

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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In the Matter of:	:
	:
AMERICAN SOCIETY FOR THE	:
PREVENTION OF CRUELTY	:
TO ANIMALS, et al.,	:
	:
Plaintiffs,	:
	:
vs.	: Civil Action No.
	: 03-2006
RINGLING BROTHERS AND	:
BARNUM & BAILEY CIRCUS,	:
et al.,	:
	:
Defendants.	: Washington, D.C.
	: February 7, 2008
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TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE
BEFORE THE HONORABLE JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

On behalf of the Plaintiffs:

KIMBERLY D. OCKENE, Esq.

On behalf of the Defendants:

LISA ZEILER JOINER, Esq.

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P R O C E E D I N G S

1
2 THE CLERK: This is Civil Case 03-2006, American
3 Society for the Prevention of Cruelty of Animals, et al.,
4 versus Ringling Brothers and Barnum & Bailey Circus, et al.
5 Kimberly Ockene is for the Plaintiff, Lisa Joiner for the
6 Defendant. This is a telephone status conference.

7 THE MAGISTRATE JUDGE: Good afternoon, everybody,
8 this is Judge Facciola. Just a couple of things I want to go
9 over with you. I have reviewed the documents that were
10 redacted and I have seen the nature of the redactions. They
11 are redactions of the name of a human being and in a couple of
12 instances, identifying information about that person, such as
13 phone numbers.

14 Obviously, these documents were prepared by
15 government officials and people had to give that kind of
16 information. One was really remarkable, he had to give his
17 driver's license and all this other stuff. So I appreciate
18 that.

19 The one issue I had that I needed some guidance on is
20 that, that if the person is affiliated with the institution or
21 organization, there has been a redaction of the affiliation.
22 So in other words, if it is John Doe of the XYZ Institution,
23 both John Doe and XYZ have been obliterated. I chatted with
24 Judge Sullivan about that and he has no recollection or could
25 not find in the papers a source where he gave guidance as to

1 | the nature of those redactions. So I was just wondering, why
2 | did you redact that the way you did?

3 | MS. OCKENE: Your Honor, this is Kimberly Ockene for
4 | the Plaintiff. It was actually our intention in most
5 | instances I think not to redact the organizational name, but
6 | only to redact the names of individuals. So if we did that in
7 | certain places, that's something we would actually be willing
8 | to turn over.

9 | THE MAGISTRATE JUDGE: Okay, because on occasion --
10 | I'm glad you said that because I wanted to know that. On
11 | occasion, it seems to be that the people were affiliated with
12 | people for the Ethical Treatment of Animals.

13 | MS. OCKENE: Right.

14 | THE MAGISTRATE JUDGE: All right, we found -- we have
15 | a list and Sara will coordinate this to save you the time. We
16 | have an independent list of all of the instances where that
17 | occurred.

18 | MS. OCKENE: Okay.

19 | THE MAGISTRATE JUDGE: And we will get that to you.
20 | Otherwise, I can say, having looked at them, that the
21 | redactions are only of identifying information of the human
22 | beings.

23 | MS. OCKENE: That was our intention, Your Honor, and
24 | (inaudible).

25 | THE MAGISTRATE JUDGE: And you seem to have --

1 MS. OCKENE: -- to redact the organizational name.

2 THE MAGISTRATE JUDGE: All right, well, we'll clean
3 that up and then I'll issue an order to the effect that I
4 don't see any reason for additional judicial action.

5 Okay, now let's take up right now --

6 MS. JOINER: Could I be heard and put Defendant's
7 position on the record on this?

8 THE MAGISTRATE JUDGE: Well, I don't know what you're
9 going to say, because they did what they said they were going
10 to do. Now wasn't that your complaint that they didn't do?

11 MS. JOINER: No, our complaint was that it happened
12 at all.

13 THE MAGISTRATE JUDGE: Oh, I see.

14 MS. JOINER: When the government produced these
15 documents to Plaintiffs, it did not make these redactions.
16 This was Plaintiffs filtering the documents as they passed to
17 us as the result of a Rule 45 subpoena. So our objection here
18 is why are these documents being filtered in the version
19 that's coming to us? It wasn't the government that did this,
20 it was Plaintiffs as they were passing through them.

21 THE MAGISTRATE JUDGE: See, this is why I'm a little
22 confused. I had thought that the two sides had -- since Judge
23 Sullivan did not recollect the source of the redaction power,
24 I thought it had something to do with a preexisting agreement
25 you had. That's not true?

1 MS. JOINER: No, there was no agreement by Defendants
2 to do this. We asked to get them in the exact same form that
3 the USDA produced them and when we contacted the AUSA, she
4 said, "Oh, procedurally, this is hard. Get them from
5 Plaintiffs."

6 We agreed to abide by protective orders. These
7 particular documents are under two sets of protective orders,
8 one from the ancillary litigation that the subpoenas spawned,
9 which was heard and decided by Judge Sullivan, resulting in an
10 order that the government give these documents to Plaintiffs,
11 and a second protective order that you've issued in this case
12 regarding it. We've agreed to be bound by all of that.

13 And what our complaint is is why are these things
14 being filtered when they're going completely to Plaintiffs,
15 but when they come to us, they've got big black boxes all over
16 them?

17 MS. OCKENE: I'd be happy to address that, Your
18 Honor.

19 THE MAGISTRATE JUDGE: Well, let me see if I
20 understand something. I'll have to talk again to Ms. Lyons
21 because this puts a little different spin on what I was
22 chatting with her. Under FOIA or other government
23 collections, I would understand why the government would
24 invoke an informant's privilege upon the theory that people
25 will not cooperate with government investigations if their

1 identity is disclosed to third parties. Did Lyons and the
2 United States at any point invoke that privilege and redact
3 the names of the informants who gave the information?

4 MS. OCKENE: May I address that, Your Honor?

5 THE MAGISTRATE JUDGE: Sure. Identify yourself for
6 the record when you say, "May I," say your name.

7 MS. OCKENE: Okay, Kimberly Ockene for the
8 Plaintiffs.

9 THE MAGISTRATE JUDGE: All right.

10 MS. OCKENE: I'd like to address that point for the
11 record. We had a long litigation with the USDA over this
12 matter. Through the course of that litigation, they initially
13 did produce all of the material, the many of the materials to
14 us in heavily redacted form, including among others by
15 redacting all the names and identifying information of
16 individuals who provided information to the government.

17 THE MAGISTRATE JUDGE: Okay, so in --

18 MS. OCKENE: And we ended up settling that litigation
19 through a settlement stipulation, protective order, through
20 which the government, the agency, the USDA, agreed to give us
21 in unredacted form all of these materials that they had
22 previously redacted. And although we didn't memorialize this
23 point, we also contemplated through our discussions that we,
24 in turn, the Plaintiffs, would, if it came to turning over
25 these materials to the Defendants, Feld Entertainment, that we

1 | would undertake to redact only identify information of
2 | informants.

3 | THE MAGISTRATE JUDGE: And that is the deal that you
4 | made with the government.

5 | MS. OCKENE: That was our understanding, yes. And
6 | Jane Lyons, I believe, will confirm that.

7 | THE MAGISTRATE JUDGE: I'll check with her. That is
8 | an aspect of this we did not discuss, but I will.

9 | MS. OCKENE: And I also, Your Honor, I understand,
10 | based on my discussions with the agency, that if Feld
11 | Entertainment wanted to issue a subpoena to the USDA for these
12 | materials, they would settle it in a different way with Felt
13 | than they would, than they did with us and, for example, by
14 | redacting the names of informants.

15 | THE MAGISTRATE JUDGE: So it's your understanding it
16 | is the position of the United States that if Feld were to seek
17 | this by FOIA or Rule 45 --

18 | MS. OCKENE: I'm sorry, repeat that, Your Honor.

19 | THE MAGISTRATE JUDGE: If Feld was to seek this, the
20 | information, either by FOIA or Rule 45, the government would
21 | redact the same information that you redacted.

22 | MS. OCKENE: Correct. In fact, they would probably
23 | redact more than we redacted because they have less
24 | familiarity with the I guess you could call the players in
25 | this matter. We actually did not redact individuals who we

1 had reason to believe Feld was already familiar with and
2 individuals who were outspoken about the subject in the public
3 domain. And I actually believe that the government would
4 probably do more heavy redactions than we did.

5 THE MAGISTRATE JUDGE: All right, and your position
6 then would be Feld actually has gotten the benefit in the
7 sense that by getting the documents from you, rather than the
8 United States, there are fewer redactions than there would be
9 if they got them from the United States.

10 MS. OCKENE: Correct, Your Honor.

11 THE MAGISTRATE JUDGE: And on the basis of that is
12 your discussion with Ms. Lyons.

13 MS. OCKENE: That's right.

14 MS. JOINER: And Judge, this is Lisa Joiner. There
15 are a few things that I would like to address in there.
16 Number one, it's not accurate to say that the names that were
17 redacted were only people unknown to us. I sat through a
18 deposition of Ms. Archelle Hemley, one of the major
19 complainants, and it was ridiculous. I had to use a USDA
20 document that had her name and her contact information
21 redacted and the same thing had been publicly filed by
22 Plaintiffs in the case almost a year earlier on the record
23 here. So it's not accurate to say that it's only people not
24 known to us.

25 Secondly, Mr. Gasper, our associate here, had several

1 | conversations with Ms. Lyons. She never once said to us, you
2 | know, "If you seek these from us, I'm going to put these
3 | redactions in there."

4 | THE MAGISTRATE JUDGE: Okay.

5 | MS. JOINER: And I have read the protective order
6 | and the stipulation in that case and I certainly have no
7 | recollection of anything entered in those papers that were
8 | filed with the Court resolving this matter saying, "Well,
9 | we're only going to give it to you, Plaintiffs, but not to
10 | Feld or anybody else."

11 | THE MAGISTRATE JUDGE: All right, what we'll have to
12 | do, obviously, is convene a hearing in this matter and ask Ms.
13 | Lyons to join us. I don't see any other way to resolve this,
14 | since she's the central player in the piece and my having
15 | ex parte informal conversations doesn't get us where we want
16 | to go. So Sara will be in touch with you and Ms. Lyons and
17 | we'll set that up.

18 | The next item on the agenda would be the desire of
19 | parties to resume their motion practice, now that the fact
20 | discovery has ended. Outstanding already was an application
21 | made by Feld, I believe, to force HSUS to participate in the
22 | February 28th hearing. I understand from Sara that an
23 | opposition to that has been filed by HSUS today -- will be
24 | today. And so then we'll receive that and obviously, I'll
25 | have to read that and decide where we go from there.

1 Could you both explain to me what other motions you
2 wish to file? I know from correspondence, e-mails we've had
3 there is a desire to review the deposition of Rider because
4 Rider was instructed not to answer certain questions. Is that
5 true?

6 MS. JOINER: Yes, Judge, if I can try to run through
7 the -- this is Lisa Joiner, I'm sorry. I can kind of run
8 through the list of our various motions that are --

9 THE MAGISTRATE JUDGE: Well, before --

10 MS. JOINER: -- accumulating now.

11 THE MAGISTRATE JUDGE: All right, well --

12 MS. JOINER: The motion to file with HSUS, the
13 motion that we did file I guess a week or two ago, that -- my
14 understanding is that you granted our right to do that at the
15 hearing that was held January 8th and that was done. And HSUS
16 filed its response, I believe it was yesterday.

17 What we have from Plaintiffs today is their response
18 to our motion to enforce against HSUS. So we don't understand
19 why Plaintiffs are weighing in and we want to know if we're
20 supposed to respond to that. Plaintiffs also filed a motion
21 to compel against us yesterday.

22 THE MAGISTRATE JUDGE: Okay, just a second, let's go
23 back to the HSUS. The briefing as that now stands is Feld
24 went first, made a motion to join them; HSUS filed and
25 Plaintiffs filed as well. Ms. Joiner, are you seeking

1 | permission to respond to that?

2 | MS. JOINER: Yeah, the question is if Plaintiffs are
3 | going to be allowed to weigh in on this, right -- it's a
4 | motion against HSUS.

5 | THE MAGISTRATE JUDGE: Well, all right --

6 | MS. JOINER: If Plaintiffs are going to be allowed to
7 | weigh in on this --

8 | THE MAGISTRATE JUDGE: Okay --

9 | MS. JOINER: -- to be filed today --

10 | THE MAGISTRATE JUDGE: I'm about to permit you to do
11 | that, so you probably don't want to talk me out of it, okay?
12 | So how much time do you need to do that?

13 | MS. JOINER: Well, what I would propose, what we
14 | would like to do is to if it's okay with you is when we
15 | respond to the HSUS -- reply, excuse me, when we file our
16 | reply to the HSUS reply, we could do it in one document.

17 | THE MAGISTRATE JUDGE: That's fine.

18 | MS. JOINER: So our reply would be to both the HSUS
19 | reply to answer this thing that Plaintiffs filed today.

20 | THE MAGISTRATE JUDGE: That's appropriate, thank you.

21 | MS. JOINER: Okay.

22 | THE MAGISTRATE JUDGE: Now let's go on, you said you
23 | had another motion.

24 | MS. JOINER: Well, there is Plaintiffs' motion to
25 | compel which was filed on the 5th.

1 MS. OCKENE: This is Kimberly Ockene for the
2 Plaintiffs. The Court had granted us permission to file
3 that --

4 THE MAGISTRATE JUDGE: Okay.

5 MS. OCKENE: -- during an e-mail exchange with Ms.
6 Podger, from my understanding.

7 THE MAGISTRATE JUDGE: Yes, we understand that.
8 Okay, what would you like to do with that, Ms. Joiner?

9 MS. JOINER: Well, I wasn't aware that permission had
10 been granted. So if Plaintiffs' motion to compel, the
11 permission had been granted, if that's their stand, we'll
12 proceed with the normal briefing.

13 THE MAGISTRATE JUDGE: That's fine, and then that I
14 guess takes us to the Rider deposition.

15 MS. JOINER: And that would take us to the motion
16 that we have, which we would need permission to file.

17 THE MAGISTRATE JUDGE: Okay, could you --

18 MS. JOINER: And there are three different
19 depositions where instructions not to answer were given. One
20 is the Rider deposition and he was instructed not to answer
21 questions as to when he was instructed to save e-mails, why he
22 didn't go to the inspection, and his understanding as to what
23 kind of documents he was supposed to save for discovery.

24 THE MAGISTRATE JUDGE: Okay, and you want to move to
25 compel his answers.

1 MS. JOINER: That's correct.

2 THE MAGISTRATE JUDGE: Okay, what's the other one?

3 MS. JOINER: Okay, then the second one, during the
4 30(b)(6) deposition of WAP, the Wildlife Advocacy Project,
5 there was outright refusal by the witness to answer certain
6 questions. And one of the categories, I believe, was inquiry
7 that was made about HSUS payments for Rider and we want to be
8 able to compel on that.

9 Then there were also questions that were limited in
10 -- well, in my -- the deponent, the individual who appeared in
11 the 30(b)(6) was Eric Glitzenstein, Plaintiffs' counsel, so a
12 lot of his answers were couched in, "In my capacity at WAP
13 . . .," and refused to answer based on the knowledge that that
14 particular witness had. So that particular motion to compel
15 would be part of that.

16 MS. OCKENE: Your Honor, this is Kimberly Ockene. I
17 just want to say that I do have a couple of things to say
18 about each of these matters, but I'm reserving until the end,
19 if that's appropriate.

20 THE MAGISTRATE JUDGE: Well, I guess, Ms. Ockene,
21 what we have to decide right now is both sides obviously want
22 to speak to these issues. I should grant permission for both
23 sides to do so. So Ms. Joiner will make her motions, you'll
24 respond in the ordinary course, she'll reply and I'll resolve
25 them.

1 MS. OCKENE: That's all good, Your Honor. I'll just
2 mention that with respect to the deposition of the Wildlife
3 Advocacy Project, they are separately represented, their
4 counsel is not, obviously, on the phone at the moment, so I
5 have no understanding of the matter involved in that case.
6 But I do understand that to my knowledge, there's been no meet
7 and confer regarding that matter to date.

8 THE MAGISTRATE JUDGE: Okay, well, given where we are
9 right now, I'm going to relieve both of you of any obligation
10 of _____ to meet and confer, let's -- if we're going to
11 go to war, we're going to go to war, so --

12 MS. OCKENE: All right.

13 MS. JOINER: And Judge, this is Lisa Joiner here and
14 I -- you know, when things happen at depositions, right, the
15 decision is made on the spot. So I can send, I'm more than
16 happy to send a follow-up letter to say, "Yes, as we told you
17 at the deposition, we're going to move to compel," right?

18 But when a person interrupts the deposition and ruins
19 the flow of the questions and tells the witness not to answer,
20 you've done your meet and confer right there by doing that.

21 THE MAGISTRATE JUDGE: Okay, well, I'm not --

22 MS. JOINER: It's a little different than back and
23 forth with documents and written discovery and whatnot.

24 THE MAGISTRATE JUDGE: Okay, I'm relieving both sides
25 of any meet and confer obligations, so that's not a problem.

1 MS. JOINER: Right. Then the third deposition with
2 instructions not to answer, the Animal Protection Institute.
3 And this again went back to questions that pertain to
4 communications, conference calls that occurred regarding
5 payments with Rider, and the witness was instructed to limit
6 her answers to not specifics, but only generally speaking, and
7 I stated at the deposition that I would not accept that.

8 MS. OCKENE: This is Kimberly Ockene. And the reason
9 the depositions were taken were based on Judge Sullivan's
10 order, Your Honor, to develop the background.

11 THE MAGISTRATE JUDGE: Okay, well, fine. Would you
12 want to set -- I know you're busy with your expert discovery,
13 so I didn't know if the two of you just wanted to stay on the
14 phone and come up with some schedules that are consistent with
15 your other obligations. I have no schedule I'm going to
16 superimpose on you. How much -- since you're the moving
17 party, Ms. Joiner, when would you like to file?

18 MS. JOINER: One of the depositions we just got, I
19 think actually two of them we just got back today.

20 THE MAGISTRATE JUDGE: Okay.

21 MS. JOINER: So we want to try to go through those,
22 obviously, and be thorough. So if we could file let's say by
23 the 15th?

24 THE MAGISTRATE JUDGE: You read my mind, I was just
25 going to say the 15th. All right, we can make it one

1 comprehensive omnibus motion.

2 MS. JOINER: Yes, I would, fine.

3 THE MAGISTRATE JUDGE: Let me -- I'm just thinking it
4 seemed to me --

5 MS. JOINER: Then we have a couple of other
6 potential disputes which I am not yet sure of, right?

7 THE MAGISTRATE JUDGE: Well, before they write
8 them --

9 MS. JOINER: -- hear about those now or not?

10 THE MAGISTRATE JUDGE: Hold on.

11 MS. OCKENE: And I have one or two matters I might
12 raise, as well, Your Honor.

13 THE MAGISTRATE JUDGE: Okay, just before we go any
14 further, to keep the size of all this to a minimum, would you
15 want to give me -- I don't know what your arrangements with
16 your court reporters are -- would you want to give me those
17 transcripts on CD-ROM?

18 MS. JOINER: We can do that.

19 THE MAGISTRATE JUDGE: Why don't we do that? And is
20 there any impediment to my _____ them into a WPDF file so
21 I can search?

22 MS. JOINER: I don't think so, I think you can do
23 that.

24 THE MAGISTRATE JUDGE: All right, why don't you check
25 with the reporters? The best of all possible worlds for me is

1 from the reporting and PDF format, that would be great.

2 MS. JOINER: Okay.

3 THE MAGISTRATE JUDGE: Then we won't have hundreds of
4 pages of deposition transcript all over the place. Okay, now
5 you've got some other issues that you think are not yet ripe
6 and I don't know if you want to bring them up now or if we
7 should just wait until they ripen.

8 MS. OCKENE: And can I have -- you know, this is
9 Kimberly Ockene again, with a couple of matters. We can
10 finish with Ms. Joiner first.

11 THE MAGISTRATE JUDGE: Ms. Joiner, anything else?

12 MS. JOINER: Yes. We have an issue with the
13 document subpoena to Meyer, Glitzenstein and Crystal to
14 inspect originals of certain documents and to inspect
15 Medidata. And we had gotten an initial response roughly a
16 week ago and said we would hear more from them tomorrow.

17 THE MAGISTRATE JUDGE: Okay.

18 MS. JOINER: So in light of that, you know, we think
19 that's on the horizon. There's also an issue with subpoenas
20 that were issued by Plaintiffs to the group PETA and I have
21 timely filed objections to those. I think they're
22 procedurally flawed, as well as substantively. And
23 interestingly enough, I have PETA's counsel hopping up and
24 down, jumping on my doorstep, telling me he's going to produce
25 all kinds of transcripts that are under protective orders by

1 | other courts.

2 | So I've asked Plaintiffs' counsel twice if they're
3 | going to withdraw those. If they voluntarily do, that's it.
4 | If they're going to proceed with these subpoenas, then I think
5 | that we will have to move to quash. And if we can't get this
6 | worked out, can we have leave to so move?

7 | THE MAGISTRATE JUDGE: Certainly.

8 | MS. OCKENE: And this is Kimberly Ockene on that
9 | matter, Your Honor. We are not planning to withdraw our
10 | subpoena to People for the Ethical Treatment of Animals for
11 | highly relevant depositions in a matter that they had, again,
12 | Feld Entertainment for spying. And we are prepared to move to
13 | compel if that's the preferred course of action, rather than
14 | Defendant moving to quash, and we would move to compel before
15 | Your Honor and ask permission to do so.

16 | THE MAGISTRATE JUDGE: Is that acceptable to you, Ms.
17 | Joiner?

18 | MS. JOINER: You know, however, I don't really care,
19 | if it comes up as a motion to quash or a motion to compel --

20 | THE MAGISTRATE JUDGE: Well, why don't we do this --

21 | MS. JOINER: -- as long as we get a chance to be
22 | heard on this.

23 | MS. OCKENE: This is Kim Ockene again. We'd prefer
24 | to move to compel.

25 | THE MAGISTRATE JUDGE: Granted. Okay, that finishes

1 Ms. Joiner. Now Ms. Ockene, you have some stuff?

2 MS. OCKENE: Yes. Well, the one matter was the
3 matter we just covered regarding the subpoenas to the People
4 for the Ethical Treatment of Animals. And the other matter is
5 the motion to compel that we just filed with Your Honor, that
6 I just wanted to make clear that it was understanding that we
7 had permission to do that.

8 THE MAGISTRATE JUDGE: You do.

9 MS. OCKENE: And the only other matter that's
10 possibly on the horizon is that the Defendant has refused to
11 cover the expenses that the Plaintiffs had to expend for
12 redepositing Mr. Gary Jacobson, which we had to do because of
13 Defendants' instructions not to answer for a matter that Your
14 Honor later compelled them to answer. So we had to spend a
15 lot of money and resources redepositing him and Defendant has
16 refused to cover those costs.

17 THE MAGISTRATE JUDGE: I'll relieve you of your
18 obligation to further meet and confer and you may have leave
19 to compel that expenditure.

20 MS. OCKENE: Okay, thank you, Your Honor.

21 THE MAGISTRATE JUDGE: So we'll add that instruction.
22 I would hope that everybody could file their first group of
23 papers, let's call them their affirmative papers seeking
24 relief, on the 15th. And then we'll just follow the local
25 rules in terms of times for oppositions and replies. Is that

1 | acceptable to everyone?

2 | MS. OCKENE: Yes, Your Honor.

3 | MS. JOINER: That would be fine.

4 | THE MAGISTRATE JUDGE: Okay, anything else?

5 | MS. OCKENE: I have nothing further, Your Honor.

6 | THE MAGISTRATE JUDGE: Okay.

7 | MS. JOINER: I have one more question, sorry. I
8 | think that you had, at the earlier hearing in January which I
9 | was not there for, but I thought that you had referenced at
10 | some point setting forth some kind of an order about the date
11 | for exchange of witness lists and exhibits. And we just
12 | wanted to check, is it still your intention to do that or --

13 | THE MAGISTRATE JUDGE: I'll have to check that
14 | transcript and my notes, I don't remember.

15 | MS. JOINER: It's our understanding that Your Honor
16 | issued an order on that matter.

17 | THE MAGISTRATE JUDGE: I can just about remember what
18 | I had for lunch, so I'm going to have to go back and check my
19 | notes, Sara will check her notes, and we'll check the docket
20 | and we'll get back to you on that. I'm not going to guess, I
21 | just have absolutely no recollection, so give me a moment.

22 | MS. JOINER: I think it was -- well, you know, the
23 | hearing has been -- the order's already set the hearing date
24 | for the 26th. This pertained to I think you had referenced a
25 | date for exchange of witnesses and exhibits.

1 THE MAGISTRATE JUDGE: We'll take a look. It's
2 coming back to me, but as I said, I don't remember. We'll
3 look at it and we'll try to get to you, we'll clarify that by
4 _____ tomorrow, okay?

5 MS. JOINER: Thank you.

6 THE MAGISTRATE JUDGE: Thank you.

7 MS. OCKENE: Thank you, Your Honor.

8 THE MAGISTRATE JUDGE: All right, good day.
9 (Whereupon, the hearing concluded.)

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UNITED STATES OF AMERICA)
) Civil Action No. 03-2006
DISTRICT OF COLUMBIA)

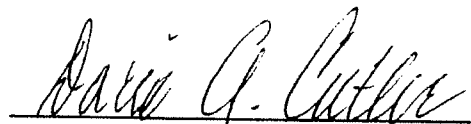
I, PAUL R. CUTLER, do hereby certify that a recording of the foregoing proceedings in the above matter was duplicated from an original recording by the Office of the Clerk, United States District Court for the District of Columbia and that said duplicate recording of the proceedings was transcribed under my direction to typewritten form.



PAUL R. CUTLER

- - -

I, DORIS A. CUTLER, do hereby certify that the foregoing transcript was typed by me and that said transcript is a true record of the recorded proceedings to the best of my ability.



DORIS A. CUTLER