

## 1 UNITED STATES DISTRICT COURT

2 DISTRICT OF COLUMBIA

3  
4 AMERICAN SOCIETY FOR THE  
5 PREVENTION OF CRUELTY TO  
6 ANIMALS, ET AL

CIVIL ACTION NO. 03-02006

7 WASHINGTON, D.C.

8 VERSUS

THURSDAY, MARCH 6, 2008

9 RINGLING BROTHERS AND BARNUM &  
10 BAILEY CIRCUS, ET AL

10:00 A.M.

11 **EVIDENTIARY HEARING**

12 BEFORE THE HONORABLE JOHN M. FACCIOLA

13 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

14  
15 A P P E A R A N C E S:

16 FOR THE PLAINTIFFS,

17 ERIC R. GLITZENSTEIN, ESQ.  
18 HOWARD M. CRYSTAL, ESQ.  
19 KIMBERLY D. OCKENE, ESQ.  
20 MEYER, GLITZENSTEIN &  
21 CRYSTAL  
22 1601 Connecticut Ave., NW  
23 Suite 700  
24 Washington, D.C. 20009  
25 (202) 588-5206MATTHEW F. STOWE, ESQ.  
PAUL, HASTINGS, JANOFSKY &  
WALKER, LLP  
875 15th Street, NW  
Washington, DC 20005  
(202) 551-1700

FOR THE DEFENDANTS,

JOHN M. SIMPSON, ESQ.  
LISA Z. JOINER, ESQ.  
GEORGE A. GASPER, ESQ.  
KARA PETTEWAY, ESQ.  
FULBRIGHT & JAWORSKI, LLP  
801 Pennsylvania Avenue, NW  
Washington, D.C. 20004  
(202) 662-4501

REPORTED BY:

WENDY C. RICARD, CCR, RPR  
OFFICIAL COURT REPORTER  
333 Constitution Ave., NW  
#6718  
Washington, D.C. 20001  
(202) 354-3111

Proceedings recorded by mechanical stenography.

Transcript produced by computer-aided transcription.

# I N D E X

## WITNESSES:

## PAGE:

TRACY SILVERMAN

BY MS. JOINER

8

BY MR. GLITZENSTEIN

46

MICHAEL MARKARIAN

BY MR. GASPER

50

## EXHIBITS:

PLAINTIFFS' EXHIBIT NO. 7 (Tab "C" documents) 47

DEFENDANTS' EXHIBIT NO. 23 (Interrogatories/  
Documents) 49

DEFENDANTS' EXHIBIT NO. 45 (Declaration/  
Documents) 85

**P-R-O-C-E-E-D-I-N-G-S**

THE DEPUTY CLERK: Civil case # 03-02006, American Society for the Prevention of Cruelty to Animals versus Ringling Brothers and Barnum and Bailey Circus, et al.

For the plaintiff is Katherine Meyer, Kimberly Ockene, Eric Glitzenstein. Representing the defendant is Lisa Joiner, John Simpson, George Gasper, Kara Petteway.

This is an evidentiary hearing. Also present is Ms. Jane Lyons(Phonetic) from the United States Attorney's Office.

THE COURT: Ms. Lyons, would you come up please? Ms. Lyons, as I've explained to you, a question arose pursuant to an obligation I had to review certain documents which had been redacted as your role in transmitting those documents to one or both of the parties in this case.

Ms. Lyons, would you be so kind as to tell them what you told me?

MS. LYONS: I'm afraid I don't recall with precision the conversations I had either with Mr. Gasper or with you, but I can state for the record that I settled the ASPCA versus Department of Agriculture, civil action 05-840, which was also pending before Judge Sullivan, with the intention of allowing the maximum amount of information to be released to the parties, but we released it through the ASPCA's lawyers for more -- you could say enlightened redaction and application of FOIA exemptions and governmental privileges that we were

1 fighting about. And that was our intention when we released  
2 the documents to the ASPCA, that they would, with a better eye  
3 than someone at the USDA, with their black magic marker --  
4 with a better eye, they could redact the documents more  
5 appropriately and, hopefully, minimize the disputes in  
6 discovery in this case.

7 THE COURT: And what happened then?

8 MS. LYONS: Well, I received phone calls from Mr.  
9 Gasper twice; Ms. Ockene has called me a couple of times.  
10 You've called me a couple of times.

11 THE COURT: Okay. But to back up a bit, the suit  
12 that was pending before Judge Sullivan was a suit by the ASPCA  
13 that sought under FOIA certain documents that were in the  
14 possession of the Department of Agriculture.

15 MS. LYONS: Yes. They were also sought under a  
16 subpoena, and we settled the matter purely under the subpoena.

17 THE COURT: And you made these documents available  
18 to -- when you made the documents available to the ASPCA, were  
19 there any redactions that had been done by the agency pursuant  
20 to the exceptions under FOIA?

21 MS. LYONS: They had received most of the documents  
22 previously in a redacted form, and we had filed -- indicies  
23 and assertions of governmental privilege with Judge Sullivan.

24 THE COURT: Uh-huh.

25 MS. LYONS: And then to settle the lawsuit, we

1 provided the same documents, plus a few more that we had found  
2 during the settlement negotiations, in an unredacted form, but  
3 with the intention that the information in them would still be  
4 protected and used only in this litigation, and at the  
5 conclusion of this litigation either be destroyed or returned  
6 to the agency.

7 THE COURT: And I take it -- thank you, Ms. Lyons.  
8 Does anybody have any questions of Ms. Lyons? Then to pick up  
9 the thread, when the documents are given to the ASPCA, then  
10 are any additional redactions made? Mister --

11 MS. OCKENE: Thank you, Your Honor. When we  
12 received the documents pursuant to our settlement agreement  
13 with the USDA, the only redactions we made in turning the  
14 materials over to the defendant, pursuant to our discovery  
15 obligations with the defendant in this case, we only sought to  
16 redact the names and specific identifying information like  
17 Social Security numbers and address of individuals who we  
18 believed were not yet known to the defendant, and who had  
19 lodged complaints or otherwise alerted the USDA to the  
20 mis-treatment of the animals by Ringling Brothers. So we were  
21 seeking to protect the legitimate privacy interest of third  
22 parties.

23 THE COURT: And those are documents which I in turn  
24 reviewed which are on the CD-rom.

25 MS. OCKENE: Correct, Your Honor.

1 THE COURT: Thank you, ma'am. Any questions for Ms.  
2 Lyons by anyone?

3 MR. GASPER: Your Honor, may we respond to Ms.  
4 Ockene's -- it's more to address the Court than Ms. Lyons.

5 THE COURT: Well, if you need Ms. Lyons, she has  
6 other things to do. Do you need --

7 MR. GASPER: No, Your Honor.

8 THE COURT: All right. Thank you very much, Ms.  
9 Lyons. You're excused. I appreciate your coming today.

10 MS. LYONS: Thank you, Your Honor.

11 THE COURT: You're welcome. Yes, sir.

12 MR. GASPER: Good morning, Your Honor. George  
13 Gasper for the defendant. Just following up so that the  
14 record is clear here that what's been redacted by plaintiffs,  
15 we understand, is the names of individuals, as well as other  
16 information. The other information is in our notes back at  
17 the office, but, in terms of the names of the individuals,  
18 this isn't necessarily a privacy matter. These are people who  
19 would be potential witnesses in this case, and so it's the  
20 identity of potential witnesses the plaintiffs have now been  
21 given access to, but not the defendant.

22 And so -- there's a case back in 2007, Your Honor --  
23 I do not have the citation with me -- but it's one of your  
24 cases in which you held that what one side has access to under  
25 Rule 45, the other side has equal access to.

1 THE COURT: Let me explain what I did. When I got  
2 the CD-rom, all right, I went back through them and looked at  
3 that the redactions, and they were redactions of identifying  
4 information of people who made complaints.

5 MR. GASPER: Yes, Your Honor.

6 THE COURT: And why were those redactions improper?  
7 I thought that's what Ms. Lyons just told us.

8 MR. GASPER: The redactions are improper in the  
9 sense that what's now been given to plaintiffs is the identity  
10 of people who could be witnesses in this case, either that  
11 could have been deposed by Feld already or could be called by  
12 either side, and so these are people who have -- the  
13 underlying complaints here of the USDA involve the same  
14 allegations that are at issue in this lawsuit, and so these  
15 are people who have witnessed actions that are at issue in  
16 this lawsuit.

17 THE COURT: Let's proceed because we've got witnesses  
18 here. We'll have to put this to one side, and I'll put it  
19 down for separate hearing. Call your next witness.

20 MS. OCKENE: May I respond just briefly?

21 THE COURT: Well, we're going to -- I've got to go  
22 back over this myself. I'm going to have to look at them  
23 again and refresh my recollection as to what's going on here.  
24 But I wanted to make sure you both had a chance to hear what  
25 Ms. Lyons told me because, now, I understand what happened;

1 but now I've got to go back through them one by one and see  
2 what was deleted.

3 MS. OCKENE: For the record, Your Honor, we do not  
4 intend to call any of the witnesses, any of the individuals,  
5 whose names are redacted.

6 THE COURT: All right. As I say, we'll have to put  
7 it to one side. I'll have to pull out -- look at it again.  
8 Okay. Please call your next witness.

9 MS. JOINER: -- Tracy Silverman, Your Honor.

10 THE COURT: I'm sorry?

11 MS. JOINER: Tracy Silverman.

12 THE COURT: Ms. Silverman, please. Once again, all  
13 other witnesses must step out.

14 THE DEPUTY CLERK: Ms. Silverman has already been  
15 sworn.

16 THE COURT: Yes, she has. Ms. Silverman, I remind  
17 you you're under oath.

18 THE WITNESS: Yes, Your Honor. Thank you.

19 \* \* \* \*

20 **TRACY SILVERMAN**, called as a witness herein, after  
21 having been duly sworn previously, testified as follows:

22 \* \* \* \*

23 **BY MS. JOINER:**

24 Q. Excuse me. Ms. Silverman, when we left off the other  
25 day, you had identified approximately five conference calls in



1 which you had communications with the organizational  
2 plaintiffs regarding Mr. Rider's funding, correct?

3 A. I don't recall, but I'll take your word for it.

4 Q. Who participated in those five conference calls?

5 A. And these are the conference calls again about funding?

6 Q. That's correct.

7 A. That would have been the organizational plaintiffs  
8 involved in the lawsuit.

9 Q. And who from the organizational plaintiffs would have  
10 participated?

11 A. Most likely it would have been Lisa Weisberg from the  
12 ASPCA; Nicole Paquette from the Animal Protection Institute,  
13 and that was when she was officially a plaintiff -- or I'm  
14 sorry -- when API had become a plaintiff; myself; Cathy Liss  
15 from AWI; and, I believe, John Lavern and/or Ethan  
16 Eddy(Phonetic) for the Fund.

17 Q. Did Ms. Meyer also participate from the Wildlife  
18 Advocacy Project?

19 A. Not in those calls that we were talking specifically  
20 about contributions from the group, specific dollar amounts. I  
21 can't recall if she was on any of those phone calls. I know  
22 she's been on phone calls when we talked about media strategy,  
23 and if there happened to be a call where those things  
24 overlapped, she may have been on. But I do remember one call  
25 where she actually got off when we were talking about specific

1 funding.

2 Q. So you do remember at least one call where she was --

3 A. I'm sorry?

4 Q. You do remember at least one call where Ms. Meyer was on  
5 the phone?

6 A. I don't ever recall her being on the phone when we talked  
7 specifically about dollars and funding.

8 Q. Okay. Can you tell us, please, what the co-plaintiffs  
9 discussed with regard to funding?

10 MR. GLITZENSTEIN: Your Honor, this is same  
11 objection we've made. We have a pending motion, if you  
12 recall, from our hearing last week on exactly these conference  
13 calls. We're filing our brief tomorrow, and I think Your  
14 Honor ruled that, subject to your reviewing that motion, you  
15 would sustain an objection until you have a chance to review  
16 this, so this is getting back into the same issue.

17 THE COURT: Sustained.

18 BY MS. JOINER:

19 Q. Did Mr. Rider ever participate in any of these calls?

20 A. No.

21 Q. Why was that?

22 A. The fund -- whenever we talked about funding for the  
23 media campaign, there was really no reason for Mr. Rider to  
24 be on any of those calls.

25 Q. Who ultimately received the funding for the media

1 campaign?

2 A. For the most part, the funding went through the Wildlife  
3 Advocacy Project.

4 Q. And the Wildlife Advocacy Project gave it to whom?

5 A. I don't know where all the money goes for the Wildlife  
6 Advocacy Project, but I do know that some funds that go  
7 towards the Wildlife Advocacy Project go towards our media  
8 campaign, and Tom Rider who is the one who is the sole actor  
9 in our media campaign.

10 Q. Is there anybody else, to your knowledge, at the Wildlife  
11 Advocacy Project other than Mr. Rider who is conducting a  
12 media campaign?

13 A. Not that I know of.

14 Q. Did you take any notes from these conference calls?

15 A. No.

16 Q. And were there any follow-up communications that resulted  
17 from any of these conference calls?

18 A. There may have been follow-up calls.

19 Q. Approximately, how many?

20 A. Very few. I couldn't give you a specific number. I'm  
21 sorry.

22 Q. Okay. So I believe you testified that you started at the  
23 Animal Welfare Institute in February of 2005?

24 A. Five, yes.

25 Q. So the conference calls that you're referencing would

1 have been after you started; is that correct?

2 A. Those are the ones that I'm testifying to, yes.

3 Q. Okay. Do you know whether there were any conference  
4 calls prior to you starting?

5 A. I don't know.

6 Q. Who at AW -- if I use AWI for Animal Welfare Institute,  
7 will you understand what I mean?

8 A. Yes.

9 Q. Can you tell us who at AWI knew about the payments that  
10 were being made to or for Mr. Rider?

11 A. Other than me, it would be Cathy Liss and Jill Umphlett.

12 Q. I'm sorry. What was the last name?

13 A. Umphlett. She would have known about some of them.

14 THE COURT: Why don't you spell that for the  
15 reporter, please?

16 THE WITNESS: I think her last name is spelled  
17 U-M-P-H-L-E-T-T.

18 BY MS. JOINER:

19 Q. And does Ms. Umphlett have a position at AWI?

20 A. I believe her title is administrative assistant.

21 Q. To anybody in particular?

22 A. No. She's just our receptionist, and she'll handle  
23 checks that go out and bookkeeping, that kind of thing.

24 Q. Okay. Did anybody at AWI have to approve the funding for  
25 Mr. Rider?

1 A. Cathy Liss.

2 Q. And are there any documents that are related to that  
3 approval?

4 A. No.

5 Q. Does AWI have a board of directors?

6 A. Yes.

7 Q. And were the Rider payments ever discussed at board  
8 meetings or with board members?

9 A. I don't believe so, but I've never attended a board  
10 meeting, unless it was just to drop by and say hello to board  
11 members. That would be something that Cathy Liss would know.

12 Q. And you previously identified for us that AWI has made  
13 payments directly to Mr. Rider by check and wire transfer,  
14 correct?

15 A. That's correct.

16 Q. Were there any other type of payments that AWI made  
17 directly to Mr. Rider?

18 A. I don't believe so.

19 Q. Can you explain for us what the process is for requesting  
20 a check at AWI?

21 A. Generally, I would just ask Jill if she could write a  
22 check and send it over to the Wildlife Advocacy Project. I'm  
23 assuming you're talking about specific to the media campaign  
24 in this case.

25 Q. Yeah. I'm just asking the general business practice for

1 AWI to issue a check.

2 A. Well, if I were the one that was asking for the check, I  
3 would have a communication with Cathy Liss about it. I would  
4 call her and say I'd like a check for such and such a purpose,  
5 and she would say "yes" or "no"; and if she said, yes, then I  
6 would ask Jill to please send a check to whoever I wanted it  
7 to go to.

8 Q. And by "Jill", you mean Ms. Umphlett?

9 A. Yes. I'm sorry, Jill Umphlett.

10 Q. Is there a check request form?

11 A. No.

12 Q. And is there anybody other than Ms. Liss that approves  
13 checks?

14 A. No.

15 Q. And who at AWI has check signing authority?

16 A. Cathy Liss.

17 Q. Is there anybody else?

18 A. Not that I'm aware of, no.

19 Q. And so is there any accounting department at AWI?

20 A. No.

21 Q. So Ms. Umphlett is the one who is responsible for  
22 physically preparing the check?

23 A. That's correct.

24 Q. And how does Ms. Umphlett keep a record of the checks  
25 that she writes?

1 A. I believe she has a software program that she uses called  
2 QuickBooks.

3 Q. Does she physically write out checks?

4 A. You know, I'm not really sure. I ask her for the check,  
5 and she sends it out. I'm not sure specifically how the  
6 process goes.

7 Q. So she doesn't give the check back to you, she sends it  
8 herself?

9 A. She sends it herself, that's correct.

10 Q. And how does she know where to send it?

11 A. Well, if it's a check that I have requested, I'll tell  
12 her where to send it.

13 Q. Do you provide her with the address?

14 A. Yes.

15 Q. And are you aware of any other kind of recordkeeping that  
16 AWI has besides the software program that you've mentioned?

17 A. I don't keep those records, so that is isn't something I  
18 would know. I'm sorry.

19 Q. Okay. When you travel, do you have to do expense reports  
20 for reimbursements?

21 A. Yes.

22 MS. JOINER: May I approach, Your Honor?

23 THE COURT: Sure.

24 BY MS. JOINER:

25 Q. What I'd like to direct your attention to is tab "C" here

1 of plaintiffs' exhibits and, specifically, perhaps, maybe, 10  
2 or 15 pages into it, if you can find AWI 8807 to 8808.

3 A. Are you referring to the Bates stamps?

4 Q. Yes, ma'am.

5 A. Well, the tenth one that I have is 06504.

6 Q. Okay. Keep going. You're almost there. A couple more  
7 pages.

8 A. Okay. I think I'm with you.

9 Q. Have you found it?

10 A. 08807; is that where you want me to start?

11 Q. Yes, ma'am. And I believe it's a two-page document that  
12 continues on.

13 A. Yes.

14 Q. Okay. Do you recognize this document?

15 A. Yes, I do.

16 Q. Okay. Can you explain for us what it is?

17 A. Sure. This appears to be my expense report from the  
18 expenses I had at a press conference I participated in  
19 Sacramento, California, back in September of 2005.

20 Q. Did Mr. Rider attend that with you?

21 A. Yes.

22 Q. Do these amounts in here reflect travel for Mr. Rider or  
23 just for you?

24 A. Travel just for me.

25 Q. And what about the entry for the lodging; does that



1 reflect an expenditure just for you or Mr. Rider?

2 A. That reflects an expenditure just for me.

3 Q. Okay. Did Mr. Rider have any kind of an expense report  
4 like this for AWI?

5 A. No.

6 Q. Does Mr. Rider do expense reports for AWI?

7 A. No.

8 Q. If you would turn now in that same tab to 10118, which is  
9 towards the back -- I think it's actually the third from the  
10 back.

11 A. Okay.

12 Q. Found that?

13 A. Yes.

14 Q. Okay. Have you seen this document before?

15 A. Yes.

16 Q. Okay. It is a January 3, 2008 check from the Animal  
17 Welfare Institute to Mr. Tom Rider; is that correct?

18 A. It's a little bit difficult to read, but I believe that's  
19 what this is, yes.

20 Q. The copy is a little dark. What is the amount of this  
21 check?

22 A. \$750.

23 Q. And whose signature is on the check?

24 A. Cathy Liss.

25 Q. And what does the memo line for the check say?

1 A. Elephant media.

2 Q. So why did AWI pay Mr. Rider directly at this time?

3 A. I don't remember specifically why we did on this  
4 particular occasion.

5 Q. Did Mr. Rider ask for this particular amount?

6 A. I don't recall.

7 Q. How did you know where to send this check to?

8 A. Mr. Rider would have told me where he was located and  
9 where to send the check for those checks that we sent directly  
10 to him.

11 Q. And would you have needed to have written that  
12 information down at the time that he provided it?

13 A. Not necessarily.

14 Q. The address, you would not have needed to have written  
15 down?

16 A. No. Sometimes Jill would be in my office, and I would  
17 just tell her. I would be on the telephone with Mr. Rider,  
18 and I'd say, Jill, I need a check request. I need to send a  
19 check to Mr. Rider. And if she happened to be in my office  
20 -- this could have been a particular time when she was -- I  
21 would just tell her.

22 Q. So would she write down the address as to where to send  
23 this to Mr. Rider?

24 A. Perhaps. But you'd have to ask her that question.

25 Q. Do you know how this was sent to Mr. Rider, what the

1 means were?

2 A. No, I don't recall.

3 Q. Does AWI have a set payment schedule for Mr. Rider?

4 A. No.

5 Q. How does it know when to make payments for Mr. Rider?

6 A. Well, we never have to make payments for Mr. Rider.

7 These are grant contributions that we make to him for our  
8 media campaign, just so that we're clear about that. I talk  
9 to Mr. Rider regularly. I also talk to Kathy Meyer at the  
10 Wildlife Advocacy Project, so I am somewhat familiar with how  
11 much money there is for the media campaign, and when we feel  
12 that there is a time where the funds are low or we need money  
13 to do a certain media event, then that would be a time that we  
14 would send Mr. Rider a check or send money to the Wildlife  
15 Advocacy Project for that purpose.

16 Q. So you would have a phone conversation with either Mr.  
17 Rider or Ms. Meyer?

18 A. Exactly.

19 Q. Do you know where Mr. Rider currently is right now?

20 A. I do.

21 Q. What's his current address right now?

22 A. I don't feel comfortable disclosing that.

23 THE COURT: Why is that relevant?

24 MR. GLITZENSTEIN: I object to that, Your Honor.

25 He's doing this media campaign, and there's also an

1 outstanding request that the defendants have made that we're  
2 briefing right now on these Federal Express labels. We have  
3 given the information about the cities that Mr. Rider goes  
4 to. we have deleted the precise addresses precisely because,  
5 in all candor, we think that if they know where Mr. Rider is  
6 when he goes to the cities where he does his media campaign,  
7 that can be used to disrupt his campaign, follow him.

8 In the pending motions they've made, they've said  
9 they want to contact his friends and relatives. We're making  
10 an argument that you may ultimately accept or not accept --  
11 we're making an argument that this is interfering with his  
12 activities and interfering potentially with third parties in a  
13 way that we don't believe is appropriate, and I think that's  
14 basically in part what this is designed to accomplish.

15 THE COURT: Counsel?

16 MS. JOINER: Can I respond to that? We don't think  
17 there is any evidence to support the notion that we're  
18 following or doing whatever other nefarious deeds for Mr.  
19 Rider. Mr. Rider is a witness that sits in the midst of all  
20 of this. He should be subpoenaed, and he should be here to  
21 testify, and hiding his address is going to come up later when  
22 we come to the issue of whether or not his testimony can be  
23 used and how. So his actual address --

24 THE COURT: In this hearing or in the trial?

25 MS. JOINER: That is correct, for both.

1 THE COURT: Is he -- when you say you don't want to  
2 give his address, don't give his address, but he's somewhere  
3 in America?

4 THE WITNESS: Yes, he is.

5 THE COURT: Thank you. Move on.

6 BY MS. JOINER:

7 Q. Does AWI have a process for sending a wire transfer?

8 A. Not a formal process, no.

9 Q. Okay. So does -- is there any kind of an account that  
10 AWI has, for example, at Western Union?

11 A. I don't know.

12 Q. Okay. So in those instances where AWI wired Mr. Rider  
13 money, were you involved with that?

14 A. Not specifically with the wire transfer, but I may have  
15 requested that funds be sent to Mr. Rider.

16 Q. Okay. And who did you ask to send those funds to Mr.  
17 Rider?

18 A. Well, when I have in the past, it's always been to Jill  
19 Umphlett.

20 Q. Okay. And do you know how AWI actually arranges for  
21 those wire transfers?

22 A. No, I don't. When we were doing -- when we were  
23 producing materials for discovery and looking back at the wire  
24 transfers that we had done, I had talked to Jill Umphlett  
25 about it because I don't really know how Western Union works

1 because I don't do any of the wire transfers, and there was  
2 one wire transfer that she had done, and it was the first time  
3 that she had done it, so she just told me how she had done it.

4 Q. How did she explain what she -- can you tell us what she  
5 did to make that wire transfer?

6 A. Sure. She got a check -- I believe it was for \$600. We  
7 wanted to send \$500 to Mr. Rider for the media campaign, and  
8 there was a wire transfer fee of \$30 or \$35 or whatever it  
9 was. So she went and got a check, and she cashed it for \$600  
10 and then she went -- I'm not sure where she went to do the  
11 wire transfer, but it ended up being 535 or \$36 with the fee.

12 And she went ahead and did the wire transfer, and then  
13 the rest of the money came back to AWI into petty cash. And I  
14 think prior to that the wire transfers that we had done had  
15 been done by credit card, if I recall.

16 Q. And are there any kinds of records or receipts that are  
17 kept with petty cash?

18 A. I don't know.

19 Q. Do you know whether there is a cost involved with sending  
20 a wire transfer?

21 A. I believe there is a fee from my discussions with Ms.  
22 Umphlett.

23 Q. And did Ms. Umphlett get a receipt for that wire  
24 transfer?

25 A. I don't know.

1 Q. So you don't know if AWI has a receipt for that or not?

2 A. If we do have a receipt for it, we would have produced it  
3 in discovery. I just -- I'm sorry. I can't recall.

4 Q. And at AWI does anybody have to approve money transfers?

5 A. Again, that would be Cathy Liss.

6 Q. Okay. If you would flip back in the same tab, "C", a  
7 couple of pages, to AWI-10116. It's five from the end.

8 A. Okay. I see it.

9 Q. Find that?

10 A. Yes.

11 Q. Have you ever seen this document before?

12 A. Yes.

13 Q. Okay. What is it?

14 A. It appears to be a receipt from a Western Union money  
15 transfer.

16 THE COURT: I'm sorry. What's the number again; AWI  
17 10016?

18 MS. JOINER: I'm sorry; 10116.

19 THE COURT: 10116.

20 MS. JOINER: Yeah. It's five from the end.

21 THE COURT: Thank you. I see it. Ms. Silverman,  
22 what did you just say about this document?

23 THE WITNESS: I said that it appears to be a  
24 receipt from a Western Union money transfer.

25 BY MS. JOINER:

1 Q. Who is -- at the top, it says: "Dear Suzan  
2 Milward(Phonetic)". Who is Susan Milward?

3 A. Susan Milward is an employee of the Animal Welfare  
4 Institute.

5 Q. And what is her title?

6 A. I don't know her title.

7 Q. Did she make this money transfer?

8 A. It appears so, yes.

9 Q. Was this particular transfer done over the Internet or by  
10 some other means?

11 A. I'm not sure by looking at the document, and I didn't do  
12 it so I can't answer the question. I'm sorry.

13 Q. Okay. If you look down underneath transaction details,  
14 it says: "Your money transfer control number is" and then  
15 it's redacted. Do you know what a money transfer control  
16 number is?

17 A. No.

18 Q. Okay. Do you know how Mr. Rider then goes to retrieve  
19 the wire funds?

20 A. No.

21 Q. And how did Ms. Milward pay Western Union? Was this  
22 check, cash, or credit card transaction?

23 A. I believe it was a credit card.

24 Q. And whose credit card was it?

25 A. It's hard for me to tell by looking at the document, but



1 I believe Ms. Milward has an AWI credit card.

2 Q. If this would have been charged to a credit card, would  
3 Ms. Milward then be reimbursed?

4 A. Not if it was an AWI credit card.

5 Q. If it was an AWI credit card, then AWI would have paid  
6 the bill directly?

7 A. To the credit card company?

8 Q. Yes. I'm sorry.

9 A. Yeah.

10 Q. Do you know where that credit card statement is?

11 A. If we have a copy of it, it would have been produced in  
12 discovery.

13 Q. Do you know whether the money transfer control number  
14 changes with each wire transfer or not?

15 A. No, I don't.

16 Q. Okay. Now, if you would turn three more pages towards  
17 the back, please, and look at AWI-10119.

18 Q. Have you found that?

19 A. Yes.

20 Q. Can you explain what this document is?

21 A. Yes. It's a check to the Wildlife Advocacy Project in  
22 the amount of \$4,500 for media.

23 Q. Okay. And what's the date of the check?

24 A. January 11th, 2008.

25 Q. And who signed this particular check?

1 A. Cathy Liss.

2 Q. All right. So on January 11th, if you look back, that is  
3 the same date that money was also being wired directly to Mr.  
4 Rider; is that correct?

5 A. I'll have to look back at the other document.

6 Q. Yeah. Just flip it a couple of pages earlier to the wire  
7 transfer.

8 A. That's correct.

9 Q. Okay. So who -- Ms. Milward did the wire transfer  
10 directly to Mr. Rider on that day, correct?

11 A. It appears so from the document, but I can't tell you for  
12 sure.

13 Q. And how would Ms. Milward know where to send that to?

14 A. Well, again, my communications whenever I've requested  
15 grant money for Mr. Rider has been through Jill Umphlett. If  
16 Jill Umphlett isn't available, she would contact Susan  
17 Milward. As far as an address to send it, that would either  
18 come from me or Ms. Umphlett.

19 Q. And then if you look over to the check that's dated the  
20 same date, this was going to the Wildlife Advocacy Project,  
21 correct?

22 A. Correct.

23 Q. Is there any reason why payments were going out to the  
24 Wildlife Advocacy Project and to Mr. Rider directly on the  
25 same day?

1 MR. STOWE: Objection, Your Honor. What's the  
2 relevance of this to whether or not documents have been  
3 searched for and produced?

4 THE COURT: I'm hoping that will become clear.  
5 Answer the question.

6 THE WITNESS: I don't remember on this particular  
7 occasion why that occurred; however, there were times that we  
8 needed to get money to Mr. Rider for media for one reason or  
9 another in a short period of time, and I know that wire  
10 transfer is a pretty quick way of doing that. Sometimes when  
11 we contribute money into the Wildlife Advocacy Project, it  
12 takes time for money to get there, to be processed, and then  
13 the money to go out to Mr. Rider.

14 So on this particular occasion, I can only guess  
15 that was the situation, that we wanted to get money to Mr.  
16 Rider for a particular media event or travel or whatever it  
17 happened to be.

18 BY MS. JOINER:

19 Q. Do you know who prepared this particular check on January  
20 11th, 2008?

21 A. No, I don't. It was signed by Ms. Liss.

22 Q. Do you know whether there would have been any documents  
23 related to the addressees for both of these payments?

24 A. In terms of a written document with an address?

25 Q. That's correct. Would there have been any kind of notes

1 written down as to where to send these two payments?

2 A. I don't know. It may have been written on a scrap piece  
3 of paper. I really don't know because I didn't do it.

4 MS. JOINER: Can I approach, Your Honor?

5 THE COURT: Sure.

6 MS. JOINER: This is the August order. Do you need  
7 a copy? (Speaking to Mr. Glitzenstein.)

8 BY MS. JOINER:

9 Q. This is the August 23, 2007 discovery order. Have you  
10 had a chance to look at it?

11 A. That's what it is. I haven't had a chance to read  
12 through it, again, but, yes.

13 Q. Have you previously seen this document?

14 A. Yes.

15 Q. And read through it?

16 A. Yes.

17 Q. Okay. Were you the person at AWI who was responsible for  
18 searching for documents that were called for by this order?

19 A. Yes.

20 Q. Okay. If you would like to look at the language on pages  
21 six and seven that pertains to the productions for the  
22 organizational plaintiffs; if you want to orient yourself.

23 A. Which part? I'm sorry.

24 Q. I would like to focus on the bullet point that begins on  
25 the bottom of paragraph -- Page 6 and continues on.

1 A. Okay.

2 Q. Ms. Silverman, did you have any understanding what that  
3 first bullet point meant?

4 MR. GLITZENSTEIN: Your Honor, I object on the same  
5 grounds that I think you sustained last week, which was that  
6 it unavoidably calls for an attorney/client communication to  
7 be divulged.

8 THE COURT: Well, I think it's a work product. Let  
9 me ask you this, Ms. Sullivan: You read the document?

10 THE WITNESS: Yes.

11 THE COURT: And you had the responsibility of  
12 complying with it on behalf of your organization?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: So without telling us how you arrived at  
15 it, you reached a certain conclusion as to what it meant?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Next question.

18 BY . JOINER:

19 Q. What was your understanding of what needed to be produced  
20 in response to this paragraph?

21 MR. GLITZENSTEIN: I object to the -- it calls for  
22 an attorney/client privilege --

23 THE COURT: Sustained. Work product. Go ahead.

24 MS. JOINER: May I approach, Your Honor?

25 THE COURT: Certainly.

1 BY MS. JOINER:

2 Q. I would like to turn to Defendants' Exhibit 64.

3 THE COURT: You got it, Ms. Silverman?

4 THE WITNESS: I do, Your Honor.

5 BY MS. JOINER:

6 Q. Do you recognize this document?

7 A. Yes.

8 Q. What is it?

9 A. This is an invitation to a benefit that we held in July  
10 of 2005.

11 Q. Was it a fundraiser?

12 A. Yes.

13 Q. And what were the funds being raised for?

14 MR. GLITZENSTEIN: Your Honor, this also goes  
15 precisely to the motion which is being briefed. A fundraiser  
16 that was held by non-profit groups in which people are invited  
17 to attend for the purpose of promoting a group activity is, we  
18 submit, and we will be briefing tomorrow, a quintessential  
19 First Amendment activity, and we would at least ask Your Honor  
20 to hold off on any questioning related to this.

21 THE COURT: Well, it speaks for itself. Let's look  
22 at the second page, Ms. Silverman.

23 THE WITNESS: Okay.

24 THE COURT: All right. We're asked to join Ed  
25 Begley and Valerie Harper at a benefit; that's right. So the

1 document speaks for itself; is that right?

2 THE WITNESS: Yes.

3 MR. GLITZENSTEIN: -- called next, Your Honor.

4 THE COURT: Okay.

5 BY MS. JOINER:

6 Q. Was AWI a host of this event?

7 A. Yes.

8 Q. Was AWI involved in the planning of this event?

9 A. Yes.

10 Q. Did AWI have any communications either orally or in  
11 writing that related to the organization and planning of this  
12 event?

13 MR. GLITZENSTEIN: Your Honor, again, this is --

14 MS. JOINER: It's a "yes" or "no" question right  
15 now.

16 THE COURT: Okay. I'll rule on the objections.  
17 Okay. State your question -- Madam Reporter, read the  
18 question back, would you?

19 (Whereupon, the court read the above question back  
20 at this time.)

21 THE COURT: "Yes" or "No", Ms. Silverman?

22 THE WITNESS: Yes.

23 THE COURT: Thank you.

24 BY MS. JOINER:

25 Q. And who at AWI worked on planning this event?

1 A. I did.

2 Q. Was there anybody else?

3 A. It was primarily me. I had talks with Ms. Liss about  
4 it, but I was the one that was responsible for it.

5 Q. Were there ever any e-mails that related to this  
6 organizing and planning of this fundraising event?

7 A. Yes.

8 Q. And were there ever any hard copy documents that related  
9 to this fundraising event?

10 A. Hard copy documents other than the invitation and --

11 Q. Anything -- the only thing we have is the invitation. So  
12 is there anything other than the invitation?

13 A. Not that I can think of.

14 Q. Okay. Any kind of notes about planning, organizing?

15 A. Notes about the planning?

16 Q. Yes. Were there any kind of notes or documents other  
17 than e-mails that were created during the process of  
18 organizing this event?

19 A. Sure.

20 Q. Do you know what happened to the funds that were raised  
21 from this event?

22 MR. GLITZENSTEIN: Your Honor, once, again, I --

23 THE COURT: Well, that's not appropriate. The  
24 question is: Are you aware of any information pursuant to  
25 Judge Sullivan's order that suggests that the funds that were



1 raised by this event went to pay Tom Rider?

2 THE WITNESS: They did not go to pay Tom Rider, no.

3 THE COURT: Thank you.

4 BY MS JOINER:

5 Q. Would you please turn to Defendant's Exhibit 58? Have  
6 you found that?

7 A. Yes.

8 Q. If you would turn to the second page of this memo that  
9 was produced by the Wildlife Advocacy Project, and if you  
10 would look down at the fourth line which indicates an October  
11 7th, 2005 deposit and the memo portion states: AWI, dash,  
12 from fundraiser in L.A., and the right-hand column indicates  
13 that the amount paid is \$8,000; do you see that?

14 A. Yes.

15 Q. Was there any fundraiser in L.A. that AWI did, apart from  
16 the one where we just looked for the invitation?

17 A. No. Not that I'm aware of.

18 Q. And if you look two lines down on this same document, it  
19 indicates that there was a deposit dated November 23, 2005,  
20 and the memo says: Grant, dollar sign, from AWI, and in  
21 parentheses, from fundraiser in California, and the amount  
22 paid was \$5,427.57; do you see that?

23 A. Yes, I do.

24 Q. And, again, would this be the same fundraiser that we  
25 just looked at the invitation for?

1 A. Yes.

2 Q. Would you turn, please, to Defendant's Exhibit 75? And  
3 you have explained for us that some of the money that AWI pays  
4 to or for Mr. Rider is for van repairs; is that correct?

5 A. That is correct. So that he can participate in the media  
6 campaign.

7 Q. Have you found this Exhibit No. 75?

8 A. Yes.

9 Q. Okay. If you look at the last page -- this is the order,  
10 I believe, in which the documents were produced to us. The  
11 last page of this appears to actually be the first page of the  
12 fax cover sheet; do you see that?

13 A. Yes. Yes.

14 Q. The "To Tracy," that's indicated on there, are you the  
15 "Tracy" that's referenced there?

16 A. Yes.

17 Q. Did you actually receive this document at AWI?

18 A. Yes.

19 Q. Do you still have a copy of this document?

20 A. If I did, I would have given it to my attorneys.

21 Q. Did AWI actually pay this invoice?

22 A. I believe so. Yes.

23 Q. And do you know how that payment was made?

24 A. I can't recall.

25 Q. So it could have been by check, by credit card, or by --

1 is there any other option; check or credit card?

2 A. I believe it would have been by either check or credit  
3 card.

4 Q. Thank you. If we can go back, I'd like to look at tab  
5 "C", again. And, in particular, I'm looking for AWI-9946.

6 A. I'm sorry; 9946 is what you said?

7 Q. Yes, that's correct. Maybe about two-thirds of the way  
8 through.

9 A. Okay.

10 Q. Okay. Is this the payment that you previously identified  
11 for us where the check was written to Ms. Umphlett and then  
12 cashed and then wired to Mr. Rider?

13 A. I'm not sure. The amount is \$600.

14 Q. Right.

15 A. But I'm not sure if this is the one.

16 Q. Well, did this kind of -- did this kind of payment happen  
17 more than once?

18 A. What kind of payment?

19 Q. Where a check was written to Ms. Umphlett, she cashed  
20 it, and then wired the money to Mr. Rider?

21 A. No. I don't believe so.

22 Q. Can you -- I cannot read on my copy the memo line. Can  
23 you read that for us?

24 A. I think it says: Fix me. Tom Rider.

25 Q. And do you know whose handwriting is at the top?

1 A. No, I don't.

2 Q. Has AWI taken steps to preserve documents related to this  
3 case?

4 A. When you say "preserve documents", could you be a little  
5 bit more specific in what you mean by that?

6 Q. To save documents related to this case?

7 A. Yes.

8 Q. Okay. What has AWI done to do that?

9 A. We don't have a formal process by which we preserve  
10 documents, but we do save things when we have them. We don't  
11 throw things away in the case. If we receive documents by the  
12 mail or we receive clippings or anything of that sort, we'll  
13 hold onto them.

14 Q. Are there any e-mails?

15 A. Other than the ones that are on our computers?

16 Q. Any e-mails that relate to this case that AWI has?

17 A. I'm sorry, you had said hard copies so I thought that was  
18 a followup. Sure, we have e-mails.

19 Q. Okay. And has AWI saved all of its e-mails regarding  
20 this case?

21 A. Yes.

22 Q. If you would turn please to Defendants' Exhibit 74; do  
23 you recognize this document?

24 A. Yes.

25 Q. Is this an e-mail that you sent?

1 A. Yes. It appears to be an e-mail that I sent.

2 Q. Okay. And the recipients of this e-mail are indicated in  
3 the two-line --

4 A. That's correct.

5 Q. Okay. Has AWI saved this particular e-mail?

6 A. I'm sure that we did. We try to save all of our e-mails.

7 Q. Are there other e-mails regarding this litigation that  
8 are of this nature?

9 MR. GLITZENSTEIN: Your Honor, foundation. It's not  
10 clear that the e-mail regards this litigation at all, regards  
11 an interview that Mr. Rider did as part of the media  
12 campaign.

13 THE COURT: I'm sorry. Say your question, again,  
14 please.

15 BY MS. JOINER:

16 Q. I'll back up. There is a reference in here that says he  
17 felt really good about the interview; do you see that?

18 A. I do.

19 Q. Okay. So to be more specific, are there other e-mails  
20 that reflect communications that you have had with Mr. Rider?

21 A. Other e-mails?

22 Q. Yes.

23 A. Yes.

24 Q. And have you saved all of them?

25 A. I've tried to.

1 Q. I need to get you the correct binder for the particular  
2 discovery document I want to look at.

3 MS. JOINER: Your Honor, may I approach?

4 THE COURT: Yeah.

5 BY . JOINER:

6 Q. I would like to direct your attention to Exhibit No. 23,  
7 Defense Exhibit No. 23.

8 THE COURT: Defendants' 23?

9 MS. JOINER: Yes, sir.

10 BY MS. JOINER:

11 Q. Have you found that?

12 A. Yes.

13 Q. Do you recognize this document?

14 A. Yes.

15 Q. Okay. Why was it prepared?

16 A. It was prepared because we were asked for supplemental  
17 discovery responses.

18 Q. Was it also prepared pursuant to the Court's August 23,  
19 2007 order?

20 A. Yes.

21 Q. Okay. And if you look at the next to last page, 14, this  
22 document is dated September 24, 2007; is that correct?

23 A. Yes.

24 Q. And if you look at the very last page on the  
25 verification, is that your signature?

1 A. Yes.

2 Q. So were you the person at AWI who was responsible for  
3 preparing these responses?

4 A. Yes, I was.

5 Q. If you would turn please to number 19; have you found  
6 that?

7 A. Yes.

8 Q. Okay. There are no conference calls identified in there  
9 with regard to the organizational plaintiffs and the funding;  
10 is that correct?

11 MR. GLITZENSTEIN: I'm sorry, Your Honor. Sorry to  
12 interrupt, but, as with other witnesses, can we have the  
13 witness read the question that she was supposedly responding  
14 to before she provides answers --

15 THE COURT: Take your time, Ms. Silverman. Read it  
16 carefully.

17 THE WITNESS: Okay, Your Honor. Thank you. Would  
18 you like me to read it aloud or to myself?

19 THE COURT: To yourself.

20 BY . JOINER:

21 Q. Okay. Are there conference calls in there?

22 A. No.

23 Q. Okay. If you would look next, please, and go ahead and  
24 read Interrogatory Number 21. I want to focus on the first  
25 paragraph, but please read the whole thing.

1 A. (Witness complies.)

2 Q. My question with regard to this interrogatory response is  
3 the second sentence to this particular supplemental response  
4 that states -- it's on Page 11: AWI states that although it  
5 did not originally view this information as responsive to this  
6 interrogatory, it is providing the information in compliance  
7 with the Court's order and because defendant has stated that  
8 it views this information as responsive to this interrogatory.  
9 So my question, first, is when it references, "this  
10 information," what is that referring to?

11 A. I believe it's referring to the grants that were provided  
12 for the media campaign.

13 Q. The funding for Mr. Rider?

14 A. Correct. And the media campaign.

15 Q. All right. And when did AWI begin to view this  
16 information as responsive?

17 MR. GLITZENSTEIN: Your Honor, I object on both  
18 attorney/client and, also, work product.

19 THE COURT: It also goes to foundation. Now, your  
20 functioning in this capacity is general counsel of this  
21 organization, right?

22 THE WITNESS: Yes, that's correct, Your Honor.

23 THE COURT: Did you write that statement or was that  
24 statement written by somebody else?

25 THE WITNESS: The statement in its form -- it was



1 written by my attorneys.

2 THE COURT: But you reviewed it?

3 THE WITNESS: I did.

4 THE COURT: Okay. And you didn't disagree with its  
5 contents?

6 THE WITNESS: I did not.

7 THE COURT: Did there ever come a time in this -- in  
8 the preparation of your answer where you discussed what your  
9 answer would be with counsel? Answer "yes" or "no".

10 THE WITNESS: Yes.

11 THE COURT: And did he give you guidance as to that?

12 THE WITNESS: As to my answer, no.

13 THE COURT: Who drafted the answer, you or your  
14 attorney?

15 THE WITNESS: The answer that's here was drafted by  
16 my attorneys.

17 THE COURT: And you say you reviewed it?

18 THE WITNESS: Yes, I did.

19 BY MS. JOINER:

20 Q. Well, certainly, by no later than January 31st, 2007, AWI  
21 regarded the funding payments to Mr. Rider as responsive to  
22 this interrogatory; is that correct?

23 MR. GLITZENSTEIN: Your Honor, foundation. Where  
24 did the date January 31, 2007 come from?

25 THE COURT: Well, are the days -- isn't that the

1 date of the answer?

2 MS. JOINER: The particular one we're looking at is  
3 the September 24, '07 answer.

4 THE COURT: Okay.

5 BY MS. JOINER:

6 Q. So my question now is: If originally AWI did not view  
7 this as responsive, certainly, no later than January 31st,  
8 2007, it did?

9 MR. GLITZENSTEIN: Your Honor, again --

10 THE COURT: That's argumentative, but --

11 MR. GLITZENSTEIN: -- we haven't looked at January  
12 31st, 2007. That was before Judge Sullivan's September 2007  
13 order which these responses --

14 MS. JOINER: I object to the speaking objections.

15 THE COURT: Yeah. I think it's appropriate. Please  
16 explain, if you would, to the witness why January is  
17 significant.

18 BY MS. JOINER:

19 Q. Absolutely. If you would turn back one exhibit to Number  
20 22 -- do you have that?

21 A. I do.

22 Q. Okay. And this is AWI's supplemental responses to  
23 interrogatories that is dated -- if you look at the next to  
24 the last page -- January 31st, 2007; is that correct?

25 A. Yes.

1 Q. Okay. And who signed as to the objections on this one;  
2 Exhibit 22?

3 A. My signature is on the verification page.

4 Q. But my question before was who signed as to the  
5 objections on Page 17?

6 A. It looks to be Kathy Meyer.

7 Q. Your counsel, correct?

8 A. Yes.

9 Q. And then the next page, which you were referencing, Page  
10 18, the verification on behalf of AWI came from you; is that  
11 correct?

12 A. Yes.

13 Q. Now, if we turn back to the supplemental response in  
14 Exhibit 22 at Number 21, it begins on Page 15, continues  
15 through Page 16.

16 A. Would you like me to read that?

17 Q. Yes. Please go ahead.

18 A. (Witness complies.) Okay.

19 Q. Okay. And I just want to read on Page 16, the next to  
20 the last paragraph states: AWI has made contributions to the  
21 Wildlife Advocacy Project for advocacy work for public  
22 education on the issue of the treatment of elephants held in  
23 captivity. Documents reflecting these contributions have been  
24 produced by AWI and are hereby incorporated by reference, AWI-  
25 06494 through 06506; do you see that?

1 A. Yes, I do.

2 Q. And that was part of AWI's answer that you read and  
3 signed, too; is that correct?

4 A. Yes.

5 Q. Now, if we turn quickly back to the black binder, tab  
6 "C", it's the very first pages.

7 A. Yes.

8 Q. Okay. So the response in Exhibit 22, Number 19,  
9 references the documents that are located at the very  
10 beginning of tab "C", which is AWI-6494 through 6506.

11 A. Okay.

12 Q. Okay. And that particular group of documents, 6494  
13 through 6506, are checks that AWI wrote to fund Mr. Rider; is  
14 that correct?

15 A. To fund the media campaign, yes.

16 Q. Okay. If we could turn now to Exhibit 41, defense  
17 Exhibit 41, please; have you found that?

18 A. Yes, I have.

19 Q. Do you recognize this document?

20 A. Yes, I do.

21 Q. What is this document?

22 A. This is my declaration.

23 Q. And that was submitted in response to the August 23, 2007  
24 order that we looked at?

25 A. That's correct.

1 Q. Paragraph one references that you are submitting this on  
2 behalf of AWI based on your personal knowledge; do you see  
3 that? Did you do anything other than your own personal  
4 knowledge in order to prepare this declaration? Did you speak  
5 to anybody else at AWI?

6 A. Yes, I did.

7 Q. And who did you speak with at AWI?

8 A. I believe I spoke with Cathy Liss and, also, with Jill  
9 Umphlett.

10 Q. And in paragraph two, the first sentence states: AWI has  
11 not intentionally -- excuse me -- destroyed, discarded or  
12 disposed of any records that are responsive to defendants'  
13 document production request and that are required by this  
14 court's August 23, 2007 order.

15 Were there any documents unintentionally discarded,  
16 destroyed or disposed of or otherwise not produced in this  
17 case?

18 A. Not that I know of. If there was an e-mail that wasn't  
19 saved or something of that nature, it wasn't -- there was  
20 nothing that I can remember. Not every single e-mail always  
21 makes it into the saved folder, but I do the best I can.

22 Q. And is paragraph two also the result of you talking to  
23 anybody at AWI?

24 A. Yes.

25 Q. And who did you speak with in order to prepare paragraph

1 two of this declaration?

2 A. I spoke with Cathy Liss and Jill Umphlett.

3 MS. JOINER: Thank you, Ms. Silverman. I have  
4 nothing further at this time.

5 THE COURT: Cross-examine, please.

6 MR. GLITZENSTEIN: If Your Honor is inclined to take  
7 a break, I could use a couple of minutes. If not, I'll --

8 THE COURT: All right. We'll take five minutes;  
9 11:15 everybody.

10 THE WITNESS: Thank you.

11 THE COURT: Ms. Silverman, you're under oath.  
12 Please don't discuss your testimony with anybody.

13 THE WITNESS: Thank you, Your Honor.

14 (Whereupon, there was a brief recess at this time;  
15 thereafter, court resumed.)

16 MR. GLITZENSTEIN: Thank you, Your Honor.

17 **EXAMINATION BY MR. GLITZENSTEIN:**

18 Q. Ms. Silverman, good morning.

19 A. Good morning.

20 Q. If you could turn to the documents that are behind tab  
21 "C", this is in the black volume two of plaintiffs' exhibits,  
22 tab "C".

23 A. (Witness complies.)

24 Q. Are you generally familiar with what these documents are?

25 A. Yes.

1 Q. What are they?

2 A. They are documents that I produced in discovery on behalf  
3 of the Animal Welfare Institute.

4 MR. GLITZENSTEIN: Your Honor, could I move this  
5 entire set into evidence at this time? They were referred to  
6 by defense counsel, but just for matter of completeness.

7 THE COURT: Sure. No objection.

8 MR. GLITZENSTEIN: And I think we are up to  
9 Plaintiffs' Exhibit No. 7.

10 THE COURT: All right. No objection. Tab "C" will  
11 be admitted as Plaintiffs' 7 without objection.

12 MR. GLITZENSTEIN: Thank you, Your Honor.

13 BY MR. GLITZENSTEIN:

14 Q. Ms. Silverman, do you believe that these documents  
15 reflect all payments that AWI has been able to uncover that  
16 have gone to Mr. Rider either directly or indirectly?

17 A. Yes.

18 Q. And do you have a high level of confidence that that's  
19 the case?

20 A. I do. We searched high and low, so --

21 Q. And so you believe you did a thorough search for  
22 documents that would reflect any payments to Mr. Rider?

23 A. I do.

24 Q. And did you carry that search out in good faith?

25 A. Yes, I did.

1 Q. Did you carry it out in a conscientious way that would be  
2 designed to search all files and locations where such funding  
3 might be located?

4 A. Yes, I did.

5 Q. With respect to the fundraiser that we were discussing  
6 before, are you aware that documents relating to the  
7 fundraiser have in fact been withheld on media strategy  
8 grounds?

9 A. Yes.

10 Q. Ms. Silverman, if I could ask you to take a look at  
11 Defendants' Exhibit 23 --

12 MR. GLITZENSTEIN: Your Honor, this one was referred  
13 to. I don't believe it was formally moved into evidence.  
14 Since there has been testimony about it, it might make sense  
15 to do that. I'd be happy to have it marked as Plaintiffs'  
16 Exhibit 8 or if the defendants want to have it introduced as  
17 Defendants' Exhibit No. 23?

18 MS. JOINER: I'm sorry. What number is that?

19 MR. GLITZENSTEIN: Twenty-three.

20 MS. JOINER: Let's just use it as the same number,  
21 Your Honor.

22 THE COURT: So, therefore, it's coming in as  
23 Defendants' Exhibit No. 23. All right. Defendants' Exhibit  
24 Number 23 is admitted.

25 BY MR. GLITZENSTEIN:



1 Q. And looking over it, Interrogatory Number 21, which  
2 defense counsel asked you about, if you could just take a  
3 moment to not read again, but just glance through again to  
4 make sure you're familiar with the interrogatory answer that  
5 I'm asking about.

6 Do you believe that is a complete and accurate response  
7 to the interrogatory?

8 A. Yes, I do.

9 Q. And is it your understanding that in response to Judge  
10 Sullivan's September 27th -- excuse me -- August 23rd, 2007  
11 order, AWI did in fact undertake an effort to uncover all  
12 information that would be included in this interrogatory?

13 A. Yes.

14 MR. GLITZENSTEIN: I have nothing further, Your  
15 Honor.

16 THE COURT: Thank you. Ms. Silverman, you may step  
17 down.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: You may call your next witness, please.

20 MR. GASPER: Michael Markarian.

21 \* \* \* \*

22 **MICHAEL MARKARIAN**, called as a witness herein, after  
23 having been duly sworn by the deputy clerk, testified as  
24 follows:

25 \* \* \* \*

**DIRECT EXAMINATION BY MR. GASPER:**

Q. Good morning, Mr. Markarian.

A. Good morning.

Q. Could you please state your name for the record?

A. Michael Markarian.

Q. And please spell the last name?

A. M-A-R-K-A-R-I-A-N.

Q. Thank you. Mr. Markarian, are you employed?

A. Yes.

Q. By whom?

A. By the Humane Society of the United States.

Q. And what is your title?

A. Executive Vice President for External Affairs.

Q. When did you assume that title?

A. January of 2005.

Q. Is that January 2005, is that when you began to work for the Humane Society?

A. Yes.

Q. Do you currently hold any position on behalf of the Fund for Animals?

A. Yes.

Q. What is that position?

A. The president of the Fund for Animals.

Q. Who pays your salary, Mr. Markarian?

A. The Humane Society of the United States.

1 Q. Does the Fund for Animals provide you with any  
2 compensation?

3 A. Not directly.

4 Q. Any indirectly compensation?

5 A. The Fund for Animals reimburses the Humane Society of the  
6 United States for time that I spend working on Fund for  
7 Animals' projects.

8 Q. Does the Fund for Animals reimburse the Humane Society  
9 for any time you've spent discussing payments to Mr. Rider?

10 A. I'm not aware of that.

11 Q. Sir, how many hours per week do you spend working on Fund  
12 for Animals' matters?

13 A. It varies.

14 Q. On average, over the course of the last year, how many  
15 per week?

16 A. Maybe one hour per week.

17 Q. What office do you work out of?

18 A. I principally work out of the Humane Society of the  
19 United States office in Gaithersburg, Maryland.

20 Q. Who pays the lease for that space?

21 A. The Humane Society of the United States.

22 Q. Did there come a time, sir, when the Humane Society  
23 purchased assets from the Fund for Animals?

24 A. There was a time when the Fund for Animals and the Humane  
25 Society of the United States entered into a corporate

1 combination agreement, and there was a transfer of assets  
2 between the two groups.

3 Q. So the Humane Society purchased the assets of Fund for  
4 Animals; is that right?

5 A. It was an asset acquisition agreement.

6 Q. When did that take place?

7 A. January of 2005.

8 Q. And as a result of that acquisition, the Humane Society  
9 purchased most of the Fund for Animals assets; isn't that  
10 right?

11 A. I'm not sure whether "purchased" is the correct term or  
12 whether "most" would be correct. The Fund for Animals  
13 maintained several assets in real property, and other assets  
14 were transferred to the Humane Society of the United States.

15 Q. Are you aware of what assets the Fund for Animals  
16 retained?

17 A. Yes.

18 Q. What were they?

19 A. The Fund for Animals maintained property at our Black  
20 Beauty Ranch Animal Sanctuary in Texas and property in Ramona,  
21 California, which is used to operate the Fund for Animals  
22 Wildlife Rehabilitation Center.

23 Q. Anything else that the Fund for Animals retained?

24 A. I'm not entirely sure. There may have been some other  
25 assets that were maintained for the Fund for Animals. Those

1 are the two properties that I'm certain of.

2 MR. GASPER: Your Honor, may I approach the witness?

3 THE COURT: Certainly.

4 MR. GASPER: Your Honor, we have a copy of this for  
5 the Court, as well.

6 THE COURT: Thank you.

7 BY MR. GASPER:

8 Q. Mr. Markarian, do you recognize this document?

9 A. Yes, I do.

10 Q. And what is this document?

11 A. This is the asset acquisition agreement entered into by  
12 the Fund for Animals and the Humane Society of the United  
13 States.

14 Q. Okay. Sir, on Paragraph 1.1 on Page 1, am I correct that  
15 this says the Humane Society will purchase, acquire, and  
16 accept from the Fund all assets except those identified in  
17 section 1.2?

18 A. Yes. I believe that's correct.

19 Q. And if you flip forward, sir, to Page 3, Section 1.2,  
20 defines excluded assets to include, "A", cash in the amount of  
21 \$250,000; "B", books and records relating to its  
22 incorporation; "C" -- and I am paraphrasing here -- records  
23 relating to preparation and certification of financial  
24 statements; "D", rights under this agreement; "E", personal  
25 property of officers, directors; "F", the right to receive

1 mail; and "G", is the title that you described earlier on the  
2 real estate; is that correct?

3 A. Yes. That's correct.

4 Q. Other than these assets right here, the Humane Society  
5 purchased everything owned by the Fund for Animals effective  
6 January 1st, 2005; isn't that right?

7 A. Other than these assets listed, other assets were  
8 transferred to the Humane Society of the United States.

9 Q. So effective January 1st, 2005, sir, all the equipment in  
10 Fund for Animals offices were transferred to the Humane  
11 Society; isn't that right?

12 A. The Fund for Animals does continue to lease office space,  
13 but any owned assets other than what has been included here  
14 would have been transferred to the Humane Society.

15 Q. So the equipment in the offices, that was transferred to  
16 the Humane Society; is that right?

17 A. That's my understanding, yes.

18 Q. And the filing cabinets, those were transferred to the  
19 Humane Society; is that right?

20 A. Yes.

21 Q. And the computers, those were transferred to the Humane  
22 Society; isn't that right?

23 A. Yes.

24 Q. Do you use a computer for your work as president of Fund  
25 for Animals?

1 A. Yes, I do.

2 Q. Who owns that computer?

3 A. The Humane Society of the United States.

4 Q. Do you have a Humane Society e-mail address?

5 A. Yes, I do.

6 Q. Do you use that e-mail address for your work as Fund for  
7 Animals' president?

8 A. Yes, sometimes I do.

9 Q. And do you have a Fund for Animals' e-mail address?

10 A. I do, yes.

11 Q. How often do you use that?

12 A. Infrequently.

13 Q. You have conducted Fund for Animals business using your  
14 HSUS e-mail address; is that correct?

15 A. Yes.

16 Q. You mentioned office space that Fund for Animals still  
17 has. Prior to the combination with HSUS, how many offices did  
18 Fund for Animals have?

19 A. The Fund for Animals had about a half dozen offices  
20 around the country.

21 Q. How many does it have now?

22 A. It has one office in New York City and the animal  
23 sanctuaries that I mentioned previously.

24 Q. Who pays for the office space in New York City?

25 A. The Fund for Animals.

1 Q. They pay the lease on that?

2 A. Yes, I believe so.

3 Q. Do any Humane Society employees work out of that office?

4 A. There are a couple of Humane Society employees who are  
5 based in the New York City area who do spend some time in that  
6 office, but they're not full time in that office.

7 Q. Sir, pursuant to the agreement that we have looked at  
8 here between HSUS and Fund for Animals, the Humane Society was  
9 required to offer employment to every Fund for Animals'  
10 employee; isn't that right?

11 A. The HSUS was required to offer employment to every Fund  
12 for Animals employee at that time pursuant to the normal  
13 hiring process, including background checks and applications.

14 Q. How many employees, sir, prior to this agreement did Fund  
15 for Animals have?

16 A. About 50.

17 Q. How many employees does Fund for Animals currently have?

18 A. The Fund for Animals has no paid staff of its own.

19 Q. Who pays people who work on behalf of the Fund for  
20 Animals?

21 A. They are employed by the Humane Society of the United  
22 States, and the Fund for Animals reimburses the HSUS for time  
23 that those employees spend working on Fund for Animals'  
24 programs.

25 Q. Whose time is reimbursed by Fund for Animals?



1 A. Several staff members who work on Fund for Animals'  
2 programs.

3 Q. Anyone who works on this case?

4 A. Myself; attorneys who represent the Fund for Animals in  
5 this case, their time would also be paid for by the Fund for  
6 Animals.

7 Q. Who are those attorneys?

8 A. Jonathan Lovvorn and Ethan Eddy.

9 Q. What about Roger Kinler(Phonetic)?

10 A. I believe that Roger's time that he spends on Fund for  
11 Animals' matters would also be reimbursed by the Fund for  
12 Animals.

13 Q. So who is Roger Kinler?

14 A. He's the general counsel and chief legal officer for the  
15 Humane Society of the United States.

16 Q. And who is Ethan Eddy?

17 A. Ethan works in the animal protection litigation section  
18 of the Humane Society of the United States.

19 Q. And by whom is Jonathan Lovvorn employed?

20 A. Jonathan Lovvorn is employed by the Humane Society of the  
21 United States.

22 Q. Sir, since January of 2005, the Fund for Animals has not  
23 operated its own fundraising department; isn't that right?

24 A. That's correct.

25 Q. And it has not operated its own public relations

1 department; isn't that right?

2 A. Yes, that's correct.

3 Q. And it has relied upon the Humane Society employees to  
4 provide those services; isn't that right?

5 A. That's correct.

6 Q. Same thing with the litigation department, correct, that  
7 Fund for Animals has not operated its own litigation  
8 department since January 1, 2005?

9 A. That's correct.

10 Q. And it's relied upon the individuals you mentioned  
11 earlier for litigation services; isn't that right?

12 A. Yes.

13 Q. All of whom are Humane Society employees?

14 A. Yes.

15 Q. Sir, prior to January 1st, 2005, this combination with  
16 Humane Society, describe the ways in which you personally have  
17 been involved in this lawsuit.

18 A. Could you restate that, please?

19 Q. Sure. Prior to the combination with the Humane Society,  
20 describe the ways in which you have been involved in this  
21 lawsuit.

22 MR. GLITZENSTEIN: Your Honor, we are going to  
23 object to the extent that it may call for attorney/client  
24 privileged information or work product.

25 THE COURT: All right. But let me see if I

1 understand the question: Have you had any involvement in this  
2 lawsuit in any way, Mr. Markarian?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: What has the nature of your involvement  
5 been?

6 THE WITNESS: As the president of the Fund for  
7 Animals, I had decision-making authority, consulted with our  
8 staff about the nature of the lawsuit, consulted with our  
9 attorneys about legal strategy, what evidence we may choose to  
10 rely on, and, also, had discussions with other co-plaintiffs.

11 THE COURT: Thank you.

12 BY MR. GASPER:

13 Q. Did anyone else acting on behalf of the Fund for Animals  
14 have any involvement in this lawsuit prior to January 2005?

15 A. Yes, I believe so.

16 Q. Who were they?

17 A. Previous staff members of the Fund for Animals, named  
18 D.J. Schubert(Phonetic) and Christine Wolf(Phonetic) had some  
19 involvement in the lawsuit, as well.

20 Q. D.J. Schubert, is that a former Meyer, Glitzenstein and  
21 Crystal associate?

22 A. I believe he was employed at one time by Meyer and  
23 Glitzenstein. I don't know what his position was there.

24 Q. Ethan Eddy, was he employed by Meyer, Glitzenstein and  
25 Crystal?

1 A. My understanding is that he was at one time.

2 Q. Jonathan Lovvorn was, as well; isn't that right?

3 A. That's my understanding.

4 Q. Now, sir, since January 1st, 2005, the manner in which  
5 you have participated in this lawsuit, has it changed in any  
6 way?

7 A. I have still been as the president of the Fund for  
8 Animals the main point of contact regarding the lawsuit for  
9 the Fund for Animals. Mr. Lovvorn and Mr. Eddy have also had  
10 some involvement as counsel for the Fund for Animals.

11 Q. Anyone other than Mr. Lovvorn, yourself, and Mr. Eddy  
12 been involved in this lawsuit on behalf of the Fund for  
13 Animals since January 2005?

14 A. Not that I'm aware of.

15 Q. Has Mr. Kinler worked at all on this litigation?

16 A. Mr. Kinler is involved in the corporate governance of  
17 the organization, has been involved in responding to subpoena  
18 requests. I'm not aware that he has been involved in the  
19 offensive litigation matters in this case.

20 Q. You don't know, sir, if he has ever spoken to the board  
21 of directors about this litigation?

22 A. I'm not aware of it.

23 Q. Okay. Sir, do you recall being deposed in this case in  
24 June of 2005?

25 A. Yes, I do.

1 Q. Did you talk to Mr. Kinler to prepare for that  
2 testimony?

3 A. I believe so.

4 Q. Okay. Who is Ms. Heidi Prescott (Phonetic)?

5 A. She is the senior vice president of campaigns for the  
6 Humane Society of the United States.

7 Q. Has she been involved in this lawsuit in any manner?

8 A. In her previous role as national director of the Fund for  
9 animals, she had some knowledge of the lawsuit, but was not  
10 very directly involved.

11 Q. Did she have knowledge of any payments being made to or  
12 for Mr. Tom Rider?

13 A. I'm not sure whether she would have had knowledge of any  
14 payments.

15 Q. Is she still employed by the Humane Society?

16 A. Yes, she is.

17 Q. And you don't know whether or not she has knowledge of  
18 these payments; is that right?

19 A. I don't believe that she does. We have -- we queried her  
20 in response to these interrogatories and subpoena requests,  
21 and she did not have any knowledge or documents in her  
22 possession about payments to Mr. Rider.

23 Q. Sir, are you aware that this Court issued an order on  
24 August 23rd, 2007 ordering the Fund for Animals to produce  
25 documents and information concerning payments to Tom Rider?

1 A. Yes.

2 Q. Did you read that order?

3 A. Yes, I did.

4 Q. How many times?

5 A. I don't recall.

6 Q. When did you first read the order?

7 A. I read the order when it was issued in August of 2007.

8 Q. And when did you last read the order?

9 A. I re-read the order in preparing for today's testimony.

10 Q. Are you also aware, sir, that the Court issued an order  
11 in December of 2007 requiring the Humane Society to produce  
12 documents in this case?

13 A. Yes, I am.

14 Q. Have you read that order?

15 A. Yes.

16 Q. When did you first read it?

17 A. I read the order when it was issued in December of 2007.

18 Q. Sir, you signed all of the Fund for Animals interrogatory  
19 responses in this case; is that right?

20 A. Yes.

21 Q. And in doing so, you verified that they were true and  
22 accurate and complete; is that right?

23 A. Yes.

24 Q. And you were the deponent on behalf of Fund for Animals  
25 back in December of 2005; isn't that right?

1 A. Yes.

2 Q. And you submitted a declaration on behalf of the Fund for  
3 Animals in response to the Court's August order; isn't that  
4 right?

5 A. Yes.

6 Q. And you submitted a declaration on behalf of the Humane  
7 Society in response to the December order; isn't that right?

8 A. Yes.

9 Q. Sir, were you responsible for locating responsive  
10 documents on behalf of the Fund for Animals?

11 A. Yes, I was.

12 Q. Are you familiar with how Fund for Animals looked for  
13 such documents?

14 A. Yes.

15 Q. And were you responsible for the Humane Society's search  
16 for documents?

17 A. Yes.

18 Q. Are you familiar with what HSUS did to comply with the  
19 order?

20 A. Yes.

21 Q. Mr. Markarian, is it your understanding that Fund for  
22 Animals has produced all of the documents in its or HSUS'  
23 files that concern payments to or for Tom Rider?

24 A. Yes, it is.

25 Q. Has FFA produced all the documents in its or HSUS' files

1       that concern communications regarding the subject matter of  
2       this lawsuit?

3       A.   Excuse me.  Yes, it has.

4       Q.   Has Fund for Animals identified in its interrogatory  
5       responses all the internal communications it has had  
6       concerning payments to Tom Rider?

7       A.   Yes.

8       Q.   Has Fund for Animals identified in its interrogatory  
9       responses all the communications it has had with HSUS  
10      concerning payments to Tom Rider?

11      A.   Yes, I believe so.

12      Q.   Has Fund for Animals identified in its interrogatory  
13      responses all of the communications it had with other  
14      organizations concerning payments for Tom Rider?

15      A.   Yes.

16      Q.   Sir, is it your understanding that the Humane Society has  
17      produced all of the documents in its or its employees' files  
18      that pertain to the payments HSUS has made to the Wildlife  
19      Advocacy Project?

20      A.   Yes.

21      Q.   All of the documents in its files that pertain to these  
22      payments; is that correct?

23      A.   Yes.

24      Q.   Is it your understanding that the Humane Society has  
25      produced all of the documents in its or its employees' files



1       that refer, reflect, or relate to Tom Rider?

2       A.    Yes.

3       Q.    Has HSUS produced all of the documents in its or its  
4       employees files that pertain to WAP, the Wildlife Advocacy  
5       Project, and pertain to payments to Tom Rider?

6       A.    Yes.

7       Q.    And, sir, has the Humane Society produced all of the  
8       documents in its or its employees' files that discuss this  
9       litigation?

10      A.    Yes.

11      Q.    All of the documents that discuss this litigation; is  
12      that correct?

13      A.    Yes, I believe so.

14               MR. GLITZENSTEIN: Your Honor, just for clarity's  
15      sake, we haven't gotten anything from Mr. Markarian as to  
16      what his understanding of those terms are. Obviously,  
17      pertaining to most litigation, it involves attorney/client  
18      communications and other things that the parties agreed did  
19      not have to be produced. So I just want to make sure Mr.  
20      Markarian knows what he's being asked and is not being led  
21      down a path that is not going to serve anybody's purposes.

22               THE COURT: Okay. So be it. Go ahead, proceed.

23               MR. GASPER: Thank you, Your Honor.

24      BY MR. GASPER:

25      Q.    Mr. Markarian, the Fund for Animals paid Tom Rider a

1 thousand dollars in 2004; isn't that right?

2 A. That's correct.

3 Q. And the Fund for Animals paid Meyer, Glitzenstein and  
4 Crystal approximately \$4,500 that was given to Mr. Rider over  
5 the course of three years; isn't that right?

6 A. That's correct.

7 Q. And the Humane Society has paid the Wildlife Advocacy  
8 Project \$11,500 over the course of three years that was given  
9 to Mr. Rider; isn't that right?

10 A. The amount that was paid to the Wildlife Advocacy Project  
11 was to be used for a media campaign regarding circus issues.  
12 We do understand that some of the money was used to support  
13 Mr. Rider's travel expenses and his activities to discuss  
14 circus issues with the public and with the media, but we don't  
15 have the expectation that that's the only thing the money was  
16 used for.

17 Q. But the amount of the payments total \$11,500; isn't that  
18 right?

19 A. That's correct.

20 Q. So the Fund for Animals has paid Tom Rider a thousand  
21 dollars. The Fund for Animals has paid Meyer, Glitzenstein  
22 and Crystal almost \$4,500, and the Humane Society has paid the  
23 Wildlife Advocacy Project \$11,500; is that correct?

24 A. The Humane Society has not paid the Wildlife Advocacy  
25 Project that money. That was the Fund for Animals' payment to

1 the Wildlife Advocacy Project which was processed by the  
2 accounting department of the Humane Society.

3 Q. Why wasn't that processed by the Fund for Animals?

4 A. The Fund for Animals relies on the administrative  
5 functions of the Humane Society of the United States when  
6 processing checks, making payments, etcetera.

7 Q. Which individuals requested that the payments be made?

8 A. I believe that I approved the payments. The requests  
9 would have come either from myself or from John Lovvorn.

10 Q. Any other FFA employees that know about the payments to  
11 Tom Rider other than yourself and Mr. Lovvorn?

12 A. Not to my knowledge.

13 Q. Nobody else knows about these payments; is that your  
14 testimony?

15 A. Can you rephrase the question again? I'm sorry.

16 Q. Are there any other Fund for Animals' employees that know  
17 about these payments other than yourself and Mr. Lovvorn?

18 A. Well, there are no Fund for Animal employees. I'm an  
19 officer of the organization. Mr. Lovvorn is counsel for the  
20 organization. He and I had direct involvement in donations to  
21 the Wildlife Advocacy Project to support media and campaign  
22 efforts. I had direct knowledge of the payments to Mr. Rider  
23 that were made in 2004 which you referenced, which were used  
24 by him to repair his van and be able to travel.

25 Q. Okay. Let's talk about them in two parts, then. Prior

1 to the 2005 -- so these are payments made by the Fund for  
2 Animals. Who knew about those other than yourself?

3 A. Marian Probst(Phonetic) who was the chair of our board of  
4 the Fund for Animals and worked in the New York City office  
5 had also had knowledge of those payments.

6 Q. Did you talk to her about those payments?

7 A. Yes.

8 Q. Did you talk to anyone else on behalf of Fund for Animals  
9 about those payments?

10 A. I don't recall at that time.

11 Q. Did anyone else on behalf of Fund for Animals know about  
12 the payments other than yourself and Ms. Probst, and this is,  
13 again, all prior to January 2005?

14 A. They may have. I don't recall who on staff I would have  
15 talked to about that.

16 Q. Okay. Now, after 2005, the payments by the Humane  
17 Society, are there any FFA officers or directors that know  
18 about those payments other than yourself?

19 MR. GLITZENSTEIN: Objection, Your Honor. Again, I  
20 think the witness has already stated these weren't from the  
21 Humane Society.

22 THE COURT: Yeah. Well, I'm a little confused.  
23 After 2005, you want to know about FFA?

24 MR. GASPER: Yeah. Your Honor, these are payments  
25 made allegedly, I guess, perhaps, on behalf of FFA, but they

1 are on Humane Society paperwork, Humane Society checks,  
2 etcetera. So when I refer to the Humane Society payments, I'm  
3 referring to the payments made out of the HSUS accounts to  
4 Wildlife Advocacy Project, as you say, Mr. Markarian, on  
5 behalf of Fund for --

6 THE COURT: Are you aware of such a procedure?

7 THE WITNESS: Yes, Your Honor. The nature of the  
8 combination between the two organizations is --

9 THE COURT: I understand. Thank you. Counsel.

10 BY MR. GASPER:

11 Q. Who else on behalf of the Humane Society knows about  
12 these payments being made?

13 A. Our accounting department which would have processed the  
14 payments to the Wildlife Advocacy Project. They would clearly  
15 know that those payments exist.

16 Q. Any other HSUS employees other than Mr. Lovvorn,  
17 yourself, and the accounting department?

18 A. I'm not aware of others.

19 Q. Were they ever discussed at the Humane Society board  
20 meetings?

21 A. Not that I'm aware of.

22 Q. Do you attend those board meetings?

23 A. I do, yes.

24 Q. Were they ever discussed at the Fund for Animals' board  
25 meetings?

1 A. At the Fund for Animals' board meetings, we have  
2 discussed this litigation in general. We have not to my  
3 recollection discussed donations that were made to the  
4 Wildlife Advocacy Project to support media and campaign  
5 efforts on the circus issue.

6 Q. How many times has the Fund for Animals' board discussed  
7 this litigation?

8 A. I really can't recall.

9 Q. More than three?

10 A. Possibly.

11 Q. As many as 10?

12 A. I would doubt it.

13 Q. Sir, do you recall whether the Fund for Animals made a  
14 supplemental document production in January of 2007 in this  
15 case?

16 A. Yes, I do.

17 Q. Are you aware of how the Fund for Animals searched for  
18 documents in connection with that production?

19 A. Yes.

20 Q. Whose files were searched?

21 A. My personal files were searched; the Fund for Animals'  
22 organizational files were searched; files at our Black Beauty  
23 Ranch Sanctuary in Texas were searched; files in our New York  
24 City office were also searched.

25 Q. Were there any specific employees' files that were

1 searched other than your own?

2 A. Yes, I believe so.

3 Q. Who was that?

4 A. I believe we identified several staff members who had  
5 possibly worked on Fund for Animals' projects, including staff  
6 members of the Black Beauty Ranch, and as well as the  
7 attorneys in our litigation section who work on this case.

8 Q. And which attorneys specifically are you referring to?

9 A. John Lovvorn and Ethan Eddy.

10 Q. They are the only attorneys whose files were searched in  
11 January of 2007?

12 A. I believe that's correct.

13 Q. Did you review the board meeting minutes in January of  
14 2007?

15 A. I'm sorry?

16 Q. Did you review the Fund for Animals board minutes to see  
17 whether or not they were responsive?

18 A. Yes, I believe I did.

19 Q. When you searched -- let's say we've got yourself, Mr.  
20 Lovvorn and Mr. Eddy, did the Fund for Animals review these  
21 individuals' HSUS e-mail accounts for responsive documents?

22 A. Yes, we did.

23 Q. Did you produce any?

24 A. I don't recall the exact documents that we produced at  
25 that particular time, but we did search the electronic files,

1 e-mail files, as well as paper files.

2 Q. So it's your testimony, sir, that you've searched all of  
3 your Humane Society e-mails for any documents containing  
4 payments to Tom Rider?

5 A. And you produced all of those; is that your testimony?

6 A. I don't recall finding any documents electronically that  
7 related to payments to Tom Rider.

8 Q. Do you recall Fund for Animals conducting a search in  
9 September of 2007 for documents in this case?

10 A. Yes, I do.

11 Q. Were any other individuals' files searched other than the  
12 ones you've already mentioned in January 2007?

13 A. We generally searched the same files that we had searched  
14 previously which I've mentioned.

15 Q. Now, with respect to Mr. Lovvorn, either in January or  
16 September, what specific files did Fund for Animals review of  
17 his?

18 A. We reviewed files that were related to this case and any  
19 files that were likely to contain information that was  
20 responsive to the request.

21 Q. Did you review all of the files in his possession that  
22 might contain information relating to payments to Mr. Rider?

23 A. I did not personally review every file or every document.  
24 I made recommendations on which staff and which files should  
25 be reviewed, and our attorneys compiled the information for



1 our responses.

2 Q. So you don't know, sir, whether or not all of Mr.  
3 Lovvorn's files concerning payments were searched by Fund for  
4 Animals?

5 A. I believe that all of his files were searched if we felt  
6 they were like likely to contain any information that might be  
7 responsive.

8 Q. Sir, the individuals whose files were searched in  
9 September of 2007, how did they know what to look for?

10 A. They were instructed by our attorneys on what to look  
11 for.

12 Q. And which attorneys were those?

13 A. They were -- if you'll excuse me for one second, which  
14 document request are we --

15 Q. We're talking about the September 2007 production that  
16 the Fund for Animals made in response to the Court's August  
17 2007 order.

18 A. I believe they would have been instructed by our counsel  
19 at Meyer and Glitzenstein, as well as our counsel within the  
20 organization and our general counsel's office, as well.

21 Q. And "our general counsel's office", is that Fund for  
22 Animals or Humane Society's?

23 A. The Humane Society's general counsel's office.

24 Q. Okay. So, sir, the people who were looking for  
25 documents, did they rely on these instructions by your outside

1 and inside counsel?

2 A. Yes, I'm sure they did.

3 Q. Were these instructions reduced to writing?

4 A. I don't recall.

5 Q. Have you ever seen a document purporting to summarize the  
6 requirements of the Court's August 2007 order?

7 A. I don't recall.

8 Q. Sir, you read the August 2007 order; is that correct?

9 A. Yes.

10 Q. Was your understanding of that order influenced by  
11 anything lawyers have told you?

12 A. We, obviously, consulted with our attorneys on how to  
13 interpret the order.

14 Q. And did you discuss with them the scope of the order?

15 MR. GLITZENSTEIN: Your Honor, I object on attorney/  
16 client grounds.

17 THE COURT: Sustained.

18 BY MR. GASPER:

19 Q. Sir, were you responsible for providing the interrogatory  
20 responses on behalf of Fund for Animals in this case?

21 A. Yes.

22 Q. Did anyone who works for Fund for Animals or Humane  
23 Society provide information for those responses concerning  
24 communications with Mr. Rider?

25 A. Can -- could you rephrase the question, please?

1 Q. Sure. Did anyone who works for the Fund for Animals or  
2 the Humane Society provide information for those interrogatory  
3 responses that concerned payments to Tom rider?

4 A. Well, our attorneys compiled the information. They  
5 queried other staff who may have had some contact with Mr.  
6 Rider. They compiled the documents which were found, and,  
7 obviously, worked with me to compile the responses to the  
8 interrogatories.

9 Q. Specifically who was queried?

10 THE COURT: Who was queried by whom?

11 MR. GASPER: I'm sorry. Mr. Markarian just  
12 testified that individuals were queried by lawyers to prepare  
13 this information. So my question, sir, is who were you  
14 referring to when you said individuals were queried?

15 THE WITNESS: At this time, they queried any staff  
16 who may have worked on Fund for Animals' programs, and, as I  
17 indicated earlier, those included staff at the Black Beauty  
18 Ranch, myself, and my own personal files and the files of our  
19 counsel who had worked on this litigation, as well as the  
20 files in our New York city office.

21 BY MR. GASPER:

22 Q. Was anyone else asked to provide information about  
23 payments to Mr. Rider?

24 A. At this time, this is the -- this is the September 2007  
25 response?

1 Q. My question was: Throughout either the '04 or '07  
2 responses. I believe the "at-this-time" phrase was something  
3 you mentioned, but my question pertains to at any time.

4 A. Okay. The -- several former staff of the Fund for  
5 Animals, including Heidi Prescott, were queried about any  
6 interactions she may have had with Tom Rider, any documents  
7 that may be in her possession; Richard Farnotto(Phonetic) who  
8 is the director of the Fund for Animals Black Beauty Ranch was  
9 also queried multiple times, and documents in his possession  
10 were searched multiple times.

11 Q. Was Mr. Lovvorn queried about his communication with  
12 other organizations concerning payments to Tom Rider?

13 A. I believe so, yes.

14 Q. You believe he was asked about that?

15 A. Yes.

16 Q. Are you aware, sir, whether or not those communications  
17 are disclosed in the interrogatory responses?

18 A. I don't believe that there were any documents that were  
19 responsive to that request.

20 Q. I'm sorry, sir. The question was: The communications  
21 that Mr. Lovvorn had with other organizations that concerned  
22 payments to Tom Rider, is it your understanding that those  
23 communications are identified in the Fund for Animals'  
24 interrogatory responses?

25 MR. STOWE: Objection. Foundation. Assumes facts

1 not in evidence.

2 THE COURT: Have you seen the responses that he's  
3 referring to?

4 BY MR. GASPER:

5 Q. You've seen the responses, haven't you?

6 A. Yes, I have.

7 Q. And you verified them all to be true and accurate; isn't  
8 that right?

9 A. Yes, that's correct.

10 Q. Is it your understanding that these discussions are  
11 reflected in those interrogatory responses?

12 THE COURT: What discussions?

13 MR. GASPER: The discussions that Mr. Lovvorn had  
14 with other organizations concerning payments to Tom Rider.

15 THE WITNESS: It's my understanding by -- from  
16 reading the Court order and in consultation with our counsel  
17 that we were not obligated to provide any documents which  
18 related to the media campaign by the organization. So those  
19 would not have been included in the interrogatory responses.

20 BY MR. GASPER:

21 Q. Sir, is it your understanding that documents concerning  
22 payments to Tom Rider have not been produced on the basis that  
23 they are media strategy documents?

24 A. No, that's not my understanding.

25 Q. I'm sorry. I misunderstood your point, then.

1 MR. STOWE: Your Honor, I think that we talked about  
2 communications, and now we're talking about documents, I think  
3 the witness --

4 THE COURT: I think he can figure it out. Go ahead,  
5 Mr. Markarian. Why don't you -- what are you having?

6 THE WITNESS: We have produced every document that  
7 relates to any payments to Tom Rider. We have not produced  
8 documents which were excluded from the scope of the order  
9 which related to the media and campaign strategy by the  
10 organizations.

11 BY MR. GASPER:

12 Q. The documents you're referring to that you excluded on  
13 that grounds, the documents and the information, does that  
14 include the communications about the payments that Mr.  
15 Lovvorn had with the other organizations?

16 A. I'm not aware that it did.

17 Q. I'm sorry. So we have to take a step. The question,  
18 sir, was whether or not your understanding is that  
19 communications Mr. Lovvorn has had concerning payments to Tom  
20 Rider were identified in Fund for Animals interrogatory  
21 responses? Is it your understanding that those communications  
22 are described in the interrogatory responses?

23 A. Yes.

24 Q. You think they're in there; is that your testimony?

25 A. We have produced every document that related to payments

1 to Tom Rider. We queried staff about conversations that they  
2 have had and included any responsive statements in the  
3 interrogatories.

4 Q. Sir, HSUS received a subpoena in this case; isn't that  
5 right?

6 A. Yes.

7 Q. How did you learn about it?

8 A. I learned about it through our counsel.

9 Q. Were you involved in searching for responsive documents?

10 A. Yes, I was.

11 Q. Specifically whose files were searched when Humane  
12 Society looked for documents?

13 A. We identified several staff members of the Humane Society  
14 of the United States who had previously searched their files  
15 because they were searched during the Fund for Animals'  
16 responses, and they were researched, rechecked, and we also  
17 identified a broader scope of Humane Society of the United  
18 States' employees who had not worked on Fund for Animals  
19 programs, but we felt may have had some contact with Mr.  
20 Rider, may have worked on circus-related issues, and,  
21 therefore, we identified several people in our regional  
22 offices, several people in our wildlife section, thinking that  
23 we would cast the net widely and search files and talk to  
24 staff members who may have had some interaction with Mr.  
25 Rider.

1 Q. Was Mr. Lovvorn among those people?

2 A. Yes.

3 Q. Were all of his files searched?

4 A. Yes.

5 Q. Even his files that relate to Fund for Animals' payments?

6 A. I believe so, yes.

7 Q. Do you know for sure?

8 A. I can't say for sure.

9 Q. What about Ethan Eddy, were all of his files searched?

10 A. Yes.

11 Q. Even his files that relate to Fund for Animals' payments  
12 for Mr. Rider?

13 A. I'm not aware that he has files related to any Fund for  
14 Animals' payments to Mr. Rider.

15 Q. Were Mr. Lovvorn and Mr. Eddy asked if they had any  
16 e-mails about payments to Mr. Rider?

17 A. Yes, they were.

18 Q. Did they have any?

19 A. I can't recall if there were any that were responsive to  
20 the request.

21 Q. Were Mr. Kinler, Roger Kinler's files searched in  
22 response to this subpoena?

23 A. I don't recall.

24 Q. Were Mr. Wayne Pachelli's(Phonetic) files searched?

25 A. Yes.



1 Q. All of his files?

2 A. I believe so.

3 Q. Including any files he had related to a July 2005  
4 fundraiser that raised money for Mr. Rider.

5 A. Yes. I believe that all his files were searched.

6 Q. Anyone else on behalf of the Humane Society that was  
7 involved in that 2005 fundraiser?

8 MR. STOWE: Your Honor, he hasn't asked the witness  
9 any questions about whether or not HSUS or Fund for Animals  
10 had any involvement in the fundraiser.

11 THE COURT: Did you? That's the one in Los Angeles?

12 THE WITNESS: Yes. The Humane Society of the United  
13 States did provide some support for that fundraiser and helped  
14 promote it to some of our donors, but was not very involved in  
15 organizing it or collecting donations or anything at that  
16 level.

17 BY MR. GASPER:

18 Q. Setting aside whether it was very involved or not very  
19 involved, who on behalf of HSUS was involved?

20 A. Mr. Pachelli attended the event and spoke at the event  
21 as he frequently does at other events for local humane  
22 societies and animal protection organizations around the  
23 country. I had some knowledge of the fundraiser, and I  
24 believe that some of our staff in our major gifts' section may  
25 have sent some invitations to Humane Society donors in that

1 area.

2 Q. Specifically who? What individual employees?

3 A. I don't recall. When -- that was in 2005. I don't  
4 recall which staff worked on that.

5 Q. Sir, I believe there is a white binder in front of you.  
6 Can you please turn to tab 45? These are Defendants' Exhibit  
7 45.

8 A. Forty-five? I believe this goes to --

9 Q. I may need to get you a different volume.

10 A. This goes to 32.

11 MR. GASPER: I'm sorry. Your Honor, may I approach?

12 THE COURT: Of course. It's your declaration,  
13 right, Exhibit 45?

14 THE WITNESS: Yes, sir. I'm sorry.

15 THE COURT: Sure. Just a moment. Let the reporter  
16 do what she has to do.

17 (Whereupon, the court reoprtter changed steno paper  
18 at this time.)

19 BY MR. GASPER:

20 Q. Mr. Markarian, do you recognize this document, Exhibit  
21 45?

22 A. Yes, I do.

23 Q. And what is this document?

24 A. It is my declaration on behalf of the Humane Society of  
25 the United States.

1 Q. Okay. And so that the record is clear, if you flip ahead  
2 after yours -- it is within Exhibit 45, but after the first  
3 few pages there is a second declaration attached as Exhibit 45  
4 and I just want to make sure the record is clear; do you  
5 recognize the second document there?

6 A. Yes, I do.

7 Q. What is this?

8 A. It's the declaration of Mary Katherine Bergee(Phonetic),  
9 the controller of the Humane Society of the United States.

10 Q. And both of these declarations are on behalf of the  
11 Humane Society of the United States; is that right?

12 A. That's correct.

13 Q. And they're in connection with the Court's December 2007  
14 order; is that right?

15 A. That's right.

16 Q. Sir, if I can direct your attention to paragraph two. You  
17 state: That HSUS, quote, conducted a thorough inquiry in  
18 December 2007 to find relevant documents in its possession,  
19 control or custody, that -- and you go on to list "A" through  
20 "D"; do you see that?

21 A. Yes, I do.

22 Q. What did you mean when you said "relevant documents"?

23 A. By "relevant documents" I mean documents that were  
24 responsive to the Court's request and that we -- I believe if  
25 I remember correctly -- we had about one week to respond to

1 the order, and we created a search process that we felt was  
2 most likely to produce responsive documents.

3 Q. Were there any documents withheld on the basis that they  
4 were not relevant?

5 A. I believe that there was a very small set of documents  
6 that was withheld because it had already been produced by the  
7 Fund for Animals.

8 Q. Sir, were there any documents that you did not look for  
9 because you did not deem them relevant?

10 A. Well, as I said, we had about a week to comply. We --

11 THE COURT: Excuse me, counsel. Approach the bench.  
12 (The Court spoke to the deputy clerk at this time.) Go ahead.

13 THE WITNESS: As I said, we had about a week to  
14 comply. We created a search process that we felt would be  
15 most likely to produce relevant documents. We did not search  
16 every corner of every building. We did not search the files  
17 of departments that were not likely at all to have any  
18 documents that were related to Tom Rider or related to this  
19 litigation.

20 MR. GASPER: Sir, in paragraph number four, you  
21 state that the individuals identified had no documents that,  
22 quote, were not solely related to media or legislative  
23 strategies --

24 THE COURT: You can't refer to this as evidence. Are  
25 you offering it into evidence?

1 MR. GASPER: Yes, Your Honor. We can move this into  
2 evidence.

3 THE COURT: All right. What number is it, then?

4 MR. GASPER: It's 45, Your Honor.

5 THE COURT: All right. Defendants' 45 is admitted.

6 BY MR. GASPER:

7 Q. Do you see paragraph four, Mr. Markarian?

8 A. Yes.

9 Q. You said none of the employees interviewed had in their  
10 possession documents that were, quote, solely related to media  
11 or legislative strategies; do you see that?

12 A. Yes, I do.

13 Q. For purposes of this declaration, how did you define  
14 media or legislative strategies?

15 A. We defined that as any strategy that was related to our  
16 media campaign to inform the public about circus issues, about  
17 the abuse of elephants in circuses, and we also included press  
18 releases, any documents that were publicly available on our  
19 web site, such as a press release which simply stated the  
20 organization's position on circus issues.

21 Q. So your testimony, sir, is you withheld documents on the  
22 basis it was publicly available; is that right?

23 MR. STOWE: Objection, Your Honor. This line of  
24 questioning is going to get into attorney/client privilege  
25 matters.

1 THE COURT: Well, when it gets there, we'll stop it.  
2 Go ahead. Keep going.

3 BY MR. GASPER:

4 Q. Did you exclude anything that was publicly available? Do  
5 you have a web site, by the way?

6 A. Yes.

7 Q. Was there anything on the web site that pertained to the  
8 judge's order but that you kept back because it was publicly  
9 available?

10 A. There were press releases available on the web site which  
11 we kept back because we felt they were exclusively related to  
12 the media campaign of the organization.

13 THE COURT: But they were on the web site?

14 THE WITNESS: Yes, sir.

15 BY MR. GASPER:

16 Q. Sir, was your definition of, quote, media or legislative  
17 strategies influenced by anything your lawyers told you?

18 A. Yes. In consultation with our attorneys, we did discuss  
19 the scope of media and legislative strategies.

20 Q. What kind of documents did the Humane Society withhold on  
21 the basis that they were media or legislative strategies?.

22 MR. STOWE: Your Honor, that sounds like attorney/  
23 client --

24 THE COURT: Well, let's see if we can cross that. It  
25 wouldn't be fair, it wouldn't be right to draw a deduction

1 from Mr. Markarian's testimony as to the advice he was given,  
2 but let me see if I can do it this way. Answer this "yes" or  
3 "no": Did you discuss what the words "media and legislative  
4 strategy" meant with your lawyers?

5 THE WITNESS: Yes.

6 THE COURT: And you got guidance from them?

7 THE WITNESS: Yes.

8 THE COURT: All right. And you talked with them  
9 about that?

10 THE WITNESS: Yes, sir.

11 THE COURT: And was that the principle you then used  
12 to exclude things that you felt were within media and  
13 legislative strategy?

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: All right. It seems to me "A" to be an  
16 attorney/client privilege. It also seems to be work product  
17 because it exposes the workings of a lawyer's mind as to the  
18 meaning of the term.

19 MR. GASPER: Thank you, Your Honor.

20 BY MR. GASPER:

21 Q. Mr. Markarian, the employees whose files were searched  
22 in response to this subpoena, did they have any documents that  
23 pertained to payments either to Tom Rider or the Wildlife  
24 Advocacy Project?

25 A. The accounting department of the Humane Society of the

1 United States did produce documents related to payments by the  
2 Fund for Animals to the Wildlife Advocacy Project.

3 Q. Did anyone else other than the accounting department  
4 produce such documents?

5 A. I'm not aware that anyone other than the accounting  
6 department had documents related to those payments.

7 Q. Did you ask anyone other than the accounting department  
8 if they had such documents?

9 A. Yes, we did.

10 Q. Who did you ask?

11 A. As I mentioned earlier, we asked several staff members of  
12 regional offices for the Humane Society. Staff members of the  
13 wildlife department searched my own files, searched the files  
14 of people whose files had been previously searched multiple  
15 times in response to the Fund for Animals interrogatories.  
16 But we cast the net more widely in response to the HSUS  
17 subpoena to try and capture any staff member who might have  
18 had contact with Tom Rider, might have had documents in their  
19 possession, and none of these people did.

20 Q. Is it your testimony, sir, that Jonathan Lovvorn has no  
21 files in his possession that concern payments to Tom Rider?

22 A. That's my understanding.

23 Q. And is it your understanding that Mr. Lovvorn had no  
24 e-mails concerning payments to Tom Rider?

25 A. That's my understanding.



1 Q. Is it your understanding that he has no e-mails referring  
2 or reflecting or relating to Mr. Rider?

3 A. That's my understanding.

4 Q. What about yourself, sir, have you ever received or sent  
5 an e-mail concerning payments to Tom Rider?

6 A. Not that I'm aware of.

7 Q. Sir, also in paragraph four of Exhibit 45, you state that  
8 none of the employees interviewed had any documents, quote,  
9 that had not already been searched and produced to defendant  
10 by Fund for Animals; do you see that?

11 A. Yes.

12 Q. What did you mean by that phrase "not already been  
13 searched and produced"?

14 MR. STOWE: We're going to object again on the same  
15 attorney/client grounds.

16 THE COURT: Well, let's see what Mr. Markarian says.

17 THE WITNESS: The several files that had been  
18 searched during the Fund for Animals' responses to its  
19 interrogatories were in fact searched again. Many of these  
20 staff members' files were checked and then rechecked and  
21 checked again, both in terms of the Fund for Animals' searches  
22 and then later the Humane Society of the United States'  
23 searches.

24 BY MR. GASPER:

25 Q. So it is your testimony that any file that was searched

1 previously by the Fund for Animals was searched again by the  
2 Humane Society in December of 2007?

3 A. I'm not aware that every single file that had been  
4 searched initially was then searched again, but there was a  
5 great deal of overlap. Many of these files were searched  
6 multiple times.

7 Q. Sir, also, on paragraph four, if you flip over, it's Page  
8 3 of the declaration -- you state that none of the employees  
9 interviewed had documents, including electronic documents,  
10 that referred to, reflected, related to Tom Rider or to any  
11 payments made to Tom Rider by the HSUS; do you see that?

12 A. Yes.

13 Q. Did any of these people have documents that related to  
14 payments made by the Humane Society to the Wildlife Advocacy  
15 Project?

16 A. The accounting department had some records of donations  
17 from the Humane Society of the United States to the Wildlife  
18 Advocacy Project that preceded this matter. I believe they  
19 were related to manatee protection campaigns, and, then as I  
20 indicated, the accounting department also had records of  
21 payments that were made to the Wildlife Advocacy Project on  
22 behalf of the Fund for Animals which related to the media and  
23 campaign effort regarding circus elephants.

24 Q. Did anyone else other than the accounting department have  
25 any such documents?

1 A. Not to my knowledge.

2 Q. Did you ask every single person whether or not they had  
3 such documents?

4 A. We asked every single person that we queried as part of  
5 the search. We asked the staff members who we felt were  
6 remotely likely to have had any contact with Mr. Rider or  
7 with this litigation or even with elephant related issues,  
8 and they did not have any documents that were responsive to  
9 this request. Some of them had never even heard of Mr. Rider  
10 or knew anything about this litigation.

11 Q. Sir, in paragraph five of your declaration, you state  
12 that attorneys for the HSUS and employees of the HSUS  
13 accounting department conducted a search of HSUS accounting  
14 records to find records of and documents relating to any  
15 payments by the HSUS to Tom Rider and to the Wildlife Advocacy  
16 Project; do you see that?

17 A. Yes.

18 Q. Did you look anywhere else other than the accounting  
19 department for documents relating to the payments to the  
20 Wildlife Advocacy Project?

21 A. As I said, we've queried several members of the program  
22 staff who had worked at some level on circus-related issues,  
23 and we asked them to search their files, and there were no  
24 documents that related to Mr. Rider or to the Wildlife  
25 Advocacy Project.

1 Q. Nobody had any documents except for the accounting  
2 department relating to these payments; is that your testimony?

3 A. That's correct.

4 Q. There were no e-mails reflecting or referring or relating  
5 to Mr. Rider?

6 A. Not to my knowledge.

7 THE COURT: All right. Mr. Gasper, how much more do  
8 you have because we're going to stop? All right. Here's the  
9 situation we confront. It is now 12:20. We certainly cannot  
10 continue this afternoon because, as I've advised you, I'm  
11 duty judge and I have all the criminal matters beginning at  
12 1:30.

13 So, accordingly, where do we stand and where do we  
14 go from here? How many more witnesses do you have? How much  
15 more evidence?

16 MR. GASPER: I can speak to this witness, Your  
17 Honor, but I may defer to Mr. Simpson for the --

18 THE COURT: How much more time do you have with him?

19 MR. GASPER: With this witness, Your Honor, I'd like  
20 to say 30 to 40 minutes, maybe a little more.

21 THE COURT: After him, what do you have, Mr.  
22 Simpson?

23 MR. SIMPSON: After Mr. Markarian, Your Honor, we  
24 have Cathy Liss. We have Mr. Glitzenstein, Ms. Meyer. I'm  
25 assuming Tom Rider is not going to be here. We would

1 designate his deposition in the manner that the Court wants it  
2 designated, either by having it read from the stand or  
3 provided in paper.

4 THE COURT: So you have five more witnesses?

5 MR. SIMPSON: Yes, sir.

6 THE COURT: Well, what are we going to do about that?  
7 We've got to find another date to do them. Are all the -- the  
8 five who remain are all D.C. people, Ms. Liss; nobody is  
9 coming from out of state?

10 MR. SIMPSON: I believe that's true.

11 THE COURT: All right. Well, then you're going to  
12 have to sit down and work with counsel on getting a date to  
13 continue this. Bear in mind that you'll have to work with Ms.  
14 Podger(Phonetic), as well, because, as I've told you, I'm the  
15 judge in criminal matters for the rest of the month, and then  
16 we go into April. It looks like I'm going to be on trial  
17 almost all of April.

18 So let's stop there and work it out.

19 MR. GLITZENSTEIN: May I address you briefly, Your  
20 Honor?

21 THE COURT: Well, if you're going to object to his  
22 going any further, Mr. Glitzenstein, I would -- it's hard for  
23 me to hear you now because we have got to be back in 40  
24 minutes to start a criminal calendar. These people have to  
25 eat and do some other things.

1                   You can stand down, Mr. Markarian.

2                   MR. GLITZENSTEIN: I understand. Very quickly on  
3 Mr. Markarian. As Your Honor may recall, last week was  
4 supposed to be the only day, that's what we were told. Today  
5 was scheduled only so that Mr. Markarian could make it. We'd  
6 appreciate if there is anyway we can finish Mr. Markarian up,  
7 and then you will have heard from every organizational --

8                   THE COURT: Mr. Markarian, where do you live?

9                   THE WITNESS: I live in Washington, Your Honor.

10                  THE COURT: Okay. How could we do that?

11                  MR. GLITZENSTEIN: How can we -- excuse me?

12                  THE COURT: He said he's got another 40 minutes.

13                  MR. GLITZENSTEIN: I defer to the Court. I think  
14 he's gone for an hour or so.

15                  THE COURT: No. You don't defer to the Court, you  
16 defer to the clock. There's only 24 hours today.

17                  MR. GLITZENSTEIN: Your Honor, could I just --  
18 either now or at some point, counsel of record are three of  
19 the witnesses. As you know, we have a pending motion.

20                  THE COURT: I know. All right. I'll have to look at  
21 that.

22                  MR. GLITZENSTEIN: Can I suggest a course of action  
23 on that --

24                  THE COURT: Sure. Why not?

25                  MR. GLITZENSTEIN: -- which I think especially given

1 the time dimension. If they are continuing to insist, which  
2 we don't think is necessary and we think is contrary to Judge  
3 Sullivan's ruling on him not wanting counsel of record to  
4 become witnesses in these proceedings, if after the close of  
5 the other testimony or even after today, they submit a brief  
6 statement or memorandum as to why they think they've satisfied  
7 what they acknowledge as a high standard for calling counsel  
8 of record, give us a short period of time to respond to that,  
9 and explain why we believe they have not satisfied those legal  
10 standards, we can keep those to 10 pages or so, and then Your  
11 Honor will have a basis on which to --

12 THE COURT: But you already have a motion pending I  
13 thought you said.

14 MR. GLITZENSTEIN: We made an oral motion. As Your  
15 Honor may recall, we were not permitted to file a motion  
16 before last week's hearing.

17 THE COURT: Why don't we do this, I'll let you file  
18 that motion. How much time do you need to get it in?

19 MR. GLITZENSTEIN: Your Honor, I think if we had a  
20 week, that would be fine.

21 THE COURT: All right. Take 10 days.

22 MR. GLITZENSTEIN: Ten days.

23 THE COURT: Ten days to respond, Mr. Simpson?

24 MR. SIMPSON: Yes, Your Honor.

25 MR. GLITZENSTEIN: If we could have a brief here for

1       reply because they'll articulate why they need counsel. So if  
2       we could have a week after their response to reply?

3               THE COURT: That's fine. Okay. But I still want  
4       you to work with Ms. Podger and at least set some tentative  
5       dates so you can lock me in. Whatever happens, you'll have  
6       some time. We can't do any more today. I have five detention  
7       hearings this afternoon. You'd sit around all afternoon  
8       listening to me do that.

9               MR. GLITZENSTEIN: I understand, Your Honor.

10              THE COURT: And we just couldn't get it done. Then  
11       I have a settlement conference at three o'clock.

12              MR. GLITZENSTEIN: Right. I appreciate that, Your  
13       Honor.

14              MR. GASPER: Your Honor, for the record, Mr.  
15       Markarian --

16              THE COURT: Mr. Markarian, you'll have to come back  
17       at the date we set. Is that okay with you?

18              THE WITNESS: I would prefer not to, but I --

19              THE COURT: Well, yeah, and I'd prefer water was  
20       wine, but, you know, life goes on, Mr. Markarian. Don't  
21       discuss your testimony. You're under oath.

22              THE WITNESS: I understand.

23              THE COURT: Thank you.

24              MR. GLITZENSTEIN: Thank you, Your Honor.

25                       [End of proceedings]



C E R T I F I C A T E

I, Wendy C. Ricard, Official United States Court Reporter in and for the District of Columbia, do hereby certify that the foregoing proceedings were taken down by me in shorthand at the time and place aforesaid, transcribed under my personal direction and supervision, and that the preceding pages represent a true and correct transcription, to the best of my ability and understanding.

---

Wendy C. Ricard, CCR, RPR  
Official U.S. Court Reporter

WENDY C. RICARD, CCR, RPR  
OFFICIAL COURT REPORTER