

No. 08-769

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

ROBERT J. STEVENS

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT*

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: DEC. 15, 2008
CERTIORARI GRANTED: APR. 20, 2009

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Docket No. 05-2497

UNITED STATES OF AMERICA, APPELLEE

v.

ROBERT J. STEVENS, APPELLANT

DOCKET ENTRIES

DATE	PROCEEDINGS
5/12/05	Criminal Case Docketed. Notice filed by Robert J. Stevens. (LLD)
5/12/05	ORDER appointing FPD to continue to represent Appellant, filed. (LLD)
5/12/05	RECORD available on District Court CM/ECF. (CMD)
5/25/05	APPEARANCE from Attorney Laura S. Irwin on behalf of Appellee USA, filed. (PDB)
6/2/05	FOLLOW UP LETTER to Karen S. Gerlach requesting the following documents: **Appearance Form **Information Statement **Transcript Purchase Order Form (CMD)

DATE	PROCEEDINGS
7/1/05	ORDER directing attorney Karen S. Gerlach, to SHOW CAUSE in writing on or before 7/11/05, why counsel failed to timely order the transcript. (CMD)
7/7/05	RESPONSE by Karen S. Gerlach to Order to Show Cause, filed. Certificate of service dated 7/6/05. (CMD)
7/7/05	APPEARANCE from Attorney Karen S. Gerlach on behalf of Appellant Robert J. Stevens, filed. (CMD)
7/7/05	INFORMATION STATEMENT on behalf of Appellant Robert J. Stevens, received. (CMD)
7/7/05	TRANSCRIPT PURCHASE ORDER (Part I), ordering a transcript of the proceedings, filed. (CMD)
7/7/05	TRANSCRIPT PURCHASE ORDER (Part I), ordering a transcript of the proceedings, filed. (CMD)
7/7/05	TRANSCRIPT PURCHASE ORDER (Part I), ordering a transcript of the proceedings, filed. (CMD)
7/7/05	TRANSCRIPT PURCHASE ORDER (Part I), ordering a transcript of the proceedings, filed. (CMD)

DATE	PROCEEDINGS
7/14/05	ORDER to Michael D. Powers directing transcript, ordered on 7/6/05, to be filed by 8/8/05, filed. (CMD)
7/14/05	ORDER to Julie Kienzle directing transcript, ordered on 7/6/05, to be filed by 8/8/05, filed. (CMD)
7/14/05	ORDER to Patricia W. Sherman directing transcript, ordered on 7/6/05, to be filed by 8/8/05, filed. (CMD)
7/14/05	ORDER to Roberta Swank directing transcript, ordered on 7/6/05, to be filed by 8/8/05, filed. (CMD)
7/21/05	ORDER (Clerk) considering response by Karen S. Gerlach, Esq. to Order to Show Cause. As it is noted that counsel has now filed the transcript purchase order form as required, the Order to Show Cause issued to Karen S. Gerlach, Esq. on July 1, 2005 is hereby discharged, filed. (CMD)
8/1/05	MOTION by Court Reporter Roberta Swank for extension of time to file transcript until 8/31/05 filed. (PDB)
8/5/05	ORDER (Clerk) granting motion for extension of time to file transcript, Roberta Swank. The transcripts shall be filed on or before August 31, 2005, filed. (PDB)

DATE	PROCEEDINGS
8/5/05	TRANSCRIPT PURCHASE ORDER (Part III) notifying transcript by Michael D. Powers filed in D.C., filed. (CMD)
8/5/05	TRANSCRIPT PURCHASE ORDER (Part III) notifying transcript by Patricia W. Sherman filed in D.C., filed. (CMD)
8/8/05	TRANSCRIPT PURCHASE ORDER (Part III) notifying transcript by Julie Kienzle filed in D.C., filed. (CH)
9/15/05	ORDER directing Roberta Swank, Court Reporter, to SHOW CAUSE in writing on or before 9/26/05 why court reporter failed to comply with extension deadline for filing of transcript, filed. (CMD)
9/26/05	RESPONSE by Roberta Swank, Court Reporter to Order to Show Cause, filed. Certificate of service dated 9/23/05. (CMD)
10/5/05	ORDER (Clerk) discharging Order to Show Cause issued to Karen Sirianni Gerlach on September 15, 2005, as it is noted that the case opening forms have now been filed, filed. (TYW)

DATE	PROCEEDINGS
10/14/05	ORDER (Clerk) considering response by Karen S. Gerlach, Esq. to Order to Show Cause. As it noted that counsel has now filed the transcript purchase order form as required, the Order to Show Cause issued to Karen S. Gerlach, Esq. on July 1, 2005 is hereby discharged, filed. (CMD)
10/14/05	BRIEFING NOTICE ISSUED. Appellant brief and appendix due 11/14/05. (CMD)
11/10/05	MOTION by Appellant Robert J. Stevens for extension of time to file brief and appendix, filed. Answer due 11/25/05. Certificate of Service dated 11/9/05. (CMD)
11/18/05	ORDER (Clerk) granting motion by Appellant for extension of time to file brief and appendix. Appellant's brief and appendix shall be filed and served on or before December 23, 2005, filed. (CMD)
12/16/05	MOTION by Appellant Robert J. Stevens for extension of time to file brief and appendix until 1/13/06, filed. Answer due 1/3/06. Certificate of Service dated 12/15/05. (CMD)
12/22/05	ORDER (Clerk) granting consent motion by Appellant for extension of time to file brief and appendix. Appellant's brief and

DATE	PROCEEDINGS
	appendix shall be filed and served on or before January 13, 2006, filed. (CMD)
1/17/06	APPENDIX with volume 1 attached to brief on behalf of Appellant Robert J. Stevens, Copies: 4, Volumes: 3, Delivered by mail, filed. Certificate of service date 1/13/06. (LAL)
1/17/06	PRESENTENCE REPORT (4 ccs) received. [UNDER SEAL] SEND TO MERITS PANEL (LAL)
1/17/06	MOTION by Appellant Robert J. Stevens for leave to file brief in excess of both page and word limitation, filed. Answer due 1/30/06. Certificate of Service dated 1/13/06. (LAL)
1/17/06	MOTION by Appellant Robert J. Stevens to lodge exhibits in the form of videotapes, filed. Answer due 1/30/06. Certificate of Service dated 1/13/06. (LAL)
1/26/06	ORDER (Clerk) referring to a motions panel the motion by Appellant Robert J. Stevens for leave to file Brief containing 21,749 words and Granting motion by Appellant Robert J. Stevens to lodge video tape exhibits. Appellant must retrieve the exhibits within 60 days of the conclusion of this appeal or the exhibits will be destroyed, filed. (LAL)

DATE	PROCEEDINGS
1/26/06	VIDEO EXHIBITS pursuant to Clerk Order dated 01/26/06. (Held in SAFE), filed. (LAL)
2/1/06	ORDER (Fisher, Authoring Judge) granting motion by Appellant Robert J. Stevens for leave to file overlength brief containing 21,749 words with filing as of the date of this order, filed. (LAL)
2/1/06	ELECTRONIC BRIEF on behalf of Appellant Robert J. Stevens, Copies: 1, Pages: 96, Word Count: 21,749, delivered by mail, filed. (See Court Order Dated 02/01/06) Certificate of service date 1/13/06. (LAL)
2/1/06	HARD COPY RECEIVED of Brief and Appendix volume 1 from Appellant Robert J. Stevens, Copies: 10. (LAL)
2/8/06	APPEARANCE from Attorney Robert L. Eberhardt on behalf of Appellee USA, filed. (CMD)
2/8/06	MOTION by Appellee USA for extension of time to file brief until 3/24/06, filed. Answer due 2/24/06. Certificate of Service dated 2/6/06. (CMD)

DATE	PROCEEDINGS
2/9/06	ORDER (Clerk) granting consent motion by Appellee for extension of time to file brief. Appellee's brief shall be filed and served on or before March 24, 2006, filed. (CMD)
3/24/06	MOTION by Appellee USA for extension of time to file brief until 3/31/06, filed. Answer due 4/6/06. Certificate of Service dated 3/22/06. (CMD)
3/28/06	ORDER (Clerk) granting second unopposed motion by Appellee for extension of time to file brief. Appellee's brief shall be filed on or before March 31, 2006, filed. (CMD)
4/3/06	Third Unopposed MOTION by Appellee for extension of time to file brief, filed. Certificate of Service dated 3/31/06. (CH)
4/5/06	ORDER (Clerk) granting third unopposed motion by Appellee for extension of time to file brief. Appellee's brief shall be filed and served on or before April 6, 2006, filed. (CMD)

DATE	PROCEEDINGS
4/10/06	MOTION by Appellee USA for leave to file brief in excess of word limitation. Appellee Brief contains 14,915 words, filed. Answer due 4/21/06. Certificate of Service dated 4/6/06. (LAL)
4/12/06	ORDER (Clerk) granting motion by Appellee USA for leave to file Overlength Brief containing 59 pages and 14,915 Words with filing as of the date of this order, filed. (LAL)
4/12/06	ELECTRONIC BRIEF on behalf of Appellee USA, Copies: 1, Pages: 59, Word Count: 14,915, delivered by mail, filed. Certificate of service date 4/6/06. (LAL)
4/12/06	HARD COPY RECEIVED of Brief from Appellee USA, Copies: 10. (LAL)
4/17/06	MOTION by Appellant Robert J. Stevens to extend time to file reply brief until 5/24/06, filed. Answer due 5/1/06. Certificate of Service dated 4/14/06. (CMD)
4/24/06	ORDER (Clerk) granting motion by Appellant for extension of time to file reply brief. Appellant's reply brief shall be filed and served on or before May 24, 2006, filed. (CMD)

DATE	PROCEEDINGS
5/31/06	MOTION by Appellant to extend time to file reply brief, filed. Answer due 6/5/06. Certificate of Service dated 5/18/06. (CMD)
6/5/06	HARD COPY RECEIVED from Appellant Robert J. Stevens (10cc of reply). (GPK)
6/8/06	ORDER (Clerk) The foregoing motion is construed as a motion for leave to file reply brief out of time. So construed, the motion is granted with filing as of the date of this Order, filed. (CMD)
6/8/06	ELECTRONIC REPLY BRIEF on behalf of Appellant Robert J. Stevens, Copies: 1. Delivered by mail, filed. Certificate of service date 5/31/06. (LAL)
7/12/06	CALENDARED for Wednesday, October 25, 2006 in Pittsburgh, PA. (MAC)
10/25/06	ARGUED Wednesday, October 25, 2006 Panel: Smith, Fisher and Cowen, Circuit Judges. Counsel for Appellant: Karen S. Gerlach and Counsel for Appellee: Robert L. Eberhardt (MAC)
5/8/07	SUA SPONTE ORDER (Coram: Scirica, Chief Judge, Authoring Judge, Sloviter, McKee, Rendell, Barry, Ambro, Fuentes, Smith, Fisher, Chagares, Jordan, Hardiman and Cowen, Circuit Judges) A major-

DATE	PROCEEDINGS
	ity of the active judges having voted for rehearing en banc in the above appeal, it is ordered that the Clerk of this Court list the above case for rehearing en banc at the convenience of the Court, filed. (CMD)
5/23/07	CALENDARED for Tuesday, November 13, 2007. (MAC)
8/23/07	MOTION by Proposed Amicus-Appellee Humane Society USA for leave to proceed as amicus curiae, filed. Answer due 9/7/07. Certificate of Service dated 8/22/07. (LAL)
8/23/07	HARD COPY RECEIVED of Amicus brief from Proposed Amicus Curiae Humane Society USA in support of Appellee, Copies: 10. (LAL)
8/23/07	Notice of telephone request to Heather L. Foran, counsel for Proposed Amicus Curiae Humane Society USA, requesting 6 additional copies of Amicus Brief. Response due in 3 days. (LAL)
8/24/07	COMPLIANCE RECEIVED. Six (6) additional copies of amicus brief on behalf of Proposed Amicus Curiae Humane Society USA, received. (MCW)

DATE	PROCEEDINGS
8/27/07	ORDER (Scirica-Chief Judge, Authoring Judge, Sloviter, McKee, Rendell, Barry, Ambro, Fuentes, Smith, Fisher, Chagares, Jordan, Hardiman & Cowen-Circuit Judges) granting motion by Humane Society of the United States of America for leave to proceed as amicus curiae in support of Appellee, filed. (GPK)
8/27/07	ELECTRONIC AMICUS BRIEF on behalf of Amicus Curiae Humane Society USA in support of Appellee, Copies: 1, Pages: 35, Word Count: 6,476, delivered by mail, filed. Certificate of service date 8/22/07. (LAL)
9/28/07	CLERK'S LETTER to counsel written at the direction of the Court. The court has directed that the parties file updated briefs. The parties should file by October 15, 2007 letter briefs, not to exceed 5 pages, updating the court on any factual or legal developments since the principal briefs were filed. The letter briefs, with certificate of service, should be filed electronically and the parties should send an original and 14 paper copies to the clerk's office. Response due by 10/12/07. (MAC)

DATE	PROCEEDINGS
10/15/07	ANSWER received from Robert L. Eberhardt, Esq., counsel for Appellee, in accordance with the Court's letter dated September 28, 2007. The court directed that the parties file updated letter briefs by October 15, 2007, not to exceed 5 pages, updating the court on any factual or legal developments since the principal briefs were filed. (MAC)
10/15/07	Answer received from Karen S. Gerlach, Esq., counsel for Appellant, in accordance with the Court's letter dated September 28, 2007. The court directed that the parties file updated letter briefs by October 15, 2007, not to exceed 5 pages, updating the court on any factual or legal developments since the principal briefs were filed. (MAC)
11/8/07	Copy of transcript of tape of oral argument on Wednesday, October 25, 2006 filed by Karen S. Gerlach, Esq., counsel for Appellant, filed. (Filed for information of the Court Only) (EH)
11/13/07	REARGUED En Banc Tuesday, November 13, 2007 Panel: Scirica, Chief Judge, Sloviter, McKee, Rendell, Barry, Ambro, Fuentes, Smith, Fisher, Chagares, Jordan, Hardiman and Cowen, Circuit Judges. Counsel for Appellant: Karen S. Gerlach

DATE	PROCEEDINGS
	and Counsel for Appellee: Robert L. Eb- erhardt (MAC)
5/27/08	LETTER dated 05/22/2008 filed pursuant to Rule 28(j) from counsel for Appellee USA. SEND TO MERITS PANEL. (DMM)
7/18/08	PRECEDENTIAL OPINION Coram: SCIRICA, Chief Judge, SLOVITER, MC- KEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN and COWEN, Circuit Judges. Total Pages: 79. Judge: SMITH Authoring with dis- sent from Judge COWEN, joined by Judge FUENTES and Judge FISHER. (DMM)
7/18/08	JUDGMENT, Vacated, filed. (DMM)
8/11/08	MANDATE ISSUED, filed. (CJC)
10/8/08	U.S. Supreme Court Letter dated 10/04/2008 granting Appellee USA an ex- tension of time to and including 11/15/2008 to file petition for writ of certiorari. Su- preme Court Application No. 08A287. (NB)
11/10/08	U.S. Supreme Court Letter dated 11/06/2008 granting Appellee USA an ex- tension of time to and including 12/15/2008

DATE	PROCEEDINGS
	to file petition for writ of certiorari. Supreme Court Application No. 08A2497. (NB)
12/19/08	NOTICE from U.S. Supreme Court. Petition for Writ of Certiorari filed by United States of America on 12/15/2008. Supreme Court Case No. 08-769. (NB)
4/24/09	NOTICE of U.S. Supreme Court disposition at No. 08-769. Petition for Writ of Certiorari filed by United States of America granted on 04/20/2009. (CMD)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

Docket No. 2:04-cr-00051-ANB-1

UNITED STATES OF AMERICA

v.

ROBERT J. STEVENS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
1/3/04	32	Points for Charge by USA as to ROBERT J. STEVENS (aen) (Entered: 01/04/2005)
3/2/04	1	INDICTMENT as to ROBERT J. STEVENS (1) count(s) 1-3 (aen) (Entered: 03/03/2004)
3/2/04	2	Indictment Memorandum as to ROBERT J. STEVENS (aen) (Entered: 03/03/2004)
3/2/04	3	REQUEST for Summons for ROBERT J. STEVENS to appear for arraignment at 9:30 3/23/04 for ROBERT J. STEVENS before Magis-

DATE	DOCKET NUMBER	PROCEEDINGS
		trate Judge Francis X. Cai- azza and post O.R. Bond in the amount 10,000.00 dollars. SUMMONS(ES) issued. (aen) (Entered: 03/03/2004)
3/8/04	4	ORDER as to ROBERT J. STEVENS, Appointing Fed- eral Public Defender Michael J. Novara, Esq. (signed by Judge Alan N. Bloch on 3/4/04) CM all parties of re- cord. (aen) (Entered: 03/08/2004)
3/8/04	5	NOTICE of Judge Bloch's Children's Association with law Firms as to ROBERT J. STEVENS (aen) (Entered: 03/08/2004)
3/8/04	6	ORDER as to ROBERT J. STEVENS directing that the parties to this case are to comply with Local Criminal Rule 16.1 (signed by Judge Alan N. Bloch on 3/8/04) CM all parties of record. (aen) (Entered: 03/08/2004)
3/12/04	7	NOTICE of Victum and Wit- ness Act Implementation order by USA as to ROB-

DATE	DOCKET NUMBER	PROCEEDINGS
		ERT J. STEVENS (aen) (Entered: 03/12/2004)
3/30/04		Arraignment as to ROBERT J. STEVENS held on 3/30/04 before Magistrate Judge Francis X. Caiazza [Reporter: none] Defendant pleads not guilty. (with Document # 1) (aen) (Entered: 03/31/2004)
3/30/04		Unsecured Appearance BOND entered by ROBERT J. STEVENS in the amount of \$ 10,000.00 (aen) (Entered: 03/31/2004)
4/13/04	8	MOTION by ROBERT J. STEVENS to Extend Time for filing pretrial motions with Proposed Order. (aen) (Entered: 04/13/2004)
4/14/04		ORDER upon motion granting [8-1] motion to Extend Time for filing pretrial motions as to ROBERT J. STEVENS (1), reset Motion Filing deadline to 6/14/04 for ROBERT J. STEVENS (signed by Judge Alan N.

DATE	DOCKET NUMBER	PROCEEDINGS
		Bloch on 4/14/04) CM all parties of record. (aen) (Entered: 04/14/2004)
6/1/04	9	MOTION by ROBERT J. STEVENS to Extend Time to file pretrial motions with Proposed Order. (aen) (Entered: 06/01/2004)
6/2/04		ORDER upon motion granting [9-1] motion to Extend Time to file pretrial motions as to ROBERT J. STEVENS (1), reset Motion Filing deadline to 8/13/04 for ROBERT J. STEVENS (signed by Judge Alan N. Bloch on 6/1/04) CM all parties of record. (aen) (Entered: 06/02/2004)
8/16/04	10	MOTION with Brief in Support by ROBERT J. STEVENS for Bill of Particulars with Proposed Order. (aen) (Entered: 08/17/2004)
8/16/04	11	MOTION by ROBERT J. STEVENS to Dismiss Indictment under the Freedom of Speech Clause of the First Amendment and the due pro-

DATE	DOCKET NUMBER	PROCEEDINGS
		cess Clause of the Fifth Amendement to the US Con- stitution with Proposed Or- der. (aen) (Entered: 08/17/2004)
8/16/04	12	BRIEF by ROBERT J. STEVENS in support of [11- 1] motion to Dismiss Indict- ment under the Freedom of Speech Clause of the First Amendment and the due pro- cess Clause of the Fifth Amendement to the US Con- stitution (aen) (Entered: 08/17/2004)
8/16/04	13	MOTION with Brief in Sup- port by ROBERT J. STEV- ENS to Suppress Physical Evidence with Proposed Or- der. (aen) (Entered: 08/17/2004)
8/16/04	14	MOTION by ROBERT J. STEVENS to Compel the Govt. to Provide Deft with a Statement of Uncharged Misconduct Evidence with Proposed Order. (aen) (En- tered: 08/17/2004)

DATE	DOCKET NUMBER	PROCEEDINGS
8/18/04	15	MOTION by USA as to ROBERT J. STEVENS to Extend Time to file Govt's response to Defts Pretrial motions with Proposed Order. (aen) (Entered: 08/18/2004)
8/19/04		ORDER upon motion granting [15-1] motion to Extend Time to file Govt's response to Defts Pretrial motions as to ROBERT J. STEVENS (1), Response to Motion set to 9/20/04 for ROBERT J. STEVENS for [14-1] motion to Compel the Govt. to Provide Deft with a Statement of Uncharged Misconduct Evidence, set to 9/20/04 for ROBERT J. STEVENS for [13-1] motion to Suppress Physical Evidence, set to 9/20/04 for ROBERT J. STEVENS for [11-1] motion to Dismiss Indictment under the Freedom of Speech Clause of the First Amendment and the due process Clause of the Fifth Amendment to the US Con-

DATE	DOCKET NUMBER	PROCEEDINGS
		stitution, set to 9/20/04 for ROBERT J. STEVENS for [10-1] motion for Bill of Particulars (signed by Judge Alan N. Bloch on 8/19/04) CM all parties of record. (aen) (Entered: 08/19/2004)
9/13/04	16	MOTION by USA as to ROBERT J. STEVENS to Extend Time to file Govt's Response to Defts Pretrial Motions with Proposed Order. (aen) (Entered: 09/13/2004)
9/16/04		ORDER upon motion granting [16-1] motion to Extend Time to file Govt's Response to Defts Pretrial Motions as to ROBERT J. STEVENS (1), Response to Motion set to 10/5/04 for ROBERT J. STEVENS for [14-1] motion to Compel the Govt. to Provide Deft with a Statement of Uncharged Misconduct Evidence, set to 10/5/04 for ROBERT J. STEVENS for [13-1] motion to Suppress Physical Evidence, set to 10/5/04 for ROBERT J.

DATE	DOCKET NUMBER	PROCEEDINGS
10/5/04	17	<p>STEVENSON for [11-1] motion to Dismiss Indictment under the Freedom of Speech Clause of the First Amendment and the due process Clause of the Fifth Amendment to the US Constitution, set to 10/5/04 for ROBERT J. STEVENSON for [10-1] motion for Bill of Particulars (signed by Judge Alan N. Bloch on 9/16/04) CM all parties of record. (jsp) (Entered: 09/17/2004)</p> <p>RESPONSE by USA as to ROBERT J. STEVENSON re [14-1] motion to Compel the Govt. to Provide Deft with a Statement of Uncharged Misconduct Evidence, [13-1] motion to Suppress Physical Evidence, [11-1] motion to Dismiss Indictment under the Freedom of Speech Clause of the First Amendment and the due process Clause of the Fifth Amendment to the US Constitution, [10-1] motion for</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		Bill of Particulars (aen) (Entered: 10/06/2004)
10/7/04	18	Pre-trial conference and hearing on motions as to ROBERT J. STEVENS set at 1:30 11/10/04 for ROBERT J. STEVENS before Judge Alan N. Bloch (aen) (Entered: 10/07/2004)
10/14/04	19	MOTION by ROBERT J. STEVENS to continue Pre-trial conf. and Hearing on Pretrial Motions with Proposed Order. (aen) (Entered: 10/14/2004)
10/18/04	20	ORDER as to ROBERT J. STEVENS denying [19-1] motion to continue Pretrial conf. and Hearing on Pretrial Motions as to ROBERT J. STEVENS (1) (signed by Judge Alan N. Bloch on 10/18/04) CM all parties of record. (aen) (Entered: 10/18/2004)
10/19/04	21	MOTION by ROBERT J. STEVENS SEALED MOTION with Proposed Order. (aen) (Entered: 10/19/2004)

DATE	DOCKET NUMBER	PROCEEDINGS
10/19/04		ORDER upon motion granting [21-1] motion SEALED MOTION as to ROBERT J. STEVENS (1) (signed by Judge Alan N. Bloch on 10/19/04) CM all parties of record. (aen) (Entered: 10/19/2004)
11/16/04	22	Motion hearing held on 11/10/04 as to ROBERT J. STEVENS re: [14-1] motion to Compel the Govt. to Provide Deft with a Statement of Uncharged Misconduct Evidence, [11-1] motion to Dismiss Indictment under the Freedom of Speech Clause of the First Amendment and the due process Clause of the Fifth Amendment to the US Constitution, [10-1] motion for Bill of Particulars before Judge Alan N. Bloch Doc # 10, Denied, Doc # 11 Denied, Doc # 13 Denied and Doc # 14 Granted. [Reporter: Michael Powers] (aen) (Entered: 11/16/2004)

DATE	DOCKET NUMBER	PROCEEDINGS
11/16/04	23	Jury trial as to ROBERT J. STEVENS set at 9:30 12/13/04 for ROBERT J. STEVENS before Judge Alan N. Bloch (aen) (Entered: 11/16/2004)
11/17/04	24	MOTION by ROBERT J. STEVENS SEALED MOTION with Proposed Order. (aen) (Entered: 11/17/2004)
11/17/04		ORDER upon motion granting [24-1] motion SEALED MOTION as to ROBERT J. STEVENS (1) (signed by Judge Alan N. Bloch on 11/17/04) CM all parties of record. (aen) (Entered: 11/17/2004)
12/2/04	25	MOTION by ROBERT J. STEVENS to continue Trial with Proposed Order. (aen) (Entered: 12/02/2004)
12/2/04	26	ORDER as to ROBERT J. STEVENS granting [25-1] motion to continue Trial as to ROBERT J. STEVENS (1), reset Jury Trial for 9:30 1/10/05 for ROBERT J. STEVENS (signed by Judge

DATE	DOCKET NUMBER	PROCEEDINGS
		Alan N. Bloch on 12/2/04) CM all parties of record. (aen) (Entered: 12/03/2004)
12/20/04	27	MOTION by ROBERT J. STEVENS SEALED MO- TION with Proposed Order. (ksa) (Entered: 12/21/2004)
12/22/04		ORDER upon motion grant- ing [27-1] motion SEALED MOTION as to ROBERT J. STEVENS (1) (signed by Judge Alan N. Bloch on 12/22/04) CM all parties of record. (ksa) (Entered: 12/23/2004)
12/22/04		ORDER as to ROBERT J. STEVENS that the within motion is sealed, and that it shall remain sealed until fur- ther order of the Court. (signed by Judge Alan N. Bloch on 12/22/04) CM all parties of record. (w/doc. #27) (ksa) Modified on 12/23/2004 (Entered: 12/23/2004)
12/29/04	28	MOTION by ROBERT J. STEVENS in Limine to pre- clude the Govt. from refer-

DATE	DOCKET NUMBER	PROCEEDINGS
		ring to or relying upon the Hunting/Farming scenes in the Catch Dogs Video and to redact all scenes except for the organized Dog Fight from any copy of the Video shown or submitted to the Jury with Proposed Order. (aen) (Entered: 12/29/2004)
12/30/04	29	Tele conference as to ROBERT J. STEVENS held on 12/30/04 before Judge Alan N. Bloch [Reporter: none] (aen) (Entered: 12/30/2004)
1/3/05	30	Status conference as to ROBERT J. STEVENS held on 1/3/05 before Judge Alan N. Bloch in re Video of Expert Witness for Deft. [Reporter: None] (aen) Modified on 01/03/2005 (Entered: 01/03/2005)
1/3/05	31	Proposed Voir Dire Questions by USA as to ROBERT J. STEVENS (aen) (Entered: 01/04/2005)
1/4/05	33	Points for Charge by ROBERT J. STEVENS (aen) (Entered: 01/04/2005)

DATE	DOCKET NUMBER	PROCEEDINGS
1/4/05	34	RESPONSE by USA as to ROBERT J. STEVENS re [28-1] motion in Limine to preclude the Govt. from referring to or relying upon the Hunting/Farming scenes in the Catch Dogs Video and to redact all scenes except for the organized Dog Fight from any copy of the Video shown or submitted to the Jury (aen) (Entered: 01/05/2005)
1/5/05	35	Proposed Voir Dire Questions by ROBERT J. STEVENS and for Jury Questionnaire. (aen) (Entered: 01/05/2005)
1/5/05	36	REPLY by ROBERT J. STEVENS to response to [28-1] motion in Limine to preclude the Govt. from referring to or relying upon the Hunting/Farming scenes in the Catch Dogs Video and to redact all scenes except for the organized Dog Fight from any copy of the Video shown or submitted to the

DATE	DOCKET NUMBER	PROCEEDINGS
		Jury (aen) (Entered: 01/05/2005)
1/5/05	37	MOTION by ROBERT J. STEVENS SEALED MO- TION with Proposed Order. (aen) (Entered: 01/06/2005)
1/5/05		ORDER upon motion grant- ing [37-1] motion SEALED MOTION as to ROBERT J. STEVENS (1) (signed by Judge Alan N. Bloch on 1/5/05) CM all parties of re- cord. (aen) (Entered: 01/06/2005)
1/6/05	38	ORDER as to ROBERT J. STEVENS denying [28-1] motion in Limine to preclude the Govt. from referring to or relying upon the Hunt- ing/Farming scenes in the Catch Dogs Video and to re- dact all scenes except for the organized Dog Fight from any copy of the Video shown or submitted to the Jury as to ROBERT J. STEVENS (1) (signed by Judge Alan N. Bloch on 1/6/05) CM all par-

DATE	DOCKET NUMBER	PROCEEDINGS
		ties of record. (aen) (Entered: 01/06/2005)
1/6/05	39	Points for Charge by ROBERT J. STEVENS (aen) (Entered: 01/07/2005)
1/7/05	40	MOTION by ROBERT J. STEVENS in Limine to Exclude Prior Acts Testimony under Rule 404(b) and to Exclude Repeated Testimony Concerning Animal Injuries under Rule 403 with Proposed Order. (aen) (Entered: 01/07/2005)
1/7/05	41	RESPONSE by USA as to ROBERT J. STEVENS re [40-1] motion in Limine to Exclude Prior Acts Testimony under Rule 404(b) and to Exclude Repeated Testimony Concerning Animal Injuries under Rule 403 (aen) (Entered: 01/10/2005)
1/10/05	42	ORDER as to ROBERT J. STEVENS denying [40-1] motion in Limine to Exclude Prior Acts Testimony under Rule 404(b) and to Exclude Repeated Testimony Con-

DATE	DOCKET NUMBER	PROCEEDINGS
		cerning Animal Injuries under Rule 403 as to ROBERT J. STEVENS (1) (signed by Judge Alan N. Bloch on 1/10/05 CM all parties of record. (aen) (Entered: 01/10/2005)
1/10/05		Voir dire begun as to ROBERT J. STEVENS (1) count(s) 1-3 (aen) (Entered: 01/11/2005)
1/10/05		Jury trial as to ROBERT J. STEVENS begins. (aen) (Entered: 01/11/2005)
1/11/05	43	SUPPLEMENTAL Request to Points for Charge by USA as to ROBERT J. STEVENS (aen) (Entered: 01/11/2005)
1/11/05		Jury trial as to ROBERT J. STEVENS continues (aen) (Entered: 01/12/2005)
1/12/05		Jury trial as to ROBERT J. STEVENS continues oral motion for Judgment of Acquittal by Deft, Denied Orally. (aen) (Entered: 01/13/2005)

DATE	DOCKET NUMBER	PROCEEDINGS
1/13/05		Jury trial as to ROBERT J. STEVENS continues and Concludes. (aen) (Entered: 01/14/2005)
1/13/05	44	Jury trial as to ROBERT J. STEVENS concluded deft found guilty on counts 1,2,3, memo filed before Judge Alan N. Bloch [Reporter: Julianne Kienzle] (aen) (Entered: 01/14/2005)
1/13/05	45	JURY VERDICT of Guilty: ROBERT J. STEVENS (1) count(s) 1-3 (aen) (Entered: 01/14/2005)
1/13/05	46	ORDER setting Presentence Report due 3/17/05 for ROBERT J. STEVENS to this court, defendant, and counsel; statement outlining objections to, or agreement with the Presentence Report due 3/31/05 for ROBERT J. STEVENS Presentence Report with addendum to this court, and counsel to this court, and counsel due 4/11/05 for ROBERT J. STEVENS ; Sentencing set

DATE	DOCKET NUMBER	PROCEEDINGS
		for 1:30 4/21/05 for ROBERT J. STEVENS (signed by Judge Alan N. Bloch on 1/13/05) CM all parties of record. (aen) (Entered: 01/14/2005)
1/19/05	47	MOTION by ROBERT J. STEVENS to Travel with Proposed Order. (aen) (Entered: 01/20/2005)
1/20/05	48	ORDER as to ROBERT J. STEVENS granting in part, denying in part [47-1] motion to Travel as to ROBERT J. STEVENS (1) (signed by Judge Alan N. Bloch on 1/20/05) CM all parties of record. (aen) (Entered: 01/20/2005)
1/21/05	49	NOTICE Pursuant to the Victim and Witness order of Nov 27 1984 by USA as to ROBERT J. STEVENS (aen) (Entered: 01/24/2005)
3/30/05	50	Position by USA with respect to sentencing factors as to ROBERT J. STEVENS (aen) (Entered: 03/30/2005)

DATE	DOCKET NUMBER	PROCEEDINGS
3/31/05	51	Position by ROBERT J. STEVENS with respect to sentencing factors (aen) (Entered: 03/31/2005)
4/12/05	52	MOTION by ROBERT J. STEVENS SEALED MOTION with Proposed Order. (aen) (Entered: 04/12/2005)
4/12/05		ORDER upon motion granting [52-1] motion SEALED MOTION as to ROBERT J. STEVENS (1) (signed by Judge Alan N. Bloch on 4/12/05) CM all parties of record. (aen) (Entered: 04/12/2005)
4/15/05	53	TENTATIVE FINDINGS as to ROBERT J. STEVENS (signed by Judge Alan N. Bloch on 4/14/05) CM all parties of record. (aen) (Entered: 04/15/2005)
4/18/05	54	SENTENCING MEMORANDUM by ROBERT J. STEVENS (aen) (Entered: 04/19/2005)
4/18/05	55	MOTION by ROBERT J. STEVENS to continue bail pending appeal with Pro-

DATE	DOCKET NUMBER	PROCEEDINGS
		posed Order. (aen) (Entered: 04/19/2005)
4/19/05	56	OBJECTION to the Court's Tentive Rulings by ROBERT J. STEVENS (aen) (Entered: 04/20/2005)
4/19/05		MOTION by ROBERT J. STEVENS for downward departure (With Doc # 56) (aen) (Entered: 04/20/2005)
4/20/05	57	RESPONSE by USA as to ROBERT J. STEVENS re [55-1] motion to continue bail pending appeal (aen) (Entered: 04/20/2005)
4/22/05	58	Sentencing Hearing held on 4/21/05 before Judge Alan N. Bloch [Reporter: Patricia Sherman] re: ROBERT J. STEVENS (1) count(s) 1-3 (aen) (Entered: 04/22/2005)
4/22/05	59	ORDER as to ROBERT J. STEVENS Granting Doc # 55 motion to Continue (signed by Judge Alan N. Bloch on 4/21/05) CM all parties of record. (aen) (Entered: 04/22/2005)

DATE	DOCKET NUMBER	PROCEEDINGS
4/25/05	60	JUDGMENT ROBERT J. STEVENS (1) count(s) 1-3. DEFT SHALL PAY A SPECIAL ASSESSMENT IN THE AMOUNT OF \$ 300.00 AND THE DEFT IS HEREBY COMMITTED TO THE CUSTODY OF THE US BUREAU OF PRISONS TO BE IMPRISONED FOR A TERM OF 37 MONTHS TO RUN CONCURRENTLY AND UPON RELEASE FROM IMPRISONMENT THE DEFT SHALL BE ON SUPERVISED FOR A TERM OF 3 YEARS TO RUN CONCURRENTLY WITH CONDITIONS OF SUPERVISION, NO FINE. (signed by Judge Alan N. Bloch on 4/25/05) (aen) (Entered: 04/25/2005)
4/27/05	61	MOTION by ROBERT J. STEVENS to Travel with Proposed Order. (aen) (Entered: 04/27/2005)
4/28/05		ORDER upon motion granting [61-1] motion to Travel as to ROBERT J. STEVENS

DATE	DOCKET NUMBER	PROCEEDINGS
		(1) (signed by Judge Alan N. Bloch on 4/28/05) CM all parties of record. (aen) (Entered: 04/28/2005)
5/2/05	62	MOTION by ROBERT J. STEVENS to Extend Time to file Notice of Appeal with Proposed Order. (tam) (Entered: 05/03/2005)
5/2/05	63	NOTICE OF APPEAL from [60-1] judgment order by ROBERT J. STEVENS (1) count(s) 1-3 TPO ISSUED. (lck) (Entered: 05/05/2005)
5/5/05		Certified copy of Notice of Appeal [63-1] appeal as to ROBERT J. STEVENS, certified copy of docket, certified copy of order dated 4/25/05 and certified copy of order appointing counsel dated 3/4/04 mailed to USCA; copy of Notice of Appeal and information sheet to USA, court reporters—Michael Powers, Julianne Kienzle and Patricia Sherman, and judge. Copy of in-

DATE	DOCKET NUMBER	PROCEEDINGS
		formation sheet to appellant. (lck) (Entered: 05/05/2005)
5/16/05		NOTICE of Docketing ROA from USCA as to ROBERT J. STEVENS Re: [63-1] ap- peal USCA Number: (05- 2497) (aen) (Entered: 05/16/2005)
5/19/05	64	Satisfaction of Judgment as to Assessment by ROBERT J. STEVENS (aen) (En- tered: 05/19/2005)
5/20/05	65	ORDER as to ROBERT J. STEVENS denying [62-1] motion to Extend Time to file Notice of Appeal as to ROBERT J. STEVENS (1) as moot. (signed by Judge Alan N. Bloch on 5/5/05) CM all parties of record. (aen) (Entered: 05/20/2005)
5/24/05	66	MOTION by ROBERT J. STEVENS to Travel with Proposed Order. (aen) (En- tered: 05/25/2005)
5/26/05	67	ORDER as to ROBERT J. STEVENS denying [66-1] motion to Travel as to ROB- ERT J. STEVENS (1)

DATE	DOCKET NUMBER	PROCEEDINGS
		(signed by Judge Alan N. Bloch on 5/25/05) CM all parties of record. (aen) (Entered: 05/26/2005)
7/6/05	68	TRANSCRIPT REQUEST (TPO) by ROBERT J. STEVENS for proceedings held on 03/30/2004 before Judge Francis X. Caiazza, (Gerlach, Karen) (Entered: 07/06/2005)
7/6/05	69	TRANSCRIPT REQUEST (TPO) by ROBERT J. STEVENS for proceedings held on 04/21/2005 before Judge Alan N. Bloch, (Gerlach, Karen) (Entered: 07/06/2005)
7/6/09	70	TRANSCRIPT REQUEST (TPO) by ROBERT J. STEVENS for proceedings held on 05/05/2005 before Judge Alan N. Bloch, (Gerlach, Karen) (Entered: 07/06/2005)
7/6/05	71	TRANSCRIPT REQUEST (TPO) by ROBERT J. STEVENS for proceedings held on 11/10/2004 before

DATE	DOCKET NUMBER	PROCEEDINGS
		Judge Alan N. Bloch, (Gerlach, Karen) (Entered: 07/06/2005)
8/2/05	72	TRANSCRIPT of Sentencing Proceedings as to ROBERT J. STEVENS held on 4/21/2005 before Judge Bloch. Court Reporter: Patricia Sherman. Request for Redaction of specific personal identifiers 8/16/2005. (sjs) (Entered: 08/02/2005)
8/3/05	73	TRANSCRIPT of Suppression Hearing as to ROBERT J. STEVENS held on 11/10/2004 before Judge Alan N. Bloch. Court Reporter: Michael D. Powers. Request for Redaction of specific personal identifiers 8/17/2005. (sjs,) (Entered: 08/05/2005)
8/4/05	74	TRANSCRIPT of Jury Trial as to ROBERT J. STEVENS held on 1/10/2005 before Judge Alan N. Bloch. Court Reporter: Juliann A. Kienzle. Request for Redaction of specific personal identifiers

DATE	DOCKET NUMBER	PROCEEDINGS
8/4/05	75	8/18/2005. (sjs,) (Entered: 08/05/2005) TRANSCRIPT of Jury Trial as to ROBERT J. STEVENS held on 1/11/2005 before Judge Alan N. Bloch. Court Reporter: Juliann A. Kienzle. Request for Redaction of specific personal identifiers 8/18/2005. (sjs,) (Entered: 08/05/2005)
8/4/05	76	TRANSCRIPT of Jury Trial as to ROBERT J. STEVENS held on 1/12/2005 before Judge Alan N. Bloch. Court Reporter: Juliann A. Kienzle. Request for Redaction of specific personal identifiers 8/18/2005. (sjs,) (Entered: 08/05/2005)
8/4/05	77	TRANSCRIPT of Jury Trial as to ROBERT J. STEVENS held on 1/13/2005 before Judge Alan N. Bloch. Court Reporter: Juliann A. Kienzle. Request for Redaction of specific personal identifiers 8/18/2005. (sjs,) (Entered: 08/05/2005)

DATE	DOCKET NUMBER	PROCEEDINGS
7/18/05	78	JUDGMENT of USCA (certified copy) as to ROBERT J. STEVENS re 63 Notice of Appeal—Final Judgment, vacating judgment/order of the district court. (dm3,) (Entered: 07/18/2008)
8/11/05	79	MANDATE (Judgment) of USCA (certified copy) as to ROBERT J. STEVENS re Transmission of Notice of Appeal, vacating judgment/order of the district court. (Attachments: # 1 Opinion) (cjc3,) (Entered: 08/11/2008)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Criminal No. 04-51
(18 U.S.C. § 48)

UNITED STATES OF AMERICA

v.

ROBERT J. STEVENS

INDICTMENT

COUNT ONE

The grand jury charges:

On or about February 10, 2003, in the Western District of Pennsylvania and elsewhere, the defendant, ROBERT J. STEVENS, did knowingly sell a depiction of animal cruelty, namely, a videotape showing dog fights entitled "Pick-A-Winna," with the intention of placing said depiction in interstate commerce for commercial gain.

In violation of Title 18, United States Code, Section 48.

COUNT TWO

The grand jury further charges:

On or about February 10, 2003, in the Western District of Pennsylvania and elsewhere, the defendant,

ROBERT J. STEVENS, did knowingly sell a depiction of animal cruelty, namely, a videotape showing dog fights entitled "Japan Pit Fights," with the intention of placing said depiction in interstate commerce for commercial gain.

In violation of Title 18, United States Code, Section 48.

COUNT THREE

The grand jury further charges:

On or about April 4, 2003, in the Western District of Pennsylvania and elsewhere, the defendant, ROBERT J. STEVENS, did knowingly sell a depiction of animal cruelty, namely, a videotape showing dog fighting and dogs attacking hogs entitled "Catch Dogs," with the intention of placing said depiction in interstate commerce for commercial gain.

In violation of Title 18, United States Code, Section 48.

A True Bill,
/s/ ILLEGIBLE
FOREPERSON

/s/ MARY BETH BUCHANAN
MARY BETH BUCHANAN
United States Attorney
PA ID No. 50254

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Criminal No. 04-51

UNITED STATES OF AMERICA

v.

ROBERT J. STEVENS, DEFENDANT

Transcript of Jury Trial Proceedings on Tuesday,
January 11, 2005, United States District Court, Pitts-
burgh, Pennsylvania, before Alan N. Bloch, Senior Dis-
trict Court Judge.

APPEARANCES:

For the Government: Stephen R. Kaufman, Esq.
 Assistant U.S. Attorney
 400 USPO and Courthouse
 700 Grant Street
 Pittsburgh, PA 15219

For the Defendant: Michael J. Novara, Esq.
 Assistant Federal Public
 Defender
 1001 Liberty Avenue
 1450 Liberty Center
 Pittsburgh, PA 15222

* * * * *

[32]

* * * * *

TIMOTHY KNAPP, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q. Sir, can you please tell us your name?

A. For the record, Trooper Timothy C. Knapp.

Q. How are you employed?

[33]

A. I'm employed with the Commonwealth of Pennsylvania as a state trooper.

Q. How long have you been a state trooper?

A. I'm currently in my 19th year of employment.

Q. Can you briefly describe to the jury your career as a state trooper, the various positions that you've held.

A. My career started in 1987. I was assigned as a uniformed trooper in the patrol traffic division at the Uniontown barracks. From there, I was assigned as a criminal investigator at the Waynesburg barracks for the next three years. From there, I went to the organized crime unit in the Pittsburgh region for seven years. And for approximately the last two years I'm back at the Uniontown barracks as a criminal investigator.

Q. Trooper Knapp, is one of your duties to enforce laws against animal cruelty and animal fighting?

A. Yes, it is.

Q. And can you briefly describe your experience in those areas?

A. My experience in animal cruelty cases, I've investigated approximately 15 cases of animal cruelty. I made approximately eight arrests and assisted other agencies in arrests for animal cruelty, and I've performed numerous search warrants pertaining to animal cruelty.

Q. Did any of those cases involve dogfighting?

[34]

A. Yes, they did.

Q. Have you worked in an undercover capacity in your investigations against dogfighting?

A. Yes, I have.

Q. Did you participate in the investigation in this case?

A. Yes, I did.

Q. Where did you first see any reference to Mr. Stevens?

A. I observed advertisements in a publication, Sporting Dog Journal.

Q. Were you ever a subscriber to the Sporting Dog Journal?

A. Yes, I was.

Q. Can you explain to the jury how you became a subscriber to the Sporting Dog Journal?

A. During my investigations, I obtained a subscription using another subscriber to vouch for me.

Q. Is it your understanding that it's necessary to have that type of vouching occur before one can subscribe to Sporting Dog Journal?

A. Yes, it's necessary.

Q. Is Sporting Dog Journal available publicly at newsstands?

A. No. It's not.

Q. Does Sporting Dog Journal contain the results of illegal dogfights?

A. Yes, it does.

Q. And, in fact, did you ever submit any fictitious dogfights [35] to Sporting Dog Journal?

A. Yes, I did.

Q. Were they published in Sporting Dog Journal?

A. Yes, they were.

Q. Did you review the advertisement in Sporting Dog Journal with Special Agent Quijas of the USDA?

A. Yes, I did.

Q. With respect to Mr. Stevens' advertisement, was there a particular issue in which you saw Mr. Stevens' advertisement?

A. Yes, the September/October 2001 issue.

* * * * *

[36]

Q. When you reviewed this advertisement with Special Agent Quijas, did you decide to make certain undercover purchases of videos?

A. Yes, we did.

Q. Which particular videos did you decide to purchase first?

A. For the first order, we decided on the Pick-A-Winna video for \$45, Japan Pit Fights for \$25.

Q. Did you decide to purchase any other items that were advertised in this advertisement?

A. Yes. We ordered a parting stick, also referred to as a break stick.

[37]

Q. What is a parting stick or break stick?

A. Sometimes it can be made out of a wooden handle or sometimes they're made out of plastic. It's a stick that is utilized to pry the jaws of a pit bull apart so they will release their hold or bite.

Q. Release their hold or bite on another animal?

A. On another animal, correct.

Q. Did you write a letter to Mr. Stevens ordering these videos?

A. Yes, I did.

* * * * *

[42]

RAYMOND QUIJAS, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KAUFMAN:

[43]

Q. Please state your name, sir.

A. My name is Raymond Quijas, Jr.

Q. Please tell us how you're presently employed.

A. I'm presently employed as a U.S. Postal Inspector, Denver Division.

Q. Can you tell us about your prior history of employment in federal law enforcement.

A. I began my career in federal law enforcement in 1988 as a special agent with the U.S. Department of Agriculture's Office of Inspector General. I served approximately 11 years with that department. I also served as a special agent with the Drug Enforcement Administration approximately three years with the Department of Justice DEA. And now I'm presently at this point employed with the U.S. Postal Inspection Service as a postal inspector.

Q. Was there a time between your service as a DEA agent and your current service as a postal inspector where you went back to work as a USDA special agent?

A. That is correct.

Q. Was that the period of time where you participated in this investigation?

A. That is correct.

Q. Could you please tell us your educational background.

A. I received my bachelor's degree from Sam Houston State University, Huntsville, Texas, in 1988. From that point on, I [44] began my basic training at the federal law enforcement training center in Glendale, Georgia, where I successfully graduated from there. I also graduated from the FBI DEA Academy in Quantico, Virginia. I successfully graduated from there. And I also graduated from the U.S. Postal Inspection Service Basic Training Academy in Potomac, Maryland, Career Development Division.

Q. Agent Quijas, did Mr. Stevens, the defendant, come to your attention through an advertisement in a journal known as the Sporting Dog Journal?

A. That is correct.

Q. Did you and Trooper Knapp work together on this case?

A. That is correct.

Q. Did the two of you formulate a plan to make certain purchases from Dogs of Velvet and Steel, Mr. Stevens' business?

A. That is correct.

* * * * *

* * * * *

Q. Did you find certain magazines related to pit bulls in Mr. Stevens' residence?

A. Yes, sir, we did.

Q. Can you give the jury the names of those magazines which you recall today?

A. Sporting Dog Journal; American Game Dog Times; Pit Bull Reporter; Pit Bull Chronicles, American Pit Bull Terrier Gazette come to mind, numerous copies.

Q. Did you review those copies of magazines?

A. Yes, sir, we did.

Q. Did some of those magazines report the results of dogfights?

A. That is correct.

Q. Did you also find Mr. Stevens' sales records regarding his sales of products pertaining to his business, Dogs of Velvet and Steel?

A. Yes, we did.

Q. Did Kristen Hamman prepare a summary page and then separate detailed summaries of those sales records of the years 2001, 2002, and 2003, January through April?

A. That is correct.

Q. And it's only January through April because the search warrant was executed April 23, 2003; is that right?

A. That is correct.

[52]

Q. If you could look in front of you, is Exhibit 6 the one-page summary of those records?

A. That is correct.

Q. Are Exhibit 6A 6B and 6C the more detailed summaries of these sales records?

A. Yes, sir, they are.

MR. KAUFMAN: We move the admission of 6, 6A, 6B and 6C.

THE COURT: Admitted.

BY MR. KAUFMAN:

Q. Let me show you what has been marked as Exhibit 6. Does that set forth a total for the sales over that two year plus four month period?

A. That is correct, sir.

Q. Just to be clear, these are not only the sales of the three videos in this case, this is a total of the sales of all the products; is that right?

A. That is correct.

Q. And what is that total, sir?

A. \$57,534.95.

Q. Did you find records of sales of the videos to states and countries other than Virginia?

A. Throughout the United States and foreign countries as well, yes, sir, that is correct.

Q. Agent Quijas, did it also come to your attention that [53] Mr. Stevens, through his business, Dogs of Velvet and Steel was operating a website?

A. Yes, sir. It came to our attention during—when we received the first initial order.

Q. On one of the advertisements, was the name of the website listed?

A. Yes, sir, it was.

Q. Did you give any instructions to anyone else within your agency to download a copy of that website?

A. Yes, sir, I did.

Q. Can you tell us what happened?

A. I was able to forward that information to a computer specialist for the Office of Inspector General USDA providing the information for that website, inquiry was conducted and the computer technician was able to capture that site at that time.

Q. What is the name of the website?

A. Pitbulllife.com.

* * * * *

[55]

* * * * *

MARK T. KUMPF, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q. Sir, can you give us your name and spell your last name, please.

A. Mark Thomas Kumpf, K-U-M-P-F.

Q. Can you give us your educational background?

A. Yes, sir. I have a bachelor's degree in English and political science from Virginia Wesleyan College in Virginia. I have taken additional training through The Humane Society of the United States, the National Animal Control Association and Virginia Animal Control Association in animal fighting ventures. I have attended Norfolk Police Academy, had additional training through the Department of Criminal Justice Services.

THE COURT: Move closer to the microphone and speak right into it.

BY MR. KAUFMAN:

[56]

Q. Mr. Kumpf, how are you currently employed?

A. I am a superintendent of animal services for the City of Newport News, Virginia.

Q. How long have you been with Newport News?

A. I started with them in August of 2004.

Q. Did you serve as an animal control officer anywhere else before joining the City of Newport News?

A. Yes, sir. I was a senior animal control officer for the City of Norfolk Virginia Police Department from 1989 through 10 2004.

Q. Can you explain to the jury the duties that you had as an animal control officer over the 16 years or so since 1989?

A. Yes. My job is technical law enforcement. It involves the detection of animal-related crimes. In addition to the routine animal control duties, such as apprehending stray animals and checking animals for their current licenses and vaccinations, we investigate complaints of animal cruelty, dogfighting, related form of animal abuse and animal cruelty, as well as animal hoarding. Basically, everything related to dogs, cats, domestic animals and livestock that a police officer would investigate compared to people.

Q. You might want to slow down a little bit. I think our court reporter has a little difficulty if you speak that fast.

A. Yes.

Q. Have you developed any specialties in the field of animal [57] control over your years?

A. Yes, sir. I focused on two main areas, the first would be blood sports. That's animal cruelty investigations related to dogfighting and cockfighting, as well as animal hoarding investigations which relates to mass animal seizures, houses full of hundreds of animals.

Q. With respect to the first specialty of dogfighting and blood sports, have you ever served as an instructor in that field?

A. Yes, sir. I'm a certified instructor for The Humane Society of the United States as well as the National Animal Control Association. I instruct training in

blood sports investigations on a monthly basis for those organizations. Most recently helped set up the Cook County Illinois Dog Fighting Task Force.

Q. In what city is Cook County, Illinois?

A. Chicago.

Q. Can you give us an idea of the number of dogfighting cases that you investigated over your career?

A. I've probably investigated well over 1,000 complaints of dogfighting in my career.

Q. Some of those investigations, do some of them involve what you would consider to be major cases involving dogfighting?

A. Yes, sir.

Q. How would you define a major case?

[58]

A. Major case would involve ten or more dogs, usually evidence of advanced training techniques, possible connections with other jurisdictions or localities, people traveling for the purposes of dogfighting, that would be basically the major cases.

Q. Can you give us an idea of how many major cases you've worked on?

A. I've probably worked on 15 or so major cases and consulted with other jurisdictions on their cases.

Q. Have you had an opportunity to interview individuals who have engaged in actual dogfighting at the professional or contracted level?

A. Yes, sir.

Q. Can you give us an idea of how many you've had a chance to talk to, just a rough idea?

A. I've talked with four or five individuals that are engaged in that type of activity.

Q. Have you ever testified before the Virginia legislature?

A. Yes, sir.

Q. Can you describe the context in which you so testified?

A. Yes, sir. I was part of the group that testified in support of the revised dogfighting legislation. I gave testimony before both the Senate and House agriculture committees on dogfighting.

Q. Did that lead to the passage of a revised dogfighting law [59] in Virginia?

A. Yes, it did. In 1998 we passed a revised statute that improved our ability to detect, investigate and arrest, prosecute and convict those engaged in illegal dogfighting.

Q. Mr. Kumpf, have you received any awards for your work as an animal control officer?

A. Yes, sir. I was named the Virginia Animal Control Officer of the Year by the Virginia Federation of Humane Societies in 1995, by the Virginia Federation of Humane Societies, and I was named International Animal Control Officer of the Year in 2001 by the Western Australian Rangers Association.

Q. Have you testified in court before?

A. Yes, sir.

Q. Have you been recognized as an expert witness in court on the subject of dogfighting?

A. Yes, sir, I have.

Q. Are you referring to courts in the State of Virginia?

A. Yes, sir.

MR. KAUFMAN: Your Honor, at this time, I offer Mr. Kumpf as an expert in the methods and practices of illegal dogfighters.

THE COURT: Any questions on qualifications?

MR. NOVARA: No. No objection, Your Honor.

THE COURT: All right. The Court recognizes him as an expert in his field.

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[60]

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Q. Let me then turn to dogfighting. In your review, are there various levels of dogfights within the United States?

A. Yes, there are.

[61]

Q. Can you describe what those levels are?

A. There are several levels of dogfighting. The basic level or street fighting level is a spontaneous group of dogfighters. These are usually young men who are trying to prove who is the toughest person on the block and they use these animals as weapons or tools for intimidation.

You move up from that level to what is referred to as hobbyists or dabblers. These are people who are more into the fighting of the dogs for the gambling potential. They are interested in not so much the blood lines but in the quick return that they can see after a fight, how much money they can win.

You move up from that level to the professional level where you find people that are very interested in the breeding and history of the dogs and their role is to basically breed the ultimate fighting dog. They look at blood lines, how many fights particular animals have won, and they try and come up with a genetic match that creates that ultimate fighting dog.

Q. In a professional fighter, are those contracted fights?

A. They can be contracted matches. In that match, two people would agree to a match with a dog of the same sex and an agreed upon weight at a specific time. They would then meet at that time in order to have the two dogs refereed by a third neutral party so that that match could be judged and then [62] reported.

Q. Are there typically spectators at these matches?

A. Yes.

Q. Where are these matches typically held in the United States?

A. They can be held in variety of locations. In rural areas, they're often held in barns, out of the way places. When you move into a city or an urban environment, they may be held in warehouses, abandoned buildings, basements, anywhere that avoids the prying eyes of either law enforcement or casual citizens.

Q. Are there any notices or advertisements for these fights?

A. There are no notices or advertisements that are basically placed on telephone poles, but within the underground dogfighting community, you may see calls for a fight to be held by posting on the Internet or by notice in one of the underground fighting magazines announcing that a person has a particular dog and particular weight that's looking to have a show, which is a term of art used to refer to a fight.

Q. Has law enforcement made attempts to attend these underground dogfighting fights?

A. Yes. Have made attempts. They're very difficult to infiltrate because most of the people attending these fights know everybody else that's invited to attend a fight and newcomers are looked at very closely. In fact, at some of [63] these matches, they'll take a few minutes before the actual match begins to kind of eye the other people in and see if they think they might be with law enforcement.

Q. Is there a referee that is in a part of these matches?

A. Yes.

Q. Can you just then describe for the jury how one of these professional dogfights would work.

A. In the pit, essentially, for a professional dogfight, they would agree on a time and place and they would meet with the dogs. The two handlers would go to the area where the dogs are supposed to be fought, either a ring or a pit, or just an area designated for that purpose. The dogs would be weighed, each of them must be at or below the weight that they have contracted to fight at. If both two dogs meet that criteria, then each dog would be washed. That's to make sure that there are no poisons or foreign substances on the animal's fur that could either harm or injure the other dog or make the other dog not want to bite and keep biting that particular animal.

At that point, once the dogs are washed, they're both introduced into the pit or the ring. The dogs are faced away from each other behind what is called a scratch line. The referee enters the pit, he'll stand between the two contestants, he'll advise them to turn and face your dogs, at which point each handler will turn behind that scratch line, facing their dog to the opposing dog, and the referee will [64] then give a command to release your dogs. At that point, the dogs are supposed to run from behind the scratch line, meet in the center of the ring and engage in combat.

Q. When the term a dog is scratching or a dog failed to scratch is set forth, what does that mean?

A. The dog held behind the scratch line can be there for one of two reasons. It can start there—at the beginning of a match or during the match, there may have been what's called a turn or handle where the referee

has each of the dog handlers physically take their dogs back to their respective corners and face them away from each other. The commonly accepted time for that is about 30 seconds. The dogs are then ordered faced again and released. The dog which turned away first has ten seconds to run to the center of the ring and try and bite the opposing dog. If he does, the fight continues again until the dogs release each other. If he doesn't cross that scratch line, he has essentially decided he's not going to fight anymore and the fight is over and he's declared the loser.

Q. Can you describe then, is that the only way that a dogfight can end in this context?

A. No. You can have a fight end in several ways. In one case you may have one dog expire. While it is uncommon, it still does happen and a dog would fight and would die from its injuries in the ring.

Another way that the contest could end is one of [65] the dogs simply does not want to fight anymore. It continues to turn away, it won't engage in other dog, and when it's required to be released to fight, it won't run across and try and attack the other dog.

The third way a match could stop is the handler could decide his dog has had enough and isn't going to win and he can do what's called picking up his dog. That's essentially the same thing as a boxer throwing in the towel. If he just picks it up, the fight is declared over.

Q. Are there set periods of time between rest periods?

A. No. Unless agreed upon beforehand, the fight goes as long as each dog is mouthing the other dog and continues to fight. It can be ten minutes, it can be an hour, it can be up to two hours. If they stop for a handle, they have 30 seconds in their corners and then they're released again, but it could be any length of time.

Q. What do you mean by "they stop for a handle"?

A. If one of the dogs turns away or doesn't mouth the other dog and the referee advises the handlers to handle their dogs, he'll take—order them to take their dogs to their respective corners, they'll go there for approximately 30 seconds, release them to start fighting again.

Q. What are break sticks?

A. A break stick or a parting stick is basically a wooden or Plexiglass pry bar that is used to separate dogs' jaws. A [66] couple of instances where you may see those used in a fight, when a dog gets a bite hold on a dog, on the opposing dog and it's not—there's no motion going, they're just standing there, the referee may call a handle, the handlers will take the break stick out or the parting stick, they will place it between the dog's jaws and use it as a lever and try to pry them apart. Some break sticks come equipped with what basically looks like a small hull on the end of the small hook.

Another instance where you would use it is where if a dog's lip gets hung over its canine tooth, it causes pain and it won't bite. It's called being fanged. They will use that hull and insert it in the hull in the lip next to the

tooth to pull the lip down off the tooth and away from the dog's bite.

Q. Sir, let me show you what we've marked as Exhibit 3E. Is this a break stick?

A. Yes, sir.

Q. Are there legitimate uses for break sticks?

A. Not that I'm aware of. It's not standard equipment that's issued to an animal control officer. Most people that breed dogs don't have one of these lying around.

Q. Mr. Kumpf, have you had the opportunity to see during the course of your career pit bull dogs that have been involved in fights?

[67]

A. Yes, sir.

Q. Can you give the jury an idea of how many dogs you've seen that have been involved in the types of fights you're describing?

A. I've seen probably well over 1,000, 1,000 dogs that have been injured as a result of a dogfight.

Q. Can you describe to the jury what injuries you've seen and what—what injuries you've seen in looking at these dogs?

MR. NOVARA: Objection. Relevance. 403.

THE COURT: Overruled.

BY MR. KAUFMAN:

Q. You may answer.

A. The predominant injuries you see in these dogs are punctures, lacerations. These wounds are concentrated in the four limbs, the chest, the neck, the ears, the muscle. Basically, if you had two dogs facing each other and engaged, that's where the majority of these injuries result.

Q. Does scarring occur on these dogs?

A. Yes. It's very common. You'll see scars from partially healed or poorly healed injuries. It's also common to see traumatic amputation, ears missing, toes missing, pieces of the dog that have been removed in a fight with another dog.

Q. Mr. Kumpf, are you aware of the conditioning period that takes place before a dogfight?

A. Yes, sir.

[68]

Q. Is there a term of art in the dogfighting world for that conditioning period?

A. Yes. The conditioning period is commonly referred to as a keep.

Q. K-E-E-P?

A. Yes.

Q. What is the importance of the conditioning period or the keep?

A. As I mentioned earlier, a contract match occurs between two dogs of the same sex at a previously agreed upon weight. When a dog is being kept at the owner of the handler's property, it's kept what is called chain

weight. This may be a number of pounds greater than the agreed upon contract weight. Just as a wrestler or prizefighter has to go from his nonconditioned weight to his conditioned weight, the keep is designed through a period of exercise, diet, training to take the animal from its chain weight right up to the date of the fight when it should be at its match weight.

Q. Which is higher, the chain weight or the match weight?

A. Generally, the chain weight is higher than the match weight. It's a weight reduction plan, not a weight increase plan.

Q. What types of equipment are used by dogfighters in this conditioning period?

A. They may use a number of devices, such as a treadmill or a [69] slap mill, device known as a cat mill or jenny spring poles, flirt poles, in some cases they may even use something like a swim tank.

Q. Let me stop you for a moment. You mentioned a cat mill or jenny spring poles; is that right?

A. Yes, sir.

Q. Can you describe what that looks like?

A. Basically, it's a carousel-type contraption similar to a horse logger. It has a central pole with an axle and a double bar arrangement that allows the dog to be attached at one end to a harness and then at the other end there would be some type of bait or lure, either a live animal in a cage or a hide, and the dog simply runs around in circles chasing this hide or lure for a period of time.

Q. What is the purpose of putting a dog in that type of contraption?

A. Similar to building—like running on a treadmill, it builds up the dog's stamina and endurance and gives it some drive to focus on while it's doing that.

Q. You also mentioned a spring pole and flirt pole; is that right?

A. Flirt.

Q. F-L-I-R-T?

A. Yes, sir.

Q. Let me ask you first what a spring pole is?

[70]

A. A spring pole is a device that usually consists of a rope or chain attached to a heavy duty spring that is suspended from either an overhead girder or possibly a tree limb. At the base of this contraption is an animal hide of some type, and what it's used for is the dog will be encouraged to jump, grab hold of the hide and basically through body motions bounce up and down strengthening its jaws and upper body showing how long it can hold onto that target bait.

Q. What about a flirt pole, is that a similar device?

A. It's a similar device, but it's basically designed for a person to hold instead of a tree limb. It's a pole with a rope on the end, once again, a hide or bait, and it's designed for a person to hold up so the dog will jump up and they bounce the dog using their body strength.

Q. What conditioning to the dog occurs through the use of a spring pole and a flirt pole?

A. The most—the purpose of—the focus of that is building up jaw and upper body strength. Basically, what you're doing is building up the dog's biting potential.

Q. Is it fair to stay that there's a science to conditioning dogs for dogfights?

A. Yes, sir.

Q. And can you tell us where that information is available?

A. The information available on how to train your dog to fight a dogfight is available through the underground [71] publications that the sport has. They also frequently distribute this information now over the Internet. There are videos and other training aids that are made available through that underground community to teach them how to keep a dog.

Q. Have you personally seen some of these underground journals that you just referred to?

A. Yes, sir.

Q. Can you give us the names of those journals that you recall?

A. Some of the ones I'm familiar with are the Sporting Dog Journal, the American Game Dog Times, Pit Bull Gazette, Pit Bull Reporter, Bits on Pits, Your Friend and Mine. There's quite a number that come—spring up. They're in publication for a while, then they go out of publication and then come back.

Q. To your knowledge, have those types of journals been found in search warrants executed at the residences of dogfighters?

A. Yes.

MR. NOVARA: Objection.

THE COURT: Overruled.

BY MR. KAUFMAN:

Q. You can answer, sir.

A. Yes, sir, they have been found.

Q. Let me focus on the Sporting Dog Journal for a moment. Do you have an opinion as to where Sporting Dog Journal stands in [72] this realm of underground dogfighting magazines?

A. Sporting Dog Journal is probably the preeminent, No. 1 on the list of underground dogfighting publications. Most dogfighters look to it as essentially the guidebook and bible on how to fight dogs and fighting reports.

Q. What types of information is available in the Sporting Dog Journal?

A. You will routinely find match records of dogfights, you will find lists of champion dogs both for winning fights as well as producing champion fighting dogs from puppies. You'll see ads for dogs for sale or dogs that stud. You'll see ads for materials and equipment used for dogfighting; information on how to treat injuries resulting from a dogfight; articles on how to avoid detection by law enforcement and subsequently how to

defeat prosecutions. A lot of technical information, very accurate information on how to fight dogs.

Q. Does the term “champion” have a particular meaning in the dogfighting world?

A. Yes, it does.

Q. What is the meaning?

A. A champion is a dog that is won three contracted and reported matches. Those fights don’t necessarily have to be in order, there may be a break and a loss between, but they have won three fights.

Q. What about the term “grand champion,” does that have a [73] different meaning?

A. Yes, sir. A grand champion refers to a dog that has won five consecutive fights without a loss. And if the dog should happen to lose its sixth fight, according to actual rules, then it loses grand champion status.

Q. What about the term register of merit?

A. Yes.

Q. What does register of merit refer to?

A. Register of merit refers to particular—specific dogs who have sired or through their blood lines have sired a number of champions or grand champions and by checking back through the blood lines, you can determine that they are the sire of these particular dogs.

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Q. Do you have any special expertise in catching large animals such as hogs?

A. Yes, sir.

Q. Can you explain your expertise?

A. I instruct class in large animal capture through the National Animal Control Association. We teach how to capture escaped farm animals such as cows, pigs, horses, things of that sort. I've also consulted with various groups on dealing with things such as hog truck turnovers where large numbers of animals are released at one time.

Q. Are the methods shown in Catch Dogs legitimate methods, in your view?

A. No, sir. You don't use a pit bull to catch a hog.

Q. Why not?

[80]

A. The object, at least if you're trying to capture a hog, the idea is to capture it healthy, and as shown in these videos, a pit bull trained in these fashions basically goes over and destroys the animal. It's not something like you would see someone that's hunting with say a pack of beagles, which the object of those dogs is to follow the dog—follow the scent animal and point it out to the hunter. They're not being used as tools, they're being used as weapons.

Q. In your opinion, does the Catch Dogs video have any serious educational value?

A. No. It doesn't. If it had educational value, you would see the one particular animal which is ripping the

pig's face off, they wouldn't let that go on. That's inhumane treatment of that animal, they could stop it right then and there and say, no, this is what you shouldn't allow to happen, but in the video it just goes right on through.

Q. Does that video have any value to animal control officers?

A. No, sir. We would never use that as training tool.

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DR. HARRY BENDIX, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q. Sir, can you please state your name?

A. I'm Dr. Harvey Bendix.

THE COURT: Dr. Bendix, would you move closer to [87] the microphone.

BY MR. KAUFMAN:

Q. Dr. Bendix, can you tell us how you are employed?

A. I am hospital director and owner of the Norwin Veterinary Hospital in North Huntingdon, Pennsylvania.

Q. Can you tell us your educational background?

A. I attended the University of Pennsylvania School of Veterinary Medicine. I graduated with a veterinary degree in 1975. I got my Bachelor of Science degree from the Penn State University in 1971.

Q. What was your major at Penn State?

A. Penn State, I graduated Bachelor of Science in Animal Sciences.

Q. Can you briefly describe your veterinary career leading up to your ownership of the Norwin Animal Hospital?

A. I trained at the Animal Medical Center as an intern in my veterinary career when I was in my senior year. I did a tour of the Bronx Zoo. I did live at the Narberth Animal Hospital in Narberth, Pennsylvania, when I was in veterinary school. I did a turn at Dr. Ruth's Animal Hospital in Lansdale, PA, when I was in veterinary school. And when I was in undergraduate school, I was also employed by the Pittsburgh Zoological Society here in Pittsburgh.

Q. As part of that job with the Pittsburgh Zoological Society, did you ever appear on television?

[88]

A. Yes, I have.

Q. In what capacity?

A. In television, I was taking animals on Romper Room. I was Mr. Harvey on Romper Room. I would take the zoo animals on and educate the children on animals.

Q. How many years was it between graduating from veterinary school and starting your own business the Norwin Animal Hospital?

A. In '71 I entered veterinary school, '75 I graduated. We opened the Norwin Veterinary Hospital in 1977. Prior to opening the Norwin Veterinary Hospital, I was employed at the Monroeville Veterinary Hospital—that was 1975 to 1976—as a general practitioner under Dr. Robert Lynch. In 1976 I was at the Werntz Memorial Hospital in Verona, PA, under Dr. Burkhart. And then 1977, we opened up the Norwin Veterinary Hospital.

Q. Have you been operating the hospital continuously ever since?

A. That is correct.

Q. Do you presently work with any police departments in the Western Pennsylvania area?

A. I'm presently consultant for approximately 30 different police dogs. This includes narcotics dogs, bomb dogs, utility dogs. This includes the bomb squad dogs of Greensburg, State Attorney General's narcotics dogs and several districts and [89] boroughs throughout Western Pennsylvania.

Q. Have you ever been the consulting veterinarian on any movies filmed in Pittsburgh?

A. Yes, I have. In the early '80s or '90s there was a movie filmed here in Pittsburgh. It was called "Bump in the Night." It was starring Christopher Reeve, Meredith Baxter-Birney and Wings Hauser. I was called to be the consulting veterinarian. They needed a veteri-

narian on-site because there were some animals in scenes.

Q. Have you received any awards or honors during your career as a veterinarian?

A. I have been Veterinarian of the Year in 1995. I have been awarded an award from Nine Lives for my veterinary career. And I have also been Pennsylvania Veterinarian of the Year '95 and also an award for the AVNA in '95 for service to them.

Q. What is AVMA?

A. American Veterinary Medical Association.

Q. Have you treated animals which have been in dogfights?

A. Yes, I have.

Q. What are the two types of dogfights?

A. Well, we have intentional dogfights, such as like the videos that you're watching, and then there's the accidental dogfights that happen, Mrs. Jones' two dogs just happened to get into a skirmish. There is intentional and unintentional.

Q. Can you give the jury an idea of the frequency with which [90] you see dogs that have been involved in intentional fights?

A. Intentional fights, I see those when I'm called on by police departments or humane agencies to consult on a case. I may see one or two a year.

Q. Have you testified in court before?

A. Yes, I have.

Q. In what types of cases have you testified?

A. I have testified in cases where human children were bitten by dogs. I have also testified in criminal cases involving pit bull fighting.

MR. KAUFMAN: Your Honor, I offer Dr. Bendix as an expert in the area of veterinary medicine.

THE COURT: Any questions on qualifications?

MR. NOVARA: No, sir. No objections.

THE COURT: The Court recognizes the witness as an expert in his field.

BY MR. KAUFMAN:

Q. Dr. Bendix, let me first ask you to describe the extent to which you have had contacts with pit bulls.

A. We see pit bulls—they're increasing number in our clinic. We have several that are family pets and they do—they are very, very nice, loving dogs. We also see the pit bulls that come in that have been in the street fights.

Q. Have you watched all three videos Pick-A-Winna, Japan Pit Fights and Catch Dogs in their entirety?

[91]

A. I have watched them on two occasions in their entirety.

Q. That was part of your preparation for testifying in this trial?

A. That is correct.

Q. From treating dogs that are in fights and from watching the videos, are you familiar with the injuries that occur and can occur to pit bull dogs during these types of fights?

A. Yes, I am.

Q. Can you describe the types of injuries that these dogs suffer?

MR. NOVARA: Again, objection as to general, non-video specific testimony of injuries.

THE COURT: Overruled.

THE WITNESS: The bite wounds that we see, the bite wounds we see are—most of them are bite wounds. These bite wounds are inflicted by the teeth. There are tears in the skin. There are puncture wounds. There are lacerations. There can be broken teeth. There can be ruptured eyes. There can be blood in the eyes, shredded ears, lacerations on the ears, puncture wounds in the legs, and, in severe cases, we may even see chest wounds or abdominal wounds where the dogs have been ripped open in the abdomen or deep puncture wounds into the abdomen.

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Q. Dr. Bendix, can you begin by first explaining to the jury the different types of teeth that are found in a dog's mouth?

A. The first teeth that we see, they're the same on the top and the bottom. These front ones are the incisors. They're the nippers. They're the ones that grab on. The big teeth [93] here are the canines. Now, you have to understand this is a model that is given to veterinarians to demonstrate to clients dental disease, so you may see some fractured teeth in this model, but a normal dog has approximately 42 teeth. That may vary, depending on whether some did not erupt or any were extracted or didn't grow in properly, or sometimes dogs can have extra teeth. But anyway, these are the canines. These are the ones that do the most damage. Whenever these canines go in, what you may see on the outside is simply a little puncture wound, but what we see as surgeons, when we get into these dogs is these teeth go in, they puncture, they tear and as they rip open blood vessels, they drag in the contaminants of fur and all the contaminants on the skin to introduce infection. So you've got a compressive injury, you have puncture holes, you have bleeding, you have nerves that are firing off because they're disturbed and the dog is in pain.

Q. Dr. Bendix, let me stop you. Can you give us an approximation of how deep a wound the canine teeth can make in an opposing dog?

MR. NOVARA: Objection, Your Honor, as to this.

THE COURT: Overruled.

THE WITNESS: What will happen, you don't look at it as one tooth because you have a top tooth and a bottom tooth. So this dog has his mouth open. You've got in a normal dog four canine teeth. Remember, some of these are [94] broken or missing on the model, so the

dog comes down, these are puncturing, these are grabbing on.

Now, in the fight wounds—the fight videos that you’re seeing, you’re seeing dogs and pigs that are being pulled, twisted, turned, yanked on and these are gripping and shredding the tissue. So you have four teeth and these are average-sized teeth. Some of these canines are much bigger than what you see here. But these teeth are going in doing most of the damage as these are biting on. The teeth in the back were more for grinding, but they’re grinding and crushing.

Q. What are the names of the teeth in the back?

A. You have premolars here and then of course the molars in the back.

Q. Is it possible when a dog bites another dog for bones to be broken?

A. Yes, it is possible. In fact, in one of the videos you’ll hear them describe how in a hog a jaw was ripped apart. When these dogs, as you saw in the video this morning, when they’re down in the submission position, these dogs are biting at the legs where you can easily have enough compressive forces to break a bone.

Q. There’s a reference in one of the videos to the stifle part of a dog?

A. The stifle is the correct name. That is equal to the [95] knee. If the dog is ripped apart and torn apart in the leg, you can rip the femoral artery or lower arteries, you can get into the knees, introduce a knee infection. You can shred the knee ligaments, the lateral col-

lateral, medial collateral and you can also introduce infection into the joint.

Q. Now, with respect to the first type of teeth, the nippers that are in front, can those smaller teeth cause injuries?

A. Absolutely. They're going to puncture the skin. As the dog is pulling and tugging, he's going to be ripping and tearing with those, too.

Q. Dr. Bendix, can these dogs sustain internal injuries during the course of a dogfight that cannot be seen by the viewer?

A. Absolutely. You can have dogs that have hematomas, bleeding vessels underneath the skin. You can see dogs that have ruptured organs such as the spleen. You can see punctured lungs. You can have nerves that are torn. If they penetrate through a joint like the stifle, you can have damage to the ligaments and knees. You're not going to see that until you surgically open them.

Q. Can dogs bleed internally?

A. Absolutely.

Q. With the respect—you mentioned briefly when you were over near the jury about the possibility of infection. How would the infection enter the dog?

[96]

A. Once you sustain a break in the skin by a mouth, the mouth is not sterile. You have literally hundreds and hundreds of germs that can enter the body. If you introduce enough germs into the body within a matter of

a few hours, infection is going to take place that can easily overwhelm the attack dog's defense system. So we see dogs come in with abscesses and infections all the time from bite wounds.

Q. Does the number of puncture wounds in a dog have any effect on the likelihood of infection?

A. The more puncture wounds, the more contamination, the more infection.

Q. Is anemia a condition that can result in dogs from fights?

A. If you have enough puncture wounds and enough bleeding underneath the skin or rip open a major vessel, absolutely, a dog can bleed out.

Q. What is anemia?

A. Anemia is not enough red blood cells. In layman's terms, you have lost blood.

Q. Are there certain areas of the dog where if torn or cut open by the opposing dog's mouth could lead to death?

A. They can rip open the jugular vein, rip open a chest, rip open an abdomen, those are some of the more vulnerable spots. Also, just from the massive amounts of injuries, some of these dogs just lapse into shock and can die.

Q. Are there scars that form on dogs who are in these fights?

[97]

A. Scars are what happens whenever the skin closes over. If a surgeon makes an incision on you, you will heal with a scar. So what happens, all these puncture wounds and tears and rips are on the skin, if they heal, they are going to leave a scar. On the videos you'll see they will manifest like little white areas of hair loss. You can't see it, but it's very thick tissue. It's what mother nature does to heal, forms scar tissue.

Q. Let me move to a different area. Is exhaustion or fatigue in a dog a concern for a dog in a catch dog-fight?

A. Absolutely. As they even mention in the films, these dogs, you see them huffing and puffing and panting. These dogs can get hyperthermia, which means their body temperature is above normal. A normal dog's temperature would be 101 to 103½. We'll see dogs coming in with heat exhaustion. Their temperature may be 105, 106. These dogs in the fights are not cooled off, they're fighting for 20 minutes, half an hour, sometimes for an hour, and they can just be plain exhausted. And they also talk in the video about cooling the core temperature.

Q. Did you see in your review of the videos—did you actually see dogs that in your opinion were so exhausted or fatigued that it should have been stopped at that point if it has to occur in the first place?

A. There were several dogs in the videos, they just were [98] submissive, they just didn't want to go out there and fight. They were being tested to the limits. You can see them, they're huffing, puffing, tail down.

Q. Does a dog have the ability to sweat?

A. The only sweat glands in a dog are around the feet or around the face muscle.

Q. How does a dog reduce its core temperature?

A. They pant. They can also divert blood to areas, like, the ears, they will become more vascular to relieve heat, but most of it is through panting. You and I sweat, but the dogs have to pant to relieve body heat.

Q. Is it possible for a dog to go through shock from a combination of injuries and exhaustion?

A. Absolutely.

Q. What is shock?

A. Shock is where the body isn't producing enough blood to the vital organs and the animal can drop their blood pressure. Some of these injuries also, as I said, can lead to death.

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[99]

Q. Are you able to tell as a veterinarian whether or not a dog is in pain?

A. Yes, we can.

Q. How do you tell that?

MR. NOVARA: Your Honor, I would object. We're conceding injury. I don't see why we need to be talking about pain.

THE COURT: Overruled.

Answer.

THE WITNESS: Dogs will come in—for example, if we have a dog that's in a dogfight, they have all of these wounds, we try to touch it, they're going to try to turn around and bite us. Unless we sedate them to evaluate them so you can touch them, they will try to bite you. They can be screaming in pain. Some of the videos, especially the Japan videos, we hear dogs screaming in pain.

Q. Can you see from looking at the dog, even if there's music in the background, whether a dog appears to be in pain?

A. We have a general idea. The dog may be favoring a leg, the dog may be arching over in pain. They may be hesitant to move because they're in so much pain, they just freeze in a position that they can't move. They're in so much pain.

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[100]

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Q. In your opinion, is a dog in these fights feeling more pain than a human being feels when you simply pinch together the skin on your elbow?

A. When you look at these videos, see all the different places where these dogs are bitten, ripped and torn, they're definitely in pain. These dogs you have to understand are going to fight to the death, if they were allowed to. If the fight is broken by the trainer, they may not get to the death point, but if you were to just let these dogs go on their own, they're just going to go until one of them is dead.

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[102]

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Q. Dr. Bendix, in your opinion, do any of these three videos, Japan Pit Fights, Pick-A-Winna or Catch Dogs have serious educational, historical or scientific value?

A. In my opinion, no. Most of what I saw was it was more of an advertisement for breed lines. It was an advertisement for the gentleman's books, his videos and other products that he sold about pit bulls.

Q. Is there any educational value to seeing the animals in these videos interact in this way?

A. This is no educational video. In my career in veterinary school, we were never shown films like this.

Q. In your opinion, would a veterinary school ever show films like this?

A. I would seriously doubt a veterinary school would show these films because pit bull fighting is condoned by the AVMA.

Q. Pit bull fighting is not condoned you mean?

A. It's—we do not encourage it. We do not want anything to do with it. We deplore it.

Q. In the Japan Pit Fights videos there is a reference to [103] veterinarians being at pit side in Japan. Did you hear that reference?

A. I heard that reference. My question on that, what is defined as the "veterinarian"? In foreign countries, the standard of veterinary care may not be as good or as technical as the United States. So a veterinarian

in a foreign country could be equivalent to what we would call a veterinarian technician here. They do not have the training, they do not have the expertise or the ability that we as graduate veterinarians in the United States have.

Q. Would it be ethical for a veterinarian in the United States to attend an illegal pit fight?

A. It would be illegal and unethical.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Criminal No. 04-51

UNITED STATES OF AMERICA

v.

ROBERT J. STEVENS, DEFENDANT

Transcript of Jury Trial Proceedings on Wednesday,
January 12, 2005, United States District Court, Pitts-
burgh, Pennsylvania, before Alan N. Bloch, Senior Dis-
trict Court Judge.

APPEARANCES:

For the Government: Stephen R. Kaufman, Esq.
 Assistant U.S. Attorney
 400 USPO and Courthouse
 700 Grant Street
 Pittsburgh, PA 15219

For the Defendant: Michael J. Novara, Esq.
 Assistant Federal Public
 Defender
 1001 Liberty Avenue
 1450 Liberty Center
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JOHN H. PARKER, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q. Sir, could you please state your name.

[4]

A. John H. Parker.

Q. Can you tell us what part of the country you grew up in?

A. I grew up—I was born in Rocky Mountain, North Carolina, and I grew up for several years in North Carolina, had jobs in North Carolina and Virginia.

Q. Can you tell us in what setting you grew up, whether it was city, suburbs or on a farm?

A. I grew up on what you would call now a small family farm.

Q. Were there any hogs or swine on that farm?

A. One of our primary sources of income, we had a 65 sow operation in North Carolina.

Q. What is a sow?

A. Female that has had young.

Q. After graduating from high school, did you attend college?

A. Yes, I did. I attended North Carolina State University in Raleigh and graduated in animal husbandry and I did some graduate work. I do not have a master's degree.

Q. What year did you graduate from North Carolina State?

A. 1962.

Q. Tell us about the jobs that you had then after graduating from college.

A. My first job after graduating from college, I was a county agricultural agent. That's part of the extension service—every state has that—and it's advising and helping the farmers grow crops and grow livestock and put in best [5] management practices, and also it involves marketing their products that they do produce.

Q. Where did you hold that job?

A. I started in a place call Kinston, North Carolina, which is in southeast North Carolina. I was there for a total of five years. I was promoted to what is called a real livestock specialist. That was also under the USDA county agricultural, and I had several counties that I advised farmers on marketing and production of animals.

Q. Did you work with hogs in those jobs?

A. Absolutely. Again, I have never known anything else but hogs and I have continued in that now since as a kid 4H club.

Q. After being an agriculture agent, did you obtain other employment at some point?

A. Yes, I did. I was hired by the North Carolina State Department of Agriculture as a livestock marketing specialist. I was in charge of their state grading programs of live hogs and feeder pigs and what we call telephone auction. We sold animals over the telephone, which was a new technology at that time. We sold them all over the East Coast.

Q. After having that position with the North Carolina Board of Agriculture, where did you go next?

A. Well, while I was at North Carolina, I served on the state board, the state pork industry board in North Carolina. We had a lot of contacts with the packing companies in Virginia. [6] They decided they wanted to have a state organization just like North Carolina had and they sent for me to be one of the applicants—I never thought I would end up with the job—and I have been in that job with the state pork association for 32 plus years now.

Q. What year did you start with the Virginia Pork Industry Board?

A. I remember March 16, 1972.

Q. What is your position with the Virginia Pork Industry Board?

A. I'm the executive director of the Virginia Pork Industry Board.

Q. How long have you had the position as executive director?

A. Since March 16, 1972.

Q. How many pork producing states are there in the United States?

A. Well, all states have a few hogs, but there are 44 organized states that have state pork producer organizations that help them in marketing and promotion and research and education and Virginia is one. Of course, Pennsylvania is one.

Q. Now, do you have counterparts then that hold your same position in these other states?

A. That's right.

Q. Can you compare your longevity compared to those other [7] counterparts of yours?

A. I don't want to sound like I'm bragging because the gray hair tells the tale, but I now have seniority on every single employee in the 44 states in both of my two national organizations. I have outlasted everyone.

Q. Sir, during your career, have you ever judged live hog shows?

A. At one time when my ego needed more satisfaction, I tried to judge as many livestock shows as I possibly could. At one time, it was over 20 different states. It was quite an honor to judge—my training as a youngster was in 4H and FFA.

Q. Let any stop your, what does FFA mean?

A. Future Farmers of America. 4H is, of course, the organization that's in each county that has to do with a lot of urban kids involved in 4H. I served on judging teams in both 4H and FFA.

Then I represented North Carolina state on two different judging teams, one of live animals and one of meat products. We competed and I had a good record in that, so it was natural that I would train judging teams after I got into extension service, and from that I started judging shows in different states and I judged quite a few shows.

Q. Do you have experience, or as part of your job, working with producers of pork, the industry, the pork industry?

A. The entire industry. In Virginia, we've always looked [8] upon—and our name has always been the Virginia Pork Industry Association, Virginia Pork Industry Board. We've always had the word “industry” because we wanted to involve everyone from the farmer that raised the pig to the person that is hauling the pig to the feed mill, that sells the feed to the packing company, that slaughters and processes the food and to the retailer. So we're involved in the pig from the time it is conceived until the consumer buys it in the supermarket.

Q. Sir, are you a hunter? Have you been a hunter during the course of your life?

A. I don't want to say I'm a retired hunter. I don't hunt as much now as I used to, but I have hunted since I was probably 11 years old.

Q. What types of animals have you hunted during your life?

A. Pretty much small animals, squirrel, rabbit, and, again, to make it a little better living, I got so I could afford to goose hunt a little bit, so I pretty much have those three.

Q. Have you ever testified in court before?

A. No, sir.

MR. KAUFMAN: Your Honor, I offer Mr. Parker as an expert in the area of hog and swine.

THE COURT: Any questions on qualifications?

MR. NOVARA: No, Your Honor.

THE COURT: The Court recognizes the witness as an [9] expert in this field.

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[19]

Q. Mr. Parker, have you watched the video Catch Dogs?

A. I have watched it three times, sir.

Q. Have you watched it in its entirety?

A. Yes, sir, three times.

Q. Did you form an opinion as to whether or not that video has any serious educational value?

A. Just my opinion, I don't see anything educational about it, as a hunter, as a citizen, as a man who really knows and loves animals and been involved with this hog industry as long as I have.

Q. Can you explain—if you as a hunter—you have never hunted wild boars?

A. No, sir, I have not.

Q. If you were—you have hunted various other kinds of animals over a 50-year period?

A. Oh, yes, sir.

[20]

Q. If you were interested in learning how to hunt wild boars do you think the Catch Dogs video would be of value to you?

A. First of all, the reason you hunt is to exhibit some skill and some competition and some challenge there. What I saw on these films there, just hogs were turned loose and wild dogs were sicked on these hogs and there was a slaughter. I didn't see anything that even resembled a hunt. A hunt is when you have dogs that you're paid a lot of money for and you're very proud of, you have spent a lot of time training and you pick up a cold trail, pigs, rabbits or whatever and walked around, then you follow that cold trail, that dog—man, I'd rather do that than shoot the animal. I like to hear the dog when he runs that trail and then eventually that dog will find that animal, and at that point, you need to put that animal out of his misery right then and you do that with a good shot. You don't fool around and injure the animal in this kind of thing. This is terrible what I saw. It's disgusting, really.

Q. Did you see these hogs and pigs of various kind and stress and would that have any affect on the taste of the meat once killed?

A. That's why I thought this tape is faulty because they talk about having a good meal that night off of this animal. That's the furthest thing that could possibly happen when you have dogs, five and six dogs shaking a hog, getting him [21] excited so all the blood will stay there. You're going to eat that meat tonight? We always chill meat. Every ounce of meat that everybody

eats is chilled. It never goes through a chill. That in itself is faulty. But the idea of stressing that animal and then talking about eating that meat tonight. And the other thing that needs to be said, too. The last thing we want in our industry is boar flavor, sex odor. It spoils the taste. I get calls occasionally they will slip by and they will get in the packing house and some lady will buy a ham in a store and the ham smells the kitchen, nobody can eat it. She wants to know what is wrong with the ham. Normally, it's because of sex odor where a boar got past all this inspection. It is not a perfect science and so they do get by. The last thing we want is sex odor. So I can't believe anybody is very interested in eating a wild boar. It would be the last thing I want to eat.

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[22]

Q. Mr. Parker, can you tell jury whether or not hogs and swine feel pain?

A. Oh, absolutely. The first thing, everyone needs to know is that a hog is a simple stomach animal just like a human. And that's the reason skin grafts are taken from swine skin because they're simple stomach animals. I get a little tongue tied. The heart valves of a lot of swine go into human beings. John Wayne died of cancer, but he had a pig's valve in his heart when he died. And that's a normal procedure of taking these and we got 100 other uses that we're very proud of that swine contributes to human. One of the major sources for insulin for diabetics is pig pancreas.

Q. I want to focus on whether hogs do feel pain.

A. Absolutely. The idea of these pigs being tortured and thinking they're not in pain, there's something wrong with that. What I saw on that film that I have seen three times, these tortured pigs are feeling pain just like a human being is feeling pain.

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[26]

Q. Mr. Parker, what type of hog was that?

A. That hog was Yorkshire gilt. Yorkshire is pre-eminent hog in this country.

Q. It was a domestic hog?

A. Absolutely.

Q. If there was audio there, what would you expect to hear?

A. Oh, my land, the pig would be suffering from the bites. You could see the bottom jaw was pretty much removed. It was under a great deal of pain and stress, I'm sure.

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[27]

Q. Now, if this farmer wants to catch this hog, are pit bulls necessary to do that?

A. That's the first time I have ever seen pit bulls used to catch a hog like that. And I can't understand. Normally what would happen, a farmer would have what's called panels and they would easily herd them up into a corner of a pen. I see no value sicking bad dogs on a hog that you're trying to catch.

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[30]

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Q. You said there are regulations that control how these things happen, like the stopping and feeding was an example, correct? But I think you just alluded to, it hasn't always been that way, correct?

A. No, in years gone by, like all farming, there were fewer regulations. As time has gone on, there have been more [31] regulations on everything.

Q. In 1972 when you started out, these more humane practices weren't necessarily the way you did it?

A. Let me say it this way. In 1972 when I first started, we had less hogs in confinement than we have today, more hogs were grown in open fields and this kind of thing. And now, the industry, like everything else, has consolidated. They have to get bigger to be able to survive and so we've gone to confinement. Pretty near all the hogs are raised in confinement.

Q. Factory farms, is that a bad word for you? Is there another way you can talk about it?

A. It's not a problem for me because the people that benefit by factory farms in my state are small people that have contracts that would have had to leave the farm had they not had a contract with the larger farm. The larger farm is able to buy inputs at a cheaper price and sell product at a higher price and it has kept them in business.

Q. That may be fine for the farmers. Let's talk a little bit about the pigs. These things are huge, correct, some of these farms?

A. Some of these so-called factory farms or corporate farms, get very large, that's right.

Q. You talked about confinement, the pigs are confined in small spaces of necessity, correct?

[32]

A. That's right.

Q. And do you know what this square foot per pig is, generally speaking?

A. Generally speaking, we try and have 12 square feet per pig. That's in a feeding floor.

Q. Let's talk about some of the nonfeeding floor. What is a furrowing crate?

A. Furrowing crate is where you bring a sow in just before it's time for her to have pigs, which is furrowing and you restrict her so that when the pigs are born, she can't flop down on this side and mash the little pigs or flop down on this side and mash the little pigs. There's a heat lamp on each side to draw the pigs out from under the sow, whereas if the sow was left, say, outdoors in a nesting area that she'd made a nest, we had a lot of pigs mishmashed. We average about ten pigs per sow where we used to average a much smaller number where they were mashed.

Q. Notwithstanding its utility for breeding purposes, the pig when it's about to give birth is confined in a space where it basically can't move around, correct?

A. It can move around but it can't turn around.

Q. Can't turn around?

A. That's right.

Q. And it's left in there for quite a period of time, isn't it?

[33]

A. It's left in there until the pigs are big enough where the pigs can scamper and kind of fend for themselves.

Q. That's weeks?

A. It could be in the neighborhood of weeks, but the idea of—these buildings cost so much, the idea is to get them all in and out as fast as possible because that makes the price less per pig.

Q. Nevertheless, these intelligent creatures that you testified about, you bring them in to this narrow space where they can't turn around and you keep them in there for weeks at a time, correct?

A. Up to three weeks would be the max.

Q. You talked about some of the other practices, electric prods, right?

A. That's at the packing house.

Q. And that's still done today, right?

A. Absolutely.

Q. And those things hurt, don't they?

A. Well, it stuns that pig in a micro second.

Q. I'm talking about the prod. When you talked about some of the negative practices that you're trying to fix, one would be the prod to move them along?

A. We would love to see all of those outlawed and banned and put in—

Q. But they're not, are they?

[34]

A. Occasionally a farmer will have one, that's right.

Q. It's used, isn't it?

A. Occasionally.

Q. And those things hurt, don't they?

A. Oh, I wouldn't like to have electric shock put to me and I'm sure a pig won't either. They experience the same feelings we do.

Q. And you testified about sometimes the pigs are so exhausted by the time they're coming to slaughter they will just drop dead; is that right?

A. No. I didn't say that. I said if they're stressed on the truck—now, there's several reasons for that. Overcrowded could do that, it could be the truck didn't have what we call cut jakes or partitions and all of a sudden a truck driver is a reckless type driver, he puts on the brakes too fast, they all pile up in one place, so there are occasionally dead pigs found in those trucks.

Q. So in the process of your—in your industry's delivering pigs to market, for a number of reasons, overcrowding, stress, poor handling, pigs drop dead, right?

A. That's right.

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[35]

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Q. Well, people learn from mistakes, don't they? You've heard that I'm sure?

A. I believe that.

Q. So if you show a mistake, sometimes that can have more value than showing the right thing, couldn't it?

A. That's possible.

Q. Now, you also talked about how the pigs are killed, correct? And you kind of made it sanitary, you described it in a clinical sense. I think you said the electric—

A. Probe is put in the forehead.

Q. And it's killed and then it's hung up?

A. Hoisted.

Q. Hoisted?

A. That's right.

Q. And then its throat is slit?

A. That's right.

Q. And the blood pours out?

[36]

A. That's right.

Q. Now, is it fair to say that could be considered somewhat gruesome to certain people, right?

A. Exactly. It is gruesome.

Q. Now, if you went into the slaughterhouse and you took a video of these pigs coming in, being stunned to death, hoisted up, having its throat slit and the blood

pouring out, do you think that would have any educational value to the public?

A. I don't know of any educational value. It certainly would hurt the industry as far as our image is concerned.

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[37]

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Q. Now, is it your testimony that no one in this country legitimately uses catch dogs to hunt pigs?

A. I know of no one. Again, I sound like I'm bragging. That's my business. That's the only thing I know is hogs and I have never heard anyone using them such as we've seen today.

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[38]

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Q. Did you testify about hunting pigs in the wild?

A. If I—I believe maybe you asked the question, if I was going to hunt for wild boar.

Q. Right.

A. I would start off with a dog that would pick up the trail. I never saw these dogs even hardly looking for a trail. These dogs were attack dogs. And the hunting business is a business of picking up cold trails and getting warmer and getting closer to the animal and then

when you finally do get down, when you put that animal out of his misery in a hurry.

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I. LEHR BRISBIN, having been duly sworn, testified as [42] follows:

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[46]

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Q. Do you have any experience with respect to dog behavior?

A. Yes. Dogs have been a part of my life since I was a child and for the early part of my career in animal—it was a hobby, but it quickly in the late '60s, early '70s became part of my profession. Dogs help me retrieve ducks. Dogs help me find turtles and dogs above all help me catch and control pigs from my research.

Q. Do these dogs include the American Pit Bull Terrier?

A. Yes, they do.

Q. Briefly, what experience do you have with the American Pit Bull Terrier in particular?

A. If I may, can we establish that I also mean the American Staffordshire Terrier, which is the name by which the breed goes to with the American Kennel Club.

Q. Is that the same breed?

[47]

A. It is exactly the same dog.

Q. Different sets of papers for different organizations?

A. Yes.

Q. What is your experience with respect to those dogs?

A. I have trained, owned and shown those dogs in typical dog shows like you would see on Animal Planet or the Westminster Dog Show. I have trained them in obedience competition and I have used them to hunt the pigs. My work with these dogs have led me to be elected the vice president in the past of the Staffordshire Terrier Club of America and to serve as the elected delegate to the American Kennel Club in New York representing that breed of dog.

Q. Do you have any experience or—excuse me, do you have any expertise with respect to dogfighting with pit bulls?

A. Yes.

Q. And why do you have that experience?

A. Starting back in the mid to late '70s, the pit bull came under fire and became the target of breed specific legislation aimed at outlawing or severely restricting the rights of people to own these breeds. There were states in the United States, like Ohio, where you couldn't even take one of these dogs to a dog show.

The American Kennel Club asked me to become their expert witness of choice in challenges against these laws. The laws were based on a number of presumptions like jaw [48] pressure and above all on the fact that the pit bull or American Staffordshire Terrier was of peculiar danger to society because it had in the past been selected for dogfighting. It therefore became incumbent on me to learn the facts about dogfighting and see if this was correct, and I found it was not.

Q. Are you recognized as an expert on the American Pit Bull Terrier by any groups or organizations?

A. Well, the American Kennel Club and the United Kennel Club, which also registers the breed under a different name. And I have testified as an expert witness on the breed in court on I think it was nine occasions or so. Some of those were testimonies before mayor and city council, but about nine times in courts of law.

Q. Have you ever been asked to testify as an expert on pigs in the past?

A. No. Although my opinion has been sought on pigs and a number of court cases that never went to trial.

MR. NOVARA: I would offer Dr. Brisbin as an expert on the ecology, behavior management and control of pigs, including the hunting of pigs with dogs, as well as an expert on the behavior of the American Pit Bull Terrier, its historical use in dogfighting and its present day use in big game.

THE COURT: Any questions on qualifications.

[49]

MR. KAUFMAN: No, Your Honor.

THE COURT: The Court recognizes the witness is an expert in his field.

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Q. What kind of dogs would you use to catch the pigs?

A. To actually catch the pig, I use pit bulls.

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[55]

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Q. Now, you saw some of the training scenes on the Catch Dogs video?

A. Yes, I did.

Q. Is this similar to what you do in your own work?

A. The principles are the same, essentially.

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[57]

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Q. You heard testimony about break sticks, spring poles and treadmills, correct?

[58]

A. Yes.

Q. Do you know of any legitimate uses for these items?

A. To condition dogs. Treadmills, for example, in numbers are in the possession of dog handlers who get dogs ready to be shown on Animal Planet, in Madison Square Garden, Harrisburg Dog Show. These people have a number of different size treadmills that their clients' dogs work out on to get fit for the show, spring poles, flirt poles, all these things. These things are often used to amuse the dog, I guess you could use it to toughen up the dog, but break sticks, above all, are extremely important in situations where you don't have verbal control over the dog and be able to make it release on verbal command. Most all of the humane organizations I know, the city animal shelters, especially in areas where there are likely to be pit bulls in the shelter have and use break sticks.

Q. Have you ever been to a weight pulling contest?

A. Yes. In fact, early in my career, in the early '70s, I actually started putting on weight pulls, strangely enough with bloodhounds. I found out my big blood hounds loved to pull weights, wagons with weights in them. Later I found out that pit bulls were superb push weight pullers. I actually put on a demonstration of a weight pulling contest in the '70s at the Atlanta Convention Center.

Q. Do people condition their dogs prior to weight pull [59] contests?

A. Yes. I'm sure most people do. I certainly did mine.

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Q. With respect to the Pick-A-Winna videotape, what is your opinion as to its value?

A. It has a really unique value to me, which I intend to exploit to the fullest extent possible in the future. It was one of the first opportunities I ever had to see a dogfight after really decades of reading about dogfights and seeing pictures. I had never seen a video of a dogfight and that made crystal clear to me many important things that I resolved I needed to teach my students in animal behavior that I needed to educate the public, legislative, city councils, animal control officers, or I'm often asked to consult and lecture on pit bulls.

Q. Was there something in particular about how the fight was conducted and the human contact that was instructive?

A. Yes. The instructive thing to me about the Pick-A-Winna was the extremely close proximity within which the handlers and referee got to the dogs. These handlers and referees were literally on their hands and knees with their faces poked [60] right down at the action. At first, I didn't know why. Why would you want to look that close? And then Bob's handout material says they're looking to see if the dog gets fanged or gets that lip hung over his tooth. The important thing about that, that this tape really demonstrates is the important fact that if there ever was a dog on the face of the earth that was selected to not bite a man under stress, this is it. I mean if two German shepherds, or, heaven forbid, two Saint Bernards were fighting each other, you would at your own life's peril put your face down. In fact, so many serious bites occur when owners try to break up dogfights.

Q. With respect to the Japan Pit Fights video, what is your opinion?

A. The unique thing about the Japan—

Q. First of all, do you have an opinion as to whether or not that video has serious educational value?

A. The Pick-A-Winna?

Q. You already spoke about that. The Japan Pit Fights?

A. Yes, I do.

Q. What is that opinion?

A. It does indeed also have serious educational value to me.

Q. Would you explain why?

A. Yes. The institution of Cajun rules, which causes dogs to fight from the conditions in which death in the pit is a rarity but rather the termination of a fight due to the loss [61] of stamina or wind as you would call it is important. The reason the Japan video is important, because unlike Pick-A-Winna, where the parts of the fight are shown and then Bob Stevens comes on and tells you what happens at the end, that's not satisfying and one is left, gee, what is he covering up? How terrible is it at the end? In the Japan pit fight, you actually see from start to finish what you know because people are clapping and the dogs are being taken out of the pit and you get to see the condition of the dogs, which you—and it supports an important point that I make to my animal behavior classes and to the public in general, legislative bodies, that gameness, which is the word that is bandied around in this breed, is not—this is my personal opinion, but I readily believe it—gameness is not a behavioral

trait. It's a physiological trait. It has to do with the enzymes and the ability of the dog's body to continue to function under stress. And, you know, when other dogs on a treadmill will be passing out from exhaustion, these dogs reach down and grab not behavior, but an inner enzyme system of physiology that keeps them going.

Q. You've testified about how interesting these are to you and you started to talk about how they would be interesting to the general public. Could you speak more specifically why the Pick-A-Winna videotape and the Japan Pit Fights video would have serious educational value to the public?

[62]

A. When I testify in courts of law or before a mayor and city council, or I call it testifying to my students, I ask them to accept the fact that dogfighting, as such, does not predispose the pit bull to being a particularly dangerous animal. These tapes show them that.

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Q. With respect to the Catch Dogs and Country Living video, what is your opinion as to whether or not that particular video has serious educational value?

A. Yes, it does, but on a more eluded scale. I think the educational value there is to people who own pit bulls and want to hunt them. And Bob Stevens is alone, I think, in a very lonely field of those people who are telling people who own pit bulls. You have a responsibility to do things right, to not get the dog hurt, try not to get the pig hurt and do things with control and training. And that's—to a lot of these people, that's an absolutely foreign concept.

Q. Are these types of pig hunts common in the southeast?

A. Very.

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Q. Let me focus on one of the scenes that has been testified about here. Do you recall the scene where the dog in Mexico, I believe the dog's name was Katie, catches the hog by the mouth instead of the ear. Do you recall that?

A. Yes. I would say she tried to catch it and it didn't work.

Q. Does that particular scene have serious educational value in your opinion?

A. Oh, yes. That is a good example of what shouldn't happen. Let me emphasize that. When I teach, when anyone teaches, the educational value of the material you use is not predicated on the fact that that material shows everything going right. Otherwise, I would say football coaches wouldn't review last week's game films. They don't want to watch the film to show [64] the team how they did everything perfect. They want to show who missed their coverage, who didn't block, and that's the educational value of showing how things didn't go right, what you shouldn't do.

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[65]

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Q. To end, you've seen all three of these videos?

A. Yes, I have.

Q. You have given your opinion as to their value?

A. Yes.

Q. Do you plan on using them in connection with your work?

A. Not only the videos, but the handout, particularly the Pick-A-Winna handout, which I will use as what I call a required optional reading in my Canine Behavior and Dogs in Research teaching classes at the University of Georgia or elsewhere.

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[67]

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Q. Now, you said in your opinion, the principles used in the video were the same as a principles used in your training?

A. Training for catch dogs.

[68]

Q. Training for catch dogs?

A. Yes.

Q. You don't train catch dogs the way we saw in the video, do you, sir?

A. Essentially, yes.

Q. Would you permit a catch dog to do what the dog Katie did to the domestic farm pig?

A. Not if I could get it stopped in time, but if I was on video camera, I'm not sure how quick I would put it down and say, oh, my gosh, that shouldn't happen, and then quickly try and get the dog off the pig.

Q. So if you were using the video camera, you might just decide to continue shooting rather than put your video camera down and try to get the dog off the pig; is that what you're telling us?

A. I'm not sure what I would do. I can't say.

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[71]

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Q. Are you telling this jury that as part of your testimony, you would be attempting to convince that governmental body not to outlaw pit bulls, correct?

A. Yes.

Q. That you would show part of Mr. Stevens' videos where we see these pit bulls fighting?

A. I'm not sure I would show Mr. Stevens' Catch Dog video. I would show the Pick-A-Winna and the Japan Pit Fights. Usually, the breed specific legislation doesn't talk about catching pigs.

Q. I'm not talking about catching pigs. So you're telling us it's your opinion that it would help you convince a city council to not outlaw pit bulls by showing them Japan Pit Fights?

[72]

A. If the city council premised their justification for the breed specific legislation on the cornerstone that dogs are used for fighting and, therefore, are the jaws of death and a threat to human beings, yes, I would then use those videos to counter that argument.

Q. Don't you agree with me, sir, that those videos, Pick-A-Winna and Japan Pit Fights, indeed do show the destructive power of pit bulls?

A. No. Just the opposite. You can have two dogs that have jaws of death, the jaws that are supposed to rip animals asunder and look at them, for 40 minutes they do their best to do their worst to an opponent. They have each other buy the throat and nobody gets killed.

Q. Nobody gets killed, sir, but dogs get injured, do they not?

A. Not in that tape I didn't see it.

Q. You saw no injuries?

A. No, I saw two sworn out dogs at the end. I saw abrasions. I didn't see a gaping wound. I didn't see gushing blood, like you would if you had two German shepherds fighting, please, I mean it would be blood everywhere and one of the dogs would be exsanguinated. That means having loss of blood.

Q. Did you see the mat at the conclusion of the fight in the Japan Pit Fights?

A. Yes. It was smeared with blood from abrasions. I didn't [73] see an open, gaping wound on either of the dogs, any of the dogs in the Japan video.

Q. Are you denying, sir, that any of those dogs were punctured in those fights?

A. I can't tell. I didn't get close enough. Puncture wounds may have been there.

Q. As I understand your testimony, it's basically your opinion that the type of dogfighting we saw in Pick-A-Winna and Japan Pit Fights is not really harmful to a dog, other than they may get a few abrasions? Is that what you're telling us?

A. They are not more harmful than other comparable breeds of dogs which are not so being singled out for legislative discrimination, like Saint Bernards. There are five breeds of dogs that kill more people per dog out there than pit bulls and my contention is this shows that the kinds of injuries inflicted by those other breeds are not shown by pit bulls. They are flying, as I put it, knifing clamps.

Q. Dr. Brisbin, let me ask my question again. I'm not asking you to compare the pit bull to any other breed of dog?

A. But the legislative bodies do.

Q. Let's put the legislative bodies aside. I'm moving on. My question is, are you telling us that what we saw in Japan Pit Fights and in Pick-A-Winna, that in those videos, there is no harm to these dogs beyond some abrasions?

[74]

A. Harm is a hard word. I certainly wouldn't see serious injury. If you ask about harm, abrasions, if done bad enough, can be serious injury. I didn't see what I would call a serious injury. I didn't see any losing dog

in the Japan video. You don't see the end of the fight in Pick-A-Winna. I didn't see any losing dog at the end of the Japan fights that I thought needed immediate veterinary attention.

Q. Sir, would you acknowledge that there is the potential for serious injuries to dogs in the fights that we saw in the Pick-A-Winna and Japan Pit Fights videos?

A. Oh, certainly there is potential, but how frequent is it? I think I've heard your dogfight expert testify it's seldom did he see dogs killed.

Q. Dr. Brisbin, do you think it is responsible for a pit bull owner to engage his dog in this type of professional fight with another dog?

A. No.

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[75]

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Q. You said you were interested in Japan Pit Fights because it shows a quality that you referred to as game-ness?

A. Yes.

Q. And you're correct, the word "game" is used quite frequently in the videos we saw; is that correct?

A. Yes.

[77]

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Q. The more game they are, the more substantial the pain they will endure, right, the more game they are?

A. I think you can make a case for that.

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[79]

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THOMAS MICHAEL RIDDLE, having been duly sworn, testified as follows:

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[80]

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Q. Do you have any experience with the use of catch dogs in farming or on ranches?

A. Yes, I do.

Q. What kind of experience?

A. Well, I have been around pit bulls all my life. My grandfather was a hunter as well. And using pit bulls is very [81] necessary, especially if you get into a situation where you have a wild boar holed to a big thicket somewhere.

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[82]

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Q. What kind of dogs do you use to hunt wild boar?

A. Pit bulls, American Bull Masters, Plott Hounds sometimes Catahoula.

* * * * *

[83]

Q. And what do you use the catch dogs to do?

A. The catch dogs are used to subdue the animal because the Plott Hound himself is not tenacious enough or have enough grit is what we use in business, the term we use in the business, just doesn't have enough grit to really hold the animal there, especially if you get into a situation where a client has wounded an animal. California law dictates you are responsible for that wounded animal and you have to retrieve it and humanely dispense that animal.

Q. Are there situations where your hunters shoot the boar?

A. Yes.

Q. And do they always successfully kill the boar in their first shot?

A. Not always.

Q. Do you then use the catch dogs in that situation as well?

A. That's correct.

Q. And why do you do that?

A. To humanely dispense of the animal. You wouldn't want him getting away and dying somewhere in agony. And, again, California law dictates that you are legally required to make a reasonable attempt to retrieve your wounded game.

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[84]

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Q. Were you asked by the defense to review Mr. Stevens' video *Catch Dog in Country Living* and provide the Court with an opinion and testimony as to whether or not it has serious educational value?

A. Yes, sir, I was.

Q. What is your opinion?

A. I feel that it is very educational, especially for a young individual that wants to get into the sport of hunting and especially wild boar hunting and especially if he's interested [85] in using dogs for his venture. And I think that Mr. Stevens' literature as well as his videos are educational in that respect.

Q. Why does this video have value to young prospective hunters? What does it teach them?

A. It mainly shows them what not to do. Shows a lot of what to do, but shows what not to do, and both are equally important in order to be an educated, learned individual when you get into the sport of hunting.

* * * * *

Q. Have you gone on hog hunts in the southeast?

A. Yes, sir, I have.

Q. Did those hunts resemble the hunts that Mr. Stevens depicted in his video?

A. Yes, they did.

Q. I'd like you to focus on the scene from Mexico in which the dog, I think her name is Katie, unfortunately, latched onto the farm pig's mouth. Do you recall that scene?

A. Yes, I do.

Q. Does that scene have particular and serious educational value?

A. Again, it shows a person what not to do, what not to allow to happen. You want to train these dogs properly. You want the dog to understand that you want him on the ear for the [86] dog's safety. That dog if he would have gotten onto a wild boar, and especially the hybrids I deal with in California, he would have been killed immediately.

Q. Was it helpful and educational to see the dog-fighting scene at the beginning of the video?

A. Well, I would say it falls into the history of the breed, and in order to fully understand the breed itself, you should know very well the history of the breed, distasteful as it may be to some people, it's best to know the history of the breed and know the animal and what his talent is.

Q. This video contained certain training scenes. You talked about how you trained your dogs. Is the way you train your dogs consistent with the scenes that you saw in that video?

A. Very similar, yes.

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[87]

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Q. Do you ever use spring poles?

A. Uh-huh, yes, I do.

Q. Why do you use spring poles?

A. To develop the neck muscles, the rear mouth muscles, basically, to develop the overall physical structure of your bull dog because when he grabs onto that 400 pound— 4-00-pound wild boar, he's going to be lifted up off the ground several times, has to have enough strength to hold on.

[88]

Q. Do you ever use break sticks?

A. A very important tool for anybody with a large dog to have is a break stick.

* * * * *

Q. Mr. Riddle, do I understand correctly that when you take clients hunting, they all have rifles or some types of firearms?

A. Yes, sir.

Q. And so the object of the hunts that you guide people on is to shoot wild boar with a firearm; is that right?

A. That's correct.

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[89]

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Q. So you don't use the pit bulls to kill the boar, you use the pit bulls if one is wounded by a bullet shot?

A. That's correct. They can't kill them.

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[90]

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Q. My question, again, is there any particular, anything [91] particular about that dogfighting scene that makes it historical?

A. Again, it shows exactly what the bull dog was used for in times past. And, unfortunately, currently they use it now in Japan and some people here, of course. If I were to give a pit bull puppy to someone, I would have to let them fully know the history of that bull dog. And the reason being is that some people will get—and let me really stress this, bulldogs are a working dog. They're not your lap dog, they're not your show dog, they're not your foo-foo dog.

Q. Are you referring to bulldogs now or pit bull?

A. When I say "bulldog," that's my southern term coming out because we call them all bulldogs. So I'm referring to pit bulls. If you want to clarify. And they have to be educated as to what type of dog this is and what he is capable of. If they're not fully educated, that dog is in the wrong hands and doesn't need to be in that person's hands.

Q. So is it your testimony that there is a natural element of dangerousness about a pit bull?

A. There's a natural element of dangerousness in any large dog, but a pit bull is bred for his high prey drive. And having said his high prey drive, that's what

makes him so good at hunting and so good at being a hunting dog. And in the wrong hands, people have used this dog to kill neighbor's cats, they have used this dog for dogfighting, illegally, of [92] course, in the United States. They have used this dog to attack people. All of the wrong things for them—for this dog to be exposed to.

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[94]

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Q. And is it fair to say you have respect, even for the animals that are the subject of a hunt?

A. That's correct.

Q. And is one of the principles of hunting to prevent unnecessary suffering to the animals that are hunted?

A. Correct.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Criminal No. 04-51

UNITED STATES OF AMERICA

v.

ROBERT J. STEVENS, DEFENDANT

Transcript of Jury Trial Proceedings on Thursday,
January 13, 2005, United States District Court, Pitts-
burgh, Pennsylvania, before Alan N. Bloch, Senior Dis-
trict Court Judge.

APPEARANCES:

For the Government: Stephen R. Kaufman, Esq.
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For the Defendant: Michael J. Novara, Esq.
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[6]

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THE COURT: Members of the jury, I am going to give you your instructions now.

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[15]

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You will recall that I explained to you earlier that the defendant has been charged with three counts of selling depictions of animal cruelty. Each of these is a separate crime and you should consider each one separately and return a separate verdict for each.

Count one charges the defendant with on or about February 10, 2003, in the Western District of Pennsylvania, and elsewhere, knowingly selling a depiction of animal cruelty, namely, a videotape showing dogfights entitled Pick-A-Winna with the intention of placing said depiction in interstate commerce for commercial gain in violation of Title 18 of the United States Code, Section 48.

Count two charges the defendant with on or about February 10, 2003, in the Western District of Pennsylvania, and elsewhere, knowingly selling a depiction of animal [16] cruelty, namely, a videotape showing dogfights entitled Japan Pit Fights with the intention of placing said depiction in interstate commerce for commercial gain in violation of Title 18 of the United States Code, Section 48.

Count three charges the defendant with on or about April 4, 2003, in the Western District of Pennsylvania, and elsewhere, knowingly selling a depiction of animal cruelty, namely, a videotape showing dogfighting and dogs attacking hogs entitled Catch Dogs, with the intention of placing said depiction in interstate commerce for commercial gain in violation of Title 18 of the United States Code, Section 48.

You will note that the government charges that an offense occurred on or about a certain date. The government does not have to prove that the particular crime was committed on those exact dates, so long as the government proves beyond a reasonable doubt that the defendant committed the crime charged on a date or dates near the time charged in the indictment.

Section 48(a) provides that whoever knowingly creates, sells or possesses a depiction of animal cruelty with the intention of placing that depiction in interstate or foreign commerce for commercial gain, shall be guilty of an offense against the United States.

Section 48(b) provides that the statute does not apply to any depiction that has serious religious, political, [17] scientific, educational, journalistic, historical or artistic value.

In order to establish the offenses alleged at counts one, two and three, the government must prove the following elements beyond a reasonable doubt as to each count.

First, that the defendant sold a depiction of animal cruelty;

Second, that the defendant did so knowingly;

Third, that the defendant did so with the intention of placing the depiction in interstate commerce for commercial gain;

And fourth, that the depiction has no serious religious, political, scientific, educational, journalistic, historical or artistic value.

Therefore, you must first determine whether the government has proven beyond a reasonable doubt for each count the first element, that is, that the defendant sold a depiction of animal cruelty. The term “depiction of animal cruelty” means any visual or auditory depiction, including any photograph, motion picture film, video recording, electronic image of, or sound recording of conduct in which a living animal is intentionally maimed, mutilated, torture, wounded or killed. If such conduct is illegal under federal law or the law of the state in which the sale takes place, regardless of whether the maiming, mutilation, torture, wounding or killing [18] took place in the state.

Therefore, in determining whether the government has established that the videotape at issue in each count contains a depiction of animal cruelty, you must first determine whether the government has proven beyond a reasonable doubt with respect to each count that the videotape at issue in that count depicts conduct in which a living animal is intentionally maimed, mutilated, tortured, wounded or killed. To act intentionally, means to act voluntarily and purposefully and not because of mistake or accident or other innocent reason.

If you find that the government has proven beyond a reasonable doubt that the videotape at issue depicts conduct in which a living animal is intentionally maimed, mutilated, tortured, wounded or killed, you must then

determine whether the government has proven beyond a reasonable doubt that the conduct depicted in the video violated the law of the state in which the sale took place. The government may meet its burden by proving that the conduct depicted violated either the law of the state of the seller or the law of the state of the buyer. The government is not required to prove that the conduct depicted was illegal under the law of both the buyer's state and the seller's state. I instruct you that in this case, the seller of the videotapes at issue in each of the three counts was located in Virginia and the buyers were [19] located in Pennsylvania, therefore, the government can establish the first element by proving beyond a reasonable doubt that the conduct depicted violated either Virginia or Pennsylvania law.

As to count one and two, I instruct you as a matter of law that the videotape at issue in each of those counts depicts dogfighting, which is illegal under both Virginia and Pennsylvania law.

As to count three, which pertains to the videotape entitled Catch Dogs, I instruct you as a matter of law that the depictions of dogfighting contained in this video show conduct that is illegal under both Virginia and Pennsylvania law. As to the remainder of the video at issue in count three, you must determine whether any of the conduct depicted violated Virginia or Pennsylvania law.

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If you unanimously find the government has met its burden of proof on the first element as to count one, two or three, you must go on to determine whether the government has proven beyond a reasonable doubt the second element for that particular count, that is, that the defendant acted knowingly. [23] To act knowingly means to act voluntarily and intentionally and not because a mistake or accident or other innocent reason. It is not necessary for the government to prove that the defendant knew that selling depictions of animal cruelty was illegal. If you unanimously find that the government has met its burden of proof on the first two elements, as to count one, count two or count three, you must determine whether the government has proven beyond a reasonable doubt the third element for that count, that is, that the defendant acted with the intention of placing the depiction in interstate commerce for commercial gain. The term “interstate commerce” includes commerce between any place in a state and any place outside of that state.

If you unanimously find that the government has met its burden of proof on the first three elements as to count one, count two or count three, you must determine whether the government has proven beyond a reasonable doubt the fourth element for that count, that is, that the depictions contained in the videotape at issue in that count have no serious religious, political, scientific, educational, journalistic, historical or artistic value. Here, the defendant does not argue that the depiction in the videotapes at issue have serious religious, political, journalistic or artistic value, but argues that they do possess serious scientific, educational and historical value. You must decide whether the [24] government has proven

beyond a reasonable doubt that the depictions have no serious scientific, educational or historic value.

In determining whether the government has proven this element beyond a reasonable doubt, you must determine whether a reasonable person would find that the depictions have no serious scientific, educational or historic value, taken as a whole. The term “serious” means significant and of great import.

This requirement finds its roots in the First Amendment of the United States Constitution, which protects freedom of expression as a fundamental right in our society. Thus, the law does not condemn a depiction of animal cruelty if, taken as a whole, a reasonable person would find that the work has serious religious, political, scientific, educational journalistic, historical or artistic value. However, the constitutional right of freedom of expression does not extend to a depiction of animal cruelty when the work, taken as a whole, lacks such value.

The proper inquiry in this case is not whether an ordinary member of any given community would find serious scientific, educational or historic value in the material, but rather whether a reasonable person would find such serious value in the depiction, taken as a whole.

That almost completes my instructions to you. I’ll [25] close briefly with the final directions on how you are to arrive at your verdict.

The evidence presented has raised factual issues that you must decide as trier of the facts, and you must resolve those issues solely on the basis of the evidence you’ve heard or the lack of evidence and my instructions to you on the law. Your duty is to determine whether

the defendant is guilty or not guilty solely on the basis of the evidence, or lack of evidence, and my instructions to you on the law.

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[29]

[THE COURT:] Now is your opportunity to put any exceptions to the charge that you have on the record.

* * * * *

MR. NOVARA: Perhaps the most important issue is the definition of “serious,” which the Court defined as [30] significant and of great import. I believe the inclusion of the words “great import” raised it to an unnecessarily high standard.

THE COURT: That’s what the dictionary defines serious as.

MR. NOVARA: Serious means real, not trivial, not pretend, and I think that by raising it up to something of great importance, that you’ve inappropriately created a higher standard than necessary.

THE COURT: I don’t intend to change that.

MR. NOVARA: Finally, as to the bottom of Page 20, we had asked our proposed No. 2 instruction as to reasonable person, and I believe that you should have included the fact that a reasonable person could include a minority of persons as set forth in the laws that we had cited for you and not just any reasonable person.

THE COURT: I don’t intend to change that. I think I’ve properly charged on that.

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THE COURT: The Court recognizes Mr. Novara for your closing argument.

MR. NOVARA: Thank you, your Honor.

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[45]

Look at the government's Exhibits 6A, B, and C. These were the lists of the persons he sold his videos to. There are over 800 people here and the government's didn't show you that any one of them was a dogfighter. And who were these people? Who were the customers included on this list? Who do we see? Barnes & Noble orders books and music. Amazon.com.

Now, you'll also see that these organizations purchased the book, Dogs of Velvet and Steel, but the government has the advertisement here—I don't need to show it to you in detail, the book is on there, just like everything else.

* * * * *

PICK-A-WINNER

A Pit Bull Documentary

By Bob Stevens

We hope you have enjoyed this movie entitled Pick-A-Winna. We want to emphasize again, that it is a documentary on the history of our breed in the sense that it shows what distinguishes our breed. It may seem contradictory or that when we say we do not promote dog fighting we are just saying that to keep out of trouble. That is not the case. It can seem contradictory because we then turn around and show dog fighting on a video. That is no more the case than it is when a dog fight is shown in the movies such as *Call of the Wild* based on Jack London's novel by the same name. Actually the movie depictions of these dog fights tend to try and show gruesome scenes where the dogs are snarling, baring their teeth and fight to kill. That does not happen and the dog matches you view in our movie show none of that. You will find much more animal cruelty in most of the hunting videos available today. Again we do not promote, encourage, or in any way condone dog fighting. We are satisfying a public demand to view what made our breed the courageous and intelligent breed that it is. The matches that we show that took place in the U.S. are very old and happened when dog fighting was such a misdemeanor that the local sheriff was very often in attendance.

That said, we are excited to have completed the first home video in the format we did, with background music and narration. It was my first attempt at making a video in movie format. Actually it is the first one ever

made in this manner. But—you will see mistakes. There are quite a number of really bad glitches between scenes as it was very difficult using basic equipment to prepare the movie for you. Once the master is done, I can't re-do it. Another problem we had was using the microphone. It is quite sensitive and I didn't realize until the master was done that some of the narration is inconsistent in voice quality and even a breath can be picked up by the instrument. But the mistakes do not detract from the action and fun.

It was fun making this movie for you and a learning experience as well. The next movie I make won't have those same mistakes.

At the very end of the movie you will see our "Bloopers". So these are not mistakes in making the movie but rather we thought you'd get a kick out of some of our narration goof ups.

Prices. Since we don't have the huge volume of the movies you rent from video rental stores, our cost per video is much, much higher. Our videos must therefore, out of necessity, carry higher prices. When cost of reproduction and postal rates go up, we try not to pass the increases on to our customers until it becomes necessary—but from time to time we have to.

I'd like to point out a couple of errors in the narration of the tights. In introducing the first match I said the dog with natural ears will be coming out of the right hand corner as you view the screen and the dog with cropped ears would come out of the left corner.

That is backwards. Crop ears comes out of the right corner and natural ears from the left corner. The other error is that at the conclusion of the second match with

Dark Tail and the Buckskin, I said it went an hour and two minutes. It went an hour and ten minutes.

General terms.

There are some terms I would like to explain at this point for those who may be unfamiliar with them.

- Buckskin. In Pit Bull vernacular a light brown colored dog—from a light blond to almost brown coat is called a buckskin.
- Red. Dark brown 10 reddish brown dogs are generally called red dogs
- Brindle. There are no brindle dogs in your movie, but they are stripped dogs. A dark gray with red or brown background is common.
- Natural ears and crop ears. Some people cut a Pit Bull's ears sort of like a Doberman's ears that most people "crop". This is for appearance only. Most people let the dog's ears hang naturally untouched.
- Scratch. You will see this term also defined in the section that explains the rules. In the traditional pit or arena—sometimes called the box, the corners the dogs leave often have a piece of tape on the floor that goes from one side to the other. It is just a little longer than the length of the dog. As explained in the rules section, the dogs fight in rounds similar to boxing. When the referee announces that their handler must release them they have ten seconds to cross that line which is called a scratch line—and take a hold on their opponent. If they do not want to go out of their corner, or if they cross part way and stop or walk

to a neutral corner—they lose the match. Therefore the process of coming out of their corner and going across is usually called a scratch. They take turns so that you may hear the referee announce, for example “red dog’s turn to scratch”.

- Schooling. When a young dog becomes of age and shows a desire he is schooled. This means he is allowed to fight another younger opponent just a short time, perhaps less than a minute to see if he is ready. If he is, he is exposed to a variety of styles from different dogs—sparring partners if you will so that he gains experience. When he is ready he is game tested by having him fight a dog of equal caliber and perhaps a bit bigger long enough to demonstrate he has the gameness and ability necessary to compete.
- Bump. A bump is a very short fighting experience, generally the young dog’s first as described above. Sometimes they say “give him a taste”.
- Roll. A roll, or rolling a dog is the process of having a dog fight in effect sparring partners as part of the schooling process described above. It is under controlled circumstances and the dog can be touched, encouraged, when he does good, etc. He can be rolled with different styles and weights. It is not good to over roll a dog as it can take some of the energy and enthusiasm. Some dog men roll a lot and others believe in just a limited amount of rolling. Many of the so called dog fighting busts are really what is called backyard rollers. These are people who do not really match dogs as described herein, but get together

and fight the dogs with little rules—and for some good ‘ol boys with disregard to the dogs unfortunately. More often they are the ones caught and described by the news as dog fighting rings.

- Keep. The conditioning program a Pit Bull undergoes—roadwork, treadmill work, spring-pole work etc., including the feeding schedule and rest schedules.
- Champion. The winner of three matches. There can be losses. So for example if a dog wins two matches, then loses a match, then wins a match, he can still be declared a champion. Or if he wins three matches and loses his fourth match, he is still a Champion.
- Grand Champion. The winner of five consecutive matches—with no losses. If a dog becomes a winner of five matches and then contests a sixth time and loses he loses his status as Grand Champion.

* * * * *

JAPAN PIT FIGHTS

By Bob Stevens

American pit dog fighting is relatively new to Japan. Dog fighting is legal and endorsed by the government providing it is conducted as a sport. This means that there is no gambling or illegal activities allowed in connection with the dog fights.

The matches—conventions—are held publicly and have quality veterinarians that attend to each dog immediately following each match. The matches are conducted in tournament style much like karate tournaments. It involves one club or district vs another and the winners compete until a national champion is honored. Owners of the winning dog receive trophies. Most of them belong to the wealthy class and they match dogs for honor and glory and as a hobby.

The Japanese basically follow the modified Cajun rules that developed in America, but you will notice some handling practices that would not be allowed under strict Cajun rules. For example, sometimes they tap their dogs upon the command to release the dogs. Often they don't properly handle when the dogs are out of holds and a turn has been called. To me this (insignificant) fact is far overshadowed by the fact that they take better care of their dogs than most American dogmen can afford to and have complete veterinarian care for *every* dog at pit side. Money is never a motivation in the matches. More to the point, they have excellent, game, match dogs as we shall see and you still see talented dogs compete.

Although inexperienced at fighting Pit Bulls, the Japanese have fought their own native fighting dogs

(they are called Tosa dogs) for many, many years. A Tosa resembles a Pit Bull very much. Most Tosa dogs are red dogs with black nose. They are much, much, bigger and average 100 pounds or more in weight. Tosa dogs are not nearly as game as a Pit Bull, but genetically, they are a fighting dog and gamer than non-fighting bred dogs.

In the late 60's, the Japanese became very impressed with the American Pit Bull—not only because of the Pit Bull's gameness, but because the matches are far more exciting. The Tosa dogs are so large they are very slow moving and boring by comparison. The Japanese love the much faster pace and the fighting talent displayed by the American Pit Bull.

In 1973, Mr. Suzuki, then Chairman of the board of directors of the American Pit Bull Terrier Club of Japan, imported fighting dogs from Don Mayfield.

In 1974, Mr. Morikawa imported some dogs from Pat Patrick. These were very good dogs and the Japanese were captivated by them.

In 1975, Mr. Isamu Okabe, president of the American Pit Bull Terrier Club of Japan (and a very important, influential man), attended a pit convention in Mississippi, and as a result imported Niger bred dogs from Don Mayfield. Mr. Okabe had matched Tosa dogs for many years with an 80% win record. He is a highly respected gentleman.

Subsequently Mr. Kodaira imported Hammonds Rufus bred dogs from Gary Hammonds. These dogs were very impressive and the competition was upgraded.

These key people represented different areas of Japan and the tournament style of dog fighting evolved

into competition between essentially Mayfield bred dogs vs. Patrick bred dogs vs. Hammonds bred dogs. As tournaments go, sometimes one district won, sometimes another.

In the early 90's, Chinaman bred dogs had a significant influence in Japan. Mr. Enomoto (he acquired the nickname Teddy Bear from Bobby Hall when he visited the States where he was treated to the infamous hospitality of Bobby and Jeanette Hall) acquired a female from me. I named her Amazing Grace. Grace was a result of Tom Garner's breeding. Her father was Ch. Chinaman and her mother was Gr. Ch. Spike bred to Bobby Hall's Bullyson blood. The Japanese contest only males. They import females for breeding and test their ability and gameness, but they do not match them. Grace proved to be an excellent pit dog and game. More importantly she produced ace pit dogs. My friends in Japan also acquired a female from Dwight Pulley named Baby, that, when bred to the Garner/Fat Bill blood was to produce some of the best in Japan. This dog, named Baby is out of Ch. Cotton and Edwards Dusty—pure Big Boy breeding at its best. This prompted my Japanese friends to acquire some more of Tom Garner blood and so they acquired some pups from Fat Bill that was a result of a breeding made by Fat Bill and Tom Garner. These pups were a result of Garner's Ch. Chinaman bred to Fat Bill's Ch. Bolero. You can see these pups when they were in their breeding pen in Fat Bill's yard in the beginning of the video on Pit Protection. These dogs were a sensation to the Japanese pit game in the early 90's. They all became pit winners that, more importantly to Japan, produced great pit winners. The last I heard none of these dogs were defeated. Our Japanese

friends were so pleased with these dogs that they purchased some more from Fat Bill.

In 1991, Hiroshi Tukashima, a close friend of Isamu Okabe, contacted me, asking for more dogs and invited me to Japan. I sent them three sons of McGee's Panther named Samurai, Cain and Rambo and a daughter of McGee's Panther (I named her Kunoichi it means a female ninja) that was made available by Matt McGee. One of them, named Cain, won his debut match for Mr. Okabe when I visited Japan and attended their convention. The enclosed video features those Panther dogs. Following is, a description of the three matches and the dogs involved.

The matches were held in June, 1993, in Yamaguchi province. The first match involves an inbred son of Panther I named Samurai. This was Samurai's debut match and he fought Sugimoto's John, a very game and talented pit dog. The weight was 48 pounds. Samurai is the black dog and the handler is the clean cut young man with white jacket and pants. His name is Hirouki Arai. Arai conditions and handles the dogs for Mr. Okabe and Mr. Tukashima—all friends of mine since I visited Japan. Samurai won the match in 70 minutes and ten scratches when John gamely tried to scratch and was unable. You will see a slight gliche, or flicker part way into the match. I cut about fifteen minutes of the match so that all three matches would fit on a two hour video. Samurai is the type of pit dog that a dog man dreams of. He is obviously game. He doesn't bite as destructively as his brother, Rambo, but he is indeed a very hard mouthed dog. He went on to be a champion and challenged the Japan national champion and won. He fought the best and beat the best to become the All National

Japan Champion. He is a very wise and tough pit dog. His matches did not take anything out of him—he became better and tougher with each fight subsequent to the one you are about to watch. Yes, Samurai is truly a dog man's dream.

The second match involves Cain. The bottom side of Cain is St. Benedict's Raleigh, a very, very, game Bulldog. Cain went to Japan as a young dog that looked good in his initial schooling. But as a match dog, like Samurai, he just seemed to get better and better as he matured, with each match. His first match was in June of 1992 while I was in Japan. That convention involved 120 people and 26 dogs. Cain's opponent, Matano's Asashin, was Patrick bred. The match was at 37 1/2 pounds. Cain was drawn down too fine for this match as he is a natural 44 pound match dog. In 36 minutes, 10 seconds, after six scratches, Cain stopped Asashin. The match you are about to view was Cain's second match in the June '93 convention. His opponent, Yamamoto's Johnny is another Patrick bred dog. both dogs are brindles and look very much alike. You can tell Cain by the fact he is handled by Hirouki Arai. The Johnny dog is handled by a woman. Japanese women also enjoy the sport. The weight for this match is 44 pounds. At 32 minutes Yamamoto concedes the match and Johnny is picked up game. This made Cain a two time winner. Cain is now a five time winner, undefeated—a grand champion. His fifth match was against a great four time winner. It was a real war that was even for 25 minutes, but Cain with steady pressure and tactic pulled ahead and his opponents handler conceded the match.

The third match features Samurai's brother (from a later, repeat breeding—Rambo is younger). This match

also took place at the June '93 convention. It was Rambo's debut match. the match was at 45 pounds, Rambo's opponent weighed in at 46.4 pounds. The opponent dog was Tamura's Bitch (a male). These dogs also look very much alike. Rambo is black with a red undercoat. Bitch is a chocolate dog. You tell Rambo, again, because he is handled by Arai. Although going uphill 1 1/2 pounds, Rambo keeps the match one sided as his exceptionally hard mouth annihilates the Bitch dog until at 26 minutes, Tamura concedes the match. This was Rambo's first victory. He is now a four time winner. His destructive mouth has completely destroyed all opponents.

These dogs and Champion Lightning and Grand Champion Miss Panther alone, qualifies Panther to be Register of Merit, but Jack informed me he would not recognize the Japan fights because they were not reported to Sporting Dog Journal (by me) until 1994. This is unfortunate as the great Panther dog deserves recognition not only for his own ability but for the fact that he has out produced, percentage-wise, a good many that appear on the R.O.H. list. But that doesn't matter—I knew Panther and I know what he can produce. Like any pit dog ever bred, he has produced some that quit—but the good ones—oh boy!

I hope you enjoy the matches. It is true the Japanese are not as experienced at handling as Americans due to the newness of the sport—but the dogs are high quality. So get some popcorn and cokes and sit back and

enjoy the best fighting dogs in the world perform—the
American Pit Bull Terrier.

The best in Pit Bulls,

/s/ BOB STEVENS
BOB STEVENS

[PICTURE OMITTED]