

4/4/2011

Adelman v. Boy Scouts of America, et al. Kevin O'Neill

Page 1

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

HOWARD ADELMAN AND JUDITH  
SCLAWY, AS CO-PERSONAL  
REPRESENTATIVES OF THE  
ESTATE OF MICHAEL SCLAWY-ADELMAN,

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, INDIVIDUALLY,

---

VIDEOTAPED DEPOSITION OF  
KEVIN O'NEILL

Upon oral examination, taken by counsel for  
Plaintiffs on April 4, 2011, commencing at  
10:09 a.m., at 2373 East Horseshoe Drive,  
Naples, Florida, before Joseph F. Sineno,  
Court Reporter and Notary Public, State of  
Florida at Large.

- - -

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DEFENDANT'S  
EXHIBIT

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1 APPEARANCES:

2 ROBERT D. PELTZ, ESQ., of LEESFIELD & PARTNERS,

3 P. A., 2350 South Dixie Highway, Miami, Florida 33153;

4 Attorney for Plaintiffs.

5 FREDERICK E. HASTY, III, ESQ., of WICKER, SMITH,

6 OHARA, McCOY, GRAHAM & FORD, P. A., 2800 Ponce de Leon

7 Boulevard, Suite 800, Coral Gables, Florida 33134; Attorney

8 for Howard K. Crompton and Andrew L. Schmidt.

9 WILLIAM SUMMERS, ESQ., of LANE, REESE, SUMMERS,

10 ENNIS & PERDOMO, P. A., 2600 Douglas Road, Suite 304, Coral

11 Gables, Florida 33134; Attorney for Boy Scouts of America

12 and South Florida Council, Inc.

13 RICHARD D. SCHEVIS, ESQ., of GAEBE, MULLEN,

14 ANTONELLI & DIMATTEO, 420 South Dixie Highway, Third Floor,

15 Coral Gables, Florida 33146; Attorney for Plantation

16 Methodist Church.

17 - - -

18 I N D E X

19 ATTORNEY	DIRECT	CROSS	REDIRECT	RECROSS
20 Mr. Peltz	5	85,109,112		
21 Mr. Summers		26	99,111	
22 Mr. Hasty		48	107	
23 Mr. Schevis		79	109	

24

25

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1 THE VIDEOGRAPHER: We're now on the record.

2 Today is April 4, 2011. The time is 10:09 a.m. This

3 is a videotaped deposition of Kevin O'Neill taken in

4 the matter of Howard Adelman and Judith Sclawy, as

5 co-personal representatives of the Estate of Michael

6 Sclawy Adelman, Plaintiffs, versus Boy Scouts of

7 America, The South Florida Council, Inc., Boy Scouts

8 of America; Plantation United Methodist Church; Howard

9 K. Crompton, individually; and Andrew L. Schmidt,

10 Individually, defendants. Case number

11 10-CV-22236-ASG.

12 The court reporter's name is Joe Sineno; my name

13 is Beth MacDonald, and we are in Naples, Florida.

14 Will counsel please identify themselves for the

15 record?

16 MR. PELTZ: Good morning. My name is Bob Peltz,

17 and I represent Michael and his parents.

18 MR. SUMMERS: Bill Summers. I represent the Boy

19 Scouts of America, and the South Florida Council.

20 MR. SCHEVIS: Richard Schevis, with the law firm

21 of Gaebe, Mullen, Antonelli. I represent the

22 Plantation United Methodist Church.

23 MR. HASTY: Rick Hasty. I represent Howard

24 Crompton and Andy Schmidt.

25 THE VIDEOGRAPHER: Will the court reporter please

Page 3

1 E X H I B I T S

2 PLAINTIFFS' FOR IDENTIFICATION

3 No. 1 Statement of Howard Crompton.....8

4 No. 2 Initial Notification of Death Form.....9

5 No. 3 Document produced by Park Service.....19

6 No. 4 Case-closed Report.....25

7

8 DEFENDANTS

9 [Defendant's Exhibits 4 through 11 were retained by Mr.

10 Summers]

11

12 No. 1 Timeline.....39

13 No. 2 Communications Log.....44

14 No. 3 NOAA Online Weather Data.....46

15 No. 4 Officer Comings' Report.....101

16 No. 5 Det. O'Neill's Report.....101

17 No. 6 8/10/09 Close-Out Report.....103

18 No. 7 CD's of photos.....106

19 No. 8 CD's of scene.....106

20 No. 9 CD, Collier County Sheriff's Office, For Official

21 Use Only.....106

22 No. 10 CAD Detailed Report.....106

23 No. 11 CAD Detailed Report.....106

24

25 - - -

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1 swear the witness?

2 Thereupon:

3 KEVIN O'NEILL

4 having been first duly sworn, upon his oath deposes and

5 says as follows:

6 DIRECT EXAMINATION

7 BY MR. PELTZ:

8 Q Sir, would you state your name and your present

9 office address, please?

10 A Yes. My name is Kevin P. O'Neill, that's capital

11 O, apostrophe, capital N-e-i-l-l. I currently work for the

12 Collier County Sheriff's Office, and my office is located

13 at 2373 East Horseshoe Drive, Naples, Florida.

14 Q What is your position with the Collier County

15 Sheriff's Office?

16 A I am a detective in the major crimes unit.

17 Q Can you tell us about your background in law

18 enforcement?

19 A Yes. My background started in 1982. I was hired

20 by the New York City Police Department. I retired in the

21 New York City Police Department in August of 2003.

22 In October of 2003, I was hired by the Collier

23 County Sheriff's Office who I'm currently employed with.

24 Q And what are your general job duties as a

25 detective for the Collier County Sheriff's Department?

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1 Q Okay.

2 A -- which was the video. He gave me a timeline;

3 he gave me their video log.

4 Q Okay.

5 A Audio log; and a communications log.

6 Q Do you have the timeline?

7 A The timeline?

8 Q Yes.

9 A Yes. They also provided me with the -- I got the

10 -- I'm sorry, it was the other fellow --

11 Q Who's that?

12 A Comings. I got the statement from Pena, the --

13 Q That I've seen. I just haven't seen a timeline

14 from the Sheriff's Department.

15 A It's not a timeline. This was not a timeline, my

16 timeline.

17 Q I don't mean that. I mean --

18 A That was a timeline provided to me by the -- by

19 the Parks Department.

20 MR. SUMMERS: I'd like to make a copy of this and

21 include it as Defendant's Exhibit I.

22 A If you leave it over here, I'll make copies.

23 Q Do you mind if there -- hold on -- you made him

24 put a sticker on this.

25 A Oh, sure.

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1 Q I don't want to put anything on a police document

2 until they tell me I can. I don't want to get arrested.

3 [The document referred to was marked as Defendant's

4 Deposition Exhibit No. 1 for identification.]

5 Q And then --

6 MR. PELTZ: Can you wait just one second? I want

7 to see this.

8 MR. SUMMERS: Sure.

9 Q [By Mr. Summers] In looking at the next page,

10 which would be, I guess, section 13 starting out, at some

11 point you were told that there would be no autopsy?

12 A That is correct.

13 Q Were you trying to get an autopsy?

14 MR. PELTZ: Object to the form.

15 A I preferred to have an autopsy done.

16 Q [By Mr. Summers] And why is that?

17 A Because it advances to exactly what the cause of

18 death was.

19 Q Okay. Was the -- from what you were learning

20 from contacting the Medical Examiners, were they interested

21 in doing an autopsy?

22 A When I contacted Michelle on Sunday, she had told

23 me that they weren't doing one, that they were contacted by

24 the family that they had a religious objection.

25 Q In the normal investigations that you do of

Page 40

1 deaths, are autopsies performed?

2 A Not on all.

3 Q Okay. On what percentage?

4 A It depends on the doctor. The Medical Examiner

5 has the ultimate ruling on it.

6 Q Yes.

7 A Basically when I speak to them, in this

8 particular case being it was a juvenile, I -- you know, as

9 representing the juvenile, parents have their wishes, I

10 felt that if it were my child I'd prefer to have an autopsy

11 done.

12 Q And in here you said: I would have preferred to

13 have an autopsy performed?

14 A Yeah.

15 Q And it says: And would subsequently contact the

16 doctors. What does that mean?

17 A Well, I had spoken to Michelle who was the

18 assistant. I didn't speak to -- exactly to the doctors. I

19 later on did make contact with Dr. Coburn and Dr. Borges.

20 Q And what did they tell you?

21 A Well, Dr. Coburn had told -- and Dr. Borges both

22 had told me that being there was no crime committed, or I

23 can't prove a crime was committed, there was no indication

24 of any sort of violent death, I didn't have any indication

25 that Michael had used any sort of drugs, that they couldn't

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1 do an autopsy over religious objection. They had no

2 grounds.

3 Q Okay. And then you contacted the park special

4 agency and told them about that decision?

5 A Yes, I did.

6 Q What was his response?

7 A He preferred to have an autopsy done too.

8 Q Did you ever talk to him in anymore detail on the

9 investigation that the Park Service was doing?

10 A I had spoken to him. He come to my office when

11 we had this -- we met with Dr. Coburn about the preference

12 to have the autopsy done. I spoke to him a little about

13 his investigation, but after they deemed it an accident,

14 then more or less no.

15 Q Okay. Did the special agent tell you under what

16 circumstances the park closes down its trail?

17 A No, he did not.

18 Q Did he tell you if they ever close down their

19 trail?

20 A No, he did not.

21 Q Then section 18, does it talk about a

22 conversation with a Chuck Hunt, I believe that might be

23 Jeff Hunt of South Florida Council? Did you have a

24 conversation with a guy named Hunt?

25 A Yes, I did.

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1 Q Okay. And then on 19, there's an SO investigator  
 2 Terry Morganthal. Who is that?  
 3 A Investigator Morganthal works for the State  
 4 Attorney's Office. I comment for us to keep in touch with  
 5 the State Attorney's Office when conducting a juvenile  
 6 death investigation to make sure that -- making everything  
 7 they want to do.  
 8 Q And this is again a section where there's a -- it  
 9 talks about whether or not there should be an autopsy?  
 10 MR. PELTZ: Object to the form.  
 11 A Correct. At the time I just -- I didn't think I  
 12 had probable cause to get a court order to force an autopsy  
 13 to be conducted, and I concurred with the State Attorney's  
 14 Office with my facts that I had and they concurred that it  
 15 did not have probable cause at that time to force an  
 16 autopsy.  
 17 Q And then in section 20, that's where you relate  
 18 the GPS of the scene as you were told by a ranger -- park  
 19 ranger?  
 20 A By Ranger Shreffler, correct.  
 21 Q Did they ever give you a print-out supposedly  
 22 tracked by the GPS being carried by one of the men on the  
 23 hike?  
 24 A No, they did not.  
 25 Q The park never gave you that.

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1 A No.  
 2 Q Did they ever tell you they had that?  
 3 A No, I don't remember or recall that.  
 4 Q In section 22 there's mention of a communication  
 5 log. Would that be a sheriff's communication log?  
 6 A That's actually the rangers, Everglades rangers'  
 7 communication log.  
 8 Q Okay.  
 9 MR. HASTY: I've never seen it.  
 10 MR. SUMMERS: Yeah, that's what I'm saying.  
 11 MR. HASTY: More documents not produced  
 12 [inaudible].  
 13 MR. PELTZ: Object to the form. That is a  
 14 statement...  
 15 Q [By Mr. Summers] It looks like there's a cover  
 16 page and then five pages of a communications log that's  
 17 handwritten. And then there's a daily log, two-page daily  
 18 log.  
 19 What's your understanding -- or it looks like a  
 20 three-page daily log.  
 21 A It was prepared by the rangers.  
 22 Q Okay.  
 23 A Exactly -- I received that, I believe it was from  
 24 ranger...  
 25 Q Here. I'll hand this to you. That may help you.

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1 A I believe -- if my understanding is correct, it's  
 2 from the dispatcher's office, dispatcher's log.  
 3 Q The park dispatcher?  
 4 A Correct. Dispatcher communication log. And this  
 5 is a log of daily events that I got from the ranger station  
 6 out a-ways.  
 7 Q Okay. It looks like on the first document  
 8 there's some highlighting. Do you know who did the  
 9 highlighting?  
 10 A No, I do not.  
 11 Q It was that way when you received it?  
 12 A That is correct.  
 13 Q Thank you, sir.  
 14 MR. SUMMERS: I'll mark this as Composite  
 15 Defendant's 2.  
 16 [The document referred to was marked as Defendant's  
 17 Deposition Exhibit No. 2 for identification.]  
 18 A You'll need copies of this one?  
 19 Q That would be. Yes, sir.  
 20 On 23, you went to an online weather report from  
 21 NOAA, that would be the National Atmospheric  
 22 Administration, Oceanic and Atmospheric Administration?  
 23 A That is correct.  
 24 Q And that's a publicly-available document giving  
 25 the temperature that NOAA observed on the day?

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1 A Correct.  
 2 Q And that was 94 degrees Fahrenheit?  
 3 A That is correct.  
 4 Q And then the Oasis Ranger Station gave you a  
 5 print-out that showed their own private report?  
 6 A From what I understand was, I took the NOAA for  
 7 myself --  
 8 Q Yes, sir.  
 9 A -- from what I found out that the ranger station  
 10 actually had their own weather data in the park.  
 11 Q Do you know if they make that information  
 12 available to the public, that is, someone who wants to use  
 13 the trail?  
 14 A I don't know.  
 15 Q Okay. In any event, when you went looking for  
 16 publicly-available weather information, you found the NOAA  
 17 temperature which showed a high for the day of 94 degrees?  
 18 A That is correct. Let me just see that report  
 19 here.  
 20 Q And do you know anything about how the Park  
 21 Service generates its numbers or --  
 22 A No.  
 23 Q -- where the gauge is located or if it's in the  
 24 sun or in the shade or --  
 25 A No.

<p style="text-align: right;">Page 62</p> <p>1 Q All right. Do you know why it is that that word 2 was whited out in the copy that was supplied to us? 3 MR. PELTZ: Object to the form and predicate. 4 A No. 5 Q [By Mr. Hasty] Do you know who made a copy of 6 this report for others, other than yourself? In other 7 words, did you make any copy of this report for anyone? 8 A No. 9 Q But in your report, in paragraph 9, Mr. Adelman, 10 the boy's father, Michael's father, told you that he took 11 Claritin? 12 MR. PELTZ: Object to the form. 13 A It was my understanding Howard informed Eric, who 14 was the supervising nurse in the emergency room, of the 15 Claritin issue. 16 Q [By Mr. Hasty] Okay. A toxicology report was 17 prepared by the toxicology section of the Miami-Dade County 18 Medical Examiner's Office. Did you ever see the results of 19 that toxicology report? 20 A I have a copy of it, yes. 21 Q Had you closed your file before or after that 22 report came in? 23 A I closed my case after the report. 24 Q Okay. After the toxicology report came in, did 25 you have any further conversation with either Dr. Borges or</p>	<p style="text-align: right;">Page 64</p> <p>1 MR. PELTZ: Excuse me. Let me object to the form 2 and predicate in all these questions that are with 3 regard to someone else's notes that you're asking him 4 about. 5 Q [By Mr. Hasty] Go ahead. 6 A Okay. 7 Q Do you have a note going by and seeing the 8 Medical Examiner's Office -- 9 A On -- 10 Q -- on 5/11/09? 11 A On my report on number 17, I noted that I did 12 stop by and I spoke to Dr. Coburn and Dr. Borges. 13 Q All right. On that day, 5/11? 14 A Correct. 15 Q Okay. And the note reads: There appears to be 16 conflicting stories about whether or not the boy was a 17 hiker or not. I explained, as I had explained before to 18 him, and the federal agent that we would have wanted an 19 autopsy, that even if we find that congenital problems, it 20 won't necessarily mean he died of the problem and that an 21 autopsy also -- well, something I can't read there -- all 22 problems, but would answer many questions. 23 Do you remember having that discussion with Dr. 24 Coburn? 25 MR. PELTZ: Object to the form and predicate.</p>
<p style="text-align: right;">Page 63</p> <p>1 Dr. Coburn? 2 A No. 3 Q Now, in the Medical Examiner's file -- 4 THE COURT REPORTER: Excuse me one second. 5 Q On May 10th, there's a note from the Medical 6 Examiner's file. I'm sorry, that's not the note I want. 7 There is a note, but that's not the one I mean to ask you 8 about. 9 It's May 11th at 4:15, there's a note here -- and 10 I'm presuming, and I have no problem in showing it to you 11 -- I'm presuming that this is Dr. Coburn's writing, but I'm 12 not sure. I'll hand it to you and ask you if you can 13 identify the handwriting. It's 5/11/09, at 4:15 p.m. 14 Let me just take my microphone off and ask you to 15 sit there and I'll get to you. Do you know whose 16 handwriting this is at the bottom there? Do you know if 17 it's Dr. Coburn's or -- 18 A No. 19 Q -- whose it is? 20 You don't know? 21 A No. 22 Q Okay. In any event, there's an entry here that 23 says, "5/11/09, 4:15 p.m. Det. O'Neill came by and we 24 discussed facts of the case once again." So does that 25 refresh your recollection of talking to Dr. Coburn or...</p>	<p style="text-align: right;">Page 65</p> <p>1 A Yeah. 2 Q [By Mr. Hasty] Okay. Now, on the next page of 3 the same note, it says: I told him we drew blood and will 4 test for drugs. He also asked Michelle for two disks with 5 the pictures, one for the SO, I guess Sheriff's Office, and 6 one for the federal agent. Det. O'Neill is concerned the 7 parents will later want to sue the Scout Master or want him 8 prosecuted criminally and we may not have enough 9 information without an autopsy to determine certain things. 10 I told him that his concerns were valid and that while that 11 may become an issue, at this point in time I had no 12 statutory right to hold the body further or to perform an 13 autopsy above the family's objections, and he understood. 14 Do you remember that conversation with Dr. 15 Coburn? 16 MR. PELTZ: Object to the form and predicate 17 A I remember having that conversation with Dr. 18 Coburn that I preferred to have the autopsy done to answer 19 many questions. 20 Q [By Mr. Hasty] Did you specifically tell her 21 that you were concerned that the parents will later want to 22 sue the Scout Master? 23 MR. PELTZ: Object to the -- 24 Q [By Mr. Hasty] Did you discuss that with him? 25 MR. PELTZ: Object to the form and predicate.</p>

17 (Pages 62 to 65)