
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



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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.

The Death of 3-yr. old Kenny

Introduction

Baby elephants are an enormously popular attraction at circuses and zoos and bring in tens of thousands of spectators each year to these exhibitions. Ringling Bros. uses several baby elephants in its performances. One such elephant, a 3-yr. old named Kenny, died the night of January 24, 1998 after his third appearance for the circus in one day. Ringling Bros. advertisements heavily touted Kenny as a star attraction. Records released under the Freedom of Information Act reveal that, although Kenny was extremely ill and that Ringling Bros.' own veterinarian strongly recommended that he "remain in the barn," Kenny was nevertheless made to appear in three shows on the day he died. He died an extremely painful death from intestinal problems an hour after his last appearance.

The Animal Welfare Act provides that the Secretary of the U.S. Department of Agriculture "shall promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors. Regulations further provide that "handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma . . . behavioral stress, physical harm, or unnecessary discomfort." 9 C.F.R. § 2.131(a)(1). "Young or immature animals shall not be exhibited for periods of time which would be detrimental to their health or well-being." 9 C.F.R. § 2.131(b)(3).

Outcome

Although the USDA filed a formal Complaint against Ringling, it later dropped the case in exchange for a "settlement" under which Ringling agreed to (1) contribute \$10,000 to an institution "to conduct research relating to gastrointestinal or infectious diseases in elephants;" (2) provide \$10,000 to a nonprofit "sanctuary" for elephants; and (3) "include in its annual continuing education training program a speaker consultant with recognized expertise in the area of humane handling, care, treatment and transportation of animals by exhibitors." Ringling fulfilled these three conditions by funding research on ways to prevent herpes in baby elephants, even though there was no evidence that Kenny had herpes; giving \$10,000 to an elephant hospital in Thailand that is owned by the same organization that employs the expert hired by Ringling to defend this case; and by hiring the former Assistant Deputy Administrator for Animal Care at the USDA to be Ringling's new "Vice President for Animal Care."

In exchange, the Deputy Administrator for Animal Care provided Ringling with a written statement that, "contrary to published reports," the USDA's Complaint "did not allege that Ringling Bros. was responsible for or that its actions contributed to the death of Kenny," and that "Ringling Bros. has never been adjudged to have violated the Animal Welfare Act or the Regulations or Standards issued thereunder" – a statement that continues to be used by Ringling in defense of charges by animal welfare groups that Ringling mistreats its elephants. The case was then closed.

The USDA's Investigation

On the evening of January 24, 1998, 3-yr. old baby elephant Kenny died following his third appearance in one day at the circus at Ringling's Jacksonville, Florida show. Records released under the Freedom of Information Act reveal that Kenny was extremely ill, that he **"had not been eating or drinking the night before his death,"** that he **"had 3 episodes of diarrhea,"** that he was **"bleeding from his rectum,"** that **"he had a hard time standing and was very shakie,"** and that he was acting **"painful and colicky and layed [sic] down and rose several times."** The records also reveal that, due to his condition, Ringling Bros.' veterinarian, Dr. Gary West, advised Ringling's elephant trainers, Gunther Gebel Williams and his son, Mark Oliver Gebel, that Kenny **"should not go in the show"** and **"should remain in the barn."** Nevertheless, the records also reveal that the veterinarian's advice was overridden by Williams, who insisted that Kenny be taken out and paraded with the other elephants. About an hour after this last appearance, Kenny **"died acutely"** with **"[r]ectal hemorrhage [] prominent at death."**

The USDA began its investigation sometime during the first week of February, 1998. On February 5, 1998, Gary West submitted a sworn Affidavit to the agency describing Kenny's symptoms and recounting that West had advised Gebel-Williams **"that Kenny should remain in the barn . . . because Kenny didn't feel good."** Sworn testimony from other Ringling Bros. employees confirmed that **"Dr. West did not want Kenny to perform in the third Show."** On February 6, 1998, the USDA obtained a sworn statement from Gunther Gebel Williams stating that the **"final decision as to whether an animal performs is up to my [son] and me,"** but that they **"would not go against the Veterinarian's decision,"** and, in a supplemental affidavit submitted on February 28, 1998, Williams stated that **"if the Veterinarian tells us that an animal is unhealthy or physically unable to perform**

we would not overrule the Veterinarian's decision."

On March 4, 1998, Gary West submitted yet another affidavit stating that, although he had "advised" the Ringling Bros. trainers that "Kenny should remain in the barn," "[t]his was not an order, just advice," that he "did not feel that they were trying to override my advice," and that he "was never pressured, intimidated, or coerced in any way by the trainers or anyone else" to let Kenny appear in the third show on the day he died, and that "[i]f I had ordered the trainers to leave Kenny in the barn I feel that they would have."

Nevertheless, on March 6, 1998, the USDA's Acting Deputy Administrator for Animal Care sent a memo to the Undersecretary for Marketing stating that the evidence showed that "**orders from the attending veterinarian to leave Kenny in his stall during the 3rd performance on the day he died were not followed by the trainers, Mark Oliver Gebel and Gunther Gebel Williams,**" and that, although in his later declaration Dr. West "back peddles on his initial statement," "suggesting that he would have deferred to the trainers' judgment," the agency had nevertheless concluded that "**there is a prosecutable violation,**" and therefore "recommend[s] filing a complaint."

On April 16, 1998, the USDA filed a Complaint against Ringling for violating the AWA standards for the handling of animals. Although its own investigation had shown not only that Ringling Bros. trainers made Kenny perform two earlier shows when he was sick, but also that they made him appear in a third show, against the explicit advice of Ringling's own veterinarian, the Complaint did not charge Ringling for this latter incident. Rather, it only charged Ringling for making Kenny perform in the first two shows, as a failure to handle Kenny "in a manner that did not cause behavioral stress and unnecessary discomfort," in violation of 9 C.F.R. § 2.131(a)(1), by making the elephant "perform before it had been examined by a veterinarian" after "determining that

exhibited for periods of time which would be detrimental to their health or well-being,” and that animals “shall be exhibited only for periods of time and under conditions consistent with their good health and well-being,” 9 C.F.R. §§ 2.131(b)(3), (c), Ringling was not charged with violating these provisions.

On May 14, 1998, a USDA investigator noted that Ringling Bros.’ Vice President and Corporate Counsel had refused to provide the agency with a copy of the histopathology report on Kenny in furtherance of the agency’s attempt to determine Kenny’s cause of death. On May 13, 1998, Ringling Bros. filed its Answer to the Complaint in which it asserted that the trainers “believed that Kenny was feeling well enough to participate in his normal activities,” and that because elephants “can become upset and agitated when separated from the rest of the herd or their routine is otherwise disturbed, it was in Kenny’s best interests to be allowed to join the other elephants . . . and participate in the presentation as he normally did.” Despite Dr. West’s sworn testimony that he advised the trainers that “Kenny should remain the barn” during the third show, Ringling Bros. nevertheless asserted that, prior to the third show, “Kenny still did not appear to the veterinarian, trainers, or the veterinarian’s assistant to be seriously ill, and that, based on a discussion with the veterinarian, “it was decided that it would be in Kenny’s best interests” to allow him to perform with the other animals. In support of its position, Ringling submitted an unsworn statement by veterinarian Michael Schmidt, who had no first-hand knowledge of any of the events surrounding Kenny’s death, but who stated that, based on what he had been told, it was his opinion that “all actions by employees of [Ringling] Feld described in those documents were taken in the best interests of Kenny.” Dr. Schmidt mentioned that he has done consulting work on elephant veterinary care and reproduction “for the governments of Thailand and Myanmar (formerly Burma),” and that he was “actively engaged in scientific research with the goals of developing enhanced reproduction

in the timber elephants engaged in logging activities” for those countries – i.e., that he was helping them produce elephants for their work forces. One of the organizations Dr. Schmidt works for is the Forestry Industry Organization in Thailand.

On July 1, 1998, the Acting Deputy Administrator for Animal Care, issued a “Decision Memorandum” stating that the agency had decided to settle the case with Ringling Bros. because the violations related to inadequate veterinary care and improper handling are “very subjective assessments.” Under the settlement, Ringling agreed (1) to donate \$10,000 to an institution “to conduct research relating to gastrointestinal or infectious diseases in elephants;” (2) to provide \$10,000 to a nonprofit sanctuary for elephants; (3) to “include in its annual continuing education training program a speaker consultant with recognized expertise in the area of humane handling, care, treatment and transportation of animals by exhibitors under the Animal Welfare Act;” and (4) to require its employees to acknowledge receipt of the company’s written policy to comply with the AWA.

On July 15, 1998, the USDA entered into the settlement with Ringling Bros. On the same day – apparently as an additional agreement entered into by the parties as part of the settlement – USDA sent a letter to Ringling’s attorneys stating that “certain media reports stated incorrectly that USDA had charged Ringling Bros. with a violation of the Animal Welfare Act that resulted in the death of ‘Kenny,’” and that, “contrary to the published reports,” the complaint “did not allege that Ringling Bros. was responsible for or that its actions contributed to the death of ‘Kenny.’” In a further effort to address Ringling Bros.’ “concerns expressed at numerous meetings with our attorneys,” the Acting Deputy Administrator provided Ringling with the written statement that “Ringling Bros. has never been adjudged to have violated the AWA or the Regulations and Standards issued thereunder.” On July 15, 1998, the USDA officially “closed” the investigation.

Ringling's Settlement Compliance

On October 14, 1998, USDA formally approved Ringling Bros.' donation of \$10,000 to an Elephant Hospital in Thailand, in satisfaction of Ringling's obligation under the settlement to donate \$10,000 to a "nonprofit sanctuary for elephants." According to documents submitted by Ringling, that Hospital is located in a complex that is "owned by the Forestry Industry Organization, a government-run timber enterprise" – the same organization that employs Michael Schmidt, the veterinarian who submitted an "expert" statement in the case on behalf of Ringling stating that "all actions by employees of [Ringling] Feld . . . were taken in the best interests of Kenny." The other \$10,000 for "an outside organization or institution to conduct research relating to gastrointestinal or infections diseases in elephants" was provided to researchers who are studying ways to prevent the herpes virus from reducing the number of baby elephants who survive in captivity. Although there was never any evidence that Kenny suffered from such a virus, Ringling has a strong commercial interest in preventing herpes in baby elephants, since it needs healthy babies for its circus performances, and herpes in captive elephants has become an increasing problem.

Finally, in fulfillment of Ringling's obligation under the settlement to "include in its annual continuing education training program a speaker or consultant with recognized expertise in the area of humane handling, care, treatment and transportation of animals by exhibitors under the Animal Welfare Act," the company hired a former USDA employee as a "training and veterinary consultant." As stated in correspondence from Ringling's Vice President, prior to becoming a paid consultant for Ringling, he "was a USDA employee for 27 years, having held the position of Assistant Deputy Administrator for Animal Care at the time of his retirement" -- i.e. this individual was a high-level official in the same office that enforces the AWA. Ringling also fulfilled its obligations under this provision of the settlement by inviting USDA's Acting Deputy Administrator

for Animal Care and several other USDA employees to visit the circus in California, where they gave presentations to Ringling's staff.

Enforcement Synopsis

The incident of Kenny's death appears to be the first and only time in recent years that the USDA has filed formal charges against Ringling for violating the Animal Welfare Act. However, not only did the agency not pursue the most serious charge against Ringling – i.e., the Gebels' refusal to heed Ringling's own veterinarian's advice that the severely ill baby elephant should be left in the barn and not made to perform a third time – but it settled the entire case without obtaining any penalties for the U.S. Treasury or future enforcement efforts by an agency that is consistently underfunded. Furthermore, USDA chose not to obtain any injunctive relief to prevent Ringling Bros. from engaging in similar practices in the future. Instead, for \$10,000 paid to an employer of its own "expert," and \$10,000 more for the prevention of herpes in captive baby elephants, Ringling obtained a much more valuable written statement from an extremely high level official of the agency that enforces the AWA: that Ringling had been wrongly accused of taking actions that "contributed to the death of 'Kenny,'" and, more important for public relations, that **"Ringling Bros. has never been adjudged to have violated the AWA or the Regulations and Standards issued thereunder"** – a statement that, to this day, Ringling relies on as evidence that there is absolutely no validity to assertions by animal welfare groups that Ringling beats and otherwise mistreats its elephants.

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AFFIDAVIT

1. (name of affiant) Gary D. West, DVM being duly sworn on oath

make the following statement:

I, Gary D. West, D.V.M., voluntarily give this statement to W.D. McFather who has identified himself to me as an Investigator with USDA, APHIS, Investigative & Enforcement Services.

I reside at [redacted] Phone No. [redacted]
[redacted] I prefer not to give my social security number.

I am employed full time by Ringling Bros. & Barnum & Bailey Circus as their Attending Veterinarian. I have held this position for approximately 1 1/2 years. I have been a veterinarian for 2 1/2 years. I have had approximately 2 years experience giving veterinary care to elephants.

On January 24, 1998, I received a call from [redacted] around 1:40pm regarding Kenny an Asian male elephant which was born on August 19, 1994. I was informed that Kenny had not been drinking for about 18 hours, with the exception of some rain water, although he was eating a little. I was also informed that he was showing some colicky signs, but he was performing normally.

I told [redacted] to give him 500mg of Banamine orally. I called [redacted] back a short time later and was informed that Kenny readily took the medicine.

On this same date I arrived in Jacksonville, FL, at about 5:45pm. This is where the circus was being held and where Kenny was located. I was told by [redacted] that during the second performance Kenny had 3 episodes of diarrhea. After my examination of kenny he appeared mildly dehydrated. I gave him 1 gram of ceftiofur IM and 400 mg Banamine IM. He was offered water with powered electrolytes of which he drank about 40 liters within a 3 hour period. After he drank the fluids he seemed well hydrated and his mucous membrane color was good. He continued to

Gary D. West
SIGNATURE OF AFFIANT

Subscribed and sworn to before me at [redacted]
on this 5 day of February, 19 98

W.D. McFather
DESIGNATED PURSUANT TO 7 USC 2262
ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS
AUTHORITY NO 2250

GOVERNMENT
EXHIBIT
18
1023

AFFIDAVIT

I, (name of affiant) May D. West, DVM being duly sworn on oath

make the following statement:

act painful and colicky and laid down and rose several times. Some fresh blood was passed after a formed bolus of feces was passed. More blood was passed with formed stool. I performed a rectal examination with no palpable abnormalities. After the exam my rectal sleeve was covered with blood. Shortly afterwards he was again offered fresh vegetables and fruit items. He ate several apples. He also drank some more water with electrolytes.

The decision was made by ^{bb} to take Kenny with the other elephants to the arena because he felt that leaving kenny behind might be more disruptive to his routine. I advised him that Kenny should remain in the barn. The reason for this is because Kenny didn't feel good and I felt he might pass some blood which might be seen by a spectator and cause speculation as to his well being. I don't believe the walk to the arena with the other elephants would exacerbate his condition nor do I believe it did. Kenny was taken to the arena with the other elephants and was returned to the barn about 15 minutes later. ^{bb} if told me that coming back Kenny was a little unsteady. When the elephants were in the arena I heard one of them wail a few times. Wailing is not an indication that an elephant is in pain. I don't know which elephant did the wailing. To my knowledge while at the arena, Kenny stood next to the ring while the other elephants performed. After returning from the arena he started playing with his water. He drank approximately 1 gallon of electrolytes and water. Afterwards he passed some blood and his condition appeared to improve. Approximately 1 1/2 to 2 hours later he died acutely. Rectal hemorrhage was prominent at death. Even though I performed a necropsy, which started about 5:00am on January 25, 1998, to date the cause of death has not been determined and may never be definitive.

Kenny had performed in 2 shows that day prior to my arrival and to my knowledge performed normally. His performance usually lasts

May D West
SIGNATURE OF AFFIANT

Subscribed and sworn to before me at
on this 5 day of February, 19 98

W. A. McFarther
DESIGNATED PURSUANT TO 7 U.S.C. 2217 TO
ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS
AUTHORITY NO 2250

GOVERNMENT
EXHIBIT
18
10203

AFFIDAVIT

I, (name of affiant) Mary D. West, DVM being duly sworn on oath
make the following statement:

about 7 minutes. I believe our handlers would not allow an animal to perform if they knew that the animal had a serious illness. We could not foresee that this illness was serious enough to cause kenny's acute death.

W.D. McFather has a copy of my case report, necropsy report, histopathology report, and culture reports. I have given him a copy of our written program of veterinary care. This copy was faxed to Ringling Bros. This is why it is not signed by them.

I swear that this statement is true and correct to the best of my knowledge and belief.

Mary D. West
SIGNATURE OF AFFIANT

Subscribed and sworn to before me at _____
on this 5 day of February, 19 98 b6

W.D. McFather
DESIGNATED PURSUANT TO 7 U.S.C. 2712 TO
ADMINISTER OATHS, AFFIDAVITS, AND AFFIR
AUTHORITY NO 2250

GOVERNMENT
EXHIBIT
18
Pg 3 of 3
AND RETURN TO US

AFFIDAVIT

being duly sworn on oath make the following statement: I am employed with Ringling Brothers [] mailing address P.O. Box 9001, Vienna, VA. 22183-9001.

I am the [] with the [] with Feld [] Entertainment, dba: Ringling Brothers. I give this sworn statement to Page A. Epple and William T. Groce who has identified themselves to me as investigators with USDA, APHIS, IES.

I first became aware that Kenny was sick when I was told by one of the animal handlers on January 24, 1998. I heard Dr. West might need help so I went to Kenny. Dr. West asked me to purchase some fresh greens for Kenny. I purchased about \$30.00 worth of collards, broccoli, lettuce and cabbage. I heard Dr. West say that Kenny should not perform. I mentioned, wouldn't it be less stressful to let Kenny walk with the group; instead of leaving him behind. Dr. West said that would not be a bad ideal that the decision would be the [] The Veterinarian makes recommendations but the [] has the last decision as to whether the animals will perform. When I returned with the fresh greens Kenny was bedded down and I heard that he had walked to the show curtain but did not perform. I fixed the greens for Kenny but he picked over them and didn't eat much. Kenny preferred the lettuce over the other greens. I left thinking Kenny had a belly ache and that he would be fine in the morning. I was surprised the next day when I heard he died.

I have read my sworn statement consisting of one page. I was given an opportunity to make any changes I felt were needed. It is true and correct to my knowledge.

[] SIGNATURE OF AFFILIANT []

Subscribed and sworn to before me at Columbia, SC on this 6 day of February, 1998

DESIGNATED PURSUANT TO 7 U.S.C. 2217 TO ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS. AUTHORITY NO. 2227

GOVERNMENT EXHIBIT 21

Privacy Act Notice on Reverse

Page 1 of 1.

AFFIDAVIT

being duly sworn on oath make the following statement: I am employed with Ringling Brothers mailing address P.O. Box 9001, Vienna, VA. 22183-9001.

I am a

with Feld Entertainment, dba: Ringling Brothers. I

give this sworn statement to Page A. Epple and William T. Groce who has identified themselves to me as investigators with USDA, APHIS, IES.

On January 23, 1998, I observed Kenny and he appeared to be in good condition. I did not notice any unusual signs.

On January 24, 1998, I arrived at work for my shift from 3:30p.m. to 10:00p.m. I remember seeing Dr. West present when I arrived for my shift. I checked the elephants and didn't notice much. I did notice Kenny was having a hard time going to bathroom. He acted constipated. His stool was moist not normal. He was attempting to go to the bathroom every ten to fifteen minutes. Around 4:30p.m. to 5:30p.m. Kenny's stool appeared to have mucus. I was told it might be from pushing to hard. Kenny's stool got reder as time went on. He was still eating apples. He was being given electrolytes in his water. Around 7:30p.m. to 8:30p.m. Kenny starting to lay down and get back up. He was repeating this action often. His stool appeared to have blood in it now. Kenny went over with the other elephants to perform.

Dr. West did not want Kenny to perform in the third Show at 7:30p.m. on the 24th of January 1998. I do not know who over ruled Dr. West's decision. After the performance I had food available for all the elephants. I left the elephants around 10:00p.m. I noticed several people entering the elephant tent around 11:30p.m. I went out and was shocked to hear that Kenny had died. I helped place Kenny on a pallet for removal.

I have read my sworn statement consisting of one page. I was given an opportunity to make any changes I felt were needed. It is true and correct to my knowledge.

SUBSCRIBER'S SIGNATURE

Subscribed and sworn to before me at Columbia, SC on this 6 day of February, 1998

APHIS FORM 7162 Replaces V7 Form 3-99G which is obsolete (NOV 92)

Page A. Epple
DESIGNATED PURSUANT TO 7 U.S.C. 2217 TO ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS, AUTHORITY NO. 227

GOVERNMENT EXHIBIT 22

From: Ron DeHaven-APHIS
To: HQDOMAIN.GW("Michael Dunn-OSEC")
Date: 3/6/98 2:46pm
Subject: Ringling Brothers Cases

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGE

Mr. Dunn,

I was planning on discussing disposition of the 2 Ringling Brothers cases following our meeting on DDAL; however, since that meeting has been postponed, please excuse the e-mail.

Following are my recommendations, based on conversations with Mr. Medley and Mr. Vail:

1. Tiger shooting incident

While there is a technical violation for improper euthanasia, prosecutorial discretion suggests that, given the horrible circumstances, we should close the case with a letter of warning.

2. Death of Kenny the Elephant

The case shows that orders from the attending veterinarian to leave Kenny in his stall during the 3rd performance on the day he died were not followed by the trainers, Mark Oliver Gebel and Gunther Gebel Williams. However, the veterinarian back peddles on his initial statement in later sworn statements, suggesting that he would have deferred to the trainers' judgement. Nevertheless, we feel there is a prosecutable violation, and recommend filing a complaint. It is likely that Ringling Bros. would want to settle by consent agreement; of course, I would let you know of any such offers before we would agree to a settlement.

With your concurrence, we will proceed as described above.

Ron

CC: HQDOMAIN.GW("Craig Reed-APHIS", "Terry Medley-APHIS...")

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGE

RECEIVED JAN 25 2002



UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No.
)
)
) Feld Entertainment, Inc.,)
) dba Ringling Bros. &)
) Barnum & Bailey Circus,)
)
) Respondent) Complaint

98-0020

There is reason to believe that the respondent named herein has willfully violated the regulations (9 C.F.R. § 1.1 et seq.) issued pursuant to the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.), hereinafter referred to as the Act, and, therefore, the Administrator of the Animal and Plant Health Inspection Service ("APHIS") issues this complaint alleging the following:

I

A. Feld Entertainment, Inc., dba Ringling Bros. & Barnum & Bailey Circus, hereinafter referred to as respondent, is a corporation and its address of record is 8607 Westwood Center Drive, Vienna, Virginia 22182.

B. The respondent, at all times material hereto, was licensed and operating as an exhibitor as defined in the Act and the regulations.

II

On two separate occasions on January 24, 1998, the respondent failed to handle a juvenile Asian elephant known as "Kenny" as expeditiously and carefully as possible in a manner that did not cause behavioral stress and unnecessary discomfort, in that, after determining that the elephant was ill and needed to be examined by a veterinarian, respondent made the elephant perform before it had been examined by a veterinarian, in willful violation of sections 2.100(a) and 2.131(a)(1) of the regulations (9 C.F.R. §§ 2.100(a), 2.131(a)(1)).

WHEREFORE, it is hereby ordered that for the purpose of determining whether the respondent has in fact willfully violated the Act and the regulations and standards issued under the Act, this complaint shall be served upon the respondent. The respondent shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an answer shall constitute an admission of all the material allegations of this complaint.

The Animal and Plant Health Inspection Service requests:

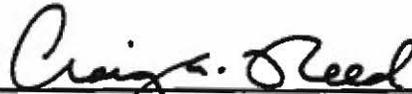
1. That unless the respondent fails to file an answer within the time allowed therefor, or files an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the Act; and

2. That such order or orders be issued as are authorized by the Act and warranted under the circumstances, including an order:

(a) Requiring the respondent to cease and desist from violating the Act and the regulations and standards issued thereunder; and

(b) Assessing civil penalties against the respondent
in accordance with section 19 of the Act (7 U.S.C. § 2149).

Done at Washington, D.C.
this 16th day of April, 1998



Acting Administrator
Animal and Plant Health
Inspection Service

FRANK MARTIN, JR.
ROBERT A. ERTMAN
Attorneys for Complainant
Office of the General Counsel
United States Department of
Agriculture
Washington, D.C. 20250-1400
Telephone (202) 720-2633, 720-4982

RECEIVED AUG 1 2008

DECISION MEMORANDUM FOR THE ACTING ADMINISTRATOR

FROM: W. Ron DeHaven **W. RON DeHAVEN JUL - 1 1998**
Acting Deputy Administrator
Animal Care

SUBJECT: Ringling Brothers Settlement Proposal

ISSUE:

Animal Care is requesting approval for the terms of a consent agreement with Feld Entertainment, Inc.

BACKGROUND:

It was decided in a meeting with Mr. Dunn that we would file a formal complaint against Feld Entertainment, dba Ringling Brothers and Barnum and Bailey Circus, for alleged Animal Welfare Act (AWA) violations related to the death of Kenny, a 3-year old elephant. The animal died from an acute gastrointestinal infection. The complaint cited two violations related to inadequate veterinary care and improper handling, but these are very subjective assessments. We were seeking a \$5,000 civil penalty on this case. It was understood at the time the decision was made to issue the complaint that there were several potential "holes" in our case, and the "outside experts" we contacted were not lining up on our side.

OPTIONS:

Frank Martin has negotiated a possible settlement with Feld Entertainment. The terms are:

1. \$10,000 donation to an outside organization or institution to conduct research relating to gastrointestinal or infectious diseases in elephants—subject to APHIS approval.
2. \$10,000 to an outside nonprofit sanctuary for elephants—subject to APHIS approval.
3. A continuing education program for each performer, animal trainer, animal attendant, animal care giver, and veterinary assistant on the regulations and standards and sound husbandry practices. This continuing education will include a speaker or consultant with recognized expertise in the area of the humane handling, care, treatment, and transportation of exhibit animals.
4. Ringling Brothers will require each contract animal handler and employee to acknowledge receipt of a copy of Feld's written policy to comply with the AWA.

DECISION MEMORANDUM FOR THE ACTING ADMINISTRATOR

RECOMMENDATION:

Given the weakness of our case against Feld Entertainment and the limited penalty we could seek at a hearing, I think this is a very favorable settlement proposal for the Department. Please advise if you would like me to proceed with this settlement. If you prefer, I can prepare a decision memo to Mr. Dunn.

DECISION BY THE ACTING ADMINISTRATOR:

Approve _____

Disapprove _____

Discuss with me _____

Date _____

cc:

K. Vail, OGC

R. Stanley, IES

B. Goldentyer, AC

USDA:APHIS:RDeHaven:rd:cy:7/1/98:dec-ring.98

RECEIVED MAR 27 2002

July 15, 1998

Mr. Harris J. Weinstein
Ms. Jeannie Perron
Covington & Burling
1201 Pennsylvania Avenue, NW.
P.O. Box 7566
Washington, D.C. 20044-7566

Dear Mr. Weinstein and Ms. Perron:

Subject: In re Feld Entertainment, Inc., dba Ringling Bros. & Barnum & Bailey Circus, AWA Docket No. 98-20

I am writing to allay your concerns expressed at numerous meetings with our attorneys about the media reports surrounding the death on January 24, 1998, of the juvenile Asian elephant known as "Kenny" and the complaint filed by the United States Department of Agriculture (USDA) in AWA Docket No. 98-20.

As you are aware, certain media reports stated incorrectly that USDA had charged Ringling Bros. and Barnum & Bailey Circus (Ringling Bros.) with a violation of the Animal Welfare Act that resulted in the death of "Kenny." Contrary to the published reports, the complaint filed in AWA Docket No. 98-20 did not allege that Ringling Bros. was responsible for or that its actions contributed to the death of "Kenny." Also, Ringling Bros. has never been adjudged to have violated the AWA or the Regulations and Standards issued thereunder.

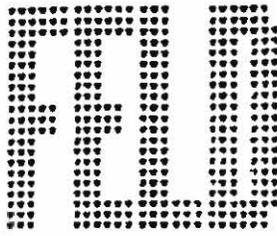
I hope this letter addresses your concerns.

Sincerely,

W. RON DeHAVEN

W. Ron DeHaven
Acting Deputy Administrator
Animal Care

RECEIVED AUG 1 2008



ENTERTAINMENT, INC.

March 23, 1999

VIA FEDERAL EXPRESS

Bob Ertman, Esquire
United States Department of Agriculture
Office of General Counsel
Room 2014
South Building
Washington, D.C. 20250-1417

JULIE ALEXA STRAUSS
Vice President
and Corporate Counsel

Ringling Bros. -
Barnum & Bailey
Combined Shows, Inc.

Ringling Bros. -
Barnum & Bailey
International, Inc.

Ice Follies and
Holiday On Ice, Inc.

Ringling Bros. and
Barnum & Bailey

Siegfried & Roy
at The Mirage

Doney on Ice

Ringling Bros. and
Barnum & Bailey
Clown College

The Wizard of Oz
on Ice

Manhattan
New York-New York
Hotel & Casino

Dear Mr. Ertman:

This annual report is submitted pursuant to paragraph 9 of the Consent Decision between the United States Department of Agriculture ("USDA") and Feld Entertainment, Inc. d/b/a Ringling Bros. and Barnum & Bailey ("Feld").

Feld has continued to enhance its education training program for all performers who work with animals and animal handlers, as that term is defined in the Consent Decision (collectively "Animal Care Staff"). Feld held a scheduled training program in December, 1998 for each of the traveling circus units, the Williston Animal Retirement Facility and the Center for Elephant Conservation. Feld retained Dr. Richard Crawford as a training and veterinary consultant. Dr. Crawford was employed by USDA for 27 years and retired as Assistant Deputy Administrator for Animal Care. Dr. Crawford is a recognized expert in the area of humane handling, care, treatment and transportation of animals by exhibitors under the Animal Welfare Act, who continues to keep his knowledge of USDA procedures and policies up-to-date.

Dr. Crawford conducted a seminar for the Animal Care Staff. Dr. Crawford's presentation included the history prior to and overview of the Animal Welfare Act ("AWA"), as well as current requirements. He outlined the relevant Standards and Regulations of the AWA, and discussed sound husbandry practices for all animals exhibited by Feld. Dr. Crawford also responded to questions raised by the Animal Care Staff and discussed with them Feld's animal facilities and procedures. Dr. Crawford's presentation was also translated into a foreign language for some of the foreign Animal Care Staff.

Mr. Bob Ertman
March 23, 1999
Page 2

All attending Animal Care Staff received a folder entitled Animal Care Staff Training Program, a copy of which is enclosed with this letter. The folder contains information regarding Dr. Crawford's presentation, excerpts from Title 9 of the Code of Federal Regulations, Ringling Bros. Animal Care Manual and a pocket sized laminated list of "Do's and Don'ts," which is also posted at the Animal Compounds. Each attendee was asked to sign a form acknowledging attendance and agreement to abide by the provisions of the AWA, its Standards and Regulations, as well as internal policies and procedures of Ringling Bros. Furthermore, this material has also been translated into Russian, Hungarian and Spanish and forwarded to those employees that speak the respective languages.

The training sessions were well received by the Animal Care Staff and future sessions are being planned.

Sincerely,



Julie Alexa Strauss
Vice President
and Corporate Counsel

cc: Frank Martin, Esquire

Allegations of Abuse by Former Ringling Employees

Introduction

On December 21, 1998 – just two months after the USDA formally “closed” the Kenny investigation – a formal complaint was filed with the USDA concerning reports by former Ringling Bros. employees of routine, severe abuse of Ringling Bros. elephants, including baby elephants. The reports are based on the eye-witness accounts of two former Ringling employees – both of whom worked in the barns where the elephants were kept. These former employees submitted sworn videotaped and transcribed testimony to the USDA describing routine beatings of elephants, especially a baby elephant named Benjamin and an older female named Nicole. They also testified that another severely abused elephant named Karen is extremely dangerous because of years of abuse at the hands of her trainers. Nevertheless, Karen is frequently brought out by Ringling Bros. as part of its “pre-show adventure” activities, where young children get to visit with the animals before the performance.

Animal Welfare Act regulations provide that “handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma . . . behavioral stress, physical harm, or unnecessary discomfort,” and that “young animals shall not be exposed to rough or excessive public handling . . . which would be detrimental to their health or well-being.” 9 C.F.R. § 2.131(a), (b). The regulations further provide that “physical abuse shall not be used to train, work, or otherwise handle animals.” 9 C.F.R. § 2.131(a)(2)(i). The regulations further provide that “any animal must be handled so there is minimal risk or harm to the animal and to the public, with sufficient distance and/or barriers between the animal and/or general viewing public so as to assure the safety of animals and the public.” § 2.131(b)(1).

Outcome

The USDA spent only five months investigating this case, and closed it on May 7, 1999 without taking any enforcement action because the same Ringling employees accused of abusing the elephants all denied doing so. However, the USDA ignored crucial evidence by former employees who had nothing to gain from coming forward. It also ignored virtually all of the evidence that corroborated the testimony of those former employees, including results of the USDA’s own internal investigation which showed elephants with numerous bullhook injuries; sworn testimony by a current employee who said that he sees “hook boils twice a week on average” on the elephants; and the views of the USDA’s own experts that Ringling elephants may well have been beaten with bullhooks. In closing the investigation, the USDA also failed to do any follow-up of testimony from the former employees that the baby Benjamin received particularly frequent and brutal beatings from his trainer. However, two months later, that 4-year old elephant mysteriously drowned while swimming in a pond in Huntsville, Texas – when, according to eye-witnesses, this same trainer went in after him with a bullhook. (See Benjamin Case Study, Sec. V).

The USDA's Investigation

The Allegations

On December 21, 1998, the Assistant Secretary for USDA's Marketing and Regulatory Affairs, and the Associate Administrator for the Animal and Plant Health Inspection Service (APHIS), received eye-witness testimony from two men who had recently left the employment of Ringling Bros. The men alleged that Ringling elephants are routinely beaten with an ankus or "bullhook" – a long club with a sharp metal hook at the end. The USDA was also given copies of video-taped and transcribed depositions of the two men concerning their eye-witness accounts.

According to both men, on many occasions during September - December, 1998, they witnessed Ringling Bros.' elephant handlers and trainers beat elephants severely on their heads, ankles, and other parts of their bodies with an ankus. One of the men provided a photograph of one of the bull hooks, and the men identified all of the abusive trainers and handlers by name. Both men also testified that the Ringling Bros. elephant handlers and trainers use the sharp end of the bull hook to make the elephants do as they wish, by hooking it onto their ears, their ankles, and other parts of their hides and then forcibly pulling the animals with the hook. They testified that these beatings, stabbings, and other mistreatment cause the elephants much distress and pain, as evidenced by the animals' cries and other distressful verbal reactions which they frequently witnessed, and that the elephant handlers often draw blood from the animals when they use the bull hooks.

The men also testified that particular elephants were beaten more frequently, including a baby male named Benjamin and an adult female named Nicole. The men testified that Benjamin's trainer beat Benjamin constantly, throughout the country, and that the beatings were completely unprovoked. They testified that they had seen the handlers and trainers beat Nicole on several occasions, and that one of them beat her so badly once that he shattered a bull hook on her. Both

men also testified that Jeffrey Steele, the Executive Manager of Ringling's "Blue Unit," was present during at least one severe beating of Nicole that took place in Rosemont, Illinois, and that Mr. Steele could not possibly have avoided seeing the beating, as well as hearing the repeated "whacking" sound of the bull hook on Nicole, and the animal's cries of distress. However, the men further testified that Mr. Steele never took any action to stop the beating or to reprimand the Ringling Bros. handler who engaged in this conduct.

The former employees also testified that one of Ringling's elephants, named "Karen," who has been severely beaten over the years, is extremely dangerous, and that employees on the animal crew are instructed not to get near her or they could be killed.

The Investigation

The USDA Inspection

To begin its investigation the USDA called Ringling Bros.' corporate headquarters and requested an itinerary for its "Blue Unit" – the division that the former employees had worked for – clearly putting Ringling on notice that the agency intended to send its inspectors to the circus in the very near future. In fact, although USDA has authority to conduct completely unannounced inspections, according to an internal USDA memorandum, Ringling's headquarters informed the USDA official who requested the itinerary that "their legal dept would have to review [the] request" before the USDA could even be given an itinerary.

On January 7, 1999, two USDA inspectors arrived at the circus in Sunrise, Florida, but were told by Jeffrey Steele, the General Manager, that they could not conduct the inspection without the presence of "corporate representatives." The inspectors then contacted USDA headquarters which then "conferenced" with Ringling's officials, and the inspectors were allowed to return and proceed with the inspection, but were accompanied by Joan Galvin, Ringling's Vice President for

Government Relations.

According to the Inspection Report, the first elephant to be examined urinated when her trainer began giving her commands – a sign that the animal was extremely fearful of this individual.

In addition, according to the USDA inspector:

On the right side of her head, about midway between the attachment of the ear, and the bony ridge above the eye, was a round, symmetrical hole of about 1/8 inch in diameter, penetrating the skin. The lesion was compatible in appearance with a fresh puncture wound. I touched the lesion and got a small amount of blood on my finger. There were smears beside the lesion that appeared to be dried blood. I asked [a Ringling employee] what he thought this was from. He told me a bullhook, another elephant, or anything. He didn't know.

The inspector then examined Nicole who had a "pecan sized lump of what appeared to be healed scar tissue at the upper attachment of her right ear."

The inspectors then left. The next day, they were joined in the inspection by Ringling's veterinarian, Dr. Lindsay, "and other officials representing the Circus," including the company's corporate counsel from Vienna, Virginia and its outside lawyer from Washington, D.C. – who had apparently been flown in to monitor the inspectors as they performed their inspections. The inspector re-examined Nicole, but the 1/8 inch bloody hole that she had found the preceding day could no longer be located. She then examined another elephant who "had a variety of apparently recent healing, scratches and scrapes on her head and right side," but Dr. Lindsay told the inspector that these "might be from the transport vehicle." According to the inspector, "scratches seen on Benjamin seemed old," and Ringling's officials explained that they were probably caused by another baby elephant.

A week later, Dr. Lindsay, Director of Veterinary Care for Ringling, submitted a statement to the USDA that the "several superficial abrasions in the head and flank area" on Benjamin "were a result of his playing with his companion 'Shirley.'" He further stated that Nicole had no

“integumentary lesions” and that “she showed no resentment to handling and restraint by the handlers.” As to Susan’s “several linear abrasions along her right flank,” Dr. Lindsay was now certain that these “occurred during a trailer ride from Miami . . . and were caused by a protruding hinge or latch in the trailer.”

Affidavit Testimony

The USDA took affidavits from approximately eight Ringling Bros. handlers and trainers, all of whom had been identified by the former employees as the ones who participated in the routine abuse of the elephants. Although all of these employees admitted that an ankus is used on the elephants, not surprisingly, they all denied that it was ever used in an “abusive” manner.

However, one of the handlers admitted that “I use the ankus by touching cue spots on the elephant.” Another employee admitted that “I have seen hook boils on some of the elephants” – i.e., infections from sores that are caused by the bullhooks used on the animals’ hides. He explained that “I have seen them on the side of the trunks and on the underside of the legs,” that he sees “hook boils twice a week on average,” and that “hook boils are common on elephants.” Another employee stated that the ankus was used on Nicole “only if she does not respond to the vocal command.”

As to whether Karen – who is exposed to children in the “pre-show adventure” – is dangerous, most of the employees admitted that she is:

“Karen can be aggressive against a person who she does not know;” “We advise new employees without elephant experience to stay away from her to avoid getting hurt;” “Karen could be dangerous only to new people and when chained;” “I stay away from Karen because she has been known to knock people around;” “It is recommended that new people stay away from Karen just to avoid any injury.”

The USDA also obtained an affidavit from Jeffrey Steele who admitted that “the bull hook

is used . . . to reinforce the commands given to” the elephants, but denied ever seeing any beating of the elephants. As to Karen, although most of the handlers and trainers had agreed that she could be extremely dangerous around people she does not know, Mr. Steele denied having any “knowledge of Karen ever hurting everyone,” and went out of his way to emphasize that “Karen has been working up close and personal with our audience for some time.”

On January 16, 1999, despite the evidence obtained during the December 8, 1999 inspection – of a bloody hole, healing scar tissue, lumps, scratches, and abrasions – as well as affidavit testimony from Ringling’s own employees that the ankus is regularly used on the elephants, that handlers created “cue spots” with the ankus, that “hook boils are common,” that Nicole’s handler uses the ankus on her when she fails to “respond to a vocal command,” and that Karen is definitely dangerous to people she does not know, the USDA inspector in charge of the investigation signed a form stating that “none of the issues [raised in the Complaint] were confirmed.”

However, on January 20, 1999, the USDA obtained a sworn affidavit from one of the Ringling employees whose testimony had initiated the investigation, Glenn Ewell. Mr. Ewell reiterated all of his previous sworn testimony. Thus, Mr. Ewell testified that, as a general rule, the elephants were kept chained at all times, except when performing,” and that he was instructed to stay away from Karen “because of her aggressive behavior.” Mr. Ewell also provided extensive details of incidents of abuse that he had witnessed, and identified the names of the individuals who were involved and the specific locations and times of each incident. He stated that he had seen Nicole “severely beaten” in Denver by two of the handlers “because she had performed poorly” – that she was taken back to the holding area and beaten “in the head, on the trunk, and behind the front feet,” and that “the beating continued until the handle of the bull hook shattered.” He further testified that “[o]ne of the strikes . . . resulted in the metal hook penetrating the skin . . . causing an open

wound from which blood began flowing,” and that the entire animal crew was “present and witnessed the beating.” Mr. Ewell also testified that after the beating was over, “a person by the name of Sonny doctored the wound with some type of powder to stop the bleeding.” He further testified that in Cleveland, Ohio he saw Nicole beaten “at least three times while she was chained because she was performing badly in the ring,” and that “these beatings were conducted in full view of the crew.” Mr. Ewell also described the incident where Nicole was beaten in front of Jeffrey Steele, who did not say anything or “attempt to stop the beating.” He described a particularly brutal beating of Karen when she refused to be cleaned. He testified that he had seen other elephants struck with bull hooks “for either having performed badly or for trying to socialize with another elephant next to them in line.”

Mr. Ewell also testified that he had seen the babies Benjamin and Shirley beaten by one of the handlers “at least five times” – again naming the specific locations of each beating. He reported a conversation in which Benjamin’s handler said that “if it will not sink in, then beat it in. It’s the only way to make an elephant do the performance right.” He stated that Benjamin’s trainer “beats the hell out” of Benjamin when he “will not perform right,” and that this gets the female elephants “agitated when the babies cry out when they are being beaten.”

Mr. Ewell described in great detail the bull hooks, which he testified are made for the handlers and crew by one particular Ringling employee: “fiberglass handles shaped like an ax handle approximately three feet in length with a titanium head and bands. The titanium head consists of two points, one of which goes straight out and the second being on a hook.” He estimated that the overall weight of the hook is more than five pounds.

The USDA's Use of Outside Experts

On February 12, 1999, the USDA sent copies of the photographs that were taken during the January 7-8, 1999 inspection to several "outside experts," with a form letter explaining that the agency was "not asking for an affidavit or commitment to testify at this time," but wanted an "assessment of the photographs" and answers to some questions to help the agency "determine what, if any, enforcement action to pursue."

On February 22, 1999, the Director of Animal Care for the USDA's Eastern Region sent a memorandum to Headquarters recommending a "complete review" of the investigation, and noting that the investigative file did not contain statements from certain men who were mentioned by name as having personal knowledge of the incidents complained of. The memo also noted that one of the Ringling employees had stated in his affidavit that he sees "hook boils about twice a week," and that, according to this USDA official, this statement "**indicates possible mishandling of elephants.**"

On April 12, 1999, the USDA prepared a "summary" of the responses it received from the experts. The summary reflects that the experts believed that the photographs taken of "Nicole," "Benjamin," and "Susan" showed multiple lesions, abscesses, scars, bumps, and "hook boils," but that it was difficult to state the cause of all of these scars, based only on the photographs that were provided. With respect to the photographs of Nicole (USDA Exhibits 26, 28, 31) the experts stated:

Possible abscess; cause undetermined; cannot determine cause of lesion; did not like information/photos presented; Bumps are unusual; possible hook scars; healed and months old; old lesions; **Likely healing hook lesions which became infected (bumps) and hook boils (rings); ring scars are old, bumps are more recent (weeks to months);** Cannot determine cause of lesion; did not like information/photos presented.

As to the scarring on Nicole's upper right ear, one expert stated that this was "probably from a bull hook," that this was "consistent with 'old school of training' to make a part sore for faster training response," and that, "if so it is abuse." Another expert stated that the scars were "most

likely hook scars,” and another stated that it was “[h]ard to determine cause [of lesion], but [the] location is where you never want to strike or hook animal.”

With respect to the photographs of Benjamin (USDA Exhibit 30), one expert stated that the scar “[a]ppears to be relatively new; could be improper bull hook lesion;” and another stated that he/she “[c]annot determine [the] cause of [the] lesion; did not like [the] information/photos presented.” As to the photographs of Susan, (USDA Exhibits 32), one expert stated that the “multiple lesions” on her head were “Possible bull hook marks(striking or hooking)”, and another stated that he/she “cannot determine cause of lesion; did not like information/photos presented.” The majority of the experts commented, in general, that the photos were “inconclusive,” that it “would help to have more in-depth information,” and that they needed “more detailed information” to reach “any conclusions or recommendations.”

In response to the USDA’s question, “what signs could be used to gauge possible abuse by specific handlers or past handlers,” one of the experts responded that the animal “would show submissive behavior” such as “urinat[ing]” or being “hesitant to come on command” – precisely what one of the elephants had done when her trainer approached her during the USDA inspection on January 7, 1999.

The USDA Closes the Case

Ten days later, by memorandum dated April 22, 1999, USDA Headquarters returned the case report to the Eastern Region on the grounds that the consulted “outside experts,” who did not examine any of Ringling’s elephants nor interview either of the former Ringling Bros. employees who complained of rampant beatings of elephants, and who had complained that they needed “more detailed information” before they could make any conclusions or recommendations, “concurred that there was no clear abuse of the elephants” shown in the photos.

Therefore, on May 7, 1999, USDA's Deputy Administrator of Animal Care sent a memorandum to the Administrator of APHIS, explaining that "the subject case had been closed with no action due to insufficient evidence." The Deputy Administrator of Animal Care explained that the agency had decided to close the investigation without any further investigation or enforcement action for several reasons. First, he stated that, based on the outside experts' review of the photographs, there was no evidence of "clear abuse," although he acknowledged that "there was **some support for the inappropriate use of a bull hook on one elephant's upper ear attachment.**"

Second, the Deputy Administrator of Animal Care explained that "notwithstanding" the sworn testimony of the two former Ringling employees, "there was no supporting evidence to substantiate the allegations." Third, he stated that, at the inspection done on January 7-8, 1999, the agency was "unable to confirm any of the allegations."

Fourth, the Deputy Administrator explained that "[o]ffsetting the affidavits of the complainants are very strong affidavits from each of the five people accused of abusing the elephants which emphatically . . . deny the accusations." Therefore, he concluded, "[b]ased on lack of physical evidence and lack of corroborating testimony, as well as the opinion of eight experts . . . **and the strength of the affidavits of the accused parties**, APHIS has no grounds to issue a complaint or stipulation, and, therefore closed the case."

In closing the investigation, the USDA also relied on an article entitled "Wild Elephants in Captivity," which states that "[t]he bull-hook is an indispensable instrument in the training and control of elephants." The article further states that when the sharp point of the bullhook is "deeply embedded into the elephant's skin," it "can produce wounds that may become infected" - i.e. the "hook boils" that one of the Ringling Bros. employees testified were "common" in the Ringling

elephants. The article further states that **“The sharp point of the bull-hook should be repeatedly jabbed into various places of the skin in a given area and not in the same place continually,”** and that **“[t]he skin of the elephant is relatively sensitive, so it does not require deep penetration to obtain a response.”** It further states that **“[a]fter a period of effective training, simply placing the bull-hook on the skin will bring about the desired behavior of the elephant.”** See USDA Exhibit 35.

On August 21, 2000, the USDA Animal Care Eastern Regional Director sent a letter to Julia Alexa Strauss, Ringling’s Vice President and Corporate Counsel, stating that the investigation had been closed because **“no violations were documented.”** A week later, on September 2, 2000, the Deputy Administrator of Animal Care sent an e-mail message to Eastern Regional Director asking her to **“do me a favor.”** He explained that Ringling’s Vice President for government relations, Joan Galvin, **“was appreciative of the letters on the closing of the 3 investigations on Ringling,”** but that Ms. Galvin **“was concerned that it looked like all of the investigations were closed in August 2000.”** Therefore, on behalf of Ringling’s Vice President, the Deputy Administrator asked the Eastern Regional Director to **“resend”** the letters and **“include the approximate date (month and year) the respective investigations were closed.”** In other words, the Deputy Administrator for Animal Care was instructing one of his employees to rewrite the letters that had already been sent so that they were more to Ringling’s liking.

Enforcement Synopsis

Despite the sworn eye-witness testimony of two former Ringling employees who had nothing to gain from coming forward, who completely corroborated each other’s sworn depositions, who specifically testified that bull-hooks are used on the elephants, that Nicole and Benjamin are frequently the victims of abuse, and that Karen is a dangerous animal, the USDA decided to close

this investigation in less than five months, based on (1) a single pre-announced inspection of some of the animals during which the inspector was accompanied by Ringling's corporate officials, and in which the inspector observed numerous scars on the animals; (2) the failure of the experts to whom photographs were sent to find "clear evidence of abuse;" and (3) the insistence of those accused of beating the elephants, that they never abuse the animals.

However, the agency's memorandum closing the case neglected to mention all of the evidence that corroborates the accounts of the two former employees, and instead relied on the self-serving statement of those accused of the abuse. For example, the Deputy Administrator's memorandum failed to mention that during the one inspection that was conducted in the presence of Ringling officials, the inspector observed a bloody hole on one elephant's head that was "compatible in appearance with a fresh puncture wound," a "pecan-sized lump of what appeared to be healed scar tissue at the upper attachment of [the] right ear" of Nicole, a "variety of apparently recent healing scratches and scrapes" on another elephant's head and right side, and "scratches" on Benjamin – all of which was completely consistent with the testimony of the two former employees. Nor did the Deputy Administrator's memorandum indicate whether the inspector had made any determination of whether Karen was dangerous to the public.

The Deputy Administrator's memorandum closing the investigation also conspicuously failed to mention that the handlers and trainers who were interviewed universally admitted to using bullhooks on the elephants and also agreed that Karen was aggressive and possibly dangerous to those she does not know. Nor did the memo mention that one of Ringling's employees testified that he sees "hook boils twice a week on average" on the animals and that "hook boils are common on elephants," although the agency's own Eastern Regional Director had emphasized that this testimony "indicates possible mishandling of elephants," and the one publication that the agency

apparently consulted states that such infections are caused when "the sharp point" of the bullhook is "deeply embedded into the elephant's skin." Similarly, the Deputy Administrator's memorandum did not mention that one of Ringling's employees admitted that he uses the ankus "by touching cue spots on the elephant."

Nor did the memorandum closing the investigation include any of the views of the experts concerning the inappropriateness of drawing any conclusions based only on the photographs they were sent. Nor, for that matter, did the USDA mention that many of the experts believed that, in fact, the photographs show multiple lesions, scars, bumps, and hook boils on the elephants.

Most notably, there is no evidence in the file on this case that the agency ever sought to obtain any of the basic medical records from Ringling Bros. for any of these animals, including Benjamin and Nicole, which would certainly have shed some light on the accuracy of the former employees' allegations. Likewise, there is no evidence that the USDA interviewed any other former employees of Ringling, or even that it interviewed any present employees of Ringling who were not accused of mistreating the animals, but who were in a position to witness this treatment by others. However, perhaps if the USDA had done a more thorough investigation, particularly with respect to the allegations of the repeated abuse of Benjamin, it would have been able to prevent this 4-yr. old elephant from dying two months after the agency closed this investigation, when his trainer went into a pond after Benjamin with a bullhook. (See Benjamin Case Study, Sec. V).



7-075

Meyer & Glitzenstein
1601 Connecticut Avenue, N.W.
Suite 700
Washington, D.C. 20009-1035

Dr. Reed
Original with
enclosure sent
to Sally Beck's
office for response
Telephone (202) 588-5206
Fax (202) 588-5049

Katherine A. Meyer
Eric R. Glitzenstein
Howard M. Crystal
Jonathan R. Lovvorn
*Admitted in CA only

CONTROL NO: MPP-98-185
ORIGINAL TO: APHIS
DATE: 12/21/98

December 21, 1998

Hand-Delivered

Michael Dunn, Assistant Secretary for Marketing
and Regulatory Affairs
Dr. Craig Reed, Associate Administrator,
Animal and Plant Health Inspection Service
1400 Independence Ave., S.W.
Washington, D.C. 20250

Re: Complaint Against Ringling Brothers For Abusing
And Mistreating Elephants And Request For
Immediate Investigation And Seizure And Protection
Of Several Elephants By The Department Of
Agriculture.

Dear Mr. Dunn and Mr. Reed:

On behalf of Performing Animal Welfare Society ("PAWS"), and
its officers, Pat Derby and Ed Stewart, we write to bring to your
attention evidence of serious violations of the Animal Welfare
Act and the implementing regulations to that statute by Ringling
Brothers and Barnum & Bailey Circus with particular regard to its
treatment of elephants in its possession, including baby
elephants. Specifically, PAWS has recently obtained the sworn
deposition testimony of

provide eye-witness accounts
and other evidence of routine, severe beatings with bull hooks of
elephants, including babies, used in Ringling Brothers' "Blue
Unit," to make those elephants perform in a certain way, and to
punish them for not performing or otherwise behaving as desired
by the circus's trainers. Both eye-witnesses further testified
that this abhorrent, unlawful treatment of these animals has
occurred in front of, and with the apparent acquiescence of,
Jeffrey Steele, Ringling Brothers' Executive Manager for the Blue
Unit. They also testified that Ringling Brothers uses an



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elephant in its performances who is extremely dangerous.

As discussed below, and more fully in the attached Addendum, this conduct violates the AWA and implementing regulations in numerous respects, and requires the immediate suspension of Ringling Brothers' exhibition license, and a full investigation. In addition, PAWS implores you to act expeditiously to protect these animals from further abuse and mistreatment, by exercising your authority to seize the animals and ensure their safety during the pendency of your investigation and enforcement proceedings. PAWS stands ready to assist you in acting to protect these animals as expeditiously as possible.

A. Eye-Witness Testimony.

1. Elephants Are Severely Beaten With Bull Hooks.

Enclosed is a videotape of sworn deposition testimony of Ringling Brothers

individuals

Copies of the transcripts of their depositions are also enclosed as Exhibits B and C.

Individuals provide sworn testimony that on many occasions they witnessed Ringling Brothers' elephant handlers and trainers, including individuals named [redacted] beat elephants severely with an instrument called a "bull hook" which is a hard club made of fiber glass, wood, or metal, with a sharp hook on the end of it. Many of these bull hooks are manufactured by [redacted]

for use on the elephants by the animal crew. One of the deponents, [redacted] has provided one of these bull hooks to PAWS as evidence and we have enclosed a photograph of it. Exhibit D.

[redacted] exhibits and further describes these bull hooks in his deposition, and demonstrates their use by Ringling Brothers' employees. He explains that on several occasions, these employees used bull hooks to beat elephants repeatedly on the head, ankles, and other parts of their bodies to make them behave in a particular way or to punish them for not performing as desired. This testimony is completely corroborated by the other deponent, [redacted]

[redacted] bu

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[] also testified that the Ringling Brothers' elephant handlers and trainers use the sharp end of the bull hook to make the elephants do as they wish, by hooking it onto their ears, their ankles, and other parts of their hides and then pulling on the bull hook. These men also testified that these beatings and stabbings with the bull hooks cause the elephants much distress and pain, as evidenced by the animals' cries and other distressful verbal reactions, and that the elephant handlers often draw blood from the animals when they use the bull hooks. This testimony is further corroborated by videotape of Ringling Brothers' "Red Unit" arriving in Sacramento in 1997. That videotape, attached as Exhibit E, shows elephant handlers unloading elephants from the trains and striking the animals with whips, and using hooks on their ears to "control" them.

There are 13 adult and 2 baby elephants in the Blue Unit. Although the trainers use the bull hooks on many of these animals, [] testified that particular elephants are beaten more frequently, including an Asian elephant named "Nicole," and a baby elephant named "Benjamin." [] testified that they have seen [] beat Nicole on several occasions, and that [] beat her so hard once that he shattered a bull hook on her. [] testified that he saw three of the [] beating Nicole at one time.

[] also testified that they also witnessed [] beat the baby elephant Benjamin many times. Both men testified that beatings occurred throughout the country where the Blue Unit performed, including Denver, Colorado, Cleveland, Ohio, and the Rosemont Arena, outside Chicago, Illinois. They also testified that the beatings were completely unprovoked by the animals, who are extremely gentle and cooperative.

[] further testified that Jeffrey Steele, who is the executive manager of the "Blue Unit," was present during at least one severe beating of Nicole -- that this vicious beating with a bull hook took place in Rosemont, Illinois, outside of Chicago, after [] made Nicole lay down on the ground, that this beating lasted for several minutes, and that it was conducted within full view of Mr. Steele. When asked whether it was possible that Mr. Steele did not see this beating and therefore was unaware of it, one of the deponents, [] testified that, while he did not believe that Mr. Steele could have avoided seeing the beating, he certainly could not have missed hearing the repeated "whacking" sound of the bull hook on Nicole as well as Nicole's cries of distress.

Despite this abusive and clearly unlawful treatment toward this animal, Mr. Steele neither said nor did anything to stop it, nor did he take any action whatsoever to reprimand the Ringling Brothers' employee who was engaging in this conduct. Rather,



according to [redacted] Mr. Steele -- the top executive officer of the Blue Unit -- simply ignored this conduct and went on about his business. This incident alone, and Mr. Steele's cavalier reaction to it, suggests that such treatment of elephants in Ringling Brothers' circus is by no means aberrational, but, rather, is business as usual for this exhibitor.

- b6, b7C, b7D

As detailed below, and more fully in the attached Addendum, these beatings and stabbing with bull hooks violate the Animal Welfare Act and its implementing regulations, including the provisions that state that "physical abuse shall not be used to train, work, or otherwise handle animals," that "handling of all animals shall be done . . . in a manner that does not cause trauma . . . behavioral stress, physical harm, or unnecessary discomfort," and that "young animals shall not be exposed to rough or excessive public handling . . . which would be detrimental to their health or well-being." 9 C.F.R. § 2.131(a), (b) (emphasis supplied).

2. Elephants, Including Babies, Are Left Chained For Days.

[redacted] also testified that elephants are left chained hour after hour, each day, and that, with few exceptions, they are allowed off their chains only when they perform. In addition, when the circus is traveling, the elephants remain chained in the stock cars for as long as 2-3 days consecutively, and are not provided any opportunity, whatsoever, to walk around, or otherwise exercise.

b6, b7C, b7D

These conditions, which are completely at odds with the natural biological needs of these magnificent animals, also violate the AWA regulations, since they too constitutes conduct that causes the animals "behavioral stress." 9 C.F.R. § 2.131(a). In addition, these conditions appear to violate the provision of the regulations which states that the animals must be provided sufficient space "to make normal postural and social adjustments with adequate freedom of movement." 9 C.F.R. § 3.128, 3.137(c).

3. Ringling Brothers Is Using An Extremely Dangerous Elephant In Public Exhibitions And Exposing The Public, Including Thousands Of Young Children, To The Risk Of Injury.

[redacted] testified that there is an elephant in the Blue Unit named Karen who, according to Ringling Brothers' own trainers and handlers, is extremely dangerous. In fact, this elephant is considered so dangerous by these Ringling Brothers' trainers, that the other members of the animal crew are emphatically instructed not to get near her or they can be killed. For this reason, this animal is not cared for in the same manner as the other animals -- e.g., the crew is not

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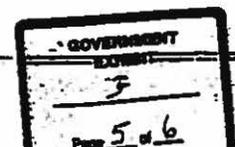
permitted to feed her directly or to bathe her without a trainer being present to maintain control over the animal. A Ringling Brothers animal handler who appears on the videotape marked Exhibit E explains that Karen is "very mean" because she was beaten by her former circus owners.

Despite Ringling Brothers' own knowledge of the dangerousness of this animal, it nevertheless continues to use her in its public performances around the country, in violation of 9 C.F.R. § 2.131(b), which prohibits animals from being exhibited if they pose a risk to the safety of the public. Particularly in light of past incidents where performing elephants have gone on rampages, including the 1994 Circus International incident in Honolulu, Hawaii which resulted in several deaths and severe personal injuries, this elephant should not be permitted to perform in public arenas, only feet from thousands of young children. Indeed, the parents of these children are completely unaware of the condition of this particular animal and the fact that Ringling Brothers' own trainers regard her as extremely dangerous.

B. The Agency Must Act To Protect These Animals And To Ensure That Ringling Brothers Does Not Continue To Mistreat Them.

In light of this recent eye-witness testimony, there can be no doubt that Ringling Brothers is in violation of the Animal Welfare Act and the statute's implementing regulations. In addition, because these animals are "endangered" within the meaning of the Endangered Species Act, 16 U.S.C. § 1531 et seq., Ringling Brothers is also in violation of the prohibition against the "taking" of any such animal. PAWS is today sending Ringling Brothers and the Fish and Wildlife Service notice letters pursuant to 16 U.S.C. § 1540(g) concerning those additional violations of federal law.

On the basis of the evidence presented here, PAWS implores you immediately to investigate these charges, to suspend Ringling Brothers' exhibition license, and ultimately to revoke that license, pursuant to 7 U.S.C. § 2149. In the meantime, to ensure that these animals, particularly Nicole and Benjamin, are protected from further abuse and mistreatment, PAWS urges you to exercise your authority, pursuant to 9 C.F.R. § 2.129, to confiscate these animals and place them in temporary shelters until this matter can be resolved. In addition, to protect the public from the risks posed by Karen, PAWS urges you to prohibit Ringling Brothers from continuing to use this elephant in exhibitions, and to determine her appropriate disposition.



PAWS urges you to act on this matter immediately. It is prepared to assist you in any way possible to protect these magnificent animals from any further abuse or mistreatment. Please contact us or Ms. Derby directly concerning the actions you will take in response to this Complaint.

Sincerely,

Katherine A. Meyer
Katherine A. Meyer

Caro L. Romano
Caro L. Romano

cc: Secretary Dan Glickman
Congressman Sam Farr

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Page 6 of 6
APPROPRIATE AGENCIES AND FIELD OFFICES ADVISED BY SLIP(S)

ADDENDUM

blp

COMPLAINT AGAINST RINGLING BROTHERS CIRCUS

Eye-witness Testimony Applied to Violations of Animal Welfare Act Regulations

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b7D

- (A) 9 C.F.R § 2.131. (a)(1) requires that "handling of animals shall be done as expeditiously and carefully as possible in a manner that does not cause excessive trauma, overheating, excessive cooling, behavioral stress, physical harm or unnecessary discomfort."

Relevant Deposition Testimony

- (1) Bull Hooks are frequently and maliciously used by trainers to train, work, punish and otherwise handle the elephants

blp
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- (2) Trainers physically abuse adult elephants with the bullhook

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- (6) Adults show severe behavioral distress when Benjamin is beaten
- (7) Excessive chaining and limited exercise/ play opportunities cause behavioral stress and unnecessary discomfort
- (8) Train travel without exercise causes behavioral stress and unnecessary discomfort to the animals;

B. 7 C.F.R. § 2.131(a)(2)(i) requires that "[p]hysical abuse shall not be used to train, work, or otherwise handle animals."

(I) Bull-hooks are frequently and maliciously used by Trainers to train, work, and otherwise handle and mistreat the elephants (see



supra)

(2) Trainers physically abuse the adult elephants on a regular basis
(see supra)

(3) Beatings of one particular elephant, Nicole, are frequent, brutal
and unprovoked (see supra)

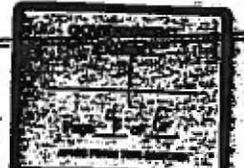
(4) _____ physically abuses the baby elephants (see supra)

(5) Ringling Brothers Permits and Encourages Physical Abuse to
Train, Handle and Work the Animals

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(6) Trainers attempt to hide the animal injuries resulting from their
abusive practices

-bb
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(C) § 2.131 (b)(1). "During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and/or general viewing public so as to assure the safety of animals and the public."

(1) Karen

b7c
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(D) § 2.131 (c)(1). "Animals shall be exhibited only for periods of times and under conditions consistent with their good health and well-being."

(1) Exhibition of Nicole is detrimental to her health and well-being.

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(F) § 3.128 Space Requirements. "Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Inadequate space may be indicated by evidence of malnutrition, poor



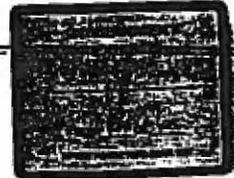
condition, stress, or abnormal behavior patterns.”

- (1) Chaining does not provide sufficient space for the elephants to make normal social adjustments with adequate freedom of movement.

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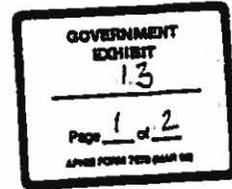
- (2) Four-year old elephants Benjamin and Shirley do not have opportunity adequate space or freedom of movement to make normal social adjustments.

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TO: USDA-APHIS-Animal Care

DATE: 1-16-99



RE: Complaint # 99-075
Narrative

On January 7 and 8, 1999, I inspected the elephant section of the Ringling Bros. and Barnum & Bailey Circus; Blue Unit. The circus was located in Sunrise, Florida, at the National Car Rental Center. The inspection was in response to complaints made by the Performing Animal Welfare Society (PAWS). Mr. Samuel Santiago, Senior Investigator, USDA-APHIS-IES and I worked together both days.

On the afternoon of January 7, 1999, Mr. Santiago and I arrived at the circus, and Mr. Jeffrey Steele, General Mgr., Blue Unit gave us permission to proceed. However, early in the inspection, after examining the first elephant, Mr. Steele indicated that he intended to cooperate "150%" but he wanted us to wait until corporate representatives could accompany us. Mr. Steele said that this would be done quickly, and the representatives, including the attending veterinarian, could be on site by the next morning.

Since a delay of inspection is not considered acceptable by USDA, Mr. Santiago contacted IES headquarters, and it was confirmed that such a delay is not compliant. We were instructed to return, and if denied access at that time, to write a violation. However, soon after, we were told by USDA, to proceed with the inspection, that USDA and Ringling had conferenced, and we were free to return and proceed. We would still be joined by corporate representatives the following day. Joan Galvin, VP Government Relations, came to work with us on 1-7-99, when we returned.

On 1-8-99, we were joined by the Circus's attending veterinarian, W.A. Lindsay, D.V.M., and other officials representing the Circus. The officials included Julie Strauss, VP and Corporate Council; and Jeannie Perron, JD, DVM.

On 1-7-99 and 1-8-99, we worked with Richard Froemming, VP Circus Touring Units, and the following officials and personnel traveling with the Circus: Jeffrey Steele; General Mgr., Blue Unit; []

] DU

The elephants (all Asian females except Benjamin, an Asian male) were identified as: Meena, Lecharnee, Camala, Zeena, Lutzi, Susan, Rebecca, Jewel, Sophie, Karen, Mysore, Minnie, Nicole, and the youngsters Benjamin and Shirley.

] DU

Meena was the first elephant I examined (1-7-99). [] her. She urinated when the commands began. On the right side of her head, about midway between the attachment of the ear, and the bony ridge above the eye, was a round, symmetrical hole of about 1/8 inch in

diameter, penetrating the skin. The lesion was compatible in appearance with a fresh puncture wound. I touched the lesion and got a small amount of blood on my finger. There were smears beside the lesion that appeared to be dried blood. I asked [redacted] what he thought this *DL* was from. He told me a bullhook, another elephant, or anything. He didn't know. The next day I tried to show it to Dr. Lindsay. I was unable to locate it again, despite searching the same area.

Dr. Lindsay and I examined Nicole. I saw nothing except an approximately pecan sized lump of what appeared to be healed scar tissue at the upper attachment of her right ear.

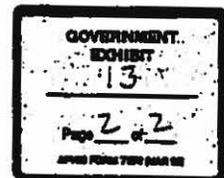
I examined Susan, with Dr. Lindsay. She had a variety of apparently recent, healing, scratches and scrapes on her head and right side(see photos). Dr. Lindsay said he saw Susan on December 29 and 30, 1998 and they were not there. He thought they might be from the transport vehicle.

Benjamin, approximately 3 years old (and Shirley, the younger of the two) were loose in a "large" pen when Mr. Santiago and I arrived. The pen was bedded with wood shavings, and there were traffic cones in the pen as toys. I saw the two youngsters playing together, and with their toys. The scratches seen on Benjamin seemed old, and were explained as probably being from Shirley, before her tusks were removed. Otherwise, I did not see anything unusual about Benjamin. At night, these elephants were chained, in their pen.

The Blue Unit had a turn-out pen for the elephants, although it was not set up. According to Mr. Steele, the elephants are either turned out in the pen at their stops, or walked, for exercise off-chains. The elephants at this location, were chained on the diagonal, with padded chains, and the ones that we examined were able to lie down and get up while chained.

Kristina Cox, DVM; VMO

Kristina Cox, D.V.M.; V.M.O.
USDA-APHIS-AC
Eastern Region
Ft. Lauderdale, FL.



AFFIDAVIT

I, (name of affiant) _____ being duly sworn on oath make the following statement:

06 []

handlers are needed for the separation of elephants which are fighting. I have never seen any injuries inflicted with the ankus on any of the elephants.

Karen can be aggressive against a person who she does not know. She is an animal that I handle and I feel comfortable handling her. She is protective of her space and will show a sign of aggressive behavior if she does not know the person. It is a policy that no one should get close to her without a trainer or handler who she feels comfortable with. Tape is sometimes laid out on the flooring in front of her where she is tethered to mark where people unfamiliar with her shouldn't go. Spray paint is sometimes used on the floor. Neither Karen, nor any of our elephants, is a hazard to the general public.

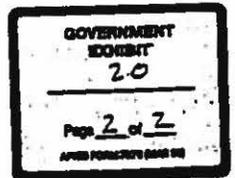
The space provided to the baby elephants allows them to move freely. An electrical fence pen is frequently used whenever the location permits us to lay out the fence. Shirley is loose most of the day in the pen. Benjamin may be tethered in the pen for some time during the day. They are both tethered in the pen during the night, although if my trailer is located next to the pen, Shirley is not tethered during the night.

I have read and had the opportunity to change and correct this sworn statement which is true and correct to the best of my knowledge. []

SIGNATURE OF AFFIANT/

Subscribed and sworn to before me at Sunrise, Florida on this 8th day of January, 1999

APHIS FORM 7162 Replaces VF Form 3-3PG which is obsolete (NOV 92)



[Signature]

DESIGNATED PURSUANT TO 7 U.S.C. 2217 TO ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS. AUTHORITY NO. 3015

AFFIDAVIT

I, *Glenn D. Ewell*, being duly sworn on oath make the following statement:

I make the following voluntary statement to Neil W. Williamson who I know to be an investigator employed by the United States Department of Agriculture. Although my given name is Glenn Ewell, I am commonly known as "Doc". My current address is 11435 Simmerhorn Rd., Galt, California 95632. I can be reached at (209) 745-2606. My date of birth is January 4, 1954. My SSN# is 034-44-7192.

From October 8, 1998, until about December 3, 1998 I was employed by Ringling Bros. Circus as a member of the animal crew. I traveled with the 'Blue Unit' coming on board while the unit was performing in Denver, Colorado (October 7, 1998 thru October 18, 1998). The unit then moved to Cleveland, Ohio for performances (October 23, 1998 thru November 1, 1998), on to Rosemont, Illinois (November 4, 1998 thru November 15, 1998), then to Chicago, Illinois (November 17, 1998 thru November 29, 1998), and finally to Huntsville, Alabama for performances (December 3, 1998 thru December 6, 1998), which is where I resigned.

As a member of the animal crew I was assigned to the elephant troupe and my duties involved general maintenance and upkeep around the elephant area in addition to caring for the elephants including feeding and watering. At the time of my employment there were 15 elephants traveling with the Blue Unit consisting of 13 adult Asian females and two Asian juveniles (one male and one female). There were anywhere between 8 to 12 individuals assigned to the elephant troupe during the time I was employed. These individuals included, as the best I can recall, Steve (last name unknown), Rob Lowe, Gary Boyle, 'little' Robbie (last name unknown), James Stehcon, and myself were classified as animal crew as printed on our identification

SIGNATURE OF AFFIANT

Subscribed and sworn to before me at Galt, California
on this 20th day of January, 1999

APHIS FORM 7162 Replaces VF Form 3-990 which is obsolete
(NOV 92)

DESIGNATED PURSUANT TO 7 U.S.C. 2217 TO
ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS,
AUTHORITY NO. 2838

AFFIDAVIT

Glenn D. Ewell, being duly sworn on oath make the following statement:

cards. Randy (last name unknown) was the head trainer. Adam (last name unknown) and Pat (last name unknown) were assistant trainers and helped supervise the animal crew. Pat was responsible for the training of the two juvenile elephants.

As a general rule the elephants were kept chained in position until approximately 20 minutes before show time when they were unchained and walked around until the performance started. After the performance was over they would be brought back to the holding area and re-chained in position. There generally was only one performance on weekdays with two performances per day on weekends. Mondays were considered 'dark days' as there generally was no performance. The only times the elephants were unchained was approximately one hour per performance and occasionally when the weather permitted electrical pens were constructed outdoors so the elephants could be allowed to roam inside the pens. There were usually six pens constructed for this purpose with the two juveniles being penned together in one pen away from the adults. During my employment these pens were constructed very infrequently. Sometimes they would be taken on a twenty minute walk on Mondays but not always. Some Mondays they remained chained all day.

My job for the Animal Crew consisted of showing the individuals what areas to clean and to dispose of the trash and manure. The only instructions I recall being given was to stay away from Karen because of her aggressive behavior. I, along with the other crew members, was told to stay to the right or left of Mysor or Sophia who were chained on either side of her. I was told not to go close to her unless a trainer was present.

OF AFFIANT

and sworn to before me at Galt, California
day of January, 1999

Exempted VP Form 3-99G which is obsolete

DESIGNATED PURSUANT TO 7 U.S.C. 2217 TO
ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS,
AUTHORITY NO. 2828

AFFIDAVIT

I, *Glenn D. Ewell*, being duly sworn on oath make the following statement:

Concerning specific incidents in which I felt elephants were abused, the first occurred approximately two days after I started working. After one of the performances in Denver, one of the adult females by the name of Nicole was severely beaten by Randy and Adam because she performed poorly. The elephants were taken back to the holding area ~~and~~ and Randy took a bull hook and began beating Nicole in the head, on the trunk and behind the front feet. The beating continued until the handle of the bull hook shattered. While Randy was beating Nicole in the head and trunk area, Adam began beating her on the lumbar and hindquarter area on the right hand side. One of the strikes made by Adam to the lumbar area resulted in the metal hook penetrating the skin and causing an open wound from which blood began flowing. After the beating was over a person by the name of Sonny doctored the wound with some type of powder to stop the bleeding. No other veterinary care was provided to my knowledge. All of the animal crew previously identified were present and witnessed the beating.

After moving to Cleveland I saw Randy beat Nicole at least three times while she was chained because she performed badly in the ring. Again these beatings were conducted in full view of the crew.

After moving to Rosemont, another incident occurred in which Randy was beating Nicole for a bad performance and Jeff Steele (executive director for the blue unit) came through the elephant area trying to find Adam and observed the beating and didn't say anything to Randy about

SIGNATURE OF AFFIANT

Subscribed and sworn to before me at Galt, California
on this 20th day of January, 1999

APHIS FORM 7162 Replaces VF Form 3-59C which is obsolete
(NOV 92)

DESIGNATED PURSUANT TO 7 U.S.C. 2217 TO
ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS,
AUTHORITY NO. 2828

AFFIDAVIT

I, *Glenn D. Ewell*, being duly sworn on oath make the following statement:

abusing Nicole, nor did he attempt to stop the beating. Again, the majority of the animal crew was present during the beating.

After moving to Chicago, on approximately the fourth or fifth day after arriving, Randy was trying to stretch out Karen so the crew could clean her. She refused to stretch out and Randy, Adam, Pat, and Steve all took bull hooks and began beating her. Karen had no choice but to submit ~~and the beating continued~~ and the beating continued after she went down.

I have on occasion seen Randy and Adam strike Mysor, Lechnee, Meana and Susan with bull hooks for either having performed badly or for trying to socialize with another elephant next to them in line. The bull hooks used by the handlers and crew are hand made by Adam. They have a fiberglass handle shaped like an ax handle approximately three feet in length with a titanium head and bands. The titanium head consists of two points, one of which goes out straight out and the second being on a hook. I estimate the overall weight of the of the hook to be more than five pounds.

The animal crew was told by Adam, Randy, Pat, and Steve that what you see here stays here. I resigned from Ringling Bros. because I could no longer tolerate the abuse the elephants were receiving.

SIGNATURE OF AFFIANT

Subscribed and sworn to before me at Galt, California
on this 20th day of January, 1999

APHIS FORM 7162' Replaces VF Form 1-593 which is obsolete
(NOV 92)

DESIGNATED PURSUANT TO 7 U.S.C. 2217 TO
ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS,
AUTHORITY NO. 2838

AFFIDAVIT

I, *Glenn D. Ewell*, being duly sworn on oath make the following statement:

I have read this statement consisting of five pages and have had an opportunity to make corrections and/or additions. I swear that all information contained in this statement is true and correct to the best of my knowledge.

SIGNATURE OF AFFIANT

Subscribed and sworn to before me at Galt, California
on this 20th day of January, 1999

APRIS FORM 7162 Replaces VF Form 3-99C which is obsolete
(NOV 92)

**DESIGNATED PURSUANT TO 7 U.S.C. 2217 TO
ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS.
AUTHORITY NO. 2838**



United States
Department of
Agriculture

Marketing and
Regulatory
Programs

Animal and
Plant Health
Inspection
Service

4700 River Road
Riverdale, MD 20737

SUBJECT: Investigation of Ringling Brothers
and Barnum & Bailey Circus (RBBBC)
(Case No. FL99028)

MAY 7 1999

TO: Craig A. Reed
Administrator

An investigation of RBBBC was initiated in January 1999, in response to materials submitted to Animal Care by the Performing Animal Welfare Society. These materials included statements [redacted] alleging abusive handling and training practices involving elephants.

b1o
b7c
b7d

The subject case has been closed with no action due to insufficient evidence as explained below.

Affidavits and evidence collected during the course of the investigation have been reviewed and examined. Photographic exhibits have been distributed to [redacted] from the elephant handling and management field. The following conclusions were reached:

] b5

1. Photographic documentation of skin lesions was sent with a brief summary of the case (no identifying information was provided as to licensee or animals involved) to elephant management and handling experts, including [redacted]

] b5
b6

Along with the photographs and summary, a list of questions pertaining to the issues raised in this case were provided. The consensus of the experts was that there was not evidence of abuse, most lesions were likely due to tusks of other animals, there was some support for the inappropriate use of a bull hook on one elephants upper ear attachment, but there was no way of determining when most of the marks were made -- many were old. No evidence of bruising or other evidence of the animals being struck was seen.

2. The affidavit testimony of the two initial complainants notwithstanding, there was no supporting evidence to substantiate the allegations contained therein. In fact, the evidence obtained would be considered "exculpatory," that is, tending to exonerate Ringling Brothers and Barnum & Bailey Circus.



3. APHIS responded in a timely manner in providing inspectors and investigators to examine the animals, personnel and procedures used at the facility. An Animal Care inspector examined the elephants mentioned for wounds within days of APHIS receiving the complaint and reported none. Inspection of the facilities found no noncompliant items. We were unable to confirm any of the allegations. Based on the healing rates of elephants in general, one would have expected to find physical evidence of the alleged abuse.
4. Offsetting the affidavits of the complainants are very strong affidavits from each of the five people accused of abusing the elephants which emphatically state:
- the parties never beat any elephants, emphatically deny the accusations
 - the parties have never seen anyone else beat any elephants
 - they are not aware of any elephants ever being beaten, and would report it if they became aware of such practices
 - bull hooks are used as secondary communication—as a cue, not as a weapon
- [most frequently cited as abusive in the complainants' affidavits) is professional and very accomplished with elephants]
-] b5
b6
5. Based on lack of physical evidence and lack of collaborating testimony, as well as the opinion of eight experts in elephants handling and management (many of which APHIS have used in the past to aid in evaluation and prosecution of AWA violation cases) and the strength of the affidavits of the accused parties, APHIS had no grounds to issue a complaint or stipulation, and, therefore, closed the case. The complaint made on behalf of the two former employees could not be substantiated.

W. RON DeHAVEN

W. Ron DeHaven
Deputy Administrator
Animal Care

cc:

K. Vail, OGC, Washington, DC
A. Christian, IES, Riverdale, MD ✓
M. Jones, IES, Riverdale, MD
E. Goldentyer, AC-ER, Raleigh, NC
C. Billet, OA, Washington, DC

APHIS:AC:WRDeHaven:BKohn:rf:734-4980:5-7-99:c:\oa\ringling case closing.lwp

WILD ELEPHANTS IN CAPTIVITY

Dr. Jack Adams

Department of Psychology
California State University Dominguez Hills
Carson, California 90747

Center For The Study of Elephants
P.O. Box 4444
Carson, California 90749

GOVERNMENT EQUIPMENT
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by circuses and in private holdings. No data was available as to the subspecies or sexes in this census of elephants. Therefore, the total elephant population in captivity was 49 animals. Seventeen other countries held 66 elephants in 2 institutions. Thus, there is approximately a total of 74 known elephants in captivity throughout the world. This figure, however, is not entirely accurate as all the countries and institutions have not been accounted for, and there are undoubtedly many private elephant holdings that have not been reported. A recent survey in Africa estimated that the population of wild elephants was approximately 1,350,000. There are approximately 30,000 wild Asian elephants remaining in the world.



CHAPTER 10
THE BULL-HOOK

The enormous size and weight of elephants made necessary for the early caretakers and trainers to devise some instrument that would aid in the control of these animals. At first, spears were devised and used. They consisted of long wooden shafts that could be easily handled and they had a sharp point on one end. In jabbing the tough, mud-encrusted skin, the pointed end of the wooden shaft frequently became dull and ineffective. Then a sharp metal point was attached to the end of the wooden shaft. However, the metal-pointed, long spears soon became unwieldy as the elephants were trained. The length of the shaft had to be shortened so that it was more manageable. Also, the pointed end of the shaft had to be modified so that the elephant could be hooked and pulled toward the trainer. Consequently, the modern bull-hook evolved and is shown in the accompanying photograph.

The bull-hook is an indispensable instrument in the training and control of elephants. It is through the combination of spoken words and the effective use of the bull-hook that the trainer, handler or caretaker can control an elephant of any size. When not in use, the bull-hook should always be placed in the same conspicuous, convenient and accessible place where it can be readily obtained when necessary.

In using the bull-hook, the sharp points should be deeply embedded into the elephant's skin, as it can

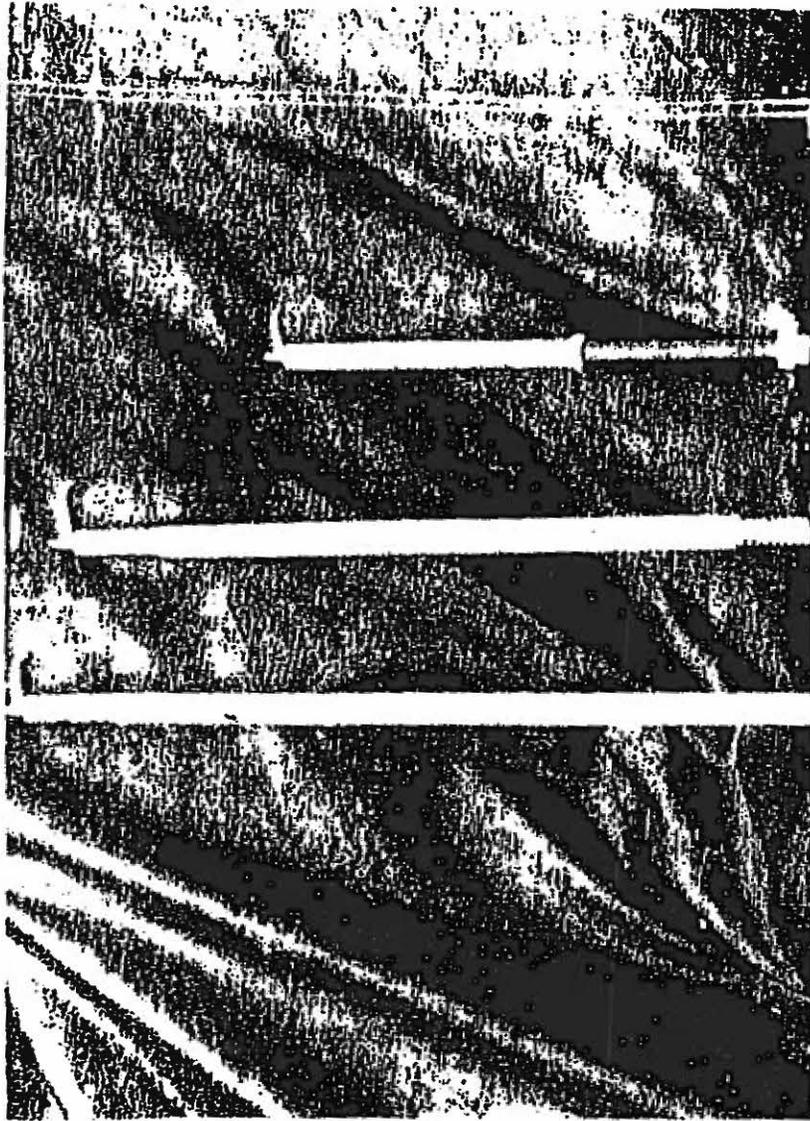


Fig 27 Multiple pierce

produce wounds that may become infected and difficult to heal. The sharp point of the bull-hook should be repeatedly jabbed into various places of the skin in a given area and not in the same place continually. The skin of the elephant is relatively sensitive, so it does not require deep penetration to obtain a response. After a period of effective training, simply placing the bull-hook on the skin will bring about the desired behavior of the elephant.

There are some places on the body of the elephant where the bull-hook should not be used. The sharp points of the bull-hook should never be jabbed into the top of the elephant's ear where it is attached to the head. Breaks in the skin at this point are difficult to heal because of the constant movement of the ears. The bull-hook should not penetrate the soft tissue around the elephant's eyes, mouth, and genitalia.

There is an old adage among great elephant trainers regarding the use of the bull-hook which states: "Not how much, but when." This implies that the bull-hook should be utilized as an aid to guiding and directing the behavior of the elephant. Only in certain rare instances should the use of the bull-hook be justified as an instrument to inflict pain or as a weapon of attack upon an elephant. One of the instances might be when the life of a human being is stake.

The metallic sharp points of the bull-hook should be made of stainless steel. This metal is resistant to rust, and it is easy to keep clean because of its smooth surface. Other metals are subject to corrosion and pitting in the areas where dirt and bacteria could accumulate and cause infections when the sharp points pierce the elephant's

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United States
Department of
Agriculture

Animal and
Plant Health Inspection
Service

Animal Care

Eastern Region
920 Main Campus Drive
Suite 200
Raleigh, NC 27806
Telephone: (919) 716-5532
Fax (919) 716-5696

Julie Alexa Strauss
Vice President/Corporate Counsel
Feld Entertainment, Inc.
8607 Westwood Center Drive
Vienna, VA 22182

August 21, 2000

RE: IES Case Number FL 99 028 AW

Dear Ms. Strauss:

The Animal Welfare Act investigation that was conducted into a whistle blower complaint of elephant abuse was recently completed. Inasmuch as no violations were documented the matter was closed on April 22, 1999. No further action is being taken with regard to this investigation.

The agency retains the option of reopening this case in the future if we obtain additional information that warrants further investigation.

If you have any questions, please call the Animal Care Eastern Regional Office at (919) 716-5532.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Goldentyer".

Elizabeth Goldentyer, DVM
Eastern Regional Director
Animal Care

Cc:
Facility File (52-C-0137)
M. Binkley, SACS-ER
R. DeHaven, AC Deputy Administrator



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The Forcible Removal of Baby Elephants from their Mothers

Introduction

On February 9, 1999 – at the same time USDA was investigating the eye-witness accounts of former Ringling employees who said that elephants, including babies, were routinely beaten by Ringling trainers and handlers – two USDA inspectors conducting a routine inspection of Ringling’s “Center for Elephant Conservation” in Polk City, Florida observed “large visible lesions” on the rear legs of two extremely young elephants, Doc and Angelica. They were told by Ringling officials that these scars “were caused by rope burns, resulting from the separation process from the mothers.” The baby elephants were about 18 months old.

Ringling calls its breeding farm the “Center for Elephant Conservation” and Kenneth Feld, Ringling’s CEO, boasts that Ringling has “the largest gene pool outside of Asia,” and that Ringling is “the real hope for the perpetuation of the species.” However, Ringling is not breeding elephants for release to the wild. On the contrary, Ringling is breeding elephants for one purpose only: to insure that it has a steady supply of baby elephants – an extremely popular attraction – for its circus performances.

Furthermore, in the wild, baby elephants are not usually weaned from their mothers until they are between 2-4 years old, or older, and even after that, female elephants remain with their mothers and other members of their herds for the rest of their lives, and males stay with their families until they are ready to start their own families at between 9-15 years old. Therefore, forcibly removing 18-month old babies from their mothers so that they can be “trained” to perform in a circus is anathema to the “conservation” of this species.

Animal Welfare Act regulations provide that “handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma . . . behavioral stress, physical harm, or unnecessary discomfort,” and that “young animals shall not be exposed to rough or excessive public handling . . . which would be detrimental to their health or well-being.” 9 C.F.R. § 2.131(a), (b). The regulations further provide that “physical abuse shall not be used to train, work, or otherwise handle animals.” 9 C.F.R. § 2.131(a)(2)(i).

Outcome

Even though the USDA concluded that “the handling of these two elephants was not in compliance with the Animal Welfare Act regulations,” and that “there is sufficient evidence to confirm that the handling of these animals caused unnecessary trauma, behavioral stress, physical harm and discomfort to these two elephants,” the USDA took no enforcement action against Ringling.

*USA Today (January 6, 2000), 9D.

The USDA's Investigation

On February, 9, 1999, at a routine inspection of Ringling Bros.' Center for Elephant Conservation in Polk City, Florida, two USDA inspectors saw two 18 month-old elephants, named Doc and Angelica, who were restrained by "leg restraints on two legs, one fore and one rear." According to the inspectors' internal memoranda to the file, "[o]n first glance, it was obvious that **there were lesions on the back legs of both elephants.**" When the inspectors asked what had caused the lesions, Ringling Bros. officials Jim Williams and Gary Jacobson both explained that the lesions "were caused by rope burns due to the elephants' movements when tied, and that **this type of restraint was done routinely during the separation process from their mothers.**" They further indicated that "these elephants have to be restrained this way during the separation process," and that "this was '*industry standard*' and a normal way of doing this."

The inspectors called the Director of the USDA's Animal Care Eastern Regional Office and told her that they believed this "should be cited as a violation" of the Animal Welfare Act regulations. However, after conferring with the Deputy Administrator of Animal Care, the Eastern Regional Director instructed the inspectors "to not write it as a violation, but to write it as a '*note*' on the inspection report, since [the Deputy Administrator] felt we should consult with others in the industry before taking action." The Deputy Administrator also instructed the inspectors to obtain photographs of the lesions to review. Therefore, the inspectors returned to the Ringling facility.

However, when they returned, they were met by several Ringling officials, including Ringling's veterinarian, Dr. William Lindsay, who "was very upset" and, although the AWA authorizes inspectors to conduct unannounced inspections of all facilities, the inspectors were "asked repeatedly why we could not be more collegial and call him before we came." According

to the inspectors, “[a]ll Ringling personnel were very reluctant to let us take pictures,” and insisted that this “would interrupt the normal routine for the animals,” even though all of the elephants were completely restrained by chains. Accordingly, the inspectors left the facility and decided to return the next day to take photographs.

When the inspectors returned the next day, Ringling’s veterinarian, Dr. William Lindsay, “questioned our authority to take photos, and to conduct unannounced inspections.” He also indicated that “this process of separating the babies from their mothers was a normal ‘*industry standard*.’” According to the inspectors, Dr. Lindsay also explained that “the ropes & chains were removed prior to [the inspectors’] arrival,” the elephants had been moved to another area and “appeared ‘cleaned up.’” The inspectors further recorded that, “[i]n addition to what we saw the day before, we now also were able to see **additional healed scars around each leg, including front legs.**”

As instructed by USDA Headquarters, the inspectors did not cite Ringling Bros. for noncompliance with the Animal Welfare standards on the Inspection Report, but instead included the following “note” at the bottom of that Report:

There were large visible lesions on the rear legs of both Doc and Angelica. When questioned as to the cause of these lesions, it was stated by . . . Gary Jacobson that these scars were caused by rope burns, resulting from the separation process from the mothers on January 6, 1999. . . . Angelica also had two linear healing scars on the back of the right hind leg. Doc had a pink scar on the right rear mid-leg area. . . . The issue is of concern, and will be forwarded to Headquarters for review to determine if it is a violation of the AWA (per instructions by Dr. Betty Goldentyer). A formal determination will be made at a later date and forwarded to the facility.

Inspection Report (February 10, 1999).

The USDA's Use of Outside Experts

Two days later, on February 12, 1999, the USDA's Senior Staff Veterinarian sent a form letter to the same elephant experts who had reviewed photographs taken during the Ewell investigation [See previous Case Study], requesting the experts to review the photographs of Doc and Angelica and to answer certain questions. According to the subsequent responses of those experts, the animals were far too young to be separated from their mothers, and the method used was outdated and traumatic:

"Don't recommend separation until at least 2 years – in the wild males don't wean until 4, females never leave mothers company – why should captivity be different?" "The approach used here is outdated and do[es] not meet AWA standards, even if they are the 'norm;" "Are better and less stressful ways;" "It is traumatic, stressful, caused physical harm and unnecessary discomfort;" "not necessary to remove calf to train it; prefer use of positive reinforcement – required understanding of training and patience."

By internal memorandum dated April 19, 1999, the experts' views were forwarded to the Deputy Administrator for Animal Care.

On May 11, 1999, the Deputy Administrator sent a letter to Julie Strauss, Ringling's Vice President and Corporate Counsel, stating that, "[a]fter careful consideration of the issue, we find that the handling of these two elephants was not in compliance with the Animal Welfare Act regulations," and that "there is sufficient evidence to confirm the handling of these animals caused unnecessary trauma, behavioral stress, physical harm and discomfort to these two elephants." However, the agency took no enforcement action against Ringling Bros.

On May 18, 1999, Ms. Strauss sent a letter to the Deputy Administrator, insisting that Ringling's practices complied fully with the Animal Welfare Act regulations and demanding that the agency provide Ringling with the "names, expertise and opinions of all individuals or entities from whom you sought information." Ms. Strauss further stated that:

As you are well aware, Ringling Bros. has cooperated with USDA on several occasions to provide continuing education to APHIS inspectors, including hosting tours at our facilities and having our on site experts available to answer questions and share information with your personnel. Most recently, in April of this year, APHIS toured the CEC [Center for Elephant Conservation] as part of an elephant training program. We have long maintained this open door policy with USDA and the entire elephant community. We believe this exchange of information and expertise benefits all parties. Exchange of information, however, is a two way street, and we believe that sharing the information you gathered is the correct and fair action to take.

On June 3, 1999, the Deputy Administrator responded by stating that, “[a]s documented in the inspection report, ‘[t]here were large visible lesions on the rear legs of both Doc and Angelica. When questioned as to the cause of these lesions, it was stated by Mr. Jim Williams & Gary Jacobson that these scars were caused by rope burns, resulting from the separation process from the mothers on January 6, 1999.’” the Deputy Administrator further explained that the elephant experts it consulted agreed that this practice was stressful, traumatic, and harmful, and he also explained that it was important for the agency to keep the identities of the experts confidential so as not to impair the agency’s ability to obtain their participation in the future.

Nevertheless, other than “noting” the inspectors’ observations on the Inspection Report and sending Ringling a private letter expressing the agency’s concerns, the USDA still did not take any enforcement action against Ringling Bros. for its violations of the AWA.

On June 11, 2000, several animal welfare organizations, including the American Society for the Prevention of Cruelty to Animals, the Fund for Animals, and the Animal Welfare Institute brought a lawsuit against Ringling Bros. under the Endangered Species Act for violating the prohibition against the “harming” of Asian elephants – an endangered species – relying in part on the Deputy Administrator’s letter to Ms. Strauss which stated that Ringling’s separation practices caused the babies “physical harm.” In response, Ringling’s lawyers began a non-public concerted campaign to convince the Deputy Administrator of Animal Care to retract his earlier statement, and

the USDA agreed to reconsider the matter.

As part of Ringling's effort to convince the USDA to rescind its earlier finding, Ringling submitted supplemental affidavits from its employees that recanted the contemporaneous testimony they had provided the USDA inspectors on February 9, 1999. The employees' new version of what caused the "large visible lesions" the inspectors saw on the young elephants was not the result of the "routine" separation process they had candidly described at the time of the actual inspection, but rather a result of "dirt and sand" that somehow got in between the "soft cotton ribbon" that Ringling uses on its baby elephants.

On February 15, 2001 – more than 2 years after the original incident – Ringling's former veterinarian also submitted an affidavit to the USDA in which he stated that when, at the time, he "said that the marks occurred during the separation process," he "mis-spoke," and that, instead, "the rub marks occurred in handling the elephants separate and apart from the separation process." He further explained that, when he examined Angelica and Doc, there were no large visible "lesions," but only "rub marks," and that he "believe[s] they were caused by the cotton bands."

However, this veterinarian "declined" to sign this belated affidavit for "personal" reasons – i.e., he refused to swear, under penalty of perjury, that his new version of what had occurred more than 2 years ago was correct. Nevertheless, the agency made no further attempt to obtain this individual's testimony under oath, or to probe the basis for his complete "about-face" regarding the cause of the lesions on Doc and Angelica.

In an internal memorandum dated July 17, 2001, the Deputy Administrator of Animal Care informed the Director of Investigative and Enforcement Services that the inspectors' "action, i.e., to cite noncompliances on the inspection report," "was appropriate" – even though, pursuant to the Deputy Administrator's own instructions, the inspectors were told not to include any such citation

on the inspection report, but instead simply to “note” their observations about Doc and Angelica’s lesions.

By letter dated July 23, 2001, the Deputy Administrator sent Ringling Bros.’ corporate counsel a letter stating that the investigation had “**been closed administratively with no action.**”

By letter dated August 9, 2001, Ringling Bros.’ lawyer wrote to the Deputy Administrator and complained about his reference to the matter as an “investigation.”

As we discussed on the telephone, your use of the word “investigation” in connection with this matter was erroneous. You had previously referred to the matter as fact gathering, rather than an investigation, and you advised me that the use of the word “investigation” in the July 23 letter was inadvertent.

By letter to Ringling’s lawyer dated August 10, 2001, the Deputy Administrator “confirm[ed]” that “the ‘investigation’ of the two weaning elephants is more accurately characterized as a fact gathering process.”

Enforcement Synopsis

Even though the USDA concluded that Ringling’s routine treatment of its baby elephants violated the Animal Welfare Act regulations and caused the animals “unnecessary trauma, behavioral stress, physical harm and discomfort,” the agency never took any enforcement action against Ringling. Moreover, because the Deputy Administrator of Animal Care had instructed the inspectors not to “cite” Ringling for violating any regulations, but instead only to include a “note” at the bottom of the Inspection Report concerning their “observations,” the Inspection Report itself does not even reflect that Ringling was in violation of the law. Nor does the record reflect any effort on the agency’s part to ensure that Ringling has changed its practices with respect to its treatment of baby elephants at its “Center for Elephant Conservation.” Nor did the USDA make even a cross-

reference to the fact that, at the same time, the agency was investigating allegations by two former Ringling employees that Ringling handlers and trainers routinely hit and beat baby elephants with bullhooks to “train” them and keep them under control (see Former Employees Case Study, Sec. III), or to the fact that one of the elephants that these employees testified received particularly brutal treatment – Benjamin – had recently died under extremely mysterious circumstances (see Benjamin Case Study, Sec. V). Instead, as with each of those investigations, the USDA simply closed the Doc and Angelica investigation without any further action.

In addition, the agency’s own inspectors were extremely disturbed by the “large visible lesions” they saw on these very young elephants, the experts consulted by the agency had concluded that Ringling’s treatment of the animals was “unnecessary and traumatic,” and the agency itself had concluded that it caused the animals “unnecessary trauma, behavioral stress, physical harm and discomfort.” However, in the end, not only was there no citation for violating the AWA, but, acceding to Ringling’s demands, the agency would not even describe the matter as being subject to a formal “investigation,” but instead merely noted that the overwhelming evidence of mistreatment of these baby elephants was nothing more than a “fact-finding” process that ended in no enforcement proceeding whatsoever.

MEMO

To: File
From: Miava Binkley, DVM
Subject: Ringling Brothers - Polk City site inspection
Date: February 16, 1999

On Tuesday, February 9, 1999, Dr. Robert Brandes and I began a routine inspection at Ringling Brothers' (Feld Entertainment) Center for Elephant Conservation (52-C-0136) in Polk City, FL.

We arrived in the morning about 10 am. and met Jim Williams, who accompanied us throughout the inspection. At the end of the walk-thru inspection, we saw two young (approx. 18 months old) elephants restrained in the large female night holding barn. (Doc and Angelica). They were held by leg restraints on two legs, one fore and one rear. The front legs were held by plastic wrapped chains and the rear legs were held by wide cloth/cotton webbing. On first glance, it was obvious that there were lesions on the back legs of both elephants. Angelica's lesion on the anterior aspect of the right rear leg appeared very pink, moist, and about 6" by 1" in size, just below the rear leg restraint. She also had a smaller lesion on the left rear leg. Doc's lesion appeared more whitish and about the same size. We were told by Ringling personnel that the reddish color was due to the iodine-based ointment that was on the lesions. ("Biozide")

I asked what caused the lesions. Gary Jacobson said Doc and Angelica were weaned from their mothers on January 6th and that the scars were from rope burns during this process. He described the process as putting a cotton rope around each leg, then a chain around the neck, and leading the baby off with another elephant. Jim Williams acknowledged that this is what caused the lesions.

Later, Dr. Brandes and I looked at the "Biozide" ointment that was used. It was an iodine based ointment that was dark orange colored like iodine, not really red. We reviewed records and attempted to contact Dr. Lindsay by phone, but he was unavailable. We left for lunch and said we would return later for the exit interview.

I attempted to contact Dr. Goldentyer when we arrived at a local restaurant, but was not able to reach her until later in the afternoon. I described what we had seen, and stated that Dr. Brandes and I felt it should be cited as a violation. She conferred with Dr. DeHaven and then instructed us to not write it as a violation, but to write it as a "note" on the inspection report, since Dr. DeHaven felt we should consult with others in the industry before taking action. He also wanted pictures of the lesions to review. After completing the inspection report as instructed, we returned to the Ringling facility at approx. 5 pm. There to meet us were Drs. Bill Lindsay and

File

Page 2

February 25, 1999

Gary West, Jim Williams and Gary Jacobson. Dr. Lindsay was very upset and asked repeatedly why we could not be more collegial and call him before we came. I explained to him that all our inspections are unannounced. We also asked at that time to take pictures of Doc and Angelica. All-Ringling personnel were very reluctant to let us take pictures. Jim Williams said he would not help us take pictures and that it was a bad time since many of his staff had left for the day and it would interrupt the normal routine for the animals. In light of everything, I elected to come back the following day for the pictures and the final exit interview.

We returned to the facility the following day at about 10 am. We were met by Jim Williams who proceeded to interrogate me about what was happening. He asked if he could be involved in any violations - I answered it was possible. He then began badgering me about my qualifications to inspect elephants. I calmly answered that I had a right to inspect this facility. He then walked away in apparent disgust and told Dr. Lindsay to handle things. Dr. Lindsay was calm and helpful, as was Dr. West. We proceeded inside the building to take pictures. They had placed the young elephants in a small pen. They said they did not want pictures taken of them on leg restraints. I said fine, since all I wanted was pictures of the lesions. Dr. West was videoing the two elephants and they had been cleaned of all medicated ointment. The lesions appeared to be healing scars. Angelica's lesions looked less dramatic than the previous day, but Doc's actually looked more pink than the day before. In addition to what we saw the day before, we now also were able to see additional healed scars around each leg, including front legs. These were well-healed but clearly visible. Dr. Lindsay agreed the lesions were healing scars but did not feel it was anything important. Dr. Brandes took pictures and then we proceeded to do the exit interview. After the report was shown to Dr. Lindsay and Dr. West, Dr. Lindsay was reluctant to sign the report. I explained that he was only signing that he received a copy of the report, not that he agreed with it. He was upset that we had even written a note about the scars and stated that we were "silly" for making such a big issue over a little thing. He did sign the report and wrote a short note about his concern.

As for the TB status of the herd, Dr. Lindsay confirmed that several animals remain untested at present (Doc, Angelica, Charlie, Casey, and Rajah). Vance, the breeding male who cultured TB positive, has not yet begun treatment. Mala is continuing her treatment with INH only via rectal slurry. They have not been successful in treating her orally and rifampin is not well absorbed rectally. He did say Ringling had decided to go ahead and attempt to treat Vance but they would have to make physical changes in the building to do it safely since he is not handled in free contact. He did not know when treatment would begin. Both Vance and Mala appeared in good body condition. Jim Williams did say that he was the one who collected the mucus from the floor when Vance coughed up very thick, viscous yellow material for 5-7 days. No other material has been seen since.



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
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Animal Care

Eastern Region
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Annapolis, MD 21401-7400

Narrative

On February 9, 1999, Dr Binkley and myself performed a routine reinspection of Feld Entertainment-Center For Elephant Conservation (52-C-0136) located in Polk City, FL.

There were two baby elephants in the large female night holding barn named "Angelica" & "Doc". These elephants were chained on opposite front-rear legs. One of the front legs was chained with link type chain around the front leg at the ankle area. The other end of this chain was anchored to a metal ring that was embedded into the concrete flooring. The opposite rear leg had a wide piece of cloth material around the area of the knee joint. The ends of this cloth were attached to a rope, which was secured to the metal railing of the enclosure behind the animals. The animals movements were restricted by this method of restraint. There was only some side to side swaying motions.

Visible scars were readily observable. Angelica's lesion appeared as a pink linear scar approximately 6" long x 1" wide. The left rear leg also had a scar directly below the cloth tie. These lesions appeared "greasy" and we were told by Mr. Williams that they were treated with an iodine-based ointment. This elephant also had 2 healing linear scars on the back of the right hind leg. Doc had a pink scar on the right rear mid leg area.

Dr Binkley immediately upon observation of these scars asked Mr. Jim Williams and Gary Jacobson as to the origin of them, and why these elephants were tied up this way. Both men said that they were caused by rope burns due to the elephant's movements when tied, and that this type of restraint was done routinely during the separation process from their mothers. They indicated that these elephants have to be restraint this way during the separation process. They indicated that this was "industry standard", and a normal way of doing this.

After the walk through portion of the inspection we requested that we take photographs of these animals. Mr. Williams then became antagonistic and defensive. He questioned us as to why we wanted to take pictures. We said we had some concerns about these scars. He said he would have to get Mr. Jacobson to handle these animals, and he was not sure if Mr. Jacobson was still available. He also said he himself would not handle them so that we could take photographs. He also questioned the legality of us taking these photographs. As it was late in the day and the barn was dark. I thought that the only way to take a picture would be with the use of a flash. Mr. Williams said that he was not sure if he would allow a flash picture, as he was unsure of how the elephants would react to the flash.

Because it was late in the day for picture taking, Dr Binkley decided to postponed the pictures until the following morning, February 10, 1999.

When we arrived the next morning we were first met by Mr. Jim Williams, in the parking area, who again became antagonistic & defensive when we asked to take photographs of Angelica & Doc. He also inquired as to Dr Binkley's expertise in the management of elephants. Shortly afterwards he just walked away.

We then met Drs. Lindsey & West. Dr Lindsey also questioned our authority to take photos, and to conduct unannounced inspections. We explained the regulations to him. Dr Lindsey also indicated that this process of separating the babies from their mother was a normal "industry standard". He further questioned us as to why we wanted to take these pictures, and asked us of our concerns about these elephants. Dr Binkley explained that we had some concerns about these scars which were caused by the method of restraining these animals. She also asked Dr. Lindsey if he agreed that they were scars. He did agree to that description of what we observed. He still could not understand our concerns.

He then informed us that the ropes & chains were removed prior to our arrival. These elephants were also moved to another area in the female high holding barn for the pictures. All the ointments were removed, and the animals appeared "cleaned up".

During the exit interview Dr Lindsey, Jim Williams, & Gary Jacobson again reiterated their views. They appeared surprised about our concerns, and that we were making a big deal about this. Mr. Williams & Jacobson became loud and again indicated that this was alright, and that we did not know anything about separation procedures. Mr. Williams & Jacobson shortly walked away, and Drs. Lindsey & West were the only ones present for the rest of the exit interview.

Dr. Binkley spoke to Dr Goldenryer by telephone, and expressed our great concerns over this handling issue, and the scars which we observed. Dr Binkley informed me that she was informed by Dr Goldenryer that we would cite our concerns only as a notation on the inspection report, and would not cite it as a non compliance until a decision is reached by the Animal Care staff.

Dr. Lindsey was hesitant about signing the inspection report. He asked us if he must sign the report. We said that he did not have to sign the report, but if he did not, we would send it to him by certified mail. Dr West confirmed the regulations and accuracy of our statements. Dr Lindsey then wanted to put a statement on the inspection report, which Dr. Binkley agreed to.

We informed Drs. Lindsey & West that we are going to send the photos that we took to headquarters staff for review, and that they would be notified after that review.

Summary for Case 2:

One month prior to the photographs taken, the two elephants in question were "weaned" from their mothers with the use of ropes to aid the separation. At the time of the photographs the abrasions were still very visible and had not healed completely.



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FEB 18 1999

INSPECTION REPORT

Feld Entertainment Inc.
Ringling Bros/Barnum & Bailey
8607 Westwood Center Drive
Vienna, VA 22182

Site 002
Center For Elephant Conservation
12850 Old Grade Road
Polk City, FL 33868

0137
52-C-0156
2/9-10/99
9:45 AM
Reinspection

NARRATIVE

Current inventory 27 Asian Elephants

CATEGORY I: Non-compliant item(s) previously identified that have been corrected.

Veterinary Care 2.40

A new Program of Veterinary Care has been completed.

CATEGORY III: Non-compliant item(s) identified this inspection

Records 2.75

The TB test results of Jenny, which recently came from the Red unit on December 1, 1998, are not available for review. All records shall be readily available for review by any APHIS official.

To be corrected by: February 16, 1999

NOTE:

Culture results on Vance indicated a positive TB status early January 1999. As of this date, no treatment has been instituted. This animal is owned by ^{Doc} [b6]

There were large visible lesions on the rear legs of both ^{Doc} and Angelica. When questioned as to the cause of these lesions, it was stated by ^{Doc} & Mr. Gary Jacobson that these scars were caused by rope burns, resulting from the separation process from the mothers on January 6, 1999. Angelica's lesion appeared as a pink linear scar, approx 6" long x 1" wide on the right rear leg. The left rear leg also had an scar directly below the cloth leg tie. Both lesions appeared to have been treated with an iodine-based ointment (they were moist). Angelica also had two linear healing scars on the back of the right hind leg. Doc had a pink scar on the right rear mid-leg area.

All these lesions now appear to be healing scars. After removal of the medicated ointment on 2/10, they appeared much less pink.

This issue is of concern, and will be forwarded to Headquarters for review to determine if it is a violation of the AWA (per instructions by Dr. Betty Goldentyer). A formal determination will be made at a later date and forwarded to the facility.

GOVERNMENT
EXHIBIT
1
Page 1 of 1
APHIS FORM 7575 (04/98)

Prepared By: [Signature]
Title: Robert Brandes, D.V.M. Veterinary Medical Officer, USDA, APHIS, Animal Care

Date: 2/10/99

LARIS ID NO. 2002

Copy Received By: [Signature]
Title: [Signature]

Date: 2-10-99

Case note our concern over the
intervention of these lesions. WAF

USDA:APHIS:Animal Care

Memo This document contains time-sensitive information. Please read immediately and respond as specified.

To Miava Binkley, SACS, Raleigh, NC
From Barbara Kohn, DVM
Date/Time 4/12/99 at 2:42PM
Subject Ringling Brothers and Barnum and Bailey Circus Case

Miava - I submitted these documents to Ron and IES last Friday. Ron reviewed the information and summaries, and would like for you to review the information and determine what, if any, violations should be put forward in the case. My recommendations are provided in the summary table. Please feel free to discuss any of these issues with me (I will be in Tampa/Orlando next week) and send the completed case to Ron. Meredith Jones is the staff person in IES handling this case.

Thanks, 
Barb

Barbara Kohn
USDA, APHIS, Animal Care
4700 River Road, Unit B4
Riverdale, MD 20737-1234
301-734-7833
301-734-4978 Fax
Barbara.A.Kohn@usda.gov



4-9-90
[Signature]

Case 1 Questions	Expert Responses - summary	Interpretation/ Recommendation
<p>#1</p> <p>Bump on right ear (photo 1) (exhibit 26)</p>	<p>----- Could be anything; common, normal, cannot say bull hook or not; may be tusk injury</p> <p>----- No lesion seen; not a common area to hook; probable tusk injury, if anything; not significant</p> <p>----- Possible abscess; cause undetermined; unusual area for hook lesion</p> <p>----- Cannot determine cause of lesion; did not like information/photos presented</p>	
<p>#2</p> <p>Bumps on rt. ventral abdomen; grey ring scars in rt. rear/tail (photo 2) (exhibit 28)</p>	<p>----- Abdominal bumps/scars most likely due to narrow straps of an elephant saddle; site of lesions and width is where rear strap would be placed; bumps are the result of pinching/folding skin under strap</p> <p>----- Bumps are unusual; possible hook scars, but on wrong side; healed and months old; ring scars look like healed tusk scars; never seen hook lesions like this, but possible; old lesions</p> <p>----- Likely healing hook lesions which became infected (bumps) and hook boils (rings); ring scars are old, bumps are more recent (weeks to months)</p> <p>----- Cannot determine cause of lesion; did not like information/photos presented</p>	
<p>#3</p> <p>Long linear white scar on rt. chest wall; multiple white scars on right side of face (photos 3&4) (exhibit 30)</p>	<p>----- Appears to be relatively new; could be improper bull hook lesion or tusk lesion or other hazard in environment; would need to check area(s) animal held prior to the lesion</p> <p>----- Unlikely to be hook mark; probably tusk or corner of something in paddock; facial scars probably tusks</p>	

	b5 D10	unlikely orientation for hook wounds; probably tusks or environment is the source
	b5 D10	Cannot determine cause of lesion; did not like information/photos presented
#4	b5 D10	Hard to determine cause, but location is where you never want to strike or hook animal
Scarring on upper attachment of rt. ear (photos 5&6) (exhibit 31)	b5 D10	Probably from a bull hook; consistent with "old school of training" to make a part sore for faster training response; if so it is abuse; scar old and long healed, probably from initial training
	b5 D10	Old scars; most likely hook scars; elephants don't self-traumatize their ears here
	b5 D10	Cannot determine cause of lesion; did not like information/photos presented
#5	b5 D10	Wider than normal hook marks; probably tusk lesions; examine sharpness and size of pen/line mate tusks
Multiple lesions on heads (photos 7-10) (exhibit 32)	b5 D10	Possible to be bull hook marks (striking or hooking), but also possible from tusks of fighting animals; similar lesions from banging doors and walls with head
	b5 D10	Not indicative of bull hook wounds; cause by wide, duller object; if elephants kept on a line, these would indicate injuries from other animals
	b5 D10	Cannot determine cause of lesion; did not like information/photos presented
#6	b5 D10	Oil darkens, charcoal powders (i.e., Wonder Dust) make them less obvious, but nothing is for sure
Are there products that can hide lesions or cover them up for a day?		

	b5 b6	<p>No known way to hide lesion from close inspection; dyes or dirt might hide, but lesion evident after bathing and on close exam</p>
	b5 b6	<p>Unlikely that wounds could be hidden; elephant skin thickness, swelling at the sight, slow healing, and pulling away of skin from edges of wound preclude easy hiding</p>
	b5 b6	<p>Unaware of any compound to hide a lesion from the day before</p>
#7	b5 b6	<p>Possible animal would show submissive behavior: urinate, squat, stretch back on restraints without threat at that time; may be hesitant to come on command</p>
What signs could be used to gauge possible sbuse by specific handlers or past handlers	b5 b6	<p>each animal may react differently; possible aggression, possible fear, submission, flinching, being head shy. May not be able to tell which trainer initiated the behaviors. Very hard to prove abuse from current behaviors.</p>
	b5 b6	<p>May or may not see any distinguishable response; animals are highly variable and individual.</p>
	b5 b6	<p>Highly variable; depends on animal, handler, nature and duration of any abuse</p>
#8	b5 b6	<p>In photo 5 (exhibit 31) - handler hold a soda can: this would put him at risk. Inappropriate if this was the handler; inappropriate if this was anyone else - handler should not allow it. Improper handling</p>
Other comments	b5 b6	<p>photo are inconclusive; photos show use of picket line for housing, and most of the lesions could be from neighbors</p>
	b5 b6	<p>Would help to have more in-depth information and know if other animals had access to those in the photos.</p>
	b5 b6	<p>would not make and conclusions or recommendatinos without more detailed information</p>

Case 2 Questions	Expert Responses - summary	Interpretation/ Recommendation
<p>#1</p> <p>Use of ropes during weaning common? Acceptable? Preferred?</p>	<p>b5 b6 [] Ropes only used during training and to move calf out of pen (phone information: at a minimum use wide, soft rope; prefer webbing materials to distribute force to prevent any abrasions)</p> <p>b5 b6 [] Common to use during the training or breaking period; may be used to do the initial separation of mother from calf. Not preferred or even acceptable; not necessary to remove calf to train it; prefer use of positive reinforcement - required understanding of training and patience.</p> <p>b5 b6 [] Rope is better than chains; if animal is rambunctious - could develop lesions in a short time; use wider/thicker, softer materials to avoid abrasions</p> <p>b5 b6 [] Ropes accepted for elephant training; should be used in manner to minimize harm, but "minor" abrasions can occur</p>	<p style="text-align: right;"> </p>
<p>#2</p> <p>Could ropes cause the injuries seen?</p>	<p>b5 b6 [] It is possible ropes used during training caused these lesions. Should use large, softer ropes and fit them properly. Will eliminate such lesions</p> <p>b5 b6 [] Almost any restraint forced on an animal will cause such lesions - fighting restraint over a long period of time. There are other methods, though not often used yet.</p> <p>b5 b6 [] Lesions consistent with use of ropes. Lesions could have been minimized by using larger, softer ropes</p> <p>b5 b6 [] See #1</p>	

<p>#3</p> <p>Was there excessive force or improper handling?</p>	<p>Without being there, difficult to say, after a month, the healing process should have begun by now if a one-time problem</p> <p>Consistent with traditional elephant training and scarring; question is whether we should allow this to be a standard practice - it is traumatic, stressful, caused physical harm and unnecessary discomfort</p> <p>Lesions could probably been reduced in severity, but are not indicative of excessive force or improper handling by industry standards.</p> <p>See #1</p>	
<p>#4</p> <p>Are there other methods for separating calves and mother? At what age should it be done?</p>	<p>Many factors to take into account, need case-by case evaluation</p> <p>Are other better and less stressful ways: using a creep gate, positive reinforcement, short periods of separation from infancy, etc.; don't recommend separation until at least 2 years - in the wild males don't wean until 4, females never leave mothers company - why should captivity be different?</p> <p>Process is stressful, can use "aunties"; don't wean circus elephant til at least 2, breeding animals til at least 2 1/2 - 3 years old.</p> <p>Seapration is stressful; weaning age is variable and individual</p>	
<p>#5</p> <p>Other comments</p>	<p>Photos indicate more of a training problem than a separation problem</p> <p>The approach used here is outdated and do not meet AWA standards, even if they are the "norm"</p> <p>Suspect and error in judgement on the selection of the ropes used</p> <p>Want more information and chronology</p>	



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United States
Department of
Agriculture

Marketing and
Regulatory
Programs

Animal and
Plant Health
Inspection
Service

4700 River Road
Riverdale, MD 20737

May 11, 1999

Ms. Julie Strauss
Feld Entertainment, Inc.
Ringling Brothers and Barnum & Bailey Circus
8607 Westwood Center Dr.
Vienna, VA 22182

Dear Ms. Strauss:

We have completed our review of the lesions observed on two juvenile elephants, Doc and Angelica, during the inspection of the Center for Elephant Conservation in Polk City, Florida, on February 9, 1999 (copy enclosed). Without divulging the identity of the facility, we solicited several elephant experts to review the photographs and history of the situation. After careful consideration of the issue, we find that the handling of these two elephants was not in compliance with the Animal Welfare Act regulations, specifically Section 2.131(a)(1) "Handling of animals" (Title 9, Code of Federal Regulations). We believe there is sufficient evidence to confirm the handling of these animals caused unnecessary trauma, behavioral stress, physical harm and discomfort to these two elephants.

It was the opinion of several of the expert reviewers that there are other methods available to separate juvenile elephants from their mothers that would be less stressful and not cause lesions such as those observed on Doc and Angelica. While the method used may be traditional, it is incumbent on every licensee to review their handling practices to ensure they are compliant with Animal Welfare Act regulations and consistent with currently accepted standards. We appreciate that the management of Feld Entertainment is committed to full compliance with the Animal Welfare Act, and as such, feel certain that you will address this situation to ensure that it does not reoccur.

On a separate matter, we have received Dr. Murray Fowler's report of his evaluation of the lameness observed in another elephant by the name of Lechamee. Based on Dr. Fowler's evaluation, we will consider Lechamee fit for continued travel and performing as explained in his evaluation. We appreciate Ringling's response regarding this concern.



APHIS - Protecting American Agriculture

An Equal Opportunity Employer

Ms. Julie Strauss

2

If you have any questions regarding this letter or the Animal Welfare Act, please feel free to contact Dr. Elizabeth Goldentyer in our Eastern Regional Office or me.

Sincerely,

W. RON DeHAVEN

W. Ron DeHaven
Deputy Administrator
Animal Care

cc:

K. Vail, OGC, Washington, DC
E. Goldentyer, AC-ER, Raleigh, NC
B. Kohn, AC, Riverdale, MD
J. Rogers, LPA, Riverdale, MD

APHIS:AC:WRDeHaven:rf:734-4980:5-11-99:c:\ac\ringling elephant letter.lwp



RECEIVED FEB 22 2002

February 16, 2001

United States
Department of
Agriculture

Marketing and
Regulatory
Programs

Animal and
Plant Health
Inspection
Service

Investigative and
Enforcement Services

903 San Jacinto Blvd
Room 220
Austin, TX 78701

512/916-5552
512/916-5197 (fax)

Subject: Information Requested
FL01095-AC

To: Charmain Zordan
Senior Investigator
Florida

Enclosed please find the affidavit prepared during the interview conducted with Gary West, DVM on February 15, 2001. As discussed with you this morning Dr. West affirmed that the information contained within the affidavit was true and correct but declined to sign the document for personal reasons.

If additional information is required please advise.

Jacqueline M. Freeman
Jacqueline M. Freeman
Senior Investigator

Enclosure

cc: M. Kurland
Ft. Worth, TX



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An Equal Opportunity Employer



AFFIDAVIT

I, *Gary Don West, DVM*, being duly sworn on oath make the following statement:

b6 freely and voluntarily to Jacqueline Freeman who I know to be employed by the United States Department of Agriculture. My address is [] and *b6* my telephone number is [] I am currently employed by the [] *b6* and have been employed by either associate veterinarian or staff veterinarian for a total of approximately three years. Prior to my employment with the [] *b6* was employed by Feld Entertainment for approximately two years. I was based at the Center for Elephant Conservation in Polk City, FL during my two year employment with Feld Entertainment, but did travel as needed with the two circus units. My title with Feld Entertainment, as I recall, was Staff Veterinarian.

My duties at Feld Entertainment included general clinical veterinary care of all animals owned by Feld Entertainment. I resigned my position with Feld Entertainment after having been accepted for the position I currently hold at the [] I left Feld Entertainment in *b6* 1998. From February 1999 through July 1999 I was associate veterinarian at the [] *b6* with there having been a staff veterinarian at the zoo. In that there was a staff veterinarian I was allowed to work as a veterinarian for Feld Entertainment at the CEC primarily (though there was some travel with the units) during 2/99 through 7/99. I was still based in San Antonio during that period of time, I worked mainly weekends at the [] I traveled during *b6* the week for Feld Entertainment during that six-month period. Dr. Lindsey at Feld Entertainment is, I believe, the person I corresponded with regarding my working with Feld Entertainment during that period of time.

Prior to my working for Feld Entertainment, [] *b6*

I have no plans to return to Feld Entertainment, but I didn't leave with any hard feelings. The amount of travel required of the position with Feld Entertainment is a factor...I got a little burned out on the travel.

Through Feld and the [] *b6* I worked with elephants for a period of about five years. I have worked with more than eighty-five elephants during that five year period.

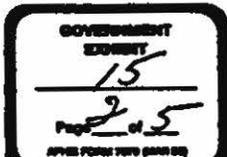
Dr. West declined to sign this affidavit. DMZ 2/15/01

SIGNATURE OF AFFIANT

Subscribed and sworn to before me at the [] February, 2001.

b6 on this 15th day of

Jacqueline M Freeman
DESIGNATED PURSUANT TO 7 U.S.C. 2217 TO ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS. AUTHORITY NO. 2332



AW 2/15/01

AFFIDAVIT

I, Gary Don West, DVM, being duly sworn on oath make the following statement:

At CEC, I didn't find that there were set guidelines on separating young elephants from their mothers. The elephant handlers and managers were involved in that process, and it was not an activity or event that the veterinarians were involved in routinely. Typically, I wasn't present on a daily basis at the CEC, with my travel schedule. I cannot say with certainty what the age was of the young elephants when the separation process was started, but I would say it was after one year of age. I can't give any facts on how the young elephants were separated, when or for how long because I was not involved in this process. Again, this process was left to the discretion of the elephant handlers and managers.

I don't know if the young elephants were ever returned to their mothers after the first separation, when or for what length of time. When I did observe those occasions where young elephants were restrained, I observed cotton bands on two legs, typically one front and one rear. I can't say that in the two years I worked for Feld ever having seen an elephant with all four legs restrained. Again, I observed instances in which two legs were restrained. I didn't observe any young elephants to be restrained 24 hours a day, for instance when they were in a pen or paddock-type area, there would be no restraints on the animals.

I think the calves always do some resisting or pulling with the back legs. During discussions I have with other zoo veterinarians, I have found that others have noted the same observation. The young elephants seem to settle in pretty quickly, though.

I can't answer the question posed regarding the times of unrestrain or untied periods during the initial separation process. I wasn't there a lot of the time when the calves were being handled by the elephant handlers or managers. I don't know what timeline was used by those persons in determining what period of time the calves would not be restrained or tied.

My only exposure to young elephants was that which I received at Feld Entertainment, and therefore know of no alternative methods used for the separation process. I am not aware if dirt or sand would get imbedded in the cotton bands. I am aware that the barn in which the animals were held had a concrete floor, and would not think dirt or sand would be problematic in that area. I didn't handle the cotton bands, and therefore am not aware of any problems with dirt or

Dr. West declined to sign this affidavit. AW 2/15/01

SIGNATURE OF AFFIANT

Subscribed and sworn to before me at the _____
February, 2001.

AW
in this 15th day of _____

APHIS FORM 7162 Replaces VS Form 3-99G which is obsolete
(NOV 92)

Regina M. Freeman
DESIGNATED PURSUANT TO 7 U.S.C. 2217 TO
ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS,
AUTHORITY NO. 2332



mw 2/15/01

AFFIDAVIT

I, Gary Don West, DVM, being duly sworn on oath make the following statement:

sand in the cotton bands. I have no knowledge of how often the cotton bands were cleaned and/or replaced. That was the responsibility of the elephant handlers and managers.

I was not directly involved in any baby elephant separations during my employment at CEC or anywhere else, for that matter. I am not aware of what type of separation procedures were used to separate the calves Angelica and Doc, therefore I do not have an opinion as to the method(s) used. I assume that Gary Jacobsen and [redacted] oversaw the separation process at the CEC, ^{b6} as they are the two elephant managers at that facility, or were during my employment. I never heard anyone complain about the separation methods used at the CEC for any elephants, meaning no one came to the veterinary staff with concerns regarding the process or the effects on the animals.

^{b6}
I understand that Jacobsen and [redacted] were present during the inspection on February 9, and Dr. Lindsey and I arrived at the CEC at the very end. (Dr. Lindsey and I had been off-site.) All ^{b6} four of us (Jacobsen, [redacted], Lindsey and myself) were present when Dr. Binkley returned on February 10 to take pictures of the two calves, Angelica and Doc. Dr. Binkley came back the next morning, and I made a videotape of the process when she was taking the photographs. We made the videotape in order that there could be an accurate interpretation made of the issue regarding the elephants, and while that videotape was the property of Feld Entertainment, I believe that Dr. DeHaven has seen it. I did not keep a copy of the videotape.

I did write a letter to Dr. DeHaven following the February 9 and 10 inspection, addressing the fact that we didn't agree with the wording of the inspection report, with specific reference to the use of the word "lesion". I wrote the letter quickly after the inspection, and said that the marks occurred during the separation process. The handlers and managers then addressed with me that I mis-spoke in the letter, that the rub marks occurred in handling the elephants separate and apart from the separation process. I kept a copy of the letter, but can't locate it at this time. If I do turn up a copy, I will provide a copy to Ms. Freeman.

When I examined Angelica and Doc, I found what I would characterize as rub marks, and believe they were caused by the cotton bands. The marks appeared superficial only. I only found these rub marks on the hind legs, with no such marks observed on the front legs. I don't recall the rubs being lesions, they just looked like rub marks - like the gray part of the

Dr. West declines to sign this affidavit - dmj 2/15/01
SIGNATURE OF AFFIANT

Subscribed and sworn to before me at the [redacted] February, 2001.

so
on this 15th day of

Ms. Melina M. Freeman
DESIGNATED PURSUANT TO 7 U.S.C. 2117 TO ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS, AUTHORITY NO. 2132



AFFIDAVIT

I, Gary Don West, DVM, being duly sworn on oath make the following statement:

I consider skin breakage or skin trauma to be a serious lesion...any kind of rubbing down to raw tissue. I would consider a superficial rub to be one where there is no breakage to the skin, no swelling. I would consider the rubs I observed on the two calves to be similar to a saddle rub on a horse, where there is no redness, no broken skin, no swelling. I can only characterize them as superficial rub marks.

The elephant handlers and managers would apply Biozide, an iodine-based ointment. I think the day of Dr. Binkley's inspection the Biozide had been applied by someone, though I am uncertain as to why in that in my professional opinion the ointment was not needed in that there was no unbroken skin.

I and Dr. Lindsey felt like the marks weren't really lesions, and addressed that issue with Dr. Binkley. However, her opinion is that they were lesions. Dr. Lindsey made a notation regarding his concern to the inspection report regarding the characterization that these were interpreted as lesions.

I know of no other forms of stress or injury that required veterinary care as a result of the separation processes used at the CEC in separating young elephants from their mothers.

This statement has been prepared by Ms. Freeman and is based on information I have provided her this date. I have read all four pages, have had opportunity to make necessary corrections and/or additions, and swear that all information contained therein is true and correct to the best of my knowledge.

Dr. West declined to sign this affidavit Jan 2/15/01

SIGNATURE OF AFFIANT

Subscribed and sworn to before me at the []
February, 2001.

20
on this 15th day of

APHIS FORM 7162 Replaces VS Form 3-990 which is obsolete
(NOV 92)

Jaqueline M Freeman
DESIGNATED PURSUANT TO 7 U.S.C. 2217 TO
ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS,
AUTHORITY NO. 2332



RECEIVED FEB 22 2002

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW WASHINGTON, DC
WASHINGTON, DC 20004-3401 NEW YORK
TEL 202.663.8600 LONDON
FAX 202.663.8391 BRUSSELS
WWW.COV.COM SAN FRANCISCO

JEANNIE PERRON, JD, DVM
TEL 202.663.8687
FAX 202.778.6687
JPERRON@COV.COM

August 9, 2001

Via facsimile

W. Ron DeHaven, DVM
Deputy Administrator
Animal Care
USDA-APHIS
4700 River Road
Riverdale, MD 20737

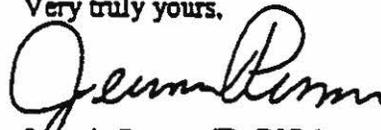
Re: Your Letter to Feld Entertainment, Inc. of July 23, 2001

Dear Dr. DeHaven:

I am memorializing our telephone call of July 27, 2001, regarding the above-referenced July 23, 2001 letter. In that letter, you referred to the closure of the "investigation" involving handling practices of two weaning elephants. As we discussed on the telephone, your use of the word "investigation" in connection with this matter was erroneous. You had previously referred to the matter as fact gathering, rather than an investigation, and you advised me that the use of the word "investigation" in the July 23 letter was inadvertent. In any event, you confirmed that the "closure" of this matter will not affect in any way your agreement to consider any additional submissions in connection therewith.

Your consideration is sincerely appreciated.

Very truly yours,


Jeannie Perron, JD, DVM

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United States
Department of
Agriculture

Marketing and
Regulatory
Programs

Animal and
Plant Health
Inspection
Service

700 River Road
Plover, MD 20737

AUG 10 2001

Jeannie Perron, J.D., D.V.M.
Covington & Burling
1201 Pennsylvania Avenue NW
Washington, DE 20004-2401

Dear Dr. Perron:

This letter is to confirm the accuracy of your letter of August 9, 2001, which summarizes the salient points of our July 27, 2001, telephone conversation regarding your client, Feld Entertainment, Inc.

The "investigation" of the two weaning elephants is more accurately characterized as a fact gathering process. Further, "closure" of this matter would not preclude a reconsideration of our position upon receipt of additional information relevant to the issues.

Sincerely,



W. Ron DeHaven
Deputy Administrator
Animal Care

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JUL 23 2001

United States
Department of
Agriculture

Marketing and
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Programs

Animal and
Plant Health
Inspection
Service

30 River Road
Riverdale, MD 20737

Ms. Julie Alexa Strauss
Feld Entertainment, Inc.
Ringling Brothers Barnum and Bailey
Circus
8607 Westwood Center Drive
Vienna, VA 22182

RE: IES Case Number FL 01 095 AW
IES Case Number OH 00 018 AW

Dear Ms. Strauss:

The evaluation of two Animal Welfare Act (AWA) investigations involving Ringling Brothers Barnum and Bailey Circus have been completed. Both investigations have been closed administratively with no action, as explained below.

The investigation involving handling practices of two weaning elephants in 1999, confirmed that the action taken by Animal Care in response to these concerns, i.e., to cite a noncompliance as part of a routine inspection, was appropriate to the circumstances and no further action is indicated or necessary at this time.

Another investigation regarding allegations of misuse of an ankus has been closed due to insufficient evidence to support violations of the AWA or regulations.

The agency retains the option of reopening these cases in the future if we obtain additional information that warrants further investigation. If you have any questions or need further clarification, please call me at (301) 734-4890 or the Animal Care Eastern Regional Office at (919) 716-5532.

Sincerely,

W. RON DEHAVEN

W. Ron DeHaven
Deputy Administrator
Animal Care

cc:

A. Christian, IES, Riverdale, MD
Facility File (52-C-0137)

E. Goldentyer, ER-RD, Raleigh, NC

APHIS:AC:EGoldentyer:rf:734-4980:7-19-01:c:\ac-east\notify case closing rbbb
fl-oh.lwp



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The Death of Benjamin

Introduction

On July 26, 1999, 4-year old elephant, Benjamin – the same baby that two former Ringling Bros. employees had reported was viciously beaten on a regular basis by his trainer, (see Former Employees Case Study, Sec. III) – mysteriously drowned while swimming in a pond in Huntsville, Texas, although, in the wild, elephants are naturally good swimmers. This was the second baby elephant in Ringling's care to die unexpectedly since January, 1998 – the two-year old Kenny had died on January 24, 1998, after being used in three circus performances on a day when he was severely ill. (See Kenny Case Study, Sec. II).

Animal Welfare Act regulations provide that "handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma . . . behavioral stress, physical harm, or unnecessary discomfort," and that "young animals shall not be exposed to rough or excessive public handling . . . which would be detrimental to their health or well-being." 9 C.F.R. § 2.131(a), (b). The regulations further provide that "physical abuse shall not be used to train, work, or otherwise handle animals." 9 C.F.R. § 2.131(a)(2)(i). The regulations further provide that "wild or otherwise dangerous animals shall not be taken from their primary enclosure except under extreme emergency conditions." § 3.140(b).

Outcome

The USDA's internal investigative report showed that, according to eye-witnesses to the event, when Benjamin would not come out of the pond, his trainer, Pat Harned, went in after him with a bullhook. The investigative report further stated that Harned's use of the bullhook **"created behavioral stress and trauma which precipitated in the physical harm and ultimate death of the animal."** Nevertheless, a few months later, USDA's Assistant General Counsel prepared a memorandum closing the investigation with no enforcement action. The memo omitted all reference to the eye-witness accounts and conclusions contained in the agency's own investigative report concerning Mr. Harned's use of a bullhook on Benjamin, and instead stated only that, while enjoying a swim in a pond, "[s]uddenly, and without any signs of distress or struggle, Benjamin became unconscious and drowned." Accordingly, Ringling Bros. was exonerated by the USDA of all wrong-doing in the second death of a baby elephant in less than 2 years.

The USDA's Investigation

On July 26, 1999, Ringling Bros. issued a press release announcing that one of its baby elephants, Benjamin, "died suddenly while playing and bathing in a pond on private property outside Houston, Texas." The next day, Ringling issued another press release in which it stated that the visit to the pond was "a scheduled stop en route to the Reunion Arena in Dallas," and that "it appears that Benjamin died when he ventured into deeper water."

Benjamin was 4 years old. Just seven months before he died, the USDA had been notified that, according to two former Ringling employees, Benjamin was routinely beaten with a bullhook by his trainer. (See Former Employees Case Study, Sec. III). One of the employees, Glen Ewell, submitted sworn testimony to the USDA stating that he had personally witnessed Benjamin beaten "at least five times," and he identified each of the specific locations of the beatings. He also reported a conversation in which Benjamin's trainer stated that "if it will not sink in, then beat it in. It's the only way to make an elephant do the performance right," and, Mr. Ewell further stated that Benjamin's trainer "beats the hell out" of Benjamin when he "will not perform right." Despite this testimony, Ringling Bros.' own veterinarian's acknowledgment that Benjamin had "several superficial abrasions in the head and flank area," and the observation from at least one of the experts who examined photographs of Benjamin that one of his scars appeared "relatively new" and could be an "improper bull hook lesion," the USDA took absolutely no action to investigate these matters further or to protect this elephant. Instead, based primarily on the insistence of Benjamin's trainer, and the other Ringling trainers and handlers who were accused of abuse, that Benjamin was never beaten, the USDA completely ignored these warning signs concerning Benjamin.

Two days after Benjamin died, the USDA obtained an affidavit from Pat Harned, Benjamin's trainer. Mr. Harned stated that he had cared for Benjamin and another baby elephant, Shirley, since

they were seven months old and that they had been under his "care and supervision" since they joined Ringling. He further stated that on July 25, 1999, when the circus had finished its Houston engagement, he departed for the next engagement in Dallas, with Benjamin and Shirley in a separate truck, that he decided to spend the night at a "private truck stop" in Huntsville, Texas, and that the next morning, he let Benjamin and Shirley go for a swim in a pond on the property. Mr. Harned stated that Shirley got out of the pond, but that Benjamin "appeared to be thoroughly enjoying the water." He said that he then put Shirley back in the truck, but that Benjamin "ignored my calls to him." Mr. Harned stated that he "then decided to get Benjamin's attention by going into the water," that he "took [his] ankus and stepped into the water, and walked in chest deep water over to where Benjamin was" with the ankus in hand. He stated that he "touched" Benjamin's back (with the ankus) "so he would raise his head to listen to me," but that Benjamin "did not respond." He said that Benjamin was unconscious. A local veterinarian was called, who "surmised that Benjamin had a cardiac arrest while swimming," even though elephants are excellent swimmers, and the 4 yr.-old elephant had no history of heart disease.

On September 1, 1999, the USDA investigator assigned to the case issued the results of his investigation. According to his Report, "[w]itnesses state this elephant apparently died while swimming in the pond because the elephant would not respond to the voice commands of the trainer, Pat Harned. Two eye witnesses to the incident . . . both state in their respective affidavits that the elephant would move the other direction in an attempt to avoid trainer Pat Harned when he "poked" the elephant with a stick" - i.e., an ankus. The Investigative Report further stated that a "videotape" taken at the time of the incident shows "what the elephant did when poked with a stick by trainer Pat Harned." However, the USDA has refused to release this videotape to the public.

The Investigative Report further concluded that “[t]he elephant seeing and/or being ‘touched’ or ‘poked’ by Mr. Harned with an ankus created behavioral stress and trauma which precipitated in the physical harm and ultimate death of the animal.”

The Investigator recommended charging Ringling with several violations of the Animal Welfare regulations. First, he recommended that Ringling be charged with violating the standard governing the “handling” of animals, on the grounds that “[t]he handling of the juvenile ‘Benjamin’ was not done as expeditiously and carefully as possible in a manner that does not cause trauma, behavioral stress and physical harm.” Second, he recommended charging Ringling with a violation of the standard governing “employees,” on the grounds that “[a]t the time when two elephants were allowed to swim in the pond, there was not a sufficient number of adequately trained employees present to provide care and an acceptable level of husbandry practices . . . which resulted in the death of the male elephant.” Third, the investigator recommended charging Ringling with a violation of the standard governing “care in transit,” which provides that “Wild or otherwise dangerous animals shall not be taken from their primary enclosure except under extreme emergency conditions.”

The next day, September 2, 1999, the Deputy Administrator for Animal Care forwarded to the USDA’s Investigative and Enforcement Services (IES) a “binder of materials identified” as “Ringling Bros. Report to USDA Regarding Benjamin,” which included a videotape. That binder – containing Ringling’s own version of what occurred on the day that Benjamin died – has not been released to the public.

Two months later, on November 24, 1999, the USDA’s Assistant General Counsel sent a memorandum to the Director of IES in which he stated that “the resulting evidence does not indicate that the death of Benjamin resulted from neglect or any violation of the regulations.” According to

the Assistant General Counsel:

[B]oth elephants appeared to enjoy swimming. After Shirley left the pond, Benjamin did not follow directions to leave also. After placing Shirley in the trailer, the trainer returned for Benjamin. Benjamin, however, continued to refuse to leave the pond. Suddenly, and without any signs of distress or struggle, Benjamin became unconscious and drowned.

The Assistant General Counsel's final account of what occurred conspicuously omitted any reference whatsoever to the agency's own investigator's conclusion that "[t]he elephant seeing and/or being 'touched' or 'poked' by Mr. Harned with an ankus created behavioral stress and trauma which precipitated in the physical harm and ultimate death of the animal." However, since the Assistant General Counsel had a copy of the Investigative Report at the time he prepared his memorandum, he clearly made a deliberate decision to omit this extremely relevant information from his account of the event, and instead to insist that Benjamin went from happily swimming to "suddenly" becoming unconscious and drowning without any precipitating cause whatsoever.

On December 2, 1999, the Deputy Administrator for Animal Care sent a memorandum to the Administrator of APHIS, notifying him that, based on the Office of General Counsel's evaluation, "there is insufficient basis to support prosecution of the subject case," and that the Deputy Administrator had decided to close the case. A notation written on the memo indicates that the Deputy Administrator communicated this decision to Ringling's officials by phone on December 3.

In a form letter sent by the USDA to concerned citizens, the agency denied that Benjamin died "under mysterious circumstances," and stated that a board certified veterinary pathologist determined that Benjamin "died after a cardiac arrhythmia caused him to lose consciousness." However, the letter does not address why a 4-yr. old elephant with no history of heart problems would suddenly suffer "cardiac arrhythmia" while enjoying a brief moment of unrestrained freedom

swimming in a pond.

Enforcement Synopsis

Despite the agency's own investigator's conclusion that "[t]he elephant seeing and/or being 'touched' or 'poked' by Mr. Harned with an ankus created behavioral stress and trauma which precipitated in the physical harm and ultimate death of the animal," the USDA General Counsel's office closed this investigation without taking any enforcement action against Ringling. Furthermore, the memorandum closing the investigation completely misstated what the agency's own evidence showed. Thus, contrary to the Assistant General Counsel's statement that "suddenly" and for no apparent reason, Benjamin had a heart attack and died, the evidence instead strongly suggests that the baby elephant's heart attack was caused by his extreme fear of his trainer who was approaching him in the water with an ankus because Benjamin had refused to respond to Harned's voice commands and leave the water that he was enjoying so much. In fact, according to the Investigative Report, the eye-witnesses to the event uniformly stated that Benjamin moved away from Harned to "avoid" him when he "poked" Benjamin with the ankus.

More important, in reaching their conclusion that the case should be closed with no further action, the USDA officials also conspicuously failed to take into account – at all – the fact that just months before this animal died, two former Ringling Bros. employees had warned the agency that Pat Harned viciously beat Benjamin with an ankus on numerous occasions throughout the country, and that Harned was overheard saying that if his command to Benjamin will not sink in, then Harned "beat[s] it in." Perhaps this is why this 4 yr.- old elephant desperately tried to avoid Harned when he entered the pond with his ankus, and then, when Harned nevertheless caught up with him and began "poking" him with the ankus, the elephant, who, based on a lifetime of beatings from Harned

knew he would be severely beaten – again – suffered a “cardiac arrhythmia [that] caused him to lose consciousness.”

The videotape taken at the time of Benjamin’s death, as well as the “binder” that was sent to the USDA with Ringling’s version of what happened have never been released to the public. As of last year, Mr. Harned was still employed by Ringling.



Privacy Act Notice on Reverse

AFFIDAVIT

I, (name of affiant) Hugh Patrick HARNED, being duly sworn on oath

make the following statement:
Page of 1 of 3

I give this statement freely and willingly to Charmain Zordan who has identified herself to me as a USDA Investigative and Enforcement Services Investigator.

I am Hugh Patrick Harned and I am an employee of Feld Entertainment, Inc., dba Ringling Bros and Barnum & Bailey Circus. I have been an employee of Ringling Bros and have worked with young and adult elephants during this time. I have cared for two young elephants, Benjamin and Shirley since they were seven months old, and they have been under my care and supervision since they joined the Blue Unit of Ringling Bros.

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On Sunday, July 25, 1999, the Blue Unit concluded its engagement in Houston, Texas. At approximately midnight, I departed Houston in my truck to travel to the next engagement in Dallas. Benjamin and Shirley were travelling in front of me in their truck, which was driven by a third party truck driver. [redacted] was also travelling with me in a separate vehicle. I decided to stop for the night at a private truck stop in Huntsville, Texas, owned by Mr. Will Lawler, at which I arrived at approximately 1:30 in the morning. Immediately upon my arrival, I checked on Benjamin and Shirley, and then I bedded them down for the night. I gave apples and carrots, along with hay, to them, and then I went to my trailer to sleep.

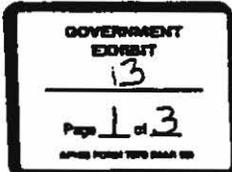
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The next morning, I awoke at 7:00 am, and I checked on Benjamin and Shirley. I then went to inspect the pond near where the truck was located, as I planned to take them swimming. I had also looked at the pond the night before. I had asked how deep the pond was, and was told that at its deepest point, the pond is ten to twelve feet deep. I was also told that [redacted] swim in the pond. At approximately 7:50am, I walked Benjamin and Shirley to the pond, where they drank water. I then walked with them to another location at the pond, where they drank some more water. I noticed weeds at that area of the pond, and so I

b7c
b6

Hugh P. Harned
SIGNATURE OF AFFIANT

Subscribed and sworn to before me at Polk County, FL
on this 29 day of July, 1999.



[Signature]
DESIGNATED PURSUANT TO 7 U.S.C. 2217 TO ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS. AUTHORITY NO 3002

AFFIDAVIT

I, (name of affiant) Hugh Patrick Harved being duly sworn on oath

make the following statement:
Page 2 of 3

walked them back to the first location. Benjamin and Shirley began to drink again, and then they went into the water. Shirley swam around briefly, and then she got out of the water and stood by me watching Benjamin. Benjamin continued farther into the pond, where he swam, splashed and played in the water. He appeared to be thoroughly enjoying the water. It was clear to me that Shirley did not want to return to the water. Therefore, I walked her the short distance of approximately 50 feet to the truck, and I put her into the truck. I immediately returned to the pond. At that time, I saw that Benjamin was swimming around the pond and that he was near the pier. He continued to be playful, and ignored my calls to him. He swam under the pier and then returned to where he had been swimming earlier.

I then decided to get Benjamin's attention by going into the water, as I was ready to prepare for my departure to Dallas. I walked onto the pier and took off my shoes and shirt. I took my ankus and stepped into the water, and walked in chest deep water over to where Benjamin was. I used my ankus to touch Benjamin's back so he would raise his head to listen to me. I touched him one time, and he did not respond. I thought he was still ignoring me, and, therefore, I touched him again with the ankus. When he did not respond, I submerged my head under the water to lift up Benjamin's head and trunk. At that point, I knew something was wrong, and I screamed. Benjamin was unconscious. Up until that point, Benjamin's behavior and activity were totally normal.

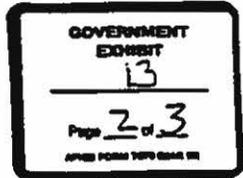
I immediately called for help and started pushing Benjamin toward the edge of the pond. One of the truck drivers, Scott Martin, jumped in to help me. We pushed Benjamin to the shore, while I was trying to hold Benjamin's trunk above the water. While we were doing this, Mr. Lawler, the owner of the property, brought a tractor to the side of the pond, along with rope to assist in getting Benjamin out of the water. We put the rope around Benjamin's torso before reaching the edge of the pond, and he was taken out of the water.

bc b7c

Hugh P. Harved
SIGNATURE OF AFFIANT

Subscribed and sworn to before me at Polk County, FL
on this 29 day of July, 19 99

[Signature]
DESIGNATED PURSUANT TO 7 U.S.C. 2217 TO
ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS.
AUTHORITY NO. 3109



AFFIDAVIT

I, (name of affiant) Hugh Patrick HARNED, being duly sworn on oath make the following statement:

Page 3 of 3

before we got Benjamin out [redacted] held his trunk and began to blow air into it. Once Benjamin was out of the water [redacted] continued blowing into his trunk, while I administered chest compressions to Benjamin. We both did this for a period of time, and when we got tired, other people relieved us. I also checked Benjamin's mouth to see if there were any obstructions. I did not feel any. Also at this time, someone called a local veterinarian, Dr. Moore.

Dr. Moore arrived approximately one and a half hours later. He examined Benjamin and asked me what had happened. I described that Benjamin had been swimming and acting playfully and normally and that he suddenly stopped moving. I recall that Mr. Lawler described to the vet that right before I went into the water, Benjamin had raised his head and trunk out of the water and sprayed water, as he had done earlier. The vet surmised that Benjamin had a cardiac arrest while swimming.

Several hours later, Benjamin was taken to Texas A & M Diagnostic Lab in a refrigerated trailer for a necropsy, as directed by Ringling Bros. veterinarian. I stayed at the property with Shirley until the truck returned. I then traveled to the Ringling Bros. Center for Elephant Conservation, located in Florida. Shirley travelled in her trailer while I followed behind her.

I have read the foregoing statement and have been given an opportunity to make any correction or changes of any information I feel is erroneous or incorrect. I make this statement to the best of my knowledge and belief.

Hugh P. Harned

SIGNATURE OF AFFIANT

Subscribed and sworn to before me at Polk County, FL on this 29 day of July, 19 99.

GOVERNMENT EXHIBIT 13 Page 3 of 3

Chambers DESIGNATED PURSUANT TO 7 U.S.C. 2217 TO ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS. AUTHORITY NO. 3004

RECEIVED JAN 25 2002

UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL PLANT HEALTH INSPECTION SERVICE
INVESTIGATIVE AND ENFORCEMENT SERVICES
WESTERN REGION
FORT WORTH, TEXAS

REPORT OF INVESTIGATION

Violator(s): FELD ENTERTAINMENT, INC. Lic. # 52-C-0137
d/b/a Ringling Bros. and Barnum & Bailey *
8607 Westwood Center Drive
Vienna, VA. 22182
Telephone no. (703) 448-4000 or 448-4065

Case Number: TX99237-AC

Violation(s): 9 CFR, 2 and 3

Investigator: David Green
c/o USDA, APHIS, IES
P. O. Box 6258
Fort Worth, Texas 76115 -6258
(817) 885-6922

Date: September 1, 1999

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from Investigative and Enforcement Services, USDA, APHIS.

SYNOPSIS

Violator(s): Feld Entertainment, Inc., is corporation based at Vienna, VA., which is USDA licensed. Feld Entertainment currently holds USDA exhibitors license number 52-C-0137.

Business

Information: Feld Entertainment, Inc., is an entertainment corporation and the parent company of Ringling Bros. and Barnum and Bailey®. Chairman and Chief Executive Officer is Kenneth Feld; President and Chief Operating Officer is Stuart Snyder, and Julie Alexa Strauss is Vice-president and Corporate Counsel.

Primary

Witness(es): William Henry Lawler can testify to two elephants being on his property and to what he observed. Angela Martin and Scott Martin can testify to transporting two elephants from Houston to Huntsville, Texas and what they observed. Hugh Patrick Harned can testify to allowing the two young elephants to enter a pond to swim. He can further testify as to his training methods and prior experiences with transporting the two young elephants. [b6
b6] witnessed the death and can testify to her observations.

Previous

History: USDA licensee Feld Entertainment, Inc., has been involved in the following prior violations: Florida case FL99028 which was closed on April 22, 1999, as no violation supported. Florida case number FL98026 was closed on 7/15/98 with a consent decision resulting in a \$10,000.00 civil penalty. Florida case FL98023 was closed on 4/02/98 with a ticket (APHIS form 7060). Ringling Bros. and Barnum and Bailey® was involved in case VA92015 which was closed on 4/06/92 with a ticket (APHIS form 7060).

Violation

Events: On July 25, 1999, Ringling Bros. and Barnum and Bailey® elephant trainer, Hugh Patrick Harned, loaded two young elephants, Benjamin and Shirley, on a trailer for transportation to Dallas, Texas. A contract truck driver, Scott C. Martin and [b6] transported the two young elephants from Houston, Texas to Huntsville, Texas, where Pat Harned had decided they would stop for the night. A convoy of vehicles, consisting of Scott Martin and [b6] transporting the elephant trailer, Pat Harned in a separate truck, and Pat Harned [b6] in a jeep, stopped at a combined private residence and trucking company owned by William Lawler at Huntsville, Texas. The night was spent at this facility with the elephants remaining in their trailer. The morning of July 26, 1999, Mr. Harned unloaded the two elephants, as he planned to allow them to swim in a pond. He walked the two animals around the pond allowing them to drink. According to Mr. Harned, both elephants entered the water. Shirley swam briefly then exited the water. Benjamin stayed in the water. Pat Harned put Shirley back in the trailer, and Benjamin was still in the water and swam to a deeper area of the pond. Mr. Harned attempted to get Benjamin out of the water using repeated voice commands. The animal would not respond to Mr. Harned. Mr. Harned entered the water to attempt to get the elephant to exit the pond. Witnesses state the animal attempted to avoid Mr. Harned by moving to a deeper area of the pond. By the time Mr. Harned, who got in the water, was able to get close enough to "touch" the elephant, the animal was not responding. Because of Mr. Harned's calls for help, truck drivers who were in the area came and assisted in pushing the animal to the shallow area of the pond. The animal was pulled from the water by a rope attached to a back-hoe. The body of the animal was later that same day transported to the Texas Veterinary Medical Diagnostic Laboratory in a refrigerated trailer for a necropsy.

EXPLANATION OF THE EVIDENCE

9 CFR

On or About July 26, 1999

- § 2.131 (a)(1): Handling of Animals. The handling of the juvenile elephant "Benjamin" was not done as expeditiously and carefully as possible in a manner that does not cause trauma, behavioral stress and physical harm. USDA Application for license, APHIS Form 7003, (exhibit 1) shows Feld Entertainment, Inc., renewed their USDA license on April 8, 1999. Their renewed license, number 52-C-0137, is valid through April 28, 2000. USDA Inspection report (exhibit 2) shows Ringling Bros. and Barnum and Bailey® (Blue Unit) was inspected at Houston, Texas on July 15, 1999. There are no non-compliant items that are identified on the inspection. Affidavits of Hugh Patrick Harned (exhibit 13); Angela Deann Martin (exhibit 18); and Scott Christopher Martin (exhibit 22) show that Pat Harned loaded two young elephants, Benjamin and Shirley, on a trailer for transportation to Dallas, Texas on the evening of Sunday, July 25, 1999. Photographs (exhibit 12, page 1 photograph C, and page 2) show the trailer used to transport the two elephants. Affidavits of Scott Martin (exhibit 22) and Angela Martin (exhibit 18) shows that Scott Martin drove the truck which hauled the two young elephants, Benjamin and Shirley, and they were followed in separate vehicles by Pat Harned and [b6] Affidavit of Pat Harned (exhibit 13) shows he made the decision to stop at a private truck stop and residence outside Huntsville, Texas, owned by William Henry Lawler, [b6] Affidavit of William Henry Lawler (exhibit 19) states he was contacted and gave permission to use his property and facilities. The two young elephants spent the night in their trailer at this location. Affidavit of Pat Harned (exhibit 13) states on Monday, July 26, 1999, soon after he got up that morning, he unloaded the two elephants from the trailer with the intent of allowing the elephants to swim in a pond on the property which he had been informed was 10 to 12 feet deep. Affidavits of Pat Harned (exhibit 13); Scott Martin (exhibit 22); Angela Martin (exhibit 18) and Will Lawler (exhibit 19) describe what happened when the elephants entered the water and when trainer Pat Harned attempted get the male elephant, Benjamin, out of the water. Witnesses state this elephant apparently died while swimming in the pond because the elephant would not respond to the voice commands of the trainer, Pat Harned. Two eye witnesses to the incident, Scott Martin and Will Lawler, both state in their respective affidavits that the elephant would move the other direction in an attempt to avoid trainer Pat Harned when he "poked" the elephant with a stick. Video Tape (exhibit 30) shows the pond where the incident occurred and a description by Will Lawler of what the elephant did when poked with a stick by trainer Pat Harned. Photographs (exhibit 20) also show the pond and surrounding area. Affidavit of Michael Copeland Moore, D.V.M. (exhibit 27) shows he was called to the premise to view the elephant after it succumbed. Affidavits of Will Lawler (exhibit 19) and Scott Martin (exhibit 22) state the dead elephant was loaded on a refrigerated trailer and transported to TVMDL at Texas A & M University for a necropsy. Necropsy reports (exhibits 25 and 29) show that the male, juvenile elephant named Benjamin apparently drown. Trainer Pat Harden placed this elephant at risk in an unfamiliar environment where the water depth was 10 to 12 feet. Mr. Harden was unfamiliar with this body of water. The elephant seeing and/or being "touched" or "poked" by Mr. Harned with a ankus created behavioral stress and trauma which precipitated in the physical harm and ultimate death of the animal.
- § 3.132: Employees. At the time when two elephants were allowed to swim in a pond, there was not a sufficient number of adequately trained employees present to provide care and an acceptable level of husbandry practices as set forth in this subpart which resulted in the death of male elephant. Affidavits of Hugh Patrick Harned (exhibit 13); Angela Deann Martin

(exhibit 18); and Scott Christopher Martin (exhibit 22) show that Pat Harned loaded two young elephants, Benjamin and Shirley, on a trailer for transportation to Dallas, Texas on the evening of Sunday, July 25, 1999. Photographs (exhibit 12, page 1 photograph C, and page 2) show the trailer used to transport the two elephants. Affidavits of Scott Martin (exhibit 22) and Angela Martin (exhibit 18) show that Scott Martin drove the truck which hauled the two young elephants, Benjamin and Shirley, and they were followed in separate vehicles by Pat Harned and [b6]. Affidavit of Pat Harned (exhibit 13) shows he made the decision to stop at a private truck stop [b6] outside Huntsville, Texas, owned by William Henry Lawler, [b6]. Affidavit of William Henry Lawler (exhibit 19) states he was contacted and gave permission to use his property and facilities. The two young elephants spent the night in their trailer at this location. Affidavit of Pat Harned (exhibit 13) states on Monday, July 26, 1999, soon after he got up that morning, he unloaded the two elephants from the trailer with the intent of allowing the elephants to swim in a pond on the property which he had been informed was 10 to 12 feet deep. Hugh Patrick Harned was the only qualified, experienced handler with the two elephants. Affidavits of Pat Harned (exhibit 13); Scott Martin (exhibit 22); Angela Martin (exhibit 18) and Will Lawler (exhibit 19) describe what happened when the elephants entered the water and when trainer Pat Harned attempted get the male elephant, Benjamin, out of the water. Witnesses state this elephant apparently died while swimming in the pond because the elephant would not respond to the voice commands of the trainer, Pat Harned. Two eye witnesses to the incident, Scott Martin and Will Lawler, both state in their respective affidavits that the elephant would move the other direction in an attempt to avoid trainer Pat Harned. Video Tape (exhibit 30) shows the pond where the incident occurred and a description by Will Lawler of what the elephant did when poked with a stick by trainer Pat Harned. Photographs (exhibit 20) also show the pond and surrounding area. Affidavit of Michael Copeland Moore, D.V.M. (exhibit 27) shows he was called to the premise to view the elephant after it succumbed. Affidavits of Will Lawler (exhibit 19) and Scott Martin (exhibit 22) state the dead elephant was loaded on a refrigerated trailer and transported to TVMDL at Texas A & M University for a necropsy. A preliminary necropsy report (exhibit 25) and final necropsy report (exhibit 29) shows that the male, juvenile elephant named Benjamin apparently drown. Only one trained employee was present to cope with two young elephants being allowed to swim in an unfamiliar environment.

§ 3.140 (b):

Care in Transit. Wild or otherwise dangerous animals shall not be taken from their primary enclosure except under extreme emergency conditions. Affidavits of Hugh Patrick Harned (exhibit 13); Angela Deana Martin (exhibit 18); and Scott Christopher Martin (exhibit 22) show that Pat Harned loaded two young elephants, Benjamin and Shirley, on a trailer for transportation to Dallas, Texas on the evening of Sunday, July 25, 1999. Photographs (exhibit 20, page 1 photograph C, and page 2) show the trailer used to transport the two elephants. Affidavits of Scott Martin (exhibit 22) and Angela Martin (exhibit 18) shows that Scott Martin drove the truck which hauled the two young elephants, Benjamin and Shirley, and they were followed in separate vehicles by Pat Harned and [b6]. [b6] Affidavit of Pat Harned (exhibit 13) shows he made the decision to stop at a private truck stop and residence outside Huntsville, Texas, owned by William Henry Lawler. [b6] Affidavit of William Henry Lawler (exhibit 19) states he was contacted and gave permission to use his property and facilities. The two young elephants spent the night in their trailer at this location. Affidavit of Pat Harned (exhibit 13) states on Monday, July 26, 1999, soon after he got up that morning, he unloaded the two elephants from the trailer with the intent of allowing the elephants to swim in a pond on the property which he had been informed was 10 to 12 feet deep. Hugh Patrick Harned was the only qualified, experienced handler with the two elephants. Affidavits of Pat Harned (exhibit 13); Scott Martin (exhibit 22); Angela Martin (exhibit 18) and Will Lawler

(exhibit 19) describe what happened when the elephants entered the water and when trainer Pat Harned attempted get the male elephant, Benjamin, out of the water. Witnesses state this elephant apparently died while swimming in the pond because the elephant would not respond to the voice commands of the trainer, Pat Harned. Two eye witnesses to the incident, Scott Martin and Will Lawler, both state in their respective affidavits that the elephant would move the other direction in an attempt to avoid trainer Pat Harned when he "poked" the elephant with a stick. Video Tape (exhibit 30) and diagram (exhibit 14) shows the pond where the incident occurred and a description by Will Lawler of what the elephant did when poked with a stick by trainer Pat Harned. Photographs (exhibit 20) also show the pond and surrounding area. Affidavit of Michael Copeland Moore, D.V.M. (exhibit 27) shows he was called to the premise to view the elephant after it succumbed. Affidavits of Will Lawler (exhibit 19) and Scott Martin (exhibit 22) state the dead elephant was loaded on a refrigerated trailer and transported to TVMDL at Texas A & M University for a necropsy. A preliminary necropsy report (exhibit 25) and final necropsy report (exhibit 29) shows that the male, juvenile elephant named Benjamin apparently drown. Pat Harned released the elephants from their primary enclosure (the transport trailer) to let them swim in a pond which Mr. Harned was told was 10 to 12 feet deep. It was not an emergency that the animals be allowed to swim.

OTHER EVIDENCE

Photographs (exhibit 3) which were made during the Animal Care inspection conducted at Houston, Texas on June 15, 1999 by Animal Care Inspector Charles Curren. Page 9, photograph B and page 10, photograph A, show the two young elephants which accompanied the blue unit. Page 11, photograph A shows the truck trailer used to transport the two young elephants.

Interoffice Memorandum from Charles Curren (exhibit 4) is a narrative report of his inspection of the Ringling Bros. and Barnum and Bailey® (Blue Unit) done at Houston, Texas. No non-compliant items were documented.

Confirmation and rate agreement (exhibit 5) shows the transportation agreement to supply trucking services for the transportation of the two young elephants from Houston, Texas to Dallas, Texas.

Straight Bill of Lading (exhibit 6) shows the transportation of the "live" elephant, Shirley, from Huntsville, Texas to Polk City, Florida. This movement occurred after the death of the elephant named Benjamin. Scott Martin and a second driver made this haul to return the elephant to Florida.

Photocopy of a press release (exhibit 7) supplied by Ringling Bros. and Barnum and Bailey® to USDA officials.

Photocopy of a press release (exhibit 8) supplied by Ringling Bros. and Barnum and Bailey®.

Photocopy of a Fax transmittal (exhibit 9) supplied by J. Strauss giving permission for the release of a preliminary necropsy for the elephant named Benjamin. Only permission for the preliminary necropsy is given by this record.

Affidavit of Dr. David L. Sabala, D.V.M. (exhibit 10) outlines the contact and on site interviews made on July 28, 1999, while the circus was located at Dallas, Texas.

Affidavit of Kenyon R. Branch (exhibit 11) outlines the contact and on site interviews made on July 28, 1999, while the circus was located at Dallas, Texas.

Affidavit of Charmain Zpordan (exhibit 15) outlines the contact and on site interviews made in Florida on July 28 and July 29, 1999. The interviews of circus employees was done with counsel present.

Affidavit of Dr. Sylvia Taylor (exhibit 16) states Dr. Taylor inspected the female young elephant "Shirley" at the breeding compound.

Affidavit of David Green (exhibit 17) outlines the contact and on site interviews made on July 28, 1999 while the circus was located at Dallas, Texas.

Fax cover memo and documents (exhibit 21) supplied to USDA only due to the request of USDA Investigator David Green. This fax supplied the property owners name and address where the elephant died along with a copy of the medical history of the elephant Benjamin.

Subpoena Duces Tecum (exhibit 23) issued to Dr. L. G. Gayle, Associate Agency Director of the Texas Veterinary Medical Diagnostic Laboratory, dated August 3, 1999.

Affidavit of services of Jacqueline M. Freeman (exhibit 24), dated August 9, 1999.

Fax cover memo and documents (exhibit 26) supplied to USDA only due to the request of USDA Investigator David Green. This fax supplied a copy of a toxicology.

Clinic records (exhibit 28) of the Ritchey / Moore Veterinary Clinic showing the professional services performed relative to the elephant.

EXHIBITS

- Exhibit 1: Photocopy of a USDA Application for License, Aphis Form 7003, renewal date shown as April 28, 1999. 1 page
- Exhibit 2: Photocopy of a USDA Inspection Report, dated July 15, 1999. 2 pages
- Exhibit 3: Photographs made at the July 15, 1999 inspection at Houston, Texas. 14 pages
- Exhibit 4: Photocopy of an Interoffice Memorandum from Charles M. Curren, dated July 16, 1999. 4 pages
- Exhibit 5: Photocopy of a Confirmation and Rate Agreement, dated July 19, 1999. 1 page
- Exhibit 6: Photocopy of a Straight Bill of Lading, dated July 26, 1999. 1 page
- Exhibit 7: Photocopy of a Press Release, dated July 26, 1999. 1 page
- Exhibit 8: Photocopy of a Press Release and Early Necropsy Finding, dated July 27, 1999. 1 page
- Exhibit 9: Photocopy of a Fax transmittal and memo requesting release of the preliminary necropsy, dated July 28, 1999. 3 pages
- Exhibit 10: Affidavit of Dr. David L. Sabala, dated July 29, 1999. 2 pages
- Exhibit 11: Affidavit of Kenyon R. Branch, dated July 29, 1999. 5 pages
- Exhibit 12: Photographs of elephant Shirley and the transport truck, dated July 29, 1999. 3 pages
- Exhibit 13: Affidavit of Hugh Patrick Harned, dated July 29, 1999. 3 pages
- Exhibit 14: Drawings of a pond supplied by Hugh Patrick Harned. 2 pages
- Exhibit 15: Affidavit of Charmain Zordan, dated July 30, 1999. 5 pages
- Exhibit 16: Affidavit of Dr. Sylvia Taylor, dated July 30, 1999. 1 page
- Exhibit 17: Affidavit of David Green, dated July 30, 1999. 5 pages
- Exhibit 18: Affidavit of Angela Deann Martin, dated August 2, 1999. 4 pages
- Exhibit 19: Affidavit of William Henry Lawler, dated August 2, 1999. 6 pages
- Exhibit 20: Photographs of the pond and surrounding area at Huntsville, Texas, dated August 2, 1999. 7 pages
- Exhibit 21: Facsimile records from Feld Entertainment Attorney Julie Alexa Strauss, dated August 3, 1999. 4 pages
- Exhibit 22: Affidavit of Scott Christopher Martin, dated August 3, 1999. 4 pages
- Exhibit 23: Photocopy of a Subpoena Duces Tecum, dated August 3, 1999. 3 pages

- Exhibit 24: Affidavit of Jacqueline M. Freeman, dated August 9, 1999. 1 page
- Exhibit 25: Cover letter and preliminary laboratory report from TVMDL, dated August 10, 1999. 7 pages
- Exhibit 26: Facsimile records from Feld Entertainment, dated August 10, 1999. 2 pages
- Exhibit 27: Affidavit of Michael Copeland Moore, D.V.M., dated August 10, 1999. 2 pages
- Exhibit 28: Clinic records from the Ritchey/Moore Vet. Clinic. 2 pages
- Exhibit 29: Memorandum and Final necropsy report from TVMDL, dated August 17, 1999.
- Exhibit 30: Video Tape made at Huntsville, Texas on August 2, 1999. 1 video tape



United States
Department of
Agriculture

Office of the
General
Counsel

Washington,
D.C.
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MEMORANDUM .

TO: Ron D. Stanley
Director
Investigative and Enforcement Services
APHIS

FROM: Kenneth H. Vail *KHV*
Assistant General Counsel
Marketing Division

SUBJECT: Alleged violations of the Animal Welfare Act by Feld
Entertainment, Inc., dba Ringling Bros. and Barnum &
Bailey Circus (TX99237)

The file in this case documents the exhaustive investigation of the sudden and unexplained death of a young elephant, Benjamin.

In July, 1999, the circus was moving two young elephants, Benjamin and Shirley, from Houston to Dallas, Texas. Although a tractor and driver were hired for the move, the elephants were in the circus' transport trailer and were accompanied by a trainer.

The trainer arranged to stop for the night at the rural property of the owner of the trucking company, in preference to stopping for the night at a truck stop on the interstate highway. On the morning of July 26, 1999, the trainer obtained permission from family members at the property for the elephants to swim in a pond there. The pond was regularly used by the family for swimming and the trainer was informed of the configuration and condition of the bottom of the pond.

Both elephants were led to the pond and allowed to enter the water. The video tape shows that both elephants appeared to enjoy swimming. After Shirley left the pond, Benjamin did not follow directions to leave also. After placing Shirley in the trailer, the trainer returned for Benjamin. Benjamin, however, continued to refuse to leave the pond. Suddenly, and without any signs of distress or struggle, Benjamin became unconscious and drowned.

It was suggested that the circus violated the handling regulations at 9 C.F.R. § 2.131(a) because "Ben was allowed to swim in an unfamiliar, potentially unsafe pond without any means of direct control to assure his safety, and he died while in the pond." However, the trainer familiarized himself with the pond and there is no indication that there was any hidden hazard or potentially unsafe condition which contributed to the incident.

It was also suggested that the circus violated the regulations at 9 C.F.R. § 3.132 in that "[t]here was not a sufficient number of

employees to supervise the swimming, or to help Ben out of the pond when he needed it." The evidence discloses that elephants are natural swimmers and that they enjoy swimming. The evidence does not suggest that additional employees were needed. Animals such as elephants, hippopotami, and kodiak bears enjoy the water and the regulations do not prohibit exhibitors from allowing them to swim. Nor do the regulations require exhibitors to accompany the animals with enough attendants to lift them from the water.

Finally, it was suggested that the circus violated the regulations at 9 C.F.R. § 3.140(b) for care in transit in that "Ben was removed from his primary enclosure when there was not an emergency situation to warrant it." This regulation must be interpreted in the context as prohibiting carriers from, for example, removing a lion from its cage at the airport. It cannot be interpreted as forbidding an exhibitor from removing an animal from a transportation trailer (except in an emergency) until it reaches its ultimate destination and thus forbidding exercise, recreation and cleaning at overnight stopovers or other rest stops.

The evaluation of the evidence by veterinary medical experts indicates that the most likely cause of death was a cardiac arrhythmia which resulted in a loss of consciousness which was followed by inhalation of water and death by drowning. Although the circumstances certainly warranted thorough investigation, the resulting evidence does not indicate that the death of Benjamin resulted from neglect or any violation of the regulations. Accordingly, the investigative file is returned herewith.

Attachments

RECEIVED MAR 27 2002



DA	D
For	R. Stanley
	Rogers
	Kohn
(A)	B C D

United States Department of Agriculture

Marketing and Regulatory Programs

Animal and Plant Health Inspection Service

Animal Care

To: Craig A. Reed

By Fax: 3 pages

From: W. Ron DeHaven RD 12/2/99

Subject: Investigation of Ringling Brothers - Death of Benjamin

Date: December 2, 1999

Based on an extensive investigation and an evaluation of the evidence by the Marketing Division of OGC (copy attached), there is insufficient basis to support prosecution of the subject case. With your concurrence, I intend to close the case administratively with no action, and notify Ringling officials of this action by telephone.

- Voicemail to Joan Galvin, 12/3/99, 9:45am

b5

Approve C. Reed December 3, 1999

Disapprove _____

See me _____



Animal Care is a part of the Department of Agriculture's Animal and Plant Health Inspection Service.

An Equal Opportunity Provider and Employer

12/2/99

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

Introduction

During the week of August 23-28, 1999, a month after Benjamin died in Texas (see Benjamin Case Study, Sec. V), inspectors for the Santa Clara Valley Humane Society in California reported that they had observed seven Ringling elephants with multiple lacerations and puncture wounds behind their left ears in San Jose, California. Another humane investigator who attended each of the performances that week "noticed numerous times that some of the elephants had punctures and lacerations on various areas of their bodies, which included the foreleg, trunk, and behind the left ear." Photographs of the elephants' wounds were reviewed by both the Director and Curator of the Oakland Zoo who concluded that "the wounds documented on these elephants were consistent with control wounds caused by an ankus."

The area behind an elephant's ear is extremely sensitive. According to several former Ringling employees, it is a place that Ringling uses to "hook" the elephants with bullhooks to make them move and perform on command.

Animal Welfare Act regulations provide that "handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma . . . behavioral stress, physical harm, or unnecessary discomfort," 9 C.F.R. § 2.131(a), (b), and that "physical abuse shall not be used to train, work, or otherwise handle animals." 9 C.F.R. § 2.131(a)(2)(i).

Outcome

On July 5, 2001, the USDA closed the investigation without taking any enforcement action against Ringing Bros., on the grounds that the eye-witness accounts from the humane officers and police officers were too "similar" in wording to be reliable and that the Oakland Zoo officials had only reviewed photographs of the animals' wounds.

The USDA's Investigation

On August 23, 1999 – just a month after the baby elephant Benjamin died while swimming in a pond and while the Doc and Angelica investigation was still pending (see Benjamin Case Study, Sec. V; Doc and Angelica Case Study, Sec. IV) – a San Jose, California police officer accompanied Christine Franco, a humane officer from the Santa Clara Humane Society, to an inspection of Ringling Bros. elephants, who were being unloaded from trains for scheduled performances in San Jose. The officers documented the following injuries on the elephants they observed:

Toby	2 Lacerations behind left ear - consistent with the use of an ankus as noted by Dr. Lindsay [Ringling's own veterinarian]
Siam	3 lacerations on the left, outer ear canal and behind the left ear
Banco	1 healing laceration. 1 large scar and 3 small lacerations on the left ear.
Mary	2 lacerations on the left rear hip.
Sarah	1 small laceration behind the left ear.
Assan	2 lacerations on the rear of the left ear and 1 laceration on the left side of the forehead.
Baby	Laceration on the left front leg and to the lower left side of the face (jowl area).

Therefore, of the 14 elephants, 7 of them had lacerations. Another officer on the scene reported that she observed "what appeared to be a fresh stream of blood behind the left ear" of the elephant named Toby, and Humane Officer Franco observed "blood streaming from two separate lacerations behind Toby's left ear."

Officer Franco further noted that:

Seven of the elephants had injuries behind or on the back of their left ears. Almost all of the injuries appeared to be fresh, with bright red blood present at the wound sites. One of the elephants had a larger laceration with what appeared to be dried blood. None of the elephants appeared to have any injuries or scarring behind their right ears. One of the elephants, named Mary, had two lacerations on her lower left flank. Another elephant named Assan had lacerations and scars on both her trunk and forehead. An elephant named Baby had abrasions on the back of her left ear. She also had a laceration on her front left foreleg and on the back of her left ear.

Officer Franco reported that she overheard Ringling's veterinarian, Dr. Lindsay, state that "he could not deny that [the lacerations on Toby] were caused by ankuses." However, Dr. Lindsay also told the humane officer that he would categorize the injuries on the animals as "abrasions, not lacerations," because "he considers lacerations to be wounds that require sutures." He further stated that "the injuries on these elephants did not require suturing," although, according to the humane officer, "they were bleeding and the skin was punctured and torn."

The next day, August 24, 1999, Officer Franco took the photographs and videotape of the elephants to Dr. Joel Parrot, Executive Director of the Oakland Zoo, and Colleen Kinzley, the Oakland Zoo's General Curator. According to Officer Franco, "Parrot and Kinzley stated they were confident the injuries were caused by ankuses," and Dr. Parrot affirmed that the injuries should be characterized as "lacerations," since "these injuries were cuts and punctures that broke the skin and caused bleeding."

On August 27, 1999, another police officer accompanied Officer Franco during another inspection of the elephants. She observed a "puncture" on one elephant's left cheek, approximately 6 inches below the eye, and a "fresh puncture" half-way down the trunk of another elephant. When she looked at this wound fifteen to twenty minutes later, "blood had come to the surface." On August 29, 1999, one of the police officers "observed a few cuts on some of the elephants' trunks

and left ears." This same officer noted that:

Each day I was present observing the animals I noticed several elephant handlers use their ankus on their elephants. The handler would ask his elephants to move back. **If the elephant did not respond the handler would use his ankus to poke the elephant in the legs or sometimes the feet. I saw them use it on their trunks, back of their front legs, back of their rear legs, mouth, and a few times behind the left ears.**

Officer Franco also "noticed that one of the elephants had a laceration, approximately 1/4 -1/2 inch in length, horizontally across its trunk," and that "there was fresh blood present and it appeared that the injury was very recent."

Another officer reported that "during the time I was present and observing the animals, I noticed several different animal handlers using their ankus' to poke and prod the elephants," which "occurred when an elephant did not respond to verbal commands." According to this officer, "[t]he younger handlers would use the pointed end of the ankus and push on the elephant while using harsh verbal commands." This officer also reported that "[t]he handlers would ask an elephant to do something such as 'Go Down' and if the elephant wasn't moving fast enough they would smack it with the side of the ankus to hurry it up." She further reported that she saw one of the handlers "use his ankus, which appeared to be sharper than some of the others multiple times when the elephants would not comply and even sometimes when they were already in compliance," and that "his actions seemed habitual." She observed that this particular handler "would use the ankus mostly on the legs," but she "did see him use it several times on the elephant's trunks and a few times on their mouth and behind the ears."

On August 28, 1999, Officer Franco again returned to the circus, and observed "several elephants with fresh wounds on their bodies that required closer inspection." However, because Officer Franco had been treated with animosity by "both the circus and Arena management," she asked the Director of her office to make arrangements for another inspection. The next day, the

Director of the Humane Society accompanied Officer Franco and several other officers to the circus. They "saw new wounds on the first two elephants," but were unable to examine all of the animals because they "had to be brought to the Arena for the last show." After the show, the officers examined several of the elephants and observed that:

Siam had dried blood behind her left ear. Toby had five lacerations behind her left ear. Two were approximately one inch long, and three were approximately ½ inch long. Tonka had fresh blood behind her left ear.

One of the other officers present at the time noted that she saw one of the handlers "use his ankus to make one of the elephants move," and "using his body weight . . . forcefully yanked on the elephants' ear," and that the handlers "would slap the elephants with the side of the ankus to get it to move quicker or to obey."

On May 4, 2000, Humane Officer Franco formally filed a Complaint with the USDA, and asked the agency to investigate the matter under the Animal Welfare Act.

On May 31, 2000, a senior investigator for the USDA visited the circus where it was performing in Toledo, Ohio. According to his internal notes, every elephant handler he interviewed admitted using an ankus on the elephants, and one said that he "uses an ankus and sometimes a whip."

On June 19, 2001, the Humane Society of Santa Clara Valley sent copies of the photographs and videotape of wounded elephants to the USDA.

On July 14, a USDA senior investigator met with Officers Franco and Mayeda on July 14, and noted that their report on "the wounds found on the elephants, as documented in some of the photographs, are consistent with ankus wounds." However, despite the fact that, as stated above, one of the other officers had reported that "each day" he was present observing the elephants he "noticed several elephant handlers use their ankus on the elephants," the USDA investigator

nevertheless discounted Franco and Mayeda's evidence on the grounds that "no one present or interviewed witnessed the cause of the wounds, or pointed out a suspect that may have caused the wounds."

On July 19, 2000, the USDA obtained a sworn affidavit from one of Ringling's attending veterinarians who stated that he had limited experience with elephants, but that, during the humane officers' inspection, he "did not see significant wounds," that "[t]he only marks that appeared on the elephants . . . were superficial," and that he was "unable to determine if they were scratches or punctures."

On July 25, 2000, the USDA obtained a sworn affidavit from Dr. Joel Parrot, Executive Director of the Oakland Zoo. Dr. Parrot stated that, after carefully examining 62 photographs of the elephants, he and the Curator of the Zoo "determined through our expertise, that the wounds documented on these elephants were consistent with control wounds caused by an ankus." Dr. Parrot further stated that:

the wounds documented are in locations on the elephants which are consistent with locations used to control the animals, and are in common places caused by ankuses or hooks. These locations include – behind the ears, on the left rear flank, on the top right side of the head, and on the left foreleg. In reviewing the photographs I have determined that it is almost impossible for anything else to have caused the lesions behind the ears. The drawing of blood would not have caused the wounds behind the elephants' ears, for they are in places where blood is not drawn from an elephant. The wounds are not consistent with other conditions, such as ingrown hairs.

Dr. Parrot further stated that:

The majority of the wounds documented in these photographs are fresh, actively draining puncture wounds caused by an ankus or hook. Some are oozing punctures Although most of the wounds documented in these photographs appear to be superficial, it is unusual to have that many fresh wounds on elephants. Also documented in these photographs are what appear to be drag wounds, caused by an ankus that did not catch in the elephant's skin. Some are fresh and some are scars.

Dr. Parrot concluded that **"It is apparent that Ringling Brothers is actively using an ankus,"** and that **"the trainers and handlers may be using excessive force and poor techniques . . . to control and train their elephants."**

On October 2, 2000, Ringling's veterinarian, Dr. Lindsay, sent a letter to the USDA investigator stating that, to the best of his recollection, several of the elephants examined by the humane officers **"had superficial skin scrapes and abrasions on various parts of their skin,"** and that this **"may happen as elephants play, rub their skin on the interior of the train cars during transport, defend their pile of hay from a friendly neighbor or develop ingrown hairs."** He further stated that only one elephant, Toby, **"had a recent scrape on the back of her left ear,"** and that, although Dr. Lindsay did not know for sure, he **"would suggest that this occurred either on the train during the last few hours prior to stopping, or on a doorframe during unloading on the Animal Walk."** Dr. Lindsay further stated that the conclusions of the Santa Clara Humane Society officers should be disregarded because the Santa Clara Humane Society is on a **"witch hunt."**

On July 5, 2001, a member of USDA's Animal Care staff sent a memorandum to the Deputy Administrator for Animal Care, stating that she was **"concerned"** about two issues relating to the investigation. The first was that the numerous contemporaneous eye-witness accounts of the Santa Clara humane officer and San Jose police officers are **"similar enough in format and wordage to raise questions,"** and second, that **"there appears to be no affidavits from Ringling handlers or other witnesses."** While acknowledging that the wounds on the elephants were **"placed consistent with ankus use,"** she stressed that they also **"could be from other activities, including contact with other elephants and taking blood samples (as alleged by Dr. Lindsay)."** In addition, she stated that Ringling's veterinarian **"could not substantiate any claims of wounding,"** and that the Oakland Zoo officials **"examined only photographs."** For these reasons, the USDA official concluded, **"there is**

insufficient evidence to support any action being taken under the AWA." Accordingly, on July 17, 2001, the Deputy Administrator closed the case "with no action."

Enforcement Synopsis

Despite the eye-witness reports from several local humane officers and police officers that, upon arrival in San Jose, many of the Ringling elephants had bloody puncture wounds and other abrasions on their bodies, admissions by all of the handlers that they do in fact use an ankus on the elephants, and the expert opinions of both the Executive Director and Curator of the Oakland Zoo that "the injuries were caused by ankuses," the USDA took no action against Ringling Bros. Instead, in making the decision to close the case, the agency dismissed the eye-witness testimony of the humane officers and police officers on the grounds that their contemporaneous accounts of bloody lacerations and puncture wounds were "too similar," although they consistently report the same injuries on the animals, which were also photographed. In addition, although the USDA was quick to dismiss this evidence simply on the grounds that it was "similar in wordage," in other investigations, the agency has given great weight to the accounts of Ringling Bros. employees who deny abuse, even when those denials are also extremely similar in wordage. (See Former Employees Case Study, Sec. III). In other words, when the accounts of witnesses who work for Ringling Bros. are similar but tend to exonerate Ringling, the USDA gives them great weight, but when the accounts from witnesses who are not employed by Ringling and who are experts in animal abuse consistently report abuse and misconduct, the USDA discounts them as lacking credibility.

The agency also discounted the reliability of the expert opinions of the two Oakland Zoo officials, simply on the grounds that these experts only reviewed photographs of the elephants, but did not examine the animals themselves. However, this approach is in stark contrast to that taken by the agency in other investigations where the USDA relied heavily on the opinion of elephant

experts based only on observations of photographs to exonerate Ringling Bros. See Former Employees Case Study, Sec. III (case closed because USDA claimed that experts who reviewed photographs of wounds did not find evidence of “clear abuse”); see also Doc and Angelica case study, Sec. IV (USDA relied on expert opinions based on photographs of leg wounds to find violations of the Animal Welfare Act, but nevertheless inexplicably closed the case). Again, the internal documents show a clear pattern: the agency relies on expert opinion based only on photographs of wounded elephants when such opinions cannot verify “clear abuse,” but the agency completely discounts expert opinions based on photographs of wounds when the experts are “confident the injuries were caused by ankuses.”

Furthermore, at the time this case was being investigated, the USDA had already closed several other very recent cases involving allegations that Ringling Bros. handlers and trainers routinely beat, hit, poke, and pull elephants with a bullhook or ankus, including the investigation of Benjamin's death, and the case involving allegations of two other former employees. However, none of these other cases is even mentioned – anywhere – in the Santa Clara case file, let alone taken into consideration as cumulative evidence of a clear pattern of abuse and mistreatment of the elephants. (See Benjamin Case Study, Sec. V; Former Employees Case Study, Sec. III). There were also several additional cases that were still pending when the Santa Clara Humane Society case was closed – all of which charged Ringling with inflicting injuries on elephants with ankuses – including yet another report by a former Ringling Bros. employee that Ringling handlers and trainers routinely beat and strike elephants, including babies, with bullhooks. (See Tom Rider Case Study, Sec. VII; San Francisco Case Study, Sec. VIII). However, there is also no mention of any of those pending cases in the decision to close the San Jose case. And, as later discussed, although the Animal Welfare Act provides that the USDA should cooperate with state and local officials in curtailing the

abuse of animals used in entertainment, the USDA did not provide any evidence to the same San Jose police officer and Santa Clara humane officer when, a year later, they brought state cruelty charges against Ringling elephant trainer Mark Gabel for striking an elephant with a bullhook in violation of the local animal cruelty code. (See Asia Case Study, Sec. IX).

The USDA has refused to release the 62 photographs and videotape taken by the Santa Clara humane officers to the public.

VESTIGATION / INCIDENT REF IT

<input checked="" type="checkbox"/> CRIME	REPORT NUMBER	DEPARTMENT	DEPT. NUMBER	PAGE 1 OF 17
<input type="checkbox"/> INCIDENT	A99-015840	Animal Services	20	
Crime Section	Additional Crimes (see additional crime / victim report attached)		Title	F (M) I

5 U.S. PC ELEPHANT ABUSE

LOCATION	CITY	COUNTY
SAN JOSE ARENA	SAN JOSE	Santa Clara

FROM DATE OCCURRED	TO DATE OCCURRED	DATE REPORTED	TIME REPORTED
3-23-99	8-29-99	8/23/99	

OTHER AGENCY	OTHER AGENCY REPORT #	FCN#	DAY OF WEEK
SAN JOSE POLICE DEPT.			S M T W T F S

PARTY # V-1	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
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VICTIM	NAME (FIRST, MIDDLE, LAST)
	STATE OF CALIFORNIA

SUSPECT	STREET ADDRESS	CITY, STATE, ZIP
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WITNESS	HOME PHONE	OTHER PHONE	BUSINESS ADDRESS
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AP / RP	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE
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ARRESTED	ADDITIONAL INFORMATION
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PARTY # S-1	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
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VICTIM	NAME (FIRST, MIDDLE, LAST)	RED TOURNAISE UNIT
	LINNING BROS, BARANUM + BAILEY CIRCLES	

SUSPECT	STREET ADDRESS	CITY, STATE, ZIP
	8007 WESTWOOD CENTER	VIENNA, VA 22182

WITNESS	HOME PHONE	OTHER PHONE BUSINESS (703) 449-4020	BUSINESS ADDRESS
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AP / RP	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE
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ARRESTED	ADDITIONAL INFORMATION
	CORPORATE OFFICE

PARTY # W-1	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
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VICTIM	NAME (FIRST, MIDDLE, LAST)
	LANZETTE WILLIAMS

SUSPECT	STREET ADDRESS	CITY, STATE, ZIP
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WITNESS	HOME PHONE	OTHER PHONE (408) 577-4273	BUSINESS ADDRESS
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AP / RP	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE
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ARRESTED	ADDITIONAL INFORMATION
	SAN JOSE POLICE SERGEANT

GOVERNMENT EXHIBIT
 82
 Page 1 of 17
 APR 1999 100 0000 00

SPECIAL HANDLING / STATUS		
<input type="checkbox"/> Hate Crime / Gang Activity	<input type="checkbox"/> CPS	<input checked="" type="checkbox"/> Copy to D.A. Office
<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Juvenile Confidentiality	<input type="checkbox"/> Copy to Local Law Enforcement
<input type="checkbox"/> Outside Agency Assist	<input type="checkbox"/> PC 293 Confidentiality	<input type="checkbox"/> Other:
	<input type="checkbox"/> Public Safety Section Review	

NAME OF REPORTING EMPLOYEE	SIGNATURE	TITLE	BADGE NO.	DATE
CHRISTINE FRANCO	<i>Christine Franco</i>	INVESTIGATOR	A7	9-8-99

SIGNATURE OF SUPERVISOR	TITLE	BADGE	DATE
<i>M. Manda</i>	ADJUTANT	A1	9-8-99

INVESTIGATION / INCIDENT REPORT

<input checked="" type="checkbox"/> CRIME	REPORT NUMBER A09-05810	DEPARTMENT Animal Services	DEPT NUMBER 20	PAGE 7 OF 17
<input type="checkbox"/> INCIDENT	Additional Crimes (see additional crime / victim report attached)			Title FBI

Crime Section: S.S. PC ELEPHANT ABUSE

LOCATION SAN JOSE ARENA	CITY SAN JOSE	COUNTY Santa Clara
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FROM DATE OCCURRED 8-23-99	TO DATE OCCURRED 8-29-99	DATE REPORTED 8-23-99	TIME REPORTED
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OTHER AGENCY SAN JOSE POLICE DEPT.	OTHER AGENCY REPORT #	FCN#	DAY OF WEEK S M T W T F S
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PARTY #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
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<input type="checkbox"/> VICTIM	NAME (FIRST, MIDDLE, LAST) MARCIANA MAYEDA								
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<input type="checkbox"/> SUSPECT	STREET ADDRESS									CITY, STATE, ZIP	
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<input checked="" type="checkbox"/> WITNESS	HOME PHONE	OTHER PHONE (WORK)	BUSINESS ADDRESS 2065 MARTIN AVE. STE 101 SANTA CLARA, CA 95050							
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<input type="checkbox"/> AP / RP	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE
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<input type="checkbox"/> ARRESTED	ADDITIONAL INFORMATION DIRECTOR OF SOUTH BAY ANIMAL CENTER								
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PARTY #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
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<input type="checkbox"/> VICTIM	NAME (FIRST, MIDDLE, LAST) DARRELL DEWIER								
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<input type="checkbox"/> SUSPECT	STREET ADDRESS									CITY, STATE, ZIP	
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<input checked="" type="checkbox"/> WITNESS	HOME PHONE	OTHER PHONE (WORK)	BUSINESS ADDRESS 2065 MARTIN AVE. STE 101 - SANTA CLARA, CA 95050							
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<input type="checkbox"/> AP / RP	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE
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<input type="checkbox"/> ARRESTED	ADDITIONAL INFORMATION SERGEANT - SOUTH BAY ANIMAL CENTER								
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PARTY #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
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<input type="checkbox"/> VICTIM	NAME (FIRST, MIDDLE, LAST) TERRY DEWIER								
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<input type="checkbox"/> SUSPECT	STREET ADDRESS									CITY, STATE, ZIP	
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<input checked="" type="checkbox"/> WITNESS	HOME PHONE	OTHER PHONE (WORK)	BUSINESS ADDRESS 2065 MARTIN AVE STE 101 - SANTA CLARA, CA 95050							
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<input type="checkbox"/> AP / RP	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE
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<input type="checkbox"/> ARRESTED	ADDITIONAL INFORMATION ANIMAL CENTER / HUMANE OFFICER								
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SPECIAL HANDLING / STATUS			<input type="checkbox"/> CPS	<input checked="" type="checkbox"/> Copy to D.A. Office
<input type="checkbox"/> Hate Crime / Gang Activity	<input type="checkbox"/> Juvenile Confidentiality	<input type="checkbox"/> Copy to Local Law Enforcement:	<input type="checkbox"/> PC 293 Confidentiality	<input type="checkbox"/> Other.
<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Public Safety Section Review			
<input type="checkbox"/> Outside Agency Assist				

GOVERNMENT EXEMPT
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Page 2 of 17
SPCS FORM 100 (08/98)

NAME OF REPORTING EMPLOYEE HESTER FRANCIS	SIGNATURE <i>Francis Hester</i>	TITLE INVESTIGATOR	BADGE NO. A7	DATE 9-8-99
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SIGNATURE OF SUPERVISOR <i>M. Medina</i>	TITLE DIRECTOR	BADGE 21	DATE 9-8-99
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VESTIGATION / INCIDENT REF RT

<input checked="" type="checkbox"/> CRIME	REPORT NUMBER	DEPARTMENT	DEPT. NUMBER	PAGE <u>3</u> OF 17
<input type="checkbox"/> INCIDENT	ACIA-015810	Animal Services	20	
Crime Section	Additional Crimes (see additional crime / victim report attached)		Title	F <u>RA</u> I
5 PC ELEPHANT ABUSE				
CITY	CITY	COUNTY		
SAN JOSE ARENIA	SAN JOSE	Santa Clara		
FROM DATE OCCURRED	TO	FROM TIME OCCURRED	TO	DATE REPORTED
5-23-99	8-29-99			8-23-99
OTHER AGENCY	OTHER AGENCY REPORT #	FCN#	DAY OF WEEK	
SAN JOSE POLICE DEPT			S M T W T F S	

PARTY #W-5	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
VICTIM	NAME (FIRST, MIDDLE, LAST)								
	JOEL J PARROTT D.V.M.								
SUSPECT	STREET ADDRESS					CITY, STATE, ZIP			
	9777 MOIF LINKS RD.					OAKLAND, CA 94605			
WITNESS	HOME PHONE	OTHER PHONE	BUSINESS ADDRESS - MAILING						
	(510) 632-9525 ext. 172		P.O. BOX 5238 OAKLAND, CA 94605						
AP / RP	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE		
ARRESTED	ADDITIONAL INFORMATION								
	EXECUTIVE DIRECTOR, OAKLAND ZOO								

PARTY #W-6	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
VICTIM	NAME (FIRST, MIDDLE, LAST)								
	COLLEEN KINZLEY								
SUSPECT	STREET ADDRESS					CITY, STATE, ZIP			
	9777 GOLF LINKS RD.					OAKLAND, CA 94605			
WITNESS	HOME PHONE	OTHER PHONE	BUSINESS ADDRESS - MAILING						
	(510) 632-9525 ext. 1601		P.O. BOX 5238 - OAKLAND, CA 94605						
AP / RP	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE		
ARRESTED	ADDITIONAL INFORMATION								
	GENERAL CURATOR - OAKLAND ZOO								

PARTY #W-7	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
VICTIM	NAME (FIRST, MIDDLE, LAST)								
	DON DORCE								
SUSPECT	STREET ADDRESS					CITY, STATE, ZIP			
WITNESS	HOME PHONE	OTHER PHONE	BUSINESS ADDRESS - MAILING						
	(408) 727-4584		SOL'S MARTIN INC. STE. 101 - SANTA CLARA, CA 95050						
AP / RP	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE		
ARRESTED	ADDITIONAL INFORMATION								
	ANIMAL CONTROL OFFICER / HUMANE OFFICER								

SPECIAL HANDLING / STATUS

<input type="checkbox"/> Hate Crime / Gang Activity	<input type="checkbox"/> CPS	<input checked="" type="checkbox"/> Copy to D.A. Office
<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Juvenile Confidentiality	<input type="checkbox"/> Copy to Local Law Enforcement
<input type="checkbox"/> Outside Agency Assist	<input type="checkbox"/> PC 293 Confidentiality	<input type="checkbox"/> Other:
	<input type="checkbox"/> Public Safety Section Review	

GOVERNMENT COURT
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Page 3 of 17
AND FROM REPORT ON

NAME OF REPORTING EMPLOYEE	SIGNATURE	TITLE	BADGE NO.	DATE
CHRISTINE FRANKS	<i>Christine Franks</i>	Investigator	A7	9-2-99
SIGNATURE OF SUPERVISOR		TITLE	BADGE	DATE
<i>M. Milagres</i>		Director	A1	9/5/99

INVESTIGATIONS DEPARTMENT

INVESTIGATION / INCIDENT R: **JRT**

<input checked="" type="checkbox"/> CRIME	REPORT NUMBER AAA-015240	DEPARTMENT Animal Services	DEPT NUMBER 20	PAGE 4 OF 17
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Crime Section: **70.5 PC ELEPHANT ABUSE** Additional Crimes (see additional crime / victim report attached) Title: **F** **W** **I**

LOCATION SAN JOSE HQ #2A	CITY SAN JOSE
COUNTY Santa Clara	

FROM DATE OCCURRED 8-23-09	TO 8-24-09	FROM TIME OCCURRED	TO 8-23-09
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OTHER AGENCY SAN JOSE POLICE DEPT.	OTHER AGENCY REPORT #	FCN#	DATE REPORTED 8-23-09	TIME REPORTED	DAY OF WEEK MTWTFSS
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PARTY #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
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VICTIM NAME (FIRST, MIDDLE, LAST)
LIM FLORES

SUSPECT STREET ADDRESS CITY, STATE, ZIP

WITNESS HOME PHONE: **(408) 727-6529** OTHER PHONE: **work** BUSINESS ADDRESS: **2005 MARTIN AVE STE. 101 - SANTA CLARA CA 95050**

AP / RP	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE
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ARRESTED ADDITIONAL INFORMATION
ANIMAL CONTROL OFFICER / HUMANE OFFICER

PARTY #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
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VICTIM NAME (FIRST, MIDDLE, LAST)
BARBARA WALLACE

SUSPECT STREET ADDRESS CITY, STATE, ZIP

WITNESS HOME PHONE: **(408) 727-6529** OTHER PHONE: **work** BUSINESS ADDRESS: **2005 MARTIN AVE STE. 101 - SANTA CLARA CA 95050**

AP / RP	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE
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ARRESTED ADDITIONAL INFORMATION
ANIMAL CONTROL OFFICER / HUMANE OFFICER

PARTY #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
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VICTIM NAME (FIRST, MIDDLE, LAST)

SUSPECT STREET ADDRESS CITY, STATE, ZIP

WITNESS HOME PHONE

AP / RP	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE
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ARRESTED ADDITIONAL INFORMATION

SPECIAL HANDLING / STATUS

Hate Crime / Gang Activity

Domestic Violence

Outside Agency Assist

NAME OF REPORTING EMPLOYEE | SIGNATURE
MISTINE FRANGO | *Mistine Frango*

SIGNATURE OF SUPERVISOR | SIGNATURE
M. Maqueda | *[Signature]*

RINVEST: Humane Society of Santa Clara Valley 2065 Martin Ave. Santa Clara CA 95050

new work address for Darrell Reiver? & number

(408) 277-5548

work cell

(408) 203-4819

777 N. 15th STREET SUITE # 700 SAN JOSE, CA 95110

Copy to D.A. Office

Copy to Local Law Enforcement:

Other:

GOVERNMENT DOCUMENT

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Page **4** of **17**

APR 2009 10:00 AM

BADGE NO 177	DATE 9-8-09
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BADGE 21	DATE 9-8-09
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CLEARANCE CODE:

ADDITIONAL CRIMES	
1	2007 BUSINESS & PROFESSIONAL CODE
2	
3	
4	
5	

ANIMALS					
Type	Breed	Color	Sex	Age	Name
1	ELEPHAS	ASIAN	GREEN	F	VARIOUS AGES +
2	MAXIMUS				NAMES
3	↓				
4					
5					

<input type="checkbox"/> Evidence obtained <input type="checkbox"/> Evidence sent to lab <input type="checkbox"/> Evidence released <input type="checkbox"/> Released to: <input checked="" type="checkbox"/> Photos taken Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <input checked="" type="checkbox"/> Video taken Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<input type="checkbox"/> Vehicle towed <input type="checkbox"/> Vehicle stored <input type="checkbox"/> Vehicle impounded <input type="checkbox"/> Towed by: <input type="checkbox"/> Stored by: Released to: _____
---	--

LIST OF EVIDENCE	
1	102 PHOTOGRAPHS TAKEN BY C. BIONDI A7
2	1 8mm VIDEO TAPE APPROX. 10-15 MINUTES BY M. MITCHELL A7
3	
4	
5	
6	
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16	
17	
19	
20	



<input checked="" type="checkbox"/> NARRATIVE	DATE/TIME OF ORIGINAL INCIDENT 8-23-99	REPORT NUMBER A914-CISE/10	Page 7 of 17
<input type="checkbox"/> SUPPLEMENTAL			

At 1205 hours I arrived in uniform with Marcia Mayeda (W-2), Director of SBACS, at the intersection of Cinnabar and Autumn Street in the city of San Jose. Mayeda was wearing plain clothes and wearing a picture identification card and a badge. Several horses had already been unloaded from the train. We were greeted by [redacted] and [redacted] exchanged business cards. Shortly after our arrival, Sgt. Darrell Revier (W-3) of SBACS arrived on scene. Sergeant Revier was in plain clothes and wearing a picture identification card and a badge. Also present was officer Teri Reeve from SBACS(W-4) Reeve was in her department-issued uniform.

I met with Williams while Mayeda observed the unloading of the horses. I walked around to the rear side of the train and placed a thermometer through the window of the last boxcar. The car contained six to eight Asian elephants. The thermometer read 89 degrees Fahrenheit after approximately 30 seconds in the car. After approximately one minute I asked Williams to take the temperature in the same manner that I had. After about 20 more seconds the thermometer still read at 89 degrees

I walked to where Revier was standing, and we observed the unloading of the elephants. While watching the elephants, Revier and I observed one of the circus employees attempt to put a muzzle on a Lipizzan horse. The horse struggled while the man attempted to put the muzzle on. I noticed the muzzle was pressing up against the horse's nostrils and the horse was trying to pull the muzzle off. I asked the horse's handler to remove the muzzle and readjust it. The handler complied with my request.

NOT A FOIA DELETION

All of the remaining horses, elephants, and four zebras were removed from the train and walked to the San Jose Arena parking lot. During the walk I was beside a teenage boy (who I later learned was [redacted] by the name of [redacted] He was one of the [redacted] of two elephants. I noticed that each handler carried an ankus. An ankus is stick, commonly made of metal, approximately two to two and a half feet long, with a sharp hook on the side and sharp point on the end.

Upon arrival at the animal compound we were asked to wait while the elephants were placed on chains inside the tent. [redacted] was present and was available to answer our questions. As he escorted us into the elephant tent, Reeve observed what appeared to be blood behind the left ear of the elephant named Toby. I inspected the site as well and also saw blood streaming from two separate lacerations behind Toby's left ear. As these lacerations were evidence of possible violations of PC 596.5, I immediately asked Mayeda to bring both my 35-mm camera and video camera so I could document the findings.

Based on Toby's injuries, I told [redacted] I needed to examine each elephant for injuries. [redacted] helped me examine each elephant. He told me the names of each elephant and said he was [redacted]

Mayeda videotaped my examinations while I examined and photographed the elephants. Revier stood beside me and wrote down my observations as I narrated them. Williams



REPORTER NAME NICHOLE GARCIA	BADGE # A7	DATE 9-8-99	REVIEWER NAME MARCIA MAYEDA	BADGE # 21	DATE 9/19/99
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<input checked="" type="checkbox"/> NARRATIVE	DATE/TIME OF ORIGINAL INCIDENT	REPORT NUMBER	Page 3 of 7
<input type="checkbox"/> SUPPLEMENTAL	9-23-99	PC97-015840	

stood by I was able to look over 13 of the 14 elephants. After I had examined eight of the elephants, I was joined by Dr. Lindsey, the veterinarian who works for RBBBC.

Seven of the elephants had injuries behind or on the back of their left ears. Some of the elephants had scars behind their left ears. Almost all of the injuries appeared to be fresh, with bright red blood present at the wound sites. One of the elephants had a larger laceration with what appeared to be dried blood. None of the elephants appeared to have any injuries or scarring behind their right ears. One of the elephants, named Mary, had two lacerations on her lower left flank. Another elephant named Assan had lacerations and scars on both her trunk and forehead. An elephant named Baby had abrasions on the back of her left ear. She also had a laceration on her front left foreleg and on the back of her left ear.

All of the injured elephants belonged to Ringling Brothers Circus. None of the three contracted elephants had any injuries, however they were constantly swaying from side to side.

I asked ^{do} [] if he knew where these injuries could have come from. [] ^{do} stated they possibly were caused by the other elephants. I overheard Williams ask Lindsey if he thought Toby's injuries might have come from an ankus. Lindsey stated that he could not deny that they were caused by ankuses.

I was unable to examine an elephant known as Luna. As we attempted to look behind her left ear, Luna let out a loud noise, similar to a growl, and began spraying urine. Luna's urination pattern was different from the urination patterns of the other elephants I had examined. Approximately three other elephants had urinated while I was in the barn. While the urine was in large amounts, the other elephants' urine streams were contained to a normal area. Luna's urination pattern was a wide ranged spray and was released while she was vocalizing. Based on my experience in animal behavior, Luna appeared terrified and urinating out of fear. She then started to retreat sideways away from both ^{do} [] and myself, while still urinating. Luna's vocalizing and urination intensified. All of the other elephants started to become anxious and the atmosphere became chaotic. Some of the other elephants started to vocalize.

At that time an air compressor hose outside of the elephant barn broke from its coupling. More of the elephants began vocalizing and became anxious. I told [] I did not want to stress Luna any more and that we should come back to her after she calmed down. Wells stated it would not make any difference because Luna was a stressful elephant, did not like to be handled, and was a difficult elephant. I told [] to leave Luna and we ^{do} could move on to the next elephant.

At this point Lindsey questioned me as to what I was doing, and expressed concern for my observations. Lindsey asked me to tell him how I chose to categorize injuries as lacerations, rather than abrasions. Lindsey told me he categorized the injuries I saw as abrasions, not lacerations. He told me he considers lacerations to be wounds that require sutures. Lindsey stated that the injuries on these elephants did not require suturing.



PREPARER NAME	SADGE #	DATE	REVIEWER NAME	SADGE #	DATE
[]	77	9/23/99	[]		

<input checked="" type="checkbox"/> NARRATIVE	DATE/TIME OF ORIGINAL INCIDENT	REPORT NUMBER	
<input type="checkbox"/> SUPPLEMENTAL	B-23-619	AG-65810	Page 9 of 17

although they were bleeding and the skin was punctured and torn. Lindsey stated he would classify these injuries as abrasions. I told Lindsey that when I was finished with the examinations we could begin examining the elephants again so he could give me his medical opinion of the injuries on the elephants I had already examined.

Lindsey expressed a concern for our documentation of the injuries and I repeatedly informed him and [] that our presence was to monitor public safety, sanitation issues, and humane treatment of the animals. I also repeatedly stated we wanted to help them comply with all of the city municipal and California State Penal Codes. I did express a concern for the injuries on the elephants and informed them that the Humane Society would not tolerate any mistreatment of the animals. I did inform them that these injuries appeared to be consistent to those of what an ankus would cause and there was a possibility they might be in violation of the California State Penal Code.

We moved on to look at the other animals. I asked [] if I could have a list of all the elephant handlers, particularly the ones who were walking the elephants from the train to the animal compound. I also asked if he could specify what handler was in charge of each elephant. [] gave me a list of names, but was uncertain of all the information. This is the list [] gave me: (also refer to attached copy)

[] gave us a lengthy tour of the animal compound, including all the animals that were privately contracted through Ringling Brothers. We looked at the horses through their stall doors, and also saw camels, royal yaks, zebras, alpacas, ostriches, and angora goats. All of these animals were examined only visually, with no physical contact. One Lippizan stallion that belonged to RBBBC, "Duke", had a bandage on his left hind ankle. Dr. Lindsey stated that Duke was under treatment for proud flesh but was sound.

We then saw the big cats. There were tigers and one leopard. They all had access to water and shade in their cages. [] pointed out that there were misters for hot weather inside the cages. However, they were not in use at the time, because the water connections had not yet been made.

We then inspected the private acts containing domestic dogs. I noticed they were kept the majority of the time in dog crates. The crates appeared to be clean and the trailers they were kept in were fairly cool for such a hot day. However, they did not appear to have continuous access to any water, with the exception of two - three Poodles in the second of the three different acts.

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PREPARED BY C. M. []	BADGE # A7	DATE 9/8/94	REVIEWER NAME []	BADGE # A1	DATE 9/8/94
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<input checked="" type="checkbox"/> NARRATIVE	DATE/TIME OF ORIGINAL INCIDENT	REPORT NUMBER	Page 11 of 17
<input type="checkbox"/> SUPPLEMENTAL	08-23-99	A99-01580	

b6 I told [redacted] needed all of the elephant's names, and the order they were walking in the day before. I also needed to know what handler was in charge of each elephant at the time, so that I could ensure my report would be accurate. In summary [redacted] gave me the following statement.

b6 STATEMENT OF [redacted] was the [redacted] the elephants and the elephant handlers. Some of the elephants were just stupid and clumsy animals. They always trained and walked the elephants on the animals' left sides, and never on the right sides. They always try verbal commands and only use rewards when they are training the elephants (apples, bread, and carrots). The elephants always walk in the same lineup and have the same handlers. [redacted] gave me the lineup from the walk the previous day and what elephants the handlers were in charge of.

The elephant handlers (and elephants they handled) were: [redacted] (Siam and Baby), [redacted] (Tonka and Luna), [redacted] (Assan and Bonana), [redacted] (Asia, Tonka, and Luna), [redacted] (Vicky, Judy, and Jenny), and [redacted] (Toby and Banco, Sarah on the walk).

NOT A FOIA DELETION

b6 [redacted] stated that during the walk from the train to the compound, the order of the elephants and who was handling and walking with them was (there was usually two elephants per handler):

Order of the elephants (name of handler):

1. Asia [redacted]
2. Tonka [redacted]
3. Luna [redacted]
4. Assan [redacted]
5. Bonana [redacted]
6. Sarah [redacted]
7. Mary [redacted]
8. Toby [redacted]
9. Banco [redacted]
10. Vicky [redacted]
11. Judy [redacted]
12. Jenny [redacted]
13. Siam [redacted]
14. Baby [redacted]

NOT A FOIA DELETION



b6 [redacted] stated that after I left the previous day he had examined the elephants' lacerations, and after wiping away the blood noted that the injuries were smaller than they had appeared. [redacted] stated that the amount of blood covering the area and seeping into the elephants' wrinkled skin made the injuries appear larger. [redacted] said the injuries could have come from the train, but was not sure.

PREPARER NAME	SADGE #	DATE	REVIEWER NAME	SADGE #	DATE
(11) LUTHE FRAMER	177	8-23-99	[redacted]	21	9/8/99

<input checked="" type="checkbox"/> NARRATIVE	DATE/TIME OF ORIGINAL INCIDENT	REPORT NUMBER	Page 1 of 7
<input type="checkbox"/> SUPPLEMENTAL	8-23-99	899-55E-10	

b6 I asked what would happen to circus employees who abused the animals.
 b6 stated depending on the severity of the abuse the person would usually be transferred to another department in the circus, or sometimes fired.

Wednesday, 8-25-99

On Wednesday, 8-25-99, at 1845 hours, Mayeda, Williams, and I arrived at the San Jose Arena. We each stood at different locations. Williams was near the animal compound, Mayeda was at the animal dressing area, and I was at the entrance to the back area of the arena on the corner of West Saint John and Montgomery Street. We observed all of the animals as they were walking into the dressing area before they started their performance.

At approximately 1915 hours, Officers Don Ponce of SBACS (W-7) and Reeve arrived with Humane Society employee Kelly Zantow. They were in plain clothes and were present to observe the show. They purchased three tickets and I asked them to take notes based on their observations. They timed each performance to give us an example of how much exercise each animal gets during a performance. See Ponce's report.

During the show and in between acts I was approached by Mark Gaipo, General Manager of the Red Touring Unit. Gaipo introduced himself and asked what had happened on Monday. Gaipo said several employees had told him there might have been a problem with some of the elephants' injuries. I told Gaipo that I was concerned to find bleeding lacerations on the some of the elephants and that I had documented my findings.

b6 At some time during the show I had tried to engage in a casual conversation with
 b6 I had asked who his favorite elephants were. [b6
 gave the names of two elephants. He then stated he had a third favorite elephant, but he
 liked them all. I asked who his third favorite elephant was and he became
 b6 agitated. I said, "YOU JUST WANT TO KNOW WHO PUT THE SCARS ON
 b6 BABY'S EARS!" I told that I did not even know Baby had scars on her ears,
 and that I thought she just had a few cuts. then lit up a cigarette and turned to
 b6 one of his colleagues. appeared very angry and was complaining about the
 conversation that had just taken place.

Thursday, 8-26-99

On Thursday, 8-26-99, I received a voicemail from a concerned citizen regarding the Persian cats that had performed in the circus show the previous night. The citizen stated that she had a telescopic lens on her camera, and she thought the cats appeared to be starving.

Later that evening I attempted to make contact with the owners of the Persian cats. They were a subcontracted act, and I remembered them as being very open and cooperative about seeing their animals on Monday. Ponce was with me when I made contact with the owners. I told them I had received a complaint regarding their cats and asked if I could take another look at them. While English was not their native language, both the husband and wife understood my question and openly invited us into the area where they had kept



PREPARER NAME	BADGE #	DATE	REVIEWER NAME	BADGE #	DATE
M. J. H. [unclear]	17	8-25-99	M. J. H. [unclear]	21	8-15-99

<input checked="" type="checkbox"/> NARRATIVE	DATE/TIME OF ORIGINAL INCIDENT	REPORT NUMBER	Page 13 of 17
<input type="checkbox"/> SUPPLEMENTAL	8-28-99	1999-0520	

their animals. They opened up the cages to the cats housing and allowed me to handle the cats. I was able to determine that the cats were not underweight.

At that time I was approached by Lindsey Gaipo, and an unidentified adult white male (approx. 6'2", 180 lbs., brn hair, wearing a tuxedo). The triangulated positions they took made it impossible for me to watch them all at the same time, and raised officer safety concerns in my mind. The unidentified man stood directly behind me, while Lindsey and Gaipo stood in front of me. Officer Ponce stood behind me and to the left, a couple feet away from the man who was behind me. Lindsey's face was red and some of the veins in his facial area were pulsating. He was very angry. Lindsey stated to me that he was very angry and it was that it was taking a lot of effort for Gaipo to control him at that moment. I told Lindsey to feel free to express his concerns.

Both he and Gaipo expressed their anger at me for not asking them to accompany me while inspecting the cats. Both Lindsey and Gaipo caught me off guard with their anger. I responded by stating I had received a complaint from a concerned citizen earlier in the day and I just wanted to briefly examine the cats. Words were exchanged between both parties and we cleared the area so that we could examine veterinary records for the circus animals. As we walked to the trailer where the records were kept, I told Lindsey that the heated conversation that had just taken place was "water under the bridge," and that we could start over with no hard feelings. Lindsey appeared to be at ease and with a smile told me he would meet me in a short while at the trailer. I then went looking for Mayeda and Williams.

Upon finding Mayeda, I explained to her what had just occurred, and told them I did not feel comfortable meeting with them alone. Due to the rage exhibited by Lindsey and Gaipo, combined with the potentially unsafe position they placed me in, I requested that both she and Williams accompany me. We then met with Lindsey and Gaipo and I reviewed veterinary records and permits while Mayeda spoke with Gaipo. Williams stood by and spoke with Lindsey.

After reviewing paperwork I asked Lindsey if I could have a brief private conversation with him. Lindsey agreed. I apologized to Lindsey for not asking him to accompany me during the examination of the cats. I explained that I hadn't realized he wanted to be present each time I looked over an animal. I also told him I was pleased with the condition of the cats and thought the complaint would warrant no merit.

I also stated to Lindsey that he approached me in a very confrontational and threatening manner, and I asked that he not approach me in such a way again. I told him that we would not be able to effectively communicate with each other in an angry manner. I explained to Lindsey that to hinder any type of work an officer was conducting could result in negative consequences, such as an arrest. I apologized again to Lindsey for any misunderstandings and the conversation ended.

I then met with Mayeda and Gaipo. I requested a copy of the veterinary records for the circus animals. Gaipo stated it would be over 600 copies of paperwork. I told Gaipo I

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OTHER FILES YOU WANT TO

PREPARER NAME	BADGE #	DATE	REVIEWER NAME	BADGE #	DATE
Christine Gannon	17	9-6-99	Michelle Gannon	21	9/15/99

<input checked="" type="checkbox"/> NARRATIVE	DATE/TIME OF ORIGINAL INCIDENT	REPORT NUMBER	Page / of 17
<input type="checkbox"/> SUPPLEMENTAL	E-33-99	ACV-15840	

didn't want to inconvenience him and that I would review the documents again, deciding which information was necessary for me to have.

I asked Gaipo if I could speak with him alone. Mayeda left the trailer, leaving only myself, Gaipo, and one other circus employee. I apologized for not asking him to accompany me on the inspection of the Persian cats. I also stated that I was concerned for the way he had approached me regarding that issue. I told Gaipo he had approached me in an inappropriate, threatening manner. I also explained to him that interfering with the work of a humane officer could result in negative consequences, such as an arrest. I explained to Gaipo I was not threatening him in any way, and I just wanted him to have a clear understanding of what was inappropriate. Gaipo questioned my age. He began to tell me his experiences and his educational background. We eventually engaged in a casual conversation about California and other non-work related topics. The conversation ended on a very positive note and I told Gaipo I would see him later.

After the show, Gaipo asked me if we were going to be there over the weekend. I told him we would and Gaipo was pleased. Gaipo stated it would be good if we were there so our agency wouldn't get overwhelmed with complaints from the public concerning the animals.

Friday, 8-27-99

On Friday, 8-27-99, I arrived at the Arena at 1728 hours with Reeve and SBACS Officer Kim Flores (W-8). On scene was SBACS Officer Joshua Whiskey (W-9). I was immediately approached by Steve Kirsner, Booking and Event Manager for the San Jose Arena.

Kirsner's demeanor was confrontational and he expressed a strong concern for our presence at the Arena. He stated that the circus was his client, and any issues I might have with the circus should be brought directly to him. He told me he had received numerous complaints of my entering dressing room areas where employees kept personal belongings. I told Kirsner those were false accusations.

Kirsner also stated that the circus did not appreciate me requesting 600 copies of veterinary records. Kirsner said he had a problem with Sgt. Williams's presence at the Arena. He stated he had already put in a telephone call to her supervisors, who gave him the understanding she was did not have the authority to be there.

I explained to Kirsner that I was there to ensure public safety, sanitation, and humane treatment of all the animals and that these accusations were not accurate. Kirsner told me he was a taxpayer, and in essence my employer. I told Kirsner that I was employed by a private entity and that he was not my employer. Kirsner said he must have not correctly articulated himself and still did not understand why I was present. He stated that I should have notified him that I would be there and that every time I chose to be present at the Arena I needed to notify him. I told him I understood his position, and told him I was late for a 5:30 meeting with Mr. Gaipo. I shook his hand and cleared the scene at 1736 hours.

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PREPARER NAME	BADGE #	DATE	REVIEWER NAME	BADGE #	DATE
Kim Flores	197	8-27-99	Steve Kirsner	24	9/15/99

<input checked="" type="checkbox"/> NARRATIVE	DATE/TIME OF ORIGINAL INCIDENT	REPORT NUMBER	Page/Of 17
<input type="checkbox"/> SUPPLEMENTAL	8:25:19	AG-1544	

I met with Gaipo to look over the veterinary records for the circus animals. Gaipo asked me how I was doing and I told him I was just approached by Kirsner. I told Gaipo that Kirsner said I was to deal directly with him instead of the circus. I also told him that Kirsner said he had received complaints from the circus regarding our presence. Gaipo said he thought that was weird because he had not spoken with Kirsner, and it was only appropriate for me to deal directly with the circus. I looked through the veterinary records again and requested copies of approximately 25-30 documents. Gaipo said he would have them ready in 20 minutes. I told Gaipo I would be back in a couple of hours and that I did not want to inconvenience him. I told Gaipo to take his time and I would return later. Gaipo showed me where he would leave the documents in case he was not there when I returned. I left to observe the animals.

During the day I had noticed that [redacted] ^{DO} was ignoring me. After attempting to greet him several times and being rebuffed, I finally realized [redacted] did not want to communicate ^{DO} with me or acknowledge my presence. I later learned from Sgt. Williams that [redacted] was ^{DO} angry with me and did not want to have any dealings with me.

During the show I noticed one of the elephants had a laceration, approximately 14 - 12 inch in length, horizontally across its trunk. There was fresh blood present and it appeared that the injury was very recent. I asked Sgt. Williams to have the injury ^{DO} examined by [redacted] since she had a better rapport with him at this time to make the request.

Later that afternoon the zebras escaped from their handler during their walk from the Arena to their stables. I was alerted by a scream as I was walking with the zebras back to their stables. I turned around saw two zebras, tied to each other by their halters, galloping down Montgomery Street. I immediately instructed the a citizen next to me to get back from danger, and radioed Reeve to keep herself and others clear from danger.

I watched ^{DO} from approximately 50 yards as numerous circus employees, including [redacted] tried to catch the zebras. The zebras frantically ran in both the north and south directions to avoid capture. I noticed a handler with two white Lippizan Stallions, frightened by the zebra commotion, trying to prevent them from breaking free of his control and escaping. The zebras were finally captured after approximately 45 seconds to one minute.

A woman and her small crying child, approximately two years of age, were quickly passing by. The woman was yelling in anger and stated she and her baby were almost trampled by the zebras. She said luckily a woman pulled her and her baby to safety, by allowing her access to her yard through a closed gate. The woman stated she wanted to make a complaint and another bystander took her name and phone number and gave it to me. As the woman was leaving I told her I might be contacting her in the near future.



PREPARER NAME	BADGE #	DATE	REVIEWER NAME	BADGE #	DATE
CHRISTINE GRAMER	177	9/15/17	CHRISTINE GRAMER	177	9/15/17

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<input type="checkbox"/> SUPPLEMENTAL	8-23-99	AGC-015240	7

I returned to the trailer after the show to retrieve the documents. Gaipo was not present. I asked [redacted] if she would please check his desk for them. She found the documents and handed them to me.

I saw Gaipo as I was leaving the Arena. He asked again if we were going to be present over the weekend. I told him yes. He expressed relief by stating it would be good for us to be present so we would not get inundated with complaints regarding the circus animals. He felt that since we would be on scene, those complaints could be reduced by our presence. He also said the weekends were a busy time for animal agencies to receive complaints, because people had more time to sit around and complain.

Saturday, 8-28-99

On 8-28-99, during the second performance and while the elephants were being dressed, I noticed that Baby was reluctant to obey. [redacted] repeatedly asked baby to "Go down." [redacted] asked Baby approximately four times. Baby just stood still and [redacted] appeared to become angered. He murmured what sounded like threatening language near the elephant's left ear. I saw [redacted] raise his ankus in Baby's line of sight. Baby then complied with [redacted] verbal commands.

I was at the Arena with SBACS employee Dareyn Lanier (W-10), when speaking with [redacted]. During our conversation [redacted] made this statement regarding an elephant named Luna: "I probably shouldn't be saying this, but Luna is the psychotic one in the bunch." He also told me that "Luna" was short for "Lunatic".

During the course of the three shows throughout the day, the zebras were not used.

There were also several comments made by one of the horse handlers that his horse always "acted up", and that he did not feel comfortable handling it. He also told me that if the stallions misbehave, he will tell them, "I'm gonna beat your butt" and they would cooperate.

There were several elephants with fresh wounds on their bodies that required closer inspection. However, due to [redacted] animosity and the fact that he was our main contact for the circus, I felt it was most appropriate to develop an alternative option for communications. I telephoned Mayeda and expressed my concerns, telling her that both the circus and Arena management had become hostile. I told her that several elephants had new injuries and needed to be examined. I told her I had planned to look at the elephants one more time, on Sunday, before they left San Jose. However, due to the circumstances, I asked her if she would be the lead contact for the final inspection of the elephants. I told her I believed her presence could diffuse their animosity and keep the interactions on a workable level. Mayeda agreed.

Sunday, 8-29-99

At approximately 1345 hours, Mayeda arrived at the Arena. She met with [redacted] while I observed the animals at the dressing area. Mayeda made arrangements with [redacted] to [redacted]



PREPARER NAME	SADGE #	DATE	REVIEWER NAME	SADGE #	DATE
(1) M. STALE (signature)	47	9-8-99	(signature)	4	9/15/99

<input checked="" type="checkbox"/> NARRATIVE	DATE/TIME OF ORIGINAL INCIDENT	REPORT NUMBER	Page 17 of 17
<input type="checkbox"/> SUPPLEMENTAL	8-23-99	1209-015310	

examine the elephants at 1900 hours when Dr. McCormick, the circus's on-call veterinarian, arrived. Dr. McCormick arrived on scene at approximately 1900 hours.

Mayeda told us (me, Reeve, Williams) that [redacted] told her they would be in a hurry to load all the animals after the show ended. He planned to water the elephants one more time after the last show, and they walk them to the train. We could examine them during their watering.

A short while later, Gaipo approached us and asked if there were any problems. Mayeda told him she was aware they were under time constraints, and if was more convenient for them we could look at the elephants sooner, so as not to delay their departure. Gaipo said that was fine, and we should arrange that with [redacted].

Mayeda found [redacted] later and relayed this information to him. He brought us to look at the elephants. We saw new wounds on the first two elephants, but then the elephants had to be brought to the Arena for the last show. McCormick arrived at this time. Mayeda and I waited by the animal pens while Williams, McCormick, and Reeve walked with the elephants to the arena.

The elephants were brought back and made to stand in a row, but without chains. All of their chains and electric tape corrals had been dismantled. We waited for [redacted] to tell us we could return to look at the animals. [redacted] busied himself with other work. Finally, Mayeda approached him and asked when we could continue our examinations. He told her we had to wait for [redacted].

After approximately ten minutes [redacted] appeared from his trailer. He did not make contact with us, but stood by the elephants. As it was getting dark, Mayeda again approached and asked to continue our inspection. He told her we had to wait for his [redacted] to escort us.

Finally [redacted] brought us to look at the elephants. Mayeda and Williams examined the elephants while I took photographs of wounds. Reeve prepared the photo ID cards. Mayeda only asked to see Banco, Toby, Bonana, Tonka, and Siam - the elephants we had seen fresh wounds on. Siam had dried blood behind her left ear. Toby had five lacerations behind her left ear. Two were approximately one inch long, and three were approximately 1/2 inch long. Tonka had fresh blood behind her left ear. I photographed the wounds.

Due to the darkness, animosity from the circus and Arena management, and their hurry to leave, we were unable to perform thorough examinations on these elephants. We were unable to look at the other elephants at all.

We walked alongside the elephants, horses, and zebras as they were walked back to the train. The animals were loaded and we cleared the scene at approximately 2100 hours.

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OTHER PAGES THIS CASE NO.

PREPARER NAME	SADGE #	DATE	REVIEWER NAME	SADGE #	DATE
Michelle [redacted]	177	9-5-04	[redacted]	21	9/5/04

SUPPLEMENTAL REPORT

DATE OF ORIGINAL INCIDENT

TIME OCCUR

REPORT NUMBER

8/23/99

1130-1510 hrs.

A99-0.5490

ADDITIONAL PARTIES:

PARTY #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
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US: NAME (FIRST, MIDDLE, LAST)
 PEOPLE OF THE STATE OF CALIFORNIA

RECEIVED FEB 22 2002

WITNESS STREET ADDRESS CITY, STATE, ZIP

AP / RP HOME PHONE OTHER PHONE BUSINESS ADDRESS

ARRESTED VEHICLE YEAR MAKE MODEL COLOR TYPE LICENSE NUMBER STATE

ADDITIONAL INFORMATION

PARTY #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
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SUSPECT NAME (FIRST, MIDDLE, LAST)
 RINGLING BROTHERS BARNUM AND RALEY CIRCUS

WITNESS STREET ADDRESS CITY, STATE, ZIP

AP / RP HOME PHONE OTHER PHONE BUSINESS ADDRESS

ARRESTED VEHICLE YEAR MAKE MODEL COLOR TYPE LICENSE NUMBER STATE

ADDITIONAL INFORMATION

P #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
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SUSPECT NAME (FIRST, MIDDLE, LAST)

WITNESS STREET ADDRESS CITY, STATE, ZIP

AP / RP HOME PHONE OTHER PHONE BUSINESS ADDRESS

ARRESTED VEHICLE YEAR MAKE MODEL COLOR TYPE LICENSE NUMBER STATE

ADDITIONAL INFORMATION

PARTY #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
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SUSPECT NAME (FIRST, MIDDLE, LAST)

WITNESS STREET ADDRESS CITY, STATE, ZIP

AP / RP HOME PHONE OTHER PHONE BUSINESS ADDRESS

ARRESTED VEHICLE YEAR MAKE MODEL COLOR TYPE LICENSE NUMBER STATE

ADDITIONAL INFORMATION

GOVERNMENT
 EQUIPMENT
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REPORTER NAME SIGNATURE TITLE BADGE NO. DATE
 Keith [Signature] N. Review SERGEANT 552 9-2-99

SIGNATURE OF REVIEWER TITLE BADGE NO. DATE
 [Signature] ALVAREZ 77 9-8-99

NARRATIVE
 SUPPLEMENTAL

DATE OF ORIGINAL INCIDENT

8/23/99

OCCURRED

130 - 1510

REPORT NUMBER

499 015450

RECEIVED FEB 22 2002

SYNOPSIS: On 8/23/99 at approximately 1130 hrs. I arrived at the intersection of Cinnabar and Montgomery Streets in San Jose to assist Investigator Franco. A7, in an inspection of the Ringling Brothers Barnum and Bailey Circus animals. I observed 14 Asian elephants and approximately 40 horses of different breeds being unloaded from the train cars in preparation for storage at the San Jose Arena. I accompanied Franco and the animals to the parking lot to the north of the Arena where the animals were going to be temporarily housed. Upon arrival at the Arena Investigator Franco began to examine the animals for possible animal cruelty violations. I assisted Franco by taking notes of injuries Franco found. We made contact with the circus' veterinarian, Dr. Lindsay in the middle of the examinations. We finished the examinations at approximately 1500hrs. and cleared the Arena at approximately 1510hrs.

NARRATIVE: On 8/23/99 at approximately 1130hrs. I arrived at the intersection of Cinnabar and Montgomery Streets in San Jose to assist Investigator Franco with an investigation of the Ringling Brothers Barnum and Bailey Circus. The circus staff was unloading animals from the train box cars upon my arrival. I stood by with Franco and observed the animals as they were being unloaded. As we were watching the animals, one of the circus staff members wearing a red polo type shirt was attempting to muzzle a large white horse that was standing directly in front of me. The horse appeared to not want to be muzzled but the muzzle was successfully applied. As the staff member walked away Franco and I both saw the muzzle was applied so tightly that the horse's nostrils were peeled back and it was apparent the horse was having difficulty breathing. The nostrils were almost completely closed off due to being peeled back so severely. Franco and I both told another circus staff member the muzzle had to be loosened or removed and a large muzzle placed on the horse. The circus staff member immediately called for assistance and the muzzle was changed. Once the animals were all unloaded we started to walk south on Montgomery Street, heading to the San Jose Arena. I walked at the end of the line of horses and elephants on the left side. I was walking next to San Jose Police Sergeant L. Williams # 2345. When we arrived at the Arena parking lot the animals were then walked into a large holding area where they were restrained by chains under a large canopy. The canopy was approximately 75 yards long and 55 yards wide. The elephants were chained to large spikes in the asphalt and the horses were put into temporary corrals that were approximately ten feet by ten feet. Franco began to examine the elephants with the assistance of the circus.

named [] As Franco found injuries I documented them in my notes. See page 4 "Injuries" for documented injuries. A man later identified as Dr. Lindsey was walking close by talking on a cellular phone. [] was holding back the elephant's ears as Franco took photos and pointed out injuries to me for documentation. As Franco and I continued to examine the animals Dr. Lindsey approached and asked what we were doing. Franco explained what was happening and what had been documented so far.

STATEMENTS OF LINDSEY: Lindsey stated the injuries we had documented on several elephants were not lacerations as I had listed them. He argued that they were more like abrasions. Lindsey defined a laceration as an injury that would require sutches to repair. Lindsey defined abrasions as a rubbing or scraping of the skin.

NARRATIVE CONTINUED: As Lindsey observed Franco and I, I told Lindsey that we could go back to the beginning of the animals and re-evaluate the documented injuries and make corrections if needed. He agreed and we continued the examinations. As we worked our way through the elephants we arrived to an elephant named "Luna". As [] tried to pull back the elephant's ear she became very upset and turned away from [] "Luna" then began to growl loudly. "Luna" then became very upset and trumpeted loudly several times. "Luna" began to sway back and forth as she showed her fear or anger. "Luna" also began to urinate when [] attempted to calm her. The urination was not the same as the other elephants who were relaxed



PREPAPER NAME: [] BADGE NO: 552 DATE: 11/2/99 REVIEWER NAME: [] BADGE NO: [] DATE: 11/2/99

NARRATIVE SUPPLEMENTAL	DATE OF ORIGINAL INCIDENT	TIME OCCURRED	REPORT NUMBER
	5/23/99	11:30 - 1:50	A99-015-50

and not stressed had been doing. "Luna" urinated in long streams, which sprayed over a wide area. She seemed very tense and did not want to be touched. Franco told [redacted] we could come back to her when she was calmer. [redacted] stated it would not make a difference. At that time an air compressor hose broke free and began to cause a loud hissing and banging noise which appeared to frighten the elephants. The animals began to sway and vocalize until the hose was turned off. Once the hose was controlled, the animals began to relax and settle down. We finished the inspection of the elephants and moved on to the horses under the canopy. We observed one horse named "Vegas" which had a taped ankle. According to [redacted] the horse was not currently being used in the show and was due to be retired from the circus at their next stop, which was Sacramento, California. We finished examining the horses under the canopy and moved on to another canopy where more horses and other animals were housed. No injuries or concerns were documented. After the animals under the canopies, we inspected two different groups of domestic dogs that were used in the shows. Franco warned one dog owner that the dogs needed water at all times. The dog handler reluctantly gave the dogs more water. After the dogs we examined approximately twelve (12) tigers that were housed in cages near the dogs. No injuries or concerns were documented. After the tigers we walked into the Arena and inspected the area housing pigeons and Persian cats that were also used in the shows. No injuries or concerns were documented. Finally, we inspected one more area where domestic dogs were housed. Williams noted an Airedale dog had a hot spot on one of its sides. No other injuries or concerns were documented. When we finished the inspection [redacted] and Lindsey met with us and we told them everything looked in order. [redacted] asked how he might obtain a copy of the report. Franco explained at that she does not just give copies of her reports out.

STATEMENTS OF [redacted] After being told he would not be able to get a copy of Franco's report [redacted] stated, "Then there may be a problem with our attorneys and the pictures you took." I then explained he could request a copy through the official channels, if a report was even written.

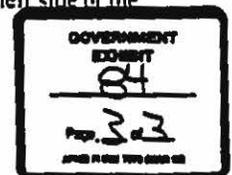
NARRATIVE CONTINUED: After talking about the reports we all shook hands and parted ways. Franco and I cleared the scene at approximately 1:10 hrs.

PHYSICAL EVIDENCE: None.

INJURIES: The following injuries were documented:

- "Toby" 2 Lacerations behind left ear-consistent with the use of an akus as noted by Dr. Lindsey.
- "Siam" 3 lacerations on the left, outer ear canal and behind the left ear.
- "Banco" 1 healing laceration, 1 large scar and 3 small lacerations on the left ear.
- "Mary" 2 lacerations on the left rear hip.
- "Sarah" 1 small laceration behind the left ear.
- "Bananna" Left eye was red and irritated with white discharge. Animal continuously rubbed the eye with her trunk.
- "Assan" 2 lacerations on the rear of the left ear and 1 laceration on the left side of the forehead.
- "Baby" Laceration on the left front leg and to the lower left side of the face (jowl area).

ADDITIONAL INFORMATION: None.



PREPARED BY	BADGE NO.	DATE	REVIEWER NAME	BADGE NO.	DATE
		5/23/99			

<input checked="" type="checkbox"/> SUPPLEMENTAL REPORT	DATE OF ORIGINAL INCIDENT 8/27/99	TIME OCCUR. 1400	D	REPORT NUMBER A99-015840					
<input type="checkbox"/> ADDITIONAL PARTIES:									
PARTY #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
SUSPECT	NAME (FIRST, MIDDLE, LAST)								
WITNESS	STREET ADDRESS						CITY, STATE, ZIP		
AP / RP	HOME PHONE	OTHER PHONE		BUSINESS ADDRESS					
ARRESTED	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE		
ADDITIONAL INFORMATION									

RECEIVED FEB 22 2002

PARTY #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
SUSPECT	NAME (FIRST, MIDDLE, LAST)								
WITNESS	STREET ADDRESS						CITY, STATE, ZIP		
AP / RP	HOME PHONE	OTHER PHONE		BUSINESS ADDRESS					
ARRESTED	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE		
ADDITIONAL INFORMATION									

PARTY #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
SUSPECT	NAME (FIRST, MIDDLE, LAST)								
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AP / RP	HOME PHONE	OTHER PHONE		BUSINESS ADDRESS					
ARRESTED	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE		
ADDITIONAL INFORMATION									

PARTY #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
SUSPECT	NAME (FIRST, MIDDLE, LAST)								
WITNESS	STREET ADDRESS						CITY, STATE, ZIP		
AP / RP	HOME PHONE	OTHER PHONE		BUSINESS ADDRESS					
ARRESTED	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE		
ADDITIONAL INFORMATION									

REPORTER NAME VALUCC BARBARA	SIGNATURE <i>Barbara</i>	TITLE HUMANE OFFICER	BADGE NO. 453	DATE 8/31/99
SIGNATURE OF REVIEWER <i>[Signature]</i>	TITLE <i>[Title]</i>	BADGE NO.	DATE 9/8/99	

GOVERNMENT
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APR 1999 1000 0000 0000

NARRATIVE
 SUPPLEMENTAL

DATE OF ORIGINAL INCIDENT
 8/27/99

T.M. SCOPED
 1400

REPORT NUMBER
 A99-015240

Synopsis:

ON AUGUST 27, 1999, AT APPROXIMATELY 1330 HOURS I ARRIVED WITH INVESTIGATOR FRANCO AT THE SAN JOSE ARENA TO OBSERVE THE RINGLING BROTHERS CIRCUS. I STAYED THROUGHOUT THE AFTERNOON SHOW WHICH ENDED AT APPROXIMATELY 1600 HOURS. WHILE OBSERVING THE ELEPHANTS TWO APPEARED TO HAVE FRESH PUNCTURES ON THEM, AND SEVERAL ELEPHANTS BEGAN USING THEIR TRUNKS TO DRINK UP ANY DROP OF LIQUID INCLUDING POOLS OF URINE FROM OTHER ELEPHANTS. ALL INFORMATION HAS BEEN FORWARDED TO INVESTIGATOR FRANCO FOR FURTHER INVESTIGATION.

NARRATIVE:

ON AUGUST 27, 1999, AT APPROXIMATELY 1330 HOURS I ARRIVED WITH INVESTIGATOR FRANCO AT THE SAN JOSE ARENA TO OBSERVE THE RINGLING BROTHERS CIRCUS. I STAYED THROUGHOUT THE AFTERNOON SHOW WHICH ENDED AT APPROXIMATELY 1600 HOURS. WHILE OBSERVING THE ELEPHANTS LINED UP SIDE BY SIDE BEFORE THE FIRST ENTRANCE, TWO OF THEM APPEARED TO HAVE FRESH PUNCTURES ON THEM. I AM UNSURE OF THE ELEPHANTS NAMES, BUT THE FIRST I NOTICED WAS IN THE CENTER AND HAD A PUNCTURE ON ITS LEFT CHEEK APPROXIMATELY 6" BELOW ITS EYE AND APPEARED TO HAVE SWOLLEN TISSUE AROUND IT. THE SECOND ELEPHANT WAS TOWARD THE FRONT OF THE LINE AND HAD A FRESH PUNCTURE HALF WAY DOWN ITS TRUNK ON THE FRONT LEFT SIDE. WHEN I LOOKED AT THIS PUNCTURE FIFTEEN TO TWENTY MINUTES LATER, BLOOD HAD COME TO THE SURFACE. TOWARD THE END OF THE SHOW THE ELEPHANTS WERE GIVEN ONE LOAF OF BREAD TO BE SHARED WITH ALL OF THEM, EACH GETTING A PIECE. IMMEDIATELY AFTER EATING THE BREAD, THE ELEPHANTS BEGAN USING THEIR TRUNKS TO DRINK ANY BIT OF LIQUID ON THE GROUND INCLUDING POOLS OF URINE FROM OTHER ELEPHANTS. ALL INFORMATION WAS FORWARDED TO INVESTIGATOR FRANCO FOR FURTHER INVESTIGATION.



PREPARED BY NAME
 WALLACE, BARBARA
 ECSSUPPLINE

SADGE NO. DATE
 H53 8/31/99

REVIEWER NAME
 [Signature]

SADGE NO. DATE
 [Signature] 9/8/99

<input checked="" type="checkbox"/> SUPPLEMENTAL REPORT	DATE OF ORIGINAL INCIDENT	TIME OCCURRED	REPORT NUMBER						
<input type="checkbox"/> ADDITIONAL PARTIES:	8-23, 25, 26, 27, 28, 29 - 1999		A99-015840						
PARTY #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
SUSPECT #	NAME (FIRST, MIDDLE, LAST)								
WITNESS #	STREET ADDRESS						CITY, STATE, ZIP		
AP / RP #	HOME PHONE	OTHER PHONE	BUSINESS ADDRESS						
RESTRICTED #	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE		
ADDITIONAL INFORMATION									

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PARTY #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
SUSPECT #	NAME (FIRST, MIDDLE, LAST)								
WITNESS #	STREET ADDRESS						CITY, STATE, ZIP		
AP / RP #	HOME PHONE	OTHER PHONE	BUSINESS ADDRESS						
RESTRICTED #	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE		
ADDITIONAL INFORMATION									

PARTY #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
SUSPECT #	NAME (FIRST, MIDDLE, LAST)								
WITNESS #	STREET ADDRESS						CITY, STATE, ZIP		
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RESTRICTED #	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE		
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PARTY #	DRIVERS LICENSE NUMBER / ID	STATE	SEX	HAIR	EYES	HEIGHT	WEIGHT	DOB	RACE
SUSPECT #	NAME (FIRST, MIDDLE, LAST)								
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AP / RP #	HOME PHONE	OTHER PHONE	BUSINESS ADDRESS						
RESTRICTED #	VEHICLE YEAR	MAKE	MODEL	COLOR	TYPE	LICENSE NUMBER	STATE		
ADDITIONAL INFORMATION									

GOVERNMENT
EXEMPT
87
Page 1 of 3
APR 1999

PREPARED BY	REVIEWER NAME	SIGNATURE	TITLE	BADGE NO.	DATE
	TERI S. REEVE	<i>[Signature]</i>	HUMANE OFFICER	434	11-1-99
	SIGNATURE OF REVIEWER		TITLE	BADGE NO.	DATE
	<i>[Signature]</i>		SERGEANT	552	11-15-99

NARRATIVE SUPPLEMENTAL	DATE OF ORIGINAL INCIDENT	TIME	CURRED	REPORT NUMBER
	8-23, 25, 26, 27, 28, 29-1999			1999-015840

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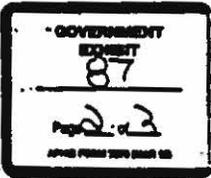
This is a supplemental report per the request of the Santa Clara County District Attorney's Office. Based on my observations while present at the Ringling Brothers Circus during the week of 8/23 through 8/29/99. I observed a few of the elephant handlers using their ankus' on the elephants.

During the time I was present and observing the animals, I noticed several different elephant handlers using their ankus' to poke and prod the elephants. This occurred when an elephant did not respond to verbal commands. The handler would ask the elephant to do an action and when the elephant failed to do so the handler would use the ankus to direct it. The handlers would poke the elephant on the feet or legs to move it backwards. The younger handlers would use the pointed end of the ankus and push on the elephant while using harsh verbal commands. Sometimes after the elephants had already complied a named [redacted] would still yell at the elephant for no apparent reason. He never appeared to be happy with the elephant even though it was just standing there.

The handlers would ask an elephant to do something such as "Go Down" and if the elephant wasn't moving fast enough they would smack it with the side of the ankus to hurry it up. One [redacted] in particular named [redacted] tried to never use his ankus in front of me and appeared very tense. I was concerned about his actions and watched him closely. [redacted] would use verbal commands and if the elephant did not respond he would become angry and tolerate it, not always using his ankus. I saw [redacted] come over two times and use his ankus to move the elephant for [redacted].

I asked one of the [redacted] where they got their ankus' from and he told me that they purchased the ankus' unassembled and put them together themselves. He also stated they would sharpen the hook. I was concerned with the comment, but was unsure if I should pursue the questioning and ignored his statement.

I saw [redacted] use his ankus, which appeared to be sharper than some of the others multiple times when the elephants would not comply and even sometimes when they were already in compliance. His actions seemed habitual. [redacted] would use the ankus mostly on the legs. However, I did see him use it several times on the elephant's trunks and a few times on their mouth and behind their ears. [redacted] and the [redacted] would poke the elephants with the sharpened end of the ankus and guide them in the direction they wanted them to move. On the last day when they were tearing down the tent I saw [redacted] use his ankus to make one of the elephants move. Using his body weight [redacted] forcefully yanked on the elephants' ear. Due to the hostile environment on that day I could not see if this action had caused injury, nor could I determine what elephant it was.



I knew most of the handlers were uncomfortable with the presence of the officers, more noticeably the younger gentleman. They always appeared to be in angry moods and did not make eye contact with me. They would look in all directions before they would interact with the animals. Sometimes they would slap the elephants with the side of the ankus to get it to move quicker or to obey. They would also verbally command the

REPORTER NAME	BADGE NO	DATE	REVIEWER NAME	BADGE NO	DATE
ERIC S REEVE	H34	11-21-99	[redacted]	552	11-15-99

ACSSUPPNLIN

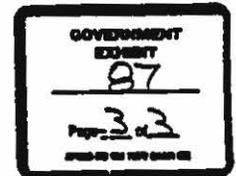
NARRATIVE SUPPLEMENTAL	DATE OF ORIGINAL INCIDENT	TIME OCCURRED	REPORT NUMBER
	8-23, 25, 26, 27, 28, 29 - 1999		A99-015840

elephants in an angry tone with the exception of [redacted] appeared to act ^{DU} more compassionately towards his three elephants. I never saw if the handlers would cause injury to the elephants, but over the course of the week I noticed several different elephants had new injuries (some bleeding) other than the ones we had originally seen on the first day. I did not notice any injuries on [redacted] elephants at any time. ^{DU}

Referencing page four of my original report, first paragraph, last sentence:

The younger aged elephant handlers appeared to be the ones who did not seem comfortable touching the elephants with their ankus in my presence. However, [redacted] and a gentleman who wore [redacted] seemed very ^{DU} comfortable using their ankus in my presence. This is referring to the use of the ankus in a harsher manner such as using the ankus accompanied with stern verbal commands.

On or about 8-27-99, while walking with the horse handlers to the arena for a performance I engaged in a conversation with one of the handlers. Although, I do not recall his name he seemed to be friendly. I asked him how he was doing and he replied by stating they were all stressed out that we were there, referring to Animal Control. He also stated that if the horses started "acting up" that they could not control them and if they hit the horse in front of the officers the officers would arrest them. They were stressed because they felt they could not do what they normally do. I told him that was not true and there was a certain degree of force that was acceptable to control the animals. I also told him that if he were to beat the horse that would be unacceptable. That was then end of the conversation because the horses were called to perform.



REPORTER NAME	BADGE NO.	DATE	REVIEWER NAME	BADGE NO.	DATE
TERI S. REELE	H34	11-11-99	KELICI	552	11-8-99

ACSSUPPNLIN

AFFIDAVIT

1. Joel J. Parrott, D.V.M. . being duly sworn on oath make the following statements:

1. Joel J. Parrott, make the following statement to James Schwartz, who has identified himself as an Investigator employed by the United States Department of Agriculture. I swear, under oath, that the following statement is true and correct, and is provided under my own free will.

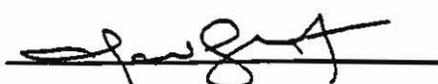
I am the Executive Director and a staff veterinarian of The Oakland Zoo, 9777 Golf Links Road, Oakland, CA 94605. My telephone number is (510) 632-9525. I have worked for The Oakland Zoo for [] I have [] of experience working with elephants, and have been involved in their training, veterinary care, handling, design of facilities, treatment, etc..

On or about August 24, 1999, Christine Franco, Humane Investigator, Santa Clara County Humane Association, and Sergeant Williams, San Jose Police Department, met with Colleen Kinzley, General Curator, and me at the Oakland Zoo. We were shown several photographs which were apparently taken of Asian elephants at Ringling Brothers' Barnum and Bailey Circus at their show in San Jose, CA. In carefully examining these photographs, Colleen and I determined through our expertise, that the wounds documented on these elephants were consistent with control wounds caused by an ankus. The wounds were not consistent with incidental abrasions or other control procedures. I do not recall whether Ms. Franco or Officer Williams requested that Colleen and I travel out to the San Jose Arena to examine the elephants wounds. Neither Colleen nor I visited Ringling Brothers or witnessed the elephants' wounds in person. My impression of the wounds are based on my interpretation of the photographs, and not an actual site visit to examine the Ringling Bros. elephants.


SIGNATURE OF AFFIANT



Subscribed and sworn to before me at The Oakland Zoo, 9777 Golf Links Road, Oakland, CA on this 25th day of July, 2000.



APHIS FORM 7162 Replaces VT Form 3-59G which is obsolete (NOV 92)

DESIGNATED PURSUANT TO 7 U.S.C. 2217 TO ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS. AUTHORITY NO 1014



AFFIDAVIT

I, Joel J. Parrott, D.V.M., being duly sworn on oath make the following statement:

It is apparent in reviewing these 62 photographs again today, July 25, 2000, that the wounds documented are in locations on the elephants which are consistent with locations used to control the animals, and are in common places caused by ankuses or hooks. These locations include - behind the ears, on the left rear flank, on the top right side of the head, and on the left foreleg. In reviewing the photographs I have determined that it is almost impossible for anything else to have caused the lesions behind the ears. The drawing of blood would not have caused the wounds behind the elephants' ears, for they are in places where blood is not drawn from an elephant. The wounds are also not consistent with other conditions, such as ingrown hairs.

The majority of the wounds documented in these photographs are fresh, actively draining puncture wounds caused by an ankus or hook. Some are oozing punctures. In my professional opinion, along with that of Colleen Kinzley, there are far too many fresh wounds on these elephants. Although most of the wounds documented in these photographs appear to be superficial, it is unusual to have that many fresh wounds on elephants. Also documented in these photographs are what appear to be drag wounds, caused by an ankus that did not catch in the elephant's skin. Some are fresh and some are scars.

It is apparent that Ringling Brothers' is actively using an ankus which may be too sharp for the amount of force which is put behind it. It is apparent that the trainers and handlers may be using excessive force and poor techniques, with controlling devices, to control and train their elephants.


SIGNATURE OF AFFIANT

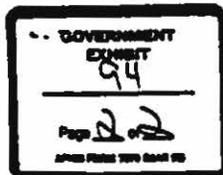


Subscribed and sworn to before me at The Oakland Zoo, 9777 Golf Links Road, Oakland, CA
on this 25th day of July, 2000.

APHIS FORM 7162 Replaces VF Form 2-59G which is obsolete
(NOV 92)



DESIGNATED PURSUANT TO 7 U.S.C. 22.7 TO
ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS.
AUTHORITY NO. 3014





RECEIVED FEB 22 2002

Animal Care

Memo

TO: Ron DeHaven
FROM: Barbara Kohn *BK-1/5*
DATE: July 5, 2001
SUBJECT: RBBB Case OH00018-AC

I have reviewed the case materials, including the photographs and the over 2 hours of video tapes submitted as evidence, for Case OH-00-018-AC, involving alleged abuse of animals during a stay in San Jose, California, between August 23 - 29, 1999. The allegations involve abuse via improper use of ankuses.

I am concerned about two issues. One is the majority of the "evidence" involves written statements by local Animal Control and Police Department members that are similar enough in format and wordage to raise questions, and two, there appears to be no affidavits from Ringling handlers or other witnesses (although they had been contacted and spoke readily with IES investigator). The bottom line is there is insufficient evidence to support any action being taken under the AWA. The wounds on the elephants, although placed consistent with ankus use, could be from other activities, including contact with other elephants and taking blood samples (as alleged by Dr. Lindsey). Once the wound areas were cleaned, testimony states that most wounds were not visible. Blood does tend to spread around a small wound. One laceration did look significant, but apparently healed well without further intervention.

None of the parties witness any abuse or improper use of an ankus, RBBB's local veterinarian could not substantiate any claims of wounding, photographic evidence is marginal, video tape evidence showed no instances of abuse (quite the contrary, as handlers exhibited extreme patience with the animals), and Oakland Zoo personnel examined only photographs, not the animals. No parties that actually examined the ankuses stated they were sharp.

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While CA laws are more strict in some areas, no AWA violations were seen with regard to the elephants. The issues involving the horses are beyond our jurisdiction. There was evidence of elephants swaying when in the backstage holding area - the animals were chained - but this was more pronounced when the majority of the elephants were in the arena and just a few, including one young animal, were left on line. The one issue that APHIS may want to recheck involves a dog act, where the animals are housed in Vari-kennels except for a short time in an approximately 8' X 10' pen to be watered. I could not tell if all housing met AWA requirements or if all animals were provided the required exercise. The act included Boston terriers, poodles, a German Shepherd, and several other dogs (approximately 15 dog all together from what I could see).

One of the elephants in the video did have a significant crack through a front toe nail. This animal should be monitored for proper treatment and foot care.

I have requested a listing of past and current cases and investigations involving RBBB with summaries of instigating complaints and outcomes. I should have the information sometime later next week.



FILE COPY 2002

United States
Department of
Agriculture

Marketing and
Regulatory
Programs

Animal and
Plant Health
Inspection
Service

700 River Road
Beltsville, MD 20737

SUBJECT: Feld Entertainment, Inc. Case No. OH-00-018-AC

JUL 17 2001

TO: Alan R. Christian
Director
Investigative and Enforcement Services

Please close the subject case administratively with no action.

There is insufficient evidence to support a violation.

W. Ron DeHaven
Deputy Administrator
Animal Care



APHIS - Protecting American Agriculture

An Equal Opportunity Employer

**Allegations by Former Ringling Bros. Employee Tom Rider
of Routine Beatings of Elephants.**

Introduction

On April 10, 2000 – while the USDA was still investigating the Santa Clara Humane Society's Complaint concerning multiple lacerations and puncture wounds on elephants -- the USDA was presented with a detailed account by another former Ringling employee, Tom Rider, who had worked in the elephant barn for Ringling Bros. for 2 ½ years. According to Mr. Rider, who worked at Ringling from June 1997 until November 1999, elephants are routinely beaten with bullhooks, certain elephants received particularly bad treatment, including Nicole and the baby elephant, Benjamin – who drowned in July 1999 – that Ringling uses a powder called “Wonder Dust” to cover up the bleeding wounds, and the elephant, Karen, who is used in the “pre-show adventure” is extremely dangerous.

Animal Welfare Act regulations provide that “handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma . . . behavioral stress, physical harm, or unnecessary discomfort,” and that “young animals shall not be exposed to rough or excessive public handling . . . which would be detrimental to their health or well-being.” 9 C.F.R. § 2.131(a), (b). The regulations further provide that “physical abuse shall not be used to train, work, or otherwise handle animals.” 9 C.F.R. § 2.131(a)(2)(i). The regulations further provide that “any animal must be handled so there is minimal risk or harm to the animal and to the public, with sufficient distance and/or barriers between the animal and/or general viewing public so as to assure the safety of animals and the public.” 9 C.F.R. § 2.131(b)(1). The statute also provides that an exhibitors' records “shall be made available at all reasonable times for inspection and copying” by the USDA. 7 U.S.C. § 2140.

Outcome

Even though Mr. Rider's eye-witness accounts are consistent with those of other former Ringling employees, the Investigative Report on Benjamin, the observations of the Santa Clara humane officers and San Jose police officers, expert opinion concerning Ringling's use of an ankus on its elephants, and the agency's own inspection reports which consistently note Ringling elephants with lesions, abrasions, scars, lumps, and holes on their bodies, this investigation was closed in March, 2002, with no enforcement action. In addition, although Mr. Rider registered particular concern about the treatment of Nicole, and alleged that she had been removed from touring at the end of June, 1999, because of her many wounds and scars, the USDA waited almost a year and a half to locate and conduct a thorough investigation of this elephant.

The USDA's Investigation

On April 10, 2000 the USDA received the eye-witness account of yet another former Ringling employee, Tom Rider, who worked in the elephant barn for 2 ½ years, from June, 1997 to November, 1999. According to Mr. Rider, it is "well known" in the circus community that Ringling Bros. uses ropes to tie the elephants down in order to "train them," and, if the animals do not do as they are instructed, "they are hit with a bull hook." Mr. Rider reported that at one point, he counted more than two dozen bullhook wounds on each of the elephants Zeena and Rebecca.

Mr. Rider also reported that he had first-hand knowledge "of atrocious beatings received – repeatedly – by the baby elephant, Benjamin" – the same elephant who two other former employees had also reported was severely beaten on a routine basis, and who died in July, 1999 while swimming in a pond, after his trainer went in after him with a bullhook. (See Former Employees Case Study, Sec. III; Benjamin Case Study, Sec. V.)

Mr. Rider also reported that the elephant Karen, who is exhibited close to children in Ringling's "pre-show adventure," is extremely dangerous as a result of years of being beaten. He reported that at one point on the tour, Karen was beaten, mercilessly, for 23 minutes by one handler, while several Ringling Bros. employees watched.

Four months later, on July 20, 2000, the USDA obtained a sworn statement from Mr. Rider detailing the abuse of elephants that he had witnessed. Mr. Rider gave exhaustive details of events, including the names of the handlers and trainers who beat the elephants, and the circumstances and locations of each beating. For example, he testified that in October, 1997, in Pittsburgh, Pennsylvania he witnessed two Ringling handlers beating the elephants Nicole and Sophie. "Apparently the elephants did not perform in the show correctly and they were being punished. The

people (public) outside the tent could hear the elephants screaming from the beating.”

In February 1998, in Richmond, Virginia, he saw one of the trainers “try to get two elephants (Zina and Rebecca) to lay down. The elephants would not respond to him and he beat the elephants. Immediately after the beating I saw 24 plus lesions on Zina, and 36 plus lesions on Rebecca.” He further testified that:

May, 1998, in New Haven, Connecticut, I saw Pat Harned beating a young elephant named “Benjamin” because he was messing with the other elephant (Shirley). Another elephant named “Karen” started making noise (by rattling her chain) because Benjamin was getting hit - Pat came over and beat Karen for 23 minutes because she would not stop making noise. After Pat was done he asked me to get the “Wonder Dust” so that he could cover up the bleeding of Karen.

Mr. Rider identified several other employees who witnessed these events. According to Mr. Rider, Pat Harned “was always beating on Benjamin, because he was a young bull elephant and was full of play.”

Mr. Rider further testified that in April 1999, in Chattanooga, Tennessee, two of the trainers told Rider to close the tent “so that they could beat ‘Sophie and Karen’ for playing with each other.” He further testified that Nicole was beaten often and that, in June 1999, she was taken off the train and sent to Ringling’s facility in Florida “because of all the scars.” According to Mr. Rider, Ringling “didn’t want the USDA to see all the hook marks on her leg, which had swollen,” when the USDA conducted an inspection when the circus moved from the U.S. into Canada. According to Rider, in Canada, several elephants were also beaten with bullhooks.

Mr. Rider further testified that, during his employment at the circus, “we always knew a few days ahead of time (up to a week in advance) of any USDA inspections (this happened at least 5 times.” He further testified that the USDA would never do inspections in the evening “when the abuse is happening,” and that the agency only inspects the animals that Ringling allows it to inspect.

According to Rider, **“if the USDA would inspect each animal behind the ears, behind the leg, and around the tail, they would find gross scaring and lesions.”**

Mr. Rider provided a detailed list of the Ringling employees whom he had witnessed abusing the animals. According to Mr. Rider, **“these people use excessive hooking and hitting with bull hooks,”** and most of the abuse occurs in the evenings just before the shows. Mr. Rider further testified that he **“saw baby Benjamin systematically abused, 5 to 6 times a day, by Pat Harned,”** and that another handler was **“extremely violent with the elephants.”**

The next day, the USDA investigator assigned to the case was sent a memorandum to the USDA’s regional directors, listing the possible violations of the Animal Welfare Act she should investigate based on Mr. Rider’s evidence. According to the USDA investigator, who interviewed Mr. Rider, **“[t]here is no question that he loves the elephants that he worked with (in the blue unit), and wants to help them find a better life than what is provided by the circus.”** The investigator raised the possibility of examining each elephant for scars to validate Mr. Rider’s claim that the elephants are routinely beaten with bullhooks. She further asked whether, in light of Mr. Rider’s testimony concerning the routine beating of Benjamin, the agency should attempt to locate more witnesses to such beatings and possibly **“reopen”** the Benjamin case, which had been closed on December 2, 1999, when the General Counsel’s Office concluded that the 4-year old Benjamin had **“suddenly” “become unconscious and drowned”** while enjoying a swim in a pond. (See Benjamin Case Study, Sec. V).

The USDA investigator also recommended contacting additional witnesses concerning Mr. Rider’s allegation that Karen was beaten for 23 minutes in New Haven Connecticut, and she suggested asking Ringling **“for their elephant employee records and see if we could locate some of these people for an interview.”**

In an e-mail message dated August 7, 2000, the USDA's Eastern Regional Director thanked the investigator for her "excellent summary" of Mr. Rider's allegations, but stated that she and the Director of Animal Care for the Western Region, had agreed that "there have been complete investigations of most of the allegations already," referring to the investigations of the eye-witness accounts of two other former Ringling employees who also complained of Ringling's routine use of the ankus on its elephants, the beating of Benjamin, and the danger to the public posed by Karen – and which ended with the USDA closing the case and taking no action against Ringling. (See Former Employees Case Study, Sec. III). In addition, even though Mr. Rider had submitted exhaustive details concerning locations, circumstances and eye-witnesses to each event of abuse, the Eastern Regional Director nevertheless stated that "[t]here is not sufficient evidence presented here to reopen those cases," and that, accordingly, they "don't think any other action is warranted at this time." She therefore instructed the investigator to "close this out."

On August 8, 2000, the Deputy Administrator for Animal Care, expressed concern about Mr. Rider's allegations appearing in a "60 Minutes" or "20/20" piece, which he warned "wouldn't play too well for us." However, he further admitted that Mr. Rider's allegations "are serious and numerous."

On August 18, 2000, USDA's investigator sent an e-mail message to the Director of Investigative and Enforcement Services (IES), requesting him to send her copies of other closed Ringling Bros. cases, including the Benjamin case and the eye-witness accounts of two other former employees. The USDA investigator also sent an e-mail message to USDA's Western Regional Director of Animal Care and a veterinary inspector stating that she wanted a USDA veterinarian to conduct a "full inspection of the elephants, to include comments about any sores or scars on the animals." She further stated that she wanted to accompany the veterinarian to the inspection so that

she could obtain photographs of any findings, and asked whether the inspection could take place in Sacramento, California on the 7th or 8th of September.

In response, the Western Regional Director replied that “[t]his is going to be a little uncomfortable,” because the Deputy Administrator and another Animal Care veterinarian “are going to be conducting a self-requested Ringling Bros. inspection and training session on 8/25 in San Jose” – i.e., these USDA officials were going to visit the circus at Ringling’s invitation; therefore, it would be “uncomfortable” for the USDA to also insist on examining Ringling’s elephants for bullhook wounds. On August 22, 2000, the Director of IES notified the USDA investigator that all of the previous Ringling cases she requested had been closed, with no action taken.

On August 29, 2000, the USDA investigator sent a memorandum to USDA’s Investigative and Enforcement Services Division in California, requesting additional information about the Ringling elephants. She stated that her request “should be given high priority,” and she requested “the medical records for the elephants with the Blue Unit,” including “Jewel, Zina, Karen, Lutze, Susan, Misor, Minyak, Bonnie, Juliette, and Kelly-anne,” and information concerning the elephant Nicole. Explaining that Nicole was the subject of abuse in an earlier investigation (see Former Employees Case Study, Sec. III) that had been closed with “no violation,” she noted that Mr. Rider had also reported the abuse of Nicole and that this animal had been removed from the circus on June 21, 1999 “because of severe scarring, hook marks, and swelling in her legs.” To investigate this charge, the USDA investigator requested Investigative Services to “[o]btain the medical records and current disposition of this animal.”

The next day, August 30, 2000, the USDA investigator sent another memorandum to the IES office in Florida. She requested that it take a veterinary inspector “to the sites where Ringling

Brothers houses their elephants (Williston and Polk City), and thoroughly examine each elephant.” She requested the inspection to “document any scars and injuries found on the animals” and advised that “it is alleged that scars can be found behind the ear, around the tail area, and behind the legs.” The investigator further requested IES to “obtain the medical records and current disposition” concerning Nicole, and also requested “a thorough inspection of this particular animal.” On August 30, she also sent a request to the IES Office in North Carolina, stating that she had “asked for documentation from the Animal Care files in North Carolina, but to date have not received any response.”

On September 15, 2000, the USDA requested from Ringling the medical records for all of the elephants in the Blue Unit, and “[a]ll medical records and the current disposition of the elephant known as ‘Nicole.’”

According to an internal memorandum dated November 1, 2000, two and a half months after the USDA investigator requested a thorough examination of the elephants at Ringling’s facilities in Florida, and particularly Nicole, the USDA still had not conducted any such inspections. In a Memorandum dated November 24, 2000 to the Director of IES, the USDA investigator complained that her “investigation has been very frustrating in that Feld Entertainment has not been cooperative with allowing the USDA to review medical records on the elephants.”

An internal memorandum dated February 1, 2001 from a USDA inspector to the Deputy Administrator of Animal Care recounts that a particular witness who apparently once worked for Ringling testified pursuant to a subpoena that another employee at Ringling “kept detailed records of many incidents of animal abuse that occurred on the units over the years and was keeping these records secret for “protection,” and that “abuse did happen on the traveling units due to the constant turnover of personnel and the types of transient workers they had.” There is no indication that the

USDA ever made any effort to obtain such evidence.

On February 16, 2001, the investigator sent an e-mail to the Florida IES office concerning the "status of my requests for additional information." On February 20, 2001 – almost 11 months after Mr. Rider first informed the USDA about the abuse of Nicole, and that she had been removed from performing because she was so badly scarred from her beatings, the USDA made its first formal request to Ringling "to find out the location of Nicole." It was informed that Nicole was at the breeding farm in Polk City, Florida which Ringling calls the "Center for Elephant Conservation." In a memorandum to the same office dated February 22, 2001, the USDA investigator stated that "[t]imeliness is becoming critical in asking for the current records of disposition for 'Nicole.'"

In a memorandum dated February 26, 2001, an investigator for the Florida office informed the investigator that Nicole was at the Polk City facility, that she and the other 26 elephants had already been inspected as part of a routine inspection in August 2000, and that the inspection report did "not identify any items of non-compliance."

In a March 26, 2001 Memorandum to the director of IES, the investigator again complained that Ringling "has not been cooperative in allowing the USDA to review medical records on the elephants." She also requested that a subpoena be issued to a particular Ringling employee for all of his records involving the Ringling elephants, including "medical records, correspondence, telephone conversation records, journals, a list of the current disposition of all elephants owned by Feld, etc." She also requested that this witness be asked about his knowledge "of abusive handling of Nicole."

On May 14, 2001, the USDA investigator sent an e-mail message to another IES investigator located in West Virginia advising him that there are now "numerous complaints pertaining to the

ongoing hitting and beating of Nicole,” and that he should ask a particular witness, who was apparently being subpoenaed, about his knowledge of this. On May 15, 2001, the USDA issued a subpoena to someone “to provide testimony and records regarding the handling, care, and treatment of elephants” at Ringling Bros.

On August 8, 2001, the director of IES sent an e-mail message to the investigator, stating that, based on the material she had sent in, he does not feel that the investigation of charges concerning the abuse of Nicole can be **“considered complete without a visual inspection of ‘Nicole’ by an Animal Care veterinarian, a thorough check of her veterinary care, health and treatment records and questioning her caretakers about the alleged injuries and subsequent treatments.”** In other words, whatever routine inspection occurred at the Polk City facility in August 2000 was apparently not considered to be sufficient to answer these fundamental questions concerning the treatment and condition of Nicole. Accordingly, on the same day, the IES Office in North Carolina formally requested the USDA’s Animal Care division to conduct **“a physical examination of the Ringling-owned elephant ‘Nicole,’”** and to **“inspect and obtain copies of any health records relating to Nicole from the past 18 months.”**

On August 21, 2001 – almost a year and a half after Mr. Rider first alerted the USDA about the abuse of Nicole and the fact that she had been removed from the circus **“because of all the scars,”** and because Ringling **“didn’t want the USDA to see all the hook marks on her leg, which had swollen”** – the USDA finally conducted an inspection of Nicole. The inspector’s account of that inspection states that **“there was blood on the back of the ear”** where, according to Ringling, coincidentally **“they had just drawn a blood sample”** – the same excuse that Ringling had provided for the bloody puncture wounds found on the seven elephants during the San Jose inspection. (See Santa Clara Humane Case Study, Sec. VI). The inspector further noted **“a small old scar at the top**

of the right ear where the ear attaches to the head,” but noted that “all else appeared normal.”

However, when the inspector asked Ringling to produce Nicole’s medical records, they were “not detailed,” and, when the inspector requested copies of the few records that were produced, Ringling refused to provide them without the consent of their lawyers. The lawyers then told the USDA inspectors that they needed two weeks to “assemble possibly more complete medical records” for Nicole. Nevertheless, the records that were provided showed that Nicole had arrived at the Polk City compound in July 1999 – precisely the time that Tom Rider had said she was taken out of the circus because of her many wounds.

In a memorandum dated August 27, 2001, the USDA Inspector informed the USDA investigator that Nicole’s medical records “did not look complete,” that Ringling and its attorneys “refused to let us copy the records on hand,” and that they also refused to allow the inspectors “to question any of the employees at the facility.”

Sometime in March, 2002, the Rider investigation was officially closed by the USDA with no action. Even though it is a closed investigation, the USDA has refused to disclose to the public any of the records concerning the reasons for the agency’s decision, any of the other underlying records of the investigation, or any medical records for Nicole.

Enforcement Synopsis

Mr. Rider provided detailed eye-witness accounts of the routine beatings of elephants with bullhooks over a 2 ½ year period, including the particularly brutal treatment of both Nicole and Benjamin. Moreover, this evidence was completely consistent with (1) the previous eye-witness accounts of two other former Ringling employees; (2) the USDA’s own inspection reports and interview logs which verified that Ringling handlers and trainers use ankuses on the elephants; (3) the findings of the Santa Clara humane officers and San Jose police officers that 7 of 14 elephants

had bloody lesions or puncture wounds on their bodies; and (4) the eye-witness accounts of Benjamin's death and the agency's own internal conclusion that the trainer's use of an ankus "precipitated" the "ultimate death of the animal." (See Previous Case Studies, Sections III, VI, & V). Nevertheless, the USDA did very little to follow-up on these matters, and, again, quietly closed the case with no enforcement action whatsoever.

In fact, based on the records released under the Freedom of Information Act, it appears that the only part of Mr. Rider's complaint that was actually investigated were his allegations concerning the treatment of Nicole. As to the other matters – the routine use of the bullhook on the other elephants, the abuse of Benjamin, and the threat posed by Karen – the USDA simply decided that since it had already investigated similar allegations in the past and closed those investigations, there was no basis to re-open them when faced with additional eye-witness testimony that completely corroborated the prior evidence. Nor, apparently, was there any follow-up at all concerning Mr. Rider's charge that Ringling is advised, ahead of time, about USDA inspections.

Furthermore, even as to the allegations concerning Nicole, the record reveals an extremely recalcitrant attitude on the part of the USDA in determining the validity of Mr. Rider's charges. Thus, although Mr. Rider's complaint about Nicole was received by the agency on April 10, 2000, it was not until a year and a half later, on August 21, 2001, that the agency finally conducted a visual inspection of Nicole or even sought access to her medical records. Therefore, the agency let almost a year and a half go by before inspecting an animal whom an eye-witness had reported had been removed from performing because she was so badly wounded. Even then, the inspector found "blood on the back of the ear" – a finding that is completely consistent with the use of an ankus – yet, based on Ringling's completely self-serving representation, recorded this as being due to the fact that Ringling just happened to draw blood from Nicole that same day. This excuse, which Ringling

also gave to explain why seven elephants had bloody wounds behind their ears in San Jose, California, has been refuted by Dr. Parrot of the Oakland Zoo, who has explained that “the drawing of blood would not have caused the wounds behind the elephants’ ears, for they are in places where blood is not drawn from an elephant.” (See Santa Clara Humane Society Case Study, Sec. VI).

In addition, when the USDA inspectors asked Ringling to produce the medical records for Nicole, the records “did not look complete,” and Ringling’s officials refused to let the inspectors take copies of the records with them – all blatant violations of the AWA, for which Ringling was conspicuously not cited.

Therefore, rather than treating Rider’s eye-witness accounts as cumulative to the many other accounts of routine beatings and use of the ankus by Ringling, the USDA did the opposite: it reasoned that since it had already closed those previous investigations with no action, then Mr. Rider’s allegations also must be insufficient to support any enforcement action. Accordingly, it also closed this investigation, without taking any enforcement action and without disclosing to the public the reasons for its decision.

Meyer & Glitzenstein
1601 Connecticut Avenue, N.W.
Suite 700
Washington, D.C. 20009-1056

CONTROL NO: MRP-00-47
ORIGINAL TO: APHIS
DATE: 4/11/00

Katherine A. Meyer
Eric R. Glitzenstein
Howard M. Crystal
Jonathan R. Lovvorn
Daniel R. Vice

Telephone (202) 588-5206
Fax (202) 588-5049

April 10, 2000

Hand-Delivered

Michael Dunn, Assistant Secretary for Marketing
and Regulatory Affairs
1400 Independence Ave., S.W.
Washington, D.C. 20250

Re: Complaint Against Ringling Brothers For Abusing
And Mistreating Elephants And Request For
Immediate Investigation And Seizure And Protection
Of The Elephants

Dear Mr. Dunn:

On behalf of Performing Animal Welfare Society ("PAWS"), and
its officers, Pat Derby and Ed Stewart, we write to bring to your
attention yet another eye-witness to the routine beating and
other mistreatment of elephants by Ringling Brothers. [

[] For the Ringling Brothers' "Blue Unit" for [] has disclosed
that Ringling Brothers' trainers and handlers routinely hit and
beat elephants, including baby elephants, with bull hooks to make
them walk at a certain pace and to perform in the circus. By
letter to you dated December 21, 1998, we presented you with
sworn deposition testimony from two other Ringling Brothers'
employees [] who reported the same
kind of treatment toward the Ringling Brothers' elephants.

[] has also revealed that it is "well known" in the
circus community that Ringling Brothers uses ropes to tie the
elephants down in order to "train them" and that if they do not
do as they are instructed, they are hit with a bull hook. This
report is completely consistent with the recent USDA report that
PAWS obtained that revealed that Ringling Brothers had inflicted
severe rope burns on two of its baby elephants during the routine
"separation" process that it uses at its "conservation" facility



recycled paper

in Florida.

b6 b7C, b7D
[] has identified several handlers and trainers by name who he personally witnessed repeatedly beat the elephants in the Blue Unit, including the babies. [] also traveled b6 with the elephants on tour, and said that they live on cramped stock cars, are chained for more than 23 hours a day, and exposed to extreme temperatures, and left to stand in their own waste for hours at a time.

b6 [] also has first-hand knowledge of atrocious beatings received -- repeatedly -- by the baby elephant, Benjamin, who [] also reported was the constant recipient of beatings by Ringling handlers. Benjamin is also the baby elephant who mysteriously died last year while supposedly "frolicking" in a pond. [] has information b6 concerning the true circumstances under which the baby elephant died.

Sadly, [] also reports that although he was present during many USDA inspections of Ringling Brothers, none of the inspectors ever examined an elephant. [] reports that if b6 the inspectors did examine them, they could not help but see b7C numerous wounds from repeated beatings with bull hooks. In fact, b7D [] reports that at one point, he counted more than 2 dozen b6 bull hook wounds on two of the elephants, Zeena and Rebecca.

Like [] before him, [] also b6 reported that one of Ringling Brothers' elephants, Karen, is extremely dangerous, and that, as a result of years of being beaten, she is extremely aggressive. In fact, [] reports b6 that at one point on the tour, Karen was beaten, mercilessly, for b7C 23 minutes by one handler, while several Ringling Brothers' b7D employees watched. [] has stated that Karen -- who is b6 used in the "pre-show adventure" where she is paraded around dozens of children -- could easily kill someone if the trainer lost control of her for even an instant.

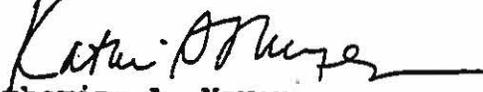
In light of this new evidence, PAWS once again calls on the USDA to conduct a thorough investigation of these matters. As you well know, all of this conduct violates the Animal Welfare Act and the agency's regulations governing the care and treatment of animals used in exhibitions, including the provisions that state that "[p]hysical abuse shall not be used to train, work, or otherwise handle animals," that "[h]andling of all animals shall be done . . . in a manner that does not cause trauma . . . behavioral stress, physical harm, or unnecessary discomfort," and that "[y]oung animals shall not be exposed to rough or excessive public handling . . . which would be detrimental to their health or well-being." 9 C.F.R. § 2.131(a), (b) (emphasis supplied).

PAWS stands ready and willing to assist the agency in an immediate investigation, and in providing refuge for these magnificent animals. Please contact either me or Pat Derby of PAWS (209) 745-2606 to discuss this Complaint further. (is currently (and would be available for questioning by the USDA. (

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b6

Sincerely,



Katherine A. Meyer

USDA-APHIS

USDA, APHIS
INVESTIGATIVE &
ENFORCEMENT SERVICES

Diane Ward
California and Nevada
(703) 812-6581

Memorandum

To: Robert Gibbens, Elizabeth Goldentyer-
A.C. Regional Directors.

From: Diane Ward, IES, Investigator

cc: Wendy Koch, David Head, Mark
Kurland

Date: July 21, 2000

Subject: Ringling Brothers' elephants- CA00136.

Background: An ex-Ringling Brothers Circus employee [redacted] has come forward with many allegations of abuse to the elephants by Ringling Brother's employees. This man is speaking out to the USDA (apparently directly to Michael Dunn), and to the news media; all of which he has done with the assistance of Pat Derby (PAWS). I have worked with [redacted] for the last week, and have taken a lengthy statement from him (attached). [redacted] worked with the elephants, as their [redacted]. There is no question that he loves the elephants that he worked with (in the blue unit), and wants to help them find a better life than what is provided by the circus.

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Current Violations?: The information that [redacted] as brought to me involves many "gray areas". Because the "violation" issues are not straight forward, I am asking for your input to determine if I should continue to investigate the complaint, and what issues to investigate. The following are the issues that I could further investigate, as I see them (feel free to add anything else I may have missed):

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1.) The abuse that [redacted] talks about is the routine handling of the elephants by the trainers. [redacted] inds the use of "bull hooks" to be totally unnecessary. [redacted] claims that the elephants are constantly being hooked to hard behind the ears, around the tail, and on the back side of the foot. He would like the USDA to inspect each elephant, claiming that you will see scars in all these areas from the misuse of the hooks. Do we want to have each elephant examined, and have the USDA Officials decide if there are scars (and are they excessive)?

2.) In the case of the death of the elephant know as "Benjamin". Do we want to reopen this case? One point that [redacted] makes (and may be valid), is that none of the Benjamin handlers and trainers are still employed by Ringling Brothers. The [redacted] was a man named [redacted] and he is now working [redacted]. According to [redacted] the circus employees who witnessed the drowning state that Benjamin was beaten prior

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to going into the water (and maybe while in the water) and that is what caused Benjamin not to come out of the water. We could try to locate [redacted] (also former Ringling employee, who witnessed the drowning) and see if he wants to add any new information about what happened to Benjamin. Do you want to reopen this case (TX99237)?

3.) Many of the other issues that [redacted] ^{talks} about in this affidavit appear to me to have already been investigated, but I can't be sure from what information I have. For example he talks about a tiger being shot in it's own cage, and about abuse to the elephants at the winter quarters in Florida- it appears that the cases may be IL99016 and FL99028 (but I can't get a lot of details from the computer tracking system). Maybe you could go through the Animal Care files and determine what has been investigated, and if any further work needs to be added to these cases (from what [redacted] has to contribute).

4.) Do you find [redacted] complaints about the elephants exposure to excessive heat and cold to be worth investigating? The problem will be the time that has gone by since the events happened. The USDA inspection reports for the blue unit must show some of the conditions during the times that he complains about. Maybe the decision to further investigate can already be answered through the inspection reports.

5.) [redacted] complains about having advance notice of the USDA coming to do inspections of the animals (he claims is happens more in the eastern region, then in the western region). I find this complaint very hard to believe, because he isn't talking about an individual State. Let me know if you want IES to further investigate this issue.

Another issue that [redacted] brings up is the time of day that the USDA does their inspections. He claims that most of the abuse to the elephants happens just prior to a performance (1 hour before). It may not be reasonable for the USDA to conduct a full inspection just prior to a show, but it would be interesting to review the times of the day that inspections are made to show if the USDA personnel may have been on the grounds the day of a show. The USDA Inspectors may have witnessed rehearsal times, and gone back later to do a full inspection. I do not have this information, but you may be able to respond to such allegations by reviewing the inspection reports.

6.) In May 1998, at the New Haven Arena in CT [redacted] alleges that the elephant "Karen" was beaten for 23 minutes. He claims this beating was done by [redacted] Another employee witnessed the beating [redacted] and so did an employee (security guard) of the arena. We could try to contact [redacted] and the security guard, but a lot of time has gone by.

7.) Apparently Ringling Brothers went through a lot of employees during the time [redacted] was employed.. [redacted] claims that the day a person is hired to help with the elephants, is the same day they are given a bull hook and are made to walk with the elephants. We could ask Ringling for their elephant employee records and see if we could locate some of these people for an interview. The current employees could also be interviewed to see how much experience they have, although this may be part of the routine inspection and be unnecessary to look into again.

Another issue that came up during my interview with [redacted]; the responsibility of the railroad companies who haul the Ringling train. The Ringling train is a mile (plus) long, and the cars are owned by Ringling Brothers. The train engines that haul the cars are owned by what ever railroad company that Ringling contracts with to do the haul. Does the railroad company become a "carrier" under the USDA regulations? The railroad does not take possession of the animals, but they may have responsibility for the positioning of the cars so that the fumes and heat from the engines do not go into the animal's cars. Would the railroads need to be licensed by the USDA to do these hauls?

The IES tracking number for this complaint is CA00136. I will wait to hear from you before doing any further investigation into these complaints.

 Betty J Goldentyer
08/07/2000 01:47 PM

To: Diane E Ward/CA/APHIS/USDA@USDA
cc: Robert M Gibbens/CA/APHIS/USDA@USDA, Miava F Binkley/NC/APHIS/USDA@USDA
Subject: Re: Ringling Brothers' elephants 

Hi Diane, This is an excellent summary and I appreciate it. I talked with Bob Gibbens this afternoon. We are in agreement that there have been complete investigations of most of the allegations already. There is not sufficient evidence presented here to reopen those cases. The issues that were not previously investigated are too old to be able to pursue practically. We are dealing with some issues with Ringling that are still open. I don't think any other action is warranted at this time. Let me know if you need anything else - like some paperwork to close this out. Thanks again Betty
Diane E Ward

 Diane E Ward
08/02/2000 05:19 PM 

To: Robert M Gibbens/CA/APHIS/USDA@USDA, Betty J Goldentyer/NC/APHIS/USDA@USDA
cc: V W Koch/CA/APHIS/USDA@USDA, Mark E Kurtand/TX/APHIS/USDA@USDA, David B Head/TX/APHIS/USDA@USDA
Subject: Ringling Brothers' elephants

Hi, I am "resending" my letter on the Ringling Brothers elephants-- I found that I put the wrong case number on the Memo. The case number is CA00136 (not CA00139). Sorry for the confusion. Diane

NEW MEMO-  Elephant MEMO

Forwarded by Diane E Ward/CA/APHIS/USDA on 08/02/2000 02:13 PM

 Diane E Ward
07/21/2000 03:55 PM 

To: Robert M Gibbens/CA/APHIS/USDA@USDA, Betty J Goldentyer/NC/APHIS/USDA@USDA
cc: V W Koch/CA/APHIS/USDA@USDA, Mark E Kurtand/TX/APHIS/USDA@USDA, David B Head/TX/APHIS/USDA@USDA
Subject: Ringling Brothers' elephants

Attached is a letter pertaining to an investigation initiated on the Ringling Brother's. Please review and respond.

Memo-  Elephant MEMO

This is the affidavit from the Ringling Brothers employee-  elephant-a.

USDA-APHIS

USDA, APHIS.
INVESTIGATIVE &
ENFORCEMENT SERVICES

Diane Ward
California and Nevada

Memorandum

To: Alan Christian, IES Director, MD
From: Diane Ward, IES, Investigator
cc: Dan Hutchings, CO- no attachments
Frank Keyser, WV- no attachments
Date: 11/24/00
Subject: CA00136-AC, Ringling Brothers

This is a request for a subpoena to compel testimony from [redacted] under the AWA. b6 b7C b7D

As you are aware, I have been involved in an investigation into allegations of elephant abuse and exhibiting elephants infected with TB by Ringling Brothers Circus.

The investigation has been very frustrating in that Feld Entertainment has not been cooperative with allowing the USDA to review medical records on the elephants, and that key witnesses will not cooperate due to court settlements with Feld Entertainment that prevent them from discussing any circus issues with anyone.

One such witness that I requested to be interviewed was [redacted]

[redacted] There is documentation showing that [redacted] had discussed the issue of TB in the performing elephants with several individuals. b6 b7C b7D

Frank Keyser, IES, has talked with [redacted] attorney who has indicated that b6 b7C b7D

[redacted] would be willing to talk with us if he was subpoenaed to compel testimony.

Apparently at one time [redacted] had documentation pertaining to TB infection in the elephants. b6 b7C b7D

[redacted] I would like [redacted] interviewed as to what documentation exists pertaining to TB in the elephants, which elephants were supposedly infected, what was his knowledge of hiring a Veterinarian or Physician to test the elephants and cover up their findings of TB, and who has knowledge about the infection in the elephants (Feld, trainers, employees, etc.). b6 b7C b7D

Please be aware of the following facts in making a decision about this request: [redacted]

[redacted] so what ever information he has is 3 to 4 years old. The USDA had jurisdiction in diseased animals being exhibited in 1997, but the Policy Statement for the Control of TB in Elephants was not in force until 1998. Even if the information is b6 b7C b7D

old. I would think that if Ringling Brothers Circus knowingly exhibited TB infected animals at any time we would want to pursue action.

For your information, I am providing you a complete copy of my request for additional information to Frank Keyser dated 8/29/00; a copy of Frank Keyser's investigative report dated 10/30/00 (report only, with a copy of pages 43 and 44 of [redacted] against Feld which is her testimony as to what [redacted] said about the elephants with TB); and a complete copy of a Memorandum from Frank Keyser dated 11/3/00, documenting his conversation with [redacted] torney.

If the subpoena is issued, it can be served to [redacted] through his attorney [redacted] I would request that Frank Keyser conduct the interview, since he is the person who has been involved in this portion of this investigation in the IES Eastern Region.

If you need any further information pertaining to this request, please advise.

Diane Ward

Memorandum

To: Alan Christian, IES Director, MD
From: Diane Ward, IES, Investigator
Through: Dan Hutchings, IES, CO
cc: Frank Keyser, IES, VA
Date: 03/26/01
Subject: CA00136-AC, Ringling Brothers

This is a request for a subpoena to compel testimony and provide documentation from, [redacted] under the AWA. b6, b7c

As you are aware, I have been involved in an investigation into allegations of elephant abuse and exhibiting elephants infected with TB by Ringling Brothers Circus (also known as Feld Entertainment).

The investigation has been very frustrating in that Feld Entertainment has not been cooperative with allowing the USDA to review medical records on the elephants, and that key witnesses will not cooperate due to court settlements with Feld Entertainment that prevent them from discussing any circus issues with anyone.

One such witness that was interviewed was [redacted]. The attached documentation shows that [redacted] alleges that [redacted] keeps detailed records of many incidents of animal abuse that occurred on the units over the years. [redacted] told him that Ringling faked the TB tests for the elephants so they wouldn't turn up positive. I would like [redacted] interviewed as to his knowledge of abuse and TB in the Ringling elephants, which elephants were or are supposedly infected, what was his knowledge of hiring a Veterinarian or Physician to test the elephants and cover up their findings of TB, and who has knowledge about the infection in the elephants (Feld, trainers, employees, etc.). b6 b7c

[redacted] needs to be interviewed about his conversations with [redacted] and verify the information as reported by [redacted]. He should be asked how long he has been employed by Ringling Brothers (or Feld)? What is his current job description and duties at Feld? Obtain a complete copy of all of [redacted] involving the Ringling elephants- this is to include medical records, correspondence, telephone conversation records, journals, a list of the current disposition of all elephants owned by Feld, etc. b6 b7c

Does ^{b6, b7c} [redacted] now the current disposition of the elephant known as Nicole? What knowledge does ^{he} [redacted] have of abusive handling of Nicole?

If the subpoena is issued, the best place to serve [redacted] will probably be at [redacted] b6, b7c

The IES Investigator assigned to this area is Frank Keyser (who is very familiar with this case), I am sending him a copy of this request so that he will be aware of the possible subpoena being issued. It would be advisable to take another USDA or law enforcement agent along on this interview, as a witness.

Attached is the following supporting documentation to substantiate this request:

- 1.) Investigative report from Frank Keyser, dated 2/5/01.
- 2.) Interview log with [redacted] b6, b7c
- 3.) Letter from Miava Binkley, dated 2/1/01.
- 4.) Complaint letter from the office of Meyer & Glitzenstein, dated 8/1/00.
- 5.) Copy of the Civil Suit filed by PAW's against [redacted]
- 6.) A list of the elephants owned by Feld, by name. b6, b7c
- 7.) Information on [redacted] from "Choice Point" computer tracking. b6, b7c

If you need any further information pertaining to this request, please advise.

Diane Ward
Diane Ward

Alan R Christian

08/08/2001 12:29 PM

To: Diane E Ward/CA/APHIS/USDA@USDA
cc: John S Kinsella/NC/APHIS/USDA@USDA, David B Head/TX/APHIS/USDA@USDA, Daniel M Hutchings/CO/APHIS/USDA@USDA
Subject: Ringling

After reviewing the material you sent in, I have asked John Kinsella to further investigate the issues regarding "Nicole". Although much time has passed since the 1999 incident, I don't feel the investigation can be considered complete without a visual inspection of "Nicole" by an AC veterinarian, a thorough check of her veterinary care, health and treatment records and questioning her caretakers about the alleged injuries and subsequent treatments. John has assured me he will coordinate with AC and get this taken care of as soon as possible.

Alan



USDA\APHIS\IES
Eastern Region
920 Main Campus Drive
Raleigh, NC 27606
(919) 716-5618

Memorandum

To: *Diane Ward, Investigator
Truckee, CA*
From: *Charmain Zordan, Investigator*
Seminole, FL
cc: *John Kinsella, Eastern Regional Director.*
Date: *August 27, 2001*
Subject: *Additional Information CA00136-AC*

Enclosed is Dr. Tom Callahan's affidavit and digital photos of Nichole taken on August 21, 2001 at Ringling's Center for Elephant Conservation, Polk City, FL.

Dr. Callahan visually examined Nichole, and found her to be in good condition. We requested to see Nichole's veterinary care records after the examination. At that point, Gary Jacobson immediately contacted Feld's attorneys. Dr. Callahan and I talked to Julie Strauss and Jeannie Peronne via conference call. Dr. Callahan told them the records did not look complete. We requested that we be able to copy the veterinary care records on hand, and have access to all veterinary care records for Nichole for at least the past two years. They refused to let us copy the records on hand, and said it would take approximately two weeks for them to get back to me on our request. They also said that because this was part of an investigation they would not allow us to question any employees at the facility. I will keep you posted.

If you have any questions or need more information, please don't hesitate to ask.

enclosures

Abuse in San Francisco

Introduction

Between August 30 and September 2, 2000 – when Mr. Rider’s charges of routine use of the ankus were still pending before the USDA – a member of a group called “Citizens for Cruelty Free Circuses” videotaped Ringling Bros. handlers hitting baby elephants with ankuses and one handler using pliers to pinch the sides of baby elephants, in connection with Ringling’s performances in San Francisco, California. The videotapes were provided to the USDA which began yet another investigation.

Animal Welfare Act regulations provide that “handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma . . . behavioral stress, physical harm, or unnecessary discomfort,” and that “young animals shall not be exposed to rough or excessive public handling . . . which would be detrimental to their health or well-being.” 9 C.F.R. § 2.131(a), (b). The regulations further provide that “physical abuse shall not be used to train, work, or otherwise handle animals.” 9 C.F.R. § 2.131(a)(2)(i).

Outcome

Although the USDA’s own Investigative Report concluded “the evidence shows that the ankus is used to correct the baby elephants, and . . . that pliers are also used as a correction tool,” and the agency’s own inspection of the elephants found “lumps” on one of the baby elephants that had been pinched with pliers, the agency took no enforcement action against Ringling.

The USDA's Investigation

From August 30 to September 2, 2000, a member of an organization called "Citizens for Cruelty Free Circuses" (CCFC) witnessed and video-taped Ringling handlers in San Francisco hitting and jabbing elephants, including baby elephants, with ankuses. The video-tape also shows one of the handlers using folding pliers to pinch the sides of baby elephants. The CCFC member also gave the USDA a copy of an anonymous letter dated August 23, 2000 that had been sent to his group which stated that:

One day in Oakland, CA – about 10 to 12 days ago (2) Elephants from Ringling Bros. Circus - Blue Unit - got into a pushing match - nothing really occurred - But one of them - Zina with a bad trunk- was beaten very bad with a bull-hook by an asshole named [deleted by USDA] who hooked this old-poor Elephant 20+ times and you could hear the ole girl scream forever . . . Please look into this before another Elephant get's a beattin' like that . . .

On September 7, 2000, the circus was inspected in Sacramento, California by USDA. The inspector reported that Ringling was not in compliance with the Animal Welfare Act standards because "[t]here is no documentation maintained on elephants that have minor lesions, scars or abrasions," and because "[c]areful examination of the elephants revealed some scratches or lesions that may have required medical care, but there is no documentation of treatments." In a subsequent affidavit, the inspector reported his findings for each elephant:

- 1) Zina - one old scar, a fresh scratch, and a hard abscess (lesions) on the left jaw;
- 2) Jewel - wound on the head (which I also examined two weeks prior), and lameness in the front leg;
- 3) Lutzi - pressure mark on the right side of head, old scar on hind left leg, crack in nail on hind left foot;
- 4) Susan - small sore between the eye and the ear on left, small sore by right ear, old scars behind the left ear and upper ear. This animal has a larger (three inch), deep scar on the hind area (which was old and healed). This animal also had the pressure marks on the head;

- 5) Minyak - small scratch on ear;
- 6) Bonnie (baby) - small scar by right eye;
- 7) Juliette (baby) - small sore on left side of head. [Ringling] claims the sore was caused by the head piece worn in the show;
- 8) Kelly-anne (baby) 2 lumps; both on the left side, one in the middle midsection (1 ½ inches long), the other lower midsection towards abdomen (1 inch long). Pressure mark on left side of head. [Ringling] claims the lumps are mosquito bites.

Thus, Zina, the elephant who the anonymous informant said was given a particularly brutal beating 10 days before the inspection had **“one old scar, a fresh scratch, and a hard abscess (lesions) on the left jaw.”** The baby elephant with the 2 lumps on her body is one of the elephants in the videotape who is pinched with pliers by her handler. Nevertheless, Ringling insisted that these lumps were **“caused by mosquito bites.”**

In a March 15, 2001 Memorandum, the USDA IES investigator informed the Western Regional Director of USDA’s Animal Care that the Assistant Regional Director of IES had reviewed the evidence and apparently decided that no further investigation or enforcement was warranted. Accordingly, a **“No Violation”** Report was prepared. That Report stated that:

On August 30 through September 2, 2000, the Blue unit was being exhibited in Northern California (San Francisco Bay area). During this time period, it appears that the baby elephants were pinched on their sides with pliers, apparently used as a training tool. It is also documented that one of the babies was hit in the trunk with the ankus, apparently used as a disciplinary tool.

The Report further stated that **“[t]he evidence shows that the ankus is used to correct the baby elephants, and also it appears that pliers are also used as a correction tool.”**

Nevertheless, in a letter dated April 5, 2001, the Western Regional Director informed Ringling’s Vice President that **“inasmuch as no violations were documented, the matter is considered closed.”**

Enforcement Synopsis

Despite an eye-witness account and videotape showing Ringling handlers hitting baby elephants with an ankus and pinching them with pliers, a subsequent inspection recording scars, lumps, or lesions on virtually every elephant, along with the agency's own inspection report that states that the evidence "shows that the ankus is used to correct baby elephants," and that "pliers are also used as a correction tool," the agency took no enforcement action against Ringling. The agency's reasons for closing the investigation have not been disclosed to the public.

The agency also apparently made no effort to contact the anonymous witness, who obviously worked for Ringling Bros., and who wrote that one of the elephants, "Zina," had received a particularly bad beating in Oakland, California, even though the USDA's own inspector noted during a September 7, 2000 inspection that this elephant had **"one old scar, a fresh scratch, and a hard abscess (lesions) on [her] left jaw."**

Furthermore, all of the evidence collected in this investigation was completely consistent with the numerous other complaints that the USDA had received and dismissed since 1998 concerning Ringling's use of an ankus as a "correction tool." In fact, although the San Francisco investigation was begun and closed while the Rider investigation was still pending, apparently the conclusion that Ringling uses both an ankus and pliers to "correct" the baby elephants was not considered corroborating evidence to support Mr. Rider's charge that Ringling routinely uses an ankus to punish and control its elephants, including the babies. (See Rider Case Study, Sec. VII). Instead, both investigations were simply closed with no enforcement against Ringling Bros.

AFFIDAVIT

I, (name of affiant) *Joseph Patrick CuvIELLO*, being duly sworn on oath make the following statement to *Diane Ward*, who has identified herself as an Investigator employed by the *USDA, Investigative and Enforcement Services*. I swear this statement is true and correct.

My mailing address is P O. Box 410862, San Francisco, CA 94141-0862. I am a member of a group called Citizens For Cruelty Free Circuses. This group believes that the use of animals in circuses is inhumane, we try to educate the public not to support circuses using animals. Whenever a circus is in our area, we hand out leaflets to the patrons asking them not to support the use of animals in the circus, and we also video tape as much of the activities with the animals and the handlers that we can to document the treatment that the animals are receiving.

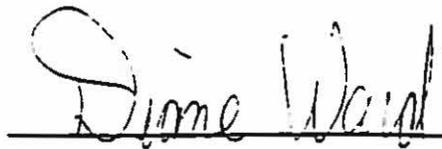
I have given Diane Ward two videos that I personally have taken, where I have witnessed for myself the treatment and handling of the animals with the Ringling Brothers Circus group.

In video tape #1. The beginning section of the tape was shot in late August 1999, while the Ringling Brothers circus animals were being walked from the Arena (where the show was) to the back lot (where the animals were housed)- from the Arena to the back lot the animals were walked on a public street. This was in San Jose, CA, late in the evening. I witnessed, as the video shows, that the Zebras are tied together in pairs and one handler is assigned to each pair. The animals were being walked down a street in San Jose, CA, and they were all excited (possibly scared) and hard to control. The handlers in particular were having problems with the zebras. At one point a handler loses control of a pair of zebras, the animals get loose and run down the street, and the only thing that stops the animals is a light post (because the animals are tied together and one went on one side of the post and one on the other). Again I witnessed this event, and video taped this section on the tape I have given to Diane Ward. Also on this tape,



SIGNATURE OF AFFIANT

Subscribed and sworn to before me at Redwood City, CA
on this 25th day of September, 2000



AFFIDAVIT

I, (name of affiant) Joseph Patrick Cuvello, being duly sworn on oath make the following statement to Diane Ward, who has identified herself as an Investigator employed by the USDA, Investigative and Enforcement Services. I swear this statement is true and correct.

there is a second view of the same incident. this section was actually video taped by Alfredo Kuba (another member of our group)

In video tape #2 I was monitoring the care and handling of the elephants while they were in Oakland, San Francisco, and San Jose, CA; from mid August to September 2, 2000; video taping as much as possible. I actually video taped about 14 hours during this time period; but I have edited some of the abuse section on to one tape to give to Diane Ward. The beginning of the tape is from the local TV news show, where they interview David Kiser with Ringling Brothers, while they were in the Bay Area during this time period. Kiser states "Never Hit. Never, Never, Never will you see anyone use the ankus as anything other than a guide or a tool". The video then documents the use of the ankus to hit and jab the elephants, as well as using pliers to pinch the elephants. I witnessed, and video taped, the events in this video tape- showing the babies getting hit with the ankus, and the handler using a folding type pliers to pinch the sides of the baby elephants. I witnessed the Ringling handler poking and pinching the baby elephants between August 30 to September 2, 2000, in San Francisco, CA. The elephants without question do not like being pinched with these pliers, to a point that when the handlers take the pliers out (they attach the pliers to their belts) that the elephants will try to get away from the handler. This video also shows the elephant known as Juliet chained and swaying while in San Jose, CA, on August 27, 2000.

I have also given Diane Ward a photocopy of an anonymous letter sent to our organization, dated August 23, 2000. This letter was postmarked in San Francisco on 9/2/00, and would appear to be

Joseph Patrick Cuvello
SIGNATURE OF AFFIANT

Subscribed and sworn to before me at Redwood City, CA on this 25th day of September, 2000

Diane Ward

AFFIDAVIT

I, (name of affiant) Joseph Patrick CuvIELLO, being duly sworn on oath make the following statement to Diane Ward, who has identified herself as an Investigator employed by the USDA, Investigative and Enforcement Services. I swear this statement is true and correct.

written by one of the circus employees. The address used to mail this to us is the business address for Citizen's For Cruelty Free Circuses. Who ever wrote this letter must have gotten the address from the leaflets that we were handing out during the circus visit to Oakland, San Jose, and San Francisco in August and September 2000.

Pat Cuvillo

SIGNATURE OF AFFIANT

Subscribed and sworn to before me at Redwood City, CA on this 25th day of September, 2000

APHIS FORM 7162 Replaces VF Form 3-39G which is obsolete (NOV 92)

Diane Ward

DESIGNATED PURSUANT TO 7 U.S.C. 2.17 TO ADMINISTER OATHS, AFFIDAVITS, AND AFFIRMATIONS. AUTHORITY NO 2414



CITIZEN'S for CRUELTY
 FREE CIRCUSES
 P.O. Box 410862
 SAN FRANCISCO, CA

94141-0862



34141X0862 13

Hi Diane

This is an anonymous letter, we received, about an incident in Oakland. The letter was written in San Jose and mailed in San Francisco.

Pat Cruik

WEDNESDAY -
AUGUST 23-00
SAN JOSE - CA

PEOPLE:

(1) One day in CARLAND, CA - about 10th or 12th day's ago (2) Elephant's from Ringling Bros. Circus - BLUE Unit - got into a pushing match - nothing really accured - but one of them - Zina with a bad TRUNK - was beatted very bad with a Bull-Hook - by an Asshole named [] who hooked this old-poor Elephant 20+ times and you could hear the ole girl scream for ever. Now this [] take's care of (3) Baby^{ble} Elephant's who has no control over these Elephant's. The vet-tech is now keeping an eye on Zina, and warned []
But [] said he has permission from upstairs to do this bad thing to these special - Please look into this - before another Elephant get's a beattin' like that

- AN ELEPHANT LOVER -



United States Department of Agriculture
Animal and Plant Health Inspection Service
Animal Care

INSPECTION REPORT

Ringling Brothers Barnum & Bailey Circus Blue Unit 8607 Westwood Center Drive Vienna, Virginia 22182	Site Arco Arena Sacramento, California	52-C-0137 September 7, 2000 0930
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NARRATIVE

Elephants-10, Camels-2,

CATEGORY III: Non-compliant item(s) identified this inspection:

Section 2.40 Veterinary Care-

There is no documentation maintained on elephants that have minor lesions, scars or abrasions. Careful examination of the elephants revealed some scratches or lesions that may have required medical care, but there is no documentation of treatments. Procedures of treatments were described by the animal handlers but no documented records were maintained.

Records of medical treatment were not available on the camel that recently had both rear feet caught in a train track. The procedures for treatment of this animal was described by the veterinarian and the animal handler. It is a requirement to document and have available records of treatment for animals requiring veterinary care. Programs must be established for documentation of treatments for any lesion/scar of any type that requires veterinary care. These programs must be established for all animals under your control. Correct by September 14, 2000.

Section 3.125(c)Storage

Perishable items were seen in a trailer near toxic substances. Breads and Carrots were in plastic bags and were stored in a trailer with a can of spray paint, gas operated pressure washer and several discarded drink containers. Bananas were in two boxes beneath a trailer on the asphalt

Prepared By: <u>Michael J. Smith</u>	Date: <u>9/7/00</u>
Title: <u>Michael J. Smith, Veterinary Medical Officer, USDA, APHIS, Animal Care</u>	LARIS ID: <u>5019</u>
Copy Received By: <u>D-DB</u>	Date: <u>9-7-00</u>
Title: <u>Becky M. Moore</u>	

GOVERNMENT
EXHIBIT



INSPECTION REPORT

with corner (detergent) sprinkled on and around the boxes. Containers of apples were on a pallet adjacent to two containers of gasoline.

Programs and Procedures for proper food handling, storage and preparation must be established to ensure that food is free from contamination, wholesome and palatable. Correct by September 14, 2000

Section 3.137(d) Primary enclosures used to transport live animals-

The train used to transport the elephants and hoofstock had floor and ceilings that were in need of repair. The floor surfaces were peeling up allowing debris to become lodged in these spaces and the ceiling had paint flaking. There is presently no program in place to repair these facilities while traveling. Procedures should be in place to reduce or control peeling or flaking areas in these vehicles or to repair these areas while in transit. The areas of the train cannot be properly cleaned and sanitized when in transit if allowed to remain in these conditions. Correct by September 21, 2000.

The correction deadlines are for the establishment of programs to permanently resolve the above non-compliances.



Prepared By: <u>Michael J. Smith</u>	Date: <u>9/7/00</u>
Title: <u>Michael J. Smith, Veterinary Medical Officer, USDA, APHIS, Animal Care</u>	LARIS ID: <u>6019</u>
Copy Received By: <u>DOB</u>	Date: <u>9-7-00</u>
Title: <u>General Manager</u>	

Striking of Asia With A Bullhook

Introduction

On August 25, 2001 – while both the Rider and San Francisco investigations were still pending at the USDA – an officer in the San Jose Police Department accompanied two humane officers to a Ringling circus performance in San Jose, California. Just before the finale, the officer saw Ringling’s elephant trainer Mark Oliver Gebel, son of legendary elephant trainer Gunther Gebel Williams, angrily “lunge at the first elephant (Asia) with his ankus.” Immediately after the elephants came out of the arena, the officer saw that Asia had a bloody spot behind her left elbow – precisely where she had been jabbed by Gebel. Because California’s anti-cruelty statute specifically prohibits the use of an ankus to punish or discipline an elephant, the officer issued an official citation to Gebel.

Animal Welfare Act regulations provide that “handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma . . . behavioral stress, physical harm, or unnecessary discomfort,” and that “young animals shall not be exposed to rough or excessive public handling . . . which would be detrimental to their health or well-being.” 9 C.F.R. § 2.131(a), (b). The regulations further provide that “physical abuse shall not be used to train, work, or otherwise handle animals.” 9 C.F.R. § 2.131(a)(2)(i). The AWA encourages the USDA to cooperate with the states in carrying out both the AWA and state animal cruelty codes. 9 C.F.R. § 2145(b).

Outcome

Although the Gebel incident was completely consistent with the evidence adduced in many other recent USDA investigations – i.e., it demonstrated that, contrary to Ringling’s public assertions, Ringling handlers and trainers routinely use a bullhook on the elephants – the USDA did not conduct any investigation or undertake any enforcement action concerning this incident. Nor did the agency even share with the San Jose authorities its own voluminous evidence demonstrating Ringling’s routine use of the bullhook. Instead, the USDA stood quietly by and allowed Ringling to continue to insist to the public that it has never used a bullhook on its elephants.

The USDA's Investigation

On August 25, 2001, while several investigations were pending at the USDA concerning Ringling's use of an ankus on its elephants, a police officer and humane officer in San Jose, California attended a night-time performance of the circus. Unlike the USDA inspections, which are conducted during the day, this inspection by the local authorities was conducted at night during the time that the animals were actually performing – precisely the time that former Ringling employee Tom Rider advised the USDA that most of the abuse occurs.

As the elephants were being lined up to go out for the grand finale, the officers saw the elephant trainer Mark Oliver Gebel, son of Gunther Gebel Williams, “lunge at the first elephant (Asia) with his ankus.” According to the San Jose police officer who witnessed the incident:

He was yelling at her to move. It was obvious from his voice and body language he was angry. I saw his arm go forward in a jabbing motion toward the area behind Asia's left elbow. Asia immediately bolted forward then took 3-4 very rapid steps. [Gebel] then turned and yelled at the next elephant in line who quickened her pace. He then continued to walk back toward the tent, yelling at the elephants as he walked by them. I immediately informed Investigator Franco what I had seen and indicated that because of Asia's reaction to the ankus strike, she had probably received an injury. Franco stated she had also seen [Gebel] lunge toward the first elephant.

Immediately after the elephants came out of the Arena into the loading dock area, I saw Asia had a bloody spot behind her left elbow.

According to several other officers who examined the elephant after the incident, Asia had a “nickel sized blood spot on her left shoulder area,” and one officer further stated that she “could see the pink fleshy part of [Asia's] skin where it had been gouged out.” All of this information was promptly provided to USDA.

Under the California state anti-cruelty to animal statute, it is a criminal misdemeanor to use an ankus to discipline or punish an elephant. See CA-PC § 596.5. Accordingly, the humane officer issued a criminal citation to Gebel, and the matter was referred to the District Attorney, who decided

to prosecute the case. In his defense, Gebel's lawyer took the position that a) Gebel did not strike the elephant with an ankus; and b) even if he did, the resulting injury was only the size of a "pinprick" that could not possibly be considered "cruelty" for an 8,000 lb. animal. On December 21, 2001, after Gebel's lawyer portrayed the San Jose humane officer as working for an "organization that has an agenda," and without Mark Gebel himself taking the stand, a jury found Gebel "not guilty" of cruelty to animals under the California statute.

Even though the USDA is not bound by the verdict rendered in the state case, and the incident involved here -- using an ankus on an elephant to make it perform as required -- has been the subject of numerous other USDA investigations, the USDA did not conduct any independent investigation of this incident. Nor did the USDA provide the San Jose authorities with any of the evidence which shows a clear pattern of Ringling's use of an ankus to discipline and control the elephants it uses in its performance. (See Former Employees Case Study, Sec. III; Benjamin Case Study, Sec. V; Santa Clara Valley Humane Society Case Study, Sec. VI; San Francisco Case Study, Sec. VIII; and Tom Rider Case Study, Sec. VII).

Enforcement Synopsis

At the time of this incident, there were several pending investigations at the USDA concerning Ringling's use of an ankus on its elephants to make them perform on demand and to keep them under control -- all of which Ringling publicly denies doing. Yet, despite the eye-witness testimony of a police officer and several humane officers that Mark Gebel struck an elephant with an ankus to keep her in line during a performance, the USDA did not even open an investigation into this matter. Nor, did the USDA use any of this evidence as part of the several other ongoing investigations concerning Ringling's use of the ankus -- although the officers' testimony clearly corroborates the allegations by former Ringling employees, the opinions of

testimony clearly corroborates the allegations by former Ringling employees, the opinions of elephant experts, and observations by USDA's own inspectors – that Ringling routinely uses an ankus on its elephants. Nor, despite the USDA's express statutory authority to “cooperate with the officials of various states or political subdivisions thereof in carrying out the purposes” of the Animal Welfare Act – i.e., to ensure that animals used in entertainment are treated humanely – did the USDA provide any of this evidence to the District Attorney in the Asia case. Instead, the agency just stood quietly by while Mr. Gebel was acquitted and Ringling continued to insist to the public that its employees never hit the elephants with bullhooks, and that any allegations to the contrary are complete fabrications by “animal rights” activists.

NOTICE TO APPEAR NONTRAFFIC No. HS 000839

DATE 5/25/01 TIME 1015 AM DAY OF WEEK SAT. CASE # 101-03094

NAME (FIRST, MIDDLE, LAST) MARK OLIVER GEBEL

ADDRESS 1710 SOUTH LAKESIDE COURT

CITY Venice, Florida STATE FLORIDA ZIP CODE 34293-1929

DRIVER'S LICENSE # 6140-554-70FL STATE FLORIDA CLASS B RID 8/17/70

SEX M HAIR B EYES B HEIGHT 6'3" WEIGHT 150 RACE OTHER DESCRIPTION

VIOLATION(S) CODE SECTION DESCRIPTION MISD./INFRAC (circle one)

CR-PC 596.5 Elephant (M) I

ABUSE M I

M I

M I

M I

M I

M I

M I

M I

M I

FLORIDA DL 6140-554-70-27-0

BOOKING REQUIRED

LOCATION OF VIOLATION(S) CITY OF OCCURRENCE

at 505 W. Santa Clara St. SAN JOSE

VIOLATION (S) NOT COMMITTED IN MY PRESENCE, DECLARED ON INFORMATION AND BELIEF

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

DATE 5/25/01 ARRESTING OR ISSUING OFFICER [Signature]

NAME OF ARRESTING OFFICER, IF DIFFERENT FROM ISSUING OFFICER:

WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE CHECKED BELOW.

X [Signature] BOOKING REQUIRED

COURT LOCATIONS ON REVERSE SIDE

San Jose [] Sunnyvale [] Santa Clara [] Palo Alto [] Traffic []

Form approved by the Judicial Council of California, 2000 PC 832.8

COURT COPY 012257

No. HS 000839

DRR 98 0152156

Tuberculosis

Introduction

Tuberculosis is an extremely debilitating lung disease that can cause death if not properly treated. Although elephants do not suffer from tuberculosis in the wild, they contract the disease in captivity largely due to the stressful conditions under which they are forced to live and travel. Tuberculosis is extremely contagious and can be transmitted between humans and elephants, and vice versa. Signs of tuberculosis infection include coughing, fatigue, fever, spitting up blood, and chronic weight loss.

Elephants maintained at Ringling's breeding farm, which Ringling calls the "Center for Elephant Conservation," are used in public exhibitions throughout the country, including circus performances, elephant rides, and TV commercials, as are animals maintained at Ringling's "retirement" facility in Williston, Florida.

AWA regulations provide that each exhibitor "shall establish and maintain programs of adequate veterinary care," including the "use of appropriate methods to prevent, control, diagnose, and treat diseases." 9 C.F.R. § 2.40(b)(2). They further provide that it is unlawful to exhibit an animal who poses a risk to the safety of the public. 9 C.F.R. § 2.131(b).

On April 1, 1998, the USDA issued a policy statement concerning the "control of tuberculosis in elephants" to require periodic testing of elephants for TB, to "identify those elephants that are infected and ensure that appropriate quarantine and/or treatment measures are instituted." The policy requires that "all captive elephants in the United States" must be periodically tested for tuberculosis, and that any animals found positive be treated and/or quarantined. In addition, the policy requires that "all attendants, handlers, and/or trainees which have direct contact with elephants be tested for tuberculosis on at least an annual basis."

Outcome

Although one of the USDA's own inspectors cited Ringling Bros. for violation of the Animal Welfare Act for failing to provide treatment for an elephant who had tested positive for tuberculosis, the Deputy Administrator for Animal Care later "overrode" this decision and formally "withdrew" it. In addition, although at least two former Ringling officials had provided testimony – at least one, pursuant to a subpoena – that Ringling had used elephants infected with TB in its public performances, the USDA's General Counsel's Office interfered with the agency's ability to investigate this matter by greatly restricting the records that Ringling would have to provide regarding its elephants. In addition, although at least eight elephants in Ringling's possession had tested positive for TB in recent years, none of this information was revealed to the public. Instead, as it had done so many times before, the USDA simply closed the investigation with no further action.

The USDA's Investigation

During a June 9, 1998 inspection at Ringling's "breeding farm" in Polk City, Florida, a USDA inspector noted that, of the 25 elephants being housed there, two had tested "positive" for TB, including a 30-year old female named Mala, and that several elephants had not yet even been tested. By letter dated July 7, 1998 to Ringling's veterinarian, William Lindsay, the Eastern Regional Director of the USDA's Animal Care program stated that the USDA had reviewed the situation involving "the possible exposure to tuberculosis from Mala" of two baby elephants who had been at the breeding farm but were now performing in the circus, Benjamin and Shirley, and that "we feel it would be appropriate for Benjamin and Shirley to continue to travel with the circus provided that they are cultured by the three sample method every other month for one year and provided that all cultures remain negative." The Eastern Regional Director also noted that many of the other elephants at the "breeding farm" had been exposed to Mala and therefore were at risk of developing TB.

In September, 1998, one of Ringling's elephants, 36-year old Dolly, was euthanized at Ringling's "retirement" facility in Williston, Florida. The necropsy showed that she had TB. Another internal document states that a Ringling elephant named Tommy or King Tusk was clearly exposed at the Williston facility to Dolly, who was infected with TB, and that Ringling was using King Tusk in live performances around the country. According to the USDA document:

Tommy (King Tusk) was away touring for a few months this year, with the Red Unit. While in Ohio, he had an intestinal obstruction lasting 12 days and was quite sick. He also had a stiff right carpus and elbow and is being treated with Banamine, Adquan, and exercise. [Ringling] has not yet decided what to do with him, since he clearly has been exposed to Dolly and is normally a touring animal. One would hope that they would wish to give him a rest from travel for humane reasons relating to his other problems, not just because of the TB issue.

According to the USDA, at Ringling's breeding farm, there were "still four untested males at that location: Raja, Charlie, Casey and Vance," and "the two babies, Doc and Angelica," who still had not been tested for TB.

The Inspection Report for a February 9-10, 1999 inspection at the breeding farm noted two "non-compliant" items regarding TB. It stated that "the TB test results of Jenny . . . are not available for review," and that "Culture results on Vance indicated a positive TB status, early January 1999," but "as of this date, no treatment has been instituted." Several other elephants still had not been tested for TB, including the babies Doc and Angelica, and Charlie, Casey, and Rajah.

On March 5, 1999, the Florida Department of Agriculture and Consumer Affairs imposed a state Quarantine on the elephant Prince Tusk at Ringling's Williston facility because he had tested positive for TB.

In a letter to Ringling's veterinarian dated April 14, 1999, the Deputy Administrator of USDA's Animal Care program, stated that "in regards to Vance's treatment, despite multiple conversations with Feld Entertainment representatives, we have yet to receive Ringling's written plan to treat him for tuberculosis."

An e-mail to a USDA official on September 10, 1999 reported that "another Ringling Brothers elephant" named Teetchie had tested positive for TB. According to the e-mail, "Bill Lindsay [Ringling's veterinarian] knows already. He was not surprised." On September 13, 1999, Dr. Leroy Coffman of the Florida Department of Agriculture and Consumer Services sent an e-mail message to the USDA requesting that "a quarantine be issued ASAP on 'Teetchie' and all other elephants on the premises until a complete epi [epidemiological] investigation can be completed" by a designated veterinarian.

By letter dated October 8, 1999 to Lee Coffman of the Florida Department of Agriculture, the group People for the Ethical Treatment of Animals informed Dr. Coffman that a confidential source had provided information that, although Ringling had acknowledged that Mala had tested positive for TB, at least 12 other elephants at Ringling's breeding farm were under treatment for TB, including several babies; that some elephants had not yet been treated, and that Vance had active TB and was very sick. According to the source, **five of the baby elephants who had been exposed to TB were going to be removed from the compound soon to be taken to Boston to perform.**

On October 14, 1999, a team of investigators from the Florida Department of Agriculture and the USDA conducted an "unannounced" inspection at Ringling's breeding facility. According to an internal account of that inspection, the inspectors were told that there were 25 elephants at the compound and that Ringling had no plans to move any of them within the next 30 days. However, when asked to produce an inventory of the animals, "he admitted that **five (5) elephants that would be on the current inventory list had left the compound that morning before our arrival.**" When asked if there were any TB-positive elephants being treated with anti-tuberculosis drugs, the Ringling employee stated that Mala had been successfully treated and that Vance, a 32-year old male, was positive for TB and "is currently being treated and is in isolation at the facility." When asked if there were other elephants being treated for TB, the employee refused to answer the question. However, according to the report of the investigation, "**while in the office, Dr. Warner and I noticed a trash can full of empty bottles of Isoniazid**" – the drug used to treat TB.

According to the report, Ringling's records "showed that other elephants were or have been treated with anti-tuberculosis medications," and the "records contained several entries showing laboratory test results for other elephants for serum levels of Isoniazin, PZA, and Rifampin." In addition to Vance and Mala, "serum levels for other elephants include: Sid, Minyak, Sally, Birka,

Josky, Kelly Ann, Romeo, Alana, Juliette, and Nicole.”

According to information supplied by a confidential source, the baby elephants who were to perform in Boston “were put into the transport vehicle and sent off to Massachusetts 90 minutes before officials arrived.”

A November 11, 1999 USDA Inspection Report notes that Teetchie – who had tested positive for TB on September 11, 1999, was euthanized on October 28, 1999.

On August 1, 2000, the USDA received a portion of a transcript of the deposition of Joel Kaplan, a private investigator who had worked for Kenneth Feld, President of Ringling. Mr. Kaplan testified that he was told in 1993 by one of Ringling’s veterinarians that **“about half of the elephants in each of the shows had tuberculosis and that the tuberculosis was an easily transmitted disease to individuals, to human beings.”** Mr. Kaplan further testified that he was asked **“to find a physician who would test the people on the circus to see if they had tuberculosis but who would destroy the records and not turn them in to the center for disease control.”** He also testified that he believes it is **“immoral to have elephants traveling by every arena in the country with tuberculosis.”**

A Memorandum dated August 29, 2000, from USDA’s California Office of Investigative and Enforcement Services (IES), requested that IES in West Virginia obtain additional information stating that **“this request should be given high priority.”** The memo requested that particular individuals be interviewed concerning their **“knowledge of TB in the Ringling elephants, and that Ringling’s corporate office be contacted so that the USDA could “obtain any documentation regarding the testing of their elephants for TB.”** It also requested information about the elephant known as Tilly at the Williston, Florida facility who **“supposedly is known to be infected with TB,”** and it requested that the agency **“obtain this animal’s medical records, the date she was found**

positive for TB, and document all locations that she had been exhibited since found with TB.” By Memorandum dated August 30, 2000, IES in California requested similar information from the IES Office in Florida, again stressing that “this request should be given high priority.”

A September 6, 2000 Inspection Report for the Williston facility notes a finding of “non-compliance” with AWA regulation 2.40(b)(2), which requires all exhibitors to use “appropriate methods to prevent, control, diagnose, and treat diseases.” According to the Inspection Report, **“there is an elephant at the Ringling Brothers Williston Elephant Retirement Facility [Tillie] that is TB positive and not receiving treatment,”** and **“[t]his situation could potentially lead to infection or reinfection of these elephants.”** Ringling was given 30 days, until October 6, 2000, to correct the problem. Tilly was not owned by Ringling, but was being housed at its Williston site with Ringling elephants.

According to an internal Memorandum dated September 7, 2000 from Tom Callahan of the Florida Department of Agriculture to USDA, all of the elephants at the Williston facility “are in close enough contact at some point during the day or night to allow for contagion of infectious organisms.” In addition, Ringling “is at present treating three of their elephants who have been found to be culture positive.” However, “Tillie was found culture positive on 28 April 2000,” and **“[f]our months have elapsed without treatment or separation.”**

By letter dated September 15, 2000, the USDA requested from Ringling **“any and all documentation regarding the tuberculosis testing of all elephants in their possession past and present,”** “all medical records and the current disposition of the elephant known as ‘Tillie,’” and “all test records for tuberculosis testing performed on this animal and provide a list of all locations this elephant has been exhibited for the past three years.”

A September 18, 2000 USDA Interview Log records that a former employee of Ringling’s

“did state that elephants being exhibited by Ringling Bros. did have tuberculosis,” and that “Ringling Bros./ Feld Entertainment has known this since 1994.” The witness also informed the USDA that there had been a **“TB related death of an employee,”** and he **“expressed his concern about the children who rode the elephants.”** He also told the USDA that a veterinarian who had previously worked for Ringling **“found elephants with TB but did not report it.”**

On September 24, 2000, Ringling’s veterinarian, William Lindsay, notified the USDA that Ringling had another TB positive elephant at the Williston facility named Luke.

On October 18, 2000, in response to an earlier letter from Dr. Lindsay that has not been disclosed to the public, the Deputy Administrator for Animal Care informed Dr. Lindsay that the USDA would not withdraw its earlier citation concerning **“non-compliance”** with AWA regulations because Tillie, who had tested positive for TB was not being treated and was also not separated from the other elephants at the compound. USDA’s letter explained that **“[e]ven though Tillie is not owned by Ringling, because she is on the same licensed premise with the Ringling elephants and is not clearly separated from them, Ringling is responsible for her care.”** As such, **“according to the TB guidelines, arrangements for her treatment should have been made shortly after her first positive culture result which was received in June.”** The letter also stated that **“it is our understanding that [Tillie] is in close contact with a number of other elephants that are not on medication,”** and that **“it does not seem to be in the best interest of the elephants to have an untreated, known positive animal housed with other animals that are not on preventive medication.”** Accordingly, USDA informed Dr. Lindsay that **“the inspection report will stand as written at this time.”**

On November 24, 2000, the EIS office in California sent a Memorandum to the Director of IES complaining that **“[t]he investigation has been very frustrating in that Feld Entertainment has**

not been cooperative with allowing the USDA to review medical records on the elephants, and that key witnesses will not cooperate due to court settlements with Feld Entertainment that prevent them from discussing any circus issues with anyone.” She also requested that a subpoena be issued to a particular witness to compel his testimony.

On December 11, 2000, the USDA issued a subpoena to Charles Smith who was once a high-level official at Ringling, to compel “testimony relating to tuberculosis in the performing elephants with Feld Entertainment.”*

By letter dated January 17, 2001, Ringling’s attorney again requested the Deputy Administrator of Animal Care to “reconsider” and “withdraw” the inspector’s conclusion recorded in the September 6, 2000 inspection report that Ringling was in “non-compliance” with AWA regulations because it had failed to treat Tillie in a timely manner. By letter dated January 31, 2001, the Deputy Administrator notified Ringling that the USDA had decided to “withdraw the citation under 2.40(b)(2) for failure to initiate tuberculosis treatment in Tillie.” Citing the “unique” circumstances of the situation, USDA stated that “we no longer consider this to be a violation of the Animal Welfare Act or the implementing regulations.”

A February 1, 2001 Memorandum from the IES office in West Virginia to the Deputy Administrator recounts testimony provided by an individual pursuant to a subpoena. According to IES, the individual testified that he “was not sure of the exact number of elephants affected but thought it was about 5 on the Blue Unit and 7 on the Red Unit.” He also testified that “he personally knew that the circus hired a private physician to test the employees without

* Charles Smith, who was once the Chief Financial Officer for Ringling, was recently featured in a “60 Minutes” report concerning Kenneth Feld’s surveillance of a writer who had written an unflattering magazine article about the Feld family and Ringling Bros. See 60 Minutes (May 4, 2003), produced by Alden Bourne. Mr. Smith, who had brought a wrongful discharge case against Ringling, had subsequently settled the case for \$6.5 million, with the agreement that he remain silent about matters that transpired when he was employed by Feld.

reporting any positive results to the health authorities,” and that “some employees did test positive.” He also testified that he had been informed that Ringling “‘faked’ the TB tests for the elephants so they wouldn’t turn up positive.”

In a February 5, 2001 Memorandum to the IES office in California, IES in West Virginia complained that his ability to obtain the medical records on Ringling’s elephants had been limited by USDA’s Office of General Counsel. He explained that OGC, in consultation with Ringling’s attorneys, had made the “arrangements” and “established which records would be made available to us.” He further explained that a lawyer with OGC “and Feld Entertainment representatives agreed” that the investigators would only be provided TB test records on elephants who were “to be on exhibit (traveling) or removed from exhibiting, from 1/1/99 to the present.” This was far less information than the investigators had previously requested in their letter to Ringling dated September 15, 2000, in which they had requested “any and all documentation regarding the tuberculosis testing of all elephants in their possession past and present.”

An internal USDA record dated February 20, 2001, stated that a USDA veterinarian “had noted a non-compliant item regarding veterinary care of Till[ie] because she was not under treatment after testing positive for TB, but that the Deputy Administrator of Animal Care overrode this citation.”

On March 5, 2001, IES in California sent an e-mail message to USDA’s office in Iowa requesting it obtain from USDA’s National Veterinary Services Laboratories “all the TB test results done on the elephants from 1993 to the present time.”

On March 26, 2001, Dr. Lindsay sent the USDA another note informing that agency that yet another elephant at the Williston facility – India – had tested positive for TB.

On March 26, 2001, the California IES investigator requested that another subpoena be issued, again expressing her frustration because **“Feld Entertainment has not been cooperative with allowing the USDA to review medical records on the elephants.”**

On April 16, 2001, USDA’s National Veterinary Services Laboratories provided a list of Ringling elephants that had tested positive for TB:

Teetchie, 9/3/99, 7/24/00
Vance, (3) 1/8/99, 6/11/99, 7/2/99
Sabu, 12/19/2000
Mala, 6/15/98
Dolly, 11/20/98, 12/4/98
Calcutta 1, 8/11/00
Calcutta 2, (2) 11/30/99, 7/24/00, 7/25/00, 8/17/00
Siam, 11/30/99

The laboratory noted however, that it had not received any test requests from Ringling since October 2000 to date, and that other labs may have performed additional tests.

On June 13, 2001, the Deputy Administrator of Animal Care met with Ringling’s attorney to discuss **“the investigation regarding allegations that Ringling was using known TB infected animals in circus performances.”** The Deputy Administrator’s discussion of what occurred at that meeting was deleted by the USDA from the records released under the Freedom of Information Act.

Sometime in March 2002, the USDA closed the tuberculosis investigation without taking any enforcement action against Ringling, and without ever revealing to the public the existence of the investigation, let alone the agency’s reasons for terminating it. None of the subpoenaed testimony or materials, and none of the medical records for the elephants, has been disclosed to the public.

Enforcement Synopsis

Although, on September 6, 2000, a USDA inspector found that Ringling was in "non-compliance" with AWA regulations because there was a TB positive elephant at the Williston facility who was "not receiving treatment," almost five months later the Deputy Administrator "overrode" this citation and actually "withdrew" it, as if it had never been issued. In addition, although the investigators in charge of the TB investigation had determined that they needed from Ringling Headquarters "any and all documentation regarding the tuberculosis testing of all elephants in their possession past and present," to investigate allegations by former Ringling employees that Ringling knowingly exhibited to the public elephants who had tested positive for TB, the USDA's General Counsel's office also overrode that decision and instead allowed Ringling to produce only the TB records for elephants who were on exhibit during a specific two-year period, January 1, 1999 to February 5, 2001.

During the investigation, it was discovered that at least two elephants at Ringling's breeding facility had tested positive for TB, that many other elephants at that facility, including the baby elephants who are star attractions in the circus throughout the country, had been exposed to the infected animals, and that several other elephants at Ringling's "retirement" facility in Williston also had tested positive for TB. The records also show that Ringling's on-site personnel misrepresented to the USDA and Florida State inspectors that all of the exposed animals were still at the compound, when, in fact, five babies had been shipped to Boston just minutes before the inspectors arrived. This same Ringling employee also refused to answer the inspectors' questions concerning how many and which animals were actually being treated for TB. However, Ringling was not cited for any violations of the AWA or the regulations in connection with these misrepresentations, even though the AWA provides that inspectors are to have access to all relevant information at all reasonable

times.

In addition, it appears that at least two individuals who once worked for Ringling in some capacity testified to the USDA that TB-positive elephants had been knowingly exhibited by Ringling and that Ringling actively concealed the results of TB tests done on its employees, as well as the TB results for elephants who tested positive. Yet, the USDA's own investigators were thwarted from investigating these extremely serious matters by their own agency, including the General Counsel's Office, which acceded to Ringling's request that it greatly limit the medical records that Ringling was required to provide to USDA investigators.

Meanwhile, although tuberculosis is an extremely contagious disease, and Ringling's elephants are publicly exhibited throughout the country, including elephants that go in and out of both the breeding and retirement facilities, the public has been kept completely in the dark about this investigation, the agency's decision to "override" the conclusions of its own inspectors and investigators, and the reasons this investigation was closed with no further action.

RECEIVED MAY 3 2002

RINGLING BROTHERS ELEPHANT INVENTORY

POLK CITY BREEDING FARM (as of 6/0/98)

25 total elephants (17 Ringling, 1 Jacobson)

Ringling

Louie - 31

Juno - 29

Tova - 28

Reba - 28

Rajah - 27 (male, untested)

Sheena - 26 - -

Emma - 26

Casey - 25 (male, untested)

Charlie - 24 (male, untested)

Babe - 22 → Niabi Zoo (IL) - 2000

Alana - 21

Dame - 21 → in CANADA 8/00

Icky II - 19

Romeo - 4 (male)

Angelica - 1 (Charlie x Icky II)

Doc - 1 (male) (Charlie x Alana)

Kelly Ann - 1 (Vance x Sally)

Osgood (male)

[Birka - 30] b4

Josky - 30

Mala - 30 (TB positive 6/98)

Minyak - 30

Sally - 30

Sid - 30

Vance - 30 (male)(TB positive 1/99)

Jacobson

Smokey - 14 (castrated male)

Requested), jeterw@doacs.state.fl.us (IPM Return Requested)
CC: Ulysses.J.Lane@usda.gov, David.P.Warner@usda.gov,
John.A.Jones@usda.gov, Lisa_Conti@doh.state.fl.us (IPM Return
Requested), fmarkham@vsfla.aphis.usda.gov (IPM Return Requested)

On Thursday December 10, 1998, I went to the Williston Elephant Retirement

Center of the Ringling Brothers-Barnum and Bailey Circus to conduct an epidemiologic investigation relative to M. tb diagnosis in an elephant named

Dolly. The address is 18655 NE 81st St., Williston, FL 32696. The manager of the facility is [redacted]

b6
b7c

The operations manager is [redacted]

cell phone is b6
b7c

The Facility veterinarians are Dr. Bill Lindsey (703)403-8412 from Oregon, WI and Dr. Romero Isaza from Kansas State University.

The facility is located on a dirt/gravel road off of US 27/41 approximately 6

miles south of Archer between Archer and Williston on NE 81st Street. The land

is rented from Pat Zerbini of the Tarzan-Zerbini Circus who also owns elephants

at this facility. The facility occupies approximately 10 acres of this 30 acre tract.

Elephant census - Ringling Bros - 14, Zerbini - 4 = 18 total elephants
Tigers - Ringling Bros - 2 [redacted] } 3 = 5 total tigers

Significant epidemiologic findings.

b6

Dolly (TB affected elephant):

- This was an apparently healthy elephant in excellent condition. Dolly was

born in 1958 and was euthanized at age 40 in late September due to a chronic

foot problem. TB lesions were identified in the trachea and upper bronchi at

necropsy. Samples submitted were positive for Mycobacterium tuberculosis. I

do not have a copy of the lab report. This elephant was transtracheal wash

negative in April 98 according to Dr. Lindsey.

- Dolly was one of three elephants purchased from [redacted] of

b6
b7c

Canton, OH in 1985. She was used in the circus from 1985 until she entered the retirement

center in 1987. Dolly remained at the retirement center from 1987 until she

was euthanized 9/98. Other elephants obtained from [redacted] include

] in 1985 b6

Calcutta (DOB 1946) and King Tusk (DOB 1945).

TB test history at the Elephant Retirement Facility which was opened in the mid 1980's:

All elephants at the retirement facility have been test negative by trans-tracheal wash April 98. All elephants were retested for TB in December 1998.

All employees were on yearly TB skin testing. In 1997, one employee at Williston (and another employee at the Polk City Facility) were skin test

positive / chest xray negative. Both were placed on prophylactic treatment

according to public health protocols. Employees are now on a TB health monitoring program for TB testing every 6 months. Skin testing was performed

at the Levy Co Health Dept last year and this year at a clinic in Gainesville.

Elephant Movements:

In general, no movement of elephants occur once they enter the Retirement

Center. Exceptions: When the Polk City Center for Elephant Conservation opened

in 1985, 12 elephants moved from Williston to the Polk City Facility. In

addition, King Tusk left the retirement facility to do a TV commercial in Ohio

approximately 3 months ago and was returned to the facility.

All of the elephants moved from Williston to Polk City have been test negative

for TB. However, one elephant named Maya was M. tb positive at the Polk City facility in June 1998. This elephant was leased to Ringling from [redacted] b10

[redacted] and appears to be completely unrelated to the TB case in Dolly at Williston. b6

Adjacent herds:

1. Approximately 16 cows are fenceline adjacent to the Ringling premise on the east side. These cows are fed bedding material from the elephants and have

been known to stray onto the Ringling premise to visit their haybarn.

Distance

from the elephants to the fenceline is less than 100 yards. The owner's last

name was not known - they called her [redacted] Her phone number is b6

[redacted] - b6

2. One small cattle herd is located approximately 1/4 mile to the west.

Owners name is unknown but the cattle belong to a [

] that b6

[- - - - -] b6

3. At least four premises along the dirt road have horses.

4. One premise across the road has Tigers owned by [

] b6

Most Probable Source of Infection:

[- - - - -]

] b5

Actions Taken:

Dr. Coffman has requested that the Elephant Retirement Facility and the adjacent cattle herds be placed under quarantine and tested. Please advise as to who is responsible for this assignment. Dr. Jones is on annual leave until the first of the year. I will be happy to go down and do the TB testing if Frank Markham can get the cattle herds lined up on or before next Monday, December 21. Remember, we will need three days for the testing, one to inject and come back and read the test 72 hours later and pull the brucellosis samples.

Dr. Coffman, also, please advise as to what the requirements for quarantine release will be so that this information can be explained to the owners. My recommendation would be for one negative brucellosis and TB test on the cattle herds. As for the elephants, I really don't have a good answer. However, if the current trunk washes are negative, [

] b5



United States Department of Agriculture
Animal and Plant Health Inspection Service
Animal Care

RECEIVED

FEB 18 1999

INSPECTION REPORT

Feld Entertainment Inc.
Ringling Bros/Barnum & Bailey
8607 Westwood Center Drive
Vienna, VA 22182

Site 002
Center For Elephant Conservation
12850 Old Grade Road
Polk City, FL 33868

0137
52-C-0136
2/9-10/99
9:45 AM
Reinspection

NARRATIVE

Current Inventory 27 Asian Elephants

CATEGORY I: Non-compliant item(s) previously identified that have been corrected.

Veterinary Care 2.40

A new Program of Veterinary Care has been completed.

CATEGORY III: Non-compliant item(s) identified this inspection
Records 2.75

The TB test results of Jenny, which recently came from the Red unit on December 1, 1998, are not available for review. All records shall be readily available for review by any APHIS official.

To be corrected by: February 16, 1999

NOTE:

Culture results on Vance indicated a positive TB status early January 1999. As of this date, no treatment has been instituted. This animal is owned by Doc & Angelica

There were large visible lesions on the rear legs of both Doc and Angelica. When questioned as to the cause of these lesions, it was stated by Doc & Mr. Gary Jacobson that these scars were caused by rope burns, resulting from the separation process from the mothers on January 6, 1999. Angelica's lesion appeared as a pink linear scar, approx 6" long x 1" wide on the right rear leg. The left rear leg also had an scar directly below the cloth leg tie. Both lesions appeared to have been treated with an iodine-based ointment (they were moist). Angelica also had two linear healing scars on the back of the right hind leg. Doc had a pink scar on the right rear mid-leg area.

All these lesions now appear to be healing scars. After removal of the medicated ointment on 2/10, they appeared much less pink.

This issue is of concern, and will be forwarded to Headquarters for review to determine if it is a violation of the AWA (per instructions by Dr. Betty Goldentyer). A formal determination will be made at a later date and forwarded to the facility.

GOVERNMENT
EXHIBIT
1
Page 1 of 1
APHIS FORM 7870 MAR 98

Prepared By: [Signature]
Title: Robert Brandes, D.V.M. Veterinary Medical Officer, USDA, APHIS, Animal Care

Date: 2/10/99

LARIS ID NO. 2002

Copy Received By: [Signature]
Title: [Signature]

Date: 2-10-99

*Please note our concern over the
resolution of these lesions with*

RECEIVED MAY 3 2002

Janet B Payeur
09/10/99 12:48 PM

To: Miava F Binkley/NC/APHIS/USDA@USDA
cc:
Subject: Teechie the elephant

Just a heads up that we reported out last Friday another Ringling Brothers elephant as M. tuberculosis positive- Teechie, a 52yr old Female at their retirement facility. Bill Lindsey knows already. He was not surprised. Hope things are going well for. Are you coming to USAHA?
Janet

RECEIVED MAY 3 2002

Subject: M-tb Investigation, Center for Elephant Conservation, Ringling Brothers Circus, Polk City, FL

Date: October 14, 1999

An unannounced visit/inspection was conducted at the Center for Elephant Conservation (CEC), Ringling Brothers Breeding Compound at approximately 1:30 p.m. on October 14, 1999. The CEC facility is located north of Interstate 4 on County Road 557, near Polk City (Polk County), Florida. The visit/inspection was conducted by a joint state/federal investigative team and consisted of the following individuals:

Dr. William C. Jeter, DVM, Assistant Bureau Chief, Bureau of Animal Disease Control, Division of Animal Industry, Florida Department of Agriculture and Consumer Services (FDACS), Tallahassee, FL.

Officer Gary Bain, Agriculture Law Enforcement Office, FDACS, Winter Haven, FL.

Dr. Dave Warner, DVM, Assistant Area Veterinarian In-Charge, USDA/APHIS/US, Gainesville, FL.

Dr. Robert Brandis, DVM, USDA/APHIS/Animal Care, Orlando, FL.

The purpose of the visit/inspection was to investigate the validity of recent information received by Dr. Leroy M. Coffman, State Veterinarian, FDACS regarding the following items:

1. Several elephants on the premise have been or are being treated with anti-tuberculosis drugs for Mycobacterium tuberculosis (M-tb, i.e. human tuberculosis).
2. A number of elephants will be leaving the CEC facility during the week of October 11-15, 1999 for Boston, MA. Some of these elephants were treated with M-tb drugs.
3. The amount of Isoniazin supplies on hand at the facility far exceeds the amount that would be needed to treat one elephant. Information received indicates that this medication is being used on several elephants at the compound.
4. Manure from the facility, including manure from a known M-tb positive elephant, is hauled from the facility daily and being spread on farmland at a nearby location.

Post-it® Fax Note	7671	Date	11/23	# of Pages	4
To	Mary Beth Sweetland	From	Dr. Coffman		
Company	PETA	City	FDACS		
Phone #		Phone #			
Fax #	757-622-0457	Fax #			

5. M-tb positive elephants are being used in the breeding program at the facility.

The inspection team arrived at the entrance to the CEC at approximately 1:30 p.m. [] CEC [] was summoned to the entrance gate where introductions were made and a request was made to allow the team to conduct an inspection of the facility. The inspection would include a physical inspection of the facility and all elephants, an inspection of records, and an interview with [] was advised that the unannounced inspection was in regards to the presence of M-tb positive animal(s) on the premise. [] agreed to our request and invited us into the facility. b6

Prior to conducting the facility, animal and records inspections, [] agreed to answer our questions as best he could, but reserved the right to refer questions regarding medical records and treatment protocols to Ringling Brothers consulting veterinarian Dr. Bill Lindsey, Madison, WI. b6

[] stated that the CEC opened in 1995 and was built solely for the purpose of breeding elephants. The facility layout and building design certainly confirms his statement. The facility is located a good distance from the main road and provides excellent security and isolation. The buildings and turn-out pens are very sturdy and maintained in excellent condition. b6

[] stated that there were 25 elephants currently housed in the compound; ages range from 2 months to 57 years. In addition to the elephants owned by Ringling Brothers (17) [] Bradenton, FL maintains seven (7) elephants at the compound and Gary Jacobson, Polk City, FL has one (1) elephant on the property (see inventory list). b6

[] was asked if there were plans to move any elephants from the facility within the next 30 days. His response was no. When asked to provide the team with a current inventory of elephants at CEC, he admitted that five (5) elephants that would be on the current inventory list had left the compound that morning before our arrival. He provided the team with a copy of a current Certificate of Veterinary Inspection, dated October 7, 1999 and signed by Dr. Bill Lindsey (see OCVI, Certificate No. 034822).

[] was asked if there were any M-tb positive elephants at the compound and if they were being treated with anti-tuberculosis drugs. He reported that the elephant Mala was previously treated as a M-tb positive elephant, but was successfully treated and has had a least two negative cultures on trunk washings. He also reported that Vance, a 32 year old male was positive for M-tb and is currently being treated and is in isolation at the facility.

b6 [] was then asked if there were other elephants at the compound being treated with anti-tuberculosis drugs. His response was that all other elephants in the compound have negative trunk washes. When advised that his response did not answer the question, he referred us to Dr. Lindsey to answer this question. While in the office, Dr. Warner and I noticed a trash can full of empty bottles of Isoniazid*.

The team was given a tour of the CEC breeding facility. All the elephants appeared healthy and the facility was in excellent condition and very clean. None of the elephants appeared to be physically ill and they were in good condition. A diagram of the compound provided to the team indicated the location of the resident animals. (See attached information).

Vance appeared to be healthy and in excellent physical condition. There was some swelling over one of his knees, but there was no evidence of lameness. As stated above, Vance is being housed in an isolation unit. He is turned out a night into a small outside pen adjacent to a larger turn out pen for other elephants. Vance is turned out at night while the other elephants are housed inside one of the larger buildings.

Upon return to the office, the medical records for Vance and Mala were made available for our review. The records search showed that Mala was treated for M-tb and appears to be free of the disease as indicated by at least two consecutive negative cultures on trunk washings. She is now back with the general population. Vance's medical records shows that he is positive for M-tb on positive cultures of trunk washings and is currently being treated in accordance with the standard M-tb treatment protocol and is isolated from all other elephants.

The records search of Vance and Mala also showed that other elephants were or have been treated with anti-tuberculosis medications. The records contained several entries showing laboratory test results for other elephants for serum levels of Isoniazin, PZA and Rifampin. In addition to Vance and Mala, serum levels for other elephants include: Sid, Miryak, Sally, Birka, Josky, Kelly Ann, Romeo, Alana, Juliette and Nichole.

b6 [] was asked if there was any movement of elephants between the CEC and Ringling Brothers Retirement Center for Elephants located in Williston, FL (there have been two cases of M-tb disclosed at both facilities). He stated that there was no interaction between the two compounds. The inventory list shows that 12 of the elephants currently housed at the CEO location came from Williston in July, 1995. However, this appears to be relocation of animals upon opening of the CEC compound in 1995. There appears to be no other information regarding movement of elephants between these two facilities.

Page 1

1 VIRGINIA:
 2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY
 3
 4 [Redacted] b6, b7c, b7D
 5 PLAINTIFF,
 6 vs
 7 BELLS-FLOVO, INC., b6
 8 Defendant. Fairfax, Virginia
 9 April 21, 1998
 10 Deposition of:
 11 [Redacted] b6, b7c, b7D
 12 called for examination by counsel for the defendant.
 13 pursuant to notice, at the office of Clerkship of
 14 Smith, 4020 University Drive, Suite 212, Fairfax,
 15 Virginia, commencing at 10:35 a.m., before Glenn L.
 16 Cox, Notary Public for the Commonwealth of
 17 Virginia.
 18
 19
 20
 21
 22

Page 3

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

1 Thereupon,
 2
 3
 4 was called as a witness and, after being duly sworn
 5 by the notary, was examined and testified as
 6 follows:
 7 EXAMINATION BY COUNSEL FOR THE DEFENDANT
 8 BY MR. KEITH:
 9 Q State your name, sir. b6, b7c, b7D
 10 A [Redacted] b6, b7c, b7D
 11 Q Your business address?
 12 A [Redacted] b6, b7c, b7D
 13 Q How are you employed?
 14 A [Redacted] b6, b7c, b7D
 15 Investigative Services Incorporated.
 16 Q How long has [Redacted] b6, b7c, b7D
 17 been in existence?
 18 A Since 1974.
 19 Q And are you the sole proprietor of that
 20 business?
 21 A It's a corporation, yes.
 22 Q All right. Are you the sole owner of it? b6

Page 2

1
 2 APPEARANCES:
 3 For the Plaintiff:
 4 WILLIAM L. STAMMER, JR., ESQUIRE
 5 STAMMER, JAMAIL, HENDEL, DENNER & DALHOBY, L.L.C.
 6 SUITE 1000
 7 2300 Greenbore Drive
 8 McLean, Virginia 22102-3604
 9 For the Defendant:
 10 JOHN A.C. KEITH, ESQUIRE
 11 Clerkship of Smith
 12 4020 University Drive
 13 Suite 212
 14 Fairfax, Virginia 22030
 15
 16 O-O-N-T-I-S-N-T-S
 17 WITNESS:
 18
 19 EXAMINATION BY: Mr. Keith PAGE
 20
 21 D-E-N-I-E-D-I-T-S
 22
 23
 24
 25
 26
 27
 28
 29
 30
 31
 32

Page 4

1 A Yes.
 2 Q Have you had your deposition taken before?
 3 A Ever?
 4 Q Yes, sir.
 5 A Yes.
 6 Q So you know what the drill is?
 7 A Pretty much.
 8 Q I'll ask you questions, and if I don't
 9 make myself clear, feel free to ask me to rephrase
 10 the question, I'll be glad to do that. And if you
 11 need a break, just let me know.
 12 A Okay.
 13 Q What's your educational background? b6, b7c, b7D
 14 A I completed - actually, excuse me. Is she
 15 going to bring a glass of water?
 16 (A discussion was held off the record.)
 17 BY MR. KEITH:
 18 Q Educational background?
 19 A I completed
 20
 21
 22

Deposition of [Redacted]

b6, b7c, b7D
b6

b6

[Redacted]

S

[Redacted]

b6

[Redacted]

b6

[Redacted]

13 A Would some real problems with some of the
 14 elephants. I was told in 1993 by ^{1st}
 15 about half of the elephants in each of the shows had
 16 tuberculosis and that the tuberculosis was an easily
 17 transmitted disease to individuals, to human beings,
 18 the circus, the elephants were transported all
 19 throughout Florida, which is illegal to do that in
 20 the State of Florida.
 21 Q How is that related to an assignment that
 22 you took?

he means

b6
b7C
b7D

b6

Deposition of

[Redacted Name]

Jb6, b7C
b7D

NOT A FOIA DELETION

b6

I think it's immoral to have
 18 elephants traveling by every arena in the country
 19 with tuberculosis. I was asked by _____ through _____
 20 Kenneth, to find a physician who would test the
 21 people on the circus to see if they had tuberculosis
 22 but who would destroy the records and not turn them

Page 150

1 in to the center for disease control. And I was in
 2 the process of doing that when the assignment got
 3 squashed because the
 4 _____
 5 _____ who then proceeded with that assignment.

b6

- b6, b7C
b6 b7D

USDA-APHISUSDA, APHIS,
INVESTIGATIVE &
ENFORCEMENT SERVICESDiane Ward
California and Nevada
(703) 812-6681

Memorandum

To: *Samuel Santiago, IES, FL*
From: *Diane Ward, IES, CA*
cc: *Dan Hutchings, IES, MO- report only*
Date: *August 30, 2000*
Subject: *CA00136-AC*

This is a request for additional information involving the elephants with the Ringling Brothers Circus. This request should be given high priority.

I first got involved with this case because of a complaint of abuse on the elephants in the Blue Unit. The complaints were initiated by the Performing Animal Welfare Society (PAWS) located in California. In the past, this group has filed other complaints of abuse against Ringling Brothers; which have been investigated by IES but have been closed with "no violation".

While investigating the current allegations of abuse on the elephants, another allegation was made by PAWS that Ringling Brothers knowingly has exhibited elephants infected with TB.

I am requesting that you contact the Inspecting VMO with Animal Care, and go to the sites where Ringling Brothers houses their elephants (Williston and Polk City), and thoroughly examine each elephant. Document any scars and injuries found on the animals- it is alleged that scars can be found behind the ear, around the tail area, and behind the legs. The elephant known as "Nicole" was the subject of abuse in FL99028; after thorough documentation this case was closed "No Violation". Nicole's name has come up again in this current investigation. It is alleged that on June 21, 1999, this elephant was removed from the Blue Unit train and trucked back to Florida because of the severe scaring, hook marks, and swelling in her legs. The elephant was never returned to the Blue Unit. Obtain the medical records and current disposition of this animal (please conduct a thorough inspection of this particular animal).

Inquire and obtain any documentation regarding the testing of their elephants for TB (see the attached USDA Policy for TB testing). Inquire about the elephant known "Tilly" at the Williston, FL facility; she supposedly is known to be infected with TB. Obtain this

animals medical records, the date she was found positive for TB, and document all locations that she has been exhibited since found with TB. For any animal found positive for TB, document where the animal has been exhibited and housed since infected.

Thanks for your help.

ATTACHED:

- 1.) Complaint letter from the office of Meyer & Glitzenstein.
- 2.) Affidavit from [redacted] b7C, b7D
- 3.) USDA AC Policy #21- Control of TB in Regulated Elephants.
- 4.) USDA AC guidelines for the control of TB in Elephants- Note the management of the animals per the TB results (groups A, B, C, D).

- set of color photos sent



United States Department of Agriculture
Animal and Plant Health Inspection Service
Animal Care

INSPECTION REPORT

Feld Entertainment, Inc.
8607 Westwood Center Drive
Vienna, VA 22182

Site Williston Elephant Retirement Facility
18653 NE 81st Street
Williston, FL

52-C-0137
9-6-00
10:30 AM
Special

NARRATIVE

CURRENT INVENTORY: 5 Tigers, 14 Elephants (12 owned by Feld entertainment and 2 owned by P. Zerbini)

CATEGORY III: Non-compliant item(s) identified this inspection:

Section 2.40(b)(2) - Veterinary Care -

This special inspection is in response to information that there is an elephant at the Ringling Brothers Williston Elephant Retirement Facility that is TB positive and not receiving treatment. At this time there is in fact one culture positive elephant (Tillie) owned by Ms Patricia Zerbini who is not receiving treatment. This elephant is commingled with the elephants owned by Ringling Brothers Circus. This situation could potentially lead to infection or reinfection of these elephants. This is a violation of the above section of 9 CFR Subchapter A.

CORRECT BY: 10-06-00

Prepared By:	<u>Tom Callahan DVM</u>	Date:	<u>9-6-00</u>
Title:	<u>Tom Callahan, Veterinary Medical Officer, USDA, APHIS, Animal Care</u>	LARIS ID:	<u>1039</u>
Copy Received By:	<u>[Signature]</u>	Date:	<u>9-6-00</u>
Title:	<u>[Signature]</u>		

FELD ENTERPRISE INVENT

Facility: RINGLING BROTHERS

Lic./Reg.#: 52C-0137 Date: 9-6-00

ANIMAL TYPE	# INSPECTED
None	
Adult Dog	
Puppy	
Adult Cat	
Kitten	
Guinea Pig	
Hamster	
Rabbit	
Group 1 Nonhuman Primate (Marmoset, Tamarin)	
Group 2 Nonhuman Primate (Capuchin, Squirrel Monkey)	
Group 3 Nonhuman Primate (Macaque, African Species)	
Group 4 Nonhuman Primate (Mandrill, Large African Species)	
Group 5 Nonhuman Primate (Baboon)	
Group 6 Nonhuman Primate (Great Ape)	
Group 1 Cetacean (Beluga Whale, Killer Whale, Bottlenose Dolphin)	
Group 2 Cetacean (Common dolphin, White-Sided Dolphin)	
Group 1 Pinniped (Far Seal, Walrus, Harbor Seal, Sea Lion)	
Group 2 Pinniped (Bearded Seal, Ringed Seal, Hooded Seal)	
Polar Bear	
Sea Otter	
Strawman	
Bear (Other Than Polar Bear)	
Elephant	14
Large Wild/Exotic Felid (Lion, Tiger, Leopard, Cheetah, Mountain Lion)	7, 10, 13, 14, 15
Small Wild/Exotic Felid (Bobcat, Lynx, Ocelot, Caracal)	
Large Wild/Exotic Canid (Wolf)	
Small Wild/Exotic Canid (Fox, Jackal, Dingo, Coyote, Hyena)	
Pocket Pelt (Hedgehog, Sugar Glider, Brain Snake, Carni-Chloctilis)	
Wild/Exotic Hoofed Animal (Tapir, Rhino, Hippo, Giraffe, Antelope)	
Wild/Exotic Other Animal (Kangaroo, Opossum, Bat, Porcupine, Weasel)	
Farm Animal	

SUPPLEMENTARY DATA FOR RBIS

NCI #	Section Number (Exactly as entered on inspection report)	# Animals Affected	NCI Severity (Critical, Direct, or Indirect)	NCI Significance (Low, Medium, or High Risk)	Repeat NCI (Y/N)
1	2.40 (2/2)	14	CRITICAL	HIGH	
2					
3					
4					
5					
6					
7					
8					
9					
10					

MEMO

To: Dr. Miava Binkley
From: Tom Callahan
Subject: RBBBC Inspection of 9-6-00
Date: September 7, 2000

This memo contains additional information as requested.

The elephant at the center of this inspection is Tillie owned by Ms P. Zerbini (PZ). No official papers or title were seen to prove this, just a statement from [redacted] Elephant Retirement Facility. b6

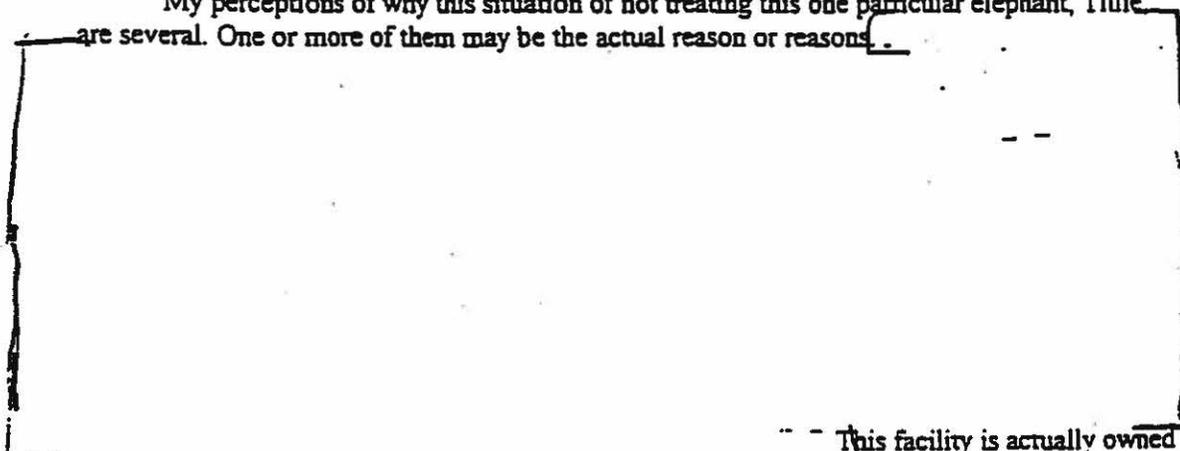
bu [The total number of elephants at this facility is fourteen. Twelve owned by Ringling Brothers Barnum and Bailey Circus (RBBBC) and two owned by PZ. They are as follows:

- Tillie and Luke owned by PZ
- Tommy, Cora, Susie, India, Siam, Prince, Putzi, Sabu, Roma, Peggy, Calcutta#1, and Calcutta#2 owned by RBBBC.

The schematic enclosed with this report shows the housing or penning relationship of the elephants to each other. As can be seen all the elephants are in close enough contact at some point during the day or night to allow for contagion of infectious organisms.

RBBBC is at present treating three of their elephants who have been found to be culture positive. They are also testing all the elephants by trunk washing at approximately monthly intervals.

My perceptions of why this situation of not treating this one particular elephant, Tillie are several. One or more of them may be the actual reason or reasons.



This facility is actually owned by PZ and leased to RBBBC. The actual elephant facility is not large enough to adequately separate this animal from the others at this time. An area on other portions of PZ's property could be used but would require time and money to construct. And again PZ has just returned

Dr. Miava Binkley
Page 2
September 7, 2000

from Europe

Tillie was found culture positive on 28 April 2000. Four months have elapsed without treatment or separation. RBBBC seems to agree.

It is necessary to note that RBBBC is making every effort to aggressively diagnose and treat all the other elephants at this facility. Their trunk washings are in excess of the requirements. They are treating other culture positive animals at the facility. The fact that they even have this retirement facility shows a new level of life-long commitment to elephants in the circus industry.

They seem to accept their responsibility in this matter. They do wish that the circumstances surrounding the event also be considered.

USDA-APHIS

USDA, APHIS,
INVESTIGATIVE &
ENFORCEMENT SERVICES

Diane Ward
California and Nevada

Memorandum

To: Alan Christian, IES Director, MD
From: Diane Ward, IES, Investigator
cc: Dan Hutchings, CO- no attachments
Frank Keyser, WV- no attachments
Date: 11/24/00
Subject: CA00136-AC, Ringling Brothers

This is a request for a subpoena to compel testimony from [redacted] under the AWA. b6
b7C
b7D

As you are aware, I have been involved in an investigation into allegations of elephant abuse and exhibiting elephants infected with TB by Ringling Brothers Circus.

The investigation has been very frustrating in that Feld Entertainment has not been cooperative with allowing the USDA to review medical records on the elephants, and that key witnesses will not cooperate due to court settlements with Feld Entertainment that prevent them from discussing any circus issues with anyone.

One such witness that I requested to be interviewed was [redacted]

[redacted] There is documentation showing that [redacted] had discussed the issue of TB in the performing elephants with several individuals.

Frank Keyser, IES, has talked with [redacted] attorney who has indicated that [redacted] would be willing to talk with us if he was subpoenaed to compel testimony.

Apparently at one time [redacted] had documentation pertaining to TB infection in the elephants. b6
b7C
b7D

[redacted] I would like [redacted] interviewed as to what documentation exists pertaining to TB in the elephants, which elephants were supposedly infected, what was his knowledge of hiring a Veterinarian or Physician to test the elephants and cover up their findings of TB, and who has knowledge about the infection in the elephants (Feld, trainers, employees, etc.). b6
b7C
b7D

Please be aware of the following facts in making a decision about this request: [redacted]

[redacted] so what ever information he has is 3 to 4 years old. The USDA had jurisdiction in diseased animals being exhibited in 1997, but the Policy Statement for the Control of TB in Elephants was not in force until 1998. Even if the information is b6
b7C
b7D

old, I would think that if Ringling Brothers Circus knowingly exhibited TB infected animals at any time we would want to pursue action.

For your information, I am providing you a complete copy of my request for additional information to Frank Keyser dated 8/29/00; a copy of Frank Keyser's investigative report dated 10/30/00 (report only, with a copy of pages 43 and 44 of [redacted] against Feld which is her testimony as to what [redacted] said about the elephants with TB); and a complete copy of a Memorandum from Frank Keyser dated 11/3/00, documenting his conversation with [redacted] torney.

b6

b6 b7c b7D

b6 b7c b7D

If the subpoena is issued, it can be served to [redacted] through his attorney [redacted] I would request that Frank Keyser conduct the interview, since he is the person who has been involved in this portion of this investigation in the IES Eastern Region.

b6 b7c b7D

b6 b7c b7D

If you need any further information pertaining to this request, please advise.

Diane Ward



RECEIVED MAR 5 2002

United States
Department of
Agriculture

Marketing and
Regulatory
Programs

Animal and Plant
Health Inspection
Service

Animal Care

4700 River Road
Riverdale, MD 20737

January 31, 2001

Dr. Jeannie Perron
Covington and Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

Dear Dr. Perron:

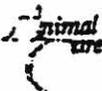
Thank you for your letter of January 17, 2001, regarding the September 6, 2000, inspection of Ringling's Williston facility. In your letter you explain the reasons you feel that the citation of a noncompliant item under §2.40(b)(2) is inappropriate and request this citation be withdrawn.

We have carefully reviewed the information provided in your letter and during our meeting on January 10, 2001, with you and Dr. William Lindsay. Based on the assumption that the course of events outlined accurately reflects what happened, your request is reasonable. There appears to be a unique set of circumstances surrounding the initiation of treatment of "Tillie," the history and housing facilities on site, and the concerns regarding developing drug resistance in a herd known to be affected by *Mycobacterium tuberculosis*. By this letter we withdraw the citation under §2.40(b)(2) for failure to initiate tuberculosis treatment in Tillie. Given the circumstance unique to this situation, we no longer consider this to be a violation of the Animal Welfare Act or the implementing regulations.

We appreciate the time and effort you spent presenting your position on this matter, and believe this letter will bring the issue to a fair and equitable conclusion.

Sincerely,

Wm. Ron DeHaven
Deputy Administrator
Animal Care



Animal Care is a part of the Department of
Agriculture's Animal and Plant Health Inspection Service.

An Equal Opportunity Provider and Employer

000

COVINGTON & BURLING

02/06/01 11:52 FAX

RECEIVED MAY 3 2002



Animal and Plant Health Inspection Service Investigative and Enforcement Services

USDA, APHIS, IES
920 MAIN CAMPUS DRIVE
SUITE 200
RALEIGH, NC 27606
(919) 716-5618

FRANCIS W. KEYSER
INVESTIGATION SPECIALIST
(240) 381-0699 CELL/VOICE MAIL

Memorandum

TO: Diane Ward, Investigator, IES, Western Region

FROM: Frank Keyser, Investigation Specialist, IES Eastern Region

cc:

DATE: February 5, 2001

SUBJECT: Case No. CA00136AC; Additional Information

On January 31, 2001, Dr. Miava-Binkley and I met with [redacted]

[redacted] Their appearance was in response to a

Attached to this memo you will find an Interview Log, and a

copy of a letter from Dr. Binkley to Dr. Dehaven, [redacted]

de [redacted]
b6 b7c

As indicated in the Interview Log [redacted] claims [redacted] does not have any materials or documents to provide USDA which may relate to the care and treatment of elephants or other animals by Ringling Bros. Circus or Feld Entertainment. [redacted]

Of significance are [redacted] concerning the existence of audio tapes made from a conversation [redacted] had with [redacted] claims that these tapes contain statements by [redacted] that Ringling Brothers had knowledge of elephants in both the Blue and Red Units (at that time) that were infected with tuberculosis and being exhibited to the public. [redacted] was performing experimental treatment on the elephants at that time and the elephants were clinically ill. Like other materials formerly in his possession these tapes were turned over to the law firm, Fulbright and Jaworski, LLP, for safekeeping as a neutral party. Fulbright and Jaworski were to release the materials to Kenneth Feld on or about 2/2/01.

b6
b7c
de
b7c

[redacted]
b6
b7c

b5
b6
b7c

That same afternoon Dr. Binkley and I went to the law office of Covington and Burling, located at 1201 Pennsylvania Ave. NW, Washington, DC, to review the TB test records on Ringling Brothers elephants. Covington and Burling are representing Feld Entertainment, and arrangements were made by OGC Attorney, Robert Ertman, for them to have the records made available to us for inspection. I had very little to do with these arrangements and it was Mr. Ertman who established which records would be made available to us. As I understood it, Mr. Ertman and Feld Entertainment representatives agreed that we would be provided TB test records on elephants which were to have been on exhibit (traveling) or removed from exhibiting, from 1/1/99 until present. Dr. Binkley was utilizing a recent inventory list which she used to account for the elephants in the TB records. (Attachment 6) As for the elephant named, "Nicole", Dr. Binkley did indicate to me that this animal had left the Blue Unit prior to 2000. I do recall seeing her name in the TB records however we were not provided any additional records to review, so I could not ascertain her disposition.

b5

This completes my response to your additional information request. However, should you need more assistance please call me.

RECORD OF CONVERSATION

DATE: February 20, 2001

TIME: 0915

PERSON CONTACTED: Dr. Miava Binkley, Animal Care Specialist

ORGANIZATION: USDA, APHIS, Animal Care, Raleigh, NC 27060

PHONE: 919-716-5588

SUBJECT: Case No. CA00136-AC

SUMMARY: Dr. Binkley was contacted in an effort to find the location of Nicole the juvenile elephant; information regarding TB testing of Ringling elephants and the inspections of the Polk City and Williston sites of Ringling Bros.

Dr. Binkley stated Dr. Taylor, VMO had inspected the Polk City site in August 2000. She stated by the information she had, Nicole was at the Polk City site.

Dr. Callahan, VMO had inspected the Williston site on September 6, 2000. According to Dr. Taylor in a previous conversation, she accompanied him on this inspection.

Dr. Binkley said she and Frank Keyser inspected Ringling's TB medical records, and found everything in compliance.

As to the elephant named Tilly, she is an elephant owned by Patti Zerbini. This elephant is housed at Ringling's Williston site. Dr. Callahan had noted a non-compliant item regarding veterinary care of Tilly because she was not under treatment after testing positive for TB, but Dr. DeHaven overrode this citation.

She said she would fax to me the inspection reports and Dr. DeHaven's decision.

65

52-C-0137

William A. Lindsay, D.V.M.

4631 County Trunk Hwy. A • Oregon, Wisconsin 53575 • (608) 835-8696

RECEIVED MAY 3 2002

March 26, 2001

Dr. M. BURLBY:

919-716-5696

Info re: Marcan tiger -

Also - Info re Elephant "INDIA"

CELESTIA [

] b6



William A. Lindsay, D.V.M.

RECEIVED MAY 3 2002

4631 County Trunk Hwy. A • Oregon, Wisconsin 53575 • (608) 835-8696

March 26, 2001

Dr. M. Binkley:

--
--

It appears most likely that there will be another elephant at our Williston facility who will be culture positive for M. tb. I am waiting for final confirmation and sensitivity.

Bill Lindsay



Memorandum

To: Alan Christian, IES Director, MD
From: Diane Ward, IES, Investigator
Through: Dan Hutchings, IES, CO
cc: Frank Keyser, IES, VA
Date: 03/26/01
Subject: CA00136-AC, Ringling Brothers

This is a request for a subpoena to compel testimony and provide documentation from, under the AWA. *b6, b7c*

As you are aware, I have been involved in an investigation into allegations of elephant abuse and exhibiting elephants infected with TB by Ringling Brothers Circus (also known as Feld Entertainment).

The investigation has been very frustrating in that Feld Entertainment has not been cooperative with allowing the USDA to review medical records on the elephants, and that key witnesses will not cooperate due to court settlements with Feld Entertainment that prevent them from discussing any circus issues with anyone.

One such witness that was interviewed was [redacted]. The attached documentation shows that [redacted] alleges that [redacted] keeps detailed records of many incidents of animal abuse that occurred on the units over the years. [redacted] told him that Ringling faked the TB tests for the elephants so they wouldn't turn up positive. I would like [redacted] interviewed as to his knowledge of abuse and TB in the Ringling elephants, which elephants were or are supposedly infected, what was his knowledge of hiring a Veterinarian or Physician to test the elephants and cover up their findings of TB, and who has knowledge about the infection in the elephants (Feld, trainers, employees, etc.). *b6 b7c*

[redacted] needs to be interviewed about his conversations with [redacted] and verify the information as reported by [redacted]. He should be asked: how long has he been employed by Ringling Brothers (or Feld)? What is his current job description and duties at Feld? Obtain a complete copy of all of [redacted] involving the Ringling elephants- this is to include medical records, correspondence, telephone conversation records, journals, a list of the current disposition of all elephants owned by Feld, etc. *b6 b7c*

Does ^{b6, b7c} [redacted] now the current disposition of the elephant known as Nicole? What knowledge does ~~he~~ [redacted] have of abusive handling of Nicole?

If the subpoena is issued, the best place to serve [redacted] will probably be at [redacted] b6, b7c

The IES Investigator assigned to this area is Frank Keyser (who is very familiar with this case), I am sending him a copy of this request so that he will be aware of the possible subpoena being issued. It would be advisable to take another USDA or law enforcement agent along on this interview, as a witness.

Attached is the following supporting documentation to substantiate this request:

- 1.) Investigative report from Frank Keyser, dated 2/5/01.
- 2.) Interview log with [redacted] b6, b7c
- 3.) Letter from Miava Binkley, dated 2/1/01.
- 4.) Complaint letter from the office of Meyer & Glitzenstein, dated 8/1/00.
- 5.) Copy of the Civil Suit filed by PAW's against [redacted] b6, b7c
- 6.) A list of the elephants owned by Feld, by name.
- 7.) Information on [redacted] from "Choice Point" computer tracking. b6, b7c

If you need any further information pertaining to this request, please advise.

Diane Ward
Diane Ward

AFFIDAVIT

I, Janet Payeur D.V.M. Ph. D. , being duly sworn on oath make the following statement:

To Mike Booth who has identified himself as an investigator with the United States Department of Agriculture, Animal Plant Health Inspection Service, Investigative and Enforcement Services.

I am employed at National Veterinary Services Laboratories (NVSL) 1800 Dayton Rd. PO Box 844 Ames, LA 50010. Phone (515)663-7676. I am the supervisor of Mycobacteria and Brucella Lab, I review and interpret all test results for my lab.

Mr. Booth has requested test results for M. tuberculosis for elephants owned by Ringling Brothers Circus or Feld Entertainment where M. tuberculosis was isolated.

The following is a list of Elephants that NVSL has tested for the subject owner and are positive for M. tuberculosis I have provided Mr. Booth with test charts and other related documents for the following elephants. Any test request that comes into NVSL are listed under the name of Ringling Brothers Circus.

Tectnie, 9/3/99, 7/24/00.

Vance, (3)1/8/99, 6/11/99, 7/2/99

Sabu , 12/19/2000

Mala, 6/15/98

Dolly, 11/20/98, 12/4/98

Calcurta 1, 8/11/00

Calcurta 2, (2)11/30/99, 7/24/00, 7/25/00, 8/17/00

Siam, 11/30/99

Janet B Payeur
SIGNATURE OF AFFLIANT

Subscribed and sworn to before me at NVSL Ames. I on this 16th day of April , 2001

[Signature]

AFFIDAVIT

I, *Janet Payeur D.V.M. Ph. D.*, being duly sworn on oath make the following statement:

It should be noted that the TB report for Calcutta 1, may be in error for the feces that tested positive on 1/16,18/2000. In the trunk washes that were submitted on 2/3,4,5/2000 for Calcutta 1 there were no isolation²⁶ made. Calcutta 2 is positive for TB.

I have provided Mr. Booth with a list of all elephants that NVSL has tested for Ringling Brothers Circus. We have not received any test requests for the subject company since October 2000 to date.

I have read the above statement and swear it is true and correct to the best of my knowledge.

I make this statement of my own free will.

Janet S. Payeur
SIGNATURE OF AFFIANT

Subscribed and sworn to before me at NVSL Ames, IA
on this 16th day of April, 2001

Neil Booth