

EXHIBIT 1

**Plaintiffs' Reply in Support of Their Motion
to Compel Compliance with a Third Party
Subpoena Served on People for the Ethical
Treatment of Animals
Civ. No. 03-2006 (EGS/JMF)**

COPY

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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:
PEOPLE FOR THE ETHICAL :
TREATMENT OF ANIMALS, INC., :
:
Plaintiff, :
:
vs. : At Law No. 220181
:
KENNETH FELD, et al., :
:
Defendants. :
:

----- -X
:
PEOPLE FOR THE ETHICAL :
TREATMENT OF ANIMALS, INC., :
:
Plaintiff, :
:
vs. : At Law No. 204452
:
STEVEN KENDALL, et al., :
:
Defendants. :
:

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Fairfax, Virginia
Thursday, March 9, 2006
The trial commenced at 9:25 a.m.
BEFORE:
THE HONORABLE DAVID T. STITT and jury.

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1 particular problem. Would it be appropriate for Your
2 Honor to ask her not to talk to anybody about this
3 matter if she's excused because it would be --

4 THE COURT: I just told her not to talk to
5 any of the other jurors.

6 MR. CAWLEY: Right. But what about if she
7 went outside and talked to the press or me or, you
8 know. Do you see what I mean? I think that would be
9 appropriate. I am asking Your Honor to do that if
10 that's appropriate.

11 THE COURT: Any problem?

12 MR. HIRSCHKOP: No.

13 THE COURT: Ms. Murphy, I need to expand what
14 I'm asking you in terms of not talking to anybody.
15 Don't talk to anybody, okay, especially the other
16 jurors, but please don't talk to anybody about any of
17 this, if you would please.

18 Thank you, ma'am.

19 (The bench conference was concluded.)

20 (The jury returned to the courtroom.)

21 THE COURT: Members of the jury, I need to
22 tell you a couple of things.

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1 Good morning. I appreciate you all being
2 here on time this morning, and I apologize for the
3 substantial delay. We've had a number of legal
4 matters we've been working on in here, and we've
5 completed those. The first thing I need to tell you
6 is your group now numbers eight instead of nine. I
7 have excused Juror Murphy. You're not to concern
8 yourselves in any way with that fact, although I can
9 assure you it was not because of any wrongdoing on her
10 part at all, but she has been excused from trial.

11 The next thing I need to tell you is there's
12 a stipulation the parties have entered into which
13 means when they stipulate to something, they both
14 agreed that I can read you the stipulation.

15 The parties have stipulated that PETA
16 incurred \$40,332.50 in attorney's fees in connection
17 with the detinue action against Mr. Feld and others.

18 The parties further stipulate that PETA
19 incurred \$358,860 in attorney's fees in connection
20 with the original lawsuit brought against Mr. Feld and
21 others from which Mr. Feld was nonsuited. PETA is
22 seeking these attorney's fees as damages in this

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1 lawsuit among other damages.

2 The parties have stipulated that these
3 attorney's fees were reasonable and necessary to the
4 pursuit of those lawsuits, but Mr. Feld denies that
5 those lawsuits had any merit and denies that PETA is
6 entitled to any damages in this case.

7 That stipulation was worked out by counsel
8 basically to save what would probably have been a
9 considerable amount of time in terms of putting things
10 into evidence. That is the stipulation.

11 The next thing I need to tell you is that the
12 plaintiff has rested the plaintiff's case which means
13 that completes the presentation of the plaintiff's
14 case. We will now turn to the defense case.

15 Mr. Cawley, you can call your first witness.

16 MR. CAWLEY: Thank you, Your Honor.

17 Your Honor, the defense would call Kenneth
18 Feld.

19 Whereupon,

20 KENNETH J. FELD,

21 was called as a witness on behalf of the defendant,
22 and after having been first duly sworn, was examined

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1 and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. CAWLEY:

4 Q Good morning, Your Honor, again, and good
5 morning, Mr. Feld.

6 Sir, would you state your full name, please?

7 A Kenneth Jeffrey Feld.

8 Q And Mr. Feld, do you hold a position in
9 several corporations involving live family
10 entertainment?

11 A Yes, I do.

12 Q Very briefly, which corporations do you now
13 hold a position in involving the entertainment
14 business?

15 A In Feld Entertainment and its subsidiaries.

16 Q What is Sells-Floto?

17 A Sells-Floto is a company that sells the
18 souvenirs at the traveling family entertainment that
19 we do.

20 Q Is there a corporation called Ringling Bros.-
21 Barnum & Bailey as well?

22 A And there's Ringling Bros.-Barnum & Bailey,

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<p>1 Q What do you recall about those reports in the 2 first several years, 1990, 1991, 1992?</p> <p>3 A After looking at them, I don't recall seeing 4 them. Periodically, I mean, I had discussions about 5 animal rights and things that were happening. I don't 6 recall the reports in the early years.</p> <p>7 Q Who was Chuck Smith?</p> <p>8 A Chuck Smith was executive vice-president and 9 chief financial officer of the company.</p> <p>10 Q Was he involved with, in some respect, all of 11 the companies that you have discussed?</p> <p>12 A Yes, he was.</p> <p>13 Q What was the relative difference between your 14 role with respect to these corporations and 15 Mr. Smith's role?</p> <p>16 A My role was primarily in the creative end. I 17 was the guy that put the shows together. I would go 18 all over the world looking for talent and would come 19 up with the creative concepts, hire a creative team 20 and really guide the various productions that we had.</p> <p>21 Q In the years 1990, 1991, 1992, what is your 22 recollection with respect to how often you would</p>	<p>1 regularly?</p> <p>2 A I believe it is. I think from that time on, 3 I did receive regular reports from Richlin.</p> <p>4 Q All right. Mr. Andelman, would you please 5 put on the next Exhibit 596?</p> <p>6 Could you turn to it also, Mr. Feld?</p> <p>7 Now, this document is also in evidence, 8 Plaintiff's 596, and it's to a Mr. Bloom. Was he an 9 executive in your organization?</p> <p>10 A Yes, he was.</p> <p>11 Q Is the date the same as the previous 12 document?</p> <p>13 A Yes.</p> <p>14 Q It says, "I have been instructed that 15 effective this date, the distribution list for my 16 reports are to include," and is that your name there 17 at the top?</p> <p>18 A Yes.</p> <p>19 Q Now, during the time '90, '91, '92, I think 20 you just mentioned that you had discussions with 21 Mr. Smith; is that correct?</p> <p>22 A That's right.</p>
Page 1984	Page 1986
<p>1 receive these reports? Did you get them regularly?</p> <p>2 A I don't believe that I did.</p> <p>3 Q Did you have discussions with Mr. Smith from 4 time to time about Mr. Froemming's work?</p> <p>5 A I did. Mr. Smith and I would meet 6 frequently. And we discussed all the topics of all of 7 our businesses, and the animal rights issues would 8 come up.</p> <p>9 Q Let me ask Mr. Andelman, if you would, 10 please, to put on Plaintiff's Exhibit 595 which is in 11 evidence.</p> <p>12 Mr. Feld, this document, which is in 13 evidence, is a letter to you from Richlin Consultants 14 dated January 18, 1993. Do you see it in front of 15 you?</p> <p>16 A Yes, sir.</p> <p>17 Q It says, "Dear Mr. Feld." It's from Richlin 18 at the top. And then it says, "I have been instructed 19 to submit copies of my weekly reports to your office 20 for review."</p> <p>21 Is that date significant in your mind in 22 terms of when you started to get these reports</p>	<p>1 Q Now, first of all, how often would you have 2 discussions or phone calls with Mr. Smith?</p> <p>3 A We both traveled a great deal. And if I was 4 in the office, which probably averaged over the year 5 maybe two days a week, and if he was in the office, we 6 would meet. And I would talk to him probably four 7 times a week.</p> <p>8 Q What would be the topics that you would cover 9 in these conversations?</p> <p>10 A It was a full array of all the businesses 11 that we were in. So it dealt with the circuses. It 12 dealt with Sells-Floto merchandising, all the ice 13 shows and all of our -- that was the time when we 14 started globally expanding. And so there was a lot of 15 talk about our international business.</p> <p>16 Q Did those conversations include at times 17 discussion of Mr. Froemming's work?</p> <p>18 MR. HIRSCHKOP: Objection, leading, Your 19 Honor.</p> <p>20 MR. CAWLEY: I can rephrase it, Your Honor.</p> <p>21 BY MR. CAWLEY:</p> <p>22 Q Can you state whether or not any of those</p>

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<p>1 confusing and not clear.</p> <p>2 THE COURT: Clear that up.</p> <p>3 MR. CAWLEY: Thank you.</p> <p>4 BY MR. CAWLEY:</p> <p>5 Q Tell about the development. When did these</p> <p>6 innovations take place that you just described?</p> <p>7 A I think that's probably been within the last</p> <p>8 six or seven years, I think.</p> <p>9 Q All right. Tell about breaking up the trip</p> <p>10 or how the trip is handled.</p> <p>11 A The trip is handled, that there's some stops</p> <p>12 that are very close. For instance, we'll go from</p> <p>13 Baltimore to Washington, which is a very short hop.</p> <p>14 Some are longer. I think the longest run that we have</p> <p>15 is probably Phoenix to it used to be San Diego or</p> <p>16 Fresno, whatever it is, but that's probably the</p> <p>17 longest run. And I believe that is about -- I don't</p> <p>18 know -- 1200 miles, but there are stops. Typically</p> <p>19 they are water stops, and I believe it's every eight</p> <p>20 to twelve hours. I mean it's regulated. It happens.</p> <p>21 And at these watering stops, the elephants are</p> <p>22 watered. They're unloaded off the train. They're</p>	<p>1 other animals?</p> <p>2 A We have an animal care staff not only at the</p> <p>3 center but on each of the traveling units. There are</p> <p>4 trainers. There are handlers. There are people that</p> <p>5 virtually live with the elephants and the other</p> <p>6 animals.</p> <p>7 Q What is the relationship? How have you</p> <p>8 observed the relationship between these animal</p> <p>9 trainers and the animals that they care for?</p> <p>10 A There's a real bond. I mean it's an</p> <p>11 attachment that they have. It's really no different</p> <p>12 than what any of us would have with our dogs or our</p> <p>13 pets. Actually, on the units we have our animal --</p> <p>14 our key animal people that live on the premises in</p> <p>15 trailers. They don't travel on the train. They</p> <p>16 actually go in trailers so they can be with the</p> <p>17 animals around the clock when we get to the various</p> <p>18 venues and arenas that we play.</p> <p>19 Q There was some mention before -- in fact, you</p> <p>20 mentioned it -- Romeo and Juliette, two animals that</p> <p>21 were born close together; right?</p> <p>22 A That's right. They were the first two born</p>
Page 2032	Page 2034
<p>1 watered. They're cared for, and then they go back on</p> <p>2 the train.</p> <p>3 Q All right. There was some discussion about</p> <p>4 the nails of an elephant, fingernails or toenails.</p> <p>5 I'm not sure what the right word is. How are those</p> <p>6 cared for in the circus?</p> <p>7 A The elephants, because their feet are quite</p> <p>8 sensitive, that they're given pedicures. It winds up</p> <p>9 being about once every two to three weeks because it's</p> <p>10 a long process. It can take six hours to do the</p> <p>11 pedicure on one elephant because it's all done by hand</p> <p>12 with a file. And it sort of runs a cycle. And they</p> <p>13 do that. So it's sort of constant foot care that the</p> <p>14 elephants are given.</p> <p>15 Q Now, you mentioned the Center for Elephant</p> <p>16 Conservation. You said it was for research,</p> <p>17 reproduction, and what was the third?</p> <p>18 A Retirement.</p> <p>19 Q And retirement. Okay. How many births have</p> <p>20 taken place at that facility?</p> <p>21 A We've had 19 births at that facility.</p> <p>22 Q Now, who cares for the elephants and the</p>	<p>1 in what became our breeding program.</p> <p>2 Q When they were babies, how were they</p> <p>3 transported?</p> <p>4 A When they went out on tour, they went on tour</p> <p>5 with their mothers.</p> <p>6 Q How were they transported?</p> <p>7 A They were transported in a specially-built</p> <p>8 truck to carry the elephants.</p> <p>9 Q Were they with their mothers?</p> <p>10 A Yes, they were.</p> <p>11 Q Did those baby elephants entertain?</p> <p>12 A Well, I think they were exhibited. They</p> <p>13 actually came in to be with their mothers. And there</p> <p>14 was a whole big production and a song about Romeo and</p> <p>15 Juliette, and, you know, a birthday thing. It was a</p> <p>16 very cute thing. But they didn't perform any</p> <p>17 behaviors per se. They just walked around with their</p> <p>18 mothers.</p> <p>19 Q Now, is the circus's use of animals</p> <p>20 regulated?</p> <p>21 A Yes. We are regulated by the United States</p> <p>22 Department of Agriculture.</p>

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1 plaintiff's attorney said in that case, all it is is
2 inflammatory. It's not probative of anything in this case.

3 MR. HIRSCHKOP: The allegations are in the
4 complaint that he says he saw. Allegations go directly to
5 the actions of his organizations under him against Pat
6 Derby.

7 It's cross-examination. This isn't far afield.
8 This is directly related to this. I remember the leeway
9 they got on Mr. Kendall yesterday. This is directly
10 related.

11 The admissions are not being filed in this case as
12 admissions. We may move them at some point. But the fact
13 they made admissions in that case are directly pursuable on
14 cross-examination.

15 MR. CAWLEY: It's not fair to read a bunch of
16 allegations in a case.

17 THE COURT: I agree about the allegations. Take
18 away the allegations. But the admissions, if it was in
19 another case, that's an admission you can cross-examine him
20 about that. The allegations, you can't go into the
21 allegations.

22 MR. HIRSCHKOP: Those things are in this case in

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1 A I saw that there were reports, yes.

2 Q Reports from Mr. Froemming to your Mr. Smith and
3 Mr. Bloom and Mr. Sowalsky, right?

4 A Whoever the reports were to, yes.

5 Q Did you believe Mr. Froemming when you talked to
6 him?

7 A Yes.

8 Q Did you find him reliable?

9 A Yes.

10 Q Do you have any reason to question what he put in
11 his reports today?

12 A I've learned a lot since I've been here in two
13 weeks, so some things I now question that I never did
14 question before.

15 Q What do you now question, sir?

16 A What I question is if in fact he said that he
17 was -- if the reports are accurate, he said that he was
18 paying \$1,500 a week, for instance, to Mr. Kendall. And
19 Mr. Kendall says that he was only getting 750 a week. I
20 would think there's something that's not accurate with
21 that.

22 Q One of them has to be lying, right? Would that be

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1 documents.

2 THE COURT: No.

3 MR. HIRSCHKOP: Okay.

4 BY MR. HIRSCHKOP:

5 Q You've been sitting in court. Did you see
6 documents we put on the screen that Ed Stewart driver's
7 license was taken from Pat Derby's home?

8 A I saw that on one of the reports.

9 Q Do you remember that coming up in the course of
10 the case with Mrs. Derby in California?

11 A No, I don't remember that.

12 Q Do you recall banking records were taken from that
13 organization?

14 A No.

15 Q Do you recall that coming up in documents in this
16 case?

17 A In this case, yes.

18 Q Wasn't that also one of the things being litigated
19 in California?

20 A It may have been, yes.

21 Q Do you recall charges of social security numbers
22 came up in this case as being taken from Pat Derby's home?

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1 fair?

2 A One of them is not telling the truth, yes.

3 Q And you've seen the 1099 that Mr. Kendall got
4 which matches what he says as his weekly income, isn't that
5 correct?

6 A I think so. I don't recall seeing that exactly.

7 Q Based on that, it would appear that Mr. Froemming
8 is lying, cheating you out of money, wouldn't it?

9 A Maybe.

10 Q Now, to begin with, counsel asked you about a
11 number of charts. Do you remember the chart counsel put up
12 there?

13 A Yes.

14 Q The first was Irvin Feld and Kenneth Feld
15 Productions, Inc. When did that go out of existence?

16 A That became what is now Feld Entertainment.

17 Q Roughly 1990, who were the owners of Irvin Feld
18 Productions, Inc. I'm sorry. I'll call it I&K. Is that
19 permissible?

20 A That's fine.

21 Q It was known that way?

22 A Yes.

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<p>1 Entertainment?</p> <p>2 A Well over 90 percent.</p> <p>3 Q And the trust to your children, you have control</p> <p>4 of that because you're the trustee, right?</p> <p>5 A Yes, I am.</p> <p>6 Q And of course you can fire Mr. Sowalsky, so</p> <p>7 essentially you have 100 percent control?</p> <p>8 A Yes.</p> <p>9 Q Okay. Now, these are not your only corporations.</p> <p>10 You actually have 20 or 30 different corporations, isn't</p> <p>11 that correct?</p> <p>12 A I don't know how many there are. They're</p> <p>13 subsidiaries.</p> <p>14 Q You know there are at least 20 others we went</p> <p>15 through in your deposition.</p> <p>16 A Okay. Well, okay.</p> <p>17 Q And you own corporations that own property in</p> <p>18 North Carolina?</p> <p>19 A No. I don't believe so.</p> <p>20 Q I thought you had --</p> <p>21 A We did at one point in time. Currently -- oh, no,</p> <p>22 we actually do, I'm sorry. Yes. Yes, sir.</p>	<p>1 A I don't know.</p> <p>2 Q You have no idea of the value of your circus?</p> <p>3 A No, I don't.</p> <p>4 Q Okay. And the value of your other companies --</p> <p>5 well, I think we've agreed, it's well in excess of a</p> <p>6 billion dollars. There is no question about that, is</p> <p>7 there?</p> <p>8 A I don't know if that's the value. I mean, it's a</p> <p>9 lot of money, I would grant it. Whether it's a billion or</p> <p>10 something less than that, I don't know exactly what it is.</p> <p>11 Q Well, I've read in Forbes, and correct me if I'm</p> <p>12 wrong, you're the 378th richest man in the United States.</p> <p>13 Is that about correct?</p> <p>14 A Don't believe everything you read in Forbes.</p> <p>15 Q They said you were worth in excess of</p> <p>16 \$750,000,000. Is that correct?</p> <p>17 A No, that's not correct.</p> <p>18 Q You talked on direct examination of the things</p> <p>19 that circuses wanted to achieve. Do you remember that?</p> <p>20 A Yes.</p> <p>21 Q And one of which was the safety of animals. Do</p> <p>22 you remember that, sir?</p>
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<p>1 Q Okay. And you own corporations that own property</p> <p>2 in the Commonwealth of Virginia?</p> <p>3 A No. That's not correct. I got it confused. The</p> <p>4 Virginia property was sold.</p> <p>5 Q The one down in Richmond?</p> <p>6 A That's right.</p> <p>7 Q Okay. And you own other corporations with other</p> <p>8 business interests, right?</p> <p>9 A Yes.</p> <p>10 Q And you are in fact the chief executive officer of</p> <p>11 a vast financial empire, aren't you?</p> <p>12 A I guess you could say that, yes, sir.</p> <p>13 Q Well, we're talking about assets well in excess of</p> <p>14 a billion dollars, aren't we?</p> <p>15 A I don't know what the assets are.</p> <p>16 Q Just the circus alone produces hundreds of</p> <p>17 millions of dollars of revenue a year, doesn't it?</p> <p>18 A It's well over a hundred million dollars a year,</p> <p>19 yes, sir.</p> <p>20 Q If you were to sell the circus, the sales price,</p> <p>21 the value of the circus would be far in excess of the</p> <p>22 annual gross revenue, wouldn't it?</p>	<p>1 A I don't know exactly what you're referring to.</p> <p>2 Q Well, Mr. -- your counsel asked you, what does the</p> <p>3 circus want to achieve. And you said you wanted to take</p> <p>4 care of families and you wanted to make money and you were</p> <p>5 also concerned about the safety of animals.</p> <p>6 A That's correct.</p> <p>7 Q Have you ever seen one of these things</p> <p>8 (indicating)?</p> <p>9 A Yes.</p> <p>10 Q What's it called?</p> <p>11 A It's an ankus or a bull hook.</p> <p>12 Q A bull hook. Have you ever seen circus handlers</p> <p>13 striking elephants with these things?</p> <p>14 A I have seen circus people strike elephants with</p> <p>15 it, yes.</p> <p>16 Q Where do they strike them?</p> <p>17 A On the legs.</p> <p>18 Q One of the sensitive parts on an elephant is</p> <p>19 behind the leg, right, back of the leg?</p> <p>20 A Yes.</p> <p>21 Q One of the sensitive parts of an elephant is</p> <p>22 behind the ear. Have you seen them striking them behind</p>

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<p>1 the ear?</p> <p>2 A Well, what I've seen is that used as a guide.</p> <p>3 I've also seen it used improperly, yes.</p> <p>4 Q And have you seen them strike them under the chin?</p> <p>5 That's another sensitive part of the elephant. Have you</p> <p>6 seen that?</p> <p>7 A Yes. I've seen that.</p> <p>8 Q Have you seen lots of sores on elephants, open</p> <p>9 bleeding wounds from ankuses, from bull hooks?</p> <p>10 A No, I haven't.</p> <p>11 MR. HIRSCHKOP: Your Honor, I move this into</p> <p>12 evidence.</p> <p>13 MR. CAWLEY: Your Honor, what is the -- I object</p> <p>14 to the foundation. There has been no showing that this is</p> <p>15 a Ringling bull hook or ankus.</p> <p>16 MR. HIRSCHKOP: He said just like this. I don't</p> <p>17 happen to own a Ringling --</p> <p>18 MR. CAWLEY: I don't think he said it was just</p> <p>19 like that.</p> <p>20 MR. HIRSCHKOP: I'll ask him.</p> <p>21 BY MR. HIRSCHKOP:</p> <p>22 Q The top of the bull hook, is that how they look?</p>	<p>1 MR. HIRSCHKOP: He's described the differences.</p> <p>2 THE COURT: All right.</p> <p>3 MR. CAWLEY: It was offered originally as</p> <p>4 demonstrative. It wasn't on the exhibit list. It pops up</p> <p>5 in court. I object to it.</p> <p>6 MR. HIRSCHKOP: The exhibits they put in last were</p> <p>7 not on the exhibit list, either, the letters back and</p> <p>8 forth. But it doesn't have to be on the exhibit list to</p> <p>9 bring it in through him. It's not my case.</p> <p>10 THE COURT: Proper foundation has not been laid.</p> <p>11 The objection is sustained. 1447 is denied.</p> <p>12 (The bull hook was marked Plaintiff's</p> <p>13 Exhibit No. 1447 for identification.)</p> <p>14 BY MR. HIRSCHKOP:</p> <p>15 Q Now, sir, you've seen numerous reports, have you</p> <p>16 not, from the Department of Agriculture on the misuse of</p> <p>17 this bull hook on elephants?</p> <p>18 A No, I haven't.</p> <p>19 Q You have had -- do you deny that people within</p> <p>20 your own circus have come to you and complained about</p> <p>21 elephants being brutalized with these bull hooks? Has that</p> <p>22 happened?</p>
Page 2108	Page 2110
<p>1 I mean, we have pictures of it, the ones used in the</p> <p>2 circus.</p> <p>3 A The top looks similar to that.</p> <p>4 Q And what about the handle? Is that about the</p> <p>5 same?</p> <p>6 A No. The ones at Ringling Brothers that I've seen</p> <p>7 are smaller than that. That is not an accurate</p> <p>8 representation of what a Ringling bull hook is.</p> <p>9 Q Well, dealing with the silver part, is that</p> <p>10 accurate? That's basically what you see in the bull hooks.</p> <p>11 We've seen pictures of them, a Ringling bull hook.</p> <p>12 A I'm just saying the Ringling bull hooks are</p> <p>13 smaller than that.</p> <p>14 Q Smaller in that the handle is shorter?</p> <p>15 A Shorter. I don't believe they are quite that</p> <p>16 diameter, either.</p> <p>17 MR. HIRSCHKOP: With that reservation, I still</p> <p>18 move it in evidence. There has been a lot of testimony</p> <p>19 about how he breeds animals, they take such wonderful care</p> <p>20 of animals. It's something highly pertinent.</p> <p>21 MR. CAWLEY: What's the relevance of this? It's</p> <p>22 not the same bull hook.</p>	<p>1 A They have not come to me, no.</p> <p>2 Q No employees have come to you and said, Mr. Feld,</p> <p>3 they are beating the animals horribly with these bull</p> <p>4 hooks?</p> <p>5 A I don't recall that.</p> <p>6 Q Do you recall becoming aware of employees making</p> <p>7 complaints to outside people about the use of these bull</p> <p>8 hooks?</p> <p>9 A Yes, I've heard about it. No one came directly to</p> <p>10 me with it.</p> <p>11 Q Okay. You say, sir, that Exhibit 595 -- this is</p> <p>12 something you were shown on direct examination.</p> <p>13 January 18, 1993. May I approach the witness, Your Honor?</p> <p>14 THE COURT: Yes, sir.</p> <p>15 BY MR. HIRSCHKOP:</p> <p>16 Q Now, this is a letter directed to you, January 18,</p> <p>17 1993. "Dear Mr. Feld. I have been instructed to submit</p> <p>18 copies of my weekly reports to your office for review."</p> <p>19 Do you see that? It's from Mr. Froemming, we</p> <p>20 assume. It's from Richlin Consultants and the signature</p> <p>21 page is not there. Do you see that?</p> <p>22 A Yes, I do.</p>

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<p>1 Q And this is the first one you remember seeing,</p> <p>2 right?</p> <p>3 A Oh, I may have seen others. This is when I</p> <p>4 believe I would get them on a regular basis.</p> <p>5 Q But you were getting PETA/PAWS reports before</p> <p>6 that, weren't you?</p> <p>7 A No, I wasn't.</p> <p>8 MR. HIRSCHKOP: Okay. Now, this thing -- it's in</p> <p>9 evidence, Your Honor. May I hold it up so the jury can see</p> <p>10 what I'm referring to?</p> <p>11 THE COURT: If it's in evidence, yes, sir.</p> <p>12 BY MR. HIRSCHKOP:</p> <p>13 Q The first page has privileged, redacted. What was</p> <p>14 taken out there that the jury can't see?</p> <p>15 A I have no idea.</p> <p>16 Q The bottom has redacted. What was taken out there</p> <p>17 that the jury can't see?</p> <p>18 A I don't know.</p> <p>19 Q Well, look at the next page. What was taken out</p> <p>20 there that the jury can't see?</p> <p>21 A I have no idea.</p> <p>22 Q No signature page, nothing. Why is it we just get</p>	<p>1 prior to depositions.</p> <p>2 Q Well, at deposition, I deposed you. It was well</p> <p>3 over a year ago, wasn't it?</p> <p>4 A The first time it was, yes.</p> <p>5 Q And I showed you numerous documents with</p> <p>6 redactions. Why didn't you then, why didn't you then do</p> <p>7 something about it?</p> <p>8 A For what reason, sir?</p> <p>9 Q So that there would be a full and honest</p> <p>10 disclosure so we can get to the truth of what's happening.</p> <p>11 A I believe it is full and honest disclosure.</p> <p>12 Q Well, attached to this document, he says in the</p> <p>13 bottom -- look at the last paragraph. Read that to the</p> <p>14 jury on the bottom of the first page.</p> <p>15 A This is -- "I have on this day prepared a</p> <p>16 supplemental plan with additional suggestions that will</p> <p>17 help address the issue of centralizing the efforts on</p> <p>18 behalf of Ringling to effectively address the problems</p> <p>19 concerning the perception of animal care given."</p> <p>20 Q And attached is an implementation plan, is it not?</p> <p>21 A That's correct.</p> <p>22 Q Okay. So this report was basically sending you an</p>
Page 2112	Page 2114
<p>1 this totally incomplete document?</p> <p>2 A I have no idea. This may have come from Charles</p> <p>3 Smith's files, not from the company files.</p> <p>4 Q You've seen numbers of documents in this case that</p> <p>5 have the same kind of redaction that came from the</p> <p>6 corporation files.</p> <p>7 A That's right. My understanding is, if they were</p> <p>8 redacted, they had nothing to do with animal rights.</p> <p>9 Q Well, you've testified to all these things</p> <p>10 Mr. Froemming was doing. How can the jury tell if you're</p> <p>11 accurate if you take out all this stuff and you don't let</p> <p>12 them see it?</p> <p>13 A I didn't redact this. They were redacted by</p> <p>14 counsel.</p> <p>15 Q Didn't you ever look at these and say, wait a</p> <p>16 minute. This is not very fair. Why don't the jury have</p> <p>17 the full information so they can arrive at the truth in</p> <p>18 this matter?</p> <p>19 A No, I never did look at them.</p> <p>20 Q You actually showed up in this courtroom without</p> <p>21 ever having looked at these documents?</p> <p>22 A No, I didn't say that. I never looked at them</p>	<p>1 implementation plan, wasn't it?</p> <p>2 A I don't know what the redacted portion is. There</p> <p>3 is an implementation plan here, yes, sir.</p> <p>4 Q Okay. And it says, for instance, at page Smith</p> <p>5 PETA 0775 -- can you find that, sir, please?</p> <p>6 A Yes, sir.</p> <p>7 Q It talks about accomplishments under Richard</p> <p>8 Froemming's direction. He identified groups whose goal was</p> <p>9 to destroy Ringling Brothers. Do you see that?</p> <p>10 A Yes, sir.</p> <p>11 Q He identified methods used by the opposition to</p> <p>12 attack Ringling Brothers. Do you see that?</p> <p>13 A Yes.</p> <p>14 Q And then he talks about accomplishments under his</p> <p>15 direction further. Do you see that?</p> <p>16 A Is that on the next page?</p> <p>17 Q Next page, yes, sir.</p> <p>18 A Yes.</p> <p>19 Q He talks about, number four, developed</p> <p>20 intelligence operation, created an intelligence gathering</p> <p>21 operation. What was his intelligence gathering operation?</p> <p>22 A As far as I know, it was to find out what the</p>

Page 2115	Page 2117
<p>1 animal activists groups were doing.</p> <p>2 Q I'm sorry. I asked that poorly, sir. I mean, did</p> <p>3 he have a crystal ball, or did he have undercover</p> <p>4 operatives that were going into people's organizations? Do</p> <p>5 you know which he had?</p> <p>6 A I don't know. But from what I've seen here, it</p> <p>7 looked like he did have people inside of some of the</p> <p>8 organizations.</p> <p>9 Q Well, didn't it wet your curiosity what was his</p> <p>10 intelligence gathering operation?</p> <p>11 A I don't know. I don't recall this document.</p> <p>12 Q He gained advance knowledge of planned attacks.</p> <p>13 Do you know how he did that?</p> <p>14 A Where is that, sir?</p> <p>15 Q The next thing, right under created an</p> <p>16 intelligence gathering operation.</p> <p>17 A I see that, yes.</p> <p>18 Q He gained advance knowledge of planned attacks.</p> <p>19 Was that also through a crystal ball or perhaps he had some</p> <p>20 inside information?</p> <p>21 A He may have. I mean, he talked to a lot of</p> <p>22 people. I don't know. He obviously gathered some</p>	<p>1 Q Did you direct your lawyers, get me that video</p> <p>2 propaganda; let's show that to the jury?</p> <p>3 A They did extensive searches of our facility. What</p> <p>4 you have is what they came up with.</p> <p>5 Q But you have no idea where the rest went, the</p> <p>6 hundreds. You heard Mr. Kendall testify he made over a</p> <p>7 thousand reports. You heard Mr. Kendall testify he always</p> <p>8 videotaped demonstrations, that he went to hundreds and</p> <p>9 hundreds of demonstrations. He made one copy for</p> <p>10 Mr. Froemming and he kept one copy. Where are the hundreds</p> <p>11 and hundreds of copies that he gave to Mr. Froemming?</p> <p>12 A I have no idea.</p> <p>13 Q What have you done to find out where they are,</p> <p>14 sir?</p> <p>15 A We searched all of our facility.</p> <p>16 Q We searched? Did you go search?</p> <p>17 A No, I didn't search. But the attorneys searched,</p> <p>18 and we had people spending a substantial amount of time.</p> <p>19 Q Did you ever ask Mr. Froemming, when you went into</p> <p>20 Mr. Smith's office and closed it up, what happened to those</p> <p>21 videos? The videos, he had a credenza full of videos</p> <p>22 behind his desk. Did you ever ask him what happened to</p>
Page 2116	Page 2118
<p>1 information.</p> <p>2 Q Mr. Feld, there is no question you're a brilliant</p> <p>3 businessman. You got up on the stand there. You told the</p> <p>4 jury of many major accomplishments of yours. You pride</p> <p>5 yourself on being a brilliant businessman, right?</p> <p>6 A I like to think that, yes.</p> <p>7 Q I'm not appealing to your ego or being negative.</p> <p>8 Let's get to the truth of this. The fact is, you're very</p> <p>9 hands on. You're a micro manager, aren't you?</p> <p>10 A I am when it comes to the shows, yes.</p> <p>11 Q And you go down and you help pick out the dresses</p> <p>12 for the entertainers, right, and the pants and everything</p> <p>13 else. I don't want to limit it to women.</p> <p>14 A Yes.</p> <p>15 Q You helped pick out the costumes. You said that,</p> <p>16 right?</p> <p>17 A Yeah, I'm very hands on with the production of the</p> <p>18 shows, that's correct.</p> <p>19 Q He says here he obtained video propaganda used</p> <p>20 against the circus. Where's the video propaganda? Why</p> <p>21 can't the jury see that?</p> <p>22 A I don't know?</p>	<p>1 those videos?</p> <p>2 A I don't know that he had a credenza full of</p> <p>3 videos. But I don't know what happened to the videos no</p> <p>4 matter what.</p> <p>5 THE COURT: Let me know when you get to the end of</p> <p>6 a line of questions.</p> <p>7 MR. HIRSCHKOP: This is fine, Your Honor.</p> <p>8 THE COURT: Members of the jury, let's take the</p> <p>9 afternoon break. If you would, pleased, follow the Deputy</p> <p>10 Atkins. Please step down, Mr. Feld.</p> <p>11 (The jury left the courtroom.)</p> <p>12 THE COURT: Fifteen minutes.</p> <p>13 MR. CAWLEY: Thank you, Your Honor.</p> <p>14 (A recess was taken.)</p> <p>15 THE COURT: Members of the jury, we'll continue</p> <p>16 with the cross-examination of Mr. Feld. Mr. Hirschkop?</p> <p>17 MR. HIRSCHKOP: Yes.</p> <p>18 BY MR. HIRSCHKOP:</p> <p>19 Q Mr. Feld, I just want to digress into something</p> <p>20 else that came up while I was looking at this. You said on</p> <p>21 direct examination that you have never been found guilty of</p> <p>22 an offense by the Department of Agriculture, isn't that</p>

<p style="text-align: right;">Page 2119</p> <p>1 correct? Not you personally but Feld Entertainment or</p> <p>2 Ringling?</p> <p>3 A No, I believe what I said is that we've never been</p> <p>4 found in violation of the Animal Welfare Act or the</p> <p>5 mistreatment of our animals.</p> <p>6 Q In point of fact that's because you make an</p> <p>7 agreement and pay the fine and settle a case, isn't that</p> <p>8 true?</p> <p>9 A No, sir.</p> <p>10 Q You were cited for the wrongful death of Benjamin.</p> <p>11 Who is Benjamin?</p> <p>12 A Benjamin was an elephant that drowned in a lake in</p> <p>13 Texas.</p> <p>14 Q And the handler went in and he was prodding</p> <p>15 Benjamin with a bull hook and drove him into deeper water.</p> <p>16 There's a video of it, isn't there, of Benjamin drowning?</p> <p>17 A There is a video, but that's your interpretation</p> <p>18 of it, sir. There was an investigation by the USDA and</p> <p>19 there was no wrongdoing found on the part of the circus.</p> <p>20 Q What about Kenny?</p> <p>21 A There was --</p> <p>22 Q Was Kenny a baby elephant?</p>	<p style="text-align: right;">Page 2121</p> <p>1 A That is incorrect.</p> <p>2 Q We'll get to that later. Sir, we talked about</p> <p>3 bull hooks. I would like to show you your deposition. May</p> <p>4 I approach, please?</p> <p>5 THE COURT: Yes, sir.</p> <p>6 BY MR. HIRSCHKOP:</p> <p>7 Q This is the of June 29, 2004.</p> <p>8 A Yes. Should I move this?</p> <p>9 Q Yeah, you can, if you like. Do you recall, sir,</p> <p>10 do you recall I took your deposition on that particular</p> <p>11 day?</p> <p>12 A Yes, sir.</p> <p>13 Q Have you reviewed that deposition at any time</p> <p>14 recently?</p> <p>15 A No.</p> <p>16 Q Okay. Have you gone over the answers in that</p> <p>17 deposition with anyone any time recently?</p> <p>18 A No, I haven't.</p> <p>19 Q Would you turn to page 143. Please let's start at</p> <p>20 142. Do you have that, sir?</p> <p>21 A Yes, I do.</p> <p>22 Q Do you see at line seven, just to get a</p>
<p style="text-align: right;">Page 2120</p> <p>1 A Kenny was a baby elephant.</p> <p>2 Q Were you not cited by the Department of</p> <p>3 Agriculture for cruelty to Kenny?</p> <p>4 A No. We were not.</p> <p>5 Q You didn't pay a \$20,000 fine because of the death</p> <p>6 of Kenny?</p> <p>7 A No, we did not.</p> <p>8 Q Okay. We'll get to that. Did you pay anything</p> <p>9 with regard to Kenny?</p> <p>10 A Yes, we did.</p> <p>11 Q What did you pay?</p> <p>12 A We paid \$10,000 to the Kamari Fund, which</p> <p>13 researches elephant herpes virus at the Smithsonian, and</p> <p>14 also \$10,000 to a Thai elephant hospital.</p> <p>15 Q And was that \$20,000 in payments in response to a</p> <p>16 charge brought against you by the U.S. Department of</p> <p>17 Agriculture?</p> <p>18 A They had an investigation, and we were found that</p> <p>19 there was no responsibility on the part of Ringling for the</p> <p>20 death of the elephant.</p> <p>21 Q That baby elephant died right after performing</p> <p>22 while ill, was ill; is that correct?</p>	<p style="text-align: right;">Page 2122</p> <p>1 foundation, "and the training of elephants includes the use</p> <p>2 of bull hooks, does it not?" You answered yes.</p> <p>3 A That's correct.</p> <p>4 Q And I asked you, "How are the bull hooks used?"</p> <p>5 What was your answer there? Down at page 143 at line 3.</p> <p>6 A "The bull hook is used as a guide for the</p> <p>7 elephant, much the way a leash is used for a dog in</p> <p>8 training a dog, or bridle and reins are used for horses."</p> <p>9 Q Would you use something like this on a dog or a</p> <p>10 horse, this ankus?</p> <p>11 A No, but you're dealing with a 10,000-pound animal</p> <p>12 that's -- it's all relative.</p> <p>13 Q The question is, you can give a dog a treat to</p> <p>14 teach him to do something, can you not?</p> <p>15 A Yes, but they also have leash laws.</p> <p>16 Q And you can't put a leash on a elephant, can you?</p> <p>17 A No, sir.</p> <p>18 Q And I asked you, "Well, a bull hook has a large</p> <p>19 metal hook at the end, doesn't it?"</p> <p>20 And you said, "I believe every bull hook is</p> <p>21 different." Do you see that? I'm just continuing on page</p> <p>22 143, sir, line 7.</p>

Page 2123	Page 2125
<p>1 A I see the question, yes.</p> <p>2 Q Okay. That was your answer there?</p> <p>3 A Yes.</p> <p>4 Q That was a truthful answer?</p> <p>5 A I believe it to be.</p> <p>6 Q When you say "every bull hook is different," you</p> <p>7 mean every bull hook that is used in the circus is</p> <p>8 different or different circuses are different or what?</p> <p>9 A Yeah. When you go to India, you can see a bull</p> <p>10 hook that's ten feet long. If you go to Ringling</p> <p>11 Bros.-Barnum & Bailey, you'll see a bull hook of a certain</p> <p>12 size and dimension. If you go other places, you may see</p> <p>13 something else. The National Zoo, different kind. So it</p> <p>14 is different.</p> <p>15 Q So you know a good deal about bull hooks used at</p> <p>16 Ringling, is that correct?</p> <p>17 A I know they are used there, yes.</p> <p>18 Q And what they look like and they are the exact</p> <p>19 same on the red unit and the blue unit and the training</p> <p>20 facility down in Florida. They are all the exact same</p> <p>21 length handles. Is that your testimony?</p> <p>22 A I don't know if they are exactly the same.</p>	<p>1 say large, I don't know what large means. It's a relative</p> <p>2 term."</p> <p>3 Q "At least several inches in diameter." What was</p> <p>4 your answer?</p> <p>5 A "I'm not sure."</p> <p>6 Q "Well, it's sharp metal at the end, is it not?"</p> <p>7 What was your answer?</p> <p>8 A "Which one are you speaking of?"</p> <p>9 Q "Well, the standard one, used in your circus, what</p> <p>10 do they look --" What was your answer, sir?</p> <p>11 A "I don't know that. I can't sit here and describe</p> <p>12 it because I don't know what a standard one is."</p> <p>13 Q "I mean, I don't."</p> <p>14 A "I mean, I don't."</p> <p>15 Q You didn't know what a standard one is in the</p> <p>16 circus. Have you boned up on bull hooks since the time</p> <p>17 you were deposed?</p> <p>18 A I can't say I've boned up. I've been to the</p> <p>19 circus and our elephant facility.</p> <p>20 Q You say at line 13, "it is -- could be a stick</p> <p>21 that is a foot or a foot and a half long with a curved hook</p> <p>22 at the end." Isn't that correct?</p>
Page 2124	Page 2126
<p>1 Q Might some handles be longer than others?</p> <p>2 A They might.</p> <p>3 Q Might some handles be thicker than others?</p> <p>4 A They may be.</p> <p>5 Q When you're guiding a 10,000-pound elephant, if</p> <p>6 you had a handle that was any thinner than that, it would</p> <p>7 be hard to hold onto when you're trying to get behind that</p> <p>8 elephant, wouldn't it? It's a fairly heavy thing. Do you</p> <p>9 want to see how it feels, sir? May I approach, Your Honor?</p> <p>10 THE COURT: Did you answer the question?</p> <p>11 Q Do you want to see how it feels? It's hard to</p> <p>12 hold up. It would take a strong person, something this</p> <p>13 heavy. Have you ever handled a bull hook?</p> <p>14 A No.</p> <p>15 Q Okay.</p> <p>16 I asked you, "No, the ones that were used by Mr.</p> <p>17 Goebel for which he was prosecuted in California, was that</p> <p>18 one with a large curved hook at the end?" What was your</p> <p>19 answer?</p> <p>20 A Is this line 16, sir?</p> <p>21 Q Yes, sir.</p> <p>22 A "It had a hook at the end. I don't know, when you</p>	<p>1 A That's what it says here, yes.</p> <p>2 Q And I asked you, "Why do they have a hook at the</p> <p>3 end? What's done with that hook? Is it ever caught into</p> <p>4 the back of an animal's leg or prodded into the back of the</p> <p>5 animal's leg?" You say, "It is used as a guide for the</p> <p>6 animals." Right?</p> <p>7 A That's correct.</p> <p>8 Q And I say, "How does it guide the animal?" You</p> <p>9 say, "I'm not an animal trainer, so I don't know exactly</p> <p>10 how it's used." Was that truthful when you gave that</p> <p>11 statement?</p> <p>12 A Yes.</p> <p>13 Q Is that what you believe today?</p> <p>14 A Is what what I believe today, sir?</p> <p>15 Q That you don't know exactly how it's used because</p> <p>16 you're not an elephant trainer.</p> <p>17 A I personally have never used a bull hook. I've</p> <p>18 never trained an elephant.</p> <p>19 Q Now, sir, I was asking you, before I got into the</p> <p>20 bull hook, about Exhibit 595, which was a January, 1993,</p> <p>21 exhibit. Do you recall that, sir? You're welcome to look</p> <p>22 again. I left it up there for you.</p>

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1 doesn't it?

2 A It appears to be, yes.

3 Q Okay. Now look at page 0803, sir.

4 A Okay.

5 Q "California operative busy, busy, busy."

6 Did it raise any question of who the California

7 operative was and what that California operative was doing?

8 A No.

9 Q Look about halfway down the page. See, "Note:

10 "Derby was not at this meeting"?

11 A This is --

12 Q Is that correct?

13 A Looks like a legislative meetings that was taking

14 place there, and she was not present at the meeting.

15 Q I just want know if want to see. I want to focus

16 on the next paragraph.

17 "Operative has complete bio ready." Do you see

18 that?

19 A Yes.

20 Q "Operative has complete bio ready on Derby and

21 past involvement with the animals. Whereas, Nina her

22 elephant burned to death in barn. Also history of her

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1 husband being shot for cattle rustling. We're having

2 meetings as the best way to turn operative against the

3 various animal rights groups both in the California and

4 also the national organization PETA, Pacheco, Newkirk."

5 Do you see that, sir?

6 A Yes.

7 Q Did that not raise any red flags about what these

8 operatives were doing internally with these groups?

9 A No, because this seems like obviously it was

10 public information. You can find out past history of what

11 someone was doing when they had this type of facility.

12 Q Look at Exhibit No. 850, please. Do you see 850,

13 sir?

14 A I have that in front of me, yes.

15 Q And, sir, this is marked confidential, "Animal

16 activist activities with related material to same, November

17 11, 1993."

18 Do you see that, sir?

19 A Yes, I do.

20 Q And you got a copy of this report, did you not?

21 A I don't know. It's very possible I may have.

22 Q Look at 848, see if it confirms you got a copy of

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1 it.

2 A It seems -- that seems right, I think. Yes.

3 Q Okay. Now, on 850 look at the first page, the

4 second paragraph up from the bottom. "Operative is meeting

5 with Lambert this weekend, will get additional information

6 on her campaign and her activities."

7 Does that sound like public information, sir?

8 A I don't know. I -- I don't know who it was. It

9 could have been an employee of Ms. Lambert's. It could

10 have been a volunteer. It could have been a friend. I --

11 I have no idea.

12 Q Didn't you have some obligation to ask? Millions

13 were being spent on Froemming and fictitious companies, and

14 it never occurred to you to ask?

15 A Well, I didn't know about these companies. I

16 mean I knew about Richlin Associates or whatever it was.

17 Q All right. Look at the next page, sir, Corp.

18 2333. "Some other items of interest about Lambert. Is

19 currently working on her own elephant bill. Has 13 points

20 stated. One thing she has learned from her legislative

21 work is to include a lot."

22 That's internal information. How could you find

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1 it unless you had some operative inside of her

2 organization?

3 A There may have been. There may have been.

4 Q And clearly someone's talking to her. Look at

5 the bottom. Two lines up from the bottom, "Stated she took

6 photographs inside Ringling trains when the zookeeper was

7 drunk."

8 This is about Ms. Lambert. Did it occur to you

9 that this is internal information and where was this coming

10 from?

11 A Well, I don't know that this is internal. I mean

12 I think -- I think there were people that saw her, as was

13 stated earlier, that she was always taking pictures around

14 the boxcars and things like that. So I don't know where

15 this came from.

16 If there -- you know, it looks like maybe there

17 was an operative there; so this looks like information

18 maybe that person would have gotten.

19 Q Look at the next page, please. "Reference her

20 USA Today letter. Stated she received over one hundred

21 responses; phone calls from all over, including Hong Kong,

22 New Zealand, England, and Canada."