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2 guilty of the charges against him? I think it tells
3 you a lot.

4 Ask yourself, who among all of the witnesses
5 who came into this courtroom and swore to tell the
6 truth, who had the greatest motive to testify
7 falsely or in a manner that favored the witness?
8 When you're asking about the Defendant's testimony,
9 ask yourself this: Who was familiar with the
10 criminal justice system? Who had been through it
11 before? Who had a chance to review all the evidence
12 before he took the stand? The obvious question is,
13 who stands to gain the most by a verdict of not
14 guilty? I suggest, it is the Defendant. Again, I
15 am saying, don't change the rules when the Defendant
16 puts evidence on. Here is what I mean: Try to
17 remember what you were thinking and feeling on
18 Friday afternoon when the Defendant testified. As
19 you saw him and listened, did you believe he was
20 telling the truth? Did you believe him? Was it
21 credible? Did it appeal to your common sense? Did
22 it sound rehearsed? You might remember a few
23 objections by myself and even the Court as to the
24 leading questions, but I would suggest to you, Mr.
25 Warney had a story to tell, and he was going to get

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2 that story out. He didn't have any problems telling
3 the story to you. Ask yourself this: When I got a
4 chance to cross examine Mr. Warney, did his demeanor
5 change? Did his means of answering the questions
6 change when I was asking him the questions as
7 opposed to when Mr. Barr was? What is important in
8 the Defendant's testimony regarding alibi? You know
9 now even from the Defendant's own testimony that he
10 had the opportunity to commit the crime. He was
11 alone from approximately 6:00 p.m. to 10:30 or
12 midnight on New Year's Eve night. The next day when
13 he told the police he killed Mr. [REDACTED], even
14 accepting Mr. Gorton's testimony that the Defendant
15 was alone from that afternoon, early afternoon until
16 about 4:30 or 4:45 and, essentially, the next day he
17 was alone the entire day when he wasn't with Mr.
18 Gorton, and as the Defendant admitted a number of
19 times on Friday, he is the only one who can prove or
20 tell you where he was. I asked him that a number of
21 times. He said, "I am the only person who can show
22 where I was at those times." Did you believe him?

23 Again, you didn't hear much about Officer Adams
24 in Mr. Barr's closing remarks. I would suggest to
25 you there is a reason why. Because you have to

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2 believe that Officer Adams was all already a part of
3 this police conspiracy to wrongly charge the
4 Defendant on January 4th. Think about the
5 implication. Because, let's be honest, Mr. Barr
6 started off by saying "Mr. Keenan's going to argue
7 that the police are on trial, not the Defendant."
8 Well, not entirely. It's not all the police. There
9 is good police, like Officer Edgett, who didn't find
10 the Defendant's fingerprints on the videotape, so
11 he's okay, but there is bad officers, Sergeant Gropp
12 and Investigator Beaudrault, and think of the
13 implications of what you're being told. By the 4th
14 of January, not only is Officer Adams, who is
15 following up a call into 911 by the Defendant, part
16 of a conspiracy, that continues through the Booking
17 process. But play the implication out. If Officer
18 Adams and Sergeant Gropp and Investigator Beaudrault
19 are willing to pin a Murder rap on anyone they can
20 pick off the street, of course, the real killer of
21 Mr. ██████ remains outstanding.

22 You heard Officer Adams testify. She filled
23 out a long report. Mr. Barr asked her about it.
24 Where she claims in the apartment the Defendant is
25 already trying to say "Brian Szymkowski told me he

1 killed Mr. [REDACTED] on January 1st. We were over at
2 his house. I was shoveling snow. Mr. [REDACTED] was
3 cooking chicken." Now, these are details that the
4 Defendant is telling Officer Adams twenty hours
5 after Mr. [REDACTED] body is found. How could he
6 possibly know Mr. [REDACTED] was killed on the 1st at
7 his house and that he was home cooking chicken if he
8 wasn't involved? But you heard the Defendant
9 testify, Officer Adams was not telling the truth
10 about that. He never mentioned Brian Szymkowski to
11 Officer Adams. And you have got to ask yourself,
12 what motive does she have to come into this court
13 and not tell the truth about that? She knew the
14 Defendant. Mr. Barr told you this poor Defendant
15 was like a lion walking -- I'm sorry, a lamb. I got
16 my analogy wrong. He was like a lamb walking into
17 the lion's den. I'm not sure what the appropriate
18 analogy is of Officer Adams. She walked into the
19 Defendant's den, and you know what, folks, she
20 walked out after taking down the information that
21 the Defendant gave her. She didn't arrest him,
22 handcuff him, interrogate him. And you know what,
23 it's being suggested to you that the Rochester
24 Police Department just grabbed ahold of the
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1 Defendant. He was -- I think the term used is he
2 was a fly that got caught on the flypaper. Do you
3 remember the testimony that was presented to you?
4 This Defendant called the Rochester Police
5 Department on January 4th, he tells you because his
6 brother is, apparently, implicating him in the
7 killing. Officer Adams goes out and takes a report.
8 She leaves. Did they stakeout the Defendant's
9 apartment that night? Did they follow the
10 Defendant, these officers who had set in motion a
11 plan to falsely accuse the Defendant? No. What did
12 these mean officers do the next day? They left
13 their card at the Defendant's apartment. Getting no
14 response, they left the Defendant alone that day,
15 and on Saturday -- you heard the testimony of
16 Investigator Beaudrault. One portion of it is
17 absolutely denied by Mr. Warney. You heard
18 Investigator Beaudrault and Sergeant Gropp indicate
19 that they had some phone calls back and forth with
20 the Defendant on that Saturday. Investigator
21 Beaudrault testified that the Defendant told her
22 over the phone "I am going to church, so we will
23 hook up later." This was Investigator Beaudrault
24 saying that. You heard the Defendant. Absolutely
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1 not true. "I never told -- I never told them I was
2 going to to church." Folks, you have to ask
3 yourself, why would Investigator Beaudrault make up
4 something that is helpful to the Defendant? You
5 remember Sergeant Gropp testifying that he didn't
6 mind because he wanted to go to breakfast before
7 they went out and talked with the Defendant at his
8 apartment because he hadn't eaten? These are the
9 same police officers who are supposedly making up
10 the entire statement that has been presented to you
11 by the Defendant. Does it make sense to you? Did
12 you believe the Defendant when he testified? We
13 have presented to you a statement that the Defendant
14 concededly read, signed, and initialled and, yet,
15 he's told you the entire document, every word in it,
16 was made up by the police. You know that the
17 Defendant is experienced in the criminal justice
18 system. He told you he was aware of his rights.
19 You have heard that there has been sometimes when he
20 gave up his rights and spoke to the police and
21 sometimes when he didn't. What I want you to do is
22 this when you go into the jury room and consider the
23 Defendant's statement, because the Judge is going to
24 give you instructions on it: You're going to have
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2 to find that the statement -- the Defendant was
3 advised of his rights and that he spoke to the
4 police, and then you will get to decide what part of
5 the statement you believe is true and what isn't.
6 Mr. Barr has pointed out some things he suggests to
7 you are clearly wrong so, therefore, you know that
8 the police made up the entire statement, and I will
9 give you an example that Mr. Barr used. Some of the
10 evidence from the bathroom. You heard Mr. Rodwell
11 come in and testify that blood was found on a number
12 of items in the bedroom suite, and most of the items
13 you couldn't tell whose blood it was because there
14 wasn't enough. Some of the blood on the knife, for
15 example, clearly was consistent with the victim.
16 Mr. Barr pointed out to you the fact that the
17 Defendant talks about a Kleenex that was rolled in
18 the shape of a bandage and a blue towel. Mr. Barr
19 says that tells you that that statement can't be
20 believed because the killer, once he wiped the knife
21 on that blue towel, that's how it would have been
22 left there. It would have been left by the killer.
23 Well, no, it wouldn't have been because if the
24 killer wiped the knife on the blue towel, you would
25 have found Mr. [REDACTED] blood, and you didn't. That

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2 knife was covered with blood. But what is important
3 about that piece of tissue? Sergeant Gropp and
4 Investigator Beaudrault weren't at the scene. They
5 had only seen two Poloroid photographs of Mr. [REDACTED]
6 on the bed. And, yet, when they spoke with the
7 Defendant, the Defendant told them about a tissue
8 that was wrapped as a bandage, and you know what,
9 just short distance away from the murder weapon on
10 the vanity there was a piece of tissue wrapped in a
11 bandage. Now, you know the Defendant's blood wasn't
12 found on that tissue because he wasn't cut. The
13 police told you that. They even photographed it.
14 How would he have known about a tissue wrapped in
15 the form of a bandage if he hadn't had been in Mr.
16 [REDACTED] bathroom? Only the killer would have known
17 about that and about the knife and about the towel
18 with the blood on it and about the video tapes. And
19 go back and listen to Sergeant Gropp's testimony. I
20 do disagree with Mr. Barr, the testimony when
21 Sergeant Gropp asked him, "what were you doing in
22 the bedroom?" And the Defendant said, "watching
23 television." Sergeant Gropp didn't feed him any
24 answers about videotapes. And then he said, "well,
25 what were you watching on the video tapes?" And he

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2 talked about an adult movie, and he said "describe
3 what was on it." He said, "there was a white man
4 and a Hispanic man." He wasn't describing
5 homosexual acts between them. As you know from the
6 stipulation on the tape that was found rewound
7 completely inside the television, there were -- I
8 guess every type of background was represented on
9 the tape, male and female, including white men and,
10 clearly, Hispanic men or men who had a Hispanic name
11 and spoke with a Hispanic accent and appeared to be
12 Hispanic. Why is this important? When you're
13 talking about the written statement -- and you may
14 well believe that not everything that the Defendant
15 told the police was true. We know it wasn't true.
16 Brian Szymkowski wasn't involved. He was in a
17 secure facility. Yet, the Defendant told both
18 Officer Adams that and Investigator Beaudrault and
19 Gropp. Why is that important? Because the
20 Defendant has told you the police made up the entire
21 statement. Here is where your common sense comes
22 in. Now you have got to ask yourself, all right, if
23 the police -- if Sergeant Gropp and Investigator
24 Beaudrault are going to make up a statement to
25 falsely implicate Mr. Warney, wouldn't they do a

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2 better job of it? Would they put in the statement
3 things that are clearly wrong? Because you're being
4 asked to make that jump and assume that the police
5 are willing to target an innocent man wrongly, but
6 then they are going to type up a statement with
7 Brian Szymkowski starting out as being the person
8 involved and the Defendant cutting his finger, even
9 though the police, themselves, are photographing the
10 Defendant to document that he doesn't have a cut
11 finger and so on. Wouldn't the police have done a
12 better job of making up a statement? I suggest to
13 you they would have. And what I also suggest to you
14 is that that statement is what the Defendant told
15 the police.

16 The Judge will instruct you on what the People
17 have to prove regarding the voluntariness of the
18 statement. You have heard two officers describe
19 that the Defendant was fully advised of his rights,
20 and he agreed to give up his rights and speak to
21 them. What they testified was that the Defendant
22 said when they asked "would you be willing to give
23 your rights up and talk with me? Yes. I am here to
24 help you" or "I want to help you," words to that
25 effect. The rights card is in. The statement is

1 in. That contains pre-printed Miranda rights on it.
2 You have heard about the Defendant's experience in
3 the system, the fact that he was well aware of his
4 rights and, yet, signed each page of the statement
5 after making corrections in his own handwriting and
6 initialling those. I want you to be careful when
7 you're listening to that part of the Judge's
8 instructions because the Judge will tell you what I
9 have to prove, but here is what I mean: Don't
10 assume by the fact that questions were asked or
11 arguments were made by myself and Mr. Barr, that
12 certain other things are required. Do you remember
13 Mr. Barr arguing this morning that the police never
14 stopped and told Mr. Warney, "okay, now, Mr. Warney,
15 now that you have changed your story, you admitted
16 being inside the house when Mr. [REDACTED] was stabbed,
17 you're now a murder suspect. We better advise you
18 of your rights, so that you may want to think about
19 getting a lawyer." Listen to the Judge's
20 instructions and see if that is required, if the
21 police have to do that, if they have to stop and
22 make a big production out of it. You heard Sergeant
23 Gropp. He testified that as the Defendant kept
24 changing his story, and all of a sudden now he's
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2 putting himself inside the house, "well, I was
3 involved in the robbery, I was involved in one stab
4 wound." He said, "wait a minute, at this point we
5 are going to advise you of your rights," and they go
6 on, and they did continue to question him. Wouldn't
7 you expect that? Isn't that their job? Do you
8 really think Investigator Beaudrault and Sergeant
9 Gropp threatened the Defendant? Does anyone believe
10 that? You heard about how they treated the
11 Defendant when they were talking with him. They got
12 him a pop. They let him smoke. They took him to
13 the bathroom, got him a muffin, cold water, these
14 mean old police officers who were threatening the
15 Defendant. They took him out to a hospital where
16 there was doctors and nurses right in the area. You
17 heard the Defendant, he said he was in a room where
18 doctors and nurses were. Mr. Barr said, "well, why
19 didn't -- you didn't hear anything -- you didn't
20 hear anything about the Defendant's blood being
21 analyzed." Well, you know on that date when they
22 took him to the hospital, it was already five days
23 after the murder and they weren't able to get his
24 blood taken that day. No date was ever put in the
25 record by Mr. Barr or the People from the testimony,

1 when the testimony of Mr. Rodwell was offered, but
2 that's it. Don't guess, folks. I mean, I don't
3 know what would have been in the Defendant's blood
4 five days after he killed Mr. [REDACTED] but we are
5 talking about the 1st of January, that's when it
6 counts. And where did they talk to the Defendant?
7 They talked to him in Lieutenant Jones' office. I
8 mean, it's being suggested to you that there was a
9 nefarious reason that they didn't put him down in an
10 interview room and chain him to a picnic table when
11 they questioned him. They questioned him in
12 Lieutenant Jones' office because he came in as a
13 witness. He contacted the police himself to give
14 the information, and now you heard that Sergeant
15 Gropp did report the results of the investigation to
16 Lieutenant Jones. Well, who is Lieutenant Jones?
17 He was the head of the Homicide Unit at that time.
18 Now, People's 27, the Defendant's statement, is like
19 any other piece of evidence; that's the written
20 confession. You have to go through and evaluate it
21 like you would any other piece of evidence. Give it
22 the proper perspective, and you decide what part of
23 it is credible and what isn't. Obviously, I am
24 suggesting to you that the Defendant's admissions
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2 that he killed Mr. [REDACTED] and the description of
3 that killing is believable. That you can accept any
4 part of that statement and any other evidence,
5 frankly, you find is credible and reject any part
6 you consider isn't. And when you're doing that, I
7 mean, we all have our common sense and intelligence
8 tells us that sometimes people like Mr. Warney or
9 anyone else who are confronted with having done
10 something bad maybe, perhaps, they won't always tell
11 the complete truth. I will give you an example in
12 everyday life, seeing as we have ten men on the
13 panel here. Let's say it's March and it's a Friday
14 night and the Big East Tournament is coming up, and
15 as I am leaving work about five o'clock, a couple of
16 guys in the office say, "Rick, let's go down to the
17 Distillery and we will watch the game tonight." I
18 will say "all right. Sounds good. Let's go," and
19 about two o'clock the next morning I walk home and
20 my wife is waiting up for me. She says, "where have
21 you been?" I say, you know, "honey, I was down at
22 the Distillery. I didn't want to go there. My
23 friends forced me to go, so I had to." Is that
24 statement true? Well, it is partly because I am
25 admitting I did go down to the Distillery to watch

1 the games, but it is not entirely true, is it?
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3 Doesn't our common sense tell us that sometimes
4 people who are put in having to explain something
5 they have done don't always tell the truth about it?
6 Sometimes they try to put their participation in a
7 most favorable light. You will have to decide
8 regarding the Defendant's statement what part of
9 that you accept is true and what you don't. The
10 Defendant tells you in the statement to the police
11 -- and, again, I am addressing you now with the hope
12 that you don't believe the police made this up
13 line-by-line as the Defendant told you. He
14 described that he did know Mr. [REDACTED] that he knew
15 Mr. [REDACTED] was an easy target, he knew how Mr.
16 [REDACTED] was dressed, and he described a nightshirt.
17 And, remember, the nightshirt that Mr. [REDACTED]
18 found in, that is also the nightshirt that Michael
19 Lee sees him in the last time he sees him alive on
20 New Year's Eve day. The Defendant says he's cooking
21 dinner, and he's particular about it, cooking
22 chicken, which is the same thing, you remember, he
23 had said two days earlier to Officer Adams. Now,
24 who could possibly know these things if you hadn't
25 been inside that house, inside the kitchen? You

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2 heard the Defendant say that he took money. I think
3 at one point, I think he said a hundred dollars from
4 Mr. [REDACTED] wallet. You know the wallet was found
5 upstairs, empty, near the closet, the closet which
6 was ransacked. You will see photographs of it. If
7 you don't recall from the video, it shows the
8 clothing thrown down, and you will recall Mr. Lee's
9 testimony that that is where the Defendant kept
10 additional money. You heard the Defendant say that
11 he stabbed Mr. [REDACTED] with a knife taken from the
12 kitchen. Do you recall Mr. Lee's testimony? He was
13 shown both knives. The second knife that was found
14 in the closet, he said that looked like the type of
15 knife that they had in the house. Regarding the
16 murder weapon, he said that was the knife that they
17 kept in the house. Where did they keep it? They
18 kept it in a drawer under the crockpot where the
19 chicken was cooking. Now, who would know the
20 chicken was cooking? A person who got that knife
21 and used it against Mr. [REDACTED] the killer. The
22 Defendant described the knife as being twelve
23 inches, with ridges. I think Technician Edgett said
24 it was thirteen inches with the serrated blade. The
25 Defendant later told Sergeant Gropp he had thrown

1 the victim on the bed face up. That he had stabbed
2 him up to fifteen times. You know there was
3 nineteen sharp force injuries. And about the
4 jewelry, you remember Mr. Lee on direct told you
5 that Mr. [REDACTED] did own a pinky ring with stones
6 exactly like the ring that was found; he hadn't seen
7 it in a while. When he was shown it in court, he
8 said that looked like the ring. Mr. Barr got up and
9 he asked Mr. Lee about the necklace, and he held it
10 up and he said, "did Mr. [REDACTED] own a necklace like
11 this?" And Mr. Lee said, "yeah, he had one just
12 like it. Now, you heard the Defendant say that the
13 necklace his sister had bought for him and the pinky
14 ring he had purchased at a garage sale. Again, the
15 Defense does not have to prove anything in this
16 case, but ask yourself this: Regarding the jewelry,
17 Walter Gorton came into this courtroom and testified
18 as a defense witness that he was Mr. Warney's lover
19 for ten years; they lived together. Why wasn't he
20 shown the jewelry? That was jewelry Mr. Warney had
21 been wearing every day for the last three years or
22 four years, as he told you. Why wasn't it shown to
23 Mr. Gorton? I suggest to you because it wasn't the
24 Defendant's property. He could have done that. He
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chose not to.

Quickly, the statements at the jail, "I've got a body." You heard Detective D'Ambrosio. I think he's been a police officer thirty seven years. Gropp and Beaudrault, they testified as to the specific meaning that those words have on the street. Sergeant Dreeson, his testimony was very important because he also said, he's just meeting the Defendant in the jail, that he doesn't know what he's there for. He doesn't know what he's being charged with. "Hey, Dreeson, how you doing? Okay, Doug. How are you doing? Not so good. I've got a body." Not "I got charged with a body." Not "I got a body on me," but "I got a body." What else did Sergeant Dreeson tell you? He said "I stopped talking to him as soon as he said that because of what he had said." What's the implication involved? Because he just said he killed someone, he stopped talking to him. If he had said, "I just got charged with a body," it has a whole different meaning. You would have to ask yourself, why would he say that, "I made sure I stopped talking to him"? It didn't mean that he had just been told that the Defendant had killed someone.