

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

JANE DOE and JOHN DOE,	.	Civil Action No. 1:04cv1361
	.	
Plaintiffs,	.	
	.	
vs.	.	Alexandria, Virginia
	.	April 29, 2005
YUSUF ABDI ALI,	.	10:00 a.m.
	.	
Defendant.	.	
	.	
. . . . .	.	

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:

SCOTT A. JOHNSON, ESQ.  
Cooley Godward LLP  
One Freedom Square  
11951 Freedom Drive  
Reston, VA 20190-5656

FOR THE DEFENDANT:

JOSEPH PETER DRENNAN, ESQ.  
218 North Lee Street, Third Floor  
Alexandria, VA 22314-2631

ALSO PRESENT:

YUSUF ABDI ALI

OFFICIAL COURT REPORTER:

ANNELIESE J. THOMSON, RDR, CRR  
U.S. District Court, Fifth Floor  
401 Courthouse Square  
Alexandria, VA 22314  
(703)299-8595

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

## P R O C E E D I N G S

THE CLERK: Civil Action 2004-1361, Jane Doe, et al. v. Yusuf Abdi Ali. Will counsel please note their appearance for the record.

THE COURT: All right, counsel, you need to put your names on the record.

MR. JOHNSON: Good morning, Your Honor. Scott Johnson of Cooley Godward for the plaintiffs.

THE COURT: All right, Mr. Johnson.

MR. DRENNAN: Good morning, Your Honor. Joseph Peter Drennan for the defendant, who is present.

THE COURT: All right. Now, the matter that's before the Court today is the plaintiffs' motion for a voluntary dismissal without prejudice on terms and conditions, and I understand, Mr. Drennan, that you're not opposed in principle to the concept of a voluntary dismissal. You would like to see it probably with prejudice, but I think you recognize that the unique facts of this case do suggest that there has to be some leniency in this respect.

I think the real issue today that we need to decide are the specific conditions under which such a dismissal will be granted by the Court. I am concerned about the status of this case for many reasons, Mr. Johnson. One, of course, is the logistical problems associated with the ability to get discovery in this case. It is certainly the normal practice that a person

1 who's going to sue in a court be able and willing to come into  
2 that jurisdiction to prosecute the case.

3 Now, I recognize the realities of certain types of  
4 litigation, of which this is one, that that may not always be  
5 possible. At the same time, it is absolutely unreasonable to  
6 require a defense attorney to have to travel to areas of the world  
7 where there are definitely issues of risk to his safety and health  
8 in defending a case, and so I have to balance these interests.

9 It is also a problem in that this particular defendant,  
10 I had the clear impression from the papers I've seen, is not able  
11 to go most likely out of the country without jeopardizing his  
12 status in the United States, and he has a right to be present  
13 certainly at the deposition of the plaintiffs who have brought  
14 this lawsuit.

15 So in thinking about this issue, which I know Judge  
16 Poretz also has under consideration, and we touched on this once  
17 before but I don't think in the level of detail that I anticipate,  
18 on this issue about where discovery or where the depositions of  
19 the plaintiffs would occur, I think we can resolve that issue in a  
20 moment, depending upon some other factors, but what I want to  
21 understand right now is, Mr. Drennan, you have already issued  
22 interrogatories to the plaintiffs, correct?

23 MR. DRENNAN: That is correct, Your Honor.

24 THE COURT: And my understanding is that you are still  
25 extremely dissatisfied with the specificity of the responses, or

1 has that now been corrected?

2 MR. DRENNAN: Well, I am indeed, Your Honor,  
3 particularly with regard to the issue of documentation of who  
4 these people are. I have yet to see a single document that  
5 corroborates the -- or vets the identity, the true identity of the  
6 people involved.

7 I understand from one of their interrogatory responses,  
8 they each -- actually, the same array was sent to each party, and  
9 each, each party in response to the pertinent interrogatory  
10 indicated that he or she, as the case may be, was present outside  
11 of Somalia at the -- sometime in 1990 in one of these refugee  
12 camps that were, that were administered at that time, and I know  
13 from my knowledge of the region that all refugees get IDs, and I  
14 haven't seen any sort of identification.

15 I understand further that the, that the plaintiffs  
16 traveled to Nairobi for interviews at the U.S. Embassy there on, I  
17 believe it was, the 19th of this month, just last week, and I have  
18 yet to see any documents evidencing, you know, how they identified  
19 themselves when they presented themselves at the embassy.

20 That's among others -- I have not brought on any sort of  
21 motion to compel because I've been quite busy dealing with other  
22 aspects of the case. We've been here almost every Friday for the  
23 last couple of months.

24 THE COURT: All right. What I'm going to do in this  
25 case is I am going to grant the plaintiffs' motion for the

1 voluntary dismissal without prejudice on specific terms and  
2 conditions, and if those terms and conditions are not satisfied,  
3 then this dismissal will result in a dismissal with prejudice.

4 First of all, the plaintiffs must within 30 days provide  
5 full and complete responses to the discovery that is outstanding,  
6 both the documentary evidence that's been requested and the  
7 interrogatory answers, and satisfactorily satisfying that  
8 discovery obligation is a precondition to this case being refiled.

9 If there have been proper responses, then that suggests  
10 to the Court that there's a real case to go forward, and it gives  
11 you the right to file the case again.

12 But my concern is there are serious allegations that  
13 we've not totally addressed at this point about an  
14 extraordinarily -- about this case being beyond the statute of  
15 limitations. There is a very serious allegation that's still  
16 unresolved in this case that the plaintiffs are actually being  
17 used by political forces to not so much file a genuine individual  
18 lawsuit on their own behalf but to raise -- or to try to use some  
19 political leverage out of a case out of this Court that could have  
20 an impact on a foreign sovereign's efforts to develop a program of  
21 reconciliation and reunification.

22 We all know that the U.S. State Department may yet weigh  
23 in on this case. There are all sorts of concerns that this Court  
24 has about whether this is appropriate litigation and appropriate  
25 in this jurisdiction, and so I want to make sure that if this case

1 is going to go forward, it goes forward as a legitimate civil  
2 litigation and not something else.

3           The plaintiffs should be able with all the time that's  
4 passed and apparently all the resources that are behind this  
5 litigation to be able to answer what do not appear to the Court to  
6 be unreasonable discovery requests. So the discovery that is  
7 outstanding as to the plaintiffs, that is, the interrogatories and  
8 the document requests, must be satisfactorily resolved within 30  
9 days.

10           Now, I can tell from your body language, Mr. Johnson,  
11 this is giving you concern, so why don't you tell me why that's a  
12 problem at this point.

13           MR. JOHNSON: May it please the Court, Your Honor, I  
14 don't believe it's a problem that we respond. In fact, I believe  
15 we have responded. I was surprised in that really in this case,  
16 the reason we've been before Judge Poretz on a couple of occasions  
17 is not as a result of any discovery delay or lack of diligence on  
18 the part of the plaintiffs; rather, it's been the difficulty in  
19 getting any kind of responses at all out of the defendant.

20           We had served discovery in January. It was due in  
21 February. We only received the written responses and the  
22 privilege log a few weeks ago.

23           And so I want to make sure I understand -- I don't  
24 believe that there's been any particular issues raised by  
25 Mr. Drennan other than perhaps --

1           THE COURT: He's telling me he doesn't know who the  
2 plaintiffs are in this case or he has no confidence in the  
3 identity of the plaintiffs.

4           MR. JOHNSON: Your Honor, certainly if we have that  
5 documentation, you know, we're more than happy to provide it, and  
6 we will seek that documentation without question. I just wanted  
7 to make sure that there wasn't perhaps a misunderstanding, that I  
8 believe the plaintiffs have been very diligent in responding to  
9 all discovery issues that have been raised.

10          THE COURT: Then you won't have a problem with this.  
11 But what I'm saying is within 30 days -- if I dismiss your case  
12 today, you've got to make sure within 30 days that you have  
13 complete, full answers to the currently outstanding -- when I say  
14 "outstanding," that is, that discovery that has been filed by  
15 Mr. Drennan as to the plaintiffs. If there are third parties or  
16 others, I'm not as concerned about that. It has to be fully  
17 answered.

18          Now, Mr. Drennan has identified one issue that he's  
19 dissatisfied with, which is a clear identification of who the  
20 plaintiffs are in this case. I also thought as I read through  
21 things that at least in the deposition answers, there was a great  
22 deal of unclarity about dates and where things happened, but did I  
23 misread that, Mr. Drennan, or are you satisfied with the rest of  
24 the information?

25          MR. DRENNAN: Your Honor, this is something that, that

1 has recently come up where upon the defendant's having filed the  
2 declaration first and then having given his deposition, at some  
3 point in some of the pleadings that were coming back from the  
4 other side, I noticed that there was some equivocation about when  
5 certain events took place based on the, on the defendant's  
6 answers.

7 Well, the plaintiffs are bringing this lawsuit, and they  
8 make very, very serious allegations concerning occurrences in the  
9 mid-1980s, and we were just a little troubled about that. And I  
10 mention that in my most recent memorandum to the Court simply  
11 because in our view, respectfully, it's illustrative of what  
12 appears to have been an inadequate, palpably inadequate pre-suit  
13 investigation.

14 But the, the answers are -- the sworn answers are what  
15 they are, and I was just planning on -- and that's why we're so  
16 anxious to take the depositions of these plaintiffs, so that we  
17 can get the appropriate amplification of what these specific  
18 allegations are.

19 THE COURT: All right. Then other than the identity of  
20 the plaintiffs, you're not dissatisfied substantively at this  
21 point with any of the discovery you've gotten from the plaintiffs?

22 MR. DRENNAN: I think that that's a correct statement,  
23 Your Honor.

24 THE COURT: All right. That's going to be a very easy  
25 precondition then for the plaintiff.



1           MR. JOHNSON: Your Honor, if I may just seek  
2 clarification, so I understand, if we do not have any written  
3 documentation identifying the plaintiffs, and I don't know that  
4 that's the case at this point, it seems to me that our honest and  
5 truthful answers to the interrogatory requests or any document  
6 discovery would, in fact, be that it doesn't exist or we don't  
7 have it. To me, that would satisfy any duty that we have to  
8 respond to those requests.

9           THE COURT: Well, I'm not going to give you an advisory  
10 opinion. You have to do what you have to do, and we'll see where  
11 we go from there.

12          MR. JOHNSON: Yes, Your Honor.

13          THE COURT: All right.

14          MR. JOHNSON: Your Honor, if I may just briefly address  
15 the issue of -- I know Your Honor has raised a question about an  
16 alleged political motivation for this case. I'm concerned that  
17 it's simply a red herring that's been raised by the defendants in  
18 this case -- the defendant in this case.

19                 There really is no political motivation in this case  
20 whatever. This is simply the situation where we're trying to  
21 represent two plaintiffs that have suffered some very serious  
22 wrongs, and I just want to go on the record to clarify our  
23 position on that. Thank you.

24          THE COURT: All right. Now, the single largest issue is  
25 where these depositions are going to occur, and here's how I think

1 we solve all problems: First of all, as I thought about this  
2 issue, there are two levels of problem here. First are the broad  
3 discovery depositions, which obviously in most civil cases,  
4 there'd be a round of discovery depositions of parties, and then,  
5 of course, if the case survives pretrial motions, when it goes to  
6 trial, the parties are present in court to testify, and that  
7 creates issues in this case as well.

8 I think the best way of handling this concern is to do a  
9 video deposition run from this courthouse to whatever location the  
10 plaintiffs are. That allows the plaintiffs the flexibility of  
11 anywhere in the world they want to be. It allows the defendant to  
12 be present throughout the deposition because he would be able to  
13 see and hear the individuals as they're being questioned.

14 It allows -- the technology exists now that would allow  
15 counsel to be right here in the United States and to question the  
16 people over the video link. It enables this Court to administer  
17 the affirmation so that if there is any false statements, those  
18 individuals could be prosecuted by this United States Attorney's  
19 Office for committing perjury because it would be a crime made in  
20 the presence of the Court.

21 The technology exists. It is expensive, and in my view,  
22 the plaintiffs would have to bear the entire cost of that. That  
23 would allow, I think, everything to go forward.

24 Now, in addition, my recommendation, although I'm not  
25 wedded to this, is it seems to the Court that the deposition

1 should be more in the line of a de bene esse deposition than a  
2 discovery deposition; that is, the likelihood of these plaintiffs  
3 being able to come to this courthouse if the case gets to that  
4 point and appear in the courtroom is probably problematic, and  
5 therefore, rather than expending counsel's time twice, we ought to  
6 be able to do that questioning in such a way that there is  
7 basically substitution for actual trial testimony, and to ensure  
8 that that goes smoothly, the Court is willing to make itself or  
9 one of the magistrate judges, or I guess we need Judge Poretz,  
10 available to actually preside over that questioning so that  
11 objections that were raised similar to what would be raised during  
12 a trial can be ruled upon by the Court and a clean videotape can  
13 be constructed.

14 I think that solves the problem of trying to figure out  
15 where the depositions occur, avoids almost all the logistical  
16 issues that have been raised in the various motions that are  
17 before Judge Poretz. I think it gets around all the concerns,  
18 Mr. Drennan, that you've had about oath administration and the  
19 ability to have your client confront his accusers.

20 And the issue, of course, is the logistics. The Court  
21 itself I do not believe has that kind of technology. We have some  
22 technology, but when we've had overseas interactive depositions,  
23 we've had outside agencies provide the technology for that. I  
24 know it exists in the private sector, and the burden would be on  
25 the plaintiffs, who seem to have great financial resources

1 available to them, to be able to work that out.

2 If that can't be worked out, then the only alternative  
3 would be -- and I see it's a very unsatisfactory one because it  
4 denies the defendant his right to be present at those depositions,  
5 and so I really think this is the only way you can go and  
6 accommodate all of those issues.

7 Now, Mr. Drennan, let me hear you because I know you  
8 originally when we talked about a video deposition had some  
9 concerns.

10 MR. DRENNAN: Your Honor, I have some, I have some  
11 concerns about this. I understand the Court's ruling, and, and I  
12 do think that to an extent, it accommodates the, the issue of the  
13 presence of the defendant.

14 Your Honor --

15 THE COURT: And it avoids your having to travel outside  
16 of Virginia, frankly.

17 MR. DRENNAN: Well, well, Your Honor, that's -- I'll  
18 tell you that's never really been the issue. I mean, as I  
19 mentioned to the Court before, I've been to the Middle East. I've  
20 been to areas where there have been travel advisories.

21 I, I had some profound concerns about travel to  
22 Somaliland. I think that I would be at serious personal risk, and  
23 indeed, especially in view of who I represent, and the State  
24 Department advisory reflects that all American citizens are well  
25 advised not to go to anywhere in Somalia at the present time,

1 including the --

2 THE COURT: It's off the table. I'm not --

3 MR. DRENNAN: I understand that, but if Your Honor is  
4 inclined to allow video depositions, here -- of course, noting our  
5 exception to that, to that ruling, I want to see these people, and  
6 I want to see them right across the table from me, and if that  
7 means that my client has to be present by a video link but that  
8 I'll be there, be it in Ethiopia or Djibouti or, or any other  
9 country, I'll do it that way, but I don't believe that I should be  
10 constrained to be delimited to seeing these people on a video.

11 I want to be there, and also, there's a latent issue,  
12 Your Honor, we haven't raised because it's been quite apparent to  
13 me for quite some time that the case has been coming to this, but  
14 these people are claiming physical injuries, and I have in my  
15 discussions with counsel, have broached the issue of IMEs, and the  
16 response was, well, you shouldn't be entitled to IMEs.

17 We didn't bring the matter on formally by way of motion,  
18 but Judge Poretz obiter dictum has indicated that he believes that  
19 the plaintiffs should be required to give IMEs if the defendant  
20 asks for them, and that's another issue that needs to be  
21 accommodated.

22 And I've stated to the, to the plaintiffs' counsel that  
23 if, if the plaintiffs withdraw any claim that they sustained  
24 physical injuries and are not asking for any damages premised on  
25 any physical harm that they claim to have suffered, I'll withdraw

1 my request for IMEs.

2           These people are making very serious claims against my  
3 client. My client is dubious about the validity of the claims,  
4 and that's a latent issue that upon a refiling of the case, that  
5 would need to be addressed.

6           THE COURT: What's the nature of the physical injuries  
7 alleged in this case?

8           MR. DRENNAN: Well -- and, of course, Mr. Johnson will  
9 correct me if I'm inaccurate in any regard -- but generally  
10 speaking, the allegation with regard to the female is that she  
11 sustained a beating that was so severe that it caused her to  
12 sustain a miscarriage. Now, that's -- I'm not asking for an IME  
13 to verify whether she had a miscarriage. I'm not --

14           THE COURT: Twenty years ago, that would be almost  
15 impossible.

16           MR. DRENNAN: No, no, no, no. But the other gentleman  
17 has -- tells a tale of receiving a number of gunshots and being  
18 left for dead, and even though those allegations are considerably  
19 remote in time as well, that -- the credibility of those  
20 allegations is rather suspect, and we respectfully submit that an  
21 IME would be appropriate with regard to John Doe.

22           THE COURT: All right.

23           MR. DRENNAN: In addition, Your Honor, with regard to  
24 the issue of a video link, the, the posture of the case before  
25 this motion was brought on had your plaintiffs requesting the

1 issuance of commissions for the taking of a number of nonparty  
2 depositions in Ethiopia.

3           It's invariable that if the case goes forward, there  
4 will need to be certainly from the plaintiffs' standpoint, unless  
5 they're not going to put on any other evidence aside from the, the  
6 ipse dixit testimony of the plaintiffs, that there will be other  
7 depositions taking place involving people from that part of the  
8 world that presumably would not be able to travel here, and the  
9 question arises as to whether those would be depositions that  
10 would be video link depositions so that the defendant has an  
11 opportunity to be present as well.

12           THE COURT: All right, Mr. Johnson?

13           MR. JOHNSON: Your Honor, if I may, to address the --  
14 well, first off, to address the video conference issue, I know we  
15 had raised it earlier, and in fact, the Court had raised it  
16 earlier, and we understood from Mr. Drennan that was not something  
17 he was interested in, and therefore, we did not pursue that  
18 option. That does sound like a good option.

19           I will note that the -- this is a pro bono matter that  
20 we are helping to support. Indeed, the resources of the  
21 plaintiffs are not abundant by any stretch, and the plaintiffs  
22 themselves are certainly by our standards here in the United  
23 States not very well off.

24           I would like to, to raise two points: One, the issue of  
25 the IME. We have not denied -- rejected any claim for an IME. We

1 have not seen any motion or request before the Court with regard  
2 to an IME, and it doesn't seem appropriate at this time for that  
3 issue to be addressed by the Court.

4           Second, in terms of the issue of other nonparty  
5 witnesses, it doesn't seem to me that it's our burden to provide a  
6 video link for the defendant in order to sit in and watch those  
7 depositions and that there's no issue with regard to local rule  
8 30A that those other witnesses be brought here. So I don't  
9 believe that's a burden that the plaintiff should have to bear in  
10 this situation. Thank you.

11           THE COURT: Well, I'm not quite sure how the due process  
12 rights of a civil litigant extend to third-party depositions.  
13 Certainly in order for the defendant and defense counsel to be  
14 able to meaningfully address those third-party depositions, they  
15 have to be able to interact to some degree either before or after  
16 the deposition or during the deposition. I mean, often parties  
17 are not present with third-party depositions. I think we'll face  
18 that issue when we come to it.

19           But what I'm going to do, as I said, is I'm going to  
20 grant plaintiffs' motion for the voluntary dismissal, and as I  
21 said, the conditions that I'm going to impose are first of all, as  
22 I said earlier, that there has to be a response to the identity  
23 questions and document requests that have been -- that are  
24 outstanding.

25           There cannot be any duplicative discovery in any newly



1 filed action. Now, that does mean that if there has been  
2 outstanding discovery by either side and that side has not been  
3 satisfied by the quality of the response, I will permit a motion  
4 to compel or renewed request for that discovery, but to the extent  
5 that something has already been resolved or answered, there's not  
6 to be any duplication in the newly filed action.

7 I'm very concerned about the statute of limitations  
8 because I think, frankly, this case is already way beyond any  
9 reasonable time period, and I think that's ultimately going to be  
10 a very serious issue in this case, but because I'm only going to  
11 give the plaintiffs 45 days in which to refile a new action, I  
12 will stay the statute of limitations only for that 45-day period  
13 but no further.

14 The new action cannot be brought unless the plaintiffs  
15 and the defendant can work out this video deposition. I'm going  
16 to go with my instinct on that, but the plaintiff has to make all  
17 the arrangements in terms of the equipment, in terms of the  
18 payments for it, everything. You'll need to clear with my  
19 chambers time when we can do it, and I will see whether we're  
20 going to use the 7th floor courtroom that does have some  
21 technology in it or whether we need to do it here.

22 Now, will those depositions be in English, or will a  
23 translator be necessary?

24 MR. JOHNSON: Your Honor, I believe the translator will  
25 be necessary.

1           THE COURT: All right. You're going to have to make all  
2 the logistical arrangements for the translator and, as I said, the  
3 videographer, everything, and then clear it with the Court, and I  
4 want a time estimate as to how long you think these depositions  
5 will last, all right, in other words, whether we're going to be in  
6 court for a day or two days.

7           Now, since I'm going to be -- I or Judge Poretz will be  
8 presiding, there isn't going to be a lot -- that's one of the  
9 other reasons why I wanted to do this. I've read too many  
10 deposition transcripts where there's all sorts of objections and  
11 back-and-forth among lawyers. It's not going to happen this way.  
12 I may give you a little leeway since this is going to be a  
13 combined discovery and potential trial deposition, but this may  
14 very well be the plaintiffs' only time to testify in this case.

15           And frankly, if the testimony is not solid, it may lead  
16 to a very early motion by the defense. I expect this to be a real  
17 case, as I said, with real litigants, and not some sort of thing  
18 made out of the ether, and so the plaintiffs have got to be able  
19 to respond appropriately to the questions that are being asked of  
20 them.

21           So the two of you need to consult with your calendars,  
22 with your best estimate as to the time that's going to be needed.

23           Now, the other thing in terms of time, what's the time  
24 difference between wherever this -- and the plaintiffs don't have  
25 to be in Somalia or any other place. You decide where they should

1 be, but remember, there's a time gap, and I'm not coming to court  
2 at 5:00 in the morning to accommodate their schedule. So you're  
3 going to be working off of -- I'm willing to start 8:30-ish here,  
4 not much earlier than that.

5           And the other thing is I don't want to tie up my court  
6 reporter on this process. Although I'll be in session, the  
7 record, the official record -- and I'll check with Ms. Thomson and  
8 make sure we can do it this way -- is going to be that video  
9 record. So whoever the videographer is, I'll swear them in as  
10 official court reporter, but I think that's it, because it's not  
11 technically a trial, it's a pretrial matter, but I don't think I  
12 should have to use court resources for it. I think that will be  
13 sufficient, and then if the videotape is played at trial, we would  
14 capture that as part of the trial record. So I think we can work  
15 it that way.

16           In terms of any third-party depositions, Mr. Drennan,  
17 I'll let you brief that issue. I'm not sure how that's going to  
18 work at this point, but let's get the plaintiffs' depositions  
19 taken care of first.

20           And I think that pretty much covers the issues that you  
21 were concerned about in terms of the prefiling conditions. The  
22 defendant's not giving up any of the defendant's rights to object  
23 to any of these depositions, including the video deposition. I  
24 don't really think in a civil case you're going to have a  
25 legitimate argument that your inability to be in the same room

1 with the people is prejudicing your client.

2 But I also do agree, although there's not a formal  
3 motion on the floor, that certainly as to John Doe, because  
4 gunshot wounds would be even 15 or 20 years later able to be, I  
5 think, medically confirmed, that the IME is a reasonable request  
6 given the nature of the allegations.

7 Now, again, if those change in the complaint, in the new  
8 complaint, then, of course, it may not be necessary, but in  
9 thinking through the prefiling decisions, you need to recognize  
10 that if you're still alleging physical damage to John Doe from  
11 gunshot wounds or other sort of physical items that could be  
12 detected with an examination, that he will have to -- if it's a  
13 reasonable request, that he would have to sit for an IME, and then  
14 working that out is something you'll have to figure on. Okay?

15 All right, are there any other conditions, first of all,  
16 Mr. Johnson, that you're concerned about? Again, 45 days is your  
17 time limit, so you're going to have to work with your technology  
18 people. If they need to come over here and look at the courtroom  
19 to see how it would be set up, talk to Ms. Travers, my courtroom  
20 deputy, about making those arrangements. All right?

21 MR. JOHNSON: Thank you, Your Honor. I do have one  
22 point. Do I understand the Court's discussion of the IME at this  
23 stage is simply a suggestion that the parties work together to try  
24 to make arrangements for that IME if a motion is filed?

25 THE COURT: I'm basically alerting you that one of the

1 things you have to be thinking about if you refile this case for  
2 these two plaintiffs is that John Doe, if he's still claiming  
3 physical injuries of the sort that was described in court, that  
4 is, gunshot wounds, is going to likely have to be examined for --  
5 sit for an IME. That's out there. It's just something to  
6 consider in your evaluation about whether there should be another  
7 filing in this case.

8 MR. JOHNSON: Thank you, Your Honor.

9 THE COURT: All right?

10 MR. JOHNSON: Thank you, Your Honor. The other issue,  
11 again, I would just note my objection with regard to having to  
12 actually provide any identification documents or otherwise. We  
13 will certainly within, as I understand it --

14 THE COURT: How could these people travel to Ethiopia?  
15 Is Ethiopia allowing foreign nationals inside its country without  
16 there being some paper?

17 MR. JOHNSON: Your Honor, as I understand it, they did,  
18 in fact, receive some sort of visa or pass to travel to, to  
19 Nairobi. So they have not yet traveled to Ethiopia. It was  
20 travel to Nairobi to get their -- or to apply for their U.S. visa,  
21 their nonimmigrant visa.

22 So I just can't -- I can't represent to the Court right  
23 now what actual document they received. It just occurred on the  
24 19th. We actually had a difficult time even reaching our  
25 plaintiffs because of a -- some confusion in the U.S. Embassy.

1 Their passports -- or the -- presumably, I guess, Your Honor, the  
2 visa materials they received to travel were inadvertently locked  
3 up in the office, and they had four or five days spent in Nairobi  
4 until they could get another plane back to Somalia.

5           So it may very well be there are documents we can  
6 provide, and certainly if we have them and they're responsive, we  
7 will provide them. My only concern and noting the objection was  
8 if we don't have anything, I would not want that to be preclusive  
9 of us refiling the suit.

10           THE COURT: We'll have to work that out when we get  
11 there.

12           MR. JOHNSON: Okay. Thank you, Your Honor.

13           THE COURT: All right? Mr. Drennan, anything you wanted  
14 to add?

15           MR. DRENNAN: Just one thing, Your Honor, and I don't  
16 want to repeat myself, and I won't, but with regard to the terms  
17 and conditions respecting the video deposition, all we would ask  
18 is that there be at this point -- because I could see this as  
19 being a potential stumbling block in conferral with counsel --  
20 that there be an explicit provision regarding the depositions  
21 going forward in a place where there is, is some infrastructure  
22 and where there is not a State Department advisory of potential  
23 death to an American citizen, because I want to have the option of  
24 being there present physically to see these people face to face.

25           THE COURT: You understand --

1 MR. DRENNAN: Your Honor --

2 THE COURT: Wait, wait. You understand then I'm not  
3 going to require the plaintiff to pay those costs.

4 MR. DRENNAN: I understand that, Your Honor, and -- but  
5 the plaintiffs have already represented to the Court in their  
6 earlier filings that they could get their, get plaintiffs to Addis  
7 Ababa. If there is to be a video deposition, let it be Addis  
8 Ababa rather than Somaliland, which is a place that is essentially  
9 beyond the pale for any American to go, particularly this  
10 American, who represents Colonel Ali in this case.

11 MR. JOHNSON: Your Honor --

12 THE COURT: Unless, Mr. Drennan, you've got some case  
13 law that says that it's a clear violation of due process or other  
14 rights that your client and you have for you to be physically  
15 present during this deposition, I think putting that additional  
16 burden on the plaintiffs is unreasonable.

17 Now, again, the video has got to be good. If it's --  
18 and so there's a lot of burden already on the plaintiffs to get a  
19 really decent company, and obviously, if the plaintiffs are in  
20 Somalia, whoever they hire as their videographer folks have got to  
21 be able to go into that country with their equipment. There has  
22 to be a location.

23 So it may very well be that it isn't going to happen  
24 there anyway because the logistics for whoever the company is that  
25 does this may be that they don't want to or can't get into the

1 country, and so it may take care of itself in that manner. All  
2 right?

3 But unless you can show me -- and I'll give you a few  
4 days to see if you can come up with some case law that says  
5 definitively that I'd be committing, you know, reversible error to  
6 say to you, no, you're going to have to live with these video  
7 depositions under these circumstances or make the decision to go  
8 where they are, but -- in other words, I'm forcing the plaintiffs  
9 to bear the cost of the entire video program. To add the  
10 additional costs that they must travel to a certain location for  
11 the video matter to go forward simply because you might want to be  
12 present I don't think is reasonable.

13 Now, again, the reality is that they may have to travel  
14 anyway, and if that is the case, Mr. Johnson, you need to give  
15 Mr. Drennan clear notice of that. In other words, if your company  
16 says, "We're not going to go there to take these depositions,"  
17 then you're going to have to still make arrangements for your  
18 clients to travel.

19 And then, Mr. Drennan, at your own cost, if you decide  
20 you want to be present in the room when they're being questioned,  
21 that's your option.

22 MR. DRENNAN: Your Honor, one, one, one further  
23 consideration that we believe is appropriately aired here is the  
24 fact that our government does not recognize the self-proclaimed  
25 republic of Somaliland, and to have a deposition go forward from



1 that territory could very well present some very touchy diplomatic  
2 issues.

3 We recognize the government of Ethiopia. We recognize  
4 the government of Djibouti. We do not recognize the  
5 self-proclaimed republic of Somaliland.

6 And au contraire, there's actually every indication  
7 that, that I have from my sources that, that our government is  
8 watching very carefully the, the efforts of the transitional  
9 government to set up shop, so to speak, in Mogadishu or in some  
10 other capital city, and this -- allowing this exercise to go  
11 forward could, could have some very profound and unpleasant  
12 reverberations in that region.

13 THE COURT: Well, I'm not ordering the deposition to  
14 occur anyplace. I'm just saying wherever it occurs, it occurs.

15 And the State Department has had a lot of time to weigh  
16 in officially on this case, and we still don't have their  
17 position. If you want to contact your people over there and get  
18 an advisory opinion, clearly, if the State Department indicates  
19 that the United States government believes it would be against our  
20 national interests to allow this deposition to occur there, I'll  
21 cancel that location and require the plaintiffs to travel  
22 elsewhere, but I don't have that in this record.

23 And I'm not ordering that it occur there. I'm just  
24 saying the plaintiffs will be deposed by a video deposition  
25 because no matter what their situation is, it's pretty clear

1 Mr. Ali cannot leave the United States and be able to -- he'll  
2 have a problem, I suspect, coming back here. That's the  
3 logistical problem he's got.

4 MR. DRENNAN: Yeah.

5 THE COURT: And I want to make sure that he has the  
6 right to be present at that deposition. That's how I'm balancing  
7 this. So that's the parameters of it.

8 MR. DRENNAN: All right. Your Honor, there is one final  
9 point, and that relates to the issue of costs. Your Honor related  
10 to us in, I believe, a hearing that was held on the 1st of April  
11 or thereabouts that this, this problem of the plaintiffs coming  
12 here should -- I believe Your Honor used the term should have come  
13 as no great surprise to the plaintiffs.

14 We have been to court on -- to be sure, some of these  
15 trips to court have been with regard to discovery issues regarding  
16 the defendant, but an identifiable portion of my considerable  
17 efforts on behalf of my client in this litigation have been in  
18 dealing with this very issue that was eminently predictable from  
19 the outset, and the plaintiffs now are being essentially given an  
20 indulgence to refile, and we believe that in addition to the --  
21 and again, I understand the position of the Court, but with regard  
22 to the limitations issue, we believe that, that we, we've suffered  
23 and continue to suffer prejudice.

24 We've also suffered a rather not inconsiderable  
25 incurment of costs in the way of attorneys' fees of having to deal

1 with proceedings that relate to these issues that we're talking  
2 about now.

3 THE COURT: Well, I'm not awarding fees, but I think it  
4 is fair to put counsel on notice -- and it sounds as though this  
5 is a case that perhaps is more driven by counsel or others than  
6 the litigants themselves -- but Rule 11 might very well result in  
7 the award of fees and expenses on -- in terms of the second case,  
8 if it gets filed and there's not a good faith reason to believe  
9 that, for example, the statute of limitations defense will not be  
10 successful and that this case can properly go forward with two  
11 genuine plaintiffs whose identity is known and who are going to be  
12 able to comply with the requirements of any litigant who comes  
13 into federal court, that is, to be available for the necessary  
14 discovery, etc.

15 I'll face that issue when it comes, but, Mr. Johnson,  
16 you're just on a general notice that as an officer of this Court,  
17 you've got to be sure that if this case proceeds and you continue  
18 to, you know, increase the costs for the defendant, that there's a  
19 genuine basis to let it go forward.

20 Again, there are lots of legal issues floating around in  
21 the periphery of this case that haven't really been addressed yet.  
22 And you also, both sides, I think, have a genuine interest in  
23 making sure that the State Department moves on the questions that  
24 are before it concerning this case, and, Mr. Johnson, your firm is  
25 involved in the other case as well, and I think the same issue

1 applies there.

2 I mean, the defendants are in a different position, but  
3 the overall concerns, if they are real, as to the status of  
4 Somaliland and what's going on there and any effect this  
5 litigation might have on that I would expect the State Department  
6 will let us know.

7 But in any case, I've granted your motion. Hopefully,  
8 you understand the restrictions. We'll put some of them in an  
9 order, but the fullest explanation will be in the transcript.

10 All right, anything further?

11 MR. JOHNSON: Your Honor, can I just briefly, I would  
12 like to note an objection to the video depositions just to the  
13 extent that if we do find some sort of problem in having the video  
14 deposition arranged, certainly that sounds as though that's  
15 something that it's up to us get arranged, and we will, you know,  
16 move quickly forward to try to secure that and the details and  
17 logistics of that kind of deposition, in terms of, in terms of  
18 costs, I would just note at this point that certainly any costs  
19 that have been incurred so far in this matter would be reasonably  
20 covered by -- and because our discovery would continue forward  
21 into a subsequent case, that costs really shouldn't be an issue.

22 And I understand the Court's admonition with regard to  
23 making sure we have a valid case and valid plaintiffs, and  
24 certainly we take that to heart and without question will uphold  
25 our responsibility to make sure that we have a valid case with our

1 plaintiffs. It's our position that indeed we do.

2 THE COURT: Have you met your clients?

3 MR. JOHNSON: I have not, Your Honor.

4 THE COURT: Has anyone in your firm met your clients?

5 MR. JOHNSON: Yes, they have, Your Honor.

6 THE COURT: That's good. That's a good start. All  
7 right.

8 In any case, that's the ruling of the Court. Now,  
9 again, you've got 45 days to get this all worked out. The  
10 deposition doesn't have to occur within that time, but, you know,  
11 that's a prefiling condition, that we're all set to go.

12 MR. JOHNSON: Just so I understand then --

13 THE COURT: You've got 45 days in which to respond to  
14 the defendant, that shouldn't be that difficult, and to get all  
15 the logistics set up and in place for the video deposition.

16 MR. JOHNSON: So that's 45 days in which to refile a new  
17 complaint and to have arrangements for video depositions in place.

18 THE COURT: Right.

19 MR. JOHNSON: It doesn't have to occur by then.

20 THE COURT: Correct, but it has to be set up so you know  
21 who the company is, you should know who the interpreters are going  
22 to be, you should know where it's going to occur, you should have  
23 a time frame. You will have talked to my chambers and gotten the  
24 dates to do it, in other words, it's ready to go.

25 Now, it may not be able to go as soon as you file the

1 complaint, but it obviously has to go relatively quickly because  
2 among other things, you're going to get a scheduling order in this  
3 case if you refile, and it's going to be probably a slightly  
4 shorter scheduling order since you've had a chance to do  
5 discovery, and we'll see where it goes from there.

6 MR. JOHNSON: Yes, Your Honor.

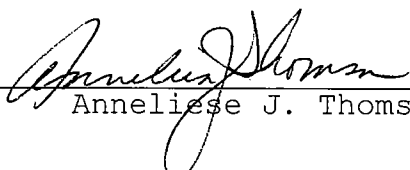
7 THE COURT: All right? Thank you.

8 MR. DRENNAN: Thank you, Your Honor.

9 (Which were all the proceedings  
10 had at this time.)

11  
12 CERTIFICATE OF THE REPORTER

13 I certify that the foregoing is a correct transcript of the  
14 record of proceedings in the above-entitled matter.

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19 Anneliese J. Thomson  
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