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"[This] work is extraordinary. I wish Phil had given me some of these ideas a long time ago. I would be a much better trial lawyer. The book is for young lawyers to be inspired and somewhat older ones to consider more powerful ways to persuade."

—Thomas Girardi, member of the Inner Circle of Advocates and the International Society of Barristers, former president of the International Academy of Trial Lawyers and the American Board of Trial Advocates

"Philip Corboy, one of the great legal talents of our time, clearly demonstrates in *Final Arguments* that he has walked more than a mile in his clients' shoes. He is indeed a true crusader."

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"The work of Phil Corboy on final arguments should be located at the front of your list of books and materials to be used as a practicing plaintiff's lawyer. His leadership in the preservation of consumer rights and consumer attorneys' rights has been unforgettable and cannot ever be overstated."

—Browne Greene, recipient of more million-dollar verdicts than any attorney in California history, member of the Inner Circle of Advocates

Final Arguments

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These arguments were given on behalf of brave and damaged people in genuine need of advocacy. They and the many other valiants whom I have been honored to serve through the years have earned all of the earnest persuasiveness that any lawyer would be privileged to give.

Contents

Publisher's Note

This book is intended for practicing attorneys. This book does not offer legal advice and does not take the place of consultation with an attorney or other professional with appropriate expertise and experience.

Attorneys are strongly cautioned to evaluate the information, ideas, and opinions set forth in this book in light of their own research, experience, and judgment; to consult applicable rules, regulations, procedures, cases, and statutes (including those issued after the publication date of this book); and to make independent decisions about whether and how to apply such information, ideas, and opinions to a particular case.

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Foreword to the Original Edition

When I decide to invest my time in reading a book written by a fellow professional, I am interested in knowing three things: who the author is, the importance of the subjects to me and my clients, and what new answers I can obtain for questions that continue to bother me.

In judging Philip Corboy, I share with you these observations. If one judges him by the offices bestowed on him by fellow members of the bar, then he is among the top in his field. He has been honored by the American Bar Association, the Association of Trial Lawyers of America, the Chicago Bar Association, and the National Institute for Trial Advocacy with high leadership positions. If the ability to teach is important, then he has taught in practically every state and major city in our country. For years, he has had the willingness to share rather than be selfish. He has a fantastic ability to communicate.

If experience and time are good tests of ideas, then I tell you that you are receiving his forty years of experience on the cutting edge of major trials. If the saying "If you're so smart, then why aren't you rich?" persists, then I would suggest that his clients' awards make him one of the smartest trial lawyers in the United States.

As to the importance of the subject of this book, I believe that next to the luck or instinct experienced by the lawyer during jury selection, the most important time of the trial occurs during the final summation, and particularly during the final five minutes of the last rebuttal argument.

Just as words have changed the course of history, I believe that a dedicated wordsmith can affect a verdict. In most cases brought on behalf of the plaintiff, the last issue concerns the amount of the verdict. These precious minutes of argument should be prepared in advance, beginning with the moment that you meet your client.

When I started practicing in 1948, the highest verdict in Florida was $75,000, which was subsequently reduced because it was excessive. People were hurt just as tragically then as now. Advocates' sharing of ideas of new arguments has had more bearing on the adequacy of awards than any other part of the lawsuit. That is why I have collected and plagiarized specific arguments containing special phrases and examples, such as those provided by Phil Corboy. He has been at the forefront in bringing his professional excellence to his clients' tragedies.

As for new answers to old questions, as you read, I would suggest you pay particular attention to these questions: What do you say while you are standing up or sitting down? What should the juror hear about the role of jurors and why they must share the responsibility of a verdict? How do you apologize for mistakes? Do you put a label on the other lawyer? Does a "reasonable and fair" amount mean 50 percent? How do you dramatically share a client's coma, paraplegia, or blindness? Is there a way to simplify "present money value"? How do you emphasize certain instructions given by the judge? How do you solve the complicated verdict form by turning six damage elements into six verdicts? How do you anticipate or answer the economic defenses of short life expectancies, a windfall resulting therefrom, annuities, and doubling of a jury award from investing it at the corner bank? In a products liability case, what can be done with a company's recall of defective products?

I recommend this book without hesitation because the answers are those that Philip Corboy supplied while under the real courtroom pressures of a worthy opponent, a judge ruling on objections, a jury of strangers, a client in tragedy, and a substantial offer that had been turned down at his recommendation. This is not a lecture. It is reality. Get your best marking instrument and get ready to help your client.

—Bill Colson

Foreword to the New Edition

Bill Colson's foreword is spot on. While I make no attempt to improve upon it, I can supply some firsthand insight into why Phil was a true master of the art of courtroom persuasion.

Phil has always been a people person. He has always loved interacting with people. He has treated everyone who has crossed his path with dignity and respect. This is true whether he was chatting with a shoeshine man or a president of the United States. Jurors could sense his sincerity, and they hung on his every word.

Phil and I were once interviewing a prospective new attorney fresh out of law school. Afterward, Phil suggested we hire him. His main reason? The young man had been a taxicab driver throughout college, and Phil remarked: "Cab drivers [at least back then] know how to relate to people."

Phil had a way of being parental in the courtroom. The first case I worked up for him involved the death of a twenty-eight-year-old man in a factory dust explosion. He had been married for just two weeks. During his final argument, Phil suggested to the jurors that they adopt his reasoning on both liability and damages. As he was speaking, I was struck by the forceful way he was addressing them. Indeed, after the jury was discharged, the foreman came up to Phil and asked, "Mr. Corboy, did we do okay?"

That simple question summed up the essence of Phil Corboy's success. Jurors wanted to please him because they respected him for his competency, which was acquired through meticulous preparation. They respected him for being courteous, caring, and civil to them, the court, court personnel, witnesses, and yes, until rebuttal, his opponent.

Lastly, jurors respected Phil for maintaining his credibility throughout the proceedings. Phil knew that once you lose your credibility, you've also lost the jury, and thus, the case.

I get a kick out of the proponents of the relatively new so-called Reptile method of persuasion who view it as innovative

and cutting edge. *Long* before this term was coined, great lawyers like Corboy, Colson, Walkup, the Fuchsbergs, Levine, Spence, and so many others were—in a subtle but masterful way—utilizing it. You will spot it while reading the following arguments. The other thing you will easily spot is Phil's empathy and compassion for his clients. You, like the jurors he was addressing, will find his arguments to be real, sincere, and heartfelt. Why? Because they were. That ability defined the man, the lawyer, and his amazing career.

Phil will turn eighty-eight years young this August. While he no longer commands the courtroom, his body of work will continue to educate and inspire trial lawyers of all levels of proficiency for as long as the Seventh Amendment exists. Enjoy.

—Thomas A. Demetrio, May 2012

PART ONE

Block v. General Signal Corporation

1

Argument

Mr. Corboy: May it please the court, Mr. Johnson, Dr. Block, and Ms. Zanios, fellow officers of the court. I mean it when I call you fellow officers of the court because that's exactly what jurors are.

I will begin this discussion by reminding you of something I said four and a half weeks ago. The words were: "This trial will supply you with testimony and evidence of what will happen during the rest of this young man's life."

Those are the words that I used in my opening statement to suggest to you the tremendous responsibility that you have as officers of this court to determine the outcome of the controversy between your peers—this company on one side, and this individual on the other.

Now, that exact quote, of course, does not mean the words are written in stone because, as a matter of fact, this case has taken various forms. Forty-three witnesses have testified, and well over three hundred exhibits have been put into this record.

I hope you are aware of how important your role is in the due administration of justice. The right to a trial by jury started almost eight hundred years ago at a place called Runnymede, England,

just after the feudal system ended. From that time until the present, people in this and other English-speaking countries have had the right to a trial by jury. People who have arguments, people who have experienced a tragedy and seek redress, people who have been hurt in their pockets or bodies, have had the right to a trial by a jury of twelve strangers who supply veracity, integrity, and decency to a system that works.

We all heard criticism of the jury system long before we began this trial. I did not start trying lawsuits yesterday, and long before yesterday, I heard criticism of the jury system. I heard it was cumbersome. I heard it was burdensome. I heard it was expensive. I heard it was tiresome. These things may be accurate until one sits on a jury. Then the jurors have the privilege of acting as officers of the court. Those who sit on a jury serve their country not because it is a tremendous job and the world is going to remember all that they have done, but because they have become a part of the government.

To put it another way, once people sit on juries, they know that the jury system works. The twelve of you are going to put your collective consciences, your collective backgrounds, your collective educations, your collective common sense, your collective ethnicities, your collective intellects, and your reasonableness and your fairness together, and you are going to reach a verdict.

Each and every one of you said under oath that you would try this case according to the law and according to the evidence, and that you would let the chips fall where they may. But I would like to say these two things: first, you can appreciate that a trial of this type does engender, does solicit, does propagate tension. And if, at any time during this trial, I indulged in any excess, if I did anything that was in any way impolite or impertinent or discourteous to His Honor, to you members of the jury, to Mr. Johnson or his clients, then I offer my absolute, instant, abject apology.

I ask you, I beg you, do not saddle your intellectual responsibilities in reaching a verdict in this case by any inappropriateness, any excess, any zeal, any passion, any impertinence which I may have committed during the last four and one half weeks. I am not

on trial. I came here to represent a young man and his father. I am doing what I have been asked to do as a member of my trade, as a member of my profession.

This case started out when Dr. Block retained me to represent his son. I filed what is called a complaint. A complaint is a charge of negligence. The defendant, as it had all the right in the world to do in a country like ours, with a system like ours, denied that it was negligent. And it had all the right in the world to do that. Anybody accused of running a stop sign and turning a healthy young man into what you know now is John Randolph Block—Professor Block, Randy Block—has a right to a defense. The defendant filed an answer denying its liability. And it had a right to do that.

Then the case developed. When the case began, Mr. Johnson, as he had a right to do, told you in his opening statement that you would probably find his client responsible because, after all, at the accident scene, his client said that it was his fault. He said under oath that he was driving forty-five to fifty miles an hour through a stop sign. He told the police officer he was reading a map, and that he thought the stop sign was cocked.

So Mr. Johnson was saddled with some severe facts, but he still had a right to defend his client. He said to you as a representative of his client, "Ladies and gentlemen, you will probably find against my client; but just keep your feet on the floor; remember, be reasonable, be fair, and think about it." He said to you, "Maybe the plaintiff in this case, John Randolph Block, contributed to this occurrence. Maybe you will find that the damages should be reduced somewhat because John Randolph Block contributed to the occurrence." Mr. Johnson had an absolute right to do that.

Then this court, after hearing all of the evidence, made a decision as a matter of law that my client had absolutely nothing to do with the collision that caused these tragedies. And I might say, at this point, that we have been fortunate to appear in a court where the jurist is not only competent but also very understanding of the vicissitudes of lawyers' personalities. He is a man who has put up

with four and a half weeks of words after words and never once shown ill temper.

I think you have seen how [the judge] has been completely fair and impartial in handling this trial. And we, this corporation, and this doctor, are fortunate to have had the opportunity to serve in a courtroom headed and robed by this gentleman.

He is going to tell you what the law is, and you, as officers of this court, are going to apply it. When you walk into the jury room, you are going to find out that counsel for this corporation and I have very few differences of opinion about any of the facts in this lawsuit. The differences are in what the bottom line should be. When you enter the jury room, you are going to have a twofold responsibility: finding the facts, which we mostly agree on, and then applying the law that this court is going to supply you.

How do I know, and how does Mr. Johnson know, that you are going to apply the law? Two reasons: first, you know what an absolute travesty, what an absolute waste of the democratic process, what an absolute waste of everyone's time it would be if you were to try this case other than on the law; and second, because all of you said under oath that you would follow the law.

By the way, when I start talking about the law, don't think I am much of a genius. Don't think I am the greatest lawyer in the world. I know what the law is because His Honor told us already what he is going to tell you. He told us what the law is going to be. So we know what the law is going to be when he tells it to you.

Now, you may not like the law as the court tells it to you. You may think, "My God, what is it?" But, believe me, it has gone through the system. It has been tested. The law works because people like you follow it. It works because this is America with its few foibles and problems. It works because we are a free country where strangers picked by strangers will give a true and just result, verdict, and truth. And that's why this system is going to work today. And that's why, when this case is over, you will be privileged and proud to know that you were part of a system that works.

That doesn't mean that you are going to want to do it again next year. As citizens, we are proud to do a lot of things; but when we think them over, we often don't want to do them again.

You people have a terrible, tremendous responsibility. As you sit there, you may be thinking, "Why did I get involved in this? Why me? How, out of all of the millions of people in this county, did we get picked? How did we get on that jury list to sit here in this jury to hear not a broken fender case, not a case where some woman's purse was stolen, not a case where somebody took a check out of a mailbox, not a case where somebody slipped on the ice, but the case we are here for? Why were we chosen?"

But on the other side of that coin, ask yourselves, "Why was Randy Block injured?" Why you? Why Randy Block?

I don't know what fates brought you and Randy Block together, but you are here. And you have the job and the responsibility to follow the law. Now, the law, as I have indicated, is relatively simple to apply. You listen to it. And you listen to the facts. Some of the facts in this case are tedious. They have been boring for you. They have been boring for you because people like me are afraid not to get everything out of a witness and not to put everything into a case because one of you might think I did something wrong or I forgot something. And I know the hours and the days and the weeks you have been here were hard on you, but it is about to end. And you will no longer have to ask yourselves, "Why me?"

But I do want to say something else. This case would have taken a lot longer if I didn't have Ms. Maryanne Zanios helping me. This young woman was a nurse by trade. She just became a lawyer last October and was sworn in by the Supreme Court. She is working on her very first case with me. I am proud to be working with her on this case. She got all of these exhibits and documents ready. I could not have done it alone. So this case could have taken even longer. But we have done our best to make this tedious task as quick and as short as possible.

And Mr. Johnson has cooperated. We have one exhibit about medical expenses. You know, we could be sending to the jury a packet

of bills this high. Instead, you are going to get one piece of paper with all of the bills added up so you don't have to sift through them all. Mr. Johnson cooperated yesterday when he asked would it be all right to have the stipulation read rather than have his driver return to the stand. So the lawyers in this lawsuit have done their best to be expeditious in a business that is not expeditious.

This case involves George Block, guardian of the estate and person of John Randolph Block, and this corporation. This lawsuit is not against that young man. That was one of the changes that occurred in this case. After he testified and supplied us with his version of what occurred, we, with permission from my client, dismissed him from this lawsuit.

We want no verdict; we don't want you to assess any responsibility against this young man because, as the court told you at the very beginning, this is not a criminal case. Nobody is losing a job. No one is going to jail. No one is being fined. No one is being punished. That is what the court told you.

So this young man's role in this lawsuit is as a representative of his company. The verdict that you will be signing will have nothing to do with this man. Why? Because the court has decided that it is a question of damages only. And the company whose truck he was operating on that day, on his way to the site, is responsible for his actions.

Corporations, whether they are General Motors or a ma-and-pa store, can only act through flesh and bones. This corporation was acting through its agent. Its agent is not a party to the suit, but the corporation is responsible for its agent.

Now, ladies and gentlemen, as I have indicated to you, there are very, very few discrepancies as to the facts themselves. There are very, very few discrepancies as to what happened on the twenty-third day of August 1981.

I don't think you will have to spend much time in the jury room. It will be your responsibility to make seven ultimate decisions after examining the discrepancies that exist or might have existed.

You might be thinking to yourselves, "I thought we were here on damages only." You are; but, believe me, the court is going to tell you how you shall assess damages. The court is not going to tell you the amount. That is your job. But it will tell you what guidelines to use in assessing damages in this lawsuit.

The damages in this lawsuit, the court will tell you, shall be fair and shall be reasonable. Long before you became officers of this court, the word *fair* did not mean "in the middle." The word *fair* did not mean "half." The word *fair* didn't mean "mediocre." You might have heard the expression "He is a 'fair' pitcher." That's not what we are talking about. Or "He is a 'fair' basketball player, but he can't make free throws." That's not what we are talking about.

We are not talking about "fair" newspapers, those which take all advertisements and don't discriminate against people who want to advertise in the paper. We are talking about *fairness* meaning "justice." And half justice is worse than no justice.

Suppose this were a case where someone was driving down the highway and bumped into the rear of a farmer's car, causing $180,000 damage to the rear bumper. You might think that farmer had no right being out on that highway in the first place; he should have been home tilling his corn. So instead of giving him $180,000, you give him $90,000. That wouldn't be fair. It might be in the middle, it might be medium, but it wouldn't be justice. It would be half justice.

Suppose a sculpture by Picasso were somehow razed to the ground tomorrow by a bunch of lunatics who had the financial responsibility to respond, and they were sued, and art dealers came in and said, "That Picasso sculpture is worth $10 million." You might say to yourself, "A hunk of iron, $10 million? Picasso is not even alive; let's give $5 million." That wouldn't be justice. It would be half justice. Even though you might not like Picasso, you would be required to be fair under the law. And if the appraisers said it was fair, it would mean the award would be $10 million.

The term *reasonable* doesn't mean you wait for an ad in the *Sun-Times* or the *Tribune* for an after-Christmas sale when prices

would be lower, perhaps three bucks for a scarf instead of six. That's a sale. That's not reason. Reason means using your intellect. So *fair and reasonable* means using justice, your intellect, and your own experiences in life to arrive at the verdict.

This case is a question of what is fair according to your reason and the law. Now, ever since 5:55 p.m. on August 23, 1981, there has been absolutely no doubt that John Randolph Block was the victim of a closed-head injury resulting in spastic quadriplegia. Dr. Plum might have coined that phrase, but he did not coin the disease or the pathology or the condition. Remember the article he wrote? You can read it again. In that article, he said here is a problem looking for a name. The problem is closed-head injury with spastic quadriplegia.

Some victims stay in a coma until they die. And, Dr. Block, I know you understand I have to talk this way. I have to talk facts. Some people stay in a coma until they die. Some come out of it and stay in what is called a vegetative state where they just lie still and breathe. And some come into what Dr. Plum calls the locked-in syndrome.

But this disease, this pathology, this condition, regardless of the name it has been given, is as old as brain damage. Only the ways of dealing with it are new. Dr. Plum—and this is absolutely uncontradicted—told you this is the worst injury in the world. Yes, I am sure all of us have had close friends and relatives who have suffered. And some of us have experienced suffering ourselves. And some of us have lost loved ones. And some of us have known people who are just quadriplegic. I say "*just* quadriplegic" because [of] how healthy this man would be if he were *just* quadriplegic.

Dr. Plum told us this condition is the most agonizing thing in the world because this man is trapped in his own body and he knows what is going on around him. He knows what happened in the Princeton–DePaul basketball game the other night. He knows what is happening in Beirut. He knows what has happened to his friends as they propagate and supply new people to the world. He knows his brother is an athletic instructor down in Texas. He

knows his goddaughter is living in Texas. He knows all of those things. And he is locked in his body. And that's why Dr. Plum said this is the most agonizing and disastrous physical problem a person can have and still live.

I ask each and every one of you jurors, as people living in this country, to accept that other people are entitled to other views. They may not be the right views, but they are their views, and people are entitled to them. And I was quite serious when I asked each panel of four people, "Do you agree that life is sacred no matter what?"

Those who gave tentative answers, those who were hesitant, in the exercise of my right as a lawyer, were excused by this court. So the thirteen of you who remain are those who gave their word that they believe life is sacred no matter what.

There are times when a man or a woman should be allowed to pass on to wherever men and women go to according to our respective spiritual beliefs. But there are other times when the decision is made to save these people. Once that decision is made, the thirteen of you have agreed, that person's life is sacred.

This young man, John Randolph Block, lingered in a coma. And then finally, one day in September, Dr. Spire, through the magnificence of the electroencephalogram, which is nothing more than an electrocardiogram of the head, saw that this boy had some brain life. His brain was not dead.

And the possibility existed that he would come out of the coma. And the possibility existed that, when he came out of the coma, he would not be in the vegetative state. The possibility existed that he would be in that middle stage, the agonizing one. And that's when George Block made the decision. This son of his was on glucose. He was on 200 calories a day. He was living on his own body fat. And remember, he did not have much body fat; he was five foot ten, weighed 160 pounds. He kept going down because you can't sustain yourself on 200 calories a day.

A decision had to be made: if his son was not brain dead, if his son was not going to remain in the vegetative state, George Block

would have to feed him. And they started feeding him through the nasogastric tube which went up through his nose, down through his esophagus, and into his stomach. We know the esophagus is in back of the trachea. So when his head was pushed back and the tube was pushed in—there are pictures here—he was able to eat.

From that moment on, the "live" was cast; the *l-i-v-e* was cast because Dr. Block decided he could not extinguish his son. To stop feeding him, to stop supplying him with optimal care at that point, would have been murder. To stop supplying him with all that sustains life, a life that the thirteen of you have said is sacred, would have been murder.

This is not a murder trial. This is a trial in which you shall determine what it means for this young man to have suffered the most agonizing, horrible injury possible and still live, and have the right to live because life is sacred. Not that the thirteen of you or the two of us would suggest for even a fraction of a second that we would want to live that way; that's not the test. We don't know what our wish would be. We don't know what our will would be because we're not there.

You know, it is sort of like being in the army. If you have not been in the army, you can't describe it. Nobody knows what it is like. Or it's like being married. If you have not been married, nobody can tell you what being married is like. They are states that only participants can tell you about. So you don't know whether you would want to live or not, because you are not there.

The facts are uncontradicted. Randy Block wants to live. Danielle Dunning told us that. Those wonderful, caring nurses told us that. Dr. Mullan told us that. And Dr. Plum and Dr. Ketel said it is important that he wants to live. Now, that's his choice. He wants to live. And while he is alive, he is entitled to optimal care.

So, ladies and gentlemen, your function will be to determine his care. Why you? Because you were thrown together. Why Randy Block? Because he was thrown into that occurrence. It will be your function and your responsibility in this case to make seven specific, responsible decisions.

Where are these decisions going to come from? You will not be allowed to say, "I am going to discard my responsibility." You will not be allowed to say, "I am going to forget about it." You will not be allowed to say, "It is crazy," because then you will be violating a system that has worked for years.

What is your responsibility? It is the responsibility to look into these facts and acknowledge George Block's love for his son. George Block showed his love as a father, working day after day, week after week, month after month, talking to his son. He hoped that his son was alive inside that body—he knew he was alive. He hoped that, if his son's brain came alive, his son would remember that his father was there working with him.

And his son did wake up. And he smiled. He did not laugh, but he smiled. And from that day on, he knew his father. And from that day on, the love of that father has sustained and has added to the quality of life of John Randolph Block.

Now, there are a dozen ways I could start this. I could talk about all of the witnesses who have come in here, forty-three of them. I could talk about all of the things that this young man has had an opportunity to do. But instead, I am going to tell you what the law is going to be, just as the judge has told it to me. When this case is over, you are going to sign a verdict form that says, "We, the jury, find for the plaintiffs, Harris Trust & Savings Bank and George Block, coguardian of the estate of John Randolph Block, a disabled person, and George E. Block, guardian of John Randolph Block, disabled person. We assess the damages as follows." Then you are going to assess the damages.

And one of you is going to be the foreperson. The foreperson will sign the form at the top. And the other eleven of you will also sign it. We don't know yet who those eleven are. You will sign that verdict, and you will hand it to Judge Durham.

After you have elected a foreperson, you will deliberate. You will be asked to form seven conclusions, make seven decisions. And you will be asked to reach seven verdicts. You will have to decide

if disability has resulted from this injury. I am not going to be in that room. You know how I would vote. Mr. Johnson will not be in there. Judge Durham is not going to be in there. You, the jurors, are going to be in there.

Now, what does *disability* mean? What does the simple word *disability* mean? Again, I could review all of the evidence, all of the testimony, all of the discussion between the lawyers, and I think we all would agree that *disability* simply means "the lack of ability."

Disability means the "cannots" of one's life. I cannot speak Yugoslavian. I sometimes have trouble speaking English. I cannot do a lot of things, but that is not what we are talking about. We are talking about the disability resulting from this injury. And the court is going to tell you that damages for pain and suffering, disability and disfigurement, are not reduced to present cash value.

Now, why is that important and why do I bring it up? Because the last three or four witnesses have mentioned present cash value. The Alaska rule, the 1 percent rule, the 2 percent rule, the annuity rule—what does it cost to get some money and what is the present discount value to bring it down? The law, wisely, has said that damages for pain and suffering are not reduced to present cash value. Don't assume that this young man can put his award in a bank or buy securities or gamble at Las Vegas to earn more money; and don't give him less money for disability because he can earn money with that money. That is not how it works with disability.

The court is going to tell you, in the longest instruction you are going to get, that you must start off by talking about mortality tables. And the last sentence on the instruction, the very last sentence, will show you that this young man has a forty-two-year life expectancy. You will get instructions on pieces of paper like this, only longer. The longest instruction in there is going to tell you that damages for pain and suffering and for disability and disfigurement are not reduced to present cash value.

So you have to decide it. And even if it is $100 million or more, you don't reduce it to present cash value. Why? Because you said

you would follow the law. Why? Because you would be violating your oath if you reduced the amount.

I respectfully suggest to you that disability, in terms of this injury, means the "cannots." What can this man not do as a result of this accident, as a result of a car smashing into the side of his automobile, causing him to end up inside what is portrayed as plaintiff's exhibit No. 27-A? What is it in terms of the "cannots" of his life that he cannot do?

Well, he cannot talk. He just cannot talk. Imagine being up since six o'clock this morning and not talking. Imagine not talking for just the last four and a half hours. I am not referring to listening or being required to listen. I am referring to not talking, that is, not talking about good things, not talking about bad things, not joking. Sure, he can work through a communicator, but that is not talking. That's communicating. That's not talking. That's a synthesized voice you heard. He cannot write. Yes, he can communicate through writing, but he cannot write.

And another "cannot" is he cannot walk; never again can this man walk, run, trot, jog, crawl. He cannot even walk. He cannot go running through that park over there. He cannot sit on the bench out there.

He can't stretch. When many of us got up this morning, we stretched because it feels good to stretch. He can't stretch. And he cannot turn. He cannot even turn in bed. He wakes up in the middle of the night because somebody is turning him. They turn him so that he doesn't get those horrible bedsores, but he cannot turn himself.

Everyone within earshot of my voice has controlled his or her bladder since waking up this morning. That man has not controlled his bladder today, and never again will he control his bladder. It is a neurogenic condition. It is the same with his bowels.

He cannot use his hands. That means he cannot play cards. He cannot scratch. He cannot rub his legs. He cannot clap. He cannot do anything with his hands. They are useless. He cannot drive—

not a new car, old car, or his car, even if it were able to be fixed up. His car weighed about 2,800 pounds and was hit smack on the side by a car weighing 4,100 pounds with 1,200 pounds of contents. Even if his car were fixable, John Randolph Block would never drive it or anything like it again.

He cannot brush his teeth. Remember the film, the videotape which showed Rosalie brushing his teeth? He cannot even brush his own teeth. He certainly cannot dental floss them.

He cannot bathe. He cannot shower. He cannot dry himself. He cannot shave or clothe himself.

He cannot play any games. Oh, yes, he can play checkers laboriously; but he cannot do what most thirty-year-old men do.

He cannot eat. Chili is a foreign substance to him. He cannot eat Quaker Oats, chicken, turkey, steak; he cannot drink beer. OK, he can be fed through that tube in his gastrointestinal area, through that gastrostomy that he was supplied with. You will see those tubes in the pictures again, if you wish to look at them. But he can't eat. When you go to a football game, you want a hot dog. I don't suggest he is going to a football game. I am suggesting what he cannot do as a result of this occurrence. He can smile, but he cannot laugh. He might give a little grin, but the heartiest joke in the world will not precipitate a laugh from him. He cannot laugh.

Sex is kind of obvious, isn't it? No matter what Dr. Ketel does not know, I am sure that anybody within earshot of my voice, or anybody outside earshot, for that matter, knows that that young man cannot involve himself in sexual activity.

He cannot hear normally. He has moderate loss of hearing ability in his left ear, which means he cannot hear moderate voices. That means, for purposes of conversation, he is deaf in his left ear.

He cannot see normally. He has got diplopia, and diplopia means he sees double. He sees twenty-six jurors out there. And the only way that can be solved is by putting an eye patch over one eye. It

can be solved, sure; but he cannot solve it. Somebody has to put the eye patch on for him.

That beautiful music, the French horn and the piano and the drums, all those things he played in high school, he can no longer play. He no longer has those musical skills that usually last a lifetime. Sure, he can listen to Willie Nelson, but he himself cannot involve himself in it.

He cannot take pictures. He cannot snap a Minox. He cannot snap a Polaroid. He cannot so much as cook chili. He cannot take his own medicine. He cannot even call for help.

In the cannots, he has given up the two ultimate qualities of life. What are they? Freedom and privacy. Think of that. They are the opposites.

Freedom. It means you can do anything you want and go anywhere you want. And privacy means you can be alone and contemplate and watch rivers and listen to poetry and do all the things that the Creator put you on this earth to do. But John Randolph Block has no privacy. A person must be with him at all times. The level of training for that person to provide optimal care is irrelevant to our discussion at this moment—he cannot be alone. He cannot exercise freedom.

He cannot take a shower or a bath alone. And he cannot do anything with other people. So he has not only lost freedom, but he has lost privacy, too.

To sum it up, this man can do nothing, absolutely nothing, by himself; nothing. You saw the tape of Rosalie taking care of him from the time he got up in the morning. He is a lot healthier now than he was then. He cannot do anything without a Rosalie. And ladies and gentlemen, I respectfully ask you to consider when determining the amount of money allowable under law as compensation for this terrible, agonizing injury, a figure of $10 million. Keep in mind that whatever that figure is, $10 million or $100 million, it is not reduced to present cash value.

Why? Because, I guess, under the charity of the law, he has earned it. He has given up his freedom. He has given up his privacy. He

has given up whatever it takes, whatever is needed to be within his own body and not without it. The first element of damages you will decide on is disability, but it is not the last. It is not the last at all. Then it would be easy. We could stop right now.

The second element of damages that you are going to be required to discuss and determine is physical pain and mental suffering experienced and reasonably certain to be experienced in the future as a result of this injury. The court is going to tell you again that, because of the pain this man has experienced, he is entitled to have money—crass, coarse, discourteous to the intellect though that might be—for these horrible injuries. And that money is not to be reduced to present cash value.

He is entitled to a specific sum for physical and mental suffering experienced and about to be experienced for the rest of his life. And what has he gone through? This, too, would not be difficult to determine if we wanted to sift through all of the exhibits and go through all of the discussions concerning pain and suffering. We also could talk about the future he might have had.

If you remember plaintiff's exhibit No. 84, his high school record from Marmion, he was seventeen years of age, had an IQ of 131, and had scholarships to half a dozen schools. He didn't get into Harvard, but he knew, just as his parents knew, that he could learn anything he could read in a book. He knew he could be a mechanic or a flute player or a tennis player or a chili maker. He knew he could do all of those things.

This sounds like I'm talking about disability, but he is now suffering more than physical pain. The court is going to tell you that you should take into consideration not only his physical pain but also his mental suffering.

Physical pain is reasonably easy to understand, isn't it? We know what happened. We know what happened from the moment that he needed a craniotomy. Remember how they performed trephination on his skull and put that tube in to reduce the pressure? That's when he started coming back to life. Maybe not that instant, but

slowly and surely he came back to life as he went from one phase of the coma to another.

And the more he came out of the coma, the more pain he was aware of. The more pain he was aware of, the more he has given of himself, the more entitled he is to money, according to the law. That is a terrible way to put it, but there is no other recourse.

If each of the thirteen of you could perform a craniotomy on him or undo his gastrostomy or sew up his trachea for good so that he could walk and talk and think, wouldn't he be happy? And we would not be here. I am sure he would give up all rights to dollars for pain and suffering—all of them. He would throw it out the window tomorrow as anybody in the world would do.

But the law says that you people, with your fates thrown together in this lawsuit, are required to compensate him for his physical pain and mental suffering.

Maybe another way to understand the mental suffering would be to talk about the "cans." We talked about the "cannots." Let's talk about the cans as far as mental pain is concerned.

What can he do? He can wish. He can sit within that jail of his, that corpse of body and blood, and feel anguish and wish he were out. And he can agonize. As Dr. Plum said, the real torture of this disease, this pathology, this condition, is agony because he is in his body and he knows he is there and he cannot get out. And he can smell. That's why his father has asked the nurses not to eat around him, because he can smell food.

Who has not been hungry and smelled their spouse's or their loved one's or their mother's cooking? And you just can't wait until it is going to be six o'clock and you are going to eat. We all have smelled and anticipated food and felt our mouths begin to water.

He can yearn. Most thirty-year-old men yearn and yearn and yearn. The technical word is libido. Men were put on earth to be with women. And women were put on earth to be with men. And he can yearn to be with a woman. But, as Dr. Plum said, as Dr.

Mullan said, all he can do is yearn. Dr. Ketel said, "I don't know if he can have sex; it depends on what kind of a partner he finds." But we all know what yearning and the inability to do anything about it means.

We also know what it means to be able to taste, which he can do in a limited way. Remember, they put some beer in his mouth? They put some chocolate in his mouth. He smiled. He could taste it, but he could not swallow it. So what does it mean to be able to taste but not to chew and swallow?

Take your hands and put them on your trachea and put something in your mouth and try to swallow. The food does not go anywhere else. That is his life. He can taste it in his mouth, but he cannot swallow it.

We know he has spasms on a daily basis. And we know that there is pain with these spasms. And we know that his legs can be brought apart twelve inches and something put in between them so they don't knock back together. We know what it takes to open them up.

We know about that cylinder that is put on his hand, and we know what would happen to his hand if he formed a fist. The fingernails would go right through the palm of his hand.

And we know that he has a fear. Remember? He told his brother George. George came up to visit him one day. "I have a fear of coughing, of not being able to breathe."

Some of us have experienced the horribleness of putting food in our mouths and having it go down the wrong way and waiting those few seconds until we can choke it up. There is a technique now for hitting and knocking it out; but we all know what it means to be coughing and unable to breathe. And he has gone through this coughing and this suctioning and this difficulty time after time. But each time he coughs, he is afraid he won't be able to breathe.

You have seen the videotape. You have heard how he moans. He is not moaning because he is enjoying himself. Twice now he has

broken his jaw from moaning, that moaning that you heard on the videotape when Rosalie was suctioning him. No, she does not have to suction him as much as she used to; his lungs are clear now, and he is able to swallow a little now, but he still moans.

You saw him on the videotape when he was using the computer. He moaned at times. Well, that moaning is not because he is happy. That moaning is because of physical pain or mental suffering. It is one or the other. It certainly is not because he is enjoying it.

He is frustrated. Of course, he is frustrated. He looks out that window at Lincoln Park and sees little kids playing and enjoying themselves and being pushed in carts. And he sees cars go by on Lakeview. Maybe the answer is to take him out of that room. That might be a suggestion, to put him in a cell where he cannot see anything but himself, to close his eyes so he sees nothing. But, in the meantime, he is frustrated.

What else can he do that indicates mental pain and suffering? He can use his computer. And that computer tells the whole thing. If you remember, he once said on that computer that he wanted to go back to teaching law. He said, "I would like to go back to teach law." He said it right on that computer. Another time, he said, "I would like to go out to the farm and visit my dad." It was at Thanksgiving. On top of this, he said, "I would like to go to the farm and see folks and friends. I would like to teach law."

I may have forgotten some other things he said. They will be here for you. There may be other things in here that would indicate his anguish and his fears and his pain. I do remember that one time he said, "I am in constant pain." Another time he said, "I was afraid I was going to die."

Remember, he told someone on January 6, 1984, "When I was in the ICU unit at Columbus Hospital, I was afraid I was going to die." That's fear. That's mental fear. That's mental suffering.

"All my extremities hurt," he said on the computer. "Intense pain in there, but I am willing for OT and PT because I want to live." That was on the computer. He said he wants to get well, knowing

full well he is not going to get well, that he is a captive, that he is a prisoner in that five-foot, ten-inch body of his.

He is indicating some mental suffering by saying these things. "My jaw keeps me in constant agony. I feel like an idiot," he told Rosemary O'Connor one day. Another time he said, "I want to be sane." As I have indicated, he said he would like to go back to teach law. Does that not show mental suffering?

The "cans," *c-a-n.* He can look in a mirror. He can know what people think of him. Remember that one of the decisions his father made was not putting him in his own apartment because people would see him. And they might think he is an idiot. They might think he is retarded. He is embarrassed to be around strangers because he knows that strangers don't know. He knows that they don't know he is an intelligent human being. It's not that they don't care, but they don't think.

So he is aware of people. And he can remember. I don't know how many of you went to the Vatican Art Exhibit at the Art Institute, but you can go as many times as you want when it is here. He went once. On the second tape you saw, he was at the Vatican Art Exhibit at the Art Institute on October 15, 1983. And the next day, through his eyes, he put it on the computer.

Doesn't that tell you something about anguish and pain, knowing that he had to be taken there by a nun and a nurse in a medicar? While others are walking and listening to those tapes they put on your head down in those places, he had to have somebody do it for him. Is that not anguishing?

Worst of all, I guess, is he knows his predicament. He knows that he will never get out. He knows that he is a captive, a prisoner in his own body. In short, he is trapped in a useless body and knows it and thinks about it and is aware of it.

You, ladies and gentlemen, without reducing it to present cash value because that's what the court is going to tell you, must determine an award. I respectfully suggest that you consider awarding this young man somewhere in the area of $8 million for that element

of damages, and let him do what he wants with it because, under the law, he has earned it. Gross as that may seem, gross as that may appear, under the law, this judge is going to tell you those exact words. Those are not my words; I would not have the temperament or the guts to come up here and tell you that that is what the law is if His Honor hadn't told Mr. Johnson and me that that is what he'll instruct you on.

And you five ladies and the rest of you gentlemen will be responsible for granting him a sum of money not reduced to present cash value. And you will not say, "Well, he can take $8 million and he can do this or he can do that. He can take that $8 million and do whatever he wants with it." That is not your test. Your test is translating the anguish and the fear and the tumult into dollars. That's the responsibility which you will shortly undertake.

The next element of damages, ladies and gentlemen, that you shall take into consideration is disfigurement. I don't know how to describe *disfigurement.* Think about how those of us who are not disfigured, uncharitable though it may be at times, avoid those who are disfigured. It might be some poor, hapless soul at the corner of Dearborn and Clark without any legs and with a hat in his hand. The cops leave him alone because they know that's the only way that the poor guy can eat that day.

But this man is in a position that, wherever he goes, he is disfigured. And the consciences of those listening to me may say, "Well, we are healthy, we are beautiful, we don't have to look in mirrors." Being disfigured, by the way, does not mean horribly burned. You have seen this young man. You have seen the pictures of him. You have seen how his hands are stuck up like this and his legs are stuck out on the wheelchair. You will see all of these pictures again.

What does *disfigurement* mean? No, he is not like the elephant man who has to hide behind a screen. No, he was not going to be a movie actor. Yes, his hair was receding; but he was a healthy, full human being. But disfigurement, in all candidness, would not have stopped Randy Block. He had the guts and the wherewithal

and the spontaneity to be a great man whether he was disfigured or not. So mere disfigurement would not have stopped him from going on to greater heights.

You have seen this young man. You have seen how his hands are disfigured. We know the optimal care that he must receive in order just to remain at his present level. We know that disfigurement, much as we like to keep away from it, will be with Randy Block every day of his life.

And you will see a picture of him when he was on the Princeton swimming team. You will see a picture of him, five-feet, ten-inches tall and 160 pounds of maleness. He now weighs 119 pounds and lacks a proper figure.

Incidentally, each of these verdicts is to be taken into consideration individually. They are seven different decisions, each independent from the other. I will be very blunt and frank with you. There is going to be no opportunity on your jury verdict form to add them up. That is not what you will be required to do. You will be required to assess each and every one of them. Somebody may suggest you should add them up, but you won't get the opportunity on your jury verdict form, because at the bottom of the form, underneath the last element of damages, will be the place to sign your names, beginning with the foreperson.

I respectfully suggest that you consider the figure of $2 million for the disfigurement this young man has gone through, not that he wouldn't have been successful without it, but because he has a body, and it is not the body he had before. And the court will tell you to consider disfigurement as an element, an entity in and of itself.

I guess picture No. 154-A shows his disfigurement as well as any. There will be others to look at and compare with the picture of how he looked on that swimming team.

The next element of damages is relatively simple: What has he lost in terms of dollars earned to date? Well, our two economist friends didn't have any trouble with that. I certainly am not going to throw all of this paper at you.

Plaintiff's exhibit No. 363 is a summary of his money earnings as a practicing law professor, as a consultant, and as a member of the ABA Task Force on Professional Competence.

The total of salaries and consulting would have been $79,175. And we must include the interest on that money, which he has not earned since he was hurt August 23, 1981. And he, just like they can reduce it to present cash value for the future earnings, has the right to bring it up to present cash value for past earnings. The total is $117,078. In my opening statement to you four and a half weeks ago, I said I thought he lost about $90,000. I was wrong. Both of the economists looked at the documents and figured he lost $117,000 in that area, $117,078. I guess that is relatively easy to figure out.

From here on, we are going to be talking about economists, salaries, the future, and the past. Now, the court is going to tell you that you shall not speculate or conjecture. The court is going to tell you conjecture, speculation, and guesswork are unacceptable. The court is also going to tell you that you have a job to do. How are you going to put those together?

Well, one way is by listening to the witnesses. And let's see what the witnesses said. Somebody in that vast world out there may say, well, if John Randolph Block liked teaching so much that he quit an up-and-coming, brand-new law firm to go back to teaching, that's where he would have spent the rest of his life.

And, ladies and gentlemen, if that is your decision, then that's your decision. If you decide that he would have taught for the rest of his life, then that's your decision. That's why the jury system works—because the twelve of you will be making that decision.

It would be foolhardy and somewhat unfair to allow me to make the decision. And, although I am sure he would be as fair as he possibly could be, I think Mr. Johnson might suffer the same impediment of partisanship if he were called upon to respond to the query: What would John Randolph Block have done with the rest of his life if he had not been interfered with?

Now, the court is going to tell you that "damages with respect to the loss of future earnings of John Randolph Block must be based upon your determination of his work-life expectancy in accordance with all of the other instructions as it existed before this occurrence and without taking into consideration his present injuries."

Therefore, you must calculate his future life earnings as if he had never suffered these tragic injuries. If for some reason you decide he has a shortened life expectancy, the defendant will still be responsible for the money he would have earned if he were able to be employed for the rest of his life. So the court, in its wisdom, will tell you that you shall take into consideration his work expectancy as if this injury had never occurred. That's why both of the economists did their best to try to figure out his future work expectancy and his earnings.

Now, if he remained a law school professor, his loss of future earnings would be in the area of $1,256,608. Both of the economists agree on this figure. So if you believe that John Randolph Block would have stayed a teacher the rest of his life, then I respectfully suggest $1,256,608 is the present cash value of his earnings reasonably certain to be lost in the future.

Now, I think it would be absolutely horrendous of me to sit here and tell you folks what economic model to use to determine his future loss of earnings. You have your choices. You will make the decision. You have heard all of the evidence, and I respectfully suggest you combine your efforts and decide if you want to start with the Alaska model. That means you decide that he makes X number of dollars a year, and that interest will be exactly the same as inflation so that they balance each other out through multiplication. That would not be a violation of the instruction of the court.

Or you can use the 1 percent or 2 percent model, or whatever model you think is correct. Whatever model you choose, the economists agree that he would have lost $1,256,608 in present cash value if he had remained a law school professor.

And if that is your decision, so be it. I think it would be improvident of me, however, and somewhat irresponsible if I did not point out a few things to you. First of all, we know that he was asked what he wanted to do. He answered on the computer, "I want to go back to teach law."

I don't think you can ignore that. I don't know whether it means that's what he wanted to do that day or that's what was in his short-term memory, or whether he actually wanted to go back and spend the rest of his life practicing law. If that's what you think, and it is your job to decide, then you should reach the conclusion that his loss of future earnings would have been $1,256,608.

We do know, of course, that the medical experts—Dr. Plum, Dr. Ketel, Dr. Mullan—all agree he will never work again. So that choice is not part of your problem. George Kryder said Randy Block was going to teach a while and then go back to practice. George Kryder is the man who went to Princeton with him. Randy Block told Danielle Dunning that he planned to return to the practice of law.

And there are two other people who I think must be considered. One was Mr. Reuben, on the videotape. Mr. Reuben said, under oath, even though on tape, that if this man came back this year, entry level, after being a college professor for five or six years and having worked at his firm before, he would have earned $55,000 to $60,000.

If you remember, another man came in here. His name was Mr. Whitney. He was the corporate lawyer who graduated from Northwestern Law School, worked for the law firm of Jenner & Block, had worked for the United States government, and became house counsel for Motorola Corporation. He hired Randy Block for that summer, and Randy made $5,960 that summer.

I asked that man if Randy Block would be eligible to go to work for him in 1981 or 1982. His answer under oath was, "Yes, he would be eligible to come to work for us in '81 or '82."

So I don't think it is speculation, I don't think it is conjecture, I don't think it is guesswork when a man like Mr. Whitney, Northwestern

graduate, associate of Jenner & Block, former government attorney, and lawyer for Motorola out here in Schaumburg, said, "Yes, he would be eligible to come to work for us. We liked him. We liked his work. We liked his writing. He was industrious. We liked to go out and have a drink with him on Friday afternoons. He wore clothes like a professor. He was a good guy. And if he came to us in '81 or '82, he would earn $50,000 or $60,000 per year." That was two years ago.

I don't think it is too difficult to speculate—and you may decide differently; that's your job—that he would have returned to the practice of law. He could have returned this year making somewhere between $50,000 and $60,000. Now, is $50,000 or $60,000 a lot of money? Absolutely. That's why you should consider it and consider it very carefully.

Maybe he would have waited ten years before he went back to the practice of law. Maybe the fact that he was on Law Review at the University of Chicago; maybe the fact that he had an IQ of 131; maybe the fact that he was an honors graduate, cum laude, from Princeton; maybe all of those things would have made him a mediocre lawyer. If he had gone back to the practice of law, and if he were a mediocre or average partner, his earnings with fringe benefits broken down to present cash value would have been $3,439,413.

Ladies and gentlemen, you have seen and you will see his diploma from Princeton which says he graduated cum laude. If you think he was going to be a law professor for the rest of his life, that's your decision.

If you think he would have gone on to different things, that's your decision. If you think, after looking at his academic records from these various schools, that teaching law is what he was destined for, that's your decision.

But rather than speculate and guess about it, I think you should take into consideration what Mr. Whitney, Mr. Reuben, and Mr. Kryder have said. If you decide he would have gone into practice, then you would find a figure somewhere in the area of

$3,439,413. If not, it would be the other figure which the economists agree upon.

Now, ladies and gentlemen, the last three days were spent on testimony concerning this last element of damages. It's an easy one: medical expenses to date. You will also get into evidence all of the exhibits that support exhibit 333. Mr. Johnson has been courteous enough to add them up.

The medical expenses down to the last date available, as you look at plaintiff's exhibit 333, are $979,146.05. All of those bills are in evidence. And if you wish, you may look at them all; but I think that they are codified and crystallized on this exhibit. Please take our word for it that we calculated the figure twice, and we got $979,146.05.

The next element of damages, which you will consider separately, is the one that I think you will spend the most time deliberating on, not because of what the economists and salespeople said, not because life expectancy is that much in issue, but simply because the figures are so tremendous that you should take into consideration all of what you have heard concerning John Randolph Block's future medical expenses.

We know that it costs somewhere in the neighborhood of $630 plus $491 a day, for a total of $1,121 a day without emergencies. That's about $410,000 a year.

Now, $410,000 a year is optimal care. If this man's life is as sacred as the thirteen of you said it was, I respectfully suggest and implore that the optimal care figure be assigned in order to preserve the sacredness of that life. A yearly cost of $410,000 is not what the doctors say, although they must be given some consideration. And you should certainly give them some consideration.

I respectfully suggest to you that medical science today is growing rapidly. Old drugs like penicillin and sulfa are passé. Penicillin was one war's drug. Sulfa was another war's drug. Now they have new drugs. I don't know if the drug companies are going to be successful or whether they are just going to go out of business.

I don't know whether this young man is going to live until he is seventy-two or over, or whether he is going to die next week. I don't have that responsibility.

When this case is over, Dr. Plum will continue his research, as he is entitled to do. Dr. Ketel will be out at the hospital in the suburbs. Judge Durham will have another case. Mr. Johnson will go on to represent another defendant. I will go on to represent somebody who has been injured, and you people will go home.

You might decide that John Randolph Block is going to die three years from now and award him somewhere in the neighborhood of $1,200,000—which doesn't take into consideration any emergencies. And what if three years from now, John Randolph Block is alive and well and he calls you at home and says, "Mr. or Ms. Juror, I am John Randolph Block; you made a mistake; will you come on back and add some money?" You know you are not going to do it because you won't be required or able to.

The optimal medical care of John Randolph Block is not in the hands of Dr. Plum. It is not in the hands of the nuns at Columbus Hospital. It will be in the hands of his father for a short time only. His father is fifty-eight years old. By a short time, I mean fifteen or twenty years. Whether he does or does not get optimal care is in your hands.

Whether Dr. Ketel is right, whether Dr. Plum is right, whether Dr. Mullan is right are all things that you should take into consideration.

But, remember, when you walk in there—and I don't know why you got thrown into this case any more than I know why Randy Block got hit—you have to decide. You have to decide how long John Randolph Block is going to live. And then you have to decide what type of optimal care he is entitled to. And you put a dollar figure on it.

If there is some veracity to the fact that, right now, it is taking $409,165 a year to care for John Randolph Block, and if he lives a full life expectancy, under plaintiff's exhibit 333, his damages for this element will be $16,469,078.

His father, who is not without an interest in this lawsuit, told you—and I was surprised—that he thought his son probably would not make the life expectancy because of the vicissitudes of life and all of the attacks he has gone through and all he is going to go through. So he said he thought that his son would live until he was sixty-five or seventy.

If that's what you figure, and if you think he is entitled to the optimal care of $410,000 brought up by whatever way you want, the Alaska method, which means the interest rate and the growth will coincide, or by Dr. Ralls's method, or by Dr. Linke's method, where interest would outweigh growth by 1 percent—whichever way it is—if you believe this young man is entitled to optimal care, then I respectfully suggest you may consider $13,763,654 if you think he will live to age sixty-five. And it is $11,931,571 if you think he will only live to age sixty.

I do not have a crystal ball. I am not a member of the Blessed Trinity. I do not know whether John Randolph Block will live a normal life expectancy or whether he will pass away some time before then, but I do know that he would have had a normal life expectancy if it were not for the occurrence of August 23, 1981. You know that he would have had a normal life expectancy if he had not been crushed by that truck on August 23, 1981.

Doctors can't play God. You can't play God. I can't play God. But sometimes, people have to make decisions which affect other people's lives for the rest of their lives.

In this case, twelve people from twelve different walks of life are going to use the evidence in this lawsuit, and they are going to have to decide how long they think John Randolph Block is going to live. It is a responsibility that I, as a lawyer, never have to undertake. And the judge will not undertake it.

You people, by virtue of your temporary responsibilities as officers of this court, have had the buck placed on your desks. There's no running away.

Horrible fear of making the wrong decision is going to go into that jury room with you. You must decide not only how long

Randy Block will live, but also what type of care he is entitled to in order to survive the tragedy of August 23, 1981. We know that one person lived in a coma for thirty-seven years at home, but with the best care, the most wonderful care in the world.

He's got a shot at it. It is your job to fund it and let the chips fall where they may by deciding on the type of care and the length of time John Randolph Block is entitled to receive it.

It is no easy task. And I am aware that, during these last few days, my voice went up, my hands trembled, and I made my voice too loud because I was aware, as perhaps you were not aware, that this is how it was going to come out. When that jury room closes, we are out of your lives until you walk back in.

You will go in there and determine the present cash value of the reasonable expense of medical care, treatment, equipment, supplies, and services reasonably certain to be needed by John Randolph Block in the future.

You have been an attentive group of thirteen people. I am flattered. I am grateful to work under a system that allows me to talk to thirteen people who are willing to give up their time and their outside interests to listen to the problems of other people and assume and accept the responsibility of solving them. I have faith in this jury system.

I hope you do. I know you do or you would not have accepted the responsibility of being here.

Thank you for listening to me. Mr. Johnson will now have an opportunity to speak after the recess. Thank you very, very much.