

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----x
4 ADAM WIERCINSKI,

5 Plaintiff,

6 versus

09 CV 4413 (ILG)

7 MANGIA 57, INC.,

8 Defendant.

U.S. Courthouse
Brooklyn, New York

9 -----x
October 21, 2013
10:00 a.m.

11 Transcript of Civil Cause for Trial

12 Before: HONORABLE I. LEO GLASSER,
13 District Court Senior Judge

14 APPEARANCES

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Also Present:
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Proceedings recorded by mechanical stenography. Transcript
produced by computer-aided transcription.

MICHELE NARDONE, CSR, RPR, CRR -- Official Court Reporter

1 (In open court.)

2 (Jury selection recorded but not transcribed.)

3 THE CLERK: Jurors in the jury box, please stand and
4 raise your right hands.

5 (The jury was sworn in.)

6 THE CLERK: Thank you. Please be seated.

7 THE COURT: Let me spend about five or ten minutes to
8 tell you a little bit about how this trial will evolve, tell
9 you a little bit how a trial proceeds.

10 Each of you have told me that you can be fair and
11 impartial, and so you will be listening to evidence as it will
12 be presented during the course of the trial. Now, the primary
13 responsibility that jurors have to discharge is to determine
14 what the facts of the case are. Nobody else in this courtroom
15 has that responsibility. It's only you who will decide what
16 the facts are. You are the sole judges of the facts, and in
17 every respect you are judges without robes.

18 You may be aware or have noticed from either the
19 movies or television that it's customary for persons to rise,
20 stand, as the judge enters and leaves the courtroom, not as a
21 mark of respect for the person who is the judge necessarily,
22 but a mark of respect for the position which that person
23 occupies. And you will be aware before long as you enter and
24 leave this courtroom we will be standing as a mark of our
25 respect for the position which you occupy, namely as judges,

1 judges of the facts in this case.

2 Now, I said a minute or so ago that you will determine
3 what the facts are based upon, based only upon the evidence as
4 it will be presented during the course of the trial. Evidence
5 comes in two major forms. We speak of evidence as being direct
6 evidence and we speak of evidence as being circumstantial.

7 Direct evidence describes the communication of a fact by a
8 witness who testifies that he or she knows that fact because
9 she learned it through one of her senses. So a witness who
10 testifies that I heard it, I saw it, I touched it, I tasted it,
11 is giving what is known as direct evidence, stating knowledge
12 of a fact that the witness knows because the witness actually
13 saw it or heard it and touched it and so on.

14 The jury's function is to determine whether the
15 witness is remembering accurately what he or she says he saw or
16 heard or touched, whether the witness is testifying truthfully.
17 In short, to determine the credibility of that witness.

18 It's not always possible to prove a fact which is
19 relevant to the case through the mouth of a witness who can say
20 that I saw it, I heard it. It sometimes becomes necessary to
21 prove fact A by proving fact B, and the jury is asked to infer
22 the existence of fact A from the proof of fact B.

23 Let me give you an example. We are sitting in what is
24 essentially a windowless courtroom. If I had to prove to the
25 jury as we are sitting here that it is raining now, I could not

1 prove it by saying that I see it, I hear it, I feel it, because
2 I can't. But assume that as we are sitting here someone walks
3 into this courtroom, and we turn to look and we see a person
4 wearing a raincoat that is soaking wet, and if that person
5 walks into the well, we see the person carrying an umbrella
6 from which water is visibly dripping. We might infer that it
7 is raining.

8 And the jury could be asked to find the fact of rain
9 circumstantially, find the fact of rain from the fact of a
10 soaking wet raincoat and dripping umbrella. That's what we
11 mean by circumstantial evidence, inferring the existence of one
12 fact from proof of another.

13 Facts are to be inferred only if it is reasonable and
14 logical to do so. For example, if before you went to bed last
15 night you looked out the window and the street, sidewalk, was
16 perfectly dry, you got up this morning and you looked out the
17 window and the street was wet but the sidewalk was still
18 perfectly dry, it would not be logical or reasonable to infer
19 that it rained during the night. It would be more logical and
20 reasonable to infer that a sanitation truck came down the
21 street and washed the street and the sidewalk is still dry.

22 So inferences are to be drawn only if they are logical
23 and reasonable to draw. They are not to be drawn by
24 speculation or guesswork.

25 Evidence sometimes comes in the form of what we speak

1 of as stipulations. It not infrequently happens during the
2 course of a trial when the parties do not dispute the existence
3 of a fact, and so they will stipulate to -- fancy word for
4 agree -- to existence of that fact. They don't contest it.
5 Lawyers do that primarily to save the time and the expense
6 sometimes of having to prove a fact about which they don't
7 disagree.

8 A homely illustration would be if it became important
9 in a particular case to prove that on December 15, 2011 there
10 was a severe snowstorm in the City of New York. The parties
11 may stipulate that on December 15, 2011 it snowed, and, if it
12 were important, they might even stipulate as to how many inches
13 of snow fell; and they would stipulate to that. They would
14 agree. There is no dispute about it. Because if they didn't,
15 then it would become necessary to call an employee from the
16 United States Weather Service to come down and testify that he
17 has examined the records, the official records of the United
18 States Weather Service, and he can testify that on that day it
19 snowed.

20 So in order to avoid the necessity for that, to call a
21 witness to take up the time of the jury and the court, parties
22 agree. You must consider the fact to which the parties have
23 stipulated as a fact in evidence.

24 Now, the way this trial will evolve will be after I
25 have finished talking, the lawyers will want to undertake to

1 present the evidence in this case. It will begin by the
2 plaintiff's lawyer making an opening statement and the
3 defendant's lawyer making his opening statement.

4 An opening statement has been analogized to the table
5 of contents in a book or the coming attractions of a movie. It
6 should be a simple, brief statement, telling you what it is
7 that the plaintiff thinks the evidence will prove. The
8 defendant will make his opening statement and tell you what, in
9 his view, he believes the evidence in this case will not prove.

10 After the lawyers have made their opening statements,
11 the plaintiff will undertake to prove his case; and he will do
12 so -- do that by calling a witness.

13 I should have told you that evidence not only comes in
14 the form of the sworn testimony of witnesses, but it also comes
15 in the form of what we speak of as exhibits. An exhibit could
16 take any form that is tangible that has some relevance to an
17 issue in this case. Relevance means, from the point of view of
18 evidence, anything which tends to prove or disprove a fact in
19 issue in the case, it's deemed to be relevant. So exhibits are
20 not infrequently offered in evidence.

21 You will hear one or the other of the attorneys ask
22 the court to mark an exhibit for identification generally
23 first, have the exhibit identified, and offer it in evidence;
24 and it will be marked as an exhibit. It could be a photograph,
25 it could be a letter, it could be a record. It could be

1 anything that's tangible that has some relevance to an issue in
2 this case.

3 Then you hear the court announce that the exhibit will
4 be received in evidence, and it will be given a number or a
5 letter. That will be part of the evidence in this case, and
6 when you retire to deliberate, those exhibits will go into the
7 jury room with you, and you are to consider as part of the
8 evidence.

9 I started to tell you that after the attorneys have
10 made their opening statements the plaintiff will undertake to
11 present the evidence which he believes will establish his case.
12 Plaintiff will call a witness who will be standing in this
13 witness box, raise his or her right hand, swear to tell the
14 truth, and will be asked a series of questions.

15 Questions put to the witness by the party who called
16 that witness, we speak of as the direct evidence from that
17 witness. When the questions intended to be asked of that
18 witness by the party who called them have been exhausted, the
19 witness will then be cross examined by the other party.

20 When the questions which were intended to be asked on
21 cross-examination have been exhausted, it not infrequently
22 happens that the plaintiff will call that witness or announce
23 that he has some additional questions to put to the witness,
24 and we speak about it as redirect, and then there will be
25 recross, and it can go on that way for a while until they have

1 exhausted all the questions, both on direct and
2 cross-examination, that they intend to elicit answers that they
3 intend to elicit from that witness.

4 When the plaintiff has presented all of the evidence
5 which he believes proves his case, you will hear the plaintiff
6 announce that the plaintiff rests. That is his announcement
7 that I have presented my case.

8 The defense will now have an opportunity to present
9 its evidence to establish what it believes the case has not
10 proven, and there will come a point when you will hear the
11 defense announce that the defense rests; and I will ask whether
12 both parties rest, and if the answer is yes, the formal
13 presentation of evidence has been concluded.

14 What will happen then is the parties will then make
15 their closing arguments. We speak about it as summations.

16 Perhaps I should have told you that when the plaintiff
17 rests, we might take a brief recess. We might do the same
18 after the defense rests and both sides rest.

19 The plaintiff will sum up first, make his closing
20 arguments first. Summation will be a review of the evidence
21 and what the plaintiff believes the evidence proves and will
22 try to convince the jury that he has established his case. The
23 defense will then sum up and attempt to convince the jury that
24 the case has not been proved. The plaintiff will have a brief
25 opportunity to reply.

1 When they have concluded, I will then instruct the
2 jury of the law to be applied to the facts as the jury finds
3 them, and the jury will then retire to deliberate and return a
4 verdict. I will instruct you at some length with respect to
5 such things as the standard of proof, the degree of evidence
6 which the parties would have to present, and so on.

7 For now I think I should tell you that the schedule
8 that I will keep is that we generally start at 10 o'clock in
9 the morning. We may take a mid-morning recess briefly, and for
10 Juror number 2 we will try and accommodate the problem you
11 indicated that you have. We will recess for lunch at 1:00,
12 generally resume at 2:00, and continue through until about 4:30
13 or 5:00, depending upon what else I may have to deal with late
14 in the afternoon by way of the case or a motion; and we will
15 generally take a brief mid-afternoon recess.

16 I will ask you to be as prompt as you can possibly be.
17 If we are going to resume tomorrow at 10 o'clock, please make
18 every effort to be here so that we can start properly and
19 promptly at 10 o'clock. I make every effort to be prompt, and
20 unless there is some major, major accident or reason why I
21 can't, you will be able to set your watches at 10 o'clock when
22 I walk into this courtroom at 10 o'clock.

23 And the reason I ask that you be prompt is for your
24 interests as well as the rest of us. If just one of you is
25 late and doesn't come until, say, 10:15, all of us are just

1 sitting around waiting for you. That's not an intelligent or
2 effective use of time. It will prolong the trial, it will
3 prolong your jury service. So please make every effort to be
4 prompt.

5 Having said that, why don't we take a brief recess
6 before I give the attorneys an opportunity to collect their
7 thoughts and make their opening statements. We will recess for
8 about five minutes.

9 Mr. Kessler will show you where the jury room is, if
10 you follow him.

11 THE CLERK: Please come with me, jurors.

12 (Jury exits.)

13 THE COURT: We will resume in five minutes.

14 (Recess.)

15 (Continued on the next page.)
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1 (In open court.)

2 THE COURT: Is the plaintiff ready?

3 MR. BLIT: One issue before we begin. I called my
4 office to get the Polish translator for tomorrow for the
5 witnesses. After we put the plaintiff on, can we break for the
6 day, and we will have all our witnesses here tomorrow?

7 THE COURT: Mr. Blit, this case has been here since
8 2009. I don't know what your problem is with translators. If
9 it's a problem with getting a Polish translator, I can tell you
10 I tried a case not terribly long ago where we had two Polish
11 translators interchanging with each other.

12 There is no reason in the world why at this stage you
13 can tell me or are telling me you have trouble with the
14 translator. This case has been here now for over four years,
15 and the answer is no. We are going to continue with the trial
16 as a trial should continue when it's been called ready.

17 Having said that, let's get the jury here.

18 (Pause.)

19 (Continued on the next page.)

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1 (Jury enters.)

2 THE COURT: Thank you very much. All right.

3 Mr. Blit.

4 The plaintiff is now going to make his opening
5 statement.

6 MR. BLIT: May it please the court.

7 Good morning. My name is Matthew Blit, and at the
8 table here with me are my co-counsel, Russell Moriarty and
9 Justin Clark, and we represent the plaintiff Adam Wiercinski.
10 As the judge indicated, this is an employment discrimination
11 matter.

12 First, what I would like to do is thank you all for
13 being here. I understand it's not much of a choice, but
14 nonetheless you are here; and you are here for a great purpose,
15 and that purpose is the very rare purpose of the ability to
16 provide justice. That's your job here.

17 We have laws, and they are implemented by jurors. The
18 juries decide guilt, innocence, and verdicts such as this in a
19 civil case. So you have a great opportunity in front of you to
20 provide justice. I thank you for that.

21 The first thing in this trial is, after I give my
22 opening statements and the defendants give their opening
23 statements, is that Mr. Wiercinski will take the stand. When
24 Adam takes the stand, he is going to explain to you about his
25 job at Mangia 57. At Mangia 57 Adam was a delivery man of the

1 food the for different businesses around New York City.

2 As a deliveryman he had a supervisor; and the
3 supervisor that controlled him, controlled his work, would on a
4 continuous basis discriminate him, torment him, and put him
5 down because of his religion. Adam will explain what exactly
6 the supervisor did and what he said. He will explain that in
7 order to get the jobs, the supervisor would call him over and
8 tell him where to go with the different food.

9 Adam was a -- is, a Polish Jewish immigrant with a
10 high school degree. This was a very important job for him.
11 This was a pretty well-paying delivery job, and he did anything
12 he could to keep this job. The supervisor that would control
13 him on a daily basis or a consistent basis would refer to him
14 as fucking Jew, dirty Jew, a Jewish pederast, kike. That's how
15 he would refer to him, not as Adam, and that was the supervisor
16 that controlled his work to put food on his table. That's what
17 he had to go through during his employment. He will explain
18 that to you when he gets on the stand.

19 Not only were comments made, pennies from tips would
20 be thrown on the floor and he would be told to pick them up if
21 he wants his pay. Anything to degrade Adam the supervisor did.
22 He even walked past him and would pass gas and say hey, Adam,
23 just like in the holocaust at Auschwitz, you just got gassed.
24 There are laws that prevent this.

25 Most companies have policies that prevent this and

1 tell the employees that this is not permissible in the
2 workplace. They usually provide handbooks or employment
3 manuals, and it states a clear policy of discrimination, there
4 is a zero tolerance policy, we don't tolerate this. Most
5 employees expect that. But not here at Mangia 57. The
6 evidence will show there was no policy, but it still doesn't
7 give them the right to discriminate or subject a person to a
8 hostile work environment.

9 It's a very simple case. You are going to be asked
10 one question at the end of the day, when this trial is over.
11 You are going to be asked was Adam subject to a hostile work
12 environment by his supervisor, what a reasonable person would
13 have felt under the circumstances.

14 The defendants, this is not -- just like the judge
15 said, this isn't a TV show or a movie. It's not a made-for-TV
16 event, where you see on TV the defendants just come in and say
17 I did it. We don't expect that. Don't look for it. It's not
18 going to happen.

19 What they are going to do is they are going to do the
20 other way. They are going to come in with smoke and mirrors
21 and try and distract you.

22 THE COURT: Mr. Blit, this is an opening, not a
23 summation.

24 MR. BLIT: Sure. This is what we believe the
25 defendants will do, is come in and try and distract you from

1 the ultimate issue. They will tell you, hey, Adam is a bad
2 man. They will have him on the stand and get real aggressive
3 with him and try and scare him and try and accuse him of
4 crimes, of defrauding the government, stealing money, but the
5 beautiful thing is we have a constitution and a Fifth Amendment
6 privilege, all of us have that privilege. Don't be scared of
7 it. If they badger him and try and get him to admit to crimes,
8 he is going to use that Fifth Amendment, our constitution, that
9 protects us. Don't be scared by that. Don't be fooled by
10 that.

11 But not only will Adam testify about what was said to
12 him and done to him on a continuous basis throughout his
13 employment, there will be witnesses as well.

14 Again, thank you very much for being here. Please,
15 don't get distracted. Just listen to the facts. Everybody has
16 a supervisor and no one should be treated the way Adam was
17 treated. Please listen to the facts, listen to the testimony.

18 I thank you again.

19 THE COURT: Mr. Kaiser.

20 MR. DANIEL KAISER: Thank you, your Honor.

21 Good morning. My name is Dan Kaiser. I represent the
22 defendant here.

23 As your Honor had let you know at the beginning of
24 this trial, I have a representative from Mangia here. His name
25 is Mr. Cymbrowitz, and next to me is Bill Kaiser, a colleague

1 of mine, who will help me try this case.

2 During the course of this trial you will get to know
3 Mr. Wiercinski. The recurring question that will come back to
4 you or be in your mind: Is Mr. Wiercinski an honest man? Is
5 he truthful? And that's a critical question that you are going
6 to have to ask yourself throughout the course of these
7 proceedings. Because whether he was abused in the manner that
8 he claims he was abused is all about whether he is being honest
9 with you, whether he is truthful.

10 Specifically, what are you going to hear about that
11 issue? Well, specifically you will hear evidence in this trial
12 that Mr. Wiercinski used a fictitious name when he was at
13 Mangia. He actually got paid under a different name in order
14 to hide that income so that he could acquire social security
15 benefits that he wasn't entitled to. This was while he was at
16 Mangia. You will hear that he actually submitted false
17 information to a United States governmental agency, a whole
18 narrative, a whole false narrative, in order to receive social
19 security benefits and other government benefits to which he
20 wasn't entitled.

21 Mr. Blit says that's a distraction. Whether he is
22 truthful, whether he is honest, whether what he tells you in
23 this courtroom is true, that's what this case is about. So
24 that's not a distraction. This is information you need in
25 order to do your job as jurors.

1 What else are you going to hear about his -- about
2 Mr. Wiercinski? Well, you will learn from a witness who will
3 testify to you that Mr. Wiercinski attempted to bribe him.
4 Actually attempted to pay him cash at some point during the
5 course of this litigation in order to testify untruthfully or
6 in order to seek his cooperation and to testify favorably for
7 him during the course of this litigation. His name is Robert
8 Ranfranz.

9 You will hear from Mr. Ranfranz, a credible guy, and
10 he will tell you. He will recount to you that conversation he
11 had with Mr. Wiercinski; and that recurring question will come
12 in your mind again: Is he an honest person? Is he telling you
13 the truth?

14 Now, what Mr. Wiercinski will claim occurred didn't
15 occur. Certainly, Mr. Wiercinski, the story he will tell you
16 didn't occur in anything near the manner that he will claim
17 that it did. He was not abused in that way. And you will hear
18 all sorts of evidence that go to that question, but I ask again
19 for you to keep this in mind when you listen to that evidence.

20 He will tell you that he was abused in a terrible way,
21 a constant way, as Mr. Blit referred to, year after year after
22 year after year after year after year after year; and he never
23 left that food deliverer position, never sought another food
24 deliverer position in New York, New York City, surrounding
25 areas. Is that credible? Is Mr. Wiercinski being truthful

1 with you? Is that a distraction, or is that information you
2 need to know to assess his credibility?

3 You will hear from Mangia managers, you will hear from
4 two of the principal managers that he accuses of all this bad
5 conduct. They will tell you what really happened to
6 Mr. Wiercinski, how he was really treated, and what the issues
7 were regarding the management of Mr. Wiercinski. Marge
8 Cymanow, Mr. Zbozien, they will come and tell you very credibly
9 what those experiences were like; but you are also going to
10 hear from a gentleman by the name of Zindel Zelmanovitch.

11 Mr. Zelmanovitch will take that stand and testify and
12 tell you that he was friends with Mr. Wiercinski; that he was a
13 mentor to Mr. Wiercinski; that he helped him settle here in the
14 United States when he came here from Poland, provided all sorts
15 of services. He will tell you that Mr. Wiercinski would come
16 to him as a confidante, talk to him about work issues, talk to
17 him about personal issues, and Mr. Zelmanovitch would help him.
18 This was throughout the course of this alleged abuse and
19 harassment.

20 But what he will also tell you, Mr. Zelmanovitch, who
21 I believe you will find to be extraordinarily credible, is that
22 not once, not one time did Mr. Wiercinski complain to him that
23 he was being discriminated against, that he was being abused in
24 the manner that Mr. Wiercinski claims he was being abused. Not
25 once in all that time.

1 You will learn that Mr. Zelmanovitch actually helped
2 Mr. Wiercinski get his job back when he was fired during the
3 course of this harassment and got Mangia to rehire him. So
4 this is a guy who intervened on his behalf and interceded, but
5 not once did Mr. Wiercinski complain to him about harassment.
6 Is that credible? Is Mr. Wiercinski being honest with you? Is
7 he being truthful?

8 What I would ask that you do, respectfully, is listen
9 to all of the evidence -- plaintiff will get to put on their
10 witnesses; defendants will get to put on their witnesses -- and
11 reserve judgment, final judgment, about who is telling the
12 truth and who is not until you have heard all of that evidence.
13 What I'm confident of is that same recurring question when this
14 court gives you this case to decide, to decide the facts of
15 this case, that same recurring question will arise in your
16 minds that will arise in your minds as you listen to the
17 evidence and that will arise in your minds when you are given
18 to the case to decide. Is Mr. Wiercinski being honest? Is he
19 being truthful with us about what happened when he was at
20 Mangia?

21 I want to thank you in advance for your time and your
22 patience and your service, to listen to this case in its
23 entirety. Thank you very much.

24 THE COURT: Call your witness.

25 First, you have heard the opening statements. The

1 plaintiff will now undertake to present its case.

2 Call your witness.

3 MR. MORIARTY: Plaintiff calls Adam Wiercinski.

4 THE CLERK: Please stand over here. Please raise your
5 right hand.

6 ADAM WIERCINSKI, called as a witness, having been
7 first duly sworn/affirmed, was examined and
8 proceeded to testify as follows:

9 THE WITNESS: Yes, I do.

10 THE CLERK: Please be seated. Will you state and
11 spell your full name for the record please.

12 THE WITNESS: My name is Adam Wiercinski.

13 THE COURT: Spell it.

14 THE WITNESS: W-I-E-R-C-I-N-S-K-I.

15 THE COURT: Go ahead, Mr. Moriarty.

16 DIRECT EXAMINATION

17 BY MR. MORIARTY:

18 Q Good morning. I'm going to ask you a series of questions
19 about the case. I'm going to ask that you listen to the
20 questions carefully and answer to the best of your ability.
21 I'll start with your background.

22 In what year were you born?

23 A I was born on May 3, 1953.

24 Q In what country were you born?

25 A Krakow, Poland.

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1 Q How long did you live in Poland?

2 A Well, since the date of birth until I emigrated in 1980.

3 Q During that time did you live with your parents?

4 A Yes.

5 Q Are your parents from Poland and natives of Poland?

6 A Yes, they were.

7 Q Are your parents Jewish?

8 A Yes.

9 Q Are you in fact Jewish, sir?

10 A Yes.

11 Q Briefly, what was it like as a Jewish person growing up in
12 Poland during those years?

13 A For me or for my parents?

14 Q For you and your family.

15 A Well, as far as my parents, they were born in city of
16 Lwow. They were born in the city of Lwow. That was at that
17 time Polish, in Poland; and in 1939 when the first the Soviets
18 invaded that eastern part, after Nazis invaded from the west,
19 and then 1941 Nazis invaded the east and captured Lwow and
20 therefore their lives were at stake.

21 And my father was not born as Wiercinski. My father
22 was born as Mark Kirszner, and he was relatively young. He did
23 not look like, you know, an orthodox Jew, and he was able to
24 obtain phoney, you know, ID, from the underground; and from
25 that moment on he was Mark Wiercinski, and as such he was able

1 to survive. And since he spoke good German, he was employed by
2 the German company as an accountant, you know, fearing for his
3 life on a daily basis.

4 And my mother, since her father was Polish actually,
5 Czosnykowska, was able to -- they were not married at the time;
6 married later -- she was able to save herself and later married
7 my father and became a Wiercinski family, and then after that
8 they moved to Krakow.

9 Q You personally, sir, as a Jewish person living in Poland
10 at that time, did you experience any difficulties?

11 A Well, there was anti-Semitism obviously. It was visible,
12 but I was able to get by; and around 1979, 1980 I decided that
13 it would be in the best interest of mine to emigrate.

14 Q That was to America, correct?

15 A I considered English spoken countries, England and the
16 United States, and I chose the United States.

17 Q For what reason did you decide to come to America at that
18 time?

19 A Well, I was seeking better life, and fear of anti-Semitism
20 and communism as well.

21 Q What were your expectations when coming to America?

22 A My expectations were that I would be able to, you know,
23 life as a free man and getting a decent job and get by.

24 Q How did you actually end up in America?

25 What was the process that you used to get here?

1 A Well, I -- since I had the recommendation of the Jewish
2 consul in Krakow, I came to Vienna and then contacted the
3 Jewish organization RAV-TOV. That is the international Jewish
4 rescue organization that helps Jews especially from eastern
5 Europe to emigrate to either Israel or the United States of
6 America, and they enlisted me and gave me all the legal
7 assistance and some money to come here; and on August 26, 1981
8 I was admitted at JFK and was given the early number already at
9 that time.

10 Q Did that Jewish group that you mentioned help you when you
11 actually landed in America?

12 A They gave me all the legal assistance, in a way, the green
13 card, and then that was it. I had to go ahead myself and find
14 a job and looking -- at first they help me find -- actually,
15 they paid me three months rent and helped me find an apartment,
16 and I found a job and that's how it started.

17 Q Just going back to your background for a moment, what's
18 the highest level of education that you achieved?

19 A Well, I completed grammar school, then high school, and
20 two years of premed. I thought I was going to be studying the
21 school of medicine, but it didn't work.

22 Q So that in fact high school is your highest degree?

23 A Completed.

24 Q Was that in Europe or?

25 A The year was the mid-70s I guess.

1 Q Did you achieve that degree in America or in Poland?

2 A In Poland.

3 Q At some point after arriving in America did you find
4 employment?

5 A Yes. And my first-ever employment after I had arrived was
6 in a knitting factory, Bella Mia, here on 26th Street at Sixth
7 Avenue. It was two Jewish owners who were actually born in
8 Krakow. So it was my first job.

9 Q For how long were you in that job?

10 A Approximately until 1981 until June 1982.

11 Q What kind of work did you do for that company?

12 A Well, I was helping with selecting items to be shipped
13 out, sweaters, you know, knitwear in general.

14 Q After you left that job did you find a new one?

15 A Yes. I found an employment with Helmsley. It was like
16 Leona Helmsley Hotel, on Madison Avenue.

17 Q Do you recall about what years you worked for that
18 company?

19 A Well, I think it was -- I started in June 1982 up to 1984.
20 For October 1994 I guess.

21 Q Thank you. At some point after you left that company did
22 you come to work for the defendant or any of their related
23 companies?

24 A Yes. Well, after I left the hotel I went to work at
25 Mangia 56, located on 56th Street between Sixth and Fifth

1 Avenue.

2 Q About what year did you start working for Mangia 56?

3 A I remember it was November 1990 -- 1984.

4 Q What was your position with the company when you started?

5 A When I started, as part of the delivery personnel.

6 Q What in fact would you deliver?

7 A Well, it was delivering food to the corporates, also, to
8 the individual -- individuals who work from their office
9 serving these companies. It was a small place at that time.

10 Q Just so it's clear, what kind of business is Mangia 56?

11 A Mangia 56 was the catering company, catering business.

12 Q Would that be food catering?

13 A Yes, food catering.

14 Q Is that company related to the defendant in this case in
15 any way?

16 A It was Mangia, yes.

17 Q Now, when you started working for Mangia, I believe you
18 said in 1984, do you recall if you were full-time or part-time?

19 A I was part-time.

20 Q Do you recall the days and hours that you worked?

21 A I worked from 10:00 or 11:00 to 3:00. So it was basically
22 lunches, for lunches.

23 Q Do you recall your rate of pay at that time?

24 A At that time it was probably \$3 an hour plus daily tips.

25 Q And do you recall who your managers were at Mangia 56?

1 A The manager was Mr. Margaret Cymanow, C-Y-M-A-N-O-W.

2 Q During your time at Mangia 56 did your job duties change
3 at any time?

4 A No.

5 Q During your time at Mangia 56 did your supervisors change
6 at any time?

7 A No. It was the same, the same people, the owner and his
8 sister, Mr. Muniak and Ms. Cymanow.

9 Q I just remind you, when you shake your head the record
10 can't reflect that. So please answer yes or no.

11 A Okay.

12 Q How long did you stay at Mangia 56?

13 A I stayed there until probably 1989. You know, it was a
14 long time ago. Probably around this year.

15 Q What was your reason for leaving when you left Mangia 56?

16 A I think I found a position at the Hotel Excelsior hotel
17 located on 81st Street and Columbus Avenue.

18 Q What year was that, sir, when you started working at that
19 place?

20 A It was 1989 until '90 -- either '91 or 1992, unless I'm
21 very wrong. I don't recall exactly.

22 Q After you left that position with the hotel where did you
23 work, if anywhere?

24 A I also worked at -- as the security officer in Kinney
25 Securities Company and had the position as a midnight security

1 officer at 42 Broadway, downtown.

2 Q At some point after working in that position did you
3 return to work for Mangia?

4 A Yes. The company closed, and we were all, you know,
5 discharged, and I came to work for -- at that time Mangia 56
6 closed and Mangia 57 opened, and I went to work with Mangia at
7 48th Street.

8 Q Do you recall what year you began working at Mangia?

9 A I think it was 1992. I think it was 1992.

10 Q When you started working at Mangia 48 what was your
11 position?

12 A It was basically the same. I was delivery person.

13 Q Was that position full-time or part-time?

14 A Part-time.

15 Q Do you recall your rate of pay?

16 A The rate of pay was a little bit higher at that time,
17 probably \$4 an hour plus daily tips.

18 Q Do you recall about how much you made in total during your
19 time working for Mangia 48, in a week or in a month?

20 A In a week would be probably 250,000 -- I mean \$250 a week.

21 Q How or where -- strike that.

22 You mentioned that part of your compensation was tips,
23 correct?

24 A Yes.

25 Q Who would those tips be given to you by?

1 A Well, it was -- at first it was -- I think at that time
2 when I came to work at Mangia 48th Street, Margaret Cymanow was
3 no longer involved in Mangia 48. She was manager at Mangia 57,
4 but the person responsible for the manager of Mangia 48 was
5 Ivona Brehze, B-R-E-H-Z-E.

6 Q Was that person your direct supervisor during the time you
7 worked there?

8 A Yes. She was a close associate to Margaret.

9 Q Did you have any other supervisors while you were working
10 for Mangia 48?

11 A It was the assistant for Ivona was Mr. Wojtek Lipski.

12 Q For about how long did you work at Mangia 48, sir?

13 A I worked at Mangia 48th Street. I worked, I think, up to
14 the late 1998.

15 Q What happened then? How did your employment at Mangia 48
16 come to an end?

17 A Well, Mr. Lipski was assistant manager, and then at one
18 point Mrs. Ivona Brehze left employment to seek career in
19 accounting business, and when Mr. Lipski became manager he got
20 rid of me.

21 Q After Mr. Lipski got rid of you, like you said, did you
22 start working anywhere else anytime thereafter?

23 A I went to -- we worked for newly opened Mangia Wall
24 Street, located at 40 Wall Street, Donald Trump's building.

25 Q I should ask you about: What year did you leave

1 Mangia 48?

2 A Approximately -- approximately late 1990 -- 1998 or 19 --
3 1990 -- just give me a minute because I'm getting confused.

4 Yeah, I think I'm right. 1998.

5 Q Okay. About what year did you start working for Mangia
6 Wall Street?

7 A It was the same year.

8 Q How did you come about that job at Mangia Wall Street?

9 A Well, I came to -- since Lipski, you know, got rid of me,
10 I contacted Zindel Zelmanovitch from the -- Sasha Muniak, the
11 owner, associate. Since he sponsored me, his organization, he
12 was a coordinator in the RAV-TOV Jewish rescue committee. I
13 told him what happened to me, and he called Sasha right away
14 and told him there was some kind of vendetta and he ordered him
15 to rehire me. That's how I got the job.

16 I didn't want to come back to Mangia 48th Street
17 because it wouldn't be right. So I went to the newly opened
18 Mangia Wall Street.

19 Q How long were you working at that location?

20 A Approximately nowhere -- a year and a half, up to 1998 or
21 2000. I don't recall exactly the date.

22 Q Was that position part-time as well?

23 A Yes, yes.

24 Q Did you have the same job duties at the Mangia Wall Street
25 location?

1 A Yes, yes.

2 Q Do you recall your rate of pay at Mangia Wall Street?

3 A It was the same.

4 Q Do you recall who your supervisors were?

5 A The supervisor was Mr. Maslanka, the elder, the father.

6 It was a father and son, or the younger. At that time it was a
7 younger Mr. Maslanka, the younger, junior.

8 Q And now you mentioned at some point you left Mangia Wall
9 Street, correct?

10 A Yes.

11 Q Did you become employed at any time after Mangia Wall
12 Street?

13 A Yes.

14 Q With whom?

15 A It was -- since Mangia Wall Street didn't have much
16 business and it wasn't really enough money to distribute to the
17 delivery people, I asked to directly -- to be transferred at
18 Mangia 57. That was a real money maker. It was the best
19 catering business in town. And I feel it would be room there
20 for me.

21 Q Who did you request that transfer to?

22 A I spoke with Zindel Zelmanovitch again, and he spoke with
23 Sasha Muniak, and I guess Sasha asked him to talk to his
24 sister, and that's how I got the job.

25 Q This Zindel Zelmanovitch person you mentioned, is he an

1 employee of Mangia?

2 A No. He is the finance. He is the finance. His company
3 finances Mangia and, you know, loans. So therefore Sasha
4 Muniak is very close to him.

5 Q Just to be clear, as far as you know, is this person an
6 owner of Mangia?

7 A No, no, he is not. But he -- basically he pulls the
8 strings because he finance all Mangia with the money from his
9 company, and that's how I got the job.

10 Q How did you come to learn that about this Mr. --

11 A Zelmanovitch.

12 Q -- Zelmanovitch?

13 A Because Sasha -- when Sasha Muniak gets the loan, so he
14 needs to pay back. So he asked me to deliver envelopes full of
15 cash on a monthly basis to Mr. Zelmanovitch and to his company,
16 because the payment, the loan payment that he received from
17 Mr. Zelmanovitch company.

18 Q Just to be clear, who is this person Sasha Muniak?

19 A Sasha Muniak is the president of Mangia, all Mangias. He
20 is the owner.

21 Q Do you know how long Mr. Muniak has been the president of
22 all Mangias?

23 A From the very first moment they come to market, 1981.

24 Q So from the beginning of your employment, as far as you
25 know, Mr. Muniak has been the president?

1 A Yes. He is the owner.

2 Q You mentioned that at some point you went to work at
3 Mangia 57, correct?

4 A Yes.

5 Q Do you recall about what year that was?

6 A 1999 or early 2000. I don't recall exactly, but around
7 this time.

8 Q And you mentioned that you requested a transfer to that
9 location, correct?

10 A That was the only location left for me.

11 Q Why did you request a transfer to that specific location?

12 A Because, you know, Mangia 48th Street, I didn't want to go
13 back to Lipski; and Mangia Wall Street was really very slow,
14 and it was really no room for me. So Mangia 57 was the busiest
15 location in the midtown, and I feel that I will be able to earn
16 some decent money and make a living.

17 Q Do you recall about what years you worked at Mangia 57 up
18 until?

19 A Probably late 1999, when I started, or early 2000.

20 Q Okay. I said approximately what year did you work at
21 Mangia 57 up until.

22 A Well, from, as I said, early 2000, up to 2007.

23 Q Okay. Do you recall who your managers were at Mangia 57?

24 A My managers was Maslanka junior and then his father. They
25 switched. They switched. They sent Maslanka senior to Wall

1 Street and brought Maslanka junior to be a manager at Mangia 57
2 Street. And also, Monica Tashat (phonetic) was a manager, and
3 we had managers like Mr. Artur Zbozien, who was a manager;
4 Mr. Gregory Serosiek, Mr. Robert Bazgier. They were either
5 manager or assistant managers and dispatchers in the company.

6 Q Did these people that you mentioned supervise your work in
7 any way at any point during your employment?

8 A Yes.

9 Q Was your position the same as it was in the previous
10 Mangias?

11 A Yes.

12 Q Was your rate of pay the same as it was in the previous
13 Mangias?

14 A A little bit higher. At that time I would say 4 or \$5 an
15 hour.

16 Q Your Honor mentioned the basic reason that we are here
17 today, which was harassment.

18 Describe your treatment during the times that you
19 worked for Mangia, by your managers and control people at the
20 company?

21 A Well, it was on the first day of the job, when I came, one
22 of the part of our duties was to unload the truck, with all the
23 paperwork, the catering boxes, that we had to bring downstairs
24 to the basement, to the catering area, that were later used to
25 deliver sandwiches, and I was asked like anybody else to go

1 upstairs and unload the truck, with the boxes, you know,
2 handing the boxes downstairs.

3 And while I was carrying large amount of the boxes, I
4 bumped accidentally, because I didn't see who was in front of
5 me. The boxes were large, I bumped in Mr. Artur Zbozien, one
6 of the managers, and the moment it happened I apologized to him
7 that I didn't see him; and instead of accepting the apology he
8 basically jumped to me and said did anybody ever fuck you up,
9 you stupid fucking Jew, you. And at that point, you know, I
10 saw the saliva in the corner of his mouth and his face turning
11 red. I thought he was going to slaughter me, but I went along
12 I was so intimidated.

13 And at the same time one of the assistant managers,
14 Mr. Rybarski, who was acquainted with Mr. Zbozien very well, he
15 witnessed it; and when I complained to him, he took me aside
16 and said, Adam, listen, come here, I want to talk to you. You
17 know, don't ever speak to him this way. Don't ever complain.
18 This guy has powerful connections in Krakow, and be careful
19 because if you keep coming back something might happen to your
20 family, to your brother. So be careful.

21 He was like physically and verbally threatening me not
22 ever complain about the treatment that I just received on the
23 first day of job.

24 Q Just to be clear, do you recall about what year that was,
25 given that you were at Mangia at different times?

1 A It was on the very first day of work. Either it was the
2 late 1999 or early 2000. The first ever, you know, first
3 moment I appeared at Mangia 57. It was in the morning, about
4 10 o'clock in the morning.

5 Q Were there others around who witnessed this incident, sir?

6 A The people witnessed it because, you know, it's a small
7 place, crowded with delivery people; and one of the coworker,
8 his name was -- his name is Marian, witnessed it, and he was
9 absolutely -- he couldn't believe that something like that
10 happened to me.

11 MR. DANIEL KAISER: Objection, your Honor.

12 THE COURT: Sustained.

13 Q This Mr. Zbozien that you mentioned, is he someone you
14 worked with on a regular basis?

15 A Yes. He was the manager on the late dinner shift and
16 assistant manager for Mr. Maslanka for the breakfast, for the
17 lunch period.

18 You know, the catering company works like we have a
19 breakfast shift and then lunch shift and the night shift for
20 the late dinners. So at that time I worked lunches, started at
21 10 o'clock, and that's exactly when it happened, at 10 o'clock
22 in the morning.

23 Q When that incident occurred how did it make you feel at
24 the time?

25 A I couldn't believe that that happened. I was stunned. I

1 was frozen. And I'm not a man who retaliates like, you know,
2 somebody does something to you and you go back and slap his
3 face. I never do it. I'm not good at it. I would rather, you
4 know, I swallowed it and I thought it was going to be an
5 isolated incident, but unfortunately it wasn't.

6 Q Did your treatment improve at any time thereafter, or no?

7 A As far as -- no, it didn't.

8 Q In what way? What happened after that incident?

9 A Well, with Mr. Zbozien, because he was the one who in
10 general was sitting at the register after the lunch shift,
11 around 3 o'clock, to account for the delivery that we have
12 made, like to square away with the register, you know, you stay
13 in line with others and, you know, you give him all the
14 invoices. We had the house charge accounts, we had the credit
15 card accounts, we had cash orders as well. We had what -- do
16 you call it, web accounts.

17 So we either need to pay money to the register,
18 depends on how many credit cards or how many tips was involved,
19 or sometimes the register paid; and anyway, we need to be
20 accounted. So at the end of the shift we were, Mr. Zbozien was
21 responsible for accounting procedure, in giving you your daily
22 tips. Depends how much it was. Then you were leaving.

23 So when I approached him, when it was my turn, he -- I
24 have noticed this, that he very seldom dealt with me. He had
25 the chance, he stood up, when it came to my turn, he stood up

1 ostentatiously; and he said I'm not going to be dealing with
2 this fucking Jew and asked his assistant, Robert Bazgier, to
3 deal with me in a way it would be humiliating to deal with me,
4 a Jew. So Mr. Bazgier death with me. And at the end
5 Mr. Zbozien -- for the next person Mr. Zbozien was returning to
6 the register, and it was several times that happened.

7 But one time I played a little bit with him. When he
8 came to my turn and he was ready to stand up, I pretended -- I
9 pretended that I had to do something and I went back to the
10 line. And when it came my turn again he did the same thing,
11 but on many occasions he didn't have anybody else around him,
12 his assistants, to deal with me. So he -- eventually he had to
13 deal with me and he had to take me, my, you know, to square
14 away with me.

15 And in order to humiliate me in any way, he -- for
16 example, sometimes I owe money to the register, sometimes the
17 register have to pay me. So, for example, if it was that
18 Mr. Zbozien had to pay me like, let's say, \$12.24, he paid me
19 cash, the \$12, but instead of giving me the quarter, or if he
20 didn't have change, he would say like he did to others, here is
21 a dollar, go upstairs to the register and bring change, he
22 deliberately pick up 24 pennies, counting them deliberately
23 slowly, and throw it at the, you know, at the table, at the
24 register, and this is your pay, you fucking Jew. And I refused
25 to take it. So he picked it up again and throw it all over.

MICHELE NARDONE, CSR, RPR, CRR -- Official Court Reporter

1 You know, I can live without 24 cents. So I was going to leave
2 with \$12 in my pocket, and then he threwed it after me. It was
3 humiliating. It was terrible experience, horrible.

4 Q Is this something that Mr. Zbozien would do to other
5 delivery persons?

6 A I beg your pardon?

7 Q Is this something, throwing the change like you described,
8 something that Mr. Zbozien would do to all the other Jewish
9 delivery persons?

10 A No. He did the same thing to Mr. Zarnowski and calling
11 him names because Mr. Zarnowski is a gay person.

12 MR. DANIEL KAISER: Objection, your Honor.

13 Q He hated Jews and gays and African Americans. He admitted
14 it many times.

15 So he was one of the delivery persons and he was
16 treated terribly, the same way, in calling him, you know,
17 faggot on a daily basis. It was for him and he was trapped
18 because Mangia supported him. He couldn't just leave. So he
19 had to swallow the insult, and he did the same things to him
20 and to Mr. Ubowski as well; and he called derogatory names to
21 Mr. Robert Ranfranz as well. It seems Mr. Ranfranz admitted
22 being a gay person.

23 MR. DANIEL KAISER: Objection, your Honor.

24 THE COURT: Sustained.

25 Q Just to clarify, how many times did that incident occur,

1 the one you described, where Mr. Zbozien threw change at you?

2 A Several times. At least a dozen times. You know, it was
3 not like a daily basis, but sometimes somebody else had to deal
4 with me, and he wasn't around sometimes; but in all, I would
5 have to say at least a dozen times.

6 Q When these incidents were happening, what was your
7 understanding as to why Mr. Zbozien was doing this to you?

8 A He was vicious, anti-Semitic. He hated Jews. He many
9 times described Jews like, guilty for all the world's
10 misfortunes, you know, like whatever, Jews everything is
11 because of Jews, basically every war, everything, the Jews rule
12 the world, Jews have money, you know, it was like on a daily
13 basis. It was visible. Visibly and verbally he was very, very
14 anti-Semitic.

15 Q Where would Mr. Zbozien say these things that you
16 described?

17 A He was making them in general, around in public, between
18 his colleagues. I overheard it many times.

19 Q And in the incidents where you said that change was thrown
20 at you, were other coworkers around that seen these incidents?

21 A Yes, they have. You know, it was -- he did it not only to
22 me. He did it to other people who were gay, and the many
23 people who didn't --

24 MR. DANIEL KAISER: Objection, your Honor.

25 THE COURT: Sustained.

1 Q At the time that you mentioned -- strike that.

2 You mentioned one incident where Mr. Zbozien threw
3 change at you and uttered an anti-Semitic slur.

4 Did the other times that he threw change, did he say
5 anything during those times?

6 A The same thing, this is your pay, you stinking Jew, or,
7 you know, you dumb Jew. He never said Jew to me, like always
8 had to spice it up, some either stupid Jew or you dumb Jew. He
9 was laughing. He had a lot of fun doing it, and he knew
10 nothing was going to happen to him. I don't know why.

11 Q How did Mr. Zbozien address you on a regular basis?

12 A Well, he very seldom called me my first name. He called
13 me, you know, the slurs that I just mentioned clearly; and it
14 was terrible for me, you know, to listen to it, and I knew that
15 there is no chance for me to complain because he was indeed
16 connected. He was like untouchable, and he was terrible person
17 to describe. I can't even describe how he was, and he still
18 works there.

19 Q How long while you were working at Mangia 57 was
20 Mr. Zbozien your manager?

21 A He was manager from the very beginning, and then I needed
22 more work, more hours, and I requested that instead of part
23 time I was going to work full time. It means also the night
24 shift, dinner shift, and then he was my manager, you know,
25 during the dinner shift.

1 Q At any time during those years did Mr. Zbozien treat you
2 differently or better than as you described?

3 A Not really, you know, not really. Every day I came to
4 work I was like wondering what else is going to happen to me,
5 how I'm going to get by the day. I had that fear every time.

6 Q Do you recall any other instances where you felt that
7 Mr. Zbozien harassed you in the workplace?

8 A Mr. Zbozien, I had an incident with him during the night
9 shift that we were supposed to at 9 o'clock he went down to
10 accounts people, it was the end of the shift, and when I was
11 with him giving him money or invoices, he loudly passed wind in
12 front of me, you know, when I was standing next to him and
13 laughed at him, the Jew, here is your Zyklon B that was used to
14 gas Jews in the concentration camps, and he laughed along with
15 his assistant manager. He laughed like it was the best joke he
16 ever had.

17 Q I want to make sure that it was clear.

18 When you said he passed wind, what did you mean, sir?

19 A Well, he farted.

20 Q Was this in your presence?

21 A Yes. I was next to him. I was about to square away with
22 the register, you know, giving invoices.

23 Q You mentioned you made a statement about Zyklon B?

24 A Yes.

25 Q What is that, as far as you know?

1 A Zyklon B was the gas used by Germans to gas Jews in the
2 concentration camps.

3 Q So exactly what did Mr. Zbozien say about Zyklon B at the
4 time?

5 A Exactly. This is what it was exactly for, Zyklon B, this
6 is for you stupid Jews.

7 Q Was that statement meant for you?

8 A Yes. Another incident during the night shift was he had a
9 dinner with his colleague -- his name was Blinski; I remember
10 him very vividly -- and they were having the dinner when we
11 were working out there, and at one point when I was, you know,
12 bussing the table for him he took the salt and sprinkled the
13 salt on the food and outside the food. That was like also
14 using this phrase that this was your Zyklon B, and they both
15 laughed. He had the best time doing it. They really enjoyed
16 it.

17 Q Who were they making that gesture towards?

18 A Mr. Zbozien and then Mr. Blinski, he was like trying to
19 make fun of me in front of his friends, you know.

20 Q Did he direct that statement about Zyklon B towards you?

21 A Yes, he did.

22 Q How did that make you feel at that time?

23 A I cannot describe. It was -- I couldn't do anything
24 because I didn't want to complain too much or Bazgier
25 complained about it several times to Mr. Muniak's sister.

1 Q Let me ask you this: Was Mr. Zbozien aware of your Polish
2 and Jewish background?

3 A Yes, yes, they knew who I was. Everybody knew.

4 Q How did they know?

5 A Because Margaret told them.

6 Q Were there any other instances where Mr. Zbozien harassed
7 you?

8 A As far as Mr. Zbozien, I do not recall. I think this is
9 like, to the best of my recollection, was Mr. Zbozien himself.

10 Q Let me ask you this, if you can answer it. Before you
11 mentioned that he would quite frequently use the word Jew, such
12 as stinking Jew, smelly Jew.

13 About how many times, if you could guess, would
14 Mr. Zbozien use those types of words during the time that you
15 worked at Mangia?

16 A Well, it was very hard to just count because I wasn't
17 thinking like I was going to be here, and to remember
18 correctly, but it was at least a dozen times at least. Several
19 times during the years, sometimes, you know, it didn't happen
20 because he went on long vacations to Astoria and he wasn't
21 there, but any time he came back it was a nickname. I
22 nicknamed him. It was the name for the known gases in the
23 concentration camp.

24 Q Did he call you anything else than Jew?

25 A I beg your pardon?

1 Q Did he make any other derogatory references toward you
2 other than Jew?

3 A Well, he called me a dick, you know, and but basically it
4 was about my Jewish -- about me being Jewish. So he never
5 missed the opportunity.

6 Q Well, did he make any other references to you about being
7 Jewish besides what you just described?

8 A As far as Mr. Zbozien, I don't recall at this time.

9 Q Did anyone else at Mangia 57 mistreat you in any way
10 during your time there?

11 A Yes. Assistant managers and good friends with
12 Mr. Zbozien.

13 It first was Mr. Sarosiek, who was the assistant
14 manager from the breakfast shift, and I had incident with him
15 that it's very hard to forget. One of the, you know, it was
16 during the time that I worked for the night shift and one of my
17 duties was to prepare for the dinner shift around 3 o'clock,
18 you know, to bring all the paperwork, paper plates, you know,
19 utensils, and for that reason I had to go to the paper room and
20 bring them up, bring and prepare.

21 So the paper room at that time was closed, and I
22 entered it not knowing who is inside; and inside was
23 Mr. Sarosiek and his friends, drinking alcohol and, you know,
24 vodka. And you could see that they all had more than one, and
25 when Mr. Sarosiek saw me he got so upset that he basically

1 jumped out of that room, pushed and shoved me against the wall,
2 you know, I hit my head against the wall, almost causing me
3 blurred vision, and he was like get the fuck out of here, you
4 stupid Jew, you, and I was like, excuse me, and it was a
5 commotion.

6 At that time Margaret Cymanow, who was in the office
7 upstairs but the cameras are all over, and she must have seen
8 it. And she came to deal with this and she was like -- she
9 asked me what happened, and I described what happened and she
10 took Mr. Sarosiek aside, but I was present and she reprimanded
11 him. She was like if I ever catch you again drinking alcohol
12 in the paper room I'm going to fire you on the spot. Sasha
13 Muniak -- if Sasha, my brother, finds out, he is going to be
14 very upset. Don't ever drink in the paper room, don't ever
15 drink alcohol here.

16 Not a single word was said to me. She was not
17 concerned at all. She just was upset that he was abusing
18 alcohol with friends while at work, and that was -- I couldn't
19 believe it.

20 Q Do you think she knew of the treatment that you received?

21 A Of course. I told her.

22 MR. DANIEL KAISER: Objection.

23 A I told her what happened, and she must have seen it. She
24 must have seen it, and she had screens, security cameras and
25 everything.

1 Q What did you tell her specifically?

2 A I told her word for word what he did to me and what
3 happened, and her only concern was that he was drinking, you
4 know. She was afraid that Sasha would find out and there would
5 be trouble.

6 Q How did that make you feel, when that incident happened,
7 sir?

8 A I felt like no matter what they do that they always going
9 to get away with this. I couldn't believe, you know.

10 I complained to Margaret on several occasions, you
11 know. She always discouraged me from coming back, you know,
12 don't bother me, I'm busy, I'm busy. She was completely pat me
13 on the back, okay, don't worry, don't worry.

14 And at one point you asked about Mr. Zbozien. So I
15 remember now that at one point he was like provoking me,
16 speaking dirty to me, and I finally lost my cool and I talked
17 back to him. I don't remember what I said, but Mr. Muniak was
18 present, the manager, and she asked me to go home for the
19 reason that I talked back to the manager, and I was not allowed
20 to come back until Margaret Cymanow approves.

21 So I called Margaret right away in this afternoon and
22 I said that I had to see her, we need to schedule an
23 appointment, and that I need to talk to her. And, indeed, the
24 very next morning I went to Mangia Wall Street because she was,
25 you know, she was rotating. She was at that time general

1 manager of all Mangias or director of operations. I don't
2 know.

3 And we sat down, and I finally let it all out and I
4 was determined. I finally wanted to for her to treat me
5 seriously, not just pat me on the back and let it go; and I
6 exactly told her what happened, how he behaves, how he calls
7 me, and that I was going to go to the department of -- I didn't
8 know where to go but I was just improvising that I was going to
9 go here and there to complain and I was very, very determined.

10 And she must have noticed that and she said all right.
11 You go home, rest, and I will schedule a meeting between these
12 people, Mr. Zbozien, Sarosiek and Bazgier, and, you know, so
13 she called me next time, next day, and said you come back to
14 work. I come back the day after and everybody was like, you
15 know, basically taking my hands and kissing me on the hand like
16 the pope. What happened? Mr. Zbozien got fired. I said
17 really? And he wasn't.

18 She transferred him to Mangia Wall Street for a couple
19 of weeks just to show off how great manager she was, that she
20 really listened to my complaints finally. And then one of my
21 friends is going to be a witness. He approached me a couple of
22 weeks later and he told me he met with --

23 MR. DANIEL KAISER: Objection.

24 THE COURT: Sustained.

25 A And --

1 THE COURT: Excuse me. Sustained.

2 Move on, Mr. Moriarty.

3 Q About when did that conversation with Margaret Cymanow
4 occur?

5 A About mid-2000, 2005. I really don't remember exactly,
6 but it was the Mangia Wall Street was still open. So it must
7 have been in the mid-2000s.

8 Q Exactly what was your complaint to Ms. Cymanow about
9 Mr. Zbozien's treatment of you?

10 A Well, about the -- not only the about the treatment, for
11 the whole thing. You know, I explained to her how he has been
12 treating me from the very beginning. I explained to her how I
13 feel, and what I'm going to do about it. I simply threatened
14 her to go to authorities, and she got scared and then she -- I
15 thought she was going to fire him. I thought he was fired, but
16 it was that show-off.

17 After a couple of weeks Mr. Zbozien got back his
18 position at Mangia 57, and she took me aside and I was like
19 stunned that he is back. And she said, Adam, I'm sick and
20 tired of this. I don't want any complaints. If you ever come
21 back complaining about this I'm going to fire you on the spot
22 and even your Mr. Zelmanovitch won't be able to help you.

23 Q And how long was Mr. Zbozien away from the Mangia 57
24 location?

25 A More than three weeks. The reason, it was a punishment

1 for him because he wasn't able to make that kind of money the
2 way he was making at Mangia 57. That was punishment enough to
3 transfer him to Mangia Wall. Nobody wanted to go to Mangia
4 Wall. It was no good business at that time. Even
5 pre-September 11 Mangia Wall wasn't as busy as the other
6 Mangias. So transferring them was a kind of punishment. It
7 was making half money that he used to.

8 Q When he returned -- when he returned to Mangia 57 did he
9 continue to supervise you there?

10 A Yes, yes, but at that time I think I was off the night
11 shift. I quit. I was rather, you know, be part-timer than
12 deal with him, you know. So I quit the night shift and became
13 back part-time delivery person.

14 Q As a part-time person did you have any interaction with
15 Mr. Zbozien?

16 A Yes, in the same fashion, because he was the one who was
17 the dispatcher and he was at the register when we were dealing
18 with him at the end of the shift, lunch shift.

19 Q Were there any other instances where you felt you were
20 harassed at Mangia?

21 A It was also another assistant manager, Mr. Bazgier, who
22 was another person, and he also called me different names as
23 far as Jewish. And I remember one time I complained about him
24 to Mrs. Cymanow, and he called the manager Maslanka and asked
25 Bazgier to be sent to her office upstairs. She wanted to check

1 things out, and I was hoping she was going to reprimand him or
2 fire him for what he was doing. And after like 15 minutes
3 Mr. Bazgier came back red, his face looked like prune, and he
4 was very upset.

5 Instead of apologizing to me she was reprimanded by
6 her manager; but nevertheless he came, kicked me in the groin
7 and called me a Jewish pederast. It was like -- I can't
8 describe.

9 Q What -- do you know what he meant by Jewish pederast?

10 A Pederast, it means like gay, because I'm not gay, but
11 since I live alone, I'm a loner, they considered me a gay. You
12 know, never missed an opportunity to call me names like that.

13 Q Was that done in front of anyone else at Mangia?

14 A Certain people saw it, including Maslanka, but he never
15 took action.

16 Q Do you recall when that incident occurred?

17 A Not exactly the date, but it was in -- after beginning of
18 2000. Everything happened between 2000 and 2007.

19 Q You said you complained to Ms. Cymanow about that
20 incident, correct?

21 A Yes.

22 Q Did you complain to Ms. Cymanow any time thereafter about
23 discrimination or harassment in the office?

24 A I complained to her on several occasions, but then she
25 always discouraged me to come back. Finally, when you

1 complain, it is very difficult, from the reason that she
2 threatened me to fire me and to bother her with this. Once you
3 complain, there is no action, it's very difficult to come back
4 next day and knock on the door. I would rather, you know,
5 swallow the insult rather than being coming back every time.

6 But it was several times, at least ten times that,
7 including those two incidents that, you know, that I described
8 to you with her. First Sarosiek for the drinking, and then
9 Zbozien and I had a meeting with her at Mangia Wall Street that
10 she finally took action, send him to Wall Street for a couple
11 of weeks just to show off that she did take action. But it was
12 never like she never took real action. As a matter of fact, he
13 still works for Mangia.

14 Q I just want to make sure I understand the specifics of
15 your complaint to Ms. Cymanow.

16 What exactly did you complain of to Ms. Cymanow?

17 A Well, I complained to her about the treatment Mr. Zbozien,
18 Mr. Sarosiek, and Mr. Bazgier calling me the dirty names about
19 my Jewish religion. And goes all right. She was like all
20 right, all right. Don't bother me, I'm busy, and she was going
21 that.

22 Q Before you move on, were there any other incidents of
23 harassment that you would like to discuss today?

24 A Well, it had nothing to do with Mangia, but there was
25 certain colleagues of certain coworkers that they really hated

1 Jews. And at one time -- I forgot his last name, but his first
2 name was Gregory, and I called him the tanned face because he
3 rented an apartment in Brighton Beach and he was into sun bathe
4 every day, and he was always nicely sun tanned, you know, brown
5 face.

6 And at one time we had like a soccer ball cup
7 generally years ago, and Poland was playing against Germany,
8 and we said we were going to go to new bite pub and watch this
9 game together. It was coworkers, and Mr. Zbozien was there and
10 Sarosiek.

11 MR. DANIEL KAISER: Objection.

12 THE COURT: Sustained.

13 Q I'm asking specifically in the workplace.

14 Were there any other instances where you were treated
15 in a discriminatory manner?

16 A It was -- the colleagues, they called me, they sympathized
17 with Zbozien, and they called me derogatory names, like this
18 guy, that I supposed to be, you know, rooting for Israel.

19 MR. DANIEL KAISER: Objection.

20 A (Continuing) And certain people call me the name just to
21 please him.

22 MR. DANIEL KAISER: Objection.

23 THE COURT: Excuse me. Excuse me. Mr. Moriarty.

24 Q Was management aware of these situations where your
25 coworkers would treat you in a discriminatory manner?

1 A Yes, of course. Everybody knew.

2 Q How do you know?

3 A Because they were talking about it, and the guy kept
4 approaching me. He said, Adam, they hate you here, you know,
5 the guys.

6 MR. DANIEL KAISER: Objection, your Honor.

7 THE COURT: Sustained.

8 Q The harassment that you described, did it stop at any time
9 before you left employment with Mangia?

10 A It stopped exactly 2007, when the authority that I went to
11 wrote a letter demanding that anti-Semitic remarks stop by
12 Mr. Zbozien and his colleagues, and this is when it stopped.

13 Q At -- besides Ms. Cymanow did you complain to anyone else
14 at Mangia, anyone in Mangia about the discrimination?

15 A I spoke with Sasha Muniak on one occasion in 2007, and he
16 summoned me to find out about it. Also that he was facing by
17 coworkers for unpaid wages and he summoned me and he asked
18 about everything.

19 And I said to Sasha, this is not -- this is
20 Mr. Zbozien who really is, because it was Mr. Rybarski also.
21 He was friends with me and he asked me not to be friends with
22 me because I was Jewish and they fired him finally, and he
23 wanted to really get back at them. He filed a lawsuit for
24 unpaid wages.

25 MR. DANIEL KAISER: Objection, your Honor.

1 THE COURT: Sustained.

2 Q Did you mention the issues -- strike that.

3 When did this conversation with Mr. Muniak occur?

4 A I think it was in 2007, and I finally let it out to him
5 who is responsible for it, that it was Mr. Zbozien, it was his
6 sister, Margaret, who really covers up for them, and, you know,
7 all the problems with lawsuit is against these people. And
8 when he found out I told him how they were treating me. I told
9 him everything, and he wanted to fire Zbozien. Some colleagues
10 told me.

11 MR. DANIEL KAISER: Objection.

12 THE COURT: Sustained.

13 Q When you discussed these issues with him did you get into
14 the specifics of the anti-Semitism and discrimination?

15 A Yes, yes, and he said who is doing it to you, and I
16 mentioned these three people, especially Artur Zbozien, and he
17 got upset and he wanted to fire him, and Margaret objected.
18 When this happened then I found out that Sasha himself wanted
19 to fire Zbozien, and his sister objected to it.

20 MR. DANIEL KAISER: Objection, your Honor.

21 THE COURT: Sustained.

22 Q Was anything done about your complaints after this
23 conversation with Mr. Muniak?

24 A Well, the lawyer wrote the letter they took him, I
25 remember --

1 Q I will ask it like this.

2 Did Mr. Muniak take any specific action to address
3 your complaints of discrimination?

4 A We, he wanted to fire Zbozien, but his sister objected and
5 he didn't argue.

6 Q So do you know if any negative action was taken against
7 Mr. Zbozien after the complaint?

8 A Nothing that I know of.

9 Q When you were working at Mangia were you aware of any
10 written policies that addressed discrimination or harassment in
11 the world place?

12 A No. Mangia was ruled by sister Margaret Cymanow. No
13 state of rules applied. So if she liked it, if she liked you,
14 it was okay. If she didn't, you got fired or no really -- no
15 policing existed of any kind at Mangia.

16 Q Did you know at the time that you worked for Mangia if
17 there was a formal complaint procedure in place where if you
18 felt you were being mistreated you could complain?

19 A No, it was not available, and this is not a union place,
20 you know, they don't have, they don't follow this.

21 THE COURT: Would this be a good point to recess for
22 lunch?

23 MR. MORIARTY: Yes, your Honor. Thank you.

24 THE COURT: Why don't we recess until 2 o'clock.

25 Enjoy your lunch.

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Don't discuss anything about the case.

I will see you at 2:00. Thank you.

(Jury exits.)

THE COURT: We will resume at 2 o'clock.

(Lunch recess.)

(Continued on the next page.)

A F T E R N O O N S E S S I O N

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(In open court.)

(Time noted: 1:55 p.m.)

THE COURT: Are you ready, Mr. Moriarty?

MR. MORIARTY: Yes, sir.

THE CLERK: All rise.

(Whereupon the jury enters the courtroom at 2:03 p.m.)

THE COURT: Thank you very much.

Mr. Moriarty, why don't you proceed.

(Witness resumes the witness stand, Adam Wiercinski.)

THE COURT: You are still under oath, Mr. Wiercinski.

THE WITNESS: Yes, Your Honor.

DIRECT EXAMINATION

BY MR. MORIARTY (continuing):

Q Mr. Wiercinski, just to clarify, earlier in your testimony you described various Mangia locations.

Which Mangia, specifically, are you taking this action against.

A Specifically Mangia 57.

Q Why did you choose specifically to direct this action at Mangia 57?

A Because it was actually the discrimination occurred when I was at Mangia 57.

Q That is by the people that you mentioned earlier, correct?

A Yes.

1 Q Other than those people, how would you describe your
2 treatment?

3 A Well, I had a pretty good relations with the other
4 employees and around Mangia. And not only the catering
5 department but in the store and the office people and the
6 telephone people. But so -- but as far as the discrimination
7 is concerned, these three people specifically poisoned my blood
8 for quite awhile while working there.

9 Q One final question on that. You mention you were at
10 Mangia 57 for several years. Why did you stay so long if you
11 were in this environment that you described?

12 A Well, when it happened I was in my 50's. You know, I was
13 55. I was scared to death if I leave or get fired not many
14 people will offer me a job. So the money was good. Overall
15 relationship with other Mangia people were good. I was afraid
16 that if I was dismissed the next day I am going to be jobless
17 and it is going to effect me.

18 I was pretty much like an abused wife who is beaten
19 up, abused, and yet stays in the relationship because of the
20 security and financial security and protection. That was what
21 I needed. When I was younger I was able to leave one employer
22 without worrying. But when you are 55 it is difficult to just
23 slam the door behind you and look for a new career or something
24 of that sort. I felt very bad and abused and yet I was coming
25 back to work.

1 Q So these treatments that you described today, did they
2 affect you in any way outside of work?

3 A Yes. It seems, as I said previously, I am not the man who
4 once they slap you slapped back. I am not a guy who
5 retaliates. Therefore, I was following the abuse. At the time
6 I got home I felt like a balloon who needs to be defused. I
7 noticed that I treated aggression, and I was like talking to
8 myself, discussing the issues, and I lost my ability to sleep.
9 I developed a sleeping disorder for quite sometime, and I knew
10 it was something wrong. I lost my self esteem because I felt
11 like a second class citizen at work. And I felt that it is not
12 like it used to be the same. I stopped going out. I am a very
13 outgoing person, and I love going out and meeting people. It
14 all stopped at some point. I felt like I am in need of help.

15 Q Prior to your work at Mangia, did you experience the same
16 symptoms that you just described?

17 A No, I have not.

18 Q About when did those symptoms arise?

19 A In the mid 2000s. I would have to say like 2005.

20 Q What have you done, if anything, to deal with these
21 issues?

22 A Well, I felt like at some point I need to go to seek help,
23 to seek help, psychiatrist. It was this treatment center
24 actually across the street from Mangia. You know, the Jewish
25 Center for Family Services. And they had the psychiatrist

1 there. And we delivered food there. So I knew they were
2 there.

3 I felt like at some point I have to make a decision
4 and go there. Because it is very hard if you have a mental
5 issue, and you know something is wrong, to make that first
6 step. Like the alcoholic, it is very hard to admit that you
7 are an alcoholic and that something is wrong with you. It is
8 the same issue here.

9 But I finally went there in 2008 and I got the
10 treatment. I am still with them ever since. You know, I am
11 being treated for depression and sleeping disorder and other
12 issues.

13 Q What kind of treatment do you receive at this center?

14 A I see the psychiatrist on a monthly or two monthly basis,
15 who discusses the issues with me and prescribes medication. I
16 see the psychotherapist on a weekly basis, every Friday for 45
17 minutes.

18 Q What is the name of the psychiatrist that you see?

19 A Dr. Richard Hechsler.

20 Q How long have you seen Dr. Hechsler?

21 A Since December 2008.

22 Q Do you see Dr. Hechsler?

23 A Yes, I do.

24 Q You mentioned the medications that you are taking. What
25 medications are those, specifically?

1 A I take Zoloft for my depression. And I take Ambien on a
2 daily basis for my sleeping disorder which really kills me. I
3 don't have a problem falling asleep. I wake up after one hour
4 or hour and a half of sleep, and I cannot go back to sleep. It
5 really effects me. I am tired and I cannot function.

6 Q When did you start taking these medications?

7 A The moment that I saw the psychiatrist for the first time,
8 and I am on that medication ever since.

9 Q What doctor prescribed that medication?

10 A Dr. Hechsler, he is the one who gave me the prescription.
11 He is a psychiatrist.

12 Q You said Zoloft and what other drugs?

13 A Zoloft for the depression and Ambien for the sleeping
14 disorder.

15 Q Have you taken either Zoloft or Ambien before, at anytime
16 before you sought treatment with them?

17 A No, I have not.

18 Q What other kind of treatments have you received by the
19 doctor and therapist that you mentioned?

20 A It was Gail Krinn, K-R-I-N-N. I go for psychotherapy on a
21 daily basis which consists of discussion about me. She treats
22 me on how to defuse the aggression. She schools me how to
23 breathe, you know, yoga and certain -- like having a
24 psychotherapy session. She takes care of me very well. I
25 enjoy going, and I really getting better in that department.

1 Q So the treatment that you are receiving, has that helped
2 your symptoms?

3 A Yes.

4 Q You are still seeking that treatment even today, is that
5 correct?

6 A Yes.

7 Q I am going to show you a document which we previously
8 marked as Plaintiff's Exhibit Number 1.

9 I ask you to take a look at that document, sir.

10 MR. D. KAISER: I object to this.

11 THE COURT: Come up.

12 I don't know what it is.

13 (Continued on the next page.)

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1 (Sidebar conference.)

2 MR. D. KAISER: It is a letter to Mr. Wiercinski from
3 his doctor describing his symptoms. The doctor is not
4 testifying here. It is complete hearsay. He is not going to
5 be here to be cross examined or anything else. It is just a
6 letter from his doctor claiming that he suffers from depression
7 and anxiety. For that reason, we would ask that Your Honor
8 exclude it.

9 MR. MORIARTY: We discussed this issue with counsel
10 previously. The defendants have, as part of their exhibits,
11 intake notes from the very same Jewish Center. We basically
12 had an agreement, as far as I understood, if we didn't need the
13 custodian of records to come for the defendants to submit the
14 intake notes we wouldn't need it for the same documents here
15 today.

16 MR. D. KAISER: We addressed this issue before Your
17 Honor. You said if we decided we wanted to submit those intake
18 notes we would present them to you. We didn't because we
19 decided we are not going to present those notes.

20 We never agreed to this. They were supposed to
21 produce the doctor, at a minimum, for his deposition because
22 they were going to call him as a witness.

23 THE COURT: Has the doctor ever been deposed? I was
24 about to ask that.

25 MR. D. KAISER: No, he never has been deposed.

1 THE COURT: You asked for that?

2 MR. D. KAISER: He was asked for in a deposition and
3 he was not made available.

4 MR. MORIARTY: The doctor's schedule would not allow
5 it. We can have the custodian of records from the Jewish
6 Center come in and testify as to the documents.

7 THE COURT: No. I am not going to permit it. It
8 would seem to me that this is essentially an expert witness
9 that you are seeking to call. There should have been an
10 opportunity to depose him or at least have a basis --

11 MR. MORIARTY: Your Honor --

12 THE COURT: The answer is, no. I am staying an
13 objection to it. Why don't you move on.

14 MR. MORIARTY: Thank you, Your Honor.

15 (End of sidebar conference.)

16 (Continued on the next page.)

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1 (In open court.)

2 MR. MORIARTY: Your Honor, at this time I have no more
3 questions for the plaintiff, but I would request a five-minute
4 recess so I can discuss with counsel and check my notes to make
5 sure that that is correct.

6 THE COURT: Why don't you inquire of counsel now.
7 Go ahead.

8 MR. MORIARTY: Thank you, Your Honor.

9 (Whereupon counsel confer.)

10 THE COURT: Gentlemen, I take it that you have no
11 further questions?

12 MR. MORIARTY: I do, Your Honor, just very brief.

13 DIRECT EXAMINATION

14 BY MR. MORIARTY (continuing):

15 Q Sir, moments ago you mentioned three people who caused the
16 issues that you recently described. Regarding Ms. Cymanow,
17 what specifically did she do that led to a hostile work
18 environment?

19 A Well, she covered for these people. After my numerous
20 complaints she did not take accurate action to stop it. She is
21 also known for being anti-Semitic. In fact, she called me and
22 referred to Jews in general as Jopek, J-O-P-E-K. Which is, in
23 Polish it means like little Jew. It is not very derogatory but
24 it is like demeaning.

25 Q Is that something that she said to you specifically?

RONALD E. TOLKIN, RPR, RMR, CRR

1 A Yes, many times. And she speaks about Jews in general
2 using Jopek in the plural. She is known as anti-Semitism.

3 Q The various issues that you described that you felt were
4 harassment, you were not harassed everyday, were you?

5 A No, not everyday. It depends, you know, if Mr. Zbozien
6 was around. I have other management, managers, and they were
7 okay. It happened on numerous occasions but not on a daily
8 basis.

9 MR. MORIARTY: No further questions.

10 THE COURT: Mr. Kaiser, cross-examination.

11 MR. D. KAISER: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. D. KAISER:

14 Q Good afternoon, Mr. Wiercinski. How are you?

15 A Pretty good. How are you?

16 Q Good.

17 Mr. Wiercinski, when you were working at Mangia, did
18 you get paid using a different name.

19 MR. MORIARTY: Objection, Your Honor, relevance.

20 A At this time, I would like to ask the jury and Your Honor
21 to permit me to use the Fifth Amendment because I believe that
22 to answer this question it may incriminate me.

23 THE COURT: What was the answer to that question?

24 Would you repeat it.

25 THE WITNESS: At this time, I would like to seek the

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1 right to hide behind the Fifth Amendment, and I respectfully
2 decline to answer this question on the ground it may
3 incriminate me.

4 THE COURT: Mr. Wiercinski has just asserted his right
5 pursuant to the Fifth Amendment of the Constitution to refuse
6 to answer that question.

7 You may, but are not required, you may infer that the
8 answer to the question, had he given it, would not have been
9 favorable to him. You may infer that conclusion but you are
10 not required to.

11 Go ahead, Mr. Kaiser.

12 MR. D. KAISER: Thank you.

13 Q Mr. Wiercinski, did you get paid under a different name in
14 order to conceal income from the United States government?

15 MR. MORIARTY: Objection.

16 THE COURT: I will allow it.

17 A At this time, Your Honor and members of the jury, I would
18 like to seek the refuge behind the Fifth Amendment and
19 respectfully decline to answer the question on the ground it
20 may incriminate me.

21 Q Finally, on that particular issue, did you conceal -- did
22 you desire to conceal your income from the United States
23 Government so that you could obtain benefits from the Social
24 Security system that you were not entitled to?

25 MR. MORIARTY: Objection.

1 THE COURT: Overruled.

2 A Your Honor and members of the jury, at this time I would
3 like to seek the refuge behind the Fifth Amendment and
4 respectfully decline to answer this question on the ground that
5 it may incriminate me.

6 Q Mr. Wiercinski, do you recall providing sworn testimony at
7 an administrative hearing related to this litigation?

8 MR. MORIARTY: Objection. Relevance.

9 MR. D. KAISER: I am happy to --

10 THE COURT: What are you objecting to?

11 MR. MORIARTY: Relevance of the prior testimony. The
12 witness is here to testify today.

13 THE COURT: The objection is overruled.

14 Go ahead.

15 Q Do you recall giving sworn testimony?

16 A At this time, I would like to seek the refuge behind the
17 Fifth Amendment and respectfully decline to answer this
18 question on the ground that it may incriminate me.

19 Q I would like to read to you, Mr. Wiercinski, your answers
20 to these questions from that administrative hearing. Page 196,
21 line 9:

22 "QUESTION: " --

23 THE COURT: Excuse me. Before you get to that, do I
24 understand you are asserting your Fifth Amendment right to
25 respond whether you were or were not deposed at a prior

1 occasion? Is that what you are taking the Fifth Amendment to?

2 THE WITNESS: Yes.

3 D. KAISER: May I proceed, Your Honor?

4 THE COURT: Please.

5 D. KAISER: Thank you.

6 Q (Reading:)

7 "QUESTION: And what name did you give to Mangia to
8 pay you under?

9 ANSWER: I was giving Adam Jamroz.

10 QUESTION: Is there an Adam Jamroz?

11 ANSWER: Yes. He is a cousin. He is no longer with
12 us because he is not in the country anymore, but I used his
13 name. Because, we, in 1991 opened a joint account together
14 when he was with me, and we used to deposit money in that
15 account. So when the account was opened I called Martha and
16 she said, you know, no problem with that."

17 Do you recall that testimony?

18 A At this time, I would like to seek the refuge behind the
19 Fifth Amendment and respectfully decline to answer this
20 question on the ground it may incriminate me.

21 THE COURT: Counsel, will you please come up.

22 (Continued on the next page.)
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1 (Sidebar conference.)

2 THE COURT: An answer to the question whether you
3 recall being deposed or not cannot subject this witness to any
4 criminal prosecution that I am aware of. I don't know there is
5 a Fifth Amendment privilege with respect to that. I don't know
6 if you advised him to take the Fifth Amendment to answer that.
7 He will not respond to whether he was or was not deposed or
8 taking the Fifth Amendment to an answer to a question which he
9 has given before under oath.

10 If he wishes to persist in the Fifth Amendment, I am
11 just telling you that this is not a Fifth Amendment privilege
12 which is appropriately taken. To answer a question whether you
13 have been deposed or not is not subjecting him to criminal
14 prosecution. Having said that, I don't know what you advised
15 your client.

16 Let's move on.

17 (End of sidebar conference.)

18 (Continued on the next page.)

1 (In open court.)

2 CROSS EXAMINATION

3 BY MR. D. KAISER (continuing):

4 Q Mr. Wiercinski, in that same proceeding which you were
5 under oath, did you provide this answer to this question. It
6 was a question by the Court in that case:

7 "THE COURT: So your purpose was to have the income
8 shown in someone else's name so that the governmental agency
9 wouldn't know that you were making that income?

10 THE WITNESS: Uh-huh:

11 THE COURT: "Yes"?

12 THE WITNESS: Yes, yes."

13 Do you recall that question and that answer that you
14 provided at this proceeding?

15 A At this time, I would like to seek the refuge behind the
16 Fifth Amendment and respectfully decline to answer this
17 question on the ground that it may incriminate me.

18 Q This is the final question that I have for you on this
19 issue, Mr. Wiercinski. And I understand how you responded to
20 these questions, but the final question on the Social Security
21 issue is this. How much did you receive in Social Security
22 benefits while you were receiving income under the name of Adam
23 Jamroz at Mangia?

24 A At this time, I would like to seek the refuge behind the
25 Fifth Amendment and actually decline to answer this question on

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1 the ground it may incriminate me.

2 Q Did you, Mr. Wiercinski, file tax returns during the years
3 you worked at Mangia?

4 MR. MORIARTY: Objection, Your Honor.

5 May I address the Court?

6 THE COURT: You may. Do you want to do it at side-bar
7 or do you want to do it before the jury?

8 MR. MORIARTY: At side-bar.

9 (Continued on the next page.)

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1 (Sidebar conference.)

2 MR. MORIARTY: Counsel hasn't even brought up one
3 issue about the merits of the case. This is exactly what we
4 were concerned about in conference, that he would try to turn
5 this into a trial on the issues not related to the case. I
6 believe at the conference you instructed counsel that he will
7 get some leeway but he can't take this to an extreme.

8 THE COURT: No, I never instructed him to that affect
9 at all. What I did tell you, and I recall it specifically,
10 that credibility is always an issue as far as the witness is
11 concerned.

12 When Mr. Wiercinski took the stand and swore to tell
13 the truth, his credibility is at issue. Any question which may
14 go to truthfulness or honesty is perfectly proper as a question
15 which goes to the truthfulness and credibility of this witness.

16 MR. MORIARTY: But asking a question about tax returns
17 when we are not seeking lost wages.

18 MR. D. KAISER: We actually, Your Honor, specifically
19 talked about it.

20 THE COURT: Excuse me. If your question is, has he
21 filed income tax returns for the income which he has received,
22 that is fine. Where are you going beyond that?

23 MR. D. KAISER: Only what did he report on those tax
24 returns from the Mangia income which he did not. That is it.

25 THE COURT: That goes to credibility. That goes to

1 truthfulness and honesty, and that is perfectly proper
2 cross-examination.

3 MR. MORIARTY: Yes, Your Honor.

4 (End of sidebar conference.)

5 (Continued on the next page.)
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1 (In open court.)

2 MR. D. KAISER: Your Honor, may I hand the exhibit
3 book to the witness?

4 THE COURT: Yes, you may.

5 CROSS-EXAMINATION

6 BY MR. D. KAISER (continuing):

7 Q Mr. Wiercinski, can you go to the 10th tab in the book
8 before you.

9 MR. MORIARTY: Can you put it up on the screen?

10 MR. D. KAISER: I am not offering it in evidence. I
11 don't think it's appropriate to put it on the screen.

12 Q Mr. Wiercinski, in the year 2006 you filed a tax return
13 with the U.S. Government, is that correct?

14 A I do not recall.

15 Q Can you review it and tell me if that refreshes your
16 recollection?

17 MR. MORIARTY: We were not given a copy of the book.

18 MR. D. KAISER: I will give you an exhibit book.

19 MR. MORIARTY: Thank you.

20 MR. D. KAISER: Would Your Honor like an exhibit book?

21 MR. MORIARTY: Which tab?

22 MR. D. KAISER: Tab 10.

23 Q Mr. Wiercinski, does that refresh your recollection that
24 you filed a return in 2006?

25 A At this time, I would like to seek the refuge behind the

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1 Fifth Amendment and respectfully decline to answer the question
2 on the ground it may incriminate me.

3 Q Did you report your Mangia income in 2006 to the United
4 States Government?

5 A At this time, I would like to seek the refuge behind the
6 Fifth Amendment and respectfully decline to answer this
7 question on the ground that it may incriminate me.

8 Q Mr. Wiercinski, rather than ask you a separate question
9 for each of the successive years, I am going to ask you, do you
10 recall filing returns for 2008, 2009, and 2010?

11 A At this time, I would like to seek the refuge behind the
12 Fifth Amendment and respectfully decline to answer this
13 question on the ground it may incriminate me.

14 Q Finally, on this topic, Mr. Wiercinski, for those years,
15 2008, 2009 and 2010, did you report your income, your Mangia
16 income to the United States Government?

17 A At this time, I would like to seek the refuge behind the
18 Fifth Amendment and respectfully decline to answer this
19 question on the ground that it may incriminate me.

20 Q Prior to receiving -- withdrawn.

21 In your early years at Mangia when you were working
22 full-time in Mangia, and I am asking now separate and apart
23 from the Social Security issues, did you receive public
24 assistance.

25 A At this time, I would like to seek the refuge behind the

1 Fifth Amendment and respectfully decline to answer this
2 question on the ground it may incriminate me.

3 Q The final question on this issue. At that time, were you
4 working under and were you receiving your wages under the name,
5 the fictitious name, Adam Jamroz to conceal your income so you
6 could obtain the public benefit?

7 A At this time, I would like to seek the refuge behind the
8 Fifth Amendment and respectfully decline to answer the question
9 on the ground it may incriminate me.

10 Q Now, you testified, Mr. Wiercinski, that there was an
11 incident, the first incident with Mr. Zbozien occurred related
12 to the box -- when you where were folding boxes, correct?

13 A No. Actually, the first incident occurred when I was
14 bringing boxes from the truck.

15 Q Bringing boxes?

16 A Yes.

17 Q At that time, Mr. Wiercinski, you said that he called
18 you -- is that when he called you, you are claiming that he
19 called you a fucking Jew?

20 A Yes. That was the first encounter with Mr. Zbozien that I
21 had on the first day of work.

22 Q I think that you testified that you were so taken aback or
23 shocked that you didn't confront him, is that correct?

24 A I didn't confront him. I ask him why he was saying what
25 he was saying. I forgot what he answered. But anyway, in a

1 few seconds later I was approached by assistant manager,
2 Mr. Rybarski, and took me aside and advised me not to complain
3 about Mr. Zbozien or I would regret it.

4 Q Was this your first encounter with Mr. Zbozien?

5 A I believe it has.

6 Q You believe it was the first time that you had a meeting
7 with him?

8 A Yes, I guess so.

9 Q This was your first day of work, is that correct?

10 A Yes.

11 Q So on your first day of work, Mr. Zbozien, who you never
12 met before with the encounter with the boxes, turned around and
13 called you a fucking Jew?

14 A Yes.

15 Q It is your testimony that you were so taken aback that you
16 didn't confront him about it? Is that correct?

17 A I confronted him and I said --

18 Q What did you say?

19 A I said, How dare you call me this, or something to that
20 matter. It was 2000 --

21 Q So Mr. Zbozien apparently knew that you were Jewish?

22 A They knew about me, yes.

23 Q Mr. Zbozien, in particular, knew that you were Jewish, is
24 that correct?

25 A Yes.

1 Q Although this was the first time you met him?

2 A At work.

3 Q You never previously advised him that you were Jewish, is
4 that correct?

5 A He knew I was Jewish.

6 Q You never advised him, did you?

7 A I don't have to. They all knew about me.

8 THE COURT: The question is did you advise him. Can
9 you answer that yes or no?

10 A I don't recall.

11 Q Do you recall providing deposition testimony on this first
12 incident? Do you remember your deposition testimony in this
13 case?

14 A Yes.

15 Q And you were under oath, is that correct?

16 A Yes.

17 THE COURT: One minute. Let me just tell the jury
18 what is deposition testimony, so they will understand.

19 After a case has been commenced, after a lawsuit has
20 started, there is a lot by way of pretrial activity. Before
21 the case actually gets into the courtroom, lawyers on both
22 sides can depose witnesses or other parties to the lawsuit.
23 That is, they can have those witnesses appear to be questioned.
24 Generally it is at the lawyer's office, one or the other.
25 Questions are asked under oath and answers are given under oath

1 and recorded by a stenographer. Generally it is a court
2 reporter type stenographer like Mr. Tolkin is here. The
3 transcript of that deposition, that question and answer period
4 has been prepared.

5 Mr. Kaiser is asking Mr. Wiercinski whether he recalls
6 being deposed. That was the last question. If the answer was,
7 yes, he will now ask, I suppose, do you recall giving this
8 answer and being asked this question, and giving this answer.

9 Go ahead, Mr. Kaiser. Did he respond to your question
10 as to whether he recalled being deposed.

11 Q Do you recall being deposed, Mr. Wiercinski?

12 A Yes.

13 Q You recall being asked a series of questions about your
14 claim and providing answers to the question, is that correct?

15 A Yes.

16 Q And you understand you were under oath and required to
17 provide truthful testimony, is that correct?

18 A Yes.

19 THE COURT: Do you have copies of the deposition
20 transcript?

21 MR. D. KAISER: Would you like a copy of it, Your
22 Honor.

23 THE COURT: If it is available let me have it.

24 MR. D. KAISER: Here, Your Honor.

25 THE COURT: Indicate the line and page, Mr. Kaiser.

1 MR. D. KAISER: Sure. Page 267, beginning on line 17,
2 Your Honor.

3 Q The question, Mr. Wiercinski, was:

4 "QUESTION: When did the first incident happen?

5 ANSWER: It was the first day I appeared in Mangia 57,
6 around 10:00.

7 QUESTION: Okay, what happened?

8 ANSWER: The truck with the boxes, the Mangia truck,
9 we were unloading the boxes downstairs to the catering room and
10 I accidentally bumped into Zbozien. And I just hit him not
11 heavy, but I hit him with a box. He was like, and I am
12 quoting, Did anybody ever -- fuck you, mother fucking Jew,
13 something to that nature. He was like upset that I did that.
14 I dropped my jaw and was like starting to fight back, you know,
15 how dare you call me that?"

16 Were those his words at the time? You said "and I
17 quote." Is that what he said.

18 A Yes, something to that matter. You know, it was ten years
19 ago. I cannot recall whether he had addressed me fucking Jew
20 or stupid Jew, something to that matter. Underlining again
21 something to that matter.

22 Q No. I understand, Mr. Wiercinski.

23 In your deposition you said "and I quote." So that
24 would be the accurate description of what he told you.

25 A If I said so.

1 Q You said that you complained about this conduct, is that
2 correct?

3 A Yes.

4 Q You complained about this conduct to Margaret Cymanow?

5 A I complained about this conduct to assistant manager,
6 Mr. Rybarski.

7 Q You complained about the incident generally to
8 Ms. Cymanow, is that correct?

9 A Yes.

10 Q How frequently did you complain to her?

11 A As far as I am concerned, altogether, probably like ten
12 dozen times.

13 Q You complained to Margaret Cymanow approximately a dozen
14 times from 2000 until 2002 --

15 A Yes.

16 Q Or 2006 or 2007?

17 A Yes.

18 Q So that would be a couple of times a year?

19 A Yes.

20 Q Margaret Cymanow was a person you claimed was also a
21 vicious anti-Semite, is that correct?

22 A Yes, she was.

23 Q So you were going to this vicious anti-Semite to complain
24 about the anti-Semitism?

25 A Yes. She was the general manager of Mangia.

1 Q During all of this time you were going to the other
2 vicious anti-Semites to complain about the anti-Semitism, did
3 you ever put those complaints in writing?

4 A No.

5 Q Did you ever think to record in writing these complaints
6 at anytime?

7 A This wasn't procedure at Mangia.

8 Q Well, weren't you concerned that Ms. Cymanow, another,
9 according to you, vicious anti-semite who was, I think you
10 said, calling you all sorts of nasty names about being a Jew,
11 correct?

12 A It's not nasty. It's humiliating, but it's not nasty.

13 Q Humiliating names about being a Jew, and you thought that
14 she would be the appropriate person to address these religious
15 discrimination claims to?

16 A Yes. She was the only proper person to go. She was a
17 general manager. Manager of all managers.

18 Q Now, you knew -- you were friends with Ms. Cymanow,
19 correct?

20 A Not really. I --

21 Q I'm sorry. I didn't mean to interrupt you.

22 A I wasn't a friend. I knew her.

23 Q Well, you knew her husband, correct?

24 A Not really. It was my roommate who was a friend of her
25 late husband.

1 Q You didn't know her husband?

2 A I knew him, but I wasn't friendly.

3 Q You, in fact, had been to her house on a number of
4 occasions, correct?

5 A I was there with my friend who was friends with them.

6 Q So you had, from time-to-time, socialized with Ms. Cymanow
7 and her husband, correct?

8 A Not really. It wasn't socializing. I was just a
9 visiting. I was with the friend who was the friend to
10 Cymanows.

11 Q And during those times, whether you call it socializing or
12 visiting with a friend, did you know that she was a vicious
13 anti-semite?

14 A No, I did not.

15 Q Did she say anything on these visits to indicate that she
16 was a vicious anti-Semite?

17 A She was referring about Jews, you know, in humiliating
18 ways. Calling them Jopek.

19 Q During the time you were visiting her in her house?

20 A Yes.

21 Q But you still went and visited with her?

22 A Jopek, again, it is not derogatory name. It's a rather
23 funny way of talking about Jews. It's like you Jews. She was
24 like being -- you know, making fun of it. Not really
25 addressing the issues that Jews are nasty or not. So she

1 wasn't anti-Semite. She was known as being anti-Semite.
2 Around Mangia, everybody knew. At Mangia everybody was talking
3 about her as anti-Semite. She was a very religious person.
4 She was a devoted Catholic. But at the same time, she was an
5 anti-Semite.

6 Q You testified that you believe Ms. Cymanow told Arthur
7 Zbozien that you were Jewish, correct?

8 A Yes.

9 Q You don't know that she did. You're assuming that,
10 correct?

11 A Yeah. They all knew who I was.

12 Q So that, to understand why Mr. Zbozien, on your first day
13 with him, on your first day would make these remarks to you,
14 and you said you didn't tell him you were Jewish. You're
15 assuming Miss -- someone else did, correct, but you don't know
16 who that is?

17 A Yes.

18 Q Mr. Wiercinski, was your -- was your -- you talked a
19 little bit about your upbringing. Was your mom Catholic?

20 A My mom was half Jewish. Her father was a Pole. And her
21 mother was Jewish.

22 Q Her mother was Jewish. Were you raised Jew?

23 A After the war, when they escaped the Soviets and
24 immigrated to Krakow, they -- my father admitted during the
25 meeting that from now on he's never going to go back to his

1 original name, Kirszner. That we're going to be raised as
2 Wiercinski. And he -- the second things is he never allow us,
3 me and my brother, circumcised.

4 So in a way, we were raised not as a Catholic, but we
5 were going not to emphasize our Jewish religion too much.
6 Because it was -- you know, Poland was, at that time,
7 anti-Semite. And it was better to be a Wiercinski and not talk
8 about your religion views much.

9 Q Do you celebrate the Jewish holidays?

10 A I do now.

11 Q Since when?

12 A Since I arrive to America.

13 Q You talked about individuals who discriminated against
14 you. Said these terrible things. One was Mr. Zbozien.

15 A Yes.

16 Q Another was Mr. Bazgier, I believe, right?

17 A Yes.

18 Q He said things to you. And Mr. Sarosiek. All these
19 people said things to you?

20 A Yes.

21 Q Those are the individuals you identified on your direct
22 testimony, correct?

23 A I believe so.

24 Q You've been preparing for this direct testimony for
25 sometime, correct?

1 A Yes.

2 Q Did Mr. Lipski -- d you know who that is?

3 A Yes.

4 Q Did Mr. Lipski ever say anything to you that was
5 discriminatory or derogatory?

6 A Yes.

7 Q You didn't mention him on your direct. Is there a reason?

8 A No reason. You know, I'm trying to put behind Mangia 48th
9 Street. I'm only concentrating on Mangia 57th.

10 Q You claimed that Mr. Lipski, who you didn't mention on
11 your direct, called you a little dirty Jew, correct?

12 A Called me a little Jew.

13 Q So you stand by that testimony?

14 A Yes.

15 Q Even though counsel asked you a number of times whether
16 you had given a full account of the harassing conduct, but you
17 didn't mention Mr. Lipski.

18 MR. MORIARTY: Objection, Your Honor.

19 THE COURT: Overruled.

20 Q Is that correct?

21 A If I said so, yes.

22 Q So we can add Mr. Lipski to the list as well, correct?

23 MR. MORIARTY: Your Honor, I'd like to renew my
24 objection.

25 THE COURT: Your objection is made. Overruled.

1 Q So we can add Mr. Lipski now?

2 A Yes.

3 Q So now there are -- is it five individuals who are vicious
4 anti-Semites when you worked at Mangia, correct?

5 A No, not vicious anti-Semites. Mr. Lipski just expressed
6 to me on one occasion and that is it.

7 Q You believe --

8 MR. MORIARTY: May I have a side-bar.

9 THE COURT: No.

10 Q You believe that Mr. Lipski fired you because you're
11 Jewish, correct?

12 A Could be. I'm not certain of it, but it could be.

13 Q Well, that's what you believe.

14 A I believe.

15 Q When you were fired, this was in 1999, correct?

16 A Probably, yes.

17 Q When you testified on direct that the harassment occurred
18 between 2000 and 2007, that's not true because he called you a
19 dirty Jew, according to you, in 1999?

20 MR. MORIARTY: Objection. It mischaracterizes the
21 testimony.

22 THE COURT: Overruled.

23 MR. MORIARTY: There's several Mangias.

24 THE COURT: Overruled. Don't argue my rulings,
25 Mr. Moriarty.

1 Q So when you testified that harassment occurred between
2 2000 and 2007, that's not true, correct?

3 A The real harassment occurred when I was at Mangia 57th.

4 Q Well, being called a dirty Jew would be real harassment,
5 correct?

6 A He didn't call me dirty Jew. He called me little Jew, or
7 something like that. It was 1999 and I don't remember.

8 Q So he didn't call you a dirty Jew?

9 A I don't think so. I don't recall exactly.

10 Q Did he call you "A One Fifth Avenue Little Jew," did he
11 say that to you?

12 A Yes.

13 Q That would be significant discrimination, correct?

14 A Yes.

15 Q That occurred in 1999?

16 A Yes.

17 Q Just so we're clear, you said 2000 or 2007. Now you're
18 saying it also occurred in 1999?

19 A Of course it did.

20 Q When you were fired for reasons that you believed were
21 because you were Jewish, you didn't complain about that then,
22 correct?

23 A I was fired. I don't know why I was fired. He never gave
24 me a specific reason why he fired me. And so I can assume that
25 it was for that reason. You know, I didn't do anything wrong

1 to be fired. But he said me from the very beginning I started
2 to work there. And once he became a manager, was promoted from
3 assistant manager to manager, I knew that my days were going to
4 be counted.

5 Q My question, Mr. Wiercinski, was, that's what you
6 believed. You didn't complain about it, correct?

7 A Yes.

8 Q You didn't complain about any of Mr. Lipski's alleged
9 conduct towards you, correct?

10 A Not on the record I didn't.

11 Q I'm sorry. Not on the record?

12 A No, I didn't complain.

13 Q Now, when you were fired, you went to Mr. Zelmanovich,
14 right?

15 A Yes.

16 Q Zindel Zelmanovich?

17 A Yes.

18 Q He was a friend of yours, correct?

19 A No, he was not.

20 Q He was someone who helped settle you in the United States
21 when you came from Poland, right?

22 A It was an organization that was headed by Rabbi David
23 Neiderman, and he was the coordinator.

24 Q So he was one of the people that helped you, correct?

25 A Yes.

1 Q Mr. Zelmanovich is an Orthodox Jew?

2 A I really do not know.

3 Q You know he's Jewish?

4 A Yes.

5 Q He wears an yarmulke?

6 A Yes.

7 Q He's one of the people that provided you relocation
8 assistance, correct?

9 A Assistance was rendered to me by the organization RAV-TOV.

10 Q Mr. Zelmanovich is someone you went to from time-to-time
11 seeking advice?

12 A I don't recall really. It was just -- when I met him, it
13 was when I delivered cash from Sasha Muniak. I was the go
14 between Sasha Muniak and Mr. Zelmanovich. When Sasha Muniak
15 paid the debt to Mr. Zelmanovich, he asked me to deliver those
16 envelopes of cash to Mr. Zelmanovich.

17 Q Is your testimony that you did not go to Mr. Zelmanovich
18 seeking advice about work issues, about life issues?

19 A No. I don't recall going to him for that.

20 Q Well, you went to him when were you fired from Mangia,
21 correct?

22 A Yes.

23 Q That was a work issue, correct?

24 A Yes.

25 Q You sought Mr. Zelmanovich's intervention on your behalf

1 to get your job back, correct?

2 A Yes.

3 Q So that was an incident where a work issue happened. You
4 were fired, right?

5 A Yes.

6 Q You went to Mr. Zelmanovich, and he advocated for you to
7 get your job back, correct?

8 A Yes.

9 Q You're saying that was the only instance you can recall in
10 which you sought his personal assistance or advice?

11 A Yes, I think so.

12 Q There was no other time that you went to him?

13 A I don't recall.

14 Q So you never complained to him about discrimination,
15 correct?

16 A I don't recall.

17 Q Well, you don't recall you went to him when you were fired
18 for a reason you believed was for discrimination, right, by a
19 guy who called you a little Jew? And you don't recall what you
20 told Mr. Zelmanovich, who is, himself, Jewish, that you were
21 discriminated against while you were at Mangia?

22 A I might have said it to him. I don't remember. It was
23 ten years ago. I am sorry.

24 Q Mr. Wiercinski, on any occasions did you offer any form of
25 compensation to anyone to testify for you in the context of

1 this litigation?

2 A No.

3 Q Do you know who Robert Ranfranz is?

4 A I do know now.

5 Q Well, do you know him as someone who used to work as food
6 deliverer with you?

7 A I do now.

8 Q You don't recall at the time that he worked with you?

9 A When I found out about him, I didn't know who he was
10 because I didn't remember his last name. But accidentally, I,
11 through the Facebook, I went to the friend of the friend and I
12 discovered who he was. And then it all came to me. So I do
13 remember who he was.

14 Q You called him on occasion to talk about this case, didn't
15 you?

16 A No, I did not.

17 Q You never on any occasion, whether in a phone call or
18 anything other, offered him money so he might testify for you
19 in this litigation?

20 A No, I did not.

21 Q That's your testimony?

22 A Yes, it is.

23 Q So the discrimination, Mr. Wiercinski, began -- we now
24 know began in 19 -- according to your testimony, your
25 narrative, began in 1999 with Mr. Lipski. You didn't complain

1 about that. You were fired and rehired, correct?

2 A Yes.

3 Q And then it continued at the other location, the other
4 Mangia location by Mr. Zbozien, correct?

5 A Yes.

6 Q Mr. Bazgier also said things to you, correct?

7 A Yes.

8 Q Mr. Lipski?

9 A Mr. Lipski was not associated with Mangia 57.

10 Q Mr. Sarosiek?

11 A Yes.

12 Q And Ms. Simmons, correct?

13 A Yes.

14 Q And all this time you continued to work at Mangia?

15 A Yes.

16 Q And you said, I think, on questioning from your attorney,
17 that you needed a job, correct?

18 A I needed security.

19 Q But you also didn't -- Mr. Wiercinski, all these years of
20 harassment that you're claiming went from 1999 all the way up
21 to 2007, correct, eight years of what you're claiming was this
22 constant abuse, you never looked for another job, did you?

23 A At this time I would like to respectfully decline to
24 answer this question on the ground that it may incriminate me.

25 Q After you left -- after, ultimately, you left in 2008, Mr.

1 Wiercinski, when you went -- sometime in 2008 you went home to
2 Poland, correct?

3 A Yes.

4 Q And then you wanted to come back to Mangia, correct?

5 A Yes.

6 Q Even then you wanted to come back to Mangia and work there
7 as late as 2007, despite all the harassment that occurred, all
8 of this abuse that you're claiming occurred, is that right?

9 A Yes.

10 Q In fact, you weren't allowed back. That's your testimony,
11 correct?

12 A Yes.

13 Q You then went to work after you left at a restaurant
14 called Cucina.

15 A At this time, I would like to seek refuge behind the Fifth
16 Amendment and respectfully decline to answer this question on
17 the ground that it may incriminate me.

18 Q Again, you remember testifying, Mr. Wiercinski, at a
19 hearing, correct?

20 A Yes.

21 Q Is that correct?

22 A Yes.

23 Q I'm going to ask if you recall this question and this
24 answer, page 207, line 25:

25 "QUESTION: Now, after not being rehired by Mangia 57,

1 what did you do for a living.

2 ANSWER: Well, I went to the location Cucina that
3 occupied the Mangia 56 location when Cucina took over. And I
4 asked for a job. And they hired me, you know, for a couple --
5 for approximately March 2008 until I left."

6 You answered that question at the hearing.

7 A At this time, I would like to seek the refuge behind the
8 Fifth Amendment and respectfully decline to answer this
9 question on the ground that it may incriminate me.

10 Q Are you seeking that refuge because you continued, during
11 that time, to hide the Cucina income from the United States
12 Government?

13 MR. MORIARTY: Objection.

14 THE COURT: Overruled.

15 A At this time, I would like to seek refuge behind the Fifth
16 Amendment on the grounds that it may incriminate.

17 Q You were seeking to hide the income at that time when you
18 worked at Cucina because you were obtaining Social Security
19 benefits to which you were not entitled, correct?

20 A At this time, I would like to seek the refuge behind the
21 Fifth Amendment and respectfully decline to answer this
22 question on the ground that it may incriminate me.

23 Q Can you go, Mr. Wiercinski, to Exhibit 20 in your exhibit
24 book.

25 THE COURT: Go ahead.

1 Q Do you see Exhibit 20?

2 A Yes, I do.

3 Q Just a couple of very quick, Mr. Wiercinski, follow-up
4 questions I neglected to ask you. I am sorry. While you are
5 looking at 20, also look at 21. I have one question about
6 those documents.

7 Did you actually, Mr. Wiercinski, submit written
8 information about yourself to the Social Security
9 Administration in support of your application for benefits.

10 A At this time, I would like to seek the refuge behind the
11 Fifth Amendment and respectfully decline to answer this
12 question on the grounds it may incriminate me.

13 Q Was that information, Mr. Wiercinski, false? The
14 information you gave to Social Security was a narrative of your
15 life that was false, is that correct?

16 A At this time, I would like to seek refuge behind the Fifth
17 Amendment and respectfully decline to answer this question on
18 the ground that it may incriminate me.

19 Q Did Adam Jamroz ever loan you money?

20 A At this time, I would like to seek refuge behind the Fifth
21 Amendment and respectfully decline to answer this question on
22 the ground that it may incriminate me.

23 Q That was false, was it not?

24 A At this time, I would like to seek refuge behind the Fifth
25 Amendment and respectfully decline to answer this question on

1 the ground that it may incriminate me.

2 Q You communicated to the Social Security Administration
3 that information, meaning, that Adam Jamroz had loaned you
4 money, and that Adam Jamroz was suing you to get it back, all
5 of that is false, correct?

6 A At this time, I would like to seek refuge behind the Fifth
7 Amendment and respectfully decline to answer this question on
8 the ground that it may incriminate me.

9 Q Immigration never submitted documents in the name of Adam
10 Jamroz to the Immigration Naturalization Service?

11 A No.

12 Q Did you ever sign Adam Jamroz's name to a document that
13 went to the INS?

14 A At this time, I would like to seek the refuge behind the
15 Fifth Amendment and I respectfully decline to answer this
16 question on the ground that it may incriminate me.

17 Q When you signed his name, you knew you were submitting a
18 document to the INS that was forged?

19 A At this time, I would like to seek the refuge behind the
20 Fifth Amendment and respectfully decline to answer this
21 question on the ground that it may incriminate me.

22 Q When you went to see the therapist at the Jewish Board --
23 you said you went to see the therapist?

24 A Yes.

25 Q Did you ask that therapist whether that therapist could

1 tie -- somehow tie your emotional injuries to this litigation?

2 A I told her about my lawsuit, being fired. And I told her
3 about my symptoms. And that was it.

4 Q Did you ask her to see if she could tie -- you know, be
5 able to tie it to the litigation?

6 A No, I don't think so.

7 Q I ask you to look, and this is just to refresh your
8 recollection, if it does, Exhibit 28. I'd ask -- just the
9 first page, Mr. Wiercinski. And I'm not going to read any
10 portion of the document. This is just for your benefit so you
11 can refresh your recollection.

12 Do you see the paragraph in the middle.

13 A Yes, I do.

14 Q Just take a moment to read that to yourself?

15 A Yes, I recall it. I see it.

16 Q Does that refresh your recollection at all that you asked
17 the therapist to tie or attempt to tie your emotional injuries
18 to this litigation?

19 A If I said so, it's in writing, it may have happened.

20 Q Did you tell the therapist that you were referred by the
21 judge?

22 A I wasn't present when the judge spoke to my former partner
23 during the conference that I've had. But from what my attorney
24 told her, it was just to advise me to get a checkup for my
25 conditions. It was the judge doing the thing of the Department

1 of Human Rights, that she advised my attorney to get me checked
2 up. I wasn't present at that hearing so I don't know if the
3 judge said that. But from what my attorney told me, that was
4 the case.

5 Q So you're referring not to any judge in this courthouse.
6 You're referring to the Division of Human Rights judge?

7 A Yes, I think so.

8 Q That judge, according to you, asked you to be checked out?

9 A According to my former attorney.

10 Q Do you have any understanding why the judge would ask you
11 to get checked out by a therapist?

12 A I have no clue.

13 Q Do you know who Adam Bass is?

14 A At this time, I would like to seek the refuge behind the
15 Fifth Amendment and respectfully decline to answer that
16 question on the ground that it may incriminate me.

17 Q For some reason you changed your name to him, correct?

18 A No, I did not.

19 Q In 2002, Mr. Wiercinski, were you transferred to the night
20 shift at Mangia?

21 A I believe this is what happened, although I don't remember
22 exactly the date.

23 THE COURT: Is the answer yes?

24 THE WITNESS: Yes.

25 Q When you were transferred, you asked for that transfer,

1 correct?

2 A Yes.

3 Q You asked for that transfer in 2002 despite the fact that
4 Mr. Zbozien was working that shift?

5 A Yes.

6 Q At this point, Mr. Zbozien had, according to you, already
7 subjected you to years of harassment, correct?

8 A Yes.

9 Q But you still wanted to be transferred to his night shift,
10 correct?

11 A Yes.

12 Q Today --

13 MR. D. KAISER: May I have a moment to speak to
14 counsel, Your Honor?

15 THE COURT: Yes.

16 (Whereupon counsel confer.)

17 MR. D. KAISER: That is all that I have, Your Honor.

18 THE COURT: We will take our mid afternoon recess.

19 Let's take a mid afternoon recess. Ten minutes or so.

20 (Whereupon the jury leaves the courtroom at 3:05 p.m.)

21 MR. MORIARTY: Your Honor.

22 THE COURT: We will resume in about ten minutes.

23 (Recess taken.)

24 (Matter continued on the next page.)

25

1 (In open court.)

2 THE CLERK: Please be seated.

3 MR. BLIT: After we do the redirect, we are not going
4 to have any more witnesses for today. They are going to all be
5 here tomorrow. We were able to get a Polish translator for
6 tomorrow morning at 9:30.

7 THE COURT: Get the jury.

8 (Jury enters.)

9 THE COURT: We have some redirect, Mr. Moriarty?

10 MR. MORIARTY: Yes, your Honor.

11 THE COURT: Have your witness come back here.

12 Please be seated.

13 REDIRECT EXAMINATION

14 BY MR. MORIARTY:

15 Q Mr. Wiercinski, just a couple more questions.

16 Just to clarify, this lawsuit that you brought is
17 against Mangia 57 and not Mangia 48, correct?

18 A That's correct.

19 Q And the incident that Mr. Kaiser brought up about
20 Mr. Lipski and yourself, did that incident happen while you
21 were working for Mangia 57 or Mangia 48?

22 A Mangia 48.

23 Q When you first testified this morning and you were
24 discussing issues about the harassment in the workplace, you
25 left out that incident.

1 Why did you leave that incident out?

2 A Are you referring to Mr. --

3 Q No. The incident with Mr. Lipski?

4 A With Mr. Lipski at Mangia 48 Street?

5 Q Correct, yes.

6 A Because it was an isolated incident. It happened only one
7 time.

8 Q Just to clarify, you were working for Mangia 48 at that
9 time, correct?

10 A Yes.

11 Q And the termination that Mr. Kaiser discussed in 1999, who
12 were you working for at that time?

13 A Mangia 48 Street.

14 Q So that's a different entity than the entity you are suing
15 today, correct?

16 A That's right.

17 Q Okay. On the day you first met Artur Zbozien, which you
18 described and which Mr. Kaiser reiterated, how long had you
19 been working for Mangia at that time?

20 A Must have been like 15 years.

21 Q Okay. You said -- I believe you stated in your testimony
22 that you -- everyone knew that you were Jewish at that time you
23 met Mr. Zbozien.

24 A Yes.

25 Q Why do you think?

1 A Because everybody knew everybody at Mangia, especially
2 people that worked for that period of time. So in a way I was
3 at Mangia 57 at that time. They knew who was at Mangia 48
4 Street. We never knew each other personally, like I was
5 shaking hands with the guy, but they knew who I was and I knew
6 who they were.

7 Q Okay, and one final point.

8 Mr. Kaiser mentioned that you requested transfer to
9 the night shift in 2002, I believe.

10 A Yes.

11 Q Why did you request that transfer?

12 A Because there was more money to be made, and I wanted to
13 make extra money.

14 Q What did you mean? Why was there more money to be made?

15 A Extra couple of hours and during the dinner shift it was
16 relatively busy and I was hoping to make more money.

17 Q So did that transfer actually give you more hours of work
18 during the week?

19 A Yes, ten hours plus extra shift means extra tips. So it
20 was for financial gain obviously.

21 Q That was the reason you requested the transfer?

22 A Yes.

23 MR. MORIARTY: No further questions.

24 MR. DANIEL KAISER: I have just one recross.

25 THE COURT: Please.

1 MR. DANIEL KAISER: May I approach the witness?

2 THE COURT: You may.

3 RECROSS-EXAMINATION

4 BY MR. DANIEL KAISER:

5 Q I would ask that you look, Mr. Wiercinski, at the first
6 tab of that document.

7 THE COURT: What document are you referring to?

8 MR. DANIEL KAISER: I'm sorry. It's the first tab in
9 the book. It's the filed complaint. I'm just asking him to
10 look at it to refresh his recollection, your Honor.

11 A Yes.

12 Q Can you go to page 7 of that document.

13 First of all, do you recognize that as the complaint
14 you filed in this lawsuit?

15 A Yes.

16 Q Can you go to page 7.

17 A Yes.

18 Q I folded it over for you so it's easy for you to see.

19 Do you see paragraph 36?

20 A Yes.

21 Q And 37?

22 A Yep.

23 Q So in your -- when you brought this lawsuit and filed a
24 complaint you specifically talked about the firing by
25 Mr. Lipski, correct?

1 A Yes.

2 Q So that you at that time seemed to have envisioned that as
3 part of your allegations in this case, correct?

4 A Yes.

5 Q And you didn't leave that out because it was Mangia 57
6 that you were suing, were you?

7 A We -- it was my previous attorney. We dismissed all the
8 charges against former Mangia entity and we only suing
9 Mangia 57. This attorney's name is Mr. Warshawsky, sitting out
10 there. He can clarify this. We dismissed all the other
11 charges against individuals and other Mangia entities and we
12 left Mangia 57.

13 MR. DANIEL KAISER: That's all I have. Thank you.

14 THE COURT: Nothing further. You are excused. Thank
15 you.

16 Now, I'm told that this is as far as we can go today.
17 So we will recess for the day. We will resume tomorrow at
18 10 o'clock. I want to thank you in advance for being prompt
19 tomorrow morning.

20 Before I release you for today, over the past few
21 years, given the explosion of all of the communication
22 developments that have taken place with iPhones, iPads,
23 computers, and so on, problems have arisen from time to time in
24 this and other courts during the course of jury trials. You
25 heard me say during the preliminary remarks that your

1 determination of the facts should be based entirely on the
2 evidence in this case.

3 Everything that you determine regarding the facts and
4 other things concerning this case are things that you have
5 learned during your jury service here in the courtroom. What
6 has happened from time to time -- not only in this court; I
7 have had experience with it in some other cases I tried -- but
8 courts around the country, jurors undertake their own
9 investigation. So they get on the Internet, and they start
10 Googling and getting information about the parties, the
11 lawyers, and so on, about this case. So they get information
12 based upon their surfacing through the Internet deliberately or
13 accidentally, which is information not obtained in this
14 courtroom, and for all you know much of it may be completely
15 incorrect.

16 So, we have been asked to instruct the jury don't do
17 your own investigations or research about anything concerning
18 this case or the parties in this case, if there is anything. I
19 don't know whether there is or not, but don't do it. Make your
20 determination when you are called upon to do it based only upon
21 what you have learned here in the courtroom. Okay.

22 Thank you very much. I will see you tomorrow morning.
23 Thanks for being prompt tomorrow.

24 (Jury exits.)

25 THE COURT: Who is your next witness going to be?

1 MR. BLIT: We have three witnesses tomorrow. I'm not
2 sure exactly who we are going to put on first.

3 THE COURT: Who are they?

4 MR. MORIARTY: Your Honor, Marian Krajewski, Martin
5 Swiderski, and Jaroslaw Ubowski.

6 THE COURT: All right. Again, I would suggest you
7 give some serious thought to what I said to you a few minutes
8 ago. This is a very interesting and serious question arising
9 from this lawsuit.

10 I will see you tomorrow at 10 o'clock.

11 (Proceedings adjourned to Tuesday, October 22, 2013 at
12 10:00 a.m.)

13 o o o

14 I hereby certify that the foregoing is a true and accurate
15 transcript from my notes in these proceedings.

16 _____
MICHELE NARDONE, CSR, RPR, CRR - Official Court Reporter

17 I hereby certify that the foregoing is a true and accurate
18 transcript from my notes in this proceeding.

19 _____
RONALD E. TOLKIN, RPR, RMR, CRR - Official Court Reporter

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MICHELE NARDONE, CSR, RPR, CRR -- Official Court Reporter

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