

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

KERRY LEWIS,)
)
Plaintiff,)
)
vs.) No. 0710-11294
)
CORPORATION OF THE PRESIDING)
BISHOP OF THE CHURCH OF JESUS)
CHRIST OF LATTER-DAY SAINTS, a)
foreign corporation sole registered)
to do business in the State of)
Oregon; CORPORATION OF THE)
PRESIDENT OF THE CHURCH OF JESUS)
CHRIST OF LATTER-DAY SAINTS AND)
SUCCESSORS, a foreign corporation)
sole registered to do business in)
the State of Oregon; THE BOY SCOUTS)
OF AMERICA, a congressionally)
chartered corporation, authorized)
to do business in Oregon; and)
CASCADE PACIFIC COUNCIL, BOY SCOUTS)
OF AMERICA, an Oregon non-profit)
corporation,)
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS
VOLUME 24

BE IT REMEMBERED That the above-entitled matter came on regularly for trial, before the Honorable **JOHN A. WITTMAYER**, Judge of the Circuit Court of the County of Multnomah, State of Oregon, commencing at the hour of 8:48 a.m., on Thursday, the 22nd day of April, 2010, and reported in stenography by Debra K. Cheyne, Certified Court Stenographer No. 94-0291.

APPEARANCES

Kelly Clark, Paul Mones, Gilion Dumas on behalf of the Plaintiff;

Charles Smith & Christie Moilanen, on behalf of Defendant The Boy Scouts of America.

Present for 8:30 hearing: Paul Xochihua (CPC/BSA), Kristian Roggenorf (Plaintiff), Mick Seidl (Media).

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1 MR. MONES: Thank you, Your Honor.

2 **PLAINTIFF'S FIRST CLOSING ARGUMENT**

3 MR. MONES: May it please the Court,
4 ladies and gentlemen of the jury, counsel, Mr. Lewis,
5 Mr. Clark, and Ms. Dumas, this is the first time I've
6 gotten a chance to speak before you. Most of the time
7 has been cross examining witnesses and arguing motions
8 before the Court or arguing before the Court about the
9 various aspects of the case.

10 My job now is to discuss with you the one
11 phrase, the one aspect of Mr. Clark's statement to you,
12 which is that this phase of the case is about punishing
13 the Boy Scouts of America and deterring them and other
14 organizations that serve youth from ever engaging in
15 this type of unconscionable and deplorable behavior that
16 you have heard about over these six long weeks.

17 You have already heard and found by clear
18 and convincing evidence that the Boy Scouts of America
19 were recklessly and outrageously indifferent to a known
20 risk of harm and were consciously indifferent to the
21 safety and welfare of Kerry Lewis and others.

22 In the first phase of this case by
23 answering the last verdict -- the last question on the
24 verdict form yes, you have said that the Boy Scouts of
25 America need to be punished for their misconduct and

1 that they -- that they need to be deterred from similar
2 misconduct.

3 The concept of punishment for those who
4 do wrong is woven through the fabric of our society.
5 From someone who steals from a cash register or a wall
6 street executive who gets arrested, they just don't have
7 to give back the money; they also need to be punished.
8 And even if they apologize and say we won't do it again,
9 we won't steal, they still have to be punished.

10 If a company sells a defective car, and
11 there are accidents as a result of that, and somebody
12 dies, and the company recalls the car and says, we're
13 going to make all the best changes we can, we're going
14 to put on better pedals, we're going to change the
15 alignment, that company still gets punished.

16 And why do we punish? Because that's how
17 we maintain order in society. That's how we maintain
18 justice. We maintain security and civility and order,
19 and most important in this case, safety; safety for
20 children.

21 But the question today is how do you
22 punish an organization? You can't put the Boy Scouts of
23 America in jail, and nobody's asked you to do that. How
24 do you punish an organization that's demonstrated a
25 conscious, an outrageous indifference to the health and

1 safety of children and to Kerry Lewis?

2 How do you punish an organization with
3 \$900,000,000 in assets that makes 2.5 million dollars a
4 month just off the interest in its liquid account, and
5 that for decades through its callous policies have put
6 the health, safety, and welfare of thousands of children
7 at risk?

8 So your job today is to decide punitive
9 damages, how much -- how much it will take, ladies and
10 gentlemen, to stop the BSA and to punish them for what
11 they did to Kerry Lewis. And we submit to you based
12 upon what we heard this week, there's only one figure,
13 \$25,000,000.

14 And as I will detail to you, there is
15 nothing that happened in this past week that should
16 convince you that it should be anything less than
17 \$25,000,000. We're not asking you to shut down the Boy
18 Scouts of America; that would be wrong. There are tens
19 of thousands of millions of boys and families who
20 benefit from the Boy Scouts of America, but you can make
21 the Boy Scouts better.

22 Some of you may have concerns about using
23 money to punish the Boy Scouts of America, but that's
24 all we have at our disposal here. That's all we can do.
25 We can't put back the lives destroyed. We can't change

1 the families that have been changed. We can't make
2 better the families that have been changed permanently.

3 What we can do is we can award punitive
4 damages and punish the behavior of the Boy Scouts of
5 America that created these -- this situation.

6 And punitive damages are also used to
7 deter, deter future behavior. So when you consider your
8 punitive damages consider the fact that if your verdict
9 speaks loudly enough youth organizations around the
10 United States will double up and rethink their policies
11 and practices about the way they treat children.

12 This court has given you guidance --
13 excuse me -- I remember the lawyers all said they were
14 nervous when they were up here. I'm nervous, too, so
15 that's okay -- about what a reasonable amount of
16 punitive damages should be.

17 The Court has instructed you that there
18 must be a reasonable relationship between the amount of
19 punitive damages and the plaintiff's harm. There's no
20 set formula of what that relationship is.

21 The Judge has also instructed you that
22 you may consider the reprehensibility, how bad the
23 behavior was of the defendant's conduct, and the
24 defendant's financial -- financial condition in deciding
25 punitive damages.

1 The instructions the Court has given you
2 is like a road map. It will be up to you to apply these
3 instructions. But we firmly believe, as I said earlier,
4 that \$25,000,000 is the appropriate amount.

5 Now, let's look at these guidelines of
6 reprehensibility one by one. You already know that the
7 evidence shows that -- of the reprehensible nature of
8 the defendant's conduct. You know how they recklessly
9 allowed sexual abuse go on decade after decade after
10 decade after decade.

11 You heard about how the Boy Scouts of
12 America covered up through secrecy their problem of
13 sexual abuse, how they hid the perversion files and
14 still continue to this day to hide the perversion files
15 from the parents of boys and Troop volunteers.

16 The Boy Scouts of America has failed, as
17 I will detail in a little while, to do anything with
18 those I.V. -- I.V. perversion files. To understand the
19 circumstances under which boys like Kerry Lewis have
20 been molested, to understand how they've been groomed,
21 to understand the circumstances where they have been
22 molested, you listened and you heard from Mr. Walsh, and
23 Mr. Marshall, and the second in command that there was
24 nothing -- Mr. Terry -- that there was nothing to learn
25 from these files.

1 We believe the opposite is true.

2 You also learned that the Boy Scouts of
3 America failed to train its adult leaders about the very
4 existence of sexual abuse and how to handle that sexual
5 abuse in Troops if the problem ever arose.

6 And if you remember my questions and Mr.
7 Clark's questions to witness after witness this week
8 about the -- how to protect your children from child
9 abuse and the youth protection videos, "A Time To Tell"
10 and "It Can Happen To Me," which are the primary
11 educational vehicles -- you have to understand this --
12 that the Boy Scouts of America give to parents and
13 children, not one mention, not one mention, not even a
14 hair -- not even a hair of a breath of a mention of
15 Scouts who molest young boys.

16 And you must understand that the motive
17 for keeping this silent -- and you heard that as well in
18 the first half of the case -- are the three M's: Money,
19 membership, and manpower. The BSA knew that if it
20 revealed the true extent of its problem with sexual
21 abuse it would scare off people; they were worried
22 because they didn't know how to handle the problem.

23 And as a result, they hid the problem.
24 And by hiding the problem more abuse happened.

25 Also keep in mind when you consider

1 reprehensibility that there are thousands of children,
2 not just Kerry Lewis, who are represented in these boxes
3 right here. Hundreds of boys, nine-, 10-, 12-,
4 13-year-old boys whose lives have permanently been
5 damaged. And you can consider that in your punitive
6 damage award.

7 And what we have done in the first phase
8 we had to take out, pursuant to certain orders of the
9 Court, we had to take out the effects of abuse on kids,
10 some of the things in here in the files took out mention
11 of how boys cope with the abuse, whether they got
12 counseling.

13 That was all put back. And if any of you
14 are interested in seeing, if you want to take these
15 boxes back with you, you can see the devastating impact
16 that the Boy Scouts of America knew these files had.

17 But while you may not award punitive
18 damages to punish the defendants for the harm caused to
19 these other Scouts, we are only asking you to consider
20 the harm suffered by these boys in evaluating the
21 reprehensibility of the defendant's conduct.

22 Now, the next thing we -- the Court
23 allows you to consider is the -- is the defendant's
24 financial condition when determining whether \$25,000,000
25 is an appropriate amount of money.

1 Will you put up . . . you've learned
2 through Ms. Morones, whose testimony, I might add, was
3 uncontradicted, the Boy Scouts of America did not
4 present one witness, remember, not one witness -- you
5 never heard it from that stand there -- to say that
6 Ms. Morones was wrong. They never said it.

7 So the Boy Scouts of America, as you
8 heard, have \$929,000,000 in assets, yearly revenues of
9 \$400,000,000. I'm just going to write these numbers up
10 here as we -- as we talk, because it's -- and you
11 remember my math is terrible, but I will hopefully get
12 this right. So 929,000,000 in assets.

13 Yearly revenues of \$400,000,000,
14 (writing) monthly revenues of \$35,000,000, unrestricted
15 liquid assets of \$554,000,000. I'm just going to put
16 liquid assets -- I'm sorry -- a hundred million dollars
17 in property, and \$67,000,000, and this is for a
18 liability reserve fund.

19 They also solely off their assets that
20 they have make about 2.5 million dollars per month. And
21 as Ms. Morones told you, it would take about nine and a
22 half months for the Boy Scouts of America to earn back a
23 penalty of \$25,000,000. But one thing that we -- that
24 we went over I think a little too quickly with
25 Ms. Morones was this Form 990. What exhibit number is

1 this?

2 I.T. TECHNICIAN: 1483.

3 MR. MONES: 1483. So I would urge you,
4 really urge you, go back in the jury room and look at
5 this, because I'm going to go through five points with
6 you right now. Can we go to 102881, please? I'm going
7 to talk to you about the salaries, because when you look
8 at the salaries of this -- of this large nonprofit, the
9 largest youth organization in the United States, you
10 learn -- and I want to go through this for a few minutes
11 with you a little slowly. I know Mr. Clark says I talk
12 too fast, so I'm going to slow down.

13 Mr. Mazzuca, the CEO, earns one million,
14 one hundred and sixty-three -- do you have that up
15 there? That looks great. Let's see if everybody can
16 see it. Can you all see that? Okay. \$1,163,472.

17 Mr. Terry, who you saw up here yesterday,
18 who didn't have the time or the interest to even go, you
19 know what? I wonder what the heck is in these files
20 that have been in my office for 90 years; I wonder
21 what's in here? He didn't have the time. Do you know
22 how much the Boy Scouts of America pays this man?
23 \$662,786.

24 Then there are gentlemen below him.
25 Don't know who these men are, but they are the top

1 echelon. 580,000 for Mr. Brock (ph). Mr. Stone gets
2 415,000. Mr. Fitzgibbons (ph) gets 386,000. Mr. Tubble
3 (ph) -- I'm going too fast -- 398,143. And Mr. Langston
4 (ph), 313,141. And Mr. Ashland (ph), 299,000.
5 Mr. Green, 332,000. Mr. Park, \$396,000. And then
6 Mr. Williams, 695,000, for a grand total -- now you
7 should add this up yourself, because I added this myself
8 on a calculator. I come up with \$5,644,405. But check
9 my math, please.

10 Let's go to page 102865. Normally, I
11 wouldn't think that this was -- would be something to
12 point out, but I think it's worth pointing out here,
13 just to show how active the corporation, the BSA
14 corporation is; this is called contractor compensation,
15 and it's mostly made up of law firms that the BSA pays
16 each year.

17 It paid \$3,156,000 to a firm in New York
18 City. It paid \$402,000 to a firm in Florida. It paid
19 another \$833,000 to a firm in Florida -- in Texas. It
20 paid another 414,000 to a firm in New Jersey.

21 And then there's something called
22 technical resources, temporary labor services. I don't
23 know what that is. But the total, as you can see -- and
24 this is a public document. This is not something that
25 we, you know, we had to go anywhere. But this is all on

1 the internet. They -- they publish this -- \$5,465,116.

2 And now let's go to the third category
3 I'd like you to look at. And this was just mentioned
4 before, but just to show you this is not a local YMCA,
5 the Boy Scouts of America. The Boy Scouts of America is
6 not a small nonprofit. They have a museum, a number of
7 museums.

8 And if you read the first schedule
9 here -- can you blow that up there, please, John? The
10 National Council has paintings and artifacts in various
11 museums and national Council-owned buildings. The
12 largest Council resides at the Scouting museum in the
13 Irving, Texas, which houses collectibles appraised at
14 approximately \$45,000,000.

15 The last appraisal conducted in June
16 2006: Costs associated with acquisition and maintenance
17 of these collections have been expensed. And 47 -- in
18 this collection, which is the majority of it if you
19 go -- reflected on the BSA website, are Norman Rockwell
20 paintings. And I think we've had testimony to that
21 effect.

22 Now let's go to 102826. This is a
23 nonprofit corporation, the Boy Scouts of America. This
24 is the lobbying expenses for the Boy Scouts of America,
25 a congressionally-chartered corporation. They spent in

1 2005 \$241,663 on lobbyists. In 2006 they spent \$188,898
2 on lobbyists. In 2007 \$203,765, and in 2008 about the
3 same amount, 205,364, for a grand total over four years
4 of just shy under \$850,000, 839,690.

5 That's what they spent on lobbying. Who
6 were they lobbying? Ask yourself who was the Boy Scouts
7 of America lobbying?

8 And then, which I have to admit I'm going
9 to go to the last page, which is -- sometimes
10 organizations have perks, and by the kind of perks they
11 have you can tell how good they're doing, you can tell
12 how fat they are, how rich they are, how much money is
13 flowing in that pipeline.

14 Let's look at the Boy Scouts of America,
15 and remember these are contributions here and selling
16 the little knick knacks over the internet. John, bring
17 up that first Schedule J there.

18 I.T. TECHNICIAN: It's up.

19 MR. MONES: It's up. Thank you. Sorry.
20 Spouses of key employees are required to attend
21 meetings, and their expenses are reimbursed by the
22 company. Company, I guess, means the Boy Scouts of
23 America. The Boy Scouts of America is a family-oriented
24 organization requiring spousal participation.

25 Their expenses are considered necessary

1 to fulfill the business purpose of the organization,
2 which is what? Ask yourself that question. You've been
3 in here for five weeks of testimony. What's the
4 business purpose of the corporation? Protecting
5 children, maybe.

6 The expenses are considered -- all
7 expenses are substantiated. The reimbursement of these
8 expenses are not included in employee taxable
9 compensation. The total expense for spousal travel in
10 2008 was \$72,749. That's not a lot of money compared to
11 a billion dollars, but you know what? It's one of those
12 little things that shows you how well they're doing.

13 Now, the next line is even better.
14 Employees traveling with volunteers or overseas are
15 allowed to upgrade to First Class to allow the employee
16 to discuss business during the flight. The total First
17 Class travel for 2008 was \$69,302.

18 Well, I'd say the Boy Scouts of America
19 are doing pretty good if they can afford to fly their
20 executives First Class, because everybody knows that if
21 you're going to give money to a nonprofit you have to
22 sit in First Class. The people in First Class can't
23 come back to coach, I guess. That must be the logic of
24 it.

25 Would you put the graph up, please? No.

1 Just the graph. So when you look and consider the
2 defendant's financial condition here, consider that
3 chart that Mr. Clark showed you. Each of these squares
4 equals 900 -- or 930 squares. And, John, please show
5 what 25,000,000 is of that. That shows you what kind of
6 dent this would be in the Boy Scouts of America's
7 financial structure. A dent, a small dent, the
8 proverbial drop in a bucket.

9 I'd like to move on to my next topic now,
10 get into some of the meat. The Boy Scouts, I expect,
11 are going to ask you not to punish them. But I ask you
12 what have they proven to you over the last week or the
13 last three days, to return a punishment -- to return a
14 verdict of anything but \$25,000,000? What are they
15 going to say? Let's think about it.

16 In 1983 we really didn't know that adult
17 leaders like Timur Dykes existed. Or, Dykes was too
18 smart and too wily for us. We never, ever had an
19 experience with men like him. We didn't know that Scout
20 leaders are like that. We did all we could based upon
21 the knowledge we had at the time to warn parents like
22 Jim and Helen Lewis about the dangers of Scout leaders
23 like Timur Dykes.

24 We had set policies and practices in
25 place that when a Scout leader was found to have

1 molested a youth the Troop and the charter organizations
2 were trained to make sure every parent who was in the
3 Troop, or better yet, even the Council knew about the
4 perpetrator. Or, maybe they'll say, we make sure all of
5 our charter organizations knew the rules to follow to
6 put men like Timur Dykes out of the Troops permanently.

7 And, of course, when we discovered Kerry
8 Lewis was sexually abused we apologized to him. We
9 asked for his forgiveness. The BSA will -- will tell
10 you do not punish us because look how we changed our
11 ways. Look at our Youth Protection program. And you're
12 going to receive hundreds of documents. You'll receive
13 an avalanche of documents.

14 And I'm going to remind -- I'm going to
15 ask you to remember four things when you look through
16 these documents. First, the only documents -- and I've
17 become a broken record on this; I'm sorry, sorry, sorry,
18 sorry -- but the only documents given to Scouts and
19 their parents are two items.

20 First, to Cub Scouts, and it's an insert
21 for Cub Scouts and Boy Scouts. Please read it. Please.
22 I'm asking you as plaintiff's counsel to read that
23 material. Please read it. Look through the pages.

24 And you heard Mr. Terry, I mean, and --
25 and some of the other witnesses. It was a little

1 difficult for them to kind of say yes to some of my --
2 to agree with me that none of these had examples in them
3 of Scouts. But after a few questions from Mr. Clark and
4 I, finally we got the "yes" out of them.

5 Yeah. I've got to agree with you,
6 basically. Yeah. There's no Scouting information in
7 there. But you do it. Trust yourself. You look
8 through it yourself.

9 Mr. Terry had to admit, Mr. Bross had to
10 admit, that these pamphlets contain nothing. And I
11 submit to you, ladies and gentlemen, that the
12 pamphlets -- what was the other number?

13 I.T. TECHNICIAN: 1476 and 1496.

14 MR. MONES: Oh, right. 1476 and 1496 --
15 could have been produced by a school, a police
16 department, a YMCA, a State agency. They could have
17 been handed out at Fred Meyer.

18 Because Fred Meyer, I mean, I got my flu
19 shot because Fred Meyer had these things about flu
20 shots, and it was all about why you shouldn't get, you
21 know, how you get the flu, and you need to get your
22 shot, and it was great literature, you know. They had
23 great health literature to let me know whether to
24 protect my health.

25 Well, I can see Fred Meyer having a

1 handout on child abuse. It's a good community --
2 community-minded organization. But the Boy Scouts of
3 America, they know where these boys are abused. They
4 have the boxes here. They have the evidence. They
5 know.

6 They had a responsibility to put that
7 information in. And the videos. "It Happened To Me,"
8 which is -- I was corrected -- for seven to 10-year-old
9 boys, and "A Time To Tell" for boys a little older, 11
10 to 14, look at those scenarios, and you'll see as the
11 witnesses admitted, nothing at all, a big zero in terms
12 of sexual abuse of Scouts.

13 None of the situations even remotely
14 resemble what happens when kids are abused, nothing you
15 heard from Kerry Lewis or you heard from the other young
16 men who were molested. Or if you read any of these
17 files. Again, I get back to these files. If you read
18 any of these files you'll see that they were scenario
19 after scenario after scenario.

20 You heard me go through them with
21 Mr. Marshall. I went through 10, 12, 15 files with him
22 easily. I went through it with Dr. Warren. I went
23 through it with -- with our expert, Mr. Schoener. You
24 heard it. And then you took the time and you
25 diligently, I'm sure, looked through them. But none of

1 these situations appear in these files.

2 And these videos, not bad videos as they
3 go, but they could have been produced by the -- the
4 Jaycees, the Junior League, a neighborhood center,
5 because again, as Mr. Potts -- I know that was kind of
6 boring having that testimony read, the deposition
7 yesterday, as much as Mr. Clark and Mr. Crew tried to
8 make it a little lively and interesting. But you heard
9 Mr. Potts through his testimony six years ago say that
10 those are generic videos. It never mentioned or
11 included anything about Boy Scouts.

12 Now thirdly, all the other videos you
13 will see and all the other documents produced for adult
14 leaders barely mention abuse in Scouting. And those
15 that do never tell the leaders to warn parents and kids
16 about Scout leaders who molest Scouts. There is one
17 tape, because I've looked at all these tapes, because
18 they're in evidence now, and Mr. Clark asked me to look
19 through them. And it was my pleasure, because I wanted
20 to know exactly what the Boy Scouts were doing.

21 And there is one video if you get a
22 chance to look at it which shows a man leading a boy
23 into the woods. You know, he's not touching him or
24 anything. He's just kind of walking. And, you know, it
25 looks like it's outside. And it says violation of the

1 one-on-one contact rule. And so that's all there is.

2 And then the next picture in the Youth
3 Protection training video, is of a kid -- you have my
4 cell phone there -- is a kid running out of the bathroom
5 with a face like this, and looking at a video -- looking
6 at his cell phone as he's taking a picture of somebody
7 in the bathroom.

8 And you heard Mr. Terry say, oh, that's a
9 really big problem, a really big problem in the Scouts
10 kids taking videos of each other in bathrooms with cell
11 phones. I bet you they have tens of thousands of files
12 of kids with cell phones.

13 But there's no mention of any of the
14 information, ladies and gentlemen, that you could learn
15 from these files here, nothing that tells boys what to
16 look for in terms of grooming, nothing tells -- that
17 tells boys what to look for in terms of Scout leaders
18 who would buy presents for them or tells parents.

19 And number four, the only documents that
20 you will see that directly address abuse by Scouts, and
21 there aren't a lot of them, are internal documents sent
22 to only the staff, the paid staff of the BSA.

23 You heard Mr. Robinson say -- and this
24 is -- this is not new news -- you heard Mr. Robinson say
25 when he was on the stand I said to him, when did you

1 first find out about sexual abuse in Scouting.

2 He said, I found out in 1960. Mr. Terry
3 found out in 1969. So they knew about the problem, but
4 they were not going to let that information get into any
5 of these publications.

6 And so yesterday Mr. Smith asked you, I
7 think it was No. 2286, you'll probably -- he'll probably
8 talk about it. He flashed it twice up on the screen.
9 Look at that letter. That's only to Scout
10 professionals. It talks about child abuse, sure. It's
11 only internal.

12 And I want to also reference you to Boy
13 Scout internal document 2295. I want you to look at
14 that, because I think that's important. This came out
15 in 1988, and it's now in evidence. It's only sent
16 around -- do you have the cover page?

17 MR. CLARK: It's up there.

18 MR. MONES: Oh. It's up there. How to
19 deal with it. This is a BSA staff orientation for the
20 professional staff. If you go to page 2. Okay. This
21 is what they told their people. And I'd like you to
22 focus on No. 2. Just bring that up. Thanks, John.
23 Child abuse has an effect on the BSA internally and
24 externally.

25 I remember you -- if you remember, I

1 asked him questions about that. Now let's go down to
2 the second bullet point. This is what they've admitted
3 to themselves: It can injure the reputation of the Boy
4 Scouts of America and cause it to lose community
5 support. And then in parenthesis, manpower and
6 financial support.

7 Remember Mr. O'Connor up there who was
8 so -- was so thoroughly cross examined as if he was some
9 faker by the defense counsel? Remember he talked about
10 manpower and membership? He wasn't making it up. It's
11 right there in the -- in their internal documents. They
12 admit that this stuff is bad for business; child sexual
13 abuse is bad for business. You can take it down now.

14 And I'll admit to you, and we're not --
15 we're going to be honest about it. Two videos, got some
16 good basic stuff in it for parents. But considering
17 what the Boy Scouts of America knew for -- and -- and
18 these documents were -- these videos were produced in
19 the late '80s, early '90s -- considering what they knew
20 for almost 70 years, these documents, "How To Protect
21 Your Child From Child Abuse" and the videos, we submit
22 to you, are false and misleading as they reflect the
23 real incidents of sexual abuse in Scouting.

24 Now getting back to what the BSA proved
25 to you and didn't prove to you this week, did they

1 demonstrate to you that they could have done more? No.
2 Everything that came out of the mouths of the BSA was,
3 we are the best. We have never done anything wrong
4 (motioning). Our programs are the best. We are better
5 than any other youth group.

6 In fact, as Mr. Clark reminded you, the
7 only person that really did anything wrong here
8 according to the Boy Scouts of America was Kerry Lewis,
9 a meth head from Klamath Falls whose family had bad
10 genetics. And you know what? Maybe Kerry Lewis was at
11 fault. Blame Kerry Lewis because he trusted too much.
12 Blame Kerry Lewis.

13 MR. SMITH: Objection, Your Honor.
14 There's no claim of --

15 THE COURT: Sustained. The objection is
16 sustained.

17 MR. SMITH: Thank you.

18 THE COURT: Move on to another area of
19 argument.

20 MR. MONES: I will, Your Honor. Sure the
21 BSA told you in Phase 1 it was Timur Dykes' fault, but
22 they never took an iota of responsibility this week for
23 how their policies created a Timur Dykes. When a tiger
24 gets out of the zoo and maims someone you know that the
25 real problem is not the tiger, but who let the tiger

1 out.

2 And, ladies and gentlemen, the BSA let
3 the tiger out. And they have acted in this courtroom
4 over the last six weeks as they -- as if they've done
5 nothing wrong, and nothing you heard on this witness
6 stand or from counsel should convince you otherwise.

7 And when you look at what the BSA proved
8 and did not prove, look at what has not changed within
9 the Boy Scouts of America. Excuse me. The BSA still
10 does not mandate child sexual abuse training across the
11 board. The BSA doesn't make Youth Protection training,
12 you heard it yesterday, as a condition of registration
13 for adults.

14 And it doesn't require the training of
15 unregistered adults. And as Mr. Terry said, he doesn't
16 even know how many unregistered adults. I think
17 Mr. Xochihua during his examination threw out the figure
18 of 500,000 unregistered adults.

19 Number two, the BSA's warning and
20 education information to parents and children, as I said
21 just a few minutes ago, doesn't reveal the reality of
22 abuse by Scout leaders. At best it pays lip service to
23 it.

24 And to this day as we sit here right now,
25 the BSA still has not done a comprehensive analysis of

1 the I.V. files or what could be learned from them. In
2 fact, you know that none of the bigwigs in the BSA even
3 have an interest in what's in these boxes. I told you
4 that earlier.

5 And the tragic irony is, is that a group
6 of strangers, a Portland, Oregon, jury, far removed from
7 Irving, Texas, knows more about what's in these files
8 than I'm sure Mr. Marshall does, and I'm sure Mr. Terry
9 does, and Mr. Walsh, who, I mean, it was like
10 (motioning) -- it was like, oh, I can't be bothered.
11 You saw his video. I don't -- I don't -- I could if I
12 wanted to, but I don't want to look at those files.

13 That's amazing when you think about it.
14 A jury knows more, who just came together out of the
15 fact that they got a letter in the mail from the County,
16 and they went through the jury selection process, and
17 you were asked to sit on this jury. You're an impartial
18 group of people, and you know more, probably I would
19 say, and there's been no evidence to the contrary, than
20 the entire brass of the BSA put together about what's in
21 these boxes, because when the BSA really wants to know
22 what's put in these boxes what do they do?

23 They go to Dr. Warren, or they bring in
24 Dr. Bross, who talks about the mythical Dave Finkelhor,
25 whoever he is. He doesn't exist in this courtroom.

1 He's a ghost. You never heard any testimony from him.
2 You only heard people talk about the great Dr.
3 Finklehor. It was -- it was as if Dr. Bross when he was
4 being examined by Mr. Kelly could not say enough great
5 things about Mr. Finkelhor -- or Dr. Finkelhor, as if he
6 was the Boy Scouts of America's answer to all of their
7 child sexual abuse problems.

8 I had these files stacked up in my living
9 room table before I examined Mr. Marshall a few weeks
10 ago. And I thought, what would these files -- because I
11 kept reading through them. And really, it was so
12 depressing. And I don't know if any of you who have
13 read these files felt like that. But it was hard
14 reading these files. This was not easy work. It was
15 not easy.

16 But if these files could speak to Kerry
17 Lewis what would they say? Be careful. There are adult
18 leaders who seem to be friendly, but they have bad
19 intentions. Be careful. There are adult leaders who
20 ply young boys with presents, and attention, and good
21 time, and help them with their merit badges, all for
22 using them in some very bad way.

23 Be careful. There are men like Timur
24 Dykes who are as bad for Scouting as a fire breaking out
25 in a Boy Scout pup tent. But unfortunately, ladies and

1 gentlemen, these files were just pieces of paper, pieces
2 of paper mindlessly compiled and collated, day in and
3 day out, month in and month out, year in and year out by
4 people like Mr. Ernst, BSA functionaries who wrote
5 letters to the counsels, collected newspaper articles,
6 angry letters from parents, and records of sex crimes
7 convictions.

8 Men like Paul Ernst and Nathaniel
9 Marshall, good men, I'm sure. He's a good man. When I
10 cross examined him we did get into it a bit. But he's a
11 good man. I have no doubt about his intentions. But he
12 was in an organization that was -- that -- that was like
13 the rust corroding, because they hid secrets.

14 He didn't -- Mr. Ernst, and really
15 Mr. Ernst is the one who was there much longer than
16 Mr. Marshall. Mr. Ernst didn't ring any bell. Sure
17 they had a fire hose up there to put out the fire of the
18 news. Remember that?

19 Mr. Ernst never went to his boss and
20 said, oh, my God. Young boys are getting sexually
21 abused. You didn't see any letters back like that from
22 Mr. Ernst, did you? We've got to do something about
23 this problem. This is terrible.

24 Hey, listen. Everything that -- the
25 defendants have tried to convince you that, oh, 1980.

1 That was a really long time ago. 1970, oh, we could do
2 nothing about sexual abuse. Well, I'll tell you that
3 back in those days there were police officers who
4 arrested people. There were juries who convicted
5 people, and there are prisons that house people back in
6 the '30s, the '40s, the '50s, the '60s, who did horrible
7 crimes to kids, not as many as there are today, but
8 they -- they -- people still knew it was wrong.

9 Don't tell yourself, be convinced in
10 terms of looking at reprehensibility here, that people
11 didn't know, that Mr. Ernst didn't know, that it was
12 wrong. Don't let them know that -- or don't let them
13 convince you of that.

14 I can tell you one obvious way the files could
15 have been used is to tell parents and adult leaders
16 about how maybe a simple statement could have been told
17 to them. Maybe they could have been told that there are
18 Scout leaders, Scouting is safe, but there are Scout
19 leaders that have been ejected over the years for trying
20 to hurt little boys. That's all they did.

21 That's all you would have to say. We know
22 about the problem. You don't have to be very graphic or
23 detailed. We know about the problem. Be careful with
24 your sons. The BSA could have been honest with Helen
25 and Jim Lewis and the millions of other parents right

1 through to today just by putting in non -- non alarming
2 words what I've just told you.

3 Now getting back to deal with what the BSA
4 doesn't do. And by the way, ladies and gentlemen,
5 there's no way the BSA is going to do this on their own.
6 No way. No way they're going to change their documents,
7 no way they're going to inform their -- their Scouts
8 about it.

9 The only way it's going to be done is through
10 a punitive damage award of \$25,000,000. That's the only
11 way. Because you heard Mr. Terry: They're not going to
12 do it; they're just not going to do it.

13 Regardless of what their documents say, also
14 you know that Martin Walsh, the BSA executive who told
15 you they still don't mandate reporting of child abuse to
16 law enforcement or to Child Protective Services.
17 Regardless of what's in the documents, remember what he
18 said: Only if the local law requires it.

19 That means if the mandatory reporting laws in
20 a specific state do not contain a requirement for
21 private nonprofits to report sexual abuse then there
22 will be no reports.

23 And again, the BSA still refuses to mandate
24 child abuse training across the board. How many decades
25 now have they been holding on to the legal fiction that

1 they don't have the power to control local Troops? How
2 many witnesses said they're moving towards it, just over
3 the horizon, at least. How many boys have been abused
4 while the BSA has been moving towards training?

5 The fact is, if they can mandate criminal
6 background checks, they can mandate registration.

7 Why doesn't the BSA do this? Because they've
8 made a deliberate decision not to, and they're still
9 doing it, still putting liability concerns and legal
10 fictions and interests of the organization ahead of the
11 safety of boys. But if it comes to kicking out a
12 homosexual leader in New Jersey, boy, that -- the Boy
13 Scouts of America is right there, right on their horse
14 kicking that Boy Scout leader out.

15 That exercises some very direct control. But
16 when it comes to requiring training in child abuse, no,
17 we don't -- we don't have control.

18 The fact is, if you closed your eyes and
19 listened to much of the testimony this week from Phase
20 1, you would -- from Phase 2, you would think you were
21 in Phase 1, because in so many ways nothing has changed.
22 It's the same old same old.

23 Next, though the BSA did institute the -- the
24 Two Deep Rule, and no one-on-one contact, and no adults
25 sleeping with kids in tents, those are things that

1 Mr. Terry admitted to you they could have done 20 years
2 earlier. The Youth Protection policies when you
3 consider all the information the BSA possesses on child
4 sexual abuse are in the final analysis carefully
5 constructed window dressing to cover up and to -- and to
6 deflect criticism.

7 That, ladies and gentlemen, is the only
8 reasonable conclusion to be seen from the BSA's
9 treatment of the I.V. files. Even look at Mr. Potts'
10 testimony, if you remember it, an article on child
11 sexual abuse that he put his name on for the
12 International Journal of Child Abuse was ghost written
13 by none other than a PR person.

14 A woman in San Antonio, Texas, and the
15 reason -- let me just back up. Why -- why do we need
16 education? Because of this situation. A woman in San
17 Antonio, Texas, is led to believe her son could never be
18 sexually molested by his trusted Scout leader. Only one
19 day several years later in around 2007 after the
20 Assistant Scout leader -- and you heard Ms. Hoy -- had
21 groomed her son, bought presents for him in exactly the
22 same way, if you listened closely, that Kerry Lewis was
23 molested 25 years ago, she gets a phone call, the worst
24 phone call a parent could get, aside from the fact that
25 your child has been physically injured or worse.

1 Ma'am, I'm a police detective. I'm very sorry
2 to tell you this, but you have to come down to the
3 station. Your son has been sexually molested by his
4 Scout leader. I'm not saying, ladies and gentlemen,
5 that the literature would definitely have prevented it.
6 But it's the kind -- if they informed parents of this
7 danger, it's the kind of a thing that would be
8 foreseeable that parents would rely upon.

9 And the BSA we're not saying is an absolute
10 insurer against all risks. We know that. Kids can go
11 in a car on a BSA trip and get into a car accident. You
12 may even hear that from the defense. What we are
13 saying, though, is talking about -- and Mr. Clark talked
14 about this in his opening statement and in his closing
15 statement -- is foreseeability based upon its files what
16 it knew, the BSA must exercise due care to protect the
17 boys and girls -- to protect the boys.

18 And ladies and gentlemen, it's been shown that
19 they have not done that in 25 years. The BSA has within
20 its ability the power to reduce the risk that Scouts are
21 sexually abused by providing parents and Scouts the
22 needed information.

23 And you know what? Not too much to ask from
24 the nation's largest youth organization with a billion
25 dollars. But the BSA is not going to do this on its

1 own. One of your most important jobs is to make the BSA
2 do it. Your verdict has to speak loud enough to say
3 change your policies, tell parents about the abuse, tell
4 parents information that they can use to protect their
5 kids.

6 Repentance is woven into the fabric of our
7 society. When someone merely makes a mistake or
8 consciously commits a grievous wrong they apologize.
9 One of the first things we do with our children is we
10 teach them when they break a toy of a friend is they
11 apologize.

12 When common criminals -- and I've spent a lot
13 of time in criminal courts throughout the United
14 States -- when a common criminal comes before a judge,
15 typically what they do is they apologize and ask for
16 forgiveness.

17 And because these defendants -- this defendant
18 has refused to apologize for anything, has been -- has
19 been graphically demonstrated by their press release
20 which criticized the verdict of this jury, your punitive
21 damage award must do what the BSA refuses to do on its
22 own.

23 Your verdict must be sufficient enough to be
24 the equivalent of making the BSA admit they have to
25 change direction. And if the verdict is not high enough

1 then the message will not be clear enough and they won't
2 change.

3 So when you punish the BSA please
4 consider the amount of your award to be sufficient to
5 make the BSA say that they were wrong, not just to Kerry
6 Lewis, but to thousands of boys who have been abused.

7 And the lack of contrition, this attitude
8 I just mentioned, is putting their head down in the sand
9 and damn the torpedoes to full speed ahead was
10 demonstrated by this BSA press release released within
11 an hour of this verdict.

12 Would you just put it up, please?

13 This press release, ladies and gentlemen,
14 you know, members, if we were sort of on TV like Exhibit
15 1, Perry Mason style, this is Exhibit 1 that shows clear
16 and convincing evidence of the reprehensibility of the
17 BSA's action; the BSA, that hallowed American
18 institution, this demonstrates believes it is above the
19 law, regardless of what counsel may say to you when he
20 stands up here, because this, these words, ladies and
21 gentlemen -- and Mr. Terry didn't know anything about
22 this -- they sent the second in command here to testify.

23 And he didn't -- he's in -- I couldn't
24 even follow how much he's in charge of. He didn't know?
25 He didn't know about this response put on their website?

1 "We are grave" -- I want to read out
2 loud just -- just -- and bear with me, because I think
3 the words when you listen to them also resonate more
4 deeply.

5 "We are gravely disappointed with the
6 verdict. We believe that the allegations made against
7 our youth protection efforts are not valid. We intend
8 to appeal. We are saddened by what happened to the
9 plaintiff. The actions of the man who committed these
10 crimes do not represent the values and ideals of the Boy
11 Scouts of America. The safety of young people currently
12 in the Scouting program has never been in question
13 during these legal proceedings.

14 "The case focused on the discussion about
15 what society and the BSA knew about child abuse
16 approximately three decades ago. This is a longstanding
17 societal issue that every youth-serving organization
18 must address.

19 "Based on the standard of care at that
20 time the BSA believes it acted responsibly, and that the
21 evidence presented during the trial does not justify the
22 verdict.

23 "The safety of our youth members and
24 participants are our highest priority. Throughout the
25 decades we have been on the forefront of training our

1 leaders and youth in recognizing and preventing abuse
2 through our comprehensive youth protection training."

3 Now, when we went through that little
4 charade before of saying, we're the best; we don't do
5 wrong, I was just giving a little look see into what
6 they actually said. I wasn't making anything up. You
7 know, they say, oh, the plaintiff's lawyers they make
8 things up. They want to make things look good for their
9 client. They want money. They want -- they want to
10 make things look bad for the defense.

11 No. I didn't have to make anything up.
12 These guys did it themselves. Outrageous. This is
13 outrageous.

14 Whatever happened to respect for the jury
15 system? Whatever happened even to common criminals?
16 You can just think about it. While we disagree with the
17 verdict, we respect the jury. Could have said that.
18 This is only a press release quoting Mr. -- paraphrasing
19 Mr. Clark that only a PR firm could love.

20 A verdict of \$25,000,000 I'll tell you,
21 ladies and gentlemen, that will prevent these press
22 releases from being released again if the Boy Scouts of
23 America ever have to come into a courtroom. They won't
24 be doing this again. And that's what \$25,000,000 will
25 do to punish them. They are unbowed. They don't care.

1 In our justice system punishment is good.
2 Punishment is good for the soul, and punishment will be
3 good for the victim to give closure, and punishment is
4 going to be good for the BSA. Punishment is good,
5 because it makes people repent. And that's what has to
6 happen.

7 The reason to this day that the BSA has
8 not acknowledged what they did and not acknowledged the
9 seriousness of the problem is they haven't been forced
10 to. You saw all my questions, both on the video, during
11 depositions, and I had asked -- I must have asked
12 Mister -- Mr. Marshall four or five times is sexual
13 abuse a problem. I asked Mr. Marshall who said, what's
14 the word "problem" mean.

15 And back in 2004 to show you that there's
16 a continuous party line, because I want -- we wanted to
17 show you that way back in 2004 they marched forward to
18 2006 and they have the same party line. Excuse me,
19 counsel. They have the same party line. Haven't
20 changed at all.

21 But your verdict can make them change if
22 it speaks loud enough. As being the most trusted
23 organization for youth in the nation, the BSA has
24 portrayed itself as the gold standard for youth
25 programs. It is like no other youth organization in the

1 United States.

2 It cannot be compared to a local
3 recreation program. It cannot be compared to a summer
4 camp program. It is not like Friendly House in
5 Northwest Portland. It is not like the rec -- the local
6 rec center in Clackamas County. It is not like any
7 local recreation center or youth program. It can't be
8 compared to Little League. It can't be compared to Pop
9 Warner Football. It just isn't the same. And you know
10 it from being here.

11 The oaths that people take, lifelong
12 Scouts. This is a culture. This is not an afternoon
13 rec program. These people take the lives of young boys
14 just like the Catholic Church does, and it molds them,
15 and it seeks to have them in their -- in their lives
16 forever. And that's why older gentlemen -- I'll ask
17 counsel what's the name of the man . . .

18 (Counsel confer.)

19 MR. MONES: We can't remember the name.
20 We can't remember. It's closing argument. Anyway, the
21 old gentleman who testified up here -- you said he was
22 your friend, didn't you?

23 MR. CLARK: Mr. Jim Veen.

24 MR. MONES: Jim -- Jim Veen. He is --
25 he's, you know, 80 years old, came in here, was -- that

1 man is full of respect. He is the soul, the heart and
2 soul of the Boy Scouts of America. Great respect for
3 that man.

4 But he has been a Scout since he has been
5 a little boy. The Boy Scouts, you know, I mean, I
6 played Little League. I don't even know who my Little
7 League coach is anymore, and nor -- nor would anybody
8 else. The Boy Scouts of America wear uniforms; they
9 take an oath.

10 Can you put up the next image, please?

11 Look at this. This is a picture, a
12 painting by Norman Rockwell. This painting that sits in
13 the Boy Scout National Museum shows you in no uncertain
14 terms how one of our great American artists, Norman
15 Rockwell, and I might add, it was a blasphemy on Norman
16 Rockwell to be compared to a pornographer. I just want
17 to say that one thing. I'm not going to say anything
18 more about it. That was terrible that that was -- that
19 those words were uttered in this courtroom.

20 These paintings are an idealized version
21 of what the Boy Scouts of America think. Look at it.
22 There's George Washington and the Boy Scout's facing
23 forward, looking into the future, with the halo of the
24 Sun around it. It has images of God, America, and
25 Country.

1 And the Boy Scouts of America have
2 wrapped themselves in our great nation. Every one of us
3 makes up the United States of America. And the Boy
4 Scouts of America have chosen through hanging this
5 painting to wrap themselves in the mantle of this great
6 nation.

7 Well, if you do that, then your
8 responsibilities better be up to -- better be up to par
9 for that.

10 The Boy Scouts of America celebrates its
11 centennial this year, one hundred years. It has the
12 support of titans of industry, former presidents of the
13 United States, members of Congress. It has tens of
14 millions of dollars donated a year, hundreds -- a
15 hundred million dollars worth of property. It gets
16 money from little kids on corners in New York City, the
17 corners of Nevada, Portland, Oregon, Denver, Colorado,
18 who give their hard-earned money to the Boy Scouts of
19 America.

20 They can withstand the 25,000,000-dollar
21 verdict. And it has good people. It has Mr. Toyooka
22 and Ms. Martin. Why didn't we -- why didn't we -- why
23 didn't we cross Ms. Martin? Why didn't I do with
24 Ms. Martin what I did with Ms. Marshall in terms of
25 those cross examinations?

1 Because Ms. Martin is a good woman, and
2 Mr. Toyooka is a good man. I told that to Mr. Xochihua
3 after -- after -- after the hearing. Good man. He's
4 the heart and soul. He should be -- he should be the
5 president of the CPC, I'll tell you, rather than
6 Mr. Grant. Maybe he should be where Mr. -- where --
7 where -- where Mr. Terry should be.

8 Heart and soul of the Boy Scouts of
9 America. And if you give a 25,000,000-dollar award to
10 the -- 25,000,000-dollar punitive award you will make
11 the Boy Scouts of America better and safer. You won't
12 break the Boy Scouts of America's back. By your verdict
13 you will tell the biggest and most powerful youth
14 organization in the United States to change the way it
15 treats children.

16 And if you do that you will change the
17 way that other youth organizations treat their children.
18 And in the process, ladies and gentlemen, the verdict
19 you render here in Room -- Courtroom 518, in the
20 Multnomah County Courthouse in Portland, Oregon, will
21 affect thousands of children, because you stood up for
22 kids.

23 Thank you.

24 THE COURT: Mr. Smith, go ahead, sir.

25 MR. SMITH: Thank you, Your Honor.

1 **DEFENDANT'S CLOSING ARGUMENT**

2 MR. SMITH: If it please the Court,
3 counsel, Mr. Lewis, ladies and gentlemen of the jury,
4 I'm not much for theatrics. I'm not much of one for
5 opening boxes that have only been opened twice in this
6 courtroom for you and document files on the floor during
7 the opening statement. And I'm not much of one for
8 opening them now and telling you what's in them and what
9 isn't in them.

10 I had plenty of opportunity to talk to
11 you about what's in those boxes and how those files are
12 treated on a confidential basis at the closing of Phase
13 1 of this trial. And I'm relatively certain that all of
14 you remember my comments about confidentiality. I might
15 touch on that again later in this discussion; I don't
16 know.

17 It's never failed -- and I've been at
18 this a long time; I'm not prematurely gray -- walking up
19 to the courthouse I think I know what I'm going to tell
20 that jury when I get up here in closing argument. And
21 it never fails. I hear the other lawyer talk, and it
22 completely changes what I want to tell folks.

23 And I'll tell you in my experience as a
24 lawyer I've never represented a client that has been in
25 this situation. And I've been doing this for a long

1 time.

2 You've already rendered a verdict in
3 Phase 1, and you folks have told the Boy Scouts that
4 they're subject to punitive damages and they've made a
5 mistake here. And the Boy Scouts begrudgingly have to
6 accept that, don't they, because that's our system. And
7 nobody, including myself and the Boy Scouts of America,
8 are ever going to disagree with the jury system. So
9 let's set that aside. It's the greatest system we've
10 got. It's the only system we've got worldwide that
11 works like it does. And I'm proud to be able to work in
12 the system.

13 And the Boy Scouts have got an
14 opportunity to come in and present their case to you
15 just as any individual does. And they're to be treated
16 in the same light and given the same consideration. And
17 all the shouting during Phase 1 at the close of that
18 case, and talking about secrecy, and talking about
19 hiding details, and talking about the lawyers that are
20 representing counsel and representing the parties,
21 that's all well and good, but it's just not my style.

22 I'm going to talk to you about some of
23 the details in this case, though, make no mistake about
24 it. In opening statement a couple of days ago, but now
25 it seems like for Phase 2, I probably spoke less than

1 five minutes. And I'm going to take a little longer
2 this afternoon. I've got some things I want to review
3 with you, but I want to remind you again what I say is
4 closing argument.

5 And make no mistake about it, I hope to
6 convince you about the Boy Scouts of America's position
7 in this case, Phase 2. If I touch on something that is
8 different than you recall it, you're to go by your own
9 notes, and you know that, because what I'm doing is
10 simply argument. It's not evidence. And the Court's
11 already told you that.

12 I'll also remind you that if there's
13 something I've done as a lawyer, and again, that's kind
14 of a tired refrain, I'm sure, but it's important to the
15 clients in this case, and I'm sure Mr. Mones will tell
16 you the same thing, that if there's something the
17 lawyers have done in this case that you found
18 objectionable, we all ask that you not hold it against
19 our client, because it's the client's case; it's not
20 mine.

21 I've had to make a lot of objections this
22 week in this case, and sometimes that looks bad to
23 juries, but it's necessary to protect the client. And I
24 know you understand that. And I'd like to ask you
25 again, do not hold it against the Boy Scouts of America.

1 what -- what society and the BSA knew about child abuse
2 approximately three decades ago." That also is true.

3 "This is a long-standing social issue
4 that every youth-serving organization must address."
5 And wouldn't you agree that's also true? And that's
6 been the evidence throughout the course of this case.

7 That was posted on the Boy Scouts'
8 website. It wasn't released to the media. And I as a
9 lawyer haven't talked to the media. And the media's
10 obviously been here in this courtroom. And you folks
11 are to be congratulated and commended for your results
12 in this Phase 1 of the case. And I hope we can say that
13 after Phase 2.

14 But if any of you after hearing Mr.
15 Clark's opening statement in Phase 1 of this case could
16 have avoided what occurred out here in the street when
17 you left the courtroom that day it would be amazing.
18 The Oregonian's box with a paper in it --

19 MR. MONES: Objection.

20 THE COURT: The objection is sustained.
21 Argue the evidence, Mr. Smith.

22 MR. SMITH: In any event, there's been a
23 good deal of media attention to this case, folks, and
24 you've seen it.

25 MR. MONES: Objection.

1 MR. SMITH: What's --

2 THE COURT: That's -- you're moving on to
3 another subject?

4 MR. SMITH: Yes, I am.

5 THE COURT: I thought so. Go ahead.

6 MR. SMITH: What's -- what's underlying
7 this response in terms of this posting on this website?
8 Do you really believe anybody associated with the Boy
9 Scouts of America's national office, a national
10 organization, condones child abuse? Do you really
11 believe that the hundreds of Councils throughout this
12 country, the thousands of staff members, and the
13 millions of volunteers condone child abuse or would ever
14 knowingly allow it and ever encourage it?

15 Does anybody really believe that?

16 So what's underlying the response by the
17 Boy Scouts of America (pointing) to post this on a
18 Website? Because the case in Phase 1 focused on a
19 standard 25 to 30 years ago. You folks didn't hear one
20 shred of evidence, really, about what's occurred from
21 the years on in terms of the Youth Protection program
22 that the Boy Scouts have instituted and were working on.

23 It's a little bit like -- and I'm sure
24 most of you remember he passed away here I think a
25 couple of years ago now -- Paul Harvey used to say and

1 had a program, "Now you've heard the rest the story."
2 And that's what the Boy Scouts of America have tried to
3 relate to you during Phase 2 of this case. Counsel --

4 THE COURT: Excuse me, Mr. Smith. You
5 with the camera, your red flash is in violation of our
6 court rules. You will not use it again. Do you
7 understand, ma'am?

8 UNIDENTIFIED SPEAKER: Yes. Sorry.

9 THE COURT: Excuse me, Mr. Smith, for
10 interrupting your argument.

11 MR. SMITH: Thank you. I hadn't noticed
12 it.

13 THE COURT: Well, I'm looking in that
14 direction.

15 MR. SMITH: I know you are, Your Honor.

16 THE COURT: Go ahead.

17 MR. SMITH: Thank you. This business
18 about an apology has come up. And you heard the
19 questions. We haven't even apologized to the plaintiff.
20 We haven't apologized to the parents. We haven't
21 apologized to the country about the problem of child
22 sexual abuse in the Boy Scouts of America.

23 This courthouse, ladies and gentlemen, is
24 full of cases every day where if an apology could
25 resolve it, maybe that would be done. But again, the

1 parties that are defending cases in this courthouse and
2 in this courtroom have got a right to come in and tell
3 their side of the story like the rest of the story that
4 Paul Harvey used to give.

5 And had there been an apology, had there
6 been an apology, what would these lawyers be telling
7 you? Why did it take so long? And one of the answers
8 there is the rareness of child sexual abuse in this
9 country. And you've heard plenty about it and how that
10 came about through experts.

11 Is the only way to prevent child sexual
12 abuse in an organization like Scouting or any other
13 youth organization to apologize and warn about
14 Scoutmasters in the case of the Boy Scouts -- Boy Scouts
15 of America? Is that the only way to deal with it?

16 When you have an opportunity to review
17 the exhibit materials in this case, and counsel's
18 indicated to you there's going to be hundreds of
19 exhibits. We tried to par those back. Some of them are
20 cumulative because they're ongoing and republished. And
21 you've heard some testimony about that. And I'll touch
22 on it maybe a little later.

23 But I would submit to you respectfully,
24 ladies and gentlemen, that when you look at these
25 manuals, and when you look at some of the materials that

1 are given to parents, would any parent not get the
2 message, not get the message that there's a serious
3 danger of child abuse, period, and not only in Scouts,
4 but outside Scouts.

5 And again, I'll touch on that with some
6 of these exhibits. But the BSA, I would submit again
7 respectfully to you, is trying to assist in bringing
8 that risk to parents' attention, and we've done so with
9 some of the materials we've provided.

10 The evidence here has been just over a
11 short week. I'm not going to review a lot of the
12 testimony. We asked four people who'd been involved in
13 Scouting who were actually contacted in behalf of the
14 counsel when they were involved in this case, and we
15 asked them to stay available and come in and testify on
16 behalf of the Boy Scouts of America: Shari Spencer, Dan
17 Toyooka, Marilyn Martin, and Russell Garrett.

18 They come from all walks of life. And
19 you heard what they did -- what they do in their private
20 life in terms of their employment and that kind of thing
21 and their family. They were all involved in Scouting as
22 youths.

23 Now, they talked to you about their
24 training during that period of time. They talked to you
25 about serving as trainers. And they talked to you about

1 the application of the Youth Protection program and its
2 principles. And I'm not going to go through all those.
3 You're going to have plenty of time to look at them in
4 these exhibits.

5 Mr. Terry outlined for you the best way
6 we could think -- could think to do it was to try to
7 have some -- something to put up on the screen here to
8 kind of outline what has occurred and what has happened
9 over the years.

10 He talked to you about landmark -- or
11 testified to you about landmark periods of time in terms
12 of the Youth Protection program, and landmark materials,
13 and pointed out that they're continually being updated
14 and improved. And I think you'll find that in some of
15 the materials that you'll have a chance to look at. And
16 relied on what counsel has suggested to you is this
17 ghost, David Finkelhor. I don't know if any of you
18 remember.

19 It's kind of an unusual name to begin
20 with. David Finkelhor's name came up in Phase 1 of this
21 case because his name was replete throughout some of the
22 exhibits. He's a, if not world-renowned expert, he's
23 just about the leading expert of child sexual abuse in
24 this country.

25 And you were told by Mr. Terry that the

1 BSA commissioned a group of experts, a staff of experts,
2 and it was led by Dr. David Finkelhor. And he gave you
3 the names of the other people. And we've heard those
4 names bandied around here. I won't belabor the point.
5 You heard their names. All leading researchers and
6 scientists in this field. And the Boy Scouts got them
7 together and have relied on them to assist with their
8 Youth Protection training program.

9 And -- and after that, after that was
10 done, Dr. Finkelhor, you'll recall -- you'll recall from
11 Mr. Terry's testimony, sent a couple of graduate
12 students in and took a look at some of these files. And
13 fortunately or unfortunately, unfortunately in this
14 case, really, there wasn't that much there to work with,
15 not that much to work with for a consultant like him.

16 And yet, he still -- matters are still
17 under discussion with the Boy Scouts of America as to
18 what could be done to improve the program still.

19 But you heard from Dr. Warren, who had
20 perhaps more time to look at all these records. We
21 really don't know based on the graduate students that
22 looked at the -- looked at the records on behalf of
23 Dr. Finkelhor how to prepare that. But Dr. Warren told
24 you in Phase 1 of this case that there was simply not
25 enough information in these I.V. files to develop -- I

1 think she called it an empirical scientific analysis of
2 what might be done in an effort to further the cause of
3 prevention of child sexual abuse.

4 And you know from Phase 1, and maybe it
5 was obvious in Phase 2, that that's not the purpose of
6 these files. It's simply not the purpose. It's to keep
7 bad people out. And there's been references. In Phase
8 1 there was a reference in closing argument, I think it
9 was, to the Catholic Church. And there's been a great
10 deal of media attention on the Catholic Church here
11 these last couple of months.

12 And there was reference here today in
13 closing argument to the problems of the Catholic Church.
14 And I would submit respectfully to you that if it was
15 possible and the Catholic Church had a program like this
16 that would keep track of pedophiles, to keep track of
17 undesirables that were trying to be involved with the
18 Scouts, just as if they were trying to be involved with
19 the Catholic Church, and were moved around, this is the
20 kind -- this is the kind of system that hopefully would
21 track them.

22 It's not full proof. It's not perfect,
23 but that's what it's designed to do, so that people
24 cannot be moved around, and not by the Boy Scouts of
25 America, cannot move around voluntarily. A predator can

1 not move from the state of Oregon to Florida or anywhere
2 else in this country, hopefully, and if their name is in
3 this file and there's a file on them, they can never be
4 involved with the Boy Scouts again.

5 And I ask you folks what is wrong with
6 that? What's wrong with trying to maintain that kind of
7 control? We asked Dr. Donald Bross to come in, because
8 he's got 34 years experience in this field, and he's a
9 recognized expert in the field of sexual abuse of
10 children.

11 And he told you about his background and
12 credentials. And his -- his testimony was kind of
13 exhausting. And I don't know if you folks were able to
14 follow all of it. He was a little difficult to follow.
15 We had one of those microphone on him because he's got a
16 soft voice. But we have the advantage of these daily
17 transcripts through the hard work of folks like this
18 court reporter here who is taking everything down we're
19 saying.

20 And one of the questions that was asked
21 on cross examination of Dr. Bross was: So your
22 testimony is what the Boy Scouts knew about child abuse
23 is no different than what anybody else knew in the 1980,
24 right?

25 ANSWER: Well, I think that when they

1 trying to cross check and keep people that might be
2 pedophiles out of the organization?

3 No.

4 And does it surprise you that they want
5 to keep that information confidential?

6 Well, no, not given my experience in
7 having these kinds of files get out, because it produced
8 organizations that by mistake or by improper release
9 have ended up with tremendous problems with slander, and
10 defamation, and other kinds of lawsuits for making these
11 allegations without having criminal convictions or very,
12 very powerful evidence to support them.

13 And there's a lawyer talking who has done
14 this who has represented children against organizations
15 like that for ten or 12 years during the course of his
16 practice.

17 And, yes, Dr. Donald Bross relies on
18 somebody like that. He said his reliance is not
19 misplaced if you heard his testimony on Dr. Finkelhor's
20 analysis. So again, the BSA tried to assemble one of
21 the finest teams of consultants in the country to look
22 at this problem and help us.

23 And the overwhelming evidence, I would
24 submit to you, ladies and gentlemen, in this case,
25 particularly Phase 2, is that the BSA is doing its very

1 level best to see to it that's done. Again, it's not
2 perfect; it's not flawless, but it's unmatched. And
3 yet, you're being asked or you're being told it's not
4 good enough, so they've got to be punished.

5 I said it in closing argument in Phase 1
6 of this case, and I'm going to say it again. We're
7 damned if we do; we're damned if we don't.

8 So what are some of the exhibits that
9 you're going to have an opportunity to look at? Some of
10 these have, perhaps, been put up on the wall. I
11 don't -- I don't recall now. But I want to talk to you
12 a little bit about some of the records you're going to
13 see and in the hopes that they may be illustrative of
14 some of the Boy Scouts' positions in the case.

15 First, ladies and gentlemen, it should be
16 perfectly clear, and I hope it is, the Boy Scouts of
17 America never came into this case and denied that abuse
18 had not occurred. We never did that.

19 It's not in the pleadings, and if it was,
20 you'd have heard about it. And you didn't hear anything
21 like that from counsel. We've never denied it.

22 And we never, ever blamed this young man
23 on what occurred with Timur Dykes. And we never, ever
24 blamed his family, particularly his mother. And any
25 suggestions to the contrary is wholly inappropriate and

1 incorrect.

2 I did tell you we're not coming in here
3 and making any excuses. And we're not. The facts are
4 what they are. The records are what they are.

5 Abuse can happen and it can happen in
6 Scouting. And counsel's right; this is an internal
7 memo. We showed it to you. It's -- it's Exhibit 2286.
8 It's directed to the leadership of the Boy Scouts of
9 America. And that goes right down the line to all
10 staff. And this is dated May 22, 1986, folks, not too
11 long after this -- we were dealing with the incidents in
12 the -- in the first phase of this case.

13 Child abuse has become a concern in our
14 society which we must do something about. It can happen
15 almost anywhere, in and outside of the child's home. It
16 can happen in Scouting. It cannot be ignored. Is that
17 somebody at National saying, hey, let's hide the ball?
18 The staff?

19 Child abuse can be physical, mental,
20 sexual and even verbal. It can come from a variety of
21 sources within Scouting, including abuse by other
22 Scouts, by leaders, by Merit Badge counselors, and by
23 parents. Child abuse must be stamped out. Let's not be
24 afraid to talk about it.

25 The next exhibit I want to talk to you

1 about might sound a little, oh, I don't know. It's
2 aimed at Cub Scouts, but it talks about something that
3 we would submit to you could be important in your
4 considerations.

5 It talks about the -- it's Exhibit 25 --
6 2356. Excuse me. It's a 2009 publication. And it
7 talks about the Bobcat requirements for Cub Scouts. And
8 it's the first badge every boy earns in the Cub Scout --
9 in the Cub Scout level. And it talks about the law of
10 the pack. And it talks about it in levels that,
11 hopefully, will resonate with a Cub Scout.

12 And it defines Aquila. I hope I'm
13 pronouncing that right. But Aquila is the Scout name
14 for a leader. Some of the people you might call Aquila,
15 this exhibit says, are your parents, your teacher, and
16 your Cub Scout leader.

17 And then you'll find an exhibit, 2297,
18 "How To Protect Your Children From Child Abuse and Drug
19 Abuse, a Parents' Guide," at page -- it's actually page
20 7 of 14. It's got some different numbers in there as
21 well, but it's page 7 of 14 on the exhibit list. It's
22 page 11 on that pamphlet.

23 The law of the pack includes the phrase:
24 The Cub Scout follows Aquila. Aquila is a good leader
25 and should never ask the Cub Scout to do something that

1 the Cub Scout feels bad about. If Aquila, who -- if
2 Aquila, who might be a teacher, a coach, or other youth
3 leader even asks a Cub Scout to do something he thinks
4 is bad the Cub -- the Cub Scout has a right to say no
5 and to tell his parent.

6 I would submit again to you that's
7 recognition by the Scouts that clearly abuse can happen
8 in Scouting, and they're fully aware of it, and they've
9 talked about it through the organization. There's an
10 exhibit, trial Exhibit 2296. It's a 1988 publication,
11 and it talks about camp. And it talks about camp
12 leadership.

13 And right in this, "Youth Protection
14 Guidelines for School Leadership": If you suspect that
15 a child in camp is a victim of child abuse you must
16 report this to camp director or program director. And
17 it goes on. But it talks about abuse of children in
18 Scout camps. Is that the Scouts not talking about abuse
19 among the Scouting -- the Scouting organization? I
20 submit to you respectfully it's not.

21 Exhibit 2323. It's a 1993 printing.
22 It's printed in Hispanic and English both. At page 15
23 of this 19-page exhibit there's this sentence about
24 three paragraphs, four paragraphs down: If suspected --
25 if a suspected molestation occurred within Scouting

1 report the case to your local Scout Council officials
2 and the head of the organization that sponsors your
3 child's pack, Troop, team, or post, again talking about
4 abuse in Scouting by Scouts.

5 And could we have, please, just the
6 introduction. I think it's 2347. Am I correct about
7 that, sir?

8 I.T. TECHNICIAN: Uh-huh.

9 MR. SMITH: Thank you. If we could just
10 show that. You've seen this once, and I'm not -- but I
11 just want to show the introduction just to remind you of
12 what was said in this introductory material.

13 (Video:) This is a production of the Boy
14 Scouts of America. Welcome to Youth Protection
15 training. This program is designed for volunteer
16 leaders, and parents of boys, and Cub Scouts in the Boy
17 Scout program.

18 Child abuse is a significant social
19 problem, harming not only the victims and their
20 families, but also causing negative impacts on
21 youth-serving organizations and our community.

22 This training program focuses on BSA's
23 developed Youth Protection Guidelines, the rules we
24 follow to the eliminate or reduce the opportunities for
25 abuse to occur within a Scouting program.

1 These rules take into account the kinds
2 of activities included in Scouting and how these
3 activities could present an opportunity for abuse.
4 After completing the training you should be able to --

5 MR. SMITH: That's fine. Thank you very
6 much. Within the Scouting program there are what I
7 would respectfully submit to you are barriers as well
8 that the Boy Scouts of America put into place to try to
9 control this and try to prevent it. And again, I'm
10 talking about child abuse.

11 Those barriers include "Are You Qualified
12 To Be a Volunteer Leader"? That's trial Exhibit 2285 --
13 or defense Exhibit 2285. I'm sorry. And you'll find
14 that this is an application, and it's detailed. It's an
15 adult application. And I would urge you to look at it
16 and look at what's asked of people who are applying to
17 get into the Scouting program:

18 Employment references, previous jobs,
19 have they been involved in Scouting before? It's a
20 detailed application. It's a step in the direction to
21 control this kind of problem. And this is a July 1988
22 publication.

23 And I believe Defendant's Exhibit 2286
24 was discussed with you. But it was a letter from Robert
25 Mazzuca, the Chief Scout Executive, back in June 2 of

1 2008. That's not too long ago really. And it's talking
2 about beginning in 2003 the BSA's required a criminal
3 background check for all new volunteers.

4 "The policy was implemented to verify the
5 prospective volunteers to meet our standards of
6 leadership. It has been a valuable addition to our
7 overall Youth Protection program. I am asking your help
8 with this effort. Our registration records indicate
9 that because your tenure as a registered volunteer with
10 the Boy Scouts of America began in 2003 a criminal
11 background check has not been conducted on you."

12 The names are blocked out in this, but
13 not only did they -- did they want criminal background
14 checks on people coming into the program, they went back
15 and got them in the past.

16 Mr. Devore testified here just a few days
17 ago. And we asked him about Exhibit 2392, "Child Abuse
18 Reporting Requirements for the Local Council." All I'm
19 asking you to do is take a look at it, and you'll see
20 what's being done to try to the erect barriers and track
21 this problem.

22 Trial Exhibit 2280 is entitled "Barriers
23 Against Child Sexual Abuse." And I would definitely
24 commend this to you as an exhibit to look at. It says
25 on page -- it's actually page 27 of 28 of the exhibits.

1 It's page 52 of that particular publication.

2 And it says on that page: An important
3 key to protecting children in Scouting and elsewhere
4 from sexual abuse is to the eliminate dangerous
5 circumstances before they arrive -- before they arise.

6 And in this article published in
7 September 1988 is the following: In addition to the
8 screening methods -- I probably should go up a paragraph
9 on this.

10 "How else is the BSA creating barriers
11 against would be molesters? Some safeguards have been
12 in place for years. Others are more recent, and still
13 others are being readied for future use. In addition to
14 the screening methods used to -- used locally by
15 chartered organizations, the BSA's confidential file has
16 been used for decades to exclude anyone who would be
17 unfit as a Scout leader because of moral, criminal, or
18 other reasons."

19 This was published in the Scouting
20 magazine, ladies and gentlemen, again, in 1988. The
21 so-called secret files discussed in a publication that
22 goes out to a million people, according to Mr. Terry, in
23 the Scouting community, parents, and anybody else
24 involved that's on the registration list or is
25 interested in reading it.

1 You've heard a lot about training.
2 You'll see lots of exhibits about it if you care to look
3 at them. I would just submit to you that one of them is
4 2370, a defendant's exhibit, and it's a little
5 guideline, just a segment of it, for "Facilitators
6 Guide," it's entitled. And it simply says that:

7 "The Boy Scouts of America deeply
8 appreciates your acceptance of the responsibility to
9 facilitate this session of Youth Protection Guideline
10 training for volunteers and parents. This training is
11 an important part of our strategy for helping to protect
12 our members from child abuse.

13 "You must learn the specific reporting
14 procedures used in your BSA local Council and add them
15 to the handout materials for participation in your
16 training sessions."

17 And this is for the folks that you heard
18 about -- that are training -- doing training. And it's
19 got kind of a simplistic little notice maybe that you
20 can take a look at, for publishing locally in terms of
21 where the training's going to be, who's going to conduct
22 it, and that sort of thing.

23 It also says: How can parents help
24 protect their children at page 3 of that -- of that
25 publication. And it indicates this information is

1 provided so that parents can detect any deviations from
2 the BSA-approved program.

3 And I know this gets to be kind of slow
4 going, but I'm not flashing it up on the screen. So I'm
5 going to just finish up with one more matter here
6 involving the exhibits, and I won't go any further with
7 it.

8 In 1994, and this is a revision, you
9 heard about it from counsel. And you've heard about
10 this business of apology again. And I don't know
11 whether this fits in with being apologetic or not. But
12 counseling was discussed, I know, and -- and maybe it
13 wasn't clear at the time it was discussed.

14 But this is a revision of the procedures
15 for maintaining standards and membership again. And it
16 was produced in 1994. And it talks about counseling
17 being available. And it talks about offering support
18 for counseling of individuals whose abuse has occurred
19 within Scouting and who wish to receive counseling.
20 Abuse that has occurred within Scouting.

21 Does that sound like an organization
22 that's denying that there isn't abuse in Scouting?
23 Again, this is the "Procedures for Maintaining Standards
24 of Membership."

25 And then it goes on to say what you do in

1 order to see about looking into counseling. I won't go
2 through that. But it says: Generally, if counseling is
3 elected the parents should be told the Council will pay
4 for up to three months of therapeutic care for the Scout
5 victim and the parents, consisting of weekly sessions
6 not to exceed \$125 per session. And if counseling for
7 the victim is still necessary after three months further
8 payment will be considered, et cetera, et cetera, et
9 cetera.

10 Now, does that sounds like an uncaring,
11 indifferent, man-endangering organization, reflecting a
12 state of mind that the heck with it, I ask you? And
13 this is not the only piece of evidence in this file to
14 look at, but it will give you an idea of what the Boy
15 Scouts have done since the mid '80s.

16 And again, it's something we couldn't
17 talk to you about in Phase 1 of this trial. If the
18 Youth Protection program that has been developed, and
19 refined, and improved, and published since the mid '80s
20 is so bad, folks, there hasn't been one expert called in
21 the rebuttal portion of this case to say that. There's
22 not been one expert to come in and tell you that.

23 The only expert who's testified has been
24 Dr. Bross, and he has thoroughly one hundred and
25 one percent endorsed the program, and he's told you his

1 15-minute break now before we hear from Mr. Mones.

2 (Jury excused. Recess.)

3 THE CLERK: All rise. Court is back in
4 session.

5 THE COURT: All right. Be seated, folks.
6 We'll bring the jury in, and Mr. Mones can make his
7 rebuttal argument.

8 (Jury returns.)

9 THE COURT: All right. Go ahead, Mr.
10 Mones.

11 MR. MONES: Thank you.

12 THE COURT: Rebuttal argument.

13 **PLAINTIFF'S REBUTTAL ARGUMENT**

14 MR. MONES: Good afternoon, ladies and
15 gentlemen. This is my last opportunity to talk to you.
16 I wanted to start by bringing it back to Kerry Lewis and
17 remind you that punitive damages has two parts.

18 I spent some time talking about
19 deterrence and punishment of what they did to Kerry
20 Lewis. I want to talk about the punishment just for
21 Kerry Lewis. Regardless of what your decision is with
22 respect to deterrence, how much deterrence, they still
23 need to be punished and deserve to be punished for what
24 happened to Kerry Lewis.

25 Whatever happened after 1985 it came too

1 late for Kerry Lewis. It did nothing to prevent his
2 abuse. It did nothing to save him from being molested
3 by Timur Dykes.

4 Punitive damages, the purpose of which is
5 to punish the behavior and the conduct that created the
6 abuse, so remember that when you go back into the
7 courtroom (verbatim).

8 Let me just go over some specific points
9 with respect to David Finkelhor. If, in fact, David
10 Finkelhor was the expert that they said he was, he would
11 have been in this courtroom; he would have testified for
12 this jury.

13 Secondly, Mr. Smith made a point of
14 saying, well, if anybody -- if the plaintiffs had any
15 attorney -- any expert who was going to say the BSA
16 program was bad they would have brought him in. The
17 point of fact is we believe we proved our case to you
18 clearly and convincingly by showing you through the
19 admission of their own witnesses that none of the BSA
20 documents that goes to the two primary parties that
21 really are at the heart of this, the parents and their
22 children, talk about the sexual abuse of Scouts.

23 And when you do go through those
24 documents you will see most of the documents that do
25 mention this area of sexual abuse are the documents for

1 paid counsel. For example, the procedures for
2 maintaining standards of leadership that Mr. Smith told
3 you about, those just go to paid counsel staff.

4 And if counseling -- if it's true that
5 counseling is offered, why did Ms. Hoy say that in 2007
6 her son was never offered counseling? (Juror sneezes.)
7 Bless you.

8 And if the -- if the changes in the BSA
9 program were still under discussion with Dr. Finkelhor
10 that doesn't help people who are still being molested
11 now. Dr. Warren -- Dr. Warren looked at the files, but
12 I think she said nothing could be done. If you look at
13 -- remember what Dr. Schoener said way back when?

14 He said they were full of examples of
15 what could be learned from the sexual abuse of Scouts.
16 And in addition, again there was a representation of
17 these files are used to keep people out permanently.
18 Then you have to ask yourself what about the probation
19 program?

20 If you remember I asked some questions
21 about remember that one file that came up and up again?
22 If it don't stink, don't stir it. The file that was
23 representative of the BSA keeping things quiet.
24 Remember, that man was arrested in 1972 for molesting a
25 child.

1 He came back. In 1979 they allowed him
2 back in, and he woke up in a pup tent, because a kid
3 came in and punched that Scout in the chest. And then
4 there's a note in 1981 -- 1989 to Paul Ernst, is this
5 guy still in the Boy Scouting program? So obviously,
6 whatever this program is in terms of probation it's not
7 working to keep out Scout abusers.

8 And in terms of the Boy Scouts of America
9 having the same amount of information on sexual abuse as
10 other organizations, please remember the testimony of
11 Mr. Wolff from the Big Brothers and Big Sisters. He
12 said the Boy Scouts had way more information than Big
13 Brothers and Sisters. Big Brothers and Sisters I think
14 he had testified had maybe 30 cases, just a handful of
15 cases. They weren't keeping cases for decades.

16 And in terms of what the defendants in
17 this case said about Kerry Lewis and his family, please
18 remember that Mr. Grant who testified here is the head
19 of the CPC. The CPC is controlled by the Boy Scouts of
20 America.

21 In fact, you heard Mr. Toyooka say when
22 asked about the Boy Scout Council he said the Boy
23 Scout -- he's a true sport by any defense witness -- the
24 Council and the BSA are one and the same thing, putting
25 a lie to the fiction that the Boy Scouts of America are

1 different and an independent entity from the -- from the
2 Council.

3 And remember Mr. Grant said, quite
4 remarkable as it was, that the parents need to be put in
5 jail for sending their child over to Mr. Dykes' house.

6 So please again remember that the
7 defendants here need to be punished for that behavior of
8 what was done to Kerry Lewis between 1983 and 1984.

9 If you remember the video that was put up
10 by Mr. Smith just a few minutes ago, what did it say in
11 the crawl? About three million kids are abused a year
12 in the United States. It didn't say that in any one
13 year 2,000 or 3,000 Scouts are molested by their adult
14 leaders.

15 If you're speaking to parents and Scouts
16 you tell them -- if you're worried about their abuse by
17 adult leaders, you tell them how many Scouts are abused,
18 not how many people are abused in society -- Scouts were
19 abused in society.

20 In terms of the confidentiality of the
21 files, confidentiality we respect -- you can respect
22 confidentiality. Confidentiality doesn't mean secrecy.
23 Mr. Smith and the defendants repeat that the files are
24 confidential; you can't look at them because they're
25 confidential.

1 They could have studied the files, could
2 have opened up, as I said in my first part of my
3 statement, and looked at the files, learned something.
4 If Mr. -- Dr. Finkelhor can't find anything, or whoever
5 he is, and maybe Dr. Warren can't find anything from it,
6 clearly Dr. Schoener could be brought in if they wanted
7 to tell them what was in those files and how they could
8 learn from them.

9 They could publish a study. They could
10 let people know these files exist. They don't have to
11 release any names. Nobody's interested in ruining any
12 reputations. The plaintiffs are not saying publish all
13 these names, and -- and -- and that's the only way you
14 could use this information.

15 You could say the number of boys that
16 have been molested on campouts. You could look at the
17 number of boys molested on one-on-one contacts.

18 Please remember that when I asked
19 Mr. Marshall about the effectiveness -- or maybe it was
20 Mr. Potts was asked the effectiveness of the Youth
21 Protection program did they compare it to the I.V.
22 files? No. How do you know your program is working
23 unless you have something to compare it to?

24 And -- and -- and on that point I would
25 recommend you to look at the exhibit which we offered

1 yesterday, which was a document that was a response from
2 the Boy Scouts of America in another case concerning the
3 number of I.V. files. And that document states that --
4 and it's from Mr. Honeywell's office -- that document
5 states that between 1970 and 2007, 5,177 Scouts -- or
6 Scout leaders were put into the I.V. files.

7 If you do the simple math you will see if
8 you divide 37 into 5,199, that number is about 140 per
9 year.

10 If you remember Mr. Xochihua's example on
11 the White Paper looking in between 1965 and 1985, that
12 worked out to be about 50 Scout leaders a year. 140 is
13 about one Scout leader -- and that's about one Scout
14 leader a week. 140 is about three Scout leaders a week.
15 And that shows something may not be working. And we
16 submit it's not.

17 Where does a burglar go when he wants to
18 break into a house? He looks for homes where there's
19 easy access, get in and get out undetected. The same is
20 true with youth organizations and molesters. Molesters
21 look for unlocked doors, unlocked windows. And unless
22 the Boy Scouts of America fundamentally alters its
23 program it will still have open doors and open windows
24 for these Scout leaders.

25 The major theme of our case were two:

1 What could have been done to protect Kerry Lewis, and
2 the protection of children's safety. And your verdict
3 in this case will not mean just protection for the
4 safety of children in Troop 719 or in Portland, Oregon,
5 but if your verdict is significant and clear and
6 speaking to the Boy Scouts of America, it will affect
7 children in all youth-serving organizations from the
8 Camp Fire Girls, to the Big Brothers and Sisters, to
9 other youth organizations around the United States.

10 Was it a freak accident that happened to
11 Kerry Lewis? No. The Boy Scouts of America knew for
12 years what was going on. They could have educated.
13 They could have warned in some way, but they didn't.
14 And that was reprehensible behavior as you have
15 previously found. It was not a freak accident. It was
16 a conscious and deliberate decision -- conscious and
17 deliberate policy not to tell people.

18 The Boy Scouts of America has forgotten
19 the Scout oath. The Boy Scouts of America has forgotten
20 Scout law repeated by the various witnesses on this
21 stand. The boys in Troop 719 or in some Troop in Peoria
22 or -- or Pittsburgh don't have the voice to stand up and
23 say to the Boy Scouts, you know what? We need safer
24 programs. They don't have that voice.

25 But you have that voice. You can be the

1 voice of these Scouts around the country. You can be
2 Kerry Lewis' voice if your verdict speaks loud enough.
3 Your verdict must warn. Your verdict must speak loud
4 enough to the Boy Scouts of America hierarchy, to men
5 like Martin Walsh, to men like Mr. Terry -- James Terry,
6 that the some time -- that the next time Mr. Walsh is
7 asked is child sexual abuse a problem in the Boy Scouts
8 of America, he's not going to say, problem? What does
9 that mean. He's going to say, you know what? I am sad
10 to tell you, yes, sexual abuse has been a problem in the
11 Boy Scouts of America.

12 But we are working our tails off every
13 single day to make it better. We are trying to prevent
14 Scouts from being molested. And the reason -- and I'm
15 ashamed of what happened in the past. I'm ashamed we
16 didn't do more. We were wrong. And the reason we're
17 doing more is there was a jury in Portland, Oregon, that
18 woke us up. And now we will speak the truth.

19 Thank you.

20 THE COURT: Jurors, I will remind you of
21 some of the housekeeping instructions that I gave last
22 week, week before last, whatever it was.

23 Remember, there are no time limits on
24 your deliberations. This will take you however long it
25 takes you. I'll have the Clerk check on you as we get