

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE	:	Civil Action No. 03-2006
PREVENTION OF CRUELTY TO	:	
ANIMALS, et al.,	:	
	:	
Plaintiffs	:	March 12, 2009
v.	:	
	:	
FELD ENTERTAINMENT, INC.	:	2:40 p.m.
	:	
Defendant	:	P.M. SESSION
.	:

TRANSCRIPT OF TRIAL RECORD
MID-AFTERNOON SESSION
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:	ERIC ROBERT GLITZENSTEIN, ESQ. KATHERINE A. MEYER, ESQ. TANYA SANERIB, ESQ. MEYER GLITZENSTEIN & CRYSTAL 1601 Connecticut Avenue, NW Washington , DC 20009 (202) 588-5206
For the Defendant:	LISA ZEILER JOINER, ESQ. JOHN M. SIMPSON, ESQ. LANCE L. SHEA, ESQ. FULBRIGHT & JAWORSKI LLP 801 Pennsylvania Avenue, NW Washington , DC 20004-2623 202-662-0200
Court Reporter:	REBECCA STONESTREET, RPR, CRR Official Court Reporter Room 6511, U.S. Courthouse Washington, D.C. 20001 (202) 354-3249

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

C O N T E N T S

WITNESS

MICHAEL KEELE

By Ms. Joiner

By Mr. Glitzenstein

VOIR DIRE EXAMINATION

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DIRECTCROSSREDIRECTRECROSS

By Ms. Joiner

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By Mr. Glitzenstein

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E X H I B I T S

NUMBERADMITTED

PLAINTIFF

142-F

102

25-A

60

1 **P R O C E E D I N G S**

2 THE COURT: Let's proceed, counsel. Go ahead and call
3 your next witness.

4 MS. JOINER: Thank you, Your Honor. Defendant calls
5 Michael Keele.

6 THE COURT: All right.

7 (Oath administered by Courtroom Deputy.)

8 **(MICHAEL KEELE, DEFENDANT witness, having been duly sworn,**
9 **testified as follows:)**

10 **EXAMINATION**

11 THE COURT: Good afternoon. How are you?

12 THE WITNESS: Fine, thank you.

13 BY MS. JOINER:

14 Q. Would you please state and spell your name for us?

15 A. Michael Keele, M-I-C-H-A-E-L, K-E-E-L-E.

16 Q. Where do you work, Mr. Keele?

17 THE COURT: Just one second.

18 (OFF THE RECORD.)

19 THE COURT: All right. Go ahead, counsel.

20 BY MS. JOINER:

21 Q. Where do you work, Mr. Keele?

22 A. I work at the Oregon Zoo in Portland, Oregon.

23 Q. How long have you worked there?

24 A. I've worked there for 37 years.

25 Q. What is your current position?

1 A. Deputy director of living collections.

2 Q. And what are your duties there?

3 A. I'm responsible for the oversight of the activities of the
4 animal health section, animal care section, horticulture,
5 volunteer resources, and conservation.

6 THE COURT: One second. Did anyone find any authority
7 on that very interesting evidentiary issue about introducing
8 evidence in plaintiff's case-in-chief? You know, there's a
9 long-standing view and there's a more modern view, and...

10 MR. SIMPSON: Based on the limited time we had, Your
11 Honor, I think we found pretty clear support for the
12 long-standing view.

13 THE COURT: Yeah, the traditional view. Normally this
14 issue comes up in criminal cases, more often than not when a
15 defendant is concerned about whether or not he or she can make
16 an MJOA at the conclusion of the government's case-in-chief.
17 And there's a lot of case law that says the government always
18 has to introduce its case in its chief, but there's a more
19 traditional view, too, that gives a trial court a little more
20 discretion.

21 MR. SIMPSON: Well, the traditional view is I think as
22 I stated, and that is once they rest, that can't re-open without
23 Your Honor's permission. And that's governed by your discretion
24 under Rule 611, I think.

25 THE COURT: I don't want to abuse it, you know, and I

1 don't want to say because it's nonjury, let it in. But I don't
2 think that type of evidence we were talking about before comes
3 in in a rebuttal case at all because it doesn't rebut anything.

4 MR. SIMPSON: I don't think so. No, I think what
5 should be clearly the case is after the plaintiff rests, they
6 can't use cross-examination of a defense witness basically to
7 put on evidence that could have been put on --

8 THE COURT: Unless it's of an impeachment nature; prior
9 inconsistent statements, other contradictory evidence. Well,
10 they can introduce in your case-in-chief under those
11 circumstances, do you agree or not?

12 MR. SIMPSON: Well, impeachment and refresh
13 recollection, that's wide open. But that's generally not
14 introduced anyway. It's shown to the witness, exhibited to the
15 trier of fact, and then --

16 THE COURT: And the point is made with the impeachment?

17 MR. SIMPSON: That's correct. But what they were
18 trying to do was actually introduce evidence on a point relevant
19 to their case-in-chief that they had already closed on.

20 THE COURT: Now, it wasn't really prejudicial, but if I
21 understand you correctly -- and I guess from a trial lawyer's
22 point of view, had you known that plaintiffs were going to
23 introduce that or attempt to introduce that at some point,
24 you're telling me that your theory would have been different?

25 MR. SIMPSON: Well, I think in that particular case,

1 with those photographs, we probably would have maybe shown the
2 witness the night before these photographs. I mean, we might
3 have gone over them at a prior time. But those weren't even on
4 their exhibit list.

5 THE COURT: But as a lawyer, though, is it really
6 prejudicial to you?

7 MR. SIMPSON: I don't really think they are. I don't
8 truly think they are. But what I'm a little concerned about is
9 basically after they rest, now we're going to have mulligans
10 done in our case when that really shouldn't be the case. I
11 mean, at this point, having rested, I don't think they get to
12 reintroduce evidence.

13 And just --

14 THE COURT: That's why there's a rebuttal phase of the
15 trial.

16 MR. SIMPSON: That's correct. But that's very --

17 THE COURT: Because otherwise the plaintiff continues
18 to make the plaintiff's case-in-chief utilizing exhibits they
19 had not offered in their case-in-chief through your witnesses
20 that they had never planned to call as party opponents or
21 whatever reason.

22 MR. SIMPSON: That's correct. And that's why I
23 think -- you know, this wasn't a jury trial, but typically you
24 would not, as a defendant, offer evidence in the plaintiff's
25 case. I've never been allowed to do it. I've tried it and it's

1 always been excluded.

2 THE COURT: Well, that's the more traditional view, but
3 now I think the more modern view is that defendants sometimes in
4 criminal cases, for a host of reasons, will offer evidence in
5 the government's case-in-chief. All it means is that the Court
6 considers not only the government's evidence but also that
7 evidence as well in determining whether or not the government
8 has made out a prima facie case.

9 But really, when I was trying cases, it was taboo. You
10 couldn't do it. You just couldn't do it.

11 MR. SIMPSON: That's correct.

12 THE COURT: But I don't want to knowingly abuse my
13 discretion. Did you find a case from our circuit?

14 MR. SIMPSON: Well, actually, I did not. The one that
15 I guess clearly states the traditional rule, and I have to
16 apologize, was decided in 1914. But it's 211 f Reporter 812
17 (sic), a decision by Ninth Circuit which clearly sets forth the
18 traditional rule. It's not been reversed.

19 THE COURT: I'm sorry, that's 211?

20 MR. SIMPSON: 211 f 824, Ninth Circuit Court of
21 Appeals, 1914.

22 THE COURT: Yeah, you didn't see anything from the
23 D.C. Court of Appeals?

24 MR. SIMPSON: We're still looking, Your Honor. We
25 didn't have a whole lot of time during lunch.

1 THE COURT: It's an interesting issue. You would think
2 that would be something that -- it doesn't come up, that
3 question. I think it probably boils down to a discretionary
4 call, especially at the end of the day, if it's not prejudicial.
5 But because it's nonjury, I don't want to throw the rules out
6 the window.

7 MR. SIMPSON: That's correct. Because even if the case
8 is closed on both sides, Your Honor still has the discretion to
9 re-open the case. So I think it's the same test.

10 THE COURT: Re-open it, right. All right.

11 Yes, counsel, did you have any authority?

12 MS. MEYER: Your Honor, I didn't find any yet, any cases
13 right on point, also during the lunch break. There are
14 certainly plenty of cases that say as long as the
15 cross-examination is within the scope of the direct, obviously
16 the evidence can come in. And I mean --

17 THE COURT: Well, counsel, I appreciate the concession.
18 And it's not prejudicial, I don't think, at the end of the day.
19 But there has to be a limit, though, because otherwise a
20 plaintiff - not you, but a plaintiff - could continue to proceed
21 with the plaintiff's case-in-chief well into defendant's along
22 those lines.

23 If you tell me this is something isolated, that's fine.
24 I'll probably just let it in if you tell me that. I mean, if
25 there's something more waiting --

1 MS. MEYER: No, this is isolated. And again, it's the
2 kind of --

3 THE COURT: Someone made reference to a dump truck
4 being -- I mean, do you have a dump truck you're going to --

5 MS. MEYER: We're worried about their dump truck.

6 THE COURT: Well, we've already been over theirs. But
7 do you have one that you're trying to get --

8 MS. MEYER: I don't think we do.

9 But in this case, Your Honor, it simply was their own
10 photographs. And the only reason I thought it would be helpful
11 to have it in evidence is because Mr. French actually testified
12 about the size of the pens, and it's a changed practice, they
13 used to use the picket line, and here we have --

14 THE COURT: He did, and I found it to be helpful to
15 look at.

16 MS. MEYER: Right. And here we have a photograph. I
17 mean, they're their photographs, they're not our photographs.
18 So that's why I wanted to --

19 THE COURT: Well, if someone wants to submit some other
20 authority, they can. I don't want people to spend an
21 unnecessary amount of time on that issue. I mean, it would be
22 more troubling if it was to be prejudicial or something, or
23 surprise.

24 MS. MEYER: Right.

25 THE COURT: But it's not. I mean, it's basically

1 illustrative of what the witness testified to. Okay.

2 MS. MEYER: Thank you, Your Honor.

3 THE COURT: Sorry, Ms. Joiner. Sorry to let you start
4 and then stop you.

5 MS. JOINER: That's quite all right. I may repeat
6 myself, but let's see.

7 BY MS. JOINER:

8 Q. Does the Oregon Zoo have any elephants?

9 A. Currently we have Asian elephants, and we have three adult
10 males, three adult females, and a six-month-old calf.

11 Q. And how long has the Oregon Zoo had elephants there?

12 A. At this location since 1960, but we've had elephants in
13 Portland since 1953.

14 Q. What type of contact system does the Oregon Zoo use with its
15 elephants?

16 A. Currently we train our elephants in both a free and
17 protected contact environment.

18 Q. And at some point during your career at the Oregon Zoo,
19 Mr. Keele, did you work with elephants?

20 A. I did.

21 Q. When did you begin working with elephants?

22 A. I started at the zoo in 1971, and as a rover keeper filled
23 in at elephants periodically but didn't have any
24 responsibilities for training them. That came in 1975, when a
25 position came in to work full-time exclusively with elephants,

1 and I guess I was assigned to elephants at that point. And I
2 worked full-time from 1975 through 1980 before being promoted to
3 a management position.

4 Q. And what was the job title that you had from that period you
5 just described from 1975 to 1980?

6 A. It was an animal keeper, but it was assigned exclusively to
7 elephants.

8 Q. And what were your duties at that time with regard to the
9 elephants?

10 A. We provided daily care for the elephants, so we fed them,
11 cleaned them, inspected them, we provided routine foot care for
12 them, some level of exercise, we provided training. We
13 participated in preparing birth plans and worked with females
14 that were giving birth also. If they had problems with their
15 births, then we were involved in assisting and sometimes
16 hand-rearing some of the calves. And then we had some
17 responsibilities with public education.

18 Q. When your position changed to a management position, what
19 was your title at that point?

20 A. Animal keeper foreman.

21 Q. And when did you say that was?

22 A. 1980 or '81, I think.

23 Q. At that point did you continue to handle elephants?

24 A. I did. As an animal keeper foreman, I all of a sudden was
25 responsible for all of the zoo programs, all of the animals.

1 And because of turnover with elephants, they weren't able to
2 replace me right away, so I had to fill in until we had a
3 replacement, and then subsequently I filled in often after that
4 until about 1982.

5 Q. And how many elephant births have you participated in?

6 A. With the last one on August 23rd of last year, nine.

7 Q. And since that last point until now, what if anything has
8 been your role regarding elephants at the Oregon Zoo?

9 A. I'm sorry, from the animal keeper foreman on?

10 Q. Yes.

11 A. As I mentioned, I did some hands-on work in there until
12 about 1982, but I was responsible for the day-to-day operation
13 of primarily the husbandry aspect of it. A veterinarian was
14 responsible for the medical piece of it; I was responsible for
15 supervising the elephant care staff, providing the training that
16 they needed.

17 And then as time moved on, I was promoted to assistant
18 director. We hired a general curator, promoted one, and at that
19 point the general curator was more involved with the day-to-day
20 stuff and my role now is more of the oversight of the policy and
21 being sure that the Oregon Zoo elephant management policy is up
22 to date and followed.

23 Q. And what type of elephant research, if any, has been
24 conducted at the Oregon Zoo?

25 A. When I was an elephant keeper, we did quite a bit of

1 research trying to determine the female Asian elephant's estrous
2 cycle, and we were doing that primarily by assessing the male's
3 behavior to them on a daily basis. Because elephants really
4 don't show a lot of external signs of when they're cycling, when
5 they can become pregnant.

6 We did that for many years, and then aligned it with
7 blood samples or hormone work to actually finally identify the
8 Asian elephant estrous cycle for purposes of breeding.

9 And then we did some research with chemosensory
10 communication, which is looking at pheromones that elephants
11 secrete, and trying to determine what the communication modality
12 is, what are they trying to communicate back and forth to one
13 another. A lot of that research has been taken to range
14 countries, sometimes to help impact human/elephant conflicts.

15 We were the first -- well, infrasonic communication was
16 actually discovered first at Oregon Zoo, with a team of
17 scientists that came in and actually recorded infrasonic
18 communication with the elephants, and then they went back to
19 Africa and played it back to truth test it.

20 We participate with all kinds of research. We're very
21 collaborative. So if there's research about endotheliotropic
22 herpes virus, we'll be involved in that. There's some DNA work
23 that we've helped with. We're there.

24 Q. If I could go now to Defense Exhibit 25, this is at PDF 57
25 through 60, do you recognize this document, Mr. Keele?

1 A. Yes, I do.

2 Q. What is it?

3 A. It's my vita.

4 Q. Are there any updates to this since you've submitted your
5 report in this case?

6 A. In January of this year I accepted a board of director
7 position with the National Elephant Center.

8 Q. And can you tell us briefly what the National Elephant
9 Center is?

10 A. The National Elephant Center is a consortium of AZA
11 facilities that came together to, let's see, develop a place
12 where we could deal with some of the elephant problems we've had
13 in our zoo, such as loan animals, where we would need a place
14 where we could take a loan animal and pair it up with another
15 animal. We see it as kind of a regional facility, where
16 elephants that need homes can find a place for a period of time
17 until we can place them at other zoos.

18 We see the potential for it as a center for breeding
19 both elephants and also staff on how to work with elephants.
20 It's kind of in its infancy. We hope to have places built for
21 elephants by the fourth quarter of this year or the first
22 quarter of next year.

23 Q. And in your other memberships it indicates the Association
24 of Zoos and Aquariums.

25 A. Yes.

1 Q. Can you explain for us briefly, is that referred to as the
2 AZA?

3 A. Yes, the AZA is a professional organization that is
4 dedicated to furthering science and education and conservation
5 that benefits wildlife.

6 Q. And how long have you been an AZA member?

7 A. Since 1985.

8 Q. Are you also a member of the Elephant Managers Association?

9 A. Yes.

10 Q. And how long have you been a member of that particular
11 group?

12 A. I believe I've been with it since the beginning, which I
13 believe is some time in the '80s.

14 Q. And can you describe briefly what the Elephant Managers
15 Association is?

16 A. It's a group of elephant professionals, those that actually
17 manage -- or work with elephants, as well as people like myself
18 who are involved with elephants at a different level, and then
19 individuals who just have an interest in elephants. It's a
20 professional organization; they have a journal that helps
21 disseminate a lot of information to its membership and they hold
22 annual meetings.

23 Q. And underneath that it indicates that you have received some
24 certificates from the AZA for outstanding service. Can you
25 describe briefly what those were for?

1 A. The first one in 1999 and 2000 was following AZA's elephant
2 initiative. And that was kind of a huge effort to pull in a lot
3 of stakeholders and AZA professionals to talk about our elephant
4 programs and try to identify knowledge gaps, try to identify
5 deficiencies and areas where we needed to improve on elephant
6 management in order to make our programs -- well, improve our
7 programs. It touched on many things such as elephant standards,
8 conservation, international networking -- we had another one.
9 Importation is an example.

10 Q. And if we look down, I would like to direct your attention
11 under the Conservation Involvement from it indicates 2000 to the
12 present. Would you tell us, what is the AZA Elephant Taxon
13 Advisory Group/Species Survival Plan?

14 A. Well, a Species Survival Plan is a program that ensures the
15 survival of a species, actually of a select wildlife species.
16 And so each SSP manages a breeding program for that species;
17 that's to maintain a healthy self-sustaining population with
18 both a genetic diversity and demographic stability. So that's
19 one piece of it, which we were in the early '80s.

20 But the TAG is a higher level, and the TAG looks at
21 conservation priorities for the species, it looks at education
22 priorities, and also a purpose for keeping these animals in
23 captivity.

24 We also identify research priorities that are important
25 to the elephants in taking care of them in captivity, as well as

1 research that will benefit them and conservation in the field.

2 Q. And how many of these SSPs are in the AZA?

3 A. There are 113 SSPs that comprise, I think it's 180 species.

4 Q. And what role does the SSP have with regard to husbandry
5 guidelines?

6 A. One of the responsibilities of the SSP is to develop
7 breeding strategies, also to develop a studbook which drives the
8 breeding strategies, as well as the husbandry guideline. And
9 the husbandry guideline is a great reference tool, where it
10 captures some of the best practices that are out there and has
11 its membership actually follow the guidelines so that we can
12 more easily identify areas where there might be husbandry issues
13 or medical issues.

14 Q. How many husbandry guidelines are there?

15 A. Well, with the 180 species that are in the SSPs, I would
16 presume there would be that many. But I imagine there aren't
17 quite that many yet, because some of the SSPs are going to be
18 newer and they're going to be in the process of developing those
19 standards.

20 Q. How long have you been a member of the Asian elephant SSP?

21 A. Since its inception in 1985.

22 Q. And at some point were the SSP and the TAG combined for
23 elephants?

24 A. They were. That was in, I want to say, 2000.

25 Q. And your resume' indicates that you were the chair beginning

1 in 2000. Is that still current?

2 A. That's true. That's current.

3 Q. Would you explain what an Asian elephant studbook is?

4 A. An Asian elephant studbook is a catalog of all of the
5 animals that we know about in North America, in this case, and
6 all of those animals that are living or have lived in our zoos
7 or even outside of the AZA community. So circuses and in
8 private holders as well.

9 The studbook is important because in order to develop a
10 breeding program for them, we need to know what their genetic
11 background is. So by cataloging all that information, we can
12 then make recommendations for their breeding, and that helps us
13 develop the self-sustaining population.

14 Q. And how is the information collected for the studbook?

15 A. Primarily through a survey. So a survey goes out to holders
16 of elephants with what we know about the individuals, and we ask
17 the holders to validate the information.

18 Now, with AZA zoos, they report that information to a
19 data system, and so we get a lot of that information that way.
20 But with non-AZA folks, the survey helps us a lot to get that
21 information.

22 Q. Can you tell us approximately how many of the elephants in
23 North America are housed in AZA institutions?

24 A. There's somewhere between 260 and probably 290.

25 Q. And what percentage of the elephant population is that,

1 approximately?

2 A. About half.

3 Q. Where are the rest of the elephants located?

4 A. The rest are located with circuses, with private holders,
5 and in private ranches, in sanctuaries.

6 Q. If I could turn to the next page, this is PDF 58, and under
7 your publications, if I could direct your attention to the one
8 right there, the Elephant Husbandry Resource Guide. Can you
9 explain to us what that is?

10 A. The Elephant Husbandry Resource Guide is kind of a reference
11 on how to take care of elephants, and it lists all the needs
12 that an elephant would have in captivity. In this particular
13 case we go beyond that and talk about education and
14 conservation, but we also deal with management, staff training,
15 animal training, nutrition. We talk about transportation, we
16 talk about medical issues, and we talk about birth, and we talk
17 about raising calves in the event you have to hand raise them,
18 among other things.

19 Q. And who compiled this guide?

20 A. There was a lot of folks that put that together. But it
21 started with the SSP management group, which were at that point
22 nine members that were elected from different AZA zoos that had
23 elephants, and I was the chair of that. Each of the management
24 team members took on chapters, and their responsibility was not
25 to write the chapter but to identify the experts who could help

1 with that.

2 Q. And when did you start that process?

3 A. We put together an outline at our mid-year meeting in
4 Pittsburgh in 1997.

5 Q. And how long did it actually take to complete that Husbandry
6 Resource Guide?

7 A. Well, I really liked the Rhino Husbandry Resource Guide that
8 had come out just before that, and it was really a wonderful
9 guide and it talked about all the things that kind of we were
10 dealing with, and it took four years. And I was talking to my
11 group about, you know, we need to commit a bunch of time to it,
12 and they were sure they could get it done in six months, but I
13 was trying to help them realize it was a lot more work than
14 that. And it finally was distributed in 2004.

15 Q. And what is the purpose of the Husbandry Resource Guide?

16 A. Well, it's really -- when I look at it and realize all the
17 information that's in there, and in many cases was already out
18 there and this pulled it all into one place, so it's a really
19 great reference to look up information that you would want if
20 you were interested in housing elephants, how to do that. If
21 you were interested in providing certain medical care, it's
22 there.

23 So its purpose is really to identify best practices
24 with animal care, or elephant care in this case, and make it
25 available to everyone.

1 Q. And how was authorship on this guide attributed?

2 A. I think Debbie Olson was the main coordinator who pulled all
3 the chapters together and coordinated reviews and solicited
4 outside reviewers. So there's a whole host of contributors that
5 are identified. I think in the preface there's about 50 people
6 that are identified as either contributors or reviewers.

7 Q. At some point did non-AZA members become involved with the
8 Husbandry Resource Guide?

9 A. Yeah. The Husbandry Resource Guide is really the
10 responsibility of an AZA SSP, and so it's supposed to reflect
11 the AZA community. But our group really felt like there were
12 50 percent elephants that weren't the AZA population, and we
13 felt kind of an obligation to provide this information to them
14 as well, so that meant that we needed to get input from them,
15 recognizing that there are housing issues that are different
16 outside of a zoo.

17 And so somewhere, I think it was around -- it was early
18 on when we started including outside folks for their input.

19 Q. And who was the, for lack of a better word, targeted
20 audience for the Elephant Husbandry Resource Guide?

21 A. It was everyone who housed elephants in North America.

22 Q. Was that guide written for litigation purposes?

23 A. No.

24 Q. Can you tell us, which group's standards does the Husbandry
25 Resource Guide recognize?

1 A. Well, in putting it together, it was almost like we realized
2 that as soon as we got it out, it would almost be outdated. So
3 we were trying to get as much information as we could. The EMA,
4 the Elephant Managers Association, already had some guidelines
5 out, so they're referenced in the husbandry guide throughout.

6 We also asked USDA, APHIS for input, and they reviewed
7 it. We had the International Elephant Foundation participate
8 with that, and their membership.

9 Q. And when it was completed in 2004, to whom was it
10 distributed?

11 A. My understanding was that it was distributed to every holder
12 of elephants. So everyone who had elephants in the U.S. got it,
13 all the contributors got a copy of it; we also sent it to our
14 colleagues overseas.

15 Q. And do you consider the resource guide to be authoritative
16 on the topic of elephant husbandry?

17 A. I really do --

18 MR. GLITZENSTEIN: Your Honor, I object. It seems to
19 me that we haven't qualified Mr. Keele as an expert yet, so
20 asking whether it's authoritative before he's qualified as an
21 expert seems to be putting the cart before the horse.

22 MS. JOINER: I think this is part of his publications,
23 and he's simply speaking to what this is.

24 THE COURT: He can give his answer. I'll assess
25 whatever weight it's entitled to. He can answer the question.

1 A. I do believe it's an authoritative reference.

2 THE COURT: Why?

3 THE WITNESS: I think because of the input it has
4 received from so many of the experts out in the field, and folks
5 like USDA and EMA, I think it represents the entire elephant
6 community.

7 BY MS. JOINER:

8 Q. Have you done any teaching, Mr. Keele?

9 THE COURT: I don't think he heard you. Or are you
10 thinking about it?

11 THE WITNESS: Yeah, I'm thinking.

12 MS. JOINER: Or maybe I'm not being artful enough. Let
13 me just move down to the bottom of the --

14 THE COURT: I'm sorry, maybe I missed the answer. I
15 don't know.

16 A. I don't consider myself a teacher, so when asked that -- but
17 yes, I've been involved in some level of teaching.

18 BY MS. JOINER:

19 Q. And what is it that you have done?

20 A. I've participated in some training workshops with USDA and
21 their inspectors and investigators on two occasions.

22 Q. Have you agreed to appear as an expert witness for
23 Feld Entertainment in this case?

24 A. Yes.

25 Q. When did you agree to do that?

1 A. I believe it was November of 2007.

2 Q. What is your hourly rate for the work that you've done on
3 this case?

4 A. \$125 an hour, plus expenses, and \$350 for deposition rate.

5 Q. Have you ever been paid by or worked for Feld Entertainment
6 on anything else?

7 A. No.

8 MS. JOINER: At this time, Your Honor, I would like to
9 tender Mr. Keele as an expert in captive Asian elephants,
10 parturition and breeding, captive elephant management and
11 husbandry standards, and principles of elephant training.

12 THE COURT: Any voir dire, counsel? Any voir dire or
13 any objection?

14 MR. GLITZENSTEIN: Yes, Your Honor, briefly. I'm
15 trying to write down the list of areas of expertise.

16 **VOIR DIRE EXAMINATION**

17 BY MR. GLITZENSTEIN:

18 Q. Good afternoon, Mr. Keele.

19 A. Good afternoon.

20 Q. Mr. Keele, I think you indicated that the last time you've
21 done any significant hands-on work with elephants was in 1982.
22 Is that right?

23 A. That's correct.

24 Q. So since then you've basically had management positions. Is
25 that correct?

1 A. Correct.

2 Q. And in terms of your educational background, you don't have
3 any advanced degrees. Is that correct?

4 A. That's correct.

5 Q. You don't have a college degree. Is that correct?

6 A. That is correct.

7 Q. So your claim to expertise is based essentially on your
8 practical experience and your discussions with others in the
9 field. Is that correct?

10 A. That's correct.

11 Q. And do you recall being deposed in this case?

12 A. I'm sorry?

13 Q. Do you recall being deposed in this case?

14 A. Yes.

15 Q. And you made an effort to answer the questions as truthfully
16 and accurately as you could. Right?

17 A. I did.

18 Q. Do you recall indicating during deposition that you're not
19 really familiar with Ringling's operations?

20 A. Yes.

21 Q. And that's the case, is it not?

22 A. Yes.

23 Q. And so as a consequence, you haven't really analyzed how
24 Ringling's operations compare to AZA certified facilities.

25 Correct?

1 A. That's correct.

2 Q. And as a result, the expert report you've prepared for this
3 proceeding doesn't actually address how Ringling in particular
4 uses the bull hook. Is that correct?

5 A. I believe that's true.

6 Q. And it doesn't actually address how Ringling or FEI in
7 particular uses chaining practices. Is that correct?

8 A. That's correct.

9 Q. You're not a veterinarian?

10 A. I am not.

11 Q. And you didn't do any detailed review of the medical records
12 in formulating your opinion in this case that pertain to the
13 elephants at issue here?

14 A. No.

15 Q. No, you didn't do that review. Is that correct?

16 A. I remember some -- I remember reading some of
17 Phillip Ensley's report.

18 Q. But that's the extent of what you reviewed in terms of the
19 medical condition of the elephants. Is that correct?

20 A. Right. Yes.

21 Q. And you also, I believe, acknowledged in your deposition
22 that you're not qualified to opine on the psychological effects
23 of any of the practices at issue on the elephants. Correct?

24 A. That's my opinion.

25 Q. That you're not qualified to offer an opinion on that?

1 A. That's correct.

2 Q. And so you would defer to behaviorists on that issue. Is
3 that correct?

4 A. Yes.

5 Q. You've also not studied elephants in any wild setting. Is
6 that correct?

7 A. That's correct.

8 Q. And in fact, you've never seen an Asian elephant in the
9 wild. Isn't that correct?

10 A. Well, not quite. But I imported an Asian elephant in 1999,
11 and before she came over, I went to Malaysia to check her out.
12 And in the process, I went with the wildlife department to go
13 down to where she was at, and they took me to a place in one of
14 the national parks where they had captured elephants and they
15 had them tethered for relocation. So I did see them there.

16 And there was another place in Malaysia, but at that
17 point they were wild animals and had been brought into
18 captivity.

19 Q. Yeah, let me just take look at your deposition just to make
20 sure we're on the same wavelength on this topic, page 135.

21 Page 135 of the deposition, looking at line three, the
22 question to you was: "And by the way, have you ever had the
23 occasion to observe Asian elephants in the wild?" Up through
24 line five: Answer, "No."

25 So just so we understand, when you answered no, you

1 were answering no because you hadn't seen them in the wild. Is
2 that correct?

3 A. That's correct.

4 Q. And just to clarify, the Asian elephants that you did see
5 over in Asia were ones that had already been taken in from
6 captivity and put into basically a captive situation. Is that
7 right?

8 A. Right.

9 Q. Now, you testified about the AZA and the SSP, which is an
10 entity created by the AZA. Is that correct?

11 A. Yes.

12 Q. For purposes of our discussion, it's the SSP/TAG when we're
13 talking about elephants. Is that correct?

14 A. It's actually the TAG/SSP.

15 Q. I stand corrected. And that's because unlike some other
16 animals, the only animals that are dealt with under the SSP are
17 Asian and African elephants. Correct?

18 A. That's correct.

19 Q. And those have been deemed to be sufficiently similar that
20 they're dealt with under one TAG as opposed to different TAGs
21 for different species. Is that right?

22 A. Their captive needs are relatively the same. Yes.

23 Q. So, for example, in contrast, for some cat species, there
24 are separate TAGs for tigers and for lions and for leopards and
25 that sort of thing. Correct?

1 A. Yes. And there's a further distinction there that the
2 expertise for each of those species that you mentioned, tigers,
3 clouded leopards, snow leopards, may be different people.

4 With the elephants, they're pretty much the same
5 people, so it makes sense that since this is mostly volunteer
6 efforts from these professionals, that we use as few people as
7 necessary.

8 Q. And just so we're also on the same wavelength, the AZA
9 itself has put out standards. Correct?

10 A. For?

11 Q. Let me be clear about that. Has put out standards for
12 accreditation of entities that become members of the SSP?

13 A. Yes, there are accreditation standards.

14 Q. And those are standards that relate to things like use of
15 the guide or the bull hook?

16 A. Yes. There's AZA standards for elephant management and care
17 that are part of the accreditation process.

18 Q. And they relate to things also like space limitations,
19 amount of water provided, and those sorts of things?

20 A. Yes.

21 Q. And Ringling -- let me refer to it as Feld.

22 Feld Entertainment is not a member of the SSP. Correct?

23 A. That's correct.

24 Q. It has not gone through the accreditation process that's
25 required to become a member of the SSP. Is that correct?

1 A. That's correct.

2 Q. And as a consequence of that, you've never made any
3 determination as to whether or not FEI would be able to meet
4 those standards. Correct?

5 A. That's correct.

6 Q. And there are also non-zoo members of the SSP. Correct?

7 A. Yes.

8 Q. But FEI has not attempted to become a non-zoo member of the
9 SSP either, has it?

10 A. I don't know that for sure, because I wouldn't necessarily
11 be the one that would be contacted for that.

12 Q. But you know that they are not a member of the SSP?

13 A. I know they are not a member.

14 Q. You're not here testifying on behalf of the AZA, are you?

15 A. I am not.

16 Q. You're not testifying on behalf of the SSP?

17 A. No.

18 Q. You're not testifying on behalf of the Oregon Zoo. Correct?

19 A. Correct.

20 Q. And there's a steering committee for the SSP. Correct?

21 A. Yes.

22 Q. And in fact, some steering committee members would probably
23 be opposed to your testifying today. Correct?

24 A. I don't know.

25 Q. In terms of the husbandry guide you referred to, we can get

1 into some more questions about this in a bit. But just at this
2 point, the husbandry guide is not an officially endorsed AZA
3 publication, is it?

4 A. Well, it meets the criteria set forth to develop a husbandry
5 guideline through SSP, so as much as it would be -- as any
6 guidelines would be endorsed, then that would be it.

7 Q. Well, let me ask you about how that answer comports with
8 your deposition. If we look over at page 133, beginning at
9 line five, the question was: "How does the AZA fit in to this
10 document? In other words, does the AZA officially condone the
11 contents of this document?" And the answer was, "No."

12 And then you go on to say, "Typically a TAG is charged
13 with developing a husbandry manual for a species, and the TAG or
14 the SSP has total control over its content and development."

15 Just so I understand, but the AZA has not itself
16 endorsed --

17 MS. JOINER: Your Honor, I'm going to object. If
18 they're going to use deposition testimony, they need to read the
19 full answer.

20 MR. GLITZENSTEIN: Well, I read the answer up until the
21 paragraph ended, Your Honor. I'm not sure how much I should
22 read.

23 THE COURT: I think that's fair, for completeness.
24 Just read the whole answer.

25 MR. GLITZENSTEIN: I'm happy to read the rest of it.

1 BY MR. GLITZENSTEIN:

2 Q. "We recognize this document could really help other non-AZA
3 holders and owners of elephants, and that we kind of felt an
4 ethical obligation to be a little broader in how we addressed a
5 lot of elephant management issues. So the document says some
6 general things, where with the AZA we call it out more
7 specifically in little boxes throughout the document."

8 Is that the rest of your answer?

9 A. Yes.

10 Q. Did I read that accurately?

11 A. Yes.

12 Q. And in fact, in terms of the little boxes, those are places
13 where the AZA standards frequently are more -- are stricter than
14 what's in the guidelines. Correct?

15 A. Correct.

16 Q. And so you're holding AZA --

17 THE COURT: You hadn't finished your answer. Go ahead.

18 THE WITNESS: May I go back to the officially endorsed?

19 THE COURT: Yes, you may.

20 A. The information I gave you today was to clarify that to my
21 knowledge, AZA doesn't officially, whatever you said, sanction
22 or whatever, guidelines. They're usually done within the SSP,
23 and that's probably as far as it goes.

24 BY MR. GLITZENSTEIN:

25 Q. Yeah, I appreciate that. But again, in light of that

1 clarification, the only officially sanctioned AZA document are
2 the standards. Correct?

3 A. Correct.

4 Q. And it's the standards that are the mandatory criteria with
5 which the institutions that apply for AZA or SSP membership must
6 comply. Correct?

7 A. Correct.

8 Q. And in fact, when you were developing the Husbandry Resource
9 Guide, is it not the case that there was at least a number of
10 issues not a consensus as to how some of the issues should be
11 addressed?

12 A. Yes.

13 Q. And some of those issues, for example, included training of
14 elephants. Correct?

15 A. Correct.

16 MR. GLITZENSTEIN: Your Honor, I think that's all I
17 have for the voir dire portion. I think our position would be
18 that we have no objection to Mr. Keele testifying as an expert
19 with regard to elephant husbandry and management in the zoo
20 setting. We do object to him offering any opinions outside the
21 scope of his report, particularly with regard to FEI's
22 practices, because as he's acknowledged, he doesn't know
23 anything about those practices and his report specifically does
24 not address them.

25 So if his testimony is limited to what is occurring in

1 the zoo world, and his expertise is to the zoo maintenance and
2 care of elephants, excluding veterinary issues, which he said
3 he's not a veterinarian, then we have no objection to him
4 testifying, understanding that qualification.

5 THE COURT: Ms. Joiner, any other questions, first,
6 before you respond to that?

7 **VOIR DIRE EXAMINATION**

8 **BY MS. JOINER:**

9 Q. One question about the topic you were asked by counsel, that
10 you testified that you were not qualified to opine on any
11 psychological effects on elephants. Is that correct?

12 A. I believe I stated something like that in my deposition.

13 Q. But you did opine on the effects in your report of -- strike
14 that. I'll try to not lead.

15 What if any opinions in your report did you provide
16 about animal welfare? Did you include those?

17 A. I did.

18 MS. JOINER: That's the only question that I have, and
19 I'm prepared to respond if you like.

20 THE COURT: Go ahead.

21 MS. JOINER: First of all, Mr. Keele's report is full
22 of all kinds of references and comparisons back to what
23 Ringling's practices are and how they relate. And the argument
24 that Mr. Keele can't come in as an expert and offer opinions in
25 this case because he hasn't been to Ringling and doesn't work

1 for Ringling, that's the same category that plaintiff's
2 counterparts are, Ms. Laule, Ms. Buckley, Ms. Kinzley.

3 So I'm not sure that that gets us anywhere at this
4 point, in light of the testimony that plaintiff's own experts
5 have presented, because they have a complete lack of knowledge
6 about our own operations.

7 THE COURT: So in other words, it goes to weight and
8 not admissibility?

9 MS. JOINER: I would agree, given how we've proceeded
10 thus far, Your Honor.

11 THE COURT: What about that? Does it go to the weight
12 of his testimony?

13 MR. GLITZENSTEIN: I think the contrast is that as
14 Mr. Keele has acknowledged, he didn't actually opine in his
15 report about Ringling's practices with the bull hook or its
16 chaining practices. Our experts actually looked at videotape
17 and looked at materials and then gave opinions about FEI's
18 practices in particular.

19 Mr. Keele, I think quite candidly, has indicated that
20 he believes he doesn't know enough about those practices to
21 articulate specific opinions about them, which again I think
22 it's very candid. And we don't have a problem with him saying
23 here's how it's done in the zoo world, and if FEI then wants to
24 make an argument that, well, if it's done that way in the zoo
25 world, then here's what you should infer about our practices,

1 that's fine.

2 But he is simply not a witness who can, based on his
3 own concession, offer an opinion here in court today which
4 supplements what's in his report. And his report does not
5 provide opinions about Ringling's use of the bull hook or the
6 chaining practices that were at issue. We were very careful in
7 our experts' reports to ensure that they could offer opinions
8 based on whatever materials they reviewed as to the particular
9 practices that we're alleging.

10 So I think there's a pretty fundamental distinction,
11 and I think the case law is quite clear that if a witness says,
12 I haven't looked at topic X, whatever that material consists of,
13 by reading the materials, looking at the videotapes, and then
14 forming an opinion in the report, they can't come into court for
15 the first time and start presenting an opinion.

16 So we have no problem with them offering a general
17 opinion about how these practices are engaged in in the zoo
18 world, and I think that actually may be illuminating to the
19 Court. But it's a different matter --

20 THE COURT: Well, are you suggesting that he's being
21 offered for the purpose of articulating an opinion that he has
22 not previously expressed in his report? Are you suggesting that
23 defendants are attempting to offer him as an expert who will, if
24 allowed, articulate an opinion that he's not previously
25 articulated in a report?

1 MR. GLITZENSTEIN: That's a concern I have. Because
2 Mr. Keele just acknowledged that his report doesn't address
3 FEI's particular practices with the use of the bull hook, and he
4 has acknowledged, I think quite candidly, that he didn't address
5 their particular practice of use of the chaining.

6 So if we're going to avoid those questions, that's
7 fine, but if the questions are going to be --

8 THE COURT: Let me just stop you for a second. You're
9 not offering him for that purpose. You're not offering him in
10 an effort to attempt to get him to state an opinion that he's
11 not articulated in his report, are you?

12 MS. JOINER: No, Your Honor. Everything is in his
13 opinion. And I need to just point out, it's completely
14 inaccurate to say that he didn't consider anything that our
15 particular client does with regard to things. He has it right
16 here in his references; he reviewed both of the inspection
17 videos - it's in his report - he went out and looked at the
18 seven elephants at issue.

19 THE COURT: Well, ask him the question again.

20 MS. JOINER: Do you want me to put further foundation
21 in?

22 THE COURT: Yeah, that's fine.

23 BY MS. JOINER:

24 Q. Okay. If you would pull out Defense Exhibit 25 again,
25 please? And I would like to go to Exhibit 2. I'm not sure

1 which PDF page, but it's Exhibit 2. It's the very last page of
2 that exhibit.

3 Do you recognize this from your report, Mr. Keele?

4 A. Yes, I do.

5 Q. And I would like to direct your attention to those
6 particular entries right there (indicating). What are these
7 materials that are listed in this appendage to your report?

8 A. The Endangered Species Act of 1973; the Asian Elephant
9 North American Regional Studbook, Karen and Nicole video
10 footage, Auburn Hills, 11/13/2007; ASPCA versus
11 Feld Entertainment elephant video inspection, Auburn Hills, same
12 date; ASPCA, et al. vs. Ringling Brothers Barnum & Bailey Circus
13 elephants video footage; Center For Elephant Conservation DVDs
14 1 through 3.

15 Q. Did you actually review those materials in the course of
16 preparing your report?

17 A. Yes, I did.

18 MS. JOINER: Let me get to the right page, Your Honor.

19 A. I believe I included something in my report.

20 BY MS. JOINER:

21 Q. And if I could go to page 39 of your report -- I'm sorry, I
22 guess it starts on page 37 down at the bottom. What is this
23 section of your report called?

24 A. "Observations From Inspections."

25 Q. And what inspections are you referencing there?

1 A. I guess three inspections I made, two at CEC, the Center For
2 Elephant Conservation, and then one that was at Auburn Hills.
3 No, it wasn't, I'm sorry. It was of Nicole and Karen at
4 North Carolina.

5 Q. And at the time that you submitted your expert report in
6 this case, Mr. Keele, did you consider it to be complete and
7 include your opinions?

8 A. Yes.

9 MS. JOINER: Okay. Foundational, I think --

10 THE COURT: All right. I will, consistent with what the
11 Court has previously done, allow the witness to testify, and at
12 the merits determination stage give the witness' testimony what
13 weight, if any, it's entitled to.

14 MS. JOINER: Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 **BY MS. JOINER:**

17 Q. Mr. Keele, do you have any opinion regarding the use of
18 restraints during parturition?

19 A. Yes.

20 Q. What is your opinion on that?

21 A. They are an effective tool that their use is recognized
22 globally for elephant management.

23 Q. Why are they used during parturition?

24 A. They can assist with a difficult delivery where the
25 female -- it might be a female's first calf, she might not be

1 experienced, and she may turn aggressive to the calf. It can
2 also be used afterwards if the mother rejects the calf and there
3 needs to be reintroduction efforts. It gives the staff much
4 greater control of a situation like that, and in a safer
5 environment.

6 Q. And have you personally experienced the use of tethers
7 during birth?

8 A. At Oregon Zoo we've had 27 births and we've never restrained
9 during birth. We've had a need to restrain as part of the
10 parturition process, where there were other elephants that were
11 trying to be too attentive to the calf and we needed to restrain
12 or tether the female for a while so that the calf could rest.

13 And then more recently we had a situation where an
14 inexperienced mother tried to kill her calf, and in 87 seconds
15 had managed to kick the calf clear around the room while another
16 elephant jumped in and joined. And we had to pull that animal
17 and then reintroduce it back to the mother, who was tethered.

18 Q. As the Asian elephant studbook keeper, are you familiar with
19 the birth and death rates of Asian elephants in North America?

20 A. Yes.

21 Q. Do you have any opinion regarding Ringling's breeding
22 program?

23 A. I think their breeding program is phenomenal. I mean,
24 they've had 22 births; 21 of them were from natural breeding and
25 then another one was from artificial insemination, which is a

1 great feat. And I think they've only lost four, so they're well
2 under the average, which is -- calf mortality is somewhere close
3 to 40 percent, and Ringling is far from that.

4 Q. And what if anything does a successful reproduction or high
5 fertility indicate as to an animal's well-being?

6 A. Well, a successful breeding program is an indicator of
7 elephant well-being. It's one indicator. And then second
8 generation breeding, where an animal who has been born in
9 captivity reproduces, is even further -- is another indicator of
10 well-being.

11 Why I think it's important is because elephants in our
12 care, birth and reproduction is huge in their whole life, and so
13 they go through the process of courtship, they go through the
14 process of being pregnant, giving birth, and then learning how
15 to be good mothers. And then females who aren't -- or who have
16 never reproduced now learn from these animals. So it's really
17 huge in their kind of portfolio of life experiences.

18 Q. I want to turn now to the topic of training principles.
19 Would you explain, please, what is operant conditioning?

20 A. Operant conditioning is a form of learning by which
21 behaviors are determined through their consequences.

22 Q. And which elephant management style is operant conditioning
23 used with?

24 A. Well, it's used in both a free and protected contact
25 environment.

1 Q. And what do you mean when it's used with both?

2 A. Well, free contact environment is where keepers are -- they
3 don't have a barrier between them and the elephants, so they're
4 right in with the elephants, and so they're using the same
5 operant conditioning methods that you would use when you have a
6 barrier between you and the elephant.

7 Q. How is reinforcement used with operant conditioning?

8 A. Well, reinforcement, the theory behind it is that it
9 increases the likelihood of a behavior occurring.

10 Q. What types of reinforcement are there?

11 A. There's positive reinforcement and negative reinforcement.

12 Q. What is positive reinforcement?

13 A. Positive reinforcement is something -- it is a reward that
14 follows a behavior that you've asked an elephant to do. So if
15 you say "foot up," the elephant raises its foot and you give it
16 a food reward. There's other positive reinforcements other than
17 food, so sometimes it's just a "good girl" or a pat on the
18 shoulder. It's something she looks forward to.

19 Q. And what is negative reinforcement?

20 A. Negative reinforcement on the other hand is when a stimulus
21 is provided that the elephant doesn't like and moves away from
22 it. So with positive reinforcement, the reward happens after
23 the behavior is given; with negative reinforcement, the behavior
24 happens after the stimulus. Or the behavior -- yeah, I think
25 that's right.

1 Q. Is operant conditioning used just on elephants?

2 A. No. Operant conditioning is used with all kinds of animals,
3 including people. And as a matter of fact, animals themselves
4 learn from within their own social group from
5 operant conditioning.

6 So some examples might be a bit on a horse, for
7 example, or a leash on a dog, or I guess canes are used with
8 pigs. What they do is they all provide -- in negative
9 reinforcement they all provide stimulus to a part of the anatomy
10 of the animal which causes them to move away from that.

11 Q. And in your opinion, is there any confusion in the lay
12 community with what these terms mean?

13 A. I think there's huge confusion. I think the lay community,
14 even if they have cats and dogs and they practice operant
15 conditioning themselves, still look at positive reinforcement
16 meaning good, negative reinforcement bad.

17 Q. Is that how those terms are used in operant conditioning?

18 A. No.

19 Q. What is the importance of timing on the use of
20 reinforcement?

21 A. Well, animals learn quickly that there's a consequence to
22 their behavior. So if they provide a behavior that you've asked
23 for and you reward them right away, then they bridge that. They
24 know what they've been rewarded for. And the next time that you
25 ask for that command, they will do it; they'll provide it again,

1 and you reward them again.

2 If you don't reward right away and time elapses, by the
3 time that you do reward for the behavior you think you've asked
4 for, you've really rewarded it for the behavior the elephant
5 last remembers. So you could end up rewarding the wrong
6 behaviors, and that could be a problem.

7 Q. And what is the tool in elephant training that is used for
8 negative reinforcement?

9 A. With negative reinforcement, primarily we use the guide.

10 Q. And how is the guide used for negative reinforcement?

11 A. It can be used in a couple of ways. One is to provide a
12 negative stimulus or a pressure at different points on their
13 bodies to cue them on a command, or sometimes it can be used
14 just to -- you can just use the other side of the handle and
15 kind of indicate and kind of make a motion and that works.

16 Q. And what does the animal do in response to the pressure
17 that's applied?

18 A. They move away from the stimulus. So as an example, if you
19 were using the guide and asked the elephant to present its foot,
20 and then used the guide to cue it right behind its foot, the
21 elephant would move away from the pressure and lift its foot.

22 Q. When if ever are positive and negative reinforcement used
23 together?

24 A. Well, the whole idea in elephant training is try to get to
25 as much positive reinforcement as possible. So if you're using

1 negative reinforcement to get a behavior like the one I just
2 described, where you're raising the foot, as soon as the foot
3 comes up, it's a great opportunity to positively reward. So in
4 time you end up asking for the foot without the negative
5 reinforcement; the foot comes up, and you're using positive
6 reinforcement.

7 Q. What is punishment, Mr. Keele, in terms of operant
8 conditioning?

9 A. Punishment is used to extinguish undesirable behaviors.

10 Q. And can you give us some examples of punishment with
11 elephants?

12 A. Sure. If an elephant were presenting behaviors that were
13 threatening to the handler or actually could cause trauma to
14 other elephants or itself, then the guide could be used to
15 strike the animal with a firm "no," and that should cause the
16 animal to stop what it's doing.

17 Q. Are there any other examples of punishment?

18 A. There are. Another punishment is to time-out. A time-out
19 is a punishment where the elephants enjoy the interaction with
20 you, but they're not giving you the behavior that you've asked
21 for, so by backing off and not providing any further interaction
22 is a punishment.

23 Q. How would you punish an elephant for noncompliance with a
24 command?

25 A. You wouldn't really do that. That doesn't really make any

1 sense. Because if it's a behavior that's threatening, such as
2 being kicked, I mean, that's clear, that's evident. But for not
3 complying, and then to try to punish it for a behavior that it
4 doesn't understand, is really only confusing. And it's
5 really -- I mean, that's not really an acceptable way of
6 punishing.

7 Q. Do you have any opinions as to whether fear and pain are
8 effective training techniques?

9 A. Well, I think in order for fear and pain to work requires
10 that the guide or whatever you're using has to be used an awful
11 lot, often enough to continue that kind of fear environment.

12 So causing pain, I mean, I think that -- I don't think
13 that's a very effective way to train.

14 Q. And you said you have to use it an awful lot. Can you tell
15 us what the effect is if you start using the guide an awful lot?

16 A. Well, it's almost like dogs that continue to pull on a leash
17 all the time; they get used to it so it doesn't bother them at
18 all. They're always going to do it. Same with elephants; if
19 you instill fear in them all the time and you have to use the
20 ankus all the time, they come to rely on that.

21 So it's kind of a dysfunctional relationship where the
22 guide is being used too often, but at some point the elephant
23 won't do the behavior anymore unless the guide is used a lot.

24 Q. In that situation, in that kind of a use, how would the
25 elephant react if you then stopped using the guide?

1 A. You know, I think that they would become somewhat
2 unpredictable. Because they start depending on that kind of
3 treatment in order to do whatever behaviors. Sometimes I liken
4 that to parents with their children saying, I'm going to count
5 to three, and they don't want follow up on it, and so pretty
6 soon they're counting to five. And it gets to be the same thing
7 with the elephant. They expect that so much pain is going to
8 happen before they really have to do anything.

9 Q. In your opinion, Mr. Keele, what is the most effective
10 aspect of training?

11 A. Well, in my opinion, it's consistency and it's the mutual
12 trust that the elephant keeper builds with the elephants.
13 Because that's, to me, what the common language then is built
14 between the two of them, so that the trainer then can
15 communicate to the elephant what it needs, and then it can
16 understand from the elephant when it understands the command.

17 So the consistency and the communication to me is
18 everything, and that really makes operant conditioning move
19 forward pretty smoothly, actually.

20 THE COURT: So let me see if I understand what you're
21 saying. Are you saying that it's the expectation of pain that
22 prompts the elephant to do what he or she does?

23 THE WITNESS: With the example that was given me?

24 THE COURT: Yeah.

25 THE WITNESS: To me that's poor training. So the

1 elephant gets used to that kind of treatment, and so then if you
2 go over there and just cue it lightly, it won't do it because
3 it's not used to that. It's used to being more hooked, I guess,
4 so then it will behave that way. So basically in that
5 situation --

6 THE COURT: What about the presence of the hook itself,
7 though, just the presence, just the visual presence of the hook?

8 THE WITNESS: Well, I think if it's used
9 inappropriately, then it can be a problem to the elephant. The
10 elephant can learn to fear it.

11 THE COURT: What about just being held in front of an
12 elephant with a command? Doesn't that inflict the anticipation
13 of pain if the elephant doesn't respond?

14 THE WITNESS: I don't think so, in a good training
15 situation. No, I don't think so.

16 BY MS. JOINER:

17 Q. When does training with an elephant occur?

18 A. Training occurs, in my opinion, any time that a trainer is
19 in with elephants. Any time an elephant can have contact with a
20 trainer, then training is happening. Because that trainer has a
21 behavioral expectation of that animal, and the behavioral
22 expectation may be minimal but still at least it is this: You
23 can't bump into me, you can't step on me, you can't move on me.
24 And if you do those things, there's consequences for that. So
25 any time that happens, training is happening.

1 Q. What is the purpose of training an elephant?

2 A. The purpose of training is huge, because it really allows us
3 to provide excellent husbandry, actually, veterinary care,
4 training, exercise, foot care, a lot of procedures that we would
5 otherwise have to immobilize them or knock them down to do,
6 which is risky.

7 Q. The judge was just asking you about the guide. Why is the
8 guide a tool that's used to train and handle elephants?

9 A. Well, it's kind of an internationally accepted tool that
10 provides a cue that the elephant understands, and so it provides
11 negative reinforcement. It can also be used as a guide, though,
12 too, to where you can kind of not even come into contact with
13 the elephant, if it's trained well, and it will perform commands
14 as requested.

15 MS. JOINER: I would like to go to Exhibit 2, which is
16 the Elephant Husbandry Resource Guide, and I would ask that
17 Your Honor let us -- at this time, since the brief is pending,
18 would you permit us to use this the same way with Kari Johnson,
19 where we look at a limited portion as a learned treatise because
20 the briefing is pending?

21 MR. GLITZENSTEIN: Your Honor, just to be clear,
22 Mr. Keele is being allowed, at least tentatively, to be
23 testifying as an expert subject to a weight determination; he
24 can rely upon for his testimony materials that are not
25 officially admitted into evidence, in any event.

1 So we have no objection to him testifying to the extent
2 he relied upon documents in formulating his opinion. So I think
3 that solves the problem. And then Your Honor can decide whether
4 or not any portion of it could actually be admitted into
5 evidence, as such.

6 THE COURT: That's fine.

7 MS. JOINER: Thank you.

8 BY MS. JOINER:

9 Q. I would like to direct your attention to page 65.

10 Do you recognize this from the husbandry guide,
11 Mr. Keele?

12 A. Yes, I do.

13 Q. I would like to direct your attention to this paragraph
14 here, and it continues on to the next page.

15 Could you read that provision for us, Mr. Keele?

16 A. Yes. "The guide is a tool that is used to teach, guide, and
17 direct the elephant into the proper position or to reinforce a
18 command. This is accomplished by adding a physical cue to a
19 verbal command. The ultimate goal of the elephant handler is to
20 have the elephant respond to verbal commands alone, using the
21 guide as little as possible."

22 Q. Do you agree with that description, Mr. Keele?

23 A. Yes, I do.

24 Q. What effect does proper use of the guide have on training?

25 A. Well, when used properly, it can really greatly accelerate

1 training in both a free and protected contact environment.

2 Q. And what effect does improper use of the guide have on
3 training?

4 A. I think that it can cause confusion, I think it can create
5 situations that could become dangerous for the trainer. It's
6 just not -- if it's not used using operant conditioning methods,
7 it's not as effective.

8 Q. Do you have any opinion about whether a handler can make an
9 elephant perform a behavior that it doesn't want to do?

10 A. Yes.

11 Q. What is your opinion?

12 A. I believe that a handler cannot do that. If the elephant
13 doesn't want to do it, then I don't believe that the handler can
14 make it do it.

15 I do believe that with a proper training program and
16 using positive and negative reinforcement and punishment, that
17 it greatly increases the chances that the animal can be trained
18 to do what needs to be done.

19 Q. Are you familiar with the term "hook mark"?

20 A. Yes.

21 Q. What is a hook mark?

22 A. Generally they're superficial scrapes, punctures, you know.

23 Q. And how do they occur?

24 A. A number of ways. Sometimes they're accidental, where the
25 elephant pulls away from a hook that's maybe on its leg and gets

1 a laceration. Other times it's through keeper error or through
2 too much pressure that's put on it during training.

3 Q. And what if any type of medical care is required for a hook
4 mark?

5 A. Generally they're superficial and require no care. I've had
6 situations where keepers have reported a puncture wound, and
7 when the vet gets down there the next day, the vet can't find
8 any evidence of it.

9 THE COURT: When you say superficial, what do you mean
10 when you use that term?

11 THE WITNESS: Well, sometimes people look at hook,
12 whatever, scratches, whatever, differently.

13 THE COURT: We're talking about punctures, I think.

14 THE WITNESS: A puncture is a little different because
15 it can become infected.

16 THE COURT: Is there such a thing as a superficial
17 puncture, though?

18 THE WITNESS: Yeah.

19 THE COURT: What do you mean by that?

20 THE WITNESS: Well, let's see. I've got this thing on
21 my thumb; it's superficial. It doesn't really require any kind
22 of treatment.

23 THE COURT: Doesn't a puncture mean that there's an
24 intrusion into the skin?

25 THE WITNESS: Yes.

1 THE COURT: That's more than superficial, though, isn't
2 it?

3 THE WITNESS: No, not for elephants.

4 THE COURT: All right. Why? Why is it not for
5 elephants?

6 THE WITNESS: Well, because of their tough skin, for
7 one. And typically their skin can be, I guess, damaged in any
8 number of ways through insect bites, through in the wild when
9 they're walking through some thorny areas. It's kind of like a
10 fact of life for them in the wild.

11 THE COURT: But comparing elephants to humans, though,
12 there could not be such a thing as a superficial puncture of
13 human skin caused by a bull hook, though, could it?

14 THE WITNESS: From a bull hook?

15 THE COURT: That's what we're talking about, with the
16 guide.

17 THE WITNESS: No.

18 THE COURT: And the difference is because of the
19 thickness of the skin? Is that what it is?

20 THE WITNESS: Yeah, it depends. Because the skin is
21 thicker in different areas of the body.

22 THE COURT: So a puncture, would it be proper to call
23 it a wound?

24 THE WITNESS: Yeah, I guess as long as it was
25 superficial.

1 THE COURT: All right. A superficial puncture wound of
2 an elephant is superficial because of the density of the skin,
3 then, as distinguished from caused by a hook, as distinguished
4 from such a wound piercing a human skin?

5 THE WITNESS: You know, I think the struggle with this
6 has to do with our vets who look at these wounds and assess
7 them, and they put in the medical record "these are superficial
8 requiring no care." That's usually what I go by. Unless I feel
9 like there's several superficial wounds; then that's more of an
10 issue. But I think it's a medical determination.

11 BY MS. JOINER:

12 Q. For a regular one, what's the size? Like, how big are we
13 talking about here?

14 A. A superficial --

15 Q. Yes.

16 A. -- puncture? Let's see. It's been awhile since I've seen
17 one. We had a female who had three in close proximity and --

18 THE COURT: Three what?

19 THE WITNESS: Three superficial punctures.

20 THE COURT: All right. Now, describe what they looked
21 like.

22 THE WITNESS: Okay. They were raised just a little
23 bit, and in the center --

24 THE COURT: Pierced?

25 THE WITNESS: In the center of them you could see a

1 little pink.

2 THE COURT: Meaning blood?

3 THE WITNESS: I think it's blood, yeah.

4 THE COURT: What else could it be?

5 THE WITNESS: Well, it could be skin, the skin
6 underneath.

7 THE COURT: Underneath?

8 THE WITNESS: Underneath the top skin. It could be a
9 different layer of skin that turns pink.

10 THE COURT: So then that suggests an intrusion into the
11 skin, then?

12 THE WITNESS: Into a layer of skin.

13 THE COURT: All right. Thank you.

14 BY MS. JOINER:

15 Q. Can you describe the circumference, the actual size of that?

16 A. Well, the ones that I was talking about that were raised
17 were probably no bigger than my little finger, and raised maybe
18 a quarter inch.

19 Now, there can be worse ones, but that may be the
20 result not of the puncture, but they become infected, in which
21 case they would swell. And then those would not necessarily be
22 superficial.

23 Q. Are you familiar with the term "hook boil"?

24 A. Yes.

25 Q. What is a hook boil?

1 A. A hook boil is a deeper puncture that does infect and does
2 require some care.

3 Q. In your opinion, Mr. Keele, if someone had misused a guide
4 on an elephant, what kinds of behaviors or reactions would you
5 expect to see from the elephant?

6 A. I think that there was a term out there called hook shy.
7 And that's when a guide is used too much, and then whenever the
8 handler is around, the elephant would kind of flinch or kind of
9 back away, or in some cases the elephant could actually try to
10 get away and stay away. It could anticipate commands so that
11 the guide wouldn't be used, because they would anticipate it
12 would be used inappropriately.

13 But also, inappropriate use of the guide could result
14 in the elephant wanting to fight with the keeper, handler,
15 whatever, and actually injure or kill.

16 Q. Did you yourself have an opportunity to observe the seven
17 elephants that are at issue in this case?

18 A. Yes.

19 Q. When did you do that?

20 A. I observed Karen and Nicole in I think it was either late
21 February or early March 2008, and then I saw the other five
22 elephants at the Center For Elephant Conservation I think in
23 March of 2007. No, I'm sorry, 2008.

24 Q. And what evidence did you see of ankus misuse on these
25 elephants, Mr. Keele?

1 A. I didn't see any injuries.

2 Q. Were you looking for it?

3 A. I was looking for them.

4 Q. Why do you say you didn't see any evidence of that?

5 A. Why do I say that? Because I didn't see any evidence of any
6 hook wounds. I checked the animals over, I walked around them,
7 I looked at their feet, I felt their ears, I looked behind their
8 ears. I didn't see any evidence.

9 Q. And what observations did you make about the elephants'
10 behavior while you were there?

11 A. I intentionally looked to see if the elephants -- how
12 comfortable the elephants were around the trainers, and I looked
13 to see if they were flinching, I looked to see if they were kind
14 of watching them really closely, I looked to see if I thought
15 they were frightened. And I didn't see that. The animals
16 seemed comfortable around the trainers, and also I felt
17 comfortable around the elephants, so I didn't feel like the
18 elephants were, like, high strung or tense.

19 Q. We looked earlier at the footage you said that you had
20 reviewed from the inspections. Is that correct?

21 A. Yes.

22 Q. And what observations did you make of the elephants in those
23 inspections?

24 A. Well, I was watching for a number of things. I wanted to
25 see how the elephants did in the pens and what kind of play they

1 initiated themselves, and I saw some of that. But again, I was
2 looking to see how they worked with the trainers. And in some
3 of the tapes I could see that there were just elephants in the
4 tapes, but I knew there were trainers around because the
5 elephants were behaving by not tearing up stuff. Anyway, so I
6 knew they were there, but I couldn't really tell by the
7 elephants' behavior.

8 So there was a bunch of communicating between the pens
9 between elephants. They weren't focusing. So if there was a
10 trainer there that was a problem, then I would expect that the
11 elephants would be at the far end of the pen from where the
12 trainer was. I didn't see that. I saw the elephants moving
13 around freely.

14 I then checked later when I talked to them to see if
15 they left the elephants out in those pens unsupervised, and they
16 don't.

17 Q. Mr. Keele, I want to move to the topic, the final one, of
18 elephant restraints. Are you aware of any federal restrictions
19 on the amount of time that an elephant can be tethered?

20 A. No.

21 Q. Does the AZA itself have a time limit on tethering?

22 A. Yes.

23 Q. What is it?

24 A. It's for less than the majority of 24 hours. It's meant to
25 be no more than 12 hours in a day.

1 Q. And what about the rest of the non-AZA institutions in
2 North America? Is there any time limit for them?

3 A. In the Elephant Resource Husbandry Guide, there is a time
4 limit of 16 hours, no longer than 16 hours without exercise in a
5 day.

6 MS. JOINER: Could we pull up page 68 of Exhibit 2?

7 BY MS. JOINER:

8 Q. I direct your attention to page 68, this provision here. Is
9 that what you were receiving when you said the 16-hour limit?

10 A. Yes.

11 Q. And apart from the AZA standard and the one that's found in
12 the elephant Husbandry Resource Guide, are you aware of any
13 other time limits for tethering?

14 A. No, I'm not.

15 Q. Do you have an opinion as to whether tethering is a
16 generally accepted husbandry practice?

17 A. Yes.

18 Q. What is your opinion?

19 A. My opinion is it is a generally accepted tool, and that it's
20 accepted worldwide, so many other regional elephant, what do
21 they call them, groups that I know of in Europe and Australia
22 also condone the use of tethers. They're valuable tools for
23 providing good elephant management.

24 Q. One final topic, Mr. Keele. Do you know Carol Buckley?

25 A. Yes.

1 Q. Did you ever have any conversations with her regarding any
2 kind of disciplinary action taken by the Elephant Managers
3 Association?

4 A. Not that I can recall.

5 MS. JOINER: I have nothing further, Your Honor.

6 THE COURT: All right. Let's take a 15-minute recess
7 before cross-examination. You can step down. I have to ask you
8 not to discuss your testimony with anyone.

9 (Recess taken at 3:56 p.m.)

10 THE COURT: Let's proceed.

11 MS. JOINER: Your Honor, I forgot. Can I move in the
12 vita as Exhibit 25-A for Mr. Keele?

13 THE COURT: Any objection?

14 MR. GLITZENSTEIN: I'm sorry, which part was that?

15 MS. JOINER: Just his vita.

16 MR. GLITZENSTEIN: Just that part of the report?

17 MS. JOINER: Yes.

18 MR. GLITZENSTEIN: No objection, Your Honor.

19 THE COURT: All right. Admitted.

20 (DEFENDANT EXHIBIT Number 25-A was moved into
21 evidence.)

22 **CROSS-EXAMINATION**

23 BY MR. GLITZENSTEIN:

24 Q. Mr. Keele, your testimony about use of the bull hook was
25 basically testimony about how you believed the bull hook should

1 be used. Correct?

2 A. I'm sorry?

3 Q. Your testimony about use of the bull hook or the guide -
4 we'll use that phrase interchangeably - was testimony about how
5 you believed that particular tool should be used. Correct?

6 A. Yes, in context of operant conditioning and providing
7 negative reinforcement.

8 Q. You're not providing testimony, just again to be clear,
9 about specifically how it is used at the FEI institutions.
10 Correct?

11 A. I don't know how it's used there. The times that I was
12 there, I saw it used; it seemed appropriate to me when I saw it.

13 Q. But they knew you were coming for those inspections.
14 Correct?

15 A. That's correct.

16 Q. And in fact, just to also be clear about that, those were
17 not the court-ordered inspections, were they?

18 A. I don't know.

19 Q. You didn't attend the court-ordered inspections in this
20 case, did you?

21 A. No, I did not.

22 Q. When you went for those inspections you referred to, none of
23 plaintiff's experts were in attendance. Is that correct?

24 A. That's correct.

25 Q. Judge Sullivan asked you a question about whether the

1 elephant can be fearful at just the sight of the bull hook. Do
2 you remember that?

3 A. Yes.

4 Q. And you said you didn't think so. Is that right?

5 A. The way that he was describing it, by holding it out in
6 front, I think in my deposition I believe I did say that an
7 elephant could be afraid of a guide.

8 Q. So just to be clear about this, an elephant can be afraid at
9 just the sight of a guide. Correct?

10 A. It could be.

11 Q. And that would be an elephant who had in fact had pain
12 inflicted on it by the use of the guide. Correct?

13 A. That would be a reason.

14 THE COURT: But then that would not be the shy elephant
15 that you described in your direct testimony, would it?

16 THE WITNESS: It could be. A couple of things could
17 happen; a new elephant is being trained who is shy may react
18 differently than one that the guide has been used on
19 inappropriately.

20 BY MR. GLITZENSTEIN:

21 Q. And again, so if the use of the guide is used in a way that
22 an elephant would be fearful, you would regard that as improper
23 use of the guide. Is that correct?

24 A. Well, if it was done that way intentionally, yes.

25 Q. If it was done intentionally so that the elephant becomes

1 fearful of the use of the guide. Correct?

2 A. Yes.

3 Q. And that would be if the elephant experiences pain as a
4 consequence of the use of the guide. Correct?

5 A. No.

6 Q. So an elephant would not become fearful, but it would
7 experience pain. Is that what you're saying?

8 A. They could, yes.

9 Q. So there's a distinction between experiencing pain from
10 something and becoming fearful of it, in your mind. Is that
11 what you're saying?

12 A. I'm not sure what you're saying.

13 Q. Well, maybe I'm not sure what either of us are saying. Let
14 me try to be clear about it.

15 THE COURT: I'm not either.

16 MR. GLITZENSTEIN: I usually just confuse myself, but
17 now I've confused everyone, Your Honor.

18 BY MR. GLITZENSTEIN:

19 Q. Let me ask it this way: In terms of the elephant's
20 subjective response, just to be clear about this, again, you're
21 not a behaviorist. Correct?

22 A. Correct.

23 Q. So you would defer to behaviorists as to how an elephant is
24 responding in a particular way and why. Isn't that correct?

25 A. Yes and no. I've been around elephants long enough that I

1 can interpret some of their behaviors.

2 Q. But in any event, we can agree, can we not, that the
3 improper use of the guide could result in an elephant becoming
4 fearful as a consequence of that. Correct?

5 A. Yes.

6 Q. And in fact, the guide can be used in a proper way, can it
7 not?

8 A. Can be used in a proper way?

9 Q. Right.

10 A. Yes.

11 Q. And in fact, you've had experience with an elephant at least
12 on one occasion suffering as a consequence of bull hook use in
13 that fashion. Correct?

14 A. Correct.

15 Q. We're referring to the elephant Rose 2. Right?

16 A. That's correct.

17 Q. You had an incident where a handler at your facility
18 inflicted bull hook wounds on the elephant. Correct?

19 A. Correct.

20 Q. And that was of grave concern to the facility, was it not?

21 A. It was.

22 Q. And in fact, that individual was ultimately fired as a
23 consequence of inflicting those bull hook wounds. Correct?

24 A. I think I say in my deposition I'm not sure if he was
25 actually terminated. The process to terminate him was in place,

1 there was a grievance procedure and arbitration that happened,
2 but eventually he was no longer employed at the zoo.

3 Q. And as a manager, that was a result that you very much
4 desired. Correct?

5 A. Yes.

6 Q. Because you believed that the bull hook had been used
7 inappropriately in inflicting those wounds. Correct?

8 A. I guess I would phrase it differently. I believe the guide
9 was used inappropriately. I've never called it a bull hook in
10 all my time.

11 THE COURT: You've never done what?

12 THE WITNESS: I've never referred to it as a bull hook.
13 I've been at the zoo for my entire time, and not exposed to --
14 it may be used in this context, but when it keeps coming at me
15 as bull hook, it sounds like a weapon.

16 BY MR. GLITZENSTEIN:

17 Q. Well, let me ask you about that so that we can get on the
18 same --

19 THE COURT: What do you mean, it sounds like a weapon?

20 THE WITNESS: Well, a bull hook, I mean, it has a bad
21 connotation. I mean, it's not -- the way we use it now as a
22 guide is a way to work with the elephant. I try to -- actually,
23 at one point I wanted to call it a baton, because it's kind of
24 like a conductor leading an orchestra. It can be used that way.

25 THE COURT: Except it has a spear on the end of it,

1 though.

2 THE WITNESS: Yeah, it does.

3 THE COURT: Does it sound worse than it looks?

4 THE WITNESS: I think so.

5 BY MR. GLITZENSTEIN:

6 Q. Well, just to be clear about this, this is not a word that
7 was made up by the animal welfare or the animal rights
8 community, is it?

9 A. No.

10 Q. In fact, it was a word that was derived by the captive
11 elephant industry, was it not?

12 A. Correct.

13 Q. And historically the captive elephant industry referred to
14 it as a guide. Right? I mean, as a bull hook. Correct?

15 A. Not completely. So there were sections of the elephant
16 community that did, but there were sections that did not.

17 Q. Let's look at your deposition at page 91, at line 13. And
18 the question to you was: "Was the instrument at one time
19 commonly referred to as a bull hook within the captive elephant
20 industry?"

21 Answer: "Correct."

22 Did I read that correctly?

23 A. Yes.

24 Q. So that was its common name among the industry participants.
25 Correct?

1 A. It was commonly referred to, yes.

2 Q. And in fact, it's the industry that has changed the name
3 over the course of time, not the animal community. Right?

4 A. I kind of feel like something is not working right here. I
5 would say in the zoo community we didn't use bull hook as often
6 as it was used in the non-zoo community.

7 Q. And the non-zoo community would include the circus
8 community. Right?

9 A. Correct.

10 Q. So in the circus community, it's been historically referred
11 to as a bull hook. Right?

12 A. Yes. And that's not to say that it wasn't used that way at
13 some zoos, but in my exposure it was commonly -- well, I won't
14 say commonly. It wasn't used that commonly in the zoo
15 community.

16 Q. But there's also been a conscious effort to shift to the
17 word "guide" because it sounds more benign. Right?

18 A. We've actually tried to change several things that have kind
19 of a bad public connotation.

20 Q. And another example would be chains, which are now generally
21 referred to as tethers. Right?

22 A. Correct.

23 Q. Mr. Keele, talk about the AZA for a moment. We talked a
24 little bit earlier about the standards that are imposed --

25 THE COURT: Hold on. Did you want to add something?

1 A. Yeah, on both changing the names of the tether and guides,
2 besides what it looked like to the lay community, it also
3 represents that the guides weren't used like they were I know in
4 the '60s and '70s, as bull hooks. And tethers had become more
5 than just chains; they were different kinds of fabrics and ropes
6 and so forth. And so the idea of chaining that referred to any
7 kind of tethering just didn't make sense to us.

8 So there was a practical reason for doing it, and there
9 was, of course, a public perception.

10 Q. I appreciate the explanation.

11 THE COURT: You mentioned the conductor's - and I'm
12 sure this is not the right word - baton. What is the correct
13 word?

14 THE WITNESS: That's what I used, was baton.

15 THE COURT: I'm sure that's not. I think we're both
16 wrong. But anyway, we understand what we're saying. You
17 mentioned the conductor's use of the baton. Are you suggesting
18 that the use of a bull hook is as benign as that of the
19 instrument used by someone conducting a symphony?

20 THE WITNESS: At times. So a well trained elephant
21 doesn't need negative reinforcement; it can see the guide down
22 by its foot and knows that the verbal command -- I mean, the
23 idea is to use verbal commands and not to use negative
24 reinforcement, so that's what you're working towards all the
25 time.

1 And I was corrected when we had the discussions about
2 baton or guide or bull hook or ankus, because someone pointed
3 out police use batons. That's not a very good term to use. So
4 we were conscious of it.

5 BY MR. GLITZENSTEIN:

6 Q. But a baton doesn't result in puncture wounds, does it?

7 A. No.

8 Q. And just to follow up on that discussion you had with
9 Judge Sullivan, you were suggesting that sometimes puncture
10 wounds can be caused, but that would, in the ordinary course -
11 and that's in your experience - be infrequent. Correct?

12 A. Yes.

13 Q. And the objective is that at most it would be an infrequent
14 occurrence. Correct?

15 A. Yes.

16 Q. And in fact, when any kind of a puncture wound is caused, it
17 may, in your view, be minor. But it's still a wound. Correct?

18 A. Well, I don't know. The guide can actually scrape the skin
19 and not break the skin. So I wouldn't call that a wound.

20 Q. But any break in the skin that results, even one that you
21 would regard as minor, would be a wound. Correct?

22 A. It would be a superficial wound, yes.

23 Q. Superficial wound, but nonetheless a wound. Right?

24 A. A scratch.

25 Q. Let me ask about that. Particularly in light of the Rose 2

1 event, you as a manager are always concerned about any kind of
2 puncture wound, aren't you?

3 A. Yes.

4 Q. And in fact, the reason why you know about the elephant who
5 had the three puncture wounds is because even though you're now
6 a higher-up official at the zoo at this point in time, you make
7 it your business to know about those kinds of incidents.

8 Correct?

9 A. Yes.

10 Q. So you don't regard any puncture wound as a minor matter at
11 this point in time, do you?

12 A. No.

13 Q. In terms of the AZA standards in terms of condition of
14 accreditation, the reason why those standards were established
15 was in order to ensure that there would be credibility for the
16 member organizations with regard to animal care and welfare.

17 Correct?

18 A. Yes. Well, did you say that the reason why those standards
19 were developed was for the reason that you set forth?

20 Q. Yes.

21 A. Well, it was bigger than that. I mean, there were no
22 standards out. There had been guidelines out there before and
23 there had been a whole evolution of guidelines; there was a lot
24 of non-consensus about it. And standards were ultimately
25 imposed by the board of directors which were then required to

1 raise the level of elephant care and welfare.

2 Q. So the idea was to raise the level of care within
3 institutions that are members of the AZA and SSP. Correct?

4 A. Yes.

5 Q. And part of the problem was that recommendations and
6 guidelines weren't necessarily being followed. Correct?

7 A. Yes.

8 Q. So the idea was to have something that would be enforceable
9 against member institutions. Correct?

10 A. Yes.

11 Q. They're not enforceable against institutions such as FEI,
12 that are not members. Correct?

13 A. That's correct.

14 Q. And in fact, other than the AZA standards and any federal
15 requirements that apply, there are no enforceable standards
16 against an entity like FEI. Correct?

17 A. I don't know what kind of groups that are outside of AZA
18 that may have some bearing on the entertainment community.

19 Q. But as far as you know, there are no such enforceable
20 standards?

21 A. That's correct.

22 Q. Now, in order to become an AZA/SSP member, you have to be
23 able to satisfy a conservation requirement. Is that correct?

24 A. Yes.

25 Q. And FEI, as I think you testified earlier, is not a member

1 of the AZA/SSP. Correct?

2 A. Yes.

3 Q. And in fact, it's your view, is it not, that an entity set
4 up as a traveling circus could not qualify for that kind of
5 accreditation. Correct?

6 A. You know, I don't know. I've thought about this before, and
7 I think that there may be some issues around traveling, but I
8 think that CEC could be an example of something that could
9 qualify.

10 Q. Well, let me ask you about that. Are you aware of the space
11 limitations at the CEC?

12 A. The space limitations?

13 Q. Correct.

14 A. No.

15 Q. Are you -- you understand the space limitations in the AZA
16 standards, though. Correct?

17 A. Yes.

18 Q. So if the space made available to elephants at the CEC is
19 smaller than the space provided for in the AZA standards, that
20 would be a problem. Correct?

21 A. That would be.

22 Q. And you haven't done an analysis of the space that's made
23 available when the elephants are traveling and housed overnight
24 while they're on the blue unit. Correct?

25 A. I'm sorry?

1 Q. You haven't done an analysis of how much space the
2 Ringling Brothers elephants have when they're housed overnight
3 while on the road. Correct?

4 A. No, I have not.

5 Q. And if the space made available to them in that situation
6 were less than the AZA requirement, that would be a problem in
7 gaining accreditation. Correct?

8 A. Both of those would be problematic unless Ringling was able
9 to show how they could mitigate that.

10 Q. And the AZA standards also specifically provide that
11 elephants must be provided an ongoing source of drinking water.
12 Correct?

13 A. Are you saying that they must have water available to them
14 continually?

15 Q. Well, as I understand the AZA standard, and maybe we can
16 just sort of make sure we're clear about the same language, is
17 not one of the AZA standards that elephants must have drinking
18 water available to them during the course of the day?

19 A. Yes, during the course of the day.

20 Q. And so if water were not made available to the elephants as
21 a regular matter, that would be a problem for gaining AZA
22 accreditation. Correct?

23 A. Yes. So that means that if water was basically withheld.
24 Because if it was provided two or three times a day, that would
25 be sufficient.

1 Q. But is it not the case that at most institutions water is
2 provided on an ongoing basis for the elephants?

3 A. I can't speak for every institution, but I will say that
4 there's a number of them, including Oregon Zoo, that does not do
5 that.

6 Q. Provides water on a ongoing basis?

7 A. Correct.

8 Q. So there's no particular veterinary reason why zoos would
9 withhold water from elephants except for twice a day. Correct?

10 A. There is. One is to determine how much water they're taking
11 in, for one; and the other is, sometimes when elephants have
12 access to water 24/7, they end up spreading it all over their
13 living quarters, which can sometimes be a problem to their feet.

14 Q. Let me make sure I understand. But as a general matter,
15 most zoos do make water available on an ongoing basis. Correct?

16 A. I don't know. I think there's many zoos like ours that have
17 the same concerns.

18 Q. Isn't that the case of one of the AZA requirements, is that
19 elephants -- and let me refer to -- actually, if I can call up
20 the AZA standards, so we're actually looking at the language,
21 Plaintiff's Exhibit 74, which is already admitted into evidence.

22 THE COURT: Excuse me one second, counsel.

23 (OFF THE RECORD.)

24 THE COURT: Go ahead, counsel.

25 MR. GLITZENSTEIN: Thank you, Your Honor.

1 Make it page three.

2 THE COURT: Just a couple of other things I'm trying to
3 resolve so we'll have some more time tomorrow.

4 (OFF THE RECORD.)

5 THE COURT: I have to attend to something at 9:15, so
6 we'll start at 9:30 tomorrow.

7 Go ahead. Sorry.

8 BY MR. GLITZENSTEIN:

9 Q. Mr. Keele, just so we're clear about the same language that
10 we're referring to, over on page three of the AZA standards,
11 we're looking at 1.5.1, and the standard says, "While outdoors,
12 and weather permitting, elephants must have regular access to a
13 water source such as a pool, waterfall, misters, sprinklers, or
14 wallow that provides enrichment and allows the animals to cool
15 and/or bathe themselves." Do you see that?

16 A. Yes, I do.

17 Q. So at any of the FEI facilities that were not the case, that
18 would be a problem for gaining AZA accreditation. Correct?

19 A. I'm going through my head to help you understand it. When
20 we were talking about water before, I thought we were talking
21 about drinking water. But I see you have a different context
22 here.

23 Q. Is there a reason why the elephants wouldn't be able to
24 drink the water that was contained in a pool, waterfall, mister,
25 or wallow?

1 A. At our facility a pool would not be considered the drinking
2 source. We would provide fresh water because they swim in that.

3 Q. So you would provide fresh water in addition to the water?

4 A. Correct.

5 Q. So if an institution did not at least provide this, that
6 would be a problem for gaining AZA accreditation, would it not?

7 A. Yes.

8 Q. Now, I think you testified that at least insofar as the
9 traveling part of FEI is concerned, that clearly would be a
10 problem in terms of gaining AZA accreditation. Correct?

11 A. I believe it could be.

12 Q. Well, in fact, didn't you write an article called "Elephant
13 Importation From Range Countries, Ethical and Practical
14 Considerations For Accredited Zoos"?

15 A. Yes.

16 Q. And that was published in a publication called "Zoo Biology"
17 in 2006?

18 A. Yes.

19 Q. And that is a peer reviewed publication. Correct?

20 A. Yes.

21 Q. What do you mean by peer reviewed, by the way?

22 A. It's sent out to other scientists to review for accuracy or
23 for further references.

24 Q. And that is the traditional concept of peer review?

25 A. As I understand it.

1 Q. That's how I understand it, too.

2 A. Good.

3 Q. If we look over at page 221 of that document that we just
4 referred to, the article, and about halfway down through the
5 second paragraph -- and let me just try to set this article up a
6 little bit so you understand the context. This is an article
7 you wrote talking about the long-range prognosis for the
8 elephant population in the zoo world. Correct?

9 A. Correct.

10 Q. And you've made in the article, and I think it's fair to
11 say, is it not, that you've made other predictions about the
12 long-term prognosis being poor. Correct?

13 A. Correct.

14 Q. And that's because the elephant population from a
15 demographic standpoint in North America will be on the decline.
16 Is that correct?

17 A. That's correct. If we don't make some changes to our
18 breeding strategies, our breeding rates, and infant mortality.

19 Q. And in terms of making those changes, this article talked
20 about several different ways in which that problem could be
21 addressed. Correct?

22 A. Yes.

23 Q. And those ways include making more arrangements with
24 institutions that are not AZA/SSP members. Correct?

25 A. Yes.

1 Q. As well as other possibilities, including getting more
2 elephants from range countries and that sort of thing. Correct?

3 A. Yes. And from our colleagues overseas.

4 Q. And in this article you were talking about various aspects
5 of making these arrangements with non-AZA members. Correct?

6 A. Correct.

7 Q. And in the course of that you had the following statement
8 about Ringling Brothers in particular. If I could look at the
9 page 221 of this document, and going to the second full
10 paragraph in there, and midway through the paragraph you say,
11 "For example, one of the largest private holders of elephants in
12 North America, Ringling Brothers Barnum & Bailey Circus,
13 administers an elephant conservation center in Florida that
14 could conceivably meet AZA standards. However, even if this
15 facility could meet the AZA standards, it would be difficult to
16 justify zoo/circus breeding program collaboration if any of the
17 animals produced left the facility for traveling circus shows.
18 Traveling circuses which involve frequent transportation of
19 elephants via train or truck clearly would not meet existing AZA
20 standards for elephant management and care." Do you see that?

21 A. I do.

22 Q. Was that a correct recitation of what you wrote?

23 A. Yes. And I should also say that that was coauthored, and
24 that Michael Hutchins was the other author of this paper. He
25 was the director of conservation with AZA, and has a much better

1 sense of the accreditation standards.

2 Q. He has a better sense than you do?

3 A. Yes.

4 Q. But you did sign on to this article, did you not?

5 A. Uh-huh.

6 Q. And I assume when you signed on to it, you satisfied
7 yourself that everything in it was accurate?

8 A. Well, my name is on it.

9 Q. You wouldn't -- as a professional, you wouldn't have put
10 your name on it unless you were satisfied it was sufficiently
11 accurate to go out to publication. Right?

12 A. As a professional, I would sometimes cede to the knowledge
13 of the coauthor in having a sense. And so -- but I'm not going
14 to disagree with it.

15 Q. I ask no more.

16 THE COURT: You wouldn't lend your signature to
17 something you don't believe in, would you?

18 THE WITNESS: No. Just Michael and I have argued about
19 this an awful lot. He's pretty cut and dried on it, and I've
20 always been, from the --

21 THE COURT: You didn't put an asterisk on it and say,
22 "I disagree," did you?

23 THE WITNESS: No, I did not.

24 BY MR. GLITZENSTEIN:

25 Q. And if we look at the paragraph above that one, there's

1 another statement I would ask you to draw your attention to
2 which states, and if I can read: "Obtaining elephants from
3 non-AZA accredited facilities is possible, and perhaps even
4 advisable under certain circumstances, but few behaviorally or
5 reproductively sound animals are currently available from
6 private sources in North America, and numbers likely will
7 decrease over time. It is also unlikely that non-AZA accredited
8 facilities would be willing to contribute animals to the SSP
9 population without gaining something in return, whether it is
10 financial consideration or increased cooperation with and
11 credibility from the professional zoo community," closed quote.
12 Do you see that statement?

13 A. Yes.

14 Q. And in fact, affiliating with the AZA in some fashion is one
15 effort that one can undertake to gain additional credibility
16 from the zoo community. Correct?

17 A. I'm sorry, what?

18 Q. In terms of gaining credibility, as I understood the
19 statement you made there, that would be accomplished by having
20 more of a relationship with the AZA. Correct?

21 A. Correct.

22 Q. Now, I think you testified with regard to the Species
23 Survival Plan, for what we refer to as the Taxon Advisory Group,
24 that it's the same for African and Asian elephants. Correct?

25 A. Yes.

1 Q. And that's because they're deemed to be sufficiently similar
2 that the same TAG, T-A-G, would be able to work on both species.
3 Correct?

4 A. Yes. We felt their captive needs were similar enough that
5 we would address them as the same.

6 Q. And the way the SSP -- I'm sorry, I think you corrected me
7 before. And it's TAG/SSP, is that correct?

8 A. Yes.

9 Q. The way that works is that they have to basically approve
10 any kind of breeding arrangement. Correct?

11 A. Yes.

12 Q. And the idea behind that is so that there is a kind of
13 control over which elephants are breeding which other elephants.
14 Right?

15 A. Yes. And also carrying capacity. So we need to know where
16 vacancies are at zoos, and then we need to make informed
17 decisions about filling those vacancies.

18 Q. And it's also the case that you want to have that oversight
19 so that all the institutions participating are on the same
20 wavelength in terms of husbandry, management, welfare issues,
21 and that sort of thing. Correct?

22 A. Yes.

23 Q. And that's basically, once again, complying with the AZA
24 standards. Right?

25 A. Yes.

1 Q. And as a consequence of that, an institution cannot -- that
2 is a member of the SSP cannot exchange elephants with non-SSP
3 members, as a routine matter. Isn't that correct?

4 A. Without first going through the TAG/SSP.

5 Q. But even if you go through the TAG/SSP, as a general matter,
6 it's not permitted to exchange elephants directly with a non-AZA
7 member. Correct?

8 A. Well, no, there's a process. Unless I'm misunderstanding
9 you. But if there's recommendations -- the TAG can make
10 recommendations for only elephants held in AZA zoos, and we can
11 only make recommendations for them to move within the AZA.

12 So if Zoo A says, I've got this male now who's 20 years
13 old and needs a home, and the TAG steering committee looks at
14 the vacancies and says, you know, we don't have any vacancies
15 for males right now, and they're saying, well, the space is
16 really important; we really need to move him out, it's causing
17 problems for other animals, then we would say that the animal is
18 surplus to the breeding effort. And then that zoo is free then
19 to decide where that animal should go within their acquisition
20 and disposition policies, and also AZA's. So at that point it
21 leaves our responsibility.

22 Q. Right. But as I understand it, FEI can't participate
23 directly; they have to participate through an AZA member
24 institution. Correct?

25 A. That would be right.

1 Q. And in the past, the Oregon Zoo had a situation where they
2 did surplus, I think as you just described it, Asian elephants
3 to FEI. Correct?

4 A. Yes.

5 Q. And I think one of those elephants is the elephant Prince?

6 A. Yes.

7 Q. Which, as far as you know, is still at the Williston
8 facility in Florida?

9 A. Correct.

10 Q. That arrangement would not be permitted today, would it?

11 A. Let's see. Well, not from the Oregon Zoo's acquisition and
12 disposition policy.

13 Q. And it wouldn't be permitted today, because under that
14 policy you wouldn't deem FEI to be sufficiently in tune or
15 acting in accordance with the Oregon Zoo's conservation policy,
16 as well as in terms of the AZA standard. And that's a way too
17 long question. Let me ask it better than that.

18 The reason why you wouldn't do that is because, to
19 start with, it wouldn't be consistent with the Oregon Zoo's
20 conservation policy and program. Correct?

21 A. Correct.

22 Q. And it would also be a problem for you because of the
23 concerns about meeting the AZA standards. Right?

24 A. Well, if you mean that we would just do it without going
25 through the AZA or TAG/SSP process, then yeah, that would be a

1 problem.

2 Q. And in terms of conservation, your specific concern would be
3 that FEI does not share the mission of the zoo. Correct?

4 A. Yes.

5 Q. The mission of the zoo, as you understand it these days,
6 being primarily a conservation and public education mission.
7 Right?

8 A. Right. It's primarily our mission, which is conservation,
9 education, and research.

10 Q. So that would be a problem in terms of entering into that
11 kind of relationship with FEI?

12 A. Yes.

13 Q. Now, in terms of the studbook and your reference to that,
14 and FEI's involvement, the only entities that are required to
15 submit information to the studbook are SSP members. Correct?

16 A. Correct.

17 Q. And so FEI, any information they submit is entirely
18 voluntary. Correct?

19 A. Correct.

20 Q. And so as far as you know, you're not getting all
21 information from FEI, only that which they're willing to give
22 you. Correct?

23 A. Correct.

24 Q. So if there are many more stillbirths, for example, than had
25 been reported to you, you have no enforceable way of addressing

1 that problem. Correct?

2 A. Correct.

3 Q. But if it were an AZA SSP member, then you could ensure or
4 take steps to obtain accurate information. Correct?

5 A. Mostly. The information I get from AZA zoos is sometimes
6 questionable, also. That's why at one point I had two animals
7 listed in a studbook twice, because I got information from that
8 zoo twice on different occasions that represented these animals
9 with different birth dates, and so they ended up in there
10 differently.

11 Q. But for the most part, you have mechanisms for getting
12 accurate information from SSP members?

13 A. Right. Accurate but not always complete.

14 Q. In terms of the AZA standards, again, that we were just
15 looking at, those were developed because there was a desire to
16 develop adequate standards for Asian elephants in member
17 institutions. Correct?

18 A. And I think there was a recognition that there was more that
19 we could do for elephants. We've had a couple of high profile
20 incidents that drew attention to some of our -- what's the word
21 I want? Some of our deficiencies. And we wanted to, as you
22 mentioned earlier, kind of raise the standard, raise the bar.

23 Q. But you wanted to raise the bar to an adequate level of
24 care. Correct?

25 A. Yes.

1 Q. And so there would be a concern that if you're not complying
2 with those standards, the care may be inadequate. Correct?

3 A. Correct.

4 Q. And in fact, providing, for example, less space than
5 provided in the AZA standards could be detrimental to an Asian
6 elephant. Correct?

7 A. By itself, I think the standards indicate that there needs
8 to be a more holistic look at the program.

9 Q. So the concern would be if they're not meeting the standard,
10 it could be detrimental to an elephant. Correct?

11 A. So, for example, if the San Antonio Zoo had an indoor
12 facility that was deemed, I don't know, four square feet too
13 small, doesn't meet the standards - and we've had some issues
14 like that, notwithstanding San Antonio Zoo - but they would look
15 more at the entire program, how important is that indoor space.
16 Because the elephants spend most of the time outdoors.

17 Q. So as I understand your answer, if there were de minimis
18 variation, that would be less of a concern. Correct?

19 A. I don't understand de minimis.

20 Q. If there were a minor variation from the standard, that
21 would be less of a concern?

22 A. We would still check in to it, but it would be less of a
23 concern if the rest of the program was good.

24 Q. But if there were a significant discrepancy or difference
25 from the standard, that would be a serious concern. Correct?

1 A. Yes. Yes.

2 Q. And that's because that could be detrimental to the
3 well-being of the animal involved. Correct?

4 A. Yes.

5 Q. And that's true about all the AZA standards. Correct?

6 A. Yes.

7 Q. Now, to go back to the bull hook use for a moment, you
8 testified about what you believe is the proper way to use the
9 bull hook. Correct?

10 A. Yes.

11 Q. And if one is using a bull hook properly, one would not be
12 causing frequent lacerations, puncture wounds, and that sort of
13 thing. Correct?

14 A. Yes.

15 Q. And so if there are frequent puncture wounds, lacerations,
16 and that sort of thing for a particular institution, that would
17 be a grave concern. Correct?

18 A. That would concern me, yes. I would want to look in to the
19 background of why that was -- why that happened, and was there
20 events that caused it, was there ways to avoid it. Yes, it
21 would concern me.

22 Q. And it would concern you because that could be detrimental
23 for the elephant. Correct?

24 A. Yes.

25 Q. Harmful for the elephant?

1 A. It could be poor for their well-being.

2 Q. It could be, I'm sorry?

3 A. It could be bad for their well-being, could affect their
4 well-being.

5 Q. For the well-being of the elephant. Okay.

6 And in fact, it's also the case that elephants should
7 not be routinely struck with the bull hook. Correct?

8 A. Correct.

9 Q. And if an institution had a situation where its handlers
10 were routinely striking the elephant with the bull hook, that
11 would also be a concern. Correct?

12 A. Well, with my experience, yes, it would be. We would
13 terminate the individual.

14 Q. You would terminate the individual for that?

15 A. Well, I guess that's too quick. I mean, obviously we would
16 want to look into it, as we did before, to understand the entire
17 issue before taking action.

18 Q. But you would be extremely concerned about that kind of
19 conduct. Correct?

20 A. Yes.

21 Q. And that's because of the potential harm to the elephant.
22 Correct?

23 A. Well, yes. And in violation of policy.

24 Q. So harm and violation of policy?

25 A. Well, can you repeat that, please?

1 Q. I missed that.

2 A. Can you repeat not the last question but the one before
3 that?

4 Q. Well, I'll move on, because I think we've covered that.

5 And in fact, the objective, once again, is to use the
6 bull hook in a way that does not result in any puncture wounds
7 or lacerations. Correct?

8 A. That's true.

9 Q. And in fact, you state in your report that the American
10 Veterinary Medical Association standards provide that the bull
11 hook should not be used in a way that results in puncture wounds
12 or lacerations. Correct?

13 A. Correct.

14 Q. Just for one moment, again, about what you referred to as
15 the puncture wounds that are not as serious as others, the fact
16 is that any puncture wound could result in an infection.
17 Correct?

18 A. I suppose it could.

19 Q. And in terms of requiring medical treatment, some puncture
20 wounds do require treatment and some don't. Correct?

21 A. I would say relatively few of them do.

22 Q. But just again to be clear about this, the reason you know
23 about the three that you referred to before is because there
24 should be record keeping, at least, on all puncture wounds.
25 Correct?

1 A. Correct. But I have to say, in my early days, we didn't do
2 that at all.

3 Q. Let me ask about that, because I find that to be important.

4 In your early days you didn't do it. Right?

5 A. Correct.

6 Q. And it seems to me a theme of your report - and tell me if
7 I'm misreading this - is that the standard in the zoo community
8 has really changed considerably over the course of time?

9 A. Yes, I believe it's evolved a lot.

10 Q. And it's evolved in order to address some of these problems
11 that occurred in the earlier days. Right?

12 A. Yes.

13 Q. And those problems included excessive use of the bull hook?

14 A. Yes.

15 Q. And --

16 A. Well, excessive use of the bull hook because people didn't
17 understand good animal training behavior theory. So it was an
18 intuitive thing. People needed training.

19 Q. Right. But that was more common among the zoo community
20 members back in the '70s and '80s, is what you're saying.

21 Correct?

22 A. That's my belief.

23 Q. And one of the efforts that the AZA has undertaken is to
24 bring the zoo community into a different mode of thinking.

25 Correct?

1 A. Yes. Through the principles of elephant management training
2 and the standards.

3 Q. The principles that you talked about a little bit earlier.
4 Right?

5 A. Well, The Principles of Elephant Management is a course that
6 AZA offers and trains elephant handlers.

7 Q. Right. So it performs that service for its members.
8 Correct?

9 A. Yes.

10 Q. But once again, you have no idea how Ringling Brothers
11 currently uses the bull hook, do you?

12 A. Only from what I saw briefly during the inspections.

13 Q. Which was about a two-hour total process. Correct?

14 A. Well, I guess it would be a little more than that, two to
15 four hours. Because I was at two places.

16 Q. But that's the entirety of your experience. Right?

17 A. Yes.

18 Q. And I think you testified --

19 THE COURT: I'm sorry. You did attend the sessions,
20 though, the viewing sessions?

21 THE WITNESS: Not with plaintiffs.

22 THE COURT: Oh, you viewed the film?

23 THE WITNESS: I viewed 12 hours of tape.

24 THE COURT: I see. All right.

25 BY MR. GLITZENSTEIN:

1 Q. Yeah, and in terms of reviewing the tape, and also your own
2 time at the CEC and on the road, I think you testified that you
3 didn't see any evidence of bull hook use. Is that correct?

4 A. No, I didn't.

5 THE COURT: You didn't testify or you didn't see?

6 THE WITNESS: No, I didn't see any.

7 BY MR. GLITZENSTEIN:

8 Q. Let me ask you about that. You actually prepared two
9 reports in this case. Correct?

10 A. Yes.

11 Q. I mean, you initially prepared a shorter report, if you
12 recall, about nine pages?

13 A. Yes.

14 Q. And then, when the Court granted an extension for FEI to
15 respond to plaintiff's expert reports, there was a longer report
16 prepared. Correct?

17 A. Correct.

18 Q. And that one was about 55 pages or so?

19 A. It was a completion of the first. So the second one
20 included the first nine pages or whatever of the first.

21 Q. I understand. So you took the time to try to make sure that
22 report was as complete as possible. Right?

23 A. Yes.

24 Q. And you went through plaintiff's experts' reports and
25 responded to what you thought was necessary to respond to?

1 A. Yes.

2 Q. Now, I didn't see -- and maybe I missed it. I didn't see
3 where in your more comprehensive expert report you talked about
4 whether or not the elephants had ankus or bull hook wounds, or
5 evidence of bull hook use on their bodies. Do you think it's in
6 there?

7 A. I don't recall. I mean, I remember stating in my report
8 that I was asked to do a general assessment, and that's pretty
9 much what I feel I did.

10 Q. Well, again, maybe I missed some other reference to it.
11 Because none of us are perfect, for sure. But when I looked
12 over it, the report, when you talked, for example, on page 41
13 and page 40 -- I think it's starting at page 39, which is where
14 you talk about the inspection that you went on, you do talk
15 about the feet condition of the elephants, you talk about a
16 facial sore or a pressure sore on one of the elephants, you talk
17 about behavioral assessment, not recoiling. But I didn't see
18 anywhere in these pages or the other parts that I looked at any
19 reference to not having bull hook wounds. Do you remember
20 anywhere else in the report you may have referred to that?

21 A. No. But I didn't see any broken bones, either.

22 Q. You didn't see, excuse me?

23 A. I didn't say in there that I didn't see any broken bones,
24 either. I reported what I saw, not what I didn't see.

25 Q. Well, again, you were responding to the plaintiff's experts'

1 reports. Correct?

2 A. I did in my report, yes.

3 Q. And the plaintiff's experts' reports did talk about seeing
4 lots of bull hook scarring. Don't you remember that?

5 A. Yes, yes.

6 Q. So that would seem to be a logical thing for you to address
7 in your report if you were trying to respond to what plaintiff's
8 experts said, wouldn't it?

9 MS. JOINER: Objection. Argumentative.

10 THE COURT: Do you understand the question?

11 THE WITNESS: Yeah, I do. But...

12 THE COURT: But what?

13 THE WITNESS: Well, I feel like he's telling me how I
14 should have written my report. My point is, if I didn't see it,
15 why would I mention it?

16 THE COURT: If you had seen it, you would have
17 mentioned it, then?

18 THE WITNESS: Yes.

19 BY MR. GLITZENSTEIN:

20 Q. But you also -- so again, not to belabor this point too
21 much, but you did see plaintiff's experts talk about the
22 scarring that they saw. Correct?

23 A. Yes, I did.

24 Q. And more than one of plaintiff's expert witnesses said that
25 in their reports. Correct?

1 A. Right.

2 Q. Now, it would be inappropriate to strike an elephant with a
3 bull hook near its mouth. Correct?

4 A. Yes.

5 Q. And if that were done, that would be an inappropriate use of
6 the bull hook?

7 A. Yes.

8 Q. And in terms of the elephant's fear response, you said you
9 didn't see that when you looked at the videotapes at the CEC or
10 the other inspection.

11 MR. GLITZENSTEIN: Can we take a look at Plaintiff's
12 Will Call Exhibit 142, at time clip 5735?

13 (Videotape played in open court.)

14 BY MR. GLITZENSTEIN:

15 Q. And if you could take a look at this clip, Mr. Keele, and
16 watch an elephant that comes out of line. See the elephant over
17 on the right there coming out of line? And that's Mr. Jacobson.
18 You know him. Correct?

19 A. I do.

20 Q. If you watch this, Mr. Jacobson, he's got a bull hook in his
21 hand. Right?

22 A. Yes.

23 Q. You see the elephant moving back?

24 A. Yes.

25 Q. That's not recoiling from a person with a bull hook, in your

1 view?

2 A. No, that elephant was responding to his command.

3 Q. He was responding?

4 A. That's what I saw.

5 Q. So that's different from recoiling in response to somebody
6 with a bull hook?

7 A. In my opinion. I think he's not even using the bull hook.
8 He's doing what he should be doing, which is the animal is
9 trained well enough and he doesn't have to use the guide.

10 THE COURT: But he hasn't. The elephant doesn't see
11 the bull hook, though. Is that not significant?

12 THE WITNESS: Not to me.

13 THE COURT: How would you describe recoiling? What
14 would this elephant be doing if in your view it was recoiling as
15 opposed to responding?

16 THE WITNESS: Well, I'm seeing these elephants swaying
17 as if they're comfortable. If this animal was reacting to him,
18 I would have expected the animal to move back faster, and maybe
19 even moving its head down as it moved back, kind of in a
20 protective posture.

21 BY MR. GLITZENSTEIN:

22 Q. Mr. Keele, if you knew that --

23 THE COURT: I'm sorry. They're swaying as if they're
24 comfortable. Is that right?

25 THE WITNESS: When the clip starts, they're kind of all

1 swaying. So...

2 THE COURT: Can we see that again?

3 MS. JOINER: Can we have the sound put on this as well
4 while it's being played?

5 MR. GLITZENSTEIN: I think we were having problems with
6 our sound.

7 (Videotape played in open court.)

8 THE COURT: That's an indication of their comfort
9 level?

10 THE WITNESS: In my opinion.

11 THE COURT: Why?

12 THE WITNESS: Because they're not standing at attention
13 with their ears out watching him, or -- as a matter of fact,
14 they're moving in to him periodically, which means that they're
15 not fearful of him. And that she steps out of line says that --
16 I mean, if she was really fearful of him, she wouldn't be
17 stepping out of line. And if she was and he walked over, she
18 would be zapping back there.

19 THE COURT: He walked over and had that stick in his
20 hand, didn't he, at the time?

21 THE WITNESS: Yeah. My guess is that those elephants
22 never see him without it.

23 THE COURT: What's the purpose of that?

24 THE WITNESS: Well, when he's with them, and these are
25 animals that are in a free contact environment, he needs to have

1 the guide for negative reinforcement or punishment.

2 BY MR. GLITZENSTEIN:

3 Q. And in fact, if the evidence in this case showed that
4 Mr. Jacobson does use the bull hook for punishment, wouldn't
5 that help to inform your opinion about whether the elephant was
6 moving back when Mr. Jacobson walked over because he had the
7 bull hook in his hand?

8 A. Well, I would say that if these animals are properly
9 trained, that they know there's a consequence to their behavior.
10 And it could be negative reinforcement, it could be punishment,
11 or it could be positive reinforcement.

12 Q. And so that's different from fear? The negative consequence
13 is not the same thing as fear, you're testifying?

14 A. I am. I'm saying that they realize there's a consequence,
15 good, bad, or otherwise.

16 Q. But the bad consequence would be having the bull hook used.
17 Correct?

18 A. For punishment, yes.

19 Q. But that's not the same thing as being fearful of the bull
20 hook, is what you're saying?

21 A. Well, they know there's a consequence, I mean, and it's a
22 consequence they want to avoid. But, you know, I guess I
23 wouldn't say it's fear, necessarily. They know what the
24 consequences are.

25 THE COURT: But they're not looking forward to it,

1 though, are they?

2 THE WITNESS: Probably not. They want to avoid it.

3 THE COURT: Right.

4 BY MR. GLITZENSTEIN:

5 Q. Do you have any children?

6 A. I do.

7 Q. And if you were going to punish your child with something
8 that was really bad for them, would you describe them as being
9 fearful of the punishment or not?

10 A. I would describe them as being -- let's see, how would I say
11 it? Because the context I use is what I did with my daughter
12 when she was four years old and she wanted to dash out in the
13 street. And I grabbed her and I pulled her back, and I said,
14 no, you can't ever do that. And she cried, she was upset.

15 And I did that because the next time she got close to a
16 street and I said no, she would remember that, and she would
17 know there were consequences, and she would not run out in the
18 street again.

19 Q. Can we take a look at another clip?

20 MR. GLITZENSTEIN: Actually, Your Honor, could I move
21 that one -- I don't think that particular clip from Plaintiff's
22 Will Call 142 is in evidence yet. And I don't know if we want
23 to revisit this, but I think this is actually a perfect example
24 of an exhibit that was on plaintiff's exhibit list. We had no
25 reason to show this particular clip until this witness testified

1 the way he did.

2 And we can understand -- and I think even with exhibits
3 that are not previously identified, there's an issue, as I
4 understand the case law, about whether those can be used not in
5 the party's case-in-chief, but for something that has long been
6 on the exhibit list that was not objected to at all.

7 THE COURT: So in other words, it could have come in
8 with the appropriate foundation in your case-in-chief because no
9 one objected to it. Right?

10 MR. GLITZENSTEIN: Nobody objected to this exhibit.

11 MS. JOINER: Judge, I might be mistaken. Maybe I'm
12 completely wrong. I thought that the inspection videos were in
13 evidence wholesale.

14 THE COURT: I've seen that tape during this trial, so I
15 thought so. Do we have a number, though?

16 MS. JOINER: Because I thought that the inspection
17 videos neither side had objected to, and I assumed that they
18 were wholesale in and we were showing them.

19 THE COURT: And if they're not, they should be. I've
20 seen that tape, though. That tape has been played during the
21 course of this trial.

22 MR. GLITZENSTEIN: And I think, Your Honor, we've been
23 moving in the particular --

24 THE COURT: It's the other courtroom deputy. She
25 wasn't here.

1 I don't know if you have Carol's notes or not.

2 COURTROOM CLERK: What I have is 142-A, B.

3 THE COURT: What's the number on this one?

4 MR. GLITZENSTEIN: I don't know if we've played -- we
5 may have played it, but I'm not sure we moved this particular
6 one in before. What we've been doing is moving in parts of
7 the --

8 THE COURT: Did defendants move this in? I don't know.
9 What is 142? Yes?

10 MS. JOINER: Your Honor, unless plaintiffs object, I
11 would say that the inspection videos from Auburn Hills and CEC,
12 that's one instance where they should just be wholesale in
13 evidence. And if they want to mark separate -- like this time
14 clip or whatever, I'm fine with that. I think that's different
15 than other video clips by third parties or whatever.

16 THE COURT: Any problem?

17 MR. GLITZENSTEIN: Yeah, I think the concern,
18 Your Honor, is that we were careful to move in particular clips
19 partially as a way of making life easier for the Court, so you
20 could see which clips were focusing on what we think they stand
21 for.

22 If the defendant at the end of the case wants to move
23 in the entire video, we can talk about whether or not that's
24 appropriate, but certainly not, I think, the thing to do now.
25 We have been trying to move in particular clips because we think

1 they pertain to particular aspects of the testimony.

2 THE COURT: What's the particular clip number for that
3 tape?

4 MR. GLITZENSTEIN: This is 142, and this would become
5 142-F, if it's allowed into evidence.

6 THE COURT: I'll admit it. Is there objection to that?

7 MS. JOINER: No objection, Your Honor.

8 THE COURT: 142-F is admitted.

9 (PLAINTIFF Exhibit Number 142-F was moved into
10 evidence.)

11 BY MR. GLITZENSTEIN:

12 Q. And if we could take a look at another one that is already
13 in evidence, and that is Plaintiff's Will Call 132-G.

14 The question I would ask you while you're looking at
15 this is whether you think this is an example of an elephant
16 displaying a fear behavior.

17 THE COURT: Let me go back to the other tape. It's a
18 little disturbing. I'm sure I saw that tape during the course
19 of this trial. Did you not offer that?

20 MS. JOINER: I thought that was in, yes.

21 MR. GLITZENSTEIN: Your Honor, that might have been one
22 that they put in, defendants put in.

23 THE COURT: Someone put it in, because I recall them
24 walking back and forth and it displayed --

25 MR. SIMPSON: It came in through Gary Johnson.

1 THE COURT: Right. But it disturbs me that we don't
2 have a number for that, though. Unless it was given another
3 number.

4 MR. GLITZENSTEIN: Well, I think at the end of this
5 process, Your Honor will probably be able to reconcile a lot of
6 these discrepancies.

7 THE COURT: All right. It's important to have a clear
8 record here.

9 MR. GLITZENSTEIN: And we've been trying with these
10 videos to just move in the clips that we were relying on so we
11 would be clear about that.

12 THE COURT: I understand that, and I think both sides
13 have done an excellent job doing that. But I know I've seen
14 that, and it would be mystifying if it had not been received in
15 the evidentiary record. But anyway, we need to hook it up with
16 a number, though, at some point.

17 MR. GLITZENSTEIN: It's also possible that some of
18 these clips may blend in after a while, Your Honor.

19 THE COURT: No, that was pretty distinct. I recall
20 that.

21 MR. GLITZENSTEIN: So if we could play that one.

22 BY MR. GLITZENSTEIN:

23 Q. And see if you believe -- once again, you can look at this
24 clip and tell us whether you think this elephant is displaying a
25 fear response.

1 (Videotape played in open court.)

2 BY MR. GLITZENSTEIN:

3 Q. Did you see the use of the bull hook?

4 A. I did.

5 Q. And did you see the elephant's response?

6 A. I did.

7 Q. Would you describe that as a fear response?

8 A. Well, you know, what I don't know is if there was a vocal
9 command given. And if there was not a vocal command given, then
10 that would have been inappropriate.

11 Q. Would have been inappropriate?

12 A. Yeah. But I think you asked if I saw a fear response, and
13 what I saw the animal do was raise her head and trunk up. So I
14 don't know if that was the command that was given and she didn't
15 do it on command; there's a lot I can't get out of that.

16 Q. But just looking at the elephant's reaction, based upon
17 that, you can't tell whether that's a fear response?

18 A. I wouldn't say. I mean, again, if a verbal command was
19 given and the animal didn't comply, then the negative
20 reinforcement. She lifted her head and she put her trunk up, so
21 it looks like a trunk-up to me. But --

22 THE COURT: What does that mean, a trunk-up?

23 THE WITNESS: It's when she puts her trunk up here
24 (indicating).

25 THE COURT: I know what it looks like. What does it

1 mean to you, though?

2 THE WITNESS: Oh, it means exactly what you're seeing.
3 So when he says, "trunk up," she's supposed to put her trunk on
4 top of her head and lift her head.

5 BY MR. GLITZENSTEIN:

6 Q. And that is, as far as you can tell from this video, someone
7 jabbing a bull hook into the elephant's neck. Correct?

8 A. That's what it appeared, but did I really see that or is the
9 hook in front of him?

10 Q. Well, maybe we could play it again.

11 (Videotape played in open court.)

12 THE COURT: I don't know if you can really see that.

13 A. So he didn't jab her.

14 BY MR. GLITZENSTEIN:

15 Q. He struck her. Correct?

16 A. He struck her.

17 Q. And I think you testified before that routine striking
18 simply to obtain compliance is ordinarily not appropriate
19 behavior. Correct?

20 A. That's correct, I did.

21 Q. Correct, that it's not appropriate?

22 A. Right.

23 Q. In terms of the chaining practices, first of all, the
24 Oregon Zoo at this point in time does not chain the elephants on
25 a prolonged basis, does it?

1 A. It depends. We had the recent birth where the mother was
2 restrained, tethered for several days, but as a rule, no, we
3 don't.

4 Q. So just so I understand that, so you do restrain or chain
5 for certain kinds of circumstances. Correct?

6 A. Yes.

7 Q. In that situation, you decided that you needed to restrain
8 for several days because of the birthing process. Right?

9 A. No, it was to reintroduce the calf back to the mom.

10 Q. But even with regard to those kinds of circumstances, you've
11 made case-by-case judgments as to when chaining was necessary
12 and when it wasn't. Correct?

13 A. Yes. Above our routine that we do on a daily basis.

14 Q. Right. And the routine is chaining when you have particular
15 management and veterinary practices that have to be engaged in,
16 for the most part. Correct?

17 A. So did you say routine?

18 Q. Yes.

19 A. No, routine is a daily thing. So it's part of the morning
20 routine where the females are fed their grain, their vitamins,
21 they get their bath, and that's when some level of training
22 usually happens, especially with new people that get trained.

23 Q. But it's only for two hours a day, including the night.
24 Correct?

25 A. Correct.

1 Q. And so you found it possible to maintain your elephants by
2 only chaining them for two hours for every 24-hour period, as a
3 routine matter. Correct?

4 A. Yes.

5 Q. And in fact, that's better for the elephants, you've
6 determined, than keeping them chained for much longer periods of
7 time. Correct?

8 A. Certainly for our group. I guess I look back and feel like
9 we've been really very fortunate that we have had such
10 compatible groups.

11 Q. But it's been better for your group?

12 A. Yes, in that we only need to do it for certain procedures
13 and the routine in the morning.

14 Q. And one of the ways it's better for your group is that you
15 believe there has been less foot problems as a consequence of
16 restricting the chaining on hard surfaces. Correct?

17 A. You know, I don't think I said that. I think my report said
18 that even though we don't restrain on any kind of long-term
19 basis, we've had horrible foot problems.

20 Q. Right. But let me just also add into the mix, you've
21 recently changed the substrate at the Oregon Zoo. Correct?

22 A. 10 years ago, but yeah.

23 Q. And you've changed it from what was a concrete surface.
24 Correct?

25 A. Uh-huh. And asphalt.

1 Q. To a more rubberized surface?

2 A. No. We had just an asphalt yard and concrete indoor
3 facilities; we added a huge outdoor natural substrate yard which
4 is two-thirds the size of our original footprint, and that was
5 all natural substrate. Then we got rid of the asphalt yard and
6 put in all natural substrate, and then we coated all the
7 concrete in the buildings with a rubberized surface. So that
8 was from 1980 through about 2000.

9 Q. And so the purpose of that was to provide more surfaces
10 where the elephants could stay without being on hard,
11 unforgiving surfaces. Correct?

12 A. Yes.

13 Q. And as a consequence of that, you've seen less problems with
14 elephant feet and musculoskeletal difficulties. Correct?

15 A. Those are big factors. Others had to do with exercise
16 programs, nutrition, and a different approach at foot care.

17 Q. But just so I understand, big factors do include providing
18 the elephants a more forgiving surface on which to stand.
19 Correct?

20 A. We felt that was important to good foot and joint health.

21 Q. And in your expert report you say that if chaining is done
22 properly, there should not be leg and foot injuries. Is that
23 correct?

24 A. That's my belief, yes.

25 Q. But if it's done improperly, there could be leg and foot

1 injuries. Correct?

2 A. Yes.

3 Q. And in fact, evidence that one would look for, for example,
4 would be severe indentations on an elephant's leg. Correct?

5 A. That could be an indicator, yes. But those can -- yeah,
6 okay.

7 Just so we're clear on that, because we're using
8 restraint, and tethers and chains; that happens with rope, it
9 could happen with chains, it could happen with any kind of
10 tethering.

11 Q. And I think you've stated previously - correct me if I'm
12 wrong about this - that chaining an elephant with arthritis on a
13 hard surface could be something that would aggravate that
14 condition. Correct?

15 A. I'm sorry, did I say that? I guess I would like to see the
16 context I said that.

17 Q. Let me ask you about that. Let's go to your deposition at
18 page 214.

19 Actually, let's take a look at your report at page 22.
20 Actually, page 21 of your report, in the last paragraph on that
21 page you're responding to Ms. Buckley and you say: "In her
22 expert report, Buckley states several times her belief that
23 restraints is the cause of foot disease and arthritis in
24 elephants. While I believe restraint can be a factor with
25 individual animals, it is my opinion that Buckley's conclusion

1 is speculative."

2 So it's the case that at least with individual animals,
3 restraining on a hard surface could exacerbate an arthritis
4 problem. Correct?

5 A. Yes.

6 Q. And is it not also the case that having an elephant chained
7 on a hard surface may contribute to the development of pressure
8 or foot sores -- I mean, or bed sores?

9 A. I'm sorry, could you repeat that?

10 Q. That chaining an elephant on a hard surface for a lengthy
11 period of time may contribute to the development of pressure or
12 bed sores?

13 A. I'm sorry, I'm thinking about -- I'm sorry, I'm thinking
14 about the last question you asked me about the arthritis and
15 restraint. Because I think further in that deposition I
16 commented about how that could actually -- if they were
17 restrained and there was some sort of stereotypic behavior, and
18 I never got called on that, but how that movement can actually
19 help joint health. So on the one hand, where it could impact it
20 in a negative way; if there happens to be stereotypic behavior,
21 it could benefit in another way. But that happens on restraint
22 or off restraint.

23 Q. Right. But it also relates to whether you're restrained on
24 a hard surface or not. Correct?

25 A. It could be a factor, yes.

1 Q. And in terms of -- returning to pressure sores, just so we
2 know we're talking about the same thing, pressure sores, which
3 you do refer to in your report, are sores that can result when
4 an elephant is lying for a long time on a hard surface.

5 Correct?

6 A. That is one way. But it can also happen on surfaces that
7 are not that hard.

8 Q. But what they are are the bone of the elephant rubbing up
9 against the surface. Correct?

10 A. Yes.

11 Q. And just so we understand, when you're lying on a hard
12 surface and you're a large animal, the bone is more likely, is
13 it not, to rub up against a concrete, unforgiving surface?

14 A. I think in my report I commented that there are other
15 factors that come into play; one of them might be the animal's
16 age and the body condition of the elephant; it may also be that
17 the elephant prefers or only lays down on one side, which puts
18 that pressure on it every time it lies down rather than rubbing
19 it back and forth.

20 And the reason why I mentioned the soft surface is
21 because we do have rubberized surfaces, and we do have a male
22 every now and then who develops a pressure sore on his hip.

23 Q. But just so I understand your testimony, one factor among
24 the other ones you mentioned would be the nature of the surface.
25 Correct?

1 A. Yes.

2 Q. And if there were an institution that had chronic pressure
3 sores or bed sores, that would be something that would cause
4 concern, wouldn't it?

5 A. Yes. Can I add to that? When I answered the question, I
6 took your question to mean multiple bed sores on multiple
7 animals. I mean, I took it to be that it was a chronic problem,
8 versus one animal who continually gets bed sores because of some
9 debilitating other thing that might be happening.

10 Q. Right. But if you saw a lot of bed sores in a population of
11 elephants, that would be a concern. Correct?

12 A. Correct. I would want to look at the environment and see
13 what we could change.

14 Q. You would be looking to change something. Right?

15 A. Yes.

16 Q. And that would be true about any set of health problems that
17 you would see in a population of elephants. Correct?

18 A. Well, there would be a holistic assessment, and the
19 environment would certainly be one of those things.

20 Q. Now, you just referred to chaining and whether swaying could
21 be something that would have an effect or not on arthritis. And
22 I think that before when we showed a clip, you were talking
23 about the swaying that we saw in some of those elephants.
24 Correct?

25 A. Correct.

1 Q. Now, in fact, it's generally perceived in the zoo community
2 that swaying or stereotypical behavior is a problem that should
3 be addressed. Correct?

4 A. I think we're kind of at our infancy in understanding that.
5 Because what we see as humans that's stereotypy does seem to
6 bother us, but when we start doing applied research such as
7 looking at polar bears, and a multi-institutional thing where we
8 see stereotypic patterns with them; yet when we try to document
9 that through blood work, looking at corticosteroids, we
10 realize -- we expect to find them, thinking they're stressed,
11 and they're not.

12 So what we see and what's actually happening often is
13 different, so it's hard for us to really say that it's a problem
14 by itself. We could say that it might be an indicator of poor
15 welfare, but then we would have to line it up next to what other
16 good welfare is going on in that animal's life at the same time.
17 So it's not really an easy thing yet to assess.

18 Q. Well, it may not be easy to assess, but in fact you did make
19 some assessment of it in a publication that came out, I think
20 quite recently, called "Elephants and Ethics." Are you aware of
21 that book?

22 A. Yes.

23 Q. Published by Johns Hopkins University?

24 A. Yes.

25 Q. This one, or at least it looks like this one (indicating).

1 And you in fact did coauthor a chapter of that
2 publication?

3 A. Yes.

4 Q. Along with Mitchell Hutchins and Brandie Smith?

5 A. Michael Hutchins.

6 Q. Michael Hutchins, I'm sorry. And if we could take a look at
7 that. And the name of the chapter that you authored is called
8 "Zoos As Responsible Stewards of Elephants." Is that correct?

9 A. Right.

10 Q. And once again, you made an effort to ensure that everything
11 included in this chapter would be as accurate as possible?

12 A. Yes.

13 Q. And if we take a look at a paragraph on page 293 of that
14 publication, and the first full paragraph on the top, let me
15 read what you said: "One specific concern that arises because
16 of space constraints is a method of restraint called chaining or
17 tethering," citing Roocroft and Zoll. "Tethering has become the
18 more popular term because some zoos are replacing metal chains
19 in favor of synthetic materials. Some zoos use tethering to
20 restrain elephants overnight to prevent intraspecific aggression
21 in group housing situations, and allow subordinate animals to
22 rest and eat in peace," citing Brockett.

23 "However, tethering also prevents normal social
24 interaction and activities, and has been shown to cause
25 stereotypic behavior," citing Brockett and Gruber, et al. And

1 then, "Its excessive use may diminish welfare," closed quote.

2 Do you see that?

3 A. Yes.

4 Q. Now, there you've made a pretty specific statement that
5 tethering prevents normal social interaction and has been shown
6 to cause stereotypical behavior. Do you see that?

7 A. Yes.

8 THE COURT: Let me stop you for one second. The court
9 reporters are quite professional. You said 5:30, didn't you?

10 (OFF THE RECORD.)

11 BY MR. GLITZENSTEIN:

12 Q. And the two sources that you cited for that proposition in
13 this article are Brockett and Gruber, et al. Do you see that?

14 A. Yes.

15 Q. Now, if we could take a look at the Gruber article, which
16 actually has already been admitted into evidence as Plaintiff's
17 Will Call 157, "Variation in Stereotypic Behavior Related to
18 Restraint in Circus Elephants," is that in fact the article you
19 were referring to?

20 A. Yes.

21 Q. And is your understanding of that article that it
22 demonstrated that when elephants are moved from chaining on
23 pickets to pens, that stereotypical behavior went down
24 substantially?

25 A. That's correct.

1 Q. And that's where you draw your conclusion that chaining
2 contributes to stereotypical behavior. Correct?

3 A. Correct. And I don't recall when this work was done. Is it
4 on there?

5 Q. It says 2000 on it.

6 A. And I think the chapter you referenced we finished in 2003.
7 Does that sound right? In the book.

8 Q. I'm not sure when the chapter was done. The book itself I
9 think came out in 2008.

10 A. Right. It was there for a while.

11 Q. And the other publication that you referred to in your
12 chapter is Brockett?

13 A. Right.

14 Q. If we could just take a look at that publication. And is
15 that the one you're referring to, "Nocturnal Behavior in a Group
16 of Unchained Female African Elephants"?

17 A. Yes.

18 Q. That's the one that showed that when elephants were
19 unchained at the Atlanta Zoo, they demonstrated much less
20 stereotypical behavior than other elephants that had been
21 studied. Correct?

22 A. That's correct.

23 Q. It also showed that foot problems declined significantly
24 when there was less chaining. Correct?

25 A. I don't recall.

1 Q. You would agree that failing to provide for an elephant's
2 social needs could be detrimental to the well-being of an
3 elephant. Correct?

4 A. Yes.

5 Q. And in fact, the AZA standards at the beginning refer to the
6 intelligence, strength, and social needs of these magnificent
7 animals. Correct?

8 A. Yes.

9 Q. So you would agree that elephants are highly intelligent?

10 A. Yes.

11 Q. By the way, do you believe that elephants are more
12 intelligent than cows?

13 A. Than cows? Well, like cow elk or what kind of cow?

14 Q. How about a dairy cow?

15 A. A dairy cow? Yes.

16 THE COURT: What's your basis for that opinion?

17 THE WITNESS: I guess because I like them better. No,
18 I think I would be looking at the domesticity of the cattle, and
19 they're not really raised socially like elephants are. And I
20 think elephants have exhibited a lot of behaviors and different
21 experiences that show that they're smarter.

22 So in some ways it's subjective, but we talk about
23 elephants being as smart as dogs.

24 THE COURT: Do you think dogs are smarter than
25 elephants?

1 THE WITNESS: No, I think elephants are smarter than
2 dogs.

3 THE COURT: Smarter than dogs. I'm sorry, I
4 misunderstood you.

5 BY MR. GLITZENSTEIN:

6 Q. Let me ask you a couple of questions about the Husbandry
7 Resource Guide that you were asked about. One question at the
8 outset is, this is a guide that was developed, again, for both
9 Asian and African elephants. Correct?

10 A. Yes.

11 Q. And that was because, once again, it was determined that the
12 needs of those animals are sufficiently similar that they could
13 be addressed in one guide?

14 A. That wasn't the driving force. I think the elephant
15 community was together, and so it made sense if you were going
16 to do an elephant resource guide, that it didn't make sense to
17 do an Asian one and didn't make sense to do an African one, and
18 their needs were similar enough that they could be addressed in
19 one guide.

20 Q. But actually, one issue in particular that the guide refers
21 to in terms of foot care does suggest that you have to be more
22 attentive to Asian elephants' feet than African elephants' feet.
23 Is that right?

24 A. That's correct.

25 Q. And let me ask you about one aspect of that. If we could

1 look at page 44 of the guide, and under Foot Care, if you look
2 over at the right-hand side, there's a statement about midway
3 down the paragraph which says, quote, "It is believed that since
4 elephants in the wild are frequently on the move, overgrown pads
5 and nails are naturally worn down, while the substrate prevents
6 excessive moisture and fungus from becoming a problem." Do you
7 see that?

8 A. Yes.

9 Q. And again, you did play a role in producing this guide?

10 A. Yes.

11 Q. And in fact, isn't the suggestion there that for elephants,
12 and particularly Asian elephants, who naturally exist on a
13 softer surface in the wild. Correct?

14 A. In general, yes.

15 Q. They walk long distances and their feet are better
16 maintained as a consequence of being able to walk long distances
17 and wear their pads down. Correct?

18 A. I don't believe -- I think the distances they travel is in
19 relationship to the resources that are available. So if there's
20 plenty of resources around, they're not traveling great
21 distances.

22 Q. But in any event, the way natural selection works is that
23 they've developed feet and legs in order to adapt to their
24 particular environment. Correct?

25 A. Yes.

1 Q. I mean, that is the way the evolution through natural
2 selection occurs. Right?

3 A. (Witness nods.)

4 Q. And if we could look over at page 46, if you see on the
5 first paragraph on the left, full paragraph, there's a statement
6 that reads, quote, "In captivity, some of the alleged causes of
7 foot problems have been identified as the lack of exercise,
8 excessive moisture, and improper substrate." Do you see that?

9 A. Yes.

10 Q. Now, improper substrate once again would be a hard,
11 unforgiving surface that the elephant has to stand on too often.
12 Correct?

13 A. Well, it could be wet, muddy conditions, too.

14 Q. But it could also be an excessively hard, unforgiving
15 surface. Right?

16 A. It could be, yes.

17 Q. And just while we're on the guide, if we look over at
18 page 46, there's a reference to the bull hook. And on the
19 left-hand side we're talking about the -- I'm sorry, page 66.
20 And over on the left-hand side there's a paragraph, the second
21 full paragraph, and down at the end of the paragraph it's
22 discussing the guide or the bull hook. It states, quote, "The
23 ends of the hook should catch but not tear or penetrate into the
24 skin. On a rare occasion superficial skin marks may result, but
25 generally do not require medical attention." Do you see that?

1 A. Yes.

2 Q. So even assuming the validity of this, this is saying that
3 that should be a rare occurrence. Correct?

4 A. That's what the guide says, yes.

5 Q. And so if those kinds of marks were more than a rare
6 occurrence, that would be a concern, from a management
7 standpoint. Correct?

8 A. Well, you know, I don't know. I mean, the way that's
9 written, it says -- can you show me that again, please?

10 MR. GLITZENSTEIN: If we can highlight that part again.
11 Actually, highlight that whole paragraph so he can see the
12 entire paragraph.

13 THE COURT: They're having a changing of the
14 professionals here. Thank you very much.

15 (RECESS taken at 5:36 p.m.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Rebecca Stonestreet, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

SIGNATURE OF COURT REPORTER

DATE