

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**FELD ENTERTAINMENT, INC.**

**Plaintiff,**

**v.**

**ANIMAL WELFARE INSTITUTE, et al.**

**Defendants.**

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**Case No. 07-1532 (EGS/JMF)**

**PLAINTIFF FELD ENTERTAINMENT, INC.'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT OF ENTRY OF A PROTECTIVE ORDER**

**EXHIBIT 3**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE  
PREVENTION OF CRUELTY TO  
ANIMALS,

Plaintiff,

v.

FELD ENTERTAINMENT, INC.,

Defendant.

CA No. 03-2006

Washington, D.C.

Thursday, February 5, 2009

10:15 a.m.

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TRANSCRIPT OF BENCH TRIAL - MORNING SESSION - DAY 2  
BEFORE THE HONORABLE EMMET G. SULLIVAN  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

KATHERINE A. MEYER, ESQ.  
TANYA SANERIB, ESQ.  
ERIC GLITZENSTEIN, ESQ.  
HOWARD CRYSTAL, ESQ.  
DELCIANA WINDERS, ESQ.  
Meyer, Glitzenstein & Crystal  
1601 Connecticut Avenue, N.W.  
Suite 700  
Washington, D.C. 20009  
202-364-4092

For the Defendant:

LISA JOINER, ESQ.  
KARA PETTEWAY, ESQ.  
JOHN SIMPSON, ESQ.  
MICHELLE PARDO, ESQ.  
LANCE SHEA, ESQ.  
Fulbright & Jaworski, LLP  
801 Pennsylvania Avenue, N.W.  
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202-662-4504

**Court Reporter:**

**JACQUELINE M. SULLIVAN, RPR  
Official Court Reporter  
U.S. Courthouse, Room 6820  
333 Constitution Avenue, NW  
Washington, D.C. 20001  
202-354-3187**

**Proceedings reported by machine shorthand, transcript produced  
by computer-aided transcription.**

Jacqueline M. Sullivan, RPR  
Official Court Reporter

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

1  
2 COURTROOM DEPUTY: Civil action 03-2006, American  
3 Society For the Prevention of Cruelty to Animals, et al versus  
4 Feld Entertainment, Inc.

5 Would counsel please identify yourselves for the  
6 record?

7 MS. MEYER: Catherine Meyer for the plaintiffs, your  
8 Honor.

9 THE COURT: Good morning, counsel.

10 MS. SANERIB: Good morning. Tanya Sanerib for the  
11 plaintiff.

12 MR. CRYSTAL: Howard Crystal for the plaintiff.

13 MR. GLITZENSTEIN: Eric Glitzenstein for the  
14 plaintiffs.

15 MS. WINDERS: Delciana Winders for the plaintiff.

16 MS. SINNOTT: Michelle Sinnott, tech.

17 THE COURT: For the plaintiff?

18 MS. SINNOTT: For the plaintiffs.

19 THE COURT: Good morning, your Honor. John Simpson  
20 for the defendant.

21 MR. SHEA: Good morning, your Honor. Lance Shea for  
22 the defendant.

23 MS. JOINER: Good morning, your Honor. Lisa Joiner  
24 for the defendant.

25 MS. PETTEWAY: Kara Petteway for the defendant.

1 MS. PARDO: Good morning, your Honor. Michelle Pardo  
2 for the defendant.

3 MS. STRAUSS: Good morning, your Honor. Julie Strauss  
4 for the defendant.

5 MR. PALISOUL: Derek Palisoul for the defendant.

6 THE COURT: Let's proceed with the cross-examination.  
7 I'm mindful that the doctor has a plane to catch.

8 MR. SIMPSON: Your Honor, if I could just bring up two  
9 preliminary matters with the Court's indulgence, and I think  
10 it's important to get matters like this straightened out when we  
11 are just getting the trial started.

12 Would you switch the Elmo on for me, please?

13 Your Honor, it's come to our attention that one of the  
14 corporate representatives for the plaintiff, Animal Protection  
15 Institute, is blogging the details of this trial on the  
16 Internet. Ms. Nicole Piquette, their senior vice president and  
17 general counsel, was excused from the Rule of Exclusion of  
18 witnesses yesterday by your Honor and chose apparently to  
19 broadcast the details of the testimony in this case on the  
20 Internet, and I'm concerned that this is an abuse of the  
21 privilege that you granted her yesterday, and I am concerned  
22 that this kind of thing becomes a bulletin board for fact  
23 witnesses in the case to check out what's going on in the trial.  
24 You know, she's entitled to her opinion about what's going on,  
25 but what I don't want to see is fact witnesses using this as a

1 way to check on what people have testified to. So I think your  
2 Honor ought to order her to seize this blogging, and I think  
3 your Honor should clarify paragraph fifteen of your order to  
4 include instructions that fact witnesses shall not only not  
5 review the transcripts of the trial, should not discuss the  
6 transcript of the trial with lawyers, but also should not read  
7 Internet blogs and similar sources of information where the  
8 trial transcript or details of the testimony are being posted.  
9 We've already given that instruction to our witnesses, not just  
10 don't read the transcript, not just don't talk to lawyers and  
11 other witnesses, but don't go out there on the Internet and read  
12 news accounts of what's going on so that you get the same  
13 information indirectly, so we think as a prophylactic matter,  
14 that that ought to be addressed up front, and I think you have  
15 the power and discretion to do so under Rule 615.

16 THE COURT: Well, we certainly tell fact witnesses, we  
17 tell all witnesses not to discuss their testimony with anyone,  
18 but what you're asking me to do is essentially tell them in  
19 advance of their testimony not to discuss anyone else's  
20 testimony essentially and that doctor -- she's not a doctor --  
21 Attorney Piquette, she's in the courtroom today? Is she?

22 MR. SIMPSON: Well, she was entitled to be. It was  
23 packed yesterday. I don't know whether she was here or not. I  
24 don't know what she looks like. I've never seen her.

25 THE COURT: This blogging issue is an issue that's

1 coming up quite frequently in cases.

2 Let me hear from plaintiff's counsel.

3 Thank you for bringing it to my attention.

4 MS. MEYER: Your Honor, I didn't know about this. If  
5 Mr. Simpson had told me about it when he discovered it I  
6 certainly would have been in agreement that Ms. Piquette --

7 THE COURT: He probably didn't know about it until  
8 today perhaps.

9 MR. SIMPSON: Ten minutes ago.

10 MS. MEYER: I didn't know about it, your Honor. We  
11 certainly have instructed our witnesses to abide by all of your  
12 instructions, and we have no problem telling Ms. Piquette that  
13 she should not be blogging about what goes on in the trial.

14 THE COURT: I think also I need to ask both sides to  
15 ask their witnesses, to direct their witnesses, not to search  
16 for other bloggers' opinions. This case is going to be tried  
17 and decided based on the evidence in the courtroom. I recognize  
18 that the public has an interest in what's going on and that  
19 there are people who are not participants or connected with any  
20 of the organizations wish to blog to their hearts' content about  
21 anything they want to blog about, you know, I guess that's their  
22 prerogative, but at least insofar as the participants in this  
23 trial are concerned and the officers of the various  
24 corporations, I have some control and I'm going to direct them  
25 not to do any blogging. I think that's only fair.