

EXHIBIT 10

Plaintiffs' Motion to Lift the
September 25, 2007 Protective Order
Civ. No. 03-2006 (EGS/JMF)

LONG ISLAND, NY
SUNDAY 565,979
FEB 24 2002

Buttelles

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22164

IDEAS

With the Greatest of Unease

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By Janet M. Davis

THE FULL-PAGE, \$220,000 advertisement ran in The New York Times and the Los Angeles Times on Jan. 7. An elephant's trunk dangled out of the upper left-hand corner, open, as if to be speaking. Signed by Kenneth Feld, the chairman and producer of the Ringling Bros. and Barnum & Bailey Circus, "An Open Letter to Animal Rights Groups" came out swinging. It charged that organizations such as People for the Ethical Treatment of Animals were "creating politically motivated lawsuits, violent and sexually titillating ads, publicity stunts" that target "responsible" circuses, zoos and aquariums.

Yet Feld's circus had just won a major court victory against one of those very groups. Less than three weeks earlier, a Santa Clara, Calif., jury acquitted Ringling animal trainer Mark Oliver Gebel on charges filed by the local Humane Society that he had abused an elephant with an ankus (hooked metal stick) on the show grounds last summer. And besides, the circus business has been booming since Sept. 11, as audiences seek familiar entertainment close to home.

So, why the full-page ad? Why the aggressive tone of the ostensible victor?

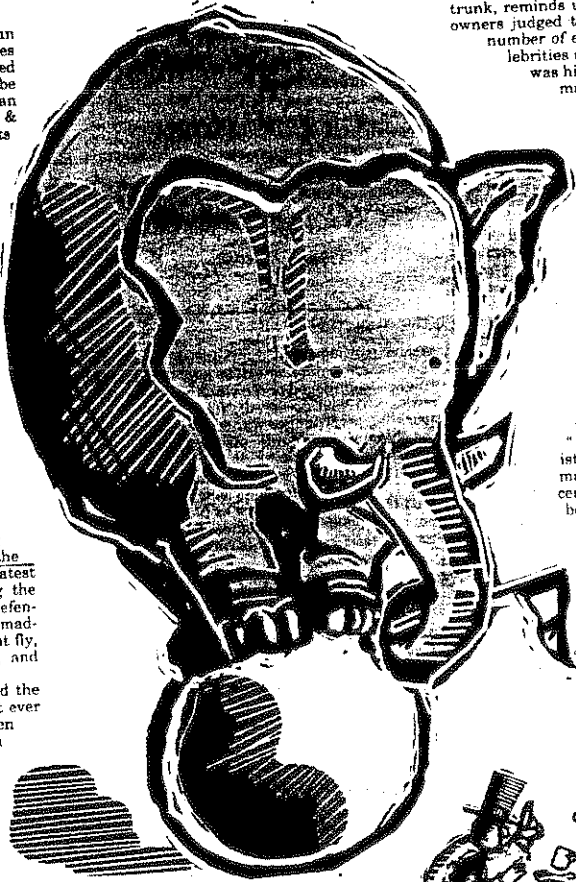
We can't be certain of Feld's precise motive, but we know that these recent episodes, as well as ongoing lawsuits against the Ringling show by PETA and the American Society for the Prevention of Cruelty to Animals, are only the latest in a long series of cultural battles involving the American circus. The circus has been on the defensive virtually from the start — this culture of nomadic outsiders, filled with animalized humans that fly, humanized animals that dance on two feet, and bawdy, grease-painted clowns in drag.

President George Washington, for one, loved the show he saw in Philadelphia in 1793, the first ever by an American circus. But many clergymen were uneasy with displays of itinerant human beings — particularly "half-dressed" women in knee-length skirts — calmly standing atop galloping horses, walking across the tightrope and twirling on the trapeze. The clergy also decried the preponderance of tagalong gamblers who played games of chance with the audience and often gave the show owners a cut of the profits. Soon, the circus became a target of local and state regulation. Connecticut outlawed it until 1840, and Vermont virtually taxed it out of the state.

At that time, in an agrarian society where animals worked side by side with people in the fields and on the streets, the circus animal was accepted fairly easily. But this changed in the latter half of the 19th century, as trolleys, trains and later automobiles displaced working animals. Evolutionary theory, which highlighted the biological relatedness of all living things, also prompted many Americans to reassess their relationship to animals. And the female performer, an emblem of the circus's earlier disrepute, was no longer a target of censure in a society where greater numbers of women were entering public life as wage earners, reformers and participants in a new "physical culture" movement — riding bicycles, swimming, playing tennis and lifting weights.

The U.S. animal welfare movement, as it was then called, came to life in this cultural climate and soon became the circus' leading enemy. Established in 1866, the ASPCA relentlessly acted to remove signs of visible animal suffering. According to the historian James Turner, the introduction of analgesics and anesthetics showed that pain was longer a dreary fact of life simply to be tolerated; instead, it became increasingly stigmatized, for people and animals.

In 1880, the ASPCA president, Henry Bergh, publicly protested the fact that the acrobatic horse Sala-



Newspaper illustration / Jack Sherman

People fill the seats, but the American circus is forever on the defensive

mander jumped through flaming hoops. Placated by P.T. Barnum's assurance that his horse was in no danger, the ASPCA dropped its fight to banish the act. In Denver, Humane Society officials were outraged in 1891, when a phony story leaked to the press stated that Adam Forepaugh's circus fed Denver's excess dog and cat population to the show's tigers.

Circus proprietors publicly denied any wrongdoing. They had eagerly incorporated exotic animals, supposedly as a way to educate audiences and offset accusations of impropriety. But they were on the defensive — even in an era when the circus reached the height of its popularity and profitability. In the 1880s, showmen stressed that animal trainers practiced the "kindness method" of training in which animals learned their stunts through a rewards system, without beating.

All along, the pachyderm has been a central object

of concern, as the recent Ringling newspaper advertisement, seemingly spoken from an elephant's trunk, reminds us. By the late 19th century, circus owners judged their shows' worth in terms of the number of elephants they owned. Elephant celebrities such as Jumbo, a sensation until he was hit and killed by a train in 1885, often made or broke showmen's fortunes.

Besides the Gebel court case, the ASPCA and two other groups sued Ringling Brothers in April, 2001, charging that the circus' transportation of elephants was cruel and in violation of the Federal Endangered Species Act. A federal judge threw out the case, but in 1998 the circus settled with the federal Department of Agriculture for \$20,000 when a baby elephant died after a performance. (The money went to elephant conservation efforts.)

Justifying his elephant breeding program, Feld states in the newspaper ad that the elephants are "dying out there" in a "wild" which, in reality, no longer exists. His critics counter that this hardly makes the circus more humane. In a recent newspaper interview, Lisa Weisberg of the ASPCA stated that the Ringling Bros. elephant facility was simply a site for breeding more performing elephants.

And this sentiment, of course, cuts to the heart of the debate: Is it ethical to train wild animals for performance? Scientific research increasingly emphasizes the sentient nature of animals. TV and movie images of wild animals living in their native habitat also makes many people uneasy with an entertainment form that is dependent on confounding the boundaries between animal and human, wild and tame.

Protests against the billion-dollar pet care industry, use of laboratory animals, industrial hog farms and deer hunting all speak to a state of philosophical flux regarding how we view animals. For animal rights activists, the notion of wild animals trained to perform, or even living in captivity, is morally repugnant. Yet for its fans, the circus represents a long tradition of

working with animals to fulfill human and — arguably — animal needs. The rise and profitability of animal-free circuses over the last two decades — most famously, the Cirque du Soleil — could be a sign of things to come. The circus has survived for more than two centuries partly by changing with the times, but mostly because times have changed around it. People still flock to the old-fashioned circus, but whether that will continue for very long is an open question. The Ringling newspaper ad may be a sign that our largest, most famous circus is not so sure.



Janet M. Davis teaches American studies and history at the University of Texas at Austin. Her book, "The Circus Age: Culture and Society Under the American Big Top," will be published in the fall.