

1 RIVERSIDE, CALIFORNIA, FRIDAY, APRIL 24, 2009; 8:30 A.M.

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3 (The following is a partial transcript of the
4 proceedings of this date.)

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6 THE COURT: That, ladies and gentlemen, are the
7 instructions.

8 Any comment from counsel before we go on?

9 MR. JACKSON: No, your Honor.

10 THE COURT: You want the jury to take a short break
11 now before you get into your argument?

12 MR. JACKSON: Whatever -- the court reporter is
13 nodding yes, so --

14 THE COURT: Take a short break?

15 We will just go right into argument. Let's go into
16 argument. You are only going to argue five minutes or so, so
17 she won't get that tired.

18 MR. JACKSON: I wish that's the way it was, your
19 Honor.

20 Before I get started, the Lewis family has asked me
21 to thank each one of you for serving as a juror over the past
22 ten days. You have been taking notes. You have been paying
23 attention to the testimony, and I'd like to join the Lewises
24 in acknowledging that you have taken time away from your
25 families, away from your employment, away from other
26 activities in life to be here for the past ten days, and we

27 sincerely appreciate your willingness to serve as jurors in
28 this case.

1

1 Can everybody hear me okay? I'm a little nervous,
2 big burden representing a family who has been through what
3 this family has been through.

4 You have listened to the evidence. I'm not going to
5 go through each and every bit of evidence. I will try to
6 highlight some of the things that we believe should be
7 discussed and deliberated in the jury deliberation room to
8 hopefully give you some focus on what we think is important in
9 this case.

10 Thomas Jefferson said that serving as a juror in the
11 United States of America is just as important as serving with
12 our armed forces or voting in an election. And whether or not
13 you agree with Thomas Jefferson, the fact of the matter is,
14 this is a very, very important task that you've agreed to do,
15 be here for, and we do appreciate your participation. I'm
16 sure I can also acknowledge that defense counsel feels the
17 same way.

18 The jury verdict that you give in this case will
19 have a lasting legacy, not only for the Lewis family, we are
20 talking about Mr. Lewis, Mrs. Lewis, Trey, Linda, Camille,
21 Cameron, but also for the community. This is something that
22 while we've been here for ten days -- and I don't know how
23 long it's going to take you to deliberate on this case -- Art,

24 Jr.'s death took place six years ago. This case has been in
25 litigation for the last five years. This has been a long,
26 long journey. You have been paying attention. You have been
27 taking notes, and we appreciate everything that you've done.
28 When it comes to evaluating the evidence in this

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1 case, it comes down to who is telling the truth, what really
2 happened, and one of the things that has jumped out at me as
3 the trial progressed and the witnesses started getting called
4 to the witness stand is how different witnesses behaved when
5 they were asked questions, how did they appear. Sometimes
6 it's not always what somebody says, but it's how they say it.
7 What did they say in the past, what do they say in trial, what
8 did they say on cross-examination. How do they look? Do they
9 look nervous? Do they look worried about what they're going
10 to say next? Are they being evasive? These are all things
11 that jurors, people who have experienced everyday life
12 experiences, that's your job, is to take a look at these
13 witnesses and figure out who is telling the truth, who doesn't
14 remember what's being said, who is saying what has been
15 designed to be said in court during this trial.

16 Mr. and Mrs. Lewis and the kids would not be here
17 today if on the night of October 30, 2003, their son had
18 lunged at a sheriff deputy, who stepped toward the sheriff
19 deputy and started this entire incident. We wouldn't be here
20 today. That's not what happened that night. What happened

21 that night in their home is that they followed the deputy's
22 instructions, they brought their son out, who was standing
23 next to Mr. Lewis, with Jessie Lewis on the other side.
24 Officer Baer, once he got the other two officers in the house
25 behind Art, Jr., pulled out his pepper spray behind his back,
26 sprayed Art, Jr. The other two officers jumped on him to take
27 him down. There was no aggressive movement by Art, Jr., and
28 that's why we're here.

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1 There are some admitted, stipulated facts. The
2 judge did read them to you. It's a fact that at his death,
3 Arthur Lewis II, Arthur Lewis, Jr., was survived by his mom
4 and dad and two children, Arthur Trey Lewis and Nathaniel
5 Cameron Davis Lewis -- we call him Cameron -- and those facts
6 are not in dispute.

7 The other stipulated fact that you probably already
8 have an appreciation for is that at the time of this incident,
9 the Riverside County Sheriff's deputies, Corporal Dean Baer,
10 Sergeant Jaime Briones, Deputy James Hamrick, Deputy Kevin
11 Lamb, Deputy Bill Davis, were each acting within the scope and
12 course of their official duties of the Riverside County
13 Sheriff's Department. If you find that these deputies acted
14 wrongfully, the County of Riverside is responsible, and I
15 don't think defense counsel is going to disagree with that.

16 This case, I was working on this last night in our
17 kitchen. My 14-year-old daughter came up to me and asked me

18 about the case, and I explained it to her. She said, "Dad, it
19 comes down to if the jury believes that Arthur, Jr. didn't
20 lunge towards this officer, if the jury believes Arthur, Jr.
21 didn't do anything to cause this physical confrontation, then
22 the Lewises did nothing wrong, the family did nothing wrong."

23 It really comes down to that, and I would like you
24 to focus on whether or not you believe the evidence shows that
25 Arthur, Jr. lunged, attacked, did whatever, towards Officer
26 Baer or any other officers. We are going to go through that a
27 little bit, because it's our belief that Officer Baer has one
28 version about what happened, Officer Hamrick has one version

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1 about what happened, and Officer Lamb has one version about
2 what happened, and Officer Masson, who came in later, has
3 another version of what happened. You have to ask yourself,
4 why is that the case?

5 In reality, Art and Jessie, who were there that
6 night, have a consistent understanding about what happened
7 that night. There is no conflict in their testimony about
8 whether or not their son was following commands before he was
9 attacked from behind and brought down.

10 This is a very, very sad case, but the Lewises are
11 not the type of family -- they are not here looking for your
12 sympathy, they are looking for your understanding, your
13 empathy, as to what happened on the night in question. You
14 know, it's been a pleasure to represent this family. They do

15 what they say and they say what they do. They are a
16 hard-working family, and they did nothing wrong on the night
17 of October 30, 2003, and I want you to know it's been a
18 pleasure to get to know you and meet you. It's been a long
19 journey.

20 Although you are not to allow sympathy to play into
21 your verdict. That does not mean you can't use empathy, your
22 understanding of life, to try to appreciate what this family
23 has been through, what challenges we've had coming to take
24 this case to trial over the last five years. You don't have
25 to leave your heart outside the courtroom door, and I told
26 most of you that when we were selecting jurors in this case.
27 Bring in all your life experiences, figure out based upon the
28 evidence who is telling the truth and who is not.

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1 This is really a simple case when it comes down to
2 the facts. All we want you to do as a jury is to fix what can
3 be fixed. Can it be fixed? We want you to help what can be
4 helped. We want you to make up for whatever cannot be fixed
5 or helped.

6 I want you to talk about that when you're back in
7 the deliberation room. Think about the quality of the
8 witnesses who have testified. Think about what you've heard
9 during this trial. With Arthur, you've got someone that's
10 been married for 35 years, same job 30 years, getting up at
11 3:00 in the morning every day, driving to Terminal Island,

12 Long Beach, outside of L.A., every single day from Moreno
13 Valley for the last 25 years, doing everything he can to
14 provide for his family. He's a straight shooter. He took the
15 job, he does what he's told, he's worked his butt off. He's
16 not lying about what happened that night.

17 Together they moved from Los Angeles to Moreno
18 Valley, raised a beautiful family, good parents, great kids,
19 great grandchildren now. Jessie is a woman that like to voice
20 her opinion, and that's probably one reason why we're here.
21 She knows what happened in that house that night. She knows
22 that her son was complying with what the officers told him to
23 do, and she knows that her son did not make a lunge towards
24 any officer, and I think you do, too, after hearing the
25 evidence. We are going to go through that.

26 Officer Baer changed his testimony. For five years,
27 Arthur, Jr. lunged at me. During the trial, he admitted,
28 well, it wasn't a lunge, it might have been a big step. Why

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1 is that?

2 You've got as guardian ad litem -- and what that
3 means, is because we have two kids, they can't represent
4 themselves, so the moms are appointed by the Court to
5 represent them in these proceedings. It's legal terminology.

6 But you've got Linda, who has just done a fabulous
7 job with Trey, and part of the reason Trey has turned out to
8 be the exceptional young man that he has turned out to be is

9 because of his dad, the things they did together, the
10 activities they did together at church, what they did, the
11 time they spent. You didn't hear any evidence to the
12 contrary. Nobody came in here and beat up Trey's character.
13 Same thing with big Cameron here. Camille has done
14 an exceptional job with Cameron, who is five, and probably
15 going on ten.

16 Neither Trey or Cameron are going to have a father
17 for the remainder of their lives, and that shouldn't be the
18 case.

19 Let's talk a little bit about Arthur Lewis. Let's
20 talk a little bit about Bobby, Shorty, all the nicknames.
21 Amazing person. Nothing but love from this man. Meet him at
22 a Starbucks, he's a normal kind of guy. A couple times a year
23 he would have an episode, and the family was there for him.
24 The family would feed him. The family would take care of him
25 and get him back on his feet. You didn't hear any testimony
26 to the contrary that Bobby, you know, was a troublemaker, that
27 Bobby was out of control, that Bobby wasn't a normal kind of
28 guy.

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1 I've had this picture across from my desk in my
2 office for the last two years. I feel like he's been watching
3 me with those eyes, just making sure that I was doing my job
4 on this case. These are tough cases, and it's taken a lot of
5 work to be able to share the evidence that we have shared with

6 you during the course of this trial. The father that these
7 two kids lost, the son that Mr. and Mrs. Lewis lost, is a Navy
8 veteran, hard-working professional, an active participant in
9 church, both on Sundays and during the weekdays, amazing human
10 being. You can't put it into words, but it's my job to try.

11 In the defense attorney's opening statement, which
12 wasn't evidence, he told you that they would be presenting
13 evidence during the trial that Art, Jr. was experiencing
14 paranoia at work, stress brought on my purchasing a home,
15 paranoid thinking, and was worried about someone in the
16 neighborhood. I would assume they were going to try to paint
17 a certain picture of this individual that wasn't painted
18 during this trial. You need to ask yourself, why wasn't that
19 picture painted? Why weren't the pieces of the puzzle that
20 they told you they were going to put together the picture
21 that's been shown at the end of this case? Because he wasn't
22 like that.

23 Bobby was a good guy. He was a good guy that needed
24 help at the Lewises' home that evening, and rather than
25 getting help, rather than taking their time and coming in and
26 helping this family, the police officers came in, rushed the
27 situation. Once they were set up, they knew exactly what they
28 were going to do next, and they took him down.

1 You heard testimony during the trial by one of the
2 officers about how, oh, after so many years in the business,

3 you kind of know what the other person is going to do. You
4 know if he's going to fight, you know if he's going to be
5 cooperative. You know what, the officers all know what
6 they're doing, too. One officer is standing back here knows
7 when he calls for back-up and two guys come in behind Bobby,
8 they make eye contact. They know what's going to happen next.
9 Those guys went in there to take him down and get him out of
10 the house, and it shouldn't have gone down that way.

11 The medical conditions that Bobby had were
12 manageable and not life-threatening, and he had been living
13 with them since returning from the Persian Gulf, since
14 returning from his Navy duty, just fine. Gainfully employed,
15 active in the church. There weren't any problems.

16 Let's talk a little bit about a couple of our
17 witnesses. We had Dr. Pietruszka come in and talk to you a
18 little bit about what his independent review of Bobby's
19 medical conditions were, and how those medical conditions were
20 affected by what happened that evening. It's undisputed that
21 at the time this went down that night, Bobby had a long
22 history of asthma, hypertension, sleep apnea, episodes a
23 couple times a year, all conditions, several of which relate
24 to the respiratory system, relate to having oxygen.

25 Dr. Pietruszka testified that when Bobby was -- the
26 carotid restraint was applied to Bobby, when the pepper spray
27 was put into the air, and you all heard this testimony, and he
28 stood here and explained it in detail, all of that affected

1 Bobby's ability to breathe that night. He wasn't able to get
2 oxygen. You couple that with the preexisting enlarged heart,
3 you couple that with two officers on top of you, one with his
4 knee behind your neck, one with the knee on the back, and
5 that's a recipe for disaster, and that's just what happened.
6 It's because of that that Bobby died that night.

7 In fact, Dr. Pietruszka told you that had Bobby not
8 had that physical confrontation that night, barring any other
9 accidents, that he would have lived a long and healthy life.
10 It's because of what happened that night that resulted in his
11 death.

12 You can take notes. If I'm saying something that's
13 different than what the witnesses told you, make a note of
14 that and talk about it back in the jury deliberation room.
15 It's hard to remember everything that everybody said. It's
16 hard for me, too. This is my understanding of what
17 Dr. Pietruszka talked about. In fact, his words were, "He
18 would still be alive today had it not been for the physical
19 confrontation with the sheriff deputies."

20 Mr. Dusenbury, the police misconduct expert that we
21 brought in, 30 years on the job, Long Beach Police Department,
22 worked his way up through the department. I watched him. You
23 listened to his testimony. He told you exactly what his
24 thoughts were on what was done properly that night and what
25 was not done properly that night. I'm not going to go through
26 that with you again. If you believe that Arthur, Jr. did not
27 aggressively take a step or lunge at Officer Baer, then it's

28 our position this whole thing shouldn't have happened, and you

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1 should find for the plaintiffs.

2 I'm not the only one that says that. They brought
3 in Mr. Fonzi, their police expert. You recall him being the
4 last witness? We asked him a couple of questions, a couple of
5 hypotheticals. I asked him the question:

6 "Q Okay. Arthur, Jr." --

7 By the way, I've got his transcript from his
8 testimony.

9 "Q Arthur, Jr. is standing next to his
10 father and mother, and never took a step or
11 never lunged towards Officer Baer. At this
12 point in time is it still your opinion that
13 the use of pepper spray would have been
14 appropriate and reasonable under the
15 circumstances?

16 "A If he never lunged, if he never took
17 a step, and the officer didn't perceive that
18 as a threat, no, it would not have been
19 reasonable."

20 Even their own expert testified under oath that the
21 amount of the use of force that night would not have been
22 reasonable if you believe what Mr. and Mrs. Lewis are telling
23 you, that their son did not ever lunge or take a step towards
24 Officer Baer.

25 And, by the way, in judging the credibility of
26 witnesses, let's start with Mr. Lewis, a deacon in his church,
27 someone that's been a straight shooter his whole life. You
28 know, you need to evaluate whether or not that's truthful

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1 testimony, and it was emotional testimony. It's emotional
2 because he saw his son severely injured right in front of him,
3 and there wasn't anything he could do about it. Jessie Lewis
4 has no reason not to tell you what happened that night.
5 That's why we're here. That's what makes this such a
6 difficult case. She tells you -- truthfully testified what
7 she saw that night.

8 You have transcripts that are in evidence that we
9 want you to read and review. See if it's consistent with the
10 testimony you heard during the trial. Now, keep in mind, and
11 this is important, the first transcript you're going to read
12 was an interview that Officer Masson did that night with the
13 tape recorder, that he never told the Lewises he had, and we
14 are okay with that. It's kind of, you know, whatever, 12:00
15 at night when she had this conversation with the deputy. He
16 didn't tell her that she was being tape-recorded. I wanted
17 that statement to come into evidence, because I want you to
18 read it. She's not hiding anything. But she had been up
19 since about 6:00 the morning before. So 6:00, all day long,
20 6:00 at night, this thing happens at 9:15, 9:30. This first
21 statement takes place at midnight that night. The statement's

22 the next morning at 6:30 in the morning. Art had been up for
23 27, 28 straight hours and, by the way, his statement is
24 consistent with his testimony. Jessie's is in evidence, and
25 it's consistent with her testimony, even after being up for a
26 day, 24 hours.

27 While I've got Mr. Fonzi's testimony here, I think
28 it's important to also understand a couple of answers to

12

1 questions he gave us about whether or not the police officers
2 had the right to detain or hold the Lewises in their home that
3 night. I asked Mr. Fonzi:

4 "Q Did I hear you correct in testifying
5 under oath that if any of these officers told
6 Mr. and Mrs. Lewis they were under house
7 arrest, based upon your understanding of the
8 circumstances, those officers would have been
9 acting improperly?

10 "A That is correct.

11 "Q If Mr. and Mrs. Lewis had asked the
12 officers at their home that night for
13 permission to go to the hospital to see their
14 son, and the officers did not allow them to
15 go, would the officers have been acting
16 improperly that night?

17 "A Yes."

18 If you believe the Lewises' version of what happened

19 that night, even their own expert says the officers acted
20 improperly, and we think that's important.
21 Let's talk just briefly, because each of our experts
22 went through their qualifications in detail, and I saw you
23 guys taking notes. But with respect to Dr. Pietruszka,
24 teaches at the USC School of Medicine, Professor of the Year
25 in 2002, 2004, 30 years as a practicing physician, he still
26 sees patients, board certified, practices in internal
27 medicine, pathology. Correct me if I'm wrong, but when he
28 came in and told you what his opinions are, he was

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1 crystal-clear about what his findings were. He didn't dance
2 around the issue. He knew exactly what his findings were.
3 Dusenbury also explained his credentials to you.
4 The guy has been there and done that, and he told you that --
5 check your notes. He told you that the way the officers
6 handled the situation that night was not the way it should
7 have been done.

8 Now, in defense counsel's opening statement he told
9 you the evidence would show that Arthur Lewis, Jr. lunged at
10 Deputy Baer. Those were his words. He didn't say he took a
11 step, he lunged. I think the evidence -- I know the evidence
12 during the trial showed otherwise. We are going to talk just
13 a little bit about that.

14 Officer Baer testified that in his training as a
15 police officer, in a situation like this, a 5150, you need to

16 assess the situation, avoid confrontation, there is no rush or
17 hurry, and I want you to ask yourselves, and ask each other
18 back in the jury deliberation room, is that what happened that
19 night?

20 THE COURT: You better hold it for a minute here.

21 MR. JACKSON: Thank you, your Honor.

22 Five years ago in his original report, Baer
23 indicated that Bobby had lunged at him. On his direct
24 examination, he indicated Bobby had lunged at him. On
25 cross-examination, he recanted that. He didn't lunge at him.
26 Now he says he stepped, he took a big step towards him. Why
27 is that? You have to ask yourself, why is that the case?

28 He also testified -- by the way, Baer testified

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1 differently than Hamrick, Hamrick testified differently than
2 Lamb, and Lamb testified differently than Briones. He also
3 testified that Bobby went after Deputy Hamrick. Do you
4 remember that testimony? He went after Deputy Hamrick.

5 Deputy Hamrick took the stand and -- by the way,
6 when Baer testified, Baer was over here, and he said that
7 Bobby first lunged, and then changed it to took a big step
8 towards him, and he pepper-sprayed him, and then he either
9 turned or lunged towards Hamrick. I'll let you figure that
10 out.

11 Hamrick came in, not knowing what Baer said, and
12 Hamrick said that's not what happened. What Hamrick said is

13 when he came in behind Bobby, Bobby was in front between he
14 and Baer, and actually Hamrick said he went up and initiated
15 the contact with Bobby. And I asked him, did you jump on his
16 back, and he said, no, Bobby was turned to the side, I hit him
17 from the side, I made contact from the side. Hamrick didn't
18 say that Bobby went after him, Hamrick said, no, no, no, I
19 went over and initiated the contact with Bobby. That's
20 conflicting testimony in a court of law. There is a reason
21 why they're not in here listening to each other testify.

22 Baer is the only one that testified that while Bobby
23 was standing next to his mom and dad -- it's a small living
24 room -- that he was standing, he might be pacing like this a
25 little bit, his fists were like this. The Lewises testified
26 he would stand like this, tense, and that's what would happen
27 when he had his episode. That doesn't make him a criminal.
28 That doesn't make -- give anybody the right to take him down.

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1 Baer is the only one who said -- and he put his
2 hands up during his testimony -- that he looked like he was
3 going to fight, and he actually -- I said the words, "Hands
4 up?", and he said, "His hands were up."

5 No other officers came in here and testified to
6 that, and I asked each one a specific question. Every officer
7 said his hands were by his side. I think Baer is trying to
8 paint a little bit different picture than what really happened
9 that night.

10 During the trial, I found this interesting, it
11 sounded like there was testimony where, was there really a
12 carotid restraint, was there really a blood choke applied.
13 Who said what? You know, the bottom line is, Lamb came in
14 here and, using defense counsel as an exhibit, he showed you
15 and he admitted that he tried to apply a carotid restraint
16 that night. That's not an issue in this case. A carotid
17 restraint, a blood choke, was attempted that evening.

18 You know, their expert, the guy that did the
19 autopsy, Dr. Juguion, boy, he learned something when he came
20 here to trial. He learned for the first time that Lamb had
21 tried to apply a blood choke to Arthur Lewis, Jr. If you
22 recall that testimony, I thought it was pretty darn important,
23 when he did the autopsy, when he did his opinions, when he did
24 his findings and writing, when he came into court and
25 testified, it sounded to me like he thought our lack of
26 oxygen, loss of oxygen, inability to breathe, had something to
27 do with how Bobby was handcuffed and picked up and carried
28 outside, and that somehow prevented him from breathing. When

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1 he gave you those opinions, he had no clue that what we were
2 talking about was a blood choke around the neck for 20 to 30
3 seconds, as Lamb testified, that, if not effective on the
4 carotid artery, which is the blood artery, guess what, it
5 might have been effective on affecting his ability to breathe,
6 especially when thereafter you've got two officers putting

7 weight on you, you are asthmatic, there is pepper spray in the
8 air.

9 When I brought this to his attention, and I didn't
10 realize he didn't know this, guess what? It didn't change his
11 testimony at all. I mean, I think it was disingenuous.
12 That's a big fact, and that expert didn't know about that big
13 fact. It was a big fact. It was a fact that Dr. Pietruszka
14 relied upon in sharing with you his diagnosis as to why Bobby
15 died that night.

16 One of the officers testified he went out when they
17 took Bobby out in the grass, and what did he check? He
18 checked his carotid artery for a pulse. That's an important
19 artery. There is a reason why he checked this artery. There
20 is a reason why Lamb tried the carotid restraint on this
21 artery. It's a life-or-death type of situation.

22 Each officer -- and I'm going to try to move along.
23 Each officer that came into the house testified about the
24 pepper spray in the air. It was hard to breathe, choked, it
25 affected different people differently. One of their experts,
26 the last guy who came in from San Diego, I talked to him a
27 little bit about whether or not pepper spray would affect
28 somebody with asthma. It took me a little bit of work, but at

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1 first he didn't want to admit that somebody with asthma might
2 be affected by pepper spray. It wasn't a trigger.

3 Then we talked about pollen in the air. We talked

4 about weather conditions and dust, and at the end of his
5 testimony he finally admitted, yeah, pepper spray could be a
6 trigger for somebody with asthma. Why was that like pulling
7 teeth with that expert? Why didn't he just admit it in the
8 first place? That's not what he was being paid \$4,000 to
9 testify to. That's not what he was being paid another \$2,000
10 for testimony that day or whatever hadn't been paid. He was
11 sticking to his guns. He's a hired gun. He's an expert
12 witness, and he was trying to do his job, but I think it
13 backfired for him. It didn't make sense. Once again, that
14 has to do with credibility, who is telling the truth here.

15 Davis came in with his dog, and even one of the
16 investigators afterwards who arrived at the scene, I think it
17 was Sergeant Briones, actually said, you know, take your dog
18 outside, doesn't need to be in here. Just one of many things
19 that my clients were experiencing that night, backed up down
20 the hallway, backed up into the kitchen. Their son has got
21 three police officers on him. All of this took place without
22 Bobby doing anything to invoke the confrontation. The
23 officers should have taken their time. They should have
24 waited longer. They should have taken the parents outside,
25 "What would you like us to do?"

26 MR. DISENHOUSE: Move to strike this, your Honor.
27 It's improper argument.

28 THE COURT: Sustained. Keep in mind the instruction

1 I gave you earlier that what counsel say in argument is not
2 evidence.

3 You may continue.

4 MR. JACKSON: Thank you, your Honor.

5 You decide what should have happened that night.

6 That's your job.

7 When Briones came in after the fact -- and by the
8 way, we have Baer giving you one version of what happened, we
9 have Hamrick giving you another version of what happened, and
10 both of those versions have to do with whether or not Bobby
11 took a step, whether or not Bobby lunged. Hamrick said that
12 Bobby did not go after him, and we have already talked about
13 that. When Lamb came in, Lamb told you that he was looking
14 out the door to see the dog coming up the walkway with Officer
15 Davis, so he didn't see who stepped towards who, and that's
16 important. What Lamb saw is what happened thereafter.

17 But I have a problem with Officer Lamb's testimony.
18 Sergeant Briones came in as a witness and testified that
19 Officer Lamb never told him that he had attempted a carotid
20 restraint on Bobby. Why is that? Did Officer Lamb not want
21 his sergeant to know that's what he tried to do? Did Officer
22 Lamb think it was so unimportant that he wasn't going to tell
23 his sergeant, or is it a continuation of one misrepresentation
24 after another to cover up what should have been a
25 straightforward situation, pyramided into a disaster?

26 Officers Lujan and Masson arrived, you know, two and
27 a half hours later. They didn't see what happened. But it is
28 interesting with their testimony where they stepped outside

1 with the officers to get their stories straight. Let's get
2 our stories straight before we start telling everybody what
3 happened. Is that what happened? That's up to you to decide.
4 Does it really matter if you find that Arthur, Jr. never
5 stepped towards Officer Baer? It's just one of many, many
6 pieces of the puzzle that we talked about in my opening
7 statement that you need to talk about back in the jury
8 deliberation room.

9 The other thing that seemed to escape the witnesses,
10 Masson and Lujan, is that Mr. and Mrs. Lewis had just
11 experienced the biggest nightmare of their lives right in
12 their own home, in their own living room, after calling for
13 help, and we know what happened. Everybody seems to think
14 there is a problem with Mr. and Mrs. Lewis having questions
15 about cooperative with the police from that point forward, you
16 know, you need to sign this search warrant, you need to sign
17 this Consent to Search form, you know, you can't do this, you
18 can't do this. They acted reasonably under the circumstances
19 later on that night. In other words, they're reasonable
20 people. They're not bad people. They didn't do anything
21 wrong.

22 I thought it was interesting, it was either
23 Investigator Masson or Lujan -- and, by the way, this
24 transcript is in evidence. You're going to be able to read
25 it. They're giving you the impression that the Lewises were

26 being uncooperative about signing the consent form to search.
27 But in reality, when you read this transcript, and what the
28 testimony was, the investigators said, you know what, it's

20

1 probably better that you don't sign this consent form. It's
2 probably better that we just go ahead and get a search
3 warrant. So this was just a normal interaction. It wasn't
4 something that they were trying to avoid or trying to hide
5 anything.

6 Dr. Juguion, who I have already talked about, didn't
7 even know about the carotid restraint being applied on Bobby,
8 didn't do any independent investigation in this case. He
9 relied upon documents, statements provided to him from defense
10 counsel's office. The petechiae, what we talked about in the
11 eyes, when he was testifying, he thought that was just a very
12 insignificant factor, because, you know, how could somebody be
13 hurt by picking them up and carrying them out? How is that
14 going to affect their blood supply? Well, in reality, if in
15 fact the cause of the petechiae was the blood chocking, was
16 the asthma, was the pepper spray, was the officers on this
17 guy's back, then it does become relevant. You just can't
18 discount it.

19 Remember, he also talked to you a little bit about
20 the contract his medical group has with the County of
21 Riverside since 2000, 2001. You know, what are the benefits?
22 What are the payments they're receiving? What are they being

23 paid to do? Are they truly an independent agency,
24 independently looking at these autopsy results? That's not a
25 question I can answer. It's a question that you're going to
26 have to answer when weighing the veracity of a witness.
27 By the way, with respect to Dr. Vilke, their hired
28 gun from San Diego, he testified that documents he was shown

21

1 indicated that Art, Jr. was out of control, out of control.
2 And then what he did, he started bringing in these Miami
3 cocaine trained incidents, excited delirium, this concept that
4 started in Miami because of all the cocaine use years ago, how
5 people would get all jacked up on cocaine, their heart would
6 stop beating, and then they just die. None of that has
7 anything to do with this case, and you have to ask yourself,
8 why was he bringing all that up? Was he truly trying to
9 explain his findings to you, or was he trying to influence you
10 with unnecessary facts that have nothing to do with this case?

11 You're going to have remember what his testimony
12 was. He testified to in excited delirium cases, or cases of
13 this type, in ten percent of them, this is what happens in
14 excited delirium cases. And I'm thinking to myself, why is he
15 going the direction of just ten percent instead of there is a
16 90 percent chance this didn't happen? And I think he probably
17 had about 4,000 or 5,000 reasons why he was trying to
18 pigeon-hole this into the ten percent area.

19 You need to ask yourselves the question whether or

20 not it's okay for the defendants to come in here, bring in the
21 witnesses that they brought in, and have them testify the way
22 they testified. Is that okay? Is it okay to do that in a
23 court of law? Was this inadvertence, was it negligence, was
24 it a scheme to come here and try to misguide everyone about
25 what happened, or did you not see it that way? But it's not
26 okay for the defendant to do that.

27 You can't put your stamp of approval on what
28 happened that night in the Lewis home. It shouldn't have

22

1 happened, and they're standing up for the fact that what
2 happened that night is not the way the County of Riverside is
3 saying that it happened. It takes courage to do that. It
4 takes a lot of effort. It takes a lot of work, a lot of
5 fortitude, to come in here and spend the time over the last
6 five years to keep their son's memory in their minds and to do
7 what they think is right, and to put their trust in you as
8 jurors to make the right decision in this case.

9 The only remedy in a case like this -- nobody is
10 going to jail, nobody is losing a job. The only remedy in a
11 case like this are money damages. We talked a little bit
12 about money damages during voir dire when we were picking
13 jurors, and the judge asked you if each and every one of you
14 would be able to follow instructions and follow the law, and
15 if the evidence supports a slight tipping of the scales, a
16 preponderance of the evidence, that in fact the county acted

17 wrongfully through its deputies and caused my clients harm,
18 would you be able to award money damages on a case like this.
19 And that's what you are charged to do as jurors, and that's
20 why we're here.

21 How do you -- how do you calculate non-economic
22 damages in a case like this? These are damages, these are
23 human losses, relationships gone, advice is gone,
24 companionship is gone. How do you put a number on that? What
25 do you do to figure out what those numbers are?

26 In voir dire I talked a little bit about you get
27 that phone call in the middle of the night, and it's someone
28 who you love and care for, something bad has happened, and you

23

1 answer the phone, and the first thing you think about is not
2 what are the medical bills, what are going to be the loss of
3 earnings, what you think about, is this person all right, is
4 this person going to still be in my life, you know, how bad
5 was she hurt, how severely injured was he injured? Those are
6 intangible damages. Those are life harm. Those are the
7 damages we are looking at in this case.

8 The 911 call that was made that night was a call for
9 help. Jessie was calm during that call. She wanted someone
10 to come to the house and help her. It's what in the legal
11 profession you call a red herring, that's what that 911 call
12 was. In other words, if the call had been there is a bank
13 robber at my house, I need you to come and help me, or the

14 call had been I've got two people in my living room fist
15 fighting, I need you to come help and break it up, that gets
16 the officers there. They step into the house, but then it's
17 their obligation to independently assess what happened that
18 night, what do I do next?

19 Once they got to the house, what they did, they
20 asked Mr. Lewis to bring his son down the hallway, which he
21 did. Every officer that testified testified that the Lewises
22 were cooperative. They didn't interview. They did what they
23 were being told that night, and can you imagine doing
24 everything you're told, and basically the officers are setting
25 the situation up so when the other two guys come in they can
26 grab your son from behind, get him handcuffed, get him out of
27 there, go to the next call. Why take your time when you can
28 get it done in ten or 15 minutes?

24

1 They did everything they were supposed to do. When
2 the confrontation started, can you imagine standing there and
3 looking over and watching these guys do this to your son? I
4 don't know what I would have done. I might have jumped in. I
5 mean, honestly, I couldn't -- they did everything they were
6 supposed to do. They still lost their son. Make a phone
7 call, police officer arrives, 15 minutes later, 16 minutes
8 later, your son is dead. That's not the way these things are
9 supposed to work.

10 You have got to read between the lines, what

11 happened that night. Both Trey and Cameron, although he's too
12 young to understand all this right now, you know, Art talked
13 about Bobby being his best buddy. And he doesn't have him
14 anymore. Guess what? These guys have lost their best buddy,
15 they have lost their dad, who is the guy that's going to be
16 going to church with them, taking them fishing, going to the
17 car shows, talking about his first touchdown, talking about
18 his first kiss with a girl, talking about the first time
19 someone has broken their heart, missing Thanksgiving dinners,
20 which the Lewises would always do at their house, Christmas,
21 going to school in New York, all the things, all the
22 intangibles, these kids are aren't going to have anymore, and
23 this is really awkward to talk about, but this is what we have
24 to do. It's those intangible damages that we need to talk
25 about.

26 Art and Jessie raised a beautiful son, and all the
27 pictures that we talked about are coming back into evidence.
28 You're going to be able to look at them. I like this one.

25

1 Their son gave them two grandchildren, and I think we probably
2 have two of the best grandparents in the world in this
3 courtroom. But Art's best friend has been taken from him, and
4 Jessie's firstborn has been taken from her, and it shouldn't
5 have happened. This could have been avoided, it should have
6 been avoided, but it wasn't avoided.

7 I can't tell you what dollar amount is reasonable to

8 compensate Trey and Cameron for the loss of their dad, or Art
9 and Jessie for the emotional distress that they went through
10 watching this happen in front of them. That's your job. What
11 I can do is give you some things to think about, different
12 ways society places a value on different things. One example
13 would be tomorrow we have the NFL draft. There is going to be
14 kids coming out of college who can throw a football, catch a
15 football, run fast with a football, that are going to be given
16 \$10 million contracts, \$5 million contracts, \$20 million
17 contracts. Society places a value on something like that.
18 That's what society says it's worth. A couple weeks ago in
19 San Bernardino there was a racehorse that was sold for about
20 15 and a half million dollars. Society has decided that this
21 item, this object, is worth 15 and a half million dollars for
22 whatever reason. A Van Gogh painting with flowers was
23 recently sold for \$40 million. That's what society has placed
24 on a value of oil on a canvas by a famous artist. If somebody
25 came in and slashed that painting, if somebody came in and
26 shot that racehorse, if something happened to that first-round
27 draft pick tomorrow where he's not able to play football
28 anymore, you can actually -- you can get an appraiser, an

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1 economist, to come in and tell you what the loss of value is.
2 The economist is going to say with respect to the painting,
3 based upon 100 other similar paintings around the world, this
4 is the value that was lost, this is the dollar amount of the

5 loss. The same principle applies with a racehorse, the same
6 principle applies with an NFL running back. You can put a
7 number on that. Tiger Woods a year and a half ago sank a putt
8 that was worth \$1.5 million to him. That's the value society
9 puts on it.

10 Here is the thing. We can't bring an appraiser into
11 Court to put a value on the life, the joy, the happiness, the
12 companionship, the love that these two kids are not going to
13 have with their father anymore. Guess who that appraiser is?
14 That appraiser is going to be you. And it's an awesome
15 burden, it's a difficult task, but you've been paying
16 attention, and I know you can do it. Putting a number on the
17 emotional distress, the mental anguish, that Mr. and
18 Mrs. Lewis experienced that night watching this happen to
19 their son, once again, standing there, doing what the officer
20 is telling him to do, all of a sudden they get hit from behind
21 while they're getting sprayed from the front, and then
22 everything goes crazy. You know, what -- who is going to
23 appraise what type of damages started that evening, and now
24 they are forced to live with for the rest of their lives?
25 That's going to be you. That's your job. You are the
26 appraisers of these human losses.

27 Art, Jr. was a masterpiece to his family. Art, Jr.
28 was the world to Trey, and although Cameron was just this big

1 when his dad was taken from us, he's missed out on having his

2 dad around for the last four and a half years, and he'll miss
3 out on having his dad around for the rest of his life. One of
4 the challenges on a case like this, and I know you guys can
5 get above it, is when you leave this courtroom, you are going
6 to talk to your neighbors, your family and your friends, and
7 they're going to ask you, why did you award Mr. and Mrs. Lewis
8 so much money in this case? Why did you award the kids so
9 much money in a case like this? And you're going to be able
10 to tell them, well, you don't understand, what happened that
11 night shouldn't have happened. What we did, these kids'
12 father was taken from them, incredible tragedy, and if you're
13 in there and you knew the facts, it shouldn't have happened.
14 Their son, a mother and father's son, was killed, severely
15 injured in front of them. That's why. This is not a
16 difficult question.

17 One last example. You know, think about this for a
18 second and talk about it when you're in the deliberation room.
19 If you have a \$5 million computer system, and somebody comes
20 in and damages that computer system, and an expert economist
21 comes in and says it's going to cost \$5 million to fix that
22 computer system. That's what it's going to take. Would you
23 agree with me that to award only \$3 million to fix a system
24 that without argument is going to take \$5 million to replace,
25 that's an inefficient award, that's an insufficient award? In
26 other words, if you find the damages are this, then the jury
27 award should be this, and that's just fair. You shouldn't
28 award less than what the evidence and the harm has shown the

1 verdict should be, and keep that in mind. It's a difficult
2 concept. I'm encouraging you to at least talk about it when
3 you get back into deliberations.

4 Now, I'm going to go through one of our special
5 verdict sheets that you're going to be asked to complete back
6 in the deliberation room, and before I do that, what I want to
7 talk to you a little bit about is with respect to Cameron and
8 Trey.

9 THE COURT: How much longer are you going to be
10 here?

11 MR. JACKSON: Five minutes.

12 THE COURT: All right. The reporter is going to
13 need a break here. She's been going almost two and a half
14 hours here.

15 MR. JACKSON: Five or ten minutes.

16 For the loss of their father, for the human losses
17 that we talked about, what we are asking you to do, we are
18 suggesting a figure of \$3 million to \$4 million for Cameron
19 for the loss of his father. We are asking you for \$3 million
20 to \$4 million for Trey for the loss of his father. Think of
21 the examples we have given you, and discuss among yourselves
22 intelligently about what's fair in a case like this. For
23 watching their son, for watching what happened to their son in
24 their living room that night, for the emotional distress that
25 they truly experienced, for what they're going to be doing for
26 the next 20 years of their expected life without their son,

27 Mr. and Mrs. Lewis are asking for \$1.5 million in emotional
28 distress damages for their son, \$1.5 million for Arthur and

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1 \$1.5 million for Jessie.

2 Now, having said that, those are the numbers that we
3 believe the human loss values and the evidence has shown.
4 Whatever you as a jury decide is fair and reasonable, the
5 Lewises have told me they will be extremely comfortable with.
6 This is in your hands. It's my job to tell you what we feel
7 the evidence has shown, but it's your job to do what you feel
8 comfortable doing. They'll respect whatever decision you
9 make.

10 Let me show you what a jury verdict form looks like.

11 THE COURT: You have a problem with that chart
12 there.

13 MR. JACKSON: Can you guys see that, or do you want
14 me to turn the lights down?

15 Thank you, Bruce.

16 This is what a special verdict form looks like, and
17 with respect to the wrongful death, with respect to the
18 emotional distress, with respect to the false arrest, false
19 imprisonment causes of action, you're going to have a couple
20 of different verdict forms. What we would like you to do --
21 this is the wrongful death form. I'm going to show you how it
22 works.

23 The first question says, "Did the deputies use

24 excessive force in detaining Arthur Lewis, Jr.?"

25 Based upon the evidence, based upon your
26 deliberations, we believe the answer is yes. The evidence
27 shows that Bobby never took a step towards this officer, never
28 lunged towards the officer, was compliant at all times. Their

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1 expert even said if he didn't step towards the officer, wasn't
2 aggressive towards the officer, didn't lunge towards the
3 officer, force wasn't reasonable. That's the case. I
4 probably could have done this in five minutes.

5 Next, if your answer to question number one is yes,
6 then answer two. If you answer no, then you stop and you sign
7 the bottom of the form and you're done.

8 Number two, "Was the use of excessive force a
9 substantial factor in causing harm to Arthur Lewis III and
10 Nathaniel Lewis?"

11 Cameron is Nathaniel, that's his proper name, and
12 you all know Trey.

13 The answer is yes, substantial factor in causing
14 harm to Arthur Lewis III and Cameron.

15 The next question, "What are Arthur Lewis III's
16 damages for the past, present, and future loss of Arthur,
17 Jr.'s love, companionship, comfort, care, assistance,
18 protection, affection, society, moral support, training, and
19 guidance?"

20 Basically you don't have a father anymore. What are

21 those damages? You will be the human loss appraisers. That's
22 going to be your job. We are challenging you to step up and
23 do the right thing in this case.

24 MR. DISENHOUSE: I'm going to object. That's an
25 improper argument to make to the jury.

26 THE COURT: Proceed. You are about ready to close
27 here?

28 MR. JACKSON: I am, your Honor.

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1 THE COURT: All right.

2 MR. JACKSON: Question number four, same question
3 with respect to Cameron, what are those damages. You're then
4 going to be asked whether or not Arthur, Jr., whether or not
5 Bobby, was negligent in having this physical confrontation
6 initiated, was he negligent, or did he and his family do
7 everything he was asked to do. We would ask you to mark no,
8 he was not negligent, he didn't do anything wrong that night.

9 Next question, "Was Arthur Lewis, Jr.'s negligence a
10 substantial factor in causing harm?" He wasn't negligent.

11 "Assuming 100 percent equals the total
12 responsibility for the injury to Arthur Lewis, Jr., what
13 percentage of responsibility for that injury do you assign to
14 the following?" The deputies, 100 percent at fault, Arthur
15 Lewis, zero.

16 That's how we feel the evidence weighs on this case
17 by a preponderance of the evidence, and how the first special

18 verdict form should be completed.

19 You're going to be given a verdict form for Art and
20 Jessie on the emotional distress case. You're going to be
21 given a verdict form for Art and Jessie on the false
22 arrest/detention case. It's the same process.

23 In wrapping up, I would like to please ask you that
24 you be guided by the facts and the law in this case, pay
25 attention to what the judge has read to you, and pay attention
26 to the jury instructions back in the jury deliberation room.
27 Please review the evidence carefully. We want you to review
28 the evidence that's been admitted. Go over the testimony, go

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1 over the conflicting testimony of the police officers. It's
2 critical. Go over the consistent testimony of who else was
3 there that night.

4 Their son is not here to tell his side of the story,
5 but we believe that he's watching these proceedings, and that
6 he's looking at his mom and dad and his two sons
7 optimistically that you guys are going to make the right
8 decision in this case.

9 MR. DISENHOUSE: Objection, your Honor, that's
10 improper argument.

11 MR. JACKSON: Just give me another two minutes, and
12 I'm done.

13 THE COURT: Argument is not evidence. It's what the
14 attorneys think. You don't have to accept it.

15 Go ahead.

16 MR. JACKSON: Thank you, your Honor.

17 Arthur and Jessie, Cameron and Trey through their
18 moms, have asked me to ask you to please bring in a verdict
19 that's sanctioned by the facts, that's sanctioned by the law,
20 that's sanctioned by your good conscience, and that's
21 sanctioned by what's the right thing to do. This is their
22 only opportunity to have redress for what's happened to their
23 family. They don't get to come back to court. This is it.
24 We ask you to deliberate and come back with a verdict that
25 will have a lasting legacy for the Lewis family and for the
26 community, a verdict that will be a lasting monument to
27 Arthur, Jr. for what he's done and for the Lewis family.

28 I appreciate your time. I know this has been

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1 difficult. I'm going to have a chance to speak briefly with
2 you again after defense counsel gives his closing.

3 Thank you very much.

4 THE COURT: All right. Ladies and gentlemen, we
5 will take a 15-minute break. See you back here in 15 minutes.

6 You'll hear closing argument by the defense and then
7 rebuttal by the plaintiff.

8 (Recess.)

9 (The following proceedings were held in open court
10 outside the presence of the jury:)

11 THE COURT: I don't think Juror No. 9 is a happy