

ORIGINAL

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1 VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

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3 EDWARD GOODOVE and HARRIET GOODOVE,
4 CO-ADMINISTRATORS of the Estate of
5 JEFFREY H. GOODOVE, deceased,

5

Plaintiffs

6

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v.

Case No. 4552

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CHARLES E. DYE, et al.,

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Defendants

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PORTION OF ARGUMENT

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Taken On

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April 24, 1991

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1 April 24, 1991

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3 MR. ALBRO: Jeff was on the threshold of adulthood,
4 having survived the teenage years, adolescent years, and what
5 a joy it must have been to his parents that he not only came
6 out of that in one piece, not acting in any bizarre fashion or
7 rebelling or doing all the things that every parent has a
8 nightmare that a child might do as an adolescent, but as a
9 serious student, as a young man who took his religion
10 seriously. And how often do we see that? He took his faith
11 in God seriously.

12 Unfortunately, the only way that this can be
13 portrayed to you is through the type of evidence we've put on
14 and for the pain it causes you again, I'm sorry, but there
15 really is no other way. There is a paradox to what you are
16 about to do because you're going to have to equate a human
17 life and the pain caused by its loss to money damages. But
18 it's the only method in two hundred (200) years of our common
19 law system of justice that we have to compensate for that type
20 of loss. And we do it because in our society life is the
21 most precious commodity. Ours is a wonderful civilization
22 among all of those on the face of the earth because we put
23 life first. When the people who wrote our Declaration of
24 Independence stated the inalienable rights of men and women,
25 they said life first, then liberty and pursuit of happiness.

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1 Life came first and we wish certainly that our system of
2 justice could give you a wand that you could wave and say
3 yes, he was killed negligently and we'll bring him back and
4 he'll walk through that door and he'll go home to Virginia
5 Beach with his parents, but we don't have that.

6 The sudden death of a child has to be one of the
7 most horribly, tragic and wrenching experiences any parent can
8 experience. We're not supposed to bury our children. In this
9 country with the quality of medical care we give children and
10 the nurturing we give children, you're not supposed to bury
11 your children. The death of a child is really the death of
12 the future because you put so many hopes and dreams and
13 aspirations on a child as you bring them along and when he
14 dies, your future dies. And it's particularly awful, not just
15 to lose a child, but to lose a child unexpectedly without
16 warning. It's bad enough when someone has a prolonged illness
17 and they die or they're at an advanced age and they die and
18 you have time to accommodate for that and plan for that and
19 get yourself mentally prepared, but you're not ready when the
20 trooper knocks on the door and tells you your son is dead, the
21 boy to whom you had spoken just hours before on the phone.
22 And not having the time to prepare for that loss increases
23 the pain and the permanency of the pain. And ~~on~~ people who
24 are convicted of horrible crimes, sentenced to the electric
25 chair, we give them years of appeals to make sure a mistake

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1 wasn't made. We don't have that opportunity in a case like
2 this. They weren't ready, they'll never be ready as a result
3 of this death. And how long will that suffering for the whole
4 family go on? I suggest to you it will go on for as long as
5 they live, every April 16th the pain will be brought back on
6 the anniversary of his birth. That was last Tuesday.
7 Probably what goes through any parent's mind is buying a
8 birthday present or something like that and that comes back
9 every year. There will be an empty chair at dinner every
10 night. This is a family, as Mrs. Goodove said, even though we
11 both work, the one thing we always did, we always sat down at
12 the dinner table together and that chair is always going to be
13 empty. At religious holidays, other family member's birth-
14 days, he'll always be gone, never be replaced. There will be
15 other events in life too, and I suggest to you, one of the
16 most painful will be sometime in May of 1992 because on the
17 day probably every bit as nice as this one, in May of 1992,
18 all of those college graduates of the University of Virginia
19 are going to put their robes on and they're going to march
20 down the Lawn as they have done for so long, but there will be
21 somebody from that class of '92 who won't be there, Harriet
22 and Eddie and Michael and Scott will know that he's not there
23 to graduate with his class.

24 I will, because I must, discuss with you the value
25 of this case and suggest an award to you. Whatever award you

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1 make is for you to decide. I can only suggest and I invite
2 counsel for the defendants, if they wish, to do the same. The
3 two (2) defendants in this case are represented by four (4)
4 attorneys from four (4) separate law firms, all of them
5 experienced and good lawyers. I suggest that they tell you if
6 they disagree with me what the award should be. I suggest
7 that if they disagree with what I tell you, that they point
8 that out or tell you what they would suggest if they repre-
9 sented the Goodoves.

10 An instruction you've been given tells you what you
11 may consider. You may consider sorrow, mental anguish,
12 comfort, loss of companionship, guidance. A few things that
13 came out during the evidence in this case come to mind. I
14 couldn't hope and I wouldn't try to repeat them all to you,
15 but some of the things that were said that fit into those
16 categories, when someone said he was the jewel of their lives,
17 that kind of said it all. Somebody who would call his
18 grandmother to say goodnight everyday, someone who would try
19 to be a comfort to an aunt in her nineties in New York who he
20 didn't really know, someone who went to the University of
21 Virginia and as a first year student with a tough pre-med
22 curriculum, went to work for Madison House, the student
23 volunteer agency and he tutored high school kids in after-
24 noons, he took that time. What did he know about Charlottes-
25 ville, ¹ He didn't grow up in Charlottesville. He knew his

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1 brother went--went to UVA, but he jumped right in because this
2 was now his community and he was going to help out. A boy
3 when asked what do you want for your birthday, asked for
4 Gray's Anatomy, the book they buried him with. A boy who had
5 the long view as one of his friends said, a boy who said I
6 know what I want and I know it's important and out of thirty-
7 five (35) kids in a high school physics class, he's the only
8 one who took it seriously and did the work and why, because as
9 he said to Scott Lyons, this is important, I'll need to know
10 this someday.

11 You will be given a verdict form and on that form in
12 awarding damages to the Goodoves, you will find four (4)
13 names, Mr. and Mrs. Goodove and Scott and Michael and four (4)
14 lines and it is your very, very serious and difficult duty to
15 award monetary damages and state separately for each of those
16 people what you believe the enormity of their loss to be.

17 You will also have and the judge has read to you
18 something about life expectancies. Why is that there? Why
19 did I ask that to come into evidence? Because you have a
20 right to know just how short this life was cut. This boy had
21 a life expectancy of another fifty-one (51) years on the date
22 of his death. But more than that, I asked that the life
23 expectancy of each of the four (4) family members go into
24 evidence so that you would know how many more years they had
25 with him. So how do you value these losses? Scott took the

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1 stand, he didn't stay on the stand long, but was there any
2 more poignant witness in two (2) days than that young man, who
3 is a young man and yet a little boy at the same time. And the
4 light of his life, his older brother to whom he looked to for
5 so much was gone, and he told us, he struggled through tears
6 to tell you that he's working harder to make Jeff proud.

7 One of the tragedies in this case is that Scott
8 really can't be Scott. He feels he's got to take Jeff's place
9 for his family, he's got to be a little Jeff. And so in many
10 respects his parents have lost them both. They lost Jeff when
11 he died and then they lost Scott when he felt he had to take
12 over that role. What do you say about a relationship where--
13 Scott said whenever I asked Jeff to teach me tennis or do
14 anything, he would do it. Scott's life expectancy was fifty-
15 five (55) years when his brother died. He would have outlived
16 his brother. They had fifty-one (51) years together and I
17 suggest to you, for as long as he lives, Scott will suffer
18 that loss. And I suggest to you respectfully, that you award
19 him damages in the sum of five hundred thousand dollars
20 (\$500,000.00).

21 Harriet. I really--I almost shudder at the task of
22 how I as a lawyer can put into words the grief that a mother
23 feels when she loses her precious boy. It's almost a subject
24 that I ought not to talk about it is so enormous. But there
25 are a couple things that were said by her that more than all

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1 the tears in the world bring home the enormity of the loss.
2 She said in her last telephone conversation with her son, she
3 talked about what he'd be doing, she worried over the weather
4 and not to go up to Northern Virginia that night to see his
5 brother and she said in her words, she said I thought he was
6 tucked in. When we put into evidence the photograph of Scott
7 and his mother and his father and his grandparents when he got
8 his Honor Society ribbon, even now she worried about his hair
9 and whether it was in place. She was almost embarrassed for
10 you to see the picture because his hair didn't look right.
11 This was the little baby who was premature and who had to
12 overcome hurdle after hurdle after hurdle and Harriet led him
13 over those hurdles, whether it was doctors for his eye problems
14 or educators for his learning disabilities or for his speech
15 difficulties, he overcame them all, and in such a magnificent
16 way and that's the reason Harriet feels the loss. This is the
17 boy who as Harriet said cooked dinner because he felt I worked
18 too hard and he wanted to take that burden off me. They say a
19 picture is worth a thousand words and I don't doubt the wisdom
20 of that at all. And I suggest that plaintiff's exhibit 26,
21 that was a picture of Jeff on his Confirmation Day, standing
22 next to his mother really tells you more than I as a lawyer
23 could ever hope to tell you about that relationship and about
24 the enormity of the loss. At the time Jeff died, Harriet's
25 expectancy was that she would live another thirty-one (31)

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1 years, thirty-one (31) years she's not going to have with her
2 son and I respectfully suggest to you that you award Harriet
3 damages in the sum of five hundred thousand dollars
4 (\$500,000.00).

5 Michael, robbed of his younger brother to whom he
6 looked to for so much, the younger brother who gave him so
7 much joy, particularly in his first year at UVA as they ceased
8 to be older brother, younger brother and that relationship
9 matured and they became equals as they entered young manhood.
10 Michael is obviously a big man, physically very strong, but
11 what you saw on the stand and what you learned from Dr.
12 Kornbluth is that the inner strength is gone. At a time when
13 he should have so much to look forward to, should be excelling
14 and achieving so much in his studies, he has nightmares of
15 accidents and death, he can't sleep, he cries uncontrollably,
16 he's inconsolable, he has to call Michele repeatedly on a
17 daily basis for support and his physician feels he will need
18 as much as three (3) more years of therapy and then he hopes
19 he will begin to cope with that loss. In addition, he's
20 lost--he's lost his college years. He can't come back to
21 Charlottesville anymore, that's just too much for him, a city
22 he loved so much. He can't come back to the University he
23 loved or the fraternity he loved. That's all been destroyed
24 as result of this. When Jeff died, Michael's life expectancy
25 was another forty-eight (48) years. He will feel the pain of

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1 that loss for every one of those forty-eight (48) years and I
2 suggest to you again respectfully that you award him five
3 hundred thousand dollars (\$500,000.00).

4 With Eddie, the loss is different, the loss is just
5 as enormous, but what he lost was his special relationship, a
6 boy who was fulfilling his dream to be a doctor. And what a
7 great joy that must be for any of us who can't do what we want
8 to do in life, to see that our child is able to go beyond us
9 and achieve it. In a time when there are so many broken
10 homes, fathers who can't spend time, how wonderful it must be
11 to have a father who said I will put my kids first and
12 everything else is second. They're the center of my life and
13 I'll do whatever it takes, whether it was the regular weekend
14 tennis game that he played with Jeff, whether it was going out
15 on a boat no matter how violently ill it made Eddie, he did
16 it. One of the great joys that was taken away from him was
17 that he came from an unhappy home and he vowed he wouldn't
18 have that and he made good on that vow and then it was all
19 taken away from him, it was all or none. He has had to suffer
20 a special form of torture and that's what Dr. Blackburn told
21 you about. He has had to endure horrible thoughts and
22 horrible nightmares and horrible torments and Dr. Blackburn
23 helped him get over some of those. But it's never, ever going
24 to go away. And the pain is going to continue because life
25 goes on and reminders of Jeff will be there everyday. It's

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1 going to go on every time one of his boys takes a car trip,
2 he'll never sleep until that trip is over. It's going to go
3 on every night when one of his boys goes out. It's going to
4 go on as Scott follows in the steps of his brother and goes to
5 UVA. When Jeff died, Eddie's life expectancy was twenty-six
6 (26) years, he had that many more years left with Jeff.
7 They've all been taken from him and he will feel the pain all
8 those twenty-six (26) years. And I suggest to you that you
9 award him the same amount that I suggested for the other
10 members of the family.

11 Ladies and gentlemen, when we were going through the
12 first stage of this case, you took your oath as jurors and you
13 answered questions and you were forthright and you were
14 truthful and among the answers you gave to questions that I
15 posed were, if the evidence would support a substantial--a
16 very large verdict, you would have no hesitation signing such
17 a verdict and that you had no preconceived notion as to any
18 dollar limit or any ceiling on damages. And I suggest to you,
19 you will find no personal injury case with more damage than
20 this one and I urge you to return a verdict for the full and
21 the satisfactory amount of the loss, not seventy-five percent
22 because if you return seventy-five percent of justice, you've
23 returned twenty-five percent of injustice. Award the full
24 amount. In many respects, a lot of the witnesses who took the
25 stand were giving a eulogy to Jeff and in a very real sense

1 it's going to end today with you. You get to write the final
 2 chapter. You get to write the eulogy and whatever you come
 3 back with when you return through that door will be something
 4 that Harriet and Eddie and Mike and Scott will remember
 5 everyday of their lives so long as they live. You have the
 6 unique opportunity to bring this chapter to a close and to do
 7 it in a dignified and satisfactory manner. Charlottesville
 8 was once a happy place for this family and I trust that
 9 through the process that has picked seven (7) good residents
 10 of this city, that you will tell them that for Charlottesville
 11 you understand their loss, you understand what happened here
 12 and you are not going to let them leave our city without
 13 knowing, without being told by you, that you understand their
 14 suffering and you are willing to give a verdict that signifies
 15 the depth of that understanding. I urge you, do not shirk
 16 from that duty. I am confident you will not shirk from that
 17 duty and I thank you very much for your attention.

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MR. ALBRO: Ladies and gentlemen, I'll take no more
 than five or ten minutes of your time. You've been patient,
 it's been long, it's been hard to sit through so much legal
 argument, but it's an important case for everyone and I know
 you appreciate that.

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1 All the defense counsel who have spoken to you said
2 don't sympathize, don't base your verdict on sympathy. That
3 is the law. My clients have plenty of sympathy from their
4 family, plenty of sympathy from their friends, people who sat
5 with them at the funeral. They can go elsewhere for sympathy.
6 The law says you don't base the verdict on sympathy and I
7 agree with that. When I say to you, my clients have plenty of
8 sympathy from their friends and their family, they didn't have
9 to come here for sympathy, but you can and you must base your
10 verdict upon empathy, that is understanding of loss. Not
11 feeling sorry for someone. No, we give you this amount
12 because we appreciate the nature and extent, the enormity of
13 your loss and that's what the law says you do and that's what
14 you should do and I'm confident you will do it.

15 A couple of points with respect to Mr. Wood. Mr.
16 Wood said Officer Grissom wasn't at the scene. What he says
17 is conjecture. Conjecture is a \$5.00 word. It means guess
18 work. Was Officer Grissom guessing? He wasn't knocked about
19 in an auto accident that day. He had his faculties, he had
20 his wits and he came out there and he found the skid mark and
21 he found the scuff mark and he put them on there and nobody
22 disputes the accuracy of his police work. Nobody ever proved
23 that Steve Grissom guessed. He knows from his investigation
24 that Dye started his turn at the stop bar, he knows where the
25 point of impact was, he showed you all of that on the diagram,

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1 he showed you where the crest of the hill is, well beyond
2 where Dye turned, well beyond where Dye was hit.

3 Again, blame it on the intersection they say, blame
4 it on the intersection. What does that mean? They're
5 suggesting to you that even if people had been careful the
6 accident would have happened. You don't believe that because
7 that isn't true. If people had been careful, this accident
8 would never have happened. What does this mean? It's a
9 dangerous intersection so it's okay to speed? If you found
10 for Charles Brown that's what you'd be saying. It's a
11 dangerous intersection so it's okay to make a blind turn and
12 cut the corner? That's what you'd be saying if you found a
13 verdict for Charles Dye and neither of those things is so.
14 It's sort of like somebody saying I came up on a railroad
15 crossing in the city, there was a building near the inter-
16 section and I couldn't see past the building, so I just went
17 on. Now of course if I had approached it slowly and carefully
18 and come up to the track and taken a look around the building,
19 there wouldn't have been a collision. Don't blame me because
20 I couldn't see from a certain vantage point away from where I
21 should have been before I entered the intersection and crossed
22 over the tracks.

23 With respect to Mr. Buck's argument, again as I told
24 you, as I predicted, the defense of Mr. Brown was for speed,
25 didn't matter. First, while Mr. Buck made certain calcula-

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1 tions here, nothing he did up here proved how fast his client
2 was going. It didn't do that at all. The only way you can
3 conclude how fast his client was going was from the testimony
4 of the people who saw it. Mr. Buck said well, they didn't
5 call experts. Well, that's true, but you've got a young man,
6 John Towsey sitting in the car, wide awake, a licensed driver
7 who says clearly and unequivocally, he was never shaken, even
8 ^{asa} ~~on the~~ friend of Charles Brown, he was consistently going 35
9 miles an hour all the way up that hill until the point of
10 impact. You don't need an expert when you've got an eyewit-
11 ness. Would this accident have happened had he not been
12 speeding? I did the calculations, I suggest you do them for
13 yourselves in the jury room. If he had been 22 feet away or
14 15 feet away, which he would have been had he not been going
15 35 or 40 miles an hour, these cars would never have hit and
16 Jeff would be alive. Mr. Buck may be right when he said Goetz
17 Rokahr didn't see Brown's headlights, he saw somebody else's
18 headlights. But that doesn't matter, he saw somebody's
19 headlights and the driver to his immediate left has the same
20 opportunity and because he was inattentive, too busy cutting
21 the corner, he didn't see the headlights; therefore, he
22 didn't have the information he should have had that would have
23 said be prudent, be careful, get to the crest of that hill
24 which you can see plain as day, get to the crest and make your
25 turn.

1 On damages, you can't put a dollar figure on a human
2 life, but you must under your oath as jurors, put a dollar
3 figure of that loss to the members of his family. What they
4 have lost, that's your job. It's tough, but it's your job.
5 Nobody asked for Jeff's future income as a doctor, but you may
6 well consider that he was fulfilling his father's dreams and
7 he was the pride of his family because of his hard work toward
8 that professional career. Mr. Wood said something I will
9 address, but only briefly, that no one should make a profit.
10 That's offensive, My clients are not here to make a profit. A
11 profit is something you have after you've been paid back in
12 full. They just want to be paid back in full. The suggestion
13 is made and it's partially correct, life went on. No one
14 portrayed these folks as being incapable of getting out of bed
15 in the morning, but Mr. Goodove told you I was a store manager
16 for sixteen (16) years and I had to quit that. I had to give
17 up my position because I couldn't stand--the stress from
18 Jeff's loss was too much. Yes, Harriet said, I go on as a
19 realtor, but it's affected my work. I can't deal with
20 strangers. Who do you think realtors deal with if they're
21 going to be successful but strangers? Yes, Michael is in law
22 school, but Michael says I can't concentrate, I can't study, I
23 need psychiatric help just to be able to go about the
24 activities of daily living. The pain and the loss here are
25 enormous and I wouldn't necessarily disagree with Mr. Lincoln

1 that with time pain lessons, every adult knows that. But Mr.
 2 Lincoln was a trial lawyer and I suspect Mr. Lincoln would
 3 never stand up and argue that you ought to give anything less
 4 than the full measure of loss in a wrongful death case and I
 5 suggest to you that the enormity of the pain and the intensity
 6 of it and the length of pain is different when you have your
 7 child wrongly taken from you, wrongly taken from you without
 8 warning by the carelessness of other people.

9 We all ask for fairness. Fairness is a verdict in
 10 accordance with the law as His Honor has given it to you.
 11 Fairness is an assessment of the enormity of this family's
 12 loss, fairness is your appreciation of the special qualities
 13 of this wonderful boy. We will not come back to you again.
 14 You will write the final chapter right now. That is an
 15 awesome responsibility and I leave you with the question: what
 16 was this boy? By your verdict, you will tell us. Thank you.

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1 STATE OF VIRGINIA AT LARGE:

2 I, Thelma L. Madison, Notary Public in and for the
3 State of Virginia at Large, having been so duly commissioned
4 and qualified, do certify that the foregoing portion of
5 hearing was duly taken by me at the time and place specified
6 in the caption hereof.

7 I do further certify that said hearing was correctly
8 taken by me by mechanical methods and that the same was
9 accurately written out in full and transcribed into the
10 English language and that said transcript is a true, accurate
11 and correct record.

12 I further certify that I am neither attorney nor
13 counsel for or related to or employed by any of the parties to
14 the action in which this hearing was taken and further that I
15 am not a relative or employee of any attorney or counsel
16 employed by the parties hereto or financially interested in
17 this action.

18 My commission expires September 29, 1991.

19 Given under my hand and seal this 6th day of May
20 1991.

21
22 Thelma L. Madison
23 Notary Public
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25