

1 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

2

3 MARTHA SCUDDER, a single )  
individual, )

4

)  
Plaintiff(s), )

5

)  
vs. ) NO. 04-2-04721-8SEA

6

)  
LARRY GALLOWA, a married )  
7 individual, )

8

)  
Defendant(s). )

9

DEPOSITION UPON ORAL EXAMINATION OF  
KATHRYN PHILLIPS

10

11

11:45 A.M.

12

JANUARY 13, 2005

13

4800 AURORA AVENUE NORTH

14

SEATTLE, WASHINGTON

15

16

17

18

19

20

21

22

23

24

25 REPORTED BY: MARY L. GREEN, CCR NO. 2981

1 A P P E A R A N C E S

2 FOR THE DEFENDANT(S):

3 MELISSA A. MacDOUGALL

Alexander & Bierman

4 4800 Aurora Avenue North  
Seattle, Washington 98103

5

FOR THE PLAINTIFF(S):

6

CATHERINE M. CABALO

7

Brandt Law Group

1524 Alaskan Way, Suite 100

8

Seattle, Washington 98101

9

ALSO PRESENT: JOHN SCUDDER

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

3

1

I N D E X

2

EXAMINATION BY:

PAGE

3

Ms. MacDougall

4

4

5

6

7

EXHIBITS FOR IDENTIFICATION

PAGE

8

(NO EXHIBITS MARKED)

9

10

11

12

13

14

15

16

17  
18  
19  
20  
21  
22  
23  
24  
25

4

1 SEATTLE, WASHINGTON; THURSDAY, JANUARY 13, 2005  
2 11:45 A.M.  
3 --oOo--

4  
5 KATHRYN PHILLIPS  
6 sworn as a witness by the Notary Public,  
7 testified as follows:

8  
9 EXAMINATION

10 BY MS. MacDOUGALL:

11 Q. Let me get you to state your name for the  
12 record, please.

13 A. Kathryn Phillips. I also use the name  
14 Kathryn Scudder, R. Kathy Scudder.

15 Q. In fact, let me back up. I'm Melissa  
16 MacDougall, and I represent Larry Gallowa, and I sent  
17 you a subpoena notice of deposition today, and, in  
18 fact, you called me to ask me to move the time,  
19 correct, back to 11:00, and I apologize that we are  
20 delayed, and you did let me know that your legal last  
21 name was Phillips, but I did not amend the deposition  
22 notice.

23 A. Right. Because we agreed that I would show  
24 up without you having to amend it.

25 Q. Right. Now, is it your intent at some point

5

1 to -- let me back up. Do you use the last name  
2 Scudder?

3 A. Yes. I say Kathy Scudder when I'm  
4 introduced. The only time I use Phillips is anything  
5 legal, my bank account, insurance, you know, for my  
6 health insurance, things like that. We are in the  
7 process -- I have contacted an attorney and in fact  
8 have met with him, and we are in the process of

9 legally changing my name to Scudder. John and I both  
10 have past bad marriages, and both of us think that  
11 getting married will ruin a great relationship, so  
12 we're just going to do it legally that way, but it has  
13 not yet been done.

14 Q. Kathy, have you ever been deposed before?

15 A. Numerous times.

16 Q. And just you don't have to tell me the exact  
17 circumstances, but briefly what were those in  
18 relationship to?

19 A. I used to be a management accountant, and in  
20 the course of my employment, there were a couple of my  
21 employers that were being sued for various reasons,  
22 and because I was the one with the most familiar  
23 knowledge with their accounting practices and even how  
24 much money was available in the company, that would be  
25 -- was why I was deposed.

6

1 Q. So is it fair to say you're familiar with the  
2 procedure? And I'll just remind you to answer out  
3 loud and --

4 A. Not to nod, right.

5 Q. And wait until I finish my question, and I'll  
6 try not to interrupt you, although I'm not sometimes  
7 very good at that. We'll go forward.

8 Let me get you to state your address, please.

9 A. Mailing or physical?

10 Q. Let's start with the mailing address.

11 A. My mailing address is Post Office Box 71,  
12 McKenna, capital M-c capital K-e-n-n-a, Washington  
13 98558.

14 Q. Is that a billing address for you?

15 A. Yes. We do not receive mail. We live on a  
16 private road. The post office will not deliver mail  
17 to our physical address, so we have to have a post  
18 office box.

19 Q. I'm quite familiar with that myself. What's  
20 your residential address?

21 A. My residential address is 10101 - 332nd  
22 Street South, Roy, Washington 98580.

23 Q. Do you have a business address that is  
24 separate from the address you just listed?

25 A. No.

7

1 Q. So what is your business?  
2 A. We have two businesses.  
3 Q. Okay. What are they?  
4 A. We have Happy Hookbills Ranch. Actually, the  
5 businesses are strictly in John's name. However, we  
6 say we, because we live together and we are -- we do  
7 them together, so I say we, but the businesses are  
8 technically owned by John L. Scudder, Junior.  
9 Q. And that is the gentleman seated next to you,  
10 correct?  
11 A. Yes.  
12 Q. And what is the nature of the two businesses?  
13 A. We have Happy Hookbills Ranch. That is a  
14 bird breeding facility. We raise various types of  
15 hookbill parrots, Conuers, C-o-n-u-e-r-s, Amazons,  
16 A-m-a-z-o-n-s, Macaws, M-a-c-a-w-s, and Cockatoos,  
17 C-o-c-k-a-t-o-o-s.  
18 Q. And the other --  
19 A. Excuse me. And we have a small number of  
20 African birds, Piocephelous, P-i-o-c-e-p-h-e-l-o-u-s  
21 or u-s?  
22 MR. SCUDDER: I'm not being deposed.  
23 A. I'm not quite sure of the spellings, but  
24 Piocephelous are the small African birds.  
25 MS. MacDOUGALL: Off the record for just a

8

1 moment, please.  
2 (Discussion off the record.)  
3 Q. (BY MS. MacDOUGALL) What's the nature of your  
4 second business?  
5 A. It's John L. Scudder DBA Scudder  
6 Transportation.  
7 Q. Is that a trucking company?  
8 A. Yes. We haul cream and freight for a local  
9 milk producer.  
10 Q. Talk to me just about the Happy Hookbills  
11 Ranch and your involvement. Just tell me briefly what  
12 you, Kathy, do for and at the Happy Hookbills Ranch.  
13 A. Pretty much everything to an extent. My  
14 initial involvement was strictly to learn how to hand  
15 feed baby birds and do baby bird nursery. We call --  
16 where the baby birds are raised, we call it a nursery,  
17 and so I was taught -- my initial was to learn to hand  
18 feed and nursery management, cleanliness procedures,  
19 how to feed the babies, how much to feed them, how

20 often to feed them, how to wean them, just basically  
21 from -- because we artificially incubate, which means  
22 that the parent birds do not hatch. We collect the  
23 eggs, and I do the egg collection, and we place them  
24 in an incubator, and they are artificially incubated,  
25 and then they hatch, and we hand feed them from day

9

1 one.

2 Q. If I use the term aviary for your facility,  
3 is that correct?

4 A. Yes, it is correct, but we choose to use the  
5 word farm.

6 Q. Farm. Okay. I will try to remember to refer  
7 to it as a farm.

8 A. Well, you can say our aviary, but I can just  
9 say that my habit if I'm talking about Happy Hookbills  
10 will be to say our farm rather than our aviary.

11 Q. How long have you been involved with the  
12 Happy Hookbills Ranch?

13 A. Since May 2, 2003.

14 Q. And do you know how long your husband has  
15 owned and operated the Happy Hookbills Ranch?

16 A. Between 20 and 25 years, I believe, is how  
17 long he's been breeding birds. How long the name  
18 Happy Hookbills Ranch has been used, I do not know.

19 Q. Prior to coming to the Happy Hookbills Ranch,  
20 did you have any previous experience with any of the  
21 duties that you described to me that you do at the  
22 ranch today?

23 A. Until I came to Washington in May of 2003, I  
24 had never even held a bird. I had never even had a  
25 parakeet or a canary when I was a child.

10

1 Q. So your experience, is it fair to say, is  
2 should we say on-the-job training? Is that correct?

3 A. Yes. Martha was the person who taught me how  
4 to hand feed and nursery management procedures. Once  
5 I learned the nursery management procedures, she then  
6 began showing me what to do in the outside aviaries.

7 John worked -- he's gone in the truck,  
8 because we have that other business, so until Bob  
9 Vincent arrived on the scene, the families had an  
10 extremely cordial relationship. We didn't even knock  
11 on each other's doors, which we -- we live directly

12 beside each other. Our property lines adjoin. We  
13 never even knocked on doors. We just would go in. So  
14 she --

15 Q. She being Martha?

16 A. What?

17 Q. She being Martha?

18 A. Yes. Martha. So once that she saw that I  
19 was getting the nursery management and the hand  
20 feeding procedures, that I had learned those  
21 sufficiently, she started showing me how to breed --  
22 to feed the aviary breeding flock, and she also taught  
23 me how to identify species of birds, which were  
24 Conuers, which were Amazons, which were Macaws. Then  
25 we began to get more specific. This is this kind of

11

1 Amazon. This is this kind of Amazon. This is this  
2 kind of Conuer. This is this kind of Cockatoo. This  
3 is this kind of Macaw.

4 She was basically the one who would tell me,  
5 and then I would go with John through our aviaries  
6 when he was feeding and say, okay, is this this kind  
7 of bird, this kind of bird, that kind of bird? That's  
8 how I learned to be able to identify all of the  
9 species that not only Martha raises but also the  
10 species that we raise.

11 Q. Did John Scudder, Junior, provide you with  
12 any training of the birds at the Happy Hookbill Ranch?

13 A. Yes. Our facility was operated totally  
14 separate as far as the breeding birds. During the  
15 summer of 2003, our eggs were incubated at Martha's  
16 facility and our babies were fed. We use old  
17 isolettes from hospitals to -- because they maintain  
18 temperature.

19 Baby birds are born blind, deaf, and  
20 featherless, and so they have to have humidity and  
21 temperature maintained, so we utilize isolettes to  
22 maintain the temperature and humidity until they are  
23 raised to such size and are feathered to such amount  
24 as that they do not have to be kept in a controlled  
25 temperature environment.

12

1 Q. So the eggs were incubated at Martha's during  
2 the summer of 2003 and hatched and fed over there?

3 A. Fed, yes, until they reached the fully

4 feathered stage, and then I brought them up to my  
5 house.

6 Q. At that time period, summer of 2003, was  
7 there anything in the incubating, hatching, or feeding  
8 of those babies at Martha's that you disagreed with or  
9 asked her to change regarding the incubation,  
10 hatching, and feeding?

11 A. Yes.

12 Q. What was that?

13 A. During the month of July of 2003, all of our  
14 eggs began dying in the shell prior to hatching. At  
15 that point, I asked Martha if it was possible that  
16 there was a bacterial infection in the incubator that  
17 she was utilizing to incubate the birds.

18 Q. What did she say?

19 A. She said that she didn't know if there was or  
20 not. However, she did remove all eggs, hers and ours,  
21 because they were incubated together, and placed them  
22 in another incubator and had the incubator that they  
23 were initially in cleaned.

24 I do recall that there -- I wasn't totally  
25 familiar with temperatures and humidity percentages at

13

1 that point, but I do recall her mentioning that part  
2 of the reason that the eggs may have been dying is  
3 that the calibration on the thermometer and hydrometer  
4 were off and that that is possibly why we lost all of  
5 those eggs.

[Ed.— It is worth noting that, in this suit, Martha Scudder and Robert Vincent are suing Mr. Larry Gallawa for libel, claiming that it was his false statements about bad care at their farm, which caused the massive, otherwise-unexplained loss of chicks or birds, and thereby a huge loss of income]

6 Q. Was there any determination made as to  
7 whether there was any bacteria infecting that  
8 incubator that you know of?

9 A. No determination that I know of.

10 Q. Did you ask -- let me back up. Is there any  
11 testing procedure that could have been performed to  
12 determine if there was any bacteria in that incubator?

13 A. I don't know. Common sense tells me that it  
14 could have been swabbed and there could have been  
15 bacteriology tests run. In my own incubator that I  
16 now have at home at Happy Hookbills Ranch, if I were



17 to be having that sort of problem, what I would have  
18 done is swabbed the surfaces, the interior surfaces of  
19 the incubator and then taken those swabs immediately  
20 to have a bacteriology run on them.

21 Q. Do you know if Martha did that, took a swab  
22 and had a test run, bacteriology?

23 A. Not to my knowledge.

24 Q. Anything else that you disagreed with during  
25 that time period as far as management, hatching,

14

1 nursing procedures that Martha was doing that you or  
2 John disagreed with and perhaps asked her to change?

3 A. Not on the nursery procedures, no.

4 Q. On any other type of procedure?

5 A. Well, when we -- she began showing me about  
6 feeding the breeding flock, and I had read a report  
7 that Dr. Tracy Bennett had written in January of 2003  
8 when I was not here and that in that report it stated  
9 that food dishes and water dishes were not supposed to  
10 be on the floor of cages.

11 We explained to her that on certain Macaw --  
12 size Macaws and certain size Cockatoos that it was  
13 necessary because they would dump their food, but  
14 there were some bird food dishes in the smaller  
15 species that were either on the floor or hooked on the  
16 cage almost to the floor, and I did ask her why they  
17 weren't raised, and she never really gave me an  
18 answer.

19 Q. She being Martha?

20 A. Yes. Martha never -- I'm sorry.

21 Q. That's okay. Anything else that you  
22 disagreed with or questioned or asked Martha to change  
23 at that time?

24 A. None that I told her. I had learned  
25 different feeding procedures from Jonathan than what

15

1 Martha used. However, those were her birds. They  
2 weren't my birds, and I didn't feel it was my place to  
3 question her or ask her to make changes in her  
4 facility, especially given the fact that my experience  
5 at that time was limited, and the only thing I  
6 basically could question was how come these things in  
7 this report are still there?

8 Q. And by this report, meaning Dr. Bennett's?

9 A. Yes.

10 Q. Did you question Martha why the conditions  
11 were still going on despite Dr. Bennett's report?

12 A. No. Like I said, I asked her why they were  
13 lower, the food dishes, and she never gave me an  
14 answer. By that time too, by the time I was beginning  
15 to learn those things and to be doing more research on  
16 the Internet about parrot breeding, right around that  
17 time is when Mr. Vincent arrived on the farm, and  
18 within a short amount of time after Mr. Vincent  
19 arrived on the farm, the relations between the two  
20 families and the two farms began to deteriorate such  
21 that the only involvement that I had was I would go  
22 down and feed baby birds when Martha was not going to  
23 be home.

24 Q. Let me stop you there and change directions a  
25 little bit. There is currently a restraining order or

16

1 series of restraining orders between at least certain  
2 people of the two families; is that correct?

3 A. There is a restraining order between Robert  
4 Vincent and Martha Scudder with me. It is mutual. I  
5 am not allowed to contact them. I am not allowed to  
6 follow them. I am not allowed to surveil them, and I  
7 am not allowed to enter the premises of their  
8 residence.

9 Q. When you say it is mutual, does that mean  
10 they are not allowed to do all of those things towards  
11 you as well?

12 A. Yes. The restraining orders were initially  
13 -- well, they were initiated by Robert Vincent and  
14 Martha Scudder. When we went to court and both sides  
15 explained the situation which they used to obtain the  
16 restraining orders, the judge said, These are mutual.  
17 I'm going to find that there is harassment on both  
18 sides, and I'm making them mutual.

19 Q. Can you briefly tell me the circumstances of  
20 -- actually, let's back up. Do you know when that  
21 was?

22 A. The restraining orders were served on us --  
23 the temporary ones were served in March. I believe --  
24 just one moment. I do have a copy of the original  
25 temporary restraining order, so I can tell you when

17

1 they were originally filed. Just one moment, please.  
2 Martha obtained the temporary restraining  
3 orders on March 17, 2004. The hearing date was March  
4 31, 2004, at 8 a.m. in Pierce County District Court in  
5 Tacoma, Washington, in courtroom 741. At that time,  
6 once we attended that hearing, there were restraining  
7 -- a mutual restraining order entered that expires on  
8 March 31, 2005. Please correct me, but did you ask me  
9 the circumstances as why --  
10 Q. I did, yes. Thank you.  
11 A. There was a proposed ordinance for Pierce  
12 County that was sponsored by a number of animal rights  
13 activists, one of which was Mr. Gallowa, and I saw on  
14 the Internet one of the animal rights Yahoo groups  
15 called POWAR, capital P capital O capital W capital A  
16 capital R, which on their site stood for protect our  
17 wonderful animals' rights. On that specific Yahoo  
18 news group, Mr. Gallowa posted that on a certain date  
19 in February -- and I believe it was the 24th, but I  
20 don't remember exact date --  
21 Q. Which year are we talking about?  
22 A. 2004.  
23 Q. Gotcha. Okay.  
24 A. -- that there was -- that on that date there  
25 was to be a law signed into being into Pierce County

18

1 -- in Pierce County that was going to protect the  
2 birds and that he had been asked to speak when the  
3 council signed it into law.  
4 At that point, I contacted Carolyn -- well, I  
5 contacted the Pierce County council, and Carolyn  
6 Pendle -- and that's spelled P-e-n-d-l-e -- was the  
7 one who was basically in charge of the ordinance, and  
8 that's who I spoke with, and they had been attempting  
9 to locate bird breeders in Pierce County so that they  
10 could be provided notice of this hearing.  
11 So we were still speaking with Martha at that  
12 time. We weren't visiting back and forth between the  
13 farms on any type of regular basis, but on occasion we  
14 would go to each other's facilities. Excuse me.  
15 Martha and I would occasionally go to each other's  
16 home. Robert and John rarely had contact with each  
17 other.  
18 When we found out about the ordinance, I  
19 attempted to call Martha on the telephone to discuss

20 it with her, and three times in a matter of about five  
21 minutes Mr. Vincent hung up on me because he asked me  
22 who's calling and I told him it was none of his  
23 business; that the call was for Martha. And so he  
24 would hang up, so we went over to Martha's house.  
25 Martha at that time had quite a number of

19

1 small dachshunds, somewhere in the neighborhood of  
2 eight to ten that when you entered her property and  
3 climbed the steps to her front porch made a horrible  
4 racket by all of them chasing at your heels and  
5 barking, so in order for anyone in the home to hear  
6 you knocking, you had to knock quite loudly, and we  
7 did, and Martha answered the door. Mr. -- and we  
8 entered her home.

9 Mr. Vincent was at a distance close to the  
10 kitchen/great room area, and he was on the telephone,  
11 and John told his mother that Bob was screening her  
12 calls and he didn't think that was right. Right  
13 around that point Mr. Vincent got off the phone and  
14 came to the door. I was inside the door probably 3  
15 feet to 4 feet with Martha in front of me, and John  
16 was like beside me, and then Mr. Vincent came up and  
17 he and John began a verbal altercation.

18 Mr. Vincent was like, I don't want you in my  
19 house, and John said, This isn't your house. This is  
20 my -- and Mr. Vincent said, Whose is it? And John  
21 said, This is my mother's house. You don't exist.  
22 Needless to say, that -- Mr. Vincent was already  
23 screaming, so they began yelling at each other, and I  
24 cannot recall everything that was said while they were  
25 yelling at each other, because at that time I was

20

1 standing there saying to Martha, Martha, that's your  
2 son Bob's talking to that way. Martha, that's your  
3 son Bob's talking to that way.

4 She began to lightly pat Bob on the shoulder  
5 going, Robert, Robert. It didn't help. Then John's  
6 cell phone rang, which we use as the business phone  
7 for the trucking company, and he stepped outside the  
8 door onto the porch to take the telephone call. At  
9 that point, Mr. Vincent turned on me and began  
10 screaming in my face.

11 Mr. Vincent is approximately 6 foot 3 to 6

12 foot 4, and I would estimate that his weight is  
13 probably in the neighborhood of 220 to 240 pounds.  
14 I'm not very good at guessing weight, but he is much  
15 larger than I am. That was not the first time that  
16 Mr. Vincent had verbally assaulted me. He had  
17 verbally assaulted me on two other occasions.  
18 At that point, he began yelling at me. He  
19 used his physical size to get me backed up against the  
20 wall by the door and was -- his nose was about a  
21 quarter of an inch from mine. He was screaming.  
22 Spittle was being sprayed all over my face, and he was  
23 standing there pushing his chest out going forward.  
24 By the time I reached the wall, I couldn't  
25 back up any further, and when he used his chest to

21

1 push up against my chest against the wall, I put my  
2 hands on his shoulders and pushed and said, Get away  
3 from me. I do remember saying, Get away from me. If  
4 you touch me, I'll have you charged with assault  
5 because of the fact that he had verbally assaulted me  
6 on prior occasions.

7 On one prior occasion when he had verbally  
8 assaulted me, John's two sons and one of their friends  
9 witnessed it, and they stood at our property line,  
10 because I was talking with Martha and Robert was  
11 yelling at me while I was trying to discuss it with  
12 Martha, and several times Martha and I walked away  
13 from him and he followed, and all three boys told me  
14 that they felt that Mr. Vincent was going to  
15 physically attack me at that time, and they were all  
16 standing there so that if he did they could jump on  
17 him and get him away from me.

[Ed.— The law suit alleges that scurrilous e-mails by Mr. Gallawa somehow disturbed the chicks at the Scudder/Vincent farm, causing massive breeding collapse, an effect reinforced by one or two visits by 'animal activists' to the outer portions of the facility. It would seem these types of physical and verbal altercations described by Kathy Scudder, which sprouted shortly after the arrival of Mr. Vincent at the farm, could be a more plausible explanation for any alleged disruption in the breeding activity during that time period.]

18 Q. Let me interrupt you right there just so I  
19 can ask some questions and make the record clear.  
20 During the incident that you're describing that

21 happened at Martha's home that's the subject of the  
22 mutual restraining orders, did you physically assault  
23 Mr. Vincent first before he touched you?

24 A. No, I did not. I did not touch Mr. Vincent  
25 until he used his chest to shove me and hold me up

22

1 against the wall while he screamed in my face, and I  
2 told him on numerous -- that's all I was saying was  
3 get away from me. All I wanted to do was get out the  
4 door, okay?

5 When I shoved him, he did not lose his  
6 balance. He did go backwards, but he did not fall,  
7 and he recovered his balance fast enough that before I  
8 could get turned around and get out the front door  
9 Mr. Vincent grabbed my right arm, twisted it, shoved  
10 me up against the door jamb, and screamed in my face  
11 over and over, I exist now, don't I?

12 Q. What did you understand him to mean by I  
13 exist now, don't I?

14 A. Because John had told him that he didn't  
15 exist, and there he had my arm twisted and me shoved  
16 against the door, and I'm assuming that he meant that,  
17 see, I exist because I can shove you against a door.

18 At that point, I began kicking out at  
19 Mr. Vincent, and, yes, I tried very hard to land a  
20 good kick in his groin. Unfortunately, I couldn't on  
21 his brand new Levis that were extremely stiff, and I  
22 kicked at him, and I was kicking at him, and I finally  
23 was able to get my arm loose and get out the door.

24 Right about that time was when John's  
25 telephone conversation ended, and he headed toward

23

1 Mr. Vincent because Mr. Vincent had laid his hands on  
2 me. At that point, I stood in front of John and  
3 wrapped my arms around his neck and told him it wasn't  
4 worth it, because he was going to protect me  
5 physically. Let's just leave. Let's go. Let's  
6 leave. I basically pushed him, and we went down and  
7 got on the quad and went home.

8 Q. Let me stop you right there. Sorry. I don't  
9 mean to keep interrupting you. I want to make sure we  
10 break this up with some questions and not forget and  
11 go back and be clear. Is the restraining order --  
12 does it involve Mr. Scudder seated next to you today?

13 A. There is one against him. However, the  
14 affidavit in support of the restraining order that is  
15 entered against -- well, that's entered in the --  
16 mutually against Martha and Bob and John and I  
17 strictly said that I attacked Bob.

18 Q. That was their statement in their affidavit?

19 A. Their statement was that we forced our way  
20 into the home and that I attacked Bob and that John  
21 attempted to restrain my arms and -- well, excuse me  
22 just one moment.

23 I have pulled a copy out of my file of the  
24 original restraining orders. Their statement says, On  
25 2-6-04, both respondents arrived at petitioner's

24

1 residence yelling and causing a commotion at the door.  
2 I excused myself from my guests and asked the  
3 respondents to leave. Martha also asked them to  
4 leave. Respondent Kathy wedged herself between the  
5 door jamb and the door and threatened Robert that if  
6 he touched her she would have him arrested for  
7 assault. Robert continued to tell Kathy to leave  
8 while Martha called 911.

9 She continued to threaten Robert and  
10 attempted to enter further into the house. Robert  
11 kept stepping in front of Kathy until Kathy lunged at  
12 Robert's throat. Robert pushed her once out the door  
13 into John's arms. Kathy started kicking Robert in the  
14 groin area while John restrained her arms. John  
15 escorted Kathy off the property.

16 I attempted to have charges filed, but the  
17 sheriff who responded refused to make a report. This  
18 is the third similar incident in approximately four  
19 months. There were no prior incidents.

20 MS. CABALO: Allow me to put on the record my  
21 objection as to a -- a standing objection as to the  
22 authenticity of any documents provided by Ms. Phillips  
23 -- excuse me -- Ms. Scudder, but you can answer any  
24 questions.

25 THE WITNESS: If you would like, Ms. Cabalo,

25

1 you can make a photocopy.

2 MS. CABALO: I probably have that somewhere  
3 in our file. I just want to have that in the record  
4 that they need to be authenticated.

5 THE WITNESS: I want to have it on record  
6 that I have offered you to be able to have a photocopy  
7 of this.  
8 Q. (BY MS. MacDOUGALL) I'm not going to make it  
9 an exhibit to the deposition. I just want to ask you,  
10 the affidavit that you just read into the record, is  
11 any part of that statement true?  
12 A. No.  
13 Q. Is that correct? No?  
14 A. No.  
15 Q. And there were no prior incidents, correct?  
16 A. There were no prior physical incidents.  
17 Q. Did Mrs. Scudder, Martha Scudder, call 911 on  
18 the day that that affidavit describes, that incident?  
19 A. Yes, she did.  
20 Q. Did a sheriff respond?  
21 A. Yes, they did.  
22 Q. Was there a report made that you know of?  
23 A. Yes. The sheriff came to our home.  
24 Q. To your home?  
25 A. To our home and discussed the -- and took a

26

1 report from me.  
2 MS. MacDOUGALL: Let's go off the record and  
3 take a break, please.  
4 (Discussion off the record.)  
5 Q. (BY MS. MacDOUGALL) You wanted to say  
6 something.  
7 A. I need to clarify something. When you asked  
8 me if anything that I read was true and I said no --  
9 Q. On that affidavit, correct?  
10 A. On that affidavit. There were a couple of  
11 things that were true. One was that Martha called  
12 911, and the other one was that I did kick at Robert's  
13 groin, but it wasn't for the reason that they stated.  
14 Q. Do you know as you sit here today what the  
15 relationship is between Bob Vincent and Martha  
16 Scudder?  
17 A. He's her boyfriend. They live together.  
18 They share the same bedroom.  
19 Q. Do you know when that I'll call it romantic  
20 relationship began?  
21 A. Yes. Approximately mid to end September of  
22 2003.  
23 Q. And did Mr. Vincent move on the property at



24 that time?

25 A. Mr. Vincent was living on the property prior

27

1 to that time. Mr. Vincent arrived on the property  
2 approximately the middle of August of 2003. Martha  
3 didn't have anyone to help her feed her breeding  
4 flock, and so our son Brandon was going down and  
5 feeding her flock for her every day, and school was  
6 going to be starting, and Brandon wasn't going to be  
7 available to feed her birds, so another friend of  
8 Martha's -- her name is Judy Adams -- brought Robert  
9 over to the farm and introduced him to Martha.

10 I understand that Mr. Vincent was living in  
11 his motor home on someone else's property. I do not  
12 know whose, where, or how long that had been going on.  
13 So when Judy brought Mr. Vincent over, Martha talked  
14 with him, and she decided that, yes, he could come  
15 live on the property, and her basic way for people to  
16 help her feed her flock was she would provide them  
17 with free room and board in exchange for feeding the  
18 flock, so when Mr. Vincent originally arrived, he did  
19 not bring his motor home. He moved into the  
20 downstairs bedroom of Martha's home.

21 Q. And at some point the two of them entered  
22 into a romantic relationship?

23 A. Yes. And the reason I know this is that  
24 there was one day when I was down there to feed babies  
25 because I helped Martha up through the 2003 breeding

28

1 season. Martha was outside the area where you go into  
2 where the nursery and everything is, and Martha asked  
3 me what I thought about Bob, and I said, Well, I don't  
4 know. You know, I don't really have an opinion. I  
5 don't really like him, but, you know, that's a  
6 personal opinion.

7 She said, Well, I really like Bob, and, I  
8 mean, she was looking at me with these dreamy eyes  
9 saying, I really like Bob. She said, I've discussed  
10 how I feel about him with him, because I don't want to  
11 scare him away.

12 Q. Let me interrupt you at that point. Do you  
13 know when the two of them entered into a romantic  
14 relationship? I'm just trying to get a time period  
15 here.

16 A. Sometime between mid and late September,  
17 because I --  
18 Q. Of 2003?  
19 A. Of 2003.  
20 Q. Okay. And then do you know whether or not  
21 Mr. Vincent today owns any interest in Mrs. Scudder's  
22 aviary?  
23 A. Mrs. Scudder told me that she had refinanced  
24 the farm jointly with Mr. Vincent --  
25 MS. CABALO: Allow me to interject for a

29

1 minute. Standing objection to any hearsay. Continue.  
2 A. Mrs. Scudder, Martha herself told me that she  
3 had refinanced the farm with Bob and had added him to  
4 the deed, and the reason that she told me that was  
5 during the -- when I explained where he had verbally  
6 assaulted me before when the children were watching,  
7 because at that time Robert -- when I was attempting  
8 to speak with Martha, Robert kept telling me to leave,  
9 and I looked at Martha and I said, You're the only one  
10 who can tell me to leave, because this is your  
11 property and he doesn't have the right, and Martha  
12 said, No, he's on the property now.  
13 At that point was when I walked away so that  
14 I was away from him and almost to our property while I  
15 was continuing my discussion with Mrs. Scudder, and  
16 she walked with me as I would try to walk away and  
17 avoid the screaming and yelling that Mr. Vincent was  
18 doing at that point and --  
19 Q. (BY MS. MacDOUGALL) Let me interrupt you and  
20 ask a question. I'm going to focus on a different  
21 area. When is the last time you were on the aviary  
22 property or inside the house of Martha Scudder?  
23 A. Except for the brief period of time in early  
24 February when the incident that caused the restraining  
25 orders, the last time I was on her property was

30

1 somewhere either mid to late October or early November  
2 of 2003. I do not know the exact time. I just can  
3 remember a time frame because of what was going on in  
4 our lives and where we were at the point in raising  
5 the babies, so that's the only way I can even get a  
6 basic idea, because I didn't know I needed to write  
7 down every time I was there.

8 Q. You don't need to write down. I want your  
9 best testimony, so you don't need to guess, but that's  
10 okay. That's narrowed it down enough for me.

11 When you said earlier in your testimony that  
12 you had seen Dr. Bennett's report of her, I'll call  
13 it, investigation of the aviary, correct? You've read  
14 that report?

15 A. I've read that report. Martha provided that  
16 report to me to read.

17 Q. Now, are you aware of let me call it the  
18 subject matter of this lawsuit in which -- after I'm  
19 done characterizing this, wait, because counsel may  
20 have an objection -- the subject matter of the lawsuit  
21 in which Mrs. Scudder, Martha Scudder, has alleged  
22 that my client, Larry Gallowa, has made false  
23 statements about the conditions of her aviary and  
24 subject matter of this lawsuit involving  
25 recommendations made by Dr. Bennett and the Pierce

31

1 County Humane Society about the conditions and needed  
2 improvements of the aviary? Are you aware of all of  
3 those?

4 MS. MacDOUGALL: Do you have an objection?

5 MS. CABALO: (Shaking head).

6 MS. MacDOUGALL: Great.

7 Q. (BY MS. MacDOUGALL) Now you can answer the  
8 question.

9 A. I am aware because I read the report. I was  
10 also on the farm and accompanied Dr. Bennett when she  
11 reinspected in June of 2003.

12 Q. Since you had read the report of Dr. Bennett  
13 which was written sometime in March of 2003 based on  
14 her earlier inspection of Mrs. Scudder's aviary and  
15 since you were there on Mrs. Scudder's property for  
16 the June 2003, summer 2003 inspection of Dr. Bennett  
17 and based on what you personally observed yourself,  
18 did you see improvement in the aviary during that  
19 second inspection of Dr. Bennett?

20 MS. CABALO: I would object on the basis that  
21 it's vague, but go ahead and answer.

22 A. Yes. There were improvements made. She had  
23 addressed a number of the issues that were in  
24 Dr. Bennett's recommendations, and there were a number  
25 of Martha's friends and family members who worked

1 considerably on the farm to improve the conditions in  
2 order for Martha to pass this inspection, because in  
3 that report, the humane society requested that Martha  
4 provide them with updates on what she was doing to  
5 improve the conditions of the aviary that were listed  
6 in that report.

7 Q. (BY MS. MacDOUGALL) Are you one of the family  
8 members that participated in work on Martha's  
9 property?

10 A. I'm not her family, but, yes, I am one of the  
11 people who participated in the work and cleaning up  
12 her property.

13 Q. Can you tell me -- just give me a sketch, an  
14 outline of what work was done for her to as you say  
15 pass the second inspection?

16 A. Vegetation in and around the bird houses was  
17 weedeated down and raked up. Underneath the bird  
18 cages, the feces, spilled seed, other vegetation, and  
19 matter was raked out and shoveled up into wheelbarrows  
20 and removed out of the bird house buildings. The  
21 cages were scraped and cleaned of fecal matter.

22 Because Dr. Bennett requested that the Macaws  
23 have water bottles rather than an automatic watering  
24 system, water bottles were attached to all of the  
25 cages in which there were Macaws. There was a lot of

1 trash that was picked up. A substantial amount of  
2 trash was picked up and disposed of.

3 Q. Let me stop you right there, because I think  
4 I have a pretty good understanding. Did both you and  
5 John participate in the cleanup or helping out at the  
6 ranch at that time? I said ranch. I'm sorry. Let me  
7 be clear. Mrs. Martha Scudder's aviary.

8 A. As far as I know, the only participation that  
9 John did was that he installed perches in cages that  
10 were lacking perches. That was one of the things that  
11 was addressed in Dr. Bennett's report, and because  
12 John was in the truck working a lot and was not home a  
13 lot in the daytime hours, on his days off that was  
14 basically about the only thing that he could do is put  
15 in the perches. If there were nest boxes that were  
16 loose, he'd check them and tighten them up. But as  
17 far as did he get out there physically raking and  
18 shoveling and weedeating, no, he did not.

19 Q. The perches that you just referenced, were  
20 those replacement perches to replace perches that  
21 maybe the birds had chewed through or were they  
22 placing perches in cages where there previously were  
23 no perches?  
24 A. They were replacing perches that were chewed  
25 through. Large birds such as Cockatoos and Macaws can

34

1 turn a 2-by-4 perch approximately 5 to 6 feet long  
2 into toothpicks in a matter of 24 hours. One of the  
3 objections in Dr. Bennett's report was that there were  
4 PVC perches in some of the cages. That is because we  
5 would put one -- there's two sets of perches in every  
6 cage. Excuse me. There are supposed to be two sets  
7 of perches in every cage.

8 Q. What are those two sets for?

9 A. For the rear of the cage and the front of the  
10 cage. The front of the cage is where the food dishes  
11 are, and you are supposed to have a perch where the  
12 bird can stand on the perch and access a food dish  
13 that is raised to the level of the perch. The rear  
14 perch is for access to the nest box.

15 Also one of the things that I learned reading  
16 on the net is that birds need to be able to fly from  
17 one perch to another, and that's why you put two  
18 perches. It is pretty standard in the industry for  
19 breeders to have two perches in every cage.

20 Q. Did Mrs. Scudder have two perches at the time  
21 of Dr. Bennett's inspection that you know of?

22 A. I was not there during her initial  
23 inspection, so I do not know.

24 Q. And did Mrs. Scudder need to install new  
25 perches -- strike that.

35

1 Did Mrs. Scudder install new perches as a  
2 result of Dr. Bennett's report so that she could pass  
3 the second inspection in June of 2003?

4 A. Yes.

5 Q. And did those perches, the type and location,  
6 based on what you know given your experience and then  
7 also based on what you saw were installed for the  
8 perches, did that bring it up to what you would call  
9 standard?

10 A. Yes. May I please --

11 Q. Sure.

12 A. Okay. One of the things that Dr. Bennett  
13 objected to was that there were PVC perches, so what  
14 we did was we put the PVC perches in the -- or left  
15 the PVC perches in the rear of the cage and placed  
16 wood perches in the front of the cage.

17 When Dr. Bennett reinspected -- and I was  
18 there when we explained to Dr. Bennett when she still  
19 objected to having the PVC perches was that these  
20 particular types of birds can destroy their perches in  
21 a matter of a day or two, so that in order that the  
22 birds did not spend time on the bottom of the cage  
23 that we had the PVC perches in the rear and the wood  
24 perches in the front so that they had perches there in  
25 order to groom their beaks.

36

1 Q. So if I understand your testimony -- and I  
2 don't want to put words in your mouth -- based on what  
3 you saw and the discussions that you had with  
4 Dr. Bennett and the help that you provided and  
5 participated in for the aviary, it's fair to say that  
6 at least in your opinion conditions had improved and  
7 some of the recommendations made by Dr. Bennett were  
8 instituted in June of 2003; is that correct?

9 A. Yes. Dr. Bennett specifically said that she  
10 wasn't totally satisfied, and this is -- Dr. Bennett  
11 said this to me, because I had escorted her around to  
12 some of the bird houses while John was escorting  
13 another person who was inspecting also, and then when  
14 we came back and all of us met in the front of  
15 Mrs. Scudder's house, Dr. Bennett said that while she  
16 felt that there were additional improvements that  
17 could be made, that the improvements that were done  
18 were adequate and that's basically -- you know, she  
19 wanted it to be better, but they were adequate.

20 Q. Do you know if Mrs. Scudder, Martha Scudder,  
21 in any way reduced her flock, reduced the number of  
22 birds based on the recommendation of Dr. Bennett?

23 A. No. She did not.

24 Q. And then --

25 A. In fact, she acquired additional birds.

37

1 Q. At what point -- when you say she acquired  
2 additional birds, at what point of time are we

3 talking?

4 A. During the summer of 2003, there were birds  
5 brought over. There were a couple of them. One of  
6 them was a Military Macaw, and that was going to be  
7 set up as a breeder, but he died. There were other  
8 birds. People would bring Martha birds that they  
9 didn't want anymore. Who they came from I don't know.  
10 I would just notice that there were new birds in a  
11 cage near her.

12 They were not in the aviaries. They were in  
13 cages on the -- her house is two stories, and there is  
14 an overhanging porch. On the bottom area where that  
15 porch overhangs were cages, and there were birds that  
16 would be in those cages that had come on the property  
17 when I was not there, but they would be new birds, not  
18 a great number. I would say a half a dozen at the  
19 most over the summer.

20 Q. And then the last time that you were on the  
21 aviary property -- you said sometime in the fall of  
22 2003 -- the conditions and improvements that were  
23 made, were they still in place during your last visit  
24 to the aviary?

25 A. In my opinion, no. In my opinion, the

38

1 conditions of the aviaries had not improved and had in  
2 fact started going back to the same condition in which  
3 they were when Dr. Bennett inspected.

[Ed.— This is a critical point. Some but not all improvements were made in anticipation of the follow-up inspection. Then, apparently, conditions were allowed to backslide but further inspections were denied.]

4 In most specifically Mrs. Scudder's  
5 Philippine Blue Nape house, Dr. Bennett's report  
6 specifically stated that bird dishes should be  
7 elevated from the floor of the cage, and in  
8 Mrs. Scudder's Philippine Blue Nape house, Mr. Vincent  
9 had cut doors at the bottom right-hand side of the  
10 cage and had made little -- had used wire to make a  
11 little area to set the food dish, and all you had to  
12 do was open that little door and remove the food dish  
13 and then put it back, and they were sitting on the  
14 floor of the cages, and we specifically told  
15 Mrs. Scudder when we saw that that -- at that time I  
16 called her mom. I said, Mom, Dr. Bennett said you're

17 supposed to have those elevated, okay? And she  
18 ignored it.

19 Q. Let me ask you a different question. I'll  
20 change topics a little bit. In the two-plus years  
21 that you've been working at the Happy Hookbills  
22 Ranch --

23 A. Excuse me. One plus.

24 Q. One plus. I apologize.

25 A. It's not quite two years.

39

1 Q. One-plus years. Thank you. Have you learned  
2 different ways and techniques to care for the birds  
3 than the care of the birds -- let me strike that.

4 Does the Happy Hookbills Ranch employ  
5 different techniques for the care of its birds,  
6 different from Mrs. Scudder's ranch to your knowledge?

7 A. Yes, we do.

8 Q. Do you know if the differences between the  
9 two ranches are due to different management styles or  
10 whether they're due to health reasons for the birds?

11 A. Both.

12 Q. What are some of the different management --  
13 excuse me. What are some of the different care  
14 techniques for the birds that your ranch employs that  
15 are specifically for the health of the birds?

16 A. We have a closed facility. No one other than  
17 family members who live on the farm or family members  
18 who may be visiting from Alaska, because we do have  
19 family in Alaska who have birds on their farm on  
20 breeder loan, are allowed in our aviaries.

21 Q. Is Mrs. Scudder's facility closed as of today  
22 that you know of?

23 A. As of today, no. Was it closed when I was on  
24 her facility? No.

[Ed.— An important point which does not jibe with Martha Scudder's claims (see  
MarthaScudderDeposition,pt1 Section 13, line 17)]

25 Q. What else is different? Anything about the

40

1 feeding of birds or the bird's diet that's different  
2 -- that the Happy Hookbills Ranch does differently  
3 from Martha Scudder's facility?

4 A. We utilize a different seed mixture. When I



5 first came here, we were using the same seed mixture  
6 that Mrs. Scudder was using. It was one that John had  
7 developed, and we began to notice when we would go get  
8 the seed mixture that it wasn't consistent with what  
9 John had established with his mother as what a seed  
10 mixture should be, and around that point, we quit  
11 mixing our seed down at Martha's facility and began  
12 mixing it again at our own.

13 You need to understand that up until February  
14 of 2000 -- February of 2000, which was when Suzanne  
15 Scudder left Happy Hookbills Ranch and she and John  
16 Scudder, Junior, were divorced, up until that time,  
17 the feeding and care of the birds was totally  
18 separate. The seed for our birds was mixed on our  
19 farm. The cooked diet portion for our birds was  
20 cooked on our farm.

21 Unfortunately, when Suzanne left and John of  
22 course having to work all day was not able to cook the  
23 cooked diet in an adequate time to feed them, and the  
24 time factors of when he may or may not have arrived  
25 home, that made it difficult to mix the seed and

41

1 things on our farm, so for that period of time, the  
2 seed mixture and the cooked diet was done at  
3 Mrs. Scudder's farm, and we would go pick it up in the  
4 afternoon and we would feed our birds.

5 Mrs. Scudder demanded of the employee that  
6 was previous to Mr. Vincent -- and I was there when  
7 she told Steven Graves that her birds were to be fed  
8 no later than noon --

9 MS. CABALO: Again, just to restate again  
10 standing objection to all hearsay, statements that  
11 she's testifying Martha made in her presence or anyone  
12 for that matter made in her presence.

13 MS. MacDOUGALL: Let me just stick a brief  
14 response that we'll call a standing response. I note  
15 your objection as far as hearsay for anybody else, but  
16 as far as Mrs. Scudder, I'm going to state that they  
17 fall under the party exception, but I'll note your  
18 objection and then we'll just keep going on, and I'm  
19 not going to state that you've waived any of your  
20 hearsay objections.

21 MS. CABALO: Sure.

22 A. Could we go off the record for a second?

23 Q. (BY MS. MacDOUGALL) Sure.

24 (Discussion off the record.)  
25 Q. (BY MS. MacDOUGALL) Who is Steven Graves?

42

1 A. Steven Graves was the person who used to live  
2 on Martha's farm and feed her birds.  
3 Q. Is he related at all to Vivian Graves?  
4 A. He's her brother.  
5 Q. Does Vivian Graves still to your knowledge  
6 live on the property that Martha Scudder owns?  
7 A. Vivian Graves lives in a house trailer that  
8 has an auxiliary dwelling permit, and it is parked on  
9 Martha's property. We live in a community called Big  
10 Lots in which you must have at least five acres to  
11 build a dwelling, and you are limited to one dwelling  
12 of any size and an auxiliary dwelling of no more than  
13 1,000 square feet. This does not include farm  
14 buildings. It strictly includes dwellings in which  
15 people live.  
16 Q. To your knowledge, does Mrs. Scudder own the  
17 dwelling, the auxiliary dwelling that Ms. Graves lives  
18 it?  
19 A. To my knowledge, Ms. Graves owns that  
20 dwelling.  
21 Q. Do you know if any of Mrs. Scudder's birds  
22 are kept or housed in Ms. Graves' facility at any  
23 time?  
24 A. I only know of one time in which there -- I  
25 cannot state definitively that the birds went there.

43

1 All I can state is what Martha told me she did with  
2 the birds.  
3 Q. And what was that?  
4 A. There was an incidence in which there was an  
5 outbreak of psittacosis at the Bird Cage Pet Shop in  
6 Federal Way. Two of the birds that died of  
7 psittacosis came from Mrs. Scudder's farm.

[Ed.— This important claim was vehemently denied by Martha Scudder. For evidence, see “Emails (to Larry Gallawa) re: Psittacosis traceable to Parrot Depot” on the “Documents” page.]

As a  
8 result, the health department issued a warrant to have  
9 birds on Mrs. Scudder's property tested for

10 psittacosis.

11 Mrs. Scudder told us about that warrant, and  
12 part of the reason that she told us is because our  
13 properties adjoin, and at that time, there was a  
14 certain section between the two properties in which  
15 there was no fence, so in order to make sure that  
16 people from the health department who we didn't know  
17 what kind of viri they may have on their shoes or  
18 their clothes did not come on their property, we  
19 erected a fence along that area where the only area  
20 where there was no fence between Martha Scudder's  
21 property and John Scudder, Junior's, property.

22 When she told me that the warrant -- there  
23 was a warrant and she said that her attorney was  
24 attempting to squash that warrant, I do not know how  
25 true that was. All I can testify to is what

44

1 Mrs. Scudder said to me.

2 I said, Well, are they going to serve it?

3 She said, I don't know. And I said, Well, you know,  
4 that Cockatoo you have downstairs looks pretty sick.  
5 I said, You really might want to consider euthanizing  
6 it before the health department comes. She replied to  
7 me, That bird and any others I'm kind of worried about  
8 will be put over in Vivian's trailer.

9 Q. And you don't know whether she actually did  
10 that or carried that out; is that true?

11 A. I do not know if she carried that out. All I  
12 know is that she told me that's what she was going to  
13 do.

14 Q. Do you know if the health department actually  
15 served the warrant and made an inspection of the  
16 property?

17 A. Mike Carter of the Seattle Times told me that  
18 the health department did serve that warrant and that  
19 they tested ten of Martha's birds and that none of the  
20 ten had psittacosis, and the reason that Mike Carter  
21 of the Seattle Times told me was because Mr. Carter  
22 contacted me via e-mail about an article that they  
23 were going to be writing that was going to feature  
24 Scudders prominently.

25 I sent Mr. Carter an e-mail not too long ago

45

1 asking him for a copy of that article, because I had

2 not been able to locate it in the archives of the  
3 Seattle Times, and Mr. Carter replied that the article  
4 was never published.

5 Q. And when you say you contacted Mr. Carter  
6 recently, do you mean recently as of today's date  
7 recently?

8 A. As of day before yesterday's date.

9 Q. Gotcha. And he told you the article was not  
10 published?

11 A. Uh-huh.

12 Q. Did he send you a copy of his unpublished  
13 article?

14 A. No, he did not.

15 Q. Did you have any other discussions  
16 surrounding the article or the Scudder facility?

17 A. With Mike Carter?

18 Q. Yes. Sorry. That day when you contacted him  
19 or e-mailed him.

20 A. Well, see, he e-mailed me initially back  
21 along the times when Mr. Gallowa was sending those  
22 adversarial e-mails, which I'm not exactly sure of  
23 those dates, but I could pull them out if you want,  
24 but if we can just say it's around that same time.

25 Q. Certainly.

46

1 A. He sent me an e-mail and said that he wanted  
2 to hear the Scudders' side and that Mrs. Scudder's  
3 attorney, Kathryn Cabalo, had said that it was  
4 breeding season and that they weren't allowed on the  
5 property. I believe Ms. Cabalo might be familiar. I  
6 don't know for sure. But that's what he told me.

7 Q. Ms. Cabalo might be jumping in there with an  
8 objection at any moment.

9 A. I'm just telling you what he e-mailed me. If  
10 you wish, I could print that e-mail, because it wasn't  
11 in the deposition. It was in anything about the  
12 Scudders, so if you wish, I can print it out.

13 Q. Let me interrupt and see if I can shortcut to  
14 clarify a little bit here. When you recently  
15 contacted Mr. Carter day before yesterday, I think you  
16 said it was, for the article to see if it was

46

17 published or where it was and you were told it was not  
18 published, at that time, was there any other exchange  
19 regarding Martha Scudder or my client, Larry Gallowa,

20 that you had with Mr. Carter?

21 A. Not a couple of days ago, but there was a  
22 telephone call I had with Mr. Carter after he sent me  
23 the first e-mail asking about it.

24 Q. Okay. Tell me the substance of that  
25 telephone call.

47

1 A. Basically I explained to Mr. Carter that John  
2 Scudder, Junior, and Happy Hookbills Ranch was a  
3 totally separate facility and not affiliated with  
4 Scudders Exotic Birds, which is what Martha was at  
5 that point in time calling her aviary or that's what  
6 her business cards said. She also utilized M&J  
7 Enterprises. I explained to him that they were  
8 different.

9 Then he asked me questions about breeding  
10 birds, and what I did was explained to him about what  
11 bird breeding was all about, things like that you only  
12 get a 50 percent production rate on a very good year;  
13 that of that 50 percent production rate, you're only  
14 going to get an approximately 40 percent fertility  
15 rate; that of that 40 percent fertility rate, you're  
16 probably only going to have a hatch rate of between 80  
17 and 90 percent because you do have eggs that die in  
18 the shell.

19 We utilized a round number of 200 pairs of  
20 birds and utilized the percentages and then an average  
21 -- what an average price was if you had received this  
22 number of birds and what an average of the price was  
23 and what that would mean as far as income.

24 Q. What was your purpose in letting Mr. Carter  
25 know that Happy Hookbills was different from Martha

48

1 Scudder's aviary? Why did you do that?

2 A. Because Mr. Gallowa was sending me  
3 confrontational and adversarial e-mails and so was  
4 Stuart Metz and so was another person I can't remember  
5 her name, but I provided you with a copy of the  
6 e-mail. Mr. Gallowa was threatening us. I got  
7 e-mails from -- I got an e-mail from Stuart Metz that  
8 said, You don't know me, and it's in your best  
9 interest that you don't meet me.

10 I got one from another person that posted --  
11 that was because of a cross-post that Mr. Gallowa put

12 on the Internet that accused us, because I say we had  
13 no control over what Martha did on her facility, of  
14 how inhumane we were and how would we allow her to  
15 abuse a child, and the last sentence of that e-mail  
16 was we will get you.

17 Q. So let me see if I can clarify a little bit.

18 Is it your testimony that Mr. Gallowa, my client, was  
19 somehow linking Happy Hookbills Ranch with the  
20 statements he was speaking negatively about about  
21 Mrs. Scudder's facility?

22 A. He insinuated that because -- in fact, he  
23 stated, called us -- called her your namesake to John.  
24 He insinuated that because our last name was Scudder  
25 that we had the same type of practices that Martha

49

1 had.

2 Q. And is it your testimony that you in fact do  
3 not have the same type of practices that Mrs. Scudder  
4 has?

5 A. Yes, we did. In fact, Mr. Gallowa asked to  
6 visit our facility, and we told Mr. Gallowa that if he  
7 met certain conditions that he and anybody he wanted  
8 to have to come and visit our facility. However,  
9 those conditions were that no one who was going to  
10 come on the facility had any contact with any type of  
11 bird, whether it be parrots, poultry, game fowl,  
12 pigeons, any type of bird at all. If they had had any  
13 contact within 45 days, they could not come on our  
14 property. If they would sign an affidavit that they  
15 had not been in contact with a bird for 45 days, we  
16 would be more than happy to allow him to inspect our  
17 property.

18 Mr. Gallowa at that point sent an e-mail back  
19 saying that these are impossible conditions to meet  
20 because Dr. Bennett's a vet and we have birds, and at  
21 that point we said, Well, I'm sorry. If you're not  
22 willing to meet our conditions, you can't come on our  
23 farm.

24 Q. Let me be very clear here. Why was it  
25 important -- let me back up.

50

1 Was it important to you at that time to  
2 clarify for Mr. Carter of the Seattle Times that Happy  
3 Hookbills was a separate entity and did not have the

4 same avian management techniques that were employed by  
5 Mrs. Scudder? Was that important to you?

6 A. Yes, it was.

7 Q. And why is that?

8 A. Well, because Mr. Carter had a copy of that  
9 report that Dr. Bennett had, because Mr. Gallowa had  
10 provided it to him because he had obtained it from  
11 Pierce County under the Freedom of Information Act  
12 based upon their contract with the Tacoma Pierce  
13 County Humane Society. I believe that's what it's  
14 called.

15 He had a copy of that report, and I wanted  
16 him to understand that our aviaries had never been in  
17 that condition; that our management styles were  
18 totally separate; and that because John's name was  
19 John Scudder, Junior, did not mean that he was the  
20 same or that our facility was the same as Martha  
21 Scudder's.

22 Q. Gotcha.

23 MS. MacDOUGALL: Let's go off the record for  
24 a minute.

25 (Discussion off the record.)

51

1 MS. CABALO: For the purposes of  
2 Ms. Scudder's deposition, I'm going to have to reserve  
3 my right to do my follow-up because of the length of  
4 time it took for Martha's -- Martha Scudder's  
5 deposition this morning. I wanted time to review her  
6 deposition transcript in order to come up with some  
7 efficient questions so that we wouldn't be here too  
8 long for my follow-up, so I'll have to reserve that  
9 right if that's mutually agreeable to you two.

10 THE WITNESS: Is there some way that you guys  
11 can do this somewhere other than here so it's near to  
12 where we are?

13 MS. MacDOUGALL: I have no objection to doing  
14 that. I have done depositions at people's homes.

15 MR. SCUDDER: How about Hawaii?

16 MS. MacDOUGALL: I'm going to vote for  
17 Hawaii.

18 THE WITNESS: So if I can arrange with an  
19 attorney in Yelm to utilize his conference room, can  
20 we utilize that conference room if I have to have  
21 questions asked -- additional questions asked of me?

22 MS. MacDOUGALL: I have absolutely no

23 objection to that.  
24 THE WITNESS: Do you, Ms. Cabalo?  
25 MS. CABALO: I don't at this time.

52

1 MS. MacDOUGALL: Can we go off the record now  
2 again?  
3 MS. CABALO: Yes.  
4 (Discussion off the record.)  
5 A. There is a vet report from Tumwater  
6 Veterinary Hospital.  
7 Q. (BY MS. MacDOUGALL) Is it the first page I'm  
8 looking at?  
9 A. There's several pages. The name on there  
10 says Rebecca Adams and Audrey Martinez, and I want to  
11 clarify that the reason that I have copies of that is  
12 because Rebecca Adams and Audrey Martinez had a rescue  
13 bird that Martha had given them, and they could not  
14 afford the medical treatment on that bird, and I paid  
15 for it, so they provided me a copy of the veterinary  
16 record because I paid for that bird, not only the  
17 exams and the antibiotics but also for the euthanasia  
18 of it.  
19 MS. CABALO: Let the record reflect that the  
20 deponent is referring to documents provided to counsel  
21 titled -- two pages titled Tumwater Veterinary  
22 Hospital.  
23 THE WITNESS: Excuse me. There's well more  
24 than two pages. There's number of microbiology  
25 reports, and there is also a handwritten letter dated

53

1 yesterday from Dr. Bennett clarifying that -- on the  
2 first page of his notes he has written down PDV, and  
3 he wanted to clarify that that was a mistake and that  
4 it meant PDD or PVD. Basically he wanted to clarify  
5 that he meant proventricular dilatation disease.  
6 Would you like me to spell that?  
7 THE REPORTER: I think I can get that one.  
8 MS. MacDOUGALL: Let's take an hour break,  
9 please.  
10 (Depositor recessed at 1:30 p.m. to be  
11 reconvened at 2:30 p.m.)  
12  
13  
14



15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

54

1                   AFTERNOON SESSION  
2                   2:30 p.m.  
3                   --ooOoo--  
4

5                   CONTINUING EXAMINATION

6 BY MS. MacDOUGALL:

7     Q. Counsel and I have agreed that we'll go for  
8 another hour to accommodate some things that she's  
9 already got pressing for this afternoon. That will  
10 give you folks time to get out of here before the  
11 traffic hits. Then when we reconvene, we can do it  
12 somewhere down by you folks.

13     A. Yeah. Because what I'm going to do is  
14 contact the attorney that we use down there, the one  
15 who's doing my name change. If we can't use his  
16 conference room, my doctor is in Yelm, and he has a  
17 conference room in the upstairs. He has a house for  
18 the office, and I'm sure that between one or the two  
19 of the other, he can arrange for us to have a  
20 conference room.

21           MR. SCUDDER: I've got a barn.

22     A. I'd rather they don't come to the house to do  
23 it, because that means that -- see, you have to  
24 understand, we run an aviary, okay? The birds come  
25 first, and my house comes second.

55

1     Q. (BY MS. MacDOUGALL) Don't worry. One of the  
2 things that we do need we make sure we do is not all  
3 talk at once for the court reporter, because she needs  
4 to get everything down.

5           MS. MacDOUGALL: Can you read me what the  
6 last sort of sentence and line of questioning was?

7 (The reporter read back as requested.)  
8 Q. (BY MS. MacDOUGALL) Kathy, you've given me  
9 and we've made for plaintiff's counsel a set of  
10 documents that we talked about just prior to our  
11 break. Just identify for me what it is that you've  
12 handed us.  
13 A. One is your paralegal made the copies. I  
14 didn't. The first several pages up to the handwritten  
15 letter on Tumwater Veterinary Hospital letterhead are  
16 the veterinary records of a Yellow Crowned Mealy  
17 Amazon that Martha gave my friend Rebecca Adams.  
18 Q. When did she give your friend Rebecca Adams  
19 that bird?  
20 A. On 10-29-2003, because the first visit to the  
21 vet is on 10-30-2003, and she took that bird to the  
22 vet the day after she got it from Martha's.  
23 Q. And then what is -- we'll go back. I just  
24 want to identify right now what it is I've been given  
25 by you so that when we do continue your dep we have a

56

1 record, because I'm not sure I'm going to get to  
2 making all of these exhibits at this time. What's the  
3 next piece of information that you've handed me in  
4 this packet?  
5 A. Okay. There are two pages, page 1 of 2 and  
6 page 2 of 2, which contain an e-mail to John and I  
7 from Stuart Metz.  
8 Q. And your reply?  
9 A. And my reply.  
10 Q. Okay.  
11 A. I did not print original e-mails and replies  
12 separately. I just printed everything all together so  
13 it was easier to follow the process, because you would  
14 have to start at the back and go forward from the way  
15 my printer works.  
16 Q. Let me see if I can sort of fast forward. It  
17 looks like the rest --  
18 A. No. The next section -- there's three pages,  
19 okay? -- is an e-mail from a woman named Lynn Ketner,  
20 who obviously is one of the people that Mr. Gallowa  
21 sent copies of every e-mail that he sent to us, and on  
22 this it's describing how we should have made Martha  
23 quit.  
24 Q. Let me interrupt you here at this point,  
25 because we don't need to talk about all of them.

1 Whether they've come from Larry or groups or back and  
2 forth to you or you and John, is the rest of the  
3 information you gave me copies of e-mails from one  
4 source or another?

5 A. Well, up until you reach the one where it  
6 says Yahoo groups, and then those are what I printed  
7 off of the Internet. You can see at the bottom of  
8 information that Mr. Gallowa put on the Internet  
9 regarding the Scudder aviary and also John and I.

10 Q. Great. All righty. Now, I think you  
11 described for me where in location the two properties  
12 are, and basically your facility property and  
13 Mrs. Scudder's facility property are located next to  
14 each other and adjoin although they are now separated  
15 by a fence. Is that true?

16 A. Yeah. There was only a small area that  
17 wasn't separated by a fence, and that was strictly  
18 because when there were cordial relations between the  
19 family to facilitate going back and forth between the  
20 houses rather than having to go down our 900-foot  
21 driveway and around to hers.

22 Q. Gotcha. I think you also told me that you  
23 have not been on the property since October 2003 or  
24 September, October, November, sometime in 2003.

25 A. Yeah. It would be October or November, not

1 September. It would be October or November.

2 Q. And have you had -- you have had no contact,  
3 correct, since that time or since the restraining  
4 order?

5 A. Right. Actually, when you said being on her  
6 facility, I was on her facility in the first of  
7 February of 2004.

8 Q. I'm sorry. You're right.

9 A. But I didn't visit any of the aviary  
10 buildings or anything at that time. That was strictly  
11 there at -- right there in front of her house. But,  
12 yes, that's the last time I was in her aviary  
13 buildings was in late fall of 2003.

14 Q. And we were talking about what you observed  
15 in the late fall of 2003 about the conditions, and you  
16 were describing for me what Mr. Vincent had done with  
17 the feed dishes and your statements to Mrs. Scudder

18 about the location of the bird dishes. Do you recall  
19 that area of testimony?

20 A. Yes, I do.

21 Q. What else about the condition of the aviaries  
22 did you notice during that visit in fall of 2003?

23 A. That there is vegetation again growing up in  
24 and around the cages in the bird houses.

25 Q. What type of vegetation are we talking about?

59

1 A. In what she calls her long house, there was  
2 night shade, which is poisonous to birds, growing up  
3 and around cages. Along the what she calls her Macaw  
4 house, there was like grass and weeds, and in the back  
5 of it, she has what they call knot weed, and that was  
6 starting to grow up against the back of the Macaw  
7 house.

8 Q. Let me ask you a quick clarifying question.  
9 Knot weed, do you mean the Japanese knot weed that  
10 looks like a bamboo plant?

11 A. No. It's not a bamboo plant.

12 MR. SCUDDER: Yes.

13 A. I didn't know it was a bamboo plant. I just  
14 know it has great big leaves on it.

15 Q. (BY MS. MacDOUGALL) Gotcha. Now, the night  
16 shade you said is poisonous. What detriment, if any,  
17 does the Japanese knot weed have to the birds?

18 A. It provides a way for rodents to climb up  
19 onto the cages, and mice carry avian tuberculosis, and  
20 the way that mice transfer avian tuberculosis to birds  
21 is they get up either in the cages or the nest boxes.  
22 If they get in the cages and they get into the food  
23 dishes, they urinate in the food dishes, and the urine  
24 carries avian tuberculosis.

[Ed.— There was at least one case of avian tuberculosis among the M. Scudder Farm necropsies]

25 And it's the same way if they get in the nest

60

1 box. If they get in the nest box, they have a  
2 tendency to make nests and have babies in the nest  
3 boxes, and the birds lay their eggs in the nest boxes.  
4 That's where they go to also get additional shelter is

5 in the nest boxes. So if you have vegetation growing  
6 up and around your cages, you're providing a direct  
7 ladder so to speak for mice and other rodents to get  
8 up to the cages.

9 Q. Anything else other than vegetation that  
10 you've noticed -- that you noticed at that time, 2003,  
11 the fall, about the condition of the aviary that you  
12 would consider to be detrimental to the health of the  
13 birds?

14 A. Well, as it gets wetter and wetter in the  
15 fall, fecal matter doesn't dry and fall through the  
16 bottom of the cages, because the birds sit on a perch,  
17 and so they are basically excreting in the same area  
18 all of the time because they don't move around the  
19 cage, so you begin getting a buildup of fecal matter.  
20 I mean, you can get fecal matter that if you don't  
21 clean it will stack up six or eight inches or more.

22 Q. Is it a problem for any reason whatsoever to  
23 go in and clean these cages and remove that fecal  
24 matter?

25 MS. CABALO: I'll interject. I need to

61

1 object to this entire line of questioning to the  
2 extent that it asked for expert opinion, but you can  
3 go ahead and answer.

4 Q. (BY MS. MacDOUGALL) You can go ahead and  
5 answer.

6 A. Based upon my studies on the Internet -- and  
7 those studies have been from some of the most  
8 prominent bird breeders in the United States -- they  
9 specifically discuss that fecal matter in a cage  
10 transmits disease, most particularly if the birds  
11 getting -- the birds naturally have E. coli in their  
12 gut. However, if there's fecal matter in the cages in  
13 the food or in their water, that can cause E. coli to  
14 multiply rapidly and cause an infection in the bird.

15 Q. How often do you clean your cages at Happy  
16 Hookbills Ranch?

17 A. How often do we clean our cages?

18 Q. Uh-huh.

19 A. During the wintertime, we carry a hoe and a  
20 rake. We don't pull our food dishes and put the food  
21 in them and take them out to the aviaries. We have a  
22 cart. We have five-gallon buckets that have this  
23 seed, the food, a place for spent seed, and our clean

24 food dishes and like a hoe or a rake that's on that  
25 cart, and at any time that we see fecal matter that is

62

1 beginning to build up in the bottom of the cage, we  
2 scrape it out. You turn a regular garden rake upside  
3 down and scrape, and then you use the hoe to pull  
4 anything forward and you take it out and you dispose  
5 of it.

6 Q. Now, are these breeder birds that you clean  
7 the same way?

8 A. This is our breeder aviaries that I'm talking  
9 about.

10 Q. Does the cleaning that you've just described  
11 disturb your birds in any way?

12 A. No, it doesn't. Well, they're always  
13 disturbed when you go in the aviaries. They yell and  
14 they scream. But that's also because they know  
15 they're getting fed, okay? About the same time every  
16 day they know that. But does it hurt them?

17 Q. Yes. Is it detrimental to them to clean the  
18 cages in the way --

19 A. No. It is not detrimental -- in my opinion,  
20 it is not detrimental to the birds, and, in fact, to  
21 leave the fecal matter piled up in the cage would be  
22 detrimental to the birds.

23 Q. In the fall of 2003, do you know if  
24 Mrs. Scudder and Mr. Vincent were jointly  
25 participating in the care of the birds and the aviary?

63

1 A. Yes, they were. On numerous occasions I saw  
2 them, because it's really -- their property is right  
3 there. I mean, if I'm outside, I can see some of  
4 theirs. I saw them together feeding birds. The only  
5 building that I ever saw them feeding birds jointly in  
6 is what she calls her long house, because that's the  
7 one that is most visible from where my little  
8 greenhouse is.

9 Her Macaw cages, her Macaw house, her Amazon  
10 house, her Cockatoo houses are not readily visible  
11 from our farm, but I did see them on numerous  
12 occasions together feeding the birds in the long  
13 house, and they had come out -- you can see the end of  
14 the Macaw house, and they had come out of the Macaw  
15 house and entered the long house together.

16 Q. Do you have an understanding as you sit here  
17 today if one or the other, Mrs. Scudder or  
18 Mr. Vincent, takes primary responsibility for the  
19 care, feeding, and cleaning of the aviary?

20 A. No. I do not know which one is responsible.

21 Q. Any other concern going back to my earlier  
22 question that you observed in 20 -- the fall of 2003?  
23 Any other condition that you observed at that time  
24 that you would state was detrimental to the condition  
25 of the birds?

64

1 A. The Cockatoo houses had some water dishes in  
2 them that were contaminated with fecal matter.

3 MS. CABALO: Again, just to be on the record  
4 -- forgive me for being a little late in the game with  
5 the objections. Again, my standing objection.  
6 Anything with regard to Mrs. Scudder's opinion as to  
7 what may be detrimental to the birds calls for expert  
8 opinion, and I object in that regard.

9 MS. MacDOUGALL: Let me just be clear. I'm  
10 not calling her as an expert. I'm just asking her  
11 based on her knowledge and experience that she has  
12 gained to date. I mean, you can leave that as a  
13 standing objection for this entire line of questioning  
14 if you like.

15 Q. (BY MS. MacDOUGALL) Go ahead.

16 A. In fact, it was Martha who told me that fecal  
17 matter in water dishes contaminated them.

18 Q. So there was --

19 A. She was the one who taught me that you're not  
20 supposed to have fecal matter in water dishes. There  
21 were some water bottles that were growing algae.

22 Q. How quickly does algae grow if you know?

23 A. In the summertime, very fast. In the fall as  
24 it gets colder, it grows slower unless there is direct  
25 sunlight, and I only know that because I have plants

65

1 rooting in my window and I have plants rooting in  
2 another area, and in the water that's in the window  
3 that gets direct sunlight algae grows, whereas in the  
4 ones that aren't getting direct sunlight, the algae  
5 doesn't grow.

6 Q. In the fall if there's no direct sunlight, do  
7 you know how quickly algae could cover a water bottle?

8 A. No, I do not.  
9 Q. What else beyond the fecal matter in the  
10 water dishes and the algae in the water bottles?  
11 A. Just the overall condition of the bird  
12 houses. The underneath the cages hadn't been raked or  
13 cleaned. There was an area where Mr. Vincent had  
14 cleaned some vegetation back in order for better  
15 access to some of the bird houses, but there was still  
16 a lot of vegetation.  
17 There was a lot of just trash in and around,  
18 and a lot of the reason that I also saw that was  
19 especially like during September is because Martha let  
20 me pick blackberries on her property because she liked  
21 blackberries, so I'd go pick blackberries and then I  
22 would give her some of the ones I got, because she  
23 likes them on her ice cream, so that's part of the  
24 reason I was seeing this.  
25 There were blackberry vines growing up and

66

1 around one of her bird houses, because I would stand  
2 and reach through -- it wasn't all around the cage,  
3 but it was all around the bird house and reaching to  
4 the point where the runners were getting to the cages.  
5 That's where I would pick them.  
6 Q. Let me get an understanding, because you said  
7 something that makes me think I've got a mistaken  
8 impression. You said rake out from underneath the  
9 cages the fecal matter. Do these cages not have a  
10 solid bottom that you clean?  
11 A. No. All of the cages both at Happy Hookbills  
12 Ranch and as far as I know all of the cages at  
13 Scudder's Aviary that are in what we call bird house  
14 buildings, bird houses -- we just call them bird  
15 houses. We don't call them aviaries. All of the  
16 cages that are in bird houses are elevated. Is this  
17 approximately 2 feet?  
18 MR. SCUDDER: Thirty inches.  
19 A. Thirty inches.  
20 Q. (BY MS. MacDOUGALL) Are they suspended or are  
21 they raised up on legs?  
22 A. Okay. It's a combination. There are 2-by-4s  
23 in the front that the front of the cage rests on,  
24 okay? And in the back there are chains that are  
25 hooked to the edges of the cages, the corners of the



1 cages, and then those chains are hooked to 2-by-4s,  
2 like rafter like 2-by-4s of the roof. Most if not all  
3 of Martha's cages are done that way.

4 She may have a few that simply set on 2-by-4s  
5 in the front with the 2-by-4 in the back, but I would  
6 not be able to tell you for sure because I never  
7 looked to see if there were any chains as well in  
8 those houses that had that type of -- and the reason I  
9 know that is because I used to help Judy collect eggs,  
10 and I could climb up on those to get to the nest  
11 boxes.

12 Q. So the bottom of the cages are the same  
13 materials as the cage themselves, wire?

14 A. Yes. Totally.

15 Q. So the fecal material falls down through onto  
16 the ground; is that true?

17 A. Right. As well as spent seed.

18 Q. So when you were talking about raking out,  
19 it's the pile of feces that is building up underneath  
20 a cage that you're talking about raking; is that true?

21 A. Right. I wouldn't say that what you call  
22 builds up, okay? The fecal matter that you have to  
23 like scrape out when it's wet outside, generally you  
24 put that in something and throw it away, but in the  
25 summertime, the fecal matter gets dry and falls

1 through.

2 You also have seed hulls. You have live seed  
3 that the birds have knocked out of their dish. You  
4 start getting plants growing underneath the bird  
5 houses because the seeds sprout, so you need to keep  
6 that cleaned out. It's basically a matter of  
7 cleanliness of keeping the fecal matter and the spent  
8 seed and the dropped seed, and just, you know, it will  
9 get gucky under there if you don't clean it out.

10 Q. Anything else about the general aviary  
11 conditions that you noted that we haven't talked about  
12 thus far?

13 A. I don't remember exactly when I noticed it,  
14 but I did notice that part of the roof of the long  
15 house was collapsing and in on the long house and that  
16 there were cages -- whether or not they contained  
17 birds I do not know, because I could not see that far.

18 Our driveway goes -- you're east -- our

19 driveway goes straight across the far side of Martha's  
20 property, because we have a recorded easement that  
21 allows us to get to our property because it's directly  
22 behind Martha's. So when you go down my driveway, you  
23 go right by her long house and Vivian Graves' trailer,  
24 so unless you have blinders on like a horse, you're  
25 going to notice and see things.

69

1 One of the things that I noticed was that for  
2 a considerable amount of time there was a section of  
3 the roof of the long house that had collapsed and that  
4 there were cages around in that area that you could  
5 see were at least partially laying -- the back of them  
6 laying on the ground. Some of them -- one of them the  
7 whole cage was down on the ground. Were there birds  
8 in there? I cannot -- I could not see.

9 Q. Do you know who Dr. Dillon is?

10 A. Can I add one more thing, though, about the  
11 long house?

12 Q. Certainly. I didn't mean to interrupt you.  
13 I thought you were done.

14 A. I can tell you that the roof of the long  
15 house has since been repaired with some metal on that,  
16 so she has fixed that. Have the cages been lifted up?  
17 I do not know, because this is the time of year when  
18 we completely plastic all of the bird houses, and  
19 there is no way to see in it.

20 Q. Do you know who Dr. Dillon is?

21 A. My understanding -- I have never met him, but  
22 my understanding is that he works for Washington  
23 State University's poultry extension in Puyallup and  
24 that Dr. Dillon performs necropsies, blood sexing.  
25 You can also go get swabs and swab the vents of your

70

1 birds and take them back and have avian panels run.

2 So basically it's my understanding that while  
3 he's not an actively practicing veterinarian in the  
4 state of Washington, he's the one who's in charge of  
5 the poultry extension. That's who I understand he is.  
6 If that's not who he is or what he does, I don't know.

7 Q. You have never met him?

8 A. No, I have not.

9 Q. So you probably would not know if he performs  
10 inspections or tours or takes students out to

11 Mrs. Scudder's aviary; is that correct?  
12 A. Yes. I would know that he does.  
13 Q. What is it that you know?  
14 A. Well, I've seen people on the property taking  
15 tours of the bird houses, and this was prior to there  
16 was no communication, and when I asked Mrs. Scudder  
17 who it was, she told me it was Dr. Dillon and  
18 veterinary students. There was another time when  
19 there was a poultry symposium that Dr. Dillon either  
20 conducted or was at the poultry extension that there  
21 were people who -- other veterinarians and other  
22 people involved in poultry and avian that came over  
23 and toured the facility.

[Ed.— This is one of several examples wherein letting visitors into the bird houses was deemed to have no adverse effect, in contrast to the catastrophic outcome claimed for two female visitors briefly accessing the periphery of the facility—apparently because they were “activists.” ]

24 There was specifically one gentleman who I do  
25 not know his name, but at one time Mrs. Scudder was

71

1 discussing raising or having ducks in order to produce  
2 baloot, which is where the duck egg is allowed to  
3 incubate to a certain point and then it is placed in a  
4 brine solution and the embryo is killed and people  
5 from like Cambodia and the Indonesian Vietnam and all  
6 that is considered a delicacy for them, and ducks and  
7 other poultry, because parrots are not poultry, but  
8 ducks and chickens have to be vaccinated every year  
9 for exotic New Castle's disease, and I was concerned  
10 that whether or not it was a live or a killed vaccine,  
11 so when this gentleman who was doing the tour, I went  
12 over and asked him about it, and she had been giving  
13 him a tour of her facility.

14 Q. Has Mrs. Scudder ever mentioned to you or  
15 have you ever seen someone that she made you aware of  
16 was Dr. Dillon touring the outside areas of the avian  
17 buildings? And I'm not talking about the house. I'm  
18 talking about the long building, the building where  
19 she houses some of the other birds that you've talked  
20 about.

21 A. You mean the exterior and not the interior?

22 Q. Correct.

23 A. Not to my knowledge. I would not recognize

24 Dr. Dillon if you sat him at the end of the table.

25 Q. Do you know if when Mrs. Scudder provides or

72

1 permits tours she opens up the entire avian facility  
2 and shows people to your knowledge the other buildings  
3 like the long building and --

4 A. Oh, yes. In fact, in the summer of 2003 she  
5 was busy, and the people who own a little business  
6 called Taco Gabby's -- it's a little Mexican  
7 restaurant -- she had invited them to come to the  
8 facility. However, their basic language is Spanish,  
9 and Mrs. Scudder doesn't speak Spanish, and I speak  
10 poor Spanish, but I speak much better Spanish than  
11 anybody else around does, so she asked me -- once they  
12 toured the nursery area and saw the babies in the  
13 isolettes, she asked me to take them through the  
14 aviaries.

[Ed.— This is perhaps the most dramatic example of the discrepancy between Martha Scudders' allegations and reality. If taco makers traipsing through the actual aviaries did not disturb breeding activities, it is highly unlikely that emails and “activists” viewing the facility from afar did so – as the Scudder lawsuit against Larry Gallawa alleged. Obviously the court agreed because it dismissed the lawsuit.]

15 I took them through what's called her Amazon  
16 house and her Macaw house. I did not take them  
17 through the long house, nor did I take them through  
18 the Cockatoo houses, but I did take them through those  
19 buildings and explained about the different kinds of  
20 birds to the best of my ability. They did also have  
21 one young child with them that could speak English, so  
22 if I couldn't communicate, then he helped me, so it  
23 was sort of like we were speaking Spanglish.

24 Q. Do you know a gentleman by the name of Bill  
25 Larson?

73

1 A. Bill Larson. I know a man whose name is  
2 Bill, first name is Bill, who came to Martha's  
3 facility during the summer of 2003 and brought eggs  
4 that he put in her incubator. Is his last name  
5 Larson? I have no idea.

6 Q. Have you ever witnessed Mrs. Scudder  
7 disposing of any birds on her property either by  
8 burning carcasses or burying carcasses or putting

9 carcasses in the garbage?

10 A. In the garbage.

11 Q. When did you witness that?

12 A. I have never seen her bury or anything. Oh,

13 gosh. She had a bird die in that summer. That one

14 she threw away. Most of the birds that I saw that

15 died during the summer of 2003 Mrs. Scudder took or

16 said she was taking -- I cannot say for sure that

17 that's where she went, but she put those birds in

18 plastic bags and said she was going to Dr. Dillon's to

19 have them necropsied.

20 Q. In the area that you live in, do you know if

21 you are permitted to dispose of birds in the garbage?

22 A. I don't know if you can or not.

23 Q. Does your aviary have that practice where you

24 dispose of dead birds in the garbage?

25 A. We haven't had any dead birds. Okay. Excuse

74

1 me. I had a Sun Conuer that was approximately one

2 week old that died in its little cup, and, yes, I did

3 throw it in the garbage, because I could see no reason

4 to have a few day old bird necropsied.

5 Q. Sure. So the time that you mentioned that

6 you knew that she disposed of a bird in the garbage,

7 when was that?

8 A. It was in the summer.

9 Q. Of 2003?

10 A. Of 2003. And then just recently within the

11 last month or six weeks, we use the same garbage

12 service, and when the garbage truck pulled up to our

13 -- to pick up our garbage, because we have a little

14 dumpster, the dumpster was kind of down in the mud,

15 and the garbage guy was having a hard time hooking it

16 up on that, so I got John to come out and help him.

17 We saw a Blue Fronted Amazon in the part

18 where she dump -- originally they dump the dumpster

19 there and then they dump it up over into the garbage

20 truck. There was a Blue Fronted Amazon that was

21 laying in that area, and I do know that he picks up

22 the dumpster at Mrs. Scudder's home and then comes to

23 our home directly.

24 Q. How large is the bird that you saw?

25 A. The Blue Front?

75

1 Q. Uh-huh.

2 A. Approximately 14 inches, 12 to 14 inches from  
3 the top of the head to the tip of the tail. As far as  
4 grams of weight, I wouldn't know. I could tell that  
5 that bird was skin and bones.

6 Q. How could you tell that?

7 A. Because I looked at it and because the  
8 garbage guy had a shovel on his truck, and I went, oh,  
9 wow, there's a dead Blue Front, and the garbage  
10 gentleman got his shovel that's on the side of the  
11 garbage truck and he picked it up, and I looked at it,  
12 and I poked it with a stick because I would not touch  
13 it because in case it was diseased.

14 It was -- one of the ways that you can tell  
15 that a bird is extremely thin is they have what's  
16 called a keel bone that runs down the center of the  
17 chest, okay? When that keel bone protrudes like a  
18 knife and there's no muscle or meat or anything along  
19 the side of it, it looks almost like your turkey  
20 carcass at Thanksgiving where you've carved off the  
21 white meat.

22 It starts sticking out like that, and that  
23 was what I noticed, and that its feathers were yucky,  
24 but that could also have been because it was in the  
25 garbage. You know, they were that -- but most

76

1 specifically the thing that I noticed more than  
2 anything was that that bird was very, very, very thin.  
3 I'm not an expert, but if a bird was that skinny, it  
4 would die.

[Ed.— This supports other allegations of dead parrots being thrown in the garbage at this farm, and contradicts Martha Scudder's testimony on the handling of deceased birds (see Martha Scudder Deposition, Pt1, Section 125).

The description by Kathy Scudder suggests that the bird died either of starvation or a wasting disease. It seems likely that discarding a bird this way is illegal under Washington State Law RCW 16.68.020, Duty to bury carcass of diseased animal--Dead animal presumed diseased :

Every person owning or having in charge any animal that has died or been killed on account of disease shall immediately bury the carcass thereof to such a depth that no part of the carcass shall be nearer than three feet from the surface of the ground. Any animal found dead shall be presumed to have died from and on account of disease.]

5 MS. CABALO: Objection to the extent that it  
6 calls for expert testimony.

7 MS. MacDOUGALL: Sure.

8 Q. (BY MS. MacDOUGALL) So other than what you've  
9 just described to me, any other incidents where you've  
10 witnessed any birds in the garbage from Mrs. Scudder's  
11 aviary?

12 A. Not in the garbage. Like I said, most of the  
13 time she said she was taking them to Dr. Dillon. I  
14 have seen dead birds, but not in the garbage other  
15 than that.

16 Q. Do you know if there is a requirement -- are  
17 you as an aviary required to have the birds that die  
18 in your possession necropsied?

19 A. It's not a requirement. Currently there are  
20 no regulations governing -- there are no standard  
21 regulations governing the care of birds. Birds were  
22 exempt under the Animal Welfare Act until a group of  
23 animal rights activists sued and it was determined  
24 that excluding birds from the Animal Welfare Act was  
25 arbitrary, so the USDA is now required to regulate

77

1 birds.

2 However, those regulations have not yet been  
3 instituted. The time for call of comments ended  
4 November 1, 2004, and just recently the PIJC, which is  
5 the Pet Industry Joint Advisory Council, submitted a  
6 very, very, very long list of proposed regulations as  
7 well as reasons that birds should still be exempted  
8 from the AWA, but as yet, the USDA has not established  
9 any standards as far as the care and feeding and  
10 housing of birds.

11 Q. Let me go back a minute to the bird that you  
12 saw that you reported was very thin that was in the  
13 garbage. What are some of the reasons that you know  
14 of that would make a bird become very thin?

15 A. The only reasons that I know of that would  
16 make a bird become very thin is either, A, the bird is  
17 not being fed; B, the bird's not been fed an adequate  
18 diet; C, an illness called PDD, also known as Macaws  
19 wasting syndrome; D, any other bacterial or viral  
20 infection that may or may not have been treated  
21 depending on -- birds are difficult to care for,  
22 because if they get sick, if the treatment is not  
23 almost immediate, they're generally going to die.

24 You have to get treatment as soon as you  
25 notice that like their eyes are getting droopy or

1 their heads are drooping down, because it's difficult  
2 enough to treat a bird, and there are only, I think,  
3 three certified avian vets in the whole state of  
4 Washington --

5 Q. Do you know who those vets are? Let me  
6 interrupt you.

7 A. Okay. I know who two of them are. One of  
8 them is Dr. Tracy Bennett. The other one is  
9 Dr. Deanna Schafer, and I did know that Dr. Kamaka is  
10 to be taking her avian boards sometime during this  
11 year of 2005, and she works very closely with  
12 Dr. Bennett. I think, but I am not positive, that the  
13 other one is Dr. Craft up in Woodin something, but I  
14 don't know for sure. I just heard scuttlebutt that  
15 he's the other certified one. I don't know that for a  
16 fact.

17 Q. Who is your farm's current veterinarian?

18 A. Dr. Leslie Kovar.

19 Q. Have you ever needed to use Dr. Bennett for  
20 any reason?

21 A. Dr. Tracy Bennett?

22 Q. Yes.

23 A. No. If I have a bird that needs to see an  
24 avian vet, I would take them to Dr. Deanna Schafer,  
25 because Dr. Tracy Bennett is in north Seattle and

1 Dr. Deanna Schafer is in Lakewood.

2 Q. Let me interrupt just to make something  
3 clear. I think earlier you said there was a  
4 handwritten letter in here from -- did you say from a  
5 Dr. Bennett?

6 A. It's Dr. Greg Bennett.

7 Q. Different Bennett. Is it spelled differently  
8 as well, I think. It looks like B-e-n-e-t. Do you  
9 know if that's -- no. I'm sorry. It is spelled  
10 exactly the same. He just has very poor handwriting  
11 like many physicians and vets. When you spoke earlier  
12 about a handwritten note from Dr. Bennett, it wasn't  
13 Tracy Bennett. It was this note from Dr. Greg  
14 Bennett?

15 A. Dr. Greg Bennett, yes.

16 Q. Sorry. I didn't mean to interrupt you, but I  
17 realized I had a mistaken impression.

18 A. Can I add something else too?



19 Q. Sure.

20 A. One of the reasons that I would not use  
21 Dr. Tracy Bennett is that Dr. Tracy Bennett feels that  
22 we're lumped in the same thing as far as how we treat  
23 our birds as Martha is, and so I would not use her  
24 because of that opinion. However, I did sell two  
25 birds this year to people who use Dr. Tracy Bennett,

80

1 and they did take those birds for a vet check to  
2 Dr. Bennett, and from what I understand, Dr. Bennett  
3 was not upset about the condition of the birds.

4 Q. Great. The diseases that you were  
5 mentioning, illnesses that could make a bird sick  
6 enough to appear thin, are those diseases first of all  
7 communicable to humans?

8 MS. CABALO: Again, objection to the extent  
9 it calls for expert testimony.

10 A. As far as I know, the only disease that birds  
11 carry that are communicable to humans is psittacosis.  
12 Macaw wasting syndrome is a neurological disorder.  
13 It's a virus that causes neurological problems, but  
14 that virus -- and I have done extensive research on  
15 the Internet, and I have also personally spoken with  
16 Dr. Branson Ritchie, who is the head of the disease  
17 research facility at the University of Georgia's  
18 college of veterinary medicine, and according to  
19 Dr. Branson Ritchie, Macaws wasting or PDD as it's now  
20 known as -- they generally don't call it Macaws  
21 wasting syndrome anymore -- is not communicable.

22 Q. (BY MS. MacDOUGALL) The psittacosis, though,  
23 at least to your knowledge is --

24 A. I know for a fact that psittacosis is because  
25 I have researched that on the Internet. It's

81

1 chlamydia. Psittacosis in a bird is chlamydia in a  
2 human.

3 Q. Are there any health concerns that you're  
4 aware of given what you've just told me about diseases  
5 and potential spread of psittacosis to humans -- are  
6 there any potential health concerns that you know of  
7 with disposing of a bird's carcass in the garbage?

8 A. Unless you knew for sure that that bird died  
9 of psittacosis, I could see no reason why you would  
10 not dispose of it in the garbage unless there is a

11 Washington state law or a Pierce County law, because  
12 we live in an unincorporated area of Pierce County,  
13 that says that you may not do that. As far as I know,  
14 that doesn't exist, but that doesn't mean it doesn't,  
15 because I have not researched Washington state law.

16 Q. If a bird expires due to Macaw wasting  
17 syndrome, is that the same type of death as  
18 starvation?

19 A. Basically.

20 Q. How long would that take, the bird that you  
21 saw -- and I forget the bird's name.

22 A. The Blue Front or the --

23 Q. The Blue Front.

24 A. Well, I saw more than one bird that died of  
25 Macaw wasting disease at Martha's farm, one that she

82

1 specifically told me was dying of it. She used that  
2 particular bird -- she took me up on her porch and  
3 showed me that bird and said, This is what a Macaw  
4 that's dying of PDD looks like.

[Ed.— This statement would seem to contradict Martha Scudder's claim that she has no communicable disease at her facility; reference: MarthaScudderDepositionPt.1—Sections 142,143 ]

5 I was also present when Dr. Scott McDonald  
6 was at Martha's facility in May of 2003, because that  
7 was the first time I'd ever seen a sexing clinic. In  
8 fact, Dr. McDonald let me look in his little scope to  
9 see the inside of a bird. There was a particular  
10 Yellow Nape after all of the sexing was done that  
11 Mrs. Scudder brought in to Dr. McDonald and asked  
12 Dr. McDonald to scope the bird, which means that he  
13 makes an incision in the bird and uses something like  
14 a laparoscope and looks up in the bird, because she  
15 told Dr. McDonald that she couldn't keep weight on the  
16 bird, and he looked in the bird and then closed the  
17 incision and said that in his opinion the bird had  
18 PDD, and Martha asked him what she should do, and he  
19 said, well, ventilation is about the only thing they  
20 know of now.

21 There's no definitive test, and there is no  
22 cure, and there is no treatment. There's since --  
23 they have since at a farm in Florida called Milo's  
24 Ranch had a lot of success using Celebrex to reduce

25 the inflammation. What happens -- and I know I am not

83

1 an expert witness, but I have researched PDD for more  
2 hours than you can know, because it is what I consider  
3 the AIDS of the avian world. It is incurable. It can  
4 lie dormant, and even though it is dormant, the bird  
5 is still contagious during this dormant time even if  
6 it's not in an acute stage.

7 Q. Let me interrupt you. By contagious, you  
8 mean to other birds in the flock?

9 A. To other birds in the flock. Not all birds  
10 in the flock will get it. There are birds that they  
11 know have died of PDD and their cagemate doesn't have  
12 it.

13 Q. Is there any way to prevent it?

14 A. The only way to -- to prevent the illness  
15 totally?

16 Q. Yes.

17 A. No.

18 Q. Is there any way to prevent the spread -- if  
19 you know that one bird in the flock has it and you  
20 want to make sure that no other bird comes down with  
21 it, is there any way to prevent that from happening?

22 A. You quarantine them in a separate area. All  
23 aviaries -- well, okay. Let me rephrase that.  
24 Standard aviary practice amongst breeders nationwide  
25 is if you bring a bird on your property, you

84

1 quarantine it for 30 to 45 days away from your other  
2 birds. You don't handle that bird. I'm speaking of a  
3 breeder bird or even a new pet, okay? You don't  
4 handle that bird and then handle other birds. Birds  
5 that are in quarantine are fed last, okay?

6 You use viricides, fungicides, antibacterial  
7 soaps to clean yourself. You make sure if you are --  
8 have entered the quarantine area on our farm, the  
9 quarantine area has a small like 2-by-2 tray that's  
10 about 2 and a half or 3 inches deep that holds water  
11 and contains what's called neutral 64, which is a  
12 fungicide, viricide, antibacterial extremely strong  
13 disinfectant, and you mix that with a certain  
14 percentage of water, and when you leave the quarantine  
15 area, you step in that foot wash, foot bath with your  
16 shoes. It's only a little bit of water so that you

17 don't get it up into your shoes --  
18 Q. Let me stop you right here just so I  
19 understand, because you said standard aviary practice  
20 and then you spoke about what you're doing at your  
21 farm. Is the quarantine practice that you're  
22 describing, is that something that you're stating is  
23 only done at your farm or is this standard practice  
24 that you know of?  
25 A. The quarantining --

85

1 Q. Correct.  
2 A. -- is standard practice. Using the neutral  
3 64 and a foot bath --  
4 Q. Things like that, yes.  
5 A. There's other manners in which they  
6 quarantine. Some people wear coveralls, booties over  
7 their shoes, and they take those booties off and  
8 remove the -- some people wear like a lab coat to  
9 cover their clothes.  
10 Q. So basically there's different ways to  
11 perform the cleanliness procedures that are required  
12 with quarantine?  
13 A. Right.  
14 Q. Let me ask you if you know of the quarantine  
15 procedures, if any, employed by Mrs. Scudder at her  
16 aviary.  
17 A. As far as I know, she has no quarantine  
18 procedures and, in fact, boards birds that she has  
19 sold to other people.

[Ed.— As indicated elsewhere, the "quarantine facility " at this farm consisted of about 2-3 cages in an old garage, totally insufficient for 400 or more birds, especially if a contagious disease broke out. Moreover, Kathy Scudder's testimony suggests that true quarantine procedures weren't employed at all.]

I know that specifically  
20 because she had an Umbrella Cockatoo whose name was  
21 Elliot, and it belonged to a gentleman that she had  
22 sold Elliot to, and when that gentleman would go on  
23 vacation, he would bring Elliot over for Martha to  
24 baby-sit. She also had birds from a lady named Stacy.  
25 I don't know her last name, but she frequents Martha's

86

1 facility. Stacy boarded her birds there when she was

2 out of town.

3       There was a military Macaw named Sarge that  
4 I'm not sure if it was a boarding situation when it  
5 was left there or if it was to be what's called a  
6 breeder loan, but that bird died, so it never was set  
7 up, and that bird was definitely not quarantined,  
8 because Martha's two personal pets, one is a military  
9 Macaw named Hotshot and the other is a Blue Moon Gold  
10 Macaw named Spanky that shared the same perches and  
11 cage on Martha's front porch with that bird from the  
12 time it was brought on her farm.

13       MS. MacDOUGALL: Let's stop there. We're  
14 close enough to 3:30. We will reconvene at another  
15 time and location convenient to all present here. It  
16 will be sometime after your return from --

17       THE WITNESS: Excuse me. When is your  
18 return?

19       MS. CABALO: I'm trying to think. You say my  
20 return, which is the 24th. But I'm not going to think  
21 about that day or that week. My thought would be  
22 probably sometime -- assuming we get one of our trials  
23 settled, early February would be my first available  
24 date.

25       MS. MacDOUGALL: Okay. Great. We can go off

87

1 the record.

2       (Deposition adjourned at 3:25 p.m.)

3       (Signature was reserved.)

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19

20  
21  
22  
23  
24  
25

1 CORRECTION & SIGNATURE PAGE

2 RE: SCUDDER v. GALLOWA;  
KING; 04-2-04721-8SEA;

3 KATHRYN PHILLIPS; JANUARY 13, 2005

Reported By: Mary L. Green

4

I, KATHRYN PHILLIPS, have read the within  
5 transcript taken JANUARY 13, 2005, and the same is  
true and accurate except for any changes and/or

6 corrections, if any, as follows:

7 PAGE/LINE	CORRECTION	REASON
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		

8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		

22 Signed at \_\_\_\_\_, Washington, on this

23 date: \_\_\_\_\_.

24

25 \_\_\_\_\_  
KATHRYN PHILLIPS

1 REPORTER'S CERTIFICATE

2

3 I, MARY L. GREEN, the undersigned Certified Court  
4 Reporter and Notary Public, do hereby certify:

5 That the sworn testimony and/or proceedings, a  
6 transcript of which is attached, was given before me

7 at the time and place stated therein; that any and/or  
8 all witness(es) were by me duly sworn to testify to  
9 the truth; that the sworn testimony and/or proceedings  
10 were by me stenographically recorded and transcribed  
11 under my supervision, to the best of my ability; that  
12 the foregoing transcript contains a full, true, and  
13 accurate record of all the sworn testimony and/or  
14 proceedings given and occurring at the time and place  
15 stated in the transcript; that I am in no way related  
16 to any party to the matter, nor to any counsel, nor do  
17 I have any financial interest in the event of the  
18 cause.

19 WITNESS MY HAND AND SEAL this 23rd day of January  
20 2005.

21

---

22 MARY L. GREEN  
Certified Court Reporter  
23 CCR No. 2981  
Notary Public in and for the  
24 State of Washington, residing  
in Snohomish County.  
25 Commission expires 4/4/2005.