

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

GARLAND D. MURPHY, III, M.D. and)
PHYLLIS MURPHY, Individually and)
on behalf of all others)
similarly situated,)

Plaintiffs,

) CASE NO.
) 5:17-CV-5035

VS.

GOSPEL FOR ASIA, INC., GOSPEL)
FOR ASIA-INTERNATIONAL, K.P.)
YOHANNAN, GISELA PUNNOSE, DANIEL)
PUNNOSE, DAVID CARROLL, and PAT)
EMERICK,)

Defendant.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE TIMOTHY L. BROOKS

February 16, 2018; 1:39 p.m.

FAYETTEVILLE, ARKANSAS

Proceedings recorded in realtime via machine shorthand.

Dana Hayden, CCR, RMR, CRR
Federal Official Court Reporter
35 East Mountain Street
Fayetteville, Arkansas 72701

APPEARANCES

FOR THE PLAINTIFFS:

Mr. James M. Graves
Bassett Law Firm
221 North College Avenue
Fayetteville, Arkansas 72701
(479) 521-9996
(479) 521-9600 Fax
jgraves@bassettlawfirm.com

Messrs. Marc R. Stanley and Martin Woodward
Stanley Law Group
6116 North Central Expressway, Suite 1500
Dallas, Texas 75206
(214) 443-4300
(214) 443-0358 Fax
marcstanley@mac.com
mwoodward@stanleylawgroup.com

FOR THE DEFENDANTS:

Mr. Steven T. Shults
Mr. John T. Adams (via telephone)
Shults & Adams, LLP
200 West Capitol Avenue, Suite 1600
Little Rock, Arkansas 72201-3637
(501) 375-2301
(501) 375-6861 Fax
sshults@shultslaw.com
jadams@shultslaw.com

Messrs. Robert Thompson Mowrey and Paul F. Schuster
Ms. Harriet Ellan Miers and Mr. Matt Davis
Locke Lord LLP
2200 Ross Avenue, Suite 2800
Dallas, Texas 75230
(214) 740-8450
(214) 756-8450 Fax
hmiers@lockelord.com
rmowrey@lockelord.com
pschuster@lockelord.com
mdavis@lockelord.com

1 THE COURT: The next matter before the Court
2 today is the case of Garland D. Murphy, III, and Phyllis
3 Murphy, plaintiffs, versus Gospel For Asia,
4 K. P. Yohannan, Gisela Punnose -- and I apologize if I'm
01:39PM 5 not getting that correct -- Daniel Punnose, David
6 Carroll, and Pat Emerick. Our case number is
7 5:17-CV-5035.

8 The matter comes before the Court today for
9 purposes of a hearing on a pending discovery dispute
01:39PM 10 that has been fully briefed and is ripe for a decision.
11 In setting this matter for a hearing today, the Court
12 required at least one lead counsel for each party to
13 appear, and it also required each of the named parties
14 to appear, both plaintiffs and defendants; and I see a
01:40PM 15 courtroom full of people, so it looks like that part of
16 my order's been complied with, but let me see if we
17 can't introduce everyone.

18 Appearing today -- well, let me introduce the
19 plaintiffs first. I see that we have Mr. and
01:40PM 20 Mrs. Murphy seated back there. Good afternoon.

21 MR. MURPHY: Good afternoon, Judge.

22 THE COURT: Then on the other side of the
23 aisle -- well, in representing Murphys, we have here
24 today Mr. Marc Stanley. I see Mr. Stanley; we have
01:40PM 25 James Graves and Martin Woodward. Good afternoon to you

1 as well.

2 MR. WOODWARD: Good afternoon.

3 THE COURT: And do we have a corporate
4 represent here today for Gospel For Asia?

01:41PM

5 MR. MOWREY: That would be Dr. Yohannan.

6 THE COURT: Dr. Yohannan?

7 MR. MOWREY: Yes, sir.

8 THE COURT: Okay. And then Dr. Yohannan, raise
9 your hand. I think I -- thank you, sir.

01:41PM

10 And then Gisela?

11 MR. MOWREY: Gisela. It's Gisela, your Honor.

12 THE COURT: Gisela, pronounce your last name
13 for me.

14 MS. PUNNOSE: Punnose.

01:41PM

15 THE COURT: Thank you, ma'am. And Daniel
16 Punnose is here, David Carroll is present, and Patrick
17 Emerick is present.

18 Well, let me say to our parties thank you very
19 much for coming. I know that the Murphys didn't have
20 very far to travel, and I know that many of the
21 defendants had to travel great distances to be here
22 today, so I very much appreciate that.

01:41PM

23 Representing the --

24 MR. MOWREY: Your Honor, if I may. David

01:42PM

25 Carroll is also here today -- I'm sorry. Steve Coke,

1 who is the acting -- he's outside counsel, but he acts
2 as general counsel for GFA, and I wanted to introduce
3 him as well.

4 THE COURT: All right. And how do we spell
01:42PM 5 Coke?

6 MR. COKE: C-o-k-e.

7 THE COURT: Just like the cola.

8 MR. COKE: Just like it.

9 THE COURT: All right. Thank you very much for
01:42PM 10 being here as well, Mr. Coke.

11 MR. COKE: Yes.

12 THE COURT: Representing the defendants, we
13 have Robert Mowrey, and we have Matt Davis, and we have
14 Harriet Miers, and we have Paul Schuster, and then I
01:42PM 15 know we have Mr. Shults here, and I understand that we
16 have John Adams, who is listening from his office back
17 in, I'm assuming Little Rock.

18 MR. ADAMS: Yes, your Honor.

19 THE COURT: So, again, thank all the parties
01:43PM 20 for being here I wanted all of the parties to be here so
21 that they could hear, unfiltered, the Court's
22 perspective of where we are on this discovery dispute
23 because for reasons which will become evident throughout
24 this hearing, I want everyone to leave here today being
01:43PM 25 crystal-clear about this Court's views of the discovery

1 dispute and what its rulings are. I don't want anything
2 left to be misunderstood; and if at the end of the
3 hearing you aren't crystal-clear about what this Court's
4 directives are, then you need to raise your hand because
01:44PM 5 I don't want to have to take up this matter again.

6 So let me tee this up generally in terms of the
7 procedural history that brings us here today; and then
8 after I have established a general timeline, I'm going
9 to go back and spend a little bit more time at what I
01:44PM 10 think are some significant and specific points on the
11 timeline that inform part of the Court's views as to why
12 we're here today.

13 So the Court's understanding is that all of
14 this discovery dispute started back on or around August
01:44PM 15 15th of 2017. That is when the plaintiffs served their
16 requests for admissions and production. In total that
17 was about 1,072 separate requests for admissions and 178
18 line item requests for production.

19 The defendants, upon receiving that, asked
01:45PM 20 plaintiffs' counsel to withdraw the discovery because it
21 was in violation of the Court's local rules and was in
22 violation of the Court's instructions at the case
23 management hearing. On Saturday, September 9th of 2017,
24 counsel for both sides conferred but were unable to
01:45PM 25 reach an agreement.

1 Later that same day, September 9th, Mr. Mowrey
2 e-mailed the Court describing these events and
3 requesting, pursuant to the Court's case management
4 order, requested that the Court schedule a telephone
5 conference.

01:45PM

6 Then on September 12th of 2017, Mr. Stanley
7 sent an e-mail to the Court saying that plaintiffs were
8 going to be withdrawing their discovery request because
9 they had gone back and re-reviewed the Court's
10 instructions and determined that Mr. Mowrey's point was
11 well taken, but he also informed the Court that they
12 would be moving for leave to file more than 25 requests
13 for admissions.

01:46PM

14 So that's what happened. On September 18th,
15 the plaintiffs filed a motion for leave to serve
16 discovery. Within a few hours after that motion had
17 been filed, the Court responded and indicated that it
18 would like to set up a telephone conference. It could
19 sense that it needed to get involved fairly quickly
20 because it understood what the defendants' response was
21 going to be.

01:46PM

01:46PM

22 So both parties were asked to prepare a joint
23 letter to the Court to explain their positions with
24 regard to the dispute about these thousand-plus requests
25 for admissions and other discovery items, and the

01:47PM

1 parties complied with that request.

2 And on September 22nd of 2017, which I think is
3 one of the specific dates that I'll be drilling down on
4 more specifically in a moment, that's the date that the
01:47PM 5 Court held a telephone conference to discuss this
6 dispute about the appropriateness of all of these
7 requests for admissions that the plaintiffs had filed.

8 At the time of the Court's telephone
9 conference, the defendants had not had time to file a
01:48PM 10 formal response; and that's not counsel's fault. It's
11 just that literally the amount of time that the rules
12 allow them had not yet expired, and the motion was not
13 fully ripe; but nevertheless, the parties had had an
14 opportunity to state their positions in a letter, and
01:48PM 15 the Court was able to hear from them during its
16 telephone conference.

17 A little bit later, the defendants did, in
18 fact, file their response to the plaintiff's motion for
19 leave; and on November 21st, the Court entered its
01:48PM 20 ruling on the motion after it had been fully briefed,
21 and it granted plaintiff's motion for leave to serve all
22 of these requests for admissions and requests for
23 documents.

24 The Court found that the large number of
01:49PM 25 requests for admissions were proper. They were largely

1 very repetitive questions, about a half-dozen requests
2 for admissions, but they were geared toward each line
3 item contribution designations.

4 So in any event, as explained in the Court's
01:49PM 5 order, that's another item that I want to drill down on
6 more deeply here in just a moment. The Court ruled that
7 the plaintiffs could serve that discovery. So I believe
8 the very same day, the plaintiffs did formally serve
9 that discovery on defendants.

01:49PM 10 So the defendants have been aware of this, the
11 nature of this discovery, since August 15th of last
12 year, and it has specifically been ordered that the
13 discovery could be served on November 21st of last year
14 and, in fact, it was served on November 21st last year.

01:50PM 15 We have 30 days to respond to requests for
16 admissions and so on December 21st of last year, the
17 defendants did serve their responses on the plaintiffs.

18 The plaintiffs felt like some of those
19 responses were insufficient, so they subsequently asked
01:50PM 20 defendants to revise their responses; and after multiple
21 e-mail exchanges, the defendants refused to compromise
22 much.

23 On January 8th of 2018, Mr. Stanley contacted
24 the Court to request a phone conference, and that same
01:51PM 25 day the Court inquired as to whether the parties had

1 actually spoken on the phone about this or gotten
2 together in person to review this. The Court learned
3 that their communications about this dispute had just
4 been through back-and-forth e-mails and so the Court
01:51PM 5 ordered Mr. Mowrey and Mr. Stanley to personally visit,
6 and they did.

7 The Court had instructed that if Mr. Stanley
8 and Mr. Mowrey could not resolve these differences, then
9 the plaintiff should file an appropriate response.

01:51PM 10 My understanding is that Mr. Mowrey and the
11 defendants did revise and make some compromises on how
12 they were wording or the responses they were providing,
13 but as it turns out, the plaintiffs still believed that
14 the responses were insufficient.

01:52PM 15 So the plaintiffs, on January 26th, filed
16 motion for sanctions. That is the motion that is before
17 the Court today -- that's at Document 55 of the court
18 record -- and the defendants filed their response on
19 February 2nd -- that's found at Document 61 of the Court
01:52PM 20 record -- and the matter was set for a hearing today.
21 So that is the big picture and the procedural history
22 that brings us all here today.

23 I've next got a question for everyone. Will
24 you please raise your hand if you've ever seen the movie
01:53PM 25 "Groundhog Day." I feel like I am Phil Connors who was

1 portrayed by Bill Murray in the movie "Groundhog Day" in
2 dealing with this discovery dispute; and I am of the
3 view, having read the motion and the response, that the
4 defendants, at least in their answers -- their answer to
5 these requests for admissions, and in their response to
6 the motion for sanctions, are like all of the people
7 that Phil Connors was dealing with in the movie
8 "Groundhog Day."

9 He woke up every day repeating February 2nd,
10 over and over again, but the people that he was
11 interacting with in the plot of this movie didn't
12 realize that; and I feel like when I read the
13 defendants' answers and when I read their response that
14 it is as if this Court had not already addressed and
15 ruled on some of these same issues at least twice, if
16 not more and, yet, here we are again.

17 So because I believe that it is very important
18 to understand that the Court is not looking at this
19 motion for sanctions and response in a vacuum but that
20 it is looking at it in the context of what the Court has
21 previously heard from the parties, discussed with the
22 parties, and given guidance to the parties and ruled on,
23 I'm going to spend some time, before we get to this
24 motion, to drill down a little bit deeper on what has
25 transpired before because I don't want to rule in a

1 vacuum like I feel like I'm being asked to.

2 I have a transcript from the September 22nd
3 hearing, and I'm going to be reading excerpts from this
4 transcript. And the excerpts that I will be reading
01:56PM 5 skip around a lot. What I have tried to do is just
6 select passages that give the context that I'm wanting
7 to provide. So please don't think that everything that
8 I'm about to read was said consecutively. It's not. It
9 jumps around a little bit.

01:56PM 10 But in any event, the Court, in setting up the
11 purpose of the telephone conference, explained as
12 follows: "The plaintiff's lawsuit sets forth causes of
13 action sounding in RICO violations, common law fraud,
14 statutory fraud pursuant to the Arkansas Deceptive Trade
10:39AM 15 Practices Act, and a common law claim for unjust
16 enrichment.

17 "The defendants deny that they have
18 fraudulently induced anything and explain that there are
19 completely innocuous explanations to address any and all
10:39AM 20 concerns about the disposition of any donations that it
21 has received."

22 The Court then went on to explain: "The Court
23 understands that the central, or core, fact issues for
24 the case or for trial is going to be whether the
10:44AM 25 defendants spent the financial and charitable donations

1 that it had received for the purposes that had been
2 expressly designated by the defendants' donors; and
3 through the course of discovery to date, as I understand
4 it, the defendants have informed the plaintiffs and have
10:44AM 5 provided a certain amount of information and documents
6 that establish 179 different donation codes that
7 categorize various purposes of donations. And the
8 plaintiffs report that the defendants have objected to
9 certain other disclosures on various grounds, including
10:45AM 10 overbreadth and international law concerns and various
11 purposes.

12 "So as I understand it, the plaintiffs are
13 seeking, in this third set of discovery, that they would
14 like to propose requests for admissions. It is the same
10:45AM 15 five- or six-part request for admission and document
16 production that corresponds to each of the 179 different
17 donation purpose codes that have been -- that they have
18 been provided a certain amount of information about from
19 the defendants.

10:45AM 20 "The defendants object saying that the sheer
21 volume of what's being requested is not appropriate.
22 They also object inasmuch as they contend -- and they
23 cite a fair amount of authority -- that what the
24 plaintiffs are seeking to do with these requests for
10:46AM 25 admissions really goes against the purpose and intent of

1 the types of discovery to be sought and achieved through
2 Rule 36 discovery."

3 Mr. Stanley was later asked to state his
4 position, and here is an excerpt where he is quoting
01:59PM 5 from Mr. Mowrey. Mr. Stanley says, "On Page 34,
6 Mr. Mowrey actually agreed with the Court, and what he
7 said was" -- and he's talking about our initial case
8 management hearing that had occurred earlier in the
9 year, and he's quoting Mr. Mowrey as saying this: "Going
10 to the heart of the allegation, we believe we will be
11 able to show that the monies that were designated went
12 to the particular items that were specified."

13 And Mr. Mowrey said at that time that they are
14 going to be able to show that at trial.

02:00PM 15 Mr. Stanley goes on to say: "So the requests
16 for admissions were simply intended to say, 'Admit that
17 this was the total amount, admit that you sent it
18 somewhere, admit you have no evidence as to how it was
19 spent. If you do have the evidence, give it to us."
10:49AM 20 It's very simple, and that's all we want."

21 Again Mr. Stanley says, referring to
22 Mr. Mowrey: "Mr. Mowrey tells me in phone calls that
23 they are assembling this information, that they are
24 working on some report that they might show this -- or
02:01PM 25 that might show this. Well, either they have the

1 evidence that they can work on it or they don't, and
2 that's what we want."

3 So then it was Mr. Mowrey's turn to respond.
4 Mr. Mowrey says, "Yes, your Honor. The point here is
10:50AM 5 that the very issue that Mr. Stanley is getting at is
6 basically to prove his case or to disprove our case
7 through these requests for admissions, and that is just
8 a totally inappropriate use of requests for admissions."

9 Later on in the hearing the Court made this
02:02PM 10 statement: "Now back to you, Mr. Stanley. They, being
11 the defendants, have apparently provided information
12 about the amounts of donations that were received and
13 broken that out by codes. How would you describe or
14 characterize what sort of information has been provided
02:02PM 15 that would go to the issue of matching up expenditures
16 with the designations made by the donors?"

17 Mr. Stanley's response was, "That's exactly my
18 point. There's zero documents and zero information. We
19 tried to get this first in our first set of discovery
02:03PM 20 requests, and we got objections saying that requires a
21 forensic accounting and it's beyond what the Murphys
22 spent their money on. And so we said" -- the plaintiffs
23 -- "rather than bother the Court, they gave us this
24 other document; we'll just break it up ourselves and
02:03PM 25 say, 'Show us how you've spent this money,' and they've

1 given us zero documents so far and zero information on
2 it."

3 The Court then said, "All right, Mr. Mowrey.
4 You apparently -- your clients apparently track
02:03PM 5 donations received by these categories. Help me
6 understand the methods that they" -- the defendants --
7 "use to track their disbursements or their expenditures
8 by purpose."

9 And Mr. Mowrey gave a very lengthy explanation,
02:04PM 10 or response anyway; and to kind of get to the point, he
11 says: "Now, I have made it clear to Mr. Stanley, and
12 I'll state to the Court: We have withheld -- and by
13 'we,' I'm talking about the defendants in this case --
14 have withheld no documents based on our objections.

11:04AM 15 "Yes, we have -- we have provided objections to
16 his requests, but we have withheld no documents based on
17 objections. We have given him the entire general ledger
18 of our client. We have produced approximately 50,000
19 documents. We have produced documents that we have in
11:05AM 20 our possession showing where these monies were spent."

21 Mr. Mowrey continues: "GFA does not spend the
22 money. The money is spent by the foreign entities, and
23 Mr. Stanley has chosen not to sue the foreign entities.
24 He has made no attempts to get any information from
02:05PM 25 these foreign entities. So we have provided documents.

1 There are still documents we have. We continue to find
2 documents and, frankly, the documents that we're finding
3 now are not what Mr. Stanley has specifically requested;
4 but to the extent we have any documents that bear on any
02:06PM 5 of these issues, we intend to produce them from these
6 defendants."

7 And then the Court observed: "Well, you
8 receive millions upon millions of dollars in donations.
9 Your donors, your solicitation allows them to designate
02:06PM 10 it for specific purposes. You're describing for me
11 somewhat of a shell game inasmuch as if a donor were
12 ever to say, 'How can I know that the money that I
13 designated for ministry tools actually went to ministry
14 tools,' and you're, in effect, saying, 'Well, we can't
02:06PM 15 prove that. You'd have to ask the people that we gave
16 it to,' who, by the way, are foreign companies or
17 foreign entities or foreign individuals.

18 "So, if that's what the response is, then you
19 are telling me that there is no accounting or no
02:07PM 20 accountability mechanism from the people that you
21 forward money to in Asia to corroborate or verify that
22 they are spending the money in accordance with your
23 donors' intentions?"

24 And that was a question to Mr. Mowrey, and he
02:07PM 25 responded: "No, I'm not saying that. This is not a

1 shell game. One of the previous issues were these GAAP
2 audits, and we have now produced those. I want to tell
3 the Court and the plaintiffs' counsel where we are on
4 this. GFA-USA has retained one of the big four
02:07PM 5 accounting firms. That firm has been working with their
6 Indian counterpart to obtain documents in India. The
7 accounting firm has not yet had access to those
8 documents. Only recently have the Indian counterpart
9 been given access to the documents."

02:08PM 10 A little bit later, in continuing his answer,
11 Mr. Mowrey says: "But at this point we do not have
12 possession of those, of those documents, and neither
13 does the U.S. arm of the entity that we have retained --
14 that we have retained, do they have access to them.

02:08PM 15 "So, your Honor, I will also say that one of
16 the categories of documents I don't think that has
17 specifically been requested, but we recently found out
18 about that we will be producing to the plaintiffs, these
19 are not accounting documents but our client has
02:08PM 20 regularly received information from India regarding the
21 work that is being done in India, and this is extensive.
22 And it's done, I think, on a monthly or quarterly, a
23 quarterly basis, so I don't want the Court to get the
24 impression that this is some person out there that is
02:09PM 25 just raising money."

1 Still continuing his response, a little bit
2 later Mr. Mowrey says: "The work that is being done by
3 GFA-USA and by their Indian counterparts is not a sham.
4 This is real work that people's lives are dependent
02:09PM 5 upon, and it's difficult to prove from an accounting
6 standpoint because of the access, but we intend to do
7 it."

8 A little bit later, the Court observes, or asks
9 Mr. Mowrey: "Are there any charitable organizations
02:09PM 10 that have no ties whatsoever to Gospel For Asia or any
11 entities that are tied to Mr. Yohannan that is funding
12 the field partners, or do all of their money come from
13 someone that has some connection to Gospel For Asia?"

14 Mr. Mowrey says: "I don't know the answer to
02:10PM 15 that question."

16 The Court then goes on: "Where I'm going with
17 this, Mr. Mowrey, is control; and it would seem that if
18 these field partners are dependent upon either the
19 defendants in this case or the principals of the
02:10PM 20 defendants in this case that have been sued directly or
21 indirectly for their financial backing that the power of
22 the pursestrings brings with it some amount of control
23 over the production of documents that would establish
24 how the money is spent. The allegation here is that a
02:11PM 25 representation is made to your donors that their money

1 will be spent in the field for a specific purpose.

2 "So, given the power of the pursestrings, one
3 would think that there would be some sort of paper trail
4 to establish how the money was actually expended and
02:11PM 5 that that paper trail wouldn't be a document that's kept
6 in a vault by the field partner, but one would think
7 that the field partner would be at all times ready,
8 willing, and able to share that with the source of their
9 funding."

02:11PM 10 The Court went on to say: "I am very
11 appreciative of what you are saying, that the defendants
12 have engaged a top four international accounting firm to
13 conduct a forensic audit. I think that that is an
14 incredibly good action for your organization to take;
02:12PM 15 but what you're basically saying is outside of this
16 litigation context, 'We're sincerely and genuinely
17 looking into all of this. We've hired really, really
18 smart people to genuinely and sincerely look into this,
19 and as soon as we have more information, we're going to
02:12PM 20 let you know; stay tuned.'"

21 The Court explained: "But that's not how
22 litigation works. The plaintiffs have sued these
23 defendants for fraud. They have a right to acquire the
24 paper trail documents independently of the accountants
02:13PM 25 that have been engaged by the defendants; and to the

1 extent that you don't have the documentation and/or you
2 do not have a right or ability to control the production
3 of the documents that have been requested, then I get
4 it; but if that's the case, then that must be your
5 response.

02:13PM

6 "Here's what I'm going to do. I think that a
7 formal ruling by the Court is premature. There is a
8 pending motion on the table. I think that the defendant
9 should have the right to file a fulsome response. I
10 would ask, when you file a response, that you either do
11 so in a manner or include alternative language to seek a
12 protective order over any documents that you believe
13 there is a legal basis for nondisclosure or privilege or
14 whatever the case may be so that we can take up that
15 issue on the front end as well; and once you have filed
16 your response, the Court will take a deeper dive into
17 the issue and examine the documents more thoroughly and
18 will issue an opinion.

02:13PM

02:14PM

19 "But having said that, let me tell you where
20 the Court's -- what the Court's current thoughts are.
21 First of all, the issue in this case is whether the
22 proceeds of these donations have been spent as
23 designated by the donors or not; and it occurs to me
24 that discovery aimed at the amounts of donations
25 received, broken down by those designated purposes, is

02:14PM

02:15PM

1 wholly appropriate discovery; and the other side of the
2 equation being how donations received were spent is a
3 wholly appropriate area for discovery too.

4 "I don't think that the rules of federal
02:15PM 5 procedure contemplate your ability to say, 'We object
6 based on this, we object based on that, we object based
7 on this; but subject to those objections, we're going to
8 do our best to look for and give you something.' You
9 either have an objection or you don't, and the rules
02:15PM 10 require that, to the extent that you have documents
11 outside the objection, you have to produce them; and to
12 the extent you want to object, you need to file a motion
13 for a protective order.

14 "It just seems to the Court that you're
02:16PM 15 objecting to the format of requests for admissions when
16 you have raised all of these objections to providing
17 information when they were previously propounded as
18 interrogatories and requests for documents, and you've
19 done so in such a manner of, 'well, we object, but we're
02:16PM 20 going to do so, stay tuned, 'and I just don't think that
21 that is an appropriate objection.

22 "So, as the defendants contemplate their
23 response to the defendant's motion, I would ask that you
24 keep in the back of your mind that the Court is very
02:17PM 25 likely to allow some form or fashion of discovery as the

1 plaintiffs currently seek; and if the Court, in your
2 response, believes that you are putting up illegitimate
3 barriers to that discovery or providing evasive answers,
4 then you might potentially be looking at the Court
02:17PM 5 appointing a special master to get to the bottom of
6 this.

7 "And, again, if your point is you don't have
8 documents and you can't provide something that you don't
9 have, then that is your response; but if you have
02:17PM 10 documents or, because you control the pursestrings, you
11 are in a position of control over the documents, I would
12 suggest that you try a little bit harder."

13 So that's how we left things. And I'm sorry to
14 take up so much of everyone's time, but there was a lot
02:18PM 15 of context. There was a lot of explanation. There was
16 a lot of discussion about what the Court viewed as being
17 appropriate, and it's kind of a black-or-white
18 situation: Either you have it, and if you have it,
19 produce it; if you don't, just say you don't have it,
02:18PM 20 and that's fine too.

21 So the defendants did not have, at that time of
22 that telephone conference, an opportunity to fully
23 respond, and the Court gave them that opportunity. And
24 Mr. Mowrey filed an excellent response, the Court
02:18PM 25 considered that response, and it issued a written

1 opinion and order. And that was filed on November 21st;
2 that can be found at Document 44 of the case file.

3 And again, so that you understand the context
4 of today's hearing, I want to read part of the Court's
02:19PM 5 order from November 21st: "The matter currently before
6 the Court concerns a discovery dispute that has arisen
7 between the parties regarding information central to
8 this case; namely, information regarding where donated
9 monies were sent and for what purposes they were used.

02:19PM 10 "As is obvious, given the nature of this case,
11 plaintiffs' theory of fraud is premised on demonstrating
12 that defendants and their international partners did not
13 spend the donated money in accordance with their donors'
14 wishes and, in doing so, violated promises allegedly
02:19PM 15 made to these donors doing -- to do exactly that.

16 "In order to demonstrate that these donations
17 were not spent in conformity with these alleged
18 promises, plaintiffs served two prior sets of discovery
19 on defendants. Both of these sets, which included
02:20PM 20 interrogatories and, by the Court's count, at least 75
21 requests for production, sought to obtain information
22 and documents that would either establish or refute
23 plaintiffs' theory about where the donated money went.

24 "It is clear that plaintiffs' prior attempts to
02:20PM 25 discover this crucial information were only partially

1 successful. In short, these interrogatories and
2 requests for production provided a wealth of information
3 that illustrate how much money was collected by the
4 defendants, but this discovery information did nothing
5 to clear up the confusion as to how this accumulated
6 money was subsequently spent.

02:20PM
7 "Plaintiffs now once again seek answers to the
8 same questions that they've been asking for months: Was
9 donated money diverted to other causes and do defendants
10 have information or documents that would prove how the
11 money was spent.

02:21PM
12 "In an effort to come at this problem from a
13 different angle, plaintiffs now seek to serve on the
14 defendant what amounts to over 1,000 requests for
15 admissions. While startling upon first read, the
16 sizable number of requests for admissions consists
17 entirely of the same six requests for admissions
18 repeated for each of 179 different codes, representing
19 different categories of donations; for example, a code
20 for pigs and a separate code for bicycles:

02:21PM
21 "Each of these sets of requests for
22 admissions is accompanied by a request for production
23 asking for any documents in the defendants' possession
24 that would reflect how this earmarked money was spent.

02:22PM
25 "In their response in opposition, defendants

1 object to this proposed discovery on several grounds,
2 including the sheer number of requests, the improper
3 nature of these requests, given the purposes of Rule 36,
4 and the lack of need for these requests now that
02:22PM 5 defendants' field partners have recently committed to
6 providing information relevant to plaintiffs' inquiries.
7 The Court finds these reasons unpersuasive."

8 The Court ruled, "There is nothing per se
9 improper about these requests for admissions. The Court
02:22PM 10 will not deny these requests solely because they concern
11 facts which may be matters for trial. If defendants
12 deny the facts that they are asked to admit or, after
13 reasonable inquiry, if they do not have information by
14 which to either admit or deny these facts, then that is
02:23PM 15 the answer that should be provided."

16 The Court noted that "Defendants object to
17 these requests for admissions because they argue they
18 have been rendered unnecessary by recent commitments by
19 some of the defendants' international field partners to
02:23PM 20 provide information related to plaintiffs' questions and
21 because they personally do not have control over what
22 their international field partners do. These objections
23 are also unpersuasive to the Court.

24 "The fact that defendants might now have the
02:24PM 25 ability to provide a supplemented answer to previously

1 served interrogatories does not alter the Court's view
2 that these requests for admissions are proper, given the
3 information that has been submitted to it by the
4 parties. Moreover, defendants contend that the
5 requested information is largely in the hands of third
6 parties over whom defendants exercise no control.

7 "As the Court advised during the telephone
8 conference, if, after reasonable inquiry, defendants do
9 not have within their possession information by which
10 they could honestly admit or deny these requests for
11 admissions, then that is the answer that should be
12 provided.

13 "If, in fact, it turns out that defendants are
14 correct that they do not have the means by which to
15 document how their international field partners spent
16 the money, then the replies to plaintiffs' requests for
17 admissions will be very similar and simple. It is,
18 therefore, ordered that the plaintiffs' motion for leave
19 to serve this discovery be granted."

20 And that was November 21st; the Court
21 understands that the discovery was served formally that
22 same day. The Court understands that the defendants
23 timely responded a month later. The Court understands,
24 as I explained earlier, that the plaintiffs took
25 exception with the sufficiency of the defendants

1 'answers, and that brings us to the instant motion for
2 sanctions and to the defendants' response.

3 What the plaintiffs are, as a matter of
4 predicate, asking the Court to find is that the
02:26PM 5 defendants' responses are insufficient, and I believe
6 that that is a predicate finding that the Court would
7 have to make before sanctions would be appropriate.

8 In response -- and I've read the entirety of
9 the response several times now and so please don't think
02:26PM 10 that my summary of the response is intended to ignore
11 multiple different reasons and explanations that are
12 advanced, but my overall takeaway is that the defendants
13 believe that they have responded to these requests for
14 admissions in a manner that is exactly proper and
02:27PM 15 exactly as the Court has previously directed.

16 And I will tell you this: The defense lawyers
17 in this case are extremely good and skillful lawyers,
18 and they write extremely well, and they have parsed
19 their responses to these requests for admissions
02:27PM 20 probably better than any other lawyer or law firm I know
21 of if you tried really, really hard, okay? They have
22 done a good job; but in the Court's view -- and I'm
23 going to hear from Mr. Mowrey in a moment -- we're still
24 back to the same things that we were talking about last
02:28PM 25 September.

1 The Court is being told that, "We've produced
2 lots and lots of documents," and when the plaintiffs ask
3 us whether we've produced everything we have, we explain
4 how we have produced all of these documents and then we
02:28PM 5 say, "And we're still looking. We're still gathering.
6 Stuff is still coming in. You don't understand. These
7 foreign partners are outside the United States, and it's
8 difficult."

9 It's the same thing this Court was being told
02:28PM 10 last September. The defendants' response says,
11 "Plaintiffs are making this way too complicated. It's
12 not that complicated." Well, in my view the defendants
13 are the ones that are making this way too complicated.

14 In response to these same five or six
02:29PM 15 questions -- and actually only three or four are in
16 dispute -- the sole focus is was the money spent as
17 designated. There's either "Yes, it was" or, "No, it
18 wasn't."

19 If the answer is, "Yes, it was," and that is,
02:30PM 20 in effect, the answer that has been given, then the
21 response to the remaining questions can only fall into
22 about one of four groups.

23 One would be something to the effect of, "We
24 only have documents that show expenditures in the field
02:30PM 25 generally, and we do not have any documents that show

1 how any specific line items such as bicycles or water
2 buffaloes were procured or paid for."

3 Another possibility would be, on the complete
4 opposite end of the spectrum, "We have specific
02:30PM 5 documentation for each of the 179 different designated
6 items, including bicycles and water buffaloes, and here
7 are the Bates-numbered pages for the receipts or
8 checks," or whatever it is that specifically documents
9 it.

02:31PM 10 Then there are a couple of areas or responses
11 or possibilities that are in between those two extremes.
12 One would be, "We have specific documents that partially
13 establish the total dollar amount that was designated
14 for a given category -- for example, \$100,000 that might
02:31PM 15 have been designated by donors for water buffaloes --
16 but we only have receipts totaling \$50,000, and we're
17 going to have to rely on witness testimony or something
18 else to explain the difference." That would be one
19 possibility.

02:32PM 20 A fourth possibility is, "We don't have any
21 documents to specifically establish that any particular
22 donation was funded in the field as designated, but we
23 can rely on other things such as witness testimony or
24 the fact that we can prove that money was actually spent
02:32PM 25 in the field, and we can prove that at trial."

1 That's about as complex as this case is, and
2 the defense is "This money was spent as designated." If
3 you only have general proof of that, then just own up to
4 that and say, "We only have general proof. We don't
02:33PM 5 have anything -- we don't have receipts, we don't have
6 checks, we don't have bills of sale. We don't have
7 anything specific." That's fine, but if that's what
8 your defense is going to be at trial, the plaintiffs are
9 entitled to know that.

02:33PM 10 Knowing what you don't have is sometimes as
11 important as knowing what you do have and what they have
12 been, in effect, asking. As defined through this entire
13 history that I have reviewed ad nauseam with you today,
14 that is the point that we have been getting at.

02:34PM 15 Your answers and your response in the briefing
16 numerous times, numerous times I think in some shape,
17 form, or fashion, it's in every one of the responses,
18 and it's repeated no less than a half-dozen times in
19 your response brief: "We know this information is out
02:34PM 20 there, and they have agreed to provide it to us, and
21 we're going to go -- we're going to go collect that and
22 we're going to give it to you."

23 Well, when? And the rules require, with
24 respect to requests for production, that the documents
02:35PM 25 be produced within 30 days. This discovery was

1 propounded last summer on some of these items. The
2 specific requests that were accompanied with these
3 requests for admissions were first given to you back in
4 August, they were formally served on November 21st, and
02:35PM 5 we're now two and a half months down the road from then.

6 In September the Court was told not to fear,
7 "We're working on this. We've hired some really, really
8 smart accountants with a really, really big
9 international accounting firm to help us. Not to fear;
02:36PM 10 we're going to provide it." And, yet, in your response
11 brief you say, "We're still collecting that stuff.
12 We've given lots of it to them, and we're going to give
13 them more as soon as we give it -- as soon as we get
14 it."

02:36PM 15 As I said back in September, that is not the
16 Court's view of how discovery works under the federal
17 rules. Your response is akin to attempting to nail
18 Jell-O to the wall. Until they get these documents,
19 they are not going to be able to take a very
02:36PM 20 well-informed deposition of the defendants or the
21 representatives of the defendant entity.

22 If the deal is you only have general records of
23 expenditures in the whole and not records of specific
24 line item expenditures, they have the right to know that
02:37PM 25 going into the deposition process. If you need more

1 time to gather documents, more than the 30 days allowed
2 under the rules, there's a mechanism for getting more
3 time. You file a motion with the Court.

4 Back in September, the Court discussed, "If you
02:37PM 5 need a protective order, come see the Court on the front
6 end." And so to the extent that this is about a
7 complicated process and a need for more time to visit
8 with these field partners, then ask the Court for more
9 time; but in the Court's view, it is simply

02:38PM 10 inappropriate to, in effect and substance, tell the
11 plaintiffs, "We're working on it; we'll get back to
12 you."

13 I have -- of the attachments that have been
14 provided to the motion and response, there are examples
02:39PM 15 and admittedly not everything, not nearly everything
16 that the defendants have provided to plaintiffs, but
17 they have attached examples of the types of information
18 that they have provided to the plaintiffs. And I want
19 to say to the individual defendants that are here, I
02:39PM 20 know that a lot of work has been put into this, and I
21 don't think you to think for a minute that your lawyers
22 haven't been working very, very hard.

23 Lots of information has been gathered. Lots of
24 information has been provided to the plaintiffs, but
02:39PM 25 litigation should not be like a hog searching in the

1 woods for truffles, and that is, in effect, what your
2 responses are.

3 To the parties that are here today, I want to
4 read to you one of the rules of procedure that govern a
02:40PM 5 civil case. All the lawyers here can quote this rule,
6 but maybe you're unaware of it. It's an often
7 overlooked rule, but it's a very important rule. It
8 says, "These rules," referring to the Rules of Civil
9 Procedure, "govern civil actions. They should be
02:41PM 10 construed, administered, and employed by the Court and
11 the parties to secure the just, speedy, and inexpensive
12 determination of every action and proceeding."

13 Litigation is not a game. Litigation should
14 not be viewed as something that we're going to run up
02:41PM 15 the costs on the other side, which sometimes plaintiffs'
16 lawyers in class action cases are prone to do, but nor
17 should it be throwing a haystack full of paper and
18 parsing your answers to somehow give the illusion that
19 there's been technical compliance with the rules when,
02:42PM 20 in substance, you're not saying anything.

21 And I think that, at bottom, the requests that
22 have been made are very simple and that the responses
23 have been extremely well crafted by very skillful
24 lawyers, but they basically are evasive.

02:42PM 25 My takeaway, in trying to read through and

1 parse through everything, is that the defendants do not
2 presently have documentary proof to show how these 179
3 different designated contributions -- contribution
4 categories were spent. You don't have receipts, you
02:43PM 5 don't have bills of sale, et cetera, et cetera, et
6 cetera; and if that is your answer, then just say that.

7 What you have said is that you have lots of
8 documents and you have lots of proof and you have lots
9 of bank records that you've received from these foreign
02:44PM 10 partners to show that they were given money and that
11 they spent it in the field; and if you're going to use
12 the fact that money was sent and received and was
13 generally spent in the field, if that's the defense,
14 that's fine, but the plaintiffs have a right to know
02:44PM 15 that that's what your defense is; and where you have
16 specific evidence as to any given line item, they have a
17 right to know what that consists of.

18 Now, having said all of that, I have one
19 question for Mr. Mowrey, maybe two, and then I'm going
02:45PM 20 to hear whatever Mr. Mowrey would like to say in support
21 of the defendants' response. My question is I could not
22 tell whether, when sending money to the field partners,
23 whether there was any sort of transmittal correspondence
24 and, if so, whether that actually says, "Dear friends in
02:46PM 25 this part of India, enclosed please find \$50,000 which

1 has been donated for water buffaloes and must be spent
2 on water buffaloes," or whatever the transmittal letter
3 would say.

4 So I guess my question is, is there transmittal
02:46PM 5 correspondence; and, if so, is it specific to donor
6 designations; and, I guess thirdly, has any such
7 documentation, is that part of what has already been
8 provided to the plaintiffs?

9 Mr. Mowrey?

02:46PM 10 MR. MOWREY: Yes, your Honor. The designation
11 reports which were produced -- that was one of the first
12 things that had been produced -- those are sent to India
13 and those designation reports are Exhibit A, I think, to
14 our response, break down the monies within each of the
02:47PM 15 designated -- within each of the designated categories.

16 THE COURT: Well, so what you're saying is a
17 report that reflects total donations and how those were
18 designated, that's sent to the field partners?

19 MR. MOWREY: Yes, sir. Yes, sir.

02:47PM 20 THE COURT: There are dozens or hundreds of
21 field partners?

22 MR. MOWREY: Well, your Honor, the monies are
23 all sent to one location. There are separate Indian
24 trusts. There are a number of trusts, but essentially
02:47PM 25 those trusts are centered in Thiruvalla, at the main

1 headquarters at the synod and so all the monies are sent
2 to the trust which are maintained there at the
3 headquarters.

02:48PM 4 THE COURT: Well, how does Trust A know how
5 much Trust Z is going to spend on water buffaloes and
6 vice versa?

02:48PM 7 MR. MOWREY: The trusts, your Honor, is just a
8 mechanism to receive the money. Once the money is in
9 India, then they will then disburse money in a -- some
10 of it is sent directly, for example, to missionaries
11 that are paid directly by the synod; other monies are
12 disbursed to the numerous diocese; and then there's many
13 other monies that are purchased and given to the synod.
14 It's a very diverse way of disbursing the money once it
02:48PM 15 hits India.

02:49PM 16 THE COURT: Okay. Well, with that added
17 context, then I'm going to, I guess, to refine my
18 question is when the diocese sends out the money, is
19 there a transmittal letter or information that goes with
20 that that says, "This group, you must spend \$20,000 on
21 water buffaloes and this group over here, you must spend
22 \$25,000 on bicycles? Is there some attachment to the
23 money that says you must use it for this purpose?

02:49PM 24 MR. MOWREY: Your Honor, they have designation
25 codes, but the way that it works is more what I would

1 consider bottom up. In other words, the diocese make
2 requests. They say, "We need" -- which come from their
3 church. "We need so many dollars for water buffalo, we
4 need dollars for bicycles" or whatever, and the requests
5 are made.

02:49PM

6 The money then flows from Thiruvalla to the
7 diocese and then the records are disbursed from there.
8 Records are kept with respect to all of those monies,
9 both the disbursements, as well as the monies that are
10 spent.

02:50PM

11 THE COURT: I'm sorry. One more time.

12 MR. MOWREY: Okay.

13 THE COURT: You send out a request to raise
14 money for bicycles, for example. You get donations for
15 bicycles.

02:50PM

16 MR. MOWREY: Correct.

17 THE COURT: According to the plaintiffs'
18 allegations, these donors are promised that if they give
19 money for bicycles, they will be used to buy bicycles.

02:50PM

20 So my -- I guess my question is this: Does the
21 particular missionary, or whatever the proper term would
22 be, that receives money from the diocese in India, do
23 they know that they are supposed to spend this month's
24 check or money on bicycles and, if so, is that in a
25 letter, is it in an e-mail? How do they know it and

02:50PM

1 where is the record and has it been provided?

2 MR. MOWREY: Well, there's a lot of action on
3 the question. To get right to your -- to the bottom
4 line here, your Honor, is -- and there's many things
02:51PM 5 here to say, but we have said in our -- let me back up,
6 if I could.

7 I'll answer your question. There is not a
8 transmittal letter that I'm aware of that says, "We
9 raised \$100,000 for bicycles; here's the \$100,000. Go
02:51PM 10 buy the bicycles." There's nothing like that, okay? It
11 doesn't work that way.

12 The way it works is that these various diocese
13 say, "These are things that we need," and then they will
14 get monies, and they spend that money for those items.

02:51PM 15 And I need to correct one thing, your Honor.
16 The promise is not -- the promise that was made and the
17 promise that is primarily in the complaint was that all
18 this money would go to India. You make a donation; all
19 of your money goes to the field.

02:52PM 20 The promise is not that you give money for a
21 bicycle as a designated purpose and that all of your
22 money is going to go to that bicycle. That's not the
23 promise. There is a commitment, first of all -- I mean,
24 it can't be. It's not a designated -- it's not a
02:52PM 25 restricted designation.

1 THE COURT: Well, let me parse that a little
2 bit. I meant to say, if I didn't, the word "alleged" in
3 front of promise, the alleged promise is. I'm not
4 trying --

02:52PM

5 MR. MOWREY: I understand.

6 THE COURT: -- in any manner to assume that
7 that's what the promise was -- and Mr. Stanley will
8 correct me if I'm wrong in stating what the allegation
9 is -- but that, again, is beyond the point.

02:53PM

10 If that is your position, then why not just
11 say, "We don't have any receipts or bills of sale or
12 checks to give you because we only promised to use these
13 monies in the field, and we received \$3 million in this
14 month or this year, and here is proof that we sent it to
15 the field"; and if that's the defense, that's fine.

02:53PM

16 MR. MOWREY: Your Honor, there are receipts.
17 There are receipts. What we have given to the
18 plaintiffs this week -- and let me -- when the Court had
19 the hearing in September, we got a transcript, provided
20 it to our clients, sent it to India.

02:53PM

21 I've been to India twice and told them what we
22 need; and we, before this motion was filed, we had
23 gotten bank statements, of which there are numerous
24 because there's numerous bank statements over -- in
25 numerous accounts.

02:54PM

1 We have been working on, and this week they now
2 have the general ledgers for the trusts at the synod
3 level, which is the administrative level, as well as the
4 diocese level. Over 40 diocese, and each of these
02:54PM 5 diocese, they keep separate books and records. It
6 doesn't all go into the -- all up into administration.
7 You have to look at them all. And they now have what
8 are called cash books and bank books. The bank books
9 show the deposits in the cash books and they show the
02:54PM 10 receipts out.

11 It's a ledger, and unfortunately this
12 organization has used a software program that was never
13 meant for this kind of organization. It's an
14 off-the-shelf program that was used for, I think for
02:55PM 15 retail, and it is very rudimentary. They are in the
16 process of changing that now because it doesn't show the
17 sorts of -- it doesn't have the type of flexibility that
18 they should have in their software.

19 But this is the ledger that shows the
02:55PM 20 expenditures; and the fact of the matter is if you look
21 at the specific designations over the relevant time
22 period, it's about \$375 million. I mean, and I don't
23 think there will be any dispute about that. That's the
24 number, if you look at the designations that are in
02:55PM 25 dispute. It's about \$375 million over this time period.

1 Those expenditures, just the expenditures, show well in
2 excess of that amount, spent in the ministry.

3 Now, there are three levels. The first
4 level -- the way I look at this, your Honor, the first
02:56PM 5 level is did these folks send money over there and just
6 say it's sent over and just relied on it, okay?

7 They received reports -- they were produced in
8 the initial disclosure. They received reports from
9 India, from an India accountant that shows -- and it's
02:56PM 10 bucketed differently. It wasn't broken down into 179
11 buckets. It was broken down into about ten categories,
12 but essentially -- and so many of those categories would
13 be lumped together. But it shows that monies were spent
14 over there. They got that evidence.

02:56PM 15 They also got evidence, as we have produced to
16 the plaintiffs, of the work that was being done. I
17 mean, one of the -- for example, the one designation
18 that they used in their motion was water buffaloes
19 thinking that, well, surely you don't have any evidence
02:56PM 20 that money that was spent on water buffaloes. Well, in
21 fact, the document that we showed shows, yes, here's
22 some personal stories about what was spent on water
23 buffaloes.

24 So from the ministry standpoint, your Honor,
02:57PM 25 they are in daily contact with people over there. They

1 are getting stories sent. They are getting an annual --
2 they get these certifications from the India
3 accountants, and they are over there. They have got
4 people over there. They are actually, they see the
5 minutes or they see it happen.

02:57PM

6 Now the plaintiffs have filed a lawsuit. It's
7 like, well, okay, we've got a -- and we also received,
8 your Honor -- it's in these documents -- a sheaf of
9 documents from India where they went through each
10 designation and said, "These are the way the monies have
11 been spent." Does it have backup? No, it doesn't have
12 backup. It was a document they sent us, but it showed
13 the monies that have been spent.

02:57PM

14 Now we have a lawsuit. Are those documents
15 sufficient to show that the money was actually spent in
16 that way? No. They are just one piece of it. If you
17 were to call the YMCA and ask them, "Hey, I want to know
18 about the contribution I made, did it go to a certain
19 place, they may send me a report and say, how do I know
20 that it actually went there.

02:58PM

21 So my next point is now they have the ledgers.
22 Now they have the ledgers. And I realize they probably
23 haven't had time -- maybe they have had time to at least
24 to look at them a little bit. They just got it in the
25 last couple of days.

02:58PM

1 THE COURT: My understanding is that the
2 ledgers are going to have categories, but because they
3 don't refer to it the same way as the donations were
4 designated, there's not going to be a one-on-one
5 correlation; is that right?

02:58PM

6 MR. MOWREY: That is correct in many respects.
7 Now, for example, a missionary, a missionary's a
8 missionary, so that's an easy one. You can map those
9 directly. But, for example, your Honor, you give
10 \$100 -- let's say a million dollars is raised for
11 bicycles. So it's not like a million dollars goes to
12 India for bicycles. You wouldn't necessarily expect to
13 see a receipt for a million dollars for bicycles because
14 you've got distribution, you've got costs to purchase a
15 bicycle, to get it to where it needs. Those are costs
16 that are associated with -- it all goes to India, but
17 it's not like there's going to be \$100 to go to a
18 bicycle shop in India. It's got to be distributed. The
19 point is that the bank -- the ledgers that they have
20 now, the cash books and the bank books are going to show
21 that level of detail.

02:58PM

02:59PM

02:59PM

22 Now, the next step is they are going to look at
23 that and they are going to say, well, how do I know that
24 that money was actually spent? And, your Honor, that's
25 where India comes in.

02:59PM

1 THE COURT: That's where what?

2 MR. MOWREY: That's where India comes in.

3 These documents are in hardcopy. They are not
4 electronic. I've seen many of them. They are in these
02:59PM 5 notebooks, hundreds of them, hundreds of them, of
6 receipts, hardcopy receipts.

7 And so when they see -- when the plaintiffs
8 start looking at this information and they want proof of
9 where these monies, "Okay. I see it in your ledger;
03:00PM 10 show me how it was actually" -- those documents are in
11 India. And that's where our accountants have -- I mean,
12 it's not like these are documents we're keeping from
13 them, and they can come and look at them. We've offered
14 that.

03:00PM 15 So, your Honor, I want to say --

16 THE COURT: So you have or have not provided
17 these notebooks that have the actual receipts?

18 MR. MOWREY: Well, they're available. They're
19 in India but, I mean, we don't have them. I mean, they
03:00PM 20 are in -- the actual receipts. We have given them the
21 ledgers that show the expenditures, but no one can
22 possibly give them every -- I mean, you couldn't collect
23 on them. It would be -- it would be impossible to
24 collect all the documents, receipts for every
03:01PM 25 expenditure that was made when they are not in

1 electronic form, your Honor. They're hardcopies.

2 THE COURT: Well, I mean --

3 MR. MOWREY: We are not objecting --

4 THE COURT: You and I both have been practicing
03:01PM 5 long enough to know that there's a way to get pieces of
6 paper into evidence. They don't have to be in
7 electronic form.

8 MR. MOWREY: Yes, your Honor. My point here is
9 that we are not -- we are not objecting to making them
03:01PM 10 available. We will -- at this point I'm not sure what
11 else the plaintiffs -- as I understand the Court's
12 frustration, it's like, "Look, you say you don't have
13 control, you just sent the money over there, and now you
14 can't show me that it was actually spent."

03:01PM 15 And that's when I went to India, twice, and
16 said, "Look." And the folks over there, your Honor, you
17 can get on the Internet and see. I mean, these
18 organizations have been shut down, many of them, these
19 NGOs over there because if the India government believes
03:02PM 20 that there is control by an outside entity, and
21 particularly in the U.S., they close these places down.
22 So they're very protective over there.

23 But I said, "Look, it's this way. You can read
24 this transcript. You either get these documents to show
03:02PM 25 how this money was spent or that's going to be the end

1 of the case." And so they understood, okay, this is
2 what we have to do and so that's what they have been
3 doing and we have now given them these ledgers for each
4 of these trusts over this period of time.

03:02PM

5 THE COURT: So I'm not sure that I understand
6 the answer to my -- or to my earlier question. Have the
7 notebooks with the receipts been provided to the
8 plaintiffs?

03:02PM

9 MR. MOWREY: They are available, your Honor.
10 They are available in India. They are welcome to come
11 and look at -- once they identify transactions that they
12 want to test, they are welcome to come and look at those
13 transactions just like our accountants are looking at
14 these transactions.

03:03PM

15 THE COURT: So have you told the plaintiffs
16 that if they want actual receipts, they are going to
17 have to go to India? Because what I've seen is you've
18 got requests out there and you're working on it, and
19 when it comes in, you're going to provide it, and I
20 don't know how Mr. Stanley would know what is in the
21 works, when it's going to come and whether that will be
22 receipts or not.

03:03PM

23 MR. MOWREY: Receipts, no, your Honor, because
24 these receipts are not in electronic form. What is --

03:03PM

25 THE COURT: What difference does that make? I

1 don't understand the significance of the fact they're
2 hardcopy.

3 MR. MOWREY: Because there are millions and
4 millions of transactions, and how would you -- how do
03:03PM 5 you trust a transaction without getting every -- I mean,
6 I don't know what their accountants might want to test
7 that transaction.

8 THE COURT: When I ordered you and Mr. Stanley
9 to stop putting words on paper and just communicate with
03:04PM 10 each other verbally, did you explain that to
11 Mr. Stanley?

12 MR. MOWREY: We have -- your Honor, I have told
13 Mr. Stanley, just as I have told the Court at every
14 turn, that we are -- and I realize these have just been
03:04PM 15 words in the past, but the fact is after that -- after
16 the hearing in September, we have been making all these
17 efforts and, yes, we've told Mr. Stanley that we are
18 working on getting these documents.

19 THE COURT: I'm talking about more recently
03:04PM 20 when I ordered y'all -- before they filed their motion
21 to get on the phone, did you explain to him that there
22 are notebooks with receipts in them, millions of them,
23 that you can't reasonably bring those back to the United
24 States but he's welcome to go to India and look at them?
03:05PM 25 Did you explain that to him on the phone?

1 MR. MOWREY: Your Honor, I can't recall
2 specifically. I mean, clearly in our papers that we
3 have said we would make that -- make those available to
4 him.

03:05PM

5 Your Honor, the discovery dispute, if I may,
6 when the -- first of all, there were two sets of
7 discovery requests that went out at the very beginning.
8 Mr. Stanley never -- and we did -- we made objections,
9 your Honor. We made objections. Mr. Stanley never
10 contacted us about those at all.

03:05PM

11 We then received the thousand admissions, and
12 that was the first time that we had -- and we were the
13 ones that first contacted, that we tried to follow
14 Court's procedures and so forth.

03:05PM

15 When the Court ordered the admissions to be
16 sent, we then responded to those admissions.
17 Mr. Stanley had some objections to the way we responded.
18 We thought our responses -- we were trying to give more
19 information to explain our responses. Mr. Stanley said,
20 "No, I don't want that."

03:05PM

21 So as your Honor knows, if you look at our
22 admissions, we made no objections. We do exactly what
23 the rules tell us to do. We admit, we deny, and one of
24 them said we had insufficient information to admit or
25 deny; and that, on the one that we had insufficient

03:06PM

1 information, that really goes to the heart of this
2 lawsuit, your Honor.

3 THE COURT: Well, but -- and, you know, I
4 looked at that particular -- how you worded your
03:06PM 5 response to D, and I took a highlighter; and all of the
6 insufficient evidence to admit or deny, that language
7 does, in fact, appear in your response to D, but it also
8 has this "like nailing Jell-O to a wall" characteristic
9 to it because it says that you have provided, and will
03:07PM 10 provide, and will continue to provide these documents.

11 So if you're on the other side of that case
12 trying to understand what documents they are supposed to
13 use to establish that the monies donated for a specific
14 purpose were, in fact, used for that, you have to
03:07PM 15 cross-reference ultimately a dozen different documents,
16 general ledgers, and you also just kind of have to
17 accept in good faith that there's more on the way.

18 MR. MOWREY: Your Honor, when you say there's
19 more on the way, I mean, we have given them the
03:07PM 20 documents that show the expenditures. At this point --
21 again, if you look at it from different levels, at the
22 level that we will be at, at this point, it will be the
23 plaintiffs looking at the documents they have been
24 provided and saying, "We need proof of these particular
03:07PM 25 transactions."

1 THE COURT: Defendants have made, and will
2 continue to make, a reasonable inquiry. The defendants
3 have made reasonable inquiry and are continuing to
4 inquire. I mean --

03:08PM

5 THE COURT: Well, your Honor, let me -- first
6 of all, your Honor, we are here in February. We have a
7 certification hearing coming up in April. We -- our
8 response is due in a couple of weeks.

03:08PM

9 Merits discovery is not until -- we're talking
10 about merits here. We are talking about full-on,
11 full-blown merits; and even in the case management
12 order, I mean, as I read the order, it says the scope of
13 discovery may include both class and merits discovery,
14 which we had a discussion about at the first hearing.

03:09PM

15 That said, discovery which clearly has no purpose other
16 than full merits issues should be deferred until after
17 the Court rules on class certification.

03:09PM

18 What the plaintiffs are saying at this point
19 is, look, if you've got evidence that these monies were
20 spent on designated purposes, just give it to us and
21 that's -- and if you don't have it, then just tell us
22 you don't.

03:09PM

23 We are in the process of providing, and have
24 now provided, the information that they can show that
25 monies were spent. Really the issue at this point will

1 be to see what documents they -- because they are not
2 going to look at -- no accountant would look at every
3 document received behind every expenditure. They will
4 choose certain things that they want to look at. That's
5 the way it will be tested. That's the way any person
6 would test when you're dealing with so much material.

03:09PM

7 And so that's where we are at this point. I
8 don't know what else we can do at this point, your
9 Honor. We do intend -- the fact, the reason, when it
10 said admit you don't have evidence to show that X amount
11 was spent is that that's exactly what we're working on
12 right now because you've got 179 designations in India.
13 The fact is they kept their accounting more for the
14 foreign contribution accounts than they did in terms of
15 matching.

03:10PM

03:10PM

16 Does that mean they didn't spend the money on
17 these items? No. It doesn't mean they didn't spend the
18 money at all; and that's what we're in the process of
19 showing now, which I think we will be able to show,
20 that, generally speaking, that monies that went for
21 designated purposes were spent in that way.

03:10PM

22 There may be some -- there may be some that
23 there is less in some categories, but frankly, your
24 Honor, I don't think that is a -- if the monies were
25 spent on the ministry, frankly I think that's all

03:10PM

1 that -- legitimately spent on the ministry, I think
2 that's all a donor could really ask, and that's what was
3 represented to them.

4 So again, missionaries are an easy one. We can
03:11PM 5 track the payments right to missionaries. It gets more
6 difficult when you're talking about a Bridge of Hope
7 home, for example, because there you have children that
8 are sponsored, and there's a lot of different types of
9 expenses that go into a Bridge of Hope center.

03:11PM 10 THE COURT: Did you tell me earlier that these
11 missionaries who are the end recipient of these
12 designated donations, that they do or do not get a piece
13 of paper that says, "With this month's allotment, you
14 need to use X dollars to buy bicycles"?

03:11PM 15 MR. MOWREY: Well, the -- your Honor, I don't
16 know the answer to that. The missionaries get a -- they
17 get a -- there's an amount that a missionary -- and by
18 missionary, some of these people are what we think of as
19 missionaries. Others are actually pastors in these
03:12PM 20 12,000 churches and people to work in these churches,
21 and that's their pay. That's their salaries that they
22 are paid.

23 Whether they use some of that money for their
24 money to purchase certain items, I don't know the answer
03:12PM 25 to that.

1 THE COURT: Well, I guess that's my point is
2 why would there be a receipt if the end user who is
3 going to buy a buffalo or a bicycle didn't know that
4 they were to use proceeds that they received at a
5 specific point in time for that purpose?

03:12PM

6 MR. MOWREY: Well, again, what happens is the
7 churches, these churches make known within their diocese
8 the needs that they have. The diocese then makes their
9 needs known to the synod, and the synod will then send
10 money to the diocese who, then the diocese will
11 distribute the money, purchase items, get the items down
12 to the churches.

03:13PM

13 THE COURT: So does the individual pastor, for
14 example, that requested bicycles or the pastor that
15 requested water buffaloes, their requests for those
16 items, I mean, is that in writing; is it maintained; has
17 that been produced?

03:13PM

18 MR. MOWREY: There will be records of
19 purchases, but I don't know that there would be a
20 transmittal request for it. I mean --

03:13PM

21 THE COURT: In other words -- in other words,
22 if it turns out that there were one or two or three
23 pastors that identified a need for bicycles and they
24 sent a letter to the diocese and said, "Could you please
25 send out a request to our donors to fulfill this need?"

03:13PM

1 Then Mr. Stanley could say, "Well, that is pastor A,
2 pastor B, and pastor C. I'm going to go to India. I'm
3 going to visit with pastors A, B, and C to see if, in
4 fact, they received money for bicycles and whether they
5 did or not."

03:14PM

6 But if there's no documentation of who made the
7 request and there's no documentation coming back the
8 other direction of, "Here's the fulfillment of your
9 request; go spend it on bicycles," then all you're left
10 with is the general ledger and the testimony of

03:14PM

11 witnesses who say, "All of the money was spent in the
12 field; we can't guarantee that it was spent on bicycles
13 or water buffaloes." And when we get down to the
14 representations that were made, maybe that's all you
15 represented and everything is great and this lawsuit is
16 junk. I don't know.

03:15PM

17 MR. MOWREY: Your Honor, when it comes to
18 bicycles or blankets, there are going to be receipts. I
19 mean, the issue is not how the request was made. I
20 mean, isn't the issue if a million dollars goes for
21 blankets and we can show receipts for a million dollars,
22 then hasn't the request been fulfilled?

03:15PM

23 THE COURT: Well, perhaps so, but my point was
24 this: It gets back to this "nailing Jell-O on the wall"
25 idea. You say there are receipts and then you -- and

03:15PM

1 then I ask, "Well, have you produced those?"

2 "Well, Judge, no. I mean, you're talking about
3 millions of receipts. How could we have produced those?
4 Mr. Stanley is welcome to go to India and look at these
03:15PM 5 notebooks."

6 So my question was let's start with a set of
7 documents that won't be quite so burdensome to produce.
8 Let's start with pieces of paper that flow up and these
9 are our requests for bicycles or buffaloes; and then
03:16PM 10 correspondence, transmittal information that would be
11 going back to those people that you can match up
12 requests with fulfillments to, and say, "Here's \$10,000
13 that we were able to raise for your bicycles."

14 I mean, that proof may be difficult to obtain
03:16PM 15 in and of its own, but it seems like it would be a lot
16 less difficult to obtain than the receipts from the
17 villages because it should be documentation that would
18 be in one centralized offer. It's the request and the
19 fulfillment of the request; and all I'm asking is, does
03:16PM 20 that exist?

21 MR. MOWREY: Well, your Honor, I don't know if
22 there are transmittal letters back and forth. I don't
23 know the answer to that. I mean, and we can -- to the
24 extent that they are available, we have no objection in
03:17PM 25 producing, and we will produce them, but I don't think

1 that it works that way. I think it's more -- and these
2 receipts, some of them could be at the church level,
3 many of them are going to be at the diocese level, and
4 many are at the synod level.

03:17PM

5 We have no objection to producing them, your
6 Honor. There's no objection to producing them. It's
7 just a matter of the sheer volume of these documents.

8 THE COURT: How far along is your top four
9 accounting firm with their forensic investigation?

03:17PM

10 MR. MOWREY: Well, they are in the process,
11 your Honor, of looking at that -- those ledgers and
12 mapping those to the designations.

13 THE COURT: Well, they were in the process of
14 doing that last September. My question is where are
15 they?

03:17PM

16 MR. MOWREY: No, your Honor. They've only had
17 access to these documents -- I don't know exactly how
18 long they've had access, but they did not have -- I
19 don't think they had access in September, your Honor.

03:18PM

20 This is only -- this has only been relatively recently
21 that they've had the access to the documents to start
22 the mapping. And that's what the plaintiffs are going
23 to do, and I'm sure there will be disagreement.

24 There will be some -- because it's not a
25 one-to-one. Our accountants will say, "Well, this

03:18PM

1 dollar should go in this bucket," and they will say,
2 "No, that shouldn't go in that bucket; it ought to go in
3 this bucket," or whatever. So there may be disagreement
4 about that.

03:18PM

5 That's why -- that's the other piece of this,
6 your Honor. I don't think -- I think the key in this
7 lawsuit is not -- and again, what was represented was
8 not that every dollar that was designated would go
9 specifically for that designated purpose.

03:18PM

10 THE COURT: All right. Thank you, sir.

11 Mr. Stanley?

03:19PM

12 MR. STANLEY: Thank your Honor. First of all,
13 like you, Judge, I think words are important; and when
14 Mr. Mowrey just said -- and I wrote it down word for
15 word -- "We have given them the documents to show the
16 expenditures." That's it. We win. I mean, that's all
17 you need to do. I mean, that's all we asked for.

03:19PM

18 And so this was an easy layout. That's what we
19 set this up for, an easy layout. We used the water
20 buffaloes there and they admitted, "Yes, we collected
21 \$1.6 million," 1.599, in contributions from donors with
22 donor designations for project code 1507, water
23 buffaloes; and attached to this response are the
24 documents previously produced to these plaintiffs who
25 don't understand these documents. Here they are showing

03:19PM

1 that we spent the \$1.6 million for water buffaloes; here
2 they are, case closed.

3 He is now asking to turn the federal rules on
4 its head. What he said is, instead of Groundhog Day,
03:19PM 5 it's opposite day. What he said was we've got to go to
6 India, and there are millions of documents in all kinds
7 of ledgers showing all kinds of expenditures and that
8 what the plaintiffs probably should be able to do is map
9 it out one by one and find out which ones were for water
03:20PM 10 buffaloes and which ones were for bikes and somehow come
11 to -- well, that's not our burden.

12 This is what we're asking them to do, and we
13 asked them. He just said he's given us all the
14 documents to show the expenditures. Just tell us which
03:20PM 15 documents in this million dollars -- million documents
16 they said they produced, give us the Bates numbers and
17 we can understand what it is. That's not what's
18 happening.

19 I think the Court's right that nailing Jell-O
03:20PM 20 on the wall is a different way of saying there's just
21 spin on this. We've been told two things. We've been
22 told that all the designations were fulfilled by the
23 field partners. That was a representation Mr. Mowrey
24 made in May, unequivocally. I think that's also in
03:20PM 25 other pleadings. And then we were told that the

1 defendants have relative -- have no relationship or
2 control with the field partners.

3 Both of those are simply not true. What the
4 truth is, is that field partners do not track spending
03:21PM 5 and the GFA considers the designations fulfilled when it
6 descends to the field. This is what Mr. Carroll told
7 ECFA -- let me get my water. Excuse me.

8 Mr. Carroll -- and I have the document right
9 here. Mr. Carroll told ECFA, "We consider the
03:21PM 10 designations fulfilled when we send it to the field,"
11 not when they spend it. It's fulfilled when we send it
12 to the field." That's what's happening.

13 Now what's happening is they are trying to put
14 the toothpaste back in the tube. ECFA busted them for
03:21PM 15 this; it got in the blogs, in the press and everything
16 like that. It turns out -- and Mr. Mowrey just used a
17 number. \$376 million.

18 If I may show the Court, if I can do the ELMO
19 right. Let me try.

03:22PM 20 CLERK CRAIG: One moment.

21 MR. STANLEY: Of course, when you show up, you
22 don't have the right documents in front of you. One
23 second.

24 Oh, yeah. Okay. One second. Here it is.

03:22PM 25 So this is what we attached to the requests for

1 admissions, and this is not a dispute. A few dollars
2 here, a few dollars there, they corrected it in the
3 answers. But the bottom line here is there were \$376
4 million in contributions designated from 2009 to the
5 first quarter in 2016.

03:22PM

6 By interesting coincidence, it turns out that
7 GFA was -- that the field partners were hoarding this
8 same amount of money, \$376 million in cash reserves.

9 This is a 2015 document from Siny Punnose. Siny

03:23PM

10 Punnose, when Mr. Mowrey says the money goes to
11 Thiruvalla, it goes to Siny Punnose. Siny Punnose is
12 K. P. Yohannan's niece. She's the one in charge of all
13 of this.

14 It says, "The reserves of the group rose to
15 \$376 million at 31 March 2014. There were \$313 million
16 at March 2013."

03:23PM

17 That's the truth is that they were hoarding the
18 money. Even K. P. admits to ECFA -- and I have the
19 letter in front of me -- K. P. Yohannan says, "We didn't
20 send any money to the field in 2013 or 2014. We sent to
21 it Hong Kong." They were holding this money. They then
22 told ECFA we'll do this massive spend-out.

03:23PM

23 When Mr. Mowrey tells you there were
24 accountants in India, the accountants only came after
25 this lawsuit was filed. For 2015 -- lawsuit was filed

03:24PM

1 in 2016. The accountants come in, in 2015, to do the
2 2015 audit and the 2016 audit.

3 The documents we saw on water buffaloes
4 yesterday that they produced were expenditures in 2016
03:24PM 5 for water buffaloes. The toothpaste, they are trying to
6 squeeze it back out, out of the tube, or put it back
7 into the tube. That's what's going on here.

8 They say that the defendants don't control
9 these third-party entities. I have two documents, if I
03:24PM 10 might -- let me find them -- showing just the opposite.
11 Here's one. This document is 2015, April 2015, produced
12 by them from Reverend Dr. K. P. Yohannan, president,
13 asking them to transfer Canadian dollars, or CAD -- I
14 don't know. CAD, those are cash deposits -- for Gospel
03:25PM 15 For Asia (India), for further credit to Gospel For Asia
16 (India). These are from -- remitting it to the state
17 bank of India in Canada, and I can show you that account
18 number is Gospel For Asia (India). I have the accounts
19 for that. That's K. P. Yohannan doing that.

03:25PM 20 David Carroll says he has no control over it.
21 I've got David Carroll requesting a document -- sorry.
22 There it is. This is David Carroll who says, "I have no
23 control over the field partners," right? "We have no
24 control; we have nothing to do with them"; yet, David
03:26PM 25 Carroll sends a letter to Sarah Billings from the Royal

1 Bank of Canada asking them to transfer \$20 million from
2 Gospel For Asia (India) to GFA's account in the United
3 States, signed David Carroll, CEO, Gospel For Asia.

4 How could he authorize money coming out of a
03:26PM 5 Gospel For Asia (India) account? We know it's a Gospel
6 For Asia (India) account because it's account number --
7 489 is the last four digits. Here it is. There's a
8 statement from the Royal Bank of Canada, Gospel For Asia
9 (India), care of Teresa Chupp, in Carrollton -- that's
03:26PM 10 their old address before they moved to Wills Point --
11 for Gospel For Asia (India), and there's the account
12 number.

13 So clearly the spin that they have been told
14 that these folks have no control over the field partners
03:26PM 15 is simply not true. They have control over it. They
16 have wire instructions, wire authority. K. P. Yohannan
17 is the metropolitan of that. You read the constitution
18 from prior hearings. It talks about all of his roles in
19 the constitution.

03:27PM 20 All of these folks, Mr. Carroll, Reverend
21 Carroll, Mr. Emerick, the Reverend Emerick, all the
22 others have sworn total loyalty to K. P. Yohannan.

23 His niece, Siny Punnose also have sworn loyalty
24 to K. P. Yohannan. They have absolute control of that.

03:27PM 25 They also -- let me show the reserves. This

1 whole thing about how they don't make that promise, I
2 agree with you that's a matter for trial, but that's not
3 true. I can show you instances on instances on
4 instances where they say if you buy -- if you designate
03:27PM 5 for a bike, we'll do a bike. We've had no documents --

6 THE COURT: And that is the allegation in the
7 complaint.

8 MR. STANLEY: That is the allegation in the
9 complaint, and I can have proof of it to you tomorrow.

03:27PM 10 I mean, I have -- we actually put it in the motion for
11 class certification. It's very clear that it's in
12 there.

13 What's really interesting to me also, if I
14 might just take one second and read pretty much one of
03:28PM 15 the key documents in the case. This is an e-mail from
16 Reverend Carroll, David Carroll, to K. P. Yohannan, and
17 I think it's really important because it really will put
18 it back into perspective what's going on: "Sir, I need
19 to share with you where I am over this situation." I'm
03:28PM 20 right here. "I will try to summarize for brevity sake.

21 We have a saying in our country: The numbers don't lie.
22 The published FC-6 reports" -- which they rely on quite
23 a bit in their answers, if you recall -- "show
24 westerners that we have either sent money to the field
03:28PM 25 raised for National Ministries and Bridge of Hope to

1 fund the hospital and the corpus fund, or our FC-6
2 filings are filed wrong. Either way, this is a huge
3 problem. It appears to those reading these that we
4 might have been dishonest to the donors (fraud), or been
03:29PM 5 dishonest to the Indian government, (a PR nightmare at
6 least). Sister Siny's report below will, in my opinion,
7 do little to satisfy those who are printing out and
8 analyzing our FC-6 reports. I am sorry for not
9 expressing more confidence than this. I think we may
03:29PM 10 have used money raised for National Ministries and
11 Bridge of Hope for the hospital," which they told us did
12 not happen.

13 "I think that India feels that we raise money
14 and send it" -- by the way, Mr. Mowrey said that in a
03:29PM 15 prior hearing, that none of the money went to the
16 hospital. "I think that India feels that we raised
17 money and sent it to them and they can legally use it
18 any way they deem fit. I hope that I am wrong, but I am
19 doubtful." This doesn't sound like someone who has
03:29PM 20 already got accountability, knowing how they spent the
21 money.

22 "I also don't think that it is an intentional
23 wrong, but if I am correct, it is a huge wrong. We've
24 spoken at hundreds of churches with tears asking for the
03:30PM 25 National Ministries and Bridge of Hope support, and the

1 FC-6 that is public says that we sent much of that money
2 for the hospital and the reserve corpus funds." Next
3 page.

4 MR. MOWREY: Could he read the rest of that
03:30PM 5 letter, your Honor?

6 MR. STANLEY: I am.

7 MR. MOWREY: Okay. Good.

8 MR. STANLEY: "It doesn't matter that we have
9 now moved the money out of the corpus fund" -- this is
03:30PM 10 now after the ECFA thing -- "because of public FC-6
11 reports" -- I'm sorry. It's backwards. Sorry. That's
12 not right, either. That's right.

13 "It doesn't matter that we have now moved the
14 money out of the corpus fund because according to the
03:30PM 15 public FC-6 reports, we have been building them up for
16 years. Moving the money only serves to confirm the
17 feelings of guilt to outsiders."

18 Again, they have not been spending the money.
19 They have been building up the corpus funds for years.

03:31PM 20 "I think the only way for us to handle the
21 inquiries raised by Bruce and others is to refer them to
22 our Indian office. Mr. Throckmorton" -- that's the
23 blogger -- "(unless a miracle happens) will get this
24 information and may even begin an investigation of us.
03:31PM 25 We can say all we want that we don't have anything to do

1 with the Believers Church or the field and that you are
2 only the spiritual head of the church and that finances
3 are handled by others but you, but as a practical
4 matter, that will not hold up. Can the field find a way
5 out of this situation? I too am very nervous.

03:31PM

6 "I have always believed in total accountability
7 of the field, yet the FC-6 reports provide numbers that,
8 as a former auditor, I cannot just explain away with a
9 simple explanation. I, and the world, will need
10 numerical proof now, and I do not have the ability to
11 get it from the USA end. Only the field can explain it,
12 and I am in the hot seat in this crisis and I feel a lot
13 of pressure."

03:31PM

14 I would point out, Judge, this was in 2015, May
15 of 2015, almost three years ago. You pointed out that
16 our discovery was served in August. ECFA asked them for
17 this information in May of 2015. They've had three
18 years to compile this information, and they just don't
19 have it because it doesn't exist. Nobody ever tracked
20 the designations because they were simply spent out on
21 the -- once they were sent to the field, they were done
22 with it. There was no accountability.

03:32PM

03:32PM

23 It goes on to say, "If I say, well, it is not
24 my problem, it's a field problem, it's as good as saying
25 we are guilty of misappropriation," which is true. If I

03:32PM

1 say "The FC-6 reports are filed inaccurately on purpose,
2 due to the hostile environments we work in, it gets the
3 field in trouble and turns the attention to them. I get
4 the feeling that, although we are not financially
03:33PM 5 dishonest, we are financially reckless. The stockpiling
6 of money in the RBC -- Royal Bank of India account --
7 and then the hurried transferring of it to the field,
8 the Hong Kong account, et cetera. Sir, may I please
9 have my name taken off of the RBC account as soon as
03:33PM 10 possible?"

11 It goes on and on and on.

12 MR. MOWREY: Would you read the rest of it,
13 please? I thought you were going to read the whole
14 thing.

03:33PM 15 MR. STANLEY: There's really nothing to read --
16 okay. I'm happy to.

17 Judge, do you want me to read the rest? I'd
18 rather he read it.

19 THE COURT: Well, I'll be happy to have
03:33PM 20 Mr. Mowrey put that on record if he believes that the
21 context is necessary.

22 I mean, what's kind of lost on me -- I mean, I
23 understand that this is kind of a, you know, golden
24 nugget sort of piece of evidence that you have, but what
03:34PM 25 has been dogging the Court are the discovery requests,

1 and that's really the only thing that I want to make a
2 ruling on today.

3 MR. STANLEY: May I tie together what I was
4 saying?

03:34PM 5 THE COURT: Please.

6 MR. STANLEY: What I was saying is for the
7 nailing the Jell-O to the wall has been this is the
8 Indian folks and we have no control over it; and my
9 whole point was they knew all along that they were
10 building up these reserves and not spending it. They
11 knew it hasn't been spent. They knew they weren't
12 getting accountable reports and they just simply need to
13 say to us, like what you said is, "We don't have the
14 proof. I can't prove to you 1.6 million in water
03:34PM 15 buffaloes with receipts. I will have at trial someone
16 to testify that we spent money on water buffaloes." I
17 can live -- if that's what it is, like the Court said, I
18 understand that that -- I'll object to the testimony,
19 but there are no receipts there.

03:34PM 20 Mr. Mowrey said a minute ago, "I've given the
21 receipts showing expenditures." It's simply not true.
22 If it is, I'll put them to the test today, show us
23 \$1.599 million in water buffaloes. Just give it to the
24 Court next week and we'll understand where we are. It's
03:35PM 25 not out of the materials that you've given us. It's not

1 there.

2 When the Court says are there documents from
3 Siny Punnose sending it down to the diocese saying,
4 "Hey, you need to spend this on water buffaloes and this
03:35PM 5 on bikes," not a single document that we've gotten shows
6 that.

7 Are the documents from the diocese going
8 upstream to the synod saying, "Hey, we need water
9 buffaloes and bicycles," not a single document. What we
03:35PM 10 have is the needle in the haystack saying, well, here's
11 our ledgers. So Mr. -- I don't know -- Jones got \$40
12 today. You need to figure out, Mr. Stanley, that that
13 is either missionary or water buffalo or bike or
14 whatever. Good luck. There's nothing supporting it.

03:35PM 15 THE COURT: So does the ledger information in
16 any way correlate to the 179 designation categories?

17 MR. STANLEY: Not one iota. And we've spent
18 hundreds of thousands of dollars on the plaintiffs' side
19 going through the million documents they said that
03:36PM 20 they've given us, out of my pocket, several hundred
21 thousand dollars to try to get this; and like Jell-O to
22 the wall, it could have all been avoided by them simply
23 saying, "Here's the truth. The truth is when we send
24 the money, we're done with it. We don't -- and we're
03:36PM 25 not accountable. We may send them occasionally."

1 Mr. Mowrey added some examples where they did.
2 I will tell you it did not happen in every case, but
3 sometimes they did send designations to the field.

4 "When we send it, we're done. We don't do
03:36PM 5 anything on the other end to see that the money was
6 spent correctly." And that's just the truth, and I
7 think the truth is important here, and that's all I'm
8 trying to say.

9 If you've got the receipts for \$1.6 million in
03:37PM 10 water buffaloes and you say you've given it to us, just
11 give me the Bates numbers. If I'm too stupid to see it
12 myself, tell me the numbers.

13 But to say that I have to go to India and look
14 through millions of books and do some testing which is
03:37PM 15 absurd that you would pick a few and say, well, this
16 extrapolates to everything, the whole thing is -- the
17 whole notion is absurd.

18 That turns discovery on its head. That's not
19 how it's supposed to be done. I have the right to ask
03:37PM 20 them, "You made this representation. You agree that you
21 collected this money; do you have any evidence how it
22 was spent?" Yes or no. That's all I want.

23 MR. MOWREY: May I, your Honor?

24 THE COURT: You may.

03:37PM 25 MR. MOWREY: A document that was produced --

1 this is just one document that was produced in the
2 initial disclosures, Mr. Stanley said show me -- any
3 document that would show how money was spent. This is a
4 document that was prepared every year since before this
03:38PM 5 discovery period from Indian accountants. I'm looking
6 at one -- this one happens to be 2014, and it has
7 expenses, and it has a bucket for ministry tools,
8 outreach, training, INIT support -- national
9 missionaries, I assume -- and it gives a total for
03:38PM 10 those. It has those buckets. Doesn't have 179, but it
11 has expenditures, large expenditures that are made, and
12 this is a report that is received from India.

13 There is another document that we produced.
14 They produced it when this lawsuit was in our initial
03:38PM 15 disclosures that we received from India, where it shows
16 expenditures for the 179 -- for 179 designations. It is
17 -- it was Exhibit G, Exhibit G to our response. This is
18 a spreadsheet, and it showed monies that were expended
19 with respect to these designations.

03:39PM 20 So now what we've given Mr. Stanley, when he
21 says he's spent hundreds of thousands of dollars out of
22 his own pocket, he couldn't possibly have looked at the
23 documents or examined the documents very thoroughly that
24 we've given him here this last week, which are the cash
03:39PM 25 books showing the expenditures.

1 THE COURT: Tell me again what Exhibit G shows,
2 or what it is?

3 MR. MOWREY: Exhibit G, your Honor,
4 unfortunately it's a printout, and it was actually a
03:39PM 5 huge spreadsheet; but as you can see, it has each of the
6 project codes, and these are expenditures -- yeah, the
7 expenditures are at the end. So each by bucket.

8 So the first one is audiovisual, and these
9 are -- I think if you read it across. Those would be
03:40PM 10 the -- that's the monies that were sent out.

11 MR. STANLEY: Sent to the field.

12 MR. MOWREY: Yeah, if you go to 24676. So if
13 you look at the -- there's one column that shows the
14 inflow under INR. It's the word INR -- these are in
03:40PM 15 Rupees -- and then it shows the outflow.

16 MR. STANLEY: So can I ask Mr. Mowrey, while
17 he's doing that, to go to the water buffalo one and show
18 the outflow?

19 MR. MOWREY: Water buffaloes, like some of them
03:41PM 20 that you've lumped together.

21 MR. STANLEY: There we go.

22 MR. MOWREY: Well, lumped here, that doesn't
23 mean, your Honor, the issue -- that's what's going on --
24 that's what's going on now. We're going to see receipts
03:41PM 25 from the documents from the ledgers. Will he be able to

1 show that there is -- that water buffaloes were
2 purchased and how many? And it may not be in that
3 amount. We'll have to see.

4 We are in the discovery process, your Honor.

03:41PM

5 They have access to the same documents we do. That's
6 the bottom line. There are no documents that the
7 plaintiffs do not have access to that we do not have
8 access to.

9 THE COURT: What does that mean?

03:41PM

10 MR. MOWREY: That means exactly that. We have
11 given them all the documents that -- on the ledger, and
12 with respect to the underlying actual receipts, we will
13 make those available as they are kept in the regular
14 course of business.

03:42PM

15 I don't know another way -- we're not trying to
16 hide the ball on it, your Honor. They're in India, and
17 that's where our accountants are, and that's where they
18 have been -- they spend weeks here. I don't -- I think
19 under the rules, your Honor, production means making
20 them available in the regular course of business, and we
21 will do that.

03:42PM

22 MR. STANLEY: Your Honor, it's been three years
23 they have known this is going on. The allegation has
24 always been you have not accounted for or disbursed the
25 donations as per the designation.

03:42PM

1 This exhibit they are showing you is also
2 Jell-0 on the wall. It is 38 categories that somehow we
3 might extrapolate that these items were in. There's
4 nothing tying it to designation codes. This is a
03:42PM 5 recreation, and most of this work has been done, the
6 metadata, a lot of this work has been done in the last
7 few weeks.

8 MR. MOWREY: That work has not been done in the
9 last few weeks.

03:43PM 10 But, your Honor, here's the point. There are
11 admissions asked, "Admit you have no evidence." How
12 could we possibly admit that when we do have evidence.

13 And then it asks for a certain amount, and the
14 certain amount is what we're about at this point. That
03:43PM 15 takes work.

16 MR. STANLEY: I disagree. The admission was
17 admit you have no evidence. You said, we do have
18 evidence. We said, okay, tell us the evidence. Point
19 us to, out of the million documents you've given, where
03:43PM 20 you just said you gave us all the evidence, show us \$1.6
21 million in water buffaloes. It just doesn't exist.

22 MR. MOWREY: I don't think that was a question,
23 show us \$1.6 million in water buffaloes. You asked us
24 what evidence we had -- or you asked us what -- you
03:43PM 25 asked us, admit we have no evidence; and then you

1 asked -- this isn't parsing; we're answering these
2 questions. And then you say produce all documents in
3 your possession, and we gave a list of all the documents
4 in our possession.

03:44PM

5 MR. STANLEY: That's --

6 MR. MOWREY: At that time. So we -- I don't
7 know how else we would have answered these questions.

8 MR. STANLEY: If you have evidence -- your
9 Honor.

03:44PM

10 THE COURT: Stop. Stop, stop. Y'all are
11 talking to each other at this point.

12 Mr. Mowrey, I'll come back to you in just a
13 second.

03:44PM

14 You mentioned something, this notion of a
15 theory based on some of the documents that you were
16 reading from that these donations weren't actually being
17 fulfilled in the field contemporaneous with when the
18 donations were received, but they were being

03:44PM

19 accumulated, and only after some of these allegations
20 surfaced did they start spending money on bicycles and
21 water buffaloes. And you made some reference to 2013
22 and another reference to, maybe it wasn't until 2016
23 that they started spending money; but I'm not sure what
24 the Court is supposed to make of that distinction, given

03:45PM

25 that your requests all go through calendar year 2016.

1 MR. STANLEY: The requests go to the first
2 quarter -- the discovery requests go to the first
3 quarter of 2016 and end -- that's fair enough. They
4 still didn't have that even then. They can't point it
5 to us.

03:45PM

6 What I was saying was that they got busted by
7 ECFA -- and I have the documents here showing it --
8 where they admitted to ECFA the following: "We consider
9 the designations fulfilled once we send it to them."

03:45PM

10 ECFA said that's not good enough. So they
11 said, "And why are you holding 280 million at the time
12 in reserves instead of spending this money when you say
13 there's an urgent need in the field to do this."

03:46PM

14 So they came down with a spend-down plan, and
15 Dr. Yohannan writes them a letter on September 15 of
16 2015 saying, "I went and talked to my Indian -- my field
17 partners, and they graciously agreed to reduce the cash
18 balances to \$72 million," which is nine months, but then
19 ECFA said that wasn't good enough.

03:46PM

20 So he says, "So I've gone back to them again
21 and now they have reduced it to 11 million and here's
22 our cash spend-out plan." It doesn't say, "We're going
23 to spend it out matching the designations." It just
24 said, "We're going to get rid of these cash reserves."

03:46PM

25 There's been no evidence still -- I mean, that could

1 have answered the question.

2 Mr. Mowrey might have said to me on water
3 buffaloes, "Well, we didn't spend it contemporaneously,
4 but we did, after ECFA told us to spend down the money,
03:46PM 5 we spent the \$1.6 million on water buffaloes and here's
6 the documents that show it." They just simply don't
7 exist. They just went out and allegedly spent down the
8 money.

9 I have no proof that they even did that.

03:47PM 10 That's a different issue. I don't even want to litigate
11 that. I want to litigate the issue of, you promised you
12 would spend this money on water buffaloes and you didn't
13 spend it, and you had no proof that you spent it; and if
14 you do have proof you spent it, give it to me. That's
03:47PM 15 what I want to litigate. Not how they spent out the
16 rest of their money and go through millions of pages in
17 a language I don't even understand, because I won't
18 understand the entries in the Indian books, and try to
19 piece it all together myself. I'd like them to show me
03:47PM 20 where they did it. That's all I'm asking.

21 THE COURT: Well, another issue in your
22 request, you've described the admissions and your
23 request for production in terms of evidence, not
24 receipts, not bills of sale, not warehouse
03:48PM 25 documentation, not transmittal letters.

1 MR. STANLEY: I think that's fair. I have
2 generally, as I've gotten older, gotten away from trying
3 to overdefine because I get more objections than
4 anything like that. I thought this was pretty simple.
03:48PM 5 But even if there's any evidence, we haven't gotten
6 anything.

7 So it's fair enough to say that there's
8 testimony, it's fair enough to say there's photographs
9 which may or may not be admissible; that doesn't
03:48PM 10 resolve -- that doesn't relieve them of the burden,
11 notwithstanding that, that they have the receipts to
12 show it to give us that.

13 Also, requests for -- the first request for
14 production also was broad enough to bring it all in,
03:49PM 15 show us where you spent all this stuff. They say we
16 didn't file a motion to compel, but also they didn't
17 withhold any documents anyway. So, notwithstanding
18 their objections. But I still think that there's a
19 burden. There may be more evidence.

03:49PM 20 Mr. Mowrey may have a point that I may have
21 witness testimony and pictures and whatever else.
22 Again, I can go take pictures and I don't know whether
23 it's going to be admissible. That's a valid point, but
24 it doesn't relieve them of the burden to give us what
03:49PM 25 they have. And he just testified -- he just said a

1 minute ago to the Court as affirmative representation,
2 "We've given them these documents," and all I'm saying
3 is tell us where they are because I can't find them.

03:49PM 4 THE COURT: All right. Mr. Mowrey, I'll give
5 you the last word.

03:50PM 6 MR. MOWREY: Your Honor, we are committed to
7 producing documents. We're not objecting. We're not
8 hiding behind anything. We had this control issue
9 that -- and the fact is whether we have control or not
10 is irrelevant really because the issue is are we going
11 to be able to get the documents, and that's what I tried
12 to explain to the people in India, and I think they
13 understand that.

03:50PM 14 They want to -- if they want this case to go
15 forward, then they have to provide the information
16 showing how these monies were spent; and ultimately
17 that's what this case is about is whether the monies
18 that were taken in, how they were spent.

03:50PM 19 I think there is a serious issue as to it's our
20 burden to show that if we have a million dollars in a
21 designated -- for a designated purpose and that would
22 be, say, bicycles and we can't show that a million
23 dollars was spent, that some less amount was spent but
24 that that money was spent in the ministry, I don't think
03:51PM 25 that that means that we lose and we don't prevail.

1 The Murphys in this case, before they ever gave
2 \$1 to India, they supported the Dicksons, who worked
3 here in the United States. That's not a part of this
4 lawsuit. And Dr. Yohannan wrote them a letter. This is
03:51PM 5 in 2007: "When I think of the ministry of our Asian
6 brothers and sisters as they labor to reach their people
7 with the gospel, I'm incredibly grateful for you, for
8 your recent gift of \$150 is for our home staff. It is
9 if you are in the very villages where these missionaries
03:51PM 10 minister," and so forth.

11 "100 percent" -- this is bold letters: "100
12 percent of all contributions designated for use on the
13 mission field are sent to the mission field.

14 And then he goes on: "Gospel For Asia is
03:51PM 15 committed to honor specific designations to the extent
16 they best fulfill the purposes of the mission as set
17 forth by our board of directors. However, to protect
18 the deductible status, Gospel For Asia must accept
19 contributions without restriction."

03:52PM 20 And so we -- Mr. Stanley and I do agree that we
21 have \$376 million at issue here that was sent over for
22 designated purposes. The documents that we have
23 provided to them this past week show the spend of a
24 greater amount than that; and what we're about -- in now
03:52PM 25 is because we're in -- we're mapping to see how many of

1 those dollars went to those designated purposes.

2 How they actually got there, whether there was
3 a specific request by a church or a letter or an e-mail
4 frankly, your Honor, it seems to me the point is how was
03:52PM 5 the money spent and was it spent in accordance with the
6 purposes of the ministry and generally was it spent for
7 the various reasons that they have raised the money, and
8 I think we're going to be able to show that that's the
9 case. So when he says we've produced no evidence, it's
03:52PM 10 just not true. We have.

11 THE COURT: All right. Thank you, sir.

12 Well, the Court, having reviewed the motion and
13 the response but also, very importantly, in the context
14 of the several other occasions that this Court has
03:53PM 15 commented on this -- on these same issues and issued
16 directives and orders on these issues, is going to make
17 the following findings.

18 The Court is going to find that certain of the
19 defendants' responses to the requests for admissions are
03:54PM 20 insufficient under 3686, and the Court is going to enter
21 an order that requires the defendants to provide an
22 amended answer in a form and format that the Court
23 believes would be sufficient.

24 With regard to request for admission D, with
03:54PM 25 regard to -- it's the same subpart with regard to 179

1 different donation designations -- the defendants'
2 response varies a little bit from response to response,
3 sometimes because the amount that they have been asked
4 to admit is off by a few dollars here or there.

03:55PM

5 But setting that sort of, what I'm assuming is
6 a Scrivener's error aside, substantively on item D, the
7 defendants may respond by saying that the request is
8 admitted, they may respond by saying that the request is
9 denied, or they may respond as follows: "Defendants

03:55PM

10 have made a reasonable inquiry, and the information they
11 know or can readily obtain is insufficient to enable
12 them to admit or deny." Period.

03:56PM

13 The Court would view as improper any of this
14 embellishment which suggests that they might have the
15 ability at some point in the future through ongoing
16 inquiries. The question is, at a snapshot in time,
17 after a reasonable inquiry has been made, do you admit
18 or deny it, or you're not in a position to admit or
19 deny.

03:57PM

20 The rule would allow you to explain in detail
21 why it is that you can't do that, and I don't want to
22 prevent you from availing -- for you to avail yourself
23 of what the rule would permit, but your answer, as you
24 have stated it, obfuscates the point of the question and
25 one of the three options; and it gets back to this

03:57PM

1 notion that it's like trying to nail Jell-O to the wall
2 and that is why I'm finding it to be insufficient and
3 that is why I'm ordering you to pick one of those three
4 responses.

03:57PM

5 And to the extent that you want to explain that
6 in greater detail, and rather than having to burden
7 copying and pasting that explanation 179 times, this
8 Court would find it sufficient, if you like, simply in
9 the preamble to your responses, to make the explanation

03:58PM

10 similar that you have made today, with the exception of
11 none of this business about there might be stuff to
12 come.

03:58PM

13 This isn't a moving target. It is based on
14 your reasonable inquiry for this historical period that
15 they have identified: Do you admit, deny; and if it's
16 true that you've made a reasonable inquiry but you still
17 can't admit or deny, then say that. But those are your
18 three options.

03:59PM

19 If there's some particular reason like, "These
20 records are maintained in India and we've tried hard but
21 are not able to get them," I mean, you're entitled to
22 give an explanation under the rule, but put that as part
23 of the preamble because, best I can tell, it's the same
24 explanation for every response.

03:59PM

25 So to the extent that, two months from now, you

1 come up with a photograph taken by Pastor Jones of the
2 water buffaloes that he bought with his money, then
3 there's a procedure under Rule, I think, 36(b) that will
4 allow you to move the Court to amend your answer.

03:59PM

5 Depending on what additional information you come up
6 with and whether there's an explanation for why you
7 shouldn't have discovered that after reasonable inquiry
8 when you first responded, the Court may or may not allow
9 you to amend it. My point is simply there is a protocol
10 for you to amend, or withdraw, if that is the case, your
11 response.

04:00PM

12 So in Item E, there it asks admit that you have
13 produced to plaintiffs all evidence, and I recognize
14 that there is a little bit of a problem with how
15 all-encompassing that is, but it says admit that you
16 have produced to plaintiffs all evidence that you
17 possess regarding how the \$71,468 -- and this is in the
18 case of item number 1 -- designated by donors for
19 ministry tools was spent.

04:01PM

20 You seem to have rather consistently answered
21 Item E as denied, and you're certainly free to deny that
22 on every one. That is an acceptable response, but it
23 comes with some consequences because if you deny Item E,
24 then in some shape, form, or fashion, you're going to
25 have to explain to the plaintiffs what it is that exists

04:01PM

04:01PM

1 as to ministry tools that you haven't produced.

2 I don't know if there were other previous
3 interrogatory or requests for productions that take that
4 up, but the most likely place that you're going to have
04:02PM 5 to explain that is going to be in response to Item G on,
6 "Produce all documents in your possession that reflect
7 how the \$71,000 for ministry tools was actually spent."

8 Item F, I guess, is kind of the opposite of
9 Item E and so the same observation would be made.

04:03PM 10 When you get to Item G, and in your response
11 here -- and I think the -- I mean, I'm not going to
12 compare every single one of these, but it seems to be
13 the exact same response to every Item G. And again, I
14 will admit that I didn't spend a whole lot of time
04:03PM 15 comparing each one, but it seems like that's the same
16 response. I think that that is insufficient, and I'm
17 going to order you to file an amended answer.

18 Based on your explanation today and what I
19 gather from your response, you're basically saying, "We
04:03PM 20 have all this proof," whether it be ledgers or bank
21 account statements or what have you, "that money was
22 collected and it was disbursed"; and there's even some
23 specific ledgers like the one you just mentioned that
24 there's some bookkeeping that corresponds to all this.
04:04PM 25 But I also heard you explain that either there may not

1 be any line item-specific evidence; or if there is,
2 you're still working to acquire it, and it may be that
3 in order to defend this case, you're going to have to go
4 to India and take pictures of water buffalo. I don't
5 know what the ultimate defense that you may try to put
6 on would be, but I find your answer here deficient and
7 insufficient in the context of -- and if this was the
8 first time that the Court had ever seen it, I might not
9 view it this critically; but in the context of the

10 Court's prior exposure, the Court's prior directives,
11 the Court's prior order, I'm going to find that it is
12 insufficient and I'm going to require you to do this:

13 I'm going to require the defendants to divide
14 their response to Item G into two parts. The first part
15 will be general evidence. I'm going to define "general
16 evidence" to mean basically what you've already stated
17 here, which I understand to be evidence that you can
18 point to generally to show that money was received and
19 disbursed in India, but there's not anything specific to
20 correlate it to each of the 179 different donation
21 designations. So that's general evidence.

22 The second part of your response needs to be
23 for specific evidence, and here's how I define "specific
24 evidence." When it says produce all documents in your
25 possession, custody or control reflecting how the

1 \$71,468 designated by donors for ministry tools was
2 actually spent, then under "specific evidence," I want
3 to see references to actual documents and corresponding
4 Bates numbers.

04:07PM

5 So if you have, for example, a transmittal
6 letter that is referencing designation code 1000, or if
7 it's referencing the designation code that corresponds
8 to the women's literacy program, or if it's the
9 designation code that corresponds to water buffaloes or
10 bicycles or whatever it may be, if it is a specific --
11 if that document contains a specific reference to that
12 particular donor designation, then list what the
13 document is and the Bates stamp number.

04:07PM

04:08PM

14 Now, you say, "Well, there's going to be lots
15 of receipts, but they're in these notebooks in India."
16 At this point I do not believe that that's the
17 plaintiffs' problem. They have been asking for this
18 stuff for a long time. We all know what they are
19 looking for. They have come at it from three or four
20 different ways, and you've not responded to it. Some of
21 your earlier responses had objections. The Court wasn't
22 called upon to rule on any of those objections.

04:09PM

04:09PM

23 What I do know is there was a request for
24 production, Item G, to all 179 of these; and to the
25 defendants' credit -- and I applaud you for that -- you

1 didn't object, nor did you seek a protective order.

2 I think that there is more than a sufficient
3 basis and expectation by your admission that you
4 received these monies, and by your admissions in the
04:09PM 5 earlier hearing that, to your knowledge, it's not like
6 the recipients have any other donors that they are
7 accountable to. You have the power of the pursestrings,
8 so to speak. The Court believes that the named
9 defendants here, including individually named
04:10PM 10 defendants, have the ability to produce these documents
11 in the United States, in the State of Texas where y'all
12 practice, if you want to.

13 Now, if you want to say that it's not worth it
14 to you, to provide that, or that there's some technical
04:10PM 15 reason why you can't, then, you know, I guess that you
16 can explain that to Mr. Stanley, but I can guarantee you
17 that if you don't produce it that your explanation,
18 either in motion practice or your class certification
19 motion practice, summary judgment practice or motion in
04:11PM 20 limine practice is going to be pretty hollow.

21 So, again, requests for production are made at
22 a point in time. If you have it, provide it, identify
23 the Bates stamp, where it's located; and if Mr. Stanley
24 calls you up and says, "Well, I see that you have
04:11PM 25 provided this transmittal letter and it's supposed to

1 apply to ministry tools; I don't see where on this page
2 it talks about ministry tools," well, then you better
3 help him out on where it's located on that page because
4 if y'all have to bring this back to me and I have to
04:12PM 5 settle a dispute about whether what you're lumping under
6 specific evidence is specific to that category or not,
7 someone is not going to be very happy with what happens
8 at the end.

9 If you come up with additional evidence later,
04:12PM 10 well, then obviously the rules require you to supplement
11 your responses to requests for production; but you can't
12 just say, especially after as long as this issue has
13 been going on, that, "We're looking into that; we'll let
14 you know when we find it." That's not how the rules
04:13PM 15 work, it's not how this Court construes them, and that
16 is not going to be an acceptable answer to this Court.

17 I do agree with you, Mr. Mowrey, that, you
18 know, there's more than one way to prove things. You
19 may not necessarily need a receipt or a bill of sale or
04:13PM 20 anything else; but as I mentioned earlier, sometimes
21 knowing what documents don't exist is as important as
22 knowing which documents do exist because it informs the
23 next step of discovery. It informs how you ask
24 questions at depositions. It informs how you respond to
04:14PM 25 motions. So that's why the Court is taking the actions

1 that it is.

2 As to when this amended response is going to be
3 required, my initial reaction is two weeks. If you make
4 an earnest effort to comply with that and you realize
04:14PM 5 that at this point it's not physically possible for some
6 reason, then pick up the phone and call Mr. Stanley and
7 tell him the logistics of what would prevent you from
8 fully complying within two weeks and work out a time
9 frame on which to provide that to him. No more e-mails;
04:15PM 10 no more letters. Pick up the phone and talk to each
11 other.

12 Under Rule 36(a)(6), it says that, "On a
13 finding that an answer does not comply with this rule,
14 the Court may order either that the matter is admitted
04:16PM 15 or that an amended answer is served," and so that's what
16 I'm ordering is that an amended answer is served within
17 two weeks.

18 It also allows, should the Court's order not be
19 complied with that the Court enter -- have the ability
04:16PM 20 to enter the full array of sanctions under Rule
21 37(b)(2), and this is one of the reasons why I wanted to
22 have all of the defendants here today.

23 You've got one more chance to provide the
24 information and amended answer that the Court has
04:17PM 25 ordered. If you don't do that within the parameters

1 that I have ordered today, then the full range of
2 sanctions available under Rule 37(b)(2) will be on the
3 table. Potentially that could include -- and I'm not
4 saying that it would -- but it could include striking
04:17PM 5 your answer and entering a default judgment against each
6 of you individually.

7 The Court is also going to permit Mr. Stanley
8 to move for an award of attorney fees related to the
9 making of this motion. The Court will allow the
04:18PM 10 defendants to respond both to the general
11 appropriateness of the Court entering an order awarding
12 fees, and they may also respond to the reasonableness of
13 any fees that may be requested.

14 The only guidance that I would give is that at
04:18PM 15 this point, Mr. Stanley, I am going to give them one
16 more chance and so the scope of the fees that I would
17 consider to be appropriate are those fees immediately
18 associated with you bringing this motion and appearing
19 in court today.

04:18PM 20 I'm not going to consider the hundreds of
21 thousands of dollars that you've spent reviewing,
22 investigating and all of that, but the fees of making
23 your motion and appearing here today, you may --

24 MR. STANLEY: Your Honor, at this time we're
04:19PM 25 not going to incur fees. We work on contingency.

1 THE COURT: All right. Well, then that takes
2 care of that.

3 So the Court will be entering a written order
4 that will track its rulings just now. I would encourage
04:19PM 5 y'all to resolve this issue, to understand that at its
6 essence, the plaintiffs are simply wanting to know
7 whether you can prove -- not prove -- whether you have
8 documents that go to the issue of establishing that
9 money was spent for each of these individual line items.

04:20PM 10 They understand the big scheme of the monies.
11 They're asking for proof and evidence that might exist
12 that goes to each individual line item specifically.
13 And so whatever hurdles that there may be, whatever
14 individual differences that there may be in some of
04:20PM 15 these line items, I think everyone knows, or should know
16 by this point, what the objective is, and I can't think
17 of anything that I haven't said already that I can say
18 to underscore the fact that you have enough
19 understanding to be able to work out any other issues as
04:21PM 20 it relates to this between yourselves. If you can't,
21 the Court will still be here, but some serious sanctions
22 are going to be issued if the defendants are on the
23 losing side of any subsequent dispute over these issues.

24 Is there anything further today, Mr. Stanley?

04:21PM 25 MR. STANLEY: No, sir.

1 THE COURT: Mr. Mowrey?

2 MR. MOWREY: Your Honor, the only thing I would
3 request, our response to the certification motion is due
4 in two weeks. Could we have at least another week or so
04:21PM 5 rather than two? If you say two, then obviously we're
6 going to abide by that, but --

7 THE COURT: On the certification motion or
8 the --

9 MR. MOWREY: Our response -- our response is
04:21PM 10 due, I believe two weeks from today.

11 MR. STANLEY: Are you asking for an extra week
12 of this order? Three weeks?

13 MR. MOWREY: Yes. Of this order, yes.

14 THE COURT: All right. Three weeks.

04:21PM 15 MR. MOWREY: Thank your Honor.

16 THE COURT: We're adjourned.

17 (Proceedings adjourned at 4:21 p.m.)

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF OFFICIAL REPORTER

I, Dana Hayden, Federal Official Realtime Court Reporter, in and for the United States District Court for the Western District of Arkansas, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 20th day of February 2018.

Dana Hayden

Dana Hayden, CCR, RMR, CRR
Federal Official Court Reporter