

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION
OF THE CRUELTY TO ANIMALS, ET AL.,

Plaintiffs,

vs.

FELD ENTERTAINMENT, INC.,

Defendant.

CA No. 03-2006
Washington, DC
February 5, 2009
2:10 p.m.

PM Session

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>For the Plaintiff:</u>				
ARCHELE HUNDLEY		5	69	
ROBERT TOM	77	98	126	
LANETTE WILLIAMS DURHAM	132			

P R O C E E D I N G S

1
2 We'll proceed. Counsel, let me think out loud for a second.
3 I don't want anyone to respond right now, but at some point
4 you're going to have to respond.

5 The Congress certainly intended something when it
6 chose this language very carefully. And it's uncontroverted
7 that Asian elephants can be held in captivity. So is this the
8 type of taking that is being complained of here that Congress
9 intended to regulate? Is this a scenario like a spotted owl
10 in a certain protected area or a certain area, unbeknownst to
11 everyone, and all of a sudden there is an endangered species
12 and all sorts of safeguards have to be put in place in order
13 to prevent a taking, or -- I don't know, is the bald eagle
14 still an endangered species, the American eagle?

15 It's not, but hypothetically, because I love
16 eagles, if it were still an endangered -- and thank goodness
17 it's not, but if a nesting place was found in Rock Creek Park,
18 you know, if it's endangered, what steps have to be taken --
19 poor choice of words -- well, no, what steps have to be taken
20 to prevent or to avoid an unlawful taking of that endangered
21 species? And that's what I'm going to be focusing us on.
22 What did Congress intend?

23 Congress intended obviously that the Asian elephant
24 should be in captivity under certain -- pursuant to certain
25 regulations, and they should be controlled, 8,000-pound

1 animals must be controlled. There's a balance there somewhere
2 and, you know, where do zoos and circuses cross the line with
3 respect to control mechanisms, control procedures to protect
4 the public? You can't have 8,000-pound animals running loose
5 without the benefit of adequate protection. How do you
6 control those animals if not by the use of the devices I've
7 heard testimony about? How do you do it? How do you control?

8 So anyway, I'm just thinking out loud. At some
9 point you're going to focus on those issues anyway. But -- I
10 just wanted to think out loud there for a second. No one has
11 to respond. And you folks are thinking about the same things.
12 Where do you cross the line?

13 All right. Let's proceed with the witness.

14 Thereupon,

15 ARCHELE HUNDLEY, resumed the stand,
16 the witness herein, having been previously sworn, was examined
17 and testified as follows:

18 THE COURT: I have an engagement at 6:30 this
19 evening, so I want to try and finish with those two witnesses
20 you have today. I really want to do that, especially since
21 we're not sitting tomorrow. So we made some adjustments to my
22 calendar, so my time is yours. Let's proceed.

23 CROSS-EXAMINATION CONTINUED

24 BY MS. JOINER:

25 Q. Ms. Hundley, before the break we were talking about

1 your return trip to the Red Unit in Lexington, Kentucky. And
2 that trip was the one that PETA provided with you the hidden
3 camera, is that correct?

4 A. Yes.

5 Q. And they also sent somebody out to show you how to use
6 it?

7 A. Yes.

8 Q. And you were there for two days, is that correct?

9 A. Yes, I believe.

10 Q. And the first day you asked about getting rehired?

11 A. Yes.

12 Q. And you had to speak to Mr. Balfour, who had to make a
13 call to the main office, correct?

14 A. Yes.

15 Q. And then you went back and visited the animal compound
16 that day?

17 A. Yes.

18 Q. Then you had to go back a second day to find out if
19 Mr. Balfour could rehire you?

20 A. That's right.

21 Q. Both days were show days when you were there, correct?

22 A. I don't recall exactly. Maybe, I don't really
23 remember.

24 Q. Well, the first day you told us that you hung out at
25 the animal compound and you went back to the hotel when it was

1 show time, is that right?

2 A. Yeah, yeah, okay. Right.

3 Q. And then the second day there were shows also?

4 A. Yes.

5 Q. Okay. You were not there for the animal load-out at
6 the train?

7 A. No.

8 Q. When you worked on the Red Unit you were friends with
9 Carrie Coleman, is that correct?

10 A. Yes.

11 Q. And you used that friendship to return to the Red Unit?

12 A. Yeah, yeah.

13 Q. And she actually helped you get rehired, didn't she,
14 try to get rehired?

15 A. Well, maybe. I don't know. I wasn't with her when she
16 talked to anyone or anything, so.

17 Q. Did she welcome you back?

18 A. Yes.

19 Q. But you didn't mention the concealed camera part to
20 her, did you?

21 A. No.

22 Q. Ringling would not actually rehire you, correct?

23 A. Correct.

24 Q. And the reason why is because you quit without giving
25 them notice, isn't it?

1 A. The reason they wouldn't rehire me is actually because
2 they caught word of the unemployment thing, I'd filed for
3 unemployment and said that there was animal abuse there.

4 THE COURT: There was what?

5 THE WITNESS: Animal abuse.

6 BY MS. JOINER:

7 Q. Let's take a look at Defense Exhibit 124. Now, if you
8 could scroll through this document. First page, please. All
9 right. This was an exhibit at your deposition, do you recall
10 that?

11 A. I don't know. What is it exactly?

12 Q. Right there. Let's scroll through this document, tell
13 us when you're ready for the next page, so you can look at it.

14 A. Okay.

15 Q. Ready for the next page?

16 A. Yeah.

17 Q. Are you starting to recall this?

18 A. Yeah.

19 Q. Ready for the next page?

20 A. Almost was. Wasn't quite ready. Okay.

21 Q. Next page, please.

22 A. Yeah.

23 Q. Next page, please.

24 A. Yeah.

25 Q. Next page, please.

1 A. Okay.

2 Q. Next page, please.

3 A. All right.

4 Q. And the next page, please. This is your
5 September 29th, 2006 declaration, is that correct?

6 A. Yes.

7 Q. And if we go back to the first page of this exhibit,
8 I'd like the Court to take judicial notice that this was filed
9 as document 113-3 in this case on November 22, 2006.

10 THE COURT: All right.

11 BY MS. JOINER:

12 Q. The purpose of doing the September 2006 declaration was
13 to give it to the USDA, correct?

14 A. Yeah, I believe so.

15 Q. And who was responsible for actually giving it to the
16 USDA?

17 A. I was.

18 Q. You quit in June of 2006, is that right?

19 A. Yes.

20 Q. So it was not one month after you left, but it was
21 three months after you left that you completed this
22 declaration?

23 A. Yeah, but it took the investigator a long time to get
24 out to me to get it done.

25 Q. An investigator came out to do this declaration?

1 A. Oh, no. No, I mean, but it took him a long time to
2 meet with me.

3 Q. This was the document that Debbie Leahy from PETA
4 helped you with, wasn't it?

5 A. Yes.

6 Q. And you had quite a few phone conversations with her to
7 finalize it?

8 A. Yes.

9 Q. And you reviewed it for accuracy before you signed it?

10 A. Yes.

11 Q. And when you looked at it you thought that there was
12 nothing that needed to be changed, it was all correct and
13 accurate?

14 A. I don't recall, I don't remember, I think that there
15 might have been some problems with it. I don't remember
16 exactly what they might have been.

17 Q. Let's go to Page 160, please, of your deposition. And
18 at Line 6 I ask you: Okay. So what I'm trying to figure out
19 is were there different drafts of this. Answer: No, huh-uh.
20 Question: Before you actually signed it in September.
21 Answer: I looked over it, I read it, everything was fine with
22 it. I signed it. Question: Okay. So did you make any
23 changes after Ms. Leahy faxed it to you? Answer: No, no.
24 Question: Okay. Answer: I looked it over, it was all
25 correct and as it happened and in my words, and nothing needed

1 to be changed, it was all correct and accurate.

2 That was your testimony, wasn't it?

3 A. Yes.

4 Q. And you did complete it before you met with the USDA
5 the first time?

6 A. Yes.

7 Q. And the first meeting with the USDA was approximately
8 November 3, 2006?

9 A. I don't recall exactly when it was.

10 Q. Well, you know it was after this declaration, which was
11 the end of September?

12 A. Yes. Yes.

13 Q. So would you agree it was early November?

14 A. Possibly.

15 Q. And who arranged for that meeting with the USDA?

16 A. PETA did.

17 Q. So you flew to D.C. and you met with Dr. Chester Gibson
18 at the USDA, is that right?

19 A. Yes.

20 Q. Do you know his title is deputy administrator of animal
21 care at APHIS?

22 A. Yes.

23 Q. Who came with you to that meeting?

24 A. It was myself and Debbie Leahy and Robert Tom.

25 Q. And did RaeLeann Smith from PETA also come with you?

1 A. I can't remember if she was there or not. I think she
2 may have been, yes.

3 Q. And you told Dr. Gibson everything that you could
4 remember, correct?

5 A. Yeah. You know, he was limited in time though. We
6 weren't there very long. But as -- I think so, yeah.

7 Q. But you told him everything that you could remember,
8 correct?

9 A. I believe so. I don't remember exactly what all was
10 said in that meeting. I'm sure I did.

11 Q. Did you give him your September affidavit at the
12 meeting?

13 A. No.

14 Q. Was it before the meeting?

15 A. No. No, I don't think it was. As I said, he was
16 limited on time, and he sent somebody -- I talked to another
17 investigator after that.

18 Q. So if we were to look at Exhibit 124 again, there is no
19 reference in here to any kind of a concealed camera, is there?

20 A. No, there's not.

21 Q. Did you tell Dr. Gibson about your secret videotapes?

22 A. No.

23 Q. Did you provide a copy of them to Dr. Gibson?

24 A. No, I didn't have them.

25 Q. I think your counsel asked this earlier, but would you

1 tell us again, have you been back to the Red Unit since
2 Lexington, Kentucky?

3 A. Yes.

4 Q. When was that?

5 A. I guess it was -- oh, gosh. I'm so terrible with
6 dates. November or -- no, September, October. I don't
7 recall. I just don't know. I mean.

8 Q. One time?

9 A. Yeah, just the one time.

10 Q. Do you know what city it was in?

11 A. Kentucky, Lexington.

12 Q. So did you go back to Lexington a second time after
13 wearing the hidden camera?

14 A. No.

15 Q. So my question is -- let me back up. My question was
16 after you went back to the Red Unit in Lexington, have you
17 since that time returned to the Red Unit at all?

18 A. Oh, yeah. Yeah, just this past year I went to -- they
19 were having a performance at the circus and I went and took
20 some footage.

21 Q. When was that?

22 A. Of the elephants. In April.

23 Q. April of 2008?

24 A. April of -- yes, yes.

25 Q. What was the city?

1 A. Charleston. They came back to my hometown.

2 Q. Is that the only other time that you've been back to
3 the Red Unit?

4 A. That's it.

5 Q. And for what portion of the tour in Charleston were you
6 there for?

7 A. Well, just a couple -- I went a couple days.

8 Q. Was that when you went back for a protest?

9 A. Yeah.

10 Q. Was it a show --

11 A. No, no, no, it wasn't a protest. I went to -- I wanted
12 to see the elephants that I had worked around and the animals
13 that I worked around, and I went back and got a seam through
14 the fencing. I didn't go to the show, I just went back to get
15 a glimpse of the animals.

16 Q. It was a show date when you went back?

17 A. Yeah, yeah, yeah.

18 Q. Did you go visit the train when you went back?

19 A. No.

20 Q. You didn't see the animal load-out or load-in?

21 A. Yeah, I did see the load-in, when they were leaving.

22 Q. Okay.

23 A. But I didn't make it quite all the way to the train,
24 though.

25 Q. You did not make it all the way to the train?

1 A. No, no, no. I went on the walk and quit part of the
2 way.

3 Q. I see. You didn't make it to the train, you just saw
4 part of the walk?

5 A. Yeah.

6 Q. So let's go to Exhibit 124, please. Paragraph 18.
7 Thank you. Paragraph 18 says: Garrison told me that the
8 elephants scrape their backs when they are loaded on and off
9 the trains because the openings in the boxcars is not large
10 enough, is that correct?

11 A. That is true.

12 Q. That was part of your complaint that you made to the
13 USDA?

14 A. Yes.

15 Q. And you never noticed this while you worked there?

16 A. No, not really, not until he pointed it out.

17 Q. But he didn't point that out to you until after you had
18 quit?

19 A. Yes.

20 Q. But you claim that you saw this too, don't you?

21 A. Well, once he had mentioned it, yeah, I recall it
22 myself now. There was so much abuse and things going on
23 there, it's just hard to remember every little detail of
24 everything. It's terrible to remember what I have -- what I
25 remember now. I wish I could block it all out.

1 Q. But you've never been back to the Red Unit to see the
2 train since you quit, is that correct?

3 A. That's correct.

4 Q. But you never noticed it while you were there?

5 A. Didn't really pay attention.

6 Q. Did you personally provide this declaration to the
7 Animal Protection Institute?

8 A. No.

9 MS. JOINER: Just for identification purposes I'd
10 like to pull up Plaintiffs' Will Call Exhibit 114.

11 THE COURT: All right.

12 BY MS. JOINER:

13 Q. And this has Bates label API6241 to 6248, which is the
14 Bates label used by API in this case. Do you know, Ms.
15 Hundley, who provided this document to the Animal Protection
16 Institute?

17 A. I'm not a hundred percent sure how they --

18 Q. Okay. Do you know how this document came to be filed
19 in this case?

20 A. No, I don't really recall it.

21 Q. Okay. Then in December of 2006 you met with the USDA
22 for a second time in Charleston, is that correct?

23 A. That's correct.

24 Q. And Frank Keyser, a USDA investigator, came out to meet
25 with you?

1 A. Yes, ma'am.

2 Q. This time you met alone with him, is that right?

3 A. That's correct.

4 Q. Let's look at Exhibit 125. This is one of the
5 documents that your counsel showed to you. And I want to just
6 ask you about the initials that are at the bottom of the page.
7 Do you see that?

8 A. Yes.

9 Q. There's an initial and a date down at the bottom?

10 A. Yes.

11 Q. You went over this document with Mr. Keyser during your
12 meeting?

13 A. Yes, I did.

14 Q. He had you initial each page and date it, is that
15 right?

16 A. That's correct.

17 Q. And the purpose of that was to review it for accuracy?

18 A. That's correct.

19 Q. So when we go to Exhibit 126, this is the declaration
20 that you prepared for Mr. Keyser in December while he was
21 there meeting with you, right?

22 A. Uh-huh.

23 Q. And the purpose of this document was to make any
24 corrections that Exhibit 125 needed, is that right?

25 A. I believe so. I'm not real sure. Probably.

1 Q. If you'd look, please, at Paragraph 4 of your December
2 declaration, which is Exhibit 126. That paragraph reads:
3 I've never been employed with the People for the Ethical
4 Treatment of Animals, PETA, nor have I ever received any
5 compensation from that organization for any reason. That was
6 what you provided to Mr. Keyser, correct?

7 A. Correct.

8 Q. And when you wrote that you excluded from compensation
9 any kind of travel that they provided for you or hotel rooms
10 or that kind of thing, is that correct?

11 A. What was the question? I'm sorry.

12 Q. When you wrote this, you excluded from the definition
13 of compensation any kind of travel or hotel rooms that PETA
14 has provided for you, correct?

15 A. Yeah, that's correct.

16 Q. You mentioned earlier on your direct that you speak to
17 legislatures on behalf of PETA, is that right?

18 A. Well, not -- well, I have been to many different things
19 for them, but it's not just for them, it's for the elephants.
20 It's to try to get the bans on the chains and the bull hooks.
21 I'll go wherever I need to go whenever I need to go there,
22 just to make people aware of what's going on.

23 Q. Specifically the activities that you do in coordination
24 with PETA include going to talk to different legislators, is
25 that correct?

1 A. Yes.

2 Q. And it also includes travel?

3 A. Yes.

4 Q. And you attended a circus protest?

5 A. Just the one there in Charleston.

6 Q. At the time of your deposition you could not think of
7 anything else that you did in connection with PETA, correct?

8 A. I don't know that I had done anything else with PETA at
9 that time. I just don't recall.

10 Q. You forgot to mention at your deposition at that point
11 when I asked you that you did public service announcements for
12 PETA, correct?

13 A. I don't know that I had done one at that time. I'm not
14 sure when -- I'm terrible with dates, so I'm not sure what
15 days were what, or if it had even been done at that point. I
16 don't think it had been.

17 Q. You know that your deposition was in December of 2007?

18 A. Yeah.

19 Q. Is that right? Okay. Now, the purpose of all of these
20 activities is to try to ban the use of the guide or ankus or
21 bull hook, whatever word you want to use, correct?

22 A. Yes.

23 Q. And you're also trying to get elephants banned from
24 Ringling Circus, is that correct?

25 A. No, mainly just the bull hooks and chains.

1 Q. You don't believe that elephants should be banned from
2 Ringling Circus?

3 A. I would like to see the elephants out of the circus,
4 yes, I would.

5 Q. And it's not just Ringling, it's all circuses, isn't
6 it?

7 A. It is, yeah.

8 Q. And you also think that ankuses should be banned
9 altogether?

10 A. Yes, I do.

11 Q. And you don't think that there are any circumstances
12 under which an ankus could be used properly?

13 A. No, I don't.

14 Q. On February 10th, 2007 you made another trip to D.C.,
15 is that correct?

16 A. Again, I'm not real good with dates, so.

17 Q. Well, you remember coming to town because you were
18 meeting with counsel to try to become a plaintiff in this
19 case?

20 A. Okay. Okay.

21 Q. Do you remember that?

22 A. I remember -- yeah, to try to become a plaintiff, yes.

23 Q. February of 2007?

24 A. Probably about right.

25 Q. How did you meet those attorneys?

1 A. I was actually told about them through PETA.

2 Q. Is that plaintiffs' counsel that is here today?

3 A. What?

4 Q. The attorneys that you met with, is it plaintiffs'
5 counsel that are here today?

6 A. Oh. Yeah.

7 Q. On March 30th, 2007, a 60-day notice letter was sent
8 out on your behalf, is that right?

9 A. I think so, yeah.

10 Q. Let's pull up Defense Exhibit 186, please. If you
11 would scroll through this and tell me if you recognize this
12 document, Ms. Hundley.

13 A. I have seen it before.

14 Q. Do you need to see the rest of it or are you able to
15 recognize it now?

16 A. Could I see a little more of it?

17 Q. Absolutely.

18 A. Yeah, I recall it.

19 Q. So Exhibit 186, Defense Exhibit 186 is your 60-day
20 notice letter, is that correct?

21 A. Yes.

22 Q. On August 29th, 2007 you filed a motion to join this
23 case as a plaintiff, isn't that right?

24 A. What was the date again?

25 Q. August 29th, 2007.

1 A. That's probably about right.

2 Q. I'll just put -- if you would turn the ELMO on. Can
3 you see that?

4 A. Yes.

5 Q. Do you recognize this document?

6 A. I have seen it before, yes.

7 MS. JOINER: For the record, Your Honor, this is
8 Document Number 181 and it was filed on August 29th, 2007.

9 THE COURT: All right. Thank you.

10 BY MS. JOINER:

11 Q. Now, you didn't actually see the proposed complaint
12 before it was filed, did you?

13 A. I'm not real sure if I did or not. I don't recall when
14 I saw it the first time.

15 Q. And you're uncertain as to whether you saw any
16 documents before they were filed?

17 A. Yeah. Well, I mean as far as dates and things, I
18 couldn't tell you when they were filed or -- no, I couldn't.
19 I couldn't be sure of when any of them were filed or sent in
20 or what dates they needed to be sent in.

21 Q. Well, you don't believe that you reviewed anything
22 before it was filed, do you?

23 A. What do you mean, reviewed it? I have looked at these,
24 I've seen them before, but I'm not sure when they were filed.

25 Q. If you would turn, please, to Page 253 of your

1 deposition. At Line 18, you were asked: Did you ever see
2 that before it was filed? Answer: No. Question: Okay. Did
3 you see any documents before they were filed with the Court?
4 Answer: I'm uncertain.

5 That was your testimony, wasn't it?

6 A. Yeah. I'm still uncertain.

7 Q. Are you aware that the motion to join this lawsuit was
8 denied?

9 A. Yeah. Yeah.

10 MS. JOINER: And for the record, Your Honor, that
11 is Docket Number 212 from October 25th, 2007.

12 THE COURT: All right.

13 BY MS. JOINER:

14 Q. You were never an employee on the Blue Unit, is that
15 right?

16 A. That's correct.

17 Q. But you were a union member?

18 A. Yes.

19 Q. And you did not work with any of the elephants while
20 were you at Ringling Brothers, is that right?

21 A. That's correct.

22 Q. And you were never at the elephant barn at night?

23 A. No, I wasn't there at night.

24 Q. And you've never handled an elephant?

25 A. I've never handled one.

1 Q. You've never moved one?

2 A. I've never moved one.

3 Q. And you've never trained one?

4 A. Correct.

5 Q. And you've never held any ankuses?

6 A. That's correct.

7 Q. You were not allowed to touch the crews' ankuses while
8 were you there, were you?

9 A. That's correct.

10 Q. You said at your deposition that you never used an
11 ankus except to talk at a legislative hearing?

12 A. That's correct.

13 Q. That was the only time?

14 A. That's correct.

15 Q. That's actually not correct, is it? You played with an
16 ankus while you made your commercials for PETA?

17 A. Oh. Yeah.

18 Q. So in September of 2007 you filmed three public service
19 announcements?

20 A. Yes.

21 Q. And you went down to Norfolk, Virginia to do that?

22 A. Yes.

23 Q. Where in Norfolk did you actually film the commercials?

24 A. At a house. A house that I guess -- I don't know if
25 PETA owned it or who owned it, but a house, someone's house.

1 Q. PETA produced the entire commercial, is that right?

2 A. Yes, ma'am.

3 Q. They made a film out of it, is that correct?

4 A. I believe so.

5 Q. And you were the one that starred in it?

6 A. Yeah.

7 Q. And the house was a set, wasn't it?

8 A. It was a real house.

9 Q. It wasn't your real house, was it?

10 A. No, it wasn't.

11 Q. But you filled it up with props, didn't you?

12 A. Yeah, I had some pictures of the kids.

13 Q. And PETA directed the entire thing, didn't they?

14 A. No, there were a few other people there, but I don't
15 know who they were or what was going on with it all.

16 MS. JOINER: I'd like to look at a portion now,
17 Your Honor, from Defense Exhibit 283.

18 THE COURT: All right.

19 MS. JOINER: This is Clip Number 1:09 to 1:33.

20 (Video played).

21 BY MS. JOINER:

22 Q. Is that you twirling the ankus?

23 A. That is me.

24 Q. The ankus is what you referred to as a torture device
25 with your counsel, is that correct?

1 A. Yes.

2 Q. Is this at the end of your day of filming?

3 A. I think close to it. We were still -- they were still
4 doing some shooting though, yeah.

5 Q. So after you twirled the ankus, then you dragged it
6 across the sidewalk for a while, right?

7 A. Yes, yes.

8 Q. Let's look at Clip Number 5:38 to 5:42.

9 (Video played).

10 Q. Is that you dragging it across the sidewalk?

11 A. That is me.

12 Q. You didn't mention any of these uses of the ankus
13 during your deposition, did you?

14 A. No.

15 Q. Are there any other times that you've used an ankus?

16 A. No, never.

17 Q. PETA actually wrote the script for these commercials
18 that you did, didn't they?

19 A. They were my experiences, but yeah, they did write it,
20 but it was my experiences and things that I witnessed while I
21 was with Ringling.

22 Q. In fact they told you exactly what to say, didn't they?

23 A. Maybe not exactly, but they were my words. Not my
24 words, but my -- definitely my experiences.

25 Q. Well, let's go to Defense Exhibit 282, please. This is

1 Clip Number 46:51 to 47:18.

2 (Video played).

3 THE COURT: Could you stop that. I couldn't hear
4 the first part. Maybe there's nothing to be heard. I just
5 couldn't hear it.

6 (Video replayed).

7 BY MS. JOINER:

8 Q. That's you in the clip, right?

9 A. Yes.

10 Q. And somebody off screen is telling you what to say?

11 A. Yeah.

12 Q. And then they told you exactly what to do, didn't they?

13 A. Not exactly, not the whole time. It's just stressful.

14 I'd never been put in front of a camera like that to do any
15 kind of public service announcement, so it's nerve-racking
16 and --

17 Q. Let's take a look at Clip Number 49:42 to 50:15.

18 (Video played).

19 BY MS. JOINER:

20 Q. And then they told you exactly how to read the script
21 that they wrote for you, didn't they?

22 A. Yeah, yeah, they helped me quite a bit.

23 Q. Let's look at Clip 1:07 to 1:58.

24 (Video played).

25

1 BY MS. JOINER:

2 Q. That's your face that we saw in the screen, is that
3 right?

4 A. Yes.

5 Q. And those were your pictures behind you that you
6 brought from home of your kids?

7 A. Yes, ma'am.

8 Q. Whose voice off-screen were we hearing?

9 A. That was RaeLeann Smith.

10 Q. So even though you consider the ankus to be a torture
11 device, you were very eager to use it during these
12 commercials, weren't you?

13 A. I wanted to get -- I wanted people to see it. A lot of
14 people have never seen ankuses before, and yeah, I was -- I
15 want people to see them.

16 Q. Let's look at Clip 3:14 to 3:44.

17 (Video played).

18 BY MS. JOINER:

19 Q. This was the day of filming that you just testified was
20 very stressful for you, is that right?

21 A. It was.

22 Q. Now, you claim that your co-workers liked you until you
23 started to complain about the abuse, is that right?

24 A. That's right.

25 Q. But you started to complain about the abuse almost

1 immediately, correct?

2 A. Maybe not right right away, I don't know, a week or
3 two. It wasn't long.

4 Q. You referenced complaints generally with your counsel.
5 I want to go through them specifically. One of your very
6 first complaints was to Mr. Balfour, is that right?

7 A. I'm not exactly sure. I don't remember.

8 Q. Nobody else was present for your conversation with him?

9 A. I really don't remember how that went. All I remember
10 is that I was always ignored or went directly back to -- told
11 to go to Sacha.

12 Q. Let's look at Page 55 of your deposition, please.
13 Actually I'll just show you -- let's start at Page 54, 24,
14 Line 24, to give you some context. The question is: Did you
15 have any conversations with Mr. Balfour that you complained of
16 the treatment of elephants? Answer: Yeah, and he told me to
17 take it to Sacha and Alex. Question: When did -- well, how
18 many of those conversations were there? Answer: Well, I went
19 to him once. Question: And when did that happen? Answer:
20 That would have been, I want to say Albany, New York. He was
21 actually one of the first people that I did talk to about it.

22 A. Yeah.

23 Q. That was your testimony?

24 A. Yeah.

25 Q. Nobody else was present for that conversation, correct?

1 A. Correct.

2 Q. And you complained to him about Jimmy, Sacha, Pista and
3 Alex using their ankuses and chains excessively.

4 A. I complained to him about the use of the bull hook,
5 yes.

6 Q. About those people?

7 A. He really didn't give me an opportunity to, he just
8 told me to go to Sacha. I don't recall exactly what was said
9 to --

10 Q. Let's go to Page 55 of your deposition again, Line 16.
11 The question is asked: And what did you say to him? Answer:
12 I told him the same thing that I told Sacha and Alex after I
13 talked to him, was that I believed that they used their
14 ankuses and chains excessively. I believed that Jimmy and
15 Sacha and Pista and Alex at times were a bit excessive with
16 their ankuses.

17 Did I read that correctly?

18 A. Yeah.

19 Q. And the Sacha that is referenced there is Sacha Houcke?

20 A. Yeah.

21 Q. Who was the only elephant trainer, you claim?

22 A. As far as I know, Alex Vargas, he worked with them a
23 lot too. Yeah, the elephant trainer, though, was Sacha.

24 Q. The others you considered handlers, correct?

25 A. Yes.

1 Q. You claim that most of the animal crew, including
2 yourself, were terrified by Sacha, is that right?

3 A. Yeah.

4 Q. You admit that Sacha never threatened you with any
5 violence?

6 A. No.

7 Q. And you never saw Sacha without an ankus?

8 A. Yeah, he had it with him most all the time.

9 Q. You had no other conversations with Mr. Balfour
10 regarding the treatment of elephants?

11 A. No.

12 Q. Within two weeks of arriving you claim that you
13 complained also to Jimmy Strickland, is that right?

14 A. Yes.

15 Q. And the complaint was about bull hooks used excessively
16 and about how the animals were being treated, is that right?

17 A. Yes.

18 Q. And you told Jimmy that all of the handlers, anybody
19 who had an ankus, used it excessively every day?

20 A. Yes.

21 Q. That conversation with Mr. Strickland lasted about
22 three minutes?

23 A. I'm not sure. I don't know.

24 Q. Let's go to Page 42 of your deposition.

25 A. Wait a minute. Who's Mr. Strickland?

1 Q. Jimmy.

2 A. Okay. Okay. I just know him as Jimmy.

3 Q. We'll stick with that then. So the conversation with
4 Jimmy lasted about three minutes, is that right?

5 A. It didn't last long.

6 Q. And nobody else was present for it?

7 A. No.

8 Q. You also claim that the elephants are afraid of the
9 bull hook, is that right?

10 A. That's right.

11 Q. And that they shriek when they see it and they try to
12 get away from it?

13 A. That's correct.

14 Q. You next complained to Sacha Houcke about three days
15 later, is that right?

16 A. I think that's probably about right.

17 Q. And you told Sacha that the handlers were constantly
18 hitting the elephants with the hooks, is that right?

19 A. Yes.

20 Q. And that the handlers included Sacha, Pista, Alex, Ryan
21 and Jimmy.

22 A. I believe I did.

23 Q. And that conversation lasted three or four minutes?

24 A. Maybe. I'm not sure about time and all of those things
25 now. I'm not sure.

1 Q. And nobody else was present for it?

2 A. I don't think so.

3 Q. And then you spoke to Alex, possibly in Tulsa?

4 A. Yes, I think so.

5 Q. And you identified anyone with an ankus to Alex as
6 being too extreme, is that right?

7 A. That's correct.

8 Q. And that again included Sacha, Pista, George, Jimmy and
9 Alex?

10 A. Yes.

11 Q. And by extreme you meant constant use of the ankus and
12 the chains, is that right?

13 A. Yes.

14 Q. And you had no further conversations with Alex, is that
15 right?

16 A. I don't really think I did. I don't recall if I did or
17 not.

18 Q. And the second time you spoke to Sacha was in Tulsa
19 after this elephant incident, is that right?

20 A. I think it might have been.

21 Q. And you think that conversation lasted about a minute?

22 A. Yeah.

23 Q. And nobody else was present for that?

24 A. That's correct.

25 Q. You referenced earlier in your direct that you had

1 complained to Carrie Coleman as soon as she arrived?

2 A. Uh-huh.

3 Q. And she arrived about two to three weeks after you
4 started?

5 A. That's correct.

6 Q. And your complaints to her were constant, is that
7 right?

8 A. Yes.

9 Q. At least every other day?

10 A. Yes.

11 Q. And then finally, after the Tulsa incident is when you
12 took it to Griggs?

13 A. I believe it might have been around that time. I'm not
14 sure. I believe so.

15 Q. And who's Griggs?

16 A. I think he's one of the -- I know he's one of the
17 managers. I'm not sure exactly what his job duties are. He
18 didn't actually spend a whole lot of time in the elephant
19 compound, or in the compounds.

20 Q. You complained that you actually spoke to Mr. Griggs in
21 Tulsa about this?

22 A. It may have been. I don't recall.

23 Q. You don't recall?

24 A. No.

25 Q. Let's go to Page 72 of your deposition. Line 10: And

1 what did you tell him? Answer: Just that -- no, no, I
2 didn't -- no, I didn't talk to Balfour, it was Griggs.

3 Question: Oh, okay. Was Mr. Balfour there for this? Answer:
4 No, Mr. Balfour was not there. Question: Okay. You spoke to
5 Mr. Griggs in Tulsa? Uh-huh. What did you tell Mr. Griggs?
6 Just about the beating that I witnessed, about what happened.

7 That was your testimony? Was it the same day?

8 THE COURT: You have to say yes or no. You're
9 shaking your head.

10 THE WITNESS: Yes.

11 THE COURT: She can't write that down?

12 BY MS. JOINER:

13 Q. Was it the same day?

14 A. No, I don't think it was. I'm not real sure.

15 Q. And you told him about what you had witnessed?

16 A. Yes.

17 Q. And Mr. Griggs, you claim, ignored you?

18 A. Yes.

19 Q. And he explained to you that if Sacha hadn't done that
20 they would have never been able to work with that elephant
21 again, is that right?

22 A. I heard that more from Carrie Coleman.

23 Q. Really? What did John Griggs say?

24 A. I heard those type things all the time. Just they
25 always referred me back to either Sacha Houcke or Alex Vargas,

1 talk to them about it.

2 Q. Let's go back to Page 72, Line 21. The question was
3 asked: And what did you tell him? And you answered: I was
4 ignored again. Well, you know, I was given the same
5 explanation, that if he hadn't done that, that he would have
6 never been able to work with that elephant again, that they
7 can't let them get by without -- with not doing a command.

8 Is that your testimony?

9 A. Yes.

10 Q. Your complaint to Mr. Griggs is completely false, isn't
11 it?

12 A. No.

13 Q. You didn't even know who John Griggs was while you
14 worked there, did you?

15 A. There were a lot of people around, yeah, but yeah, I
16 knew who he was. I knew who he was. I was always getting
17 Griggs and Balfour confused.

18 Q. You certainly never complained to Mr. Griggs while you
19 worked on the Red Unit, did you?

20 A. Yeah, I complained to him. We just rarely saw them.
21 They were just in and out.

22 Q. Let's look at Exhibit 125. I'd like to look at
23 Paragraph 5. You say: When I voiced concerns to management,
24 including John Balfour, Jason Griggs and Sacha Houcke about
25 animal abuse, I was either ignored or told if you don't like

1 it, pack your bags, and warned not to show affection toward
2 the animals. Is that correct?

3 A. That's correct.

4 Q. His name is not Jason Griggs, is it?

5 A. You know, like I said, I'm not good with names. It's
6 either John Griggs or -- I always got John and Jason confused,
7 Jason Balfour, John Griggs, whichever.

8 Q. That is despite the fact that you've already testified
9 that everybody on the unit referred to each other by their
10 first names?

11 A. Other than management. I mean, they were -- I called
12 the bosses, you know, Mr. or Miss, so I didn't go by their
13 first names, it was always Mr. or Miss.

14 Q. When you returned to Lexington after you had already
15 quit, you had to ask Carrie Coleman to identify who Mr. Griggs
16 was and point him out to you, didn't you?

17 A. There was a time -- you know, I didn't see him very
18 often, so I might have. I might have.

19 Q. Let's take a look at Exhibit 281, please. Now, when
20 you were in Lexington, you went to lunch with Carrie Coleman,
21 is that right?

22 A. That's correct.

23 Q. And you walked past an elephant brunch, didn't you?

24 A. Yeah. I think so.

25 Q. And at that time you were wearing your secret camera?

1 A. Yeah.

2 Q. And that recorded both audio and video, didn't it?

3 A. Probably.

4 THE COURT: What was the word? You walked past an
5 elephant?

6 MS. JOINER: Brunch.

7 THE COURT: That's what I thought you said.

8 BY MS. JOINER:

9 Q. So you were recording both audio and video secretly,
10 correct?

11 A. Yes.

12 Q. And at that point in time you still had no idea who
13 John Griggs was, did you?

14 A. Like I said, I know who he was, when we worked with the
15 crew, we'd see him, but I hadn't seen him in a while, so I may
16 have been confused about which one was which, because there
17 were several people there, and they were holding cameras on
18 one another, and I think that I might have been. I don't
19 know.

20 Q. Let's look at Clip 24:26 through 24:50.

21 (Video played).

22 BY MS. JOINER:

23 Q. That's your voice asking Carrie Coleman, who's John
24 Griggs, isn't it?

25 A. Yeah, it is.

1 Q. And Carrie Coleman is having to point him out to you
2 and say, no, no, you're looking at the wrong one?

3 A. Oh, yeah, probably so. I don't know.

4 Q. That was her voice on the clip that we heard other than
5 yours?

6 A. Yeah, yeah. Okay.

7 Q. And by November of 2006 you still had no idea who John
8 Griggs was, did you?

9 A. I know -- I have talked to him before and I have seen
10 him. Like I said, I'd probably seen him once or twice on the
11 Red Unit. There were so many different people that worked
12 there, you know, and after not being there for a while and not
13 seeing these people.

14 Q. Let's go back to the Exhibit 280, please, the press
15 conference. And I want to play Clip 29:15 to 29:23.

16 (Video played).

17 BY MS. JOINER:

18 Q. That is you again, right?

19 A. Yes.

20 Q. Who's off camera telling you how to answer who you
21 complained to?

22 A. I don't know who that was. I thought I was talking to
23 a reporter. I'm not sure.

24 Q. Now, you complained to the USDA that the elephants are
25 only unchained when the public is around, is that right?

1 A. That's correct.

2 Q. And you also complained to the USDA that whenever the
3 public is not around, the elephants are chained up?

4 A. That's correct.

5 Q. So if we look at Exhibit 124, Paragraph 19. This is
6 the paragraph in your declaration that you gave to the USDA
7 about that, is that correct?

8 A. Yeah, that's correct.

9 Q. And then in your deposition you told me that the only
10 time that elephants were not in chains was during animal
11 walks?

12 A. Uh-huh.

13 Q. During the shows?

14 A. Yeah.

15 Q. In the morning when they are practiced?

16 A. Which -- yeah, yeah, yeah.

17 Q. Whenever the public was around. Is that right?

18 A. Yeah, which is generally shows.

19 Q. And sometimes during rehearsals, is that right?

20 A. Which I think are only about once a week, yeah, yeah,
21 yeah.

22 Q. And you claim that when they were in the electrical
23 fence, that it was rare, is that right?

24 A. Do what now?

25 Q. You claim that when they were in their pens with the

1 electrical fence, that that was rare?

2 A. Yeah.

3 Q. And you also testified earlier with your counsel during
4 the two-week layover in Tulsa, the circus was at the
5 fairgrounds, is that right?

6 A. Yes, ma'am, they were.

7 Q. And they had pens set up the whole time for the
8 elephants?

9 A. Yes, ma'am, they did.

10 Q. And there was no public around at all?

11 A. That's correct.

12 Q. I'd like to go to Exhibit 128, please. And if we can
13 go to AH 20-2. This photograph was taken in Tulsa at the
14 fairgrounds, wasn't it?

15 A. It was.

16 Q. And you're the one that took it?

17 A. Yes, ma'am.

18 Q. Was this before the fight broke out?

19 A. Yes, ma'am.

20 Q. You don't know which of those elephants those are, do
21 you?

22 A. No, ma'am, I don't.

23 Q. Let's look at AH 20-5.

24 A. I'm not sure, they would switch the elephants around
25 and stuff too, so I'm not sure which ones were which, so.

1 Q. They -- what do you mean, they would switch them
2 around?

3 A. They might let three off the chains and hook the rest
4 up, take the rest off, or hook them back up. You know, I
5 mean, they might have these playing outside for a little while
6 and then take them back into the tent and chain them up and
7 bring the other ones out to play.

8 Q. Is it your testimony that all of the elephants were
9 never unchained at the same time?

10 A. Well, you know, in Tulsa, Oklahoma they had a bigger
11 pen, so they did let a few of the elephants off the chains
12 then, yeah.

13 Q. My question is, is it your testimony that the elephants
14 were never unchained all at the same time?

15 A. Yeah.

16 Q. You know that there were three groups of pens for the
17 Red Unit elephants, don't you?

18 A. No.

19 Q. And you know that only certain elephants are grouped
20 together in certain pens, don't you?

21 A. No.

22 THE COURT: Let me ask you this. You're not an
23 elephant trainer?

24 THE WITNESS: No.

25 THE COURT: You observed this, though, this scene

1 we're looking at now, the elephants in the -- looks like a
2 pool of sorts. And they are not chained. Did you observe how
3 they were -- how they got back into their pens? Did you
4 observe what happened after this, after they -- after the pool
5 time was over?

6 THE WITNESS: Yeah.

7 THE COURT: What happened after this? Tell me.

8 THE WITNESS: Well, they got into a fight. At the
9 time -- I'm not sure if those pictures were taken before the
10 fight broke out, like the day before, or on the same day. I'm
11 not real certain of exactly when those photographs were taken.

12 THE COURT: Did you ever observe this type of
13 frolicking by the elephants and how they were returned to
14 whatever restraints they were in before that?

15 THE WITNESS: The handler.

16 THE COURT: Tell us. I wasn't there. Tell us what
17 you observed.

18 THE WITNESS: On which day?

19 THE COURT: Any day that you observed this type of
20 frolicking by the elephants. They don't appear to be chained.

21 THE WITNESS: They -- they --

22 THE COURT: At some point -- listen to me. At some
23 point I assume they left this pool area and returned someplace
24 else, right?

25 THE WITNESS: Yeah.

1 THE COURT: So can you just tell me what you
2 observed when they returned to wherever they came from. The
3 manner in which they returned.

4 THE WITNESS: By the ankuses?

5 THE COURT: I don't know. I wasn't there. You
6 tell me what you saw.

7 THE WITNESS: Okay. Well, they were -- they
8 weren't always let off of the chains.

9 THE COURT: Listen to my question. They don't
10 appear to be in chains. They appear to be in an open area.

11 THE WITNESS: No, they're not. And they didn't
12 usually --

13 THE COURT: I'm making an assumption, tell me if
14 I'm wrong, at some point -- listen to me. At some point I
15 assume they returned to some other confined area.

16 THE WITNESS: Yes.

17 THE COURT: Did you observe that?

18 THE WITNESS: No, I didn't. No, I didn't, no,
19 not -- on that day particularly?

20 THE COURT: On any day?

21 THE WITNESS: Oh, yeah. By the ankuses, the
22 handlers would --

23 THE COURT: So they always used the ankus? I
24 wasn't there. So it wasn't as if somebody whistled and the
25 elephants returned to wherever they were. They used this

1 ankus?

2 THE WITNESS: They used the ankus. The handler
3 would walk up with the ankus and pull them back in.

4 THE COURT: It was always used?

5 THE WITNESS: Yeah, it was always used. It was
6 never not used, sir.

7 THE COURT: All right.

8 BY MS. JOINER:

9 Q. I'd like to look at Page 79 of your deposition, please.
10 Line 7, you were asked: Did you learn their names while you
11 worked there? Answer: I did. I did and could have named
12 them all off at one point. Question: Do you know how they
13 are grouped? Answer: I did then. I'm not too sure of it
14 now. I have a vague idea of how it went.

15 MR. CRYSTAL: Is there a question?

16 MS. JOINER: That was the testimony, correct?

17 THE COURT: I assume there's a question now. But
18 was that your testimony?

19 THE WITNESS: Yeah, that's correct.

20 BY MS. JOINER:

21 Q. Now, you told the USDA that this abuse that you saw was
22 traumatic for you, is that right?

23 A. Yes, it was.

24 Q. Let's look at FEI Exhibit 128 at AH 20-8. This
25 photograph was taken in Tulsa, is that right?

1 A. It was.

2 Q. And who's the person in the middle holding the sign?

3 A. I am.

4 Q. And by this point you've testified that you were
5 totally traumatized and a nervous wreck, is that right?

6 A. As I said, I'm not sure -- oh, yeah, I was -- I had had
7 a lot of problems.

8 Q. Let's look at AH 20-9, the next exhibit. And this was
9 taken in Tulsa as well?

10 A. I believe so.

11 Q. Are you the person in the red shirt?

12 A. Yes.

13 Q. Was this photograph taken before or after you decided
14 to quit?

15 A. Before.

16 Q. Let's go to Exhibit 127, please. I'd like to look at
17 AH 19-4. This photograph was taken in Dayton, is that
18 correct?

19 A. I think it was.

20 Q. You do not know if the public was around, is that
21 right?

22 A. No, I don't think they were. I'm not sure.

23 Q. The elephant is unchained and standing in a pen, is
24 that correct?

25 A. That's correct.

1 Q. And you don't know which elephant this is?

2 A. No, I don't.

3 Q. Let's look at AH 19-6. Again, this photograph was
4 taken in Dayton, is that correct?

5 A. Yes.

6 Q. The elephants are unchained and in a pen?

7 A. Yes.

8 Q. And you do not know which elephants those are?

9 A. No, ma'am, I'm not sure.

10 Q. And let's look at one more, AH 19-7. The elephants are
11 unchained and in a pen, is that correct?

12 A. Yes.

13 Q. You don't know which elephants those are?

14 A. No.

15 Q. Let's go to the next one, AH 19-8. Would you identify
16 the person on the left?

17 A. That's Garrison.

18 Q. On the left?

19 A. Yes. Oh, Carrie Coleman.

20 Q. Who's the person in the blue shirt on the right?

21 A. That is Garrison.

22 Q. And you can see part of somebody's face in the back.
23 Who's the person in the back?

24 A. That is Pista.

25 Q. You took this photo?

1 A. Yes.

2 Q. And Pista was one of the handlers that you complained
3 about repeatedly, correct?

4 A. Yes.

5 Q. You also identified him as one of the bullies that was
6 working for Ringling, is that right?

7 A. Yep.

8 Q. And you also dated him, didn't you?

9 A. No.

10 Q. You didn't?

11 A. No, no.

12 Q. You did not?

13 A. We were friends, we were somewhat friends. I mean, I
14 didn't agree with the handling of the elephants, but we knew
15 each other, yeah.

16 Q. It was more than friends, wasn't it?

17 A. No, it wasn't.

18 MR. CRYSTAL: Objection as irrelevant.

19 THE COURT: It may or may not be. I'll allow the
20 question to be answered.

21 BY MS. JOINER:

22 Q. You were more than friends with Pista, weren't you?

23 A. No, ma'am, I wasn't.

24 Q. You didn't have an intimate physical relationship with
25 him?

1 A. No, ma'am, I did not.

2 Q. You deny that you ever had sex with him?

3 A. I never had sex with him.

4 MR. CRYSTAL: Objection, irrelevant.

5 THE WITNESS: Never did.

6 THE COURT: It may not be. But let's proceed.

7 She's already answered. Let's turn to another line of
8 questioning.

9 BY MS. JOINER:

10 Q. Turning to the Tulsa incident, you did not see the
11 elephant fight itself?

12 THE COURT: It may go to bias, motive. That's why
13 I allowed it. Go ahead.

14 THE WITNESS: I'm sorry?

15 BY MS. JOINER:

16 Q. The Tulsa incident, you did not see the elephant fight
17 itself?

18 A. I still couldn't quite hear you.

19 Q. The Tulsa incident, you didn't see the elephant fight
20 itself, is that right?

21 A. No, I didn't.

22 Q. And when the fight broke out all of the elephants were
23 outside in their pens, correct?

24 A. I'm not sure if all of them were or not. I'm not quite
25 sure. I think there were quite a few of them out. Most all

1 of them I think were.

2 Q. And you said that you saw three elephants that were
3 chained and lying down with their trunks up after the fight,
4 is that right?

5 A. They were all lying down with their trunks up, yeah,
6 except for the one.

7 Q. And at your deposition you did not know which elephants
8 were involved, but you claim that it was Baby who was
9 bleeding, is that right?

10 A. I wasn't -- I'm not a hundred percent sure which ones
11 were which.

12 Q. But yet if we look at Exhibit 125, to Paragraph 6, the
13 second sentence that you read for your counsel says: Two of
14 the elephants were Banana and Baby, and I believe the third
15 one was Tonka. That is what you told the USDA, right?

16 A. I may have. Probably. I'm not sure.

17 Q. This is your declaration that you signed, correct?

18 A. Yeah, yeah, yeah.

19 Q. And since you knew how the elephants were grouped at
20 the time that you worked there -- correct?

21 A. I wasn't a hundred percent sure which ones were which.
22 I had an idea, and maybe when I worked there -- I was just
23 starting to really learn how they were grouped.

24 Q. Sacha was trying to make one elephant lie down?

25 A. Uh-huh.

1 Q. In Paragraph 6 here you say that he was swinging his
2 ankus like a baseball bat, is that right?

3 A. Yes.

4 Q. If we go to Exhibit 126, the very last page, the only
5 correction that you made, which is what your counsel covered
6 with you, was that you changed your first version from Sacha
7 inserting the bull hook into the ear to swinging it with full
8 force, is that right?

9 A. Yes.

10 Q. Now, if we go back -- I'm sorry we have to skip back
11 and forth like this. If you go back to Exhibit Number 125 and
12 look at this paragraph again, Paragraph 6 on Exhibit 125,
13 there is no reference in there anywhere to two bull hooks, is
14 there?

15 A. No.

16 Q. And in your correction on Exhibit 126, there is no
17 reference in there anywhere to two bull hooks, is there?

18 A. No.

19 Q. You say that you were standing about five feet away
20 from this?

21 A. Probably -- probably more like 10, five to 10 feet.
22 Probably 10. It wasn't far.

23 Q. Well, you were working at the time in the elephant
24 barn, is that correct?

25 A. I wasn't working in the elephant barn.

1 Q. I'm sorry, in the horse barn.

2 A. Yes.

3 Q. And that was set up across from the elephant barn, is
4 that right?

5 A. Yeah, I came out of the horse barn right by a truck
6 that was -- like it was a big one they hauled stuff on. And
7 we were at the end of it, yeah, all of us, the whole animal
8 crew, at the end of this truck, in between the compounds.

9 Q. There was a trailer in between the two?

10 A. Yeah, yeah, yeah.

11 Q. So were you able to see the right side or the left side
12 of the elephant?

13 A. Left side.

14 Q. And you also claim that Carrie Coleman did not check
15 the elephants after the fight?

16 A. No.

17 Q. And the public never came up during any of this, did
18 they?

19 A. It was the fairgrounds, no.

20 Q. Did you know that the USDA conducted an investigation
21 into Tulsa?

22 A. I don't know.

23 Q. So you have no idea how that turned out?

24 A. No.

25 Q. So despite meeting with Dr. Gibson and investigator

1 Keyser, you never followed up to find out what happened?

2 A. No, I didn't. They never really called me either,
3 though, so.

4 Q. If we turn again on Exhibit 125 to Paragraph 39,
5 please. This paragraph says: It was a three-day train ride
6 when we traveled by train from Worcester, Massachusetts to
7 Tulsa, Oklahoma. The elephants and horses were only let out
8 once for exercise during the trip. There was such an
9 accumulation of elephant feces that it took two dump trucks to
10 remove all the waste from their boxcars. Did I read that
11 correctly?

12 A. Yes.

13 Q. Is that the three-day train ride that you testified to
14 earlier with plaintiffs' counsel?

15 A. Yes.

16 Q. And you say that the train did not stop until it
17 reached Tulsa, is that right?

18 A. Right before Tulsa, yes.

19 Q. The train actually stopped in Indianapolis on that run,
20 didn't it?

21 A. To feed, probably.

22 Q. Pardon me?

23 A. To feed.

24 Q. It also stopped and took the elephants off the train
25 during that run, didn't it?

1 A. I don't recall.

2 Q. You don't recall because you missed that particular
3 stop and didn't show up to work for it, did you?

4 A. I don't recall that either.

5 Q. And the crew was looking for you during that stop,
6 weren't they?

7 A. I don't recall it.

8 Q. And you were actually reprimanded for that, weren't
9 you?

10 A. No, I was never reprimanded for anything like that, no.

11 Q. You were never reprimanded for missing a stop?

12 A. I don't recall it if I was. I don't think so.

13 Q. Well, let's turn to Exhibit 126, please. I'd like to
14 go to Paragraph 8. The very first sentence there says:
15 During my employment at Ringling I was never disciplined by
16 Ringling, and my only infraction was once being warned for
17 oversleeping.

18 A. I overslept in Dayton.

19 Q. In Dayton?

20 A. Yes, in Dayton, Ohio. And I was reprimanded verbally
21 that time.

22 Q. And you deny missing any kind of an elephant break in
23 Indianapolis, is that correct?

24 A. I don't recall missing any elephant break.

25 Q. Previously you testified that you rode on the train,

1 but you don't actually ride in the train cars with the
2 elephants, right?

3 A. I don't know what they do. I never rode in the
4 elephant cars.

5 Q. And you don't know what they do in the elephant cars
6 while the train is moving?

7 A. No, I don't, I don't --

8 Q. Now, when you quit you claim that you told everybody
9 that you were leaving, is that right?

10 A. They knew I was leaving. I told them like the day
11 before that I was going to be going.

12 Q. And you told Carrie that you were leaving?

13 A. Yes.

14 Q. And you claim that you told Alex that you were leaving?

15 A. Yes. The day that I left.

16 Q. And you claim that you had to go home because of the
17 animal treatment, is that right?

18 A. Yes.

19 Q. So you gathered all your things from the train and you
20 rode the bus back to the arena with your bags, is that right?

21 A. That's right.

22 Q. Did you leave anything on the train?

23 A. I don't know if I did or not.

24 Q. And you never told anybody that you were leaving to try
25 and reconcile with your husband?

1 A. No.

2 Q. And you deny any knowledge or discussions regarding the
3 difference between how you receive your final pay if you're
4 fired or if you quit?

5 A. I remember, I know that they had something with that,
6 but I'm not exactly sure what it all was about. I think --

7 Q. Let's turn to Page 109 of your deposition, please.

8 Line 16: Do you know the difference between how you received
9 your final pay if you were fired or if you quit? Answer: No.
10 Question: There's a difference? Answer: I don't know that
11 there is. Question: Did you ever have a discussion with
12 anybody about that before you left? Answer: No.

13 Was that your testimony?

14 A. Yes.

15 Q. And you also deny having any discussions prior to
16 leaving the Red Unit about how to get fired?

17 A. No, never.

18 Q. Never had those discussions?

19 A. No.

20 Q. And you deny leaving the Red Unit at any time before
21 you quit because you needed to temporarily go home to your
22 family?

23 A. Do what now? What was -- no, I left because of the
24 abuse.

25 Q. And you gave no other reasons for leaving aside from

1 what you claim is the abuse?

2 A. Well, yeah, I mean, I don't recall what all I did say.

3 I just knew I wanted -- didn't want to be there anymore.

4 Q. And you left and you went home with your husband and
5 your children, is that right?

6 A. I left not knowing where I was going to go. I went
7 back home thinking that I probably would maybe go and stay
8 with my mom or my sister. And I had talked to my ex-husband
9 some.

10 Q. Well, he picked you up at the bus stop in Charleston,
11 correct?

12 A. He did. He did.

13 Q. At the time of your deposition your divorce was not
14 finalized, correct?

15 A. We -- actually I've never even yet received my divorce
16 decree. I do pay child support to him. I think it's been
17 finalized. I don't know what all is going on with it. I
18 still have never received a divorce decree. But I pay child
19 support and he does have custody, so.

20 Q. But at the time when you returned home, your divorce
21 was not finalized, correct?

22 A. Yeah, I was ordered to pay child support then, too, but
23 I don't know how far it had gone, but yeah, we had already
24 been to court and custody and all these things had been
25 established, yes, ma'am.

1 Q. Let's go to Page 264 of your deposition, please. Line
2 5: Okay. Is the divorce case with Mr. Hundley completed?

3 Answer: No.

4 Was that your testimony?

5 A. Yeah.

6 Q. If you'd look back at Exhibit 125 again. I'd like to
7 go to Paragraph 32. You accused Carrie Coleman of fabricating
8 employee records when you made your declaration for the USDA,
9 didn't you?

10 A. Yes.

11 Q. And that's an extremely serious accusation to be
12 making, isn't it?

13 A. Yeah.

14 Q. Let me direct your attention to the one, two, three,
15 four -- fifth line, the sentence that says: They fabricate
16 employee records so they can be used to discredit former
17 employees who file abuse. Do you see that?

18 A. Yes.

19 Q. Who do you mean by they?

20 A. I guess Ringling Brothers.

21 Q. You mean Sacha and Carrie, don't you?

22 A. Well, probably, yeah, she's --

23 Q. Now, when you went back to get some footage in
24 Lexington, Kentucky, you didn't tell anybody on the Red Unit
25 that you were recording them, did you?

1 A. No.

2 Q. And Alex gave you permission to enter the animal
3 compound, correct?

4 A. Yes.

5 Q. And you spoke with him for quite some time?

6 A. A little bit.

7 Q. And Alex would have rehired you, wouldn't he have?

8 A. Yes.

9 Q. And so would have Sacha?

10 A. Probably so.

11 Q. So I want to go now to Exhibit 281, please. This is
12 Clip 40 seconds, through 1:37.

13 (Video played).

14 BY MS. JOINER:

15 Q. Okay. Is this at the arena in Lexington?

16 A. Yes.

17 Q. Is the female voice that we just heard on that tape
18 yours?

19 A. Yes.

20 Q. And you were speaking to Alex Vargas?

21 A. Yes.

22 Q. He was the person who appeared halfway in the white
23 shirt?

24 A. Yeah.

25 Q. At the time that you spoke to Alex you were already

1 scheduled to leave the next morning, is that right?

2 A. Yeah, I think. I don't know. Like I said, it sounds
3 like it.

4 Q. Can you tell us where you had your camera on you?

5 A. It was a button camera. It was -- the camera itself
6 was a button, and a big part of it was wrapped around my
7 waist.

8 Q. Were you able to stop and start the filming?

9 A. Yeah.

10 Q. And you were alone, correct?

11 A. Yeah.

12 Q. So this is the scene where you entered the compound,
13 and from here you start to walk to the horses, is that right?

14 A. Uh-huh.

15 Q. You spent most of that day with Carrie Coleman?

16 A. Yeah, I believe, I believe so.

17 Q. I'd like to play clip 455 through 558.

18 (Video played).

19 BY MS. JOINER:

20 Q. Security was preventing any public from entering the
21 compound, weren't they?

22 A. Yes.

23 Q. During your visit there was no public around?

24 A. I don't know that there -- I don't recall. I don't
25 remember if there were people standing out looking at the

1 elephants or not.

2 Q. And the voice that we heard at the end was Carrie
3 Coleman's coming out to greet you. Is that right?

4 A. Yes.

5 Q. And she helped you get past security at that point?

6 A. Yes.

7 Q. I want to play Clip 5:58 through 7.

8 (Video played).

9 BY MS. JOINER:

10 Q. Is that Sacha Houcke in that video?

11 A. Yeah.

12 Q. That Sacha Houcke that you're terrified of?

13 A. Yeah.

14 Q. Who was the person in the blue shirt?

15 A. Carrie Coleman.

16 Q. In the footage we just watched you're walking through
17 the horse barn, is that correct?

18 A. Yes.

19 Q. On the first day when you returned you claim that you
20 saw elephant mistreatment that included a little overuse of
21 the ankus, and saw them standing in chains swaying back and
22 forth, is that right?

23 A. Yes.

24 Q. On the second day, the elephant mistreatment that you
25 saw was just the swaying, same use of the ankus, and chains?

1 A. Yes.

2 Q. We've also looked at a portion of your complaint to the
3 USDA, and in your declaration you claim that you were warned
4 never to show affection towards the animals, is that right?

5 A. That's right.

6 Q. Let's look at Clip 7 to 8:03.

7 (Video played).

8 BY MS. JOINER:

9 Q. Jonah is the horse that you worked with?

10 A. Yes.

11 Q. And you're showing him affection in that clip, are you
12 not?

13 A. Yes.

14 Q. That was in full view of Sacha Houcke, wasn't it?

15 A. Yeah, but I didn't work for him then either.

16 Q. After this you asked Carrie if you could see the
17 elephants, and you walked through the horse barn to go over to
18 look at the elephant barn, is that right?

19 A. Yeah.

20 Q. And you told her that today was your last day and that
21 you'd be leaving tomorrow, is that right?

22 A. I don't know. I don't recall.

23 THE COURT: Keep your voice up.

24 THE WITNESS: I'm sorry.

25 MS. JOINER: Let's look at Clip 8:03 to 8:20.

1 (Video played).

2 BY MS. JOINER:

3 Q. Now, do you remember that you said you were going home
4 tomorrow?

5 A. Yeah.

6 Q. I want to look at some of the footage that you took of
7 the elephant barn. Let's go to Clip 13:05 to 13:54, please.

8 (Video played).

9 BY MS. JOINER:

10 Q. So, the guy who walked across the screen putting his
11 shirt on is Jimmy Strickland, the union steward, is that
12 correct?

13 A. Yes.

14 Q. And he is the one that you complained both to and
15 about, right?

16 A. Yes.

17 Q. And the Antonio that you greeted there is Antonio
18 Olmeda, who was a handler with an ankus, and you complained
19 about him too, correct?

20 A. Yes.

21 THE COURT: Counsel, it's been about an hour and a
22 half. We'll take a 15-minute recess at 3:45. You have a
23 couple more minutes.

24 MS. JOINER: Now or another couple minutes? I'm
25 sorry, what did you --

1 THE COURT: You can take it -- it's not quite
2 quarter to 4:00 yet.

3 MS. JOINER: So I can go a little bit more? Great.
4 I want to look now at the next clip, 14:35 to 15:55, please.
5 (Video played).

6 BY MS. JOINER:

7 Q. That's Antonio throwing some hay, correct?

8 A. I believe so.

9 (Video played).

10 BY MS. JOINER:

11 Q. What we're looking at here to the right of that tent
12 are the elephant pens, isn't it?

13 A. I don't know. I don't know that it was. I don't know
14 that it was.

15 Q. You don't know that it was?

16 A. Huh-uh.

17 (Video played).

18 BY MS. JOINER:

19 Q. What was it that you were supposed to have in writing
20 for the company?

21 A. What are you talking about?

22 Q. The reason why they wouldn't hire you back was because
23 you didn't put it in writing, is that correct?

24 A. No, it was because -- the reason they didn't hire me
25 back was because when I filed for my unemployment, the

1 unemployment office had gotten ahold of -- the unemployment
2 office had contacted Ringling Brothers and -- yeah, and had
3 talked to Ringling Brothers. So they knew that I had filed an
4 unemployment complaint about the animal abuse.

5 THE COURT: We'll take a 15-minute recess. We'll
6 start promptly back at 4:00 o'clock. No need to stand. Thank
7 you.

8 BRIEF RECESS

9 AFTER RECESS

10 THE COURT: Let's proceed.

11 BY MS. JOINER:

12 Q. Before the break, Ms. Hundley, we left off with the
13 reason why you were not rehired, and I want to play a clip
14 29:53 to 30:14. We're still on, I'm sorry, Exhibit 281.

15 (Video played)

16 BY MS. JOINER:

17 Q. When you returned to Lexington, did you try to get
18 anybody from Ringling to rent your father's horses?

19 A. No.

20 Q. No?

21 A. No.

22 Q. Let's go to clip 1:51 to 101:35 seconds.

23 (Video played).

24 BY MS. JOINER:

25 Q. Is that your voice in that clip?

1 A. Yes.

2 Q. I'd like to go to Exhibit 285, please. And I want to
3 play from 8 seconds to 23 seconds.

4 (Video played).

5 BY MS. JOINER:

6 Q. Is that your voice in that clip?

7 A. Yes.

8 Q. Can you tell us, please, who you are talking to there?

9 A. He was the dog trainer.

10 Q. Your quitting the circus didn't have anything to do
11 with animal abuse, did it?

12 A. Yes, it did.

13 Q. And you never told anybody that you were quitting
14 because of animal abuse, did you?

15 A. Yes, I did.

16 Q. Let's go to clip 3:40 to 5:08.

17 (Video played)

18 BY MS. JOINER:

19 Q. That's your voice on the footage?

20 A. Yes.

21 Q. And this was taken during your last night in Lexington,
22 wasn't it?

23 A. I'm not real sure.

24 Q. You had already made plans to go back home, didn't you?

25 A. Probably. Probable had.

1 Q. After this you then proceeded over to the elephant barn
2 again, didn't you?

3 A. I don't know.

4 Q. And instead of complaining, you actually complimented
5 the crew on how good the elephants looked, right?

6 A. Maybe.

7 Q. Let's take a look at 34:45 to 34:51.

8 (Video played)

9 BY MS. JOINER:

10 Q. Is that your voice in that clip?

11 A. Yes.

12 Q. Now, at your deposition you told me that you left the
13 compound in Lexington because Jimmy Strickland approached you
14 and was extremely correct -- extremely upset, is that right?

15 A. He seemed like he was. As I recall him, yeah.

16 Q. And you claim that he was so upset because you had
17 filed for employment when you came back home, is that right?

18 A. Yeah.

19 Q. And you responded, you say, to him by complaining
20 several times, and when you saw things getting heated you left
21 the compound?

22 A. Yeah.

23 Q. And you also testified at your deposition that you were
24 afraid for your own safety at that point, is that correct?

25 A. That's correct.

1 Q. Let's take a look at Clip 42:39 to 45:33.

2 (Video played).

3 BY MS. JOINER:

4 Q. That's your voice in that clip?

5 A. Yes.

6 Q. And that's Jimmy Strickland in that clip, is that
7 correct?

8 A. Yes.

9 Q. After that conversation with him you still didn't leave
10 the compound right away, did you?

11 A. It was maybe -- it wasn't long after that I don't
12 think.

13 Q. Well, you continued to hang out after that time and
14 made arrangements to go have pizza with everybody, didn't you?

15 A. No, I didn't go.

16 Q. Let's look at Clip 46:24 to 46:34.

17 (Video played)

18 BY MS. JOINER:

19 Q. That's your voice again in that footage?

20 A. Yes.

21 Q. The person that's saying she loves you is Carrie
22 Coleman?

23 A. Yes.

24 Q. And they're saying that they're going to come visit
25 you?

1 A. Yes.

2 Q. Let's go to one more clip, which is 51:22 to 52:10.

3 (Video played).

4 BY MS. JOINER:

5 Q. Is that your voice in that clip?

6 A. Yes.

7 MS. JOINER: I've got nothing further, Your Honor.

8 THE COURT: I'm sorry. You caught me eating candy,
9 sorry, I didn't hear what you said. Redirect?

10 MR. CRYSTAL: Thank you, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. CRYSTAL:

13 Q. Ms. Hundley, when you went back in Lexington, Kentucky,
14 and we've seen several clips of that, you were trying to get
15 rehired, is that right?

16 A. Yes.

17 Q. And did you say some things that weren't necessarily
18 accurate --

19 A. Yes.

20 Q. -- to people then?

21 A. Yes.

22 Q. Why did you do that?

23 A. Because I wanted to try to get some footage of the
24 elephants, you know, they're not going to willingly let me on
25 the compound with cameras, they had to be hidden. So, yeah --

1 and, too, I was intimidated by them and afraid of them.

2 Q. You weren't under oath when you were talking to them
3 then?

4 A. No.

5 Q. You understand that you're under oath today, correct?

6 A. Yes.

7 Q. Ms. Joiner showed you Defense Exhibit 186, which was
8 the -- I think we should -- can we show Defense Exhibit Number
9 186. I think it was referred to as a 60-day notice letter?

10 A. Yes.

11 Q. A notice letter on letterhead. Go to the next page.
12 Do you remember reading this letter a little earlier, taking a
13 look at this letter with defense counsel?

14 A. Yes.

15 Q. Did you approve of the plaintiff's counsel filing --
16 sending this letter on your behalf?

17 A. Yes, I did.

18 Q. And there was also some discussion about your filing a
19 motion in this lawsuit, do you remember that discussion?

20 A. Yes.

21 Q. Did you approve of the plaintiff's lawyers filing a
22 motion to add you into this lawsuit?

23 A. Yes, I did.

24 Q. Thank you. Going back to the videotape in Kentucky,
25 was it hard to go back?

1 A. Yes.

2 Q. Why was that?

3 A. Because I was afraid for my safety. It was hard seeing
4 the animals again, and it was hard being somewhat deceitful.

5 Q. Why did you do it?

6 A. Because I care for the animals that I worked with and
7 worked around.

8 Q. You were shown a clip of you petting a horse?

9 A. Yes.

10 Q. Which horse was that?

11 A. Jonah.

12 Q. Was that the horse that you worked with?

13 A. Most of the time, yes.

14 Q. Did you ever mistreat Jonah?

15 A. No, never.

16 Q. Did you see anyone else mistreat horses while you
17 worked there?

18 A. Yes.

19 Q. What did you see?

20 A. I've seen horses given lip twists while I was there.

21 That evening I saw one of the horse handlers take a pitchfork
22 and smack a horse's head out of the muck bucket.

23 Q. Did you ever see anyone punch horses?

24 A. Yes.

25 Q. Where? What part of the horses?

1 A. I saw Sacha Houcke punch a miniature horse in face with
2 his fist one time. I heard it from several feet away, he hit
3 him so hard.

4 Q. I'm sorry, what was that last part?

5 A. He hit him so hard. I heard him punch him, the
6 miniature horse, from several feet away.

7 Q. I'm sorry. If we can take a look, again, at Defense
8 Exhibit Number 126, which has already been admitted into
9 evidence. I want to look at the last page. Page 5, excuse
10 me. Do you see that in your screen?

11 A. Yeah.

12 Q. I want to draw your attention to the paragraph below
13 the bullet points, it starts -- it says, in paragraphs, do you
14 see that?

15 A. Yes.

16 Q. Could you just read us that one sentence.

17 A. Right --

18 Q. It starts in Paragraph 17?

19 A. I'm sorry. In Paragraphs 17, 18, 32, 34, 35, 36 and
20 37, conversations were videotaped by me after I was no longer
21 employed with Ringling.

22 Q. Thank you. You can stop there. Is that referring to
23 the paragraphs of the other statement? The statement with
24 your initials that we talked about earlier?

25 A. Yes.

1 Q. And so you told the USDA that some of the statements in
2 your declaration that you gave them had come after you were
3 working at Ringling, is that right?

4 A. Yes.

5 Q. Thank you. And, I'm sorry, just so I understand. You
6 mentioned lip twists, is that the term you used?

7 A. Yes.

8 Q. What is a lip twist?

9 A. It's where they actually grab the bottom lip of the
10 horse and turn it all the way around.

11 Q. How does the horse react to that?

12 A. He jerks and jolts and tries to get away.

13 Q. Were you shown some pictures earlier of some of the
14 elephants out by the pools, do you remember that?

15 A. Yes.

16 Q. How often when you worked there did you see elephants
17 out in pools of water?

18 A. That was the only time.

19 Q. Is that when they were in Tulsa, is that right?

20 A. Yes, sir.

21 Q. And the Judge had asked you some questions about what
22 happened after they were out by the pools?

23 A. Yes.

24 Q. I believe you said that they were lead back to wherever
25 they were going next. How did they get back to the pools back

1 to where they were --

2 A. By the ankuses, the bull hooks.

3 Q. What did they do with the bull hooks?

4 A. Put them underneath the jaw. If they didn't want to
5 go, they'd put them underneath the jaw and yank or smack them
6 to get them to go.

7 Q. I think the Judge had asked -- do they sometimes
8 whistle to ask the elephants to come?

9 A. No.

10 Q. Or do they ever just tell them to come?

11 A. Yeah, they do do that.

12 Q. But do they also use the ankus to make them come?

13 A. Yes, sir, they do.

14 Q. And where do they --

15 THE COURT: Elephants respond to calls to come?

16 THE WITNESS: I have seen them come just with being
17 asked, yes.

18 BY MR. CRYSTAL:

19 Q. Where do they go after they -- when they were taken
20 from the pools, where do they go next?

21 A. Back into the tent and chained.

22 Q. Back to be chained?

23 A. Yes.

24 Q. Do you remember discussing this public service
25 announcements with Ms. Joiner?

1 A. Yes.

2 Q. Were those public service announcements based on your
3 experiences?

4 A. Yes, sir, they were.

5 Q. And was everything you said on those public service
6 announcements true?

7 A. Yes.

8 Q. Was it difficult to do those announcements?

9 A. Very.

10 Q. Why was that?

11 A. I've never been in front of the camera before, not to
12 do anything like that.

13 Q. I think you told us earlier that you left the circus,
14 you quit, right?

15 A. Yes.

16 Q. And were you paid the day that you left?

17 A. Yes, I was.

18 Q. Ms. Hundley, is everything you told us here today true?

19 A. Yes, sir, it is.

20 Q. And that beating of the elephant with Sacha Houcke that
21 we discussed earlier today, is everything you told us about
22 that incident true?

23 A. Yes, it is.

24 MR. CRYSTAL: Thank you. I have no further
25 questions, Your Honor.

1 THE COURT: Any other questions?

2 MS. JOINER: Nothing further.

3 THE COURT: All right. Thank you. You may step
4 down. Are you returning home this evening?

5 THE WITNESS: Yes.

6 THE COURT: Have a safe trip.

7 THE WITNESS: Thank you very much.

8 THE COURT: We'd ask that you not discuss your
9 testimony with any of the other participants in this trial or
10 any potential witnesses in this trial. Thank you.

11 MR. CRYSTAL: Your Honor our next witness is Robert
12 Tom.

13 THE COURT: All right. I'm sorry, there were notes
14 here -- computer notes, and I didn't -- I overlooked it. But
15 let me ask you this. There were some photos in Dayton, Ohio,
16 is that correct or not?

17 THE WITNESS: Yes.

18 THE COURT: Employees were not allowed to have
19 cameras.

20 THE WITNESS: Correct.

21 THE COURT: How did you manage to take photos?

22 THE WITNESS: I had permission ahead of time. We
23 had to have permission from Sacha Houcke or Alex Vargas to
24 take our cameras. If we were caught with the cameras without
25 their permission they would take them from us. I had

1 permission on that particular day to have my camera from Sacha
2 Houcke and Alex Vargas.

3 THE COURT: The cameras weren't hidden? They
4 weren't --

5 THE WITNESS: On that day, no, they weren't.

6 THE COURT: Okay. All right. Any questions?

7 MS. JOINER: No.

8 THE COURT: All right. Thank you.

9 Thereupon,

10 ROBERT TOM,
11 the witness herein, having been first duly sworn, was examined
12 and testified as follows:

13 THE COURT: Good afternoon.

14 DIRECT EXAMINATION

15 BY MR. CRYSTAL:

16 Q. Good afternoon, Mr. Tom.

17 A. Good afternoon.

18 Q. Could you please state your name.

19 A. Robert Tom.

20 Q. And, Mr. Tom, where do you live?

21 A. Almo, Kentucky.

22 Q. What is the nearest city to that?

23 A. Murray or Paducah.

24 Q. And who do you live with?

25 A. My wife, Margaret Tom.

1 Q. Mr. Tom, where did you grow up?

2 A. New York.

3 Q. And, Mr. Tom, are you working now?

4 A. Yes, I am.

5 Q. Where do you work?

6 A. Cadillac Foods (phonetic).

7 Q. What do you do there?

8 A. It's food processing place.

9 Q. Do you do food processing?

10 A. Yes.

11 Q. How long have you lived in Kentucky?

12 A. About three years.

13 Q. And where did you live before that?

14 A. New York.

15 Q. And what kind of work did you do there?

16 A. Worked for the Sanitation Department.

17 Q. For about how long?

18 A. For ten years.

19 Q. Mr. Tom, did you ever work with the Ringling Brothers
20 Circus?

21 A. Yes, I have.

22 Q. How long did you work for the circus?

23 A. About two years.

24 Q. Did your wife also work at the circus?

25 A. Yes.

1 Q. About what time did you leave?

2 A. August of 2006.

3 Q. Which unit of the circus did you work?

4 A. Red Unit.

5 Q. And what did you do at the circus?

6 A. I took care of all the animals in the circus.

7 Q. What did you do for them?

8 A. I fed them. I gave them water. Brought them into the
9 show.

10 Q. Which animals?

11 A. The horses. I helped them set up sometimes with the
12 elephants.

13 Q. Did your wife also work at the circus?

14 A. Yes.

15 Q. What did she do?

16 A. She did the props, they call it backstage. The props
17 for the circus.

18 Q. Mr. Tom, what hours did you work when you were at the
19 circus?

20 A. When I first started I was working the dayshift and
21 then in the middle of the year, the second year they put me
22 nights.

23 Q. When you were working the dayshift, what hours would
24 that be?

25 A. From 9:00 o'clock in the morning until 11:00, and then

1 go back to the train and then go back for the show, two hours
2 before the show.

3 Q. And I think you mentioned you helped to care for the
4 elephants, is that right?

5 A. Yes.

6 Q. What did you do for the elephants?

7 A. I helped them feed them, clean up after them. When
8 Alex told me to help them -- clean up behind them.

9 Q. Who was that -- Alex?

10 A. Alex Vargas, the supervisor.

11 Q. About how many elephants were there?

12 A. Ten elephants.

13 Q. And how often would you see them?

14 A. Every day.

15 Q. Did you get near them?

16 A. Yes.

17 Q. Did the elephants ever touch you?

18 A. Yes.

19 Q. Tell us about that?

20 A. They touched me with their trunk.

21 Q. Do you remember the elephants' names?

22 A. Yes, I do.

23 Q. Could you tell us, please?

24 A. Asia, Luna, Tonka, Baby, Ashan (phonetic), Banana,
25 Toby, Siam, and I'm missing two.

1 Q. Do you like the elephants?

2 A. Yes.

3 Q. Why is that?

4 A. Because they were like cool animals at the time when I
5 was working there.

6 Q. Do you feel like you developed a bond with the
7 elephants?

8 A. Yes.

9 Q. Why is that?

10 A. I guess they grew a bond to me when I was working over
11 there.

12 Q. When you said you saw the elephants every day, what
13 times of day would you see the elephants?

14 A. From 8:00 o'clock in the morning when we got there
15 until 11:00 o'clock --

16 Q. Let's start with the morning -- were you finished?

17 A. Yes.

18 Q. Let's start with the morning. When you first saw them
19 in the morning, where would the elephants be?

20 A. In their tent.

21 Q. Would they be free to move around?

22 A. No, they'd be chained up.

23 Q. Where would the chains be?

24 A. On their front left leg and rear right leg.

25 Q. And then where would you be working?

1 A. In the horse tent.

2 Q. How far away was that?

3 A. Maybe 10 yards.

4 Q. And then when would be the first time that you'd see
5 them off of their chain?

6 A. When they do practice.

7 Q. When was that?

8 A. About 9:00 o'clock when they put them in the circle and
9 make them go around inside the tent for like an hour.

10 Q. And then what would happen after that?

11 A. They'd go back on the chains.

12 Q. And then when would be the next time you'd see them off
13 the chains?

14 A. Show time.

15 Q. When would that be?

16 A. Whenever the show is -- could be a morning show,
17 afternoon show or open house.

18 Q. And then at the end of the day?

19 A. They get chained back up.

20 Q. Did you ever see the elephants at night?

21 A. Yes.

22 Q. And how were they at night -- maintained?

23 A. Chained up.

24 Q. Did you see other people working with the elephants?

25 A. Yes.

1 Q. And did you see people carrying something when they
2 were working with elephants?

3 A. Yes. The bull hooks.

4 Q. What is that?

5 A. It's a stick with a point on it and a hook on it that
6 they use to control the elephants with.

7 MR. CRYSTAL: Your Honor, I'd like to show Mr. Tom
8 Plaintiff's Will Call 118, Page 22, it's been admitted into
9 evidence.

10 BY MR. CRYSTAL:

11 Q. Mr. Tom, you should see on your screen -- do you
12 recognize that picture?

13 A. Yes.

14 Q. What is that?

15 A. That's the bull hooks.

16 Q. Thank you. Mr. Tom, who had bull hooks while you
17 worked on the circus?

18 A. Mostly all the elephant crew.

19 Q. Could you name them for us?

20 A. Jimmy, Pista, Alex Vargas, Antonio, and whoever they
21 hired at the time at the circus.

22 Q. Who is Jimmy?

23 A. Jimmy Strickland.

24 Q. Who is he?

25 A. He's an elephant handler.

1 Q. How about Pista?

2 A. Animal handler.

3 Q. How about Alex Vargas?

4 A. Supervisor over the elephants.

5 Q. And Antonio?

6 A. Assistant to Alex Vargas, and, slash, vet tech.

7 Q. Was there someone in charge of training the elephants?

8 A. Sacha Houcke.

9 Q. Did he also carry a bull hook?

10 A. Yes.

11 Q. What are the bull hooks used for?

12 A. To control the elephants, to make them move. They just
13 hook them around the ear to make them move faster -- or in the
14 legs.

15 Q. So, you would see them hook the elephants?

16 A. Yes.

17 Q. And what parts of the elephants' bodies would you see
18 them hook?

19 A. The legs, the ears.

20 Q. Anything else?

21 A. One incident in Tulsa, in the back.

22 Q. And how often would you see them hook the elephants?

23 A. Every day.

24 Q. How many times a day?

25 A. About 20 times a day.

1 Q. And when they used the bull hooks, would they hit them
2 hard?

3 A. Yes.

4 Q. Would they sometimes use them to pull the elephants?

5 A. Yes.

6 Q. Would they sometimes use them to push the elephants?

7 A. Yes, they do some times.

8 Q. Did Sacha Houcke, who you mentioned, did he hit the
9 elephants with the bull hooks?

10 A. Yes.

11 Q. And did Jimmy Strickland hit the elephants with bull
12 hooks?

13 A. Yes.

14 THE COURT: You have to slow down, Counsel. I've
15 been telling you that for years. You talk fast, so do I. Slow
16 down a little bit so the court reporter can get the testimony.

17 MR. CRYSTAL: Okay.

18 BY MR. CRYSTAL:

19 Q. Did Pista hit elephants with bull hooks?

20 A. Yes.

21 Q. Did Alex Vargas hit elephants with bull hooks?

22 A. Yes.

23 Q. Did Antonia hit elephants with bull hooks?

24 A. Yes.

25 Q. Did anyone tell you why they hit elephants with bull

1 hooks?

2 A. To show them who's boss and show them discipline.

3 Q. You mentioned Tulsa a few moments ago, Tulsa, Oklahoma?

4 A. Yes.

5 Q. What happened in Tulsa, Oklahoma?

6 A. Toby and Banana were fighting outside in a pen and
7 Sacha and Alex and -- they all separated the elephants, put
8 them all back on chains. And Sacha was trying to put the
9 elephant down by hooking it behind the ear, commanding it to
10 go down, and the elephant refused to go down.

11 Q. Where were you standing at this time?

12 A. Maybe a good 10 feet away, 20 feet away.

13 Q. What did you see?

14 A. Sacha hooking the elephant non-stop behind the ear,
15 telling him down, down, down, and the elephants refused to go
16 down.

17 Q. What happened next?

18 A. Then Sacha stopped, sat down for a minute, got his
19 other bull hook and used two bull hooks on him -- on Toby.

20 Q. Where on the elephant?

21 A. Back behind the ear and on top of its back.

22 Q. What did he do?

23 A. He, with all his weight, trying to pull Toby down to go
24 down, and Toby refused, just screaming in pain.

25 Q. Did you see any blood on the elephant?

1 A. Yes.

2 Q. Where on the elephant?

3 A. Behind the ears going down his face and neck.

4 Q. And was anyone else near the --

5 THE COURT: You said he used two bull hooks,
6 describe what he did.

7 THE WITNESS: He put it behind the elephant's ear
8 right here and he jumped up and put it on the middle of this
9 back on top and tried to yank down with all his weight with
10 his feet off the ground, trying to pull the elephant down.

11 THE COURT: Okay.

12 BY MR. CRYSTAL:

13 Q. Was anyone else near the elephant at that time?

14 A. Yes.

15 Q. Who was that?

16 A. There was Alex Vargas, Jimmy Strickland, Junior, Pista
17 and then the horse crew.

18 Q. Did anyone else hit the elephants at that time -- the
19 elephant, I'm sorry. The elephant that we're talking about,
20 did anyone else hit the elephant?

21 A. Just Alex Vargas trying to grab it with the dirt hook
22 behind its leg -- his right rear leg, trying to pull it down
23 the same time Sacha was doing it.

24 Q. Mr. Tom, how long did this last?

25 A. A good hour.

1 Q. And was the elephant making any noise?

2 A. He were screaming in pain.

3 Q. Did the elephant lay down?

4 A. No, he did not.

5 Q. Mr. Tom, did you observe while you were working at the
6 circus anyone do any medical work with the elephants?

7 A. Carrie Coleman.

8 Q. Who is she?

9 A. She was a veterinarian technician that got hired in
10 Washington.

11 Q. I think you also mentioned Antonio as a, slash, vet
12 tech?

13 A. Yes.

14 Q. Did you observe him do any --

15 A. Yes, in Baltimore he was drawing blood behind Luna --
16 behind the ear.

17 Q. Uh-huh. And was he -- did he carry a bull hook at the
18 time?

19 A. Yes, he did.

20 Q. Did he use the bull hook?

21 A. Yes, he was whaling it on the forehead.

22 Q. How many times did he hit the elephant?

23 A. About five or six times really hard.

24 Q. And did you see any of these individuals with bull
25 hooks during performances?

1 A. Yes.

2 Q. And where would they have the bull hooks during
3 performances?

4 A. Up their sleeve where the audience couldn't see where
5 the hooks are just showing like at the part at the hands.

6 Q. You mentioned earlier that the elephants were on
7 chained in the morning. How much of the day would they spend
8 on chains?

9 A. Ninety percent, unless it was open house.

10 Q. They were off the change in during the practice in the
11 morning, you said?

12 A. Yes.

13 Q. And they of the chains during performances?

14 A. Yes.

15 Q. Were they sometimes let off the chains to roam around
16 in an area?

17 A. Just for open house.

18 Q. What about in Tulsa, Oklahoma, do you remember them
19 being off the chains there?

20 A. They were out for a little bit at the time.

21 Q. So, sometimes they were left off chains to roam
22 around --

23 A. Yes.

24 Q. -- is that right?

25 A. Yes.

1 Q. How often would that occur?

2 A. Once in awhile.

3 Q. In the two years that you worked at the circus, can you
4 approximate how many times you saw that happen?

5 A. So what?

6 Q. Saw elephants off chains in an enclosure?

7 A. Maybe a good 20-30 times when open house --

8 Q. What is an open house?

9 A. When the people -- the public come to see the animals
10 and they have them off the chains, it all depend what type of
11 arena it is.

12 Q. Were all the elephants, at those times, would all of
13 the elephants be let off the chains?

14 A. No, there would be two elephants still on the chain.

15 Q. Do you remember which elephants?

16 A. That would be Luna or Tonka would still be on the
17 chain, and Banana.

18 Q. Would they ever be let off chains in an enclosure?

19 A. No.

20 Q. Mr. Tom, could the elephants walk around while they
21 were on chains?

22 A. No.

23 Q. Could they turn around?

24 A. No.

25 Q. Did they ever have something to play with while they

1 were on chains?

2 A. No, just the hay.

3 Q. And what surface would they stand on, generally?

4 A. Wooden platforms.

5 Q. Anything else?

6 A. If it's in an enclosed area, it would be the concrete
7 floor.

8 Q. Did you ever see them standing on glass?

9 A. No.

10 Q. Mr. Tom, while you worked at the circus, how did the
11 elephants travel between cities?

12 A. By train.

13 Q. Did you live on the train?

14 A. Yes, I did.

15 Q. Did you ever see the cars that the elephants traveled
16 in?

17 A. Yes.

18 Q. When would you see those cars?

19 A. When it was feeding time for the animals.

20 Q. During the trip?

21 A. Yes.

22 Q. And what about at the end of the trip?

23 A. Yes, when we unloaded them.

24 Q. Would you help or be there when the elephants would be
25 unloaded?

1 A. We would be setting up the ramps for the elephants to
2 come out. And then Jimmy and them would take the elephants
3 and we'd go back to where we were.

4 Q. Would you do anything to help clean out the cars at the
5 end?

6 A. Only on a long run. We get -- we cleaned the cars out,
7 like two day runs, three day runs.

8 Q. And what would you be cleaning out?

9 A. Hay, feces, urine that was mixed with the hay.

10 Q. Would you see the feces and urine in the areas where
11 the elephants had been standing?

12 A. Yes.

13 Q. Every time you would do that?

14 A. Yes.

15 Q. Mr. Tom, why did you leave the circus?

16 A. I got fired.

17 Q. And did they tell you why you were fired?

18 A. They said I was abusing the animals and I was
19 neglecting them.

20 Q. Was that true?

21 A. No.

22 Q. Had you been planning on leaving the circus?

23 A. Yes.

24 Q. When were you planning to leave?

25 A. We were heading to Louisville, Kentucky like three

1 weeks prior, two or three weeks prior.

2 Q. Three weeks after --

3 A. -- after we got fired, yes.

4 Q. Thank you. Mr. Tom, do you know a group, PETA, or
5 People for the Ethical Treatment of Animals?

6 A. Yes.

7 Q. And did PETA have someone following the Red Unit while
8 you worked there?

9 A. Yes.

10 Q. Did you ever talk to that person while you worked at
11 the circus?

12 A. Only the day I got fired.

13 Q. During the time that you were working there?

14 A. No, we wasn't allowed to.

15 Q. Did you ever talk to PETA before you worked at the
16 circus?

17 A. No.

18 Q. Had you ever talked to any animal protection group
19 before you worked at the circus?

20 A. No.

21 THE COURT: How did you know this person was
22 following the circus?

23 THE WITNESS: They would be coming with a camera
24 and walking on the side with the elephants, and every time
25 they would be doing the same thing.

1 BY MR. CRYSTAL:

2 Q. What did you tell that person the day you were fired?

3 A. I told them about the abuse on the elephants. And then
4 he said he'll have Debbie Leahy that's in charge up here to
5 give me a call.

6 Q. Did she give you a call?

7 A. Yes, she did.

8 Q. And did you talk to her?

9 A. Yes, I did.

10 Q. What kind of work have you done with PETA since you
11 left the circus?

12 A. Going to the press. Talking to the press about the
13 animal abuse, the bull hook use.

14 Q. Have you --

15 A. -- the elephants.

16 Q. Have you traveled for PETA?

17 A. Yes.

18 Q. Has PETA paid you for anything you've done?

19 A. No.

20 Q. Have they paid for your trips?

21 A. Yes.

22 Q. And why have you done that?

23 A. Because I got tired of the abuse on the animals with
24 the elephants.

25 Q. Why have you traveled for PETA to speak out?

1 A. To speak out for the abuse on the animals where they
2 got, I guess, no rights, the elephants. So, I'm trying to
3 stick up for them.

4 Q. Mr. Tom, have you ever heard of the USDA?

5 A. Yes.

6 Q. What is that?

7 A. It's a government -- it's about -- I forget offhand
8 what it is.

9 Q. Did you ever see to someone from the USDA --

10 A. Yes, I did.

11 Q. You have to let me finish and I'll let you finish.

12 A. Okay.

13 Q. Did they write down what you said?

14 A. Yes.

15 Q. Did you sign a sworn statement about what you saw?

16 A. Yes, I did.

17 MR. CRYSTAL: Your Honor, I'd like to show Mr. Tom
18 Plaintiff's Exhibit 115, Pages 7 and 8.

19 BY MR. CRYSTAL:

20 Q. Mr. Tom, if you can take a look --

21 MS. PETTEWAY: I object, hearsay.

22 MR. CRYSTAL: That's another prior consistent
23 statement, Your Honor.

24 THE COURT: Do you anticipate some --

25 MR. CRYSTAL: I think so, Your Honor.

1 THE COURT: I'll let it in provisionally.

2 THE WITNESS: Yes, it is.

3 BY MR. CRYSTAL:

4 Q. If you can take a look at this page and tell me when
5 you're done and then look at the second page.

6 A. Okay.

7 Q. Do you recognize this?

8 A. Yes.

9 Q. Is that your signature at the bottom?

10 A. Yes, it's on both pages.

11 Q. And what is this document?

12 A. It's an affidavit to the FDA -- USDA about what we saw
13 in Tulsa and Baltimore.

14 Q. And at the very bottom there is a date, could you read
15 that for us?

16 A. April 2007. April 4th.

17 Q. And then I'd like to go back to the first page, and I'd
18 like you to read for us the bottom paragraph that starts: On
19 or about.

20 A. On or about April 20th, 2006, Ringling Brothers Circus
21 was housing their animals at the fairgrounds in Oklahoma City
22 for two weeks. Hurricane Katrina had a -- devastated New
23 Orleans, and we had planned to do a show there. And we're
24 told that there were no facilities available, so we were in
25 limbo for two weeks. The animals and personnel were resting

1 at the fairgrounds during the time.

2 Only this day I saw Sacha Houcke lead elephant
3 trainer -- use the bull hooks on Toby, a female elephant --
4 Asia elephant. He hooked her behind the ear, top of her back,
5 and left rear leg. Another trainer, Alex Vargas, was also
6 using his bull hook on her. The hook caused Toby to bleed
7 from her ear and the top of her back. The blood ran down her
8 face and back. Both trainers were using all their weight to
9 pull in the bull hooks.

10 I saw -- I was told that the elephant wasn't
11 listening to the command, lay down, and this was why they were
12 using the bull hooks. All I could do was stand and watch. If
13 I said anything, I was sure I would be fired. The public was
14 allowed to observe the animals while they were at the
15 fairground. Soon several of them came over to watch the
16 trainers. When the trainers noticed them, they stopped using
17 the bull hooks.

18 Q. If you can just read the next two sentences for me.

19 A. The incident is an unusual case. I observed the
20 trainers using the hooks on the elephants many times during
21 the two year period with Ringling Brothers.

22 MR. CRYSTAL: Your Honor, at this time I would move
23 this exhibit into evidence.

24 THE COURT: I'll provisionally allow it for the
25 record, subject to the appropriate subsequent impeachment.

1 MR. CRYSTAL: Thank you.

2 BY MR. CRYSTAL:

3 Q. Mr. Tom, you mentioned earlier the open house, when
4 would that happen?

5 A. It would happen wherever the show was at. It could
6 be -- certain areas that will have open house.

7 Q. What time of day, sorry?

8 A. It all depends on the show, it could be morning,
9 afternoon, nights.

10 Q. Would it be before the show?

11 A. Yes, two hours before the show.

12 Q. How long would the open house last?

13 A. About an hour.

14 Q. And who would attend the open house?

15 A. The public.

16 MR. CRYSTAL: I have no further questions at this
17 time.

18 THE COURT: All right. Cross-examination.

19 CROSS-EXAMINATION

20 BY MS. PETTEWAY:

21 Q. Kara Petteway for the defendant. Mr. Tom, you only
22 worked on the Red Unit, correct?

23 A. Yes.

24 Q. You never worked on the Blue Unit?

25 A. I have not.

1 Q. You do not know any of the personnel who work on the --

2 THE COURT: Excuse me. I think we're out of film
3 here or something. It shut down? There are weird things that
4 happen with our equipment, I don't know why.

5 BY MS. PETTEWAY:

6 Q. Mr. Tom, you do not know any of the personnel who work
7 on the Blue Unit?

8 A. I do not.

9 Q. And when you worked on the Red Unit you were on the
10 animal crew?

11 A. Yes.

12 Q. And your main responsibility was to care for horses,
13 correct?

14 A. Yes.

15 Q. You were not on the elephant crew?

16 A. No, I was not.

17 Q. And you weren't assigned to a set schedule to help out
18 with the elephants, were you?

19 A. No, only if they asked me to.

20 Q. You do not bathe the elephants?

21 A. No.

22 Q. You did not provide foot care for the elephants?

23 A. No, that was Sacha that did that.

24 Q. And you never performed any type of husbandry on the
25 elephants?

1 A. No.

2 Q. And you never trained an elephant?

3 A. No.

4 Q. You never received any training in the use of a bull
5 hook?

6 A. No.

7 Q. And you were never provided with a bull hook when you
8 were working on the Red Unit?

9 A. Correct.

10 Q. And you're not a vet tech?

11 A. No, I'm not.

12 Q. And you have no kind of veterinary or animal training?

13 A. No, I have not.

14 Q. You've met with the USDA two times, correct?

15 A. Yes.

16 Q. And the first time you met with the USDA was in
17 Washington, D.C.?

18 A. Yes.

19 Q. And you came to Washington, D.C. in February of 2007?

20 A. Yes.

21 Q. And PETA booked your flight to Washington, D.C. and
22 made your travel arrangements for you?

23 A. Yes, they did.

24 Q. And at your meeting with the USDA, you were present,
25 your wife was present and Archele Hundley was present?

1 A. Yes.

2 Q. And also a representative from PETA present?

3 A. Yes.

4 Q. And you met with the USDA for about an hour?

5 A. I think so, I'm not sure how long it was.

6 Q. And you told the USDA about the elephant abuse that you
7 claimed that you saw when you were working on the Red Unit?

8 A. Yes.

9 Q. Before you met with the USDA, you had provided a
10 statement under oath, correct?

11 A. Yes.

12 Q. And that statement was about the treatment of the
13 animals on the Red Unit?

14 A. Yes.

15 Q. And that statement was dated October 10th, 2006?

16 A. I guess, I don't remember offhand.

17 Q. If we could bring up Defendant's Exhibit Number 157.

18 THE COURT: All right.

19 BY MS. PETTEWAY:

20 Q. Could we go back to the first page, actually. This is
21 Plaintiff's Exhibit LL in their opposition to defendant's
22 Motion for Summary Judgment. I'd ask the Court to take
23 judicial notice of this exhibit.

24 THE COURT: I shall.

25

1 BY MS. PETTEWAY:

2 Q. If we can go to Page 2, please. And this is the
3 declaration of Robert Tom. Mr. Tom, if you could take a
4 moment to look at this document and let us know when you're
5 ready to go to the next page.

6 A. Yes, I am.

7 Q. Just let me know when you're ready with regard to each
8 page.

9 A. Okay. Okay. Okay. Yes.

10 Q. Mr. Tom, that's your signature?

11 A. Yes, it is.

12 Q. At the bottom. And this is dated October 10, 2006?

13 A. I guess it says October, the date is crossed out, it's
14 just 2006.

15 Q. Before the -- it says subscribed and sworn to before me
16 this 10 day of October, 2006. Did I read that correctly?

17 A. Yes.

18 Q. You dictated this statement to someone and somebody
19 else typed it up?

20 A. Yes.

21 Q. Correct. And someone from PETA typed this document up
22 for you?

23 A. I think at the time this was the FDA, the lady that did
24 it. I'm not sure offhand who did this one.

25 Q. After you met with the USDA in Washington, someone from

1 the USDA came to Kentucky, correct?

2 A. Yes.

3 Q. And that's where you were you living at the time?

4 A. Yes.

5 Q. And they called you and came to your home?

6 A. Yes.

7 Q. And at that time you talked to them again about what
8 you saw in Tulsa, Oklahoma, correct?

9 A. Correct.

10 Q. And you -- this individual from the USDA typed up what
11 you said?

12 A. Yes.

13 Q. And they printed it out?

14 A. Yes, they did.

15 Q. And you an opportunity to review that document?

16 A. Yes.

17 Q. And then you signed it?

18 A. Yes.

19 Q. Could we go to Defendant's Exhibit 165. Mr. Tom, can
20 you review this document and just let us know when you're
21 ready to go to the next page.

22 A. Okay. Yes.

23 Q. Could we scroll down to the bottom of that page,
24 please. Mr. Tom, is that your signature?

25 A. Yes, it is.

1 Q. And on the right there's a signature of a Carol
2 Ballard?

3 A. Yes. That was the lady that came from USDA.

4 Q. Ms. Ballard came to your home in Kentucky?

5 A. Yes.

6 Q. And on the bottom left-hand corner you see the letters
7 APHIS Form 7162?

8 A. Yes.

9 Q. Is this the document that you dictated to the woman
10 from the USDA when she came to your home?

11 A. Yes, it is.

12 Q. Can we go back to Defendant's Exhibit 157, and go to
13 Page 2. This is the other statement that we looked at before.
14 This is the document that someone from PETA typed up for you,
15 correct?

16 A. I don't know, it was so long ago, it could be. I'm not
17 sure. But it is what I told them, and they just typed it up.

18 Q. Do you remember giving the USDA a document when you met
19 with them in February of 2007?

20 A. Yes.

21 Q. Now, you never entered the elephant cars when they were
22 loaded, did you?

23 A. No.

24 Q. And only the elephant crew goes into the elephant cars
25 when they are loaded, isn't that right?

1 A. Yes.

2 Q. And normally on a two to three day run the train will
3 stop, correct?

4 A. Yes.

5 Q. And all the elephants will be taken out of the car?

6 A. Yes.

7 Q. And the elephant cars will be cleaned out?

8 A. Yes.

9 Q. And new bedding will be put down?

10 A. Excuse me, yes.

11 Q. Right. And the elephants will be given food?

12 A. Yes.

13 Q. And then the train will continue on with the rest of
14 its trip, correct?

15 A. Yes.

16 Q. You testified earlier that the elephants are chained
17 about 90 percent of the time, right?

18 A. Yes.

19 Q. And you claim that the envelopes are only unchained
20 when the public was around?

21 A. Yes.

22 Q. Or for an open house?

23 A. Yes.

24 Q. For during a performance?

25 A. Yes, or for practice, too.

1 Q. For practice. Okay. And you testified earlier about
2 an incident in Tulsa, Oklahoma?

3 A. Yes.

4 Q. And the Red Unit had a layover there?

5 A. Yes, they did.

6 Q. And you testified about the elephants getting into a
7 fight?

8 A. Yes.

9 Q. And the elephants were in a pen when that fight
10 started?

11 A. Yes.

12 Q. Right. And Sacha Houcke had to separate the elephants?

13 A. Yes.

14 Q. So, they weren't chained up when they were fighting,
15 right?

16 A. No. I think the two elephants were Banana and Luna,
17 they were the only two that got chained up.

18 Q. But the rest of the elephants weren't chained?

19 A. No.

20 Q. How many pens were set up that day?

21 A. Usually it's just three pens.

22 Q. Three pens?

23 A. Yes.

24 Q. How many elephants are in each pen?

25 A. Three, three and four.

1 Q. Okay. Now, you did not actually see the envelope fight
2 until in Tulsa, did you?

3 A. No, I did not.

4 Q. And you didn't see the elephants being separated?

5 A. That I saw.

6 Q. You did?

7 A. Yes.

8 Q. Do you recall giving a deposition in this case?

9 A. I don't remember.

10 Q. Do you remember coming to Washington, D.C?

11 A. I came a couple --

12 Q. December of 2007?

13 A. I don't know. I came -- I don't remember why.

14 Q. Do you remember coming to a law office?

15 A. Yes.

16 Q. And you had counsel from the law firm of Scad & Arps?

17 A. Yes.

18 Q. And you gave testimony?

19 A. Yes.

20 Q. And an attorney asked you questions about what you saw
21 when you worked on the Red Unit?

22 A. Yes.

23 Q. And you were under oath when you gave that testimony?

24 A. Yes.

25 Q. If we could go to Page 56 of Mr. Tom's deposition, to

1 Lines 57, excuse me -- Lines 6 -- beginning at Line 6.

2 Question: Did you actually see Alex -- I'm a little bit
3 confused, Alex, Sacha, Jimmy and Pista separate the elephants?

4 Answer: No. Question: Your arrived after that? Answer:
5 Right.

6 Was that your testimony?

7 A. Yes.

8 Q. And the first thing that you saw in Tulsa was the
9 elephants actually being brought back into the tent?

10 A. Yes.

11 Q. You've never broken up an elephant fight before, have
12 you?

13 A. No.

14 Q. And you don't know how you would break up an elephant
15 fight?

16 A. No, I wasn't trained.

17 Q. And some of the elephants on the Red Unit have tushes,
18 correct?

19 A. Excuse me?

20 Q. Small tusks or tushes?

21 A. Yes.

22 Q. You don't know if the elephants cut each other during
23 the fight, do you?

24 A. No, I do not.

25 Q. Earlier you testified about the incident in Tulsa,

1 Oklahoma, that Sacha Houcke used two bull hooks at once?

2 A. Yes.

3 Q. Can we please go to Defendant's Exhibit 165. Mr. Tom,
4 we looked at this document a little bit earlier.

5 A. Okay.

6 Q. If we could go to the second paragraph, beginning: On
7 or about?

8 A. Okay.

9 Q. And I'm going to read the part that is highlighted in
10 yellow. On this day I saw Sacha Houcke, the lead elephant
11 trainer, use the bull hook on Toby, a female Asian elephant.
12 He hooked her by her left ear, top of her back and left rear
13 leg. Did I read that correctly?

14 A. Yes.

15 Q. And you don't mention two bull hooks in this affidavit,
16 do you?

17 A. No, but you could tell by reading it that there was two
18 bull hooks.

19 Q. How can you tell?

20 A. Because she got hooked behind her ear and on her top.

21 Q. And this is the affidavit that you gave when the USDA
22 came to your home in Kentucky, correct?

23 A. Yes.

24 Q. You testified earlier that at one point -- you started
25 out working in the day shift, correct?

1 A. Yes.

2 Q. And then at some point you were transferred to working
3 at the night shift?

4 A. Yes.

5 Q. When was that?

6 A. I think it was in Denver, Colorado, when I got
7 transferred to the night shift.

8 Q. Do you know what time of year that was?

9 A. Not off -- I think it was in the summertime, I just
10 don't remember offhand.

11 Q. And you testified that the incident in Tulsa happened
12 in -- you previous -- you recall testifying in your deposition
13 that the incident in Tulsa happened in the morning?

14 A. Yes.

15 Q. Were you working the night shift at that time?

16 A. I was still there present at the time.

17 Q. On Direct you testified that the incident in Tulsa
18 lasted about 30 minutes, correct?

19 A. Yes.

20 Q. Or about an hour, excuse me, correct?

21 A. Yes.

22 Q. If we can go to Defendant's Exhibit 157. And we're
23 going to focus on Paragraph 4. And I'm going to read the
24 second to last line. This beating lasted for approximately 30
25 minutes. Did I read that correctly?

1 A. Yes.

2 Q. The first time you complained to management about the
3 incident in Tulsa was one week after it happened, correct?

4 A. Yes.

5 Q. And that was to John Griggs?

6 A. Yes.

7 Q. You didn't complain to management on the day it
8 happened?

9 A. No.

10 Q. You didn't complain the day after?

11 A. No, because there was no management at the time.

12 Q. So, your testimony is John Griggs was not present in
13 Houston -- or in Tulsa?

14 A. Later on he was. He was on vacation when we had the
15 layover, a lot of them took vacation, except for the animal
16 crew.

17 Q. You didn't complain the Sacha Houcke?

18 A. No, because he would have fired me right there on the
19 spot.

20 Q. Bud you did complain to Sacha Houcke later, didn't you?

21 A. Yes.

22 Q. And you complained to him in Houston?

23 A. Yes.

24 Q. Can we look at Defendant's Exhibit 59, and go to Page
25 36 of that exhibit. This is the Red Unit schedule for 2006.

1 And if we could focus in on Cell 16, beginning at Cell 16.

2 The layover in Tulsa began May 24th, 2006, correct?

3 A. Yes.

4 Q. And after the Red Unit was in Tulsa, it traveled to
5 Oklahoma City?

6 A. Yes.

7 Q. And then the Red Unit traveled to San Antonio?

8 A. Yes.

9 Q. And then the Red Unit traveled to Memphis?

10 A. I guess I was on vacation at the time.

11 Q. Okay. And then just -- let's look down at Line 24,
12 Houston?

13 A. Yes.

14 Q. Houston was -- Red Unit was in Houston from July 14th,
15 2006 to July 23rd, 2006, correct?

16 A. Yes.

17 Q. So, you didn't confront Sacha Houcke about what you saw
18 in Houston for almost a month -- what you saw in Tulsa for
19 almost a month later, right?

20 A. Yes, because I haven't been with the show at the time.
21 I was just there that day for the show. He told me to come in
22 for the show.

23 Q. So, you waited a month after what you saw in Tulsa to
24 complain to Sacha Houcke, correct?

25 A. Yes.

1 Q. Mr. Tom, you're a member of the teamsters union,
2 correct?

3 A. I guess. I have no idea if they have one or not.

4 Q. Well, money was taken out of your paycheck every month
5 for teamsters dues, wasn't it?

6 A. I guess it was, I'm not sure, because when they had a
7 teamster meeting, they never got to funds from Feld
8 Entertainment.

9 Q. I'd like to go to the teamsters withholding
10 authorization?

11 MR. CRYSTAL: Is this one of the exhibits.

12 MS. PETTEWAY: It's not an exhibits. It's an
13 impeachment document.

14 BY MS. PETTEWAY:

15 Q. Mr. Tom, is that your signature?

16 A. Yes.

17 Q. Under employee?

18 THE COURT: Why don't you assign it a number so the
19 record is clear.

20 MS. PETTEWAY: We'll mark that as Defendant's 306.

21 BY MS. PETTEWAY:

22 Q. Mr. Tom, I'm going to begin reading at that top of the
23 page.

24 MR. CRYSTAL: Your Honor, I'd just like to object.
25 We've never seen this document before.

1 THE COURT: I think counsel is using it for
2 impeachment purposes. I'm not so sure -- do you know whether
3 or not you remember --

4 THE WITNESS: I know they had one, but they never
5 did anything for us.

6 THE COURT: My question is: Do you know whether
7 you were a member of the union or not?

8 THE WITNESS: I know I signed the paper the first
9 day I started about having a union, but after that I'm not
10 sure if we had one or not.

11 THE COURT: All right.

12 BY MS. PETTEWAY:

13 Q. You knew that you could be object fired if you got
14 three write-ups, correct?

15 A. Yes.

16 Q. And you claim that you didn't start to receive
17 write-ups --

18 THE COURT: Why don't you use that for refreshing
19 his recollection because his answer was he didn't know. So,
20 I'll allow it for that purpose. You looked -- you see that
21 document, is that your signature on there?

22 THE WITNESS: Yes, it is.

23 THE COURT: So, at some point you signed it?

24 THE WITNESS: That's when I first started with
25 them.

1 THE COURT: All right.

2 BY MS. PETTEWAY:

3 Q. And you claim that you started to receive write-ups
4 after you had the argument with Mr. Houcke in Houston,
5 correct?

6 A. Yes.

7 Q. And you didn't received any write-ups before then?

8 A. No.

9 Q. If you could look at Defendant's Exhibit 166. Mr. Tom,
10 is that your signature under the employee line?

11 A. Yes.

12 Q. And this document is dated June 28th, 2006?

13 A. Yes.

14 Q. And if we could go back quickly to Defendant's Exhibit
15 59, which is the Red Unit schedule, Page 36 of that document,
16 and I'm going to read Line 24. Houston, Texas. It indicates
17 that the Red Unit was in Houston from July 14th, 2006 to
18 July 23rd, 2006, correct?

19 A. Yes.

20 Q. So, if we could go back to Defendant's Exhibit 166.
21 So, this document is dated before the Red Unit was in Houston?

22 A. Yes. It looks like it's San Antonio by looking at the
23 calendar that you just showed me.

24 Q. This was before you had argument with Sacha Houcke?

25 A. Yes.

1 Q. And the first paragraph of that document reads as
2 follows: Per the agreement in the teamsters contract, you're
3 hereby being issued a formal written warning regarding your
4 employment with Ringling Brothers and Barnum & Bailey Circus
5 as a result of following reason. And the text -- the
6 typewritten text below reads: You are hereby notified that if
7 there are any further violations of the Ringling Brothers and
8 Barnum & Bailey general rules of conduct or the rules of the
9 teamsters contract could result in termination. Did I read
10 that correctly?

11 A. Yes.

12 Q. If we could look at the bottom of that document. It
13 indicates that the union steward received a copy of this
14 document?

15 A. I guess he did, I don't know, he wasn't there at the
16 time.

17 Q. And it's your testimony that this document isn't
18 accurate?

19 A. Yes.

20 Q. If you could go to Defendant's Exhibit 167.

21 THE COURT: Excuse me, your testimony is that it is
22 or not accurate?

23 THE WITNESS: Is not accurate. That's the day they
24 had a party and I was already in town, and I just went to go
25 in -- walk back, and the bus never showed up to take the

1 evening shift back home. And I worked the night shift at that
2 time, so I was there. The other guy in the elephant tent
3 couldn't get home because there was no bus.

4 THE COURT: All right.

5 BY MS. PETTEWAY:

6 Q. This is Defendant's Exhibit 167. Mr. Tom, is that your
7 signature?

8 A. Yes.

9 Q. Under employee?

10 A. Yes.

11 Q. And this document is dated June 28, 2006?

12 A. Yes.

13 Q. And this document includes the same language about the
14 teamsters contract?

15 A. Yes.

16 Q. And this document indicates that the reason for the
17 written warning is: Left work before job was finished.

18 Missed animal walk?

19 A. Yes.

20 Q. Did I read that correctly?

21 A. Yes.

22 Q. And it's your testimony this document isn't accurate
23 either?

24 A. Yes, because I was going on vacation that day.

25 Q. And if we can look at Defendant's Exhibit 168. Mr.

1 Tom, is that your signature on the bottom of this document?

2 A. Well, I printed it at the time. That's not my
3 signature.

4 Q. But you printed that?

5 A. Yes.

6 Q. Your name. And you dated it August 5th, 2006?

7 A. Yes.

8 Q. And this document includes the same language about the
9 teamsters contract, doesn't it?

10 A. Yes.

11 Q. And the reason for the warning reads as follows:

12 Tuesday, 8/1/2006. Late for work, causing other crew member
13 to miss the bus home. Thursday, August 3rd, 2006. Loitering
14 outside of compound for 30 minutes without checking animals.
15 At 10:30 p.m., not able to be found and several horses were
16 without water. On August 3rd, 2006, the horses were without
17 water, weren't they?

18 A. No, I gave them water. At the time it was a hundred
19 degrees that day. I'd go down one side, go back to the other
20 side, by the time I go back to the other side they drank up
21 all the water on one side.

22 Q. So they didn't have water?

23 A. Yes.

24 Q. And Carrie Coleman confronted you about this, correct?

25 A. Oh -- the day of the write-up. The day of the

1 incident, she was nowhere to be found.

2 Q. She wasn't there?

3 A. No, she was not.

4 Q. And after you received this written warning you were
5 fired, weren't you?

6 A. Correct.

7 Q. Were you upset that you were fired?

8 A. A little bit because I had no way to support my family.

9 Q. And you didn't make a complaint about being fired to
10 the union steward, did you?

11 A. No, because there was no union stewards that would help
12 you.

13 Q. So, you didn't make a complaint to the union?

14 A. No.

15 Q. You testified earlier that there was someone who always
16 followed the Red Unit with a video camera, correct?

17 A. Correct.

18 Q. And you knew that the circus was being filmed?

19 A. Yes.

20 Q. And you also claim that you observed mistreatment of
21 the elephants beginning on your first day of work at the
22 circus?

23 A. Yes.

24 Q. And you observed that mistreatment each and every day
25 that you worked there?

1 A. Yes.

2 Q. And the first day that you talked to the PETA
3 videographer was the day that you got fired, correct?

4 A. Correct. Yes.

5 Q. Did you tell the videographer about the abuse that you
6 saw?

7 A. Yes.

8 Q. And did you talk to the PETA videographer one time or
9 more than one time that day?

10 A. I think once, and then he gave me -- I gave him my
11 number and the lady from PETA called me.

12 Q. And did you talk with one person or more than one
13 person from PETA?

14 A. One person at the time. And then when I left the
15 circus, off the grounds, that's when they called me again.

16 Q. Okay.

17 A. When I was off the property.

18 Q. We'd like to play a clip from Defense Exhibit 286,
19 beginning at 5 minutes and ending at 6 minutes 26 seconds.
20 (Video played).

21 BY MS. PETTEWAY:

22 Q. Mr. Tom, is that you in the video that we just saw?

23 A. Yes, it is.

24 Q. That was you wearing a blue shirt?

25 A. Yes.

1 Q. And black pants?

2 A. Yes.

3 Q. And there are actually three people there, right?

4 There was you, the man in the black shirt and the
5 videographer?

6 A. I guess, I have idea who was filming that at the time.

7 Q. And you didn't talk to the PETA videographer about
8 elephant abuse at all, did you?

9 A. I talked to him about a little bit of it, as you heard,
10 but that was it. I talked to him later on when she called me
11 up when I left the grounds.

12 Q. So you told PETA about elephant abuse after they called
13 you?

14 A. Yes.

15 Q. And is it your testimony that this is the -- your
16 conversation with the PETA videographer on the day that you
17 were fired?

18 A. Yes.

19 Q. This is the only time you talked to them that day?

20 A. Yes.

21 Q. I'd like to play another clip from Defendant's Exhibit
22 286, time stamp 11:40 to 12 minutes 20 seconds.

23 (Video played).

24 BY MS. PETTEWAY:

25 Q. Mr. Tom, is that you in the video again?

1 A. Yes, it is.

2 Q. And that's the PETA videographer?

3 A. Yes.

4 Q. And this time you're talking to him in a different
5 location, right?

6 A. Yes, it looks like it. I'm not sure -- looking at the
7 first video, it could be the other side of where I was at.

8 Q. This time you're talking to the PETA videographer, it's
9 just you and the man in the black shirt?

10 A. Yes.

11 Q. And the videographer is on the other side of the
12 street?

13 A. I guess, I have no idea.

14 MR. CRYSTAL: Your Honor, I'm going to object on
15 the grounds that, as you say -- I don't mean these for
16 impeachment, but it's not at all clear there aren't multiple
17 video cameras.

18 THE COURT: Counsel can continue to lay her
19 foundation. I'll give it whatever weight it's entitled to, if
20 any.

21 BY MS. PETTEWAY:

22 Q. Mr. Tom, you spoke with the PEAT videographer on more
23 than one time on the day that you were fired?

24 A. I might have, I'm not that sure, off hand. It was so
25 long ago.

1 Q. And you testified earlier that after you spoke with
2 the --

3 THE COURT: Is your answer that you don't know
4 where the videographer was at the time?

5 THE WITNESS: Correct. I didn't know where he was
6 or who it was that was filming it.

7 BY MS. PETTEWAY:

8 Q. And you're not sure how many times you spoke to him on
9 that day?

10 A. No.

11 Q. Did you speak with him more than two times?

12 THE COURT: He doesn't know.

13 THE WITNESS: I spoke with him once.

14 BY MS. PETTEWAY:

15 Q. So, after you spoke with the PETA videographer that
16 day, someone from PETA called you later on, correct?

17 A. Correct. When I was out of state.

18 Q. And you've met with someone from PETA at least 10
19 times?

20 A. I guess so, I'm not sure how many times offhand.

21 Q. If you'd look at your deposition, Page 74, Line 18.
22 Question: Do you know how many times all together you met
23 with someone from PETA? Answer: Maybe 10 times, give or
24 take. Did I read that correctly?

25 A. Yes.

1 Q. You spoke at a PETA press conference in Chicago,
2 correct?

3 A. Yes.

4 Q. And the press conference in Chicago was being held
5 because the City of Chicago was considering banning the use of
6 bull hooks?

7 A. Yes, it is.

8 Q. And you spoke out in favor of that ban?

9 A. Yes.

10 Q. And your wife also spoke at that press conference?

11 A. Yes.

12 Q. And Archele Hundley spoke at that press conference?

13 A. Yes.

14 Q. Are you aware that you tried to become a plaintiff in
15 this case?

16 A. I really don't know. It's been so long since I did
17 this stuff, so I'm not sure.

18 Q. You sent a letter to Kenneth Feld and the United States
19 Department of the Interior indicating that you intended to sue
20 the circus under the Endangered Species Act, didn't you?

21 A. No, I never sent the letter out that I was going to sue
22 them.

23 Q. If we can look at Defendant's Exhibit 186. This is
24 Plaintiff's Exhibit 3 to plaintiff's motion for leave to file
25 a supplemental complaint adding three former Ringling Brothers

1 employees, and the docket number is 181-4. Let me turn to
2 Page 2 of that exhibit, and look at the first paragraph.

3 Can you blow up the entire first paragraph,
4 please. This letter is written on behalf Archele Hundley,
5 Robert Tom, Jr., and Margaret Tom, all of whom are former
6 employees of Feld Entertainment, FEI, and the Ringling
7 Brothers Circus, herein, collectively referred to as Ringling
8 Brothers. Ms. Hundley worked for the circus from
9 approximately April 20th, 2006 through June 27th, 2006. Mr.
10 and Mrs. Tom worked for the circus for about two years until
11 August 6, 2006. Did I read that correctly?

12 A. Yes.

13 Q. If we can look at the top of that document, please.
14 The letter is dated March 30th, 2007. And if we can go to the
15 next page, and then the last page, please. And the letter was
16 written by Katherine Meyer and Tanya Sanerib. And it's your
17 testimony that you've never seen this document before?

18 A. I just don't remember, it's been so long.

19 Q. If we could look at -- if we could look at the
20 supplement complaint, please. This is Plaintiff's Exhibit 1
21 to plaintiff's motion for leave to file supplemental
22 complaint, it's docket number 181-2. Go to the second page,
23 please. Have you seen this document before?

24 A. Yes.

25 THE COURT: Counsel, I have to return a telephone

1 call, it will take no more than one or two minutes. We'll
2 take a very short recess. We will still sit until 6:30, but I
3 can't wait any longer. All right. No need to stand.

4 BRIEF RECESS

5 AFTER RECESS

6 THE COURT: Go ahead, Counsel.

7 BY MS. PETTEWAY:

8 Q. Mr. Tom, just a few more questions. It's your view
9 that the bull hook should not be used at all?

10 A. Yes.

11 Q. And it's your view that any use of the bull hook is
12 mistreatment?

13 A. Yes.

14 Q. And it's your view that chaining an elephant is cruel?

15 A. Yes.

16 Q. And it's your view that chaining should be banned?

17 A. Yes.

18 MS. PETTEWAY: No further questions.

19 THE COURT: All right. Redirect.

20 REDIRECT EXAMINATION

21 BY MR. CRYSTAL:

22 Q. Mr. Tom, you were asked some questions about the day
23 you were fired when you talked to the PETA videographer -- the
24 PETA person?

25 A. Yes.

1 Q. Do you know how many people from PETA were videotaping
2 that day?

3 A. Just that guy right there that you see in the video,
4 he's the only one that has been with us since I started.

5 Q. Mr. Tom, did you ever see the elephants at nighttime?

6 A. Yes.

7 Q. And how were they maintained at night?

8 A. Chained up, all of them.

9 Q. There was some discussion about the time the elephants
10 would travel on the trains, did you ever see the elephants fed
11 during train trips and not taken off the train?

12 A. Just for the short runs they're not taken off.

13 Q. I'd like to show you again Defense Exhibit 166.

14 Defense counsel showed you this exhibit. Could you just tell
15 us what date that is?

16 A. June 28, '06.

17 Q. And that's says: Did not show up for work, no excuse?

18 A. Right.

19 Q. On June 28th, 2006?

20 A. Yes.

21 Q. Okay. I'd like to show you again Defense Exhibit 167.

22 And what date is that?

23 A. Same date.

24 Q. And that one says: Left work before job was finished.

25 Missed animal walk. Is that right?

1 A. Yes.

2 Q. So, on the same day there was a write-up saying that
3 you did not show up for work?

4 A. Right.

5 Q. And there was also, on the same day, it said that you
6 left worked before the job was finished, is that right?

7 A. Yes.

8 Q. Okay. And I'd like to go back briefly to Plaintiff's
9 Exhibit 115, and that bottom paragraph in the sentence that
10 begins: On this day. Do you see that?

11 A. Yes.

12 Q. On this day I saw Sacha Houcke, the lead elephant
13 trainer use the bull hook on Toby, a female Asia elephant. He
14 hooked her by her left ear, top of her back and left rear leg.
15 Did you mean that at some times -- at some point he used two
16 bull hooks?

17 A. Yes.

18 Q. Thank you.

19 MR. CRYSTAL: Your Honor, I'd ask that this be
20 admitted into evidence now.

21 THE COURT: It shall be.

22 MR. CRYSTAL: Thank you, Your Honor. It would be
23 Plaintiff's Exhibit 115.

24 BY MR. CRYSTAL:

25 Q. Mr. Tom, during that incident in Tulsa, when did you

1 first see blood on the elephant?

2 A. When they first started hooking the elephant, when he
3 ripped behind the ear.

4 Q. Did the elephant --

5 A. We saw the blood coming down.

6 Q. Did the elephant have blood on her before he hooked the
7 elephant?

8 A. No.

9 Q. And who else was watching with you when you saw that
10 incident?

11 A. Archele Hundley and mostly the whole horse crew that
12 was there then, everybody that worked in the elephant tent was
13 there watching it.

14 Q. Mr. Tom, is everything that you told us today about
15 your experience at the circus true?

16 A. Yes.

17 Q. Including what you saw at Tulsa, Oklahoma?

18 A. Yes.

19 MR. CRYSTAL: Thank you. I have no further
20 questions, Your Honor.

21 THE COURT: Do you have any questions?

22 MS. PETTEWAY: Nothing further.

23 THE COURT: I'll excuse the witness. Are you
24 returning home this evening?

25 THE WITNESS: No, tomorrow morning.

1 THE COURT: Have a safe trip.

2 THE WITNESS: Thank you.

3 THE COURT: Do you have another witness, Counsel?

4 MS. MEYER: Yes, Your Honor.

5 THE COURT: How long do you anticipate the Direct?
6 Again, I think I said I have an engagement at 6:30, and then a
7 few minutes ago I said I'm going to sit until 6:30. I have to
8 be somewhere at 6:30. How long do you anticipate the Direct
9 to be?

10 MS. MEYER: I'd say 45 minutes to an hour, Your
11 Honor.

12 THE COURT: Is this an out of town witness or --

13 MS. MEYER: It is, but she's willing to stay. I
14 mean, I've already arranged for her --

15 THE COURT: All right. Let's try to finish direct
16 examination anyway. If we can't finish both, I have -- wait a
17 minute, just a minute, tomorrow is Friday.

18 MS. MEYER: My preference would be to not have her
19 go on the stand and not be able to finish her today, frankly.

20 THE COURT: She'd have to come back Monday.

21 MS. MEYER: She's willing to do that. I would just
22 like to do it in one day as opposed to splitting it up.

23 THE COURT: Yeah, I was just wondering if I could
24 fit her in tomorrow. I'd have to make some adjustments
25 tomorrow. You folks hadn't planned on being here tomorrow,

1 had you?

2 MS. MEYER: That's the other option, I guess.

3 Start her today and --

4 THE COURT: I'm sensitive to persons from out of
5 time, you incurred some expenses obviously with the weekend.
6 I don't know about -- Carole, I need to talk to you and Addy
7 about Monday. Let me speak to you both at the bench.

8 OFF THE RECORD

9 THE COURT: Counsel, how about this? I could
10 probably move some things tomorrow afternoon. I can't -- I've
11 made an appointment to have a meeting outside the office
12 tomorrow morning, I could probably do it at 2:00 o'clock and
13 finish with this witness tomorrow. And I could move my
14 10:00 o'clock matter on Monday morning until 9:00 o'clock and
15 we can proceed with the trial at 10:00.

16 I know I told you -- if someone has something else
17 planned for tomorrow, that's fine, because I told you we
18 weren't going to sit on Friday. But there are a couple of
19 things that I can move on my calendar to accommodate you. We
20 can take direct testimony today and finish cross-examination
21 tomorrow. Do you want to do that? Is that a hardship for
22 anyone? I know I'm switching up on you a little bit, but I'm
23 just trying to accommodate everyone.

24 MR. SIMPSON: No objection, Your Honor.

25 MS. MEYER: That's fine.

1 THE COURT: Just take the direct exam. That's
2 fine. I just can't do it tomorrow morning. Can't do it. But
3 I can do it at 2:00. Let's take Direct Examination today and
4 we'll do Cross-Examination tomorrow at 2:00 o'clock. Carol,
5 you'll ask the Magistrate Judge to take care of -- there's a
6 2:30 matter that I have -- let's proceed.

7 MS. MEYER: I'd like to call to the stand Lanette
8 Williams, Your Honor.

9 Thereupon,

10 LANETTE WILLIAMS DURHAM,
11 the witness herein, having been first duly sworn, was examined
12 and testified as follows.

13 THE COURT: Good afternoon good evening good day.

14 BY MS. MEYER:

15 Q. Would you please state you ever name for the record?

16 A. Lanette Durham, L-A-N-E-T-T-E D-U-R-H-A-M.

17 Q. And what is your maiden name?

18 A. Williams. W-I-L-L-I-A-M-S.

19 Q. And where do you currently live?

20 A. Hohenwald, Tennessee.

21 Q. And what is your occupation?

22 A. I'm retired.

23 Q. And when you retired, what was your occupation?

24 A. I was a police sergeant for the City of San Jose.

25 Q. Do you mind if I call you Sergeant Williams?

1 A. That's fine.

2 Q. Where were you employed in August of 1999?

3 A. I was employed by the City of San Jose, San Jose,
4 California at the San Jose Police Department.

5 Q. How long you had been employed on the police force at
6 that time?

7 A. Approximately 16 years.

8 Q. And what were your duties?

9 A. I was a police sergeant. I think I was working the
10 curfew center at that time.

11 Q. When did you become a sergeant?

12 A. Let's see, I think it was 1996.

13 Q. And prior to that time had you had any jobs that
14 involved the care of animals?

15 A. Yes, I had.

16 Q. What was that?

17 A. I was -- prior to that I was a State Humane Officer for
18 the State of California. I also worked at the Humane Society
19 being a night manager or, excuse me, the weekend manager. I
20 raised animals. I showed animals. I worked at pet stores.

21 Q. When were you a State Humane Officer?

22 A. I believe -- I think it was in 1978, it was a couple
23 years around that time.

24 Q. And who were you State Humane Officer for?

25 A. Humane Society for Santa Clara Valley.

1 Q. What state is that in?

2 A. The State of California.

3 Q. What was entailed in that job?

4 A. Investigating cruelty to animal cases, inspecting pet
5 stores, following up on complaints that we had regarding
6 animal cruelty.

7 Q. In August of 1999, were you involved in an inspection
8 that was conducted of the Ringling Brothers circus?

9 A. Yes, I was.

10 Q. Do you remember when that was in August?

11 A. I believe they were there the week of August 22nd
12 through that Sunday.

13 Q. And what were the circumstances of your involvement?

14 A.

15 MS. PARDO: Objection. I want to renew the
16 objection to the Red Unit evidence.

17 THE COURT: All right. I'll let it come in. This
18 is the other evidence issue, is that correct?

19 MS. MEYER: Yes. And also evidence of a routine
20 practice, Your Honor.

21 THE COURT: All right. Over objection, I'll allow
22 it.

23 BY MS. MEYER:

24 Q. What were the circumstances of your involvement in that
25 inspection?

1 A. The Humane Society had requested the police department
2 allow me to assist them in inspecting the Ringling Brothers
3 Circus.

4 Q. And why were you asked to assist?

5 A. Because of my prior experience with animals.

6 Q. Did you do anything in particular to prepare for that
7 inspection?

8 A. Yes, I did.

9 Q. What did you do?

10 A. I studied the USDA Guidelines for Animal Welfare Act.
11 Also the State of California Fish and Game Regulations, and
12 the California Penal Code.

13 Q. Did you do anything else to prepare for that
14 inspection?

15 A. I went to Oakland, California to see the circus.

16 Q. When did you do that?

17 A. I believe it was on the Thursday before, which I think
18 was August 19th.

19 Q. The Thursday before the inspection that we're talking
20 about?

21 A. Yes.

22 Q. And why did you do that?

23 A. We had asked for what kind of animals and the number of
24 animals that will be coming to San Jose, and we hadn't gotten
25 back any response. I wanted to go to the circus to see what

1 kind of animals they were having or bringing.

2 Q. Were you on duty when you went to Oakland, California?

3 A. No.

4 Q. And what did you observe in Oakland, California?

5 A. I went into the performance and watched the circus to
6 see how long the animal's acts were and what kind of animals
7 were involved.

8 Q. Who did you see at that performance?

9 A. You mean from the circus?

10 Q. Yes.

11 A. I saw the major performers. Gunther Gebel Williams was
12 there, he was the one that I remember was there.

13 Q. Who is Gunther Gebel Williams?

14 A. He's a very well-known animal trainer and performer for
15 the circus.

16 Q. And was he performing with the elephants when you saw
17 him in Oakland, California?

18 A. Yes, I believe he was with the elephants.

19 Q. Did you observe anything else when you went to Oakland,
20 California?

21 A. I also observed the loading of the animals, this was on
22 a different day.

23 Q. When was that?

24 A. It was the Sunday after the final performance.

25 Q. Sorry, after the final --

1 A. The final performance.

2 Q. Do you remember what time the elephants were loaded on
3 to the train?

4 A. It was about 8:30 at night.

5 Q. And at that point in time did you have an opportunity
6 to see the Ringling Brothers handlers interact with the
7 elephants?

8 A. Yes, I did.

9 Q. What did you observe?

10 A. I observed them loading the elephants, lining them up,
11 walking down the street to a certain point. We couldn't go to
12 where the railroads were, but we watched them go through the
13 parking lot and then later on saw them continue down another
14 street and line the elephants up and get them loaded into the
15 trains.

16 Q. And did you see the handlers carrying anything in their
17 hands?

18 A. Yes, they had ankuses or bull hooks.

19 Q. Can you describe what those bull hooks looked like?

20 A. They are rods that are typically made out of either
21 metal or Fiberglas, they're probably about -- they vary in
22 length, so, two -- two-inches, I've seen them as long as --
23 I'm sorry, two feet. I have seen them as long as three feet.
24 They have a sharp point at one end and below that point they
25 have a sharp hook on the side.

1 Q. And did you have an opportunity when you were in
2 Oakland to observe handlers using the bull hooks with the
3 elephants?

4 A. Yes, I did.

5 Q. What did you see?

6 A. I would see them either poking at the elephants in the
7 leg area to get them to move. Sometimes they would use the
8 hook part of it behind their left ear.

9 Q. And did you -- when is the next time that you saw the
10 Ringling Brothers elephants?

11 A. I saw them the following day in San Jose.

12 Q. What were the circumstances of seeing them the
13 following day?

14 A. The train had come to San Jose and they were in the
15 train.

16 Q. And that was the day after you had seen them in
17 Oakland?

18 A. Yes.

19 Q. And did you -- where did you see the elephants the next
20 day in San Jose?

21 A. At first they were by the San Jose Arena, I think it's
22 now called Compaq Center, and they were still in the train
23 cars.

24 Q. And what time of day the next day did you see the
25 elephants?

1 A. The first time I saw them was about 11:00 o'clock,
2 11:30.

3 Q. Did you see the elephants unloaded in San Jose?

4 A. Yes, I did, that was later.

5 Q. What time did you see them get off the train?

6 A. That was about 12:30.

7 Q. And do you know how much time had elapsed between when
8 you saw them get on the train in Oakland and when you saw them
9 get off the train in San Jose the next day?

10 A. About 16 hours.

11 Q. Do you know how many -- how far it is from Oakland to
12 San Jose?

13 A. I think by car it's about 40 minutes, 45 minutes.

14 Q. Have you driven that route before?

15 A. Many times.

16 Q. How long does it take you?

17 A. Depending on the traffic it could go anywhere from 45
18 minutes to two hours.

19 Q. When you saw the elephants unloaded from the train in
20 San Jose, were you on duty?

21 A. Yes.

22 Q. Were you in uniform?

23 A. Yes, I was.

24 Q. Were you accompanied by anyone else?

25 A. Yes.

1 Q. Who were you accompanied by?

2 A. Christine Franco, Marsha Mayeda, and I believe there
3 are a couple other animal control officers.

4 Q. I'm actually having a hard time hearing you, if you
5 wouldn't mind speaking up. Christine Franco, who is that?

6 A. She was a cruelty investigator.

7 Q. For who?

8 A. For the Humane Society of Santa Clara Valley.

9 Q. Were you working with her in doing the inspection that
10 we're talking about?

11 A. Yes.

12 Q. And who is Marsha Mayeda?

13 A. I believe she was a Director of Operations for the
14 Humane Society of Santa Clara Valley.

15 Q. Did you have any specific responsibilities in
16 connection with the circus coming to San Jose?

17 A. Yes.

18 Q. What were those?

19 A. One was safety of the people. I carried a special -- I
20 guess for a better term, it was called an elephant rifle, a
21 special type of rifle you could use to dispatch large animals.
22 Also, I was there to assist the Humane Society in what they
23 do, their duties. And then also to mediate any kind of
24 potential problems between animal rights folks and the circus
25 personnel.

1 Q. And when you got to the train in San Jose in August of
2 1999, where were the elephants?

3 A. They were still in the train.

4 Q. Did you have any -- did you make any observations about
5 the train before the elephants were unloaded?

6 A. The train cars that the elephants were in were -- a
7 couple of them were rocking back and forth.

8 Q. Did you observe anything else about the trains?

9 A. I went around the backside and I saw there was a large
10 black box under the elephant cars, and it had some sort of --
11 it had liquid seeping out of it.

12 Q. Do you make any observations about that liquid?

13 A. It appeared to me to be urine.

14 Q. What is your basis for saying that?

15 A. The consistency and the smell that was coming from that
16 area.

17 Q. Did you have an opportunity to observe what was going
18 on inside the train?

19 A. I could just see the elephants were in there and
20 appeared to be chained.

21 Q. Did you make any observations about the elephants on
22 the train?

23 A. Just the swaying. They were in there swaying, swaying
24 back and forth.

25 Q. And did you watch the elephants taken off the train?

1 A. Yes, I did.

2 Q. Describe what you saw?

3 A. One or two people would go into the car with the
4 elephants, and they appeared to be kneeling down, I assumed
5 they were unchaining them, and the people from the outside
6 would call the elephants out.

7 Q. And did you observe the elephants actually getting off
8 the train?

9 A. Yes, I did.

10 Q. And what observations did you make?

11 A. A couple of the elephants, especially the taller ones,
12 had a difficult time coming through the doors.

13 Q. Did you observe any of the Ringling Brothers employees
14 handling the elephants at that point in time?

15 A. Yes.

16 Q. What did you observe?

17 A. That they would use their ankus to move the elephants
18 about.

19 Q. And did you observe any particular handlers interacting
20 with the elephants with their bull hooks?

21 A. After the elephants came out of the train they would
22 turn them around and have them shoulder to shoulder facing the
23 train. At that point I saw Gunther Gebel Williams use his
24 bull hook on the left side of the elephant and grab him in the
25 mouth area and yank down with both hands.

1 Q. And how do you know this was Gunther Gebel Williams?

2 A. I recognized him from the circus in Oakland.

3 Q. And after the elephants were lined up, what happened
4 next?

5 A. Then they had the elephants turn to go into the -- down
6 the street to go into the arena.

7 Q. And did you observe the handlers with the elephants at
8 that point in time?

9 A. Yes, I did.

10 Q. And what were they doing?

11 A. There was one handler for about every two elephants,
12 they were walking on the left side of the elephants. And,
13 again, they were using their ankus to get the elephants to do
14 whatever they wanted them to do.

15 Q. How were these using the ankus?

16 A. They'd have it in the hand -- they would use it in the
17 leg area on the left side to get them to move forward.

18 Q. After the walk to the arena, where were the elephants
19 taken?

20 A. The elephants were taken into a large tent.

21 Q. And can you describe the area where they were kept?

22 A. It was a large tent, very large. It had metal poles
23 sticking up and then canvas tops over the top of it.

24 Q. And how were the elephants maintained there?

25 A. They were chained.

1 Q. How were they chained?

2 A. They had large long chains, two rows of chains parallel
3 to each other, and I'm guessing they were about 20 feet apart.
4 And then the elephants were chained with one front leg,
5 usually with two chains going to the front leg in a V-shape to
6 one foot, one front foot, and then a single chain that held
7 the leg in the back.

8 Q. And did you observe what kind of surface they were
9 chained on?

10 A. It was asphalt.

11 Q. How long were these chains?

12 A. I think probably the ones in the front were maybe --
13 I'm kind of guessing, six feet, but there is a V. So, they
14 were attached to the front chain that ran the length of the
15 tent in two different spots and where it V'd back went to
16 their leg. So they were five to six feet long, the two of
17 them together.

18 Q. How much space did the elephants have to move in?

19 A. From what could I see they could only move a few feet
20 front to back or side to side.

21 Q. Were they able to turn around?

22 A. No.

23 Q. And after the elephants were chained in the tent, what
24 happened next?

25 A. We waited for Ringling employee to meet us, Pete

1 Cimini, he was a vet tech, and he was going to go with us as
2 we toured the animal facility.

3 Q. What happened next?

4 A. The first elephant we came to, I believe was Toby, and
5 immediately one of the animal control officers noticed that
6 she had fresh blood behind her left ear.

7 Q. Did you see that blood on Toby?

8 A. Yes.

9 Q. And was Toby a female elephant?

10 A. Yes.

11 Q. Describe what you saw?

12 A. I saw two red marks behind her ear, her left ear. They
13 appeared to be lacerations.

14 Q. And where on Toby's body did you see it?

15 A. Behind her left ear.

16 Q. Sorry, the left ear. And did anyone take photographs
17 of these lacerations?

18 A. A little bit later, yes.

19 Q. And after you saw the lacerations on Toby, what
20 happened?

21 A. The lacerations appeared to be consistent with marks
22 that could have been caused by an ankus, so we believed that
23 there could have been a violation of 596-PC of the California
24 Penal Code, which is abuse of elephants.

25 Q. So, what did you do next?

1 A. So then we requested to see the rest of the elephants
2 and inspect them.

3 Q. And how many elephants were involved in that
4 examination?

5 A. Fourteen.

6 Q. And what did the inspection entail?

7 A. I believe seven of the elephants had injuries that
8 appeared to be consistent with ankus marks.

9 Q. And why do you say that?

10 A. From where the injuries were located, there were
11 several lacerations behind the left ear -- it was always on
12 the left side. There was also several puncture wounds in the
13 leg areas on the left side, and these were consistent with
14 what I had seen in Oakland, the way the elephants were
15 handled, the way the ankuses were used, and they were the type
16 of injuries consistent with injuries that would have been
17 caused by an ankus.

18 Q. And where besides the ears did you see these injuries?

19 A. On the left side by the leg.

20 Q. Did anyone take photographs of these injuries?

21 A. Yes, they did.

22 Q. Who took the photographs?

23 A. The still photographs were taken by Christine Franco.

24 Q. Was the inspection recorded in any other way?

25 A. It was also videotaped.

1 Q. Who took the videotape?

2 A. Mash Mayeda.

3 Q. I'd like to go to Exhibit 119, Plaintiff's 119, please.

4 I'd actually like to have you look at each of these
5 photographs before I ask you about them.

6 MS. PARDO: I'm going to object, Your Honor.

7 THE COURT: Basis.

8 MS. PARDO: I don't think we've laid a proper
9 foundation yet to authenticate these. She said that she was
10 not there and hasn't yet identified --

11 THE COURT: Go ahead and lay a foundation.

12 MS. PARDO: -- with sufficient predicate.

13 MS. MEYER: I wanted to actually show her the
14 photographs before I lay the foundation, Your Honor.

15 THE COURT: This is 119. Do you know what it is?

16 MS. MEYER: Sergeant Williams, were you --

17 THE COURT: Just a minute. Do you know what it is?

18 THE WITNESS: That's a photograph of one of the
19 elephants that we saw, the injury.

20 THE COURT: How do you know that to be?

21 THE WITNESS: Because I've seen these photographs
22 before and I recognize that. I was there when they were
23 taken.

24 THE COURT: Okay. Overruled.

25 MS. MEYER: Okay.

1 BY MS. MEYER:

2 Q. I wanted to show you the photographs and then ask you
3 if in fact you saw the events that are depicted in the
4 photographs. So, if we can just do them one at the time?

5 THE COURT: So the record is clear, what is it that
6 you're showing her?

7 MS. MEYER: I'm showing her the 40 photographs that
8 are contained in Exhibit 119, simply to ask her whether or not
9 she can say that she saw these animals, the events that are
10 depicted in these photographs.

11 THE COURT: What are these photos of?

12 THE WITNESS: Photographs of the various injuries
13 that we found on the Ringling Brothers elephants that day.

14 THE COURT: All right. Go ahead. What is it about
15 those photos that suggest to you that those photos were taken
16 the day of your investigation as opposed to some other day?

17 THE WITNESS: Just that I've seen them many times
18 and I recognize them.

19 THE COURT: All right.

20 BY MS. MEYER:

21 Q. Sergeant Williams, did you see these photographs around
22 the time that they were taken by Ms. Franco?

23 A. Yes, I believe there's one in there that I did not see
24 just because of the position of the elephant. The elephants
25 were so close together, I didn't get a look at it then but I

1 saw it later on.

2 Q. Did you see, except for that photograph, did you see
3 the actual injuries that we're looking at on the elephants
4 that are depicted in these photographs?

5 A. Yes, I did.

6 Q. And do these photographs accurately depict the events
7 that you saw in August of 1999 when you were involved in the
8 inspection in San Jose?

9 A. Yes.

10 Q. I'd actually like to go to a couple of them, if we
11 could, in particular, and the first one is Exhibit 119 at Page
12 5, and could we have that on the full screen.

13 Could you tell Judge Sullivan what you observed
14 on this elephant?

15 A. The laceration.

16 Q. Could we go to the next photograph, which is at Page
17 10, and can you actually -- if you can use your finger to
18 circle what you observed on this elephant?

19 A. It's like a puncture-type injury.

20 Q. And the next photograph I'd like to look at is on Page
21 11 -- what do we do, hit clear? I do it? This is at Page 11.
22 And could you circle that. Tell Judge Sullivan what you
23 observed on the elephant and circle it for him?

24 A. This is another puncture-type injury.

25 Q. And could we go to Page 13, please. Could you tell

1 Judge Sullivan what you observed on this elephant?

2 A. Two puncture injuries.

3 Q. Go to Page 14, please. Could you tell Judge Sullivan
4 what you observed on this elephant?

5 A. Do you want me to circle that one?

6 Q. I don't think you need to circle that one. Just tell
7 him what you observed?

8 A. Two puncture-type injuries.

9 Q. Could we go to Page 17, please. Now, on this
10 photograph I would like you to describe to Judge Sullivan what
11 you see here and if you could indicate by circling what you're
12 talking about?

13 A. There's several injuries on this particular photograph.
14 There's -- above where the fingers are, there's -- it looks
15 like three puncture injuries and then a larger -- I'll circle
16 the other injury. That injury, to me, appears more like a
17 laceration. And lower down by where the trunk is, the little
18 tip of the trunk over to the right, is another injury.

19 Q. Okay. And is this Page 17. So, we need to go to Page
20 23. Can you tell Judge Sullivan what you observed on this
21 elephant?

22 A. This is a laceration inside the left ear of an
23 elephant.

24 Q. Go to page 25. Could you tell Judge Sullivan what you
25 see here. Describe what you see here?

1 A. These are more bloody wounds. There's numerous ones, I
2 don't know if I need to circle them, there are several of
3 them. You can see the blood dripping down from them.

4 Q. Go to Page 31. And could you tell Judge Sullivan what
5 you see here, and please circle that?

6 A. This is a bloody puncture wound here (indicating).

7 Q. Do you know what part of the body that was seen on?

8 A. I'm not exactly sure, it could be the trunk.

9 Q. Could we go to Number 34, please. And what did you
10 observe on this elephant?

11 A. Another puncture-type injury.

12 MS. MEYER: I'd like to move these photographs --
13 all the photographs in Exhibit 119 into evidence, Your Honor.

14 THE COURT: Any objection?

15 MS. PARDO: No objection.

16 THE COURT: Admitted.

17 BY MS. MEYER:

18 Q. What, if anything, did you think had caused these
19 lacerations that you observed?

20 A. I believe they were caused by an ankus.

21 Q. What is the basis for your belief?

22 A. They were all on the left side, which is the side that
23 the handlers handle the elephants from. They were either
24 puncture or laceration-type injuries in the areas that are
25 typically used by the handlers to move the elephants about,

1 such as the ears, they use the ankus on top of the ears, using
2 the hook part to pull the elephant down or move it around.
3 They also use the tip of the ankus in more of a poking motion
4 to get the animals to respond by moving away from the
5 pressure, and they do that in the area of the front leg and
6 the back left side of the elephant.

7 Because of the type of injuries they were,
8 located in the areas that they were, which I knew to be areas
9 that were commonly used by the handlers to move the elephants
10 about, I believe them to be injuries coming from an ankus.

11 Q. And did you do anything to get more information about
12 what may have caused the lacerations?

13 A. We asked the Ringling Brothers personnel.

14 Q. And did you engage in any investigation on your own to
15 see what may have caused the lacerations?

16 A. Yes, we did.

17 Q. What did you do?

18 A. We took the photographs to the Oakland Zoo.

19 Q. Why did you do that?

20 A. There is a veterinarian there, Dr. Joel Parrott and
21 also the elephant manager, curator, Colleen Kinzley.

22 Q. Why did you take the photographs to them?

23 A. They were both experts in elephants.

24 Q. And did Dr. Parrott and Ms. Kinzley provide you with an
25 opinion as to what caused the lacerations that were depicted

1 in the photographs?

2 A. Yes.

3 Q. And did you take any other action during the time that
4 Ringling Brothers was in San Jose to investigate what may have
5 caused these lacerations s?

6 A. Yes, I -- yes, I did.

7 Q. What did you do?

8 A. I had looked into the train cars to see if there was
9 any way that anything in the train could have caused the
10 injuries. I looked at the head gear that the elephant wore to
11 see if there was anything on the head gear that could have
12 caused the injuries. I looked at the shoes that the women
13 wore that rode the elephants to see if there was anything on
14 the heels of the shoes or the shoes themselves that could have
15 caused injuries. And looked into the tent area where the
16 elephants were housed to see if there was anything that could
17 have caused the injuries.

18 Q. Did you find anything?

19 A. No, I did not.

20 Q. And after the inspection, did you have any additional
21 opportunities to observe the treatment of the elephants by the
22 Ringling Brothers employees during the time the circus was in
23 San Jose in 1999?

24 A. Yes, I did.

25 Q. What did you observe?

1 A. I observed numerous times when Gunther Gebel Williams
2 would use the ankus in a punishing manner.

3 Q. Can you be more specific?

4 A. One example is, the arena has a sloping driveway that
5 goes down into the arena, underneath the arena, and he was
6 walking an elephant down in that area and he grabbed the --
7 with his ankus, he grabbed the elephant on top of its ears and
8 yanked down very hard with both hands.

9 Q. Do you remember anything else you observed during that
10 time period?

11 A. He also on both Saturday and Sunday used the ankus
12 numerous times on the elephants, getting them to and from
13 the -- excuse me, that's not right, not going to and from, but
14 when he was in front of the arena getting ready to perform and
15 also when he was in the holding area the last day of the
16 circus -- they were waiting to chain the elephants up because
17 they were tearing down the tent and they had to wait there for
18 quite a period of time. And I saw number times where he used
19 his ankus in a punishing manner.

20 Q. What do you mean by that?

21 A. Most of the times the handlers would try to use the
22 ankus more as a guiding tool. Put it against the skin but not
23 in a harsh manner, just more of a -- let me see what word to
24 use -- more as a light poke to get them to move away from
25 or -- move away from the pressure. And the times that I saw

1 Gunther Gebel he was using it more in a harsher manner, more
2 of a jabbing motion, more -- like using both of his hands. I
3 didn't see any of the other handlers do that.

4 If they used the ankus on the ear area, they
5 would just place the ankus on top of the ear and pull down on
6 it. He would actually hook it on the ear and then yank down
7 with both hands on it.

8 Q. Did you observe anything else that stands out in your
9 mind about any of the elephants during the time that you
10 observed the circus that week.

11 A. Many of them swayed a lot when they were chained.
12 Almost every time I saw them chained, they would be swaying
13 back and forth.

14 Q. Did you see any other marks on the bodies of the
15 elephants that week?

16 A. Yes, I did.

17 Q. What did you see?

18 A. I saw one elephant named Banana had a puncture-type
19 wound on her trunk that was fresh and bleeding. Also, later
20 in the week, I believe it was Friday or Saturday, I saw that
21 both Toby and Bonko had fresh wounds behind their left ear.

22 Q. How do you know the names of these elephants?

23 A. Just some of the elephants I remembered. I mean, I'd
24 have to see the whole elephant in person. But I just
25 remembered the ones that were injured because it was noted.

1 Q. And how many times did you have an opportunity to
2 observe the circus in August of 1999?

3 A. I saw them in Oakland on Thursday and then on Saturday
4 night. And then I saw them -- I'm sorry, Sunday night. And
5 then I saw them in San Jose Monday through the following
6 Sunday.

7 Q. And during that time period, how were the elephants
8 maintained?

9 A. The majority of the time they were chained in the tent.

10 Q. And were they chained in the same way that you've
11 already described?

12 A. Yes. They were chained with one front -- like it was a
13 left foot and then it would be the opposite hind leg that was
14 chained.

15 Q. How many hours a day were you able to observe the
16 elephants?

17 A. It would vary with the number of performances they had
18 that day. On the days where they only had one performance, we
19 were probably there four to five hours. On the days where
20 they had more than one, we'd be there up to eight hours, ten
21 hours maybe.

22 Q. How much of that time did you see the elephants on
23 chains?

24 A. They were chained except when they were performing.

25 Q. Did you have an opportunity to observe the behavior of

1 the elephants when they were maintained that way?

2 A. Yes.

3 Q. What did you observe?

4 A. Five or six of the elephants swayed back and forth.
5 One of the elephants swayed front to back.

6 Q. You mentioned a videotape that was taken of the
7 inspection that you participated in in August of 1999. Were
8 you present when that videotape was taken?

9 A. Yes, I was.

10 Q. Did you see the events that were videotaped?

11 A. Yes.

12 Q. Did you have an opportunity to watch the videotape
13 after it was taken?

14 A. Yes, I did.

15 Q. Did you watch it close in time to when it was actually
16 taken?

17 A. Yes.

18 Q. I'd like to turn to Plaintiff's Exhibit 147. And I'm
19 actually going to show two clips and ask Sergeant Williams
20 whether or not those clips --

21 THE COURT: How long are the clips?

22 MS. MEYER: One is about 20 seconds and the other
23 is about 10 seconds, they are very short clips.

24 THE COURT: Well, we can't finish today anyway, so
25 it's 6:15 and I do have to -- I did plan to be at this

1 engagement at 6:30, we might as well come back tomorrow at
2 2:00 o'clock. We'll finish the witness tomorrow. You have to
3 come back tomorrow. Please do not discuss your testimony with
4 anyone. We'll start promptly at 2:00 o'clock. Thank you.

5 Let me raise another issue, and I don't want to
6 keep you here. Maybe you want to think about it. I recall
7 some years ago I had a case involving -- it was an action for
8 money against an accommodation, and the question was whether
9 or not it was indeed a public accommodation. Very interesting
10 case and I'm not going to bore you with the all the details.
11 But it was a close call as to whether it was a public
12 accommodation or whether it was evidence of discrimination, et
13 cetera, et cetera.

14 The thought occurred to solicit the views of the
15 agency that -- the federal government agency that had
16 oversight responsibility for those types of issues. And
17 indeed, it would be the Department of Justice, Civil Rights
18 Division, Department of Housing. And I made an inquiry as to
19 whether or not the agency had the resources available, since
20 the Government was not a party to that case, whether the
21 agency had the resources available to bind the Court and the
22 parties with the benefit of their thoughts about the issue.

23 And, indeed, what we received from the agency was
24 indeed very illuminating on the issue. I ultimately made the
25 call with respect to the issues. I think, indeed, the parties

1 actually settled. But the views of that agency with oversight
2 responsible were extremely helpful to the Court and to the
3 parties because it was a very close call as to whether the
4 accommodation was indeed public and had to make certain
5 immunities available to the public, et cetera. So, I was
6 thinking, listening to the testimony I heard, wandering
7 whether or not there is any federal agency with any oversight
8 responsibility for arguably any of the issues confronting the
9 Court. Whether or not there is an agency whose views might be
10 of some value to the Court. Is there?

11 MS. MEYER: Well, Your Honor, the agency that has
12 jurisdiction over this matter would be the Fish and Wildlife
13 Service, Your Honor.

14 THE COURT: Fish and Wildlife, not the Department
15 of Agriculture?

16 MS. MEYER: Well, this is an Endangered Species Act
17 and the issue is whether or not the actions we're talking
18 about constitute a take under the Endangered Species Act.

19 THE COURT: So, it would be the Fish and Wildlife
20 Service?

21 MS. MEYER: They would be the agency that would
22 have jurisdiction over the matter.

23 THE COURT: All right. Any opinion as to whether
24 the views of the agency might be significant enough for the
25 Court to seek those views?

1 MS. MEYER: I don't know, Your Honor. I mean,
2 they'd have to see all of our evidence and hear what our
3 experts had to say.

4 THE COURT: I recognize this is late in the game,
5 but sometimes, you know, there's no harm in thinking about
6 these issues. We're in trial, this is a nonjury trial, and,
7 you know, I further thought, well, if there are some views
8 that should be shared by the agency with oversight
9 responsibility whether an amicus brief could be filed based on
10 the parties submissions in this case, the proposed findings,
11 et cetera, the recitation of what the evidence shows. So the
12 answer is maybe, huh?

13 MS. MEYER: Maybe, Your Honor. The other thing I
14 would add is we do intend to, and the defendants also intent
15 to, I believe, produce some documents -- some public records
16 from the Department of Agriculture, which has jurisdiction
17 over the Animal Welfare Act as to its views as to some of the
18 actions we're speaking about. So, some of that will be in
19 evidence in this case.

20 THE COURT: And the other question I had, I was
21 reasonably certain that no one had intended to call anyone
22 from Fish and Wildlife Service or the Department of
23 Agriculture. I was reasonably certain about that, am I
24 correct in that regard? There will be no Government witnesses
25 testifying in this case?

1 MS. MEYER: That's my understanding. We certainly
2 aren't calling any, Your Honor.

3 THE COURT: All right. Any view?

4 MR. SIMPSON: I think our view on that, Your Honor,
5 was sort of laid out in our opening statement. I think she's
6 right that the agency with oversight generally over the
7 Endangered Species Act is Fish and Wildlife. But the way Fish
8 and Wildlife has approached this issue with respect to captive
9 animals, captive endangered species is -- and this is very
10 clear from the way they promulgated the Captive Bred Wildlife
11 Registration in 1979, and again the Harassment Rule in 1998,
12 and that is, although, in their view, which we don't agree.

13 A captive animal can be taken. It can't be taken
14 unless the treatment at issue for that captive animal violates
15 the AWA. So, they have in effect incorporated that standard
16 into their view of what constitutes a taking for a captive
17 animal. From our prospective it gets back to the same point
18 because we don't think we're subject to the taking provision
19 anyway, but we are subject to the Animal Welfare Act.

20 So, at the end of the day I think, whether you go
21 to Fish and Wildlife first or whether you go to USDA first,
22 you're going to end up with USDA. Because it's my
23 understanding that they would defer, that being Fish and
24 Wildlife, would defer to Agriculture about whether these
25 animals are being held in conditions that, for example, are

1 not humane and healthful, which is one of the Agriculture
2 standards. Their view, they being Fish and Wildlife, if it's
3 humane and healthful, then it's not going to be harassment,
4 it's not going to be a wound, it's not going to be harm.

5 And when they do things, for example, like issue
6 Captive Bred Wildlife Permanent Registrations, which we have,
7 we have 21 elephants -- actually now 23 elephants subject to
8 that. That whole standard is an exemption -- that whole thing
9 is a carve out from the taking prohibition. So, if you have
10 one of these permits, you're authorized to take, you're also
11 authorized to transport, ship, import, the whole thing --
12 everything that Section 9 prohibits you're authorized to do.
13 But you can't do it under the permit if it doesn't comply with
14 the Animal Welfare Act.

15 So, when they issues these permits like they just
16 did last week, the one we have has been renewed for another
17 period of time, they won't do it that if the permit applicant
18 is not in good standing with the USDA, has some problem with
19 his license, et cetera. And there have been several
20 exhibitors who have issues like that, where they'd had
21 elephants or they've had endangered species, they haven't been
22 complying with the Animal Welfare Act, and they've lost their
23 ability to get registration with Fish and Wildlife.

24 So, I think it's -- I think it's a good idea. The
25 problem we've got is we're in the predicament of being sued,

1 one private party against another, without the views of the
2 agency that really --

3 THE COURT: Well, I was thinking the same thing.
4 Both sides are doing a great job, but I'm sitting here
5 wondering, what's missing here?

6 MR. SIMPSON: Well, we've considered this. And I'm
7 not sure there's any way we have as private parties to get the
8 agency involved. I mean, if you like tried to bring them in
9 as third parties --

10 THE COURT: I think years ago I raised that issue
11 as to whether or not any basis existed for the Government to
12 be brought in in this action, and I think the answer was a
13 resounding no. And I think -- I was reasonably certain that
14 the Government -- there was no legitimate basis for the
15 Government to be a party in this case at all. But and whether
16 or not to have amicus views, though, that might be helpful.

17 MR. SIMPSON: That's the dilemma. I think our
18 position is that both of those agencies really have to be in
19 the loop, not just Fish and Wildlife.

20 MS. MEYER: Your Honor, I'm sure it will come as no
21 surprise to you that we have a very stark disagreement about
22 what the law is. And the plaintiff's position is that the
23 Fish and Wildlife Service has not said whatever is in
24 compliance with the Animal Welfare is not a take. That is
25 simply not a correct statement of the law. And this

1 highlights one of the problems in this case, Your Honor, they
2 have no permit at all with respect to the elephants -- the
3 non-captive bred elephants that you ruled are subject to the
4 case.

5 You've already given them a ruling on the captive
6 bred elephants, you granted their summary judgment motion on
7 those because they had a permit. They have no permit at all
8 for the elephants that are at issue here, and that highlights
9 one of the problems and shows what our standing argument is
10 with respect to our organizational plaintiffs. They have
11 never applied for that permit. They've never demonstrated to
12 the Fish and Wildlife Service that what they're doing is
13 prohibited under the Endangered Species Act. They've never
14 presented the evidence, made the demonstration that is
15 required, and obtained a permit from the Fish and Wildlife
16 Service, Your Honor. So, that's the problem.

17 So, when counsel for the defendant says we wish we
18 could figure out a way to have an opportunity to get the views
19 of the Fish and Wildlife Service.

20 THE COURT: Apply for a permit, right?

21 MS. MEYER: They should apply for a permit and give
22 the public an opportunity to see what they have to say, make
23 all the arguments we're making and see whether the Fish and
24 Wildlife will give them a permit under Section 10 to keep the
25 elephants in chains and on trains for the number of hours they

1 spend on trains and hit with bull hooks that cause bloody
2 wounds, and we'll see if the Fish and Wildlife Service gives
3 them a permit, Your Honor. It hasn't happened yet. They
4 haven't asked for the permit, they don't have that permit.

5 THE COURT: Would the agency be in a position to
6 offer an advisory opinion as to whether a permit would issue?

7 MS. MEYER: I'm sorry, say that again.

8 THE COURT: Would the agency be in a position to
9 render an advisory opinion as to whether a permit should
10 issue.

11 MS. MEYER: I don't think so, Your Honor. There's
12 a whole statutory procedure under Section 10 that is required
13 by the statute, and this Court held in Gerber versus Norton a
14 few years ago that that Section 10 process applies with
15 respect to the -- to every request for a permit to engage in
16 an otherwise unlawful act under the Endangered Species Act.
17 The defendant simply has not applied for that permit, nor
18 provided any of the information that is required to support
19 such a permit.

20 THE COURT: All right. Don't read too much into my
21 question. Getting back to an appropriate role for the agency.
22 Could it not be -- that opinion not be in the form of an
23 amicus representation to the Court.

24 MS. MEYER: Again, Your Honor, I think the problem
25 would be they have to see all of the evidence and hear from

1 our experts as if the Section 10 process had been complied
2 with and then render an opinion.

3 THE COURT: Yeah, maybe so. Okay. All right.

4 MR. SIMPSON: Your Honor, if I can just respond.

5 THE COURT: Yes.

6 MR. SIMPSON: Just so the record is clear. We've
7 actually explored this with the Fish and Wildlife Service, we
8 haven't done it formally. But a couple of years ago their
9 position on this is that, were you to apply for a Section 10
10 permit for your so-called preact animals, it is our view, Fish
11 and Wildlife, that you don't need one because you're not
12 taking them. Right? Number one.

13 Number two. This whole procedure under Section 10
14 has never be applied to anything but wild animals anyway, so
15 there's really no way to do this. Now, I'd be happy to have
16 them come in and tell you that formally. That's what they
17 told us informally. I think it's an excellent idea. I think
18 an amicus brief would be a good thing from both agencies.

19 THE COURT: Well. I'm not going to blame anyone
20 else for not thinking of it. You know, sorry I didn't think
21 of it some years ago, I don't know. But I debated whether I
22 was even going to raise it. All right. Thanks for your
23 thoughts. See you tomorrow at 2:00. Enjoy your evening.

24 COURT ADJOURNED AT 6:30 P.M.

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C E R T I F I C A T E

I, Lisa M. Hand, RPR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

Lisa M. Hand, RPR

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