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5 Court.

6 Good afternoon. I've written down "good
7 morning."

8 Again my name is Michael Haggard. Along with
9 my father, Andy Haggard, whom you've already met,
10 we have the privilege and the honor to represent a
11 little girl in front of all of you and her name is
12 Loren Hinton.

13 And on May 15, 2001, 20 months ago, Loren was
14 the victim of a near drowning at the Defendant's,
15 2331 Adams Street Corporation, swimming pool.

16 Loren is a beautiful, sweet, innocent little
17 child, and the evidence will show she has suffered
18 one of life's most devastating and crippling
19 injuries. Loren will never talk, walk or eat on
20 her own again.

21 The evidence in this case is about 2331 Adams
22 Street Corporation, who owned these two apartment
23 buildings and this swimming pool. Ladies and
24 gentlemen, the evidence will show that they were
25 careless, they were reckless, and they were

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22 Street Corporation, who owned these two apartment
23 buildings and this swimming pool. Ladies and
24 gentlemen, the evidence will show that they were
25 careless, they were reckless, and they were

1 indifferent towards the safety of human life and,
2 most importantly, children and that is why this
3 incident occurred.

4 The evidence in this case will be clear that
5 2331 Adams Street Corporation had the duty to
6 maintain their premises in a safe condition for
7 the safety of their tenants.

8 The evidence is absolutely clear that on the
9 day in question and in the months before they had
10 a defective pool gate, had a defective fence on
11 their premises.

12 And ladies and gentlemen, the evidence will
13 show that this is no surprise. They were warned
14 continuously about this defective pool gate. They
15 admit that they knew about the defective pool
16 gate. They were warned specifically a child could
17 die or drown, and the evidence will show that they
18 did nothing about it. Nothing.

19 They ignored all the warnings and maybe most
20 importantly they never told the tenants who could
21 do something about it and take it into their own
22 account that there was a dangerous condition on
23 this property.

24 And when that type of company's negligence,
25 when their recklessness collides with absolute

1 innocence such as Loren Hinton, this is the
2 catastrophic result: A little girl's -- who was
3 two years and ten months old at the time of the
4 incident, not two years old -- life has been
5 forever changed and her family's life has been
6 forever changed.

7 That is what this case is all about, ladies
8 and gentlemen, these two images: This broken pool
9 gate that you will learn violated the law because
10 it was not secure and did not self lock, combined
11 with a little girl.

12 I want to introduce you to the parties in
13 this case so you get a chance to know who the
14 parties are. As I already told you, my father and
15 I represent Loren. We also represent Lonnie and
16 Lorri, Loren's parents in their case.

17 You're going to get a chance to meet Loren in
18 just a few minutes. We're going to bring Loren in
19 so you can meet her. You're taking a week out of
20 your life, away from your families, away from your
21 busy work schedules, and you need to meet Loren
22 Hinton. You need to see her. You need to know
23 what she's all about.

24 Obviously we do not have her in the courtroom
25 everyday. She has too many medical needs, too

1 many therapies to go through, but we're going to
2 bring her in also at the end of the trial.

3 The Defendant in this case is 2331 Adams
4 Street Corporation. They owned, controlled and
5 operated this apartment building at the time of
6 this incident.

7 In the six or seven months beforehand, the
8 evidence will show that they are responsible for
9 their inactions or their actions of their
10 managers, their employees and their agents.
11 Whether their employees should have fixed this,
12 knew about this, did they tell them, they are
13 responsible for what happened on their premises.
14 That is the law.

15 What is the evidence in this case? Ladies
16 and gentlemen, I think there are four points, four
17 incredibly important points that you need to know
18 about.

19 One, they violated the law. There is one
20 reason and one reason only for pool gates and pool
21 fences at apartment complexes or hotels. Not to
22 make light or anything, but they're not to keep
23 animals out of the pool area. They're to keep
24 children out. That's their one sole purpose.

25 You will hear from an aquatics expert in this

1 case who will talk to you not only about the law
2 in South Florida and Hollywood but all over the
3 country. That's why legislators pass these laws
4 so that we have gates and we have fences because
5 kids run around, especially when they're out at
6 the pool.

7 You will hear a lot about supervision in this
8 case and I will get to that in a moment. Ladies
9 and gentlemen, make no mistake about it, pool
10 gates and pool fences are to keep kids who aren't
11 at the pool area from getting in. That's their
12 purpose.

13 The evidence is overwhelming that they
14 violated every law applicable to pool gates and
15 pool fences at the time of this incident.

16 Number two, they were warned about it. You
17 will hear from several tenants who live right next
18 to this pool who said to the manager, a man named
19 Frank Griesau, fix that fence, fix that fence.
20 I'm worried about my own children. I have a
21 couple kids and if one of them runs this way, they
22 might get in that pool.

23 That is the evidence. You will hear that
24 they told them about a little toddler slide, a one
25 year to three year old Little Tyke toddler slide.

1 The evidence will be that it had no business being
2 in that pool area. It's not a pool slide. It
3 draws smaller kids to it. It's colorful. You
4 will see the slide and you will see pictures of
5 it.

6 But maybe more important than all of that,
7 ladies and gentlemen, is that the Defendants
8 admit, the manager of this apartment complex
9 admits I knew it was broken. I knew it was a
10 problem for kids and I told the man who hired me.
11 I told the man who told me what to do, who came
12 and collected the rent, a man named Andy
13 Finkelberg, who obviously is an envoy for the
14 family that was involved in this corporation, told
15 him we got to fix this gate.

16 Ladies and gentlemen, they had a fence
17 company out here to look at it before this
18 incident, the manager did. And Andy Finkelberg
19 told him, the evidence will show you, let's wait
20 till after the summer when people don't use the
21 pool as much. Let's wait till we have the money.

22 And you saw the results of what that
23 conscious decision yielded. It changed a little
24 girl's life forever.

25 But almost in an ironic and foreshadowing

1 twist of fate, you will hear testimony tomorrow
2 morning from the Pinero family, who lived right
3 across from this pool area, that a month or two
4 before Ricardo Pinero is outside playing with his
5 children, a month or two before Loren's tragic
6 accident, and he sees another different three year
7 old girl leaning over the pool next to this
8 toddler slide.

9 Ricardo Pinero jumps over the fence, pulls
10 this girl back from falling in the pool, carries
11 her outside the pool area. And Ricardo's wife
12 Janet, who will be the second witness, told Frank,
13 the manager who the Defendants are responsible
14 for: What are you waiting for, a little girl to
15 drown?

16 A month-and-a-half later, Ricardo Pinero
17 pulled Loren Hinton out of that pool because in
18 the meantime this corporation did nothing to fix
19 the fence.

20 The picture, ladies and gentlemen, that may
21 sum everything up for you is a picture taken by
22 the investigating police officers. It shows the
23 fence on the day of the incident wedged back
24 against a bush totally broken, shows the crime
25 scene tape, shows the police officers next to the

1 fence, and it shows this slide. And worse than
2 anything in the world, it shows Loren Hinton's
3 shoes.

4 I want to talk to you about the day of the
5 incident and explain this apartment complex to you
6 as best I can. Lorri Hinton worked as a school
7 bus driver you heard and she picked up her
8 youngest daughter Loren, who was two years and ten
9 months at the time, and her son, Lonnie, Jr., who
10 was six years old at the time or five years and
11 eleven months, picked them up at day care.

12 And Lorri came home to 2331 Adams Street
13 where they lived -- and just so you get some
14 bearings of this apartment complex, let me try to
15 explain it to you. We have an aerial over here
16 that shows the outline of the apartment complex
17 and we also have a diagram here.

18 The Hintons lived on the Madison Street side
19 of the apartment complex. There is a gated
20 entrance right over here and a parking lot over in
21 this area. That's where they usually parked.
22 They came in that gate and the stairs were here
23 and they lived up here.

24 On the day of the incident, Lorri came home
25 with her two kids. They walked in about 5:30 and

1 they came to this area between the two buildings.
2 You will hear this area called the play area.
3 That's where all the kids --

4 And by the way, there were 10 to 15 kids in
5 this apartment complex and they all played. They
6 all knew each other and kind of grew up together
7 and they played in this area. They played
8 kickball. They played hide-and-go-seek. They
9 played any game you can play.

10 And Lorri congregated with some of her
11 neighbors, talked about what neighbors talked
12 about, their jobs, lives, children; talked for
13 several minutes as their kids dropped the book
14 bags down and played with their friends and talked
15 about how their day care went and everything like
16 that and played games.

17 Lorri told the kids after a few minutes, come
18 on, guys, let's go see your dad. Lonnie was in
19 school at the time studying but he was upstairs at
20 home.

21 So Lorri went up the stairs with the children
22 and came down to the apartment. At that moment
23 Lonnie was coming out with his barbecue grill and
24 he was going to cook out for the family and he
25 brought out his grill.

1 The kids threw those book bags in the
2 apartment and went down with their dad. As much
3 as Lonnie would like to think that they wanted to
4 come down and spend time with dad, they wanted to
5 go down and play with their friends.

6 Again they went down and Lonnie set up the
7 grill right down in the play area. The two kids
8 were playing hide-and-go-seek and playing with all
9 their friends.

10 Again the testimony will be there were ten or
11 so kids down there, ages three to eighteen, and
12 that there were several adults down there, four or
13 five adults, who were the same ones that were
14 talking to Lorri and the same ones that were
15 talking to Lonnie, and unfortunately later on the
16 same ones who congregated by the pool when Loren
17 was rescued.

18 Lonnie finished cooking, turned to his kids
19 and said, You guys finish up now. I'm going to
20 come back and get you. I'm going to take the food
21 up. I'm going to come down and get you. Finish
22 up with your friends. And he goes directly
23 upstairs with a friend helping him with his
24 grill.

25 There will be testimony from several

1 witnesses at this apartment complex that anytime a
2 friend would go to the bathroom, go run and answer
3 their phone or do anything, they all watched each
4 others kids. They did the best they could as
5 working families and they would all watch their
6 kids.

7 The testimony will be Lonnie did not need to
8 say, hey, watch Loren right now, watch Lonnie,
9 Jr., right now. The kids were playing together
10 with all these other families and all these other
11 adults were down there.

12 Lonnie went upstairs, walked down the hall,
13 opened his door, took the lambchops off the grill,
14 put them on a plate, walked inside, put them on
15 the table, kissed his wife and turned and said,
16 I'm going to go get the little ones. Got a glass
17 of water, turned around and heard an awful scream,
18 heard footsteps down this hallway and heard this
19 (indicating).

20 He opened the door and it's little Nicholas,
21 the Pinero child, saying, Toookie drowned, Toookie
22 drowned. And that's Loren's nickname.

23 Parents obviously ran and followed this boy
24 down to the pool area and lived every parent's
25 absolute nightmare as they saw Ricardo Pinero

1 breathing into Loren's mouth trying to resuscitate
2 her.

3 Lorri fell to the ground on her knees and
4 just started praying. Lonnie tried to do what he
5 could. And as always the paramedics, as they
6 somehow can, arrived and restored a pulse and they
7 took little Loren to the hospital. And that whole
8 apartment complex gathered in this area to pray
9 for little Loren.

10 And Loren made it through. She made it
11 through but unfortunately that night the doctors
12 told Lonnie and Lorri that she would never be the
13 same. She would never ever be the same.

14 Ladies and gentlemen, this complex is
15 important to understand. It was a gated complex,
16 meaning that every inch of it was fully gated or a
17 high fence, and these children could play without
18 the risk of going into the street, without the
19 risk of someone coming in and taking them.

20 They were steel gates that you had to have a
21 lock to get in. The manager will testify that he
22 fixed those gates because it was great for
23 everybody to be able to play and have no danger
24 inside.

25 The evidence will show that in the tragic

1 days after Loren's near drowning for the first
2 time ever, as Lonnie and Lorri went back and forth
3 from the hospital to their son who obviously was
4 very traumatized by this, they found out for the
5 first time from the neighbors who lived on the
6 other end of the apartment complex that this gate
7 was broken, these neighbors had told the manager,
8 another little girl had almost drowned. So if it
9 wasn't enough to deal with what was going on, they
10 learned all this after.

11 The evidence will show you no one bothered --
12 the apartment complex, the manager -- bothered to
13 tell the people in this building, hey, we've got a
14 broken gate, watch out, we're going to fix it but
15 we want you to be aware of it.

16 There is no evidence in this case at all that
17 they ever warned them and gave them a chance to
18 know about this. They consciously kept this
19 decision to themselves and I'm going to tell you
20 why that's important.

21 You have a couple issues to decide in this
22 case, ladies and gentlemen, and the first issue is
23 is the apartment complex negligent in failing to
24 maintain this gate.

25 We would humbly submit to you the evidence in

1 this case is overwhelming. The Defendants even
2 admitted in this case -- The first question is are
3 they negligent. We feel you will have no problem
4 with that.

5 The second question is does their negligence,
6 their conscious disregard for human life to ignore
7 these warnings, these prior incidences, does it
8 rise to the level of punitive damages. We feel
9 the evidence again is overwhelming on this issue.

10 And ladies and gentlemen, let me tell you we
11 have the burden of proof on those issues and we
12 embrace it. We embrace it because the evidence in
13 this case is overwhelming.

14 We have to prove that -- like you heard
15 before the scales of justice, we have to weigh
16 them a little bit more on our side. We feel we
17 will when you hear all these warnings and all
18 these admissions.

19 But let me tell you something else. The
20 defense in this case -- and we know this because
21 of not only Mr. Kennedy's voir dire but because of
22 the depositions we have taken -- the defense in
23 this case is let's blame the parents. Let's blame
24 the parents.

25 Well, let me tell you something, the defense

1 has the burden of proof on that. They have to
2 prove -- To give one percentage of negligence on
3 Lonnie or Lorri Hinton, they have to prove the
4 preponderance of the evidence on that.

5 And ladies and gentlemen, when you receive
6 the evidence in this case and you compare what
7 this apartment complex knew, the warnings they
8 had, their total inactions, the fact they just
9 ignored it and they never told the other parents
10 about it so they could do something about it,
11 there is no negligence on these parents who are
12 going through this tragedy. No negligence at
13 all.

14 There will be arguments that, hey, we should
15 watch our kids all the time. The parents never
16 knew about this extreme danger, not even a hint of
17 it. The Defendants knew about it intimately and
18 did nothing about it.

19 At this time I would like to turn your
20 attention to the issue of damages. Loren was two
21 years and ten months at the time of this
22 incident. I think in voir dire someone talked
23 about at a certain age how could they remember
24 things.

25 Loren was at that age where if you start a

1 journey, she's at the start of everything:
2 School, friends, boyfriends, loves, sports, go on
3 and go on and on through life, and she will never
4 ever be able to experience those things that she
5 was entitled to.

6 But I will tell you something, Loren is a
7 special kid and she is a fighter. And while these
8 injuries are tremendously tragic and catastrophic,
9 you're going to meet and you're going to know what
10 Loren does everyday, and you're going to see how
11 she has improved and what these parents and her
12 are championing together.

13 And at this time, Your Honor, if I could have
14 your permission, I would like the jury to meet
15 Loren.

16 THE COURT: You may.

17 (Thereupon, LOREN HINTON was brought into the
18 courtroom in the presence of the jury.)

19 MR. MICHAEL HAGGARD: Thank you. And if any
20 of you all cannot see Loren just to say hi, if
21 they could stand, if you would like.

22 This is Loren. You will probably hear the
23 rest of the case that her name is Tookie. Nobody
24 calls her Loren, it's always Tookie. And this is
25 the beautiful child that this case is all about.

1 And you're going to get to see videos of
2 Loren, videos of her accomplishments and physical
3 therapy and all that medical care is doing for
4 this little angel.

5 And we wanted you to meet her today and see
6 her at the end of the case which you will, but you
7 will be hearing a lot about her even though she
8 won't be here with you all, but I promise she will
9 be back.

10 Thank you, Astrid.

11 Lonnie and Lorri, we'll let you all step out
12 a little while.

13 (Thereupon, LORRI, LONNIE and LOREN HINTON
14 exited the courtroom.)

15 MR. MICHAEL HAGGARD: Ladies and gentlemen,
16 we wanted the parents to step out because we're
17 going to talk in earnest about what this child's
18 going through and it's something that they live
19 with everyday and don't really need to hear
20 about.

21 Loren has suffered an injury that is so
22 devastating and so catastrophic that you will hear
23 evidence she is trapped in her own body. She is
24 awake. She is alert. In her treating doctor's
25 words, Doctor Lucy Cohen, who you will hear

1 testimony from I believe Friday, she is totally
2 conscious of her surroundings. She is trapped in
3 that little body.

4 And this week your job is somehow to measure
5 this little girl's life, not only at this stage
6 but ten years from now, twenty years from now.
7 Your job this week is to evaluate a life through
8 every stage of life.

9 You are going to deal with damages in the
10 past, from the day of this incident, the
11 experience of this incident up until now, and then
12 you are going to be asked to talk about damages
13 50, 60 years from now.

14 You're going to have to bring your common
15 sense into this courtroom and your experiences to
16 compensate Loren Hinton. If you could -- and I
17 always say this. Juries are powerful. Juries are
18 so powerful. They're the backbone of this great
19 country. But they aren't all powerful because if
20 they were all powerful you all would simply wink
21 and magically put her back to May 14 and you all
22 would get to go home and, most important, she
23 would be okay.

24 But you can't do that. And the only way that
25 we have in this jury system is to somehow make her

1 whole for these damages, make her whole. And I
2 will come back to that.

3 Damages in this case are divided up into two
4 different areas. One is called economic damages.
5 This is where your note pads really come in handy
6 because we can give you some numbers and they're
7 down to the last cent.

8 The economic damages are really packed into
9 three categories. What are Loren's past medical
10 bills? Loren was injured on May 15, 2001. Her
11 past medical bills up to about the start of trial
12 are \$700,000.

13 Ladies and gentlemen, I can tell you that
14 that has changed since I've been up talking to you
15 because every minute, every hour Loren's medical
16 bills go up because she has constant ongoing 24
17 hour care. But for purposes of giving you a
18 number, \$700,000 is what you will receive in
19 evidence and I do not think there's any dispute
20 from the defense on that.

21 The next element is her future earning
22 capacity. Loren will never work in her life. She
23 obviously had the right, the privilege to go work
24 in whatever profession she wanted. And although
25 we're talking about numbers, it's always important

1 to consider, as much as sometimes we don't like
2 working, the experience of it, the experience of
3 being a judge, the experience of being a police
4 officer, the experience of doing what all that you
5 all do.

6 She will never have that. There may be an
7 argument to what degree she would have that in the
8 future or not degree and all that. Ladies and
9 gentlemen, in a case of this magnitude it's
10 inconsequential. She's never going to work.

11 And we believe conservatively, you will hear
12 from an economist on this issue though, damages
13 are also around \$700,000 or a little bit more, so
14 that's important for you all to keep in mind.

15 The economic damages that are most critical
16 are her future medical care costs. From this date
17 forward what does it take to take care of Loren
18 Hinton, to give her the basic medical care that
19 she needs.

20 Let me tell you what that is, ladies and
21 gentlemen, and again there is really no dispute
22 from the defense on this. She has 24 hour skilled
23 nursing care. Astrid was one of the nurses. She
24 has several. 24 hours a day she has it.

25 As you can see, she has a tracheotomy to help

1 her breathe. Skilled nurse has to change that,
2 clean that and deal with that.

3 Loren will never ever eat again through her
4 mouth. She is fed through her stomach through a
5 tube. Skilled nurses have to change that, have to
6 deal with that.

7 Loren goes through several therapies a day
8 that are absolutely not only beneficial but great
9 for her. She goes through physical therapy. You
10 will meet her physical therapist who will testify
11 this week that what they do is they try to keep
12 Loren from getting too stiff, from getting
13 contracted because she can't control her arms and
14 her legs, so they give her physical therapy.

15 Ladies and gentlemen, you will see these
16 tapes -- and we will not show you hours of tapes,
17 we're just picking out one day that Loren goes
18 through -- and you will see that Loren experiences
19 an awful lot of pain. And it is not easy to look
20 at, but you have to look at it to understand what
21 this little girl goes through not only now, but
22 goes through for the rest of her life.

23 She has respiratory therapy. Because she
24 cannot cough, because she cannot swallow, she
25 builds up secretions in her throat and the

1 respiratory therapist has to put a tube into her
2 throat several times a week to clear that out in
3 what is called deep suctioning.

4 It's all difficult to look at but it's all
5 critical, critical to Loren's life and her
6 continued improvement which you will hear how much
7 she has improved in the last 20 months.

8 Medications, ladies and gentlemen, I won't
9 even begin to start the list. She has so much
10 medication that she needs for pain, when she
11 becomes agitated when she's in different
12 surroundings, when she needs to be calmed down,
13 she needs them for the rest of her life.

14 And surgeries. Unfortunately because of
15 Loren's orthopaedic disabilities, she's going to
16 need different surgeries on her hips and different
17 areas of her body during the course of her
18 lifetime.

19 Ladies and gentlemen, Loren gets all of this
20 now. All we are asking, because we believe humbly
21 the Defendants are responsible for this, just give
22 her the care she gets now. Please don't stop it.
23 Please don't take it away.

24 You will hear from an expert economist in
25 this case, Doctor Fred Raffa, who's written

1 numerous articles and books. And how do you
2 decide what amount of money now will take care of
3 her 50, 60 years from now because obviously we
4 deal with --

5 One thing we all know about medical care is
6 it's expensive and it's not getting cheaper, and
7 so Doctor Raffa, who will be the only economist
8 that you hear from in this case, his testimony
9 will be unrebutted.

10 He will testify to you that if you invest an
11 amount of money now, by the end of this jury trial
12 when you are done, if invested, that will take
13 care of Loren's basic care needs.

14 Ladies and gentlemen, that number is not
15 small. That number to take care of Loren, this
16 ongoing 24 hour care, is \$36,927,351.

17 And let me just tell you, if Loren has a
18 complication that no one knows about right now,
19 that's not covered in that. If she decompensates
20 for some reason, that's not covered in that.
21 Unforeseen problems are not covered in that.

22 And when we go through this plan and you see
23 this plan, you will see things that we didn't put
24 in there even though we know she will need it
25 because we can't tell how many times she'll need

1 it.

2 So this is basic, ladies and gentlemen. This
3 is what she gets now and a couple other things
4 that she absolutely deserves in equipment. And it
5 is high but, ladies and gentlemen, as you have
6 seen this is no simple case. This is no simple
7 case.

8 The last issue that you will decide is the
9 non-economic damages, the intangible damages. You
10 will hear testimony. You will receive the medical
11 records. And most importantly, you will see with
12 your own eyes what Loren goes through.

13 You all can think of this better than I can,
14 but she will not experience life like she should
15 have. And one of the elements that the Judge will
16 instruct you on at the end of the case is what is
17 called the loss of the capacity to enjoy life.
18 Loren has lost it almost completely.

19 She will never have that first kiss. She
20 will never hear that first boy tell her that he
21 loves her. She will never have kids. She will
22 never have grandkids. Every experience that we
23 cherish, whether it's a sunset or whether it's
24 just time alone reading a book, have been taken
25 from her.

1 You somehow as this jury have to decide the
2 assessment of her life. The economic damages are
3 easy, ladies and gentlemen. They may be big and
4 they are, there is no question about it, but they
5 are undisputed.

6 This area is where you sit back and you judge
7 this girl's life and what it could have been and
8 what it should have been and how do you compensate
9 her for it.

10 The Judge will instruct you that you will be
11 dealing with such things as pain and you will hear
12 testimony from all her therapists, all her nurses,
13 her doctors. You will see the videos of what she
14 goes through.

15 And it's your job as jurors, your
16 responsibility and I know it's not easy, but you
17 have to look at it and then deal with it and
18 compensate her for it, her suffering, her mental
19 anguish, how do you deal with her disability.

20 These are all words that have been in our law
21 for over 100 years and they're in there because
22 juries and people like yourselves have to make
23 these difficult decisions.

24 And ladies and gentlemen, I think as my
25 father said, you can't come back here every five

1 or ten years and see how Loren's doing. That's
2 very important to a number of issues in this
3 case. You can't come back here and decide that.

4 You're going to have to decide it this week
5 and we're going to do our best to put on that
6 evidence and show you what we think that this
7 little girl's life could have been.

8 This decision, the economic damages, you will
9 see the numbers. You have written them down. We
10 will give them to you again in closing. But this
11 decision on assessing her life is going to be
12 yours. Every decision is yours but this one is
13 something you're really going to have to think
14 about.

15 I'm almost done, but there's one issue on
16 damages I would like to address with you and that
17 is the one damage defense that at least I can
18 think about.

19 Ladies and gentlemen, the testimony from
20 Loren's treating doctor who's been with her for
21 several months taking care of her is that Loren,
22 if given this medical care that she so richly
23 deserves, can live a normal life expectancy
24 because all this medical care takes care of her
25 and prevents the problems.

1 This case has been pending for one year and a
2 half. The evidence will show that the defense one
3 month ago hired an expert or hired a doctor to
4 testify about one thing. The evidence will show
5 that this doctor will come in this courtroom and
6 sit on that stand and say don't worry about all
7 that medical care, Loren's hurt so bad she's going
8 to die early. You don't need to give her all that
9 medical care.

10 Ladies and gentlemen, this doctor spent three
11 days working on this case, spent 20 minutes
12 evaluating little Loren, and was paid \$15,000 to
13 render that opinion. I think at the end of the
14 case you will know why. Because that 36 million
15 dollars is critical to Loren Hinton and it's a lot
16 of money.

17 This doctor's opinions will be challenged to
18 the utmost by myself and my father. And we humbly
19 believe that the evidence is overwhelming from her
20 treating doctors, her medical team that has been
21 with her, that she deserves this medical care if
22 anybody deserves anything.

23 At the end of this case, ladies and
24 gentlemen, we will come back to you with those
25 questions of whether 2331 Adams Street Corporation

1 is negligent.

2 We believe the evidence is overwhelming,
3 whether Lonnie Hinton had any knowledge about this
4 defective gate is overwhelming. He did not.

5 Ladies and gentlemen, the responsibility in
6 this case we humbly believe the evidence will show
7 you by a preponderance of the evidence is that
8 2331 Adams Street Corporation is totally
9 responsible for these catastrophic injuries.

10 Thank you for your time today and thank you
11 for your time this week.

12 THE COURT: Mr. Kennedy.

13 MR. KENNEDY: Good afternoon, ladies and
14 gentlemen.

15 Again my name is John Kennedy and I represent
16 the 2331 Adams Street Corporation.

17 What we want to do is explain to you the
18 situation that has occurred here with respect to
19 the 2331 Adams Street Corporation from the time it
20 was formed, from the time that it was purchased by
21 the Finkelberg family through their corporation,
22 and the time that the incident involving Loren
23 Hinton occurred on May 15 of 2001.

24 I've met Mrs. Hinton now on many occasions
25 and she's a very likeable woman, I've met

1 Mr. Hinton and he's a very likeable man, and we
2 are in no way saying that they don't care about
3 their children.

4 But what we are going to be saying to you is
5 that Mr. and Mrs. Hinton made a decision that was
6 an unreasonable decision that a two-and-a-half
7 year old child could run around within the fenced
8 in area of this apartment complex unsupervised.
9 Mr. Hinton has testified to that and Mrs. Hinton
10 has testified to that.

11 Again they're nice people. We believe that
12 they love their children. But they have also made
13 a tragic decision here. It was an unreasonable
14 decision to allow a two-and-a-half year old child
15 to run around this apartment complex
16 unsupervised.

17 Ladies and gentlemen, this is the apartment
18 complex that is known as the 2331 Adams Street
19 complex. Here you're going to see the Adams
20 Street side and over here is the Madison Street
21 side and you can come in from either side.

22 And as this blowup shows, this merely is the
23 fenced in area and there are parking lots adjacent
24 to the north and south side of the complex. And
25 the parking lot areas themselves are not fenced

1 in.

2 However, this building here where Mr. and
3 Mrs. Hinton lived is on the Madison Street side
4 and all the way over here on the Adams Street side
5 is where the pool was unfortunately where Loren
6 Hinton was found.

7 As you can see, this is a two story complex.
8 Mr. and Mrs. Hinton lived on the second story of
9 the Madison Street side. They lived in apartment
10 number 26.

11 And there are going to be some disputes,
12 ladies and gentlemen. It is not black and white
13 as to what exactly did occur. There is testimony
14 from the Hintons' next-door neighbor, Mrs. Goldin,
15 that she saw Mrs. Hinton arrive home with her
16 children from school as they walked by her
17 apartment complex.

18 The interesting thing here, ladies and
19 gentlemen, is that this two story unit on the
20 Madison Street side, there's a gate right here and
21 this is the gate Mrs. Hinton has testified she
22 came in. And Mrs. Goldin lives here and Mr. and
23 Mrs. Hinton lived here.

24 So if the testimony is accurate that she
25 walked down here to this side of the complex and

1 then walked into her apartment, Mrs. Goldin would
2 never have seen her.

3 The testimony from Mrs. Goldin is that she
4 saw Mrs. Hinton coming home from school at
5 approximately the time that she said she did with
6 her two children and they went into the apartment
7 complex.

8 Another issue that is very important here,
9 ladies and gentlemen, is that nobody, nobody is
10 going to come in here and testify that they were
11 watching Loren Hinton on the day that the accident
12 occurred.

13 And in fact, the testimony of Mrs. Hinton is
14 going to be that once she brought her children up
15 to the apartment, she never went back downstairs.
16 So Mrs. Hinton cannot and will not testify who was
17 downstairs when her children were downstairs and
18 Mr. and Mrs. Hinton were up in their apartment.

19 The testimony from Mr. Hinton will be that
20 there were some children playing in the area, but
21 he will admit that he was not depending upon any
22 of those children to supervise his children at the
23 time the incident occurred.

24 And in fact, he admits that Tookie could
25 sometimes watch herself and in fact he admitted

1 that they felt safe that anywhere within their
2 fenced in area where all these apartment complexes
3 are it was okay for Tookie to go when she was
4 two-and-a-half years old.

5 There's one specific woman, again
6 Mrs. Goldin, who Mr. Hinton testifies that he made
7 a lambchop for and she was down there at the time
8 and Mr. Hinton presumed that she was watching
9 Tookie when he went upstairs.

10 Well, we have taken Mrs. Goldin's deposition
11 and Mrs. Goldin's going to testify that that's not
12 true. Mrs. Goldin's going to testify that she was
13 in her apartment at that time.

14 There's another witness named Mrs. Haase.
15 Mrs. Haase lived on the first floor on the Madison
16 Street side. Mrs. Haase's deposition has not been
17 taken. No one can find Mrs. Haase. Mrs. Haase is
18 not going to walk in here and testify that she was
19 watching the child at the time.

20 You know why? Because nobody was watching
21 this child at the time that this accident occurred
22 and that's very important, ladies and gentlemen.
23 This is not a nine or ten or eleven year old who
24 knows how to swim. This is a two-and-a-half year
25 old child who was allowed to run around by the

1 parents' own admittance anywhere within this
2 complex.

3 And again that decision does not make Mr. and
4 Mrs. Hinton bad people, but good people sometimes
5 make unreasonable decisions and on its face,
6 ladies and gentlemen, this was an unreasonable
7 decision.

8 There has been testimony about knowledge with
9 regard to this fence. Well, there's going to be
10 competing testimony here, ladies and gentlemen,
11 and I'm not going to stand before you and say that
12 the manager of this apartment complex did not have
13 some problems with this fence and gate because,
14 ladies and gentlemen, that's true.

15 But you're going to hear from him. He's
16 going to come into this courtroom and he's going
17 to testify that every time he found that fence in
18 a condition that wasn't acceptable, he tried to
19 remedy the situation and that there were children,
20 children in their teens, who were vandalizing that
21 fence, hopping over the fence as kids often do,
22 pulling the gates close together in order for the
23 door not to shut. He will come in here and
24 testify that every time he saw that fence in that
25 condition, that he fixed it to the best of his

1 ability.

2 Mr. Haggard has made a representation to you
3 that he went -- the gentleman who I'm talking
4 about is Mr. Frank Griesau -- that Frank Griesau
5 went to Andy Finkelberg, who is the son of one of
6 the owners of this corporation, and said that we
7 need to fix this gate.

8 Well, ladies and gentlemen, both those
9 gentlemen will be in here to testify as to that
10 conversation and the context of it. It was a
11 conversation with respect to fixing up the entire
12 pool area. The issue wasn't about -- The issue
13 that they discussed was not about safety. The
14 issue was simply fixing up the pool area.

15 Now, when this apartment complex was
16 purchased in October/November of the year 2000,
17 the Finkelberg family through their corporation
18 had a schematic done and an inspection done of the
19 entire property, and it is about twenty something
20 pages long and listing a number of things that
21 needed to be fixed on the property before they
22 bought it. That's going to be a document that
23 we're going to show to you.

24 And in that document they hired somebody to
25 take a look at this piece of property and tell

1 them if there was anything wrong. And the people
2 who looked at this property did not tell them that
3 there was anything wrong with the fence or the
4 gate.

5 In addition, you're not going to find in this
6 case that at any time the Finkelbergs or the 2331
7 Adams Street Corporation was made aware of any
8 code violations or any violations whatsoever from
9 any organization within Hollywood with regard to
10 violations with the fence and the gate.

11 After the Finkelbergs through the 2331 Adams
12 Street Corporation purchased this property in
13 October/November of 2000, there was a manager who
14 was the manager from the prior ownership. There
15 was some problems with that manager and at some
16 point in time he was fired.

17 That gentleman will come in here and testify
18 himself as to what he believes occurred, but even
19 he will testify that on some occasions he saw the
20 problem with the fence after the point in time he
21 was a manager and he in fact would fix the fence
22 himself.

23 Mr. Haggard is arguing to you on one hand
24 that everybody who lived here knew that there was
25 a problem with the fence, that person after person

1 after person told Mr. Griesau that there was a
2 problem with the fence.

3 MR. MICHAEL HAGGARD: I'm going to object as
4 to argument, Your Honor.

5 THE COURT: Overruled.

6 MR. KENNEDY: But the only people who didn't
7 know that there was a problem with the fence was
8 Mr. and Mrs. Hinton.

9 Mrs. Goldin's going to come in here and
10 testify, that's one of the next-door neighbors of
11 the Hintons, that she knew there was a problem
12 with the fence.

13 The next-door neighbor of the Hintons on the
14 other side was Frank Griesau, the property
15 manager, and he's going to testify that he had
16 conversations with everybody about the problems he
17 was having with the fence.

18 Now, he can't specifically remember saying to
19 Mr. or Mrs. Hinton that, yes, on this particular
20 day we had a problem with the fence, but
21 Mr. Griesau will be in here and tell you and
22 testify it was a problem. Every time he fixed the
23 fence, the kids were breaking the fence.

24 Now, the issue with regard to any code
25 violations with regard to this fence is also in

1 dispute to an extent. The Hollywood code requires
2 a self-closing, self-latching gate.

3 When working properly and as it was designed,
4 this was a self-closing and self-latching gate.
5 Admittedly there were times when that was not
6 working properly and this was due to the fact that
7 when he, Mr. Frank Griesau, would put this fence
8 back into a working condition, that other kids
9 would go ahead, take the fence -- take the lock,
10 open up the gate all the way and hold it open so
11 that they could run and jump in the pool.

12 There is no obligation on the part of the
13 2331 Adams Street Corporation to have a 24 hour
14 guard there. The obligation that they had is to
15 take reasonable steps to try and maintain the
16 premises.

17 This is important, ladies and gentlemen,
18 because during the voir dire Mr. Haggard mentioned
19 at length absentee owners as if that is a bad
20 thing in and of itself.

21 Well, Mr. Finkelberg lives in Argentina and
22 his children at the time they bought the property
23 lived in Argentina and they came to America and
24 invested in property in America and they set up a
25 corporation. And in a small complex like this, as

1 happens all over the United States, they had a
2 property manager who lived on site and they relied
3 upon that property manager to let them know what
4 was going on.

5 And the knowledge that the 2331 Adams Street
6 Corporation had is important especially as to the
7 issue of punitive damages. Because, yes, Frank
8 Griesau was having some problems with the fence,
9 but in his mind it wasn't a safety issue and he
10 will be in here to testify to that. He had a
11 problem, he was fixing it.

12 The intermediary was Andy Finkelberg, Roberto
13 Finkelberg's son. Andy Finkelberg will testify
14 that he never told his father that there was a
15 problem with the fence, nor did he tell any of the
16 other owners of the 2331 Adams Street
17 Corporation.

18 Because as Frank explained it to him, yes,
19 there was some vandals on this property who were
20 abusing the fence and then Frank would go ahead
21 and fix it. So it wasn't perceived to them, by
22 Frank Griesau or Andy, to be a safety problem so
23 Andy never explained that to his father.

24 So to sit here and say that this corporation
25 was indifferent, willfully wanton to this

1 situation is just not accurate because the owners
2 of the corporation weren't even aware that there
3 was this type of problem.

4 And ladies and gentlemen, Mr. Haggard was
5 right about one thing. You just saw Loren Hinton
6 and that her condition is a tragic, tragic
7 condition to be in.

8 What condition that is is at issue though and
9 unfortunately, ladies and gentlemen, you as part
10 of the jury are going to have to determine
11 damages, as Mr. Haggard has said, and in doing
12 that you're going to have to make a determination
13 as to what the life expectancy is of somebody who
14 is in the condition that Miss Loren Hinton is in
15 at the present time.

16 Miss Loren Hinton breathes through a
17 tracheostomy. She is fed through a gastro tube.
18 She has reactive airway disease and for that
19 reactive airway disease she is given steroids.

20 One of the side effects of steroids is to
21 weaken the immune system. When somebody is in
22 this condition, primarily what they die from is
23 either a respiratory infection or a gastro
24 infection.

25 And as Mr. Haggard said, she is getting

1 optimum care. And as Mr. Haggard has said to you
2 with regard to the care that she's getting now, we
3 are not going to argue that she doesn't need one
4 thing that she's getting. We want her to get the
5 optimum care that she's going to have for the rest
6 of her life. But the thing that you're going to
7 have to determine is what the rest of her life
8 really entails.

9 Mr. Haggard is going to have somebody come in
10 here and tell you that the life expectancy for
11 that child is the same as everyone else. It's
12 71.43 more years from today and that is what they
13 do to base their numbers for the economic
14 damages.

15 There's going to be testimony by expert
16 witnesses. Those expert witnesses are going to be
17 cross-examined and these are not black and white
18 issues, ladies and gentlemen. As Mr. Haggard said
19 in voir dire, it's not black and white.

20 You're going to have to look at this
21 situation and listen to the testimony and make a
22 decision as to how long you believe that this
23 young girl is going to live. And I know that's
24 something that's very difficult to do but that is
25 something that we have to ask you to do.

1 Just like Mr. Haggard is going to ask you to
2 assume that they're going to live out for 71.43
3 more years, there's going to be testimony also
4 from other people in here. And what you need to
5 do, ladies and gentlemen, is you need to weigh and
6 balance that testimony and the reason why certain
7 people will say certain things and why there will
8 be conflicts.

9 Not to reduce this to a simple analogy but as
10 a parent, sometimes you come in and there's a
11 broken cookie jar and you've got one child saying
12 one thing and one child saying the other and
13 you've got to somehow make a decision as to who's
14 telling the truth. Were are their inaccuracies.

15 You've got to weigh the testimony and there
16 are reasons why certain people will say certain
17 things, and you're going to hear conflicting
18 testimony and you're going to have to resolve
19 that.

20 But the two big issues that you're going to
21 have to resolve when it comes to the defense is
22 with regard to this pool. There is more than one
23 way to open up that gate. Many times kids when
24 using a pool take the gate, open it up, prop a
25 chair in front of it and then run and jump in the

1 pool as kids often do and then leave it just like
2 it is.

3 There's going to be no testimony as to how
4 Miss Loren Hinton got into that pool. By the
5 parents' own admission they were playing
6 hide-and-seek at the time. So Loren, as they will
7 testify, as they have testified to in their
8 depositions, they were allowed to go anywhere in
9 the property, anywhere inside this fenced in area.

10 And this fenced in area is a big area. You
11 have the building here. You have alleyways back
12 here. You have alleyways here. You have
13 alleyways here. And in this little area where
14 there was purportedly the barbecuing going on, you
15 cannot see anything that's happening over on this
16 Adams Street side.

17 And ladies and gentlemen, I submit to you
18 that a two-and-a-half year old child should not be
19 allowed to run around in that area unsupervised.
20 That is not a reasonable decision to make.

21 During voir dire I asked many of you is it
22 reasonable, do you believe that young two year old
23 children need to be supervised at all times, and
24 you said yes. And that is exactly what we have
25 here, ladies and gentlemen.

1 Thank you very much for your time. I
2 appreciate your time this week and we'll see you
3 tomorrow.

4 THE COURT: All right. Members of the jury,
5 let's go ahead and stand in recess for the
6 evening.

7 Tomorrow we're going to start at 10:00
8 o'clock. I ask that you be here, you know, a
9 little before 10:00 o'clock. For those of you
10 that arrive a little early, we'll have some coffee
11 brewing for you in the jury room so you can relax
12 for a few minutes.

13 The parking passes that you used today will
14 be good throughout the entire trial, so go ahead.
15 Just allow yourself sufficient time to park.

16 Also is there anyone who needs a note for
17 their employers or anything?

18 Mr. Cortez, do you need anything for any of
19 your teachers at school saying that you're here?

20 MR. CORTEZ: There's nothing I can do about
21 it I guess.

22 THE COURT: Well, if there's anything that
23 you want from me, they can either contact my
24 office or I will give you a note saying that you
25 have been here.