

COPY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE
PREVENTION OF CRUELTY TO
ANIMALS, et al.,

Plaintiffs,

vs.

RINGLING BROTHERS AND BARNUM
BAILEY CIRCUS, et al.,

Defendants.

Docket No. CA-03-2006

Washington, D.C.
Friday, September 16, 2005
2:35 p.m.

TRANSCRIPT OF A MOTION
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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by computer-aided transcription.

P R O C E E D I N G S

1
2 THE CLERK: Civil Action 03-2006, American Society
3 for the Prevention of Cruelty to Animals, et al. versus
4 Ringling Brothers and Barnum & Bailey Circus, et al.

5 would counsel please identify yourselves for the
6 record.

7 MS. MEYER: Katherine Meyer for the plaintiffs. And
8 with me is Kim Ockene, Your Honor.

9 MR. GULLAND: Eugene Gulland for the defendant. with
10 me is Josh Wolson.

11 THE COURT: You have not been able to resolve this
12 discovery dispute yourselves.

13 Let me invite the principal attorneys to the
14 microphone.

15 Have you spent any time conferring about this dispute
16 just to see if you can resolve it yourselves?

17 MS. MEYER: No, Your Honor. Not until we filed the
18 motion to compel. There was a meet and confer effort prior to
19 that time. And some disputes, relatively minor matters, were
20 resolved. But the bulk of the information that is the subject
21 of the motion to compel we remain, continue to remain -- have
22 diametrically opposed views of what is required here.

23 MR. GULLAND: I think that's accurate. There was a
24 good deal of discussion before the filing of the motion to
25 compel.

1 THE COURT: Let me invite plaintiffs' counsel to
2 remain at the microphone, and I'll invite defendants' counsel
3 back in just a few minutes.

4 Let me see if I understand your argument.

5 You've propounded some interrogatories, you've served
6 a request for production of documents seeking veterinarian
7 records, seeking medical records.

8 Some medical records have been produced?

9 MS. MEYER: Yes, Your Honor.

10 THE COURT: Some veterinarian records have been
11 produced?

12 MS. MEYER: Very few, Your Honor, yes.

13 THE COURT: But, nevertheless, am I correct in saying
14 that defendants did not invoke a privilege with respect to
15 either veterinarian records or medical records?

16 MS. MEYER: That's correct, Your Honor. Instead,
17 what they did is they just pretended that there were no further
18 records that were responsive.

19 THE COURT: Absent the editorial, I'm correct,
20 putting aside whether they pretended or not, no privilege has
21 been invoked?

22 MS. MEYER: No privilege was invoked, originally.
23 They are now -- after we filed our motion to compel they are
24 asserting that all of the medical records that they did not
25 identify or claim a privilege for are, nevertheless,

1 confidential. And they have now asserted --

2 THE COURT: I just want to make sure I understand
3 what's in this file. The file is voluminous. I've seen a
4 privilege log that pertains to, I think, some e-mails or so
5 that defense counsel filed. You're familiar with that?

6 MS. MEYER: Yes.

7 THE COURT: Is there another privilege log in this
8 voluminous file?

9 MS. MEYER: No, Your Honor. In terms of a privilege
10 log, here's what defendants have filed.

11 They filed their original privilege log when they
12 gave us their first response to our broad discovery request.
13 And that is Exhibit C to our motion to compel. It lists a
14 total of five documents, Your Honor.

15 THE COURT: That's what I'm referring to, right.

16 MS. MEYER: In June, when they gave us a supplemental
17 production of some documents, they supplemented their privilege
18 log with about, I think it's about 32 or 33 additional
19 documents. None of those documents listed on either one of
20 those privilege logs, now for a total of 38 documents, concern
21 the medical records on the elephants.

22 THE COURT: Right. They concern, Rider, I believe,
23 don't they?

24 MS. MEYER: Some of them do and some of them concern
25 some other things.

1 THE COURT: Some other issues.

2 MS. MEYER: There are many issues, Your Honor.

3 THE COURT: I'm just focusing on the veterinarian
4 records and the medical records right now.

5 MS. MEYER: Right.

6 THE COURT: So for purposes of our discussion then, I
7 can assume the records do exist?

8 MS. MEYER: Yes, Your Honor.

9 If I could just be clear, Your Honor, we're talking
10 about basically the charts, the medical charts, on each of the
11 animals. We haven't seen any of them.

12 THE COURT: All right. Each of the animals has been
13 identified?

14 MS. MEYER: As far as we know, Your Honor.

15 THE COURT: Well, you've asked for the identities of
16 all elephants --

17 MS. MEYER: Yes, Your Honor.

18 THE COURT: -- that they own?

19 They don't own some elephants, but they're in
20 custody?

21 MS. MEYER: Correct, Your Honor.

22 THE COURT: There are some elephants that Ringling
23 Brothers owns and there are some that Ringling Brothers has
24 custody of?

25 MS. MEYER: That they lease, correct, Your Honor.

1 THE COURT: who do they lease them from?

2 MS. MEYER: Other owners of captive elephants.

3 THE COURT: So we know who the elephants are, that's
4 not a big issue, is that right?

5 MS. MEYER: I think we now have a pretty good
6 inventory, although we had to figure that out on our own.

7 THE COURT: well, you should be able to ask one
8 question, what elephants do you own and which elephants do you
9 lease.

10 MS. MEYER: And I'm just telling you, Your Honor,
11 they didn't tell us all of that information originally. I
12 think right now we have a pretty good list, but we don't have
13 the medical records.

14 THE COURT: You shouldn't have to guess as to the
15 number of elephants or the identities of each. Unless Ringling
16 Brothers and Barnum & Bailey Circus is prepared to pay
17 significant sums of money for sanctions, you won't have to
18 guess about that. They can answer that question. You
19 shouldn't have to guess.

20 MS. MEYER: we've had to do a lot of guessing in this
21 case, Your Honor.

22 THE COURT: You're not going to have to do any more
23 guessing about things that are relevant.

24 With respect to the defendants' need for a protective
25 order, though, what's your objection? Their concern is that

1 they look at web sites maintained by plaintiff and they say,
2 you know, what's going to happen to us is that maybe we'll be
3 harmed, maybe seriously harmed, by information that we produce
4 that's in our files.

5 why isn't that a legitimate concern that they have to
6 persuade a judge that they're entitled to a protective order?
7 There's been no fact finding with respect to what, indeed, the
8 photos or files or films actually mean and whether or not
9 injuries were caused as a result of defendants' conduct or
10 actions or inactions, et cetera. So if they produce a ton of
11 information, they have some legitimate concerns that it will be
12 used wrongly and inure to the detriment of them.

13 MS. MEYER: I have three responses, Your Honor.

14 First of all, I don't want to belabor the point too
15 much, but I think in view of the way they have proceeded in
16 this case, and again that was in failing to even identify the
17 existence of these documents, nor claim a privilege for them --
18 and before I said they pretended. I mean, we asked for all the
19 medical records, they give us some medical records and that was
20 the end of it. Nothing listed on a privilege log, no
21 indication that there were other medical records until we
22 pressed it.

23 THE COURT: What gave you an inkling there were
24 additional records?

25 MS. MEYER: Because when we went through the records,

1 of records pursuant to a protective order and then some further
2 argument as to whether or not those documents should be made
3 available to the public. That's one approach. I don't know.

4 MS. MEYER: I think it's backwards, Your Honor.

5 THE COURT: I don't know what the documents show and
6 I don't know whether the documents if made available to the
7 public will produce the kind of Burka harm that they're talking
8 about. I just don't know.

9 Do I have a desire to look at some 1,700 films? No.
10 Do I have the time to do it? No. I mean, if I have the desire
11 to do it, I don't have the time to do it.

12 How is a judge to resolve this? I don't want to
13 appoint someone, appoint some magistrate judge, and force upon
14 him or her the responsibility for the next year or two to look
15 over these documents and determine what the public should see
16 and what the public shouldn't. I totally agree with you. I
17 couldn't agree with you more about the public's right to know
18 what's going on in these courthouses and these courtrooms. I
19 couldn't agree with you more. And I've said it and I've said
20 it and said it and I'll say it again when it's appropriate.
21 But what's fair at this juncture?

22 MS. MEYER: I'll tell you what's fair. I'll tell you
23 what we've said is fair.

24 And before I get to what I think is fair, I just want
25 to make another point, Your Honor.

1 These records go to the core of our case. And our
2 concern, if you impose a protective order here, is that
3 essentially we're going to be litigating this case in secret.
4 Because any time a lay witness wants to refer to these medical
5 records, an expert witness wants to refer to any of these
6 medical records, we want to refer to them in any motions,
7 procedural or otherwise --

8 THE COURT: But you're assuming that the Court, after
9 production of records or all the records or some of the
10 records, will never make a determination before you get to that
11 stage that the public has a right to see some of these, you're
12 making that assumption.

13 Look, if I were to do that, if I were to say, look,
14 you're entitled to all these records, because there's been no
15 privilege and because there's been a waiver, but they should be
16 first pursuant to a protective order, I wouldn't keep in place
17 that protective order forever until the end of this litigation.
18 At some point there should be some determination as to what
19 those records show and whether or not, indeed, the public has a
20 right to see those records. This is a public enterprise. This
21 defendant travels across this country day in and day out and,
22 for the most part, exhibits its animals to the public.

23 MS. MEYER: They not only do that, Your Honor --

24 THE COURT: And they charge the public to come and
25 see the animals.

1 MS. MEYER: They not only do that, Your Honor, but
2 they spend an enormous amount of money on public relations
3 talking about what great care they give their animals. What
4 they're trying to do here, Your Honor, is stifle the other part
5 of the debate. They release the information they want to
6 release, they go on the Today's Show, they put it on their web
7 sites, they produce color brochures about all the wonderful
8 care they give their elephants and say that our clients are
9 whacky animal rights activists who cannot be trusted when they
10 say these animals are being beaten and chained, et cetera. And
11 then when we say, well, how about if we get the information
12 that would actually show the condition these animals are kept
13 under, the answer is, oh, it's very secret and confidential,
14 you can't see it and you're going to misuse it.

15 THE COURT: Has Katie Couric ever invited you to the
16 Today's Show?

17 MS. MEYER: No, we haven't had that opportunity yet,
18 Your Honor.

19 THE COURT: And they've been on the Today's Show?

20 MS. MEYER: Yes, they have, Your Honor.

21 THE COURT: Really?

22 MS. MEYER: Yes, Your Honor. Kenneth Feld pretty
23 much on an annual basis gets to go on the Today's Show.

24 But the point being, Your Honor, if we're going to
25 have a robust public debate about an issue --

1 THE COURT: In fairness, NBC News ought to invite
2 both sides.

3 MS. MEYER: I agree.

4 THE COURT: That's just an observation. That's not a
5 ruling, because NBC is not a party.

6 MS. MEYER: They shouldn't be able to control the
7 entire debate on this issue. I think the fair way -- you asked
8 what's the fair way to deal with it.

9 what we have suggested in our papers is if they can
10 show some -- they've made this claim that some of this
11 information is being relied on in some papers, some
12 unidentified papers that they're working on.

13 THE COURT: Apparently you're sensitive to that,
14 though, because you said in the footnote you would consent
15 to --

16 MS. MEYER: Right. If they can make a showing with
17 respect to particular records that are somehow related to a
18 particular study that they're working on and they don't want to
19 disclose that information to the public because somehow it's
20 commercially valuable and it would somehow jeopardize their
21 ability to get that study out, we would be more than happy to
22 see that information under a protective order.

23 But we don't think they are entitled to a blanket
24 protective order for all the medical records. I would remind
25 Your Honor, I think what's going on here, again, because these

1 records are so -- go so much to the core of our case and are
2 going to be relied on and referred to by all the witnesses in
3 this case, I think what's going on here is that they're trying
4 to get through the back door of this protective order, which
5 what you would not let them get at the beginning of discovery
6 when they asked, you may recall, for a broad protective order
7 to cover all of the discovery in this case. And you said, no,
8 you can't have that broad protective order, you make a
9 particular good cause showing with respect to specified
10 information and we'll take a look at that.

11 We do not believe that they have made that kind of
12 showing here when they say all of the detailed medical records
13 on all of the elephants must be kept secret. And that's what
14 they have said here.

15 So we believe that, again, they have the burden.
16 They haven't met the burden, particularly in light of the way
17 they've proceeded here, by not even telling us these records
18 existed and not claiming a privilege for them or listing them
19 on their privilege log. That they should not get this kind of
20 blanket protective order, which will in effect mean that we
21 will not, without coming to you and asking you to lift it, so
22 we'll be having this argument again, we will not be able to
23 refer to any of the medical records on the elephants in public.

24 THE COURT: Did the defendants ever tell you in
25 response to your request for production of documents or in

1 response to interrogatories that the documents, the medical
2 records that you've previously received, were, indeed, all the
3 medical records in possession of the defendants, did they say
4 that?

5 MS. MEYER: They did. They said -- actually, I'll
6 have to pull the cite out. They said that you have the
7 complete information requested.

8 THE COURT: That was in response to your request for
9 medical records and veterinarian records?

10 MS. MEYER: Yes, Your Honor.

11 THE COURT: And now they've told you, only because of
12 your persistence, that there are additional other medical
13 records?

14 MS. MEYER: That's right.

15 THE COURT: Do they refer to them as medical records
16 as well?

17 MS. MEYER: They call them the detailed medical
18 records. Oh, those medical records, you mean the detailed
19 medical records, you wanted those, we didn't know you wanted
20 those.

21 And this gets me to a broader point.

22 THE COURT: I just want to be clear about that.

23 Your response was unequivocal, produce all medical
24 records in your possession?

25 MS. MEYER: Yes. We want all the medical records on

1 each of the elephants. And instead we got these little
2 summaries for some of the elephants, and mums the word that
3 there was anything else.

4 That gets me to another point, Your Honor.

5 THE COURT: Someone swore to that, someone filed that
6 under oath? I assume a declarant filed that under oath?

7 MS. MEYER: No. We just got a box of documents.

8 THE COURT: Well, someone attested to that, though.

9 Didn't someone certify that, either an attorney or --

10 MS. MEYER: I guess they certified that these are the
11 responses to the discovery.

12 THE COURT: Well, I'm concerned that those were all
13 the medical records. Was it an officer of the corporation?

14 MS. MEYER: I wish I could lay my hands on the quote
15 that would help put this in a --

16 If you'll just bear with me for a minute, Your Honor.

17 THE COURT: I mean, if it was in response to a
18 request for an interrogatory --

19 MS. MEYER: I'll find it, Your Honor.

20 THE COURT: You don't have to find it.

21 If it was in response to a request for an
22 interrogatory, then some officer -- attorneys can't sign
23 that -- some officer of the corporation would have to sign
24 that?

25 MS. MEYER: That would be correct, Your Honor.

1 THE COURT: So maybe as part and parcel that person
2 needs to come and tell me why he lied or she lied under oath.
3 Because that was provided to you under oath, these are all the
4 medical records?

5 MS. MEYER: That's right, Your Honor, that's the way
6 we view it.

7 The only caveat I'll add to that, Your Honor, and it
8 goes to sort of the gravamen --

9 THE COURT: we're talking about production of
10 documents or something more serious like interference with the
11 fair administration of justice or obstruction of justice or
12 something criminal in nature. I take this very, very
13 seriously.

14 No attorney should have to put up with this nonsense.
15 And, indeed, it appears to me that it is nonsense. If someone
16 has told you they've produced all the records and then told you
17 later, oh, are you referring to the more detailed medical
18 records there's no excuse for that.

19 MS. MEYER: That's right, Your Honor, that's what
20 happened in this case.

21 The only thing I'll add to that in their defense, if
22 it's a defense at all --

23 THE COURT: You're going to defend them?

24 MS. MEYER: I just want to be reasonable here, Your
25 Honor, because I think this may be what they say. And this

1 goes to the gravamen of our motion to compel really, or the
2 thing I really wanted to spend my time on with respect to that,
3 but it's related. Is that what they did here, Your Honor, is
4 they asserted ten very broad general objections to our
5 discovery. And then they asserted those, all ten of those
6 general objections, with respect to every single interrogatory
7 and every single document production request, all right,
8 without telling us, well, which documents are you saying are
9 being withheld from us under which of those objections.

10 We had a privilege log that, as I showed you, had a
11 total of five documents listed on it. And it may be that they
12 thought, as I think they're trying to play this game with
13 respect to all the other information at issue here under our
14 motion to compel, they may say to you, oh, those medical
15 records, those detailed medical records, they fell under some
16 of these one, two, three, all ten of our general objections,
17 and, therefore, we didn't have to say whether or not they
18 existed or were privileged.

19 That seems to be their position with respect to a lot
20 of the categories of information that we have moved to compel.
21 And for that proposition, Your Honor, they're relying on this
22 decision by the D.C. Circuit a couple of years ago in the
23 Philip Morris RICO case. And in that case the court held that
24 the District Court, Judge Kessler, had erred in not allowing
25 the defendants to assert a general objection and have the Court

1 decide the general objection before making the defendants
2 assert a privilege, okay.

3 And that seems to be the case upon which they're
4 relying for the proposition that they can assert ten general
5 objections with respect to every single discovery request, not
6 tell us which documents are being withheld and why, and then
7 after we figure it all out come into your court and say, oh,
8 yes, well, now those are privileged, those are privileged.

9 And that Philip Morris case does not stand for that
10 proposition at all. There Philip Morris was relying on some
11 very specific general objections. It made it very clear which
12 objections applied to which documents. And they asserted those
13 general objections before the Court and asked the Court to
14 decide them before they raised their privilege.

15 We have not had that here. I don't even know which
16 of these general objections they think is covered, do cover the
17 medical records at issue. But that's the only defense I can
18 make, is they think those medical records they failed to
19 identify, failed to assert a privilege for, and, again,
20 pretended did not exist, Your Honor, they may think they're
21 covered by some of those general objections, I don't know.
22 That's all I can say on that point.

23 Here we go. Document request number eight, which is
24 the one for the medical records, all medical records on each
25 elephant. Here is what they say in a November 8, 2004 letter

1 on page seven to me and my co-counsel, Ms. Ockene.

2 Quote, defendants have produced to you more than 700
3 pages of elephant medical records. There is no basis for
4 plaintiffs to demand records regarding trunk washes or other
5 tuberculosis tests -- that's another issue in this case, Your
6 Honor -- as there is no claim or defense in this case relating
7 to elephant tuberculosis.

8 Next sentence, moreover, the records that defendants
9 produce to you are complete in that they contain all of the
10 pages in defendants files, end quote.

11 That's what they said

12 Now apparently there's some other detailed medical
13 records. And there have to be, Your Honor. This corporation
14 claims that it is breeding this endangered species to conserve
15 it for future generations, that it has this wonderful standard
16 of care. They've got to have detailed medical records on each
17 of the elephants, just like if you go to your veterinarian with
18 your pet, your dog, you go in there, there's a problem, they
19 will pull out the chart on your animal. Especially if you've
20 been going to the same place ~~for many years~~, just like a human
21 being, they have charts, medical charts, on each of the
22 animals. We haven't seen ~~any of those~~, Your Honor.

23 So should they get a protective order in lieu of all
24 of that? I don't think so. And simply on the grounds that my
25 clients are going to somehow misuse the information to inform

1 for a protective order, was if any of these records are
2 disclosed publicly, Your Honor, if they somehow make their way
3 into the public domain, this is going to cause their
4 veterinarians, who up until now give the highest standard of
5 care to these animals, to suddenly be chilled in doing so
6 because they won't want to write down any more what they've
7 done or what they've observed because they'll be afraid that if
8 they write down their observations it will get out into the
9 public and somehow they'll be embarrassed or whatever. That's
10 their other argument. They're going to stop giving the animals
11 the highest standard of care that they normally give them
12 because of the fear that our clients are somehow going to
13 misuse and twist and use this information in a nefarious way.

14 I just don't think they've met their burden here,
15 Your Honor.

16 And, again, we are more than willing on the second
17 point to see if there are any particular records that relate to
18 some commercially sensitive research paper they're working on,
19 and, if so, enter into a protective order. But to have a
20 blanket protective order for all of the medical records on all
21 of these animals, particularly, again, when for a year and a
22 half they pretended these records didn't even exist, I just
23 don't think is fair, Your Honor, nor is it warranted under the
24 rules of civil procedure.

25 THE COURT: Thank you.

1 Yes, counsel. Good afternoon.

2 MR. GULLAND: Good afternoon, Your Honor. Let me
3 address, first, by rejecting categorically any suggestion that
4 we have hidden the ball. That's not the way we litigate cases,
5 I assure you.

6 THE COURT: That's not the way your law firm
7 litigates cases, but maybe your clients haven't been as
8 forthcoming to you as they should have been.

9 MR. GULLAND: Well, let me tell you what happened in
10 this case.

11 THE COURT: Did an officer of the corporation sign
12 that answer to interrogatory or response to a request for
13 production that these are the entire medical documents?

14 MR. GULLAND: I'm not aware that there is any
15 statement that these are the entire medical records, so let me
16 take you through what happened.

17 We provided our responses to the document requests.
18 And this was, I think, last May or June of 2004. There was no
19 response to our production for months and months and months
20 until late last fall. Plaintiffs then asked for the meet and
21 confer.

22 We talked with them. They pointed out that -- and
23 Mr. Wolson handled all this. They pointed out that the history
24 documents which are nonconfidential and that we had produced --

25 THE COURT: The patient history document?

1 MR. GULLAND: That's right. That they had showed
2 you, must have been compiled with information from
3 veterinarians, because that's the way veterinarians work.

4 Mr. Wolson went back and said we don't seem to have
5 the veterinary information the plaintiffs have pointed out to
6 us. And they said, well, we better check our veterinarians,
7 our off-site veterinarians, who it turned out a guy named
8 Lindsey had medical records on his own that he kept in his
9 office off the sites of Ringling and it was not included in the
10 Ringling files.

11 And as soon as we found that, we got back to them,
12 said we do have veterinary medical records, but they contain a
13 lot of information that --

14 THE COURT: I think your clients are hiding the ball
15 from you. It wasn't that long ago I practiced law. And I can
16 recall frequently returning retainers to clients who wouldn't
17 be complete, wouldn't be up front with the attorney. Because
18 then the attorney's hands are tied and then the attorney finds
19 himself in proceedings like this trying to justify things that
20 are hard to justify.

21 They asked for all medical records and all
22 veterinarian records. These aren't unintelligent people who
23 own this circus. They knew what the request was for.

24 MR. GULLAND: Your Honor, I can only say, it's a very
25 decentralized organization. It's an organization that travels.

1 THE COURT: What's more serious is they're playing
2 footloose and fancy-free with the Court, and I take that very
3 seriously. And if I have to march those CEOs in here for
4 explanations under oath and under penalty of perjury, I'll do
5 that. I would hope that I won't have to do that. But a simple
6 request to produce medical records and veterinarian records.
7 It's not a difficult one to comprehend. And for them to say,
8 oh, gee, we really have to look further. I mean, without their
9 diligence these records would have been unnoticed.

10 MR. GULLAND: I have to say that I think if there had
11 not been the meet and confer process, we would not have gone
12 back and found the veterinary records. But that's what a meet
13 and confer process is for.

14 There is no bad faith here, Your Honor. The only
15 reason --

16 THE COURT: That's not a condition precedent for your
17 clients to be up front with you and up front with their
18 advisories. There was a request made. They complied with the
19 request. They produced what they wanted to produce. And they
20 knew these other records existed. And no one said they didn't
21 know these records existed. That's what concerns me.

22 MR. GULLAND: Your Honor --

23 THE COURT: I have the highest regard for you and
24 your firm, you know that. When you're before this Court and my
25 colleagues and other judges in this country, your firm does

1 great work. But your clients, I think, have hidden the ball
2 from you and they find themselves in a very precarious
3 position.

4 MR. GULLAND: Your Honor, I am unaware of any bad
5 faith or effort to hide the ball here.

6 THE COURT: The bad faith would be they didn't
7 produce everything they knew existed, though. That's the bad
8 faith. Oh, off-site veterinary, oh, we didn't know you were
9 talking about that, we thought it was just these couple of
10 documents, and thank God the plaintiffs had the diligence to
11 have a meet and confer because now we know. I mean, that's
12 crap. And I'm not referring to you. That's just crap your
13 clients are giving you, counsel. That's exactly what it is.

14 And I'm going to order that all those documents be
15 produced. And I want someone to come in here and tell me. I'm
16 going to set this down for an evidentiary hearing because I am
17 truly displeased about the manner in which discovery has taken
18 place. Those documents should have been produced prior to any
19 meet and confer. There was a request. They had an obligation
20 as clients to be up front with the plaintiffs and the Court.
21 And if there were privileged documents, to say these documents
22 are privileged so we could have litigated the privilege issue.

23 MR. GULLAND: Your Honor, we've never said the
24 documents are privileged.

25 THE COURT: I want them produced. But I want them

1 also to show cause why they shouldn't be held in contempt of
2 court, and I mean it. And if I find they're in contempt of
3 court, I'm going to impose sanctions. I'm going to give the
4 word monetary recovery a new definition, because they're
5 playing games with the Court and I don't appreciate that.

6 MR. GULLAND: Your Honor, with all due respect, I
7 don't think that there's an adequate basis here to reach that
8 conclusion.

9 THE COURT: Fine. Then they can respond to my order
10 to show cause, but someone is going to respond and tell me why
11 they could not respond to a clear English request for a
12 production of all medical and veterinarian records. They're
13 going to do that. And if they don't, if they can't do it, I'm
14 going to hold them in contempt and impose significant -- and do
15 you know what, I'm not going to rule out incarceration either.
16 Because I'm sick and tired of all these efforts by litigants to
17 hide the ball. I've seen it time and time again and I'm tired
18 of it.

19 So an order to show cause will be separate and apart
20 from my ruling to produce all of the medical records and
21 veterinarian records. And when I say all, I mean all, every
22 last record.

23 Now, if there's some research going on that is going
24 on in an effort to prepare some documentary, that's something
25 different. If it can be justified. If it can be justified.

1 Now, I'm open to someone filing something, either
2 under seal or on the public record, in an effort to persuade me
3 that there's a need or a basis for a protective order in that
4 regard. And I'll just leave it at that. It may well be that a
5 basis will exist for the entry of such a protective order. And
6 it doesn't sound like plaintiffs seriously disagree with that
7 if an appropriate showing can be made.

8 But with respect to veterinarian records and medical
9 records, I want them all produced and I want them produced now.

10 MR. GULLAND: Your Honor, on the question of the
11 protective order, Ms. Meyer said --

12 THE COURT: The medical records and veterinarian
13 records?

14 MR. GULLAND: Yes. Focused on that.

15 Ms. Meyer said again and again that there's no basis
16 here to fear that the plaintiffs are going to misuse these.
17 Just last week, Your Honor, a San Francisco television station,
18 plaintiff Tom Rider appeared on that. Tom Rider appeared on
19 that station and provided a reporter on that station with
20 copies of tapes that were produced in this litigation.

21 In particular, there was a tape showing the birth of
22 a baby elephant. And Mr. Rider and other persons affiliated
23 with the plaintiffs made a commentary on that, very one-sided
24 in our point of view, showing the elephant chained while she
25 was having a baby in order to protect the baby elephant and

1 those around her. But they characterized the situation as one
2 of abuse.

3 There was no opportunity on our part to have somebody
4 respond. And it's a perfect illustration of exactly the kind
5 of thing we fear, the use of information here to attack
6 Ringling Brothers, which is quite unfair. And cases are not to
7 be tried in the media.

8 In addition, the reporter for that San Francisco
9 station was given a copy of Mr. Wolson's correspondence to
10 counsel for plaintiffs discussing the information and tapes
11 being turned over. So the point of the matter is that there's
12 a very real need for some protection here.

13 THE COURT: Is there any case anywhere directly on
14 point that deals with this precise issue where a public
15 interest group has attacked the manner in which an organization
16 either houses or cares for or raises animals and information is
17 produced and then it ends up in the public arena? I'm not
18 aware of any case directly on point.

19 MR. GULLAND: I'm not aware of a case that is that
20 specifically on point. But there are plenty of cases that
21 enter protective orders, which, if you'll recall, extend also
22 to matters of embarrassment, as well as commercial and
23 proprietary information on the view that information that's
24 produced in discovery should not be used to try somebody out of
25 court or to attack them out of court.

1 We're not going around -- our clients are not going
2 around attacking particular plaintiffs here. Our clients are
3 going around defending the care that they give the animals, but
4 they're not using discovery information.

5 THE COURT: Counsel didn't make that up. Have there
6 been characteristics of whacky animal rights organizations
7 alluded to this organization?

8 MR. GULLAND: I'm not aware of any attack on these
9 plaintiffs on the part of the defendants in this case. I'm
10 simply unaware of that.

11 But, Your Honor --

12 THE COURT: How could you be embarrassed by your own
13 files, by your own records? Let the public see them. What are
14 you concerned about?

15 MR. GULLAND: We're not embarrassed by them. We're
16 embarrassed by the misuse and out of context treatment of them.

17 If you take --

18 And we submitted affidavits in support of the
19 protective order.

20 THE COURT: Suppose the information is produced.
21 Well, it will be produced. But suppose the information is then
22 used by plaintiffs with an admonition to plaintiffs that if
23 they use this information in the public arena, they state only
24 that this information was produced pursuant to a request by
25 plaintiffs, period, without any editorial?

1 MR. GULLAND: Well, the problem with things like
2 veterinary records is they're very cryptic.

3 THE COURT: What's wrong with that approach? If
4 they're produced, and they will be, and the plaintiffs are
5 directed if you use this, because you do have a right to, it's
6 not privileged information and you aren't arguing that it is
7 privileged information, but if you use this, you use this with
8 the following sentence, these documents were produced in
9 discovery pursuant to a request by plaintiff, period. What's
10 wrong with that?

11 MR. GULLAND: Well, what's wrong with that, Your
12 Honor, is two things.

13 First, veterinarian's notes, like the notes that
14 lawyers right down, like the notes that doctors write down, are
15 very cryptic. They're not drafted and prepared for the purpose
16 of recording in a narrative necessarily understandable way
17 what's going on. These are the notes of the veterinarian, or
18 in the case of human beings the doctor.

19 THE COURT: Right. But these medical histories and
20 patient records mean absolutely nothing without the
21 underpinnings. They wouldn't say that. The doctor didn't sit
22 down and type this information, I assume. I assume that's not
23 the way it works. I mean, when I take an animal to a vet, and
24 I had to do that today, the doctor wrote notes and I assume at
25 some point should generate a record, I guess.