

CIVIL GRAND JURY – CITIZEN COMPLAINT

**To: Los Angeles County
Civil Grand Jury
Clara Shortridge Foltz Criminal Justice Center
210 West Temple Street, Eleventh Floor, Room 11-506
Los Angeles, CA 90012
Filed by: Catherine Doyle
August 4, 2009**

It is the civil responsibility of the Los Angeles Grand Jury to act as watchdog over all aspects of local government within Los Angeles County and to respond to citizen complaints relating to same. Pursuant to this charge, I, as a citizen of Los Angeles and a representative of the international animal protection organization In Defense of Animals (IDA), am submitting this formal complaint against and request for investigation of the Los Angeles Zoo (“the Zoo”).

This complaint outlines serious flagrant acts of malfeasance and misfeasance committed by the Zoo through the following actions:

- Withholding public records in violation of California state law (Government Code Section 6250 *et seq.*)
- Attempting to cover up negligence in animal deaths
- Tampering with public records
- Misleading the public and city officials by making false statements, concealing important facts and generally obfuscating the truth

The most recent incident, the withholding of public records, was uncovered in July 2009, but some incidents date back to 2005. The facts that follow are evidence of the Zoo’s pattern of practice to cover-up, obscure and conceal important information in order to:

- Avoid public exposure of Zoo negligence;
- Prevent public exposure of inadequate conditions for elephants at the Zoo which have led to severe health problems and deaths; and
- Protect the Zoo’s agenda of pushing a costly and inadequate elephant exhibit renovation through the Los Angeles City Council.

As general manager of the Los Angeles Zoo, John Lewis is either directly responsible for or has directly been involved in all of these actions.

1. Background

Starting in 2003, the Los Angeles Zoo’s care and housing of elephants has been the focus of controversy. The incidents described in this complaint are related to this contentious issue. Of particular concern was the elephant Gita, who suffered from severe arthritis, painful, chronic foot infections, and severe infection of the bone in one foot. These conditions were caused by the inadequate conditions for elephants at the Zoo. Many thousands of citizens urged the Zoo to send the elephant to a sanctuary that would provide her with the adequate space and natural conditions necessary to restore her quality of life.

During this time, the Zoo was seeking Los Angeles City Council approval for its Pachyderm Forest renovation plan (which it won in April 2006). The Zoo also faced a citizen lawsuit, filed in August 2007, aimed at stopping construction of the exhibit. The elephant exhibit would again be challenged in 2008-2009, based on the fact that the City Council did not hear all the relevant facts at the 2006 hearing. The zoo failed to fully inform City Council of numerous pertinent facts during the 2006 hearing, including the history of elephant suffering and deaths at the Los Angeles Zoo, the true state of Gita's poor health, and the full costs associated with keeping elephants in a new exhibit.

This resulted in renewed hearings and a second (narrow) approval for the project. However, information later emerged showing that the Zoo *again* withheld critical information from the City Council, including a USDA finding that the Zoo had violated the federal Animal Welfare Act in the treatment of Gita and paid a stipulated penalty to the USDA as a result of that finding (see Section 7).

The more than three-year long controversy focused on elephant health problems caused by zoo conditions. Public sentiment strongly held that elephants should not continue to be held in inadequate conditions in Los Angeles, even in a similar, though slightly larger, display. The condition of Gita the elephant was extremely material to this debate.

Rather than operating with full transparency, the Zoo consistently manipulated facts and misinformed the Los Angeles City Council about the gravely serious nature of Gita's health problems and the failure of the Zoo to provide a healthy environment for elephants. In addition, Zoo officials repeatedly covered up evidence of negligence in the eventual death of Gita, and even violated the California Public Records Act by withholding public documents about USDA sanctions for zoo violations of federal law.

2. Zoo distorted, misled and withheld information from city officials

On April 19, 2006, the Los Angeles City Council held a hearing to determine whether the \$42 million elephant exhibit renovation should proceed. When questioned during the hearing about the state of Gita's health, Mr. Lewis "settled" things by testifying that the elephant *had* "an infected foot" that was now essentially healed. He said nothing about any other health problems occurring at the time (severe arthritis and a tail abscess that measured 17 inches tall and 22.5 inches wide) or the chronic nature of her foot condition (which affected more than one foot), giving the impression that these problems were a thing of the past and that Gita was doing well. Only two months later, Gita was dead.

During the most recent hearings that took place between November 2008 and January 2009, the Zoo was again questioned about its tragic history of 14 elephant deaths and the care and conditions for elephants at the Zoo. At no time did the Zoo disclose that in January 2008 the Zoo paid a USDA fine for failure "to assure an elephant received veterinary care in adequate time," (Attachments 1 & 2) or that it had knowledge of the penalty since April 13, 2007 (Attachment 3). The Zoo also was cited for the 2006 death of a chimpanzee, for failure "to assure a chimpanzee had the availability of veterinary care in adequate time."

The failure to disclose information about the fine must be considered lying by omission, since the quality of the Zoo's care and conditions for elephants was at the heart of the debate about whether an expensive, new elephant exhibit should proceed. (See more information on the USDA fine and the Zoo's withholding of public records in Section 7.)

The Zoo also appears to have misled the Los Angeles City Council about the status of the elephant exhibit construction project. Zoo proponents repeatedly claimed during the 2008-2009 hearings that the Pachyderm Forest was **one-third complete** (including in a full-page Los Angeles Times ad placed by the Greater Los Angeles Zoo Assn.), and thus too far along to halt. Six months later, however, on June 16, 2009, Zoo and Bureau of Engineering officials told the Information, Technology and General Services Committee that construction on the elephant exhibit was only **ten to fifteen percent complete**. In this instance, they were seeking approval of construction funds for cost overruns in an early phase of the project.

The evidence shows that Zoo officials secured City Council approval for the \$42 million Pachyderm Forest by repeatedly and knowingly failing to disclose critical facts, and distorting and withholding critical information.

3. Zoo tampered with public records

Zoo responses to California Public Records Act (CPRA) requests filed by IDA indicate that the Zoo tampered with Gita's medical records, deleting potentially volatile information from a city document. (Attachments 4 & 5)

This information indicated that Gita's bone infection might not have been cured by surgery and that her life-threatening problem might continue, despite Zoo claims to the contrary. The Zoo has claimed that veterinarians had deleted an inappropriate diagnosis. However, accepted veterinary practice calls for **amending** a patient's records, not deleting information entirely from them.

In addition, the Zoo deleted the words "pictures taken" in reference to Gita's feet. Not coincidentally, I had previously requested all medical photographs taken of her feet and had been denied these records by the Zoo.

4. Zoo attempted to cover up negligence related to Gita's death in June, 2006

Gita died on June 10, 2006. According to the zoo's press release, the elephant was found sitting down (an unusual and dangerous position) in the morning and died at 9:40 a.m., and that the body had been transferred to another facility for a necropsy. (Attachment 6)

On June 20, 2006, IDA filed a complaint with the USDA requesting an investigation into Gita's death. The complaint was based on information received from more than one zoo whistleblower that Gita had been seen down in a dangerous position the night before her death, yet the zoo took no action to help her or provide veterinary assistance.

At a Los Angeles Zoo Commission meeting that same day (June 20), Mr. Lewis refuted the information contained in the IDA complaint, declaring, "They don't know what they're talking about. They're making stuff up because they have a national agenda." (Attachment 7)

However, Commissioner Shelby Kaplan Sloan revealed at the meeting that a security guard had informed her that he found Gita down the night before her death.

Six days later, the Zoo issued a press release, directly contradicting Mr. Lewis' vigorous public denial. The press release acknowledged that on June 10, 2006 (the day of Gita's death):

“On Saturday, June 10, 2006, the Los Angeles Zoo received information that someone observed “Gita,” the Zoo's female Asian elephant, sitting down for several hours prior to being discovered by her keepers in the early morning hours. In response to this information, the Zoo immediately began a thorough internal investigation.” (Attachment 8)

The June 26, 2006 press release proves that Mr. Lewis misled the Zoo Commission by charging that the allegations in IDA's complaint were false. In fact, according to the press release, the Zoo knew that the allegations were true.

5. Zoo knowingly misled the public

Despite information contained in Zoo medical records that clearly indicated the grave condition of Gita's health, Mr. Lewis and Zoo staff repeatedly misled the public over a period of months before Gita died, stating that she was “fine.” The Zoo's own veterinary records showed that, in fact, she suffered severe health problems, including chronic foot disease and arthritis – the leading reasons for euthanizing elephants in captivity.

Please see Attachment 9, which provides examples of misleading public statements made by Mr. Lewis or other Zoo staff that were directly contradicted by information in Gita's medical records. Following are just a few excerpts:

“Richard Lichtenstein – Asked Mr. Lewis if our elephants are happy and healthy. Mr. Lewis responded we think they are.”

- From the Minutes of the Meeting of the Board of Zoo Commissioners of the City of Los Angeles, August 16, 2005

Veterinary records dated 5.25.05 report that zoo vets discovered bone had literally “disappeared” from Gita's front left foot, having rotted away from advanced infection. Record noted: “Osteomyelitis present.” (Osteomyelitis is inflammatory infection of the bone. This condition is generally terminal for elephants.)

“So yes, Gita does have a current condition in her left front foot.”

- Dr. Greer, Minutes, Meeting of the Board of Zoo Commissioners of the City of Los Angeles (special meeting to discuss the elephant issue), September 20, 2005

"Due to their care and attention, our [elephants] thrive physically and psychologically."

- John Lewis, Minutes, Meeting of the Board of Zoo Commissioners of the City of Los Angeles, September 20, 2005

Gita underwent surgery on September 23, 2005, to remove two-thirds of the bone in one toe due to severe infection (osteomyelitis) that had caused the bone to erode.

The director of the Los Angeles Zoo and Botanical Gardens blasted game show host Bob Barker for labeling the zoo's elephants as miserable and sick and said the pachyderms were healthy and would remain at the zoo.

"I want to reassure people that our elephants are fine," Lewis said. "They are not near death. They are not going crazy."

- Zoo Won't Send Pachyderms Packing, Blasts Barker

CBS-TV, February 11, 2006, http://cbs2.com/topstories/local_story_042183628.html
Four months later, Gita was dead.

It is clear that the Zoo was less than forthright in its public statements, which were aimed at minimizing the severity of Gita's condition and gave the public the false impression that the elephant was fine, when, in fact, she was suffering severely from terminal health conditions.

6. Zoo obfuscated the truth about Gita's death in report to Mayor Antonio Villaraigosa

On August 23, 2006, Mr. Lewis provided a report to Los Angeles Mayor Antonio Villaraigosa about Gita's death. In this report, Mr. Lewis omitted critical details from Gita's necropsy report that would have presented a more comprehensive and realistic portrayal of the elephant's severe health problems and extreme suffering at the time of her death.

Two experienced exotic animal veterinarians, one who worked with Gita for more than 20 years, provided statements for inclusion with a letter to Mayor Villaraigosa (Attachment 10), blasting the Zoo's report as not adequately presenting the facts. Both veterinarians, independent of one another, came to similar conclusions, and both expressed dismay that the Zoo chose to put so much focus on Gita's apparently healed foot lesion, to the exclusion of other significant findings, especially the "extensive" and "severe to very severe Degenerative Joint Disease ("arthritis") in "all four legs in multiple joints." Dr. Mel Richardson, a zoo and exotic animal veterinarian for more than 25 years, wrote:

"In Mr. Lewis' report he concluded: "The Los Angeles Zoo & Botanical Gardens has proven that surgery and aggressive long-term treatment can be a viable solution for digital osteomyelitis in elephants. I am accustomed to zoo administrators putting a positive spin on a bad situation, but Mr. Lewis has managed to glean the one pearl from sixteen pages of pathology detailing the horrific pain this elephant was suffering." (Emphasis added.)

Following are some examples of misleading information from the zoo's report and the independent veterinarians' response (more can be found in the letter to the Mayor):

Zoo report:

The complete analysis indicates that Gita died of cardiac failure associated with thrombi, or blood clots, blocking the right chambers and major vessels of her heart. The cause of the clots was a systemic coagulation disorder which began three to five days before her death. The cause of this coagulation disorder could not be determined. (Emphasis added.)

Statement by former Los Angeles Zoo veterinarian Dr. Gary Kuehn, who personally worked with Gita for more than 20 years:

“...the pathologist also indicated that the clotting ‘...may have been triggered by the extensive synovial tissue damage in joints or bacterial toxins from the cellulitis lesions.’ This means that the clotting may have been caused by Gita’s widespread joint disease, or by toxins absorbed from the large and complex abscess on Gita's backside. The pathologist represented this information as his informed impression though he was unable to state this as proven fact. However, nothing contradicts these scenarios, and other likely alternatives were not offered.”

Zoo report:

“There was no explanation of the cause of the abscesses on her tail and hip.”

Statement by Dr. Mel Richardson:

“The truth is the Zoo’s own clinical records provide some explanation. It is documented that in the months prior to her death, Gita had been leaning and “resting her rear” against the bars of her enclosure to shift her weight – an attempt to relieve her painful, arthritic front legs. This caused at least one abscess, or pressure sore, to form on the right hip. Both the necropsy report and the Zoo’s own clinical records indicate the hip lesion was in communication with the tail head abscess, creating one large, extensive lesion.”

Zoo report:

“She had some kidney disease which may have been age related.”

Statement by Dr. Mel Richardson:

“There is no mention in the necropsy report of Gita’s kidney disease being related to age, as reported by Mr. Lewis. However, the pathologist reports Gita was suffering from a probable immune-mediated membranoglomerulonephritis (kidney disease) from weeks to months old. **This type of kidney disease is caused by a chronic immune stimulation from an organism’s immune system being constantly challenged by microbes and/or other antigens, such as would be found in Gita’s constantly infected feet, in the badly infected abscesses on her hindquarters, or in the very severe degenerative arthritis.**”

These examples clearly show that Mr. Lewis again failed to present, in this case to the Mayor, a comprehensive set of facts that accurately portrayed the circumstances surrounding this elephant’s death. He instead downplayed and even attempted to cover up the truth by oversimplifying, understating and omitting facts. As Dr. Kuehn wrote:

“The report to the Mayor glosses over Gita’s long-term, severe foot and joint problems in less than a single sentence (“In addition to the joint disease in her feet and legs...”) as if they were not worth further consideration. In fact they were a dominant factor during Gita’s life, and may have played a significant role in her death.”

Ignoring Gita's years-long suffering served Mr. Lewis' goal of diverting attention away from the conditions at Los Angeles Zoo, the source of pain and suffering for Gita many other elephants through the years. It also averted honest public discussion of the underlying problem for elephants at the Los Angeles Zoo, which is that it cannot provide the conditions elephants need to thrive.

It should be noted that a motion presented before City Council on June 21, 2006, which claimed that Gita's death was "a good opportunity to have a public discussion on this matter," that "it would be appropriate for the Council to conduct a hearing on the entire matter," and moved that the "Zoo Department be directed to report immediately to the Council with the results of the necropsy" was referred to the Arts, Parks, Health & Aging Committee, where it was never agendized.

(See Attachment 11 for necropsy report, Attachment 12 for Mr. Lewis' report to the mayor, and Attachment 13 for the City Council motion.)

7. Zoo attempted to cover up USDA stipulated penalty in death of Gita

As part of my work with IDA, I submitted a public records request to the Los Angeles Zoo under the California Public Records Act (Government Code Section 6250 *et seq.*), on May 5, 2008 (Attachment 14). I requested all correspondence between the Zoo and the USDA regarding its investigation of Gita's death (which also included a chimpanzee, Judeo, who died in 2006 following a snake bite).

The Los Angeles Zoo provided other records that I requested and did not claim to exempt any records. However, it also did not provide any documents related to the USDA investigation of Gita's or Judeo's deaths.

At the time of my CPRA request, the Zoo was in possession of ample records documenting both the findings of the USDA investigation and the fine paid as a result. But the Zoo illegally withheld these public records. In fact, I learned of the fine only through separate correspondence with the USDA in July 2009. That correspondence indicated that the Zoo had paid a stipulated penalty to the USDA in 2008 for failure "to assure an elephant received veterinary care in adequate time" and for failure "to assure a chimpanzee had the availability of veterinary care in adequate time."

Further, this was not the first request I had made to the Zoo for such information. I requested it as early as January 2007 and as recently as May of this year. **It was not until the information was made public through a press release by IDA** that the Zoo released to me at least 14 pages of documents it had been illegally withholding for more than a year.

So great is the concern about the Zoo's failure to disclose the USDA findings and resulting fine to the City Council and the public that Councilmember Tony Cardenas brought forth a motion on July 22, 2009, which states in part: "I FURTHER MOVE, that the City Attorney's Office investigate and report back on any possible criminal and/or civil violations by the LA Zoo of the California Public Records Act and the Freedom of Information Act." (Attachment 15)

8. Conclusion

The significance of the Zoo's failure to disclose the severity of Gita's medical condition, the circumstances of her death, the USDA findings of legal violations for providing inadequate veterinary care, and the Zoo's payment of a stipulated penalty for those violations cannot be overstated.

Los Angeles Zoo, a city agency, continues to be a hotbed of controversy. Zoo officials – city employees – have engaged in a pattern of practice that includes repeated cover ups, illegal withholding public records, tampering of public documents, and misleading City Council members in a way that may well have changed the outcome of its vote to approve the expenditure of \$42 million in public funds for the elephant exhibit renovation.

The Zoo's actions are an affront to transparency in government and violate the public trust. In that regard, the Zoo's behavior is reprehensible and irresponsible.

This complaint presents a wealth of evidence demonstrating that the Los Angeles Zoo has engaged in extensive misfeasance and malfeasance and that an investigation by the Los Angeles Civil Grand Jury is warranted.