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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 solely) Volume 20  
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 solely 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

BE IT REMEMBERED that the above-entitled  
matter came on regularly for trial before the  
HONORABLE JOHN A. WITTMAYER, Circuit Court Judge of the  
County of Multnomah, State of Oregon, commencing on  
Thursday, April 8, 2010, and a Jury.

## Plaintiff's Closing Statement

1 finished with their arguments at a natural time for us to  
2 take a break, so we're probably going to interrupt their  
3 arguments for our morning and afternoon breaks and for  
4 our lunch break. I want to use the time as efficiently  
5 as we can because there's a lot of material to cover.

6 So with that then, Mr. Clark, closing argument  
7 on behalf of plaintiff.

8 MR. CLARK: Thank you, your Honor.

9 Good morning.

10 THE JURY: Good morning.

11 MR. CLARK: What I said at the beginning of  
12 voir dire about every witness was going to be nervous  
13 still sometimes applies to lawyers. I want to start off  
14 by thanking you for your hard work.

15 I tell people that our system does not  
16 guarantee justice, but it guarantees a chance at justice.  
17 And that chance is increased and heightened when you have  
18 to deal with a jury that pays attention, and you have.  
19 And on behalf of Mr. Mones and on behalf of Mr. Lewis, we  
20 thank you.

21 I also want to tell you that I've given --  
22 I've asked Ms. Sailey to feel free to interrupt me if I  
23 get going too fast, which I sometimes do, so don't hold  
24 that against her or hold that against me.

25 We talked in this case about a theme, and that

## Plaintiff's Closing Statement

1 theme was that youth organizations must do everything  
2 possible to protect children.

3 John, can we pull up the thematic chart, the  
4 first line?

5 Youth organizations must do everything  
6 feasible to protect children. I've inserted the word  
7 "feasible" instead of possibility because feasibility has  
8 been used a lot in this case. That is a general  
9 principle with which I think virtually every person in  
10 this courtroom agrees and several of the witnesses did  
11 agree.

12 Next line. Some risks to children can be  
13 eliminated or limited. We know that. We know that if  
14 Boy Scouts are going on camping trips, some of the risks  
15 can be eliminated by warnings, by proper preparation, by  
16 training, some risks can be eliminated or limited.

17 We know that if a risk cannot be totally  
18 eliminated, a youth organization must warn children and  
19 parents and other protective adults about those risks.

20 So you warn about lightning, because it cannot  
21 be totally eliminated. You can train about it, but you  
22 still warn because you want people to know. If there's  
23 an outbreak of E.coli from a camp, you pick up the phone  
24 and you call the parents of the kids who are there  
25 because you want them to know about a hidden danger that

## Plaintiff's Closing Statement

1 they don't know about. So if a risk cannot be totally  
2 eliminated, the youth organization must warn.

3 All of which leads to a youth organization  
4 cannot keep secrets about hidden dangers to children.  
5 That is the community rule that I'm going to come back to  
6 again and again in this closing argument. You cannot  
7 keep secrets about hidden dangers to children.

8 You may remember that my opening statement  
9 used thematic questions, what did they know, when did  
10 they know it, what did they do and not do about it? I'm  
11 going to use that structure in my closing argument as  
12 well both at the national level and locally.

13 So just to summarize, can you pull up, John?

14 The national level, what did they do, when did  
15 they know it, and what did they do and not do about it?  
16 What they knew was that they had a serious problem with  
17 pedophiles in Scouting; that thousands of boys were being  
18 abused; and that if nothing changes, nothing changes.  
19 And more boys like Kerry Lewis would be abused.

20 When they knew this was by at least 1965 and  
21 certainly for decades before that. We only have starting  
22 in 1965 here, but there's evidence that these files went  
23 back further in time than that. And certainly they knew  
24 it before Kerry Lewis was abused in 1983 and 1984.

25 What they did and did not do about it was to

## Plaintiff's Closing Statement

1 warn anyone or take any other reasonable common sense  
2 steps to change the system and protect kids like Kerry  
3 Lewis, to protect kids like Kerry Lewis from people like  
4 Timur Dykes. And so with parents like Kerry Lewis'  
5 putting their trust in the Boy Scouts of America, the Boy  
6 Scouts of America breaking that trust, more Boy Scout  
7 abuse.

8           The summary of the local scene looks like  
9 this. What they knew. They knew that their charismatic  
10 Assistant Scoutmaster, Timur Dykes, to whom kids flocked  
11 like bees to honey, they knew that he had molested --  
12 that he had admitted to molesting 17 Scouts, including  
13 Boy Scouts and Cub Scouts.

14           I want to highlight here one of the most  
15 significant things that happened in the last week was  
16 when shaky Adrian Leech got up there and talked about  
17 what happened to him as a Cub Scout by Timur Dykes. We  
18 showed you on the roster the Leech brothers, and the next  
19 name down was Kerry Lewis.

20           They knew that Boy Scouts and Cub Scouts were  
21 being abused by Timur Dykes. All of the leaders of that  
22 troop had to do was go to the roster and look at the list  
23 and say who might have been within this guy's poisonous  
24 reach. And there, right there on the list was Kerry  
25 Lewis. He transferred in September.

## Plaintiff's Closing Statement

1           This was January, five months later, and they  
2 knew that these boys had been abused going back in time.  
3 All they had to do was look down at the list and there  
4 was Kerry Lewis. The law calls that foreseeability.  
5 I'll talk about that idea in a little bit.

6           When they knew this was by January 31, 1983  
7 when Mr. Dykes made his confession, his admission to  
8 Gordon McEwen. What they did not do about it was to  
9 publicly warn the Scouting community or the parents of  
10 the other 13 boys in the troop or the parents of the kids  
11 on the Cub Scout roster, the other kids on the Cub Scout  
12 rosters.

13           They didn't warn the parents of boys who were  
14 reasonably foreseeable in Timur Dykes' grasp that he's  
15 dangerous to boys. Everything that you thought about  
16 Timur Dykes is wrong. You've got to forget it. He's  
17 food poisoning. And we're calling to tell you that your  
18 kid may have eaten the bad food. They didn't do that.

19           If they had taken reasonable steps to do  
20 things like that, Kerry Lewis' abuse would have been  
21 prevented. We wouldn't have been here -- we wouldn't  
22 even be here. So that's what they knew, when they knew  
23 it, what they did and did not do about it in summary,  
24 nationally and locally.

25           Now, I want to go back through some of the

## Plaintiff's Closing Statement

1 evidence in detail at the national level. This will take  
2 me some time, then I'll shift and do the same thing at  
3 the local level going back through some of the evidence  
4 and some of the testimony.

5 Then after I've done the national and the  
6 local, I'm going to talk about some of the links between  
7 the national and the local. Then I'm going to talk about  
8 causation and damages. Then I'll finish with a few  
9 remarks about what this case means. That's kind of a  
10 roadmap of where I'm going.

11 So what they knew at the national level was  
12 the existence and scope of the pedophile problem. That's  
13 what they knew at the national level. This isn't going  
14 to work, is it, John? I'm sorry. Sorry about this.

15 And the first testimony I want to highlight is  
16 that of Mr. Nathaniel Marshall, Boy Scout representative  
17 who sat through this trial. And he admitted that they  
18 were keeping these files back to 1925.

19 Although, he refused to answer the simple  
20 question of whether they knew they had a problem, five  
21 times Mr. Mones had to ask him, did you have a problem  
22 with abuse in Scouting? He never got a straight answer.

23 The only person in this courtroom who has  
24 admitted that he has a problem and needs to do something  
25 differently is Kerry Lewis when it comes to his drug and

## Plaintiff's Closing Statement

1 alcohol problem. The other side can't even say the word  
2 "problem," let alone admit it.

3 But it was there in 1925 that they were  
4 keeping the files. As Dr. Schoener said, you don't keep  
5 a national system unless you've got a national problem.  
6 They knew that by 1925.

7 By 1935 -- can we have the article up, John?

8 By 1935, the New York Times was writing an  
9 article about the Boy Scout's red list. And the head of  
10 the Boy Scouts of America is explaining what the red list  
11 is. 2900 files are referenced in that 1935 article.

12 Now, remember, this wasn't primarily any kind  
13 of a public discussion or public announcement by the Boy  
14 Scouts about child abuse. The purpose of all this was to  
15 put the public at ease. Remember, this was the 1930's.  
16 There are no Communists in Scouting.

17 We have no reds in Scouting. The red files  
18 don't mean we have Communists. We've got some  
19 pedophiles, but we don't have Communists. That's what  
20 that 1935 article says, but it documents the problem.

21 Mr. Grant Robinson, the former Cascade Pacific  
22 Council executive, sat there and admitted that when he  
23 was at an earlier Council, I believe it is called Lone  
24 Pine, but I could be wrong about that -- by the way, this  
25 is -- I meant to say this up front.



## Plaintiff's Closing Statement

1           Everything that I'm going to tell you is based  
2 upon my notes, my recollections of the evidence and what  
3 I could get through with the transcript. If I misstate  
4 something, that will be accidental, and I apologize for  
5 it. And you go with your notes and your recollection.  
6 I'm doing the best I can with the notes and the  
7 recollection that I have.

8           Mr. Robinson said that in 1960, whatever  
9 Council he was with, he was told basically there's an  
10 issue with pedophiles in Scouting, with child abuse in  
11 Scouting, 1960. So we got 1925, 1935, 1960.

12           Do you remember the kind of gum-shoe, former  
13 LA detective that came in here, Mr. Dworin, long-time  
14 head of the child sex crimes unit for the LA Police  
15 Department, interviewed thousands of pedophiles and  
16 thousands of kid victims. And he came in and had done a  
17 remarkable thing.

18           He'd been through all of these files in a  
19 systematic way. I think he said it took him 65 hours.  
20 He gave you a list of what was in those files for the  
21 knowing, the profile of the pedophile, how they operated,  
22 multiple victims, who the boys were, how it happened,  
23 where it happened. He documented it. Something they  
24 could have done at any time in the last 85 years and they  
25 never did.

## Plaintiff's Closing Statement

1           Dr. Schoener, who regularly consults, unlike  
2 Professor Warren from the University of Virginia,  
3 primarily targets violent sexual offenders and studies  
4 them, Dr. Schoener consults with youth organizations  
5 about how to keep their organizations safe.

6           We've been doing it for a long time. And he  
7 says that if you've got a national file system, you've  
8 got a national problem. And it is not enough to just  
9 keep the list. At some point it has to register that  
10 you've got to change what you are doing. What you are  
11 doing isn't working. So Dr. Schoener talked in some  
12 detail about that.

13           Remember, he'd been an expert witness in a  
14 prior case for the Boy Scouts of America. And he never  
15 knew about the files. This was the first experience he  
16 had with the files. And they put him on the stand as an  
17 expert witness several years ago and didn't tell him  
18 about the files. And he said this is an astonishing body  
19 of knowledge.

20           What you could have done with that knowledge  
21 was incredible. That's some of the testimony. We've got  
22 the files themselves here, 1250 P files, roughly 1,000 of  
23 them involving child sexual abuse.

24           Now, we also know that from 1925 to 1935, if  
25 Mr. Marshall is right, is that in 1925, when they started

## Plaintiff's Closing Statement

1 keeping the files, and the New York Times articles said  
2 they had 2900 of them by 1935. And about one-third of  
3 those, something like 900 were related to child abuse,  
4 you know you've got from 1965 to 1985, you know you've  
5 got roughly 1,000.

6 You know you've got 900 between 1925 and 1935,  
7 so what about between '35 and '65? Well, let's see what  
8 the official Boy Scout statistics shows.

9 Oh, I'm sorry. This doesn't go back that far.  
10 My fault. My mistake. Scratch that.

11 I'll get you the citation later on. I  
12 apologize for the exhibit that shows that between 1935  
13 and 1965, the Boy Scouts of America's official records  
14 show a few hundred files for the Perversion category,  
15 just a few hundred.

16 But by the New York Times article and this  
17 statistic, if you extrapolate, you easily get -- because  
18 we're got 2,000 here, and if you look at another 30  
19 years, and you assume that's a conservative, half the  
20 number, you've got 2,000.

21 So my point in all this is it is not  
22 unreasonable to suggest that by 1985, they had between  
23 3,500 and 4,000 files dealing with child molesters.

24 If you just take '65 to '85 and extrapolate it  
25 back, and these are just the ones, just the ones that got

## Plaintiff's Closing Statement

1 reported, just the ones that got caught. I'll talk more  
2 about this in a minute.

3 So this was just the tip of the iceberg. How  
4 do we know that? Well, first of all, logically. They  
5 had no system in place to educate or train people in  
6 reporting. So how these people got reported is blind,  
7 dumb luck.

8 Somebody -- some pedophile's plan went bad and  
9 somebody found out. But there was no systematic  
10 encouragement for these people to report. This just  
11 happened. These files just happened. There was no  
12 training about them. They didn't say we've got this  
13 system. And if you need help, this is what you do. They  
14 didn't say that to parents and local chartering  
15 organizations. So that's one reason we know that these  
16 numbers have to be low.

17 Second reason is the mental health reality.  
18 You heard Dr. Schoener, Dr. Conte, I think even Dr.  
19 Sebastian admit that only a small percentage of child  
20 abuse is ever reported. The studies, I think show  
21 something like six percent, a tiny fraction is ever even  
22 reported.

23 Thirdly, we know that this is not the whole  
24 universe because they've admitted they destroyed files  
25 either because a person got old, a person died, or for

## Plaintiff's Closing Statement

1 whatever other reason, noble or ignoble, they destroyed  
2 files. So we know we're not dealing with a complete  
3 universe here, just the tip of the iceberg.

4 So by 1965, and certainly before Kerry Lewis  
5 was abused, the Boy Scouts of America knew that thousands  
6 of boys were being abused in their program by thousands  
7 of pedophiles and nothing changed.

8 Now, I want to anticipate the defendants'  
9 argument here, that their problem was no worse than that  
10 of society in general. Well, first of all, if we hadn't  
11 sued them, how would they know?

12 In 85 years, they never did what Mr. Dworin  
13 did in three weeks, in 65 hours, they never did that.  
14 They never looked in the files to see what was there  
15 until they got sued. We got these files, brought them in  
16 to show them to you, and then all of a sudden, they've  
17 got statistics. They've got an analysis, all of a  
18 sudden, and they can talk about what they mean and what  
19 they don't mean.

20 So how would they have known? Mr. Marshall  
21 said they never kept statistics on the abuse. They never  
22 did an analysis of it. He admitted that on the stand.

23 Why didn't they hire someone like Dr. Warren,  
24 a high-powered academic with seven research assistants in  
25 1975 and say, you know what, we've been keeping these

## Plaintiff's Closing Statement

1 files, but things don't seem to be getting better.

2 Why don't you take a look and tell us if you  
3 can give us any advice on what changes we might want to  
4 make. But the files just kept growing and the professors  
5 kept busy on other projects because they didn't ask. No  
6 worse than the problem in society at large. Well, you  
7 know what, ladies and gentlemen, the parents of boys in  
8 Scouting expected better than society at large.

9 They didn't put their kid in Smilin' Jack's  
10 Day Care Center. They entrusted their boys to the Boy  
11 Scouts of America and the Boy Scouts of America promote  
12 trust. That is their stock-in-trade. On my honor. That  
13 is their stock-in-trade. And that's why the parents put  
14 the boys there. They better be better than society in  
15 general. It is an amazing argument.

16 The Lewises, the Severs, the Dreberts, the  
17 Leech parents, real names, real boys, real lives trusted  
18 the Boy Scouts. And the response is hey, it is no worse  
19 than the society at large. They had the ability to be  
20 better than the society at large. They had a closed  
21 system.

22 If you think about it, they have the ability  
23 to keep people out; adults, children, whoever they want.  
24 They have a closed system. They control it. You have to  
25 be a member. Remember, Mr. Dale, the gay Scoutmaster, he

## Plaintiff's Closing Statement

1 doesn't get to be a member because the Boy Scouts of  
2 America went to the United States Supreme Court to prove  
3 their right to select their own membership, their  
4 leadership. They have a closed system.

5           If I catch a disease walking around downtown,  
6 that's one thing. But if I'm in a clean unit at Good  
7 Samaritan Hospital, I expect better. I don't expect to  
8 catch any old germ like I would if I was walking around  
9 on the streets. They had a closed system.

10           They had the ability to implement one, a  
11 training program. They've got a highly organized,  
12 vertically integrated corporate structure. They've got  
13 national. They've got regional. They've got councils.  
14 They've got districts.

15           They've got a highly integrated corporate  
16 structure from top to bottom, and they could have  
17 implemented a program any time they wanted to. And as  
18 proof positive of that, I will remind you of the drug  
19 problem they've got in the Cubmaster Handbook that I  
20 asked Dr. Wiest about.

21           They thought it was a good idea to warn young  
22 boys about the dangers of drugs. They've got several  
23 pages in there. They train Scoutmasters on it. They  
24 trained volunteers. It is in the Cubmaster Handbook.  
25 They had the ability to do that. They did the same thing

## Plaintiff's Closing Statement

1 with homesickness, vandalism, hazing, sex curiosity, all  
2 of these things that boys bump into. That's all in the  
3 material. They had the ability to do it.

4 But nobody pulls their child out of Scouting  
5 because the Boy Scouts warn the parents that a child  
6 might get homesick. But the Boy Scouts of America  
7 believe that if they told parents and charter  
8 organizations about their pedophile problem, they would  
9 lose members. That's why they did warnings about drugs,  
10 but not warnings about pedophiles.

11 You heard from Mr. O'Connor who came down here  
12 from Alaska. And you will see in those Chicago Tribune  
13 articles that have been admitted into evidence, the Boy  
14 Scouts of America in the 1970's were obsessed with  
15 keeping their membership up.

16 Remember, he talked about the 3M's: Money,  
17 membership, manpower and the PR angle of all of that.  
18 They were obsessed with keeping their membership up.  
19 That's the reason that they didn't put child sex abuse in  
20 there with drugs, vandalism, homesickness, and the other  
21 problems they warned about.

22 What you are seeing is a pure and simple  
23 concern for the organization, the best interest of the  
24 organization over the best interest of the children.  
25 There it is plain and simple, right there in front of



## Plaintiff's Closing Statement

1 you.

2 Mr. Wolff, the man from the Big Brothers and  
3 Sisters who came in here and talked with us not only  
4 about what is feasible, but what they did with the Big  
5 Brothers and Sisters shows the lie of the Boy Scouts'  
6 position that it wasn't a good idea.

7 Big Brothers and Sisters did it, they did it  
8 just fine. They took the leap of faith to do the right  
9 thing and put the interests of the safety of children  
10 ahead of the well-being of the organization. And they  
11 were 40 years younger than the Boy Scouts of America. If  
12 Don Wolff had been president of Boy Scouts of America in  
13 the 1970's, we wouldn't be here.

14 When Dr. Warren was really pushed several  
15 times, Mr. Mones had to ask her the question, when she  
16 was really, really pushed about, are you saying this was  
17 feasible or not feasible, she finally said, in short,  
18 feasible but not advisable.

19 Possible, but not a good idea. Possible, but  
20 not a good idea to warn parents in charter organizations  
21 about the pedophile problem. That sometimes it is okay  
22 to keep secrets from parents and trusted community  
23 leaders about hidden dangers to children. Sometimes it  
24 is okay to do that.

25 That is reason number one why you should

## Plaintiff's Closing Statement

1 return a verdict for punitive damages because it is not  
2 okay to keep secrets about hidden dangers to children.  
3 They had the information. They kept the secrets.  
4 Feasible, but not advisable.

5 Her explanation on this when pushed was if you  
6 trained about Scout leaders, you would also have to train  
7 about doctors, nurses and coaches. Fine. I don't know  
8 that the Big Brothers and Sisters program was limited.

9 It was -- you talked to them about dangers  
10 from trusted adults. You can devise a system. They did  
11 it. Big Brothers and Sisters did it. So by that  
12 reasoning, you should not warn about axes or knives  
13 because then you might also have to warn about hacksaws  
14 and broken glass and razors.

15 It makes no sense. It is an insult to your  
16 intelligence, what she said and because it might cause a  
17 panic. Now, we're getting closer to the truth. It might  
18 cause a panic. Big Brothers and Sisters found a way to  
19 do it. It didn't cause a panic.

20 What the Boy Scouts of America are really  
21 saying is that they don't trust the parents with this  
22 information. That has to be a logical implication of  
23 their argument. It might cause a panic, so we'll keep it  
24 to ourselves.

25 We know better than parents. That sounds like

## Plaintiff's Closing Statement

1 large religious institutions 25 or 30 years ago. We have  
2 to keep this information from the faithful or it will  
3 cause scandal because parents can't handle this  
4 information.

5 The corporate board rooms of auto  
6 manufacturers will hang onto this information because our  
7 consumers are too foolish to understand what to do with  
8 this. Like Jack Nicholson playing Colonel Jessup in that  
9 movie about the Marines, where he's ordered a lazy Marine  
10 to be eliminated, and Tom Cruise is trying to get at the  
11 truth, and he looks at him and says, son, you can't  
12 handle the truth. We'll handle it for you.

13 There's several problems with the percentage  
14 analysis that Mr. Xochihua put up there at one point. I  
15 think, if I recall that the number, but I think it was a  
16 very tiny fractional percent. I think it was  
17 .0001 percent of all adults in Scouting abuse children.

18 I think that's what the suggestion was. You  
19 remember Dr. Schoener's jaw dropping and saying, you are  
20 not suggesting that that's the whole universe, are you,  
21 that your numbers represent the actual numbers of people  
22 out there abusing children?

23 Again, we know these are the only ones that  
24 got caught. We know that files were destroyed. We know  
25 that one of these, one of these files often contains the

## Plaintiff's Closing Statement

1 names or -- not the names, but the fact of many boys who  
2 were abused, multiple victims. One file often shows  
3 repeat offenses over the years. If a man abused three  
4 times over a 15-year period of time because he was put on  
5 probation, he's in there one time.

6 So this number can't be right. Apart from  
7 which, if you do the math, X over Y, and Y is an inflated  
8 number, as we know the membership numbers for the Boy  
9 Scouts of America were inflated, then this doesn't work.

10 The Chicago Tribune article suggests that in  
11 Chicago alone, the numbers might have been off by as much  
12 as 25 to 50 percent with ghost units. Sacramento,  
13 Florida, look at the numbers of places, how widespread  
14 this was in those Chicago Tribune articles.

15 These numbers are nothing more than smoke and  
16 mirrors. But the final problem and the more serious  
17 problem about this percentage analysis is that it focuses  
18 on the wrong target. It focuses on the percentage of  
19 these instead of the numbers of boys.

20 Dr. Warren said she was not even asked to do a  
21 calculation as to how many children might be represented  
22 in these files. She wasn't even asked. It wasn't part  
23 of her assignment. The number of kids don't matter to  
24 the Boy Scouts of America. That's what that testimony  
25 highlights. Just like for the last 85 percent, it wasn't

## Plaintiff's Closing Statement

1 important for them to hire someone like Dr. Warren.

2 If you've got -- it is not hard to do the  
3 math. If you've got five victims per pedophile, if  
4 you've got 10 victims per pedophile, if you've got 20  
5 victims per pedophile, if as Dr. Sebastian said in one of  
6 her studies that she cited, you got 100 victims per  
7 pedophile, and you've got, I don't know, 2,000, 3,000,  
8 4,000 files, what are those numbers? 20,000 kids?  
9 40,000 kids? Sixty? The largest universities in the  
10 United States have 60,000. That's how many we're talking  
11 about.

12 But whether you believe it was 20 or 80  
13 doesn't matter. The point is they are real lives. They  
14 are real boys. And nothing was changed.

15 By the way, now that you have the jury  
16 instructions, you have a jury instruction on hypothetical  
17 questions. I'm going to ask you a hypothetical question.

18 What if the Boy Scouts of America down in  
19 their corporate offices in Texas and in their regional  
20 offices and district offices and the Council offices,  
21 what if those buildings, instead of being filled with the  
22 names of little boys and teenaged boys and young men,  
23 were filled with hundred dollar bills.

24 And suppose 20,000 times over the last six  
25 decades a petty thief had broken in and taken a

## Plaintiff's Closing Statement

1 hundred-dollar bill over and over and over again, do you  
2 suppose that they wouldn't have fundamentally changed  
3 their security system? And would it have been more than  
4 just keeping a list of the thieves to make sure they  
5 can't get back in the building again. They would have  
6 changed something.

7           You don't just get to keep a list. But when  
8 pedophiles walk in the Boy Scout system and stole the  
9 lives of little boys over and over and over again, they  
10 kept a list and nothing else changed.

11           And I mentioned these numbers, 10,000, 20,000,  
12 50,000 boys, it is a lot. And if you think about -- when  
13 you are thinking about punitive damages, this is punitive  
14 damages consideration number two, think about the social  
15 costs foisted on the rest of society by what they did:  
16 The drugs, the alcohol, the broken families, the crime,  
17 the mental health costs, the suicides. Punitive damages  
18 verdict says you are going to levy a fine on them for  
19 imposing that cost on society.

20           What else they knew from the files -- by the  
21 way, these files, these boxes of files for no particular  
22 reason that I can figure out have sat right there during  
23 the whole trial, day after day after day right there.

24           The elephant in the room, the lead weight at  
25 the center, and they sat there. Very seldom has anybody

## Plaintiff's Closing Statement

1     come over to open these boxes and see what's in them.  
2     Much of that has been done on the screen. This is not a  
3     bad analogy to what happened in the Boy Scout offices.  
4     They sit there, unopened, unexamined. The elephant in  
5     the room.

6             And even though you've heard from several  
7     experts about these files, and we've tried to show you  
8     some of what's in there, I encourage you to spend time  
9     with this material.

10            As far as we know, you are the first jury  
11     anywhere to see these files. You are now the guardians  
12     and custodians of them as you are the guardians and  
13     custodians of the public interest and of community  
14     safety. Satisfy yourselves as to what is in those boxes.

15            You can be sure that if there were good files  
16     in there, they would have shown them to you. There are  
17     no good files. Sometimes the system worked the way they  
18     intended and a Scoutmaster would be kicked out forever.

19            Other times, far too often, it didn't work the  
20     way it was supposed to. But there are no good files.  
21     These are all bad files. They are all stories of  
22     tragedies. But take what works from the experts and  
23     leave the rest and satisfy yourselves. Get your hands  
24     dirty.

25            There will be 12 of you deliberating. You

## Plaintiff's Closing Statement

1 heard Mr. Dworin, the LA cop, say that he got through  
2 these in 65 hours. You don't need to spend 65 hours.  
3 I'm not suggesting that. But there will be 12 of you  
4 deliberating. If you took two hours and you split the  
5 files up, and you each looked at 20 collectively, and you  
6 would have looked at 240, which is about 20 percent of  
7 the files, a little higher than that.

8 If you wanted to spend three hours, you might  
9 get through a third of them. But whatever you do, I  
10 encourage you to look through them in some systematic  
11 way. Make them yours. Understand them. And then you  
12 decide what they knew and when they knew it.

13 Here is some of what we know was in those  
14 files. One, most of the situations involve multiple  
15 victims. 578, Exhibit 31, 36, 40 and 520.

16 Secondly, the abuse often happened in the  
17 Scout leaders' homes or apartments, 40, 34, 614, 406,  
18 456, 507. And remember, no Boy Scout prohibitions on  
19 this.

20 In the 1980's, there was no rule against this.  
21 Witness after witness after witness said that. The  
22 president of the Cascade Pacific Council with no  
23 prohibitions against this said that the parents should be  
24 in jail. The parents are the criminals. Blame the  
25 parents. Blame the victims. How many times did you hear



## Plaintiff's Closing Statement

1 that in this case?

2 If the Scout defendants had one theme in this  
3 case it was blame the victim. Blame the parents. There  
4 was no prohibition on spending the night in Scout  
5 leaders' homes, and it happened.

6 Sometimes Cub Scouts and Webelos were abused,  
7 645, 524. And I'm going to suggest that Timur Dykes'  
8 I.V. Files tells that story even if it doesn't show it,  
9 because we know that Timur Dykes abused Cub Scouts.

10 That often it was single, young men, just like  
11 Timur Dykes. These are all, by the way, boom, boom,  
12 boom, boom, all just like Timur Dykes, 359, 61, 436, 863,  
13 963. Unregistered leaders were abusing, what they call  
14 Adult Scout Volunteers, 543, 589.

15 If you believe everything they say about what  
16 they did about Timur Dykes was they put him on a kind of  
17 probation. He became an Adult Volunteer because you've  
18 heard, you heard several boys testifying that after  
19 January of 1983, Timur Dykes was involved in Scouting.  
20 Joel Drebert said he heard Timur's back.

21 You saw a photograph of Eagle Scout Joe Severs  
22 with Timur Dykes there working on the Eagle project.  
23 Kerry Lewis talked about everything that happened after  
24 January of '83. At best for them, Timur Dykes was an  
25 Adult Scout Volunteer after January of 1983. Adult Scout

## Plaintiff's Closing Statement

1 Volunteers abused, and the Boy Scouts knew it.

2 Men on probation, whatever that means, you  
3 heard Dr. Schoener say, what do you mean by probation?  
4 What are the terms? Who sets it? What can that possibly  
5 mean? Like transferring an abusive priest from one place  
6 to another and telling him not to do it again. That's  
7 what probation means, 276, 480, 524, 34.

8 I want to give you a slight disclaimer on all  
9 these numbers. This is the best we've been able to do  
10 and come up with these numbers. If any one of them is  
11 off or if it doesn't seem to represent what I've said to  
12 you it represents, I'm sorry. These are our best efforts  
13 to match the files with the categories.

14 So that's what they knew about the national  
15 pedophile problem. They certainly knew it by 1965 and  
16 1970. That is exactly what I told you in opening  
17 statement that the evidence would show, that they knew  
18 they had a pedophile problem on their hands and they knew  
19 it by 1965.

20 Now, I want to turn to this concept of  
21 foreseeability.

22 John, can you pull up jury instruction 23 on  
23 foreseeability?

24 "A person is liable only for the reasonably  
25 foreseeable consequences of his or her actions. There

## Plaintiff's Closing Statement

1 are two things that must be foreseeable.

2 "First, the plaintiff must be within the  
3 general class of persons that one reasonably would  
4 anticipate might be threatened by the defendant's  
5 conduct; second, the harm suffered must be within the  
6 general class of harms that one reasonably would  
7 anticipate might result from the defendant's conduct."

8 That's the law on foreseeability. Now, notice  
9 that it is called foreseeability. Foreseeable  
10 consequences. Not actually foreseen. I want to talk to  
11 you about the difference.

12 A reasonable possession -- a reasonable person  
13 in the possession of this knowledge could reasonably have  
14 foreseen that if nothing changes, nothing changes. If  
15 nothing changes, there will be more abuse. That was  
16 foreseeable.

17 Now, I'll show you on other instructions  
18 later, the Boy Scouts of America did not need to know  
19 that this particular kid would be abused on that  
20 particular day by that particular pedophile, only that it  
21 was foreseeable that without changes, more abuse would  
22 happen. It is a common sense standard.

23 Boy Scouts made a deliberate and knowing  
24 decision not to make changes, even though it was  
25 foreseeable that more kids would be abused. Big Brothers

## Plaintiff's Closing Statement

1 and Sisters made a deliberate decision with the same  
2 information. Exactly the opposite kind of decision.

3 It might be foreseeable, may or may not be  
4 foreseeable that if you are driving down the Terwilliger  
5 Curves talking on your cell phone or on your Blue Tooth  
6 now and drinking a cup of coffee, that you might have an  
7 accident.

8 But putting them in the Terwilliger Curves,  
9 speeding, with a cup of coffee in one hand and a  
10 hamburger in the other hand, a cell phone under his  
11 shoulder, driving with his knees, and turning around  
12 talking to his kids in the back at 70 miles an hour, and  
13 it is completely different kind of foreseeability  
14 analysis.

15 The foreseeability analysis changes, as you  
16 will see, when you look through the jury instructions  
17 carefully based on the same or similar circumstances that  
18 somebody is in.

19 And the reason for this approach is so that we  
20 don't reward the old head-in-the-sand attitude, not  
21 whether this person actually foresaw it, but what a  
22 reasonable person standing here looking at these files  
23 would have foreseen it. Reasonable is the community  
24 standard. It is your common sense.

25 We don't want to reward hear no evil, see no

## Plaintiff's Closing Statement

1 evil, speak no evil. So we ask what was reasonably  
2 foreseeable. We have proved a lot more than foreseeable.  
3 We've proved that they knew, in fact, about the pedophile  
4 problem.

5           Somebody had to read those files when they  
6 were being created, and that somebody was usually the  
7 somebody in the position of Paul Ernst, through the  
8 registration director, whose name you will see on most of  
9 those documents. Somebody at Boy Scouts of America knew  
10 that, and you will see from another jury instruction I'll  
11 show you later that if a corporate agent knew it, the  
12 corporation knew it.

13           Now, I want to talk to you about the phrase  
14 "knowingly allowed," because we have proven to you that  
15 they knowingly allowed child abuse to continue.

16           It is important because one of the issues that  
17 you will have to decide that the Boy Scouts of America  
18 has raised in the face of all of this evidence, all of  
19 this history, all of these wrong decisions, all of this  
20 abuse of the boys, one of their defenses is Kerry Lewis  
21 should have sued them sooner. He waited too long. The  
22 statute of limitations has passed.

23           So I want to talk to you about this idea of  
24 knowingly. Can you put that jury instruction up, please?  
25 Actually, hang on just a second. Drop that down for just

## Plaintiff's Closing Statement

1 a second. Let's go with the one above that. Nineteen.

2 Scout defendants contend that this case is  
3 barred by the statute of limitations. "To prevail on  
4 this defense, these defendants must prove by a  
5 preponderance of the evidence that their conduct did not  
6 knowingly allow, permit or encourage child abuse."

7 Well, wait a minute, why do the defendants  
8 have to prove that? I thought the plaintiff had the  
9 burden. It is a defense. The defense has the burden of  
10 raising it, pleading it and proving it.

11 So they've got this double negative here.  
12 They have to prove that their conduct did not amount to  
13 knowingly allowing, permitting or encouraging child  
14 abuse. And the definition of knowingly for that statute,  
15 "Does not require actual knowledge of a particular act of  
16 child abuse, or actual knowledge of a particular child  
17 being abused."

18 You don't have to walk in and see it happening  
19 to be liable under the statute of limitations. You just  
20 have to knowingly allow child abuse to occur or continue.  
21 And it is the defendant's burden of proof on this.

22 So when they stand up and say, Kerry Lewis  
23 should have sued them sooner, ask yourself that question.  
24 Well, did they knowingly allow it? Have they proved to  
25 me that they didn't knowingly allow it?

## Plaintiff's Closing Statement

1           You might remember Exhibit 1448, that was the  
2 letter that the defense expert, Dr. Lorah Sebastian, back  
3 when she was still advocating for children, wrote to the  
4 Oregon legislature and said essentially, you need to  
5 change the statute of limitations because oftentimes  
6 people don't understand because of the shame, the guilt,  
7 the embarrassment, they don't understand until later in  
8 life that they might have a claim. That's a paraphrase,  
9 but that's essentially what she said.

10           She wrote that letter to the legislature. And  
11 the legislature in its wisdom created this extended  
12 statute of limitations. But because they didn't want to  
13 apply it to just any garden variety slip and fall case,  
14 but the more serious category of child abuse, they used a  
15 higher standard, this knowingly.

16           So I want to highlight that for you, tell you  
17 what it means, tell you what it doesn't mean. It doesn't  
18 mean you have to walk in and see this child being abused  
19 and remind you that it is the defendants' burden of  
20 proof.

21           So we are not saying they should have known.  
22 We are saying they did know. They did nothing to change  
23 their system. They knew that petty thieves were breaking  
24 in and stealing little boys. They did nothing to change  
25 their system.

## Plaintiff's Closing Statement

1           As long as we're talking about jury  
2 instructions, let's plow on through a couple more. The  
3 negligence, please, No. 22. This is a long instruction.  
4 I'm not going to read all of it. I'm going to highlight  
5 a couple of things. It talks about reasonable care.

6           Again, this word "reasonable," the mythical  
7 reasonable person. Who is that reasonable person? Well,  
8 that's reflected in your community judgment. What would  
9 a reasonable person do under the circumstances?

10           "In deciding whether a party used reasonable  
11 care, consider the dangers apparent or reasonably  
12 foreseeable when the events occurred. Consider the  
13 dangers apparent or reasonably foreseeable when the  
14 injuries occurred. Do not judge the party's conduct in  
15 light of subsequent events; instead, consider what the  
16 party knew or should have known at the time."

17           Now, in our case, should have known doesn't  
18 count because we're dealing with knowingly under the  
19 statute of limitations. So a person or organization is  
20 negligent when the person does something that a  
21 reasonably careful person would not do or fails to do  
22 something that a reasonably careful person would do. It  
23 is a common sense standard.

24           But what you need to know -- let's pull up 25.  
25 Remember, the other one said same or similar



## Plaintiff's Closing Statement

1 circumstances. This one says when determining if the  
2 risk of harm to plaintiff was foreseeable, you may  
3 consider any specialized knowledge of the defendants.  
4 You may consider those files when you are trying to  
5 figure out what they knew and when they knew it and what  
6 was foreseeable and what they knowingly allowed.

7 Even the Cascade Pacific Council president  
8 agreed that if you know you've got food poisoning at a  
9 camp, your obligation shifts. You've got a duty to do  
10 something differently based on the information that you  
11 have. Specialized knowledge.

12 Mattel Toys doesn't get to sit on the  
13 knowledge that the doll's arm is breaking off and choking  
14 little girls. They have specialized knowledge. Their  
15 duty to act is greater. Toyota can't hide stuck gas  
16 pedals. They've got specialized knowledge.

17 Where you stand depends upon where you sit.  
18 Remember, we talked about that in voir dire. Where you  
19 stand depends on where you sit. And if you are sitting  
20 over here and you've got access to those files, your  
21 obligations are different.

22 It was utterly fascinating that Dr. Warren  
23 came in here and said that the small country private  
24 school that has never had an allegation of child sexual  
25 abuse before is in no different position in terms of the

## Plaintiff's Closing Statement

1 standard of care than the Boy Scouts of America with  
2 their thousands of incidents of experience.

3 She actually put those two institutions in the  
4 same category in terms of the standard of care. Well,  
5 that's not the law in Oregon. The law in Oregon is any  
6 specialized knowledge is important in the analysis.

7 This is why the Boy Scouts of America train  
8 about axes and knives. Because they have specialized  
9 knowledge based upon their experience that sometimes an  
10 eight-year-old-boy swinging an axe is not a good idea.

11 And you've got to change how that happens out  
12 there. You've got to have an adult show him. You have  
13 to wait and say, you know, you can use a hatchet, but not  
14 an axe, whatever the rules are going to be.

15 But then again, axes and campfire accidents  
16 don't hurt your reputation. Child sexual abuse does, if  
17 that's what you are concerned about, if you are concerned  
18 about money, manpower and membership.

19 I talked to you about what they did not do  
20 already, part one. They didn't make any changes in their  
21 system. I told you it was feasible. I explained to you  
22 how they could have done it and how they did it with the  
23 Cub Scout programs on drug training.

24 I want to talk a little bit more about this  
25 idea of training. In opening statement, we made it very

## Plaintiff's Closing Statement

1 clear that one of the things we were going to try to  
2 prove to hold them accountable was that they should be  
3 educating, warning and training.

4 It was a central theme in our opening  
5 statement. And in response to those claims, what do they  
6 show you? After two years of litigation and all of the  
7 National resources, the Council-level resources, the  
8 experience, the data bank, the thousands of Scouters they  
9 could have drawn on to show you what they did to train or  
10 educate about child sexual abuse, what do they show you  
11 from 1925 to 1965 about their training?

12 Two public service ads buried in Scouting  
13 magazine in the 1980's. That's what they show you. That  
14 don't even talk about abuse in Scouting. Two public  
15 service ads.

16 Oh, and a nice man named Linnard Bybee who  
17 came in and talked about the child abuse training that he  
18 had received in 1981. And he showed you his certificate.  
19 He showed you his uniform.

20 Two public service ads and a nice man named  
21 Linnard Bybee, that's what they can produce to show you  
22 their training program. No training materials. No  
23 literature. No National or Council Executive who  
24 explains to you their comprehensive system of training  
25 and education. Nothing.

## Plaintiff's Closing Statement

1           Are they really suggesting that that was  
2 evidence of a reasonable response to what they knew?  
3 Remember, all of the people who say they got no training  
4 in childhood sexual abuse. Earl Wiest. McEwen.

5           I think all of the Scout Executives said that  
6 there was no training given in those years other than  
7 what they have shown you. Virtually every local Scout  
8 witness came in and said they never got -- Jack Powell.  
9 He couldn't even remember if he gave child abuse  
10 training.

11           Remember, he said no, I didn't. I asked him,  
12 didn't you do that sort of stuff as a police officer?  
13 Virtually every local Scout witness said and most  
14 importantly, if nothing else, two of them, McEwen and  
15 Wiest, said they never got training in child sexual  
16 abuse. If they'd been required to take it, they would  
17 have taken it. They both said that.

18           Compare that with what the Big Brothers and  
19 Sisters did. They studied it. They wrote materials.  
20 They held national conferences. They invited other youth  
21 organizations. They trained and they discussed. They  
22 made it a priority. The implication of the evidence is  
23 even that they attempted to work with the Boy Scouts of  
24 America and got nowhere.

25           But what the Big Brothers and Sisters did is

## Plaintiff's Closing Statement

1 what was possible, what was feasible and what was  
2 advisable. And it is what the Boy Scouts of America  
3 knowingly chose not to do because it might cause a panic,  
4 because we know better than parents.

5 All right. We're going to jump into more jury  
6 instructions. I keep using the word "they," and I did it  
7 in opening statement deliberately, and I've done it in  
8 closing statement deliberately. I've used the word  
9 "vague." Now, I want to tell you specifically using the  
10 law of agency who is "they."

11 "They" in this case is the BSA National or the  
12 CPC or both of them and their agents. So I want to talk  
13 about the law of agency. The troop leaders at the local  
14 level, the charter representatives, the Scoutmasters, the  
15 Scouting coordinators, the members of the Scouting  
16 committee, all of those local people who are carrying out  
17 the Scouting program.

18 Those who in this case have said over and over  
19 again that they followed the Scouting program to the  
20 letter, if not the stitch, where the patches go, how do  
21 you progress through the membership, what's the statement  
22 of religious principle?

23 All of these people say, we followed the  
24 Scouting program. Those are the people who are carrying  
25 out the Scouting programs. They are the representatives,

## Plaintiff's Closing Statement

1 especially McEwen and Wiest, are the representatives of  
2 the Scouting organization. And we have proved to you  
3 that they were agents. So let's look at the law of  
4 agency.

5           There's a lot -- there's several of them, and  
6 I want to highlight only two of them. They are all  
7 important. By highlighting any of these instructions,  
8 I'm not suggesting the others are not important. They  
9 are just the ones that I need to talk to you about.

10           The first concept is No. 32 -- contained in  
11 No. 32. "A person or entity is an actual agent when a  
12 principal, through words or conduct, gives that person or  
13 entity the authority to act on the principal's behalf  
14 subject to the principal's right to control, and that  
15 person or entity agrees to act on the principal's  
16 behalf."

17           The phrase I want to focus on is this notion  
18 of right to control. And we've proved to you in this  
19 case over and over again that the Boy Scouts of America  
20 had the right to control the details of the Boy Scouting  
21 program.

22           Wiest and McEwen both said over and over again  
23 they would have followed any child abuse training; that  
24 it was mandatory. They would have done that.

25           I got a little bit through a document with

## Plaintiff's Closing Statement

1 Mr. -- with Dr. Wiest and I stopped because I was getting  
2 confused and he was getting confused, so I just stopped.  
3 But I want to put it up there before you. It is Exhibit  
4 1409, page 10. And it is a mind-numbing document to read  
5 through. You can spend as much time with it as you think  
6 is necessary.

7 But what I want to show you here, this is just  
8 the -- on a standard troop charter, this is just how you  
9 fill out the application. It comes from the Boy Scouts  
10 of America, how to do this, how to fill out this  
11 application for troop charter. Remember, annual troop  
12 charters? How do you fill it out?

13 If you go through here, you will find  
14 something like -- see the yellow highlights? John is  
15 going to circle them through here. If you will go  
16 through this document, you will find something like 15 to  
17 20 places in this document alone where the boys use the  
18 word "must" or "shall" or other mandatory language.  
19 Fifteen to 20 times, depending upon how you count the  
20 language just in this document, the right to control is  
21 evident and apparent.

22 Annual vetoes over leader appointments. Can't  
23 get to be a Boy Scout leader without the Boy Scouts of  
24 America's approval. Advancement requirements. When do  
25 you go from being a Star to being a Life? When do you go

## Plaintiff's Closing Statement

1 from being a Webelos to being a Boy Scout? The ages of  
2 the boys, the uniforms, the structure, the oath, the  
3 religious beliefs, it is all dictated from on high.

4 Now, I'm sure we're going to hear that the LDS  
5 troops were different, but all of those changes had to be  
6 approved, requested, negotiated and approved by the Boy  
7 Scouts of America.

8 The 10th Ward didn't get to decide on its own  
9 that they were not going to move boys directly from  
10 Webelos into Boy Scouts of America, but they were going  
11 to have this Blazer category. That had to be negotiated  
12 at the higher level. The Boy Scouts of America always  
13 had the right to say do it our way or you don't get a  
14 charter. You mandate this training or you don't get a  
15 charter. Sorry. That's the way it is.

16 The Boy Scouts had the ability, the right to  
17 control. And it is really interesting if you think about  
18 it. The difference in attitude on this question between  
19 the National Boy Scout brass and the local witnesses.

20 The local witnesses you heard from over and  
21 over again said yes, it was the Boy Scout program. We  
22 followed the Boy Scout program. Dr. Wiest showed us how  
23 to put the uniform on. There's a right way and a wrong  
24 way. Jack Powell, the police officer, several times said  
25 yes, it was the Boy Scout program. The local witnesses



## Plaintiff's Closing Statement

1 seem to have no problem with this idea.

2 But the Boy Scouts from the National level are  
3 playing this sort of word game with you. So what is at  
4 stake here? Why all of the elbowing about this issue?  
5 Why extend this trial by days because we've all got to  
6 get in our evidence about right to control? What is  
7 going on here? Why would they make this argument that  
8 only a lawyer could love? Because it had to be a lawyer  
9 that invented it because it is a liability concern.

10 If they admit the obvious, then what McEwen  
11 and Wiest did and didn't do is what the Cascade Pacific  
12 Council and the Boy Scouts of America did and didn't do.

13 If, on the other hand, they can hold onto this  
14 legal fiction that they have no right to control these  
15 people, then they can say they are not our agents.

16 Note the jury instruction says right to  
17 control. It doesn't say what percentage of time it has  
18 to be exercised. It simply says the right to control.  
19 And we have shown you seven ways from Sunday that they  
20 have the right to control.

21 If they admit they have the right to control,  
22 then they would have to explain why they didn't make  
23 child abuse training mandatory. And if they mandated  
24 child abuse training, then they would be admitting that  
25 these people were their agents. And every time a

## Plaintiff's Closing Statement

1 Scoutmaster abuses a boy, they would be fighting  
2 liability. So they create this legal fiction and they  
3 fight for it. Once again, they put the interests of the  
4 organization over the interests of the boys.

5 No. 29, please. Imputed knowledge. "A  
6 corporation cannot know anything except through its  
7 agents. A corporation is said to have knowledge of facts  
8 that its agents learn within the scope of their agency."

9 So if Gordon McEwen and Earl Wiest were  
10 agents, what they knew is what these Scout defendants  
11 knew. If the Boy Scouts of America had the right to  
12 control Gordon McEwen and Earl Wiest, then what they knew  
13 is what the Boy Scouts of America knew. And the  
14 defendants know this, which is why they have fought so  
15 hard in this case on the issue of right to control.

16 The defendants would have you believe that  
17 they are just down there in Irving, Texas, printing  
18 literature like some pamphlet company, sending it off  
19 into the world and hoping that it does some good.

20 They have a vertically integrated corporate  
21 structure. They maintain the right to control it from  
22 the top to the bottom, from where the patches go on the  
23 uniforms, to where James Dale can be a Scoutmaster  
24 because he's gay.

25 I think Mr. Smith said in opening statement

## Plaintiff's Closing Statement

1 that the local charting organizations owned the troops.  
2 I think that was his phrase. And that's an interesting  
3 way to put it.

4 I own my car. I can do with it what I want.  
5 I can change the engine. I can rent it out for  
6 commercial purposes. I can paint it. I can gear it up.  
7 I can gear it down. I can loan it to a friend, even a  
8 gay friend. I can do whatever I want to it. I can put a  
9 political bumper sticker on it.

10 Local charter organizations can't do those  
11 things with their car. They can't change the Boy Scout  
12 program, the Eagle requirements. They can't bring in  
13 20-year-old Scoutmasters. They can't decide to create a  
14 new troop out of their old troop called the Portland  
15 Men's Gay Chorus Troop. They can't refuse to pay the  
16 membership fees. They can't take their kids on a  
17 500-mile trip without a trip permit. They can't do away  
18 with the troop committee.

19 So much for owning your own car.

20 THE COURT: Is this a good time for a break?

21 MR. CLARK: This is, your Honor.

22 THE COURT: I'm watching a clock. It is a  
23 good time as far as I'm concerned. We're going to take a  
24 15-minute break, folks.

25 (Recess.)

## Plaintiff's Closing Statement

1 THE COURT: All right.

2 Go ahead, Mr. Clark.

3 MR. CLARK: Thank you, your Honor.

4 I want to move now to the same construct, what  
5 did they know, when did they know it, what did they do  
6 about it at the local level, Portland, Oregon, early  
7 1980's.

8 What they knew was that Timur Dykes was a  
9 serial pedophile, serial child molester who abused Boy  
10 Scouts and Cub Scouts after working on Scouting projects  
11 at his apartment, including often sleepovers. That's  
12 what they knew.

13 It is uncontested that they knew that 17  
14 Scouts had been abused. If you listened carefully to  
15 Gordon McEwen's testimony, I asked him the question, that  
16 wasn't all the boys in the troop, right? There were more  
17 boys than that in the troop, and he said right. There  
18 were more boys than that in the troop. And we know that  
19 all 17 of those were Scouts.

20 They knew that Timur Dykes was the Pied Piper.  
21 They knew that kids loved him. Remember, Gordon McEwen  
22 even laughed in his deposition and said he had a big, old  
23 boa constrictor. He used to feed it rats. They knew  
24 that this guy was a kid magnet.

25 Now, in the right kind of situation, parts of

## Plaintiff's Closing Statement

1 that can be a good thing. I'm going to talk more about  
2 mentoring. But they knew that Timur Dykes was a Pied  
3 Piper. Dr. Wiest said he had lots of interests that boys  
4 liked, mountain climbing and sports. He was widely  
5 respected by the entire community.

6 If you look, if you look in Detective  
7 Shipley's report, several times it talks about how  
8 well-respected and well-loved Timur Dykes was by the  
9 people involved with Scouting at that LDS Church.

10 They knew the boys were being abused on  
11 sleepovers. If you look at Detective Shipley's report,  
12 which for those of you are interested is 1324, Exhibit  
13 1324, if you are interested in that, it says a lot of  
14 things, but it says two things that are particularly --  
15 three things, that are particularly of note.

16 One of them is it is all through the police  
17 report that this abuse with the Lashbaugh boys happened  
18 on a sleepover at Timur Dykes' apartment after working on  
19 Scouting projects. And since Colleen Lashbaugh, the  
20 mother, is the one that came to Gordon McEwen, you can  
21 safely assume that Gordon McEwen knew all those things.

22 The other interesting thing that Shipley's  
23 report shows you, you'll see it in there, showed it a  
24 couple of times during the trial, something to the effect  
25 of Mr. Dykes doesn't know why he's done this.

## Plaintiff's Closing Statement

1           He has known these boys for years through  
2 church service, but never had any problems with touching  
3 them until he became involved with the Boy Scouts as a  
4 Boy Scout leader. That is an incredible statement.

5           And when, as the defense will do, they suggest  
6 to you that the responsibility for this abuse lies  
7 somewhere else, here than here, like the church, go back  
8 to Detective Shipley's report and look at that line.  
9 Timur Dykes is speaking through that police report.

10           He's telling you what was the source and the  
11 context of this abuse. He doesn't know why, but he does  
12 know it was never a problem when he just knew them  
13 through church. It became a problem when he became a  
14 Scout leader.

15           They knew that there were multiple victims.  
16 Seventeen to be exact. They knew that Cub Scouts were  
17 being abused. I'm going to spend some time on this --  
18 actually one more thing.

19           They knew that the time frame of the abuse  
20 went back years. They knew that because Bishop McEwen  
21 said he talked to every one of the 17 boys as well as  
22 their parents, which means he would have talked to Adrian  
23 Leech, who was up here earlier in the week. Adrian Leech  
24 said that he was being abused by Timur Dykes, I think he  
25 said from the time he was eight or nine, for years.

## Plaintiff's Closing Statement

1           So they would have known that this abuse  
2 wasn't just a recent thing; that it went back in time.  
3 In the Shipley report, the Lashbaugh kid tells him some  
4 of this happened last fall. I think he even said August.  
5 I could be wrong about that. I think he said the fall.

6           Why is that important? Because Kerry Lewis  
7 was a Cub Scout in that same troop, that same pack, and  
8 he'd been for most of 1982. Until the fall of 1982,  
9 Kerry Lewis had been in that Cub Scout pack.

10           All they had to do was look at the roster and  
11 there's Kerry Lewis' name waiving at them. Now, Dr.  
12 Wiest said they didn't always keep rosters of the  
13 rosters. Mr. O'Connor from Alaska told you that's not  
14 true. They had to keep copies of the rosters. But even  
15 if you believe what Dr. Wiest says, remember that he also  
16 said this was a small community. We knew those boys. We  
17 knew who those boys were.

18           And remember, McEwen is the head of all of the  
19 units, not just the Boy Scout troop, but all of the  
20 units, the troop, the pack, the Webelos. He's the head  
21 of all of those Scouting units. He has responsibility  
22 for all of them.

23           John, did I miss pulling up the roster? Can I  
24 have 1410, page 11, please?

25           This is the roster I've been talking about.

## Plaintiff's Closing Statement

1 It is Exhibit 1410. It is page 11. I point it out to  
2 you because there's a lot of rosters. And it is hard to  
3 get through them sometimes.

4 1410, page 11, expiration date 1983, which  
5 means that this is the Scouting year 1982. We now know  
6 why these expiration dates are what they are, by the way.  
7 It had to do with inflating membership numbers and  
8 recruiting at the end of the year.

9 And here is the list of kids. So he says he  
10 talked to the Leech brothers, Matthew and Adrian Leech.  
11 If he didn't talk to Adrian Leech, he talked to Matthew  
12 and Paul, the older brothers. But he knew that Adrian  
13 Leech was on the list because he talked to the parents.  
14 And Adrian Leech said my parents talked to us and said we  
15 were all on a list.

16 So McEwen knew that Adrian Leech and Matt  
17 Leech had been abused, Cub Scouts. And right there  
18 underneath there is Kerry Lewis who, up until a few  
19 months earlier, had been a Cub Scout in Pack 719.

20 Foreseeability. Who might have been -- who  
21 else might have been abused? Who else should we warn?  
22 Who had a close relationship with Timur Dykes? Just go  
23 to the list, folks. It is right there.

24 All of this fog that has been thrown your way  
25 about Troop 815 and 719 and how Cub Scouts have no



## Plaintiff's Closing Statement

1 contact. How many times did you hear Cub Scouts have no  
2 contact with Boy Scout leaders? Can't happen. Didn't  
3 happen. Not the practice. Very, very rare to have  
4 anybody from 815 in 719 or vice versa.

5 All of that, we knew, we have litigated  
6 against these people for two years, we knew they would  
7 come in here and tell you it is impossible that what  
8 Kerry Lewis is telling you is impossible, couldn't have  
9 happened.

10 Boy Scout leaders didn't have contact with Cub  
11 Scouts. Well, apparently one Boy Scout leader at that  
12 troop did and they knew it because he was abusing Cub  
13 Scouts over and over again. You heard it can't be.  
14 Kerry Lewis couldn't have had that kind of a relationship  
15 with Timur Dykes. He was only a Cub Scout.

16 When they knew all this was by January 1983,  
17 and there's no real dispute about that. So they knew in  
18 January 1983, that Timur Dykes was a danger to boys, and  
19 it was foreseeable that without warnings, he would do  
20 more harm. He was food poisoning.

21 And it was reasonably foreseeable if they  
22 don't get on the phone and call and tell parents there's  
23 been an outbreak of E.coli, then more kids are going to  
24 get sick, and they didn't do it.

25 What did they do? Gordon McEwen talked one on

## Plaintiff's Closing Statement

1 one with the boys and the parents. Never a group  
2 meeting. One on one. Keep it secret. Keep it quiet.  
3 Talk to the parents of the 17. Cooperated with the  
4 police, question mark. Put a question mark there because  
5 it doesn't seem very convincing.

6 Detective Shipley said he knew about initially  
7 two or three, and then I think he eventually said four or  
8 maybe six, but I never knew about the 17. For whatever  
9 reason, noble or not, secrecy or bad judgment or because  
10 he wasn't trained, Gordon McEwen didn't tell Shipley  
11 about the 17.

12 They released Timur Dykes from his sacred  
13 calling. That's the slap on the wrist, the religious  
14 slap on the wrist that I talked to you about in opening  
15 statement. I want to talk about this for just a minute.

16 He was disfellowshipped, whatever that means.  
17 And none of this, none of this should be taken to apply  
18 any disrespect to the LDS Church. But disfellowshipped  
19 does not mean excommunication.

20 It apparently means that you can attend church  
21 but not speak and cannot take the sacraments. But most  
22 importantly, it is done in secret. Something the Boy  
23 Scouts of America would have known because 50 percent,  
24 25 -- I think the Cascade Council president Eugene Grant  
25 said something between one-third and one-half of all

## Plaintiff's Closing Statement

1 Scouting units in the country were operated by LDS  
2 Church.

3 Boy Scouts knew about the LDS disclaimer. The  
4 Boy Scouts had the right to say you can do what you want  
5 to as a matter of doctrine and religious belief, but if  
6 you are going to run our program, here is what you do  
7 when a situation like this comes up. And if that doesn't  
8 work with your religious beliefs, that's fine. We  
9 respect your religious beliefs. You can have your own  
10 program.

11 Here are our rules. They didn't do that. So  
12 this discipline, this slap on the wrist was done in  
13 secret. Nobody even knew why. For all of the church  
14 community knew, Timur Dykes had a sexual relationship  
15 with his girlfriend outside marriage. Macho, young guy.

16 What do you suppose most macho, young guys in  
17 the LDS Church are disciplined for in their early 20s?  
18 What would the congregation have thought? It was the  
19 Scouts' responsibility to make sure the local  
20 organization was trained to tell them what happened and  
21 why.

22 Dr. Wiest said he didn't even know why for  
23 several weeks. And after apparently some period of time,  
24 some break, he's back working with boys. Joel Drebert,  
25 the carpenter from South Dakota, told you a very moving

## Plaintiff's Closing Statement

1 story about coming to church one day and hearing the  
2 other boys, Timur is back, or was it, Timur is back.

3 Joe Severs is working with Timur Dykes a year  
4 later on his Scouting project, on his Eagle Scout  
5 project. Kerry Lewis tells you a continual story of  
6 Timur Dykes being in Scouting.

7 So let's look, by the way, at what the  
8 documents say because you've got the testimony of all of  
9 these people who were there, that after a brief period of  
10 time gone, Timur Dykes was back because of this slap on  
11 the wrist.

12 Let's go to 1409, page 5. These are some  
13 other rosters that you are going to want to know about if  
14 you want to follow Timur Dykes' history. This is for the  
15 year 1980. You can't tell it from there, but you can  
16 tell it from the handwritten notes.

17 It is 1409, page 5. This is the one that Dr.  
18 Wiest didn't even remember. This was the time when Timur  
19 Dykes served as Scoutmaster, not as Assistant  
20 Scoutmaster, some years earlier. And he's on here as  
21 Scoutmaster, SM. There he is during 1980.

22 And then, all of a sudden, for some reason in  
23 May of 1980, he's scratched off and David Rose comes in  
24 as the new Scoutmaster. I'm sorry, the one above. John  
25 McIlmoil comes in as the new -- I can't tell if that's SC

## Plaintiff's Closing Statement

1 or SM. No, I'm right. David Rose is Scoutmaster, 5/80.  
2 So Timur Dykes is out and David Rose is in, 1980.

3           Somebody took great care to make a note of the  
4 fact that Timur Dykes was no longer Scoutmaster in 1980.  
5 It is important to keep these records current and  
6 accurate, right? That's what they did. If you thumb  
7 through these rosters, you'll see over and over and over  
8 again where people, the dates are changed, the addresses  
9 are changed.

10           Then you go to 1409, page 7, this is when  
11 after apparently a year-and-a-half absence from Scouting,  
12 for whatever reason, Timur Dykes comes back as Assistant  
13 in December of '81, which by the way, is absolutely  
14 consistent with what Helen Caldwell told you.

15           They moved to Portland in late '81, in the  
16 fall of '81. Got involved in the church community. One  
17 of the first things that happened was they got a visit  
18 from the home teacher, Timur Dykes. He pretty quickly  
19 started talking to Kerry Lewis about Scouting. Makes  
20 sense.

21           In December of '81, Timur Dykes, he's  
22 Assistant Scoutmaster. He's back in Scouting. And  
23 knowing the way he thinks now, he would be there talking  
24 to young Kerry Lewis about Scouting.

25           And that's where that relationship grew. So

## Plaintiff's Closing Statement

1 again, somebody has taken the time to write in by hand  
2 here because it is important to know who your leaders  
3 are. Timur Dykes, 12/81.

4 Let's go to 1409, page 11. This is for the  
5 year 1982. Timur Dykes, Scout Assistant, the year that  
6 Kerry Lewis is a Cub Scout. The year that Timur Dykes is  
7 abusing the Leech boys. The McIlmoils -- not the  
8 McIlmoils, the Lashbaughs, Joel Drebert, Joe Severs.  
9 This is the year that is happening, folks, right there.

10 And then they say -- so this is 1982. Let's  
11 go to the next one, please. The next one is 1409, page  
12 11 -- 14. This is the roster for year 1983. Expires in  
13 1984, January. This is the year for roster 1983. You  
14 see Timur Dykes there as a Scout assistant. You see no  
15 handwritten changes.

16 It was important to make handwritten changes  
17 to keep the records clear, but they didn't do it in 1983.  
18 I suspect you are going to hear that it was a mistake, an  
19 oversight. But it was done everywhere else.

20 And wouldn't you think that with something as  
21 profound as being removed from Scouting, from molesting  
22 boys, they would make darn sure if they really intended  
23 to take him off the list, they would make darn sure that  
24 he was documented there. They didn't do it.

25 I'm going to suggest the reason they didn't do

## Plaintiff's Closing Statement

1 it is because he wasn't removed from Scouting. He was  
2 given a religious slap on the wrist, told to take some  
3 time off, and then in a few months he's back.

4 The other way we can know this is the most  
5 official document you can find from Boy Scouts National  
6 or Cascade Pacific Council is Timur Dykes' I.V. File,  
7 which is 1313, Exhibit 1313. Now, remember, this is  
8 created in March of '87. They don't even create a file  
9 until four years later.

10 Tim Van Dykes, all this information and his  
11 interests, rock climbing and reptiles, these are things  
12 Scouts knew about him. Rock climbing, reptiles were his  
13 interests. And Troop 719, Portland, Oregon, Scout  
14 assistant, date registered, January '84, date resigned,  
15 1985. Sexual molesting of young boys.

16 It doesn't say 1981. It doesn't say kicked  
17 out in January 1983. It says registered. And I'm going  
18 to suggest what it means is re-registered in '84 and  
19 resigned in '85.

20 That is the conclusion you have to draw from  
21 that evidence. And it is the most consistent with what  
22 all those boys said. After a short period of time, six  
23 months, nine months, a year, three months, who knows, but  
24 after some period of time, Timur Dykes was back in  
25 Scouting.

## Plaintiff's Closing Statement

1           Now, they may say this is a mistake. I don't  
2 know. They haven't explained this. But there's a simple  
3 way to clear it up. They are in control of all of the  
4 annual registrations, those pieces of paper that  
5 everybody testified they had to fill out every year and  
6 send off to the Boy Scouts to make sure they are still  
7 approved for leadership.

8           These defendants have not produced one piece  
9 of paper, one registration for Timur Dykes. Now, either  
10 it was lost, or something else happened to it, but they  
11 haven't produced it. And what the witnesses have  
12 testified to, the boys who were there is most consistent  
13 with this documentary evidence. What the documentary  
14 evidence says is that Timur Dykes was the official Scout  
15 assistant all through 1983 into 1984 and maybe into 1985.

16           They did not tell the parents of the other 13.  
17 Remember, 17 out of, I think the evidence was 30 members,  
18 they didn't tell the parents of the other 13. They  
19 didn't tell the parents of the non-LDS boys.

20           Remember, there was testimony that not all of  
21 the boys in the troop were LDS. So how would those  
22 parents know about the religious slap on the wrist? They  
23 didn't tell them. They didn't tell the parents of the  
24 other Cub Scouts in Troop 719. And most importantly,  
25 they didn't tell the parents of Kerry Lewis right there



## Plaintiff's Closing Statement

1 on the roster next to the Leech brothers.

2 The Scout defendant's position in this case is  
3 it was not foreseeable that a guy who had molested 17 Cub  
4 Scouts and Boy Scouts would molest others if those  
5 parents weren't warned. But notice an interesting thing.

6 For all of the long, intelligent and sometimes  
7 hard-to-follow explanations that Professor Warren from  
8 the University of Virginia with her seven graduate  
9 interns gave you, she had a lot of words, she said a lot  
10 of things, she never once gave an opinion that this met  
11 the standard of care in 1983.

12 She says she wasn't asked. You remember she  
13 didn't know anything about the facts of this case. That  
14 wasn't part of her assignment. That means they've  
15 offered you no expert testimony whatsoever that they met  
16 the standard of care in 1983.

17 They couldn't even get Professor Warren to  
18 hold her nose and say that. They couldn't or wouldn't  
19 find an expert to say they met the standard of care in  
20 January of 1983 at the local level. Because it is  
21 foreseeable. That series of events is foreseeable.

22 When you are keeping the local negligence  
23 claim -- when you are deliberating on the local  
24 negligence claim, keep that in mind about what they did  
25 not produce in terms of evidence.

## Plaintiff's Closing Statement

1           You may recall in my opening statement that I  
2 made a suggestion to you that you would want to watch --  
3 shifting to another area now -- that you would want to  
4 watch for parallels between the national and the local.

5           I already gave you some of those. That was  
6 the list of the files about the attributes of what they  
7 knew about the way pedophiles operated and a number of  
8 those places it exactly matches up with what happened  
9 with Timur Dykes.

10           That's one of the links I wanted to talk to  
11 you about. But the second link I want to talk to you  
12 about -- the reason that that's important is because  
13 these files represent the pedophile's playbook.

14           You don't see the trends from below, from on  
15 the ground. If you are McEwen or Wiest, you don't know  
16 this. The chartering organizations don't know this. You  
17 only see the trends from up above where the Boy Scouts of  
18 America were.

19           And as Mr. Wolff told you, see what you can  
20 learn. Every abuse -- I think he said every abuse  
21 incident that came in, we studied. We tried to figure  
22 out what could we learn from it because they knew this is  
23 the pedophile's playbook.

24           So there's one link. What was happening at  
25 the National level and what was happening at the local

## Plaintiff's Closing Statement

1 level, all of the various aspects of Timur Dykes' MO that  
2 paralleled what was happening in the national files.

3 But, second, I want to talk to you about  
4 Gordon McEwen and Earl Wiest and show you a link between  
5 the national negligence and what happened locally.

6 When Gordon McEwen was pressed with the  
7 question of didn't you think that a guy who had molested  
8 17 would molest more, he said pretty directly, pretty  
9 candidly, I didn't let that register. I didn't let that  
10 register. He hadn't been trained to let that register.

11 Do you remember Dr. Wiest told a powerful  
12 story about a year later, a year after he knew because he  
13 eventually knew what was going on with Timur Dykes and  
14 the reason for the allegations a year later, do you  
15 remember he said he was in a restaurant with his wife,  
16 and they looked across the restaurant and there was Timur  
17 Dykes with a young mother and a small boy.

18 He said, I got an uncomfortable feeling in my  
19 stomach. I think he said something like that. I was  
20 uncomfortable, and I didn't know what to do.

21 All of that training, the Scoutmaster  
22 training, the Wood Badge training, the dedicated,  
23 committed Scout leader, that Dr. Wiest obviously was,  
24 taking training and giving training and trying to help  
25 boys, that he doesn't know what to do? Because he hasn't

## Plaintiff's Closing Statement

1       been trained.

2               If the BSA had simply done what the Big  
3       Brothers and Sisters did, which was to train its  
4       volunteer and its professional staff, both of these men  
5       would have known what to do. And whoever that little boy  
6       was sitting with that mom, that who, the minute Timur  
7       Dykes laid eyes on him, it was game over, whoever that  
8       little boy was could have been spared, along with the  
9       other 17, along with Kerry Lewis.

10              They didn't even know about the national  
11       problem. They both testified, they never heard about the  
12       files. Heard nothing about the national problem. So the  
13       Boy Scouts keep its pedophile problem hidden from the  
14       chartered organizations. When it all goes bad, they come  
15       into court and claimed the chartered organizations.

16              You have to wonder when they formed these  
17       partnerships with schools and rotaries and Methodist  
18       Churches and Catholic Churches and LDS churches and  
19       Future Farmers of America, do they shake hands and look  
20       them in the eye and give them that Boy Scout look, and  
21       say we're partners, but, by the way, if it goes bad and  
22       something happens and there's a lawsuit, you are on your  
23       own? We're not partners anymore.

24              They hid the pedophile problem from parents  
25       and from chartering organizations. That's punitive

## Plaintiff's Closing Statement

1 damages fact number three.

2 I want to go briefly through, as a transition,  
3 to the section where I'm going to talk about Kerry Lewis'  
4 damages. I want to talk briefly about the legal notion  
5 of causation, which means we've got to pull up some more  
6 jury instructions.

7 Would you pull up 26, please? I want to talk  
8 to you about the idea of causation in the law. It a  
9 little bit different than you might be used to it on the  
10 streets.

11 What is a cause of something? "A cause is  
12 defined as an act or omission that is a substantial  
13 factor in producing or bringing about the injury and  
14 damage. A substantial factor is an important or material  
15 factor and not one that is insignificant."

16 So substantial factor, that's the test. Was  
17 the Boy Scouts of America's negligence a substantial  
18 factor in Kerry Lewis' abuse? And you'll note from  
19 Instruction 27 that there can be multiple causes.

20 If you find the Scout defendant's acts or  
21 omissions were a substantial factor in causing the  
22 injury, you may find that the defendant caused the  
23 injury, even though it was not the only cause.

24 So substantial factor is the test that you are  
25 looking for and it shows up in two places. One is what

## Plaintiff's Closing Statement

1 they did that caused -- was it a substantial factor in  
2 Kerry Lewis' abuse? And you say yes.

3 And, two, did the abuse by Timur Dykes cause  
4 Kerry Lewis' damages? Was it a substantial factor in  
5 bringing about his damages? Was the negligence a cause?  
6 Yes, it was.

7 The parents both testified they knew nothing  
8 about the Boy Scout's national pedophile problem. And if  
9 they had, they would have done things differently. They  
10 are down there in Klamath Falls, and they've got Kerry  
11 Lewis back in Scouting because they think they just had a  
12 narrow miss in Portland.

13 They don't know about this. They don't know  
14 about Timur Dykes. When they found out about him in  
15 Tillamook, they ended that relationship. Causation. If  
16 they had known, they had been warned, they would have  
17 done things differently. And then causation of Kerry  
18 Lewis' damages, that what happened to him by Timur Dykes  
19 was a substantial factor in causing his damages.

20 Dr. Sebastian, I think really said -- I  
21 believe she really said that the abuse caused Kerry Lewis  
22 no damage, that she couldn't come to a professional  
23 opinion that it did.

24 So let's talk for a few minutes about the  
25 damages. Folks, I'm sorry this is going longer than I

## Plaintiff's Closing Statement

1 expected, but it is. I told you in opening statement  
2 that in this trial, you would see a different face of the  
3 Boy Scouts of America than you were used to. I want to  
4 talk about another face. I want to talk about the face  
5 of Kerry Lewis.

6 It is a nice face. It was a nice face as a  
7 little boy. And I want you to imagine a 12-year-old boy,  
8 young, maturing face, has sulfuric acid thrown in his  
9 face and it becomes deformed and burned and scarred.  
10 You've seen people with horrible burns on their faces.

11 Remember, in voir dire, we talked about  
12 invisible injury? I'm going to suggest to you that what  
13 happened to Kerry Lewis was like acid in the face, only  
14 it was the inside face. The psychologist called it the  
15 psyche. Spiritual people call it the soul. Whatever you  
16 want to call it, the inner face of a young boy was  
17 deformed and scarred.

18 Can we have 1341, page 3?

19 Again, he went from all of the confident and  
20 energy and enthusiasm in the world, a self-image, you  
21 heard it, he said the "best in the west," that was his  
22 self-image from being trusting and eager and interested  
23 to secretive and withdrawn and private.

24 By the time he's in high school, he's doing  
25 drugs and alcohol. He's readily involved with girls and

## Plaintiff's Closing Statement

1 sex. He's got a loss of motivation. Loss of grades.

2 What happened, I asked him. There was nothing  
3 to fill the void of Timur Dykes. He tried. You remember  
4 soccer, wrestling. He dropped out of both of those. Ten  
5 and two in wrestling, he dropped out. Lost his  
6 motivation. He was, as he said, hollow. Interesting  
7 word, "hollow." So what did you do when you felt hollow?  
8 I started drinking and partying and hanging out with  
9 girls. He's no longer the best in the west.

10 Timur Dykes had told him you are going to be  
11 somebody. I don't have to worry about you. You will be  
12 somebody. You are going to be all right. And what he  
13 said was that was a lie. Everything about Timur Dykes  
14 was a lie, and so I was a lie. Did you hear him say  
15 that? I was a lie.

16 It is a kind of incest really being abused by  
17 a trusted adult. And it means that the whole  
18 relationship by definition is a fraud. So Kerry Lewis  
19 felt like a fraud. He was a lie.

20 I'm going to put a cold list of some of the  
21 areas of his damages up here on this paper. And it is a  
22 good example of the limits of words. Labels and words  
23 don't describe experiences, but this is the best we've  
24 got.

25 We've got the self-concept and the



## Plaintiff's Closing Statement

1 self-identity. We've got drug and alcohol issues. I  
2 want to talk about those for a second. What do you know  
3 about, by common sense, about drug and alcohol problems?  
4 It is an escape. It is a filler. It works for a while,  
5 and then it began to eat him alive.

6 People in the 12-Step Program say, I took a  
7 drink, the drink took a drink, the drink took me. I took  
8 meth, meth took meth, meth took me. He's in the United  
9 States Navy and he weighs 95 pounds because what he's  
10 done to meth and what meth has done to him. And the  
11 insanity of that drug and alcohol culture lasts for a  
12 decade or so, and he still struggles with it.

13 Although, his denial is broken and he knows  
14 what he has to do. Now, what about the causal link here?  
15 Dr. Sebastian said there's no causal link. It is all  
16 genetic. It runs in the family. Bad genes. Bad family.  
17 Bad examples. Klamath Falls.

18 Dr. Conte went through very carefully and  
19 explained Kerry Lewis never saw his grandparents model  
20 drinking behavior. And prior to his own drinking, he  
21 never saw his parents model problem drinking. They both  
22 testified that they developed some problem drinking when  
23 their marriage began to break up. And by that point,  
24 Kerry Lewis was already involved. It is not a modeling  
25 thing, at least not for him.

## Plaintiff's Closing Statement

1           They point to his brothers. Dr. Conte  
2 explained why that can be explained for modeling.  
3 Younger brothers modeling what big brother does.  
4 Interesting that the sister doesn't have alcohol or drug  
5 problems.

6           Clearly, at least the early onset, even if  
7 Kerry Lewis was going to have a substance abuse problem,  
8 the early onset, the intensity and the duration were  
9 impacted by the abuse. That's the clear testimony of  
10 what Dr. Conte said. Of all of the things that you know  
11 about child abuse survivors, what's the first thing that  
12 comes up on the list? Drug and alcohol issues. And  
13 there we have it in this case.

14           I didn't hear Dr. Sebastian say that even if  
15 you are going to have a drug or alcohol problem, the  
16 child abuse is the prescribed remedy; that it helped him;  
17 that it is what we hope happens to a kid who is going  
18 through a tough time with drugs and alcohol.

19           I don't even think Dr. Sebastian said that.  
20 Obviously, the drug and alcohol issue was connected to  
21 the abuse. It cannot not be. And Dr. Conte explained  
22 why.

23           Then you've got guilt, guilt for what he did  
24 to his brothers, guilt for lying to his parents, guilt  
25 for the wasted years, for the impact on the relationship

## Plaintiff's Closing Statement

1 with his daughter, guilt because I allowed it to happen.  
2 A universal feeling for child abuse survivors, according  
3 to Dr. Conte.

4           Guilt and shame. Guilt says I made a mistake.  
5 Shame says I am a mistake. There's something  
6 fundamentally wrong with me. Kerry Lewis said I feel  
7 like the whole world got an instruction manual and I  
8 didn't get one. I always felt behind. I always felt  
9 like I didn't quite get it.

10           He used the word "emasculating," this abuse  
11 was emasculating. For a man to be emasculated, for a boy  
12 to be emasculated is profound. It is like -- it is  
13 almost like saying I've been castrated. It is  
14 emasculating. He feels hollow.

15           Relationships with girls and women. He has no  
16 understanding of intimacy and he never has. He doesn't  
17 know how to be emotionally available. I'm not talking  
18 about the normal sort of men-don't-get-it kind of thing,  
19 where men don't know how to be emotionally available.  
20 This is something different. According to what Dr. Conte  
21 said, this is something different.

22           He didn't have any steady girlfriends in high  
23 school. He didn't have the normal development  
24 experience, that combination of awkward friendship and  
25 then romance and then sexuality, where it all gets

## Plaintiff's Closing Statement

1 blended together, and we call that intimacy.

2 He never had that. He went immediately to  
3 prove his masculinity, according to Dr. Conte, to  
4 sleeping with girls, having relationships with girls'  
5 bodies. That was his first experience with intimacy.

6 How much is that worth? Not knowing how to be  
7 intimate in a romantic relationship. How do you put you  
8 a price on that? Relationships with men, with boys and  
9 men. Dr. Conte was eloquent in talking about the loss of  
10 a transitional figure, the mentor.

11 Societies have different ways of turning boys  
12 into men. Some traditional societies, it is done through  
13 a right of initiation with a tribe. In the Western  
14 culture, it is usually been done through the idea of a  
15 mentor.

16 We're going to spread the load off the fathers  
17 and we're going to allow groups of good men to help turn  
18 these young boys into men. That's what coaching is  
19 about. That is what Big Brothers and Sisters are about.  
20 That is what Boy Scouts of America is supposed to be  
21 about.

22 Can I have slide one? This is what Boy Scouts  
23 of America is supposed to be about. You see it here with  
24 Timur Dykes and Kerry Lewis and you see it there in the  
25 handbook.

## Plaintiff's Closing Statement

1 Timur Dykes was a hero to Kerry Lewis. He  
2 said he was bigger than life. He taught him practical  
3 skills, ropes and knots and climbing. Gave him an  
4 identity as a climber, but he also talked to him about  
5 God and faith and problems. And then suddenly, one day,  
6 he was gone in Tillamook. He's yanked out of Kerry  
7 Lewis' life.

8 And Kerry Lewis learns that not only was his  
9 hero gone, it would have been better if Timur Dykes had  
10 been killed in an auto accident in terms of its impact on  
11 Kerry Lewis. Not only is my hero gone, but he's a fake  
12 and a fraud, and the whole relationship has been a lie,  
13 and I have been a lie.

14 So Kerry Lewis doesn't trust men. He doesn't  
15 know what it is to have a group of five or ten men in  
16 your cell phone that he can pick up and call any time and  
17 say I need help. I don't know how to do this. You are a  
18 good dad. I don't know how to do what I need to do with  
19 my daughter, will you help me?

20 He doesn't have a group of men that he can  
21 call and say, I've got this thing with drugs and I want  
22 to get clean, how do I do it? He doesn't know how to ask  
23 for help. He doesn't know how to be real and vulnerable.

24 Although, he is learning and he made a  
25 courageous effort to sit up there and bear his soul to

## Plaintiff's Closing Statement

1 you and be vulnerable to you and real and authentic, he  
2 couldn't name five friends, male friends. He could name  
3 three.

4 The only two people he could say he'd been  
5 authentic with, the men that he'd been vulnerable and  
6 authentic with are two lawyers, one of whom he's known  
7 several months and one of them he's known less than two  
8 years. How do you measure that loss?

9 And then the last area is achievement and  
10 career. I'm going to cut this short by just giving you  
11 one example, one contrast. His brother, Joshua, came  
12 here and testified.

13 Remember, Joshua, 32-year-old, young jet  
14 mechanic. Five years younger than Kerry Lewis. He  
15 struggled with drugs for a while. Got himself cleaned  
16 up. Went into the Army. Served honorably. Came out  
17 with all kind of service awards. Went through Lane  
18 Community College at the end of his military career.  
19 3.87. Got the job of his life. Loves his job. Jet  
20 mechanic, just like my dad.

21 That's where Kerry Lewis should have been five  
22 years ago. Even if you believe he was genetically  
23 predisposed to drugs, here he is five years older and  
24 he's still finding his way.

25 How do you put a value on a scarred soul? How

## Plaintiff's Closing Statement

1 do you put dirty dollar value on a scarred inner face?

2 And that's your job.

3 As I told you in voir dire, we didn't invent  
4 this system. If it was up to Kerry Lewis, you would all  
5 have a blue button and an orange button, and if you push  
6 the blue button, we would go back in time and undo what  
7 was done to Kerry. And we would be asking nine of the 12  
8 of you to push the blue button.

9 But we don't have blue button justice. We  
10 have monetary justice. It is a certificate, a coupon of  
11 justice. It is the best analogy I can come up with. It  
12 is what we ask you to do to value somehow, value these  
13 losses, that pain and suffering, which is not over, by  
14 the way.

15 You've heard Dr. Conte. He's got a lot of  
16 work to do. How do you put a dollar figure on that?  
17 Somebody asked in voir dire, what's the formula? It is a  
18 very good question. And the answer that his honor gave  
19 you is that there is none. There's a jury instruction on  
20 it, and you should follow that closely, but it doesn't  
21 have a formula in it.

22 You have to use your common sense and your  
23 instincts and your judgment. They call it an award of  
24 economic damages, what your award will be. An award is  
25 something that you earn.

## Plaintiff's Closing Statement

1 I'm going to suggest this is more like  
2 restitution. We are asking you to make them pay back  
3 what they took from him to the tune of \$4 million. His  
4 restitution, pay it back. Any of you who saw that fly  
5 fishing movie called *The River Runs Through It*, you may  
6 remember it had Brad Pitt in it. It wasn't one of Brad  
7 Pitt's early, big movies.

8 Had a scene were Brad Pitt and his brother had  
9 stolen a drift-boat -- a row boat, and they take it down  
10 the waterfalls and they busted it all up. And their very  
11 strict Scottish, Presbyterian, minister father said you  
12 will work off every cent of its value.

13 And what we are asking you to do is to say to  
14 the Boy Scouts of America and the Cascade Pacific  
15 Council, you are responsible for every cent of the value  
16 that you took from this man. And you tell youth  
17 organizations that if you put the interests of the  
18 organization ahead of the interest of the children, that  
19 in Portland, Oregon, you will be forced to pay every cent  
20 of the value of the damage and harm.

21 Let there be no doubt about this, what this  
22 jury thought happened in this courtroom in the last three  
23 weeks. And I want to conclude with just a few more  
24 thoughts, particularly on the punitive damages question.  
25 Child abuse thrives in secrecy. And it is nourished and



## Plaintiff's Closing Statement

1 fed by secret systems.

2 The Boy Scouts of America has planned and  
3 schemed and fought to protect its secrets for decades.  
4 And now, when a gutsy little guy has the nerve to stand  
5 up to them and say you are not going to call me a liar,  
6 now is the time to reckon.

7 It took a lot of persistence and hard work to  
8 get those files to you. And what they mean, what they  
9 signify is huge. The secrets are out. They kept their  
10 secrets. They kept them hidden. And you need to speak  
11 with them in the language that they will understand, the  
12 language of punitive damages.

13 And you take their secrets and you shout them  
14 from the rooftop of this courthouse that we're not going  
15 to allow youth organizations to keep secrets about hidden  
16 dangers from children.

17 You say to them, if you break the community's  
18 rules, you will pay every cent of the harm you have done  
19 because you don't get a second chance to protect  
20 children. That's the compensatory damages piece.

21 But the second message from you should be that  
22 the Boy Scouts of America were held accountable by a jury  
23 of diligent and attentive citizens who refused to play  
24 the secrecy game and made the secrets public so that  
25 youth organizations know you can't put the 3M's ahead of

## Plaintiff's Closing Statement

1 the safety of children.

2 And you do all that with a powerful,  
3 compensatory damages verdict and a "yes" on the punitive  
4 damages verdict form. Give voice to Kerry Lewis'  
5 inarticulate words, that voice that was silenced for so  
6 long.

7 As an old saying, speak your truth even if  
8 your voice shakes. Add your voice to Kerry Lewis' and  
9 tell the world that this is not okay, what they did is  
10 not okay. They broke the community's rules.

11 You are the conscience of the community. The  
12 jury system is the most powerful mechanism in the  
13 democratic world for reform. It doesn't mean it is easy.

14 You think the early cases involving the  
15 Catholic Church were easy for these people to stand up  
16 and say what happened to them, for juries struggling to  
17 find the truth to know what's the right thing. It wasn't  
18 easy. It couldn't have been easy.

19 But 5,000, 10,000 men and women across this  
20 country stood up and say what happened to them, the  
21 juries began to hold them accountable. No disrespect to  
22 the Catholic Church, after all of the good and honorable  
23 things that they do, but they had a problem and it needed  
24 to be cleaned up.

25 And the Catholic Church is a sacred place that

## Plaintiff's Closing Statement

1 it was 25 years ago, not because the bishops got the Holy  
2 Spirit, but because the bishops got sued over and over  
3 again by courageous men and women and held accountable by  
4 juries who wouldn't put up with it.

5 And now it has spread. And the rest of the  
6 world's democracies are demanding accountability. It  
7 started in the United States of America with juries just  
8 like you.

9 This is also an important case for the Scout  
10 defendants, not only youth organizations and  
11 organizations that take care of senior citizens and  
12 another vulnerable class of people. Physical or mental  
13 handicapped organizations, not only will they learn that  
14 they can't get away with putting the 3M's first.

15 But by the right verdict here, you can stand  
16 with the thousands and millions of good men and women and  
17 boys in the Boy Scouts of America at the troop level and  
18 at the chartering organization level who believe in  
19 Scouting. And you stand with them and not with a  
20 corporate culture that values the 3M's over the safety of  
21 boys.

22 We ask you to return a verdict of \$4 million  
23 for what happened to Kerry Lewis. And we ask you to send  
24 a powerful message with a "yes" on the punitive damages  
25 verdict, so that everybody will know that it is wrong to

## Plaintiff's Closing Statement

1 keep secrets about hidden dangers to children.

2 Thank you for your attention.

3 THE COURT: Mr. Smith.

4 MR. SMITH: Can I have just a couple of  
5 minutes, your Honor, to set the courtroom up?

6 THE COURT: Yes, sure you can.

7 MR. SMITH: Thank you.

8 (Brief recess.)

9 MR. SMITH: Thank you.

10 THE COURT: Jurors, it is my expectation that  
11 we're going to interrupt Mr. Smith's argument for lunch  
12 before he's finished.

13 Are you expecting that, Mr. Smith?

14 MR. SMITH: No, I don't think I'll finish.

15 Good morning, folks. Sorry for the  
16 interruption there. We've been together four weeks. So  
17 you know my name is Chuck Smith and I represent the Boy  
18 Scouts of America.

19 When you first came here, I don't know if you  
20 expected to hear about the Catholic Church, but I want to  
21 start by making a comment here and be right up front  
22 about it.

23 This is not a case against the Catholic  
24 Church. There's absolutely no similarities between this  
25 case and the Catholic Church. And if you've been reading

## Defendants' Closing Statements

1 in the media lately, I would ask you to set those  
2 incidences aside involving the Catholic Church.

3 That emphasis and my client's pain is  
4 misplaced, and when Dr. Warren was asked about it, she  
5 made short work of it. She said there's virtually no  
6 comparison whatsoever, and that's the end of it. This is  
7 not a case against the Catholic Church.

8 You folks have been very patient. We've been  
9 here four weeks. And I'm kind of -- I wondered that on  
10 the first interview and this case was discussed with you,  
11 if you really knew what you were in for.

12 The court told you and told us it is going to  
13 be a long trial. We're going to have some long days and  
14 you are going to work hard. The court has worked hard.  
15 Staff has worked hard. The court reporter is working  
16 hard. And you folks have been working hard.

17 I know you've been taking notes. You've been  
18 paying attention. There's been questions submitted, and  
19 I hope, I think, I don't know, it is probably 10 or 12  
20 questions submitted, I don't remember, I would hope that  
21 they were all answered and to your satisfaction.

22 We've all been working hard, even the  
23 attorneys. But now, we're getting close to the end of  
24 our work, the lawyers are and his Honor is at least for a  
25 while. And it is going to be turned over to you, and you

## Defendants' Closing Statements

1 are going to have more hard work.

2 We're supposed to be careful about thanking  
3 jurors for their service, but I think I can speak on  
4 behalf of the court and the staff here and the lawyers  
5 involved in this case and the parties they represent,  
6 that we do appreciate your service and the time you've  
7 taken out of your personal lives and your jobs and away  
8 from your families to be of service to the court and  
9 these parties. We all appreciate that.

10 You should make no mistake about this, and I'm  
11 sure it is evident from Mr. Clark's comments that this is  
12 the time for argument. And I hope to touch on some areas  
13 in this case. And the evidence you've heard and the  
14 documents that you are going to review, I hope to  
15 convince you of the merits of my client's case.

16 But make no mistake about it, folks, that's  
17 exactly what it is. It is argument. And what I say is  
18 not evidence. And you take into the jury room your notes  
19 and your recollection of the evidence. And if it was  
20 different from what I suggest to you, by all means,  
21 disregard what I am suggesting.

22 I'll try to touch on the evidence and I'll try  
23 to remember as best I can, but if your memory and your  
24 notes differ, you are to go by your memory and your  
25 notes.

## Defendants' Closing Statements

1           Mr. Clark is going to have an opportunity to  
2 stand up and rebut, give a rebuttal argument after I'm  
3 done and after Mr. Xochihua is done. So I would ask that  
4 if I touch on something that you think is significant, I  
5 would ask that you hold it in your memory. And after you  
6 hear the remaining arguments in the case, that you take  
7 whatever you believe is significant that I might touch  
8 on, take it into the jury room at the appropriate time  
9 and deliberate accordingly.

10           Another thing that I'm sure is obvious, ladies  
11 and gentlemen, this is not my case. It is the  
12 plaintiff's case, Mr. Kerry Lewis. It is the Boy Scouts  
13 of America's case, and it is the local Council's case.

14           The reason I touch on that is simply this, and  
15 I don't mean to be standing quite so close here, right on  
16 top of you, I'll move this back a bit, but there are  
17 things that happen in a four-week trial, I guess we  
18 haven't been here 28 days, but it seems like it, for over  
19 a four-week time span.

20           Lawyers do things in court or witnesses  
21 testify in a certain fashion or there's objections made  
22 or something like that, and you, as jurors, might take  
23 offense to that, and that's perfectly understandable.

24           And the reason I'm touching on it is because  
25 if there's something that I've done personally during the

## Defendants' Closing Statements

1 course of this case that you might have taken offense to,  
2 either an objection to something that you wanted to hear  
3 or a manner, objection, or some kind of cross-fire  
4 between counsel and the parties, I would ask you not to  
5 hold it against my client, the Boy Scouts of America. I  
6 think you'll find that is fair enough. I would hope so.

7 The court has instructed you on the law  
8 already. And I am not going to talk a lot about the law.  
9 We talked about your responsibilities as prospective  
10 jurors during the voir dire portion of this case.

11 And I hope you recall that we did ask, and I  
12 did ask on behalf of the Boy Scouts of America that you  
13 folks wait until you hear all of the arguments, all of  
14 the evidence, the court's instructions before you start  
15 making up your mind about the case. And I trust that  
16 you've done that.

17 The court has told you that you are not to  
18 allow bias, sympathy, prejudice, emotions appeal to your  
19 better judgment, and we trust that you'll do that. You  
20 are not to allow guesswork or speculation to enter your  
21 deliberations, and I'm sure you'll do that.

22 The court has instructed you about agency and  
23 about control. And I'm not going to flash these things  
24 up on the screen. I'm not very good at doing that kind  
25 of thing. You probably saw that during the course of



## Defendants' Closing Statements

1 this trial.

2 But you'll have those -- you'll have an  
3 opportunity take those instructions with you into the  
4 jury room, and I would ask that you look at them closely  
5 and review them closely when you are looking at the  
6 evidence. And look at the instruction involving burden  
7 of proof. And remember the court's words about burden of  
8 proof.

9 I want to talk to you a little bit, too, about  
10 the fact that you don't have to set aside your common  
11 sense when you go into that jury room.

12 And with regard to that, what about this  
13 fellow, Larry O'Connor, who testified here a few days  
14 ago? What has a regrettable situation got to do in my  
15 client's history back in the '70s about inflating  
16 membership lists?

17 What does that got to do with this case? What  
18 does it got to do with claim of sexual abuse against  
19 Kerry Lewis crept into this case because a comment about  
20 public relations and the Boy Scouts concern about public  
21 relations?

22 Well, from a common sense standpoint, why  
23 wouldn't the Boy Scouts be concerned about public  
24 relations? Everybody is concerned about public  
25 relations. Nobody wants bad press. Nobody wants bad

## Defendants' Closing Statements

1 opinions. Nobody wants bad reputation, whether it is  
2 your neighbors, your family, your friends, whatever.

3 But please recall the cross-examination about  
4 that evidence and how those people were treated. People  
5 were fired. People lost their jobs and so forth. You  
6 heard the cross-examination.

7 That's something that happened back, many,  
8 many years ago. And the idea of holding the Boy Scouts  
9 responsible or trying to personalize them for something  
10 like that now by letting that kind of evidence creep into  
11 the case, I would submit to you from a common sense  
12 standpoint, doesn't wash in this case.

13 What about Timur Dykes? Counsel is right. He  
14 fooled everyone. The consummate conman. He fooled his  
15 church. He fooled his parishioners who were with him.  
16 He fooled the Lewis family. He fooled the Scouts. He  
17 fooled the Scouting program.

18 He fooled Adrian Leech and even after Adrian  
19 Leech and his family and his mother knew about his  
20 situation, Adrian Leech was still working with him and  
21 still going to his apartment. He fooled law enforcement.  
22 And he even fooled this court, not Judge Wittmayer, but  
23 another judge who you've heard testify. He even fooled  
24 the court.

25 He was able to escape notification of my

## Defendants' Closing Statements

1 client until 1987 is the first we heard about that. It  
2 has been suggested that that's when the lawsuit was  
3 filed.

4 Take a look at his file and you'll see what is  
5 in it. I'm not so sure that is correct, that the first  
6 notification that the Boy Scouts of America knew about  
7 this fellow was back -- was 1987. So he has a long  
8 history of fooling people.

9 You'll find in the I.V. File that there  
10 appears to be an error or mistake. I would submit to you  
11 it is a mistake. It is Exhibit 1313. And it talks about  
12 him being registered in 1984 and leaving the registration  
13 roles in 1985.

14 And I would submit to you clearly, that's a  
15 mistake. There's no rolls or no registration rolls that  
16 would have him on them in 1984 that we know of. Why not?  
17 I do not know why. We can't explain why. That's some 30  
18 years ago. But it appears to be a clear mistake in terms  
19 of his registration.

20 I told you in opening statement, ladies and  
21 gentlemen, what I believed the evidence would show. We  
22 talked about, and I talked about it the very foundation  
23 of the Boy Scouts of America's program, the charter  
24 organizations and how it is established in local  
25 communities and how those are formed.

## Defendants' Closing Statements

1           And the local charter organizations around  
2 this country and here locally consist of school  
3 districts, it consisted of law enforcement, auxilliary,  
4 Elks clubs, banks, churches such as the LDS and various  
5 youth organizations.

6           Most importantly, ladies and gentlemen, I  
7 think I communicated to you, or I tried to tell you in  
8 opening statement the foundation of these charter  
9 organizations, our parents, and to suggest that we don't  
10 trust parents is wholly contrary to the Boy Scouts  
11 program.

12           We rely heavily on parents. You've heard  
13 evidence of that effect. It has been suggested in  
14 closing argument that we don't trust the parents. That  
15 just defies common sense from the Boy Scouts of America's  
16 perspective.

17           We rely on parental involvement. It is one of  
18 the ways that we rely on the knowledge of local  
19 volunteers, the people from the community, people that  
20 are known by parents, people that are members of or  
21 involved with charter organizations, are people that are  
22 supposed to be known locally, and that's what we count  
23 on. It is kind of our first line of defense. I told you  
24 that in opening statement.

25           And we talked a little bit about the structure

## Defendants' Closing Statements

1 of the Boy Scouts of America and how that works. The  
2 local charter organizations form a unit. They select  
3 their leaders. They determine the activities. They  
4 carry them out, and they do so on a day-to-day basis.

5 You've never heard one shred of evidence in  
6 this case, ladies and gentlemen, that the Boy Scouts of  
7 America are involved on a day-to-day basis at the  
8 operational level telling folks like the LDS Church how  
9 to run their unit or their troop units. I'll talk to you  
10 a little bit about you that later.

11 But Mr. Schoener testified, in response to a  
12 question, he talked about, I believe you'll recall, and I  
13 wrote this down as a quote, the all-powerful  
14 Congressionally chartered Boy Scouts of America.

15 That all-powerful organization, ladies and  
16 gentlemen, the evidence is, the ground floor of it  
17 consists of one million-plus volunteers annually,  
18 everyday people, just like ourselves in this courtroom,  
19 volunteering their services.

20 And above all, I hope I made it abundantly  
21 clear in opening statement that the Boy Scouts of  
22 America, folks, are not here to blame anyone. And I  
23 don't mean maybe. We're not here to blame Mr. Lewis'  
24 parents, his father, Jimmy Lewis. We're not here to  
25 blame his mother, Helen Caldwell. We're not here to

## Defendants' Closing Statements

1 blame the plaintiff himself. We're not here to blame the  
2 LDS Church.

3 We're not making any excuses for our program.  
4 And you've heard no excuses from us, contrary to what's  
5 been suggested. And I want to assure you again, we're  
6 not here to blame anybody for what has happened here. I  
7 would submit to you, respectfully, that's not what the  
8 evidence shows.

9 What the evidence does show, and I hope it has  
10 been made abundantly clear in that regard as well, we are  
11 dealing with a period of time some 25 to 30 years ago,  
12 aren't we? And in the early '80s, we tried to bring to  
13 your attention and bring you the evidence of what was the  
14 standard of care during that period of time. What was  
15 known during that period of time?

16 The Big Brothers and Big Sisters, one of their  
17 straw men testified, a fine man. He's done a lot of  
18 good, but they have an entirely different program and an  
19 entirely different purpose. We have comparable  
20 organizations, clearly, and we have comparable  
21 approaches. And I'll talk to you about that a little bit  
22 later, but that's where it ends. They are not the same  
23 entities.

24 Ladies and gentlemen, for a hundred years, the  
25 Boy Scouts of America have been intrusted with the safety

## Defendants' Closing Statements

1 of millions of boys and young men. And I would submit to  
2 you that from the first time that we hold our children in  
3 our arms, they are most precious asset that we have.

4 And to suggest that the Boy Scouts of America  
5 don't understand or don't appreciate that is not  
6 appropriate, folks. We haven't existed for a hundred  
7 years because that's how we treat young men and young  
8 women as well, some cavalier, uncaring attitude.

9 The claim that the Boy Scouts of America would  
10 deliberately, yes, even recklessly do anything beyond  
11 what's been claimed here or what has been claimed here is  
12 beyond my client's imagination truly. The Boy Scouts of  
13 America, folks, depend on parental involvement. And we  
14 believe and support the family, morality, God, country,  
15 you've heard that all before in this case.

16 If you think for one minute, ladies and  
17 gentlemen, and I mean, one minute that people like Bishop  
18 McEwen, Bishop French, Dr. Earl Wiest, Jim Bean, Grant  
19 Robinson, Jack Powell, Mr. Bybee, men who are dedicated  
20 in the LDS Church, men who are obviously involved with  
21 the Scouting program, men dedicated to success, men who  
22 support and subscribe to the Scout oath, and that is on  
23 my honor, I will do my best to do my duty to God and my  
24 country, and to obey the Scout law, to help other people  
25 at all times, to keep myself physically strong, mentally

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1     awake and morally straight, if you think for one minute  
2     that those men don't live by the Scout law and they are  
3     going to sit still and tolerate any known pedophile,  
4     predator or child, a person involved in child sexual  
5     abuse, if you think for a minute they are going to sit  
6     still for that, then you are not going to spend a lot of  
7     time deliberating on this case, ladies and gentlemen. It  
8     won't take you long at all.

9             I would submit to you that the exact opposite  
10     is the case. What about Bishop McEwen? In opening  
11     statement, you'll recall that I called up or played a  
12     portion of his testimony, questions that I had asked him  
13     on his deposition, several depositions that had been  
14     taken.

15             And again, I told you, I'm not going to replay  
16     that, I wrote down essentially what he said. He very  
17     candidly answered several questions in that deposition in  
18     one of those depositions.

19             He was asked -- I asked him: "Were you acting  
20     on behalf of the Cascade Pacific Council when you met  
21     with Timur Dykes?

22             "Answer: No.

23             "Question: Were you acting on behalf of the  
24     Boy Scouts of America?

25             "Answer: No.



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1           "Were you acting in your capacity as bishop of  
2 the church?

3           "Answer: Yes."

4           He was not acting obviously within the course  
5 and scope of any agency as alleged by the plaintiff when  
6 he answered those questions and when he was doing what he  
7 did.

8           And what again, about -- what did he do? And  
9 what did he do wrong in this case? He took action  
10 immediately. He cooperated with the authorities. He met  
11 with the families. He disfellowshipped Timur Dykes.  
12 Counsel calls it a slap on the wrist. I think the  
13 evidence is, a couple of years later, Timur Dykes was  
14 excommunicated.

15           Granted, he did not report it to the local  
16 Council, the Cascade Pacific Council. And he did not  
17 report it to the Boy Scouts of America. He didn't find  
18 that information. Didn't find the way to us.

19           But should he have done something else besides  
20 disfellowship? Should he have stood up in the church?  
21 What would the circumstances be then? Can you imagine  
22 that, ladies and gentlemen?

23           Had he gone in before the congregation on a  
24 Sunday and talked about 17 youngsters having been  
25 apparently abused by Timur Dykes? There's been a

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1 discussion about whether they were 17 Scouts or 17 boys.  
2 I would submit to you that if they were only Scouts,  
3 somebody would have found where he testified to that  
4 before, but what's the difference?

5 Let's assume they were all Scouts, or if not  
6 that, certainly some of them were Scouts. They were all  
7 members of the LDS Church. And can you imagine calling  
8 out a situation with Timur Dykes and saying Timur Dykes  
9 has been disfellowshipped because he's been abusing young  
10 men, the members of our congregation?

11 He wouldn't have to name the boys. Everyone  
12 would know in that congregation who was in that Scout  
13 troop or who other people were in the church. And how do  
14 you think those kids would have felt going to school the  
15 next day?

16 There's got to be some common sense here,  
17 folks. I'll talk to you a little bit more about that.  
18 But again, how do you think those kids would have felt if  
19 that kind of information had been brought to the  
20 attention of the entire congregation?

21 So he handled it on a private basis as best he  
22 could under circumstances with law enforcement involved  
23 and law enforcement cooperating with him as well as he  
24 cooperating with them on an expeditious and expedient  
25 basis.

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1           The bishop says -- Bishop McEwen says that he  
2 told Dr. Wiest about this situation. Dr. Wiest doesn't  
3 recall that in so many words. He wondered about the  
4 situation. The evidence is he wondered about that, but  
5 he didn't know.

6           What about Dr. Wiest? Again, I ask you, does  
7 he impress you as the kind of individual that had he  
8 known, would he have recommended, as the evidence  
9 apparently is, that Timur Dykes assist Joe Severs with  
10 the Eagle Scout program, in pursuit of an Eagle Scout  
11 award? Did Dr. Wiest impress you as somebody that would  
12 do that had he known? I respectfully submit to you  
13 again, he would not.

14           This incident in the restaurant when Dr. Wiest  
15 candidly told you, and he kind of gulped, he struggles  
16 with that, and part of that might have something to do  
17 with the doctor's age and what he grew up being used to  
18 and what he saw that day. It was about a year ago. He  
19 hadn't seen Timur Dykes in a year, and he sees him across  
20 the room in a restaurant, and he doesn't know what to do.

21           How many of us would walk over to somebody  
22 having a meal, and Timur Dykes is there with a youngster  
23 and the youngster's maybe mother or aunt or grandmother,  
24 we don't know, what would you have him do?

25           Go over and confront them. Go over and

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1 tell -- do something to tell the lady something about  
2 Timur Dykes? How does he know what's going on during the  
3 year? How did he know who those people are? Again, I'm  
4 asking you to use a little common sense when you stop and  
5 think about that.

6 Lastly, here before the noon hour, I guess  
7 I'll try to wind up.

8 THE COURT: I was going to ask you to find a  
9 place that's good for you to stop, Mr. Smith.

10 MR. SMITH: I think I can do it here.

11 What about Jack Powell, just a couple of  
12 blocks away, a cycle policeman in the Portland Police  
13 Department, it was better than 20 years, what about Jack  
14 Powell?

15 Do you think for one minute when he was at  
16 Farragut, Idaho, at the LDS Encampment, do you think he  
17 was asked about, did he see Timur Dykes there? What if  
18 he had seen Timur Dykes there?

19 Again, do you think for one minute he would  
20 have tolerated that, as a Portland Police officer, as a  
21 member of the church and somebody actively involved in  
22 Scouting? I would submit to you again, the answer is no.  
23 He would not have. Again, you've got to apply some  
24 common sense to what you've heard.

25 I guess that's the best place to stop.

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1                   THE COURT: A good time to stop. We're going  
2 to stop for lunch now. We'll resume at 1:30. So we'll  
3 see you then.

4                   (Luncheon recess, 12:00 p.m.)  
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1                   A F T E R N O O N   S E S S I O N

2                   THE COURT:  Be seated, folks.

3                   Are we ready for the jury?  Let's bring them  
4                   in.

5                                 (Jury present, 1:30 p.m.)

6                   THE COURT:  Okay.  Go ahead, Mr. Smith.

7                   MR. SMITH:  Thank you, your Honor.

8                   Well, hello again, ladies and gentlemen, and  
9                   good afternoon.

10                   I want to go back to the BSA structure just a  
11                   little bit.  You've heard a lot about it, so I don't want  
12                   to belabor it, but the relationship between the CPC and  
13                   the BSA and the charter organizations.

14                   You've heard the court's instructions on the  
15                   law in that regard.  And I would just comment to you the  
16                   instructions again on agency and control.  I'm not going  
17                   to detail that evidence.

18                   I'll just simply say that you know that the  
19                   evidence is that they are three distinct entities.  The  
20                   charter organization's responsibility is to run the  
21                   day-to-day activities of the troop.  And it is  
22                   responsible for the operation of the troop with local  
23                   volunteers, the CPC or the Cascade Pacific Council, in  
24                   this instance was the Columbia Pacific Council then, is  
25                   to provide local support, and the BSA has the

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1 responsibility to provide the guidelines and the training  
2 materials and that type of thing.

3 Make no mistake about it, the Boy Scouts of  
4 America do require, make mandatory, two matters. And  
5 that is the uniform and the advancement protocol. And  
6 that's about it.

7 Do we retain the right to revoke a charter, a  
8 registration? Yes, we do. And we submit respectfully to  
9 you that that does not mean we have the right to control  
10 how the Council does its job or the local organization  
11 does its job.

12 It is designed to maintain the standards, and  
13 we do expect and do require and do want the adherence to  
14 the guidelines. And if it does not occur, the Boy Scouts  
15 of America do reserve the right to revoke, for instance,  
16 the local charter or in the particular instance of an  
17 individual, their registration. And that ties in with  
18 the I.V. Files.

19 In connection with the organizational -- the  
20 organization and how it works, however, I would just  
21 commend to you your notes. And with respect to the  
22 witnesses, Mr. Marshall, Doug Smith, Bishop French and  
23 Grant Robinson, they all detailed and all talked about  
24 and testified about operational details.

25 With respect to the relationship of the Boy

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1 Scouts of America and the LDS Church in this instance, I  
2 would commend to you Cascade Pacific Council's Exhibit  
3 No. 3041. You can take a look at the -- it is a 1977  
4 publication by the Latter-Day Saints.

5 You can take a look at the table of contents.  
6 It talks about the working relationships between the Boy  
7 Scouts of America and the sponsoring units of the church.  
8 And it talks about church policies regarding chartering  
9 of units, of Scouting units.

10 And for more detail perhaps and some  
11 illustrations, you might want to take a look at the CPC  
12 Exhibit 3042. And that is the LDS's publication of its  
13 Scouting Handbook.

14 And page 1 of that handbook has an  
15 illustration of a special award that the LDS Church  
16 provides for Scouts that are members of the church. It  
17 is an On My Honor Award. And you can take a look at that  
18 if you like.

19 And it indicates to you, and I'm going to  
20 quote, "This handbook has been developed to help stake  
21 and ward advisers and other Scouting leaders understand  
22 how the Scouting program is used in the church. When  
23 properly carried out under strong priesthood leadership,  
24 Scouting effectively holds boys and young men close to  
25 their families and the church."



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1            "It specifically provides that every phase of  
2 the Scouting program should help young men and leaders  
3 understand that Scouting activities are carried out to  
4 accomplish priesthood purposes. Scouting is under the  
5 direction of the priesthood and is itself a priesthood  
6 activity."

7            That's page 1. Then if you are interested in  
8 taking a look at this exhibit further, I would just  
9 commend you to page 8. It talks about, and you've heard  
10 about this, 11-year-olds are Blazer Scouts in the LDS  
11 Church.

12            You've heard that explained to you. I don't  
13 need to detail that, but it does go into some detail.  
14 And surprise of all surprises, they have a special  
15 position on the Sabbath.

16            What a surprise that the church would prefer  
17 not to have campouts over the weekend if it is going to  
18 invade Sunday. You've heard about that, that they do try  
19 to curtail that except if they have an extended campout.

20            So there are special arrangements made. I  
21 would submit to you that there's been no evidence on it  
22 and that is not particularly unique. It is still within  
23 the guidelines of the Scouts.

24            Turning to the I.V. Files, it is true no youth  
25 organization in the country apparently at the time had a

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1 program like that its in place. It is not that  
2 sophisticated, I believe you'll find, and I respectfully  
3 submit, you take a look at the files and you can make up  
4 your mind for yourself. It is not designed, this program  
5 is not designed for statistical purposes.

6 Dr. Warren testified for you that they do not  
7 have anywhere near the information needed to develop the  
8 scientific or analytical base, database for purposes  
9 claimed by the plaintiff in this case.

10 She specifically told you that no analysis or  
11 evaluation -- or an analysis and evaluation, I should  
12 say, requires a skilled people to conduct the interviews.  
13 It has to be handled over a period of time.

14 And she gave an example, the McMartin  
15 situation that occurred years ago. And maybe people  
16 remember it, maybe you don't. She cited that, as where  
17 skilled people aren't involved interviewing children and  
18 doing the follow-up on it. And it just creates more  
19 problems than it solves.

20 No one has her statistical summary, or her  
21 statistical summary hasn't been challenged. And yes, we  
22 did have this done because in connection with this case,  
23 it was felt it was necessary.

24 She spent 220 hours herself looking at these  
25 files and cutting them down and trying to evaluate and

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1 analyze them. You saw the four slides, and you'll have  
2 copies of them for you to review.

3           Significantly one of those charts shows that a  
4 good many -- a good many of the years, I think almost  
5 every year showed that we had more people that we were  
6 keeping track of or finding out about than law  
7 enforcement did. And there's a graph of that. You can  
8 take a look at that.

9           There's really no convincing evidence, ladies  
10 and gentlemen, I would submit to you, that point out that  
11 the maintenance of these files and what information has  
12 been acquired here has any direct, causal relationship to  
13 the damages that are being claimed.

14           The Files are for one purpose. I told you in  
15 opening statement, and I'll say it again, they are to rid  
16 the BSA of problems and -- problems, undesirable people,  
17 and they are to prohibit them from returning.

18           It is not done to hide. It is not done to  
19 move them around. It is not done, if they are on  
20 probationary status, to move them around. It is designed  
21 for the exact opposite, to keep track of them and try to  
22 control the problem and/or keep them out initially.

23           If you choose to review the Files, and counsel  
24 has asked that you do so, I do the same, you'll find all  
25 kind of examples, ladies and gentlemen. Some, I believe

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1 you'll find were well-handled and others not so good.  
2 There's some mistakes were made. There's no question  
3 about it. We're not perfect. There's some questionable  
4 judgments, and you've certainly heard about those.

5           There's some probation that hasn't always  
6 worked, and there's probation that has. The plaintiffs  
7 argue here, the plaintiff argues that you could have done  
8 more. We should have done more. We made lots of  
9 mistakes. You made lots of mistakes, but nevertheless,  
10 the Files are invaluable.

11           Well, you can look at them for yourself and  
12 see if that really makes common sense. Probation is not  
13 the equivalent of the Catholic Church, for instance, and  
14 moving priests around to hide something. I think it is  
15 just the opposite, again, as I said.

16           There's a pile of Files here. And I thought  
17 it would be a great idea -- you could see I have these --  
18 these are Files that I know I've tried to keep a note of  
19 that were offered in evidence and that were discussed.

20           And I had thought about what a great idea it  
21 would be to start going through these and point out what  
22 I thought were pitfalls, pratfalls and what were good  
23 about these Files.

24           But I found at the end of the morning this  
25 morning, my voice is going out, and that's probably a

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1 good thing because I'm not going to do this. I will just  
2 point to you some numbers, though, some of Files, if you  
3 want to take a look at them.

4 I would -- I'll give you those numbers.  
5 There's about 15 of them, maybe a few more. But it will  
6 give you a cross-section of these files: 5, 7, 11, 31,  
7 40, 43, 49, 113, 520, 563, 692, I think that's it. 727,  
8 I think I've got that one down, too, 735 and 1147.

9 And you may not find it interesting, I don't  
10 know, but it is better to have than me reading them to  
11 you and trying to point things out. There's one File,  
12 though, that I thought is fairly recent, and I'm sure you  
13 all remember it; I just want to touch on it.

14 Dr. Sebastian was asked, did you find any  
15 evidence of satanic cult in these Files or any kind of  
16 thing? She said no, I didn't. And she reviewed, I think  
17 every other, seven or nine, files after they've been gone  
18 through by her team.

19 And that file, it was Plaintiff's Exhibit 182,  
20 was shown up on the screen. And you'll recall that the  
21 cross-examination pointed out, and I would ask you to  
22 look, it was that File that had the news alert on it, if  
23 you recall. And the date of this report on this news  
24 alert was November 17.

25 And the next day, you'll find -- I beg your

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1 pardon. The date of the incident was the -- the arrest  
2 was November 16. The date of this news report, the news  
3 alert internally down in Irving, Texas, was November 17,  
4 ladies and gentlemen, the day after this arrest was made,  
5 and it talks about the details.

6 The person that was arrested was not  
7 registered at the time. He was registered through  
8 October '92. So pretty close in point of time, but -- I  
9 beg your pardon, in 1982. So he hadn't been registered  
10 for a while.

11 And yet, he still put it in the I.V. File.  
12 Unfortunately, in this incident, there was an Eagle Scout  
13 involved. And even without details involving the Eagle  
14 Scout, his -- his name was put in the I.V. Files.

15 So there's an example of one they called up  
16 for one particular purpose, but the response was very  
17 quick. And that's a good thing, I would submit to you,  
18 because that's what this is designed for.

19 Now, if you want to look in these boxes, I'll  
20 take one out in the file, I don't care. I don't want to  
21 get it out of order. Here is one. I don't know what it  
22 is. I'm not going to take time to look through the file,  
23 folks, but it is one file.

24 And what is bad about this file? I'll tell  
25 you what's bad about it. One of these matters involving

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1 sexual abuse is not good. The Boy Scouts would prefer  
2 that's not the case. One of them is not good.

3 It is too many. What's good about this File?  
4 Well, hopefully, the person is still not eligible to be  
5 in the Boy Scouts. What's good about all these Files?  
6 It is because they are out of Scouting, and that's what  
7 they are designed to do. Nothing more. Nothing less.  
8 And that's the whole purpose of these Files again.

9 How is the reporting to be done? You'll have  
10 four exhibits: Maintaining Standards of Leadership. You  
11 can go through those. I will commend to you the 1972  
12 publication. It is CPC Exhibit 3022. And it talks about  
13 how to go about informing the BSA National about this  
14 kind of problem, how to secure the evidence and how you  
15 submit it and what you do with it.

16 I won't detail that again. You are welcomed  
17 to look at it if you like. That's how it is supposed to  
18 work. Has it always worked perfectly? No, it has not.  
19 But we've got it in place. And again, it is for a  
20 reason.

21 Now, these Files, ladies and gentlemen, are  
22 unredacted. We had to produce them. And I told you in  
23 opening statement, we don't produce these Files unless  
24 ordered to do so by the court. And there's a good reason  
25 for that. And so -- because we feel a responsibility to

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1 try to keep these Files confidential. But naturally, we  
2 have to obey a court order. So these Files were produced  
3 after a number of issues involving their production.

4 But I want to tell you they are unredacted.  
5 The concern of the BSA, and it should be the concern of  
6 anybody when you stop and think about it for four weeks  
7 now, these Files, portions of them, sometimes all of them  
8 have been flashed up on the screen.

9 You've got people sitting back here in the  
10 gallery, and we've had visitors throughout this four  
11 weeks of trial, and these names have been up on this  
12 board. And how would it be if somebody sitting here back  
13 in the gallery like today, and they see a name flash up,  
14 and they recognize it as a child, somebody they knew in  
15 their childhood or a family member, or a friend or a  
16 neighbor?

17 Not good. Not at all good. And that's why  
18 they are kept confidential. We go to great lengths,  
19 ladies and gentlemen, in this country to protect our  
20 children and their identities and their names when things  
21 like this are involved. And that carries into adulthood  
22 on many occasions. And this case is the perfect example.

23 It is filed as a Jack Doe. If you've had  
24 occasion when you've been walking around the hallways on  
25 breaks, if you've looked at the schedule out here, you'll



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1 not see Kerry Lewis' name, ladies and gentlemen. He's an  
2 adult. His birthday was just this last Tuesday. And  
3 that's for a good reason, isn't it? These Files need,  
4 and we hope they are kept confidential.

5 The standard of care that existed 25 or 30  
6 years ago was different than it is today. And in my  
7 opening statement, I tried to give you some examples of  
8 what was going on in that period of time, kind of see if  
9 we couldn't set the stage.

10 But you've heard witnesses talk about stranger  
11 danger and the man in the shadows in the trench coat. Or  
12 that was a long time ago, wasn't it, but some of us  
13 remember those days. The evidence was in this case  
14 insofar as the standard society was just waking up to  
15 this kind of problem.

16 We've been criticized. Apparently I guess it  
17 is criticism you folks are going to have a chance to see  
18 these two exhibits again, CPC Exhibit 3026 and 3025. I  
19 guess I should have reversed those numbers and given you  
20 the lowest one first.

21 I'll just hold them up. You'll remember  
22 seeing them. This is the pictures. These ads, if you  
23 want to call them that, they are a public service  
24 announcement appeared in the Scouting magazine, a  
25 magazine designed for adults.

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1           And it has been kind of dismissed that hey, is  
2 this the best you can do? These public service  
3 announcements put up by the National Committee for the  
4 Prevention of Child Abuse. And that's what they were  
5 doing at the time. And they were running in Scout  
6 magazine as a public service.

7           And you'll recall one of the questions from  
8 counsel was well, this shows a little girl. Well, yes,  
9 it does. You can see that. And what was the thinking at  
10 the time? The girls were a target and young boys were  
11 not. And you heard some evidence along those lines.

12           And this is consistent with that. And the  
13 evidence about is rehabilitation working or not working,  
14 you've heard it is not particularly effective. But  
15 you'll see in these ads that most abusers could be helped  
16 in one of them. The other one says most child abusers  
17 can be helped.

18           That was the thinking at the time, and this is  
19 what was being produced at the time. That was the  
20 standard of care. And that's indicative of the standard  
21 of care, I should say.

22           Donald Wolff testified for you, and we know  
23 who he is. And he did an article in 1982. That was a  
24 part of his testimony, I believe you'll recall. He  
25 likewise confirmed that in the early '80s, we're finally

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1 getting some traction on this issue.

2 But we had a copy of his article. I asked him  
3 about it and so did Mr. Xochihua asked him several things  
4 about it. But he wrote when an allegation is reported to  
5 us from whatever source, an accurate written report  
6 should be immediately prepared and filed.

7 I have recommended in every instance that the  
8 match, if still in existence, should be immediately  
9 suspended. He wrote that in 1982. And who was doing  
10 that for decades before that? Who was instituting  
11 immediate suspension? It was the Boy Scouts of America,  
12 ladies and gentlemen.

13 He also wrote -- I believe we asked him about  
14 some of the problems involved. Organizations such as  
15 ours, meaning the Big Brothers and Sisters, should have  
16 the computerized ability to maintain a list of all  
17 employees and volunteers as well as those whose services  
18 have been terminated, so that member agencies can have  
19 access to information, which would at least dictate  
20 follow-up disclosure concerning said termination before  
21 re-employment and rematching with children.

22 Even this suggestion, he says, might violate  
23 privacy rights unless legislation is expanded to include  
24 the rights of such agencies for recordkeeping or the  
25 right to access the state and national recordkeeping.

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1           And you'll recall we talked to Dr. Warren and  
2           asked Dr. Warren about the Congressional record. And the  
3           National Child Protection Act of 1993, there was a  
4           discussion in that record going back into the early '80s  
5           and talking about the creation or Congress' efforts to  
6           create a controlled registry so that interchange of  
7           information could be accomplished.

8           She mentioned three organizations, didn't she?  
9           The Civil Air Patrol, Big Brothers and Sisters, and the  
10          Boy Scouts of America all interested in trying to get  
11          that accomplished. And yet, it has not been  
12          accomplished. It has not been done yet.

13          Taking it right up to current times. And  
14          again, not about the time frame, we know we're working up  
15          through July 1984, but Dr. Conte, when he brought in his  
16          file, had an article in it from the Journal of American  
17          Medical Association, March 27, 2010. And I had a tough  
18          time kind of examining about some of the findings in this  
19          article, simply because it is kind of cumbersome  
20          language.

21          It is a real mouthful. And at the risk of  
22          reading again to you and not putting it up on the screen,  
23          I do want to read to you what the final comment was, and  
24          perhaps you'll remember me reading it to him.

25          And it was a review of sexual abuse of boys,

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1 definition, prevalence, correlates, sequelae and  
2 management. And the comment in the conclusion of the  
3 article was, "The objectives of this review were to  
4 clarify the definition of sexual abuse of boys to update  
5 the prevalence estimates of this abuse and to explore its  
6 correlates, its sequella and management.

7 "The literature was small and methodology  
8 limited. Methods of eliciting abuse, histories  
9 frequently reported described or done subjectively,  
10 definitions of abuse, vary widely, sampling techniques  
11 were generally poor, and few studies controlled for  
12 effect, modifiers and confounders. Consequently,  
13 prevalence estimates were discrepant, associates  
14 confounded, and causal inferences not feasible."

15 A real mouthful. You'll see why I had  
16 difficulty probably examining him about it. But that was  
17 the state of affairs, ladies and gentlemen, a month ago  
18 in 2010.

19 We're asking the Boy Scouts of America to take  
20 care of that kind of a problem here with these Files. I  
21 would submit to you again, is that common sense?

22 Turning to this question of noneconomic  
23 damages. First, again, if Scouting was the problem, as  
24 it has been claimed to be, we would submit to you it is  
25 significant that when the family moved from the Portland

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1 area to Klamath Falls, immediately the three boys were  
2 put back into the Scouting program, all brothers.

3 And what is the evidence about these damages?  
4 Dr. Sebastian was retained to conduct a comprehensive  
5 analysis. We had her report. And I asked her about the  
6 18 points that are in that report.

7 They involved records that she received,  
8 informed consent that was taken, procedures utilized,  
9 parental status, and behavioral objectives -- or  
10 observations, excuse me, family background, military  
11 history, criminal history, physical health, legal issues,  
12 sexual issues and so on, and the test that she conducted  
13 and her findings.

14 And she concluded after an 18-point exhaustive  
15 examination that sexual abuse did not cause the drug  
16 abuse issue, and that plaintiff has drug-related issues.  
17 She didn't blame it on Klamath Falls, ladies and  
18 gentlemen. Klamath Falls was in the discussion, no  
19 question. The plaintiff himself brought it up, you'll  
20 recall.

21 Dr. Conte, in his report, basically said and  
22 basically he testified, as you say, that the root of the  
23 problem now may not have been the sexual abuse, but it  
24 was this issue of betrayal.

25 Well, how do these experts characterize the

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1 significance of the abuse? Neither of them really  
2 reported touching. And Dr. Conte's notes, he didn't  
3 report touching. And there was an indication that the  
4 plaintiff couldn't recall. Dr. Conte described the abuse  
5 as relatively low in order.

6 Dr. Sebastian said it was mild. What's the  
7 best evidence on this point? What's better than these  
8 two experts? You folks heard it. And I would submit to  
9 you, you saw it. It was the evidence about ten years in  
10 New York.

11 Mr. Lewis, to his credit, got off drugs. And  
12 look what happened. He became gainfully employed. He  
13 married. He started a family. He was earning a good  
14 living. Standing on his own two feet. I think I used  
15 those words.

16 He obviously was satisfying an employer who  
17 had confidence in him. He was supervising sometimes 25  
18 to 30 men who were older, older than he was. Kind of  
19 used a slang phrase, I think, about how they felt about  
20 him, but he was emphatic about it and he meant it, and I  
21 don't blame him.

22 But I would submit to you that you not only  
23 heard that evidence, you had a chance to see him testify  
24 about it. And I would submit to you again, he was  
25 animated when he did it. It was a period in his life, it

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1 was an accomplishment, and he was proud of it, and as  
2 well as he should be.

3 His pride radiated when he was discussing it.  
4 You could tell it in his voice and in his appearance. I  
5 would respectfully submit to you, ladies and gentlemen,  
6 that without the drugs, the claimed damages that we're  
7 talking about here cannot be attributed to the Boy Scouts  
8 of America. He completely got himself straightened out  
9 for ten years. So when you think about the noneconomic  
10 damages, I would ask you to think about that evidence.

11 Turning to the question of punitive damages,  
12 again, the Boy Scouts of America are not infallible. No  
13 matter how hard we try and no matter how effective the  
14 program is, and despite the BSA's best efforts, you are  
15 being asked, never mind. Let's penalize him. Let's  
16 penalize them anyway, despite everything they've tried to  
17 do.

18 Ladies and gentlemen, we're not supposed to  
19 swear in court, but I'll tell you, with all due respect  
20 to his Honor and the lawyers and their parties and the  
21 gallery here, we are damned if we do and we're damned if  
22 we don't here. Please stop and think about that.

23 Was the Boy Scouts' conduct here as alleged  
24 amounted to reckless indifference or disregard? Has it  
25 been outrageous? I respectfully submit to you, ladies



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1 and gentlemen, that it has not, and it doesn't warrant an  
2 award of noneconomic damages or punitive damages. They  
3 aren't appropriate in this case, I submit to you.

4 In the early '80s, society was just waking up  
5 to this problem. Congress was struggling with it, still  
6 struggling with it, even as late as last month, and now  
7 the Boy Scouts of America are being hauled before you and  
8 being hauled before this court and criticized for not  
9 doing a job.

10 Ladies and gentlemen, I thank you for your  
11 attention, and I am asking that you return a verdict for  
12 the Boy Scouts of America.

13 Thanks again for your attention.

14 THE COURT: Whenever you are ready, Mr.  
15 Xochihua.

16 MR. XOCHIHUA: Thank you, your Honor.

17 Counsel, Mr. Lewis, Mr. Marshall, Mr. Devore,  
18 members of the jury.

19 It is a rare privilege to be here talking to  
20 you about this case that you've been so patient and  
21 attentive to. It is a rare privilege to represent the  
22 Cascade Pacific Council in this case.

23 My client appreciates the attention that  
24 you've given and paid in this case, paying attention to  
25 the evidence, stuff that you've seen on the screen, and

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1 we appreciate the questions that you've asked.

2 I am usually going third, and I'm third again,  
3 it is 2:00, you've had lunch. I'm going to try to move  
4 around and keep you awake. I'm trying to ask you to pay  
5 attention.

6 You probably want me to be brief so you can  
7 hear from Mr. Clark or Mr. Mones, whoever is going to  
8 come up and talk after I sit down, but I have to talk.  
9 It is a \$4 million case right now, more to come maybe,  
10 and I have to get some points for my client.

11 But before that, I want to talk about some of  
12 the things that I thought I heard on Mr. Clark's closing.  
13 Sometimes you've probably seen me over there with my pen  
14 circling stuff, and that's what I did. What I think I  
15 heard him say, and again, as everybody has been saying,  
16 whatever we say isn't fact. We're advocates, right. So  
17 go on your memory.

18 But I think he said that the defendants here  
19 couldn't even stand up here and tell you there was a  
20 problem. Maybe you remember that. Maybe you don't. I  
21 think he said that none of the witnesses you heard from  
22 said there was a problem.

23 Then the very next thing he said was, what did  
24 Grant Robinson tell you? Well, Grant Robinson was the  
25 Scout Executive in 1984. Did he get up here and tell you

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1 there was no problem? Mr. Clark referred to him because  
2 Mr. Grant told you he'd been aware of a problem since he  
3 started working as a professional Scouter in some  
4 council, didn't he?

5 Where is this "no one will admit a problem"  
6 coming from? What I think I heard was something about  
7 this just being the tip of the iceberg, just the tip of  
8 the iceberg. There was no system. These are here  
9 because of blind dumb luck.

10 What about the documents called Maintaining  
11 Standards of Leadership that started in 1972? I'm going  
12 to tell you what the exhibit numbers are. I think there  
13 are four different versions of them in evidence. They  
14 are our Exhibits 3022, '23, '24 and '25. I would ask you  
15 to take a look at those and see if that's blind dumb  
16 luck.

17 Mr. Clark stood up here and talked about 85  
18 years. I'm going to remind you that most of what you've  
19 heard stopped in mid-1984. What he got up here and told  
20 you was that nothing has changed since then. That's what  
21 he was implying.

22 But we're limited in this phase of the case as  
23 to what we can say about what happened after July 1984.  
24 So I'll ask you to do the math from, I guess 1925 through  
25 1984. It is not 85 years.

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1           What I heard I think Mr. Clark say was the Boy  
2 Scouts basically should have been better than everyone  
3 else because there are these files and they started  
4 keeping them early. Is that reasonable? Read your jury  
5 instructions. It talks about what a reasonable person,  
6 reasonable organization would have done. Is it  
7 reasonable to say you have to be the best?

8           I think Mr. Clark suggested that because of  
9 worries about public image, the Boy Scouts of America did  
10 not talk about child sex abuse in their materials. He  
11 was talking about the Tribune articles in 1974, the ghost  
12 troop issue. He said they were obsessed with membership.  
13 They were so obsessed with membership, that's why they  
14 didn't want to bring this horrible issue up. That's why.  
15 Where was the evidence to support that?

16           He said, I think, that if Mr. Wolff had been  
17 in charge of the BSA program years ago, there would have  
18 been no more victims of child sex abuse in the Boy  
19 Scouts. Do you believe that? He said Dr. Warren  
20 insulted your intelligence. Did she?

21           He said, children don't matter to the Boy  
22 Scouts of America. Don't they? He said, we're going to  
23 get up here and blame everyone else but ourselves.  
24 Mr. Smith said he wasn't going to blame anyone. I'm  
25 going to blame somebody, and it was Mr. Dykes. That's

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1 who I'm going to blame. You heard Bishop McEwen refer to  
2 him as a snake. Do you remember that? He was asking him  
3 about a wolf in the garden. He said well, more like a  
4 snake. That's whom I'm blaming.

5 He suggested that Mr. Dykes was put on  
6 probation and he apparently wants to know what the  
7 explanation is for some of the documents. And I'm going  
8 to hit some of them for you to see if I can suggest an  
9 explanation that you consider reasonable in light of what  
10 you've heard.

11 He talked a lot about this statute of  
12 limitations defense. We have suggested that somehow if  
13 it is the law and it applies, it is unfair, that we're  
14 saying his client filed too late. I'm going to ask you  
15 to take the law and apply the facts to the law calmly and  
16 dispassionately and do what the judge has told you to do.

17 He suggested that Dr. Sebastian is a turncoat.  
18 He didn't use that phrase, but he said back when she  
19 wrote that letter when she supported victims. You read  
20 that letter. You read that letter. She was in support  
21 of extending the statute of limitations to sue the abuser  
22 who is not here, who has not been sued.

23 So now, back to what I planned to say. You  
24 might have guessed I get a little wound up every now and  
25 then. I've done it when I've asked questions. I try to

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1     restrain myself, but I can't help it sometimes.

2             If I've done so and I've offended you, don't  
3     hold it against my client, please. You can tell other  
4     people that there was this crazy lawyer in the courtroom,  
5     or something like that, but try not to hold it against my  
6     client. You've seen the different styles. I told you at  
7     the outset, we're advocates. We want our clients to win.  
8     Absolutely we do.

9             Even though what we say isn't evidence, I am  
10    assuming that by paying attention, you've learned a lot  
11    about the strengths and weaknesses of our cases by how we  
12    ask questions, by what we ask questions about, whether we  
13    brought stuff out on direct or cross-examination.

14            At the outset of the case, I think I waved  
15    around a book. It was a different colored book because  
16    it was 2009. This is 2010. I think the judge has got  
17    one on his bench. I suggested that I was going to do  
18    everything that I could on behalf of my client to follow  
19    these rules. And if people thought I wasn't, well, the  
20    judge is the referee here, and you saw us jump up and  
21    down objecting. And the judge is making the calls just  
22    like the line judge in the tennis match does, except a  
23    lot more complicated than that.

24            What is plaintiff's claim? You have your jury  
25    instructions hand-out there. If you do, there's a

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1 summary of the pleadings, page 3. You don't have to go  
2 through it. I'll just read parts I like and then someone  
3 else can read parts they like, but I encourage you to  
4 read it all.

5 In the first paragraph, plaintiff's summary of  
6 their complaint says Mr. Lewis was sexually abused as a  
7 child by his Boy Scout leader.

8 Now, just for a second, I want to digress.  
9 You heard their expert, Mr. Schoener, not Dr. Schoener,  
10 Mr. Schoener, you heard him agree that the rosters that  
11 you are going to get a chance to look at in detail never  
12 show Mr. Dykes as being a Scoutmaster or Scout leader in  
13 any pack or troop Kerry Lewis was in.

14 Same unit, no question. Same unit for a time,  
15 but he was never officially Mr. Lewis' Scout leader  
16 according to plaintiff's expert, according to the  
17 rosters.

18 In that first paragraph, they say at first,  
19 Kerry Lewis alleged that defendants were negligent in  
20 that before the abuse of Kerry Lewis, defendants had  
21 direct knowledge through their agents that Dykes posed a  
22 danger to Scouts. Direct knowledge through their agents.  
23 Who were they talking about? Later in the instructions,  
24 you may remember from yesterday, they are talking about  
25 Bishop McEwen and Earl Wiest, Dr. Wiest.

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1           In the second paragraph, they talk about this  
2 institutional-wide problem that the Boy Scouts had with  
3 Scout leaders sexually abusing children. They say  
4 despite the knowledge and the knowledge that is in the  
5 Ineligible Volunteer Files, despite this knowledge, they  
6 didn't implement adequate policies to prevent sexual  
7 abuse of children. They say it was foreseeable to my  
8 client and BSA that if the policies remained unchanged,  
9 plaintiff, that's Mr. Lewis, plaintiff would be sexually  
10 abused by adult Scout leaders.

11           So because of what's in these Files, our  
12 clients should have known that he would be -- it was  
13 foreseeable that he would be abused. That's part of  
14 their claim.

15           Then they move on to the punitive damages.  
16 This is the third paragraph where they scratched out the  
17 word "amounted." Do any of you remember? They say that  
18 Mr. Lewis has alleged that in failing to warn or protect  
19 him from the risk of sexual abuse by a Scout leader,  
20 defendants, that's my client, the BSA, acted with a  
21 reckless and outrageous indifference to a highly  
22 unreasonable risk of harm and with a conscious, conscious  
23 awareness, conscious indifference to the health, safety  
24 and welfare of plaintiff.

25           And if you believe that, that's the last



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1 couple of questions on the verdict form. It has to do  
2 with punitive damages. That's what they are claiming.  
3 And the last two paragraphs deal with the answers that  
4 have been filed.

5 We said that we admitted on at least one  
6 occasion Timur Dykes illegally touched Kerry Lewis. We  
7 denied that we knowingly allowed, permitted or encouraged  
8 any acts of childhood sexual abuse of Kerry Lewis. And  
9 that affords us a defense under statute of limitations.

10 We also deny fault. We deny liability. I  
11 want to touch on just a couple other things in these  
12 instructions before I go away from them maybe.

13 What are their claims based on? We just read  
14 it. Direct knowledge, right, direct knowledge. That's  
15 why all of these agency claims, agency, the bishop, Dr.  
16 Wiest.

17 Now, you heard them both testify. They never  
18 talked to the CPC, Cascade Pacific Council or the BSA. I  
19 think one of the jurors may have asked a question in that  
20 regard. Did the CPC and the BSA know? Well, usually you  
21 don't ask a witness who is not with that organization did  
22 they know. You put on evidence that shows they knew.  
23 That's what plaintiffs are trying to do here with these  
24 I.V. Files.

25 They've used these and somebody asked for

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1 limiting instructions. Remember the limiting  
2 instructions? You have to read those and figure out how  
3 you use these documents. But they are using these to  
4 prove notice and knowledge against my client and the BSA.

5 They are claiming apparently that when Bishop  
6 McEwen, in a privileged, religious privileged setting,  
7 learned about Mr. Dykes' problem with boys, as Mr. Smith  
8 said when he was acting as bishop, not on behalf of my  
9 client or the Boy Scouts, he was a dual agent.

10 I'm going to turn to page 6 of these  
11 instructions. And down at the bottom, it says knowledge  
12 of agent. It is the second instruction up. And I want  
13 to touch on this. It says a principal, that would be in  
14 this case either my client or the Boy Scouts of America,  
15 is not charged with the knowledge an agent acquires while  
16 not acting in the course of his agency.

17 Not charged with that knowledge, if the bishop  
18 was not acting in his role as an agent for either of our  
19 clients, or you are not charged with knowledge, or which  
20 relates to matters not within the scope of his authority  
21 unless the agent actually communicates the information to  
22 his principal.

23 I suggest this instruction, if you interpret  
24 it according to the facts that you've heard, means that  
25 if the bishop -- if you believe the bishop when he said

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1 he was doing it in a privileged setting, and he did not  
2 tell my client and did not tell the BSA, then that  
3 knowledge didn't come to us. You can't just pretend it  
4 did.

5 Let me turn to the next page. Again, near the  
6 bottom, there's an instruction called agency control. It  
7 says a person is considered an "agent," it is in quotes,  
8 of the principal. So, let's see, Bishop McEwen for a  
9 second.

10 Bishop McEwen is considered an agent of, I'll  
11 say, the Cascade Pacific Council, if the Cascade Pacific  
12 Council has the right to control the manner of the  
13 performance of the work, not only end result, but how  
14 that result is reached.

15 Do you think the Cascade Pacific Council had  
16 the right to control how Bishop McEwen took a confession?  
17 It says a mere furtherance of the purpose of the  
18 principal is not sufficient.

19 Well, the bishop did remove Dykes from his  
20 calling as an Assistant Scoutmaster. That sort of  
21 furthers the purpose of the Boy Scouts of America and my  
22 client by removing a bad egg. But that's not enough,  
23 according to this instruction.

24 This instruction goes on. A principal,  
25 Cascade Pacific Council, controls the conduct of a

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1 nonemployee agent. Who would that be? Of course, the  
2 bishop, Bishop McEwen, maybe Dr. Wiest, if the principal,  
3 Cascade Pacific Council, controls the details of the  
4 manner of performance of the conduct which is alleged to  
5 have caused the injury.

6 So what was the bishop's conduct that caused  
7 the injury? It was in not contacting the parents of  
8 Kerry Lewis. That's the causal link here. He did not  
9 contact the parents of Kerry Lewis after he learned about  
10 Mr. Dykes' problem with young boys. That's what is  
11 really being complained about here. Did the Cascade  
12 Pacific Council control what the bishop did in that  
13 regard? It is for you to decide.

14 So I'll move on. I crossed out some things  
15 while Mr. Smith was talking because sometimes we tend to  
16 think along the same lines. But he did talk to you about  
17 bias. And you've been told that you are not supposed to  
18 let bias or sympathy or prejudice enter into your  
19 decision-making process. But I'm going to talk about a  
20 different kind of bias. And that's the bias of witnesses  
21 that you saw here or saw on video.

22 You get to evaluate other people's bias and  
23 how it affected their testimony and what they said. You  
24 get to think about their motives in seeing what they  
25 said. You get to evaluate them and their credibility.

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1 And I would ask you to do that and take that job  
2 seriously.

3 Who were the least biased witnesses you've  
4 heard? Who were the least biased witnesses? I have some  
5 thoughts about that, but I'm not going to jump to my  
6 thoughts right now.

7 Let's talk about clients. Do you think  
8 clients are biased if they are part of a case? You  
9 better believe it. Why wouldn't they be? My client  
10 didn't even get to testify. My client representative?  
11 Why? Well, he wasn't in the Council back then. He's the  
12 current Scout Executive in the Council. Is he biased?  
13 You bet. He would like to get up here and tell you how  
14 biased he is. Isn't Nate Marshall biased? You bet. He  
15 wants to win, doesn't he?

16 Is Kerry Lewis bias? Do you think the other  
17 clients of Mr. Clark were biased when they testified here  
18 in support of a family member or another plaintiff in a  
19 case against the same parties? I'm going to suggest they  
20 are biased.

21 You can evaluate whether that affects their  
22 credibility. It is up to you. I'm not saying that it  
23 makes them not believable. I'm just saying you get to  
24 think about that. How did that affect their testimony?  
25 What are their motives for testifying?

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1           Nate Marshall, we'll talk about him for a  
2 minute. You know, he sat up there, I don't know how many  
3 hours, being cross-examined. How did he do? Was he  
4 given just one-sided answers? Always supporting  
5 Scouting? Or did he exhibit ignorance about things? Did  
6 he say, I really don't know? I don't remember? Or did  
7 he flub up? Was he rehearsed? Do you think he was  
8 rehearsed?

9           You get to evaluate those sorts of things.  
10 When you all get back there and you get to talk about it,  
11 I'm sure you'll have a little lively discussion about  
12 that.

13           He didn't know the contents of each and every  
14 one of these Files. Did you expect him to? When Mr.  
15 Mones asked Mr. Marshall what he meant when he said he  
16 thought parents had a vested interest in their children,  
17 do you remember that? Mr. Marshall explained what he  
18 meant.

19           Do you think he was trying to blame Mr. Lewis  
20 or Kerry Lewis' mother, Helen Caldwell, or was he  
21 explaining what he just told you?

22           Grant Robinson, we've talked about him. How  
23 biased did he come across? Does bias affect his  
24 testimony? He out and out told you, hey, when I started,  
25 I was told bad guys like boys, and we have an

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1 organization that caters to boys and here is what we do  
2 about it.

3 Now, there may not have been a document called  
4 Maintaining Standards of Leadership in the '60s, we don't  
5 know. We can't find one. It looks like the 1972 one  
6 you'll see has a letter that says this is the first time  
7 we put it on paper.

8 Does that mean that because there wasn't a  
9 piece of paper or a little brochure saying here is how  
10 things are done, that it wasn't done? Well, the Files  
11 are evidence that it was before 1972 that something was  
12 happening. There was some process.

13 Gene Grant, current volunteer, president of  
14 the Cascade Pacific Council. He's a lawyer. He donates,  
15 too. He raises funds for the Cascade Pacific Council.  
16 He said he hadn't testified much. You might have been  
17 able to tell that as his testimony went on.

18 When he spoke his mind, about his opinion,  
19 about some of the facts and circumstances, was he showing  
20 his bias? You bet he was. He was showing his bias. But  
21 that is his opinion.

22 He tried to pull it back a little from the  
23 edge by calling it hyperbole when he said that it just  
24 seemed criminal. This group thing, he doesn't know what  
25 was going on. What parents would allow this to happen?

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1 But that is not the position we are taking here  
2 officially before you.

3 You probably remember it was about 20 minutes  
4 to 5:00 when I started asking him questions. Maybe 25  
5 minutes to 5:00 one evening. And I asked him maybe 15,  
6 20 minutes of questions, turned him over to Mr. Smith,  
7 took about five minutes. Mr. Clark took just a little.

8 And there it is 5:00, and we left maybe 15 or  
9 20 more minutes of questioning of that witness. We got  
10 interrupted because I got to cross-examine Mr. Schoener  
11 for a while. But then Gene Grant came back and spent  
12 hours on the stand on April Fools Day because I tried to  
13 be funny when it was my time to take over again and  
14 pretend that I was going to blow the next hour and a half  
15 of your day.

16 Neither Mr. Smith nor I asked Mr. Grant any  
17 questions about his personal opinions. What we asked him  
18 about, and this is the testimony I'd like you to think  
19 about, was Scouting in the LDS Church. What did it mean,  
20 camping by Cub, Webelos, Boy Scouts in the LDS Church?

21 Trying to do the math with trying to come up  
22 with 34 or 35 campouts, as Mr. Lewis has testified that  
23 he went on with Mr. Dykes. And if Mr. Grant is to be  
24 believed, and I'll suggest to you that some of the LDS  
25 exhibits Mr. Smith referenced talk specifically about how



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1 many overnight camping events can be had by different  
2 levels of Scouts. If he is to be believed, there might  
3 have been six before Mr. Lewis moved out of the 10th Ward  
4 of the church with his family and his name shows up on  
5 Unit 815 rosters.

6 We asked him about Kerry Lewis. Hey, do you  
7 recognize this old picture of him? Was he ever there in  
8 Unit 815 in the 15th Ward of the church? He said, I  
9 recognize him. Yeah, he was.

10 Do you believe that testimony? Or is he just  
11 making it up? Is his bias affecting that testimony? Or  
12 do you believe what he said then? Do you believe he  
13 believed what he said when he said parents, it is  
14 criminal? Bias, but maybe still believable.

15 You get to decide that. Let's talk a little  
16 bit about some people that plaintiffs chose not to bring  
17 here for you. Where was Counselor Alderson? She was the  
18 first therapist who ever treated plaintiff. Plaintiff  
19 was referred to her by his lawyer after getting involved  
20 in this church while the LDS Church was still a party.  
21 Remember, we went through her records a little bit.

22 Where was Dr. Natasha Velaas? Where was she,  
23 the second counselor to ever treat this plaintiff for  
24 \$4 million worth of noneconomic damages that are being  
25 sought here? Why wasn't she here?

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1           What did Dr. Conte say about that, the expert  
2 who evaluated the plaintiff? Do you remember what he  
3 said? It sounded -- again, my recollection isn't  
4 perfect, but it sounded to me like when we asked him,  
5 well, did you think about calling up his therapists, he  
6 basically said that wouldn't have mattered to me.

7           They don't, they don't know what I know. They  
8 don't know what I do or something to that effect. I  
9 can't remember. But it seemed he was sort of dismissive  
10 of the very people who had been hired to treat this  
11 plaintiff, one of whom at least we know was selected for  
12 this plaintiff.

13           Let's talk about Detective Shipley for a  
14 little bit. Do you think he might have been one of the  
15 least biased people here? He doesn't really take either  
16 side. He's law and order, former law and order. He's  
17 sort of law and order in his job at Safeway handling  
18 investigations. What about Judge Snouffer? Both sides  
19 wanted to call those witnesses, but plaintiff gets to go  
20 first, so I didn't have a problem.

21           Let's talk briefly about Mr. O'Connor, an  
22 interesting man from a class who had no axe to grind.  
23 Did it seem to you like he had no axe to grind? Did he  
24 seem eager, maybe a little bit, to label the Boy Scouts  
25 of America liars? That's what he said on the witness

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1 stand.

2 I was Googling this trial and I saw in the  
3 press. They are liars. And then when he testified and  
4 he explained what he meant by that, what he meant was he  
5 had an unfortunate situation involving a former friend,  
6 Mr. Gould. He reported him to that Council.

7 Doesn't know if that information ever made it  
8 to the Boy Scouts of America, but because he saw him  
9 again 11 years later, he assumed it must not have or --  
10 he assumed it did and they didn't care.

11 That's what he was telling you. They are  
12 liars. They don't kick these people out. They get this  
13 information, they don't act on it. But he didn't have  
14 the knowledge to support that opinion, I suggest. It is  
15 up to you to decide if he did.

16 What could he know about this trial that you  
17 don't know in his Google session? You've been here.  
18 This is more than 15 and a half days. You've been here.  
19 Do you think he knows more about what's happened here  
20 than you do? Maybe. Maybe not. But he was sure willing  
21 to come in here and tell you about it.

22 He was willing to testify that the Boy Scouts  
23 of America falsifies records it submits to Congress every  
24 year. What was his support for that? Well, back in '69,  
25 or whenever he was actually a professional Scouter, he

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1 became aware of some problems with registration. And he  
2 was aware of all these articles in '74 about Troopgate or  
3 whatever it is.

4 Mr. Smith read those while I was still sort of  
5 thinking about them. And while the witness was on the  
6 stand, he said, gee, you know, these articles, don't they  
7 show that once the national organization became aware of  
8 this, they implemented a five-step program?

9 They fired people. They took care of the  
10 problem once they knew. It was in all of the papers.  
11 Why not just try to cover it up? Because you can't cover  
12 stuff up that's in the papers. That's one reason.  
13 Maybe, maybe the Boy Scouts of America realized it had a  
14 problem and tried to deal with it. Maybe.

15 Plaintiffs don't want you to believe that.  
16 They want you to believe the numbers that we were talking  
17 about with Mr. Schoener are all inflated and useless  
18 information. Is that what you believe? You get to  
19 choose to believe or not believe that.

20 I made a mistake in my numbers, and I put an  
21 extra zero in there. I hope you realize once I realized  
22 that, I took it back and said something about it. I  
23 think the numbers that I put up on the chart were like  
24 .0003. I had an extra zero that I had to remove, but  
25 .003 percent to .005 percent, not the .0001 percent that

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1 Mr. Clark put up there.

2 Who else called -- was called? Ryan Johnston  
3 came in to talk to you. I couldn't believe this. How  
4 four boxes of documents can multiply into six. That was  
5 a pretty powerful witness there.

6 So plaintiff, his mother, his father, two of  
7 his brothers and three other plaintiffs with current  
8 claims against my client, current claims against the Boy  
9 Scouts of America, those three other plaintiffs who  
10 formerly had a claim against the LDS Church all were  
11 represented by Mr. Clark's office.

12 Did their bias affect their credibility at  
13 all? Did any of their testimony seem at all rehearsed to  
14 you? Do you remember the sort of parade of answers?

15 Well, it was in the Cub Scout Handbook, four  
16 or five questions pretty close together. How did you  
17 know? Well, it was in the Cub Scout Handbook. You heard  
18 it four or five times, three or four times. When did he  
19 last read it? That was kind of interesting. Maybe it is  
20 mean -- maybe I was mean asking that question. Maybe it  
21 was unfair. But maybe I wanted you to know.

22 You heard in opening statement that the first  
23 time Mr. Lewis woke up lying on Mr. Dykes' abdomen and  
24 Mr. Dykes had an erection that he thought wrong, wrong,  
25 wrong. Do you remember that? I can't do it like

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1 Mr. Clark does.

2 Is that what he testified to under oath when  
3 the LDS Church was still in the case? I think we played  
4 that for you as to what he testified. I think the  
5 testimony was, something to the effect of, I didn't know  
6 what to think. He didn't even know what an erection was  
7 at the time. Remember that testimony? I hope I am not  
8 mistaken.

9 Do you think the testimony from the various  
10 witnesses who gave deposition testimony while the LDS  
11 Church was still a party, do you think their testimony  
12 changed at all after the LDS Church was no longer a  
13 party?

14 Do you think the focus of attention went away  
15 from the church is at fault? We don't trust the church,  
16 the church betrayed us to well, now, it is the Boy Scouts  
17 who did it? I tried to bring out what I could in that  
18 regard. I hope you weren't offended by that.

19 I'm going to ask you to bring up Exhibit 3082,  
20 please, page 2. These are the records from Michelle  
21 Alderson, some of them. I'm not going to make you look  
22 at all of them. I'm going to blow up this letter of  
23 January 27, 2010.

24 Just down here. Remember, we showed you this  
25 before. Kerry had shared that he told his parents about

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1 the abuse after it occurred and that his parents  
2 confronted the church. Church representatives reportedly  
3 told his parents that they knew about this sexual abuse  
4 and the priest had repented. There was apparently no  
5 consequences for this priest by the church, which  
6 continued to cause Kerry anger and frustration.

7 Let's go to page 12, same exhibit. This is  
8 his actual first visit record. He had one scheduled  
9 before, but it got rescheduled. What does this say?  
10 March 4, 2008. An hour-long session. Worked on anger  
11 issues related to SA. I'm going to suggest that might  
12 mean sexual abuse by priest. LDS youth group and Boy  
13 Scout leader.

14 Client angry that told parents at time of  
15 abuse. Told parents at time of abuse. Parents  
16 confronted church, who advised they were aware of abuse  
17 and abuser had repented. Continue to work on anger  
18 issues.

19 Why do you think Counselor Alderson wasn't  
20 called as a witness here? You can drop that. I was  
21 going to bring up the, and I will -- I'm going -- let's  
22 bring up Exhibit 182. Mr. Smith talked about this, but I  
23 kind of like showing it to you. Top half of this.

24 Remember the questions about this little  
25 fireman putting out the fire? How significant was that

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1 to you in the overall scheme of things in this case?

2 They were talking about this because of the satanic cult.

3 Mr. Smith pointed out that this person,  
4 however you pronounce his name, John Sileo, was arrested  
5 on November 16. They found drugs, alcohol, weapons and  
6 other sexual material. He was an Assistant Cubmaster in  
7 Pack 145 through October 1982. So a year before, not now  
8 registered. And then there was somebody else.

9 This is the Eagle Scout currently registered.  
10 Extent, details of his involvement not immediately known.  
11 Council is processing standards of leadership, again,  
12 those exhibits, removal papers today.

13 Down here: Action or recommendations. Usual  
14 procedures. Forward anything to National. Point out  
15 that this guy is not registered with the BSA and that  
16 this other guy whose involvement isn't really known is  
17 being removed the next day. Counsel said if we wanted to  
18 pull up good files, why, then we would. Well, we didn't  
19 have to. They did it.

20 Let's talk for a minute about credibility of  
21 some of the witnesses that you've heard. I won't hit  
22 them hard, but Bishop Gordon McEwen, Robert French,  
23 Bishop French, Jim Bean, I like saying his name, Jack  
24 Powell, Linnard Bybee, what did you think about them?

25 You know, we brought in -- I'm going to insult



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1 somebody here, I know it, we brought in some people who  
2 are mature. That's a good word. They had gray hair.  
3 Most of them, if they had hair.

4 Why? Because they were around when this  
5 happened and it is getting harder to find them. It is  
6 getting harder to find witnesses who remember events back  
7 then and bring them in, but we did. It is up to you to  
8 evaluate their testimony.

9 Did Bishop McEwen come across as being biased?  
10 Was he painting a rosy scenario for his benefit, for  
11 anyone's benefit? Do you think he spoke the truth about  
12 what he said he did when Colleen Lashbaugh came to him?  
13 What did he do wrong?

14 There was some mention about the slap of the  
15 wrist and the disfellowshipment. Exhibit 3043 consists  
16 of about four or five pages of LDS documentation that  
17 explains both, about disfellowshipment and  
18 excommunication.

19 Was Bishop McEwen believable when he said he  
20 acted immediately that he removed Dykes from his calling?  
21 Told him to stay away from children when he said he  
22 cooperated with the authorities, legal authorities? Was  
23 he believable when he said, you know, I'm not really all  
24 that involved in Scouting? I don't really take the  
25 training. Other people do that.

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1           The people are more hands-on. So if he wasn't  
2 trained, that's the BSA's fault apparently, as it is my  
3 client's fault, because we didn't make people who weren't  
4 really directly involved take the training.

5           You heard Mr. Wolff, the attorney from St.  
6 Louis. I think he ultimately admitted that back even in  
7 the mid '80s, you weren't really able to make people  
8 undergo this kind of training even in his organization.

9           Was the bishop credible when he said he had  
10 privileged conversations? I'm going to suggest, not just  
11 with Mr. Dykes, but when he went to talk to each of the  
12 parents and each of the children, do you think maybe it  
13 is possible that those were considered privileged  
14 conversations within the church? Do you think those  
15 conversations occurred at the direction or subject to the  
16 control of my client or the Boy Scouts of America?

17           Secrecy, you keep hearing secrecy. If you  
18 look at that summary of the plaintiff's case and the  
19 instructions, I don't think you'll find the word  
20 "secrecy" in there anywhere. It is a nice word. It  
21 sounds great in court. But was it wrong for the bishop  
22 to meet privately? Do you consider that secrecy to  
23 respect people's privacy rights and interests?

24           Did the bishop, Bishop McEwen, say he actually  
25 knew that these young boys were spending the night at

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1 Timur Dykes' apartment? I think we read back the  
2 testimony. While I forget, Gene Grant who actually -- he  
3 was so biased, that he was the one willing to say that if  
4 that's what the bishop said, he was wrong to say it,  
5 didn't he? Wrong to allow it, if that's what he allowed.

6 If the bishop said it, and I suggest he did  
7 not, I suggest he said that if he had known, he would  
8 have put a stop to it or at least several of the  
9 witnesses said that, was it with his approval?

10 Was it when he was acting on behalf of my  
11 client or the Boy Scouts of America? You heard the  
12 church frowned upon such things. I think it was Jack  
13 Powell. Maybe I'm losing track of who said what.

14 Bishop French, he came across, I thought,  
15 fairly well. Did he have an axe to grind against anybody  
16 really?

17 Jim Bean, he said a lot. I tried to time him,  
18 15 minutes or so, but he said a lot, didn't he, in his  
19 soft-spoken way? Was he believable when he talked about  
20 what the LDS Scouting publication would suggest and  
21 recommend that training be taken by them from available  
22 training resources? He talked about the round tables,  
23 Council and so on. Was he believable when he said the  
24 LDS Church promoted the training? Neither Mr. Smith nor  
25 Mr. Clark cross-examined him.

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1           Jack Powell, did he really teach this Scout  
2 leader development course that Mr. Bybee came in to tell  
3 you about and brought his framed certificate? We made a  
4 color photocopy. I have to give this back to him, as you  
5 may recall. It is in evidence.

6           I want to talk about Linnard Bybee for a few  
7 minutes. How did he come across to you? Did he have an  
8 axe to grind? Here is a guy who was a combat  
9 photographer in Vietnam. Was injured. Was awarded a  
10 Bronze Star. He comes back to Portland. Goes to school.  
11 Winds up in the electricians union. Moves up in the  
12 ranks. Becomes an electrician apparently with Portland  
13 Public Schools and now he is a supervisor at Portland  
14 Public Schools.

15           Do you remember the cross-examination of Dr.  
16 Warren by Mr. Mones? Mr. Mones cross-examined him. And  
17 she said, you know what, I think there was even some  
18 training back then. She referred to Mr. Bybee as  
19 Mr. Bypass.

20           You all have been pretty stone-faced through  
21 this proceeding, jurors. I try to watch. I sneak  
22 glances, all of us do. Some of us are better at it than  
23 others. You probably saw me.

24           What did Mr. Mones say? He said, oh, the bus  
25 driver. You remember that? Not all of you were

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1 stone-faced when you heard that as if being just a bus  
2 driver wasn't very impressive, as if someone who is just  
3 a bus driver couldn't tell you the truth, as if a mere  
4 bus driver shouldn't be believed.

5 Was Mr. Bybee believable? Was he trained when  
6 he said he was? Did the red and white "train" badge on  
7 his Scoutmaster shirt mean what he said it meant? Did  
8 you believe him when he said he was kind of upset about  
9 it because he lost overtime and there was a lot of  
10 overtime available?

11 He remembers the training because it happened  
12 when he and his wife apparently nearly lost their  
13 daughter, for some reason that we didn't go into.

14 While I'm mentioning Mr. Mones, I'm going to  
15 pick on him a little more just a little. Remember him  
16 telling Dr. Warren to forget the Standards. Forget the  
17 Standards. She kept wanting to talk about Standards.  
18 Forget the Standards. Now, they are saying Standards,  
19 apparently you didn't follow them.

20 Remember him telling Dr. Warren well, the only  
21 thing they do is molest Scouts. Do you remember that?  
22 That was kind of an interesting comment. My eyebrows  
23 went up.

24 I'm going to talk to you about criminal acts.  
25 When you are in the jury room, I want you to look at page

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1 6 of the instructions. Top of the page says unexpected  
2 criminal acts are not foreseeable.

3 That brings me to Mr. Dykes. He never  
4 testified. You saw him in opening. Some video was  
5 played, but he was never here before you as a witness.  
6 By all accounts, he had everyone convinced he was someone  
7 good. No one had a clue. Not Mr. and Mrs. Lewis at the  
8 time. Not Dr. Wiest. Not Bishop McEwen.

9 And Mr. Dykes unquestionably, I suggest,  
10 engaged in criminal acts with boys. Criminal acts which  
11 no one came here and testified before you that they  
12 expected at the time. In fact, everyone said that they  
13 couldn't believe it or at least words to their --  
14 shocked, stunned.

15 Unfortunately, even after Mr. Dykes confessed  
16 to the bishop, after he pled guilty and was investigated  
17 by a detective, after he was told to stay away from  
18 children, after he was told -- charged with a crime or  
19 crimes by the Multnomah County District Attorney's  
20 Office, after he pled guilty and after he was sentenced  
21 by Judge Snouffer, he committed more criminal acts. Some  
22 of those involved Mr. Lewis. Were those expected  
23 criminal acts or unexpected criminal acts?

24 If my client didn't know through the bishop  
25 about the earlier problem, how could my client have

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1 expected that the criminal acts directed toward Mr.  
2 Lewis, how could they have expected that they happened --  
3 that they would happen? Unexpected criminal acts are not  
4 foreseeable.

5 Dr. Wiest, let's bring up exhibit -- the  
6 center-fold, I've been calling it. Dr. Wiest, why did I  
7 bring this up when he was here? Because that's what he  
8 looked like then. Here we are 25 or so years later.  
9 That's what he looked like then. That's the guy who, if  
10 he had known, would have taken action.

11 He understood that Dykes was removed from  
12 Scouting, removed from his calling. He knew police had  
13 been involved. But he wasn't -- he wasn't told by his  
14 bishop the specifics of what the bishop knew. Why? He  
15 had a son in the troop. Why was he not told? I suggest  
16 it is because the bishop took his privilege seriously.  
17 He didn't tell everyone because he felt he had to protect  
18 the privilege. He didn't tell anyone in the church.

19 But let's assume for the sake of discussion  
20 that that privilege didn't exist. How far would you have  
21 the bishop go to tell people? There's been a lot of talk  
22 of about 30 people in the troop.

23 If you actually take the rosters for the years  
24 that Mr. Dykes was an Assistant Scoutmaster with the Unit  
25 719 troop and you cross off duplicate names and then you

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1 count them all up, and you merge those three years or two  
2 years, I think you'll wind up with about 24.

3 Because some of the names are there that came  
4 in after Mr. Dykes was already removed from Scouting for  
5 this reason. There's a little notation that says so.

6 But even if the bishop had contacted everyone  
7 in that troop, it wouldn't have hit Kerry Lewis' parents.  
8 Even if he contacted every parent of every boy who was  
9 still in that church, it still wouldn't have been to  
10 Kerry Lewis' parents.

11 What he should have done apparently is see  
12 Kerry Lewis' name. Find out where they were. Call them  
13 up or go to visit him. Why stop there? Why stop there?  
14 If Mr. Dykes is a known danger, gosh, shouldn't the  
15 bishop have sent letters to like the school system?  
16 Shouldn't he have sent letters to all of the LDS  
17 Churches? Why limit it to the LDS Church?

18 That's kind of being preferential. You told  
19 your own people. You didn't tell the Presbyterians down  
20 the road? Why not? You could be criticized for that.

21 Where does it end? You have to decide whether  
22 what he did was reasonable, whether what he did was at my  
23 client's direction or control or whether my client had  
24 the right to control it.

25 Did Dr. Wiest try to slant his testimony? He



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1 said that after Bishop McEwen told him Mr. Dykes was  
2 released from his calling as an Assistant Scoutmaster, he  
3 does not remember Mr. Dykes being involved in any  
4 Scouting activities.

5 In fact, have you heard from one witness, one  
6 witness that any of these events involving Mr. Lewis  
7 occurred during a regular Scouting activity? The other  
8 plaintiffs who came in and testified, did they say any of  
9 this happened during regular Scouting activity? No.

10 Why not? Why not? Why didn't it happen  
11 during regular Scout activity? Well, it is not like the  
12 Big Brothers and Sisters where the whole goal is to get  
13 an adult alone with a child, one on one.

14 What the Scouts had was a structure that had a  
15 number of people involved; parents, troop committee,  
16 Scouting coordinator, Scoutmaster, Assistant Scoutmaster,  
17 more than one involved in most regular activities back  
18 then.

19 I'm going to talk briefly about the experts.  
20 Which experts came across as being less biased, more  
21 biased? Less informed, more informed? Mr. Dworin, the  
22 gentleman from LA, did he say he could have identified  
23 Mr. Dykes as a sexual predator on children before it was  
24 known to anybody else? No, he did not.

25 I don't think anybody came in here and told

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1 you they could have identified Dykes as a predator  
2 beforehand regardless of all of these profile  
3 similarities that -- I mean, if it had been, instead of  
4 Mr. Dykes, a married man who was in his 70s here that we  
5 were talking about having molested kids, I bet you could  
6 find files in here that said oh, married men in their  
7 70s, got to keep an eye out for them. I think Mr. Dworin  
8 admitted there's no way to figure out who is going to  
9 prey on children before they do it.

10 Dr. Conte, he said 95 percent-plus of his  
11 evaluations are for plaintiffs; that regardless of the  
12 limits of information available to him, regardless of  
13 what Mr. Lewis told him who seems to minimize the effects  
14 on him of this sexual abuse, he had an opinion that  
15 nearly everything bad that has ever happened in  
16 plaintiff's life was probably somehow caused by this  
17 sexual abuse.

18 I remember in opening, Mr. Clark standing  
19 before you and saying his client wasn't going to make  
20 that claim. He was going to own up to some of the  
21 problems in his life. And maybe he did. And maybe I'm  
22 jaded and cynical. And maybe I just don't remember what  
23 he said completely in that regard. But what Mr. Clark  
24 said in closing, I suggest, was far different than what  
25 the picture was when he gave his opening.

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1           Dr. Conte didn't delve very deeply into Mr.  
2 Lewis' history in the Navy or perhaps he would have been  
3 told what Dr. Sebastian was told, that he was bored with  
4 his job in the Navy.

5           Do you remember Mr. Lewis' mother testifying  
6 about the notes she created about the circumstances  
7 involving the church and Mr. Dykes and the bishop that  
8 she was saving in case if there's some sort of an  
9 emotional crisis or need for them; that she never gave to  
10 her son and she can't find now?

11           Was he even aware that those existed? And was  
12 he? He interviewed people, but he thought what they were  
13 telling him was that there had been all these problems  
14 instead of not enough to give Mr. Lewis the thing that I  
15 wrote down shortly after Mr. Dykes was arrested in  
16 Tillamook.

17           Mr. Smith touched on this. If the abuse at  
18 the hands of Mr. Dykes caused Mr. Lewis' problems in high  
19 school after two years of good grades, with drugs, with  
20 women, with alcohol, what explains this stable period in  
21 New York?

22           How could the abuse not be a causal factor  
23 that made that impossible? How much did the abuse affect  
24 Mr. Lewis? How much did it affect him? He told Dr.  
25 Sebastian he really didn't think much about it until

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1 after he became involved in this lawsuit. I think he  
2 told you that in this courtroom.

3 Let's pull up the testimony of Mr. Lewis which  
4 I played in opening.

5 (Video deposition of Kerry Lewis played.)

6 "How was it that you came to -- well, why did  
7 you end up suing the church and the Boy Scouts for this?

8 "Answer: Because I was asked to be part of  
9 this lawsuit.

10 "Question: Who asked you that?

11 "Answer: Mr. Clark.

12 "Question: Okay. Well, I don't want to --  
13 I'm not asking you about conversations that you had with  
14 Mr. Clark. What I'm trying to find out is how you ended  
15 up thinking that you might go see a lawyer about the  
16 situation, that's what I'm interested in.

17 "Answer: I didn't think about going to see a  
18 lawyer ever.

19 "Okay. How did you get contacted then?

20 "Answer: My mother started this whole thing.  
21 She asked me -- it is very difficult, a lot of  
22 information. My mom started this whole ball rolling.

23 "Question: How so?

24 "Answer: She read in the -- one of the  
25 newspapers here in Oregon about a case Mr. Clark was

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1 involved with.

2 "Question: Had your mom not contacted you  
3 about this, what would you have done?

4 "Answer: Nothing.

5 "Question: When did you first become angry  
6 and frustrated at the church?

7 "Answer: When my mother called me back in  
8 '07."

9 I think that speaks volumes. When his mother  
10 called him, apparently his marriage was not doing well.  
11 There may have been some financial issues. He left his  
12 wife and his daughter in New York to come here to be  
13 involved in this lawsuit.

14 He did well after arriving for a while. He  
15 has a stable relationship. He has a house in Klamath  
16 Falls. He has a truck. He has a trailer and a couple of  
17 four-wheelers that he goes to the dunes on weekends. But  
18 he also, once he learned this case was going to go to  
19 trial, started having some problems.

20 And I'm going to suggest to you that before  
21 that, he didn't really think he had any problems. What  
22 Dr. Conte apparently is telling you is that despite what  
23 his client believes, believed, thought, he disagrees  
24 because the plaintiff is not, I can't remember the words  
25 Dr. Conte used, but psychologically aware, mindful or

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1 whatever it was, psychologically mindful.

2           You have to evaluate that, evaluate what you  
3 think, what the truth is. I'm going to talk a little bit  
4 about Mr. Schoener. He was a real interesting expert who  
5 testified to many opinions to a reasonable professional  
6 certainty. Do you remember that?

7           Even though he admitted he performed no  
8 independent research. Even though he only made it  
9 through one-third to one-half at least when he first  
10 testified, and when he was called back on rebuttal, maybe  
11 more than half of the I.V. Files.

12           Before he came in here and testified in front  
13 of you about vast majority and great majority and so on,  
14 even though he kept no count of the Files he actually  
15 viewed, even though he thought it would be irrelevant,  
16 irrelevant to try to learn how the Boy Scout's records  
17 compared to other records that may have been kept by  
18 other organizations at the same time. He wasn't even  
19 aware anyone else did.

20           What he said -- when Mr. Clark repeated in  
21 opening, you don't have these kind of records unless you  
22 have a problem, so I guess if you don't keep them, you  
23 don't have a problem. And I think that's what Mr. Smith  
24 was saying when he cursed here in front of you. He used  
25 foul language.

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1           Mr. Schoener, who believes all newspaper  
2 articles are true. Remember that testimony? Mr.  
3 Schoener, who I'm going to suggest tried to back out of  
4 his testimony when I got a hold of him 10 minutes or 15  
5 minutes before 5:00 the first time he was here about how  
6 to measure, how to compare the known information, the  
7 known, I'm not talking about unknowns, we all know there  
8 are unknowns.

9           We all know that not all of these perverts get  
10 caught or reported, but comparing known information  
11 available from these Files to known information available  
12 to other youth-serving organizations, what other  
13 youth-serving organizations? Children's Protective  
14 Services? Law enforcement?

15           Mr. Schoener acknowledged that all he really  
16 had to do was run a newspaper search, have some news  
17 search engine go out and gather all of the newspaper  
18 articles that you are going to see in these Files when  
19 you go through them and that would have led him to the  
20 same type of information as the Boy Scouts was keeping.

21           You'll see them. You've seen some of them.  
22 They talk about Scoutmaster and all kind of things in the  
23 newspaper articles. Do you think that was secret  
24 information? Do you think it was secret when it was on  
25 the front page of whatever New York paper it was, the old

## Defendants' Closing Statements

1 one?

2 Do you think it was secret information when  
3 the Boy Scouts of America reported to Congress they kept  
4 these Files years ago? Mr. Schoener was surprised. He  
5 never heard of it before. You've been told here that you  
6 may be the first jury to look at it, but you certainly  
7 aren't the first people who have ever heard about these  
8 things. It has been in the papers. You'll see it when  
9 you go through these Files.

10 Mr. Schoener, who didn't ask for any  
11 additional information from the lawyers representing Mr.  
12 Lewis, who never tried to find out what training was  
13 available here in what was then called the Columbia  
14 Pacific Council. Never wanted to find out apparently,  
15 who was never provided with the trial testimony of Jack  
16 Powell or Linnard Bybee even before he came back.

17 Who could not, on rebuttal, do you remember  
18 this, he's on the telephone on rebuttal, Mr. Mones was  
19 talking about these statements Janet Warren made. I  
20 asked him, what page is that? What page are you talking  
21 about? And he couldn't come up with one. Why do you  
22 think that was? Was he an impartial, unbiased expert?

23 I'm getting near the end here, believe it or  
24 not. I could go on to talk about Mr. Schoener for quite  
25 a while. I have probably two more pages of things to say



## Defendants' Closing Statements

1 about Mr. Schoener, but I'm going to skip to some of the  
2 ones that I think are probably more interesting.

3 I think he said he thought these early public  
4 service advertisements in Scouting magazine, first he  
5 said they aren't good enough, or words to that effect.  
6 You don't see anything about Scoutmaster or Scout abuse  
7 in that. That's not really even raising the awareness of  
8 people who are involved in Scouting about potential child  
9 sex abuse.

10 Then he also said, I think on the phone, he  
11 wasn't really intending to criticize those ads. He  
12 admitted he was not here to talk to you about the  
13 relevant standard of care for organizations like these  
14 two defendants back at the time, the relevant time. Why?  
15 Because he wasn't aware of one. He says you should have,  
16 you would have, you could have.

17 Did I go too fast?

18 She said he was unaware of any validating or  
19 commonly accepted training programs used by organizations  
20 like the defendants back at the time to prevent or train  
21 about child sexual abuse.

22 How did he stack up against Dr. Warren? Who  
23 do you think was more objective? Who do you think had  
24 their opinions more based on objective information? Who  
25 undertook any research at all? I suggest she did.

## Defendants' Closing Statements

1           Mr. Schoener did say a couple of things that I  
2 think are potentially important, because what he finally  
3 said was the reason you want to tell parents that  
4 Scoutmasters could be abusing their kids in Scouting is  
5 because then they will be on notice, and they will be  
6 able to make a decision, a decision as to whether their  
7 children should continue on in Scouting.

8           Do you remember that testimony? And I asked  
9 him, would you agree that once Timur Dykes was arrested  
10 in July of 1984, that Mr. and Mrs. Lewis were on notice  
11 of the possibility that a Scoutmaster or Scout leader  
12 might abuse children since apparently they understood he  
13 was not supposed to be around young boys and they thought  
14 that might be a violation of some probation? He said  
15 yes.

16           And I asked him whether he was aware that  
17 after that, the children, including Mr. Lewis and his  
18 three younger brothers, continued on in Scouting? Why  
19 did I ask those questions?

20           Because at the time, even though they were on  
21 notice, Mr. Lewis' parents did not blame Scouting. They  
22 were mad at the church. There's no question. Mr. Lewis  
23 confronted the bishop in trying to find out where Timur  
24 Dykes was. He got no answers. I said in opening, they  
25 strayed from the church. But they continued on in

## Defendants' Closing Statements

1 Scouting.

2           What does that matter to you? Because right  
3 here, right now, after they first sued the LDS Church and  
4 my client and the Boy Scouts of America, the church is  
5 out. It is not here anymore before you except in one  
6 place on the verdict form. And I think actions speak  
7 louder than words do now. Actions back then speak  
8 volumes. That's why we asked those questions.

9           Some might suggest I'm bringing this up  
10 because I'm blaming Mr. and Mrs. Lewis. And I want to be  
11 clear about it. Mr. Dykes' criminal acts against their  
12 son were not expected by them or anyone else at the time.  
13 I am not blaming them for being fooled by him. How could  
14 I? How could my client blame them for that?

15           Back to Detective Shipley. When he started  
16 testifying, it seemed like maybe he was suggesting that  
17 the bishop hadn't been forthright with him. And on  
18 cross-examination, did it come across to you that after  
19 we went slowly through his report, he realized some of  
20 his recollection wasn't all that great, as I think he  
21 came in and said, they only knew about two victims.

22           By the time we were done with  
23 cross-examination, it was up to six. Plus there were all  
24 those blacked-out names, you'll see, of other kids who  
25 were known to be around Timur Dykes.

## Defendants' Closing Statements

1           How many does it take before at that time the  
2     investigative authority for this county to say, oh, gee,  
3     we might have a serial predator here? I don't know. Is  
4     two enough? Is six enough? Does it have to hit 17? It  
5     was a judgment call, and it was a judgment call by  
6     Detective Shipley, subject to the review of the Multnomah  
7     County District Attorney's Office.

8           I think he testified that at no time did he  
9     ever get any vibe that Bishop McEwen was in any way  
10    trying to hide any information from him. But remember,  
11    you are the ones who have to remember.

12          Did he ever ask for a roster? I think he said  
13    he did not. Did he ever suggest contacting the parents  
14    of other youth than the ones the bishop told him  
15    Mr. Dykes said he tried to touch while they were  
16    sleeping -- or touch while they were sleeping? No. Did  
17    he think as a former Scout to contact the local Council  
18    or the National BSA? He didn't.

19          That's because he knew he was talking to a  
20    bishop in the 10th Ward of the LDS Church. Even though  
21    he knew there was Scouting involved, he didn't think to  
22    have anybody contact my client or the Boy Scouts of  
23    America.

24          The police reports shows Children's Protective  
25    Services was involved. I'm going to suggest that

## Defendants' Closing Statements

1 Children's Protective Services is a youth-serving  
2 organization, and that it had lots of information about  
3 abused youth. Did Mr. Schoener seek to find out any of  
4 that here in Oregon, here in Portland?

5 Judge Snouffer told you about what happened  
6 back then. He said there was no Sex Offender Registry  
7 back then. He told you what he saw from the file made it  
8 look like it was a fairly routine and typical handling of  
9 a matter involving a first-time offender. He didn't  
10 require my client or the Boy Scouts of America to be  
11 notified.

12 Statute of limitations, it is on the top of  
13 page 5 in your instructions. It is one of our defenses.  
14 It is. I'm not shy about it. We have to prove by a  
15 preponderance of the evidence that our conduct did not  
16 knowingly allow, permit or encourage child abuse? That  
17 is for you to decide.

18 If you decide that the conduct of my client  
19 and the Boy Scouts of America or either of them was not  
20 knowingly allowing, permitting or encouraging child  
21 abuse, then Mr. Lewis' case is over. It is a tough call.  
22 It is a tough decision.

23 We are saying he doesn't get the benefit of  
24 the extension of the statute because that's the law. It  
25 will be a tough decision for you, I hope. I hope. But

## Defendants' Closing Statements

1 maybe you won't get there because maybe you'll decide my  
2 client and the Boy Scouts of America were not negligent  
3 to begin with with respect to the abuse of Kerry Lewis by  
4 Mr. Dykes.

5 I'm going to go back to those Maintaining  
6 Standards of Leadership documents. Does that say we  
7 knowingly allowed, permitted or encouraged child abuse?  
8 Does the public service ad say that?

9 Do you remember the testimony of McEwen,  
10 Bishop McEwen, Jack Powell, Linnard Bybee, Bishop French,  
11 Detective Shipley, do you think that shows that my client  
12 knowingly allowed, permitted or encouraged child abuse?

13 Do you recall the testimony about all of the  
14 reasons for these Ineligible Files? Does that say that  
15 we knowingly allowed, permitted, encouraged child abuse?  
16 It is a serious question. And how you answer that, if  
17 you get there on the verdict form, will have a tremendous  
18 impact on one side or the other side in this case. But  
19 the law is what the law is. You get to calmly,  
20 dispassionately decide the facts and apply the law.

21 I talk a little bit about numbers. There's  
22 one document I want to bring up on screen. It is 3207,  
23 please.

24 I'm getting there. I have two more pages,  
25 judge, I think.

## Defendants' Closing Statements

1           You didn't hear anything about this. This is  
2 a document that was admitted by stipulation between  
3 counsel for the parties. Like the numbers Mr. Marshall  
4 had that are in evidence for the National organization,  
5 these are based on records at the Council level.

6           And it gives you some idea during those four,  
7 five years how many units were in the Council, how many  
8 youth were registered through the Council, how many  
9 registered Adult Volunteers there were, and how many  
10 Professional Scouters there were for the Council.

11           Should you choose to do any math, that's the  
12 only reason they are in there, but it also will give you  
13 an idea of the size of this Council back at the time.

14           You can bring that down. I want to talk about  
15 the rosters for a minute. Please bring up 1409, Page 14,  
16 please.

17           Do you remember all those questions to Dr.  
18 Wiest about rosters and such and how Mr. Clark was  
19 pointing out the scratch out and the dates and so on?  
20 One of you jurors wrote a question: Whose responsibility  
21 was it to maintain the roster throughout the course of  
22 the year?

23           Remember, these are documents that were  
24 stipulated as having been produced by my client. That's  
25 that little CPC number in the corner. These came from my

## Defendants' Closing Statements

1 client's records. Mr. Clark suggested that I was going  
2 to come up here and tell you there was a mistake; that  
3 that line for Timur Dykes wasn't crossed out, that that  
4 was a mistake.

5 I'm going to suggest to you that it is proof  
6 that my client was not notified that Mr. Dykes had been  
7 removed from his role as an Assistant Scoutmaster. This  
8 is the record that still existed at the Council when this  
9 lawsuit was filed, and it was requested and it was  
10 ultimately produced.

11 What does it show? It shows that he was, in  
12 fact, on this, according to this sheet, which was in  
13 their possession in 1987 when Mr. Dykes hit the  
14 Ineligible Volunteer Files, they went back and might have  
15 looked at this and said gosh, he might have been  
16 registered until January 31 of '84. 1 of '84, it says,  
17 on the face sheet of his Ineligible Volunteer Files.

18 You'll see on the face sheet that there's  
19 information there about excommunication in the LDS  
20 Church. Well, where did that information come from? We  
21 don't have a witness here who can tell you that.

22 Grant Robinson said, I signed it. I dated it,  
23 but that's not my handwriting. We had other people who  
24 would gather information. Well, how did he gather  
25 information? Is it possible that maybe it says resigned



## Defendants' Closing Statements

1 simply because he never re-registered? There was no  
2 evidence he re-registered after this. And that's why it  
3 says resigned. That's for you to decide.

4 Mr. Clark said the conclusion you have to draw  
5 about this, I'm not going to tell you what conclusions  
6 you have to draw. You get to make up your own minds  
7 about what conclusions and decisions you reach. I'm just  
8 suggesting there's another way to look at this document.  
9 And I'm suggesting that it is proof of our position of  
10 lack of notification.

11 Mr. Lewis, he said two different things under  
12 oath at two different times on a number of occasions. We  
13 tried to bring that out to you. Why? Because maybe his  
14 biases have affected his testimony. Maybe his motives  
15 have effected his testimony. Just like you can consider  
16 bias and motives for any other witness, I'm going to ask  
17 you to consider them when you evaluate his testimony.

18 You've heard him say that Mr. Dykes pulled his  
19 hand up -- and pulled his hand up to his penis and they  
20 touched, but he told Dr. Conte he didn't think that  
21 happened, that it didn't touch.

22 He said he was asked to join the suit. He  
23 said he asked to join the suit. He said that it was  
24 wrong, wrong, wrong. He said, I didn't know what an  
25 erection was. I didn't know what to think about it.

## Defendants' Closing Statements

1           Do you remember Dr. Sebastian testified that  
2 her examination of Mr. Lewis was recorded by somebody  
3 from Mr. Clark's office? Do you remember that? They sat  
4 in the interview room, and she had them move behind Mr.  
5 Lewis so that their presence wouldn't affect the  
6 communication going on.

7           She came in here and told you a number of  
8 things about what Mr. Lewis told her during that  
9 interview. If she was misrepresenting what he said when  
10 she came and testified in front of you, do you think  
11 maybe you would have heard excerpts from that audio tape  
12 proving her wrong? That didn't happen. I'm going to  
13 suggest that that's something significant.

14           Did she fail to support her opinions with  
15 information, knowledge? Was she reasonable in concluding  
16 that Mr. Lewis' drug issues were not primarily caused by  
17 the abuse at the hand of Timur Dykes? It is up to you to  
18 decide.

19           I want to bring up another document. Do you  
20 remember Mr. Clark saying he didn't come up with any kind  
21 of training documents, just this certificate is nice, but  
22 where are the training records? We don't have any.

23           But I found something interesting in one of  
24 the exhibits that's been received, Exhibit 1381, page  
25 133, please. This, if I am not mistaken, is a

## Defendants' Closing Statements

1 Scoutmaster Handbook from 1981.

2 Remember the portions that were shown to you.  
3 One of them was this sex curiosity. Why don't you roll  
4 it up here. It tells the Scoutmaster back in 1981, how  
5 do you handle these issues? You got to respect the  
6 privacy rights of parents to teach their own youth. How  
7 do you handle it?

8 Here is rule number one. Don't instruct the  
9 Scouts on the subject of sex and family life. It is not  
10 really Scouting's responsibility. I'm paraphrasing, not  
11 reading. Only give advice within your own competence.  
12 Why do they say that? Well, because it is based on  
13 volunteers who may have differing levels of knowledge and  
14 competence as to how to deal with issues like this that  
15 arise.

16 Rule number three, refer them to persons  
17 qualified to handle them. If they have a spiritual  
18 leader or doctor, go there. If they are not available,  
19 you might have to help the Scout meet one, but don't try  
20 to play a highly professional role and avoid passing the  
21 buck. So try to do something. But don't pretend you are  
22 something you are not.

23 It says publications that you judge  
24 unacceptable should be removed from the scene. Maybe  
25 that's where we got off on this point, issue, if you

## Defendants' Closing Statements

1 remember that. Let's go to the next page.

2 This is evidence of what was thought at the  
3 time -- what was being told to Scoutmasters at the time  
4 in 1981, about sex. Could run from the innocent to the  
5 scandalous. They call for a private and thorough  
6 investigation. Frank discussion with those involved.

7 Does that sound like secrecy to you? It is  
8 important to distinguish between youthful acts of  
9 innocence. And again, we're showing the age, the era,  
10 and the practices of a homosexual.

11 That's been waved around here like a red flag.  
12 But I talked to you before you were selected to sit on  
13 this jury and asked whether you can set that aside  
14 because it really doesn't have anything to do with this  
15 case. And I think most of you said that you were.

16 It does say, it is a greatest importance that  
17 such occasions be kept quiet, avoid accusations and any  
18 loose talk. Discuss these problems with the Scout's  
19 parents, religious leader and troop committee.

20 Does that sound like a campaign of secrecy to  
21 you, a failure to try to think ahead, a failure to try to  
22 do the right thing? It is not directly on point. It  
23 doesn't say child sexual abuse. But that's why we  
24 brought in people who researched the literature and had  
25 some idea of what the standard of care was at the time.

## Defendants' Closing Statements

1 You heard Dr. Warren. She said that the Boy Scouts of  
2 America did not fall beneath the standard of care; that  
3 they exceeded it in some ways at that time.

4 I want to talk about the verdict form for a  
5 minute, damages, and then I'm done just in time maybe for  
6 a break.

7 The verdict form: The very first question is  
8 about the Boy Scouts of America. Was defendant, Boy  
9 Scouts of America, negligent in one or more of the ways  
10 plaintiff's claim -- plaintiff claims?

11 Again, it is your decision. I'm going to ask  
12 you to seriously consider putting a "no" in there. If  
13 that's the case, then the Boy Scouts win.

14 Then you get to my client, Question 2a: Was  
15 my client negligent? I'm going to ask you again to  
16 seriously question putting in a "no" as an answer. If  
17 you do that, you don't have to answer any more questions.  
18 But if you proceed, then you are going to be asked: Did  
19 that negligence cause harm to the plaintiff? If you say  
20 "no," again, the defendants win.

21 Then you get to the tough question, if you've  
22 gotten that far, what's the apportionment of fault?  
23 You'll see that the LDS Church is listed there with a  
24 percentage. That's simply a function of the law. They  
25 are a former party. They are allowed to be considered by

## Defendants' Closing Statements

1 you as to any fault they may have had.

2 I'm not here suggesting that you should find  
3 them at fault. I'm here suggesting you should find my  
4 client and the Boy Scouts of America not at fault and not  
5 reach that question. But you might, and you have to do  
6 what you consider to be the right thing.

7 What are the total damages? \$4 million is  
8 being claimed. You do not have to award \$4 million. You  
9 get to pick a number, if you get that far. I'm going to  
10 suggest to you that for what you heard here, this case is  
11 not worth millions of dollars. I'm going to suggest to  
12 you it is not worth hundreds of thousands of dollars.  
13 But that is not my decision. It is yours.

14 Then you get, after going through all of that,  
15 to the statute of limitations offenses. You may have  
16 gone through all of the prior questions and answered them  
17 all, and then you decide it was filed too late because  
18 you may decide that my client or the Boy Scouts proved  
19 they did not knowingly permit, allow or encourage child  
20 abuse in relation to plaintiff's claims that are here,  
21 then you go on to the punitive damages questions.

22 You heard Mr. Schoener testify. He gave his  
23 opinion. That was loud and clear. Oh, it was a  
24 highly -- what did he say, it was -- we'll use the magic  
25 language that relates to. You'll see it in the

## Defendants' Closing Statements

1 instructions on the punitive damage instruction. Oh,  
2 yes, yes, they were. And his opinion is punish us.  
3 Punish us for what we did or didn't do. Again, you get  
4 to decide.

5 Given the length of the case, you got serious  
6 matters at issue. It is a natural human tendency to want  
7 to try to help people who look like they could use help.  
8 It is a natural human tendency to try to assume that  
9 organizations somehow don't have feelings or don't feel  
10 the results of a verdict.

11 I'll suggest to you that each and every  
12 registered volunteer in the Cascade Pacific Council will  
13 know about whatever verdict you do, whatever you decide,  
14 really quickly. And it could have an impact on them,  
15 just like the verdict could have an impact upon Mr.  
16 Lewis.

17 Okay. Mr. Lewis' lawyer, I don't know which,  
18 they have a chance to rebut what I've argued, rebut what  
19 Mr. Smith has argued again.

20 Again, I hope I didn't offend you. I hope  
21 when I sit down, if he comes up with an argument that I  
22 didn't think about, talking about, that you'll say what  
23 would the lawyers for the defendants have said in  
24 response to that argument when you deliberate, talk about  
25 that.





## Defendants' Closing Statements

1 before.

2 THE COURT: Yes. I have. I think it requires  
3 your stipulation, since Rule 47 F says to the contrary.

4 MR. SMITH: Yes.

5 MR. XOCHIHUA: I think it is 57 F.

6 THE COURT: Did I say 47?

7 MR. XOCHIHUA: Yes.

8 THE COURT: Excuse me, I misspoke. I've got  
9 it open here. It is 57 F. Thank you.

10 MR. XOCHIHUA: I concur in your suggestion.

11 MR. MONES: We would stipulate on the record,  
12 judge.

13 THE COURT: All right. Then what I'll do this  
14 afternoon, I'll identify the alternates. I'll thank them  
15 for their service. I'll send them home and tell them  
16 that we'll be in touch, and they are not discharged.

17 Okay. That's what we'll do. Thank you.

18 Bring them in.

19 (Jury present.)

20 THE COURT: All right. Go ahead, Mr. Clark.

21 MR. CLARK: Thank you, your Honor.

22 Good afternoon again, ladies and gentlemen.

23 Rebuttal is a very different kind of argument.

24 And there are always decisions that one has to make about  
25 how to go about it. I'm going to try and blend a couple

## Plaintiff's Rebuttal Statement

1 of things. I'm going to try and keep our eye on the big  
2 picture and what is important, and at the same time  
3 respond to some of the specifics that have been brought  
4 up by the defense. There's no way to do both  
5 comprehensively. So you may find me jumping back and  
6 forth from the thematic to the specific.

7 And it will necessarily be jumbled. I will  
8 necessarily be jumping around, but I'll try and give you  
9 some headlines and some transitions so you know why I'm  
10 talking about what I'm talking about.

11 What is the defense to this case? The abuse  
12 didn't happen? Well, that's what it was for a long time.  
13 And then two weeks before trial when Timur Dykes admitted  
14 he molested Kerry Lewis, the Scout defendants took the  
15 word of the pedophile, after they spent two years calling  
16 Kerry Lewis a liar, and they said well, I guess some of  
17 it happened.

18 Mr. Xochihua said in his opening statement,  
19 maybe more times than one. So which is it? Did it not  
20 happen? Did it happen once or did it happen more than  
21 once? What we know is they still don't put any value on  
22 child sexual abuse. Not worth \$4 million. Not worth  
23 hundreds of thousands of dollars.

24 I waited. What is it worth? \$25,000? 75?  
25 175? Not worth hundreds, that's all we know. That's

## Plaintiff's Rebuttal Statement

1 still the value they put on child sexual abuse.

2 So what is the defense? Did the abuse happen,  
3 or did it not? Yes is the answer to that. Are we  
4 blaming the parents or are we not? According to Mr.  
5 Xochihua, no. According to the president of the Cascade  
6 Pacific Council, they ought to be in jail.

7 Mr. Xochihua says, you know what, that's not  
8 our official position. There are pleadings prior to a  
9 week before trial that said blame of other parties,  
10 including the parents, may be at fault.

11 So are the parents to blame, or are they not?  
12 The answer is yes. This case has been defended exactly  
13 the way a clever criminal defense lawyer defends a  
14 pedophile. Death by a thousand cuts. Maybe I can get  
15 this jury to reasonable doubt. The abuse didn't happen.  
16 And when there's seemingly conclusive proof that it did,  
17 well, then it wasn't me.

18 In this case it wasn't my people, it was  
19 somebody else. That's what the anti-agency argument is  
20 by definition. It is blaming somebody else.

21 And then it is what all pedophiles and  
22 apologists for child abuse do at all times, which is you  
23 blame the victim. They said they didn't do it. They  
24 said they weren't blaming the victim. Really? Really?

25 They attack him seven ways from Sunday. They

## Plaintiff's Rebuttal Statement

1 attacked his credibility. They attacked his motives.  
2 They called him a liar for two years, politely, of  
3 course. They didn't use that word. But what, what are  
4 you saying when you say somebody is not telling the truth  
5 about something that's profound as child abuse? You are  
6 saying he's lying. And they take words and they twist it  
7 out of context and they show short video clips.

8 Do you remember what he said? I was asked by  
9 Mr. Clark to get involved in this case as a witness.  
10 Then he talks to his family and he decided what all child  
11 abuse survivors do, not all, but many child abuse  
12 survivors do is; it is time to stand up for myself.

13 He talked about the conversation with his dad  
14 in which he decided, I'm going to stand up for myself,  
15 because if I didn't do it, I would be running away from  
16 it. And then he became a plaintiff.

17 And I don't know how many times they played  
18 that darn video and how many times they have to hear it,  
19 they are going to use that as if the dangers of child  
20 abuse in this country are the responsibility -- the abuse  
21 that happened to Kerry Lewis. And the real threat of  
22 society are two plaintiffs lawyers who try to stand up  
23 for a man who was abused. We're the threat. It is our  
24 fault. We're the ones that turned Timur Dykes loose.  
25 That's what they are saying.

## Plaintiff's Rebuttal Statement

1           Now, if Kerry Lewis is a liar, why doesn't he  
2 lie about the most important thing, the most potentially  
3 impactful thing on this case? It happened between 22 and  
4 27 times. And it was anal penetration. And it was oral  
5 sex and it was masturbation. Nobody would know. You  
6 heard what the other boys said Timur Dykes did to them.

7           If he was going to lie to you knowingly and  
8 intentionally, if he's that kind of a character, if you  
9 can get into that kind of a mind-set and go there, then  
10 why doesn't he lie about the most important thing?

11 Because he's an honest guy. Yes, his process is  
12 developing. Of course, he's learning more about this.  
13 He's learning the language to put concepts and these  
14 feelings into words.

15           But saying the same thing in a couple of  
16 different ways is not the same as saying different  
17 things. And to suggest otherwise is dishonorable and it  
18 is distasteful.

19           I was hoping we weren't going to have to spend  
20 time in closing argument talking about people's motives.  
21 We have challenged the motives of one group of people and  
22 one group of people only, the top-level corporate  
23 management of Boy Scouts of America for choosing  
24 membership, money and manpower over the safety of  
25 children.

## Plaintiff's Rebuttal Statement

1           We have not attacked -- we've attacked the  
2 judgment and the actions of Mr. McEwen, Mr. Wiest and a  
3 number of other people, but nobody is suggesting that  
4 they got up -- we haven't suggested they got up one  
5 morning and decided to hurt children, those men, that  
6 they got up and decided to hurt children. We judge  
7 actions, not motives.

8           And if the message isn't clear, our message  
9 about Bishop McEwen and Mr. Wiest and the others like him  
10 is they should have been trained, the Boy Scouts had the  
11 knowledge, and they didn't do it. So they made bad  
12 decisions.

13           But you know what, if you are Kerry Lewis, it  
14 doesn't really matter much why Mr. Wiest, Dr. Wiest or  
15 Gordon McEwen didn't pick up the phone and call his  
16 parents. It doesn't really matter much why, does it?

17           The fact is they didn't get the warnings that  
18 he was abused. We haven't attacked the motives of the  
19 lawyers. We haven't attacked the motives of their  
20 witnesses. And Mr. Xochihua stands up here for 45  
21 minutes, all of the witnesses that we called are thieves  
22 and names. All of the witnesses that they called are  
23 noble and enlightened.

24           So the case is being defended the way a clever  
25 criminal defense lawyer defends somebody on trial for

## Plaintiff's Rebuttal Statement

1 child abuse. The abuse didn't happen. If it happened,  
2 it wasn't by me or by my people. The victim is changing  
3 his story. The family is stirring this up. Hoping death  
4 by a thousand cuts, that they can get you to reasonable  
5 doubt.

6 But this isn't a reasonable doubt case, as the  
7 instructions show. The burden of proof is on us to prove  
8 by a preponderance of the evidence, more likely than not,  
9 what happened. Then when it gets to the question of  
10 punitive damages, is it clear and convincing that the  
11 behavior was reckless and outrageous and so on and so  
12 forth.

13 So death by a thousand cuts doesn't get you  
14 there. I'm going to have some more things to say about  
15 the way this case has been litigated at the end. Since  
16 they opened the door and they want to talk about that,  
17 I'm going to talk about it, but I'm going to talk about  
18 it at the end.

19 Now, I'm going to do what I said I was going  
20 to do, which is I'm going to dig into some of the  
21 specifics. And the kind of cutoff place that I'm going  
22 to try to go to is the things that I think may be most  
23 likely get to be confusing to you.

24 Mr. Xochihua kept talking about standard of  
25 care. Standard of care is only relevant in this case to

## Plaintiff's Rebuttal Statement

1 the extent that the jury instructions say that it is.  
2 And the jury instructions talk about foreseeability. The  
3 jury instructions talk about foreseeability based on  
4 specialized knowledge.

5           What's in the Files, what they knew about  
6 Timur Dykes. Specialized knowledge affects  
7 foreseeability. Standard of care in some abstract,  
8 theoretical sense doesn't much matter. Specialized  
9 knowledge, what Mr. Schoener said, I apologize for  
10 calling him doctor earlier, too many doctors in this  
11 case, for the standard of care is affected because if you  
12 got this information, then according to what Mr. Schoener  
13 says, your foreseeability shifts. You have an enormous  
14 body of information. And you don't get to sit on it.

15           So standard of care is not the concept. The  
16 concept is foreseeability. And again, they come back to  
17 a couple of paragraphs in the Cubmaster Handbook, which  
18 talks pretty clearly, if you look at it, about young boys  
19 coming on to young boys.

20           They describe that as homosexual conduct. It  
21 doesn't say anything about Scout leaders. I come back to  
22 the same thing I said before, the reason that we -- I  
23 suspect, I haven't asked him, but the reason I suspect  
24 that Mr. Mones referred to Mr. Bybee as the bus driver is  
25 to contrast that with what you would expect to see if



## Plaintiff's Rebuttal Statement

1 they are trying to put on evidence of comprehensive  
2 training.

3 You would expect to see a Boy Scout executive  
4 from Texas coming in and talking about oh, well, here are  
5 the 37 files that we had, and the way that we trained  
6 people back then in child abuse. Or a Cascade Pacific  
7 Council executive to come in and say, yeah, here is  
8 volume 1982, the way Mr. Wolff did with his early 1980's  
9 articles on child abuse for the Big Brothers and Sisters.

10 That's the reason that we used Mr. Bybee. Not  
11 out of any disrespect to him, I know Mr. Mones didn't  
12 intend it that way, because he's not that kind of man.  
13 But the fact is they didn't bring you anybody from  
14 leadership to talk about what they did.

15 They brought you a very nice person, obviously  
16 proud of his time in Scouting. And that's the only  
17 person they could find? And the two public service ads.  
18 That's the point of all of that.

19 Let's be real clear. Mr. Xochihua said  
20 there's no way to figure out who is going to prey on  
21 children before they abuse. We're not blaming McEwen and  
22 Wiest for not knowing before Colleen Lashbaugh's  
23 confession that Timur Dykes was a child molester.

24 We're blaming them and we're blaming the Boy  
25 Scouts for not training them to know that a guy that

## Plaintiff's Rebuttal Statement

1 molests 17 boys is likely to molest more, and that it is  
2 foreseeable that he would go right to the same group of  
3 kids, Troop 17, Pack 17, there's Kerry Lewis' name.

4 That's foreseeable. That's what we're blaming them for.

5 And the suggestion that it was -- that we're  
6 trying to blame them for not being able to pick Timur  
7 Dykes out before the 17 were abused, that's irrelevant.  
8 We've never said that. That's not part of this case.

9 We're suggesting that based upon what they  
10 knew there, what they knew there, they could have put an  
11 effective training program in place.

12 And I keep coming back to the Big Brothers and  
13 Sisters for two reasons. One is it only took them a year  
14 or two. Do you remember Mr. Wolff, he said when he got  
15 the notice that NAMBLA, the Man/Boy Love Association, was  
16 trying to infiltrate the Boy Scouts and the Big Brothers  
17 and Sisters, he went into action.

18 He stared down his board and got some people  
19 who agreed with him, and they ran it through, and within  
20 a year or two they were doing seminars. He was writing  
21 papers. They were talking to other organizations. That  
22 happened quickly.

23 Now, yes, it was the 1980's. But you have to  
24 remember, the Boy Scouts had a 40-year start on the Big  
25 Brothers and Sisters. Boy Scouts were started in the

## Plaintiff's Rebuttal Statement

1 early 1900's. Big Brothers and Sisters weren't started  
2 until the 1940's. They didn't have this information.  
3 The Boy Scouts had it and sat on it. If they had  
4 one-tenth of what Big Brothers and Sisters had done a  
5 decade earlier, Kerry Lewis wouldn't have been abused.  
6 The causation is that clear.

7 And if McEwen and Wiest had been trained or  
8 had done the common sense thing and gone and found the  
9 rest of the kids on the roster, then the abuse wouldn't  
10 have happened.

11 I want to talk for a minute about this  
12 business of religious privilege. There's no jury  
13 instruction here that says a corporation can only act  
14 through its agents. And what an agent knows, a  
15 corporation knows, with an asterisk that says, unless the  
16 information was gained in a religious context, in which  
17 case it doesn't count.

18 That is not the law. They say they are not  
19 blaming the LDS Church. They spend a lot of time talking  
20 about LDS Churchy-things, including religious privilege.  
21 The suggestion is that because McEwen was listening to  
22 some of these people possibly in a privileged  
23 conversation, that he somehow was restricted from what he  
24 can do with that.

25 Well, a parent, not because he's talking to

## Plaintiff's Rebuttal Statement

1 the police officer about it, and if it is Timur Dykes'  
2 religious privilege, Timur Dykes is talking to a police  
3 officer about it, so it doesn't make any sense first off.  
4 Secondly, there's no jury instruction on it.

5 The question is, was he acting as an agent at  
6 the time? Now, if he wasn't acting as an agent for the  
7 Boy Scouts, and I mean, McEwen, if he wasn't acting as an  
8 agent for the Boy Scouts, then why does everything in  
9 Shipley's report talk about Scouting?

10 If he wasn't acting as an agent for the Boy  
11 Scouts, then why did Colleen Lashbaugh go to talk to him  
12 because he's the head of the troop in which all of the  
13 boys were abused? If he's not acting as the head of the  
14 troop, but he only acts a Mormon bishop, why did the  
15 Lewis family, the Lewis parents, Mr. Lewis go see McEwen  
16 a year later?

17 Why did he say that? Because I knew he was  
18 the head of a Scout troop. So he gets this information.  
19 He's wearing two hats. One of them is a Scouting hat.  
20 The fact that he may or may not have dispensed some  
21 religious absolution or some spiritual comfort to Timur  
22 Dykes is irrelevant.

23 And even if somehow it plays into the thing,  
24 you have to come back to what Eugene Grant said. I'm the  
25 guy. The buck stops with me. I'm the president.

## Plaintiff's Rebuttal Statement

1 Cascade Pacific Council and the Boy Scouts of America,  
2 charter organizations all over the country, Future  
3 Farmers of America, rotaries, PTA's, Methodist churches,  
4 Episcopal churches, Catholic Church, if there's some  
5 problem that restricts people's ability to protect  
6 children because of the religious doctrines involved,  
7 then it is up to the Boy Scouts of America to say you can  
8 believe what you want to.

9 But as long as you are dealing with our  
10 program, here is the rules. You report this, this and  
11 this. Yes or no. You want a charter or not. You want a  
12 charter, you say yes. You don't want a charter, bye.

13 Unless maybe that particular religious  
14 institution owns 50 percent of your troops, in which case  
15 maybe you don't have the guts to say that. But either  
16 way, it comes back to the Boy Scouts of America and the  
17 Cascade Pacific Council.

18 Mr. Xochihua pointed you to the jury  
19 instruction that said that unexpected criminal acts are  
20 not foreseeable. I think everybody agrees with that.  
21 The question is these were not unexpected criminal acts  
22 by Timur Dykes after January of 1983. After January of  
23 1983, it was absolutely expected. And after about 1965  
24 or 1970, it was absolutely expected that this kind of  
25 abuse would happen in Scouting to boys like that.

## Plaintiff's Rebuttal Statement

1           It is not an unexpected criminal activity.  
2       These are all full of criminal activity. The only  
3       difference between a freak accident and a foreseeable  
4       danger is frequency. And what you knew and when you knew  
5       it is a continuum. And at some point there's a tipping  
6       point. If you are the highway department and there's a  
7       dangerous curve, and you watch somebody go off the road,  
8       maybe that's a freak accident. And you make a note of  
9       it.

10           But a year later when ten people have gone off  
11       the road, and you've made ten notes of it, maybe you know  
12       you've got a dangerous curve. And 30 years later, when  
13       200 people have gone off that road and died, and you've  
14       taken notes, at what point do you know you have a  
15       dangerous curve? At some point there you don't get to  
16       just say well, we never analyzed it.

17           The only difference between a foreseeable  
18       danger and a freak accident is frequency. I don't know.  
19       A thousand, the first 500, the first hundred, at what  
20       point does it tip when you say it is now foreseeable that  
21       if nothing changes, nothing changes?

22           We're not talking about unforeseeable criminal  
23       conduct. We are talking about absolutely foreseeable  
24       criminal conduct here. So the highway department has to  
25       put up a warning sign. They have to put up a guardrail.

## Plaintiff's Rebuttal Statement

1 Maybe they have to straighten the road. But they don't  
2 just get to keep sitting there and keep taking statistics  
3 and keep taking notes about the number of people that  
4 drive off the dangerous curve.

5 Now, as I can recall the main challenges to  
6 credibility or bias from the defense lawyers --  
7 interestingly, I waited for a challenge or bias or  
8 accusation against Mr. Wolff. And I didn't hear it.

9 But Mr. O'Connor from Alaska, the guy that's  
10 got the \$50,000 bequest in his will, he's been a Scouter  
11 for 60 years, the guy up there with the one Cub Scout in  
12 his troop, has an axe to grind. Apparently, that's why  
13 he came in here. He may have an axe to grind. If he has  
14 an axe to grind, it is that they didn't do the right  
15 thing in the '70s when it came to inflating membership  
16 and ghost units.

17 Mr. Smith said he is doesn't understand what  
18 that has to do with a child sexual abuse case. I suspect  
19 Mr. Smith is joshing you. What it has to do with is the  
20 motive to protect the organization's reputation.

21 If you are desperate to keep members, so  
22 desperate that you are pumping up the membership rolls  
23 and at the same time you don't want this thing to come  
24 out here, this secret. It is perfect. It is a perfect  
25 link; they call it circumstantial evidence.

## Plaintiff's Rebuttal Statement

1           The court instructed you yesterday that  
2           circumstantial evidence is just as powerful as direct  
3           evidence. Two facts laid side by side mean something.  
4           Footprints in the snow always mean somebody has been  
5           there. That's circumstantial evidence.

6           The motive is to keep membership numbers from  
7           dropping. That's the significance of the ghost units and  
8           what Mr. O'Connor had to say.

9           Very briefly, a couple of points. I suspect  
10          Dr. Conte didn't talk to Alderson or Velaas because at  
11          the time neither of them had seen Kerry Lewis more than  
12          about three times. But trust your judgment on what he  
13          said about that.

14          They attacked the credibility of Joe Severs,  
15          Joel Drebert and Adrian Leech because they are  
16          plaintiffs. Did they suggest one way in which their  
17          testimony might have been effected? Are they suggesting  
18          that any of those boys were lying? They have to be.

19          Why else do you bring that up unless -- but  
20          you don't have the guts to say he's a liar, so you say he  
21          might be biased. If they are going to call him a liar,  
22          call him a liar. Don't pick around at it. Is he or  
23          isn't he?

24          It comes back from what I said in the  
25          beginning, what is the defense in this case? Who is the



## Plaintiff's Rebuttal Statement

1 first witness that the defense called? Who did they call  
2 to put on their theory of this case, what they stand for  
3 and what they want you to know about them? Do you  
4 remember who it was?

5 Was it a Boy Scout executive to tells you  
6 about the good things they do? Was it somebody from the  
7 top to talk to you about how they had done things right  
8 in terms of child abuse training?

9 The first witness that the Scout defendants  
10 called was a child abuse victim, Heath Lewis, Kerry's  
11 younger brother, the one who had gotten the tar beaten  
12 out of him by his stepdad.

13 And they put him up there for what reason?  
14 What useful information did they get out of him? He had  
15 a drug problem. We would have stipulated to that.  
16 That's what the Boy Scouts of America had stood for in  
17 this case. They call a child abuse victim up there to  
18 suggest that because his life is a mess and his life is a  
19 mess, it runs in the family.

20 I mean, think about it, what other possible  
21 explanation is it, is there for calling that young man  
22 who had ADD problems from very early on and has struggled  
23 with drugs, what possible reason is there for the Boy  
24 Scouts of America to call a child abuse victim as their  
25 first witness? To embarrass him in front of you people.

## Plaintiff's Rebuttal Statement

1 That's the way they have litigated this case. And they  
2 call these other abuse victims liars.

3 I can't let this one go. Dr. Sebastian's  
4 testimony before the legislature was in support, Mr.  
5 Xochihua said of bill, which would extend the statute of  
6 limitations to sue the perpetrators.

7 That somehow or other the laws in the State of  
8 Oregon and legislature or the courts or whoever is  
9 deciding that you can sue institutions of trust when they  
10 don't protect children; that somehow or another that law  
11 is a bad law, and we should just have -- the law should  
12 just be that you can sue the perpetrators.

13 Yeah, that would solve the problem, wouldn't  
14 it? That would really solve the problem. The  
15 perpetrators, ladies and gentlemen, you don't -- Mr.  
16 Xochihua said that he blames, I think he said one person  
17 and one person only for this, or his client blames one  
18 person and one person only, and that is Timur Dykes,  
19 because Timur Dykes was a wolf and he fooled everybody.

20 Well, we know what wolves do to lambs and fowl  
21 and chickens. They chew them up. So when the wolf comes  
22 along and you leave the gate open, the wolf comes in and  
23 does what wolves do, the rancher doesn't get to blame the  
24 wolf.

25 Damn wolf. God, who would thought that wolf

## Plaintiff's Rebuttal Statement

1 got in and ate that lamb. Yeah, the door was open.  
2 That's what wolves do. You don't get to come along and  
3 blame the wolf for doing what wolves do.

4 Of course, Timur Dykes was a tortured and  
5 demented man. Nobody is suggesting otherwise. That's  
6 not the point. They knew that those people were out  
7 there. In this case they knew that that's where he was.  
8 And the fact that this wolf, because nobody protected  
9 Kerry Lewis, got to Kerry Lewis, the rancher now blames  
10 the wolf.

11 They talk to you about the Procedures for  
12 Maintaining Standards of Leadership as an example of the  
13 kind of thing they were trying to do to respond to child  
14 abuse. I think the Exhibit No. is 3022, 23 and 24.

15 You'll want to look at the first page, I  
16 think, it is of the 1972 Procedures for Maintaining  
17 Standards of Leadership. What it says is, and I forget  
18 the exact order, but somewhere pretty clearly on the  
19 first couple of pages is, we've got to keep this quiet.  
20 When you put one of these people in the file, it has got  
21 to be quiet.

22 So I hope you do look at the Procedures for  
23 Maintaining Standards of Leadership in 1972. The other  
24 thing is there's no evidence in this case that anybody at  
25 the local level, the chartered organizations was trained

## Plaintiff's Rebuttal Statement

1 in how to put people in any of these files. Mr. Wiest  
2 wasn't. Gordon McEwen wasn't. They didn't know anything  
3 about the files, let alone how to get somebody in them.

4 I forget if it was Mr. Smith or Mr. Xochihua  
5 that said that Gordon McEwen was not acting on behalf of  
6 the BSA and not acting on behalf of the CPC when he  
7 removed Timur Dykes.

8 You may remember they asked that question in  
9 the deposition. And Bishop McEwen said no, I wasn't. I  
10 was acting in other than a capacity. And then later on,  
11 I asked him in the same deposition, well, if you weren't  
12 acting on behalf of the Boy Scouts in removing Timur  
13 Dykes, then he's still a member of Boy Scouts. He hasn't  
14 been officially removed. And Bishop McEwen said  
15 something like sadly, yes.

16 So he could go across town and register  
17 somewhere else? Sadly, yes. The fact is if he wasn't  
18 acting in an official capacity for the Boy Scouts of  
19 America, then how did he remove Timur Dykes as  
20 Scoutmaster?

21 I mean, the authority either flows down or it  
22 doesn't. They don't get to have it both ways. They  
23 don't get to say when it all goes well, these guys are  
24 our agents and then turn around and say, but when it goes  
25 badly, they are not our agents. If he removed him as

## Plaintiff's Rebuttal Statement

1 Assistant Scoutmaster, then he had to have authority to  
2 do that.

3 And on this agency question, it reminds me of  
4 one other thing I wanted to mention to you. When it all  
5 goes well and a Scout comes up you and does well and  
6 becomes an Eagle Scout, goes on and does great things in  
7 life, becomes a senator from any state, suppose the Boy  
8 Scouts of America give an equal share credit to the Third  
9 Street Baptist Church in Joplin, Missouri, where the guy  
10 was a Boy Scout, do you suppose they take the credit  
11 hook? Look at what our Boy Scouts do. But when it goes  
12 bad, all of a sudden, the Third Street Baptist Church in  
13 Joplin, Missouri, is on their own.

14 Again, they want it both ways. McEwen had to  
15 be acting in the course and scope of his agency or he  
16 wouldn't have the authority to remove Timur Dykes at all.

17 Now, they said -- they've said that Timur  
18 Dykes' I.V. File has to be a mistake. Where it says  
19 '84-'85, it has to be a mistake. Do you remember hearing  
20 them say that? I predicted they would say that. That's  
21 what they said. Because Grant Robinson -- because of the  
22 things Grant Robinson testified to about how he opened  
23 that file and how he got that information.

24 I think Mr. Robinson testified that he never  
25 had done one of these before. If you pull up Exhibit

## Plaintiff's Rebuttal Statement

1 504, face page. Pull up the signature on the bottom,  
2 please.

3 This says Grant Robinson, when he was Scout  
4 Executive of Lake Bonneville. Show the date, please.  
5 1981. Before he came to Portland, before he opened Timur  
6 Dykes' I.V. File in 1987.

7 Grant Robinson is no stranger to I.V. Files.  
8 He knew how to open an I.V. File. He knew it was  
9 important. He knew that the information is important.  
10 He had to get it out there.

11 Timur Dykes' file is a damning piece of  
12 evidence for the defense. And they don't know what to do  
13 with it, so they call it a mistake. I waited and waited  
14 and waited for an answer on where the official  
15 registrations for Timur Dykes are. I still don't think  
16 we know.

17 But what that -- what Timur Dykes' I.V. File  
18 says is that he was active in Scouting in '84 and '85 and  
19 what the rosters say is that he was active in Scouting in  
20 '83.

21 Just a couple other major points and then I'll  
22 be finished.

23 One of the first things that Mr. Smith said  
24 was that there's no comparison here with the Catholic  
25 Church. They are both vertically integrated

## Plaintiff's Rebuttal Statement

1 organizations with a hierarchal structure. They are  
2 family-based, community-based, youth-based organizations.  
3 They have absolutely admittedly noble and lofty aims.

4 They had -- they rely on parents and  
5 volunteers to carry out their mission. They had  
6 knowledge at the top levels of serious problems with  
7 child abuse decades ago. They gave no warnings about  
8 that. They put people on probation and let them back in.  
9 There was more abuse. When the lawsuits came, the first  
10 reaction was to blame the victim. Other than that,  
11 there's no similarities. It is exactly the same  
12 situation playing out all over again.

13 I'm not going to comment again on the language  
14 of the president of the Cascade Pacific Council, but he  
15 did clearly say that the parents ought to be in jail.  
16 And their pleadings clearly did say that the fault was in  
17 part based on the parents' conduct up until two weeks  
18 before trial.

19 Would you pull up the photographs?

20 You didn't hear much about this in closing  
21 argument. They spent a week telling you it was  
22 impossible for Kerry Lewis to hang around Troop 719.  
23 Couldn't have been possible for Kerry Lewis to be in  
24 Troop 719 in 1984.

25 This is July or August 1984, Farragut, Idaho,

## Plaintiff's Rebuttal Statement

1 LDS Encampment. And there he is. Look at the patches of  
2 all of the people around him. 719. Did they even ask  
3 any questions? Did they even -- no, no, because they  
4 know -- they knew that it was game over right here.  
5 Their impossibility theory is gone between that document  
6 and the Cub Scout roster. The defense of impossibility  
7 is gone.

8 Because Kerry Lewis was, in fact, hanging out  
9 with people in Troop 719, even if he was on the rolls in  
10 815 and because they knew that Cub Scouts in Pack 719 had  
11 been abused.

12 Just to sort of show some other comparisons.  
13 Keep going. Keep going. Long, floppy, reddish blond  
14 hair, big overbite, small child. But it is impossible  
15 for him to have been involved in Troop 719. Pull it  
16 down.

17 I want to just recall the comments I made to  
18 you about the importance of this case. Whether you  
19 believe it is fate or luck or God, nobody is here by  
20 accident.

21 If a spunky guy in Alaska hadn't gotten on the  
22 phone or on the e-mail and contacted us and come down  
23 here to testify about what was happening to membership  
24 numbers in the 1970's, you would have never known the  
25 pressure that the Boy Scouts of America was putting on



## Plaintiff's Rebuttal Statement

1 its people to keep the membership numbers up.

2 You would have never known the motive, the  
3 driving motive for keeping these files secret if he  
4 hadn't contacted us. And they wanted it that way. They  
5 wanted you to go into that room ignorant of that fact.

6 If Mr. Mones hadn't been a good enough lawyer  
7 to find Mr. Wolff and interrupt his Easter weekend with  
8 his grandson, you would have gone into the deliberation  
9 room thinking that the Boy Scouts of America tried really  
10 hard to work with the Big Brothers and Sisters, but they  
11 just couldn't quite get it done because of some law in  
12 Congress, so there was nothing they could do.

13 But Mr. Wolff comes in here and tells you, no,  
14 it was feasible to do something. We did it. We didn't  
15 get any cooperation from the Boy Scouts, but we did it.  
16 But if we hadn't been able to contact Mr. Wolff based  
17 upon what we heard Dr. Warren say, you would have gone in  
18 there in the dark on that issue, and they wanted it that  
19 way.

20 They are still doing it. That kind of  
21 litigation, that kind of action has been going on for too  
22 long. That kind of response deserves a punitive damages  
23 verdict. That kind of attitude has been going on for  
24 decades. They are still doing it, ladies and gentlemen.

25 Thank you for your attention and your service.

1 On behalf of my client, we appreciate it.

2 THE COURT: Jurors, I have some housekeeping  
3 instructions for you.

4 First of all, there are no time limits on  
5 deliberations. This work will take you however long it  
6 takes you to accomplish.

7 It is a little past 4:30. It has been a long  
8 day for everyone. I am not going to require you to begin  
9 your deliberations today. I'm going to tell you you can  
10 go home as soon as we're done here to return tomorrow  
11 morning at 9:00 to begin your deliberations.

12 I want to remind you from now until I  
13 discharge you from further responsibility in this case,  
14 as I've said before, do not discuss this case with anyone  
15 at all. Do not read any news reports or watch any news  
16 reports or listen to any news reports about this case.

17 When you go to the jury room on your way out,  
18 leave your notes -- first of all, take your notes with  
19 you for the first time. Take your copies of the jury  
20 instructions, your copies of the verdict form with you  
21 and leave them in the jury room.

22 They will be there for you tomorrow morning  
23 when you, when 12 of you come back to your deliberations.  
24 During your deliberations, you are to stay in the jury  
25 room at all times unless you leave with the clerk's