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VIRGINIA:  
IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

VOLPE M. BOYKIN, Administrator :  
of the Estate of DAVID CLAY :  
BURNETTE, :  
Plaintiff, :  
vs. : AT LAW NO. CL89-36  
JEREMIAH E. ZULLINGER, JR., :  
Defendant. :

EXCERPT OF PROCEEDINGS

TAKEN BEFORE: The Honorable Austin E. Owen, Judge  
and jury

November 14, 1989 - 10:00 a.m.

Virginia Beach, Virginia

APPEARANCES: Breit, Drescher & Breit  
By: Jeffrey A. Breit, Esquire  
and  
Jimmie R. Keel, Esquire  
Co-counsel for the Plaintiff

Pender & Coward  
By: Peter C. Manson, Esquire  
and  
Heilig, McKenry, Fraim & Lollar  
By: George J. Dancigers, Esquire  
Co-counsel for the Defendant

REPORTED BY: Deborah L. Yost, RPR, CSR

COPY

1 [The following is the closing argument  
2 of Mr. Briet, the Plaintiff's attorney.]

3  
4 MR. BREIT: May it please the Court,  
5 defense counsel, may it please you, and may it please  
6 you, ladies and gentlemen of the jury. It's now your  
7 moment of decision where you have the terrible power to  
8 reject this woman and her family or accept the deep  
9 loss that they have suffered and award them fair and  
10 adequate compensation. You have a very difficult job  
11 because you've had to sit and judge the life of a  
12 stranger, the life of a family, and you've had to do  
13 that in hearing the testimony of one hour about this  
14 man.

15 As I told you in my opening statement,  
16 what I wanted you to remember and what I want you to  
17 remember now is what type of man was David Burnette  
18 and what type of family was this family in September  
19 of 1988. For fifty years David Burnette never asked  
20 for anything of anyone except to love and enjoy life.  
21 For fifty years he never complained. He had no reason  
22 to. He never stayed from work because he had no  
23 reason to and he never asked for sympathy, charity or  
24 help from anyone because he had no reason to.

25 David Burnette was a professional truck

1 driver, a hard-working man, a loving father and much  
2 more than just a husband to this woman here. There is  
3 no place in the world, other than in America, where  
4 the value of human life is more cherished than here,  
5 and but for a few moments in September of 1988 when  
6 David Burnette swerved to avoid taking this man's  
7 life, instead took his own life, we wouldn't be here.  
8 The loss of this life is going to live with this  
9 family for a long, long time and probably not a day  
10 will go by where someone in this courtroom, either  
11 family or friend, will not think about the loss of  
12 David Burnette.

13 How long? Well, it seems like ages to  
14 me when John F. Kennedy was killed, and yet in a week  
15 and a half it will be twenty-six years since his  
16 death, and in twenty-six years, Cheryl Burnette will  
17 only be sixty-four years of age, and the youngest  
18 Burnette child will only be forty-six years old.  
19 What's it going to be like in two weeks when Cheryl  
20 sits down for Thanksgiving and these children sit down  
21 for Thanksgiving? What's it going to be like at  
22 Christmastime? How many holidays, over how many years  
23 is this family going to sit down and silently look  
24 down at the empty chair and say quietly to themselves  
25 "God, I wish he was here. I wish he could share this

1 moment with us."

2 The Court has given you these  
3 instructions which you are allowed to take back with  
4 you, and I urge you to look at instruction number  
5 three, because instruction number three is the  
6 instruction which outlines the elements of damage  
7 which you may and should consider in awarding money to  
8 this family. You know, it's a strange system that we  
9 sit here, some fourteen months after the death of  
10 David Burnette, and we ask seven strangers to put a  
11 number for their loss because it's just not fair, and  
12 I know that if we had the power, and if you had the  
13 power to turn back the wheels of time, to just moments  
14 before this accident, and held this gentleman up from  
15 trying to pass, or make David Burnette stop and do  
16 something besides get on the tunnel at that instant,  
17 if we could do that, I know that each and every one of  
18 us in this courtroom would do that, but we don't have  
19 that power. The only thing that the law allows us to  
20 do, and the only thing that the law allows you-all to  
21 do is to somehow put some number where a void now sits  
22 in her home and each one of their homes.

23 We have filed suit for \$1,300,000 and  
24 the size of that may be huge and vast, but the  
25 contemplation of this man's life, of this woman's life

1 and of these three children's lives is huge and vast  
2 and you should not reduce your award to this family  
3 because the size of the award may be so large that you  
4 fear that you may embarrass this defendant. Your job  
5 is to do justice and there is not a single person in  
6 this courtroom that can complain if you do justice.

7 The Court instructs you in instruction  
8 number three to consider the financial loss, and I  
9 think that element of the damage is rather simple.  
10 David Burnette was earning something around \$20,000 a  
11 year, and if he were to work fifteen years to  
12 sixty-five, that would be \$300,000, and if he worked  
13 for twenty years, in his health, probable, that would  
14 be \$375,000.

15 I will leave you-all to consider the  
16 mathematics, but that's not to mention anything for the  
17 raise or the rise of his income in the years to come,  
18 and that's not to mention one single dollar for the  
19 services that he performed for this woman and these  
20 children around the home, around the house, around the  
21 cars. That's an element of damage that you have to  
22 consider. The more difficult damage, ladies and  
23 gentlemen, is how do you put a number for these three  
24 children. Sure, David Burnette loved his children,  
25 just like any man loves his children, but they were a

1 close family, a very close family, and they relied on  
2 him, not only for his friendship and his guidance and  
3 his advice, but they hoped, and you heard from this  
4 witness stand, they hoped to be able to give back to  
5 him what he had been able to give to them, and what he  
6 had been able to give to so many people over so many  
7 years.

8 I told you in opening statement to try  
9 to consider what kind of man was this? What kind of  
10 man was David Burnette to his family and to his  
11 friends, because that's all we really have to rely on.  
12 Somehow you must digest that one hour of testimony and  
13 decide for yourself, was David Burnette a good man?  
14 Was he a good father? Was he a good husband? The  
15 more difficult problem, ladies and gentlemen, is what  
16 do I say to you for Cheryl Burnette? He was so much  
17 more than just a husband.

18 What is a husband? To some, a husband  
19 is the handiest thing ever invented. What is a  
20 husband? For these gentlemen, it may be difficult to  
21 consider what it's like to be a husband and what it's  
22 like to not be there, and for you all, I hope it's a  
23 little easier for you to understand what this woman  
24 has gone through. What is a husband? A husband is  
25 the one who helps you move the furniture. A husband

1 is the one who helps you change the light bulbs. A  
2 husband is the one who helps open the dresser drawer  
3 when it's stuck. A husband is the one that you turn  
4 to when the zipper on your dress is stuck, that you  
5 turn to when the jar from the cupboard won't open,  
6 when the dog or the cat needs to go to the vet. A  
7 husband is the one you turn to when you need your back  
8 rubbed and your neck is stiff. A husband is the one  
9 who can tell you how good the dinner was that you just  
10 made. A husband is the one who can kiss you on the  
11 tip of your lips. A husband is the one who took  
12 Cheryl for a walk, held her hand, took her for a ride  
13 on a horse, took her camping. A husband is the one  
14 who you curl up to in the cold of winter and keep your  
15 feet warm. A husband is the only one who can look at  
16 you and say those familiar words, "I love you" and  
17 make all the glowing years of past come forward and  
18 bring all of the hope of the future present.

19 In closing, ladies and gentlemen, I  
20 have had the awesome responsibility to somehow tell  
21 you about the life of David Burnette, Cheryl Burnette  
22 and his three kids, their past and their future, and  
23 all I can remind you is that through no fault of her,  
24 no fault of any of these children, they sit here in a  
25 Virginia Beach courtroom, away from their home, asking

1 for justice. Through no fault of hers, her spirit,  
2 her vitality and her dreams sit on the cold floor of  
3 the Chesapeake Bay; and so now I take that awesome  
4 responsibility of mine and I lift it from my shoulders  
5 and give it to you, and I know that you will do your  
6 job well, but I ask you, and I hope for all of you  
7 that ten or fifteen years from now that you may  
8 accidentally bump into Cheryl Burnette, or you may  
9 accidentally bump into one of these children on the  
10 street and I know that if you can look them in the eye  
11 and walk up to them and say, "Hey, I remember you --

12 MR. MANSON: Your Honor, I think I've  
13 got to object. He's trying to inject the personal  
14 feelings of the jury at this point.

15 MR. BREIT: It's argument, Your Honor.

16 THE COURT: I think you're certainly  
17 entitled to argue, but I don't think it should be  
18 personalized insofar as this jury is concerned.

19 MR. BREIT: Yes, sir, Your Honor. I'll  
20 rephrase it.

21 And I hope that when you come out of  
22 this courtroom today and for the years after today,  
23 that you can be proud of what you've done here because  
24 this is their only day in court and today you decide  
25 an entire lifetime of a man by your verdict. That's



1 an awesome responsibility, and I hope that you will be  
2 fair with this family, as I'm sure you will be.

3 Thank you.

4  
5 [Mr. Manson made a closing argument on  
6 behalf of the defendant and Mr. Breit made a  
7 final closing argument on behalf of the  
8 plaintiff as follows:]

9  
10 MR. BREIT: Your Honor, I'll be very  
11 short, ladies and gentlemen.

12 Mr. Manson stands up here and says,  
13 "Don't punish this man." He says that, "I come before  
14 you and I admit my fault." The defendant comes here  
15 and admits his fault because the evidence is so clear  
16 that the defendant had no choice but to stand before  
17 you and admit his fault. He says, "Don't punish this  
18 defendant. Be fair to this defendant. Be fair to  
19 him. Don't punish to him." What do I explain to  
20 Cheryl Burnette this year, next year, ten years from  
21 now? What do I explain to these three children when  
22 the defendant says, "Oh, I came came in here and  
23 admitted that I was at fault"? Should we give him  
24 some credit for that? Should we punish this woman  
25 because every dollar of that \$20,000 wasn't there.

1 Because Jeffrey Breit said something in his closing  
2 argument, should we punish this woman, should we  
3 punish these children?

4 I think the evidence is clear from this  
5 witness stand what this gentleman did for this family.  
6 I want you to be fair. I want you to be fair to this  
7 gentleman, but I want you to remember, this is this  
8 family's last day in court. They didn't want to be  
9 here. They didn't choose to be here. David Burnette  
10 would be here today but for his admitted negligence  
11 and fault. Don't give him special treatment because  
12 he was forced to come in here and tell them I was  
13 wrong. I killed a man. Be fair with this family,  
14 because they have to live with that loss, that void  
15 forever and ever.

16 I don't want you to punish. I want you  
17 to be fair. I didn't put on the testimony of all of  
18 the friends from North Carolina, the rest of the  
19 family. I didn't put on the testimony from the people  
20 from his business as to what his projection income  
21 would be as a truck driver. Those are elements that  
22 are not here, but ladies and gentlemen, let's be fair.  
23 I didn't try to put on the evidence of how much this  
24 woman has spent each and every month for electricians,  
25 plumbers and everything else that she's going to have

1 to spend out of her pocket. That was things her  
2 husband did for her.

3 I want you to be fair, but I want you  
4 to be fair to this family, because they don't want to  
5 be here. They didn't choose to be here. They were  
6 forced to come here because that's all we have.  
7 That's all the law allows for, and so when you come  
8 back from that room and look this family in the eye, I  
9 want you to be proud of what you've done because you  
10 know that what you're going to do is going to be fair  
11 to everybody. That's all I want. And if you do that,  
12 then not a single person, the Judge or any of the  
13 parties can complain.

14 Thank you very much.

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1 COMMONWEALTH OF VIRGINIA AT LARGE, to-wit:  
2

3 I, Deborah L. Yost, RPR, CSR, a Notary  
4 Public for the Commonwealth of Virginia at Large,  
5 certify that the foregoing is a correct transcript to  
6 the best of my ability of the excerpt of the  
7 proceedings, taken in the case of VOLPE M. BOYKIN, et  
8 cetera, versus JEREMIAH E. ZULLINGER, in the said  
9 court before the Honorable Austin E. Owen, Judge and  
10 jury, on November 14, 1989.

11 I further certify that I am not  
12 relative or employee or attorney or counsel of any of  
13 the parties, or financially interested in the action.

14 Given under my hand this 22nd day of  
15 November, 1989.

16  
17  
18  
19 Deborah L. Yost  
20 Notary Public

21 My Commission Expires: September 30, 1993  
22  
23  
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25