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SUPERIOR COURT OF WASHINGTON  
IN AND FOR KING COUNTY

MARTHA J. SCUDDER, A single individual,  
Plaintiff,  
vs.  
LARRY GALLANA, A married individual,  
Defendant

Case No.: 04-2-04721-8 SMA  
DECLARATION OF Dr. BRIAN SPEER, DVM,  
DIPLOMATE ABVP, BCAMS

I, Brian Speer, make the following Declaration under Penalty of Perjury under the laws of the State of Washington.

1. I am over the age of 18, am competent to testify and make this declaration based on my knowledge of the facts:

2. I am the owner of The Medical Center for Birds in Oakley, California. For twenty-two years, practiced veterinary medicine; exclusively limited to avian species since 1988. I have lectured and published frequently on the treatment of breeding birds and flock medical management.

3. I am a past president of the Association of Avian Veterinarians, and I am board certified in avian practice through the American Board of Veterinary Practitioners and the European College of Avian Medicine and Surgery.

DECLARATION OF - 1

JACK MAICHEL, ATTY  
PMB 130, 10611 CANYON RD. E.  
KRYALUP, WA 98171  
206-985-0004

1 4. Based on my review of the necropsy reports of Martha Scudder's  
2 birds, supplied by Mr. Maichel and Ms. MacDougall, I have determined that  
3 there is no evidence of the diseases claimed to exist by Mr. Galloway and  
4 others that is documented in necropsy submissions from this facility,  
5 specifically but not limited to, Exotic Newcastle's disease, Psittacosis  
6 (Chlamydia), and Psittacine Beak and Feather Disease.

7 5. I have read the two reports written by Dr. Tracy Bennett, who  
8 inspected Martha Scudder's aviary.

9 6. It is my opinion, that the Dr. Tracy Bennett report is not supported  
10 by necropsy evidence of the disease conditions claimed. There are several  
11 empirical opinions regarding the facility and its degree of sanitation,  
12 however these opinions are unsubstantiated by factual pathologic  
13 documentation of the risk factors of the disease conditions being claimed,  
14 photographic evidence or other supporting documentation.

15 7. Dr. Bennett, in her first report, made several recommendations to  
16 change some aspects of Martha Scudder's breeding aviary. It is my  
17 understanding that Martha Scudder complied with most of these  
18 recommendations, including but not limited to structural changes in the  
19 cages, structural changes in the facility, structural changes in the water  
20 system, and debris and waste removal.

21 8. The recommendations made by Dr. Bennett in her report to Wally Hall  
22 and the action implemented by Martha Scudder to address them could easily  
23 have served as a significant and more continuous disruptive factor, resulting  
24 in a drop in breeding productivity for the collection, morbidity and/or  
25 mortality in some of the breeding stock, and economic harm to the breeding  
collection.

DECLARATION OF - 2

**JACK MAICHEL, ATTY**  
PMB 120, BUCKLE CANYON RD. 2,  
FOYALDEN, WA 98021  
253-995-0804

1           9. Regarding the opinions and comments by Dr. Metz, he should be  
2 categorically be unqualified to render any opinion, interpretation or comment  
3 regarding any of the allegations of Mr. Galloway or more importantly, the  
4 observations of Dr. Bennett. Dr. Metz is not a licensed veterinarian in any  
5 state or country, lacks any veterinary medical training, avian-specific  
6 medical training or mentorship, and virtually every opinion he has rendered  
7 in this case should not be accepted as having true veterinary medical or  
8 avicultural practice merit and/or accuracy in this case.

9           10. Finally, as I advised Mr. Michael and Ms. MacDougal in my  
10 deposition, I was contacted by Dr. Bennett before her deposition. Initially,  
11 she wanted to discuss the case and the manner of delivering a deposition, but  
12 I advised her that I was named as an expert in this case. We discussed  
13 generalities of this case, and I provided professional input as to deposition  
14 delivery and general advice in this regard.

15 Signed this 15<sup>th</sup> day of August 2005, at *Orinda, CA*  
16 *David F. [Signature]*  
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[The Editors consider the Declaration of Dr. Speer one of the most disappointing and saddest aspects to come out of *Scudder vs. Gallawa* and feel that reflects some of the basic problems in trying to improve the welfare of captive parrots. Therefore, we feel it important to elaborate on his Declaration with a detailed review of the facts.

First of all, Dr. Speer apparently never inspected the Scudder Parrot Depot Farm. According to his Deposition in July 22, 2005, his Declaration was based solely upon reviewing the necropsies, laboratory reports and the letters from the Humane Society. This evidence is scarcely a complete picture.

We acknowledge that Dr. Speer is a learned and world-respected veterinarian. Given those credentials, we were puzzled why he would come to such a sweeping, one-sided conclusion in favor of the Plaintiff, even if he were their paid witness—going so far as to state that there was “no evidence of the diseases claimed to exist.” However, when in a position of providing detail, Dr. Speer tailors his answer so that it remains true while failing to take all the evidence into account—his actions can only be characterized as lying by omission. Dr. Speer can only deny the claims of the Defendant Gallawa by “avoiding” evidence contained in 1) the necropsy reports of the pathologist of record Dr. Dhillon and at least three pathologists-in-training; 2) the statements by Martha Scudder herself who in her own deposition admitted to the presence of PDD on her farm; 3) at least one clinical observation of Dr. Scott MacDonald [viz, KathyPhillipsScudderDeposPtII, Sec 110]; and 4) the conclusions of another respected, Avian Board-certified veterinarian, Dr. Tracy Bennett—with whom he indicates had had contact, but *could not discuss the case* as he had been retained as an “expert witness” for the Plaintiff.

Dr. Speer testifies to the absence of chlamydiosis, Newcastle Disease, and Psittacine Beak and Feather Disease in the necropsy reports; however, the latter two were not part of the allegations of disease at this farm and the former only a minor part. More to the point, Dr. Speer completely disregards all the diseases and conditions (such as starved birds) that *were* documented, or that 120 documented dead birds might in and of itself indicate a problem (not to mention birds thrown into the garbage without necropsies, according to testimony).

It would appear Dr. Speer took advantage of the following, in the letter of Dr. Tracy Bennett DVM to Wally Hall of the Pierce County Humane Society (see full documentation under Documents tab) dated March 7, 2003. In that document, and only in that document, the following statement is made:

**"The only way to prevent the spread of psittacine diseases such as Exotic Newcastle Disease (which raised it's [*sic*] ugly head in California this year), Psittacine Beak and Feather disease, Pacheco's disease, and Chlamydophila, is to practice strict testing and quarantine procedures which appear to be totally lacking in this facility"**

Dr. Bennett is not discussing here the *specific* diseases which were alleged to occur at the Scudder Parrot Depot *at all*; she is clearly discussing the absence from that facility of appropriate disease containment procedures *in general* which would predispose to a variety of communicable diseases. So where is Dr. Speer's discussion of the diseases which *were* diagnosed at the Parrot Depot? Such discussion is curiously absent, yet using impressive verbal prestidigitation, he bold-faced tells the Court that there was “no evidence of the diseases claimed to exist.” This raised two possibilities—either that Dr. Speer suppressed discussion of the hundred-plus unusual necropsies coming from Parrot Depot out of a Conflict of Interest, or he simply did not read all those necropsies, for which he was paid at the rate of \$450 per hour.

Many of the birds (as discussed in Dr. Metz' Declaration) died either of or with severe emaciation. However, Dr. Speer suggests that all comments in the declaration of Dr. Stewart Metz be stricken as "lacking merit and/or accuracy." It is true that Metz is a medical physician and not a veterinarian; however, the relevant issue would be whether Metz's statements were in fact accurate. As with Dr. Bennett's conclusions [see below], he simply dismisses out-of-hand any conclusions which he does not like (an approach which the Judge apparently also rejected). In fact, Metz' declaration seemingly discussed all the court evidence, not merely the necropsies. Although Speer states that his declaration is "based on the knowledge of the facts," shrewdly, it is painfully obvious it is not based on **all** the facts.

The emaciated carcass of a bird indicates death from either starvation or disease, or both. Dr. Speer, who as a prestigious veterinarian is in a position to promote avian welfare, simply dismisses the evidence of such a large number of dead birds.

So what **did** they die from? It turns out that Dr. Speer is an expert in sorting out such "flock emergencies". The interested reader is referred to the website (<http://www.modelaviculture.org/> ) of the Model Aviculture Program, the very avicultural program the high standards of which seemed to be violated in many ways at the Parrot Depot. There one may find an article by Drs. Scott Echols and **Brian Speer** entitled "Managing Avian Flock Emergencies" (<http://www.modelaviculture.org/FlockEmergencies.htm> ). A "flock emergency" for an aviary is defined in terms not just of bird mortality, but of financial loss. Since Martha Scudder sued Mr. Gallawa for the supposedly devastating financial losses allegedly attributable to his defamation, then clearly the Parrot Depot is in a state of "flock emergency."

So what would the good doctors recommend for a flock emergency such as this? The details as outlined by Dr. Speer and his peer(s) can be found on their above referenced website. However, the proper avicultural approach when it comes to loss of income involves: good production records; careful review of necropsy records; improving nutrition; traffic- flow, and environmental design; and carefully moving birds within the aviary to avoid "starvation, extreme environmental conditions, mass exposure to toxins, and other hazards."

By good **records**, does he refer to the record-keeping that Martha Scudder's own bird broker, Julie Corwin, so plaintively rails about lest the Pierce County Ordinance get passed ( viz, Decl. of Julie Corwin )?

By **starvation**, does he mean such as all the cases of unexplained inanition and wasting in the Scudder necropsies? Or the "protruding keels" mentioned in Dr. Tracy Bennett's report that he conveniently ignores as he dismisses her comments?

By **nutrition**, does he mean Dr. Bennett's evidence of a non-psittacine, farm- mash, black sunflower-seed diet lacking fruits and vegetables (see "Summary of observations and recommendations" under the Documents tab)?

By **traffic-flow and environmental design**, does he mean lack of adequate, if not any, real quarantine system , and the placing of diseased birds next to neonates (see Kathy Phillips Scudder Deposition Volume 2 Page 60)?

By "**extreme environmental conditions**", might he mean keeping birds under freezing conditions in unheated, inadequately covered, outside "structures" (see pictures under Frances Davidson Complaint Statement)

By "**mass exposure to toxins**", might he be thinking of the more than dozen rare parrots who slowly suffocated over nearly a week from a Parrot Depot neighbor's smoldering fire? (*Martha Scudder herself testified she let sixteen of her "prized" birds suffocate over a number of days from smoke coming from a neighbor's fire. Asked why she didn't simply*

*move the birds out of harm's way, she replied because that would have disturbed their breeding; see, Martha Scudder Deposition, Volume 1 Page 116.)*

No, as a witness for the Plaintiff, Dr. Speer supported the notion that the Defendant, by bringing these conditions and practices into the public spotlight, somehow *caused* the flock emergency at the Scudder Parrot Depot. Worse still, Dr. Speer had an opportunity here to take the high road and use his knowledge and reputation to further the principles which both he and the American Federation of Aviculture supposedly stand for. Sadly, and inexplicably, he passed on this opportunity. In this, he has, in the opinion of the Editors, abrogated his ethical responsibility as a veterinarian. We feel compelled at this point to remind Dr. Speer of his veterinary oath:

*Being admitted to the profession of veterinary medicine, I solemnly swear to use my scientific knowledge and skills for the benefit of society through the protection of animal health, the relief of animal suffering, the conservation of livestock resources, the promotion of public health and the advancement of medical knowledge.*

*I will practice my profession conscientiously, with dignity and in keeping with the principles of veterinary medical ethics.*

*I accept as a lifelong obligation the continual improvement of my professional knowledge and competence.*

When a colleague and fellow Avian-board certified veterinarian, Dr. Tracy Bennett, attempted to stay true to that oath and take the higher ethical road, Dr. Speer's response was insultingly condescending and dismissive, calling her conclusions "unsubstantiated."

But, most astoundingly, he then states that Dr. Bennett may well be to blame for the "flock emergency" at the Parrot Depot:

**"The recommendations made by Dr. Bennett in her report and the actions implemented by Martha Scudder to address them could easily have served as a significant and more continuous disruptive factor, resulting in a drop in breeding productivity for the collection, morbidity and/or mortality in some of the breeding stock, and economic harm to the breeding collection."**

Rarely has hypocrisy been so transparent. It would appear Dr. Speer's own published practices and actions to *CORRECT* flock emergencies make them *WORSE* when they are carried out by a veterinarian whose position in a legal proceeding does not agree with that of the party signing his paycheck.

Most damningly, when Dr. Speer was no longer Martha Scudder's paid mouthpiece, when his statements in his declaration were challenged by a reporter from the Tacoma News Tribune, Dr. Speer replied:

**"There were diseases present, just not those"**

(see News Articles, "Parrots in Peril")—confirming he committed his omissions knowingly and therefore with a clear purpose in mind.

We are disturbed to see someone of Dr. Speer's stature in aviculture auction off his credentials and position in this manner: giving frankly misleading testimony through a willful ignorance of facts they were fully aware of at the time, and worse, then choosing to lay Parrot Depot's problems not with Martha Scudder and Bob Vincent, but at the feet of a fellow veterinarian seeking only to document and improve conditions.

—Editors.]