

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**AMERICAN SOCIETY FOR THE PREVENTION** )  
**OF CRUELTY TO ANIMALS,** )  
1755 Massachusetts Ave. N.W. )  
Washington, D.C. 20036, )

**ANIMAL WELFARE INSTITUTE,** )  
1686 34th Street, N.W. )  
Washington, D.C. 20007, )

**THE FUND FOR ANIMALS,** )  
8121 Georgia Ave., N.W. )  
Suite 301 )  
Silver Spring, Maryland 20910 )

**TOM RIDER,** )  
600 East Holland Street )  
Washington, Illinois 61571, )

Plaintiffs, )

v. )

**RINGLING BROTHERS AND BARNUM & BAILEY CIRCUS,** )  
8607 Westwood Center Drive )  
Vienna, Va. 22182, )

**FELD ENTERTAINMENT, INC.,** )  
8607 Westwood Center Drive )  
Vienna, Va. 22182, )

Defendants. )

Civ. No.

**PLAINTIFFS' MOTION TO COMPEL COMPLIANCE  
BY WASHINGTON SPORTS AND ENTERTAINMENT, L.P.  
WITH THIRD PARTY SUBPOENA**

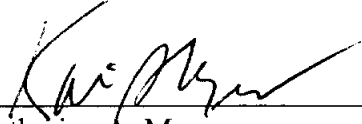
Plaintiffs, the American Society for the Prevention of Cruelty to Animals, *et al.*, move to  
compel compliance with the subpoena duces tecum they served on a third party to this litigation –

Washington Sports and Entertainment, L.P. (“WSE”) – on March 26, 2004. WSE operates the MCI Center, where defendant Ringling Brothers and Barnum & Bailey (“Ringling”) performs its circus each year in the Washington, D.C. area. The subpoena seeks access to video, audio, and other recordings made in the areas in which the Ringling elephants are maintained while the circus is performing at the MCI Center.

Although the original return date for the subpoena was April 27, 2004, and was subsequently extended by plaintiffs to May 3, 2004, WSE did not file either objections to the subpoena or a motion to quash the subpoena, as provided pursuant to Rule 45(c) of the Federal Rules of Civil Procedure. Instead, although WSE has already identified all of the records that are responsive to the subpoena, it has informed plaintiffs in no uncertain terms that it has no intention of producing all of those records. Accordingly, plaintiffs must move to compel such production.

As more fully explained in the accompanying memorandum, particularly because, according to WSE itself, the responsive records were easily identified and readily accessible, and because WSE has not asserted any privileges with respect to any of this material, yet plaintiffs have nevertheless offered to enter into a protective order to meet WSE’s stated concerns that the subpoena is “overly broad,” plaintiffs are entitled to have their subpoena complied with. In support of this motion, plaintiffs submit Exhibits A- J, which includes the Declarations of Plaintiff Tom Rider and plaintiffs’ attorneys Katherine Meyer and Kimberly Ockene.

Respectfully submitted,



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Katherine A. Meyer  
(D.C. Bar No. 244301)  
Eric R. Glitzenstein  
(D.C. Bar No. 358287)  
Kimberly D. Ockene  
(D.C. Bar No. 461191)

Meyer & Glitzenstein  
1601 Connecticut Ave., N.W.  
Suite 700  
Washington, D.C. 20009  
(202) 588-5206

Date: May 6, 2004

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Vienna, Va. 22182, )

**FELD ENTERTAINMENT, INC.,** )  
8607 Westwood Center Drive )  
Vienna, Va. 22182, )

Defendants. )

Civ. No.

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL  
COMPLIANCE BY WASHINGTON SPORTS AND ENTERTAINMENT, L.P.  
WITH THIRD PARTY SUBPOENA**

Plaintiffs, the American Society for the Prevention of Cruelty to Animals *et al.* have moved to compel compliance with a subpoena duces tecum that they served on a third party to

this litigation, Washington Sports and Entertainment, L.P. (“WSE”), which operates the MCI Center in Washington, D.C. See Subpoena (Exhibit A). As demonstrated below, because (a) the subpoena seeks highly relevant information, (b) WSE has already located and assembled the responsive records, (c) WSE has not filed any objections or a motion to quash under Rule 45(c), Fed.R.Civ.P. – nor has it even asserted that any of this information is privileged – and (d) plaintiffs have nevertheless agreed to enter into a protective order to meet WSE’s stated concerns that the subpoena is “overly broad,” the motion to compel should be granted.

### **BACKGROUND**

This case involves plaintiffs’ challenge to the methods used by Ringling Brothers and Barnum & Bailey Circus (“Ringling”) to train, control, “discipline,” and otherwise handle the endangered Asian elephants that are used in its circus. Plaintiffs allege, and intend to prove, that such methods – which include beating and striking elephants with sharp “bull hooks,” whips, and other instruments, forcibly removing baby elephants from their mothers, and keeping the elephants chained for long periods of time – constitute prohibited “takes” under the Endangered Species Act (“ESA”), 16 U.S.C. § 1538(a), because they “harm,” “harass,” and “wound” these endangered animals. See Complaint ¶ 96; see also 16 U.S.C. § 1532(19) (definition of “take”). Plaintiffs further allege that these actions also violate ESA regulations that require captive wildlife to be maintained under “humane and healthful conditions,” 50 C.F.R. § 13.41, and that they also violate Animal Welfare Act regulations governing the treatment of elephants used in circuses, which constitutes an additional violation of ESA regulations. See Complaint ¶ 97; see also 50 C.F.R. § 13.48 (any person holding a captive-bred wildlife permit under the ESA must comply with “all applicable laws and regulations governing the permitted activity”).

Plaintiffs include Tom Rider, who worked for Ringling for two and a half years. He asserts that Ringling handlers and trainers “routinely beat the elephants,” including the baby elephants, and that they “routinely hit and wound the elephants with sharp bull hooks.” Complaint ¶ 19. Mr. Rider further asserts that he both “saw and heard baby elephants cry in pain from their beatings,” and that this treatment of the animals takes place “throughout the country . . . including in Washington, D.C.” *Id.* As Mr. Rider further explains in the attached declaration, “by far the most severe and obvious abuse” of the elephants occurs “‘behind the scenes,’ when the elephants and their handlers [are] in the areas that are not open to public scrutiny,” and much abuse also “takes place during rehearsals with the elephants when the public is not watching.” *See* Declaration of Tom Rider (Exhibit B) ¶ 5. Mr. Rider further explains that when he was with the circus in 1999, it performed at the MCI Center in Washington, and that “there were several security cameras located in the immediate vicinity of where the elephants were housed when they were not performing,” and that “[b]ased on [his] personal knowledge of this venue and of the elephant abuse that [he] witnessed there” he believes that “footage from these security cameras – and from cameras in any other location where the elephants were or are kept, walked, or made to rehearse – would also record the use of bull hooks or whips on elephants.” *Id.* ¶ 8.

Accordingly, on March 26, 2004, plaintiffs served WSE – which operates the MCI Center - with a subpoena duces tecum, commanding it to produce and permit copying of:

[a]ll videotapes, audiotapes, photographs, or other recordings of any kind taken, created, or produced for security, surveillance, or any other purpose at the MCI Center . . . in the areas where elephants are housed, cared for, or maintained for any period of time in connection with performances by Ringling Brothers and Barnum & Bailey Circus . . .

Subpoena (Exhibit A) (emphasis added); see also Certification regarding Service of Subpoena (Exhibit C). The subpoena requested such records made during specific dates that Ringling performed at the MCI Center from 1998 to 2004, and provided a return date of April 27, 2004 – giving WSE more than thirty days to either produce the records, file objections, or seek to quash the subpoena. See Subpoena (Exhibit A). The subpoena further directed WSE to designate an officer or other person to identify and authenticate the subpoenaed records on behalf of WSE. Id. As a courtesy, a copy of the subpoena was also faxed to WSE’s General Counsel on March 26, 2004. See Letter to Maryanne Niles from Katherine Meyer (March 26, 2004) (Exhibit D); Declaration of Kimberly Ockene (Exhibit E) ¶ 4.<sup>1</sup>

Although the Rules of Civil Procedure allow third parties to file objections to a subpoena within 14 days after service, no such objections were filed by WSE, nor did WSE move to quash the subpoena. See Fed.R.Civ.P. 45(c). Nor, for that matter, did WSE make any contact with plaintiffs’ attorneys regarding this matter. Rather, on April 20, 2004 – a week before the original return date – plaintiffs’ attorney called WSE’s General Counsel to inquire as to how WSE intended to comply with the subpoena. Ockene Decl. ¶ 5. In response, she was informed by WSE’s attorney that WSE does have surveillance footage that is responsive to the subpoena, that it should not take long to copy the footage, and that he would get back to her about the timing of producing the materials. Id. ¶ 6.

On April 21, 2004, WSE’s attorney further informed plaintiffs’ attorney that the company only had one week’s worth of responsive tapes, amounting to approximately 156 hours of footage – i.e., the footage recorded during Ringling’s most recent engagement at the MCI

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<sup>1</sup>A similar subpoena was also served on Madison Square Garden in New York City.

Center, March 22 - March 26, 2004 – because WSE did not keep tapes from previous years. Ockene Decl. ¶ 7. Although plaintiff Rider distinctly remembers that there were “several security cameras” at the MCI Center “located in the immediate vicinity of where the elephants were housed when they were not performing,” Rider Decl. ¶ 8, WSE’s attorney informed plaintiffs’ attorney that there is only one such camera. Ockene Decl. ¶ 7. He further stated that he had made arrangements to have the tapes copied, that he would get back to plaintiffs’ attorney when the tapes were ready, and that WSE might prefer to stipulate to authenticity rather than to provide an official for a deposition who could authenticate the records. *Id.* ¶¶ 7-8. On that basis, plaintiffs’ attorney stated that plaintiffs were willing to extend the return date for a reasonable period of time to allow for reproduction of the footage. *Id.* ¶ 7. On April 23, 2004, plaintiffs’ attorney sent WSE’s attorney a follow-up letter, confirming that plaintiffs were willing to extend the return date until May 3, and also stating that plaintiffs wished to proceed with a deposition as required by the subpoena. See Letter to Gary Kolker from Kimberly Ockene (Exhibit F).

On April 28, 2004, counsel for plaintiffs and counsel for WSE had another conversation about WSE’s compliance with the subpoena. For the first time, WSE’s attorney complained that the subpoena was “overly broad,” that plaintiffs were not entitled to all of the video footage of the “areas where the elephants were housed, cared for or maintained,” but were only entitled to those portions of the videotape that actually depict elephants. He further stated that WSE had decided that the most “efficient” way to provide plaintiff with such information, was for WSE to go through the tapes and provide plaintiffs the “excerpts” that concern elephants, and that WSE would have to charge plaintiffs \$5,000 for the cost of this undertaking. Ockene Decl. ¶ 11.

WSE’s attorney further mentioned that, because Ringling was WSE’s “tenant,” he had to make



sure that any arrangement was also fair to Ringling. Id. ¶ 12. WSE's attorney did not assert that there was any privileged information on the videotape, or otherwise assert a need for confidentiality. Rather, he only asserted that WSE need not provide all of the responsive records to plaintiffs because the subpoena was "overbroad," and included information that was not relevant to plaintiffs' lawsuit. Id. Plaintiffs' attorney explained that, particularly because, as WSE's attorney himself had pointed out, WSE had a business relationship with Ringling, plaintiffs were concerned that WSE might not provide plaintiffs with all of the footage that they believe is relevant to their claims. Id. ¶ 13.

Nevertheless, in an effort to address the defendants' concerns, plaintiffs' attorneys called WSE's attorney on April 28 and suggested two alternatives for dealing with this matter: (1) plaintiffs could go to WSE's offices and review the tapes there and designate the portions of the footage that they would like to obtain; or (2) WSE could provide plaintiffs' attorneys with a copy of the entire 156 hours of videotape at their offices for the same purpose. Although WSE had not asserted any privilege with regard to the tapes, plaintiffs' attorneys further offered that, whichever alternative WSE chose, plaintiffs would be willing to abide by a confidentiality agreement with regard to their viewing of the records at this juncture. See Declaration of Katherine Meyer (Exhibit G) ¶ 2. WSE's attorney again explained that he would have to consult with Ringling's attorneys, and he requested that plaintiffs put their alternative proposal in writing. Plaintiffs did so by e-mail message sent later that day, which also reminded WSE's attorney that, "[i]n light of the fact that we served this subpoena over a month ago, and that the current (extended) return date [was] now Monday, May 3, 2004, we are anxious to have this matter resolved as soon as possible." See E-mail Message from Katherine Meyer to Gary Kolker

(April 28, 2004) (Exhibit H).

The following day, April 29, 2004, WSE's General Counsel sent a letter to plaintiffs' counsel rejecting their suggested alternatives. Letter to Kimberly Ockene from Marianne Niles (Exhibit I). She explained that, in WSE's view, "in order to provide a copy of the requested video footage, an employee will have to review and redact approximately 156 hours of video footage," that "this exercise is not within the video staff's normal duties," and that it will take "approximately thirty (30) days and will cost \$5,000, payable in advance, for this work to be completed." Id. WSE further "decline[d]" the offer to have plaintiffs' representative visit the MCI Center to review the tapes, because MCI is "not staffed to provide this service" – although she said nothing about plaintiffs' alternative suggestion that MCI simply provide a copy of the tapes for plaintiffs' attorneys to review at their offices. WSE's attorney further stated that the company did not believe that the offer to provide a confidentiality agreement "was a viable alternative," although she did not explain why. Id. Finally, again, WSE did not assert any privileges with respect to the footage, but simply stated that, short of plaintiffs paying WSE \$5,000 to redact and disclose the information that it believes to be relevant, compliance with the subpoena "will disclose information which is overly broad, not relevant, nor material and is certainly beyond the scope of [plaintiffs'] subpoena." Id.

On May 3 – the return date for the subpoena – plaintiffs' attorneys called WSE's attorneys to ascertain whether this was WSE's final position and whether WSE was filing a motion to quash. Meyer Decl. ¶ 3. In response, WSE's attorney stated that WSE was not filing a motion to quash the subpoena, but that plaintiffs should consider the April 29 letter to be WSE's final position on the matter. Id. Accordingly, because the return date has now passed, plaintiffs

have no choice but to move to compel compliance with the subpoena.

### ARGUMENT

A party is entitled to discover information “if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). Moreover, a party may obtain discovery regarding any matter that is relevant to either the claims or defenses in the case. *Id.* Thus, “[t]he test of relevancy for discovery is broad to assure that civil litigants obtain the fullest possible knowledge of the issues and facts before trial.” Staley Continental v. Drexel Burnham Lambert, 1988 WL 36117, \*2 (D.D.C.) (April 8, 1988), citing In Re Sealed Case, 676 F.2d 793, 809 (D.C. Cir. 1982) (emphasis added).

As explained *supra*, plaintiffs’ subpoena specifically seeks “[a]ll videotapes, audiotapes, photographs, or other recordings of any kind taken, created, or produced for security, surveillance, or any other purpose at the MCI Center . . . in the areas where elephants are housed, cared for, or maintained for any period of time . . .” Subpoena (Exhibit A) (emphasis added).

According to WSE, it has identified 156 hours of responsive videotape taken in the areas where the Ringling elephants were kept at the MCI Center between March 22 and March 26, 2004. See Niles Letter (Exhibit I).<sup>2</sup>

In refusing to provide plaintiffs with the requested information, WSE has not asserted that any of the information is privileged. Rather, the only concern that has been stated by WSE is that, to provide all of the requested information, instead of excerpts selected by WSE, would

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<sup>2</sup>In light of Mr. Rider’s specific recollection that “there were several security cameras” at the MCI Center in the areas where the elephants “were housed when not performing . . . kept, walked, or made to rehearse,” Rider Decl. ¶ 8 (emphasis added), plaintiffs intend to question WSE’s designated deponent about WSE’s contention that there was only one camera in such areas.

“disclose information that is overly broad, not relevant, nor material and is certainly beyond the scope of [the] subpoena.” Niles Letter (Exhibit I). However, because the subpoena specifically commands production of “all” videotapes taken “in the areas” where the elephants were kept, regardless of whether every frame of the videotape actually depicts an elephant, WSE’s assertion that providing all such videotapes would be “beyond the scope” of the subpoena is clearly incorrect.

Nor is there any merit to WSE’s assertion that information other than portions of the tape that show elephants is “not relevant” here. Niles Letter (Exhibit I). On the contrary, although plaintiffs suspect that much of the videotapes would depict elephants – since these animals are extremely large and were apparently kept in the same areas at the MCI Center during March 23-26, except for the few hours when they were actually performing – plaintiffs specifically worded the subpoena to ensure that they would be able to obtain all information that may be relevant to the claims in their lawsuit, as well as Ringling’s defenses. This would include, for example, not only video footage of actual elephants, but also footage of Ringling handlers wielding bull hooks, whips, or other instruments, footage depicting chains used on elephants, footage that records the sounds of elephants and elephant handlers off-camera, conversations between and among Ringling employees, and footage that reflects the conditions in which the elephants are maintained. See, e.g., Complaint ¶ 19 (“Mr. Rider saw and heard baby elephants cry in pain from their beatings” (emphasis added); USDA Affidavit of Tom Rider (July 20, 2000) (Exhibit J) at 2 (“[t]he people . . . outside the tent could hear the elephants screaming from the beating” (emphasis added); Complaint ¶ 97 (Ringling’s treatment of the elephants “is inhumane and unhealthful” (emphasis added). Therefore, having a WSE employee decide what may be relevant

to plaintiffs' claims – particularly when WSE's attorney candidly admitted that he was consulting with Ringling Brothers about this matter because Ringling is WSE's "tenant" – will not ensure that plaintiffs have access to all information that is "reasonably calculated to lead to the discovery of admissible evidence." Cf. In re The Exxon Valdez, 142 F.R.D. 380, 383 (D.D.C. 1992) (claims of undue expense are less credible when subpoenaed third party has a financial relationship with the defendant).<sup>3</sup>

Nor may WSE refuse to produce the requested information on the grounds that the subpoena is "overly broad." Indeed, according to WSE's attorneys, WSE easily located the finite set of tapes that it deems responsive to plaintiffs' subpoena. Therefore, it can not legitimately contend that it will suffer any undue burden in complying with the subpoena. Cf., e.g., GFL Advantage Fund. v. Colkitt, 216 F.R.D. 189, 196 (D.D.C. 2003) (recognizing that subpoena may be "overbroad" when it is "without any temporal limitation"); Linder v. Calero-Portocarrero, 183 F.R.D. 314 (D.D.C. 1998) ("[w]hether compliance with a requested search would be unduly burdensome depends on the volume of material requested, the ease of searching for the requested documents in the form presented, and whether compliance threatens the normal operations of the responding [party]") (internal citations omitted).

In fact, the only burden at issue here is the one that WSE insists it must impose on itself to give plaintiffs less than what they have subpoenaed – i.e., by having an employee "review and redact approximately 156 hours of video footage," which WSE contends will take 30 days and

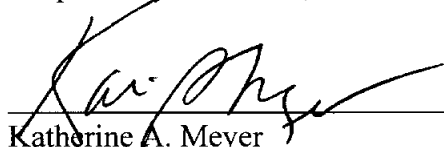
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<sup>3</sup>In fact, the MCI Center has a long standing financial relationship with defendant Feld Entertainment, which owns the Ringling Brothers circus. Thus, in addition to annual performances of the circus, Feld Entertainment also uses the MCI Center for performances of its "Disney on Ice," "Anastasia on Ice," and other events. See Washington Post (February 21, 1997) (Exhibit K ) at 4; NIH News Briefs (Oct. 20, 1998) (Exhibit L).

cost \$5,000. Niles Letter (Exhibit I). However, particularly when WSE has not asserted that any of this information is privileged, and plaintiffs have nevertheless offered to review these materials subject to a confidentiality agreement that would prohibit them from revealing any information that truly has no bearing on this case, WSE's assertion that this is the only way it can comply with the subpoena simply makes no sense. In addition, although WSE has also asserted that it is "not staffed" to accommodate plaintiffs' suggestion that plaintiffs have someone go to the MCI Center and review the tapes, WSE has not explained why it will not simply give plaintiffs a set of the tapes to review at their offices, subject to a protective order, for the purpose of identifying the portions they wish to obtain for use in the case, which would not appear to require any staffing by the MCI Center. See Staley Continental, 1988 WL 36117, \*3 (noting that "the imposition of a protective order alleviates the confidentiality concerns" asserted by the subpoenaed party).

Accordingly, although plaintiffs have clearly demonstrated that their subpoena is "reasonably calculated to lead to the discovery of admissible evidence," Fed. R. Civ. P. 26(b)(1), there simply is no legitimate basis for WSE's refusal to comply in full with plaintiffs' subpoena. In addition, because WSE failed to file objections to the subpoena or a motion to quash within the time provided by Rule 45(c), but rather, put plaintiffs in the position of having to move to compel compliance with the subpoena to obtain the information to which they are entitled, WSE should be made to reimburse plaintiffs for their attorneys' fees and costs in connection with this motion. See In re The Exxon Valdez, 142 F.R.D. at 384 (acknowledging that contempt sanction provided by Rule 45 may be applicable where subpoenaed party fails to timely object to the subpoena).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Katherine A. Meyer", is written over a horizontal line.

Katherine A. Meyer  
(D.C. Bar No. 244301)  
Eric R. Glitzenstein  
(D.C. Bar No. 358287)  
Kimberly D. Ockene  
(D.C. Bar No. 461191)

Meyer & Glitzenstein  
1601 Connecticut Ave., N.W.  
Suite 700  
Washington, D.C. 20009  
(202) 588-5206

Date: May 6, 2004

AO 88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the  
**United States District Court**  
 DISTRICT OF COLUMBIA

American Society for the Prevention  
 of Cruelty to Animals, et al.,

**SUBPOENA IN A CIVIL CASE**

V.

CASE NUMBER:1 03-2006

Ringling Brothers and Barnum & Bailey  
 Circus

To: Washington Sports and Entertainment, L.P.

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Meyer & Glitzenstein, 1601 Conn. Ave, NW,	DATE AND TIME April 27, 2004, 10 a.m.
--	--

Washington, D.C. 20009 Suite 700

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **Records listed in Attachment A**

PLACE Meyer & Glitzenstein, 1601 Conn. Ave, NW	DATE AND TIME April 27, 2004, 10 a.m.
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) <i>Kimberly Ockene, Associate Attorney, Counsel to Plaintiff</i>	DATE 3-25-04
---	-----------------

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER  
 Kimberly Ockene, Meyer & Glitzenstein, 1601 Conn. Ave. NW, Washington, D.C

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

1 If action is pending in district other than district of issuance, state district under case number.

20009  
 (202) 588-5206



AO 88 (Rev. 1/94) Subpoena in a Civil Case

**PROOF OF SERVICE**

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_

Date

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Address of Server

RULE 45, Federal Rules of Civil Procedure, Part C & D:

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that

person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(vi) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an un-retained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Issued by the  
UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

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

Plaintiffs, )

v. )

RINGLING BROTHERS AND BARNUM )  
& BAILEY CIRCUS, et al., )

Defendants. )

Civ. No. 03-2006 (EGS)

ATTACHMENT A TO  
SUBPOENA IN CIVIL CASE

Washington Sports and Entertainment, L.P., is hereby commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time indicated on page 1 of the foregoing civil subpoena:

All videotapes, audiotapes, photographs, or other recordings of any kind taken, created, or produced for security, surveillance, or any other purpose at the MCI Center, located at 601 F Street, NW, Washington, D.C., 20004, in the areas where elephants were housed, cared for, or maintained for any period of time in connection with performances by Ringling Brothers and Barnum & Bailey Circus or Feld Entertainment at the MCI Center for the years 1998 through 2004, including but not limited to the following dates:

March 24, 1998 through (and including) March 29, 1998;  
March 24, 1999 through (and including) March 28, 1999;  
March 28, 2000 through (and including) April 2, 2000;  
March 22, 2001 through (and including) March 25, 2001;  
March 21, 2002 through (and including) March 24, 2002;  
April 9, 2003 through (and including) April 13, 2003; and  
March 22, 2004 through (and including) March 26, 2004.

Pursuant to the foregoing subpoena, Washington Sports and Entertainment, L.P. is also required to designate an officer, director, managing agent, or other person who is authorized to produce, identify, and authenticate the subpoenaed records on behalf of Washington Sports and Entertainment, L.P.

**MEYER AND GLITZENSTEIN**  
1601 CONNECTICUT AVE. NW., SUITE 700  
WASHINGTON, DC 20009-1056

**FIRST UNION NATIONAL BANK**  
15-122-540

PAY TO THE  
ORDER OF

Washington Sports and Entertainment, L.P.

\$ 50.00

Fifty and 00/100

DOLLARS

MEMO witness fees - subpoena

*Kate Meyer* MP

⑈00008230⑈ ⑆05400⑆ ⑆220⑆ ⑆206670⑆ ⑆476250⑈

Security Features Included. Details on back.

**MEYER AND GLITZENSTEIN**

To: Washington Sports +  
267 - witness fees for deposition

8230

**MEYER AND GLITZENSTEIN**

8230

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, <u>et al.</u> ,	)	
	)	
	)	
Plaintiffs,	)	Civ. No. -
	)	
v.	)	
	)	
RINGLING BROS. AND BARNUM & BAILEY CIRCUS, <u>et al.</u> ,	)	
	)	
Defendants.	)	

**DECLARATION OF TOM E. RIDER**

I, Tom E. Rider, state as follows:

1. I make this declaration in support of plaintiffs’ subpoenas served upon Madison Square Garden, L.P., and Washington Sports and Entertainment, L.P. The facts set forth in this declaration are true and correct and are based on my personal knowledge.

2. I am a plaintiff in this law suit under the Endangered Species Act (“ESA”).

3. I worked as an elephant barn man for Ringling Brothers and Barnum & Bailey Circus (“Ringling Brothers”) from June 1997 through November 1999. I worked with Ringling Brothers’ “Blue Unit” for the entire term of my employment.

4. During my employment with Ringling Brothers, I witnessed the physical abuse and mistreatment of endangered Asian elephants on a systematic, daily basis. The elephant handlers and performers hit, prod, lacerate, poke, and pull the elephants with

“bull-hooks” (also known as “ankuses”) and whips, on a regular, ongoing basis -- even when the elephants were not “disobeying” a particular command. Frequently this abuse leaves bloody wounds and scars on the elephants’ bodies.

5. Although Ringling Brothers employees hit elephants with bull hooks in public view -- e.g., during loading or unloading of trains, during walks from trains to arenas, and before and after performances in areas visible to the public -- by far the most severe and obvious abuse that I repeatedly witnessed took place “behind the scenes,” when the elephants and their handlers were in the areas that are not open to public scrutiny. I am also aware that much abuse takes place during rehearsals with the elephants when the public is not watching. Evidence of this behind-the-scenes conduct is highly relevant to plaintiffs’ claims in this case.

6. For these reasons plaintiffs have subpoenaed several years of security or surveillance footage taken at both the MCI Center (owned by Washington Sports and Entertainment, L.P.) and Madison Square Garden in the areas where the elephants are typically housed or kept.

7. I was at Madison Square Garden with the Blue Unit in 1998. I recall that there were several security cameras located both in the area behind the arena where the elephants were kept while they were not performing, and along the walkway that led from the area where the elephants were kept to the arena “portal” (the doorway through which performers and animals enter the arena from backstage). Based on my personal knowledge of this venue and of the treatment of elephants that I witnessed there, I believe that footage from these security cameras -- and from any other camera in any area where

elephants were or are kept, walked, or made to rehearse -- would record the use of bull hooks or whips on elephants that the plaintiffs allege violates the ESA.

8. I was at the MCI Center with the Blue Unit in 1999. I recall that at the MCI Center there were several security cameras located in the immediate vicinity of where the elephants were housed when they were not performing. Based on my personal knowledge of this venue and of the elephant abuse that I witnessed there, I believe that footage from these security cameras -- and from cameras in any other location where the elephants were or are kept, walked, or made to rehearse -- would also record the use of bull hooks or whips on elephants.

9. Furthermore, I understand that spokespeople for Ringling Brothers have been making statements in the press that plaintiffs' allegations in this case are based on old evidence and do not reflect Ringling Brothers' current practices. The footage requested in the subpoenas served on Madison Square Garden and Washington Sports and Entertainment is highly relevant to demonstrate that the elephant mistreatment I witnessed while I was employed with Ringling Brothers was routine and daily, and continues to take place year-in and year-out at venues all around the country, such as Madison Square Garden and the MCI Center.

Pursuant to 28 U.S.C. § 1746, I declare, under penalty of perjury, that the foregoing is true and correct.



Tom Rider

3 29 2004

Date

PROOF OF SERVICE			
<b>SERVED</b>	DATE	PLACE	CT Corporation 1015 15th Street NW Suite 1000 Washington, DC
	3/26/04 @ 2:00pm		
SERVED ON (PRINT NAME)		MANNER OF SERVICE	
Mark D. Fienbarr, Authorized Agent		Corporate	
SERVED BY (PRINT NAME)		TITLE	
Ken Margolis		Private Process Server	

20065

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 3/26/04  
DATE

*Ken Margolis*  
\_\_\_\_\_  
SIGNATURE OF SERVER Ken Margolis

P.O. Box 18647  
ADDRESS OF SERVER

Washington, DC 20036

Rule 45, Federal Rules of Civil Procedure, Parts C & D:  
(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing under burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copying the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice of the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions

of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assurances that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspondence with the categories in demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**Meyer & Glitzenstein**  
1601 Connecticut Avenue, N.W.  
Suite 700  
Washington, D.C. 20009-1056

Katherine A. Meyer  
Eric R. Glitzenstein  
Howard M. Crystal  
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Kimberly D. Ockene  
Tanya M. Sanerib

Telephone (202) 588-5206  
Fax (202) 588-5049  
meyerglitz@meyerglitz.com

March 26, 2004

Maryanne Niles, Esq.  
Vice President and General Counsel  
Washington Sports and Entertainment, L.P.  
601 F Street, NW  
Washington, D.C. 20004

Re: *American Society for the Prevention of Cruelty to Animals v. Ringling Brothers and Barnum & Bailey Circus*, Civ. No. 03-2006 (EGS)

Dear Ms. Niles:

We represent the plaintiffs in the above-referenced case. In connection with this case, Washington Sports and Entertainment, L.P. (WSE) is today being served with the attached subpoena, commanding it to produce certain records created at the MCI Center and designate an officer or agent to appear for a deposition. Please be advised that receipt and knowledge of this subpoena requires WSE and the MCI Center to ensure that all requested records are retained and safeguarded from this point forward, even if those records would otherwise be destroyed or removed from WSE's or the MCI Center's custody in the regular course of business. *See, e.g., Flatow v. Islamic Republic of Iran*, 196 F.R.D. 203, 209 (D.D.C. 2000) ("The recipient of a subpoena has a duty to safeguard documents that are the subject of the request"); *United States v. Lundwall*, 1 F. Supp.2d 249, 255 (S.D.N.Y. 1998) (obstruction of justice statute, 18 U.S.C. § 1503, "embrace[s] . . . the concealment and destruction of documents sought or likely to be sought in pending proceedings").

Although the subpoena states that the records should be produced and deposition taken at our office, we are willing to discuss whether there is an alternative way to view these materials that would be more convenient for everyone concerned.

Thank you for your attention to this matter.

Sincerely,

  
Katherine A. Meyer



cc: Eugene Gulland  
Counsel for Ringling Brothers  
and Barnum & Bailey Circus

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION	)	
OF CRUELTY TO ANIMALS, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civ. No.
	)	
	)	
RINGLING BROTHERS AND BARNUM & BAILEY	)	
CIRCUS, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**DECLARATION OF KIMBERLY OCKENE**

I, Kimberly D. Ockene, state as follows:

1. I make this declaration in support of Plaintiffs' Motion to Compel Compliance by Washington Sports and Entertainment, L.P. With Third Party Subpoena. The facts set forth herein are based on my personal knowledge.

2. I am an associate attorney at the law firm Meyer & Glitzenstein. I represent the plaintiffs in the above-captioned action.

3. On March 26, 2004, I prepared and arranged for service of a third party subpoena duces tecum commanding Washington Sports and Entertainment, L.P. (WSE) - the owner of the MCI Center in Washington, D.C. -- to produce for inspection "[a]ll videotapes, audiotapes, photographs, or other recordings of any kind taken, created, or produced for security, surveillance, or any other purpose at the MCI Center . . . in the areas where elephants are housed, cared for, or maintained for any period of time in

connection with performances by Ringling Brothers and Barnum and Bailey Circus.”

Exhibit A. The subpoena also requested WSE to designate for deposition an officer or agent who could attest to the authenticity of the records. See id. The subpoena was served on WSE’s registered agent on that same day, March 26, 2004. See Exhibit C (Proof of Service of subpoena).

4. On March 26, 2004, I also faxed and mailed a courtesy copy of the subpoena to WSE’s general counsel, Marianne Niles. See Exhibit D.

5. The original return date on the subpoena was April 27, 2004. See Exhibit A. However, as of April 20, 2004, neither I nor my co-counsel, Katherine Meyer, had heard anything from WSE as to whether it intended to produce the records by April 27. Accordingly, on April 20, I telephoned and spoke with WSE’s general counsel, Marianne Niles, to check on the status of WSE’s compliance with the subpoena. Ms. Niles indicated that another attorney was primarily working on the matter, and she would have that attorney call me back.

6. Later that same day (April 20), I received a call from Ms. Niles, who had attorney Gary Kolker on the line with her. Ms. Niles stated that Mr. Kolker was arranging for compliance with the subpoena on behalf of WSE. Both Ms. Niles and Mr. Kolker stated that WSE intended to “cooperate” and comply with the subpoena. Mr. Kolker stated that they had identified surveillance footage that was responsive to our subpoena, and were in the process of having it copied for us. Mr. Kolker stated he would get back to me with additional details regarding production of the footage.

7. On April 21, 2004, I received another phone call from Mr. Kolker. He reiterated that they had identified responsive footage from one surveillance camera

located in the area where the Ringling Brothers elephants are maintained at the MCI Center. Although our subpoena requested footage from each of the years 1998-2004, Mr. Kolker stated that WSE only had footage from this year - 2004. He told me that that footage was approximately 156 hours, and that he should be able to have it copied and ready for us by early the following week, probably by Monday or Tuesday (April 26 or April 27). I told Mr. Kolker that, although the return date on the subpoena was April 27, if he needed a little more time to get the job done we were willing to be cooperative.

8. In that same conversation on April 21, 2004, I reminded Mr. Kolker that the subpoena also called for WSE to designate a deponent who could testify to the authenticity of the records. Mr. Kolker stated that WSE might prefer simply to stipulate or submit a declaration as to the records' authenticity. I told him that we would consider this option, but probably would still prefer to take a deposition.

9. Later that week, on Friday, April 26, 2004, I sent Mr. Kolker a letter following-up on our oral conversations. See Exhibit F. In the letter I indicated that we had decided that taking a WSE agent's deposition would be the most efficient and reliable method of ensuring our questions would be answered as to the authenticity and origin of the records WSE intended to produce in response to our subpoena. See id. I also noted that although we had agreed to extend the return date of the subpoena to allow WSE adequate time to reproduce the responsive records, we wanted the records by no later than May 3. See id.

10. On Tuesday, April 27, 2004, I received a call from Mr. Kolker, who thanked me for my letter of April 23, and stated that he had identified someone to serve as WSE's representative for the deposition. Mr. Kolker asked that I speak with my co-

counsel and arrive at some suggested dates during the week of May 3 for the deposition, and call him back with those dates. Mr. Kolker also asked that we take the deposition at WSE's offices, to make it more convenient for the designated deponent. Subsequently, I spoke with my co-counsel, Katherine Meyer, and we determined that the best time for the deposition would be mid-to-late in the week of May 3, 2004. I then called Mr. Kolker back and got his voicemail; I left him a message indicating our preferred dates for the deposition, and that we were willing to accommodate WSE's request to have the deposition at its offices.

11. On April 28, 2004, I received another call from Mr. Kolker. Although I expected to hear that the records would be ready for production on Monday, May 3, and to learn from Mr. Kolker which of the suggested deposition dates they had decided on, I did not hear either of these things. Instead, for the first time, Mr. Kolker announced that WSE no longer felt it was appropriate to produce the entire 156 hours of identified footage in response to our subpoena. Rather, he stated that they had decided that the most "efficient" way to get us the records would be for WSE to redact all portions of the footage that did not depict elephants. He stated that to accomplish this task would take approximately 30 days and would cost approximately \$5,000, and that plaintiffs would have to bear that cost.

12. I asked Mr. Kolker what the sudden objection was to providing all of the footage our subpoena called for, and he simply responded that (in WSE's view) much of the footage would not be relevant to our law suit, that it would be "overbroad," and that this was the most "efficient" method of production for everyone involved. I questioned whether that was in fact the most efficient method, since he was telling me that it would

cost \$5,000 and take 30 days. I indicated that we were more than willing to go through the footage ourselves rather than have WSE do it, and that, if there were any concerns as to what was reflected in the footage, we would enter into a confidentiality agreement as to all portions of the tape that did not relate to Ringling Brothers' elephants. Mr. Kolker continued to assert that WSE intended to be cooperative, but that WSE did not intend to provide all of the video footage. Mr. Kolker also indicated that Ringling Brothers was a "tenant" of WSE, and that he needed to ensure that the response to our subpoena was "fair to all parties."

13. I then told Mr. Kolker that, to be candid with him, and especially since he had himself pointed out that WSE has a financial relationship with Ringling Brothers -- the defendant in this case -- having a WSE employee determine which portions of the tape were or were not "relevant" to our case would not ensure that we would actually receive all of the information that we deemed relevant to our case. Mr. Kolker reiterated that WSE would not produce all of the footage, and we should get back to him regarding whether we would agree to pay the \$5,000 to obtain the redacted footage.

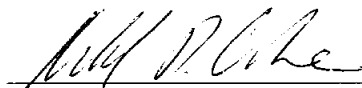
14. Later that day, after conferring with my co-counsel Katherine Meyer, we telephoned Mr. Kolker together. Ms. Meyer told Mr. Kolker that we wanted to work out a method of reviewing the responsive footage that was the least burdensome to WSE and that addressed whatever concerns they had, but that we could not agree to paying the \$5,000 and having WSE decide what to redact from the tapes at this time. Instead, Ms. Meyer suggested that, if WSE was worried about the contents of the footage that did not relate to Ringling Brothers' elephants, WSE could produce all of the footage to us pursuant to a confidentiality agreement. Alternatively, Ms. Meyer suggested that we

could come to WSE's offices to review the footage there, also pursuant to a confidentiality agreement. Mr. Kolker responded that he would have to "consult" with Ringling Brothers on this proposal, because they were a "tenant" of WSE's. Later that day, Mr. Kolker asked Ms. Meyer to put her proposal in writing, by e-mail, and send it to him. Later that same day, Ms. Meyer sent an e-mail to Mr. Kolker reiterating her proposal to accommodate WSE's stated concerns. See Exhibit H.

15. On April 29, 2004, I received a letter from Marianne Niles, WSE's general counsel, which restated WSE's position that it would provide the responsive footage to us in redacted form, at a cost of \$5,000, in approximately 30 days. See Exhibit I.

Pursuant to 28 U.S.C. § 1746, I declare that the foregoing is true and correct to the best of my recollection.

5-6-04  
date

  
\_\_\_\_\_  
Kimberly D. Ockene

Meyer & Glitzenstein  
1601 Connecticut Avenue, N.W.  
Suite 700  
Washington, D.C. 20009-1056

Katherine A. Meyer  
Eric R. Glitzenstein  
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Jonathan R. Lovvorn  
Kimberly D. Ockene  
Tanya M. Sanerib

Telephone (202) 588-5206  
Fax (202) 588-5049  
meyerglitz@meyerglitz.com

April 23, 2004

Gary Kolker, Esq.  
Washington Sports and Entertainment, L.P.  
Legal Affairs  
601 F Street, NW  
Washington, D.C. 20004

Re: Subpoena in American Society for the Prevention of Cruelty to Animals v. Ringling Brothers and Barnum & Bailey Circus, Civ. No. 03-2006 (D.D.C.)

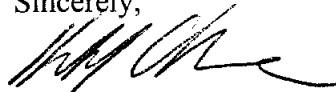
Dear Mr. Kolker:

I am writing in reference to the conversations we have had this week concerning the above-referenced subpoena requiring Washington Sports and Entertainment to produce certain records and a person who can testify as to the authenticity and origin of the records. We have agreed to extend the return date to allow adequate time for the reproduction of the responsive records, and you have indicated the records should be available by the middle of next week. In any event, we would like to have the records produced no later than Monday, May 3, 2005.

When we spoke I indicated that I would get back to you concerning the need to take the deposition of someone who can speak to the authenticity of the records and the process by which they were determined to be responsive. We have decided the most efficient way of ensuring our questions are answered is to proceed with a deposition. I anticipate that it would be a short deposition. When we speak next week, we can discuss a mutually agreeable date and time for the deposition.

Thank you for your attention to this matter.

Sincerely,



Kimberly D. Ockene

cc: Joshua Wolson, Esq.



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION	)	
OF CRUELTY TO ANIMALS, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Civ. No.
	)	
RINGLING BROTHERS AND BARNUM & BAILEY	)	
CIRCUS, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**DECLARATION OF KATHERINE A. MEYER**

1. I am the lead attorney for the plaintiffs in this case. This declaration is based on my personal knowledge, and is submitted in support of plaintiffs' motion to compel compliance by Washington Sports Entertainment, L.P. ("WSE") with plaintiffs' third party subpoena duces tecum, which was served on WSE on March 26, 2004, with an original return date of April 27, 2004.

2. On April 28, 2004, together with my associate Kimberly Ockene, I called Gary Kolker, the attorney for WSE who is handling this matter. Mr. Kolker stated WSE's position that it should not have to disclose information on the responsive videotapes that is unrelated to our lawsuit, and that, therefore, WSE intended to comply with the subpoena by having a WSE employee redact and produce only those portions of the tape that WSE believes are relevant, and that plaintiffs would have to reimburse WSE for the cost of doing so. In response, I suggested two alternatives: (1) plaintiffs' attorneys would go to the MCI Center and review the entire 156

hours of videotape and designate the portions that we wish to obtain for the lawsuit; or (2) WSE could provide plaintiffs' attorneys with a copy of the entire 156 hours of videotape, and we would undertake the burden of going through the tapes at our own office and designating which portions we wish to obtain. I further stated that, regardless of which option WSE chose, we would be willing to enter into a confidentiality agreement that would ensure that we would not reveal any portions of the tape that were not relevant to our lawsuit.

In response, Mr. Kolker stated that he would have to discuss the matter with Ringling Brothers' attorneys, since Ringling is a "tenant" of WSE's. A short time thereafter, he called me and asked me to put my proposal in writing, which I did by e-mail message on the same day. See Attachment E. In that same e-mail, I stressed that, since we had served the subpoena over a month ago and the current return date was now May 3, 2004, we were anxious to have the matter resolved as soon as possible.

3. On April 29, 2004, we received a letter from WSE's General Counsel, Marianne Niles, reiterating WSE's position that it would only provide excerpts and that plaintiffs would have to advance WSE \$5,000 for this purpose. Ms. Niles rejected our proposals to review all of the responsive tapes at the MCI Center and to enter into a confidentiality agreement. See Exhibit I. Later that day, I spoke to Gary Kolker who informed me that WSE was not filing a motion to quash, and that the April 29 letter from Ms. Niles represented WSE's final position on the matter.

**Katherine Meyer**

---

**From:** "Katherine Meyer" <katherinemeyer@meyerglitz.com>  
**To:** <gkolker@washsports.com>  
**Sent:** Wednesday, April 28, 2004 5:45 PM  
**Subject:** ASPCA v. Ringling Bros. Subpoena

Gary -- per our phone call of earlier today, and your follow-up request that I put this proposal in writing:

in response to your concern about not wanting to produce all of the videotapes that are responsive to our subpoena, because they will contain information on them that has nothing to do with elephants, and our concern that we cannot afford to pay \$5,000 (or anything close to that) to have someone from Washington Sports and Entertainment edit the tapes and provide us only the excerpts that concern elephants, we propose that:

you provide us with all of the tape(s) to review -- either at our office or at yours -- so that we will bear the time and expense of reviewing them to figure out what, if any portions, we are interested in obtaining, and then we can figure out the best way to obtain those specific portions

we are willing to be subject to a confidentiality agreement that would ensure that we did not reveal or use any portions of the tape(s) that are not relevant to our lawsuit or that we are not interested in using

In light of the fact that we served this subpoena over a month ago, and that the current (extended) return date is now Monday, May 3, we are anxious to have this matter resolved as soon as possible. Therefore, we appreciate your willingness to get back to us on this by tomorrow. If I am not available when you call, please talk to Kim Ockene.

WASHINGTON SPORTS  
& ENTERTAINMENT

MARIANNE C. NILES  
Vice President, General Counsel

April 29, 2004

Kimberly Ockene, Esquire  
Meyer & Glitzenstein  
1601 Connecticut Avenue, N.W., Suite 700  
Washington, D.C. 20009

Re: Subpoena in connection with ASPCA vs. Ringling Brothers,  
No 03-2006 (EGS) (D.D.C.)

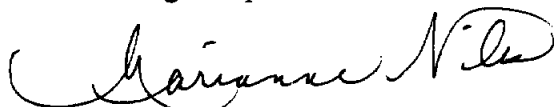
Dear Ms. Ockene:

In response to the subpoena sent to Washington Sports & Entertainment LP in the above-referenced case, requesting video footage "...in the areas where elephants were housed, cared for, or maintained...", please be advised that in order to provide a copy of the requested video footage, an employee will have to review and redact approximately 156 hours of video footage. As this exercise is not within the video staff's normal duties, this task will take approximately thirty (30) days and will cost \$5,000, payable in advance, for this work to be completed.

We respectfully decline your offer to have your employee visit MCI Center and review the video tapes because we are not staffed to provide this service. Moreover, we do not believe your offer to provide a confidentiality agreement in conjunction with such a visit is a viable alternative.

We wish to comply with your subpoena, but compliance short of following our recommendations above, will disclose information which is overly broad, not relevant, nor material and is certainly beyond the scope of your subpoena.

Sincerely,  
Washington Sports & Entertainment L.P.



Marianne Niles  
Vice-President and General Counsel

CC: Gary Handleman  
Gary Kolker  
Earnie Fingers

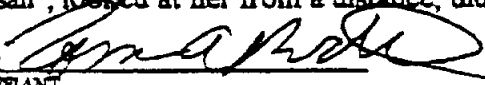
Plaintiffs' Motion to Compel  
Exhibit I

**AFFIDAVIT**

I, (name of affiant) Tom E. Rider, being duly sworn on oath make the following statement to Diane Ward, who has identified herself as an employee of the USDA Investigative and Enforcement Services. I swear the following information is true and correct:

My mailing address is 600 East Holland, Washington, IL 61571. I have worked with elephants since 1997, my first elephant job was with Clyde Beatty Circus. I worked for Ringling Brothers Circus, as a barn man, for 2 1/2 years- from 1997 to November 1999. When I was hired, I was told that if you complain to the USDA or the news media that we would loose our jobs. I traveled with the circus on the road (train). I refused to work the elephants with bull hooks.

I make this statement today to explain the on going abuse of the elephants that I witnessed at Ringling Brothers. The abuse at Ringling Brothers is 6 out of 7 days a week, it is just an on going daily event at every town listed on the route cards. The worst abuse that I witnessed was the following: 1.) in Lubbock, TX (about June 12, 1997)- there was a semi-emergency because of a tornado in the area. The employees started hitting and hooking the elephants to get them out of the tent and into one of the buildings. I saw blood on the trucks of the elephants. It was my job to unchain the elephants, the elephants were panicked and looked like they wanted to run. Graham Chipperfield was in charge of the elephants. 2.) On July 9, 1997, in Tupelo, MS- again a storm was coming in, all the elephants where chained in a line and getting wet, the elephants were starting to get antsy. After the storm, Graham and I unchained the elephants to walk back to the night facility. A cattle truck drove up and scared the elephants and four of them started to run. Graham took off after them and he hooked one elephant (it was Mini) in the front of the trunk and brought her down on the ground. He did stop them from running, but Mini ends up with a 3 inch cut across the trunk. 3.) October 1997, in Detroit- the elephant "Susan" was sick (not eating, diarrhea), I reported it to Gary (Veterinarian with Ringling Brothers). Gary and Graham came out to see "Susan", looked at her from a distance, did no examination, and claimed

Tom E. Rider-   
SIGNATURE OF AFFIANT

Subscribed and sworn to before me at Sacramento, CA  
on this 20th day of July, 2000

Diane Ward- 


APHIS FORM 7162 Replaces VF Form 3-99G which is obsolete  
(NOV 92)

DESIGNATED PURSUANT TO 7 U.S.C. 2217 TO  
ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS,  
AUTHORITY NO. 2414

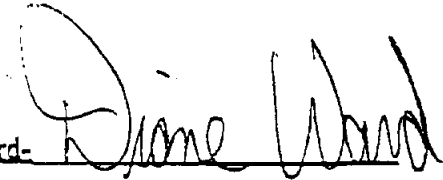
**AFFIDAVIT**

I, (name of affiant) Tom E. Rider, being duly sworn on oath make the following statement to Diane Ward, who has identified herself as an employee of the USDA Investigative and Enforcement Services. I swear the following information is true and correct:

the elephant looked fine. I took care of "Susan", and she does recover, but the Vet did not examine her. 4.) October 1997, in Pittsburgh, PA- I witnessed Alex Vargas and Daniel Raffo beating the elephant "Nicole and Sophie". Apparently the elephants did not perform in the show correctly and they were being punished. The people (public) outside the tent could hear the elephants screaming from the beating. 5.) During winter quarters (Nov. 12, 1997)- we were at the fairgrounds in Tampa, FL, where the tents and arena are set up for 2 months. Randy Peterson was sent out from the Ringling's permanent farm (in Florida) to be in charge of the winter barns. At winter quarters it is a relaxing time for the elephants, there is not as much hitting on the elephants except at rehearsals. From Tampa, we moved to St. Petersburg, FL. In St. Petersburg, I saw Graham run from the arena to his truck and get his gun. I found out that Richard Chipperfield (Graham's brother) got attacked by a tiger, and Graham put the tiger in the cage and then shot it 5 times (while it was in a cage). Richard was seriously injured in the accident, he is permanently disabled. After the accident Randy becomes superintendent of animals, replacing Graham (because Graham resigned, due to the accident). After Graham left, the abuse to the elephants gets worse. 6.) February 1998- we were in Nashville, NC, and it was snowing. We were made to walk the elephants 3 1/2 miles in the snow (from the train, to where the show was set up), it was dangerous because it was slippery. 7.) February 1998, in Greensboro, NC- I had been doing a lot of complaining about the animal abuse, Randy wanted to get me out of the circus because of my complaints, Randy knew I didn't like the animal abuse. 8.) February 1998, in Richmond, VA- I saw Jeff Petagrew try to get two elephants (Zina and Rebecca) to lay down. The elephants would not respond to him and he beat the elephants. Immediately after the beating- I saw 24 plus lesions on Zina, and 36 plus lesions on Rebecca. Randy saw what Jeff had done to

Tom E. Rider-   
SIGNATURE OF AFFIANT

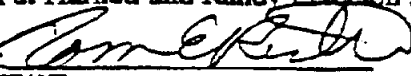
Subscribed and sworn to before me at Sacramento, CA  
on this 20th day of July, 2000

Diane Ward- 

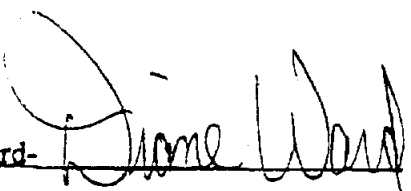
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the elephants, and got mad at Jeff because he was afraid that Mr. Feld would see the wounds on the elephants (Kenneth Feld was visiting the unit on this date). 9.) March/April 1998, in Madison Square Gardens, New York- the elephants got no exercise for 3 weeks. There was no place to exercise them in the city, they tried once to walk them about the block but it didn't work out. At this location 4 people quit work in one day because of the animal abuse- two of their names were Neil and Tony. 10.) May 1998, in New Haven, CT- Pat Harned was beating a young elephant named "Benjamin" because he was messing with the other elephant (Shirley). Another elephant named "Karen" started making noise (by rattling her chain) because Benjamin was getting hit- Pat came over and beat "Karen" for 23 minutes because she would not stop making noise. After Pat was done he asked me to get the "Wonder Dust" so that he could cover up the bleeding on Karen. One of the employees at the time, Rob Lyle, also witnessed this beating. There also was a security guard at the New Haven arena (downtown) who also saw what was going on. 11.) July 1998, in route to Phoenix, AZ- it was over 100 degrees and we were traveling during the day. I was riding with the elephants in the train, the heat was unbearable. The car that transports the elephants is close to the engine, and the heat and smoke from the engines was coming into the train car. I complained to Tommy Henry that I had no way to cool the elephants down, even the water was hot; Tommy said there was nothing we could do. There is no air conditioning in the train cars, and the ceiling vents/lights are always clogged with straw and dirt (they are a fire hazard). I feared for myself and the elephants during this trip, because of the heat. 12.) August 1998, in Anaheim, CA- the elephant "Lechme" was having problems with constipation. We had to "rack" her out (to clean her bowels).. While doing this Lechme accidentally hit me in the eye with her tail. Pat Harned and Randy Peterson hit Lechme because she flicked her tail at me. It

Tom E. Rider   
 SIGNATURE OF AFFIANT


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 on this 20th day of July, 2000

Diane Ward 

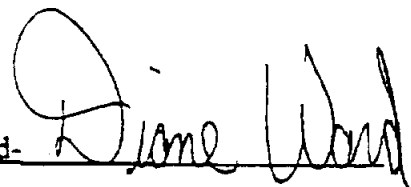
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was just an accident, the elephant did not intentionally hit me, she did not deserve to get hit for this. 13.) August 1998, in San Jose, CA- the Humane Society investigated an elephant bleeding behind the ear. They documented the bloody elephant, but they said they could not prosecute because they could not determine who had beat the animal. Ringling Brothers said that the blood was from drawing blood for veterinary care. 14.) September 1998, San Francisco, CA- Randy wanted all the doors (at the Cow Palace) kept closed because the animal activists were trying to film the hitting of the elephants. It was really hot, and the air conditioners were not working, and I had to keep the doors closed and let the animals suffer in the high heat. 15.) October 1998, Denver, CO- "Dateline" was coming to film the animals for animal abuse. Jeff Steele (unit manager) met with us about not abusing the animals while "Dateline" was here, we were instructed not to hit the animals while being filmed. Pat Harned and Kenneth Feid were interviewed by "Dateline" and stated that they never hit or beat the elephants. Of course the handlers do not hit the animals when the know a filming crew is present, or if they know the USDA is coming. 16.) November 1998, Cleveland, OH- it was so cold on the train that I could see my breath. I packed hay in the cracks of the door to try to stop the cold from coming in; there is no heat in the elephant car (only the baby animal car has a heater). 17.) January 1999- Miami, FL- Scott Green is hired as an elephant handler. This man had no elephant experience at all. The first night he worked he was walking elephants into the arena with a "bull hook". Green started hitting the elephants on a regular basis, stating it was discipline. Green was hired by Randy Peterson and Jeff Steele. 18.) January 1999, Jacksonville, FL- Alex Vargas came to visit the circus (he has a trapeze act, and use to work with the elephants), I told Alex about the animal abuse; he said he couldn't do anything about it because he did not want to lose his job (he was still

Tom E. Rider-   
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Diane Ward- 



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employed by Ringling, but no longer with the Blue unit). 19.) February 1999, Fayetteville, NC- Rob Lyle (barn man) quit work due to the abuse to the elephants. 20.) March 1999, Cincinnati, OH- the vice presidents of Feld Entertainment (Richard Fremming and John Jamison) were visiting the blue unit while Randy was working on the front feet of the elephant known as "Nicole". Nicole pulled her feet away, so Randy hit her on the head. The vice-presidents witnessed Randy hitting Nicole, and never said a word about it. 21.) April 1999, Chattanooga, TN- Randy and Adam had me drop a side wall on the tent (close the tent), so that they could beat "Sophie and Karen" for playing with each other. 22.) June 21, 1999- the elephant "Nicole" was taken off the train and trucked back to Florida, because of all the scars. They didn't want the USDA to see all the hook marks on her leg, which had swollen. We knew the USDA would be inspecting us, because we were moving from the U.S. into Canada. I have asked numerous people what ever happened to "Nicole", no one knows. 23.) June 1999; Ottawa, Canada- five elephants get into a fight in the exercise pen. We were using the new exercise pen instead of chaining the elephants in a line. All five elephants broke out of the pen, two ran into the horse tent and three continued to fight. I was lucky that the two elephants went into the horse tent, because I was the only one there with the animals and I had no way of stopping the elephants from leaving (they could have easily just ran out into the public street). Adam Hill, Randy, and Pat showed up in about 5 minutes with bull hooks and start beating on the elephants to stop the fight. I got in trouble for not beating the elephants to stop the fight. Adam Hill was in charge of the barn at that time. 24.) August 1999; Dallas, TX- I found out that "Benjamin had died". The baby elephant known as "Benjamin and Shirley" travel separately from the group in trucks, with Pat Harned. Pat was always beating on Benjamin; because he was a young bull elephant and was

Tom E. Rider-   
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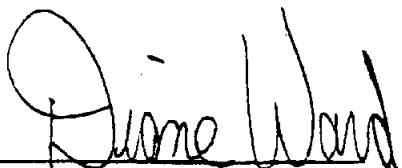
full of play. 25.) October 1999, travel from Detroit to Boston- it very cold, snowing and the elephants were freezing cold; there was not heat on the train car.

About the USDA Inspections: During my employment at Ringling Brothers, we always knew a few days a head of time (up to a week in advance) of any USDA inspection (this happened at least 5 times). Randy Peterson or Adam Hill would come and tell me a few days before the inspection to get the place cleaned up because the USDA Inspector would be here on a certain day. Either Randy and David Keyser always showed the USDA around; we were told not to answer any questions for the USDA. The USDA would never do there inspections in the evening when the abuse is happening. The ideal time to do an inspection would be right before a show (because that is when they are hitting the elephants). The USDA does not inspect every animal, just what Randy wants to show them. If the USDA would inspect each animal behind the ears, behind the leg, and around the tail; they would find gross scarring and lesions. I never saw the USDA do a close inspection of the elephants.

The people employed by Ringling Brothers who abused animals daily were Adam Hill, Pat Harned, Randy Peterson, Scott Green, Jeff Petagrew, Robert Ridley, Jeff (known as "Cowboy"), James (from the Ringling farm in Williston, FL), Dave McFarland, Steve Heart, Josh, Dave Whailey, Dave Wiley, Daniel Raffo, and Gary Jacobson (baby trainer). These people use excessive hooking and hitting with the bull hooks, and hooking the elephants then giving them commands (they just hook the elephant for no reason, they never even give the elephant a command so how could she have disobeyed). I witnessed most of the animal abuse from 6 p.m.

Tom E. Rider -   
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Diane Ward - 

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to 10 p.m- which is when the handlers came to work with the elephants. I saw baby Benjamin systematically abused, 5 to 6 times a day, by Pat Harned; this included verbal abuse all the time. Adam Hill was extremely violent with the elephants, he is now working at Clyde Beatty Circus.

In the 2 1/2 years that I was employed at Ringling Brothers, I saw at least 69 people hired to work with the elephants in the blue unit. All of these people either quit, were fired, or left for some other reason. Most of these individuals had no prior experience working with elephants.

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NEWS STYLE **SPORTS** CLASSIFIEDS MARKETPLACE  
REDSKINS AREA PRO TEAMS COLLEGES HIGH SCHOOLS LEAGUES & SPORTS COLUMNISTS FEATURES SPORTS INDEX

## Construction Boom Puts Old Arenas to Use

### Related Items

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[Capitals Section](#)

[Wizards Section](#)

*By Maryann Haggerty*  
Washington Post Staff Writer  
Friday, February 21, 1997; Page G01

Ask Warren Butler about the future of the Miami Arena, and he just sighs.

The arena, built in 1988, isn't good enough anymore for its two main tenants, the National Basketball Association's Miami Heat and the National Hockey League's Florida Panthers. Both teams plan to move to new arenas in the next few years.

That leaves the older sports palace in limbo. "Nothing has really been finalized," said Butler, executive director of the Miami Sports and Exhibition Authority, which owns and runs the facility on behalf of the city of Miami. "The things I've heard are very, very preliminary."

Major league sports teams, including those in the Washington area, are in the midst of an unprecedented construction boom. More than two dozen new sports venues have been built in the United States and Canada since 1990, and about 18 more are in some stage of planning, according to the National Sports Law Institute at Marquette University Law School in Milwaukee. That means a lot of old venues are being abandoned.

In some places, such as Philadelphia, the old arenas continue to host such lower-prestige events as college basketball and indoor soccer. And in some cases, the buildings struggle to make money. At least one, Richfield Coliseum outside Cleveland, sits vacant and unused. And many, such as the much-loved Boston Garden, have been demolished to make way for parking lots for their shiny replacements.

In the Washington area, three new sports venues are under construction, meaning that Memorial Stadium in Baltimore, USAir Arena in Landover and Robert F. Kennedy Stadium in the District will lose their big-league tenants. Memorial likely will be demolished, but owners of the other two facilities hope to keep them running profitably with lower-level events: soccer matches, concerts, college sports and probably plenty of truck and tractor pulls.

"There are events you could bring in here [at the suburban USAir

Plaintiffs' Motion to Compel  
Exhibit K

Arena] that you could never bring downtown," said Wes Unseld, a top executive with sports team owner Abe Pollin, who owns both USAir Arena and the partially completed MCI Center downtown.

As a rule, sports teams aren't moving because the buildings are falling down around their ears. Instead, the old arenas are "economically obsolete" -- they don't have lots of luxury boxes and state-of-the-art concession stands, so they don't earn as much money as the new buildings can.

In some circumstances, though, it's possible to keep an old arena running at a profit. In Philadelphia, the new CoreStates Center sits about 100 yards away from the older CoreStates Spectrum. This month alone, the two buildings will house 58 events.

"There are incredible efficiencies with both buildings essentially in the same parking lot," said Peter Luukko, who oversees the complex for Comcast Spectacor, a Philadelphia company that owns both buildings as well as the Flyers hockey team and 76ers basketball team. "We don't have to have duplication of all the management staff."

To maximize use of the Spectrum, Comcast Spectacor bought an American Hockey League expansion team, the Phantoms. The building also is home to a professional indoor soccer team, the LaSalle University men's basketball team and a variety of ice shows, roller hockey games and monster truck shows.

"We have high school graduations, college graduations -- a lot of events we couldn't do when we only had one building because of date availability," Luukko said.

"Other than some of the major concerts -- and maybe the truck pull -- any of the sporting events we're bringing in now aren't even close to the income from the Flyers and Sixers," he said. But the Spectrum still makes money, he said, largely because there's no debt on it.

"The building itself still has 19,000 seats and can sell a lot of damn tickets," he said.

Having a paid-off mortgage makes a big difference in the economics of a sports venue, said Gary Lane, director of Denver's Division of Theaters and Arenas, which runs McNichols Arena. The Denver Nuggets have said they will move out of the arena to the planned Pepsi Center two miles away before the decade is out. The plan is to keep operating McNichols.

"If you have \$160 million in a new arena, you're looking at \$14 million or more in debt service annually," he said.

He also pointed out that from a business point of view, running an arena is different from running a sports team. Team owners have to pay multimillion-dollar player salaries. "That's a lot of revenue to make up," he said.

But the arena owner is just a landlord. "All landlords charge rent and expenses, and inside the rent and expenses, we are able to operate in black ink," Lane said.

But sometimes rent isn't quite enough, said J. Isaac, who oversees operations at Memorial Coliseum in Portland, Ore., the arena that used to be home to the Portland Trailblazers until the new Rose Garden opened nearby in 1995. Although the two venues are managed by the same company, Memorial Coliseum is owned by the city and the Rose Garden is owned by the owner of the Trailblazers.

"So far, we're doing all right; the problem is it is very difficult in the shade of a new state-of-the-art arena to make enough money to pay for the escalating capital repair costs you experience with an older building," Isaac said. "It's possible on an operating basis to break even or make a small profit, but the only way we're doing that is using" the same staff to run both buildings.

"What we are not covering even with that is capital improvement costs. The city of Portland is paying those from separate funds," he said. Those improvements are projected to cost from \$500,000 to \$1 million a year.

"We feel it's just a matter of time until something else is going to have to be done with this building," he said.

Plenty of plans have been floated for how to use Richfield Coliseum in the Cleveland suburbs, but none makes economic sense, according to John Graham, an executive with the company that owns Richfield and the new Gund Arena downtown. So the building has sat unused since 1994.

Among the unsuccessful ideas: an indoor amusement park, an office complex or a church. Still under consideration: using the building for stores or simply leveling it.

"These arenas are built for a very, very specific purpose, and it appears they are very, very difficult to retrofit," Graham said.

In Baltimore, the city kept Memorial Stadium operating much longer than anyone had expected after the Orioles left for Camden Yards in 1992, according to Edward Cline, deputy director of the Maryland Stadium Authority. The minor league Bowie Baysox used it, then the Stallions of the Canadian Football League, then the NFL Ravens this past season.

Since about 1989, commissions and consultants have studied the future of the site, a highly sensitive subject in the neighborhood, Cline said. Right now, demolishing the stadium to provide space for a training center for the Ravens appears the likeliest outcome, he said.

In Landover, USAir Arena owner Abe Pollin plans to keep the building running even while trying to book 200 nights a year at his new MCI Center, to be the home of the Capitals and the Wizards, next season's name for the Bullets. And the D.C. Sports Commission also plans to keep RFK operating, even as the Redskins head to a new stadium in Prince George's County. In both cases, the buildings being deserted are paid for and will attempt to attract a variety of lower-level events.

"We are giving up a major and will be bringing in minors," Jim Dalrymple, executive director of the D.C. Sports Commission, said when the Redskins ended their last season at RFK. "I think it's a stadium that can pay for itself and not be a drain on the taxpayers and bring some great entertainment to people."

For promoters of the non-sports events that use sports facilities, the new buildings mean a welcome array of choices. "We are always excited when there's a new venue to play," said Lisa Morgan, vice president of arena relations and tour planning at Feld Entertainment Inc. in Vienna, one of the nation's biggest bookers. The company puts on the Ringling Bros. and Barnum & Bailey Circus as well as Disney on Ice and other popular shows.

A choice of two arenas in a city "allows a management group to have enough flexibility with dates," she said. "October to May can be very tricky at prime buildings," because basketball and hockey are in season.

Arena owners with older buildings to fill also are "frequently" willing to make deals on prices. "Most times, they want to make sure they can pay the mortgage," Morgan said.

But some areas already have all the performance spaces they need. For instance, in Florida, she estimated there are 12 venues within a 100-mile radius. "South Florida is a good example of where not to build another arena," she said.

But arenas are being built there anyway, leaving the city of Miami with what could become an expensive problem. Butler, the arena authority director there, said the Miami Arena still has \$37 million in debt outstanding.

A variety of ideas have been floated for how to use the building, even as a film sound stage, but nothing is certain.

"No formal talks have taken place about what could be done with it," Butler said, and it's not a crisis yet. "We've got at least three years left for the Heat."

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[Back to the top](#)

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REDSKINS AREA PRO TEAMS COLLEGES HIGH SCHOOLS LEAGUES & SPORTS COLUMNISTS FEATURES SPORTS INDEX

Yellow Pages



Front Page

Previous Story

Next Story

NIH RECORD

## NEWS BRIEFS



### **Seminar on Performance-Based Contracting**

The Bethesda/Medical chapter of the National Contract Management Association is hosting a brown-bag lunch seminar Wednesday, Oct. 21 from 11:45 a.m. to 1 p.m. in EPN, Conf. Rm. H. The topic will be "Performance-Based Service Contracting," led by Stanley Kaufman, deputy associate administrator, Office of Federal Procurement Policy. The seminar is open to all. For more information call Sharon Miller, 496-8611.

### **'Extramural' Flu Shots**

While NIH employees can get their flu shots at work, their families and friends also need protection against the illness. Many organizations in the Washington metropolitan area are sponsoring flu immunizations. The Division of Safety has compiled information on some of the major programs -- public and private. This information will be updated as appropriate on the flu Web page: <http://www.nih.gov/od/ors/ds/flu>.

### **Stetten Lecture Reminder**

The Wednesday Afternoon Lecture on Oct. 21 will feature Dr. Susan L. Lindquist of the University of Chicago. Her talk, "Mad Cows Meet Psychotic Yeast: The Expansion of the Prion Hypothesis," is NIGMS's 1998 DeWitt Stetten, Jr., Lecture.

### **Wednesday Afternoon Lectures**

The Wednesday Afternoon Lecture series -- normally held on its namesake day at 3 p.m. in Masur Auditorium, Bldg. 10 -- switches to Monday on Oct. 26 when Dr. Leon Rosenberg gives the second James A. Shannon Lecture, "The Medical Research Enterprise -- Only as Strong as Its Clinical Links." Time remains 3 p.m., as does venue, Masur. Rosenberg is professor, department of molecular biology, Princeton University.

On Oct. 28, Dr. Peter Mombaerts, assistant professor and head, laboratory of vertebrate developmental neurogenetics, Rockefeller University, presents "Targeting Olfaction."

The NIH Director's Cultural Lecture follows on Nov. 4.

For more information or for reasonable accommodation, call Hilda Madine, 594-5595.

### **'Anastasia on Ice' Tickets**

Plaintiffs' Motion to Compel Exhibit L

The R&W has tickets for a performance of *Anastasia on Ice*, Saturday, Oct. 31 at 11 a.m at MCI Center in downtown Washington. Tickets are \$16 (regularly \$17.50). Call the activities desk for more information, 496-4600.

### **Can You Garden with Cactus?**

Ever tried to grow a cactus? Did you ever kill a cactus? Want to learn more about the care of cacti indoors and out? The NIH Garden Club's next meeting will feature Robert Stewart, a Maryland extension agent and expert in the field of cacti. He has a slide presentation offering a bigger picture of the world of the cactus. The meeting is Thursday, Nov. 5 in Bldg. 31, Conf. Rm. 7 from noon to 1 p.m. Club meetings are open to all. Check its Web page at: <http://www.recgov.org/r&w/garden>

### **Ski Club Offers Two Trips**

The NIH Ski Club has two big outings planned. One is to Banff, Canada, Jan. 30-Feb. 6, 1999. The price is \$984 per person for downhill skiers and \$844 per person for cross-country skiers (no lift tickets). The second trip is to St. Moritz, Switzerland, with a stop in Rome, Feb. 26-Mar. 10, 1999. The price is \$1,510 per person. For more information, contact Bob Bingaman, (301) 829-2079 or email [BINGFAM@erols.com](mailto:BINGFAM@erols.com). Reserve your space now.

### **Workshop on Chromatin, Transcription and DNA Replication**

The Center for Scientific Review is hosting a workshop Feb. 2-3, 1999, on "Chromatin, Transcription, and DNA Replication." It will bring together top intramural and extramural scientists, including study section members, and allow interaction and discussion. The workshop will be held at the Natcher Conference Center. There is no registration fee and registration is not required. However those interested in attending should email Ramesh Nayak at [nayakr@drg.nih.gov](mailto:nayakr@drg.nih.gov) so organizers can keep track of attendees.

The theme of the meeting is the role of chromatin and nuclear structure in the function of basic cellular processes including aging and cancer. Speakers include Bruce Stillman, Gary Felsenfeld, Richard Hodes, Fred Winston, Sankar Adhya, Carl Wu, Elizabeth Blackburn and Thomas Cech.

### **Symposium on Genetically Engineered Mice**

The National Cancer Institute and National Institute of Environmental Health Sciences are sponsoring a symposium entitled "Pathology of Genetically Engineered Mice: So You've Got a New Genetically Engineered Mouse, What Do You Do Next?" to be held at Natcher Conference Center Feb. 24-25, 1999. Complete information on the symposium and online registration is at the Web site <http://www.ncifcrf.gov/vetpath/symposium.html>.

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*Up to Top*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION	)	
OF CRUELTY TO ANIMALS, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Civ. No.
	)	
RINGLING BROTHERS AND BARNUM & BAILEY	)	
CIRCUS, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**CERTIFICATE OF SERVICE**

I certify that plaintiffs' motion to compel compliance by Washington Sports and Entertainment, L.P. with third party subpoena has been served by having copies of the motion, memorandum, and Exhibits hand-delivered this 6<sup>th</sup> day of May, 2004 to:

Counsel for Washington Sports & Entertainment, L.P.:

Marianne Niles  
Gary Kolker  
Washington Sports & Entertainment, L.P.  
601 F. Street, N.W.  
Washington, D.C. 20004

Counsel for Defendants:

Eugene D. Gulland  
Joshua Wolson  
Covington & Burling  
1201 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2401

A handwritten signature in black ink, appearing to read "Kath. Meyer", written over a horizontal line.

Katherine A. Meyer  
Meyer & Glitzenstein  
1601 Connecticut Ave., N.W.  
Suite 700  
Washington, D.C. 20009

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION	)	
OF CRUELTY TO ANIMALS, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Civ. No.
	)	
RINGLING BROTHERS AND BARNUM & BAILEY	)	
CIRCUS, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

Upon consideration of plaintiffs' motion to compel, and the opposition and replies thereto, it is this     day of                     , 2004,

ORDERED that plaintiffs' motion is granted, and it is further

ORDERED that Washington Sport and Entertainment, L.P. ("WSE") shall, by no later than ten days from the date of this Order fully comply with the subpoena duces tecum served by plaintiffs on WSE on March 26, 2004.

\_\_\_\_\_  
United States District Judge

Copies to:

Katherine A. Meyer  
Kimberly Ockene  
Meyer & Glitzenstein  
1601 Connecticut Ave. N.W.  
Suite 700  
Washington, D.C. 20009

Marianne Niles  
Gary Kolker  
Washington Sports & Entertainment, L.P.  
601 F Street, N.W.  
Washington, D.C. 20004

Eugene D. Gulland  
Joshua Wolson  
Covington & Burling  
1201 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2401