

Alejandro Vargas CONFIDENTIAL
Washington, DC

May 31, 2007

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION :
OF CRUELTY TO ANIMALS, et al., :
Plaintiffs, : Civ. No.
v. : 03-02006
RINGLING BROTHERS AND BARNUM & BAILEY : (EGS)
CIRCUS, et al., :
Defendants. :

Washington, D.C.

Thursday, May 31, 2007

Videotaped deposition of ALEJANDRO VARGAS,
called for examination for the Plaintiffs in the
above-entitled matter, pursuant to notice, the
witness being duly affirmed by MARIANNE R. HEWITT, a
Notary Public in and for the District of Columbia,
taken at the offices of Meyer, Glitzenstein &
Crystal at 1601 Connecticut Avenue, N.W., Suite 700,
Washington, D.C. at 10:08 a.m., Thursday, May 31,
2007, and the proceedings being taken down by
Stenotype by MARIANNE R. HEWITT and transcribed
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19

20 ALSO PRESENT:

21 RAYMOND HEER, III

22

1 BY MS. MEYER:

2 Q What was the first one that you named?

3 THE WITNESS: I believe I said Rebecca,
4 the first one.

5 BY MS. MEYER:

6 Q Zina, did you say Zina?

7 THE WITNESS: Zina, Zina.

8 BY MS. MEYER:

9 Q Zina. And how would -- how did Sophie's
10 personality differ from say Rebecca?

11 A Sophie was happier and a very active
12 elephant.

13 Q And what about Rebecca?

14 A She was -- she was a slow elephant. She
15 was very quiet, and she liked to be by herself.

16 Q How about Minnie, what was she like?

17 A She used to like she would make sounds
18 with her mouth whenever you petted her, whenever
19 you would caress her, whenever you fed her.

20 Q Would you pet her and caress her?

21 A Yes.

22 Q And what about Zina, what was she like?

1 A Her trunk was paralyzed, so she didn't
2 like anybody to touch her food because of that
3 reason, she also liked to be alone.

4 Q And how about Lutzi, what was she like?

5 A Lutzi was a very tall elephant, and he
6 walked kind of funny, and he used to hit the ground
7 with his trunk whenever he wanted something and
8 because of that we'd call him Thumper as a
9 nickname.

10 Q Lutzi was a female elephant, though,
11 correct?

12 A Yes.

13 Q And what about Karen, what was she like?

14 A She doesn't like to have people around
15 her.

16 Q Was Karen considered dangerous?

17 A I never had any problems with Karen when
18 I began working I -- I -- I just began working with
19 her and right by her side without any problems.

20 Q Were employees warned to stay away from
21 Karen because she was dangerous?

22 A We were told to just do our work, and

1 then to stay away from the pens so that she would
2 be relaxed and we would not bother her.

3 Q You never heard anyone say that Karen was
4 dangerous.

5 A No, what we heard was that we should not
6 be near her because she did not like people.

7 Q Okay. Did you have a favorite elephant
8 that you worked with during that time period?

9 THE WITNESS: Karen and Sophie.

10 A Karen and Sophie.

11 Q And why were they your favorite
12 elephants?

13 A Very intelligent and Sophie because she
14 was funny.

15 Q Would you consider yourself a friend of
16 the elements -- the elephants?

17 A Yes.

18 Q Were you considered a barn man when you
19 were working for the Blue Unit during that time
20 period?

21 THE INTERPRETER: A barn man.

22 The Interpreter interpreted barn as a

1 THE REPORTER: I'm sorry, what?

2 THE INTERPRETER: At the end of '97.

3 BY MS. MEYER:

4 Q Is that the only time you worked with him
5 on the Blue Unit?

6 A Yes.

7 Q And can you describe to me what happened
8 during the rehearsals of the elephants that you
9 referred to?

10 A Are you talking about Bonnie, Kelly and
11 Julie?

12 Q Were they involved in the rehearsals?

13 A All animals were rehearsal.

14 Q Okay. And what was --

15 A Were involved in rehearsals.

16 Q And what -- describe for me what happened
17 at a rehearsal?

18 A We will do the same act, the routine that
19 was performed during the -- at the show.

20 Q And were members of the public allowed to
21 watch rehearsals?

22 A Only the people that were part of the

1 staff not only at the center but on each of the
2 traveling units. There are trainers, there are
3 handlers, there are people that virtually live with
4 the elephants and the other animals."

5 And then he was asked the question, "What
6 is the relationship? How have you observed the
7 relationship between these animal trainers and the
8 animals that they care for?"

9 And his answer is, "There's a real bond.
10 I mean it's an attachment that they have. It's
11 really no different than what any of us would have
12 with our dogs or our pets. Actually on the units
13 we have our animal -- our key animal people that
14 live on the premises in trailers."

15 And that's end quote, that's all I'm
16 going to read from that.

17 And my question is, do you agree with
18 what Mr. Feld said about the relationship between
19 the elephants and the elephant handlers?

20 THE INTERPRETER: Oh, you stopped at
21 trailers, is that where you stopped?

22 MS. MEYER: Yes.

1 list of the commands that the elephants
2 understood -- let me -- let me finish my question.

3 My question is was that a -- is this a
4 complete list of the commands that the elephants in
5 the Blue Unit understood when you went to work
6 there in 2000?

7 MS. PARDO: And I'm going to object to
8 the question.

9 Are you asking -- are you asking with
10 respect to what Mr. Vargas knows?

11 MS. MEYER: Yes.

12 MS. PARDO: Okay.

13 THE WITNESS: Yes.

14 BY MS. MEYER:

15 Q Okay. And when you went to work for the
16 Blue Unit in the year 2000 you were the
17 superintendent of animals; is that correct?

18 A In the Red Unit or the Blue Unit.

19 Q The Blue Unit in 2000; is that correct?

20 A Yes.

21 Q Okay. And as part of your duties as the
22 superintendent of animals in the Blue Unit in the

1 year 2000, were you required to know what the
2 commands for the elephants were?

3 A Yes.

4 Q Do you know how the elephants learned
5 what to do in response to these various commands
6 that you listed for us?

7 A Yes.

8 Q How do you know that?

9 A I learned it with my father.

10 Q Were you ever present when an elephant
11 was taught to sit down for the first time?

12 A No.

13 Q Okay. Were you -- were you ever present
14 when an elephant was taught to respond to the
15 command foot for the first time?

16 A No, I only have memory of large elephants
17 that have been working already for some time.

18 Q Okay. So my question is you -- you never
19 actually observed an elephant being trained for the
20 first time to respond to these various commands; is
21 that correct?

22 A No.

1 Q In other words, the answer is I -- that
2 is a correct statement.

3 MS. PARDO: I'm going to object to the
4 form of the question.

5 But if you could clarify your question
6 that would be helpful.

7 MS. MEYER: Could you read back the
8 question, please.

9 (The record was read by the Reporter.)

10 MS. PARDO: And he said no.

11 BY MS. MEYER:

12 Q So it's not correct.

13 A I have never seen an elephant being
14 trained.

15 THE REPORTER: I'm sorry, I can't hear
16 you.

17 A I have never seen an elephant being
18 trained.

19 Q Okay, thank you.

20 Now when you worked on the Blue Unit did
21 you use a bull hook?

22 A Yes.

1 please.

2 BY MS. MEYER:

3 Q When you worked on the Blue Unit between
4 2000 and 2005, did -- did all of the elephant
5 handlers carry two bull hooks?

6 A The trainers only.

7 Q Okay. And when you say the trainers, who
8 do you mean?

9 A The -- the bosses, those who are in
10 charge of the animals.

11 Q Okay. So when you use the word trainer,
12 are you referring to yourself as a trainer as well?

13 A I am not a trainer.

14 Q But you had two bull hooks you said when
15 you worked at the Blue Unit between 2000 and 2005;
16 is that correct?

17 MS. PARDO: Objection, asked and
18 answered.

19 THE WITNESS: Yes.

20 BY MS. MEYER:

21 Q And then you said the trainers also had
22 two bull hooks at the Blue Unit between 2000 and

1 Q Okay. I'm still trying to find out which
2 of the trainers for the Blue Unit between 2000 and
3 2005 carried both a large bull hook as you
4 described it and also a smaller bull hook as you
5 described it?

6 MS. PARDO: I'm going to object to the
7 question, I think it's ambiguous of the terms
8 you're using, carry, and your reference to the size
9 of the bull hooks as well is ambiguous in the
10 question.

11 You can answer, if you can.

12 THE WITNESS: I am confused about the --
13 yes, the guides, the two guides because yeah, there
14 two kinds exist, but we do not carry, you know,
15 both at the same time.

16 MR. SIMPSON: Exactly.

17 MS. MEYER: Okay. I would appreciate it
18 if Counsel -- Co-Counsel does not make any comments
19 on the record.

20 MR. SIMPSON: I don't think the record
21 picked anything up.

22 MS. MEYER: Well, I --

1 had both kinds of those bull hooks; is that
2 correct?

3 A Well, that is what I saw when I saw them
4 working during the act, but I don't know whether
5 they have more or not.

6 Q Okay. So they may have had more than two
7 bull hooks; is that correct?

8 A Perhaps, I don't know.

9 Q But they at least had two, a large one
10 and a smaller one.

11 A Yes.

12 Q Okay. And did those three individuals
13 also present elephants during the act?

14 A Yes.

15 Q When they were presenting the elephants
16 during the act did those three individuals use
17 their smaller bull hook?

18 A Generally.

19 Q And when did they use the larger bull
20 hook?

21 A I think when they forgot the little one.

22 Q How often did you see one of these three

1 Q What year?

2 THE WITNESS: Last year.

3 Q 2006.

4 A Last year, yes.

5 Q And when you say he was disciplining an
6 elephant, what do you mean?

7 A He was putting -- he was making him lie
8 down because he was fighting with another elephant.

9 Q What was the name of the elephant that he
10 disciplined?

11 THE WITNESS: Banko.

12 Q Banko.

13 A Yes.

14 Q And what else did -- did Sasha do with
15 that elephant to discipline him?

16 A When he made him lie down he was just
17 saying no, no, no.

18 Q Did he strike the elephant with a bull
19 hook?

20 A No.

21 Q Did he have any physical contact at all
22 with the elephant and the bull hook?

1 A He had the guide on the upper part of the
2 elephant's head just holding it there and talking
3 to the elephant.

4 Q And when you say the guide you mean a
5 bull hook, correct?

6 A Yes.

7 Q Okay. Which end of the bull hook did he
8 have on the elephant's head?

9 A The part where the metal is.

10 Q Which part of the metal?

11 A At the other side of where the guide is.

12 Q Was it the hook part of the metal?

13 A Yes.

14 Q Okay. So the hooked part of the metal
15 was on the elephant's head; is that correct?

16 A Yes.

17 Q And how do you know that he was
18 disciplining the elephant?

19 A Because I was working in the back of the
20 tent, I heard that the elephants were fighting. I
21 heard Sasha's voice calling the elephants by their
22 name, and then he went and brought over the two

1 elephants that had been fighting. He put them
2 inside the tent and that is where he made him lie
3 down.

4 And minutes later I turned around the
5 tent and he was standing right next to them.

6 THE INTERPRETER: Sorry, the Interpreter
7 doesn't know who was standing right next to who.
8 He was -- the witness said and he was standing
9 there with a guide.

10 Q And when you say he you mean Sasha; is
11 that correct?

12 THE WITNESS: Yes.

13 A Yes.

14 Q And when you say guide you mean bull
15 hook.

16 A Yes.

17 Q Was -- was Sasha using one of the larger
18 bull hooks that you've described or one of the
19 smaller bull hooks?

20 A One of the long ones.

21 Q Okay. And how long did Sasha make the
22 elephant lie down for?

1 A Around five, ten minutes.

2 Q Did he make the elephant put its trunk up
3 when he was doing this?

4 A He called him and the elephant did raise
5 his trunk like that, yes.

6 Q So Sasha commanded the elephant to put
7 its trunk up.

8 A Yes.

9 Q And that -- was that also for five to ten
10 minutes?

11 A No, it was short. I don't know exactly
12 how long but no, no.

13 Q And how long did Sasha have the metal end
14 of the bull hook on the elephant's head during this
15 time?

16 A Only when he asked him to lie down, and
17 then he lie down and he was just -- then afterwards
18 he was just talking to him saying no, no, no.

19 Q Okay. When you say the elephant was made
20 to lie down can you describe how the elephant was
21 made to lie down?

22 A He was like this in all -- on all fours,

1 we call that stretched out (indicating).

2 Q Is that a natural way for an elephant to
3 lie down?

4 A Yes.

5 Q When does an elephant lie down like that?

6 A When we put the blankets on or when we
7 are going to clean the sawdust on their backs.

8 Q When an elephant sleeps at night does it
9 lie down like that?

10 A It lies down all along on the side.

11 Q So it does not lie down like the way it
12 was lying down when it was being disciplined when
13 it is sleeping at night; is that correct?

14 A No.

15 Q Okay. During the time that the elephant
16 was made to lie down what was Mr. Houcke doing?

17 THE INTERPRETER: Mr. what was the name?

18 BY MS. MEYER:

19 Q Mr. Houcke, what was Mr. Houcke doing?

20 A I -- he then he allowed him to stand up,
21 and then he told some guys to close up, and we left
22 two elephants inside and two elephants outside.

1 Q I'm asking during the five to ten minutes
2 that Banko was made to lie down, what was Mr.
3 Houcke doing?

4 A He was right next to him telling him no,
5 no, no, no.

6 Q Was he holding the bull hook in his hand?

7 A Yes.

8 Q Was it in a raised position?

9 MS. PARDO: Objection to the form.

10 THE WITNESS: He had it placed here just
11 on his head (indicating).

12 BY MS. MEYER:

13 Q Did he have it placed on the elephant's
14 head during the entire time that the elephant was
15 made to lie down?

16 A No.

17 Q Okay. During the time that when the bull
18 head was not on the elephant's head, did Mr. Houcke
19 have the bull hook in a -- in his hand?

20 A Yes.

21 Q And where was the position of the bull
22 hook relative to Mr. Houcke's body?

1 A Like this (indicating).

2 Q He had it down by his side.

3 A Yes.

4 Q Okay. Had you ever seen an elephant
5 disciplined this way before?

6 A Yes.

7 Q When?

8 THE WITNESS: Chipperfield.

9 A Chipperfield.

10 Q When was that?

11 A When I worked during that period with
12 Chipperfield.

13 Q When you worked on the Blue Unit with
14 Chipperfield.

15 A Yes.

16 Q And was it Mr. Chipperfield who you saw
17 discipline an elephant like that?

18 A Yes.

19 Q How many times did you see him discipline
20 an elephant like that?

21 A In the years that I was there like two or
22 three times perhaps.

1 AFTERNOON SESSION

2 THE VIDEOGRAPHER: This begins tape three
3 in the deposition of Alejandro Vargas. On the
4 record at 1:47:44.

5 BY MS. MEYER:

6 Q Mr. Vargas, before we took a break you
7 were describing an incident that you witnessed
8 involving Sasha Houcke disciplining an elephant, do
9 you recall that?

10 A Yes.

11 Q And you said it occurred when an elephant
12 named Banko was fighting with another elephant; is
13 that correct?

14 A Yes.

15 Q Do you know what the name of the other
16 elephant is?

17 THE WITNESS: Baby.

18 A Baby.

19 Q But Banko was the elephant who was being
20 disciplined by Mr. Houcke; is that correct?

21 A Yes.

22 Q Was any action taken with respect to Baby

1 during that incident?

2 A No.

3 Q Did anyone strike Baby with a bull hook
4 during that incident?

5 A No.

6 Q Okay.

7 MS. PARDO: And I want a standing
8 objection to the use of the term bull hook.

9 Mr. Vargas has previously testified that
10 he refers to that as a guide.

11 So we'll make this objection just one
12 time, but we would object to your use of a term
13 that he's not -- he's not used to using.

14 BY MS. MEYER:

15 Q Is it true, Mr. Vargas, that you are not
16 used to using the word bull hook?

17 A I always use guide.

18 Q Did you use guide when you worked with
19 your father before you went to Carson and Barnes?

20 A In Spanish it is stick.

21 Q Did you ever use the word bull hook
22 before you went to work at Carson and Barnes?

1 A No.

2 Q Have you ever used the term bull hook to
3 refer to the stick as you call it?

4 A I have heard people using it. I have not
5 used it in that manner, I always use guide.

6 Q So you've never used the term bull hook
7 in your life; is that correct?

8 A Yes, I have used it, but I don't remember
9 when.

10 Q Okay. And earlier you had no trouble
11 describing what a bull hook was and explaining that
12 when you use the word guide you mean a bull hook,
13 correct?

14 A Is that a question?

15 Q Yes, there was a correct.

16 A Yes.

17 Q Okay. So I was asking you about Baby,
18 whether or not anybody took any action against Baby
19 as a result of that incident you were discussing
20 earlier.

21 A No.

22 Q And do you regard Sasha Houcke's

1 treatment of the elephant Banko in that incident
2 you've described as an appropriate handling of an
3 elephant?

4 A Appropriate, yes.

5 Q And do you regard Mr. Houcke's use of the
6 bull hook with Banko in that incident as an
7 appropriate use of a bull hook?

8 A Yes.

9 Q During the lunch break that we just took,
10 Mr. Vargas, did you discuss with your attorneys at
11 all your testimony here today?

12 A No.

13 Q Did your lawyers discuss your testimony
14 in front of you?

15 A No.

16 Q Did your lawyers confer in front of you
17 about any of your testimony today?

18 A No.

19 Q Mr. Vargas, have you ever struck an
20 elephant with a bull hook?

21 MS. PARDO: Objection --

22 THE WITNESS: No.

1 MS. PARDO: -- to vagueness.

2 If you can define strike, what you mean
3 by strike.

4 BY MS. MEYER:

5 Q Have you ever hit an elephant with a bull
6 hook?

7 A No.

8 Q Did you ever cause an elephant to bleed
9 by the use of a bull hook?

10 A No.

11 Q Have you ever taken a bull -- the sharp
12 end of a bull hook and put it behind an elephant's
13 ear and pulled on it (indicating)?

14 A Pull in which sense?

15 Q In the way I just described.

16 A Like you showed me with your hand.

17 Q Yes.

18 A No.

19 Q Have you ever taken the hooked end of a
20 bull hook and put it behind an elephant's ear and
21 pulled on it in any way?

22 A Yes.

1 Q How often have you done that?

2 A It depends on whether it is necessary to
3 guide the animal.

4 Q Okay. Under what circumstances would you
5 put the hooked end of a bull hook behind the
6 elephant's ear and pull on it?

7 A When an elephant for some reason becomes
8 frightened and goes running, or if they are about
9 to eat something like gasoline.

10 Not running but if they are in danger of
11 like grabbing something, or also when they are
12 about to eat something like glass or gasoline, for
13 instance.

14 Q Are those the only circumstances under
15 which you would put a hooked end of a bull hook
16 behind an elephant's ear and pull on it?

17 A Yes.

18 Q What if you wanted to make an elephant
19 stay in line on a walk and the elephant wasn't
20 doing that, would you put a bull hook behind its
21 ear and pull on it to make it stay in line?

22 A When we are putting them in line -- in a

1 line there is no need to do that.

2 Q So you would never use a bull hook in
3 that situation; is that correct?

4 A Not to put them on a line, no.

5 Q Okay. So is it your testimony that the
6 only time you've ever put the hooked end of a bull
7 hook behind an elephant's ear and pulled on it was
8 if the elephant was in danger somehow or about to
9 eat something that wasn't good for it?

10 A Or if we are walking and it stops.

11 THE INTERPRETER: In some nationalities
12 they use the word meaning to stand up not although
13 the normal meaning in general is to stop.

14 No, he means to stop. When an elephant
15 stops and will not move.

16 BY MS. MEYER:

17 Q Okay. And in that circumstance you would
18 take the hooked end of a bull hook and put it
19 behind the elephant's ear and pull on it.

20 A You put it down here in this part
21 (indicating).

22 Q And pull on it.

1 the bull hook and the animal's body; is that
2 correct?

3 A Yes.

4 Q Okay. Have you ever caused a puncture
5 wound behind an elephant's ear by using the bull
6 hook in that manner?

7 MS. PARDO: Object to the form.

8 The term puncture wound is not defined.

9 BY MS. MEYER:

10 Q Do you know what a puncture wound is?

11 A A wound.

12 Q Do you know what that means?

13 A A wound, yes.

14 Q Have you ever caused a wound to an
15 elephant's ear by use of a bull hook when you put
16 the hooked part of the bull hook behind the
17 elephant's ear and pulled on it?

18 A No.

19 Q Have you ever seen any wounds caused by
20 bull hooks on elephants?

21 A Yes.

22 Q When did you see them?

1 A Last year.

2 Q Any other time?

3 A No.

4 Q That's the only time you've ever seen a
5 wound caused by a bull hook on an elephant.

6 A Yes.

7 Q Where was that?

8 A We were working in Texas.

9 Q And what did you see?

10 A Tonka just stopped, Sasha put the hook
11 behind his ear or her ear. Some activists were
12 running on the other side and she got startled and
13 kind of turned. And then Sasha guided the animal
14 forward so that it could continue walking.

15 MS. MEYER: I'm sorry, I didn't hear what
16 you said.

17 THE INTERPRETER: Sasha guided the animal
18 forward so that it would continue walking.

19 BY MS. MEYER:

20 Q And it was during Sasha guiding the
21 animal that he caused a wound on the animal's ear.

22 THE INTERPRETER: In this I guess he

1 didn't use guiding, that was a term used by the
2 Interpreter.

3 MS. MEYER: Oh.

4 THE INTERPRETER: He said -- he used
5 another word equivalent to guiding but just for
6 your -- if you want to clarify that part of the
7 question.

8 MS. MEYER: Okay.

9 BY MS. MEYER:

10 Q Let me ask the question this way. When
11 Sasha put the hook behind Tonka's ear during this
12 incident and pulled the elephant away was he
13 guiding the elephant?

14 A Yes.

15 Q And that's when you became aware that
16 there was some kind of wound on the elephant's ear?

17 A Yes.

18 Q So that wound was caused by Sasha guiding
19 the elephant; is that correct?

20 A Well, that is when I saw the wound, but I
21 don't know if it happened as a result of that or if
22 it happened -- already happened for some other

1 reason.

2 Q What other reason would have caused the
3 reason?

4 MS. PARDO: Object. Objection, calls for
5 speculation.

6 THE WITNESS: I don't know.

7 BY MS. MEYER:

8 Q Okay. When did you first see that wound?

9 A When we were walking and one of the
10 activists began screeching.

11 Q And did you look behind Tonka's ear?

12 A I was behind her with another elephant
13 and I -- then I saw it, but I did not see anything
14 abnormal.

15 Q But I thought you said you saw a puncture
16 wound behind the animal's ear, or you saw a wound,
17 excuse me. You saw a wound behind the animal's
18 ear.

19 A Yes.

20 Q So that was a normal occurrence.

21 A I saw it yes, but what I mean by that is
22 that I didn't see that it was bleeding a lot or

1 that it was a large wound or anything like that.

2 Q Was it bleeding at all?

3 A No, it was a small.

4 THE WITNESS: Small.

5 Q There was no blood.

6 A Yeah, a little bit just a -- it was a
7 small thing.

8 Q Well, how large is the point on the end
9 of a hook of a bull hook?

10 A I have never measured it.

11 Q Is it smaller than the size of a quarter?

12 A It's smaller.

13 Q Is it smaller than -- than a nickel, the
14 size of a nickel?

15 A I have never compared it, I don't know
16 exactly.

17 Q Do you know how big a nickel is?

18 A Yes.

19 Q And you've worked with bull hooks for 15,
20 20 years; is that correct?

21 A Yes.

22 Q Okay. And you're saying you don't know

1 whether the point on the end of the hook of a bull
2 hook is smaller than the size of a nickel; is that
3 correct?

4 MS. PARDO: Objection.

5 Objection, argumentative.

6 THE WITNESS: A nickel is round.

7 A A nickel is round.

8 Q That's correct.

9 THE WITNESS: Okay.

10 A And the metal is a semicircle.

11 Q Okay. And the end of the hook is a
12 semicircle.

13 A I don't know how to explain it.

14 Q Okay. I want you to describe what Sasha
15 did to Tonka in this incident that you're
16 explaining to us.

17 A We were walking, there was some act --
18 some activists were running behind us on the
19 opposite side. Tonka turned towards them and Sasha
20 wanted to bring her towards him.

21 And that is when they began screeching or
22 and Tonka turned once again to see what was

1 happening. And then Sasha and the elephant walked

2 together -- continued to walk together.

3 Q Which -- which part of the bull hook did

4 Sasha use on the elephant?

5 A The metal part.

6 Q Which part of the metal part?

7 A The top part.

8 Q The top part.

9 A Yes, the metal part.

10 Q Okay. Which part of the metal part did

11 he use on the elephant?

12 A The edge of the metal, the side of the

13 metal.

14 Q Did he use the point at the end of the

15 hook on the end of the bull hook?

16 A Yes.

17 Q Okay. And I was asking you to give us

18 some idea of the size of the point on the end of

19 the hook of the bull hook is, that's what I was

20 asking you about.

21 A How could I explain that to you?

22 Q Okay. I was just asking you if it was

1 smaller than a nickel, the point?

2 MS. PARDO: Objection, this has been
3 asked and answered.

4 MS. MEYER: It has been asked, I don't
5 think it has been answered.

6 MS. PARDO: The witness -- the witness
7 has said he can't describe the size of that for
8 you.

9 Are you -- are you asking him to -- for a
10 measurement of a point, is that what you're asking
11 him about?

12 MS. MEYER: All I asked him was whether
13 or not it was smaller than a nickel.

14 THE WITNESS: Can you show me a nickel?

15 MS. MEYER: Does anybody have a nickel?

16 BY MS. MEYER:

17 Q You don't know what a nickel looks like?

18 A Yes, I do.

19 MS. MEYER: Oh, the Translator has it.

20 THE INTERPRETER: I -- I don't know if I
21 have it, I can check. I know I have it in my other
22 bag, but I -- I'm sorry. No, they are dimes,

1 dimes.

2 A nickel is slightly larger than a dime,
3 right?

4 BY MS. MEYER:

5 Q Is it smaller than a dime? Show him the
6 dime.

7 (Dime displayed to the witness.)

8 A Larger than that.

9 Q Okay. So the hook -- the point on the
10 end of a hook of a bull hook is larger than a dime;
11 is that correct?

12 A Twice as large as that.

13 Q Twice as large as a dime. The point on
14 the end of a hook -- of a hook of a bull hook.

15 A Yes.

16 Q All right. Did you ever see Troy Metzler
17 strike an elephant with a bull hook?

18 THE INTERPRETER: Troy, Troy.

19 MS. MEYER: Troy Metzler.

20 A When I was working, no, I didn't.

21 Q And back to the Tonka incident that you
22 were describing. Did you take any action to treat

1 the wound behind Tonka's ear?

2 A Yes, when we stopped at the train which
3 we were going towards and it was about two blocks
4 away, yes, we cleaned it with water.

5 Q Who did that?

6 THE WITNESS: Sasha and Peshta.

7 A Sasha and Peshta.

8 Q Who is Peshta?

9 A One of our workers.

10 Q Okay. Did you personally inspect the
11 wound behind the elephant's ear?

12 A Yes. After we loaded all the animals in
13 the train, yes.

14 Q And you saw blood on that elephant's ear,
15 correct?

16 A A little bit.

17 Q Okay. And what -- approximately what
18 size was the blood that you saw?

19 A Like this (indicating).

20 Q Okay. Have you ever seen Troy Metzler
21 hit an elephant with a bull hook?

22 A Not when I was working.

1 A One on the front and the other one on the
2 back on the opposite side.

3 Q And are the elephants chained during the
4 day at all?

5 A No.

6 Q They're not chained at all during the
7 day.

8 A Only Luna.

9 Q Luna is the only elephant that is chained
10 at any point during the day on the Red Unit.

11 A And Bananna.

12 Q Okay. None of the other elephants are
13 ever chained during the day on the Red Unit.

14 A Not during the daytime.

15 Q Why are Luna and Bananna chained?

16 A Luna will just grab anything and eat
17 anything. We are afraid she will eat -- end up
18 eating a cable or something that would do her harm.

19 Q Can you put her somewhere where she is
20 away from a cable so that won't happen?

21 A Well, it's not so much the cable she just
22 grabs anything and starts eating anything, you

1 know, the tent, the plastics, just anything at --
2 at hand. But whether Joe Frisco is there or when
3 Ryan is there then they are free.

4 THE REPORTER: Did you say Ryan or Brian?

5 THE WITNESS: Ryan.

6 A Ryan.

7 THE INTERPRETER: I don't know who it is.

8 BY MS. MEYER:

9 Q And why is that, why are they free when
10 those individuals are there?

11 A Because they are in charge of that
12 department, what that is Joe Frisco and then Ryan
13 helps him clean and all of that.

14 Q Are you saying that Joe Frisco can keep
15 Luna under control so that she doesn't try to eat
16 things that are dangerous for her?

17 THE WITNESS: Jimmy, Joe, Peshta.

18 A Jimmy, Joe, Peshta, but since he is in
19 charge we have to abide by his decisions, by Joe
20 Frisco's decisions.

21 Q Why -- why is Bananna chained during the
22 day?

1 A Because he or she fights with the other
2 elephants.

3 Q And does she also get off her chains when
4 Joe Frisco is around?

5 A Generally in the case of Bananna when we
6 are all there he is let free -- she is let free.

7 Q How many hours during the day is Luna on
8 chains?

9 A Three, perhaps four hours.

10 Q And how about Bananna, how many hours a
11 day is she on chains?

12 A Like -- like an hour or two hours. It
13 depends on the shift change.

14 Q Do you know an elephant named Asia?

15 A Yes.

16 Q Is she on the Red Unit right now?

17 A Yes.

18 Q Has -- is she ever chained during the
19 day?

20 A She's never chained during the day.

21 Q Okay. Do you know what the phrase empty
22 out means?

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1 4:16 p.m.)

2 THE VIDEOGRAPHER: This begins tape five
3 in the deposition of Alejandro Vargas. On the
4 record at 4:16:16.

5 BY MS. MEYER:

6 Q Mr. Vargas, is there someone name Yuri
7 who works for the Red Unit?

8 A Yuri.

9 Q Yuri, Y-U-R-I.

10 A I have never heard of that name.

11 Q Okay. Mr. Vargas, have you ever been
12 convicted of a crime?

13 A No.

14 Q I want to show you a DVD, and then ask
15 you some questions about it.

16 And this is a DV -- an excerpt from a DVD
17 that has been produced in this case with the Bates
18 label API7166.

19 I'm going to show it to you in its
20 entirety, and then ask you questions about it.

21 (A DVD is being played.)

22 MS. MEYER: Can you see it?

1 THE WITNESS: Yes.

2 (The DVD stopped playing.)

3 MS. MEYER: All right.

4 BY MS. MEYER:

5 Q Have you ever seen that excerpt of a tape
6 before?

7 MS. PARDO: I'm going to object to the --
8 any questions related to this DVD. There has been
9 no foundation about who has supplied this footage,
10 and also it has been excerpted and is not shown in
11 its entirety. There are parts that are missing
12 from that video.

13 MS. MEYER: Well, as I said, we produced
14 this -- the entire video to the defendants, it's
15 Bates labeled API7166.

16 This is an excerpt, which is complete,
17 the excerpt is complete from start to finish,
18 nothing was taken out of the excerpt. And this is
19 a discovery deposition, and I'm entitled to ask the
20 defendant questions about this.

21 MS. PARDO: And for the record, there is
22 a portion of that that has been excerpted out

1 that -- that cuts a portion of this event out.

2 MS. MEYER: Between the beginning and the
3 end of the tape.

4 MS. PARDO: That's correct.

5 MS. MEYER: Can you tell me what it is?

6 MS. PARDO: Yes, it's the initial part of
7 the video.

8 MS. MEYER: No, I'm asking -- I
9 understand the initial part of the video has been
10 taken out, and the end of the video has been taken
11 out.

12 What I said is the excerpt I'm using from
13 start to finish is complete.

14 MS. PARDO: And -- and for the record,
15 that is not the case. There is footage that has
16 been cut out that -- that would fully describe or
17 complete the picture of what you've shown the
18 witness.

19 MS. MEYER: You're saying there's an
20 ex -- there's something from in the middle of the
21 tape that I just showed that's not complete, the
22 excerpt itself is not complete.

1 you have any basis for saying that the -- that we
2 have edited anything out of the portion that we
3 just showed you and the deponent?

4 MS. PARDO: What we have an objection to
5 is that you have not shown the complete videotape
6 and that you have excerpted out certain parts to
7 fit the needs of your question.

8 We would object because you have not
9 shown the complete event that is available in
10 videotape.

11 You are free to ask questions subject to
12 our objection.

13 MS. MEYER: Okay. But again, you don't
14 have any basis for suggesting that we've taken
15 anything out of the excerpt that was shown.

16 MS. PARDO: I -- then maybe I'm quibbling
17 with your question --

18 MS. MEYER: Yeah.

19 MS. PARDO: -- I don't understand it.

20 MS. MEYER: Yeah, you don't.

21 MS. PARDO: But we -- yes, we do object
22 to the manner in which you've excerpted and

1 objection.

2 And I guess because you have not made any
3 statement that you have any basis for believing
4 that I've edited anything out of the excerpt that
5 was shown from start to finish that you don't have
6 any basis for questioning that the excerpt at least
7 is complete from start to finish.

8 MS. PARDO: I can't say that sitting here
9 today, no, I don't know that.

10 MS. MEYER: And you have no basis for
11 saying it.

12 MS. PARDO: I -- I can't compare unless I
13 saw the complete footage, which has not been
14 provided today to the witness.

15 MS. MEYER: Okay.

16 BY MS. MEYER:

17 Q Subject to all of that, Mr. Vargas, I
18 want to ask you some questions about that.

19 Have you seen that excerpt before?

20 A (Nods head negatively.) No.

21 Q Do you recognize yourself on that
22 videotape?

1 A Yes.

2 Q Did you notice at the beginning of the
3 videotape there's an incident where one of the
4 handlers takes the bull hook and puts it behind the
5 elephant's ear and pulls on the elephant to make it
6 go in a certain direction?

7 A I was looking at the elephant, and I was
8 looking at myself trying to move the elephant.

9 Q Did you notice at the beginning of the
10 tape that someone took a bull hook to the ear of
11 the elephant to make it go in a certain direction?

12 A After I was there I see Sasha's legs.

13 Q Okay. So was that Sasha who used the
14 bull hook in that way at the beginning of the tape?

15 A I think so.

16 Q Okay. Because earlier you testified
17 about I asked you if you've ever seen a wound on an
18 elephant, and you said there was only one time
19 you've ever seen a wound and you described an
20 incident that occurred in Tulsa -- I'm sorry, in
21 Austin, Texas I believe last year sometime.

22 Do you remember that testimony?

1 A Yes.

2 Q Just to be clear, I misspoke. It took
3 place in Austin, Texas; is that correct?

4 A I said Texas, that's what I said.

5 Q Okay. Do you know whether or not the
6 incident you described earlier with Sasha, Sasha
7 Houcke took place in Austin, Texas?

8 A Yes.

9 Q And just watching that tape does that
10 appear to be the incident that you were describing
11 earlier in your testimony when you described an
12 incident in which you saw Sasha Houcke use a bull
13 hook on an elephant and -- and then you saw a wound
14 on the elephant's ear?

15 MS. PARDO: Objection.

16 Objection. The same objection that this
17 is an incomplete videotape of the events that we're
18 speaking of right now.

19 MS. MEYER: Okay. You've already made
20 that objection, I don't think it needs to be made
21 over and over again. It's on the record.

22 MS. PARDO: Do you want to agree to that

1 being a continuing objection?

2 MS. MEYER: Sure.

3 MS. PARDO: Okay. With respect to the
4 videotape being incomplete we'll make that a
5 continuing objection for this portion of the
6 question.

7 BY MS. MEYER:

8 Q So when you watch that video it appears
9 to be the incident that you were describing earlier
10 in your testimony involving Sasha Houcke; is that
11 correct?

12 A Yes.

13 Q Okay. And in the latter part of the tape
14 there's a scene where it looks to be you are
15 pulling on an elephant's ear or head while the
16 elephant is trying to defecate.

17 Did you see that scene?

18 A Yes, and I -- and there I also realized
19 that when the -- the elephant was defecating then
20 we stopped and I went back.

21 Q Which elephant was that that you were
22 pulling on?

1 THE WITNESS: Luna.

2 A Luna.

3 Q And which elephant was it that Sasha
4 Houcke was using the bull hook on?

5 THE WITNESS: Tonka.

6 A Tonka.

7 Q Do you know how much Luna weighs?

8 A Approximately 8,500 -- 8,800 pounds.

9 Q Did you use force on Luna when you were
10 trying to pull her away from where she was when she
11 was trying to defecate?

12 MS. PARDO: Objection to the form.

13 THE WITNESS: Excuse me.

14 MS. PARDO: The term force is vague, if
15 you can define that for the witness.

16 BY MS. MEYER:

17 Q Do you know what the term force means?

18 A Force, yes.

19 Q Okay. So my question was did you use
20 force on Luna when you pulled her away from the
21 place where she was trying to defecate?

22 A Just when I was stretching my arm.

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1 when you were guiding the animal in that excerpt?

2 A The part of the metal.

3 Q Did you -- were you using the hooked part
4 of the metal end of the bull hook?

5 A Yes, the part of the guide.

6 Q I asked whether you were using the hooked
7 part of the metal end of the bull hook?

8 A And I said yes.

9 Q Okay. Do you know whether or not you
10 punctured Luna's skin when you used the bull hook
11 in that way?

12 MS. PARDO: Objection.

13 Objection to the term puncture. If you
14 can define that for the witness, it's vague.

15 THE WITNESS: Could you ask the question
16 again.

17 BY MS. MEYER:

18 Q Do you know what the word puncture means?

19 THE WITNESS: Punch.

20 THE INTERPRETER: In Mexico they -- you
21 use when there is a flat tire they call that punch.

22 But the word that the Interpreter used in

1 Spanish was perforate the skin. The witness should
2 have understood that, although he's concentrating
3 on the English word.

4 MS. PARDO: Well, and I would -- I'd
5 object to actually that characterization. Um, I
6 think the witness --

7 THE INTERPRETER: The Interpreter is
8 translating that is how you have said it in
9 Spanish.

10 MS. PARDO: Okay. And the -- I think the
11 witness is confused. I think we need some
12 clarification on what you mean by puncture then
13 maybe we can get the record clear.

14 BY MS. MEYER:

15 Q Do you know whether or not you perforated
16 the skin of Luna when you used the bull hook on her
17 as illustrated in the excerpt that we just saw?

18 A Nothing happened to her. Yes, I know.

19 Q You checked behind her ear.

20 THE WITNESS: USDA.

21 A USDA.

22 Q What does that mean?

1 THE INTERPRETER: Department of

2 Agriculture.

3 BY MS. MEYER:

4 Q No, no. What -- how does that answer my
5 question?

6 A The activists called USDA and told them
7 what had happened. USDA came and checked the
8 animals to make sure.

9 Q When did the USDA come?

10 A After we finished walking the elephants
11 from the train to the building.

12 Q How long after the incident did the USDA
13 come?

14 A Approximately like five hours, four hours
15 perhaps.

16 Q Between the time that you used the bull
17 hook in the way shown on this tape and the USDA
18 came, did you inspect the elephants's ear to see
19 whether or not you had perforated the skin behind
20 her ear?

21 A Which animal are you talking about?

22 Q Luna.

1 A Yes, I did check it.

2 Q And did you see any breakage of skin
3 behind her ear?

4 A No. She had nothing on it.

5 MS. PARDO: Objection.

6 Can you make clear for the record where
7 Luna was -- where you're talking about on Luna's
8 body because I don't know if that --

9 MS. MEYER: Well, I was using the word
10 ear.

11 MS. PARDO: Okay.

12 BY MS. MEYER:

13 Q Do you know where the ear on Luna's body
14 is?

15 MS. PARDO: Okay. Okay, I hadn't heard
16 that in your question. I just wanted to make sure
17 we were identifying where on the body.

18 BY MS. MEYER:

19 Q Okay. Did you --

20 A Over here (indicating).

21 Q That's where you used the bull hook on
22 her was right under her ear?

1 A Yes.

2 Q And was it right under her left ear?

3 A Yes, on this side (indicating).

4 Q Did you see the wound on Tonka's ear that
5 was seen shortly after Sasha Houcke used the bull
6 hook on her as shown in this excerpt?

7 THE INTERPRETER: Shonka is -- I'm sorry,
8 on --

9 MS. MEYER: On Tonka.

10 THE INTERPRETER: Tonka.

11 MS. PARDO: Objection.

12 Objection to the form.

13 BY MS. MEYER:

14 Q Let me ask the question again. Did you
15 check behind Tonka's ear after this incident
16 occurred?

17 A Yes, we spoke about it earlier today.

18 Q Okay. So that is the incident that we
19 spoke about --

20 A Yes.

21 Q -- and you said there was a bloody spot
22 behind her ear; is that correct?

1 A Yes.

2 Q Okay. Who is responsible for purchasing
3 the bull hooks that are used on the Red Unit now?

4 THE WITNESS: Joe Frisco.

5 A Joe Frisco.

6 Q Do you know where he purchases them from?

7 A Well, he's in charge, but he hasn't
8 bought anyone -- he hasn't ordered one.

9 Q I'm sorry, what?

10 A He's in charge of doing it, but he hasn't
11 bought any of them. He has not ordered them.

12 Q Oh. So you know that Joe Frisco has not
13 ordered any bull hooks since you've been on the Red
14 Unit.

15 A Since December up to date I -- I have not
16 known that he -- of him ordering anything.

17 Q Prior to Joe Frisco coming to the Red
18 Unit, who was responsible for ordering bull hooks?

19 A Sasha and myself.

20 Q Oh, have you actually ordered bull hooks
21 while you've been working on the Red Unit?

22 A No.

1 Q But you had that responsibility.

2 A Yes.

3 Q Did you have any responsibility for
4 disseminating bull hooks to the elephant handlers
5 or trainers while you've been on the Red Unit?

6 A The tamers are the ones that are in
7 charge of doing that.

8 Q So you don't have any responsibility for
9 handing out bull hooks; is that correct?

10 A The person that is in charge is the
11 handler of the elephants -- or the handler of the
12 elephant handlers.

13 Elephant tamers, not elephant. The
14 handler of the elephant handlers.

15 Q When you were pulling on Luna in the
16 excerpt that we just watched why were you doing
17 that?

18 A Because Tonka and Asia were separated,
19 and I wanted to bring them together.

20 Q And I'm confused because you were
21 using -- you were pulling on Tonka so what -- how
22 is that related to -- I'm sorry, you were pulling

1 on Luna so how is that related to Asia and Tonka
2 being separated?

3 A Because then there is Asia and one in
4 front of her, and then there is Tonka, and then
5 there is Luna and when they were walking they got
6 apart and that is why I wanted to bring Luna to
7 them.

8 And then once I realized what she was
9 doing, that she was defecating, then I brought them
10 back.

11 THE INTERPRETER: The Interpreter asked
12 you brought them back. Yes, together in a line.

13 BY MS. MEYER:

14 Q Well, you realized that Luna was
15 resisting you when you were pulling on her, did you
16 not?

17 A Yes, but I hadn't realized that she was
18 defecating. Once I realized it and you'll see in
19 our video you will see that we stopped to allowed
20 her to finish.

21 Q But at the time you were pulling on her
22 you -- you felt resistance from her, correct?

1 A Yes. And then I realized what was
2 happening and that I had to go back to bring them
3 on the line, and you see -- you will see that I go
4 back.

5 Q Why didn't you just use a voice command
6 to make her do what you wanted to do?

7 A I did talk to her.

8 Q But a voice command was not enough to
9 make her to do what you wanted her to do?

10 A No, because my attention was -- well, our
11 attention was on Tonka. I -- our attention was on
12 Tonka and the other animals that were in front of
13 Asia.

14 If you see our video you will hear my
15 voice I said Luna here, Luna here. She does not
16 pay attention so I go back and then I -- and the
17 witness made the motion of pulling his arm
18 (indicating).

19 Q I thought you said earlier you've never
20 seen any of this videotape before.

21 MS. PARDO: Objection.

22 THE WITNESS: I just saw it now.