

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at Winchester**

UNITED STATES OF AMERICA)	
)	
v.)	4:12-cr-9
)	Mattice/Carter
JACKIE McCONNELL)	

UNITED STATES' SENTENCING MEMORANDUM

Comes the United States of America, by and through William C. Killian, United States Attorney for the Eastern District of Tennessee, and Steven S. Neff, Assistant United States Attorney, and submits the following sentencing memorandum for the Court's consideration in deciding an appropriate sentence in the above-styled case.

On May 22, 2012, the defendant entered a guilty plea to Count One of a Fifty-Two count indictment, that is, Conspiracy to Violate the Horse Protection Act (HPA) in violation of Title 18, United States Code Section 371 and Title 15, United States Code, Sections 1824(1), 1824(2)(B), and 1825(2)(B). This charge to which the defendant pled guilty constituted the most serious offense with which the defendant was charged,¹ and the factual basis for the plea incorporated all of the facts which would have supported many of the remaining counts against the defendant. The maximum punishment for this offense is 5 years imprisonment, 3 years supervised release, \$250,000 fine, any lawful restitution, and a \$100 Special Assessment. The parties, however, entered into a plea pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). The plea agreement took into consideration the defendant's age, health, and lack of criminal history, as well as the applicable

¹The plea therefore conformed entirely with United States Department of Justice policy regarding guilty pleas.

sentencing guideline range.² Thus, the parties agreed that a sentence of probation rather than imprisonment was appropriate in the case.

The recommendation for probation rather than imprisonment does not mean that the United States supports a sentence inadequate to address the seriousness of the crimes with which the defendant was charged or the acts which support the factual basis to which he agreed. The United States' position is that a significant sentence to the extent permitted by law, within the confines of the defendant's guilty plea, is both warranted and appropriate given the defendant's long-term defiance of federal law. At the outset, the United States urges the Court to impose the maximum term of five (5) years of probation and the leveling a significant fine for the defendant's crimes. The defendant has significant assets, as the pre-sentence report lists his total net worth as over \$2.2 million. Moreover, the Court should impose conditions of probation requiring the defendant to divest all activities relating to the training, exhibition, transport, sale, and contact with horses to ensure compliance with the terms of probation for the entirety of the Court's supervisory jurisdiction over him. These requirements are especially important in light of the defendant's long and entrenched history of non-compliance with the HPA, as discussed, *infra*.

The United States has a compelling interest in ensuring that convicted felons on probation or other supervision of the Court, like the defendant, comply with the Court's ordered terms of their release. Preventing recidivism is of particular importance in this case, especially given the defendant's history of violating federal laws aimed at protecting horses. It is particularly noteworthy that the defendant committed these crimes while under a disqualification ordered by the

²Had the defendant proceeded to trial and been convicted, his sentencing guideline range still would have been the same – no guideline range, based on the non-existent offense level which applies to the defendant's crimes and his lack of any criminal history.

United States Department of Agriculture (USDA) for the very types of acts which are the subject of the instant criminal case.³

I. General history of horse soring and efforts to combat it

“Soring” is the intentional abuse of gaited horses⁴ through the infliction of pain to a horse’s legs or hooves in order to force the horse to perform an artificial, exaggerated gait in the show ring. Several methods can be used to sore a horse, including the application of caustic chemical irritants (*e.g.*, mustard oil, diesel fuel, and even common dishwashing liquids), mechanical devices such as heavy chains, and pressure shoeing by inserting nails, screws, bolts or other objects between the sole and the shoe. These methods of soring cause the horse to suffer pain or distress when walking.⁵

Also known as the “big lick,” the distinctive and unnatural gait created by these methods of soring is characterized by movement where the horse snaps its knees up to its chest while the

³Congress clearly intended to limit the training, showing, exhibition, and commerce-related activities of violators of the Horse Protection Act even absent a criminal conviction. 15 U.S.C. Section 1825(1). *See also*, 15 U.S.C. Section 1825(4)(c), which allows the USDA to disqualify offenders found to have violated Section 1824 and to subject them to penalties, including, *inter alia*, preventing such individuals “from showing or exhibiting any horse, judging or managing any horse show, horse exhibition, or horse sale or auction....”

⁴“Gaited horses,” such as the Tennessee Walking Horse and Spotted Saddle Horse, are horse breeds that have particular tendencies during locomotion. “Gaited” is the term for a horse which moves each leg independently, so there is always at least one foot on the ground, so there is no “moment of suspension,” where all four feet are off the ground, as in the trot and canter in other breeds.

⁵*See, e.g.*, U.S. Dept. Of Agriculture, Animal Care Annual report of Activities, Fiscal Year 2007, available at <http://www.ahdf.org/pdf/Soring/2007> AC Report.pdf.

weight-bearing hind legs reach beneath the horse to compensate for its weight.⁶ Heavy chains are attached to the horse's legs while it is ridden so that the horse reflexively snatches its foot up in pain as the weight of the chains hits the sensitive area of the sore pastern (*i.e.*, ankle area), causing the horse to shift its weight onto the back legs, resulting in the prized "big lick" gait.

The high-stepping stride of the Tennessee Walking Horse has long thrilled horse show crowds. Horse show judges value the high-stepping "big lick" gait. The appearance created by the application of training methods to sore the horses is one of horses half-sitting as they circle around the show ring. Owners and trainers receive ribbons, rewards, prize money, and prestige,⁷ while the horses themselves suffer a life of privation and abuse.

Soring started in the Southeastern United States in the 1940s, with the historical epicenter of the practice being in Tennessee. It has spread to all areas of the country in which gaited horse competitions exist. In the 1960s, those who engaged in soring did so with such brazenness that the legs of horses in the show rings often had grotesque rope scars and blood running from the sites of their injuries. These wounds resulted from the barbaric use of chemicals and chains.

In 1970, the cruelties of soring reached the attention of the American public as a result of an article in *Life* magazine, and under the authorship of United States Senator Joseph Tydings, Congress passed the Horse Protection Act (HPA), designed to eliminate the practice of soring by preventing those who engage in soring from gaining a competitive edge over owners and trainers

⁶*See, e.g., American Horse Protection Association Inc. v. Lying*, 681 F.Supp. 949, 952 (D.D.C. 1988) ("Soring 'causes the animal to quickly lift its feet and thrust them forward. Also, the horse reaches further with its hindfeet in an effort to take weight off its front feet, thereby lessening the pain.'").

⁷The defendant, for example, was an inductee into the Tennessee Walking Horse Hall of Fame despite years of soring horses and violating the law to get the results which led to this "honor."

who do not use soring as a training method.⁸ The HPA prohibits showing, exhibiting, auctioning, and selling sore horses, transporting or moving sore horses for such purposes, and falsifying records that are required under the HPA and USDA regulations.

Funding for nationwide enforcement in 1970 was \$150,000 per year, and over 40 years following the passage of the Act, funding remained only at \$500,000. The USDA's Animal and Plant Health Inspection Service (APHIS) enforces the HPA. However, due to limited resources discussed above, USDA only makes appearances at around seven (7) to ten (10) percent of horse shows. Under the HPA, 15 U.S.C. Section 1825(d)(5), a horse is presumed sore if abnormal sensitivity or inflammation is detected in both of its forelegs or both of its hind legs, known as bilateral soreness. Soreness is also often detected in a horse's pasterns, the area just above the hoof.

Today, these above-described soring methods are being masked and camouflaged to circumvent the law, leaving fewer outward and obvious physical signs of abuse. These methods include coloring in scars on the horses' legs using markers and "stewarding" horses to train them not to react in pain to manipulations of their sore feet by show inspectors. As a result, detection of abuse and illegal conduct has become even more difficult, but the continual pain these show horses endure has only escalated. After caustic chemicals are applied to horses' front legs, their legs are

⁸15 U.S.C. Section 1822(1)-(3). *See also*, H.R. Rep. No. 1597, 91st Cong., 2nd Sess. 1970, P.L. 91-540, HORSE PROTECTION ACT OF 1970; 1970 U.S.C.C.A.N. 4870, 4872 (Stating, "The reported bill is designed to end the inhumane practice of deliberately making sore the feet of Tennessee Walking Horses in order to alter their natural gait. ... The Tennessee Walking Horse is a magnificent animal, distinguished by its proud, high skipping gait or 'walk.' ... [I]t was discovered about 20 years ago that if the front feet of the horse were deliberately made sore, the intense pain which the animal suffered when placing his forefeet on the ground would cause him to lift them up quickly and thrust them forward, producing exactly the desired gait. ... That this method of producing the 'big lick' is a particularly cruel and inhumane practice does not appear to matter to some walking horse owners and trainers. ... This bill should help end the unnecessary and inhumane practice of soring horses – something the Tennessee Walking Horse exhibitors have not done ... themselves.").

wrapped in plastic wrap to “cook” the chemicals into the flesh. In addition to the chemicals used to cook into the horses’ front legs to cause sensitivity to the chains they wear (the method primarily employed by the defendant), pressure shoeing is used to cause pain in the horses’ hoof capsules each time they step on their front feet. Thus, the incredible cruelty of soring continues, and individuals continue to profit financially and gain prestige from their unlawful conduct. Interestingly, soring itself is not even a crime under federal law; rather, the knowing transportation, entry, or sale of a horse which has been sored is the crime pursuant to the HPA.⁹

II. Defendant’s history of soring and HPA violations

Until recently, the defendant’s crimes were little-known and regarded and rarely enforced. He operated in an environment in which leaders of the gaited horse communities “circled the wagons” and protected those engaged in a culture of abusing horses and engaging in fraud. Due to a lack of resources and the inability to engage in meaningful enforcement measures, administrative procedures established by the government did little to curb the practice of soring horses to produce the “big lick” gait valued by judges of gaited horse competitions. Moreover, the practice of fraudulently identifying trainers of the horses involved in the competitions became rampant as the defendant and others in the industry attempted to shield themselves from the administrative consequences that did exist for transporting, entering, and showing horses which had been sored.

The defendant’s history of violating the Horse Protection Act dates back to 1979 and includes four periods of disqualification resulting from violations of the Horse Protection Act: two

⁹Even at that, this crime is nothing more than a misdemeanor. The only felony aspect of the HPA is the submission of false paperwork or entry forms required by law.

six-month disqualifications, a two-year period of disqualification from 1994-1996 and a five-year period of disqualification from 2005-2011. *In re: Jackie McConnell, et al*, HPA Docket No. 99-0034; Decision and Order filed June 23, 2005; 2005 WL 1524664 (USDA); *McConnell v. U.S. Dept of Agriculture*, 198 F. App'x 417 (6th Cir. 2006). A search of the Horse Protection Act database reveals HPA citations incurred by the defendant on at least the following dates: May 26, 1979, September 9, 1985, November 6, 1988, September 1, 1989, March 19, 1995, January 1, 1998, October 6, 2002, August 31, 2003, August 8, 2004, September 6, 2005, September 12, 2006, October 31, 2006, and August 30, 2009. On November 19, 2009, the defendant was cited for appearing on show grounds, was found to have violated his five-year HPA disqualification, and was assessed a \$1,000 civil fine.

Despite repeated citations, fines, a five (5)-year USDA disqualification, and multiple horse industry organization imposes suspensions, the defendant has continued his long-standing practice of soring horses in violation of the HPA. Most recently, he had his trainer's license suspended from October 2006 through October 2011. Despite this suspension, he was cited for violating his suspension and fined in 2009. However, the defendant continued to train horses for other individuals, using illegal methods of soring such as applying caustic chemicals to horses' pasterns, as well as committing various acts of animal cruelty under Tennessee law. Not only did he commit these acts, but the defendant directed others to violate the law and oversaw a criminal enterprise centered on so doing. Evidence of his actions was captured *via* video recordings. Additionally, two horses brought by the defendant to the National Walking Horse Celebration, held in late August through early September, 2011, were disqualified after being found to have been sored in violation of the Horse Protection Act. A federal search warrant was executed at the staging barn

owned by one of the defendant's horse-owning clients and used by the defendant during the Celebration, which yielded numerous chemicals that have been laboratory analyzed and determined to contain mustard oil and hydrocarbons consistent with kerosene or diesel fuel—all substances prohibited under the Horse Protection Act and used to cause painful burns on horses' legs. The legs of all twelve horses transported to the Celebration by the defendant were swabbed, laboratory-analyzed, and tested positive for chemicals prohibited by the Horse Protection Act.

Furthermore, during an animal welfare inspection of the defendant's barn on March 1, 2012, eight of the 26 horses inspected by a USDA veterinary medical officer and an independent equine veterinarian were found to be sore by both veterinarians. An interview of a confidential informant ("CI") revealed that after being notified of an upcoming government Coggins' records check the prior week, the defendant ordered his employees to cease soring horses. According to the CI, the defendant further ordered the removal all of the prohibited substances from the barn in order to avoid having the inspectors find the illegal materials. A search of a dumpster behind the defendant's barn yielded numerous plastic wrappings emitting a strong chemical odor consistent in type and smell with wrappings removed from the horses he had trained and entered into the Celebration that tested positive for prohibited chemicals the previous August. Additionally, the dumpster contained numerous hypodermic syringes similar in type to those used to administer analgesics to horses. These syringes had volumes too small for the administration of other commonly used drugs such as antibiotics. Analgesics are given to sore horses to mask pain responses and to conceal the soring itself during inspection. A search of the defendant's truck revealed a set of grossly overweight leg chains, also called "action devices," that had recently been used and were still covered in grease. These facts indicate that the defendant continued his 30-year

practice of soring horses and took steps to conceal his criminal activities.

Wealthy and influential owners like some of those who patronized the defendant's training business for a long period of time knew or should have known that he was utilizing soring practices. This would have been self-evident from the large number of violations reflected in the administrative tickets and suspensions that he, his employees, and the owners themselves received for soring over the duration of the period in which he trained their horses. Nevertheless, they continued to pay him large amounts of money to continue the training even while he was federally disqualified from doing so. This demonstrates that the acceptance of soring is so steeped in the culture of gaited horse competitions by owners that it is perfectly acceptable to violate federal law in order to get ribbons and trophies and make significant profits from the sale of championship horses and breeding fees, despite the fact that many of the horses won because trainers like the defendant cheated. The purchase and resale of Tennessee Walking Horses, therefore, is fraught with fraud when based upon results which are skewed because they are artificially-enhanced and not the product of the natural abilities of the horses. The individuals who purchase these horses, therefore, would be victims of fraud themselves unless they were aware of the illegal training practices.

The reach of soring so permeates the industry that it has become extremely difficult to find an equine veterinarian in Tennessee to testify about soring practices, lest he alienate his clientele who follow these practices of soring and lose their business. The end result is that soring continues unabated, and its victims – the horses – are paying an enormous price.

III. 18 U.S.C. Section 3553 Analysis

The federal sentencing guidelines are no longer mandatory and are now merely advisory. *United States v. Booker*, 543 U.S. 220 (2005). Before imposing sentence, the Court is asked to consider the sentencing factors listed in Title 18, United States Code, Section 3553(a), which take into account the nature and circumstances of the offense and the history and characteristics of the defendant. Some of the factors listed by Congress include a sentence necessary to 1) reflect the seriousness of the offense, 2) promote respect for the law, 3) provide just punishment (specific deterrence), 4) afford adequate deterrence to criminal conduct (general deterrence), and 5) protect the public from further crimes of the defendant. The undersigned will address some of the above-referenced factors in turn.

A. Seriousness of the offense

The seriousness of the defendant's instant offense is perhaps inappropriately addressed by the offense level guidelines calculation. The defendant's crimes carry fairly light punishment as the statute and operation of the sentencing guidelines are currently constructed, and such violations of the law rarely result in a guideline range higher than the range in which the defendant falls. Indeed, as reflected in the defendant's PSR, the Sentencing Commission has to this point declined to address this crime with a specific offense level calculation.

B. Respect for the Law

When cases such as the defendant's reach the courts, judges have an opportunity to ensure that the community sees that the legal system works and the right people are being adequately punished. While the government is cognizant of and shares the sentiments of the public outcry and desire to see significant jail time imposed on violators of the HPA like the defendant, the sad reality

is that the law passed by Congress does not possess significant teeth in the form of statutory maximum punishments and sentencing guidelines calculations. Thus, the United States and the Court are bound by the constraints of the law as it currently exists. Moreover, as noted, *supra*, the acts of soring themselves (as seen on the video produced by the Humane Society of the United States (HSUS)) is not even a crime at all under federal law; rather, they were Tennessee state law violations only, and misdemeanors even at that. The transport, entry, sale, or showing of a horse knowing that it is sore *is* a federal crime – but it is only a misdemeanor. Thus, the acts which spurred public outrage would only carry a theoretical maximum of one year in prison, before application of the sentencing guidelines, which result in virtually no range of imprisonment at all. The felony aspect of the instant case involves the falsification of entry paperwork at horse shows – essentially a white collar type crime.

In the government's experience, older white collar offenders with no criminal history, health problems, and a virtually non-existent guideline range receive probationary sentences from the courts. In this instance, it was imperative to secure a felony conviction for the defendant, as well as his voluntary admissions that he had been involved in soring. The consequences of a felony conviction¹⁰, coupled with the accompanying forfeiture and potential for a significant fine as urged by the United States (discussed *infra*), serve to satisfy the interests of justice within the confines of the current status of the criminal statutory scheme associated with the HPA. This and other reasons led to the willingness of the government to agree to a probationary sentence, especially when one

¹⁰The defendant will lose the right to vote, hold, public office, serve on a jury, possess a firearm or ammunition and other related privileges of U.S. citizenship. These formal consequences exist in addition to the "unofficial" consequences the defendant faces such as loss of reputation and respect in the community. The defendant's life work, business, reputation, and accolades have all been stripped as a result of this prosecution and his guilty plea.

realizes that the guidelines range would have been the same even had the case gone to trial and the defendant never admitted his guilt. His admissions further enhance the ability of the State of Tennessee to both prosecute pending criminal charges involving cruelty to animals and defend itself against civil actions by horse owners seeking to overturn the State's seizure of horses unlawfully trained by the defendant. Owners can no longer assert that their horses were not sore in light of the defendant's guilty plea, the factual basis of his plea agreement, and his allocution to the Court. Under the circumstances, committing extensive resources necessary to try a case of this type made little sense from a prosecutorial standpoint, given the fact that the end result in punishment would be virtually the same even if a conviction were obtained over the vagaries and uncertainties of a trial jury.

The one area of this case in which the Court can promote respect for the law is in the arena of financial penalties. The Court has the ability to impose an extensive fine under the statutory scheme – up to \$250,000 – and the United States urges the Court to exercise its authority in this area to the utmost. Such actions by the courts promote respect for the law.

C. Just Punishment/Specific Deterrence

The third vital factor is the issuance of just punishment and specific deterrence. Light sentences for offenders such as the defendant do nothing to dissuade them from returning to criminal misconduct. The lack of a prison term, however, does not necessarily mean that the defendant's sentence will be "light." As discussed elsewhere, the Court has a variety of options in ensuring that the defendant's sentence will be sufficient to serve the interests of just punishment. Specific offenders such as the defendant must understand that serious misconduct will result in significant losses of freedom and/or financial assets in the future should they decide to continue these illegal

practices.

D. General Deterrence

In a related factor, general deterrence is also a vital element of sentencing. When associates, acquaintances, and even similarly situated strangers see that a defendant receives a severe punishment for offenses, they are more apt to reconsider engaging in similar conduct in the future in fear of receiving the same treatment. Without fear of societal retribution in the form of a significant loss of their freedoms and finances, offenders will continue to engage in the same type of misconduct. As noted by Gary Becker, Nobel prize winning economist, “the incarceration of the specific offender is less important than providing a disincentive to future offenders through financial penalties.”¹¹ The path to general deterrence in this instance is paved by financial penalties. The Tennessee Walking Horse industry generates large amounts of money – the legitimacy of which is questionable due to the massive fraud perpetrated by those like the defendant whom are involved in soring. This group is comprised of the very type of individual who would be deterred by the imposition of heavy financial penalties to individuals like the defendant. Such penalties would then provide a financial disincentive to cheat and commit fraud within the realm of the gaited horse industry.

The reality of the concept of general deterrence is evident in the government’s recent efforts at enforcing this law. The defendant’s PSR makes this argument well in paragraphs 47-49, when it points out that the defendant’s peer groups must be more cautious in their endeavors lest they run afoul of the law and be prosecuted themselves. Moreover, as the PSR suggests, the

¹¹Gary Becker, “Crime and Punishment: An Economic Approach,” in *Essays in the Economics of Crime and Punishment*, 1, 24-34 (Gary S. Becker & William M. Landes, eds., 1974).

government's prosecution of this defendant (and Barney Davis, *et. al.*), along with the publicity surrounding the release of the video produced by HSUS and used as evidence in this case, helped expose the widespread cruelty done to Tennessee Walking Horses and opened the eyes of the nation to the problem for one of the first times since the statute was enacted in 1970. That resulted in several consequences, including the withdrawal of major corporate sponsors, disruption of ill-gotten financial gains based on violations of the law, and the beginnings of a halt to the illegal practices of soring. There has also been discussion that state and federal legislators are discussing strengthening the existing laws.

E. Protection of the Public

The final factor, protection of the public, is not a serious concern in the defendant's case, but the United States notes the significant observation that according to a 1997 study done by Northeastern University and the Massachusetts Society for the Prevention of Cruelty to Animals (SPCA), animal abusers are five (5) times more likely to commit violent crimes against people and four (4) times more likely to commit property crimes than are individuals without a history of animal abuse. www.pet-abuse.com/pages/abuse_connection.php#ixzz25bKqTh8k. The FBI has recognized the connection between a history of animal abuse and the commission of violent crimes since the 1970s. *Id.* Other research has demonstrated consistent patterns of animal cruelty among perpetrators of more common forms of violence. *Id.* In fact, the American Psychiatric Association considers animal cruelty to be one of the diagnostic criteria of conduct disorders. *Id.* "Abusing an animal is a way for a human to find power/joy/fulfillment through the torture of a victim they know cannot defend itself." *Id.*

IV. Conclusion

The Tennessee Walking Horses who bring fame, money, prestige, and power to their owners and trainers receive nothing for their service. Due to the physical infirmities imposed after years of abuse, they are often kept in small dark stalls for the majority of their lives. They are subjected to a lifetime of cruelty and confinement – all for a trophy, a ribbon, and some cash. “Animals are more than ever a test of our character, of mankind’s capacity for empathy and for decent, honorable conduct and faithful stewardship. We are called to treat them with kindness, not because they have rights or power or some claim to equality, but in a sense because they don’t; because they all stand unequal and powerless before us.”¹²

For the above stated reasons, the United States respectfully requests that the Court impose the maximum term of probation and a large fine commensurate with the defendant’s long standing practice of soring and disregard for the law. Moreover, the United States requests that the Court impose a condition prohibiting the defendant from owning, exhibiting, selling, transporting, working with, or training or assisting in the training of horses for the duration of his probation.

Respectfully submitted,

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¹²Matthew Scully, “Dominion: The Power of Man, the Suffering of Animals, and the Call to Mercy,” xi-xii (2002, New York – St. Martin’s Press).

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2012, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U. S. mail. Parties may access this filing through the Court's electronic filing system.

Respectfully submitted,

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