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2 02 AMERICAN SOCIETY FOR THE .

3 03 . CA No. 03-2006

4 04 v. . Washington, D.C.

5 05 .

6 06 TRANSCRIPT OF BENCH TRIAL - AFTERNOON SESSION

7 07 UNITED STATES DISTRICT JUDGE

8 08 TANYA SANERIB, ESQ.

9 09 1601 Connecticut Avenue, N.W.

10 10 202-364-4092

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17 17 Jacqueline M. Sullivan, RPR

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1 00003:01 P R O C E E D I N G S

2 02 COURTROOM DEPUTY: Please remain seated and come to

3 03 order.

4 04 Civil action 03-2006, American Society For the

5 05 Prevention of Cruelty to Animals, et al versus Feld

6 06 Entertainment, Inc.

7 07 Would counsel please identify yourselves for the

8 08 record?

9 09 MS. MEYER: Katherine Meyer for the plaintiffs, your

10 10 Honor.

11 11 THE COURT: Ms. Meyer.

12 12 MS. SANERIB: Good afternoon, your Honor. Tonya

13 13 Sanerib for the plaintiffs.

14 14 MS. WINDERS: Good afternoon, your Honor. Delcianna

15 15 Winders for the plaintiff.

16 16 THE COURT: Good afternoon.

17 17 MS. SINNOTT: Good afternoon. Michelle Sinnott, tech,

18 18 for the plaintiffs.

19 19 THE COURT: Good afternoon.

20 20 MR. SIMPSON: Good afternoon, your Honor. John

21 21 Simpson for the defendant.

22 22 MS. PARDO: Michelle Pardo for the defendant.

23 23 MS. PETTEWAY: Kara Petteway for the defendant.

24 24 MS. JOINER: Good afternoon, your Honor. Lisa Joiner

25 25 for the defendant.

1 00004:01 MR. SHEA: Good afternoon, your Honor. Lance Shea for
2 02 the defendant.

3 03 MS. STRAUSS: Good afternoon, your Honor. Julie
4 04 Strauss for Feld Entertainment.

5 05 MR. PALISOUL: Derrick Palisoul, showing exhibits.

6 06 THE COURT: Before you leave this afternoon, I want
7 07 both sides -- I know you've been keeping time for yourselves for
8 08 your opponents, I know you have. I'd be interested to see what
9 09 you have to say about the time for your opponents and yourself.
10 10 If you're doing a good job, I'm going to say keeping doing what
11 11 you are doing. It's a distracting, but it's important, and I
12 12 carved out time on these occasions, but it's a distraction, but
13 13 before you leave today, let me just see what you've been doing
14 14 and we'll plan accordingly.

15 15 I'm sorry for the delay. I had this other matter this
16 16 morning, and after that hearing there was some collateral things
17 17 that we had to deal with regarding that case, and we had to take
18 18 at least twenty minutes for lunch, so I'm sorry for the delay.

19 19 We'll start. I don't plan to sit past 5:30 today
20 20 unless it's absolutely necessary to accommodate some out-of-town
21 21 witness. But let's go ahead and proceed.

22 22 MS. MEYER: Thank you, your Honor.
23 23 We'd like to call to the stand Louis Gedo.

24 24 THE COURT: All right.

25 25 COURTROOM DEPUTY: Please raise your right hand.

1 00005:01 Do you solemnly swear that the testimony you're about
2 02 to give will be the truth, the whole truth, and nothing but the
3 03 truth?
4 04 MR. GEDO: I do, yes.
5 05 THE COURT: Good afternoon, sir.
6 06 THE WITNESS: Good afternoon.
7 07 LOUIS KEITH GEDO, WITNESS FOR THE PLAINTIFFS, SWORN
8 08 DIRECT EXAMINATION
9 09 BY MS. MEYER:
10 10 Q. Would you please state your name for the record?
11 11 A. Lewis Keith Gedo.
12 12 Q. Mr. Gedo, have you ever taken video footage of the inside
13 13 of the Ringling Brothers Circus?
14 14 THE COURT: How do you spell your surname?
15 15 THE WITNESS: G-e-d-o, Gedo.
16 16 THE COURT: All right.
17 17 BY MS. MEYER:
18 18 Q. Mr. Gedo, have you ever taken video footage of the inside
19 19 of the Ringling Brothers Circus train?
20 20 A. Yes, I have.
21 21 Q. And when did you take that footage?
22 22 A. In March, I believe, 14th, 2000.
23 23 Q. And do you know which unit that was of the circus?
24 24 A. Yes. It was the Blue Unit.
25 25 Q. And how do you know that?

1 00006:01 A. The emblem on the side of the train was blue.
2 02 Q. Okay. And where did you take that video footage?
3 03 A. In Long Island, Union Dale.
4 04 Q. Have you had an opportunity to review plaintiff's will call
5 05 Exhibit 130?
6 06 A. Yes, I have.
7 07 Q. And did you take the video footage that's on Plaintiffs'
8 08 Will Call Exhibit 130?
9 09 A. Yes, I have.
10 10 Q. And is that the video footage that you took in March 2000
11 11 in Union Dale, Long Island?
12 12 A. Correct, yes.
13 13 Q. And does that video footage contained in Exhibit 130
14 14 accurately depict that you saw that day in March 2000?
15 15 A. Yes, it does.
16 16 Q. I'd like to show Mr. Gedo a clip from Plaintiffs' Exhibit
17 17 130, your Honor.
18 18 THE COURT: All right.
19 19 MS. MEYER: And the clip that I'm showing is time-
20 20 stamped 3 minutes and 35 seconds through 5 minutes and 35
21 21 seconds.
22 22 (Video played.)
23 23 BY MS. MEYER:
24 24 Q. Mr. Gedo, did you take that video footage?
25 25 A. Absolutely. Yes, I did.

1 00007:01 Q. Does the accurately depict what you personally observed in
2 02 March 2000 on Long Island?
3 03 A. Yes, it does.
4 04 MS. MEYER: I'd like to move in Exhibit 130, your
5 05 Honor.
6 06 THE COURT: All right.
7 07 Objection?
8 08 MS. PETTEWAY: No objection, your Honor.
9 09 THE COURT: Admitted.
10 10 (Plaintiffs' Exhibit No. 130 was admitted into
11 11 evidence at about 1:02 p.m.)
12 12 BY MS. MEYER:
13 13 Q. Now, Mr. Gedo, did you also have opportunity to review
14 14 Plaintiffs' Exhibit 133?
15 15 A. Yes, I did.
16 16 Q. And was a portion of the videotape that we -- that is
17 17 included on Exhibit 130, also included on Exhibit 133?
18 18 A. Yes, it is.
19 19 MS. MEYER: I have no further questions.
20 20 THE COURT: Any cross-examination?
21 21 MS. PETTEWAY: Yes, your Honor.
22 22 Kara Petteway on behalf of the defendant.
23 23 THE COURT: Counsel.
24 24 CROSS-EXAMINATION
25 25 BY MS. PETTEWAY:

1 00008:01 Q. Good afternoon, Mr. Gedo.

2 02 A. Hi, counselor.

3 03 Q. Do you know who the plaintiffs in this case are?

4 04 A. Not completely, no, I don't.

5 05 Q. Did you send the videotape footage in Plaintiffs' Exhibit

6 06 130 to the plaintiffs?

7 07 A. No, I did not.

8 08 Q. Do you know how the plaintiffs in this case came to be in

9 09 possession of your videotape footage?

10 10 THE COURT: I don't think he knows who the plaintiffs

11 11 -- do you know who the plaintiffs are?

12 12 THE WITNESS: I believe I know one of the plaintiffs,

13 13 Animal Welfare Institute, but other than that, I'm not entirely

14 14 sure if there's any other plaintiffs.

15 15 BY MS. PETTEWAY:

16 16 Q. So do you know how the plaintiffs in this case came to be

17 17 in possession of your videotape footage?

18 18 MS. MEYER: Objection, your Honor.

19 19 THE WITNESS: I do not.

20 20 THE COURT: To the extent he says -- he said he

21 21 doesn't know anyway. I'll allow the answer.

22 22 BY MS. PETTEWAY:

23 23 Q. You did submit this videotape footage to In Defense of

24 24 Animals, correct?

25 25 A. Correct, yes.

1 00009:01 Q. Otherwise known as IDA?
2 02 A. Correct.
3 03 Q. Did you send this videotape footage to the United States
4 04 Department of Agriculture?
5 05 A. I did not, no.
6 06 Q. Did you send it to any other state or local authority?
7 07 A. No, I did not.
8 08 Q. When did you send this videotape footage to IDA?
9 09 A. In 2000. Probably sometime in the summer. I'm not exactly
10 10 sure what month it was, but ...
11 11 Q. And you took this videotape footage in March?
12 12 A. Um-hmm.
13 13 Q. Why did you wait several months before sending it to IDA?
14 14 A. Because I didn't know who to turn to. I didn't know where
15 15 to go with this footage. I was beside myself in seeing the, you
16 16 know, the elephants, and I had no idea who to go to, where to
17 17 turn to.
18 18 Q. What did you do with the footage after you took it but
19 19 before you sent it to IDA?
20 20 A. I had the footage with me. It was in my home.
21 21 Q. Did you alter it in any way?
22 22 A. I did not.
23 23 Q. You submitted this videotape footage to IDA anonymously,
24 24 correct?
25 25 A. I believe I did. I don't know if I -- I don't recall if I

1 00010:01 actually put my name on the envelope on the outside, so I may
2 02 have submitted it anonymously.

3 03 Q. Were you a member of the IDA at the time you took this
4 04 videotape footage?

5 05 A. I was not, no.

6 06 THE COURT: Let me ask you this: You said were you
7 07 beside yourself when you saw the elephants. What do you mean by
8 08 that?

9 09 THE WITNESS: What I mean by that, emotionally it was
10 10 difficult for me to take all of it in. Previously I had heard
11 11 about the conditions, but when I actually saw that being there,
12 12 emotionally it was very difficult for me, so I guess it took me
13 13 a while to emotionally deal with, you know, deal with what I had
14 14 seen.

15 15 BY MS. PETTEWAY:

16 16 Q. How did you come into contact with plaintiffs or
17 17 plaintiffs' counsel in this case?

18 18 A. I was contacted -- I don't remember if it was by phone, I'm
19 19 not entire sure. I was contacted by the plaintiff. I guess it
20 20 was the -- from what I recall, it was the, you know, the
21 21 attorneys for the plaintiffs.

22 22 Q. Do you recall when that conversation took place?

23 23 A. Last year. End of the summer maybe. Sometime in the
24 24 summer.

25 25 THE COURT: What portion of that photo? You took that

1 00011:01 film footage. I wasn't there obviously. What is it about that
2 02 film footage that resulted in your concluding that you were just
3 03 beside yourself? What part of it was it that stressed you?

4 04 THE WITNESS: That's a good question, your Honor.

5 05 THE COURT: You were distressed, right?

6 06 THE WITNESS: I was.

7 07 THE COURT: What part of it was it? Or maybe all of
8 08 it was. I don't know, you tell me. If you need to be shown it
9 09 again, that's fine.

10 10 THE WITNESS: Even watching it now, emotionally it was
11 11 a little troubling because I have animals at home, companion
12 12 animals, and it just, it seemed for sentient individuals to be
13 13 confined in those situations, it just --

14 14 THE COURT: There are different elements of
15 15 confinement, though, in those films.

16 16 Actually, can we see it again?

17 17 What confinement are you focusing on?

18 18 THE WITNESS: In the tiny boxcars. I mean, you can
19 19 actually see that their heads are almost glazing the top and
20 20 their bodies are up against the walls. I mean, it's a tight,
21 21 very tight confinement, and they're chained obviously.

22 22 THE COURT: So those are the two confinements that
23 23 you're talking about. I don't know what that is. Is that a
24 24 cage?

25 25 THE WITNESS: It's actually inside the train in the

1 00012:01 boxcar.

2 02 THE COURT: The train.

3 03 (Video played.)

4 04 THE WITNESS: Also, I mean, the smell, it was -- they

5 05 were standing in urine and feces. Just the whole thing was

6 06 emotionally really difficult.

7 07 THE COURT: All right.

8 08 THE WITNESS: You can hear them breathing. To me it

9 09 sounded a little bit laborious, but I don't know when you see

10 10 them tugging on the chains.

11 11 THE COURT: All right. Thank you.

12 12 Sorry. It's your cross-examination. I'm sorry. I

13 13 didn't want to wait until later and ask him. It's nonjury. So

14 14 I'm sorry to interrupt you. Go right ahead, counsel.

15 15 BY MS. PETTEWAY:

16 16 Q. Mr. Gedo, did you film this footage with a zoom lens?

17 17 A. I had a video camera that had -- it had a zoom feature,

18 18 yes, and there are probably times when I did use the zoom

19 19 feature to focus in on the feet, the chains, so, yeah, I would

20 20 say it does have a zoom feature.

21 21 Q. Were you actually inside the train car when you took the

22 22 footage?

23 23 A. I was not.

24 24 Q. So you were on the outside of the train car?

25 25 A. There's actually doors, and on each end of the boxcar

1 00013:01 there's windows opening, no glass. On the end of the boxcars
2 02 there's openings. I call them windows. They look like windows.
3 03 They're about three feet off the ground.
4 04 Q. You were able to get a close view of the elephants,
5 05 correct?
6 06 A. I was, yes.
7 07 Q. Have you been inside or have you had the opportunity to
8 08 view inside of a Ringling Brothers' train car since the time you
9 09 took this footage in March of 2000?
10 10 A. Not since this time, no.
11 11 Actually, I stand corrected. I was actually inside
12 12 one of the Ringling Brothers' cars, but not with the elephant
13 13 cars. It was the car with the horses in there, so it wasn't --
14 14 because there's several cars to this train and one of them
15 15 contains the horses chained up and that car was actually inside,
16 16 but not with the elephants. It was I just had no opportunity to
17 17 go in there, and I didn't necessarily want to be in there any-
18 18 way.
19 19 Q. So you have not had the opportunity to view the inside of
20 20 an elephant car since March of 2000?
21 21 A. That's correct.
22 22 Q. And you do not know if any changes have been made to
23 23 Ringling elephant train car since that time, do you?
24 24 A. I'm not aware of that. I haven't been inside so I can't
25 25 answer that there is or isn't, but I'm not aware.

1 00014:01 Q. And you're not aware that fewer elephants ride per train
2 02 car now than they did in 2000?
3 03 MS. MEYER: Objection, your Honor; assuming facts not
4 04 in evidence.
5 05 THE COURT: I'll allow the question.
6 06 If you're aware.
7 07 THE WITNESS: I'm not aware.
8 08 BY MS. PETTEWAY:
9 09 Q. On the date that you took this footage, you didn't record
10 10 it with an automatic date and time stamp, did you?
11 11 A. I don't recall. I may not have. I don't recall.
12 12 Q. And on the date that you took this footage, did you film
13 13 continually or did you turn your camera on or off?
14 14 A. There were times when I turned it off when I was moving
15 15 from one end of the car to the other, or the train, from one end
16 16 of the train to the other end.
17 17 Q. How many hours of footage did you take that day?
18 18 A. Certainly less than an hour. I think it was less than an
19 19 hour.
20 20 Q. Did you film the circus at all during the other days it was
21 21 in Union Dale?
22 22 A. I did not, no.
23 23 Q. You testified earlier you sent the raw footage to IDA?
24 24 A. It was footage. I don't recall if it was raw footage. I
25 25 know that I did not send them the actual tape itself. That I

1 00015:01 kept. I still have that, the original tape. So I transferred
2 02 on to a VHS tape, which I did send to them, and on that tape
3 03 that I sent to them I put, you know, a title or words or
4 04 something like that, which I think you'll see in Exhibit 133 or
5 05 whatever, but I didn't actually send them the initial footage
6 06 that I took.

7 07 Q. So just so I'm understanding, you did put the title on the
8 08 film before you sent it to IDA?

9 09 A. I did, yes.

10 10 Q. So you did alter the footage before you sent it to IDA?

11 11 A. I can't recall altering the footage. If you consider
12 12 putting words in the beginning and the end of the footage
13 13 altering, then ...

14 14 Q. If we could pull up Plaintiffs' Will Call Exhibit 130 and
15 15 play from the beginning to ten seconds.

16 16 (Video played.)

17 17 Mr. Gedo, this is the screen that you added on before
18 18 you sent the footage to IDA?

19 19 A. Yes, it is.

20 20 Q. You've never worked for a circus, have you?

21 21 A. I have not, no.

22 22 Q. And you've never trained an Asian elephant?

23 23 A. No, I have not, not in this lifetime.

24 24 Q. You've never worked with an elephant?

25 25 A. I have not.

1 00016:01 MS. PETTEWAY: Nothing further.

2 02 THE COURT: What did you say, not in this lifetime?

3 03 THE WITNESS: Yes, I said that.

4 04 THE COURT: Tell us about when you did train

5 05 elephants.

6 06 THE WITNESS: I never -- I have never trained an Asian

7 07 elephant. I apologize for that.

8 08 THE COURT: I'm not deducting three minutes. I

9 09 interrupted your cross-examination for at least three minutes,

10 10 so to the time-keepers of the courtroom, do not deduct three

11 11 minutes from cross-examination, all right?

12 12 MS. PETTEWAY: Thank you, your Honor.

13 13 THE COURT: Redirect?

14 14 MS. MEYER: I have nothing further, your Honor.

15 15 THE COURT: All right.

16 16 Thank you.

17 17 THE WITNESS: Thank you.

18 18 THE COURT: I'm going to excuse the witness.

19 19 Are you traveling outside D.C. today, Washington,

20 20 D.C.?

21 21 THE WITNESS: Tomorrow.

22 22 THE COURT: I have to ask you that you not discuss

23 23 your testimony with any of the other participants in this case,

24 24 the witnesses or the attorneys.

25 25 THE WITNESS: Sure.

1 00017:01 THE COURT: Thank you very much.

2 02 THE WITNESS: Thank you, your Honor.

3 03 THE COURT: So the record is accurate,
4 04 cross-examination ended at I'll say 1:13. I spent at least
5 05 three minutes asking questions. I think that's reasonable.

6 06 All right. Now you tell me we could use this time
7 07 this afternoon. You had two witnesses?

8 08 MS. MEYER: Yes, your Honor.

9 09 THE COURT: Is your next witness longer or shorter
10 10 than that witness?

11 11 MS. MEYER: Longer.

12 12 THE COURT: All right.

13 13 MS. MEYER: Yes, your Honor, we'd like to call to the
14 14 stand Joseph Patrick CuvIELLO.

15 15 THE COURT: How do you spell the surname?

16 16 MS. MEYER: C-u-v-i-e-l-l-o.

17 17 COURTROOM DEPUTY: Please raise your right hand.
18 18 Do you solemnly swear that the testimony you are about
19 19 to give will be the truth, the whole truth, and nothing but the
20 20 truth?

21 21 MR. CUVIELLO: I do.

22 22 COURTROOM DEPUTY: Have a seat.

23 23 THE COURT: Good afternoon, sir.

24 24 THE WITNESS: Good morning, your Honor. Good
25 25 afternoon.

1 00018:01 THE COURT: Everyone does that.

2 02 JOSEPH PATRICK CUVIELLO, WITNESS FOR THE PLAINTIFFS, SW

3 03 BY MS. MEYER:

4 04 Q. Would you please state your name for the record?

5 05 A. My full name is Joseph Patrick CuvIELlo.

6 06 Q. And what do you go by?

7 07 A. Pat CuvIELlo.

8 08 Q. Where do you live, Mr. CuvIELlo?

9 09 A. I live in San Mateo County, California.

10 10 Q. How long have you lived there?

11 11 A. I've lived there about fourteen years.

12 12 Q. Are you familiar with the claims the plaintiffs have made

13 13 in this case?

14 14 A. Yes, I am.

15 15 Q. What are they?

16 16 A. That the Ringling Brothers Circus is in violation of the

17 17 Endangered Species Act by harming or harassing the elephants.

18 18 Q. And do you know why you've been called as a witness in this

19 19 case by the plaintiffs?

20 20 A. Yes, I do.

21 21 Q. Why is that?

22 22 A. Because I have taken videotape of some of the treatment of

23 23 the elephants at Ringling Brothers Circus.

24 24 Q. Have you had an opportunity to observe the Ringling

25 25 Brothers Circus over the years?

1 00019:01 A. Yes, I have.

2 02 Q. And for how long have you been observing the Ringling

3 03 Brothers Circus?

4 04 A. About twenty years now.

5 05 Q. When did you first start monitoring the Ringling Brothers

6 06 Circus?

7 07 A. I first went out to leaflet at Ringling Brothers Circus I

8 08 believe it was 1988, and then I think I started videotaping

9 09 Ringling in 1989.

10 10 Q. Okay. And when you first started monitoring the circus,

11 11 were you part of a group?

12 12 A. Yes, I was.

13 13 Q. What was the name of the group?

14 14 A. The name of the group monitoring the circus was called

15 15 Animal Rights Connection.

16 16 Q. All right. Is that a nonprofit organization?

17 17 A. It was a grass roots organization. It wasn't registered.

18 18 Q. And have you monitored the circus as part of any other

19 19 groups over the years?

20 20 A. Yes. As part of a group called Citizens for Cruelty

21 21 Circuses, and then it morphed into Circuses For Cruelty For

22 22 Entertainment.

23 23 Q. Are those also grass roots groups?

24 24 A. Yes.

25 25 Q. What were the purpose of these groups?

1 00020:01 A. The purpose of the Animal Rights Connection was to educate
2 02 people about treatment of animals in our society in different
3 03 areas, like the meat industry, the circus industry, the rodeos.
4 04 The purpose of Citizens For Cruelty For Entertainment or
5 05 Citizens For Cruelty For Circuses was specifically to focus on
6 06 circuses coming through the Bay area.
7 07 Q. Okay. And are these groups still in existence?
8 08 A. Citizens For Cruelty For Entertainment is.
9 09 Q. All right. Now, how many times since 1988 have you
10 10 personally monitored the Ringling Brothers Circus in some
11 11 respect?
12 12 A. I monitored Ringling every year they come through the Bay
13 13 area. They come through usually late August/early September,
14 14 and they play -- now they play -- initially they played two
15 15 cities, and then they added San Jose who added an arena, so
16 16 there were three cities and now they're down to two cities in
17 17 the Bay area again, so I've monitored them every year for twenty
18 18 years.
19 19 Q. Which cities have you had the opportunity to monitor the
20 20 circus in?
21 21 A. Oakland, California, Daly City California, which is just
22 22 south of San Francisco, California, San Jose, California,
23 23 Stockton, California, Sacramento, California, Fresno,
24 24 California, San Diego California, Los Angeles, California, and I
25 25 also monitored them in Rosemont, Illinois one year as well.

1 00021:01 Q. When was that?

2 02 A. I think it was 2005.

3 03 Q. Okay. Are you familiar with the different units of the

4 04 circus?

5 05 A. Yes.

6 06 Q. What are they?

7 07 A. The Red and the Blue Unit.

8 08 Q. And have you had an opportunity to observe the Blue Unit

9 09 over the years?

10 10 A. Yes.

11 11 Q. How many times have you observed the Blue Unit?

12 12 A. Blue Unit, they switch off every year. They alternate

13 13 coming. So if I've been doing it twenty years, probably ten

14 14 times the Blue and ten times the Red.

15 15 Q. Okay. What parts of the Ringling Brothers Circus

16 16 operations have you had an opportunity to observe?

17 17 A. I observed the handling of the animals, and the living

18 18 conditions of the animals.

19 19 Q. Okay. Have you observed the unloading of the train when

20 20 the circus arrives in the city?

21 21 A. Yes.

22 22 Q. Have you had an opportunity to observe the animal walks

23 23 from the train to the arenas where the circus will perform?

24 24 A. Yes.

25 25 Q. Have you had an opportunity to observe the place where the

1 00022:01 elephants are kept when they're not performing?
2 02 A. Yes.
3 03 Q. Have you had an opportunity to observe the elephants being
4 04 walked back to the train and loaded on to the train to go to
5 05 another city?
6 06 A. Yes.
7 07 Q. Do you know what a bullhook is?
8 08 A. Yes, I do.
9 09 Q. Can you describe it, please?
10 10 A. A bullhook is about a one-and-a-half to three-foot stick.
11 11 And it has a steel apparatus on the end of it. It looks like a
12 12 fireplace poker.
13 13 Q. Okay. And when you say it has a steel something on the end
14 14 of it, could you describe it?
15 15 A. It has a hook and a point, so it's kind of like that, like
16 16 a fireplace -- resembling a fireplace poker.
17 17 Q. Have you had an opportunity to see Ringling Brothers'
18 18 personnel use bullhooks with elephants over the years?
19 19 A. Yes, I have.
20 20 Q. How many times have you had that opportunity?
21 21 A. Hundreds.
22 22 Q. Can you describe the ways in which you've seen Ringling
23 23 Brothers' employees use the bullhook with the elephants?
24 24 A. I've seen the employees swing the hook like a stick and hit
25 25 the elephants with it, hit them up like that. I've seen them

1 00023:01 jab the elephants with the pointed-tip end, I've seen them use
2 02 the hook end and hook the elephant, put it under their chin to
3 03 hook them, put it behind their ear, hook them on top of their
4 04 like front leg/back leg, hook them that way, and I've seen them
5 05 threaten the elephants like hold it up like they're going to hit
6 06 them, or when they issue a command and the elephant doesn't
7 07 respond, they might swing the hook in front of their face to get
8 08 them to respond.

9 09 Q. And when you say you've seen elephant hook an elephant,
10 10 could you describe -- I'm sorry. When you say you've seen the
11 11 Ringling Brothers' personnel hook the elephants, can you
12 12 describe what you mean by that?

13 13 A. Yeah. The hook end of the bullhook, they'll take the hook
14 14 and they'll, for instance, under the chin, they'll put it under
15 15 the chin and they'll jerk it really hard to get the elephant to
16 16 respond to their command.

17 17 Q. Where on the bodies of the elephants have you seen Ringling
18 18 Brothers' handlers hook elephants?

19 19 A. I've seen them hook under the chin, I've seen them hook
20 20 behind the ear, on top of the ears, behind the right -- or not
21 21 the right. Behind the front leg, behind the -- on the back end
22 22 of the elephant, the butt, and on the foot. I've seen them hook
23 23 on the foot as well.

24 24 Q. Okay. And how many different handlers have you seen use
25 25 the bullhook in this way?

1 00024:01 A. Many. Many different handlers.

2 02 Q. And I think you also said you've seen handlers jab

3 03 elephants with bullhooks; is that correct?

4 04 A. That's correct.

5 05 Q. Could you describe what you mean by "jab"?

6 06 A. They take the bullhook with the pointed end and they'll

7 07 just jab the elephant with it.

8 08 Q. Where on the bodies of elephants have you seen handlers jab

9 09 elephants with bullhook?

10 10 A. I've seen them jab it typically being near the front leg on

11 11 the body.

12 12 Q. Okay. And how often do you see that?

13 13 A. Not that often.

14 14 Q. And you also said hitting, you've seen handlers hit the

15 15 elephants with bullhooks?

16 16 A. Yes.

17 17 Q. Can you describe what you mean by that?

18 18 A. I've seen handlers hit the elephants. I saw one hit him on

19 19 the trunk with the bullhook yet like a stick, on the trunk.

20 20 I've seen them hit them on the chin. That's all I can think of

21 21 at the moment.

22 22 Q. Okay. When is the last time you saw the Blue Unit of the

23 23 Ringling Brothers Circus?

24 24 A. The Blue Unit was in the Bay area last year, so it would

25 25 have been late August/early September.

1 00025:01 Q. And where did you see the Blue Unit?
2 02 A. I saw them in San Jose, California, Oakland California,
3 03 Stockton, California and Sacramento, California.
4 04 Q. Do you know the names of any of the circus employees who
5 05 were handling elephants on the Blue Unit when you saw it last
6 06 year?
7 07 A. Yes, I do.
8 08 Q. What are the names that you know?
9 09 A. There was Mike Hayword, there was Sonnie Ridley, there
10 10 was -- I don't know his last name, but his first name is
11 11 Ischium, there was a guy named David Polk there, and that's all
12 12 I can think of at the moment.
13 13 Q. Do you remember an individual named Brian Christiani?
14 14 A. Brian Christiani, yes, he was there.
15 15 Q. Do you know an individual named Alex Petrov?
16 16 A. Yes, I remember him too. He was there.
17 17 Q. How do you know the names of these handlers?
18 18 A. The names of the handlers, I get them from the programs.
19 19 Sometimes they're in the programs. Sometimes I hear the other
20 20 handlers calling them by name.
21 21 Q. Okay. Now, have you seen any of these individuals that
22 22 you've named use the bullhook on elephants in ways that you've
23 23 described here today?
24 24 A. Yes.
25 25 Q. Who have you seen?

1 00026:01 A. Mike Hayword, David Polk, Sonnie -- all of them.

2 02 Q. All right. Do you know the names of any other Ringling

3 03 Brothers' employees who used to handle elephants on the Blue

4 04 Unit?

5 05 A. Used to handle, yes.

6 06 Q. That you haven't already named.

7 07 A. Yes. There was Troy Metzler, Dave Waley, Daniel Rapho,

8 08 Andy Weller, Randy Peterson, Pat Harned. There was a guy named

9 09 David in 1998. I don't know his last name. There was another

10 10 guy named Jeff Pettegrew. Another Jeff; they called him Cue

11 11 Boy. Chipperfild, there was a guy named Chipperfild, Graham

12 12 Chipperfild, and that's all I can remember at the moment.

13 13 Q. How about an individual named Alex Vargus?

14 14 A. Alex Vargus.

15 15 Q. How about an individual named Randy Peterson?

16 16 A. Yes, Randy Peterson.

17 17 Q. How about an individual named Adam Hill?

18 18 A. Yes, I remember Adam Hill.

19 19 Oh, and there was another guy named Robby as well.

20 20 Q. How do you know these individuals' names?

21 21 A. Same thing: saw them in the program or just heard their

22 22 names called.

23 23 Q. Okay. Have you ever observed any of those individuals use

24 24 the bullhook on elephants in the way that you have described?

25 25 A. Yes.

1 00027:01 Q. And when is the last time you saw the Red Unit of the
2 02 circus?
3 03 A. The Red Unit would have been in 2007, late August/early
4 04 September.
5 05 Q. Before we get to that, I wanted to follow-up on a question.
6 06 You said you've observed some of the additional Blue Unit
7 07 handlers that you named use the bullhook on elephants in the way
8 08 you described. Who have you seen use the bullhook that way?
9 09 A. Daniel Rapho, Robby, Andy Weller, Adam Hill, Pat Harned,
10 10 and I think that's it.
11 11 Q. How about Troy Metzler?
12 12 A. Troy Metzler, yes, Troy Metzler.
13 13 Q. How about Alex Vargus?
14 14 A. Yes, Alex Vargus.
15 15 Q. How about Randy Peterson?
16 16 A. No, I never saw Randy Peterson use the bullhook on any of
17 17 them.
18 18 Q. How about Jeff Pettegrew?
19 19 A. Jeff Pettegrew, yes.
20 20 Q. I was asking you about the Red Unit. The last time you saw
21 21 the Red Unit was when?
22 22 A. 2007.
23 23 Q. Do you know the names of any of the Ringling Brothers'
24 24 handlers who were working on the Red Unit with elephants when
25 25 you last saw them?

1 00028:01 A. Alex Vargus was the one I remember, and I'm drawing a blank
2 02 on some of the other names, but Alex Vargus was with them in
3 03 2007.
4 04 Q. How do you know who Alex Vargus is?
5 05 A. Alex has been there for years, so I've seen him in the
6 06 program and I've heard his name called as well.
7 07 Q. Have you ever observed Mr. Vargus use the bullhook on an
8 08 elephant in the ways that you've described?
9 09 A. Yes, I have.
10 10 Q. What have you seen?
11 11 A. I've seen him hook the elephant while they were walking
12 12 them to the arena. I've seen them hook the elephant on the
13 13 head.
14 14 Q. Okay. And are you familiar with any of the Ringling
15 15 Brothers' employees who used to handle elephants for the Red
16 16 Unit?
17 17 A. Yes.
18 18 Q. Who do you know?
19 19 A. Gunther Gebel-Williams, Mark Gebel, Sacha Houck, Sacha
20 20 Houck. Let's see. That's all I can think of at the moment.
21 21 Q. How do you know these individuals?
22 22 A. Well, Gunther was their famous elephant trainer, so he was
23 23 all over. I knew him from the program, and prior to even going
24 24 out to the circus I had heard of Gunther, and then Mark was his
25 25 son. So I would hang around the circus. I saw Mark as his son

1 00029:01 and he was in the program as well, and Sacha Houck was in the
2 02 program as well. There was another guy named Rick Boker. Rick
3 03 Boker was another guy on the Red Unit.
4 04 Q. Okay. And how many times did you have an opportunity to
5 05 observe Gunther Gebel-Williams?
6 06 A. Many times.
7 07 Q. All right. Did you ever observe any of these individuals
8 08 that you've just named use a bullhook in the ways you've
9 09 described?
10 10 A. Yes. All of them.
11 11 Q. Do you remember any particular incidents?
12 12 A. Yes, I remember one. I think it was either '89 or '91.
13 13 They were unloading the elephants from the Oakland train, and
14 14 when they unload the elephants they pull them off the train and
15 15 there's a dirt berm there they have to walk down to on the
16 16 street but they hold them on the dirt berm and the elephants are
17 17 facing the train. One of the elephants -- I can't remember her
18 18 name -- Mark Gebel was standing there next to her and there was
19 19 some problem there and he was hooking her and Gunther came over
20 20 and starting hooking her and she was screaming, and this went on
21 21 for a good five minutes.
22 22 Q. Okay. Do you remember any other particular incidents?
23 23 A. Sacha Houck, I remember quite a few incidents with him,
24 24 where he was coming out of the show in San Jose hooking the
25 25 elephants. Gunther was a big hooker. I saw him hooking quite a

1 00030:01 few times coming off the train.

2 02 Q. Can you describe what you saw?

3 03 A. Pardon me?

4 04 Q. Can you describe what you saw?

5 05 A. Yeah. It was in Sacramento. They unloaded from the train,

6 06 and Gunther was hooking the elephants and hitting the elephants,

7 07 that they were standing there waiting to walk from the train to

8 08 the arena.

9 09 Let's see. Rick Boker, I saw him hooking the elephant

10 10 off unloading the train in Daly City going to the Cow Palace,

11 11 and Mark, same thing, that time in Daly City too. I was in one

12 12 going to Cow Palace. I didn't see Mark Houck that much, though,

13 13 I have to say.

14 14 Q. Okay. And have you had occasion to observe how the

15 15 elephants react to the use of the bullhook in the ways you've

16 16 described?

17 17 A. Yes I have.

18 18 Q. What have you observed?

19 19 A. Well, they respond to the command. If they say "move up"

20 20 and they don't move up and they hook them, they'll move up.

21 21 They'll back away from the hook. And those are basically the

22 22 two responses I've seen.

23 23 Q. Okay. And have you observed the Ringling Brothers'

24 24 elephants behave in any other way around the bullhook?

25 25 A. Just, you know, if it's a wield, they have a fear of it.

1 00031:01 They seem to be afraid of it.

2 02 Q. Have you seen both young and adult elephants being used on

3 03 both units?

4 04 A. Yes, I have.

5 05 Q. And how do you know whether an elephant is a young

6 06 elephant?

7 07 A. Well, they're typically a lot smaller than the other

8 08 elephants and they have a lot more hair.

9 09 Q. And based on your observations, are the young elephants

10 10 treated any differently than the adult elephants with respect to

11 11 the bullhook? I'm sorry.

12 12 A. The young elephants seem to be hooked a whole lot more.

13 13 Q. What have you observed?

14 14 A. The elephants, I remember in 2000 they had three elephants,

15 15 Kelly Ann, Julietta, and Boin. They were young elephants, and

16 16 they were in the Cow Palace at the Cow Palace building in the

17 17 Cow Palace building, and they were hitting the young elephants.

18 18 They were hooking them, yelling at them quite a bit, and I

19 19 remember on the walk in 2002 when they had two young elephants,

20 20 Doc and Angelica, the walk to the train to Cow Palace, Mike

21 21 Hayword was hooking Angelica quite a bit. And in the walk from

22 22 Sacramento from the train to the arena Troy Metzler was hooking

23 23 Angelica quite a bit.

24 24 Q. Who is Troy Metzler?

25 25 A. Troy Metzler, he is one or was one of the Ringling handlers

1 00032:01 with the Blue Unit.

2 02 Q. Did you have an opportunity to observe whether Mr. Metzler

3 03 had responsibility for any particular elephants?

4 04 A. Troy Metzler seemed to be the one in charge of the young

5 05 elephants in 2000 and in 2002, and then he seemed to be in

6 06 charge of all the elephants in 2004 and 2006. In 2006 was the

7 07 last year I saw Troy Metzler with the Blue Unit.

8 08 Q. Okay. Have you ever seen a Ringling Brothers' employee hit

9 09 an elephant with a bullhook in front of another Ringling

10 10 Brothers' employee?

11 11 A. Yes.

12 12 Q. How often have you seen that?

13 13 A. Every time I saw them hit an elephant it was in front of

14 14 other employees.

15 15 Q. Okay. Now I'd like to go through each of the parts of

16 16 circus you said that you had observed and ask you some questions

17 17 about it.

18 18 You mentioned that you've seen the unloadings of the

19 19 elephants from the train; is that correct?

20 20 A. Yes, that's correct.

21 21 Q. And can you describe what you mean by that?

22 22 A. Ringling travels by train, so they load -- they move the

23 23 animals from town to town, and the people, or a good deal of the

24 24 people, go from town to town by the train, and when they pull in

25 25 to the town, they have to unload the animals from the train to

1 00033:01 get them to the arena, and the elephants and the horses, they
2 02 typically walk to the arena. The tigers, they have wheeled
3 03 cages that they just wheel them to the arena or drive them to
4 04 the arena. With the elephants and the horses, they will open
5 05 the doors on the train, they have the animal cars, and they'll
6 06 open the doors on the train and they'll put up ramps and then
7 07 they'll, for the elephants, the handlers will go into the train
8 08 with their bullhook and they will move the animals out of the
9 09 train, and sometimes they use a bullhook, sometimes they don't,
10 10 and the elephants will walk down the ramp off the train and then
11 11 they'll stand there until they get them all unloaded and they're
12 12 ready to walk them from the train to the arena and then they'll
13 13 walk them all from the train to the arena.

14 14 Q. How many times have you seen these kinds of unloadings that
15 15 you've described?

16 16 A. Every year for twenty years at least two or three
17 17 unloadings.

18 18 Q. All right. Have you ever had opportunity to see inside the
19 19 Ringling Brothers train?

20 20 A. Yes.

21 21 Q. What did you observe?

22 22 A. The elephants were chained to the wall. They had one chain
23 23 around the one front leg of the elephant and they had a chain
24 24 around one back leg of the elephant. And I also observed hay on
25 25 the floor of the train and also feces the floor of the train as

1 00034:01 well.

2 02 Q. And were you able to see what kind of flooring the train

3 03 had?

4 04 A. I don't think I could see the flooring.

5 05 Q. Have you ever had to wait to see the animals actually

6 06 unloaded from the train once you got to the train?

7 07 A. Yes.

8 08 Q. And how often does that happen?

9 09 A. Typically I have to wait, once the train pulls in, I

10 10 usually get there before the train pulls in, but typically once

11 11 the train pulls in I have to wait, and that can vary from one

12 12 hour to ten hours.

13 13 Q. Okay. Do you remember any particular times when you had to

14 14 wait for the elephants to be unloaded from the train?

15 15 A. Yes. There were times in Sacramento, I remember, when

16 16 Graham Chipperfield was with the elephants. They pulled in late

17 17 morning and they didn't unload them until I think about five or

18 18 six at night. And San Jose same thing: they pulled in, they

19 19 pulled in early morning, and they didn't unload them until the

20 20 afternoon. San Diego 2006 they pulled in at night, like a

21 21 Monday night, and they didn't unload them until Tuesday morning.

22 22 Those are the ones I can think of offhand.

23 23 Q. All right. And you said the elephants are taken off the

24 24 train sometimes with use of the bullhook; is that correct?

25 25 A. I'm sorry?

1 00035:01 Q. I think you said the elephants are sometimes taken off the
2 02 train with the use of the bullhook; is that correct?
3 03 A. Yeah. They usually have a bullhook in their hand. If
4 04 they're using it or not -- they're not always using it to pull
5 05 them off the train.
6 06 Q. When the handlers are lining the elephants up after they
7 07 take them off the train, are they using commands?
8 08 A. They use commands and they have a bullhook and sometimes
9 09 they use the bullhook too.
10 10 Q. Can you actually hear them using the commands?
11 11 A. Yes.
12 12 Q. Have you ever observed handlers giving the elephants food
13 13 in connection with lining them up?
14 14 A. I've never seen that in lining them up, no.
15 15 Q. Have you had an opportunity to observe the number of
16 16 elephants that were on a railroad car together?
17 17 A. Yes.
18 18 Q. What have you observed?
19 19 A. The number varies. The last year they came I think they
20 20 only had seven elephants, and the most I've seen is twelve.
21 21 Q. Have you ever been able to see how many animals were on a
22 22 single train car together?
23 23 A. Single train car? I think it's been anywhere from two to,
24 24 two to six, maybe.
25 25 Q. Now, you've mentioned that you've had an opportunity to see

1 00036:01 the walks that are done from the train where the train pulls in
2 02 to the arena; is that correct?
3 03 A. That's correct.
4 04 Q. How many such walks have you observed?
5 05 A. Every year for twenty years two, at least two or three
6 06 cities, so, you know, thirty to forty walks.
7 07 Q. Can you describe how the walks are done?
8 08 A. Once they unload the elephants from the train, they line
9 09 them up and when they're ready to walk they'll walk down the
10 10 train in single file and the handlers will have their bullhooks,
11 11 and they'll typically want the elephants to hold each other's
12 12 tails and they'll walk them to the train -- or sorry -- walk
13 13 them from the train to the arena down the streets of the city.
14 14 Q. All right. And have you observed which side of the
15 15 elephant the handlers are on?
16 16 A. The handlers typically walk on the left side of the
17 17 elephants. Every now and then a handler will go on the right
18 18 side.
19 19 Q. And have you observed the handlers giving commands to the
20 20 elephants during the walk?
21 21 A. Yes.
22 22 Q. All right. Have you observed the handlers giving food to
23 23 the elephants during the walk?
24 24 A. No, I've never seen food.
25 25 Q. Have you had an opportunity to see Ringling Brothers'

1 00037:01 handlers use the bullhook on the elephants during the walk?

2 02 A. Yes.

3 03 Q. And what have you observed?

4 04 A. As I mentioned earlier, Troy Metzler with the baby

5 05 elephants or the young elephants, hooking them to keep them in

6 06 line. Mike Hayword as well. Typically I don't see them using

7 07 the hook too much on the walk.

8 08 Q. Okay. Now, you mentioned that you've also had an

9 09 opportunity to see where the elephants are kept at a particular

10 10 venue when they're not performing; is that correct?

11 11 A. That's correct.

12 12 Q. How often have you had that opportunity?

13 13 A. Every year for twenty years two or three times a year, so,

14 14 you know, thirty to forty.

15 15 Q. Can you describe how you have seen the elephants

16 16 maintained?

17 17 A. Yes. Before 2001 the elephants would be kept -- they would

18 18 put up a tent in the parking lots of the arenas and they would

19 19 keep the elephants under the tent and they would keep them

20 20 chained in the line where they would have a line of chains

21 21 behind the elephant and a line of chains in front of the

22 22 elephant and coming off that chain would be a chain going to the

23 23 front leg of the elephant and a chain going to the back leg of

24 24 the elephant so they would be chained by two legs in place. And

25 25 in 1996 was the first year I saw where they had the elephants in

1 00038:01 what I called pens or corrals. You would put up poles in the
2 02 parking lot and they would square, you know, four poles and they
3 03 would tape it off as a square, and it was about twelve to
4 04 fourteen parking spaces, like two rows of six or seven parking
5 05 spaces, and they would let the elephants stand in the pen. And
6 06 I saw that first in '96, and then I didn't see that again until
7 07 2001, I believe, and every year prior to that they were chained
8 08 in line.

9 09 Q. Okay. And can you describe the kinds of chains that were
10 10 used on the elephants when they were chained in line?

11 11 A. Just a chain link, not a big thick chain, but just a chain.

12 12 Q. I'd like to show -- never mind.

13 13 And can you describe how much space the elephants had
14 14 to move around in when they were chained in a line like that?

15 15 A. They didn't have any space. They can't even turn around.

16 16 Q. When is the last time you saw elephants chained in a line
17 17 that way?

18 18 A. Chained in a line that way. I see it every year. They
19 19 chain them at night. During the day typically in the Bay area
20 20 they have them in the pens, but at night when they come out of
21 21 the last show they chain them up in line like that.

22 22 Q. Okay. And when was the last time you saw that?

23 23 A. That would be last year, last August or -- late August or
24 24 early September, San Jose; Stockton.

25 25 Q. In Stockton, did you say?

1 00039:01 A. In Stockton, yes.

2 02 Q. August 2008?

3 03 A. 2008, yes.

4 04 Q. How much room did the elephants have to move around?

5 05 A. When they're chained they don't have any room.

6 06 Q. Okay. Do they have an opportunity to explore their

7 07 surroundings.

8 08 A. No.

9 09 Q. Do they have an opportunity to interact with each other?

10 10 A. The ones that are chained next to them they can interact

11 11 with.

12 12 Q. The last time you saw elephants maintained in a line on

13 13 chains like that, do you know how long they were on chains?

14 14 A. I don't know. I wasn't there in the morning when they let

15 15 them off.

16 16 Q. Have you had an opportunity to observe what kind of surface

17 17 the elephants are chained on?

18 18 A. I've seen them chained on the regular parking lot, the

19 19 blacktop, and I've seen they had platforms sometimes. I don't

20 20 know what they have now. They had I think there were wooden

21 21 platforms they would have them stand on.

22 22 Q. Okay. Have you ever seen the elephants maintained on

23 23 grass?

24 24 A. No.

25 25 Q. Have you ever seen them maintained on dirt?

1 00040:01 A. No.

2 02 Q. And you said you have seen in recent years elephants in

3 03 pens during the daytime; is that correct?

4 04 A. That's correct.

5 05 Q. All right. And how often have you seen that?

6 06 A. I've seen that every year since -- well, I saw it first in

7 07 '96, and then I've seen it every year since 2001, so about seven

8 08 years.

9 09 Q. Okay.

10 10 A. The last seven years.

11 11 Q. And can you tell us what kind of surface the elephants are

12 12 on when they're in the pens?

13 13 A. It's the parking lot surface, the blacktop.

14 14 Q. Okay. And are the elephants unchained when they're in the

15 15 pens?

16 16 A. Most of them are unchained. There's typically there's one

17 17 that has one chain around one of its legs, usually a front leg,

18 18 and the chain is a longer chain though. It's not like a short

19 19 chain. But typically most I would say if there's seven

20 20 elephants, six of them are unchained. If there's twelve

21 21 elephants, eleven of them are unchained.

22 22 Q. Could you give Judge Sullivan an idea of how much space the

23 23 elephants have when they're in one of these pens that you're

24 24 describing?

25 25 A. Oh, well, as I said earlier, it's about two rows of six to

1 00041:01 seven parking spaces, and sometimes you know how there's a,
2 02 between parking spaces often times they're next to each other,
3 03 some people park like this and the road in between. Sometimes
4 04 there's the road in between or, you know, the driveway in
5 05 between the spaces, so I would say if I was to estimate, 30 x 30
6 06 feet.

7 07 Q. Okay. And how many elephants would be in one of those?
8 08 30 x 30 feet pens?

9 09 A. Anywhere from two to four.

10 10 Q. All right. Now, have you ever had an opportunity to
11 11 observe particular elephants that were maintained differently
12 12 than other elephants?

13 13 A. Well, sometimes some elephants are let in the pens and some
14 14 are --

15 15 MS. PARDO: Objection, your Honor.

16 16 THE COURT: I didn't understand the question. Why
17 17 don't you rephrase that question?

18 18 BY MS. MEYER:

19 19 Q. Have you ever observed elephants that were being kept in a
20 20 way that was different than the way the rest of the elephants
21 21 were being kept?

22 22 A. Sometimes, as I said, they have elephants, they'll let a
23 23 pen, the pens, and they'll have, and this is not -- I haven't
24 24 seen this often, but some elephants will be kept chained up
25 25 while the other ones are in the pens.

1 00042:01 Q. Okay. Now, when have you seen that?
2 02 A. The time I remember that stands out in my mind was 2004,
3 03 and that was in Oakland, and that was with the Blue Unit, and
4 04 there were two young elephants, Angelica and Sara, and Sara and
5 05 Angelica were kept chained up. Angelica was chained up the
6 06 whole time. I never saw her off chains in Oakland at all. Sara
7 07 was chained up, except during the animal open house, which is an
8 08 event before the performance starts, she would be in the pens at
9 09 that time and all other times she was chained up.
10 10 Q. Okay. Now, how do you know who these elephants are?
11 11 A. The elephants are often in the program. They talk about
12 12 the elephants in the program.
13 13 Q. Do you know how old the elephant, Sara, was that you're
14 14 describing when you saw her in 2004?
15 15 A. In 2004, my recollection is that Sara was three years old.
16 16 Q. Do you know how old Angelica was at that point in time?
17 17 A. At that point in time my recollection is she was seven
18 18 years old.
19 19 Q. Okay. And how much time did you have to observe Sara and
20 20 Angelica in 2004 in Oakland?
21 21 A. In Oakland in 2004, their performances were Wednesday
22 22 through Sunday, and they had one performance Wednesday,
23 23 Thursday, Friday, three performances on Saturday, and I'm not
24 24 sure if they had two or three performances on Sunday, but the
25 25 performances are about two-and-a-half hours, and when you add in

1 00043:01 the hour-and-a-half prior where they have the animal open house,
2 02 then we're looking at about four hours, so on Wednesday,
3 03 Thursday, Friday, I was there at the circus about four hours and
4 04 I observed the elephants, Sara and Angelica, for about probably
5 05 two-and-a-half of those hours, and on Saturday they had three
6 06 shows, so I was at the circus probably about ten to eleven
7 07 hours, and on Sunday, if they had three shows, which I don't
8 08 think they did, they probably had two shows, I would be there
9 09 probably about eight hours, and during the time I observed the
10 10 elephants when I was there, Angelica was always chained up. I
11 11 never saw her off chains once, and Sara was chained up except in
12 12 the open house.

13 13 Q. Okay. Did you have an opportunity to observe how Sara was
14 14 behaving when she was chained?

15 15 A. Sara, when she was chained she was swaying back and forth,
16 16 which is typical of most of the elephants when they're chained.

17 17 MS. PARDO: Objection.

18 18 THE WITNESS: She was swaying back and forth.

19 19 MS. PARDO: I think he's going into the lay opinion
20 20 area.

21 21 THE COURT: I'm sorry, I couldn't hear you.

22 22 MS. PARDO: Objection. I think that calls for he's
23 23 testifying lay opinion.

24 24 THE COURT: I'll allow it.

25 25 These are your observations? Is that what you

1 00044:01 observed? You're not an expert in this, you're not an expert in
2 02 elephant behavior, correct?
3 03 THE WITNESS: Correct.
4 04 THE COURT: All right. So just tell us what you
5 05 observed.
6 06 THE WITNESS: Okay.
7 07 I observed Sara swaying back and forth. Sometimes she
8 08 would reach out towards Angelica.
9 09 THE COURT: These swayings took place under what
10 10 conditions that you observed?
11 11 THE WITNESS: Sara was chained by one front and one
12 12 back leg, and the chains -- it wasn't opposite front and back
13 13 leg, it was the same side of her body, and she was chained
14 14 underneath the tent, and she would sway back and forth, and Sara
15 15 and Angelica were chained facing each other so sometimes she
16 16 would reach out towards Angelica with her trunk.
17 17 BY MS. MEYER:
18 18 Q. Okay. And did you make any record of these observations
19 19 concerning Sara and Angelica?
20 20 A. Yes.
21 21 Q. What kind of a record did you make?
22 22 A. I video-taped it.
23 23 Q. All right.
24 24 MS. MEYER: Your Honor, I want to show a clip from a
25 25 videotape, and in order to authenticate it, I want to ask Mr.

1 00045:01 CuvIELlo whether or not this is videotape that he took, and
2 02 whether or not he --
3 03 THE COURT: You can ask your questions.
4 04 MS. MEYER: So I'd like to show the clip.
5 05 BY MS. MEYER:
6 06 Q. Did you in fact take videotape of Sara and Angelica in 2004
7 07 in Oakland?
8 08 A. Yes, I did.
9 09 Q. Okay. And did you take videotape of Sara and Angelica
10 10 engaging in the behavior that you have described here today?
11 11 A. Yes, I did.
12 12 Q. Is that the videotape that you said that you recorded?
13 13 A. Yes.
14 14 Q. Okay.
15 15 THE COURT: Are there time and date indicators?
16 16 THE WITNESS: I'd have to see the video. I'm not
17 17 sure. There should be on the video. There should be a
18 18 date/time stamp.
19 19 MS. MEYER: We're just going to show a --
20 20 THE COURT: Any objections? Any objections to him
21 21 seeing the tape so he can say whether or not this is his tape?
22 22 MS. PARDO: We do have an objection. The tape is
23 23 edited, and we don't believe that the witness has provided a
24 24 foundation that is complete enough, and that the tape is
25 25 misleading as edited.

1 00046:01 THE COURT: Certainly that may go to the weight that
2 02 the Court gives it. You can certainly cross-examine it.
3 03 Any additional foundation that you can lay for this
4 04 tape? Were you at the circus, obviously?
5 05 THE WITNESS: Yes.
6 06 THE COURT: What time of the year was it?
7 07 THE WITNESS: This was late August.
8 08 THE COURT: Lay some more foundation before you let
9 09 him see the tape.
10 10 MS. MEYER: I'm sorry, I didn't hear you.
11 11 THE COURT: Lay some more foundation before you let
12 12 him see the tape. What else about this tape before you let him
13 13 see the tape.
14 14 BY MS. MEYER:
15 15 Q. What's depicted on the tape that you saw?
16 16 A. Sara and Angelica are underneath the tent in the parking
17 17 lot at the Oakland Coliseum in Oakland, California, and they're
18 18 chained up and they're facing each other, and I believe they're
19 19 on wooden platforms chained up, and there are some handlers
20 20 around there as well, handlers or barnmen, blowing the area
21 21 around I believe at some point, and the elephants are basically
22 22 just standing there chained up swaying.
23 23 Q. Okay. And you said earlier that you observed the elephants
24 24 chained that way for some period of time; is that correct?
25 25 A. That's correct.

1 00047:01 Q. How many hours would you say you observed the elephants
2 02 chained in that way?
3 03 A. As I said, Angelica, every time I saw her during the five
4 04 days they were in Oakland, she was always chained. Sara at
5 05 least during the show, she was always chained.
6 06 Q. Okay. So if you had to estimate the number --
7 07 THE COURT: Are there any other identifying factors
8 08 about this tape that would lead you to conclude or lead someone
9 09 else to conclude that indeed the tape is yours?
10 10 THE WITNESS: Just my testimony.
11 11 THE COURT: Okay.
12 12 MS. MEYER: I think if I could show him the tape, your
13 13 Honor.
14 14 THE COURT: Go right ahead. This is fine. This is
15 15 all provisional anyway. Go ahead.
16 16 MS. MEYER: Thank you.
17 17 BY MS. MEYER:
18 18 Q. I'd like to show a clip from Will Call Exhibit 128, and the
19 19 clip that we're showing is timed 35 seconds to 2 minutes. I
20 20 want to show the tape first and then ask you some questions.
21 21 A. Okay.
22 22 (Video played.)
23 23 Q. Mr. CuvIELlo, did you take this video footage?
24 24 A. Yes, I did.
25 25 Q. And when did you take it?

1 00048:01 A. August 18th, 2004.

2 02 Q. And do you know what time you took it?

3 03 A. At 9:31, it looks like.

4 04 Q. 9:31 p.m.?

5 05 A. Yes.

6 06 Q. And does this videotape accurately depict what you saw on

7 07 that day at that location?

8 08 A. Yes, it does.

9 09 Q. Can you describe what is shown on this video clip?

10 10 A. That is Sara, she's a three-year-old Asian elephant and

11 11 she's chained by one front and one back leg on the same side of

12 12 her body, the legs are on the same side of her body, and she's

13 13 rocking back and forth.

14 14 Q. That is an example of the chaining of Sara that you

15 15 described earlier?

16 16 A. Yes, it is.

17 17 Q. And can you tell us how long in terms of numbers of hours

18 18 you saw Sara on chains like this?

19 19 A. On this night?

20 20 Q. While you were observing her in Oakland in 2004.

21 21 A. Okay. Well, when I was video-taping her it was during the

22 22 shows, so all the time during the show she was in chains, but

23 23 they have what they call an animal open house which occurs about

24 24 an hour-and-a-half before the show and runs for about an hour,

25 25 so if the show's at 7:30, the animal open house runs at 6:00 and

1 00049:01 runs to 7:00. During the animal open house she was in the pens
2 02 with all the other elephants. All the other time she was
3 03 chained up.

4 04 THE COURT: What is the elephant standing on there?
5 05 THE WITNESS: It looks like a platform.

6 06 THE COURT: I know you're not an expert. Do you know
7 07 why as opposed to just the cement or the concrete?
8 08 THE WITNESS: I don't know.

9 09 BY MS. MEYER:
10 10 Q. Okay. And now I'd like to show Mr. CuvIELlo a second clip
11 11 from the same Will Call Exhibit 128, and this one is
12 12 time-stamped 8 minutes and 8 seconds through 9 minutes and 31
13 13 seconds.

14 14 (Video played.)
15 15 And while we're watching this, Mr. CuvIELlo, can you
16 16 tell Judge Sullivan who these two elephants are?
17 17 A. The elephant on the left is Angelica. She's a
18 18 seven-year-old Asian elephant. And the elephant on the right is
19 19 Sara. She's a three-year-old Asian elephant, and this is the
20 20 same night, August 18th, and they are both chained by one front
21 21 leg and back leg on the same side of their body. This is at
22 22 Oakland, California.

23 23 Q. Mr. CuvIELlo, did you take this videotape?
24 24 A. Yes, I did.
25 25 Q. When did you take it?

1 00050:01 A. August 18th, 2004.

2 02 Q. Where did you take it?

3 03 A. Oakland, California.

4 04 Q. All right. And does this video footage that we've watched

5 05 accurately depict what you saw on that day at that location?

6 06 A. Yes, it does.

7 07 Q. And can you add anything to your description in terms of

8 08 what you observed?

9 09 A. No, I don't have anything to add.

10 10 Q. All right. So is this an example of the chaining of Sara

11 11 and Angelica that you described earlier?

12 12 A. Yes, it is.

13 13 Q. All right.

14 14 MS. MEYER: I'd like to move in to evidence those

15 15 clips from Will Call 128, your Honor.

16 16 THE COURT: All right. I will provisionally allow

17 17 them to come up on the evidentiary record subject to any further

18 18 objections that counsel for defendant wishes to make.

19 19 MS. MEYER: All right.

20 20 THE COURT: And subject to cross-examination.

21 21 (Plaintiffs' Will Call Exhibit No. 128 was admitted

22 22 into evidence at about 2:00 p.m.)

23 23 BY MS. MEYER:

24 24 Q. Do you recall any other instances of observing elephants on

25 25 chains by themselves?

1 00051:01 A. I can't think of any offhand.

2 02 Q. Okay. Are you familiar with an elephant named Zina?

3 03 A. Zina, yes.

4 04 Q. Have you ever seen Zina on chains by herself?

5 05 A. Yes. When they took the other elephants into the show, she

6 06 was left chained by herself.

7 07 There was also another elephant named Bo who was a

8 08 male elephant, I remember, in 2001. They kept him separate from

9 09 the other elephants and he was chained up separately.

10 10 Q. Tell me what you remember about seeing Zina on chains.

11 11 A. Zina was with the Blue Unit. It was 2002. And this was

12 12 Oakland, California as well. And they had the elephants chained

13 13 up underneath the tent, and when they took them all into the

14 14 show, they didn't use Zina. I never see them use Zina in the

15 15 show, and she was just chained up there.

16 16 Q. How long did you see Zina on chains?

17 17 A. You know, I really can't say because I don't remember being

18 18 focused on Zina, but I saw her on chains.

19 19 Q. Okay. How was she chained?

20 20 A. One front and one back leg and it was opposite legs,

21 21 opposite sides of the body.

22 22 Q. How do you know which elephant that was?

23 23 A. We were told which elephant that was. We were told she had

24 24 a dead trunk and that's why they didn't use her in the show and

25 25 that's how I knew she was Zina.

1 00052:01 Q. Tell me about what you observed with respect to Bo.
2 02 A. Bo was -- I think he was about thirteen. He was an Asian
3 03 male elephant and they didn't keep him with the other elephants
4 04 who were all females, so they would take him in the show
5 05 separately and they would bring him out separately, and they
6 06 kept him in a separate tent away from the other elephants and he
7 07 would be chained up in that tent.
8 08 Q. Have you ever observed any of the other elephants at the
9 09 Ringling Brothers Circus behave in a way that is similar to what
10 10 we've seen on this video footage with respect to Sara and
11 11 Angelica's behavior?
12 12 A. Yes.
13 13 MS. PARDO: Objection to the form.
14 14 THE COURT: It was quite expansive. I'll allow the
15 15 question. I don't know how else she could ask that question,
16 16 but I'll allow it.
17 17 Tell us whether or not you've seen that.
18 18 THE WITNESS: Yes, I have.
19 19 THE COURT: Tell us what you saw.
20 20 THE WITNESS: Well, throughout the years many
21 21 different elephants, and I can't identify them by name, but when
22 22 they were chained up in the parking lots they would be swaying
23 23 and rocking back and forth. Some would bob their head up and
24 24 down.
25 25 BY MS. MEYER:

1 00053:01 Q. How often do you see that?

2 02 A. I saw it every year up until the pens, and now when they

3 03 put the elephants in pens some in pens will rock but most of

4 04 them don't.

5 05 Q. Okay. And during your years of observing the circus, have

6 06 you ever seen the elephants provided water to swim in?

7 07 THE COURT: Leading. You can ask about the

8 08 circumstances under which elephants were shown on occasion. Let

9 09 him testify.

10 10 MS. MEYER: Okay.

11 11 BY MS. MEYER:

12 12 Q. Have you ever seen elephants swimming?

13 13 THE COURT: What else have you seen about these

14 14 elephants? Tell us what else, activities they were engaged in.

15 15 THE WITNESS: Sometimes they would provide a tire, it

16 16 looked like a tire off one of the tractors, an old tire. The

17 17 elephants would play with it. Sometimes I saw think would put

18 18 some mounds of sand in the pens with the elephants. The

19 19 elephants would roll on the sand. Sometimes they -- well, one

20 20 time actually I did see where they put -- this was 2002. They

21 21 had two young elephants, Doc and Angelica, and they had not a

22 22 swimming pool, but it was a tub where they would stand with

23 23 water and they would play in that during the animal open house

24 24 and it was only during the animal open house. Prior to the

25 25 animal open house, I saw them put out like bamboo, things I

1 00054:01 never saw prior or otherwise, put out some bamboo, palm, or
2 02 something like that. That's all I can think of at the moment.
3 03 BY MS. MEYER:
4 04 Q. You've mentioned open house several times. What is that?
5 05 A. The animal open house is Ringling inviting the public to
6 06 come see how well they take care of the animals about an
7 07 hour-and-a-half before the show starts, and it runs about an
8 08 hour or so. Like I said, if the show starts at 7:30, the animal
9 09 open house starts at 6:00 and ends about 7:00.
10 10 Q. Have you been to animal open houses?
11 11 A. Yes.
12 12 Q. How many have you been to?
13 13 A. I think I've been to two or three.
14 14 Q. Okay. Have you had an opportunity to observe any other
15 15 open houses?
16 16 A. Any? I'm not sure I understand the question.
17 17 Q. Other than actually going to them, have you had an
18 18 opportunity to observe any other open houses?
19 19 A. Yes. I can see it when I'm not in the open house. I can
20 20 also videotape into the animal open house.
21 21 Q. Okay. And can you describe what takes place at the open
22 22 house?
23 23 A. Patrons, ticketed patrons can go into the animal compound
24 24 area. The open house is basically where they keep the animals
25 25 all the time. But during the animal open house they let the

1 00055:01 patrons go in there, the ticketed patrons, so they can go in
2 02 there and see the elephants. The elephants are in pens. They
3 03 can see the elephants, they can see the horses, the tigers.
4 04 They ask questions of the handlers or the trainers back there if
5 05 they have any questions. Typically they give the patrons going
6 06 into the animal open house, they give them a pamphlet that they
7 07 made up, a Ringling Brothers pamphlet.
8 08 Q. Okay. How are the elephants maintained when they're in the
9 09 open house?
10 10 A. In the open house typically they're in the pens.
11 11 Q. Okay. Are they chained?
12 12 A. No.
13 13 Q. Are the elephants provided anything while they're in the
14 14 open house?
15 15 A. They're provided some food to eat like bamboo, the bamboo I
16 16 mentioned earlier. I've seen watermelons given to the elephants
17 17 at that time. One time I saw they had ice, block of ice with
18 18 fruit in it that they put in there for the elephants to, you
19 19 know, try and get the fruit out of. Hay. They'll give them hay
20 20 in there.
21 21 Q. And are the ticket patrons who go to the open house, are
22 22 they allowed to bring cameras in?
23 23 A. I know still cameras. I'm not sure about video cameras
24 24 anymore. They used to, but I'm not sure they do that anymore.
25 25 Q. What happens when the open house is over?

1 00056:01 A. When the open house is over, they tell the people, you
2 02 know, you have to leave. The people leave, and then they get
3 03 the elephants and any of the animals they're going to take into
4 04 the show, they get them ready at that point, and the elephants
5 05 usually are one of the first animals that go into the show, so
6 06 they dress the elephants up, blow them off. They blow the hay
7 07 off them with a leave blower, they brush them off, and then they
8 08 put the Ringling headdress on them and get them ready to go into
9 09 the show.

10 10 Q. Okay. Have you ever observed a Ringling Brothers' handler
11 11 use any other instrument on an elephant other than a bullhook?

12 12 A. To inflict pain, you mean?

13 13 THE COURT: Period.

14 14 THE WITNESS: Period?

15 15 I've seen a handler use a broom on an elephant to hit
16 16 him in the back legs, jab him in the side. I've seen a handler
17 17 use pliers on an elephant to pinch the elephant with. I've seen
18 18 a handler step on the elephants's trunk, the tip of her trunk.
19 19 That's about all I can recall.

20 20 BY MS. MEYER:

21 21 Q. Okay.

22 22 A. I have seen them use food as well to get an elephant to do
23 23 what they want them to do.

24 24 Q. Okay. And you say you saw a handler use pliers on an
25 25 elephant; is that correct?

1 00057:01 A. That's correct.

2 02 Q. Can you describe that incident?

3 03 A. It was 2000 and it was at the Cow Palace, and I was

4 04 videotaping there at night during the show, and I don't know. I

5 05 think it might have been a Thursday night. The handler pulled

6 06 something out of his back pocket and waived it in front of the

7 07 elephant's face and the elephant swung around. I didn't quite

8 08 know what that was. I thought it was an electric hot shot at

9 09 the time, a hand-held hot shot, but I talked to a former

10 10 employee about it that night and he told me that they typically

11 11 have leatherman pliers --

12 12 MS. PARDO: Objection to the hearsay.

13 13 THE COURT: Sustained.

14 14 What you saw. What you saw, not what someone else

15 15 told you. You saw what you saw, correct?

16 16 THE WITNESS: Yes.

17 17 THE COURT: And you saw the use of a pair of pliers?

18 18 THE WITNESS: Yes, I did.

19 19 THE COURT: Use of the hot shot, what does that mean.

20 20 THE WITNESS: A hot shot is a hand-held electric prod.

21 21 That's what I thought it was at first.

22 22 THE COURT: Have you seen that used?

23 23 THE WITNESS: Not at Ringling Brothers, no. But I

24 24 video-taped -- he put it in his back pocket, so I video-taped it

25 25 close up. Then a couple days later I video-taped it again. He

1 00058:01 pulled it out of his back pocket, and it was a pair of pliers
2 02 and he handed it to another handler who used it to clean her
3 03 nails and cut her nails with.
4 04 THE COURT: Pair of pliers?
5 05 THE WITNESS: Yes. Leatherman, it has all kind of
6 06 stuff on it.
7 07 THE COURT: I'm sorry?
8 08 THE WITNESS: It's called leatherman pliers, and they
9 09 have all kinds of utilities on it.
10 10 BY MS. MEYER:
11 11 Q. You said you recorded that incident on videotape; is that
12 12 correct?
13 13 A. Yes.
14 14 Q. Did you take any other action with respect to that
15 15 particular incident?
16 16 A. That year I did file a complaint about that with the USDA
17 17 and a USDA -- I think she was an inspector, named Diane Ward,
18 18 came out to my house and took my affidavit about that, and --
19 19 Q. And did the USDA take any enforcement action with respect
20 20 to that incident?
21 21 A. I can't recall enforcement action. My recollection is,
22 22 when I got the response, that the report said they found a welt
23 23 on the side of the elephant's body where it looked like he
24 24 pinched her with the pliers on the video, and Ringling said it
25 25 was a mosquito bite and the USDA didn't take any action.

1 00059:01 Q. Have you ever observed any other treatment of the elephants
2 02 by Ringling Brothers personnel that you regard as mistreatment?

3 03 A. I've seen the elephants being forced to defecate, which I
4 04 regard that as mistreatment.

5 05 Q. Describe what you mean by that.

6 06 A. The elephants, they force them to defecate. They make them
7 07 defecate prior to going into the show, and the elephants, they
8 08 have to defecate whether they need to or not, and I've seen the
9 09 elephants when they're forced to defecate, they squat like a dog
10 10 or a cat, which is not how an elephant defecates. An elephant
11 11 basically stands like a horse and defecates, and I consider that
12 12 abuse.

13 13 THE COURT: Did you ever complain to the USDA about
14 14 your observations of the bullhook?

15 15 THE WITNESS: Yes, I have.

16 16 THE COURT: You have complained?

17 17 THE WITNESS: Yes.

18 18 THE COURT: Were there ever any investigations?

19 19 THE WITNESS: Yes. It was the same year, the 2000
20 20 year, she came out and she, Diane Ward, and she did investigate.

21 21 She watched the video. She went out there, and the report, if I
22 22 remember it correctly, she said they thought there was abuse --

23 23 MS. PARDO: Objection.

24 24 THE WITNESS: -- but they didn't take action.

25 25 MS. PARDO: Hearsay.

1 00060:01 THE COURT: You got a report? Someone sent you a copy
2 02 of the report?
3 03 THE WITNESS: Yes.
4 04 THE COURT: They did? All right.
5 05 BY MS. MEYER:
6 06 Q. Okay. How many different times have you complained to the
7 07 USDA about Ringling Brothers' treatment of the elephants?
8 08 A. About the elephants? I think two or three.
9 09 Q. Has the USDA ever taken any enforcement action with respect
10 10 to your complaints?
11 11 A. Not that I know of.
12 12 Q. All right.
13 13 THE COURT: You complained. Was that agency
14 14 responsive? Did someone return your telephone -- how did you
15 15 complain?
16 16 THE WITNESS: I wrote up a complaint and I sent it in.
17 17 The first one -- I forgot -- Diane Ward was the only one who
18 18 came out actually and investigated for my complaint. My later
19 19 complaints, I don't remember them being responsive about the
20 20 elephants. They were about the tigers one time, but not the
21 21 elephants.
22 22 THE COURT: What do you normally do, write-up the
23 23 complaint and send it in, or do you telephone someone?
24 24 THE WITNESS: I write up the complaint and cite the
25 25 codes from the Animal Welfare Act and why I think it's a

1 00061:01 violation of that law and I send my video with that to show
2 02 them, hopefully that they'll think it too.
3 03 BY MS. MEYER:
4 04 Q. Mr. CuvIELlo, why do you take videotape of the Ringling
5 05 Brothers Circus?
6 06 A. I take my videotape because I use it to educate the public
7 07 about how the animals are treated at Ringling Brothers.
8 08 Q. What do you do with the videotape?
9 09 A. With our videotape, sometimes we'll take still pictures off
10 10 of it and we'll put it on our flyer, we'll put it on our posters
11 11 that we hold out there. There is a guy who comes out and
12 12 demonstrates who has what's known as a body T.V. screen, so he
13 13 wears basically a T.V. screen on his body and he shows video. I
14 14 make a copy of stuff for him to to show. I use it to file
15 15 complaints with the USDA, and I also put it on the Internet to
16 16 show people, and I also solicit media to do stories on Ringling
17 17 by showing them the video as well.
18 18 Q. Why do you engage in those activities?
19 19 A. Pardon me?
20 20 Q. Why do you engage in all of those activities?
21 21 A. Because I think it's wrong to treat elephants as if their
22 22 life is meaningless, so I want to educate people about that in
23 23 homes, that they won't support that.
24 24 Q. Okay. How do you get access to the areas where you
25 25 videotape from?

1 00062:01 A. The areas I videotape from are public areas, so any member
2 02 of the public can go there, and I just go there myself and stand
3 03 there.

4 04 Q. Have your opportunities to observe the treatment of the
5 05 elephants remained the same over the years?

6 06 A. I always have the same access to the areas, except a couple
7 07 of times I've been arrested in those areas. The video-taping,
8 08 my videotape has been blocked, like somebody will put a trailer
9 09 in my way or close the flaps on the tent; thing likes that.

10 10 Q. When you say somebody, who are you referring to?

11 11 A. A circus worker.

12 12 Q. How often does that kind of thing happen?

13 13 A. It happens typically every year at some point.

14 14 Q. Okay. And I didn't catch the other point you said.
15 15 Something about flaps on a tent?

16 16 A. Yeah. The tent has flaps that they open up, I guess to get
17 17 air in there, and sometimes they'll put the flaps down so we
18 18 can't see in the tent, see the elephants in the tent when the
19 19 elephants are in the tent.

20 20 Q. How often does that happen?

21 21 A. That typically happens every year as well.

22 22 Q. All right. Any other measures that have been taken that
23 23 have made it difficult for you to videotape?

24 24 A. Not by Ringling Brothers.

25 25 Q. Okay. By anyone else?

1 00063:01 A. I've been arrested while I was video-taping and while I was
2 02 leafletting at certain arenas.
3 03 Q. How were those arrests resolved?
4 04 MS. PARDO: Objection to the relevance.
5 05 THE COURT: I don't know whether they are or not.
6 06 I'll allow him to answer, though.
7 07 Were you ever prosecuted?
8 08 THE WITNESS: No, I was never prosecuted. I was
9 09 charged with trespassing and the charges were dropped, and I
10 10 filed civil suits and one -- and have two pending.
11 11 THE COURT: Against the police department?
12 12 THE WITNESS: Police department, yes, and the managers
13 13 of the arena.
14 14 BY MS. MEYER:
15 15 Q. Okay.
16 16 THE COURT: Ringling Brothers?
17 17 THE WITNESS: Ringling Brothers was a plaintiff in the
18 18 first lawsuit against San Jose, but that wasn't as applied to
19 19 what happened to me. We had five plaintiffs.
20 20 THE COURT: No, no. The suit that you filed, though.
21 21 You filed two lawsuits, if I understand you correctly.
22 22 THE WITNESS: Three.
23 23 THE COURT: Three? Did you ever file a lawsuit
24 24 against Ringling Brothers?
25 25 THE WITNESS: Like I said, in the first one there were

1 00064:01 five plaintiffs, but Ringling was a defendant against one of the
2 02 plaintiffs, not against me, so I never did personally file
3 03 against Ringling.

4 04 BY MS. MEYER:

5 05 Q. What kind of lawsuits have you filed?

6 06 A. Well, the three I'm talking about were civil actions for
7 07 violation of my rights, and those are three that I filed since
8 08 2003, and I've had lawsuits prior to that with respect to First
9 09 Amendment rights as well.

10 10 THE COURT: Have you ever sued Ringling Brothers?

11 11 THE WITNESS: No.

12 12 Actually, in small claims I did, yes.

13 13 THE COURT: For what?

14 14 THE WITNESS: There was a handler who was accusing me
15 15 of trying to upset the camels. He was walking and he threatened
16 16 me that he was going to shove the camera up my butt, and so I
17 17 kept my eye on him, and at one point he came over and grabbed my
18 18 camera and I pushed him away, and I sued Ringling for assault
19 19 and battery in small claims, and I did not win that.

20 20 THE COURT: There was a trial?

21 21 THE WITNESS: There was a small claims hearing
22 22 basically, yeah.

23 23 BY MS. MEYER:

24 24 Q. Mr. CuvIELLO, have you had a chance to review --

25 25 THE COURT: How long ago was that suit against

1 00065:01 Ringling Brothers?

2 02 THE WITNESS: That was I think 2001. So eight years

3 03 ago.

4 04 THE COURT: Are you still mad about that?

5 05 THE WITNESS: Pardon me?

6 06 THE COURT: Are you still mad about that?

7 07 THE WITNESS: No.

8 08 BY MS. MEYER:

9 09 Q. Mr. CuvIELlo, have you had a chance to review Plaintiff's

10 10 Exhibit 132?

11 11 A. Yes, I have.

12 12 Q. And does that exhibit contain video footage that you've

13 13 taken?

14 14 A. Yes, it does.

15 15 Q. And does the video footage that you've taken accurately

16 16 depict events that you've actually witnessed?

17 17 A. Yes, it does.

18 18 Q. And if I were to show you parts of the video footage that

19 19 you took, would you be able to tell us where you took that video

20 20 footage?

21 21 A. Yes, I would.

22 22 Q. Would you be able to tell us when you took that video

23 23 footage?

24 24 A. I could tell you the year. I don't know about the specific

25 25 date.

1 00066:01 MS. MEYER: I'd like to show Mr. CuvIELlo some video
2 02 clips, your Honor, from Will Call Exhibit 132 for the purpose
3 03 of --
4 04 THE COURT: Any objection?
5 05 MS. PARDO: Yes. We have the same objection, no
6 06 foundation and --
7 07 THE COURT: Really what's lacking?
8 08 MS. PARDO: We believe he's not going to be able to
9 09 establish that this accurately depicts the events that he saw,
10 10 and it's substantially edited.
11 11 THE COURT: Don't you need to give him a chance to do
12 12 that, though? How is this different from any photo that a
13 13 witness would be shown and said tell us what this is? Oh,
14 14 that's a photo that I took on such and such a date. Shouldn't
15 15 he be given a chance to tell us whether the video is his?
16 16 MS. PARDO: We'd like to preserve the objection, your
17 17 Honor. We can address it on cross.
18 18 THE COURT: Absolutely.
19 19 BY MS. MEYER: .
20 20 Q. There's actually quite a few of these clips that I'd like
21 21 to show Mr. CuvIELlo for the purpose of having him authenticate
22 22 the videotape and also describe what is shown on it.
23 23 The first one is a clip from 132. It goes from 2
24 24 minutes to 4 minutes and 45 seconds, and I think we're going to
25 25 pause actually in the middle of it somewhere and then I'll ask

1 00067:01 you some questions.

2 02 A. Okay.

3 03 (Video played.)

4 04 BY MS. MEYER:

5 05 Q. Did you take that videotape that we just showed?

6 06 A. Yes.

7 07 Q. Do you know where you took it?

8 08 A. I took that in San Jose.

9 09 Q. Do you know when?

10 10 A. It was 1994.

11 11 Q. And is what is shown on that videotape an accurate

12 12 reflection of what you saw that day?

13 13 A. Yes, it is.

14 14 Q. Can you describe what you saw?

15 15 A. I was video-taping the elephants chained up in the train.

16 16 This was prior to them unloading the elephants. They had just

17 17 pulled in to San Jose and they hadn't unloaded the elephants yet

18 18 and I was video-taping the elephant in the train.

19 19 Q. How often have you seen Ringling Brothers' elephants

20 20 engaged in behavior like that?

21 21 A. Quite often.

22 22 Q. All right. I'd like to continue with that clip, and

23 23 actually I want to pause it because I want you to, first of all,

24 24 can you tell whether or not you took this videotape?

25 25 A. Yes, I did. I took it.

1 00068:01 Q. Do you know where you took it?
2 02 A. San Jose, 1996.
3 03 Q. All right. And could you tell Judge Sullivan what he
4 04 should be focusing on in this videotape so that he'll understand
5 05 what you're talking about when you describe what you saw?
6 06 A. In this videotape there's a handler on the far left there
7 07 with the dark hair and the short-sleeve shirt, and his name is
8 08 Daniel Rapho, and he's going to walk up -- he's going to leave
9 09 the scene for a minute and then he's going to walk up to the
10 10 elephant and he's going to use the bullhook to hook the
11 11 elephant, hook one of the elephants standing in line.
12 12 Q. All right. So can we play that?
13 13 (Video played.)
14 14 Can you describe what you just saw?
15 15 A. Yes. I saw Daniel Rapho, the man in the yellow shirt there
16 16 and the dark hair, walk up and hook an elephant with the
17 17 bullhook, an elephant that's standing in line.
18 18 Q. And how many times over the years have you seen Ringling
19 19 Brothers' handlers do something like that?
20 20 A. I see hooking elephants every year.
21 21 Q. Now I'd like to go to the next clip, which is also on Will
22 22 Call 128, and it's from 4 minutes and 46 seconds to 5 minutes
23 23 and 19 seconds, and I just want to show it and then I'll ask you
24 24 some questions about it?
25 25 (Video played.)

1 00069:01 Did you take this videotape?
2 02 A. Yes, I did.
3 03 Q. Do you know when?
4 04 A. That was 1996 in San Jose.
5 05 Q. Do you know where?
6 06 A. San Jose, California.
7 07 Q. I'm sorry. And is this videotape an accurate reflection of
8 08 what you saw on that day?
9 09 A. Yes, it is.
10 10 Q. And can you describe what you saw?
11 11 A. This was the first -- this was 1996, and it was the first
12 12 year I saw them in pens like this, and so this elephant was in a
13 13 pen and you could see the poles there with the -- it's red tape
14 14 going across and she was rocking, standing there rocking in the
15 15 pen.
16 16 Q. How often have you seen Ringling Brothers' elephants
17 17 engaged in that kind of behavior?
18 18 A. I see that every year.
19 19 Q. And just for the record, I think I misspoke in terms of
20 20 what exhibit we were on. We're still on Exhibit 132.
21 21 I'd like to go to the next clip, please, which is 6
22 22 minutes and 18 seconds to 6 minutes and 28 seconds, and I also
23 23 when we start this want to pause it so that you can tell Judge
24 24 Sullivan what he should be focusing on so that he'll understand
25 25 your testimony?

1 00070:01 A. The handler to the front Gene on the right standing there
2 02 with his hand on his hip, as soon as this woman walking up on
3 03 the left gets on an elephant, he is going to take his bullhook,
4 04 which he's leaning there on his left hand, he's going to take
5 05 his bullhook and he's going to hit the elephant under the chin.

6 06 THE COURT: I see two people, two people with their
7 07 hands on their hips.

8 08 THE WITNESS: The one on the far right on the far end
9 09 of the screen.

10 10 (Video played.)

11 11 MS. MEYER: Do we need to play that again, your Honor?
12 12 Did you get a chance to see it?

13 13 THE COURT: Sure you can play it. I'm not quite sure
14 14 what I saw, but you can play it.

15 15 (Video replayed.)

16 16 BY MS. MEYER:

17 17 Q. Can you describe what you see, Mr. CuvIELlo?

18 18 A. Yes. The handler, his name is Andy Weller, he walked up
19 19 and hit one of the elephants underneath the chin with his
20 20 bullhook.

21 21 Q. Does that always happen that fast?

22 22 A. Yes. The hooking is usually quicker, but hitting is that
23 23 fast too.

24 24 Q. Is that video footage an accurate depiction of what you saw
25 25 that day?

1 00071:01 A. Yes, it is.

2 02 Q. I'd like to go to the next excerpt, which is on the same

3 03 exhibit at ten minutes and 16 seconds to 11 minutes and 16

4 04 seconds, and again, I think we're going to need to pause at the

5 05 beginning of the tape.

6 06 (Video played.)

7 07 BY MS. MEYER:

8 08 Q. All right. And what should Judge Sullivan focus on in this

9 09 video clip so that he can follow your testimony?

10 10 A. In this video, if you can see the handler standing behind

11 11 the elephant, the first elephant here, he's on the left, he's in

12 12 blue pants and he's got a black shirt, and he's going to take

13 13 his bullhook and he's going to jab the elephant underneath the

14 14 chin with it, and I think at one point he even uses it as a

15 15 stick and hits her with it like that, but he's the one to focus

16 16 on in the blue pants.

17 17 Q. All right. Let's play the clip.

18 18 (Video resumed.)

19 19 Did you take this videotape, Mr. Cuvillo?

20 20 A. Yes, I did.

21 21 Q. When did you take it?

22 22 A. I took this videotape in 1998.

23 23 Q. And where were you?

24 24 A. This is at the Cow Palace in Daly City, which is just south

25 25 of San Francisco.

1 00072:01 Q. Does it accurately depict what you saw that day?
2 02 A. Yes, it does.
3 03 Q. And what did you see?
4 04 A. I saw this handler here, his name is Robby, I don't know
5 05 his last name, and he took his bullhook and he was hitting the
6 06 elephant with the blunt end of the bullhook, not the plain end,
7 07 blunt end, underneath the chin, and then he took her and hit her
8 08 with it as a stick, as a club.
9 09 Q. And how many times have you seen handlers do that kind of
10 10 thing?
11 11 A. That's not that common to see them doing that. Usually
12 12 hooking is more common.
13 13 Q. Okay. We'll go to the next excerpt, which is at 12 minutes
14 14 and 8 seconds to 13 minutes and 13 seconds.
15 15 MS. PARDO: We renew our objection to the Red Unit.
16 16 THE COURT: All right. It's overruled.
17 17 (Video played.)
18 18 BY MS. MEYER:
19 19 Q. Can you describe to Judge Sullivan what we're looking at
20 20 here?
21 21 A. This is in San Jose in 1999, and the elephants, as you can
22 22 see, there's a wire running along the front there with chains
23 23 coming off of it and those chains are used to chain the feet of
24 24 the elephants there, and you can see the elephants' feet have a
25 25 chain around it and these elephants are standing chained one

1 00073:01 next to the other. This is in the parking lot of the arena, and
2 02 that's the back leg of the same elephants chained up, so they're
3 03 chained by one front and one back leg.
4 04 Q. Did you take that videotape?
5 05 A. Yes, I did.
6 06 Q. Where did you take that videotape?
7 07 A. That was San Jose, California.
8 08 Q. Do you know when you took it?
9 09 A. It was 1999.
10 10 Q. All right. And is what we just saw an accurate depiction
11 11 of what you saw that day?
12 12 A. Yes, it was.
13 13 Q. And how often have you seen Ringling Brothers' elephants
14 14 maintained that way?
15 15 A. Typically every year at night they chain them, and like I
16 16 said earlier, during the day they're usually kept in pens.
17 17 Q. All right. I'd like to go to the next clip, which is at 13
18 18 minutes and 48 seconds to 14 minutes and 18 seconds.
19 19 MS. PARDO: Same objection to the relevance. It's Red
20 20 Unit.
21 21 THE COURT: All right. Overruled.
22 22 BY MS. MEYER:
23 23 Q. Can you describe to Judge Sullivan what we're looking at
24 24 here?
25 25 A. This is the Cow Palace in 1999, and the elephants are in

1 00074:01 the corral. You can see the white pole in the front with the
2 02 red tape coming off both sides there, and if you look in the
3 03 back, you could see -- it's hard to see, but you can see the
4 04 pole just behind them and the chains coming off there, so these
5 05 three elephants are in a different space than that elephant you
6 06 see in the far back there. They're in two different pens and
7 07 they're in the parking lot in a pen, and they're rocking back
8 08 and forth.

9 09 Q. Okay. And can you describe what kind of surface the pen
10 10 has?

11 11 A. This is a parking lot surface, so it's the blacktop
12 12 surface.

13 13 Q. All right. And does this videotape accurately depict what
14 14 you saw on that day?

15 15 A. Yes, it does.

16 16 Q. And where were you?

17 17 A. This is the Cow Palace, 1999.

18 18 Q. And when you say the elephant in the background is in a
19 19 different space, how do you know that?

20 20 A. Well, because I can see the wires there, the tape, taped
21 21 off there, and I was there at the time too, so I saw the
22 22 different pens.

23 23 Q. Okay. And is this scene typical of the pens that you have
24 24 described in your testimony?

25 25 A. Yes, this is a typical pen.

1 00075:01 Q. I'd like to go to the next clip, which is at 14 minutes and
2 02 57 seconds to 15 minutes and 53 seconds.

3 03 MS. PARDO: Objection to the relevance; Red Unit.

4 04 THE COURT: All right. Overruled.

5 05 BY MS. MEYER:

6 06 Q. Can you identify who the individual on the left side of
7 07 that screen is?

8 08 A. That is Troy Metzler.

9 09 Q. All right. We can continue to play it?

10 10 (Videotape resumed.)

11 11 Did you take this video footage?

12 12 A. Yes, I did.

13 13 Q. Where did you take it?

14 14 A. This is at the Cow Palace in Daly City.

15 15 Q. When? When did you take it?

16 16 A. This is the year 2000.

17 17 Q. And is what is shown on that videotape an accurate
18 18 reflection of what you saw that day in that location?

19 19 A. Yes, it is.

20 20 Q. What did we see?

21 21 A. I saw Troy Metzler, they were putting the headdress on this
22 22 young elephant here, and he turned around and looked back first
23 23 and then turned around and hit the elephant underneath her chin
24 24 a couple of times with his bullhook.

25 25 Q. Let's go to the next clip.

1 00076:01 (Videotape resumed.)
2 02 And who are we looking at in the middle of the screen
3 03 here?
4 04 A. In the middle of the screen, that's Troy Metzler.
5 05 Q. All right. Let's continue?
6 06 (Videotape resumed.)
7 07 All right. And did you take that videotape that we
8 08 just saw?
9 09 A. Yes, I did.
10 10 Q. All right. And when did you take that?
11 11 A. That was 2000, the year 2000.
12 12 Q. Where was that?
13 13 A. That was at the Cow Palace as well, Daly City, California.
14 14 Q. What is shown on that videotape?
15 15 A. That shows Troy Metzler going over to a young elephant and
16 16 hitting her on the trunk with his bullhook, and she puts her
17 17 trunk in her mouth after he hits her.
18 18 Q. Is what we saw in the videotape an accurate reflection of
19 19 what you saw that day?
20 20 A. Yes, it is.
21 21 MS. MEYER: Just for the record, if it's not clear,
22 22 that clip and the previous clip are all within the time stamp
23 23 that I gave. They continue, beginning from this excerpt, which
24 24 is 14 minutes and 57 seconds --
25 25 THE COURT: Let him testify.

1 00077:01 Tell us what it is.

2 02 MS. MEYER: Okay.

3 03 BY MS. MEYER:

4 04 Q. Could we see the next clip, please?

5 05 THE COURT: Do you know about the time frames?

6 06 THE WITNESS: The time frames on the exhibit?

7 07 THE COURT: Yes.

8 08 THE WITNESS: I don't know them by heart.

9 09 MS. MEYER: I was just trying to make the record

10 10 clear, your Honor, in terms of what --

11 11 THE COURT: You can't testify, though.

12 12 MS. MEYER: Okay.

13 13 BY MS. MEYER:

14 14 Q. Could we show the next clip, please?

15 15 (Videotape resumed.)

16 16 BY MS. MEYER:

17 17 Q. And Mr. CuvIELlo, did you take this video footage?

18 18 A. Yes, I did.

19 19 Q. Where did you take it?

20 20 A. The Cow Palace in Daly City.

21 21 Q. Okay. And what year?

22 22 A. It was the year 2000.

23 23 Q. And who was this individual in the foreground of the video

24 24 clip?

25 25 A. That's Troy Metzler.

1 00078:01 Q. All right. And is this an accurate depiction of what you
2 02 saw that day?
3 03 A. Yes, it is.
4 04 Q. And what did you see?
5 05 A. Troy Metzler, one of the elephants has her legs on top of
6 06 the other elephant, and she came down at one point and Troy
7 07 Metzler took his bullhook and very quickly hit her underneath
8 08 the chin.
9 09 Q. Could we actually see that clip again?
10 10 (Videotape replayed.)
11 11 Okay. And I'd like to go to the next clip that's in
12 12 this grouping. That was the end? I'm sorry. Okay. We'll go
13 13 to the next clip that's at 17 minutes and 8 seconds to 18
14 14 minutes and 24 seconds. This is going to be a group of video
15 15 footage, and can you tell us who that individual is?
16 16 A. That person is Dave Waley.
17 17 Q. All right. And let's play the clip?
18 18 (Videotape played.)
19 19 And did you take this video footage?
20 20 A. Yes, I did.
21 21 Q. Where did you take it?
22 22 A. Cow Palace in Daly City, California.
23 23 Q. When was that?
24 24 A. It was the year 2000.
25 25 Q. And is what is shown on here an accurate depiction of what

1 00079:01 you saw that day?

2 02 A. Yes, it is.

3 03 Q. Can you describe what you saw?

4 04 A. I saw Dave Waley go to the elephant and stick his bullhook

5 05 underneath her chin and pull her towards him and then yell at

6 06 her.

7 07 Q. Can we show the next part of that clip, please?

8 08 (Videotape playing.)

9 09 Did you take this videotape?

10 10 A. Yes, I did.

11 11 Q. When was that taken?

12 12 A. The year 2000.

13 13 Q. And where?

14 14 A. Cow Palace in Daly City, California.

15 15 Q. Who is that individual?

16 16 A. That's Dave Waley.

17 17 Q. Okay. And is what we've seen an accurate depiction of what

18 18 you saw that day?

19 19 A. Yes, it is.

20 20 Q. Can you describe what you saw?

21 21 A. Dave Waley went over to this young elephant and threw his

22 22 bullhook at her right front leg.

23 23 Q. All right. And let's continue with this clip.

24 24 (Videotape resumed.)

25 25 Is that Dave Waley again in the foreground?

1 00080:01 A. Yes, it is.

2 02 Q. And did you take this video footage?

3 03 A. Yes, I did.

4 04 Q. And does it accurately depict what you saw on that day?

5 05 A. Yes, it does.

6 06 Q. And where were you?

7 07 A. At the Cow Palace in Daly City.

8 08 Q. In what year?

9 09 A. 2000.

10 10 Q. All right. And can you describe what we are looking at?

11 11 A. What I saw him do was lift his bullhook in a threatening

12 12 manner towards the elephants.

13 13 Q. All right. All right. The next clip that I want to show

14 14 is at 19 minutes and 46 seconds to 21 minutes and 3 seconds.

15 15 (Videotape played.)

16 16 Can you describe what we're looking at here?

17 17 A. This is San Jose, California, the year 2000, and these are

18 18 two elephants that are chained up, one front, one back leg, and

19 19 one of the elephants, the one on the left, has an, it looks like

20 20 a piece of leftover hay that she's holding in the bottom of her

21 21 trunk, and she's rocking back and forth.

22 22 Q. Did you take this videotape?

23 23 A. Yes, I did.

24 24 Q. And what do we see here?

25 25 A. This is a young elephant, 2000 as well, in San Jose,

1 00081:01 California, and she's chained up by two legs, one front, one
2 02 back on the same side of her body, and she's rocking back and
3 03 forth as well.
4 04 Q. Did you take this videotape as well?
5 05 A. Pardon me?
6 06 Q. Did you take this videotape?
7 07 A. Yes, I did.
8 08 Q. And is what we've seen so far an accurate depiction of what
9 09 you saw in San Jose that year?
10 10 A. Yes, it is.
11 11 Q. And how often have you seen elephants engage in that kind
12 12 of behavior that we just saw?
13 13 A. I typically see it every year.
14 14 Q. Okay. I'd like to go to the next --
15 15 THE COURT: All right. I'm not trying to curtail your
16 16 examination. How much more time do you need?
17 17 MS. MEYER: For Mr. CuvIELlo?
18 18 THE COURT: Yes.
19 19 MS. MEYER: I'd say at least a half hour, your Honor.
20 20 THE COURT: We'll take a fifteen-minute recess and
21 21 we'll start promptly back at three o'clock.
22 22 MS. MEYER: Okay.
23 23 THE COURT: All right. You can step down. You don't
24 24 have to sit up there. Please do not discuss your testimony with
25 25 anyone.

1 00082:01 COURTROOM DEPUTY: This Honorable Court now stands in
2 02 a fifteen-minute recess.
3 03 (Recess taken at about 2:42 p.m.)
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1	00083:01	I N D E X	
2	02		
3	03	WITNESSES:	
4	04	LOUIS GEDO	
5	05	Direct Examination by Ms. Meyer	5
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17	17	Exhibit	
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1 00084:01

CERTIFICATE

2 02 I, JACQUELINE M. SULLIVAN, Official Court Reporter,
3 03 certify that the foregoing pages are a correct transcript from
4 04 the record of proceedings in the above-entitled matter.

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