

SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

MARTHA SCUDDER, a single individual,
Plaintiff,

vs.

LARRY GALLOVA, a married individual
Defendant

NO.: 04-2-04721-8SEA

DECLARATION OF STEWART METZ,
M.D., IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

I, Stewart Metz, M.D., make the following Declaration under Penalty of Perjury under the laws of the State of Washington:

1. I am over the age of eighteen, I am competent to testify and make this Declaration based on my knowledge of the facts.

2. I have 12 years of experience as a parrot keeper; author; active field conservationist for parrots and cockatoos; educator; and consultant on behalf of birds. I have also been a practicing Physician and Internist for 33 years, which includes being a Tenured Professor of Medicine at two major teaching universities. The latter provides me insight into specific anatomic and pathophysiologic diagnoses in many necropsies, as well as basic principles of transmissible infectious disease which are shared by both avian as well as human models.

My own experience started with acquiring my first three parrots in 1993-4. Realizing that was an enormous responsibility, I undertook to understand the relevant scientific, practical and humanistic aspects. As a practicing physician engaged in clinical medicine, research and

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ALEXANDER & BIERMAN, P.S.
Attorneys at Law, P.S.
4800 Aurora Ave North
Seattle, WA 98103-6518
206-632-2711

1 teaching, I approached this exactly the same way I did taking care of human patients--that is, to
2 try to know every relevant fact and combine it with compassion to the benefit of the patients in
3 my care. Three things came from this. 1: in the mid-1990's, I began to research the nature and
4 care of psittacines (through printed literature, symposia, validated websites, and attendance at
5 bird club meetings--many of which focused on breeding practices) and then to write articles
6 about these topics; 2. I convened the World Parrot Welfare Alliance (WPWA), an attempt to
7 bring together parties in many countries who were similarly concerned about parrot welfare. The
8 WPWA revealed how much concern existed about issues of the ethical and humane treatment of
9 parrots; 3. I also learned that many common pet parrots were highly endangered in the wild. In
10 2002, I became and remain the President and Director of Project Bird Watch and the Indonesian
11 Parrot Project, a charitable corporation (501c3 non-profit; all volunteer) working to conserve the
12 endangered cockatoos and parrots of Indonesia. We have active projects in Seram Island, Raja
13 Ampat (West Papua), and Sumba Island, Indonesia (the endemic homelands of some of the
14 species bred by Mrs. Scudder), work which requires me to have intensive, first-hand knowledge
15 of all three groups of *psittaciformes* (parrot-like birds)-- cockatoos, parrots, and lorries/lorikeets.
16

17
18 I have published approximately 35 articles pertaining to parrots and have a book due to
19 be released this year: the first half is a fable for children (and adults) about the dangers to parrots
20 in the wild; the second half is a compendium of many of my published articles dealing with
21 conservation; the ethics of breeding and owning parrots; and related topics. I am frequently
22 asked to give presentations at Symposia, Bird Club Meetings, and related venues; the audience is
23 usually a mixed one of breeders and pet bird owners. In addition, I am frequently called upon (on
24 a weekly basis, if not more frequently; usually but not always via e-mail) to provide opinions and
25
26

1 suggestions above various aspects of the care and management of captive parrots, usually dealing
2 with behavioral abnormalities. All of my work with parrots is provided *gratis*.

3 3. Attached as Exhibit A is a true and correct copy of my current CV;

4 4. I have reviewed the following documents in preparation for formulating my
5 opinions in the above-matter:

6 a. Deposition of Martha Scudder, dated January 12 and 13, 2005;

7 b. Deposition of Kathy Phillips Scudder, dated January 13, and February 3,
8 2005;

9 c. Dr. Dhillon's necropsy records of the Scudder Aviary;

10 d. Dr. Jerry Brown, DVM's records of the Scudder Aviary;

11 e. Declaration of Robin Scudder;

12 f. Reports of Dr. Tracy Bennett's inspection of the Scudder Aviary;

13 5. As a result of the review of the above documents, I make the following opinions
14 about Martha Scudder's Aviary and avian practices:

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16
17 **A. Prevalent Communicable Disease with Inadequate Containment and Prevention:**

18 One of the most striking things to me in the Depositions is the pervasive presence of
19 serious communicable disease in the Scudder Aviary-- both in its extent and variety, despite Mrs.
20 Scudder's claim not to have transmissible disease there. As far as one can tell, either she never
21 sought the final results of the histopathological examinations of the majority of necropsy
22 specimens (which she implies), or else she either denies or misrepresents the facts contained
23 therein. The latter is at least true in part since she clearly pointed out to Kathy Scudder a bird out
24 in her aviary which she knew to be infected by perhaps the most dreaded of avian (bird)
25 contagious diseases (Proventricular Dilatation Disease, PDD; see also below):
26

1 "Martha personally took me up on her porch and showed me a military Macaw, and told me that
2 that's what a Macaw dying of PDD looked like. And that bird was -- that bird was laying in the
3 bottom of the cage, wasn't even able to get up on a perch, and all that bird was was skin and
4 feathers and bones, and two days later she told me the bird was dead." When asked in her
5 Deposition whether ever had a bird with PDD (= Macaw Wasting Disease), her answer was, at
6 the least, evasive:

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8 "Q. Have you ever had a bird with Macaw wasting
9 disease at your facility?

10 A. I had some birds pending, and then when the
11 results came back from the university, it was
12 inconclusive.
13

14 Indeed, multiple birds were diagnosed as having probably PDD in Dr. Dhillon's and
15 Walsh's necropsies. There were outbreaks of another avian killer disease-Pacheco's Disease
16 (although Mrs. Scudder directly denied ever having had Pacheco's in her flock), for which
17 containment procedures were recommended sternly by Dr. Dhillon but were not followed by
18 Mrs. Scudder (see below). Therefore, it is clear that many birds had or were exposed to
19 dangerous and communicable infectious diseases, despite her denials and the concomitant
20 absence of adequate containment measures..
21

22 The significance of this potentially extends well beyond the aviary in question. Some of
23 these diseases could have been transmitted (at first silently) to the birds of both her clients and
24 her boarders, who might then have carried them to homes, pet shops or other aviaries. From an
25 ethical point of view, buyers of birds should be told that they are buying an animal that might
26 have been exposed to a disease. There is no evidence that such advice was given, since the
presence of such diseases in the Scudder Aviary was denied by Mrs. Scudder to the outside

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1 world. In fact, during a outbreak of a communicable disease (chlamydiosis) at a birdstore [the
2 Bird Cage] for which the possible source was suspected to be Martha Scudder's birds, she
3 continued to ship birds without testing them for the disease, a fact that incensed Kathy Scudder
4 (whose reputation was also at stake):

5 "Had I known that there had been an outbreak of psittacosis at the Birdcage that they had not yet
6 determined whether or not it had come from Martha's facility, because at that point they thought
7 that the birds that caused the outbreak came from Martha's facility, I was extremely angry that
8 she had not told me that prior to me shipping those birds because I would have paid the \$12
9 apiece and tested those birds prior to shipping them." In other cases, ignorance of basic facts
10 appear to be the reason for potentially selling birds with fatal or communicable diseases to
11 clients, in this case, Pacheco's Disease:

12 144

13 10 " Q. I believe it is P-A-C-H-E-C-O.

14 11 A. I'm drawing a blank now as how to say it.

15 12 Q. Is that also a virus?

16 13 A. It is also a virus.

17 14 Q. Any testing for that available so you can

18 15 determine prior to selling a bird that it has it?

19 16 A. No. "

20 It is, in fact, general knowledge that there is a widely-available test for Pacheco's Disease, which
21 can rapidly spread through a pet store or household and ravage all other birds in it.

22 Additionally, some diseases suspected or definitely identified by Dr. Dhillon as having
23 been present in Scudder birds are zoonotic diseases, meaning that they can be transmitted not
24 only to other birds but to humans as well. These include, but may not be restricted to:
25 chlamydiosis (= "Psittacosis") or avian tuberculosis. The causative agent of the latter two,
26

Chlamydophilia (formerly *Chlamydia*)

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1 [Ed.— Dr. Metz makes a common error. The pathogenic organism is correctly spelled
2 "*chlamydophila*"]

3 *psittaci* (suspected cases) and *Mycobacterium avium* (at least one documented case), and
4 well as the fungus *Aspergillus* (2 documented cases of aspergillosis) can be transmitted to
5 humans and the latter two can cause a progressive disease which is refractory to most treatments,
6 especially in the immunosuppressed patient. It should be emphasized that the number of
7 documented cases of zoonoses may well be higher: definitive tests were often not sent by Dr.
8 Dhillon or the histopathologists, and many final reports were missing from the material sent to
9 me.
10

11 In the category of deadly, transmissible disease, the one which stands out is "Macaw
12 Wasting Disease", now called Proventricular Dilatation Disease (PDD). This is a disease in
13 which the nerves to several organs, but especially to the "proventriculus" part of the gut, cease to
14 work, food fails to propulse through the digestive tract, and the bird eventually starves to death
15 or dies of neurologic or infectious complications. It is communicable. I could find at least
16 thirteen cases strongly suggestive of PDD (diagnosed by at least two separate veterinarians--
17 Dhillon and Walsh) in the Dhillon necropsies reported.
18

19 This is highly significant and very worrisome considering how many other birds might
20 have been exposed. What's particularly of concern is that Kathy Scudder notes that "**these birds**
21 **were in the advanced stages of PDD...[yet] were inside the house in an area adjacent to where the**
22 **baby birds and what we call juvenile birds were kept."**
23

24 Rather than being exposed to other birds (chicks no less), those birds with PDD should have
25 been quarantined or euthanized. Despite the presence of frequent, lethal communicable disease,
26 testimony indicates **that Mrs. Scudder did not enforce any reasonable quarantine procedures,**

1 despite her claims to the contrary. This means that any new bird which harbors a latent disease,
2 and enter the premises, is provided with no period separated from the other birds during which
3 the disease could manifest itself. Quarantining of new or sick birds is a *basic, requisite* part of
4 avian husbandry; the apparent absence of it at the Scudder Aviary is unacceptable by even the
5 softest of standards. This issue is discussed further below.

6
7 It is relevant that on February 7, 2002, Mrs. Scudder requested further refills on her prescriptions
8 for acyclovir "in a larger quantity". .Acyclovir is a highly potent anti-viral agent used for serious
9 viral diseases, usually outbreaks of Pacheco's disease. Apparently, she knew that she had a
10 problem with serious contagious disease yet she apparently did not seek additional diagnosis or
11 treatment through Dr. Brown at that time. As noted elsewhere, she lacked the quarantine
12 facilities to handle any large number of birds who might have been exposed to the deadly
13 herpesvirus which is the causative agent. Isolation of all sick or exposed birds, and facilities
14 disinfection of the facilities with oxidizing agents such as bleach, should be the first-line
15 defenses against Pacheco's.

16
17 Over the course of five years (1999-2004), 120 necropsies were performed, or an incidence of 40
18 dead birds/year sent for autopsy. Note that that figure *excludes expected causes of death* in a
19 breeder-bird aviary since, by Mrs. Scudder's testimony, she would only obtain necropsies on
20 specific types of cases [i.e., she would exclude cases of mate aggression, and the occasional
21 case, at the least, of birds who, as reported in testimony, found their way into the garbage].

22 Although the number of birds at the aviary at one time during this period is uncertain, in Mrs.
23 Scudder's testimony, it appears to be between 200 and 300. Even if one takes the higher figure,
24 and then adds on an extremely generous number of sales, one might estimate that the *maximum*
25 number of birds which might have passed through the aviary in those years could be 600. If so,
26 one might estimate that a *minimal* figure of perhaps 7% of all birds in this aviary were sent for
necropsy over a five year period. This figure represents a *minimal* figure of those birds dying of

1 either obvious disease, or, surprisingly frequently, of unusual or suspicious circumstances (see
2 below for analysis of these). This strikes me as a very disturbing number, especially given that
3 Mrs. Scudder still maintains under oath that there is "no disease" problem in her aviary.
4 Astonishingly, *no bird was immune, not even birds of her own family*--Robin Scudder returned to
5 find 11 of her own birds dead at the M. Scudder facility and writes in her declaration: " As I
6 inspected my birds, I found that they were in terrible condition. The cages hadn't been cleaned
7 and the feces was piled up high. Alot of the birds had no perches, and the food
8 dishes were empty. The feathers were in really bad shape ."

9
10 Review of necropsies suggests that several other diseases entities were present in more-
11 than-expected frequencies but the records provided do not allow adequate characterization. Other
12 cases of likely fungal disease were present and special staining techniques for the tissues were
13 requested by Dr. Dhillon; however, results of these are not in the requested records. At least six
14 cases of "pneumoconiosis" are recorded; this is one of a number of diseases wherein foreign
15 particles accumulate in the lungs and elicit an inflammatory or reactive response. These probably
16 didn't contribute to the demise of the birds but do indicate an *environmental exposure* of
17 unidentified type. Other diseased birds might merely have been hidden from view, *vis*, the one
18 found thrown into the trash, as well as the extremely sick cockatoo which might have looked
19 incriminating during the Humane Society's inspection, which, according to Kathy Scudder,
20 Martha planned "that bird and any others I'm kind of worried about will be put over in Vivian's
21 trailer." Thus, *it is unlikely that one can define the true upper limit of disease at this aviary.*

22
23
24 Equally serious causes of concern are the *unexplained clusters of deaths*. Clusters of
25 deaths often suggest widespread or pervasive problems such as environmental toxins or others
26 issues reflecting either generally poor husbandry, poor vigilance and oversight, or both. As

1 discussed further below with regards to the issue of starvation, 27 birds died suddenly in one
2 unexplained cluster (which may now be attributable to mass starvation). In April 10, 1998, Mrs.
3 Scudder brought to Dhillon 5-6 chicks which had suddenly and inexplicably died. Kathy Scudder
4 described (see below) a massive loss of eggs in Martha Scudder's incubator which may well have
5 been due to bacterial contamination. Just recently (Feb. 21, 2005), a cluster of 5 parrots
6 underwent sudden death with no unifying cause found at necropsy. Dr. Brian Murphy suggested
7 in his notes that such unexplained clusters of death can result from air-born or food-born toxin
8 and indeed, it has been documented that 16 of Mrs. Scudder's most valued birds inexcusably
9 were allowed to die over the course of a week due to unmitigated and continued exposure to
10 smoke from a neighbor's smoldering backyard fire. Together, such clusters suggest, again, that
11 environment protections, hygiene and vigilance were sufficiently defective at the aviary that
12 another cluster of sudden death always was a very real possibility. I should also note that, in
13 addition to the diagnoses listed above and others not mentioned in my analyses, 16 submitted
14 birds actually never underwent necropsy (reason unclear) and a number of final diagnoses were
15 never made, allowing for the possibility of even a wider range of diseases occurring in this
16 aviary.

17
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19 **B. Inadequate Food and Water.**

20 A biochemical analysis of the exact mix fed to the birds is not available for me to
21 examine. However, it clearly was subnormal. As noted by Dr. Tracy Bennett (a highly respected,
22 Avian Board-certified veterinarian), there was not only too much sunflower seed in the diet, but
23 much of it was the oily black-stripe variety. All sunflower seed is nutritionally limited but the
24 black variety is fat -laden and known to tend toward fat-related disease (at the cost of healthy
25 muscle mass).

1 The necropsies reveal a large number of cases of birds which died with inanition, or
2 emaciation (i.e., starvation) that appeared to be independent, or beyond the severity, of any
3 concomitant disease state. The objection could be raised that it is difficult to say that a bird, or
4 any other higher organism, died solely of starvation. It is true that not just food deprivation but
5 also disease (if relatively prolonged, severe and unattended), can certainly cause wasting and loss
6 of body fat (and muscle) stores. Conversely, starvation itself causes many pathophysiologic
7 changes in the body which can mimic disease; furthermore, it can depress the immune system,
8 reduce reproductive success, and predispose to secondary disease.

10 [Ed.— Despite Dr. Metz's attempt to separate deaths resulting from disease from those
11 resulting from starvation in his analysis of this large number of necropsies, the fact is that Martha
12 Scudder denied having birds die of *either* disease or starvation at her farm. This obviously
13 untenable bit of fence-straddling does not circumvent the inescapable fact that there seemed to be
14 a very large number of unusual or suspicious deaths.] For all of these reasons, in my analyses, I
15 have excluded all presumed or even possible cases of Proventricular Dilatation Disease, as well
16 as any bird with a reasonable chance of having had a moderately severe or severe subacute or
17 chronic disease.

19 Despite following these caveats, there still remain a substantial number of cases in the
20 necropsy files from Scudder birds, which are strongly suggestive of severe, subacute or chronic
21 deprivation of adequate nutrition. By subacute, I mean food deprivation over a period of *at least*
22 days in large birds (C.R. Blem, in Sturkie's Avian Physiology, 5th ed.). The use of low or absent
23 body fat, as visualized at necropsy, as an index of inadequate nutrient provision, is supported by
24 the statement of A.E. Rupley in her chapter on Necropsy (Chapter 10, in Manual of Avian
25

1 Practice, WB Saunders, 1997, p. 317): *"Lack of fat indicates inadequate nutritional intake or*
2 *absorption."*

3 One particularly troublesome and important case in point involves the 27 birds
4 comprising Accession #WADDL 2002-104. These birds were brought in reportedly over concern
5 over exposure to the rodenticide J Teaton AC formula 90; 12 of the 27 specimens were subjected
6 to necropsy. The pathologic hemorrhagic lesions into joint spaces and body cavities
7 characteristically seen with this toxin were *absent*, and the active ingredient (chlorophacinone)
8 was assayed and was *not* found in tissues. Thus, rodenticide exposure was excluded. No common
9 species links these birds. Although a number of histopathologic abnormalities were found in
10 individual birds, no single pathologic entity--save one-- linking these birds in common was
11 found at necropsy and the others abnormalities seen were likely to be incidental. Dr. Caplazi
12 noted an "absence of adipose stores [i.e., fat] is a notable finding in all examined birds."
13 [emphasis added]. These disturbing findings suggest a strong possibility, if not the likelihood,
14 that (in the absence of any chronic disease to explain the inanition) these 27 birds starved to
15 death over a fairly prolonged period of time.

16 Other cases support these conclusions. Case #2002-A1009, a green-winged Macaw, also
17 demonstrated "severe atrophy of adipose [fat] tissue". Although a disease state (serositis) was
18 present, it was described as acute and therefore unlikely to explain massive loss of fat cells. In
19 Case #2110-A667, a Military Macaw died with "severe atrophy of adipose [fat] tissue of the
20 heart...consistent with cachexia". Other likely cases of death by starvation include # 5-168; #
21 2003-A1103; #2004-A175; #2003-A1463; and #2003-1144. After the last, Dr. Jennifer Johnson
22 concluded that: *"Evaluation of diet and housing conditions in this flock are warranted."*
23 [Emphasis added]

1 Thus, even if one rigorously attempts to exclude cases of chronic wasting diseases, or
2 even cases of clinically suspected but not proven diseases, one is still left with 19 cases out of
3 120 necropsies in which it is likely that the birds in question died of starvation, representing 16%
4 of all necropsies in this series (and excluding, of course, any other birds not subjected to
5 examination). *I conclude that both the provision of adequate nutrition and adequacy of*
6 *vigilance about the nutritional status of birds, were markedly inadequate at this aviary. The*
7 *birds o feven her own family were not immune, as Robin Scudder observed in the empty food*
8 *bowls of the 11 of her birds which died at Martha Scudder's aviary!*

10 It is very important to note that this problem persists into the present. Consider Case
11 #2005-A168 in which a Jardine's parrot was noted at necropsy to be emaciated and of "poor
12 nutritional status." This case is dated Feb. 7, 2005. This major deficiency in nutrition at the
13 Scudder Aviary may well have also perpetuated the other major deficiency-- a proliferation of
14 cases of transmissible diseases-- since malnutrition suppresses the immune system's ability to
15 fight infection.

17 Dr. Dhillon was able to note certain deficiencies in dietary preparation even in the
18 examination of birds at necropsy! There were a number of cases of enteritis (infection of the
19 small bowel) caused by *Clostridium*, a virulent anaerobic bacterium. Dr. Dhillon specifically
20 notes that these cases might have been prevented by Mrs. Scudder if she was using a pressure
21 cooker to cook grains, and by discarding wet food from the feeders, both of which would reduce
22 or eliminate *Clostridial* spores. Spores of bacteria grow in deeper layers of grain which is
23 inadequately cooked. Another bird died apparently of, or with, "hypovitaminosis A"--i.e.,
24 Vitamin A deficiency, a sign of dietary lack often seen with seed-based diets.

1 In addition to starvation, **dehydration** seems to have caused, or have contributed to, the
2 *deaths of a number of birds*. There are a considerable number of cases at necropsy (even
3 excluding those with identifiable cause) in which there was an accumulation of urates in the
4 ureters. Urate and uric acid are by-products of protein metabolism which are excreted by the
5 kidney. However, they will precipitate out into the lumen (central cavity) of the ureter in a
6 dehydrated bird because the urate can no longer remain dissolved and in solution. Thus, cases
7 such as #5-226 (2 birds); #5-168; #2001-A668; #03-57; #03-1463, among others, on a more
8 probable than not basis, represent cases of clinically-relevant dehydration. **Note again that, as**
9 **with the issue of food deprivation, the problem with dehydration *persists* until at least as recently**
10 **as February 21 of 2005 (3 cases).** One case at autopsy was specifically mentioned by the
11 pathologist; with regard to the suspicion of not getting water (# 97-602119).
12

13 As noted by Dr. Tracy Bennett, the presence of feces in many water bowls also permitted
14 the possibility of drinking contaminated water, which is conducive to disease.
15

16 **Summary [Disease; Food; Water]:**

17 **At this Aviary, deprivation of both adequate food and water are frequent events and**
18 **contribute to chronic conditions of inhumane treatment, and risks of disease and death, as**
19 **does the excess of communicable disease in the absence of any sufficient containment**
20 **system. Inadequate vigilance seems to have perpetuated all of these problems. All of these**
21 **problems are more probably than not, exacerbated by the large number of birds present at**
22 **the Aviary, which may well exceed Mrs. Scudder's ability to care for them using acceptable**
23 **standards.**
24

25
26 **C. General Care and Husbandry ; Vigilance:**

1 The care at the Aviary was described by witnesses who had adequate opportunity to see
2 it, *in its usual state*, is as follows:

- 3 1. Kathy Scudder stated that, "I think that her birdhouses are a disaster".
- 4 2. Robin Scudder wrote: "The smell in the house was worse than any pet store I had
5 ever been in. Everything to bird feces to dog urine and feces all over the floor.
6 Cages of babies were not cleaned and birds not kept in any order...This made me
7 sick to my stomach. How should any animal be forced to live in conditions like
8 this?"
9

10 Vigilance in caring for the animals is poor, or else problems were simply ignored. In one
11 dramatic but very unfortunate example, a neighbor's fire blew smoke towards some of Mrs.
12 Scudder's rarest birds. Birds are known to have extremely sensitive respiratory tracts. If Mrs.
13 Scudder had been properly vigilant, the presence of smoke near her 'prized' birds should have
14 been treated as an emergency. **Instead, 16 rare birds (including 9 or 10 *Tanygnathus* species) were
15 exposed to smoldering fire smoke for 7 days until dead.** The reason given was that she didn't
16 want to "disturb them". This episode demonstrates a combination of poor care; poor judgment;
17 and a callous disregard for the welfare of these birds who were allowed to suffocate in a confined
18 space over a period of days.
19

20 **A common theme in Mrs. Scudder's testimony is that virtually anything that disturbs
21 breeding birds will upset them to the point of 'setting them off their breeding for the season.'** [my
22 paraphrase]. She therefore states that she did not move the birds which died of smoke inhalation
23 because "you can't pick them up and move these breeders. That would be disrupting them again."
24 *This shows an astonishing preference for the financial aspects of preserving the laying of eggs,
25 over both good judgment and concern for the welfare and humane treatment of these animals.*
26

1 Ironically, it is far more likely that the loud internal disputes between Robert Vincent and Kathy
2 Scudder (both verbal and physical, and leading to mutual restraining orders) might have 'put off'
3 the breeding of the Scudder birds, than moving those dying birds (or any transient external factor
4 alleged to be induced by the Defendant) .

5 The issue of vigilance is compounded in the fact that there is no evidence presented that
6 the final pathological diagnoses from the necropsies were obtained and reviewed by Mrs.
7 Scudder or, if they were, that the lessons to be derived from the necropsies (e.g., the presence of
8 communicable disease in the aviary or suggestions about husbandry made by experts) were
9 translated into effective action.
10

11 As shown in other testimony, the environment was very poor in certain areas. While
12 aviaries was cleaned up once (and only under insistence by the Humane Society), it was then
13 allowed to regress, demonstrating that such clean-ups were for show, only. Knotweeds grew up
14 the sides of some cages which could permit mice to gain entrance, as Kathy Scudder noted. She
15 further noted that mice can bring avian tuberculosis with them. This may well have been a
16 contributing factor to the death of the necropsied parrot which died of avian TB.
17

18 Here is how Kathy Scudder described the contents of some nestboxes: "Green, slimy
19 mold, decomposing shavings, the gunk had to be dipped out of the nest boxes and wiped off. It
20 was disgusting." This comment (as well as the evidence above and below) supports as factual
21 any allegation made by the Humane Society, Dr. Tracy Bennett, as well as the Defendant, that
22 some conditions in the Aviary reached the point of being *cruel and abusive*--in this case, the
23 issue being *sanitation*.
24

25 An important point, which I believe to be critical to this particular case, was mentioned as
26 a direct observation by Kathy Scudder at a time when she and Martha were sharing incubators

1 for their chicks. She testifies: "During the month of July of 2003, all of our eggs began dying in
2 the shell prior to hatching...It was possible that there was a bacterial infection in the incubator."
3 This points out just one example--which has surfaced--indicating that loss of birds at the Scudder
4 Aviary is likely to be *explicable by her own poor husbandry, not any external influences.*

5 The overall care of her birds was seriously lacking in other ways, as follows:

6 Shelter was likely inadequate for a proportion of birds housed outside and protected only
7 by visqueen-like compound. Her defense was that these birds were 'neotropical' and that some
8 birds come from the "Himalayan Mountains at the 5000 ft. level," and can tolerate cold
9 temperatures. However, Mrs. Scudder presents no evidence that the parrots in that building were
10 mountain birds. She does not have any Keas of which I am aware--a Kea is an Australian bird
11 which lives in freezing temperatures. While it is true that parrots can acclimatize to somewhat
12 lower ambient temperatures than those to which they are accustomed in the wild, most parrot
13 experts would not acclimatize them to temperature levels reached at night in Washington State.
14 Indeed, Dr. Jerry Brown wrote on virtually all his Official Small Animal Health Certificates for
15 Mrs. Scudder herself that "Birds can withstand temperatures of 45 degrees F." and "acclimated to
16 temperatures below 50 degrees down to 30 degree F., but he clearly indicates that they *should*
17 *not be in this range for more than 10 minutes.*" [Emphasis added]. For her to state that my birds
18 "can withstand below freezing conditions" [179;10-11], is clearly untrue or, if put in effect for
19 any prolonged period of time, would, on a more probable than not basis, constitute animal
20 cruelty. Additionally, it is not clear that adequate protection from the wind and rain was always
21 provided by a Visqueen tarp in Pacific Northwest weather.

22 [Ed.— Indeed, as late as at least March of 2006, several observers noted and
23 photographed the same housing conditions at a large outdoor structure housing birds at the M.
24

1 Scudder farm. The tarp had clearly-visible, large tears in several areas and was blowing wildly in
2 the wind. The temperature at the time was 39° (during the day; the wind-chill factor was well-
3 below freezing and it must have been substantially below that figure during the evening). Frost
4 was documented on cars and snow on the ground. At least one bird was visible through the torn
5 tarp.]

6 "Sanitation" was noted by multiple observers to be unacceptable; with very large amounts
7 of fecal and food material accumulating in and under cages . It is not surprising that fecal matter
8 accumulated to a great degree, since she refused to clean breeder bird cages any more frequently
9 than once a month, noting (once again ignoring Dr. Bennett's strong criticism to the contrary)
10 that "you cannot do that with breeder birds." Such large fecal accumulations may well have
11 compromised ventilation due to ammonia fumes derived therein, but certainly, ventilation was
12 totally inadequate for the 16 or so birds who died from neglect as a result of fumes from a
13 neighbor's smoldering fire. Dr. Bennett is on the record as stating that the space provided to each
14 bird was inadequate.
15

16
17 **D. Ongoing Veterinary Care:**

18 Inadequate individual details of non-mortem veterinary care are provided to directly
19 assess daily care. Although some pet birds and aviary birds did receive care, the large number of
20 deaths indicates that it must have been very spotty. As Dr. T. Bennett noted, in a letter to Wally
21 Hall of The Humane Society of Tacoma & Pierce Co., "Mrs. Scudder should develop a
22 relationship with a local veterinarian who has expertise in the field on avian medicine....willing
23 to develop a care program with Mrs. Scudder."
24

25 Judging by the number of birds who died of preventable or treatable diseases, Mrs.
26 Scudder seeking of adequate veterinary care was either too little or too late. The odds of

1 introduction of disease into the Aviary, was markedly increased through her practice of boarding
2 others' birds in her aviary in the absence of any quarantine; this practice violates one of the most
3 fundamental principles of avian husbandry.

4 Mrs. Scudder testified that Dr. Scott McDonald performed "walk-throughs" three-
5 times/year when he came out to perform surgical sexing on her birds. Dr. McDonald is a well-
6 known and respected avian vet. However, he is not licensed to practice in the state of
7 Washington.

8
9 [Ed.— This statement should have read that Dr. McDonald *was* not licensed in the State
10 of Washington; however, after complaints were allegedly raised with the State Board, he later
11 did receive his state license to practice veterinary medicine in the state.]

12 More cogent, it is not possible to provide avian diagnostic care on a "walk-through" of
13 aviaries containing 200-600 breeding parrots. In fact, multiple sequential surgical sexings via
14 endoscopy (and the ensuing walk-through) may well have had a deleterious effect --the risk of
15 disease transmission. Michael Taylor ("Endoscopic Examination and Biopsy Techniques", in
16 Ritchie, Harrison and Harrison (eds.) AVIAN MEDICINE: PRINCIPLES AND
17 APPLICATION), states that "*minimum* recommended soaking times [for the endoscope used in
18 surgical sexing] in properly prepared gluteraldehyde solutions typically range from 15 to 20
19 minutes." [Emphasis added]. These rules are frequently violated when 'mass' endoscopic sexings
20 are performed.
21

22 There is a note in Dr. Dhillon's necropsies: "Birds at this facility have been confirmed to
23 have multiple cases of Pacheco's Herpesvirus infection which is highly contagious and the entire
24 flock NEEDS to be treated with Novacin". Surprisingly, however, the flock was not treated.
25 Even more importantly, adequate quarantine procedures for exposed birds appear not to have
26

1 been followed. Since Mrs. Scudder continues to insist that there is no contagious disease in her
2 aviary, it may be assumed that no presumptive buyers were told that the birds might have been
3 exposed to Pacheco's, which can form a chronic carrier state in exposed birds, only to erupt into
4 acute and fatal illness at a later date. In fact, if such a purchase were to have been made within 30
5 days of exposure to any of the communicable diseases present at this Aviary, such non-
6 disclosure might have been illegal under Washington State law [RCW 16.36.082.]. This is a
7 paradigm of the inadequate way that disease was handled at this Aviary, since these incidents
8 violate basic principles of Infectious Disease known to me as a Physician and which are just as
9 applicable in Veterinary Medicine.

11 **E. Lack of Adequate Quarantine Procedures:** The issue of quarantine is of sufficient
12 importance to merit discussion in more detail. As with her denial of the presence of infectious
13 disease at her aviary, Mrs. Scudder's testimony that she maintained an adequate quarantine
14 facility, and followed adequate quarantine procedures, simply does not match the testimony of
15 others and certain facts when it is examined more carefully. Here are excerpts of what she states
16 in her testimony:

17 that she has "a couple" of cages in a garage normally used " for building new bird cages and
18 nest boxes and cutting of perches" She quarantines birds coming in from the outside but "not my
19 birds,no" .She goes on to explain that she excludes her own sick birds from quarantine because
20 she would need to medicate them. ." I usually move the mate with
21 it because they become so distraught being separated." She continues that she only quarantines
22 one bird at a time because " I don't normally buy more than one bird at a time."

23
24 This testimony already reveals that: 1) she does not have a dedicated quarantine area but rather a
25 few cages in a garage which is itself likely is contaminated with fungal and other spores, and
26 undoubtedly has inadequate sanitation, hygiene, and ventilation; 2) she only has 2-3 cages, and

1 uses only one at a time, clearly insufficient for an aviary of 200-600 birds; 3) she does not
2 quarantine her own birds, even if they are sick, which is the very purpose of quarantine; 4) she
3 keeps her own sick birds in the house for the ease of her medicating them AND allows the mate
4 to stay with the sick bird lest the mate become distraught (and instead, may well become ill); 5)
5 the statement about only buying one bird at a time does not, as far as I can tell, appear to be true.

6
7 However, the testimony of her own family reveals a far worse picture, in addition to confirming
8 once again that Mrs. Scudder's credibility is, at times, suspect. **Kathy Scudder testified:**

9 **"As far as I know, she has no quarantine procedures and, in fact, boards birds that she has
10 sold to other people.** I know that specifically because she had an Umbrella Cockatoo whose

11 name was Elliot, and it belonged to a gentleman that she had sold Elliot to, and when that
12 gentleman would go on vacation, he would bring Elliot over for Martha to baby-sit. She also had
13 birds from a lady named Stacy. .. Stacy boarded her birds there when she was
14 out of town. There was a military Macaw named Sarge ...that bird died,...

15 that bird was definitely not quarantined." When asked if during all of 2003, a period during
16 which Kathy (Martha's protégée) had total access to the entire Martha Scudder Aviary, she ever
17 witnessed any evidence of proper quarantine procedures. Kathy's response was:

18 " No, she did not. I didn't even know you were supposed to quarantine birds until I started doing
19 research on the internet."

20 In addition, when Robin Scudder went to pick up her birds from Martha Scudder, she found that
21 eleven had died and in addition, the remaining birds were in such bad shape, that she had them
22 transferred to Kathy Scudder for appropriate treatment , specifically mentioning : "Due to the
23 care and condition of my birds, they are now in the care of Kathy and John Scudder Jr, and must
24 be *quarantined* and medicated for 45 days. My birds are having to be kept separate from the rest
25 of John Scudder Jr's birds, till *quarantine* is complete...." (emphasis added). The apparent
26 absence of adequate quarantine procedures at the Scudder facility, combined with a cavalier

1 approach to boarding outside birds and the documented high prevalence of communicable
2 disease, is, in my opinion, completely unacceptable practice .

3 **E. Absence of Science- and Knowledge-Based Approach to Husbandry**

4 The unwillingness of Mrs. Scudder to face the problems with disease, can be seen in
5 statements of Mrs. Scudder that she felt free to ignore the recommendations of Dr. Dhillon to
6 contain her outbreak of Pacheco's disease, and the recommendations of an esteemed avian
7 veterinarian, Dr. T. Bennett, because her birds are breeder birds and not pet birds. Essentially
8 Mrs. Scudder was stating that she will do things her way, despite any inhumane outcome on the
9 birds. A parrot will not know whether it is a " breeder" bird or a "pet" bird; it will only know that
10 is it suffering when it is shivering, suffocating from smoke, slowly starving to death, or dying of
11 disease while confined to a small, feces-laden cage. It is true that all the fancier amenities given
12 to a pet bird cannot be expected to be granted to a breeder bird. However, from all the testimony
13 in this case, I conclude that the *basic* husbandry practices in the Scudder aviary were standard
14 deviations below that expected in any good breeding aviary and lacked much of what should be
15 available to *all* breeder birds. That these expectations are entirely reasonable can be seen in the
16 standards adopted by Kathy Scudder, after only a year and a half of additional study plus her
17 obvious application of humane principles. Her husbandry appears to be far superior to those of
18 Martha Scudder. Although she cannot be considered a true expert, her testimony reveals a
19 striking amount of knowledge, experience, and compassion which validate the conclusions she
20 presented under oath, and which contrast with the practices of Martha Scudder.
21
22

23 Good veterinary care, like good medical care, should be rooted in constant education,
24 often involving availing oneself of the input of experts. The purpose of a necropsy is to learn the
25 cause of death of a bird and put this knowledge to use to prevent (where possible) future deaths
26 from related causes. Mrs. Scudder's testimony regarding the absence of communicable disease

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DECLARATION OF STEWART METZ, M.D.- 21

ALEXANDER & BIERMAN, P.S.
Attorneys at Law, P.S.
4800 Aurora Ave North
Seattle, WA 98103-6518
206-632-2711

1 ("I don't have communicable diseases" [145-25]), or malnutrition, in her breeder birds is at
2 diametric odds with the findings of four separate pathologists. It is not clear to me whether she
3 did not seek, understand, or heed the important information to be garnered from the necropsies,
4 but had Mrs. Scudder used even a fraction of this large store of information, and followed the
5 explicit advice often contained therein, the lives of significant numbers of birds more likely than
6 not would have been spared, and that the welfare of many more would have been improved.
7

8 Martha Scudder disdains the advice from experts, including four separate avian-qualified
9 doctors who made specific recommendations or expressed specific concerns to her: Dr. Dhillon;
10 Dr. T. Bennett; Dr. J. Johnson and Dr. J. Brown. The birds (and likely her income, as well)
11 suffered considerably because of it.

12 At times, Mrs. Scudder fails to follow some of her own, most important principles. One
13 example is particularly relevant to this specific case, in which the Mrs. Scudder claims possible
14 disruptions in breeding birds caused by extraneous people entering her property (but *not the*
15 *breeding area or nursery*) on a single occasion. However, other testimony documents that
16 Martha Scudder herself permitted tours of her complete grounds, even allowing an entire group
17 of taco makers en masse *through the actual nursery itself*, apparently without ill consequences.
18

19 **F. Recordkeeping:**

20 Mrs. Scudder states that her only receipts for sales of some birds were cancelled checks.
21 This raises parenthetical issues about income-reporting practices, but more germane to the
22 proceedings at hand, this is certain not a responsible system of record-keeping for a breeder
23 claiming to be raising birds in the interests of preventing their biological extinction.
24

25 **G. Summary of Major Findings:**

1 The substandard conditions, which were observed by people outside the Scudder family,
2 are likely to have underestimated the shortcomings of the aviary. In particular, the allegations of
3 Kathy Scudder --- that Wally Hall of the Humane Society always tipped off Martha Scudder
4 when an investigation or inspection was coming, and that Martha told her that Mr. Hall was "in
5 the palm of her hand" [94; 16 and again 101;24]--- suggests to me the possibility that only a few
6 people have ever seen conditions in this aviary at their usual or worst state. Despite that, Dr.
7 Tracy Bennett, an esteemed Board-certified Avian Vet, saw fit to call her practices "cruel" under
8 the law. Others concluded [letter from Mr. Wally Hall of the Pierce County Humane Society to
9 Mrs. Scudder, dated 3/31/2003] that Mrs. Scudder needed to make major "improvements in the
10 birds' housing, diet, medical care, water, as well as reductions in the population of your aviary to
11 fewer than 100 birds." Such improvements either didn't occur, or occurred and have since
12 regressed back to their original state, as indicated in testimony.

13
14
15 A number of areas are frequently used to categorize and assess conditions at breeding or
16 animal care facilities; these are the same as those used in WA state law when it describes Animal
17 Cruelty in the Second Degree (§16.52.207[1994]) as failure "to provide the animal with
18 necessary *food, water, shelter*, rest, *sanitation, ventilation, space*, or *medical attention* and the
19 animal suffers unnecessary or unjustifiable *physical pain* as a result of the failure". In my
20 Declaration, above, I summarize some of the evidence which now permits me to conclude that
21 the Scudder Aviary was seriously deficient in *7 of the 8 areas* in which sufficient data were
22 presented to me to evaluate them; these are highlighted in *bold italics* above. Only "*rest*" is not
23 highlighted; however, no data are provided to evaluate this area.

24
25 **H. In Conclusion:**

1 *In my opinion, from both a pathophysiologic and an ethical point of view, the*
2 *frequently-unacceptable standards of care at the Scudder Aviary promulgate animal abuse.*

3 Furthermore, these problems persist up until the present. For example, a case of probable
4 Proventricular Dilatation Disease from this Aviary was diagnosed at least as late as November 5,
5 2004 (Accession # 2004-A-1417) and as noted above, several likely deaths of/with starvation and
6 marked dehydration occurred within the last month or two.

7
8 None of the deaths in the birds which were necropsied, can be related causally in any way
9 to Mr. Gallawa. Conversely, several highly significant causes of egg wastage are provided in
10 testimony such that one need not evoke any interaction with Mr. Gallawa.

11 In my opinion, there is *no doubt at all* that the objective evidence provided in the
12 Exhibits, is more than sufficient to permit *two major conclusions*:

13 a. The Scudder Aviary was run in a pervasively substandard way of such a degree as
14 to suggests the presence of multiple examples of animal abuse; and

15
16 b. No tangible evidence was presented which, alone or together, suggests that the
17 Scudder Aviary was making any substantial income from their breeding business and/or
18 that, even if it was, that income was in any way compromised by any interaction with, or
19 communication derived from, Mr. Gallawa. Rather, the testimony from several witnesses
20 has actually provided strong and cogent evidence for alternative causes for any and all
21 losses of eggs, chicks, and adult birds in the Scudder Aviary.

22
23 SIGNED this ____ day of _____, 2005, at _____, Washington.

24
25
26

Stewart Metz, M.D.

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DECLARATION OF STEWART METZ, M.D.- 24

ALEXANDER & BIERMAN, P.S.
Attorneys at Law, P.S.
4800 Aurora Ave North
Seattle, WA 98103-6518
206-632-2711

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ALEXANDER & BIERMAN, P.S.
Attorneys at Law, P.S.
4800 Aurora Ave North
Seattle, WA 98103-6518
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