

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 322

HON. LEE SMALLEY EDMON, JUDGE

4
5 TOYOTA UNINTENDED ACCELERATION)
6 CASES,)
7 (UNO TRIAL))
8 _____)

) SUPERIOR COURT
) CASE NO. JCCP 4621
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)

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10 REPORTER'S TRANSCRIPT OF PROCEEDINGS

11 Thursday, August 8, 2013

12 P.M. Session

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1 CASE NUMBER: JCCP 4621
2 CASE NAME: TOYOTA CASES (UNO TRIAL)
3 LOS ANGELES, CALIFORNIA THURSDAY, AUGUST 8, 2013
4 DEPARTMENT 322 LEE SMALLEY EDMON, JUDGE
5 REPORTER: DAVID A. SALYER, CSR 4410
6 TIME: 1:00 P.M.

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8
9 (The following proceedings were held in
10 open court in the presence of the jury:)

11 THE COURT: All right. Good afternoon. Welcome back,
12 everybody.

13 Mr. Galvin, you may proceed.

14 MR. GALVIN: Thank you, your Honor.

15 There are several points I want to make. And this is
16 the opportunity that we get to lay out for you, ladies and
17 gentlemen, what the evidence will show, what the claims are
18 and what the evidence will show.

19 First I want to respond to some issues that were raised
20 this morning, and let me do that by first pointing out to you
21 this here. This here is a simple timeline that goes from 2002
22 to 2012.

23 Some of the documents you were shown and some of the
24 issues that you were told about regarding the brake override
25 system all arose in the 2009 to 2012 time frame related to a
26 recall that was up there for about 12 or 13 minutes.

27 This vehicle was not part of that recall. The 2001 to
28 2006 Camry was not part of the recall. It was not involved in

1 the floor mat issues. That document -- and it's undisputed
2 that this document was not part of the recall.

3 This vehicle as a 2002 to 2006 Camry was first designed
4 in 1998, first came out in 2001. And from that point forward
5 to 2002 went through iterative changes, but it was a different
6 generation. This is the time period.

7 There's another point that needs to be made. And the
8 facts are going to be in this case that this is not a stuck
9 pedal case. It's not a stuck pedal case. It's a stuck --
10 alleged stuck foot case. And I'll get into more of that in a
11 few moments.

12 With respect to the brake override system, we will get
13 into in more detail about the brake override system and what
14 Toyota had and what Toyota didn't have, but the idea that the
15 brake is the boss, B-O-S-S, is just simply wrong. Using this
16 3-D model that Mr. Mardirossian showed you, the boss in the
17 car is the driver. The driver is the one who controls the
18 vehicle; the driver is the one who makes decisions about what
19 the vehicle does.

20 In this case there was 13 seconds where Mrs. Uno was
21 the boss, and she stepped on the gas 13, 12, 11, 10, 9, 8, 7,
22 6, 5, 4, 3, 2, 1, and she impacted the first pole. She was
23 the boss, not the brake.

24 The brake override system only works in specified
25 certain circumstances and doesn't work otherwise. It does not
26 work if the gas pedal is not jammed down and not moving. It
27 doesn't move if you don't press the brake. It doesn't work if
28 you're pumping the brake or moving the brake pedal back and

1 forth. You've got to put your foot on the brake, you have to
2 apply the brake, and you have to keep your foot there.

3 This is a functionality that has a limited scope of
4 circumstances when it works, and none of those circumstances
5 occurred in this crash.

6 You were shown some advertising about the vehicle. The
7 2006 Toyota Camry is a safe vehicle, and it was a safe
8 vehicle, and it was a good vehicle.

9 For 2006 it had a five star rating, a NHTSA five star
10 rating. It was number one in the J.D. Power; it was best
11 rating in J.D. Power Associates' Initial Quality award for the
12 mid-sized car segment. It got the Automotive Loyalty award
13 from R.L. Polk for the 2006 mid-sized car.

14 So for those agencies that took the vehicles, evaluated
15 them and looked at them, this vehicle did well. Our
16 advertising was correct. It's safe. Whether it's sexy or not
17 is in the eye of the beholder.

18 There are a number of key issues that I think we need
19 to discuss, and the first is what are we doing here.

20 This is a case that -- the case here, the claim that
21 brought us here, ladies and gentlemen, is that somehow when
22 Mrs. Uno's vehicle was struck by the Bello vehicle, that
23 somehow her foot got stuck behind the brake pedal and it was
24 partially on the gas pedal.

25 And then for over a half a mile and 35 or so seconds,
26 it was like that and she was trying to allegedly step on the
27 brake, and she couldn't stop the vehicle.

28 Plaintiffs' own experts who will come here and testify

1 said that if the foot wasn't stuck in the first place, there
2 is no case. The whole case requires you to first believe the
3 evidence that there would be a stuck foot in this
4 circumstance.

5 In this case plaintiffs just can't say what could have
6 happened. They have to prove it. They have to prove more
7 likely than not under the instructions that the Court will
8 give you that the foot was stuck and then everything else that
9 follows. That's their burden.

10 If they can't prove the foot was stuck under their own
11 witnesses' testimony, there is no case. Because their case
12 relies on a stuck foot.

13 So the first key point is can the foot get stuck. Can
14 Mrs. Uno's size six, double X wide foot get stuck the way the
15 plaintiffs say? And the answer to that is, no, it cannot.
16 The evidence will be it cannot.

17 There is plenty of room in that foot well for feet.
18 The geometry and the spacing between the pedals is just fine.
19 It's not going to cause the foot to get stuck. There is
20 nothing down there to stick the foot.

21 There is nothing to stick the foot. There is nothing
22 to get it stuck. And I'll show you what the evidence will be
23 there.

24 And with respect to the injuries on the foot that you
25 saw, it was difficult to see them all, but the right foot of
26 Mrs. Uno was severely injured. She had massive injuries as
27 you would expect if you go sideways into a tree at 54 miles
28 per hour.

1 But the reason her foot was damaged and injured the way
2 it was, because it is over and on the gas pedal when the
3 vehicle went, driver's side leading, into the pepper tree.

4 The driver's side of the vehicle where the driver sits
5 was crushed so much that it was pushed into the passenger's
6 side. And her foot was grabbed by the crush and crushed in
7 there. Her left foot was not. And we'll show you why.

8 So let me first show you this. What this is, this is a
9 photograph, a blown-up photograph, of a model who has the same
10 sized foot as Mrs. Uno had.

11 And so what she has -- what we did is we put her in an
12 exemplar vehicle like you saw before, a similar vehicle, '06
13 Camry, and we put mirrors down there so you could see all
14 around; you could see all around, you could see under the
15 pedals and so forth.

16 We said put your foot on the gas the way you would put
17 your foot on the gas.

18 What you'll notice -- first of all, can everyone see
19 this okay?

20 What you'll notice is that for this model with
21 flip-flops on, her heel is on the floor as you would drive a
22 vehicle. Her heel is on the floor, and her foot is on the gas
23 pedal. And that's the normal driving position for someone the
24 same size and weight, basically, as Mrs. Uno. This is the
25 size six foot, double X, in a Camry in a normal driving
26 position.

27 What I'm pointing to here, here is the foot on the gas
28 pedal. Here's the brake pedal. If you look here where the

1 mirror is, you can see the bottom of the gas -- you can see
2 the gas pedal where the flip-flop is on it and you can see
3 part of the brake pedal but not very much of it.

4 So that is the normal position. You're driving along.
5 Your foot is on the gas. That is the way your foot is going
6 to be.

7 Now, the evidence is that the plaintiffs' hypothesis is
8 that when this vehicle was hit by the Bello vehicle, that the
9 heel stayed where it was on the ground and that the top of the
10 foot moved over. And there's problems physics-wise with that
11 that we'll talk about when we get to that part of the impact,
12 but the heel stays on the ground, and the top part moves over.
13 That's what their expert says. That is what their evidence
14 will be.

15 This is a photograph of the same model putting her foot
16 in the position that the plaintiffs say is the, quote, stuck
17 foot position.

18 So what the model did was, looking at the plaintiffs'
19 expert's photographs like what you saw, she moved her foot so
20 the top -- her toes were behind the brake pedal and her heel
21 was over on the gas to duplicate the hypothesized, imagined
22 position that the plaintiffs' experts have said that
23 Mrs. Uno's foot was in as she was driving her half a mile,
24 35 seconds or so.

25 So this is the, quote, unquote, stuck foot position.

26 What you need to know here is that the mirror is down
27 here. In order for this person with the size six foot to get
28 their foot into that stuck foot position, they needed to raise

1 their foot off the ground and hold the foot in that position
2 pulling their toes against the back of the brake.

3 If you want, you can flex your ankle and you can either
4 press on the gas pedal or not press on the gas pedal.

5 In this, quote, stuck foot position that the plaintiffs
6 propose, the foot's not stuck. Because there's nothing
7 holding it there other than the purpose of holding your leg up
8 in the air.

9 So what you need to do, if your foot is down here with
10 your heel on the floor, you have to lift your foot up, rotate
11 it like this. Your right side rear end comes off the seat.
12 Your hip moves, and you have to hold it there. Because there
13 is nothing on the brake pedal or gas pedal that is holding it.
14 You have to hold it this way.

15 There is nothing that's holding the foot there. The
16 models that you see are keeping their leg levitated in that
17 position.

18 The evidence, according to the plaintiffs, is that this
19 is a brake pedal from an '06 Camry. The evidence is that when
20 the foot gets behind the brake pedal here, the thongy thing on
21 the flip-flop somehow catches on this rubber edge that comes
22 over the pad of the brake pedal.

23 The brake pedal is steel. This is a rubber pad that
24 fits on the steel plate that you press against. It fits on
25 sort of like a Tupperware top on a food container. It has a
26 lip, and you kind of put it on, pressure it on.

27 The plaintiffs' theory is that the foot is caught
28 somehow on here due to this, due to this lip edge.

1 You'll hear that the plaintiffs' experts can't really
2 describe what it is that catches it. They just say, well,
3 this little edge that flips over caught the foot. But the
4 problem with that and the evidence will show that it doesn't
5 catch the foot. It doesn't catch it.

6 They're not claiming that the flip-flop did this on her
7 foot. They're not claiming that anything like this happened.
8 They're claiming that the foot and the flip-flop got behind
9 the brake and the rubber lip that goes over the steel catches
10 it.

11 It doesn't happen. It didn't happen. That's what the
12 evidence will show.

13 With respect to the gas pedal, there's nothing on the
14 gas pedal that is going to hold the foot in that position,
15 nothing. The gas pedal moves up and down. The weight of a
16 foot like Mrs. Uno's would press on the gas pedal.

17 So if your foot is here and you press on the gas pedal,
18 it's going to fall to the ground. That's gravity. It's been
19 around for a long time.

20 The only way you can create a, quote, unquote, stuck
21 foot position that the plaintiffs hypothesize is that if you
22 hold your foot in that position.

23 To show you an example of the amount of room in that
24 area for someone with a foot the same size and shape as
25 Ms. Uno, we have a video to demonstrate, and you'll see more
26 of that in this trial.

27 Bill, can you show that? And don't forget, it's no
28 audio.

1 So let me show what you're going to see. What you're
2 going to see is same model in the same vehicle, and the point
3 is to move the foot around, show you can get in between the
4 brake and the gas, move it around the pedals, pull it out, and
5 then to put it in this, quote, stuck foot position, press on
6 the brake and show you what happens.

7 So, Bill, can you please?

8 (Video played.)

9 MR. GALVIN: Can you play it back and stop when it goes
10 into the stuck foot position?

11 What you just saw is that there is plenty of room down
12 there. There is plenty of room. There is nothing that is
13 going to catch on the back of -- nothing on the brake that
14 will catch the foot. The gas pedal moves. There is nothing
15 that is holding the foot there.

16 What you'll also see, that in order to put it into the
17 position -- stop it, Bill -- they have to lift the foot up.
18 The person has to purposely -- I'm sorry, Mr. Brisco.

19 Bill, rerun it, please.

20 MR. BERRY: This monitor is off.

21 MR. GALVIN: It's on. Are you running it?

22 Okay. Stop it.

23 The point I want to direct your attention to and what
24 the evidence will show is that in order to get the foot into
25 this levitated, held-up, allegedly stuck position, this person
26 who has the same size foot as Mrs. Uno has to lift her foot
27 up.

28 It doesn't go up there by itself. The evidence will

1 show there is no forces in this crash that will cause the foot
2 to levitate up. There is no forces in this crash that is
3 going to cause the foot to be held there for a mile distance
4 in 35 seconds.

5 And there is no reason why an alert driver couldn't
6 control this vehicle and move their foot around down here.

7 If I said a mile, correction, it's a half a mile.

8 So the plaintiffs did testing, and you're going to see
9 that. That is going to be in the evidence.

10 And the plaintiffs' own testing shows that this is not
11 a stuck pedal case. Plaintiffs' testing shows that -- and
12 this is Mr. Hannemann. Plaintiffs' testing shows this vehicle
13 could have been stopped in this accident scenario, and it's
14 going to show that the brake pedal and the gas pedal don't
15 stick the foot. It's not a stuck foot case.

16 What we've got here is we've got some snippets, some
17 runs from Mr. Hannemann's test. So let me show you -- first
18 of all, this is a test to show you -- he prepared this and
19 provided it to us in discovery, in deposition, to show us the
20 scenario that he believes occurred that he says the foot
21 stuck, the pedals are stuck, and that when you pump the brake,
22 you can't get your foot out.

23 What you're going to see is you can remove your foot;
24 that he's manipulating the test because he's pressing on the
25 gas to make it look like the vehicle is going faster and that
26 there is not a relationship between pumping on the brake and
27 on the gas.

28 So let's watch this first.

1 (Video played.)

2 MR. GALVIN: Simply stated, if your foot is in that
3 position, you can get your foot out. You simply take your
4 foot out. It's not hard.

5 Now, he obviously has bigger feet than Mrs. Uno, and he
6 obviously doesn't have to levitate it off the ground and hold
7 it there, but the point is it shows you can remove your foot
8 from that position.

9 Next one, Bill.

10 What you're going to see -- what you're going to see,
11 it went too fast. What you're going to see here is the
12 plaintiffs' expert is going to tell you she was stepping on
13 the brake and there was no evidence to that effect. And
14 because she was stepping on the brake, she couldn't get her
15 foot from this stuck position.

16 What this will show you is that that's not true. Even
17 their own testing shows the foot, while you're pumping the
18 brake, comes out on their own testing. All right.

19 (Video played.)

20 MR. GALVIN: You'll notice that the gas pedal moves
21 because the foot is moving. The gas pedal is not stuck. This
22 is in slow motion.

23 See, the foot comes out. He sticks it back in, tries
24 to press on the brake again. The gas pedal comes down, his
25 foot comes out, and he pushes it back down in there. It's not
26 a stuck pedal.

27 Pause it.

28 This next one here, the evidence will be when you hear

1 these experts, they'll say, well, when the foot is in this,
2 quote, stuck position, when you press on the brake, that makes
3 the gas go faster because the foot is connected to the brake
4 and therefore hitting the gas and so it's pushing the gas
5 down.

6 And here's this information from the test that proves
7 this point. That is what this witness is going to say to you,
8 ladies and gentlemen.

9 What this will show you is if you put your foot in that
10 position, you can cause the gas pedal to be pressed just by
11 rotating your angle or you can cause the gas pedal not to be
12 pressed by not rotating your ankle.

13 You can dictate whether you're on the gas or not. It
14 just depends how you move your ankle.

15 And the evidence will be in this case, even from
16 plaintiffs' expert, that Mrs. Uno had a normal ankle.

17 So what this will show you is that in his test he
18 purposely pressed the gas down to make it look like in a stuck
19 position the gas is going faster. But, in fact, what the
20 evidence is is that he did it on purpose.

21 What you want to look for is what his foot does on the
22 gas pedal before he steps on the brake.

23 (Video played.)

24 MR. GALVIN: What you saw is that he stepped on the gas
25 first.

26 Run it again, please.

27 He steps on the brake, holds the gas down, and then he
28 pumps. Of course the vehicle is going to go fast. He stepped

1 on the gas.

2 The pedal is not stuck, ladies and gentlemen. It's
3 moving. It's moving with his foot just the way it's designed.

4 What you're going to see here is another example where
5 he pushes the gas pedal down to get it going, puts it under
6 the brake, and then pumps the brake, suggesting that the
7 reason the vehicle is going faster is because he's pumping on
8 the brake, but, in fact, he already has the vehicle going.

9 So the question is is the foot stuck? No, the foot is
10 not stuck. There is plenty of room there. There is nothing
11 to stick it, nothing to catch it. These pedals move, and they
12 move the way they're designed to move, and plaintiffs' own
13 testing shows that.

14 Now, with respect to the injuries to the foot, let me
15 talk about those a little bit.

16 There was significant crush in this car, and we'll get
17 to the accident reconstruction in a minute.

18 But what's important to point out is that this vehicle
19 hit the pepper tree at 54 miles an hour, driver's side
20 leading. That is a very serious, significant side impact for
21 any vehicle. As a result of that, there was significant
22 damage to the vehicle.

23 What this exhibit is here, it's an overhead shot of
24 Mrs. Uno's vehicle.

25 This is her car. This is the print from the tree.
26 This is where she hit the tree.

27 The damage to the vehicle pushed the whole side of the
28 vehicle in. So basically parts of it were over on the

1 passenger side. The driver's side turns into the passenger
2 side.

3 And when it did that, it pushed all the components --
4 the seat, the pedals, the steering wheel -- with it.

5 So what this is -- and I'll show you a more simplified
6 version on the screen in a second.

7 But, first of all, what this is is down here is an
8 outline of an undamaged 2006 Camry right here showing the
9 driver's seat, the console, the parking brake handle, the
10 pedals, the brake and accelerator pedal, the foot well area.

11 So that's for a reference point. This is undamaged, no
12 accident vehicle outline. It's in gray so that when you look
13 at this one here, you see how you compare the damaged one to
14 the non-damaged one.

15 This red one up here, the red line up here is an
16 outline of Mrs. Uno's damaged vehicle. The experts go and
17 measure it with all kind of fancy stuff. So they're able to
18 very accurately identify what the damage is, how much damage
19 there is.

20 And what this is here, ladies and gentlemen, is the
21 as-damaged outline of the vehicle identifying various
22 components that were moved in the crush.

23 So there is the console box, you know, the top, the
24 little armrest cover that is on the console. There is the
25 seat belt buckle that is on the right-hand side of the seat,
26 the seat belt buckle.

27 Here's the parking brake handle that is right here.
28 The steering wheel is right here, this yellow thing. Then we

1 have the brake right here, the accelerator pedal right here,
2 and the pad that is beside the accelerator pad on the tunnel.
3 So these are the pedals.

4 So this is after the crash is over, after the vehicle
5 is up against the tree, where everything is. It shows how it
6 all moved, how it all was crushed in there.

7 To get an idea of how that compares to an undamaged
8 vehicle, you then take the gray outline of the undamaged
9 vehicle and put it on top of this outline of the damaged
10 vehicle to get an idea how did all this stuff move.

11 Here's the undamaged parts. Here's the damaged parts.

12 You can see that this steering wheel went from here to
13 here, here to here, here to here.

14 The console cover, you know, where you put your arm,
15 went from here to here, here to here.

16 And the pedals went from here, purplish pink colors
17 here, pedals from here to here, from here to here, from here
18 over to here.

19 The evidence will be when the pedals moved that way,
20 the whole floor pan was crushing that way.

21 You have to understand that Mrs. Uno was sitting in
22 this seat and her right foot was down on the gas pedal -- on
23 the gas pedal. When the crush came in, it grabbed her foot
24 and pulled it or pushed it over towards the passenger side.

25 Her upper body, because of the way the laws of physics
26 work, is wanting to go out the door. Because she's hitting
27 the tree. The car is hitting the tree at her door, and so
28 she's going to want to go that way, and the crush of the floor

1 pan has taken her foot that way.

2 So that's why she got the injury she got. She got that
3 injury when the vehicle crashed into the tree.

4 She's here with her right foot at the accelerator
5 pedal. Her left foot is back here. The crush comes in. The
6 brake pedal is moving from here to here. The gas pedal is
7 moving from here to here. Her foot is caught by this whole
8 structure that is moving in this massive crush.

9 Her torso is coming this way so the legs are going this
10 way. She's going this way.

11 And her left foot is back here, and it's pushed with
12 the crush in behind her right foot here. Her left foot had no
13 injuries to it. Her left foot was essentially protected. It
14 rode the wave of crush behind her right foot. Her right foot
15 was in the area of the pedals.

16 That's how Mrs. Uno got those severe injuries to her
17 right foot.

18 The evidence is going to show that there was no stuck
19 foot, ladies and gentlemen. There was no stuck foot in this
20 case. There was no stuck foot to be under the brake, to be
21 pressed on by the left foot that then pressed on the gas
22 pedal. It didn't happen.

23 Now, the second key point that I want to discuss is the
24 evidence -- you're going to look at the evidence of her
25 overall behavior over the course of this accident path to
26 determine what happened. Because that's part of what your job
27 is.

28 You're going to see evidence of her overall behavior

1 starting from before the Bello crash, through the Bello crash,
2 over to the other side of the street where she turned right
3 and went the wrong way, hit two poles, went across the median,
4 went on to the next median, hit a small tree, ultimately hit
5 the big tree.

6 When we -- when you look at that -- and you have to
7 look at it. When you look at a crash case like this, you look
8 at the environment, you look at the vehicle, and you look at
9 the driver. You look at all three of those things.

10 So let's first look at what's happening at 23rd Street
11 at the Bello accident.

12 This is a blowup of the 23rd Street intersection where
13 the Bello accident occurred out on Euclid. And what the
14 evidence is going to be -- can you guys see?

15 There's a lot that we don't know from this point up.
16 Because there are no witnesses. She was home alone when she
17 left on this trip.

18 We don't know whether when she did the drive you saw
19 this morning that she hit every curb on the way down or not.
20 There is no witnesses about what happened during that drive.

21 What we know relative to what you're here to decide,
22 ladies and gentlemen, is that at this point she was struck by
23 the Bello vehicle. At this point we know that at this point
24 we have a vehicle that is on a road that has a
25 45-mile-per-hour speed limit and she's going down the road and
26 Mrs. Bello comes out and impacts the left side of the Uno
27 vehicle.

28 We know when that impact occurs that Mrs. Uno is going

1 28 to 31 miles per hour. We know that by engineering
2 reconstruction of this accident. And those speeds are really
3 not in dispute. There's really no dispute about that.

4 So the plaintiffs' stuck foot theory requires, as a
5 foundational point, that her foot be on the gas, that her foot
6 is starting on the gas. There's no evidence that her foot is
7 on the gas at this point one way or the other.

8 What we know is we have a 45-mile-per-hour speed limit
9 and she's going 28 to 31 when she gets hit.

10 We know there is some angle to where she is here to
11 here.

12 She's struck, and the vehicle rotates around about
13 160 degrees to this location, and it makes tire marks on the
14 road when it does that.

15 We know that it does it at about 98 degrees a second.
16 So it's a pretty fast spin.

17 The experts -- all the experts agree that Mrs. Uno's
18 vehicle was stopped after this impact after it stopped
19 rotating. It stopped; then it started going again.

20 With respect to Mrs. Bello, the evidence this
21 morning -- you were told there was evidence that Mrs. Bello
22 looked up and didn't see it. Mrs. Bello, after her
23 accident -- after this accident, was attending to her daughter
24 and then at some point looked up and this Uno vehicle was
25 gone.

26 She doesn't know and doesn't remember how long she was
27 attending to her daughter. So in terms of this, quote, quick
28 Mrs. Uno took off, there is no evidence of that. You have to

1 decide what the evidence is. But as of now, there is no
2 witness that labels a time of how long a time Mrs. Uno was
3 stopped here.

4 What we know is this vehicle came to a stop and
5 eventually got over here.

6 So Mrs. Uno drove away from this end position. The
7 first thing -- she left the scene of this accident. The
8 question is why.

9 She left the scene of the accident, and even
10 plaintiffs' own experts -- Mr. Hannemann, who you talked
11 about, says that it's his opinion that she drove away from the
12 accident and she went on 23rd Street. She went up and made
13 one right turn, made another right turn, and then started
14 driving south in the northbound lane.

15 He said he did calculations to determine what her speed
16 was. And what he said was that when she drove away, she got
17 to a point that was 230 feet beyond this intersection on the
18 straightaway here, and from here to here, she got her vehicle
19 up to 36 miles per hour, 36 miles per hour right there.

20 The evidence is not going to be that she accelerated
21 away from here.

22 And his opinion is that he will tell you that she did
23 not step on the brake in any of this area. There is no
24 braking by Mrs. Uno in any of this area.

25 That's plaintiffs' own expert. His evidence will be
26 that the vehicle came to a stop, she started going, she drove,
27 and she got on the straightaway going the wrong way down the
28 street.

1 Why? There is no acceleration. From here to here,
2 getting to 36 miles an hour is not acceleration.

3 When she made this turn -- you're also going to hear
4 from the witnesses, the Wunsches, and when they saw the
5 vehicle, Mr. Wunsch says it was going fast. They have
6 different speeds. I'll let them speak for themselves. It was
7 50, 60, but they couldn't say for sure.

8 But they say when they saw the vehicle, the speed it
9 was going, she couldn't have made the turn that way.

10 Plaintiffs' own experts has it at 36 miles an hour,
11 230 feet down the road.

12 This vehicle could have been stopped if someone wanted
13 to stop it. If it was stopped here, you could have turned the
14 key off and gotten out. That's what the evidence would be
15 because there is nothing wrong with the vehicle.

16 The evidence would also be that there were not other
17 cars in this intersection. There is no evidence in this case,
18 ladies and gentlemen, that there were other cars in this
19 intersection, anything coming this way, going that way, other
20 than Mrs. Bello who pulled over up here.

21 So there is no evidence that Mrs. Uno turned this way
22 to avoid kids on bikes like you were told.

23 This is at 23rd Street. The evidence will be that this
24 is where the vehicle was hit by Bello, stopped, and then
25 Mrs. Uno drove away.

26 Even plaintiffs say there is no braking in here.

27 Plaintiffs have another expert who will say that, well,
28 I saw a tire mark, and I think that may be evidence that she

1 was accelerating away.

2 This here, these red marks you see on this diagram are
3 the tire marks that were caused by the Uno vehicle when it was
4 rotating around, coming to its point of rest after it was hit
5 by the Bello vehicle, these red marks right here.

6 These things circled in orange are just pieces of the
7 cars that were involved that came off.

8 This purple mark right here is the tire mark that the
9 plaintiffs' expert Mr. Hille says, well, I think that might be
10 evidence that she accelerated away.

11 The evidence is, ladies and gentlemen, that it isn't
12 and it can't be. Because this mark is nowhere near where the
13 vehicle ended up after it was hit and rotated around. The
14 vehicle is not anywhere near this mark. This mark is the
15 wrong size and the wrong location and the wrong dimension.

16 On top of that, plaintiffs' other expert says the
17 vehicle drove away and got up to 36 miles per hour.

18 The 36 miles per hour is not the rapid acceleration,
19 it's not the car taking off on you, but it's technically
20 speaking acceleration because you're stepping on the
21 accelerator. She was purposely driving away from the scene of
22 the accident.

23 That is at the scene. So now I want to focus you on
24 what happened as the vehicle went down the road, what the
25 evidence will be.

26 No. It stops here. A half mile is a long way on a
27 diagram.

28 THE COURT: Can all the jurors see?

1 JUROR RODRIGUEZ: It's kind of hard to see the far end.

2 MR. GALVIN: You know what I'll do? I'll move it down
3 and then move it.

4 MR. MARDIROSSIAN: Why don't I just come over here and
5 you don't have to worry about blocking me.

6 MR. GALVIN: That's fine.

7 You guys tell me when to stop.

8 MR. MARDIROSSIAN: Stop.

9 MR. GALVIN: Okay. So we left off at the intersection
10 of 23rd. Okay?

11 This is -- just so we have orientation, do you see this
12 little car right here? It's right here. So it's the front of
13 it just sticking out there. So it's just basically a
14 continuation. It's a different skill level.

15 So from this point, the 230-foot mark on a straightaway
16 going the wrong way down North Euclid, up until this point
17 right here is a long way. And in this distance there were
18 witnesses that drove by Mrs. Uno.

19 She started driving down the road. She was always in
20 this lane right here, the number one lane, and there were
21 people that drove by her.

22 Some people didn't look back so they didn't see whether
23 she had brake lights. Some people looked and said they didn't
24 see brake lights, but they didn't remember one way or the
25 other. Some people said they didn't see brake lights. They
26 would have remembered maybe if they did, but they weren't
27 sure, but there's a mixed bag.

28 Witnesses see different things, remember different

1 things.

2 From this point forward all the way down to here, to
3 this point here, there's nothing on the road. All we have is
4 what the witnesses say as she was driving by them.

5 What we have is witnesses that describe a vehicle that
6 is going faster and faster over time, faster and faster over
7 time.

8 They don't describe a vehicle that's got screeching
9 brakes. They don't describe a vehicle that's slowing down.
10 They describe a vehicle that is speeding up.

11 And when you go -- say in this area -- and I'm just
12 being general. I'm not giving the specifics, but about in
13 this area, there was another car in this number one lane. And
14 Mrs. Uno was driving directly at that car, and that car moved
15 over.

16 Where that happened was about 13 seconds from where the
17 vehicle first hit the first utility pole which is down here.
18 In that time frame, if you stepped on the gas, you could get
19 to that telephone pole and be 80 to 90 miles per hour.

20 Up until that point, people had been moving out of her
21 way or she was driving by them. And that driver, Marjan
22 Whyte, was there, but she was directly in the same lane. She
23 moved over. Mrs. Uno went past her, and she kept going.

24 Then what happened is as Mrs. Uno kept driving down
25 here is where -- can you guys see it down there?

26 Let me explain it. Then I'll move it.

27 Right here is where we see the first evidence on the
28 roadway of something going on with this vehicle and this

1 driver.

2 The vehicle goes off the road to the right. Right here
3 the road gets a little narrower, and the vehicle comes down
4 here, goes off the road. Then it hits the first pole right
5 here.

6 Where it goes off the road is about roughly four
7 seconds from the final impact with the tree. Where it hit the
8 telephone pole is roughly 3.2 seconds from hitting the big
9 tree.

10 After the first pole, it comes down. It hits the
11 second pole.

12 The first pole did significant damage to the right
13 front, the right-front suspension, blew out the tire.

14 She kept driving. She hits pole number 2. She hits
15 the first pole at 80 to 90 miles per hour. She hits the
16 second pole at 73 to 82 miles per hour.

17 And the second pole, she hits it further back on the
18 car. That causes the rear end of the car to ricochet out into
19 the road like that.

20 So now the vehicle is now even more out of control and
21 the rear end is swinging out to the left and the front is
22 swinging around to the right.

23 When it does that, the tires are making marks on the
24 road, and then the vehicle continues straight, goes across the
25 median into the other median at 21st street, hits a small
26 pepper tree, and then impacts with the big pepper tree. And
27 that's the final impact.

28 At the second pole, she's going 73 to 82, as I said.

1 When she comes off of the pole and hits the curb here, she's
2 going about 72 to 80 miles per hour.

3 The vehicle is continuing. It gets to the curb here at
4 21st Street, and it's going about 70 miles per hour.

5 When it hits the small tree, it's going about 64 to
6 68 miles per hour.

7 Then it hits the big tree at 54.

8 We know it hit the tree at 54 because we mathematically
9 did a reconstruction of this. And we also ran a test of a
10 Camry into a tree similar to this, a man-made tree similar to
11 this, to compare the damage. That was the purpose of that
12 test.

13 Is it okay?

14 Okay. From 23rd Street all the way up to here, nothing
15 on the road. Just people where she's driving by.

16 Here is the first evidence of the vehicle in this
17 crash, in the events of the crash, where the right side was
18 off the road.

19 She goes off the road, impacts pole number 1 does
20 damage to the right front of the vehicle. The vehicle keeps
21 going.

22 In this damage, as I said, she blows up a tire; the
23 suspension is totally decimated. She keeps going. She keeps
24 going.

25 She hits pole number 2. She goes from 89 miles an
26 hour -- 80 to 90 is the first pole -- to 73 to 82 at the
27 second pole.

28 The second pole causes the rear end of the vehicle --

1 the impact causes the rear end of the vehicle to ricochet out
2 onto the road which causes the vehicle not to be tracking, but
3 now it's going partially sideways down the road.

4 So from the outside, if anybody is looking at it and
5 you're down here, it will look like the vehicle is turning
6 right.

7 The vehicle then continues down, and it is rotating.
8 And it continues down, goes into the median, hits a small
9 pepper tree, and then hits a large pepper tree.

10 There is no evidence of braking in this area on the
11 road. The tracks, the marks on the road are what are called
12 yaw marks from the vehicle rotating and the tire laying down
13 marks as it's going along the road.

14 The vehicle is not going straight and rolling. It's --
15 the rear end is out, and the front end is over, and it's
16 making those marks.

17 These marks are not from pulling up the parking brake.
18 They are from the vehicle rotating on the road and going to
19 its final impact with the tree.

20 So what we see in this accident is the vehicle going
21 progressively faster and faster, going off the road down here,
22 impacting a pole, and the accident has already started.

23 So this blue mylar starts at pole number 1. This is
24 where the accident is happening. This is the accident.

25 When this pole impact occurs, the accident has
26 happened. This is the rollout.

27 Anything that happens in here is not going to dictate
28 what happens here, generally speaking.

1 The evidence will be from the witnesses about that.
2 It's too late. When you're in this blue zone, it's too late.
3 The vehicle is going too fast. The vehicle is out of control.
4 There's no control of the vehicle at this point. It's
5 impacting the pole, yawing around, coming down here.

6 This is the area. Pole number 1 is the area where
7 generally Ms. Peeples was. It's also the general area where
8 Mr. Ensberger was.

9 Ms. Peeples said she saw the brake light go on, go off,
10 go on, go off. Mr. Ensberger said he didn't see the brake
11 lights. He followed the vehicle; he watched it all the way
12 down. He's adamant that he didn't see brake lights at all.

13 In fact, in his deposition, if anyone said they saw
14 brake lights, it couldn't be true. Because he watched the
15 vehicle, specifically watched the vehicle, and he didn't see
16 it.

17 That's an issue that you, ladies and gentlemen, will
18 have to decide. But as you factor that in, the evidence is
19 going to be that what is described by Ms. Peeples as brake on,
20 brake off, brake on, brake off wouldn't have made any effect
21 in this area. This accident has already happened. The
22 vehicle is already out of control. It's on its way to impact
23 with the big pepper tree. If you're in the blue, you're in
24 trouble.

25 This is where those two witnesses were. They weren't
26 all up in here.

27 Ms. Peeples was driving past her at pole number 1 and
28 had rocks and stuff thrown up on her car. The other guy was

1 trying to pull out of a driveway -- but ultimately, ladies and
2 gentlemen, you're going to be the ones to decide what
3 happened. That's why we need to focus on this accident, the
4 facts of this accident.

5 The witness is Mr. Epperson, not Ensberger. Ensberger
6 was further down.

7 So those are the facts of what happened in this
8 accident. We have someone who is impacted up at 23rd Street,
9 leaves the scene of the accident, makes two right turns,
10 progressively goes faster and faster the wrong way down the
11 road, so why is that?

12 We know it's not a stuck foot. We know there is no
13 evidence that it could be a stuck foot. That's not possible.
14 There has to be some explanation for this odd, unusual
15 behavior.

16 So the evidence will be, ladies and gentlemen, that
17 this is a case of simple driver's error, driver's error.

18 This is a case of pedal misapplication. Pedal
19 misapplication is not some new phenomena that has just been
20 developed. It's been around for a long time. It was studied
21 in 1986, 1988, 1989, '99, 2004, and then again in 2012.

22 It's not a fabrication. It actually happens.

23 Pedal misapplication is when someone, for whatever
24 reason, intends to step on one pedal and steps on the opposite
25 pedal. There are situations where pedal misapplication
26 happens.

27 The situation, the factors of relevance here are
28 distracted drivers and unexpected events, both of which we

1 have here.

2 We have a driver that's obviously distracted going the
3 wrong way down the road, and we have a driver that encounters
4 an unexpected event going down the road the wrong way and also
5 having a car coming right at them in their own lane of travel.

6 There are driver characteristics, ladies and gentlemen,
7 that are known to be associated with pedal misapplication.
8 Among them are cognitive impairments, someone who has a
9 problem in their head. Among them are shorter-statured
10 people.

11 We have the situational factor here when we look at
12 this accident, and we have the driver characteristics.

13 The trial is the last sort of event in an investigation
14 like this. So before that there is investigation. We look at
15 the facts. And we've been doing that for three and a half
16 years.

17 So looking at this accident scenario, trying to
18 understand what happened, knowing that we have events going on
19 here that don't make sense, we looked at Mrs. Uno. It's
20 natural. It's part of the process. It's part of the
21 investigative approach, the environment, the vehicle, the
22 driver.

23 And when this accident happened, in fact, when the
24 police officers spoke to the family, he spoke to Jeffrey Uno,
25 and Jeffrey Uno volunteered to this officer that his mother
26 had a blood sugar of 83 about a month before this accident and
27 had confusion.

28 You're going to hear that. You'll hear it on the

1 stand.

2 But I want to be complete. He also said to the
3 driver -- to the officer, but it didn't affect her driving.

4 So we looked at Mrs. Uno's health, and she had diabetes
5 for quite some time. We looked at her medical records. She
6 had diabetes. She had non-alcoholic cirrhosis that was
7 related to the diabetes. She had hepatic encephalopathy as
8 well.

9 And we looked at what was going on with her blood
10 sugars knowing that there are symptoms that are associated
11 with hypoglycemia of confusion and forgetfulness.

12 Seeing, within her own medical records, reports of
13 confusion and forgetfulness, seeing in her records that her
14 diabetes was not in control, she was not in control, knowing
15 that before this accident her medication had been changed --
16 and you heard that this morning. She was now on insulin --
17 looking at that, looking at what her son said to the officer,
18 we went and talked to her doctor.

19 What her doctor told us in the deposition, she looked
20 at the records of blood sugar, and she said Mrs. Uno was out
21 of control; that had she known of the swings in the blood
22 sugar, she would have had her come in and would have changed
23 her medication. She was on insulin that was causing her to be
24 hypoglycemic.

25 And the instructions to Mrs. Uno, according to the
26 doctor, were keep track of this, call me to let me know what's
27 going on. And there were no records of any call from Mrs. Uno
28 or the Unos to the doctor reporting that her blood sugar was

1 not in control which was a function of this new medication.

2 So we also talked to the doctor about, well, what is
3 the -- what is normal for Mrs. Uno? Because we are all
4 different. And what the doctor said was, it needed to be
5 between 110 and 150.

6 Mrs. Uno's doctor herself said in sworn testimony that
7 the normal blood sugar that Mrs. Uno should have should be
8 between 110 and 150.

9 And what I'm showing you here is, for the month before
10 the accident, the blood sugar levels taken by Mrs. Uno --
11 orange is p.m. Blue is a.m. -- and this blue band right here
12 is the band that Mrs. Uno's doctor wanted her blood sugar to
13 be.

14 You'll notice that for that month there was literally
15 almost no day where the a.m. and p.m. reading was within the
16 band of normal as described by Mrs. Uno's doctor.

17 So there will be witnesses. There will be doctors that
18 will come here and explain to you that the conditions and
19 symptoms of hypoglycemia that we all know about, in their
20 opinion, were present on the day of this accident because we
21 know habitually she had a problem being within this band
22 during this time period.

23 We know that there are reported instances of her having
24 confusion and forgetfulness, and we know that on the day of
25 the accident, that morning when she took it, her blood sugar,
26 it was 83.

27 We know that Jeffrey, her son, told the police officer
28 that at 83 she had confusion. So that's what we know.

1 The doctors are going to testify that in their opinion
2 this is a factor that accounts for and explains cognitive
3 impairment.

4 When we look at the reconstruction of this accident and
5 understand that this vehicle was being driven the wrong way
6 down the road after making two turns, that the more likely
7 explanation for what was happening was Mrs. Uno was suffering
8 from hypoglycemia.

9 You'll hear evidence about what she ate on that day or
10 what she didn't eat and then what people say she ate at
11 another time she ate. That will be, ladies and gentlemen, for
12 you to work out. Those are facts that you will have to work
13 with.

14 This accident was not caused by the vehicle; it was
15 caused by the driver. It was a pedal misapplication event
16 that occurred when Mrs. Uno was confronted with Mrs. Whyte's
17 vehicle right in front of her.

18 She became hypersensitive to what was going on, hit the
19 gas, took off, and hit the pole at 80 to 90 miles per hour.
20 She was never on the brake. She was never on the brake, and
21 her foot wasn't stuck.

22 So let me talk about the brake.

23 The brakes in this vehicle are safe brakes. There is
24 nothing odd or unusual about these brakes. They work. They
25 are in millions of Toyota vehicles and have been in them for
26 decades, and they work. They're not some newfangled design.
27 You step on the brake in this vehicle, and the vehicle
28 responds. You will know it responds because it starts slowing

1 down.

2 There is no claim in this case by the plaintiffs'
3 experts that the brakes are defective. There is no claim that
4 the brakes are defective. There is no claim that there was
5 ever any problem with these brakes.

6 This vehicle had 10,000 miles on it, and there was no
7 reported problem with the brakes.

8 There is no indication that whenever they drove and
9 they stepped on the brakes, the vehicle didn't stop. The
10 brakes in this vehicle worked.

11 And in this vehicle -- and you will see testing that
12 proves this -- even at this point if you start driving around
13 the intersection at 23rd and you stepped on the brakes, this
14 vehicle would have stopped. This vehicle would have stopped
15 if you were driving down the straightaway at 70 miles per hour
16 and you stepped on the brakes. This vehicle would have
17 stopped.

18 The only evidence of braking that the plaintiffs point
19 to are the yaw marks that are left at the end of the accident
20 scene where the rear end of the vehicle ricochets around and
21 lays down those marks, and that's not braking. And you will
22 see evidence why that is not evidence from braking.

23 The other evidence the plaintiffs rely upon is the
24 description given by Ms. Peeples. And there, ladies and
25 gentlemen, you'll have to decide what Ms. Peeples means and
26 whether it means she was on the brake or not.

27 And let me explain to you, a brake light can go on
28 without pressing the brakes for reasons -- and let me explain

1 it because I think they got a little muddled up this morning.

2 This is the brake switch right here, this little thing
3 here. So the brake is in the vehicle upright. This is the
4 brake switch.

5 When you put your foot on the brake, it moves the
6 plunger so it turns the brake on. The brake lights can flash
7 and go on if you step on the brake, if you touch the pedal or
8 if the vehicle goes over a curb or it gets jostled.

9 So Marjan -- Ms. Peeples could have seen brake lights
10 as this vehicle was going over the curb, but the fact of the
11 matter is where she claims she saw brake lights was in the
12 blue zone. They wouldn't have made any difference here.

13 Now, I want to talk about BOS. BOS is not B-O-S-S, the
14 boss. B-O-S-S is the person who is functioning the vehicle.
15 BOS is a function or technology that Toyota started developing
16 for its vehicles in 2008.

17 In 2001 Toyota had -- let me step back.

18 BOS is a computer program, logic, that is put on the
19 engine computer that reads when you step -- when a pedal is
20 down and when you step on the brake, it has different logic of
21 when it turns on and when it turns off.

22 In 2001 Bosch, who makes car computers, had it on its
23 car computers, and Toyota had Bosch computers on some of its
24 vehicles outside the United States. In fact, they were diesel
25 vehicles. They were like 89-horsepower, you know, 1.0,
26 1.4-liter engines. In those vehicles there was BOS.

27 Later, in 2005, in those vehicles with that specific
28 engine -- later in 2005 there were some other vehicles that

1 were developed where the engines were developed by other
2 companies that were sold by Toyota in Toyota vehicles that had
3 BOS.

4 In 2005 there were some vehicles with smaller engines
5 like I just described that had a computer from Siemens that
6 had BOS on it, and they were diesel, I believe.

7 Then also in 2005 there were some other vehicles with a
8 Bosch computer that had BOS on it.

9 Toyota did not include BOS on the Camry as standard
10 equipment until 2011. In 2007 Toyota was not putting BOS on
11 its Camry.

12 I think this morning it was indicated that the evidence
13 will show in 2007 Toyota was putting BOS on Camrys. That's
14 not the case.

15 In 2010 Toyota put BOS on 2007 Camrys as part of what
16 was going on in that 2009, 2010 time frame, not on this
17 vehicle because this vehicle wasn't involved in that stuff.

18 BOS is not a substitute for a brake system. BOS is a
19 functionality that has very limited circumstances under which
20 it works.

21 If the gas pedal is pushed down and trapped by the
22 floor mat, for example, and not moving and if someone steps on
23 the brake, the BOS logic, the Toyota BOS logic that
24 plaintiffs' talked about in his deposition, would close the
25 throttle and the vehicle would eventually, over time, slow
26 down. It's not instantaneous. It takes time. The computer
27 has to read, okay. The gas pedal is down. The brake pedal is
28 pushed. I have to close the throttle.

1 That has to be the state it stays. The gas pedal has
2 to stay in that position, and the brake has to stay on.

3 BOS is not a remedy or a cure for pedal misapplication,
4 period. It's not.

5 And BOS will not work -- and you will hear more details
6 on this, but BOS does not work if the gas pedal is moving.

7 So if the gas pedal is down and it's moving like you
8 saw with Mr. Hannemann's testing, if the gas pedal is moving
9 and your foot is on the brake and the brake is moving, BOS is
10 not going to turn on. Because the computer is reading that as
11 someone wants to go or stop and it can't decide what to do so
12 it's not going to activate.

13 So there are limited circumstances under which BOS
14 works.

15 The fact that a vehicle doesn't have BOS doesn't make
16 it defective. The evidence will be that when you have a 2006
17 vehicle and it doesn't have what a 2010 vehicle has or a 2011,
18 that just makes that vehicle old.

19 The evidence will also be in this case in order for
20 BOS, B-O-S, to activate, you have to step on the brake. You
21 have to step on the brake and stay on the brake, and that
22 didn't happen here.

23 There is no witness that can give you, ladies and
24 gentlemen, testimony that said I saw the Uno vehicle with the
25 brake lights on and staying on going down the road.

26 If that's the situation, ladies and gentlemen, if these
27 brakes were used in this vehicle, this vehicle would have
28 stopped. It would have stopped.

1 The testing that was done by both plaintiffs' experts
2 and defense, Toyota experts, shows that the brakes in this
3 vehicle, even if you pump the brakes and evacuated the vacuum,
4 would stop the vehicle.

5 The evidence will be if you started doing braking down
6 in the blue zone, it's too late because the accident has
7 already happened.

8 This is a situation where instead of stepping on the
9 brake which could have stopped this vehicle, the evidence will
10 show that Mrs. Uno stepped on the gas.

11 This is an accident. This is an accident due to driver
12 error, not a defect in the vehicle.

13 You'll also hear from Mrs. Peeples that what she claims
14 she saw with respect to the brake lights she specifically says
15 it wasn't like it was pumping.

16 So when you hear testimony about pumping from experts,
17 think of what the witnesses say that were at the scene. The
18 one person who said she saw brake lights, says it wasn't like
19 they were pumping. So that must mean it was just going over
20 the curb.

21 There are a lot of facts in this case, ladies and
22 gentlemen. You're all the judge of the facts.

23 This case is about this accident, what happened in this
24 accident.

25 And thank you for your attention.

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

27 At this point we're going to take our afternoon break.
28 We're going to take a break until 10 to 3:00, 2:50.

1 You are reminded not to discuss this matter amongst
2 yourselves or with any other person. You are not to form or
3 express an opinion on the matter until it is submitted to you
4 for decision.

5 Thank you very much.

6 (The following proceedings were held
7 outside the jury's presence:)

8 THE COURT: All right. Anything for the record?

9 MR. AKARAGIAN: Not from us.

10 THE COURT: All right. See you at 2:50.

11 (Recess.)

12 (The following proceedings were held in
13 open court in the presence of the jury:)

14 THE COURT: All right. Welcome back, everybody.

15 Mr. Duffy, are you ready to proceed?

16 MR. DUFFY: Yes, your Honor.

17 THE COURT: All right. You may.

18 MR. DUFFY: Thank you.

19 Good afternoon, ladies and gentlemen. You're on the
20 home stretch. Okay? So we're almost there for the afternoon.

21 But the opening statement is an opportunity for us to
22 talk to you about what we believe the evidence is going to
23 show because, as I said to you earlier, a trial is a series of
24 snippets. It's disjointed somewhat because witnesses have to
25 be accommodated.

26 And so there's a lot of information that comes out.
27 It's not like what we normally watch on the TV show or in a
28 movie where we see it from beginning to end. It's very

1 disjointed. Things come in, they come out. They come in,
2 they come out.

3 So it gives us an opportunity, then, to talk to you
4 about what we feel the evidence is going to show in a flowing
5 manner as opposed to actually how you're going to see it.

6 At the end, as her Honor has indicated, then we get to
7 do a summation as to what the evidence did show.

8 So with that, what we're going to talk to you about now
9 is what the evidence shows. But it's important to understand
10 in this particular case we are not dealing -- there isn't a
11 great dispute about the fact that Mrs. Uno was coming down
12 Euclid. There is no dispute that she was driving southbound
13 on Euclid. There is no dispute that she had the right of way
14 as she was coming down Euclid Avenue.

15 And there is no dispute that there was an accident, and
16 there is no dispute that Mrs. Bello hit Mrs. Uno and she spun
17 around. There is no dispute on that.

18 But there is a very serious dispute about what occurred
19 in that impact, and that's what I'm going to be talking to you
20 about over this next few minutes.

21 First off, what we have here is this happened back in
22 August of 2009, and it was late afternoon. And we all know
23 that here in Southern California it can get very hot in the
24 late afternoon, and in this particular day, it was rather hot.
25 It was 99 degrees.

26 And Mrs. Bello and her daughter were out in the car,
27 and they decided to stop at a Carl's Jr. They got an ice
28 cream soda, and now they were on their way home.

1 So as they get to go home in this particular case,
2 it's -- their house -- Mrs. Bello's home that she had lived
3 there for many, many years was approximately two blocks from
4 where the accident occurred.

5 So this intersection of 23rd and Euclid is an
6 intersection that Mrs. Bello has gone through many times and
7 where the Carl's Jr. was located down on Foothill Boulevard.

8 She is progressing in the northbound lanes -- you heard
9 a lot about the northbound lanes -- coming up, makes a left
10 turn onto 23rd -- and you've seen the median. You've seen the
11 pictures -- and comes to that intersection where the accident
12 did occur.

13 What happens there is that Mrs. Bello comes up -- and
14 you've seen the diagrams and everything, lots of trees in that
15 particular area. And she said that she comes up to the
16 intersection and she's looking to the right to see -- there is
17 a tree there that she's trying to get clear of.

18 Now, she then proceeds into the intersection and makes
19 contact with Mrs. Uno's vehicle.

20 Now, here's the thing. Mrs. Bello believed she had
21 come to a stop and that the next thing that she remembers is
22 she heard a loud noise and that was in the crash.

23 So she hears the loud noise, and her daughter that was
24 seated in the passenger seat began crying. She was shaken up
25 by this. So Mrs. Bello was attending to her, trying to calm
26 her down.

27 Now, what happened here is when this occurs, she's in
28 the middle of the intersection. So you've seen this already.

1 So we'll use it again.

2 Here is Mrs. Bello's vehicle. I'll move this out of
3 the way.

4 Can everybody see that? Okay.

5 So we have Mrs. Bello coming through here, and then she
6 believes she had stopped.

7 She enters the intersection, and she hears a loud
8 noise. The crash occurs. Her daughter, Lynette, is now
9 startled, is shaken by that and begins crying.

10 What happens, once she realizes what had happened with
11 this noise, she realizes -- she looks around. She is in the
12 intersection.

13 So what she does at that point is her car had come to a
14 stop in the intersection and it had also turned off.

15 So what she had to do was just turn the car on and it
16 was fine. The car -- she was able to turn it on. But she
17 turns the car on, and she moves the car across the
18 intersection because she realizes that, all right. She is in
19 the middle of the intersection. She better get over there and
20 deal with Lynette at that point.

21 So she moves it into the intersection and -- I think
22 we're going to see.

23 You can see the car. This is where Mrs. Bello had
24 moved the car to after the accident happened.

25 Now, you can see on either photograph it's on the other
26 side of the intersection because you can see the police car,
27 you can see the ambulance there, and you can see where
28 Mrs. Uno -- Mrs. Bello had parked the car.

1 So what she did was she moved the car across the
2 intersection. She drove it and drove it over to the side.

3 You can see the front of the car. That's where the car
4 had impacted the side of Mrs. Uno's vehicle.

5 Now, once she gets over there, she, again, is trying to
6 calm Lynette down. And Lynette is still crying, is shaken up.

7 Then neighbors, the neighbors start coming out.

8 Now, remember Mrs. Bello lives in this neighborhood.
9 And one of the neighbors that does come out is a Ms. Borba,
10 Jenile -- she goes by Jennifer -- Borba. And she sees
11 Mrs. Bello. She sees Lynette. She knows the both of them
12 because they share an alleyway in the back and they come in
13 and out of that alleyway to get into their homes.

14 So she comes over and wants to, at least, find out
15 what's going on, does she need any help.

16 Mrs. Bello says, yeah. I would like you to -- I would
17 like to get Lynette checked out. Would you go in the
18 ambulance with her and go to the hospital while I deal with
19 the police officers here?

20 So what happens here is eventually, then, Lynette is
21 taken to the hospital, and they go and pick her up later that
22 evening, and she was fine. And Mrs. Bello was okay.

23 And there's going to be witnesses that are going to
24 come in and say that they got -- they went up there, they saw
25 the vehicle, they saw Mrs. Bello outside the vehicle, they
26 checked to see if she was okay, and, you know, she said she
27 was fine, but she wanted to, you know, make sure that Lynette
28 was fine.

1 So that is, in a nutshell, what took place from a
2 testimonial standpoint.

3 Now, in this case we have information that many times
4 we don't have. In a lot of automobile accidents, we don't
5 have specific, precise information, but in this one we do.

6 We're fortunate we have what they call an EDR, an
7 equipment data recorder. The best way to describe this is the
8 black box. We've all heard about the black box with
9 airplanes.

10 Sometimes they find the black box with an airplane,
11 sometimes they don't, but everybody wants the black box
12 because the black box is going to give us information to tell
13 us what occurred. It's not a video, but it's data that is
14 recorded.

15 And Mr. Mardirossian had shown you the document that
16 when it's pulled out of the vehicle, out of Mrs. Bello's
17 vehicle, you have the information as to what was transpiring
18 in the seconds, the brief seconds, before the accident
19 occurred.

20 This is all very, very important. Because it's going
21 to give us accurate information. And you're going to hear all
22 the experts tell you that they believe that this black box
23 recording is -- has provided us with very valuable and
24 accurate information.

25 So the black box recording, then, tells us -- gives us
26 an indication of what was happening in Mrs. Bello's vehicle.

27 Now, we don't have that information for Mrs. Uno's
28 vehicle as far as here is concerned. We do have it down the

1 road. And you've already heard the others talk about that, so
2 I'm not going to go any further on that.

3 But we do have the black box information that we
4 retrieved from Mrs. Bello's vehicle. So what did that tell
5 us?

6 Well, as you saw this morning -- and you're going to
7 see this in evidence, but essentially what happened was
8 Mrs. Bello made the turn onto 23rd Street going west. She was
9 coming northbound on Euclid, going west, makes the turn, and
10 then when she's going ten miles an hour, and she goes down to
11 about four miles an hour, and then at the impact she's about
12 ten miles an hour.

13 So we know exactly what the vehicle was doing at that
14 point, and this is going to become very important. And the
15 reason it's going to be important is to try to reconstruct
16 what happened in this accident.

17 Reconstruction -- the experts are going to reconstruct
18 the accident for you and talk about exactly what occurred.

19 In reconstructing it, what you need for reconstruction
20 is -- having the EDR ratings is very valuable but also having
21 physical evidence to be able to put it all together so that in
22 reality we can tell from the EDR readings and from the
23 physical evidence on the street exactly what happened.

24 In fact, the police officers, when they initially
25 investigated this, everybody was scratching their head. They
26 couldn't figure out what happened. Were these two related?
27 They just didn't know what was going on.

28 But with the EDR readings and with the physical

1 evidence -- and you've heard Mr. Galvin talk about these marks
2 on the street. They're called yaw marks. All right? It's a
3 fancy term. It's a specific term for skid marks that are
4 generated through a rotational pattern. The experts will tell
5 you about that.

6 But it does tell us exactly -- it tells us what
7 happened to the vehicles.

8 So just in simple, we have Mrs. Bello moving and hits
9 the side of Mrs. Uno's vehicle, and Mrs. Uno's vehicle is
10 going about 28 to 31 miles per hour. We calculate that out by
11 all of this physical evidence. And we know that Mrs. Bello's
12 vehicle was going approximately 10 miles an hour.

13 So now you put those together so you can tell what
14 occurred.

15 So they hit on the side of the vehicle. Because the
16 vehicle is going 28 to 31, it's going to keep moving down the
17 street, but it's going to spin out from what they call a
18 lateral delta-v.

19 Now, we're all going to learn about what that means, a
20 lateral delta-v. It's a change in velocity. And the experts
21 are going to tell you that in this collision, in this
22 accident, what we have is a low speed impact lateral delta-v.

23 They're going to tell you that this vehicle, the Bello
24 vehicle, hits the Uno vehicle and then it begins turning like
25 this. And over a two- to two-and-a-half-second time frame,
26 the vehicle goes around and the back end comes to this point,
27 which is basically about 160 degrees turn. But it's what they
28 call a four-mile delta-v.

1 And they're also going to tell you that the
2 longitudinal delta-v is about half of that, about two miles.

3 Okay. So now we know. We know what the EDR reading
4 tells us. It tells us 10 miles an hour.

5 We know we have the yaw marks on the street. So now we
6 have an indication of what could end up occurring during this
7 entire transaction in about two, two and a half seconds.

8 So what that is going to tell us is that we have -- now
9 we have the directional forces that I just talked about, but
10 we also are going to learn from reconstructing this through
11 mathematics, physics, things like that, plus all of the
12 initial information that we have.

13 So we now are going to know also what are the
14 rotational forces that would have taken place on the vehicle.
15 And the experts are going to tell you that on -- in this kind
16 of a collision where you have the contact with the side of the
17 vehicle such that the vehicle is passing by but makes the
18 contact, it's going to spin it out. It's like hitting
19 something and then the back end swerves out.

20 What you're going to hear from the experts is with a
21 four-mile delta-v, you're talking about essentially what would
22 be the impact in bumper cars.

23 We all have been through amusement parks and gone into
24 bumper cars. It spins around; the back end spins around.
25 Because this vehicle is moving in a westward direction and
26 this vehicle is moving in a southerly direction.

27 So if you're coming towards somebody in a bumper car
28 and they're moving across, you're going to hit them and you're

1 going to spin them.

2 So they're going to talk about that tells us not just
3 what we have from a side -- from the lateral delta-v, but the
4 rotation is also going to be important.

5 So what we're going to be talking about, then, is the
6 rotational force. And what the experts are going to tell you
7 is that in this particular accident with the rotational forces
8 being as they were where the car is going to be moving because
9 it's going in a southerly direction, the net effect on the
10 occupant, the person in the car, is going to be about
11 nine-tenths of a G.

12 And they're going to talk about that, and why is that
13 going to be important? Because that's going to be giving us
14 information as to could this foot have become trapped, would
15 Mrs. -- what would Mrs. Uno's body movement be?

16 One thing we do know is that she did have a seat belt
17 on. That seat belt has the lap and the shoulder which will
18 keep her in the seat so that she's not going to be, you know,
19 hitting things on the inside from the delta -- lateral
20 delta-v. Her body is going to move somewhat here. She might
21 make some contact on the side, the experts will say, with her
22 shoulder.

23 But there is also the rotation that we just talked
24 about. The rotation is also going to be taking her body back
25 in the other direction.

26 So you've got two different forces. One she starts out
27 this way because of the contact with Mrs. Bello's vehicle.
28 The other is as the vehicle is now beginning to make that

1 rotation.

2 And you'll hear testimony about what is that like?
3 That rotation is like being in a chair, in an office chair,
4 and the rotation brings you this way.

5 So that tells us what is transpiring on the body.
6 That's going to be important because we need to have some
7 information as to what was happening in the collision as to
8 Mrs. Uno's body.

9 And also it's going to tell you, as far as with the
10 shoulder strap, with the lap belt, that her body -- there
11 would be some movement, but it's not going to be significant.

12 What the experts are going to talk to you about is
13 you've heard already about this foot being moved into that
14 direction and then being on the gas, underneath the brake
15 pedal in what we call a dorsiflex situation.

16 So, again, all of this is based on physics. And the
17 experts can tell us all of this stuff based on physics, based
18 on math, and they will go through all of this with you.

19 But there's another thing that we've done in this
20 particular case in order to not just -- the experts can tell
21 you all of these things, but now we want to also see if we can
22 do some kind of test in order to determine and see does this
23 make sense, does all of this make sense.

24 So what you're going to hear is Dr. Nicholas Carpenter
25 is going to be coming in and testifying. He is a biomechanic
26 Ph.D.

27 Now, biomechanics is what's happening with the body.
28 When forces are put on the body, how does the body react?

1 This is all through forces and how the body's structure works.

2 So in order to test this, to see -- okay. We have the
3 delta-v, the equivalent of bumper cars, the rotational force
4 is like spinning in a chair. But what actually happened in
5 the vehicle for Mrs. Uno? Because obviously that's all based
6 upon physics.

7 So what he did was he did what they call a rigid
8 barrier test. A rigid barrier test is a test that is done by
9 biomechanical experts in order to test, well, how does -- how
10 do the forces really generate?

11 And so what they do is they try to -- as close as
12 possible based upon physics, to determine the impact and what
13 kind of -- what would result from that. And we do know from
14 the physics of this that we have the lateral delta-v of four,
15 the longitudinal of about two.

16 So we have information. So now let's do a test.

17 So what Dr. Carpenter is going to talk to you about is
18 he ended up getting a Camry, a 2006 Camry, a similar Camry to
19 what we're talking about here, to Mrs. Uno's vehicle. Then
20 through wiring it up and getting everything into play, he
21 devised a way of using a -- what do you call it? I'm just
22 drawing a blank.

23 He ended up using a loader that -- to generate the same
24 forces.

25 Actually, what he will testify to is the forces he used
26 were actually a little bit higher than the forces that were in
27 this to see what would happen. And he sat in the car.

28 I know it's pretty hot in here, right? I agree.

1 THE COURT: Thank you.

2 MR. DUFFY: He used a forklift to simulate the forces
3 that were generated.

4 Now, what he's going to do, he says he got in the
5 vehicle and they generated the same type of forces, a little
6 bit higher than what was in the collision, to see what it was
7 and wired up -- and he even had a bicycle helmet on with wires
8 on it so he could figure what would happen with the head, what
9 would happen with the body, and, of course, what would happen
10 with the foot.

11 And he will tell you that he did that because he can
12 come in and tell you what was going on and present you with
13 the readings that were obtained, sort of like the EDR
14 readings, where we can at least -- we have something there in
15 concrete as to what was happening.

16 Now, Dr. Carpenter is not the same size as Mrs. Uno
17 because Mrs. Uno was about five feet, four-eleven, five feet,
18 and Dr. Carpenter is almost six feet. So he is a little bit
19 farther back in the seat and everything, but he will explain
20 that. But it's more to find out what these rotational forces
21 were going to be in the accident.

22 What he's going to tell you is that in this particular
23 accident those forces that he was sitting there and he -- of
24 course, he knows it's coming and everything. But he just
25 tries to be, you know, in a neutral position. And his body
26 did move to the left.

27 Now, for him, his head with the bicycle helmet on
28 contacted the roll bar in the vehicle, but he'll tell you that

1 wouldn't have been possible for Mrs. Uno because she is just
2 too short. She would have been up closer because her feet had
3 to be closer to the pedals to be able to work the car.

4 But he's also going to tell you that during this
5 time -- and he'll give you all of the numbers as to what was
6 happening -- that his foot, his foot, moved a little bit to
7 the left but in these rotational forces, because of the spin
8 factor, came back to the neutral position.

9 And so we're going to be presenting this to you
10 because, as Mr. Galvin said, there's a real dispute as to
11 whether or not the foot in this particular case could have
12 been trapped underneath the brake pedal such that Mrs. Uno
13 then ended up taking off from that point forward.

14 So all of this is going to be presented to you so that
15 you can evaluate exactly what happened in that particular
16 collision on that particular day.

17 One of the things we don't know is Mrs. Bello never saw
18 Mrs. Uno leave. So we know she left, but we just don't know
19 the timing of that. But we do know that the forces are such
20 that the foot would not have moved that far, even
21 Dr. Carpenter's foot which is much bigger.

22 He also used the surrogate. Everybody has surrogates
23 in this case. So you've got that. So everybody has
24 surrogates. Everybody is using their foot in their surrogate
25 and showing you what's going on.

26 But the surrogate, again, what he will talk about and
27 also Dr. Black will talk about is just the fact that with
28 Mrs. Uno's foot being a size six, rather small, in order to

1 get into that position underneath the brake pedal -- it's not
2 like, you know, Shaquille O'Neil's foot -- you get right
3 underneath that brake pedal pretty easily, maybe half of it
4 would be under that.

5 But he can have it on the floor as we normally drive.
6 Because everybody, when you drive, you drive with your heel on
7 the floor. Why? Because if you lift up your leg and try to
8 drive with your heel up in the air pressing on the
9 accelerator, your quad muscle is tight. Your hip flexors are
10 tightened. You're going to get very tired very fast.

11 So that's not the natural thing. You put it on the
12 floor, and that's how you do it.

13 In that position the surrogate's -- you'll see photos
14 that show that the surrogate's foot is not going to get under
15 the position of the brake pedal. The toes will get in there,
16 but in order to get into that position, it's not even just
17 lifting the foot off the floor, but it's also twisting it and
18 turning it into this direction and holding it there for
19 approximately 35 seconds.

20 And so these are the things that are going to be talked
21 about and also the human factors' element, what do people do.

22 You're going to have Ph.D.s in human factors talking to
23 you about -- people get studied. We all get studied, maybe
24 not individually but as a group. We get studied to see what
25 do people normally do in different situations.

26 And they're going to be talking about how different
27 scenarios, you're going to react different ways.

28 They'll talk about startle effect. They'll talk about

1 hypervigilance, and we'll get into all of that. I'm not going
2 to deal with it right now.

3 But all of these things are going to be important
4 because the other thing that they're going to tell you is the
5 foot being caught in that position and then the brake being
6 applied, the brake is going to put pressure on the top of the
7 foot, especially because in this situation we have a
8 flip-flop, which means that there is nothing between the foot
9 and the back side of the metal brake.

10 The metal brake is going to go right onto the skin, and
11 then as you press down, the surrogates -- they found the
12 surrogates said, yeah, I feel it.

13 The human factors people are going to tell you -- you
14 probably don't need human factors people to tell you this, is
15 that when you feel that metal cutting into your foot, you're
16 going to pull it out. That's going to be the reaction that
17 you're going to get.

18 So all of these things are going to be important in
19 trying to determine what did happen in this particular
20 situation, and as Mr. Galvin had talked about, that what
21 really happened when Mrs. Uno left that scene and began,
22 through a series of right turns, right turns and then going
23 down, this is the classic case of pedal misapplication.

24 Being confronted with a scenario you're not expecting
25 and then reacting to it, and then once that takes place, then
26 everything starts snowballing. So the human factors people
27 will be talking to you about that.

28 So what we have here is a situation where the impact

1 occurred. No dispute, Mrs. Bello struck. We know that from
2 the EDR reading.

3 We know that the vehicle came over here and came to a
4 stop. Why do we know that? By the yaw marks. We know by the
5 yaw marks on the street that the vehicle had to have come to a
6 stop.

7 Now, unfortunately we don't have any witness to this
8 other than, of course, Mrs. Bello, but we don't have any
9 witness here because all the people that came out after the
10 accident, they heard that loud noise just like Mrs. Bello
11 talks about of having the loud noise occur.

12 And, again, human nature -- and we don't need a Ph.D.
13 in human factors to tell us what happens when you have a loud
14 noise and a bang outside -- what does everybody do? They come
15 outside. What happened? And the only thing we have then is
16 just the witnesses after the fact that come out and tell us.

17 They'll tell you that they saw Mrs. Bello in the
18 position where the car is and she was standing outside the
19 car. The police officers will tell you that too. They talked
20 to her and everything else.

21 And she didn't know. She remembers a loud noise. She
22 doesn't -- she didn't know where the car went, didn't know
23 anything more.

24 But it's the EDR readings and it's the physical
25 evidence that tells us the entire story of what occurred in
26 this particular collision.

27 And I think at the end you'll see that the impact --
28 and this impact, this low delta-v with a rotational force of

1 nine-tenths of a G -- that's not a very strong G force --
2 where at that point Mrs. Uno came to a stop and then for some
3 other reason -- and Mr. Galvin talked to you about
4 hypoglycemia, and you will see here a lot about that and talk
5 about that, but from that point, once everything stopped, for
6 some reason then she went and made these series of turns. It
7 was down the road when the pedal misapplication occurred.

8 So you'll be able to see all of this evidence, and it's
9 all there in black and white on the EDR readings and the
10 physics of it. And that will be what you'll ultimately make
11 your determination as to what you believe the facts were and
12 was this foot actually trapped in this position for 35 seconds
13 going down the road until the point where unfortunately
14 Mrs. Uno did crash into the tree.

15 That is a tragedy, and nobody is questioning that.
16 It's definitely a tragedy for Mr. Uno and for Jeffrey Uno.
17 But the pedal misapplication is the logical explanation for
18 this.

19 So thank you.

20 THE COURT: All right. Thank you, Mr. Duffy.

21 Mr. Mardirossian?

22 MR. MARDIROSSIAN: Yes, your Honor. We are prepared to
23 call our next witness. We're going to be asking the Court
24 that we play the deposition of Mr. Carr.

25 Can we -- while we set up for that, can we also bring
26 out the demonstrative model that I used in the opening?
27 Because our first witness, Mr. Wunsch, will be able to lay
28 some foundation for that and he can position himself.

1 Can we approach also, your Honor?

2 THE COURT: Certainly.

3 MR. MARDIROSSIAN: Just on the topic of playing the
4 video.

5 (The following proceedings were held at sidebar:)

6 MR. MARDIROSSIAN: Yes. Your Honor, Mr. Galvin made
7 some statements in his opening about how it would be
8 impossible to have your foot stuck underneath the gas --
9 underneath the brake pedal with it still also on the gas
10 pedal.

11 We know that Lee Carr has said that is possible and the
12 scenarios, and we want to be able to now play Lee Carr's clip
13 also.

14 MR. GALVIN: If you want to know what the testimony was
15 you have to ask him.

16 MR. AKARAGIAN: What are you talking about?

17 THE COURT: You need to -- before you speak, you need
18 to say your name again.

19 MR. BERRY: This is Mark Berry. Sorry.

20 I don't understand.

21 THE COURT: I just want clarification as to what
22 Mr. Mardirossian was asking for.

23 We have an agreed clip. Are you talking about playing
24 something else?

25 MR. MARDIROSSIAN: Correct.

26 MR. BERRY: Well, no. We object. Until we have seen
27 it, see what you propose to play and have a chance to look at
28 it and counter designate, that's not fair. Not just,

1 surprise, a piece of testimony and saying you want to play it
2 now.

3 THE COURT: The objection is sustained.

4 We need to know in advance. A day in advance, say who
5 you're going to use and who you're going to call. You need to
6 talk to them today about Carr and what portion you want to
7 read and then do it on Tuesday.

8 MR. MARDIROSSIAN: I understand, your Honor. The only
9 reason it came up now is because we heard -- because we hadn't
10 planned on playing it until we heard somebody say it couldn't
11 happen. We heard it.

12 If the Court wants us to do it on Tuesday, we will do
13 it on Tuesday.

14 MR. GALVIN: Of course when I said it couldn't happen
15 in this case.

16 THE COURT: And this is Mr. --

17 MR. GALVIN: Galvin. Sorry.

18 It couldn't happen in this case.

19 MR. MARDIROSSIAN: Go ahead. Armen, I think, wants to
20 say something.

21 MR. AKARAGIAN: We would like to play what we have for
22 Mr. Carr today.

23 The issue has become -- because of the Court's rulings
24 on some of the designations we had, the Court had us table an
25 objection to the foot getting stuck in the way Mr. Carr said,
26 I've seen that happen. There has been mention made that it's
27 impossible, that it can't happen.

28 If that happens, then we may have to face a situation

1 where -- we're not saying that we will have to play it right
2 now, but what we're saying is we don't want to waive an
3 opportunity to play that based on comments made by counsel at
4 this point.

5 THE COURT: I understand you're not waiving anything.
6 And I understand that whatever it is you do want to play,
7 you'll show them so that they can make whatever objections are
8 counter designated.

9 (Proceedings at sidebar concluded.)

10 THE COURT: While they're bringing that out, let me ask
11 the jurors, are you getting cooler? Is it better?

12 MR. AKARAGIAN: Dim the lights?

13 THE COURT: Why are we dimming the lights?

14 MR. AKARAGIAN: I'm asking is that what we do or not
15 when we play the video.

16 THE COURT: Mr. Mardirossian, are you prepared now to
17 call your first witness?

18 MR. MARDIROSSIAN: Yes, we are.

19 Before we call a live witness, we will play a segment
20 from a video deposition of one of the defense experts in this
21 case, Mr. Lee Carr, who was designated by Toyota as their
22 expert in automotive technology and dynamics.

23 THE COURT: I didn't understand that we were going to
24 play a video.

25 So now that we are, let's see what it looks like and
26 we'll decide if we need to dim the lights.

27 MR. MARDIROSSIAN: By the way, just so I introduce
28 people, that is Derrick Brandberry who is operating our

1 equipment in the past and, of course, Armen Akaragian to my
2 left.

3 THE COURT: Can everybody see that okay? We don't need
4 to dim the lights?

5 (The following video deposition played:)

6 Q. Would you please give us your full name?

7 A. Lee Carr, C-A-R-R.

8 Q. And you've been hired as an expert witness on
9 behalf of the Toyota defendants in this case, correct?

10 A. Yes.

11 Q. You agree that the motor vehicle designer must
12 consider brake pedal application so that vehicle capacities
13 will be compatible with the likely demands of the driver to
14 achieve a reasonable degree of safety?

15 A. Yes.

16 Q. Well, let's get more specific on this topic of
17 the stuck pedal.

18 As far as a stuck pedal goes, you agree that stuck
19 pedals in automobiles have been a phenomenon that have been
20 occurring for at least 20 years, correct?

21 A. As far as I know, that's happened ever since
22 we've had motor vehicles, more than a hundred years.

23 Q. So you do agree that because that phenomenon has
24 been known for motor vehicles for -- as you said, since we've
25 had motor vehicles for more than a hundred years, a
26 manufacturer has to first see a pedal getting stuck as an
27 event that can occur in a motor vehicle, correct?

28 A. To some level, yes.

1 Q. You do agree that also for manufacturers -- a
2 stuck pedal has been a phenomenon that's been known in motor
3 vehicles for at least a hundred years should undertake
4 whatever counter measures it can to try to prevent a pedal
5 from getting stuck, correct?

6 A. Sure, yes.

7 Q. First from a design and development standpoint,
8 have you yourself seen any testing performed by Toyota where
9 they tested a 2002 to 2006 Camry prior to its release to the
10 general public to determine how the vehicle would perform when
11 the accelerator pedal and the brake pedal are depressed at the
12 same time?

13 A. No.

14 Q. Have you seen any testing performed by Toyota
15 during the design and development of the 2002 to 2006 Camry to
16 determine how the Camry would perform in the event the vacuum
17 system, the brake system, was deplete and the accelerator
18 pedal was pressed at the same time?

19 A. No.

20 Q. And what did NHTSA find as part of the testing
21 of the Camry in how long it would take the Camry to stop, if
22 it would, under circumstances of certain brake forces with
23 vacuum assist depleted?

24 A. The brake force -- they show a variety. The
25 answer is different.

26 Q. Let's starts with the lowest and work our way
27 up.

28 A. All right. They would show with 225 pounds of

1 pedal force, it would stop from 65 miles an hour at about
2 190 feet.

3 It showed with 225 -- yeah. I'm sorry.

4 With wide open throttle and 225 pounds of torque force,
5 they found with no vacuum assist that it would take about
6 210 pounds -- 210 feet to stop.

7 And then with 112 pounds of brake pedal force, wide
8 open throttle, and no vacuum, they found that the vehicle
9 would decelerate from 65 down to about 18 miles an hour.

10 Then it would continue on with a speed of between 13
11 and 18 miles an hour indefinitely until they ceased the test
12 at a thousand feet.

13 At a pedal force of 50 pounds, they found that the
14 vehicle -- and without vacuum assist they found the vehicle
15 accelerated, which is what we saw on the earlier chart. And
16 then they show with 15 pounds of brake force, wide open
17 throttle, the vehicle accelerated.

18 Q. There are some situations with the Toyota Camry,
19 the 2006 Toyota Camry, including the two that we talked about,
20 where if a driver applies 50 pounds or less of brake force,
21 the driver actually cannot slow the vehicle if the vacuum
22 assist is depleted, correct?

23 A. Correct. If you only apply that amount of
24 force, it won't stop.

25 Q. Or slow down?

26 A. It wouldn't even slow down.

27 Q. It would actually accelerate?

28 A. Yes.

1 (Video deposition completed.)

2 MR. MARDIROSSIAN: That is all of our playback.

3 At this point we would like to call Mr. Wunsch, Edward
4 Wunsch, to the stand.

5 THE CLERK: You can stand behind the court reporter
6 there.

7 Raise your right hand.

8 EDWARD WUNSCH,
9 having been called as a witness and sworn, testified as
10 follows.

11 THE WITNESS: I do.

12 THE CLERK: Sir, please take the witness stand.

13 Can you please state and spell your first and last name
14 for the record.

15 THE WITNESS: Edward Wunsch, W-U-N-S-C-H.

16 THE COURT: Thank you.

17 Mr. Mardirossian, you can proceed.

18 MR. MARDIROSSIAN: Thank you, your Honor.

19

20 **DIRECT EXAMINATION**

21 BY MR. MARDIROSSIAN:

22 Q. Good afternoon, Mr. Wunsch.

23 A. Good afternoon.

24 Q. Mr. Wunsch, where do you reside?

25 A. In Mount Baldy, California.

26 Q. And how long have you lived in that general
27 area?

28 A. Since November of 1987.

1 Q. And can you tell us basically where Mount Baldy
2 is in relationship to Euclid Avenue or Highway 83?

3 A. About 11 and a half miles.

4 Q. And what direction, 11 and a half miles --

5 A. North.

6 Q. North?

7 A. North.

8 Q. And tell us a little bit about the general area
9 that you live in. Is it up on top the mountain, basically?

10 A. We're approximately halfway up the hill. We are
11 at 3800 feet. The top is 10,064.

12 Q. Very well.

13 Who do you live with?

14 A. My wife, Judith.

15 Q. Let me ask you a couple of background questions,
16 if I might.

17 It's even more embarrassing when I ask female
18 witnesses. How old are you, sir?

19 A. 75.

20 Q. And what type of work did you do in the last job
21 you had?

22 A. Food salesman, salesman in the food industry,
23 primarily.

24 Q. And how long did you perform that duty?

25 A. My first job was with the National Biscuit
26 Company in 1960. And I have had various positions with
27 various companies since then, but I was retired in '09.

28 Q. We're going to be talking about Euclid Avenue or

1 Highway 83.

2 Are you familiar with that area, sir?

3 A. Quite.

4 Q. Tell us how it is that you're familiar with it.

5 A. Going up and down the hill, the gym I go to is
6 about four blocks west of Euclid and Foothill.

7 If I'm going down to anyplace south and east of
8 Mountain Avenue, I go down Euclid.

9 Q. So would it be fair to say you're quite familiar
10 with Euclid Avenue?

11 A. Yes, sir.

12 Q. And that would be from where it begins, I guess
13 somewhere near 24th, all the way down at least to Foothill and
14 beyond?

15 A. Yes.

16 Q. All right. We have a three-dimensional model
17 here that we've been using for our openings. It's
18 exhibit 5302-9.

19 I'm going to ask, with the Court's permission, to ask
20 you just to step down for a moment and take a look at this
21 model and ask you if it shows generally what you know of
22 Euclid.

23 Take a moment. Take your time.

24 A. Very accurate reproduction as far as I can tell.

25 Q. Hang on before you go anywhere. Thank you for
26 that.

27 Hang on. Let me just ask you a couple questions.

28 What would you call this area here in the middle?

1 A. I would call it a median strip.

2 Q. And is there a special name for this area, first
3 of all?

4 A. Yeah. I think they call it the Bridle Trail,
5 the Bridle Path, something like that.

6 Q. Have you walked or jogged in that area?

7 A. I have.

8 Q. Looking back here where this says 23rd Street --

9 A. Uh-huh.

10 Q. -- and depicted, and so north would be in what
11 direction, sir?

12 A. This direction.

13 Q. And so to get to where you live up the mountain,
14 how long of a drive is that?

15 A. From there to our house, maybe nine and a half,
16 ten miles.

17 Q. All right. Now, while you're there, if I'm down
18 here at 21st, what's on this side of Euclid, which would be
19 the east side? What's here?

20 A. Houses.

21 Q. Are these small houses? Large houses?

22 A. Large.

23 Q. Large houses?

24 A. Yeah.

25 Q. Would it also be true that on the other side --

26 A. The same.

27 Q. -- that these are large, fairly expensive
28 houses?

1 A. Quite, yes.

2 Q. Okay. As you travel up and down Euclid, do you
3 use any particular lane, or it just depends?

4 A. It depends. I try and always stay to the right,
5 if possible.

6 Q. Right meaning the curb lane?

7 A. The curb lane, yes. Correct.

8 Q. Let me ask you, on the day of this accident,
9 back in August of 2009, August 28th, were you on Euclid?

10 A. Yes.

11 Q. What type of car were you in?

12 A. My Ford F-150 pickup truck.

13 Q. Were you alone?

14 A. No.

15 Q. Who was with you?

16 A. My wife, Judith.

17 Q. Anyone else?

18 A. No.

19 Q. Were you the driver?

20 A. I was.

21 Q. How long had you owned that vehicle,
22 approximately?

23 A. Since 2006.

24 Q. Where were you coming from?

25 A. We came from the shopping center called the
26 Campus Center at approximately the 210 Freeway and Campus.

27 Q. I'm sorry.

28 A. We turned. We left there on 19th Street and

1 turned right onto Euclid.

2 Q. And turned right, meaning heading northbound?

3 A. Correct.

4 Q. And where were you going?

5 A. Home.

6 Q. And was this approximately 4:00 p.m. in the
7 afternoon?

8 A. It sounds about right, yeah.

9 Q. In terms of the lane of travel that you took
10 after you made that right turn onto Euclid northbound, what
11 lane were you in?

12 A. The lane closest to the curb.

13 Q. Were you listening to any music at the time?

14 First of all, do you remember if you had the radio on?

15 A. If I have it on, it's usually on KFI. I don't
16 remember if it was on or not.

17 Q. Can you describe that day whether it was warm,
18 not warm?

19 A. Yeah. As I recall, it was a warm, clear day.

20 Q. Anything unusual about that day that comes to
21 mind?

22 A. Other than the incident?

23 Q. All right. Let's talk about the incident.

24 What's the first thing that alerted you --

25 THE REPORTER: I'm sorry.

26 MR. MARDIROSSIAN: I was going to have him mark his
27 positions. That's why I asked him to be here. I could ask
28 him to go back to the stand and ask him to go back down.

1 THE COURT: I think the only issue -- I figured you
2 were going to keep him there as long as you needed him to be
3 referring to the model, which is fine with me.

4 You just need to keep your voice up. I think the court
5 reporter is having difficulty taking it down.

6 MR. MARDIROSSIAN: I apologize.

7 Q. If I sound like I'm yelling at you, I'm not
8 yelling at you.

9 A. I understand.

10 Q. So I was asking you about where you were going,
11 and I think you told me you were going home?

12 A. Yes.

13 Q. And in terms of what it is that you saw that was
14 unusual, tell us what you saw.

15 A. I saw a vehicle appear to make a turn at a
16 higher rate of speed that I would consider possible. I felt
17 that there was -- a driver was drunk or out of control, and
18 that car then proceeded at us in the lane closest to the
19 median strip at a very high rate of speed.

20 As soon as I saw it, I told my wife, call 911.

21 Q. Now, you talked about you saw a vehicle making a
22 turn?

23 A. I saw the concluding portion of a turn. I
24 didn't see the whole turn.

25 What caught my eye was the car was approximately a half
26 to two-thirds of the way around to complete the turn coming at
27 us in the wrong lane of traffic.

28 Q. Can you give us an estimation of what speed that

1 vehicle was going as it was going through the turn?

2 MR. GALVIN: Foundation.

3 THE COURT: Sustained.

4 Q. BY MR. MARDIROSSIAN: Okay. Were you able to
5 see and appreciate how fast that vehicle was coming around the
6 turn?

7 A. I've been driving for over 50 years. I knew it
8 was too fast.

9 To estimate the miles per hour, I have no idea. But it
10 was too fast for it to be a normal turn. It was way too fast.

11 Q. Now, you say you've been driving for 50 years?

12 A. More than that.

13 Q. When you make a turn around -- let's say a right
14 turn, how fast do you normally make them with just normal
15 traffic?

16 MR. GALVIN: Objection. Relevance.

17 THE COURT: Overruled.

18 THE WITNESS: On a street like that, I would estimate
19 5 to 15 miles an hour. 15 is probably at the high end.

20 Q. BY MR. MARDIROSSIAN: If you were to compare the
21 speed of that vehicle going around that turn with what you go
22 at 5 to 15 miles an hour, can you give us a comparison?

23 A. It would seem like at least two to three times
24 faster than it should have been.

25 Q. Now, looking at this model and looking at the
26 intersection of 23rd and Euclid, do you see what I'm talking
27 about, that general area?

28 A. Yes.

1 Q. The vehicle that you saw make that turn and
2 start heading towards you, can you describe that vehicle, the
3 color, type, shape?

4 A. I knew it was gray. I couldn't tell for sure.
5 I thought it might be a Toyota.

6 And I noticed the left side had damage to it. That's
7 all I can recall. I didn't observe the driver, and the whole
8 thing happened so fast. That's about all I can give you in
9 the way of testimony.

10 Q. Just in terms of positioning -- and I've taken
11 the liberty of putting your name on this little flag.

12 A. Uh-huh.

13 Q. And what I'm going to do is ask you, first of
14 all, this being 22nd Street and this being 21st and that being
15 23rd --

16 A. Uh-huh.

17 Q. -- can you give us a general location of where
18 you were in your truck when you first saw this vehicle
19 rounding the turn?

20 A. Somewhere along in here.

21 Q. All right. So let me just see.

22 When you say "somewhere along" --

23 A. North of 22nd Street.

24 Q. North of 22nd Street?

25 A. Uh-huh.

26 Q. And by way of driveways, I'm counting one, two,
27 so from the second driveway to the fourth driveway, sir?

28 A. Yes. Approximately, yes.

1 Q. All right. Now, knowing that this is not a
2 precise area, would this be the general center of that area?

3 A. Yes.

4 Q. Now, if I place this here in the second lane,
5 would that be the center but not necessarily the identical
6 location?

7 A. Yes.

8 Q. Now, at this point is where you're driving.
9 Mrs. Wunsch is next to you.

10 Do you know if she saw what you saw by -- by that I
11 mean, do you know if she was looking at the car?

12 A. I don't believe she was.

13 I believe when I saw it, I said call 911. She may have
14 been looking in that direction; she may not have been. Don't
15 know.

16 Q. Very well.

17 At some point does the Toyota pass you or the vehicle
18 coming at you?

19 A. Yes.

20 Q. So when you first see it, it's where this flag
21 is.

22 When it passes you, how fast was that vehicle going by
23 you, if you could give us an approximation?

24 A. I would call it around 60 miles an hour.

25 Q. And approximately where were you as that vehicle
26 passed you?

27 A. Somewhere in this area.

28 Q. All right.

1 A. I don't know exactly where, but somewhere in
2 there.

3 Q. All right. Somewhere between the fifth driveway
4 to the eighth driveway?

5 A. I would say that's approximately correct, yes.

6 THE COURT: Mr. Mardirossian, it's the fifth driveway
7 to the eighth driveway north of?

8 MR. MARDIROSSIAN: North of 22nd Street.

9 Thank you, your Honor.

10 THE COURT: Thank you.

11 Q. BY MR. MARDIROSSIAN: I'll take the liberty of
12 taking the other flag that we have with a J for Judith --
13 that's your wife's name?

14 A. Yes.

15 Q. We're just going to make that an E-2 for
16 identification.

17 So this would be just about the area where you were,
18 not identical, not exact, but the general area where you were
19 when the Toyota passed you by?

20 A. Yes.

21 Q. Now, you described what you described as damage,
22 heavy damage, to the driver's side of the vehicle; is that
23 correct?

24 A. Correct.

25 Q. You made a call to 911; is that right?

26 A. I called -- I told my wife, call 911. She
27 picked up the cell phone and held it while I was driving, and
28 I did the talking on it.

1 I didn't hold the phone; she did.

2 Q. What did you tell 911?

3 A. Well, I -- I was panicked. I said something
4 like -- it may not be in this order -- there was a vehicle
5 coming at us at a high rate of speed. It seems like it was
6 out of control, and it was going southbound in the northbound
7 lanes of Euclid Avenue where the easternmost lanes are, two
8 lanes north and the western are the southbound lanes.

9 This car was coming at us southbound in the northbound
10 lanes.

11 Q. Did you say anything about damage on the
12 driver's side of the vehicle?

13 A. Yeah. As the car is going past me, I observed
14 that there was some kind of damage to the left side of it, and
15 I believe it seemed like a lot at the time, but it went by
16 real fast.

17 Q. So this is what you told the 911 operator; is
18 that correct?

19 A. As best I can recall.

20 Q. Very well.

21 Mr. Wunsch, I think we're done with this general area
22 so I can maybe ask you to take the stand again, sir.

23 A. Sure.

24 Q. Thank you, sir.

25 In terms of the vehicle approaching you and passing you
26 by, can you tell us if there was anything you heard coming
27 from that vehicle?

28 A. It --

1 Q. It's a yes or no answer.

2 A. I seemed like I remember the sound of the car
3 being louder than it should for traveling on that street, like
4 the sound of an engine racing.

5 Q. All right. You say "the sound of an engine
6 racing," meaning what?

7 A. There may have been other sounds related to it
8 that I'm not aware of, but it sounded like a car's engine
9 over-revved.

10 Q. Now, did it look to you like the vehicle was
11 going at a steady pace, or was it going faster and faster?

12 A. It was accelerating from the time I first saw
13 it.

14 I didn't turn around after it passed me, but as it
15 passed me, I think it was around -- I would guess it to be
16 around 60 miles an hour.

17 Q. So when you say from the time you first saw it,
18 you mean from the time you first saw it rounding that turn at
19 23rd heading southbound in northbound lanes to the time it
20 passed you, it was speeding up the whole time?

21 MR. GALVIN: Objection. Leading.

22 THE WITNESS: Yes.

23 THE COURT: Sustained.

24 MR. GALVIN: Move to strike.

25 THE COURT: The answer is stricken.

26 Q. BY MR. MARDIROSSIAN: Mr. Wunsch, did you see if
27 the vehicle that was approaching you was speeding?

28 A. Oh, beyond a shadow of a doubt.

1 Q. Did you notice if it was picking up speed?

2 A. It appeared to be -- it couldn't have made --
3 the laws of physics would have prevented it from going around
4 the corner at the speed it was going when it passed me.

5 So I would say, yes, it accelerated from the time it
6 made the corner until it passed me.

7 Q. After it passed you, did you look to see the
8 rear of the light -- the rear of the light -- the rear of the
9 car to see if the brake lights were on?

10 A. I did not.

11 Q. Did you turn around at all to see the rear of
12 the car?

13 A. I did not.

14 Q. Did you look at your rearview mirror to see the
15 rear of the car?

16 A. I could have, but I didn't. I was just glad the
17 car went past us without hitting us.

18 Q. Tell us what emotions were going through you as
19 this event unfolded.

20 A. I was very worried. I was almost paralyzed. I
21 think the reaction was, oh, my god, call 911.

22 And we slowed a little bit, and I go -- like we made
23 it. We didn't get hit.

24 Q. Did the police officers that investigated this
25 accident contact you?

26 A. Yes.

27 Q. Did they interview you?

28 A. Yes.

1 Q. And was your deposition taken with some of the
2 lawyers here for -- that are here in this room for Toyota and
3 for Bello?

4 A. Yes.

5 Q. Have you since learned who the occupant or the
6 driver of that Toyota Camry was?

7 A. Yes.

8 Q. Have you since learned that it was somebody that
9 your wife knew?

10 A. Yes.

11 Q. Tell us about that.

12 MR. GALVIN: Objection. Relevance.

13 MR. MARDIROSSIAN: If they're not going to get into it,
14 I don't need to get into it at all.

15 THE COURT: Sustained.

16 Q. BY MR. MARDIROSSIAN: Did you tell me just a
17 moment ago that you did not get to see what gender or what age
18 the driver of that vehicle was that passed you?

19 A. I did tell you. I couldn't tell who was driving
20 or what was driving. It was too fast.

21 Q. Were you in lane number two, meaning the curb
22 lane?

23 A. Yes.

24 Q. The outside lane?

25 A. Yes.

26 Q. Were you there that entire time, from the time
27 you saw the Toyota Camry heading southbound until the time it
28 passed you?

1 A. Yes.

2 Q. Where was the Toyota Camry in terms of lane?
3 What lane was it in from the time you first saw it
4 heading southbound on Euclid until it passed you?

5 A. The lane closest to the median the entire time.

6 Q. So that I understand what you're telling us,
7 just so that we have the record straight, going northbound,
8 that would be the number one lane, the fast lane?

9 A. Correct.

10 Q. And as you're describing it, it would be the
11 lane closest to the center median, correct?

12 A. Correct.

13 Q. And by the way, is the center median made of
14 like dirt and gravel?

15 A. Yeah. Yes, more gravel -- light gravel, not --
16 yes, gravel. Gravel and ground.

17 Q. After the 911 call, did you also see a Lexus at
18 the 23rd and Euclid intersection?

19 A. Yes.

20 Q. Tell us what you saw.

21 A. As we were driving up, we saw this car parked on
22 the northwest corner of 23rd and Euclid, and it looked like it
23 had been in an accident.

24 And there was people -- there was one lady sitting down
25 and another one standing up. And it looked like they may have
26 needed help.

27 Q. Did you speak to any of those individuals?

28 A. Yes.

1 Q. Did you ask them if they needed help?

2 A. I did. And I -- I'm a little vague on this. I
3 thought they said they had already called 911, but it had been
4 a while. So then I believe I made another 911 call.

5 Q. And then did you leave the area?

6 A. After a while, yeah. We might have been there
7 10 or 15 minutes. I'm not sure.

8 Q. Were you there long enough for emergency
9 personnel to show up?

10 MR. GALVIN: Objection. Speculation.

11 THE COURT: Overruled.

12 THE WITNESS: I don't remember, counselor.

13 MR. MARDIROSSIAN: Okay.

14 MR. GALVIN: Withdrawn.

15 Q. BY MR. MARDIROSSIAN: And once you left the
16 area, did you head home?

17 A. Yes.

18 MR. MARDIROSSIAN: Thank you, your Honor. I have
19 nothing further.

20 THE COURT: Thank you.

21 Mr. Galvin?

22 THE WITNESS: Oh.

23 THE COURT: I think Mr. Galvin may have some questions
24 for you.

25 THE WITNESS: I'm sorry.

26 **CROSS-EXAMINATION**

27 BY MR. GALVIN:

28 Q. How are you?

1 A. Well. Thanks. How about yourself?

2 Q. Good. Thanks.

3 We've never met, right?

4 A. Right.

5 Q. I represent Toyota. I've had the benefit of
6 being able to read your deposition so some of my questions
7 already take into account things you've said. Okay?

8 So you were coming from Home Depot, right?

9 A. I believe so. It was definitely that shopping
10 center. It probably was Home Depot. If I said that earlier,
11 that's what it was.

12 Q. Yeah, Home Depot.

13 Pretty much I know -- pretty much I know what you're
14 going to say before you say it. This is just to get
15 everything before the jury. Okay?

16 A. Uh-huh.

17 Q. You were going north in the number two lane, the
18 right-hand lane on Euclid, correct?

19 A. Correct.

20 Q. And you were going 35, 40 miles per hour, the
21 speed limit?

22 A. Correct.

23 Q. Or below the speed limit, correct?

24 A. Somewhere in that neighborhood.

25 Q. And when you first saw the Camry, you were about
26 a block away from it?

27 A. Yeah. It's a long block, but I would say that's
28 about right.

1 Q. Now, is this flag -- what does this flag right
2 here represent?

3 A. Is that the first one?

4 Q. Yeah, that's the first flag.

5 A. That's where I first observed the Toyota.

6 Q. Okay. When you say you first observed the
7 Toyota, it could mean this is where the Toyota was or this is
8 where you were?

9 A. No. No. That's where I was.

10 Q. So this is -- when you said in your depo when
11 you first saw it you were a block away, is this flag right
12 here your guesstimate of where you were?

13 A. Yes.

14 Q. Okay. So was your F-150 here, or is there some
15 range?

16 And if you don't know, you don't know.

17 A. Thank you. That's it. I know it was north of
18 22nd and south of 23rd.

19 Q. Somewhere in here?

20 A. Yes. Thank you.

21 Q. And there was no particular noise you heard
22 coming from the car other than it sounded like it was going
23 fast?

24 A. As I recall, it sounded -- you know how an
25 over-revved engine sounds, like if you have a conventional
26 shift car or an automatic transmission and you've left it in
27 low range too long? That was the sound that I recall.

28 Q. Or let me ask it this way.

1 You don't think there was any sound of the car other
2 than it was going -- the sound of it going much -- at a -- let
3 me do better than that.

4 "I don't think it was anything other than the sound of
5 a car going at a much higher rate of speed than I would have
6 expected"?

7 A. Uh-huh.

8 Q. Right?

9 A. But that would include an over-revved engine.

10 Q. And other than that, you didn't hear anything
11 else from it?

12 A. Correct.

13 Q. And you didn't hear any horn?

14 A. Correct.

15 Q. You couldn't see the driver?

16 A. I could not. Right.

17 Q. Now, is that because you didn't look?

18 A. Counselor, it happened so fast, I don't know.

19 All I know is I had this gray missile coming at me and
20 we survived it. I don't think I was focusing on who was
21 driving it or anything like that.

22 Q. Fair enough. It's not like you were supposed
23 to -- I wasn't intending to convey you were supposed to have
24 seen it.

25 So let me take it back and do it this way.

26 You were in the number two lane, right?

27 A. Yes.

28 Q. And you see this vehicle coming in your

1 direction, right?

2 A. Uh-huh.

3 THE COURT: Is that yes?

4 THE WITNESS: I'm sorry. I know better than that, too.

5 THE COURT: Thank you.

6 THE WITNESS: Yes.

7 Q. BY MR. GALVIN: And if I understand what you
8 said at your deposition, you had an adrenaline rush. You were
9 afraid. You thought you were going to be in an accident?

10 A. Yes.

11 Q. So you pulled over, didn't you?

12 A. I'm a bit vague about that one, counselor. I
13 believe when my wife handed me the phone, I either slowed to
14 a -- or came to a stop or I slowed very -- slowed down a lot.

15 But I can't give you exact specifications on that
16 instant.

17 Q. Okay. Let me put it to you this way.

18 You didn't keep going at the 35 to 40 that you had been
19 going at before you saw the vehicle and before you started to
20 call 911, right?

21 A. That's correct.

22 Q. So when you actually pulled over and went to a
23 dead stop or you pulled over and were sort of crawling, you
24 don't remember, but it's something like that, right?

25 A. Correct.

26 Q. Okay. And where -- relative to this flag, if
27 you can tell us -- maybe you can't -- would it have been that
28 area that you sort of pulled over -- you did what we just

1 talked about, you pulled over and crawled or stopped or a
2 combo?

3 A. One to three driveways from where that flag is
4 that's closest to me.

5 Q. Okay. So one -- so it would be here, here, or
6 here?

7 A. Somewhere.

8 Q. Do you want to come down so you can see what I'm
9 doing?

10 A. Yeah.

11 Q. So here is where you were when you first see it?

12 A. Uh-huh, right.

13 Q. And then you did a 911, so you slowed down and
14 pulled over to a crawl like we just talked about?

15 A. Uh-huh.

16 Q. So identify in here -- because you'll be gone
17 when we need to use this --

18 A. Uh-huh.

19 Q. -- where that area would have been and where you
20 did that.

21 A. I can't give you a specific driveway, counselor.
22 I'm sorry.

23 Q. Okay. Is it up here? Is it down here? Just
24 give it a range.

25 A. Somewhere between here and here.

26 Q. Okay. So one, two, three, four.

27 So basically between these two flags?

28 A. That would be my -- that is the way I recall it.

1 Yes.

2 Q. Okay. And this is the flag where she passed
3 you?

4 A. Yeah.

5 Q. Okay. So did you start slowing down and pulling
6 over, doing whatever it is you did, from this point?

7 Do you know what I mean?

8 A. Yeah. At this point I said to my wife, call
9 911.

10 She picked up the cell phone, dialed it, and held it up
11 to me to talk into.

12 THE COURT: The record should reflect that this point
13 was the first flag.

14 MR. GALVIN: Correct.

15 Q. BY MR. GALVIN: And so were you in that state
16 of -- a pulled over, slowing state when the car passed you?

17 A. We hadn't come to a complete stop.

18 Q. Right. But whatever that state was where you
19 were, you know, pulled over, slowing down?

20 A. Yes.

21 Q. You were in that state, that driving state, when
22 the car passed you?

23 A. As best I recall, yes.

24 Q. So if it was back here that you got into that
25 slowing, pulled over type state and the car passed you here?

26 A. Uh-huh.

27 Q. Then somewhere from here to here, you were in
28 that state slowed down when the car passed you?

1 A. As best I can recall it, yeah.

2 My wife may be able to help you better on that point.

3 Q. Okay. And the here that I'm pointing to for the
4 record is the flag that you put here as the point where the
5 Camry went past you?

6 A. Yes.

7 Q. Okay. So from that flag, the-Camry-passed-me
8 flag backwards to the when-I-first-see-the-Camry flag, that's
9 basically the distance that you were slowing down, pulling
10 over?

11 A. Yes.

12 Q. Okay. All right. That's all I have for this
13 moment. Yes.

14 From the time you saw the Camry to the time it passed
15 you, it was going in a straight line in the number one lane,
16 right?

17 A. Yes.

18 Q. And from the time it passed you going back
19 behind you, did you look at it at all?

20 A. I did not.

21 Q. Okay. You know that it hit a phone pole,
22 though, right?

23 A. So we heard, yes, tragically.

24 Q. And when it went by you, beside you, did you
25 look at the vehicle?

26 A. It all happened so fast. I noticed left-side
27 damage, and I noticed a high rate of speed and something like
28 an over-revved engine.

1 That's about the best that I can give you, counselor.

2 Q. And when you saw the vehicle on the straightaway
3 coming down Euclid, you concluded in your mind that it could
4 not have made the turn at the speed it was on the straightaway
5 because that was too fast, right?

6 A. I don't think the laws of physics would allow a
7 car to negotiate a 90-degree turn at what I consider to be
8 60 miles an hour.

9 Q. I'll get there.

10 But just more simple than that, in terms of we're not
11 doing reconstruction, when the vehicle went past you, when you
12 saw it, your mindset was, based on what we know from what you
13 told us before, whatever speed it was going here couldn't have
14 been the speed it took the turn up here because that would
15 have been too fast?

16 A. Are you saying -- where the vehicle passed me?

17 Q. Yes.

18 A. Yes, correct.

19 Q. And prior to where the vehicle passed you, as I
20 understand your testimony, you had seen the vehicle from
21 somewhere close to this intersection when you were back here,
22 right?

23 A. That is correct.

24 Q. Yeah. And at some point you concluded that the
25 vehicle was going faster and faster, right?

26 A. Yes.

27 Q. And that was after it was on the straightaway,
28 when you had the clear shot and you could judge that, right.

1 A. Yes.

2 Q. And in terms of this sequence, if you're here
3 when you first see it and you could see it up here, knowing
4 Euclid as you know it, is that a pretty long distance?

5 A. Do you want me to estimate the feet?

6 Q. No.

7 I'm going to object to my own question. It calls for
8 speculation.

9 THE COURT: Sustained.

10 MR. MARDIROSSIAN: Sustained.

11 Q. BY MR. GALVIN: Now, as I recall what you told
12 us before, you thought you saw it making the turn.

13 Are you -- did you actually see it make the turn, or is
14 it something that is vague to you?

15 A. When I looked up, I saw what I thought was a
16 completion of a turn at a much higher rate and in an erratic
17 fashion than would normally be done. That triggered in my
18 mind something bad is wrong.

19 Then when the car came at us accelerating, I was quite
20 certain.

21 Q. And for all the time when you saw the Camry, it
22 was in the number one lane, right?

23 A. That is correct.

24 Q. Even when it made the turn, it turned into the
25 number one lane, correct?

26 A. Well, it turned from the southernmost portion of
27 that cross street, 23rd, into the number one lane of
28 northbound Euclid.

1 Q. Correct. So it was in -- you say the
2 southernmost area of --

3 A. Of 23rd Street as it's going -- as you're going
4 east.

5 Q. Right. Into the number one lane on Euclid?

6 A. Correct.

7 Q. Okay. And from that point it always stayed in
8 the number one lane past you?

9 A. Absolutely.

10 Q. Bear with me. I'm trying to cut through.

11 I want to try to clarify something. You've used 60
12 here, and I don't want to pick nits, but let me just see if
13 you recognize this.

14 "I saw a vehicle coming at us at a very high rate of
15 speed, which I can't say it was 60, but I think it was pretty
16 close to that. It was definitely way faster than any vehicle
17 should be going even if they were going the right way on the
18 one way street, and they were coming at us the wrong way on
19 that street."

20 Do you remember saying that?

21 A. Words to that effect, yes.

22 Q. So you can't say it's 60, but it was going
23 faster than it should have been?

24 A. Absolutely.

25 Q. Now, from the point where you first saw the
26 Camry way up here on 23rd --

27 A. Uh-huh.

28 Q. This is where you were when you first saw the

1 Camry, right?

2 A. Correct.

3 Q. Way up here in the intersection of 23rd?

4 A. Yes.

5 Q. You only saw the Camry? You never saw any other
6 cars at that intersection, correct?

7 A. I did not.

8 Q. Can you identify for us, Mr. Wunsch, where you
9 were when you first saw the silver Lexus?

10 And if you need to come down, help yourself.

11 A. Thank you.

12 It was after we got closer to 23rd. If you want me to
13 guess --

14 Q. We don't want you to guess, but we want you to
15 make an estimate.

16 A. My estimate would be one to four driveways,
17 something like that.

18 Q. Okay. So in this --

19 A. In this area.

20 Q. Somewhere in this area?

21 A. Yeah.

22 Q. So 23rd, driveway, driveway, driveway, driveway?

23 A. Uh-huh.

24 Q. And you were in the number two lane.

25 Were you still doing that crawl?

26 A. I believe we picked up some speed, and then when
27 we got up here, we noticed over here the car that we saw
28 wasn't here. It was here.

1 Q. Okay.

2 A. And it looked like it had been in an accident.

3 There was a young lady sitting on the ground alongside
4 a tree and another lady standing over her.

5 Q. Now, that was the only vehicle you saw at that
6 intersection is the silver Lexus, right?

7 A. That's the only one I recall.

8 Q. And as you sit here today and as you sat at your
9 depo, that was the only one you saw at that intersection?

10 A. Correct.

11 Q. So in this model we see all these cars here.
12 They weren't here, were they?

13 A. If they were, I didn't see them.

14 Q. Can you put to us where the Camry was? I just
15 put it here, but why don't you do it?

16 A. Are you talking about the Lexus?

17 Q. The Lexus. Here. Use this one.

18 A. That's where I recall it being.

19 Q. And --

20 THE COURT: And, Mr. Galvin, can you identify what it
21 is that was just placed in that spot?

22 MR. GALVIN: Sure. There is a little silver car here.
23 Can I ask the witness to say what he did?

24 Q. Say what you did.

25 A. When we got up here, we observed the car which
26 it seemed like it had been in an accident and the young lady
27 sitting down alongside the tree and another adult lady
28 standing there.

1 They looked like they had been experiencing some kind
2 of trauma.

3 Q. Was the older lady taking care of the younger
4 lady, or could you tell?

5 A. It seemed like it, yes.

6 Q. Comforting them -- her?

7 A. Yes. It seemed.

8 Q. You didn't see any other vehicles at this
9 intersection?

10 A. I did not.

11 Q. Okay. So if we want to depict what you saw on
12 this model, these four vehicles -- the five vehicles, three
13 silver and the two red, should not be here, right?

14 A. They may have been here. I was focusing on what
15 I thought to be a car in the accident.

16 If there were cars there or not, I don't know.

17 Q. You didn't see any?

18 A. I didn't see them. If they were there, I don't
19 remember.

20 Q. We're just going on what you saw.

21 A. Okay.

22 Q. You didn't see them. Okay?

23 A. Okay.

24 Q. Okay. If some other witnesses saw them, that's
25 their job to tell us. Okay?

26 In terms of what we see looking at this thing, you come
27 up and the only vehicle you saw was the silver Lexus?

28 A. That's my recollection.

1 Q. Okay. With the two females out on the sidewalk?

2 MR. MARDIROSSIAN: Asked and answered, your Honor.

3 THE COURT: Sustained.

4 Q. BY MR. GALVIN: And did you know who those
5 people were?

6 A. No.

7 Q. Okay. What did you do next?

8 A. We pulled over and -- you know, I can't even
9 remember where we parked. I'm guessing we probably pulled in
10 front over here, but I wouldn't swear to that. And we stopped
11 to inquire if they needed any help.

12 The lady sitting down I thought might have been
13 injured. She had some other problems which probably are
14 totally irrelevant.

15 And I believe we inquired if they had called for an
16 emergency. As I recall, they said they had, but it had been a
17 while.

18 So as I recall, I made another 911 call.

19 Q. And do you have an estimate of how fast you went
20 from Euclid up over to here to the -- when you parked?

21 A. I --

22 Q. You never thought you were going to be asked all
23 these questions, did you?

24 A. If you've experienced this, you'll know what I'm
25 talking about. In a moment of semi-panic, it seems like time
26 drags on and on. It seemed like a minute or two, but it was
27 probably 15 seconds.

28 Q. Does that mean you don't really know?

1 A. Correct.

2 Q. So when you're gone and we're arguing to the
3 jury what you said, you don't know how long it was?

4 A. It was less than three minutes and more than
5 30 seconds. How's that?

6 Q. That's fine.

7 You didn't hear any screeching or skidding tire sounds,
8 right?

9 A. I did not. I generally drive with my windows
10 up, however.

11 Q. Okay. But even if that's how you were driving
12 that day, you didn't hear any of that stuff?

13 A. That's correct.

14 Q. You don't think she had her headlights on, but
15 you don't know?

16 A. Correct.

17 Q. She being the Camry?

18 A. Correct.

19 Q. You didn't see or hear the tree impact?

20 A. Correct.

21 MR. GALVIN: I think I'm done. Just let me consult.

22 I have nothing further. Thank you.

23 THE COURT: Mr. Duffy?

24 MR. DUFFY: Thank you, your Honor.

25

26 **CROSS-EXAMINATION**

27 BY MR. DUFFY:

28 Q. Mr. Wunsch, good afternoon.

1 A. Good afternoon.

2 Q. We've never met, correct?

3 A. Correct.

4 Q. In fact, at your deposition, it was only
5 Mr. Mardirossian and -- there were only two attorneys there at
6 your deposition.

7 Do you remember that?

8 A. There was a court reporter, the gentleman over
9 here --

10 Q. Mr. Jimerson?

11 A. The gentleman at the far right.

12 THE COURT: The record should reflect that's
13 Mr. Jimerson.

14 THE WITNESS: Thank you. Nice guy.

15 There was another gentleman there, but I don't know who
16 he was or his affiliation.

17 Q. BY MR. DUFFY: He was there as the video person,
18 correct?

19 A. That's correct.

20 Q. So we've never met?

21 A. Correct.

22 Q. So you indicated when you got up to 23rd, did
23 you then, you know, make the left and go across and then go in
24 front of the silver Lexus that you're talking about?

25 A. That's where we turned, and I believe we parked
26 in front of the Lexus.

27 Q. Okay. And when you made the turn onto 23rd, you
28 didn't have to pass any cars or anything like that, correct?

1 A. If we did, I don't remember it.

2 Q. Okay. But if there were cars there, you would
3 have had to wait, so your memory at this point is you just
4 don't remember any cars?

5 A. I think it's wide enough for two cars there.
6 I'm not sure. I think that lane might accommodate two
7 vehicles going east and two vehicles going west but maybe not.

8 Q. But you don't remember --

9 A. That is correct.

10 Q. -- seeing.

11 Okay. So when you pulled -- you got out of your truck,
12 correct?

13 A. Yes.

14 Q. And then that's when you came back over and you
15 saw the -- one of the -- I think you described her as a
16 granddaughter of the other person.

17 Where did you come up with that?

18 A. I probably just speculate on it.

19 It looked like the older lady was taking care of the
20 younger lady, and it looked like the younger lady might have
21 been in a state of shock or something similar.

22 Q. Describe for me what you saw with the younger
23 lady.

24 A. She was sitting down, and she said she had need
25 of a restroom.

26 Q. Okay. And the -- as far as -- describe her.
27 What was she wearing, anything like that?

28 A. I don't recall, counselor.

1 Q. Now, the younger one was already on the grass at
2 the time when you pulled up, correct?

3 A. Correct.

4 Q. And the older woman, was she walking around?

5 A. That's what I recall.

6 Q. Okay. She didn't appear to be injured, did she?

7 A. Correct.

8 Q. Okay. The younger woman, did you -- you were
9 there for about, what, 10 to 15 minutes?

10 A. Sounds about right.

11 Q. Okay. During that time when you were there, the
12 ambulance had not arrived, correct?

13 A. That's what I recall.

14 Q. Okay. Well, while you were there, did you ever
15 see the young lady that you talked about -- did you ever see
16 her get up and move around or do anything?

17 A. I believe she did.

18 Q. And tell us what you saw in that regard.

19 A. I'm not sure I understand your question.

20 Q. Well, what did you see when you said that you
21 saw her get up and move around?

22 A. Uh-huh.

23 Q. Describe for us what you saw.

24 A. I thought she was -- I thought her movements
25 might indicate either shock or perhaps some degree of mental
26 retardation or something like that.

27 Q. Now, when you -- okay. But the mental
28 retardation issue, that wasn't something that you thought was

1 coming from the accident, right?

2 A. You're right. I was not thinking that.

3 Q. You're just describing her condition?

4 A. Yes.

5 Q. Okay. What I want to find out is what about --
6 when you saw her walking around, did she appear to be limping?
7 Did she appear -- tell me what you saw in that regard.

8 A. I don't recall that part.

9 Q. Okay. Did you see any blood or anything like
10 that?

11 A. I did not.

12 Q. The same thing with the older woman?

13 A. Correct.

14 Q. But she did seem to be shaken up?

15 A. Correct.

16 Q. Did you have any conversation with the young
17 lady that you just described?

18 A. I did not.

19 Q. Okay. And so what did you -- were you the first
20 one there at the scene when -- in other words, were there any
21 other people besides the older lady and the younger lady? Was
22 there anybody else there?

23 A. I believe a homeowner came out and I -- you
24 know, I believe the young lady said she needed to use the
25 restroom and could she go inside, and he said no.

26 That's the part I got out of it.

27 Q. As far as your recollection, then, is that just
28 that you were the first one to arrive at the scene?

1 A. I don't know that, counselor.

2 Q. That's why I'm asking.

3 Did you see anybody else out there? You told us about
4 the man who came out of the house.

5 A. Yes.

6 Q. He came out after you got there?

7 A. Yes.

8 Q. Before you got there -- I mean, as you arrived
9 there, did you see anybody else out there?

10 A. I recall the older lady and the younger lady.
11 If there was anyone else there, I don't remember them.

12 Q. Okay. And we're almost done.

13 The other thing is that when you -- when you pulled
14 around in front, you said that you saw the vehicle that was --
15 and you put it down here past the intersection.

16 What made you think that that vehicle had been involved
17 in the accident?

18 A. There may have been some damage to it that I
19 didn't see, but something didn't look right to see this young
20 lady sitting down alongside the tree and this older lady that
21 seemed like she was agitated or something.

22 And, you know, it's too much of a coincidence that this
23 car comes past us at a high rate of speed, apparently out of
24 control, and maybe that was a collision or something. I --

25 Q. So it wasn't that you saw any damage on the back
26 of the car or anything like that; it was just that you just
27 thought that this might have been connected in some way?

28 A. That's the way I recall it.

1 Q. Okay. And from the time that -- when you first
2 saw the vehicle up until the time when you got over here, that
3 was that time frame of 30 seconds to three minutes that we're
4 talking about?

5 A. Correct.

6 MR. DUFFY: Thank you. No further questions.

7 MR. MARDIROSSIAN: No further questions, your Honor.
8 Thank you, Mr. Wunsch.

9 THE COURT: Thank you, Mr. Mardirossian.

10 Mr. Wunsch, you may step down.

11 MR. MARDIROSSIAN: He was wondering whether his wife
12 was going to be taking the stand. I said I don't think so.

13 THE COURT: Thank you.

14 Thank you, Mr. Wunsch. You are excused.

15 All right. We are going to call it a day.

16 Now, as you will recall, we're going to be in session
17 typically Monday through Thursday so you don't come back
18 tomorrow. We're off tomorrow.

19 Then this next week, as I mentioned to you during jury
20 selection, we're off on Monday.

21 So Monday, August 12th, we are not going to be in
22 session, but you do need to return on Tuesday, August 13th.
23 We'll start at 9:00 a.m.

24 I thank you all for being here so promptly this
25 morning. And I ask you, please, to come back promptly at
26 9:00 a.m. on Tuesday, August 13th.

27 You are reminded not to discuss this matter among
28 yourselves or with any other person, not to form or express an

1 opinion on the matter until it's sent to you for deliberation.

2 You can leave your notebooks in your chairs.

3 Thank you so much. Have a great weekend. See you next
4 Tuesday.

5 Mr. Hernandez, could you hang back for just one moment.

6 (The following proceedings were held
7 outside the presence of the jury:)

8 THE COURT: The record should reflect that we are
9 outside the presence of the jury but Mr. Hernandez is still
10 with us.

11 Mr. Hernandez, yesterday we spoke very briefly about
12 the possibility of my calling your employer. Did you want me
13 to do that?

14 JUROR HERNANDEZ: Yes.

15 THE COURT: Okay. Did you bring the information with
16 you?

17 JUROR HERNANDEZ: I have the number of the agency.

18 THE COURT: Okay. Is there a particular person I
19 should speak with at the agency?

20 JUROR HERNANDEZ: I don't know. Just whoever is there.

21 THE COURT: And the agency, is that your employer?

22 JUROR HERNANDEZ: Yes.

23 THE COURT: Okay. And do you have the full name and
24 telephone number written there of the agency?

25 JUROR HERNANDEZ: Yeah.

26 THE COURT: Okay. If you could give that, then, to
27 Ms. Jones on your way out.

28 JUROR HERNANDEZ: Thank you.

1 THE COURT: Thank you so much. We'll see you on
2 Tuesday morning.

3 MR. GALVIN: Thank you, your Honor.

4 (Juror exits courtroom.)

5 THE COURT: Okay. The record can reflect that
6 Mr. Hernandez has exited the courtroom.

7 Mr. Akaragian, did you have something you wanted to
8 raise?

9 MR. AKARAGIAN: Just something. I know the Court has a
10 4:30.

11 The Lee Carr CD, what's the Court's preference? I know
12 Mr. Salyer is transcribing the videos. I could mark it as an
13 exhibit also and however the Court wants to do it, or we can
14 just go with the transcript. That was the only thing I was
15 going to ask.

16 THE COURT: Why don't you talk amongst yourselves and
17 decide how you want to do that. You can address that on
18 Tuesday morning.

19 Let me just address one other thing.

20 Mr. Akaragian, you asked for some guidance in
21 connection with your brief that you're going to give me on
22 Tuesday.

23 When I look at Commercial Code 2313, what I was
24 referring to was comment or note number 5 that talks about
25 paragraph 1(B) that makes specific some of the principles set
26 forth above when the description of the goods is given by the
27 seller.

28 And, in particular, it ends with the line, "Of course

1 all descriptions by merchants must read against the applicable
2 trade usages with the general rules as to merchantability
3 resolving any doubts."

4 So that is what I was referring to in terms of giving
5 some context as to what safety means, and it being a general
6 trade usage in connection with that issue. So that is what I
7 was referring to.

8 MR. AKARAGIAN: Thank you, your Honor. That's a big
9 help.

10 THE COURT: The only other thing I want to address
11 before you leave is the issue of -- two things.

12 Exhibits, I'm assuming whatever you're going to use on
13 Monday you're going to bring hard copies for the Court so that
14 we've got a set of whatever it is that we can mark and so that
15 we can keep the record clear.

16 Mr. Mardirossian, did you intend to admit the one
17 exhibit that you did refer to, exhibit 5302-9?

18 MR. MARDIROSSIAN: I would like to, yes, your Honor.

19 MR. GALVIN: I think we have to get some foundation for
20 the scale and stuff. I don't mind if we continue to use it
21 the way we have been.

22 THE COURT: All right. Then I will expect you to
23 address it later when you wish to.

24 The final issue is when you're going to be using a
25 deposition or reading from a deposition of somebody, I'm going
26 to need to get involved in that discussion.

27 I want you to make sure that you have copies of the
28 deposition so that I can read along.

1 MR. BERRY: Our intention is to lodge the originals for
2 anyone where we have the originals.

3 MR. GALVIN: We didn't have them for the Wunches.

4 MR. AKARAGIAN: We had them right here just in case.

5 MR. GALVIN: I'm not making fun. I'm just saying I
6 didn't have it.

7 THE COURT: I don't particularly care to have a lodged
8 copy of every single deposition that you all have done in this
9 case. I'll have enough boxes of documents to look at.

10 But I want to make sure that we got handy copies of the
11 depositions of the witnesses where there is a chance that you
12 might read from it.

13 And thank you. I appreciate the fact that you had it
14 here.

15 All right. Thank you all very much. See you --

16 MR. DUFFY: One thing, your Honor, I would like to
17 address on the record.

18 THE COURT: Mr. Duffy.

19 MR. DUFFY: There was a motion in limine about
20 financial condition, and Mr. Mardirossian started asking the
21 witness about all of these big expensive houses that are lined
22 up on this area here, implying that Mrs. Bello lives in one of
23 these big fancy houses because she lives two blocks from here.

24 That I felt was improper in light of the motion in
25 limine. I just wanted to bring it to the attention of the
26 Court. I don't think it should happen again.

27 THE COURT: All right. If that's an objection, it's
28 overruled.

1 I don't think that that -- while you may be sensitive
2 to that, I don't think that was -- certainly not what I got
3 from the testimony. But I hear you, and I will be sensitive
4 to the issue.

5 MR. DUFFY: Thank you.

6 THE COURT: All right. I'll take my 4:30 conference
7 call.

8 Thank you all, and we'll see you next Tuesday at 8:30.

9 (At 5:10 p.m. the proceedings were adjourned
10 until Tuesday, August 13, 2013 at 8:30 a.m.)

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