

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
THE FUND FOR ANIMALS, ANIMAL WELFARE INSTITUTE, AND HSUS'
MOTION FOR A PROTECTIVE ORDER**

Civ. No. 1:07-cv-1532

Ex. 17

Excerpt from Patricia Derby Dep.

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

-----X

PEOPLE FOR THE ETHICAL TREATMENT :

OF ANIMALS, INC., :

Plaintiff, :

vs. : At Law No. 220181

KENNETH FELD, et al., :

Defendants. :

-----X

PEOPLE FOR THE ETHICAL TREATMENT :

OF ANIMALS, INC., :

Plaintiff, :

vs. : At Law No. 204452

STEVEN KENDALL, et al., :

Defendants. :

-----X

Fairfax, Virginia

Monday, March 6, 2006

The trial commenced at 10:07 a.m.

BEFORE:

THE HONORABLE DAVID T. STITT

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1 VIRGINIA:
2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY
3 -----X
4 PEOPLE FOR THE ETHICAL TREATMENT :
OF ANIMALS, INC., :
5 Plaintiff, :
6 vs. : At Law No. 220181
7 KENNETH FELD, et al., :
8 Defendants. :
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10 PEOPLE FOR THE ETHICAL TREATMENT :
11 OF ANIMALS, INC., :
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1 APPEARANCES:
2 PHILIP J. HIRSCHKOP, ESQ., and MARTANNE MERRITT
3 TALBOT, ESQ., Hirschkop & Associates, P.C.,
108 North Columbus Street, Alexandria, Virginia
22314
4 and
5 BERNARD J. DIMURO, ESQ., DiMuro Ginsberg, P.C.,
6 908 King Street, Suite 200, Alexandria, Virginia
22314, counsel for the plaintiff.
7 JOSEPH G. PETROSINELLI, ESQ., and
8 MATTHEW B. ANDELMAN, ESQ., Williams & Connolly,
9 L.L.P., 725 - 12th Street, Northwest,
Washington, D.C. 20005
10 and
11 THOMAS J. CAWLEY, ESQ., and SONA REWARI, ESQ.,
12 Hunton & Williams, 1751 Pinnacle Drive, Suite
1700, McLean, Virginia 22102
13 and
14 JOHN A. C. KEITH, ESQ. and WILLIAM B. PORTER,
15 ESQ., Blankingship & Keith, P.C.,
4020 University Drive, Suite 300, Fairfax,
16 Virginia 22030, counsel for the defendants.
17 STEVEN KENDALL, pro se.
18
19
20
21
22

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1 PROCEEDINGS
2 (The court reporter was previously sworn.)
3 **THE COURT:** Good morning.
4 **MR. PETROSINELLI:** Before we bring the jury in,
5 we have three preliminary issues to raise with the Court.
6 **MR. HIRSCHKOP:** Maybe more than three.
7 **MR. PETROSINELLI:** Maybe more than three
8 Mr. Hirschkop tells me.
9 **THE COURT:** All right.
10 Mr. Hirschkop.
11 **MR. PETROSINELLI:** Actually, Judge, I have three
12 issues; and Mr. Hirschkop has others, I guess.
13 Ours relates to the first two witnesses that we
14 understand Mr. Hirschkop intends to call today. The first
15 one is named Doll Stanley.
16 That name appeared on a plaintiff's witness list,
17 and that was the first time we understood the plaintiffs
18 intended to call her, and we objected to it immediately.
19 Ms. Stanley was never identified during discovery period as
20 a witness with relevant knowledge.
21 When we asked interrogatories of the plaintiff
22 way back in September of 2004, we asked them for a list of

<p>Page 1228</p> <p>1 She was going to be helping them raise funds, that 2 type of things.</p> <p>3 Q Did she disclose to you she was really 4 working for a man named Richard Froemming?</p> <p>5 A No.</p> <p>6 Q Did she disclose to you Mr. Froemming was 7 paying her cash to do that?</p> <p>8 A No.</p> <p>9 Q Did she disclose to you that she was taking 10 financial documents from PAWS and giving them to 11 Richard Froemming?</p> <p>12 A No.</p> <p>13 Q Did she disclose to you she was being paid by 14 Mr. Froemming to seek you out and get information from 15 you?</p> <p>16 A No.</p> <p>17 Q Did there come a time when you went to the 18 Mirage Hotel in Las Vegas, Nevada?</p> <p>19 A Yes.</p> <p>20 Q Did Julie Lewis go?</p> <p>21 A Yes.</p> <p>22 Q What happened there?</p>	<p>Page 1230</p> <p>1 said, "Well, you know, my mom and my brother are here. 2 I would love to stay with them." And she said, "but I 3 thought you were staying with me." And she really, 4 like, overreacted to the point I thought it's not 5 worth all this. If she's this upset, I'll stay with 6 her. So I ended up staying in her room with her.</p> <p>7 Q Did you ever become aware that she had 8 recording equipment to privately record conversations?</p> <p>9 A No.</p> <p>10 Q Did you ever find out where she was privately 11 recording conversations of Pat Derby?</p> <p>12 A No.</p> <p>13 Q This demonstration at the hotel in Las Vegas, 14 what did it consist of?</p> <p>15 A There were a number of people holding signs, 16 many of which I handwrote. That was it. It was just 17 right there on the main drag there in Vegas.</p> <p>18 Q Are we talking about hundreds or thousands of 19 people?</p> <p>20 A No. If I had to guess at a number, I would 21 say -- I would say 40 or so maybe.</p> <p>22 Q Was it a totally peaceful demonstration?</p>
<p>Page 1229</p> <p>1 A I had organized a protest against the Mirage. 2 They had just brought in I think at the time it was 3 six dolphins and put them in what is equal for a 4 dolphin to a bathtub. It is just a very small pool.</p> <p>5 And I -- because I had worked at the Sea 6 Shepherd Conservation Society, dolphins were very -- 7 were of interest to me, and I organized a protest.</p> <p>8 And I knew Julie during that time. And she 9 again said if there's anything I can do. She was very 10 involved. She wanted to know everything that I was up 11 to in organizing this demonstration. So leading up to 12 it, she was kind of talking to me a lot, and then she 13 did go to it as well.</p> <p>14 Q When you got there, was anything unusual 15 about the hotel arrangements?</p> <p>16 A It was odd because when I got -- my mom and 17 my brother decided to come into Las Vegas from Los 18 Angeles to go to the demonstration. And of course, I 19 wanted to stay with them. And when I got there, when 20 I got to Vegas, I mentioned that to Julie, and she got 21 angry. And it was just a very odd response. And she 22 said, "I thought you were staying with me." And I</p>	<p>Page 1231</p> <p>1 A Yes.</p> <p>2 Q Now, prior to moving east, did you see Julie 3 Lewis any other times in California?</p> <p>4 A Yes. After I had gotten -- after I was hired 5 at PETA in '92, I went up north to the PAWS sanctuary, 6 because I was going to head east, and I didn't know 7 when I was going to be back again, so I went up north. 8 And again, I went with my brother and my mom. And 9 Julie was there as well.</p> <p>10 Q And this may be kind of a dumb question, but 11 I'm not sure all the jurors know the geographical 12 layout of California. Los Angeles is in the southern 13 part on the coast?</p> <p>14 A Yes. Los Angeles is in the south and Galt, 15 where the sanctuary is, is just north of Sacramento, 16 so it was a flight.</p> <p>17 Q And Sacramento is the central part, northern 18 central?</p> <p>19 A Northern, yeah.</p> <p>20 Q Is it a couple hours drive from San 21 Francisco, so inland?</p> <p>22 A Yes, inland.</p>

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1 prejudice to them.

2 MR. PETROSINELLI: I am not ready to ask her

3 about her counterclaim, and I don't know if we are

4 going to need her or not. That's the only issue.

5 MR. HIRSCHKOP: She is going back to

6 California tonight. I don't know when your case is

7 going on.

8 MR. PETROSINELLI: She will have to come

9 back. I don't think we are going to need her, but I

10 don't want to give it up. I don't have any problem

11 with her going home as long as she can get back here.

12 MR. HIRSCHKOP: She can get back. Okay. We

13 will see what happens.

14 (The bench conference was concluded.)

15 THE COURT: Ma'am, you may step down.

16 MR. HIRSCHKOP: Your Honor, I would like to

17 read the deposition of Ms. Derby.

18 THE COURT: Counsel approach.

19 (Counsel approached the bench, and the

20 following proceedings were held:)

21 MR. PETROSINELLI: I don't know what you want

22 do, Judge. It's 4:30. There are a number of

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1 objections to this deposition that we weren't able to

2 work out.

3 THE COURT: Do you have somebody to read it?

4 MR. HIRSCHKOP: Ms. Merritt can read it, Your

5 Honor.

6 THE COURT: Give me a copy of it.

7 MR. HIRSCHKOP: Here is a copy for the Court.

8 Here is a copy that has all the bracketing, including

9 yours and mine.

10 MR. PETROSINELLI: There's two major

11 objections. Could we go through them? Maybe Your

12 Honor could rule on it, and that would cut to the

13 chase here.

14 My one major problem with it is that

15 Mr. Hirschkop would -- you remember that PAWS sued the

16 circus, and this woman is the chairman of PAWS. And

17 Mr. Hirschkop had the complaint in front of her and

18 was reading from the complaint and would say now in

19 paragraph 16 of the complaint you alleged such and

20 such. What was the basis for that?

21 He cannot introduce that testimony at this

22 trial. The complaint is not in evidence, nor will it

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1 ever be in evidence. She could never read from her

2 complaint if she was here on the stand. It's clear

3 that you can't read from the complaint, and that's

4 what he did in asking her the questions. That's

5 problem number one.

6 Problem number two is that virtually every

7 question was leading, and he's not allowed to lead

8 her. She's another animal rights person. So those

9 are the two main problems.

10 MR. HIRSCHKOP: There wasn't a leading

11 objection throughout. If you would just glance

12 through this one, every other question he objected to

13 the form of the question.

14 MR. PETROSINELLI: The form is leading.

15 MR. HIRSCHKOP: Well, I can rephrase it.

16 With regard to the major problem -- we discussed this

17 over the weekend and we tried working these

18 out -- with the complaint, we believe we will put on

19 evidence through Jeff Kerr because that is principally

20 who PETA relied on in bringing case 195. That's how

21 this all got started is we saw that complaint. Based

22 on that complaint, we brought this lawsuit. That's

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1 what started these lawsuits.

2 ~~But either way, the complaint was a verified~~

3 complaint by her. So she says under oath that Doug

4 Martin was an operative within PAWS during these

5 years. Julie Lewis was an operative within PAWS

6 during these years. I then laid the predicate to ask

7 her the question and put the complaint in front of her

8 and said you said this here. Is it true? Where did

9 you get the information from? That's the only way you

10 can ask that to lay the adequate predicate to ask

11 those questions.

12 MR. PETROSINELLI: Your Honor, the fact it

13 was verified means it's like an affidavit. Think

14 about it. Would you ever let a witness get up on a

15 stand reading from an affidavit? You can't do it.

16 MR. HIRSCHKOP: From their own affidavit.

17 MR. PETROSINELLI: It's hearsay.

18 MR. HIRSCHKOP: No, it's not hearsay. It's

19 what she said.

20 MR. PETROSINELLI: Have you ever seen a

21 witness read from an affidavit --

22 MR. HIRSCHKOP: Yes.

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1 MR. PETROSINELLI: -- on the stand? It's an
 2 out-of-court statement. He could ask her the
 3 testimony. You ask her is this true, is that true, is
 4 that true. You don't say read your affidavit and tell
 5 me whether that's true. That's what he essentially
 6 did. That complaint is not coming into evidence. It
 7 is classic, unadulterated hearsay. It's got all sorts
 8 of crazy allegations about the circus, half of which
 9 were dismissed before the case settled. It can't come
 10 into evidence.
 11 THE COURT: Is there any way to read the
 12 questions without reference to the complaint?
 13 MR. PETROSINELLI: Yes.
 14 MR. HIRSCHKOP: The complaint doesn't come in
 15 evidence. We'll see if it comes in later with
 16 Mr. Kerr, but if it doesn't come into evidence, that's
 17 fine. I am asking about specific allegations in the
 18 complaint that she made and she swore were true. I
 19 said is that true. If the jury doesn't see the
 20 complaint, they don't see what he thinks are crazy
 21 things. The rest is backed up by the various
 22 documents in this case.

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1 MR. PETROSINELLI: Judge, I did exactly what
 2 you suggested. I went through, and I tried to make a
 3 list of things so we could carve it out so the
 4 complaint wasn't referred to, and I think I've done
 5 that. It's quite a bit of testimony. I don't know
 6 how much he's going to read. It's a lengthy
 7 deposition. I think that that's what he should do.
 8 He can't read from the complaint. It's not in
 9 evidence.
 10 THE COURT: Why can't you just ask her?
 11 Can't you call her?
 12 MR. HIRSCHKOP: I can't at this point because
 13 she's not here. She's in Galt, California.
 14 I can rephrase the question. I'm not sure
 15 how accurate that would be.
 16 MR. PETROSINELLI: Your Honor, I've got these
 17 things I can give to Mr. Hirschkop, the designations
 18 that I think are proper, and he could do it, but he
 19 can't read from the complaint.
 20 MR. HIRSCHKOP: For instance, let's start at
 21 the beginning. The very first objection is on page
 22 10, Your Honor.

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1 "And when you formed PAWS, did you object to
 2 the use of these animals in circuses?" "Object to the
 3 form of the question."
 4 The next one. "Did you become familiar with
 5 the use of the bull hook in circuses?" "Object to the
 6 form of the question." There's nothing wrong with
 7 that question. I asked Joe this weekend, I said go
 8 through these and at least tell me which one you
 9 object to.
 10 MR. PETROSINELLI: And I've not done that. I
 11 didn't have time to do it. I was doing other things.
 12 MR. HIRSCHKOP: I'm not blaming you. I'm
 13 just saying that's where we are. That's most of the
 14 questions. I'll look through these tonight if you
 15 want me to take it up tomorrow morning. She is the
 16 next witness.
 17 MR. PETROSINELLI: Start Jeff Kerr.
 18 MR. HIRSCHKOP: No.
 19 MR. PETROSINELLI: Start Kendall.
 20 MR. HIRSCHKOP: No. He's going to testify
 21 after this deposition. The three witness left are
 22 May, Kendall and Kerr, Your Honor.

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1 MR. PETROSINELLI: Why can't we start
 2 Kendall?
 3 MR. HIRSCHKOP: Because there is stuff in
 4 this deposition I need first for him to testify. And
 5 besides, it will be broken up. I'll be more than 20
 6 minutes for Kendall, for sure.
 7 THE COURT: We've got 20 minutes. I'm going
 8 to have to rule on these as we go through.
 9 MR. CAWLEY: Okay.
 10 THE COURT: There's got to be a way to ask
 11 questions without referring to the complaint, though.
 12 MR. HIRSCHKOP: I'll just have to see when we
 13 get to it. I see no harm, Your Honor, if I read in
 14 your complaint you said there. What's the basis of
 15 it. He's asked about other documents that other
 16 people said things. This is a sworn --
 17 MR. PETROSINELLI: I have an example. Take a
 18 look at page 30. Do you see that question at line 14
 19 where he says --
 20 MR. HIRSCHKOP: Let me get to page 30.
 21 MR. PETROSINELLI: He says, "Look at page 11,
 22 paragraph 36(c). The allegation is made there," and

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1 then he reads the allegations. "Did you see such
 2 invoices among the documents you saw?" You don't have
 3 to refer to the complaint to do that.
 4 MR. HIRSCHKOP: I can try and do that, but it
 5 will be from my feet as we go.
 6 THE COURT: You're good at that. Do it.
 7 MR. HIRSCHKOP: I have no problem with that,
 8 as long as I can get that information. If I can't ask
 9 her the information about it, because that puts me
 10 under a great deal of prejudice.
 11 THE COURT: Ask her the information. Just
 12 don't refer to the complaint.
 13 MR. HIRSCHKOP: I will try and consult with
 14 Joe as we go along.
 15 MR. PETROSINELLI: I'll make my leading
 16 objections, and you'll overrule them.
 17 THE COURT: And I'll overrule them.
 18 (The bench conference was concluded.)
 19 THE COURT: Members of the jury, this is
 20 going to be deposition testimony with basically the
 21 part of the witness being read. You're to treat it as
 22 sworn testimony. You're to treat it as any other

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1 testimony.
 2 ~~Mr. Hirschkop?~~
 3 MR. HIRSCHKOP: Your Honor, could you tell
 4 the jury this is the deposition of Pat Derby that was
 5 taken on February 8, 2006. I'm sorry. It certainly
 6 wasn't that.
 7 Yes, it was February 2006, Your Honor. And
 8 Ms. Merritt is going to read the answers in lieu of
 9 Ms. Derby since she is not here.
 10 THE COURT: All right. That's fine.
 11 (The 2/8/06 deposition of Patricia Derby is
 12 read as follows:)
 13 BY MR. HIRSCHKOP:
 14 "Q All right. And what is your
 15 background, your work background?
 16 "A I'm the director of a nonprofit
 17 animal welfare organization, and I operate
 18 three sanctuaries for captive wildlife.
 19 "Q Going back. How long have you
 20 been a director of an animal welfare
 21 organization?
 22 "A Well, I'm the founder of the

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1 Performing Animal Welfare Society,
 2 co-founder, actually, and we've been in
 3 existence for 20 years.
 4 "Q Is it all right if I call it PAWS?
 5 "A Yes.
 6 "Q How did PAWS come about? How did
 7 you come to --
 8 "A Actually, my husband and I had
 9 worked with captive wildlife in movies and
 10 television, and we realized there was a need
 11 for better standards of care and just a
 12 protection for all captive wildlife. So we
 13 formed PAWS to work on the issues of wildlife
 14 kept in captivity.
 15 "Q How long did you work before
 16 forming PAWS with captive wildlife?
 17 "A Let's see. We formed PAWS -- I'm
 18 not good with dates, so you're going to have
 19 a hard time with me.
 20 "We formed PAWS in '85. I started
 21 working in movies and television in '67. So
 22 it's approximately 15, 16 years.

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1 "Q And what type animals did you work
 2 with in movies and television?
 3 "A Elephants, lions, tigers, bears,
 4 monkeys, chimps, leopards. All kinds of
 5 exotic animals.
 6 "Q Did there come a time when you
 7 became familiar with the use of elephants in
 8 the circus?
 9 "A Yes. I was conversant with the
 10 use of elephants in circuses from the
 11 beginning of my career as an animal trainer.
 12 "Q And as an animal trainer, did you
 13 deal with other types of exotic animals that
 14 were used in the circus, like lions or
 15 tigers?
 16 "A Yes.
 17 "I felt that circuses and traveling
 18 shows were not a good life for any captive
 19 animal because of traveling and space and
 20 training.
 21 "Q Did you become familiar with the
 22 use of bull hooks in the circus?

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1 "A Yes."

2 THE COURT: You can go ahead and make your

3 objection. Just read your objection, and I'll rule on

4 it.

5 MR. PETROSINELLI: Object to the form of the

6 question."

7 THE COURT: Overruled.

8 MR. PETROSINELLI: Thank you.

9 BY MR. HIRSCHKOP:

10 "Q Were you opposed to the use of the

11 bull hook?

12 "A Yes.

13 "Q Why?

14 "A Well, even in my tenure as an

15 animal trainer in movies, I refused to use a

16 bull hook with elephants because my own

17 philosophy with working with elephants was

18 that trying to dominate them was futile and

19 dangerous. And that because they were highly

20 intelligent, I did not feel it was necessary

21 to inflict pain to get them to do things that

22 I wanted them to do.

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1 "Q Did you find that, in your

2 experience, the bull hook did inflict pain on

3 elephants?"

4 MR. PETROSINELLI: Objection, leading.

5 THE COURT: Overruled.

6 "A Yes, definitely. The bull look is

7 an instrument that causes pain, and that's

8 the purpose of the bull hook.

9 Q With regard to elephants, do you

10 have them in your sanctuary?

11 A I have eight.

12 Q How long have you had elephants in

13 sanctuaries that you have run?

14 A I believe -- I think our first one

15 came in '85. I would say at least 20 years.

16 Q And have you become very familiar

17 with the traits and habits of elephants?

18 A Yes. I have worked with captive

19 elephants for over 30 years.

20 Q Is there anything harmful to the

21 elephants to keep them chained up continually

22 or during a -- most of the day?"

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1 MR. PETROSINELLI: Judge, objection, and can

2 we approach on this one?

3 THE COURT: Counsel approach.

4 (Counsel approached the bench, and the

5 following proceedings were held:)

6 MR. PETROSINELLI: I just figured I would do

7 this one because it's the next several questions. If

8 you would read the answers, this is the type of expert

9 testimony that Your Honor just said a minute ago we

10 started getting from Ms. Lambert that's inappropriate,

11 if you read the next several answers. She is giving

12 opinions on elephant behavior and care, and that's

13 improper.

14 MR. HIRSCHKOP: But that isn't the objection

15 that was made.

16 MR. PETROSINELLI: It's an objection to the

17 form of the question because it calls for an expert

18 opinion.

19 MR. HIRSCHKOP: Well, Your Honor, you have to

20 --if you are going to do something specific at a de

21 bene esse, you've got to spell it out so you can reask

22 the question. If he chose to make general objections

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1 like that, he's stuck with what he did. That's the

2 absolute cardinal rule on these.

3 THE COURT: I think there's got to be a basis

4 given to give him the opportunity to rephrase.

5 MR. PETROSINELLI: Your Honor, that was my

6 objection, and you still have the discretion to say

7 that this is expert testimony. This is just what

8 you've said. They went overboard with Ms. Lambert.

9 We are going to get it again. The jury has already

10 heard it.

11 MR. HIRSCHKOP: This is somebody who has

12 trained elephants for 30 years, Your Honor.

13 THE COURT: I'm going to overrule the

14 objection.

15 (The bench conference was concluded.)

16 "Q Is there anything harmful to the

17 elephants to keep them chained up continually

18 or during a -- most of the day?

19 "A Inhibiting movement in an elephant

20 is probably one of the worst, most

21 detrimental practices used on elephants

22 today.

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<p>1 "Elephants need to be moving. They need</p> <p>2 space. And chaining them is just not in</p> <p>3 their best interests.</p> <p>4 "Q Is part of your opposition to the</p> <p>5 use of elephants in the circus the</p> <p>6 restriction placed on their movements?</p> <p>7 "A Yes.</p> <p>8 "Q Why is that?</p> <p>9 "A Because elephants are the</p> <p>10 quintessential moving machine. It is so</p> <p>11 critical to their well-being that they move.</p> <p>12 "They are structured -- they are this</p> <p>13 huge body mass balancing on bones on a soft</p> <p>14 cushion on their feet. They can't lay down</p> <p>15 for long periods of time without crushing</p> <p>16 their internal organs. And they have to</p> <p>17 move. Standing still is difficult for them,</p> <p>18 and they need -- movement is a critical part</p> <p>19 of their lives.</p> <p>20 "Q Now, there's opposition to use of</p> <p>21 exotic animals in the circus. Is this a</p> <p>22 personal view or is this one of the beliefs</p>	<p>1 published author. I've written one book</p> <p>2 which chronicles my time as an animal trainer</p> <p>3 in Hollywood. Then we produced several</p> <p>4 booklets on elephants. We produced a booklet</p> <p>5 on surplus animals. We produced quite a bit</p> <p>6 of literature on captive wildlife.</p> <p>7 "Q Did PAWS have a newsletter some</p> <p>8 time in the late '80s?</p> <p>9 "A We've published a newsletter.</p> <p>10 Since we formed PAWS, we have had quarterly</p> <p>11 newsletters.</p> <p>12 "Q Going back to the newsletters. In</p> <p>13 the late '80s would you from time to time</p> <p>14 express opposition to the use of exotic</p> <p>15 animals in the circus?</p> <p>16 "A Yes.</p> <p>17 "Q Were there demonstrations against</p> <p>18 the circuses that you recall in the late</p> <p>19 '80s?</p> <p>20 "A Yes.</p> <p>21 "Q When you leaflet and appeared, did</p> <p>22 you have sometimes have signs that you would</p>
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<p>1 of PAWS?</p> <p>2 "A Well, it's part of the philosophy</p> <p>3 of PAWS. We do not believe that any animal</p> <p>4 should be used in entertainment, and it's</p> <p>5 based on my personal experiences.</p> <p>6 "Q And how did PAWS go about pursuing</p> <p>7 this opposition?</p> <p>8 "A Well, we had a plan. The first</p> <p>9 thing, because we feel very strongly that one</p> <p>10 should not make statements if they're --</p> <p>11 there are any gray areas, and that you need a</p> <p>12 lot of documentation of -- of your</p> <p>13 statements.</p> <p>14 "We began, I believe, in '85 or '86 in</p> <p>15 the incipient stages of PAWS to do research</p> <p>16 on captive wildlife in various forms of</p> <p>17 captivity: Roadside zoos, traveling shows,</p> <p>18 accredited zoos and circuses.</p> <p>19 "Q And going back to the late '80s,</p> <p>20 did PAWS prepare any literature that opposed</p> <p>21 the use of exotic animals in the circus?</p> <p>22 "A Yes. I wrote -- actually, I'm a</p>	<p>1 hold up?</p> <p>2 "A Yes.</p> <p>3 "Q And would these be including at</p> <p>4 the Ringling Brothers circus?</p> <p>5 "A Yes.</p> <p>6 "Q In California?</p> <p>7 "A Right.</p> <p>8 "Q Did you do it in other states?</p> <p>9 "A Yes.</p> <p>10 "Q Did you take part in leafletting</p> <p>11 or expressing your views in Las Vegas about</p> <p>12 elephants?</p> <p>13 "A Yes."</p> <p>14 MR. HIRSCHKOP: Indulge for a moment, please,</p> <p>15 Your Honor.</p> <p>16 Read starting at line 13, please.</p> <p>17 "A I think demonstration is when</p> <p>18 people are disruptive and they try to</p> <p>19 interfere with the business of the place that</p> <p>20 they are protesting.</p> <p>21 "We never wanted to even interfere with</p> <p>22 the people who bought a ticket and were</p>

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<p>1 taking their children to see the show. We 2 really wanted to educate them and make them 3 think about the lives of the animals 4 involved. 5 "Other people have done disruptive 6 demonstrations where they actively tried to 7 prevent the show, the performance. We have 8 gone to many traveling shows, many circuses 9 where we didn't even try to leaflet. We 10 simply went in to see how things were done. 11 "So we've always tried never to be 12 disruptive. 13 "Q Have you ever done anything in 14 terms of expressing your view at circuses 15 that would endanger any of the animals? 16 "A No. 17 "Q When I say 'you,' I'm talking 18 about PAWS now. 19 "A Right. 20 "No. 21 "Q Has PAWS ever done anything that 22 would endanger any circus performers or</p>	<p>1 documents at a private individual's house. I 2 was not allowed to do anything but look at 3 them. 4 "Q Do you remember the name of the 5 individual? 6 "A No. 7 "Q Did you ever meet a Mr. Rowan or a 8 Mr. Mattera? 9 "A I think Rowan is -- is he a very 10 tall, black man? 11 "Q I can't answer questions. 12 "A I don't know. I think that's the 13 name. I'm not sure. 14 "Q Okay. As a result of seeing those 15 documents, did you file a lawsuit? 16 "A Yes." 17 (Mr. Hirschkop and Mr. Petrosinelli confer.) 18 "Q The plaintiffs in that case 19 included Edward Allen Stewart. Who is 20 Mr. Stewart? 21 "A He's the co-founder of PAWS and my 22 partner.</p>
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<p>1 patrons of the circus? 2 "A Never. 3 "Q Has PAWS engaged in any kind of 4 violent activity with regard to any circus? 5 "A Never. 6 "Q Did there come a time when you 7 were contacted by some people about some 8 documents concerning people spying or taking 9 material from PAWS? 10 "A Yes. 11 "Q Would you tell me what happened 12 there. 13 "A I don't know. It was -- I can't 14 even remember when. I guess in the late 15 1990s we received a telephone call, I 16 think -- and I'm not good at remembering 17 things. But I think somebody called us and 18 said that this person had documents that PAWS 19 would be interested in seeing. 20 "Q As a result of that phone call, 21 did you end up reviewing any documents? 22 "A I was allowed to look at some</p>	<p>1 "Q And was he an official of PAWS 2 during the late '80s and early '90s? 3 "A Yes. 4 Q Going to the next page 21, please. 5 "Prior to seeing the documents that you 6 saw, had you ever been familiar with Richard 7 Froemming? 8 "A No." 9 Q Continuing down to line 16. 10 "Did you have any knowledge, prior to 11 seeing those documents, there were any 12 operatives placed within PAWS? 13 "A You know, one of the operatives 14 was pointed out to me prior to this by a 15 woman named Linda Nealon, who was the wife of 16 Kevin Nealon. She called me about a person 17 named Julie Lewis and said that she was a 18 spy. 19 "And, you know, you have to understand 20 we considered ourselves to be a little mom 21 and pop operation, and we're not prepared to 22 think somebody spied on us.</p>

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<p>1 "So I never really knew if that were 2 true or not. We did tell her we didn't want 3 her volunteering for PAWS anymore. And that 4 was the end of it. 5 "But other than that, I, frankly, never 6 had a thought about it." 7 "Q How large was that quantity of 8 documents that you viewed?" 9 "A It was a roomful of file folders." 10 "Q Did you, in fact, see documents 11 that were apparently confidential to those 12 two organizations in the documents you 13 reviewed?" 14 "A We reviewed -- I looked through a 15 lot of documents. I was looking for 16 documents pertaining to me or Ed Stewart. I 17 was not looking for documents pertaining to 18 anybody else. 19 "I did see some documents regarding 20 Elephant Alliance and PETA, and I mentioned 21 that to our attorney. But I have no idea 22 what -- what they contained in depth because</p>	<p>1 "A You know, she arrived at a period 2 in time where we had many volunteers, and she 3 was one of a large group of volunteers who 4 came. 5 "We used to have monthly sort of 6 indoctrination meetings for volunteers 7 because they usually assisted us at open 8 houses. So we would have a meeting and tell 9 them how to comport themselves and talk about 10 PAWS's philosophy. And she came to one of 11 those meetings and became a volunteer. 12 "Q At the time were you familiar with 13 a man called Doug Martin? 14 "A Yes. 15 "Q What is your recollection of 16 Douglas Martin? 17 "A Well, he's more difficult to 18 remember. I do remember he was, I think, 19 from England and wanted to intern or 20 volunteer for PAWS. 21 "Q Did, in fact, Ms. Lewis and 22 Mr. Martin act as volunteers for a period of</p>
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<p>1 I was not allowed to take anything away." 2 Q "Is PAWS" -- go to page 24. 3 "Is PAWS a 501(c)(3) organization? 4 "A Yes. 5 "Q Does PAWS, as a 501(c)(3), engage 6 in fund-raising? 7 "A Yes. 8 "Q In your experience, do many donors 9 want not to be publicized or have their name 10 used? 11 "A Yes. 12 "Q Do you treat your donors' list as 13 confidential? 14 "A Oh, definitely. 15 "Q And do you have a number of 16 activities you engage in which you consider 17 confidential in planning activities? 18 "A Yes. 19 "Q Did there come a time when you met 20 Julie Lewis? 21 "A Yes. 22 "Q How did that come about?</p>	<p>1 time for PAWS? 2 "A Yes. 3 MR. HIRSCHKOP: May I read line 6 and 7, Your 4 Honor? 5 THE COURT: Yes. 6 "Q You say Martin started working at 7 PAWS in 1989; is that correct? 8 "A You know, if I said it here, it's 9 correct. It's now 2005, and I can't remember 10 the date. Or 2006. Excuse me." 11 Q Read the answer on line 17, please. 12 "A Again, really, right now it's -- 13 it's hazy to me. But I'm sure he did. And I 14 do recall him being there and just part of 15 this, yes. 16 "Q Have you subsequently been able to 17 find out that he, in fact, never had anything 18 to do with PETA? 19 "A No. 20 "Q Okay. Did Mr. Martin have access 21 to PAWS' offices and files thereafter? 22 "A Yes. We are -- even today our</p>

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<p>1 office is very accessible.</p> <p>2 "Q Did you become aware at any time</p> <p>3 whether or not Mr. Martin was, in fact, an</p> <p>4 employee of Feld or Ringling?</p> <p>5 "A That was one of the really</p> <p>6 shocking parts of reading those documents. I</p> <p>7 did read about his activities at PAWS in</p> <p>8 those documents, which were documents that</p> <p>9 belong to Feld.</p> <p>10 "Q And did you see in any documents</p> <p>11 that Martin and Lewis were aligned with</p> <p>12 Mr. Froemming or Richlin Consultants?</p> <p>13 "A Yes. Apparently they were</p> <p>14 employed.</p> <p>15 "You know, you're asking me to dredge up</p> <p>16 long memories, and I'm not -- I can say that</p> <p>17 anything that's in this lawsuit is true,</p> <p>18 because the very day we looked at the</p> <p>19 documents we went to the attorney."</p> <p>20 MR. HIRSCHKOP: May I read line 18 from the</p> <p>21 middle on, Your Honor?</p> <p>22 MR. PETROSINELLI: Your Honor, I object to</p>	<p>1 PAWS?</p> <p>2 "A Yes.</p> <p>3 "Q Did you see documents showing</p> <p>4 contributions to various donors and donor</p> <p>5 cards?</p> <p>6 "A Yes.</p> <p>7 "Q Would all of those things be</p> <p>8 highly confidential to PAWS?</p> <p>9 "A Yes.</p> <p>10 "Q Did you see there was the use of</p> <p>11 PAWS's mailing list by these people in the</p> <p>12 documents?</p> <p>13 "A Yes.</p> <p>14 "Q Did you become aware they were</p> <p>15 contacting PAWS donors to try and solicit</p> <p>16 funds away from PAWS?</p> <p>17 "A Yes.</p> <p>18 "Q Did you see anything about a" --</p> <p>19 MR. HIRSCHKOP: Indulge me for a moment,</p> <p>20 please, Your Honor.</p> <p>21 THE COURT: It's time to stop anyway, unless</p> <p>22 it's really in the middle of something, which it</p>
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<p>1 that.</p> <p>2 MR. HIRSCHKOP: It's the only way it will</p> <p>3 make sense.</p> <p>4 MR. PETROSINELLI: Your Honor, could I speak</p> <p>5 to Mr. Hirschkop for one moment?</p> <p>6 THE COURT: Yes, sir.</p> <p>7 (Mr. Hirschkop and Mr. Petrosinelli confer.)</p> <p>8 BY MR. HIRSCHKOP:</p> <p>9 "Q What operations was" Julie Lewis</p> <p>10 "involved in?</p> <p>11 A Well, actually, she was a very</p> <p>12 helpful volunteer. She traveled with me to</p> <p>13 Seattle to pick up a monkey. She went with</p> <p>14 me to Washington, D.C. when I testified</p> <p>15 before Congress. She was one of those people</p> <p>16 who was sort of always there and always</p> <p>17 helpful."</p> <p>18 "Q When you reviewed the documents,</p> <p>19 did you see they include membership lists</p> <p>20 from PAWS?</p> <p>21 "A Yes, I did.</p> <p>22 "Q Did you see copies of checks from</p>	<p>1 doesn't appear to be.</p> <p>2 MR. HIRSCHKOP: No. That's fine, Your Honor.</p> <p>3 THE COURT: Members of the jury, we are going</p> <p>4 to break for the day. The usual ground rules. Please</p> <p>5 leave your notes. Please don't talk to anybody about</p> <p>6 the case. Please don't do any kind of independent</p> <p>7 research anywhere. If there's anything in the paper</p> <p>8 or on the radio or on TV, please don't watch it or</p> <p>9 read it. Have a nice evening. We will see you at 10</p> <p>10 o'clock in the morning. Deputy McCracken will tell</p> <p>11 you when and where to be.</p> <p>12 (The jury left the courtroom.)</p> <p>13 THE COURT: You seem to be doing fine with</p> <p>14 these questions without referring to her complaint, I</p> <p>15 know it's not the easiest thing in the world to do.</p> <p>16 Any housekeeping things before we break for</p> <p>17 the day?</p> <p>18 MR. HIRSCHKOP: None for me.</p> <p>19 MR. CAWLEY: None, Your Honor.</p> <p>20 MR. HIRSCHKOP: Unless you want to change</p> <p>21 your mind about the pictures.</p> <p>22 THE COURT: 10 o'clock tomorrow morning.</p>

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<p>1 (At 5:02 p.m. the trial was recessed to 2 reconvene at 10 a.m., Tuesday, March 7, 3 2006). 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p>1 CERTIFICATE OF REPORTER 2 I, Laurel P. Platt, do hereby certify that the 3 afternoon session of the foregoing proceedings was 4 taken by me in machine shorthand and thereafter 5 reduced to typewriting by means of computer-aided 6 transcription; that said proceedings are a true record 7 of the testimony given by said witnesses; that I am 8 neither counsel for, related to, nor employed by any 9 of the parties to the action in which these 10 proceedings were taken; and further, that I am not a 11 relative or employee of any attorney employed by the 12 parties hereto, nor financially or otherwise 13 interested in the outcome of the action. 14 Given under my hand this 8th day of March, 2006. 15 16 17 18 19 _____ 20 Laurel P. Platt, 21 Registered Diplomat Reporter 22</p>
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<p>1 CERTIFICATE OF REPORTER 2 I, Malynnda D. Whiteley, do hereby certify that the 3 morning session of the foregoing proceedings was taken 4 by me in machine shorthand and thereafter reduced to 5 typewriting by means of computer-aided transcription; 6 that said proceedings are a true record of the 7 testimony given by said witnesses; that I am neither 8 counsel for, related to, nor employed by any of the 9 parties to the action in which these proceedings were 10 taken; and further, that I am not a relative or 11 employee of any attorney employed by the parties 12 hereto, nor financially or otherwise interested in the 13 outcome of the action. 14 Given under my hand this 8th day of March, 2006. 15 16 17 18 19 _____ 20 Malynnda D. Whiteley, 21 Registered Diplomat Reporter 22</p>	