

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 10-CV-22236-ASG

HOWARD ADELMAN and
JUDITH SCLAWY-ADELMAN,
as Co-Personal Representative
of the Estate of MICHAEL
SCLAWY-ADELMAN

COPY

Plaintiffs,

-VS-

BOY SCOUTS OF AMERICA,
THE SOUTH FLORIDA COUNCIL, INC.;
BOY SCOUTS OF AMERICA;
PLANTATION UNITED METHODIST CHURCH;
HOWARD K. CROMPTON, individually;
and ANDREW L. SCHMIDT,

Defendants.

DEPOSITION OF CARTER CONRAD, JR.

VOLUME 2
(PAGES 162 - 217)

August 4, 2011
1:00 p.m. - 7:30 p.m.

444 West Railroad Avenue
West Palm Beach, Florida 33401

Reported By:
Barbara J. Shandell, RPR
Notary Public, State of Florida



1 THE WITNESS: Based on data
2 provided by the carrier, that appears to
3 be the case, yes, sir.

4 BY MR. PELTZ:

5 Q. Actually we have a few extra?

6 A. Yes, sir.

7 Q. But the two that the carrier indicates are
8 included within that six?

9 A. Yes, sir.

10 Q. Let me ask you about something that
11 Mr. Levin kind of skipped over.

12 In addition to performing an analysis on
13 Michael's phone, did the court also ask you to perform
14 an analysis on Mr. Crompton's Blackberry?

15 A. Yes, sir.

16 Q. And is Exhibit 4 your report as a result
17 of that request?

18 A. Yes, sir. That's correct.

19 Q. Now, initially, was there a problem that
20 you had in complying with the court's order as to the
21 Blackberry because of not having the password?

22 A. I indicated to parties that one of the
23 characteristics of a Blackberry device is that it can
24 engage in a secure wiping procedure if the inaccurate
25 password is not produced with -- or if an inaccurate

1 password is attempted to be -- to log onto a phone.

2 So I had requested on a phone conversation
3 with Mr. Hasty that that information be provided in an
4 attempt to, obviously, not overwrite data and create
5 an issue where spoolation occurs.

6 Q. Let me just see if I can interpret that in
7 lay terminology.

8 Were you concerned that some Blackberries
9 have a feature that if you try and access the
10 information without having a password, they may
11 automatically wipe out the information on the phone?

12 MR. LEVIN: Form, asked and
13 answered.

14 THE WITNESS: That's correct.

15 BY MR. PELTZ:

16 Q. And you wanted to avoid that possibility
17 and -- because you didn't want to destroy any data
18 that might be there?

19 A. That's correct.

20 Q. And so as a result of that, did you have
21 some conversations with Mr. Hasty and/or Mr. Crompton
22 about trying to secure the password?

23 MR. LEVIN: Form.

24 THE WITNESS: The conversation was
25 with Mr. Hasty, although I believe Mr. --

1 he indicated to me -- I was on the road at
2 the time and I believe he indicated that
3 Mr. Crompton was in the office, but I
4 don't -- I don't recall having direct
5 dialog with him.

6 BY MR. PELTZ:

7 Q. And some of the e-mails in the -- how many
8 pages did we say there were?

9 MR. LEVIN: 199.

10 BY MR. PELTZ:

11 Q. Did some of the e-mails --

12 MR. LEVIN: There's still just 54
13 e-mails. That hasn't changed.

14 BY MR. PELTZ:

15 Q. Some of the e-mails in the 199 pages refer
16 to this issue of you trying to get the password and
17 reasons why you needed it?

18 A. That's correct.

19 Q. And so that had some delay in your
20 attempting to access his phone?

21 A. That's correct.

22 MR. LEVIN: Form.

23 BY MR. PELTZ:

24 Q. Were you ever able to get a password?

25 A. The acquisition was completed

1 successfully, although there was no password required
2 for the phone.

3 Q. So it turned out afterwards that there
4 really -- there was no password required?

5 A. That's correct.

6 Q. You performed the test -- the analysis set
7 forth by the court in its order that's been marked as
8 Exhibit 20?

9 A. That's correct.

10 Q. And in your report, you indicate that
11 there was no data found responsive on May 8th or 9th?

12 A. Yes, sir. That's correct.

13 Q. Now, we have had through -- we know
14 through other discovery in this case, particularly
15 depositions of the 911 people, that Mr. Crompton, in
16 fact, made calls on May 9th using his Blackberry.

17 Do you know why there -- none of those
18 calls would be reflected during the acquisition you
19 had attempted?

20 MR. LEVIN: Form, predicate.

21 THE WITNESS: I can't render an
22 opinion about that. Only the time that
23 the phone was in my custody I could be
24 accountable for. There could be numerous
25 reasons which, again, I have no basis for

1 commenting on.

2 BY MR. PELTZ:

3 Q. Would you have expected that there would
4 have been records of those calls on a Blackberry?

5 MR. LEVIN: Form, predicate, asked
6 and answered.

7 THE WITNESS: The expectation is
8 going to be dependent upon the use of any
9 electronic storage subsequent to the time
10 frame that's -- where the expectation that
11 the data would have resided.

12 In other words, if a device were to
13 continue to be used, it is possible that
14 data can be overwritten or purged out of
15 the capacity for it to be retained, but I
16 don't have any -- I don't -- again, I only
17 looked at the phone in regard to the data
18 that was from 2009, May 8 and 9, and found
19 that there was no data on the phone from
20 those time frames.

21 BY MR. PELTZ:

22 Q. Do you recall -- and I don't want to get
23 into the substance of any of this, but do you recall
24 whether there was any data for prior time periods
25 which would have indicated whether or not the storage

1 capacity of the phone had still not been reached as of
2 May 8th or 9th?

3 MR. LEVIN: I'm going to instruct
4 you not to answer that question.

5 To answer that question, he's going
6 to have to break the --

7 MR. PELTZ: That's not true at all.

8 MR. LEVIN: Yeah.

9 MR. PELTZ: I've asked him --

10 MR. LEVIN: No. You're asking him
11 to --

12 MR. PELTZ: I'm going to ask the
13 question. I'm going to ask you to make
14 whatever instruction you want and then I'm
15 going to move to compel.

16 MR. LEVIN: I'm going to ask
17 that -- okay, read back the question
18 please, Madam Court Reporter.

19 (Whereupon, the requested portion of the
20 record was read by the reporter as above
21 recorded.)

22 BY MR. PELTZ:

23 Q. Let me -- I think the question is clear,
24 but let me just make it even clearer.

25 You've indicated that one of the

1 possibilities that there would be no record of the
2 phone calls that Mr. Crompton -- we know Mr. Crompton
3 made from our depositions of the 911 people is that
4 there could have been limited storage capacity that
5 could have been filled up which would then somehow
6 delete or dump prior data; is that one possibility?

7 MR. LEVIN: Form, predicate.

8 THE WITNESS: Data can be
9 overwritten if the capacity is exceeded,
10 then the newer data is saved and older
11 data is overwritten.

12 BY MR. PELTZ:

13 Q. So dumped was the wrong word, but
14 overwritten would be the correct word?

15 A. That's a possibility, one of many.

16 Q. Right.

17 In order to determine whether that
18 possibility, in fact, occurred in this case, would one
19 of the things you would look at would be whether or
20 not there had been information contained in the
21 Blackberry for a time period prior to May 8 and 9?

22 MR. LEVIN: Form, predicate.

23 THE WITNESS: In order not to
24 prejudice and I believe I --

25 MR. PELTZ: I'm talking

1 hypothetically now. I'm not asking
2 about --

3 MR. LEVIN: If you have to rely on
4 any of the information that was actually
5 in the phone outside of that time frame to
6 answer any of his questions, my position
7 is that's within the court's order and I
8 would instruct you not to answer.

9 MR. PELTZ: That was not my
10 question.

11 MR. LEVIN: He was thinking.

12 BY MR. PELTZ:

13 Q. Listen to my question.

14 Would one of the ways to be -- to
15 determine whether data -- strike that.

16 Would one of the ways to determine
17 whether -- strike that. I'm sorry. It's after 7:00,
18 I know we've all been here for a long time. Let me
19 try one more time.

20 When the data is overwritten, and
21 referring to data regarding the phone calls on this
22 type of Blackberry, is it done sequentially or
23 chronologically?

24 MR. LEVIN: Form, predicate.

25 THE WITNESS: Generally older data

1 is overwritten, newer data is saved.

2 BY MR. PELTZ:

3 Q. Is the older data that is overwritten
4 the -- was it done chronologically?

5 For example, you know, say you reach
6 your -- hypothetically you reach your storage capacity
7 on May 10th and you have, say, 30 days storage
8 capacity, I know it doesn't work that way, but just --
9 does that mean when it starts to override the data
10 that it would start on April 10th and then -- I
11 mean -- yeah, April 10th, and then the next day would
12 be April 11th and so on?

13 MR. LEVIN: Form, predicate, move

14 to strike.

15 BY MR. PELTZ:

16 Q. It's a poor question.

17 Do you understand what I'm trying to get
18 at?

19 MR. LEVIN: Form.

20 THE WITNESS: The --

21 MR. LEVIN: Is that a question? I
22 guess it is. Do you understand what I'm
23 trying to get at? Is that a --

24 THE WITNESS: Generally, the way --
25 and I'll just restate what I've already

1 said. Generally, the way that data is
2 captured is that the newer data is
3 retained, the older data is overwritten.
4 It isn't some sort of a random insertion
5 of data in the middle of a capture of
6 data.

7 In other words, if you had
8 information from day one to day 31, if you
9 go to day one of the next month, it isn't
10 going to typically overwrite day 15 of the
11 previous month. It would begin to
12 overwrite the oldest of the entries.

13 BY MR. PELTZ:

14 Q. Which would be day one?

15 MR. LEVIN: Let him finish.

16 Form, predicate, move to strike.

17 BY MR. PELTZ:

18 Q. Is that correct?

19 A. Which would have been day one of the month
20 that had elapsed previously.

21 Q. Am I correct in understanding then that
22 normally that when data is overwritten in the context
23 we're talking about, that it would be overwritten in a
24 chronological basis?

25 MR. LEVIN: Form, predicate.

1 THE WITNESS: If that's --

2 BY MR. PELTZ:

3 Q. If it's a capacity issue?

4 A. Yes.

5 MR. LEVIN: Same objection.

6 BY MR. PELTZ:

7 Q. So with regard to -- if we wanted to
8 determine whether the reason that the phone calls that
9 Mr. Crompton made on May 9th did not have any
10 corresponding data, at least that you could acquire,
11 if we want to determine whether that was due to the
12 capacity of the Blackberry having been reached and
13 then data started to be overwritten, would you be able
14 to make that determination by seeing if there was data
15 or references of phone calls prior to that date?

16 MR. LEVIN: Form, predicate.

17 THE WITNESS: Hypothetically, yes.

18 BY MR. PELTZ:

19 Q. And just to make sure I understand that,
20 in other words, if in your analysis you had determined
21 hypothetically that there was a record of phone calls
22 made on May 7th and May 6th still in his Blackberry,
23 would that have indicated to you that you would not
24 have expected the data from May 8th and 9th to have
25 been overwritten due to the Blackberry reaching it's

1 capacity?

2 MR. LEVIN: Form, predicate.

3 THE WITNESS: Yes, that's the case.

4 I would have -- I would have expected that
5 the oldest data would have been
6 overwritten.

7 BY MR. PELTZ:

8 Q. Could you tell from your analysis whether
9 or not the reason that there was no record of the
10 phone calls made by Mr. Crompton on May 9th was likely
11 due to the Blackberry having reached its capacity and
12 starting to override data?

13 MR. LEVIN: I'm going to say he
14 can't answer that because he has to
15 divulge information that is outside of the
16 time period.

17 MR. PELTZ: I totally disagree.

18 Certify the question.

19 MR. LEVIN: Fine.

20 I would -- I mean, you're not
21 represented by myself or Mr. Peltz. You
22 don't have your own counsel here, but --

23 MR. PELTZ: I'm not asking for the
24 substance of --

25 MR. LEVIN: You're getting --

1 MR. PELTZ: -- anything. I want to
2 find out --

3 MR. LEVIN: I'm going to make -- I
4 think what you're doing is very improper.
5 You're giving the witness information in
6 evidence that, first of all, hasn't been
7 established. Second of all --

8 MR. PELTZ: I think you're making a
9 speaking objection, which I don't think is
10 really proper.

11 MR. LEVIN: In this situation --

12 MR. PELTZ: If you have an
13 objection --

14 MR. LEVIN: -- to enforce a
15 limitation on a court order, a privilege
16 under the Rule of Federal Procedure, I
17 can. Okay. And --

18 MR. PELTZ: I don't think --

19 MR. LEVIN: -- I'm trying to do
20 it -- the transcript will -- you're going
21 into something that is -- you're tightrope
22 walking right now and I didn't, and I
23 think what you're doing is wrong.

24 And I'm telling him that he's
25 getting very close to the edge and you're

1 encouraging him to step over it.

2 So you're free to do what you want,
3 sir, but there is court orders on this.
4 And if we need to have another one on this
5 topic, then I think that's probably the
6 best way to proceed.

7 THE WITNESS: I'd like to respond
8 just --

9 MR. LEVIN: Sure.

10 THE WITNESS: In harmony with the
11 court's order, there was no attempt to
12 look at data other than May 8 and 9, 2009.

13 MR. LEVIN: So then to answer --

14 THE WITNESS: So I have --

15 MR. LEVIN: -- his questions that
16 he's just been asking you, you wouldn't
17 know the answer to any.

18 MR. PELTZ: Are you coaching him or
19 are you testifying for him?

20 MR. LEVIN: I allowed you to ask
21 questions out of turn when we had issues
22 along the lines of what's protected and
23 what's not. And I would expect the same
24 courtesy at this juncture.

25 If you're not going to give it to

1 me, then this will be the last comment I
2 make on it.

3 MR. PELTZ: Were you finished with
4 your response?

5 THE WITNESS: Yes.

6 BY MR. PELTZ:

7 Q. Do you still have the Blackberry?

8 A. I do. It's in our safe.

9 Q. What would be the other potential causes
10 that you could think of that the Blackberry would not
11 have information relating to the calls that we know
12 Mr. Crompton made on May 9th?

13 MR. LEVIN: Form, predicate.

14 And if you'd have to dwell on
15 knowledge you have from data outside the
16 date range, again, your answer will be
17 based on information that the parties
18 cannot know about.

19 MR. PELTZ: I totally disagree with
20 that, but at this point I'm asking what
21 are the other possibilities.

22 THE WITNESS: There are various --
23 and I've already testified to this, there
24 are various means of data not being
25 available in an electronic storage

1 environment. There's mechanical failure.
2 There's capacity being overrun. There's
3 malicious attempt. I can't comment on any
4 of that relative to this device.

5 I can comment that there was no
6 data that was responsive to the May 8th or
7 9th, 2009 time frame on the Blackberry.

8 And that is as far as my analysis
9 went in order not to prejudice myself,
10 just like I testified five hours ago about
11 not wanting to know details about the
12 case. I have made an over-attempt to stay
13 as a neutral party in this action.

14 BY MR. PELTZ:

15 Q. I understand that, but you did indicate in
16 response to Mr. Levin's questions that you did look at
17 the other text messages just briefly in order to see
18 if they were readable in the proper format and without
19 going into the substance. And of course, those
20 questions, which I guess you know are very similar to
21 the questions I'm asking, I just want to know at this
22 point in the context so that we can either rule in or
23 rule out capacity problem as to why the phone calls
24 that we know were made aren't reflected?

25 MR. LEVIN: And you're asking him

1 to do that based on his review of data
2 outside the time period.

3 MR. PELTZ: At this point --

4 MR. LEVIN: I didn't ask him to
5 answer any questions based on his review
6 of the text messages outside of the limit.
7 I asked him if he reviewed them --

8 MR. PELTZ: I'm just asking --

9 MR. LEVIN: -- and I ended it
10 there.

11 MR. PELTZ: I'm just asking whether
12 data existed. I'm not asking what it was
13 or what the content was. And the only
14 reason I'm asking it is to determine
15 whether we can rule in or rule out
16 capacity or if it leads to some other
17 reason to explain why phone calls we know
18 were made were not made.

19 And if you feel uncomfortable, we
20 can go to the court and get another --

21 MR. LEVIN: I would encourage
22 you -- I feel uncomfortable right now. I
23 don't -- I'm telling you, this is -- I
24 don't think this is proper territory
25 without some sort of court guidance here.

1 And I would -- you know, you're putting
2 everybody in a precarious situation
3 including me and the deponent.

4 You're trying to glean information
5 that he may or may not know. You're
6 trying to get an opinion from him without
7 establishing a proper predicate. You're
8 feeding him evidence in this case that he
9 knows nothing about and that isn't even
10 established properly. And you're asking
11 him to answer these question --

12 MR. PELTZ: Your client has
13 testified he made phone calls under oath.
14 Are you saying that's not established in
15 the record in this case?

16 MR. LEVIN: I didn't say that.

17 MR. PELTZ: Yes, you did. That's
18 the only thing I've asked him to assume is
19 the fact that we know that the phone calls
20 were made by Mr. Crompton on his
21 Blackberry because he testified to it and
22 it's in the 911 records that we've all sat
23 through these depositions.

24 So for you to say that evidence is
25 not in this record and that I'm feeding

1 him something --

2 MR. LEVIN: You protested --

3 MR. PELTZ: -- is totally filaceous
4 and disingenuous.

5 MR. LEVIN: You protested the
6 authenticity of the 911 records while we
7 were sitting in the Collier County --
8 while I was sitting in the Collier County
9 Sheriff's Office, sir.

10 So for you to make that comment to
11 me is disingenuous.

12 MR. PELTZ: I'm not going to --

13 MR. LEVIN: Bob, it's late. You
14 know, I'm going to take a little break.
15 I'm going to the bathroom. I'm going to
16 have to make a phone call. I have to
17 figure out what to do in this situation
18 with these questions.

19 (A brief recess was taken.)

20 MR. LEVIN: Okay. We're back on
21 the record.

22 I made a phone call to Rick Hasty.
23 Our position is that we're going to move
24 for protective order and suspend the
25 deposition. I've already made my

1 comments.

2 The deposition was noticed by my
3 office. The questioning has gotten into
4 areas that invade -- it may invade the
5 court orders that are asking for expert
6 opinions, asking for speculation from
7 somebody who's a neutral court appointed
8 expert. We're getting past fact
9 questions. We're getting into just areas
10 that we need clarification from the court.

11 So on those grounds and as well as
12 the others that were stated before, we're
13 going to move for protective order and
14 suspend the deposition until the issues
15 with this line of questioning can be
16 resolved, and that's our position.

17 MR. PELTZ: I'd like the record to
18 reflect that while we were off the record,
19 Mr. Levin asked me whether I would agree
20 to hold this line of questioning in
21 abeyance and continue on with the rest of
22 my questioning on other unrelated areas so
23 that we could get a court order on that.

24 Then I told Mr. Levin that I would
25 be happy to accommodate him, as I'm sure

1 the other people in this room would
2 testify to, if push comes to shove, and
3 that I would be happy to move on, let me
4 finish my deposition in the other areas.
5 And if the witness felt uncomfortable in
6 answering or if you felt that there was
7 some potential violation of the court
8 order, that I would be happy to go ahead
9 and allow the parties to go ahead and seek
10 guidance from the court.

11 In response -- and I repeated that
12 offer to you when you were outside before
13 you came back in here. And the reason --
14 and you've rejected that.

15 And I want that clear, because
16 what's going to end up happening is that
17 we're going to now have to come back up
18 here again. And I am going to move for
19 sanctions in the form of attorney's fees
20 and costs, because it's totally
21 unnecessary.

22 What I'm willing to do is to go
23 ahead and limit the area of controversy
24 that we have to just a few discrete
25 questions and to handle that separately

1 and then go on and complete the rest of
2 the deposition so that we don't have to
3 come back up here.

4 If the court rules I'm entitled to
5 that information, we can either get it
6 by -- through a phone deposition or some
7 other way rather than driving up two hours
8 and driving back two hours for something
9 that is needless, but you're making that
10 impossible.

11 And so in that context, I am going
12 to ask for fees and costs for having to go
13 through that needless exercise.

14 I mean, I've made it clear and I'll
15 make the offer once again on the record.
16 I mean, I do not want to put the witness
17 in a situation if he feels uncomfortable
18 or if you're concerned that there has
19 been a -- you know, the question violates
20 the court's order, which I disagree with,
21 but I'm willing to go ahead and, you know,
22 as long as we agree that I can present
23 that to the court and I can follow-up and
24 if the court rules in my favor and get
25 answers to that separately and move on

1 with the rest of the deposition.

2 I'd like to also point out that
3 we've been here since 1:00, that I guess
4 the transcript will reflect that during
5 that time I've only been questioning, I
6 would imagine, for less than an hour.
7 It's now 7:30.

8 I mean, I think we've been very
9 patient with this entire process. And I
10 just think that what you're doing is
11 creating needless work and expense for
12 everyone as well as for the witness,
13 because the court is going to obviously
14 let me finish my deposition.

15 Your co-Defendant has questions
16 that he wants to ask and you don't even
17 want to let us set aside the one issue
18 that we seem to have disagreement on and
19 handle that separately and complete the
20 depo. So that's my response.

21 MR. LEVIN: We're going to move for
22 a protective order and we're going to
23 suspend the deposition.

24 MR. PELTZ: Okay. Then I guess
25 whatever the consequences of that will be,

1 will be.

2 I just want to further clarify that
3 as I made it clear in my questioning that
4 I was not in any way asking the witness,
5 nor did I intend to go into anything
6 regarding the substance of any phone calls
7 or text messages that were in
8 Mr. Crompton's Blackberry either before or
9 after March 7th or March 8th.

10 The question that you have decided
11 to suspend the deposition on was limited
12 to solely was whether there was data in
13 the computer -- whether there was data in
14 his Blackberry that had been recorded
15 either before or after that date without
16 getting into the substance of it.

17 And the sole reason for that
18 inquiry was to determine whether or not
19 the reason that there was no data for the
20 phone calls we know were made was due to a
21 storage issue.

22 THE REPORTER: Do you want me to
23 type it up?

24 MR. LEVIN: Yes.

25 THE REPORTER: Do you want a copy?

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MR. PELTZ: Oh, yes.

THE REPORTER: Do you want a copy?

MR. FRANZ: Not yet. I will let
you know.

MR. SCHEVIS: I don't need a copy.

(Thereupon, the deposition was
adjourned at 7:30 p.m.)

- - -