

## Summation - Shanahan

1           After the defendant's attorney and, incidentally, the  
2 defendant's attorney may address certain issues on which the  
3 defendant has a burden of proof relating to a category of  
4 damages which may arise for you to consider, on that issue the  
5 defendant has the burden. Following the defendant's statement  
6 the plaintiff then has an opportunity,, doesn't have to but if  
7 there is some argument that has been made in the defense  
8 summation which he has not previously addressed, he then has  
9 an opportunity to address it simply because overall the  
10 plaintiff has the burden of establishing the elements of the  
11 claim.

12           All right. We'll hear first from the plaintiff's  
13 attorney.

14           MR. SHANAHAN: May it please the Court, counsel, good  
15 morning. Thank you all for being so attentive all week. You  
16 listened to a lot of evidence and you've heard a lot of  
17 testimony. It's our hope that after hearing the testimony and  
18 seeing all the evidence that you understand why this case went  
19 to trial. We hope you share our belief that this is an  
20 important case.

21           In my opening I told you this case was about civil  
22 rights and about corporate responsibility. It is our hope  
23 that we have effectively communicated to you the reasons why  
24 we believe that and that you now share that belief. This is  
25 our first federal court trial for Mr. LoPresti and I.

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1 THE COURT: Let's not get into the personalities of  
2 the lawyers and certainly not into the beliefs of the  
3 lawyers.

4 MR. SHANAHAN: I apologize, if we made errors I  
5 apologize for that. I made certain promises to you in my  
6 opening about what the evidence would show. I hope that  
7 you'll agree that I kept those promises. I told you that  
8 employees of the defendant corporation discriminated against  
9 my clients based upon their actual or perceived gender and/or  
10 sexual orientation. I told you what made it so outrageous was  
11 that it occurred on not one occasion but on two separate  
12 occasions and I told you what made it unconscionable is that  
13 it was ratified and condoned by Toys "R" Us through their  
14 management at the store level and at the highest corporate  
15 levels.

16 They failed to implement their own policy against  
17 harassment and discrimination, they failed to make any good  
18 faith efforts to investigate the very serious allegations that  
19 my clients made against them, including threats of physical  
20 assault and physical violence by employees wearing the  
21 corporate uniform.

22 After you hear from Mr. Goodman and I, Judge Sifton  
23 will explain the applicable law to you. That law is the  
24 Administrative Code of the City of New York, otherwise known  
25 as the civil rights law. He will give you a jury verdict

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1 sheet with questions for you to answer. The first question  
2 will be with respect to plaintiff Donna McGrath Venza's claim  
3 against the defendant Toys "R" Us for violation of the  
4 Administrative Code of the City of New York, how do you find.  
5 You'll be asked the same question for both of my other  
6 clients, Tara Lopez and Tanya Medina.

7           Based upon the evidence we have presented and the  
8 testimony you have heard, we respectfully submit that the only  
9 verdict the evidence supports and that justice demands is that  
10 you find in favor of my clients.

11           Again, we kept our promise to you on the evidence  
12 that you would see and hear. I told you that Antonia  
13 Casanova, a former Toys "R" Us employee, would testify that  
14 she heard Toys "R" Us employees laughing so loudly, so loudly  
15 at my clients she could hear them from aisles away. She did.  
16 I told you that she would confirm that employees were teasing  
17 and making fun of my clients. She testified in this matter  
18 and she did.

19           Also, Mr. Maloney testified that he did not believe  
20 the employees in that store on December 13 of 2000 acted  
21 properly. My clients testified that Ms. Casanova was one of  
22 those instigators in the store that day. You will recall when  
23 she testified, I asked Ms. Casanova to identify my client Tara  
24 Lopez. She pointed and referred to Ms. Lopez as "him". She  
25 then referred to Ms. Lopez as him throughout her entire

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1 testimony, him or he. My clients pointed Ms. Casanova out to  
2 Mr. Maloney. Mr. Maloney spoke to Ms. Casanova. She didn't  
3 receive a counseling sheet, she wasn't disciplined. Her  
4 conduct was in violation of the harassment and discrimination  
5 policy of the defendant.

6 My clients testified that Mr. Maloney told them he  
7 would speak with those associates and promised, promised that  
8 this would never happen again. My clients testified  
9 Mr. Maloney offered them a discount for what they had been  
10 exposed to on that day. Mr. Maloney testified they demanded  
11 it. You must weigh the credibility of the parties having seen  
12 them and heard them testify through last week on who is  
13 telling the truth.

14 We respectfully submit to you that had Mr. Maloney  
15 taken appropriate actions and followed his company's own  
16 policy on harassment and discrimination on December 13, the  
17 violent incident of December 20 would never have happened. My  
18 clients did receive a discount that day on the items they  
19 wanted and the items they went there in the first place to  
20 purchase for Christmas. After it was clear they were going to  
21 receive the discount no one went back in the store and filled  
22 up a shopping cart, no one got a basket and loaded it up.  
23 They did not take advantage of that situation. They simply  
24 bought the Christmas presents they had gone there originally  
25 to purchase.

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1           Again, based upon the promise of Mr. Maloney that he  
2 would appropriately deal with the associates in the store on  
3 December 13, my clients felt safe to return on the 20th. That  
4 promise was broken. Before we get to the 20th let's revisit  
5 what happened in the interim. Mr. Maloney testified that on  
6 December 17 -- excuse me, Ms. Casanova was fired not for what  
7 she did along with her co-workers to my clients, she was fired  
8 for calling a customer a bitch. This occurred between the  
9 time of my clients' two visits to the store. My clients  
10 returned a week later to finish their Christmas shopping.

11           You heard them testify in detail as to the horrible  
12 insults and violent threats of physical harm by Toys "R" Us  
13 employees. You heard my clients testify they were called  
14 faggots, homos, transvestites, men in dresses and other  
15 hurtful, bigoted stereotypes. You heard Tanya Medina testify  
16 that she recognized two of those employees as two employees  
17 that had been calling them names on the 13th.

18           Although Ms. Casanova was fired on December 17, 2000,  
19 the employees who joined her on December 13 in mocking my  
20 clients were once again present in that store and just as they  
21 had harassed and discriminated against my clients on December  
22 13th, they once again did it on the 20th, but unlike the 13th,  
23 this time the name calling escalated, it escalated into  
24 threats of physical violence against my clients by these  
25 employees.

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1           You heard testimony about the various employees that  
2 stalked my clients with bats. You heard them describe how  
3 they searched for one another through the store to find each  
4 other and to warn them about what they had seen. You heard  
5 testimony about how at least one employee blocked the path of  
6 Tara Lopez. You heard testimony about employees with bats no  
7 where near the sporting goods section for no apparent reason  
8 but the obvious.

9           You heard testimony about the stern look they gave --  
10 one of them gave Ms. Lopez as she went down an aisle and how  
11 she had to move to get around him and when she did, she saw  
12 the bat at his side. You heard testimony as to the threat to  
13 hit them with the bats if they passed by them. You heard  
14 Donna McGrath testify that an employee actually threatened to  
15 meet them outside. Tara Lopez testified she was scared for  
16 her life, she asked them to call the police. They refused.  
17 Donna McGrath was so shaken she did not fill out her own  
18 incident statement, a friend of hers did it for her. Tanya  
19 Medina was so afraid they would find out where she lived she  
20 gave the wrong address on the incident statement. My clients  
21 testified that their friend Andrea was so frightened that she  
22 took up a bat in their defense.

23           Let's review the incident statements that my clients  
24 filed with Toys "R" Us that day.

25           This is an incident statement of Tara Lopez. Under

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1 the section, describe what occurred: Me, Tara Lopez, was  
2 harassed by a few employees in Toys "R" Us. This keeps  
3 happening every time we come to shop. Please I would like you  
4 to do something about this. If you would like to talk to me,  
5 please feel free to call me and then she gave her home number.

6 This is an incident statement of Donna McGrath: We  
7 were harassed by ten employees, three were threatening us with  
8 bats and threatened to cause us bodily harm. They -- it is  
9 difficult to read as it is a copy -- they even went as far as  
10 calling us she-males, faggots, chicks with dicks and freaks.  
11 They even threatened to meet us outside. This has happened  
12 here before in the past.

13 The next statement is of my client Tanya Medina:  
14 Toys "R" Us employees made fun and even as far as threatened  
15 us with bats due to the fact of my gender. If need be, I will  
16 identify each and every employee that were involved.

17 No where in any of those statements did they ask for  
18 a discount. No where did they state they wanted money. They  
19 didn't threaten to sue the defendant. They offered to point  
20 out the employees. They offered to help fix the situation.

21 I promised you that Myra Vasquez, who's an undercover  
22 store detective, would testify that she witnessed a  
23 confrontation in the Barbie aisle between employees and my  
24 clients. She sat in that chair and she did. I promised you  
25 that Myra Vasquez would tell you she heard my clients

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1 demanding that Mr. Hofer, the store manager, call the police.  
2 She sat in that chair and she did.

3 Myra Vasquez also completed an incident statement.  
4 The statement is dated December 21st on the front and  
5 December 20th on the back. It is in evidence and you'll have  
6 a chance to review it. She testified she completed that  
7 statement that night. Mr. Maloney testified he asked her to  
8 complete it the next day. In that statement Ms. Vasquez  
9 stated she witnessed my clients stealing. However, once she  
10 was sworn in and she sat in that chair, she testified that  
11 that was not an accurate statement. We ask that you  
12 completely disregard the incident statement of Ms. Vasquez as  
13 we respectfully submit that it was not completed at the time  
14 of the incident, it is inaccurate and it is biased.

15 I promised you that we would prove Charles Valva, a  
16 supervisor, what they call a world leader, at the customer  
17 information counter that day witnessed employees harassing my  
18 clients, and we did. Mr. Valva took that stand and after he  
19 was sworn in he told you -- we read through his statement, the  
20 three page statement and he told you that when he referred to  
21 associates staring and calling them names that were uncalled  
22 for he didn't mean to refer to my clients, he meant it was  
23 associates calling names amongst each others.

24 Let's read that statement into the record:

25 On December 20, 2000 I was working on the floor when

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1 a bunch of ladies came to purchase some merchandise. They  
2 were in the Barbie aisle and some seasonal associates were  
3 going by and staring at them as well as calling them names.  
4 When I heard the comments I told the associates near me that  
5 they were uncalled for. A while later I saw the ladies with  
6 hockey sticks and baseball bats which they didn't appear to be  
7 buying. Some while later a lady came up to me at the CIC desk  
8 to form a complaint about being harassed. I was taking her  
9 complaint about the harassment as well as helping a guest on  
10 the phone. She was yelling and carrying on in front of the  
11 desk. She was yelling and telling me that I wasn't doing  
12 anything to remedy the situation but I was listening to her  
13 complaint. Then I called my manager to help deal with the  
14 situation after the lady kept yelling and carrying on. So my  
15 manager took the ladies to the front of the store to fill out  
16 incident reports. My manager also had some of the associates  
17 who dealt with the ladies to fill out incident report  
18 statements -- reports.

19 It is signed Charles Valva.

20 There's nothing in that statement about my clients  
21 being provocatively dressed. There is nothing in this  
22 statement about my clients being rude. There is nothing in  
23 that statement about my clients flirting with workers that  
24 day. The statement corroborates my clients that they were  
25 upset because they had been threatened by the defendant's

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1 employees. Although Mr. Valva wrote in this statement he told  
2 the associates the comments were uncalled for, he denied in  
3 his deposition that he did.

4 You'll recall that I read the following questions and  
5 answers from his deposition:

6 "Question: Did you ever speak to any associates on  
7 the night of the 20th about what transpired?

8 "Answer: That's not my place."

9 I asked Mr. Valva if that was the question I asked  
10 and that was the answer he gave, he answered yes. Yet, until  
11 I read that portion of his deposition transcript, he sat in  
12 that chair and he testified that he had not spoken to  
13 associates. Although Mr. Valva clearly refers to ladies in  
14 the Barbie aisle and associates making uncalled for comments  
15 to them, he sat in that chair and he said that was a  
16 misstatement. He testified that he meant associates making  
17 comments amongst each other.

18 You, again, must decide Mr. Valva's credibility.  
19 Although Mr. Valva testified that he could not hear my client  
20 as he is deaf in one ear and he was on the phone using his  
21 good ear, he wrote in that statement: I was taking her  
22 complaint about the harassment as well as helping a client on  
23 the phone.

24 Again, you must decide Mr. Valva's credibility and  
25 although he testified he could not hear my client as he is

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1 deaf in one ear, he wrote that he was standing in front of the  
2 customer, that she -- excuse me -- was standing in front of  
3 the customer information counter and yelling. You, once  
4 again, will be called upon to decide Mr. Valva's credibility.

5 Remember the testimony of Myra Vasquez, the  
6 undercover store detective, that when Tara Lopez approached  
7 the customer information desk after the confrontation she had  
8 witnessed in the Barbie aisle, she was scared and upset.  
9 Although Mr. Valva states in his statement that Mr. Hofer took  
10 incident statements from associates that night, they have  
11 never been produced at trial. In fact, Mr. Hofer denies that  
12 he ever took any statements from any associates.

13 You'll recall that Tara Lopez stated that she made  
14 her way to the customer information counter and found  
15 Mr. Valva, he was checking inventory for a customer and told  
16 her to wait a minute. He told her to wait a minute while he  
17 checked inventory even though, according to his own statement,  
18 he had already witnessed associates harassing my clients.  
19 Mr. Valva told those associates to stop and he told them that  
20 their comments were uncalled for. Mr. Valva testified that he  
21 did not hear my clients tell him -- excuse me, my client Tara  
22 Lopez, we are being harassed and that the employees have  
23 bats. He stated this as he is deaf in one ear and had a phone  
24 receiver to his other. He may be deaf in one ear but he is  
25 certainly not blind.

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1 He testified Tara Lopez was upset and carrying on in  
2 the front of the customer information counter. All he had to  
3 do was ask that customer that he was speaking with on the  
4 phone to hold on for a moment, to call a manager over the loud  
5 speaker. He didn't do that. My clients testified as to how  
6 each of them watched in a different direction when they were  
7 standing in front of the customer information counter to make  
8 sure that employees with bats didn't come at them.

9 Having met my clients and having met Mr. Valva, I ask  
10 you to balance the credibility of each of these parties and  
11 you determine who's telling the truth. Mr. Valva failed to  
12 take any action even though in his own handwritten statement  
13 he saw ladies with bats and hockey sticks that they did not  
14 appear to be buying. Send him a message that his actions were  
15 irresponsible and unreasonable and find in favor of my  
16 clients.

17 You met Mr. Hofer, the manager on duty that night.  
18 Mr. Hofer didn't bother to fill out an incident statement that  
19 night even though customers complained they were being chased  
20 by employees with bats. He testified he didn't see the need,  
21 that he didn't see the need. He didn't do it the next day.  
22 He did it in February 2001 when his friend, Mr. Maloney, asked  
23 him to. Mr. Hofer also completed the statement at or about  
24 the time Ms. Steinmetz testified she received a complaint from  
25 the Human Rights Commission.

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1           Mr. Maloney testified that he asked Mr. Hofer to  
2 complete that incident statement as part of an investigation  
3 but that could not be as Lucille Burghardt had completed hers  
4 in January. We ask you to disregard the statement, the  
5 incident statement authored almost two months after the  
6 incident by Mr. Hofer as it is self-serving and biased. You  
7 heard him testify that he didn't see the need to have my  
8 clients identify the associates that they alleged had bats  
9 that day. It is as if it happens everyday.

10           Mr. Hofer claimed they didn't offer to identify but  
11 in the incident statement we looked at earlier of Tanya Jinks  
12 she offered to identify them and she offered to do it in  
13 writing. You'll recall that I read some questions and answers  
14 from the deposition of Mr. Hofer. I then asked him if I asked  
15 those questions and if those were the answers that he gave.  
16 He answered yes.

17           Let me read one of those questions to you again now:

18           "Question: But you have someone that alleged they  
19 were chased by employees with bats, you had the actual person  
20 there with you who could have done a personal identification  
21 of those employees and you chose not to do that?

22           "Answer: I didn't see the need to do it."

23           You heard Mr. Hofer testify that he didn't see the  
24 need to take statements from associates that night about what  
25 they had witnessed. This is still his testimony even though

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1 Mr. Valva wrote in his incident statement which we just looked  
2 at that Mr. Hofer did in fact take statements that night.

3           You heard Mr. Hofer deny that my clients asked him to  
4 call the police and that he didn't see the need to call the  
5 police. You'll remember that Myra Vasquez, the undercover  
6 store detective, testified that she heard my clients  
7 repeatedly ask Mr. Hofer to call the police. Again you'll  
8 recall that I read a number of questions and answers to  
9 Ms. Vasquez in court from her deposition, I read the questions  
10 and the answers and I asked her if that accurately reflected  
11 her testimony and she answered yes.

12           Let me again read those questions and Ms. Vasquez's  
13 answers. We're referring to the point in time now when  
14 Mr. Hofer took my clients to the front of the store to fill  
15 out the incident statements:

16           "Question:     They went to the front of the store?

17           "Answer:     I remember they were in the front and  
18 they were screaming and they says that people was -- you need  
19 to call the cops, you need to call the cops.

20           "Question:     You heard them?

21           "Answer:     Somebody was saying you need to call the  
22 cops. I'm not sure which one.

23           "Question:     You heard them request that the police  
24 be called, that is accurate?

25           "Answer:     She said you need to call the cops, you

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1 need to call the cops but I don't know if anybody ever called  
2 the cops because no cops ever came."

3           Even given the testimony of Ms. Vasquez, it is still  
4 Mr. Hofer's testimony that my clients never requested for him  
5 to call the police that night. You heard Mr. Hofer testify  
6 that he observed a member of my client's party with a hockey  
7 stick and a baseball bat. You heard him testify that he never  
8 asked her why she had the hockey stick and the baseball bat.  
9 You've heard my clients testify that it was in self-defense.  
10 Mr. Hofer testified he escorted my clients to the front of the  
11 store to complete the incident statements. He showed us  
12 exactly where they completed those statements.

13           Donna McGrath testified they had to wait to have  
14 incident statements faxed to Mr. Hofer from someplace else.  
15 Donna McGrath testified that Mr. Hofer offered to give them a  
16 plain piece of white paper for them to make their statements,  
17 just like the three page undated statement we just looked at  
18 for Mr. Valva. Donna McGrath and my clients declined as they  
19 wanted to make a formal complaint. Mr. Hofer also testified  
20 that my clients were giggling and laughing as they filled out  
21 those statements.

22           You're going to look at the portion of the store now  
23 where those incident statements were completed.

24           Mr. Hofer identified this area of the store, the cash  
25 registers and one, two, three, four, five counters in this

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1 general area. He testified that my clients were leaning  
2 against those registers as they filled out their incident  
3 statements. I asked Mr. Hofer if it was possible if any of  
4 those five cameras in that immediate location could have  
5 recorded my clients as they were filling out incident  
6 statements. He testified he didn't know. You'll recall that  
7 I read him a question and answer from his deposition, I read  
8 the question, I read the answer and I asked him if that  
9 accurately reflected his testimony at the deposition and he  
10 answered yes. Let me read that again to you now:

11 "Question: Since you have marked the existence of  
12 at least five video cameras in that general area, is it likely  
13 that any of those cameras would have picked up the plaintiffs  
14 and you while they were filling out those incident reports?

15 "Answer: They could have."

16 So, Mr. Hofer testified that it was possible that  
17 those cameras could have captured images of my clients then;  
18 however, he testified that he did not see the need to review  
19 those tapes or any of the other tapes from the store.

20 Mr. Maloney testified he did not review those tapes or any of  
21 the tapes from the two cameras located in the store even  
22 though my clients had told Mr. Valva and Mr. Hofer that night  
23 that there were employees wandering through the store with  
24 bats.

25 Mr. Hofer and Mr. Maloney just want you to take their

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1 word for it that those cameras would not have recorded  
2 anything that took place in the store on December 20 of 2000,  
3 they just want you to take their word for it. Mr. Hofer  
4 testified that he eventually went back into the store and he  
5 spoke with associates. Those associates claimed they were  
6 being harassed by my clients. However, he didn't have them  
7 fill out any statements that night and now he does not  
8 remember their names. They didn't come to him to complain and  
9 they only complained when he went back into the store to ask  
10 them if anything had happened pertaining to my clients.

11 Irrespective, they have not been called to testify in this  
12 matter. Mr. Hofer just wants you to take his word for it.

13 My clients identified to you one of the employees who  
14 threatened them on December 20 with a bat, Stamati Xenakis.  
15 He was working on December 20 in the Boys World section of the  
16 Toys "R" Us, the section that contained the baseball bats and  
17 he testified that on December 20 he was in the Barbie aisle,  
18 he was in the Barbie aisle for ten seconds, he just happened  
19 to be in the Barbie aisle outside of the Boys World section at  
20 the same time as my clients.

21 Cynthia Steinmetz, an attorney at the defendant,  
22 stated in her company's two position statements that  
23 Mr. Xenakis made inappropriate statements to my clients after  
24 he was provoked by them. However, Mr. Xenakis denies that he  
25 said anything to my clients that night. Mr. Xenakis testified

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1 that the only comment that he heard made by any of my clients  
2 in the Barbie aisle that night was made by Tanya Medina. He  
3 testified that he heard Tanya Medina state, that's the pretty  
4 one. He testified that she wasn't looking at him when she  
5 made that statement. Mr. Xenakis testified that he wasn't  
6 even sure if the comment was made about him or a Barbie doll.  
7 He then testified he left the aisle and he claims that he had  
8 no further contact whatsoever that night with my clients. My  
9 clients were in the Barbie aisle looking at the dolls. Tanya  
10 Medina stated, that's the pretty one. You must decide if  
11 Ms. Steinmetz's depiction of the events that night in the  
12 Barbie aisle is accurate, was that a provocative statement  
13 made to Mr. Xenakis. Send Ms. Steinmetz a message that it was  
14 not by finding in favor of my clients. Send Mr. Hofer a  
15 message that his actions that night were unprofessional and  
16 unreasonable given the very serious complaints made by  
17 customers including employees in uniforms had threatened them  
18 with acts of physical violence.

19           Mr. Hofer had my clients fill out incident reports.  
20 The reports state they were harassed and chased by employees  
21 with bats. They state they were called bigoted names and that  
22 employees threatened to meet them outside. Ms. Steinmetz  
23 authored two position statements on behalf of the defendant in  
24 February of 2001. In those position statements authored on  
25 behalf of the company in response to the human rights

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1 complaints of Tara Lopez and Ms. McGrath, Ms. Steinmetz stated  
2 there is no mention of physical threats or physical assault  
3 made by Ms. Lopez. If Ms. Lopez had alleged at the time of  
4 the incident report that she was physically assaulted, the  
5 police would have been called.

6 That statement was made specifically in reference to  
7 the complaint of Tara Lopez, Ms. Lopez did not mention the  
8 physical assault, however, in the second position statement  
9 authored by Ms. Steinmetz in relation to Donna McGrath she  
10 didn't -- she left out that Ms. McGrath had mentioned physical  
11 assault and that Tanya Medina that night had mentioned threats  
12 of physical assault. She avoided the issue completely and the  
13 position statement she authored on behalf of the company in  
14 response to the incident statement and human rights complaint  
15 of Donna McGrath, both position papers -- both position  
16 statements, excuse me, are in evidence and you can review  
17 them.

18 You will also note that in Ms. Steinmetz's statement  
19 in response to the human rights complaint of Donna McGrath she  
20 refers to Ms. McGrath as Mr. McGrath. It is a bit  
21 insensitive, to say the least, given the nature of the  
22 allegations made in that complaint.

23 Secondly, Ms. Vasquez testified she heard my clients  
24 demanding that Mr. Hofer call the police. Mr. Hofer testified  
25 that my clients told him when they filled out their incident

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1 reports that they were being chased by associates with bats.  
2 Mr. Valva testified that Ms. Lopez told him she was being  
3 harassed by employees with bats. Tara Lopez told Mr. Valva  
4 she was being threatened by employees with bats. Donna  
5 McGrath and Tanya Medina both told Mr. Hofer they were being  
6 threatened by employees with bats. They both wrote that in  
7 their incidents reports, yet the police were never called.

8           Based upon the testimony you have heard and the  
9 documents in evidence and the position statement authored  
10 by Ms. Steinmetz on behalf of the company, Mr. Valva and  
11 Mr. Hofer violated their company policy that night, not in my  
12 clients' words but in the words of Ms. Steinmetz. Send  
13 Mr. Hofer, Mr. Valva and Ms. Steinmetz a message that when a  
14 customer in your store --

15           THE COURT: Wait a minute, let's not use this phrase  
16 "send a message." Verdicts are findings by juries in  
17 specific cases, they're not messages sent to anybody, so just  
18 don't use that phrase again.

19           MR. SHANAHAN: I apologize, Your Honor. When a  
20 customer in your store, a place of public accommodation,  
21 demands that you call the police and it is your company policy  
22 to do so, it is no longer in your discretion and the police  
23 should be called.

24           After the events of December 20 my clients never  
25 heard back from Toys "R" Us. Mr. Maloney never contacted my

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1 clients, as Mr. Hofer had promised. The evidence will show  
2 that Mr. Maloney became aware of the incident the next  
3 morning. He completed an incident statement on December 21  
4 himself. He testified he had Myra Vasquez complete one and  
5 that he asked Mr. Hofer -- excuse me, Mr. Valva to complete  
6 one as well.

7 But he did absolutely nothing else including  
8 identifying and speaking with the employees who were present  
9 in the store the evening before and it's important to point  
10 out that Mr. Maloney's statement is not based on his personal  
11 firsthand knowledge of the events of the 20th. He wasn't  
12 there. It is based upon the facts solely as communicated to  
13 him by Mr. Hofer and Mr. Valva. We, therefore, ask you to  
14 disregard that statement.

15 Ironically, no one from the defendant, Mr. Valva,  
16 Mr. Hofer, or Mr. Maloney, can recall the names of the  
17 employees involved in the incident of December 20 today. You  
18 heard the testimony of Cynthia Steinmetz, the employee -- the  
19 employment attorney for the defendant. She testified that  
20 Mr. Maloney told her that on December 20, 2000 one of my  
21 clients had on a miniskirt but Mr. Maloney testified he didn't  
22 say that, a miniskirt in the middle of winter. Ms. Steinmetz  
23 stated that Mr. Maloney told her my clients were observed  
24 trying to leave the store with baseball bats and hockey sticks  
25 without paying. But Mr. Maloney testified he never said

## Summation - Shanahan

1 that.

2 Ms. Steinmetz states that on December 20 of 2000  
3 Mr. Maloney gave my clients a 50 percent discount on their  
4 purchases. Mr. Maloney testified he was not even in the store  
5 that night when the incident occurred and found out the next  
6 morning on his way to work. Mr. Hofer and my clients all  
7 testified that they made no purchases on December 20 of 2000.

8 Ms. Steinmetz is the individual responsible for  
9 training managers and supervisors nationwide on the company's  
10 harassment and discrimination policy. She testified how she  
11 teaches managers and supervisors how to implement the policy  
12 and the procedure for handling complaints.

13 Ms. Steinmetz testified she did not speak with  
14 Mr. Hofer, Mr. Xenakis, Ms. Casanova, Ms. Vasquez or any of  
15 the others present in the store on December 13, 2000 and/or  
16 December 20, 2000. She testified she spoke with Mr. Valva but  
17 cannot recollect that discussion. Ms. Steinmetz did speak  
18 with Mr. Maloney. Ms. Steinmetz made numerous statements  
19 attributed to Mr. Maloney in the two position statements she  
20 authored. They constitute the position of the company.  
21 Again, we ask you to look at those two statements which are in  
22 evidence and determine the credibility of the various parties  
23 at issue.

24 With no response forthcoming -- and one other point,  
25 Mr. Maloney testified that he received a call from Donna

## Summation - Shanahan

1 McGrath the next day where she stated that employees had  
2 threatened them with bats. Mr. Maloney called his district  
3 manager and left a voice mail message. The district manager  
4 never contacted Mr. Maloney, he never heard back. Again, no  
5 further inquiry was made on the store level by Mr. Maloney to  
6 his district manager when that one voice mail went  
7 unreturned. My clients again continued to demand that  
8 something be done, that actions be taken.

9           They contacted corporate headquarters directly. They  
10 contacted the Risk Management Department at world headquarters  
11 in New Jersey. They were eventually put in contact with  
12 Lucille Burghardt. None of the employees in the store have  
13 ever spoken with Ms. Burghardt, not Ms. Casanova, not  
14 Ms. Vasquez, not Mr. Hofer, not Mr. Valva, not Mr. Xenakis.  
15 They didn't even know who she was. She never spoke to any  
16 of the employees present in the store on December 13 or  
17 December 20.

18           Ms. Burghardt promised she would conduct a full  
19 investigation of the incident. Ms. Burghardt promised that  
20 she would be back in touch with Donna McGrath once her  
21 investigation was completed. My clients never spoke to  
22 Ms. Burghardt again. However, on or about January 15 of 2001  
23 two of my clients received letters from Ms. Burghardt, Donna  
24 McGrath and Tara Lopez. They're in evidence and they're  
25 identical both in form and in substance and we'll only read

## Summation - Shanahan

1 one now.

2           They appear on the corporate letterhead, they came  
3 from the corporate world headquarters and they state the Risk  
4 Management Department specifically in the letterhead. The  
5 document does not identify Lucille Burghardt as a claims  
6 adjuster, they identify her as a representative of the  
7 corporation writing from corporate world headquarters and the  
8 letter states:

9           We have completed our investigation and review into  
10 the unfortunate incident you were involved in in our store.  
11 We regret any injury and inconvenience you might have suffered  
12 as a result of this incident. Upon considering the facts  
13 available to us, we can find no fault on our part. Therefore,  
14 we are respectfully denying your claim. As we are sure you  
15 can understand, the fact that an incident occurred on our  
16 premises does not automatically make us responsible. We hope  
17 you understand our position and realize that we have given  
18 this matter every consideration. We make every effort to  
19 provide a safe and enjoyable environment for those who shop in  
20 our stores and we sincerely hope you will remain one of our  
21 valued guests.

22           Sincerely, Lucille Burghardt.

23           My clients have never returned to Toys "R" Us.  
24 Ms. Burghardt stated that after a full investigation the  
25 defendant could find no fault on their part. She further

## Summation - Shanahan

1 stated the fact that an incident occurred on their premises  
2 does not automatically make them responsible. She made this  
3 statement on behalf of the company. Again, she is not  
4 identified as a claims adjuster, she is identified as a Risk  
5 Management Department representative.

6 Irrespective, she was authorized by the Risk  
7 Management Department to investigate and settle claims against  
8 the company. If they find the liability, they may deny the  
9 claim just like Ms. Burghardt did. There's been no testimony  
10 that anything Ms. Burghardt did exceeded the scope of her  
11 authority or that this letter was -- should not have been sent  
12 out. This letter constitutes the company's position which  
13 confirmed and ratified the conduct of those associates yelling  
14 bigoted comments and chasing my clients with bats. It  
15 confirmed and it ratified the actions on Mr. Maloney,  
16 Mr. Hofer, Mr. Valva, Ms. Xenakis and Ms. Casanova and all the  
17 unnamed associates. Again, we ask that you find in favor of  
18 our clients and reject the company position that the fact that  
19 an incident occurred in their premises does not automatically  
20 make them responsible.

21 Let me also read to you and, again, it is in evidence  
22 and you'll have a chance to review it, the statement that  
23 Ms. Steinmetz wrote in both position papers which she authored  
24 on behalf of the company. The company's Loss Prevention  
25 Department investigated the incident and determined that there

## Summation - Shanahan

1 was no liability on the part of the company. Ms. Lopez and  
2 also Ms. McGrath were advised of the company's position.  
3 Ms. Steinmetz clearly states in both position statements that  
4 the letter of Ms. Burghardt to the plaintiffs was the  
5 company's position. There was no testimony from Ms. Steinmetz  
6 as to any other position on behalf of the company.

7 The letter is dated January 15 of 2001, the letter of  
8 Ms. Burghardt, and Mr. Maloney testified that video  
9 surveillance from the Bensonhurst Toys "R" Us is recycled  
10 every 30 days, that is the tapes are reused every 30 days.  
11 The incident at issue happened on December 20 of 2000.  
12 Ms. Burghardt's letter is dated January 15 of 2001. Now it's  
13 21 days later. The surveillance from that store existed at  
14 the time of Ms. Burghardt's investigation. Mr. Maloney  
15 testified he didn't review those tapes and that no one ever  
16 had asked him to preserve them despite the complaints that  
17 their employees had threatened my clients with bats.

18 This case is not about asking anyone to accept,  
19 condone or understand my clients' lifestyle; again, it is  
20 about civil rights, respect and simple customer service, about  
21 employees wearing the uniform of that company, not mocking,,  
22 demeaning, threatening customers in a place of public  
23 accommodation.

24 You've heard from my clients through their testimony  
25 and you've had a chance to observe them all week long as they

## Summation - Shanahan

1 sat in this courtroom. Tanya Medina is engaged. She's  
2 employed. She's a college graduate and a highly intelligent  
3 person. Donna McGrath Venza is married and she is supported  
4 by her husband and his family which accepts her and loves her  
5 for who she is. Tara Lopez lives with her boyfriend and has  
6 the support of his family and hers. She worked as a legal  
7 office assistant at a law firm for ten years. She left that  
8 employment when she decided to transition from male to  
9 female. She didn't want to cause any problems. She's  
10 friendly with her prior employers to this day.

11 None of my clients have ever sued anyone before in  
12 their lives. They're human beings just like everybody else.  
13 They lead lives just like everybody else. They deserve to be  
14 treated with dignity and respect just like everybody else.

15 You've also had a chance to meet the people who  
16 Mr. Goodman described in his opening as the people behind  
17 Toys "R" Us. You've had a chance to use your common sense in  
18 determining their credibility as they took an oath to tell you  
19 the truth as they sat in that chair. If you believe they told  
20 you the truth, then you should find for the defendant.

21 It is interesting to note that each of the witnesses  
22 who testified for the defense are career employees; Mr. Hofer  
23 14 years; Mr. Maloney, ten years; Mr. Valva, five years;  
24 Ms. Steinmetz, a number of years, I'm not sure exactly how  
25 long; and Pat Piccolomini, 12 years. They're loyal to their

## Summation - Shanahan

1 employer and they will continue to report to work at Toys "R"  
2 Us after this trial is over. They will all continue to work  
3 together and deal with each other and they will continue to  
4 supervise employees. Judge Sifton will instruct you on what a  
5 biased witness is. When he gives you that instruction, I ask  
6 that you keep this in mind.

7           The defendants also put forward a number of defenses  
8 and we respectfully submit they should be discarded. They  
9 will claim that my clients were provocatively dressed, that  
10 they giggled and they flirted with employees. Where are these  
11 employees? Not one has been called to corroborate those  
12 statements. Mr. Xenakis did not testify to that fact even  
13 though Ms. Steinmetz did. Mr. Valva did not state in that  
14 three page statement anything about these statements.  
15 Mr. Hofer made the statement but he made it two months after  
16 the incident occurred and he made it after his friend, Robert  
17 Maloney, told him there was some kind of investigation or,  
18 quote unquote, legal action. Mr. Maloney, well, he just  
19 wasn't there and Mr. Maloney, he never bothered to  
20 investigate, it was Christmas and he was busy. So where are  
21 these employees, we respectfully submit that this defense  
22 should be disregarded.

23           Ms. Steinmetz and Ms. Vasquez claim my clients were  
24 stealing or shoplifting. Ms. Vasquez retracted the statement  
25 after she was sworn in and she sat in that chair.

## Summation - Shanahan

1 Ms. Steinmetz testified that Mr. Maloney told her they were  
2 observed attempting to leave the store with hockey sticks and  
3 baseball bats without paying. Mr. Maloney denies he said  
4 that. Hockey sticks and baseball bats, if they intended on  
5 stealing hockey sticks and baseball bats, why would they have  
6 held them, as Mr. Valva testified, over their shoulders in  
7 what, we would respectfully submit, is a defensive position.  
8 Furthermore, if they were shoplifting, why would they dress  
9 and act provocatively, giggling, flirting, drawing attention  
10 to themselves. We respectfully submit that that defense  
11 should be disregarded.

12 Mr. Goodman has made much of a four year old  
13 shoplifting conviction of Donna McGrath. She admitted it was  
14 a mistake, it was four years ago and the circumstances were  
15 that a friend of hers gave her an employee discount or what is  
16 known as underringing. You can give that conviction the  
17 weight that you believe it deserves. However, it is a four  
18 year old conviction to which she pleaded guilty and is sorry.

19 Mr. Hofer and Mr. Maloney -- one other point on the  
20 conviction, neither Tara Lopez or Tanya Medina were present on  
21 that occasion.

22 Mr. Hofer and Mr. Maloney have both testified that my  
23 clients demanded a discount on December 20. They infer that  
24 my clients contrived their allegations in the hope of getting  
25 a 50 percent discount. They infer that my clients brought a

## Summation - Shanahan

1 federal lawsuit because they did not get a 50 percent discount  
2 on December 20. If you truly believe that, you should find  
3 for the defendant. My clients never demanded money or a  
4 discount in their incident statements.

5 Mr. Maloney testified to a phone conversation with  
6 Ms. McGrath in the days following the December 20 incident.  
7 He testified she never asked for money, she never asked for a  
8 discount, she never threatened to sue. What she wanted was  
9 exactly what they had asked for on the 20th. She wanted the  
10 company to take action. She wanted Mr. Maloney to keep the  
11 promise he had made on December 13 that this would never  
12 happen again. He broke his promise on the 13th and he again  
13 broke it on the 20th. We, therefore, submit that the defense  
14 that my clients wanted a 50 percent discount should be  
15 disregarded.

16 The defendants have also attempted to distinguish  
17 comments made directly to my clients from comments made  
18 amongst employees. We respectfully submit that you should  
19 reject this defense which has absolutely no logical basis.  
20 For example, Mr. Goodman stated in his opening they were free  
21 to shop in that store and no one asked them to leave. He is  
22 correct, no one asked them to leave. Instead, they made  
23 bigoted comments, they stared at them, they eventually  
24 threatened them and they threatened to meet them outside.  
25 They didn't have to say you're not welcome to shop here,

## Summation - Shanahan

1 although arguably indirect, it is implicit in the meaning get  
2 out, you are not welcome here and don't come back.

3           They've also advanced a theory that associates were  
4 speaking amongst themselves when certain comments were made.  
5 Does that matter. They were not in the privacy of their own  
6 home, they were in a place of public accommodation working in  
7 the company uniform. It doesn't matter that they didn't know  
8 that Tanya Medina could hear them and observe them as they  
9 threatened to hit them with baseball bats if they walked by.  
10 The defendants will argue that these bigoted and threatening  
11 comments made between and amongst associates do not constitute  
12 discrimination. Reject that defense. Interestingly, we  
13 believe that is why Mr. Valva testified that his statement is  
14 inaccurate because it would support this illogical defense.

15           The defendants have also attempted to distinguish the  
16 word chased from the store in an attempt to lessen the  
17 violence acts of their employees. I think it is clear from  
18 the testimony that you have heard that my clients were indeed  
19 chased from that Bensonhurst store. They were so frightened  
20 they asked to be escorted to their car. They had to jog --  
21 they actually jogged to their car in the fear that the  
22 defendant store -- in fear as there was no escort available.

23           Again, we respectfully submit that these defenses if  
24 put forward should be discarded. The defenses are based upon  
25 stereotypes, they contradict prior statements and oral

## Summation - Shanahan

1 testimony, they contradict the testimony of Ms. Casanova and  
2 ultimately require you to blame the victim. It is a common  
3 defense, they asked for it, she asked for it, my clients asked  
4 to be humiliated, insulted, called bigoted names and then  
5 ultimately threatened with bats, they had it coming.

6 Remember what Mr. Goodman told you in his opening  
7 statement and I'm quoting Mr. Goodman, it's not the way it  
8 should be in the world but given who they are and what they  
9 look like, comments get passed to them in the rough and tumble  
10 world of walking around the streets of New York and going  
11 about their business.

12 If you believe that statement to be true, then you  
13 should find for the defendant.

14 This is a case brought based upon principle, it is  
15 about civil rights and it's about corporate responsibility.  
16 However, should you find in favor of my clients, you will be  
17 asked to compensate them for their injuries by awarding them  
18 money.

19 As we cannot turn back the time and undo the events  
20 of December 13th and 20th, you will be asked to compensate  
21 them financially for being subjected to offensive, bigoted and  
22 violent treatment which violated their civil rights.

23 After Judge Sifton explains the law to you he will  
24 give you a verdict sheet. Should you find in favor of my  
25 clients on the first question, you'll be asked to continue on

## Summation - Shanahan

1 to the second. That question will read:

2 If you find for any of the plaintiffs in response to  
3 question one, state the amount of compensatory damages to  
4 which that plaintiff is entitled.

5 Judge Sifton will explain to you what compensatory  
6 damages are. It will then list each of my clients  
7 individually and you, ladies and gentlemen of the jury, will  
8 be asked to fill in an amount that you think they deserve. We  
9 agree this will not be an easy job, it will be a hard job.  
10 Thankfully, my clients were not hit with those bats, they  
11 don't have broken arms, broken legs and they were not knocked  
12 unconscious, fortunately or unfortunately. It is sometimes  
13 easier to value a broken arm than it is to value a broken  
14 heart, shattered self-confidence, humiliation, mental anguish  
15 and the psychological effects of being subjected to imminent  
16 bodily harm.

17 My clients suffered and continue to suffer mental  
18 anguish and humiliation as a result of the conduct of the  
19 defendants you saw testify. Donna McGrath testified she felt  
20 like garbage. Tara Lopez testified she was scared for her  
21 life. Tanya Medina testified that she jogged to the car still  
22 in fear that those employees had bats. They were not hit and  
23 that is fortunate but they will live with the mental scars of  
24 that horrifying Christmas for the rest of their lives. They  
25 will live with the mental scars of being chased and threatened

## Summation - Shanahan

1 by defendant's employees with bats. They will live with the  
2 mental scars of those employees offering to meet them  
3 outside. They will live with the mental scars of being  
4 taunted, humiliated, called transvestites, homos, faggots and  
5 men in dresses. They will live with the memory of a store out  
6 of control and management who didn't care.

7           They will live with the memory of Mr. Valva  
8 continuing to check inventory as Tara Lopez asked him to  
9 intercede. They will live with the memory of being accused of  
10 leaving the store with hockey sticks and baseball bats without  
11 paying. They will live with the memory of opening Lucille  
12 Burghardt's letter where the company ratified and condoned the  
13 conduct of those employees and stated that the fact that an  
14 unfortunate incident occurred on our premises does not  
15 automatically make us liable.

16           How do you value a nightmare, how do you value or put  
17 a dollar figure on this. That's a difficult job. How much is  
18 their mental anguish and their humiliation and suffering  
19 worth. What is a ruined Christmas worth. They will live with  
20 this for the rest of their lives. That decision is in your  
21 hands.

22           Judge Sifton will instruct you on the law pertaining  
23 to consequential (sic) damages and we ask you to award my  
24 clients compensatory damages. How much again is your  
25 decision, one million, 500,000, 250,000, maybe less, but,

## Summation - Shanahan

1 again, we ask you to remember the testimony of my clients when  
2 you make that decision.

3 Question three on your verdict sheet pertains to  
4 nominal damages. Judge Sifton will instruct you on what  
5 nominal damages are. Based upon the testimony of my clients  
6 and the evidence that you have seen, we respectfully request  
7 that should you find in our favor, that you pass over question  
8 three and continue onto question four.

9 As the judge will instruct you, it is also within  
10 your discretion to award punitive damages. These damages  
11 would punish a defendant and deter future conduct consistent  
12 with what they did in this situation. This will appear on  
13 your verdict sheet as questions four and five. We  
14 respectfully submit that should you find in favor of my  
15 clients, you answer affirmatively to questions four and five.

16 Question four reads: If you find for any plaintiff  
17 in response to question one, is that plaintiff entitled to  
18 punitive damages? Please answer yes or no.

19 We implore you and respectfully request that you  
20 answer in the affirmative.

21 Question five reads: If your answer to question four  
22 is yes with respect to any plaintiff, state the amount of  
23 punitive damages to which that plaintiff is entitled.

24 Again, the judge will instruct you on the law and we  
25 respectfully submit the following facts in support of punitive

## Summation - Shanahan

1 damages: This case was brought in principal to avenge the  
2 deprivation of civil rights, a corporate cover-up and a  
3 complete and utter absence of any corporate responsibility for  
4 the actions of their employees; further, for the conduct was  
5 ratified and condoned and it should not be ratified and  
6 condoned in the future. The employees and the managers of  
7 the defendant failed in many ways and on many levels after  
8 receiving my clients' complaints that they were laughed at,  
9 made fun of, called faggots, homos, men in dresses, physically  
10 threatened while in a place of public accommodation and then  
11 the employees threatened to meet them outside. The night of  
12 the incident Mr. Hofer didn't investigate, he didn't see the  
13 need.

14 Mr. Maloney on the 13th did not document any  
15 employees, did not counsel any employees, did not terminate  
16 any employees, did not send any employees home. By his  
17 actions on the 13th he ratified and condoned what went on in  
18 that store. If you take an action that night, what happened  
19 on the 20th -- what happened on the 20th would never have  
20 happened. By his utter failure to enforce their own  
21 harassment and discrimination policy, Mr. Maloney on the 13th  
22 condoned and he ratified that conduct.

23 Aside from taking statements from Mr. Hofer,  
24 Mr. Valva and Ms. Vasquez on the 21st, Mr. Maloney took  
25 absolutely -- and calling his district manager and leaving a

## Summation - Shanahan

1 voice mail message, he took no further actions. He didn't  
2 interview any employees, he didn't review the recorded store  
3 surveillance which he confirmed existed in his testimony, he  
4 called his district manager, left a voice message but didn't  
5 follow up. That voice message was never returned.

6 At some point in late December he testified to a  
7 conversation with Donna McGrath and stated that this matter  
8 was, quote unquote, now out of his hands and in his superior's  
9 hands. Again, he didn't investigate, he didn't identify the  
10 employees involved, he didn't get statements from them. Do  
11 not blame us if we cannot identify them today. He stated it  
12 was now out of his hands and in his superior's hands.

13 That superior is Lucille Burghardt. She took over  
14 the investigation from Mr. Maloney. She contacted him and  
15 asked him to send her the statements which she had not  
16 received. Lucille Burghardt, an employee at world  
17 headquarters in the Risk Management Department, then undertook  
18 an investigation. Ms. Casanova doesn't know who she is,  
19 Mr. Hofer doesn't know who she is or didn't know who she is.  
20 Mr. Valva didn't or doesn't know who she is. Ms. Vasquez  
21 doesn't know who she is. Mr. Maloney testified he spoke to  
22 her but he can't recall the substance of those conversations.  
23 Mr. Maloney testified that Lucille Burghardt never and no one  
24 else at the corporate office ever instructed him to preserve  
25 the videotapes, but did he really need to be instructed.

## Summation - Shanahan

1 Lucille Burghardt and Mr. Maloney utterly failed to  
2 make any reasonable and meaningful investigation into my  
3 clients' complaints even though there is a corporate policy  
4 on harassment and discrimination and, by the way, where is  
5 Ms. Burghardt; she hasn't testified. The defense did not call  
6 her to explain her position of Toys "R" Us, explain the extent  
7 of her authority to act on the corporation and explain the  
8 sufficiency and the meaningfulness of this investigation.  
9 Where is she? Where is a representative of the Risk  
10 Management Department of Toys "R" Us? No one from that  
11 department has explained to you the extent of their authority  
12 to act on behalf of the corporation. Defendants have only  
13 produced Cindy Steinmetz, who doesn't work in that department,  
14 to testify and Ms. Steinmetz just asks you to take her word  
15 for it, the same Cindy Steinmetz that attributes statements to  
16 Mr. Maloney which he testified he didn't make, the same Cindy  
17 Steinmetz who stated that Myra Vasquez followed my clients  
18 through the store as they were trying to leave with baseball  
19 bats and hockey sticks which she denies, the same Cindy  
20 Steinmetz that sat in that chair and testified that she still  
21 believes my clients were treated no differently than any other  
22 customer.

23 Ms. Burghardt issued a letter dated January 15 and  
24 stated that the fact that the incident occurred on their  
25 premises doesn't make them responsible. She invited my

## Summation - Shanahan

1 clients back. It was an insult and it was a slap in the face  
2 that my clients still feel to this day. It is ratification  
3 and confirmation of what those bat wielding employees did in  
4 the store at them, by and through their agents, both  
5 Mr. Maloney and Ms. Burghardt, they utterly failed to conduct  
6 any meaningful investigation; therefore, they ratified and  
7 condoned that conduct.

8           The defendant in this case is a corporation, it is  
9 one that you all know. Corporations choose to hire people  
10 who best represent their interests. They're not told who  
11 to hire. Again, Mr. Goodman referred to them as the people  
12 behind Toys "R" Us. You have now met the people behind  
13 Toys "R" Us. You have met high level management such as  
14 Ms. Steinmetz, Mr. Maloney; you have met store managers such  
15 as Mr. Hofer; supervisors such as Mr. Valva. At each of these  
16 levels -- you've also met the associates such as       Ms.  
17 Casanova. At each of these levels those employees absolutely  
18 failed to take my clients's complaints seriously, whether true  
19 or not, they absolutely failed to implement their own  
20 purported policy against harassment and discrimination. They  
21 collectively and they voluntarily undertook to do absolutely  
22 nothing and for that they should be punished.

23           Each of these employees beginning with Bob Maloney  
24 on the 13th, Mr. Maloney on the 13th and ending with  
25 Ms. Burghardt in January of 2001, they failed to conduct

## Summation - Shanahan

1 themselves within the parameters of their own corporate policy  
2 against harassment and discrimination. You've seen the  
3 policy, remember the section entitled Quick Response to  
4 Harassment. You'll have a chance to review that as you  
5 deliberate and I would respectfully submit to you that the  
6 policy isn't worth the paper it is printed on. It is a  
7 corporate feel good policy that is not implemented at the  
8 store level, it is not implemented on the district level and  
9 it is not implemented at the highest corporate level at their  
10 world headquarters across the river in New Jersey. Don't take  
11 my word for it, look at the actions of Mr. Hofer, look at the  
12 actions of Mr. Maloney, look at the actions of Mr. Valva, look  
13 at the actions of Ms. Burghardt and look at the actions of  
14 Cindy Steinmetz.

15           If there remains any doubt in your mind as to the  
16 absolutely reckless and callous conduct of this corporate  
17 defendant, again, I ask you to look at the conduct of  
18 Mr. Maloney and Ms. Burghardt. Look at Mr. Maloney's complete  
19 and total inaction on December 13 which allowed the incident  
20 on December 20 to happen. You recall that Tanya Jenks  
21 testified that at least two of the employees from the 13th  
22 were the instigators; again, it is because Mr. Maloney did  
23 nothing. Look at the sufficiency pursuant to their own  
24 corporate policy of the actions of Ms. Burghardt. No one knew  
25 who she was. She never spoke to anyone who had any

## Summation - Shanahan

1 knowledge. She never asked, as Mr. Maloney had never asked,  
2 to identify any of those employees. That's reckless and  
3 that's callous, given the fact that in writing, in writing  
4 that they can't take back, my clients allege they were chased  
5 with bats.

6 My clients made a good faith complaint of harassment  
7 and discrimination. They have had their reputations impugned  
8 and they have been forced to litigate this case for over a  
9 year and a half. Something is morally wrong about how they  
10 have been treated because they --

11 THE COURT: Now, look, let's not --

12 MR. SHANAHAN: Move on, okay.

13 THE COURT: We're dealing with the law, not with  
14 morality.

15 MR. SHANAHAN: Okay, I'll move on. I apologize,  
16 Your Honor.

17 As Mr. Maloney stated, it is all about money. That  
18 is all the defendant understands. To punish and deter this  
19 multi-national corporation with profits in the billions of  
20 dollars you must seriously hurt them in their pocketbook,  
21 otherwise they will take your verdict, should you find in our  
22 favor, with the same degree of seriousness that they took my  
23 clients' incident statements, a slap on the wrist will do  
24 absolutely no good. You must send a message to Toys "R" Us  
25 and other corporate bullies that they will be punished when

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1 they engage in such reckless and callous conduct. Just like  
2 school yard bullies need to be punished, so too do corporate  
3 bullies.

4 Thank God no one was hit with a bat in the store that  
5 day but we should not wait for someone to be hit to punish and  
6 deter this type of conduct. By punishing this defendant with  
7 a substantial verdict in my clients' favor, you will force  
8 them and other multi-national corporations to undertake  
9 meaningful change, to undertake meaningful training, to  
10 undertake to engage in meaningful investigations and  
11 meaningful discipline of employees at each of the corporate  
12 levels. They will be forced to protect their customers from  
13 out of control employees and management that doesn't care, not  
14 only to protect those guests, but to protect their financial  
15 bottom line. They will learn that high ranking corporate  
16 officers like Mr. Maloney and Ms. Burghardt cannot ratify and  
17 condone violent and egregious conduct without suffering  
18 penalty and sanction. Again, this will deter other  
19 corporations from engaging in similar conduct.

20 How much should you award in punitive damages should  
21 you find in our favor, that is your decision. Again, this is  
22 not an easy decision, 100 million, probably not; 80 million,  
23 probably not; 60 million, maybe; 20 million, maybe. But you  
24 have to keep in mind the defendant in this case, the defendant  
25 is a multi-national corporation who reports billions in

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1 earnings.

2 MR. GOODMAN: Objection, Judge.

3 THE COURT: Yeah, there's no evidence concerning the  
4 profitability or assets of this company.

5 MR. SHANAHAN: I'll withdraw it.

6 THE COURT: Go ahead.

7 MR. SHANAHAN: We're not dealing with a mom and pop  
8 store that didn't know better or an unsophisticated  
9 entrepreneur. They called themselves the worldwide leader in  
10 family, friends and fun. Again, I ask you to review the  
11 documents that are in evidence as you make a decision on  
12 whether or not to award punitive damages and you make an  
13 ultimate decision on the conduct of Mr. Maloney and Lucille  
14 Burghardt.

15 Again, on the issue of punitive damages, I ask you to  
16 keep in mind the statement Mr. Goodman made in his opening,  
17 it's not the way it should be in the world but given who they  
18 are and what they look like, comments get passed to them in  
19 the rough and tumble world of walking around the streets of  
20 New York and going about their business. If you agree with  
21 that, you should find for defendants; if not, send them a  
22 message that they will take seriously, not a slap on the wrist  
23 but a message they will take seriously and award my clients  
24 for their reckless and callous conduct which disregarded their  
25 civil rights a substantial punitive damages award.

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1           Judge Sifton will explain to you the concept of  
2 mitigating punitive damages. The defendant will attempt to  
3 prove to you that it has a meaningful harassment and  
4 discrimination policy, as they did here in this courtroom.  
5 Just as you should disregard the testimony of defendant's  
6 witnesses as to the events of December 13 and 20 and the  
7 corporate ratification of those events, you should disregard  
8 their testimony and evidence as to the corporate policy.  
9 Ms. Steinmetz testified they have an 800 number and that it is  
10 posted in the employee lounge. It is not posted in the public  
11 areas of the store and it is unavailable to the public as it  
12 was on December 20 of 2000. Ms. Steinmetz testified that  
13 managers and store directors attend "R" Us University. I  
14 asked Ms. Steinmetz if Mr. Hofer ever attended "R" Us  
15 University and she testified he should have. Mr. Hofer  
16 testified as to his training and that of associates. This was  
17 read to you from the deposition transcripts.

18           I asked Mr. Hofer the following questions and he gave  
19 the following answers:

20           "Question: Is there any orientation given to  
21 seasonal employees on sexual harassment or discrimination?

22           "Answer: They are given a paper to read and sign.

23           "Question: Is there any videos or are there any  
24 videos that are shown?

25           "Answer: I don't recall a video.

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1 "Question: Is it explained to the employee, is the  
2 paper they're given to read and sign explained to them, does  
3 anyone go through it with them?

4 "Answer: There would just be paperwork that they  
5 had to read and sign that explains what harassment is.

6 "Question: Have you ever gone to training on  
7 sexual harassment or discrimination?

8 "Answer: No."

9 Mr. Hofer has been an employee of the defendant for  
10 14 or 15 years. Although Ms. Steinmetz testified managers,  
11 including Mr. Hofer, go through training at "R" Us University,  
12 Mr. Hofer testified to the complete contrary, a 14 year  
13 employee. There is no testimony in the record from Mr. Valva  
14 on this subject. Antonia Casanova testified she was just  
15 handed a paper to read and sign, no video, no training.

16 Mr. Xenakis testified that they throw it, and I'm  
17 quoting him, throw it in there too. He also testified that  
18 they did not show a video pertaining to harassment.  
19 Ms. Steinmetz works at the world headquarters in New Jersey,  
20 she doesn't work in the stores. Her testimony contradicts  
21 Ms. Casanova, it contradicts Mr. Xenakis and it contradicts  
22 the store manager, Mr. Hofer. I, therefore, ask you to  
23 disregard that testimony.

24 Pat Picolomini testified that she shows a video and  
25 she goes over the policy in depth. Her testimony contradicts

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1 that, again, of employees and it contradicts the testimony of  
2 the manager, Mr. Hofer. I'm sure she's a nice lady but the  
3 testimony is biased. She is an employee of Toys "R" Us, a 12  
4 year employee and she is loyal to the company. She also  
5 testified that they hire large numbers of associates around  
6 the holidays sometimes doing two orientations a day. She  
7 hires additional associates to help her with orientations in  
8 the holiday season, it is a very busy time and they need to  
9 get as many associates on the floor as quickly as possible.

10 I respectfully submit to you that Ms. Casanova,  
11 Mr. Xenakis and Mr. Hofer testified truthfully on the subject,  
12 they read it, they're given it to read, sign and there is no  
13 video or training provided. Again, the policy is not worth  
14 the paper it is printed on.

15 In conclusion, in the beginning of this case in my  
16 opening I told you this case was about civil rights and  
17 corporate responsibility. Those are the issues before you and  
18 having heard all the evidence I submit to you that Toys "R" Us  
19 has demonstrated absolutely no corporate responsibility for  
20 what occurred. Through Mr. Maloney and through Ms. Burghardt  
21 they have, in fact, ratified and condoned what occurred and  
22 they continue to do so. The defendant continues to operate  
23 stores in the city. New York is known as a melting pot and we  
24 are the capital of the world in large part because we accept  
25 people of all races, religions and backgrounds. Although we

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1 have our problems, for the most part we live together  
2 peacefully and we show each other mutual respect. It is that  
3 diversity and what it symbolizes which has made this city a  
4 target.

5           Should you find for my clients, you will be sending a  
6 very clear signal that citizens should not be chased with  
7 bats, mocked, demeaned and threatened because of their gender  
8 and/or sexual orientation, that we are a civilized city and  
9 that we will not ratify and condone this conduct, that no one  
10 should live in fear and that corporations that operate in this  
11 city will be held accountable for the violations of the civil  
12 rights of their guests by those they voluntarily choose to  
13 employ. Therefore, we ask you for the only verdict the  
14 evidence supports and that justice demands, that you find in  
15 favor of my clients.

16           Thank you very much, ladies and gentlemen of the  
17 jury.

18           THE COURT: All right, we'll take a brief recess.  
19 Don't talk about the case or permit it to be discussed with  
20 you. We'll bring you back shortly.

21           You may retire.

22           (Jury leaves courtroom.)

23           (11:15 a.m.)

24           (Recess taken.)

25