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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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AMERICAN SOCIETY FOR THE Docket No. 03-2006
PREVENTION OF CRUELTY
TO ANIMALS, ET AL,
Plaintiffs,
v. Washington, D.C.
February 17, 2009
2:48 p.m.
FELD ENTERTAINMENT, INC., CONTINUED PM SESSION
Defendant.
-----X

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

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Proceedings recorded by mechanical stenography, transcript
produced by computer.

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

2 (2:48 P.M.; OPEN COURT.)

3 THE DEPUTY CLERK: Please remain seated and come to
4 order.

5 THE COURT: Counsel. Proceed, Counsel.

6 TOM RIDER,

7 having been duly sworn previously, testified as follows:

8 CROSS-EXAMINATION (CONT'D.)

9 BY MR. SIMPSON:

10 Q Mr. Rider, you testified in your direct about what the
11 objectives of this lawsuit are. You recall that testimony?

12 A Yes, sir.

13 Q But your real objective is to get the elephants out of
14 the circus; isn't that true?

15 A No, sir.

16 Q Isn't that what you've been telling the media when you've
17 done your media work?

18 A Oh, I believe at one time there was -- we were, I
19 thought, trying to -- that there would be forfeiture of the
20 elephants and that changed.

21 Q All right. But you -- you told that in --

22 THE COURT: Excuse me one second.

23 (PAUSE.)

24 THE COURT: Go ahead.

25 Q (BY MR. SIMPSON) All right. Let me refer your attention,

1 sir, to a radio interview you gave in July of 2005 at KABC, AM
2 Radio, Los Angeles. You recall that, an interview with Tammy
3 Bruce?

4 A Yes, sir.

5 Q All right. Look at the screen, sir. You described the
6 lawsuit that was filed and you state, (reading) My main aim
7 of this lawsuit is to get those elephants out of the Ringling
8 Brothers circus.

9 That's true, isn't it? That's true, isn't it?

10 A Not now, sir.

11 Q You've changed your mind, you don't want them out of the
12 circus?

13 A That's not -- that's not what we're doing right now. I
14 would love to see the elephants all in a sanctuary but that's
15 not the purpose that I'm in this lawsuit for.

16 Q All right. You also said the same thing to a committee
17 of the Nebraska legislature in January of 2006, did you not?

18 A Yes, sir.

19 Q Let me refer you to Plaintiffs' Exhibit 94A in evidence
20 at page 264, that exhibit. And I'll refer you, sir, to page
21 11 of a hearing transcript before the Nebraska legislature.

22 And in the statement that is attributed to Tom
23 Rider, (reading) Well, I do believe -- well, do I believe
24 there should be elephants in the circus? No, I don't think
25 they belong in the circus because if they're getting abused,

1 they're riding in train cars. Is there a humane way to have
2 elephant in the circus? I have not found any humane way yet
3 unless you're letting them walk 25 miles a day and letting
4 them do what they do in the wild, which is not tricks.

5 Have I read that correctly?

6 A Yes, sir.

7 Q Were you under oath when you made that statement?

8 A I don't remember.

9 Q Did you intend to tell the truth to the legislature?

10 A Yes, sir.

11 Q Now, are you familiar, sir, with a case, a criminal case
12 that was filed in 2001 in California against Mark Oliver
13 Gabel?

14 A Yes, I'm familiar with it.

15 Q You were well aware of that case at the time, were you
16 not?

17 A Yes, sir.

18 Q You followed that case, did you not?

19 A I wasn't in the courtroom, but I followed it, yes.

20 Q You followed the progress of that case, did you not?

21 A Oh, yes, sir.

22 Q You spoke about that case in the media; isn't that true?

23 A Yes, sir.

24 Q And isn't it true that it was your view, and you've said
25 this, that that case was just a big publicity stunt?

1 A I don't remember that.

2 Q And that that case never had any merit to it and you
3 knew, before it was brought, that Mark Oliver Gabel would be
4 acquitted; haven't you said that?

5 A I don't remember saying that.

6 Q An important thing of that case in your mind was getting
7 all of this media attention. It really didn't matter what the
8 legal issues were; isn't that true?

9 A No.

10 Q Let me refer you to that same lecture you gave in
11 Carbondale, Illinois. In September 2002, and this is
12 time-stamped four hours, 36 minutes, 15 seconds through four
13 hours, 37 minutes, 38 seconds.

14 (VIDEO CLIP PLAYED.)

15 Q (BY MR. SIMPSON) This case is a publicity stunt, too,
16 isn't it, Mr. Rider?

17 A No, sir.

18 MR. SIMPSON: No further questions. Pass the
19 witness.

20 THE COURT: All right. Redirect?

21 REDIRECT EXAMINATION

22 BY MS. MEYER:

23 Q Hello, Mr. Rider.

24 A Hello.

25 Q Mr. Rider, on cross-examination last week, Mr. Simpson

1 elicited testimony from you where you described a beating of
2 an elephant named Pete that you witnessed when you worked at
3 the Clyde-Beatty circus; do you remember that?

4 A Yes, ma'am.

5 Q And Mr. Simpson asked you whether you ever complained to
6 any government authority about that beating, and I think your
7 answer was, "Not while I was at Clyde-Beatty." Do you
8 remember that testimony?

9 A Yes, sir -- yes, ma'am. Sorry.

10 Q Thank you. That's okay. And I wanted to know, what did
11 you mean by that when you said, "Not while I was at
12 Clyde-Beatty"?

13 A Well, I meant not while I was -- I didn't -- I didn't
14 take off and just run to the USDA and say, hey -- the next
15 morning I left. I don't think I brought it up until it was
16 after I was at PAWS.

17 Q Okay. Since you left your employment with the circus
18 industry, have you, in fact, talked about the beating that you
19 witnessed of Pete when you worked at Clyde-Beatty?

20 A Yes, ma'am.

21 Q Okay. Could you actually -- I would like to go to
22 Defendant's Exhibit 34.

23 Can you see that, or do we need to blow it up a
24 little bit?

25 A Enlarge it, please.

1 Q Okay. You recognize what this is?

2 A Oh, yes, ma'am.

3 Q What is it?

4 A It's my testimony before the Judiciary Committee.

5 Q That's the United States Congress; is that correct?

6 A Yes, ma'am.

7 Q And when did you give this testimony?

8 A I believe it was June 12th, 19-- or excuse me, 2000.

9 I believe it was June 12th, 2000.

10 Q Okay. Could you just take a look at the second line down
11 and read from -- for us the testimony that starts with the
12 word "I worked," and just read the first two sentences of that
13 section.

14 A (Reading) I worked with Clyde-Beatty Cole Brothers
15 circus in 1997 as an elephant keeper, and I loaded the
16 children for the elephant ride. The elephant which we used,
17 Pete or Petunia, was considered to be a dangerous animal and
18 we were cautioned not to go near her. Despite this, she was
19 used for the rides before the show and during intermission
20 carrying as many as ten children at a time on her back.

21 Q Okay. That's enough of that. Could you then also read
22 the third paragraph of your testimony that starts with "I left
23 Beatty Cole."

24 A (Reading) I left Beatty Cole because in White Plains,
25 New York, when Pete did not perform her act properly, she was

1 taken to the tent, laid down and five trainers beat her with
2 bull hooks. Pete is now dead.

3 Q Thank you. Now, Mr. Simpson -- I want to back up a
4 minute. Have you also discussed what you witnessed when you
5 were at Clyde-Beatty and the beating of Pete as part of your
6 public education advocacy?

7 A On occasions, yes.

8 Q Now, Mr. Simpson asked you whether, when you were
9 employed at Ringling Brothers, you complained about the
10 mistreatment you were witnessing to various people and I
11 wanted to ask you about that.

12 Who exactly did you complain to about the
13 mistreatment of the Ringling Brothers' elephants when you were
14 employed by Ringling Brothers?

15 A I went to Randy Peterson, who was my supervisor.

16 Q Okay.

17 A And complained to him.

18 Q All right. And now, did you -- did you have occasion to
19 actually observe Mr. Peterson himself hit elephants with bull
20 hooks?

21 A Yes, ma'am.

22 Q How often did you see that?

23 A It would vary. It was -- it was frequently.

24 Q Okay. And you testified, I think, that once when you
25 went to Mr. Peterson, he, quote, your job was threatened; is

1 that correct?

2 A Yes, ma'am.

3 Q What did you mean by that?

4 A I was in Greensboro, North Carolina and I had already
5 been complaining on the train and stuff, you know, around the
6 workers, and he told me, he said, "I want to get you out of
7 here."

8 And I said, "Well, maybe I should transfer."

9 And he said, "No, I want you out of the circus."

10 So I knew at that point my job was threatened if I
11 ever went to complain to the USDA or anybody besides him.

12 Q Okay. And after you complained to Mr. Peterson about the
13 mistreatment you were witnessing, did the -- did the practices
14 you were complaining about actually change in a good way for
15 the elephants?

16 A No, ma'am.

17 Q Okay. Were there other Ringling Brothers' employees that
18 you remember actually complaining to about the mistreatment of
19 the elephants?

20 A There was about quite a few, but I don't remember their
21 names, not all of them.

22 Q Do you remember any of them?

23 A Yes, ma'am.

24 Q Who do you remember talking to about it?

25 A I remember one in particular, his name was Neil. We were

1 in New York City and Neil actually quit the show that night
2 because of the abuse on the animals. And -- well, it was --
3 I -- I can't remember all of them that actually quit because
4 of -- I remember there was a -- one of the -- oh, I can't
5 remember his name.

6 I'm sorry, I just -- the names are -- everybody on
7 the show was one name instead of first name. We rarely ever
8 had a last name. I know Gary Oxidine was one. He didn't like
9 the way they were treated.

10 Q Okay. I was asking you if you remember you actually
11 complaining to a particular person.

12 A Oh, yes, I have, ma'am.

13 Q Besides Randy Peterson?

14 A Everybody on the train. Gary Oxidine, Alex Vargas, he
15 was -- he was not -- he was a supervisor, but we had like --
16 we had Randy Peterson, then we had other supervisors, and when
17 I went to Alex in Jacksonville, Florida and we -- there was
18 nobody there that day. It was just me and Alex, and he had
19 actually come back to visit. I believe he was on the
20 Kaleidoscope or Kaleidoscope, whatever they called it at the
21 time, and I said, "You know they're still hitting these
22 animals."

23 And he goes, "Well," he says, "there's nothing I can
24 do about it. You know it's discipline."

25 Q What about Jeff Pettigrew? I think you mentioned him as

1 someone --

2 A Oh, yes, I did complain to Jeff Pettigrew, even Daniel
3 Raffo, I told him.

4 Q Did Mr. Pettigrew have any particular job
5 responsibilities at Ringling Brothers?

6 A He was the union steward, but that wouldn't -- excuse
7 me -- that wouldn't be Ringling. He was also --

8 Q When you say -- I'm sorry, if I could just interrupt.
9 When you say he was the union steward, what do you mean by
10 that?

11 A A union steward is the person who, if you have a problem,
12 you go to him and then he goes to the union, and you can file
13 a grievance through him to the union if it's a union matter.

14 Q Okay. But Mr. Pettigrew was one of the individuals you
15 complained to; is that correct?

16 A Yes, ma'am.

17 Q Now, did you ever see Mr. Pettigrew hit an elephant with
18 a bull hook when you worked at Ringling Brothers?

19 A Yes, ma'am.

20 Q How often did you see that?

21 A Frequently as two or three times a week, if not almost
22 every day.

23 Q And after you complained to Mr. Pettigrew, did the
24 practices you were complaining about change at Ringling
25 Brothers?

1 A No, ma'am.

2 Q Why didn't you complain to the USDA about what you were
3 seeing while you worked at Ringling Brothers?

4 A I didn't want to lose my job.

5 Q Okay. And what made you think you would lose your job?

6 A It was basically -- everybody on the -- everybody on the
7 animal crew knew that. If you go complain, you know, you're
8 going -- you're going to get fired; maybe not for that, but
9 they are going to find another reason.

10 So it was just a known fact, you know, you don't --
11 you don't -- you hide everything from the USDA, you don't tell
12 the USDA, you don't even tell the general public what goes on.
13 Everything is kept quiet.

14 Q Okay. And why did you not complain to Mr. Kenneth Feld?

15 A Well, for one, it isn't like Kenneth Feld just walks
16 around the circus going "who's got a problem." And I knew at
17 that point if you went to anybody above your supervisor, which
18 I really didn't have to go. I should have went to my
19 supervisor and should have been handled from that point.

20 So when I found out that they are just going to call
21 it discipline, I know I can't walk up to Kenneth Feld and go,
22 "Hey, Mr. Feld, come here, look what they're doing to your
23 animals," because you're done. You are going to lose your job
24 for some reason. It doesn't have to be that, but you will not
25 be there very long.

1 Q Mr. Simpson also asked you why you did not take the
2 write-ups that you received to the union, and you answered,
3 "Jeff Pettigrew was present on the third one." What did you
4 mean by that?

5 A Jeff Pettigrew was one of the -- I believe there was 15
6 of us who were down at my birthday party that night and Jeff
7 was one of them. In fact, Jeff said, "If you're going to
8 write him up, you're going to have to write us all up." And
9 at that point Jeff still said, "Well, look, we are going to
10 write him up. He's going to go to Europe in a few days. We
11 are going" -- I think I got three days from work, and that was
12 it. It wasn't -- it was more or less you're going to have to
13 write everybody up at the party because we were chanting.

14 Q Was Mr. Pettigrew still the union steward during that
15 period of time?

16 A Yes, ma'am. Excuse me. He -- he got injured on the job
17 by -- he got attacked by some tigers, and I'm not sure if his
18 union job -- I'm pretty sure at that time he was, but I want
19 to be very clear when I say "yes" on that. As far as I think,
20 I'm pretty sure he was.

21 Q Okay. Mr. Simpson asked you about a time when you heard
22 Jeff Steele complaining about marks on the elephants. Do you
23 remember that discussion you had with Mr. Simpson?

24 A Yes.

25 Q And I think you said that happened in Boston,

1 Massachusetts; do you remember that?

2 A Yes, sir -- yes, ma'am.

3 Q What do you recall about that incident?

4 A He got -- he got upset because we -- in Boston, you're
5 inside the arena, and so the other people, besides employees
6 of Ringling, have an opportunity to see this, so he was very
7 upset that, you know, there was a lot of hook marks and a lot
8 of hooking going on, and, you know, he just got a little bit
9 upset about it.

10 Q Why do you think he was upset?

11 A Because the --

12 MR. SIMPSON: Your Honor, that calls him to
13 speculate about what's in somebody else's mind.

14 THE COURT: What's the impression that you were left
15 with? We're not trying to get you to -- get into someone's
16 mind, but what was the impression? What was your reaction to
17 all of that?

18 THE WITNESS: It was the same it had been for
19 two-and-a-half years. It was, you know, we got to keep it --
20 my impression was they didn't want nobody to see it, so you
21 know, it was just like when Dateline was there, we talked
22 about Dateline was, "Don't get caught on camera. When you're
23 doing the walks, you either hide the bull hook or don't get
24 caught." We used to call people with cameras Canadians.

25 THE COURT: When was this Dateline show?

1 THE WITNESS: That Dateline was in -- oh, we filmed
2 it in Denver and it -- I believe it was '98.

3 THE COURT: It was in the '90s.

4 THE WITNESS: Oh, yes, it was in the '90s, yes, sir.
5 And he came into the barn and he told us, "Don't get caught on
6 tape. There's going to be a lot of cameras there." So when
7 he yelled about --

8 THE COURT: He, who?

9 THE WITNESS: Jeff Steele. So when he came to us
10 about excessive hooking, to me it was the same thing.

11 Q (BY MS. MEYER) And what was Mr. Steele's position at the
12 Blue Unit when you worked there?

13 A Unit manager.

14 Q Mr. Simpson also asked you if the USDA ever called you
15 personally to let you know they were coming to do an
16 inspection. Do you remember him asking you that?

17 A Yes.

18 Q Okay. Would there be any reason why the USDA would be
19 calling you?

20 A No.

21 Q Did you have any responsibilities at all with respect to
22 showing the USDA around Ringling Brothers?

23 A No, ma'am.

24 Q Okay. Do you have any basis for believing that the USDA
25 informed someone else at Ringling Brothers when they were

1 coming for an inspection?

2 A Yes, ma'am.

3 Q What is your basis?

4 A I believe Randy Peterson in Vegas said, "Hey, USDA is
5 going to be in Phoenix," which was, I believe a week or two
6 away -- a week. I think only a week, and he said, "So
7 everybody be alert when we get to Phoenix."

8 Q And what was your impression as to what he meant by that?

9 A Don't get caught hooking, pick up the food, keep it on
10 the pallet. There was a write-up by the USDA for food being
11 on the ground, so we had to make sure that all the food was on
12 the pallets, the bags of grain and stuff, keep it off the
13 floor, keep it on the pallets, so he was just making us well
14 aware that they were coming.

15 Q And Mr. Simpson asked you last week about a time that you
16 were cited for insubordination and you said it had something
17 to do with giving Karen corn to eat before you gave her water.
18 Do you remember that testimony?

19 A Yes, ma'am.

20 Q Could you explain why that would be grounds for
21 insubordination?

22 A Well, it -- it happened like this: Karen is up in front.
23 We were watering and feeding at the same time. Well, I saw
24 Tommy Henry and Adam Hill standing there, and I went ahead and
25 threw the corn up to Karen, and usually what we do is we throw

1 the bag and someone will grab it and bring it back.

2 So I threw it there, and Adam Hill grabbed me, spun
3 me around, threw me back against an elephant, and I put my
4 hands in the air and said, "Did you see that, Tommy Henry?"

5 And at that point, I didn't -- I didn't react to
6 anything, and I was wrote up for throwing the corn up there.
7 They called it insubordination because he said Karen hadn't
8 been watered, but I was busy feeding. I didn't see that Karen
9 hadn't been watered.

10 Q What does that mean, "Karen hadn't been watered," why is
11 that insubordination?

12 A I really don't -- you're supposed to water them and then
13 they can get their food.

14 Q Okay.

15 A I don't know where the insubordination comes in.

16 Q Okay. But you're supposed to give them water before you
17 give them food; is that correct?

18 A Yes, ma'am.

19 Q All right. How often were the elephants provided water
20 during the 24-hour period?

21 A Well, when -- Okay. When I first started, I was on a
22 full day. So in the morning, they would get water. Usually
23 Philly already had a -- night barn man already had them
24 watered when we got to work, so if they went in, if there was
25 a rehearsal, then they went in and came back out and got

1 watered and then basically in the evening.

2 Now, when I became barn man, if it was a non-show
3 day, then I come in and usually around 5:30, 6:00 o'clock we
4 would water them and then feed out and usually Randy or
5 somebody would come over and help me, and then Philly would
6 water them when he came on. That's the best -- so I'm going
7 to say three times, maybe four times a day.

8 Q Okay. Four times during a 24-hour period?

9 A Yes.

10 Q Did the elephants have regular access to water?

11 A No, ma'am.

12 Q Okay. And so if -- if the elephant wanted to get water
13 on its own, could it?

14 A No, ma'am.

15 Q Okay. It only got water if one of the crew members gave
16 it water; is that correct?

17 A Yes, ma'am.

18 Q And if you deviated from the water schedule, would that
19 have been grounds for insubordination?

20 A Excuse me, deviated?

21 Q You gave them water on your own at some other time during
22 the day, would that have been grounds for insubordination?

23 A Yes.

24 Q What if you -- were you permitted to give the elephants
25 food during the day if you wanted to?

1 A No, ma'am.

2 Q Would that have been grounds for insubordination?

3 A Yes, ma'am.

4 Q Mr. Simpson asked you about a statement that you made to
5 the Nebraska legislature regarding why you believe you were
6 given all three write-ups that have been mentioned. Do you
7 recall that?

8 A Yes, ma'am.

9 Q Okay. And why do you believe you were given those
10 write-ups?

11 A Excuse me?

12 Q Why do you believe you were given those three write-ups?

13 A I believe it was -- I really believe that at some point
14 they were trying to get rid of me towards the end. I think
15 that I complained so much. I know that if on the last one
16 they could have fired me, but my job would say -- because I
17 was going over to Europe with Raffo.

18 But I believe over the two-and-a-half years of
19 arguments on the train with -- you know, just yes, complained
20 all the time, you know, and all of us would complain about
21 stuff, you know, but never getting to a point of fighting,
22 physically fighting, but a lot of complaining or -- I won't
23 use that word, but you know, back and forth bickering between
24 each other.

25 I just believe that they saw what they could and saw

1 an opportunity, and I think the write-ups were strictly wrong.

2 I don't believe I should have been wrote up for any of them.

3 Q Okay.

4 A Okay, maybe the last one.

5 Q You testified that the bull hooks you saw at Ringling
6 Brothers had tape on them. Can you again describe what you
7 mean by that?

8 A They would -- they would tape them. If they didn't have
9 a handle, they would tape it all the way up to the top and all
10 the way around except leaving out the top point and the hook
11 part, just the tip of the hook. It was -- when you go into a
12 show, you -- it's dark and the men in black, they are dressed
13 in black and they run around and hook the elephants to get
14 them to, you know, be in whatever position or was, and these
15 guys have to keep their bull hook covered so that the public
16 doesn't see it.

17 Q Okay. But the point of the bull hook itself was not
18 covered in tape; is that correct?

19 A Yes, ma'am, it wasn't covered.

20 Q Okay. I'd actually like to show, if I could, Mr. Rider
21 one of the photographs that was taken at the Auburn Hills
22 inspection of a bull hook that's already been admitted into
23 evidence. It's May Call 54 at page 40.

24 MR. SIMPSON: Objection, Your Honor, this exceeds
25 the scope of direct and the cross.

1 THE COURT: I'll allow it over objection.

2 Q (BY MS. MEYER) So this is a photograph that was taken at
3 the Auburn Hills inspection. Is that what you mean by tape
4 around the bull hook?

5 A Yes, I do, but there would have been more tape down
6 towards the point.

7 Q But that's basically what you're talking about?

8 A Yes, ma'am.

9 Q Okay. Thank you.

10 THE COURT: For the record, he did testify about
11 this on direct examination.

12 Q (BY MS. MEYER) Now, how often did you see a bull hook
13 used in a way that broke the skin of an elephant?

14 A How many times?

15 Q Yes.

16 A Wow, I couldn't -- so numerous, I couldn't count them.

17 Q And how many times did you see a bull hook used in a way
18 that made an elephant bleed?

19 A Again, I'm -- I know that there is 50 at one -- at one
20 time was down in Richmond, so I'm going to say hundreds.

21 Q Did you see the bull hook used in this way breaking the
22 skin of an elephant with respect to all of the elephants that
23 you worked with?

24 MR. SIMPSON: Objection to the leading, Your Honor.

25 THE COURT: Rephrase it.

1 Q (BY MS. MEYER) Did you see a bull hook used --

2 THE COURT: Tell us what you saw with respect to
3 whatever it is you want to ask him.

4 Q (BY MS. MEYER) Could you tell us if you saw the breaking
5 of the skin. Which elephants did you see the breaking of the
6 skin on?

7 A I -- all the elephants at one time or another had bloody
8 hook marks and stuff like that and hook welds. That's on all
9 the elephants. You can't pick out one and say it had more,
10 this one had less, you know, it was -- it would vary, but all
11 the elephants. There wasn't one that didn't. There was some
12 that they -- not as much that they could use them for
13 inspections but...

14 Q And when you say -- when you say, "all the elephants,"
15 does that include Nicole?

16 A Yes, ma'am.

17 Q Does that include Karen?

18 A Yes, ma'am.

19 Q Does that include Mysore?

20 A Yes, ma'am.

21 Q Does that include Jewell?

22 A Yes, ma'am.

23 Q Does that include Susan?

24 A Yes, ma'am.

25 Q Does it include Lutzi?

1 A Yes, ma'am.

2 Q Does it include Zina?

3 A Yes, ma'am.

4 Q And with regard to the chaining practices that you
5 described in your direct testimony, did you see those
6 practices used with respect to Nicole?

7 A Yes, ma'am.

8 Q And did you see them used with respect to Karen?

9 A Yes, ma'am.

10 Q Did you see them used with respect to Mysore?

11 A Yes, ma'am.

12 Q Did you see them used with respect to Jewell?

13 A Yes, ma'am.

14 Q Did you see them used with respect to Susan?

15 A Yes, ma'am.

16 Q Did you see them used with respect to Lutzi?

17 A Yes, ma'am.

18 Q Did you see them used with respect to Zina?

19 A Yes, ma'am.

20 Q Okay. And with respect to the number of hours that the
21 elephants were chained on the train that you testified, was
22 that true with respect to Nicole?

23 A Yes, ma'am.

24 Q Was it true with respect to Karen?

25 A Yes, ma'am.

1 Q Was it true with respect to Mysore?

2 A Yes, ma'am.

3 Q Was it true with respect to Jewell?

4 A Yes, ma'am.

5 Q Was it true with respect to Susan?

6 A Yes, ma'am.

7 Q Was it true with respect to Lutzi?

8 A Yes, ma'am.

9 Q And was it true with respect to Zina?

10 A Yes, ma'am.

11 Q How much playing with each other could the elephants do
12 on the train?

13 A How much playing could they do?

14 Q Playing together. Playing together.

15 A Playing. Very little. I mean, you can't -- they're side
16 by side on the train, so, you know, it isn't like they could
17 turn around. Like for the three English, they couldn't turn
18 around and play with Lecheme. She was back there. Meena was
19 in the back. They couldn't interact that way. They could
20 only interact next to each other.

21 MS. MEYER: I would like to show Plaintiffs'

22 Exhibit 121B, a clip that was shown by Mr. Simpson and ask

23 Mr. Rider some questions about it, and it was two, colon, 22,

24 colon, 56, to two, colon, 24.

25 Q (BY MS. MEYER) Do you remember this video footage as it

1 starts?

2 (VIDEO CLIP PLAYED.)

3 A Yes, ma'am.

4 Q (BY MS. MEYER) And this is footage that you took, right?

5 A Yes, ma'am.

6 Q And Mr. Simpson asked you -- while we're watching this,
7 Mr. Simpson asked you why you say this handler in the front
8 here is hooking this elephant, and I would like you to explain
9 it to Judge Sullivan if you would, please.

10 A Well, if you watch, he puts it right up here behind her
11 ear, and he's hooking her in the top of the ear with it and
12 she actually -- right now he'll pull her sideways, but right
13 there he just did a little jab to her with the end of it. And
14 if you watch up here where he does it back up on top, see how
15 he's jabbing there?

16 Now she's bending over as it's hooked right into
17 here. It's not hooking to the head piece because the one
18 thing they told us at Ringling was don't ever use the hook on
19 the head piece because they are very expensive heed pieces.

20 Q And how is the elephant -- how do you observe the
21 elephant reacting to what's going on?

22 A Trying to bend to get out of the pain of her ear being
23 hooked.

24 Q And what is your basis for saying -- for saying that this
25 is what's going on, that the handler is hooking the elephant

1 behind the ear?

2 A I've seen it a lot, a lot of times at Ringling. It's --
3 it's a means to bring their head down. It's -- you hook them
4 right behind the ear, and I've seen the marks where it slipped
5 and cuts down behind the ear.

6 Q Which side of the elephant is the handler on?

7 A The left side.

8 Q And is that -- is that unusual?

9 A No, it's -- it's basically you always walk -- I don't
10 know if it's on purpose, but they always walk on the left-hand
11 side of the elephant.

12 Q And during your two-and-a-half years at Ringling
13 Brothers, did you see wounds behind the ears of the elephants?

14 A Yes, ma'am.

15 Q And which side did you usually see them on?

16 A Usually on the left-hand side.

17 Q How common --

18 A Or excuse me, if we're looking head on, would be the
19 right-hand side. If you're the elephant, it would be their
20 left ear.

21 Q Okay. And how common did you see that?

22 A I would say two or three times a week.

23 Q Okay. Now, you answered some questions posed by
24 Mr. Simpson regarding a beating of Karen that you witnessed in
25 New Haven, Connecticut. Do you remember that testimony?

1 A Yes, ma'am.

2 Q And you said after the beating, you didn't want to go up
3 to Karen. Do you remember saying that?

4 A Yes, ma'am.

5 Q What did you mean by that?

6 A Well, I stayed as far away as I could because Karen, she
7 was not happy at that point, and I knew that if there was
8 nobody -- if I would have went up there or even got close
9 enough, she could have reached out and got me.

10 Q Okay. There's been a lot of talk about Karen. Were you
11 given any particular instructions about Karen when you went to
12 work at Ringling Brothers?

13 A The very first thing you do when you walk in the tent is
14 they say, "Karen is the fourth elephant. Don't ever go near
15 Karen."

16 Q And why did they tell you that?

17 A That's where I first heard the word "killer," and it was
18 just don't, she's -- "She's dangerous. Only certain people
19 can go near her. Do not, under any circumstances, go up to
20 Karen."

21 Q Okay. And did anyone at Ringling Brothers have
22 particular responsibility with respect to Karen while you were
23 there?

24 A The main one was Sonny. I mean, he -- he was the one
25 that always took her in for whatever part of the show she was

1 in. I wasn't -- I believe she went in in the very beginning
2 and that's when they had the kids around the -- where the
3 circus goes around the arena, the ring, and then there was
4 Randy Peterson, Pat Harned, Alex Vargas, Jeff Pettigrew,
5 obviously Sonny. Other than those maybe five or six
6 individuals, those were the ones I went to first because those
7 are the ones that can go up to Karen.

8 Q Okay. But did you say that Mr. -- Sonny, you said Sonny,
9 is that Sonny Ridley?

10 A Yeah, Robert Ridley. I'm sorry, we called him Sonny.

11 Q You said you thought he had principal responsibility for
12 Karen?

13 A Basically. That's who was always taking care of her.

14 Q And the video clip that you took that we watched again
15 today that Mr. Simpson showed you of, I believe it's
16 Mr. Ridley getting a bull hook stuck in the mouth of an
17 elephant. Do you remember that clip?

18 A Yes, ma'am.

19 Q Do you know which elephant that was?

20 A It looked like Karen.

21 Q Okay. Did Karen have any particular physical
22 characteristics that you remember when you think about her?

23 A Yes, I do. She had a black -- her hair was black. I
24 want to say U-shaped. I can't remember if it was upside down
25 or right side. If you look at her hair, right in the forehead

1 was a U shape. We never cut it.

2 Q And do you remember if Karen could do anything in
3 particular with her trunk?

4 A Yes, I do.

5 Q What did she do?

6 A She blew raspberries.

7 Q What do you mean by that?

8 A She'd step on her trunk and blow like a [noise]
9 raspberry. She was good at it. I forgot that. Okay.

10 Q And when you think about Zina, do you remember anything
11 about her physical characteristics?

12 A Her trunk, the bottom portion of her trunk, I was told
13 paralyzed, and she couldn't -- she couldn't like normally use
14 her trunk. She would have to pick food up, flip it up and
15 then spin her trunk kind of like an egg beater, you know,
16 don't go near her when she's spinning it. She'd get it up
17 there and just spin.

18 Q Did she have trouble taking water in?

19 A Yeah. We had to water her with a hose.

20 Q What do you mean by that?

21 A Take the hose and stick it in her mouth and just let
22 her -- stand there with it so she wouldn't chew on it, but
23 just sat there and let her drink out of the hose because she
24 couldn't -- she couldn't suck water or actually throw the
25 water up in her trunk, she couldn't do it.

1 Q And when you think about Zina, do you remember any of her
2 physical characteristics?

3 A The thing I remember about Zina was other than the trunk,
4 I mean, that's -- you could identify Zina was just her trunk.
5 She was --

6 Q I'm sorry. We did Zina already. I was thinking Lutzi in
7 my head. When you think about Lutzi.

8 A Oh, I'm sorry.

9 Q When you think about Lutzi, what kind of physical
10 characteristics do you think of?

11 A A little bit shorter than Susan. Her and Susan were
12 always together, so they were like the two that were always on
13 the -- side-by-side on the train, and I always thought
14 Susan -- she was always getting pushed around by Susan, so I
15 would say that -- I mean, between Lutzi and Susan, they're
16 both tall and lanky. Her front legs were very, very long, her
17 front legs. That I do remember on her.

18 Q You talking about Lutzi?

19 A Lutzi.

20 Q All right. And what about Nicole. When you think about
21 Nicole, do you have a memory of any physical characteristics?

22 A She had a lot of pink out. We call it pink out when
23 they -- the light colors they get on her trunk and stuff, she
24 had a lot of that, and then she was always the end elephant.
25 It was easy to spot Nicole.

1 Q Okay. And do you remember anything unusual about the
2 ears of any of the elephants that you worked with?

3 A The English.

4 Q Tell me about that.

5 A Camella, Lecheme and Meena had what was a -- I was told
6 it was a burn. They had been in a fire in Europe years ago,
7 and their ears were like little droplets, like little earlobes
8 all way up and down them, so I guess where -- that's the only
9 way I can describe it is like an earlobe in different places
10 hanging.

11 Q When you worked at Ringling Brothers for the
12 two-and-a-half years you were there, did you ever see an
13 elephant bleed because it got scratched by a branch?

14 MR. SIMPSON: Objection to the leading, Your Honor.

15 THE COURT: Sustained.

16 Q (BY MS. MEYER) Did you ever see the elephants with
17 branches?

18 THE COURT: What other incidents of bleeding do you
19 recall, if any?

20 THE WITNESS: I've seen -- other than the bull hook,
21 I've seen them get a scratch when they were on the train,
22 might be coming -- when they are going down to get in. Among
23 themselves, bleeding from -- I believe it was Susan had a big
24 gash in her head and we realized it was from one of the
25 elephants had scratched her with a tusk. They weren't big

1 tusks but sometimes you'd see them that way. Walking into
2 a -- rubbing next to a building or something. It wasn't --
3 you know, it wasn't as frequent as it was with the bull hook.

4 Q (BY MS. MEYER) Okay. Did you ever see the elephants
5 given branches to play with or to eat?

6 A Yes, ma'am.

7 Q How often did you see that?

8 A Kansas City, I remember that vividly because that's the
9 first time. After that, it was -- if Davey Tree Service had
10 them, maybe three times, four times. We'd just call Davey
11 Tree Service and they'll run out and dump us a bunch of
12 branches, but it wasn't every time.

13 Q Okay. Did you ever see any blood on an elephant caused
14 by a branch?

15 A Not that I remember.

16 Q Okay. And in answer to a question from Mr. Simpson, you
17 said that the scars that you were describing on the heads of
18 the elephants were not caused by head pieces. Do you remember
19 telling him that?

20 A Yes.

21 Q Why do you say that?

22 A Because they weren't where the head piece was, for one.
23 Like the difference to me between a scar and a permanent scar
24 is two different things. They had scarring where they would
25 cut the skin, be back behind the ear or on behind the leg or

1 on the trunk. It may not be permanent but they would leave a
2 cut and they were always like white.

3 It looked like, if you take and you -- the top of
4 the skin and then it would be white kind of like fat, but not
5 fat. It would just -- it would be white, so you'd have this
6 white and then a little blood in the middle. I've seen that
7 quite frequently.

8 Q But how do you know that those wounds that you've
9 describing were not caused by head pieces?

10 A They weren't where the head pieces were, and honestly,
11 the head pieces are on so loose, I don't see how they could
12 really scratch them.

13 Q Okay. And do you remember Mr. Simpson showed you a
14 videotape of you and some other handlers putting oil on
15 elephants?

16 A Yes, ma'am.

17 Q Okay. How often did that happen?

18 A Once.

19 Q Is that the only time?

20 A Yes, ma'am.

21 Q All right. Do you know who took that videotape?

22 A I believe it was -- I don't know her full name but we
23 called her Vika. She was, I believe, from Kurdistan or
24 something. She's on the end of the video when they turn the
25 video around and somebody said, "Wave, Vika." Vika was the

1 one that was filming it at the time.

2 Q How do you -- who was Vika?

3 A She worked with Pat Harned on the baby elephants, and
4 then I don't remember what she did after that.

5 Q She was employed by Ringling Brothers at the time?

6 A Yes, ma'am.

7 Q Okay. And do you remember where that videotape was
8 taken?

9 A D.C. Armory.

10 Q But physically where were you at the D.C. Armory?

11 A Oh, in the basement. We had set up the picket line and
12 then we put some of the fences up in front of it, and we were
13 down on the -- at the end where you see in the video, we're
14 down in an open space. We swept the floor and we started
15 pouring oil all over them. I mean, it was kind of fun.

16 Q Okay. Now, is the public -- was the public allowed to
17 have access to those areas when you were at a particular
18 venue?

19 A Not the general public, no.

20 Q Okay. Now, Mr. Simpson asked you some questions about a
21 letter that you wrote to PAWS, and I'd like to go to that.
22 Defendant's Exhibit 39. Can you see that, or do you need --

23 A Can you enlarge it? Okay. She's doing it.

24 Q Okay. Do you remember Mr. Simpson asking you about this
25 letter?

1 A Yes, ma'am.

2 Q Okay. And what is this letter?

3 A It's just a letter telling Pat Derby that I left.

4 Q Okay.

5 A Because I had -- I kind of left on a -- without telling
6 her.

7 Q Okay. Could you -- could you read the paragraph in the
8 middle of the letter, please, the one that starts with "I
9 want."

10 A (Reading) I want to thank you -- whoa. I want to thank
11 you for helping me get the word out about Ringling Brothers'
12 mistreatment of the elephants and giving me a place to stay.
13 Originally, when you hired me to do security at the new place,
14 you told me that I could continue to speak out against
15 Ringling. I remember Sharon Simms sat me down and told me
16 that I could do as much media as I wanted, but then, when you
17 settled your lawsuit with Ringling, you and Sharon told me
18 that as long as I was on PAWS' payroll, I could not do any
19 media against Ringling anymore. When you found out that I was
20 planning to go to Washington to help the ASPCA at a press
21 conference, you told me that I would be fired if I did that,
22 so I decided that I had to leave PAWS. I want to do
23 everything in my power to help the elephants, and this means
24 speaking out as much as possible against Ringling Brothers --
25 whoa, excuse me, I lost myself. This means speaking out as

1 much as possible about how Ringling Brothers beat them and
2 especially mistreats the babies.

3 Q Okay. Thank you. Now, Mr. Simpson asked you some
4 questions about your answers to interrogatories, and
5 particularly your answer to Defendant's Interrogatory No. 24,
6 and I'd like to turn to Defendant's Exhibit 16 and go to page
7 39 of that exhibit.

8 You're going to have to make that bigger, I think.
9 All right. And I want to -- I want to read the first sentence
10 of this interrogatory. It says, (reading) Identify all
11 income, funds, compensation, other money or items, including,
12 without limitation, food, clothing, shelter, or transportation
13 you have ever received from any animal advocate or animal
14 advocacy organization.

15 Do you see that?

16 A Yes, ma'am.

17 Q Okay. Now, what I want you to do is read your response
18 to that sentence, which starts at line 5 of the response after
19 the comma. Go down like five lines in your response, and
20 after the comma after "interrogatories." Just read the rest
21 of the --

22 A (Reading) Mr. Rider would be willing to provide
23 Defendants with the answer to the first sentence of this
24 interrogatory. Subject to --

25 Q Go ahead.

1 A (Reading) Subject to and without waiving the foregoing
2 or general objections to those interrogatories.

3 Q Hold on a second. We're lost here.

4 A Yeah.

5 Q What I want you to read is if you start on line 5 right
6 after the comma. It says, "Interrogatories," comma.

7 A Uh-huh, (reading) And subject to a confidentiality
8 agreement, Mr. Rider would be willing to provide Defendants
9 with the answer to the first sentence of this interrogatory.

10 Q Thank you.

11 A You're welcome.

12 Q Okay. Now, I want to go to the next page, which is page
13 40. Can you tell me the date of those -- of that answer?

14 A June 9th, 2004.

15 Q Okay. And now I would like to go the page 42 of the same
16 exhibit. Okay. And this is your supplemental responses to
17 Defendant's interrogatories. Do you see that at the top of
18 the page?

19 A Yes, ma'am.

20 Q I'd like to go to the end of those, which is at page 61,
21 to get the date. Do you see the date there of the date for
22 the supplemental responses to the interrogatories?

23 A Yes, ma'am.

24 Q What's the date?

25 A January 31st, 2007.

1 Q Okay. And now I want to go to page 60. And again, I
2 want you to read what your answer to your supplemental
3 response to Interrogatory No. 24 is.

4 A (Reading) Subject to and without waiving his previous
5 objections to this interrogatory, Mr. Rider hereby
6 incorporates by reference the deposition testimony that he
7 provided on October 12, 2006, and reiterates that he has
8 offered to provide Defendants with a complete list of
9 information that is responsive to this interrogatory subject
10 to a confidentiality agreement that would protect his personal
11 privacy.

12 Q All right. Thank you. And then after Judge Sullivan
13 resolved the request for the confidentiality agreement, did
14 you in fact provide a complete answer to Interrogatory No. 24?

15 A Yes.

16 Q Let's go to Defendant's Exhibit --

17 THE COURT: Can you repeat that? I had to add a
18 matter on to my calendar at 5:30. I need to speak with my
19 staff just for five minutes, so you can take a five-minute
20 recess. You can either stay there or not, but don't go too
21 far. All right. There is no need to stand. Thank you.

22 THE DEPUTY CLERK: This honorable court now stands
23 in a short recess.

24 (A BRIEF RECESS WAS TAKEN.)

25 THE DEPUTY CLERK: Please remain seated.

1 THE COURT: All right. Go ahead, Counsel.

2 Q (BY MS. MEYER) All right. We're still in Defendant's
3 Exhibit 16, and I'd like to go to page 63.

4 And so this is the -- your second supplemental
5 responses to Defendant's interrogatories. Do you see that?

6 A Yes, ma'am.

7 Q All right. If you go to the end of that document, which
8 is at page 73 in exhibit -- Defendant's Exhibit 16, it will
9 have the date that those were provided. I think it's page 73.
10 Hold on a minute. Okay. And you see the date there by your
11 name?

12 A Yes, ma'am.

13 Q What is that date?

14 A 9/24/2007.

15 Q And that's the date that your second supplemental
16 responses were provided to Defendant; is that correct?

17 A Yes, ma'am.

18 Q All right. Now, I'd like you to go to pages 13 to 16 of
19 that document and just -- which is at 75 to 78 of Defendant's
20 Exhibit 16 and just read it to yourself, starting with -- this
21 is your response to Interrogatory No. 24, starting with
22 "Supplemental Response to Interrogatory No. 24." Just read it
23 to yourself.

24 A (Witness reading.)

25 Q Ready for the next page?

1 A Oh, yes, ma'am.

2 Q Okay.

3 A (Witness reading.) Okay. Okay.

4 Q And just -- oh, keep reading. Sorry.

5 A (Witness reading.) Okay. All right.

6 Q Okay. Sorry. You're still reading?

7 A (Witness reading.) Yes, ma'am. Okay.

8 Q All right. Have you read that?

9 A Yes. Yes, ma'am.

10 Q If you could go back to page 76 of that exhibit. I'm
11 sorry, next page, 77. First of all, having read your complete
12 answer to Interrogatory No. 24 there, is that in fact the
13 response that you gave when you -- after Judge Sullivan
14 resolved the confidentiality agreement?

15 A Yes, ma'am.

16 Q Now, if you go to page 15 of the document, which is page
17 77 of Defendant's Exhibit 16, and you look at the middle
18 paragraph that starts "to the best of my recollection."

19 A Yes, ma'am.

20 Q Okay. And can you tell us which groups, based on your
21 answer there, provided you funding for your public education
22 advocacy work?

23 A Which group did?

24 Q Yes.

25 A Oh, the ASPCA, the Animal Welfare Institute, the Fund for

1 Animals and the Animal Protection Institute.

2 Q Okay. And if we go to the first page, which is page 78
3 of this exhibit, you look at the top and you read -- read that
4 first sentence in that paragraph there.

5 A (Reading) From all the other animal advocacy groups over
6 the last seven years, other than the Plaintiff groups or
7 Wildlife Advocacy project, I have received -- You want me to
8 continue?

9 Q And then there is a paragraph explaining what other funds
10 you received.

11 A Right. (Reading) Approximately \$25,350, plus one of the
12 groups also paid for a round trip train ticket for me to go
13 from Los Angeles to Chicago in March 2006 so that I could
14 speak to the city council in support of legislation that would
15 ban the use of bull hooks on elephants. It also paid my hotel
16 bill for two days while I was there, and another group paid
17 for a plane ticket for me in July 2001 so I could speak to the
18 city council of South Hampton, New York about proposed
19 legislation concerning circuses.

20 Q All right. And could you also just read, finally, the
21 last paragraph on that page?

22 A (Reading) In addition, over the last seven years, I have
23 received approximately \$7,690 from nine different individuals
24 who could probably be described as animal advocates. None of
25 these individuals are party to this lawsuits, attorneys for

1 any of the parties or employees or officers of any of the
2 Plaintiffs' organizations or WAP.

3 Q Okay. Now, based on all of this information that you
4 provided in response to Interrogatory No. 24, have you
5 received funding over the years from entities other than the
6 Wildlife Advocacy Project or Meyer & Glitzenstein?

7 A Yes, ma'am.

8 Q Okay. And are those sources of funding the ones that
9 you discuss in your response to Interrogatory No. 24?

10 A Yes, ma'am.

11 Q Okay. Now, Mr. Simpson asked you whether other than the
12 grants you have received from Meyer, Glitzenstein & Crystal
13 and the Wildlife Advocacy Project, you have any other source
14 of support. Do you remember that question?

15 A Yes, ma'am.

16 Q Okay. And based on your reading of your interrogatories,
17 what is your response to that question?

18 A I've had no other source of income other than the one I
19 spoke of. I had some little trinkets I sold at a flea market
20 that wasn't really income.

21 Q Mr. Simpson was asking you whether you have had other
22 sources of funding for your public advocacy other than the
23 Wildlife Advocacy Project or Meyer, Glitzenstein & Crystal.

24 A Yes, ma'am.

25 Q And I'm asking you, based on what you just read in your

1 interrogatory responses, what is the answer to that question?

2 MR. SIMPSON: Objection, it's leading the witness.

3 THE COURT: I'll allow the question to be answered.

4 A I received money from other people, from advocates and
5 private citizens throughout. Speaking sometimes its --
6 speaking engagements, they'll just hand me money, and I put it
7 in my pocket. I don't ask them who they are.

8 Q Why do people give you money?

9 A To support the -- to support my public education and my
10 media and to help me out on the road, you know. Sometimes
11 they just say, "Here, you know, this is to help you." I
12 don't --

13 THE COURT: You mean to say at these -- you mean
14 when you speak, you talking about speaking engagements?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: What are you talking about?

17 THE WITNESS: It's just people who come -- I'll give
18 you an example. I spoke in Pittsburgh or Harrisburg, excuse
19 me, at the capital dome, and some people came up afterwards
20 and they just shook my hand and they would have some money.
21 Well, I didn't count the money. I just put it in my pocket
22 and they said, "There, it's to help you on the road with your
23 media campaign," so...

24 THE COURT: When you got back to your hotel, you
25 would count the money, I assume.

1 THE WITNESS: Oh, sure.

2 THE COURT: Is there an average? You know, what did
3 you take in?

4 THE WITNESS: Oh, I mean, it's been as -- you know,
5 50, 100, sometimes 500. That would happen to be a guy who
6 handed me five 100-dollar bills and I don't know who the
7 gentleman was. He just said, "Thank you for doing what you
8 do." It's usually -- it can vary. Every one of them, I don't
9 go there with a expectation of getting anything. I don't go
10 there for that purpose. So if I get --

11 THE COURT: Do you ever leave without getting
12 something?

13 THE WITNESS: Oh, yes, many, many times. Oh, yeah.
14 Actually, the one in Carbondale, since everybody is bringing
15 up Carbondale, Carbondale, Illinois, nothing, and I didn't ask
16 for anything. I didn't go there to say you have to pay me to
17 speak, so...

18 Q (BY MS. MEYER) Without naming names, do you know any of
19 the individuals who have contributed to the Wildlife Advocacy
20 Project for your public advocacy work?

21 A Yes, ma'am.

22 Q Okay. Can you describe -- again, without naming any
23 names, can you describe the kinds of individuals who have
24 provided money to the Wildlife Advocacy Project for your
25 public advocacy work?

1 MR. SIMPSON: Your Honor, I'm going to object to
2 this because we tried to get this information in discovery and
3 you suppressed it.

4 THE COURT: And I didn't allow it either. That's
5 right. Overruled -- or sustained.

6 MS. MEYER: I'm just asking for the kinds of people
7 who provided information, not for the names, Your Honor.

8 THE COURT: It's irrelevant anyway.

9 MS. MEYER: Okay.

10 THE COURT: It should be.

11 Q (BY MS. MEYER) In connection with your public education
12 advocacy, did you assist in preparing any video pieces for
13 Utube?

14 A Yes, ma'am.

15 Q Okay. What is Utube?

16 A An internet source for posting videos that you want the
17 public to see.

18 Q All right. And what did you help put together for Utube?

19 A What?

20 Q What did you help put together for Utube?

21 A Oh, a little piece that had some of the different
22 videotape that we had over the years. I didn't have to -- I
23 don't recall the finished product right now, but I believe
24 there was some -- I was speaking in there and then there was
25 videotapes.

1 Q Do you know whether that piece on Utube has a link to the
2 Wildlife Advocacy Project?

3 A I'm not sure. I didn't -- I guess it does, probably.
4 I'm sure it does. I've never -- I haven't been on that link
5 in a long time.

6 Q Okay. Now, you testified, in answer to a question from
7 Mr. Simpson, that in the past you had received some funding
8 for your public education advocacy from the law firm Meyer,
9 Glitzenstein & Crystal. Do you remember that testimony?

10 A Yes, ma'am.

11 Q Do you know whether the law firm was reimbursed by anyone
12 for those expenses?

13 A I believe they were.

14 Q Now, Mr. Rider, why did you stay so long at Ringling
15 Brothers for two-and-a-half years?

16 A Well, I loved my girls and that was foremost, but you
17 have to understand, if -- if you're in a strange town
18 somewhere, and like, for instance, if I was going to complain
19 about the abuse, I knew that I could get fired, in 15 minutes
20 I'm going to be off the train, so that's a deterrent right
21 there not to complain, don't go to management, don't go to
22 other places.

23 But I loved my elephants and I knew that if I was
24 there, at least they were hearing -- you know, they were
25 hearing me every day, they were seeing me every afternoon and

1 I could give them my love and affection.

2 Q And could you explain the reasons that you left your
3 employment with Daniel Raffo?

4 A The main reason I left is that I thought the conditions
5 would change once I got over to Europe. It didn't change. I
6 was forced into using a bull hook. His wife was always on me
7 about, "Where's your hook, where's your hook," and it just got
8 to a point then after I'd seen what happened with the two
9 tigers, I just said, "That's it. I'm -- I'm going to do
10 everything I can to help these elephants."

11 Q Okay. And the photographs that Mr. Simpson showed you
12 last week of you with a bull hook in your hand, which I think
13 you said was on the docks. Do you remember that?

14 A Yes, ma'am.

15 Q Who were you employed by at the time you were holding
16 those bull hooks?

17 A Daniel Raffo.

18 Q Okay. Mr. Simpson also asked you about your original
19 response to Interrogatory No. 24 concerning how you first got
20 to PAWS from Boston. Do you remember that?

21 A Yes, ma'am.

22 Q And how did you get from Boston to PAWS?

23 A I got there by bus.

24 Q Okay. If we could go to Defendant's Exhibit 16 at page
25 89. Okay. And you see your supplemental response to

1 Interrogatory No. 24?

2 A Yes, ma'am.

3 Q And at the very beginning of your response, could you
4 just read the first clause of your response.

5 A (Reading) I hereby incorporate by reference the
6 deposition testimony that I provided on December 18-19, 2007.

7 Q That's enough for that. Okay. And now, what I'd like to
8 do is go to that deposition testimony, if we could,
9 Mr. Rider's deposition testimony from December of 2007, and
10 I'd like to go to page 161, line 3. And if you could read,
11 starting on line 3, Mr. Rider, down to line ten, please.

12 A You want me to read my answer or the whole thing?

13 Q Yeah, go ahead.

14 A (Reading) After your discussion with Ms. Swart, what did
15 you do?

16 (Reading) Went downstairs and got on the bus for
17 California.

18 (Reading) And traveled where?

19 (Reading) To Galt, California -- actually
20 Sacramento. Was met in Sacramento by a secretary.

21 Q Thank you. So if an earlier interrogatory said you had
22 flown to California, would that have been correct?

23 A No, that wouldn't have been correct.

24 Q All right. Now, you testified that the first time you
25 went public about the abuse that you witnessed in the circus

1 industry was when you talked to a reporter for the Daily
2 Mirror in London. Do you remember that testimony?

3 A Yes, ma'am.

4 Q Okay. Did you learn anything from that experience with
5 talking to the media?

6 A That the public can find out that -- I mean, I knew at
7 that point by stepping forward and speaking for the elephants
8 that the public was going to be made aware of this. It was a
9 large article and I knew there would be a good response and I
10 knew that this was a way to help the elephants.

11 Q Okay. When you say "this was a way," talking to the
12 media?

13 A Yeah, talking to the media and to newspapers.

14 Q All right. And Mr. Simpson also asked you about a time
15 when someone from the Fund for Animals discussed a job opening
16 with you. Do you remember that testimony?

17 A Yes, ma'am.

18 Q And my question is, why didn't you pursue that job?

19 A It wasn't -- I spoke to the person there, and it wasn't
20 "Come here, you've got the job." It was, "We have an opening
21 and there's a lot of people applying, come on down and apply."

22 Well, at that point I knew I was better off to just
23 stay with what I was doing and keep the media going because
24 that wasn't a guaranteed job there.

25 Q Okay. Mr. Rider, did anyone ever give you money in

1 exchange for you being a Plaintiff in this case?

2 A Absolutely not.

3 Q Okay. Did anyone ever promise you money in exchange for
4 you being a Plaintiff in this case?

5 A No.

6 Q Have you ever demanded money from any of the Plaintiff
7 organizations in exchange for being a Plaintiff in this case?

8 A No.

9 Q Have you ever demanded money from anyone in exchange for
10 being a Plaintiff in this case?

11 A No.

12 Q Have you ever asked anyone associated with Feld
13 Entertainment for money in exchange for dropping this case?

14 A No.

15 Q Have you ever asked anyone associated with Feld
16 Entertainment for anything else of value in exchange for
17 dropping this case?

18 A No.

19 Q Has anyone on your behalf ever proposed dropping this
20 case in exchange for getting you money?

21 A No.

22 Q Now, Mr. Simpson asked you if you expected to continue to
23 get funding for your public education advocacy once the
24 lawsuit was over. Do you remember that testimony?

25 A Yes, ma'am.

1 Q And I believe you said -- you said, "No, not if you win
2 the case." Do you remember that?

3 A Right.

4 Q What did you mean by that?

5 A Well, I meant that if we prevail, there is -- you know, I
6 mean, we've -- there is not going to be anymore media than
7 maybe a day or two, but other than that, I'm not going to go
8 around the United States chasing Ringling because at that
9 point the elephants are going to be in a better situation, so
10 that's what I meant by that.

11 Q And if you lose the lawsuit, do you think you might
12 continue to do media and public education on this issue?

13 A As long as it takes me to get these elephants into a
14 position where they are not being treated like they're being
15 treated now, I will devote the rest of my life to doing media
16 if I have to.

17 Q Okay. Now, you -- in answers to some questions from
18 Mr. Simpson, you were describing the way the elephants would
19 sway when you worked at Ringling Brothers, remember that?

20 A Yes, ma'am.

21 Q And I think you said in response to a question he asked
22 you that they would stop swaying if they were fed hay; is that
23 correct?

24 A Yes, ma'am.

25 Q All right. So was that a way to get them to stop

1 swaying, to feed them hay?

2 A I mean, they would stop because they'd be eating.

3 Q Okay. When did you find out where Sophie was?

4 A I believe it was either right at the deposition or
5 shortly -- I'm almost positive that Mr. Simpson said it at the
6 deposition, and I went, "Oh, I didn't know she was" -- I don't
7 recall -- I don't remember before that. I remember at the
8 deposition, but I couldn't tell you who or when. I just -- I
9 thought that's first place I heard it.

10 Q Okay. And so it's after the deposition when you knew
11 where Sophie was that you went to visit her?

12 A Yes, I'm sure it was.

13 Q Okay. And you talked about Rebecca and Mini, the two
14 elephants that went to the PAWS sanctuary. Do you remember
15 that?

16 A Yes, ma'am.

17 Q All right. When did they go to the PAWS sanctuary?

18 A I believe it was after the settlement with Ringling
19 Brothers, maybe 2001.

20 Q It was after you brought this lawsuit, wasn't it?

21 A As far as I know, yes.

22 Q It was after --

23 A Oh, yes, it was after. I'm -- absolutely because PAWS
24 was on the lawsuit in the beginning and then they weren't.

25 Q It was after PAWS withdrew from this lawsuit, wasn't it?

1 A Yes, ma'am.

2 Q Okay. And how did you feel about Mini and Rebecca going
3 to PAWS?

4 A Well, I was -- I was -- I was -- I felt good for them
5 that they weren't in the circus anymore, but I knew that
6 because of -- you know, being told I couldn't speak out with
7 Ringling, I didn't know if I could ever go up there and visit
8 them, so I knew there shouldn't have been any reason I
9 couldn't go, it's just I never had the opportunity for one,
10 but I'm glad they were where -- I'm glad that Mini got to live
11 out the rest of her life there. I'm happy with that.

12 Q Well, Mr. Simpson asked you if you have had an
13 opportunity to see photos of Mini and Rebecca at the PAWS
14 sanctuary, and I think you said "yes."

15 A Yes.

16 Q What did you observe about those photographs?

17 A Well, I -- from living up there, I knew where they were
18 in the photos, and so I could picture that in my mind. It
19 made me feel -- I was -- I was sad for Mini -- I was happy,
20 but of course, Mini wasn't gone yet, so when I seen those two
21 together, I thought -- actually there was three. I guess they
22 made friends with one of them there at PAWS, so there was
23 three elephants there, and I thought, well, at least they're
24 together and it looked like they were having a lot of fun.

25 Q And can you describe what the sanctuary looks like that

1 they were at?

2 A The sanctuary is 2300 -- or 2300 acres. It's kind of a
3 hilly part of the foothills of the San Andreas mountains, and
4 so you had a few uphill and downhill, and then you had this
5 one big valley that went down and then a whole side of a hill.
6 I heard the side of the hill was going to be something like
7 the bears or tigers were going over there.

8 On this side of the river, if you go down a bit,
9 then there was this wide open area and that's where they were
10 -- I know that's where they put Mini and Rebecca. I guess
11 they built some barns, and nothing was there when I was there.
12 This was all bare land. And then there was a couple of ponds.
13 One of them was for the -- the bigger one, I believe, is where
14 they put the ones that Pat Derby had and then the smaller
15 ponds is where they put the other, Rebecca and Mini and
16 whoever the other elephant was.

17 Q Okay. And they used a bull hook at that sanctuary?

18 A No, ma'am.

19 Q Okay. And you also talked about -- Mr. Simpson asked you
20 whether or not you had -- he asked you about your not going to
21 the inspections, the Court ordered inspections in this case.
22 Do you remember that?

23 A Yes, ma'am.

24 Q Did you want to go to the inspections?

25 A I would have liked to go, but I was -- I was scared for

1 my life. I'm going to be honest about it. I was afraid to go
2 around Ringling at that time by -- I just didn't feel that --
3 I didn't feel secure in going there.

4 Q Okay. Now, Mr. Simpson also --

5 THE COURT: I might be mistaken. I thought you said
6 you left working for Raffo because you got tired of seeing
7 elephants hurt. Isn't that what you said on direct
8 examination?

9 THE WITNESS: Yes, sir.

10 THE COURT: All right. And a few minutes ago you
11 said you left there because you were constantly being asked to
12 use the hook; is that --

13 THE WITNESS: At Raffo's, yes, sir.

14 THE COURT: All right. But originally you said you
15 got tired of seeing elephants being hooked, though. If I'm
16 mistaken --

17 THE WITNESS: Yes, when I was at Ringling. I didn't
18 use the hook.

19 THE COURT: I'm talking about in Europe.

20 THE WITNESS: In Europe, yes. Yes, Your Honor.

21 THE COURT: So why did you leave?

22 THE WITNESS: I left because I had to use the hook.
23 I didn't like using the hook. I didn't like the way -- I
24 thought things would be different when I was over there.

25 THE COURT: But you didn't say that on direct

1 examination, did you?

2 THE WITNESS: I believe so. I'm not sure.

3 THE COURT: All right. That's fine.

4 Q (BY MS. MEYER) I mean, as I understood your testimony,
5 you had several reasons for leaving Raffo; is that correct?

6 A Yeah, it was the tigers.

7 THE COURT: I don't think the hook testimony came
8 out on direct examination.

9 MS. MEYER: I'm sorry?

10 THE COURT: I don't think the testimony about the
11 hook came out on direct examination.

12 MS. MEYER: No, I don't remember that, Your Honor.

13 THE COURT: You agree with me?

14 MS. MEYER: I'm not sure. I don't remember that.

15 Q (BY MS. MEYER) Okay. Mr. Simpson asked you about your
16 standing allegation.

17 THE COURT: When I say, "I don't believe the hook
18 testimony came out," I don't believe the testimony came out on
19 direct examination about this witness' use of the hook.

20 MS. MEYER: That he was made to use the hook. I
21 don't remember.

22 THE COURT: I don't think that at all. I think I
23 would have recalled that.

24 MS. MEYER: Okay.

25 Q (BY MR. SIMPSON) Mr. Simpson asked you a question about

1 your standing allegations in the complaint, and I'd like to pull
2 up the complaint and take a look at it. Actually, I need to go
3 to paragraph 23 at page 8.

4 Can you blow 23 up? There you go. Okay. Could
5 you -- could you read that paragraph, Mr. Rider?

6 A (Reading) Because of his close personal relationship
7 with the elephants, Mr. Rider nevertheless still makes efforts
8 to see the animals, and he has been able to observe the
9 elephants he knows, as well as other Ringling elephants on
10 several occasions during the last couple of years by going to
11 cities where the circus is performing. However, each time he
12 has been able to see the elephants, he is aesthetically
13 injured by the demeanor and physical appearance of the
14 elephants who appear sad and beaten down, devoid of their
15 spirits and extremely stressed, and who exhibit stereotypic
16 behavior such as swaying back and forth.

17 (Reading) Because of his experience with the
18 circus, Mr. Rider knows that the demeanor and behavior of the
19 elephants, which causes him aesthetic injury is as a result of
20 the way they are mistreated by Ringling Brothers. Because of
21 his love for these elephants, Mr. Rider continues to visit
22 them and will continue to do so in the future even though each
23 time he does so, he suffers more aesthetic injury.

24 Q Thank you.

25 A You're welcome.

1 Q Mr. Rider, have you ever teased someone you love by
2 calling them a name?

3 A Teased someone I love, yes.

4 Q Okay. And I do want to play that clip that Mr. Simpson
5 showed you of you calling Karen a bitch. Sorry. I want to
6 play it again.

7 A That's okay.

8 Q Because I want to play some more of it, actually. So we
9 need to go to Defendant's Exhibit 30 and time stamp 16:45 to
10 17:16.

11 (VIDEO CLIP PLAYED.)

12 Q (BY MS. MEYER) And Mr. Simpson also asked you with
13 respect to the same videotape, he was asking you about whether
14 or not you had seen bags of feces, I think is what he's asking
15 you, and I think you said yes, you had seen some bags on the
16 train. I would like to show another part of this clip. Again,
17 this is Defendant's Exhibit 30.

18 THE COURT: You were just teasing the elephant by
19 calling her that name?

20 THE WITNESS: Yes, sir.

21 THE COURT: Hardly a term of endearment, though, is
22 it?

23 THE WITNESS: Not -- I guess it's not -- I just -- I
24 do it to my daughters, you know, I do it to her. It's like --

25 THE COURT: You call your daughters that?

1 THE WITNESS: I don't do it as like -- it's just,
2 you know, when you're -- you know, she's -- like my daughter
3 does something that's, you know, I don't want to nag and yell
4 and scream at her. It's like, you know -- especially if she
5 starts nagging at me or something. It's like a term of
6 endearment to me. I don't know how to other to put it.

7 THE COURT: I think you said it all.

8 THE WITNESS: Yeah. Yes.

9 MS. MEYER: I want to show a clip from Defendant's
10 30 from 9:55 to 10:31.

11 (VIDEO CLIP PLAYED.)

12 Q (BY MS. MEYER) Okay. What did you observe in that clip?

13 A Well, I observed this pile of dung sitting here, which
14 would be normal on the train. This is what -- this is what I
15 was talking about when I say we didn't put it in bags.
16 That -- we never bagged up any kind of stuff, and I also
17 noticed that the chains don't have the firehose on them, which
18 is a violation of the California law.

19 THE COURT: I'm sorry, the chains didn't have the
20 what?

21 THE WITNESS: The chains did not have the firehose
22 to protect them and this is --

23 THE COURT: In other words, they aren't wrapped in
24 firehose.

25 THE WITNESS: Right. They were not wrapped, and you

1 have to do it in California.

2 MS. MEYER: Okay. Now, Your Honor, I do want to
3 show as a demonstrative aid, if you'll let me, I'd like to
4 show, pursuant to Federal Rule of Evidence 611, a clip -- a
5 video clip of a Ringling Brothers employee hitting an elephant
6 simply as a demonstrative aid so that I can ask Mr. Rider --

7 THE COURT: Haven't we been through this? Is this
8 the one that was taken four or five years after he left?

9 MS. MEYER: Yes, Your Honor.

10 THE COURT: What's the relevance of that? Is it
11 going to come in under some other exception -- isn't there
12 some other basis for getting it in the record?

13 MS. MEYER: Well, we do have another basis, but --

14 THE COURT: In other words, the tape speaks for
15 itself, whatever it is, right?

16 MS. MEYER: Well, I tell you why I wanted to show
17 it, Your Honor, because again, under 611, it's a demonstrative
18 aid, it's just the same as me showing him a bull hook and
19 saying, "Is this the kind of bull hook you saw used at
20 Ringling Brothers."

21 I mean, this is the kind of thing -- and I have case
22 cites, *Minabea Company versus Papst*, which is a Judge Friedman
23 decision, 231 FRD3 where Judge Friedman held that in a bench
24 trial, using a demonstrative aid like this is well grounded
25 and there's no basis for keeping it out based on prejudice

1 because there's no jury here. The D.C. Circuit in *United*
2 *States versus McKinley*, 485 --

3 THE COURT: I'm sorry, which rule you relying on?

4 MS. MEYER: 611. It's simply to give you more
5 information about what he's talking about.

6 THE COURT: I understand his testimony, and there
7 already been some -- are you telling me that there is no other
8 rule that will permit the admissibility of that tape?

9 MS. MEYER: Well, we think we're going to get it in,
10 but also as a public record of the USDA, a business record,
11 but that's going to be after he's not here and --

12 THE COURT: What's the objection, Counsel?

13 MR. SIMPSON: Your Honor, the basic problem here is
14 it's the Trojan horse. That's what this is. This tape was
15 made by a person who's on their witness list. Her name Denise
16 Bolbol. This tape was made --

17 THE COURT: Is she going to testify?

18 MS. MEYER: No, she's not, Your Honor.

19 THE COURT: Well, you know what, they should have
20 brought her in here as a witness to prove it up. Just like
21 they did with CuvIELLO, it's the same problem, and now they
22 want to bring it in through a man who is long gone from the
23 circus at the time this tape was made. It's offered for the
24 truth of the matter asserted, and they're going to try to get
25 him to say exactly that.

1 MS. MEYER: That's not correct, Your Honor. I'm not
2 offering --

3 THE COURT: I'm not going to allow it. I'll read
4 those cases over the evening hour. I'm not going to allow it.
5 You can bring your witness back and I'll certainly take a look
6 at that authority, but I'm not inclined to allow it.

7 Is the witness not available the one who took the
8 tape -- who made the tape?

9 MS. MEYER: I don't know. She lives in California.
10 We weren't planning to bring -- get her here for this.

11 THE COURT: Yeah. Well, you know, you can hook her
12 up on the video then. She took the tape. She can testify
13 about it. She can authenticate it. Maybe it comes in for
14 whatever --

15 MS. MEYER: Will the Defendant allow that at this
16 point in time?

17 THE COURT: It's a question of whether the Court
18 will allow it, and if it's permissible for the Court to allow
19 it, then the Court will allow it.

20 MS. MEYER: Okay.

21 THE COURT: It may well be it's objectionable. I
22 don't know. Is this person listed as a witness?

23 MS. MEYER: I think she was listed as a May Call
24 witness because we thought we could get it in through --

25 THE COURT: If this is appropriate evidence, you

1 have a basis for it and testify about this tape she took, then
2 it will become a part of the record if it's appropriate.

3 Seems to me that's the easiest way to do it if there's an
4 appropriate evidentiary basis for that. I don't know if there
5 is or not.

6 MS. MEYER: Okay.

7 THE COURT: I mean, Mr. Simpson indicated that you
8 listed her as a witness, and apparently he was under the
9 impression that you could possibly call her. I don't know
10 whether there were objections made to the scope of her
11 testimony or not in the pretrial record, were there? Did you
12 object, Counsel?

13 MR. SIMPSON: We didn't, Your Honor. What we
14 objected to was them trying to prove this up with an
15 affidavit. We need a live witness.

16 THE COURT: Why don't you call her. If she's
17 available, she doesn't have to get on a plane and fly here.
18 We have video conferencing. We have some ability to do video
19 conferencing, and I've told counsel this. It's not a
20 surprise. I've said this before in pretrial proceedings, I've
21 said to both sides on more than one occasion to the extent the
22 Court can accommodate a side, recognizing that there are
23 significant costs associated with the prosecution and defense
24 of a lawsuit, then I was prepared to do so and still am
25 prepared to do so.

1 I mean, Maybe she can go to the federal courthouse
2 there or wherever she's at, LA or San Francisco. I don't
3 know.

4 MS. MEYER: Okay. We can explore that, Your Honor.
5 We can explore that.

6 THE COURT: Give me a proffer as to what that tape
7 shows. Is the tape -- you contend she made that the tape,
8 right?

9 MS. MEYER: Yes, yes.

10 THE COURT: She made the tape when?

11 MS. MEYER: 2004, Your Honor.

12 THE COURT: Taken of the blue team or red team or --

13 MS. MEYER: It's the blue unit.

14 THE COURT: Blue unit?

15 MS. MEYER: Yes.

16 THE COURT: Seems to be it probably has some
17 evidentiary value, so she doesn't have to hop on a plain to
18 get here. If she wants, she is more than welcome to join us.
19 To the extent we can accommodate her, we'll do so. We'll do
20 so.

21 MS. MEYER: Your Honor, I do want to move into
22 evidence Mr. Rider's affidavit that he did to the USDA, which
23 is Plaintiffs' Exhibit 20.

24 THE COURT: This is redirect examination, so what's
25 the appropriate basis?

1 MS. MEYER: It's a prior consistent statement
2 because I believe that his --

3 THE COURT: Prior consistent statement.

4 MS. MEYER: Prior consistent statement because his
5 credibility was attacked by Defense counsel, so I'd like to
6 move that in as Plaintiffs' Exhibit 20. It's an affidavit
7 that Mr. Rider gave to the USDA on July 20th, 2000, and I'd
8 also like --

9 THE COURT: He was impeached in a number of ways --
10 by a number of ways which impeachment are you referring to?

11 MS. MEYER: I'm referring to the many questions that
12 he was asked about making -- implying that he was making up
13 these stories as things have gone on and as he's received
14 money from the groups, et cetera.

15 This is an affidavit -- sworn affidavit he prepared
16 on July 20th, 2000 for the United States Department of
17 Agriculture, so I think it's a prior consistent statement that
18 should come into the record.

19 MR. SIMPSON: The only part of that, Your Honor,
20 that he was impeached on or it was even discussed were the
21 events he described in New Haven, Connecticut and Richmond,
22 Virginia. The rest of that narrative was never -- there was
23 not one word said about it on direct examination. They didn't
24 use this to refresh recollection.

25 He needs to get in the box and testify about what he

1 remembered. The only two incidents he could remember were
2 Richmond and New Haven, so I would submit that it only comes
3 in on those two. The rest of it should be out. It's hearsay,
4 it's self-serving, we tried to go through all of this in
5 discovery in his deposition with respect to his interrogatory
6 answer, which has the same narrative and it was cut off on the
7 grounds that he's got to testify about it from personal
8 memory. If he can't, then the interrogatory would be hearsay.
9 That was Judge Facciola's ruling, and I think the affidavit is
10 in the same category.

11 MS. MEYER: Your Honor, that's simply not true.
12 Mr. Simpson was not cut off at all in his deposition taking of
13 Mr. Rider. Mr. Rider was made available for two days
14 straight. There is no cutting off of Mr. Rider, and Mr. --
15 and Judge Facciola certainly did not hold that at all, and the
16 clear implication of the cross-examination of Mr. Rider here
17 today has been that because he's received funding for his
18 public education work over the years, over the years he's been
19 making things up as he goes along, and this is not hearsay
20 because it's a prior consistent statement that he gave shortly
21 after he left his employment to the United States Department
22 of Agriculture as a sworn affidavit, and I think it should
23 come into the record.

24 MR. SIMPSON: Your Honor, the deposition of
25 Mr. Rider proceeded at the behest of the Defendant for two

1 days. At the end of the second day after it had been limited
2 by Judge Facciola to 14 hours, we were in the middle of his
3 answer to the interrogatory that talked about all the
4 mistreatment he claims he saw at Ringling Brothers.

5 She stopped it and we had to go to Judge Facciola to
6 get a ruling, and this was his ruling. And I'm reading from
7 his order dated January 7, 2008, which is Docket Entry No. 245
8 in this case at page 2. And this concerns the interrogatory
9 answer which I think is the same kettle of fish as the
10 affidavit.

11 (Reading) If, as I think is certain, Rider
12 continues to confirm the accuracy of his interrogatory
13 answers, the continuation of the deposition serves no purpose
14 that I can see. He remains steadfast in insisting that his
15 interrogatory answers were true and testifies to the same
16 effect at trial. His consistent statements and his
17 interrogatory answers confirmed by his deposition testimony
18 are hearsay.

19 So he ruled that it would be hearsay, and I would
20 submit that the only part of this that came up in the direct
21 were two cities, and now they want to bring in a whole list of
22 35 other instances in which they now claim, although he didn't
23 testify to, he saw. So I think it's vastly outside the scope
24 of direct, it's rank hearsay and shouldn't be allowed.

25 THE COURT: I'll read it over the evening. This is

1 an affidavit. What's the --

2 MS. MEYER: It's Plaintiffs' Exhibit 20, Your Honor.

3 THE COURT: I'll read it. How many pages is it?

4 MS. MEYER: It's about seven pages, I believe.

5 THE COURT: I'll read it over the evening hour.

6 Anything else?

7 MS. MEYER: I also wanted to move in as a prior
8 consistent statement, the deposition that Mr. Rider gave to
9 PAWS on March 25th, 2000, which is Defendant's Exhibit 33,
10 which Mr. Simpson asked many questions of, of Mr. Rider during
11 his cross-examination, and I think under Federal Rule of
12 Evidence 106, for completeness purposes, if he's going to use
13 bits and pieces of it, the whole thing should come in.

14 THE COURT: It's not for the purpose of
15 completeness. It's for purposes of rehabilitating if he's
16 been impeached. Now, if he's been impeached, it's your burden
17 to tell me where he's been impeached, and that portion of the
18 prior consistent statement that rehabilitates his testimony,
19 and you have to do that from chapter and verse, Counsel. I'm
20 not going to let in the entire deposition.

21 MS. MEYER: I'm referring, Your Honor, to Rule 32.

22 THE COURT: You could state it tonight. You can
23 isolate the impeachment portion of his testimony because you
24 have realtime testimony, you can show me the portion of his
25 deposition that rehabilitates it and I'll consider your

1 proffer tomorrow. I'm not going to stop it. It's your burden
2 to do it tonight.

3 MS. MEYER: All right. I actually think --

4 THE COURT: Same thing with respect to the
5 affidavit. You can go through that testimony, his
6 cross-examination, you can point out where he's been
7 impeached, you can then point out the portions of his
8 affidavit that rehabilitate him and serve as prior consistent
9 statement. That's your job to do it.

10 MS. MEYER: Okay. I actually think I can probably
11 do that with the PAWS transcript right now, unless you want me
12 to do it later.

13 THE COURT: I'm not going to wait for that. You're
14 going to call your next witness.

15 MS. MEYER: All right.

16 THE COURT: Unless you're finished questioning this
17 witness.

18 MS. MEYER: I am finished.

19 THE COURT: All right. Any other questions?

20 MR. SIMPSON: I do, Your Honor.

21 THE COURT: All right. You can recross.

22 RE-CROSS-EXAMINATION

23 BY MR. SIMPSON:

24 Q Mr. Rider, in response to Ms. Meyer's questions about
25 your complaints to Randy Peterson, you said that Randy

1 Peterson threatened your job; is that correct?

2 A Yes, sir.

3 Q And you, in fact, took those concerns to the union; isn't
4 that correct?

5 A No, sir, I never made a complaint to the union.

6 Q All right. Well, let me refer you to your interrogatory
7 answers, No. 15, which is Defendant's Exhibit 16 at page 31.

8 THE COURT: Let me just stop you for one second.

9 You know, let me just say this: You don't have to stay up all
10 night and do this. This comes -- this may or may not come in
11 subject to this line of questioning. So, you don't have to do
12 it tonight. It's probably best if you do it today while the
13 testimony is reasonably fresh in our minds, but I'm not
14 requiring you to do it tonight.

15 If you don't want to do it, we can talk about this
16 at some other point, but to the extent it's hooked up to his
17 testimony now. He's available now and there's a need to ask
18 him other questions, it will be preferable to do it, but to
19 just to offer that entire testimony, that deposition
20 testimony, I think the burden should probably be on the
21 Plaintiff to show me why it should become a part of the
22 evidentiary record on the -- at the rehabilitative phase of
23 examination, but you don't have to do it tonight if you prefer
24 not to do that, Counsel. Go ahead.

25 Q (BY MR. SIMPSON) Let me refer you, sir, to the entry for

1 Greensboro, North Carolina, February 11th through 15th, 1998,
2 and it states, (reading) I went to the union because Randy
3 Peterson threatened my job because I was complaining about
4 people beating the elephants.

5 Have I read that correctly?

6 A You read it correctly.

7 Q And you stated that under oath at the time, did you not?

8 A I stated it under oath.

9 Q And in response to your complaint to the union, the union
10 told you you couldn't be fired for complaining about animal
11 abuse; isn't that true?

12 A No, that's not true.

13 Q All right. Do you remember saying that in an interview
14 in Denver, Colorado on the radio?

15 A When?

16 Q In August of 2004?

17 A I may have said it, but when I went to the union in
18 Greensboro and then I asked him -- I didn't go in and file a
19 complaint. That's what I'm saying about that.

20 Q But your -- your understanding from talking to the union
21 was that you could not be fired and you could not lose your
22 job for complaining about animal abuse; isn't that true, sir?

23 A They said I had to be wrote up three times.

24 Q They told you you couldn't be fired for complaining about
25 animal abuse, didn't they?

1 A I don't -- I don't think I -- I don't remember that, no.

2 Q Let me refer you to a transcript of a radio interview
3 that you gave in Denver Colorado on August 10, 2004. And this
4 was with a person named Tom Green. Do you remember that?

5 A Yes, sir.

6 Q And it states in here -- opposite Mr. Rider. (Reading)
7 When I was there, I complained to my supervisor. You could
8 only complain so much. If you tried to go to the USDA, you'd
9 be fired. They threatened my job in Greensboro, North
10 Carolina. Luckily, we were union and the union stepped in and
11 said, "You can't fire him because he's complaining about your
12 elephants." Basically, they just kind of let it go and
13 figured -- and just figured, "Well, I can't do anything
14 because I don't want to lose my job."

15 Did I read that right?

16 A Right. Yes, sir.

17 Q Ms. Meyer also asked you about an interaction with Jeff
18 Steele in Boston, Massachusetts with respect to marks on the
19 elephants. Do you remember that?

20 A Yes, sir.

21 Q And Jeff Steele got pretty worked up about that, didn't
22 he?

23 A Well, because it was in the public view.

24 Q Right. And what really got him worked up was the fact
25 that the elephants had a lot of marks on them from fighting

1 with each other, wasn't it?

2 A No.

3 Q You don't recall that?

4 A I don't recall him saying that.

5 Q All right. Let me refer you to that same PAWS statement,
6 Defendant's Exhibit 33, page 66, line 9 through 68, line 4.

7 (VIDEO CLIP PLAYED.)

8 Q (BY MR. SIMPSON) Now, Mr. Rider, you testified in
9 response to Ms. Meyer's questions that you want to get the Blue
10 Unit elephants away from the way they're being treated now; is
11 that correct?

12 A Yes, sir.

13 Q But since December 1st, 1999, it's true, is it not, you
14 haven't seen any mistreatment of the Asian elephant Jewell,
15 have you?

16 A No.

17 Q You haven't seen, since December 1st, 1999, any
18 mistreatment of the Asian elephant Lutzi, have you?

19 A No.

20 Q You haven't seen, since December 1st, 1999, any
21 mistreatment of the Asian elephant Mysore; isn't that true?

22 A Well, other than chaining, so no.

23 Q You want to stand by your answer? Is it "yes" or "no"?

24 A It's "no."

25 Q You haven't seen any mistreatment, since December 1,

1 1999, of the Asian elephant Nicole, have you?

2 A No.

3 Q You haven't seen any mistreatment of the Asian elephant
4 Susan since December 1st, 1999; isn't that true?

5 A Yes.

6 Q And you haven't seen any mistreatment of the Asian
7 elephant Zina since December 1st, 1999; isn't that correct?

8 A Yes.

9 Q And the only incident of mistreatment that you say you've
10 seen of Karen the elephant is that film you made of Mr. Ridley
11 in Tulsa in 2001; isn't that right?

12 A Yes, sir.

13 Q And you couldn't tell in that situation whether Karen or
14 whoever that elephant was bled, correct?

15 A True.

16 Q Now, Ms. Meyer showed you the answer to Interrogatory 24
17 in which you were asked to answer a question about the money
18 that you have received from animal advocates. Do you remember
19 that?

20 A Yes.

21 Q She pointed out to you that objections were made. Do you
22 remember that?

23 A Uh-huh.

24 Q And objections were made based on your personal privacy;
25 isn't that true?

1 A Yes.

2 Q And isn't it a fact, sir, that you sought a protective
3 order and it was denied?

4 A I --

5 THE COURT: I can take notice of that. I don't know
6 if he even knows that, but I can certainly take notice of
7 that, if that's the case. I think it probably is the case.

8 Q (BY MR. SIMPSON) And let me just show you that exhibit,
9 if we could, sir. It's Defendant's Exhibit 16 at page 40 in the
10 exhibit. And Ms. Meyer showed you this page. She's the one who
11 submitted these objections; is that correct?

12 A Yes, sir.

13 Q And that law firm Meyer, Glitzenstein & Crystal is the
14 same law firm that sent you a 1099 for 2000-and-some-odd
15 dollars for the year 2001; isn't that true?

16 A Yes, sir.

17 Q You mentioned that you had -- you think that the olive
18 oil film was made by a person named Vika. You remember that
19 testimony?

20 A Yes, sir.

21 Q And Vika was at the end of the film; is that correct?

22 A Yes.

23 Q We didn't show that film in here last Thursday all the
24 way to the end, did we?

25 A I'm not sure.

1 Q How do you know it's Vika?

2 A Because Vika was there.

3 Q Well, how many times have you seen that film?

4 A Once.

5 Q And that was played in the courtroom?

6 A Yeah.

7 Q Last Thursday?

8 A Uh-huh.

9 Q So you -- you, based on that, are saying it's Vika?

10 A Yes.

11 Q You saw Vika when it was played in the courtroom?

12 A No, I didn't see Vika when it was played in the
13 courtroom. Vika was taking the pictures.

14 Q Vika wasn't on the part that was played in the courtroom;
15 isn't that true?

16 A I guess not.

17 Q And you've seen that olive oil film on another occasion,
18 haven't you?

19 A Somewhere.

20 Q Yeah. When did you see it?

21 A I don't remember.

22 Q You saw it to get ready for this trial, didn't you?

23 A I may have.

24 MR. SIMPSON: All right. No further questions.

25 THE COURT: All right. Your witness. You can close

1 with your witness.

2 MS. MEYER: Thank you, Your Honor. I did want to
3 point out to you, Your Honor, that with respect to Mr. Rider's
4 direct testimony last Thursday, he did talk about not wanting
5 to be made to use the bull hook.

6 THE COURT: That's fine. I figured you'd correct me
7 if I'm wrong.

8 MS. MEYER: Yeah, it's at page 71, line 3 to line 9.

9 THE COURT: I just didn't recall it. That's fair
10 enough.

11 MS. MEYER: I didn't either.

12 THE COURT: I thought that was something that I
13 would have recalled, but I didn't hear that. All right.
14 That's fine.

15 MS. MEYER: I want to just -- just to complete the
16 story of what happened with the remarks made by Mr. Steele in
17 Boston, and I'd like go to -- back to the PAWS transcript that
18 Mr. Simpson has been reading from, which is their Exhibit 33
19 and go to lines where Mr. Simpson stopped. Go to line 68:05
20 and read to line 70:07, if we could do that.

21 MS. SINNOTT: Excuse me, Carol, could you switch us
22 back. Thanks.

23 FURTHER REDIRECT EXAMINATION

24 BY MS. MEYER:

25 Q So Mr. Simpson stopped at line 68, line 4, so I would

1 like you to read line 68, line 5.

2 A (Reading) What is your sense that he was concerned about
3 the elephants -- what is it your sense that he was concerned
4 about the elephants or he was concerned about?

5 (Reading) He was concerned about being caught.
6 There was no concern about the elephants.

7 (Reading) What was his -- I got -- so I got up on
8 my birthday, and he told me, this is a business. And I think
9 that is his attitude, was it strictly -- was, it is strictly
10 business. It is not the care of the elephants. He doesn't
11 worry about -- he doesn't want the hook marks to be seen by
12 the public. Because if they are seen, he has to answer for it
13 eventually. And he has to answer to somebody higher up, which
14 is Richard Froemming. Richard knows what's going on, too.

15 Q Keep reading.

16 A (Reading) That particular time, I mean, the hook marks
17 were nothing like in Richmond. They were all over the
18 elephants. It was -- I know he wasn't concerned with the
19 elephants. He was concerned for himself more than he was the
20 elephants. It was like, "I'm going to get in trouble," so I
21 don't want to see this -- I don't want to see this anymore.

22 (Reading) What city is this?

23 (Reading) Boston. Fleet center is in Boston.
24 That's it. You got the big ramp that goes on back up -- a big
25 ramp going up. That was Boston.

1 (Reading) He came back in. It was in Saint Louis,
2 too. He said twice. The first time he said, it must have
3 been Boston where I heard it. Just prior to Boston, he jumped
4 on everybody, too, although it was the day before. Then he
5 came back the next night because there was a couple of
6 incidents where it happened. Because when I got to work, they
7 told me Jeff Steele was mad about all those hook marks. And
8 then the next night -- so it was Boston, twice in Boston when
9 he --

10 Q Keep going.

11 A (reading) -- Said it. I remember when I came in, he came
12 back up -- he came back from jumping on everybody about hook
13 marks again, purpose, in two days.

14 (Reading) So that kind of -- show you what I mean
15 by this day on -- day one day on process. You got two years
16 of clouds here that -- basically, hooking and beating for the
17 whole two years.

18 Q That's enough. Thank you.

19 MS. MEYER: I have no further questions, Your Honor.

20 THE COURT: All right. Thank you. You may step
21 down. Thank you. Please do not discuss your testimony with
22 anyone.

23 THE WITNESS: All right.

24 THE COURT: Just so -- Ms. Meyer.

25 You can step down.

1 With respect to the prior consistent, again, just so
2 the record is clear, the reason I'm requiring you to do it,
3 first of all, it's because it's nonjury.

4 I mean, there is an exception to the hearsay rule.
5 I think it's your burden that if you're offering it as a prior
6 consistent statement to show where during cross-examination he
7 was impeached and there's a need for rehabilitation with
8 indeed a prior consistent statement as an exception to the
9 hearsay. I think that's your burden.

10 Do you have to do it now? Probably not. You know,
11 so I'm not trying to deprive you of sleep tonight.

12 MS. MEYER: Okay. I appreciate that.

13 THE COURT: The other thing is this: I'm just
14 thinking about the witness in California. Well, it would be
15 probably overkill to have her go to some federal courthouse
16 there and hook up video conference. You know, we can
17 probably -- she could probably testify by way of phone, unless
18 there is some reason why she can't, but then I start thinking
19 about it how is she going to authenticate a film she can't
20 even see over the phone.

21 So you'll have to figure that out. It may well be
22 that that film comes in as a business record of the USDA. I
23 don't know. I don't know. That's your burden. You have some
24 cases you want me to read, that's fine. It's a film of --
25 it's a film taken by someone who's not an employee of USDA

1 that may have been sent to USDA in the course of
2 investigation. Is this a business record within the meaning
3 of the rules of evidence of USDA? You know, could be. I
4 don't know. There should be -- there should be some authority
5 that addresses that.

6 It's not as if someone from USDA went out and took
7 this film, right?

8 MS. MEYER: Right.

9 THE COURT: Unless you -- so I don't know whether
10 it's a business record of USDA, you know, or not. So I'm just
11 exploring those options with you. You know, I don't know how
12 you get someone on the telephone to authenticate a film she
13 can't see. I don't know.

14 MS. MEYER: Okay.

15 THE COURT: Because, you know, you're very
16 innovative. You'll figure out a way, but if you can't, you
17 know, then maybe it comes in as a business record, I don't
18 know, and it probably has some evidentiary value, I assume,
19 but I'm not going to rule on that in a vacuum. I don't know.
20 I'm just sharing these options with you. It's up to you to
21 figure it out.

22 MS. MEYER: Okay.

23 THE COURT: But I'll be happy to read whatever cases
24 you want to bring to my attention, but that last point, you
25 don't have to do that tonight, I don't think. I mean, if

1 there's a -- you to supplement a prior consistent and it's
2 appropriate to let it come into the record, I'll let portions
3 of his deposition testimony and indeed portions of his
4 affidavit as appropriate, but as long as they -- they -- you
5 know, the introduction -- the receipt of those items is not in
6 conflict with a fair reading of the Federal Rules of Evidence.

7 MS. MEYER: Okay. Thank you, Your Honor.

8 THE COURT: Who's your next witness?

9 MS. MEYER: Before we do the next witness, I did
10 want to move in one other exhibit which has not been objected
11 to, and I wanted just to read a little portion of it.

12 Plaintiffs', we'll call, Exhibit 93, and there has been no
13 objection.

14 THE COURT: All right. Any objection?

15 MR. SIMPSON: I'm sorry, I don't have the numbers
16 memorized. I have to look it up, Judge.

17 THE COURT: You want to take a minute to see?

18 (PAUSE.)

19 MR. SIMPSON: You said 93?

20 MS. MEYER: Right.

21 THE COURT: 93, that's what I heard.

22 MR. SIMPSON: Yeah, there's no objection.

23 THE COURT: All right. Admitted.

24 (PLAINTIFFS' EXHIBIT 93 ADMITTED.)

25 MS. MEYER: Thank you. This is a memorandum dated

1 July 21st, 2000, and it's from Diane Ward, investigator for
2 the USDA. I just wanted to read the first paragraph.

3 (Reading) An ex-Ringling Brothers circus employee,
4 Tom Rider, has come forward with many allegations of abuse to
5 the elephants by Ringling Brothers employees. This man is
6 speaking out to the USDA, apparently directly to Michael Dunn
7 and to the news media, all of which he has done with the
8 assistance of Pat Derby, PAWS.

9 (Reading) I have worked with Tom for the last week
10 and have taken a lengthy statement from him, attached. Tom
11 worked with the elephants as their keeper, barn man, for
12 two-and-a-half years. There is no question that he loves the
13 elephants that he worked with in the Blue Unit and wants to
14 help them find a better life than what is provided by the
15 circus.

16 That's all, Your Honor. Thank you.

17 THE COURT: All right. Let me make your life even
18 easier. Why don't you do this this evening, file a -- either
19 this evening or tomorrow, file a short pleading. Just tell me
20 what it is you want and where it is in the record and the
21 authority for that, and I'll have counsel for Defendant file a
22 very short pleading in response to that, and that's the luxury
23 I have because it's nonjury, all right.

24 MS. MEYER: Thank you, Your Honor.

25 MR. SIMPSON: And this is on the prior consistent

1 statement?

2 THE COURT: Yeah, the prior consistent statements,
3 yes. Right.

4 MS. MEYER: Thank you.

5 THE COURT: But gain, I'm not trying to -- you know,
6 I don't want you to stay up all night. You know, I don't know
7 how lengthy the deposition portions are. I don't know, how
8 loan think are they that you're attempting to get in?

9 MS. MEYER: Not very lengthy.

10 THE COURT: All right. Then what's fair then? I
11 mean, you know -- you know how lengthy they are and what's
12 fair? Tonight or tomorrow?

13 MS. MEYER: Tomorrow. I can do it by tomorrow.

14 THE COURT: That's fine. Why don't I do that, and
15 then tomorrow is Wednesday and then by what, close of business
16 tomorrow or so?

17 MS. MEYER: That will be fine, Your Honor.

18 THE COURT: And then close of business on Thursday
19 then for your response.

20 MR. SIMPSON: All right.

21 THE COURT: All right. Who's your next witness?

22 MS. SANERIB: Your Honor, Plaintiffs call their
23 expert witness Gail Laule.

24 THE COURT: Excuse me one second.

25 MS. SANERIB: I can give you the spelling of the

1 witness' name. It's Gail, G-a-i-l, and the last name is
2 Laule.

3 THE COURT: The same procedure I outlined, it also
4 pertains to that video issue as well.

5 MS. MEYER: I'm sorry, Your Honor?

6 THE COURT: The tape issue, it also pertains to the
7 tape issue.

8 MS. MEYER: We'll include that as well. Thank you.

9 THE COURT: All right. Okay.

10 MS. SANERIB: The last name is Laule, L-a-u-l-e.

11 THE COURT: All right. Now, is your witness out of
12 the city -- out of state?

13 MS. SANERIB: Yes, she is, Your Honor.

14 THE COURT: She's going to have to come back
15 tomorrow, does she know that?

16 MS. SANERIB: She can come back tomorrow.

17 THE COURT: I had to schedule a TRO for 5:30 for a
18 status hearing, so we're going to have to stop promptly at
19 5:30, but you can certainly use your time between now and
20 then.

21 MS. SANERIB: Yes, that's fine.

22 (WITNESS SWORN BY THE DEPUTY CLERK.)

23 THE COURT: Good afternoon.

24 THE WITNESS: Good afternoon.

25 THE COURT: Proceed.

1 GAIL ELLEN LAULE,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. SANERIB:

5 Q Good afternoon, Ms. Laule. Can you please state your
6 full name for the record.

7 A Gail Ellen Laule.

8 Q And Ms. Laule, have you ever worked with animals?

9 A Yes, I have.

10 Q What was your first job working with animals?

11 A My first job was at Marineland in California working with
12 marine mammals.

13 Q Okay. And what did you do there?

14 A I was an animal trainer, so I worked with all the animals
15 there from setations [ph.], and whales, dolphins and sea
16 lions.

17 Q And about how long did you work at Marineland?

18 A I was there for eight-and-a-half years.

19 Q And what did do after Marineland?

20 A I worked at the LA Zoo for three-and-a-half years.

21 Q And what did you do at the LA Zoo?

22 A There I was in charge of a show department, a show
23 program there.

24 Q Okay. And what kind of animals were you working with?

25 A That was a pretty wide variety from small mammals like

1 raccoons and possums, birds of prey, large cats and some
2 lemurs and other animals. Kind of a variety.

3 Q And how long were you at the LA Zoo?

4 A I was there three-and-a-half years.

5 Q Okay. And what's your current occupation?

6 A Currently, I do three things. I'm an animal behavior
7 consultant with my consulting firm called Active Environments.
8 I am also president of Wildlife In Need, which is a nonprofit
9 organization doing rescue work and conservation work, and I am
10 vice president of a marine facility called Ocean Adventure.

11 Q And during your tenure at Active Environments, have you
12 worked with elephants?

13 A Yes, I have.

14 Q All right. And when you first started working with
15 elephants, about when was that?

16 A That was in 1989 was the first time.

17 Q And how were elephants trained at that point in time?

18 A At that time there was really just one form of or system
19 of elephant management called "free contact."

20 Q And how does that system work?

21 A It's basically a system that utilizes specific tools,
22 which is the bull hook and chaining, other sorts of tools like
23 that which primarily is based on negative reinforcement and
24 the use of physical punishment to get the animal to comply
25 with the behaviors that you want.

1 Q Okay. And have you trained elephants using free contact?

2 A No, I have not.

3 Q What system have you used?

4 A I use something called "protected contact."

5 Q And what's protected contact?

6 A It differs from free contact in that it's a system that's
7 based exclusively on positive reinforcement. The tools we use
8 are targets of varying lengths that the animal moves towards;
9 a whistle, which is used as a conditioned reinforcer, a way of
10 saying good, and food reinforcers. It's also a system that
11 prohibits any physical punishment of the elephant.

12 Q All right. And who developed this system of protected
13 contact?

14 A It was my partner, Tim Desmond, and myself.

15 Q Okay. And when did you do that?

16 A We started in 1989 in the San Diego Wild Animal Park and
17 finished up in 1991.

18 Q Okay. And why did you develop that system?

19 A Two basic reasons. At the time there was the recognition
20 that there were a number of people -- a lot of people over the
21 years dying from elephants, being killed by elephants and also
22 being severely injured by them, and there was also some very
23 public eating of an elephant which brought to light the whole
24 issue of the use of physical punishment as well.

25 So the industry was really looking for an

1 alternative, and that's how the opportunity came about.

2 THE COURT: Talking about the killing of humans in
3 captivity or --

4 THE WITNESS: Yes.

5 THE COURT: In captivity?

6 THE WITNESS: Yes.

7 Q (BY MS. SANERIB) And what work did you do to develop
8 protected contact?

9 A We had an agreement or a contract with the San Diego
10 Zoological Society. We worked at the Wild Animal Park
11 initially with an African bull and an Asian bull with the idea
12 of taking the techniques we had used with marine mammals and
13 applying those to the training of elephants, and so that's
14 what we developed over the course of the time there.

15 Q Okay. And did you do any research?

16 A Yeah. I mean, this was the first time we ever worked
17 with elephants, so we spent a lot of time talking to the
18 people there, talking to other experts in the field,
19 researching, you know, reading, observing, asking questions,
20 because we needed to understand not only the behavior of
21 elephants generally, but also what was the system that was
22 currently in existence and how did it need to change.

23 Q Okay. Ms. Laule, about how many elephants have you
24 worked with?

25 A I've worked with over 730 elephants.

1 Q And where are those elephants located?

2 A In various facilities throughout the U.S., Europe and
3 Southeast Asia.

4 Q All right. And has Active Environments done any work for
5 any of the Plaintiffs in this case?

6 A No.

7 Q Okay. Have you worked at any free contact elephant
8 facilities?

9 A Well, because free contact was the only system that's
10 been used for centuries, every facility I've worked at either
11 previously used free contact or was currently using it when I
12 started working there.

13 Q Okay. And what's the work that you mostly do at these
14 facilities?

15 A I'm usually called in either to simply evaluate or assess
16 an elephant program and give feedback on how they might
17 improve it, to evaluate whether it's a system that would work
18 with protected contact, to actually convert with protected
19 contact, training staff in training techniques and the tools
20 to use. I also teach operant conditioning and problem
21 solving and also to do sometimes individual behavior problems,
22 either an individual elephant or an individual problem.

23 Q Okay. About how much time do you spend at these
24 facilities when you go to them?

25 A It depends, but in most cases I do multiple visits over,

1 you know, a year, sometimes a lot longer than that.

2 Q And have you seen elephant handlers at those facilities
3 training elephants in free contact?

4 A Yes.

5 Q And how would you describe the techniques that they use?

6 A Well, like I said, it's -- free contact is the
7 traditional system that's been used with animals. They always
8 have a bull hook and the bull hook is used to cue the behavior
9 and then also to elicit the behavior, and the bull hook is a
10 tool that is based on negative reinforcement.

11 Basically, it's something that the animal feels
12 fear -- I mean, excuse me, feels pain or discomfort from it
13 and then they do the behavior you want by moving away from
14 that object, escaping that object, the bull hook, okay.
15 That's a negative reinforcement. And then the person, the
16 trainer in free contact, because they are in with the
17 elephant, there is no barrier between, they take a position of
18 social dominance. They actually become part of that
19 elephant's social system. And because they're this big and
20 elephants are this big, the way they become that dominant
21 person is through the use of the bull hook.

22 So they use negative reinforcement to get the
23 behavior they want. They must get the behavior they want, so
24 they demand 100 percent compliance because to get less than
25 that may in fact inhibit or be to their detriment, in other

1 words, reduce their standing in the view of the elephant, and
2 then they also, because of that, use physical discipline or
3 physical punishment as well using the bull hook all in the
4 context of getting that compliance from the elephant.

5 Q Okay. And Ms. Laule, have you ever trained an elephant
6 to accept veterinary care?

7 A Yes.

8 Q Okay. Have you trained elephants for husbandry
9 procedures?

10 A Yes.

11 Q And are there any zoos that use protected contact?

12 A Yes.

13 Q Would you say roughly how many?

14 A The -- my best guess would be about half of the zoos in
15 the U.S. currently use protected contact.

16 Q And do any circuses use protected contact?

17 A No.

18 Q Have you worked with any circus elephants?

19 A Elephants after they were in the circus, yes.

20 Q And about how many elephants?

21 A I can think of three for sure.

22 Q Okay. And what circus did those elephants come from?

23 THE COURT: And do you have a view as to why the
24 circuses don't use the protected contact?

25 THE WITNESS: Because of the requirements of

1 protected contact, I don't go in with the elephant, first of
2 all, so, you know, all circus performances, there's not only
3 the handler but people with the elephants riding on their
4 backs, and because protected contact is based on --

5 THE COURT: And the public.

6 THE WITNESS: Yeah, exactly. Because it's based on
7 voluntary cooperation, okay. I cannot guarantee to you that
8 I'm going to get 100 percent compliance every time, and that's
9 right, you have the public right there and you have to protect
10 them as well, so those are the main issues that make a circus
11 very difficult to convert to protected contact unless they are
12 willing to change what a circus looks like.

13 Q (BY MS. SANERIB) Ms. Laule, about how many years have you
14 been training animals?

15 A I've been training animals over 30 years.

16 Q And why did you get into animal training?

17 A Because I love animals. That's what I wanted to do.

18 Q And is it possible, because of your love of animals, that
19 you might be a member of one of Plaintiff organizations in
20 this case?

21 A I'm -- I have been a member and am a member of a variety
22 of animal welfare, conservation, environmental organizations.

23 Q Okay. And do you believe that your memberships in any
24 organizations along those lines is inconsistent with providing
25 objective testimony here in this case?

1 MR. SHEA: Objection, leading.

2 THE COURT: I'll allow the question to be answered.

3 A No, definitely not.

4 Q (BY MS. SANERIB) And Ms. Laule, what's the highest
5 educational degree that you hold?

6 A A master's.

7 Q Okay. And what is that master's degree in?

8 A Master of behavioral science.

9 Q All right. And what was your -- did you provide a thesis
10 for your master's degree?

11 A Yes, I did.

12 Q And what was that in?

13 A It was "Behavioral Enrichment Program for Zoo Animals"
14 was the title of it.

15 Q Okay. And what animals in particular?

16 A Well, it actually covered a wide variety of animals, and
17 I had a particular project that was part of it was sea lions.

18 Q Okay. And Ms. Laule, are you a member of any
19 professional organizations?

20 A Yeah, right now I'm currently a member of AZA, American
21 Zoo Association.

22 Q Okay. And have you done any work with the AZA?

23 A Yeah. Most of the -- actually I think all of the zoos
24 that we work with in the U.S. are AZA members.

25 Q Okay. Have you taught any courses for the AZA?

1 A Yes, I developed -- I was -- developed the second
2 revision -- or the first revision of the principles of
3 elephant management, which is part of the professional
4 training of AZA.

5 Q And are you still involved in that course?

6 A No, I'm not.

7 Q Okay. Do you know if it's still ongoing today?

8 A Yes, it is. I was involved in the first four years of
9 it.

10 Q Okay. And have you begun involved in any AZA committees?

11 A Yes, I was behavioral adviser to the Elephant SSP for a
12 number of years. I was on the advisory or the executive board
13 for behavioral -- Behavior Advisory Group, and I was on the
14 Elephant Task Force a number of years ago as well.

15 Q What was the Elephant Task Force?

16 A It was a committee that was formed at this time when they
17 were just developing the principles of elephant management
18 school and we were kind of going through this transition time
19 of, you know, dealing with the deaths and all the issues
20 associated with elephants.

21 Q And I think you mentioned the SSP. Can you explain what
22 that is.

23 A Yes. It's called, "Species Survival Plan," and because
24 both Asian -- or Asian elephants are endangered and African
25 elephants are listed as well, their populations are actually

1 managed in zoos, and so this committee oversees that.

2 Q Okay. Ms. Laule, do you attend professional conferences?

3 A Yes.

4 Q And what conferences do you attend?

5 A Well, over the years, it's varied, but I've -- recently I
6 usually always go to AZA. I've been a member and gone to many
7 conferences of the International Marine Animal Trainers
8 Association, the American Association of Zoo Keepers, Animal
9 Behavior Society, and the International Conference for
10 Environmental Enrichment and there was something else, but I
11 can't remember it now.

12 Oh, oh, and I also, because of the work I do through
13 Active Environments, we also work with primates in the
14 laboratories. I've been to conferences that involve animals
15 in biomedical research.

16 Q Okay. Have you presented at any of the conferences you
17 listed?

18 A Yeah, I presented most of the time when I go to a
19 conference.

20 Q Okay. And are those conference proceedings published?

21 A Yes, most of them are.

22 Q Okay.

23 MS. SANERIB: Ms. Sinnott, can you please pull up
24 Ms. Laule's 2005 article. It's called, "The Role of Fear in
25 Abnormal Behavior."

1 MR. SHEA: Your Honor, we object to this article
2 coming in if it's being offered.

3 THE COURT: Probably being offered in connection
4 with the qualification issue.

5 MS. SANERIB: Your Honor, I'm not offering this
6 article for the truth of the matter. I'm offering it to help
7 aid Plaintiffs in countering Defendant's *Daubert* challenge of
8 this expert.

9 THE COURT: So it goes to qualifications as an
10 expert?

11 MS. SANERIB: That's correct, Your Honor, yes.

12 THE COURT: Any objection?

13 MR. SHEA: Your Honor, it's a -- all I can say is it
14 doesn't come in. It's hearsay with no exception. It's a
15 learned treatise. It doesn't come in as a -- it's body so --

16 THE COURT: Let's see what it is. I just want to
17 see what it is and then I can measure what it is against the
18 objection so...

19 MS. SANERIB: If we could go to 3 three of the
20 document, that will give us the title.

21 Q (BY MS. MEYER) And Ms. Laule, have you seen this article
22 before?

23 A Yes.

24 Q All right. And I wanted to go ahead to page 4 of the
25 document.

1 THE COURT: Are you offering it to show that the
2 witness has offered articles?

3 MS. SANERIB: Yes, that she's --

4 THE COURT: All right. If you want to do that,
5 that's fine. I'll allow it for that limited purpose but not
6 for the truth of the matter asserted.

7 MS. SANERIB: Okay. All right. Thank you, Your
8 Honor. I did want to actually have the witness just point out
9 a couple of things in this article if I can go ahead and do
10 that.

11 Q (BY MS. SANERIB) The first one is on page 4 of this
12 exhibit in the first page, if you could just take a look at that
13 underneath the heading.

14 Ms. Laule, could you either read or describe for the
15 Court what you're talking about here?

16 MR. SHEA: Your Honor, we object. I see nothing
17 here that goes to qualifications only. It looks like it's
18 coming in for the truth.

19 THE COURT: Yeah. I mean, we can -- if she's going
20 to render an opinion, we can get to an opinion later, but I've
21 allowed it just for the purpose of your showing that she's
22 authored articles. Let's move on.

23 MS. SANERIB: Okay.

24 THE COURT: You have to qualify her as an expert.

25 Q (BY MS. SANERIB) All right. Ms. Laule, what is the --

1 THE COURT: You've written articles about what
2 topics?

3 THE WITNESS: Mostly about the use of positive
4 reinforcement training, animal welfare, those sorts of things.

5 THE COURT: And I assume you published those
6 articles?

7 THE WITNESS: Yes, I published -- many have been
8 published in peer review journals. I have written chapters
9 and books as well as, you know, presentation proceedings.

10 THE COURT: All right. Go ahead.

11 MS. SANERIB: I have two other articles of
12 Ms. Laule's, and they're book chapter, and if I can just go
13 ahead and read those, and again these are not coming in for
14 the truth of the matter but just to help us --

15 THE COURT: You can ask her questions about them.

16 MS. SANERIB: Okay.

17 Q (BY MS. SANERIB) If we can go to Ms. Laule's article from
18 the Journal of American Veterinary Medical Association, please.

19 MR. SHEA: Your Honor, we make the same objections.

20 THE COURT: All right. Insofar as qualification,
21 I'll allow some limited testimony. Let's move on. I'm
22 interested in her opinions.

23 MS. SANERIB: And I have just one other article I
24 wanted to move in, which is Ms. Laule's article from the
25 Journal of Applied Animal Welfare Science.

1 THE COURT: All right. Only insofar as this goes to
2 her qualifications, not for the truth of the matter asserted.

3 MS. SANERIB: That's correct, Your Honor, yes.

4 MR. SHEA: And Your Honor, we do raise the same
5 objection.

6 THE COURT: All right. Overruled. Any voir dire?
7 I'm sorry, are you finished?

8 MS. SANERIB: No, I have a few more questions for
9 Ms. Laule, Your Honor.

10 THE COURT: Go ahead.

11 MS. SANERIB: All right.

12 Q (BY MS. SANERIB) Ms. Laule, do you know what the Elephant
13 Managers Association is?

14 A Yes.

15 Q And what is the Elephant Managers Association?

16 A It's an organization that is made up mostly of people who
17 work with elephants, keepers, trainers, that sort of thing.

18 Q Okay. Is everyone who works with elephants a member of
19 that organization?

20 A No.

21 Q And why not?

22 A It's been around for a long time and it was traditionally
23 an organization that was specifically made up of people who
24 did free contact training, and although that's changed a
25 little bit, it still primarily represents those views and so

1 there's a lot of people that just don't find enough
2 commonality there to be involved.

3 Q Okay. What size is the community of people who train and
4 work with elephants in the United States?

5 A It's not very big.

6 Q Okay. Do you generally keep informed about what's going
7 on in that community?

8 A Yes, I do. I mean, I do attend conferences, and because
9 I work in, you know, many different facilities, I try and
10 read, keep up on what articles are out there where things are
11 going on.

12 Q Okay. And did you submit a curriculum vitae along with
13 your expert report in this matter?

14 A Yes.

15 Q If we could please go to Plaintiffs', we'll call, Exhibit
16 113. Page 604. I think we should have Ms. Laule's CV there,
17 and if we could take a look at the next page 2.

18 And Ms. Laule, does this accurately summarize your
19 qualifications that we've been discussing so far today?

20 A Yes.

21 MS. SANERIB: Your Honor, I move the admission of
22 Ms. Laule's CV as Plaintiffs', we'll call, Exhibit 113E.

23 THE COURT: Only insofar as it goes to expertise,
24 I'll allow it. Any objection?

25 MR. SHEA: We do not object to the CV portion of

1 that exhibit. We object to the remainder, which includes a
2 report and other documents.

3 THE COURT: All right. I'll allow it.

4 (PLAINTIFFS' EXHIBIT 113E ADMITTED.)

5 MS. SANERIB: Thank you, Your Honor.

6 Q (BY MS. SANERIB) Ms. Laule, are you opposed to elephants
7 being in captivity?

8 A No.

9 Q Are you opposed to the chaining of elephants?

10 A No, if it's used for specific purposes.

11 Q And what purposes are those?

12 A Chaining is a form of restraint, and there will be times
13 in caring for an elephant where you would need to restrain
14 them, short periods of time to administer veterinary procedure
15 or something like that, so you do want to have that tool
16 available to you, but it's a very specific context.

17 I don't believe it should be used for regular
18 management of animals, for housing, for social management,
19 that sort of thing.

20 Q Okay. Ms. Laule, are you being paid by the Plaintiffs in
21 this case?

22 A No.

23 Q Why are you donating your time?

24 A Because I think I have something to offer the situation.

25 Q All right. Do you consider yourself to be an expert in

1 elephant training and management?

2 A Yes.

3 Q And are you confident you can render an expert opinion in
4 this case even though you've never trained an elephant for the
5 circus?

6 A Yes.

7 MS. SANERIB: All right. Your Honor, I tender Gail
8 Laule as an expert in animal training and in the management
9 and training of elephants in captivity.

10 THE COURT: Any voir dire?

11 MR. SHEA: Yes, Your Honor.

12 VOIR DIRE EXAMINATION

13 BY MR. SHEA:

14 Q Good afternoon, Ms. Laule.

15 A Hello.

16 Q Active Environments, is that the name of your company?

17 A Yes.

18 Q You started that company, didn't you?

19 A Yes.

20 Q It's a for profit company, correct?

21 A Yes.

22 Q And Active Environments consults with elephant
23 institutions to convert management programs from free contact
24 methods, we're talking about elephants, to protected contact
25 methods; is that correct?

1 A That's one of things I do, yes.

2 Q Now, you and Margaret Whittaker -- let me back up.

3 Margaret Whittaker is an employee of Active Environments; is
4 that true?

5 A Yes, yes.

6 Q And you and Margaret Whittaker are the two people at
7 Active Environments that provide protected contact training
8 services to elephant institutions, correct?

9 A Yes.

10 Q Now, the Humane Society of the United States is a client
11 of Active Environments, isn't it?

12 A She -- Margaret did one job at Black Beauty Ranch.

13 Q Well, in fact, Ms. Whittaker, at the time of your
14 deposition in this case, was working for the Humane Society of
15 the United States consulting with them to train the elephant
16 Babe at the Black Beauty Ranch, correct?

17 A Yes.

18 Q Is that still ongoing?

19 A No.

20 Q When did it end?

21 A It's been several months since she's been there. I don't
22 know exactly.

23 Q Okay. Now, Ms. Whittaker was converting Babe to a pure
24 protected contact management system; is that true?

25 A I'm not sure about that. She primarily went there to

1 help assess the animal whether she could be moved from Black
2 Beauty Ranch because she had some very, very significant leg
3 problems, so she went there to train the animal for X-rays,
4 and of course, did that in protected contact, so -- but it was
5 more a veterinary issue that she was going for than the
6 training for protected contact.

7 Q Ms. Whittaker helped them convert Babe to protected
8 contact completely; isn't that true?

9 A I think so. I did not do the job, so I can't tell you
10 exactly that. I believe they were doing protected contact or
11 some protected contact prior, but certainly she improved the
12 situation, yeah.

13 Q Babe is the only elephant at that facility, true?

14 A Yes, uh-huh.

15 Q Now, 70 percent of Active Environments' income is
16 protected contact services, correct?

17 A Well, I said that as an estimate in my deposition. I
18 can't say that that is exact, but a lot of our work is with
19 elephants, yes.

20 Q Okay. And 70 percent, is that currently correct?

21 A It's probably a little bit less than that now because
22 we've -- we've actually have more primate jobs at the moment.

23 Q All right. But that's the number you gave me at the time
24 of your deposition?

25 A In October, that's correct.

1 Q And that remains pretty close to true, doesn't it?

2 A Like I said, I think it's a little bit less now.

3 Q Now, you're a member of the ASPCA, correct?

4 A As I told you then, I think I am. I know I have been in
5 the past, but I'm not current on what my memberships are in
6 organizations. I certainly have been in the past, yes.

7 Q You haven't checked since your deposition, have you?

8 A No, I didn't, sorry.

9 Q You're a member of the Humane Society of the United
10 States, correct?

11 A I think so.

12 Q A member of Defenders of Wildlife, correct?

13 A Yes, I think so.

14 Q Now, you never had a circus as a client; isn't that true?

15 A Correct.

16 Q You've never worked for a circus, correct?

17 A That's right.

18 Q And you've never trained an elephant to perform in a
19 circus, correct?

20 A Yes, that's correct.

21 Q And you have never been trained in free contact training
22 of elephants, true?

23 A Well, I have not been trained specifically to do it. I
24 have worked with free contact trainers, including developing
25 the principles of elephant management school where we spent a

1 lot of time talking about the techniques of free contact and
2 about protected contact, comparing, contrasting, talking about
3 how each of us do things, and so that I would consider
4 training, although I never actually went on to use it in
5 training in free contact.

6 Q Now, Ms. Laule, you remember the deposition in your case,
7 right?

8 A Uh-huh.

9 Q And I asked you a number of questions while you were
10 under oath, true?

11 A Yes.

12 Q All right. Let's go to page -- I'd like to show you page
13 60 of your deposition beginning on line 1.

14 Ms. Laule, and I'll ask you to follow along.

15 (Reading) Question: Have you ever been trained in
16 free contact training of elephants?

17 (Reading) Answer: No.

18 Did I read your testimony correctly?

19 A That's correct.

20 Q And you've never used an ankus --

21 THE COURT: Let her finish, Counsel.

22 A No, I just want to say that, but there is also many times
23 in that deposition where I told you how much time I spent with
24 these people and how much I learned in the process of that, so
25 yes, that one statement I did answer it, no, but I would

1 qualify that I also told you many times over how much time I
2 spent and how much I did learn about it from them, so when you
3 ask me was I trained by them, that's why I answered the way I
4 did just now.

5 Q (BY MR. SHEA) Now, Ms. Laule, you've never used a guide
6 or ankus, correct?

7 A That's correct.

8 Q And you've never attempted to cue an elephant with a
9 guide?

10 A That's correct, yes.

11 Q Now, your business has never been involved in scientific
12 studies of elephants in the wild, true?

13 A In the wild, no, that's true.

14 Q And you've never conducted studies of elephants in the
15 wild, correct?

16 A That's right.

17 Q You have never exhibited an elephant in a circus
18 performance, true?

19 A That's right.

20 Q And you've never trained an elephant to be exhibited in
21 any performance, correct?

22 A Yes. That's correct.

23 Q And you've never been asked by a circus to consult with
24 it for elephant handling or care, true?

25 A Right.

1 Q Now, you've never seen an elephant trained by FEI,
2 correct?

3 A In videotapes, yes, I have.

4 Q You've never directly seen that, have you?

5 A No.

6 Q And the only videotapes you've seen are those which have
7 been shown by Plaintiffs' counsel in this case; is that
8 correct?

9 A Yes.

10 Q And you've never seen FEI's protected contact management
11 methods directly, have you?

12 A No.

13 Q And you do not know how FEI defines protected contact,
14 correct?

15 A No.

16 Q That is what I'm saying is correct?

17 A Yes.

18 Q And you're not familiar with FEI's protected contact
19 training methods, correct?

20 A That's correct. There was actually one time when I was
21 supposed to have the chance to visit, but they didn't want me
22 to come.

23 THE COURT: You said "they," who?

24 THE WITNESS: I'm trying to -- I think it was when I
25 was still teaching the principles of elephant management

1 school and there was a trip planned to -- to the -- this was
2 the conservation center, but I was specifically told that I
3 could not come.

4 Q (BY MR. SHEA) Now, you do not know the steps that FEI
5 uses to train elephants to accept tethers, correct?

6 A I know free contact methods and they do free contact, so
7 I can assume that it's being done the same way I've seen it
8 done everywhere else.

9 Q But you haven't seen them do it, have you?

10 A No.

11 Q And Ms. Laule, you've worked with only two U.S. zoos in
12 the past five years, correct?

13 A Yes, I think that's correct.

14 Q And you're no longer involved in the Principles of
15 Elephant Management course, true?

16 A That's correct.

17 Q No longer involved or consulting with the Species
18 Survival Plan of the AZA, correct?

19 A That's correct, uh-huh.

20 Q And no longer consulting with the Taxon Advisory Group of
21 the AZA, correct?

22 A Those are the same, the SSP and Taxon Advisory Group are
23 the same, so no.

24 MR. SHEA: Okay. Those are all the voir dire
25 questions, Your Honor. We renew our *Daubert* objections and

1 move to strike.

2 THE COURT: All right. Any further questioning?

3 MS. SANERIB: Just a few, Your Honor.

4 VOIR DIRE EXAMINATION

5 BY MS. SANERIB:

6 Q Ms. Laule, you mentioned attending an AZA Principles of
7 Elephant Management course, and I think you said that you
8 could not go to Feld's Conservation Center. Were you told
9 why?

10 A I'm sorry, it's a little vague, but I think it's simply
11 because I was from Active Environments that did protected
12 contract training.

13 Q So the circus didn't want you to see their facilities?

14 A Right.

15 Q And you -- you mentioned possibly being a member of the
16 ASPCA and the Humane Society of the United States. Why are
17 you not certain about whether you're a member?

18 A Because for a number of years now, because I travel so
19 much, including spending a lot of time internationally, my
20 business manager actually takes care of all my personal
21 finances as well, so my assumption is when a renewal notice
22 comes in for an organization I belong to, that she renews it,
23 but I honestly don't know for sure.

24 Q Okay. And Ms. Laule, have you read scientific studies
25 about elephants?

1 A Yes.

2 Q And were those studies about regarding wild elephants?

3 A I have read studies about wild elephants and also about
4 some studies on captive elephants as well.

5 Q And about -- do you recall about how many videos you've
6 reviewed in conjunction with this case?

7 A Oh, my goodness.

8 Q Would you say it's more than five?

9 A Yes.

10 Q Okay. And do you know if any of those videos came from
11 Feld?

12 A It's my understanding they did.

13 Q Okay.

14 MS. SANERIB: And Your Honor, I forgot, there was
15 one additional article of Ms. Laule's that I wanted to move in
16 just for the purpose of supporting her expertise with
17 elephants in training. This is Defendant's Exhibit 228.

18 THE COURT: Any objection?

19 MR. SHEA: None to that article, Your Honor.

20 THE COURT: All right. Admitted.

21 (DEFENDANT'S EXHIBIT 228 ADMITTED.)

22 MS. SANERIB: All right. And that's all I have
23 right now. Thanks.

24 THE COURT: What's the title of that article?

25 MS. SANERIB: The title of that article is -- maybe

1 we can just call it up. The title of the article is --

2 THE COURT: Carol has shut us down for the evening.

3 MS. SANERIB: The title is "Protected Contact in
4 Elephant Welfare."

5 THE COURT: All right. That's fine. Any other
6 questions, Counsel?

7 MS. SANERIB: And just to make the record clear, I
8 think we moved that in there, so Plaintiffs' will call Exhibit
9 163.

10 THE COURT: All right.

11 MS. SANERIB: And the other articles should come in,
12 I guess, as Plaintiffs' will call, if we can put them all
13 together, as 164.

14 THE COURT: This is as to qualifications only.

15 MS. SANERIB: Yes, for qualifications only. That's
16 correct.

17 THE COURT: Did you have another question you want
18 to ask?

19 MR. SHEA: Yes.

20 THE COURT: You may. I'm sorry, had you finished,
21 Counsel?

22 MS. SANERIB: Yes.

23 VOIR DIRE EXAMINATION

24 BY MR. SHEA:

25 Q Ms. Laule, you're aware that there were inspections

1 ordered in this case, inspections where Plaintiffs' experts
2 could go and see the elephants, correct?

3 A Yes.

4 Q You're aware that one of those was for at the Ringling
5 Brothers Center for Elephant Conservation, correct?

6 A Yes.

7 Q You didn't attend that, did you?

8 A No, I couldn't. I was out of the country. I was unable
9 to attend.

10 Q Now, one quick question because I know we're about out of
11 time here. The last article that was just referred to, that's
12 Chapter 13 in a book actually, is it not?

13 A Yes, just came out.

14 Q Has that been published at this time?

15 A It has just came out, yes.

16 Q I see. And that contains your current opinions?

17 A Yes.

18 MR. SHEA: Nothing further, Your Honor.

19 THE COURT: All right. As I indicated, I'm not
20 going to recite the authorities again. As I indicated,
21 because the Court is proceeding nonjury, then it has the
22 luxury, if you will, of listening to the testimony and
23 determining what weight, if any, to give any experts and also
24 to make *Daubert* determinations and I'll do that.

25 I will provisionally allow the witness to be

1 qualified as an expert and to listen to her testimony and give
2 it what weight, if any, it's entitled to when the Court
3 addresses the merits in this case.

4 It is 5:30, and I don't think it would be
5 appropriate to start with this witness now. You'll have to
6 come back tomorrow. We'll start promptly at 10:00 o'clock
7 tomorrow morning.

8 THE WITNESS: Okay.

9 THE COURT: You've been sworn in, you've been
10 provisionally qualified as an expert. What is the precise
11 area of expertise again, just so the record is clear?

12 MS. SANERIB: Your Honor, it was animal training and
13 the management and training of captive elephants.

14 THE COURT: Captive elephants, all right. You
15 didn't distinguish between Asian or African elephants or
16 English or anything.

17 MS. SANERIB: No, Your Honor.

18 THE COURT: Just elephants. All right. That's
19 fine. I have to ask you not to discuss any aspect of your
20 excepted testimony tomorrow.

21 THE WITNESS: Okay.

22 THE COURT: Enjoy your evening.

23 THE WITNESS: Okay. Thank you.

24 THE COURT: All right. Counsel, anything else?
25 Yes.

1 MS. SANERIB: Your Honor --

2 THE COURT: How long do you anticipate the witness'
3 direct to be tomorrow?

4 MS. SANERIB: I would say probably around an hour.

5 THE COURT: Okay. That's fine. All right. You
6 don't have to sit there and listen to us talk legalese for
7 awhile.

8 All right. How many additional witnesses do you
9 have tomorrow?

10 MS. MEYER: We have another live witness tomorrow
11 and then we have some deposition testimony, Your Honor.

12 THE COURT: All right. And the other witness, just
13 tell me who the witness is.

14 MS. MEYER: The other witness is Colleen Kinsley.
15 One of our experts, Colleen Kinsley.

16 THE COURT: Experts. And her area of expertise?

17 MS. SANERIB: She's -- Your Honor, she's the general
18 curator at the Oakland Zoo, so she's also worked extensively
19 with elephants in captivity both free contact and protected
20 contact.

21 THE COURT: All right.

22 MS. MEYER: Your Honor, I was wondering if we could
23 have Mr. Rider released from further testimony. He's also
24 been subpoenaed by the Defendant, and given that he's been
25 thoroughly cross-examined, I was hoping that perhaps --

1 THE COURT: I don't know. Maybe there's some more
2 questions. I don't know. I'm inclined to release him, but I
3 mean, I don't want to -- you have subpoenaed him, right?

4 MR. SIMPSON: We have, Your Honor, and it's possible
5 we'll call him in on our case.

6 THE COURT: I mean, how can we accommodate him? He
7 doesn't reside in Washington, D.C. He's under subpoena, if
8 he'd like to go home and -- that's fine, but he has to be able
9 to come back here, though.

10 MR. SIMPSON: We can give him as much notice as
11 possible.

12 THE COURT: When I say he wants to go home, I mean,
13 he lives in the United States on the east coast, right?

14 MS. MEYER: He can stay. He's in his van. He can
15 stay.

16 THE COURT: I mean, I don't want -- you know, I
17 don't want him to have to stay here. I mean, I'm going to
18 leave it to counsel to work it out. As long as he can get
19 here, he can drive here within two or three hours or so or fly
20 here. He doesn't have to sit out there in the witness room,
21 that's for sure. He certainly doesn't have to come down here
22 every day. So, can counsel work that out? He is under
23 subpoena. In fairness to Defendant, I don't want to excuse
24 him.

25 MS. MEYER: Okay.

1 THE COURT: So, I'll let counsel work out the
2 arrangement there.

3 MS. MEYER: All right. Thank you.

4 THE COURT: All right. Counsel, I'm trying to say
5 this delicately, but I have to ask you to leave as soon as you
6 can because I do have a 5:30 matter. I'm going to take about
7 a ten-minute recess before that matter. All right. Thank
8 you.

9 (PROCEEDINGS END AT 5:30 P.M.)

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CERTIFICATE OF REPORTER

I, Catalina Kerr, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Catalina Kerr

Date