -- all my time that would be part of my
4 time.

5 Q. Okay. No one from the Sheriff's Office told you that?

6 A. No, that's why I went to the disability department. I was
7 instructed by my physician.

8 Q. All right. And just to be clear, it's the Cook County
9 pension board. That's the name of it, correct?

10 A. I thought I was just going to the Cook County disability
11 department.

12 Q. Okay.

13 A. That's what I was understanding.

14 Q. And to be clear, the Cook County pension board and the
15 Sheriff's Office, two separate entities?

16 A. Okay. Thank you for telling me that.

17 Q. Okay. Now, your attorney just showed you the collective
18 bargaining agreement. He just showed you part of it, but I
19 want to show you the whole thing.

20 MS. ORI: So we move into evidence what we're going
21 to mark as Defense Exhibit 2.

22 THE COURT: Any objection?

23 MR. J. FLAXMAN: I didn't understand. It's the
24 same --

25 MS. ORI: It's going to be that 20- -- the initial

1 CBA you were going to --

2 MR. J. FLAXMAN: Yeah, we don't object to this being
3 in evidence.

4 THE COURT: All right. Defense Exhibit 2 is
5 admitted.

6 (Defendant's Exhibit No. 2 was received in evidence.)

7 MS. ORI: We're going to pull it up.

8 By MS. ORI:

9 Q. Now, you were a member of the union for 27 years, correct?

10 A. Correct.

11 Q. So you were familiar with the provisions of a CBA,
12 correct?

13 A. Sure, correct.

14 Q. And the CBA has lots of provisions. I'm going to show you
15 just a couple. If we can look at Section 10.1, Leaves of
16 Absence.

17 Do you see it?

18 A. Leave of Absence, right.

19 Q. Okay. The CBA provided that you could take a leave of
20 absence, correct?

21 A. Correct.

22 Q. You could have applied for a medical leave under this CBA.

23 A. Okay. I did not. I filed what I was instructed to do by
24 my physician to go on permanent disability. That's what I was
25 told to do because of the illness I have, and I went to a

1 licensed medical physician. And that's what I'll do.

2 Q. Your physician did not work at the Sheriff's Office,
3 correct?

4 A. No, he didn't.

5 Q. Your physician was not aware of the provision in the CBA?

6 A. I don't know that.

7 MR. J. FLAXMAN: Objection. Foundation.

8 THE COURT: You can answer to the extent you know.

9 BY THE WITNESS:

10 A. I don't know that.

11 BY MS. ORI:

12 Q. Okay. The union also has a provision where you could
13 apply for a compassionate leave pursuant to CBA Section 15.8.

14 MS. ORI: If we can get to that section.

15 THE WITNESS: I wasn't aware of this, all these
16 different pages of the CBA. That's why I should have been
17 instructed that when I called the union, and I was told they
18 can't do anything until I was fired when I notified them about
19 this. So they should have let me know about this collective
20 bargaining agreement, correct?

21 BY MS. ORI:

22 Q. So yesterday you testified that after you spoke to
23 Ms. Shinnawi, you spoke to the union?

24 A. That's correct.

25 Q. Dennis Andrew, correct?

1 A. Yeah.

2 Q. Okay. And he did not tell you about compassionate leave?

3 A. No. No, ma'am.

4 Q. Okay. And you didn't ask him about it?

5 A. I didn't know about it. He should have given me the
6 understanding.

7 Q. Okay.

8 A. He was the -- he was actually the business agent.

9 Q. And the business agent of the union is not a
10 representative of the Sheriff's Office, correct?

11 A. That's correct.

12 Q. Okay. You had taken FMLA in the past?

13 A. Yes, ma'am.

14 Q. You knew the Sheriff's Office had an FMLA policy?

15 A. Yes, ma'am.

16 Q. Part of your responsibilities when you were employed by
17 the Sheriff's Office was to be familiar with the sheriff's
18 office's general orders, correct?

19 A. Correct.

20 Q. I'm going to show you what was previously marked as
21 Defendant's Exhibit 1, which is the FMLA policy.

22 Mr. Zicarelli, do you see this?

23 A. Yes, ma'am.

24 Q. All right. Okay. You have seen this FMLA policy before?

25 A. Many memos. I have seen this. Maybe. I don't recall at

1 this time. After eight years I do not recall, or seven years.

2 Q. I believe the effective date is December 2007.

3 A. Correct. This date and time, I do not remember this.

4 Q. Does this policy look familiar to you?

5 A. As I said before, I don't remember this particular policy,
6 but I remember the words FMLA medical and how you're able to
7 take your 420 hours federal law.

8 Q. Okay. But when you were employed by the Sheriff's Office,
9 you were familiar with this policy?

10 A. I don't recall that policy. I don't recall that at this
11 time, these years that have gone by about this particular
12 policy in front of me.

13 Q. But one of your responsibilities as a Sheriff's Office
14 employee was to be familiar with its policies?

15 A. But after all these years, constantly, I do not remember
16 this.

17 Q. Okay. Well, the FMLA is one of the Sheriff's Office
18 general orders.

19 A. Okay.

20 Q. Correct?

21 A. Yes, ma'am, it is one of the general orders. But like I
22 said, this is 2024. I've forgotten a lot of -- I don't
23 work -- haven't worked for the department for seven years. I
24 can't recall all this here. You're asking me, and I would if
25 I could.

1 Q. Okay. Well, you know that the Sheriff's Office had a
2 policy for FMLA where you could take 12 weeks of unpaid leave.

3 A. I was aware that you could take 400 hours. That's what I
4 had done because of the policy, and FMLA is required that you
5 give 400 hours. That's what I was told as I -- am I
6 incorrect?

7 Q. I believe it's 480 hours.

8 A. Then I had a little more time. Thank you.

9 Q. Okay. So 12 weeks and 480 hours, it's the same, correct?

10 A. Yep. Thank you.

11 Q. It's just math.

12 A. Yes. Thank you, ma'am.

13 Q. You were aware when you worked as a Sheriff's Office
14 employee of how to apply for FMLA leave?

15 A. Yes, ma'am.

16 Q. There are documents you need to fill out.

17 A. Yes, ma'am.

18 Q. And you need to get a doctor's note.

19 A. Well, that's part of the document, yes.

20 Q. Okay. You need to disclose the condition you're seeking
21 FMLA for?

22 A. Yes, ma'am.

23 Q. And you have to decide whether you're seeking intermittent
24 leave or block leave.

25 A. Yes, ma'am.

1 Q. You can --

2 MS. ORI: We would like to move Defendant's Exhibit 1
3 into evidence.

4 THE COURT: I thought it was in.

5 Any objection?

6 MR. J. FLAXMAN: I think this version of it does not
7 have the complete policy. So we don't object to the policy
8 coming in. This version that the defendants have been using
9 does not have all the pages of the policy.

10 THE COURT: All right. Well, it's what the
11 defendants are moving in. Do you have an objection?

12 MR. J. FLAXMAN: No objection.

13 THE COURT: All right. Defendant's Exhibit 1 is
14 admitted.

15 (Defendant's Exhibit No. 1 was received in evidence.)

16 MS. ORI: So we can take down Defendant's Exhibit 1,
17 and now I would like to pull up FMLA Joint Exhibit 4. This is
18 already in evidence.

19 BY MS. ORI:

20 Q. You testified about this document yesterday.

21 A. Yes, ma'am.

22 Q. In January -- I guess it was December of 2015, you applied
23 for FMLA?

24 A. Yes, as I've always done, yes, ma'am.

25 Q. I'm sorry?

1 A. As I always have been for the previous years, yes.

2 Q. Okay. You submitted paperwork.

3 A. Yes, ma'am.

4 Q. And your doctor, I believe at the end, it's an internist,
5 there was a form stating you needed intermittent leave?

6 A. Yes, ma'am.

7 Q. And the medical conditions that qualified you for FMLA.

8 A. Yes, ma'am.

9 Q. I think that's the fourth page. You had several medical
10 conditions that your doctor identified, correct?

11 A. Yes, ma'am. Two, I believe, right?

12 Q. How I read it, it looks like you had shoulder issues,
13 mobility issues, and anxiety and PTSD.

14 A. Okay. The shoulder issue was an injury at work, duty
15 injury. The deep vein thrombosis was because of a problem I
16 had for life. And the PTSD has become a life.

17 Q. Okay. So you had multiple conditions you were seeking
18 FMLA leave for?

19 A. Three, yes, ma'am. Yes, ma'am.

20 Q. Okay. And you sought intermittent leave?

21 A. Yes, ma'am.

22 Q. And the Sheriff's Office approved your request.

23 A. Yes, ma'am.

24 Q. You were approved for intermittent leave, seven episodes a
25 month.

1 A. Yes, ma'am.

2 Q. And pursuant to the FMLA policy, you were approved to take
3 up to 12 weeks of FMLA leave.

4 A. Yes, ma'am.

5 Q. Which is up to 480 hours.

6 A. Yes, ma'am.

7 Q. And after you were approved --

8 MS. ORI: You can take this down. Thank you.

9 BY MS. ORI:

10 Q. After you were approved, you took FMLA?

11 A. If that's what you're saying if I did, maybe because of
12 the fact that I took some FMLA until I decided I can't do this
13 or I might get terminated, so I better -- I better leave
14 because they're going to fire me.

15 Q. Okay. Prior to September, you were taking FMLA leave,
16 correct?

17 A. Yes, ma'am.

18 Q. Okay. Do you know if Ms. Shinnawi has a way to track your
19 FMLA time?

20 A. Yes.

21 Q. And you were aware of a program called Time Tracker?

22 A. No, ma'am.

23 Q. Okay. Do you know what program she uses to track time?

24 A. No, ma'am, I just made a phone call to her to find out my
25 time I had left.

1 Q. But when she said you didn't have enough FMLA time left
2 you did not think that was inaccurate, correct?

3 A. It wasn't her statement. You had took serious amount of
4 time, Mr. Zicarelli; do not use any more time or you will be
5 disciplined. Those were the words that were said, ma'am.

6 Q. When she spoke to you -- when you called her, you knew you
7 had used FMLA time.

8 A. Yes, ma'am.

9 Q. Okay. And you were calling her to find out how much more
10 you had left.

11 A. Yes, ma'am.

12 Q. But when you talked to Ms. Shinnawi, you knew your doctor
13 had told you to take eight weeks of block leave.

14 A. I knew that, yes, ma'am.

15 Q. Okay. And when you talked to her, you knew you had only
16 been approved for intermittent leave.

17 A. And that's what I was doing, yes, ma'am.

18 Q. You didn't disclose the medical condition you were seeking
19 treatment for to Ms. Shinnawi, did you?

20 A. Nobody, ma'am, but my physician and I due to my HIPAA
21 right.

22 Q. And the process of filling out paperwork, including the
23 doctor note documenting a medical condition, you did not do
24 that in September 2016.

25 A. Once again, please, again, with that.

1 Q. You didn't submit any new paperwork after talking to
2 Ms. Shinnawi.

3 A. No, ma'am.

4 Q. You didn't submit any paperwork after you spoke with your
5 doctor about the need for block leave?

6 A. No, ma'am.

7 Q. You testified about some damages that you say that you
8 suffered, correct?

9 A. Correct.

10 Q. When you went to speak to the Cook County pension board,
11 you did not intend on working seven more years, correct?

12 A. I intend to work until I was 60 or until 30 years were up.

13 Q. Okay. How old are you now?

14 A. I'm 60 now.

15 Q. You're 60 now?

16 A. Yes, ma'am.

17 Q. Okay. And how many years -- you worked for 27 years.

18 A. Correct.

19 Q. Okay. And so if you had worked until today, how many
20 years would you have worked?

21 A. Well, about 35 years.

22 Q. 35 years. Okay. More than the 30 years to maximize your
23 pension?

24 A. Correct.

25 Q. But when -- when you spoke to the pension board, it was my

1 understanding your doctor told you not to work any more and go
2 on disability.

3 A. I went to the disability department, and I spoke to
4 disability individuals as I was instructed. They told me what
5 I had to do. I don't -- I'm not understanding what you're
6 saying to me right now, ma'am.

7 Q. Okay. You testified yesterday that your physician said
8 don't work anymore at the Sheriff's Office, take disability.

9 A. When he found out of how I was in my condition, he wanted
10 me to go on a permanent disability because he said, You don't
11 have much time, and I don't -- left on your career; I think
12 it's best you go on a disability because of your advanced or
13 extreme PTSD.

14 Q. And to be clear, going on permanent disability is not the
15 same as taking FMLA leave?

16 A. That's -- that's true, yes, ma'am.

17 Q. Okay. After you resigned from the Sheriff's Office, you
18 were unable to work for several years.

19 A. I was --

20 MR. J. FLAXMAN: Excuse me. Objection. This was --
21 would have been the subject of a jury instruction the defense
22 withdrew.

23 MS. ORI: If we could have a sidebar. We talked
24 about this.

25 THE COURT: Sidebar.

1 (Sidebar.)

2 THE COURT: Everybody hear all right?

3 MS. ORI: Yes.

4 MR. J. FLAXMAN: Yes.

5 The issue is that going to this opens the door to
6 some testimony we understood was excluded, also could have
7 been the subject of the mitigation of damages instruction that
8 was withdrawn.

9 THE COURT: Well, when we discussed this, when
10 Ms. Ori expressly clarified that -- the question of whether
11 Mr. Zicarelli was able to work -- or was unable to work for
12 that three-year period was -- could be asked, that was
13 expressly ruled on in the pretrial conference.

14 MR. J. FLAXMAN: In response to that, we're going to
15 ask why he couldn't work, and I think that's going to get into
16 some evidence we had -- the Court had said would not come in.

17 THE COURT: No, this is -- it's not a mitigation
18 defense that they're offering. It's just a question of his
19 ability to -- whether he was going to be able to earn --
20 continue to earn money for the Sheriff's Office. It's not an
21 issue of mitigation of damages. And that was clarified when
22 the defense withdrew their mitigation instruction and
23 abandoned any mitigation argument.

24 So the argument is not going to be he didn't mitigate
25 his damages because he didn't work for three years. The

1 argument is going to be that he was not in a condition to
2 continue working for a number of years after that.

3 So, again, we addressed this expressly in the
4 pretrial conference, and that was made clear; and there was no
5 further objection, so the objection is overruled.

6 MS. ORI: Thank you.

7 (End of sidebar.)

8 THE COURT: All right. The objection is overruled.

9 You may continue.

10 BY MS. ORI:

11 Q. I'm going to ask the question again just -- when you
12 resigned from the Sheriff's Office, you were unable to work
13 due to your medical conditions for several years?

14 A. When you say "several," how many years?

15 Q. Three.

16 A. I think approximately three years or two. At that time I
17 was self-medicating because I couldn't get medication.

18 THE COURT: Mr. Zicarelli, you need to answer the
19 question that was posed.

20 THE WITNESS: Oh, go ahead.

21 I thought that's what she's asking, Your Honor.

22 Go ahead.

23 BY MS. ORI:

24 Q. So you were unable to work for several years
25 after leaving?

1 A. Yes, ma'am.

2 Q. After your phone call -- shortly after your phone call
3 with Ms. Shinnawi, you filled out your retirement papers?

4 A. Yes, ma'am.

5 Q. And now that you're retired, you're collecting your
6 pension from your time at the Sheriff's Office?

7 A. Yes, ma'am.

8 Q. Okay. And yesterday you testified that you're collecting
9 about \$2,000 a month?

10 A. Correct.

11 Q. You're actually collecting more, correct?

12 A. Approximately \$2,000 a month. Did you have a different
13 figure? I don't have that with me right now.

14 Q. Your 2022 tax returns indicated you were earning about
15 \$33,000, correct, a year?

16 A. That's because I think I was working other jobs at the
17 same time. Was that correct, or no, is that just the pension?
18 You should know the amount that I was getting from just the
19 pension.

20 THE COURT: Mr. Zicarelli, if you recall the answer
21 to the question, you can answer it. If you don't recall, you
22 should just simply say, I don't recall.

23 THE WITNESS: Sorry, Your Honor.

24 BY THE WITNESS:

25 A. I don't recall.

1 BY MS. ORI:

2 Q. Okay. If I showed you your tax return, would that refresh
3 your recollection about how much your pension --

4 A. Sure. Yes, ma'am.

5 MS. ORI: Okay. If we -- I just want to show it to
6 Mr. Zicarelli. It's Plaintiff's Exhibit 13, original 13, not
7 the one that...

8 BY MS. ORI:

9 Q. Let me know when you see it.

10 A. I see it. I see the tax return, ma'am.

11 Q. So the Cook County Pension Fund -- sorry -- the Cook
12 County Pension Fund paid you over \$33,000 in 2022?

13 A. Okay. I see that now.

14 MS. HASAN: I'll go to the page.

15 BY MS. ORI:

16 Q. Okay. Is your memory refreshed?

17 A. Is that with taxes removed, am I correct, with taxes or
18 no? What I received --

19 THE COURT: Folks, the only question pending is
20 whether this refreshes your recollection, Mr. Zicarelli, as
21 to --

22 THE WITNESS: Yes, it does. Yes, Your Honor, it
23 does.

24 MS. ORI: Okay.

25 I have nothing further.

1 THE COURT: Mr. Flaxman, anything further?

2 MR. J. FLAXMAN: Yes, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. J. FLAXMAN:

5 Q. I'm putting up on the screen a page from Defense
6 Exhibit No. 2 that was admitted, and this is page number 79.

7 MR. J. FLAXMAN: I would ask to publish this to the
8 jury.

9 BY MR. J. FLAXMAN:

10 Q. Mr. Zicarelli, do you remember you were asked about
11 something called compassionate leave?

12 A. Yes, ma'am -- yes, sir.

13 Q. And is that something you knew about in 2016?

14 A. No, sir.

15 Q. Okay. Do you see this page from the collective bargaining
16 agreement that has Section 15.8, compassionate leave?

17 A. Yes, sir.

18 Q. And does the first sentence say that "If an employee with
19 an attendance problem is unable to return to work due to the
20 serious medical condition of himself or herself or an
21 immediate family member and has exhausted all available leave
22 options, e.g., FMLA and disability leave, the employer may
23 grant a compassionate leave"?

24 A. Yes, sir.

25 Q. And did you understand that to mean that before getting

1 compassionate leave, someone must exhaust all available leave
2 options?

3 A. Yes, sir.

4 MR. J. FLAXMAN: Nothing further.

5 THE COURT: Anything further?

6 MS. ORI: No thanks, nothing.

7 THE COURT: Thank you, Mr. Zicarelli. You may step
8 down and resume your place at counsel table.

9 Let's have a brief sidebar.

10 (Sidebar.)

11 THE COURT: Does plaintiff have any further witnesses
12 or evidence to present in its case?

13 MR. K. FLAXMAN: No, Your Honor. The defense --
14 plaintiffs rest.

15 THE COURT: All right. I'll ask that question, and
16 you can rest in front of the jury.

17 MS. ORI: Judge, before we finish, I want to file a
18 motion for a judgment of directed finding. Do we do that in
19 front of the jury or at sidebar?

20 THE COURT: It's of record now. I'll take it under
21 advisement.

22 MS. ORI: Thank you.

23 THE COURT: All right.

24 (End of sidebar.)

25 THE COURT: Mr. Flaxman?

1 MR. J. FLAXMAN: The plaintiff rests. Thank you.

2 THE COURT: All right.

3 Does the defense wish to call a witness?

4 MS. HASAN: Yes, Your Honor. We call Rosemarie
5 Nolan. She will be here shortly. We told her 10:30 would be
6 the time to expect her testimony.

7 THE COURT: All right. We'll take about a ten-minute
8 break and then resume with the testimony.

9 Folks, it's important, as I reminded you already
10 several times, not to discuss the case among yourselves even
11 during these breaks when you're alone in the jury room. And
12 it's important to keep an open mind until all the evidence has
13 been presented and you've been instructed and the lawyers have
14 made their closing arguments. So we'll bring you back out in
15 about ten minutes.

16 All rise.

17 (Jury exits.)

18 THE COURT: All right. This is Ms. Nolan?

19 MS. HASAN: Yes.

20 THE COURT: All right. And you anticipate any other
21 witnesses?

22 MS. HASAN: No.

23 THE COURT: Okay. All right. So we'll presumably be
24 finishing up -- how long do you anticipate Ms. Nolan on
25 direct?

1 MS. HASAN: Not very long. Maybe 20 minutes of my
2 questions.

3 THE COURT: Okay.

4 MS. HASAN: Depending.

5 THE COURT: Who is doing the closing for plaintiff?

6 MR. K. FLAXMAN: Opening, closing.

7 THE COURT: What do you anticipate?

8 MR. J. FLAXMAN: 15 minutes. I would like a few
9 minutes to prepare it after the witness.

10 THE COURT: All right. We'll finish the evidence.
11 We'll take a break at that time. That will be long enough for
12 lunch. Well, we're going to be done by 11:30 with the
13 instructions.

14 All right. Here's what I envision. We'll get
15 started about 10:30. We'll finish Ms. Nolan I presume by
16 11:00 or so. I'll instruct the jury at that point. And then
17 we'll take a 15-, 20-minute break, and then we'll argue.
18 Okay.

19 MR. J. FLAXMAN: Okay.

20 MR. K. FLAXMAN: Thank you.

21 THE COURT: All right.

22 MS. ORI: Thank you.

23 (Recess had from 10:24 a.m. to 10:34 a.m.)

24 MS. HASAN: She's in the witness room. May I have
25 her come wait in here?

1 THE COURT: Yeah, you can bring her. We're ready to
2 go? Go ahead and bring her in.

3 MS. HASAN: Okay. Thank you.

4 LAW CLERK: All rise.

5 (Jury enters.)

6 THE COURT: All right. Please be seated.

7 All right. Ladies and gentlemen, the plaintiff has
8 rested its case-in-chief. It is now the defense has the
9 opportunity to present evidence.

10 You may call your first witness.

11 MS. HASAN: Thank you. We call Rosemarie Nolan.

12 THE COURT: Ms. Nolan, would you step up. And before
13 you sit down, would you raise your right hand.

14 (Witness sworn.)

15 THE COURT: Please be seated.

16 ROSEMARIE NOLAN, DEFENDANT'S WITNESS, DULY SWORN,

17 DIRECT EXAMINATION

18 BY MS. HASAN:

19 Q. Good morning, Ms. Nolan. Would you please introduce
20 yourself to the jury.

21 A. Hi, my name is Rosemarie Nolan. I'm the executive
22 director of the Cook County Sheriff's Merit Board.

23 Q. What do you do at the Cook County Merit Board?

24 A. I oversee a staff of about 12 people that are responsible
25 for the merit board certification process that includes

1 getting correctional officer applicants certified. It
2 involves testing applicants, conducting their investigations,
3 and preparing an investigative file so they can -- so the file
4 can go to the board for review to determine whether or not
5 these candidates are eligible to become correctional officer
6 applicants for the Cook County Sheriff's Office.

7 Q. Where did you work before you worked at the merit board?

8 A. I worked at the Cook County Sheriff's Department of
9 Personnel.

10 Q. What position did you have at the Sheriff's Office when
11 you left?

12 A. I was the director of personnel.

13 Q. When did you start working at the Sheriff's Office?

14 A. I started working in the Sheriff's Office in 1994.

15 Q. Did you work the Sheriff's Office consistently for that
16 period of 1994 till 2014?

17 A. Yes, I worked in various capacities in the Cook County
18 Sheriff's Office.

19 Q. Can you briefly summarize what the Sheriff's Office does?

20 A. Sure. Well, in my capacity as the director of personnel
21 for human resources, I was responsible for overseeing the
22 payroll of approximately 7,000 employees of the Sheriff's
23 Office. I also was responsible for streamlining the
24 return-to-work process for those individuals that were in --
25 or on a leave of absence to ensure they were at work in an

1 authorized status.

2 Also I was responsible for processing the applicants
3 that were employed by the Sheriff's Office, such as the
4 civilian employees as well as the correctional officer
5 applicants that were employed by the Sheriff's Office. We did
6 the employment processing, put them on the payroll, and then
7 we also tracked the employees, ensured their benefits were up
8 to date and ensured, you know, payroll was conducted properly.

9 Q. As deputy chief of -- or as chief of HR -- or I'm sorry,
10 your title was directive of personnel?

11 A. Executive director of personnel.

12 Q. Executive director of personnel. Thank you. Were you
13 familiar with the Sheriff's Office policies regarding
14 personnel matters?

15 A. Yes.

16 Q. I'm going to show you what's marked as Defendant's
17 Exhibit 1. Do you recognize it? Is it not up yet?

18 A. It's not available.

19 THE COURT: There we go.

20 MS. HASAN: Defendant's Exhibit. Thanks.

21 BY MS. HASAN:

22 Q. Do you recognize it?

23 A. Yes.

24 Q. What is it?

25 A. This is the family and medical leave of absence policy.

1 Q. How do you recognize it?

2 A. This is the policy of the Sheriff's Office for those
3 individuals that were applying for the family medical leave of
4 absence. It was part of the FMLA packet that was distributed
5 to employees that were requesting FMLA.

6 MS. HASAN: Can you scroll through, please.

7 BY MS. HASAN:

8 Q. It looks like some pages may be missing. Is that your
9 understanding?

10 A. Yes.

11 Q. But what the documents are are a true and accurate
12 reflection of these pages of that policy?

13 MR. K. FLAXMAN: Object to leading and object to
14 foundation. The witness stopped working for the sheriff in
15 2014. There's no foundation for her knowledge of the
16 sheriff's policies in the time relevant to this case.

17 THE COURT: All right. You can lay a further
18 foundation.

19 BY MS. HASAN:

20 Q. Can you tell me what the date of this policy is?

21 A. This policy is December 4th of 2007.

22 Q. And do you know if this policy was ever changed during the
23 time that you worked at the Sheriff's Office?

24 A. I don't recall.

25 Q. Can you describe the FMLA policy at the Sheriff's Office?

1 MR. K. FLAXMAN: Object. Foundation. The time
2 period when she worked there or the time period after she
3 stopped working there?

4 THE COURT: All right. Provide further foundation.

5 BY MS. HASAN:

6 Q. Are you familiar with the Sheriff's Office policy during
7 the time that you worked at the Sheriff's Office?

8 A. Yes.

9 Q. Did that policy track the federal law known as the Family
10 and Medical Leave Act?

11 MR. K. FLAXMAN: Objection. What happened in 2014 or
12 what the policy was in 2014 isn't relevant here, and we're
13 also asking her for a question of law.

14 THE COURT: I'll sustain the objection.

15 BY MS. HASAN:

16 Q. Are you familiar with the law known as the federal -- I'm
17 sorry -- the federal law known as the Family and Medical Leave
18 Act of 1993?

19 A. Yes.

20 Q. How are you familiar with that law?

21 A. I am familiar with it --

22 MR. K. FLAXMAN: Objection. Relevance.

23 THE COURT: Overruled.

24 BY THE WITNESS:

25 A. I am familiar with this policy and the law because as

1 my -- in my position as the director of personnel, I was in
2 that position for 13 years, and I was the person in the
3 Sheriff's Office responsible for approving the FMLA requests
4 for the employees of the Sheriff's Office. So I was very
5 familiar with the policy as well as the law. And, you know,
6 I -- that was -- the policy was an actual form that was
7 provided, as I said before, to the employees that were
8 requesting the leave, and I was the person that was
9 responsible for ensuring that the employees were provided that
10 information.

11 BY MS. HASAN:

12 Q. Can you describe the FMLA policy at the Sheriff's Office?

13 MR. K. FLAXMAN: Objection. No foundation for the
14 policy in 2016.

15 THE COURT: Sustained.

16 BY MS. HASAN:

17 Q. Can you describe the policy for the time that you worked
18 at the Sheriff's Office --

19 MR. K. FLAXMAN: Objection. Relevance.

20 THE COURT: Sustained.

21 THE WITNESS: The policy for the --

22 THE COURT: No, ma'am. I sustained the objection.
23 You can't answer the question.

24 Let's have a sidebar.

25 (Sidebar.)

1 THE COURT: All right. The objections being made are
2 she testified she worked in personnel until 2014. The events
3 that are at issue in this case arose after 2014. So how would
4 she be competent to answer questions about policies that
5 postdate her departure from the --

6 MS. HASAN: The testimony given by Wylola Shinnawi
7 was that the policy was the same from the time that she
8 started at the Sheriff's Office, which was in 2000- -- or in
9 the HR department in 2008 until she left in 2022. And nobody
10 has refuted that.

11 THE COURT: Mr. Flaxman?

12 MR. K. FLAXMAN: The fact that one witness testified
13 to certain facts doesn't allow another witness to testify to
14 facts beyond her knowledge, what happened after she wasn't
15 there. If she's going to testify that Shinnawi always tells
16 the truth, Your Honor should exclude that testimony.

17 THE COURT: All right. I think, again, you have
18 to -- the witness is only competent to testify about things
19 that are within their personal knowledge. If Ms. Nolan left
20 the Sheriff's Office two years before the incident, the events
21 that are at issue here, she doesn't have personal knowledge of
22 what the policies were at that point in time. She doesn't
23 have personal knowledge of anything that occurred relating to
24 the facts of this case and Mr. Ziccarelli's 2016 FMLA leave
25 request. So I don't see how she's competent to offer

1 testimony about these events that took place in 2016.

2 MS. HASAN: We're not offering her for the events
3 that took place. We're offering her to establish the policies
4 or that there were policies that dictated the FMLA leave at
5 the Sheriff's Office.

6 THE COURT: Well, again, she's not there. I mean,
7 there's no basis to infer that the policies -- that she knows
8 the policies didn't change. As Mr. Flaxman points out,
9 Ms. Shinnawi has already testified about that so you've got
10 that testimony in the record, but that doesn't give this
11 witness license to testify that -- about what the policies
12 were at a point in time when she didn't work for the Sheriff's
13 Office.

14 MS. HASAN: I would add that she can testify about
15 what the FMLA is understood to be generally.

16 THE COURT: No. She's not an expert witness. She's
17 not going to offer legal opinions.

18 MS. HASAN: Okay. The other thing that she would
19 testify to is her training of Ms. Shinnawi which the witness
20 testified to yesterday.

21 THE COURT: She has personal knowledge of that.

22 MS. HASAN: Okay. Then my examination will be much
23 shorter than I indicated before.

24 THE COURT: Okay.

25 MS. HASAN: Thank you.

1 (End of sidebar.)

2 MS. HASAN: Thank you.

3 BY MS. HASAN:

4 Q. Ms. Nolan, do you know Wylola Shinnawi?

5 A. Yes.

6 Q. How do you know her?

7 A. She worked for me. I supervised her in the personnel
8 department, and she was the FMLA coordinator for the Sheriff's
9 Office.

10 Q. Did you train her in FMLA?

11 A. I did.

12 Q. Do you remember what the training consisted of?

13 A. It was --

14 MR. K. FLAXMAN: Could we have more foundation as to
15 when the training took place?

16 THE COURT: I think we're trying to lay the
17 foundation.

18 BY MS. HASAN:

19 Q. Do you remember when you hired Ms. Shinnawi in the HR
20 department or personnel department?

21 A. I don't recall the exact date.

22 Q. How long did you work for her before you left from the
23 Sheriff's Office in 2014?

24 A. I worked -- as I stated before, I was in the personnel
25 department from January of 2001 to July of 2014. Wylola

1 worked for the personnel department. I'm not sure how many
2 years she was there. But I was originally responsible for
3 approving the FMLA requests, and then I then trained my deputy
4 director to take over the responsibility because it was quite
5 a bit of a responsibility, and I didn't have enough time to do
6 it by myself so I trained the deputy director. Once the
7 deputy director wasn't able to handle the responsibilities
8 completely on her own, then the deputy director, who was
9 Finola Keegan, her and myself, we trained Wylola on the policy
10 and procedures of FMLA so she could take over as the
11 coordinator of FMLA.

12 Q. Do you think Wylola was in the job for several years
13 before you left the Sheriff's Office?

14 A. Yes.

15 Q. Do you recall a little bit of the training that you put
16 Wylola through?

17 A. Yes.

18 Q. Can you describe it?

19 A. Well, we had a system called Time Tracker which basically
20 tracked everyone's attendance in the Sheriff's Office. And we
21 explained to her that she needed to utilize Time Tracker to
22 see the -- if the employee met the eligibility requirements,
23 which was to work 1250 hours from the day that they applied
24 for FMLA. So you would look at their -- we called it a time
25 card, and we would look -- explain to her -- we explained to

1 her that she had to start with the date that they applied and
2 then work backwards to determine whether or not the employee
3 worked 1250 hours. It had to be hours worked to be eligible.

4 And then trained her on the policy. There was a --
5 and attached to the policy there was two forms. There was a
6 request form for FMLA, and then there was also the
7 certification of healthcare provider form, which was the FMLA
8 form that we received from the Department of Labor. And we
9 trained her on that form as well.

10 So we went over the forms with her, the policy. We
11 taught her Time Tracker to determine eligibility. And then
12 also in Time Tracker, you know, we explained to her how to
13 track the employees' FMLA time once they started utilizing --
14 or once they were approved and started utilizing FMLA time.

15 So in the Sheriff's Office, the policy was to track
16 individuals' time based on hours or days that they were
17 utilizing the FMLA. So they could use 480 hours, they could
18 use 60 days, or they could take a 12 -- they could take
19 12 weeks. So we, you know, went over basically the
20 fundamentals of Time Tracker, which basically was just
21 tracking the calculation of the time, whether it be what was
22 utilized while taking FMLA and then the eligibility
23 requirement for FMLA, which was working 1250 hours from the
24 date that you applied for FMLA.

25 Q. Why was it important to track the time of FMLA used?

1 MR. K. FLAXMAN: Objection.

2 THE COURT: Overruled.

3 BY THE WITNESS:

4 A. Well, you wanted to know whether or not an individual
5 exhausted their FMLA usage in the event that FMLA usage was --
6 if somebody used 480 hours or if they used 60 days or
7 12 weeks, then we would, you know, want to reach out to the
8 employee and let them know that, you know, they had exhausted
9 their FMLA time. So it was important to track it as well.

10 BY MS. HASAN:

11 Q. As Wylola's supervisor, how would you describe her job
12 performance?

13 MR. K. FLAXMAN: Objection. It's in 2014 or earlier.

14 THE COURT: Sustained.

15 BY MS. HASAN:

16 Q. In 2014 or earlier, how would you describe Wylola's job
17 performance?

18 MR. K. FLAXMAN: Objection. Relevance.

19 THE COURT: Same.

20 BY MS. HASAN:

21 Q. Are you familiar with the CBA for correctional officers?

22 A. Yes.

23 Q. How are you familiar with that document?

24 A. It was a document that I used as a resource as the
25 director of personnel. It was something that I would refer to

1 on occasion for all the different sworn ranks in the Sheriff's
2 Office. It would be a reference that you would use if an
3 issue came up. It would be a resource as well as the other
4 resources to look at if you, you know, needed to ensure that
5 the -- you know, to make sure the requirements were met.

6 Q. Are you familiar -- excuse me.

7 Are you familiar with the CBA policy on sick leave?

8 A. Yes.

9 Q. Do you know whether sick leave is paid upon an employee's
10 separation of employment?

11 A. No, it's not.

12 MS. HASAN: Thank you. I have nothing further.

13 THE COURT: Cross-examination.

14 MR. K. FLAXMAN: We have no questions, Your Honor.

15 THE COURT: All right.

16 Thank you, Ms. Nolan. You may step down. You're
17 released as a witness.

18 THE WITNESS: Thank you.

19 THE COURT: Anything further from the defendant?

20 MS. ORI: Defense rests.

21 THE COURT: All right.

22 Any rebuttal?

23 MR. K. FLAXMAN: No rebuttal, Your Honor.

24 THE COURT: All right.

25 Ladies and gentlemen, that concludes the evidentiary

1 portion of the case. What remains is to provide you with the
2 instructions of law which I'm going to do in just a moment.
3 After I provide the instructions of law, we'll take about a 15
4 minute -- 15-, 20-minute break, and we'll come back out for
5 the closing arguments of counsel. Once the closing arguments
6 have been completed, that's the point that you'll retire to
7 the jury room for your deliberations and lunch, not
8 necessarily in that order, but lunch while you're deliberating
9 is on the government. So you'll have the opportunity to get
10 something to eat if you choose, and then you'll be able to
11 begin your deliberations.

12 All right. Members of the jury, you have now seen
13 and heard all the evidence and arguments -- well, you will
14 hear the arguments of the attorneys. I'm going to instruct
15 you on the law that applies in this case now. You may take
16 notes regarding these instructions, but we will also give you
17 a copy of these instructions, each of you, to use in the jury
18 room.

19 As I've already told you, you have two duties as a
20 jury. Your first duty is to decide the facts from the
21 evidence in the case. That is your job and yours alone.

22 Your second duty is to apply the law that I give you
23 to those facts. You must follow all of my instructions about
24 the law even if you disagree with them. That includes the
25 instructions I gave you before the trial, any instructions I

1 gave you during the trial, and the instructions I am giving
2 you now, and the instructions I will give you after the
3 closing arguments. Each of these instructions is important,
4 and you must follow all of them.

5 Perform these duties fairly and impartially.

6 You must make your decision based only on the
7 evidence that you saw and heard here in court. Do not
8 consider anything that you may have seen or heard outside of
9 court, including anything from the newspaper, television,
10 radio, the Internet, or any other source.

11 The evidence consists of the testimony of the
12 witnesses and the exhibits admitted into evidence. Nothing
13 else is evidence.

14 The lawyers' statements and arguments are not
15 evidence. If what a lawyer said is different from the
16 evidence as you remember it, your recollection of the evidence
17 is what counts.

18 The lawyers' questions and objections or comments
19 likewise are not evidence. A lawyer has a duty to object if
20 he or she thinks a question should not be permitted. If I
21 sustained objections to questions the lawyers asked, you must
22 not speculate on what the answers might have been, nor should
23 you infer that the lawyer who asked the question did anything
24 improper or that my rulings reflect that I have any view as to
25 how you should decide the case.

1 If you have taken notes during the trial, you may use
2 them during deliberations to help you remember what happened
3 during the trial. You should use your notes only as aids to
4 your memory. The notes are not evidence. All of you should
5 rely on your independent recollection of the evidence, and you
6 should not be unduly influenced by the notes of other jurors.
7 Notes are not entitled to any more weight than the memory or
8 impressions of each juror.

9 Give the evidence whatever weight you decide it
10 deserves. Use your common sense in weighing the evidence and
11 consider the evidence in light of your own everyday
12 experience.

13 In determining whether any fact has been proved, you
14 should consider all the evidence bearing on the question
15 regardless of who introduced it.

16 People sometimes look at one fact and conclude from
17 that fact that another fact exists. This is called an
18 inference, and you are allowed to make reasonable inferences
19 so long as they are based on the evidence.

20 You may have heard the terms "direct evidence" and
21 "circumstantial evidence." Direct evidence is proof that does
22 not require an inference, such as the testimony of someone who
23 claims to have personal knowledge of a fact. Circumstantial
24 evidence is proof of a fact or a series of facts that tends to
25 show that some other fact is true. In other words,

1 circumstantial evidence is evidence that requires an
2 inference.

3 As an example, direct evidence that it is raining
4 would be testimony from a witness who says, "I was outside a
5 minute ago, and I saw it raining." Circumstantial evidence
6 that it is raining would be the observation of someone
7 entering a room carrying a wet umbrella. You are to consider
8 both direct and circumstantial evidence. The law does not say
9 that one is better than the other. It is up to you to decide
10 how much weight to give to any evidence, whether it is direct
11 or circumstantial.

12 The law does not require any party to call as a
13 witness every person who might have knowledge of the facts
14 related to this trial. Similarly, the law does not require
15 any party to present as exhibits all papers and things
16 mentioned during this trial.

17 Part of your job as jurors is to decide how
18 believable each witness was and how much weight to give to
19 each witness's testimony. You may accept all of what a
20 witness says or part of it or none of it.

21 Some factors that you may consider in evaluating a
22 witness's credibility include:

- 23 - the ability and opportunity the witness had to see,
24 hear, or know the things that the witness testified about;
25 - the witness's memory;

1 - any interest, bias or prejudice the witness may
2 have;
3 - the witness's intelligence;
4 - the manner of the witness while testifying;
5 - and the reasonableness of the witness's testimony
6 in light of all of the evidence in the case.

7 You may consider statements given by a witness under
8 oath before trial as evidence of the truth of what they said
9 in the earlier statements as well as in deciding what weight
10 to give their testimony.

11 In considering a prior inconsistent statement or
12 conduct, you should consider whether it was simply an innocent
13 error or an intentional falsehood, and whether it concerns an
14 important fact or an unimportant detail.

15 In this case, the defendant, the Sheriff's Office of
16 Cook County, Illinois, is a government entity. All parties
17 are equal before the law. A government entity is entitled the
18 same fair consideration that you would give to any individual
19 person.

20 When I say a particular party must prove something by
21 "a preponderance of the evidence," or when I use the
22 expression "if you find" or "if you decide," this is what I
23 mean: When you have considered all the evidence in the case,
24 you must be persuaded that the proposition you are considering
25 is more probably true than not true.

1 Plaintiff Salvatore Ziccarelli claims that defendant,
2 the Sheriff's Office of Cook County, Illinois, violated the
3 Family and Medical Leave Act which is often referred to by its
4 initials FMLA. This law entitles an eligible employee to take
5 up to 12 weeks of unpaid leave during any 12-month period
6 because of an employee's serious health condition that makes
7 him unable to perform the functions of his position.

8 The statute protects an employee's attempt to
9 exercise FMLA rights, and it is a violation of the FMLA to
10 interfere with or discourage an employee's effort to use FMLA
11 leave.

12 To succeed on this claim, Mr. Ziccarelli must prove
13 all of the following by a preponderance of the evidence:

14 First, that the plaintiff had posttraumatic stress
15 disorder;

16 Second, that the plaintiff had a serious health
17 condition, and I will define "serious health condition" for
18 you in a moment;

19 Third, that the defendant had appropriate notice of
20 plaintiff's need for leave, and I will define "appropriate
21 notice" for you in a moment;

22 Fourth, that the defendant interfered with the
23 plaintiff's right to take FMLA leave by discouraging plaintiff
24 from taking leave. I will define "discourage" for you in a
25 moment.

1 If you find that Mr. Ziccarelli has proven each of
2 these elements by a preponderance of the evidence, you should
3 find the Sheriff's Office liable to Mr. Ziccarelli.

4 If, on the other hand, you find that Mr. Ziccarelli
5 has failed to prove any one or more of these elements, you
6 should find the Sheriff's Office not liable to Mr. Ziccarelli.

7 The phrase "serious health condition" means a health
8 condition that makes an employee unable to perform the
9 functions of his position.

10 Mr. Ziccarelli must have given the Sheriff's Office
11 notice of his need for FMLA leave as soon as both possible and
12 practicable, taking into account all of the facts and
13 circumstances. Mr. Ziccarelli must have given at least verbal
14 notice sufficient to make the Sheriff's Office aware that he
15 needed FMLA leave. Mr. Ziccarelli did not need to mention the
16 FMLA or use any specific words if he gave the Sheriff's Office
17 enough information that the Sheriff's Office knew or should
18 have known that Mr. Ziccarelli needed FMLA leave.

19 In deciding whether Mr. Ziccarelli proved the fourth
20 element of an FMLA interference claim, you must determine
21 whether the Sheriff's Office actions would have discouraged a
22 reasonable employee from taking FMLA leave and caused him to
23 be prejudiced. This test uses an objective standard based on
24 how a reasonable employee might react, not Mr. Ziccarelli's
25 subjective feelings.

1 I will now instruct you regarding damages. You
2 should not interpret the fact that I am giving instructions
3 about damages as an indication that I have any opinion as to
4 whether Mr. Zicarelli is entitled to damages. I am
5 instructing you on damages only so that you will have guidance
6 in the event you decide that the Sheriff's Office is liable on
7 Mr. Zicarelli's claim.

8 If you decide for the Sheriff's Office on the
9 question of liability, then you should not consider the
10 question of damages.

11 If you find that Mr. Zicarelli has proved his claim
12 by a preponderance of the evidence, you should award him as
13 damages any loss of wages and benefits that was directly
14 caused by the Sheriff's Office interference with his ability
15 to take FMLA leave. It is Mr. Zicarelli's burden to prove by
16 a preponderance of the evidence that he lost wages and
17 benefits and the amount of his loss.

18 All right. I will have a few additional instructions
19 for you after the closing arguments about how to go about your
20 deliberations, but what we're going to do now is take about a
21 15- to 20-minute break so we can get organized for closing
22 arguments. We'll bring you back out, and you'll hear the
23 closing arguments of counsel. I'll finish the instructions to
24 you, and then you'll retire to the jury room.

25 It's almost time to start deliberating, but we still

1 have a couple of things to do so don't discuss the case over
2 the break.

3 Thank you. We'll get back to you in about
4 20 minutes.

5 All rise.

6 (Jury exits.)

7 THE COURT: Okay. You got 20 minutes.

8 MR. K. FLAXMAN: Thank you, Your Honor.

9 (Recess had from 11:09 a.m. to 11:32 a.m.)

10 THE COURT: All right. We all set for closing?

11 MR. J. FLAXMAN: Yes.

12 THE COURT: Defendants?

13 MS. ORI: Yes.

14 THE COURT: Before we bring the jury in, are we set
15 with respect to the exhibits that go to the jury room?

16 MS. HASAN: Yes. Counsel and I discussed, and we
17 have a binder ready. I'm just updating the exhibit list so
18 the jurors can have something to refer to --

19 THE COURT: Perfect.

20 MS. HASAN: -- that has the admitted exhibits.

21 THE COURT: Okay. Great.

22 MS. HASAN: I don't know if we want to put that on
23 the record of what the exhibits are.

24 THE COURT: No, we don't need to do that as long as
25 we have on the record there's agreement between the parties.

closing argument - plaintiff

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1 MR. J. FLAXMAN: Correct.

2 MS. HASAN: Thank you.

3 THE COURT: Okay. All right. Then we can bring the
4 jurors in.

5 LAW CLERK: All rise.

6 (Jury enters.)

7 THE COURT: Please be seated.

8 All right. We're ready to proceed with closing
9 arguments. The plaintiff will lead off.

10 MR. J. FLAXMAN: Thank you, Your Honor.

11 CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF

12 MR. J. FLAXMAN: And thank you, ladies and gentlemen,
13 for your attention over the last day and a half. The closing
14 argument is my chance to talk to you again and tell you our
15 position and how we are asking you to consider the evidence
16 and to apply the law that you've heard from the judge. The
17 judge has told you more than once, you are the judge of the
18 facts, and you are going to go back to the jury room and
19 conclude about what those facts mean and how the law applies
20 to them.

21 The facts of this case, you heard about Salvatore
22 Ziccarelli. You heard about his history as a correctional
23 officer and about his medical problems and his need for
24 medical leave. You also heard from Ms. Shinnawi about her
25 role in the FMLA process. The title she gave was FMLA

1 coordinator. I think she also said FMLA manager. But the
2 important thing, and this is not disputed, is that she was the
3 gatekeeper. When somebody wanted leave, they had to call her.
4 There's no dispute that what Sal did when he called
5 Ms. Shinnawi was what he had to do.

6 You've heard two different accounts of that call.
7 What Sal told you is that he said he needed more leave. He
8 wanted to know how much was left. And Ms. Shinnawi told him
9 he had already taken a lot, and she told him he should not
10 take more leave, period.

11 She gave a different account. As I said, your job as
12 the jury is to weigh those different accounts. And when you
13 do that, I want you to think about a few different things.

14 One of them is the difference in position between Sal
15 and Ms. Shinnawi. Ms. Shinnawi told you she takes hundreds of
16 these calls, and over her career, thousands. Sal told you
17 this was the one time he talked to her, the one call he made.
18 Consider that when you think about who has a stronger memory
19 of the phone call.

20 We also asked you to consider the -- what I would
21 call embellishments that Ms. Shinnawi added about the call.
22 She told us that she told her supervisor about it but she
23 didn't know which one. She told us she didn't take notes
24 about the call, but she did tell us one of her supervisors
25 did. She told us one of her roles was passing out forms, but

1 then she said maybe the forms are actually online. She said
2 she told Sal that he needed to submit a new form, but maybe
3 she didn't actually say that, maybe she told him he only
4 needed a doctor's notes. Those are the kinds of what I would
5 call embellishments, obfuscations that we want you to think
6 about when you're considering which account you are going to
7 credit.

8 Something else that Ms. Shinnawi claimed that she
9 told Mr. Zicarelli was that you don't have enough hours for
10 eight weeks of leave, and she says she told him you have to
11 exhaust your FMLA leave, then you could take sick leave or
12 disability. And Sal testified that was his understanding too.
13 What he wanted to do was use up his FMLA leave before he could
14 use other types of leave. We looked at today the exhibit
15 that's the entire collective bargaining agreement. That
16 includes something called compassionate leave, and it said in
17 black and white you have to use up all your leave before you
18 can get compassionate leave.

19 I'll ask the judge to publish to the jury so I can
20 show you that exhibit. And you'll get this in a binder. It's
21 going to be marked as Defendant's Exhibit 9. And you can look
22 under compassionate leave where it says, it's available when
23 an employee has exhausted all available leave options.

24 So we're not just talking about compassionate leave.
25 We're talking about other kinds of leave. And Sal's

1 understanding was he had to exhaust his FMLA before he could
2 use that other leave, and the person he needed to talk to
3 exhaust that FMLA leave was Ms. Shinnawi. That's why I called
4 her the gatekeeper.

5 As Sal told you, when she told him, Don't take more
6 FMLA leave, she was shutting the gate. And Sal explained
7 that's why he felt he had no choice but to resign.

8 So we ask that after you consider all the evidence,
9 you conclude the only reason that Sal would resign is if his
10 account of the conversation is what happened. That
11 conversation is the key to the case, and I'll go over the
12 Court's instructions and explain why.

13 Judge Tharp instructed you on the nature of an FMLA
14 claim, and he also gave you these four elements. That should
15 be in front of you.

16 The first element that plaintiff has to prove is that
17 he had PTSD. The defendants told you at the beginning of the
18 case that's not disputed. The Cook County sheriff had
19 approved Mr. Zicarelli for intermittent leave. There's no
20 question that he had PTSD.

21 The second element is that he had a serious health
22 condition. Again, not disputed. The sheriff had recognized
23 Mr. Zicarelli's serious health condition before, and you
24 didn't hear anything suggesting that his PTSD was not a
25 serious health condition.

1 The third element is appropriate notice.

2 The fourth element is that the defendant interfered
3 with plaintiff's right to take FMLA leave by discouraging
4 plaintiff from taking that leave.

5 So let me go to the next page where you have the
6 longer definition of appropriate notice. This says that
7 Mr. Zicarelli must have given the Sheriff's Office notice of
8 his need for FMLA leave as soon as both possible and
9 practical, taking into account all of the facts and
10 circumstances. That's exactly what Mr. Zicarelli testified
11 to. He said he called Ms. Shinnawi to give notice that he
12 needed to take more leave. You're not going to hear anything
13 to show that he could have done that sooner or that by making
14 that phone call he was doing something other than giving the
15 notice he was required to give. So we ask you to find for
16 Mr. Zicarelli on the third element.

17 The last element is called discouragement and
18 interference, and it says, "In deciding whether Mr. Zicarelli
19 proved the fourth element of an FMLA interference claim, you
20 must determine whether the Sheriff's Office's actions would
21 have discouraged a reasonable employee from taking FMLA leave
22 and caused him to be prejudiced."

23 And here's where you need to judge the contents of
24 the conversation that would -- we ask you to conclude that
25 Ms. Shinnawi said if you take more FMLA, you'll be

1 disciplined, and how would a reasonable employee respond to
2 the FMLA coordinator giving him that direction? And we ask
3 you to conclude that he would respond to that by taking that
4 as his employer's policy, that if he took more FMLA leave, he
5 would be disciplined.

6 As the next sentence says, you are to judge that on
7 an objective standard. Again, any employee hearing this from
8 the FMLA coordinator, the gatekeeper for taking this leave, we
9 contend would react as Mr. Zicarelli did.

10 The other part of this element is that the action
11 must have caused Mr. Zicarelli to be prejudiced, and you saw
12 two different ways that he was prejudiced. One was he didn't
13 get paid for his sick leave. There's no question that when
14 Mr. Zicarelli left employment, he had available sick leave,
15 and he didn't receive compensation for it.

16 The other type of prejudice that I will talk to you
17 about in a second is his lost wages. And you heard a few
18 different numbers for that, and I will talk about that
19 hopefully in a very simple way.

20 That prejudice is also referred to as damages. And
21 what this instruction says is that if you find for the
22 plaintiff, for Mr. Zicarelli, on all of those elements, you
23 will consider damages. And that last paragraph says you
24 should award him as damages any loss of wages and benefits
25 that was directly caused by the Sheriff's Office interference

1 with his ability to take FMLA leave.

2 So the first type of damages is that sick leave for
3 which Sal was not compensated. And we did go over those
4 numbers yesterday, but I'll put it back up. That number,
5 414.85 hours, was in that exhibit showing all of
6 Mr. Zicarelli's leave. It's Joint Exhibit No. 5. You'll
7 have that with you in the jury room. That hourly wage,
8 \$36.666 per hour, that was in what we marked as Plaintiff's
9 Exhibit No. 2, the collective bargaining agreement. And
10 you'll have an excerpt of that -- you know, well, actually
11 you'll have both. You'll have an excerpt of it and you'll
12 have the whole thing in the jury room; but just so you can see
13 it on the screen, it's page 90 of that document. The
14 effective rate, December 1, 2015, was \$36.666. And what we'll
15 ask you to do is do that math, say 414.85 times 36.666 totals
16 up to \$15,210.89. That's the amount for the sick leave.

17 The wages, you heard Mr. Zicarelli testify this
18 morning that his intention was to work for the sheriff until
19 he had been there for 30 years, and that's why we're only
20 asking for wages for three additional years to get to those
21 30 years.

22 The other thing that Mr. Zicarelli testified about
23 was his intention to take the leave so that he could continue
24 working. We're asking you to conclude that had Mr. Zicarelli
25 not been discouraged from taking FMLA leave, he would have

1 taken leave, recovered, and gone back to work. The numbers
2 from those collective bargaining agreement for salary from
3 2017, that came from that Exhibit 2 we just looked at, and
4 it's the next page after this one. That yearly salary is
5 \$77,981. That's the -- it was the same salary in 2018.

6 For 2019, there was a higher amount. That's in our
7 Exhibit No. 5. And so the salary he would have received in
8 2019 is this number, \$79,541. And when you put all those
9 numbers together, we have what we're showing here as those
10 three years of salary, Mr. Ziccarelli testified today that his
11 pension every year was 33,000. So the amount that he was
12 missing was the salary minus the pension, and when we total
13 those up, we got \$136,503.

14 So those are the two different amounts of damages
15 that Mr. Ziccarelli is requesting. When you consider all the
16 evidence from his testimony, from these exhibits that we've
17 looked at, we ask you to conclude that the Sheriff's Office,
18 through Ms. Shinnawi, discouraged Sal from taking that FMLA
19 leave, and as a result, he suffered the injury of losing out
20 on his sick time and losing out on those three years of wages.

21 Thank you again for your attention for the last day
22 and a half, and we appreciate your service.

23 THE COURT: Thank you, Mr. Flaxman.

24 For the defense?

25 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 MS. ORI: The plaintiff's rash response to a typical
2 and formative conversation about his available leave time was
3 not reasonable. The plaintiff did not have enough time to
4 take eight more weeks of FMLA leave. That's the math. If I
5 go to a bank and ask the bank teller for \$800, and she looks
6 at my account and sees I only have 400, she's not going to
7 give me \$800. She's going to say, I can't give you \$800.
8 That's accurate information. She isn't stopping me from
9 taking my \$400, but she can't give me 800 based on math.

10 The Sheriff's Office has a policy regarding FMLA.
11 You get 12 weeks a year. That's the law. You just need to
12 work the required amount of hours and submit the correct
13 paperwork. Taking FMLA is routine at the Sheriff's Office,
14 and employees follow this process all the time.

15 The HR department has employees dedicated to
16 approving and tracking FMLA leave and answering questions
17 about FMLA. Ms. Shinnawi testified that she processed over a
18 thousand applications every year. Ms. Shinnawi gave accurate
19 information to the plaintiff in that one phone call in
20 September 2016. She didn't interfere with his FMLA rights.
21 She didn't discourage him from taking his remaining FMLA
22 leave. She just told him, You don't have enough FMLA leave to
23 cover the eight additional weeks you are seeking.

24 Ms. Shinnawi only approves FMLA time, and she
25 couldn't approve more time than he had. Ms. Shinnawi

1 routinely answered employees' questions about FMLA, how much
2 time they have left, and counseled them and what they could do
3 if they needed other potential leaves. But her purview is
4 only the FMLA. Why didn't the plaintiff talk to his
5 supervisors about using his vacation time or sick leave? Why
6 didn't the plaintiff talk to his union about taking
7 compassionate leave? There's another provision in the CBA,
8 10.1(c), a leave of absence. So there's two provisions in the
9 CBA that he could have talked to the union about.

10 And he said, he testified that he talked to the union
11 after talking to Ms. Shinnawi. He said today that the union
12 should have told him about the other leaves. He also said
13 that the Cook County Pension Fund, the Cook County pension
14 board, which is a separate entity, that they gave him
15 inaccurate information. I don't know what the union or the
16 pension fund told him. Only the plaintiff knows why he did
17 what he did. If the plaintiff wanted to return to the
18 Sheriff's Office, why did he resign?

19 The plaintiff has the burden of proof in this case,
20 and Judge Tharp just read you a bunch of jury instructions. I
21 want to highlight a couple of them.

22 To succeed on his FMLA claim, he has to prove four
23 things: That he had PTSD; that it was a serious medical
24 condition; that he gave appropriate notice; and that the
25 Sheriff's Office interfered with his right to take FMLA by

1 discouraging him from taking leave.

2 Did the plaintiff have a serious medical condition?
3 It seems so. The Sheriff's Office had approved his FMLA in
4 the past, and Mr. Zicarelli testified today that his medical
5 conditions prevented him from working for years after he
6 resigned.

7 Did he provide appropriate notice of his need to take
8 FMLA leave? He didn't. Remember, in 2016, he had approval to
9 take intermittent leave. He testified, though, that his
10 doctor told him he needed eight weeks of block leave in
11 September. You heard about the different types of leave,
12 intermittent and block. And FMLA manager Shinnawi testified
13 that if he needed block leave, he would have at least needed a
14 new doctor's note.

15 Mr. Zicarelli knew how to give notice to the
16 Sheriff's Office. You fill out paperwork with a doctor's
17 note. The forms are online. He had done it before. But he
18 didn't do that in September. The plaintiff never requested
19 block intermittent leave. He conceded that he didn't even
20 tell Ms. Shinnawi or his supervisors about his medical
21 conditions that September. In that one phone call, he asked,
22 How much FMLA time do I have left, and then hung up after he
23 was told he didn't have enough FMLA time left to cover eight
24 additional weeks and then was not receptive to using the other
25 types of leave.

1 A different bank analogy. If I go to the bank teller
2 and ask, How much money do I have left? Based on that
3 question alone, the bank teller would not be put on notice
4 that I want to take it all out.

5 The plaintiff never provided notice, and you should
6 return a verdict in favor of the Sheriff's Office. Even if
7 you find that this telephone call, this one telephone call was
8 appropriate notice, Ms. Shinnawi didn't discourage the
9 plaintiff from taking his remaining leave. Judge Tharp
10 instructed you that in deciding whether Mr. Zicarelli proved
11 the fourth element of an FMLA interference claim, you must
12 determine whether the Sheriff's Office's actions would have
13 discouraged a reasonable employee from taking FMLA leave and
14 caused him to be prejudiced. This test uses an objective
15 standard based on how a reasonable employee might react, not
16 Mr. Zicarelli's subjective feelings.

17 If you find -- for you to find in favor of the
18 plaintiff, you first have to find that Ms. Shinnawi lied when
19 she testified on the stand. You have to believe that she
20 unequivocally said, No, do not take any more leave or you'll
21 be fired. You heard Ms. Shinnawi testify and the plaintiff
22 testify. They both can't be telling the truth.

23 Judge Tharp also gave you an instruction on
24 credibility, assessing credibility. And some factors for you
25 to consider in assessing credibility: Any interest, bias or

1 prejudice the witness might have, and the reasonableness of
2 the witness's testimony in light of all the evidence in the
3 case. Who do you believe? A retired FMLA manager who
4 processed thousands of FMLA requests and counseled thousands
5 of employees about how to take the FMLA leave and who has
6 nothing to gain from lying? Or an employee who is seeking
7 three years of back pay, who said yesterday, I was afraid I
8 could not take any more leave, that's what he said yesterday,
9 but then today said, Well, I might have taken a little more
10 FMLA leave before I resigned.

11 Even if you thought that Ms. Shinnawi might have
12 misremembered some of the conversation that happened back in
13 2016, you still must find in favor of the Sheriff's Office
14 because you also must find that a reasonable employee would
15 believe that he couldn't take any more leave before being
16 disciplined.

17 Would a reasonable employee call up the FMLA manager,
18 ask her how much FMLA time he has left, and then quit after
19 the conversation knowing he still had FMLA time? He had
20 vacation time, sick time, and benefits provided for in the
21 collective bargaining agreement. A reasonable employee would
22 not have been discouraged from taking the remaining FMLA
23 leave. Mr. Ziccarelli took FMLA leave after having the
24 conversation with Ms. Shinnawi. He was not discouraged from
25 taking more leave.

1 And to the extent that plaintiff believed he could
2 not take much more FMLA leave, a reasonable employee would
3 have checked the FMLA policy. He would have called
4 Ms. Shinnawi back and asked further questions. He would have
5 asked to speak to her boss. He could have sent a followup
6 e-mail or talked to his supervisor. A reasonable employee
7 would not quit based on this five-minute conversation. A
8 reasonable employee would not suffer prejudice based on this
9 five-minute conversation. There was no FMLA interference, and
10 you must find in favor of the Sheriff's Office.

11 To be clear, Ms. Shinnawi did not lie. She told the
12 plaintiff accurate information. She told him that while he
13 could use other benefit time, she did not have the authority
14 to approve it. The plaintiff was similar to thousands of
15 other employees Ms. Shinnawi helped over the years, and
16 Ms. Shinnawi told the plaintiff similar information. She told
17 him how much time he had left, that she could only approve
18 FMLA time, and that if he wanted to use other benefit time, he
19 had to go through his chain of command. What made this phone
20 call different from the thousands of others, the plaintiff
21 quit his job. A reasonable employee would not do that.

22 I want to briefly discuss damages. Judge Tharp
23 instructed you that for you to award damages to the plaintiff,
24 you must find that he met all of the elements of the FMLA
25 interference claim, and he suffered a loss of wages and

1 benefits directly from the Sheriff's Office's conduct. The
2 plaintiff quit in September 2016. The one thing that
3 prevented him from working at the Sheriff's Office, his
4 decision to quit. He didn't suffer any lost wages or benefits
5 because of Ms. Shinnawi's conduct.

6 And the plaintiff is seeking wages for the time after
7 he quit, when he testified he was unable to work, and where
8 he's now receiving his pension. The plaintiff's ask of three
9 years of back pay and his sick leave is like blaming
10 Ms. Shinnawi for his decision to retire. Both are
11 unreasonable.

12 I ask that you return a verdict that the evidence
13 supports and that justice requires. Please return a verdict
14 for the Sheriff's Office. Thank you for your time and
15 attention.

16 THE COURT: Thank you, Ms. Ori.

17 Mr. Flaxman.

18 MR. K. FLAXMAN: Thank you, Your Honor.

19 REBUTTAL ARGUMENT ON BEHALF OF THE PLAINTIFF

20 MR. K. FLAXMAN: Ms. Shinnawi, we were just told,
21 helped thousands of employees while she worked for the
22 sheriff. When Mr. Zicarelli called her and told her his
23 doctor had said you need to take off two months, did she tell
24 him, you only have FMLA intermittent leave; if you want to
25 take off a block of time, you have to reapply? Did she say

1 that? She didn't say -- she didn't say that. Even her --
2 even the defense counsel doesn't remember Ms. Shinnawi saying,
3 Oh, I told him he had to apply for block FMLA leave. If he
4 was taking more than seven days a month, he would be taking
5 FMLA leave to which he was not entitled, and it would go to
6 the attendance division for taking unauthorized FMLA leave
7 time.

8 We're told that Mr. Ziccarelli called Ms. Shinnawi.
9 There's no dispute about that. And then we're told
10 Mr. Ziccarelli asked Ms. Shinnawi, How much time do I have
11 left? And then the defense tells you, Ms. Shinnawi said, You
12 don't have enough time to go into that eight-week program that
13 your doctor prescribed for you. Where is that in the defense
14 version of the conversation between Ms. Shinnawi and
15 Mr. Ziccarelli? It's not there. It's skipped over. It's
16 misremembered. It's ignored.

17 Mr. Ziccarelli called Ms. Shinnawi. He said, I want
18 to know how much time do I have. My doctor told me I need to
19 go into an eight-week program. Ms. Shinnawi said, Oh, you
20 don't have eight weeks. She should have said, And if you want
21 to take more -- more time than seven days a month, which is
22 what the intermittent leave was, you have to reapply. If your
23 doctor wants to send you to a one-month program and you have
24 one month on the books, you have to reapply and ask for
25 continuous leave, not for intermittent leave.

1 She didn't do that. She gave different answers in
2 her testimony about intermittent leave: I told him; I didn't
3 tell him; it's online. Did you tell him? I didn't tell him
4 it was online; I told him it was online. She didn't tell him
5 about that. She wasn't being helpful. What she told him is
6 what Mr. Ziccarelli told you, that if you take more FMLA leave
7 time than you're authorized to, if you take more than seven
8 days a month, you're going to go to attendance. And
9 Mr. Ziccarelli knew from his experience that when you go to
10 attendance, you get terminated.

11 Mr. Ziccarelli told you that it took him three years
12 before he was able to work after he left but that if he had
13 been in that treatment program, it wouldn't have been three
14 years.

15 MS. ORI: Objection. Speculation. That was not
16 evidence.

17 THE COURT: Overruled.

18 MR. K. FLAXMAN: It wouldn't have been three years.
19 It would have been less. If he had gotten treatment, it would
20 have been eight weeks and he could be back to work, or it
21 could have been eight weeks and he could have applied for
22 disability if he hadn't been cured or his PTSD hadn't been
23 lessened so he could go back to work.

24 But he didn't have that opportunity. He had to -- he
25 was told if you take more FMLA leave time than you're

1 authorized, more than seven days a month, you're going to go
2 to attendance, and Mr. Ziccarelli knew what that meant.

3 Mr. Ziccarelli isn't asking you for money when he
4 would have been unable to work. He's asking you for the
5 damages that he suffered as a result of Ms. Shinnawi telling
6 him, Don't take any more FMLA leave time. He lost that sick
7 pay that he would have gotten paid for taking addition -- the
8 FMLA leave time that had been authorized, and he lost back
9 pay, and he's not asking you to double pay him for the pension
10 benefits that he received those three years. We're putting
11 that in the chart.

12 The most interesting thing about the defense theory
13 is that when Mr. Ziccarelli phoned Ms. Shinnawi and said, How
14 many days do I have, my doctor says I need to go into an
15 eight-week program, that isn't giving notice to the sheriff
16 that he needs continuous FMLA leave time, that seven days a
17 month isn't cutting it. Of course that's notice. They had --
18 Ms. Shinnawi had notice that he needed continuous FMLA leave
19 time, and she didn't help him. She told him, If you take more
20 than seven days a month, you're going to go to attendance.

21 The jury -- the judge is now going to read to you the
22 final instructions and talk to you about the jury form, about
23 deliberations, and then you're going to go back into the jury
24 room. And it's your case. The lawyers will stop talking, the
25 judge will stop talking, and you can now talk about the case.

1 And we ask that you reach a verdict in favor of Mr. Zicarelli
2 and award him substantial damages.

3 Thank you.

4 THE COURT: Thank you, Mr. Flaxman.

5 All right. Ladies and gentlemen, once you're all in
6 the jury room for deliberations, the first thing you should do
7 is choose a foreperson. The foreperson should see to it that
8 your discussions are carried on in an organized way and that
9 everyone has a fair chance to be heard.

10 You may discuss the case only when all jurors are
11 present. Once you start deliberating, do not communicate
12 about the case or your deliberations with anyone except other
13 members of the jury. You can't talk to anyone in person or on
14 the phone, correspond with anyone, or electronically
15 communicate with anyone about the case. All forms of
16 communication are subject to this instruction, including
17 e-mail, text messaging, instant messaging, blogging, posting
18 on social media and network platforms such as Facebook, X,
19 Tumblr, Instagram, Threads, or Snapchat. You may not use any
20 electronic devices such as cell phones or computers or tablets
21 to communicate with anyone about this case. If anyone
22 attempts to communicate with you about the case through any of
23 these methods or others, you must inform me right away.

24 Also, you may not conduct any independent research
25 about the case by any means. You may not use any printed or

1 electronic source to look up any information about the case.
2 You cannot consult any reference materials or search the
3 Internet to obtain information about the matters in the case
4 or the individuals involved in the case or to help you decide
5 the case in any other way. You may not do any personal
6 investigation of the events that are the subject of this case.

7 The reason that you cannot communicate with anyone
8 about the case or conduct your own investigation and research
9 is that it is critically important that you decide this case
10 based solely on the evidence presented in this courtroom.
11 That's the only information that all of you have seen and
12 heard and that the parties have seen and heard. Permitting
13 communications or investigation outside the courtroom would
14 jeopardize the fairness of these proceedings because then your
15 verdict might be based on information that is not reliable or
16 admissible, that the parties did not have an opportunity to
17 address and that your fellow jurors did not have an
18 opportunity to consider.

19 If you need to communicate with me while you are
20 deliberating, send a note through the court security officer.
21 The note should be signed by the foreperson or one or more
22 members of the jury. To have a complete record of the trial,
23 any communications with me must be by written note. Please
24 understand that if I receive a note, I may have to talk to the
25 lawyers about your message, so it may take me some time to get

1 back to you. You may continue your deliberations while you
2 wait for my response.

3 If you send me a message, do not, do not, do not,
4 include the breakdown of any votes that you may have taken.
5 In other words, if you have taken any vote, don't tell me that
6 you are split 6-2 or 4-4 or whatever your vote happens to be.

7 The exhibits introduced at trial will be available
8 for use in the jury room during your deliberations; but as I
9 previously advised, transcripts of trial testimony will not be
10 available to you. You must rely on your individual and
11 collective memory of the testimony.

12 Copies of the instructions of law, however, will be
13 provided for each of you.

14 Along with the instructions, a verdict form has been
15 prepared for you, and you will have a verdict form in the jury
16 room with you.

17 This is what it looks like. It's a single page, and
18 it's very simple. It has at the top the case, just the name
19 of the case, and then it's got under the heading "Verdict,"
20 two questions. The first question is: "Do you find that
21 Mr. Zicarelli has proven his FMLA claim by a preponderance of
22 the evidence?" And underneath that question, there are two
23 boxes, one marked "Yes," one marked "No." You will check the
24 appropriate box to reflect your verdict.

25 If you answer "No" to the first question, you skip

1 the second question and simply sign and date the form. If you
2 answer "Yes" to the first question, then you must answer the
3 second question, which is: "State the value of damages, if
4 any." And then you will sign and date the verdict form.

5 When you have reached unanimous agreement as to your
6 verdicts, your foreperson will fill in the date, sign the
7 verdict form, and each of you must also sign the verdict form.
8 Advise the court security officer once you have reached a
9 verdict. The security officer will be seated right outside
10 the jury room so you know where to find him. And advise the
11 court security officer that you've reached a verdict. When
12 you come back to the courtroom, I will read the verdict aloud.

13 A verdict must represent the considered judgment of
14 each juror. Your verdict, whether it is for Mr. Zicarelli or
15 the Sheriff's Office, must be unanimous.

16 You should make every reasonable effort to reach a
17 verdict. In doing so, you should consult with each other,
18 express your own views and listen to your fellow jurors'
19 opinions. Discuss your differences with an open mind. Do not
20 hesitate to reexamine your own view and change your opinion if
21 you come to believe it is wrong. But you should not surrender
22 your honest beliefs about the weight or the effect of evidence
23 just because of the opinions of your fellow jurors or just so
24 that there could be a unanimous verdict.

25 All of you should give fair and equal consideration

1 to all the evidence. You should deliberate with the goal of
2 reaching an agreement that is consistent with the individual
3 judgment of each juror.

4 Remember, you are the impartial judges of the facts.

5 All right. You'll now retire to deliberate, or
6 you'll have the option of eating -- getting lunch from the
7 cafeteria before you begin your deliberations. That's up to
8 you. Just let the court security officer know how you want to
9 proceed in that regard.

10 Your deliberations should continue as necessary
11 during general -- the same general hours we've conducted
12 trial, that is weekdays roughly between 9:30 a.m. and
13 5:00 p.m. You may, however, deliberate until 6:00 p.m. which
14 is when the building closes to the public. In providing you
15 with this information, I intend no comment on the appropriate
16 length of your deliberations. That is a matter for you, the
17 jury, to determine.

18 All right. Do we have our court security officer?
19 Ms. Rone, would you please administer the oath?

20 THE CLERK: Yes.

21 (Court security officer sworn.)

22 THE COURT: All right. All rise.

23 (Jury exits.)

24 THE COURT: All right. Let's please get the exhibits
25 to Ms. Rone.

1 And, Alberta, you've got the jury instructions?

2 THE CLERK: Yes, they're here.

3 THE COURT: All right. And the verdict form.

4 MS. HASAN: The only thing, Your Honor, is that the
5 exhibit list, I prepared it. I just want to show it to
6 counsel.

7 THE COURT: Okay. That's fine.

8 MS. HASAN: -- before having it sent to Ari -- to
9 Ms. --

10 LAW CLERK: I'll print it. You can e-mail it to me.

11 THE COURT: Sorry.

12 LAW CLERK: I can print it if they e-mail it to me.

13 THE COURT: Alberta, here's the verdict form.

14 THE CLERK: Thank you.

15 THE COURT: Counsel, make sure Alberta has the best
16 contact information for you. You need to be within 15-minute
17 recall. We'll see how things proceed.

18 MR. J. FLAXMAN: Okay.

19 MR. K. FLAXMAN: Could we get information about
20 whether they go for lunch now or just deliberate?

21 THE COURT: When we know that, yeah.

22 THE CLERK: Okay.

23 MR. K. FLAXMAN: I still remember these old cowboy
24 movies, we don't need to deliberate, Your Honor.

25 THE CLERK: They are going to lunch which is right

1 downstairs.

2 THE COURT: We're good on the exhibits?

3 MS. HASAN: We're going to get a printed copy of the
4 exhibit list and just insert it. Thank you.

5 THE COURT: All right. We'll be in touch.

6 MS. HASAN: Thank you.

7 (Recess had from 12:20 to 2:14 p.m.)

8 (Court resumes at 2:14 as follows:)

9 THE COURT: Okay. I received a note from the jury a
10 couple of minutes ago. It's -- there's no time or date on the
11 note. It's signed by Noelle Minchin as foreperson. The note
12 says: "Please provide the" -- excuse me.

13 "Please provide the amount of damages - broken down -
14 and can that amount be changed." Which reads like a question.
15 There's no question mark there. "Please provide the amount of
16 damages - broken down - and can the amount be changed."

17 If you want to confer with your -- between co-counsel
18 for a minute, I'm soliciting your views as to the proper
19 response.

20 (Counsel conferring.)

21 THE COURT: All right. Let me hear first from the
22 plaintiff.

23 MR. K. FLAXMAN: We have conferred. We believe
24 Your Honor should give the jury that exhibit that was shown
25 during closing argument and answer the question can they give

1 an amount different than what was asked, yes.

2 THE COURT: When you say "exhibit," I don't believe
3 it was an exhibit.

4 MR. K. FLAXMAN: It was a -- I believe it was -- it
5 was exhibited -- a chart was exhibited to the jury in closing
6 argument by my co-counsel.

7 THE COURT: Right. That's argument.

8 MR. K. FLAXMAN: I think if they want to see the
9 argument again, they should be able to. But I think you
10 should answer the second question yes, that they're not fixed
11 to what is requested.

12 THE COURT: What's the defendant's view?

13 MS. ORI: Well, I would say it's a two-part question.
14 I would say there is no evidence that shows damages so we
15 would object to the demonstrative that was used at closing
16 arguments because it's not evidence.

17 And I would say that your jury instruction about
18 damages is what they should review.

19 THE COURT: All right. We're not showing them a
20 piece of paper that was shown during closing argument. That's
21 not appropriate. That was not introduced into evidence.
22 There was evidence in the record from which the damages
23 calculation was based, but those charts or summary tables that
24 were used during closing argument are not evidence and are not
25 going back to the jury.

1 Here's my suggestion: "It is for the jury to
2 determine the amount of damages, if any, that have been proven
3 by a preponderance of the evidence." That is consistent with
4 the damages instruction, and it answers I think both parts of
5 the question because it emphasizes that it's the jury that
6 determines the amount of damages which necessarily means that
7 the jury decides the number, not -- so there's no change, per
8 se. It's the jury's province to determine what the facts --
9 or what the damages, if any, have been proven to be.

10 MR. K. FLAXMAN: We're coming close to repeating the
11 jury questionnaire where there's a statement that we all
12 understand what you meant, but I think we should just -- you
13 could -- I would encourage you to say what you just said but
14 directly answer the question, yes, you may award damages
15 different than what was requested.

16 THE COURT: Well, that's not exactly what the
17 question is. I mean, I don't disagree with you that that's
18 probably the tenor of the question, but the -- well, so what
19 are you -- riffing off of my response, what are you
20 suggesting, Mr. --

21 MR. K. FLAXMAN: Well, I think we could -- you
22 could -- Your Honor could read to them or give them back in
23 writing your response and then another sentence saying that
24 the amount of damages to award is -- you could give a
25 different amount of damages, if any, other than what was

1 requested.

2 THE COURT: All right. What if we just add to the
3 first -- my sentence: "It is for the jury to determine the
4 amount of damages, if any, that have been proven by a
5 preponderance of the evidence." And then add a sentence:
6 "The amount requested does not control."

7 MR. K. FLAXMAN: Plaintiff has no objection to that.

8 MS. ORI: We do have an objection because they
9 must -- the only damages that he's able to recover are lost
10 wages and benefits that are directly caused by the sheriff's
11 interference. So based on that question, I'm concerned they
12 just want to award some other amount, but that amount has to
13 be wages and benefits directly tied to the Sheriff's Office
14 conduct.

15 THE COURT: Well, I don't think that's a fair
16 reading. Remember the note says, "Please provide the amount
17 of damages broken down." That doesn't suggest they're off on
18 a frolic and detour. It suggests they're trying to
19 reconstruct what the damage request by the plaintiff was. And
20 whether they're bound by that number is a take it or leave it
21 proposition or whether they have the discretion to change that
22 number.

23 MS. ORI: I still would like the addition of "loss of
24 wages and benefits that was directly caused by the Sheriff's
25 Office is interference with his ability to take FMLA leave."

1 THE COURT: Why do we need that to respond to this
2 question? This is asking the amount of damages broken down,
3 which we're not going to give them, and then asks the question
4 can the amount be changed. It's I think appropriate to
5 respond that -- to remind them that the jury determines the
6 amount of damages and that the amount requested doesn't
7 control that inquiry. I'm not -- I don't understand why we
8 need more to respond -- and we need to invoke the -- I mean,
9 they still got the jury instructions.

10 MS. ORI: Right.

11 THE COURT: So the jury instructions say what they
12 say.

13 MS. ORI: But whether plaintiff suffered damages and
14 whether those damages were caused directly by the Sheriff's
15 Office's interference I think are two separate things.

16 THE COURT: I agree. And they're not implicated by
17 this note. Whether they were caused directly by the Sheriff's
18 Office interference is not implicated by this note. I mean,
19 the note is asking -- the note is clearly asking for the
20 amount of damages that, you know, were calculated by the
21 plaintiff. I've said I'm not giving that because that was not
22 an exhibit at trial, and they have to rely on their collective
23 memories, et cetera.

24 MR. J. FLAXMAN: Are you putting that in the
25 response?

1 THE COURT: Sorry?

2 MR. J. FLAXMAN: Are you putting that in the
3 response?

4 THE COURT: No, no, I'm explaining that I'm not
5 putting that in the response because this question does not
6 suggest there's confusion about what the instruction on
7 awarding damages is. This is confusion about whether they can
8 change the amount of damages requested by the plaintiff. So I
9 think telling them: "It's for the jury to determine the
10 amount of damages that have been proven by a preponderance of
11 the evidence." I would consider: "It's for the jury to
12 determine the amount of damages consistent with the jury
13 instructions that have been provided. The amount requested
14 does not control."

15 MR. K. FLAXMAN: Plaintiff has no objection to that.

16 MS. ORI: One moment.

17 (Counsel conferring.)

18 MS. ORI: We're okay you saying consistent with the
19 damages instruction.

20 THE COURT: All right.

21 MS. ORI: I would also like if you started it
22 "damages, if any."

23 THE COURT: Well, instructions say that.

24 MS. ORI: Okay.

25 THE COURT: All right. So I'll respond to this note

1 by saying: "It is for the jury to determine the amount of
2 damages consistent with the jury instructions that have been
3 provided. The amount requested does not control."

4 MR. K. FLAXMAN: Fine with plaintiff, Your Honor.

5 THE COURT: Good?

6 MS. ORI: Yes.

7 THE COURT: Okay. That's what we will respond.

8 MR. K. FLAXMAN: Thank you.

9 (Recess had from 2:31 p.m. to 3:02 p.m.)

10 (Court resumes at 3:02 p.m. as follows:)

11 THE COURT: All right. I received a note from the
12 CS0. The note reads, 3/12/24 at 2:50 p.m.: "We have reached
13 a verdict," signed by the foreperson Noelle Minchin.

14 Anything we need to do before we bring the jury in
15 for the verdict?

16 MR. K. FLAXMAN: Nothing from plaintiff, Your Honor.

17 MS. ORI: Do I need to renew my motion for directed
18 verdict?

19 THE COURT: That's done before the matter is
20 submitted to the jury.

21 MS. ORI: Okay. I did that already.

22 THE COURT: You did that.

23 MS. ORI: Yes.

24 THE COURT: Okay. All right. Let's bring the jury
25 in.

1 (Jury enters.)

2 THE COURT: All right. Please be seated.

3 All right. Ladies and gentlemen, I have been advised
4 by the court security officer in your note that you have
5 reached a verdict; is that correct?

6 JUROR MINCHIN: Yes.

7 THE COURT: All right. Would you please hand the
8 verdict form to the court security officer.

9 All right. The verdict form reads: "Do you find
10 Mr. Zicarelli has proved his FMLA claim by a preponderance of
11 the evidence? Yes."

12 State the value of damages, if any: "\$240,000 plus
13 attorneys' fees."

14 Signed by eight members of the jury.

15 Does defendant wish to have the jury polled?

16 MS. ORI: Yes.

17 THE COURT: All right. Ladies and gentlemen, would
18 you please respond to my question to you.

19 Mr. Julio Arguello, was this and is this now your
20 verdict?

21 JUROR ARGUELLO: Yes.

22 THE COURT: Monica Mavric de Beltrami, was this and
23 is this now your verdict?

24 JUROR MAVRIC DE BELTRAMI: Yes.

25 THE COURT: Jessica Patel, was this and is this now

1 your verdict?

2 JUROR PATEL: Yes.

3 THE COURT: Elizabeth Quail, was this and is this now
4 your verdict?

5 JUROR QUAIL: Yes.

6 THE COURT: Amaya Pawar, was this and is this now
7 your verdict?

8 JUROR PAWAR: Yes.

9 THE COURT: Noelle Minchin, was this and is this now
10 your verdict?

11 JUROR MINCHIN: Yes.

12 THE COURT: Eric Ocampo, was this and is this now
13 your verdict?

14 JUROR OCAMPO: Yes.

15 THE COURT: Juan Merino-Cortes, was this and is this
16 now your verdict?

17 JUROR MERINO-CORTES: Yes.

18 THE COURT: All right. Thank you.

19 All right. Ladies and gentlemen, with your return of
20 your verdict, your jury service in this case is complete.

21 On behalf of everyone, I want to thank you publicly
22 here in the courtroom. You'll go back to the jury room, and
23 if you have just a couple of minutes, I have a little bit of
24 business to take care of here, but I would like to come back
25 and thank you all personally for this valuable service which

1 you have carried out diligently.

2 All rise.

3 (Jury exits.)

4 THE COURT: All right. Any questions? Issues?

5 MS. ORI: We again renew our motion for a directed
6 verdict -- or motion notwithstanding the verdict.

7 THE COURT: All right.

8 MS. ORI: And enter judgment in our favor.

9 THE COURT: All right. That will be taken under
10 advisement. Are you making a Rule 59 motion as well?

11 MS. ORI: Yes.

12 THE COURT: All right. That will be taken under
13 advisement. By rule, I believe you have 28 days to file your
14 motion, so I'll make that the deadline for your renewed 50(a)
15 motion as well.

16 And confer with counsel about a briefing schedule on
17 your motions. If you have an agreement, indicate that on your
18 motion; if you don't, I'll set a briefing schedule.

19 MR. K. FLAXMAN: Just so there's no surprise, we will
20 contend that the motion was not properly preserved, but we'll
21 present that in argument.

22 THE COURT: Which motion?

23 MR. K. FLAXMAN: The motion at the close of all the
24 evidence I did not hear. I heard a motion at the close of our
25 case without stating any grounds, but then I did not hear a

1 motion at the close of all the evidence before the jury
2 retired to deliberate.

3 THE COURT: Well, take a look at the rule. It just
4 requires the submission before the case is submitted to the
5 jury.

6 MR. K. FLAXMAN: I will do that.

7 THE COURT: All right. Then we will get our briefing
8 schedule and we'll go from there.

9 Anything else we need to address?

10 MR. K. FLAXMAN: I think the 90 days for fees starts
11 to run now or when you rule on the posttrial motions. I would
12 like that to be extended until you rule on the posttrial
13 motions.

14 THE COURT: Yes. I don't think it runs from the date
15 of judgment.

16 MR. K. FLAXMAN: Thank you.

17 THE COURT: Okay. All right. Congratulations,
18 Mr. Zicarelli.

19 THE PLAINTIFF: Thank you, sir.

20 THE COURT: Your lawyers did a fine job for you.

21 County, I know you're disappointed in the verdict,
22 but you did a fine job in presenting your case.

23 I'm going to go thank the jurors personally, and I'll
24 await your written submissions.

25 MR. K. FLAXMAN: If the jurors want to talk with us,

1 will you let them?

2 THE COURT: I don't allow that.

3 MR. K. FLAXMAN: Thank you.

4 THE COURT: All right. We are adjourned.

5 (Which were all the proceedings heard.)

6

7

CERTIFICATE

8 I certify that the foregoing is a correct transcript from
9 the record of proceedings in the above-entitled matter.

10 /s/Kelly M. Fitzgerald

March 28, 2024

11 Kelly M. Fitzgerald
12 Official Court Reporter

Date

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