

1 MR. WELLS: I would, your Honor.

2 May it please the Court, counsel, first of all, I'd  
3 like to thank you for the four weeks you have contributed to  
4 this case. It's a very, very serious case, as you have figured  
5 out by now. And this involves a little girl's life who lays in  
6 the balance, and you're going to be determining things about  
7 her life for the rest of her life. I can't imagine a more  
8 serious responsibility, honestly, than what you have.

9 I got a chance to sit on a jury a few times myself,  
10 but never, ever on a case that is as important and significant  
11 as this one.

12 So I appreciate your attention. I think we all do.  
13 You know, I want to just say to the Sanchez and Escamilla  
14 families that it's an honor to represent you and your daughter  
15 in this case. Thank you very much.

16 Now, I'd also like to thank Judge Pacheco, who has  
17 worked with us tirelessly. You know, we have a system of  
18 justice in our country. Some people criticize it. Some people  
19 don't. I can tell you that most countries in the world would  
20 give anything to have a system that is fair and just like ours.  
21 Is it perfect? No. But everywhere in the world where they  
22 have judges on the take and political people running the court  
23 system, it's terrible. Without justice, society fails.

24 So we have a system here in the United States that's a  
25 pretty darn good system, where 12 citizens can come and sit on  
26 a case like this and decide what you think most probably

1 happened. And I just have to say another thing that's great  
2 about our country is the son of a farm worker can become a  
3 superior court judge. That's a pretty amazing thing right  
4 there, by the way.

5 I also want to thank Suzanne and Alma, who I blocked  
6 out here, my visual, that have been here working after hours  
7 almost every day on this case. And of course, Claudette who is  
8 handing you the water and the cookies and the candies every  
9 day. It's an amazing group. It really is. And it's a unique  
10 group. This is a courthouse, by the way, that we should all be  
11 very proud of. I'd have to try cases around the Inland Empire  
12 and L.A. County and whatnot, and I'll tell you that there is no  
13 other courthouse that is as nice as this courthouse. There  
14 really isn't.

15 Okay. What do you need to decide this case? You need  
16 three things. You need the law, you need the facts and you  
17 need your common sense. Okay.

18 The law was just given to you by Judge Pacheco. You  
19 don't have to obviously write all that down or memorize that.  
20 He's going to give you a copy of all those instructions and  
21 you'll have those with you. There's probably about five or six  
22 that are really important to this case, and I'm going to go  
23 through those in my arguments.

24 The facts, the facts come from the witnesses. The  
25 witnesses, the pictures, the physical evidence, the recorded  
26 statements at the scene, the different things that you will see

1 in this case, and we're going to go through this. I know they  
2 call it closing argument. I'm not going to argue with the  
3 other side or argue with anyone. We're going to talk about the  
4 evidence and we're going to reason together and see what we  
5 think most probably happened here. That's what we're going to  
6 do.

7           Common sense is mentioned like four times in the jury  
8 instructions. You don't check your common sense when you come  
9 in here and sit as a juror and wear the badge. By the way, a  
10 lot of you have your badges on. You know, another great thing  
11 about the badges is that it lets -- it reminds us that we can't  
12 talk to you in the hallway or out in the -- wherever we are, at  
13 Molly's or whenever it is. Because we see each other around,  
14 it's an awkward thing. I don't know whether to nod. I don't  
15 know whether to smile, say hello. We're supposed to try and  
16 just stay away from you. Why? Because we want to preserve the  
17 integrity of our system of justice. How would it look if  
18 someone was talking with one of the jurors? It would look  
19 terrible. It wouldn't look fair. That's why we try to stay  
20 away from you.

21           I don't know if you remember, four weeks ago I said  
22 that's the last time I'm going to get to talk to you for a  
23 month. And here we are now. And I told you at that time a  
24 couple of things. I said, No. 1, there's going to be two rules  
25 that we're going to talk about in the case, the eyes and ears  
26 rule and the red light rule. And I told you what? That

1 there's going to be tears in this case. There's going to be  
2 moments of laughter, because this is real life.

3 But at the end of the day, real life that we're  
4 talking about, is this little girl's life. That's what we are  
5 here for. And I'm her voice. She can't talk. Okay. She  
6 can't talk to you and tell you how she feels. But I'm going to  
7 talk to you a little bit about how she feels, I think, after  
8 having spent four years with her family and four years watching  
9 her miraculously improve to the point where she's able to use  
10 that left arm and left leg and do the things that you saw here.  
11 Okay.

12 Now, one of the things that is very important in a  
13 case like this is that we don't think about sympathy. We have  
14 to set aside sympathy in a case like this, and look at the  
15 facts and the law. That's what I'm asking you to do. I have  
16 never -- I had her come in here to court one minute of one day  
17 in a month, didn't I? One minute. Okay. That was it.  
18 Because we're not here for sympathy. We're here for justice.  
19 We're not here for partial justice for this girl. I'm going to  
20 tell you we're here for full justice for this girl. That's why  
21 we're here.

22 And you're going to have to apportion fault between  
23 different people in this case. That's why we're here, because  
24 we need your help to do that. Who's at fault and why and how  
25 much and what are the damages. So those are the things you're  
26 going to be going through when you deliberate in the jury room.

1           So the law, the facts and common sense.

2           There's three things you need to decide the case:  
3 Negligence, causation and damages. Pretty simple.

4           Was the defendant negligent in the case? Was the  
5 defendant's negligence a cause? And don't be confused between  
6 the difference between the cause and a cause. Because there  
7 were multiple causes that led up to this accident.

8           You know, when we heard the opening statement in this  
9 case, it was all about a little girl darted out in the street  
10 and was hit by a car. Why in the world are we here? We're the  
11 bus and we're across the street. And then little by little we  
12 got a chance to hear the evidence in this case, didn't we?  
13 Little by little we got to find out who didn't follow their own  
14 rules and how long they didn't follow them for.

15           And honestly, as a parent in this case, this accident  
16 should never have happened. We should never have been here.  
17 Ms. Mason should never be here. This thing should have been  
18 shut down in August 2012. You report the mid-block crossings  
19 and we're done. They pull the bus pass if you violate it and  
20 the rules work. The process works. If the parents don't  
21 follow the rules, you don't get to ride the bus, you ain't  
22 crossing the street. Pretty simple, right?

23           So we're going to be talking about the eyes and ears  
24 rule, and whether or not that was a cause. Obviously, the date  
25 of the accident, the little girl running out into the street  
26 and getting hit by a car was the cause. Was that all there is

1 to the story? Of course not. And now you know why we're here.

2 Damages in this case. At the end of the case the  
3 damages in this case are astronomical. They're bigger than --  
4 I've been a lawyer for 31 years, I've never, ever seen a case  
5 with medical costs like this in the future in my whole career.  
6 But I've got to talk about those. It's uncomfortable. I'll  
7 admit that. Okay. I didn't grow up in a family with a lot of  
8 money at all. Okay. So it's uncomfortable for me to talk  
9 about those things, but I have to do that because that's my job  
10 in representing this little girl. And we have to talk about  
11 it. And it's millions of dollars. And it is. And I'm sorry  
12 that it's millions of dollars, but I'm not going to apologize  
13 for asking for millions of dollars in a case like this, because  
14 that's what the facts merits (sic) in this case.

15 So we will be talking about damages for the past and  
16 damages for the future. And that's why we have all these life  
17 care plan people and economist people and life expectancy  
18 people. That's why you heard all those instructions. We have  
19 to show, how long is she going to live, most likely? You're  
20 going to have to make that determination. You've got a range  
21 here of 22 to 70 years. We're going to talk a little bit about  
22 that in my closing argument, what's the most likely range. But  
23 ultimately, that's your decision. You're going to have to  
24 decide that, what you think most likely is going to happen to  
25 this little girl and this family.

26 It's an unbelievable responsibility, I have to tell

1 you. I don't think I would want it. But it's an unbelievable  
2 responsibility. I ask you to take it very seriously and take  
3 the time to do it correctly. Okay?

4 All right. If we can go on to the PowerPoint. If we  
5 can just dim the lights a little. Thank you. Thank you, your  
6 Honor.

7 Can everyone see that?

8 Okay. So let's go through now and talk about the law  
9 his Honor just read you. I'm going to highlight a few of these  
10 key instructions. And again, you don't need to write all this  
11 down, you're going to have the law. But what is the burden of  
12 proof in a case like this? This is a civil case. This isn't a  
13 criminal case where you have to show beyond a reasonable doubt,  
14 99 percent the lawyers use sometimes. In this case, it's a  
15 civil case, the burden of proof is more likely than not, more  
16 likely true than not true, 51 percent. Big difference. Okay.  
17 So that's the standard that you use to apply to the evidence.  
18 If you're weighing between one and one weighs a little bit more  
19 than the other one, one makes a little more sense the other  
20 one, than the other one does, then you go with that.

21 Number 2, negligence. What is negligence? This is a  
22 case of a failing to act. Okay. That's what this case is. So  
23 you talk about a case where you have someone did something  
24 wrong, they acted some way or they failed to act. And in this  
25 case, the failure to act, it went on every day in August of  
26 2012. Sometimes in the morning. Sometimes in the afternoon.

1 Right? That's what it is, failing to act, to report and shut  
2 down the mid-block crossing, jaywalking, whatever the heck you  
3 want to call it, to shut it down and pull the bus passes and  
4 make the mothers and the kids go down to the crosswalk and use  
5 the traffic light. That's the deal. You pull that pass.  
6 Should have been done a long time ago.

7           So that's the negligence rule. Failing to do  
8 something that a reasonably careful person would do in the same  
9 situation. That's why we went through with the bus supervisor,  
10 with the bus superintendent, with the expert bus drivers, and  
11 we went through the rules, are these the rules that they have  
12 to follow? Every one of them agreed to those rules.

13           Okay. This is probably one of the most important  
14 instructions. Ms. Mason is here as a defendant, but all --  
15 anything that she failed to do in this case is a responsibility  
16 of her employer. Okay. That's the law in the State of  
17 California. During the course and scope of work, if you do  
18 something wrong or you fail to do something, your employer is  
19 on the hook. She is not personally responsible for any of  
20 this. It's her employer. They're the ones that trained her.  
21 They're the ones that supervise her. She's in the course and  
22 scope at the time. And it's undisputed in this case that she's  
23 in the course and scope at all times of the activity. Okay.

24           So what are the two rules we've talked about for the  
25 last month? The eyes and ears rule. Okay. And the eyes and  
26 ears rule is what? Eyes and ears rule is pretty simple. You



1 are the eyes and ears out at that bus stop location. You see  
2 the mid-block crossing, you must report it right away. Not you  
3 might be able to wait a couple weeks, not you might be able to  
4 wait a couple of days. The rule is you must report it right  
5 away. Is that my testimony? That's not my testimony. Eyes  
6 and ears rule. We're going to go through how many people agree  
7 with that rule.

8           Number 2, this is probably one of the most important  
9 parts of the eyes and ears rule, you have to be vigilant. You  
10 can't come into court and say, I didn't see them crossing, so  
11 we're not responsible. It's whether you knew or you should  
12 have seen it. If you're vigilant, you should have seen the  
13 crossing. And it went on every day. Okay. Undisputed in this  
14 case that it went on every day in front of the bus driver, not  
15 in front of the bus driver, as the bus driver is at the corner,  
16 as the bus driver is turning the corner, as the bus driver is  
17 stopped on the way home and they crossed right in front of it.

18           You can't say, oh, it didn't happen because I didn't  
19 see it. That's not the training. That's not the rule. The  
20 vigilance rule is, you knew or you should have seen it  
21 violated. I mean, weeks. How do I explain that to her mom?  
22 This rule was violated for weeks, every day.

23           Report the unsafe environment. Undisputed in the  
24 case. They must enforce the rules, undisputed in the case.

25           Vehicle Code. If you're stopped at the bus stop, and  
26 we're going to talk about that later on, where was the bus at

1 the time of the accident. We're going to talk about that.  
2 That is sort of the second issue about negligence in this case.  
3 Okay. You don't even have to get to that, negligence in the  
4 case, because these first four rules are violated repeatedly  
5 with an opportunity to fix it, and it wasn't done.

6           So the red light rule is, if you're at the bus stop at  
7 the time of this accident, you must have your red lights on.  
8 That's the rule. That's not my rule. That's the Vehicle Code  
9 section. Okay. So that's what -- what do we do with that? We  
10 have to go out and analyze, because we have two mothers on a  
11 recorded statement at the scene that said the bus was at the  
12 bus stop when the bus -- when the car accident happened, and  
13 she didn't have her red lights on. We have to go out and  
14 analyze that, and we did do that.

15           Well, would the red lights have made any difference?  
16 And that's what all that reconstruction was. Yes, they would  
17 have. They make a difference. There's a difference from a  
18 human factors standpoint between the red light and the yellow  
19 light. Most of the people in my family, they see a yellow  
20 light, it means go faster on a traffic light. Right? But a  
21 red light means stop. We all know that.

22           Okay. Cori Cone. Training supervisor, director,  
23 safety supervisor. What is her testimony in this case? Now,  
24 you'll see up here, by the way, we have -- so what I'm saying  
25 is argument. This is the actual evidence in the case. This is  
26 Rosi working 24 hours a day, seven days a week, doing the

1 transcript while we're in trial, every night after the trial.  
2 Okay. This is the testimony. It gives you the date and the  
3 page number and the line number and the witness. If you have  
4 any questions on that, you can have a read-back on that. Okay.  
5 And it's right there on the slide.

6 I want to hear what Cori Cone had to say on 8/22, Page  
7 51, lines 18 through dash one (sic). Here's what she said.

8 "You know what the rules are for a bus driver.  
9 Report jaywalking, mid-block crossing, not using a  
10 traffic light to get to the bus stop, don't you?

11 "They are to report that."

12 That's Ms. Mason's supervisor.

13 Testimony.

14 "Is there any question in your mind that the bus  
15 driver can say, oh, you know what, I saw, but it's no  
16 big deal, I'm not going to report it?

17 "No, they are required to report it. We have a  
18 standard and that -- any safety violation that they  
19 see, they're required to report it."

20 So what is the answer to that? The answer is, oh, I  
21 didn't see it. I had too many mirrors and I couldn't see  
22 people crossing right in front of me on the street. We're  
23 going to look at some of those pictures. I mean, it's  
24 unbelievable.

25 Here's the field supervisor. What does she say?

26 "Is it true that you rely on the bus drivers to

1 be the eyes and ears for the field supervisor?

2 "Yes, that's correct.

3 "And the bus drivers are the ones that are  
4 supposed to be vigilant and look and see what's going  
5 on out in the bus stops, right?

6 "That's correct."

7 That's the rule that you should have seen it. The  
8 "should have seen it" rule. I mean, this isn't rocket science.  
9 It's common sense. Pay attention. Be vigilant. You're a  
10 professional. You have training, two months of training. For  
11 what? To not follow the rules? To not enforce them?

12 Well, Ms. Beighle.

13 "Well, do you agree that it's unsafe to cross 9th  
14 Street and not use the traffic control light?

15 "Absolutely, in my opinion it's dangerous."

16 That's undisputed in the case.

17 "And do you agree that your drivers, if they were  
18 to observe that behavior, they must report that to you  
19 immediately?

20 "Yes."

21 Why? Would you want the drivers to report right away?  
22 Because you've got to shut it down, right? You've got to stop  
23 the behavior. You pull the bus pass. You go out and talk to  
24 the parents. You go out and say, if you don't use the cross  
25 traffic control light, you're out. This is really dangerous.  
26 Kids can get hurt or killed.

1 Melinda Beighle, see the date at the top, 8/28/17,  
2 Page 29, line 6 through 13.

3 "Isn't it true that the most dangerous time for  
4 students is when they're off the bus?

5 "Yes.

6 "But you train on that to your bus drivers, don't  
7 you?

8 "Yes.

9 "And the most dangerous time is sometimes getting  
10 to and from the bus stop; is that true?

11 "Yes."

12 Okay. That's the testimony.

13 "If the bus driver is at the bus stop and the  
14 parents and the kids are crossing right in front of  
15 the bus driver to cross the street, is the bus driver  
16 supposed to see that?

17 "Yes.

18 "They're supposed to be vigilant, aren't they?

19 "Yes."

20 There's a picture, every day in front of the bus, it  
21 has to be reported. That's the picture that Ms. Arana drew  
22 across the street diagonally. So what was their answer to  
23 that? Oh, this yellow arm comes down, so they couldn't have  
24 passed in front of the bus. Are you kidding me? Come on.  
25 Common sense in the case. Couldn't they have walked around the  
26 yellow arm to cross in front of the bus driver?

1            "I want you to assume, ma'am, that in this case  
2            the testimony is that for the month of August and the  
3            month of September, parents and kids were crossing mid  
4            block and never using the traffic control light. I  
5            want you to assume that happened here. Is that  
6            dangerous?

7            "Yes.

8            "Would you expect your bus drivers to report that  
9            immediately?

10           "Yes.

11           "Any question on that?

12           "No."

13           Okay. Now, here is -- this is a very important lady  
14           that came in here. She is the director of transportation for  
15           San Bernardino, okay, Unified School District. This is  
16           important. This is the person whose picture is in the Ride  
17           Guide, who came in and testified. Okay. What is her testimony  
18           about causation in this case? Very important.

19           "Does the district have feet on the ground at the  
20           stops to try and observe unsafe conditions, or does  
21           the district rely on the drivers to perform that  
22           function?"

23           What's her response to that?

24           "We rely on the Durham drivers. They're our eyes  
25           and ears out there. They're actually the ones  
26           conducting the service every day.

1           "When you say the drivers are your eyes and ears,  
2 tell the jury what you mean by that?

3           "They're the ones actually performing the bus  
4 route. If there are any issues or concerns, they're  
5 going to witness it firsthand and report it to us, and  
6 we're going to work with them to address those  
7 challenges. They see the kids. They drive the route  
8 every day, 185 days a year.

9           "I want you to assume that every afternoon first  
10 graders are jaywalking across the street with their  
11 parents in front of the bus for two months. Is that  
12 something that you would expect a vigilant driver to  
13 observe?

14           "Oh, absolutely.

15           "And if the driver observed that, is that  
16 something you would expect to be reported?

17           "Yes."

18 They're depending on these drivers to do their job.

19           "And did you look and see if there were any, in  
20 this case, did you look at the files and see if there  
21 were any reports of anyone jaywalking or mid-block  
22 crossing on 9th Street in August through September  
23 2012?

24           "No."

25 None. Okay. That's just negligence.

26 Eyes and ears rule. They had notice. They knew or

1 should have done. They had a duty to be vigilant. They  
2 weren't.

3 I'm not pinning it all on Ms. Mason. I'm going to  
4 tell you that. I'm not pinning it all on her. There was a  
5 whole month before she even got on the job, where this was  
6 going on and nobody reported it. We had a video of Mr. Ponce.  
7 All he did was drive in the mornings. He said, ah, I saw it a  
8 year earlier, I told them not to do it a year earlier, but I  
9 didn't write it up. Are you kidding me? What do I tell her  
10 parents? They knew this was going on and they had a rule on it  
11 and they didn't follow it. And what do I tell Isabella when  
12 people don't do their jobs and follow the rules?

13 Several different drivers have had an opportunity to  
14 enforce the eyes and ears rule. We heard from Ms. Mason. She  
15 claims that she never saw it. You know, if she's distracted,  
16 she should have seen it.

17 Mr. Ponce, he only drove in the morning. He said, I  
18 didn't see it, other than the year before. We never heard from  
19 the afternoon driver in August, did we? They never brought him  
20 in. I have no idea who it is. I would like to show that  
21 afternoon driver the pictures from Ms. Arana and Ms. Gaucin and  
22 Ms. Marin in this case. What were you doing? Where were you  
23 looking?

24 A party has the ability to produce stronger evidence.  
25 You may consider the ability of each party to provide evidence.  
26 If a party provided weaker evidence, when it could have



1 provided stronger evidence, you may distrust the weaker  
2 evidence. That's an instruction in this case. Where was the  
3 afternoon driver in August? They never called him. Him or  
4 her, I don't know. They could have done that. We can't. We  
5 don't control their drivers. We had to fly all over the place  
6 and take them by videotape deposition.

7 Did Durham produce the August afternoon driver and  
8 cover drivers as witnesses to rebut the testimony of the three  
9 moms? You can answer that. No, they did not in this case.

10 Here's the three moms. By the way, these three moms,  
11 I mean, these weren't -- we had to subpoena these witnesses.  
12 These aren't like our buddies. We had to subpoena these  
13 witnesses to come in and testify. Ms. Gaucin was -- I had to  
14 ask permission from Judge Pacheco to treat her as a hostile  
15 witness and cross-examine her under Evidence Code 776 in this  
16 case. She was fighting me the whole way. Okay. They said one  
17 thing here and one thing there.

18 But they have been consistent the whole time about  
19 crossing that street and waiting for the bus to get at the  
20 corner or taking the turn or sometimes with the bus at the bus  
21 stop before they crossed.

22 The five-minute rule, come on now. In the real world  
23 the people aren't getting there five minutes early. Okay. And  
24 part of the reason, probably they're not using that crosswalk  
25 is they don't want to go down there and wait at the crosswalk,  
26 because they've got to leave 10 minutes early to get down to

1 the crosswalk and wait for the light and cross and come back up  
2 to the bus.

3 Let's look at their testimony in this case on the eyes  
4 and ears rule. Corazon Marin, first mom witness.

5 "Could you just show the jury the path of travel  
6 that you took David to the bus stop every morning back  
7 in August and September?

8 "Right there, the line, just across, just cross  
9 and just walk to the stop."

10 There it is. Now, this is the woman that lived in the  
11 back house. You remember, it was like a month ago now. This  
12 is the woman that lived in the back house. She crossed with  
13 David in the mornings. And her friend, Candelaria Arana, would  
14 come to her house and some days park -- in fact, there's her  
15 red car right there in this photograph, right there. That's  
16 her red car. That's from Google, and this is from Google Maps.

17 She would park her car on Ms. Marin's side of the  
18 street and then go back and talk, and then they would cross  
19 together, right. And what did they say they would do? They  
20 would most -- usually, they would go down to the end of the  
21 driveway and they would wait until the bus was at the corner,  
22 and then they would cross.

23 "Did you ever go down and use the traffic control  
24 light to cross 9th Street to go to the bus?

25 "No.

26 "Never; is that correct?

1 "Correct."

2 Let's leave this picture up for a second. That's the  
3 same picture.

4 "When you would come down to the end of your  
5 driveway would you wait, on the morning when you were  
6 going to cross, would you wait to see the bus at the  
7 corner flashing its lights and then you would cross  
8 the street?

9 "Answer: Yes."

10 August 23rd, Page 22, that's the testimony. That's  
11 the evidence in this case of the eyes and ears rule.

12 "If you're waiting at the end of the driveway and  
13 you're seeing the bus and then you're crossing the  
14 street, and then where would you stand when you were  
15 waiting to see the bus with the blinking lights on the  
16 corner?

17 "Sometimes I would stay in the, like, the  
18 driveway or sometimes in the dirt."

19 That's the testimony.

20 Okay. Some of these are really tough questions.

21 Okay.

22 "Did you ever have times where the bus" -- here  
23 it is, right here -- "Did you ever have times where  
24 the bus was already at the bus stop while you were  
25 crossing?"

26 Okay. That is a 100 percent, no doubt about it,

1 violation of the eyes and ears rule, if the driver saw that,  
2 should have seen it and didn't report it. That's the  
3 testimony, Ms. Marin. You can look it up and have it read back  
4 if you'd like.

5           Here's the view that Ms. Mason confirmed is the view  
6 from the bus as you're pulling into the bus stop. Okay. I  
7 mean, are you kidding me? There's the driveway. Here's the  
8 mailbox. It takes how long to get across the street? What was  
9 the testimony from their expert witness on that? Their expert  
10 witness, Mr. Landerville, says it takes about 15 seconds to  
11 get, if you're walking, for an adult, if you're walking to get  
12 from the mailbox across the street, 15 seconds.

13           One, two, three, four, five, six, seven, that's  
14 halfway.

15           And the bus driver says they couldn't see you because  
16 she had too many mirrors or she was too distracted. You get to  
17 decide. Use your common sense in this case, okay. Think about  
18 that. Think about that testimony. From Susan Reese, their bus  
19 expert, that said she vetted the case and didn't have the  
20 facts. Think about that. She says, oh, I don't think you  
21 could see the mailbox because it was too far down. That was  
22 her testimony. Are you kidding me? Come on.

23           Now I'm going to go to Exhibit 196, and the bottom  
24 portion of 196 there's a diagram that I believe you drew at  
25 your deposition. This is Ms. Marin. That indicates the path  
26 of travel you would go when you would come home. Now, we're

1 talking about the afternoons. Okay. So in the mornings,  
2 sometimes the bus is at the bus stop. Sometimes it's at the  
3 corner. Sometimes it's turning the corner. But in the  
4 afternoons, the path of travel that these parents created every  
5 day.

6 "You would walk David across the street every day  
7 on the drop off on the way home as well?

8 "Correct."

9 Here's your path of travel. It's a diagonal across  
10 9th Street towards the mailbox. This is an exhibit that you'll  
11 have in evidence in the case.

12 "Did you cross in front of the bus every day on  
13 the way home when you walked across 9th Street?

14 "Answer" -- what's the answer to that? "Yes."

15 Okay. That, ladies and gentlemen, isn't  
16 circumstantial evidence. That is direct evidence of a  
17 violation of the eyes and ears rule in front of the bus driver  
18 every darn day.

19 "Is there any question in your mind that in  
20 August, September, every day you would walk across 9th  
21 Street right in front of the bus driver; is that  
22 right?

23 "Answer: Yes."

24 And we put the two exhibits together. Here's a  
25 picture from the defendants' video showing the bus at the bus  
26 stop in the path of travel. And what's the defense to that?

1 Oh, we had -- we had this yellow arm that comes down, she  
2 couldn't have walked in front of the bus. Come on. That,  
3 ladies and gentlemen, isn't more likely than not. I'm going to  
4 tell you, that is -- that is beyond a reasonable doubt in this  
5 case. Right? The burden of proof on that.

6           Here's some more views of the bus driver looking out  
7 the front of the bus. Mailbox. The driveway. I mean, this  
8 is -- it's like a jet stream going across 9th Street every day.  
9 It was created by the parents, but it was allowed to exist by  
10 Durham, the Durham drivers, they allowed it to exist. And they  
11 were in a position to know better. We'll talk about that in a  
12 bit.

13           Mason testimony. This is a picture from a bus at the  
14 bus stop looking at the white mailbox. Do you see that? This  
15 is Ms. Mason's testimony.

16           Does that accurately depict the view you would have  
17 had when you were stopped at the bus stop at 9th and Victoria?  
18 What's the answer to that? Yes. Okay. You have that exhibit.  
19 You can look at it when you're in deliberating. There's the  
20 view, right there. Clear view. Okay.

21           Here is some of the recorded statements from Corazon  
22 Marin taken within 30 minutes of the accident by the police  
23 about this issue about the crossing and where the bus is at the  
24 time of crossing. Let's hear it.

25           (The audiotape was played back, not reported.)

26           MR. WELLS: She always does that, when she sees the

1 bus, she crosses. Okay. Eyes and ears rule. Vigilance.  
2 Seeing what's going on out there. Reporting it. Shutting it  
3 down. Doing the right things.

4           And there was a question in this case about whether or  
5 not the bus driver could see the kids when they're at the  
6 corner. So even if you backed that up, well, when you're at  
7 the corner you couldn't really see the kids. There's a pole  
8 there. There's this. And if you're stopped and the pole is  
9 blocking and you've got a lot of mirrors and there's blind  
10 spots on the bus. Remember all that testimony.

11           What did Mr. Ponce say in his videotaped deposition  
12 about his visibility?

13                   "When you would pull up to the corner of 9th  
14 Street and Victoria, could you actually see whether or  
15 not the students were standing on the sidewalk by the  
16 bus stop?"

17                   What's the answer to that? "Yes.

18                   "Okay. Clear view of that?

19                   "Yes."

20           Ms. Gaucin, okay. So Ms. Gaucin is the woman that is  
21 crossing with her daughter Yasmin, and she's with Isabella.  
22 Okay. By the way, we never -- we didn't sue Ms. Gaucin in this  
23 case. I mean, Ms. Gaucin was helping out. She's a nice lady  
24 next door. Okay. She's not a defendant in this case. No one  
25 is actually blaming her in this case, by the way. All right.

26           She's coming down, but she's going to do what? Where

1 are they going to go? That morning, as they're walking down  
2 the grass, they're going to go right across 9th Street like  
3 they've done every day. Right. That's the testimony in the  
4 case. You could put down the path of travel, the way you did  
5 it. Here's the door to my house. Would you walk like this?

6 We look at the pictures. Okay. So she drew the  
7 picture. That's her house. So she has the front house, right?  
8 She has the front house. She draws an X. Where is her path of  
9 travel? Directly across from the mailbox. Okay.

10 And Ms. Gaucin, when we're talking about this issue of  
11 notice and seeing the kids and parents crossing, what does she  
12 say her custom and practice is about waiting for the bus?

13 "The truth is, you never once, when you were  
14 taking your child to the bus, ever went down and used  
15 the traffic control light; is that true?

16 "The truth is, I didn't.

17 "But normally, you would try and get to the  
18 mailbox before the bus came?

19 "Yes, usually. Every now and then there might  
20 have been an occasion when I was coming out, coming  
21 out of the house as the bus is getting there."

22 Everyone doesn't perfectly get to the bus stop five  
23 minutes before the bus. Okay. In the real world, that isn't  
24 what happens. Then she says she doesn't understand the  
25 question.

26 "When you would pick up your daughter from the



1 bus on the way home, how would you get back home?

2 "I would cross in the same way.

3 "Did you use this path in the morning and in the  
4 afternoon every day in August and September of 2012  
5 that you've shown the jury?

6 "Yes.

7 "Did anyone from the bus company ever tell you  
8 not to cross like this?

9 "No."

10 I want to just go back to her for just a second,  
11 because I think if you remember I asked her, why didn't you go  
12 down and use the traffic control light? You know what she said  
13 to that? She said, you know, I did after the accident. And  
14 that proves a very important point in this case, that the  
15 parents, the mothers, didn't really appreciate how dangerous it  
16 was. Would you? Would anyone cross mid block with their child  
17 if they really thought that their child could get hit and  
18 killed, put in a wheelchair, brain damaged for life? No way.  
19 The mothers didn't really appreciate it until when? Until  
20 after this accident happened, right?

21 But you know what, we're going to see the Durham  
22 training video a little later on here. They knew. They  
23 appreciated the danger. They train their drivers about the  
24 danger. They train their drivers to report this danger and get  
25 it shut down right away.

26 Ms. Arana. Now, Ms. Arana is the woman that would

1 park her car and then walk with Ms. Marin. What is her  
2 testimony?

3 "When you parked your car at Ms. Marin's house,  
4 either the driveway or in front of her house, can you  
5 tell us how was it that you would cross the street  
6 from Ms. Marin's house to the bus stop?

7 "Usually we would do it through there.

8 "Can you put an X?"

9 She put an X right there. Okay. There's the mailbox.  
10 There's the X. Okay. Right across the street.

11 "As you sit here do you recall, did you ever have  
12 an occasion where you used the crosswalk?

13 "I don't ever remember having used it."

14 Now, this is an interesting piece of testimony in the  
15 case, because there's times when Ms. Arana and Ms. Marin would  
16 be across the street, like the day of the accident, by the way,  
17 and Ms. Gaucin wasn't there yet. So she's asked questions. By  
18 the way, when you were across the street over by the bus stop,  
19 waiting for the bus, did you see Ms. Gaucin cross?

20 "You just told us there were occasions when you  
21 saw Ms. Gaucin cross the street in the middle of the  
22 block with her daughter Yasmin, right?

23 "Yes.

24 "On any of those occasions did you see her cross  
25 Yasmin while the bus -- sorry -- while the bus had  
26 already arrived at the bus stop and was stopped there?

1           "The question is whether I ever saw that, saw her  
2           do that? Yes."

3           We're interested in whether or not she did it while  
4 the bus was already stopped there. So this is Ms. Arana being  
5 asked.

6           "Did you ever -- you're at the bus stop, did you  
7           ever see Ms. Gaucin cross 9th Street when the bus is  
8           at the bus stop?"

9           What's the answer to that? Oops.

10          "Yes."

11          Violation of the eyes and ears rule. Violation of the  
12 vigilance rule. More likely than not that someone should have  
13 seen this? Yes.

14          "Do you recall any bus driver ever telling  
15          Ms. Gaucin she can't cross the street with her child  
16          in the middle of the block?"

17          "I don't remember that or else I never saw it."

18          On that day when Isabella ran in front of the bus --  
19 now, she's talking about, she told the police at the scene, by  
20 the way, I've seen this little girl, she's run across the  
21 street before on 9th Street by herself. She told the police  
22 that at the scene at the time that she was interviewed, the day  
23 of the accident. Okay.

24          "On the day, that day when she ran in front of  
25          the bus across the street, did you hear the bus driver  
26          say or yell anything out the window, not to do that?"

1                   "The truth is I did not hear it.

2                   "But you were standing next to the bus, correct?

3                   "Correct."

4                   That is actual notice.

5                   This is grandma, Maria Saldana. She came in and  
6 testified briefly. Can you draw for the jury the path of  
7 travel? So grandma is taking granddaughter Isabella in August,  
8 right? In August, Carina, who's the supervisor at Subway, had  
9 to be at work early in the beginning of the month and the end  
10 of the month because they had inspections going on. Okay. And  
11 there were some insinuation here, oh, she could have made her  
12 own hours or whatnot. She had to be there early in the  
13 morning. Okay. She had to be there early in the morning.

14                   This is a hard-working family. The guy gets up at  
15 4:30, 5:00 in the morning and works until 4:00 every day. Are  
16 you kidding me? The mother, a supervisor at Subway, works  
17 hard. Okay. She had her high school daughter with her, right,  
18 and she has her daughter with her. They take her over to  
19 grandma's house to have her cross the street to the bus.  
20 Because she wanted her to go to that Bonnie Oehl school,  
21 because there was bilingual education, because her husband  
22 speaks Spanish, her mom and dad speak Spanish, and the girl's  
23 great-grandma speaks Spanish. She wanted her daughter to learn  
24 Spanish and English. Anything wrong with that?

25                   I asked everyone that question in voir dire, because  
26 some people have opinions on that, feelings. Not one of you

1 had an issue. She wanted to have her daughter learn Spanish  
2 and English. And you learn another language better when you're  
3 little, by the way, than you do trying to learn when you're  
4 older. So what does she say here?

5 "I would go here to the stop so that I would be  
6 able to look on both sides to know if it was safe for  
7 me to cross, to cross with the girl. Many times I  
8 would see the car passing. The car was already  
9 stopped or was there already.

10 "I'm not talking about where the bus was, but I'm  
11 talking about, can you draw on 231, your path of  
12 travel with the orange marker where you crossed."

13 Remember, she didn't have her glasses, so she drew one  
14 picture a little farther down, and then when she got her  
15 glasses she erased that with her hand and drew this picture.  
16 That happened in the trial. So this is an important feature  
17 right here, because this gate right here is a big metal gate  
18 and has a chain on top of it.

19 Now, the insinuation from the defense in their opening  
20 statement was somehow Carina is a bad parent because she would  
21 just drop her daughter off at the neighbor's house or drop her  
22 daughter outside the gate and take off. We found out that  
23 actually isn't the case at all. That her daughter, the high  
24 school daughter with her or her would have to open the gate,  
25 and you have to have the gate closed. Why? Because they have  
26 three dogs. So the gate is always closed or the dogs get out.

1 And there's a big chain on the top of that gate and a four-foot  
2 high, six-year-old girl cannot pull that chain out.

3           So they would get out. They would open the gate.  
4 They would wait here until she would go in the house or grandma  
5 would come out of the house and she would go in. Come on. She  
6 wasn't just dropping her off in the dirt and letting her run  
7 wild. In opening statement that was the insinuation, and then  
8 you heard the actual evidence in the case. The actual evidence  
9 in the case is nothing like that.

10           Okay. So this is grandma, Maria Saldana, path of  
11 travel, right across the street.

12           What was her agreement with the neighbor? We went  
13 round and round on this a little bit.

14                   "Did you have an agreement with the neighbor?"

15                   "Yes.

16                   "What was it?"

17                   "In September, year 2000, I spoke with her. I  
18 asked her if she could cross with the girl and she  
19 said, that's fine, there's no problem. I take my own  
20 across. I take my own across. There's no problem.  
21 I'll take the girl across."

22           I don't really know what Ms. Gaucin's point was of, I  
23 only agreed to do it one time. This went on two times a week  
24 for a month. And why did her grandma have to do that? Because  
25 her grandma had to get to work early. Okay. That's not  
26 negligence. That's not being a bad parent. That's working

1 hard and trying to do the best you can for your family, and  
2 making arrangements with a woman that she trusted across the  
3 street that had her own child going to the same bus stop.

4 Okay. So let's just talk, summarize this.

5 Was there notice to Durham of mid-block crossing in  
6 August and September? You have all three -- all three moms say  
7 yes. Grandma says yes. No one ever used the crosswalk. Marin  
8 didn't start crossing until seeing the bus at the corner and  
9 sometimes not until the bus was at the bus stop. That's in the  
10 morning. It's undisputed in the case.

11 Marin crossed every afternoon in front of the bus.  
12 Gaucin normally waited at the mailbox until the bus arrived.  
13 Sometimes she crossed when the bus was already there. Arana  
14 usually parked on the opposite side of the street and she would  
15 cross 9th Street with Ms. Marin.

16 That's the evidence in the case of a violation of the  
17 eyes and ears rule. Okay. It's overwhelming. Undisputed  
18 facts.

19 So this is where everyone agrees. Neither Ponce nor  
20 Mason claimed they ever saw a student use the crosswalk.  
21 That's undisputed.

22 All the families crossed 9th Street mid block to the  
23 bus stop every school day in August and September 2012.  
24 Undisputed in the case.

25 None of the parents appreciated the danger of the  
26 mid-block crossings until this accident happened on October

1 3rd. Now, everybody starts going down and using the traffic  
2 control light, right? That's why I talked about appreciation  
3 of the danger, of the risk. You have -- in order to do  
4 something you have to appreciate it. They just didn't.

5 No bus driver ever warned a parent or student not to  
6 cross mid block in that time frame, that August, September time  
7 frame. There's not one written record of an incident report  
8 from Durham, period, about mid-block crossing in August and  
9 September. Undisputed in the case.

10 Mr. Ponce, so this is the year before.

11 "So during the 2011-2012 school year, you recall  
12 one or two times when you saw students directly across  
13 the street from the bus stop?

14 "Yes.

15 "And you were stopped with the bus, correct?

16 Your bus was stopped at the bus stop, at the bus stop  
17 when you saw them?

18 "No. I was making the turn."

19 Okay. So he's making the turn around the corner and  
20 he sees them across the street. So this testimony about, well,  
21 you can't see 'em when you're making this turn because you have  
22 all these things you have to be concerned about.

23 "I mean, is there anything more important than the  
24 kids getting to the bus stop when you're making that  
25 turn?

26 "No, I was making the turn



1 "Okay.

2 "I saw they hadn't got to the bus stop

3 "Okay.

4 "I secured the bus."

5 He gets out and he crosses them with his red -- with  
6 his red light sign -- with his handheld sign, right?

7 "During one of those two times you put on your red  
8 lights, you got out on the road, 9th Street, and you  
9 had like a red handheld sign and you crossed them?

10 "Yes.

11 "Did you ever write up an incident report  
12 indicating that you had to cross parents and students  
13 on 9th Street?

14 "No.

15 "Any reason why not?

16 "No."

17 So here's why I think that's important, because if you  
18 write up what's going on out there, and then he makes a  
19 diagram, puts a diagram on there of what the two houses were,  
20 where they were, and it's the Gaucin house and the Sanchez  
21 house where it happened the year before. Okay. If you write  
22 up a written report and you get a new driver like Ms. Mason,  
23 maybe she has a chance to look at that and go, wow, people are  
24 out there crossing on 9th Street. I better be more vigilant  
25 about that. Give her some notice, additional notice. What  
26 about drop-offs? So I'm going to change now to drop-offs.

1                   "During the school year did you drop any off at  
2                   9th and Victoria?

3                   "No.

4                   "Did you do the drop-offs? So you -- did you do  
5                   the drop-offs?"

6                   He actually didn't do the drop-offs in August of 2012.  
7 He only did the morning shift.

8                   Evidence of Durham's negligence. Durham knew or  
9 should have known of the unsafe crossings. The evidence on  
10 that is overwhelming. Durham violated their own policy to stop  
11 dangerous conduct. Evidence on that is overwhelming. Durham  
12 violated its own policy to report the dangerous conduct.  
13 Overwhelming evidence on that.

14                   Did the drivers, the Durham drivers act unreasonably,  
15 not in accordance with their own policies and procedures or the  
16 expectations of the school district to be vigilant and report  
17 dangerous crossings? They never reported it. The answer is  
18 yes.

19                   Causation.

20                   Can we have like a three-minute break so I can just go  
21 to the restroom?

22                   THE COURT: All right. Ladies and gentlemen, let's  
23 take five minutes. Okay.

24                   (A recess was taken.)

25                   (The following proceedings were held in the  
26 presence of the jury.)

1 THE COURT: Record reflect all 12 jurors and three  
2 alternates are present.

3 Would you like to continue?

4 MR. WELLS: Yes, I would, your Honor.

5 Okay. So the next question is, did a violation of the  
6 eyes and ears rule make a difference? Was it a factor that  
7 caused her injury? Let's look at the evidence. Let's look at  
8 the law first.

9 So the rule says, a substantial factor in causing harm  
10 is a factor. So it's not the only factor. It's a factor.  
11 That a reasonable person would consider to have contributed to  
12 the harm. It must be more than a remote or trivial factor. It  
13 does not have to be the only cause of the harm. Okay.  
14 Obviously, the car hitting the girl was the cause of the harm,  
15 obviously. But what is the big picture in this case? The big  
16 picture in this case is, if the negligence, failure to act, had  
17 been moved on in August of 2012, we wouldn't be here.

18 Now, how can I say that? Well, let's look at  
19 negligence. Those are the two things that talk about multiple  
20 causes. So in this case we have multiple causes. What are the  
21 multiple causes? We've got parents crossing the street mid  
22 block, jaywalking. They're not supposed to do it. You've got  
23 kids doing it with them. Are you really going to blame a five-  
24 or six-year-old kid for following their mom across the road  
25 saying, oh, the kid should have known better? I don't see that  
26 one. Okay. So that's one of the things you're going to be

1 able to decide in the case, by the way, is whether you think  
2 Isabella is at fault. Going on the same path the parents have  
3 created for months.

4 Multiple causes. A person's negligence may combine  
5 with another factor to cause harm. So in this case the failure  
6 to shut down the mid-block crossings in August allows it to  
7 keep going. And when it keeps going, sooner or later something  
8 bad is going to happen. And it did, didn't it?

9 If you find that Durham and/or Ms. Mason or Vo's  
10 negligence was a substantial factor in causing Isabella's harm,  
11 they're responsible. They can't avoid it just because somebody  
12 else was negligent. Okay. So that's the law in the State of  
13 California. Multiple factors can cause an injury. And that's  
14 a very important instruction in this case, because you're going  
15 to have to put percentages on all the different people  
16 involved. Okay.

17 That's a jury instruction that you're going to have.  
18 Durham cannot avoid responsibility just because some other  
19 person or condition or event was also a substantial factor.

20 So here it is, Durham's failure to stop the kids and  
21 parents was a substantial factor. I mean, I have beat that to  
22 death, I think. If the crossings had been reported in August,  
23 there was a process in place to correct the problem and stop  
24 it. How do we know that? Well, it's in the Ride Guide. Maria  
25 Espinoza testified to it. When you've got something going on  
26 like this out there you don't wait for step one, two, three and

1 four. You go right to step six. You take their bus  
2 privileges.

3 And guess what? It works. And if the unsafe behavior  
4 that's been disciplined is serious, where it can lead to  
5 serious bodily harm or even death, can you skip some of these  
6 steps? What's her answer? Yes, you can. In the case of a  
7 severe misbehavior the student goes right to step six, revoke  
8 the bus privileges, it's in red.

9 Then here's one of the most important sentences in the  
10 case.

11 "In your experience, does the process we've  
12 discussed, does it work?

13 "Yes."

14 If you revoke the privileges, it works. Causation,  
15 ladies and gentlemen, if you follow the rules and revoke their  
16 privileges, it works. The accident, we're not here in October  
17 of 2012 talking about this accident.

18 Melinda Beighle from Durham.

19 "If you got the information you would have taken  
20 immediate steps to shut down the environment that was  
21 going on out there in September and August 2012,  
22 right?

23 "That's correct.

24 "And one of the steps you can do is go out there  
25 and talk to the parents immediately?

26 "Yes.

1                    "You can go out and talk to the parents, you  
2 talk to the kids, and if they don't listen you bring  
3 out the school police; is that true?

4                    "It could escalate to that, yes."

5                    Cori Cone.

6                    "And if you had been told, let's say back in the  
7 first week of August 2012, that parents and kids were  
8 crossing mid block to get to this bus stop on 9th  
9 Street, you would have corrected whatever the  
10 situation was when it was out there, right?

11                    "Yes, I would."

12                    That, ladies and gentlemen, is causation from the  
13 witnesses for the defense.

14                    "And you would have shut this down in August if  
15 this was what was going on out there, right?

16                    "Yes."

17                    She ran into the street when she saw her bus, because  
18 she had been using that path every day to get to and from her  
19 bus. Okay. Is there any other reason why she crossed the  
20 street that day? What did she say right before she ran into  
21 the street? We have that testimony. My bus. That's going to  
22 be important later on. So remember the reason she ran in the  
23 street is because she saw her bus, right? Any other reason for  
24 it? No.

25                    She had followed that same path, really it started the  
26 year before.

1                    "The two girls on either side of you, and  
2                    Isabella said, there's my bus?

3                    "She said, my bus."

4                    Okay. That's an undisputed fact in this case.

5                    "And she'd taken off running as soon as she said,  
6                    my bus?

7                    "Yes, that's what happened."

8                    Who caused or contributed to Isabella taking the path  
9 she did to the bus? The adults. Right? The grown-ups who  
10 allowed this dangerous crossing to go on, they did it, but  
11 Durham knew better and they didn't do anything.

12                    Bus expert Robert Berkstresser from San Diego.

13                    "Do you have an opinion as to whether or not in  
14 this case failure of the bus driver from Durham to  
15 report this mid-block crossing was a cause of this  
16 little girl's injuries?

17                    "Answer: Well, certainly, it was a cause. Had  
18 this been addressed early on, a month or two months  
19 earlier, on a more problem basis, this wouldn't have  
20 occurred."

21                    Okay. So is there negligence and causation on the  
22 eyes and ears rule? The evidence of that is overwhelming in  
23 this case. Not 51 percent. I mean, it's 99 percent. Okay.

24                    What's the other rule that we've talked about? The  
25 red light rule. So the red light rule is if you're stopped at  
26 the bus stop, you have to have your red lights on. Second rule

1 in this case, right?

2 And by the way, if you find negligence under the eyes  
3 and ears rule, you don't even have to get to the red light rule  
4 in this case, by the way. Okay. Durham is negligent on that.  
5 Their drivers, they didn't do it. They're negligent and that's  
6 the cause of the injuries.

7 The red light rule says what? So the Vehicle Code  
8 says, "A school bus driver shall operate the flashing red  
9 lights at all times when it's stopped for the purposes of  
10 loading or unloading the pupils." Okay. That's the rule.

11 If they violated that rule and it was a factor in this  
12 case, they're negligent. Durham is negligent. Durham is  
13 responsible for any negligence of Ms. Mason on this rule. This  
14 is the law. You'll have those instructions.

15 So what did Ms. Mason tell Officer Cruz before any of  
16 the lawyers, investigators and spin people got involved in this  
17 case? The date of the accident, within an hour of this  
18 accident, what did Ms. Mason tell Officer Cruz her custom and  
19 practice was?

20 She said she doesn't activate the red lights until all  
21 the children at the bus stop are ready to board the bus. Did  
22 you tell Officer Cruz that? She says no.

23 "And, in fact, if that's what you were doing,  
24 that's a violation of your rules, right?

25 "Yes."

26 That's her testimony.



1           We're going to go to Officer Cruz now. Officer Cruz  
2 has investigated -- this is a very experienced traffic officer.  
3 Over a thousand accident investigations. Lots of witness  
4 statements. Knows it's important to get it right. He  
5 testified in this case, one of the first witnesses. What did  
6 he say?

7           "Did Ms. Mason tell you that she doesn't activate  
8 the red flashing lights until all the children are at  
9 the bus stop and ready to board the bus?

10          "Yes.

11          "Is there any question in your mind she told you  
12 that?

13          "No."

14          I mean, why would he make it up? He doesn't really  
15 have any ax to grind at all in this case, right? He wrote down  
16 what she told him.

17          "Did Ms. Mason tell you that while she was  
18 waiting for the rest of the children to arrive, she  
19 suddenly noticed a lot of commotion across the  
20 street?"

21          Okay. So this is a statement that he took down that  
22 she told him. This is important, because it's trying to  
23 show -- we don't have the GPS and we don't have the video.  
24 Okay. So we're trying to figure out where the bus was at the  
25 time of the accident. And why were the police interested in  
26 that? I think I told you this in my opening statement.

1 Because if the bus is at the bus stop at the time of the  
2 accident, and the red lights are on, and Ms. Vo hits the little  
3 girl, it's a potentially criminal violation of the Vehicle  
4 Code. Why? Because you cannot pass the bus with the red  
5 lights on. So it's very important for these investigating  
6 officers to know where the bus was and what the lights were.  
7 Okay. This isn't me. This is what they said when we took  
8 their depositions.

9 Okay. So now, we're trying to figure out, what's the  
10 testimony in this case as to where the bus was. Okay. So we  
11 have recorded statements at the scene, and then we have a  
12 deposition a year or two years later.

13 (The audiotape was played back, not reported.)

14 MR. WELLS: Okay. That's a recorded statement.  
15 That's taken within an hour of the accident. That's before any  
16 lawyers got involved in the case. She said the bus was there  
17 when the girl ran. Okay. So I mean, we have that evidence.  
18 I'm representing a girl here who is in very serious condition,  
19 and I've got to investigate this. Because when I take the  
20 depositions a year or two later, the witness says, no, I didn't  
21 say that. I didn't say the bus was there. Okay. Well, she  
22 didn't say that. Then we find out there's an audio recording  
23 that she did say it. So you have to determine what you think  
24 is more reliable, what these witnesses said at the time or what  
25 they said later on when the lawyers got involved. Okay.  
26 That's one of your jobs as jurors.

1 Who else? Corazon Marin.

2 (The audiotape was played back, not reported.)

3 MR. WELLS: Okay. That's evidence in this case.  
4 Okay. At the time. And I mean, these witnesses were upset,  
5 but she doesn't sound -- those two witnesses do not sound as  
6 upset and traumatized as Ms. Gaucin, who cried the entire time  
7 through her testimony about where the bus was, because  
8 Ms. Gaucin says the bus was taking the corner. Okay. Very  
9 upset.

10 And by the way, when you have an event like this, it's  
11 not uncommon for witnesses to see things differently, depending  
12 on the trauma of the moment. But there's the testimony in this  
13 case. That testimony taken by a police with no lawyers and no  
14 court reporters. There it is. You're going to have the  
15 certified transcribed statements.

16 (The audiotape was played back, not reported.)

17 MR. WELLS: Okay. Yellow lights were on. The bus is  
18 at the bus stop. This is what both of these witnesses say.  
19 These are two moms that are at the bus stop that see the whole  
20 thing. That's the testimony in the case.

21 Okay. Officer Rusk, this is a very experienced guy  
22 dealing with very serious accidents for a long time. And  
23 again, he's not a guy that is, you know, leaning one way or the  
24 other in the case. These are objective people that come in and  
25 work on the case. Accident investigation team. MAIT team,  
26 Major Accident Investigation Team. He takes statements. He

1 took the recorded statements. He talked about the criminal  
2 implications.

3           Based on my training and experience and the statements  
4 of all the parties involved, the bus was likely at the stop  
5 with the yellow flashing lights on at the time of the accident.  
6 Okay.

7           So what do -- what do I do with this? In order to  
8 show that the violation of the red light rule was a cause, I  
9 have to determine whether or not red lights would have made any  
10 difference in this case. Because you remember Ms. Vo said, you  
11 know, I don't know if the bus was there. And then she said I'm  
12 not sure -- one way or the other if the bus was there. That's  
13 what she said. She didn't see it. That's her testimony in the  
14 case. Okay. That's what she said here.

15           So would red lights have made a difference? I had to  
16 hire one of the leading human factors experts in the country to  
17 come down and talk about this. The difference between yellow  
18 lights and red lights, perception-reaction times, the different  
19 types of expected and unexpected and surprised. We went  
20 through all that with you.

21           We talked about the different PRT, perception-reaction  
22 times, that when you see the red lights, you're going to slow  
23 down and you're going to get on your brakes. And then if you  
24 see the child dart, since you're already on your brake, your  
25 time to brake is much quicker. .7 seconds. If that occurred  
26 in this case, she's able to stop before she hits the girl.

1 That's the point of all that testimony.

2           If the bus was at the stop without the red lights on,  
3 that would be an underlying root cause, because the red lights  
4 would have made a difference.

5           Okay. That's this accident reconstruction. We gave  
6 all this stuff here with the feet and all these things. You'll  
7 have that testimony, if you want it read back. The bottom line  
8 is, about five seconds before the impact, the driver would have  
9 had a chance to perceive and react and stop the car, if the red  
10 lights were on. If the bus wasn't there and the red lights  
11 weren't on, none of this matters. Okay.

12           But you want to know why I had to do this? The reason  
13 why I had to do this? Because of those statements at the  
14 scene. So we did do that.

15           Here's 300 feet from the impact area. This is a  
16 picture from their accident reconstructionist. There's the  
17 mailbox right through the tree. There's the traffic control  
18 light you can see. Here's the bus stop right here. I mean,  
19 look at that. If you can see the traffic control light, you  
20 can see whether or not there were red lights on on the bus. I  
21 mean, you get to use your common sense in the case. Okay.

22           So there it is. I'm going to show it for his Honor  
23 because he stood up for it. You can actually see there's a  
24 yellow light right there. This is not 300 feet from the  
25 corner. This is 300 feet from the impact of the little girl.  
26 There's the little palm trees. There's the white mailbox.

1 Okay.

2           So the conclusions on that, pretty straightforward.  
3 If the red lights were on, she would have been able to react  
4 sooner. She would have been able to slow down and avoid  
5 hitting the girl. Okay. So if the bus is at the bus stop and  
6 it had its red lights on, would it have made a difference? The  
7 answer is yes, based on this testimony.

8           Did the defense really dispute this? Not really.  
9 They didn't call a human factors person to dispute Ms. Gill at  
10 all. Their accident reconstructionist didn't even analyze the  
11 red light issue at all.

12           Ms. Vo, would Ms. Vo -- what did Ms. Vo say about red  
13 lights?

14                    "What is your understanding of what you're  
15 required to do when you see red lights, stop bar that  
16 comes out of the bus?

17                    "I would stop."

18           THE COURT: And I think this is --

19           MR. WELLS: It's a good place to stop.

20           THE COURT: -- a good time to stop.

21           Ladies and gentlemen, we'll break for the noon hour.  
22 We'll be back here, be ready to go. Please be here timely at  
23 1:30, so we're ready to go. Okay. Thank you and have a good  
24 lunch. We'll be in recess.

25                    (A noon recess was taken at 12:00 noon  
26 until 1:30 p.m.)

1 SAN BERNARDINO, CALIFORNIA; WEDNESDAY, SEPTEMBER 13, 2017

2 P.M. SESSION

3 DEPARTMENT S-31

HON. JOHN M. PACHECO, JUDGE

4 (Appearances as heretofore noted.)

5 (Rocio Gonzalez, Official Reporter, C.S.R. 10911.)

6 -oOo-

7  
8 (The following proceedings were held in the  
9 presence of the jury.)

10 THE COURT: Welcome back, ladies and gentlemen.

11 Record reflect that all 12 jurors and three alternates are  
12 present. We are still with Plaintiff's closing argument.

13 Would you like to continue?

14 MR. WELLS: I would, your Honor.

15 THE COURT: All right.

16 MR. WELLS: While we -- hopefully, you're not going to  
17 fall asleep now after lunch. So it's really important to stay  
18 focused, eat that candy, get that level up. If you're getting  
19 sleepy, raise your hand and we can take a quick break.

20 THE COURT: Or be like me and stand up.

21 MR. WELLS: Or just stand up. We can do that, as long  
22 as you are not blocking somebody's view.

23 Let's go back to what we were talking about before we  
24 had the break for lunch, the red light issue in the case.  
25 That's where we were. And one of the things I wanted to just  
26 bring up to you is one of the instructions in this case is, a

1 party has the power to produce better evidence in this case,  
2 the GPS data and the onboard data to show exactly where the bus  
3 was and what time it was there. Okay. They didn't keep it.  
4 They have a reason they didn't keep it, but they didn't keep it  
5 in this case. So that's one thing you can consider in this  
6 case.

7 "In addition to onboard video, you also have a  
8 GPS?

9 "Yes.

10 "Would the GPS be able to track your bus where it  
11 was exactly at different points in time?

12 "Yes.

13 "If you wanted to know exactly where the bus was  
14 at the time of the accident you could have looked at  
15 the GPS if you kept it, right?

16 "Yes, I could have.

17 "And you didn't do it?

18 "No, sir.

19 "And you didn't keep it?

20 "No, we didn't.

21 "The bus video could have shown where the bus  
22 was, you didn't keep that either, right?

23 "We could have but we didn't."

24 Okay. Now, let's talk a little bit about where the  
25 bus was and try to look at some of the evidence in the case to  
26 try and figure out, piece together where the bus was when the



1 accident happened. Okay. So I'm going to talk a little bit  
2 about that for just a second.

3           So Ms. Uriquidez -- I'm close on that, I think --  
4 testified in the video deposition that the bus was halfway  
5 between Temple Street and Victoria when she heard what she  
6 thought was the accident. You guys remember that testimony, I  
7 believe. Okay.

8           Now, here's the problem with that testimony. In order  
9 for Isabella to say there's my bus and run, she has to see  
10 what? She has to see her bus. And she can't see her bus if  
11 the bus is halfway between Temple and 9th Street, because  
12 there's a huge building there that's blocking the view. Line  
13 of sight. Okay. So the bus has to be somewhere else, other  
14 than where Ms. Uriquidez says that the bus is. Okay.

15           And again, witnesses remember things differently.  
16 That's the way it is. But that line of sight proves, that's  
17 physical evidence in the case, undisputed, that it would be  
18 impossible for Isabella to see the bus if the bus is where  
19 Ms. Uriquidez says the bus was when the accident happened.

20           Okay. You get to talk about direct and indirect or  
21 circumstantial evidence. Okay. So direct evidence is, I saw  
22 it, it was there and it did it. The other type of evidence is,  
23 lots of times we use the jet plane flying across the sky  
24 example. You see a big streak. You didn't see the jet plane,  
25 but you have evidence that the jet plane went by because you  
26 saw the streak. Okay.

1 I like to use the example, my kids who like cookies  
2 and if you leave cookies in the cookie jar, they say we didn't  
3 have any cookies and they have crumbs all over their mouth, you  
4 didn't see them eat the cookies but you have circumstantial  
5 evidence that they ate the cookies. Okay. Those, under the  
6 law, it makes no difference if the evidence is direct or  
7 circumstantial, okay. That's a case law that you'll have.

8 How do we know that she ran when she saw the bus?  
9 Remember the testimony of Ms. Gaucin.

10 "And Isabella said, there's my bus?"

11 "She said, my bus.

12 "And did she take off running as soon as she  
13 said, my bus?"

14 "Yes, that's what happened."

15 What are some other circumstantial evidence that we  
16 have in this case that lines up with the bus being at the bus  
17 stop at the time of the accident? Well, we have the trip sheet  
18 from Ms. Mason's trip sheet. And in her trip sheet, and you'll  
19 have this in evidence, she says that she's at the stop at  
20 Temple at 7:47. And her normal arrival time at the 9th and  
21 Victoria stop is 7:48. And we know what time the 911 call came  
22 in, because we have the transcript. It said 7:49, I think it's  
23 7:49:11 seconds.

24 And Ms. Vo testified what? Right after she stopped  
25 her car, she got out. She ran over to the child. And she  
26 called 911, very soon after that, within a minute. That all

1 seems to line up additionally with the testimony of the moms  
2 that the bus is always on time. So 7:48, reasonable time for  
3 the accident in this case. Lines up with Isabella's testimony  
4 saying, there's my bus. Lines up with Ms. Mason's route sheet,  
5 that says she's at 7:48 at the stop. And it lines up with the  
6 911 call that came in at 7:49.

7           So I kind of did a chart here to show kind of the  
8 testimony about the bus stop, where the bus was at the time of  
9 the accident.

10           On Durham's side you've got Uriquidez that says it's  
11 up by Temple. You've got Ms. Mason that says she thinks she's  
12 on Victoria Street. You've got Perez' testimony yesterday or  
13 the day before yesterday that says that Ms. Mason turned the  
14 corner and I was right behind her, and right as I went around  
15 her bus, I stopped and I went over and I rendered aid to the  
16 child. Okay. That's the testimony in this case.

17           You've got the deposition testimony of Marin, Arana  
18 and Gaucin, all say the bus is at the corner in their  
19 deposition testimony, or turning the corner at the time of the  
20 accident. And then you've got Ms. Vo, she's sort of in both  
21 columns, because at one point she says, I didn't see the bus.  
22 The other time she says, I don't know if the bus was there or  
23 not.

24           On the other side you've got the recorded statements  
25 at the scene at the time. You've got the Arana recorded  
26 statement at the scene at the time. You've got Deputy Cruz who

1 interviewed Ms. Mason. You have Ms. Mason's admission to Cruz  
2 that she's at the bus stop and she hears a commotion.

3 You have Officer Rusk, highly qualified officer doing  
4 investigation to determine where the bus was. Says the bus was  
5 at the stop with the yellow lights on.

6 Then you've got the 911 call at 7:49 from Ms. Vo. The  
7 route sheet we just showed you, the line of sight, there's my  
8 bus. And you've got Ms. Perez saying the light was green. By  
9 the way, Ms. Uriquidez says the light was red when they turned  
10 the corner. That's not uncommon to have people on a traumatic  
11 event misremember things, how they occurred. Okay.

12 Here's Ms. Perez. Now, they've got her name down  
13 wrong on the 911 tape. They called her Yasmin Mendez.  
14 Everyone agrees that Yasmin Mendez is Yasmin Perez. School bus  
15 driver. She's with the child when Ms. Vo hands her her phone,  
16 and Ms. Perez says, the juvenile is breathing and responsive at  
17 this time. Look at the time on that. It's at 7:52:47. Okay.  
18 If Ms. Mason is at her bus stop at 7:48 and Ms. Perez is right  
19 behind her, how can it take all this time for her to come in on  
20 the 911 call? So I want you to talk about that. Think about  
21 that in the case.

22 Okay. One of the defense contentions, at least in  
23 opening statement from one of the witnesses was, oh, that  
24 Isabella was just always running across the street. I don't  
25 know if you remember that testimony or not. And then her mom  
26 testified she was never allowed to cross the street by herself.

1 Okay.

2 So we look -- Ms. Candelaria Arana.

3 "So other than the prior occasion where she ran  
4 in front of the bus in the afternoon, did she have an  
5 adult with her on every occasion she was going to  
6 cross the street that you observed?

7 "The times that I saw, yes."

8 That's the testimony. Okay.

9 Apportionment of responsibility. In this case I've  
10 already talked about it. You're going to apportion  
11 responsibility between different parties in this case. And the  
12 important part of this is the last sentence. In determining  
13 the amount of damages you should not consider the percentages  
14 when you're doing the damages. The judge does that at the end  
15 of the case after you are finished with your job.

16 You should be aware that the only person who's not a  
17 party in this case who the defendants are claiming is at fault  
18 is Carina Sanchez. Okay. So Ivan came up with the  
19 piece-of-pie idea. But obviously, a piece of pie means it has  
20 to be a hundred percent. It's got to be a hundred percent,  
21 you're going to divide up the pie between these parties.

22 On the verdict form these are the people. Durham,  
23 Ms. Mason, Ms. Sanchez, Isabella and Ms. Vo. Okay. And I'm  
24 going to go through the verdict form at the end. Those are the  
25 players you're going to be deciding on. You're not to decide  
26 on anyone who's not on the verdict form. That's the law.

1           Who is in the best position to prevent this tragedy?  
2 So that's the big question in this case. Because whoever was  
3 in the best position to prevent this tragedy is the one who  
4 should bear at least 50 percent of the fault in this case. All  
5 right.

6           I want to replay the Durham training video section  
7 about this issue. Let's listen.

8           (The video was played back, not reported.)

9           MR. WELLS: Okay. Who is in the best position? Who  
10 has the experience? Who has the training? Is it the company  
11 who has their own videos and training facilities? Who is in  
12 the best position to recognize and appreciate the hazard?  
13 Durham. These moms, as I said earlier, they thought it was  
14 okay. They didn't think it was that bad to cross the street  
15 until the accident happened, because they don't have that  
16 training. They don't have that experience. They don't have  
17 the knowledge that you're provided when you're a professional  
18 bus driver.

19           Standard of care for children. Okay. So this is the  
20 law in California. You have to look at what -- Escamilla  
21 Sanchez is a child who was six years old at the time. She is  
22 not to be held to the same standard as an adult. You have to  
23 look at what a reasonable child her age with her experience  
24 would do. What was her experience about crossing the street?  
25 Every day crossing the street mid block right where Ms. Gaucin  
26 was, right in front of her grandparents' house. That's what

1 her experience was. Is it unreasonable for her to cross the  
2 street out on 9th Street, because that's what the adults have  
3 taught her to do? No. All right. Of course, it's reasonable  
4 for her to do that, because that's what she was trained to do.

5 Now, what if the situation had been shut down in  
6 August and they said, we're pulling your bus pass, and if you  
7 don't use the traffic light, you're not going to get to ride  
8 the bus. Everyone says, gosh, that works. Then all the moms  
9 are doing what? They're going out and they're going down to  
10 the crosswalk, and they're using the traffic light every day.  
11 So when Isabella comes out, and she sees her bus, oh, I'm going  
12 to run down to the traffic light because I want to get to my  
13 bus because I'm excited about going to school. So I want you  
14 to you about that in this case.

15 Okay. Just because she ran out in the street does not  
16 necessarily mean she's negligent. Okay. If a child violates  
17 the law she's not negligent because she was six years old at  
18 the time of the accident. If you find that it was a -- it was  
19 as careful as a reasonably careful child the same age would be.  
20 She ran down the street. Kids make mistakes. Five- and  
21 six-year-old kids, they make mistakes. Is that unreasonable?  
22 Is it unforeseeable that that's going to happen?

23 Well, the people in the jury that have kids know  
24 exactly the answer to that question. So you get to use your  
25 common sense and think about that and talk about it. What's  
26 reasonable? What do kids do? They do all kinds of stupid

1 things.

2           Okay. Was Ms. Gaucin at fault? She's not on the  
3 verdict form, but was she at fault? She said that the girl  
4 left and she didn't have a chance, right? She didn't have a  
5 chance to grab her. That's the testimony in the case.

6           Insurance. One of the things, if you're back there in  
7 the jury room and somebody says, well, I wonder if there's  
8 insurance or how much insurance or how they're going to pay for  
9 this, you're not supposed to talk about insurance in this case  
10 at all. How much, if there is any. That's the law. You can't  
11 discuss it. So if any juror says, I wonder how much insurance,  
12 the rest of you have to say, hey, that's not our job in this  
13 case. Our job is to decide the case based on the facts and the  
14 evidence and the law. Okay.

15           Damages in this case. Okay. We're going to go  
16 through this. Lost earning capacity, that means the inability  
17 of Isabella to ever get a job in her lifetime. I think that's  
18 undisputed in the case. Okay. Undisputed in the case, she's  
19 not going to be able to get a job. So that number, we had an  
20 expert calculate that number. And then the other economic  
21 damage is future medical care, which is astronomical in this  
22 case, right? You saw those numbers and we're going to get to  
23 them.

24           What are the injuries that she had? She was in the  
25 hospital for over five months. She had a traumatic brain  
26 injury, cardiac arrest, fractured neck, fractured arm,



1 fractured leg, fractured pelvis.

2           What are the surgeries that she had while she was in  
3 the hospital? She had a part of her skull removed, craniotomy,  
4 evacuation of the bleeding in her brain. You heard the medical  
5 testimony on that. The reason that had to be done was because  
6 if you don't stop that pressure on the brain you're going to  
7 die. So she got pressure on the brain. It did kill part of  
8 her brain. What has she been able to do, because she was six  
9 years old, through the magic of what's called neuroplasticity?  
10 She's been able to rewire some of her brain and that has  
11 allowed her to function with her left arm and her left leg and  
12 do sign language and do the things she's been able to do. It  
13 is a miracle. It really is, but that's what has occurred here.

14           I can't imagine, honestly, a worse injury than having  
15 your brain damaged so that you're completely unable to use your  
16 body for a certain number of months. I mean, it's worse than a  
17 spinal cord injury. That's what she had.

18           She had a gastro surgery in order to put in the trach.  
19 She had the feeding tube, as you know. They had to do the  
20 decompression of the subdural hematoma. There's a feeding  
21 tube. They had a C1-C2 fusion of her vertebrae. You saw the  
22 X-rays where she had the plate and screws at the base of her  
23 neck up into her skull.

24           She had replacement of the bone flap. That didn't  
25 work. They had to take it back out, and that's why she doesn't  
26 have it in now. They're going to wait now probably next year

1 to put it in, so that she's grown and they don't have to do it  
2 twice.

3 She has a shunt on her head to drain fluid from her  
4 brain that goes down to a tube into her stomach. This is the  
5 medical testimony in the case, right? They had revisions of  
6 that. Dr. Basmajian, he came and testified he had to do  
7 surgery to repair her fractured femur. So those are the past  
8 surgeries in this case.

9 On the right is the actual CT scans showing the  
10 unstable C1-C2 defect. There's -- on the left it shows the  
11 displaced fracture of her left arm. Shows, on the bottom it  
12 shows the fracture of her left femur, pelvic fractures, kidney  
13 lacerations.

14 And this is a diagram showing how they evacuated the  
15 blood from her brain. And then the defect left on her head and  
16 she's had for the last five years.

17 Here's the procedure to do the C1-C2 fusion. So they  
18 fuse her neck at C1-C2. She does not have spinal cord damage.  
19 That's the reason she's able to move her left arm and left leg.  
20 She does not have spinal cord damage. The reason she's having  
21 problems with the right side is due to the brain damage.  
22 That's the testimony in the case.

23 What are the future surgeries that she needs? She's  
24 going to have to have that skull replaced. Scoliosis surgery.  
25 She's going to have to have that fundoplication surgery, that  
26 prevents her from getting the gastric fluid coming back up.

1 She has to have heel cord lengthening surgery, hip abduction  
2 surgery and the shunt revision surgery.

3           You heard from her treating pediatric neurologist,  
4 Dr. Shu in this case.

5           Now, one of the big issues in this case, of course, on  
6 the damages side, are two areas. Future medical care costs and  
7 how long she's going to live. Those are two things that you're  
8 going to have to decide in this case, if you find that Durham  
9 is responsible or partially responsible in this case. You have  
10 to go through it, analyze it and talk about it and decide  
11 what's fair and reasonable in this case.

12           One of the things that I was unique to have in this  
13 case is we had a treating pediatric neurologist who had  
14 experience dealing with traumatic brain injury. In addition,  
15 he also had outside experience, published articles on life  
16 expectancy. And also, treats adults with traumatic brain  
17 injury. Very uniquely qualified guy in this case. This isn't  
18 some guy who doesn't know about traumatic brain injury and  
19 long-term care. He knew about it. He's published on it. And  
20 he has patients who are in that group, including Isabella.

21           So one of the things that's undisputed in this case,  
22 that she needs 24-hour LVN care through an agency for life.  
23 Okay. I mean, even Mr. Bennett, you're going to see in a  
24 minute, the defense life care plan agrees, it's probably a good  
25 idea. I don't have any problem with doing the agency. Why is  
26 the agency important? Even though it costs more, it provides

1 continuity of care for the family. Okay.

2 Carina is not in the job of hiring and firing nurses  
3 and having to deal with the workers' comp benefits and if  
4 somebody is sick. That's not what the parents are doing.  
5 They're working. They're trying to do the best they can.  
6 That's why you have an agency that takes over that job  
7 function. Does it cost a little more? Yes, it does. But does  
8 it provide better continuity of care? Yes.

9 What did Dr. Shu say about life expectancy? He said,  
10 you know, I have experience dealing with this. I can offer an  
11 opinion on this. He said that he believes she's going to live  
12 to her mid to late 60s. So that's one of the expert opinions  
13 in this case that you can consider is Dr. Shu, the treating  
14 pediatric neurologist. Okay.

15 Dr. Shu, but I would shorten that -- so a normal  
16 Hispanic female lives to age 40 -- 84.5, I think is the number.  
17 20 years shorter than that, so 60 years, maybe mid 60s to late  
18 60s. That's his opinion in the case. Testimony is dated 8/30.  
19 And there's the page and line.

20 What about some of her function? Does she have the  
21 ability to communicate when she's in pain? Yes, she does.

22 So one of the things I was questioning Dr. Kush on,  
23 the guy that came in and talked about the shortened life  
24 expectancy, is what about a person's ability to communicate  
25 pain, is that important? It is for a doctor. Because if you  
26 can tell them where you're hurting and how you're hurting, they

1 can provide better treatment. She couldn't do that initially.  
2 But now she can. That's an important improvement that she has  
3 that talks about her overall quality and her life expectancy.  
4 On examination she's able to localize pain. She can point to  
5 where she's hurting with her better hand.

6 Dr. Shu recommends the agency. And he told you the  
7 reasons why. It's not a single person. If someone is sick,  
8 the agency can call in backup. And he says, not just  
9 consistency of care, but quality of care. We typically  
10 recommended an agency to provide care.

11 The defense life care planner, Ed Bennett, testified  
12 Monday here. What did he say? Yeah, the 20-dollar rate is for  
13 no agency, no workers' comp, et cetera. I agree, it's probably  
14 a good idea to have the agency. So you have no problem with  
15 the family using the agency? The reason this is important is  
16 because the cost will double, the cost with the agency. Okay.  
17 So I want you to talk about that.

18 Ed Bennett. Even though you have different research,  
19 the numbers, the agency care, 41.13 an hour, is that -- I'm not  
20 saying she's inaccurate or unreasonable for \$41 for an agency.  
21 So he agrees with us in this case. That's the testimony.

22 Okay. We went through this life care plan list. I  
23 mean, it's overwhelming. You're going to have that as an  
24 exhibit in there. Undisputed on everything in there, except  
25 for the motorized wheelchair. Completely undisputed in the  
26 case.

1 Carol Hyland from the Bay Area, certified life care  
2 planner. She came in and testified. She went over all of  
3 this, her medical equipment needs, her medical needs and the  
4 nursing care needs.

5 We hired one of these life expectancy experts, Vera  
6 Dolan. She came in and testified. Mr. Rubin went after her  
7 pretty good. Well, you're -- you relied on the Fuller study  
8 and you didn't use the Shavelle study. That's true, she  
9 didn't. Okay. Then we find out there's 25,000 studies out  
10 there. These experts can go around, and they can get a study  
11 that they think applies to the case. I get that. So there's a  
12 range. She says under the Fuller study, it's a Mayo Clinic  
13 study, 70 more years.

14 Dr. Kush. So Dr. Kush initially said 22 years. I  
15 don't know if you remember that testimony on Monday. He said  
16 22 more years. And then when pushed on this, when I pulled out  
17 his table, he admitted something interesting in the case. He  
18 admitted that if she lives to the age of 28, she has a 51  
19 percent chance, she lives to 28 she has a 51 percent chance of  
20 living another 17.2 years. And I kind of teased him a little  
21 bit about the Stanford thing and the numbers and all that.

22 That's a very important number for the lower number in  
23 this case, because under our standard, if it's more likely than  
24 not, if you prove that, the plaintiff prevails in that issue.  
25 So his 22 years is really more like 45 years. 45.2 if we're  
26 going to be exact. There's his testimony in the case. There's

1 the day he gave it.

2 Dr. Shewmon, the other pediatric neurologist in this  
3 case. A very experienced guy. He's been around over 40 years.  
4 Probably has seen thousands of pediatric trauma, TBI patients.  
5 And look at his opinion before he got the letter from Mr. Rubin  
6 and back off on life expectancy and read the Shavelle reports,  
7 what was his opinion in this case? His opinion was, difficult  
8 to say but probably in the order of a few decades reduced. So  
9 into her 50s. Pretty darn close to what Dr. Shu said, right?

10 He also said another interesting thing. He couldn't  
11 rule out that she may walk again. I guarantee you her parents  
12 haven't ruled out that she can walk again. And I'll guarantee  
13 you that Isabella has not ruled out that she's going to walk  
14 again. She may need assistance but she's a fighter. And she's  
15 still fighting and she's still improving. And the fact that  
16 she's still fighting and still improving, and I asked the  
17 doctor about will to live, does it matter in a case? Of course  
18 it matters. Of course it matters.

19 If you're willing to fight and get better and you're  
20 getting results -- and by the way, the medicine is getting  
21 better. Is medicine getting better over time or is it getting  
22 worse? For these kind of rehab things, it's getting way  
23 better. I don't know if you remember, but Dr. Shu said 20  
24 years ago patients like this, they might not even treat them.  
25 Now they started treating them with the feeding tubes and  
26 therapies. What's happening? They're living longer. More

1 importantly, they're having a better quality of life. Right?

2           Okay. This brief snippet of a day in the life from  
3 this summer about some of the things that she's doing now as  
4 opposed to what she was doing before.

5           (The video was played, not reported.)

6           MR. WELLS: Okay. So we showed you that to show that,  
7 you know, from a mobility standpoint, she's making gains. And  
8 you saw her moving her arm and moving her other arm and her  
9 legs. These are important physical findings from a pediatric  
10 neurology standpoint, from the life expectancy standpoint and  
11 quality of life. The more she can do, the more she can do and  
12 the better she can get.

13           All right. Let's talk a little bit about the numbers  
14 in the case. And I told you before, the numbers are -- they're  
15 large in this case. So the present value, one of the things  
16 his Honor told you is you don't have to compute what the  
17 present value is. That's why you have an economist that comes  
18 in and does that for you.

19           That 60-year life expectancy, Tamorah Hunt figured out  
20 the future medical care costs are 24,038,791. Okay. That's at  
21 60-year life expectancy. At a 70-year life expectancy it's  
22 27,030,797 -- 979. Those are the numbers in the case from the  
23 plaintiff's side.

24           Okay. And here's her actual report and I think this  
25 is in evidence. And this shows a combination of two things.  
26 It shows not only her medical care costs, but it also shows her



1 lost earning capacity. So with a high school diploma her lost  
2 earning capacity is 967,000, if she's a high school graduate.  
3 And if she has an AA degree from community college, it's 1.1  
4 million. That's the present value of that. That's at 60.

5 This is the same numbers at 70 years. And that shows  
6 you the total number there.

7 Okay. Need for the LVN care in this case, 24 hours,  
8 undisputed by either side. So the cost at \$41 per hour,  
9 \$360,000 per year.

10 So what I did was I thought I would put together for  
11 you a chart showing all the different opinions on life  
12 expectancy in this case. So you can kind of look at all these.  
13 You guys can talk about them and decide what you think is the  
14 one that's most probable. That's your -- that's your job.  
15 What's the most probable?

16 We start down there with Dr. Kush. He starts out, his  
17 first opinion is at 22 years, that's until age 32, that's true,  
18 then her medical care costs are 8.5 million in the future. If  
19 you use Dr. Kush's medically probable number, up to age 45.2,  
20 then the medical, future medical care costs are approximately,  
21 we don't have the exact numbers because we took -- this guy, it  
22 would take him an hour to compute it, approximately \$15  
23 million.

24 If you use Dr. Shewmon's report, he stated up into the  
25 mid 50s, age 54, that number is approximately \$18,000,500.

26 Dr. Shu's number, mid to late 60s, \$24 million.

1 Vera Dolan's number, 80 years, \$27 million.

2 Those are the ranges you're going to talk about. I'm  
3 going to suggest you look very closely at Dr. Shewmon and  
4 Dr. Shu. The two people that see these patients, treat them on  
5 a daily basis and have firsthand personal knowledge of this  
6 stuff. But that decision is up to you. You decide what you  
7 think is the most likely scenario in this case.

8 The other thing I want you to think about in this case  
9 is, No. 1, the -- all of the future medical care goes to other  
10 people, nurses, doctors, equipment manufacturers. None of that  
11 goes to Isabella. Her mom is her guardian ad litem. His  
12 Honor, Judge Pacheco, he watches over all of this. Okay. And  
13 when Isabella is older and hopefully he's retired, there will  
14 be another judge that will come in and watch over all this and  
15 approve all costs and all expenditures, all that. Make sure  
16 this is all accounted for.

17 That's what the law is in the State of California. So  
18 where it says, according to terms and conditions approved by  
19 the Court, you see that? That's Judge Pacheco. He monitors  
20 all of this.

21 Okay. So let's talk about Isabella. Let's talk about  
22 what she's lost and let's talk about her damages for her.

23 Now, one of the things that might be easy to do in a  
24 case like this is go, what difference would millions of dollars  
25 make for her? What difference does it make? What is she going  
26 to do with the money? If anyone says that while you're

1 deliberating on the case, I want the rest of you to say to that  
2 person, that's not our job. Your job isn't to decide what  
3 she's going to do and how she's going to use her money in her  
4 lifetime. Your job is to assess the damages for what she's  
5 lost as of right now. Okay. That's your job.

6           And this over time, if we look out over 54 years, look  
7 what she's been able to do in five. I mean, it's unbelievable.  
8 She even made a basket. Right? She made a basket and got a  
9 high five. She's starting to use a wheelchair on her own. And  
10 yes, she is No. 1 to this family. They love her. They care  
11 for her. They watch over her. They have dedicated their lives  
12 to her. And that might be part of the reason she's doing well.

13           But 30, 40, 50 years from now when they're not here,  
14 that's why she has to have the compensation now. You don't get  
15 to come back in court later on, 54 years from now and say, hey,  
16 I didn't have enough money. I ran out of money. We have to  
17 decide all of that now for her whole life. That's a huge task.

18           Let's look at her speech therapy and remember.

19           (The video was played back, not reported.)

20           MR. WELLS: So that's Rhonnie Greig, you heard her.  
21 She came in and testified. By the way, the people that do that  
22 job, I mean, that's a unique person that has the ability to do  
23 that job, right?

24           All right. So what are you supposed to consider for  
25 pain and suffering, what we call human damages, in a case like  
26 this? This is the law. You'll have it in your jury

1 instructions. And you go through and you look at these  
2 elements right here. To recover for future pain and then past,  
3 you have past and future. So this is a huge part of this case.  
4 Okay. Past and future, what is the physical pain and loss of  
5 enjoyment.

6           Look at the terms that are on here. These have been  
7 very carefully crafted. Mental suffering. How about five  
8 months in the hospital waiting to wake up and your mom, she  
9 stayed there for three months of that, because what did she  
10 say? She wanted to be there when her daughter woke up, to know  
11 where she was and her daughter did wake up. And she wants to  
12 be there when her daughter is getting better, and she's there  
13 for her every day, seven days a week, 365 days a year.

14           And Manuel is, too. He comes home from work, from  
15 gardening and he takes her out in the backyard, and she shoots  
16 the hose around. They have time together every day with her  
17 husband -- I mean, with her dad. He's a great dad. I've seen  
18 it personally.

19           Mental suffering. How about loss of enjoyment of  
20 life? How about being in a wheelchair for the rest of your  
21 life, starting at six years old. It's unspeakable, really.  
22 Right? She's had this.

23           Disfigurement. How about having the side of your head  
24 caved in and looking like it's caved in for five years.

25           The trach, physical impairment. The physical  
26 impairment in this case is almost as bad as it could get.

1           Inconvenience, grief, anxiety, humiliation, emotional  
2 distress. These are all the terms that you need to talk about  
3 when you're assessing the damages that she's entitled to in the  
4 past. Okay. And in the past five years she went from being  
5 almost comatose in the hospital, to coming out, to going to  
6 school every day. And she has suffered unspeakably on all of  
7 these.

8           I'm going to suggest the numbers to you when we go  
9 through the verdict form, but I want you to realize these are  
10 the things that you talk about. So when someone says, wow, a  
11 case that's millions of dollars, yeah, it is millions of  
12 dollars, and there's a reason why. Because these things matter  
13 in our lives.

14           Now, for the future, the same elements, loss of  
15 enjoyment of life, disfigurement, physical impairment,  
16 inconvenience, humiliation. She's going to have those for the  
17 rest of her life. However good she gets, we all know she isn't  
18 going to be playing for the Lakers, right? We all know that.  
19 She has little steps. Little joys. Little counting the beans  
20 into a bucket. And those things are successes. And she makes  
21 the pad and goes into the basket. Those are little successes  
22 that she's had and she's made improvements and she's going to  
23 continue to make improvements. But she's never going to be --  
24 she's never going to be where she was when she was this little  
25 girl, right? Ever.

26           So here's the verdict form. Here's the verdict form

1 that you're going to be provided in this case. And this is how  
2 you're going to decide this case. And the verdict form has a  
3 series of question. And the first question is, was Durham  
4 School Services negligent? We've talked about that. I've  
5 talked about the eyes and ears rule, and I've talked about the  
6 red lights. Either one of those or both of those, they're  
7 negligent in this case.

8           Was Shanita Mason negligent? You know, she said she  
9 didn't see it. But the evidence is overwhelming that she  
10 should have seen it. And I'm talking about the mid-block  
11 crossings. The evidence is overwhelming she should have seen  
12 it. So was she negligent? You know, she was.

13           Was Ms. Vo negligent? You know we had two  
14 reconstruction experts analyze the times and everything in the  
15 accident, and both of them said almost the same thing, that  
16 Ms. Vo didn't have time to react. Okay. So was Ms. Vo  
17 negligent? I mean, I'm not going to answer that for you,  
18 because I didn't see it myself. But you know, there was a bus  
19 there. There's kids there. You get to talk about that and  
20 decide that. Okay.

21           Was Durham School Services negligent? Eyes and ears  
22 rule for two months. Yes. Was Shanita Mason negligent? Eyes  
23 and ears rule for one month. Yes. And the red lights and if  
24 the bus was there and she didn't have her red lights on, she's  
25 negligent, she violated the Vehicle Code. There's evidence  
26 both ways on that. You guys are going to have to decide what

1 you think is more likely than not occurred.

2           The reason I think it might be more likely, because  
3 I'm putting a little more weight, I'm leaning towards those  
4 witnesses that testified, recorded statements at the scene.  
5 The two moms at the bus stop said the bus was there.  
6 Ms. Gaucin across the street said the bus was turning the  
7 corner. But man, she was really upset. You listen to that  
8 tape, she was crying the whole time. She was upset. She might  
9 be right on that. She might be wrong. I have a tendency to  
10 lean towards the two moms who were there. That's what they  
11 told the police officer.

12           So I believe she was negligent in this case under both  
13 eyes and ears and red lights.

14           Ms. Vo, I'm not going to offer an opinion on that.  
15 You decide.

16           Was Durham School Services' negligence a substantial  
17 factor in causing the harm to Isabella? Remember this chart?  
18 Remember this chart? Where it said that this should have been  
19 shut down in August? Every single Durham employee, supervisor,  
20 safety person, bus expert in this case said, if they saw it,  
21 they should have shut it down in August. And guess what? If  
22 this is shut down in August, we're never here in October. So  
23 was it a substantial factor? Are you kidding me? Yes. The  
24 answer is overwhelmingly yes.

25           Adults, the drivers, they dropped the ball. They  
26 didn't follow their rules. They didn't trust the process

1 because they didn't -- they violated the rules. We never got  
2 the chance to teach those mothers, you've got to go use the  
3 traffic control light. So that's the evidence in the case.  
4 That's why they're a factor, and that's why Durham's negligence  
5 was a cause of this harm. So I believe the answer to that is  
6 yes.

7           Was Shanita Mason's negligence a substantial factor?  
8 You know, if she saw this or should have seen it in September,  
9 and this gets shut down in September, we're not here in  
10 October, are we?

11           Yes, if she is at the bus stop and the red lights rule  
12 is violated, it's negligence per se under the law. It's a  
13 violation of the Vehicle Code.

14           Lillian Vo, I'll leave that blank, because I don't  
15 know how you feel about that. I've told you that the experts  
16 have said they didn't think there was anything she could do.

17           What are Isabella's total damages? Do not reduce the  
18 damages based, if any, on fault. Okay. So that's a very  
19 important instruction. You don't go through and go, okay, if I  
20 put 50 percent on Durham, do I reduce the damages by 50  
21 percent? No, you don't do that. You assess the total amount  
22 of the damages, and then you're going to do the percentages and  
23 the judge does that at the end of the case. Okay.

24           So let's start with the easy part, the lost earning  
25 capacity in this case, it's really unrebutted on that. If you  
26 give her the AA degree, this is a girl, I know it's hard to



1 tell at six, but this is a girl that loved school. Loved to  
2 learn. She loves other kids. She still loves to learn. I  
3 would say you give her the benefit of the doubt on having her  
4 going at least to junior college. So that's the earning  
5 capacity over a lifetime reduced to present value.

6 Future medical expenses, depending on the life  
7 expectancy that you use, you can determine that. I've decided  
8 to kind of do a range between Dr. Shewmon and Dr. Shu as the  
9 reasonable amount for those future medical expenses. So that's  
10 18 to 24 million. That includes the nursing care, all the life  
11 care plan, all the equipment, all of those things.

12 So what's the total future economic damage in the  
13 case? 19 to \$25 million.

14 What is her past human damages? We talked about that,  
15 the loss of quality of life, what she's been through for the  
16 last five years. Being in the hospital. Being hit by a car.  
17 Thrown 78 feet. Five months in the hospital. Rehab. Doctors.  
18 Surgeries. Your skull removed. I'm going to suggest a number  
19 to you on that, that's worth \$2 million a year in the past for  
20 \$10 million total. So that's for the last five years. That's  
21 from 2012 to today, \$2 million a year.

22 What about the future? You know, I look at this girl  
23 and if you were to just take one year of this injury, what she  
24 has, one year, and you put her in a wheelchair and you take out  
25 part of her brain and you don't let one part of her body move,  
26 just one year for that and then you're going to get better,

1 okay, if I had that, that was my client, that was Isabella,  
2 just that one year would be worth at least a million dollars.  
3 There's nobody that would take that deal, trust me. Okay. For  
4 what she's been through, just one year on that. But we're  
5 looking at, what, 54 years in the future?

6           So I think \$1 million a year for her future loss,  
7 every year for the rest of her life. Then you have to figure  
8 out what the life expectancy is on that. That's why that  
9 number is important in this case. And is that a lot of money?  
10 Yes, that is a lot of money. That is 43 to \$57 million,  
11 depending on kind of that life expectancy range in the case.

12           It's a lot of money. But this is about as bad a  
13 situation as you can possibly have. If there's ever a case  
14 that warranted these kinds of numbers, this is the case. This  
15 is the girl. Remember what I said, you're not to go, ah, what  
16 is she going to do with 43 and \$50 million? If someone says  
17 that in the jury room, you raise your hand, all of you, and  
18 say, that's not our job to decide that. Our job is to follow  
19 the law, follow the instructions about what is reasonable  
20 compensation for what she's been through.

21           And she's been through a ton. And she's going to have  
22 this, let's just say 50 more years. Okay. Let's say 54 more  
23 years. That's sort of a number that has been floated out there  
24 by some of the doctors. 54 years. That's the year, like, 2072  
25 or something. What are we going to be like in 2072? What is  
26 the world going to be like for her? I can't even imagine what

1 that is, honestly. You think about it, just the iPhones and  
2 the computers that have gone up in the last 20 years, it's  
3 unbelievable. That's just in the last 20 years. 50 years.

4           If you go back 54 years, I was six years old. I was a  
5 first grader going to a little Catholic school with the nuns.  
6 That's 54 years ago. Okay. The president of the United  
7 States, John F. Kennedy, Junior, 1963. Okay. Think about  
8 that. Five -- we hadn't even been in the Vietnam War yet.  
9 Martin Luther King, Bobby Kennedy, 1968, hadn't even occurred,  
10 their murders hadn't occurred yet. Think about that, 54 years  
11 is a long time. And that's what she has to be compensated for  
12 now. She can't come back. This is a one-time deal.

13           If you think those numbers are too high or too low,  
14 you get to decide that. You get to talk about that and reason  
15 together what you think is reasonable under the circumstances.  
16 Okay. This little girl, I want you to remember her when you're  
17 in there deliberating. Think about what she's been through and  
18 what the rest of her life is going to be like.

19           Now, after you complete those numbers -- and by the  
20 way, each one of these questions requires 9 out of the 12 of  
21 you to answer yes. And it doesn't have to be the same 9 out of  
22 12 of you that answer yes. But you go through. If there's  
23 nine of you that agree, you move on to the next question.  
24 That's the way it works on a civil case. All right.

25           Was Isabella Sanchez negligent in this case? She ran  
26 out in the street. Undisputed in the case. Defense wants to

1 call it a -- she darted out, whatever you want to call it. She  
2 darted out. She ran out. But why did she run out? She ran  
3 out because she was following the same path that those adults  
4 had established for her for two months. Right? That's what  
5 she did. She got excited because she saw her bus.

6           If two months earlier, a year earlier, that path would  
7 have been what? That path would have been, oh, you come out,  
8 and we go down to the traffic lights, and then we wait and  
9 cross. If that had been the path that the adults had used  
10 every day for two months, what do you think Isabella would have  
11 done when she saw her bus and got excited? Oh, I want to get  
12 to my bus. There's my bus. I don't want to lose my bus.  
13 Right?

14           A hundred percent in this case, the reason she ran  
15 across 9th Street, because that's the same path that adults  
16 have been using every day for months. Do we pin that on a six  
17 year old? You know what? She had just turned six. She had a  
18 birthday while we were in trial here, as a matter of fact, late  
19 August. She had just turned six. She was five years and 13  
20 months. I mean, this isn't a girl that, I don't think, you pin  
21 negligence on. But you get to talk about it, see what you  
22 think. I say no on that.

23           If you say no on No. 4, then you don't answer No. 5.  
24 If you say yes on No. 4, then you answer No. 5. Was it a  
25 factor? Was her mom negligent?

26           Now, the theory I think against the mom, you'll hear

1 from the defense is that the year earlier, she had crossed her,  
2 when she was in -- a kindergartner, across 9th Street. You  
3 know what? They just didn't think it was that bad. Nobody  
4 did, until this happened. They didn't think it was unsafe.  
5 They didn't think it was that bad. And they did it.

6           So you get to decide whether or not you think that is  
7 something that she bears some responsibility. I've talked to  
8 Carina about that. She's willing to accept responsibility for  
9 what she did the year before, geez, knowing what I know now, we  
10 shouldn't have done it. We should have used the traffic light.  
11 So was she probably negligent? I'd say, yes, she is for that.  
12 They should've used the crossing light. Was it a factor?  
13 Sure, they're crossing mid block and she's crossing mid block  
14 at the time. She's willing to accept responsibility for that  
15 in this case, a percentage of it. But man, she's paying a  
16 pretty heavy price, isn't she, for that? And she wasn't even  
17 there the day of this accident. She dropped her daughter off.

18           Okay. So here we go. The percentages of  
19 responsibility in this case. Ultimately, this is probably your  
20 most important decision, if you get this far in this case, is  
21 these percentages. So this is a very big deal.

22           Durham School Services, the reason I'm going to put  
23 most of the fault on Durham School Services is because they  
24 have the training, the knowledge, the experience, the videos,  
25 the drivers, to know just how bad this is. So I say 50 percent  
26 on Durham. Okay.

1           Shanita Mason, you know, the testimony in this case is  
2 that this was going on and that she knew or should have known.  
3 And there's testimony on the red lights, the eyes and ears, the  
4 red lights. I would say for Shanita Mason, less than 25  
5 percent. I'll tell you why. Because I believe the drivers in  
6 August should have shut this down before she ever even came on  
7 shift in September. Either shut it down or tell her or do  
8 something, write incident reports, let her know that this is a  
9 problem out there, so she has some tip-off of what's going on.  
10 They didn't do that.

11           Lillian Vo? I mean, I've looked at the  
12 reconstruction, you guys decide. Maybe she's going a little  
13 fast. I don't know. I'd say zero to five percent at the most  
14 for Lillian Vo.

15           Isabella Sanchez, six years old, I'm going to say zero  
16 on her.

17           Okay. Finally, Carina Sanchez, her mom. 20 to 25  
18 percent, depending on how you evaluate that. The thing is, you  
19 can't use Yogi Bear math. It's got to add up to a hundred  
20 percent. Okay. So you come up with what you think.

21           Those are my suggestions. Those are what I think are  
22 fair in this case, and you're going to get to decide those  
23 things. Okay.

24           I appreciate your time. I'm sorry it took so long,  
25 but it's a lot of important things to get through on a very  
26 important case. Thank you very much.