

PLAINTIFFS' EXHIBIT J
To Plaintiffs' Opposition to Defendants' Motion
For Summary Judgment
Civ. No. 03-2006 (EGS/JMF)

A Report by The American Society for the Prevention of Cruelty to Animals,
The Fund For Animals, and the Animal Welfare Institute

Government Sanctioned Abuse: How the United States Department of Agriculture Allows Ringling Brothers Circus to Systematically Mistreat Elephants

September 2003



The American Society for the Prevention of Cruelty to Animals



The Fund for Animals
we speak for those who can't



**Animal Welfare
Institute**

424 E. 92nd St.
New York, NY 10128-6804
(212) 876-7700
www.aspca.org

200 West 57th St.
New York, NY 10019
(888) 405-FUND
www.fund.org

P.O. Box 3650
Washington, D.C. 20027
(703) 836-4300
www.awionline.org

TABLE OF CONTENTS

I. Executive Summary

II. The Death of 3-yr. old Kenny

Documents:

Affidavit of Dr. Gary D. West (2/5/98)

Affidavit of Ringling Brothers employee, re: Dr. West's instructions to exclude Kenny from the performance (2/6/98)

Affidavit of Ringling Brothers employee, re: Dr. West's instructions to exclude Kenny from the performance (2/6/98)

Email to Michael Dunn from Ron DeHaven re: evidence of a prosecutable violation (3/6/98)

USDA Complaint (4/16/98)

Decision Memorandum from Ron DeHaven re: Settlement with Ringling Bros. (7/1/98)

Letter to Ringling Brothers counsel from Ron DeHaven (7/15/98)

Letter to USDA Office of General Counsel from Feld Entertainment re: former USDA employee Dr. Crawford (3/23/99)

III. Allegations of Abuse by Former Ringling Employees

Documents:

Complaint Letter to USDA (12/21/98)

USDA Inspector's Narrative (1/16/99)

Affidavit of Ringling Brothers employee (1/8/99)

Affidavit of former Ringling employee Glenn Ewell (1/20/99)

Memo to Craig Reed from Ron DeHaven re: case closed (5/7/99)

Wild Elephants in Captivity, excerpts from chapter 10, "The Bull Hook"

Letter to Julie Alexa Strauss from Elizabeth Goldentyer re: no further action on this investigation (8/21/00)

IV. The Forcible Removal of Baby Elephants from their Mothers

Documents:

USDA Inspectors' Narratives (1/16/99)

USDA Inspection Report (2/10/99)

Memo from Dr. Kohn to Miava Binkley with attachments;
Expert Responses summary (4/12/99)
Letter to Julie Strauss from Ron DeHaven informing RB that the handling of 2 baby elephants is not in compliance with the Animal Welfare Act (5/11/99)
Letter from Jacqueline Freeman to Charmain Zordan with attachment; affidavit of Dr. Gary West (2/16/01)
Letter to Julie Strauss from Ron DeHaven re:
investigation is closed with no action (7/23/01)
Letter to Ron DeHaven from Jeannie Perron re:
the use of the word "investigation" (8/9/01)
Letter to Jeannie Perron from Ron DeHaven re:
the investigation was more of a "fact gathering process" (8/10/01)

V. The Death of Benjamin

Documents:

Affidavit of Hugh Patrick Harned, Benjamin's trainer (7/29/99)
USDA Report of Investigation (9/1/99)
Memorandum to Ron Stanley from Kenneth Vail (11/24/99)
Memo from Craig Reed to Ron DeHaven re:
insufficient basis to support prosecution (12/2/99)

VI. The Santa Clara Valley Humane Society's Complaints of Routine Bullhook Use

Documents:

Investigations Report, Officer Franco (9/8/99)
Investigations Report, Officer Revier (9/8/99)
Investigations Report, Officer Wallace (9/8/99)
Investigations Report, Officer Reeve (11/15/99)
Affidavit of Dr. Joel Parrot re: review of 62 photographs (7/25/00)
Memo to Ron DeHaven from Barbara Kohn (7/5/01)
Letter to Alan Christian from Ron DeHaven re: case closed with no action (7/17/01)

VII. Allegations by Former Ringling Bros. Employee Tom Rider

Documents:

Complaint Letter to USDA (4/10/2000)
Memo to Robert Gibbens from Diane Ward (7/21/00)
Email to Diane Ward from Betty Goldentyer (8/7/00)
Memo to Alan Christian from Diane Ward (11/24/00)
Memo to Alan Christian from Diane Ward (3/26/01)
Email to Diane Ward from Alan Christian (8/8/01)

Memo to Diane Ward from Charmain Zordan (8/27/01)

VIII. Abuse In San Francisco

Documents:

Affidavit of Joseph Patrick CuvIELlo (9/25/00)

Anonymous letter re: eye-witness to elephant abuse by Ringling handler (8/23/00)

USDA Inspection Report (9/7/00)

IX. Striking of Asia With A Bullhook

Documents:

Humane Society of Santa Clara Valley citation to Mark Oliver Gebel (8/25/01)

X. Tuberculosis

Documents:

Ringling Brothers Elephant Inventory noting positive TB elephants (6/9/98)

Email reporting on a visit to Williston Elephant Retirement Center
and "Dolly's" euthanasia (12/10/98)

USDA Inspection Report re: lack of treatment for positive TB elephant (2/10/99)

Email to Miava Binkley from Janet Payeur re: another TB positive elephant (9/10/99)

Florida Dept. of Agriculture Inspection Report (10/14/99)

Deposition of Joel Kaplan (excerpts)

Memorandum to Samuel Santiago from Diane Ward re: TB and "Tillie" (8/30/00)

USDA Inspection Report re: Tillie not receiving TB treatment (9/6/00)

Memo to Dr. Miava Binkley from Tom Callahan re:

 TB treatment of Tillie (9/7/00)

Memorandum to Alan Christian from Diane Ward (11/24/00).

Letter to Dr. Jeannie Perron from Ron DeHaven
 re: withdrawing Animal Welfare Act violation (1/31/01)

Memorandum to Diane Ward from Frank Keyser (2/5/01)

Record of conversation with Dr. Miava Binkley
 re: Dr. DeHaven's overriding a citation (2/20/01)

Two letters to Dr. M. Binkley from William Lindsay
 re: positive TB elephant "India" (3/26/01)

Memorandum to Alan Christian from Diane Ward (3/26/01)

Affidavit of Dr. Janet Payeur

 listing RB elephants who tested positive for TB (4/16/01)

Executive Summary

Hundreds of documents released as a result of litigation under the Freedom of Information Act (FOIA) reveal that the U.S. Department of Agriculture (USDA) – charged with enforcing the federal Animal Welfare Act – routinely looks the other way when the Ringling Brothers Barnum and Bailey circus beats and otherwise mistreats the elephants in its circus. The records also demonstrate that many elephants have tested positive for Tuberculosis – a disease that is highly communicable to humans – and that the USDA has failed to disclose this information to the public.

The records, released as a result of litigation by the American Society for the Prevention of Cruelty to Animals, the Fund for Animals, and the Animal Welfare Institute, show that in case after case brought to the USDA in the last five years by animal welfare organizations, state humane agencies, former Ringling Bros. employees, and even USDA's own inspectors, the USDA purposely ignored crucial evidence, closed investigations prematurely, and overrode its own inspectors' and investigators' determinations – allowing Ringling to insist to the public that there is no truth to any allegations that it abuses its elephants.

- In one instance, although internal documents show that USDA investigators found that a trainer's use of a bullhook on a baby elephant named Benjamin "created behavioral stress and trauma which **precipitated in the physical harm and ultimate death of the animal,**"¹ the USDA memorandum closing the case omitted all references to this finding and instead stated that "suddenly, and without any signs of distress or struggle, Benjamin became unconscious and drowned." No enforcement action was taken by the USDA.
- In another incident, although the USDA determined that Ringling's use of chains and ropes to forcibly remove nursing elephants from their mothers at Ringling's "Center for Elephant Conservation" caused the animals "**unnecessary trauma, behavioral stress, [and] physical harm,**" and "was not in compliance with the Animal Welfare Act," the agency quietly closed the investigation without taking any enforcement action.
- The records also show that the USDA has been extremely cooperative in helping Ringling keep the public from knowing that as many as 8 elephants have tested positive for TB and many more have been exposed to the disease. In one instance, although a USDA investigator originally cited Ringling for failing to provide any medical treatment for an elephant who had tested positive, a high level USDA official later "overrode" that citation when Ringling's attorneys complained.

The records also reveal an extraordinarily cozy relationship between Ringling and the USDA. Ringling runs "training" seminars for USDA personnel at its multi-million dollar "conservation" facility in Polk City, Florida, where it breeds elephants for its circus, and Ringling hired as its "Vice President for Animal Care" the former Deputy Director of the USDA's Division of Animal Care. The records also indicate that the agency provides Ringling with advance notice of inspections,

¹ All bold, italicized or underlined emphasis herein have been supplied by the authoring organizations.

routinely allows Ringling's lawyers and other officials to accompany USDA inspectors on "unannounced" inspections, and allows Ringling to refuse inspectors and investigators access to records. The records also demonstrate that USDA officials instruct inspectors to refrain from issuing "citations" to Ringling Bros. for violations of the Animal Welfare Act and even "overrides" or "retracts" citations that are issued, retroactively. The records further show that the USDA's Office of General Counsel allows Ringling's officials to determine what records the investigators may see, that the USDA does not follow-up on obvious investigatory leads or even interview eye-witnesses to abuse, and that the USDA issues statements exonerating Ringling, and has even agreed to change the wording of letters it has already sent to Ringling – all to accommodate Ringling's well financed public relations efforts.

Congress enacted The Animal Welfare Act (AWA) in 1966 and amended it in 1970 to ensure that animals used for exhibition purposes, including circuses, "are provided humane care and treatment." The USDA has exclusive authority to enforce the statute, and may seek both civil and criminal penalties for violations of the law. Unlike many environmental laws, there is no "citizen suit" provision. Therefore, only the USDA can enforce the statute. When it fails to do so, it makes a mockery of the statute's intent to protect animals from inhumane treatment.

This Report traces nine different investigations over a five-year period – all but one of which was closed with absolutely no enforcement action taken against Ringling Bros. The single enforcement action brought by the USDA was based on the agency's conclusion that top-level officials at Ringling – famed animal trainer Gunther Gebel Williams and his son, Mark Oliver Gebel – had insisted on publicly displaying a gravely ill baby elephant three times in one day against the explicit advice of Ringling's own veterinarian. The baby, Kenny, died soon after the third performance. When Ringling refused to admit any culpability, the agency charged it with violations of the AWA. However, the agency then settled the case by allowing Ringling to contribute \$10,000 to a "sanctuary" in Thailand that trains elephants to work in the timber industry and that employs the same expert Ringling hired to testify that Kenny was treated humanely. Under the settlement, Ringling also hired as its new "Vice President for Animal Care" the same individual who for 27 years had been the Deputy Director of the USDA's Division of Animal Care, i.e., the office responsible for enforcing the Animal Welfare Act. The USDA also provided Ringling with a written statement that "Ringling Bros. has never been adjudged to have violated the Animal Welfare Act or the Regulations and Standards issued thereunder" – a statement that to this day is touted by Ringling as proof that it does not mistreat its elephants.

Feld Entertainment, which, in addition to the circus, also owns Siegfried and Roy (a Las Vegas magic act), the Ice Follies, Holiday on Ice, Walt Disney's World on Ice, and several other entertainment operations, bills itself as "the largest provider of live action family entertainment in the world," with "the circus as the hub."² Elephants, and especially baby elephants, are extremely popular attractions at circuses and zoos in this country, bringing in hundreds of millions of dollars in ticket sales each year. According to Kenneth Feld, CEO of Feld Entertainment, without the elephants, Ringling's highly profitable circus would go out of business.³

² Feld Entertainment website.

³ See USA Today (January 6, 2000), 9D.