

1 MR. MASSIMO: Good morning, ladies and gentlemen of
2 the jury.

3 I came up here Monday afternoon, I had said to you
4 that we were going to prove that the defendants in this case
5 violated Joshua Wharton's civil rights and we did just that.

6 When I came up here, I told you what we were going
7 to prove. We proved it, we brought the evidence before you
8 and now we're going to ask you to render a verdict in favor of
9 Mr. Wharton.

10 This case is a case about civil rights. It's a case
11 that's about more than Joshua Wharton. It's about
12 constitutional rights. It's about how police officers
13 interact with members of society, how police officers interact
14 with citizens, how citizens who are not committing crimes
15 cannot, under our constitution, be subject to arrest.

16 During the course of this case, we proved to you
17 that the defendants in this action were acting under the color
18 of state law. They were acting as police officers, they were
19 acting on the authority, the power that was given to them by
20 the County of Nassau to be police officers and this case is
21 about the limitation of those powers.

22 The state has conferred a power upon Officer Kouril
23 and Officer DeCaro that is not conferred upon me, it's not
24 conferred upon you, it's not conferred upon the Whartons, and
25 that power is a privilege. It is not a right. And that power

1 cannot be exceeded and when that power is exceeded, the rules
2 of our society begin to erode.

3 As a jury, you have the unique opportunity to
4 protect the constitution and the rights of the citizens of the
5 United States of America. You have the power to tell police
6 officers that the lines of the power that's conferred upon
7 them are not, the police cannot exceed those lines and
8 determine by themselves how far those lines go.

9 Now, in this case, as I said to you, we proved the
10 defendants were acting under the color of state law. It's
11 clear that Mr. Wharton has a claim pursuant to 42 United
12 States Code Section 1983 for the deprivation of his civil
13 rights on January 20, 2004, specifically his Fourth Amendment
14 right to be free from unreasonable searches and seizures, and
15 on January 20, 2004, Mr. Wharton's person, his physical person
16 was seized in violation of the Fourth Amendment when he was
17 arrested without probable cause to believe that he committed a
18 crime.

19 Now, you are going to hear later as Judge Kuntz will
20 charge you what the law is that you must consider and we have
21 three claims before this court, a claim for false arrest
22 pursuant to the federal constitution, we have a claim for
23 malicious prosecution pursuant to the federal constitution and
24 malicious prosecution pursuant to the New York State
25 constitution, but the one element that's common to all of

1 those claims is whether or not the officer had probable cause,
2 the officers had probable cause to believe whether or not
3 Joshua Wharton, on January 20, 2004, in the Dunkin Donuts
4 committed any crime.

5 I submit to you that we brought forth more than a
6 preponderance of the evidence, much more than a preponderance
7 of the evidence, that the officers did not have probable
8 cause. They knew they didn't have probable cause and they
9 went ahead and exceeded the power that was conferred to them
10 by the State because they wanted to teach Mr. Wharton a lesson
11 for doing something that they didn't like.

12 Now, you heard the evidence in this case. What
13 happened on January 20, 2004? Joshua Wharton told you. He
14 told you truthfully, he told you what happened on that night.
15 He had the guts to exercise his rights, go to a criminal trial
16 to demonstrate his innocence, and he has the guts to come into
17 this court and ask you, as a jury, to make sure that you tell
18 police officers that they cannot under any circumstances
19 violate anybody's constitutional rights.

20 On January 20, 2004, Mr. Wharton left Mineola High
21 School. He walked up north on Armstrong Avenue, he walked
22 into the Dunkin Donuts to go buy food, get a sandwich, at
23 approximately 8:45 p.m., 8:50 p.m., something in that area.
24 He was there with two other friends that he knew.

25 He went to the counter at the Dunkin Donuts and his

1 friends went off to the side, when suddenly these two men walk
2 into the Dunkin Donuts, they don't have identification on, as
3 Mr. Wharton told you.

4 I submit to you, you know they don't have
5 identification on them because all you have to do is look at
6 the video and you can see in the video that they're not
7 wearing any identification. Clearly, Officer Kouril doesn't
8 have any identification around his neck. Officer DeCaro wants
9 you to believe that he's got some sort of identification
10 around his neck. He wants you to look at the grainy images of
11 the tape, the videotape, and conclude that somehow there's a
12 badge there. There's no badge there. Just like the jacket I
13 have today, you can see maybe a little bit of black from under
14 his jacket. There's no badge on his chest.

15 There's nothing clearly identifying themselves as
16 police officers and Joshua Wharton is standing at the counter
17 of the Dunkin Donuts. He doesn't know who these men are. He
18 doesn't know why they go over to the people that he knows and
19 takes those people to the side and starts asking questions.

20 So Joshua Wharton simply looks at them and starts
21 saying, well, what are you doing? Why are you asking
22 questions? And if he used colorful language, which he admits
23 he did at some point, it was his constitutional right to do so
24 and that's the most important thing.

25 The First Amendment to the United States

1 constitution protects the speech that Mr. Wharton used. In
2 fact, ladies and gentlemen, you can believe everything that
3 the defendants have said in this trial with the exception that
4 Mr. Wharton pushed a table at the officers which we have
5 demonstrated, and I will go over this a little bit later in my
6 summation, is completely false, but you can believe everything
7 but that allegation and there still wasn't probable cause to
8 arrest Mr. Wharton and these officers knew it.

9 Now, as Joshua Wharton says that, for whatever
10 reason -- and by the way, ladies and gentlemen, the
11 description the officers when they come in is a male causing a
12 disturbance at Mineola High School. What was it about Joshua
13 Wharton and his friends walking up the block that these
14 officers thought, for whatever reason, these individuals had
15 anything to do with that? What was it about them? Was it
16 that they were African-American? What was it that these
17 officers were looking for? And you've got to ask yourself,
18 whoever this allegedly was had already left. Why would were
19 they even bothering to continue to look into this? What was
20 the big deal at this point? But what was it about that
21 description other than mail that matches Joshua Wharton or the
22 two individuals that he was with?

23 And I submit to you, as the Judge will charge you on
24 the law, there was simply no reason to even speak to these
25 individuals, and you heard Walter Signorelli testify as to

1 that fact. There was -- a disturbance is not a crime. There
2 was nothing about that information, nothing about that
3 information, that led the officers to have any reason to
4 believe that any of these individuals were even involved in it
5 and it certainly didn't give them probable cause to do
6 anything.

7 Now, Mr. Wharton is standing there and these
8 individuals are hovering, questioning his friends, they're
9 hovering over them. They don't identify themselves as police
10 officers. They don't have anything clearly identifying
11 themselves as police officers like the badges.

12 Mr. Signorelli told you -- and by the way,
13 Mr. Signorelli has impeccable credentials. You heard his
14 credentials: A police officer, retired police officer, many
15 positions he served in the police department, he's a
16 professor. He's been a police procedure expert for many
17 years. He's been qualified not only by this judge as an
18 expert witness here in this case, but in many other cases.
19 And he came in and he, he told you that these officers need,
20 needed, when they're in plain clothes, to clearly identify who
21 they are before they are talking to somebody because, you know
22 what? If they don't do that, you are going to end up with a
23 situation just like what got us here today.

24 And now, these officers, once Joshua Wharton says
25 something, despite the fact that they know the constitution

1 protects this language, despite the fact that they know and
2 they've been trained that he can't interfere with their
3 investigation with words, they begin to follow him.

4 Now, what is Mr. Wharton doing to these officers?

5 He -- not only does he grab his sandwich at the counter, pays
6 for it, he doesn't go in the direction of the officers. He
7 goes to a table. He goes over to sit down at a table to eat
8 his sandwich. He's not asking for any further interaction
9 with these officers. He doesn't know why these people are
10 questioning his friends, hovering over them, but he just wants
11 to sit down and eat his sandwich. The officers are the ones
12 that come over and start the trouble.

13 Joshua Wharton told you he never pushed a table into
14 the officer and I submit to you, ladies and gentlemen, you
15 know that's true because you see the videotape and the
16 videotape tells the story here.

17 Don't you find it interesting that the defendants
18 want you to believe numerous things, none of which happened to
19 make it on to the videotape? Now, I know the videotape is
20 incomplete, but what do you think the chances are that none of
21 the things that they want you to believe actually make it on
22 the videotape? The badges that they're supposedly wearing
23 don't make it on the videotape. The push of the table, it's
24 not on the videotape.

25 By the way, I'm not going to bore you with my

1 summation showing you the videotape again. You've seen it
2 many times. The Judge will tell you you can see it while,
3 during your deliberations. You can look at it. You can slow
4 it. You can look at every frame. You determine for yourself.

5 There's no push of a table into Officer Kouril on
6 that videotape. There are no patrons fleeing out the
7 restaurant as the defendants would like you to believe. In
8 fact, just look at what the patrons are doing. Nobody seems
9 to be concerned about what's going on here.

10 You know what's interesting about the videotape?
11 What's interesting about the videotape is in the context of
12 the constitution, it allows you to consider as the
13 constitution tells you to and the Judge charges you, allows
14 you to consider Joshua Wharton's actions without knowing what
15 words were spoken and since those words were constitutionally
16 protected, it really doesn't matter what he was saying.

17 Look at that videotape. Look at it from start to
18 end. And tell me where on that videotape do you see Joshua
19 Wharton doing anything that comes even close to committing a
20 crime and I'm telling you it's not there. It's not there
21 because he didn't commit a crime. None of this stuff is on
22 the videotape.

23 The defendants want you to believe that Joshua
24 Wharton fought with them on the floor, trying to get up and
25 down. They had to push him back down to the floor. He's

1 kicking. He's pulling his arms. He refuses to be handcuffed.
2 Didn't happen to make it on the videotape.

3 What are the chances that all the things that
4 Mr. Wharton allegedly did that they said was criminal just
5 happened to not make it on the videotape? You know, in fact,
6 ladies and gentlemen, even though the videotape is not
7 complete, if we didn't have the videotape, we wouldn't be here
8 today. It would be Joshua Wharton's word against that man's
9 word with a badge and that man's word with a badge, and whose
10 word do you think anybody would take in that situation without
11 independent proof to back up the man who's accused of the
12 crime by the men with the power to accuse him? We wouldn't be
13 here. Thank God for the videotape.

14 We live in a day and age today where there's cameras
15 all over the place. There's video all over the place and it's
16 changing the landscape of how police have to interact with
17 citizens because today, many things are being caught on camera
18 and the police can no longer just go in and rely on their
19 testimony and say, yeah, I can say whatever I want, who's
20 going to believe that kid? He's the guy who's charged with
21 the crime. He's the arrestee. We have independent proof
22 because you know what doesn't lie, ladies and gentlemen?
23 Videotapes don't lie.

24 So Joshua Wharton sits down at a table. He has two
25 police officers surrounding him. They take the table and they

1 push it back. Officer Kouril gets directly in front of
2 Mr. Wharton, Officer DeCaro gets to the side of Mr. Wharton
3 and you see Officer DeCaro actually getting prepared to take
4 Joshua Wharton down. Takes off his gloves, puts them in his
5 pocket, gets in position behind Mr. Wharton and he knows from
6 that position where Mr. Wharton is in the seat, he can get him
7 from behind, Officer Kouril can get him in front and the next
8 thing you know, they're on the floor.

9 They admitted they took him down to the floor. They
10 admitted that. There's no testimony in this record, no
11 credible testimony that Joshua Wharton even knew they were
12 police prior to being taken down on the floor.

13 You heard Officer Kouril's testimony. He didn't
14 even know he said it. You heard Officer DeCaro's testimony,
15 he was all over the place. He doesn't know who said it, when
16 they said it, it's all over the place. Their testimony is all
17 over the place. And do you know why it's all over the place?
18 Because it's simply not the truth and they're going to miss
19 details and it's going to come out all over the place.

20 And when Jonathan Wharton was on the ground, he
21 didn't fight with the police officers. You see it on the
22 videotape. He's not moving. They're all over him.
23 Initially, he's on the ground, his arms are trapped underneath
24 him, he has the weight of these two men on top of him.
25 They're don't want him to take his hands out. How is he going

1 to get his hands out with all that weight? It's not until the
2 officers are moving around he can free his arms.

3 Officer Kouril grabs his arm, twists it behind his
4 back, as Joshua described to you, in some kind of hold where
5 he can break his wrist and threatens, threatens to break his
6 wrist. You should be outraged by this conduct.

7 You're the last line of defense between their power
8 and Joshua Wharton. You're the last line of defense. You
9 speak for society in telling these officers you cannot do that
10 to a citizen of the United States.

11 Mr. Wharton, as you know, was handcuffed. You could
12 see on the videotape. He doesn't move while they search him.
13 They get him up. He complies as he's led out of the store,
14 but he should never have been arrested and I submit to you,
15 and I'm going to show to you how we proved our case.

16 As I said before, the element that's common to all
17 the claims is probable cause.

18 Now, Walter Signorelli came in here and he told you
19 in reviewing all of this record and according to proper police
20 procedures, Mr. Wharton or -- I'm sorry, the officers had no
21 probable cause to believe that Mr. Wharton committed any
22 crime.

23 Did the defendants dispute that testimony? No. Did
24 they put on an expert witness to tell you that what
25 Mr. Signorelli is telling you isn't true, isn't the law, isn't

1 police procedure? No, they did not. And they didn't because
2 they cannot deny that which is the truth. Mr. Signorelli is
3 right. There was no probable cause.

4 The defendants in this case intentionally or
5 recklessly deprived Mr. Wharton of his Fourth Amendment rights
6 and clearly their actions were the proximate cause of
7 Mr. Wharton's injuries.

8 They knew when they were trained what that
9 Mr. Wharton's actions on January 20, 2004 were not a crime,
10 but they arrested him, Mr. Wharton, to show that they're
11 empowered and Mr. Wharton is not. And we proved to you by
12 more than a preponderance of the evidence exactly what
13 happened on that date.

14 Now, probable cause, the Judge will charge you on
15 the law, but quite simply, the officers must have had
16 information at the time of the arrest to lead a reasonable
17 person who possesses the same official expertise as the
18 officers to conclude that Mr. Wharton committed or was about
19 to commit a crime.

20 Let's start with the charges.

21 You know that a crime wasn't committed because you
22 really don't have to look further than the original charges to
23 understand what really happened here.

24 You will be shown Plaintiffs' 1 in evidence and you
25 will see what Plaintiffs' 1 says. Disorderly conduct as

1 you've learned during the course of this trial and the Judge
2 will charge you on the law requires that Joshua Wharton's
3 intent be to cause public inconvenience, annoyance or alarm or
4 create a risk thereof. That means his intent must be to
5 breach the peace of the public. It does not apply to an
6 individual dispute between the officers and Mr. Wharton.

7 And there's no view of the facts in this case that
8 the words that Mr. Wharton was saying to the officers were
9 directed to any member of the public, that he was trying to
10 annoy any member of the public, that he was even trying to
11 speak to any member of the public. He wasn't trying to
12 insight any member of the public to attack the officers and,
13 therefore, I submit to you, regardless of what they charged as
14 disorderly conduct, whatever subdivision it is, it cannot
15 possibly be, under these facts, a crime that Mr. Wharton
16 committed. Can't possibly have committed that. The elements
17 aren't there.

18 And the officers knew on that night -- and if you
19 look at the original charge, the only charge that Mr. Wharton
20 was charged with, with disorderly conduct, was for the use of
21 his language, but as Mr. Signorelli told you, the officers are
22 trained that language is protected by the constitution, the
23 First Amendment. Even the officers told you they know that
24 the First Amendment protects cursing at them.

25 You don't have to agree with what Mr. Wharton said

1 or may have said on January 20, 2004. All you have to
2 understand is it was his constitutional right to say it.

3 And Mr. Wharton -- there may be constitutional
4 rights that you may cherish more than what Mr. Wharton
5 cherishes, but I can guarantee you that Mr. Wharton would be
6 the first person to try to protect your constitutional rights
7 that you cherish, whether he agrees with them or not, and
8 we're asking you to do the same.

9 Subdivision 1 of disorderly conduct requires violent
10 and tumultuous behavior of the individual and, again, it must
11 be directed at the public. The officers, and maybe it was
12 directed at them, not the public, could not possibly have
13 fallen under that subdivision. No view of this case warrants
14 that it was anything that Joshua Wharton did was directed at
15 the public.

16 Violent tumultuous behavior, the Judge will define
17 for you what that constitutes, but certainly there's no
18 evidence in this case that Mr. Wharton tried to organize any
19 kind of frightening mob behavior or threatened anybody. There
20 was no threatening behavior.

21 As I said, the words that Mr. Wharton stated were
22 protected by the First Amendment and they did not fall under
23 any of the sections of the First Amendment, as Mr. Signorelli
24 explained to you, and this concept that people were frightened
25 and started walking or running out of the Dunkin Donuts,

1 again, look at the tape. You decide whether anybody left at
2 the Dunkin Donuts. You can see who was there at the beginning
3 before this started, you can see when they left the Dunkin
4 Donuts, you can see what they were doing, you can see what
5 happens throughout and what you are going to see on the tape
6 is everybody is going about their business.

7 You've got people going up to the counter. They're
8 engaging in transactions. They're purchasing their food.
9 They're not bothering anybody. If Joshua is so loud and
10 disruptive and whatnot, as the officers described, would you
11 really think people would just be continuing to engage in
12 normal behavior, buying food from the Dunkin Donuts employees
13 and the employees continued to work the entire time?

14 Detective Mazur, Detective Mazur, he's a detective.
15 If Joshua Wharton is so out of hand, do you think
16 Detective Mazur is going to sit there, purchase a sandwich and
17 not only just purchase that sandwich, but when Joshua is
18 supposedly on the floor, kicking at the officers, trying to
19 get up and down being pushed out and what not, you think
20 Detective Mazur is going to go back for napkins? Give me a
21 break. Watch the tape. See it for yourself. Don't take my
22 word for it.

23 You'll be charged on disorderly conduct, Subdivision
24 7: Physically offensive or hazardous condition. No view of
25 this case, no view of this case could constitute Subdivision 7

1 of disorderly conduct.

2 The officers could not possibly have thought that
3 Mr. Wharton had violated this section and the fact that he was
4 charged with it just goes to show how badly they wanted to try
5 to prosecute this young man.

6 That section requires, as the Judge will describe to
7 you, such kind of public annoyances, strewing nails in a
8 roadway so that the cars that drive by get flat tires, or
9 throwing a fire cracker into a crowded audience, turning off
10 lights in a crowded movie theater. These are general public
11 annoyances. No view of the evidence in this case could fall
12 under that subdivision.

13 Let's talk about obstruction of governmental
14 administration. And, again, it's important that you, as the
15 jurors, you'll have access to all the documents that are in
16 evidence. You can look at everything that was placed in
17 evidence. You can look at all the criminal complaints that
18 were lodged against Mr. Wharton. The Judge will tell you what
19 the law is for those criminal complaints and you can see how
20 they were wrote up and how they were changed and you can make
21 your determination as to why they were changed.

22 Obstruction of governmental administration, the most
23 important thing for you to focus on is the element or two
24 elements. First, that the act be a physical interference.
25 And the Judge will charge you with the law. Words cannot

1 constitute obstruction of governmental administration. No
2 matter how much Officer DeCaro wants you to believe that, it
3 is simply not the law. And they knew this and they knew it at
4 the time that they charged him. Words alone cannot. There
5 must be a physical act. The only physical act the defendants
6 have brought forth in this case that Joshua Wharton could
7 possibly have committed on that night was the push of the
8 table at Officer Kouril.

9 Now, let's talk about that briefly.

10 This is easy. This is really easy. There's no way
11 you can give credit to the allegation that Mr. Wharton pushed
12 a table at Officer Kouril. As we showed you, police officers
13 are trained when they make an arrest, they have numerous
14 documents and paperwork they have to fill out and in that,
15 those documents and in the paperwork, the police officers are
16 required to put all the pertinent facts that go to the crime.

17 Of all the things that the officers accused
18 Mr. Wharton of doing on January 20, 2004, do you really
19 believe for one second, one second, that the most egregious
20 act that they're accusing him of slipped their minds? They
21 just happened to forget to put it in there? Are you kidding
22 me?

23 The way they've gone about this is insulting. Look
24 at the criminal complaints. Nowhere in the original
25 complaints does it say that it's in there. In fact, you don't

1 even have to look at them because both these guys admitted,
2 both the defendants admitted it's not anywhere in the
3 paperwork, not in the original arrest paperwork.

4 Look at Plaintiffs' Exhibit 4. The arrest report.
5 Look at the narrative written by Officer DeCaro in there.
6 Nowhere does it say that Mr. Wharton pushed a table into
7 Officer Kouril. Do you really think if Mr. Wharton pushed a
8 table into Officer Kouril, he would be just be charged with
9 obstruction of governmental administration? Don't you think
10 that's assaulting a police officers? Sure seems to be in the
11 world that I live in.

12 And do you think it's by coincidence that almost six
13 months after the incident, after Mr. Wharton attempts to have
14 the charges dismissed on the basis that he didn't commit any
15 crime, even if you believe everything in the original charges,
16 that Officer Kouril just happens to, on June 18th, 2004, go
17 back to the District Attorney's Office and just happens to
18 remember, well, wait a second, there was a physical
19 interference, this individual pushed a table at me.

20 Now, they can try to blame it on Ms. Aquafredda all
21 they want, but at the end of the day, when Officer Kouril went
22 to the District Attorney's Office, even though Ms. Aquafredda
23 may have typed up the complaint, they're not her words. She
24 didn't make up those words. She asked the officer, What
25 happened here? He tells her what happened. She drafts it.

1 She's not signing and swearing to it. Officer Kouril is
2 signing and swearing to it. He's the one who's taking an
3 oath.

4 This is a deliberate lie added for one reason and
5 one reason alone. They knew that unless they added this lie
6 to the charges against Joshua Wharton, the charges against
7 Mr. Wharton would have been dismissed. And the only way to
8 continue the criminal prosecution against Mr. Wharton and the
9 only way to stick it to him and show him who's boss was to put
10 these accusations in so that he had to go to a trial in the
11 criminal court, face the possibility of going to jail and
12 defend himself, and that's exactly what Mr. Wharton had to do.

13 I submit to you, and I'm not going to keep going
14 over and over and over again because it's so clear,
15 Mr. Wharton did not push a table into Officer Kouril. There
16 is no credible evidence of that occurring and you should be
17 offended that they would do that.

18 And when you look at these two defendants, their
19 actions are joined. It's not that one of them did something
20 worse than the other. They're joined. The judge will charge
21 you with regard to that. But Officer DeCaro had no problem
22 coming in before you and getting on the witness stand and
23 going forth with that complete false accusation that
24 Mr. Wharton pushed a table into Officer Kouril.

25 Do you really think if Mr. Wharton pushed a table

1 into Officer Kouril, that Detective Mazur would continue to
2 get his sandwich? That people would continue to go about
3 their business? That the employees would continue to work?
4 That people would continue to purchase food? Do you really
5 think?

6 The Judge will tell you to use your common sense,
7 ladies and gentlemen.

8 This is easy. Resisting arrest, ladies and
9 gentlemen. This one is simple. Very simple. An arrest must
10 be authorized. Quite simply, the law says that in order to
11 have a proper resisting arrest, there must be a separate crime
12 which the officers have probable cause to arrest Mr. Wharton
13 for. And since we've demonstrated to you there's no view of
14 the evidence that anybody can say he committed disorderly
15 conduct, there's no view of the evidence that Mr. Wharton
16 physically interfered with the police officers and, again, I
17 don't even know what investigation he supposedly interfered
18 with.

19 There's no crime for which there was probable cause
20 to arrest Mr. Wharton. So even if you believed he kicked, he
21 pushed, he grabbed, he tried to get up, he had to be pushed
22 back down on the floor, the arrest still wasn't authorized
23 and, therefore, there was no probable cause to believe that
24 Mr. Wharton committed a crime of resisting arrest.

25 But it really doesn't stop there because the

1 evidence in this case doesn't demonstrate he was resisting.

2 He gets taken down to the floor by two police
3 officers, by the way, don't have badges identifying
4 themselves, that don't identify themselves. He tells you he
5 doesn't know unless it's the moment that he's taken down to
6 the floor that he's dealing with police officers.

7 But you see on the tape, he's not resisting and,
8 again, the defendants want you to believe in this magic
9 coincidence, magic coincidence that all the bad stuff Joshua
10 Wharton did there just didn't happen to make it on the
11 videotape, despite the fact that they testified that he fought
12 with them right up until the time that he put on the
13 handcuffs, and you can see on the tape that there's a lot on
14 the tape before he's placed in handcuffs and he's not fighting
15 with them whatsoever. They are in control. They're
16 manhandling Mr. Wharton on that floor.

17 What is Mr. Wharton supposed to do? One's got his
18 legs, the other one's on top of him on the shoulders, all the
19 weight is on top of Mr. Wharton, what is he supposed to do?
20 How is he going to get his arms out when all of this weight is
21 on top of him? What is he supposed to do when an officer says
22 I'm going to break your wrist?

23 We have demonstrated to you clearly there's no
24 probable cause to believe that Mr. Wharton committed any
25 crime. The officers knew it at the time they made the arrest,

1 they knew it at the time they initiated the criminal
2 prosecution, they knew it at the time that they falsified the
3 additional charges.

4 We have proved to you Mr. Wharton was falsely
5 arrested. We've demonstrated the lack of probable cause and
6 that the arrest was without probable cause and that, quite
7 simply, is false arrest. The Judge will charge you on the
8 law. You'll see the proof is there.

9 We've proven that that false arrest was done under
10 the color of state law. And we've proven that it was done
11 under the color of state law which violated Joshua Wharton's
12 Fourth Amendment right to be free from false arrest by
13 arresting him without probable cause. We have also proven to
14 you that Mr. Wharton was maliciously prosecuted.

15 As the Judge will charge you, the rights are the
16 same to be free from malicious prosecution, whether it's under
17 the federal law, the United States constitution or New York
18 State law, the New York State constitution.

19 There's no dispute in this case that Officer Kouril
20 and Officer DeCaro initiated a criminal prosecution against
21 Mr. Wharton. There's no dispute in this case that that
22 criminal prosecution ended in Mr. Wharton's favor when after
23 hearing the evidence at a criminal trial, Judge Sandra Pardes
24 of the Nassau District Court found Mr. Wharton not guilty of
25 all five superseding charges he faced at that criminal trial.

1 There's no dispute that as a consequence of the
2 criminal trial proceeding, Mr. Wharton suffered a significant
3 deprivation of his liberty that's not in dispute. Mr. Wharton
4 suffered a deprivation of his Fourth Amendment rights when he
5 was required by a court of law, under the threat of a bench
6 warrant being issued against him, to appear in court for each
7 and every one of the court appearances pursuant to the
8 criminal charges and when he had to appear in court and stand
9 trial as a defendant in the criminal case.

10 Now, in addition to having to prove that, it's my
11 obligation to also prove that the defendants lacked probable
12 cause to bring a proceeding and in this case, we didn't just
13 prove that and I'm not going to go over it again. You already
14 know there's no probable cause here. But not only did they
15 lack probable cause to bring the proceeding, they even
16 extended the proceeding by adding false allegations and we've
17 proven that.

18 I must also prove that the defendants acted
19 maliciously here.

20 There's no question, ladies and gentlemen, the
21 evidence in this case demonstrates that the defendants'
22 actions towards Joshua Wharton on January 20, 2004, were out
23 of spite. You have two officers drunk on the power vested to
24 them by the State of New York when they deliberately added a
25 false fact to extend that prosecution and that shows malice

1 and it also shows malice when they arrested Mr. Wharton
2 without probable cause, not because they believed he committed
3 a crime, but because they wanted to show Mr. Wharton who's
4 boss. Is it the guys with the guns and badges or is it the
5 young male that they don't like speaking to them and they're
6 going to show him who's boss? I got a gun and badge. You
7 can't speak to me like that.

8 Guess what, ladies and gentlemen, their word is not
9 final on that. You get to tell everybody here who is in the
10 right, not them. You do.

11 Plaintiffs have proved by a preponderance of the
12 evidence that both defendants acted jointly here and
13 intentionally and recklessly committed an act under color of
14 State law which violated Joshua Wharton's Fourth Amendment
15 right to be free from malicious prosecution and we're going to
16 ask you to find a verdict in Mr. Wharton's favor on malicious
17 prosecution claims.

18 We've also demonstrated to you that Officer Kouril's
19 and Officer DeCaro's act were the proximate cause of Joshua
20 Wharton's injuries and the damages that Mr. Wharton sustained
21 were foreseeable from the acts that the defendants committed.

22 Now, it's likely the defendants will claim what's
23 called qualified immunity which the Judge will charge you with
24 regard to. And I submit to you you have to look no further
25 than the testimony of Walter Signorelli to dismiss any claim

1 of qualified immunity. There's no view of the evidence which
2 would sustain their burden of qualified immunity.

3 Essentially, they're going to try to demonstrate to
4 you that a reasonable officer would have taken the same
5 actions as these defendants, which you know that's not the
6 case and you know that's not the case because Walter
7 Signorelli told you that. Walter Signorelli told you what
8 police officers are trained. He told you that police officers
9 would know in this situation there was no probable cause to
10 arrest Mr. Wharton for any crime whatsoever.

11 The defendants have brought forth zero evidence to
12 dispute Mr. Signorelli. They could have brought an expert in
13 to tell you Mr. Signorelli was not telling the truth.

14 Don't let them fool you and make a big deal about
15 the fact that Mr. Signorelli was paid \$7,800 for his
16 testimony. It's perfectly proper for an expert witness to
17 receive compensation for their testimony. Mr. Signorelli had
18 to go through all the evidence in this case to come to that
19 conclusion. Don't let them fool you that somehow, we forced
20 Mr. Signorelli to come to a conclusion. He's a decorated
21 police officer. He got on that witness stand and, under oath,
22 he told you I didn't ask him to come to any conclusion. I
23 asked him to come -- to look at the evidence in this case and
24 make a conclusion as to whether there was probable cause or
25 not.

1 I didn't tell him you have to come to the conclusion
2 there was no probable cause. He looked at the evidence. He
3 used his expertise, he used his honesty and came up with a
4 conclusion. He's not going to get up on that witness stand
5 after all the years as a police officer and law enforcement
6 and take an oath and lie to you for \$7,800. And plaintiffs
7 were forced to spend this money just to have this witness come
8 and testify before you.

9 But they have nothing, nothing to dispute what
10 Mr. Signorelli said. Signorelli's credentials are impeccable.
11 There's nothing that they can say that's going to change that.
12 And as Mr. Signorelli told you no reasonable officer would
13 have believed under those circumstances it was reasonable to
14 arrest and prosecute Joshua Wharton on these charges and no
15 reasonable officer could believe that it's right to
16 deliberately falsify a new fact to make sure he gets
17 convicted.

18 We have also proven that Mr. And Mrs. Wharton are
19 forced to have or to pay for legal fees in the amount of
20 \$4,878 -- \$4,875 and I submit to you, that was a bargain
21 actually, but they're entitled to have that money back.

22 Now, ladies and gentlemen of the jury, I want to
23 talk about damages.

24 You have the opportunity here to protect yourself
25 and protect the community. This is your opportunity to change

1 the world. Our constitutional rights are very important and
2 the remedy we have for when police officers violate those
3 rights is to come into a court of law and ask the citizens of
4 the United States of America to draw the lines, to tell police
5 officers when they're wrong, to discourage police officers in
6 the future from violating other people's rights like they
7 violated Joshua Wharton's rights.

8 Do not underestimate your power here. You really
9 can change how things are done. Look at what has happened
10 over the years with civil rights and how civil rights have
11 changed. Juries have come in and told people you can't do
12 things the way you're doing them. You have violating people's
13 constitutional rights. Change might come about slowly, but
14 it's jurors, citizens like you, that make these changes.

15 You have the opportunity here, even if it's a small
16 change, to send the message and to make a change and to
17 prevent officers from arresting people for exercising their
18 constitutional rights in the future. And prevent officers for
19 sticking somebody in the jail cell when they haven't committed
20 a crime.

21 I don't think anyone of us would want to spend a
22 minute, let alone hours in a jail cell. Not one of us, I
23 don't think will, would want to, and really it doesn't matter
24 whether it's a few hours in the cell, eight hours, nine hours,
25 it doesn't matter. It doesn't matter. You think he has any

1 concept of time while he's in a jail cell? You think there's
2 a clock there for Mr. Wharton to look at? Nobody wants to be
3 in a jail cell and certainly nobody wants to be in a jail cell
4 when they haven't committed a crime.

5 Now, they're going to tell you Mr. Wharton was
6 released at 12:55 a.m., he was released to his father. You
7 know that's not true. Mr. Jonathan Wharton was working at
8 that time. He told you he was a corrections officer, his
9 shift was from 11:30 p.m. to 7:30 a.m. How can he possibly
10 have gotten Mr. Wharton? You think they really would release
11 Joshua Wharton to his father without his father signing
12 something? Since when are people released and are given
13 anything by police officers without signing for it? If it was
14 so important to them to release this person because he's under
15 21 years of age to an adult, don't you think they would have
16 the adult acknowledge that they're getting their child by
17 signing something?

18 The issues that we have before the Court today are
19 issues that have challenged mankind, abuse of power.
20 Arrogance is dangerous. In this case, Detectives Kouril and
21 DeCaro are drunk with power and they're arrogant enough to
22 think that they can just make up stories and get away with any
23 behavior they want. You know what's dangerous? People that
24 hide things. People that think that they can come to a court
25 of law and falsify evidence.

1 Did you hear Mr. DeCaro yesterday try to avoid the
2 truth? He was asked a question by me about a certain
3 situation and he denied it and then when I confronted him
4 again, he tried to distinguish it on whether it was as a
5 police officer or as a detective.

6 MS. PETILLO: Objection. Objection Your Honor.

7 THE COURT: Sustained.

8 Why don't you go to another topic, Counsel?

9 MR. MASSIMO: The more you see these individuals
10 speak, the more you know you can't believe a word they say.

11 Ladies and gentlemen, a just verdict in this case
12 will protect all of us. What would have happened here if
13 there was no videotape? Joshua Wharton's future would have
14 been stained permanently. He would have had a stain of a
15 criminal conviction following him around in his life. He
16 would be required to say on any application that he's looking
17 for a job, that he's been convicted of a crime and you think
18 he's going to get that job or do you think the guy next to him
19 who doesn't have a criminal conviction is going to get that
20 job? His whole future would be jeopardized if the defendants
21 got away with what they tried to get a way with.

22 Can you imagine what happens to somebody who gets a
23 criminal conviction when they're really innocent? Can you
24 imagine the burden they have to carry? Who knows what would
25 happen, would have happened to Joshua Wharton if the system

1 had falsely convicted him.

2 Officers Kouril and DeCaro presented and they
3 continue to present an immediate threat to our communities.
4 This is not a an isolated incident. This is apparent. They
5 violated the public trust. They violated the law. Let's
6 change the world one step at a time, ladies and gentlemen.
7 Let's send a message you can't do this to our citizens.

8 By following the -- I'm sorry. By following the
9 law, Judge Kuntz gives you, including the constitution of the
10 United States of America, you are entrusted with the power to
11 effect the well-being, not just of our communities but the
12 world because you speak for our communities in the society
13 that we live in.

14 This will tell police departments that they have to
15 be more careful. This will hold people accountable for their
16 actions. It may get rid of bad things in the future or tell
17 them how they have to properly train police officers to deal
18 with situations. It will make us safer in the future to give
19 a verdict in Mr. Wharton's favor and to give damages that
20 punish the officers for the actions they have taken.

21 We believe that we have demonstrated to you by more
22 than a preponderance of the evidence the officers broke the
23 laws and rules meant to protect our society. We more than
24 showed this. If you don't send a message to the defendants,
25 it will send a message that further endangers to our

1 community, showing others that they can get away with it too
2 and they can get away with violating people's constitutional
3 rights. Mr. Wharton was an outcast. He was stigmatized by
4 these charges. Police are supposed to care about us. They're
5 supposed to be fair, honest.

6 The law permits you to give punitive damages to
7 protect the community. The power that Officers Kouril and
8 DeCaro derive is a privilege that is bestowed upon them by our
9 society and the citizens of our society, not a right that, as
10 they believed they had, over our society of citizens. It's up
11 to you to decide how far someone can go to violate our rights.

12 Now, I'm going to tell you a demand for what's going
13 to sound like a lot of money, but an incomplete verdict would
14 be only partial justice. The officers are dangerous because
15 they made bad decisions, bad choices, but the only way to send
16 a message is to impose a stiff penalty and if you impose a
17 stiff penalty, it will deter other officers from making the
18 same mistakes in the future.

19 We cannot have gray areas as to when a police
20 officer can violate somebody's constitutional rights. The
21 lines are clearly defined as what a police officer can do and
22 can't do under certain situations. The line is defined as to
23 what constitutes probable cause and what doesn't constitute
24 probable cause. The line is defined that you cannot
25 criminalize somebody's speech.

1 Now, Mr. Wharton suffered numerous damages in this
2 case. He suffered compensatory damages. He was confined to a
3 jail cell. He was humiliated by these police officers and
4 while his physical injuries from what happened that night
5 weren't significant, he did have injuries and he's entitled to
6 be compensated for that.

7 His family decided they had to move out of the
8 neighborhood because they couldn't trust the police in the
9 area. He had to go to court some 16 separate times. He had
10 to miss school. He had to have the fear in his stomach, in
11 his heart and his mind that he may go to jail on false
12 charges. He had to endure while his phone didn't ring by
13 potential employers because who wants to hire a criminal. He
14 had to stand trial for two days. And watch as false
15 allegations were presented in a court of law in front of him,
16 not knowing whether he would be found guilty and possibly sent
17 to jail. And while they may mock the fact that he sought his
18 counseling through religious means and religious people in
19 accordance with the values and beliefs that Mr. Wharton has, I
20 submit to you for anybody who's religious, that is an
21 appropriate means of dealing with the anxiety and pain that he
22 felt. It's just as appropriate to speak to a pastor, to a
23 reverend, to a priest, as it is to a psychologist.

24 We're asking you for compensatory damages for all
25 these wrongs the defendants imposed upon Mr. Wharton in the

1 amount of \$250,000 and we believe that's an appropriate
2 response and an appropriate penalty. But we're asking you to
3 send a real message here, a real message to all police
4 officers that you have to know what the law is.

5 You have to know what's somebody's constitutional
6 rights, when you can arrest a person and the most important
7 thing that you can never, ever falsify a fact against an
8 individual, come into a court of law, take an oath and try to
9 get a person convicted on a false fact. Nothing evinces their
10 malicious intent against Mr. Wharton than a false allegation
11 that he pushed a table into Officer Kouril.

12 We're asking you to impose punitive damages at
13 \$1 million against each officer and that will send a message
14 to every police officer, every police department and in the
15 State of New York that you cannot do what these officers did
16 to Mr. Wharton. We cannot let those who are vested with the
17 power that the government has given them, substitute their
18 judgment in place for the clearly defined rules of society.

19 The lines have been drawn and they are clearly
20 defined lines and the officers knew that. We cannot let those
21 that we trust with power blur those lines into gray areas that
22 erode the rights that our Founding Fathers best stowed upon us
23 and that's our constitutional rights. A message must be sent
24 and you have the opportunity to send it as the citizens of
25 this country that no one can cross those lines, no one in our

1 society can do that. A penalty is useless unless it stings
2 enough to deter others from crossing those same lines.

3 The constitution's only a document with writing.
4 Honors a society. If a society is free to protect, it fails
5 to do so, the words have no meaning unless there's stiff
6 penalties to ensure they mean exactly what they say.

7 Go back there, review the evidence, you decide for
8 yourself when you watch that videotape. If you see anything
9 on that tape as an offense or a crime, you'll be given a
10 verdict sheet.

11 We're asking you at this time to find that Officers
12 Kouril and Officer DeCaro falsely arrested Mr. Wharton, we're
13 asking you to find that they maliciously prosecuted
14 Mr. Wharton and we're asking you for damages, compensatory
15 \$250,000 and \$1 million punitive damages, and to send the
16 message that you will not allow or our society will not
17 tolerate the actions of the officers.

18 Ladies and gentlemen of the jury, myself,

19 Mr. Wharton and I'm sure the defendants as well appreciate the
20 time that you have put into your service here this week. We
21 really appreciate the sacrifices that you have made and at
22 this time, I'm going to ask you to come back with a verdict in
23 favor of the plaintiff as I've outlined and thank you for
24 giving me the time and the privilege to present this case on
25 behalf of the Whartons to you.