

# EXHIBIT 14



## United States Department of the Interior

OFFICE OF THE SOLICITOR  
Southeast Regional Office  
Richard B. Russell Federal Building  
75 Spring Street, S.W., Suite 304  
Atlanta, Georgia 30303



IN REPLY REFER TO:

MPS  
NPS.SE.0389  
G-02132-3  
LG-17

June 1, 2011

VIA E-MAIL [peltz@leesfield.com](mailto:peltz@leesfield.com) and First-Class Mail

Robert D. Peltz, Esquire  
Leesfield & Partners, P.A.  
2350 South Dixie Highway  
Miami, Florida 33133

SUBJECT: Estate of Michael Sclawy-Adelman v. Boy Scouts of America (S.D. Fla.)

Dear Mr. Peltz:

This is in response to your April 28, 2011 request to the Department of the Interior (Interior) for the testimony of employees of Big Cypress National Preserve (Preserve) in the referenced litigation. This is your third request for such testimony. On February 7, 2011 you submitted a request to the Department to depose five employees of the Preserve in connection with the litigation, which arises from the death of Michael Sclawy-Adelman on a Boy Scout hike in the Preserve on May 9, 2009. The employees were all either directly involved in the response to the incident or the subsequent internal investigation. In a letter dated March 1, 2011 this office, in consultation with the National Park Service (NPS), denied your request. We determined that, after applying the factors set forth in 43 C.F.R. § 2.88 (the so-called Touhy factors), a variation from the Department's policy of not permitting its employees to testify in litigation to which the United States is not a party was not appropriate.

In a letter dated March 4, 2011, and in subsequent communications including e-mails dated March 9 and March 11, 2011, you asked us to reconsider this determination, suggesting that we may have overlooked some matters and providing us with additional relevant information, mainly related to allegations about NPS's own response to the incident and its handling of evidence following the incident. On March 25, 2011, after reviewing this additional information, the Regional Solicitor's Office, again in consultation with NPS, denied the revised request. We again determined that, based on a balancing of the Touhy factors, a departure from the Department's policy was not warranted. However, as a result of our review, we determined that there were records that had been overlooked when NPS responded to earlier Freedom of Information Act requests related to the referenced litigation. At a meeting on April 14, 2011, NPS provided the parties with copies of these records, which included a CD of the download

from one defendant's GPS unit, and copies of a backcountry permit and the trail log for the date of the incident.

On April 28, 2011, you submitted the present request, generally reduced in scope from the previous two. Specifically, you now seek the testimony of only two of the Preserve employees involved in the response to the incident (Wynn Carney and Gary Shreffler) as well as the individual who performed the download from the GPS (whom you correctly identified as Garnet Tritt). The scope of inquiry was also reduced to the following topics:

1. Testimony from Ms. Tritt about the handling of the GPS unit while it was in NPS custody, the downloading of data from the GPS unit, and the data itself.
2. Testimony from Mr. Carney and Mr. Shreffler about:
  - a. Prior discussions with the defendant scoutmasters about the hike, requirements, and trail conditions.
  - b. The Preserve's backcountry permit and logging process and retention of applicable records from the date of the incident.
  - c. Weather information for date of the incident that was contained in the NPS report.
  - d. Discussions between the rangers and the scoutmasters following the incident.
  - e. NPS's emergency response to the incident.
  - f. The existence of the sign at the head of the trail on which the incident occurred.

In reviewing your revised request, we have again conducted the analysis set forth in 43 C.F.R. § 2.88. As an initial matter, we incorporate by reference of analysis from, and reach the same conclusions as, those contained in our March 25, 2011 letter as to Touhy factors 2-9: specifically, we do not believe that factors 2, 3, 8 or 9 apply to this request (except to the extent they overlap with one or more other factors), and we believe that the same considerations apply to factors 4 (ability to maintain impartiality in conducting our business), 5 (ability to minimize possibility that it will become involved in issues unrelated to NPS mission and programs), 6 (ability to avoid spending public employee time for private purposes), and 7 (ability to avoid negative cumulative effects of similar requests) as they did to your earlier request, even though scope of the request has changed, and again conclude that they either weigh against granting the request (factors 5, 6, and 7) or weigh neither for nor against granting the request (factor 4).

As to the first Touhy factor (your ability to obtain this testimony from another source), we address as to specific requests as follows:

1. Custody and download of the GPS unit. We believe that the materials provided to you at the April 14, 2011 meeting, including the CD containing the data downloaded from the unit, plus examination of the evidence bags that contained the unit, address some of the issues for which you requested the employee's testimony. However, we acknowledge that other information, mainly related to the downloading process itself and the use of the data, is not in any record. Therefore, we conclude that this factor weighs in favor of allowing the testimony of the appropriate employee, specifically Garnet Tritt.

## 2. Testimony of Mr. Carney and Mr. Shreffler:

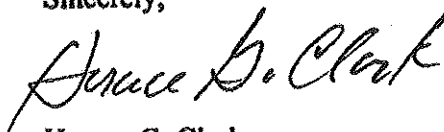
- a. Discussions between the rangers and Defendant Crompton or Defendant Schmidt before the hike: NPS avers that no such discussions took place, and we are not aware of any evidence to the contrary. Therefore, we see no benefit to allowing the rangers' testimony in this area. Therefore, this factor weighs against allowing the employees' testimony.
- b. The Preserve's backcountry permit and logging process and retention of applicable records following the date of the incident: as stated in our March 25, 2011 response we believe that the standard operating procedures already made available to you, as well as the records released to you on April 14, 2011, contain sufficient factual information to address any allegations of negligence on the part of NPS employees as well as to NPS's retention and storage of permits and the hiking log. Therefore, we conclude that, for the same reasons as set forth in our March 25, 2011 letter, this factor weighs against allowing the testimony.
- c. The weather information contained in the NPS report of the incident: NPS advises us that the information contained in the incident report was compiled for the purpose of that report. It was intended to be historic, not predictive; in other words, that data set was not provided to Defendants or to anyone before the hike took place. NPS obtains some of its weather data from the same public sources that are available to anyone else, including Defendants. Other data came from NPS-maintained automated weather stations at the Preserve; again, however, those were historic, rather than predictive, data and thus could not have been available before the incident. In short, although distinguishing between the two types of data may not be evident from the report itself, we do not see how this is relevant to the issues involving NPS employees, and so conclude that this factor is neutral as to allowing any employee testimony.
- d. Discussions between the rangers and the scoutmasters following the incident: as we stated in our March 25, 2011 response, we believe that the incident reports already made available to you are the best evidence of any statements made by Defendants Crompton and Schmidt during the NPS investigation of the incident. At this late date, the rangers likely would have to rely on the reports to refresh their recollections as to any such statements. For the same reasons as set forth in our March 25, 2011 letter we conclude that this factor weighs against allowing the testimony.
- e. NPS's emergency response on the date of the incident: similarly, as we stated in our March 25, 2011 response, we believe that the incident reports already made available to you are the best evidence of NPS's response to the incident. As with the witness statements above, we believe that at this late date NPS employees would have to rely on the reports themselves to refresh their recollections of the response. For the same reasons as set forth in our March 25, 2011 response, we believe that this factor weighs against allowing the employees' testimony.

- f. The existence of the sign at the head of the trail on which the incident occurred: NPS is still trying to confirm that this sign was in place on the date of the incident. However, the critical information provided by the sign—the unavailability of potable water—was also available on the website, copies of which already have been provided to you.<sup>1</sup> Even assuming that the existence of the sign on the date of the incident may be relevant for something other than the availability of water, we believe that this factor at best weighs slightly in favor of allowing the employees' testimony.

Accordingly, we are denying your request for testimony as to items 2a-2e, based on our determination that none of the Touhy factors weigh in favor of allowing the testimony and most factors weigh against it. As to items 1 and 2f, we acknowledge that at least one Touhy factor weighs in favor of allowing the testimony, in that the information sought may not be available from another source. Because most of the other applicable Touhy factors weigh against allowing the testimony, we still believe that, on balance, the factors do not support allowing NPS employees to testify in deposition. On the other hand, some of the other Touhy factors, mainly factor 6 (ability to avoid spending public time for private purposes) and to some extent factor 7 (ability to avoid the negative cumulative effect of granting similar requests), while weighing against allowing testimony by deposition for the reasons stated above, would weigh less against allowing the witnesses to testify by some other means. Accordingly, we are willing to allow the appropriate employees to testify in the form of an affidavit, specifically Ms. Tritt related to the GPS download, and Mr. Bob DeGross for the existence of the trailhead sign.<sup>2</sup>

If you have any questions concerning this response, please contact Michael Stevens of this office at (404) 331-4447, x238.

Sincerely,



Horace G. Clark  
Regional Solicitor

cc: Pedro Ramos, Superintendent, Big Cypress National Preserve  
Ed Clark, Chief Ranger, Big Cypress National Preserve  
Amanda Kessler, Assistant United States Attorney, Southern District of Florida

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<sup>1</sup> It may be that Defendants, or other witnesses, are able to produce (if they have not done so already) any photographs that they took at the trailhead before beginning the hike. NPS advises us that it is not uncommon for hikers to do this.

<sup>2</sup> As soon as we have received a final list from you, we will also provide authentication for the documents provided. This will be in the form of a declaration from the custodian of those documents.