

EXHIBIT 2

**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)**

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

-----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

Wednesday, March 1, 2006

The trial commenced at 10:10 a.m.

BEFORE:

THE HONORABLE DAVID T. STITT and jury.

1 PLAINTIFF'S	IN EVIDENCE	
2 Nos. 1173 - 1179 (documents)		693
3 Nos. 1181 - 1183 (documents)		693
4 Nos. 1187 - 1190 (documents)		694
5 No. 1191 (document)		694
6 Nos. 1192 - 1196 (documents)		694
7 Nos. 1202 - 1209 (documents)		695
8 Nos. 1211 - 1220 (documents)		695
9 No. 1222 (documents)		695
10 Nos. 1225 - 1239 (documents)		696
11 Nos. 1241 and 1242 (documents)		696
12 Nos. 1244 - 1257 (documents)		696
13 Nos. 1259 - 1265 (documents)		697
14 Nos. 1268 and 1269 (documents)		697
15 Nos. 1271 - 1273 (documents)		697
16 Nos. 1275 - 1277 (documents)		697
17 Nos. 1279 and 1280 (documents)		698
18 No. 1282 (document)		698
19 Nos. 1284 - 1326 (documents)		698
20 Nos. 1418-A and 1418-B (documents)		698
21 No. 570 (document)		700
22 No. 595 (document)		701

1 PROCEEDINGS

2 (The court reporter was sworn.)

3 THE COURT: Mr. Smith, you can resume the

4 stand.

5 Whereupon,

6 CHARLES F. SMITH,

7 resumed the witness stand, and having been previously

8 sworn, was further examined and testified as follows:

9 (The jury returned to the courtroom.)

10 THE COURT: Good morning, members of the

11 jury. I appreciate everybody being here on time and

12 ready to go. As you'll recall, we are in the

13 presentation of the plaintiff's case.

14 Mr. Hirschkop, you are on direct examination

15 of Mr. Smith.

16 MR. HIRSCHKOP: Your Honor, I do apologize

17 for the cumbersome nature of trying to put all these

18 documents in with the equipment and all. We are doing

19 the best we can. We will definitely try to speed it

20 up today.

21 Your Honor, we move Exhibit No. 142 in. I

22 just omitted it yesterday by accident.

1 PLAINTIFF'S	IN EVIDENCE	
2 No. 596 (document)		704
3 No. 604 (document)		704
4 No. 621 (document)		705
5 No. 690 (document)		710
6 No. 698 (document)		711
7 No. 715 (document)		712
8 No. 784 (document)		715
9 No. 801 (document)		723
10 No. 848 (document)		738
11 No. 851 (document)		743
12		
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22		

1 THE COURT: Plaintiff's 142 is admitted over

2 objection.

3 (The document previously marked for

4 identification as Plaintiff's Exhibit

5 No. 142 was received in evidence.)

6 DIRECT EXAMINATION (resumed)

7 BY MR. HIRSCHKOP:

8 **Q Mr. Smith, do you have that book up there?**

9 MR. PETROSINELLI: Your Honor, there are some

10 folks hollering over there a bit. I don't know if

11 Deputy Adkins might want to --

12 THE COURT: Yes, he's very good about that.

13 In fact, let me know if that happens again.

14 I've gotten so it doesn't even register on me if it

15 goes on, but it is disruptive.

16 All right. Mr. Hirschkop.

17 MR. HIRSCHKOP: Yes, sir.

18 Your Honor, I move into evidence Exhibits 155

19 through 160.

20 THE COURT: Plaintiff's 155 through 160 are

21 admitted over objection.

22 (The documents previously marked for

1 Q Why was Mr. Froemming now reporting to him?

2 A I would have to read this. I don't know. As
3 I said earlier, I think he coordinated a lot of
4 departments within the company.

5 Q Did there not come a time, sir, when he took
6 over basically managing Mr. Froemming's operation
7 within the company?

8 A I don't recall that specifically.

9 Q Did you continue through March of 1997 when
10 you left to be the main person running the Froemming
11 operation or did Andy Ireland take it over?

12 A I was not the main person. Probably in the
13 year before I left, maybe the year and a half before I
14 left.

15 Q Who was that person at that time?

16 A I think it was a combination of many people.
17 It was FPR, Andy Ireland's department.

18 Q Well, on September '93, looking at this
19 Exhibit 801 in the next to the last paragraph on the
20 first page he writes, "We must not forget, however,
21 that this is also the home of Nancy Alexander who is a
22 pivotal leader in the activist community towards

1 A Well, I've never met Mr. Kendall, so I didn't
2 know he was sitting back there, but I accept this
3 report.

4 MR. HIRSCHKOP: Mr. Kendall, would you stand
5 up, please.

6 (Mr. Kendall stands.)

7 BY MR. HIRSCHKOP:

8 Q Have you ever seen this gentleman before?

9 A I don't believe so.

10 Q You've never seen videotapes of him?

11 A No.

12 Q Or photos?

13 A No.

14 MR. HIRSCHKOP: Thank you, sir.

15 BY MR. HIRSCHKOP:

16 Q You were given hundreds of videos by
17 Mr. Froemming, were you not, of various demonstrations
18 over these years?

19 A Yes.

20 Q And many of them were demonstrations by
21 Putting People First, were they not, or they displayed
22 demonstrations of Putting People First?

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1 obtaining these bans in Florida and also in helping
2 activists in other states move towards similar
3 legislation, coordinating our activities through PAWS,
4 Ed Stewart and Pat Derby in California."

5 A Which page?

6 Q The first page.

7 A Okay. I've got it. Okay, I see it.

8 Q There's no mention of PETA in there, is
9 there?

10 A Not in that paragraph, no.

11 Q And did Nancy Alexander -- was Nancy
12 Alexander run by PETA?

13 A I don't know.

14 Q Was she part of these 1200 groups
15 internationally that PETA ran in your thoughts?

16 A I can't answer that without looking at the
17 list.

18 Q Look at the paragraph above that. "We have
19 an excellent coalition directed by Mr. Kendall in
20 Florida." Do you know of any other Mr. Kendall other
21 than the gentleman sitting back here who was doing
22 those sort of things for Feld?

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1 A I didn't watch hardly any of the videos,
2 number one, because I had other responsibilities. It
3 was just not my full-time responsibility.

4 Q Look, sir, at the last page of this, the
5 third page of this document. Do you see the fourth
6 paragraph down? "The actions that we have initiated
7 within the units, as well as the peripheral operations
8 are all geared to offset the activists' three major
9 claims against the circus: chained for life, life of
10 boredom, cruel treatment." Do you remember those are
11 three of the things some of the activists said about
12 why they were opposed to elephants in the circus?

13 A Yes. Those are your signs, some of them that
14 you carry around at these demonstrations. Some of
15 these have photos that are totally misleading.

16 Q Did you ever see me carrying a sign around at
17 a demonstration?

18 A No, but you said you were a member of PETA.

19 Q And proudly so.

20 Now, sir, these animals, when they're in the
21 cars being transported across country, are they
22 chained so that they can't move around too much?

1 A I don't -- I don't have that detailed
2 knowledge, but I will say this. Our animal care is
3 governed by U.S. government regulations. And we
4 adhere to them. And also certain states have animal
5 regulations. We adhere to those. And I don't think
6 PETA is the government. What right do you say -- have
7 to say that I'm not taking care of my animals. You're
8 not the government.

9 **Q Was Martin Luther King the government? What
10 right did he say to let children go to school?**

11 MR. CAWLEY: Your Honor, I think --

12 MR. HIRSCHKOP: I'll withdraw the question.

13 MR. CAWLEY: Thank you, Your Honor.

14 BY MR. HIRSCHKOP:

15 **Q Do you think American citizens don't have a
16 right to stand up and voice their opinion?**

17 A Well, of course.

18 **Q If people think the elephants are being
19 cruelly treated, they had no right to stand up and
20 voice their opinion?**

21 A But you have no evidence. You are standing
22 up and saying it without evidence. There are many

1 away or they're separated?

2 A Why do I need to know that? I mean, I'm
3 conducting my business in accordance with the
4 government regulations. You have no right to come to
5 me and say you can't do this because PETA says you
6 can't do it. You're not the government, and you don't
7 have any right to tell me what to do.

8 **Q Do you know how many years a baby elephant
9 stays with its mother in the wild when not in
10 captivity? Do you or do you not know?**

11 A I don't know.

12 **Q Do you know how long the babies you bred
13 during these years at Ringling spent with their mother
14 until they were taken away?**

15 A I don't know that.

16 **Q Do you know if a baby elephant that just died
17 in the last two years because you started training it
18 and it was still too young to be trained?**

19 MR. CAWLEY: Your Honor --

20 MR. HIRSCHKOP: I will withdraw the question.

21 MR. CAWLEY: You can't say that and withdraw
22 the question. It's improper to be testifying.

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1 circuses. A lot of your photos were from circuses
2 other than my company. Therefore, it's very
3 misleading because we took care of those elephants and
4 all other animals.

5 **Q Were the elephants chained up so they
6 couldn't move around in the cars as they were
7 transported across country?**

8 A I assume they were.

9 **Q Did these elephants spend months going cross
10 country in the red unit and the blue unit?**

11 A They're on tour for approximately ten and a
12 half, eleven months a year.

13 **Q When they weren't in these cars, were they
14 chained up most of the day when they weren't
15 performing so they couldn't move around more than ten
16 or fifteen feet?**

17 A I don't know if that's true.

18 **Q Do you know how many miles a day an elephant
19 normally roams in the wild?**

20 A I don't know.

21 **Q Do you know how long the young elephants stay
22 with their mothers in the wild before they're taken**

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1 MR. HIRSCHKOP: Okay. Then I'll leave the
2 question.

3 THE COURT: Then the objection is sustained.

4 MR. CAWLEY: Thank you, Your Honor.

5 BY MR. HIRSCHKOP:

6 **Q Look at the document. It says cruel
7 treatment. You've seen documents in this very case
8 where hot shots were being used on elephants, have you
9 not? Do you deny they're in your very documents, sir?**

10 A I saw them. I saw them written in the
11 documents, but I also explained to you those are
12 individual acts. There's no direction coming from our
13 management that says you should abuse the animals.
14 It's the reverse. Take care of the animals. Any time
15 you have a large company, you've going to have
16 individual people taking individual acts not in
17 accordance with management policy. It happens in
18 every company. No one had permission to abuse any
19 animal ever. It was an individual act, not a company
20 act.

21 **Q Are you aware that hot shots violate the
22 federal laws, the use of hot shots against elephants?**

1 MR. CAWLEY: Objection, Your Honor. This is
2 the same kind of thing. It's really Mr. Hirschkop
3 trying to testify with his view.
4 MR. HIRSCHKOP: I will rephrase the question.
5 THE COURT: Rephrase.
6 MR. CAWLEY: He already said he wasn't
7 involved in this area.
8 MR. HIRSCHKOP: He said there was no proof,
9 and they treated them wonderfully. Now he says but I
10 have no idea how they trained them.
11 A I didn't say that. I didn't say that.
12 BY MR. HIRSCHKOP:
13 **Q Please, there's no question pending.**
14 **Are you aware whether or not the Animal**
15 **Welfare Act specifically outlaws hot shots against the**
16 **use of elephants?**
17 A I don't have detailed knowledge sitting here
18 today of the Animal Welfare Act.
19 **Q Are you aware, sir, of a document in these**
20 **very documents where a vice-president of Feld**
21 **complained that she viewed an elephant with 22**
22 **puncture wounds in the elephant from a bull hook? Do**

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1 **you remember that document, sir?**
2 A A vice-president of my company complained
3 about that?
4 **Q Yes, sir.**
5 A I don't recall the document.
6 **Q Do you recall elephants having puncture**
7 **wounds from bull hooks?**
8 A I don't recall that.
9 **Q Would that be cruel if they did?**
10 A I don't know. I don't know what the
11 definition of cruelty is.
12 **Q Do you know what a bull hook is?**
13 A I know what a bull hook is.
14 **Q Describe to the jury what a bull hook is.**
15 A But --
16 **Q Describe to the jury what a bull hook is.**
17 A It's a hook that elephants are led around
18 with. But the elephants are inspected by the United
19 States government very frequently. And if that were
20 the case, it would have been reported and an
21 investigation would have ensued.
22 **Q Sir, describe to the jury what a bull hook**

1 **is. What does it look like?**
2 A I don't know exactly what it looks like, but
3 it's a hook that's used to guide the elephants when
4 they're performing.
5 **Q Is it something about that long (indicating)?**
6 A I don't know. I don't recall the length, the
7 shape.
8 **Q Is it that long (indicating)?**
9 A I don't recall the length or the shape.
10 **Q How many times have you seen the circus, sir?**
11 A A thousand times.
12 **Q How many times have you seen elephant walks,**
13 **the animal walks as they go from the trains to the**
14 **arenas?**
15 A A few of those. Only a few of those.
16 **Q How do you know that the trainers use those,**
17 **the bull hooks to guide and walk the elephants around?**
18 A See them in the show. They use it in the
19 show sometimes.
20 **Q So then you've seen bull hooks.**
21 A I don't recall the length, the 3-D image of a
22 bull hook. But the point of it is we are not out

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1 there operating without scrutiny. The United States
2 government inspects the circus frequently. So does
3 the State of California. So do other states. When
4 there's an incident -- and there will be incidents
5 always when you are involved in an operation like the
6 circus -- they will be investigated and dealt with.
7 But no one had the approval of management to abuse or
8 be cruel to animals. No one.
9 **Q Management was more interested in making**
10 **money than preserving animals; isn't that true?**
11 A That's what American corporations are about.
12 We are profit based. Watch NBC every day. You'll see
13 what America is about. Yesterday the market dropped
14 like a stone because they were afraid companies
15 weren't going to make money to the extent they were
16 making it.
17 **Q Do you remember that Mr. Kendall was paid to**
18 **go to Hawaii to lobby for a change in the laws there**
19 **with regard to the treatment of animals?**
20 A And I say so what. Every American company --
21 **Q Sir?**
22 A You asked me a question.