

1 State of Florida)
2):ss Judge Greene
3 County of Broward)
4

5 IN THE CIRCUIT COURT
6 OF THE 17TH JUDICIAL CIRCUIT,
7 IN AND FOR BROWARD COUNTY, FLORIDA
8 Case No.: 01-012933-12

9 LORRI C. HINTON and LONNIE W. HINTON, JR.,
10 individually and as natural parents and
11 guardians of LOREN HINTON, a minor,

12 Plaintiffs,

13 vs.

14 2331 ADAMS STREET CORP., a Florida Corporation,

15 Defendant.

16 EXCERPT of Proceedings had and taken before
17 The Honorable CHARLES M. GREENE, one of the Judges of
18 said Court, at Courtroom 850, Broward County
19 Courthouse, Fort Lauderdale, Broward County, Florida,
20 on Thursday, the 30th day of January, 2003, commencing
21 at the hour of 9:30 o'clock a.m., and being a JURY
22 TRIAL: CLOSING ARGUMENTS; MOTIONS; JURY QUESTION.

23 APPEARANCES:

24 ANDREW HAGGARD, Esquire,
25 and MICHAEL A. HAGGARD, Esquire,
Haggard, Parks, Haggard & Bologna, P.A.,
Appearing on behalf of the Plaintiffs.

JOHN F. KENNEDY, Esquire,
and PAUL L. NETTLETON, Esquire,
Carlton Fields, P.A.,
Appearing on behalf of the Defendant.

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2 APPEARANCES (cont.)

3
4 JIM C. BLECKE, Esquire,
5 Deutsch & Blumberg,
6 Co-counsel for Plaintiffs.)

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8 CLOSING ARGUMENTS PAGE

9 By Mr. Michael Haggard 3
10 By Mr. Nettleton 45
11 By Mr. Andy Haggard 84

12
13
14 JURY QUESTION 97
15
16
17
18
19
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21
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1 (Thereupon, the following proceedings were
2 had in the presence of the jury:)

3 * * * * *

4 THE COURT: Mr. Haggard, would you care to
5 proceed?

6 MR. MICHAEL HAGGARD: Yes, Judge. Thank you.
7 May it please the Court. Good morning.
8 We're finally here after two weeks.

9 I want to thank each and every one of you on
10 behalf of my father, on behalf of Lonnie Hinton
11 and Lorri Hinton and, most importantly, Loren
12 Hinton for your unbelievable attention these last
13 two weeks.

14 The reason I know that is the courthouse has
15 had to order several new note pads for all of you
16 because of your incredible attention, your
17 analyzation of the evidence and paying attention
18 to every word from the witness stand.

19 And it's very, very important that you do so,
20 ladies and gentlemen, because to put it simply,
21 the future of a four-and-a-half year old little
22 girl is in your hands.

23 You have an awesome huge responsibility and
24 you're going to get to that responsibility today
25 when you go back in that room to deliberate and

1 decide Loren Hinton's future.

2 I told you in opening statement that when a
3 company acts negligently, recklessly, gross
4 negligence and ignores repeated warnings, when
5 they act with the indifference towards human life,
6 when you have that picture on one side and you
7 have the other picture of a four-and-a-half year
8 old little, innocent, sweet girl, when those two
9 pictures collide, you have tragedy and catastrophe
10 and that is exactly what has happened in this
11 case.

12 No one within an earshot of this courtroom
13 would argue that this hasn't been an incredible
14 tragedy and that it could have been easily, easily
15 prevented.

16 This case is about a negligently maintained
17 pool gate fence. It is that simple, ladies and
18 gentlemen. We have the burden of proof by the
19 preponderance of the evidence to prove this, which
20 is what you have seen for two weeks.

21 Let me go through four or five points. If
22 you remember back on Tuesday, the 21st of January
23 when we started, I told you that we would prove
24 several, several things.

25 One: This pool gate was negligently

1 maintained on the day of the incident and you have
2 heard in the months before.

3 Frank Griseau, the manager of 2331 Adams
4 Street Corporation, got on that stand and
5 everything he says the Judge will instruct you
6 they are responsible for. And he said, and I use
7 his words and his words only, four to five times a
8 day I found this gate totally destroyed.

9 Ladies and gentlemen, that is negligence by
10 itself and alone. They were warned by seven
11 different tenants: Gladys Archila, Janet Pinero,
12 Richard Pinero, Marta Irabetta (phonetic), Renee
13 Cathery (phonetic), Paul Thibalt (phonetic), Nancy
14 Goldin, all warned Frank Griseau, others warned
15 Andy Finkelberg that this gate is going to kill a
16 little child.

17 They did nothing about it. They broke the
18 law, ladies and gentlemen. Pool gates and fences
19 have to securely secure the area. That's their
20 whole purpose. This gate in these pictures as you
21 can tell certainly does not.

22 You heard that Frank Griseau, the manager who
23 lived next door to the Hinton's, he never, ever,
24 ever warned them of this dangerous condition
25 ever.

1 And ladies and gentlemen, you paid attention
2 to that because you asked each and every witness,
3 different jurors, did you ever tell Lonnie Hinton,
4 did you ever tell Lorri Hinton. You asked that of
5 each witness and every witness said no, no. Frank
6 said no. That would have prevented this
7 incident.

8 They never corrected, never fixed this gate
9 permanently. And let me tell you something and
10 you know this, Loren Hinton pays for it every
11 minute of every day and there is no dispute on
12 that.

13 You will first decide in this case, the first
14 question posed to you will be did they fail to
15 maintain this pool gate. Ladies and gentlemen,
16 the answer is simple. You could have decided that
17 issue the first morning of testimony.

18 When Gladys Archila and the Pineros came in
19 and said this is how it looked for several months,
20 we told Frank Griseau and he was never outside
21 fixing it.

22 And you know what? If he was outside fixing
23 it temporarily, which he said that's all he would
24 do is straighten the pole up, he wasn't
25 successful. He didn't correct a dangerous

1 condition. That is obvious.

2 Everybody has testified, at least six
3 witnesses, that this is how it looked on the day,
4 both before and after with all the police crime
5 scene tape. There is no question about it.

6 Well, what is negligence, ladies and
7 gentlemen, because you're going to be deciding a
8 couple different issues on liability and the first
9 one I'll humbly submit to you is simple.

10 Negligence is the failure to use reasonable
11 care. Reasonable care is that degree of care
12 which a reasonably careful person would use under
13 like circumstances.

14 You're going to have this back with you in
15 the deliberation room and Judge Greene is going to
16 read it to you.

17 There is no question that they were
18 negligent. They never corrected this condition
19 permanently. That would have absolutely prevented
20 this incident. If it's padlocked, because they
21 didn't want to spend the money which we'll get
22 into, or if they fixed it this would have never
23 happened. And they never did that, ladies and
24 gentlemen.

25 Judge Greene will instruct you they're

1 responsible for their managers and their
2 employees. A number of questions were asked by
3 the jurors: Is so and so an employee, Frank
4 Griseau? Every time, yes, yes, yes. The
5 Finkelbergs? Yes, yes, yes. The Judge will
6 instruct you on that. And he never, never fixed
7 it.

8 Negligence was proven in this case by one of
9 your all's questions. I'm not sure if it was just
10 one juror or several jurors. But the question was
11 asked to all Finkelbergs and Frank Griseau: In
12 these pictures does the gate appear to you to be
13 in working order?

14 That was one of your questions. Do you
15 remember the answers? I think all of you wrote it
16 down. Each one of them said the obvious answer:
17 No, it does not. Obviously.

18 This is documented proof, ladies and
19 gentlemen. I'll get to the defenses on this and
20 I'll tell you from the outset they are desperate,
21 the defense.

22 The honorable thing, the accountable thing to
23 do would be to come in this courtroom and say we
24 had a bad gate and look at these parents and say
25 two words: We're sorry.

1 But no, we had to talk about vandalism. We
2 had to talk about Frank trying to fix it. Ladies
3 and gentlemen, that is negligence.

4 And you know what? The bad tenants -- and I
5 think you all asked a perfect question: Were the
6 Hintons bad tenants? And Frank Griseau, in spite
7 of everything else he tried to get out of, said
8 no, they were not.

9 But I guarantee you one thing, the checks
10 that my dad went over with Andy Finkelberg, they
11 cashed the checks of those tenants they had a
12 problem with. They took those right to the bank.
13 They didn't have a problem with that. They fixed
14 up all those apartments to paint them, fixed those
15 refrigerators so they could rent it out.

16 They almost had a little girl one month
17 before drown in this pool, one month before the
18 incident and they knew about it and they did
19 nothing.

20 Why wait to fix it? Why wait till we have
21 the money? Well, isn't it interesting when some
22 of the Finkelbergs get up here and testified, oh,
23 we fixed everything. \$50 wouldn't be a problem.
24 We did an \$8,000 plumbing job. That was no
25 problem.

1 Well, then fix the fence, ladies and
2 gentlemen. Go one mile to Home Depot and install
3 what the law requires for under \$50 and we're
4 never here. And more importantly, Loren Hinton's
5 life hasn't been devastated for \$50.

6 The other reason: Let's wait till after the
7 summer months. Let's leave this gate open. This
8 is Frank Griseau's testimony and Andy Finkelberg's
9 testimony. Let's wait till after the summer
10 months when everybody in the world knows people
11 use pools as much. That's when they use the
12 pools. Let's just wait.

13 They would have left it like this, ladies and
14 gentlemen. It doesn't matter. Let's just keep
15 waiting. That is absolute negligence.

16 They also tried to say, Frank Griseau -- and
17 if you remember, I had to go over this with him
18 several times and the defense continued to say
19 it -- well, it wasn't a safety concern to him when
20 he fixed it.

21 Well, it should have been. Does anybody look
22 at this and not know that this is a safety hazard,
23 ladies and gentlemen?

24 He said he was more concerned with the kids
25 slipping and falling on the pool deck than a

1 drowning. That's what he testified to.

2 Then when he was impeached with his sworn
3 deposition that was taken three months after this
4 incident, he was reminded that he said, well, the
5 reason I fixed it was I had my own
6 three-and-a-half year old who runs around in the
7 apartment complex with all the other neighbors,
8 which was the standard, which was the
9 circumstances of the neighborhood and we'll talk
10 about that, and he wanted to fix it because of
11 other children because he knew they could drown.

12 That is safety, ladies and gentlemen. That
13 is the definition of it. But instead of getting
14 up there and taking the honorable approach and
15 saying I knew it was safety, I knew it was safety
16 and they just didn't get it done for me, they have
17 to answer like that.

18 And you saw what happened yesterday which I
19 term desperation day for the defense yesterday.
20 They bring in Debra Haase, whose husband had
21 passed away, who she had told everyone involved in
22 the case she didn't remember what time she was
23 outside. She said I was outside. I can't
24 remember what time.

25 Lonnie Hinton said she was outside. Ricardo

1 Pinero said she was outside. Lorri Hinton said
2 she was outside. Mrs. Haase can't remember what
3 time a year-and-a-half ago, shortly after her
4 husband passed away.

5 And Mr. Kennedy, do you remember this, told
6 you in opening statement no one can find Debra
7 Haase. No one can find her. And that night when
8 we got done, and I'm sure you all remember because
9 you have been getting done late every night, 5:15
10 he was on the phone with her trying to get -- and
11 I'm using Mr. Kennedy's words -- her to work with
12 me, work with me.

13 That was supposed to be a bombshell
14 yesterday, ladies and gentleman, according to the
15 defense. And let me tell you something, it was
16 desperation, absolute desperation because they
17 have no defenses. This case is that simple.

18 The last question that you will answer on the
19 verdict form, ladies and gentlemen, is whether the
20 Defendant's conduct rises to the level of punitive
21 damages.

22 Remember, the burden of proof for the
23 Plaintiffs on the issue of negligence is like a
24 seesaw, the preponderance of the evidence. Did we
25 tip the scales that much on the first question.

1 The proof is overwhelming.

2 The issue of punitive damages is a higher
3 standard, clear and convincing evidence, not
4 beyond a reasonable doubt but clear and convincing
5 evidence, ladies and gentleman. And yes, the
6 evidence, it is conclusive, is that they are
7 responsible for punitive damages.

8 Let's go through it. Number one: -- I
9 apologize because it says self-locking gates and
10 we have talked about this a lot, so I'm going to
11 put the code next to it -- Was the Adams Street
12 Corporation in compliance with the Hollywood Code
13 of Ordinance requiring all pool areas to be
14 secured with self-latching and self-closing
15 gates?

16 The answer is absolutely not. How do we know
17 that? Everyone has said in that condition it
18 would not latch. It would not close. You have
19 seen the pictures. You will have them in
20 evidence. It would not close.

21 This corporation broke the law and I want to
22 talk about what the Defendants tried to do with
23 you all here. Do you remember Frank Griseau, an
24 inspection report on May 14, the day before, you
25 remember this?

1 Mr. Griseau, what has the testimony been
2 about that document from two people. Jerry
3 Dworkin, one of the top aquatic specialists in the
4 company: Has nothing to do with pools, nothing to
5 do with pools.

6 How about Andy Finkelberg? Do you remember
7 his testimony when my dad got up and said, Please
8 tell us why defense counsel asked you about this
9 document which has nothing to do with pools. And
10 Andy Finkelberg shrugged and said, I have no
11 idea.

12 Why would defense counsel be doing that,
13 ladies and gentlemen? Why? Why would they show
14 an inspection report from nine months before that
15 the pool gate or the pool presumably was fine?

16 Ladies and gentlemen, that proves one thing
17 and one thing very clearly. Once these people
18 bought that complex the pool gate went in a
19 horrible condition. That proves that they are
20 absolutely responsible.

21 They would be responsible with starting that
22 under the prior owner anyways under the law but
23 this just proves one thing: The change in
24 ownership is the reason that that pool gate went
25 to the condition it did.

1 By the way, none of those documents have been
2 admitted into evidence because of their absolute
3 irrelevance, none of them, because under the laws
4 the Judge has decided they will not come back.
5 You have to question why and what someone's trying
6 to do with your common sense on that issue.

7 Did they ever effectively respond to tenant
8 complaints concerning the broken pool gate in its
9 unsafe condition?

10 You know, Ricardo Pinero saved Loren Hinton's
11 life. He saved a little girl's life one month
12 before. We have learned a lot about heros in this
13 country over the last couple years.

14 And the defense gets up and cross-examines
15 him on the fact that Frank wanted to evict him
16 because the sewage is all over his house.

17 Why are we talking to Ricardo Pinero about
18 that? You saw how incensed Ricardo Pinero got
19 when this man saved her life. And the only reason
20 they were mad at him is because he told them you
21 did this to Loren. I told you one month before.

22 You remember this? When I got up to ask him
23 the final question, Ricardo Pinero, he told Frank
24 right after this accident, It's your fault. I
25 told you to fix it after the little girl almost

1 fell in one month before. Why didn't you do it?

2 Did the Adams Street Corporation post
3 warnings to ensure that all residents were made
4 aware of their unsafe pool area?

5 Ladies and gentlemen, we know that they're
6 negligent with any one of these. Punitive damages
7 are established by a number of these.

8 Put a warning in the common areas and go to
9 Kinko's and run off 30 copies and padlock that
10 gate and Loren Hinton is in school today with her
11 friends. It costs about \$3 to run off these
12 copies. And now we're dealing with a girl whose
13 life will never ever be the same.

14 Did they take steps to prevent this dangerous
15 condition? I'm sure the defense will get up and
16 say, yes, he tried to fix it. Well, you have to
17 fix it, that's the law, and they never did.

18 Did they follow any procedures for
19 maintenance, inspection, supervision? They had
20 none. The owners are out of the country. Frank
21 says he tells Andy. Andy Finkelberg never tells
22 his father.

23 And what did his father say? His father said
24 if somebody would have told me, I would have fixed
25 it. And if they didn't tell me, that was

1 reckless. That was his testimony, the Defendant
2 in this case.

3 And that was also the testimony of the only
4 aquatics safety specialist you heard from who
5 consults with all of the health codes around the
6 country to ensure the gates are safe for one
7 reason, one reason only: To stop accidents like
8 these that keep occurring.

9 Did Adams Street act responsibly by
10 permitting a toddler slide to remain within the
11 pool area?

12 Ladies and gentlemen, the most telling
13 picture in this case is the picture -- and I'm
14 going to show it to you in a little bit -- with
15 that slide, Loren Hinton's shoes and that broken
16 gate. It tells it all.

17 You're going to have that slide. You're
18 going to have that slide back in evidence. Why
19 would you have a one to three year old Little Tyke
20 slide leading right into the water? Especially
21 when you were told one month before that a little
22 girl was standing next to it by herself and almost
23 went in the pool. Why?

24 Ladies and gentlemen, the last question on
25 this verdict form is are they liable for punitive

1 damages? The evidence supports it. You are sworn
2 to apply the evidence to the law. That is your
3 duty and we are confident that you will follow
4 it.

5 Despite this overwhelming evidence, their
6 notice, their knowledge, the warnings and their
7 own manager's words it's a destroyed condition,
8 what do they seek to do, ladies and gentlemen?

9 They seek to blame the father of this
10 four-and-a-half year old child. They have nothing
11 else to do. They want to play the blame game in
12 this case. That's what they want to do.

13 And let me tell you something, it is not a
14 game. This is the most serious issue that you
15 will decide for a couple reasons, ladies and
16 gentlemen. Let me explain why.

17 In this verdict form there will be
18 percentages that you, if you decide that Lonnie
19 Hinton is one percent negligent, that you will
20 have to break down a percentage. I don't think
21 you're ever going to get to that. The law has no
22 basis for it but I want to tell you the effects of
23 it.

24 If you find Lonnie five percent at fault,
25 five percent of Loren's damages are reduced. They

1 want a discount --

2 MR. NETTLETON: Your Honor, objection. I
3 think he's misstating that.

4 THE COURT: Overruled.

5 MR. MICHAEL HAGGARD: They came in here in
6 opening statement and they want a discount, ladies
7 and gentlemen.

8 I'm going to tell you another thing and you
9 heard this on the stand from Lonnie and Loren. If
10 you find Lonnie Hinton, where there is absolutely
11 evidence of no negligence and I'll go over that
12 instruction again, one percent negligent when he
13 knew nothing about the pool gate --

14 You know he knew nothing because the next day
15 what did he do? Who did he go up to as anyone
16 would? He went right up to Frank Griseau, and it
17 was not a nice conversation. How could you not
18 tell me? How did you leave me in the dark? He
19 knew nothing about this.

20 Here's the evidence in the case, ladies and
21 gentlemen. Here's the evidence. Every witness on
22 that stand who lived in that apartment complex
23 told you that they watch each other's kids; that
24 they do not need to say when a phone rings, hey,
25 I'm going to get the phone, please watch Loren for

1 the next one to two minutes.

2 They say I'm going in and look at someone and
3 they - and that person watches their child.
4 Michelle Hillerio said it. Gladys Archila said
5 it. The Pineros said it. Nancy Goldin said it.

6 The burden of proof on this issue is the
7 Defendants. They have to tip those scales for you
8 to put one percent of negligence on Lonnie
9 Hinton.

10 Lonnie Hinton was cooking downstairs in the
11 play area while his kids were playing
12 hide-and-go-seek. I would submit to you that that
13 occurs in every city in the United States of
14 America. Every child has played hide-and-go-seek
15 and every family has barbecued. Not as much as
16 Lonnie Hinton. He liked to barbecue.

17 The testimony is there's always kids and
18 older kids playing in that apartment complex. The
19 testimony is that there's always neighbors
20 outside.

21 They bring in their bombshell witness,
22 Mrs. Haase, who they try to get her to work with
23 them and they try to, as Miss Haase said, be very,
24 very insistent about what I say. And she says I
25 just can't remember what time I was outside but I

1 was outside.

2 Ricardo Pinero saw Lonnie barbecuing and
3 named Candace Green, Marta, Milly, all of these
4 people that were outside.

5 Ladies and gentlemen, Lonnie Hinton turned to
6 his children and said, I'm going to take the meat
7 upstairs. Finish with your buddies and I'm coming
8 back to get you because we got to go eat.

9 He walked up those stairs. He walked down to
10 his apartment. He opened the door. He put the
11 food down. He kissed his wife and he started
12 heading out the door when the screaming occurred.

13 That is a couple minutes, ladies and
14 gentlemen, while she's down with the neighbors and
15 the children, which is the absolute standard under
16 the circumstances that everyone in the apartment
17 complex has told you about.

18 Frank told you about it, do you remember?
19 How many children play in that area? They play
20 all the time. What games do they play,
21 Mr. Griseau? They play hide-and-go-seek. Does
22 everybody play around in the common areas? Yes.

23 The defense keeps saying, well, a two year
24 and ten month old could open -- Well, actually
25 they never asked this question. They say could

1 open a door.

2 Here's the doors that we're talking about to
3 the complex. You will have this in evidence.
4 It's a nine foot steel door. Loren couldn't open
5 that, ladies and gentlemen. She was two years and
6 ten months. Plus she's playing with all her
7 neighbors and friends.

8 You have to ask yourself why they never cared
9 to ask this question. You know, before you seek
10 to blame a father in this case, don't you have to
11 warn him? Doesn't there have to be a level
12 playing field?

13 If you have all that knowledge and you
14 consciously make the decision not to warn anyone,
15 ladies and gentlemen, how do you then seek to
16 blame the father for this tragedy?

17 And I will tell you one last thing, ladies
18 and gentlemen, on this issue. Two last things.
19 There's absolutely no evidence at all to suggest
20 this and if you put one percent on Lonnie Hinton,
21 as he testified on that stand, he will live with
22 that for the rest of his life.

23 And all we ask is that you follow the law and
24 apply the evidence in this case to the law. Some
25 of you, all of us, we have our own standards for

1 our children and we have different standards.
2 This was the Adams Street complex.

3 The evidence in this case is clear as to what
4 under the like circumstances were. You will see
5 that, listen to that negligence. Some of us don't
6 let our children be baby-sat till -- or never.

7 That's not the standard, ladies and
8 gentlemen. You have to apply the law and the
9 evidence in this case. And what you have to do on
10 this issue is you have to compare because what
11 this is called is comparative negligence.

12 They are trying to say Lonnie is
13 comparatively negligent. There is no issue on
14 whether they are negligent. Compare the two.

15 Put that picture in one hand of everything
16 that Adams Street did or, more importantly, did
17 not do, the warnings, the slide, the broken
18 condition they knew about, all of that on one side
19 where Lonnie didn't know anything about it and did
20 what every other parent does as reasonable.

21 You would need a thousand percent, ladies and
22 gentlemen, because their negligence doesn't fit
23 into a hundred. It's so bad. And when you
24 compare it, I'm confident as you told us in voir
25 dire you can do the job.

1 Can you apply the evidence to the law? And
2 we are confident that you will do so and find zero
3 for Lonnie Hinton, that he was not negligent at
4 all in this case.

5 The pool gate, ladies and gentlemen, is for
6 one purpose and one purpose only: To prevent
7 little kids from getting in. Why would we have
8 pool gate laws all over this country if little
9 kids aren't directly supervised eye-to-eye all the
10 time? Why would we have those laws?

11 They're for this exact situation and
12 situations like this. That's what the law is for
13 and your job, as you well know, is to follow that
14 law.

15 I want to turn your attention, ladies and
16 gentlemen, to the damages in this case. The
17 damages in this case, as I've told you in opening
18 statement, are perhaps the most devastating
19 damages that can befall a human being.

20 There are some horrible injuries out there
21 that can happen to people. We have heard and seen
22 of people who become paralyzed, quadriplegics. We
23 see Christopher Reeve and his improvement on TV
24 and he can communicate. He can do certain things.

25 Loren's injury is not even on that level,

1 ladies and gentlemen. She is a prisoner in her
2 own body. She is trapped in her own body. She
3 has been that way since May 15 of 2001, for the
4 last 20 months. She is that way today in her
5 house and she will be like that for the rest of
6 her life.

7 Your job in this case on the issue of damages
8 is to somehow compensate Loren Hinton for all, all
9 of her damages. The law in Florida on damages has
10 been established for hundreds of years and it is
11 very, very simple and is created for one purpose:
12 So that you can look at a devastatingly injured
13 child like Loren Hinton and somehow within your
14 power make her whole.

15 I talked to you in opening statement, ladies
16 and gentlemen, if you could -- Juries are so
17 powerful. You are going to affect this little
18 girl's life for the rest of her years. But if you
19 could, you would simply blink your eyes, make a
20 wish and have her go back to May 15, 2001 before
21 this tragedy. But you cannot. But you can make a
22 difference. You can make a big difference with
23 your verdict today regarding Loren Hinton.

24 We had the burden of proof, preponderance of
25 the evidence on each issue of damages and we

1 wholly embrace it, ladies and gentlemen. We
2 wholly embrace it because we have proven each
3 element of damages by the preponderance of
4 evidence and I will go over them with you.

5 The economic damages, past economics, you
6 will receive the past medical bills in evidence.
7 They are \$717,000. And when I go over the verdict
8 form with you at the end of my closing argument, I
9 will show you each question. But they are in
10 evidence. They are not disputed, ladies and
11 gentlemen, and you will have the exact number to
12 put on that verdict form.

13 Let's talk about the future medical expenses
14 in this case. The Life Care Plan is absolutely
15 un rebutted. Loren Hinton is entitled to every
16 single element on that Life Care Plan that is
17 included in Doctor Raffa's economic analysis.
18 There is no dispute on that.

19 And one of the jurors asked, well, is she
20 entitled to it regardless of this issue - and I
21 will get to this issue - of life expectancy and it
22 was answered yes.

23 We also know most importantly, most
24 importantly that this is a bare essentials. We
25 heard during just these two weeks how much this

1 plan can change, how much her medical condition
2 can change at a moment's notice and all of those
3 things are not included in the plan.

4 You, however, are allowed to go above that
5 plan, ladies and gentlemen. You have heard of the
6 different complications. You have heard of
7 hospitalizations. You can apply that evidence to
8 this plan.

9 The future medical expenses in this case,
10 ladies and gentlemen, are around 42 million
11 dollars. And one of the jurors asked I think of
12 Doctor Cohen: What does the effect of moving from
13 Florida to California have on this plan? And I
14 have to tell you what an important question
15 because it absolutely affects the plan and we have
16 to consider that.

17 The defense got up and talked to Doctor Raffa
18 about what index he used to come up with what it
19 will be raised by California. Ladies and
20 gentlemen, go with whatever increase you think it
21 is: Five percent, ten percent, fifteen percent,
22 whatever it is.

23 But let me tell you this, ladies and
24 gentlemen, the reason the question was asked I
25 presume by one of the jurors is because everybody

1 knows California, Southern California is more
2 expensive than this area. Everyone knows that and
3 that has not been argued against.

4 But regardless of whether you accept the
5 twelve percent or you include all the different
6 things we talked about, ladies and gentlemen, the
7 economic damages in this case are undisputed. The
8 costs of medications, the costs of therapeutic
9 needs, the costs of surgery are undisputed.

10 And let me talk to you a little bit about
11 Doctor Raffa. He's a renowned economist, speaks
12 all over the country. The defense talked about
13 other economists. Well, where were they? There
14 are a number of economists that the Defendants
15 could have brought in here.

16 You know what they could have done? Could
17 have paid him \$28,000. They paid somebody else to
18 come in here. But they couldn't find an economist
19 in the country to take \$28,000 and come in here
20 and rebut these numbers. You know why? Because
21 you can't.

22 Where's their life care planner? I mean, all
23 this is stipulated to, ladies and gentlemen. All
24 this is stipulated to. And whether you think it's
25 five percent or not, you all who have raised all

1 the questions about different things, why is it
2 not in the plan, is it going to change, you have
3 one chance to do this. As we have talked about a
4 lot, we can't have you come back in five years.

5 This money that you award Loren Hinton, as
6 you have heard from the Court a stipulation, will
7 go into a guardianship account immediately. And
8 obviously it's a conservative account because you
9 cannot risk losing this money for this child.
10 It's administered by the Court.

11 And that is so important because that's why
12 we're talking about numbers that Doctor Raffa has
13 explained to you in detail that have to be
14 conservative because of the fact that she's a
15 child and the guardianship Court is dealing with
16 her.

17 They could have had an economist in here.
18 They didn't because the last thing in the world
19 the Defendants want, ladies and gentlemen, is an
20 economist to get on the stand and give you the
21 same exact numbers. This is undisputed, ladies
22 and gentlemen.

23 I think everybody has this number and we'll
24 go over it one more time.

25 Ladies and gentlemen, I want to talk to you

1 about an issue that has been raised. It is a
2 controversial issue. It is an issue that is
3 touchy to this family and I think to everybody in
4 this courtroom.

5 The evidence you have heard in this courtroom
6 overwhelmingly supports the fact that given
7 optimal care, Loren Hinton will live a normal life
8 expectancy. She deserves every chance in the
9 world and I think everybody agrees to that.

10 The defense listed a witness before ever
11 talking to him because they knew that he would
12 play ball. They brought in a witness yesterday by
13 the name of Doctor Kushner and, I have to be
14 honest with you, I don't know where to start on
15 how to deal with Doctor Kushner.

16 But I guess the first place might be the fact
17 that he absolutely suddenly within six months,
18 despite his 14 years he kept talking about of his
19 neurology practice, the last six months must have
20 been truly enlightening for this man because he
21 totally changed his sworn testimony six months
22 ago.

23 And I think one of the jurors asked the
24 question -- Everybody knows and you saw a picture
25 of this young boy, Lorenzo Peterson, the same

1 exact injury, the same exact condition as Loren
2 Hinton.

3 Doctor Kushner testified under sworn oath
4 that with optimal care, Lorenzo would live a
5 normal life expectancy six months ago.

6 Now, either one of two things happened: That
7 \$28,000 really got to Doctor Kushner or he swore
8 to tell the truth six months ago and he was
9 absolutely wrong. Either which way, there is no
10 conceivable way, ladies and gentlemen, that you
11 can give this man's testimony any credence.

12 His Honor instructed you that he was not
13 qualified, ladies and gentlemen, not qualified to
14 give a number of these opinions. And Lord knows,
15 he's given the opinion twice and one time he said
16 one thing and one time the next. That is not the
17 preponderance of the evidence.

18 Who did you hear from on the other side?
19 Doctor Lucy Cohen only treats severely disabled
20 kids. She's Loren's treating doctor. No one
21 hired her in this courtroom. She's her treating
22 doctor. She's with her. What was she paid,
23 ladies and gentlemen?

24 This man comes in here. I'm so glad I asked
25 him in recross because I would have left out the

1 \$13,000 that we didn't know about, \$28,000 to come
2 in here and change his opinion.

3 What did the respiratory therapist, physical
4 therapist, every person who deals with her
5 everyday for the last 20 months say? She's
6 rolling on command. You have seen that video.
7 You have seen it several times. And I'm sorry for
8 Doctor Kushner that Loren can't roll over quick
9 enough for him. I'm really sorry for him about
10 that.

11 You know, it seems like when every other
12 witness came in and looked at that tape, it was
13 like everybody in the courtroom was cheering for
14 this little girl. Come on, Loren, come on, do it,
15 do it.

16 She can't win with Doctor Kushner. She can't
17 win with him, ladies and gentlemen. And it would
18 be nothing short of a travesty if you all gave his
19 testimony any credence for two reasons: One, if
20 you do and you reduce her life expectancy five
21 years or ten years, Loren Hinton doesn't get that
22 medical care during that time.

23 And if you give him any credence, ladies and
24 gentlemen, then who knows what's going to happen
25 in that next courtroom with him. Maybe it's

1 \$50,000 then. He's hired by Firestone.

2 Ladies and gentlemen, this man has no
3 credibility. I don't know that any witness has
4 ever walked through those two doors with a bigger
5 cloud over his head than that man when he left
6 here yesterday.

7 Ladies and gentlemen, understand something.
8 The defense is arguing that she was hurt so bad,
9 reward us for it. Lower her medical bills.
10 Reward the Defendants. We hurt her so bad. We
11 hurt her so bad that she's going to die early.

12 There is no evidence of that, no evidence of
13 that in this case that she will. She deserves
14 every shot. And you can't come back here, ladies
15 and gentlemen. If you say that she was going to
16 die early in five, ten years, you can't come back
17 in 65 years to correct your decision. Base it on
18 the evidence.

19 By the way, Lorenzo Peterson, 16 years old
20 when this man gave his opinion. Life expectancy
21 is 62 years for an African American male. What is
22 the difference between Loren and Lorenzo?

23 When Doctor Kushner said, well, maybe I will
24 treat her in the future, I'll tell you one thing
25 beyond a reasonable doubt: Loren Hinton will

1 never see Doctor Kushner again. Thank God for
2 that.

3 Let's talk about the future earning capacity
4 because I think it's very interesting that the
5 defense has spent so much time on this, ladies and
6 gentlemen.

7 In this case we have seen the numbers. It's
8 a catastrophic case, make no mistake about it, and
9 you all know, you have known since voir dire this
10 is a gigantic damage case. There is no way around
11 it.

12 Why is the defense talking about the
13 difference between a Bachelor's degree and
14 Associate's degree, 700,000 or 1.4 million? Why?
15 Because they know she is going to be around at
16 that time. They know she's going to live that
17 long till the end of her life expectancy and her
18 work life expectancy.

19 Ladies and gentlemen, I'll tell you what. I
20 don't know if Loren would have gone to college. I
21 know one thing. These two right here would do
22 anything in the world to see Loren Hinton with a
23 cap and gown and throwing that in the air. I know
24 that, ladies and gentlemen.

25 And I know another thing. I don't like

1 studying all the time, college, but I'll tell you
2 what, when you get that test score back, that
3 accomplishment, I know Loren's never going to feel
4 that.

5 THE COURT: Fifteen minutes.

6 MR. MICHAEL HAGGARD: Yes, sir.

7 Ladies and gentlemen, we have suggested an
8 amount in the middle between the Associate's and
9 the Bachelor's degree and it is up to you. It is
10 up to you. One million dollars is the number we
11 chose between those two.

12 The non-economic damages, ladies and
13 gentlemen. You have to assess this little girl's
14 life now. You have to assess it at this point in
15 time. What has she lost? What has she lost,
16 ladies and gentlemen, over the last 18 months?

17 The past pain and suffering, the past mental
18 anguish and the loss of the capacity to enjoy
19 life. And I think you have to start with this
20 picture and you have to think back to when Loren
21 Hinton went through that gate.

22 You have to take yourself to that pool when
23 Loren was playing hide-and-seek. She ran to that
24 slide to hide from her friends. She went in that
25 water. You have to think about that.

1 You have to take yourself to that pool and
2 you have to think about the horrible thing that
3 happened next, when she lost oxygen, when she went
4 under water.

5 You have to think about her at that hospital
6 with the mechanical ventilator and you have to
7 think about the tremendous struggle over the last
8 20 months that this little girl has gone through.
9 That's the last 20 months.

10 I'm going to go to the verdict form because
11 I'm running out of time here. Let me go right to
12 the verdict form.

13 Ladies and gentlemen, you know the answer to
14 the first question is easy. They are absolutely
15 negligent.

16 Next, please.

17 I cannot state to you how important this is,
18 ladies and gentlemen. There's absolutely no
19 evidence of it, negligence on Lonnie Hinton, and
20 you know it. Everyone in this courtroom knows
21 it.

22 Next.

23 If you answer no to that second question, you
24 will not have to answer number three. But ladies
25 and gentlemen, there is no question. It's a

1 hundred percent. And think about the
2 ramifications if you find otherwise under
3 negligence.

4 Next.

5 These are the past medical bills. You will
6 have them in evidence. They are undisputed.

7 Next.

8 Those are the present value of the future
9 damages for medical expenses. You have that in
10 your note pads.

11 Next.

12 This is what we were talking about, the
13 present value of any future damages for lost
14 earning ability, ladies and gentlemen. You judge
15 Loren on that. That's your job. You judge Loren
16 Hinton on that and what her aspirations were.

17 Next.

18 Ladies and gentlemen, I want to talk to you
19 about pain and suffering in this case. We have
20 talked about the past pain and suffering and we
21 have taken you to the pool.

22 We heard about 1440 minutes in a day. That's
23 how long Loren is in pain, is suffering. And most
24 importantly, the only thing I agree with
25 Doctor Kushner on is that she has totally lost the

1 capacity to enjoy life.

2 There are 10,080 minutes in a week that this
3 little girl goes through what she goes through.
4 There are 524,000 minutes in a year. Ladies and
5 gentlemen, every minute of every year for the rest
6 of her life she is in the condition that you have
7 seen her in.

8 I was going to play you a couple clips of the
9 day-in-the-life. You have a video back there.
10 Please go over it again. It's only 14 minutes.
11 Ladies and gentlemen, it is a -- it doesn't give
12 it justice what she's going through.

13 524,000 minutes a year, we are asking for
14 under \$1 a year -- strike that -- \$1 a minute for
15 Loren Hinton, under that, for what she is going
16 through.

17 In the past, ladies and gentlemen, when you
18 take yourself to that pool and you think about
19 this little girl and you think about her -- and I
20 know it is difficult, I know it is horrible to
21 think about but you have to -- about her going
22 under that water, for the last 20 months this
23 incredible struggle that this sweet innocent child
24 has gone through, we have recommended the amount
25 of five million dollars in the past.

1 That is a recommendation for the past 20
2 months. You can give more, you can give less.
3 That is totally up to you. Your job is to somehow
4 assess her life. You have to do that under the
5 law.

6 Ladies and gentlemen, \$1 a minute or under \$1
7 a minute for the rest of her life. You will have
8 that United States Census Life Tables. 71 years
9 comes to 35 million dollars. And let me tell you
10 something, ladies and gentlemen, that's not a lot
11 of money comparatively.

12 If this was a commercial case, contracts case
13 and Boeing was in here with a 737 that got burned
14 up by a maintenance company, it would be 100
15 million dollars, 200 million dollars, 500 million
16 dollars.

17 Picasso, 200 million dollars.

18 There's a shortstop from right down the road
19 in Miami that plays baseball for the Texas
20 Rangers, 250 million dollars.

21 Let me tell you something very honestly and
22 very humbly, that doesn't even compare to Loren
23 Hinton. It doesn't even compare.

24 Ladies and gentlemen, Loren, you have to
25 think about what she's going to miss. She will

1 never have that first boyfriend. She will never
2 have that special time when someone tells you for
3 the first time that they love you.

4 She will never hear in a chapel with all her
5 friends and family that music when everybody
6 stands and she turns that corner with that
7 wonderful man to get married. She will never have
8 that.

9 And she has been robbed of the greatest gift
10 of all and that is having her own child. She will
11 never hear that child say the three most beautiful
12 words in the world, depending on if you're a mom
13 or dad: I love you, mommy. Ever.

14 And you have to take yourself into the
15 future, ladies and gentlemen, and I hesitate to
16 say this in front of these two, but there's going
17 to be a time where Loren is going to be all
18 alone. They're not going to be there anymore.
19 You have to think about that grown woman in that
20 state all alone.

21 That amount of money, ladies and gentlemen,
22 under the law in the State of Florida pales in
23 comparison to what this child is going to go
24 through every minute of her life.

25 We humbly, humbly suggest and it is up to

1 you, you can give more and you can give less but,
2 ladies and gentlemen, this injury is the worst
3 that can befall a human.

4 Next, Brian.

5 The next two questions are Lorri Hinton's
6 claims, Lorri and Lonnie, for the loss of her
7 companionship, the love, the society of their
8 child. My clients have directed me not to ask you
9 for a number. They have said to me and I have to
10 listen to them, take care of our daughter,
11 Michael. Take care of our daughter.

12 Under the law I have to tell you and you know
13 that they're suffering, suffering. The change in
14 their life is absolutely insurmountable. I am in
15 awe of these parents, the struggle that they go
16 through, the immense struggle they go through.

17 But they will not allow me to put a number up
18 there for you. That is your choice. You're going
19 to judge Lonnie, judge him here as well.

20 Next. Actually, Brian, that's okay. Both
21 those questions are for Lonnie and Lorri.

22 Ladies and gentlemen, when you go back in
23 that room, be strong. If you have convictions
24 about this case and I'll humbly say because we are
25 confident that this evidence has been

1 overwhelming, if you're on either side, be strong,
2 stay to your heart and discuss those issues with
3 your fellow jurors.

4 Because this case is so important for this
5 little girl. If you're shy, if it's not your
6 personality, fight. When I say, "fight," I mean
7 be strong because it is that important. It is
8 that important.

9 THE COURT: Five minutes.

10 MR. MICHAEL HAGGARD: Thank you, Judge.

11 They have robbed, taken Loren Hinton's
12 dreams. They have snatched her life away from
13 her, ladies and gentlemen.

14 Loren Hinton, this sweet four-and-a-half year
15 old angel, has one dream left. That dream is for
16 justice in this courtroom and the only people in
17 the world who can make Loren's dream come true is
18 you.

19 Thank you for your time.

20 THE COURT: Is the jury okay? Break?

21 I'm sorry. Okay. Restroom break and then
22 we'll start with the defense's closing.

23 (Thereupon, a recess was taken and the
24 following proceedings were had outside the
25 presence of the jury:)

1 MR. NETTLETON: Judge, I have a quick motion.

2 THE COURT: Okay. We've reconvened. We're
3 outside the presence of the jury. Counsel and
4 parties are present.

5 MR. NETTLETON: Your Honor, we need to move
6 for a mistrial at this point given the comment in
7 closing argument about the suggestion that if they
8 awarded her less money, that she would not get
9 medical care.

10 That's a misleading statement. It's not
11 true. There is no evidence that would support
12 that and it plays to the passions and prejudice of
13 the jury.

14 And I don't think it can be cured, so we'd
15 ask for a mistrial, Your Honor.

16 THE COURT: Response.

17 MR. MICHAEL HAGGARD: Judge, as we know,
18 there is no future collateral setoff rule
19 absolutely into the future. That very well
20 supports that that could happen and Your Honor has
21 instructed them on collateral setoff, so I think
22 it's pretty clear.

23 THE COURT: Number one, on the merits of your
24 motion it's denied.

25 Number two, it's denied because it's not

1 timely. Had you objected at the time, the Court
2 still would have denied the motion but, if
3 necessary and if it had been appropriate, which it
4 was not, then the Court could have addressed it in
5 the way of a curative possibly.

6 By not making a contemporaneous objection,
7 you have waived that objection and additionally
8 deprived the Court, had it been necessary which it
9 was not, of an ability to cure.

10 Bring in the jury.

11 THE BAILIFF: Jury entering the courtroom.

12 (Thereupon, the following proceedings were
13 had in the presence of the jury:)

14 THE COURT: Okay. Jury has returned.

15 And Mr. Nettleton, at this time would you
16 care to make your closing argument?

17 MR. NETTLETON: Thank you, Your Honor.

18 THE COURT: Before you do, let me just tell
19 the jury just in the way of housekeeping,
20 hopefully you all had a good break at that time
21 because what I would like to do is I would like to
22 get through the argument and then charge you and
23 then I will have your lunches brought into the
24 jury room.

25 Okay? Is that acceptable to everyone?

1 MR. NETTLETON: Thank you, Your Honor.

2 Good morning, ladies and gentlemen of the
3 jury. My name is Paul Nettleton. I haven't
4 spoken to you before. I want to join Mr. Haggard
5 in thanking you all very much for spending the
6 time and attention that you have.

7 I want to thank you also on behalf of my
8 clients. They appreciate your attention.
9 Everyone knows that jury duty is not an easy job.
10 It's tough and it's especially tough in this
11 case.

12 We've got a little girl here, Loren Hinton,
13 who has suffered a catastrophic injury. She's
14 never going to get better. There is no dispute on
15 that.

16 Everyone in this courtroom, the lawyers, the
17 court personnel, and I'm sure each one of you feel
18 extreme sympathy, compassion for this little
19 girl. That's understandable.

20 But the law that the Judge is going to
21 instruct you on requires you to look past that
22 emotion, to put that emotion aside, to look at the
23 facts objectively and to decide the case based on
24 the true facts as you find them, based on the law
25 he instructs you on.

1 Now, as Mr. Kennedy told you in opening
2 statement, we have never suggested and do not
3 suggest that the Hintons are bad parents, that
4 they don't love their children, that they don't
5 love them very much. That's never been an issue.

6 What is the issue? The issue is
7 responsibility: Responsibility of my clients in
8 terms of the property and the responsibility of
9 the parents in regard to the children.

10 In the end the issue that you're going to
11 have to decide is who is responsible, one of us,
12 both of us, and to what degree.

13 The lawyers' jobs are almost done.

14 Mr. Haggard will be getting up again to speak to
15 you one more time after I'm done and then we all
16 sit down and it's over for us and your job starts.

17 And we think we have had it tough gathering
18 all the evidence and getting it in here to present
19 to you, but it pales in comparison to what you
20 have facing you.

21 Now, we can point to the evidence we think is
22 important. We can point out what we believe are
23 conflicts in the evidence that you should
24 challenge. But in the end it's your decision as
25 to what evidence is important, what to believe,

1 what not to believe and to decide the case on the
2 merits.

3 There's two big questions that are
4 presented. What happened on that day on May 15,
5 2001 between 4:30 p.m. and 6:10 p.m.?

6 The other big question: What was the
7 condition of that fence and that gate that day,
8 the days and the weeks preceding it and what was
9 going on about it?

10 Now, you have heard a lot of comments during
11 the course of the trial about the fact that my
12 client is a corporation. That has been emphasized
13 throughout the trial. It's been emphasized in
14 some sense that a corporation is deserving of less
15 attention in a court of law.

16 Well, as the Judge will instruct you at the
17 end, a corporation and all other people stand
18 equal before the law and must be dealt with as
19 equals in a court of justice. But it's not just
20 that here that's a legal principle which sounds
21 good.

22 Mr. Haggard stood up here and told you that
23 your verdict's going to mean a lot to Mr. Hinton,
24 how you decide that negligence issue.

25 Well, it's going to mean a lot to my clients,

1 too. My clients, the so-called corporation, is a
2 family company owned by Roberto Finkelberg, Romina
3 Finkelberg, Alexandro Sorgente.

4 They've been sitting here for two weeks with
5 you as well listening to the evidence. You have
6 heard from the testimony how they got involved in
7 this property. Mr. Finkelberg wanted to assist
8 his daughter and his son-in-law in an investment.

9 They enlisted the aid of their son Andy who
10 had come to this country already. He was working
11 in real estate. He pointed out some property.
12 They thought it would be a good investment, the
13 Tropi-Sun Apartments.

14 They had the property inspected by a
15 professional property inspector. They fixed
16 things that needed to be fixed. No one told them
17 at any time before this accident that there was
18 any problems with this gate, this fence, the pool,
19 anything.

20 No one. Not the professional property
21 inspector when they purchased the property, not
22 all the government officials and inspectors who
23 were out at that property at various times, not
24 Andy, not Frank. And I'm going to talk about that
25 a little bit later. But these people never heard

1 anything about complaints about the gate and it's
2 undisputed.

3 Now, I want to mention a little bit about the
4 inspection reports because Mr. Haggard brought
5 that up.

6 You heard the testimony on the stand. Yes,
7 the inspection report on the property was
8 pre-purchase, but you have also heard testimony
9 that has been somewhat inconsistent about how long
10 this condition has been existing.

11 So we thought it was important that you hear
12 the history from the beginning of the purchase of
13 the property as far along as we could get it. And
14 no, there is --

15 Well, let me take that back. Obviously in
16 the first property inspection there was clearly an
17 inspection of the pool area. There was nothing
18 found wrong with the gate or the fence. The only
19 thing found was with regard to the masonite.

20 And then we have the Department of Health
21 inspection that was testified to by
22 Mr. Finkelberg, Andy Finkelberg. Now, it's
23 interesting because they're right. There's
24 nothing in that report about the pool and that's
25 the whole point.

1 The point is that they had an inspector out
2 there looking at the pool area and he found other
3 code issues. You heard him testify about it, that
4 they didn't have the numbers painted on the pool,
5 they needed a shower inside.

6 Those things were done when they were brought
7 to their attention. There was no attention
8 brought to the fence and the gate as being
9 noncompliant with the code.

10 Now, the fact that my clients don't know
11 anything about the fence and the gate, does that
12 absolve them of responsibility for the safety of
13 this property? Absolutely not and we're not
14 suggesting that.

15 Mr. Finkelberg on the stand acknowledged his
16 responsibility for the safety of the property.
17 But it is important in your determination of some
18 of the claims that are involved in this case --

19 The Plaintiffs are seeking two types of
20 damages in the case: First, compensatory damages,
21 and then second, punitive damages. And what I
22 would like to do is first talk to you about the
23 damages and then I want to turn to what is really
24 the central issue and that is the issue of
25 responsibility here.

1 Compensatory damages, as you probably know,
2 are damages that you would award to compensate the
3 Plaintiffs for their losses, their injuries, their
4 medical expenses and so forth.

5 Punitive damages on the other hand are
6 intended to punish someone. They're intended to
7 punish someone for intentional acts of wrongdoing
8 or for such gross negligence that it amounts to a
9 complete conscious indifference to human life.

10 And I submit to you, ladies and gentlemen,
11 that there is not one iota of evidence to support
12 that type of a claim against my clients and that's
13 why the facts concerning their knowledge about
14 these events is so very important.

15 Now, the Judge is going to instruct you on
16 the law when we're done with the closing arguments
17 and he's going to instruct you that in order to
18 find punitive damages, you're going to have to
19 make -- you would have to find two things.

20 First, you would have to find that Frank
21 Griseau or Andy Finkelberg, that they were acting
22 as agents for the company in their actions, were
23 personally guilty of intentional conduct or such
24 gross negligence that they either - in a sense
25 either tried to create harm or were completely

1 consciously indifferent to human life.

2 We submit that the evidence will not support
3 that. But that's not all. You would also have to
4 find that in addition, the officers, directors,
5 managing agents -- those are the buzz words, the
6 reality is it's these people -- that these people
7 either consciously condoned those acts,
8 participated in those acts, or engaged themselves
9 in such gross negligence as to have caused injury
10 here. And we submit again that there is no such
11 evidence in this case.

12 Again, their involvement, they looked at the
13 property. They hired a professional property
14 inspector to inspect it. They got the report
15 back. They did the things that needed to be
16 done.

17 They purchased the property. They hired a
18 manager. That manager happened to be there
19 before. That manager didn't work out. They fired
20 him. They brought in a temporary savior who was
21 there everyday when he needed to be there. There
22 were numbers given to people to call if there were
23 problems.

24 And then they hired Frank. And Frank, there
25 has been a lot made in this trial, we didn't hear

1 much about it in the closing about Frank and that
2 he had never run an apartment building before.

3 Well, I submit when you heard the evidence,
4 hopefully you will see that they did the right
5 thing. Frank had the experience in terms of his
6 background as a carpenter. That was certainly
7 going to be helpful in terms of what he was
8 doing. He also had a business background, so in
9 terms of experience he certainly was qualified to
10 handle that job.

11 And again, the evidence I don't think can
12 even be disputed by the Plaintiffs that these
13 people knew nothing about what was going on at
14 that site during the time between their purchase
15 of the property and the accident.

16 Let me talk a little bit about compensatory
17 damages. Counsel's right, we don't disagree about
18 anything on the Life Care Plan. The items on the
19 plan are appropriate. They're reasonable.
20 Doctor Kushner agreed with that.

21 But there are a couple issues and, as
22 Mr. Haggard stated, the main one is a very tough
23 issue. It's not easy to address but it does
24 concern life expectancy.

25 The Plaintiff's figures that they've given

1 you all contemplate Loren is going to live a
2 normal average life expectancy of 71 years. But
3 you will recall that even their witness,
4 Doctor Raffa, who talked about the life expectancy
5 tables and the statistics, pointed out that that's
6 an average.

7 It includes people that are very healthy that
8 will live past 100 and it also includes very sick
9 people, very injured people, who are clearly not
10 going to live that long. And unfortunately that
11 is the situation we have here.

12 Doctor Kushner came in here and talked to you
13 about the likelihood of disease, likelihood of
14 infection, effects on immune system, effects of
15 antibiotics and continuing infections, all of
16 those things that lead to a severely shortened
17 life expectancy in someone in Loren's condition.
18 And it's not pleasant but that is unfortunately
19 the reality that you all are faced with.

20 You heard Doctor Kushner testify that he
21 treats these kinds of patients. His longest
22 living patient recently died six weeks ago of the
23 very things he was talking about, the very risk
24 factors, after two-and-a-half to three years from
25 the accident.

1 I would suggest that your common sense would
2 probably tell you the same thing, even if you
3 don't consider Doctor Kushner's testimony at all.

4 Now, Mr. Haggard wants you to accept
5 Doctor Cohen's testimony that she will have a
6 normal life expectancy. Doctor Cohen is a
7 pediatric physiatrist. Her specialty is involved
8 in bridging the gap between therapy and vocation.
9 Rehabilitation activities.

10 She is not a neurologist. She does not have
11 the expertise to even address that issue. I think
12 that became evident when at one point, actually
13 two points in the trial she actually characterized
14 the condition that Loren was in as a coma and at
15 the very same time she's saying she recognized
16 signs of her being alert and awake.

17 They're completely inconsistent. I think
18 that just underscores the lack of her
19 qualifications to be addressing that issue.

20 Now, the Judge is going to read an
21 instruction to you that goes along with the
22 mortality tables that counsel referenced. That
23 gives the normal life expectancy. That says that
24 they're there for your benefit to look at but you
25 should consider the health and other factors in

1 determining life expectancy. And that's what you
2 need to do in this case.

3 Now, I suggested when I was examining
4 Doctor Raffa a ten year period as being probable.
5 And you will remember I did the ratio and the
6 doctor, Doctor Raffa, didn't agree with me.

7 But I think you can do your own math. If you
8 check the ratio whatever year you want to choose
9 in terms of life expectancy, because you do need
10 to do that as part of your determination, the
11 ratio is the ratio.

12 And counsel had suggested through
13 Doctor Raffa that the figure would not be
14 sufficient to even cover one year. Again you can
15 do the math yourself. It just depends on the
16 years and whether you're touching the principal at
17 the same time. The math works.

18 But the other thing I would like to point out
19 with Doctor Raffa's calculations, if you recall,
20 is that his methodology is an attempt to inflate
21 some numbers because he uses, if you remember,
22 higher growth rates by using a 20 year average.

23 He uses current interest rates of four
24 percent instead of a 20 year average to go along
25 with the growth rates and he assumes, and this is

1 the biggest assumption, that that four percent
2 rate is going to be the same for the next 71
3 years. And ladies and gentlemen, that's just not
4 a reasonable assumption.

5 So again, I think you need to use your common
6 sense in addressing the numbers here. As you saw
7 through some of the calculations, changing the
8 interest rate alone makes a ten million dollar
9 difference in his original calculations.

10 Lost earning ability. We questioned the
11 validity of the testimony, that's what we did,
12 because it's based upon a speculation and the law
13 requires you to base your verdict on the
14 evidence.

15 Certainly she has a loss of earning ability
16 and you can use your common sense and you can
17 award what you think is appropriate. But we would
18 suggest to you that taking numbers from an AA
19 degree or a BS degree or anything else is simply
20 based upon speculation and you should use your own
21 judgment in that regard.

22 On the non-economic damages because of
23 Loren's condition, of course, there is no question
24 that she has lost capacity to enjoy life. Again
25 there is no specific standard for those kind of

1 numbers and you have to use your own judgment on
2 that.

3 But let me turn to the issue of
4 responsibility. Where does the responsibility lie
5 for this tragic accident that occurred on May 15,
6 2001? Is my client responsible for failing to
7 take steps to maintain the premises in a
8 reasonable safe condition? That's one issue
9 that's presented to you.

10 Is Lonnie Hinton responsible as a parent of
11 Loren for negligently failing to care and
12 supervise, watch over her at the time?

13 There is no doubt that my client had a duty
14 to maintain safety, to maintain - to take
15 reasonable steps to ensure reasonably safe
16 conditions on the property. We don't dispute
17 that.

18 But there's also a duty on the part of the
19 parent, it's a continuing and constant duty to
20 watch over, supervise and care for children,
21 especially children that are too young to make
22 their own judgments and to protect themselves such
23 as Loren.

24 Now, in order for you to make a determination
25 on these issues you need to sift through the

1 evidence. You need to determine what to believe,
2 what not to believe, because there are conflicts
3 in the evidence in this case.

4 And I was sitting down last night trying to
5 figure out if all this could get pieced together
6 consistently and frankly it can. It brings to
7 mind if you have ever done a jigsaw puzzle. The
8 pieces of evidence are the pieces of the puzzle
9 and I would suggest that there's two pictures you
10 need to put together here to determine what the
11 real facts are.

12 There's a picture of what was going on with
13 the fence and the gate and in the weeks leading up
14 to the accident and the day of the accident, and
15 then there's the picture of what happened that day
16 between 4:30 and 6:10 p.m.

17 Now, you have two problems in putting that
18 picture together, those pictures, because the
19 pieces of the puzzle that you have received are
20 mixed in with other pieces from another puzzle
21 which doesn't show the true facts.

22 And in addition, you're hampered by the fact
23 that unlike your normal jigsaw puzzle, you don't
24 have a picture on the top of the box going in.
25 You don't know what it's going to look like until

1 you put the pieces together and that's what you
2 have to do back in the jury room.

3 Let me give you an example of the type of
4 pieces that I think don't belong in the picture.
5 I would suggest to you, you heard Mr. Pinero come
6 in here and testify at one point that he saw Rob
7 Lewis, the man who pulled Loren out of the pool,
8 jump off of the balcony or the landing on the
9 stairway into the pool.

10 I think everyone in this room would agree
11 that that's not true. So now you have to question
12 is that the only piece of his testimony that's not
13 true?

14 Let's talk about the gate and the fence
15 leading up to the accident and central to your
16 consideration of this of course is the testimony
17 of Frank Griseau.

18 Frank is a former employee of the
19 Finkelberg's company. He was the manager for the
20 couple of months leading up to the accident. He
21 was charged with the responsibility on behalf of
22 the company to maintain that place in a reasonably
23 safe condition.

24 Now, what you heard and I don't think it's
25 disputed from Frank or from any of the witnesses

1 is that there were constant problems he was facing
2 on that property with vandalism, not just with the
3 pool area but all over.

4 But the testimony here focused on the pool
5 area, what was happening. There were some older
6 kids that were jumping on the fence constantly,
7 swinging on the gate, pulling the gate off its
8 hinges so it would stay open so they could get
9 more room to run and jump in the pool.

10 And you recall the pictures because you have
11 seen them throughout the trial. That's what Frank
12 described was happening, the hinge -- that the
13 gate would be pulled off of the hinge so that the
14 gate could be shoved back so that it wouldn't
15 close.

16 Again -- and let me say a little bit about
17 the Hollywood code while we're talking about
18 this. Hollywood code requires self-closing,
19 self-latching gates. Obviously in this condition
20 it is not a self-closing, self-latching gate.

21 There is no doubt about that but really the
22 question is how did it get in that position and
23 when did it get in that position. And I want to
24 talk about that in a second but let me just talk
25 generally about the design.

1 Because there was testimony by Mr. Dworkin
2 that even if this were properly functioning, it
3 would not comply with the code because it wasn't
4 self-closing and self-latching.

5 But he never examined the fence. He never
6 examined the latches. He never examined the
7 hinges. And so you have the same information he
8 had to make that determination and I would suggest
9 to you, as he said, there are thousands of - or at
10 least hundreds or thousands of different
11 mechanisms for self-closing, self-latching.

12 You can have a hinge on the bottom that the
13 gate fits into which when it opens is set such
14 that the gate will swing back toward the middle.
15 That's exactly why the kids were taking this off
16 the hinge, so it would stay open. That's the
17 reason.

18 Now, you have a latch. I mean, it seems
19 fairly obvious but if this post were sitting
20 straight up, that latch goes back, hits the post,
21 lifts up and latches down. That's why it's
22 designed that way. That's a self-latching
23 mechanism.

24 So the design of the fence would be
25 self-closing, self-latching, but there is no doubt

1 it did not comply with the code on this day.

2 Now, Mr. Griseau told you that whenever he
3 saw it in this condition he did his best to fix it
4 and what he said was that he would straighten the
5 pole so that it would latch.

6 And he also testified specifically that when
7 he fixed it, it was secure and the way he
8 described that -- and he had some language
9 problems but the way he described it was when he
10 fixed it, his three year old son could not get
11 in. That means the latch connected.

12 Yet you have heard testimony from numerous
13 people that they never saw him working on the
14 fence, that the fence was always open. And that
15 testimony, if you followed along, has somewhat
16 changed over time.

17 But it used to be wide open constantly.
18 During trial the witnesses were starting to say,
19 well, maybe it was kind of shut but it was never
20 connected kind of stuff.

21 On the day of the accident there is no
22 testimony, no testimony about how that gate got in
23 that condition. I submit to you if you believe
24 Frank, and that's your decision, if you believe
25 Frank's testimony that he inspected the property

1 everyday when he got up and if there were a
2 problem he fixed it, and he also testified
3 whenever he saw the fence broken he fixed it as he
4 described securing it so his three year old son
5 couldn't get through, in other words it was
6 latched, I submit that there is no negligence
7 under that circumstance by the company,
8 notwithstanding the fact of, no doubt, months of
9 problems with this fence.

10 I would submit to you that the intentional
11 act of whoever put it in that condition would be
12 responsible for the problems and for Loren's
13 access.

14 So if the condition occurred that day after
15 Frank had secured it, you should not be finding
16 negligence on the part of the company and it
17 doesn't matter about the history of it if it was
18 secured that day.

19 But you have to believe Frank on that and you
20 may not. If you don't believe Frank's testimony,
21 if you believe the testimony that he wasn't fixing
22 it, that it was always open in that condition and
23 you believe that he knew about it or should have
24 known about it and he left it like that, then
25 there's negligence on my client. That's your

1 decision.

2 But that still leaves a question of causation
3 and apportionment of negligence, the cause of
4 Loren's accident in this case. As I said, every
5 parent has a constant and continuous duty to watch
6 over, to supervise and protect their children,
7 protect their children who are too young to
8 exercise judgment to protect themselves.

9 Now, Mr. Haggard has argued that you should
10 find no negligence on the part of Lonnie Hinton
11 because he acted reasonably, he didn't know the
12 pool gate was in this condition, and that this was
13 normal activity within this community to leave
14 your children expecting that other adults in the
15 community were going to watch them.

16 Well, I want to talk about the pool first.
17 It seems to me it should be at least a little
18 troubling to all of you that based on the
19 testimony that has been presented here that it
20 appears every single person at this apartment
21 complex who lived either on the Adams Street side,
22 the Madison Street side or was even visiting, you
23 had Sam Sanchez come in visiting, recognized that
24 the gate had problems, that it was open a lot.
25 Everyone except Lonnie and Lorri Hinton.

1 I suggest that again if you're putting the
2 picture together and putting the puzzle pieces
3 together, you have to look at what the evidence
4 says in that regard.

5 Frank was their next-door neighbor. He
6 certainly knows about the problems with the
7 fence. He's testified about what was going on
8 with it. He kept fixing it.

9 What he also testified about is he constantly
10 complained to the tenants about the problem. Now,
11 he was complaining because they kept breaking the
12 fence and he had to keep fixing it and it kept
13 getting broken. He had to keep fixing it.

14 And he said in his testimony he thought he
15 had talked to Lonnie and Lorri Hinton about it,
16 but on counsel's examination he conceded he had no
17 specific recollection of that. But he talked
18 about it to everybody in the apartment complex, so
19 you have to question that.

20 Nancy Goldin. Nancy Goldin was the Hinton's
21 neighbor on the other side. She testified about
22 seeing the gate in a bad condition on a number of
23 occasions. And if you recall, one of those
24 occasions was in December when Andy Finkelberg was
25 on the property.

1 Andy does not actually -- If you remember,
2 Andy remembered talking to her, remembered telling
3 her about some problems with plumbing and the
4 screen. He did not remember her talking about the
5 pool gate, but there's probably a reason for
6 that.

7 Because what Nancy conceded when she was on
8 the stand was that when she brought it up with
9 Mr. Finkelberg, that he advised her that the
10 previous owner, Margaret Wagner, had advised him
11 that it had been inspected, that it was up to
12 code. So it didn't register in his mind. It
13 probably didn't even make his notes. He simply
14 responded to her comments.

15 Now, she didn't remember that when she first
16 got on the stand to testify. I had to show her
17 her statement that Mr. Haggard's investigator had
18 taken two weeks after the accident and she did
19 remember at that point.

20 But Nancy Goldin, she was down there a couple
21 times. She exchanged recipes and food with the
22 Hintons. She baby-sat their children. You heard
23 about that. She was down at barbecues with them
24 all the time watching the kids run around, yet the
25 testimony is she never discussed her concern about

1 the pool gate with the Hintons.

2 Janet Pinero, she lived right across from the
3 pool. She said she saw the pool gate wide open
4 all the time. She complained to Frank and Andy
5 repeatedly, according to her testimony, decrying
6 the hazards to children, that a child's going to
7 drown. You heard that and you also heard Frank
8 dispute that he never heard those complaints.

9 Now, she was good friends with Lorri Hinton.
10 If you listen to the testimony that was just read
11 from Lorri Hinton's deposition, they used to sit
12 out in front of her apartment right across from
13 the pool and chat.

14 And what did they chat about? They chatted
15 about their kids who were playing right in that
16 area, playing right in this area here
17 (indicating). Yet the testimony is still
18 notwithstanding she was supposedly up in arms
19 complaining to Frank, complaining to Andy about
20 the dangers of this gate. She is sitting down
21 with Miss Hinton right in front of this pool with
22 the kids running around and doesn't tell her
23 anything about it. Doesn't discuss it. That's
24 the testimony.

25 Ricardo Pinero, if you recall his testimony,

1 he indicated in just a couple of months that he
2 had been living there prior to the accident. He
3 saw Lonnie Hinton going back and forth here more
4 than 20 times, walking right out this exit gate
5 which goes right by the pool gate. More than 20
6 times, two to three times a week. Yet the
7 testimony here is that he didn't know that there
8 was a problem with the fence or the gate.

9 There's some other testimony that's related
10 to this. Again the complaints that we talked
11 about, the testimony from the Pineros and others
12 is that they were telling Frank that there was a
13 problem, that it created hazards for children.

14 One of the things you heard about was this
15 prior incident with another child where Mr. Pinero
16 says he jumped over the fence to grab her, handed
17 her off to someone. And frankly, whether that
18 happened or not is not really crucial here.

19 What is crucial is was that communicated to
20 Frank? Frank says no, he said he never heard
21 about it. The Pineros say they absolutely told
22 him. Now, we knew Frank was going to deny that
23 which is why I kept trying to find out where did
24 this conversation take place, if you remember.

25 And Mr. Pinero, who testified he overheard

1 the conversation to corroborate the story, said
2 that his wife was down here by the washing machine
3 when she was telling it to Frank while he was
4 standing up here.

5 At first he said he could hear it. Then he
6 wasn't sure whether he heard it or not. When Miss
7 Pinero explained where she talked to Frank, it was
8 over here in front of the storage room right where
9 Mr. Pinero said he was standing. Not on the other
10 end of the hallway.

11 So again you need to question the veracity of
12 some of this testimony. The pieces of the puzzle
13 don't fit together. Let me suggest a picture.
14 It's up to you to decide what it looks like in the
15 end.

16 I would suggest to you that the fence and the
17 gate was being constantly abused. I don't think
18 there's any dispute about that. Sometimes
19 multiple times a day, according to Frank.

20 Frank was fixing it but maybe he wasn't
21 fixing it fast enough. He couldn't be there 24
22 hours a day. You have heard that.

23 And if this is happening multiple times a
24 day, it's likely it was in an open condition, in a
25 dangerous condition on occasions. Everyone in the

1 apartment complex knew the condition of that fence
2 and that gate. That includes I would suggest the
3 Hintons.

4 I would also suggest that there were not all
5 these pleas about safety concerns to children. I
6 think there were complaints about cleaning up the
7 place. Frank testified about that. That was Paul
8 and Renee's complaint. They wanted the pool area
9 cleaned up which included fixing up the fence. It
10 looked dilapidated because it was being abused so
11 much.

12 Now, why could that be a possible picture? I
13 suggest you heard it from Mr. Dworkin, the
14 Plaintiff's expert. It's not commonly understood,
15 absent a tragic accident like this, that an open
16 gate creates such a serious risk of catastrophic
17 injury and death. That's why his company's in
18 business. He goes around promoting public
19 awareness of this very danger.

20 That is why Frank didn't recognize it as a
21 serious hazard to children. That's why I suggest
22 to you these neighbors at the time were not
23 recognizing it as a serious risk to children.

24 And I suggest to you that the Hintons knew
25 the condition of the gate, knew the condition of

1 the fence, but they, too, did not recognize the
2 dangerous nature of that hazard.

3 A tragic event like that which has occurred
4 here tends to create memory issues I will say.
5 There's lots of miss-remembering I would suggest
6 going on. There has to be somebody to blame.
7 Blame the keeper of the gate. It's a faceless
8 entity.

9 I suggest that's what's going on. And I
10 suggest to you that the Hintons knew the condition
11 of the gate, knew the condition of the fence.
12 They had to. They walked by there all the time.
13 There is testimony from their own witnesses
14 putting them right in the area of this fence.
15 That's the only piece of the puzzle that makes
16 sense.

17 But let's move away from the pool for a
18 second because we're talking about responsibility
19 of watching over a child. You heard about other
20 dangers that exist with regard to allowing a young
21 child to wander around this particular facility.

22 The cement stairs, there are two on each side
23 of the buildings and on the third building: A
24 treacherous hazard to any two year old, especially
25 one running around playing hide-and-seek or tag or

1 something like that.

2 The gates leading to the outside. They want
3 to say there is no way that Loren Hinton could
4 have opened that gate, so they didn't need to be
5 worried about that.

6 Well, if you recall the testimony of Michelle
7 Hillerio, she was played on videotape, from Sam
8 Sanchez that very day was calling up to his friend
9 Rob Lewis to let him in the gate, what did she
10 do? She called to her two year old child to go
11 open that gate. It doesn't take much to turn a
12 doorknob and push the gate.

13 And right outside the gate, parking lot, a
14 few steps away traffic, busy roads. Then of
15 course there's always the danger of the unknown.

16 Plaintiffs would have you believe as was just
17 stated that this is a very family-oriented
18 communal type home where everybody was looking
19 after everybody.

20 But if you listen to the evidence, you heard
21 that most of the people here didn't know more than
22 two or three people by name. That's the reality.
23 The parents on the Madison Street side didn't know
24 the parents on the Adams Street side. That was
25 Nancy Goldin's testimony I believe.

1 Then you have the rowdy kids, that's
2 undisputed, that were tearing up the fence. There
3 was testimony about their friends coming in
4 creating problems.

5 All of these risks without regard to the pool
6 were out there and I would suggest would lead a
7 reasonable person to ensure that a two year old
8 was, in Mr. Dworkin's words, adequately
9 supervised, one-on-one eye contact.

10 Let's talk about May 15, what happened that
11 day. It's a difficult puzzle, if you will, to put
12 together. I tried to put a time line together and
13 it didn't work. The only --

14 You know if you put a puzzle together, you
15 start off with the corners and you get the sides
16 and then you fill in the middle. I suggest the
17 only corner piece you got in this one is 6:10.

18 6:10 is the time when 911 was called. That's
19 documented. It also happens to be the time that
20 Mr. Hinton says Nicholas knocked on the door and
21 he looked up at a clock and noted the time.

22 But what happened before that? Lonnie has
23 testified that he got home about 4:45. He went --
24 he says he went to Nancy Goldin's apartment to see
25 if she still wanted the lambchop and she said she

1 did, so he went back to his apartment to get
2 that.

3 But if you remember, Nancy Goldin testified
4 here that the first time she saw Lonnie that day
5 was when he brought her the cooked porkchop. Now,
6 he got his grill and went downstairs. He cooked a
7 single lambchop for Nancy Goldin and then
8 delivered it to her.

9 Now, Nancy Goldin says she got the lambchop
10 right about five p.m. and she's been pretty
11 consistent about that, so maybe that's another
12 corner piece in the puzzle. But then if you think
13 about it, then you might question that occurring
14 between 4:45 and 5:00 o'clock.

15 Now, the next thing in the sequence that you
16 have heard testimony on is Nancy seeing Lorri
17 Hinton and the kids coming home from school and
18 what she testified was -- this is Nancy Goldin's
19 apartment right here and the Hintons live down
20 here (indicating) -- she saw them walk by this way
21 going toward their apartment.

22 She said this occurred when she was sitting
23 down eating a lambchop. She said she did that
24 immediately after she got it because she ate it
25 while it was hot, so a few minutes after five.

1 Now, when she came in here she testified maybe it
2 was like 5:20, so give it up to 5:20.

3 Now, Lorri Hinton said she came home between
4 5:30 and 5:35. When she came in, she went down to
5 the play area and saw various people there, then
6 walked up and went back to her apartment with the
7 kids.

8 But again if she walked up the steps sometime
9 after 5:35 and you don't know how long she was out
10 here, you've got a conflict with Nancy Goldin's
11 testimony of when she saw her and which direction
12 she was going.

13 The Hintons here have told you that
14 Mrs. Hinton then entered the apartment with the
15 kids; that Mr. Hinton was about to go down and
16 barbecue and that in fact he does. He goes down.

17 Now, what I have to think about here is
18 Mrs. Hinton says, if you were listening to the
19 testimony that was just read this morning, in fact
20 that Lonnie Hinton at that point took the barbecue
21 down with the kids.

22 Now, Lonnie has said that the barbecue is
23 already down there because he had already cooked
24 the lambchop. And you might also remember Frank's
25 testimony that he never saw Lonnie cooking down

1 here. He always saw him cooking up on the
2 terrace.

3 In any event, Mr. Hinton cooks the lambchops
4 in the play area while his kids are playing in
5 that area. He finishes cooking the food and he
6 takes the food on a plate, the meat along with the
7 grill, and goes back up the stairs. He takes the
8 grill up with him.

9 As he's going up, and this was in the
10 testimony that was read to you from his
11 deposition, when he was going up he last saw Loren
12 and he says he knows it was 6:05 because right
13 when he saw her he asked a neighbor -- we don't
14 know who the neighbor was -- what time it was, and
15 the neighbor said 6:05, looked at his watch and
16 said 6:05.

17 Now, when Lonnie goes up he was asked during
18 his deposition quite a number of times who was
19 down there, who was watching the children. And he
20 was pretty consistent: Nancy Goldin, Debra Haase;
21 Nancy Goldin, Debra Haase; Nancy Goldin, Debra
22 Haase. His testimony was read to you from his
23 deposition.

24 But you know Nancy Goldin came in here. She
25 had testified earlier in deposition and testified

1 here consistently that she wasn't down there, that
2 she was up in her apartment the entire time.

3 Then last Tuesday night, after opening
4 statements in this case, we located Miss Haase for
5 the first time and you heard Mr. Kennedy called
6 her. She mentioned, as she admitted on the stand,
7 that she was not outside at the time of the
8 incident, and so Mr. Kennedy tried to get her to
9 come down here voluntarily to testify.

10 She didn't cooperate anymore. She didn't
11 tell us any more information. We didn't know what
12 she was going to say because she wouldn't talk to
13 us, so we served a subpoena on her. We didn't
14 know what she was going to say because she
15 wouldn't talk to us, but we thought you people
16 needed to hear whatever she had to say to try to
17 fit the pieces of the puzzle together.

18 And what happened? The Plaintiff's
19 attorney's investigator went out this weekend and
20 got her to sign a sworn statement that says she
21 doesn't remember anything. I think you got to
22 question why that was done. Why would they need a
23 sworn statement from her saying she doesn't
24 remember anything?

25 In any event, the two people that Mr. Hinton

1 claimed were watching his children weren't doing
2 it. They weren't even there.

3 Now, at trial last week Mr. Hinton for the
4 first time identified three additional people,
5 three additional adults that were down there
6 presumably watching the children.

7 You heard about Milly and Martha or Marta,
8 although I think his testimony was that they were
9 simply washing clothes. It wasn't clear whether
10 they were watching any children. And then there
11 was Candace Green and it's not clear what she was
12 doing. None of those people you have heard from
13 in this case.

14 But Mr. Hinton continues to say he never
15 asked anyone to watch his kids when he went up.
16 He says he went up to his apartment only a few
17 minutes, put the plate of meat down, got a drink,
18 kissed his wife and was headed back down when
19 Nicholas hit the door, knocked on the door.

20 In getting the news from Nicholas, he looked
21 up at the clock on the wall and noted it was 6:10,
22 that's in his deposition testimony, and then they
23 went down.

24 I would again suggest to you, ladies and
25 gentlemen, the pieces of the puzzle just don't fit

1 together and they don't fit together if you try to
2 work it backwards from the time.

3 You remember the testimony of Rob Lewis and
4 Sam Sanchez. They came in the gate and -- Let me
5 back up. Rob had come home earlier and had gone
6 upstairs. He testified he didn't see anybody in
7 the pool. He walks right by that platform and
8 goes up.

9 His friend comes and is yelling to him
10 sometime later and he's coming down the stairs.
11 He still doesn't notice anything obviously. He
12 goes down, let's his friend in. He comes back up
13 the stairs, turns again to go up, still neither
14 him nor his friend notice anybody in the pool.

15 But he takes two steps he said, two or three
16 steps up this second flight and as he's turning
17 back to talk to his friend, he notices Loren in
18 the pool for the first time.

19 Well, what that suggests, ladies and
20 gentlemen, even if you believe the testimony of
21 Mr. Dworkin, who suddenly became an expert on
22 people, how long they were in the pool, if you
23 believe his testimony that it was two to four
24 minutes, then obviously she was in that pool
25 before. They just didn't see her. And then the

1 question is how long was she in that pool?

2 So frankly you have to -- you return kind of
3 to square one. 6:10 is when 911 was called. Now,
4 certainly with the tragic events that occurred
5 that day people can miss--remember. People may not
6 remember at all, especially times, details.
7 That's understandable.

8 But the testimony on all the timing on what
9 occurred that afternoon doesn't fit together and
10 there's not a single person that's come into this
11 trial that has testified that they were down there
12 watching Loren Hinton when Mr. Hinton went
13 upstairs. Not one.

14 So I would suggest you also have to throw out
15 that 6:05 time from this deposition. And frankly,
16 you don't know, you can't tell from this testimony
17 how long Loren was running around that property
18 unsupervised.

19 You heard the testimony this morning from
20 Lorri Hinton about their views of allowing the
21 children to run around the apartment complex
22 unsupervised. That's what their feeling was at
23 the time.

24 So how long was Loren Hinton out there? I
25 don't think anybody knows. Certainly there has

1 been no testimony as to that. I would suggest to
2 you it could go certainly -- They came home at
3 about five, sometime after five, between 5:20 and
4 5:30, but I will suggest to you it really doesn't
5 matter.

6 Because even if you use the five minutes,
7 people in a casual conversation would think five
8 minutes is not a very long time. Oh, I was just
9 there for five minutes. It doesn't sound very
10 long.

11 But remember something else that Mr. Dworkin
12 presented to you, the expert on aquatics safety,
13 facts about drowning, but I think you can
14 extrapolate this beyond drownings.

15 Most drownings occur when a child has been
16 out of sight for less than five minutes. That's
17 why-it's so important to keep track of your
18 children. 80 percent of drownings occur
19 notwithstanding a completely adequate barrier
20 fence and gate.

21 Five minutes, it doesn't sound very long, but
22 think about how long it is for a two year old to
23 be running around unsupervised.

24 (Thereupon, Mr. Nettleton paused for
25 approximately four minutes.)

1 MR. NETTLETON: Ladies and gentlemen, I
2 didn't want to make you feel uncomfortable and I
3 cut it a little short. Five minutes is a long
4 time for her to be watching herself out there.

5 And Mr. Hinton went on to say in this
6 response that he was relying on the security of
7 the property, security of the property; that there
8 was a secure fence, that it was secure from the
9 outside. I suggest to you that's not a reasonable
10 assumption for him to make.

11 You don't have an easy job ahead, but again I
12 ask you to put aside your sympathy as the law
13 requires, as you will be instructed. Sift through
14 the evidence and determine what the true facts are
15 and apply the law to those facts as the Judge
16 instructs you. That's how you do justice here.

17 If you decide my client is responsible, I
18 accept responsibility. If you decide otherwise,
19 that's your prerogative based on the evidence.
20 And if you have apportioning responsibility, I
21 would remind you once again of something that
22 Mr. Dworkin talked about. The number one first
23 most important layer of protection is parental
24 responsibility.

25 I thank you for your time and attention and I

1 thank you on behalf of Mr. Kennedy and my clients,
2 Roberto, Romina and Alexandro, and entrust the
3 decision to you.

4 Thank you.

5 THE COURT: Members of the jury, everyone
6 okay?

7 MR. ANDY HAGGARD: We're almost finished.

8 I've got a few minutes to talk to you and
9 then you will go into your deliberations and
10 decide this case.

11 I'm fortunate to have been able to sit here
12 and listen to both closing arguments like a
13 bystander maybe and to listen to both sides.

14 And I'm sure that Mr. Kennedy and
15 Mr. Nettleton are nice people, but they have a job
16 to do in this case and they have done it to I
17 guess the best of their ability, because I must
18 have been in the wrong courtroom for the last two
19 weeks hearing the evidence I heard from that
20 witness stand as opposed to what these gentlemen
21 have said in this case.

22 Thank the Lord that you folks will be
23 deciding this case, that you will be deciding
24 Loren's future and not these gentlemen. Use your
25 common sense.

1 I have heard nothing but confusion and
2 attempts to confuse you folks with who was called
3 to testify, who wasn't, what they said and what
4 they didn't say.

5 The evidence is so unbelievably convincing,
6 as my son said earlier, with regard to liability
7 in this case and I don't need to go over it I
8 don't think too much more.

9 That's the gate. That is the gate. That was
10 in the condition it was in at the time of the
11 accident and before that. And what do we hear?
12 The attempt to confuse everybody here with I think
13 Frank fixed it, maybe Frank fixed it, Frank tried
14 to fix it, did the best he could but maybe it
15 wasn't fixed, maybe it was.

16 Folks, there is the fence. We didn't take
17 those photographs, the police took those
18 photographs. That is the condition of the gate.
19 That's the condition of the fence. That's the
20 condition of the fence the day of the accident
21 when little Loren went through there and almost
22 drowned.

23 So all this stuff about vandalism four to
24 five times a day and trying my best to fix it
25 which --

1 Mr. Nettleton, do you really believe that?
2 Do you believe that? Not one witness has come in
3 here, not one, to tell you that Frank ever
4 attempted to fix that fence either that day or any
5 day before. Not one witness except Frank.

6 And I hope you all remember Frank sitting up
7 there. I hope you remember that gentleman who was
8 impeached no less than ten times by Michael on
9 what he said before in sworn testimony and what he
10 said when he testified in front of you folks. I
11 know that you will remember that. That's the only
12 person.

13 Mr. Nettleton talks about different witnesses
14 coming in here, brought in here. Who did they
15 bring in? There were 26 units out there, folks.
16 We brought everyone we could find. Who did they
17 bring in to testify in this case? It's not that
18 hard.

19 If there was any validity to vandalism and I
20 tried everyday to fix it, it's not my fault and I
21 never received any warnings, I didn't know a thing
22 about this gate being horrible, I knew nothing
23 about it, where are the witnesses? Where are
24 they? Not one witness brought in here.

25 We brought everybody in here to testify to

1 give you this, quote, puzzle. They were talking
2 about this puzzle. There is no puzzle. There is
3 no puzzle whatsoever.

4 Who did the Defendants bring in this case?
5 Who did these two attorneys bring in here to
6 testify in this case? And again, thank goodness
7 you all are deciding this case. Thank goodness.

8 Who did they bring in? They brought Debbie
9 Haase and I wrote down the word that Mr. Nettleton
10 used, he used to cooperate and come in here and
11 cooperate. No, that wasn't the word. That was
12 not the word. The word was to Miss Debbie Haase,
13 Can you work with us? Can you work with us on
14 that? And she said, No, I can't. And your
15 investigator was too, what was the word, intense.

16 That's who they brought in. But that wasn't
17 enough. That wasn't enough. They then brought in
18 Doctor Kushner. Now, I bring that up. It doesn't
19 have anything to do with liability because that's
20 over. As Mr. Nettleton said, that's over. He's
21 worried about the punitive damages because that's
22 gross negligence. He's over this. That's
23 absolute negligence.

24 But what else did they do? They bring in
25 Doctor Kushner. Let me tell you something. I've

1 practiced law for 35 years. I have never seen
2 anything like that in my life.

3 The man was paid \$28,000, 15,000 of it in the
4 first three days, to come in here and testify and
5 to tell you folks that this little girl, the
6 daughter of these wonderful parents, is not going
7 to live a regular life expectancy. Not going to
8 live a regular life expectancy. Paid \$28,000 to
9 come in here and testify to that.

10 Is that fair? Is that fair in this case?
11 And ruled unqualified to answer other questions,
12 unqualified, and left this courtroom. And do me a
13 favor, please. Remember his demeanor. Remember
14 what he looked like on that stand answering these
15 questions when my son tried to ask and answering
16 those. Try to remember that and I know you will.

17 And then the last witness was little Romina,
18 who they brought up here, made her come up here I
19 guess, brought her up here, asked her five
20 questions and all five questions were in direct
21 conflict with her testimony under sworn oath. All
22 questions.

23 That is who they brought in. Why do I
24 mention that? I mention that because His Honor's
25 going to give you jury instructions about what is

1 fair in this case and about what you're supposed
2 to do in this case and what any jury is supposed
3 to do in this case, and especially one as serious
4 and catastrophic as this case, the jury
5 instructions.

6 You will decide this case. If you remember
7 when I picked the jury during voir dire, was the
8 word remember and I talked to you all, and one
9 gentleman who doesn't - he's not sitting here
10 right now, asked the question, he said, You mean
11 we decide the case on damages? We do it?

12 Yes, you do. That's the hard part. You do
13 do that. That's your job. Thank goodness it's
14 not the job of these gentlemen, it's not mine and
15 it's not His Honor's. It is yours to decide the
16 future of this family and Loren Hinton.

17 And let me remind you of something because
18 all of this confusion and this jigsaw puzzle or
19 whatever it is, remind you of one thing that we
20 can finally get out of what Mr. Nettleton is
21 saying is he's got no dispute, he's got no quarrel
22 with or any dispute with the figures that my son
23 put up. Not one.

24 Let me read his testimony. Let me read what
25 he said to you with regard to the Life Care Plan,

1 which is 42 million dollars, not at all
2 contradicted by any witness in the case and agreed
3 to by Doctor Kushner and agreed to by everybody
4 else.

5 Forty-two million dollars is not disputed and
6 was not disputed by Mr. Nettleton. He said that's
7 true, that's a true figure. So you must give
8 that. That's by stipulation. There is no
9 argument.

10 The next is the loss of the capacity to enjoy
11 life and that was asked of our doctor and that was
12 asked of Doctor Kushner. And he said with no
13 questions, our doctor and Doctor Kushner, she has
14 without question lost the capacity to enjoy life.
15 No argument whatsoever.

16 And that figure that my son put up was
17 thirty-five million dollars in the future and five
18 million dollars in the past. Not disputed one bit
19 by Mr. Nettleton and this side. So those three
20 figures, those three figures which total 80
21 million dollars is not in dispute, not in
22 dispute.

23 What is in dispute? What did they try to put
24 in dispute? Whether these folks are bad parents
25 or whether these folks were bad parents on the day

1 of this accident.

2 That's what they're trying to do to make you
3 come back -- and they didn't even give you a
4 figure, but to have you hopefully come back and
5 find some percentage of negligence on these folks,
6 some percentage, hoping maybe you will put five or
7 ten percent which will reduce, reduce the award to
8 Loren Hinton that they have no dispute about.
9 None. The figures are there. They don't dispute
10 that.

11 His Honor will tell you forget what the
12 lawyers say, forget what the Haggards say, forget
13 what these gentlemen say. You have to decide this
14 case on only one thing: The evidence that's come
15 from this witness stand in the last two weeks and
16 the law that His Honor Judge Greene gives you to
17 apply to that evidence.

18 And that is your job and that -- nothing
19 outside, no outside influences, nothing else,
20 nothing but the evidence.

21 And I would submit to you that for the last
22 two weeks, the only evidence you have heard, the
23 only evidence you have heard whatsoever is that
24 2331 Adams Street was negligent in this case,
25 simply negligent, and they were also negligent in

1 a gross manner, gross negligence, which leads us
2 and His Honor to punitive damages and that's the
3 testimony in this case and has been for the last
4 two weeks.

5 What I do want you to understand, because of
6 all the things I heard in the last hour, I want
7 you to understand a key word because sometimes we
8 get tied up in some words here. The word is
9 comparative negligence.

10 It's not just was 2331 Adams Street negligent
11 and were the Hintons negligent. It is
12 comparative, exactly what it means. You must
13 compare. You must compare and then come out with
14 any percentages, if any.

15 I would submit to you folks that when you
16 take every one of these exhibits back, every
17 single one of these back and you compare the Frank
18 Griseaus, the Andy Finkelbergs, you compare the
19 testimony of the condition of that gate and that
20 fence and you compare what could have been done to
21 that gate and fence any time. Just fix it.

22 And you compare the fact that they did
23 nothing, that they never warned people. They
24 never sent a flyer. They never orally told
25 anybody and they had all the knowledge and they

1 never fixed it.

2 Compare that negligence, if you would.
3 Compare that negligence and also the idea that you
4 had been warned numerous times. And some little
5 girl almost, God forbid, drowned two months
6 earlier and was saved by the same Mr. Ricardo
7 Pinero that they now say has some kind of a grudge
8 and is lying or whatever they're saying.

9 How many warnings do you need? How many
10 opportunities do you need to stop something like
11 this from happening to this little girl? How much
12 do you need? :

13 You've got warnings. You've got everything.
14 You've got the gate. You've got the fence.
15 Compare that, if you would, compare that to the
16 actions of the Hintons and all those folks in that
17 complex.

18 Compare that to Lonnie Hinton barbecuing with
19 his friends with other children like you always do
20 in a place that was a village. And you go
21 upstairs for five minutes or three minutes or
22 whatever it was knowing your friends are down
23 there, whether it's Miss Haase or Miss Goldin or
24 anybody else, and you're coming right back and
25 you're coming right back down and you get a knock

1 on the door.

2 Compare that, that five minute span that we
3 were able to do, compare that with the people that
4 had the ability to stop this, who had the ability
5 to save the life of Loren Hinton and never had
6 this happen.

7 Compare that and I would submit to you that
8 when you compare that, there is no comparison.
9 There is no comparison. And His Honor will read
10 that instruction to you. It's not from me. It's
11 100 years of Florida law that you compare. And I
12 would submit to you that there is no comparison.

13 We had a little demonstration here that
14 Mr. Nettleton did with regard to what five minutes
15 is like, of course it may have been three or four,
16 but five minutes.

17 → What was left out of that little
18 demonstration or not mentioned again was that
19 during that period of time that Lonnie Hinton was
20 upstairs, what was left out is what was
21 downstairs, the people, the neighbors, the
22 village. That was left out. The noise, the
23 talking, the hide-and-seek, all that was left out
24 and made it look like she's left over in some
25 desert somewhere.

1 But also what was left out again during these
2 two weeks, what else was left out was when he read
3 you this -- How many times have we done this with
4 the witnesses they put on the stand?

5 What was left out was, question: Who was it
6 that you were relying upon to watch your little
7 girl?

8 Answer: We were relying on herself.

9 And he stopped. He never read you the last
10 part of it.

11 The area is secured. They were running
12 around playing hide-and-go-seek at the time to my
13 recollection with the entire complex being
14 secured, the pool area being secured. It was
15 safe. That was the mindset at that time and
16 that's the answer to that question.

17 → We're talking about a puzzle, jigsaw puzzle.
18 Let me tell you what the puzzle is. The puzzle is
19 this photograph right here which shows the gate
20 and the fence and the absolute knowledge they had
21 and in not fixing it for the number of days and
22 months they didn't fix it. That's the first part
23 of that puzzle.

24 And the second part of that puzzle is a
25 beautiful little girl who no longer can walk or

1 talk, who will be in that condition for the rest
2 of her life.

3 I would submit to you that that's the end of
4 that puzzle. I'm not so sure you need anybody
5 else for that puzzle. That's about it.

6 I was sitting I think Tuesday morning,
7 Wednesday, Thursday, I guess Tuesday morning and I
8 went downstairs from the area where I'm staying.
9 It was early morning, I guess 8:30, nine, and I
10 was sitting out there just thinking of what to say
11 to you folks or whatever witnesses we were going
12 to put on.

13 And I sat there. There were two little girls
14 out there with their mother, about five or six
15 years of age, and they were walking and they were
16 talking and they were singing and they were
17 hugging their mother and they were playing with
18 each other.

19 And I had to think to myself that is
20 something that Lorri Hinton will never have from
21 her only daughter. But more importantly, that's
22 something that Loren Hinton will never
23 experience.

24 She will never experience going to school,
25 having playmates, having a birthday party that she

1 will know about. She will never experience going
2 to high school or college. As my son said,
3 boyfriends, that's over. That's over.

4 But she will live a normal life expectancy
5 according to everybody except Doctor Kushner. She
6 will do that and she will need care for the rest
7 of her life.

8 You have a huge responsibility, I don't need
9 to tell you that, and I asked you in voir dire
10 whether or not if you were one of the seven that
11 were chosen, whether you felt you could get the
12 job done.

13 You remember that? I asked you do you feel
14 you can get the job done. Can you do it. And
15 each one of you looked at me and said, yes, you
16 could. You felt like you could because this is a
17 tough one. This is a big one. And every one of
18 you all looked at me and said yes and you looked
19 at Lorri and Lonnie and you said yes. I would ask
20 you or remind you that it is a big job.

21 Thank you for your time. Thank you for the
22 time that you are going to put in the case. When
23 you go back to deliberate, please consider
24 everything you have heard. Consider the lawyers,
25 consider the law, consider the evidence, consider

1 the agendas of the different parties, everything
2 you can possibly think of, and I know you will.

3 And when you make your decision and finally
4 reach your verdict and come back here, Lorri and
5 Lonnie and Loren will be here to greet you.

6 Thank you so much from my clients, from my
7 son. Thanks.

8 * * * * *

9 (Thereupon, the following proceedings were
10 had outside the presence of the jury at
11 approximately 5:25 o'clock p.m.)

12 THE COURT: Okay. Let's bring out the jury.

13 THE BAILIFF: They're not ready. Mr. Chan is
14 making notes.

15 MR. MICHAEL HAGGARD: Judge, are all the
16 notes signed by the foreperson?

17 THE COURT: Yes, they are, even though the
18 note that I just now have received at 5:28 is
19 clearly in Mr. Chan's handwriting but signed by
20 Miss Major.

21 Could you please clarify this passage,
22 quote: By answering the following questions you
23 will determine the total amount, 100 percent, of
24 any damages that Loren Hinton and her parents
25 sustained as a result of the incident in question.

1 In determining the amount of damages, do not
2 make any reduction because of the negligence, if
3 any, of Lonnie Hinton. If you find that Lonnie
4 Hinton was to any extent negligent, the Court in
5 entering judgment will make the appropriate
6 reduction in the damages awarded.

7 So does this mean if we find, A: 2331 Adams
8 Street Corporation 50 percent, B: Lonnie Hinton
9 50 percent at fault and the amount was 100 million
10 dollars, that Loren Hinton would receive only 50
11 million dollars in settlement?

12 MR. ANDY HAGGARD: Can I say something
13 first?

14 THE COURT: You may.

15 MR. ANDY HAGGARD: The standstill is not to
16 get a verdict. The standstill is that they don't
17 understand.

18 THE COURT: That's what I'm going to try to
19 clarify, the law.

20 MR. ANDY HAGGARD: They don't understand.

21 THE COURT: That may be what it is, it may
22 not be, but we'll see. And that's why I ask
23 counsel if it will be okay to inquire of the jury.

24 MR. ANDY HAGGARD: Yes, sir.

25 THE COURT: Now, this question is addressed

1 in the jury instructions on page 11. In
2 determining the total amount of damages, you
3 should not make any reduction because of the
4 negligence, if any, of Lonnie Hinton. The Court
5 will enter judgment based on your verdict and if
6 you find that Lonnie Hinton was negligent in any
7 degree, the Court in entering judgment will reduce
8 the amount of damages by the percentage of
9 negligence that you find is chargeable to Lonnie
10 Hinton.

11 So I guess first thing to do is read the jury
12 that particular instruction and see if that
13 assists them. But I'm going to go a step further
14 because here's what I anticipate.

15 I think what the jury wants to know is if
16 there's a comparative negligence that's chargeable
17 to Lonnie Hinton, does that affect the verdict or
18 judgment as to Loren.

19 MR. ANDY HAGGARD: Correct. That's their
20 standstill, do you understand that? Not that they
21 can't reach a verdict.

22 THE COURT: And clearly the answer to that is
23 yes.

24 MR. ANDY HAGGARD: Yes.

25 THE COURT: But the question is -- That's the

1 legal answer, if that's what they're asking.

2 MR. ANDY HAGGARD: Of course.

3 THE COURT: Any comments from the defense?

4 MR. NETTLETON: Well, I guess my concern is
5 it kind of suggests that we're going to be looking
6 at a compromised verdict at some point and so I
7 have some problems with where this is headed.

8 MR. ANDY HAGGARD: That's what a verdict is.

9 THE COURT: I candidly think every verdict to
10 some extent is a compromise of six minds that
11 collectively come together to form one verdict.

12 But the point is and I think this question
13 gives me the opportunity to ask them specifically
14 what they mean. And so if there is no objection,
15 I will do that.

16 But if their question really comes down to
17 does Loren Hinton's judgment get reduced because
18 of the comparative negligence, if any, of Lonnie
19 Hinton, then the answer is yes.

20 MR. ANDY HAGGARD: Correct.

21 THE COURT: Correct.

22 MR. NETTLETON: Where's Jim?

23 MR. ANDY HAGGARD: He has no objection.

24 MR. NETTLETON: Is that correct?

25 MR. BLECKE: No objection to the Court making

1 that inquiry.

2 MR. KENNEDY: I don't think that accurately
3 reflects the law.

4 THE COURT: How does it not?

5 MR. KENNEDY: Joint and several liability in
6 economic damages but not --

7 THE COURT: Are you trying to -- Are you
8 telling me that it's the defense's position
9 that --

10 MR. NETTLETON: No, Your Honor, we're not.

11 THE COURT: -- that the only --

12 MR. KENNEDY: No.

13 THE COURT: -- wait a minute, that the
14 comparative negligence, if any, of Lonnie Hinton
15 only affects the damages that would be recoverable
16 by Mr. and Mrs. Hinton and it does not in any way
17 affect the damages of Loren?

18 MR. NETTLETON: No, Your Honor.

19 MR. KENNEDY: No.

20 THE COURT: So then what are you saying?

21 MR. NETTLETON: He's being quiet now, Your
22 Honor.

23 MR. KENNEDY: Yes.

24 THE COURT: Okay. Let's bring in the jury.
25 (Thereupon, the following proceedings were

1 had in the presence of the jury:)

2 THE COURT: Okay. Jury has returned.

3 Okay. I have two notes from the jury. The
4 first note in chronological order --

5 Counsel, everyone have a seat. Relax.

6 MR. ANDY HAGGARD: Thank you, sir.

7 THE COURT: -- is at 5:04. It says, We're in
8 a standstill.

9 Prior to bringing the jury back out, I
10 received a second note which I can recognize as
11 Mr. Chan's writing but signed by Miss Major and it
12 says, Could you please clarify this passage.

13 Quote: By answering the following
14 questions -- and now you're referring on the
15 verdict form to question - the statement between
16 question number three and question number four on
17 page two -- you say by answering the following
18 questions you will determine the total amount, 100
19 percent, of any damages that Loren Hinton and her
20 parents sustained as a result of the incident in
21 question.

22 In determining the amount of damages, do not
23 make any reduction because of the negligence, if
24 any, of Lonnie Hinton. If you find that Lonnie
25 Hinton was to any extent negligent, the Court in

1 entering judgment will make an appropriate
2 reduction in the damages awarded.

3 So does this mean if we find, A: 2331 Adams
4 Street Corporation 50 percent responsible and, B:
5 Lonnie Hinton 50 percent responsible or at fault
6 and the amount was 100 million, that Loren Hinton
7 would receive only 50 million dollars of -- you
8 say settlement. It would be the judgment.

9 JUROR CHAN: Judgment.

10 THE COURT: That's the question of the jury?

11 JUROR CHAN: Yes.

12 THE COURT: Okay. Is that what precipitated
13 the first question?

14 JUROR MAJOR: Beg your pardon?

15 THE COURT: Is that what precipitated -- had
16 you write the first question, we're at a
17 standstill?

18 JUROR MAJOR: Somewhat, yes.

19 THE COURT: Because it's my job to help you
20 with the law.

21 Firstly I'm going to read back to you a
22 portion of the instructions that I gave you which
23 is contained on page 11. Okay.

24 In determining the total amount of damages,
25 you should not make any reduction because of the

1 negligence, if any, of Lonnie Hinton. The Court
2 will enter a judgment based on your verdict and if
3 you find that Lonnie Hinton was negligent to any
4 degree, the Court in entering judgment will reduce
5 the amount of damages by the percentage of
6 negligence that you find is chargeable to Lonnie
7 Hinton.

8 Now, I don't know if that answers your
9 question and you can tell me if it does or doesn't
10 or if you need further clarification.

11 JUROR MAJOR: It answers it. You answered my
12 question.

13 THE COURT: Okay. Let's not be shy.

14 JUROR LOPEZ: It's like for the example that
15 you gave there, so questions four through ten, if
16 we put 50/50 as an example on the top, the ones
17 between four and ten are going to be a percentage
18 of that 50 percent? If it's 100, it will be 50?

19 THE COURT: All the damages contained in
20 questions four through nine are all going to be
21 reduced by the percentage of comparative
22 negligence, if any, that you find attributable to
23 Lonnie Hinton.

24 JUROR LOPEZ: That's based on question three,
25 right?

1 THE COURT: Exactly.

2 JUROR MAJOR: Yes.

3 THE COURT: Okay. Have I helped you?

4 JUROR CHAN: Yes.

5 JUROR MAJOR: Very much.

6 THE COURT: Let me ask you a question. It's
7 almost 5:40 and you have been deliberating since
8 2:00 o'clock, took a little break along the way.
9 I'm here to help you in any way that I can.

10 It's entirely up to you how you want your
11 deliberations to continue. If at any time now or
12 later you want to stop, call it a day, that's fine
13 and we start it up again in the morning.

14 If you want to continue, you may do so and
15 the only six people in this room who can make that
16 decision are the six of you.

17 JUROR MAJOR: Continue?

18 JUROR RICE: Continue.

19 THE COURT: Mr. Cortez?

20 JUROR CORTEZ: What happens if like we're not
21 getting anywhere? Is there any options?

22 THE COURT: If the jury gets to the point
23 that you come out here and you tell me that you're
24 not getting anywhere, that you're really at an
25 impasse, I'm going to speak to you further about

1 that. And I'm going to speak to you and ask you
2 to do certain things in listening to each other's
3 opinion and I'm going to send you back there to
4 try again.

5 The only verdict in this case has to be a
6 unanimous one. You all have to agree to the same
7 verdict. But I will tell you also, jurors can do
8 two things: They can agree on a verdict or they
9 can disagree.

10 If you disagree, then there is no verdict and
11 this case will be tried again before another
12 jury. So obviously the only thing everyone can
13 ask of you is to make your best effort.

14 Any additions or deletions to the
15 instructions?

16 MR. MICHAEL HAGGARD: No, Judge.

17 MR. NETTLETON: No, Your Honor.

18 THE COURT: Okay.

19 JUROR MAJOR: Thank you.

20 THE COURT: So you just tell us whatever you
21 would like to do.

22 JUROR MAJOR: We would like to continue.

23 JUROR RICE: We want to continue.

24 JUROR CHAN: We'll discuss it.

25 THE COURT: Feel free.

1 (Thereupon, the jury was excused at 5:40
2 o'clock p.m. to continue their deliberations.)

3 THE COURT: Anything else before we stand in
4 recess again?

5 MR. MICHAEL HAGGARD: No, Judge, that's
6 fine.

7 THE COURT: Anything else?

8 MR. NETTLETON: No, Judge.

9 THE COURT: Okay. Let's stand in recess.

10 * * * * *

11 C E R T I F I C A T E

12 STATE OF FLORIDA)

13) ss:

14 COUNTY OF BROWARD)

15
16
17 I, KAREN S. BARTON, Registered Merit Reporter
18 and Notary Public, do hereby certify that I was
19 authorized to and did stenographically report the
20 foregoing proceedings, and that the transcript is a
21 true and complete record of my stenographic notes of
22 the proceedings.

23 Dated this 20th day of March, 2003.

24 *Karen S. Barton*
25 KAREN S. BARTON, RMR

AA 57:18 ability 37:14 44:9 57:10 15:5 84:17 94:4 94:4
able 84:11 94:3
ability 71:15
absolute 10:15 12:16 15:2 21:15 87:23 95:20
absolutely 7:19 13:16 14:20 19:10 22:19 26:14 27:15 30:17 31:9 36:14 38:14 41:4 43:19 50:13 69:21
absolute 50:12
abused 70:17 71:10
accept 28:4 55:4 83:18
acceptable 44:25
access 64:13
accident 15:24 48:17 53:15 54:25 58:5 59:14,14 60:15 63:21 64:5 67:18 68:21 71:15 85:11,20 91:1
accidents 17:9
accomplishment 35:3
account 29:7,8
accountable 8:22
accurately 10:2,2
acknowledged 50:15
act 4:5 17:9 64:11
acted 65:11
acting 51:21
actions 51:22 93:16
activities 55:9
activity 65:13
acts 4:3 51:7 52:7,8 Adams 1:1 5:3 13:11 16:2 17:9 23:2,16 65:21 73:24 91:24 92:10 99:7 104:3
addition 52:4 59:22
additional 79:4,5
additionally 44:7
additions 107:24
address 53:23 55:11
addressed 44:4 99:25
addressing 55:19 57:6
adequate 82:19
adequately 74:8
administered 29:10
admitted 15:2 78:6
adults 65:14 79:5
advised 67:9,10
affect 25:17 100:17 102:17
African 33:21
afternoon 81:9

burden 4:18 12:22 20:6 25:24
burned 39:13
business 53:8 71:18
busy 73:14
buzz 52:5
hystander 84:13
C 1:7 2:3 108:12,12 calculations 56:19 57:7 57:9
California 27:13,19 28:1,1
call 52:22 116:12
called 23:11 73:10 74:18 78:5 81:3 85:2 calling 73:8
Candace 21:3 79:11
candidly 101:9
cap 34:23
capacity 34:3 35:18
38:1 57:24 90:10,11,14
care 3:4 7:11,11,11
46:14,16 62:22 30:7 31:4 32:22 41:10,11
49:3 44:16 53:18
58:11,20 89:25 97:6
care 22:8
careful 7:12
Carlton 1:24
carpenter 53:6
case 1:6 4:11,16 6:13 8:8 11:22 12:17 17:2 17:13 18:12 19:20 22:10,24 23:3 29:4 24:24 16:17 25:7 26:14 27:9 28:7 33:43 34:7 34:8 10:37 39:12 39:21 41:24 42:4
45:11,23 47:1 50:18
50:10 52:11 56:2
59:3 65:4 78:4 79:13
84:10,16,21,23 85:7
86:17 87:4,6 7:8 88:10
89:1,2,3,4,6,11 90:2
91:14,24 92:3 97:22
107:5,11
cashed 9:11
casual 82:7
catastrophe 4:9
catastrophically 4:8
45:13 71:16 89:4
Cathery 5:13
classification 65:2
cause 65:3
caused 52:9
causes 72:22
Census 39:8
central 50:24 60:15
certain 24:24 107:2
certainty 5:21 53:6,9
57:15 66:6 81:4,25 82:2
certify 108:18
challenge 46:24
Chan 98:13 104:9,11
106:4 107:24
changes 20:3 30:8
change 14:23 27:1,2
29:2 32:2 41:13
42:22 43:21 63:16
changing 57:7
Chan's 98:19 103:11
chapel 40:4
characterized 55:13
charge 44:22
charging 100:9,16
105:6
charged 60:21
CHARLES 1:15
chat 68:13,14
chatted 68:14
cheat 56:8
checks 99:11
cheering 32:13
child 5:16 18:10 20:3
20:14 25:13 29:9,15
28:18,19 29:4 32:1
32:14,14 33:14,16
42:17 48:10 60:5
65:23 78:9 80:5
81:10 86:2 87:10
88:4,9 18:1 93:4,14
92:13 98:1 101:11
106:23
comes 31:24 39:9 80:9
82:10 120:16
coming 21:7 74:3 75:17
10:80 86:14 93:24,25
command 32:6
commanding 1:16
commander 43:6
comments 47:10 67:14 101:3
commercial 39:12
common 15:6 16:8
21:22 55:1 57:16,8
84:25
commonly 71:14
communicate 73:18
communicated 69:19
community 65:13,15
companionship 61:9
company 4:3 14:4
39:14 48:2 51:22
60:19,22 64:7,16
71:17
comparative 23:11
clearly 14:17 49:16
54:9 98:19 100:12
client 47:12 58:6,13
64:23 83:17
clients 41:8 45:8 46:7
47:25 48:1 50:10
51:3,3 84:1 98:6
clips 38:8
clock 74:21 79:21
close 13:18,20 61:15
closing 1:17 2:7 26:8
42:22 43:4 11:16
51:16 53:3 84:12
clothes 79:9
cloud 33:5
code 13:11,12 50:3,9
61:17 62:23 63:1
67:12
codes 17:5
Cohen 27:12 31:19
55:6
Cohen's 55:5
48:21,48:21
collectively 101:11
college 34:20 35:1 97:2
collide 4:9
coma 55:14
comes 8:23 15:4 27:18
28:18,19 29:4 32:1
32:14,14 33:14,16
42:17 48:10 60:5
65:23 78:9 80:5
16:15 18:7 23:18
88:4,9 18:1 93:4,14
92:13 98:1 101:11
106:23
coming 21:7 74:3 75:17
10:80 86:14 93:24,25
command 32:6
commanding 1:16
commander 43:6
comments 47:10 67:14 101:3
commercial 39:12
common 15:6 16:8
21:22 55:1 57:16,8
84:25
commonly 71:14
communicate 73:18
communicated 69:19
community 65:13,15
companionship 61:9
company 4:3 14:4
39:14 48:2 51:22
60:19,22 64:7,16
71:17
comparative 23:11
clearly 14:17 49:16
54:9 98:19 100:12
client 47:12 58:6,13
64:23 83:17
clients 41:8 45:8 46:7
47:25 48:1 50:10
51:3,3 84:1 98:6
clips 38:8
clock 74:21 79:21
close 13:18,20 61:15
closing 1:17 2:7 26:8
42:22 43:4 11:16
51:16 53:3 84:12
clothes 79:9
cloud 33:5
code 13:11,12 50:3,9
61:17 62:23 63:1
67:12
codes 17:5
Cohen 27:12 31:19
55:6
Cohen's 55:5
48:21,48:21
collectively 101:11
college 34:20 35:1 97:2
collide 4:9
coma 55:14
comes 8:23 15:4 27:18
28:18,19 29:4 32:1
32:14,14 33:14,16
42:17 48:10 60:5
65:23 78:9 80:5
16:15 18:7 23:18
88:4,9 18:1 93:4,14
92:13 98:1 101:11
106:23
coming 21:7 74:3 75:17
10:80 86:14 93:24,25
command 32:6
commanding 1:16
commander 43:6
comments 47:10 67:14 101:3
commercial 39:12
common 15:6 16:8
21:22 55:1 57:16,8
84:25
commonly 71:14
communicate 73:18
communicated 69:19
community 65:13,15
companionship 61:9
company 4:3 14:4
39:14 48:2 51:22
60:19,22 64:7,16
71:17
comparative 23:11
clearly 14:17 49:16
54:9 98:19 100:12
client 47:12 58:6,13
64:23 83:17
clients 41:8 45:8 46:7
47:25 48:1 50:10
51:3,3 84:1 98:6
clips 38:8
clock 74:21 79:21
close 13:18,20 61:15
closing 1:17 2:7 26:8
42:22 43:4 11:16
51:16 53:3 84:12
clothes 79:9
cloud 33:5
code 13:11,12 50:3,9
61:17 62:23 63:1
67:12
codes 17:5
Cohen 27:12 31:19
55:6
Cohen's 55:5
48:21,48:21
collectively 101:11
college 34:20 35:1 97:2
collide 4:9
coma 55:14
comes 8:23 15:4 27:18
28:18,19 29:4 32:1
32:14,14 33:14,16
42:17 48:10 60:5
65:23 78:9 80:5
16:15 18:7 23:18
88:4,9 18:1 93:4,14
92:13 98:1 101:11
106:23
coming 21:7 74:3 75:17
10:80 86:14 93:24,25
command 32:6
commanding 1:16
commander 43:6
comments 47:10 67:14 101:3
commercial 39:12
common 15:6 16:8
21:22 55:1 57:16,8
84:25
commonly 71:14
communicate 73:18
communicated 69:19
community 65:13,15
companionship 61:9
company 4:3 14:4
39:14 48:2 51:22
60:19,22 64:7,16
71:17
comparative 23:11
clearly 14:17 49:16
54:9 98:19 100:12
client 47:12 58:6,13
64:23 83:17
clients 41:8 45:8 46:7
47:25 48:1 50:10
51:3,3 84:1 98:6
clips 38:8
clock 74:21 79:21
close 13:18,20 61:15
closing 1:17 2:7 26:8
42:22 43:4 11:16
51:16 53:3 84:12
clothes 79:9
cloud 33:5
code 13:11,12 50:3,9
61:17 62:23 63:1
67:12
codes 17:5
Cohen 27:12 31:19
55:6
Cohen's 55:5
48:21,48:21
collectively 101:11
college 34:20 35:1 97:2
collide 4:9
coma 55:14
comes 8:23 15:4 27:18
28:18,19 29:4 32:1
32:14,14 33:14,16
42:17 48:10 60:5
65:23 78:9 80:5
16:15 18:7 23:18
88:4,9 18:1 93:4,14
92:13 98:1 101:11
106:23
coming 21:7 74:3 75:17
10:80 86:14 93:24,25
command 32:6
commanding 1:16
commander 43:6
comments 47:10 67:14 101:3
commercial 39:12
common 15:6 16:8
21:22 55:1 57:16,8
84:25
commonly 71:14
communicate 73:18
communicated 69:19
community 65:13,15
companionship 61:9
company 4:3 14:4
39:14 48:2 51:22
60:19,22 64:7,16
71:17
comparative 23:11
clearly 14:17 49:16
54:9 98:19 100:12
client 47:12 58:6,13
64:23 83:17
clients 41:8 45:8 46:7
47:25 48:1 50:10
51:3,3 84:1 98:6
clips 38:8
clock 74:21 79:21
close 13:18,20 61:15
closing 1:17 2:7 26:8
42:22 43:4 11:16
51:16 53:3 84:12
clothes 79:9
cloud 33:5
code 13:11,12 50:3,9
61:17 62:23 63:1
67:12
codes 17:5
Cohen 27:12 31:19
55:6
Cohen's 55:5
48:21,48:21
collectively 101:11
college 34:20 35:1 97:2
collide 4:9
coma 55:14
comes 8:23 15:4 27:18
28:18,19 29:4 32:1
32:14,14 33:14,16
42:17 48:10 60:5
65:23 78:9 80:5
16:15 18:7 23:18
88:4,9 18:1 93:4,14
92:13 98:1 101:11
106:23
coming 21:7 74:3 75:17
10:80 86:14 93:24,25
command 32:6
commanding 1:16
commander 43:6
comments 47:10 67:14 101:3
commercial 39:12
common 15:6 16:8
21:22 55:1 57:16,8
84:25
commonly 71:14
communicate 73:18
communicated 69:19
community 65:13,15
companionship 61:9
company 4:3 14:4
39:14 48:2 51:22
60:19,22 64:7,16
71:17
comparative 23:11
clearly 14:17 49:16
54:9 98:19 100:12
client 47:12 58:6,13
64:23 83:17
clients 41:8 45:8 46:7
47:25 48:1 50:10
51:3,3 84:1 98:6
clips 38:8
clock 74:21 79:21
close 13:18,20 61:15
closing 1:17 2:7 26:8
42:22 43:4 11:16
51:16 53:3 84:12
clothes 79:9
cloud 33:5
code 13:11,12 50:3,9
61:17 62:23 63:1
67:12
codes 17:5
Cohen 27:12 31:19
55:6
Cohen's 55:5
48:21,48:21
collectively 101:11
college 34:20 35:1 97:2
collide 4:9
coma 55:14
comes 8:23 15:4 27:18
28:18,19 29:4 32:1
32:14,14 33:14,16
42:17 48:10 60:5
65:23 78:9 80:5
16:15 18:7 23:18
88:4,9 18:1 93:4,14
92:13 98:1 101:11
106:23
coming 21:7 74:3 75:17
10:80 86:14 93:24,25
command 32:6
commanding 1:16
commander 43:6
comments 47:10 67:14 101:3
commercial 39:12
common 15:6 16:8
21:22 55:1 57:16,8
84:25
commonly 71:14
communicate 73:18
communicated 69:19
community 65:13,15
companionship 61:9
company 4:3 14:4
39:14 48:2 51:22
60:19,22 64:7,16
71:17
comparative 23:11
clearly 14:17 49:16
54:9 98:19 100:12
client 47:12 58:6,13
64:23 83:17
clients 41:8 45:8 46:7
47:25 48:1 50:10
51:3,3 84:1 98:6
clips 38:8
clock 74:21 79:21
close 13:18,20 61:15
closing 1:17 2:7 26:8
42:22 43:4 11:16
51:16 53:3 84:12
clothes 79:9
cloud 33:5
code 13:11,12 50:3,9
61:17 62:23 63:1
67:12
codes 17:5
Cohen 27:12 31:19
55:6
Cohen's 55:5
48:21,48:21
collectively 101:11
college 34:20 35:1 97:2
collide 4:9
coma 55:14
comes 8:23 15:4 27:18
28:18,19 29:4 32:1
32:14,14 33:14,16
42:17 48:10 60:5
65:23 78:9 80:5
16:15 18:7 23:18
88:4,9 18:1 93:4,14
92:13 98:1 101:11
106:23
coming 21:7 74:3 75:17
10:80 86:14 93:24,25
command 32:6
commanding 1:16
commander 43:6
comments 47:10 67:14 101:3
commercial 39:12
common 15:6 16:8
21:22 55:1 57:16,8
84:25
commonly 71:14
communicate 73:18
communicated 69:19
community 65:13,15
companionship 61:9
company 4:3 14:4
39:14 48:2 51:22
60:19,22 64:7,16
71:17
comparative 23:11
clearly 14:17 49:16
54:9 98:19 100:12
client 47:12 58:6,13
64:23 83:17
clients 41:8 45:8 46:7
47:25 48:1 50:10
51:3,3 84:1 98:6
clips 38:8
clock 74:21 79:21
close 13:18,20 61:15
closing 1:17 2:7 26:8
42:22 43:4 11:16
51:16 53:3 84:12
clothes 79:9
cloud 33:5
code 13:11,12 50:3,9
61:17 62:23 63:1
67:12
codes 17:5
Cohen 27:12 31:19
55:6
Cohen's 55:5
48:21,48:21
collectively 101:11
college 34:20 35:1 97:2
collide 4:9
coma 55:14
comes 8:23 15:4 27:18
28:18,19 29:4 32:1
32:14,14 33:14,16
42:17 48:10 60:5
65:23 78:9 80:5
16:15 18:7 23:18
88:4,9 18:1 93:4,14
92:13 98:1 101:11
106:23
coming 21:7 74:3 75:17
10:80 86:14 93:24,25
command 32:6
commanding 1:16
commander 43:6
comments 47:10 67:14 101:3
commercial 39:12
common 15:6 16:8
21:22 55:1 57:16,8
84:25
commonly 71:14
communicate 73:18
communicated 69:19
community 65:13,15
companionship 61:9
company 4:3 14:4
39:14 48:2 51:22
60:19,22 64:7,16
71:17
comparative 23:11
clearly 14:17 49:16
54:9 98:19 100:12
client 47:12 58:6,13
64:23 83:17
clients 41:8 45:8 46:7
47:25 48:1 50:10
51:3,3 84:1 98:6
clips 38:8
clock 74:21 79:21
close 13:18,20 61:15
closing 1:17 2:7 26:8
42:22 43:4 11:16
51:16 53:3 84:12
clothes 79:9
cloud 33:5
code 13:11,12 50:3,9
61:17 62:23 63:1
67:12
codes 17:5
Cohen 27:12 31:19
55:6
Cohen's 55:5
48:21,48:21
collectively 101:11
college 34:20 35:1 97:2
collide 4:9
coma 55:14
comes 8:23 15:4 27:18
28:18,19 29:4 32:1
32:14,14 33:14,16
42:17 48:10 60:5
65:23 78:9 80:5
16:15 18:7 23:18
88:4,9 18:1 93:4,14
92:13 98:1 101:11
106:23
coming 21:7 74:3 75:17
10:80 86:14 93:24,25
command 32:6
commanding 1:16
commander 43:6
comments 47:10 67:14 101:3
commercial 39:12
common 15:6 16:8
21:22 55:1 57:16,8
84:25
commonly 71:14
communicate 73:18
communicated 69:19
community 65:13,15
companionship 61:9
company 4:3 14:4
39:14 48:2 51:22
60:19,22 64:7,16
71:17
comparative 23:11
clearly 14:17 49:16
54:9 98:19 100:12
client 47:12 58:6,13
64:23 83:17
clients 41:8 45:8 46:7
47:25 48:1 50:10
51:3,3 84:1 98:6
clips 38:8
clock 74:21 79:21
close 13:18,20 61:15
closing 1:17 2:7 26:8
42:22 43:4 11:16
51:16 53:3 84:12
clothes 79:9
cloud 33:5
code 13:11,12 50:3,9
61:17 62:23 63:1
67:12
codes 17:5
Cohen 27:12 31:19
55:6
Cohen's 55:5
48:21,48:21
collectively 101:11
college 34:20 35:1 97:2
collide 4:9
coma 55:14
comes 8:23 15:4 27:18
28:18,19 29:4 32:1
32:14,14 33:14,16
42:17 48:10 60:5
65:23 78:9 80:5
16:15 18:7 23:18
88:4,9 18:1 93:4,14
92:13 98:1 101:11
106:23
coming 21:7 74:3 75:17
10:80 86:14 93:24,25
command 32:6
commanding 1:16
commander 43:6
comments 47:10 67:14 101:3
commercial 39:12
common 15:6 16:8
21:22 55:1 57:16,8
84:25
commonly 71:14
communicate 73:18
communicated 69:19
community 65:13,15
companionship 61:9
company 4:3 14:4
39:14 48:2 51:22
60:19,22 64:7,16
71:17
comparative 23:11
clearly 14:17 49:16
54:9 98:19 100:12
client 47:12 58:6,13
64:23 83:17
clients 41:8 45:8 46:7
47:25 48:1 50:10
51:3,3 84:1 98:6
clips 38:8
clock 74:21 79:21
close 13:18,20 61:15
closing 1:17 2:7 26:8
42:22 43:4 11:16
51:16 53:3 84:12
clothes 79:9
cloud 33:5
code 13:11,12 50:3,9
61:17 62:23 63:1
67:12
codes 17:5
Cohen 27:12 31:19
55:6
Cohen's 55:5
48:21,48:21
collectively 101:11
college 34:20 35:1 97:2
collide 4:9
coma 55:14
comes 8:23 15:4 27:18
28:18,19 29:4 32:1
32:14,14 33:14,16
42:17 48:10 60:5
65:23 78:9 80:5
16:15 18:7 23:18
88:4,9 18:1 93:4,14
92:13 98:1 101:11
106:23
coming 21:7 74:3 75:17
10:80 86:14 93:24,25
command 32:6
commanding 1:16
commander 43:6
comments 47:10 67:14 101:3
commercial 39:12
common 15:6 16:8
21:22 55:1 57:16,8
84:25
commonly 71:14
communicate 73:18
communicated 69:19
community 65:13,15
companionship 61:9
company 4:3 14:4
39:14 48:2 51:22
60:19,22 64:7,16
71:17
comparative 23:11
clearly 14:17 49:16
54:9 98:19 100:12
client 47:12 58:6,13
64:23 83:17
clients 41:8 45:8 46:7
47:25 48:1 50:10
51:3,3 84:1 98:6
clips 38:8
clock 74:21 79:21
close 13:18,20 61:15
closing 1:17 2:7 26:8
42:22 43:4 11:16
51:16 53:3 84:12
clothes 79:9
cloud 33:5
code 13:11,12 50:3,9
61:17 62:23 63:1
67:12
codes 17:5
Cohen 27:12 31:19
55:6
Cohen's 55:5
48:21,48:21
collectively 101:11
college 34:20 35:1 97:2
collide 4:9
coma 55:14
comes 8:23 15:4 27:18
28:18,19 29:4 32:1
32:14,14 33:14,16
42:17 48:10 60:5
65:23 78:9 80:5
16:15 18:7 23:18
88:4,9 18:1 93:4,14
92:13 98:1 101:11
106:23
coming 21:7 74:3 75:17
10:80 86:14 93:24,25
command 32:6
commanding 1:16
commander 43:6
comments 47:10 67:14 101:3
commercial 39:12
common 15:6 16:8
21:22 55:1 57:16,8
84:25
commonly 71:14
communicate 73:18
communicated 69:19
community 65:13,15
companionship 61:9
company 4:3 14:4
39:14 48:2 51:22
60:19,22 64:7,16
71:17
comparative 23:11
clearly 14:17 49:16
54:9 98:19 100:12
client 47:12 58:6,13
64:23 83:17
clients 41:8 45:8 46:7
47:25 48:1 50:10
51:3,3 84:1 98:6
clips 38:8
clock 74:21 79:21
close 13:18,20 61:15
closing 1:17 2:7 26:8
42:22 43:4 11:16
51:16 53:3 84:12
clothes 79:9
cloud 33:5
code 13:11,12 50:3,9
61:17 62:23 63:1
67:12
codes 17:5
Cohen 27:12 31:19
55:6
Cohen's 55:5
48:21,48:21
collectively 101:11
college 34:20 35:1 97:2
collide 4:9
coma 55:14
comes 8:23 15:4 27:18
28:18,19 29:4 32:1
32:14,14 33:14,16
42:17 48:10 60:5
65:23 78:9 80:5
16:15 18:7 23:18
88:4,9 18:1 93:4,14
92:13 98:1 101:11
106:23
coming 21:7 74:3 75:17
10:80 86:14 93:24,25
command 32:6
commanding 1:16
commander 43:6
comments 47:10 67:14 101:3
commercial 39:12
common 15:6 16:8
21:22 55:1 57:16,8
84:25
commonly 71:14
communicate 73:18
communicated 69:19
community 65:13,15
companionship 61:9
company 4:3 14:4
39:14 48:2 51:22
60:19,22 64:7,16
71:17
comparative 23:11
clearly 14:17 49:16
54:9 98:19 100:12
client 47:12 58:6,13
64:23 83:17
clients 41:8 45:8 46:7
47:25 48:1 50:10
51:3,3 84:1 98:6
clips 38:8
clock 74:21 79:21
close 13:18,20 61:15
closing 1:17 2:7 26:8
42:22 43:4 11:16
51:16 53:3 84:12
clothes 79:9
cloud 33:5
code 13:11,12 50:3,9
61:17 62:23 63:1
67:12
codes 17:5
Cohen 27:12 31:19
55:6
Cohen's 55:5
48:21,48:21
collectively 101:11
college 34:20 35:1 97:2
collide 4:9
coma 55:14
comes 8:23 15:4 27:18
28:18,19 29:4 32:1
32:14,14 33:14,16
42:17 48:10 60:5
65:23 78:9 80:5
16:15 18:7 23:18
88:4,9 18:1 93:4,14
92:13 98:1 101:11
106:23
coming 21

gigantic 34:10
girl 3:22 4:8 9:16 15:25
16:12 17:22 32:14
36:8 38:3 19 42:5
45:1,19 85:5 93:5
93:11 95:7,25
girls 96:13
girl's 11:1 25:18
35:13
give 29:20 31:11,14
32:23 38:11 39:2,22
41:1,1 60:3 76:2 87:1
88:25 90:7 91:3
given 30:6 31:15 52:5
52:22 53:25
gives 55:23 91:16
101:13
glad 31:24
Glady's 5:11 6:18 20:4
80 3:25 4:21 10:27,17
13:8 16:8 18:11,15
21:8 25:20 26:4,7
27:4 20 29:7,24
36:10,11 38:10 40:23
41:16,17,18,23 41:18
45:14,20 46:10 47:9
47:23,25 48:24 51:15
51:17,18 53:7,13
54:1,10 55:20 57:2
59:12,24,25 65:15
62:5 68:6 69:22
72:6,9 75:21 76:12
77:18 78:12,14
86:6,7 25 96:11,24
97:1,22 99:18 100:13
101:5 104:21 105:17
105:20 106:25 107:1
107:3
Goldin 5:14 20:5 66:20
66:20 67:20 70:3,7,9
72:20,21,21,24 93:23
Goldin's 73:25 74:24
75:18 76:10
good 3:7 4:4 20:45:2
47:21 48:12 68:9

goodness 87:6,7 89:13
government 48:22
gown 34:23
grain 69:16
greatest 40:9
Green 2:13 79:11
Greene 1:1,15 73:15,25
91:16
greet 98:5
grill 75:6 77:7,8
Griseau 5:3,14,22 6:20
8:4,11 9:6 10:16
13:23 14:1 19:16
21:21 51:21 60:17
63:2
Griseau 92:18
Griseau's 10:8
grist 4:3 5:18,24 52:9
87:22 92:11
grow 40:19
growth 56:22,25
grudge 9:7
guarantee 9:9
guardians 1:8
guardianship 29:7,15
guess 30:16 84:17
88:19 96:7,9 100:11
101:4
guilty 51:23

happens 74:19 106:20
hard 86:18 89:12
harm 51:25
hazard 10:22 71:21
72:2,4
hazards 68:6 69:13
head 33:5
headed 79:18 101:7
heading 21:2
health 17:5 49:20
55:25
healthy 5:7
hear 31:18 40:4,11
49:11 52:5 70:5
78:16 85:11
hears 5:2,22 17:4 19:9
24:21 26:25 27:5,6
29:6 30:5 37:22
47:10 48:6,25 49:6,8
50:3 53:3 54:20 60:5
60:24 63:12 67:22
67:7,8 69:14,20
70:6,22 71:13 72:19
73:20 75:16 78:5
79:7,12 81:19 84:19
91:5 91:22,23 92:6
92:24

idea 14:11 93:3
identified 79:12
ignores 4:4
immediately 29:7
75:24
immense 41:16
immune 54:14
impass 106:25
impeached 11:2 86:8
important 3:19 27:14
29:11 36:17 42:4,7,8
46:22,25 49:11 50:17
51:14 82:17 83:23
importantly 3:11 10:4
23:16 26:23,24 37:24
96:21
improvement 24:23
incensed 15:18
incident 5:1 6:7 7:20
9:18 11:4 69:15 78:8
98:25 103:20
include 28:5
included 26:17 27:3
71:9
includes 54:7,8 71:2
inconsistent 49:5 55:17
increase 27:20
incredible 3:16 4:13
38:23
index 27:18
indicated 69:1
indicating 68:17 75:20
indifference 4:5 51:9
indirect 52:1
indivisible 1:8
infection 54:14
infections 54:15
inflate 56:20
influences 91:19
information 62:7 78:11
injured 25:12 54:9
injuries 24:20 51:3
injury 24:25 31:1 41:2
45:13 52:9 71:1
incent 44:8 38:23
inquire 99:23
inquiry 102:1
inside 50:5
insistent 20:19
inspect 52:14
inspected 48:14 63:25
67:11
inspection 13:24 14:14
16:19 49:4,7,16,17
49:21
inspector 48:15,21
50:1 52:14
inspects 48:15
install 10:7
instruct 5:7 7:5 8:6

45:21 47:16 51:15,17
instructed 31:12 43:21
83:13
instruction 19:12 55:21
94:10 100:12
instructions 88:25 89:2
100:1 104:22 107:15
instructs 45:25 83:25
insured 41:14
insurmountable 4:14
intend 51:6,6
intense 87:15
intentional 51:7,23
64:10
intent 56:23 57:8
interesting 9:21 34:4
49:23
investigator 47:17
78:19 87:15
invested 68:12
investment 11:21 48:6
50:18 55:7
involvement 52:12
iota 51:1
Irabetta 5:12
irrelevance 15:3
issue 6:7 12:23 13:25
15:6 18:14 20:6
22:18 23:10,13 25:7
25:25 26:20,21 30:1
30:2,2 46:5,6,6,10
47:24 50:24,24 53:23
55:11,19 58:3,8
issues 7:8 42:2 50:3
53:21 58:25 72:4
Items 53:18
I-N-D-E-X 2:1

34:20,22 35:20,23
37:15,15,23 38:15
39:22,24 40:17 42:11
42:14 45:12 54:1
55:14 58:11 23 60:7
73:7 77:11 80:17
81:12,17,24 85:21
89:16 91:18 95:1
96:22 98:5,24 99:10
100:18 101:17
102:17 103:19 104:6
Lorenzo 30:25 31:4
33:19,22
Loren's 18:25 24:25
31:20 35:3 42:17
54:17 57:23 64:12
65:4 84:24
Lorri 1:7 3:11 6:4 12:1
41:5,6 65:23
66:1 68:9,11 75:16
76:3 81:20 96:20
97:19 98:4
losing 29:9
loss 35:18 41:6 57:15
90:10
losses 51:3
lost 35:15,15 36:3
37:13,25 57:10,24
90:14
lot 13:10 15:12 29:25
39:10 47:10 23:23
52:25 65:24 73:13
lots 7:25
10:13,13 41:7 46:4
46:5
Lower 33:9
Lucy 31:19
lunches 44:23
lying 93:8

35:5 37:22 38:2,4,10
38:13 42:9 75:25
79:17 80:24 82:6,8,9
82:16,21 83:3
84:8 93:21,21 94:14
94:16
misleading 43:10
mistaking 19:3
miss-remember 81:5
miss-remembering
72:5
mistake 34:8
mistral 43:15
mistaken 59:20
moon 40:40
moon 40:40
moon 40:40
money 7:21 9:21 29:9
39:11 40:21 43:8
month 9:16,17 15:11
15:21 16:1 17:21
21:24
months 5:2 6:19 10:7
10:10 11:13 14:14
22:6 25:4 30:17 19
30:21 31:5,8 32:5
35:16 36:8 38:9 2:1
39:2 60:20 64:8 69:1
93:5 95:22
morning 3:7 61:7 45:2
76:19 81:19 96:6,7,9
106:13
mortality 55:22
mother 96:14,17
motion 43:1,24 44:2
MOTIONS 1:17
move 43:7 72:17
moving 27:12
multiple 70:19,23
music 40:5

negligence 4:4 5:9 7:6
7:10 8:8 9:3 10:15
12:23 19:11 20:8
23:5,11 22 36:19
37:3 47:24 51:8,24
52:9 64:6,16,25 65:3
65:10 87:22,23 91:5
92:19 93:2,3 99:2
100:4,9 16:10 18:1
102:14 103:23 105:1
105:6,22
negligent 7:18 16:6
18:19 19:12 23:13,14
24:3 26:15 91:24,25
91:25 92:10 111 99:4
100:6 103:25 105:3
negligently 4:16,23
58:11
neighbor 66:5,21 77:13
77:14,15
neighborhood 11:9
neighbors 11:7 20:19
21:14 22:7 71:22
94:21
nerdier 80:13
Nettleton 1:24 2:10
19:2 43:1,5 44:15,17
45:1,3 82:24 83:1
84:15 86:1,13 87:9
87:20 89:20 90:6,19
94:14 101:4 22:24
102:10,18,21 107:17
108:8
neurologist 55:10
neurology 30:19
never 5:23 6:8,8,20
7:18,22,23 8:6,10,25
16:13,17,21 21:2
22:8 23:6 34:1 35:3
40:1,1,4,7,11 45:14
46:2,5 48:25 53:2
67:25 68:8 69:20
76:25 79:14 86:21
93:1 94:5 95:9 96:20
96:22,24 97:1
new 3:15
news 7:20
next-door 66:5
nice 19:17 84:15
Nicholas 74:20 79:19
79:20
night 12:9 59:4 78:3
nine 14:14 22:4 96:9
105:20
noise 94:22
noncompliant 50:9
non-economic 35:12
57:22

normal 20:7 31:5 54:2
55:6,23 59:23 65:13
97:4
Notary 108:18
note 3:15 37:10 98:18
103:4,10
noted 74:21 79:21
notes 67:13 98:14,16
103:3 108:21
notice 18:6 27:2 80:11
80:14
notice 20:17
noticed 16:17 64:8
68:18 82:19
number 8:2 13:8 16:7
26:11 28:14 29:23
31:14 35:10 36:24
41:9,17 43:23,25
66:22 77:18 83:22
95:21 103:20,19,12
numbers 28:6 26:12
29:21 34:7 50:4
52:22 56:21 57:6,18
58:1
numerous 63:12 93:4

ones 105:16
one-on-one 74:9
open 10:7 21:24 22:14
61:8 62:16 63:14,17
64:22 65:24 68:1
70:24 71:15 73:3
opened 21:10 73:4
opening 4:2 12:6 19:6
24:17 25:15 46:1
78:3
opens 62:13
opinion 31:15 32:2
33:20 107:3
opinions 31:14
opportunities 93:10
opportunity 101:13
opposed 84:20
options 106:21
orally 92:24
order 3:15 8:15 51:17
58:24 103:4
Ordinance 13:13
original 57:9
origins 19:23 107:2
outside 8:20
outside 8:20
outside 20:22 11:23
11:23,25 12:1,2
20:20,25 21:1,4
42:24 43:3 73:2,13
78:7 83:9 91:19,19
98:10
overhead 69:25
Overruled 19:4
overwhelming 13:1
18:5 42:1
overwhelmingly 30:6
owned 48:2
owner 14:22 67:10
owners 16:20
ownership 14:24
owens 36:3
o'clock 1:17 75:14
98:11 106:8 108:2

34:20,22 35:20,23
37:15,15,23 38:15
39:22,24 40:17 42:11
42:14 45:12 54:1
55:14 58:11 23 60:7
73:7 77:11 80:17
81:12,17,24 85:21
89:16 91:18 95:1
96:22 98:5,24 99:10
100:18 101:17
102:17 103:19 104:6
Lorenzo 30:25 31:4
33:19,22
Loren's 18:25 24:25
31:20 35:3 42:17
54:17 57:23 64:12
65:4 84:24
Lorri 1:7 3:11 6:4 12:1
41:5,6 65:23
66:1 68:9,11 75:16
76:3 81:20 96:20
97:19 98:4
losing 29:9
loss 35:18 41:6 57:15
90:10
losses 51:3
lost 35:15,15 36:3
37:13,25 57:10,24
90:14
lot 13:10 15:12 29:25
39:10 47:10 23:23
52:25 65:24 73:13
lots 7:25
10:13,13 41:7 46:4
46:5
Lower 33:9
Lucy 31:19
lunches 44:23
lying 93:8

35:5 37:22 38:2,4,10
38:13 42:9 75:25
79:17 80:24 82:6,8,9
82:16,21 83:3
84:8 93:21,21 94:14
94:16
misleading 43:10
mistaking 19:3
miss-remember 81:5
miss-remembering
72:5
mistake 34:8
mistral 43:15
mistaken 59:20
moon 40:40
moon 40:40
moon 40:40
money 7:21 9:21 29:9
39:11 40:21 43:8
month 9:16,17 15:11
15:21 16:1 17:21
21:24
months 5:2 6:19 10:7
10:10 11:13 14:14
22:6 25:4 30:17 19
30:21 31:5,8 32:5
35:16 36:8 38:9 2:1
39:2 60:20 64:8 69:1
93:5 95:22
morning 3:7 61:7 45:2
76:19 81:19 96:6,7,9
106:13
mortality 55:22
mother 96:14,17
motion 43:1,24 44:2
MOTIONS 1:17
move 43:7 72:17
moving 27:12
multiple 70:19,23
music 40:5

negligence 4:4 5:9 7:6
7:10 8:8 9:3 10:15
12:23 19:11 20:8
23:5,11 22 36:19
37:3 47:24 51:8,24
52:9 64:6,16,25 65:3
65:10 87:22,23 91:5
92:19 93:2,3 99:2
100:4,9 16:10 18:1
102:14 103:23 105:1
105:6,22
negligent 7:18 16:6
18:19 19:12 23:13,14
24:3 26:15 91:24,25
91:25 92:10 111 99:4
100:6 103:25 105:3
negligently 4:16,23
58:11
neighbor 66:5,21 77:13
77:14,15
neighborhood 11:9
neighbors 11:7 20:19
21:14 22:7 71:22
94:21
nerdier 80:13
Nettleton 1:24 2:10
19:2 43:1,5 44:15,17
45:1,3 82:24 83:1
84:15 86:1,13 87:9
87:20 89:20 90:6,19
94:14 101:4 22:24
102:10,18,21 107:17
108:8
neurologist 55:10
neurology 30:19
never 5:23 6:8,8,20
7:18,22,23 8:6,10,25
16:13,17,21 21:2
22:8 23:6 34:1 35:3
40:1,1,4,7,11 45:14
46:2,5 48:25 53:2
67:25 68:8 69:20
76:25 79:14 86:21
93:1 94:5 95:9 96:20
96:22,24 97:1
new 3:15
news 7:20
next-door 66:5
nice 19:17 84:15
Nicholas 74:20 79:19
79:20
night 12:9 59:4 78:3
nine 14:14 22:4 96:9
105:20
noise 94:22
noncompliant 50:9
non-economic 35:12
57:22

ones 105:16
one-on-one 74:9
open 10:7 21:24 22:14
61:8 62:16 63:14,17
64:22 65:24 68:1
70:24 71:15 73:3
opened 21:10 73:4
opening 4:2 12:6 19:6
24:17 25:15 46:1
78:3
opens 62:13
opinion 31:15 32:2
33:20 107:3
opinions 31:14
opportunities 93:10
opportunity 101:13
opposed 84:20
options 106:21
orally 92:24
order 3:15 8:15 51:17
58:24 103:4
Ordinance 13:13
original 57:9
origins 19:23 107:2
outside 8:20
outside 8:20
outside 20:22 11:23
11:23,25 12:1,2
20:20,25 21:1,4
42:24 43:3 73:2,13
78:7 83:9 91:19,19
98:10
overhead 69:25
Overruled 19:4
overwhelming 13:1
18:5 42:1
overwhelmingly 30:6
owned 48:2
owner 14:22 67:10
owners 16:20
ownership 14:24
owens 36:3
o'clock 1:17 75:14
98:11 106:8 108:2

