

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

* * * * * **EXCERPT** * * * * *

In re:)
)
 SAM MAZZOLA, an individual)
 doing business as WORLD)
 ANIMAL STUDIOS, INC., a) AWA Docket No.
 former Ohio domestic) 06-0010
 corporation and WILDLIFE)
 ADVENTURES OF OHIO, INC.,)
 a former Florida domestic)
 stock corporation currently)
 licensed as a foreign)
 corporation in Ohio,)
)
 Respondent.)

and

In re:
 SAM MAZZOLA,) AWA Docket No.
) D-07-0064
 Petitioner.)

DAY XIX

Cleveland, Ohio

Thursday, July 31, 2008

1280 9th Street
 Courtroom 3013
 Cleveland, OH

BEFORE:

JILL S. CLIFTON
 Administrative Law Judge

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APPEARANCES:

On Behalf of the Respondent/Petitioner:

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On Behalf of the Complainant/Respondent:

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ALSO PRESENT:

Betty Goldentyer, USDA,
APHIS Representative

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P R O C E E D I N G S

4:42 P.M.

JUDGE CLIFTON: What I want from now on is for the court reporter to mark this portion of the proceeding for expedited transcript, from here until we go off record. I would it like to be emailed to me by a week from tomorrow, so that date would be Friday, August 8. And if it can be earlier than that, great. And my plan is then to disseminate it to the parties in this case by email, the same as I have other important communications and I hope to do it on that day, August 8 or sooner. That would also be a good opportunity for the parties to suggest to me any changes in that portion of the transcript so that they can be delivered to Neal Gross Court Reporters in time to be correct when the record copy is delivered to the Hearing Clerk. Any other transcript corrections can be filed at your leisure which would be for the benefit of the Judicial Officer.

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1 What I have to say now is my decision
2 and throughout consists of mixed findings of
3 fact and conclusions, plus my discussion,
4 analysis, and eventually my order.

5 I'd like to begin with what is APHIS
6 policy with regard to no direct contact, that
7 means no touching, between the public and
8 juvenile and adult felines. I find this
9 policy very clearly stated in CX-179. I'm
0 going to read it into the record. "Public
1 contact with certain dangerous animals may not
2 be done safely under any conditions. In
3 particular, direct public contact with
4 juvenile and adult felines (e.g., lions,
5 tigers, jaguars, leopards, cougars) does not
6 conform to the handling regulations, because
7 it cannot reasonably be conducted without a
8 significant risk of harm to the animal or the
9 public. The handling regulations do not
0 appear to specifically prohibit direct public
2 contact with infant animals, so long as it is
2 not rough or excessive, and so long as there

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1 is minimal risk of harm to the animal and to
2 the public. If you intend to exhibit juvenile
3 or adult large felines" [and adult has a
4 footnote that indicates basically that
5 juvenile or adult refers to over 3 months of
6 age] - - after the word "felines" "(e.g.,
7 lions, tigers, jaguars, leopards, cougars),
8 and would like Animal Care to review your
9 proposed exhibition to determine whether it
0 will comply with the handling regulations,
1 please include with your application a
2 description of the intended exhibition,
3 including the number, species, and age of
4 animals involved and the expected public
5 interaction."

6 This CX-179 is what I call the "Dear
7 Applicant" letter and it was provided in
8 packets for new applicants for Animal Welfare
9 Act licenses beginning in approximately
0 January 2003. During the following year, it
2 was provided to licensees who already had
2 their Animal Welfare Act licenses with their

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1 renewal packets which were sent to them
2 roughly a month before their expiration dates.

3 Now I do not have any direct evidence
4 that Mr. Mazzola's "Dear Applicant" letter
5 reached him or that he ever saw it. But that
6 is not really crucial to the allegations in
7 this case and I'll explain why as I go through
8 them.

9 What is so important about CX-179 is
0 that it so clearly states that no touching
1 will be permitted between the public and these
2 big cats that are three months and older.
3 APHIS has determined that that interpretation
4 of the handling regulations is necessary for
5 the safety of the animals and the public. It
6 is APHIS' right to interpret its regulations
7 in that regard. It is APHIS' responsibility,
18 initially, to make these interpretations.

9 We in the United States are very aware
0 of how quickly businesses and business
2 practices change and that includes the
2 business of exhibiting animals. It is

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1 reasonable that APHIS would continue to adapt.
2 It is required that APHIS' licensees be
3 adaptable and cooperative and that they
4 exercise good judgment.

5 I was very impressed in both Dr. Antle's
6 testimony and Jay Riggs' testimony that they
7 could see APHIS' viewpoint. An example of
8 that: when Jay Riggs was testifying that
9 working with the older big cats is actually
0 easier, he also commented that he can see that
1 there's greater risk because, of course, the
2 animals are bigger, stronger, faster, more
13 powerful, and so on.

4 When Dr. Antle testified, he explained
5 that these changes in interpretation were
6 devastating to his ability to collect money,
7 for example, making photographs, because
8 people loved being photographed with the big
9 cats, money that would further his
0 conservation efforts. And yet, he
2 acknowledged being able to see APHIS'
2 viewpoint because so many unqualified people

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1 who had no right acting as if they were
2 trainers were putting the public at risk.
3 When he testified that it takes ten years of
4 good experience to make a trainer of a handler
5 and he explained that that experience would
6 involve going to places that are off-site,
7 seeing how animals react in circumstances that
8 they're not expecting, that was very telling
9 evidence indeed.

0 Now I find that when Mr. Mazzola stays
1 in his role as a trainer, he is extremely
2 capable. But what he has done here is made
3 APHIS his adversary, his enemy. He has viewed
4 APHIS as the partner of PETA. Mr. Mazzola
5 testified that he did not want APHIS to have
6 his Social Security Number. Now he really
7 didn't have a corporate number to give APHIS,
8 not the corporation's federal identification
9 number. So really the only suitable number to
0 have given APHIS would have been his Social
2 Security Number which he purposely did not do.

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1 Mr. Mazzola purposely did not keep APHIS
2 apprised of his itinerary and it was partly
3 because he didn't want PETA to know where he
4 was going to be, but it was partly because he
5 did not want APHIS to know where he was going
6 to be. He did enjoy operating independently.
7 His attitude throughout, beginning in 2003 is
8 I want the license. I don't want the
9 regulation.

10 Now Mr. Mazzola is proud of his
11 integrity in being brave and courageous enough
12 to come test whether APHIS was correct or
13 whether he was correct in this setting. It is
14 unfortunate that he felt that was his best
15 option because the other alternative would
16 have been to cooperate with APHIS and get half
17 a loaf.

18 Now let me explain what half a loaf
19 would be. Half a loaf would be still being a
20 licensee and being able to have qualified
21 handlers wrestle bears for public exhibition,
22 handlers who are employed by the licensee.

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1 That would be half a loaf. The half that
2 would have been lost would be letting members
3 of the public wrestle the bears.

4 Let's talk about photo opportunities.
5 Dr. Antle has confined himself to exhibiting
6 the smaller, younger, less trained cats and
7 that's half a loaf. The public likes better
8 the big ones. Dr. Antle has not yet figured
9 out how to get the photos with a glass barrier
0 that would be as attractive to the public and
1 he has not figured out a way to interest them
2 in the plight of animals whose -- well, whose
3 conservation, along with the conservation of
4 the habitat, is at risk.

5 When Mr. Mazzola decided the only way he
6 could get a test case was to stop cooperating
7 with APHIS, he doomed his ability to remain
8 licensed. The refusal to provide the
9 itineraries would in itself be grounds to
0 revoke the license and permanently disqualify
2 the individual from being licensed. The
2 refusal to allow inspection would in itself be

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1 grounds to revoke the license and permanently
2 disqualify the individual from being licensed.

3 It is not adequate to say Dr. Harlan can
4 inspect, but Mr. Coleman, you may not. It is
5 APHIS that determined to send two inspectors,
6 both inspectors at the same time, because of
7 the difficulties that Mr. Mazzola had
8 presented. So that was a refusal to allow
9 inspection.

0 Now I am going to go through and talk
1 about the individual paragraphs of the
2 complaint before I go further, but there are
3 two other items of testimony from our previous
4 session that I want to comment on. They come
5 from both Dr. Gibbens' and Dr. Goldentyer's
6 testimony. And I'm very grateful that both of
7 them took the time to come here and present
8 APHIS' viewpoint because I didn't understand
9 it until this hearing. And in trying to apply
0 what I consider statutory construction, I
2 looked at the phrase "public" as it is
2 contained in Section 2.131(c)(1) of Title 9 of

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1 the Code of Federal Regulations; and the other
2 phrase, "general viewing public," and I
3 assumed that because they were different, that
4 they were meant to refer to different subsets.
5 I now know otherwise. I know now that APHIS
6 uses them interchangeably and with good
7 reason.

8 Dr. Goldentyer's explanation was the
9 most clear to me and it is summarized also in
0 the brief that Ms. Juarez had presented today,
1 and the gist of it is the animal needs
2 protection which means the person that's going
3 to be near the animal needs protection, and it
4 makes no sense that a member of the general
5 viewing public would lose his protection by
6 going closer to the animal. In other words,
7 if I take a member -- if I thought the general
8 viewing public was outside the secondary
9 barrier, which I did, if a person in that
0 subset then goes into the enclosure with the
2 animal, then that person is in more need of
2 protection than ever. And so yes, there must

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1 be minimal risk of harm for that person as
2 there is for any member of the public, but
3 there must also be adequate barriers or
4 distance.

5 Now the reason I struggled so with
6 trying to interpret that regulation was that
7 contact with some dangerous animals is
8 permitted. For example, a tiger that is two
9 months old is still a dangerous animal. An
0 elephant is still a dangerous animal. They
1 can be touched. So can lots of other animals
2 that can be dangerous under certain
3 circumstances. Under certain circumstances, a
4 child could be damaged by a puppy. So I
5 realize when Dr. Gibbens explained that all
6 the circumstances have to be taken into
7 account, yes, that makes sense to me, but I
8 realize that for some animals, there can be
9 adequate safeguards, even though adequate
0 barriers or distance need to be there, that
2 can be, with some animals, no distance and no
2 barrier. But with other animals, there has to

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1 be an absolute barrier or distance such that
2 no touching could possibly occur.

3 So I understand that now, and their
4 testimony was essential in this case so that I
5 could realize that I had misunderstood. But
6 because I misunderstood, I'm sympathetic to
7 Mr. Mazzola because he also thought the
8 secondary barrier is what kept out the general
9 viewing public.

10 Now when Mr. Coleman began to inspect
11 him and talk about the barriers and distance
12 not being adequate with regard to the bear
13 being photographed and with regard to the
14 tigers being photographed, I need to look at
15 those one at a time.

16 So now I go to the Second Amended
17 Complaint. Now I'm going to give the court
18 reporter a copy of the Second Amended
19 Complaint to take to the typist in case the
20 typist finds it useful in preparing this
21 portion of the transcript. And is the one
22 that Dr. Goldentyer used still here?

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1 DR. GOLDENTYER: It should be.

2 JUDGE CLIFTON: Yes, it is. That
3 document is just for the use of the court
4 reporter and the typist and then it can be
5 discarded. It is not an exhibit and it is not
6 needed for our record. It's already in the
7 record file.

8 All right, I'm going to do this the easy
9 way. I'm going to start at the back because
10 these are the easiest allegations to deal
11 with.

12 All right, I'd like everyone to look
13 with me at paragraph 47. Paragraph 47 does
14 not allege a violation. It is a paragraph to
15 indicate that notice has been provided to the
16 Respondent.

17 Paragraph 48, again sets up the
18 following paragraphs as alleged violations.

19 Looking now at paragraph 49, the
20 testimony that's important to me here is that
21 -- well, first of all, Mr. Mazzola
22 misunderstood the word "housed". The

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1 enclosure that is referred to in paragraph 49
2 is the enclosure in which the tigers' photo
3 opportunities took place. The tigers that
4 were being exhibited in those enclosures were
5 housed there for the purpose of those photo
6 opportunities.

7 The open top nature of them is said by
8 Mr. Mazzola to present no problem given the
9 fact that the tiger is chained to a table that
0 he couldn't possibly pull with him over the
1 six-foot high panel to escape. But the
2 testimony that's important here is the
3 testimony about the human error that is always
4 the concern. The reason you have redundant
5 safety measures whenever possible is to
6 anticipate that something could go wrong.
7 Even though in most cases the handlers, Mr.
8 Mazzola and Mr. Palmer, were very experienced
9 and had done the bringing of the tigers into
0 the photo opportunity enclosure thousands of
2 times without incident, nevertheless during
2 the taking in and taking out of the tigers,

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1 what controls the tigers are trainer or
2 handler who are possibly subject to failure.

3 What could go wrong? Well, perhaps in
4 clipping the chain to the -- I'll call it an
5 eye bolt, that it not get clipped properly,
6 that something startled the tiger at exactly
7 the wrong moment when vulnerability is
8 greatest. Dr. Gage's testimony was extremely
9 helpful in this regard as well. The ability
0 for a tiger to leap out over that six-foot
1 barrier was quite great.

2 When Mr. Mazzola first said why putting
3 a lid on that enclosure would be so difficult,
4 he talked about it as if structurally it was
5 hard to do, but then later in his testimony he
6 testified how quickly it could be done in the
7 event of the need, in the event of an
8 emergency, how in just a matter of a couple of
9 minutes, the two six-foot panels that would
0 constitute the ceiling could be brought out,
21 placed on top and affixed.

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1 What I find is that Mr. Mazzola's
2 concern was the six-foot height which would be
3 shortened by putting the lid on it, by a few
4 inches, would bump some people's heads and
5 that is a problem. Because you either have to
6 get taller panels or you have to have a top
7 that goes up higher before it becomes
8 horizontal to the ground. It's expensive.
9 But I think this was a suggestion that was
0 well warranted, for, I'll call it, redundant
1 safety. It's a precaution in case something
12 goes wrong.

3 And so when Mr. Mazzola, after having
4 been warned to put a lid on those enclosures,
5 failed to do so, that did constitute a
6 violation as alleged in paragraph 49, and with
7 regard to the tigers in paragraph 50, and with
8 regard to the tiger in paragraph 51.

9 Now let's talk about the bear. With
0 regard to the bear Mr. Mazzola said that if
2 the bear really wanted out of that cage, that
2 enclosure, those six-foot panels weren't going

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1 to hold him. He'd just walk through them.
2 Well, it was other measures that were relied
3 on to keep the bear from wanting to do that,
4 to keep him from becoming bored, to keep him
5 company and so forth, and of course, many
6 times he was changed out and taken away from
7 that enclosure and put back into the trailer
8 where he had more comfortable quarters. But
9 another reason to put a lid on, is that it
0 adds structural integrity to the walls of the
1 enclosure. It's one more anchoring point for
2 those walls. And for that reason I think a
13 lid would have been helpful.

4 It could well be that Lakota, who weighs
5 so much and is so mature, would not be
6 climbing. It could be that he would not be
7 climbing out, but as a redundant safety
8 measure, I think putting a lid on would help
9 keep the walls intact. That would be true
0 also as to the tiger photo opportunity
2 enclosure.

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1 So with regard to these particular
2 violations that are alleged here in paragraph
3 50, I find that they are proved with regard to
4 the adult black bear and also in 51 with
5 regard to the adult black bear.

6 Now with regard to the penalty that's
7 appropriate for those, I'll come back to that
8 after I've gone through everything.

9 All right, let's go to Posh Nightclub.
0 Please look at the paragraphs 43, 44, and 46.

1 I'm very glad that I had the opportunity
2 to hear about this bear wrestling which I
3 didn't know anything about, and as Mr. Mazzola
4 described it, he just thought of it as normal.
5 It's been done for years and years. It was
6 interesting to hear the testimony of the two
7 young men that had wrestled the bear. They
8 were very excited to have had the opportunity,
9 even though they were both scratched. I think
20 they were both scratched, at least one was.

2 It's interesting and it is exciting and
2 it's entertaining, and Mr. Mazzola was very

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1 successful as a promoter and an entertainer in
2 this regard. But this is a method of
3 entertainment and a way of life that's a thing
4 of the past. I certainly can understand why
5 APHIS could not permit its licensees to put on
6 such an exhibition and invite members of the
7 public to come in and wrestle the bear.

8 So many exhibitors would not have the
9 bears that Mr. Mazzola had identified as good
0 for this activity. So many exhibitors would
1 not have the years of experience and the
2 knowledge that Mr. Mazzola had in permitting
3 this activity. It's just far too dangerous an
4 activity to allow everybody who has access to
5 a bear and an exhibitor's license to
6 participate in. And I understand perfectly
7 why APHIS had to shut down that activity. The
8 testimony is that Mr. Mazzola did it after
9 being aware that APHIS would permit the bears
0 to wrestle only the exhibitor's employees, not
2 members of the public, and yet these three
2 exhibitions were done in spite of that. And

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1 so these are violations that are proved.
2 That's paragraph 43, 44, and 46.

3 All right, now let me go to paragraph
4 45. I want to go off record to do this.
5 We'll go off record at 5:15.

6 (Off the record.)

7 JUDGE CLIFTON: All right. We're
8 back on record at 5:18.

9 With regard to Paragraph 45, I am
0 looking at CX-36, pages 45, 46, 47, and 48.
1 At least these are all adults, which is less
2 frightening to me than with children, but
3 again, the problem here, even though -- and
4 this is, no doubt, Lakota -- even though this
5 bear has been through so many photo shoots
6 without incident and seems to have a marvelous
7 temperament for this sort of thing and seems
8 to be handled so capably by Dwayne Palmer,
9 who's pictured here, and Mr. Mazzola,
0 nevertheless, I understand that allowing a
2 bear this large, even a black bear, even a
2 very well suited black bear, to be basically

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1 side by side with people hanging onto his back
2 and enjoying just being right there hanging
3 with him, next to him; I know it was a thrill
4 for them, and I know nothing happened and they
5 were not injured. Nevertheless, I understand
6 that APHIS needs to require that there be
7 distance or barriers between a bear and the
8 public.

9 And I have to reject Mr. Mazzola's
0 theory that these are not the public, that
1 this is a private opportunity; that these
2 people have chosen to come in, and they are
3 now invited in, and they are no longer the
4 public. What is so true about the testimony
5 here about the public is the public thinks
6 that if it's being allowed, it must be safe.
7 They see a line and they get in it, and they
8 don't understand what dangers there could be.

9 And so although I can appreciate why Mr.
0 Mazzola hates to see freedoms disappear and
2 people's opportunity to do these things dry up
2 and disappear, I'm afraid that's the world

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1 we're in, and so I do find a violation in
2 Paragraph 45 of allowing these adults to have
3 their pictures taken without any distance or
4 barriers between the bear and themselves.

5 All right. Now I'm going to Paragraph
6 42, and I want to turn to CX-21, pages 8 and
7 9. I've read the APHIS brief with regard to
8 this, and I do not have that same viewpoint.
9 I feel that with regard to the juvenile lion
0 that is depicted in CX-21, pages 8 and 9, the
1 two people in the same enclosure with that
2 juvenile lion are the exhibitor's employees,
3 and the juvenile lion is not being exhibited
4 to the public.

5 I realize from the brief that there is
6 an argument there, that based on the female
7 employee's testimony, she was not involved as
8 an employee with regard to the juvenile lion,
9 but rather worked mostly in the pet store, but
0 I find that she was an employee with regard to
2 being permitted to be in contact with the

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1 juvenile lion as shown here without adequate
2 barriers or distance.

3 If it matters how much the lion weighs,
4 I find that the lion weighs somewhere between
5 80 and 100 pounds.

6 All right. Now, with regard to the bear
7 and the tiger in Paragraph 42, Mr. Coleman's
8 citation here -- let me find that. This
9 inspection report is CX-20, and the allegation
0 contained in the inspection report -- and I
1 realize we're no longer working off of the
2 inspection report. We're working off the
3 complaint, but just to see what the problem
4 was with regard to the enclosures that had the
5 public and the bear in them at the same time,
6 I want to refresh myself.

7 All right. I had read CX-20, page 2,
8 and it's basically the same situation as
9 Paragraph 45, and so I incorporate the
0 comments I made with regard to 45. I also add
2 the observation that the bear is reported by

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1 the exhibitor to be a 700 pound black bear in
2 Paragraph 42.

3 Mr. Mazzola has argued that the trained
4 handler is able to direct the position of the
5 head of the bear and, in addition, the bear is
6 chained to this box, which -- let me see the
7 picture here. Picture CX-21, page 4 shows the
8 chain, and CX-21, page 5 is another picture,
9 but really just showing the patrons either --
0 probably leaving -- after their photo has been
1 made.

2 Again, this is an extraordinary bear and
3 extraordinary trainer, but I understand why
4 APHIS cannot permit the public to be placed
5 next to a 700 pound black bear with no barrier
6 between the public and the animal. So I do
7 find a violation of Paragraph 42 with regard
8 to the bear.

9 Now, the tiger, I'm looking at CX-21,
0 page 6 and CX-21, page 7. These are good
21 pictures that we've spent a lot of time on
2 . . . and I wanted to look at what Mr. Coleman

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1 is concerned about here. At this point he's
2 mostly concerned that the panels, that go up
3 to the table that prevent the tiger from
4 turning his head and reaching the patrons, are
5 not permanently fixed, maybe not permanently;
6 are not fixed, that they are movable. Let me
7 see exactly what that concern is in the
8 inspection report.

9 Okay. I'm reading from the inspection
0 report, CX-20, page 2. "During the photo
1 shoots with an adult tiger, two fence panels
2 are used as a barrier between the viewing
3 public and the animal."

4 Now, viewing public, what we're talking
5 about here are the people who are getting
6 their photos made. So we can call them the
7 public, but we know now that APHIS also calls
8 them the viewing public.

9 "These fence panels are not secured to
0 the box on which the animal sits and could be
1 moved by the tiger. These fence panels must
2 be secured in place to create an adequate

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1 barrier between the viewing public and the
2 animal."

3 All right. Mr. Mazzola testified as to
4 why he wanted them to be movable, so that the
5 trainer or the handler could quickly get from
6 the back of the cat to the front of the cat
7 and vice versa without a problem because there
8 might be an instance in which the cat needed
9 to be released or in some other way dealt
0 with, and so Mr. Mazzola did not feel it would
1 be safer to fix these fence panels.

2 That may be. It may be there needed to
3 be some other solution, some other barrier.
4 Mr. Mazzola said, well, there's just no way
5 the tiger can turn around to where the people
6 are because of the chain set-up we have.
7 We've got not only his chain that's around his
8 neck, which starts out being -- it starts out
9 being eight feet and gets to be six feet as I
0 recall, but he's got two other chains that
2 chain his head, the eye bolt on one side into
2 the eye bolt on the other side, which prevent

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1 him from turning his head around to reach the
2 people.

3 Well, once again, something might go
4 wrong. What the inspector is asking for here
5 is a redundant safety measure, a safeguard, a
6 protection that in case something does go
7 wrong, there is a barrier so that in any case
8 the public would not be contacted by the
9 tiger's front parts.

0 At this point there is not a concern
1 expressed about the back feet and the concern,
2 for example, that Dr. Gage expressed about the
3 tiger begin able to use his back feet in a way
4 that could cause injury to the patrons. At
5 this point the only concern is that those
6 panels are not secured to the box.

7 This is a very close question for me.
8 When in doubt, err on the side of safety. I
9 don't know; I don't know if there was a
0 mechanism, carabiner or something by which
2 these panels could be affixed to the box in
2 such a way that they could be released by the

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1 trainer if it was necessary to get to the head
2 of the cat and the trainer was at the rear of
3 the cat. I don't know.

4 I'm sorry that this couldn't have been
5 worked out. It seems like such a small thing
6 now that we look back over all of this, but
7 particularly since I now know that APHIS'
8 position is that there should not be any
9 contact at all with any part of the tiger by
0 the public, I'm going to find that there is a
1 violation here.

2 All right. Now let's look at Paragraph
3 41. I'm looking at CX-18. I'm also looking
4 at CX-17. The complaint about the bear is the
5 same, and I incorporate the comments I've
6 already made. The complaint about the tiger
7 is the same, that the two fence panels -- I'm
8 going to read this about the tiger.

9 I realize I'm working backwards in time.
0 So in a way that's a little awkward. It was
2 just easier for me to do, but on August 16th,
2 2005, the inspection report says this about

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1 the photo shoots with the adult tiger. It
2 says, "During the photo shoots with an adult
3 tiger, two fence panels are used as a barrier
4 between the viewing public and the animal.
5 These fence panels are not secured to the box
6 on which the tiger sits and could be moved by
7 the tiger. The licensee has stated he feels
8 it is safer for these fence panels to be
9 movable in case of an emergency or if the
0 animal becomes agitated. These fence panels
1 must be secured in place to create an adequate
2 barrier between the viewing public and the
3 animal."

4 So I incorporate the same comments that
5 I made with regard to Paragraph 42 and
6 previously, and I do find violations with
7 regard to both the adult bear and the adult
8 tiger as indicated in Paragraph 41.

9 Now, with regard to Paragraph 40, I'm
0 looking at CX-16 and CX-15. Once again, the
2 only complaint with regard to the adult
2 tiger's photo shoots was that two fence panels

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1 are used as a barrier between the viewing
2 public and the animal. These fence panels are
3 not secured to the box on which the tiger sits
4 and could be moved by the tiger. The fences
5 must be secured in place to correct this.

6 And, again, the concern for the bear is
7 the same as previously, and I incorporate the
8 comments that I have made with regard to both
9 the adult black bear and the two adult tigers
0 in previous paragraphs.

1 Now, Paragraph 39, we get so spoiled
2 when we have pictures. I'm looking at CX-14,
3 the comments with regard to the tigers, and
4 I'm reading from this inspection report dated
5 August 19, 2004, are, "During the photo shoots
6 using adult tigers, two fence panels are used
7 as a barrier between the viewing public and
8 the animals. These fence panels are placed on
9 each side of the tiger table, but are not
0 secured in place to stop the animal from
2 potentially moving the fencing. These fences
2 must be secured in place to correct this."

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1 And with regard to the bear, the
2 description of the bear's situation in the
3 photo shoots is essentially the same. It
4 references an adult 720 pound bear, and I
5 incorporate the comments I have made in
6 previous paragraphs, and I do find a violation
7 with regard to --

8 MS. JUAREZ: Your Honor, there are
9 photos that accompany that inspection report
0 found at CX-53.

1 JUDGE CLIFTON: Where are they
2 found?

3 MS. JUAREZ: CX-53.

4 JUDGE CLIFTON: Thank you.

5 Okay. Now, I'm looking at
6 [paragraph] 39, and I'm reading about the
7 black bear, and I'm not finding any
8 allegations about the tigers; is that -

9 MS. JUAREZ: That's correct, Your
0 Honor.

1 JUDGE CLIFTON: That is correct

2 MS. JUAREZ: It was a notice.

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1 JUDGE CLIFTON: Okay. So this is
2 the notice. Okay. Paragraph 39 is not an
3 alleged violation with regard to the tigers,
4 but provides notice of a subsequent one.

5 The only violation that could be
6 remedied by some sort of a civil penalty or
7 otherwise would refer to the black bear.

8 All right. Let me look also at the
9 photos in CX-53. All right. I'm looking at
0 CX-53, page 3. These are children. That's
1 even more of a concern to me and to APHIS.

2 All right. I do find a violation for
3 the same reason with regard to the adult black
4 bear and incorporate the comments I've made on
5 other paragraphs.

6 All right. Paragraph 38 just sets up
7 these handling violations. So there's not a
8 particular alleged violation there.

9 All right. Thirty-seven is the notice
0 that the photo opportunities with the bear
2 required adequate distance or barriers and is
2 not a direct allegation.

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1 In addition, I wanted to comment. I
2 have Dr. Carter-Corker's letter in which she
3 notified Mr. Mazzola that she agreed with Drs.
4 Kirsten, Coleman, and -- or Drs. Kirsten and
5 Markin and Mr. Coleman -- that the bear photo
6 shoots required barriers or adequate distance,
7 and I want that to be referenced with regard
8 to my findings here, and I think I need help
9 as to identifying the exhibit numbers.

0 MS. JUAREZ: CX-162, Your Honor.

1 JUDGE CLIFTON: CX-162. Thank
2 you.

3 Okay. Now, with regard to Paragraph 36,
4 let me deal with all of these together. We're
5 starting with the Paragraph 33, 34, 35, and
6 36. They all have to do with whether the
7 veterinary care plan was available for
8 inspection or whether it even existed, whether
9 it was even being maintained, and whether it
0 was violated by failing to employ an attending
1 veterinarian.

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1 You know, this is difficult for me.
2 When I look at Mr. Mazzola's book, which I
3 didn't actually examine fully -- I just
4 compared some of the pages with some of the
5 pages -- I couldn't really comprehend what
6 was in there. It was a gathering of
7 information that was too difficult for me to
8 analyze.

9 I understand Mr. Mazzola's problem. Do
0 I keep my book home in case I'm being
1 inspected there? Do I take it on the road in
2 case I'm being inspected there? I realize
3 it's difficult.

4 I would think that an exhibitor who
5 travels would always have his plan with him
6 when he travels, and if a traveling exhibition
7 is going on at the same time as inspections at
8 the home operation, which I don't think would
9 happen very often because I don't think there
0 are enough inspectors to be at both places on
1 the same day, but if that were to happen, I
2 think it would be better to have your plan at

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1 your traveling exhibit or at least photocopies
2 out of it of the current information, current
3 inventory of animals, all of the vet
4 information that's current, what your plan is
5 with regard to any kind of escape or need for
6 euthanasia or anything that would be a
7 disaster. I would think you would have to
8 have that with you at all times when
9 traveling.

0 All right. Paragraph 33 is just the
1 notification. So I don't have to concern
2 myself with that.

3 And then Paragraph 34 also sets up the
4 following paragraphs. So I don't need to make
5 any specific finding until I get to Paragraphs
6 35 and 36, and these allegations are just that
7 the plan was not available for inspection. So
8 I don't have to understand whether the plan
9 was incomplete, whether it was inadequate,
0 what was in it or what was not. I can make
2 the finding that it was not available for
2 inspection.

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1 So I do find a violation of Paragraphs
2 35 and 36.

3 All right. Paragraph 32, this is the
4 situation in which Mr. Mazzola was happy to
5 have Dr. Harlan inspect, but not Randy
6 Coleman, and Mr. Mazzola says it's because of
7 what Randy Coleman said to him when
8 approaching him at his exhibition, something
9 about the lion looking like he had been beaten
0 by a baseball bat.

1 I cannot make sense of Mr. Mazzola
2 coming so uncorked even if that comment was
3 made. I know he loves his animals. I know
4 that it would be very irritating to him to
5 have somebody think he had done that to an
6 animal, but if any of my acquaintances had
7 come up to said that to me, I would know they
8 were not serious. I have a hard time
9 believing that Mr. Mazzola was so upset at Mr.
0 Coleman over something like that.

2 I think Mr. Mazzola did not want to be
2 inspected or he was so angry at Mr. Coleman

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1 that he just didn't want Mr. Coleman
2 inspecting him. That's what I think happened.

3 The testimony of Dr. Goldentyer that
4 APHIS licensees cannot be the ones who choose
5 how to run the program -- my words, not hers -
6 - is so true. I mean, the idea that you would
7 choose your inspector or choose when they
8 inspect you is ludicrous.

9 I do find that it was a refusal to allow
10 inspection when Mr. Mazzola told Mr. Coleman
11 he could not inspect on August 3, 2006. So I
12 do find a violation.

13 All right. Thirty-one, the reason I do
14 not think Mr. Coleman extorted Mr. Mazzola on
15 August 8th, 2006, is that it would be so out
16 of character with everything that I know about
17 Mr. Coleman.

18 I know that Mr. Coleman enjoys his work
19 as an APHIS animal care inspector. I can tell
20 that by the way he operates here in the
21 courtroom. I can tell by the meticulous care
22 with which he addressed each of these

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1 situations and the infinite patience he
2 exhibited. I can tell that this would be the
3 last thing that would occur to him, to try to
4 extort money from an exhibitor.

5 So I believe that when Mr. Mazzola said
6 that he had done that, Mr. Mazzola was just
7 trying to get rid of him as an inspector. The
8 confirmation that I have that Mr. Coleman
9 would not engage in any kind of extortion or
0 accepting a bribe comes when Mr. Mazzola makes
1 a telephone call to him. I don't remember the
2 date. Let's see. Let's get that pinned down.

3 What exhibit is that telephone call
4 reported by -

5 MS. JUAREZ: CX-54, Your Honor.

6 JUDGE CLIFTON: CX-54

7 MS. JUAREZ: I think it's
8 specifically referenced on page 5 of that
9 exhibit.

0 JUDGE CLIFTON: Yes. Okay. I've
2 got it marked here.

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1 Okay, but what I want is Mr. Coleman's -
2 - yes, that's right

3 MS. JUAREZ: Page 12 of the
4 statement.

5 JUDGE CLIFTON: Where is it?

6 MS. JUAREZ: Page 12.

7 JUDGE CLIFTON: Page 12. Okay.
8 Right, right. When I read CX-54, I find that
9 Mr. Coleman received the telephone call from
0 Mr. Mazzola, and during the call -- I'm
1 reading Mr. Coleman's report of one of the
2 things that happened during the call -- Mr.
3 Mazzola said, "I realize it would be cheaper
4 to pay you than to pay my stupid attorney and
5 go through this trial. So when can we get
6 together to talk about that?"

7 What Mr. Coleman reports here is that he
8 quickly got extracted from that conversation,
9 and I'll read that in a moment, then ended the
0 call, called his supervisor and the regional
1 office, was advised to go to the Office of the

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1 Inspector General to report it, and he did
2 that.

3 Then CX-54, page 5, includes the
4 synopsis of that report confirming that, in
5 fact, Mr. Coleman did on January 5, 2007,
6 refuse the bribe and immediately reported to
7 his supervisor.

8 Now, this says, CX-54, page 5, says that
9 that telephone call was recorded. So I don't
0 have to rely just on what Mr. Coleman said
1 about the call. It was recorded. We know
2 that's what he said in the call.

3 So this is how that recording goes. I'm
4 going to read it again. Mr. Mazzola said, "I
5 realize it would be cheaper to pay you than to
6 pay my stupid attorney and go through this
7 trial. So when can we get together to talk
8 about that?"

9 Mr. Coleman then asked, "Sam, are you
0 trying to bribe me?"

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1 Mr. Mazzola replied, "Well, you remember
2 when we were at the fair and I refused you to
3 inspect the animals."

4 Mr. Coleman said, "Yes, I do."

5 Mr. Mazzola said, "Remember I showed you
6 my checkbook when we were standing between the
7 two barns and I asked you how much it would
8 cost to stop these stupid inspections."

9 Mr. Coleman said, "No, Sam, I don't.
0 That never happened. I think we need to end
1 this call now until the hearing is over. I
2 will try to get you something about the letter
3 by the end of the day."

4 And that's in reference to getting for
5 Mr. Mazzola a copy of the denial of his
6 license application.

7 So all of this persuades me that Mr.
8 Mazzola's allegation that Randy Coleman had
9 attempted to extort from him money was false.
0 I, therefore, find it absolutely
2 incomprehensible that Mr. Mazzola would go on
2 air on a radio station and say something to

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1 the effect of he had gotten Randy Coleman
2 busted for accepting bribes.

3 I think of all of the evidence in this
4 case, that is what offends me the most.

5 I do find that the action that Mr.
6 Mazzola took with regard to making a false
7 report with the Office of the Inspector
8 General, saying that Randy Coleman had
9 solicited a bribe, I do find that that
0 absolutely is threatening, intimidating,
1 harassing, and abusing an inspection official,
2 and that it's the worst kind of threatening
3 and harassing and abusing.

4 I further find it of great concern to me
5 that in his testimony -- I think it was just
6 yesterday -- Mr. Mazzola confirmed that what
7 he really wanted was, both Dr. Kirsten and Mr.
8 Coleman on different occasions, was for them
9 to throw a punch at him. He really wanted to
0 goad them into fighting him so that he could
2 basically beat them, beat up on them. He
2 really did regard APHIS as his enemy

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1 throughout this. He had no concept that
2 things can change and that the activities that
3 he had enjoyed as an exhibitor without being
4 stopped from doing in the past, could be
5 stopped.

6 All right. Paragraph 30, Mr. Mazzola
7 admits the allegations in Paragraph 30. It's
8 clearly abusive. It's clearly harassing, and
9 it clearly should not be tolerated in a
0 licensee. The allegations of Paragraph 30 are
1 proved.

2 All right. Paragraph 29 is an
3 introduction basically to the paragraphs I've
4 just been through.

5 And Paragraph 28 is pretty much a notice
6 provision, not that you'd have to give notice
7 to a licensee that such behavior was
8 unacceptable, but it was done very well. The
9 Office of Inspector General counseled Mr.
0 Mazzola.

2 Mr. Mazzola started out well. When he
2 first appealed to Dr. Carter-Corker, he wrote

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1 a very thorough, long letter. It took him a
2 lot of time, and I appreciate that he tried to
3 do it that way.

4 Then whatever happened, he then wrote
5 his other letter which was to apologize to say
6 he'd like to work with -- basically with his
7 inspectors, his inspector and his supervisor -
8 - to try to work it out, and you know, he was
9 looking forward to resolving any problems.

0 Then everything just went on as it had
1 been. I don't understand it. I don't
2 understand why Mr. Mazzola gave up on the
3 process of trying to achieve some compromise
4 that might have worked.

5 Now, had he done so, had Mr. Mazzola
6 agreed to make the fence panels stationary,
7 fixed to the platform, had he agreed to put a
8 lid on the photo shoot enclosure, that would
9 not have been enough in the long run because
0 in the long run, he still would have had to
2 have a barrier between the tiger and the
2 public getting their pictures made. So there

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1 would have constantly been more requirements
2 on him, and I understand that. But he would
3 still be an exhibitor. He would still be able
4 to do things with his employees in contact
5 with his animals. He'd still be able to
6 arrange certain types of photos with the
7 public so long as that barrier was between the
8 juvenile or adult cats and the bear and the
9 patrons. So I don't know how it all came to
0 this.

1 All right. Now, I think I need a break,
2 and then I'll go into the remainder of the
3 allegations. So let's take -- I know it's
4 kind of late. I hope you're all able to stay.
5 Let's come back if you will at 6:15.

6 (Whereupon, the foregoing matter went off the
7 record at 6:05 p.m. and went back on the
8 record at 6:14 p.m.)

9 JUDGE CLIFTON: All right. We're
0 back on record at 6:14.

2 I have a question. Ms. Juarez,
2 with regard to Paragraph 17

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1 MS. JUAREZ: Yes.

2 JUDGE CLIFTON: Is the reason that
3 APHIS is not asking for any remedy except a
4 cease and desist order for Paragraph 17
5 because those allegations are going to be
6 litigated in some other venue or at least
7 they're being investigated in some other
8 venue?

9 MS. JUAREZ: No, Your Honor. The
0 reason that APHIS has taken the approach that
1 it has is because it wanted to be fair in
2 terms of providing Mr. Mazzola with notice of
3 the fact that the license was invalid. It
4 brought to the Department's attention in
5 connection with the investigation, but before
6 that time we had no knowledge of that in part
7 because of the false information that had been
8 provided.

9 But nevertheless, in an abundance of
0 fairness to Mr. Mazzola, the agency believed
1 that a cease and desist order would be
2 appropriate.

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1 JUDGE CLIFTON: I see. So you're
2 also not asking me to make a finding with
3 regard to Mr. Mazzola operating without a
4 license during those dates, August 13, 2003
5 through on or about August 3, 2006, because
6 you have other allegations which the operating
7 without a license can be dealt with in cease
8 and desist orders?

9 MS. JUAREZ: Your Honor, we were
10 sort of thinking of a finding in connection
11 with that issue.

12 JUDGE CLIFTON: Well, you know, no
13 notice is no notice with regard to findings as
14 well as remedies. So I don't think that's a
15 consistent position

16 MS. JUAREZ: Well, I guess I
17 believe it is to the extent that when the
18 agency is answering by the fact that it's been
19 provided with misinformation and once that
20 information comes to light, it certainly
21 brings it to the attention of the person who
22 is involved. I can see where a civil penalty

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1 may not be appropriate, but in any event, I
2 certainly don't want to debate this issue in
3 risk of upsetting any thoughts that you had in
4 this regard.

5 JUDGE CLIFTON: You're afraid I'm
6 going to get cranky, are you

7 MS. JUAREZ: Yes.

8 JUDGE CLIFTON: Yeah, I would.
9 I'd get cranky over it.

10 My thought is Mr. Mazzola was sending in
11 his application forms for renewal, sending in
12 his money. He was getting a license back.
13 Now, it may have been a license to a
14 corporation that wasn't valid, but I don't
15 think I want to make a finding on that.

16 MS. JUAREZ: Okay.

17 JUDGE CLIFTON: Are you willing to
18 abandon it?

19 MS. JUAREZ: Yes, Your Honor.

20 JUDGE CLIFTON: Thank you.

21 All right. I do not need to make any
22 findings with regard to Paragraph 17 because I

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1 have just twisted APHIS' arm and APHIS is
2 willing to abandon it.

3 All right. Now, I'm going to go in the
4 right order. After 17 I'm actually going to
5 go to 18, and with regard to Paragraph 18, Mr.
6 Mazzola said he didn't have written notice.
7 Well, he did have Randy Coleman's phone call.
8 He also had mailings that he had refused to
9 pick up.

0 Now, Mr. Mazzola said, "I was out of
1 town." Well, I can't believe he was out of
2 town on all those dates. APHIS certainly
3 tried to tell Mr. Mazzola that his application
4 for license had been denied, and I think Mr.
5 Mazzola knew it from Mr. Coleman's phone call
6 or that exhibit that we just talked about.
7 What is it, 54?

8 MS. JUAREZ: Yes, Your Honor.

9 JUDGE CLIFTON: CX-54, page 12,
0 confirms that on January 5, 2007, Mr. Mazzola
2 was notified by Mr. Coleman that the Eastern

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1 Regional Office denied the application and had
2 notified Mr. Mazzola by mail.

3 I understand why Mr. Mazzola went ahead
4 and appeared, to keep on with business as
5 usual at the Ohio Fair Managers Convention.
6 Number one, he had a theory all along that his
7 license was wrongfully denied, was wrongfully
8 not renewed, and then the application process
9 not followed through for a new one, and that
0 he could get reinstatement.

1 Now, when I got involved in the case and
2 was involved with Mr. Mazzola in telephone
3 conferences, I told him that that would not be
4 my view; that my view would be if APHIS denied
5 his license renewal and did not issue him a
6 new license based on a new application and was
7 wrong, he still didn't have a license. He
8 would still be engaging in unlicensed
9 activity.

0 But I also understand from a
2 businessman's point of view that it's
2 difficult to cancel engagements when you're

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1 already scheduled to be there, and of course,
2 he was hoping to get more engagements. He was
3 hoping to remain in business.

4 Nevertheless, I do find that Mr. Mazzola
5 committed the violation described in Paragraph
6 18.

7 Now, with regard to the Paragraph 19, I
8 need some help here. I don't think there's
9 proof of this if the animals weren't there at
0 the Cleveland Sport Travel and Outdoor Show.
1 If what was there was the set-up to bring the
2 animals, and I don't recall whether the
3 evidence showed the animals were outside in
4 their truck or whether the evidence failed to
5 show that the animals were brought to this
6 place of exhibition on March 14, 2007.

7 So I'm going to go off record and ask
8 that if the Complainant has evidence of this
9 that they help me find where it is in the
0 record.

2 We'll go off record now at 6:23.

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1 (Whereupon, the foregoing matter went off the
2 record at 6:23 p.m. and went back on the
3 record at 6:30 p.m.)

4 JUDGE CLIFTON: All right. We're
5 back on record. It's 6:30.

6 MS. JUAREZ: Okay. We have two
7 pieces of evidence that we discussed in this
8 case in connection with the transportation of
9 animals to the IX Center. And the first one is
10 CX-111, which is one eleven. And it's a
11 memorandum prepared by Randy Coleman to Rick
12 Kirsten. And in the second full paragraph the
13 third sentence ACI Coleman documents he had
14 showed up at the event with one bear, but was
15 not allowed to unload.

16 JUDGE CLIFTON: Okay. Good. Thank
17 you.

18 MS. JUAREZ: Okay. And then
19 beyond that, Complainant sought to introduce
20 what was marked as CX-165. It was a video clip
21 from a local news channel, WKYC. And although
22 you allowed Mr. Coleman to testify concerning

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1 what he observed in the video clip, you
2 rejected our video based on Mr. Mazzola's
3 objections, I guess. And in any event, Mr.
4 Coleman discussed what he observed in the
5 video on pages 3296 through 3297. And
6 specifically at the top of 3297, or at the
7 very bottom of 3296 and the top of 3297 Mr.
8 Coleman testified additionally they showed
9 Mr. Mazzola's trailer after he was asked to
10 leave the IX Center, they showed Mr. Mazzola's
11 trailer pulling out of the IX Center, which
12 concerns me because he actually did transport
13 animals in his trailer with the intention of
14 exhibiting at the IX Center.

15 "Mr. Coleman, you indicated that
16 the newscast dealt with the bear wrestling
17 event at the IX Center."

18 "Yes."

19 "Did that bear wrestling event
20 take place in March 2007 at the IX Center?"

21 "No, not to my -- I don't know. I
22 don't know."

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1 "Okay. Did the newscast identify
2 the name of the bear that was intended to be
3 exhibits as a wrestling bear?"

4 "They did."

5 "What was the name of that bear?"

6 "Caesar."

7 "Did the newscast contain an
8 interview with Caesar's owner?"

9 "Yes, it did."

10 JUDGE CLIFTON: Thank you. I
11 appreciate that reference to the evidence.

12 All right. I do find --

13 MR. MAZZOLA: Before you, I can I
14 get a chance to respond?

15 JUDGE CLIFTON: Mr. Mazzola?

16 MR. MAZZOLA: All right. The
17 trailer that we use to move bears is also the
18 trailer that we use to move our equipment in.

19 The news clip contained footage from the
20 year before of us wrestling the bear. The
21 bear was never at the IX Center. Nobody--
22 nobody's quote here by Bob Petersen, the guy

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1 that's the owner of the IX Center saying we
2 saw the bear and told him to put it away, or
3 maybe -- but the bear was never there. The
4 trailer -- the bear trailer was there. It's
5 the only evidence that anybody saw. And
6 that's the same trailer that, you know, we
7 have our equipment in. The bear was never
8 there.

9 Just because they saw the bear trailer
0 leaving doesn't mean the bear was in it.

1 JUDGE CLIFTON: Well, do you know
2 who Mr. Dominic Bramante is, Mr. Mazzola?

3 MR. MAZZOLA: He's a security
4 guard.

5 JUDGE CLIFTON: All right. And I
6 believe it is he who told Mr. Coleman that you
7 showed up with one bear and were not allowed
8 to unload.

9 MR. MAZZOLA: Yes. And he
0 probably assumed that there was a bear in the
1 trailer. I mean, because that's what we do.
2 But we never were even allowed to open the

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1 trailer or anything to -- he wouldn't know.
2 Yes, we had to park in the back of the
3 building.

4 You know, to be guilty of something, I
5 mean that's one thing we didn't do.

6 I mean Dominic wasn't brought in here to
7 be able to dispute -- and this is actually
8 third party, too. I mean -- I mean Dominic
9 wasn't brought in here to see did you see a
0 bear, was there a bear there. We don't have
1 his notes. This is a third party's notes. So
2 there could have been it was a bear trailer,
3 was a bear -- you know.

4 And the footage was definitely a year
5 before, they showed wrestling the bear.
6 That's what happened.

7 So believe me, I didn't -- the bear
18 wasn't there.

9 Now I wouldn't show up with one bear. I
0 mean, I'd show up with a slew of animals that
2 all would have fit in them cages. The trailer
2 held a lot more than one bear.

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1 MS. JUAREZ: Your Honor, I would
2 like to also direct your attention to CX-59.
3 And this is the schedule of events.

4 According to the Sport Show website, and
5 this CX-59 page 3 the bear was scheduled to
6 perform at 1:30 p.m. that day and again at
7 4:30 p.m., and again at 7:00 p.m. that day.

8 MR. MAZZOLA: All the animals go
9 in. They only let you bring the trailer into
0 the IX Center the day of the event. All that
1 stuff would have been done before. So there
2 was nothing there.

3 You can't prove it by theory what you
4 think.

5 JUDGE CLIFTON: Okay. It's not
6 going to make that much difference in the main
7 scheme of things, but I'm going to find that
8 that particular paragraph has not been proved.
9 That is paragraph 19.

0 My reason for finding it not proved is
2 that we have not had an opportunity to test
2 the observations of Mr. Dominic, the--we have

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1 not had the opportunity to test the
2 observations of Mr. Dominic, spelled D-O-M-I-
3 N-I-C Bramante, B-R-A-M-A-N-T-E, Chief of IX
4 Center Security. It is he that reported to
5 Mr. Coleman that Mr. Mazzola had showed up at
6 the event with one bear, but was not allowed
7 to unload.

8 MS. JUAREZ: Your Honor, just so
9 the record is clear in this case, I'd also
0 point out that this afternoon when Mr. Mazzola
1 was essentially providing a response to Dr.
2 Goldentyer's recommendation was the first time
3 that Mr. Mazzola ever stated that there were
4 no animals at the IX Center throughout this
5 entire proceeding.

6 JUDGE CLIFTON: Well, I did write
7 down a while back, and I don't know when I did
8 this, that Mr. Mazzola's position on paragraph
9 19 was that he got thrown out and that his
0 equipment was set out. And I believe he also
1 indicated that Larry Wallach was the
2 exhibitor, but I see that Larry Wallach was

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1 definitely not really perceived as the
2 exhibitor of Mr. Mazzola's exhibit.

3 All right. I don't find paragraph 19
4 proved.

5 Okay. With regard to the Vito's Pizza
6 incident that is referenced in paragraph 20, I
7 do understand why Mr. Mazzola might have
8 thought that Steve Clark's license was
9 adequate for the act or the exhibition to go
0 on. But I also understand, particularly from
1 Dr. Goldentyer's testimony why when it is Mr.
2 Mazzola's animals, and I remember the
3 photograph showing Mr. Mazzola's truck with
4 Mr. Mazzola's company names and the like, that
5 the use of Mr. Clark's privilege to exhibit
6 was merely a cover, I'll call it, for Mr.
7 Mazzola to exhibit.

8 So I do find that the violation
9 contained in item 20 has been proved, but with
0 some sympathy for Mr. Mazzola thinking he
21 could do it.

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1 I also find that the adverse inference
2 from failing to supply the documents in
3 response to the subpoenas or subpoena is
4 particularly important here. We had some
5 printouts from a bank or something in regard
6 to this, as I recall. I didn't find it was
7 persuasive because we didn't have the full
8 documents. So the failure of Mr. Mazzola to
9 bring his documents is even more problematic.

0 So for a number of reasons, and
1 especially the adverse inference I draw from
2 Mr. Mazzola's failure to produce the documents
3 responsive to the subpoena, show me that the
4 violation in paragraph 20 has been proved.

5 Now with regard to paragraph 21,
6 paragraph 21 and 22 Mr. Mazzola's comments
7 were "I did it." Those paragraphs have been
8 proved, 21 and 22.

9 With regard to the skunks. And they are
0 referenced in paragraphs 23 and 24, two skunks
2 in paragraph 23, one skunk in paragraph 24. I
2 find the violations have been proved. They're

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1 proved even without the adverse inferences,
2 but I also apply those.

3 I understand Mr. Mazzola's thinking he
4 could do this and that these were Bill
5 Coburn's skunks and he was a licensee. And
6 Mr. Mazzola did have the permit of some kind,
7 I've forgotten what it's called, and the
8 skunks were consigned to him. So Mr. Mazzola
9 had some valid mitigating circumstances, but
0 these are violations nevertheless.

1 All right. With regard to paragraph 25
2 this is one of those where you're not asking
3 for any remedy except a cease and desist
4 order. And what is the reason for that with
5 regard to paragraph 25?

6 MS. JUAREZ: We had a limited
7 amount of testimony in connection with that
8 particular provision, Your Honor.

9 JUDGE CLIFTON: All right. You
0 can get the cease and desist order from the
1 other like violations. Would you be willing to
2 abandon this allegation?

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1 MS. JUAREZ: Yes.

2 JUDGE CLIFTON: Thank you. All
3 right.

4 I make no finding with regard to
5 paragraph 25. All right.

6 Paragraph 26. I have forgotten what was
7 going to happen. Was this that there was
8 going to be Mr. Mazzola there to take photos,
9 according to the store employee?

10 MS. JUAREZ: That's my
11 recollection, Your Honor. Also, there were
12 photographs inviting the public to have their
13 photos taken with the animals.

14 JUDGE CLIFTON: I remember now.
15 It was a baby tiger.

16 MS. JUAREZ: Yes.

17 JUDGE CLIFTON: Okay. Paragraph
18 26 has been proved, and that is that there was
19 an intention to operate. Now let me think
20 about that. An intention to operate. I'm not
21 sure that an intention is adequate. We have
22 proof of an intention.

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1 MS. JUAREZ: Your Honor, section
2 2.1(a)(1) of the Animal Welfare Act
3 regulations states: "Any person operating or
4 intending to operate as a dealer, exhibitor or
5 operator of an auction, sale except persons
6 who are exempt from the licensing requirement
7 under paragraph (a)(3) of this section must
8 have a valid license."

9 Your Honor, I also believe there's a
0 case involving, I think it's Peterson. It's a
1 zoo. And they had advertisements on the road
2 billboards, if you will, for exhibition of
3 animals. And they were found to be
4 exhibitors.

5 JUDGE CLIFTON: But I'll bet they
6 actually had the zoo.

7 MS. JUAREZ: They did have the
8 zoo. But I think there's a substantial amount
9 of evidence in this case to show that Mr.
0 Mazzola had animals to exhibit.

1 JUDGE CLIFTON: Yes, but that's a
2 little different. The way paragraph 26 is

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1 worded "and/or operating as an exhibitor." Do
2 we have evidence that Mr. Mazzola actually did
3 appear for the purpose of offering photos with
4 baby tigers?

5 MS. JUAREZ: Your Honor, with
6 regard to the inspection report, CX-138, ACI
7 Coleman documented a telephone conversation
8 with Mr. Mazzola in the fourth full paragraph.
9 And the citation is: "Today the white skunk
0 remains for sale in the front window. Signs,
1 advertising photos with the baby tiger are
2 also on display. Mr. Mazzola was contacted by
3 phone and stated that the tigers used for the
4 photo shoots are owned by his 'front man Billy
5 West' who is not USDA licensed. He also said
6 that Mr. West had been told by Mazzola that
7 photos using these animals required USDA
8 license."

9 JUDGE CLIFTON: This one's
0 difficult in that I said I would draw the
1 adverse inferences, that I would be likely to
2 draw the adverse inferences and this is a

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1 perfect example of why you need the response
2 to the subpoena. Because it would show whether
3 there was any expense or income or the like
4 with regard to what actually did happen on the
5 dates that the tigers were advertised that
6 they would be available for photo
7 opportunities in the store.

8 MR. MAZZOLA: I think I remember
9 with this inspection where Randy said that he
0 confirmed who purchased the tigers from --
1 that Billy purchased the tigers, that they
2 were really his. We were reading that he
3 confirmed that the tigers were purchased by
4 him.

5 JUDGE CLIFTON: Yes, but Billy
6 doesn't have a license.

7 MR. MAZZOLA: He don't need one to
8 own them. And I stated that I told him he
9 needs a permit, and I told him don't do it and
0 it wasn't done. Randy sent him a package
2 after that to be licensed -- to get a license.
2 I told him don't do it, you're going to

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1 jeopardize yourself from getting a license. So
2 he didn't do it.

3 I know that -- and he sent them back.

4 JUDGE CLIFTON: I think we had
5 your testimony about this, but it was so long
6 ago I don't remember it very well.

7 MR. MAZZOLA: Yes. I told -- I
8 told him that he needed a license. I told him
9 don't do the event, especially after Randy
0 talked to me. And he sent Billy a package to
1 be licensed or to try to get licensed.

2 JUDGE CLIFTON: Ms. Juarez,
3 anything further?

4 MS. JUAREZ: Your Honor, the
5 exhibition was going on at Mr. Mazzola's
6 store. And to the extent that Mr. Mazzola
7 refused to answer any questions regarding the
8 personal or professional relationship that he
9 had with Mr. West, I believe that an adverse
0 inference is appropriate in that regard as
1 well.

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1 JUDGE CLIFTON: And you say the
2 exhibition was going on his store. Did he
3 know as a matter of fact that it happened or
4 just that it was being promoted?

5 MS. JUAREZ: That it was being
6 promoted, and Mr. Mazzola certainly didn't
7 indicate that it would not occur with he spoke
8 with Mr. Coleman on the phone.

9 MR. MAZZOLA: By December I didn't
10 really own the store.

1 JUDGE CLIFTON: Well, see, there I
2 have to draw adverse inferences with that.
3 But I think this was a save. In other words,
4 Mr. Coleman prevented the exhibition from
5 happening by intervening so it didn't happen
6 is what I think happened. Which means even
7 though you read that, if you intend to
8 exhibit, you have to have a license? So that
9 means you're prohibited from promoting an
0 exhibition which would be in violation even
21 though you don't actually go through with it?

22 MS. JUAREZ: I don't know that.

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1 JUDGE CLIFTON: I guess part of my
2 problem is what we typically find actionable:
3 activities not thoughts. But the promotion is
4 more than just a thought, more than just an
5 intention to exhibit.

6 MS. JUAREZ: But, Your Honor, you
7 know if you look at page 3341, and this was
8 particularly relating to the December 8, 2007
9 allegation that you are not going to make
0 findings on, but Mr. Coleman explains that we
1 were informed by another USDA official that
2 Mr. Mazzola was in fact taking photos with a
3 baby tiger and the public approximately a week
4 before the inspection. And the inspection to
5 which he refers is the December 18, 2007
6 inspection.

7 So there -- it was certainly USDA
8 officials had observed animals in the store
9 shortly before the December 18th inspection.

0 JUDGE CLIFTON: So are the animals
2 in the store being exhibited in the photo
2 shoot?

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1 MS. JUAREZ: Yes, Your Honor. If
2 they're baby tigers?

3 JUDGE CLIFTON: Yes.

4 MS. JUAREZ: Yes. In fact, I
5 think the skunk is on exhibit.

6 MR. MAZZOLA: Your Honor, I know
7 he brought them in and out of the store bottle
8 feeding them and stuff like that. But nobody
9 was doing any photos. And we did prevent that.
10 I told him I didn't need any more trouble.

1 JUDGE CLIFTON: Okay. I am going
2 to find a violation of paragraph 26 in this
3 regard: The baby tigers were on display in
4 the store. I don't have evidence that there
5 were photo opportunities with the baby tigers
6 once Mr. Coleman warned against that.
7 Photograph opportunities with the baby tigers
8 were being promoted by the sign in the window
9 at the store. The adverse inferences that I
0 draw lead me to conclude that it is Mr.
2 Mazzola who is involved with the baby tigers
2 being there to be seen because I don't have

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1 the evidence that would show that it isn't
2 him. But that's just as well because at this
3 stage I don't want to get Billy West in
4 trouble either.

5 All right. Let's move on. 27. Now we
6 have the skunks. Paragraphs 27 and 28. No,
7 this is a different skunk. I already did the
8 other skunks. Okay. Now why do I have this
9 skunk here? This is more skunks in December?
10 Okay.

1 All right. So the only defense here is
2 that it's not my store.

3 MR. MAZZOLA: It's not my store.

4 JUDGE CLIFTON: Okay. What you
5 told me, Mr. Mazzola, in your testimony about
6 the remedies is that you did not legally own
7 the store?

8 MR. MAZZOLA: Right. But also the
9 skunk wasn't ever sold.

0 JUDGE CLIFTON: Oh, that's true.
2 This just says offering to sell.

2 MR. MAZZOLA: Yes.

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1 JUDGE CLIFTON: Okay. All right.
2 Well because I'm drawing the adverse
3 inference, I'm going to find that it is your
4 responsibility for having offered the skunk at
5 the store. To the extent that you may have no
6 longer been the owner of the store, I don't
7 have the response to the subpoena that would
8 prove that. So it's on you, Mr. Mazzola.

9 All right. Now I want to deal with the
0 licensing issues and then I want to deal with
1 credibility of witnesses, then I want to enter
2 my order.

3 It's already 7:00. I'm willing to keep
4 going if you all are.

5 Ms. Juarez, how do your people
6 feel with that?

7 MS. JUAREZ: We're prepared to
8 move forward.

9 JUDGE CLIFTON: All right. Mr.
0 Mazzola?

2 MR. MAZZOLA: Go ahead.

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1 JUDGE CLIFTON: Splendid. All
2 right. The licensing issues.

3 When Mr. Mazzola sent in his renewal
4 application, he waited until the very last
5 minute. I think the termination date was
6 October 12, and I think that's the date APHIS
7 got the package.

8 The documents were not regular in that
9 the "Inc" which indicates corporation had been
0 blacked out by Mr. Mazzola. So in the renewal
1 block instead of it saying "World Animal
2 Studios, Inc." was the licensee, it said
3 "World Animal Studios." Well, if World Animal
4 Studios is not an Inc. anymore, then what is
5 it? Is it an individual, or is it a
6 partnership? If it's an individual, then the
7 proper way to apply would have been Sam
8 Mazzola doing business as World Animal
9 Studios. If it's an individual, you've got to
0 have the individual's Social Security number.

2 The APHIS office had already figured out
2 that the number was not Mr. Mazzola's Social

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1 Security number in a telephone conference with
2 him at some point. I may be getting the timing
3 of this mixed up. But Mr. Mazzola had
4 intentionally all these years withheld his
5 Social Security number from APHIS. And I think
6 that showed very poor judgment on his part, a
7 little paranoia and the thwarting of APHIS'
8 ability to proceed.

9 So when APHIS decided not to renew that
0 license, it was not some sort of pretext, it
1 was not some sort of an agenda, it was not
2 some sort of arbitrary and capricious singling
3 out Mr. Mazzola for unfair treatment. It was
4 a genuine recognition of the fact that the
5 corporation had not been valid for years, that
6 it had been a mistake to issue the corporation
7 a license. That now what essentially was
8 involved was an individual who had not
9 provided his Social Security number.

0 Now given all of those circumstances, it
2 was proper to deny the renewal.

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1 Then when Mr. Mazzola applied to be a
2 licensee, it was necessary for APHIS to
3 exercise its judgment on whether Mr. Mazzola
4 was fit to be licensed. And although Mr.
5 Mazzola believes that APHIS should not, until
6 it had some sort of a review by a court or an
7 administrative law judge or something, have
8 made the decision on its own, it has to. With
9 every licensee application, it has to evaluate
0 whether the applicant is fit to be licensed.

1 Now Mr. Mazzola brought out in this
2 hearing the evidence that there are times when
3 the Judicial Officer, for example, has at
4 least one time we know about where the
5 Judicial Officer has instructed APHIS that its
6 reason for having denied the application was
7 not sufficient reason to deny it and to take
8 another look. And subsequently, APHIS did
9 license that business. But, of course, a lot
0 of things may have happened to make that
1 licensee more fit by the time APHIS did issue
2 the license. And there may have been more

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1 information available. So that is not to say
2 just because the Judicial Officer found that
3 the particular reason given was not
4 sufficient, that is not to say that APHIS was
5 wrong in denying the application.

6 The Judicial Officer said what he did
7 because there was a hearing with lots of
8 evidence, a lot more information than had been
9 provided by the applicant at the time that it
0 applied for its license.

1 Now in this case we also have a lot more
2 information, I think, than Dr. Goldentyer had
3 at her fingertips when the license application
4 was denied. I'm sure when Mr. Mazzola saw
5 those words about unfit, he was thinking of
6 who better cares for his animals than I do. I
7 love my animals. How dare they say I'm unfit.
8 But I find there's another whole story here.

9 The story is about Mr. Mazzola's refusal
0 to be regulated, refusal to be controlled by
2 APHIS. Now APHIS has a job to do that
2 Congress gave the Secretary of Agriculture.

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1 And APHIS must regulate. APHIS must evaluate.
2 And based on the information that APHIS had at
3 the time it denied the application, it was
4 entirely justified.

5 I further find that knowing all I know
6 now know, no Animal Welfare Act license should
7 be issued to Sam Mazzola or businesses that he
8 controls. And it's because he:

9 Number one, rejects APHIS' supervision
0 as incompetent;

1 Number two, regards the majority of the
2 people that he comes in contact with who work
3 for APHIS as liars in different aspects, and;

4 Number three, fails to have an
5 appreciation of APHIS operations or the legal
6 ramifications of Congress enacting an Act,
7 delegating to the Secretary of Agriculture the
8 authority to promulgate regulations,
9 delegating to the Secretary of Agriculture the
0 authority to enforce those regulations and to
2 interpret them. And for all those reasons Mr.
2 Mazzola has gotten crosswise with APHIS in

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1 such a destructive and damaging way that that
2 relationship is irretrievably damaged,
3 irretrievably broken.

4 I know Mr. Mazzola wanted so much to be
5 back the way it was, but it just -- it just
6 cannot occur. Throughout the entire four weeks
7 of testimony I have seen exhibited over and
8 over again Mr. Mazzola's continuing contempt
9 for APHIS and its employees. Nothing would
0 change if Mr. Mazzola was licensed in any
1 capacity.

2 I know he blames all of the conflict on
3 APHIS' enforcement. But that's not what it
14 stems from.

5 If APHIS was wrong; let's say -- let's
6 start out with whether the panels on either
7 side of the tiger's platform during photo
8 opportunities should have been fixed to the
9 platform. Let's assume APHIS was wrong with
0 that, that you didn't need one more safety
2 measure or that that wouldn't make it safer.

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1 A licensee's obligation is to cooperate
2 with APHIS nevertheless, even if APHIS has
3 made a mistake. Because the trust that is
4 formed when there's cooperation and the
5 working together for the benefit of the
6 animals is assured. And there's no trust.
7 Mr. Mazzola doesn't trust APHIS; APHIS can't
8 trust Mr. Mazzola. And so any continued
9 licensing relationship between the two would
0 be disastrous in my opinion.

1 I'm so sorry it came to this because I
2 believe Mr. Mazzola is a very talented animal
3 trainer. And without having an Animal Welfare
4 Act license his opportunities in this country
5 are extremely limited. What basically happens
6 is his animals are pets. There're very severe
7 limits on what he can do with them. I don't
8 even know if he can sell them. With regard to
9 exotic species like tigers and bears, I
0 especially don't know if he can sell them.

2 I just think this result that we have
2 arrived at is a sad, sad situation and yet the

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1 appropriate one, the right one given all the
2 circumstances.

3 And I want to talk a little about the
4 credibility of witnesses in my reaching this
5 decision. Mr. Mazzola characterized himself
6 as honest and he characterized himself as
7 being willing to risk the outcome of this
8 hearing because at least he'd have his
9 integrity.

0 Now when I evaluate the credibility of
1 witnesses, honesty is of course an important
2 part of it. But more than that, I have to
3 evaluate whether the person understands
4 things, whether he has the ability to perceive
5 things, whether he has the ability to remember
6 things.

7 Well let me give you an example. I
8 found Dwayne Palmer very credible. I found him
9 very spontaneous. I found him willing to tell
0 it like it is as he understood. Now, does that
2 mean that I rely on his viewpoint in

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1 everything I made a decision on? No. But I
2 found him to be a credible witness.

3 When Mr. Mazzola would testify I felt
4 throughout this proceeding he was trying to be
5 honest. But I also felt there were a number
6 of circumstances that he had failed to
7 understand, that he didn't perceive properly.
8 And part of it, I think, was his impatience
9 with anything having to do with APHIS. He
0 just didn't care and he did not want to tune
1 in to what APHIS was trying to communicate to
2 him.

3 It hadn't always been that way. I know
4 he spoke very admiringly of how his
5 relationship with APHIS had been prior to
6 2003, prior to December of 2003. One of the
7 problems is that, for example, when Dr. Markin
8 inspected the bear photo shoots as a result of
9 a complaint about whether the bear was
0 drugged, she wrote a no noncompliance
2 inspection report. She allowed Mr. Mazzola to
2 think that everything he was doing was all

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1 right because he never heard the rest of what
2 she said on the telephone.

3 Now I don't know whether she said to him
4 "I'm really concerned about the bear being so
5 close to the photo patrons" or not. She
6 believed she did. Mr. Mazzola believes she
7 did not. But regardless, the signal that was
8 sent to Mr. Mazzola was one in which he had a
9 successful inspection.

0 Then Dr. -- what's the name of the --
1 Finney, Dr. Finney, made an observation about
2 his concern about the safety. But he didn't
3 write it as a violation so Mr. Mazzola didn't
4 tune in.

5 Finally in the December 2003 report we
6 have a firm finding of noncompliance, and only
7 then did Mr. Mazzola start to pay attention to
8 what should have been signals to him that the
9 requirements were other than what he thought
0 they were.

2 Now when I evaluate the credibility of
2 witnesses, I found that Dr. Markin was

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1 credible, but didn't have a very good
2 recollection or memory of what had happened so
3 very long ago. As she began to try to remember
4 other things, I still found her credible. Mr.
5 Mazzola regarded her as a liar.

6 With regard to Mr. Coleman's testimony,
7 I found it very credible. It's actually
8 understated. He's actually careful not to
9 exaggerate.

10 With regard to Mr. LaLonde, I did not
11 find his testimony credible. I did not find
12 that he could be so unaware of Mr. Mazzola's
13 activities. I found it not credible that he
14 had so many things he could not recall.

15 With regard to Dr. Goldentyer's
16 testimony, Dr. Goldentyer is so careful and so
17 responsive to each question and answers it
18 thoroughly, and it all makes total sense when
19 she has explained it. And Mr. Mazzola called
20 her evasive, which is probably the opposite
21 word of what I would have chosen to describe
22 her testimony.

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1 She is one of the most constructive
2 witnesses for getting to the issues and
3 answering directly the tough questions that I
4 have ever encountered.

5 With regard to Dr. Gibbens' testimony,
6 he's the first one that educated me as to
7 APHIS' position. I differ with him in his
8 viewpoint. From where he sits, he may think
9 nothing has changed from 1989, but I think a
0 lot changed. I think it truly has been an
1 evolving process. I think that's one reason
2 why Mr. Mazzola wanted it to stay like it had
3 been. Because he enjoyed fewer restrictions.

4 Dr. Gibbens explained that there was
5 more manpower to inspections, and certainly
6 that's part of it. But I think as APHIS began
7 to see what different exhibitors were doing
8 with big cats and began to see how
9 administrative law judges were interpreting
0 their regulations in a way they considered
2 wrong, and I'm taking blame for that myself,

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1 things began to change, to be more clear, to
2 tighten up.

3 I don't believe Mr. Mazzola got the same
4 notice in 2003, the same awareness in 2003
5 that Dr. Antle had when his inspector gave him
6 the "Dear Applicant" letter. There is no
7 evidence that Mr. Coleman gave Mr. Mazzola the
8 "Dear Applicant" letter. And as Mr. Coleman
9 wrote up the problems with the exhibits, he
0 didn't apply the "Dear Applicant" letter. That
1 is he didn't insist on no touching of the rear
2 end of the tiger. But now I think we all are
3 aware there can be no touching of even the
4 rear end of the tiger.

5 I found Dr. Gage's testimony very
6 credible. And I am particularly concerned
7 that even with all the chains at the tiger's
8 neck, that indeed there could be a
9 circumstance whereby someone could be injured
0 by the rear feet. Now it might take the tiger
2 rolling over so that the tiger's on his back
2 to strike out with those feet, but there is

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1 enough leeway in those chains for the tiger to
2 do that, as Mr. Mazzola testified.

3 Okay. I'm not going to go through every
4 witness. Well, I guess I will. Not every
5 witness, but with respect to a few more.

6 With respect to Mr. Haynes, the
7 Pennsylvania Game Commission person who was
8 trying to identify whether it was Mr. Mazzola
9 or some other person who had been, as I recall
0 his testimony, the most abusive he'd ever
1 encountered in his entire law enforcement
2 career, it was a long time back. I am not able
3 to conclude that he positively identified Mr.
4 Mazzola. I don't think he did. I think he
5 was a very credible witness, and therefore he
6 had that reservation. He did not positively
7 identify Mr. Mazzola. But looking at his
8 report the kind of behavior that was shown
9 there is certainly reprehensible, but it was
0 so long ago. And because I don't have it clear
2 in my mind that it was Mr. Mazzola, I don't

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1 utilize any of that testimony against Mr.
2 Mazzola here.

3 It was fun to have the cameo witnesses,
4 like the two wrestlers, Mr. Morgan and Mr.
5 Martin.

6 MS. JUAREZ: Riese.

7 JUDGE CLIFTON: Riese?

8 MS. JUAREZ: Yes. Cody Riese.

9 JUDGE CLIFTON: Mr. Riese, right.
10 Cody Riese. Thank you. R-I-E-S-E. Totally
11 credible young men.

12 It is always wonderful to have the
13 experts, the experts like Mr. Watson for
14 example. His testimony was particularly
15 persuasive when he would describe what he
16 would subject himself to as the trainer: very
17 dangerous situations, particularly with regard
18 to a grizzly bear because he took full
19 responsibility if he got hurt himself. But he
20 would never subject a member of the public to
21 risks by bringing him in proximity to a large
22 bear.

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1 Now he made it quite clear. The bear he
2 deals with is a brown bear and much more
3 ferocious and aggressive than the black bear
4 that Mr. Mazzola uses. But nevertheless, just
5 the size of the black bear and just the nature
6 of his teeth and his claws present risk, as
7 far as I'm concerned.

8 The testimony of Dr. Tilson was
9 intriguing. I remember Mr. Mazzola was
0 delighted to hear him speak, too. The most
1 significant part of his testimony that
2 influences me here is that he regretted that
3 the public would see the magnificent tiger in
4 the posture he was in on the table where the
5 chain has him down in the position where he's
6 not in a natural posture. And Dr. Tilson
7 expressed the desire that people could see the
8 tigers as they are in the wild. And that's, I
9 think, why so many of us love the film clips
0 we see where these magnificent beasts are
2 running and leaping or sleeping, or whatever
2 they're doing more in the natural state.

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1 I thought Mr. Kovach was a credible
2 witness. And I recall even he had some safety
3 concerns way back when. He didn't write
4 noncompliances, though.

5 I found Jay Riggs quite credible. I did
6 when he was before me in a hearing, and I
7 found him also credible here.

8 I also found him, as I've already said,
9 quite respectful when it comes to referring to
0 APHIS, what APHIS does, what APHIS' job is.
1 He has a difference of opinion than APHIS, and
2 so did I with regard to interpretation of the
3 regulations.

4 I found Crystal Calhoun credible. I
15 found her testimony persuasive.

6 The biggest problem I had with Mr.
7 Mazzola's testimony is one where I believe he
8 comes away from situations with an incomplete
9 perception or understanding of what happened.
0 And he says he gets passionate rather than
2 angry. But while I recognize that the emotion
2 that he's feeling is because he is very

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1 passionate about what he loves, and that is
2 his life as an exhibitor of these magnificent
3 wild animals, when he even here in the hearing
4 room or courtroom becomes loud and says things
5 that I hope he regrets after he says them, it
6 looks like anger to me.

7 It's a situation where what made Mr.
8 Mazzola unfit to be licensed has much more to
9 do with the business end of being an APHIS
0 licensee than the husbandry end of it. If it
1 were the husbandry end of it only, I believe
2 Mr. Mazzola would continue to enjoy the status
3 of Animal Welfare Act licensing.

4 All right. My orders. Mr. Mazzola, I
5 do order you to cease and desist from
6 violating the Animal Protection Act and the
7 regulations and standards promulgated
8 thereunder.

9 MS. JUAREZ: Your Honor, you said
0 the Animal Protection Act.

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1 JUDGE CLIFTON: Oh, Animal Welfare
2 Act. Thank you. I think they should call it
3 the Animal Protection Act.

4 In particular, let me get some notes
5 here. All right.

6 First of all, I want to give to Mr.
7 Mazzola, before I forget, the copy of the
8 rules that govern appeal to the Judicial
9 Officer. And I'm going to approach Mr.
0 Mazzola to do that at this time.

1 All right. That particular order that I
2 just made, I need to expand on just a bit. My
3 order is that respondent Sam Mazzola and his
4 agents and employees, successors and assigns
5 directly or indirectly or through any
6 corporate or other device or person shall
7 cease and desist from violating the Animal
8 Welfare Act and the regulations and standards
9 issued thereunder.

0 So, Mr. Mazzola, this applies not only
2 to you, but to people who could arguably be
2 called your agents or employees, successor and

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1 assigns and it involves either direct or
2 indirect violating of the Act through
3 corporate or any other device or person, as
4 well as through yourself. So the key issue
5 here is control. If you are in anyway
6 controlling the operation, then this could be
7 regarded as your violation.

8 Further, you and/or agents and
9 employees, successors and assigns, directly or
0 through any corporate or other device shall
1 cease and desist from engaging in any activity
2 for which a license is required under the Act
3 or regulations without being licensed as
4 required.

5 Now, in addition I specifically order
6 you, your agents and employees, successors and
7 assigns, directly or through any corporate or
8 other device to cease and desist from engaging
9 in those activities that I have found to be
0 violations in my findings and conclusions.
2 And that includes violations of 7 United
2 States Code Section 2134 and 2132(h) and Title

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1 9 of the Code of Federal Regulations sections
2 1.1 and 2.1(a) such as are found in paragraphs
3 18, 19, 20 and 21, 22, 23, 24, 26 and 27 of
4 the Second Amended Complaint filed on January
5 8, 2008.

6 Further, I order you your agents and
7 employees, successors and assigns, directly or
8 through any corporate or other device to cease
9 and desist from engaging in violations of
0 Title 9 of the Code of Federal Regulations,
1 Section 2.4 as found in paragraphs 30, 31 of
2 the Second Amended Complaint.

3 Likewise, I order you and your agents
4 and employees, successors and assigns,
5 directly or through any corporate or other
6 device to cease and desist from violations of
7 Title 9 of the Code of Federal Regulations,
8 Section 2.126 as it is found in paragraph 32
9 of the Second Amended Complaint.

0 Likewise, with regard to -- and I'm not
2 going to repeat all the preliminary language
2 now. I think I've made my point. With regard

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1 to paragraphs 35 and 36 you shall cease and
2 desist from violating Title 9 of the Code of
3 Federal Regulations, Section 2.40(a)(1) and
4 2.126(a)(2).

5 Likewise, I order you, your agents and
6 employees and so forth to cease and desist
7 from violating the handling regulations,
8 specifically Title 9 Code of Federal
9 Regulations, Section 2.131(c)(1) including but
0 not limited to APHIS' interpretation of that
1 regulation with regard to juvenile and adult
2 tigers as is found in the "Dear Applicant"
3 letter.

4 Further, I order you, your agents and
5 employees and so forth to cease and desist
6 from violating Title 9 of the Code of Federal
7 Regulation, Sections 2.100(a) and 3.125(a)
8 such are found in paragraphs 49 50 and 51.

9 In complying with the requirement that
0 you not exhibit without a license, you must
2 take extreme care if you seek employment of a
2 licensed exhibitor to clear your activity with

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1 APHIS and to abide by any restrictions that
2 APHIS suggests:

3 Such as refraining to do so if you own
4 the animals that are being exhibited;

5 Such as participating in the
6 promotional or public face of that exhibit in
7 such a way that it would lead people to
8 believe that it is your exhibit.

9 You must exercise caution even as to the
0 equipment that's used in exhibitions of a
1 licensed exhibitor. And that would include
2 your trucks, the trailers, the caging, the
3 mats; all of that. You're going to have to be
4 very cautious that you do not find yourself in
5 the position of being the exhibitor when
6 you're not licensed to do so.

7 Now, with regard to the license itself,
8 and this is the most important part of my
9 decision. And, as I've said, I'm sad to do
0 this but I find no option other than to do
1 this.

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1 I begin by revoking the license that you
2 had. I realize that the license renewal
3 application was denied. But nevertheless, I
4 revoke that license, which - - I want to read
5 its number into the record - - is Animal
6 Welfare Act License No. 31-C-0065.

7 I do uphold APHIS' denial of your
8 application to be licensed, as I've indicated.

9 I order that you are permanently
0 disqualified from becoming licensed under the
1 Animal Welfare Act or from otherwise
2 obtaining, holding or using an Animal Welfare
3 Act license directly or indirectly, or through
4 any corporate or other device or person.

5 Now all of these orders, revocation is
6 permanent, the permanent disqualification is
7 permanent. All of those are effective on the
8 day after this decision becomes final. If no
9 one appeals, that will be today's the day that
0 you are given this decision, you have 30 days
2 to appeal. If you fail to appeal, then this
2 decision will become final on the 35th day,

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1 and the very next day all of these
2 prohibitions are effected.

3 If there is an appeal to the Judicial
4 Officer, timely appeal to the Judicial
5 Officer, then this decision does not become
6 final until the Judicial Officer rules.

7 Now with regard to civil penalties. I
8 am painfully aware that your ability to do
9 what you have done for a living most of your
0 adult career is gone. It is for that reason
1 that I am not going to impose much of a civil
2 penalty in the case. But there are a few of
3 the violations that require it. And I want to
4 turn, first of all, to the violations of 2.4
5 found in paragraphs 30 and 31.

6 With regard to the violation in 31, the
7 maximum penalty is appropriate. The date of
8 that was August of 2006. Ms. Juarez, was the
9 maximum at that time three thousand and
0 something?

2 MS. JUAREZ: Thirty-seven fifty,
2 Your Honor.

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1 JUDGE CLIFTON: \$3,750?

2 MS. JUAREZ: Yes.

3 JUDGE CLIFTON: All right. I
4 impose the civil money penalty of \$3,750 for
5 the violation of paragraph 31.

6 With regard to paragraph 30 I impose a
7 \$1500 civil penalty for that violation of
8 paragraph 30.

9 With regard to the violations after you
0 no longer had a valid license, I would like to
1 start with paragraph 18. And I impose a
2 \$1,000 civil penalty for the violation of
3 paragraph 18.

4 With regard to paragraph 19, I found
5 that it was not proved.

6 With regard to paragraph 20, I impose a
7 \$500 civil penalty.

8 With regard to paragraphs 21 and 22 I
9 impose for each of those a \$2500 penalty.

0 With regard to the skunks in paragraph
2 23 I impose a \$50 penalty for each skunk for
2 \$100.

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1 With regard to the skunk in paragraph 24
2 I impose a \$50 civil penalty for the one
3 skunk.

4 I do not impose a penalty with regard to
5 paragraph 26.

6 With regard to paragraph 27 I impose a
7 \$50 penalty for another skunk.

8 With regard to paragraph 32 I impose a
9 \$2,000 civil penalty. Paragraph 32 had to do
0 with refusing to allow Mr. Coleman to inspect.

1 I do not impose civil penalties with
2 regard to the other violations.

3 All right. I think I'm done.

4 I would invite both sides to ask for
5 clarification at this time or expanded
6 findings, or anything that should be addressed
7 so that this case is properly postured for the
8 Judicial Officer.

9 Let's go off the record while you have
0 an opportunity to consider that. It's now
2 7:49.

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1 (Whereupon, at 7:49 p.m. off the
2 record until 7:50 p.m.)

3 JUDGE CLIFTON: All right. We're
4 back on record as of 7:50.

5 Ms. Juarez?

6 MS. JUAREZ: I don't have
7 anything, Your Honor.

8 JUDGE CLIFTON: All right. Thank
9 you.

10 Mr. Mazzola?

11 MR. MAZZOLA: No.

12 JUDGE CLIFTON: All right. Thank
13 you.

14 This concludes our record at 7:50.

15 (Whereupon, at 7:50 p.m. the
16 hearing was adjourned.)

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