

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

FELD ENTERTAINMENT, INC. :
 :
 Plaintiff, :
 :
 v. :
 :
 ANIMAL WELFARE INSTITUTE, et al. :
 :
 Defendants. :
 :
 _____ :

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 4

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.

Tuesday, February 10, 2009

10:03 a.m.

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TRANSCRIPT OF BENCH TRIAL - MORNING SESSION - DAY 5
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

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

For the Defendant:

JOHN SIMPSON, ESQ.
LISA JOINER, ESQ.
KARA PETTEWAY, ESQ.
MICHELLE PARDO, ESQ.
LANCE SHEA, ESQ.
Fulbright & Jaworski, LLP
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
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 Will counsel please identify yourselves for the
6 record?

7 MS. MEYER: Yes. Good morning, your Honor. Katherine
8 Meyer for the plaintiff.

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

11 MR. GLITZENSTEIN: Eric Glitzenstein for the
12 plaintiffs.

13 MS. WINDERS: Good morning. Delcianna Winders for the
14 Plaintiff.

15 MS. SINNOTT: Good morning. Michelle Sinnott, tech,
16 for the plaintiffs.

17 THE COURT: Good morning.

18 MR. SIMPSON: Good morning, your Honor. John Simpson
19 for the defendant.

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

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

24 MS. PARDO: Michelle Pardo for the defendant.

25 MS. STRAUSS: Julie Strauss for the defendant.

1 MR. PALISOUL: Derrick Palisoul, tech.

2 THE COURT: Good morning, everyone. Let's proceed.

3 MR. SIMPSON: Your Honor, if we could just bring up
4 one preliminary matter, and I have discussed this with Ms.
5 Meyer. It's come to our attention that one of the
6 organizational plaintiffs this time, the Animal Welfare
7 Institute, is blogging about the trial on the Internet. I could
8 have been wrong, but I thought we got this resolved a couple of
9 days ago.

10 THE COURT: I thought we did as well, that there will
11 be no blogging by any party.

12 MR. SIMPSON: It's a murky area, but they're also
13 posting a trial transcript on their website, so I'm concerned
14 that we're enabled --

15 THE COURT: Trial exhibits, exhibits are fair to be
16 posted. Transcripts, probably not, but a party should not be
17 blogging during the course of the trial.

18 Ms. Meyer?

19 MS. MEYER: Your Honor, actually Mr. Glitzenstein is
20 going to handle this matter.

21 THE COURT: All right.

22 MR. GLITZENSTEIN: Thank you, your Honor.

23 I've actually been involved in some communications
24 with the plaintiffs, so with the Court's indulgence, we've been
25 trying in good faith to carry out your Honor's directives as we

1 understood it, and we've given the parties strict instructions.

2 THE COURT: I just said the parties should not be
3 blogging.

4 MR. GLITZENSTEIN: We didn't think it's blogging, your
5 Honor, and I think that partially one of the problems we have
6 here is allowing the nonprofit organizations, just like Feld
7 Entertainment, which it's engaging in its own communications
8 with the media over this matter of public interest, and at the
9 outset of the case put out a large press release laying out
10 their views on the issues as well as their defenses on various
11 subjects, and we understood your Honor to be saying that you did
12 not want, most importantly, any individual witnesses to be
13 putting up blogs, and they're certainly not doing that. What
14 they are doing now, and we will abide by any instructions, of
15 course, your Honor provides to us, what the nonprofit
16 organizations are doing, because of the public interest in the
17 case, is simply putting on their websites no individual blogs,
18 no characterization, they're putting one-paragraph statements as
19 to who testified and providing links to publicly available
20 materials which members of the media and public can get from the
21 court.

22 THE COURT: As you're talking, I'm thinking this issue
23 came up in the Stevens case, and I know the Department of
24 Justice had a huge website it was posting to the consignment of
25 others, not necessarily the Court, but I know this issue came

1 up. Let me take about a five-minute recess, because I want to
2 revisit that. I want to take a look at the DOJ website. I
3 don't think it's inappropriate to post certain things by a
4 party, and certainly if the Department of Justice can do it, the
5 United States can do it, then certainly everyone else in the
6 country can do it, but let me just revisit it. Let me take a
7 look at what the Justice Department did.

8 MR. GLITZENSTEIN: Along those lines, obviously the
9 government doesn't have a 1st Amendment right but nonprofit
10 organizations do subject to your Honor's obviously desire and
11 interest in managing the trial as you see fit. What I would
12 suggest, though, is that Mr. Simpson has specifically pointed to
13 what the Animal Welfare Institute was doing. We would
14 appreciate if your Honor would take a look at that and see if
15 you have a problem with specifically what they're doing. We
16 don't want to have this ongoing confusion. We tried to have a
17 balance of what your Honor was talking about and the right of
18 some nonprofit groups to at least on some fundamental level
19 interact with the media, so if this is something your Honor
20 doesn't not want to happen, please let us know and we'll tell
21 our witnesses that.

22 THE COURT: That's my recollection, it was a witness
23 who was blogging.

24 MR. CRYSTAL: Right.

25 THE COURT: I want to make sure we're all talking

1 about the same thing when we're talking about blogging also.
2 What's your understanding of what blogging is?

3 MR. GLITZENSTEIN: Well, your Honor, someone who does
4 not regularly enter the blogosphere as some others do,
5 particularly a younger generation than me, my understanding of
6 blogging is, and as I understood it from Mr. Simpson's concern,
7 and maybe we misunderstood his concern, it's individuals who
8 basically use blogs to provide their own personal perspective
9 and characterization.

10 And he in particular brought up, and we understood his
11 concern, that one of the individual witnesses had made some
12 pejorative statement about Feld Entertainment's presentation,
13 and Mr. Simpson's in particular. We understand that. We have
14 tried to say no individual blogging by anybody who will be a
15 witness. Making objective information available over your
16 website and in response to what are routine media inquiries in
17 this case in our view is no fundamentally different from
18 receiving a phone call from the media and the media says what is
19 publicly available and what happened yesterday and they say two
20 witnesses testified, here are the exhibits that came in, here's
21 the public transcript. In our view, other than the fact that
22 it's on the Internet, and again, those of us who are not on top
23 of the technology as others may be at some disadvantage, and
24 that would be me, I'm not saying anybody else, but we see that
25 that provision of information is no fundamentally different than

1 the normal interaction that a nonprofit public interest group
2 would have.

3 THE COURT: You make very good points. In high-
4 profile cases we do try to accommodate the media's interest, and
5 there was a significant media interest in the Stevens case and
6 we worked with the media, and I think in the final analysis I
7 think at one time I ordered the Department of Justice to post
8 some of the Stevens exhibits, and they didn't like that, and I
9 can appreciate that a party not -- they should not necessarily
10 be burdened with accommodating another party, so we were able to
11 work out a process whereby all of the exhibits received into
12 evidence each day were posted on the courts -- in the case
13 jacket, in the case jacket, and of course the media had access
14 to the exhibits. And the exhibits, many of the exhibits
15 included film and film footage and photos and other things of
16 interest, so we were able to address that because of the media's
17 interest. The media's interest was significant. That was the
18 easiest way to deal with it, so the media obviously has a right
19 to have certain -- have the availability of -- the media
20 obviously has the right to have access to exhibits that are
21 introduced.

22 Now, you raised a question about transcripts. I
23 hadn't thought about that before. It just strikes me that that
24 might be somewhat problematic because I have allowed certain
25 exhibits and testimony to become provisionally admitted into the

1 record subject to further proceedings which may result in
2 testimony and/or exhibits being stricken, so to the extent that
3 creates a misperception in the eyes of the public as to just
4 what the evidence is, and I'm concerned about that, to the
5 extent, though, that a party post exhibits that have been
6 introduced on a party's website, I don't think I necessarily
7 have any concern. It's with the testimony, though, it's with
8 the transcripts, because you might not always be posting the
9 portion of the transcript that deals with "subject to further
10 proceedings," etcetera, etcetera, so that's my principal
11 concern, plus we already have in process a procedure whereby the
12 exhibits are posted in the case itself by a party at the end of
13 the day, so I'm not so sure why it's really necessary or
14 appropriate for a party to supplement what the Court has already
15 put its imprimatur on by allowing the parties to post exhibits
16 in a different venue, but that's just my stream of thought about
17 that.

18 MR. GLITZENSTEIN: Can I say just one quick thing
19 about that, your Honor?

20 THE COURT: Yes.

21 And the transcripts, I query whether transcripts, once
22 they're posted, can be manipulated by others. There are copy-
23 right issues with the court reporter. You purchase this from
24 the court reporter. There's some pecuniary interest there too,
25 and I'm concerned about, and I'm sure the court reporters are

1 concerned about that.

2 MR. GLITZENSTEIN: Both parties are of course
3 purchasing the transcript from the court reporter. I mean, my
4 general sense is the media has relied upon getting that material
5 from the court or from parties in high-profile cases.

6 THE COURT: And this is a high-profile case.

7 MR. GLITZENSTEIN: Right. What I would say, your
8 Honor, is, obviously anyone who is sitting in the courtroom in
9 this case has generally been made available to the public.
10 Obviously it's observing the testimony and seen the testimony,
11 so part of the concern, quite frankly, that we've had is, if
12 there are people who are able to observe or media here in
13 Washington, D.C. and can take notes and write down everything
14 that's happened, to some degree this is an accuracy question and
15 a fairness question. There are media who were not able to come
16 to Washington, D.C. and watch it directly, so there's also a
17 question about whether they see a transcript and they can see
18 the same thing anyone sitting in the courtroom can see. You're
19 not really preventing public access. What in fact is occurring
20 there is sort of a disparate access by people who can be here,
21 but people who, for whatever reason, cannot and may have the
22 interest in covering the trial, so I understand Court's concern.

23 THE COURT: Right, and I'm not being an advocate on
24 behalf of the court reporters. I just raise that point because
25 they sell their product. They sell their product, and then it's

1 being distributed for free, and then what really concerns me,
2 though, is the fact that throughout this trial from day one and
3 from the start, commencement of pretrial proceedings I have said
4 that because it's nonjury I have the flexibility of allowing a
5 lot of testimony in, a lot of evidence in, subject to further
6 proceedings, I mean, the theory being that a judge presiding
7 over the case nonjury is presumed to make a decision based upon
8 the competent evidence, so there's a lot of flexibility here,
9 and there's some testimony I've heard, I have no doubt, will be
10 stricken, so it creates a misperception in the eyes of those
11 viewing those blogs as to just what the competent evidence in
12 the record is. That's my concern. I've done that, I've
13 utilized that procedure for my flexibility and also for the
14 flexibility of others so we don't convert this four-week trial
15 into an eight-week trial. So, you know, there's a legitimate
16 concern here. I think that, and I'll take a short recess, I
17 want to revisit the Stevens website for a second, but I think
18 that we should just follow what the Court has put into play
19 here, which is to allow the parties to post the exhibits that
20 have been admitted into the evidentiary record. And leave it at
21 that. I don't recall at all allowing portions of the Stevens
22 transcript to be posted anywhere, and I don't believe the
23 Department of Justice did that. I'm sure they didn't do it.
24 I'm sure there would have been a complaint from the other side
25 about that, so I want to think through this, take a short

1 recess, but I think I'm going to enter an order precluding a
2 party from posting the transcripts, unless there's some
3 authority you want me to take a look at that might persuade me
4 otherwise.

5 MR. GLITZENSTEIN: Your Honor, no, we had not
6 specifically focused on the transcripts so we obviously can
7 abide by your Honor's ruling and see if there are any ruling
8 authority on that. These are not excerpts of transcripts; these
9 are transcripts in their entirety.

10 THE COURT: That highlights the Court's concern. I've
11 said time and time again, look, I want to hear the answer. I'm
12 not sure whether it's relevant or not. If I rely upon it, I'll
13 let you know, and that's for my benefit as well as the benefit
14 of the parties, because, you know, there's some tricky
15 evidentiary issues here, and sometimes to resolve an issue
16 appropriately requires some research mid-trial or recess to
17 think about some of these issues, but I want to make sure that
18 the record is complete in its entirety. Then I can parse
19 through and determine just what the competent evidence is. It's
20 a very interesting issue you presented and I'd be interested in
21 knowing whether or not there's some authority to support it.

22 MR. GLITZENSTEIN: Right.

23 THE COURT: The posting of a transcript. The case
24 should be tried on the evidentiary record presented in this
25 court and within the confines of the judge's ruling, that he

1 will make a decision based upon the competent evidence. So
2 that's different from posting all the transcripts and letting
3 the public then determine, you know, where the trial lies and
4 who should prevail or not, because the transcript that's being
5 posted in its entirety I have no doubt does include some
6 competent evidence that this Court is not going to allow. I was
7 interested in the answer and I allowed the answer, and I said
8 time and time again I want to hear the answer, I'm not so sure
9 it's relevant, I want to hear it, I want to hear it, and if I
10 reply upon it in my ruling I'll let you know, and everyone's
11 interest is preserved, everyone's objection is preserved. I
12 think that's the orderly way to proceed, but to allow a party
13 just to post in its entirety the transcript I have some concerns
14 with.

15 MR. GLITZENSTEIN: Can I just make one point about
16 that? And I'm sorry, I'll let Mr. Simpson --

17 THE COURT: I'll give Mr. Simpson a chance to respond.

18 MR. GLITZENSTEIN: I appreciate that, your Honor.

19 Two issues. I think that ultimately when the
20 transcripts are made available to the public as they would in
21 the ordinary course of events your Honor's rulings about what's
22 admissible for an evidentiary matter, which we completely
23 understand your Honor has said I'm taking matters under
24 advisement, we never understood that to be that the transcripts
25 that are eventually public transcripts, because this has been a

1 public proceeding, will in any way be changed from what has
2 previously been, you know, a public process, so our thought was
3 that the transcripts will reflect your Honor's statements that I
4 may not ultimately consider this to be admissible evidence, and
5 therefore it reduces the risk that you were taking something out
6 of context if somebody could see your Honor saying well, I'll
7 allow this in provisionally, because ultimately when these
8 transcripts are made available it will include your Honor's
9 indications as to what would be admissible and what would not,
10 so from our standpoint, we were simply providing ongoing access
11 to that which is happening in the courtroom and that the public
12 has access to.

13 And the only other thing I would add along those lines
14 is, that part of what the nonprofit groups are trying to do is
15 provide information to their members who have obviously much
16 interest in this, and so this really is a legitimate effort on
17 their part.

18 THE COURT: Information they can provide is my opinion
19 when I finally resolve these issues. That will be the decision
20 based on competent evidence. Someone is going to prevail and
21 someone's not going to prevail. That will be my best thoughts
22 about it.

23 I'm not sure how we handled the transcripts in
24 Stevens. I'm not sure what the procedures are in the court,
25 whether or not the transcript is posted on a daily basis in a

1 case.

2 All right. Let me take about a five-minute recess to
3 think about that. I think, and I want to hear from Mr. Simpson
4 first, though, but I think I'm comfortable with saying that you
5 know the procedure should be limited to the posting of exhibits
6 on the court's website each day and the public certainly has
7 access to those exhibits.

8 MR. GLITZENSTEIN: Your Honor, would these groups be
9 able to at least put on their websites the same exhibits that
10 are being put on the court's website? I mean, some members --

11 THE COURT: Let me think about that over the recess.
12 I don't want to -- let me just think about that for a second. I
13 don't think I have any problems with that. I think that's what
14 DOJ did. If DOJ did it I think we should allow it. Let me
15 think about what we did. I want to revisit what we did in the
16 Stevens case.

17 Mr. Simpson?

18 MR. SIMPSON: Just to make it clear, my client has no
19 concern about what goes on in this courtroom and what's admitted in
20 evidence in this case.

21 THE COURT: Your client does have a concern about what
22 goes on in the courtroom.

23 MR. SIMPSON: We want the world to know what the
24 evidence is.

25 THE COURT: You wouldn't have eight attorneys on this

1 side of your table.

2 MR. SIMPSON: This is an important case. We've got
3 nothing to hide, is my point. What somebody says about me on
4 the Internet I could care less. That's not the issue. The
5 issue is --

6 THE COURT: They're not talking about you, are they?

7 MR. SIMPSON: Well, I don't know. I've seen one. Who
8 knows, maybe I'm on somebody's black list, but that doesn't
9 matter. I don't care. That doesn't bother me.

10 THE COURT: You have to have a tough skin.

11 MR. SIMPSON: Exactly. I was a Marine. That doesn't
12 bother me. What does bother me is, we have a rule for fact
13 witnesses for one specific reason: that is, not to compare
14 notes about what one person testifies, and in this day you have
15 a vehicle for doing that on the Internet, and I don't think
16 that's any different than somebody taking the transcript and
17 leaving it on the railing out here and saying I didn't give it
18 to them, they didn't brief them on it, but there it was, so I
19 think the Court needs to have some prophylactic measures to
20 prevent that from happening.

21 THE COURT: That's a very good point.

22 With respect to authority, we've actually to some
23 extent briefed that in this case. We had a motion that was
24 filed in 2007, I believe, in which we bring -- I addressed this
25 issue. Judge Facciola addressed it.

1 MR. SIMPSON: Now, we actually addressed it, because
2 there was a concern that discovery materials were being used and
3 given to the media, and because they were first being posted on
4 the website of the court, and there is a D.C. Circuit case that
5 defines the scope of what a judicial record is, and your Honor
6 is absolutely right - until it comes into evidence and is
7 actually relied upon by the Court in making a judicial decision,
8 it's not a judicial record and there is no public access to it.
9 So here we have a transcript and we have some exhibits where we
10 don't really know whether they're in or out. Some of them are
11 in limbo, some of them are in provisionally, so I think until
12 all that gets sorted out, it's a problem if it's being put on
13 the worldwide web, and I can find that case for you. I just
14 don't remember it off the top of my head.

15 THE COURT: I'm sure it's one of the fifty opinions we
16 issued and I think I relied at one point when I said the case is
17 going to be tried on the evidence in the courtroom period, and I
18 think Judge Facciola revisited this issue.

19 Yes, counsel?

20 MR. GLITZENSTEIN: I just want to talk about this
21 issue that Mr. Simpson brought up that I neglected to talk about
22 before, we have given all the fact witnesses, except for those
23 that were excluded by your order as represented by the parties,
24 strict instructions to look at no media on this case as to print
25 media, blogisphere, whatever it may be, and in fact, we no

1 longer have any fact witnesses remaining that plaintiffs are
2 going to call that are subject to the Rule on Witnesses, so for
3 whatever your Honor decides for other reasons in terms of
4 management to the case, that's frankly a nonissue at this stage.
5 What we're talking about, and again if your Honor wanted to look
6 at what Mr. Simpson is concerned about, it may be helpful to
7 understand exactly what the guideposts are, but from our
8 standpoint, it's providing the public with the same objective
9 information that anyone sitting in the courtroom can get, and
10 it's hard for us to see how there is some additional problem
11 created merely because it's made available through a website to
12 members and anyone from the media who wants to look at it as
13 opposed to sitting in the courtroom and seeing exactly the same
14 testimony and exactly the same proceedings that are occurring as
15 your Honor mentioned.

16 THE COURT: That was a compelling argument made years
17 ago for why we should have electronic access to files. The
18 argument was that people could come to court and find out what
19 was going on in court and because they could find out in a
20 criminal matter that someone was testifying, and there was a
21 discussion about exhibits and all sorts of other things, then
22 everyone in the universe should have the same access to that,
23 and to a certain extent we agreed, but we also recognized that
24 there are instances in which the public's right to know
25 everything is curtailed by compelling reasons: privacy, secrecy

1 of proceedings, sealed proceedings, confidentiality, and here it
2 would be because the judge has not determined the scope of
3 competent evidence upon which he's going to rely to make a
4 decision, so that would be yet still another reason to not allow
5 the posting of just complete transcripts on the web, but those
6 are just thoughts that occur to me off the top of my head. We
7 haven't researched this recently, but I'll take a short recess.

8 MR. GLITZENSTEIN: Just one final point on the
9 exhibits. I believe the only ones that anybody has actually
10 posted were exhibits that were actually admitted into evidence.
11 Anything that your Honor was provisionally allowing I think we
12 were trying to be extremely cautious about any of that, so
13 anything that was actually in evidence and therefore will be
14 posted on the court's website, with one exception, it's my
15 understanding, and those who are more technologically proficient
16 than I may be able to address this, but apparently it's
17 difficult to use your Honor's process for video clips in terms
18 of posting that and making that available to the media,
19 including those that have been admitted into evidence.

20 THE COURT: I think there videos and portions of
21 videos in the Stevens case, I believe, and whatever the
22 technological challenges were, they were able to overcome them.
23 I know there were myriad photos. There may not have been any
24 film footage, I don't believe. There may have been some film
25 footage, but discuss that with Mr. Burgess. I don't know.

1 MR. GLITZENSTEIN: I guess all I'm saying, your Honor,
2 at bare minimum we would ask that any evidence that actually
3 have been admitted into evidence by your Honor and would
4 ultimately be made available over the court's website, if these
5 nonprofit groups --

6 THE COURT: I don't think I have a problem with that.
7 I just want to take a look at the Stevens order to make sure I'm
8 not doing anything different than I did in that case, but my
9 recollection is DOJ was posting all the exhibits on a daily
10 basis, but not the transcripts, and also posting on our court
11 website, I believe. I know we were posting on our court
12 website. I know that. The Court wanted to accommodate the
13 media's interest in those items of evidence that were absolutely
14 admitted into the evidentiary record. So I know that was
15 happening. And I know DOJ was doing a lot of other things.

16 Let me just take about a ten-minute recess. I just
17 want to revisit the Stevens case.

18 MR. GLITZENSTEIN: Yes, your Honor.

19 THE COURT: There's no need to stand.

20 Mr. Simpson, anything else on that point?

21 MR. SIMPSON: It's my understanding that the Jacobson
22 deposition was admitted yesterday with a provisional "to be
23 determined later" whether it's going to be relied on by the
24 Court, so that was posted on the court's website, so it's not
25 completely accurate that absolutely only things in evidence is

1 being posted. Again, that's one concern. Is it in or out? If
2 it's in, we don't have a problem with.

3 THE COURT: I also ruled, though, there are no
4 objections, notwithstanding what Rule 32 says, if you have
5 objections I'll allow it to come in. It's probably going to
6 come in anyway with respect to cross-examination of that expert.
7 I don't see any problem there, but again, I'll take about a ten-
8 minute recess.

9 Anything further?

10 MR. SIMPSON: No, sir.

11 COURTROOM DEPUTY: This Honorable Court now stands in
12 a ten-minute recess.

13 (Recess taken at about 10:26 a.m.)

14 COURTROOM DEPUTY: Please remain seated and come to
15 order.

16 (Back on the record at about 10:50 a.m.)

17 THE COURT: Counsel, these are the guidelines for the
18 parties. If an exhibit has been admitted into evidence, the
19 party's free to post that exhibit on a party's private website.
20 I'm not going to allow the posting of transcripts for the
21 reasons I've already articulated, and also because it's possible
22 that the Court could recall fact witnesses or a party could
23 recall fact witnesses. Just because they've been excused
24 doesn't mean that there's no possibility of a recall of a
25 witness, and I don't want those witnesses tainted by whatever he

1 or she may hear or read on a website. There is a procedure that
2 the court's put in place for the posting of exhibits, and I
3 encourage counsel to follow it. I think we're probably not
4 technologically advanced enough to post videos, and even if we
5 were, I probably wouldn't allow the videos that come in arguably
6 as other evidence videos, 404(b), because that evidence, if
7 viewed by a member of the public, might tend to mislead the
8 public about the reason why the evidence is a part of the
9 record. I've allowed other evidence to become a part of the
10 record as other evidence and for what that other evidence stands
11 for, not necessarily because it's evidence of maltreatment or
12 mistreatment of elephants on the Blue team, so there's the
13 potential for a misperception of just what the weight of the
14 evidence is, so subject to whatever authority counsel wish to
15 provide me with, I'm not going to allow the posting of any
16 transcripts on a party's website.

17 To the extent I guess someone wants to buy a
18 transcript and post it, I guess they can do so. I guess you're
19 open for business for anyone who wants to buy it, I guess, and
20 if that becomes a problem I'll deal with that, but those are the
21 ground rules for now, so we'll start now at eleven o'clock.

22 MR. GLITZENSTEIN: Can I ask just one clarifying
23 question? Just the videos, just so we understand, are the
24 videos that have been admitted into evidence?

25 THE COURT: Other crimes evidence, for the most part.

1 There's been a lot of evidence. Basically that was the theory
2 of your case. I said other crimes. Other evidence. Without
3 that you probably wouldn't have been able to proceed, but, you
4 know, there's a problem.

5 Oh, before I get on to the other evidence, let me just
6 say this: To the extent that an expert has testified, I think a
7 party can indicate on a party's website who the expert was, and
8 consistent with the scope of testimony outlined in a party's
9 pretrial statement, verbatim, utilize that statement without
10 attempting to characterize the scope of that expert's testimony.
11 I don't have any problems with that because the scope has
12 already been defined by a party of the anticipated testimony of
13 that expert, so I don't have any problems with the parties
14 saying so-and-so testified inconsistent with pretrial. This was
15 the scope of the testimony, without more.

16 Yes?

17 MR. GLITZENSTEIN: Your Honor, along those lines, for
18 fact witnesses, that's essentially what people have done as
19 well. Could I just read to you, it's a one-paragraph or two-
20 paragraph statement from the testimony that I think your Honor
21 is most familiar with because it occurred yesterday and this is
22 what AWI and I think what Mr. Simpson was referring to just so
23 we know what the ground rules are. The statement was day four,
24 what happened and what to expect next.

25 Today Pat CuvIELLO testified about the handling and

1 living conditions of the elephants based on his twenty years of
2 observing and monitoring the Ringling Brothers Circus. He
3 described the unloading of elephants from train cars, the walk
4 they take to the arena, how the elephants are kept when not
5 performing, and what happens at an open house. Several clips of
6 video footage taken by Mr. CuvIELLO showing bullhooks were
7 introduced into evidence. It is expected that expert witnesses
8 Dr. Hart --

9 THE COURT: A lot of that was other evidence. It
10 wasn't necessarily mistreatment or maltreatment or abuse of
11 elephants on the Blue team, though.

12 MR. GLITZENSTEIN: That's correct, your Honor, but
13 again, what they're simply trying to do is accurately state to
14 the media and to their members, just as people sitting in the
15 courtroom would be privy to, what transpired in a public
16 proceeding.

17 And just to give you one citation, as I'm sure your
18 Honor is familiar with, Seattle Times Company versus Reinhardt,
19 467 U.S. 20, does say that as a general proposition, civil
20 proceedings when they get to the trial stage are accessible to
21 the public in contrast to pretrial proceedings, so --

22 THE COURT: And they are, and the public is more than
23 welcome to come down and watch and listen to all my rulings so
24 they know exactly why certain evidence is coming in.

25 MR. GLITZENSTEIN: Your Honor, obviously we'll abide

1 by your Honor's instructions. We just want to know what they
2 are.

3 THE COURT: Thank you.

4 I want to finish this trial. Let's call your next
5 witness.

6 MS. MEYER: Your Honor, as we discussed at the close
7 of yesterday, we're going to proceed with some of the deposition
8 testimony from the 30(b)(6) witness of Gary Jacobson.

9 THE COURT: All right. And that as admitted because
10 there were no objections. Notwithstanding what Rule 32 says,
11 there were no objections. I expressly said in my order, in my
12 court order, if there are objections, state them. There were no
13 objections, and that's the reason why without any qualifications
14 whatsoever 30(b)(6) testimony comes in, so you can post that.

15 MS. MEYER: Okay, your Honor. And we did want to in
16 addition to what we introduced yesterday, which is now in Will
17 Call Exhibit 152 from that deposition, we did want to actually
18 read some of the additional testimony into the record, and so --

19 THE COURT: Why is there a need for that? It's in. I
20 can read it for myself. It's nonjury. There's no jury here.

21 MS. MEYER: Okay. So should we give you --

22 THE COURT: I'll read it.

23 MS. MEYER: So we need to give you the rest of those
24 citations?

25 THE COURT: That's fine, and you can do that and I'll