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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 6  
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. )

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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  
Wednesday, March 17, 2010, and a Jury.

1           So you should expect that there will be times  
2 when you are in the jury room waiting for us or waiting  
3 for the clerk to come bring you into the courtroom. It  
4 is very important that you folks not come into the  
5 courtroom unless the clerk brings you into the courtroom  
6 through the jury room only.

7           You folks have any questions about that?  
8 Okay. Then we're ready for opening statement.

9           Go ahead, Mr. Clark.

10          MR. CLARK: Thank you, your Honor.

11          May it please the court, counsel, ladies and  
12 gentlemen of the jury. Along with my co-counsel Paul  
13 Mones, it is my distinct privilege to represent Mr. Kerry  
14 Lewis, the case that we're about to try.

15          "On my honor, I will do my best to do my duty  
16 to God and my country and to obey the Scout law. To help  
17 other people at all times, to keep myself physically  
18 strong, mentally awake, and morally straight." Boy  
19 Scouts have a duty to obey the Scout law and the very  
20 first duty of the Scout law is the duty to be  
21 trustworthy.

22          Boy Scouts of America have taken an oath on  
23 their honor to be trustworthy and honest to the millions  
24 of parents across this country who entrust their children  
25 to them and to the millions of boys who are taught by

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1       them to trust and obey their Scout leaders.

2                 In this case, you will learn about how the BSA  
3 broke that oath and broke that duty and broke those boys.

4                 MR. SMITH: I object, your Honor. Counsel is  
5 arguing the case.

6                 THE COURT: The objection is overruled.

7                 Just tell the jury what you expect the  
8 evidence to present, not argument, Mr. Clark.

9                 MR. CLARK: You will hear evidence that  
10 nationally for decades and you will learn that in  
11 Portland, Oregon, in 1983, the Boy Scouts of America  
12 ignored clear warning signs that Boy Scouts were being  
13 abused.

14                 Ladies and gentlemen, in this case we will  
15 prove to you what the Boy Scouts knew about child sexual  
16 abuse in its program, when the Boy Scouts of America knew  
17 it and what they did and did not do about it. What they  
18 knew was that nationally, they had a child sexual abuse  
19 problem involving pedophiles in Scouting and that  
20 thousands of boys were being abused.

21                 When they knew it was by at least 1965. What  
22 they did not do about it, you will hear, is to warn  
23 anyone or to take any other reasonable steps to prevent  
24 it.

25                 This is also a case about what BSA

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1 representatives in Portland knew about the dangers of an  
2 Assistant Scoutmaster named Timur Dykes, when they knew  
3 it and what they did and did not do about it.

4 Now, what they knew, we will prove to you, is  
5 that by his own admission, Timur Dykes, was sexually  
6 abusing Scouts. When they knew this, the evidence will  
7 be, was in January 1983, before Kerry Lewis was abused.

8 What they did not do about it was to warn all  
9 of the parents of the boys in the Scouting community to  
10 which Timur Dykes had access that he was an admitted  
11 serial pedophile. They did not warn the parents. And  
12 the evidence will be that they did not warn the parents  
13 of Kerry Lewis.

14 We will prove to you also that these were not  
15 mere accidental failures. Hard as it might be to accept,  
16 we will prove to you that the BSA nationally made a  
17 knowing and deliberate decision to keep secret what it  
18 knew about pedophiles in Scouting.

19 They trained, they warned about the dangers of  
20 axes and knives, about the risks of getting hit by  
21 lightning or of drowning, but nothing, not a word, you  
22 will hear, about how they warned the public, the parents  
23 or local troop leaders about what they, BSA nationally,  
24 knew about pedophiles in Scouting.

25 In fact, throughout this case, we will show

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1 you that what happened here in Portland that led to the  
2 abuse of Kerry Lewis is simply a mirror image of what was  
3 happening nationally.

4           The evidence will be that Scout  
5 representatives get knowledge of a pedophile Scout  
6 leader. They take no meaningful action in response.  
7 They warn none of the parents who need to know about the  
8 risk. They take no other common sense steps to protect  
9 boys, and more abuse happens.

10           Now, the evidence that they made a knowing  
11 decision to keep these secrets is important because this  
12 is a special kind of community safety case. It is a  
13 punitive damages case, one where we will be asking you to  
14 punish these defendants.

15           That means your duty will be to decide two  
16 separate questions. First, whether Kerry Lewis deserves  
17 justice for what happened to him at the hands of this  
18 trusted Scout leader known to be sexually dangerous to  
19 boys.

20           But, secondly, you will also be asked to make  
21 a separate decision about whether the Boy Scouts of  
22 America and the Cascade Pacific Council acted so far  
23 outside the community's rules, both nationally and in  
24 Kerry's situation, that they need to be punished.

25           And at the end of this trial, we will be

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1 asking you to make an example of them through the  
2 powerful mechanism of a punitive damages verdict so that  
3 any other youth organization hears about or sees about  
4 this trial will know that a jury in Portland, Oregon,  
5 will not tolerate the knowingly allowing children to be  
6 abused, especially Oregon's children.

7 Now, to prove to you that these Scout  
8 defendants made a knowing decision to ignore what was  
9 happening to Scouts all over the country, we will show  
10 you in detail through their own documents what and when  
11 they knew about pedophiles in Scouting.

12 Ladies and gentlemen, in this case we have  
13 obtained, you will be the first jury anywhere to see the  
14 Boy Scouts's secret national files on pedophiles in  
15 Scouting. Secrets that were kept from the 1920's up  
16 until about three weeks ago when they were finally forced  
17 to turn them over to us. These six banker boxes  
18 represent 20,000 pages just from 1965 to 1985, which is  
19 the years that we obtained.

20 And in this trial we will look together into  
21 these files and we will look at these closely guarded  
22 secrets. Now, later on in my opening statement, I will  
23 explain to you how and why these files were kept, and you  
24 will hear about them in great detail.

25 But for now, let me just say that these

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1 documents will prove that by 1965, the BSA knew they had  
2 a serious problem with sexual abuse in Scouting, and they  
3 made a deliberate decision to keep those problems secret.

4 And you will also hear that they failed to  
5 take any steps to educate, to train, or to warn the  
6 people who needed to know, professional Scouters, local  
7 troop leaders, parents about what they knew, about the  
8 dangers of sexual abuse in Scouting.

9 We will prove to you that those decisions led  
10 naturally, predictably and forcibly to the abuse of boys  
11 like Kerry Lewis and Kerry Lewis.

12 Let me give you an outline of how the  
13 remainder of my opening statement is organized so that  
14 you will be better able to follow along where we are at  
15 any given time.

16 Ladies and gentlemen, this opening statement  
17 is long. It runs about 75 to 90 minutes, depending upon  
18 how slow or fast I go. But, unfortunately, there's a lot  
19 to talk about. I've just given you an introduction to  
20 what the case is about.

21 In the next section I will tell you the story  
22 of the Scouting relationship between Kerry Lewis and  
23 Timur Dykes, about how it started, how it grew, and about  
24 how it suddenly ended.

25 Next, we will look at how this abuse has

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1 impacted Kerry Lewis' life.

2 Next, I will tell you more about the Boy  
3 Scouts of America's secret national files on pedophiles  
4 in Scouting.

5 Finally, I will offer a few concluding  
6 remarks.

7 Now, before I go to -- before I go to the  
8 story of Kerry's relationship with Scout leader, Timur  
9 Dykes, I should give you a bit of an orientation to the  
10 Boy Scouts program in case some of you aren't familiar  
11 with some of the terms of the process involved in  
12 Scouting.

13 You can look there or up there, whichever is  
14 easier for you. Now, at the top you've got the Boy  
15 Scouts of America National. Most of people know, when  
16 they've heard about the Boy Scouts of America Nationally,  
17 it is a Congressionally chartered legal corporation. The  
18 evidence you will hear is that is a unique kind of  
19 animal.

20 You will hear evidence in this case over and  
21 over again that our society gives immense amount of trust  
22 and recognition to the Boy Scouts of America. And it  
23 starts with the fact that BSA National is a  
24 Congressionally chartered organization dating back 100  
25 years ago this year. In fact, you will hear evidence



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1 about the centennial celebrations of Boy Scouts of  
2 America. So that's Boy Scouts of America National, and  
3 it is headquartered in Texas.

4 Now, underneath the Boy Scouts of America  
5 National, there are what are called legal Councils. By  
6 the way, there's some regional offices between BSA  
7 National and local, but they don't play into this case.

8 The local Council such as the Cascade Pacific  
9 Council, headquartered here in Portland. And these are  
10 essentially local branches of the Boy Scouts of America.  
11 They will contend otherwise. We contend that these are  
12 essentially local branches of the Boy Scouts of America.

13 Then you have what is called chartered  
14 organizations here. You heard a bunch about them  
15 yesterday during voir dire: Churches, schools, civic  
16 organizations like Kiwanis, Rotary, I think 4H, probably  
17 organizations like that, police associations often.  
18 These are the local sponsoring organizations.

19 The phrase "charter organization" and  
20 "sponsoring organization" in this trial will be used  
21 pretty much interchangeably. The chartered organizations  
22 are these people -- are these kind of organizations. The  
23 kinds of civic groups that the Boy Scouts of America rely  
24 on to get their program out into the communities and to  
25 reach families and boys.

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1           Now, in this case, the charter organization  
2 was the Mormon Church over at 99th, Southeast 99th and  
3 Caruthers. Now, there were two. I should mention here  
4 there were two. There were two different Mormon  
5 congregations that met in this building at 99th and  
6 Caruthers.

7           That comes into play here in a way that you'll  
8 learn about later, but it essentially had to do with when  
9 Kerry Lewis moved a couple of blocks in the middle of  
10 1982. But there are two separate congregations there at  
11 the Mormon Church at 99th and Caruthers. There were two  
12 separate sets of Boy Scouts troops operating there. The  
13 charter representative for the Boy Scout program on one  
14 side of that Mormon Church was a gentleman called Gordon  
15 McEwen.

16           Now, the charter representative is typically  
17 the head of, no surprise, the chartered organization. So  
18 if the Rotary church sponsors the Boy Scout troopers, the  
19 president of the Rotary Club is the formal head of that  
20 particular local troop. In this case it was a man named  
21 Gordon McEwen. He was the bishop of the Mormon Church,  
22 the head of the Mormon Church called Bishop Gordon  
23 McEwen.

24           Underneath him, you have what's called the  
25 troop committee. And the troop committee is nothing more

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1 than the people, as committees usually, who do all of the  
2 work. It is the parents, the Adult Volunteers, the  
3 Scoutmasters, and the Assistant Scoutmasters.

4 And in this case the Scoutmaster and the  
5 Assistant Scoutmasters are right there. The Scoutmaster  
6 was a gentleman named Earl Wiest. And the Assistant  
7 Scoutmaster for relevant periods of time in this case was  
8 Timur Dykes. And then underneath that whole structure,  
9 you have the Boy Scout troops and the Cub Scout packs.

10 Now, the difference -- let me just take a  
11 minute and dwell on this. The difference between a Boy  
12 Scout troop and a Cub Scout pack has to do with age. Cub  
13 Scouts are the younger boys, typically seven to nine.  
14 And then 11-year-olds become Boy Scouts.

15 At age 10, and I'll tell you more about this  
16 in a few minutes, at age 10, a boy becomes what's called  
17 a Webelos, which is a transitional year, the end of Cub  
18 Scouts before becoming Boy Scouts. I'll talk more about  
19 that in a minute.

20 So let me tell you now about the relationship  
21 between Kerry Lewis and Timur Dykes, how it started, how  
22 it grew, and how it ended. This is a relationship that  
23 was defined by the Boy Scout program. It was nourished  
24 and grew in the soil of Scouting.

25 To Kerry and his parents, it looked exactly

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1 like the kind of relationship that the Boy Scouts were  
2 all about. A boy and his family believe in Scouting.  
3 The boy learns to trust the Scout leader because the  
4 Scout leader is there for him, and he teaches him things.

5 Sure, about hiking and knives and fires and  
6 knots, but also -- and the evidence you will hear  
7 directly from the Boy Scout materials on this is that  
8 Scout leaders were authorized and directed to work with  
9 boys on deeper things, family, faith, God, how to  
10 understand the world, problems, counseling essentially,  
11 mentoring certainly.

12 Let's look again at the words up here on this  
13 Boy Scout oath. That is what the Scouts teach these boys  
14 to look for and expect from their Scout leaders. Except  
15 for they don't tell the boys that some Scout leaders do  
16 all this for all the wrong reasons, even though they know  
17 that.

18 So the boy goes into the relationship of trust  
19 with all of the eagerness and openness of a lamb, not  
20 knowing that the man in the nice uniform is really the  
21 worst kind of wolf.

22 MR. SMITH: Your Honor, again, I'm going to  
23 object to this oral argument.

24 THE COURT: Yes. I'm going to sustain your  
25 argument.

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1           Mr. Clark, do not argue your case during  
2 opening statement. Tell the jury only what the evidence  
3 will show.

4           MR. CLARK: Now, I'm going to tell you several  
5 stories that you will hear in this case in the next few  
6 minutes, stories that you will hear that will show you  
7 what this relationship was like.

8           This is certainly not every detail of the  
9 relationship between Kerry Lewis and Timur Dykes, but  
10 will give you a general sense for what this relationship  
11 looked like through the eyes of the 10 to 12-year-old  
12 boy.

13           In the spring and summer of 1982 -- excuse me  
14 a minute. I've got myself confused. Sorry.

15           In the fall of 1981 -- in the fall of 1981,  
16 the family moved to Portland from George Air Force base  
17 in California, where they had been. Kerry's father was  
18 an Air Force sergeant, a tech sergeant in the Air Force.  
19 They moved frequently.

20           One of the ways that Kerry remembers dates is  
21 that they always moved in the summers. Parents did this  
22 to minimize the impact on the children with all of these  
23 moves. So they know that in the summer of '81, late  
24 summer, early fall of '81, they moved to Portland. Kerry  
25 was nine years old.

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1           And that was when shortly -- a short time  
2 after they moved to Portland was when Kerry first met  
3 Timur Dykes. Now, Kerry had been a Cub Scout when they  
4 were in California at Victorville, California, George Air  
5 Force Base. It had been a good experience for him. So  
6 when they came to Portland, they joined the Cub Scouts;  
7 Kerry joined the Cub Scouts pretty quickly.

8           They met Timur Dykes because Timur Dykes was  
9 assigned by the local Mormon church to their home to be  
10 what's called a home teacher. This is essentially a  
11 person who comes to each person's home in his area to  
12 visit and see how they are doing, to see if they need  
13 anything from the church, present the gospel message,  
14 those sorts of things.

15           And so that's how they first met Timur Dykes.  
16 But you will hear evidence from Kerry's family that Kerry  
17 was not really very interested in the religious guy from  
18 the church. He was nine years old. He was interested in  
19 other things.

20           But his mother will tell you a story about  
21 beginning to notice that Kerry was beginning to like  
22 Timur. And that would happen when Timur Dykes, who in  
23 the fall of 1981, became the Assistant Scoutmaster of the  
24 troop that Kerry was scheduled to be in, Cub Scout,  
25 becoming a Boy Scout. Timur Dykes was the Assistant

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1 Scoutmaster there.

2 The mom will tell you that when Timur Dykes  
3 was over there visiting, to do his home teaching duties,  
4 that Kerry would be anywhere he could be in the house  
5 except there listening to the religious stuff.

6 But that when Timur would say, hey, Kerry,  
7 let's talk about Scouts for a little bit, that Kerry was  
8 across the room sitting on the couch next to Timur. They  
9 were talking about Scouting things, and it was like the  
10 rest of the family weren't even in the room.

11 All of this excitement because Kerry was  
12 scheduled to become Webelos here in a few months, which  
13 is a big deal to Kerry, because the boring thing is the  
14 Cub Scouts meet in the families' homes.

15 The Webelos get to meet over at the church  
16 with the big kids, the big Scouts. So becoming a Webelos  
17 was a very big deal to Kerry. And the mom will tell you  
18 that that's where the relationship first began to really  
19 notice that Kerry really liked Timur.

20 Now, let's go to the spring of '82. This is  
21 the first time that Kerry Lewis really understood how  
22 completely different Timur Dykes was than other grown-ups  
23 and how cool he was. And I've told you that this is  
24 significant because Kerry has become a Webelos now.

25 MR. XOCHIHUA: Your Honor, I'd ask that we

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1 observe the formalities of the courtroom with respect to  
2 referencing parties.

3 THE COURT: Yes.

4 Folks, we have a rule that requires us with  
5 respect to adults to refer to them by their last names.  
6 Different for children.

7 MR. CLARK: Your Honor, he was nine years old  
8 at the time.

9 THE COURT: Well --

10 MR. CLARK: I need to call him Mr. Lewis when  
11 he was nine?

12 THE COURT: Yes, that does make some sense to  
13 me. I appreciate that. Since you are referring to him  
14 during his youth years, you can refer to him as his first  
15 name. But when you are talking about him as an adult,  
16 you can follow the rules.

17 MR. CLARK: I will try to do that.

18 THE COURT: Thank you, Mr. Xochihua. You are  
19 right.

20 MR. CLARK: So this is one of the first times  
21 that Kerry realized that Timur Dykes was cool. It was a  
22 small thing, but the kind of thing that sticks in a boy's  
23 mind.

24 Kerry is there for one of his first Webelos  
25 meetings. They are all together in the gym, all of the



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1 Boy Scouts, Webelos are all together in the gym. Before  
2 they go into the different rooms for different meetings.  
3 Kerry walks in, and he's a little bit shy, and he's not  
4 quite sure what to do, and he sees Timur, who he  
5 recognizes.

6 And Timur says, come over here, and so Kerry  
7 goes over there. And Timur puts his hands on his  
8 shoulders. And all these kids are running around in the  
9 gym, which was not something that Kerry had ever seen  
10 happen before at the church. And he was kind of  
11 wondering what was going to happen. Timur says, go on,  
12 get out there. Kerry thinks this guy is cool. He lets  
13 us play. He's going to let us play.

14 Then in the spring or summer of 1982 is the  
15 first time that Kerry Lewis ever felt like Timur Dykes  
16 thought he, Kerry, was special.

17 The scene is all of the boys are there in the  
18 gym at the school waiting for their Scout meetings to  
19 start. Boy Scouts and Webelos all gather together. And  
20 the door opens up and in walks Timur Dykes, big as life,  
21 like something out of a movie with this enormous set of  
22 mountain climbing ropes draped over his shoulders and  
23 around his body.

24 Now, these boys talk -- all knew that Timur  
25 Dykes was a tough, rugged mountain climber. They heard

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1 stories about Timur Dykes mountain climbing, rock  
2 climbing particularly. He was a rock jock.

3 He comes in with this rope around him, and the  
4 boys just get silent, and their eyes get big, and he  
5 takes the ropes off, and he throws them up on the  
6 platform at the gym with a thud. And he looks at them  
7 and he says, we got something special for you next week.  
8 And he doesn't tell them what it is. These boys have the  
9 whole week to wait to think about what might be this  
10 thing.

11 And so this thing the next week is that they  
12 walk in, and there's this big structure set up in the  
13 middle of the gym, wooden structure; big for boys, six,  
14 seven, eight feet, wooden structure. It is like a box.  
15 And all these climbing ropes are draped over the top of  
16 it in a cross-hatched pattern, crisscross pattern, kind  
17 of like a webbing or a net, that's all secured.

18 And the deal is the boys are supposed to get  
19 up there two at a time and try to push each other off,  
20 push each other through the ropes.

21 So Kerry, who is always the smallest, you'll  
22 see in photographs, he's always the smallest, Kerry can't  
23 wait for his chance because he knows he's good at this  
24 stuff. I may be small, but I'm quick, I'm fast, I'm  
25 agile, and I love to climb trees. So he knows he's going

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1 to be good at this.

2           When it finally comes to his turn, he gets up  
3 there, and he's on the other side with enormous kids, and  
4 he wins. He says, I don't know how I did it, but I did.  
5 He pushes the other kid through the ropes and he jumps  
6 down. And Timur Dykes comes around and stands behind him  
7 and puts his hands on his shoulder and says to the other  
8 boys, that's the way to do it. That's what you are  
9 supposed to do.

10           And Kerry thinks, wow, wow. And that's the  
11 first time he ever had a thought that maybe someday I  
12 could even go rock climbing with Timur Dykes.

13           Well, his dreams were to come true. By now,  
14 this is summer of '82. From then, for about the next  
15 year and a half -- sorry, for about the next two and a  
16 half years, until July of 1984, is the real period of  
17 time of the relationship of trust between Kerry Lewis and  
18 Timur Dykes, two and a half years, a long time in the  
19 life of a 12-year-old boy.

20           And so what starts happening is that Kerry and  
21 Timur start hanging out together. Starts at the Scout  
22 meetings and it goes from there. Now, you will hear  
23 evidence in this from several other boys, who were Boy  
24 Scouts or Webelos in the group that Timur Dykes was  
25 working with. They will all tell you that Timur Dykes

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1 was everywhere. He was like the pied piper.

2           Everybody wanted to be around him. Everybody  
3 went places with him. And he always, always had kids  
4 over to his apartment. There were no Boy Scout rules  
5 against this. So Timur Dykes would have boys over to his  
6 apartment all of the time.

7           They would always, almost every one of these  
8 guys, I think all of them will tell you that we were  
9 always over there at least partially to work on Scouting  
10 projects, working on Merit Badges. They would be over  
11 there working on Scouting projects. But then the fun  
12 would start.

13           By the way, this was always with parental  
14 permission. All of the parents knew the boys were over  
15 there. All the parents trusted Timur Dykes because he  
16 was a Scout leader. And they would even spend the night  
17 over there frequently. They would spend the night,  
18 especially if they were going on a camping trip the next  
19 morning or some other Scout activity. They would spend  
20 the night. Parents knew this. Parents were okay with  
21 this. Lots of boys over there.

22           But Timur Dykes' place was a kid's playground.  
23 He had ferrets. He had snakes, including a boa  
24 constrictor. He had a knife collection. He would allow  
25 these boys to play Dungeons and Dragons, which in 1983,

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1 good Mormon boys didn't do. He gave Kerry french fries  
2 for breakfast on a regular basis. It was a great place  
3 for kids to hang out. That is where they hung out.

4 And then in early 1983, somewhere in early  
5 1983, until the end of the relationship -- I'll move this  
6 out of the way -- Kerry's dream came true, and he got to  
7 start rock climbing with Timur Dykes.

8 Now, it all started with ropes and knots,  
9 which are things that Boy Scout leaders teach boys to do.  
10 Kerry will tell you about the knot they learned how to  
11 tie in Boy Scouts, the different rope projects they had.  
12 That's where it started.

13 They were always using some of Timur's  
14 climbing ropes, those little prusik ropes, the heavier  
15 climbing ropes to learn their knots, to learn their knot  
16 projects to advance in Scouting. But then Kerry and  
17 Timur began to become better friends and they began to go  
18 climbing together.

19 This is one taken in the summer of '84, I  
20 believe. This is also Kerry. Then -- is there one more?  
21 These photographs were all taken by Timur Dykes. There's  
22 more. You'll see them during the trial.

23 But the reason that this is significant is  
24 because again, I want to emphasize that Kerry had always  
25 been the smallest. And there you see. He's 12 years old

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1 in that picture. Kerry Lewis had always been the  
2 smallest kid in his class. And so he wasn't big enough,  
3 strong enough or fast enough to compete with the other  
4 boys in athletics, but he was fiery competitive. And  
5 what he loved to do were things that allowed him to be  
6 agile and quick.

7 The family will talk to you about when they  
8 first moved to Portland. Kerry -- came out to find Kerry  
9 jumping off the roof into a dirt pile in a jump that was  
10 too far for a nine-year-old kid to be doing. He loved to  
11 be the daredevil.

12 So this kind of thing, this climbing thing was  
13 fantastic for him. I can do things others can't. This  
14 was kind of Kerry's distinction. This is what made him  
15 different.

16 Kids were always the -- the psychologist will  
17 tell you, the expert witnesses will tell you kids are  
18 always looking for something that makes them distinct.  
19 This is my thing. I'm different here. And Timur has  
20 given it to me. Timur has shown me this.

21 MR. XOCHIHUA: Same reference, your Honor,  
22 Mr. Dykes was always an adult.

23 THE COURT: I don't think so. Overruled.

24 MR. XOCHIHUA: I'm referring to Mr. Dykes.

25 THE COURT: Oh, excuse me. I thought you

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1 meant -- I thought you were referencing argument. Right.

2 MR. CLARK: Your Honor, the nine-year-old boy  
3 didn't call him Mr. Dykes. I'm telling the story.

4 THE COURT: All right. That's fine. As long  
5 as you are telling it from your client's perspective, but  
6 refer to him as Mr. Dykes otherwise.

7 MR. CLARK: I understand. And I think I  
8 referenced that at the beginning, that these are through  
9 the eyes of a 10 to 12-year-old boy.

10 THE COURT: All right. That's fine.

11 MR. CLARK: Now, these are just a few of the  
12 scenes out of this Scouting friendship that lasted over  
13 two years.

14 You will hear about many others as well.  
15 Meals, movies and Scout camping trips, many, many Scout  
16 camping trips. You'll hear specific stories from Kerry  
17 Lewis about Timur Dykes on Scout camping trips.

18 Mr. Dykes over at Kerry's house, he was always  
19 welcomed at Kerry's house. He was a Scout leader. The  
20 family trusted him. This is a photograph of Christmas  
21 1983, so Kerry Lewis here is 11 years old.

22 I should give you a date of birth for  
23 reference. Sorry. April 1972 was his date of birth.  
24 That will help you keep track of some of these -- how old  
25 he was at certain times.

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1                   This is Christmas 1983. This is Mr. Dykes  
2 here on the right. This is Kerry Lewis on the left.  
3 They are playing some sort of a Christmas game. I think  
4 it is a digital football game, but some sort of  
5 electronic football game. Again, you'll see how small  
6 Kerry there, even as an 11 year old.

7                   So Timur Dykes was always over at the Lewis  
8 family home having dinner. They would go to movies.  
9 Timur Dykes even baby-sat the Lewis family on a couple of  
10 occasions, one overnight, and several other times where  
11 he would watch the kids.

12                   Kerry is the oldest of five kids. Both  
13 parents were working. And so from time to time they  
14 needed help, and Timur Dykes was somebody that they  
15 didn't hesitate to call on. And Kerry Lewis with other  
16 boys always over at Timur Dykes' apartment.

17                   You've seen this story before. A kid and his  
18 hero. You'll hear evidence from mental health experts  
19 about the importance of what's called a transitional  
20 figure in a young boy's life, somebody to help the boy  
21 get from boyhood to early manhood.

22                   In different societies, in different  
23 centuries, we've done this, the experts will tell you  
24 through tribes, tribes of men that would raise the man  
25 and give them rights of initiation and bring them into



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1 boyhood.

2 In our society, we use these mentor figures  
3 and have for a long time, to help the parents. And these  
4 transitional adults, you will hear, have an enormous  
5 impact for good or for ill on these boys.

6 And then we come to the final scene of the  
7 relationship, July 1984. I'm just going to write on  
8 here, Tillamook. The date is certain. All witnesses  
9 remember it the same. At least I think all witnesses  
10 remember it the same. And this is when the relationship  
11 ended suddenly.

12 The purpose of the trip was that Timur Dykes  
13 was taking a van load of boys, including some Scouts down  
14 to the coast for a camping trip. Probably was not an  
15 official Scout camping trip.

16 What happens is that Mr. Dykes gets pulled  
17 over by a police officer for some sort of a traffic  
18 infraction. I think expired license plate or burned-out  
19 taillight. And the police run Timur Dykes' license  
20 plate, driver's license. And they find out that he is a  
21 convicted pedophile, and that he's not supposed to be  
22 around the victims of his crimes.

23 The police ask him to step out of the van.  
24 And Kerry Lewis will tell you what that was like for him  
25 to see his mentor and hero get walked around behind the

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1 van and handcuffed and taken off in the squad car.

2           The police tell the boys, we're going to take  
3 you to the station and we're calling your parents. They  
4 don't tell them anything. They don't tell them why.  
5 They don't tell them what's going on.

6           Kerry Lewis gets to the police station, and he  
7 sits in a room at a metal desk by himself for two hours.  
8 All he knows is that his parents were on their way and  
9 that Timur is in trouble. That's all he knows.

10           The parents received a phone call that night.  
11 And both parents will talk about it and how clearly they  
12 remember it. Because this was the first time they ever  
13 knew that Timur Dykes had admitted and confessed and was  
14 convicted for sexually abusing boys, particularly,  
15 especially Scouts.

16           They will talk to you about the emotions that  
17 they had around that, the fear that they had around that  
18 as they were driving from Portland to Tillamook and about  
19 what was running wild in their imagination.

20           They get to Tillamook. They pick Kerry up.  
21 And they, of course, talk to him, not right then, but a  
22 couple of days later, when things calmed down, because  
23 mom was a good mom. She understood that this has all  
24 been upsetting to him. A couple days later, she asked  
25 him. Kerry Lewis will tell you that he could see how

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1 upset and afraid she was.

2 So he did what a lot of kids will do, you will  
3 hear from the expert witnesses, a lot of kids will do in  
4 this situation like that. He attempted to protect his  
5 parents and he said no, Timur never touched me.

6 You will hear from other boys who had the same  
7 conversation with their parents, at the same time --  
8 excuse me, their conversation had come earlier. I'll  
9 tell you about that in a minute. You will hear from  
10 other boys who had the same conversations with their  
11 parents and who denied being abused, who we now know were  
12 abused because Timur Dykes admits it.

13 Now, when they come back to Portland, the dad  
14 goes to the head of the Scout program at the church,  
15 Gordon McEwen, Bishop McEwen. The dad goes to Bishop  
16 McEwen and says, what is going on?

17 And the dad does not get what he considers to  
18 be satisfactory answers. And he concludes that Gordon  
19 McEwen is not being honest with him about what Gordon  
20 McEwen did. He doesn't get any answers.

21 Now, when Kerry Lewis was asked if he'd ever  
22 been abused by Timur Dykes, both Mr. Lewis and his  
23 parents will tell you that was the first time he had ever  
24 lied to his parents. First time ever he had ever lied to  
25 his parents.

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1           You'll hear evidence for the next few days  
2 after that how dejected Kerry it was. It was clear to  
3 him he was never going to see Timur Dykes again. Just  
4 like that. And about how he tried to process that and  
5 how confusing that was to him.

6           So just to reiterate this timeline for a  
7 minute, April 1972, date of birth, this relationship  
8 lasts two and a half years. Essentially from the  
9 spring/summer of 1982 when Kerry is a Webelos to July of  
10 1984 when Tillamook happens.

11           Now, what is not on the timeline I just gave  
12 you is the abuse. So let me talk to you about that for  
13 just a minute. At least four times that Mr. Lewis can  
14 remember, at least four times that he can remember, he  
15 woke up after spending the night at Timur Dykes'  
16 apartment, strangely on top of Timur Dykes, coming up out  
17 of the kind of sleepiness and dreaminess that we have  
18 when we're first coming awake.

19           Kind of the safest time that there is, and  
20 he's shocked into a realization that something is wrong,  
21 wrong, wrong. And he feels Timur Dykes' erect penis  
22 against his stomach from about just below the belt up.

23           Now, Kerry, by this point is old enough to  
24 have had erections himself. Knows this is something  
25 sexual. And he knows that there's something way wrong,

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1 and it is confusing. It is disorienting. It is deeply  
2 shameful to him, and he's afraid. Wrong, wrong, wrong is  
3 what he remembers thinking. And it happened on one  
4 occasion. It happened on a second occasion. And it  
5 happened on a third occasion. And it happened on a  
6 fourth occasion.

7           Kerry never told anyone. Certainly not then.  
8 This method of operation, this MO for Dykes, as you will  
9 hear, is not limited to Kerry Lewis. You will hear the  
10 stories from several other boys about what happened to  
11 them, over at Timur Dykes' apartment work on Scouting  
12 projects, sleeping at Timur Dykes' apartment. Waking up  
13 on top of Timur Dykes. Waking up having been abused in  
14 other ways.

15           On another occasion in Kerry's home while  
16 Timur Dykes was there babysitting Kerry and his siblings,  
17 as I said before, he was always welcomed in the family  
18 home, Dykes took Kerry's hand and pulled it up through  
19 his shorts. Timur Dykes frequently and almost always  
20 wore shorts.

21           And he took young Kerry's hand and pulled it  
22 up through his shorts. He was not wearing underwear, and  
23 he had Kerry touch Timur Dykes' penis. Held his hand  
24 there for a bit. And again, Kerry will tell you that he  
25 was ashamed and humiliated, and he felt kind of used,

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1 wrong, wrong, wrong. Then three weeks ago, Timur Dykes  
2 admitted to another episode of abuse.

3 (Video Deposition of Timur Dykes played.)

4 Q "Mr. Dykes, did you molest Kerry Lewis?

5 A "Yes.

6 Q "On how many occasions?

7 A "Once.

8 Q "Where was that?

9 A "In my home.

10 Q "And what was the nature of the molestation?

11 A "Same thing. He was asleep. This was after  
12 they had moved out of the Ward.

13 Q "How do you remember that?

14 A "I just do.

15 Q "Okay. And tell me, if you would please, what  
16 it is that you did to him that you considered to be  
17 molestation.

18 A "I handled his genitals.

19 Q "For what period of time? A couple minutes,  
20 longer?

21 A "No, a couple of minutes at best."

22 Kerry Lewis has no memory of the abuse that  
23 Dykes just talked about. He did not realize it until  
24 three weeks ago. This has been part of his anxiety.

25 You will hear from the mental health

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1 professional who has examined him that he's deeply afraid  
2 that there's more to his abuse than he remembers. The  
3 child abuse experts will tell you that the adult  
4 survivors of child abuse are afraid to look very deeply  
5 into this, afraid like at phobic levels. Kerry has been  
6 afraid at phobic levels to look into this. And Dykes'  
7 testimony confirms his worst fears that if he looks  
8 inside, he will open Pandora's Box.

9 Now, you need to know about what we allege as  
10 to how the defendants, Scout defendant negligence led to  
11 Kerry Lewis being abused. We will prove to you in what  
12 is perhaps the central fact of the case and the one that  
13 brings us here to seek justice from you that Kerry Lewis  
14 was abused after Timur Dykes had admitted to the Boy  
15 Scout troop leadership in January 1983 that he had  
16 sexually abused boys in Scouting.

17 Kerry Lewis was abused after Timur Dykes had  
18 admitted to Scout leadership in January of 1983 that he  
19 had abused Scouts. Here is the head of the Scout  
20 program, Gordon McEwen.

21 (Video Deposition of Gordon McEwen played.)

22 Q "So just to go on to the timeline for a  
23 minute. Sometime in February of 1983, Colleen Lashbaugh  
24 came to you with a concern that her son had described  
25 allegations of sexual misconduct involving Timur Dykes.

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1 "Do you recall that?

2 A "Yes. I'm not sure that's date, but, yes.

3 Q "But you recall the confrontation or the  
4 conversation with Colleen Lashbaugh?

5 A "Yes.

6 Q "And one of the first things you did was to  
7 call Timur Dykes and you had a conversation with him; is  
8 that right?

9 A "Yes. Correct.

10 Q "He wrote a list, right, of the boys that --  
11 was admitting that he had molested?

12 A "Correct.

13 Q "Do you remember how many names were on that  
14 list?

15 A "There were 17.

16 Q "And just to be clear, there were more boys  
17 than 17 in the troop; right? So this was not every name  
18 in the troop?

19 A "Correct."

20 So you will want to get this simple sequence  
21 of events in your head, ladies and gentlemen. In January  
22 of '83, it was actually like the 29th or 30th, that the  
23 first reports came in. In January of 1983, Timur Dykes  
24 told the head of the troop that he had molested 17 boys,  
25 17 Boy Scouts.



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1           So we have 17 boys abused before January of  
2 1983. And Kerry Lewis' abuse happens on at least six  
3 occasions after that. So this represents the 17. This  
4 represents Kerry Lewis being molested.

5           Dykes' actions first became known to the man  
6 that you just heard from, Gordon McEwen. As I told you,  
7 he was the charter organization representative. In other  
8 words, he was the formal head of the entire Scouting  
9 program, Cub Scouts, Webelos and the Boy Scout troop.

10           Kerry Lewis was also abused after the abuse  
11 had been become known to the senior Scoutmaster of the  
12 troop, a man named Earl Wiest. This was Mr. Wiest here  
13 on the right. The book on the left is a book put out by  
14 the Cascade Pacific Council that will be coming into  
15 evidence celebrating their 75th anniversary.

16           This is Mr. Wiest featured in a center page ad  
17 stating that you can count today's heroes on the fingers  
18 of one hand. And the ad is sponsored by the Mormon  
19 church. So Kerry was abused after Dykes' actions were  
20 become known to the senior Scoutmaster of that troop. By  
21 the way, Mr. Wiest denies that he knew this.

22           But Bishop McEwen says that he told him. But  
23 it is a fact that the Scout defendant in this case cannot  
24 and will not dispute, they can cannot and will not  
25 dispute this that, in spite of what they knew about Timur

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1 Dykes being a child molester, neither of these  
2 representatives of the Boy Scouts of America told the  
3 parents of all of the boys in the Scouting programs at  
4 99th and Caruthers that Timur Dykes had admitted  
5 molesting 17 boys.

6 They called the parents of the 17 men. At  
7 least McEwen called the parents of the 17 in one by one  
8 privately to ask them about, to tell them what he had  
9 learned and to ask them to check with their boys.

10 Most of the boys denied that they had been  
11 abused. They did not have a group meeting. They did not  
12 go out into the community, the Scouting community of the  
13 church there at 99th and Caruthers. All troops, all  
14 congregations would say anything, you have known about  
15 Timur Dykes up to this point you have to question. This  
16 is what he's admitted to doing.

17 MR. SMITH: Objection. Counsel is arguing the  
18 case.

19 THE COURT: Yes. Sustained.

20 Mr. Clark, just tell what the evidence is  
21 going to be.

22 MR. CLARK: The evidence will be that they  
23 didn't go warn the parents. The evidence will be that  
24 they did nothing to warn the parents of other boys within  
25 Timur Dykes' reach and grasp. So the schools where all

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1 these boys went to school, to the other congregation, to  
2 the other troops.

3           Instead, the evidence will be that Gordon  
4 McEwen, Bishop McEwen gave Timur Dykes the equivalent of  
5 a religious slap on the wrist. And that otherwise in the  
6 Scouting context, it was back to business as usual.

7           You will hear that they, of course, couldn't  
8 have fixed the abuse that had already happened, but they  
9 could have taken reasonable steps to prevent future abuse  
10 by warning the parents of all of the boys who were  
11 reasonably and foreseeably in Timur Dykes' grasp.

12           Now, the Scout defendants say that in  
13 January 1983, they removed Timur Dykes as Assistant  
14 Scoutmaster. We disagree. And the evidence will show  
15 otherwise. This is a hotly contested matter.

16           The evidence will be that what happened was  
17 that Gordon McEwen, acting as a Mormon bishop, withdrew  
18 Dykes' sacred calling to the youth program of the church  
19 which for boys was Scouting. In other words, he gave  
20 Dykes a spiritual consequence. That's the religious slap  
21 on the wrist I mentioned a minute ago. But McEwen did  
22 nothing. No one did anything to officially remove Timur  
23 Dykes from the Boy Scouts organization.

24           After January of 1983, Dykes was still on the  
25 official troop roster as Assistant Scoutmaster for all of

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1 that year and into 1984. They didn't even create a  
2 confidential file on him until 1987 when they first got  
3 sued.

4 Even more importantly, you will hear from  
5 numerous witnesses that into the summer of 1984, into the  
6 summer of 1984, Timur Dykes was still around acting as an  
7 adult Scout volunteer and an Adult Scout Volunteer, which  
8 is a different capacity than Assistant Scoutmaster, but  
9 he was still around Scouting, still around boys, still  
10 helping boys with Scouting projects.

11 Now, I should mention right here that these  
12 Scout defendants will also say that this is not their  
13 fault because neither McEwen, nor Wiest were their  
14 representative agents, not our guys.

15 They deny that the head of the troop was their  
16 representative agent, that the senior Scoutmaster was or  
17 that any of the parents or the troop committee was. Not  
18 our people. Mormon people. So they will ask you to  
19 blame the Mormon church.

20 The judge will give you the law at the end of  
21 the trial about corporate representatives and what is  
22 called agency, but we will prove to you that these men  
23 were agents of the Scout defendants. As you will learn,  
24 it has to do with the right to control the person who is  
25 carrying out the task, the right to control.

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1           One other thing may come up. I expect you  
2 will hear from witnesses that -- you know, we didn't know  
3 then what we know now about child abuse. We didn't know  
4 in 1983, the standards were different. So we weren't  
5 negligent. But the evidence I've already told you about  
6 will answer that. This was 1983, not 1953.

7           Common sense alone, the evidence will suggest  
8 --

9           MR. XOCHIHUA: Your Honor --

10          MR. SMITH: Your Honor --

11          THE COURT: The objection is sustained.

12          MR. CLARK: You will hear evidence from the  
13 expert witnesses that we will call that even in 1983,  
14 people who worked with youngsters all of the time should  
15 have known that a person who is told that a Scout leader  
16 has molested 17 Boy Scouts is likely to abuse more.

17                 Now, to continue the story, to continue the  
18 story. After his confession in 1983, Dykes was arrested  
19 and convicted, placed on probation. His conviction was  
20 for the abuse of only a few of the 17 boys. Why was  
21 that?

22                 Well, because two of the four did not want to  
23 press charges. They did not want to have to go through  
24 the trauma of testifying in court. But more importantly,  
25 in one of the most significant pieces of evidence in this

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1 case, troop leadership did not tell the police about the  
2 17.

3 In fact, the detective who investigated this  
4 crime, I expect will tell you that he never knew about  
5 the 17. Only about a few of them because troop  
6 leadership withheld that key fact.

7 The evidence will be that through their  
8 secrecy, they actually hampered law enforcement. So,  
9 ladies and gentlemen, that is the story of what the local  
10 representatives of the BSA knew about the dangerousness  
11 of Scout leader, Timur Dykes, when they knew it, and what  
12 they did and did not do about it.

13 I will tell you now a little bit about what  
14 the damage has been that has been done to Kerry Lewis.  
15 Then perhaps in about five minutes, your Honor, perhaps  
16 we can take a break.

17 THE COURT: You estimated you'd be 75 to 90  
18 minutes? Did I recall that correctly? You've gone about  
19 60. So far how much longer do you think you have so I  
20 can decide when to take a break?

21 MR. CLARK: That's right. Sure. It is going  
22 slower than I thought, unfortunately. Half-hour,  
23 perhaps.

24 THE COURT: Why don't we take a break now.  
25 That will be a better idea maybe than just a few minutes

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1 left.

2 Jurors, the way this always works, of course,  
3 you leave your notes on your chair. You go into the jury  
4 room and then you are free to go off on a break. We're  
5 going to take a 15-minute break. Be back in the jury  
6 room with the doors closed in 15 minutes. And the clerk  
7 will come get you when we're ready to reconvene.

8 Remember, you always come and go into the  
9 courtroom through the jury room. Thank you, folks.  
10 We'll see you in 15 minutes.

11 (Jury out.)

12 THE COURT: Mr. Xochihua, you wanted to raise  
13 something.

14 MR. XOCHIHUA: Yes, your Honor.

15 During the opening statement thus far, a  
16 natural thing occurred, I suppose. I see Mr. Mones over  
17 there putting his arm around his client and comforting  
18 him. And I'd ask that that just not happen. We need to  
19 take a break if plaintiff becomes overwrought.

20 THE COURT: I haven't seen anything that I  
21 thought was at a level that was inappropriate. So I  
22 think a certain level of that may be normal. If I  
23 thought it was inappropriate, I'd put a stop to it, and I  
24 would sustain your objection, but I don't think we're  
25 there.

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1                   So 15 minutes, folks.

2                   MR. XOCHIHUA: Thank you, your Honor.

3                                   (Recess.)

4                   THE COURT: All right. Be seated, folks.

5                   Is there anything we need before we bring the  
6 jury in? Apparently not. Okay.

7                                   (Jury present.)

8                   THE COURT: Okay. Mr. Clark, go ahead, sir.

9                   MR. CLARK: Thank you, your Honor. Your  
10 Honor, I see I may have been optimistic in saying a  
11 half-hour. Looking at -- I may be 40 minutes.

12                   THE COURT: You are thinking 40 now?

13                   MR. CLARK: I'm thinking.

14                   THE COURT: Go ahead, sir.

15                   MR. CLARK: Let me now turn to what all this  
16 has done to Kerry Lewis.

17                   By the way, I should explain to you that at  
18 times in this trial, due to the nature of the testimony  
19 that you'll be hearing, we're going to have Kerry Lewis  
20 out of the room at the request of his counselor.

21                   I want you to understand what Kerry Lewis'  
22 damages claim is. But, first of all, I should tell you  
23 that Kerry Lewis does not claim that every mistake he  
24 ever made, ever problem he ever had is someone else's  
25 fault.



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1 MR. SMITH: Objection, your Honor.

2 THE COURT: Argument.

3 MR. SMITH: Yes; arguing the case.

4 MR. CLARK: Your Honor, it is going to be  
5 exactly what he says from the stand.

6 THE COURT: I'm going to overrule that  
7 objection.

8 Go ahead. That's what you expect Mr. Lewis to  
9 testify to?

10 MR. CLARK: Absolutely.

11 THE COURT: All right. Go ahead.

12 MR. CLARK: Kerry Lewis does not say that  
13 every mistake he ever made, every problem he ever had is  
14 someone else's fault. He would admit mistakes, bad  
15 decisions and staying stuck, especially when it comes to  
16 his alcohol and drug problem.

17 You will also hear from experts in child  
18 sexual abuse who study this material all of the time,  
19 that being sexually abused at the transitional age of 12  
20 by someone you trusted does deep, deep damage. It is a  
21 kind of incest. And it is damage that he will be  
22 struggling with for the rest of his life.

23 According to both his family and mental health  
24 professionals, Kerry's life was impacted almost  
25 immediately by his abuse. It went to the core of his

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1 sense of self in the world, and it damaged and retarded  
2 his ability to love and trust others.

3 He went from being a committed Scout and  
4 church kid who tried to do the right thing, to being a  
5 wildly rebellious teenager just a few years later who  
6 dropped out of Scouts and church, was regularly abusing  
7 alcohol and later drugs, was sexually hyperactive and in  
8 trouble with the law, all before he was even out of high  
9 school.

10 His alcohol and drug problem was deep and  
11 long. Once he started to slide, his grades dropped.  
12 Couldn't go to college. He lost his dream of following  
13 his father into the Air Force. He wanted to be a fighter  
14 pilot.

15 Now, this was not -- the evidence will be, you  
16 will hear from the experts that this was not like the  
17 more common teenage rebellion that many of us who had  
18 teenagers or even been teenagers had been through or have  
19 seen when eventually in young adulthood, the teenager  
20 comes back, finds his or her place in the world, and kind  
21 of returns home emotionally, psychologically.

22 Because you will hear Kerry Lewis never came  
23 back, not the Kerry Lewis you see in that photograph.  
24 That Kerry was lost. It has only been in the last few  
25 years that he's even become to understand how completely

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1 his abuse changed him. You will hear more about his  
2 inability to form meaningful relationships with people,  
3 especially men.

4 Today, he has only one male friend. So all of  
5 the benefits that he should have gotten from the Boy  
6 Scouts, about knowing how to be a man among men, he  
7 doesn't have that. He doesn't trust men.

8 Though, he was highly promiscuous as a  
9 teenager, always had lots of girls around, trying to  
10 prove his masculinity to himself, he has not had good  
11 luck with emotionally intimate relationships with women.  
12 Though, he does have a good woman in his life now. He  
13 hopes to have a future together.

14 He has a beautiful daughter. He's absolutely  
15 committed to learning how to be a good father. He still  
16 has problems with authority figures. He's lost several  
17 jobs for this reason.

18 This is the same problem that, taken along  
19 with his drug issues, got him kicked out of the U.S.  
20 Navy, which had a more relaxed policy on past drug use  
21 than the Air Force who took him in on a probationary  
22 period. Even that, he could not satisfy.

23 He's never found a career path, though, he's  
24 held many jobs. You will learn that he has no religious  
25 faith at all. But remembers that the Boy Scouts listed

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1 as one of its main goals to help young men find and trust  
2 God. He has deep depression. He struggles with  
3 sleeplessness, nightmares, flashbacks. He has what they  
4 call chronic anxiety. Meaning he's often afraid for no  
5 apparent reason.

6 You will hear from the experts the sad fact  
7 that all this is quite common and predictable for sex  
8 abuse victims. For Kerry Lewis, none of it is common and  
9 none of it is predictable.

10 Let me now transition to the discussion of the  
11 BSA's national problem with child sexual abuse. In the  
12 years before Kerry Lewis was abused, you will hear that  
13 the difference between the actions and attitudes of the  
14 mental health community and the BSA when it comes to  
15 child abuse was stark.

16 By the early 1980's, you will learn the mental  
17 health community was working feverishly to get the word  
18 out to society about abuse by trusted adults. Everyone  
19 knew about stranger danger, but not about abuse by  
20 trusted adults. But the Scouts did.

21 And the BSA was still working hard to keep its  
22 pedophilia problem with trusted Scout leaders a secret.  
23 Starting in the early 1970's, with the help of the mental  
24 health community, the federal government was starting to  
25 pass national laws to help prevent child abuse. Boy

## Opening Statements

1 Scouts of America still keeping it secret. And what the  
2 BSA was successfully concealing was its systematic  
3 problem with sexual abuse by boys with trusted Scout  
4 leaders.

5 Now, if you find that hard to accept, let's  
6 look into the BSA's secret files. In March of 1972, a  
7 few weeks before Kerry Lewis was born, at the  
8 headquarters of the Boy Scouts of America, a letter was  
9 signed by a Scout Executive. The leader went to the head  
10 of the local chapter of the Boy Scouts in Waco, Texas.

11 It was in response to a report that a Scout  
12 leader in a troop there had sexually abused a boy and had  
13 been wrongfully convicted for what, under Texas law, was  
14 termed "fondling."

15 The letter was signed by a Scout Executive  
16 named Paul Ernst, who was in charge of registration of  
17 all adults in Scouting. And then all of the material  
18 having to do with this matter was put into a file, like  
19 this. Given a number, in this case 1,785, and deposited  
20 into a massive file system kept by the National BSA.

21 The evidence you will hear is that the  
22 scenario I've just told you about was nothing unusual. I  
23 tell you about this one from Texas only because it  
24 happened in the spring of 1972, which is the same time  
25 frame that Kerry Lewis was born.

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1           The BSA had been receiving reports like this  
2 for nearly 50 years. By now, in the 1970's, they were  
3 receiving them at the rate of once a week on average.  
4 Reports from Illinois and Texas, from Alabama and Oregon,  
5 from all over the nation. The details of each situation  
6 were different. But what they all had in common was they  
7 involved the sexual abuse of the Boy Scout or a Cub Scout  
8 by a trusted Scout leader.

9           These are all boys who had had things done to  
10 them in Scouting, unspeakable things that I now have to  
11 speak to you about, and you have to hear about in the  
12 next few weeks, if you are to understand this case.

13           The fondling, masturbation, oral sex,  
14 attempted penetration, child rape, things that even to  
15 say out loud today make us blush and cringe. But this is  
16 what we have to talk about.

17           The Scout defendants will tell you that they  
18 took child abuse seriously. But rather than what they  
19 say, let's look at what they did in response to the  
20 notices they were receiving from 1965 to 1985. There are  
21 four categories, four or five categories, secret files,  
22 that we will show you during this case.

23           Category one, secret file that will show what  
24 the BSA understood about sexual predators and their in  
25 their ranks. The files we have here, 1,247 of them call

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1 the Perversion Files. In Boy Scout terminology, someone  
2 was in a file for perversion if they were either a child  
3 molester or they were homosexual. These 1,247 P Files  
4 all contain allegations of child sexual abuse, 1965 to  
5 1985.

6 We will show you the secret files demonstrate  
7 that the BSA knew far more than just the fact that they  
8 had pedophiles in their ranks. We will prove that they  
9 knew that abusive Scout leaders regularly lured children  
10 into their homes and apartments by telling them that they  
11 would be working on Scouting projects and then abusing  
12 them in secret.

13 The BSA knew that abusive Scout leaders and  
14 Assistant Scout leaders were abusing Boy Scouts, Cub  
15 Scouts and Webelos. They knew that young, single men  
16 were the most common offenders. And they knew that  
17 pedophiles who were not officially registered were still  
18 doing work in Scouts.

19 Category two, secret files that show that the  
20 BSA knew that their employees and volunteers needed  
21 training and how to recognize, prevent and report child  
22 abuse.

23 Secret file 1318, State College, Pennsylvania,  
24 1984, the Scout leaders were not reporting sexual abuse  
25 to authorities. A Scout leader is criminally cited for

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1 failing to report child sexual abuse to the authorities.

2           They knew of situations where a local Scout  
3 leader had listed as many as 16 Scouts that a Scout  
4 leader had admitted to abusing, but they decided not to  
5 tell the parents of the abused Scouts unless the parents  
6 came to them and specifically inquired about whether the  
7 son had been abused.

8           Secret file 1417, Rochester, Minnesota, 1983,  
9 that local councils allowing sexually abusive Scout  
10 leaders to remain involved in the Scouting without  
11 telling parents or Scouts about the previous sexual  
12 abuse.

13           Secret file 1535, Edwards, Colorado, 1980,  
14 they knew they had volunteers who believed that before  
15 they could intervene to stop an abusive Scout leader,  
16 they had to be an eyewitness.

17           Owosso, Michigan, 1966, after informing the  
18 camp director that his Scout leader was abusing him, a  
19 boy was violated multiple times until the director was  
20 finally able to personally observe the abuse occurring  
21 before he intervened.

22           The BSA even heard from its National employees  
23 directly, that they didn't know what to do when they  
24 learned the Scout was being sexually abused. Asking for  
25 instructions. Secret file 1326, Brownwood, Texas, 1984.



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1           Category three, these files will show you that  
2 despite what they will tell you -- they will tell you  
3 that these files were set up as a way to keep bad Scout  
4 leaders out. Once you got in the files, you couldn't  
5 reregister. We will show you in this third category that  
6 they regularly failed to kick out child sexual predators.

7           Secret file 1604, Athens, Georgia, 1970, BSA  
8 learns that a Scoutmaster is suspected of sexual abusing  
9 between 11 and 14 boys. BSA also learns there had been  
10 accusations of similar abuse stemming back 15 years  
11 earlier.

12           Before they would even create a secret file on  
13 the man, the BSA requests a written statement from the  
14 father of one of the victims stating we need to know if  
15 there's been any recent events concerning this man.

16           Dubuque, Iowa, 1970, a man who served as Scout  
17 leader for nearly 30 years is reported to BSA after  
18 admitting to sexually abusing boys despite the man's  
19 confession, BSA responds. We do need more substantiating  
20 material before we can put this man into a file.

21           September 1970, Wichita, Kansas, trial Exhibit  
22 673. This one does not have a file number on it. The  
23 head of a Cub Scout Pack -- excuse me, the head of a Cub  
24 Pack is investigated for child molestation. Cub Scouts,  
25 those are the young ones, seven to nine.

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1           Several weeks later, after learning that  
2 there's a warrant out for the man's arrest, BSA writes to  
3 the local council. We realize, of course, currently we  
4 have no information, and it would be hard to justify our  
5 refusing his request to register in Scouting should he  
6 show up on another Council.

7           Secret file 1470, South Burlington, Vermont,  
8 1982, a Scout leader faces criminal charges for following  
9 a 12-year-old Scout. The man had been accused of child  
10 molestation on a number of other occasions over the  
11 previous ten years, but only goes into a file for the Boy  
12 Scouts only into one of these files after charges were  
13 filed and publicized. A handwritten note at the end of  
14 the file says, "plenty more Scout victims."

15           The fourth category, secret files, that show  
16 the BSA knowingly allowed child sex predators to continue  
17 in Scouting. Not only do they ignore opportunities to  
18 kick out these child sex predators, but they knowingly  
19 allowed them to continue on what they called probationary  
20 status.

21           Secret file 1516, Nampa, Idaho, 1983. In  
22 1979, the BSA had learned that a Scout leader is accused  
23 of abusing three boys. But nothing is done to remove the  
24 man from his post until nearly two years later in May of  
25 1981. Scout leader continues until he's finally arrested

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1 in February 1983, nearly four years later, for sexually  
2 abusing one more boy on a Cub Scout camping trip.

3 Philadelphia, Pennsylvania, April 1982, the  
4 BSA creates a secret file in the 1960's regarding the  
5 Scoutmaster who sexually abuses several boys. BSA  
6 allowed the man to return as a Scoutmaster in 1972 on  
7 probationary status. He's only removed from his position  
8 as Scout leader in 1982, ten years later after being  
9 charged with again sexually abusing two more Scouts in  
10 his home.

11 Secret file 1825, Boulder, Colorado, 1977. In  
12 1972, the BSA creates a secret file for a Scout leader  
13 they discover has been molesting Scouts for several  
14 years. Still they allow him to return on a two-year  
15 probationary term.

16 Five years later, in 1977, the Scout leader is  
17 arrested for sexually abusing at least five more boys,  
18 mostly Scouts aged 10 to 14. The abuse included  
19 masturbation, oral sex, simulated intercourse, attempted  
20 anal penetration. The man reportedly threatened to kill  
21 each of his victims if they disclosed the abuse.

22 Trial Exhibit 654, Honolulu Hawaii, 1966, BSA  
23 creates a secret file on a Scout leader after  
24 investigation of his conduct with boys in the Scout troop  
25 who revealed had he was convicted of sodomy three years

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1 earlier. BSA later allows the man, after a conviction  
2 for sodomy, back in the Scouts on probation to work with  
3 Cub Scouts.

4 Bayonne, New Jersey, 1967, BSA opens the  
5 secret file on a District Scout Executive. This is a  
6 professional paid Scouter, for performing oral sex on a  
7 Boy Scout and masturbating the boy at Scout camp. BSA  
8 puts him on probation and allows him to continue as an  
9 Adult Volunteer for nearly 40 years.

10 Category five, we will prove to you that the  
11 Boy Scouts of America deliberately and intentionally kept  
12 all this secret, that he even tried to cover it up.  
13 Secret file 1512, Peoria, Illinois, 1981.

14 The BSA has a policy of controlling access to  
15 information about abusive Scout leaders by keeping all  
16 documents at National headquarters. Can't have them out  
17 in the Council or regional offices.

18 As one letter states, the BSA has always asked  
19 that all records of this type of situation be kept at the  
20 National office and not in the local Council office  
21 because of the embarrassment that could be incurred if  
22 the wrong individuals were to read the file.

23 Secret file 1482, Indianapolis, Indiana.  
24 1982, the BSA creates a special secret file for the Scout  
25 leader in the early 1970's. The man returns as a Scout

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1 leader on a probationary period and abuses two more  
2 Scouts during the summer of 1982. A letter from BSA  
3 explains that his previous files, like other files for  
4 man who had finished probation was destroyed. That means  
5 according to the BSA, the records of a man caught  
6 sexually abusing a child who is then put on probation has  
7 his file destroyed.

8 So we know that these 1,247 secret Perversion  
9 Files are only a portion of the full picture regarding  
10 the sexual abuse that occurred by Boy Scouts in the 20  
11 years before Kerry Lewis was abused.

12 How do we know that? Because the experts that  
13 you will hear will tell you that only a tiny fraction of  
14 child sexual abuse is ever reported. There's 1,247 files  
15 there over 20 years. That averages out something very  
16 close to the child abuse file, average something very  
17 close to one a week during those 20 years.

18 A thousand of them -- I think I misspoke  
19 earlier when I said all 1,247 of them are child abuse.  
20 That's not right. 1,247 are the P Files. A thousand of  
21 them are the child abuse files. I apologize for that.

22 A thousand Perversion Files, 20 years  
23 representing child sexual abuse, a fraction of what was  
24 out there. And the experts will also tell you that the  
25 average pedophile has five to ten victims. Timur Dykes

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1 had 17 by 1983, just that we know about. So you do the  
2 math. 5,000, 10,000 kids abused in the 20 years before  
3 Kerry Lewis was abused and we don't know how many never  
4 reported.

5 Now, what does the BSA say today about its  
6 problem with child sexual abuse?

7 (Video deposition of Nathaniel Marshall  
8 played.)

9 Q "You are the person most knowledgeable  
10 regarding BSA's recognition of child sexual abuse is an  
11 institutional-wide problem within the BSA; is that  
12 correct?

13 A "Not quite sure I understand the  
14 'institutional problem' sector.

15 Q "Okay. Are you aware the person most  
16 knowledgeable in the BSA about the problem of sexual  
17 abuse over the history of the BSA?

18 A "Not quite sure it is a problem, but I do  
19 understand the situation between child abuse and the Boy  
20 Scouts of America.

21 Q "Okay. Let me rephrase it. Are you the  
22 person most knowledgeable about the circumstance and the  
23 occurrence of child sexual abuse within the Boy Scouts of  
24 America?

25 A "Yes.

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1 Q "Prior to your time being hired by the  
2 National office of the BSA, were you aware of the problem  
3 of sexual abuse of Scouts by Scoutmasters?

4 A "I'm not sure about the problem, but I was  
5 aware of some circumstances.

6 Q "Okay. So your quibble is with the word  
7 'problem'?

8 A "Yes.

9 Q "Was child sexual abuse of Scouts, is that a  
10 problem today in the Boy Scouts of America?

11 A "Um, I'm not sure it has ever been a problem.  
12 It is a situation that we wish would not happen.

13 Q "To the best of your knowledge, is the person  
14 most knowledgeable about the Boy Scouts of America  
15 history of their efforts to prevent sexual abuse, when  
16 was the problem of the sexual abuse of Scouts by  
17 Scoutmasters first recognized by the BSA?

18 A "When was it recognized?

19 Q "As a problem.

20 A "Define 'problem.'

21 Q "Well, what do you think I mean by the word  
22 'problem'?

23 A "I don't know. That's why I'm asking you.

24 Q "So when I say is sexual abuse of  
25 Scoutmaster -- sexual abuse by Scoutmaster is a problem,

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1 you want to know what the word 'problem' means?

2 A "Uh-huh."

3 There's one other file you should know about.  
4 It is from Portland, Oregon, dated March 16, exactly  
5 yesterday, 1987. This is the secret file for Timur  
6 Dykes. You'll hear about this during the trial.

7 For the BSA, the abuse of boys like Kerry  
8 Lewis by Timur Dykes was another situation of the single  
9 male Scout leader luring children to his apartment under  
10 the guise of working on Scouting projects and abusing  
11 them in secret.

12 Another situation of BSA refusing to tell  
13 parents of Scouts in the area that a dangerous pedophile  
14 was in their midst, another situation of the BSA not  
15 being honest to police about a known child predator,  
16 another situation of plenty more Scout victims, including  
17 the Scout who sits before you now, Kerry Lewis.

18 The evidence will be that, despite what the  
19 BSA knew about what was in their files and when they knew  
20 it, they did nothing. They kept it completely quiet, and  
21 as you heard, they even tried to take steps to cover it  
22 up. They did not warn Scouts. They did not warn  
23 parents. They did not warn local organizations.

24 They did not even warn people like McEwen and  
25 Wiest, both of whom will tell you that they never



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1 received any training in the Boy Scouts of America in  
2 recognition, prevention or reporting of child abuse.

3 Ladies and gentlemen, in terms of the impact  
4 of the BSA's failure to do the right thing with this  
5 information they had, you will hear from a nationally  
6 recognized expert in youth organizations safety that in  
7 their failure to disclose publicly what they knew about  
8 pedophiles who were in the position of trust, the BSA  
9 actually set back the child abuse prevention movement in  
10 this country. Held it back because of their secrecy.

11 We ask that you keep that in mind when you are  
12 considering punitive damages. And the fact that they did  
13 not warn troop leaders like Bishop McEwen and Earl Wiest,  
14 we ask you to keep in mind when they want you to blame  
15 the Mormon church.

16 Let me conclude now with just a few  
17 paragraphs. The evidence will be that the Boy Scouts of  
18 America broke their oath and broke trust with the parents  
19 and children of America who, for nearly 100 years now,  
20 parents have entrusted with their children.

21 The evidence will be that the Boy Scouts of  
22 America holds itself out as a great program for kids and  
23 families and communities. And there's no doubt that for  
24 many Scouting has been a positive experience.

25 But in this case you will see a different face

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1 of the Boy Scouts of America, one that needs to be made  
2 public and held accountable for what it allows to happen  
3 to Kerry Lewis.

4 MR. SMITH: Objection, your Honor. Counsel is  
5 arguing the case.

6 THE COURT: Sustained.

7 MR. CLARK: We will be asking you to render a  
8 verdict to hold the Boy Scouts of America accountable for  
9 what we will prove to you they knowingly allowed to  
10 happen to Kerry Lewis and others like him.

11 We will be asking you at the end of the case  
12 to return a verdict requiring the Scout defendants to pay  
13 Kerry Lewis back for his past, present and future  
14 emotional and psychological suffering in the amount of  
15 \$4 million.

16 We will be asking you also, through a punitive  
17 damages verdict, to send a clear and stern signal to the  
18 Boy Scouts of America and any other youth organization  
19 watching this trial that a jury in Portland, Oregon, will  
20 not tolerate this kind of knowingly allowing child abuse  
21 to boys in their ranks.

22 After all, in this country, we do not bring  
23 people to justice for what they do right. We bring them  
24 to justice for what they do wrong.

25 Thank you.

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1 THE COURT: Mr. Smith.

2 MR. SMITH: Thank you, your Honor.

3 May it please the court, counsel, ladies and  
4 gentlemen of the jury. I wrote down a few things this  
5 morning and I wanted to talk to you about, but I'm going  
6 to change my approach on this. And I hope you bear with  
7 me.

8 I want to start where counsel left off if I  
9 can, please, and we have the Walsh, I'll -- call that up  
10 for me, please.

11 (Video deposition played of Martin Walsh.)

12 Q "Does the Boy Scouts of America understand  
13 that child sexual abuse of Scoutmasters -- of Scouts by  
14 Scoutmasters is a problem within the Boy Scouts?

15 A "Recognize -- I think the issue is recognize  
16 it as a problem. It is no more of a problem in the Boy  
17 Scouts than in society in general.

18 Q "Does the Boy Scouts of America recognizes  
19 child sexual abuse, that is, the sexual abuse of Scouts  
20 by an Adult Leaders and Scoutmasters as being a problem?

21 A "No more than it is in society.

22 Q "Okay. Thank you. And when did the Boy  
23 Scouts of America first recognize the occurrence of the  
24 sexual abuse of Scouts by Adult Leaders and Scoutmasters?

25 A "They would have -- when they would have first

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1 reported the incident, the first incident, that would be  
2 early in Scout's history.

3 Q "Do you know when?

4 A "I don't have the specific year."

5 Thank you.

6 Can we also pull up, I know we don't have the  
7 screen on Mr. Marshall's deposition. Could I have the  
8 transcript up, please? Thank you. I'm going to read  
9 that as we go, folks.

10 (Deposition of Nathaniel Marshall.)

11 Q "And the reason why you wouldn't use the word  
12 'problem' is what?

13 A "Because I think the Boy Scouts of America is  
14 one of the safest organizations that a young person can  
15 be involved in. We encourage parental involvement all  
16 along the way through a young man's Boy Scout's life and  
17 career. We encourage parents to go and participate with  
18 the young person in Scouting activities, Scout meetings,  
19 whether it be a Cub Scout meetings or, Boy Scout, things  
20 like that.

21 "And because we think that parents, if their  
22 children's interest at heart, we just kind of feel like  
23 that they would be in the position to not let anything  
24 happen to the young people in those particular units.

25 Q "And when you say not let anything happen, do

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1 you mean, include that being sexually abused by a  
2 Scoutmaster?

3 A "Yes.

4 Q "Is that a 'yes'?

5 A "Yes.

6 Q "Okay. Is it fair to say that you, as a  
7 representative of the Boy Scouts of America here today,  
8 that the position of the Boy Scouts of America is that  
9 sexual abuse by a Scoutmaster has never been a problem in  
10 the Boy Scouts of America?

11 A "That's not what I'm saying. Any situation  
12 with regards to our youth that is not in a positive  
13 fashion, but it is a negative fashion is a problem for  
14 the Boy Scouts of America."

15 So that's all I'm going to say about the  
16 problem right now, folks. I'd like to have that, I'll  
17 just use the chart, if I can find your chart, counsel.

18 Thank you.

19 I want to change gears now, folks, and talk to  
20 you a little bit about the organization of the Boy Scouts  
21 of America. You've heard plenty about it. You've heard  
22 some things about it yesterday, I know in voir dire and  
23 you've heard lots about it this morning. But instead of  
24 stopping -- starting from the top, I want to start from  
25 the bottom here, the chartered organization.

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1           The chartered organization within the Boy  
2 Scouts framework is a local community organization. It  
3 is your PTA. It is the police department, auxiliary of  
4 law enforcement. It can be a school, a school district,  
5 the Elks, Lions, churches.

6           In this case it happened to be the LDS Church,  
7 but they are local, community organizations. And they  
8 are made up of primarily who one of the most important  
9 factors in the organization, the parents. It depends on  
10 parental involvement. And the involvement of volunteers  
11 in the community, known to those parents, those parents  
12 are some of those volunteers, known to the church, known  
13 to the school, known to the local community organization.  
14 That's what the evidence will be. It is a fundamental  
15 principle. You'll hear about it.

16           The local organization establishes a unit  
17 committee and together they operate that unit. They own  
18 the unit. And they might own equipment like a trailer or  
19 camping gear, anything like that.

20           But the local organization operates the unit  
21 and owns that unit. And they determine what the troop  
22 activities are. They select the leaders. And they plan  
23 those activities. And they do it on a day-to-day basis,  
24 on a month-to-month basis. And again, it is composed  
25 entirely of volunteers.

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1           The volunteers that have time to give to their  
2 children's interest, to the church's interest, to  
3 whatever neighborhood interest there might be or the  
4 local community. And again, in this regard, the  
5 organization here happened to be the LDS Church. And the  
6 suggestion here was made that our evidence is going to be  
7 we're going to blame this on the church.

8           You are going to hear more about the church  
9 than you heard about the church being involved in this  
10 case to some extent. But BSA is not here to blame this  
11 on the church. Those decisions will be up to you.

12           Could we have Bishop McEwen's? Call that up  
13 for us, please.

14           (Video deposition of Gordon Bishop played.)

15           Q        "At the time of your meeting with Mr. Dykes,  
16 when you called him in, as bishop, were you acting in any  
17 way on behalf of the Cascade Pacific Council?

18           A        "I'd say no.

19           Q        "Were you acting in any way on behalf of the  
20 organization called the Boy Scouts of America?

21           A        "No.

22           Q        "Were you acting as bishop of the something?

23           A        "Yes."

24           That probably says better than what I can tell  
25 you what the evidence will be, ladies and gentlemen. It

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1 says it in a nutshell as far as how the local  
2 organization and who they represent and who they are  
3 trying to work for.

4 The local Council in this case, the  
5 codefendant in this case is a separate, nonprofit,  
6 independent corporation, generally organized throughout  
7 the country in various states. They are separate, legal  
8 entities.

9 And their purpose is to raise and spend funds  
10 in support of the program. They have their own volunteer  
11 board and they make the Scouting program. The BSA  
12 Scouting program available in local geographic areas.

13 It is a program and a resource for the local  
14 community organization. In other words, the CPC provides  
15 a resource for the LDS Church, for instance, in this  
16 case, in a support role. It makes written material  
17 available that are provided by my client, the BSA, the  
18 national.

19 And the local Council provides a camping site,  
20 for instance. They don't -- they don't oversee how the  
21 camp is run. Insofar as the LDS Church, for instance, in  
22 this case if they were using a campsite, they would be  
23 responsible for looking after the troops. The local  
24 Council doesn't do that, but they provide the facility.

25 And who makes up that Council? First, it is a



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1 volunteer president. And it is a committee of local  
2 volunteers. And it is a volunteer board. Mr. Devore is  
3 seated here with you along counsel as a representative of  
4 the Cascade Pacific Council. And he's the Scout  
5 Executive, but he doesn't run the Council.

6 His responsibility is to report to the  
7 volunteer president, the evidence will be. And he  
8 reports directly to that president. He's hired by the  
9 president of the Council and he can be fired by the  
10 president of the Council.

11 He does not -- he's not beholden to the  
12 National BSA with respect to his job. It is again, it is  
13 local position and he's responsible to the organization,  
14 the local community organization that's running the  
15 program.

16 The BSA itself, you've heard is a nonprofit  
17 organization. Some of you folks heard that yesterday and  
18 spoke about it. It was chartered by Congress in about  
19 1916. We're headquartered in Irving, Texas. And we  
20 provide what I'll just call the book on the Scouting  
21 guidelines and the Scouting program. We provide  
22 documents. We provide guidelines. We have the Scout  
23 handbook. You are going to hear a lot about that and  
24 what it contains.

25 But we establish nationwide -- we do establish

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1 nationwide standards for advancement. And we're  
2 responsible for program development. We offer a benefits  
3 program. And we provide annual reports to Congress. We  
4 issue charters annually. The Councils and their  
5 sponsors, again, the local organizations such as here,  
6 LDS Church.

7 And from the standpoint of this issue of  
8 control, you'll hear what the evidence is, we do observe  
9 the right to not renew a charter of either a Council or  
10 of a local community organization if the Boy Scouts agree  
11 they are not following or adhering to the guidelines  
12 established by the Boy Scouts of America.

13 And in connection with the development of the  
14 program, you see here the so-called secret files, the  
15 I.V. Files. These files, folks, were known as the Red  
16 Flag Files or the Confidential Files. And they were kept  
17 and had been kept confidential for a reason.

18 Perhaps it is obvious to you, but the evidence  
19 will be they are replete with confidential information,  
20 with people's lives, identifying people. And we do not  
21 produce them willingly or voluntarily unless it is under  
22 court order for a very good reason.

23 Because they are full of confidential  
24 information, which should not be disseminated in our  
25 opinion throughout the world. They are not open for

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1 review by the media. They are not open for review  
2 willy-nilly on a local basis.

3 They are designed for a reason, one reason  
4 only. To do our very level best, the evidence will be,  
5 to keep out repeat offenders.

6 Once the BSA is notified, and that's critical,  
7 there's got to be some form of notice. They've got to  
8 have some reliability. Once that happens, a person is  
9 put in this file. A file is made up and hopefully they  
10 can never, ever be involved in the Scouting program  
11 again.

12 It is called registration. Every Scoutmaster  
13 has to be registered. They have to be reregistered  
14 annually. It is an annual check. And the BSA relies on  
15 information from the local people, the local folks who  
16 know if there's a problem with somebody, they should be  
17 the first to know perhaps or be aware of it, because  
18 there's nobody in Irving, Texas, nobody at the national  
19 level that's going to be down at Ground Zero or the  
20 ground level, you'll find, telling the local organization  
21 how to run its day-to-day activities and run the troop.

22 The BSA depends upon the knowledge being told  
23 or advised of a predator, somebody like Mr. Dykes, who  
24 you've heard about. And when they get notice of files  
25 made up, you'll find out, the evidence in this case, I

## Opening Statement

1 trust will be, we when we got notice, we made the file.

2 The reason for that is this, these people  
3 move. They go from state to state. They change their  
4 names or they change their birth date, or they do  
5 something to slip another area and try to get their way  
6 back into, whether it is the Scouting program or any kind  
7 of program.

8 And instead of being apologetic about these  
9 records, the Boy Scouts of America will tell you, and the  
10 evidence will be, that we're trying to be -- we feel  
11 we're trying to do the right thing by trying to track  
12 these folks and control that situation.

13 I mentioned the BSA does require certain  
14 mandatory, we have kind of a mandatory, if you will,  
15 guideline. And that is the advancement. We ask that the  
16 local organizations adhere to our advancement program.  
17 And we ask that they comply with uniform requirements.

18 Young men have a uniform. They can have a  
19 variety of uniforms. Sometimes it is a T-shirt.  
20 Sometimes it is a full uniform, depending upon what they  
21 prefer, but we do require that. Again, we don't dictate  
22 the day-to-day activities, the local organization,  
23 though, from Texas.

24 In summary, we develop policies and guidelines  
25 at the BSA National. The local Council offers support.

## Opening Statement

1 And the local organization operates the troop and selects  
2 its leaders. You'll be able to analyze all this based on  
3 the appropriate standard of care of care during that  
4 period of time. I've have evidence on that.

5 I'll simply ask you at this time that you  
6 listen to all of the evidence carefully and closely and  
7 the court's instructions on the law before you reach any  
8 conclusions in this case and return a fair and impartial  
9 verdict for all of the parties.

10 Thank you very much for your attention.

11 THE COURT: Mr. Xochihua.

12 MR. XOCHIHUA: Thank you, your Honor.

13 Counsel, Mr. Lewis, the jury. As you probably  
14 saw already, Mr. Devore and Mr. Marshall are sitting in  
15 the back. It is just really to give us a little more  
16 room at counsel table. I hope you don't take that as an  
17 indication of any kind of lack of interest.

18 I have already introduced you to them. You  
19 know who I represent. Nicole Rhoades, one of my partners  
20 is here, and she's participating in the trial as well.

21 Mr. Smith said a lot of things that I was  
22 going to say, but I'm going to hit a few things that he  
23 may not have talked about in terms of what kind of  
24 evidence may come in.

25 He's already talked about the role of my

## Opening Statement

1 client in the Boy Scout movement. But I'd like to  
2 briefly just tell you what my client filed in court here  
3 in answer to some of the claims against it. It admitted  
4 that it is what it is, a nonprofit organization, which  
5 supported the Scouting movement in this state and still  
6 does.

7 It admitted that it was on notice before this  
8 plaintiff was involved in Scouting in Oregon that child  
9 molestation could occur and did occur between adults and  
10 youth, including between adults and youth in Scouting.

11 It admitted that at certain times Mr. Dykes,  
12 the predator you've heard about, acted as a volunteer  
13 Scout leader in Boy Scout Troop 719. 719 was, as you'll  
14 hear, the unit number for the troop that was in the 10th  
15 Ward of the Church of the Latter-Day Saints.

16 My client admits that on at least one  
17 occasion, probably more, Mr. Dykes made illegal physical  
18 contact with plaintiff for his own purposes. However, my  
19 client denies that the illegal touching of Mr. Dykes was  
20 known to my client at the time. Denies that it was done  
21 for the benefit of my client or the Scouting program.  
22 Denies it was done in support of the Scouting movement in  
23 Oregon. And as a result, it denies liability for this  
24 unfortunate circumstance.

25 One of the things that Mr. Smith touched on is

## Opening Statement

1 this annual registration that applies to volunteer  
2 leaders as well. Those of you who have been involved in  
3 Scouting were probably aware of this if you are an Adult  
4 Leader. You register annually and your name gets  
5 submitted to the national organization for the purpose of  
6 trying to see if somebody who is in these files is trying  
7 to get back in.

8           You'll hear that there were these written  
9 documents beginning in the early '70s called Maintaining  
10 Standards of Leadership publications by the BSA. And  
11 that those documents put in writing a method for trying  
12 to ensure, trying to at least set the stage for a  
13 reporting mechanism, which was in existence years before.

14           This put it in a written document. And it  
15 suggested that people who were at a little higher level  
16 in the organizational scheme of things, who came upon  
17 information that a certain Scouting leader, Adult  
18 Volunteer was unfit for that position, it provided a  
19 procedure for those people to report and ultimately  
20 report a name that could go into an I.V. Files,  
21 "Ineligible Volunteer."

22           I don't know if that was explained: An  
23 Ineligible Volunteer File. Mr. Clark called it a secret  
24 file. Mr. Smith explained that it was kept confidential.

25           You will hear evidence that just because the

## Opening Statement

1 Maintaining Standards of Leadership document was not in  
2 existence doesn't mean that people weren't doing the same  
3 thing already because people were reporting people well  
4 before, you've heard, 1965 and earlier, well before this  
5 Maintaining Standards of Leadership document came into  
6 existence.

7           You've heard that these I.V. Files as I'll  
8 probably be referring to them, that in 20 years, '85, '65  
9 to '84, 19 years, 1,000 of them deal with child sexual  
10 abuse. That is tragic.

11           To give you some scope of what that means in  
12 the context of the Scouting movement, you'll hear  
13 evidence that somewhere during those same years,  
14 somewhere between a little over a million and 1.6 million  
15 Adult Volunteers registered annual each and every year.

16           You are going to hear evidence and see  
17 evidence much more than the snippets that you heard. I'm  
18 just going to point out one snippet you heard from  
19 Mr. Clark that one of these files that were theatrically  
20 dropped.

21           MR. CLARK: Objection, your Honor.

22           THE COURT: Sustained.

23           MR. XOCHIHUA: I apologize.

24           One of these suggested that they needed more  
25 substantiating material that will support our placing



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1 this man on the Confidential File. The same document,  
2 the same document in the first paragraph says, "Thank you  
3 for your letter about this person. We have placed this  
4 information in our file and have taken steps to have his  
5 name deleted from our records."

6 The second paragraph, which is what Mr. Clark  
7 referred to, goes on to say, "A written statement from  
8 one of the boys or their parents will be appreciated and  
9 it will certainly strengthen our position of refusing to  
10 accept any future application for registration we might  
11 receive from this individual."

12 That apparently falls within one of the  
13 categories you heard about. One of the other excerpts,  
14 this is the Marshall excerpt, again, we don't have any  
15 audio on this, but I'll ask you to take a look at it.  
16 Page 76. This is Mr. Marshall sitting here.

17 The question is: "It is your opinion that the  
18 matter of sexual abuse of Scouts by Scoutmasters is not a  
19 problem in the Boy Scouts of America?"

20 "Answer: I think sexual abuse of any young  
21 person is a problem, no matter where it might occur. If  
22 you are talking about specifically the Boy Scouts of  
23 America, it is a problem with the Boy Scouts. It is a  
24 problem with anywhere that it may occur."

25 I want to bring up a timeline. I think I have

## Opening Statement

1 a small exhibit, but I want to see if it is big enough on  
2 the screen. Can everybody see that all right?

3 I think the evidence is going to show, and it  
4 will be Mr. Lewis' mother, Helen Caldwell, who will say  
5 that the first contact that Mr. Dykes had with their  
6 family and their son, Kerry Lewis, was soon after they  
7 moved from California into Portland.

8 And the timing is a little bit imprecise, as  
9 you might expect people's memories a little bit  
10 different, but she says sometime in '81. If it was  
11 before the school year, it might have been September or  
12 maybe August of 1981. We have some records, one of which  
13 is an application for becoming an LPN in Oregon which  
14 Mrs. Caldwell signed, then Lewis.

15 So they moved in. And Mr. Dykes first had  
16 contact as a home teacher, and that is how they formed  
17 their relationship with him; that he would come over  
18 about once a month with another gentleman most of the  
19 time, and they would engage in religious activities that  
20 are part of the fundamental tenets of their religion.

21 But more than that, over the next year and a  
22 half, Mr. Dykes started coming over to just visit and  
23 have dinner. And he spent more and more time with the  
24 Lewis family.

25 You'll hear that Mrs. Lewis and her son Kerry

## Opening Statement

1 certainly became involved in Scouting as Cub Scouts.  
2 Mr. Lewis was a Cub Scout. His mother was a den leader  
3 or den mother, the terminology you'll hear from the  
4 people who actually know more about what it is.

5 She will testify that at no time during any --  
6 if she testifies consistently with her deposition -- I  
7 should say we've taken testimony from people under oath  
8 at different times in this case. And it has been typed  
9 up by people like this court reporter here, Ms. Eichhorn.

10 And we use it, so we have some idea before we  
11 stand up here and say what we think the evidence will be,  
12 to have some idea of what the evidence is probably going  
13 to be.

14 I think she will testify that Mr. Dykes was  
15 not involved in the Cub Scouting in her house or while  
16 her son was a Cub Scout. It was not until, she believes,  
17 her son got into Webelos where they started to meet at  
18 the church facility, that she recalls seeing Mr. Dykes  
19 around.

20 What I have here, I'm going to walk in front  
21 of it, I know I shouldn't, but I'm going to, under the  
22 LDS 10th Ward, there was Unit 719. It is just the number  
23 that applies to that particular sponsoring organizations  
24 unit. And they have a slightly different system than is  
25 how the National Boy Scout Association program is set up.

## Opening Statement

1           The National Boy Scout program, boys ages 11  
2 through the time they leave Scouts, but particularly from  
3 Boy Scouts, ages 11, 12 and 13 are all labeled Boy  
4 Scouts.

5           In the LDS Church, because of the way they  
6 practice their religion, youth aged 12, boys who are aged  
7 12 are not allowed to participate in Boy Scout troops.  
8 They call them Blazer Scouts, and they separate them.  
9 You'll hear why. There's a priesthood called the Aaronic  
10 Priesthood, which begins for young boys at age 12. And  
11 until then, while they are still a youth, they are  
12 considered too young. And at age 12, they can start  
13 participating in the Boy Scouts.

14           Now, the information that we have here comes  
15 from both roster information and witnesses. And this  
16 timeline is just a helpful aid for me to explain it to  
17 you.

18           You'll hear that rosters are created annually,  
19 rosters of the adults involved in a unit, for example, in  
20 a Boy Scout unit and the youth who register to become  
21 part of that unit for that year. The rosters at the  
22 time, you'll hear, generally were created in about  
23 December of a year for the following year. They were  
24 submitted with this annual chartering agreement. The  
25 registration that is sent on up from the unit level to be

## Opening Statement

1 considered for approval or rejection.

2 And so in each of those forms, in the upper  
3 right-hand corner, you'll see eventually there's an  
4 expiration date. And the expiration date is the end of  
5 the 12-month period, okay.

6 What we see and what you'll see when you see  
7 the rosters is that indeed, Mr. Dykes was registered as  
8 an Assistant Scoutmaster for Boy Scouts on a roster that  
9 ends with the 12 months. And they had, for some reason  
10 at the end of January, January 31, 1984. So he was on  
11 the list at the beginning of '83 when it was submitted.  
12 And this occurrence that you've heard about with the  
13 bishop occurred sometime in early February. It might be  
14 late January of 1983.

15 What I expect you to hear from the bishop, in  
16 addition to the snippets that you've seen, is that after  
17 his meeting with Mr. Dykes, he removed Mr. Dykes from his  
18 calling in Scouting and told him to not have any contact  
19 with children.

20 Within two weeks, the bishop had convened a  
21 disciplinary council at the stake level of the church.  
22 The stake level -- the stake level is above the wards,  
23 the multiple wards in the area. So he convened a  
24 disciplinary council. And they met and they decided  
25 Mr. Dykes' fate. They disfellowshipped him from the

## Opening Statement

1 church.

2 That is what I think Mr. Clark was talking  
3 about as the "slap on the wrist." It is not  
4 excommunication. That happened in 1985. But they  
5 disfellowshipped him. You'll hear people from the church  
6 explain what that means. Generally, it means you have no  
7 actual position to handle youth, being responsible for  
8 youth within the church. You also can't speak, you can't  
9 take the sacrament in meetings with the church.

10 So what I did hear on this visual aid is in  
11 red, show you when Mr. Dykes was involved in Scouting.  
12 And the timeline after that is when the bishop had  
13 released him from his obligations.

14 You'll hear from the bishop. He believes he  
15 cooperated with the police at the time. The police were  
16 informed almost simultaneously with the bishop by Ms.  
17 Lashbaugh. The police officer came to interview the  
18 bishop, and the bishop communicated with him.

19 You'll hear what the various recollections are  
20 of that communication. But I think you will hear that  
21 the officer who investigated and talked to the bishop  
22 learned that the bishop's plan was to contact the parents  
23 of the boys that Mr. Dykes had confessed to having  
24 touched.

25 And you'll hear the police officer say that

## Opening Statement

1 he, in fact, had tried to contact a couple of the  
2 children, and that there was some push back from the  
3 parents, and that he felt that it probably would be  
4 appropriate under the circumstances of what he understood  
5 the abuse had been to allow the bishop to continue with  
6 his plan.

7 In fact, that same officer in his report  
8 suggested that if the district attorney's office felt  
9 differently about it, then he would go back and do more.  
10 You'll hear the police officer say he also met with  
11 Mr. Dykes and Mr. Dykes confessed.

12 We're going to be calling a witness who will  
13 testify about the criminal record that was generated  
14 during February and thereafter that relates to the  
15 charges that were brought against Mr. Dykes, the plea he  
16 made to Attempted Sex Abuse II, which was handled by this  
17 county's justice system, the criminal justice system.

18 And Mr. Dykes was put on bench probation to a  
19 specific judge. He was told to undergo some counseling.  
20 He was ordered not to have any contact with the victim  
21 because the plea agreement related to one victim, one of  
22 Mrs. Lashbaugh's son.

23 He had to pay a fine and obey all laws. He  
24 didn't pay the fine. A bench warrant was issued for his  
25 arrest. And that bench warrant wasn't known -- nobody

## Opening Statement

1 followed up on it until after Mr. Dykes was pulled over  
2 on his way to Tillamook with several boys. At that  
3 point, his father had to come and post bail, and that  
4 bail was used to help pay off the fine. For some reason  
5 at that time, even though he was in violation of his  
6 requirements, the file was closed once the fine was paid.

7 What does this other line represent? The  
8 blue, we've said, is Kerry Lewis. I think the evidence  
9 will show that the best information available to us at  
10 this point is that the Lewis family, having first moved  
11 into Portland in the 10th Ward, remained at their home  
12 for a year and a half maybe a year.

13 They moved in the late part of 1982 to a  
14 different location. Not far away. In fact, just on the  
15 other side of the school that Mr. Lewis apparently was  
16 attending, Gilbert Parks Elementary. And they moved to a  
17 place that under the church's geographic restrictions was  
18 in a different ward. It is the 15th Ward of the LDS  
19 Church.

20 And the rosters that were in the possession of  
21 my client show Mr. Lewis' name moving out of the 719 unit  
22 to the 108 unit, which is at Gilbert Heights Elementary  
23 School and shortly thereafter into unit 815.

24 Why do I raise this? Because the move  
25 occurred, you'll see and you'll hear evidence, before the



## Opening Statement

1 bishop was told about these problems. The evidence will  
2 also show, I believe, that approximately four to six  
3 months after Mr. Dykes was released from his calling in  
4 Scouting, he moved away to somewhere in Parkrose.

5 Mrs. Lewis and Kerry Lewis remember that Timur  
6 Dykes was Mr. Lewis' Scoutmaster. I don't think you will  
7 see any actual rosters that identify Mr. Kerry Lewis as  
8 being in the same grouping of boys where Mr. Dykes was a  
9 Scoutmaster.

10 Why is that? Because at the time the Lewises  
11 moved out of the 10th Ward, Mr. Lewis was born in April  
12 of '72, he was ten years old. He hadn't yet reached the  
13 Blazer Scout level. He certainly hadn't reached the  
14 Scout level.

15 You can go ahead and shut that down. Thank  
16 you.

17 Bishop McEwen, when he was deposed under oath,  
18 you'll see more of that because he didn't live in Oregon,  
19 he lives in Utah now. He -- I believe you'll hear him  
20 say that he acted immediately and he did what he thought  
21 was appropriate.

22 He thought he was cooperating with the police.  
23 He knew that the police had been involved. He contacted  
24 the boys on the list that Mr. Dykes had provided him and  
25 the parents. That's what I think you'll hear him say.

## Opening Statement

1           He will testify, I believe, and you'll hear  
2 it, that if he had known that others had been in the  
3 district, he would have tried to contact them as well.  
4 It is unclear whether he ever contacted the Lewis family  
5 because he can't remember. And apparently the list, no  
6 one has it.

7           You heard about the relationship that  
8 Mr. Clark talked about. There was a lot of detail that  
9 you heard about this gym and the ropes and the climbing  
10 through. You'll also hear the relative lack of memory of  
11 witnesses as to most specifics about events that happened  
12 back in '83 and '84.

13           You are going to hear some evidence about why  
14 this case was brought at this time. Mr. Lewis himself  
15 testified about this. And I would ask that you go ahead  
16 and play that for the jury.

17           (Video deposition of Kerry Lewis played.)

18           Q        "And how was it that you came to -- well, why  
19 did you end up suing the church and the Boy Scouts of  
20 America for this?

21           A        "Because I was asked to be part of this  
22 lawsuit.

23           Q        "Who asked you that?

24           A        "Mr. Clark.

25           Q        "Okay. Well, I don't want -- I'm not asking

## Opening Statement

1 you about conversations you had with Mr. Clark. What I'm  
2 trying to find out is how you ended up thinking that you  
3 might go see a lawyer about this situation. That's what  
4 I'm interested in.

5 A "I didn't think about going to see a lawyer.

6 Q "Okay. How did you get contacted then?

7 A "My mother started this whole thing. She  
8 asked me -- very difficult, a lot of information. Um, my  
9 mom started this whole ball rolling.

10 Q "How so?

11 A "She read in one of the newspapers here in  
12 Oregon about a case Mr. Clark was involved with.

13 Q "Had your mom not contacted you about this,  
14 what would you have done?

15 A "Nothing.

16 Q "The letter from Michelle Alderson goes on to  
17 say --"

18 Let's stop that for just a second. I want to  
19 explain who Michelle Alderson is. She's one of the  
20 counselors that was seeing -- that saw Mr. Lewis. And  
21 her records indicate that she was referred by Mr. Lewis'  
22 attorney, Kelly Clark.

23 Go ahead.

24 (Video Deposition of Kerry Lewis played.)

25 Q "In June, he was involved in" -- it says

## Opening Statement

1 dispositions, but I suspect that that's deposition "and  
2 shared that he hadn't seen the priest since seventh  
3 grade. Earlier in the letter he says he shared that he'd  
4 been offended by a priest in childhood.

5 "Would that have been referring to Mr. Dykes?

6 A "Yes.

7 Q "The letter from Michelle Alderson goes on to  
8 say church representatives reportedly told his parents  
9 that they knew about the sexual abuse and that the priest  
10 had repented. Is that essentially what you told Michelle  
11 Alderson?

12 A "Yes.

13 Q "It goes on and says there was apparently no  
14 consequences for this priest by the church, which  
15 continued to cause Kerry anger and frustration. Did you  
16 tell her that?

17 A "That now I am, yes.

18 Q "Okay. When did you first become angry and  
19 frustrated at the church?

20 A "When my mother called me back in '07."

21 In '07, the church became a defendant in this  
22 case along with BSA, my client. Mr. Lewis saw Counselor  
23 Alderson before the church was no longer a party in this  
24 case.

25 Let me talk briefly about training. You heard

## Opening Statement

1 Mr. Clark say what he believes the evidence will show.  
2 I'm going to let the evidence come in about what training  
3 involved at the time. However, I will tell you that  
4 you'll see evidence and you'll hear it from someone who  
5 has some knowledge of these documents that the LDS has  
6 its own Scouting handbooks.

7           Why? It has some differences from the BSA  
8 program as to how it implements the program. I'm not  
9 saying it is being done without the knowledge of the BSA.  
10 It is simply not the exact same thing that is specified  
11 in the BSA guidelines, rules and regulations, that sort  
12 of thing.

13           What you will see, I hope, in evidence that I  
14 hope will be admitted is that the LDS Church is very  
15 committed to the BSA program. And for nearly everyone  
16 involved in the role of adult leadership, it urges them  
17 to undergo training, training that was available at the  
18 time. And we intend to present someone who will tell you  
19 their experience with the training that was going on at  
20 the time here in Portland.

21           Damages, just for a minute -- I'm nearly done.  
22 Before we get to damages, though, I guess I'm going to  
23 try to bring you back to what you heard earlier. It was  
24 a long time ago. You saw a picture of Mr. Dykes sitting  
25 at a table with young Kerry Lewis with a little game out.

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1           I don't know if any of you remember these, my  
2 younger brother had one. It was some sort of a football  
3 game where these little itty-bitty pong lines that were  
4 red moved around. You would have to press buttons to  
5 move those around. It was just a basic program. It was  
6 something that you look at the picture and say wow, that  
7 was quite a while ago.

8           What I think I heard Mr. Clark say about what  
9 Mrs. Caldwell now, Kerry Lewis' mother, would testify  
10 about is the significant change. All I can do is suggest  
11 to you that when she testified under oath earlier, and  
12 this would be sometime in April 2008, when the LDS Church  
13 was still a party to this case, she was asked whether she  
14 saw any change in her son, Kerry Lewis', behavior, after  
15 the Tillamook arrest that she related to Mr. Dykes at the  
16 time. And she said she didn't.

17           However, she did write down information. She  
18 kept a record, because it was part of her practice to  
19 keep a little record, a baby book, a diary, a journal of  
20 some sort. She actually created a record that talked  
21 about what happened at the Tillamook Police Department  
22 and what happened when she and her husband tried to  
23 contact Bishop McEwen or at least some bishop. She  
24 didn't really recognize the name McEwen at the time of  
25 her deposition.

## Opening Statement

1           And why did she write down what she was  
2 writing down? Because she thought they might need it.  
3 If they needed help with Kerry Lewis or got to an  
4 emotional crisis in his life about this. She never gave  
5 it to him.

6           She testified, and I think she'll say here in  
7 court, that she did not think her son had gotten to the  
8 point of such an emotional crisis where she would have  
9 given it to him. That document doesn't exist today.  
10 Apparently it was either lost or not important enough to  
11 keep.

12           You are going to hear from experts, and they  
13 are going to talk about what was thought at the times  
14 that are relevant to the conduct at issue in this case.  
15 And they are going to talk about what was known and what  
16 really wasn't known with respect to how to deal with the  
17 societal problem of child sex abuse.

18           And I think what I heard from Mr. Clark was  
19 that the BSA actually set back societies dealing with  
20 their organizations, like the BSA's dealing with this  
21 problem. And I think you'll see some exhibits.

22           They come from Scouting magazine from 1981,  
23 which I think, I think the experts will tell you is kind  
24 of early, that relate to specific -- specifically child  
25 abuse. They say things like a lot of the abuses children

## Opening Statement

1 endure are even worse than broken bones. They go on to  
2 talk about trying to do something about it. 1983 sample,  
3 1984 sample in Scouting magazine.

4           You've heard about the trust and the evidence.  
5 You are going to hear about the great amount of trust  
6 that the Lewis' family placed in Boy Scouts. I think you  
7 are also going to hear evidence that after Mr. Dykes was  
8 arrested in July of 1984, that soon after that, the Lewis  
9 family drifted away from the LDS Church, and they really  
10 still are not regular visitors to the church.

11           You'll also hear that the Lewis family,  
12 including Kerry Lewis, including his three younger  
13 brothers, Joshua Lewis, Heath Lewis and Lorne Lewis, all  
14 continue on in Scouting after Mr. Dykes was arrested,  
15 after Mr. and Mrs. Caldwell knew there was a problem.

16           And I'm going to suggest at the end of the  
17 case that you return a verdict in favor of my client.  
18 Thank you for paying attention, and thank you on behalf  
19 of my client.

20           THE COURT: All right. Jurors, that completes  
21 the opening statements. We're going to break for the  
22 noon hour. It doesn't make any sense to start with the  
23 witnesses right now. I expect you back in the jury room  
24 at 1:30 with the door closed and we'll see you this  
25 afternoon. We're in recess.



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Okay. 1:30, folks.

MR. SMITH: Thank you, your Honor.

MR. XOCHIHUA: Thank you, your Honor.

(Luncheon recess, 11:50 a.m.)