

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

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

TRANSCRIPT OF PROCEEDINGS
VOLUME 22

BE IT REMEMBERED That the above-entitled matter came on regularly for trial, before the Honorable **JOHN A. WITTMAYER**, Judge of the Circuit Court of the County of Multnomah, State of Oregon, commencing at the hour of 9:02 a.m., on Tuesday, the 20th day of April, 2010, and reported in stenography by Debra K. Cheyne, Certified Court Stenographer No. 94-0291.

APPEARANCES

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

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

Also present briefly, Mick Seidl, for the media.

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1 will take a jury to deliberate. So -- and if anything
2 changes about the schedule I'll update you as soon as I
3 can.

4 So with that, then, you're going to hear
5 opening statements from -- from Mr. Clark on behalf of
6 the plaintiff and from Mr. Smith on behalf of the Boy
7 Scouts of America with respect to the issues that remain
8 in the case for your consideration, and that is issue
9 of -- of the amount of punitive damages that you will be
10 considering.

11 So go ahead then, Mr. Clark.

12 **PLAINTIFF'S OPENING STATEMENT**

13 MR. CLARK: Thank you, Your Honor. Good
14 morning. Welcome back. We've had a few days to rest
15 and catch our breath, and maybe get a little sunshine,
16 and get away from the world of child sexual abuse for a
17 little bit.

18 We presented our evidence to you in
19 Phase 1 of this case through a three-question theme.
20 And that three-question theme restated was this: What
21 did the defendants, the Boy Scouts of America, know,
22 when did they know it and, three, what did they do and
23 not do about it?

24 Now, a theme is nothing more than a
25 central truth that runs throughout a case. It is a true

1 and consistent application of that -- that idea that
2 ties the whole case together. And because it is true it
3 will also apply in all phases of the trial.

4 And so in addition to those three
5 questions, which you've already heard about and on which
6 you've already rendered a verdict, I'm going to offer
7 two more questions for your consideration consistent
8 with that theme in this phase of the trial.

9 The fourth question will be: What have
10 they done and still not done about it? It being the
11 child abuse problem in Scouting. What have they done
12 and still not done about the problem of abuse in
13 Scouting?

14 And fifth, relevant to a punitive damages
15 phase, what kind of financial penalty will it take to
16 punish and deter them, "them" being the defendant Boy
17 Scouts of America Corporation. What kind of financial
18 consequence will it take to punish and deter?

19 These are questions that you will be
20 called on to answer in this phase of the trial. Now, I
21 want to talk to you for a minute about the purposes of
22 this phase of the trial and contrast it a little bit
23 with the purpose of the first phase.

24 The -- the purpose of Phase 1 was to
25 consider whether it was just and right to give

1 restitution to the plaintiff, Kerry Lewis, for what
2 happened to him. So the focus was on the evidence about
3 what happened and about the impact that it had on
4 Kerry Lewis. And that case, that request for justice,
5 was stated in financial terms because as you recall from
6 our discussion in voir dire we have no other way to do
7 it.

8 We don't have the blue button system of
9 justice where you can go back and undo what has been
10 done. We just have money as a symbol. But the focus in
11 Phase 1 was on restitution to Kerry Lewis and what that
12 would require in terms of justice.

13 Phase 2 the purposes are very different.
14 In Phase 2 you have now decided the restitution
15 question, and you have decided that the actions of the
16 Boy Scouts of America were reckless and outrageous and
17 the other things that were in the jury instructions that
18 the Judge gave you.

19 You've made those decisions. It is as
20 if -- if a burglar gets caught we don't just make him
21 give back what he took. We also ask what kind of
22 punishment is appropriate for what the burglar did. The
23 focus shifts.

24 And the focus now is no longer on
25 Kerry Lewis and the impact of your decision on what he's

1 entitled to in terms of restitution. The focus has
2 shifted now. And it is on that fourth and fifth
3 question, but the fifth really, what kind of financial
4 penalty will it take to punish and deter?

5 Now, punish and deter, those are two
6 separate concepts. At the end of the trial, of course,
7 the Judge will give you detailed instructions about the
8 law on punitive damages, but it uses both the words
9 "punish" and "deter." And I want to talk about those
10 for just a few -- a few minutes.

11 Punish is not a word that we often use
12 anymore. Those of us, you know, who have to deal with
13 children we may say that we give someone a consequence
14 or we give someone discipline, but we don't often use
15 the word "punishment" anymore.

16 But the law here, as elsewhere, uses a
17 more old fashioned phrase, and it uses the phrase
18 "punish as in punitive damages," and that's because
19 we're not dealing with children here in their formative
20 years. We're dealing with one of society's most
21 influential and powerful organizations.

22 And a serious decision that you make --

23 MR. SMITH: Well, your Honor, I'm going
24 to object. Counsel's arguing the case.

25 THE COURT: You're objection is

1 sustained.

2 Don't make an argument, Mr. Clark. Just
3 tell them about what you expect the evidence to be on
4 the issues that will be before the jurors.

5 MR. CLARK: Because of the seriousness of
6 these matters we call the next phase of the trial the
7 punitive damages phase. The question is: What kind of
8 financial penalty will it take to punish the Boy Scouts
9 for what it did? That's the first goal of a punitive
10 damages trial: Punishment for what the defendant
11 knowingly allowed to happen.

12 The other goal is to deter, to stop or
13 prevent or change this defendant from continuing to do
14 what this defendant did. In this way the law has a
15 specifically preventative focus. And as the Court will
16 tell you at the end of the evidence, the question is not
17 just what will it take to deter the Boy Scouts, but what
18 will it take to deter other organizations --

19 MR. SMITH: Objection, Your Honor.
20 Again, counsel's arguing the case.

21 THE COURT: Your objection is sustained.

22 Mr. Clark, tell the jury what you expect
23 the evidence to be -- to be in this phase of the trial.

24 MR. CLARK: Our suggestion to you in
25 Phase 2 that -- it's that the amount, what kind of

1 financial penalty it will take, to punish and deter the
2 Boy Scouts, is a penalty of \$25,000,000 to accomplish
3 these goals. Now, \$25,000,000 is a lot of money, so
4 where did that number come from?

5 In Phase 1, as the Court told you, there
6 was no set formula for you to use in deciding the amount
7 of compensatory damages. That will also be true in
8 Phase 2, no set formula for you to use to decide the
9 amount of punitive damages.

10 But unlike Phase 1, in Phase 2 you will
11 get a financial context. You will get some information
12 that will put this request for \$25,000,000 into context.
13 So I want to talk for a few minutes about what the
14 evidence will be on that.

15 And financial strength, of course, was
16 irrelevant in Phase 1 of the trial, but it is highly
17 relevant here because, after all, what it takes to
18 punish and deter one person is different than what it
19 would take to punish and deter another person.

20 And the difference often would have to do
21 with the financial strength of those two relative
22 people. What it might take to punish and deter Joe's
23 Auto Shop is different than what it's going to take --

24 MR. SMITH: Objection.

25 MR. CLARK: -- to punish and deter the

1 Boy Scouts.

2 MR. SMITH: Objection.

3 THE COURT: Sustained. Argument.

4 MR. CLARK: We are asking you to assess a
5 penalty in the amount of \$25,000,000, which is what we
6 think is right, right and fair, to punish a
7 billion-dollar organization. That's right. The net
8 worth of the Boy Scouts of America, according to its
9 financial reports, is nearly a billion dollars in net
10 assets, \$930,000,000.

11 And I'm going to talk in some detail
12 about that in a few minutes. But I wanted you to get
13 that number right up front, so you'd have some context
14 for our request for \$25,000,000 in punitive damages.

15 I want to talk to you now about the
16 evidence that will be before you. No. No. Back to
17 the -- I want to talk to you about the evidence that is
18 and will be before you relevant to questions four and
19 five, four, being what have they done and still not done
20 about it; five, what kind of financial -- financial
21 penalty will it take to punish and deter them?

22 So what evidence will you have to
23 consider on these questions? I've worried a little bit
24 that with a week's gap and with a two-phase trial you
25 might not have ready access to the evidence that was

1 before you in Phase 1 or that somehow you would think
2 because we're in Phase 2 that that evidence does not
3 apply.

4 And as the Court will instruct you, it
5 does apply. It is still the evidence before you. It is
6 the evidence on which you based your decision in
7 Phase 1, and it is a large part of the evidence on which
8 you will have to draw for Phase 2.

9 Our witnesses in Phase 2, the plaintiff's
10 witnesses, would essentially be the last witnesses that
11 would be called in a one-phase trial. So it is as if
12 all that evidence is still in front of you and we are
13 still live. So that's the first source of evidence you
14 will have to decide these questions.

15 And we're not going to reintroduce all
16 that evidence, because we don't have to, but I will take
17 about three minutes here to highlight what that evidence
18 was that is still before you as you consider the amount
19 of damages necessary to punish and deter the defendant.

20 As we showed up there with the first
21 question, what did they know? And the evidence showed
22 that they knew that there was a child abuse problem in
23 Scouting for a number of decades.

24 MR. SMITH: Objection, again, Your Honor.
25 We're going over Phase 1.

1 THE COURT: Yes. You don't anticipate
2 presenting this evidence again, do you, Mr. Clark?

3 MR. CLARK: Your Honor, no.

4 THE COURT: Then this is a closing
5 argument, and your objection is sustained, Mr. Smith.
6 Tell the jury what new they will be hearing in Phase 2.

7 MR. CLARK: So just to recap, the
8 evidence that was before you in Phase 1 is still before
9 you. You will hear in this phase of the trial some new
10 evidence, all of it targeted at the two questions that I
11 have put up there: What have they still done and not
12 done to fix the child abuse problem in Scouting? And
13 what kind of financial consequence will it take to
14 punish and deter them?

15 And in this phase of the trial we will
16 introduce some evidence at the beginning, largely about
17 the financial condition of the defendant. And the law
18 allows the defendant to offer what's called evidence --
19 "evidence in mitigation," evidence to suggest that you
20 should be lenient on them or that they don't need to be
21 punished. And so the sequence will be a little bit
22 different.

23 Our evidence will be fairly brief. In
24 fact, I think we'll be finished by this afternoon. The
25 defense then puts on its evidence in mitigation, and

1 then the plaintiff gets to rebut any evidence that we
2 believe was not accurate or didn't fairly characterize
3 the situation. So it will be a little bit different
4 than it was in the first phase of the trial.

5 So let's talk about the finances of BSA
6 Corporation, which is relevant to the question of what
7 amount of financial penalty it will take to punish and
8 deter the Boy Scouts for what it did in the past and to
9 prevent it from doing it in the future.

10 You will see from the Boy Scouts of
11 America's own financial documents, and we will be
12 largely focusing on what's called the I-990 -- I'm
13 sorry -- the Form 990. It's the nonprofit corporation
14 equivalent of a tax return, because nonprofit
15 corporations don't file tax returns, they don't call it
16 a tax return; they call it a 990.

17 But it is a statement of their financial
18 affairs. And we will also be using some financial
19 statements from the Boy Scouts themselves, including
20 their official treasurer's report, to talk to you about
21 their finances.

22 From these documents you will see the
23 following financial facts about the Boy Scouts of
24 America: The BSA has net assets of nearly \$930,000,000.
25 And what we've done is up here we've put this -- this

1 graph with 930 squares in it. Each square represents a
2 million dollars.

3 And then if you factor in the \$25,000,000
4 punitive damages prayer, request that we are making, it
5 looks like that. That's the portion of their total
6 assets that would be affected by such an award.

7 Second -- that's one -- BSA has
8 unrestricted assets of \$563,000,000. That's over half a
9 billion dollars with no strings attached as to what they
10 can do with it.

11 Third, BSA has annual revenues of
12 \$400,000,000. That means apart from what they have in
13 assets each year their operations produce about
14 \$400,000,000 in income or revenue.

15 Next, BSA has average monthly revenues of
16 \$35,000,000 month in, month out. And that means just
17 for perspective in the time since we've been in this
18 trial since March 15th, the BSA has received over
19 \$35,000,000 in revenues. And we urge you to remember
20 that when you consider our suggestion that it will take
21 \$25,000,000 to punish and deter.

22 The BSA Corporation receives annual sales
23 of merchandise of almost \$150,000,000. That's rounded
24 up, but it's almost \$150,000,000. And that is things
25 like hats, and uniforms, and books, to be sure. But you

1 will also hear that it is for other kinds of
2 merchandise, an official barbecue set that they sell for
3 \$40 with tongs and the brushes, little Scout figurines
4 that they sell for \$300, the little platform with two
5 Scout figurines they sell for \$300, all this branded BSA
6 merchandise you will hear about. And their annual sales
7 from that is \$150,000,000.

8 You will learn about the compensation
9 paid to the head Scout executives from the BSA, which is
10 relevant to your thinking about what it will take to
11 punish and deter them, because it tells you about how
12 they spend the money and where their priorities are.

13 The Chief Scout Executive is paid
14 \$1.2 million in total compensation per year. You will
15 hear that in contrast, the chief executive of the Big
16 Brothers and Sisters is paid about \$350,000. So the BSA
17 pays its chief executive nearly four times as much as
18 the Big Brothers and Sisters pay theirs.

19 The second in charge at BSA, a man named
20 James Terry, who is the Assistant Scout Executive, I
21 think is his title, and I understand he will be here
22 testifying in the mitigation phase of the case, is paid
23 about \$600,000 per year.

24 There are about half a dozen other Scout
25 executives making \$350,000 per year or more. Half a

1 dozen, in other words, who make more than the head guy
2 at the Big Brothers and Sisters. You will learn that
3 the Boy Scouts of America has an art collection worth
4 \$45,000,000, including some Norman Rockwell's.

5 We heard a little bit about Norman
6 Rockwell in Phase 1 of the trial. Including some Norman
7 Rockwell paintings, their art collection is
8 conservatively valued at \$45,000,000. And again, for
9 perspective, the punitive damages request we are making
10 amounts to just over half the value of their art
11 collection for knowingly allowing child abuse.

12 During the year 2009 BSA had a net change
13 in asset value of \$34,000,000. Now, this is what other
14 corporations would call a profit, but because this is a
15 so-called nonprofit corporation, this is called a net
16 change in asset value of \$34,000,000 just in the year
17 2009.

18 What all this means is that the amount of
19 money that we are asking you to use to penalize the BSA
20 for allowing the abuse of Kerry Lewis in light of what
21 they allowed to happen to other boys and to prevent and
22 deter the Boy Scouts of America and other similar
23 institutions of trust from doing these kinds of things
24 in the future, the \$25,000,000 we are suggesting is less
25 than one year's investment income for the BSA, less than

1 one month's typical revenue, less than last year's net
2 increase in asset value for just one year in the middle
3 of a depression.

4 Now I am not suggesting that \$25,000,000
5 is not a lot of money. It obviously is. But the
6 evidence you will hear will help you shift your focus in
7 terms of what is a lot of money. A lot of money in the
8 world of the BSA is different than a lot of money for
9 others.

10 MR. SMITH: Again, objection, Your Honor.
11 Arguing the case.

12 THE COURT: It's argument. Sustained.

13 The jury will disregard these -- this
14 argument from Mr. Clark.

15 Tell the jury what you intend to prove or
16 what you think the evidence will be would be a better
17 way to put it.

18 MR. CLARK: So the request we're making
19 is \$25,000,000 to get the message across to this
20 billion-dollar corporation.

21 Now, I would like to turn to the question
22 of what the Boy Scouts of America have done and not done
23 with regard to the child abuse problem, a problem they
24 have known about for eight decades. And this is the
25 fourth question above.

1 I put it last because of the way the
2 evidence is going to come in, but it's the fourth
3 question above. What have they still done and not done
4 when it comes to child abuse and the problem of abuse in
5 Scouting? And when it comes to this main question it
6 will be as important to listen to the evidence of what
7 has not been done as it will be to listen to the
8 evidence of what has been done.

9 And you will hear that many of the things
10 they have not done are some of the most basic that
11 should be done if they want to address the problem of
12 abuse in Scouting.

13 Ladies and gentlemen, you are in essence
14 now experts in child sexual abuse in Scouting. And so
15 you should look at the evidence that's going to come in
16 that I'm going to tell you about now very carefully with
17 the knowledge that you've gained.

18 And let's start off by remembering that
19 the evidence that they're going to be offering by way of
20 leniency you're entitled to look at through some lenses
21 that we often look through when we're trying to figure
22 out if someone deserves --

23 MR. SMITH: Objection.

24 THE COURT: Sustained. Same grounds,
25 argument.

1 MR. CLARK: Keep in mind as you listen to
2 the evidence the following questions, the things you
3 know about when someone does and does not deserve
4 leniency. First, what is the evidence about whether
5 they have accepted responsibility for their wrongdoing?

6 The evidence will be that the Boy Scouts
7 of America has never taken any responsibility for what
8 they knowingly allowed to happen to boys like Kerry
9 Lewis. The evidence will be that they have not admitted
10 that they had a serious and sustained problem in
11 Scouting with child abuse.

12 They have not done so in this trial.
13 They did not say, "We accept some responsibility for
14 what happened to Kerry Lewis." They had said, "We
15 accept no responsibility for what happened to
16 Kerry Lewis." So listen. The evidence will not show
17 that they have ever accepted responsibility in a
18 comprehensive way.

19 MR. SMITH: Objection.

20 THE COURT: This objection's overruled.
21 He's talking about the evidence, including the lack of
22 what he expects not to be in evidence.

23 MR. SMITH: Very well, Your Honor.

24 MR. CLARK: They have not accepted
25 responsibility for what they allowed to happen to

1 Kerry Lewis and others like them him. In fact, I'd like
2 to show you a piece of evidence that will prove just the
3 opposite. Ladies and gentlemen, last week within about
4 an hour of your verdict coming in the BSA posted on its
5 national website --

6 MR. SMITH: Objection.

7 THE COURT: Overruled.

8 MR. SMITH: I -- I would have to be heard
9 if this is coming in, Your Honor. I'd like to be heard
10 on this.

11 THE COURT: Yes. Will the jurors wait
12 for us in the jury room, please.

13 (Jury excused.)

14 THE COURT: All right. Go ahead,
15 Mr. Smith. Let's have a little context first of all.

16 Mr. Clark, did you -- what did you intend
17 to tell the jury, so that we can have a clear record of
18 what we're doing here?

19 MR. CLARK: The Plaintiff's Exhibit 1497
20 is a copy of the -- of the statement that the Boy Scouts
21 placed on their website last Tuesday after the verdict.

22 THE COURT: This is what you e-mailed to
23 me?

24 MR. CLARK: Yes, Your Honor.

25 THE COURT: All right. Thank you. All

1 MR. CLARK: Thank you.

2 THE COURT: And just so we don't make Mr.
3 Smith repeatedly object as he has had to, and most
4 objections have been sustained, Mr. Clark, there is a
5 huge difference between argument and opening statement,
6 and you have repeatedly crossed over that, in my view,
7 and in Mr. Smith's view.

8 And -- and I've sustained almost every
9 one of his objections on those grounds. Let's just not
10 do that.

11 MR. CLARK: Your Honor, I will be talking
12 for the remainder about this whole business of what they
13 have done and not done --

14 THE COURT: Oh.

15 MR. CLARK: -- so I expect it will be
16 directly tied to evidence.

17 THE COURT: Well, you know, you certainly
18 intend to offer evidence of what they've done and not
19 done. Don't argue the significance of that evidence.
20 Tell the jury what you expect the evidence to be.

21 Bring the jury in.

22 (Jury returns.)

23 THE COURT: All right. Go ahead then,
24 Mr. Clark.

25 MR. CLARK: Thank you, Your Honor. We

1 were talking about what the evidence will be about
2 whether the Boy Scouts had accepted responsibility for
3 what they knowingly allowed to happen to Kerry Lewis --
4 Lewis and others like him.

5 And I was saying that within an hour or
6 so of your verdict coming in last Tuesday the
7 defendants, Boy Scouts of America, posted the following
8 statement on their website concerning this trial and
9 your verdict. If you could blow it up a little bit
10 more.

11 "We are greatly disappointed with the
12 verdict. We believe that the allegations made against
13 our youth protection efforts are not valid. We intend
14 to appeal. We are saddened by what happened to the
15 plaintiff. The actions of the man who committed these
16 crimes do not represent the values and ideals of the Boy
17 Scouts of America.

18 "The safety of the young people currently
19 in the Scouting program has never been in question
20 during these legal proceedings. The case focused on a
21 discussion about what society and the BSA knew about
22 child abuse approximately three decades ago. This is a
23 long-standing societal issue that every youth-serving
24 organization must address.

25 "Based on the standard of care at that

1 time -- of that time, the BSA believes it acted
2 responsibly and that the evidence presented during the
3 trial does not justify the verdict. The safety of our
4 youth members and participants is our highest priority.

5 "Throughout the decade we have been on
6 the forefront of training our leaders and youth in
7 recognizing and preventing abuse through our
8 comprehensive Youth Protection training. The trial has
9 moved to a second phase. Upon its completion we will be
10 allowed to post additional information here."

11 This is the most telling and most recent
12 evidence about whether the Boy Scouts of America accept
13 responsibility for what happened to Kerry Lewis in light
14 of what happened to others like him.

15 Another thing you will want to look for
16 in the evidence that will be presented is whether the
17 Boy Scouts have made a sincere apology to those they
18 have hurt. Listen to the evidence in Phase 2.

19 It will be that the Boy Scouts of America
20 has never apologized to Kerry Lewis, never apologized to
21 the thousands of other boys who were abused in Scouting
22 represented in those files. Listen to see if in Phase 2
23 if they offer an apology to Kerry Lewis, anything like,
24 "We apologize."

25 MR. SMITH: Objection, Your Honor.

1 Again, counsel's arguing the case.

2 THE COURT: Overruled.

3 MR. CLARK: "We apologize. We failed
4 you. We kept secrets from you, and we should not have
5 done that. We wish we could go back in time and undue
6 it, but we can't."

7 MR. SMITH: He's arguing the case, Your
8 Honor.

9 THE COURT: Yes.

10 MR. CLARK: "We apologize --

11 THE COURT: This is -- you've moved into
12 argument, Mr. Clark.

13 MR. CLARK: Your Honor, I'm talking
14 about --

15 THE COURT: You've moved into argument.
16 The objection is sustained. Go on to another subject,
17 Mr. Clark.

18 MR. CLARK: I expect the evidence will
19 not contain an apology to Kerry Lewis or the others like
20 him. Is the -- is there evidence that the Boy Scouts of
21 America has yet recognized and acknowledged the
22 fundamental problem? Is there evidence that they have
23 yet acknowledged and recognized the fundamental
24 problem?

25 Listen to the evidence about what the Boy

1 Scouts of America has said to the public, to Congress,
2 to parents, to local charter organizations since
3 Kerry Lewis was abused in 1983 and '84, about the
4 problem of abuse in Scouting.

5 The evidence will be that they have never
6 acknowledged publicly that they had and have a serious
7 problem with pedophiles in Scouting. Now, I want to
8 mention to you that the BSA will be offering, we expect,
9 some evidence that they started putting out some
10 materials and education about child abuse in the 1980s,
11 just a few years after Kerry Lewis was abused.

12 And you're going to see an avalanche of
13 this kind of evidence in Phase 2 of this trial. And
14 much of it will seem pretty impressive upon first
15 reading, but I urge you to use your expertise that you
16 have developed over the last few weeks --

17 MR. SMITH: Again --

18 MR. CLARK: -- and ask --

19 MR. SMITH: -- argument, Your Honor.
20 He's arguing the case.

21 THE COURT: I don't think so. I don't
22 think he is arguing.

23 Go ahead, Mr. Clark.

24 MR. CLARK: Thank you, Your Honor. Use
25 the expertise that you have developed in the last

1 several weeks of this trial and ask some questions.
2 Looking at the material taken as a whole, does it
3 contain a sustained and clear warning about the dangers
4 of abuse in Scouting?

5 Much of the material that you're going to
6 see does not do that. It emphasizes stranger danger.
7 It talks about the threat of abuse by acquaintances and
8 other situations where boys can be harmed. And even the
9 material talking about abuse by trusted adults has
10 relatively little in it, some, but relatively little
11 about the main danger that needs warning about, which is
12 the problem of abuse in Scouting by Scout leaders.

13 Look at this evidence and ask yourself
14 would a reasonable parent looking at this get the
15 message that there is a serious danger of abuse in
16 Scouting? Does this evidence that they're going to show
17 you contain that message?

18 You will see that all too often it does
19 not. Almost never does it contain that message. And
20 that is also an important consideration in thinking
21 about what kind of financial penalty it's going to take
22 to punish and deter them in the future.

23 The fourth question: Have they done
24 everything possible to address the problem? Have they
25 done everything in their power to address the problem of

1 abuse in Scouting? And there will be two areas relevant
2 to this question.

3 First, have they mandated child abuse
4 training across the board, no exceptions, for any adult
5 who wants to work in Scouting? Or do they still hold to
6 the idea that they do not have the right to control and,
7 therefore, they don't mandate all training for all local
8 leaders across the board?

9 The evidence will be that they have not
10 conditioned annual registrations on recent completion of
11 child abuse training. The evidence will be that they
12 have not conditioned charter renewals for local Troops
13 on comprehensive child abuse training.

14 "You do not get a charter for this Troop
15 unless you can show us that every registered leader
16 dealing with this problem -- with his Troop has been
17 through child abuse training."

18 The second area relevant to whether they
19 have done everything possible to address the problem is
20 the lessons from these files. What has been done with
21 regard to these files? And the evidence will be that
22 the Boy Scouts of America has not to this day done a
23 comprehensive analysis of what is in these files and
24 what lessons could be learned from them to make Scouting
25 safer.

1 To this day Professor Warren was perhaps
2 the only person that's even been engaged to do that, and
3 that was not for the purpose of understanding what's in
4 the files and how to make the Scouts safer. And you
5 will hear no evidence that to this day they have done
6 that. And so the files are just there.

7 So ladies and gentlemen, that is what the
8 evidence will be about, questions four and five, in our
9 case theme. What kind of financial consequence must BSA
10 face to punish and deter? And what the BSA still has
11 done and not done when it comes to abuse in Scouting?
12 And that's why we suggest that a \$25,000,000 verdict is
13 what it's going to take to punish and deter.

14 Let me just say one more thing by way of
15 conclusion. You have decided that because of what was
16 done and not done with regard to Kerry Lewis, the Boy
17 Scouts of America must give him restitution for what was
18 taken from him for what was lost.

19 And you've also decided that the actions
20 of the Boy Scouts were reckless and outrageous and
21 deserve to be punished. And I suggest to you that the
22 evidence you will hear in this phase of the trial should
23 not change your thinking on that. Even if you decide --

24 MR. SMITH: Arguing the case.

25 THE COURT: The objection is sustained.

1 That's argument, Mr. Clark. Move on.

2 MR. CLARK: Even if you are convinced at
3 the end of this phase that the evidence the Boy Scouts
4 offers about what it is now doing in child abuse --

5 MR. SMITH: Objection, Your Honor.
6 Arguing the case --

7 THE COURT: No, I think that's okay.

8 MR. CLARK: -- lead you to a conclusion
9 that they have begun to get the message and they don't
10 need to be deterred, you still have a right to consider
11 what it will take to punish them for what has happened
12 in the past.

13 I will not likely be making our closing
14 argument; Mr. Mones will. So I want to say just a few
15 things. This may be my last chance to talk directly to
16 you. I thank you for your hard work and diligence in
17 this case, but that work is not done yet.

18 MR. SMITH: Objection.

19 THE COURT: That's sustained as well.

20 That's not an appropriate opening
21 statement, Mr. Clark.

22 MR. CLARK: At the conclusion of this
23 phase of the trial, ladies and gentlemen, we will be
24 asking you to stand by your decision and to do so with
25 the same focus and power that you brought to Phase 1 and

1 to return a punitive damages verdict in the amount of
2 \$25,000,000 to punish and deter the Boy Scouts of
3 America.

4 Thank you for your attention.

5 THE COURT: Mr. Smith, opening statement.

6 MR. SMITH: Thank you, Your Honor.

7 **DEFENDANT'S OPENING STATEMENT**

8 MR. SMITH: Please the Court, counsel.

9 Ladies and gentlemen of the jury, you've seen a piece of
10 evidence flashed up on the screen, and I want to repeat
11 certain portions of it that start here so you'll know
12 exactly what it is, because you'll be seeing it again,
13 I -- as I understand, and you'll be hearing it again.

14 One of the things that the Boy Scouts put
15 on their posting that counsel has shown you was: "We
16 are saddened by what happened to the plaintiff. The
17 actions of the man who committed these crimes do not
18 represent the values and ideals of the Boy Scouts of
19 America.

20 "The case focused on a discussion about
21 what society and the BSA knew about child abuse
22 approximately three decades ago." That's going to be
23 part of the evidence.

24 You're going to see consolidated
25 financial statements or they're going to be discussed.

1 They were produced as a part of the discovery in this
2 case, and you'll have that evidence to consider. You'll
3 have -- there will be some expert testimony on it.

4 Those consolidated financial statements
5 are on the Internet. Anybody can take a look at them.
6 It's not any kind of secret. They have to be published,
7 and they have to be audited, and all that kind of thing
8 and their seals or audited statements.

9 My comments this morning on opening are
10 going to be very brief. And I anticipate probably I'll
11 have more to say at the conclusion of the case. What
12 you didn't know is in about -- you heard some evidence
13 about in the early '80s there was some publications, and
14 you saw there was an ad in some of our Scouter magazines
15 about child abuse.

16 But what you didn't know in the mid '80s
17 the Boy Scouts undertook a Youth Protection program.
18 And it wasn't with the idea in mind, ladies and
19 gentlemen, and I believe the evidence will show, that it
20 was going to be solely for the Boy Scouts.

21 And counsel's right. There are --
22 there's a multitude of exhibits. You may not see them
23 all. Some of them are just in succession, publications
24 that are produced annually or every two years, and some
25 of them are pretty identical, and some of them have

1 modifications in them.

2 But you're going to hear about the
3 background of the program, how it was implemented, how
4 it is continuing to be implemented, what it consists of,
5 how it's conducted, who conducts it, by whom, the
6 materials that are used, the methods that are employed,
7 and how it's expanded over the years right up until the
8 present time.

9 And perhaps you'll hear something about
10 how it's been evaluated. And we would submit to you
11 there'll be evidence all along those lines. Again,
12 you'll have lots of materials to review if it comes into
13 evidence, and you'll hear witnesses testify about the
14 implementation of the program and how it's carried out.

15 I just would simply ask at this point of
16 time in the trial that you listen to all of the
17 evidence, plaintiff's and defendant's, carefully and
18 closely and return an appropriate verdict. Thank you
19 for your attention.

20 THE COURT: All right. Mr. Clark, call
21 your first witness.

22 MS. DUMAS: All right. Your Honor, we
23 call Serena Morones.

24 THE CLERK: Head up around over there.

25 MS. DUMAS: Could you give me just a