



1 SANTA BARBARA, CALIFORNIA; WEDNESDAY, APRIL 22, 2009

2 9:00 A.M.

3 DEPARTMENT NUMBER 3

HON. THOMAS P. ANDERLE, JUDGE

4  
5 THE COURT: All right.

6 Good morning, everybody. I do appreciate the  
7 tip that today is secretary's day, and thank you for  
8 that. My secretary thanks you also. We are all set up  
9 to have lunch today at noon.

10 All right. With that said, all the ladies and  
11 gentlemen of the jury are in their assigned location.  
12 The lawyers are all here.

13 We are ready, Mr. Cappello, for your closing  
14 argument.

15 MR. CAPPELLO: Your Honor.

16 THE COURT: Yes.

17 MR. CAPPELLO: Ladies and gentlemen of the jury,  
18 Counsel, and to our clients, the Gottesmans, their  
19 daughter Daniela, on behalf of our entire staff, my  
20 partners who have worked with me on this case since we  
21 were given the honor to represent the Gottesmans, we all  
22 thank the jury for their commitment and their time that  
23 they've put in.

24 You do all remember - I know it's been a ways  
25 back - but when we talked to you about what this is all  
26 about. I reminded each and every one of you about  
27 several things: That we live in a country where  
28 everybody has a right to expect rules to follow, and a

1 failure to follow those rules, consequences.

2 I asked each and every one of you whether you  
3 would commit to us to listen to the evidence in this  
4 case.

5 I asked each and every one of you whether  
6 despite the enormity and the graveness of the harm that  
7 happened here, you would listen to this case, and if at  
8 the end of the case you agreed with what we think the  
9 evidence was going to be, each and every one of you told  
10 me you had no problem making sure that the people that  
11 created this harm, that there would be consequences for  
12 them.

13 Now, it doesn't matter, these people are  
14 immigrants from Israel, but whether you're immigrants  
15 from Israel or any other country, our country has been  
16 made up of people that have come here for one, sometimes  
17 two, but always a third reason. And that reason is they  
18 expect equal protection under the law, and justice for  
19 all, and that if they pay their taxes and if they work  
20 hard and become educated and raise their children and  
21 love their family, like each and every one of us here, we  
22 expect to be treated by following the rules, and not by  
23 people that fail to follow the rules.

24 And what is most important that's forgotten in  
25 trials, and it's my time to remind you, is that no matter  
26 how smart the lawyers are, no matter how good they are,  
27 and I guarantee you, these three lawyers hired by Richard  
28 Berti are the very best, no matter how good they are, in

1 the end, you decide how great is this harm? Is there  
2 something that we can do to help balance this harm?

3 Now, I have this picture up of this little boy.  
4 You all know I have carried it with me throughout the  
5 trial. I have carried it with me throughout the case. I  
6 look at that picture, and it's a -- it's a beautiful  
7 little boy. He deserved the same break each and every  
8 one of you had.

9 You know, it was said, "Children are the living  
10 messages we send to a time we will not see." I think  
11 that's very prophetic. When we choose to have children -  
12 and many people choose not to have children, that's  
13 certainly understandable - but one thing I guarantee each  
14 and every one of you, it sure goes without saying, you  
15 all feel the joy and the love of childhood yourself. And  
16 you all followed the rules and made it to where you are  
17 today.

18 The haunting eyes of that little boy will never  
19 sit on a jury. He will never be able to do the things  
20 that all of you can do every day.

21 so what is this system of ours? Well, what is  
22 this system of justice that we have that brings us all  
23 together? Well, it's not a perfect system. It's not  
24 perfect at all. There's all sorts of twists and turns to  
25 it. You'll hear many of them in this case.

26 One of the things that you do need to know  
27 about this case is with this Judge, and he's told you  
28 every day, you're one of his very best juries, and you

1 know, he's been trying cases for many years, and he does  
2 not say things that aren't true. If he says that, it's  
3 because he's observed, and I've observed, and the lawyers  
4 have observed that each and every one of you have  
5 listened to the witnesses in this case.

6 You think there are juries in cases in which  
7 they didn't? Of course. I mean, it's human nature. And  
8 hopefully if the case is important enough, and I told you  
9 how important this case was when I examined each and  
10 every one of you, if it's important enough, the system  
11 will work.

12 And the system is now almost in your hands.  
13 Because if this system doesn't work, what do we have?  
14 Dodge City in the 1870's without any law. Somebody takes  
15 a life, you take their life at the point of a gun. Our  
16 law has a reason, and the reason for the law is to say,  
17 if you create harm, if you do the greatest harm, if you  
18 take life, intentionally or negligently or with willful  
19 and despicable conduct, there are consequences.

20 Now, what's this case all about? It's about  
21 this little boy. Somebody once wrote, "Children are not  
22 supposed to die." Parents are expected to see their  
23 children grow up and mature. Ultimately, parents are  
24 expected to die and leave their children behind. This is  
25 the natural course of life events. The life cycle  
26 continuing as it should. The loss of a child is the loss  
27 of innocence. The death of the most vulnerable and  
28 dependent in our society. The death of a child signifies

1 the loss of the future, of hopes and dreams, of new  
2 strength, of perfection.

3 So we come to talk about Yoni. Because that's  
4 what this case is about. Jonathan Gottesman. "Jonathan"  
5 as said with a Hebrew twist. A nickname, Yoni. This is  
6 about his too short life. His terrible death. And what  
7 a hole it left in this family.

8 This case is about profit over protection. You  
9 have seen what this case is about. We let you see all  
10 the witnesses. You saw Richard Berti on the stand. You  
11 saw Richard Ortale on the stand. They are the brains,  
12 the power, the owners, the people that chose the  
13 officers, the people that directed the business. And  
14 what their interests were was profit over protection.

15 Listen, you saw the memos. Richard Berti, who  
16 has tried to distance himself from involvement in this  
17 case by flipping hats on and off, Cal-West, COAC,  
18 et cetera, said to you in memorandums, which he told his  
19 staff, he said, "Clean that steam room."

20 Well, why did we put that in there? We put  
21 that in there to show you he was a hands-on guy. "Get  
22 that landscaping fixed up." Marketing, marketing,  
23 marketing. The adds are down, meaning the admissions of  
24 new members. He was driven by profit. He had a staff  
25 that was told to do what he directed, and his partner was  
26 as complicit as he.

27 These Defendants have consequences to pay for  
28 their conduct. This is beyond what the Defendants are

1 going to try to tell you, that we're seeking money here,  
2 and that we're trying to get money.

3 This is not about that. This is about them not  
4 paying money. That's what this case is about. And  
5 that's all you're going to hear from these two lawyers -  
6 there's going to be two lawyers argue - why you shouldn't  
7 charge a number.

8 Now, I will assure you, you have not heard  
9 through this entire case, nor have I, from these two  
10 people, about money. Because this case is about justice.  
11 And the weird twist of this law that we have, that you  
12 all committed to is if that's the way to reasonably  
13 compensate for grievous harm, for great harm, then we are  
14 all prepared to do it.

15 You know, sometimes trials like this are the  
16 only way to force companies like Cathedral Oaks Club and  
17 the Cal-West Company to do good in the future, to make  
18 sure it doesn't ever happen again. There is no other  
19 way, I mean, unless some other agency does it.

20 But when it falls finally to our peers, you,  
21 different folks from different walks of life, when it  
22 falls to you, it's your chance to say, "You're going to  
23 come to America, you're going to become a citizen, you're  
24 going to pay your taxes, you're going to be a Ph.D. at  
25 UCSB, you're going to work for the most secret government  
26 agencies in the land to protect pilots who fall behind  
27 enemy lines" -- that's what this man's life is about.

28 He was deaf as a child, and he's picked a

1 business that has to do with voice. And he worked from  
2 home so he could be with his babies. And his beautiful  
3 wife, an architect, to make beautiful things. Nothing  
4 more beautiful than those two beautiful little children  
5 that she made.

6 Trials are oftentimes, and this is one, a  
7 quest. A quest for the truth, the facts. Oded Gottesman  
8 looking at his little boy lying in the emergency room  
9 after he was finally proclaimed dead late in the  
10 afternoon, kissed that little boy's feet, and said, "I  
11 make you a promise, I will find out what happened to  
12 you."

13 He made that promise to his wife and to his  
14 family. He wanted to put his family together. His wife  
15 was laying prostrate on the floor in the emergency room,  
16 collapsed, devastated. They were completely broken. All  
17 their lives were destroyed. Sitting there picturing this  
18 magnificent life form, dead.

19 You heard the stipulation, he was a healthy  
20 little boy. Dead. And not knowing how could this  
21 happen.

22 And what were the facts that he was being told?  
23 The first thing he was told by the paramedic is, "Hey,  
24 you were misinformed. There's something going on. That  
25 child was at the bottom of the pool for a long time." It  
26 was the beginning of a quest.

27 Now, when you sit there thinking by yourselves,  
28 because at the end of this case, when it's given to you, 7

1 at the end of the day, you go inside and pick a foreman  
2 and start thinking about this case, how do you pull your  
3 life together when your first son or first daughter or  
4 second or third, this gentle, this beautiful little  
5 thing, what do you do about it?

6 And at the same time, do you just say, "Forget  
7 it, that's the way it is"? Remember, I asked each and  
8 every one of you that at the beginning of the trial.  
9 "Are any of you jurors of the mind that, if there's a  
10 death, that's the way it is, so be it," and you all  
11 committed to me that you weren't.

12 So, ladies and gentlemen of the jury, everybody  
13 in this courtroom, right down to these Defense lawyers  
14 know that when Oded Gottesman made that promise to his  
15 little boy, that maybe the truth could come out. As he  
16 sat there watching Anat holding the little child, hugging  
17 him, sure he would wake up, waiting for him to wake up,  
18 the mother holding her little boy, she couldn't believe  
19 she was losing him. Her cheerful, happy, healthy,  
20 perfect little child in the morning, and they're telling  
21 her, he's dead.

22 Well, what happened was clear. Within an hour  
23 or two, Cathedral Oaks Club organized their whole group.  
24 They trotted upstairs to look at the video. I didn't  
25 have a chance to show you that part of the video, but if  
26 you're ever interested in looking at it, you'll see him  
27 going up the stairs, Berti leading, Julie Main, she's got  
28 long hair, Valentine, all of them, the whole crew going

1 upstairs to look at the video.

2 And the very next day, the very next day, when  
3 they tried to get his clothes, they didn't give him all  
4 his clothes back. They gave them a note to talk to the  
5 lawyer, or to talk to Julie Main.

6 You learned in this case that these  
7 Defendants -- that's the note right there.

8 Next day they get a very fine lawyer, John  
9 Levitt, on board with his phone number, "Talk to our  
10 lawyers."

11 Wait a second. What is going on here? How  
12 about, "We're sorry." Where's a "We're sorry"? How  
13 about, "What a terrible thing happened. We're sorry.  
14 Please, we're sorry."

15 "That's our lawyer." Now, you know, I don't --  
16 I don't think it's terrible that they told them a name of  
17 a lawyer. I mean, that's not God awful. But how about a  
18 note instead of this. "You know, it's a terrible thing.  
19 We're so sorry this happened to you. Please, we are so  
20 sorry. Whatever we can do to help you, we will. Here's  
21 Julie Main's number, here's our lawyer's number."

22 No. And you know what really, really is the  
23 most despicable thing about this entire case, is it  
24 wasn't until three days before this trial, three days,  
25 that most of the Defendants, virtually all of them except  
26 Mr. Berti's Cal-West hat, assumed and agreed that they  
27 were negligent in the wrongful death of Yoni Gottesman.  
28 Three days before.

1           You think that the last three years things  
2 hadn't been going on? Well, you know what's been going  
3 on. Depositions, denials. We'll talk about it later.

4           It took them eight months to get the video.  
5 Now, why does it take eight months to get the video? Why  
6 are they told, "Oh, that's \$5,000 if you want that  
7 video." Why are they told that?

8           I'll tell you why. Because it is the witness.  
9 It is the perfect witness. It has documented the  
10 incompetence, the neglect, the willful indifference for  
11 the safety of this little boy. And when you first give a  
12 little snippet of it, which is grainy and doesn't have  
13 the dunking on it, you think it's just, "Oh, maybe, you  
14 know, it's a drowning."

15           But this isn't a drowning. This is, as  
16 witnesses have told you, both our experts and  
17 Miss Valentine out of her own mouth, "a systemic failure  
18 of all processes." And that's what that video is. It's  
19 a point in time, it tells us and shows us.

20           And we are the ones that had to take the grainy  
21 video, and enhance it so you could see the last struggles  
22 of this little boy; so you could see how he was  
23 aggressively dunked; so you could see how a healthy,  
24 athletic, brilliant little boy couldn't make it to the  
25 wall. We did that. So that there would be no doubt  
26 about it.

27           This little boy would wake up in the morning  
28 with his sister Daniela, who's in court here sitting next

1 to Leila, wake up with his sister, they slept in bunk  
2 beds in the same room, they ate breakfast together as a  
3 family, they laughed, they joked, they talked about the  
4 day.

5 Oded would pick the kids up after school.  
6 They'd play soccer on the lawn, they'd have dinner as a  
7 family, they'd play music together, and at night the kids  
8 would be tucked into bed, and one side of this man that  
9 you don't know, but you've learned a little bit about it,  
10 is his great love for music.

11 I would think if you suffer a hearing  
12 impairment, music would be one of the great pleasures in  
13 life.

14 And each night, he would sing to his little  
15 boy, "My Yoni, my Yoni, my sweetheart," and each night  
16 Yoni would sing back to him. He was just as musical as  
17 his dad, "My daddy, my daddy, my sweetheart."

18 Yoni was the glue of the family. He was very  
19 special. He charmed all sorts of people. He made them  
20 smile in a natural way. He was so little, he was so big,  
21 he drew them from all over the world. He loved to kiss.  
22 He was always kissing Anat. He loved his computer, he  
23 loved his tractor, trains, he loved his sports.

24 You were told that everything they did with him  
25 was a big adventure. Whether a simple vacation or a  
26 bath, Yoni was the heart of the family, and he injected  
27 love and fun into everything.

28 There's a guy named Kelly Rourke. You know, I

