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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case No. 10-22236-Civ-McALILEY/GOLD

HOWARD ADELMAN, Co-Representative  
of the Estate of Michael  
Selaway-Adelman & JUDITH  
SELAWAY-ADELMAN,

Plaintiffs,

vs.

MIAMI, FLORIDA  
DECEMBER 29, 2010

BOY SCOUTS OF AMERICA,  
a Foreign Corporation,  
HOWARD K. CROMPTON  
Individually, ANDREW  
L. SCHMIDT, et al.,

Defendants.

TRANSCRIPT OF DISCOVERY CONFERENCE HEARING  
BEFORE THE HONORABLE CHRIS M. McALILEY,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 (Call to order of the Court)

2 THE COURT: All rise.

3 MR. LEESFIELD: Good morning, Your Honor.

4 MR. FRANZ: Good morning, Your Honor.

5 THE COURT: Good morning.

6 THE CLERK: Calling the case of Howard Adelman, et al.

7 versus the Boy Scouts of America, et al., case number

8 10-22236-Civil-Judge Gold.

9 THE COURT: All right. If we could start with  
10 appearances. First for the plaintiff.

11 MR. LEESFIELD: Good morning, Your Honor. Ira  
12 Leesfield and my law partner Patricia Kennedy for the  
13 plaintiff.

14 THE COURT: Okay. Welcome. And for the defendants?

15 MR. FRANZ: Good morning, Your Honor. Kevin Franz on  
16 behalf of Boy Scouts of America and the South Florida Council.

17 THE COURT: Kevin Franz did you say?

18 MR. FRANZ: Yes.

19 THE COURT: F-r-a-n-z. And then we have some counsel  
20 on the phone?

21 MR. HASTY: Rick Hasty, Your Honor, on behalf of the  
22 defendants Crompton and Schmidt.

23 I apologize for not being there in person, but my knee  
24 was operated on this past Thursday.

25 THE COURT: Oh. Well, Merry Christmas.

1 MR. FRANZ: I am not very ambulatory even.

2 THE COURT: Oh, dear. Well, no, that is not a  
3 problem. And then do we have somebody on behalf of the church?

4 MR. FRANZ: No, Your Honor.

5 THE COURT: No?

6 MR. FRANZ: No.

7 THE COURT: No. Okay.

8 MR. FRANZ: Mr. Gaebe represents the church, but he is  
9 not here.

10 THE COURT: Okay. That's fine. Well, you are all  
11 welcome to have a seat.

12 Okay. So it had looked to me like you all had  
13 resolved this issue about the inspection of the GPS, but then  
14 it was not entirely clear to me that you had. So that's why we  
15 are having this discovery conference, and then there two other  
16 pending motions that I thought we could possibly address also,  
17 but let's start with the plaintiff's motion for preservation of  
18 evidence of the GPS.

19 I see that it seems the dispute comes down to, let me  
20 say what I think I understand that you all agree that one  
21 expert should be designated to inspect and provide information  
22 or to conduct an inspection, and I guess that counsel can  
23 observe, but you are disagreeing about whether that expert  
24 should be in North Carolina.

25 That is the defendant's pick, or somewhere in Miami.

1 That's the plaintiff's pick, and then there are expenses  
2 involved. Is that kind of what we are down to?

3 MR. LEESFIELD: Your Honor Ira Leesfield for the  
4 plaintiff. That is not the plaintiffs solution or should it be  
5 the easiest solution to try to go to North Carolina when there  
6 are hundreds of people south of Palm Beach that could do this.

7 What we suggest the procedure be in this case is what  
8 the procedure be in virtually every other case that involves  
9 important evidence.

10 This GPS system is the DNA of this case. It has  
11 already been downloaded, and we have it here for the court, by  
12 the National Park Service.

13 As you are aware, we have the hard data. And when we  
14 became aware of this, we asked the defendants to preserve it.

15 The only way I believe there will be any agreement,  
16 and nobody is prejudiced, is for the plaintiff and the  
17 defendant to have their own experts available to inspect this  
18 further.

19 Now, the question of why we need a further inspection  
20 is really beyond me, since we have the data. I can show it to  
21 the court, but assuming the defendants want to do a further  
22 inspection, the best way to do that is to have our expert and  
23 their expert in the same room with the video camera, so it is  
24 videod for the court and for us, and if they want to inspect it  
25 and we want to inspect it again, download the information

1 again, with both parties present here in Dade County, for sure,  
2 because there are people who can do that, and then the  
3 defendants are satisfied.

4 I may say, Your Honor, parenthetically, that I don't  
5 even know why, this has been going on since May of last year  
6 when the National Park Service provided us the information. If  
7 Your Honor would like to see it, I can approach --

8 THE COURT: No. That is all right.

9 MR. LEESFIELD: -- I can approach and show it to you.  
10 This has been going on since May under a Freedom of Information  
11 Act request we got this very information downloaded.

12 So now Mr. Hasty offers to hand deliver. He wants to  
13 fly to North Carolina to give this to somebody that we don't  
14 know in North Carolina who he tells us is independent, but he  
15 has selected.

16 It really is folly, Your Honor, and it is really not  
17 necessary. We should have an expert from the plaintiff, an  
18 expert from the defendant, a video camera, let download it  
19 again, and then we are done with this. This has been going on  
20 for 8 months.

21 THE COURT: Well, who would like to speak for which  
22 defendant first?

23 MR. HASTY: This is Mr. Hasty. I would like to  
24 respond.

25 THE COURT: Is this North Carolina expert someone you

1 proposed is independent or it is your expert?

2 MR. HASTY: I have an independent expert from North  
3 Carolina. It is not folly. He recommends that there be an  
4 independent forensic laboratory which will download the data  
5 and verify what has or has not been altered on the device.

6 Remember that we didn't get possession of our device  
7 until October the 15th. It is a little disingenuous to say it  
8 has been going on since May. The Park Service refused, from  
9 the time this case opened, to release the device to us.

10 THE COURT: That's really not an issue. I mean, I  
11 know that you haven't had it until recently. So it doesn't  
12 matter.

13 MR. HASTY: We haven't, and my expert says that they  
14 made a contention in their motion for injunction relief that  
15 just turning on the device will destroy data, and so my expert,  
16 and I challenged that, and I asked them to tell us what the  
17 basis for that was, and I never got a response.

18 I discussed it with Mr. Sylvester. I discussed it  
19 with Mr. Leesfield. There has been no proffer by an expert, no  
20 affidavit that says that, but it was handled by the Park  
21 Service, and the idea of an independent forensic lab who is an  
22 expert in analyzing this information, which is not someone I  
23 have retained, the idea of an independent forensic lab is they  
24 have the expertise to determine whether or not data was  
25 destroyed by the Park Service and whether or not what the Park

1 Service came up with is even accurate because these devices are  
2 not necessarily always interpreted appropriately.

3 So the idea is to permit an independent forensic lab  
4 above reproach to download the information and to provide hard  
5 copies of the data to all parties in the case, and then our  
6 expert, separately from the independent forensic lab, will have  
7 an opportunity of having full access to the findings of the  
8 independent lab.

9 This is my like CSI. And because the device was  
10 turned on, and we don't know what happened, to simply bring it,  
11 having it here in Miami and having my expert and his expert  
12 open the device doesn't mean that we are going to be able to  
13 determine whether or not what the Park Service did or did not  
14 cause problems with data stored on it, and that's why the  
15 reason why an independent forensic lab is necessary.

16 And if Mr. Leesfield's representation to the court is  
17 credibility, that this is the DNA of the case, it is extremely  
18 important.

19 It is worth it to us to make sure that an independent  
20 forensic laboratory that has the skill, the expertise and the  
21 ability to objectively download this information gets it off  
22 the device without further harm.

23 THE COURT: Well, let me ask you a couple of  
24 questions. Have you told the plaintiff the name of this lab?

25 MR. HASTY: No, and I don't know it, but my expert



1 knows it, and it is a very reputable laboratory.

2 I spoke to Ms. Kennedy about this on Wednesday of last  
3 week. I had surgery on Thursday, and she couldn't agree  
4 because Mr. Leesfield was not present in the office that day,  
5 but I explained the procedure to her.

6 THE COURT: Well, do you know the name of this  
7 laboratory?

8 MR. HASTY: I can get it for you with a phone call to  
9 my expert.

10 THE COURT: Because don't you think that would promote  
11 a discussion at least for plaintiffs to do their own research  
12 about the lab to see --

13 MR. HASTY: Yes.

14 THE COURT: -- what the

15 MR. HASTY: I am happy to supply it, Your Honor.

16 THE COURT: Now, the reason you are focusing on having  
17 a laboratory, well, let me back up. What is this laboratory?  
18 What does it specialize in?

19 MR. HASTY: It is a forensic laboratory that handles  
20 devices such as cell phones, GPS devices, and it is a very  
21 reputable forensic laboratory with forensic sciences in it.

22 THE COURT: Well, I know, but there are a lot of  
23 forensic sciences. That's why I was asking you.

24 So it is not just a laboratory that somehow  
25 specializes with GPS devices. It has some broader application.

1 MR. HASTY: Well, it does, but it does GPS devices,  
2 too.

3 THE COURT: Hold on. Hold on just one second. Let me  
4 work through a few of my questions here because you have given  
5 just a very generic description here.

6 It is certainly hard for me to make any sort of  
7 opinion about it, and I don't know how plaintiff's counsel  
8 could, either, based on what you have said so far.

9 The next question I have is the main reason you are  
10 focusing on a lab is because of the question of whether the  
11 Park Service's downloading of data from the GPS destroyed or  
12 altered evidence?

13 MR. HASTY: In part, and the other reason is because  
14 the accusation was made in the plaintiff's motion that simply  
15 turning the device on would destroy data.

16 THE COURT: Okay.

17 MR. HASTY: They put that in their motion.

18 THE COURT: Okay. I understand they did. Do you  
19 think that that is, in fact, a concern?

20 MR. HASTY: Yes.

21 THE COURT: Okay. So they put it in their motion, and  
22 apparently you share the concern that by turning it on it would  
23 somehow alter data in the GPS.

24 That's something that I am just asking. You share  
25 that concern; is that right?

1 MR. HASTY: My expert doesn't think that should be the  
2 case, but if there is any question about it, and because of  
3 what has happened with the Park Service, he recommended the  
4 independent forensic lab, and they can tell us whether or not  
5 about the data, they will turn it on and they will be able to  
6 determine right away whether or not there has been data lost,  
7 destroyed, altered or somehow mangled in the process of what  
8 happened.

9 THE COURT: Okay. So your proposal then is that this  
10 lab would be completely neutral?

11 MR. HASTY: Correct.

12 THE COURT: And it would do an analysis, and every  
13 party could have their own expert looking over the shoulders of  
14 whomever is at the lab doing the analysis?

15 MR. HASTY: Not only that, Your Honor, but the data  
16 would be put onto a disk and given to every party in the case,  
17 and that way it is above reproach.

18 It is a forensic examination, and we will know once  
19 and for all whether or not any data was lost or it was lost by  
20 the Park Service or whatever happened with this device so that  
21 it is the fairest, most objective way to do this evaluation.

22 THE COURT: Okay. But it still raises a number of  
23 questions.

24 First of all, without knowing anything about this lab,  
25 it is impossible for other counsel to form any opinion about

1 the lab's skills. So we are not even out of this --

2 MR. HASTY: I did give counsel the information about  
3 the laboratory by January the 3rd.

4 THE COURT: Well, okay. Secondly, it really makes a  
5 far more expensive process because this requires, from what you  
6 are proposing, I gather, at least one lawyer and one expert  
7 from every party to get on a plane and fly to North Carolina,  
8 right?

9 MR. HASTY: Right. Right.

10 THE COURT: Okay. And, you know, plaintiff says there  
11 are others in South Florida, I guess within driving distance of  
12 Miami or Broward who can do this.

13 Have you looked into that to see whether there is an  
14 equally competent setting where this could be done locally to  
15 keep the costs down?

16 MR. HASTY: I have not done that, Your Honor. The  
17 expert that I have retained is in the Research Triangle of  
18 North Carolina.

19 He says this is the most prominent forensic  
20 independent lab there is. I did not ask him if there is one in  
21 South Florida, but I will ask him. And if he says there are,  
22 then we can consider them.

23 THE COURT: Right.

24 MR. HASTY: I think that this device should be  
25 evaluated by a forensic laboratory.

1 THE COURT: I know. You have said that, and I really  
2 understand that part of your position.

3 What I am trying to do is get some more details about  
4 the practicalities.

5 MR. HASTY: Whether or not we can do it locally, I  
6 think that is fair.

7 THE COURT: Well, because if we are in a situation  
8 where if there is to be a laboratory involved, and I don't know  
9 enough to have an opinion about that yet, and your choice is to  
10 have a laboratory out of state, then if everyone else says,  
11 "Hey, there is somebody we think is just as good here locally,"  
12 then the question is going to become how important is it to  
13 you?

14 Are you willing to front most of the costs? And so we  
15 get into cost issues that I am not going to cross right now,  
16 but, you know, it does become a matter of fairness --

17 MR. HASTY: I agree.

18 THE COURT: -- to consider that.

19 MR. HASTY: I completely understand.

20 THE COURT: Okay. All right. So did any of the other  
21 defense counsel want to say anything on this subject?

22 MR. FRANZ: No, Your Honor.

23 THE COURT: Okay.

24 MR. FRANZ: The Boy Scouts joins with Mr. Hasty's  
25 argument.

1 THE COURT: Okay. And then we have new counsel that  
2 came in?

3 MR. WINSBY: Hi. My apologies for being late, Your  
4 Honor. Joe Winsby on behalf of the Plantation United Methodist  
5 Church. We also join with Mr. Hasty and the Boy Scouts in  
6 their position.

7 THE COURT: Okay. So all of the defendants are united  
8 on this.

9 Okay. So let me turn back to plaintiff's counsel.  
10 Your thoughts after hearing a little bit more about this.

11 MR. LEESFIELD: Thank you, Your Honor.

12 My thoughts are reinforced by listening to Mr. Hasty  
13 who tells me that his expert is in the Research Triangle of  
14 North Carolina, and now this independent fellow or lab is in  
15 North Carolina, and Mr. Hasty has offered to voluntarily, on  
16 his own fly up to North Carolina with the device and hand it  
17 over to somebody or other, I think all of that is wrong.

18 I think there was no attempt to get anyone here in  
19 Dade County. I represent to the court that in this county of  
20 three million in South Florida from Palm Beach down, maybe six  
21 million people, we have plenty of facilities to do this.

22 THE COURT: It sounds like there needs to be some more  
23 discussion here. I cannot resolve this today, I don't think,  
24 because you don't even know who is North Carolina, and they  
25 don't even know who you think is in Miami.

1 Well, I mean, we have got to start with some basic  
2 data sharing don't you think?

3 MR. LEESFIELD: Yes. There are experts. There is a  
4 company called -- I just looked. There is a called Intercell  
5 right here in Coral Gables that could do it.

6 The idea of independent examination, I mean, well, I  
7 don't see what is so independent about Mr. Hasty flying to  
8 North Carolina and meeting with this lab, giving them the  
9 information and working with his expert who happens to be in  
10 North Carolina.

11 THE COURT: Wait, but hold on. Aren't you kind of  
12 letting your knee jerk here a little bit? I mean, you don't  
13 know enough.

14 I don't think you know enough, and so the question is,  
15 is there a laboratory setting that is needed?

16 Have you talked to your expert what would they  
17 actually do to inspect the GPS? Do you know?

18 MR. LEESFIELD: Yes, ma'am. From the plaintiff's  
19 perspective, there is no laboratory setting needed.

20 I don't know who could be more independent than the  
21 National Park Service. They don't have a dog in this hunt  
22 whatsoever, except that now Mr. Hasty and the others have sued  
23 the National Park Service, and they recently brought them in.

24 Judge Gold has set a hearing on that on February 4th  
25 on why the National Park Service should be brought in on this,

1 but that's an aside. We will probably get to that downstream.

2 THE COURT: Okay.

3 MR. LEESFIELD: But the National Park Service, an arm  
4 of the United States Government, who is not a party at the time  
5 and not a defendant, has done the work.

6 We have it, all of us, in our hands. They have  
7 downloaded it, and so I think that is pretty independent. If  
8 these folks want to --

9 THE COURT: So what is your goal then in inspecting  
10 the GPS?

11 MR. LEESFIELD: I don't even need it inspected. I  
12 just need it preserved, Your Honor, for trial.

13 I just need it unaltered and untouched so that they  
14 cannot say, now if they want to take another look, my feeling  
15 about this, Your Honor, is that perhaps they don't like what  
16 the GPS readout shows because if it didn't matter, why have we  
17 had had 15 or 20 letters and motions about it?

18 My feeling is they can preserve it. I don't care if  
19 it gets readout or not, but if it is going to be touched, it  
20 has to be touched in the presence of our expert with a video  
21 camera.

22 May I say, Your Honor, that we have many, many cases  
23 before these courts with evidence; cases involving tires; cases  
24 involving medical devices, and in each one of those cases we  
25 have an expert appear.



1           The defendants have an expert appear, and they  
2 together download or inspect the ire or they inspect this.

3           THE COURT: I really understand that concept, but here  
4 is my question: I want to understand what you just said.

5           You said if it is going to be touched, you just want  
6 it to be touched in the presence of your expert?

7           MR. LEESFIELD: Yes, ma'am.

8           THE COURT: So you want to have an expert then. You  
9 were not going to plan on having an expert to inspect it, but  
10 if the defendant is going to have an expert to open it up and  
11 inspect it, then you are going to have one; is that right?

12           MR. LEESFIELD: Yes, because we don't want anything  
13 destroyed or touched, even inadvertently, and I submit to the  
14 court that it would be inadvertent.

15           THE COURT: So let me ask you this: I am just looking  
16 at a menu of possibilities here. If the defendants say, "We do  
17 want to inspect it, and our choice is this lab in North  
18 Carolina, and they are going to be our expert," and that's  
19 where you want to have it inspected, then what about if your  
20 expert gets up there and maybe the defendant bears some of the  
21 costs of travel up there, maybe not. That's a side issue, but  
22 your expert is up there and it is videod you get to witness  
23 what they do, would that be acceptable to you?

24           MR. LEESFIELD: Well, if they are going to subsidize  
25 the costs, I think that hiring somebody in North Carolina to

1 read out a GPS system that has already been read out by the  
2 National Park Service to do it again should not cause the  
3 plaintiffs, the Adelmans, the money to fly to North Carolina  
4 and fly an expert to North Carolina, I think that's unfair,  
5 especially when Mr. Hasty tells the court he has not even tried  
6 to get anybody south of Palm Beach County.

7 THE COURT: So to answer to my question, maybe you  
8 said, "Yes?" If the issue of costs was resolved, and they  
9 chose a North Carolina expert to do an inspection, and your  
10 expert could witness it, would you be satisfied?

11 MR. LEESFIELD: Yes. On the condition that it is not  
12 deemed to be an independent expert because I don't see --

13 THE COURT: I understand I am saying it is theirs.

14 MR. LEESFIELD: It is their expert, and they are going  
15 to pay to fly our expert there and get a video operator to see  
16 it, I will fly my expert there to do it, if that's what they  
17 choose.

18 I think, like so many other things that I have seen so  
19 far in this case, Your Honor, I think it is exaggerating the  
20 costs and the involvement of the court and everything else in a  
21 very straightforward matter, but if that would resolve it, if  
22 they would pay for our expert to fly to North Carolina, and  
23 they have got an expert that they want to look at it, we will  
24 have our people there, and we will videotape it, and then they  
25 can be satisfied that the National Park Service didn't rig the

1 deal, which I see no reason in the world why that would happen.

2 THE COURT: Okay. So, Mr. Hasty, there is one  
3 possible solution, if after considering local experts and you  
4 feel that, you know, there is just nobody in South and the only  
5 people are in North Carolina, and you want this North Carolina  
6 lab to do an inspection as your expert and the plaintiff could,  
7 you know, witness it and one expert goes up there for the  
8 plaintiff, and you bear costs that I would overlook.

9 I mean, we are talking an economy air fare and  
10 presumably one night at the local hotel and maybe a rental car.

11 MR. LEESFIELD: And the cost for the expert to fly  
12 there and back.

13 THE COURT: Okay.

14 MR. LEESFIELD: He is going to bill us for that.

15 THE COURT: Yes. There went economy. Well, but some  
16 of your expert's time would be billed whether it is in Miami or  
17 North Carolina. It is just that they would have travel time.

18 MR. LEESFIELD: Yes, ma'am.

19 THE COURT: Okay. So these are kind of the details,  
20 but, Mr. Hasty, what about that thought?

21 MR. HASTY: That's fine with me, Your Honor. You  
22 know, my clients are Crompton and Schmidt, but I will find out  
23 about local independent labs.

24 I want to respond to two things Mr. Leesfield said.

25 First of all, the Park Service is not an independent

1 forensic laboratory. They are park rangers. This is not what  
2 they do for a living.

3 THE COURT: I understand.

4 MR. HASTY: And so to represent to the court that the  
5 data is accurate or --

6 THE COURT: No, but, Mr. Hasty --

7 MR. HASTY: -- or that they are a lab is just folly.

8 THE COURT: But listen. Listen. Hold on.

9 MR. HASTY: They are not suing the Park Service.

10 THE COURT: Hold on.

11 MR. HASTY: They are asking for them to be separate  
12 defendant, that's a little different than saying we are suing  
13 them.

14 THE COURT: Okay. You all are arguing a lot of issues  
15 that go beyond what I need to resolve.

16 You can all debate how competent the Park Service was  
17 or wasn't in downloading data from the GPS. Honestly, it does  
18 not really matter to me on this issue because if you all want  
19 to further inspect the device, you can, and you can fight about  
20 it later on how good or --

21 MR. HASTY: Where is his expert located? Is he to fly  
22 to Miami? I don't know where he is coming from. I would like  
23 to know that information if I am being tagged with the costs of  
24 all of the expenses for their expert to attend the lab's  
25 evaluation of the device.

1 THE COURT: Is your expert local, Mr. Leesfield?

2 MR. LEESFIELD: Your Honor, our expert is local.

3 THE COURT: Okay.

4 MR. LEESFIELD: And that would be a flight from Miami  
5 to North Carolina.

6 MR. HASTY: To Raleigh.

7 THE COURT: To Raleigh. Okay. Okay. Well, these are  
8 the kind of discussions I think you all need to be having more  
9 of, short of my just kind of what would feel like an edict on  
10 my part.

11 I mean, I don't even have a name to attach to these  
12 different experts or any knowledge to offer any opinion about  
13 what lab is better or not than the other, and I don't think you  
14 all do, either. So I think you have share some more  
15 information.

16 MR. LEESFIELD: Your Honor, with all deference to the  
17 court, this process of us doing it voluntarily is not working  
18 out real well.

19 THE COURT: Apparently not.

20 MR. LEESFIELD: On every issue we have asked for  
21 deposition dates 29 days ago. We can't get deposition dates.

22 THE COURT: We are going to get to that in a minute.

23 MR. LEESFIELD: I mean, really over my experience have  
24 tried not to involve the courts in things that lawyers should  
25 work out.

1 THE COURT: Right.

2 MR. LEESFIELD: But this is not happening here.

3 THE COURT: Okay. So we are going to have to issue  
4 kind of or I will have to issue an order that sets some  
5 specific requirements.

6 MR. LEESFIELD: Right, and I would the court to  
7 consider, for the sake of economy and the sake of streamlining  
8 litigation, which I thought was our obligation as officers of  
9 court, to at least have an inquiry about an independent lab  
10 south of Palm Beach County --

11 THE COURT: Oh, yes.

12 MR. LEESFIELD: -- you know, to find somebody to do  
13 it. We can all drive up there. Our experts can drive up  
14 there. It will the Boy Scouts of, America which is paying 1,  
15 2, 3, 4, 5, 6, 7, 8 lawyers right now in this case.

16 THE COURT: Okay.

17 MR. LEESFIELD: And our clients and save us a lot of  
18 money.

19 THE COURT: Yes.

20 MR. LEESFIELD: And there was never even an inquiry  
21 made. Maybe this is just driving up to Broward and having  
22 somebody do it who is capable.

23 THE COURT: Right.

24 MR. LEESFIELD: I would ask that.

25 THE COURT: Now, that is clearly a step that has to be

1 taken, is that you all have to explore a local option.

2 So, Mr. Hasty, it sounds like that is just not  
3 something that you have done yet.

4 MR. HASTY: It is not something that I have done yet.  
5 I spoke to Ms. Kennedy about this whole plan, and she said she  
6 couldn't commit to anything because she needed to discuss it  
7 with Mr. Leesfield, and that's this past Wednesday night, and I  
8 had surgery on Thursday.

9 THE COURT: Okay.

10 MR. HASTY: I have to find out. Right now I am at  
11 home.

12 THE COURT: No. I understand.

13 MR. HASTY: I can find out when I get back to my  
14 office.

15 THE COURT: Okay. I understand.

16 MR. HASTY: I thought this hearing was not even going  
17 to happen in part, otherwise I would have been there if I could  
18 have been.

19 THE COURT: That's not a problem.

20 MR. HASTY: I am happy to do it. I am happy to take  
21 it forward. I am happy to find that out if my expert knows of  
22 an independent forensic laboratory, not just some place that  
23 holds itself out to be an expert, but an actual forensic  
24 laboratory in Dade or Palm Beach or Broward County. And if  
25 there is one, we will consider it.

1 THE COURT: Well, but it also somewhat begs the  
2 question if a forensic full laboratory is needed.

3 You have stated that as a presently is, but I am not  
4 willing to say, given how little information I have, that I  
5 agree with that premise. Sometimes it is needed. Sometimes it  
6 isn't.

7 MR. HASTY: Well, Mr. Leesfield, he does not anyway if  
8 we can take it in North Carolina as long as his expert is  
9 there, then let's just do that because I am satisfied with that  
10 option.

11 I just need to know what he thinks is going to be the  
12 expenses and whether or not you are going to order us to pay  
13 for his expenses.

14 THE COURT: Well, Mr. Leesfield, it is sounding like  
15 that is another option. We can either look for a local  
16 laboratory.

17 And if not, your expert gets sent up there at the  
18 expense of the defendants to witness the defendant's laboratory  
19 and do its analysis. It sounds like those are the two choices,  
20 right?

21 MR. LEESFIELD: Yes, Your Honor, and I would  
22 supplement some of the thoughts you expressed about, you know,  
23 whether or not we need a "forensic laboratory" to download GPS  
24 information.

25 That threshold question, whether or not we have to do



1 that, but if Your Honor reaches that threshold question, which  
2 I do not agree with, then the next step is find somebody out of  
3 the six million people south of Palm Beach --

4 THE COURT: I understand.

5 MR. LEESFIELD: -- who can do it. And as a third  
6 choice, which I think is making it even more expensive for  
7 everybody, unduly more expensive, would be to send a troop of  
8 people to North Carolina to some lab that has been recommended  
9 by his expert in North Carolina which would not be independent  
10 or deemed to be independent.

11 THE COURT: But, you know, for me to or if you all  
12 want to debate whether a laboratory is needed, then you are  
13 going to have to spend some money and some time briefing the  
14 issue for me to be the arbiter of that.

15 It seems again like maybe not the best use of  
16 resources all the way around. I mean, rather than debate it,  
17 there is probably not a down side to have a laboratory being  
18 the location of this inspection, other than cost, and so if we  
19 can solve the problem with the costs a different way, maybe  
20 that's the way to go.

21 MR. LEESFIELD: And, Your Honor --

22 MR. HASTY: Maybe what we should do is defense counsel  
23 should get together and talk about it and find out from  
24 Mr. Leesfield. We will find out the flight schedules.

25 My understanding is that it wouldn't take more about

1 an hour or an hour and a half to do all of this, and we could  
2 make a record of what they have, and it would be above  
3 reproach, and they are forensic experts, and then everybody has  
4 an objective, you know, hard copy of what they come up with,  
5 and they will be able to determine whether anything has been  
6 lost or not.

7 THE COURT: Your point of saying an hour, an hour and  
8 a half, is that maybe this plaintiff expert under this scenario  
9 could fly up for the day. Is that your point?

10 MR. HASTY: Yes, ma'am.

11 THE COURT: Okay. So I am going to issue an order  
12 that directs that the parties first, both parties, research and  
13 identify, if there is, identify any South Florida laboratory or  
14 expert that could properly conduct an inspection of the GPS and  
15 to share that information with each other. Okay.

16 MR. HASTY: Yes, Your Honor.

17 THE COURT: So let's have a deadline to do that.  
18 Obviously, this week is no good.

19 Should we say a week from Friday, January 7th. Is  
20 that too short to give you all a full week?

21 MR. LEESFIELD: Your Honor, I am before Judge Moore  
22 beginning January 6th in an aviation matter that will last, the  
23 preparation, and then the trial is the 18th of January.

24 So it would be a little hard for me. I can have  
25 somebody from my office get on that, but I think the 7th is a

1 little quick. Maybe on the 15th we can get that research done  
2 by.

3 THE COURT: Well, I am just a little concerned because  
4 your cut-off for discovery is in April, and it just seems like  
5 with this we have already taken a lot of time. So couldn't  
6 someone else in your office such as Ms. Kennedy research the  
7 lab?

8 MR. LEESFIELD: Yes.

9 THE COURT: And communicate that to the opposing  
10 party?

11 MR. LEESFIELD: We can, Your Honor, and the 7th, we  
12 get back after the holiday I think after January --

13 THE COURT: Yes. The 3rd.

14 MR. LEESFIELD: We get back the 3rd. It is four  
15 business days.

16 THE COURT: Okay. So what about Wednesday the 12th?  
17 That will give you about 10 days.

18 MR. LEESFIELD: That is fine, Your Honor.

19 THE COURT: Okay. Is that all right with you,  
20 Mr. Hasty?

21 MR. HASTY: Absolutely, Your Honor.

22 THE COURT: Okay. So by January 12th each party will  
23 communicate to the other the identity of any South Florida  
24 laboratory that would be a suitable I guess enterprise to  
25 conduct or be the setting for an inspection of the GPS.

1           And to the extent that plaintiff wants to say that a  
2 laboratory is completely unnecessary, yet there is someone else  
3 in South Florida that does not have a fully equipped  
4 laboratory, you could identify that and give your rationale of  
5 why the laboratory is unimportant. So you have to exchange  
6 that information by January 12th.

7           How am I going to set this up so this is going to  
8 work? Obviously if you all can agree on a South Florida  
9 laboratory, this is going to be a lot easier. Then we don't  
10 have the issues of costs, but if you are not in an agreeing  
11 sort of mind, and there is still this North Carolina versus  
12 Florida debate, then what I guess I would direct the parties to  
13 do is for the plaintiff to inform the defendants of the basic  
14 cost of a plaintiff expert going up to North Carolina.

15           I have already expressed my opinion that it would be  
16 an economy air fare. It would be the Hampton Inn near the  
17 airport; you know, the basic rental car and, you know, very  
18 modest per diem for meals.

19           Then on the fee issue, I am not so certain about that.  
20 I think you will have to talk to each other. You are going to  
21 have to pay your expert a fee whether they are getting into a  
22 car and driving to West Palm or going to North Carolina.

23           So the fee you are paying, and I guess I am just going  
24 to or I don't have yet a firm opinion on how to handle that.

25           That is what I am trying to say, but you have to

1 communicate that information, and maybe you will revolve it,  
2 either by picking a South Florida local or agreeing that the  
3 defendants will pick up an agreed cost of the plaintiff's  
4 expert to go to North Carolina.

5           So let's have you discuss that no later than January  
6 21st. Give a report to the court. That now gives you 3 weeks  
7 in the new year to work through this, and either tell me the  
8 issue is resolved by then or tell me that you need a hearing,  
9 but, please, what you have done so far is when you give me  
10 information, it is not information with which I could possibly  
11 resolve your dispute.

12           It is so broad and vague that I am left wanting to  
13 know more. So if you have a dispute that remains say, "Okay.  
14 The plaintiff is agreeing to do this. Concretely this lab in  
15 South Florida, and the defendant is only agreeing to do this,  
16 and here is the cost," and give it to me in a brief report.

17           It doesn't have to be lengthy, but let me know what  
18 the debate is concretely, and either I can resolve it on the  
19 papers or I will have you come right in if I need to talk to  
20 you a little bit more.

21           So how does that sound? Can you help me improve upon  
22 that plan?

23           MR. HASTY: Yes, Your Honor.

24           THE COURT: Okay. Mr. Hasty, do you have a suggestion  
25 how I can improve upon that schedule or approach?

1 MR. HASTY: Well, I am going to try to do this as  
2 quickly as possible. I don't want to delay this.

3 THE COURT: Right.

4 MR. HASTY: I am interested in getting this  
5 information. If I can contact my expert tomorrow and get more  
6 information and find out about the other labs around the State  
7 of Florida, I am happy to do that.

8 THE COURT: Okay. The question is, is the data from  
9 the GPS, does anybody consider it a necessary prerequisite to  
10 taking any depositions?

11 Because we need to talk about the discovery schedule,  
12 because if it is, then maybe I have to bump those dates up  
13 because we do need to have a schedule for you to get your  
14 discovery done by April.

15 MR. LEESFIELD: Well, Your Honor, I think quite  
16 obviously when I am deposing the defendants and asking them  
17 questions about this particular incident, the GPS data which we  
18 have from the National Park Service would be part of that  
19 deposition.

20 THE COURT: I understand what you have from the Park  
21 Service, but are you going to say, I can't take the defendant's  
22 deposition until I get the results of the defendant's expert's  
23 downloading of the GPS?

24 MR. LEESFIELD: Your Honor, I have no reason to  
25 believe, and I don't know if the defendants do, they ought to

1 tell the Court if they do, that the information we have from  
2 the United States Department of Interior is inaccurate or  
3 somehow fudged or wrong.

4 So if I were taking these depositions tomorrow, I  
5 would be using the download that they did.

6 Now, if they tell me that it is wrong or deficient,  
7 then I guess I don't want to do these depositions twice, but so  
8 far the really odd thing about all of this, Judge, for our  
9 edification is there has been no representation to the court or  
10 to counsel to or to anybody else that there is anything wrong  
11 with the information that we have.

12 THE COURT: I understand.

13 MR. LEESFIELD: And we have tried, Your Honor, to be  
14 more helpful to the court with more assistance by researching  
15 the law in this area.

16 You will notice that the back and forth has no law  
17 because there is no law, because each and every time these  
18 matters arise, counsel say, "Ira, who is your expert? Rick,  
19 who is your expert? Let's put them in a room and let's look at  
20 the tire and inspect it."

21 THE COURT: Okay.

22 MR. LEESFIELD: So we don't have any law that we can  
23 find in the federal body on this procedure.

24 THE COURT: Well, it is a very factual kind of  
25 circumstance. And until you start claiming work product

1 privilege, or things like that, we get into law, but otherwise  
2 I think it is guided by some basic kind of concepts of  
3 fairness, of sharing information.

4 Let me do this: I am going to direct that actually  
5 that status report get to me by January 19th. That is a  
6 Wednesday, because that means I can set it if I have to for a  
7 hearing the last week of January.

8 I am thinking that because I am on the duty criminal  
9 judge the first week of February, and I don't want to then go  
10 into February.

11 So the 12th for you to exchange the information about  
12 South Florida laboratories and the 19th for you to provide me  
13 with a report, that either you have resolved the issue or that  
14 concretely tells me where you are at with this dispute as  
15 boiled down. So I could resolve it definitively the last week  
16 in January if I had to do that.

17 So we need to talk about discovery, but let me just  
18 ask before I get to that, on the plaintiff's motion for  
19 protective order regarding the deposition of plaintiffs, kind  
20 of sort of seems that you have resolved the dispute; is that  
21 right?

22 MR. LEESFIELD: Your Honor, we had a one hour phone  
23 conference initiated by the plaintiffs on December 8th.

24 THE COURT: Yes.

25 MR. LEESFIELD: And at that time we asked for dates



1 for depositions. The discovery cut-off in the case right now,  
2 although we are set for trial in September, the discovery  
3 cut-off is April.

4 THE COURT: Yes.

5 MR. LEESFIELD: I think it is April 17th. So we have  
6 a lot of discovery to do in this case.

7 THE COURT: Right. And all I am asking right now is  
8 did you resolve the issues on plaintiff's depositions?

9 MR. LEESFIELD: Yes, ma'am. We offered them at that  
10 time. We offered them the dates of January 28th.

11 THE COURT: I am not talking about dates.

12 MR. LEESFIELD: Yes.

13 THE COURT: You filed a motion saying they have asked  
14 for a lot of documents like the funeral log book. The guest  
15 book and claimed work product

16 You had a lot of complaints about the subpoena duces  
17 tecum issued to the plaintiff. Has that been resolved?

18 MR. LEESFIELD: No, ma'am. It has been partially  
19 resolved by that phone conversation where counsel agreed that  
20 the spaghetti dinner, that was one of the requests. It just  
21 says the "spaghetti dinner."

22 THE COURT: Okay. So let's go to the status report  
23 you filed, docket entry 69, and it is a status report in which  
24 you went through the deposition notice to the plaintiffs, and  
25 you kind of went through each category.

1           And as I said read it, it seemed, although nobody came  
2 out and said it, it seemed that you have resolved all of the  
3 disputes.

4           Tell me where you have a dispute remaining. I have  
5 got in front of me the re-notice of taking deposition of, I  
6 will just take the first one, Mrs. Selaway-Adelman.

7           They are the same. So I have got that in front of me.  
8 I have got your status report. What is still in dispute?

9           MR. HASTY: May I respond, Your Honor?

10          THE COURT: Yes, Mr. Hasty. Go ahead.

11          MR. HASTY: Well, the Rule 26 disclosure that was  
12 filed by the plaintiff in this case is woefully inadequate.

13          When we arrived to look at what they presented to us  
14 on November 24th to respond to the Rule 26 disclosure, we have  
15 got boxes of shorts, socks and bandannas and things of that  
16 nature, but in there was cell phones owned by Michael Adelman.

17          That was never disclosed to us with the disclosure  
18 Rule 26 was done back in September, nor was it disclosed to us  
19 in October when there was a reaffirmation of what had been done  
20 prior.

21          We didn't know he had a cell phone with him, and it  
22 turns out he had it on the hike. And so we asked for the cell  
23 phone number and the name of the provider.

24          In the December 8th telephone conference, we were  
25 assured we were being given that information, and to this day

1 we have not been given that information.

2 We also found out that with the troop, they  
3 communicated to the scout members by virtue of computer e-mails  
4 that went out to the troop members, and instructions in  
5 particular went out about like that Michael died on, and we  
6 asked for the same equal preservation of the cell phones, and  
7 we asked for the same equal preservation of the computers and  
8 to be told what computer was used to receive communications  
9 from Troop 111 and from my scout leaders, and we have yet to  
10 have been given any information whether or not it was Michael's  
11 computer or it was his mother's computer, it was his dad's  
12 computer.

13 THE COURT: Mr. Hasty --

14 MR. HASTY: It has not been preserved. We have  
15 nothing.

16 THE COURT: Mr. Hasty? Mr. Hasty?

17 MR. HASTY: We cannot take the deposition until I know  
18 that information.

19 THE COURT: Mr. Hasty, is what you are talking about  
20 part of the duces tecum deposition notice, preserving a  
21 computer?

22 MR. HASTY: No. We didn't know it existed.

23 THE COURT: Okay. And excuse me for being a little  
24 bit like following a trail of bread crumbs through the dark,  
25 dark forest, but I have a motion in front of me.

1           It was a motion for protective order on a deposition,  
2 and my question that has got to floor at the moment is there  
3 still a complaint about this duces tecum notice of deposition?

4           Is there still a motion for protective order pending?  
5 Then I will be happy to get to other issues about preserving  
6 computers, preserving cell phones and a scheduling plan.

7           We will talk about it, but, Mr. Hasty, so let me go  
8 back to the plaintiff because it is the plaintiff's motion for  
9 protective order.

10           Is there something in this duces tecum notice that you  
11 still have a complaint about?

12           MR. LEESFIELD: Your Honor --

13           THE COURT: It looked like you were very successful in  
14 working through it on December 8th. It seemed that way.

15           MR. LEESFIELD: Well, I think the success arises from  
16 the agreement that we would preserve our objections for the  
17 time of the deposition and let them go ahead and take the  
18 deposition.

19           We objected to the duces tecum. If they asked for  
20 materials that are totally improper, which I submit to the  
21 court they have, and if they don't withdraw that, they asked  
22 the question, we will object and we will take it up with the  
23 court afterwards.

24           I think we need to get started with the discovery. So  
25 the answer to your question is we are preserving our objections

1 to the time of the depositions so we can get going with the  
2 depositions.

3 THE COURT: In other words, you will not come with  
4 certain things, and you tried to front the issue and say, "Hey,  
5 my client has been asked to come to a deposition and bring a  
6 bunch of stuff, and some of this stuff we have already given or  
7 there is a work product claim," and you put it before the court  
8 to say, "Don't make me bring all of this."

9 Now is what you are saying is we have just agreed, you  
10 will just decide at the time what not to bring and we will keep  
11 this issue potentially alive later on?

12 MR. LEESFIELD: No, Your Honor. We will bring  
13 whatever was brought when all of the defense counsel spent the  
14 entire day at our office going through every piece of  
15 information that we could possibly respond.

16 Mr. Hasty's representation, I don't want to debate the  
17 Rule 26 stuff now, but the answer is we are going to bring,  
18 except for the things that we have agreed upon and the things  
19 that don't exist, the things that we can't decipher what they  
20 want, we will bring everything that was there because that's  
21 everything that we have was there.

22 The cell phone was there in the back pack. Whatever  
23 was there we will bring, subject to our agreement with defense  
24 counsel that it is like the spaghetti dinner information. We  
25 have no idea, nor do they, what exactly what it is that they

1 want.

2 THE COURT: So should I deny your motion for  
3 protective order? Should I deny it?

4 MR. LEESFIELD: I think you should reserve ruling on  
5 it pending on what happens at the deposition.

6 THE COURT: Mr. Hasty, are you okay with that? It  
7 sound like, and I am a little concerned. This is the makings  
8 of two depositions.

9 MR. HASTY: I agree with Your Honor. We had pretty  
10 much worked through all of this. We were given assurances that  
11 we would be given the cell phone information.

12 Because of this new development, we said, "We need the  
13 information before we can take the parents deposition about  
14 their computers."

15 THE COURT: Okay. Put aside the cell phone and the  
16 computer for a minute. Have you got your notice of deposition  
17 in front of you?

18 MR. HASTY: I don't, Your Honor. I am sorry.

19 THE COURT: Okay.

20 MR. HASTY: But I think Ira and I went through the  
21 whole list, and I think we withdraw some items and we agreed on  
22 other items.

23 THE COURT: That is what I read in your status report.

24 MR. HASTY: Right, and I thought pretty much  
25 everything had been resolved with the information. About the

1 computers and the cell phones, that was more of our focus where  
2 we could take the parents depositions.

3 THE COURT: I am reading on Section 2 of the  
4 deposition notice the items have either been withdrawn,  
5 modified or produced.

6 Then you specify a few things the defendants would  
7 clarify about a spaghetti dinner or about Ira Abrams Eagle  
8 Court of Honor.

9 It sounded like the items in number 2 you all had  
10 worked through; that you don't have a dispute about them  
11 anymore. Am I missing something?

12 MR. HASTY: I am not sure what it is. I don't have it  
13 in front of me right now, and where we got that information was  
14 out of a Rule 26 disclosure.

15 The plaintiffs responded to the Boy Scouts answers to  
16 interrogatories. We didn't just pull this stuff out of thin  
17 air.

18 We took what they identified either in the Rule 26  
19 disclosure as documents or evidence or their answers to  
20 interrogatories, and we asked the parents to bring this  
21 information to the deposition, and that's where we got it from.

22 So I can't represent to you that we are not going to  
23 have a dispute, but I will tell you what I would recommend:

24 I would recommend that if Mr. Leesfield is available  
25 on Monday or Tuesday, we try to have another conference call

1 and see if this can be resolved.

2 The other issue is that we asked for copies of  
3 documents on November 24th. We were told his law clerks were  
4 in final exams. We have never gotten the copies of the we  
5 requested for the documents since November 24th.

6 So for over a month we have not been given copies that  
7 we agreed to pay for from that examination and inspection on  
8 November 24th. We need that information.

9 THE COURT: All right. I don't know what that relates  
10 to, and if I need to discuss it with you, I will, but here is  
11 what --

12 MR. HASTY: This goes to our ability to depose the  
13 parents and take the depositions.

14 THE COURT: No, no, but does it relate to something on  
15 your duces tecum notice? Is it something about that?

16 MR. HASTY: Yes, it does because there were things  
17 that we asked them to produce to us that they didn't have in  
18 their disclosure to response for the request for production for  
19 the Boy Scouts, and they had it there at the office, and we  
20 asked for those copies to be made so that we can have it to  
21 prepare for the parents depositions.

22 THE COURT: Well, wait a minute. Oh. This status  
23 report is only by the plaintiff. This is not a joint status  
24 report.

25 The status report that the plaintiff filed says that



1 they have produced all of that to you.

2 Here is what I am going to do on this: I am going to  
3 deny the motion for protective order, and let me explain why.

4 I got the motion, although the motion didn't say that  
5 there were objections, although the motion said there were work  
6 product claims, but there was no privilege log and no law or no  
7 assertion of privilege.

8 I, nevertheless, went through the motion, pointed out  
9 a few things that I thought you all could have done to work  
10 through it, and directed that you meet and confer, and I said  
11 to the plaintiff, after meeting and conferring, "If you haven't  
12 resolved this, plaintiff may file an amended motion for  
13 protective order that tells me exactly what is in dispute."

14 Plaintiff didn't do that. Plaintiff filed a status  
15 report that I read to say, "We have resolved everything," but  
16 it just occurred to me that this isn't a joint status report.

17 Plaintiff, you didn't follow my order. Your motion  
18 for protective order is denied.

19 Now, you all need to talk to each other. If there is  
20 still a dispute, somebody can file a very specific motion with  
21 me that says, "This exactly is in dispute." And if you claim  
22 privilege, attach a privilege log.

23 That is what you have to do. I can't resolve a claim  
24 of privilege unless I know what is in dispute. A broad generic  
25 statement of privilege does not help me at all. I can't do my

1 job, and they cannot respond to it.

2 I want to believe that you all, if you haven't already  
3 resolved this, you will.

4 The alternative is for the defendants to move to  
5 compel something. I mean, if the plaintiff says, "No way, no  
6 how will I bring something to the deposition," then you can  
7 address it in a motion to compel, but right now I am going to  
8 deny the motion for protective order, without prejudice, but if  
9 it is going to come back to me, it should come back to me very  
10 concretely to tell me what the problem is.

11 We have now spent 40 minutes talking about this, and I  
12 am still not even clear about it, and I read everything before  
13 the hearing. So there we have that.

14 Now, we need to have a scheduling plan here. We need  
15 to get this. We need to know your discovery is going to be  
16 done by April.

17 So let's talk generically about this, and let me get  
18 some basics data and then let's figure out where to go from  
19 there.

20 Plaintiff, what discovery do you still need? And then  
21 I am going to ask the defendant.

22 What depositions do you want to take? And is there  
23 any other written discovery you are waiting on; third-party  
24 discovery. Give me a picture of what you are going to need to  
25 get done by April.

1 MR. LEESFIELD: Your Honor, at a minimum we need to  
2 take the deposition of all of the defendants. We need to get  
3 the documents prior to it.

4 THE COURT: Okay. So you need a corporate  
5 representative of I guess there is how many? There is Boy  
6 Scouts of America, South Florida Council of Boy Scouts.

7 MR. LEESFIELD: We have asked, Your Honor, after we  
8 spoke on the phone in early December, Mr. Reese said, "I will  
9 get you some dates for the depositions of Boy Scouts of America  
10 which is located in Irving, Texas, but please give me the  
11 categories of people who you would like to depose at the Boy  
12 Scout headquarters," which, of course, is where all of the  
13 rules and regulations and documents are.

14 THE COURT: Help me understand because there are a  
15 couple of Boy Scout defendants.

16 MR. LEESFIELD: Yes.

17 THE COURT: Do you need a corporate representative  
18 from more than one?

19 MR. LEESFIELD: Yes.

20 THE COURT: Okay.

21 MR. LEESFIELD: We need to depose witnesses. Plural,  
22 Your Honor --

23 THE COURT: Okay.

24 MR. LEESFIELD: -- from each of the defendants  
25 entities, but they have to identify them which we have asked

1 them to do.

2 THE COURT: Let's walk through it. Boy Scott's of  
3 America.

4 MR. LEESFIELD: Boy Scott's of America in Irving,  
5 Texas.

6 THE COURT: Okay.

7 MR. LEESFIELD: We have asked for dates, and we gave  
8 Mr. Reese. We sat all around the phone. Mr. Hasty was on the  
9 phone and we all came up with some dates and in late February,  
10 I believe.

11 I don't have that exactly in front of me, that he  
12 would give us 3 or 4 days out in Irving, Texas to go through  
13 all of these documents and these folks. So Boy Scouts of  
14 America.

15 THE COURT: Okay. I am sorry. Stop right there,  
16 though. Do you know who you want to take from Boy Scouts of  
17 America? Have you issued a 30(b)(6) notice to give categories?

18 MR. LEESFIELD: Yes, Your Honor. We have done that.  
19 We sent him a letter at his request on the categories of  
20 people.

21 It is a very long detailed letter. It is what he  
22 requested so he could get the people there.

23 THE COURT: Okay.

24 MR. LEESFIELD: We held off on setting the deposition  
25 so we could get the dates to take the depositions. There is no

1 sense in setting it unilaterally.

2 THE COURT: Sure.

3 MR. LEESFIELD: So we waited and we waited and we  
4 waited. We haven't gotten the dates.

5 THE COURT: Okay. When did you send that letter?

6 MR. LEESFIELD: December 9th, Your Honor, and it is an  
7 exhibit that Your Honor has to document number 75. The letter  
8 was sent December 9th.

9 THE COURT: Okay. So you have told the Boy Scouts of  
10 America these are the categories we need to inquire of the Boy  
11 Scouts of America, and so that then the Boy Scouts of America  
12 comes back and say, "Okay, I think that will be these 2 or 3 or  
13 one people. Here is who the corporate representatives are  
14 going to be, right?

15 MR. LEESFIELD: Correct.

16 THE COURT: And then you want to notice it?

17 MR. LEESFIELD: That's right.

18 THE COURT: Okay. Okay. And you haven't gotten a  
19 response yet?

20 MR. LEESFIELD: That's right.

21 THE COURT: Okay. So I understand where you are with  
22 that.

23 Now, then there is, it is funny. I am looking at  
24 this. Let me go to your complaint. Boy Scouts of America.  
25 Boy Scouts of America is listed twice, or is it the South

1 Florida Council, Inc. Boy Scouts of America? That's the other  
2 corporate defendant.

3 Okay. Now, what about that entity?

4 MR. LEESFIELD: They are, likewise, represented by  
5 Mr. Reese, and he has, likewise, agreed to give us dates, but  
6 we don't have any dates so we can depose the South Florida  
7 Council corporate representatives and witnesses.

8 THE COURT: Have you sent a similar letter?

9 MR. LEESFIELD: Yes, ma'am.

10 THE COURT: Okay.

11 MR. LEESFIELD: The same letter. It is our attachment  
12 to exhibit 75.

13 THE COURT: Okay. Got it. All right. So then there  
14 is Plantation United Methodist Church.

15 Is there a representative that you want of the church  
16 to be deposed?

17 MR. LEESFIELD: Yes. They are in the same nature.  
18 There are people there that have knowledge of all of this, and  
19 we are waiting. That's Mr. Gaebe's client, and somebody from  
20 Mr. Gaebe's office. We were all on the phone. We need dates  
21 to take those folks as well.

22 THE COURT: Okay. Now, did you also say these are the  
23 categories we want to inquire about, or is it less complicated  
24 with the church? I assume it is a smaller organization?

25 MR. LEESFIELD: It is. We would like to get the

1 names. Just because it is in the reports, we have some names,  
2 but we didn't want to unilaterally set dates until we cleared  
3 it with all of the defendants because then we would arbitrarily  
4 pick a date.

5 THE COURT: I understand the date question.

6 MR. LEESFIELD: We have four law firms involved.

7 THE COURT: But do you know specifically who you want  
8 to depose from the church?

9 MR. LEESFIELD: Some, and some we are waiting and we  
10 will do by 30(b)(6).

11 THE COURT: Okay. So who do you want to depose from  
12 the church? Do you know their names, offhand?

13 MR. LEESFIELD: Your Honor, it may be in this letter  
14 or it may be here. Let's see,

15 THE COURT: Let's see if I have it.

16 MR. LEESFIELD: The South Florida Council. I do see  
17 some names we provided. John Anthony, Joshua Crisp and Jeff  
18 Hunt are people from the Scout Troop 111, and I don't see the  
19 precise names of the people from the church, but we do have  
20 some of them in the file and I am even waiting for some  
21 responses from Mr. Gaebe.

22 They are required under Rule 26, anyhow, to give us  
23 this information. We just want the people with the most  
24 knowledge. We have made the request. We filed it with the  
25 court.

1 THE COURT: You are talking about this letter?

2 MR. LEESFIELD: Yes, ma'am.

3 THE COURT: The letter of December 9th?

4 MR. LEESFIELD: Yes, ma'am.

5 THE COURT: Let me look at it here. Let's see. Let's  
6 see.

7 MR. FRANZ: Do you have a copy of the letter?

8 MR. LEESFIELD: I have the letter. You are certainly  
9 welcome to look at it.

10 THE COURT: I don't to see anything about the church  
11 in this letter.

12 MR. LEESFIELD: Your Honor, we may not have any  
13 information back from Mr. Gaebe's office about who the church  
14 representatives would be, but we are in communication with him,  
15 and we have made the same request.

16 THE COURT: Okay. In your December 9th letter I don't  
17 see that you are asking for information about the church,  
18 unless I have missed it.

19 It seems to be all about the Boy Scout organizations  
20 and Mr. Schmidt and Mr. Crompton.

21 MR. LEESFIELD: Right. There may be a separate  
22 letter, Your Honor, or it may have been by phone conversation,  
23 but surely all of the defendants are aware that we are not only  
24 entitled to, but anxious to take depositions of representatives  
25 of the defendants to get the information that we need.



1 THE COURT: No, no. I have that concept. What I am  
2 trying to be clear about is if you know who you want to depose,  
3 or there is some mysterious unnamed people yet who you need the  
4 defendants to divulge information to you about.

5 So I was asking about the church. Do you know who at  
6 the church you want to depose, or are you not entirely certain?

7 MR. LEESFIELD: I don't believe that that information  
8 specifically has been provided to us, but I am not sure about  
9 that, Your Honor.

10 Mr. Gaebe may have told me in a phone conversation who  
11 the witnesses may be. I can't tell the court that offhand, but  
12 as Your Honor knows, sometimes you take the depositions and the  
13 names of another witness comes up in the deposition.

14 THE COURT: Sure. No. I understand that. I  
15 understand that. I am just asking what you know right now.

16 I am not suggesting that you are going to come up with  
17 a list, anybody is, of who gets deposed and that doesn't get  
18 added to, given what you hear in a deposition.

19 MR. LEESFIELD: Certainly, Your Honor, to keep this  
20 matter on focus and moving, we have all determined to start in  
21 our phone conversation, to start with the Boy Scouts of America  
22 in Irving, Texas.

23 They are the parent organization, and we all agreed.  
24 We got our calendars out and the only dates we could come up  
25 with were these three days in February. So we need to start

1 somewhere.

2 THE COURT: Now, has everybody agreed to those  
3 February dates for Boy Scouts of America?

4 MR. LEESFIELD: As of our phone conversation on  
5 December 8th, those are the dates.

6 THE COURT: Okay. I am going to turn to the  
7 defendants in a minute. I want to finish your list.

8 We have your corporate representatives of Boy Scouts  
9 of America and South Florida Council and of the church and, of  
10 course, Mr. Crompton and Mr. Schmidt.

11 MR. LEESFIELD: Right.

12 THE COURT: Are there any other depositions that you  
13 know of if at this point that you want to take? Are there  
14 third-party witnesses?

15 MR. LEESFIELD: There may be, Your Honor. There may  
16 be people from the National Park Service.

17 There may be people who investigated this, but we are  
18 trying to start with the geographically most distance  
19 defendants and move back towards South Florida because those  
20 will be the hardest depositions to schedule because it involves  
21 all counsel being out of town for, you know, 3 or 4 days at  
22 lease.

23 THE COURT: Okay. And do you believe, unless  
24 something else comes up in discovery, do you believe that you  
25 have issued all of your written discovery? Is that all out?

1 MR. LEESFIELD: Your Honor, I think issued, yes.  
2 Whether or not the responses are adequate, I can't tell you  
3 that because I don't believe that to be the case.

4 THE COURT: Okay.

5 MR. LEESFIELD: But I think we have sent out our  
6 discovery.

7 THE COURT: Okay. Well, you know your deadlines, too.  
8 Everybody knows the deadlines in which to deal with that, if  
9 they are inadequate the time to respond to discovery and the  
10 time to bring it to the court.

11 Okay. So I have the big picture from the plaintiff.  
12 Now, let me start. I see the defendant sitting in the  
13 courtroom here.

14 Let me start with defense counsel here. What  
15 discovery do you want? Then you can respond to some of what  
16 you have heard from plaintiff's counsel.

17 MR. FRANZ: Thank you. On behalf of Boy Scouts of  
18 America --

19 THE COURT: Pull your microphone up, if you would.  
20 That way Mr. Hasty has a better chance of hearing you.

21 MR. FRANZ: Your Honor, other than the depositions of  
22 the plaintiffs in this case, I think all of the written  
23 discovery that we have done is pretty much complete.

24 I can't say for sure based on what else comes out in  
25 this case, but I think other than the plaintiff's depositions,

1 those are the key ones at this point in time.

2 THE COURT: Okay.

3 MR. FRANZ: In response to plaintiff's counsel, we did  
4 have a discussion several weeks ago, and we were only given  
5 three possible dates that the depositions of our corporate  
6 representatives could be taken.

7 We asked that counsel provide specific areas of  
8 inquiry, and we received this letter that I am looking at now,  
9 and the problem is that it is extremely over broad at this  
10 point.

11 In fact, it asks for the deposition on page 2 of the  
12 Chief Scout Executive of Boy Scouts of America. This is a  
13 person who may not have any such knowledge, and we are not  
14 required --

15 THE COURT: It might be an Apex official as the case  
16 law calls it.

17 MR. FRANZ: Right.

18 THE COURT: Yes.

19 MR. FRANZ: But, moreover, they ask for any of the  
20 corporate representatives. This is why we are having some  
21 issues.

22 They are asking for the corporate representative with  
23 the most knowledge of every procedure related to outdoor  
24 scouting activities, in particular, and it lists numerous  
25 activities.

1           That's too overbroad. In this case we are dealing  
2 with basically three things. One is trekking. One is hiking  
3 and one is first aid.

4           There is about 140 or 50 merit badges for outdoor  
5 activities, and we are trying to find the corporate  
6 representative for those three dates that are the most  
7 knowledgeable with regard to hiking, trekking and first aid  
8 which are the issues in this case.

9           That's why that is the only dispute that we have with  
10 the listed areas of inquiry. We asked for specific areas of  
11 inquiry and we got pretty much everything under the sun.

12           THE COURT: Okay. So how are you going to narrow that  
13 gap?

14           MR. FRANZ: We are trying to produce the corporate  
15 representative like I said with the most knowledge of trekking,  
16 hiking and first aid which is what we believe are the issues in  
17 this case.

18           THE COURT: Have you responded to them identifying  
19 those people?

20           MR. FRANZ: I can't say for sure. The partner in my  
21 law firm has had a little bit more communications with  
22 plaintiff's counsel who is handling this case.

23           I know that we discussed it that it was overbroad, but  
24 we fully plan to have those depositions taking place during the  
25 three days that we have agreed upon.

1 THE COURT: What are the three days in February?

2 MR. FRANZ: I can't remember if they at the end of  
3 February. The very end of February.

4 MR. LEESFIELD: I believe the dates that everyone had,  
5 remember, there is at least three law firms, three law firms on  
6 the scouting or the scout side, and so the dates that we agreed  
7 on were the end of February.

8 We were available other dates, but other people were  
9 not available. So we got the dates at the end of February that  
10 everyone cleared.

11 My suggestion, Judge, was that we get the dates and  
12 then we would notice the depositions for those dates.

13 THE COURT: Okay. So you have the dates now. The  
14 dates are not a problem. You don't have to worry about  
15 unilaterally noticing. You have agreed on the dates.

16 MR. LEESFIELD: Well, they have not confirmed the  
17 dates and their witnesses availability. We have not heard  
18 anything back on this December 9th letter.

19 THE COURT: Okay. Here is what I think needs to  
20 happen here:

21 I think you need to formally notice the Rule 30(b)(6)  
22 depositions. If we are talking about Boy Scouts of America,  
23 the dates in February.

24 MR. LEESFIELD: Yes, ma'am.

25 THE COURT: Following the rule lays out the

1 categories. Then if they have a problem, and I really hope you  
2 all could talk to each other about it and narrow it, but this  
3 is so loosey-goosey that it is not moving forward and it is not  
4 getting put in a posture where I could deal with it if I have  
5 to.

6           Ideally you sent your letter to the defense counsel.  
7 They would write back and concretely say, "You have asked for  
8 15 categories and only 5 we think are okay, and here is our  
9 witnesses for those 5," and then you talk to each other and you  
10 negotiate and you reach an agreement, but it doesn't seem to be  
11 happening.

12           So if you cannot do that, I say issue your 30(b)(6)  
13 notice. They have their time to issue an objection, and then  
14 you meet and confer, and either you reach agreement or you file  
15 a motion, and you do it in time so I can resolve it to protect  
16 your February dates.

17           There is no other way I can deal with this without it  
18 getting teed up concretely.

19           MR. LEESFIELD: Your Honor, I have no problem with  
20 that. I just want to inform the court that on December 8th we  
21 had this conversation. On December 9th, the next day, I  
22 provided to the court. I gave the next day --

23           THE COURT: I got that.

24           MR. LEESFIELD: And I have not gotten any response  
25 yet.

1 THE COURT: I wish they would have written you back.

2 MR. LEESFIELD: They didn't.

3 THE COURT: I wish they had written you back to say,  
4 "Hiking, trekking and first aid are the only appropriate  
5 categories here." And when you ask about Boy Scout uniforms --  
6 I am making up something silly.

7 MR. LEESFIELD: Of course.

8 THE COURT: I don't remember your letter. That is not  
9 relevant, and we are not going to give you -- taking my silly  
10 example -- a corporate representative on Boy Scout uniforms,  
11 and then you would talk to each other and you would say, "Oh,  
12 yeah, you are right. Okay. I don't really need that," or  
13 maybe you persuade them to give you that representative, but it  
14 is not happening.

15 So meanwhile, the time is slipping away, and I would  
16 really encourage Boy Scouts of America to write back tomorrow  
17 and say, "Here is what we propose," but otherwise I suggest to  
18 you that you issue your 30(b)(6) notice.

19 You have the date. You don't know the names of the  
20 reps yet. They will have to inform you under the rule.

21 MR. LEESFIELD: And, Your Honor, that's exactly what  
22 we will do. And as Your Honor knows, when Judge Gold set a  
23 matter for hearing in February, I immediately asked, the  
24 plaintiffs asked for the status conference because of the same  
25 concerns.



1 THE COURT: No, I understand, but we have to deal with  
2 it before February, and he has referred it to me because he  
3 wants me to handle all of the discovery.

4 MR. LEESFIELD: And we will do exactly as Your Honor  
5 has ordered. We will set it. Those are the dates we agreed  
6 upon.

7 THE COURT: If you can have a productive discussion in  
8 the next few days and at least narrow the field, do it.

9 MR. FRANZ: Your Honor, I will write a letter tomorrow  
10 listing the areas of inquiry.

11 THE COURT: Yes. You know, try to meet and confer  
12 before, but I can't resolve a debate over the scope of a  
13 30(b)(6) depo unless it has been noticed and there is an  
14 objection and the issue gets framed for me.

15 So you have got to get that going to keep those  
16 February dates, and the February dates sound pretty darn  
17 reasonable given the April cut-off. So I would like you all to  
18 keep those dates.

19 Okay. So I understand that is brewing. It sounds  
20 like, do you have dates for taking the plaintiff's deposition?  
21 Do you need that? Is that a problem?

22 MR. FRANZ: We provided the dates the very next day,  
23 Your Honor, after the phone call. We provided them with the  
24 dates of January 28th and 29th.

25 THE COURT: Okay.

1 MR. FRANZ: I am almost positive, but we did that.

2 THE COURT: Okay. So January 28th and 29th is going  
3 to be the plaintiff's deposition.

4 MR. HASTY: Your Honor, we may not be ready for those  
5 at that point in time. That's the problem.

6 THE COURT: Because?

7 MR. HASTY: Because we didn't get the documents we  
8 requested on November 24th because we don't know about the cell  
9 phones and because we don't know about the computers.

10 That was verbally told to us that we would have in  
11 that conversation on December the 8th, and here we are, and  
12 today is the 28th or the 29th, and we still don't have them.

13 THE COURT: Okay. So let me turn to the cell phone  
14 and the computer issue because we are now on the topic of what  
15 discovery does the defendant want from the plaintiff.

16 You have raised something new for me today. The cell  
17 phone and the computer preservation, what is that issue?

18 MR. HASTY: Well, the cell phones with Michael Adelman  
19 on the day of the hike, and we don't, just like our GPS device,  
20 we asked at the December 8th conference to Mr. Leesfield that  
21 the cell phone be preserved; that the same spoliation of  
22 evidence issues pertain.

23 THE COURT: So don't you have the cell phone? I  
24 thought you told me you were given the cell phone?

25 MR. HASTY: No, no, no. We were shown that he had a

1 cell phone. We went to Mr. Leesfield's office. That was our  
2 first knowledge of it.

3 THE COURT: Okay. So there is a cell phone.  
4 Mr. Leesfield, what has been done with the cell phone?

5 MR. LEESFIELD: The cell phone is exactly --  
6 everything is exactly where it was when these gentlemen came to  
7 my office.

8 THE COURT: Okay.

9 MR. LEESFIELD: And may I say, Your Honor, that the  
10 conversation, the one hour conversation was, I don't want to  
11 lead the court to say it was not productive. It was  
12 productive.

13 We narrowed the issues, but I must say, Your Honor,  
14 that this is a lawsuit. It is not an inquisition. These are  
15 parents who lost their child on a Boy Scout hike. That is what  
16 this is about. He died.

17 We say there was negligence. They say there was no  
18 negligence.

19 The cell phone issue, the computer issues, we have now  
20 expanded this scope to electronic media. The GPS system.

21 THE COURT: Okay, but can I just stop on the cell  
22 phone?

23 MR. LEESFIELD: Yes.

24 THE COURT: Mr. Hasty, do you want to be able to  
25 inspect the cell phone? What do you want to do with it?

1 MR. HASTY: I do.

2 THE COURT: Have you issued a document request or a  
3 notice of inspection?

4 MR. HASTY: No, because we were told that  
5 Mr. Leesfield would keep it; that the same protections would  
6 apply; that it was not a necessity to file a motion like they  
7 did with us, and that they would give us the cell phone  
8 provider information so the information could be subpoenaed and  
9 we could get the cell phone number. We don't even have the  
10 number of the cell phone.

11 THE COURT: Okay. Here is what I think: It is not  
12 working too well for you all with informal meeting and  
13 conferring, and it always pains me to say that, but why don't  
14 you issue a formal discovery request, whatever it is, for the  
15 cell phone. Do it. Issue it.

16 MR. HASTY: I don't even know who the provider is. I  
17 don't know what the number is.

18 THE COURT: Excuse me. Wait. You want to have access  
19 to the cell phone itself to inspect it; is that right?

20 MR. HASTY: Yes.

21 THE COURT: Okay. So issue a request for production  
22 of the cell phone, I guess, or an inspection. It is either  
23 one.

24 MR. HASTY: They have under the rule, it is 30 days  
25 which is more delay.

1 THE COURT: Okay

2 MR. HASTY: So we are talking about from December the  
3 8th. There is going to be a problem. There is going to be a  
4 problem from December the 8th. I was told there wasn't going  
5 to be a problem. I thought it was not necessary to file  
6 something formally.

7 THE COURT: Well, I think it is a shame, but here is  
8 what I think you all need to do:

9 You are not going to keep your April date unless you  
10 start cooperating better and shorten some of this.

11 So, Mr. Leesfield, it sounds like there was a  
12 discussion about the provider with the cell phone and having  
13 access to it.

14 If you haven't followed up, I think you all could  
15 agree if you want a formal discovery request that you will  
16 shorten the time period to respond to it or will you just send  
17 him in the mail the name of the provider of the cell phone.

18 The level of detail that I am having to get involved  
19 with is getting a little overwhelming to me, and it is  
20 frustrating.

21 MR. LEESFIELD: Your Honor, if I may ask the court to  
22 help us resolve this issue. I would ask for the following  
23 because we had this discussion in our conference, that more  
24 relevant, of greater relevance, I think, but equal relevance  
25 about cell phones is that we had discussed the deceased's cell

1 phone may or may not be relevant.

2 I don't see that at all, but we have discussed on the  
3 cell phone issues that the scout master, the defendants, that  
4 their cell phones on this hike and the names of the providers  
5 of their service, we have all requested that of each other  
6 informally on this meet and confer, but I would like the court  
7 to issue an order today to the plaintiffs and to all defendants  
8 that the cell phone records and the cell phone providers for  
9 the day of this incident, because there is no reason for me to  
10 get the cell phone records of Mr. Crompton from 10 days before,  
11 and there is no reason for them to get the cell phone records  
12 of this young boy from 10 days before.

13 I would like the court to issue an order which we will  
14 abide by and of course the defense will abide by that every  
15 defendant maintain their cell phone records and phone records  
16 so that when the scout masters were out there and our young boy  
17 was in trouble, we have a record of what phone calls they made  
18 and to who. If our client called 911 on his own, that they  
19 would have a record of that.

20 THE COURT: Okay. Does anybody object to preserving  
21 the cell phone records for Mr. Crompton, Mr. Schmidt and for  
22 Michael?

23 MR. LEESFIELD: Excuse me, Your Honor, and for the  
24 scouting defendants because they may have called Boy Scouts of  
25 America, the South Florida Council. They may have called the

1 church.

2 THE COURT: Okay. Does anybody object to that?

3 MR. LEESFIELD: For the day of this incident, let's  
4 everybody provide it.

5 THE COURT: Got it. Does anybody object on the  
6 defendant's side?

7 MR. WINSBY: This is specifically excepting any  
8 representative of the church, right?

9 MR. LEESFIELD: No, because they may have called the  
10 church, too. The church is a defendant. These people may have  
11 called the church and said, "We have got a young boy in  
12 trouble. What do we do?"

13 THE COURT: But I don't understand. You are saying to  
14 preserve the records. Then are you going to issue subpoenas  
15 for them?

16 MR. LEESFIELD: Well, hopefully, if Your Honor issues  
17 an order, that is the end of the day. We don't need subpoenas.

18 THE COURT: Okay. Here is what I think we need to  
19 do --

20 MR. FRANZ: Judge?

21 THE COURT: Yes.

22 MR. FRANZ: Yes.

23 THE COURT: Go ahead, sir.

24 MR. FRANZ: I would object to a company-wide sweep of  
25 cell phones for the Boy Scouts. I think that is way too

1     overbroad.

2             THE COURT:  It does sound overbroad.

3             MR. LEESFIELD:  I am not asking for that, Judge.

4             THE COURT:  Okay.

5             MR. LEESFIELD:  I am asking for relative to this  
6 incident all of the phone calls made by all of the defendants  
7 made or received.

8                     I mean, if they want the phone records of a deceased  
9 15 year-old boy on a hike, if they think that is so important  
10 that this young boy who died, whatever phone records he had for  
11 that day --

12             THE COURT:  Well, it may or may not be.

13             MR. LEESFIELD:  And it may or may not be.  I don't  
14 know, Your Honor, because to be very candid with the court, I  
15 have never listened to it.

16                     I have never even seen the phone, but I know we have  
17 it, but we only want the same from them; any phone calls  
18 related to this activity on this day by the defendants and the  
19 plaintiff will be ordered by the court to produced to each  
20 other within 30 days.

21             THE COURT:  Okay.  Here is what I am going to do:  I  
22 am going to direct, and I am going to give you all about --

23             MR. HASTY:  Your Honor?

24             THE COURT:  Hold on.  I am going to give you all about  
25 10 days.  You are each going to file with the court a very



1 concrete list of all discovery that you want, because what I am  
2 going to do, what is going to probably end up doing here which  
3 if things go better, I will back off of this idea, I am going  
4 to end up issuing an order that is going to set dates for every  
5 deposition.

6 It is going to give deadlines for all written  
7 discovery and it is going to be enforceable by the court's  
8 contempt powers. I am going to get that involved in discovery.

9 So the only way I can begin to get involved in it is  
10 for every party to sit down. You only have 3 and a half months  
11 for your discovery, and you have been at this for over a year.

12 You should know now what discovery you want. If you  
13 want cell phone records or the provider for cell phone service,  
14 you should know that, and so you should list exactly what  
15 discovery you want from the other party and tell me what you  
16 have done to get it.

17 Now, if before you file this, you all enter into some  
18 letter agreements that you give each other the names of cell  
19 phone providers, for example, nobody has to issue an  
20 interrogatory to ask for the name of a cell phone provider, but  
21 if you cannot agree to that, then you know how to use discovery  
22 to find these things out. It is not working to talk to each  
23 other.

24 So you will have a concrete list of what discovery you  
25 need and what have you done to get it and propose a schedule

1 for depositions.

2           You have got the February dates for Boy Scouts of  
3 America. You have got the January date for the plaintiff  
4 representatives, the parents, and start hammering out your  
5 dates for the other depositions, and you might be somewhat  
6 general.

7           You all might agree that, well, the two scout masters,  
8 they get deposed, I don't know after, Boy Scouts of America.  
9 Sometime in February.

10           MR. HASTY: May I ask for March, Your Honor? I have  
11 agreed to produce it.

12           THE COURT: Okay. So you might both agree on March,  
13 and maybe you don't have a specific date.

14           MR. HASTY: We agreed on December 8th that would be  
15 the case.

16           THE COURT: Okay. Whatever it is, but you need to  
17 tell me. And then once I get this, it is going to be a  
18 discovery plan that you are going to give me.

19           Every side is going to tell me what they want, and you  
20 are going to get together and try to put this in a joint  
21 document.

22           So the joint document might say, "Plaintiff wants this  
23 discovery, and we have issued interrogatories, document  
24 requests, requests for admission, third-party subpoenas;  
25 whatever it is. The same for the defendant.

1            "We need these depositions. We have all agreed that  
2 these will go forward on these dates. The other ones we have  
3 agreed can be done on other dates."

4            And if you have a dispute, you will say, "This  
5 plaintiff wants this deposition. The defendant says, No."

6            You will tell me what the discovery plan is and how  
7 you are going to accomplish it by your discovery cut-off of  
8 April 18th, and then I am going to get that document and figure  
9 out what if anything else I have to do.

10           Okay. But I think you have got to hammer this out  
11 and, you know, I would like to work with you kind of informally  
12 as you bring up new issues, but I don't think I am being very  
13 effective for you at the moment. So maybe if you go through  
14 this process I can be more useful to you. Okay.

15           MR. LEESFIELD: Your Honor, I think that's wonderful,  
16 and we will work with these folks and we will get a discovery  
17 plan to you.

18           If Your Honor today wanted to unilaterally set forth a  
19 discovery plan, the depositions are this date, this date, this  
20 date --

21           THE COURT: I don't know enough.

22           MR. LEESFIELD: Well, we will try to work because it  
23 is better with 4 law firms for us to work on our schedules to  
24 do it that way, but we are ready. We filed this motion. We  
25 want to get this done by April the 18th.

1 THE COURT: Well, I know you do, and I think that you  
2 all, in terms of some written discovery, you might agree to  
3 shorten response times.

4 MR. LEESFIELD: Right.

5 THE COURT: You don't always need 30 days to respond  
6 to certain discovery.

7 I mean, if it is going to take or, for example, on the  
8 cell phone provider issue, if you all can't agree to mutually  
9 exchange that, and you are going to have to issue an  
10 interrogatory or a third-party subpoena, well, not with the  
11 third-party subpoena, but an interrogatory, maybe you will all  
12 agree to shorten some response times.

13 MR. LEESFIELD: Well, Your Honor, why don't we agree,  
14 since it will be quicker and shorter for each defendant and the  
15 plaintiff to get the cell phone records for the date of this  
16 incident and provide it to each other?

17 THE COURT: Because you have a dispute about it, and  
18 this isn't your only dispute. So I am going to follow through  
19 with the procedure that I have just laid out.

20 Let's see, I will direct that I get that joint  
21 proposed discovery plan by January 14th. That is two weeks.  
22 Two full weeks after the holiday is over.

23 We will not penalize you with time this week. It is  
24 not realistic. So I will issue an order that we will get out  
25 today or tomorrow that will say that you need to issue that

1 joint proposed discovery plan with each party identifying who  
2 they want to depose, what discovery they want to take and  
3 information they need and what they have done to get it.

4 So either you have gotten letter agreements or you  
5 have issued formal discovery requests, but somehow you have got  
6 to get it going in that way so that if you have further  
7 disputes, at least it is getting framed to come back to the  
8 court.

9 Okay. So, Mr. Hasty, anything further on your end,  
10 sir?

11 MR. HASTY: I don't so why we can't exchange the  
12 telephone numbers of the cell phones.

13 THE COURT: Well, great.

14 MR. HASTY: The providers. I am willing to do that.  
15 I was willing to do that on December the 8th.

16 THE COURT: Well, I am trusting that you all are going  
17 to talk to each other before.

18 MR. HASTY: We cannot get copies of documents because  
19 I am telling you right now I don't think it will be ready by  
20 January 28th and the 29th to take the parents depositions  
21 unless we get the copies of the items we requested for; many of  
22 them.

23 THE COURT: Well, it is very much in plaintiffs  
24 interests to get you the documents you need before you can take  
25 the plaintiff's deposition because the plaintiffs want to hold

1 on to their trial date.

2 So they are going to have to work with you, and it is  
3 a basic premise that any party before they take a deposition  
4 should have the documents in hand that they would use for the  
5 deposition.

6 I mean, I am going to support that for anybody. So I  
7 hope that some of the issues we have talked about today are  
8 going to kind of go by the wayside because it is going to be  
9 easier maybe for you all to talk to each other and reach some  
10 agreements after today, but give me a discovery plan and let me  
11 know.

12 And if there were disputes remaining, I will hold  
13 another discovery conference. And if I need to issue a court  
14 order setting deadlines for particular discovery, that is an  
15 option. You know, hopefully I will not have to, but sometimes  
16 it is helpful.

17 Okay. Anything further from plaintiff's counsel?

18 MR. LEESFIELD: No, Your Honor.

19 THE COURT: Okay. Thank you. Anything further from  
20 counsel for Boy Scouts of America?

21 MR. FRANZ: No, Your Honor.

22 THE COURT: Okay. And for Mr. Crompton or  
23 Mr. Schmidt?

24 MR. WINSBY: No, Your Honor.

25 MR. FRANZ: No, Your Honor. Thank you for your time.

1 THE COURT: Okay. And for the Plantation Church?

2 MR. WINSBY: No, Your Honor. Thank you.

3 THE COURT: All right. Thank you all. Good luck to

4 you.

5 MR. LEESFIELD: Thanks, Judge.

6 THE CLERK: All rise. Court is in recess.

7 (Whereupon the proceedings were concluded)

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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of proceedings in the above-entitled matter.

JANUARY 7, 2011

S/JERALD M. MEYERS

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DATE

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JERALD M. MEYERS, RPR-CM