

1 however, based upon that lawyer's analysis of the evidence
2 argue any position or conclusion with respect to a matter
3 at issue.

4 Now, if in the course of making a final
5 argument, a lawyer attempts to restate a portion of the
6 evidence and if your recollection of the evidence differs
7 from that of the lawyer, you are in recalling and
8 remembering the evidence to be guided exclusively by your
9 own recollection of the evidence.

10 All right. The first argument in this case
11 will be with the Plaintiff. Please give your attention at
12 this time to Mr. Emison. Counsel.

13 MR. EMISON: May it please the Court.

14 THE COURT: Yes, sir.

15 MR. EMISON: Good morning.

16 THE JURY: Good morning.

17 MR. EMISON: The first thing I want to do
18 on behalf of Nikita, Mr. Tyndall, on behalf of myself,
19 Mr. Tessener, Mr. Willis and also Lorie Kreisel and Vince
20 Hall. Thank you for your service. It's been a long six
21 weeks. I know that. I know you have made sacrifices. I
22 know your families have made sacrifices. From the bottom
23 of our hearts, we -- we thank you for that. I want to get
24 right to the point.

25 You have three jobs here today, more than

1 that, but I want to point out three for you. All right?
2 First, answer the questions Judge Lock gives you. Now,
3 I've got a copy -- you don't have a copy quite yet but
4 you're going to have questions to answer yes and no on.
5 They're straightforward. There are six of them we're
6 going to talk about. Okay.

7 And that's -- and then you'll have a set of
8 jury instructions which explain what we must prove, what
9 Ford must prove and a lot of other things that we're going
10 to go through this morning.

11 All right. Second job: Make sure everyone
12 carefully follows the law. The law is what Judge Lock has
13 prepared in these instructions, and you all have these.
14 All right. That's very important.

15 And a third thing, before answering any
16 questions, be sure to explain to each other why you feel
17 the way you do about each question. That's important.

18 All right. When we started this case six
19 weeks ago, we started out with a slide very much like
20 this, why we're suing Ford Motor Company. And that's
21 because Ford chose to put a two-point belt in the 1999
22 Ford Escort in the rear-center seat where Che-Val was
23 sitting when Ford had known for a long time that that
24 two-point belt was not crashworthy. We explained
25 crashworthy. It means that every part of every car must

1 keep people safe in crashes. In this crash, the two-point
2 belt not only did not keep Che-Val safe, one thing
3 everybody agrees -- not many things we all agree on. But
4 one thing everybody agrees on in this case is that the
5 two-point lap belt caused all of his permanent injuries.

6 The other reason: Ford safety engineers
7 identified the danger of two-point lap belts long ago.
8 We're going to talk about that. Ford safety engineers
9 told Ford management long ago how to eliminate that
10 danger, and that was with a three-point lap belt. And
11 we're talk -- going to talk about that and we're going to
12 talk about how that applies to North Carolina law that
13 you're going to be given.

14 Now, I want to run through these pretty
15 quick, that Ford clearly knew the risks and dangers of a
16 two-point lap belt. We're going to get into more detail
17 about that. Ford knew that people would be severely
18 injured and paralyzed with the two-point lap belt. And
19 we'll, again, show you.

20 You've heard the evidence. I'll very
21 briefly show you some of that evidence. Ford chose to put
22 Che-Val at risk. Ford made a knowing, conscious decision
23 to stick with the two-point lap belt in that '99 Ford
24 Escort. That Ford's decision, Ford's choice. Ford had
25 the power to put a three-point belt in there. It was

1 their choice. Ford's choices caused Che-Val to be
2 paralyzed. Great kid. I think we can all agree on that.
3 But Ford's choices put him in that wheelchair.

4 Che-Val was not -- not told about the risk
5 of the two-point belt. We're going to talk about that a
6 lot. Ms. Stone, Nikita, sitting right back there, she
7 wasn't told about the risk of a two-point belt. No one
8 that used that '99 Escort was told about the risk of a
9 two-point belt. Ford's responsible for Ford's choice to
10 put Che-Val at risk.

11 Now, I told you I was going to run through
12 these pretty quickly. I know you've seen all these.
13 You're probably tired about hearing some of these, so I'm
14 going to be brief when I go through these.

15 Dr. Snyder. Dr. Snyder was referred to by
16 Ford as "that guy" or "that fellow." They don't like
17 Dr. Snyder in this case. Do you know why? Because
18 Dr. Snyder was one of the leading safety experts in the
19 country. He was published. He spoke all over the country
20 and he told Ford management in 1967 that, You know what,
21 lap belts are dangerous. Lap belts are going to paralyze
22 people. Lap belts are going to cause severe abdominal
23 injuries. That was September 9th, 1967. He told Ford
24 management that in the -- in the exhibit. This one was
25 19, I think, I'll probably get some of these wrong, but

1 I'm pretty sure that one was -- no, this one was 20. All
2 right. All right.

3 I want to mention -- I want to talk about
4 three-point belts and how they're better. But I do want
5 to mention that 10 days -- 10 days -- after he told Ford
6 how dangerous two-point lap belts were, he told them how
7 to fix them. And that was in Exhibit 19 where he told
8 them three-point belts provide much superior safety.
9 Three-point belts prevent the jackknifing. They prevent
10 the abdominal injuries and paralysis. 10 days after this,
11 that's what Dr. Snyder told them. That's why in this
12 case, Ford is referring to him as "that guy" or "that
13 fellow."

14 We saw a 1985 sled test. I'm not going to
15 play it. You've seen it. You saw the child dummy
16 jackknife and finally hit his head. Mr. Burnett wouldn't
17 say that. Burnett said, oh, you know, he might have had a
18 bump. He smacked his head on that console really hard.
19 And -- and, you know, Che-Val doesn't have a head injury
20 in this thing -- in this case, thank goodness. He's a
21 very bright kid. He's going to do -- he does great in
22 school. And thank goodness he does not have a head
23 injury. But that is another side effect, another danger
24 of the three-point belt, the head injury. But we're going
25 to be talking about his severe abdominal and spinal cord

1 injuries. But Mr. Burnett sat in that chair and said,
2 this was the expected result in this test. He went
3 further and he said, Ford knew exactly what would happen
4 in the '99 Escort, this. That was what Ford knew would
5 happen in the '99 Escort, and this is probably what
6 happened to Che-Val in this accident.

7 Ford also had notice from the NTSB. What
8 did the NTSB tell them? They said that they had
9 investigated 26 crashes involving at least one lap-belted
10 person and concluded that overall, crash performance of
11 lap belts was very poor.

12 And I'm going to go through these pretty
13 quickly. I'll try to slow down enough so you all can get
14 it but, again, you've seen these before.

15 They also told Ford that the occurrence of
16 lap-belt-induced severe -- the occurrence of lap belts --
17 lap-belt-induced severe to fatal injuries was not limited
18 to severe crashes. That's what Ford wants you to believe.
19 But they're not. This is what -- the NTSB is a large
20 board of multidisciplinary. That means there's engineers,
21 there's doctors. All safety. It's the Blue Ribbon panel
22 of safety experts in this country and it has been going
23 back for years. When anything happens in this county,
24 who's called in? The NTSB is called in. That's why their
25 objective -- they don't have a dog in this fight. Their

1 assignment is to investigate and make objective findings.
2 And that's what they did here.

3 What did the NTSB find? They told Ford
4 this, even correctly worn lap belts induce severe injury.
5 That's important in this case. I'll tell you why.
6 Because Ford's blaming Che-Val. He -- Ford is blaming
7 Che-Val, an 11-year-old child in this case. And I'll
8 explain why. This is important. And they -- when they
9 said "correctly worn," they defined that. While there's
10 no officially agreed-upon definition of "correct," this is
11 what the Safety Board found. It means, snugly crossing
12 the lower abdomen between the pubis and the umbilicus.
13 Bellybutton. With the belt low on the hips below the
14 crest of the ileum. That's what Ford told -- or that's
15 what the NTSB told Ford back in 1986, the crest of the
16 ileum. The crest of the ileum is right here. They didn't
17 say, like Dr. McNish, it's got to be in this notch. If
18 it's not in this notch, somebody is going to get
19 paralyzed. They said "correctly worn" meant below the
20 crest of the ileum. That's what they told Ford in 1986,
21 but Ford doesn't want to talk about that in this case
22 though.

23 What else did they tell Ford? Injuries
24 characteristically induced by the lap belt were among the
25 most dangerous types. Head, spine and abdomen. Can't get

1 any more dangerous than that. And they said in this
2 study, lap-belt-induced head and spine injuries are those
3 brought about by the violent jackknifing motion over the
4 lap belt. Injuries that would not have occurred but for
5 the use of the lap belt.

6 I talked to Mr. Burnett for a long time
7 about jackknifing. He refused to acknowledge that
8 jackknifing was bad. In fact, at one point he said it was
9 a benefit, a benefit. This Blue Ribbon panel of safety
10 experts said that jackknifing is bad. That that -- that
11 brings about all these terrible and severe injuries.

12 We saw the '88 sled test. Again, I'm not
13 going to run it. You've seen it. This epitomizes the
14 benefit of a three-point belt versus the danger of a
15 two-point belt. And this sled test, which was at 35 miles
16 an hour, these two dummies in three-point belts, you know
17 what, they performed just fine. What happened to the
18 middle dummy with the lap belt? He ended up on the
19 steering wheel, his upper torso. Ford can try to explain
20 that away all they want. The person's spine is -- that
21 these dummies had is a steel cable. Steel cable is a lot
22 stronger than an 11-year-old boy's spinal cord. I'll
23 guarantee you that.

24 This is from Ford's own document: 56
25 percent of the people in center-rear seats were injured in

1 cars with lap belts. Now, that was a study. I'll show
2 you this document later, but that's a study where it said
3 the reason -- this was the reason in 1997, January of '97,
4 that Ford safety engineers said, we got to put three-point
5 belts in all future programs. This was the reason, the
6 rationale.

7 They looked at 1988-to-1994 accidents.
8 They said those cars would have lap belts. Ford tries to
9 make a big deal that only 2.2 percent of the time will
10 anybody be in that. Well, you know what, we heard
11 testimony in this case, there are millions and millions of
12 accidents every year in this country and they -- there
13 were millions and millions back then. You know what, 2.2
14 percent of the time in millions and millions is a lot of
15 people. And a lot of people, over half of them received
16 injuries. In that seating position. This is Ford's own
17 statistics. Ford uses -- uses statistics a lot in their
18 defense in this case. They don't use their own. This is
19 their own.

20 And the -- the terrible part of this is
21 that they said 7.4 percent of those people were severely
22 injured. "Severely injured" means permanent injuries to
23 those people.

24 Two-point lap belts. This is a summary.
25 Dangers and risks that Ford knew and what Ford's choice

1 was. Dr. Snyder told them about the risk and dangers,
2 Ford chose lap belts. The '78 sled test, showed them the
3 dangers. Ford chose lap belts. The '85 sled test with
4 the child dummy. Ford chose lap belts. The NTSB told
5 them how bad it was, they chose lap belts. The '88 sled
6 test showed the dummy flying apart, they chose lap belts.
7 Their own safety engineers told them how bad lap belts
8 were and they needed to go to three-point belts in all
9 cars, Ford chose the lap belt in the '99 Escort.

10 Now, let's look at what Ford knew about how
11 safe the three-point belt was. Again, I'm going to run
12 through this pretty quick. These things are all important
13 for the instructions I'm going to talk to you later, but I
14 want to show you -- I'll wait just a second. Go ahead.

15 (Plaintiff gives water to Juror No. 9)

16 MR. EMISON: I want to show you in very
17 summary fashion what Ford knew about how the dangers and
18 what Ford knew about the safety and the benefit of a
19 three-point belt. Dr. Snyder told them -- this was
20 September 19th, 1967 -- the three-point lap belts
21 limited -- eliminated the danger posed by two-point belts.
22 The NTSB told them that the three-point belt eliminated
23 the danger, that three-point belts do not present a
24 children to hazard (sic). That was right in the NTSB
25 document, that they do not present a hazard.

1 The NTSB knew what Ford and other car
2 manufacturers were trying to do. They were trying to get
3 out of putting three-point belts in cars by saying, You
4 know what -- this defense boggles my mind, but Ford's
5 defense in this case is that, You know what, we had -- we
6 needed a lap belt for the safety of small children.
7 That's what their defense is in this case. Well, you know
8 what, that's not a new defense. They've been using
9 this -- that defense since 1986. They have retread this
10 defense time and time again. They used it in '86 and the
11 NTSB shot it down. They said, no, you don't need a lap
12 belt for the safety of small children. The opposite is
13 true. A lap belt is extremely dangerous for children 10,
14 11, children who are too big to be in a booster seat, but
15 are in -- in a lap belt.

16 Three-point shoulder belts provide better
17 protection for children. That's what the Blue Ribbon
18 panel of safety experts said.

19 So Ford decided to put a three-point belt
20 in their 19 -- in 1993 in the Ford Falcon in Australia.
21 And when they did that, guess what they did? They
22 advertised. They were proud of the fact -- and this is
23 something we can agree on. Again, this is Ford's own
24 statistic that they don't want to talk about. Their press
25 release told the public that three-point lap-shoulder

1 belts in the rear center reduced injuries by up to 60
2 percent. Incredible. Up to 60 percent.

3 What they say in January of 1997,
4 recommendation, put three-point lap belts in all -- in the
5 rear-center seat of all future programs. All future
6 programs. The advantages of a three-point system:
7 Provides the highest level of safety for the rear-seat
8 occupant. Three-point is better than the two-point. You
9 know what, I can't say it any better than that. The Ford
10 safety engineer said it better than any lawyer can say it.

11 And this is another one of those
12 scratch-my-head times when Mr. Burnett said, you know
13 what, they're talking about the Taurus versus -- of the
14 continuous loop. Taurus is never mentioned anywhere in
15 here. All they do is compare the three-point versus the
16 two-point. They have to come up with some argument. They
17 can't agree to this.

18 But this is what their safety engineer
19 said. The three-point provides consistent belt system
20 throughout the entire vehicle, user friendly. That means
21 more people are going to use it. It provides a one-step
22 operation for the customer. It's user friendly. They're
23 going to use it. And you know what? It prevents you from
24 wearing that dangerous lap belt. That's exactly what
25 they're saying here. And, oh, by the way, it allows for

1 the automatic locking retractor, which works great with
2 child seats. You didn't hear that in this case from Ford.
3 But that's what their safety engineers told all of Ford.
4 This is a company-wide document. They told all of Ford in
5 January of 1997.

6 First available timing, no issue. This is
7 something Mr. Burnett did agree to, that they could do
8 this at very little cost. No two -- no new technology.
9 This is off the shelf. They could have put it in the '99
10 Escort (snap) in a snap. They had it. They had it in all
11 other cars. Cost: 9 to 12 dollars. For 9 to 12 dollars,
12 they chose to put children at risk. Che-Val was a big
13 kid, but he was 11-years-old. He was a child. And for 9
14 to 12 dollars, they chose to put him at risk.

15 Now, the testimony about Ford, this is
16 important. They said, oh, we couldn't put the lap belt on
17 a '99 Escort, of course not, because of small children and
18 because of child seats. Well, you know what? They were
19 putting them in almost all their other cars. 2 -- over
20 2.3 million. I went through all those numbers with
21 Mr. Burnett. And the -- the -- the Lincoln Continental,
22 the Taurus Sable, the Contour Mystique and the Ford Focus,
23 which came out in 1999, and the Lincoln Town Car. The
24 only three cars they weren't putting them in is what they
25 were calling the carryover Escort and one platform called

1 Crown Victoria Grand Marquis. That's the only ones they
2 weren't putting them in.

3 Now, again, this is a summary. Dr. Snyder
4 told them how safe three-point belts were, so did the
5 NTSB. Ford's own -- Ford's own document said how great
6 they were. 60 percent reduction of injuries. Their
7 safety engineers and the safety design guideline, and what
8 did Ford chose? Again, Ford holds all the cards here.
9 They hold the power to make the decision to make the car
10 safe. They chose the lap belt in the 1999 Escort that
11 Che-Val was riding in.

12 These are the cars that -- that -- the over
13 2.3 million that had three-point belts, but a lap belt in
14 the '99 Escort.

15 Now, the instructions. I'm going to go
16 through these and I'm going to tie some of this back in to
17 specific things in these instructions. I'll probably go
18 through -- through these a little too fast. I'll try to
19 slow down. And I'm not going to go through every one
20 because I don't have time. There's too many. I am going
21 to go through ones that I think you'll find important.

22 First, Mr. Rios, that's going to be one of
23 the first questions that you have to answer. And Mr. --
24 we sued Mr. Rios. It's obvious he pulled out in front
25 of -- of the Escort. And he's responsible for the

1 injuries the accident caused. Ford is responsible for the
2 injuries that the two-point lap belt caused. We're going
3 to talk about proximate cause. But it's important to note
4 here, there can be more than one proximate cause. It's
5 not only one or the other, they can both contribute to
6 cause -- cause injuries, and that's exactly what happened
7 here.

8 So the first question you're going to get
9 on what's called a verdict sheet, very simple question.
10 Was Plaintiff injured by the negligence of Defendant Rios?
11 The answer is simple, it is yes.

12 Now, you're going to have -- and the burden
13 of proof is contained in several instructions. And you're
14 going to see burden of proof. "Burden of the proof," it's
15 a legal term. It -- it may seem confusing, but it's
16 really not. It's weighing the evidence. In a civil case,
17 it's real easy. You use your collective minds, you stack
18 up the evidence, and whichever side tips the scales, even
19 slightly, they satisfy the burden of proof in a civil
20 case. That's the burden of proof.

21 You weigh the evidence, and whichever side
22 tips the scale, they win. It's that simple.

23 So I -- I put the scales of justice there.
24 That's to indicate the weighing process.

25 And -- and this is also important. A lot

1 of you watch TV shows on -- that involve criminal-type
2 shows. Some of you may have been on a jury in a criminal
3 case. I can't remember honestly. But there's no need to
4 show beyond a reasonable doubt here. The -- the standard
5 in a civil case for burden of proof is the greater weight
6 of evidence tipping the scales.

7 Now, negligence. And -- and this is an
8 instruction you'll have in several places in the law that
9 Judge Lock will give you. "Negligence" is the failure to
10 follow a duty of conduct imposed by law. Everyone is
11 under a duty to use ordinary care to protect himself and
12 others from injury.

13 And that includes Ford Motor Company. Ford
14 Motor Company is under a duty of care to protect Che-Val
15 Batts from unreasonable injury.

16 "Ordinary care," what does that mean? That
17 degree of care that a reasonable and prudent person would
18 use under the same or similar circumstances to protect
19 himself or others from injury. Now, even though it uses
20 "himself or others," it applies to Ford. This applies to
21 Ford Motor Company. A person's failure to use ordinary
22 care is negligence. So this applies to Ford. In this
23 case, Ford was not prudent. What does "prudent" mean? It
24 means being careful and prudent. It means doing the right
25 thing. What a careful manufacturer would do. And what a

1 careful manufacturer would do with Ford's knowledge is to
2 put a three-point belt in that rear-center seat. So
3 that's the standard that Ford has in this case.

4 This is the second question you'll have on
5 the verdict sheet: Did Ford act unreasonably in designing
6 the '99 Ford Escort proximately causing Plaintiff's
7 injury? And when we talk about the Ford Escort, we're
8 talking about the two-point lap belt. That's what this
9 case has been all about. It's in the rear-center seat of
10 that Escort. So that's what we're talking about.

11 And I want to go through some of the proof
12 on that. Now, here's -- in this, we must prove by the
13 greater weight -- that's that weighing of evidence -- four
14 things. First, Ford manufactured the '99 Escort. I'm not
15 going to talk any more about this. They have admitted
16 that. It had the Ford emblem on it. There was an exhibit
17 up here -- I forgot the exhibit number -- when it was
18 manufactured and sold in 19 -- January of 1999. No
19 question they manufactured it.

20 Ford acted unreasonably in designing the
21 Ford Escort, meaning the two-point lap belt. And then
22 that instruction -- this is kind of a long one -- it has
23 you look at six different things. And I'm going to go
24 through them, but I also have a blowup here I want to put
25 up.

1 These are the six things. And I'm -- I'm
2 going to go through these. But -- and I'm -- I'm going to
3 leave these up here while I go through them. I'm going to
4 go through them one at a time so we can talk about them.

5 Okay. And I'll go through that when I go
6 through No. 2, so I put this up a little bit early. These
7 are the four things we must prove -- my apologies. I took
8 this out of order. I'll go back to that -- that Ford's
9 unreasonable acts was a proximate cause. And the "a" is
10 important. It means one of the proximate causes. Rios
11 was the other one. But this is in the instruction. It
12 says "a," and that's why I point that out. Ford was
13 unreasonable in failing to adopt a practical, feasible
14 alternative design. That's the three-point belt.

15 This is the considerations. Now I'm at the
16 point where I should have brought this out. And so what
17 are the six things? They're called "things," so that's
18 what I called them. We call them factors or elements, but
19 six things you shall consider. The nature and magnitude
20 of the risk of harm. I shortened it up. This is the
21 full -- the full one from the instruction. The nature and
22 magnitude of risks of harm associated with the design in
23 light of the intended and reasonably foreseeable uses,
24 modifications or alterations of the vehicle.

25 Again, we're talking about the nature and

1 magnitude of the harm from the two-point lap belt. That's
2 what we're talking about. So I want to talk to you about
3 what Ford knew about the nature and magnitude of the harm
4 that can come from a two-point lap belt.

5 Mr. Burnett said Ford fully understood the
6 risks of a two-point lap belt. He said that numerous
7 times. We've talked about these. I'll let you look at
8 them. I'm not going to repeat them all. We went through
9 all of these. The -- the -- what Ford knew. There's more
10 than this, but these were the ones that I thought the most
11 significant to point out to you.

12 Now, what were the harms? Injuries to the
13 small intestine, and you know what, this is best stated by
14 Dr. Snyder back in September of 1967 when he said, lap
15 belts cause serious injuries. And he went through and he
16 talked about the jejunum, and I probably mispronounced
17 that. The duodenum, the ileum, that's all part of the
18 small intestine. The large bowel, the spleen, the
19 pancreas, these are all vital organs in your abdomen, and
20 spinal cord injury and paralysis and head injuries.
21 Again, folks, you can't get any more serious than this.
22 When you stack these up, on a scale of 1 to 10, these are
23 a 10. These are a 10 when it comes to the harm that a lap
24 belt can inflict upon people. What harm a lap belt can
25 especially inflict upon an 11-year-old child. That's one

1 of the factors. That's the first factor consideration.

2 All right. So what is the second
3 consideration? This is not me. This is the law. This is
4 the law of North Carolina. I paraphrased this, the likely
5 awareness of users of the '99 Escort of the risk of harm.
6 And, again, it's talking about the two-point lap belt in
7 this case. Whether based on warnings, general knowledge
8 or otherwise. Okay? And that's pretty much stated
9 exactly like it is here in the actual instruction.

10 So let's look at that. What did Ford tell
11 their customers? You've seen this a lot. This is the
12 instruction from the owners manual on page 68. And it
13 says, the lap belt should fit snugly and as low as
14 possible around the hips and not around the waist.
15 Nothing about the risk or hazards, nothing. And when it
16 comes to this case, what you're going to be looking at is
17 what Che-Val Batts when he was 11 would have known about
18 the risks of a lap belt. I don't think any adult would
19 know. Not unless a manufacturer told them. What Ford
20 told them was nothing, not one thing. That's the second
21 thing that you're to consider in finding whether Ford was
22 unreasonable in putting a two-point lap belt in the '99
23 Escort. So what did Ford tell their customers? Well,
24 Mr. Burnett --

25 Let's see, Mr. Hall.

1 (Video played.)

2 MR. EMISON: So Mr. Burnett had to have
3 some reason why they didn't put risk in. That was his
4 reason. He knew that would be asked, I'm sure. The point
5 is, there's no disagreement here. This -- believe it or
6 not, this may be the second thing we all agree on. They
7 didn't put any risk or hazards in the owners manual. They
8 didn't tell -- they could have put it on the belt, they
9 didn't do that either. But what we talked about is the
10 owners manual. There's nothing in it. That's the second
11 consideration.

12 Third consideration, compliance with
13 government standards. You've heard a lot about government
14 standards. Well, what do we know about that? That every
15 car sold since 1967 has met these standards. Every car on
16 the roadway since '67. Good, bad and otherwise, and
17 there's been a lot of bad ones. They all met these
18 minimum standards. It's the floor. It's the bare minimum
19 that a manufacturer can put out there, and it's only one
20 of six considerations that you're to consider.

21 The government doesn't go to the plant to
22 make sure the car passes. And Ford never showed us any
23 tests that they or Mazda did that the '99 Escort passed
24 the standard. Not one test. We were provided one test,
25 the developmental test that we showed you time and time

1 again from 1995. That wasn't a test to pass the
2 standards. Ford could have brought in testing. They
3 didn't provide us any, but they sure could have come in
4 and showed you testing to prove that they passed the
5 standards. They didn't do it. They brought a stack of
6 paper in here from Mazda and said, you know what, Mazda
7 told us it passed. Well, Mazda gave them those tests.
8 They had to. They had to give them the tests. They
9 didn't bother to bring them in here to show any of us. I
10 have never seen them. We've never seen them. I would
11 like to see them. They said they passed. We haven't seen
12 anything that shows that they passed.

13 The fourth consideration, "utility," which
14 means benefit of the two-point belt in the '99 Escort
15 including performance, safety and other advantages
16 associated with that design. So what -- what this asks,
17 and, again, that's pretty much verbatim from the
18 considerations, is that the law says, you know what, on
19 some of these designs there may be a benefit and you have
20 to consider that. But you know what you heard in this
21 case, there is no benefit from a two-point belt.

22 Two-point belts have no benefit over a
23 three-point belt. Ford tried to argue that. I'm going to
24 address those arguments about the child seat and about the
25 small child, but they didn't have any benefit over a

1 three-point belt. A three-point belt provided every
2 benefit of a two-point belt and a lot more. And a lot
3 more. That's a fourth consideration.

4 Fifth consideration, the technical,
5 economic, practical feasibility of the three-point
6 shoulder belt in the '99 Escort. A lot of words, what
7 does that mean? Was it feasible, technically feasible to
8 put it in? We agree, it was. Mr. Burnett told us that.

9 Let's see -- hear what he said about this.

10 (Video played.)

11 MR. EMISON: So we agree on that. And what
12 does the costs say? Well, the safety design guideline
13 that we looked at from January '97 said, you know what, no
14 new technology. We can take it off the shelf, 9 to 12
15 dollars per car. So I would submit to you that we all
16 agree that this condition weighs toward the three-point
17 belt and weighs toward the fact that Ford was unreasonable
18 in not putting a three-point belt in the rear-center seat.

19 Fifth consideration, let's see -- hear what
20 Mr. Burnett says about it.

21 (Video played.)

22 MR. EMISON: Less -- costs less than a tank
23 of gas. For less than a tank of gas, you put children at
24 risk. You put Che-Val at risk. And he ends up in a
25 wheelchair.

1 The nature and magnitude of the risk of
2 three-point design. That is the sixth consideration.
3 Again, that's almost verbatim from the instruction.

4 This is where Ford's child seat defense
5 comes in, and let's look at -- and -- and in their '97
6 safety design guideline, which I've already showed you.
7 I'm not going to pull it up again. They said, you know
8 what, ALR, the three-point ALR retractors use great --
9 work great with child seats. Work great with child seats.

10 Mr. D'Aulerio had the catalog going way
11 back and testified that every car seat in '99 would work
12 with a three-point belt.

13 And so what if someone says that two-point
14 belts are needed for child seats? Doctor -- or
15 Mr. D'Aulerio and Mr. Burnett testified by '99 the child
16 seats could be used with three-point lap-shoulder belts.
17 And what if someone says that two-point belts are needed
18 for the safety of small children? Well, let's remind them
19 of what Ford said in their own literature. Their own
20 literature. And this is from the '98 Contour. This was
21 an exhibit in this case. It was admitted. It's Exhibit
22 284. And it was on page 4 of that. And so the press
23 release for the '98 Contour, which was about the size of
24 the Escort. It's small. The Contour targets three sets
25 of customers who differed only by their life stage: Young

1 singles, young couples, and young families.

2 And what do they say about the three-point
3 belt in the rear center? For added safety, the
4 rear-center seat position features a lap and diagonal
5 safety belt system, so they were touting the safety for
6 that. And what did they do in their brochure? They
7 showed this little girl in a three-point belt, three-point
8 safety belts for all front and rear passengers are
9 standard. They didn't charge any extra for them. And
10 they showed this young girl with the three-point belt.
11 Mr. Burnett didn't like that, but that is from Ford. Most
12 of the evidence we're bringing to you is from Ford's own
13 documents and own literature.

14 And, again, what if someone says the
15 two-point belts are needed for the safety of small
16 children? Well, they put them in two -- over 2.3 million
17 vehicles by '99. They didn't tell any of those parents
18 that, hey, don't buy these if you have small children
19 because you can't put them in the rear-center seat.

20 Ford advertised them in their brochures and
21 we went through this. In -- in their brochures, the '99
22 Contour, the '96 Taurus, the '96 Lincoln, they advertised
23 how safe three-point belts were, specifically in the
24 rear-center seat. And all the safety experts said the
25 three-point belts are safer. There's no doubt about that.

1 Now, Dr. Burton. Dr. Burton said, you know
2 what, if a child is too small for a three-point belt and
3 they -- there are children that are, we know that, well,
4 then, yes, you've got to put them a booster seat. It --
5 we're not saying don't use booster seats here in a '99.
6 You've got to use booster seats. But it's not any reason
7 to subject Che-Val to the risks and hazards of that lap
8 belt.

9 So what did Mr. Burnett say about this?

10 Mr. Hall.

11 This is about child seats.

12 (Video played.)

13 Q. Mr. Burnett really didn't want to answer that,
14 yes, but he did. So that's no defense to this case. I
15 would check that under the category, we can all agree that
16 child seats would work very well with a three-point belt
17 in the rear center of a '99 Escort. What if someone says
18 that other manufacturers were putting two-point belts in
19 the rear center of the '99? It's absolutely the case.
20 Absolutely the case other manufacturers were putting
21 two-point belts in rear center in '99 model years.

22 In '99, Ford was putting a three-point
23 shoulder belt in all their cars. When you look at Ford's
24 conduct in this case, look at what Ford Motor Company knew
25 about the risk of a two-point belt. Look at what Ford

1 Motor Company knew about how much better a three-point
2 belt was. There's no evidence in this case about what
3 knowledge the other manufacturers had other than they did
4 have the NTSB report. We know that. We don't know that
5 their safety engineers, back in 1967, started telling them
6 how bad a two-point belt -- how good a three-point belt
7 was.

8 We know that there was some manufacturers
9 out there that should have been better. They designed to
10 the floor and they put two-point belts in. But the
11 majority, the vast majority of Ford vehicles had three --
12 the safer three-point belts in. So if you look at Ford
13 Motor Company, their conduct, their knowledge about the
14 dangers of a two-point, their knowledge about the benefits
15 of the three-point, the answer is clear that Ford Motor
16 Company should have put a three-point in the '99 Escort.

17 I pulled this out. Mr. Burnett used this.
18 And I suspect that you'll hear about this from -- in
19 Ford's closing argument. I want to make something clear,
20 and I cleared this up with Mr. Burnett. These are car
21 companies that sold some cars with two-point belts. So I
22 asked him, this bar graph right here included all those
23 2.3 million vehicles that Ford sold. Because Ford sold
24 some with two-points, so he put -- he included those in
25 this bar graph. So this bar graph, which is supposed to

1 support Ford's defense, includes millions of vehicles that
2 have three-point belts in them. You talk about using
3 statistics and skewing statistics, all you have to do is
4 look at this bar -- bar chart.

5 And with respect to other companies, it's
6 not what -- it's not what other companies would do. It's
7 what other reasonably careful companies would do.
8 "Reasonable" doesn't mean average or moderate. It's what
9 a careful and prudent and safe company, what the right
10 thing to do would be in a '99, that was to put the
11 three-point belt in. Ford's safety engineers said in '97,
12 three-point belts offer the highest level. Three-point's
13 better than two.

14 The other thing that I would point out,
15 that under the law, there is no consideration here in your
16 instructions that get into this. I bring it up because I
17 think Ford's going to bring it up. So this -- what other
18 manufacturers were doing is not in here. It's not these
19 considerations. But I want to bring it up and address it
20 because Ford talked about it a lot in their case.

21 Now, Mr. Burnett checked this true. It was
22 Ford's responsibility to design and manufacture the '99
23 Escort to pose the least possible risks to passengers. He
24 also said that about Che-Val. It was Ford's
25 responsibility to design and manufacture the '99 Escort to

1 pose the least possible risk to Che-Val.

2 Ford's safety engineers told Ford
3 management decades -- for decades, lap belts injure
4 people. We've talked about these. I'm not going to
5 repeat them again. 60 percent back in '93 reduction of
6 injury. And how many people get injured? 50 -- over 56
7 percent in the rear center they told them in '97.

8 Did Ford act unreasonably in designing the
9 '99 Escort with a two-point lap belt causing Che-Val's
10 injury? These are the factors. I can't write them out.
11 They're too -- too long.

12 First factor: Nature and magnitude --
13 magnitude of the risk of harm. That goes under one
14 category of the scale. And I would submit that with the
15 huge risks that Ford knew they posed, that should go on
16 our side.

17 Two, likely awareness of users of those
18 risks. We all agree, they didn't tell anybody about the
19 risks. That goes on our side.

20 Three, the extent to which the design
21 conformed with any applicable government standards; the
22 federal standards. They didn't show us any. Not one.
23 They didn't bring any crash tests in there -- in here to
24 show us. I would submit that should go on our side of the
25 scales.

1 Four, the utility of a two-point lap belt
2 meaning does it -- any benefit of a two-point lap belt.
3 When it says "'99 Ford Escort," again, it's talking about
4 the lap belt. That's what this case is about. None had a
5 three-point belt. Doesn't provide it. I would submit
6 that goes on our side of the scales.

7 Five, was it feasible? We all agree it
8 was. There's no disagreement on it. It's got to go on
9 our side of the scales.

10 Six, nature and magnitude of any
11 foreseeable risks associated with a three -- the
12 alternative design is the three-point belt. We talked
13 about that. Works with child seats. Ford advertised it
14 was safe for small children. It should go on our side of
15 the scales.

16 Ford's side, the only person you had
17 defending the lap belt was Mr. Burnett. I would submit
18 this is not a close call; that when you weigh the factors
19 the Judge gives you, the law of this state, it's not a
20 close call.

21 And on -- so on that particular factor, we
22 would submit we fully satisfy it. And that -- that
23 factor, the four things we have to prove by tipping the
24 scales, we have more than tipped them.

25 Proximate cause. It's our burden to prove

1 proximate cause. And it's in the instruction. A cause
2 which in a natural and continuous sequence results in
3 injury and is a cause that a prudent person could have
4 foreseen would probably cause injury. Let's talk about
5 the two-point lap belt. Believe it or not, I believe that
6 everybody is going to agree on this particular element
7 that we have to -- we have to prove. All the experts, and
8 I'll go through this with you, agreed that the lap belt
9 caused the injury to Che-Val.

10 Was it foreseeable? Well, you're darn
11 right it was foreseeable. We've talked about that. Going
12 back to 1967 and probably before. It was foreseeable a
13 two-point belt would cause these exact injuries. You
14 looked at Dr. Snyder's report that went -- was published
15 and went to Ford, he predicted almost the exact injuries
16 that Che-Val got in this case.

17 This is the -- the instruction that you'll
18 have that there can be more than one proximate cause.
19 There may be more than one proximate cause. Plaintiff
20 need not prove that the Defendant's negligence, Ford's
21 negligence was the sole proximate cause. Plaintiff must
22 prove by the greater web of -- weight of the evidence only
23 that a Defendant's negligence was, a, and that's where
24 that word "a" is very important -- a proximate cause.

25 So here's where the agreement comes in.

1 Every one of these witnesses agreed that the lap belt
2 caused all the injury; Dr. Azikiwe, Dr. Burton and
3 Dr. McNish.

4 Ford knew lap belts caused horrible
5 injuries. This is the foreseeability element of that,
6 which I'm not going to talk about a lot because I've gone
7 through it. And then Ford unreasonably failed to install
8 the three-point lap belt in the '99 Escort, and here's
9 why. Because the safety design guy told them that all
10 future models should have in it in January of '97, and
11 told them about all these advantages, which I won't
12 repeat. You've heard it. I won't repeat it. It's clear
13 that it should have been in the '99 Escort.

14 Now, I want to go through some other things
15 because they were brought up by Ford in this case and I
16 imagine they'll probably talk about them in closing
17 argument. And that is the spare tire. Now, what about
18 the spare tire? What we have are, I believe, three people
19 in the Escort that said they saw a tire in the back seat
20 near Che-Val's thigh. Within a minute, we have Beth
21 Fulcher there, and I -- and I know that -- that Nikita,
22 Che-Val, Thomas did their best to remember things. I -- I
23 don't know if there was a tire there or not. I know that
24 they testified they saw a tire. And I know that when Beth
25 Fulcher got there within a minute, she said she didn't see

1 a tire. I know that when John Fulcher got there right
2 after her, he said he didn't see a tire. And I know when
3 Brandon Taylor, the first responder who got there, again,
4 within minutes, he said he didn't see a tire.

5 But you know what, folks, this is a smoke
6 screen. You know why? Because all the experts agree that
7 the lap belt caused all the injuries. Ford's own experts
8 did not mention one word about the tire. That was only
9 mentioned by the lawyers. Their experts came in here and
10 said nothing about that spare tire. Nothing. So why did
11 Ford want to talk about that during our case? I don't
12 know. It's only to throw you off. It's a smoke screen.
13 If their experts thought for one minute they could come in
14 here and sell you folks on the fact that the tire caused
15 Che-Val's injuries, don't you think they would? They
16 didn't. Dr. McNish said there were no injuries coming
17 from the back. They were all from the seat belt. All
18 from the seat belt.

19 I talked about these. Beth Fulcher -- two
20 of the most credible witnesses in this case were the
21 Fulchers; Good Samaritans, driving by. They see people in
22 need, what do they do? Without hesitation, Beth Fulcher
23 gets out, she runs over to the back seat and -- and -- and
24 stays with Che-Val. John Fulcher, what does he do? Once
25 he parks the car, he goes over and he sits with Che-Val

1 and he prays with him. He consoles him. You couldn't
2 find two better people. If I ever am in that position or
3 if anyone's in that position, you would want these people
4 to show up and help you.

5 None of these three saw anything about a
6 tire. Now, what if someone says this was a big crash.
7 Well, remind them that the Jeep's speed was 12 to 14, the
8 Escort 33, and the change of velocity -- that's the only
9 difference in the two reconstruction experts, Mr. Sutton
10 and Mr. Joe Kent, was the change in velocity here.

11 And, folks, this crash, they want to make
12 it as big and as severe as possible. I'm not going to
13 minimize it. Any crash that's severe enough to break legs
14 or even paralyze someone in a lap belt, I'm not going
15 to -- I'm not going to minimize that crash for you. But
16 you know what, Ford knew that these crashes would happen
17 every day. You can get up to this speed -- when you leave
18 the parking lot, you're at this speed, if you look at your
19 speedometer, in a matter of seconds. In a matter of
20 seconds. These are speeds that happen on city streets.
21 And -- and so when they say this was a big crash, NTSB
22 said, it doesn't take a severe crash to cause very bad lap
23 belt injuries.

24 If someone says it's a big crash -- Nikita
25 fully recovered. Her injuries; cuts, bumps and bruises,

1 aches and pains, ACL replacement. And, boy, Ford made a
2 big deal about the spinous process fractures. Those are
3 not serious. People have those all the time. Again, I
4 don't want to minimize things, but that had nothing to do
5 with the speed of the crash. That happened because Teresa
6 Durham right behind her was unbelted and crashed into
7 her -- her back. And she didn't have any treatment. No
8 treatment and she's fine. So she's fully recovered.

9 Thomas Batts, yeah, he had a broken leg, no
10 question. Bumps and bruises, aches and pains. He's fully
11 recovered. Teresa Durham, unbelted, if you're unbelted in
12 this crash, you're going to get hurt. Two broken legs,
13 bumps and bruises, aches and pains. She came in. She's
14 fully covered. Nicholas, I don't know if he was belted or
15 not. That's one of those things that it's not important
16 really in this case. But you know what is important? He
17 walked away. Walked away. Bumps and bruises, aches and
18 pains.

19 Did the two-point lap belt cause the injury
20 to Che-Val? Again, I would submit to you that this is not
21 a close call. You look at Dr. Azikiwe's testimony,
22 Dr. Burton and Dr. McNish agrees -- agrees that the lap
23 belt caused all the injuries. Not a close call. The
24 scales have to tip to our side on that issue.

25 Was Ford unreasonable in failing to adopt a

1 practical, feasible alternative design by putting a
2 three-point belt in? Again, we could go back to '67 and
3 all the other things, this is probably the most important
4 thing that tells us they were. All the advantages of
5 their safety engineers told them in January of '97, two
6 years before the Escort was manufactured. I'm not going
7 to read it for you again, because you've seen them. But,
8 yes, the three-point belt was -- should have been put in.
9 Ford was unreasonable in failing to put the three-point
10 belt in.

11 Again, this is sort of a summary of the
12 three-point belts and why they should have been put in.
13 Dr. Snyder, NTSB, Ford advertising 60 percent reduction in
14 injury in the Ford Falcon, the Safety Design Guidelines
15 and all the 2.3 other vehicles they put the three-point
16 belt in the rear center.

17 So we would respectfully submit that we
18 have satisfied our burden of proof. We have more than
19 tipped the scales that Ford did act unreasonably in
20 designing the '99 Ford Escort, and that's because they had
21 a two-point lap belt in the back seat. That's what this
22 case is about. And that the two-point lap belt caused all
23 of Che-Val's injuries. We would ask that you put a yes in
24 that blank.

25 Now, this is very important and I want

1 to -- have to go through this slowly with you. And it's
2 important because in this question -- and it's going to be
3 one of these questions you get on the verdict sheet, this
4 is where Ford is blaming Che-Val. Yes. Ford is blaming
5 an 11-year-old child in the lap belt for causing his own
6 injuries. Sound incredible? I'll go through the
7 evidence. I'll go through the evidence with you.

8 But this is the question you're going to
9 get: Was Plaintiff -- Plaintiff is Che-Val -- injury
10 proximately caused by the -- by an alteration or
11 modification made to the two-point lap belt contained in
12 the '99 Ford Escort by someone other than Defendant Ford
13 after it left the Defendant Ford's control and not in
14 accordance with Defendant Ford's instructions and
15 specifications?

16 We would submit that this is not a close
17 call. That you cannot blame the boy that you put in a
18 wheelchair, the 11-year-old child for causing his own
19 injury. But we're going to go through the evidence.

20 Ford -- this is Ford's burden of proof, and
21 that's important. On most things, we have the burden of
22 proof. This is one of the things -- this is Ford's burden
23 of proof.

24 So they have to prove these things. The
25 two-point lap belt was altered, modified, or misused; and

1 the product has been altered if there has been a change in
2 its function or use. That the lap belt was, in fact,
3 altered, modified by someone other than Ford; that such
4 alteration or modification was not in accordance with
5 Ford's instructions.

6 And they're arguing misuse by Che-Val in
7 this case. They have from the get-go. They have from
8 opening statement. But I'll bet you didn't know they were
9 blaming Che-Val for that. They are.

10 And we'll look at Ford's instructions. But
11 this is one of things you -- this is one of the things
12 they have to provide. Prove to you. It was not used in
13 accordance with Ford's instructions. And that such
14 alteration, modification or misuse was the proximate cause
15 of Che-Val's injuries. This is very important to look at
16 this instruction, because this is different than all the
17 other instructions when it comes to proximate cause. And
18 that's because it factors in a person of Che-Val's age,
19 capacity, discretion, knowledge and experience, an
20 11-year-old child. I'm going to walk through it with you,
21 but I want to point that out before I go through it with
22 you. Okay?

23 "Proximate cause" is a cause which in a
24 natural and continuous sequence produces a person's
25 injury. Now, that's the same as the other proximate cause

1 instructions, and is a cause which a reasonable and
2 prudent person of Che-Val's age. That's a big difference.

3 You've got to look at what an 11-year-old
4 child would -- could have foreseen. So you -- an
5 11-year-old child gets in a lap belt -- and we don't agree
6 about any issues. Make no mistake, we don't agree with
7 it. And we'll go through the evidence. But even if you
8 think there was misuse, you've got to look at it and --
9 and ask yourself was that something that an 11-year-old
10 child could have foreseen would cause him injury. As we
11 go through this, remember that, please.

12 Ford has the burden to prove all things.
13 All right. First, that the two-point lap belt was
14 altered, modified or misused. I want to go into that
15 evidence.

16 First of all, Ford was told back in 1986
17 what correct belt usage was. They didn't use that here.

18 THE COURT: One of the jurors needs a
19 break.

20 MR. EMISON: Yeah. I'll stop here.

21 THE COURT: All right. Members of the
22 jury, we'll take about a five-minute break. During the
23 recess, of course, please abide by my instructions. Don't
24 discuss the case. We'll pick back up in 5 minutes.

25 All right. The jurors are excused.

1 (The jury was excused from the courtroom at 11:43 a.m.)

2 THE COURT: Outside the presence of the
3 jury. Folks, I'm sorry to interrupt your argument, but
4 the bailiff alerted me that one of our jurors,
5 Ms. Pittman, just had to have a break.

6 Mr. Emison, just on behalf of the court
7 reporter, on her behest, when you're reading from the
8 slides, slow down just a little bit.

9 MR. EMISON: I'm sorry.

10 THE COURT: All right. All right. We'll
11 be in recess for 5 minutes.

12 (Court was in recess from 11:44 a.m. to 11:50 a.m.)

13 THE COURT: All right. It looks like
14 everybody is back in place.

15 Is the Plaintiff ready, Mr. Emison?

16 MR. EMISON: Yes, sir.

17 THE COURT: Is Ford ready?

18 MS. EZELL: Yes, sir.

19 THE COURT: Mr. Rios ready?

20 MR. LEWIS: Yes, sir.

21 THE COURT: As soon as all the jurors are
22 ready, let's bring them all back in, please, Sheriff.

23 (Pause.)

24 (The jury entered the courtroom at 11:53 p.m.)

25 THE COURT: All right. Mr. Emison, you may

1 continue, please, sir.

2 MR. EMISON: Thank you, Your Honor.

3 I want to go back just to make sure
4 everybody knew where we were before we took our break.
5 These are all Ford's burdens and I'm going to go through
6 all four things for you.

7 First, Ford has to prove to you that the
8 two-point lap belt was basically misused. And a product
9 has been misused if there has been a change in its
10 function or use. So let's go through the evidence on
11 that.

12 First, correct belt usage. Ford wants to
13 you to use their definition, which they didn't find --
14 they didn't show you any literature or anywhere that a lap
15 belt -- they brought Dr. McNish in. And he said to be
16 used properly you got to be right in this notch. And,
17 first of all, this is not a child's spine. We're going to
18 look at Che-Val's CT here in just a minute. But what did
19 the Safety Board say? The Safety Board said -- it's right
20 here. I'm not going to read it again because I've already
21 done that -- that it's got to be below the crest -- the
22 crest of the ileum. Below the crest of the ileum, not in
23 the notch. That's what the independent, objective Safety
24 Board told Ford back in 1986.

25 So why would they come in here and blame an

1 11-year-old child for not having the lap belt in the
2 notch? Because they don't have any other defenses in this
3 case. They have to do stuff like this. To try to
4 convince you that this is Che-Val's fault in this case.

5 Now, I had a hard time being able to show
6 this to you, but I finally was. This is from Dr. McNish.
7 This is where in Dr. McNish's deposition, I said,
8 Dr. McNish, you know, I want to know where you think a
9 properly worn lap belt would be. He said proper location
10 of lap belt, and he initialed it. It was back in November
11 when I took his deposition, right here. And I want to
12 compare that to some other evidence in this case. And
13 you'll see, he's got it about midway between the pubic
14 area and the bellybutton. Not quite, but you know, it's
15 about midway.

16 Now, this photo, I'll bring this up. Ford
17 didn't talk to Dr. McNish about this photo. It was in his
18 PowerPoint. I don't know if you remember that. It was in
19 his PowerPoint. But he did not talk -- they did not --
20 Ford did not talk to Dr. McNish about this. Ford has to
21 tell you anything they can to get around this Ford --
22 photo. You know why? Because it shows the belt mark low
23 on the abdomen. And it shows it in a place where, if you
24 look at where it was before, it would be in the exact
25 proper location. And we're going to look at where Mr. --

1 Dr. McNish drew that. We're going to be talking about
2 this quite a bit, so I'm going to leave it up back here.
3 This is a much better photo than -- than what you'll see
4 on the screen as far as the -- being able to see the belt
5 mark.

6 Now, I want to talk about Dr. Azikiwe a
7 little bit and her findings. Again, this is not from our
8 experts. This is not people paid to come in here and
9 testify to you. This is from a -- a doctor, a doctor who
10 is devoted to helping people. And -- and -- and she wrote
11 this as an objective, professional doctor right after she
12 operated on Che-Val. She talked about -- well, sorry --
13 she talked about his injuries. And I want to talk about
14 the injury to the sigmoid colon. Why is that important?
15 Because the sigmoid colon is right here. Dr. Burton --
16 you probably don't remember this, but it's down low. The
17 sigmoid colon -- and -- and I want to show you on this
18 torso where it is in -- in reference to the pubic area and
19 the bellybutton. But it's down here.

20 Look at it. The sigmoid colon is down low.
21 You have a -- a descending and a transverse, an ascending.
22 The sigmoid is down low. And Dr. Burton took this out and
23 showed you the sigmoid colon is down here. This is
24 evidence, physical evidence that the belt was low.

25 So first they have to prove misuse. We

1 believe we have objective evidence; not expert -- not
2 evidence from an expert who comes in here and tells you,
3 but photos. The injury, what -- what Dr. Azikiwe said
4 where the injury was. And then what did Dr. McNish say
5 about hyperpig -- the hyperpigmentation. He testified
6 that Ford can't have this -- they can't have this as lap
7 belt mark. Because they know if it is, they lose on this
8 issue. So they have to come up with something else.

9 Dr. McNish said it's hyperpigmen -- or
10 Dr. McNish said "hyperpigmentation." You recall that when
11 Dr. Burton -- he was standing right here with Ms. Ezell --
12 and -- and Ms. Ezell asked him about hyperpigmentation.
13 He didn't hesitate. He said that's one of the most
14 idiotic things he had ever heard of.

15 Now, I want to show you what an objective
16 professional Dr. Azikiwe said about this.

17 (Video played.)

18 MR. EMISON: That's what someone who is
19 completely objective -- doesn't have a dog in this
20 fight -- said about hyperpigmentation. Dr. Azikiwe is
21 clear that that's a mark from the lap belt.

22 Now, Dr. McNish, again, I had a hard time
23 being able to show this to you. We couldn't show it to
24 you until our rebuttal, our last part of it and I
25 couldn't -- we couldn't have anybody talk to you about it,

1 but this is what Dr. McNish drew, belt location prior to
2 loading. And he drew this in as the belt location prior
3 to loading -- loading. Now, it's up to you folks to
4 decide. But does that -- is that low? Is that on the
5 hips? You all decide.

6 That's their own paid expert, where he drew
7 it. Compare that to where he drew the proper location.
8 Look at the distance between the belt and the bellybutton
9 on where he drew Che-Val's belt before loading, before the
10 crash. Compare that length between where he said a proper
11 location for a lap belt would be. Again, I'll let you
12 folks decide.

13 Now, this also is very important, and I
14 asked Dr. McNish about this. The upper diagram -- and
15 this is the diagrams that he brought in. He didn't bring
16 in photographs of the belly. They didn't bring in
17 Dr. Azikiwe or medical records. They brought in diagrams
18 here, and -- so this is what Dr. Burton's testimony --
19 what Dr. McNish represented is Dr. Burton's testimony of
20 where the belt was. And this is where Dr. McNish says the
21 position of Che-Val was. We disagree with that, that
22 doesn't match the evidence of the eyewitnesses. But
23 that's where he says it is.

24 And what I want to point out is that even
25 though we don't agree with him, that if you look at

1 difference in the belt location, Dr. McNish agreed it
2 would be 1 to 2 inches, 1 to 2 inches difference between
3 the two locations. The -- the width of a lap belt is a
4 little less than 2 inches. And so there is -- it's --
5 it's a razor-thin margin of error that they're claiming
6 misuse by this 11-year-old child. And this illustrates
7 what -- what they're saying about the -- the difference,
8 that this is misuse. We don't agree with it. But that's
9 what you need to see is whether an 11-year-old child --
10 that's their burden to prove that 11-year-old child would
11 understand that. I don't think any adult would understand
12 it. But they have to prove to you that an 11-year-old
13 child, same character and all those other factors we went
14 through, would know that.

15 Now, this is Dr. McNish. And Dr. McNish --
16 they have some very sophisticated equipment at BRC. I
17 will grant them that. And so they can slice and dice,
18 take CT scans and do a lot of things with them. And they
19 did this. But I -- I want -- I want to use this and point
20 out that this is not a well-developed pelvis. Now, first
21 of all, there's -- they showed you no independent
22 literature that said the belt had to be here. They only
23 had Dr. McNish tell you that. The NTSB told Ford back in
24 '86 the belt needed to be below this crest, right here.
25 But, again, that is what they represent to you as

1 Che-Val's pelvis. And it is extremely easy to see where a
2 belt would slip over that. I don't know if it did or not.
3 But it certainly could have. And if it slips over it,
4 it's a ramp right to L2. It's a ramp right up there.

5 Now, what did Dr. McNish say about the belt
6 being snug? And this is important because of the
7 instructions. They have to prove to you, first of all,
8 that an 11-year-old child would have known all this and
9 that an 11-year-old child violated the instruction. Well,
10 Dr. McNish said the belt was probably snug. He said it
11 was snug. So the only thing they've got is, it wasn't low
12 enough. I think we've shown you that it was. Well, I
13 wanted to show you that Dr. McNish said the belt was
14 probably snug against his lower abdomen. Now, you tell me
15 how that's misuse. Even if you accept all their
16 arguments, that's their own -- that's their own guy there.

17 Now, their surrogate study. Their
18 surrogate they have is 18 (sic). I -- I want to tell you
19 that the medical records were inconsistent. We got the
20 same medical records he did -- they did. When we first
21 got the medical records, we saw the 120. We saw 127 --
22 no. We saw 127. I take it back. We saw 127. And then
23 we saw some higher ones. So you -- Dr. Burton used a
24 surrogate that was 144. He was actually pretty close.

25 But what Dr. McNish used was a surrogate

1 that was 118. And Dr. McNish used a surrogate that was
2 4-feet-11. Well, way before this, way before this,
3 Dr. McNish knew that the WakeMed records measured Che-Val
4 at 5'6". And with a very sophisticated scale, Dr. Azikiwe
5 told you from that chair, very sophisticated chair --
6 scale that subtracted out the stretcher weighed him at
7 154. And this is all pointed out to how skewed
8 Dr. McNish's surrogate study was.

9 I want to point this out, for a couple
10 reasons. No. 1, Mr. Burnett -- well, no, Dr. Burnett --
11 Dr. McNish said that this would be proper belt usage
12 because it's low and snug. Nobody thinks it's happened.
13 Why he put this child there, I have no idea. But one
14 thing is clear, he never put this boy in the position that
15 supports his opinion. He took over 50 photographs. I
16 don't know how much it costs. I know it costs a lot. He
17 took over 50 photographs and he didn't even put this boy
18 in one photo showing him -- him in the position that he
19 came in here and told you that this boy was in. I don't
20 understand. But that's their defense in this case.
21 Again, we don't agree with it, but I want to show you the
22 evidence in this case.

23 Now, how about this being slouched? Beth
24 Fulcher, and she doesn't -- again, objective. No dog in
25 this fight. Good Samaritan, wonderful lady. He said --

1 she said that she got there, the belt was tight. I
2 wouldn't read all that for you. I'll read too fast. She
3 said the belt was tight. And that his buttocks were
4 against the back of the seat. Exactly where Dr. Burton
5 said, exactly where they should be, nowhere near what
6 Dr. McNish is telling you.

7 She saw the -- both ends of the lap belt
8 attached tightly around him. John Fulcher, again, I can't
9 say enough about this man. And he said that he saw the
10 lap belt on. It was exactly where he would expect a lap
11 belt to be, that he had a 13-year-old stepson. And if he
12 himself went in and put a lap belt around his stepson, he
13 would put it around where -- put it in exactly the same
14 place where Che-Val had it on. That Che-Val had the lap
15 belt on where it would normally be. This is a corporate
16 pilot telling you, again, from a person who doesn't have a
17 dog in the fight, what he saw with his own eyes right
18 after this crash before the lap belt was off.

19 Brandon Taylor told you the lap belt was
20 on, that the buttocks were back against the seat back.
21 Again, first responder.

22 Dr. Burton went through a lot of testimony
23 that showed you why the -- there's no evidence that
24 Che-Val was -- that Che-Val was slouched.

25 I don't know if you remember, but he got

1 here, and he explained that in a crash like this, that
2 when you're seated -- and I'll go like this -- I won't do
3 it as well as Dr. Burton, but hopefully you'll remember
4 what he said. That if you're seated back like this, what
5 happens in a crash? The first thing that's going to
6 happen is the force is going to take your -- you forward.
7 Yes, it will take your buttocks forward. And when that
8 happens, yes, a lap belt can slip over that notch. It
9 can. And it can get up into the abdomen. But that
10 when -- that there's rebound and you go back. So the NTSB
11 told Ford that lap belt injuries occur even with people
12 correctly wearing the seat belt. They occur even with
13 when it's not a severe crash. And in this case, there's
14 no evidence that Che-Val was slouched. Even if you assume
15 he was slouched, Ford cannot meet their burden of proof on
16 these elements in blaming this 11-year-old child.

17 Second thing, the lap belt was altered or
18 modified or misused by someone other than Ford. Well,
19 I'll -- I'll give them that one. Ford wasn't using that
20 lap belt, so I'll -- I'll give them that particular
21 consideration.

22 That such alteration, modification or
23 misuse was not in accordance with Ford's instruction.
24 Here they are. Lap belt should fit snugly and as low as
25 possible around the hips, not around the waist.

1 Now, first of all, you need to look at
2 this. First of all, there's no evidence this was in the
3 car. No evidence at all, none that was -- there was no
4 owners manual in the car. There was a lot of testimony
5 that, yes, you could get one off the Internet. How many
6 11-year-old boys do you expect before they get in the car
7 to go say, You know what, I can't get in there and use
8 that until I get on the Internet to get that owners manual
9 and look at -- to see where I need to wear this lap belt?
10 It doesn't happen. But if he did and read this, that he
11 would have been in compliance.

12 If you look at the testimony of Beth
13 Fulcher, John Fulcher and Brandon Taylor, he absolutely
14 complies with this. Dr. McNish admits it was snug, and
15 it was -- was it as low as possible around his hips and
16 not around his waist? Well, if you look at the physical
17 evidence, the unbiased evidence, it was. There was no
18 misuse.

19 And here's the proximate cause. And it
20 talks about Che-Val's age, capacity, discretion,
21 knowledge, and experience. I'll be the first one to admit
22 that Che-Val is extremely bright, I'm sure he was as an
23 11-year-old. But you can't expect an 11-year-old child to
24 understand that a lap belt needs to be in the notch. I
25 would submit to you if I went out in a car or anyone went

1 out in a car and said, You know what, I need to get this
2 lap belt in the notch or I may be paralyzed, I wouldn't
3 know if it was in my notch or not. I know where my hips
4 are. And that's why it said it needed to be below the
5 crest of the ileum or the hip bone. Yeah, I'm not going
6 to repeat all this. I've already told you Che-Val's age.

7 Did the two-point lap belt cause injuries
8 to Che-Val? Everybody agrees it did.

9 Was Che-Val using the lap belt improperly?
10 Was this misuse? Well, let's look at the evidence. This
11 is Ford's burden. This is Ford's burden. Elizabeth
12 Fulcher said, no, it was tight, his buttocks back up
13 against the seat. John Fulcher, the same thing. Brandon
14 Taylor said his buttocks were back against the seat.
15 Dr. Azikiwe said that the lap belt -- there was a lap belt
16 mark low on his abdomen. Dr. Burton told you that. And
17 this photo tells you that.

18 I almost put Dr. McNish over here because
19 Dr. McNish said it was snug. And where he drew the belt
20 in, I think he could be over here. But I'll put him over
21 here because Ford paid him to come in here and said it was
22 not used right. But when you weigh the evidence, when you
23 weigh the evidence, we believe that it's not a close call,
24 that you cannot find for Ford on this question No. 3 on
25 your special verdict sheet.

1 That you should put no in this question.

2 Now, this is important. If you answer yes
3 to this question, Ford loses. No recovery from Ford for
4 Che-Val if you say that an 11-year-old child should have
5 known not to put the belt in the notch, that he did, in
6 fact, misuse it and all those four things. So why is
7 Ford -- why is Ford blaming Che-Val? Well, it's clear.
8 Because they know that they were unreasonable in putting a
9 two-point lap belt in that '99 Escort. There's no other
10 reason that a huge corporate car manufacturer would come
11 into this court and blame an 11-year-old child for causing
12 his own injury if they had any other defense they could
13 give you.

14 That's why they're asking you to blame
15 Che-Val in this case.

16 And I put this in here to show you that the
17 irony of Ford knowing exactly what the risks were, but yet
18 coming in here and saying an 11-year-old child should have
19 known those risks, should have known where a lap belt
20 would -- would fit in the notch, et cetera, using
21 manufactured evidence, not evidence from objective
22 witnesses, eyewitnesses, photographs, medical records,
23 surgeons, manufactured evidence to come in here and blame
24 an 11-year-old boy.

25 Now, this is the last question I'll talk to

1 you about. Mr. Tessener will have some -- will address
2 the other questions here. But another question on this
3 verdict sheet will be whether Defendant Ford is liable to
4 Che-Val for punitive damages. And we're going to go
5 through what we have to prove for you to answer this yes.

6 No. 1, we got to prove three things.
7 Willful or wanton conduct by Ford. Now, I've talked about
8 the burden of proof. And the burden of proof everywhere
9 in this case is by a greater weight of the evidence,
10 except with this factor, this thing I'll call it. Okay.
11 We have to prove willful or wanton conduct by clear and
12 convincing evidence.

13 Willful or wanton. The second thing we
14 have to prove is that the willful and wanton conduct by
15 Ford was related to Che-Val's injuries.

16 And the third thing is that Ford's
17 officers, directors or managers participated in or
18 condoned the willful or wanton conduct. And this tells
19 you that the second and third things must be shown by a
20 greater weight. So we go back to the old burden of proof
21 here, the -- the scales -- in tipping the scales. I'm
22 going to walk through these with you.

23 Now, this is just -- I -- I put this on
24 here as a timeline to show you the nature of the conduct
25 and how ongoing Ford's conduct has been in this case. And

1 that started back here. It actually started before that,
2 if -- if you look at the NTSB, that Ford was -- Ford knew
3 lap belts were bad long before this, but this is the first
4 document we have from a Ford safety engineer in September
5 of '87 that said lap belts were bad. Here Dr. Snyder said
6 three-point belts were good. The sled tests, the NTSB,
7 we've gone through these. But this is how long it is from
8 '67 to 2010 to give you an idea of the scale, the
9 magnitude of Ford's conduct over these many years has
10 been.

11 Willful or wanton conduct. What does that
12 mean? These will be in the instructions. The conscious
13 and intentional disregard of -- and indifference to the
14 rights and safety of others. So I'm going to talk about
15 the conscious and intentional disregard for the safety of
16 Che-Val when I go through this -- this evidence with you.
17 And that Ford knew or should have known of the reasonable
18 likely -- which Ford knows or should have known is
19 reasonably likely to result in injury. So their conduct
20 is a conscious disregard, which Ford knows the likely
21 result. We're going to go through that.

22 Here's their -- the evidence with respect
23 to the conscious disregard for the safety of Che-Val.
24 Again, the -- the longstanding knowledge and awareness of
25 the risks. This -- I put this in here to show that the

1 NTSB sent this specifically to US manufacturers, including
2 Ford, this safety study. They put it right in the study.

3 You know, I'm -- I'm not going to read this
4 again to you because we've gone through it, but this is
5 the Safety Board concluding that lap belts performed very
6 poorly, that lap belts caused injuries that were not
7 limited to severe crashes, that these injuries were among
8 the most dangerous to the head, spine, and abdomen.

9 Ford's own document showing a -- a probability -- a
10 probability -- that someone that was seated in the rear
11 center, that they were going to be injured and 7.4 percent
12 of the time injured severely. Ford's own safety engineers
13 in this document say, we got to put -- we have to put
14 three-point belts in the rear center of all future cars
15 because of this. This is Ford's own statistics.

16 Now, Mr. Hall, let's -- let's see what --

17 And this is about identifying the hazard
18 and danger and why that's important and what needs to be
19 done. This is Mr. Burnett.

20 (Video played.)

21 MR. EMISON: Folks; engineers are taught
22 this in the first basic engineering course, that when
23 you're designing a product -- I don't care what the
24 product is -- that you first have to identify the dangers
25 or hazards. And then the first thing you do is you design

1 out those danger -- dangers or hazards. You take them
2 away, if all possible. Now, sometimes it's not possible.
3 But with lap belts, it was possible. You had a shoulder
4 belt. You only get a half of a lap -- you only have a
5 half of a restraint with a lap belt. All you got to do is
6 add a shoulder belt.

7 Now, again, with respect to Ford's conduct
8 and their conscious, knowing awareness of the danger or
9 hazard posed by a lap belt is that they knew by putting a
10 shoulder belt in that you could reduce injuries by up to
11 60 percent. Again, I'm not bringing a paid expert in here
12 to tell you that. This is Ford's own document. And it
13 said more safety for Falcon. Was a press release by Ford
14 in February of 1993 when they came in and they -- they
15 cited this as the reason that they were going to provide
16 more safety by putting the shoulder belt in the
17 rear-center seat.

18 Now, this testimony came in and it was from
19 Mr. Burnett and about the known risk of a lap belt. We
20 talked about the risks last Friday a lot. And the risk
21 the lap belt would get up over and into the abdomen is a
22 known -- was a known risk to Ford Motor Company going back
23 to 1967 when Dr. Snyder told Ford about those severe
24 abdominal injuries, right -- or true? Answer: Right.
25 That's a known risk when the belt gets up into the

1 abdomen. It's a known risk. That's Ford's own corporate
2 representative in this case.

3 Now, let's see what he has to say, and I
4 think this may be kind of long, so listen carefully. But
5 it's very important when it comes to what Ford knew, their
6 conscious, knowing awareness and their intentional conduct
7 in not putting a three-point belt in. Listen to their
8 own -- this is Ford Motor Company speaking here through
9 Mr. Burnett.

10 (Video played.)

11 MR. EMISON: Now, there's a lot there. I
12 just want to point out a few things.

13 Ford said a lap belt is a known commodity.
14 That's what Mr. Burnett said several times, it's a known
15 commodity. A known commodity to who? A known commodity
16 to Ford Motor Company. Not a known commodity to Che-Val.
17 Not a known commodity to his mother or the rest of his
18 family. No one else knows that.

19 Now, he also admitted that a lap belt is a
20 lap belt. You know what, folks? They didn't even do any
21 lap belt testing after about the mid 1990s because they
22 knew exactly how a lap belt would perform. So a lap belt
23 is a lap belt. If you have a lap belt, you're going to
24 jackknife.

25 And they were told going back to the '60s,

1 and he admitted this -- he admitted the consciousness, the
2 awareness, the knowledge. And we know that Ford
3 intentionally put that lap belt in that car. There's no
4 dispute as to that. They knew all this. They had their
5 eyes wide open. And they intentionally put that lap belt
6 in. And did they know what would happen? Did they know
7 the likely result? Absolutely. Almost -- it's -- it's
8 uncanny how much detail that Dr. Snyder had back in 1967.
9 And in that exhibit, Exhibit 20, it's on page 3 or 5?
10 Page 3, I think. It's a little bit hard to find in that
11 exhibit, but it's all set out there on page 3 of Exhibit
12 20. You can read it. He predicted almost the exact
13 injuries Che-Val had in this crash.

14 Ford clearly knew way before '99 what a
15 two-point belt would do in a crash like this.

16 Now, again, I've already said this. Ford's
17 willful or wanton conduct was directly -- that's their
18 conscious -- those are -- those are weird words. Those
19 are legal words. But means their conscious disregard,
20 their conscious and intentional disregard for the safety
21 of Che-Val. That's what that means -- was directly
22 related to what that lap belt did to him. Those horrible
23 injuries he received.

24 Now, their officers and directors and
25 managers, they knew this. Dr. -- Dr. Snyder's report was

1 published. He had numerous papers published where he
2 talked about the dangers of two-point lap belts. He had
3 papers published about the safety. He spoke at national
4 symposiums on this; absolutely, their directors, officers
5 or managers. You know what? Dr. Snyder was a manager of
6 the biomechanic department. That, again, is on Exhibit
7 19; 19. That's the letter that he wrote to John Versace,
8 another safety engineer. He said, you know what,
9 three-point belts are the safest. So why he was a good
10 guy, he was trying -- he was a good guy. He was a
11 manager, and he knew this. He -- he knew everything. So
12 did the other Ford directors.

13 For almost 50 years, Ford safety experts
14 had told Ford lap belts were dangerous. The NTSB study,
15 big study, Ford didn't like it. Ford didn't like it.

16 But they knew about it. They knew
17 everything that was in that study. And the safety design
18 guideline, that's a company-wide document. So everything
19 in that, their managers, directors, officers would be
20 aware of and know.

21 Is Ford liable to Plaintiff for punitive
22 damages? For all of these reasons, we respectfully
23 suggest that we have met or burden of proof. Again, it's
24 not just a tipping of the scales. We believe that we have
25 done a lot more than that. And with a -- with a willful

1 and wanton conduct, it's going to be clear and convincing.
2 I would submit to you that what Mr. Burnett -- you just
3 saw him testify to is very clear, there's nothing
4 ambiguous. It's not a gray area. It's very clear. And
5 I'll let you folks decide whether it's convincing. But
6 one thing about it, their knowledge was clear. I'll let
7 you folks decide whether it's convincing.

8 At this point, I'll let Mr. Tessener talk
9 to you about some other questions that you're going to
10 have to answer.

11 THE COURT: Counsel, approach the bench,
12 please.

13 (A bench conference was held.)

14 THE COURT: All right. Members of the
15 jury, I think what we'll do is go to lunch at this time.
16 We're just going to take an hour for lunch. Now, a couple
17 things. Please, of course, continue to abide by my
18 instructions. They're more important than ever. Don't
19 discuss the case among yourselves or with anybody. Please
20 continue to keep your minds open. Abide by all the other
21 instructions. And folks, I'm going to do my best if we
22 possibly can to get all the arguments in today. It might
23 mean that we need to stay a little past 5 o'clock, some
24 reasonable period of time beyond 5 o'clock. Is there
25 anybody who knows right now that you cannot do that or

1 cannot make arrangements regarding child care or other
2 conflicts? If so, let me know. Raise your hand or...

3 JUROR EASON: I might. I'll have to call.

4 THE COURT: Report back to me after the
5 lunch break, will you?

6 JUROR EASON: Yes.

7 THE COURT: All right. All right. The
8 jury is excused. Wear your badges, of course; and we'll
9 see you at 1:30.

10 (The jury was excused from the courtroom at 12:33 p.m.)

11 THE COURT: Counsel, as I've just said at
12 the bench, I do want to try to get all the arguments in.
13 I haven't imposed any time limits on you, but keep them as
14 tight and concise as you can.

15 All right. Anything for Plaintiff?

16 MR. TESSENER: No, Your Honor.

17 THE COURT: Defendant Ford?

18 MS. EZELL: Your -- your --

19 THE COURT: Yes.

20 MS. EZELL: -- wish is harder when I have
21 to respond to two-and-a-half hours of Plaintiff and then
22 anticipate what's coming next. So I too would like to put
23 it to the jury, but I'm not going to -- I'm not going to
24 hurry.

25 THE COURT: I understand.

1 MS. EZELL: Okay.

2 THE COURT: And there are no time limits on
3 it.

4 MS. EZELL: All right.

5 THE COURT: And as I told you yesterday, if
6 you feel that you need a break or you're looking at the
7 jurors' faces and you feel that they need a break and you
8 reached some natural breaking point in your argument, let
9 me know and I'll take about a five-minute break or ten
10 minutes. But if you prefer to go straight through, we'll
11 do that.

12 MS. EZELL: Okay. Thank you, sir.

13 THE COURT: All right. Anything for Rios?

14 MR. LEWIS: No, sir.

15 THE COURT: We'll be in recess until 1:30.

16 (Court was in recess from 12:34 p.m. to 1:32 p.m.)

17 THE COURT: All right. Sheriff, what did
18 you find out about their ability to stay beyond 5 o'clock?

19 THE BAILIFF: She is fine. She said she
20 got someone to watch the kids.

21 THE COURT: Nobody reported any problems.

22 THE BAILIFF: No.

23 THE COURT: All right. Are the jurors all
24 back?

25 THE BAILIFF: Yes, sir.

1 THE COURT: Mr. Tessener, are you ready?

2 MR. TESSENER: Could we have one moment,
3 your Honor?

4 THE COURT: You ready? Is Ford ready?

5 MS. EZELL: Yes, sir.

6 THE COURT: And Defendant Rios?

7 MR. LEWIS: Yes, sir.

8 THE COURT: And as I told you, Ms. Ezell,
9 I'll -- after he's done, then I'll send the jury out and
10 give you a moment to get set up.

11 MS. EZELL: Yes, sir. Thank you.

12 MR. TESSENER: We're ready, Your Honor.

13 THE COURT: All right. Bring the jurors
14 in, please.

15 (The jury entered the courtroom at 1:34 p.m.)

16 THE COURT: Members of the jury, please
17 give your attention at this time to Mr. Tessener on behalf
18 of the Plaintiff.

19 Counsel.

20 MR. TESSENER: Thank you, Your Honor. May
21 it please the Court.

22 Counsel.

23 Members of the jury.

24 Good afternoon.

25 THE JURY: Good afternoon.

1 MR. TESSENER: I'm going to talk to you
2 about Che-Val. What happened and what the future holds.
3 I won't be talking a lot about the other things, the other
4 issues in the case, but the -- the same sort of jobs that
5 you have to begin with, to follow the law, to listen to
6 each other, to state your opinion, those rules apply to
7 damages, which are the harms and the losses that Che-Val
8 has suffered.

9 Now, in this case, you're going to have a
10 number of issues that will be on the verdict sheet. It
11 will have the caption and all of that, but that will be
12 how it's written out. And it will give you -- it will
13 give you instructions of starting out questions No. 1, 2,
14 3, 4. And what I'm going to talk to you about is question
15 No. 4, question No. 6.

16 Starting out with question No. 1, which is
17 was with the Plaintiff injured by the negligence of the
18 Defendant, Alejandro Ortiz Rios.

19 Now, Mr. Rios came to court and took
20 responsibility for his actions. Now, in a negligence case
21 there's two things. There is liability -- were you at
22 fault -- and then there's causation -- did you cause it?
23 The harms and losses that I'm going to talk to you about
24 were not caused by Mr. Rios. They were caused by Ford.
25 And the reason I say that, because if you -- if you just

1 remember one thing, just one thing from this case when you
2 go back there, there were six people in this wreck. Those
3 six people were all subject to the same forces. They were
4 all different shapes, sizes, heights, ages, weights.
5 There was one person, one child out of all those six
6 people that had a lap belt on. Five of those people, they
7 may have not walked away right that moment, but two of
8 them walked away right that moment, three more of them
9 walked away. So five out of six walked away. One will
10 never walk again. The only difference is he had a lap
11 belt on. It's a lap belt that is defective. That's why
12 we don't have them anymore, because they're defective.

13 When you see somebody standing up here and
14 showing a lap belt, that doesn't mean anything. You don't
15 wear a lap belt standing up. You don't put a lap belt on
16 a skeleton. When you put a lap belt on, you're in a
17 chair. And we can talk about bellybuttons. We can talk
18 about where your hips are. But when you sit down in
19 this -- when you sit down and you put the lap belt on,
20 it's up under your belly. It's right there. That's the
21 only place you can put it. And we know that's where it
22 was, because we got the picture of it. But right there it
23 is.

24 Now, 11-year-old child, they want to say he
25 was misusing it? This happened in a -- less than a blink

1 of an eye. And you don't put this belt on a skeleton.
2 There's pants. There's underwear. There's T-shirts.
3 There might be a belt. This is -- this is where it goes
4 and that's where he was wearing it.

5 Now he doesn't walk.

6 Now, the harms and losses in this case is
7 what we're here to talk about. And with those harms and
8 losses, you can fix what can be fixed. You can help what
9 can't be entirely fixed. But then you got to make up for
10 what you can't fix or help.

11 Now, when we go through this, you look at
12 Che-Val. He was just a regular little boy. He was happy.
13 Here he is at his mom's house, growing up, doing the
14 things little boys do. Now, the harms and the losses,
15 what it does is to balance -- to balance out what he has
16 gone through, to help him have options to face the
17 challenges that he is going to have, the ability to
18 overcome those challenges and the ability to make a life
19 for himself.

20 Now, I suppose when you get ready to go
21 deliberate, somebody could say, Well, you know, Che-Val's
22 done okay for the last four years. What does he need the
23 money for? Well, you remind him, whoever might say that,
24 that he will never walk again. That -- well, he's gotten
25 medical care so far. You remind them, taxpayers shouldn't

1 have to pay for his medical care.

2 When you go forward and you look at the
3 expenses that he has and you look at what you can fix,
4 this is what -- this is the amount of medical expenses
5 that was used to fix Che-Val, to help put him back
6 together; \$528,890. That was since the wreck happened.
7 Well, somebody might say, Well, other people are paralyzed
8 or in a wheelchair; they don't get any money. Well,
9 you've got to remind them. If that's what somebody says,
10 you got to look at what caused it. And the people
11 responsible should be accountable for what they've done.

12 When we go back to this verdict sheet, as
13 you see you'll have questions to answer yes or no, yes or
14 no until you come down to No. 4. In No. 4, it's a -- you
15 will put in an answer that's really a dollar sign. And
16 all of the expenses, all of the harms and losses,
17 everything that -- that I'm going to talk to you about,
18 you have to do in one lump sum.

19 You may decide -- as we go through these
20 things, you may decide what you're going to allow in your
21 verdict may be more or it may be less than what we
22 suggest. You may go through the life care plan and
23 decide, Well, there's this, but there's that; I just got
24 to weigh it out.

25 But you have to do that all in one lump sum

1 right now. Because Che-Val can't come back five years
2 from now. He can't come back 15 years from now. His life
3 expectancy is 60.7 years.

4 Well, somebody might say, Well, you know, I
5 just don't know that he's going to live that long. Well,
6 North Carolina gives us all a life expectancy, it's - it's
7 averaged based on your age. Who should gamble with that?
8 Should it be Che-Val? Because he might not make it
9 another 60 years; but what if he lives longer? If the
10 money runs out for Che-Val, it's going to be devastating.
11 So who should gamble with his life expectancy? Should it
12 be Che-Val or should it be Ford? Ford gambled in 1997
13 when they decided to have this lap belt in the Ford
14 Escort. It was a good gamble for Ford, because -- what's
15 the result? Che-Val gets paralyzed. They're able to
16 gamble with Che-Val.

17 But they shouldn't get to continue to
18 gamble with him, and that's what we have to talk about
19 today.

20 Right after this photograph is when the
21 summer -- it was the beginning of summer before Che-Val
22 was going to be going off to school, to middle school;
23 11-years-old at his neighbor's house on a horse. And like
24 most boys, just getting into puberty -- get into around 11
25 to 15 -- not only do you develop and grow, but going to

1 middle school is -- is a real right of passage. Back when
2 I was a young man, it was more high school. But now I
3 think it's more middle of school of -- of where things go
4 on and it's where you -- you start finding yourself.

5 You make friends that you'll have for the
6 rest of your life. Maybe you have your first girlfriend.
7 Maybe your first kiss, probably your first broken heart.
8 All of those things you have in middle school.

9 Well, Che-Val didn't get to start middle
10 school, instead, he was in the hospital, but he still went
11 to school. But now we need to talk about the future. We
12 know what it's cost over the last four-and-a-half years.
13 It's been over \$500,000.

14 Now, going forward, we heard about the life
15 care plan. And you've -- you've seen that -- this and
16 you've got a copy of it and this is just the first pages
17 of it, things that Che-Val's going to need. And
18 Dr. Wilhelm came in along with Dr. O'Brien and looked at
19 what he was going to need. And as Dr. Wilhelm said, this
20 is a minimum life care plan. And what she meant by
21 "minimum" is everything that is in this life care plan
22 Che-Val needs or will need. There's -- there's nothing
23 added. These things are going to happen to Che-Val. He
24 will go through these.

25 Now, you may say, Well, he's not -- he's

1 not going to go through a house or a van, but, remember,
2 this life care plan, it -- it's not -- I think Dr. O'Brien
3 said, this is not a three-bedroom house. This is adapted
4 house he lives in, and then adapting one other place some
5 other time in his life. That's all. But the medical
6 issues, everything in there, every single thing is going
7 to happen to him. Now, if he has the medical care to pay
8 for it, it will mean he has less problems, but think about
9 it. He has no use of his lower body. So no matter what
10 happens with Che-Val, anything that he has is worse. It's
11 way worse. Any illness -- a cold a virus -- anything is
12 worse for him than it's going to be for anyone that's not
13 in a chair.

14 So this doesn't account for that. This
15 doesn't account for just regular illnesses or sicknesses.
16 This is what is going to happen to him because of being in
17 this chair.

18 And this is what it's going to cost. And
19 then from here, Dr. Smith, who's the economist, comes out
20 and he breaks it down into four categories: Medical
21 services, medical commodities, nonmedical services,
22 nonmedical commodities. Dr. Wilhelm had 11 categories.
23 It was broken out in medicine or therapy and things, and
24 so it was more broken down. And you can go through that
25 and look through it. And it's -- it's like with this life

1 care plan, when you go through it, and you look at it and
2 you say, Well, Dr. Wilhelm says that, you know, he really
3 needs to see his physiatrist, Dr. O'Brien. She needs to
4 see him four times a year and that costs 110, \$120. Well,
5 you might say, Well, he doesn't need to go four times a
6 year. He might need to only go two. Well, you can cross
7 that out, if you think that's right. Now, this is what
8 his doctor says he's going to need to do. But it's for
9 you to decide.

10 But when you go through that, it's like one
11 of the things Dr. O'Brien said, he's going to have
12 pressure sores, decubitus ulcers, bed sores. He's going
13 to have them. He's going to because he's going to have
14 not only -- he can't feel himself. He also doesn't have
15 the meat back there that you would normally have, so the
16 bones are protruding. So he's going to have those
17 pressure sores. And that's going to happen five to seven
18 times over his lifetime.

19 And really, if you look at this, if it's
20 with surgery, it's going to cost \$130,000 each episode.
21 If it's without surgery, it's going to cost 127,000.
22 Because with the surgery, you'll heal up a lot faster.
23 Without the surgery, you've -- you've got other problems.

24 Now, what this doesn't have is --
25 Dr.O'Brien told us, he said, well, what happens a lot of

1 times with people is they get tired of doing this bowel
2 management that we heard described. And they get tired of
3 and worried about a pressure sore. Because if you've got
4 a pressure sore and then you've got feces near it, then
5 you're way at risk for an infection. So a lot of people
6 have a colostomy. It's a bag that goes into their
7 abdomen. I know many of you know what I'm talking about,
8 and that's where you go to the bathroom. Well, it's much
9 easier for the person because it's in front of them. They
10 can deal with it as opposed to dealing behind them. But
11 that's not in here.

12 So it -- it -- that -- if Che-Val decided
13 he needed -- he wanted to do that, or if because he has a
14 pressure sore and he could be infected and he needs to get
15 it, it's not in here. So as you go through the life care
16 plan, you see things that you might want to cross out, but
17 you may very well remember things, here, your personal
18 experience, you may know that there's -- no one can
19 predict all the future for Che-Val. His doctor said,
20 these things I know he's going to need. What else he's
21 going to need, we don't know. But it's all going to cost.

22 Now, when Dr. Smith goes through this, what
23 he does is total up to Che-Val's life expectancy. That's
24 where you have this 77 over there. And -- and -- and
25 Dr. Smith's report, it's -- it's thick and it's long.

1 Plaintiff's Exhibit 127A. But it's got a lot of tables in
2 there. And I talked to you a little bit about that in
3 opening. So you can decide, and we'll talk a little more
4 about that when it comes to earnings.

5 But with this, what -- the only thing
6 Dr. Smith does is take -- he doesn't know the prices of
7 the medical care. That's what Dr. Wilhelm does.
8 Dr. Wilhelm talks to Dr. O'Brien and says, what is this
9 child going to need? Dr. O'Brien says, he's going to need
10 this. Dr. Wilhelm then goes out and says, this is what
11 this costs today. But medical care does not get cheaper,
12 so Dr. Smith then looks at it and says, well, this is how
13 you can expect medical care to go up over the future, but
14 then he discounts it back down so that the money that
15 is -- that you allow in your verdict then covers Che-Val's
16 medical expenses for the rest of his life. Once it's
17 invested very safely.

18 Che-Val can't run the risk of investing
19 money in the stock market or anything like that. It's got
20 to be, as Dr. Smith said, like US Treasuries or something
21 very, very secure that's going to earn some money, but he
22 can't afford not to have it because he needs the medical
23 care.

24 So the total amount was \$8,645,638.

25 Now, you remember in opening I talked to

1 you a little bit about household services and I did a
2 calculation. And I have deducted it from the household
3 services number. Well, Dr. Smith deducted it from the
4 life care plan. And what he said was, this \$270,595 was
5 something Dr. Wilhelm came up with, primarily
6 housekeeping, someone to help him with the house. But
7 Dr. Smith said, well, that's part of it, but that's not
8 all of it. Because someone in a wheelchair, it's going to
9 take them 50 percent more time to do anything. That's
10 just statistically.

11 Now, there's some things he can't do that's
12 not really housekeeping, but like, you know, change a
13 lightbulb. He's going to need some help to do those sorts
14 of things. But anything he can do, if he's provided the
15 opportunity to do it, then it's just going to take him
16 longer. And his time is worth something.

17 So we deducted out -- because we didn't
18 want to count that twice, so I deducted out the -- what
19 Dr. Wilhelm had and that leaves a life care plan -- a
20 minimum life care plan of \$8,375,043. Now, this is money
21 that will go to other people. This will go to people who
22 are providing the care to Che-Val.

23 Medical expenses is what's been incurred.
24 This amount is going to other people.

25 Now, the next topic -- and Dr. Smith really

1 talked about this -- was his -- let me back up before we
2 talk about the -- that. Let's -- let's talk about the
3 household services. We mentioned that. And with the
4 household services, according to Dr. Smith, would be a
5 total of \$602,671. Now, that is for -- again, it's added
6 up over the course of his life and then discounted back to
7 what he's going to need, again, to pay other people. Now,
8 this is for his medical expenses. The 600,000 is going to
9 be for what other care he needs. And -- and I'm not
10 talking about -- I'm not talking about healthcare. I'm
11 talking about just everyday living help, somebody -- maybe
12 he needs someone to go get his -- to -- to go to the
13 cleaners or someone to go shopping for him. And even if
14 he doesn't need the help, it's going to take him twice as
15 long to do whatever he needs to do.

16 Now, some -- somebody might think, Well,
17 you know, Che-Val's got his mom. She takes care of him.
18 She cooks for him, she cleans him, she cleans for him.
19 But she is not going to always be able to do that. And
20 it's not -- it's not what he is going to want. You heard
21 him. He wants to be independent. Now, he's not going to
22 be independent as an able-bodied person. But he can be
23 independent. And that's what he wants.

24 So that money provides the freedom for his
25 mom to be his mom and not his cook and caregiver and all

1 the other hats that she shouldn't be burdened with.

2 Now, Dr. Smith talked to us about lost
3 earnings, and that's where this really comes in to play.
4 It talks about income, benefits, different things that you
5 have. And -- and, basically, for Che-Val, what you have
6 to decide is, will you allow something in your verdict for
7 his lost income? Well, then you've got to answer some
8 questions. It's real easy if you just decide, well,
9 Che-Val's never going to work. It -- legally,
10 technically, I'm sure he's 100 percent disabled. He has
11 no feeling in his lower body. So he -- he can get
12 disability. If he's never going to work, then if he has a
13 high school education, his earnings would be almost \$2.6
14 million over the course of his life in a normal work life.
15 With some college, it's almost 2.9 million. With college,
16 it's 4 million.

17 So if you said, look, I think this -- I
18 think this kid -- I think he's going to go to college. I
19 think he's going to graduate. Now, it may take longer.
20 Like Dr. Wilhelm said, it will probably take twice as
21 long. So he goes to a college that costs \$50,000 to go
22 for four years, it's going to cost him 100,000 because
23 he's going to have to go eight, not to mention what it's
24 going to cost for how he's going to live and what he's
25 going to do and how he's going to get there. So it's

1 going to be more for him. But if you say he's going to go
2 to college but then never get a job, that's his losses, \$4
3 million. But that's not what he wants and that's not what
4 he should have. He wants to be able to build a life. He
5 wants to go to college, and he plans to go to college.

6 Now, he is 16-years-old. He didn't get a
7 chance to develop much between 11 and 16. So I doubt he
8 has a real good idea on how the world operates and how you
9 get a job, how easy it is to keep a job. But he -- he
10 believes he can do it, and he ought to have that chance.

11 Now, what you'll have to decide is: What
12 will Che-Val's education level be? Do you think he'll to
13 go college? Do you think he'll get some college, finish
14 college or not at all?

15 If -- if we decide, yes, we're going to
16 give him his life care plan so it minimizes his
17 complications, then, yes, Che-Val is going to graduate
18 college.

19 But then can he get a job? You -- you have
20 to think about that. Can he -- can he get a job? Would
21 an employer take a chance on him? The risks, the burdens
22 that are involved. What we have to do is show that
23 Che-Val can overcome those risks and burdens so that an
24 employer is willing to take a chance on him. You know,
25 look, this child was wrongfully paralyzed at 11-years-old,

1 finished school, went to college. He has the ability to
2 drive, he's independent as he can be, yeah, I'll take a
3 chance on him and get him a job. That's what he wants.

4 And then last, you got to decide, how long
5 can Che-Val work? Will he work an entire lifetime? Will
6 it be less? Will he be off some? I mean, we already know
7 he's got a number of surgeries that he's got to have on
8 his shoulders and his back still in the future, and every
9 time he has a shoulder (sic) on his arm, he's a triplegic
10 for however long it takes for him to heal up. So it -- it
11 will be difficult for him. But those are the decisions
12 you have to make.

13 But if you do decide that Che-Val is going
14 to work, if you decide that he's going to work a normal
15 life and go to college, I showed you a number at the
16 beginning. It's \$1,811,000.05. That's his losses.
17 Again, if you decided he went to college and never worked,
18 his loss is \$4 million. But going to college and working,
19 his lost income and benefits -- and this adds in the
20 benefits, things that you might get by being able to work,
21 which is about 30 percent on average of whatever your pay
22 is -- that's what it would be. Now, that's a full work
23 life.

24 You may go back there and say, I don't
25 think Che-Val is going do work a full work life. Well,

1 you've got the tables right. You can go back and you can
2 look at it. You can say, Well, I don't think he's going
3 to work until age 40 or until age 50 or however you want
4 to do it, and you can fill in that blank. By the same
5 token you can say, I don't think he's ever going to work
6 and his loss then is \$4 million. We don't think that's
7 the way it should be. We think that Che-Val will go to
8 college and work and his losses will not be as much.

9 Now, all of this is in the category of
10 fixes and helps. This past medical expenses of fixing
11 Che-Val, his future care is going to be for fixing and
12 helping him; his household services for helping him; and
13 his lost income and benefits is what he was going to have
14 anyway if he wasn't hurt. That does not even approach the
15 harms and losses that he endures every day and will for
16 the rest of his life; it doesn't even approach it. The
17 amount of money to make up for that, because that's the
18 only justice we have and money provides Che-Val options
19 and opportunities.

20 It provides him with a life.

21 Now, one of the ways to try and determine
22 what a harm costs is you've got to look at a few things.
23 How bad is the harm? And it's somewhat of a scale. You
24 can be hurt and the harm can be really very, very minor.
25 And it's just not -- a value is not worth very much. And

1 it goes all the way up to -- to major harms. So you've
2 got to -- you've got to factor in every harm, because
3 you -- it's real easy to just say, Well, this happened,
4 it's worth this amount. But you have to look at each
5 individual item. And then once you determine how bad it
6 is, you got to look at how -- how long is this harm? How
7 long is it going to last?

8 Now, for some of Che-Val's harms -- and
9 we'll talk about a few of them, but not all of them --
10 some of Che-Val's harms did not last as long. He -- he
11 had a surgery. He recovered from the surgery. Now, that
12 was a harm because he shouldn't have had to have gone
13 through it, but he recovered from it. And some of his
14 harms he will have for the rest of his life.

15 And then the third question is: How much
16 does it interfere with his life? Well, I think it's --
17 you can look at it clearly. There's some harms that it's
18 probably not interfering with his life, but the vast
19 majority for Che-Val in his lower body, they are all
20 major, major harms.

21 So as we look through these, these are all
22 harms that happened to Che-Val. They're from his medical
23 records, and they're about this high. You saw them when
24 we brought them out. And ideally what you do is go
25 through each one of those and say, How bad is this, how

1 long does it last, and how much does it interfere and put
2 a number on it. Say, Well, you know, he -- you know,
3 here's a massive abdominal wall injury. Let's talk about
4 that. Well, there's all of these different things that
5 happened down to paralysis.

6 And you go through it and you say, okay,
7 well, how much is -- you know, how long is that going to
8 last? The rest of his life. How interfering is it with
9 his life? I mean, Che-Val came to court in a courthouse
10 and can't even get on the witness stand. That's how
11 interfering it is with his life. Every thing that an
12 able-bodied person takes for granted, he can't. So that
13 has to be valued.

14 The surgeries, we already talked about
15 there was -- there's medical expenses for the fixes, and I
16 understand that. But the surgery themselves is a harm.
17 The fact that you have to get cut open is a harm, that you
18 have to heal from. That has to be considered.

19 And then you move into the areas that we
20 heard -- it's -- it's -- you don't really hear from
21 Che-Val about it; but you heard from his teacher,
22 Mr. Carter, about him being depressed, isolated; his
23 teacher, Ms. Taylor, about some of the humiliation that he
24 has to go through. Each of those are harms that have to
25 be valued.

1 And as you can see, we're not going through
2 them all. There's a lot. But small things -- and -- and
3 just -- it's like Dr. O'Brien said, neuropathy. It's
4 particularly cruel that Che-Val has phantom pain. He
5 feels pain in his legs that he has no sensation at times
6 through the nerves and has to take medication. Well,
7 while at the same time, you may have remembered the
8 physical therapist, Ms. Slaughter, couldn't understand.
9 Che-Val had a -- had a scar on his thigh, couldn't figure
10 out what that was. He had hot chocolate. He just used
11 his thigh as a table. He had no idea, never felt it.

12 There's problems that Che-Val will have in
13 the future, his rotator cuff damage, his carpal tunnel
14 damage which then leads into surgery and more problems.
15 And as Dr. O'Brien said, one complication leads to another
16 complication. You -- you overcome one obstacle and that
17 creates another one for these -- for these kids.

18 Then you have to figure out, what is the
19 value of losses for Che-Val? The losses are beyond --
20 beyond ability to really count. Clearly, his mobility,
21 friends, relationships, friends that are made in
22 elementary school, middle school, high school that become
23 your friends for the rest of your life that you can always
24 go back to.

25 Job decisions. We -- we all may have done

1 work when we were young. He doesn't have that. He
2 doesn't have that to draw back on. Just the self-esteem
3 of somebody telling you, you did a good job. When Che-Val
4 gets praise, it's for doing a good job in physical
5 therapy. It's for doing a good job in occupational
6 therapy. It's not for something that he's actually
7 accomplished. He's lost his childhood. He liked to do
8 karate, play on the trampoline, play. But other kids'
9 things, he doesn't get to do. And -- and we'll -- and
10 that's gone for him.

11 Choice is taken away from him. What if
12 Che-Val decided he wanted to join the Armed Services?
13 Well, that's -- that's not an option for him anymore. He
14 was 11-years-old. And I believe one of first responders
15 we asked about his size and that came up said, oh, he
16 looked like a football player to me. Well, what if he was
17 walking down the hall of high school and a football coach
18 came up to him and said, hey, how come you're not playing
19 football? That's not happening to him now.

20 So those choices, things that you don't
21 even know what they might have been. And -- and you know,
22 the -- the biggest loss is Che-Val doesn't even know what
23 he lost because he never got to experience them. And
24 later in his life, a huge, huge loss for him will be his
25 memories because he didn't get to make them. When other

1 people are talking about when they went to the lake, when
2 they went to the water park, when you remember when we
3 went on this road trip. Do you remember -- do you
4 remember what it was like on Friday night for a football
5 game? Do you remember that? I -- whether you play or you
6 didn't, but do you remember the excitement, the thrill in
7 the air? He won't have those memories.

8 When you go back, you'll think of the
9 losses that Che-Val had to go through, the harms that he
10 underwent as he lays here in the intensive care.

11 (Pause.)

12 (Photographs displayed on the screen.)

13 MR. TESSENER: This is the only way Che-Val
14 gets to stand up now is a -- is a -- is a stander that he
15 has, one that he's about outgrown. This is soon after
16 what happened to him. This is when he was young and had
17 his family. And he wants a family of his own. He wants
18 to be married. He wanted to have two kids and a pet. His
19 family has been there for him, and, you know, it's hard
20 for -- for the parents to even process what their child's
21 gone through, and to come in here in this environment and
22 have to tell about it, it's not easy. You don't get to
23 meet Che-Val and his family outside of this room other
24 than this. But the family will not always be there for
25 him.

1 So when you go back and you have to value
2 all of these harms and losses, the ideal way is to take it
3 through each one. Che-Val has lost the use of his legs.
4 And you'll hear an instruction about one of your elements
5 of damages is loss of legs and his lower body.

6 The past loss of his legs -- and you have
7 to decide this from not only the past, but also the
8 future, for the rest of his life.

9 The past loss of use of his legs, \$1
10 million.

11 The future loss of his legs for the next 60
12 years, \$8 million.

13 Past loss of use of his bladder, \$400,000.

14 Future loss of use of his bladder, \$2
15 million.

16 Past loss of use of his bowels, 1.2
17 million.

18 Future loss of his bowels, 6 million.

19 Scarring and disfigurement, you remember
20 you look at this harm scale. It's on a scale, how bad is
21 it, how interfering is it and how wide? This scarring is
22 bad. Dr. Azikiwe said -- when -- when -- I asked her
23 about the belt mark and the scarring and the bruising. I
24 said, well -- and I showed her a picture of just an
25 abdomen. I said, how do you know that's Che-Val? She

1 said I've never put that mark on anybody before or after.
2 So it's a bad scar. But it doesn't -- the scar itself
3 doesn't interfere with him, so that's why it's -- it's
4 less.

5 His past physical pain, \$200,000.

6 And the reason that is -- that probably
7 seems low, but you don't double count the amounts. So the
8 bladder, the bowels, and the legs, that's already been
9 counted in there. You don't double count that. That's
10 for his actual physical pain outside of that, for the
11 surgeries and the therapy and the things he's had to go
12 through. His future physical pain, he's got at least four
13 surgeries ahead of him that we know of, maybe more. And
14 he's already -- has back pain, shoulder pain, all of those
15 things because of the spine.

16 Then you'll hear there's damages not only
17 the physical pain but for mental suffering. I left that
18 blank, just -- the 12 of you are going to be way better
19 than anybody else to determine what that amount is going
20 to be. And the future emotional suffering of what that's
21 going to be.

22 So the total amount of damages to
23 compensate Che-Val are at least \$31,267,609.

24 Because this -- and this is a lot of money
25 and somebody is going to go back there and they're going

1 to say, oh, that's just too much money for -- for one
2 child. Well, this was too much harm for one child. It
3 was too much to put on one child.

4 Che-Val came -- Nikita came to me years ago
5 now and could not understand how her -- her baby boy was
6 paralyzed. He was wearing his -- his lap belt. That's
7 what they had and he was wearing it. So how -- how did
8 that happen?

9 Who knew that a lap belt could cause this
10 kind of damages, other than Ford? Who knew? Ford gambled
11 with Che-Val. There's two futures for Che-Val. One, his
12 home gets remodeled. It has a room that he can get
13 through the door in without bumping his legs. It has
14 equipment that he can exercise. He has a bathroom that he
15 can get in a shower.

16 You know, it's like talking about the harms
17 on a hot sweaty summer day when you're just sweaty and
18 sticky from doing nothing. How good does a shower feel?
19 He hadn't had one in years because he can't get in the
20 shower in his house. He's got a shower chair, but he
21 can't get in it, so his mother bathes him with pail water
22 by the bed.

23 But if he got his house remodeled, he could
24 have a shower. He could wheel in there. He could do
25 that.

1 He can get the controls on his car. He
2 could drive to school. He wouldn't have to wait on the
3 bus. He wouldn't have to get strapped in and go with
4 other kids. He could drive to school. And then if he
5 wanted to stay after school and join the Art Club, if he
6 want to be on the track team, if he wanted to do any of
7 that, he could now. He can't because he's got to ride the
8 bus home, so he's strapped down now. So he -- he would
9 have some independence, if he -- if he has the
10 opportunity. Then once he has that opportunity, he can go
11 to college. When he goes to college, it's not that high
12 school kids are tougher, they're just probably a little
13 more self-centered. But when he goes off to college,
14 he'll get to make some friends. He'll get to have some
15 memories.

16 And then he'll get out of college and
17 somebody -- some employer is going to see how hard he's
18 worked, and he's going to get a job. And some lady is
19 going to judge him from the inside and not the outside and
20 maybe he will have that family. That's if you allow it in
21 your verdict.

22 The other future for Che-Val is his house
23 is not remodeled, but he'll persevere and he'll finish
24 high school. He's a great student. He gets behind
25 because he misses school, he makes it up. But he won't go

1 to college. There won't be a bus that comes by and picks
2 you up every day to take you to college that some --
3 that -- that the school system pays for, that -- the tutor
4 that Che-Val had in the hospital and home, he got paid by
5 the state to do that and volunteered for it so he could
6 make more money. Well, he's not going to have that in
7 college. He'll have to do it on his own. So he probably
8 won't go to college. Without an education, he won't have
9 a job.

10 And his mom will take care of him for as
11 long as she can. But that wouldn't be forever. And
12 because he doesn't have the medical care that he needs,
13 he'll get worse. He'll have more complications on top of
14 more complications. And he'll at some point fairly soon
15 be in a nursing home, the youngest person there and
16 immobile. That's the two futures that are ahead for
17 Che-Val.

18 The amount of money -- I told you when we
19 started that I would ask -- come up here and the evidence
20 would show that we would have to ask for at least \$28
21 million. And going back through, it's just more. But you
22 can go through it. That's -- this is all a tool for you.
23 You go through and you decide what is the right amount,
24 keeping in mind that all of this, those first four
25 categories -- those first three go to other people. The

1 fourth one is just his lost earnings. All of the rest is
2 for the greatest harms and the greatest losses. This was
3 a child who was paralyzed. That's the part about
4 compensation.

5 But there's another part to this.
6 Mr. Emison talked to you a little bit about this. Because
7 this conduct was known for so long and went on for so long
8 and, frankly, still goes on, you get the opportunity to
9 answer this question. You answer that question that is
10 for punitive damages, then you determine the amount.

11 And this is different. This is not the
12 amount of money to compensate Che-Val. This is not to
13 compensate him. It is to punish and prevent this from
14 happening again. And punish for allowing it to happen
15 now. Because with Ford, they are extremely safe. They're
16 so safe, they brought you a press release. They didn't
17 bring a document showing that lap belts were for the
18 forgotten child, but they did bring you a press release
19 that they gave away a million car seats. That's the
20 evidence they brought you. They are safe. They are so
21 safe with their money. That's what it's all about is
22 protecting their money.

23 So the only way that you send a message to
24 Ford -- and it has to be a message from Nashville, North
25 Carolina, to Dearborn, Michigan. And it's got to be loud,

1 because that's a long way and it's a big company. It's
2 got to be loud for them to hear it, that this isn't
3 tolerated; we're not going to allow it. They pay one
4 company, we heard, \$90 million that -- the one that wrote
5 an article that criticized this NTSB study. They paid
6 them 90 million. The expert they brought in here who
7 looked at the car last October and they brought him in
8 here, they paid his company, what, 24 million? He
9 couldn't remember whether he was a vice president or
10 executive vice president or whatever he was, but they paid
11 them 90 million, 24 million. Every expert they brought in
12 here they paid for.

13 And Mr. Burnett, their Ford representative.
14 They want to talk like he's an engineer, but he testifies
15 over the last 17 years on average once a month for Ford.
16 He's their trained testifier. They did a crash test in
17 this case, spent 100,000 on it.

18 So -- but they didn't put a dummy in the
19 back middle seat. If they did, they didn't tell us about
20 it. They could have done that and we would have known
21 exactly where it was, but they didn't. But that's the
22 kind of money they spend. So if you're going to send a
23 message, it's going to have to be a big message to Ford so
24 that there isn't any more Che-Vals.

25 Thank you.

1 THE COURT: Members of the jury, let's take
2 about a ten-minute break. And, of course, please continue
3 to abide my instructions. Leave your badges and materials
4 in your seats. Be back in your room in 10 minutes.

5 The jury is excused.

6 (The jury was excused from the courtroom at 2:27 p.m.)

7 THE COURT: All right. In the absence of
8 the jury, counsel, I have now e-mailed to all parties the
9 revised instruction. These contain the revisions we
10 discussed this morning switching out the first issue
11 consistent with the request of Defendant Rios. I've
12 switched the third issue consistent with our discussion
13 this morning.

14 And in the instructions that I had
15 originally prepared and e-mailed to you last night, with
16 regard to that portion of the instruction under pattern
17 instruction 106.06, damages, I have inadvertently left
18 out -- and I did not mention this yesterday -- that the
19 jury could consider the value of the minor Plaintiff's
20 household services. I do recall that there was reference
21 to that during the testimony and, of course, Mr. Tessener
22 has argued that, so I included that change in the
23 instruction.

24 Also, and I neglected to call your
25 attention to this this morning -- with regard to the

1 instructions concerning -- the -- the limiting instruction
2 requested by Ford. As to that instruction related to the
3 sale of vehicles in foreign countries, I did word that as
4 requested or substantially as requested by Ford. Because
5 I went back and checked the instruction given to the jury
6 during the trial, and I did refer to the fact that it was
7 limited to the extent that it formed the basis of an
8 expert's opinion. So that change, also, was made. In
9 fact, that was -- that was made in the set that I sent you
10 last night.

11 I neglected to ask you folks this morning,
12 were there other errors -- typographical errors,
13 misspellings, anything of that sort -- that you folks may
14 have picked up on?

15 MR. TESSENER: I did not see any, Your
16 Honor.

17 MR. KIGER: No, sir.

18 MR. LEWIS: No, sir.

19 THE COURT: If you find any, let me know,
20 because I like to send a correct copy back to the jury
21 when it goes.

22 All right. We'll be in recess 7 or 8
23 minutes or until you're ready, Ms. Ezell, just let us
24 know.

25 (Court was in recess from 2:30 p.m. to 2:37 p.m.)

1 THE COURT: All right. Is everybody ready
2 to start back?

3 MR. TESSENER: Yes, Your Honor.

4 THE COURT: All right. We'll come back to
5 order. Let's bring the jurors back in, please.

6 (The jury entered the courtroom at 2:38 p.m.)

7 THE COURT: All right. Members of the
8 jury, at this time, if you would, please give your
9 attention to Ms. Ezell on behalf of Defendant Ford.

10 MS. EZELL: Thank you, Your Honor. May it
11 please the Court.

12 Counsel, counsel.

13 Good afternoon, ladies and gentlemen of the
14 jury.

15 THE JURY: Good afternoon.

16 MS. EZELL: As you've figured out, we're at
17 the end. I've got a big pile of notes here, but when I'm
18 done, I'm really done.

19 I want to start off similar to Mr. Emison.
20 One thing that we absolutely do not contest is your
21 importance to this process. I told you during my opening
22 statement that all Plaintiff had to do was a file a
23 complaint and pay a fee and then they got to come here and
24 they got to use this courtroom and then they got the most
25 important thing that anybody could ask for, which is a

1 jury to decide the issues involved in this case. And you
2 all have been through -- in 25 years of trying cases, you
3 all have been through some stuff that I have never seen
4 before. You have shown up every day. You have paid
5 attention. You have taken notes, and we could not have
6 asked for a better jury to decide our case. So on behalf
7 of my client, the men and women who manufacture, design,
8 make, drive, haul their kids around in Ford vehicles, I
9 thank you.

10 On behalf of my team, Mr. Colarusso, who
11 will be leaving this afternoon because of a conflict that
12 he cannot avoid, Mr. Kiger, Ms. Hargrove-Banks, we have
13 all been working very -- very hard to bring you the
14 evidence that you need to do your job, which is also very,
15 very hard, and to do your justice. And hopefully sometime
16 tomorrow morning, you'll get a chance to get going on
17 that.

18 Now, we have been bringing you evidence.
19 We have had people sitting in that seat and we have had
20 documents, and that evidence and those documents are all
21 that matter except for one thing, and that's the law that
22 you're going to get from the Judge.

23 Now, I am going to spend the time that I
24 have with you, because the law is so important, talking to
25 you about what the law is and how it applies to the

1 evidence that we've been bringing you.

2 But make no mistake about it, there's no
3 Judge Ezell, there's no Judge Tessener. We're not
4 witnesses. Mr. Emison was never sworn in. And so what
5 you need to remember is what you've heard from the
6 witnesses and what you've heard from the Judge. That's
7 what the law says you need to rely on. But I'm going to
8 do my best over the course of the next hopefully less than
9 a couple hours, to take you through the evidence that
10 we've heard. And I promise I'll be shorter than -- than
11 the Plaintiffs. That's my only promise that I can make
12 right now.

13 Now, the law as I commented on today, I'm
14 not going to try to paraphrase it. I'm not going to try
15 to change it in any way. The law is good. The law will
16 give you the guidance that you need. The law will tell
17 you what to do. If at any point in your deliberations you
18 get stuck, you don't know what to do next, go to the law.
19 Look at the questions that you have to answer and look at
20 what the law says you should consider for those questions.
21 That will be what you need in order to do your job.

22 You have sworn to follow it and I am here
23 to help you try to consider the evidence that we have
24 heard in this case.

25 Now, I've put up on the board, just to

1 start, something that we didn't hear anything about in the
2 last three hours that Mr. Tessener, Mr. Emison was up. We
3 did not hear about this law, the Federal Motor Vehicle
4 Safety Standards. And make no mistake about it, that is
5 law. That is federal law. It is bumper-to-bumper law.
6 It covers the whole Escort, which you will see is the
7 product at issue in this case. And that law was complied
8 with by Ford and nobody sat there and said otherwise.
9 Nobody did. Everyone who came in here said Ford followed
10 the law.

11 So why have we heard all of the things that
12 we've heard? Well, let me tell you, if you are so
13 compelled by your ability to help Che-Val and your ability
14 to fix what can be fixed and all of those other things
15 that we heard from Mr. Tessener, then I think maybe the
16 hope is that you will be confused about the fact that the
17 Plaintiffs have not done what they need to do in order to
18 get you to the point where numbers will matter as it
19 relates to Ford.

20 What does the law say? The law says -- and
21 you'll hear this from the Judge -- that are you to perform
22 your duty -- your duty -- fairly and objectively without
23 any bias or sympathy or partiality. Don't be swayed by
24 pity, sympathy, partiality or public opinion. That's what
25 the law says.

1 And so we talked about this in jury
2 selection a hundred years ago, right? I told you, you
3 were going to have moments in this case where your heart
4 would swell -- where -- where you might cry, where you
5 would feel Che-Val even if he wasn't here. I told you
6 that that was going to happen, and it did. He is a great,
7 great child.

8 There were other moments we didn't
9 anticipate when Mr. Rios for the first time, for unknown
10 reasons his lawyer never told him, that Che-Val was
11 paralyzed by him, and he learned that for the first time
12 in front of you, and he broke down with the knowledge of
13 what he had done. That was also a traumatic, dramatic
14 human moment we did not anticipate. We did not talk about
15 that, but it happened. It happened right here.

16 But that is not the tragedy of this --
17 the -- the sympathy that we have for Che-Val is universal.
18 We are 100 percent sorry that this happened to him, and 0
19 percent responsible. And that's what I want to talk to
20 you about, because it's not about sorry, it's about
21 responsibility. That's what you took an oath to do and
22 that's now what we need to turn to.

23 And this story of Che-Val is not just a
24 story of -- of -- of tragedy that we've heard, but it's
25 also a story of triumph. Do you remember how people have

1 come in here and said he's -- he's their hero? He's their
2 inspiration. He so creative and so grounded and so
3 amazing. And that is his story, and that is wonderful.
4 That sets him up for success in the future. But that also
5 has no place in your decision because the law says that
6 corporations are to be treated just as if they were
7 individuals.

8 So you cannot say, Well, you know, this is
9 a big corporation and this is a little kid and -- and --
10 and that is what's going to decide our decision. The law
11 says that's not what we do. That's not how we do it.

12 So I've talked to you about what -- some of
13 the things that you're not supposed to do. Let's talk
14 about some of the things that you are supposed to do.

15 And -- and I guess I should start right
16 here. I do not understand -- and you should search your
17 notes and you should search your recollections and you
18 should search your memories and you should talk about it
19 amongst each other -- I do not understand how Mr. Emison
20 stood here and said not less than 15 times -- because I
21 stopped counting then -- that Ford blamed an 11-year-old
22 kid. Ford -- Ford is going to blame the boy. That's what
23 he said. I have told you since my very first opening
24 statement, I stood here, you sat there, you sat there, and
25 I said, we do not blame Che-Val. We blame Mr. Rios. He

1 caused this accident and he's accountable, and he said the
2 same thing.

3 So what else do we need to know about the
4 law?

5 We talked about this also in jury
6 selection. The burden of proof. Now, Mr. Emison stands
7 up and does his fancy PowerPoint with his videos and
8 stuff, and I don't have that. I have this piece of paper
9 that the Judge gave me, and it says what the law is. And
10 it says that the party having the burden has to prove what
11 they have to prove. And it says, you need to be
12 convinced; you need to be persuaded.

13 So if at any moment you go back into the
14 jury room and you say to yourself, I just don't know; I
15 don't know if it was the tire that caused this injury; I
16 don't know if it was because the belt was in his belly; I
17 don't know if it was because he didn't follow the
18 instructions; I don't know if it's because his mom didn't
19 tell him to sit up straight; if you don't know what
20 happened, they have not done their job. They have to
21 bring evidence that you believe. And you have to be
22 clear. You have to be convinced. You have to be
23 persuaded and you have to be unanimous. And if they can't
24 get you there, then you have to return a verdict for Ford.
25 That's the law.

1 Now, the Judge will tell you that you get
2 to use your common sense. That while do you have to take
3 the evidence from the witness stand and you do have to
4 take the documents that are admitted into evidence, the
5 big pile there, some of which you've been handed, you also
6 get to use your common sense. And let's go over what our
7 common sense tell us about this crash.

8 We didn't see any of these pictures in the
9 last few hours; but, remember, this all started when
10 Mr. Rios crashed into this Ford Escort. The tire would
11 not have been launched into Che-Val's back, Ms. Durham
12 would not have been launched into Ms. Nikita, Mr. Nicholas
13 would not have been launched into Mr. Thomas, and Che-Val
14 would not have been launched and pushed if Mr. Rios didn't
15 slam into this car because he wasn't paying attention and
16 he was talking on his phone.

17 So you've heard it. You heard it from the
18 very beginning in opening statements. The Plaintiffs
19 think that the only reason Che-Val is paralyzed is because
20 Ford was unreasonable. That's what you have to find in
21 order to find against Ford. That's one of the things you
22 have to find.

23 And if you're not sure -- again, if you go
24 back there and you're like, Well, it is important to
25 protect the forgotten child; it is important to fit belts

1 to people who don't fit in adult belts; it is important to
2 put child seats in cars. If you go back and you can't
3 figure out whether or not Ford was reasonable, the tie
4 goes to the runner. Ford is the runner. We do not have
5 the burden of proof. That's the law. That's the law. So
6 if you're not sure, if you're not convinced, if you're not
7 compelled and if you're unanimous, they have not done
8 their job. They have not done their job.

9 And they have not done their job.

10 So what are -- what do we know? What are
11 we -- when Plaintiffs came in, they said they were going
12 to bring you evidence. They stood up -- Mr. Emison stood
13 up and he said, we're going to bring you proof that the
14 lap belt was defective, that this lap belt in this Escort
15 on this day in this accident was defective. What have
16 they shown you? What have they shown you? Search your
17 minds, right now. They've shown you it was a lap belt.
18 They didn't tell you there was anything wrong with the
19 angles. They didn't tell you there was anything wrong
20 with the webbing. They didn't tell you there was anything
21 wrong with the cinch plate. They -- all they have shown
22 is what we knew before we started, it was a lap belt. It
23 still is a lap belt.

24 That in and of itself is not defective.
25 How do we know? It's really easy. Because it complied

1 with the law at the time it was manufactured. And we
2 could stop right here. We could stop right here. Ford
3 could stop right here and this case would be over. But we
4 didn't stop here. In fact, what you're going to find is
5 that the truth of the matter is, Ford worked a lot harder
6 in this case than Plaintiff did. Ford dug a lot deeper.
7 The Plaintiffs have brought you sound bites and bits and
8 pieces from history and they have not bothered to give you
9 anything other than headline news that is self-serving and
10 is outcome-determinative. They want you to go a certain
11 way and all they have presented to you are things that
12 they think will push you there.

13 There was a saying not many years ago that
14 "history was written by the victors." It turns out it
15 wasn't who won, it was who was in charge. What we've
16 known now, what our society has learned is that if we only
17 listened to one voice, if we only listened to one person's
18 version of history, then a lot of people get left out, a
19 lot of people's efforts, a lot of people's motivations, a
20 lot of discussion gets left out.

21 And that's what happened here. Mr. Emison
22 showed you the same documents in closing that he showed
23 you in opening. He's got a ton of them. He's got four or
24 five pieces of paper and he's got a few videotapes. And
25 none of them are about Che-Val and none of them are about

1 North Carolina and none of them are about August the 10th
2 of 2010 when this accident happened. And -- and only one
3 of them has to do with the Escort. And then he says
4 something which is crazy. He says, we would have taken
5 anything Ford gave us. Make no mistake about it, ladies
6 and gentlemen, Mr. Emison had unfettered access to Ford's
7 documents. They had access to every document they wanted.
8 That's the discovery process you've heard so much about.
9 They could -- they asked for anything and they got
10 everything. And what is he saying that he should have
11 had, some tests from Mazda? What happened when I asked
12 Mr. Burnett about that? If you want tests from Mazda, you
13 got to go to Mazda. They didn't go there. They didn't
14 get those documents. That's a subpoena. That's not a lot
15 of work compared to all the other stuff that they've done,
16 all of the papers they've prepared and all of the
17 documents that they've shown you.

18 But they didn't issue a subpoena to Mazda,
19 because they know what you know, which is there are no
20 tests that show if you're riding in a car and you start
21 out sitting up straight. You can. We might all start out
22 sitting up straight. How many of you right now slid down
23 just a little bit for comfort? And if you slide down just
24 a little more because there's no room, this is a -- a
25 comfortable position, but it's not a safe position. It's

1 not a safe position. And we didn't hear anything about
2 that all morning.

3 And there's no question, there's no
4 question we're going to go through the evidence -- there's
5 no question that Che-Val Batts was not seated upright with
6 the belt on his hips at the time of this accident. You
7 know why? Because Ford experts showed their work.

8 Remember when you were in school and -- and sometimes you
9 got to answer true or false or yes or no? But sometimes
10 the teacher said, hold on a minute. Show your work. Show
11 your work on this math problem. Show your work so I can
12 see if you got the right answer because you did it right
13 or if you just got the right answer from some other means.

14 Ford experts came in here day after day and
15 they showed their work. Plaintiff's experts didn't show
16 anything. They showed you nothing.

17 All right. So they said they were going to
18 prove something was wrong with the lap belt. And then
19 they were going to prove that whatever was wrong with that
20 belt caused Che-Val's injuries. All they proved was that
21 it was a two-point belt. And the only thing wrong with
22 it -- the only thing wrong with it -- was it wasn't in the
23 place it was supposed to be. And this is -- these are my
24 hips. Whether I'm standing up or sitting down, these are
25 my hips. That's where the belt goes. This is my stomach.

1 That's not where it goes.

2 They promised big things. They did not
3 deliver. They did not do their job.

4 Now, what else did they promise you? And
5 you have to be sure, right? You have to be convinced, you
6 have to be unanimous on what they have to prove.

7 For the cost of those -- you see the fancy
8 videos where they showed me asking Mr. Burnett questions.
9 We've had the videographer on in here. For the cost of
10 subscribing to that video, for the -- for the cost of one
11 of Mr. Tessener's billboards, they could have run a crash
12 test. Mr. Burnett told you that they could have run a
13 crash test. They do not get to come in here and say, we
14 don't have the proof because Ford didn't give it to us.
15 That's not what the law is. It's called a burden because
16 it's hard. It's called a burden because all you have to
17 do is file a piece of paper and come into court and you
18 get to have your case heard.

19 But when you show up, you got to bring
20 proof. And -- and they said our reason we don't have it
21 is because Ford didn't give it to us. That's -- that
22 is -- they didn't do their job. They didn't do their job.

23 Now, they did bring you a couple of -- of
24 experts -- and we're going to talk some about them for
25 sure. Mr. D'Aulerio, who was here for six days, and

1 Mr. Burton, who was here for one day -- Dr. Burton. And
2 what do we know about them? Before we even talk about
3 this case, what do we know about Dr. Burton and
4 Mr. D'Aulerio? Well, back when most of the cars had
5 two-point belts in them, they testified under oath all the
6 time that two-point belts are dangerous and bad and you
7 need to quit using those and put three-point belts in.
8 Fast forward 10, 11, 12 years -- 15 to today, now most
9 cars have three-point belts in them. So what does
10 Mr. D'Aulerio and Dr. Burton do for a living now? They go
11 into court and they put their hand on a Bible and they
12 swear to tell the truth and then they say, Three-point
13 belts are bad. Three-point belts are no good. Those are
14 not good three-point belts. That belt hurt whatever
15 person is in that case on that day for that lawyer.

16 That's what they do for a living. You
17 point them at a product -- and it doesn't even have to be
18 a seat belt. You point them at any car, any product, an
19 SUV, a -- an ATV. They told us they've -- they've --
20 child seats. Mr. D'Aulerio never met a product he didn't
21 think was defective. That's who Plaintiffs brought you.
22 That's who Plaintiffs brought to you.

23 The picture that the Plaintiffs have
24 painted in this case is a forgery. It's a forgery. And
25 what I'm going to do now is I'm going to take you through

1 the evidence so that you can see how this forgery came to
2 be.

3 It's a forgery because just like any
4 forgery, it lacks imagination, it -- it attempts to be the
5 truth, it doesn't have believability when you look at it
6 up close, and it lacks completeness.

7 So let's talk a little bit about their
8 forgery, their case against Ford Motor Company.

9 Now, in my opening I mentioned some truths.
10 And it was a long time ago that I mentioned these truths
11 to you. I was standing over there. You guys were sitting
12 where you are. But the thing about truth is, it's
13 eternal. So it was true then and it's true now, and
14 nothing that has happened in this case has changed it. So
15 what are those truths?

16 The truths are that this was a high-speed,
17 violent accident that unleashed enormous forces into the
18 1999 Escort. Six people in two cars were seriously or at
19 least moderately injured. They all went to the hospital.
20 And two backs were broken. Only one ended in paralysis,
21 but two backs were broken. And you remember there was all
22 kind of problems about that. Mr. D'Aulerio came in and --
23 and -- we'll -- we'll get to that in a minute. And he
24 denied that Ms. Stone had broken parts of her back. But
25 we worked through that with him and it turned out that

1 they were.

2 What else is true? The force of this
3 collision was so intense that Ms. Stone was sure she was
4 going to die. And you know that. You saw a crash test
5 run by Roger Burnett and Joe Kent that wasn't even as
6 intense as this accident, and nobody would want to be in
7 that crash in any restraint system. Not in a six-point
8 restraint system. That was a very intense crash that you
9 saw.

10 What else do we know? That this Ford
11 Escort on this day of this crash was 11-years-old. It was
12 11-years-old. It was the same age as Che-Val. It had
13 almost 200,000 miles on it and it had been sold for
14 salvage and it was sold for junk parts.

15 MR. TESSENER: Objection, Your Honor. That
16 is not in evidence.

17 THE COURT: Sustained.

18 MS. EZELL: The truth is, is that Che-Val
19 was sitting in the middle seat playing UNO with his aunt
20 and he was slouched and the belt was in his waist. And
21 because he was slouched and he was looking for cards --
22 I'm sorry, because he was playing cards, he was slouched
23 because he was looking for room, because there were so --
24 there was so much human in the back seat. He was looking
25 for room. He was trying to get comfortable. Maybe he

1 just slouched because that's how he sat. It doesn't
2 matter why he was slouched. If you are not sure that he
3 wasn't slouched, if you are not sure, convinced, compelled
4 and unanimous that he was not slouched when this accident
5 occurred, then Plaintiffs have not done their job.

6 The other thing that is true -- and we
7 didn't hear any evidence from Plaintiffs on this at all.
8 Not just this morning, but during this case -- is that if
9 Che-Val had been in a three-point belt, in a three-point
10 belt, and he had been slouched, he would have received the
11 same or worse injuries. The design that Plaintiff is
12 advocating in this case would not have guaranteed any
13 different result. They didn't bring you any proof on
14 that. Did Mr. D'Aulerio come in here and -- and show you
15 that a slouched 5-foot person weighing 127 pounds or 154
16 or whatever it turns out to be would not have been injured
17 slouched in a three-point belt? No, he did not. Do you
18 know why? Because that proof does not exist. Because
19 there is no such proof.

20 For all of these reasons, Ford believes
21 that it is unfair to blame the Ford Motor Company for
22 Che-Val's paralysis. Ford didn't cause these injuries and
23 we could not have prevented them. The truth is, is that
24 this lawsuit is about money. It's about money. It's
25 about moving money from this side of the room to that side

1 of the room. And if you have any question about that,
2 sometimes it's -- it's the little things that give you a
3 clue about what's going on.

4 Think about the papers that you have in
5 your -- in your laps, on the floor, in your folders. The
6 only papers that Plaintiff gave you, the only pieces of
7 paper that they wanted to make sure you could see without
8 any question, they wanted to make sure you could read was
9 the money papers, the money papers. They gave you the
10 life care plan and they gave you the economist's report.
11 They didn't care if you understood the liability issues at
12 all.

13 Look in your pouches. You'll have Joe
14 Kent's accident reconstruction, which we're going to talk
15 about. You'll have Ford giving you documentation about
16 why it was reasonable to do what they did in 1999. And
17 you will not have one document that Plaintiffs provided to
18 contest any of that.

19 This is a case about money. And in order
20 to move money, you have to do your job. They have not
21 done their jobs.

22 All right. Now, you'll recall that at the
23 beginning of this case, I told you that we would present
24 evidence to you during our witnesses and in Plaintiff's
25 case on five different themes. And we've done that.

1 The first theme is that the accident and
2 injuries, all of them, all the ones that everybody else in
3 the car sued Mr. Rios for -- everybody in this car sued
4 Mr. Rios. But only Che-Val, they also brought in Ford.

5 This accident happened because Mr. Rios was
6 driving this Jeep Cherokee talking on his cell phone or
7 was otherwise distracted, did not follow the rules of the
8 road, did not yield and accelerated into the path of the
9 Escort. There's no question about that. That was our
10 first theme.

11 The second one, Ford's lap belt did not
12 cause -- cause Che-Val's tragic paralysis and Ford could
13 not have prevented this paralysis if they had put an adult
14 belt in the car.

15 For the 1999 Escort, Ford and the
16 automotive industry -- not just Ford. Ford was run in
17 with 88 percent of the cars sold in '99 on this issue.
18 Ford and the rest of the automotive industry were
19 reasonable in their decision to leave the lap belt in the
20 car.

21 Next, Ford has been and continues to be a
22 leader in designing and installing both restraint systems
23 and other safety features to enhance the safety of their
24 occupants, to enhance and protect the motoring public.

25 And finally, because Mr. Rios has admitted

1 liability, he has admitted responsibility for Che-Val's
2 paralysis and Ford could not have prevented it, it is
3 unfair to blame Ford.

4 So what do we have? What do we know? What
5 is the proof?

6 Defendant's 334, you all have this. You
7 have it in your pouches. This is the work that was done
8 by Joe Kent. Joe Kent, unlike Mike Sutton, who you may or
9 may not recall was here for an afternoon. Mike Sutton
10 came in and said, the police officer got it wrong, I put
11 in my own numbers and those numbers made the accident less
12 severe than they would have been if I hadn't done that.
13 That's what Mike Sutton did.

14 Joe Kent, on the other hand, Ford's expert,
15 went to the scene, arranged for Trooper Heath to meet him
16 there, talked to him to make sure that they were all
17 measuring from the same place. And then when he got Mike
18 Sutton's reconstruction and it didn't make any sense, he
19 ran a test so he could figure out how much energy there
20 really was in this accident. How bad was this crash?
21 And -- and that's the theme, right? Mike Sutton, when he
22 couldn't figure it out, made it up. He didn't show his
23 work. Joe Kent showed you his work.

24 You, ladies and gentlemen, will be told
25 that you are the judges of the credibility of the

1 witnesses in this case. And when you judge their
2 credibility, look at their rigor. Look at their
3 methodology. Look at what they did. Did they just come
4 in here and tell you what they were paid to say or did
5 they actually do the work necessary to come to the
6 opinions that they came to and then show you what it was?

7 Now, but it's not just experts that spoke
8 to this issue. It's not just experts that spoke to this
9 first issue, which is that this accident and all of the
10 injuries happened because Mr. Rios was on his phone or was
11 otherwise distracted and did not follow the rules of the
12 road. It's not just Joe Kent. There's been evidence
13 since day one about this crash, this severe crash.

14 Now, Plaintiffs really want you to believe,
15 they really do, Mr. Emison said it again today, that this
16 was a moderate crash, this was not a severe crash, and
17 that Che-Val and nobody else should have been injured.

18 They need you to believe that because if
19 you think that this was a severe crash, if you know and
20 understand that the forces generated in here are
21 substantial, then they're afraid you might think that
22 Mr. Rios caused Che-Val's injuries, and that's because he
23 did. He did.

24 Now, all of Joe Kent's work in Exhibit 334,
25 all of his work was to come up with one thing. It seems

1 like a lot of paper to come up with one thing, right?
2 This Delta-V, which Mr. Emison said that's the only thing
3 they disagree on, but that's a big thing. It's a big
4 thing because the Delta-V determines the amount of energy.
5 The Delta-V determines the likelihood of getting injured.
6 And, in fact, Mr. D'Aulerio and I had a conversation about
7 that and he didn't want to. It took us a while.

8 But eventually, we did. And we created
9 together this graph. And what this says is that when you
10 are in -- Oh. Sorry. It's up here.

11 When you are in an accident whose Delta-V
12 is between 17 and 23, any accident, then your chance, the
13 probability that you're going to be seriously injured an
14 AIS 3 or higher is 80 percent if it's a 17-mile-an-hour
15 Delta-V, and 95 percent if it's a 23-mile-an-hour Delta-V.

16 What does that mean? Why is that
17 important? Why did Mr. D'Aulerio fight so hard on this?
18 Because that means that these forces, whether you're
19 belted, unbelted, were in a child seat, in a booster seat,
20 in a two-point belt, in a three-point belt, these accident
21 forces alone, Mr. Rios' slamming into this car alone is
22 sufficient to cause this injury.

23 But it wasn't just Mr. D'Aulerio who said
24 that. We had other people who testified on this very same
25 issue. We had Dr. Azikiwe, who we did actually hear about

1 today. And what did Dr. Azikiwe say about injuries today,
2 to children today? She said that children over the age of
3 1 are killed -- not just seriously injured -- but they are
4 killed in car accidents more than in any other scenario.
5 And they're killed today in car accidents in infant seats.
6 They're killed in child seats. They're killed in booster
7 seats. They're killed in two-point belts and they're
8 killed in three-point belts. And that's because accidents
9 hurt kids no matter what kind of restraint you're in. No
10 matter what kind of restraint you're in.

11 What else do we know? Well, this is Ms.
12 Fulcher's testimony, and Mr. Emison is very fond of Mr.
13 and Mrs. Fulcher. We know that. So let's see what she
14 said. Did you believe that this -- in viewing these
15 vehicles, did you think that this was a major accident?
16 Absolutely. Absolutely. She looked at the cars and said
17 they were absolutely in a major accident.

18 What else do we know? What else do we
19 know? We know that the Jeep was also smashed. And this
20 Jeep weighed substantially more, you know, than the Escort
21 did. And yet the energy caused these -- this crush as
22 well. What else do you know? You know that Mr. Rios
23 caused this accident. You know that without question.

24 Here is Mr. Rios' testimony:

25 And you would agree with me that at the

1 time of this accident, you did not follow the rules of the
2 road, correct?

3 Yes.

4 Because you went through the stop sign.

5 Yes.

6 And you failed to yield to an appropriate
7 and visible stop sign, correct?

8 Well, I didn't see it coming.

9 So now are you not taking responsibility?

10 The answer was on the next page, and I
11 didn't highlight it but here it is: No.

12 Now, we did not have access to Mr. Rios
13 prior to the day that you all met him:

14 Your lawyer never told you that we wanted
15 to talk to you, to take your deposition. We wanted to
16 find out what your story was about why you caused this
17 accident.

18 No, I didn't know about that. I was never
19 told about that.

20 And do you remember that you gave your
21 statement over the phone?

22 Well, who has that statement, I asked him?
23 I will want to know. I want to know about this accident.

24 And he said, I don't know. They just
25 called from insurance. I didn't think I was told anything

1 else.

2 And you never made yourself available for
3 Ford to come and meet with you and ask you questions?

4 Nope. No, I did not.

5 And then this was the hard -- this was hard
6 part for Mr. Rios, and this was hard for me, too. This
7 was hard. It's hard when you have to understand what you
8 have done.

9 And so you understand that it was your
10 actions that broke four legs on three people in these
11 vehicles -- in this vehicle, correct?

12 Correct.

13 And you're the one who caused these people
14 to have injuries to their stomachs in this accident,
15 correct?

16 Yes.

17 And you're the one who caused all of the
18 blood and the pain and the agony at this accident,
19 correct?

20 Yes.

21 Did you know that the 11-year-old child in
22 this accident was paralyzed?

23 No.

24 Do you accept responsibility for that?

25 Yes.

1 Mr. Rios knew who caused this accident and
2 who caused these injuries. He was devastated by it. He
3 was devastated by it, but it was the truth.

4 What else do we know about this accident?
5 We know it was avoidable.

6 Mike Sutton:

7 So if you're not distracted, you could see
8 the Ford coming?

9 Answer: Yes. This is Plaintiff's accident
10 reconstructionist. Plaintiff's accident
11 reconstructionist.

12 The only thing I could find in Plaintiff's
13 case where they actually talked about Mr. Rios and the
14 accident that we're here in this lawsuit about. This is
15 one of those questions that I would have, if I were you.
16 Why do you sue -- why do you sue somebody and then not put
17 on a case against them? Why do you -- why do you bring
18 Mr. Rios into a case and not actually go after him? It's
19 an interesting question. What did Mr. Emison tell you?
20 Because Ford is a big company. What did Mr. Tessener tell
21 you. You got to send a big message.

22 The rest of this family knew who to sue.
23 They knew who caused the accident. And the only reason
24 Ford is here is, is because they're big and they want you
25 to send a big message.

1 Now, what else do we know about the
2 accident? Mr. Rios, although he denied it, and he was
3 very candid about most things. There was testimony
4 from -- and I apologize. I didn't show you who it is.
5 From Nicholas Stone. And this is another curious thing
6 that I heard today. Mr. Emison stood right here and said,
7 you'll never find better witnesses than they Fulchers.
8 These Fulchers are great people. He's a pilot or
9 something.

10 And what he wants you to -- what he wants
11 you to believe is that somehow the Fulchers are better
12 witnesses to what happened than the good people in the
13 car. That's what he wants you to do. He wants you to
14 disregard the evidence from the people in the car. Well,
15 I'm going to put up all the evidence and we'll see what
16 happens.

17 So what did Nicholas Stone, who was in the
18 car, say? He said -- I should use that monitor. All
19 right.

20 He said it appeared -- and remember, I
21 asked him. He said he had his hand up here and his head
22 was like this.

23 And, yes, ma'am. And it appeared as though
24 he was on the phone.

25 But from where you were in the car at the

1 time, you couldn't see the phone. You could just see the
2 way he was holding his hands, correct?

3 Yes.

4 Thomas Batts, Mr. Batts seated in the front
5 seat:

6 And you indicated that your thoughts on the
7 reason he pulled out is that he was distracted, correct?
8 That was my question.

9 His answer: He was on the phone.

10 He was distracted because he was talking on
11 the phone?

12 Answer: (Witness moves his head up and
13 down.) Yep. He was on the phone.

14 What about after the accident? Nicholas
15 Stone.

16 I know you were dazed. He had told us he
17 was dazed and he was worried about his family.

18 But you were able to recall that after the
19 accident, he was also on his phone?

20 Yes, ma'am.

21 Now, we talked about this in jury
22 selection. Being on the phone distracts you from driving.
23 It distracts you from driving. And a distraction like
24 that in a blink of an eye changed the life of a family.
25 People have -- have rods in their legs, they have metal in

1 their body, and one person in that family is going to be
2 in a wheelchair probably for the rest of his life because
3 he was talking on his phone and he plowed into this
4 family.

5 Now, we did talk about the injuries to the
6 vehicle -- to the people in the vehicle. We talked about
7 that at great length. And this is that -- this is that
8 exercise that I was talking about that Mr. D'Aulerio and I
9 went through. You may recognize this. This is a
10 picture -- a cell phone picture that was taken of the flip
11 chart that Mr. D'Aulerio prepared. And what I want to
12 point out to you is not what he said, but what he didn't
13 say. And you remember, every person we went through, he
14 underestimated the amount of injuries that they had had.
15 Every person that we went through.

16 Well, you can't see it at all, can you? So
17 with -- and you'll just have to maybe consult your
18 recollections on this. But with Ms. Nikita Stone, I had
19 to go home overnight -- well, home, I had to go back to
20 the hotel where we're -- where we're staying and I had to
21 find the medical records for her and I had to bring them
22 in the next day before I could get this guy to say that
23 she, in fact, had broken her back. That is how dedicated
24 Mr. Emison's dream team is to making sure that he gets the
25 testimony he wants in these cases.

1 Every single person on this list we went
2 through one by one, and he underestimated the intensity of
3 their injuries and he downplayed it. Why? Because the
4 outcome needs to be that you think Che-Val could not have
5 been injured because of the forces of this accident.

6 Now, sometimes the best evidence is not
7 from the people that you pay hundreds of thousands of
8 dollars a year for more than 20 years. Sometimes the best
9 evidence is from people who don't get paid at all.

10 So Craig Perry, he came in and testified.
11 You may remember him. He was one of the EMTs. And he has
12 spent his life also looking at accidents. But not to come
13 in and be paid to testify, to help the people who are in
14 them. And what did he say about the severity of this
15 accident?

16 Well, now I've gone and messed it up. I'll
17 just read it to you. I'll figure it out in a minute.

18 Based on looking at that, you believed it
19 was a high rate of speed accident?

20 Yes, ma'am, I did.

21 Well, what occasioned you to think that it
22 wasn't?

23 Well, I came to learn afterwards that was a
24 low-speed impact. Well, nobody told him that except
25 Plaintiff's counsel.

1 And based on the amount of crush that was
2 done to this vehicle.

3 Yes, based on the amount of crashes I've
4 seen.

5 Well, you don't see this type of damage all
6 the time. Very rarely do you see this type of damage.

7 There is no question from anybody, from
8 Ms. Fulcher, from Mr. Perry, from everybody who came
9 across that scene, there were bodies hanging out of the
10 car and it was a huge, huge accident. What else do we
11 know? And here's that testimony I was looking for a
12 minute ago from Dr. Azikiwe.

13 I'm going to get in this time.

14 Now, and this is when she is telling us
15 about how kids are killed in accidents today. They're
16 injured in booster seats? Yes. Oh, I'm sorry. The first
17 one.

18 They're injured in infant seats with
19 five-point restraints.

20 Yes.

21 And, I'm sorry, they are injured in booster
22 seats?

23 Yes.

24 And they're injured in lap belts.

25 Yes.

1 And they're injured in three-point belts.

2 Yes.

3 And certainly they can be injured when
4 they're unbelted.

5 Answer: Absolutely.

6 But Dr. Azikiwe was not the only one.
7 Another unpaid witness who came in here confirmed that
8 crashes hurt children.

9 Brandon Taylor, he was the chief -- Chief
10 Taylor.

11 You would agree with me that in accidents
12 that you have responded to, you have seen children killed
13 or catastrophically injured that were in child seats.

14 Yes.

15 And that's with five-point harnesses.

16 Correct.

17 And you have seen children killed in
18 booster seats, correct?

19 Yes.

20 And you have seen children that have been
21 killed or catastrophically injured in three-point adult
22 belts because they were too small for those belts,
23 correct?

24 Correct.

25 Now, Plaintiffs have told you repeatedly,

1 as often as they could, that Ford is responsible for
2 this -- for these injuries to Che-Val. And their experts,
3 they said the same thing.

4 But what have we heard from the nonexperts
5 about who caused this crash and who caused these injuries?

6 Trooper Heath: As a result of your
7 investigation, did you, in fact, make a conclusion with
8 regard to what or who caused this accident? Which vehicle
9 did you find were responsible?

10 Vehicle No. 1.

11 And what vehicle was No. 1?

12 The Jeep.

13 And who was riding in the -- who was
14 driving the Jeep?

15 Alejandro Rios.

16 And as a result of your investigation, did
17 you also entertain the method by which Mr. Rios caused
18 this accident?

19 Yes, ma'am.

20 And what was that?

21 Failure to yield the right-of-way to a duly
22 written stop sign.

23 That's why we're here, ladies and
24 gentlemen.

25 Okay. Now, there is no question, you'll

1 get an instruction on this, that there are certain people
2 who care more about how this case ends up than others.
3 Ms. Nikita Stone is one of the people who cares very much
4 how this case ends up. What did she say about who was at
5 fault for causing this accident?

6 Who was at fault for the accident?

7 The accident?

8 Yes, ma'am.

9 Rios was at fault for the car accident.

10 Mr. Nicholas Stone: Whose fault was the
11 accident?

12 In my opinion?

13 Yes, sir.

14 I think it was the other guy's accident.
15 The other guy's fault.

16 And finally, Mr. Thomas Batts came in here
17 and he told you in the most honest and candid way that he
18 could what he thought about Mr. Rios.

19 Thomas Batts: At your deposition, you told
20 them, the folks who were there, that the only thing you
21 would want to say to Mr. Rios was to punch him in the
22 face. Do you remember that?

23 I probably -- I probably did.

24 Yeah. This is me. And that was because he
25 hurt you and --

1 He interrupted me and said: He hurt my son
2 basically.

3 So even Mr. Batts knows. He cares how this
4 case ends up. But when he was under oath and he swore on
5 the Bible and he told the truth, that was his truth. That
6 is the truth.

7 Now, Mr. Emison stood up here today and
8 said that he had a couple head scratchers or things that
9 just baffled him. And that's okay. And we're going to
10 talk about one of those right now.

11 So we know that in this accident, a number
12 of things were launched, right? We know that when the
13 accident happened, the cars slowed down and anything not
14 attached to the car went forward. Well, one of the things
15 that we know that was launched was a tire. Now, what is
16 the story of the tire?

17 Thomas Batts: A week prior to the crash,
18 you had this tire repaired on this vehicle, correct?

19 Yep. Or yeah.

20 You had a dog who chewed the valve stem and
21 caused that flat, correct?

22 Correct.

23 Ms. Nikita Stone: And did you tell us that
24 you believed that the tire was in the trunk before the
25 accident, correct?

1 If I said that.

2 And what do we know? That the tire was in
3 the trunk, but it wasn't where it belonged.

4 67, Plaintiff's No. 67-299. And it will
5 be -- oh, my gosh, it actually shows.

6 Okay. So this is a picture of the package
7 tray. You heard about the package tray. This package
8 tray would be up here. These are the seats, not where
9 they're supposed to be. This is the lining for the trunk.
10 This is a board that goes between the trunk lining and the
11 tire well that's underneath it. Right here on this
12 lining, you can clearly see an impression of where the
13 tire was put inappropriately. It wasn't put back in it
14 the tire well, it was put right here. And what is this --
15 this is where that tire sat. Ms. -- Ms. Stone told us she
16 saw it whenever she went grocery shopping.

17 So this tire sat right here. And on the
18 day of the accident, it went this way. Not exactly
19 forward, because we heard from Joe Kent that it was just a
20 little bit off of forward. So the tire went in the
21 direction of impact. And what is at that area? The split
22 in the seats.

23 What else do we know? Ms. Fulcher. Mr.
24 Emison stood up here and said, Ms. Fulcher said she didn't
25 see a tire. Well, there couldn't have been a tire there.

1 What did she say?

2 I looked at the seats. It looked
3 disconnected.

4 Okay. But as far as a gap or anything like
5 that, how would you describe the bottom of this seat? You
6 said it looked disconnected.

7 It looked as if it had come apart. There
8 was a gap about this big -- and she showed you in her
9 video -- behind Che-Val and I could see under there.

10 But that wasn't what she was focusing on.

11 So she didn't -- she wasn't focused on that and she still
12 noticed that -- what did we hear the experts say?

13 Mr. D'Aulerio said that the tire blew through the seat
14 back. What is this? Well, this is the seat back, right
15 here is this area, and you've seen this before. This is
16 where that tire came through from behind and this plastic
17 was bent and the tire was able to come through into the
18 occupant compartment. Now, Mr. Emison stood right here
19 and said, we should believe those Fulchers. They are good
20 people. They have no dog in this fight at all.

21 But I'm not -- I am unclear and I would
22 want to know if I were you, why Mr. Emison thinks that the
23 Fulchers should be believed about this tire when there
24 were people at the scene of the accident before the
25 Fulchers. And who were they? Miss Teresa Durham,

1 Ms. Nikita Stone, Mr. Nicholas Stone, Mr. Thomas Batts and
2 Che-Val. And what did those people say about the tire?
3 What did they say about the tire?

4 Nicholas Stone. Right here: All right.
5 At some point, either before or while you were talking to
6 Che-Val, you noticed -- and this is after the accident he
7 was talking to Che-Val. Che-Val was asking him to take
8 the tire off of his legs -- you noticed that was a tire in
9 the car, correct?

10 Yes, ma'am.

11 And it was sitting on his legs?

12 Yes, ma'am.

13 And you were surprised that there was --
14 that there was a tire in the car, correct?

15 Yes, ma'am.

16 And that's because before this accident,
17 there wasn't a tire in the car, correct?

18 Yes, ma'am. There wasn't a tire.

19 And you did not know where it had come
20 from, correct?

21 Answer: Right.

22 So this tire, which was not in this wheel
23 well, came through the back seat during this accident in
24 exactly the location where Che-Val's back, which is now
25 broken, was positioned.

1 What else do we know? Jason Spruill. He
2 wasn't there to look for tires or to pick up evidence for
3 this case, but he was there. And he noticed the seat
4 back.

5 And when you got there, those two pieces of
6 seat back were not where they were supposed to be.

7 No, ma'am.

8 And, in fact, when you went to the vehicle,
9 you could see into the trunk, correct?

10 Yes, ma'am.

11 This is what Jason Spruill saw. The seat
12 back was not how it was supposed to be. The only
13 explanation for that is the tire. The tire wasn't
14 properly put in the wheel well. And what did
15 Mr. D'Aulerio say about the tire? I'm not putting that on
16 Ford. I'm not putting that on Ford.

17 So if you, when you go to deliberate and
18 decide whether or not -- if you decide that this tire is
19 related to these injuries, it's because the tire was not
20 properly affixed to the trunk after the tire had been
21 repaired. And if you are unclear as to whether or not
22 this tire caused injuries, and you don't know, Plaintiffs
23 have not done their job. It is their job to eliminate
24 from your consideration other potential causes of this
25 accident -- of these injuries and this potential cause,

1 they have not addressed.

2 Mr. D'Aulerio:

3 Who was seated at the 60/40 split of the
4 60/40 bench during the accident?

5 That would be Che-Val.

6 Mr. D'Aulerio: Because, in fact, the 60
7 percent and the 40 percent side of the seat back were both
8 out of place at the end of this accident, correct?

9 Yeah. I explained at length. They got
10 blown out by the tire and they broke the plastic hinges.

11 That's Plaintiff's expert. That's
12 Plaintiff's expert. So when Mr. Emison says, why
13 didn't -- why didn't Ford's experts say anything about the
14 tire? There's nothing else that needs to be said. Ford's
15 job in this case is to respond to the Plaintiff. We don't
16 have to bring evidence. The evidence of the tire is clear
17 and uncontroverted. Plaintiff's own expert said that the
18 seat was blown out by the tire and broke the plastic
19 hinges.

20 I need to talk to you about the egg carton.

21 He said, no, a car is like a egg carton and
22 everybody has a -- a little spot and they're supposed to
23 be safe. And as long as nothing happens to their egg
24 carton, then the only thing that can hurt them is the seat
25 belt.

1 And I said, yeah, but Mr. D'Aulerio,
2 Che-Val's egg carton, his egg did not stay completely
3 during this accident because the back side of it was blown
4 open, correct?

5 Answer: That's true. That's true.

6 Mr. D'Aulerio. Now, and -- oh, here it is.

7 Mr. D'Aulerio: I don't know the details of
8 who secured or didn't secure that tire. I'm talking about
9 the tire. It's my understanding that the tire -- the tire
10 is what came through, but I don't know who did what
11 honestly.

12 You're not putting that on Ford, though?

13 Answer: No, I didn't say anything at all
14 about that aspect of the crash.

15 So if it was the tire, according to
16 Plaintiff's own expert, it wasn't Ford.

17 Okay. In spite of Mr. Emison's indication
18 we should not believe her, I think I'm going to show you
19 what Ms. Teresa Durham said anyway about the tire.

20 So this tire that you saw on or near
21 Che-Val's legs, you don't know who took that out of the
22 car, do you?

23 No, ma'am.

24 She was sitting right next to him.
25 Nicholas was sitting on one side. He saw the tire.

1 Teresa Durham was sitting on the other side. She saw the
2 tire. Mr. Emison stood right here and said that because
3 Ms. Fulcher, who he finds to be incredibly credible, came
4 up after the accident and didn't find a tire, that means
5 there was no tire there. You guys get to decide.

6 Now, what do we know about tires? What do
7 we know about people being injured by things flying from
8 the back? Well, we know that Ms. Nikita Stone's back was
9 broken. Ms. Nikita Stone's back was broken because her
10 sister came flying forward from the back into her seat --
11 into her seat back. But the Plaintiff wants you to
12 believe that when this tire came flying forward into
13 Che-Val's back or his seat back, that that's not what
14 broke his back. That's what they want you to believe.
15 With no proof, with no doctor, with nothing.

16 There was one person, and this person
17 wasn't paid by anybody to be here, and that's Chief
18 Brandon Taylor. And Chief Brandon Taylor, I asked about
19 people getting hurt by things flying on all of his years
20 of working as an EMT. And -- let me just take a minute to
21 try to make this better for all of us here. Okay.

22 And in all of your years -- and in your
23 years of working as an EMT and as a fire chief and
24 handling hundreds of accidents, you have seen people be
25 injured in frontal car crashes by things that have come

1 forward and hit them or struck them in some part of their
2 body, correct?

3 Answer: I have.

4 And they can also be injured by large
5 packages or bulky items that are not restrained in the
6 vehicle that come forward during a crash, correct?

7 Yes, ma'am.

8 Chief Taylor: And so a tire is like what
9 we were talking about earlier, the type of object that if
10 it flies forward during a high-speed frontal can cause
11 injury. You would agree with that certainly.

12 Answer: Correct.

13 Search your minds, search your notes,
14 search your recollections, talk to each other. What
15 evidence has the Plaintiff brought to you, what witness
16 has the Plaintiff brought to you, what doctor has the
17 Plaintiff brought to you to confirm in your minds, to make
18 you clear, to make you convinced, to make you unanimous
19 that this tire did not break Che-Val's back in the same
20 way that Ms. Nessie broke Ms. Nikita's back?

21 Now, Ms. Nikita's back was not broken as
22 much, but it was broken by an object flying from the rear,
23 and there's no evidence -- it's their job to bring it --
24 there's no evidence that Che-Val's back wasn't broken the
25 same way. But there's a lot of evidence about this tire.

1 So -- and this is not a hard question.
2 Mr. Emison has already talked about it with you, but
3 you -- you're going to get this too. All of your work in
4 this case.

5 So six weeks of coming here and listening
6 and taking notes and being thrown in the back while we
7 argued and all of that comes down to two pieces of paper.
8 This is it. You speak to us through these two pieces of
9 paper, not these two because I've already answered these
10 and that would not be fair. But you get two pieces of
11 paper and there's some questions on here.

12 And the first one is pretty easy.
13 Mr. Emison and I don't agree on much. He was right about
14 that. But we agree on this. And that is: Was the
15 Plaintiff or Che-Val injured by the negligence of
16 Alejandro Ortiz Rios? Answer: Yes.

17 Now, let's talk about one more thing and
18 then we'll move on to our second of five themes, but they
19 go faster. You have been shown this picture a number of
20 times.

21 This is Plaintiff's case. This is it right
22 here. That's why it's blown up. That's why they prance
23 it up there every time somebody comes in, and they tell
24 them to point right down there. That's their case. If
25 you are not sure, if you are not compelled, if you are not

1 convinced, if you are not solid on this, they can't even
2 begin to prove causation in this case.

3 That's why we have seen it so many times.

4 Now, Mr. Emison just this morning said:
5 Remember when Ms. Ezell was standing right here and
6 Dr. Burton was here? And he said, You would have to be an
7 idiot to think that was hyperpigmentation. Well, that was
8 one of the times I was surprised that they didn't show one
9 of their high-tech videos with Dr. Burton calling me an
10 idiot. So let's see why that is.

11 That's because he didn't say it. That
12 would be the answer to that question.

13 And so I'm showing him the picture, not
14 that one, I'm showing him this picture. This one right
15 here, which I gave to all of you so that you could look at
16 it. Because when he and I were standing there, it was
17 very hard to see. And I gave -- and I was standing there,
18 this picture in my hand and he was standing next to me.
19 And what did he say? He said: I said it's hard to see in
20 this picture, but you can see it right there. Answer,
21 sure.

22 And then she showed -- oh, and we were
23 talking about -- just to give you -- we were talking about
24 Dr. Azikiwe, who had testified that Che-Val had
25 hyperpigmentation under his arm. And Dr. Azikiwe, who had

1 said he had hyperpigmentation on his back. But this was
2 what Dr. Burton said.

3 So I asked him: And she showed us this
4 mark right here -- and I pointed to this one, right
5 here -- and what did he say?

6 He said: I didn't say it. That's an area
7 of hyperpigmentation. That's why we didn't see a video of
8 Dr. Burton making fun of me for calling that
9 hyperpigmentation, because that's what he called it. He
10 called it hyperpigmentation.

11 And then I asked him: And this area of
12 hyperpigmentation down here, this lower mark, is this an
13 area of hyperpigmentation?

14 From that photo, it looks like it is.

15 And this would be in the area where his
16 pants would have hit him.

17 And I was pointing to this area right back
18 here, where his pants would hit him.

19 Yes.

20 And this mark here is in the exact same
21 location on his back that the mark on Plaintiff's blowup
22 is on the front.

23 And that's when he called me an idiot. It
24 wasn't that he denied that this was hyperpigmentation. He
25 said that was hyperpigmentation. It wasn't until I told

1 him that this line of hyperpigmentation -- and you can see
2 it going around Che-Val's belly -- is in the exact same
3 area as this area of hyperpigmentation. That was when he
4 was standing there, he didn't know what to do, he called
5 me an idiot; after he called it hyperpigmentation.

6 Now, the next thing we need to talk about
7 is proximate cause. Proximate cause. We've talked about
8 two of the elements -- or two of the issues that you need
9 to think about when you're thinking about what was the
10 proximate cause of Che-Val's injuries.

11 This is what the Judge is going to tell
12 you, that you have to find that Defendant's unreasonable
13 acts -- and we're going to talk about that in a minute --
14 were a proximate cause of Plaintiff's injuries.

15 So what have we talked about? We've talked
16 about the wreck itself. A wreck of this magnitude has a
17 95 percent chance of causing serious injuries. The wreck
18 alone, if we stopped right there, could have caused these
19 injuries.

20 What else have we talked about? The tire.
21 The tire clearly could have caused these injuries. The
22 same injuries were caused on another occupant in this very
23 accident. You can stop right there. If you aren't 100
24 percent sure that those two things did not cause these
25 injuries, it's over. Plaintiffs have not done their job

1 on proximate cause.

2 But we didn't stop there. Now, I think
3 this is important because Mr. Emison stands up every time
4 he gets a chance and he says, everyone in this case agrees
5 that the belt caused all of the injuries. So I wrote this
6 piece of paper out when he said that this morning and I
7 signed it. We do not agree that the two-point belt caused
8 all of Che-Val's injuries. Ms. Ezell.

9 So I hope he doesn't say that again because
10 we don't agree to that, and I don't know why he keeps
11 saying it. We believe these injuries were caused by the
12 accident, by the tire, or -- and again -- again, it comes
13 down to how hard did Ford work versus how hard did
14 Plaintiff work. So the other cause is the fact that the
15 belt was not used the way it was supposed to be used. It
16 was not properly positioned. That's the other potential
17 cause. You have three potential causes of this
18 accident -- of these injuries.

19 Now, before we talk about that, before we
20 talk about this clear issue of where the belt was, let's
21 just do a little comparison on how hard people worked.

22 So this is Mr. D'Aulerio, and he said --

23 I said, well, Mr. Emison has been happy
24 with your work. He has continued to retain you for 20
25 years.

1 And then he said, well, you can ask him.

2 And I said, well, I'm not going to.

3 And then, I can't read Mr. Emison's mind,
4 but I've been working for him for 20 years and I presume
5 he likes my work.

6 Now, what work is that? Mr. D'Aulerio came
7 in here and he did say, it was his opinion, to a
8 reasonable degree of engineering or physicist's certainty.
9 He did say that in this accident, Che-Val had the belt on
10 his hips. That's what he said. And I don't know what
11 Mr. Emison was talking about this morning with this model.
12 But Mr. D'Aulerio put this same guy in this chair and put
13 that belt on here and he said, that's where the belt goes.
14 That's proper belt use. But I guess Mr. Emison is now a
15 testifying expert, too, because he had came up here
16 earlier today and said, no, this is the -- the NTSB in
17 1986 on a piece of paper where they don't even have a
18 picture said, no, this is where you put the belt. That's
19 not evidence, ladies and gentlemen.

20 You remember what the evidence has been.
21 Every expert, irrespective of how much they have been paid
22 by Mr. Emison, has said that this is where the belt goes.
23 This is where the belt goes.

24 So, let's compare how hard people worked on
25 this issue. So Mr. D'Aulerio said, as -- as any good

1 testifier would:

2 I'm sure this belt was on Che-Val's pelvis
3 at the time of this accident.

4 So he and I made a -- we made a -- we made
5 a chart, another chart together. I said, I want to make
6 sure that I write down all of your reasons where you
7 believe that. So we'll always know what work you've done
8 to come to that conclusion.

9 We made this chart. And it says, belt
10 location -- and this is little -- on Che-Val, D'Aulerio
11 opinion. And this is the basis for it. No. 1, he looked
12 at the drawings -- and we're going to look at those,
13 too -- that were done by Dr. Azikiwe, Chief Taylor, Brian
14 Taylor and Dr. McNish. That was one basis. So he looked
15 at drawings.

16 The second one, he looked at that photo,
17 that photo that we just looked at that was taken,
18 Dr. McNish told you it was taken a while after the
19 surgery, this photo; and the reason you know is because of
20 the scarring. You know because of this scarring it's not
21 a week later, it's not two weeks later. This is a
22 substantial amount of time after this had occurred, and
23 you know that. You don't need an expert to tell you that,
24 but I brought you one and he told you that, but you don't
25 need it.

1 So then -- so this one -- so -- so it was
2 the pictures, it was that photo, and it was the
3 post-accident testimony of the Fulchers and Mr. Taylor,
4 who came on the scene after this -- the tire had blown the
5 seat, after the seat back had been moved forward by the
6 tire. And they all did say -- Mr. and Mrs. Fulcher and
7 Chief Taylor -- when I got there. Not before the
8 accident. Not at the time of the accident. When I got
9 there, the seat was right back behind his back. Well, of
10 course it was. It was -- it was broken by the tire. It
11 was blown out by the tire. It was pushed into his back by
12 the tire. Where else would it be? And the belt was
13 tight. Of course, it was. He had just been in an
14 accident where he went to the end of the belt and then the
15 seat caught up with him. That is not helpful testimony.
16 That doesn't say anything about what it looked like
17 before.

18 We have testimony of what it looked like
19 before, but Mr. D'Aulerio didn't look -- didn't use it.
20 Mr. Emison didn't use it.

21 And then I said, well, what about the belt.
22 What about the belt, Mr. D'Aulerio? You're an expert.
23 You're -- you're a belt expert and physicist.

24 And he said, I looked at that belt and I
25 couldn't tell a thing about it. There was dirt all over

1 it and you couldn't read it.

2 Now, think about Dr. McNish. Dr. McNish
3 not only read this belt, but he taught you all in about 2
4 minutes how to read the belt. He showed you. And then I
5 told him, you know, come down here and show these guys.
6 He read this belt. And, of course, Mr. D'Aulerio couldn't
7 do that because if he did, he wouldn't like the story.

8 So what else do we know? They brought
9 Dr. Burton.

10 Dr. Burton said: I am also sure -- I am
11 also sure that this belt was in the right position at the
12 time of this accident. I am also sure.

13 And I said: Really? How are you sure?
14 What did you do?

15 And he said -- well, let's just see what he
16 said. I told you I would paraphrase, I'm not going to.

17 I said: Okay, Dr. Burton. Now, you're
18 sure, where is anything? Where is any picture, any
19 document, any witness statement from before this accident,
20 where is there any evidence to support this opinion?

21 The evidence is -- this is the evidence --
22 here it is -- that the belt is made -- as you started to
23 ask these questions with me off today, you said that the
24 belt was made to be in those notches. That's where it's
25 made to be.

1 And I said: And remember the notches
2 Mr. Emison said that's not where the belt goes.
3 Dr. Burton said it did -- it is.

4 And when you put it on, that's where it
5 wants to be, in the area of the notches.

6 And then he took the dummy and he put the
7 belt on it, not where Mr. Emison put it this morning.

8 And then I said: But have you brought any
9 evidence other than -- other than your expert feeling that
10 that's where the belt wanted to be on this kid on this
11 day? You brought no actual evidence from which this jury
12 itself can judge that the belt was where you depicted it
13 in this photograph. And that was the photograph that they
14 have shown to everybody, the scar photo.

15 Answer: I brought no picture of anything
16 like that to show the jury. That's correct.

17 Search your notes. Search your
18 recollections. Think to yourself, talk to each other.
19 What did Dr. Burton bring? What did Dr. Burton bring? It
20 is not hard for you to remember what Dr. McNish brought.
21 And we're going to go through those, but it was a very
22 large pile. It was a very long PowerPoint. It was
23 Exhibit 363, and it was 60 pages. And he brought a lot.
24 And Dr. Burton did not show his work. Dr. McNish showed
25 his work.

1 And what did he show? What did he show?
2 Dr. McNish showed you the process by which he came to his
3 conclusions. He showed you that he started with the
4 injuries. He looked at all of Che-Val's medical records.
5 He himself, not his guy -- looked at his medical records,
6 and he figured out where he was injured so he could work
7 back from the injuries to figure out what happened.

8 Then he looked at his films, his MRIs, his
9 CTs, his x-rays. And from that -- and he drew this line
10 that you can see right here, that's the injury path. You
11 can draw a line -- you can't have Mr. Emison come in and
12 pick up the -- I don't know, he put it somewhere. He did
13 say, this is where the colon was. That's not testimony.
14 We had a doctor come in and show you where the injuries
15 were, these -- this path he said is where every injury
16 that Dr. Azikiwe said she corrected is in this path.

17 Then what did he do? He showed his work.
18 He built a 3D model. And from this model, there is no
19 question. This evidence, this evidence is better than
20 this evidence. This evidence is before he was repaired.
21 This evidence is the day that he was injured. This
22 evidence is built from the medical illustration, the
23 medical x-rays, the medical CTs, the medical RIs -- MRIs
24 that were taken on the day of the accident in order to
25 help Dr. Azikiwe get ready to fix it.

1 And on that day, you see this -- you see --
2 you don't have to -- you don't have to ask, you see where
3 the damage to his internal and external body is. And more
4 importantly, you see where his hips. You see where they
5 are.

6 And so -- you know, he also showed his
7 work. This was a big issue in the case. This was a big
8 issue in the case. I don't know why. But it did, it
9 turned out to be a big one. Sometimes you get these. How
10 much did he weigh? How much did he weigh? Mr. Emison's
11 experts picked the highest weight they could find and they
12 went with it, and that was their story and they were
13 sticking to it.

14 Dr. McNish saw that weight, he even made a
15 note of it. Mr. Emison asked him about it. He saw that
16 weight. But then it didn't make sense to him. Just like
17 it didn't make sense to Joe Kent when he looked at the
18 accident reconstruction. The weight didn't make sense.
19 Because these charts, this is how you can tell exactly
20 what your kid is going to be. And you don't jump off of
21 it and jump back on. And in order to be the height and
22 weight that the Plaintiffs say he was in this case, you --
23 you -- you -- he would have had to have been a completely
24 different kid, and -- and he wasn't. He wasn't. He
25 was -- he was on the 75th percentile for height and the

1 95th percentile for weight his whole life, and they want
2 you to believe except the day of this accident.

3 But Dr. McNish didn't accept being -- when
4 he saw there was a differentiation, he didn't accept that.
5 He actually did the work to figure out the answer, and he
6 showed you his work. He showed you his work. Dr. Burton
7 told you the weight he was paid to tell you. That's it.
8 He didn't tell you how he got there. What other work did
9 Dr. McNish do? He did a lot. He read the belt. He
10 showed you the plastic transfer on the belt. He showed
11 you that because that's where the plastic transferred, you
12 know, like CSI, right? He CSI'd the belt. He measured to
13 where that was. He knew how much webbing was in the belt
14 on the day of the accident.

15 And Mr. D'Aulerio, I said to Mr. D'Aulerio.
16 I said, Mr. D'Aulerio is one of the reasons you couldn't
17 read this belt because, you know, you didn't have a good
18 enough camera?

19 And he said, well, yeah, if somebody had a
20 better camera, they might have been able to see more.

21 Well, Dr. McNish had a better camera and he
22 was able to see more than Mr. D'Aulerio. And what he was
23 able to see was exactly how long this belt was. But he
24 didn't stop there. He took that belt and took the length
25 of that belt and he took the information that he got about

1 the height and the weight of the kid in this case. And he
2 put not just the kid, like Dr. Burton, but he put the
3 people on either side of him in there so that you could
4 understand truly what the environment was on the day of
5 this accident.

6 But why does this matter? Why does this
7 matter? This belt length. Why is it so important that
8 Dr. McNish showed you that? Why is it so important that
9 nobody for Plaintiff showed you that? Because when you
10 take a child the size of Che-Val and you put him in a belt
11 of 32 inches -- you saw this with the surrogate work --
12 there's extra belt. There's extra webbing. That doesn't
13 make sense. Dr. McNish said it doesn't make sense. So he
14 looked at the testimony of the people sitting to the left
15 and to the right of Che-Val. And in order to get all of
16 the evidence to match up, which is partly your job, he
17 said he had to be slouched for the belt to be in his waist
18 and for it to be snug. And that made sense with all of
19 the other work that he did. It made sense when you
20 compared it to the surrogate, the fact that he would need
21 to move around in order to be comfortable.

22 It made sense when he compared it to the
23 belt. It made sense when he compared it to where he saw
24 the injuries. And most importantly, it made sense when
25 you tracked those injuries through Che-Val's body. It

1 just made sense. And that's when an expert should really
2 stop working. Not when they get to the opinion that
3 they're paid to give. It's when the evidence all together
4 makes sense.

5 And that's exactly what he did.

6 Now, Mr. Emison made some comment today
7 about jackknifing, and I wrote myself a note to mention
8 that to you. And this is the section on jackknifing.
9 Mr. Emison said: I tried and tried with Mr. Burnett, but
10 he refused say that jackknifing was bad. Well, I
11 jackknife. Mr. Emison has jackknifed. Dr. Burton
12 jackknifed, almost fell off the chair. Everybody in this
13 case has jackknifed. Jackknifing isn't bad. Jackknifing
14 isn't bad. It's just a motion. It's just a motion. When
15 is it bad? When is it harmful? When there are forces
16 that are being applied in the wrong place through your
17 body, that's when jackknifing is bad. That's when it's
18 bad. I guess that's why Mr. Burnett wouldn't agree with
19 Mr. Emison that jackknifing is bad.

20 Okay. I need to talk to you now about all
21 of the evidence that we've brought that showed that this
22 belt was above the pelvis at the time of this accident.

23 But I think I'll take a break, if that's
24 all right, before we do that.

25 THE COURT: All right. Members of the

1 jury, let's take about a 10-minute break. During the
2 recess, of course, please continue to abide by my
3 instructions. Don't discuss the case. If you need to
4 step out and stretch your legs, that's perfectly okay, but
5 be back in your room in 10 minutes. All right. The jury
6 is excused.

7 (The jury was excused from the courtroom at 4:03 p.m.)

8 THE COURT: All right. Outside the
9 presence of the jury before we recess, I have also mailed
10 to you now the revised verdict sheet prepared by our
11 clerk. I've forwarded that to you. What I think I may do
12 is, just depending upon the length of the remainder of
13 argument, is we may break after you have finished and let
14 Mr. Lewis and Mr. Tenneson -- Tenneson -- Tessener argue
15 in the morning. But if I do that, I may want to start
16 about 9 o'clock. Does that caused anybody any --

17 MS. EZELL: No, sir.

18 THE COURT: -- problem?

19 We'll -- we'll wait -- we'll be in recess
20 for 10 minutes.

21 MS. EZELL: Your Honor.

22 THE COURT: Yes, ma'am, before we break.

23 MS. EZELL: I apologize. Mr. Colarusso has
24 to leave now to catch his plane, so he just wants to say
25 good-bye to the Court and ask permission to go.

1 THE COURT: I've enjoyed it. Of course.

2 MS. EZELL: Please let him.

3 THE COURT: All right. We'll be in recess.

4 (Court was in recess from 4:05 p.m.)

5 THE COURT: All right. We'll come back to
6 order if everyone is ready. All the jurors back?

7 MR. TESSENER: Yes, Your Honor.

8 THE COURT: Folks, do you think I should
9 tell the jurors -- I don't want them to start feeling
10 anxious; that my intent would be to recess for the day
11 when Ms. Ezell finishes.

12 MS. EZELL: That's just like closing. I
13 mean, just like opening.

14 THE COURT: We'll have two short arguments
15 in the morning and start at 9 o'clock. Do you think they
16 would like or want to know that?

17 MR. LEWIS: Probably.

18 MS. EZELL: Yes.

19 MR. TESSENER: Yes, Your Honor.

20 THE COURT: All right. Well, if everyone
21 agrees, I'll do that as soon as they come back in.

22 Let's bring the jurors back in.

23 (The jury entered the courtroom at 4:16 p.m.)

24 THE COURT: Members of the jury, before
25 Ms. Ezell resumes, just for your information and planning

1 purposes, there will be two more short arguments before I
2 give you my instructions. But what we're going to do is
3 break for the day when Ms. Ezell finishes talking with
4 you. Our plan is to start at 9 o'clock in the morning and
5 have the remaining closing summations at that time. Is
6 there anyone who cannot be here at 9 o'clock in the
7 morning? Does that cause anyone any hardship?

8 (No response.)

9 THE COURT: All right. Thank you very
10 much.

11 Is that a problem?

12 A JUROR: No, sir.

13 THE COURT: All right. The jury remains
14 with Defendant Ford.

15 Whenever you're ready, counsel.

16 MS. EZELL: Thank you, Your Honor.

17 Ladies and gentlemen, before we broke, we
18 were going to go through the evidence that we have brought
19 about the location of Che-Val Batts' seat belt just prior
20 to this accident. And unlike Mr. D'Aulerio and
21 Mr. Emison, I'm going to actually show you the testimony
22 from the people who were in the car with Mr. Batts. And
23 then I'm going to show you the work that was done based on
24 this.

25 So starting with Ms. Teresa Durham, also

1 called Nessie, question: Okay. And in your deposition
2 and earlier today, you indicated that the belt was around
3 his waist, correct?

4 Answer: Correct.

5 And he was hiding his cards from you and
6 you were hiding your cards from him, right?

7 Correct. And Nicholas Stone, who was
8 sitting on his left.

9 Question: And so on that day -- from page
10 6, line 16 -- and -- and he and I were reviewing his
11 deposition. Question: And where was his seat belt
12 located on his body? And then your answer was, on his
13 waistline. And is that correct?

14 Answer: Yes, ma'am.

15 So you've got the people on the -- the
16 person to the left of him and the person to the right of
17 him much -- in a much better position to tell you where
18 his belt was and -- and both care about how this case ends
19 and they both said it was in his -- it -- it was in his
20 waistline.

21 Now, there was a number of people who had
22 an opportunity to look at Che-Val's stomach after this
23 accident prior to the repair work and the picture that had
24 been shown to you. One of them was Jason Spruill. And he
25 was one of the EMTs. And I asked him -- he had been shown

1 a picture at his deposition, which is Plaintiff's Exhibit
2 122. And that's the drawing that Dr. Azikiwe had done.

3 And here it is right here. And it's hard
4 to see, but this is the belt right up here and the top of
5 the belt touches the bottom of his bellybutton.

6 And I asked Jason Spruill, Mr. Spruill, if
7 the jury wants to know what you believed the location of
8 this belt to be directly after this accident, then
9 Plaintiff's Exhibit 122 is the best information we have
10 about that, correct?

11 Yes, ma'am.

12 And Plaintiff's 122 shows a seat belt that
13 is located in the -- the -- the young man here who's not
14 the same size as Che-Val, but you would agree with me that
15 it's in his belly touching his bellybutton, correct?

16 Yes, ma'am.

17 And it's not on his hips.

18 No, ma'am.

19 Craig Perry, also an EMT: And what you did
20 is you drew a picture and -- and he actually was
21 responsible for a picture that was drawn and shown to
22 others. And that is this picture and those are his
23 initials, SCP.

24 And the question was: When you drew this
25 picture, you drew it approximately where you believed it

1 to be on this drawing -- which is not to scale, correct?
2 And if the jury looks at this and then they can be
3 confident that on the day that you gave this deposition,
4 this is to the best of your ability where you believe that
5 mark to have been?

6 Yes, ma'am.

7 Chief Brandon Taylor was asked -- he didn't
8 have a drawing -- but he was asked where he -- he was, as
9 you recall, the first person. He unbuckled Che-Val's belt
10 and he was the first person to see the bruising. And he
11 indicated it was just below his navel, maybe in line with
12 his navel. Did I read that correctly?

13 Yes, ma'am.

14 All right, sir. And then you also
15 indicated that the mark that was below or in line with his
16 navel was dark, correct?

17 Correct.

18 Indicative of bruising, correct?

19 That's right.

20 So that's three people at the scene. Okay.
21 Now, what other evidence did we bring about the fact that
22 this injury to Che-Val was not in line with his hips as it
23 would have been if his belt had been properly worn? Well,
24 Dr. Joe Burton prepared, you may recall, a number of
25 slides, and then he didn't show them. But I asked him

1 about them anyway.

2 And these slides, because they were
3 helpful, they show a couple things. And if you zoom in on
4 them, you can see that these are Che-Val's hips down here,
5 these are his lungs up here, and this is the location of
6 his injury, the major trauma to his stomach. And that the
7 importance being, obviously, that clearly the injury is
8 substantially above the hips.

9 If we look at another exhibit that
10 Dr. Burton prepared but didn't use, this shows Che-Val
11 post -- post-surgery. And you can see where the injuries
12 are on his -- still depicted here in this path, the same
13 path that Dr. McNish identified. And then, obviously, you
14 can see where his hip bones are.

15 This is an x-ray that was taken that I
16 thought was helpful, and this -- actually, you can see
17 that this was taken when Che-Val was seated in his
18 wheelchair. And what this shows you is that he's sitting
19 on his -- on his bottom, his hips are actually on the
20 bottom of the wheelchair. And yet we remember from
21 Dr. Azikiwe's testimony that if we count down three --
22 one, two, three -- that the injuries actually occurred
23 right here to his spine. And so comparing this level of
24 his spine to where his hips would be in this photograph,
25 you can see that there's a substantial difference in that

1 location.

2 And so what did all of this evidence tell
3 us about what happened during this accident and why does
4 it matter?

5 In order for Plaintiffs to prevail in this
6 case, they have to show that a properly worn seat belt
7 caused this accident -- caused these injuries. And
8 instead, all of the evidence, except where Dr. Burton
9 thinks the belt wanted to be and some pictures that are
10 clearly post-surgery, other than that, all of the evidence
11 that you've been presented with has indicated that the
12 injuries were above the hips and in the belly.

13 And so from that, Dr. McNish was able to
14 prepare for you this demonstrative of what happened in
15 this accident.

16 Now, Che-Val started out -- as I've
17 indicated in the chair, as Dr. McNish indicated, as the
18 people sitting next to him indicated -- with the belt in
19 his belly area and slouched down either to play cards, to
20 get room, because he was a kid. We don't know why he was
21 slouched. But we do know unequivocally that he was.

22 Then Mr. Rios hits the Escort and Che-Val's
23 body goes forward. And because the belt wasn't in this
24 notch where everybody except Mr. Emison says it belongs,
25 the belt does not catch the hip. It goes instead into the

1 stomach. And as the accident continues -- and -- and even
2 though there are four pictures here, this happens in a
3 blink of an eye. This is a hundred milliseconds. But
4 towards the end of that -- of that blink, you get to the
5 point where the belt has compressed the adipose tissue.
6 It has compressed the organs and it's getting to the
7 aorta, which is what is depicted here.

8 And finally, the spine is fractured by the
9 force of the belt if you take -- obviously, we have not
10 depicted here nor did Dr. McNish put anything in here
11 about whether or not the seat -- what the impact was of
12 the seat and of the tire. But this is just another
13 alternative explanation for how these injuries occurred if
14 you just take into account what was in front of Che-Val
15 and not what -- what was behind him.

16 And so during this accident, his hips did
17 not catch the belt. And as I told you in opening
18 statement, it caught the first bone that it could, which
19 was his spine.

20 Now, Dr. Burton said that the belt started
21 out where it was supposed to be, on the pelvis.

22 And I asked Dr. McNish, why is Burton
23 wrong?

24 And this is the -- this is the answer right
25 here: Because if you jackknife violently over a properly

1 placed lap belt, you cannot get the injury path, which is
2 not disputed in this case. That is the path of injury.
3 That's where all of the injuries occurred. Every x-ray
4 you've seen, every MRI you've seen, the 3D model that
5 you've seen, that's the path of the injury; from the front
6 of his stomach to the back of his back, that's the path
7 that the belt took either because the belt was going into
8 his back or because there was pressure from behind. But
9 in any event, we know that's the path. And you can't get
10 that path with the belt there. This is how a lap belt is
11 supposed to work.

12 And Mr. Emison makes fun of this. He makes
13 fun of this. He thinks that this is ridiculous. That --
14 that somebody who's properly seated with the lap belt
15 on -- in the proper location and they go forward in this
16 jackknife motion, they're going to be injured. The
17 problem is, is that he's the only witness that we've had
18 that testified to that. What we've actually heard from
19 all of the real witnesses, is that when a lap belt
20 performs like it's supposed to, it grabs your pelvis and
21 it keeps you with your -- keeps you in line to receive the
22 least possible injuries during an accident.

23 Now, I asked Dr. McNish: Can a correctly
24 worn lap belt cause these injuries on this injury path to
25 Che-Val?

1 And he said: No, ma'am.

2 And I asked him: Why not? And I didn't
3 bring that part, so I'm going to do what I said I
4 wouldn't.

5 And he said, because if the lap belt
6 catches the pelvis, what's going to happen is you may --
7 you will remember this. You may see -- if it's a severe
8 impact, you'll see shattering to the pelvis. You'll see
9 injuries in the area where the lap belt was. And so the
10 injuries are down here, then that's where the lap belt
11 was. And if the injuries are up here, then that's where
12 it was. Sometimes the easiest explanation is the truth.

13 Mr. Burton did a surrogate study. He
14 didn't show this picture, but I showed it. And that this
15 is actually a picture of what Che-Val looked like at the
16 time of this accident. If you look at the testimony from
17 Nicholas, who was seated on his right, at Teresa, who was
18 seated on his left, they say it was in his waist. If
19 you -- if you listen to what the people afterwards, the
20 people who took the belt off, the people who treated him,
21 who rendered him aid said, they said it was in his waist.
22 If you look at his injury path, this is where the belt
23 started.

24 The only thing -- the only thing that
25 Plaintiffs have brought you is a postsurgical picture that

1 shows hyperpigmentation, scarring from surgery, shadows.
2 We don't know what it shows, but we know, based on looking
3 at what's inside Che-Val, it doesn't show where he was
4 injured.

5 Okay. So the second point was that Ford
6 did not cause these injuries. And the reason that Ford
7 did not cause these injuries, we've also -- we've just
8 reviewed. But -- now, I can't find it. Okay. But the
9 other thing that is important is that Plaintiffs have
10 brought you no evidence at all of what would have happened
11 if Che-Val had been in a three-point belt. And in order
12 for them to prevail in this case, they have to test, they
13 have to evaluate, they have to bring you evidence of what
14 the risks and benefits of their alternative design. It's
15 not Ford's alternative design. It's Plaintiff's
16 alternative design.

17 Read the instructions. The Judge is going
18 to give them to you. And it's going to say, in order for
19 Plaintiff to prevail, they have to prove that the
20 alternative feasible design would have prevented these
21 injuries. You have no evidence on that. You have no
22 evidence under these crash forces at this Delta-V in this
23 direction with this kid in a three-point belt what would
24 have happened. You don't have the evidence that you need
25 to answer that question in favor of them.

1 So the next question you'll be asked to
2 answer on this jury form has two very important points.
3 It's a -- it's a big question. It covers the majority of
4 the evidence that we've heard in this case. Did Defendant
5 Ford act unreasonably -- and we haven't talked about that
6 yet -- in designing the 1999 Ford Escort proximately or
7 legally causing the injuries? So we've just talked about
8 cause. We've talked about all of the things that prove
9 that Ford's belt was not given the opportunity in this
10 case to do the job that it could do. It was not put in
11 the right place. And if you don't put it in the right
12 place, then the belt didn't cause the injuries.

13 Now, we're going to talk about the next
14 component of that, which is unreasonableness or more
15 appropriately, reasonableness.

16 And the witness, the -- the key witness on
17 this issue was obviously Roger Burnett. Roger Burnett
18 told you that Ford makes good cars. He uses them. He
19 told you about his kids. He drives them around in them.
20 And that there's -- he told you that Ford was reasonable
21 in their rollout of these belts, that it was important to
22 have two-point belts in part of the fleet so that Ford and
23 Honda and Toyota and everybody else could evaluate how
24 these three-point belts that they were rolling out slowly,
25 whether or not they were -- they were causing more harm or

1 causing more good. You heard about the NHTSA "Go slow"
2 policy. You know that when you change the safety
3 environment of a vehicle, then you have to do it slowly so
4 that you can make sure, like with the -- with the very
5 powerful airbags that we heard Mr. Burnett talk about,
6 that you're not actually causing more harm than you're
7 preventing.

8 Now, there's some law that I want to focus
9 you on as it relates to this. Now, some of you might go
10 into the jury room and say, we know that there was an
11 injury. We know that there was an injury. And so there
12 must have been something unreasonable or this injury
13 wouldn't have happened.

14 The law says -- not Ms. Ezell -- not
15 Ford -- the law, North Carolina, Judge Lock will tell you.
16 He will instruct you that you cannot infer an unreasonable
17 design just because an injury happened. That is not
18 enough. That is all you have, but that is not enough.

19 So what do we know about reasonableness?
20 Ford had an obligation -- and Mr. Emison stood here a
21 couple hours ago and said it boggled -- boggled his mind.
22 It boggled his mind that Ford would take this position.
23 And I submit that whether or not he gets it or not is
24 irrelevant.

25 What matters is, is that if you take the

1 last lap belt out of a car, then that car in 1999 cannot
2 protect children under 80 pounds. Children under 80
3 pounds in 1999 should have been in a car seat or they
4 should have been in a booster seat. And if they weren't
5 in a car seat and they weren't in a booster seat, then
6 they were too small for adult belts, three-point belts.
7 And if you put a three-point belt in every car in America
8 in 1999, you would do more harm than good. Because
9 children, who are overwhelmingly the people who sit in the
10 middle seat in the back, would have been put at risk not
11 just for abdominal injuries, but we heard this from every
12 expert, you talked about it in jury selection, the -- the
13 belt going across the neck and creating an opportunity
14 during an accident to get a broken neck, which is a far
15 worse outcome than a broken back.

16 Now, the Plaintiffs say, we don't want you
17 to think about those other kids. There's another kids
18 involved in this case. This case is about Che-Val. And
19 Che-Val wasn't under 80 pounds, so I don't know why Ford
20 keeps bringing this up.

21 Well, ladies and gentlemen, Che-Val wasn't
22 always too big for a booster seat. This is a picture, you
23 remember this. He has the puppies. You remember this
24 picture with Che-Val with his dad. And you remember this
25 picture, this is Che-Val's little baby cousin. What

1 Plaintiffs want you to do in this case is to forget that
2 there are any other children in the world or that there's
3 any other size that you could be, and they want you to
4 think that just because Che-Val got injured that Ford
5 didn't have a responsibility to protect younger Che-Val,
6 Che-Val's cousins. That is just not the case. You cannot
7 go to an accident and then decide whether or not something
8 was reasonable. We don't Monday morning quarterback
9 design. What do we do? We look at the decisions in the
10 context they were made.

11 So let's look at 1999. What do we know
12 about 1999? That Ford up to 1999 had been working hard to
13 make their cars safer in crashes, to make them safer and
14 more convenient. They had been doing all of these -- all
15 of these safety advances were put in to the Escort between
16 1990 and 1999. Roger Burnett came and told you about
17 that. And because this issue really matters, you have
18 copies of a lot of these.

19 Now, in order to decide whether or not a
20 company is reasonable, you have to compare it to other
21 companies. That's the only way -- you know,
22 reasonableness is what you're going to be deciding. So
23 was Ford a reasonable manufacturer? How do you know if
24 Ford was a reasonable manufacturer? You compare Ford to
25 other manufacturers. And so that's why that evidence was

1 given to you. And Mr. Burnett, unlike Plaintiff's
2 experts, spent a substantial amount of time reviewing the
3 industry in 1999.

4 Now, you may recall, I asked Mr. D'Aulerio,
5 who came in here and said he was absolutely, positively
6 without question sure that this belt was defective. And I
7 said, but, what about the state of the art? What was
8 reasonable in 1999? Didn't you look at that? How can you
9 come in here and say Ford was unreasonable in 1999 if you
10 don't know what anybody else was doing in 1999?

11 And so we made this chart. It's over there
12 on that flip chart. And I took him through every vehicle
13 that's just in the peer group, that's just the same-sized
14 vehicle in 1999. And he couldn't remember all of them,
15 but the ones he remembered all had two-point belts. And
16 then the Corolla, I couldn't help it, he said that was a
17 two-point belt. And I said, well, no, actually, it
18 wasn't. Because even when he's -- we can't have him be
19 wrong.

20 So what do we know about their expert on
21 this issue? He didn't know. He got it wrong. And he
22 came in here and even though he didn't know what was going
23 on in the industry at all, he said Ford was not
24 reasonable.

25 What did we do? Roger Burnett looked --

1 and he didn't look this up on the Internet. You can't
2 Google the 1999 Escort peer group.

3 He looked this up by first researching what
4 vehicles were sold in 1999, then determining what kind of
5 vehicles they were. Then he went and he looked for
6 pictures of those vehicles or he went and looked at those
7 vehicles to determine whether or not they had two-point or
8 three-point belts in the center-rear seating position.
9 Because before we come into court and tell you that Ford
10 was reasonable, we need to be able to tell you what the
11 rest of the industry was doing. And this -- you have this
12 handout -- this is what the rest of the industry was
13 doing.

14 And I said so, Mr. Burnett, you've looked
15 at all this, tell me -- put it in a way that I can
16 understand it, how did Ford compare to the rest of the
17 industry? And he said, I'll make you a pie chart,
18 Ms. Ezell. That will be an easy way for you to get it.
19 88 percent of the vehicles in this peer group that were
20 sold in 1999 had the exact same belt that the Plaintiffs
21 say was defective. Almost every car on the road in 1999
22 was sold with this same belt. They don't want you to
23 focus on that. That's why their expert did this: I don't
24 know. I can't remember. I didn't look at it. Well, I'm
25 sorry, Mr. D'Aulerio, I'm sorry, Mr. Emison, you don't get

1 to come into a court of law where you have the burden of
2 bringing the evidence and say, I'm sorry, I didn't look.
3 I'm sorry, I don't remember. You actually, it turns out,
4 have to do the work. You have to do the work. You have
5 the burden -- it's not easy, they call it a burden for a
6 reason -- of proof. And proof means you have to bring
7 evidence.

8 Well, Ford brought evidence, and the
9 evidence is, is that Ford was running with -- that's what
10 we say was -- was the same as 88 percent of the industry.
11 88 percent of the industry. But we didn't stop there. We
12 didn't stop there in our determination of what was
13 reasonable. I said, Mr. Burnett, in addition to just
14 small family cars, what about the rest of the industry,
15 like some of the manufacturers don't make small family
16 cars? And he made me a list of the brand names that sold
17 vehicles with two-point belts in the center. So Honda
18 sold them. BMW sold them. Mercedes sold them. Kia sold
19 them. And then he totaled this up for me. And he said,
20 of the vehicles sold, 16 million -- 16.5 million were sold
21 under brand names that had the same belt as in this car.
22 And a whopping 150,000 did not. And then I said, but
23 actually, let's go a little bit deeper. Doesn't Volvo
24 actually belong to Ford and doesn't Saab actually belong
25 to General Motor in 1999? Yes. So actually 100 percent

1 of the brands selling vehicles in 1999 sold this exact
2 same belt.

3 And I said, okay, Mr. Burnett, let's put
4 that on a pie chart so everybody can understand it. He
5 said, no, I'm going to make you a bar chart. And this is
6 what he gave us. In 19 -- and this is only for the peer
7 group. This is only for the peer group, two-point centers
8 in the rear, 1.69, 1.7 million. Three-point centers --
9 three-point rear-center belts; 232,000.

10 And -- and what Plaintiff wants you to do,
11 they didn't say there's anything wrong with the belt,
12 right? It's not -- it didn't break. It didn't fail. It
13 didn't -- wasn't at the wrong angle. There's nothing
14 wrong with it. The only thing they have proven about that
15 belt is that it had two points, and so did all of these
16 other vehicles.

17 Now, what else do we know about this
18 vehicle? We know that this vehicle, which is the product
19 in this case, when it left Ford's custody and control, had
20 an owners guide. Ford can't follow vehicles for 11 years
21 through rental cars, through their second owner,
22 through -- through junkyards, through whatever and make
23 sure that people have owners manual. But what they can do
24 is they can put them online. They can put them online,
25 and they did.

1 And Mr. Emison has been dauntless in his
2 showing you of Mr. Snyder's papers from the 1960s. That
3 has been a moment relived numerous times in this trial.
4 And Ford can't do anything. Ford can't go -- they can't
5 follow their cars around and make sure they have owners
6 manuals in them, and they can't get in the car with you
7 and make sure your kid is buckled in it right. They
8 cannot do that. There's a limit to what Ford can do.

9 But when Ford sells a car, they can give
10 you the information that you need to make sure that things
11 are used properly. That's -- that's all they can do.
12 That's what everybody else in the industry did. That's
13 what Ford did. We have had no testimony from anyone that
14 Ford's instructions weren't the same as the industry, that
15 anybody else did a better job. Mr. Emison wanted them to
16 put in the owners guide that if you put the seat belt on
17 wrong, you'll have your bowels eviscerated and stuff like
18 that. And Mr. Burnett told you -- okay, sorry,
19 Mr. Emison, I know you're trying to win this lawsuit and
20 all, but we don't put that in our owners guide because we
21 want people to actually wear their belts. And if you tell
22 people -- if you make it like one of those commercials for
23 drugs where the side effects sound far worse than whatever
24 it's curing, people are not going to wear their belts.
25 And that, without question, would be the worst possible

1 thing Ford could do.

2 So what did they do? They said, don't sit
3 like Che-Val was sitting. They didn't say that. But they
4 said it. Mr. Emison said, well -- to Mr. Burnett, well,
5 why don't they say sit up -- sit up straight? The answer
6 is because you cannot sit with the lap belt snug and low
7 as possible around your hips and not in your waist unless
8 you're sitting up straight. I mean, the -- the -- the
9 lengths to which Mr. Emison will go to try to make Ford
10 the bad guy here is -- it's unbelievable.

11 And yet he doesn't -- and then when he was
12 talking to Mr. Burnett, he didn't even show him this page,
13 where there's just one after another after another
14 warning, information, instruction on how to use -- how to
15 use seat belts. Every time Ford learned something new
16 about safety, they put it in here so that people could
17 have access to it if they wanted it. This is an exhibit
18 in the case. You're welcome to read it. But without
19 question, Ford did as much as they could to protect
20 Che-Val in this case.

21 And it -- it -- it is not the law -- it is
22 not the law that if you come up with a newer, better
23 design that you have to take the old cars off the market.

24 And you'll remember that Roger Burnett told
25 you about all of the different time periods in which

1 decisions were made regarding seat belts.

2 So Phase 1. Phase I was when they brought
3 three-point belts to the front seat. So I asked
4 Mr. Burnett: In 1974, if a car didn't have a three-point
5 belt in the front seat, did the government require Ford to
6 go or anybody -- Ford, Toyota, Chevrolet, anybody -- to go
7 out and say, You got to give me all those back; we have to
8 recall those cars; those are no good anymore? No, he
9 didn't. No, the government didn't say that.

10 The NTSB, which is the only document that
11 Mr. Emison shows you over and over and over again that
12 didn't come from Ford, they didn't even say it. Nobody
13 said, go out and bring in the cars with those belts. Why?
14 Because you've seen the studies. Lap belts do a fine job.
15 They do a fine job. And -- and if you are only worried
16 about adults, then you want to use a shoulder belt. But
17 until you're not just worried about adults, you can't.

18 Phase II. Mr. Burnett, did they have to
19 recall all the vehicles after they made sure that starting
20 in 1990 vehicles had three-point belts at the rear
21 outboard position? No. Well, certainly, Mr. Burnett, in
22 2008, when they said no more lap belts at all -- you may
23 remember Mr. D'Aulerio, right, two-point, bad,
24 three-point, good. I mean, that was -- if he got paid a
25 bonus for every time he said that, he would not have to

1 work for a year. I mean, that was all that man said;
2 two-point, bad, three-point, good. But he never wrote a
3 letter to NHTSA, he never tried to do anything to get
4 two-point belts off the road. Nobody did. Nobody did.

5 In 2008, do you guys remember getting a
6 recall letter to turn in your classic cars, to come in and
7 have your vehicles, you, know fitted with three-point
8 belts? No. Because those belts are legal, they are safe,
9 and there is nothing wrong with them.

10 And so when you're thinking about Ford's
11 reasonableness, you have to compare Ford to the rest of
12 the industry in 1999. And when you do that -- and when
13 you do that, you will find that the industry
14 overwhelmingly sided with Ford. And the reason that they
15 did has been clearly pointed out, and that is that you
16 have to protect children.

17 So what changed? What changed between 1990
18 and 2008? Why did something that was a bad idea in 1990
19 become a good idea in 2008? Between those years -- and --
20 and -- and we've heard testimony about this from everyone.
21 Between those years, children who used to be too small for
22 adult belts, children who were safe in lap belts as long
23 as they were seated properly, if you put them in adult
24 belts had the belt go across their neck. This was worse.
25 This was a worse problem.

1 Ford cannot make a change that makes it
2 worse for other children. And the fact that they made
3 that reasonable decision in 1999 doesn't mean that 11
4 years later when that car gets in an accident and Mr. Rios
5 paralyzes Che-Val that there's all of a sudden something
6 wrong with a belt that everybody else in the industry was
7 using in 1999.

8 So if we go back and we look at the jury
9 form. Oh, and I -- and Mr. Emison mentioned this, so I
10 apologize; I have got to show it you.

11 He said Ford is the only one -- Ford --
12 Ford doesn't trust its own statistics and Ford is the only
13 one that took this position. That's what he said.

14 Well, Mr. Emison brought you the NTSB, a
15 1986 report. It doesn't -- he doesn't even have anything
16 in the '90s that speaks to the issue of rear lap belts.
17 He doesn't. He has nothing.

18 But we do. And so we have this study which
19 found -- let me read it for you. It also shows that there
20 is no measurable difference between lap belt and
21 lap-shoulder belt performance in terms of reduction of
22 injuries to and deaths of rear-seat occupants.

23 So we talked about that study. What else
24 did we talk about? We talked about this exhibit, which
25 is -- is in evidence, "Patterns of Misuse in Safety

1 Seats." And in this document it talks about how if don't
2 have lap belts in your cars, then your kids are not going
3 to be properly retrained. And this document is dated
4 1996, the same year that this vehicle's production
5 started.

6 In 2002, it's still a problem. In 2002 --
7 all this evidence is available to you, you've heard
8 testimony about this. In 2002, people were not using
9 booster seats. So certainly it was a problem in 1999.

10 How else do we know that Ford was
11 reasonable? In the years between the time this car was
12 sold and the time this accident occurred, you have this
13 Exhibit Ford 330, I handed it out to you. Ford made three
14 pages of safety improvements. Every time there was a
15 safety -- Ford Puts Safety First is not just a marketing
16 slogan. This has been borne out by the testimony, by the
17 documents that we've provided to you.

18 The idea that Ford would not do what was
19 safest is something that is created for purposes of the
20 money that's being sought in this case and not from the
21 evidence that's been presented to you.

22 Mr. Emison is very fond of that 1966
23 document where he says, Ford should have just put lap
24 belts -- taken -- gotten rid of lap belts and put
25 three-point belts in. This is a 1972 document. This is

1 what they were doing in '72. They didn't know what the
2 right kind of three-point belt was. They were still
3 thinking about it. They didn't know if you needed a
4 different three-point belt in the back seat than you
5 needed in the front seat. It would have been a safety
6 travesty to get rid of lap belts in 1966 when Snyder was
7 writing those papers. That would have been the worse
8 possible thing you could do. Because the only option at
9 that point was no belt at all. Or this contraption which
10 did not turn out to be a very good idea.

11 So when it comes to time for you to decide
12 whether or not Ford was reasonable, remember this:
13 Remember that Ford followed all of the laws that it had to
14 follow. It sold a legal vehicle that the seat belt
15 complied with all of the safety standards, that Ford, as
16 Mr. Burnett told you, rolled their vehicles out over time
17 so they could get real-world feedback on how this new
18 safety environment was affecting their occupants.

19 I don't know if you want to read these, but
20 you can. All this pile is -- this pile alone -- is the
21 compliance information to show that the seat belts in this
22 car complied with 208, 209 and 210. It shows all of the
23 measurements, all of the testing, all of the work that
24 Ford had to do in order to be legal.

25 Plaintiffs have brought you this pile,

1 right here in my hand, information and evidence that shows
2 there was anything wrong with this seat belt. The only
3 thing wrong with it that it was mispositioned during this
4 accident. That's the only thing. And that Ford could not
5 have helped.

6 So when we talk about reasonableness, when
7 we talk about causation, we talk about No. 2 on this
8 questionnaire. And the answer to this question has to be
9 no. For both reasons. Ford was not unreasonable for its
10 conduct in 1999 and -- and it did not cause these
11 injuries.

12 Now, you will get to No. 4 on this -- on
13 this form because -- well, you may not. You may not find
14 that Mr. Rios was -- was liable. But you will get to No.
15 4. But it's very important for you to understand this:
16 The law in North Carolina says that if you find both Ford
17 and Rios responsible, then Ford has to pay whatever
18 Mr. Rios can't pay. So he doesn't even have a car legally
19 in his name. So when I asked you at the beginning of my
20 closing, why do you think Plaintiffs sued Mr. Rios and
21 then didn't put a -- put a case on against him? It's
22 because Ford picks up the check if you find Ford at fault
23 in this case. Make no mistake about that. That's the law
24 in North Carolina.

25 Now, this one, this one -- this one is

1 offensive. And I mentioned it earlier. But Mr. Emison
2 stood up here for hours and more than 15 times -- because
3 I -- I wrote it down -- said on this next question, Ford
4 is trying to blame the boy. That's what he said, "blame
5 the boy."

6 This is not Ford's question. This is the
7 Judge's question to you. And I'll read it: "Was the
8 Plaintiff's injury proximately caused by an alteration or
9 modification made to the belt in the Escort by someone
10 other than the Defendant Ford after it left Ford's
11 control?" And this is the important part "and not in
12 accordance with Ford's instructions and specifications?"
13 It's a lot of legal stuff. What does it mean?

14 Was Che-Val wearing the belt the way it
15 says to wear it in the owners manual? Was the belt in his
16 stomach at the time of the accident? Plaintiffs have been
17 trying to get somebody to blame Che-Val so that they could
18 stand up and make that argument. They think it will make
19 you mad at Ford. Because they think that if you think
20 we're blaming him, an 11-year-old kid who is 16 now, that
21 you'll be mad and that you won't do your job.

22 And they tried that during the testimony.
23 And it didn't work then and it doesn't work now.

24 Question by Mr. Emison to Dr. McNish: Just
25 to be clear of your answer, you're not critical of

1 Che-Val, true?

2 Answer: I've made the observation that the
3 way in which the belt was being used was improper and led
4 to his injuries. I wasn't asked to be critical of anyone.
5 I wasn't asked to determine whether the people on either
6 side of him should have made -- made he was used -- made
7 sure he was using it properly.

8 I would have corrected my children if they
9 were wearing it wrong. I have grandchildren and -- but I
10 have no -- I'm not critical of him, no, sir.

11 This is the only evidence that came from
12 the witness stand and not from the lawyers about blaming
13 Che-Val for anything. And he tried to get Dr. McNish to
14 do it and Dr. McNish says, I don't -- I'm not here to say
15 somebody did something wrong. I'm saying that the product
16 was not used in the way that it was intended to be used.
17 And as it turns out, the law says, if that is true, you
18 must answer this question yes.

19 And when you do, Ford is out. As they
20 should be. Because this product was not used as it was
21 intended. And there's no blame there. That is not about
22 blame. It is about analysis. It is about showing your
23 work. It is about showing up and answering questions.
24 It's about digging down and not relying on sound bites.
25 It's about putting on evidence and not just putting on

1 sympathy and hoping that people will forget evidence is
2 necessary.

3 Now, what did Dr. McNish say about the
4 importance of this issue of misuse? So as between the
5 importance of a two-point versus a three-point belt on the
6 one hand, or a properly worn versus an improperly worn
7 belt, which one is more determinative of whether somebody
8 is going to be injured in a crash?

9 Answer: There's a lot of objections.

10 An improperly misplaced belt in this
11 accident is why he received the injuries you described.

12 It is the misplacement of the belt, not the
13 type of belt that matters. Dr. McNish isn't the only one
14 who thinks that. Dr. Burton agrees. You would agree with
15 me, then in order for any technology to be effective, it
16 not only has to be has to be properly designed, but it has
17 to be used correct.

18 Answer: Certainly.

19 So -- and you -- you clearly agree with me
20 that children can be injured if they are seated in an
21 adult lap-shoulder belt and it doesn't fit them properly.

22 I certainly would agree with that.

23 So misusing a belt, whether it's a
24 two-point belt or a three-point belt, even Dr. Burton
25 says, not a good idea. Not what the manufacturer intended

1 and clearly going to put you in a position to be injured.

2 All right. Now, the next issue is punitive
3 damages. Punitive damages are intended to punish Ford.
4 The Plaintiff wants you to be mad at Ford. They want you
5 to say that even though Ford did the same thing as the
6 rest of the industry, even though Ford followed the law,
7 that they should be punished for their behavior in 1999.
8 That's what Plaintiff wants you to do. What does the law
9 say you have to consider if you get to that issue? And I
10 don't think you will. You have to consider exactly what I
11 just mentioned, you have to consider whether or not Ford
12 was the same as the rest of the industry. You have to
13 consider whether or not Ford followed the law with regard
14 to the belts.

15 And -- and Mr. Emison brushed over this
16 when he was talking about punitive damages, but the
17 purpose of punitive damages is to punish and it's also to
18 deter. And he said, we got to make sure this doesn't
19 happen again. Well, it's not going to happen again. In
20 2008, the law was changed. No car is going to ever be
21 sold again in the United States with two-point belts. His
22 whole premise for why he wants you upset, why he wants you
23 mad, why he wants you to punish Ford doesn't even exist.
24 But the case is about money. That's what it's about.

25 So here's the -- the jury form where we are

1 right now.

2 This will be the death of me.

3 We've answered No. 1. There's been no
4 agreement so far. I don't even know if Mr. Rios' counsel
5 is going to disagree with No. 1. We don't know yet.

6 But we know that the answer to No. 1 is
7 yes, that Alejandro Rios sat right there and took
8 responsibility for this accident and Che-Val's paralysis.

9 We also know that the answer to No. 2 is
10 no. That Ford was not unreasonable. They were just like
11 everybody else and they followed the law and they didn't
12 cause these injuries. Because you got to get past the
13 tire. You got to get past the accident. You got to get
14 past the misuse before you can get to causation, and they
15 didn't bring you enough evidence to get past those. And
16 that's their burden. That's their burden.

17 The answer to No. 3 is easy. Did they --
18 did he use the belt in the way it was intended? No, he
19 didn't. And the reason that there are easy outs is
20 because the law says a product has to be given a chance to
21 do what it's intended to do. And if you don't give a
22 product the right chance to do it, you can't hold it
23 accountable if it doesn't. That makes sense.

24 Punitive damages, the answer is no.

25 There's nothing Ford did that rises to the level -- read

1 the instruction. Look at what Ford has to have done to be
2 accountable for punitive damages. There's no evidence in
3 this case. The only person who -- who is bombastic and
4 loud and -- and excited about you finding punitive
5 damages, the only person who says Ford has done anything
6 willful or with conscious disregard is Mr. Emison. No
7 witness did. And that's where we get our evidence, from
8 the witness stand.

9 So if you get to damages, if you get to
10 damages, and you -- and you might because Mr. Rios is
11 accountable and Mr. Rios should be accountable, then you
12 have the information that you need. Nobody questions that
13 Che-Val needs additional things. Nobody questions that
14 Che-Val's medical expenses were what they were. We didn't
15 contest that when the witnesses were here, and we don't
16 contest it now. The one thing we contest without
17 exception is that Ford is not responsible for them.
18 Because in order for Ford to be responsible for the
19 damages, they have to have proven that Ford was
20 unreasonable, that Ford caused these injuries and that
21 this belt was not misused. And they didn't do it.

22 And so the question of damages is something
23 you have all the evidence you need, but it's not something
24 I think will apply to Ford.

25 So where are we? At the end.

1 As you go and retire to the jury room --
2 oh, I need to tell you one more thing. Sorry, we're not
3 quite there.

4 So the burden of proof, it's -- it's a
5 burden and it should be. But because the Plaintiff has
6 the burden of proof in this case, they, believe it or not,
7 get to go first and they get to go last. So after I sit
8 down, they're going to say stuff that I cannot respond to,
9 no matter how much I disagree or how much I think the
10 evidence does not support it. And I imagine they will say
11 some things that I would probably like to respond to. But
12 you have heard the evidence, and you just listen carefully
13 to whether or not they just say it or whether or not they
14 have proved it.

15 Now, because they go last, there are a
16 couple questions which I think they should answer. Oh,
17 and -- and also Rios goes after me, and you may have
18 noticed he's taking shots at Ford the whole time, so I
19 imagine there's going to be two more arguments after me
20 that I won't be able to respond to. And just remember to
21 rely on the evidence and to rely on your memories and --
22 and the law. The law will help you so much.

23 But -- and we talked about this just a
24 little bit. You'll see this on your jury instructions.
25 Mr. Emison went over the six things that you have to look,

1 you know was this reasonable, you know, did Ford follow
2 the law, did they follow the industry? You can do that.
3 You have all the evidence you need. You know what
4 reasonable is.

5 But the one thing we didn't hear anything
6 about was that Plaintiff had to bring proof, Plaintiff had
7 to bring proof, Plaintiff had to bring proof -- that
8 they're alternative feasible design would have prevented
9 these injuries. Plaintiff didn't put anybody on that was
10 able to say that they had a document, that they had a
11 test, that they had a schematic, that they had a computer
12 simulation, that they a wild idea that if Che-Val had been
13 in a three-point belt in this accident on this day in a
14 three-point that he would not have been injured the same
15 or worse. But we did.

16 Dr. McNish came in and he showed you -- he
17 brought you pictures. He copyrighted them. That was
18 apparently of some import. And what he showed you was, if
19 you put a three-point belt on and you put Che-Val in the
20 exact same position that we know he was in because of his
21 injury path, and you have this same crash, this is what
22 happens: Beginning, middle, end. By the end of that
23 accident, in the belt that Plaintiffs say would have
24 prevented everything and permitted Che-Val to walk away,
25 at the end of everything, Che-Val would be in the same or

1 worse position, and they have brought nothing, nothing to
2 say otherwise. Check your notes. Look through your
3 notes. They have brought nothing.

4 So if the three-point belt won't solve the
5 problem, once again, they have not done their job.

6 So now we're at the end. And the questions
7 I would want answered by Plaintiff in the time that they
8 have left are: Why do you imply that two-point belts
9 cannot protect people in frontals when there's been an
10 accident in this case that we've heard some conversations
11 about, the 2008 accident that Che-Val and his mom and his
12 cousin were in, and his cousin was in the middle seated
13 position wearing a two-point belt and he was fine?

14 Why do you say that Che-Val cannot be
15 injured in a three-point belt when we know in 2008 when he
16 was smaller and didn't fit the two-point belt, that his
17 head went forward, that the brain kept going when his head
18 stopped, kissed the inside of his brain and he was at risk
19 of a closed-head injury? How can you say Che-Val would
20 not have been injured in a three-point belt when Che-Val's
21 already been injured in a three-point belt in his short
22 life?

23 Now, it wasn't the same result, but it
24 could have been. One-mile-an-hour Delta-V difference and
25 it could have been a very different result in 2008.

1 I would want to know why they didn't ask
2 anybody about that tire. I want to know why they didn't
3 talk about that. If everybody coming forward hurt the
4 person in front of them, why, when they were bringing you
5 evidence, candid, honest, complete, accurate evidence, did
6 they not address that tire? Their client's family said
7 the tire was there. Nobody cares more about how this case
8 ends. And they stand up and say, don't believe this
9 family, believe the Fulchers? I would want to know where
10 that comes from. The only motivation I can come up with
11 is money.

12 But I would want to know the answer to
13 that.

14 We've already talked about why you sue Mr.
15 Rios and then don't actually go after him, but I would
16 want them to answer that.

17 And I probably would want to know why their
18 belt expert, the guy who testifies against every seat belt
19 ever made, couldn't read that belt and y'all could? I
20 would probably want to know the answer to that.

21 Those would be some questions that would be
22 on my mind as the Plaintiff stands up here tomorrow to
23 give his brief final comments.

24 Now, on behalf of all the hard-working
25 folks that have been here, Mr. Colarusso apologizes for

1 having to go, we want to thank you so much for your
2 attention and your dedication.

3 The jury system may not be perfect for
4 everyone, it may be inconvenient, but it -- it is
5 rewarding to -- to speak for your community. And we feel
6 like we've been given a fair opportunity to show you
7 actually evidence on all of the issues that you'll be
8 asked to decide, and we will sit here and we will take
9 your verdict.

10 We appreciate your being here to speak on
11 behalf of this community. And I ask you to keep in mind
12 as you leave, that the system that we have is a good one.
13 It's a good system. The rule of law is good and you can
14 look to that at any point in your deliberations if you
15 have questions.

16 And if at the end you don't feel good about
17 what you are doing, not out of sympathy but out of doing
18 what's right, then go back to the law and go back to the
19 evidence and you'll figure it out.

20 After I'm done and they come at me a couple
21 more times and I don't get to stand up again, please go
22 back to the jury room, review the evidence, do justice in
23 this case, return a complete defense verdict for Ford
24 Motor Company.

25 Thank you very much.

1 Thank you, Your Honor.

2 THE COURT: Thank you. All right. Members
3 of the jury, we will take our evening recess at this time.
4 And as always, please continue to abide by my
5 instructions. Remember not to discuss the case among
6 yourselves or with anybody. Don't allow anybody to
7 discuss it with you or in your presence. Please continue
8 to keep your minds open. You've heard the evidence. You
9 have not heard all the arguments. You've not heard my
10 instructions as to the law. Remember not to do any
11 research on your own into any matter connected with this
12 case. That includes any research online.

13 We're going to start tomorrow at 9 o'clock.
14 If you would just report to your jury room at 9 o'clock.
15 We'll send for you immediately and get started.

16 All right. Have a good evening, folks.
17 See you in the morning. The jury is excused.

18 (The jury was excused from the courtroom at 5:17 p.m.)

19 THE COURT: All right. In the absence of
20 the jury, before we recess, I neglected to ask you folks
21 if you had reviewed the proposed verdict sheet and if you
22 felt that it was in proper form, particularly the
23 instruction between the issues. If you answered this
24 issue yes or no, then answer the next or skip to the next,
25 that sort of thing. I wanted to make sure that was