

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

Plaintiffs,

vs.

FELD ENTERTAINMENT, INC.,

Defendant.

CA No. 03-2006  
Washington, DC  
February 18, 2009  
2:35 p.m.

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

APPEARANCES:

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I N D E XWITNESSDIRECTCROSSREDIRECTRECROSSFor the Plaintiff:

GAIL LAULE

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COLLEEN KINZLEY

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## P R O C E E D I N G S

THE COURT: All right. Redirect. Let's proceed.

## REDIRECT EXAMINATION

BY MS. SANERIB:

Q. Thank you, Your Honor. Good afternoon, Ms. Laule.

A. Hello.

Q. When we broke you and Judge Sullivan were talking about the places on an elephant's body where the bull hook is used. And I'd like to show a diagram that you included in your expert report. If we can go to Plaintiffs' Will Call Exhibit 113. And that's Page 575.

If you can just highlight the diagram portion of the that.

MR. SHEA: Your Honor, again, we object to the report coming in. It's hearsay. It violates --

THE COURT: A picture? The picture is hearsay?

1 MR. SHEA: It is if she's made it and included it  
2 for some reason and talked about it, Your Honor.

3 THE COURT: It's a chart. I'll let her use it. Is  
4 this something you prepared, a diagram? Did you prepare that?

5 THE WITNESS: No, it's in a document.

6 THE COURT: All right. Ask a question. To the  
7 extent -- go ahead and use it as a chart.

8 BY MS. SANERIB:

9 Q. Ms. Laule, can you describe for Judge Sullivan what  
10 this diagram depicts?

11 A. It's the placement of where the bull hook would be used  
12 on the elephant to elicit behaviors.

13 THE COURT: Where those numbers are?

14 THE WITNESS: Yeah, like we were talking about  
15 earlier.

16 BY MS. SANERIB:

17 Q. What is the list of words at the bottom of that  
18 document?

19 THE COURT: I can read it.

20 THE WITNESS: Those are the commands or the cues  
21 that would be given in association with those -- the use of  
22 the bull hook to elicit those behaviors.

23 MS. SANERIB: Thank you very much.

24 Your Honor, we'd like to move the admission of just  
25 this diagram, not Ms. Laule's expert report, but the diagram.

1 THE COURT: Any objection?

2 MR. SHEA: It's basically the same objection, Your  
3 Honor. There's no foundation here, she's --

4 THE COURT: It's a chart, it's a picture of an  
5 elephant, and it comports with her testimony earlier. She  
6 described points on an elephant where the hook is used and  
7 this shows the points. And over objection I'll allow it.

8 MS. SANERIB: Thank you, Your Honor. That will be  
9 Plaintiffs' Will Call Exhibit 113F.

10 BY MS. SANERIB:

11 Q. Ms. Laule, you mentioned in speaking with Mr. Shea that  
12 you thought that some elephants in captivity experience better  
13 welfare than elephants in the wild. Were you thinking of  
14 particular elephants?

15 A. No, it was a general statement that -- and I think we  
16 talked about this in the deposition also -- that there was,  
17 for example, during the dry season when elephants in the wild  
18 are having a hard time finding food and water. I would say  
19 that an elephant in captivity that has access to all those  
20 resources at any time, you could make the statement that that  
21 elephant has better welfare. I think that's the example I  
22 used.

23 Q. And based on the evidence you've reviewed of Ringling  
24 Brothers Circus, in your opinion is the welfare of elephants  
25 in the circus better or worse than elephants in the wild?

1 MR. SHEA: Objection, leading.

2 THE COURT: It's not. Better or worse. Not  
3 suggestive of one particular answer. Which answer?

4 THE WITNESS: Yeah, I would say that definitely  
5 elephants in the circus have poorer welfare than those in the  
6 wild, because of the reasons we've talked about today, the  
7 fact that so many of those species' typical behaviors are  
8 impacted.

9 MS. SANERIB: Okay. Thank you.

10 THE COURT: That's it? Any other questions?

11 MR. SHEA: Yes, Your Honor, briefly.

12 THE COURT: Go ahead. Sure.

13 RE-CROSS-EXAMINATION

14 BY MR. SHEA:

15 Q. Good afternoon, Ms. Laule.

16 A. Hello.

17 Q. I don't recall asking you anything about the El Paso  
18 Zoo during my cross-examination. Do you recall that  
19 differently?

20 A. I can't say for certain. I know it was in my report, I  
21 believe. Maybe it was not in the deposition. I'm not  
22 certain.

23 Q. I meant on my cross-examination today, I didn't ask you  
24 about the El Paso Zoo, did I?

25 A. I don't think so.

1 Q. The point was the Houston Zoo had gone back from  
2 protected contact to using free contact methods, correct?

3 A. That's right, Houston, yes.

4 Q. And now, you were shown or asked questions about the  
5 Elephant Husbandry Resource Guide, is that correct?

6 A. Yes.

7 Q. And you knew that Deborah Olson edited that guide, is  
8 that right?

9 A. That's my understanding, yes.

10 Q. I see. I'd like to ask you a few questions about that.  
11 If you can go to the next page, Mr. Palisoul, and the one  
12 following that, and the one following that. Keep going,  
13 please, one more.

14 Okay. Now, Ms. Laule, if you can look at the  
15 third paragraph down, beginning at approximately. It says  
16 here: Approximately 500 Asian and African elephants live in  
17 North America. Half of this population reside in AZA  
18 institutions, and the other half of our North American  
19 elephants are owned by circuses, non-AZA zoos, private  
20 individuals, sanctuaries and corporations. Did I read that  
21 correctly?

22 A. Yes.

23 Q. Do you know that to be true?

24 A. I don't.

25 Q. You don't know one way or the other?

1 A. Right.

2 Q. I see. If we could go to page 68, please.

3 THE COURT: Excuse me one minute, counsel.

4 BY MR. SHEA:

5 Q. Ms. Laule, in the first paragraph here at the top of  
6 the page, starting the fourth line down, it says: Under  
7 normal circumstances elephants should not be tethered  
8 continuously for more than 16 hours without exercise.  
9 Elephants under medical care or other special circumstances  
10 such as a mother demonstrating aggressiveness toward her new  
11 baby may require longer tethering periods. Did I read that  
12 correctly?

13 A. Yes.

14 Q. Do you know that to be the general standard for  
15 tethering stated in this Elephant Resource Husbandry Guide?

16 A. I can only answer that that's what is written here. I  
17 don't know if it's referred to in other places in the --

18 THE COURT: What he's trying to do is elicit your  
19 opinion, if you have an opinion on that.

20 THE WITNESS: My opinion I've stated, which is  
21 different than this, and I don't know that there's any  
22 scientific basis for that statement either.

23 BY MR. SHEA:

24 Q. Let's go to Page 223, please. And at the bottom of the  
25 first column there is text. If you can pull that up, please.



1 Ms. Laule, I'll direct your attention to four lines down where  
2 it states: Elephants should be provided with fresh hay  
3 periodically during the transport, and if the trip lasts for  
4 more than 16 hours, they should be provided with an  
5 opportunity to drink water. Did I read that correctly?

6 A. Yes.

7 Q. This language anticipates transport trips in excess of  
8 16 hours, does it not?

9 A. It sounds like it, yes.

10 Q. Now, you weren't one of the authors of this manual,  
11 were you?

12 A. No.

13 Q. If you could go back to that front page, Mr. Palisoul.

14 A. I had actually contributed to what was originally going  
15 to be the manual coming out of the TAG, but as far as I know,  
16 the information was not used.

17 Q. I see. Now, I think you may know -- do you know  
18 Colleen Kinzley?

19 A. Yes.

20 Q. And was she an author, contributing author to this  
21 guide?

22 A. That's what it says. I have nothing to do with this  
23 guide. I can only see what you're reading as well.

24 Q. I see. So if I were to call out other names such as  
25 Gary Jacobson or Gary Johnson or Dr. Dennis Schmitt, I'd get

1 the same answer, is that correct?

2 A. Yes, that's correct.

3 Q. I heard you say something to the effect, on either  
4 redirect or from questions from the Court, that you could do  
5 exactly the same thing with elephants under protected contact  
6 as free contact. Do you remember that testimony?

7 A. Yes, I was referring to husbandry and veterinary and  
8 care of the elephant.

9 Q. But not performance, correct?

10 A. No, that's correct.

11 Q. And not the type of behaviors that are used in  
12 circuses, correct?

13 A. That's correct, yes.

14 MR. SHEA: I have nothing else, Your Honor.

15 THE COURT: It's your witness. Any last question?

16 MS. SANERIB: Thank you, Your Honor.

17 FURTHER REDIRECT EXAMINATION

18 BY MS. SANERIB:

19 Q. We can actually go to Defendant's Exhibit 2. I just  
20 wanted to ask you, Ms. Laule, again looking at the Elephant  
21 Husbandry Resource Guide, do you know when this document was  
22 created?

23 A. Created as in published or?

24 Q. Yes.

25 A. I don't remember exactly. It's been a few years, if

1 I'm not mistaken.

2 Q. Was it sometime do you think after this lawsuit was  
3 filed?

4 A. I'm not sure, to tell you the truth.

5 Q. All right. And can we go to Page 6 of the document,  
6 please. And again there's this list of names of contributing  
7 authors. Do you recognize any of those authors as being  
8 traditional free contact elephant trainers?

9 A. Yes, there's a number of them that are.

10 Q. And do you know if the Elephant Husbandry Resource  
11 Guide is a document that was put out by the AZA?

12 A. Well, that's the part that is a little muddy about it,  
13 because like I said, when I was involved in the TAG and we  
14 were actually developing -- each of the TAGs is supposed to  
15 have a husbandry manual. And we were supposed to develop one  
16 also, and it kept going on for year after year after year, and  
17 then -- and like I said, I actually wrote an entire section on  
18 protected contact and it was taken by the TAG, and then there  
19 was a period of time where nothing happened. And then this  
20 came out.

21 And so, like I said, it's -- I'm trying to  
22 remember. I know it was published by IEF. I'm not sure if it  
23 even states in here that it is the official manual of the TAG,  
24 but I don't believe it does.

25 MS. SANERIB: Okay. All right. That's it. Thank

1 you very much.

2 THE COURT: All right. Thank you. You may step  
3 down. I am going to excuse the witness. Any objections?

4 MR. SHEA: No.

5 THE COURT: Have a safe trip home. I have to ask  
6 you not to discuss your testimony with anyone. All right?

7 All right. Call your next witness.

8 MS. SANERIB: Your Honor, plaintiffs call Colleen  
9 Kinzley from the Oakland Zoo. And her name is spelled  
10 C-O-L-L-E-E-N, last name is Kinzley, K-I-N-Z-L-E-Y.

11 Thereupon,

12 COLLEEN KINZLEY,

13 the witness herein, having been first duly sworn, was examined  
14 and testified as follows:

15 THE COURT: Good afternoon.

16 THE WITNESS: Hello.

17 DIRECT EXAMINATION

18 BY MS. SANERIB:

19 Q. Good day, Ms. Kinzley. Can you please state your full  
20 name for the Court?

21 A. Colleen Elizabeth Kinzley.

22 THE COURT: I have to ask you to keep your voice  
23 up. You can lower that microphone. It's very important that  
24 the attorneys be able to hear your answers and the court  
25 reporter be able to hear so she can prepare an appropriate

1 transcript.

2 BY MS. SANERIB:

3 Q. Ms. Kinzley, what is your current occupation?

4 A. I'm the general curator at the Oakland Zoo.

5 Q. How long have you been the general curator?

6 A. Since 1992.

7 Q. And does the Oakland Zoo have elephants?

8 A. Yes, we do.

9 Q. How many elephants?

10 A. Four.

11 Q. And have you worked with the elephants?

12 A. Yes, I have.

13 Q. How long have you worked with the elephants there?

14 A. I began there in June of '90.

15 Q. How are the elephants at the Oakland Zoo managed?

16 A. We manage them in protected contact management.

17 Q. Are bull hooks used at all?

18 A. No.

19 Q. Was that always the case?

20 A. No. When I started there we worked with the elephants  
21 in free contact and we changed to protected contact in June of  
22 '91.

23 Q. Why did you change to protected contact?

24 A. The main reason was that we had a keeper killed by an  
25 elephant in January of '91. But the other factor that was

1 involved is that we had a female that was aggressive with  
2 people and that had injured a number of people, and her  
3 aggression had escalated, and consequently, in the free  
4 contact setting, our physical discipline with her had  
5 escalated where we were using the bull hook very heavily and  
6 also using electricity to discipline her and punish her. And  
7 we wanted to find an alternative method. And at that same  
8 time protected contact was being developed at the San Diego  
9 Wild Animal Park. So we decided that we were going to make  
10 that change.

11 Q. And you referred to using electricity. Can you explain  
12 to the Judge what that means?

13 A. Yeah. One form is relatively commonly used in free  
14 contact, and that is using an electric prod, cattle prod,  
15 hand-held. And that was used at Oakland and other places that  
16 I worked in free contact. And the less common but in  
17 instances where there is a more severe problem with an  
18 elephant, they use a device that they plug into the wall, so  
19 using 110 electricity, to shock the elephant.

20 Q. And going back to the Oakland Zoo, are chains currently  
21 used at the Oakland Zoo?

22 A. Periodically we will use chaining as a tool, and that  
23 is primarily if there's a medical situation. We do like to  
24 keep the elephants comfortable with chaining, so we'll chain  
25 them for short periods of time, maybe 20 or 30 minutes

1 periodically at this point, meaning, maybe once every couple  
2 of months. When they were in free contact the elephants were  
3 chained every night, usually around 3:30 or 4:00 o'clock, and  
4 then they came off chains between maybe 9:30, 10:00 o'clock in  
5 the morning.

6 Q. When did that chaining practice stop at the Oakland  
7 Zoo?

8 A. That stopped when we switched to protected contact. So  
9 June of '91.

10 Q. And about how much time do you spend with the elephants  
11 each week?

12 A. Up until a few years ago I was with the elephants every  
13 day, and, you know, worked with them in the morning during  
14 their morning routine, bathing, foot care. As the zoo became  
15 larger, we hired another elephant manager. So at that time I  
16 was both the elephant manager and the general curator. But we  
17 did hire another elephant manager.

18 And in more recent years I work with the  
19 elephants directly for maybe about 10 hours a week up at the  
20 barn. And then I also do behavioral observations with them  
21 and participate in different meetings and medical care. So  
22 that's probably an additional two to four hours a week. But  
23 that of course is sort of the normal week where there is not a  
24 problem. If there's a medical situation, then I could be up  
25 there, you know, pretty much every day.

1 Q. And what was your occupation before you started at the  
2 Oakland Zoo?

3 A. I was senior keeper at the Brookfield Zoo.

4 Q. And how long did you work at the Brookfield Zoo?

5 A. I was there for four years.

6 Q. And did they have elephants?

7 A. Yes.

8 Q. And I think you mentioned you were the elephant keeper,  
9 so did you work with the elephants?

10 A. Yes, I did.

11 Q. And how many elephants did they have at the Brookfield  
12 Zoo?

13 A. When I started at Brookfield they had seven elephants,  
14 two Asians and the rest were Africans, including one young  
15 male.

16 Q. And how were those elephants managed?

17 A. They were managed in free contact.

18 Q. So bull hooks were used?

19 A. Yes.

20 Q. Are were chains used?

21 A. Yes, they were chained most nights.

22 Q. And what was your occupation before you worked at the  
23 Brookfield Zoo?

24 A. I was an animal keeper at the Phoenix Zoo.

25 Q. Did the Phoenix Zoo have elephants?



1 A. Yes, they did, one Asian and two Africans while I  
2 worked there.

3 Q. Did you work with those elephants?

4 A. Yes, I did.

5 Q. About how long did you work with the elephants at the  
6 Phoenix Zoo?

7 A. About three years.

8 Q. How were the elephants at the Phoenix Zoo managed?

9 A. They were managed in free contact also.

10 Q. And were they also chained?

11 A. Yes, they were chained. They were not chained  
12 overnight, but they were chained for a period of time every  
13 day.

14 Q. Okay. I think you mentioned at one point foot care.  
15 Can you describe to the Court what kind of foot care a captive  
16 elephant requires?

17 A. Yeah, in our situation mostly what we're looking at is  
18 preventative foot care. You know, currently our elephants  
19 spend most of the time out in their enclosure, their outdoor  
20 enclosure, and they move quite a bit. So we check their feet  
21 every day, and if it's necessary we'll do any trimming of any  
22 excess growth of the nails or the foot pads and, you know,  
23 look for any problems that they might have, a torn nail or  
24 something like that. And then also through that process we  
25 bathe them, check other parts of their body. We always

1 inspect the inside of their mouth, their teeth, check their  
2 eyes. Any medical treatment that they might need would happen  
3 during that morning routine.

4 Q. Okay. Ms. Kinzley, have you worked with any other  
5 captive elephants than the ones at the zoos you just  
6 described?

7 A. Yes, I've worked at a couple facilities for short  
8 periods of time. For a few months I worked at the Racine Zoo  
9 helping with an Asian elephant there. And I also worked at  
10 the San Francisco Zoo, helping them in developing a protected  
11 contact training program, when they had elephants at their  
12 facility. And then I've helped for shorter periods of time  
13 with elephant moves or in cases where there has been an  
14 elephant illness. And I've consulted at different facilities  
15 that were either expecting a birth in a couple of cases or  
16 looking at facility design. That kind of thing.

17 Q. Have you done any work for the U.S. Department of  
18 Agriculture?

19 A. I was asked by them to help out with transferring an  
20 elephant from Illinois to the Elephant Sanctuary in Tennessee  
21 a few years ago.

22 Q. And what were the circumstances under which that  
23 elephant was being transferred?

24 A. That elephant was the first elephant to be confiscated  
25 by USDA. And in her situation, she had some very severe

1 treatment. The whole situation at that facility was very  
2 poor. But in her case they had been trying to treat foot  
3 problems and had soaked her feet in formaldehyde, which had  
4 resulted in very severe injuries to her feet. So consequently  
5 she was confiscated and moved to another facility.

6 Q. Ms. Kinzley, about how long have you been working with  
7 captive elephants?

8 A. I began in 1982.

9 Q. And what training have you received?

10 A. Most of it has been on-the-job training, learning from  
11 the trainers that taught me, and then also at various  
12 workshops and speaking with colleagues over the years. I've  
13 visited many other zoos and facilities and talked with  
14 different people and talked with field researchers and  
15 attended protected contact workshops and other operant  
16 conditioning workshops.

17 Q. And have you also attended elephant related  
18 conferences?

19 A. Yes. I used to very regularly attend the Elephant  
20 Managers Association workshop, which is an annual workshop.

21 Q. And why did you stop attending those workshops?

22 A. That one in particular I felt, after a period of time  
23 of being in protected contact, that it really was more of a  
24 free contact organization, and it wasn't really beneficial for  
25 me to attend that conference or workshop, since it was so

1 heavily geared toward free contact management.

2 Q. Ms. Kinzley, what is the highest educational degree  
3 that you hold?

4 A. I have a BA in biology and I'm getting ready to finish  
5 my master's in biology.

6 Q. And are you preparing a master's thesis?

7 A. Yes, I am.

8 Q. What is the subject of your thesis?

9 A. I'm studying bull behavior and looking at musth  
10 behavior in bulls.

11 Q. Have you done any research for your thesis?

12 A. Yes, I have. Over the past five years I've been  
13 studying elephants in Namibia, and that typically takes place  
14 during the summer months. We have a research site at a water  
15 hole, and observe elephants coming in from about 11:00 o'clock  
16 in the morning until well into the night, midnight,  
17 1:00 o'clock. And we record behavior of those elephants.

18 Q. When you're in Namibia about how often do you see  
19 elephants?

20 A. Every day, on average about 50 elephants or so,  
21 comprised of the bulls, which is a big part of my work, so  
22 maybe about 15 or 20 bulls, and then a number of family groups  
23 also come in.

24 Q. And when you refer to bulls, what are you talking  
25 about?

1 A. The male elephants, the adult males.

2 Q. All right. Are you engaged in any other elephant  
3 research?

4 A. We participate in a research project at the zoo. The  
5 same woman, Caitlin O'Connell-Rodwell, who's a researcher out  
6 of Stanford, she's the principal researcher on the Namibia  
7 project, and she's also worked with us in Oakland where we  
8 have trained one of our elephants, Donna, to stand on a force  
9 plate and indicate when she feels vibrations. And the testing  
10 there is lowering the level of vibrations so that she can help  
11 us to understand at what level elephants are detecting and  
12 better understand their use of seismic communication.

13 And then we're beginning a study looking at  
14 cognition in elephants, and Donna again is one of the ones  
15 participating, as well as our young male.

16 Q. Have you observed elephants in the wild anywhere other  
17 than Namibia?

18 A. Yes. Prior to the Namibia project I regularly led  
19 safaris in Kenya and Tanzania, so I had the opportunity to  
20 observe elephants in those locations as well.

21 Q. Ms. Kinzley, are you a member of any professional  
22 organizations?

23 A. Yes, I am.

24 Q. And what are those organizations?

25 A. The American Zoo Association, the American Association

1 of Zookeepers, the Elephant Managers Association, the Contra  
2 Costa Avian Society, the Bay Area Amphibian and Reptile  
3 Society, Performing Animal Welfare Society, and the Elephant  
4 Sanctuary.

5 Q. Have you attended any -- I think we already talked  
6 about that. You mentioned the Elephant Managers Association.  
7 Do they put out any publications?

8 A. Yes, they do. They have the Journal of Elephant  
9 Managers.

10 Q. And do you know if that journal is peer reviewed?

11 A. No, I don't believe so.

12 Q. Do you know what the International Elephant Foundation  
13 is?

14 A. Yes, it is a group that was formed several years ago,  
15 it has both people from the zoo community as well as the  
16 circus community, and with the goal, I believe, to raise money  
17 for research and conservation. Primarily -- a lot of the  
18 research has been reproductive research with captive  
19 elephants.

20 Q. Have you contributed to that organization?

21 A. No.

22 Q. Does the Oakland Zoo contribute to conservation of  
23 elephants in the wild?

24 A. Yes, we do.

25 Q. Ms. Kinzley, have you authored any publications on

1 elephants?

2 A. Yes, I have.

3 Q. And what topics, generally speaking?

4 A. Pretty wide variety of topics on captive elephant  
5 management. We have -- I've done papers on various medical  
6 cases that we've had, reproduction, various elements of  
7 management having to do with training or enrichment or how the  
8 animals use the habitat. We've had an ongoing behavioral  
9 observation project at our facility where we've been able to  
10 record the behavior of the elephants, write down their  
11 activities, how they spend their time, so we've also published  
12 some of that information.

13 Q. Have you ever worked for a circus?

14 A. No, I haven't.

15 Q. Have you ever inspected a circus?

16 A. Yes, I have.

17 Q. Which circus?

18 A. A number of circuses that have come into the Bay Area,  
19 including Ringling. Most recently I was asked to inspect  
20 Universal, this past summer.

21 Q. And you mentioned you were asked. Who asked you to  
22 inspect the circuses?

23 A. It's typically the local animal control officers.

24 Q. And about how many times have you inspected Ringling  
25 Brothers?

1 A. Several. I haven't done it in a while. I've been in  
2 Namibia typically when they come to the Bay Area now.

3 Q. And do you recall, did you find anything during any of  
4 your inspections of Ringling Brothers?

5 A. You know, my observations were consistent with what  
6 I've seen before, that the elephants spend a lot of time on  
7 leg chains, and it's a very restricted environment. Little  
8 opportunity for them to interact with other elephants, and  
9 little opportunity for them to interact in a normal way with  
10 their environment.

11 Q. Did you participate in a court ordered inspection in  
12 this case?

13 A. Yes, I did.

14 Q. Which inspection was that?

15 A. That was the inspection of the CEC in Florida.

16 Q. Prior to getting involved in this case, did you ever  
17 see Ringling Brothers elephants?

18 A. Yes.

19 Q. And about how many times would you say you've seen  
20 them?

21 A. Quite a few times. In the early part of my career it  
22 was very common for myself and my colleagues to go and visit  
23 circuses when they came into town and, you know, observe the  
24 elephants, talk to the handlers. And then I also attended an  
25 EMA conference in Florida where the Ringling facility invited



1 the delegates up to see their facility.

2 Q. Do you remember what your impression was of that  
3 facility?

4 A. Yeah. It was, you know, very barren, again little  
5 opportunity for the elephants to interact, you know, with  
6 their environment. Really lacked complexity, did not offer  
7 them the choice of when they want to drink water, when they  
8 want to eat. I think one thing that was particularly  
9 striking, and I remember myself and colleagues commenting on,  
10 was that there were two very young elephants that looked to be  
11 about two years old that were trying to get water out of an  
12 empty waterer, and they were very focused on sucking at the  
13 bottom of that water container. And then of course they were  
14 also chained, everyone was taken in and chained at about 3:30.

15 Q. Is that the same facility you visited in conjunction  
16 with the court ordered inspection in this case?

17 A. Yes, it is.

18 Q. Ms. Kinzley, are you confident you can render an expert  
19 opinion here even though you haven't worked for the circus?

20 A. Yes, I'm confident.

21 Q. Okay. And you're not a veterinarian, are you?

22 A. No, I'm not.

23 Q. But have you provided medical care for elephants?

24 A. Yes, I have.

25 Q. And generally speaking, what have you done?

1 A. A wide variety of minor medical procedures. I mean, I  
2 think it's very typical in managing elephants that the keepers  
3 often implement some of the veterinary care. So foot soaks,  
4 blood draws, injections, eye treatments, trunk washes.  
5 There's been a wide number of things that I've done for the  
6 elephants over the years.

7 Q. And I think you mentioned this previously. Do you  
8 provide husbandry for the elephants at the Oakland Zoo still?

9 A. Yes, I do.

10 Q. Ms. Kinzley, are you opposed to elephants being in  
11 captivity?

12 A. No, I am not.

13 Q. Are you opposed to chaining of elephants?

14 A. No, I'm not.

15 Q. Are you opposed to the use of elephants in circuses?

16 A. Yes, I am.

17 Q. Ms. Sinnott, can we pull up Ms. Kinzley's CV, which  
18 should be part of Plaintiffs' Will Call Exhibit 113, at Page  
19 565. And can we page through this. And Ms. Kinzley, does  
20 this summarize your qualifications that we've been discussing  
21 here today?

22 A. Yes, it does.

23 MS. SANERIB: Your Honor, I move the admission of  
24 Ms. Kinzley's CV as part of Plaintiffs' Will Call Exhibit  
25 113G.

1 MR. SHEA: No objection to the CV, Your Honor.

2 THE COURT: It's admitted.

3 BY MS. SANERIB:

4 Q. Ms. Kinzley, do you consider yourself to be an expert  
5 in elephant management and training?

6 A. Yes, I do.

7 MS. SANERIB: I tender Ms. Kinzley as an expert in  
8 elephant management and training.

9 THE COURT: Any voir dire?

10 MR. SHEA: Yes, Your Honor.

11 VOIR DIRE EXAMINATION

12 BY MR. SHEA:

13 Q. Good afternoon, Ms. Kinzley.

14 A. Hello.

15 Q. You've just mentioned your opinion about circuses.

16 You've held the opinion that elephants should not be exhibited  
17 in circuses for more than 20 years, correct?

18 A. I'd say it's probably more like 19 or 20. Really since  
19 the development of protected contact and, you know, the  
20 demonstration that there's an alternative method for caring  
21 for elephants I think is what most strongly influenced my  
22 opinion on that.

23 Q. But nonetheless it's been around 20 years that you've  
24 held that opinion, is that true?

25 A. Yes.

1 Q. You've cooperated with PETA, People for the Ethical  
2 Treatment of Animals, in elephant cases, haven't you?

3 A. I guess I'd need to understand what you mean by  
4 cooperate. I don't think I've really done much work with PETA  
5 at all. I have spoken with people from PETA over the years,  
6 answered questions, but...

7 Q. But you've worked with them over the years, haven't  
8 you?

9 A. Well, again, I have answered questions. People have --  
10 you know, all sorts of different groups and press and so forth  
11 have contacted us over the years for our opinion on different  
12 issues. And so certainly, if somebody would call me and ask  
13 me something, I would give them an honest answer.

14 Q. And that involved the animal cases, correct?

15 A. Yes. Uh-huh.

16 Q. And you have a strong mutually beneficial partnership  
17 with the Elephant Sanctuary, true?

18 A. Well, again, I guess I'm not sure what you mean by  
19 strong, mutually beneficial. I think they have done excellent  
20 work, so, you know, I'm very supportive of the Elephant  
21 Sanctuary.

22 Q. And you can --

23 A. I'm not sure what they have done for us in particular  
24 in terms of mutually beneficial. Carol did come out one time  
25 and lectured at our Celebrating Elephants event.

1 Q. But you consider the Oakland Zoo as having a  
2 partnership with the Elephant Sanctuary, true?

3 A. Sure.

4 Q. And you visited the Elephant Sanctuary for 10 or 12  
5 days, correct?

6 A. I don't ever remember being there for that period of  
7 time. I have visited there on a couple of different  
8 occasions. It has been a number of years since I have had the  
9 opportunity to visit the sanctuary.

10 Q. I see. Let me show you Page 243 of your deposition.

11 A. Okay.

12 Q. Beginning on line 12. I'll ask you to follow along.

13 Question: How many days have you spent at the Elephant  
14 Sanctuary total? Answer: Total, maybe 10 or 12 total.

15 Did I read that correctly?

16 A. Yeah, and I think, again, that, as I said, maybe  
17 it's -- to the best of my memory on that, it has been a number  
18 of years since I've been out there, so I don't remember  
19 exactly how many days I've been there.

20 Q. But I did read your testimony from your deposition  
21 correctly, did I not?

22 A. Yes, you did.

23 Q. Ms. Kinzley, you have a strong mutually beneficial  
24 partnership with the Performing Animal Welfare Society,  
25 correct?

1 A. Yeah, I would say so.

2 Q. And you have collected through your efforts \$130,000  
3 that has gone to the Amboseli Elephant Trust, correct?

4 A. I would say about that much over the years.

5 Q. Now, you have never observed wild Asian elephants, have  
6 you?

7 A. No, I have not.

8 Q. And you've never conducted any elephant research in  
9 Asia, correct?

10 A. No, I haven't. My experience with Asian elephants has  
11 only been in captivity. I worked with Asian elephants in  
12 captivity. I have had a number of opportunities to speak with  
13 people who have done research on Asian elephants in the wild,  
14 but I haven't myself done research with them. Hopefully at  
15 some point in the future.

16 Q. And I understood you to mention something about a  
17 elephant cognition study that is beginning at the Oakland Zoo,  
18 is that correct?

19 A. That's correct.

20 Q. But you've never conducted research on brain  
21 development in elephants, correct?

22 A. No, I have not.

23 Q. Now, you've not published an article about elephants in  
24 a peer-reviewed journal, correct?

25 A. I have been one of the authors on the seismic -- one of

1 the seismic papers that was in a peer-reviewed journal.

2 Caitlin O'Connell-Rodwell was the principal author on that.

3 Q. Is that the only study?

4 A. Yeah, that is the only peer review I've been involved  
5 in.

6 Q. When was that published?

7 A. Two years ago.

8 Q. And you stopped using an ankus with elephants in 1991,  
9 is that correct?

10 A. Yes.

11 Q. And so that's the last time you've used an ankus with  
12 an elephant personally?

13 A. Yes.

14 Q. You've never trained an elephant to perform in a  
15 circus, correct?

16 A. No, I have not.

17 Q. And using free contact methods you've never trained an  
18 elephant from the time it was a baby, correct?

19 A. No. I've trained young elephants but I have not  
20 trained a newborn in free contact.

21 Q. You've never worked for a circus, true?

22 A. I have not.

23 MR. SHEA: That ends my voir dire, Your Honor. We  
24 renew our objections to the testimony.

25 THE COURT: All right. Any additional questions?

1 MS. SANERIB: I just wanted to clarify what a few  
2 of these organizations are for the record that Ms. Kinzley was  
3 asked about.

4 DIRECT EXAMINATION (Resumed)

5 BY MS. SANERIB:

6 Q. You mentioned the Elephant Sanctuary. What is the  
7 Elephant Sanctuary?

8 A. It is a facility for elephants in Tennessee that Carol  
9 Buckley and her partner, Scott Blais, founded. B-L-A-I-S, I  
10 believe. And they care for Asian elephants, females  
11 primarily, although they do have a male right now that was  
12 recently confiscated by USDA.

13 Q. And do you know anything about why that elephant was  
14 confiscated?

15 A. Yes. He was extremely emaciated, perhaps a thousand,  
16 2,000 pounds underweight and, you know, I believe really had  
17 sort of slipped through the cracks. And fortunately just  
18 recently he was seen -- photos of him showed up on YouTube,  
19 and it was brought to my attention as well as the attention of  
20 some other individuals and we were able to notify USDA, and  
21 fortunately they were able to act very quickly and get him out  
22 of that situation.

23 Q. You also mentioned PAWS. And what is PAWS?

24 A. That's the Performing Animal Welfare Society. They  
25 have got several facilities in California.



1 Q. And do they have elephants there?

2 A. Yes, they do.

3 THE COURT: Why did you notify USDA as opposed to  
4 any other federal government entity?

5 THE WITNESS: USDA is responsible for inspecting,  
6 and so I contacted a person that was the elephant specialist  
7 with USDA, just to find out if they were aware of the  
8 situation. As it turned out, they had inspected some months  
9 or maybe even a year earlier, but they had lost track of him.

10 THE COURT: Okay.

11 BY MS. SANERIB:

12 Q. And you mentioned contacting an elephant specialist at  
13 the USDA. Do you know how many specialists they have?

14 A. My understanding is they have two people that  
15 specialize in elephants. And then their other inspectors are  
16 more generalists and are responsible for the inspection of all  
17 of the different animals that fall under USDA.

18 Q. I believe you also mentioned the Amboseli research  
19 group, is that right?

20 A. Yes.

21 Q. What is that organization?

22 A. The Amboseli Elephant Research Project is in Kenya in a  
23 park called Amboseli, and it's the longest ongoing study of  
24 elephants. In fact, my understanding is actually it's the  
25 longest ongoing study of any mammal. And most of what we know

1 about the behavior of elephants and about musth, which is one  
2 of the interesting phenomena with elephants, has come out of  
3 that study. And also a lot about the communication of  
4 elephants has come out of that study. Cynthia Moss is the  
5 principal researcher on that project. And the Oakland Zoo has  
6 been supporting that project for many years.

7 Q. And you mentioned musth. What is that?

8 A. It's a phenomenon in male elephants, once they reach  
9 sexual maturity, that they will have a dramatic increase in  
10 testosterone that results in some physical changes, outward  
11 physical changes. Typically urine dribbling is the one that  
12 is used to sort of definitively say that the animal is in  
13 musth, but also temporal drainage and changes in their  
14 posture. But it also results in a lot of changes in their  
15 behavior, they become much more aggressive, and it's  
16 advantageous for a bull in a wild situation because it makes  
17 them more competitive in terms of breeding and access to  
18 females.

19 MS. SANERIB: Your Honor, I don't have any more  
20 questions on voir dire. Do you have anything?

21 THE COURT: All right. I'll allow the witness to  
22 testify. I'll give the witness's testimony such weight, if  
23 any, is appropriate when I address the merits in this case.

24 MS. SANERIB: Thank you, Your Honor.

25 THE COURT: You're offering the witness as an

1 expert in what area?

2 MS. SANERIB: In captive elephant management and  
3 training.

4 THE COURT: All right.

5 BY MS. SANERIB:

6 Q. Ms. Kinzley, you were just talking a little bit about  
7 the study of elephants in the wild, and I'm wondering if,  
8 based on your experience, can you describe for the Court  
9 elephant skin?

10 A. Yes. Elephants are pachyderms, which means they have  
11 thick skin, and in fact in some parts of their body their skin  
12 is thick, but in many other areas they have very thin skin.  
13 Behind the ears, around the anus, around the eyes. But they  
14 also, over their entire body, have sensitive skin, and they  
15 spend a lot of time involved in taking care of their skin.  
16 Bathing, mud wallowing, dusting are all very important  
17 behaviors for elephants, and ones that you'll frequently see  
18 them engage in both in the wild and in captivity.

19 And, you know, one of the things that I like to  
20 tell people is that they are very responsive to insects, and  
21 they are also very sensitive to sunburn, but an elephant will  
22 be bothered even by a housefly touching down on its skin.  
23 They will react to that. So they do in fact have very  
24 sensitive skin.

25 Q. And can you describe some -- the sort of typical

1 repertoire of elephant behaviors?

2 A. Yeah. Elephants, the society is sort of a matriarchal  
3 society. The females live in family groups with their  
4 offspring and young males. Once the males get to be older  
5 they leave the family group and spend time in either bachelor  
6 groups or by themselves. But a lot of their activity is  
7 walking and moving between food sources and water sources. So  
8 they are very active animals. And they are considered  
9 migrators and will travel long distances between food sources  
10 depending upon the weather.

11 So they've really evolved as animals that are  
12 physically active for the majority of the day. Typically 17  
13 hours on average spent foraging and feeding is common for  
14 elephants.

15 They are also very highly social animals and they  
16 engage in a lot of social interactions. For example, an  
17 affiliative or sort of friendly interaction would be trunk to  
18 mouth where, you know, one elephant raises its trunk to the  
19 mouth of another elephant. Another example would be a  
20 submissive behavior of a subordinate animal turning and  
21 presenting its rear to a dominant animal. So there is a whole  
22 range in between those types of things.

23 Q. And Ms. Kinzley, I have a few questions for you about  
24 how the bull hook is used. Can you explain to the Court how  
25 bull hooks are used by elephant trainers?

1       A.    Yeah.  The bull hook or ankus is usually a staff with a  
2 hook and -- metal hook and point on the end of it.  And  
3 basically the elephant is taught that they need to move away  
4 from the pressure or pain of the hook.  So all of the  
5 behaviors, all the cue points, the top of the shoulders, the  
6 top of the head, behind the leg, all of those are points where  
7 the elephant would be moving away from that pressure or pain  
8 of the bull hook.

9                    So once the elephant learns that this tool is  
10 going to cause them discomfort or pain, then in some cases it  
11 can just be used as a cue.  So you either touch the elephant  
12 in that location, or you may even just have to raise the hook  
13 in the direction of that particular point to get the elephant  
14 to do that behavior.

15                   So there is a wide range of application of the  
16 bull hook.  Even though the basic fundamentals of how it's  
17 used are the same, how it is actually applied in terms of  
18 frequency and force is quite variable.  And in the circus  
19 situation I think we're really seeing the most extreme and  
20 severe side of how the bull hook is used, because in the  
21 circus situation the elephants are out amongst the public,  
22 sometimes literally walking down a city street.  And so in  
23 that potentially dangerous situation the handlers have to keep  
24 very tight control of the elephants.  So the hook is used with  
25 a much greater frequency and force than it might have to be

1 used in a zoo setting, for example.

2           Also in the circus situation the elephants are  
3 asked to do behaviors in their performance that are very high  
4 powered, very fast moving, often synchronized behaviors. And  
5 again, these are very contrary to their natural behavior often  
6 times. So the hook is going to be used much more heavily in  
7 that situation than, say, in a zoo situation, where the  
8 elephant doesn't ever come in contact with the public, and  
9 also is trained primarily to do behaviors having to do with  
10 its management, moving from one enclosure to another. That  
11 sort of thing.

12       Q.    I think you mentioned that elephants learn to move away  
13 from the bull hook. How are they taught that?

14       A.    Well, they are taught that the hook is going to cause  
15 them pain. So if they don't move away from the hook, then  
16 more force will be applied. And it may be just a matter of,  
17 you know, pulling against the skin, but often times it's  
18 applied with such force that it causes puncture wounds or  
19 tears in the skin, and so, it hurts. So they learn that in  
20 order to avoid that pain, they need to move in the direction  
21 that is opposite of how the hook is being applied.

22           So all of the positions of the hook are cuing the  
23 animal or forcing the animal to move in the opposite  
24 direction, which is the exact opposite of protected contact,  
25 where the target pull is the animal is taught to move toward

1 the target pull, and it's not causing them any kind of pain  
2 and they are getting food reinforcement for that movement. So  
3 they are very opposite in how they work.

4 Q. And you talked about converting the Oakland Zoo to  
5 protected contact. What were the results of that conversion  
6 for the elephants?

7 A. Well, one of the things that we were most pleased with  
8 is that the change to protected contact really allowed the  
9 elephants to behave much more freely and behave like  
10 elephants. They really could make choices for themselves,  
11 they spent a lot more time interacting with each other, less  
12 dependent on their handlers. And of course very importantly  
13 for us, it meant that they would not be physically disciplined  
14 or punished. And we really wanted to get out of that type of  
15 a system.

16 Q. Personally do you think elephants should be managed in  
17 free contact?

18 A. I strongly prefer protected contact, because I think  
19 you can provide excellent care for the animals, necessary  
20 husbandry and medical care, without the possibility of  
21 physical discipline or even abuse. In the free contact  
22 setting, I do think it's possible, I think that there are  
23 programs, free contact programs where the elephant is very  
24 compliant, it's not being asked to do anything that's really  
25 too far outside of its normal behavior. And so in that

1 situation perhaps, you know, very minimal use of the bull hook  
2 is necessary. But I think that the variability is sort of the  
3 human factor and the skill of the handler and trainer, and  
4 even what kind of mood that person might be on any given day.

5 I mean, it's something that I experience  
6 firsthand in working in free contact, that one of my  
7 co-workers came in and, you know, was having a bad day and was  
8 frustrated or angry. I mean, you could see that that at times  
9 was taken out on the elephant and that they might be more  
10 demanding or more heavy-handed with the hook.

11 Q. Ms. Kinzley, have you reviewed evidence of how Ringling  
12 Brothers elephants are handled?

13 A. Yes, I have.

14 Q. And have you also personally witnessed it?

15 A. Yes, I have.

16 Q. What does that evidence reveal to you?

17 A. I believe that, again, that how the bull hook is used  
18 with Ringling Brothers is very frequent and very heavy-handed.  
19 I think that often times the use of the bull hook causes hook  
20 wounds, punctures and tears on the elephants because of the  
21 heavy and forceful use of the bull hook.

22 Q. Did you see any evidence of such wounds during the  
23 court ordered inspection?

24 A. I saw scars that I believe are the result of prior hook  
25 wounds.



1 Q. And where were those scars located?

2 A. One example would be the top of the ear on one of the  
3 elephants.

4 Q. Can you think of any other places?

5 A. There were some scars on the legs of the elephants.

6 Q. Ms. Sinnott, can we please see from Plaintiffs' --

7 THE COURT: Attributed in your view to hooks or  
8 chains or what?

9 THE WITNESS: The one on the top of the ear I think  
10 is definitely a result from hook wounds. It's very consistent  
11 with the location that the hook is used. You know, the legs,  
12 the front legs also, when they are asking an elephant to lift  
13 its leg, and it's consistent with what I've seen in person,  
14 but also consistent with the video of hooking the elephants  
15 behind the front leg to get them to lift the leg higher.

16 You know, one example is in the video where the  
17 dancers are getting off the elephant and the handler is  
18 forcefully hooking the elephant to raise its leg higher so the  
19 dancer can step down on the leg.

20 BY MS. SANERIB:

21 Q. And I wanted to show you, I think, the picture you were  
22 just describing. It's from Plaintiffs' May Call Exhibit 54.  
23 Page 110. It has the Bates Label P.L.15230. Is this the  
24 photograph that you were talking about?

25 A. Yes, it is.

1 Q. And can you circle for the Court where that wound is  
2 you're talking about, or the scar is?

3 A. Right in that area there. I don't know. It's not  
4 circling on mine.

5 Q. Can you describe it?

6 A. Yeah. Basically right where, you know, the ear meets  
7 the head, is an area of raised, sort of abnormal tissue, and  
8 it's discolored, it's pink pigmentation there, and that would  
9 be consistent with a hook wound location for getting the  
10 elephant to lower its head. There are a number of times when  
11 a handler or trainer would ask the elephant to lower its head.  
12 So repeatedly hooking there at the top of the ear would result  
13 in that kind of scarring.

14 Q. And you're talking about, is it this area right in  
15 there?

16 A. Right. You got it.

17 Q. All right. And so you mentioned seeing scars on the  
18 ears. Was there any place else that you remember seeing  
19 scars?

20 A. There were scars on the legs of some of the elephants.  
21 I think this elephant in particular had scars on her legs.

22 Q. Ms. Kinzley, did you see any fresh bull hook wounds  
23 during the court ordered inspection?

24 A. No, I did not.

25 Q. Did you expect to see any?

1 A. No.

2 Q. Why didn't you expect to see any?

3 A. This was an announced inspection, so I am sure that  
4 they were very careful with the elephants prior to our  
5 arrival.

6 Q. Is that customary in the industry?

7 A. Yes.

8 Q. Ms. Sinnott, I'd like to pull up Plaintiffs' Will Call  
9 Exhibit 9.

10 MR. SHEA: Your Honor, we object to use of this  
11 document.

12 THE COURT: All right. What basis?

13 MR. SHEA: Basis is it is hearsay, Your Honor, it's  
14 an out of court declarant, and it cannot be shown to be an  
15 admission of a party opponent or come in through any hearsay  
16 exception. It is a document which was written but never sent  
17 to the intended recipient, and it was never dated. And it  
18 contains hearsay within hearsay. And there can be no  
19 foundation for it laid under the discovery conducted in this  
20 case.

21 MS. SANERIB: Our response, Your Honor, is that  
22 it's not hearsay, it falls within the exception to hearsay for  
23 admissions by a party opponent under 801(d)(2)(D). This is a  
24 document that was prepared by Feld Entertainment's animal  
25 behaviorist. She sent it to the manager of the unit, the Blue

1 Unit of the circus. And she quotes from several employees  
2 within the document. So both her statements, her out of court  
3 statements, as well as the statements of the employees are all  
4 party admissions.

5 And I would point the Court to Cook v. Babbitt, and  
6 it's 819 F.Supp 1. It's from D.C. It's a 1993 case. And  
7 there the Court was saying that statements related to a matter  
8 within the scope of the agency or the employment of the  
9 employee should come in as party admissions.

10 MR. SHEA: Your Honor, it cannot be shown to be a  
11 party admission. I'll cite to you United States versus AT&T,  
12 1981, U.S. District, Lexis 9527, at Star 8. It's DDC April 9,  
13 1981. They have to show that this was in the declarant's  
14 scope of work. This was written, never sent to its intended  
15 recipient, it was undated, and therefore cannot be within the  
16 scope of work. Also, the document cannot show -- by its own  
17 four corners it cannot authenticate to prove scope of work.  
18 That is the AT&T case I just mentioned.

19 And despite having this for 18 months, Your Honor,  
20 before the close of discovery, the plaintiffs never took the  
21 deposition of the declarant. They did take the deposition of  
22 the two other people mentioned by counsel, but they never  
23 asked them about this.

24 So there is not a predicate for this document. And  
25 because it was undated, it cannot be -- it can't come in under

1 any hearsay exception, certainly not a business record,  
2 because it can't be shown to be contemporaneously made, or in  
3 the ordinary course, because it was never sent to the intended  
4 recipient. It contains hearsay within hearsay, and we say it  
5 is inadmissible.

6 THE COURT: What about the last point?

7 MS. SANERIB: With respect to the authenticity of  
8 this document, your pretrial order states that documents  
9 exchanged in discovery are deemed authentic per se. And this  
10 bears a Bates label, it was produced to us in discovery by  
11 Feld Entertainment.

12 With respect to the party admissions, again, the  
13 case law that we've found on this subject said that when Rule  
14 801(d)(2) was amended, the intent of that amendment was that  
15 admissions by parties, not just specifically within the  
16 scope -- I guess it's within the scope of their employment,  
17 but it doesn't have to be a statement that they are authorized  
18 to make.

19 So this is their own animal behaviorist talking  
20 about events she witnessed with the elephant Lutzi, and we  
21 think it should come in. All of the statements within that  
22 document are statements of Feld employees.

23 THE COURT: Do you have a copy of that opinion you  
24 made reference to? An extra copy? If not, what is the  
25 citation?

1 MS. SANERIB: The citation again is 819 F.Supp 1.  
2 And I'm referring to Page 26, it's in Note 25. And, again,  
3 that's a 1993 decision here in the District of D.C. And I  
4 have --

5 THE COURT: Yes.

6 MS. SANERIB: -- several other citations I could  
7 give you if you're interested in those.

8 THE COURT: What are they?

9 MS. SANERIB: From the First Circuit I have Woodman  
10 versus Haemonetics, H-A-E-M-O-N-E-T-I-C-S. And the cite is  
11 F.1, F.3d 1087 at Page 1094. And, again, that's the First  
12 Circuit. That's a 1995 decision. And, again, as I said, this  
13 is a document that was sent by Deborah Fahrenbruck, animal  
14 behaviorist for Feld Entertainment. She authored it and she  
15 sent it to the unit manager of the Blue Unit, Mike Stuart.

16 THE COURT: Is she going to testify in this case?  
17 Is she one of your experts?

18 MR. SHEA: No, Your Honor. And Your Honor, if I  
19 might point out, counsel's representation that it was sent to  
20 Mike Stuart, it was sent under a dated cover e-mail at some  
21 point, but the document itself was never dated, and it was  
22 attached to an e-mail to Mr. Stuart. It was never dated, and  
23 the declarant said she'd forgotten she'd written it, and then  
24 sent it on to him. So we don't know when this was written.

25 And there is nothing in the record that establishes

1 any of the elements that counsel is trying to establish here.  
2 There's simply no predicate for this document. They can't  
3 show that it was in the scope of work, and it does not come in  
4 as an admission.

5 THE COURT: I'll provisionally allow it to become  
6 part of the record, subject to further consideration when I  
7 address the merits. And also further consideration of the  
8 points and authorities that counsel have respectively brought  
9 to the Court's attention. So I'll allow some questions.

10 MS. SANERIB: Thank you, Your Honor.

11 BY MS. SANERIB:

12 Q. And if we can go to the next page of this document.  
13 Ms. Kinzley, do you recall reading this document?

14 A. Yes, I do.

15 Q. Were you --

16 THE COURT: What is the exhibit number?

17 MS. SANERIB: Exhibit 9, Plaintiffs' Will Call  
18 Exhibit 9.

19 THE COURT: All right.

20 BY MS. SANERIB::

21 Q. And I'd like to go down to the last paragraph on the  
22 first -- on this page here. And if you look at the third  
23 line, it says, as everyone is aware. Can you just read a  
24 couple sentences there?

25 A. As everyone is aware, Assam is practicing to take over

1 Ring 1 in manage. Last night in the show I observed him hook  
2 Lutzi under the trunk three times and behind the leg once in  
3 an attempt to line her up for the T-mount. After the act, I  
4 stopped backstage and observed blood in small pools and  
5 dripped along the length of the rubber and all the way inside  
6 the barn.

7 Q. That's fine. Thank you. Ms. Kinzley, what is your  
8 opinion about this information that the Feld Entertainment  
9 animal behaviorist documented?

10 A. I think that that's probably relatively typical, that  
11 hook wounds occur regularly. Certainly that was my experience  
12 in free contact. I would say that the fact that the blood was  
13 actually dripping indicates that a lot of force was used, and  
14 maybe there was a tearing as well as punctures. But hook  
15 wounds are relatively common in free contact. And I think,  
16 given the force and frequency that the hook, the bull hook is  
17 used with circus elephants, it's not at all surprising to me.

18 Q. Ms. Kinzley, have you watched various video footage in  
19 conjunction with offering your opinions in this case?

20 A. Yes, I have.

21 Q. I'd like to show you some video from Plaintiffs' Will  
22 Call Exhibit 146A. The time stamp for this first one is at  
23 6:14 to about 6:53.

24 (Video played).

25 Q. If you can just describe to the Court what you're



1 seeing as you're watching this.

2 A. The elephants are being walked somewhere, but the  
3 gentleman is hooking the elephant behind the front leg, really  
4 pretty continuously, occasionally putting a little bit more  
5 force into it. And then he hits the back of her leg to get  
6 her to foot lift, and cues the next elephant. And then, you  
7 know, really forcefully hooks the back of that foot. And  
8 that's what I was sort of referring to earlier, to get the  
9 dancer off, getting the elephant to lift her leg extra high.

10 Q. And what is your opinion about this use of the bull  
11 hook?

12 THE COURT: The last part of the question -- I  
13 didn't hear the last part of your question. Your voice  
14 trailed off.

15 BY MS. SANERIB:

16 Q. What is your opinion about this use of the bull hook?

17 A. I think this is very typical. It certainly is very  
18 typical of what I've observed over many years of observing the  
19 Ringling circus as well as other circuses. I think the hook  
20 is used very frequently and forcefully in the circus situation  
21 because, again, they are in a situation with elephants where  
22 it's unpredictable, there are a lot of people around, they  
23 have to keep very tight control over the elephants, for the  
24 safety of all of those people. And then also the elephants  
25 are performing very high powered, fast moving behaviors.

1                   And I think that's an example of it. Elephants  
2 don't naturally lift their foot way up next to their chin.  
3 But in order to get a dancer off your back, that's what is  
4 necessary. So the elephant is forcefully hooked in the front  
5 leg to get that leg higher so the dancer can get down.

6       Q.    And I'd like to show Ms. Kinzley what has been admitted  
7 as Plaintiffs' Will Call Exhibit 146B. And this is video from  
8 that same exhibit. It was admitted. The time stamp is 13:15  
9 to 13:40. If you can again describe for the Court what you're  
10 seeing while you're watching the video.

11                   (Video played).

12       A.    So the handler just hit the one elephant under the  
13 chin. I don't know why. And now that elephant just got  
14 hooked under the chin again. That's a common place for  
15 getting an elephant to move up and come with the handlers. So  
16 there is often times -- I think I forgot to mention it  
17 earlier, when I did the inspection I observed scarring on the  
18 chin of the elephants, and that's a common location for  
19 scarring from hook wounds, as well as behind the front leg.  
20 So those are typical places where the hook would be applied.

21       Q.    And you mentioned at the very beginning of that clip  
22 that the elephant was hooked and you didn't know why.

23       A.    She was hit with the bull hook. He struck her under  
24 the chin. I suspect she was doing something he didn't want  
25 her to do. So that would be a punishment. It didn't change

1 her behavior, that I could see, I don't know what she was  
2 being punished for, but that is what was happening in that  
3 situation. There is no behavior associated necessarily with  
4 hitting under the chin, which is why I would describe it as a  
5 punishment.

6 Q. So punishment is used to stop a behavior?

7 A. Well, technically punishment is supposed to prevent  
8 future behavior. It will sometimes be done in away, if an  
9 elephant is doing something that you want them to stop, they  
10 might get hit to get them -- or hooked to get them to stop  
11 doing a behavior. But even after an elephant has done  
12 something, you know, as in that situation, it appeared to me  
13 that the elephant was hit after it had already stopped doing  
14 something, because it didn't appear to be doing anything. So  
15 in theory that punishment would prevent it from doing that  
16 same thing in the future.

17 Q. And what are the ramifications of that for the  
18 elephant?

19 A. Well, I think one of the things that you see in this  
20 type of situation where the elephants are so heavily dominated  
21 and controlled is they really don't get the opportunity to  
22 behave in a natural way. I mean, they don't have freedom of  
23 movement, they don't have the opportunity to interact with  
24 their environment, they can't explore, they really have very  
25 little opportunity to interact with each other. Their

1 behavior is extremely stifled.

2           And then of course there is the physical  
3 ramifications, the physical wounds caused by the hooking and  
4 the hitting, you know, potentially contusions and bruising and  
5 swelling of the tissue.

6       Q.    I'd like to show you some video from a performance.  
7 And this is from the Blue Unit, this is from Plaintiffs' Will  
8 Call Exhibit 136. It was produced in discovery under the  
9 Bates Label FEI 45220. And the time stamp on this is 1:30 to  
10 2:17.

11                           (Video played).

12       Q.    If you can again describe for the Court what you're  
13 seeing as you're watching the video.

14       A.    So the elephants are performing in the ring. So again,  
15 it's typically the behaviors are synchronized so the trainer  
16 or handler is moving very quickly between the elephants and  
17 hooking them to get them to move quickly into the positions  
18 that they are supposed to be in.

19       Q.    What behaviors are the elephants doing?

20       A.    Well, they are doing hind leg stands and -- hind leg  
21 stands where their front legs are resting on the other  
22 elephant, as well as getting up on to the tub, and now doing  
23 tub sits with the elephants. And again, he is sort of rushing  
24 through, hooking the elephants to get them to do their tub  
25 sits as close together as possible, since what they are trying

1 to do is have it be fairly synchronized and fast.

2 Q. Is a tub sit a natural behavior for an elephant?

3 A. No, not at all.

4 Q. What about the hind leg stands?

5 A. No, particularly not for adult elephants. It would be  
6 very uncommon to see that. Younger elephants and male  
7 elephants are observed in the wild where they would do a hind  
8 leg stand to reach for some high branch that they were trying  
9 to get to, and oftentimes leaning, putting their front feet  
10 against the tree. But certainly I wouldn't describe it as a  
11 normal behavior. All of this, I think, is very abnormal,  
12 particularly for adult female elephants. They really don't --  
13 what that is called is fast walk. They don't typically fast  
14 walk unless they are afraid of something and trying to get  
15 away from something. They are relatively slow moving,  
16 lumbering animals as adults.

17 Q. And I'd like to show you one more video clip. This is  
18 from Plaintiff's Will Call Exhibit 133. It was admitted as  
19 133C. And it's 26:52 to about 27:30. And again, if you can  
20 just describe for the Court what is occurring in this video  
21 footage.

22 (Video played).

23 A. So the elephant in the center is being forced to  
24 defecate. And they do that with circus elephants so that they  
25 won't defecate or urinate during the performance. And so they

1 ask the elephant to assume various sort of straining  
2 positions, physical positions, to get them, force them to  
3 defecate.

4 Q. And so that's -- I just want to make sure I understand  
5 the process for that. So they request different behaviors?

6 A. Yeah, they will put the elephants through very  
7 physically demanding behaviors, basically behaviors that are  
8 going to put pressure on their bowels. As you can see, that  
9 elephant is squatting down in a very abnormal position.  
10 Certainly not something you would see an elephant doing  
11 naturally. So they are put into these abnormal positions and,  
12 you know, told to defecate, or once they learn the behavior --  
13 again, if they don't comply with the behavior they would be  
14 hit with the bull hook or cued with the bull hook to defecate  
15 or urinate. And then if they have an accident, as I read in  
16 some of the evidence about an elephant getting beaten when it  
17 came out of the ring following having an accident and  
18 defecating in the ring, and that is something that they really  
19 want to avoid, because obviously that is not something that  
20 the public wants to see.

21 THE COURT: Do these people have bull hooks with  
22 them?

23 THE WITNESS: Yes, they do.

24 THE COURT: Who does? The person with the yellow  
25 pants on?

1           THE WITNESS: Yeah, he has a bull hook. They  
2 probably all are carrying bull hooks, pretty typical that they  
3 would have them.

4           THE COURT: Why do you say that?

5           MS. SANERIB: If you could play it again.

6                    (Video played).

7           THE WITNESS: Because usually when you're around an  
8 elephant, if you're somebody who works with an elephant in  
9 free contact, you almost always have a bull hook with you.

10          THE COURT: So the person with the yellow  
11 coveralls, where is his bull hook?

12          THE WITNESS: I thought I just saw it, and then he  
13 stepped in front of that other gentleman.

14          THE COURT: I'm sorry, I just don't see it. If you  
15 can point out the bull hooks to me, I'd appreciate it.

16                    (Video played).

17          THE WITNESS: See, he has it under his arm. Well,  
18 he disappeared again.

19          MS. SANERIB: If we could start at the beginning  
20 again.

21                    (Video played).

22          THE WITNESS: He has it under his right -- sorry,  
23 his left arm right now, and then when he walks behind the  
24 elephant you can see it a little bit better.

25          THE COURT: It's parallel to his arm, is that

1 right?

2 THE WITNESS: It's not parallel, it's sticking out  
3 behind him right now. My screen isn't doing that. Right  
4 there. Well, my screen is still not doing it.

5 THE COURT: I don't think that's it.

6 THE WITNESS: This is it right here. You can see  
7 it. This is it right here (indicating).

8 THE COURT: The other person doesn't appear to have  
9 one, does he?

10 THE WITNESS: I don't see one.

11 THE COURT: He has a shovel or something.

12 THE WITNESS: Do you see it sticking out behind  
13 him, the gentleman in the yellow pants? It's up, coming  
14 straight off his elbow right here.

15 THE COURT: Right. I do see that.

16 THE WITNESS: That's it. Yeah. Right there. I  
17 don't see --

18 THE COURT: Could you start that again.

19 (Video played).

20 THE WITNESS: So he puts it under his arm, so he's  
21 holding it like right in his armpit right now.

22 THE COURT: Like a stiff arm.

23 THE WITNESS: Yeah. He has it up under his armpit  
24 right now, and when he turns you can see it.

25 THE COURT: Is that common for them to carry those



1 things like that?

2 THE WITNESS: Yeah.

3 THE COURT: Why is that?

4 THE WITNESS: You just learn how to work with your  
5 hands free, so you put it under your arm, or the ones that we  
6 used often times actually had wooden hooks on the end of them,  
7 so we'd slip them in our belt loop. Or sometimes people in,  
8 particularly with a circus, it's not uncommon to have really  
9 small ones that they can put in their back pocket. So it's  
10 just a mechanism of being able to have your hands free and do  
11 something and still --

12 THE COURT: Is it, or is it not in an effort to  
13 conceal what they have?

14 THE WITNESS: In some cases I believe it is an  
15 effort to conceal. There's one that I have seen over the  
16 years, it's a very small, very narrow bull hook that the  
17 handlers would put up their sleeve, so they would hold it like  
18 this, so you can't -- the hook part is in the palm of the  
19 hand, so it just even looks like they are patting the  
20 elephant, and they are using the hook on it.

21 BY MS. SANERIB:

22 Q. And when you were just referring to that practice, what  
23 circus was that, do you remember?

24 A. That was Ringling Brothers.

25 THE COURT: Counsel, I have to sign an order at

1 4:00 o'clock. We'll take a 10-minute recess right now. You  
2 can step down. You don't have to sit there. Please do not  
3 discuss your testimony with anyone. All right?

4 THE WITNESS: Okay. Thank you.

5 BRIEF RECESS

6 AFTER RECESS

7 THE COURT: All right, Counsel.

8 MS. SANERIB: It was pointed out to me at the break  
9 that I neglected to move in the excerpt we showed of the video  
10 performance of the Blue Unit of Ringling Brothers Circus,  
11 which was Plaintiff's Will Call Exhibit 136. It was from one  
12 minute and 30 seconds to two minutes and 17 seconds.

13 THE COURT: Any objections?

14 MR. SHEA: No objection, Your Honor.

15 THE COURT: Admitted.

16 MS. SANERIB: So, that will be Plaintiff's Will  
17 Call Exhibit 136B.

18 THE COURT: All right.

19 BY MS. SANERIB:

20 Q. Ms. Kinzley, do you know what breaking is?

21 A. Yes, I'm familiar with that term.

22 Q. What is does it mean?

23 THE COURT: The term is breaking?

24 MS. SANERIB: Breaking. Yes, Your Honor.

25 THE WITNESS: It's sort of shortened from breaking

1 the spirit of an animal, so it's used with horses, elephants,  
2 other animals that are trained. I think in the elephant  
3 situation it typically is sort of the early part of the  
4 training when the elephant is young and the trainer in a free  
5 contact situation is working to establish a dominant  
6 relationship over that elephant, and so it's done in some of  
7 the more dramatic kind of elements of the training.

8           It may begin -- if it's an elephant that was born  
9 in captivity, it would begin with being separated from the  
10 mother and, you know, forcibly separated. And certainly in  
11 reviewing the evidence, it's something that I read about and  
12 am familiar with Ringling's practices of forcibly separating  
13 the babies from their mother using ropes to pull them away  
14 from the mother.

15           And then another element of it that -- prior to the  
16 number of elephants that have been born in captivity -- or  
17 earlier, had more to do with the process of the initial  
18 training of the elephants to lay down, where ropes would be  
19 used to -- the rope and the bull hook are used to pull the  
20 elephants down into a position on their side. And I  
21 participated in that kind of training with the two young  
22 elephants -- African elephants at the Phoenix Zoo in the early  
23 part of my career.

24 BY MS. SANERIB:

25 Q. I believe you mentioned evidence that Ringling forcibly

1 separates baby elephants from their mothers for this training  
2 process?

3 A. That's correct.

4 Q. I'd like to show you Plaintiff's Will Call --

5 MR. SHEA: Your Honor, we object to this. We  
6 understand that weaning is out of this case.

7 MS. SANERIB: Weaning is out of this case, Your  
8 Honor, but --

9 THE COURT: Why do I need to hear this?

10 MS. SANERIB: The use of restraints and the  
11 chaining of the elephants is a part of the training process.  
12 And we have a chaining claim in this case. We think this  
13 information is very relevant to that.

14 THE COURT: I can disregard the breaking issue. I  
15 thought that was out of the case as well, I'm surprised to  
16 hear it. I can disregard it. If there's some relevance with  
17 respect to chaining, I'll consider it. Breaking is not an  
18 issue in this case, correct? The separation of the baby  
19 elephants from parents is not an issue in this case?

20 MS. SANERIB: That's correct. The separation of  
21 the baby elephants from their parents is not --

22 THE COURT: What you want to use, though, is some  
23 information -- some evidence regarding the chaining during  
24 that process, though, is that right?

25 MS. SANERIB: Yeah, the chaining during that

1 process, and I think actually asking Ms. Kinzley a follow-up  
2 question about breaking, whether that's ever done to older  
3 elephants.

4 THE COURT: So what. What difference does it make  
5 if breaking is not an issue in this case?

6 MS. SANERIB: Well, presumably all of the elephants  
7 at issue in this case and all the elephants in Ringling  
8 Brothers Circus were broken, that's the reason why they can  
9 perform with the circus. So, it's sort of the start of their  
10 training.

11 MR. SHEA: Your Honor, we object to counsel  
12 testifying, I guess, and there is not evidence of that here,  
13 and it's out of the case. As far as weaning goes, they  
14 dropped forcible separation on Page 3 of their Pretrial  
15 Statement, and I don't see how any facts about that have any  
16 relevance to this case or the seven old -- or six old  
17 elephants at issue or Zina.

18 MS. SANERIB: Again, our position is that the  
19 breaking process involves both the use of the bull hook and  
20 the chaining of the elephants, so it's relevant to the claims  
21 in this case.

22 THE COURT: Well, the breaking process is not a  
23 claim here. That was a claim early on, but it's no longer a  
24 claim. So, I'm not inclined to allow this testimony. In  
25 other words, if it's not a claim in this case, what's the

1 relevance of the fact, if it is a fact, that chains are used  
2 during that process?

3 MS. SANERIB: Well, also I think I neglected to say  
4 this earlier, but also the use of the bull hook. Those two  
5 tools are integral in the training of a circus elephant, and  
6 this is part of that training process. We think it's relevant  
7 that --

8 THE COURT: To the extent they're used for  
9 training, I agree with you, it's relevant. To the extent  
10 they're used for breaking, breaking is not an issue, then it's  
11 not relevant. So, to the extent that you're eliciting  
12 testimony that's for training purposes, go right ahead, you  
13 can certainly do that.

14 MS. SANERIB: Okay.

15 BY MS. SANERIB:

16 Q. My follow-up question for you, Ms. Kinzley, would be --  
17 you described the breaking of young elephants, is that process  
18 ever used for older elephants?

19 A. Yes, it's most commonly with young elephants, but I  
20 guess I would differentiate weaning from breaking. I think  
21 breaking is really just the establishing of dominance over an  
22 elephant at whatever age, you know, in a free contact  
23 situation. And that in my experience that is typically done  
24 by physically moving the elephant into a position. And so --

25 THE COURT: When you say breaking, you're not

1 talking about the separation of baby elephants --

2 THE WITNESS: I guess I mentioned that initially  
3 because it's one process.

4 THE COURT: I understand.

5 THE WITNESS: One portion of the process.

6 THE COURT: There's a difference between weaning  
7 and there's a difference between the taking of the babies from  
8 the mothers. And the breaking process is part and parcel, I  
9 assume, of the overall training process, is that right?

10 THE WITNESS: That's correct.

11 THE COURT: To the extent that you want to  
12 elaborate on the breaking process, vis-a-vis training, you  
13 certainly can.

14 THE WITNESS: Okay. Yeah, I believe that the  
15 breaking process has to do with the establishing of dominance  
16 over the elephants and sort of the early stages of training at  
17 whatever age the elephants might be, and also sort of that  
18 process of using ropes. If an elephant is young, it can be  
19 done by several people where they're able to physically pull  
20 the elephants into a position laying down, stretching, which  
21 is to go out on their elbows and knees. But in older  
22 elephants, usually block and tackle is used.

23 In most cases it occasionally happens that an  
24 elephant has not ever been trained to lay down during its  
25 younger years, and so a block and tackle might be used to

1 train that behavior for the first time. But it most commonly  
2 incurs if an elephant refuses to lay down, and that case if  
3 they can't be forced down through the heavy use of the bull  
4 hook, then the trainers would use block and tackle or other  
5 means to forcibly make the elephant lay down.

6           And that is considered in free contact,  
7 particularly in more -- the severe form of free contact, that  
8 would be considered very essential that the elephant never  
9 refuse a behavior like a lay down because that is sort of an  
10 ultimate submissive position for an elephant, particularly  
11 during a time when it would be fearful or aggressive, and  
12 perhaps challenging a handler. And one way for the handler to  
13 ensure that they have control over that elephant is to get it  
14 to lay down in those circumstances.

15 BY MS. SANERIB:

16 Q. And you mentioned block and tackle a few times, what is  
17 that?

18 A. It's the term used for ropes and chains and winches  
19 that would be used to forcibly get a large elephant that was  
20 too big for people just to be sort of on the end of a rope to  
21 pull down. Those winches and ropes and chains are able to be  
22 used to pull an elephant down, really, no matter how big it  
23 is.

24 Q. Sort of like a pulley system?

25 A. Yes. Uh-huh.



1 Q. Okay. Ms. Kinzley, I'd like to switch course a little  
2 bit and talk about the chaining of elephants. I think you  
3 mentioned the elephants at the Oakland Zoo are not chained  
4 overnight, is that correct?

5 A. That's correct.

6 Q. And is that common in zoos?

7 A. It's very common that their chaining is only used in  
8 the zoo setting for husbandry or medical procedures. Most  
9 zoos have gotten away from long term chaining because it's  
10 believed that it's not good for the elephants, both in terms  
11 of their psychological health, it can lead to stereotypic  
12 behaviors like swaying. And also in terms of their physical  
13 well-being, chaining can cause problems with their limbs and  
14 feet and overall health.

15 Q. If the record in this case reflects that the elephants  
16 at the Center for Elephant Conservation, where you performed  
17 part of a Court-ordered inspection, are chained from 13 to 16  
18 hours a day. What's your opinion about the effects of that on  
19 the elephants?

20 MR. SHEA: Objection, assumes facts not in  
21 evidence.

22 THE COURT: Counsel?

23 MS. SANERIB: That was admitted as part of Gary  
24 Jacobson's 30(b)(6) deposition, so those facts are in  
25 evidence.

1 THE COURT: What about that?

2 MR. SHEA: Your Honor, specifically, I don't recall  
3 if it was.

4 MS. SANERIB: I'm sorry, I don't have the page and  
5 line for you, I can definitely get that for you this evening  
6 if you'd like it.

7 THE COURT: Subject to you showing it to me  
8 tomorrow or later today, I'll allow it. You may be correct, I  
9 just don't know.

10 MS. SANERIB: And I apologize for not having that  
11 citation on hand.

12 BY MS. SANERIB:

13 Q. But assuming that that is in fact the case, what are  
14 the effects on the elephants?

15 A. I think that long term chaining is very harmful to the  
16 elephants. It's harmful to them physically because it so  
17 severely restricts their movement. If you think about what it  
18 would be like for a dog that was chained and could only move a  
19 couple feet in each direction for that amount of time, I don't  
20 think that anybody would find that acceptable. So, I don't  
21 really understand why it's thought to be acceptable. And I  
22 think the zoo community doesn't consider that long term  
23 chaining to be acceptable.

24 It can result in problems with their limbs and  
25 consequently health problems with their feet, stiffness with

1 the elephants, problems with their joints. It really goes  
2 against the natural behavior of the elephants. And, again,  
3 they're animals that have evolved to walk many miles every day  
4 to be physically active. For the majority of a 24-hour period  
5 to be so severely restricted, I think physically really  
6 compromises their health.

7           But also from a psychological standpoint,  
8 elephants that are chained for long periods of time like that  
9 often develop stereotypic behaviors like swaying and head  
10 bobbing. They don't have the opportunity to interact with all  
11 of the members of the their social group, they can only  
12 interact with their closest neighbor, and even that is  
13 severely restricted. They can't do simple behaviors like a  
14 submissive elephant turning and presenting its rear to a  
15 dominant elephant. So, you potentially could create a  
16 situation where there's an abnormal aggression because of  
17 chaining. And, of course, they don't have the opportunity to  
18 freely interact with their environment. Their choice in what  
19 they get to do is extremely limited.

20     Q.    I think you mentioned a connection between having stiff  
21 joints and feet problem, is that correct?

22     A.    Yes.

23     Q.    And can you elaborate on that point for us?

24     A.    Yes. Again, going back to, you know, the elephant  
25 evolved as an animal that walks many miles every day, and they

1 are a large animal. In order to maintain health, just like  
2 anything else, they need to get the appropriate amount of  
3 exercise. So, if their movement is severely restricted then  
4 you're more likely to see problems with the health of their  
5 limbs, their joints, and also the health of their feet.

6 And also in a chaining situation the elephants  
7 are often forced to stand in their own urine and feces, which  
8 in my experience, if they have the choice, they avoid those  
9 locations and don't walk or stand in their urine and feces.  
10 But a chained elephant doesn't have a choice in that matter.

11 Q. Ms. Kinzley, I'd like to show you some of the video  
12 footage that was taken at the Court-ordered inspection. This  
13 is from Plaintiff's Will Call Exhibit 142, and the time stamp  
14 is two hours and two minutes to two hours and four minutes.

15 I'd like you to just elaborate on what you're  
16 seeing in the footage, based on the testimony you've just  
17 given, for Judge Sullivan.

18 (Video played).

19 A. So, this is video footage of elephants that are chained  
20 in the barn at the CEC. They're on a very hard surface,  
21 concrete. The concrete is not heated. And they are chained  
22 by one front leg chain and one hind leg chain. And during the  
23 inspection we observed that they were taken in and chained at  
24 about 3:30, and that we were told that they were taken off the  
25 chains the next morning. So they were spending the majority

1 of a 24-hour period on the leg chains.

2 In some cases the leg chains have a piece of fire  
3 hose around the hind leg chain, which is typically -- the hind  
4 leg chain is put on tightly at the middle of the hind leg.  
5 But in other cases the leg is not protected by a fire hose  
6 covering.

7 Q. And is that --

8 A. You can also see the length of the chains, that it  
9 really only gives the elephants the opportunity to move a few  
10 steps in any one direction.

11 THE COURT: The fire hose covering, is that fairly  
12 typical?

13 THE WITNESS: It is.

14 THE COURT: Is it more typical than --

15 THE WITNESS: I don't know why in this case it's on  
16 some and not others.

17 THE COURT: I see.

18 BY MS. SANERIB:

19 Q. What does the fire hose do?

20 A. The fire hose just helps to protect the leg, because  
21 unlike the front leg chain which is put around the leg  
22 loosely, because the foot widens, and so it can rest loosely  
23 on the front leg. The hind leg chain is put on very tightly  
24 so it doesn't slip down because of the shape of the hind leg.  
25 So, because it's put on so tightly, it will create

1 indentations in the skin of the leg and be uncomfortable, if  
2 not painful, for the elephant. So, most often when you have a  
3 hind leg chain on you'll have a protective covering to make it  
4 more comfortable for the animal.

5 BY MS. SANERIB:

6 Q. Ms. Kinzley, if the elephants that are traveling on the  
7 road with the circus are transported on the train cars for an  
8 average 25 hours a week, and if they're chained overnight for  
9 at least eight hours when they're not being transported,  
10 what's your opinion about the effects of that treatment on the  
11 elephants?

12 A. Again, I would consider that to be very harmful to the  
13 elephants, you know, both in terms of their physical health  
14 and their psychological health and the ability to behave in a  
15 natural way.

16 Q. You mentioned that you used to chain the elephants at  
17 the Oakland Zoo and you stopped. What were the impacts of  
18 when you stopped chaining the elephants overnight?

19 A. What we saw physically in our elephants immediately  
20 within a matter of weeks was that they were wearing their foot  
21 pad and nails in a more natural way. That we were doing very  
22 little trimming -- it was not necessary for us to do trimming.  
23 So, we were able to do very little trimming of the foot pads  
24 and nails because they were wearing them in a much more  
25 natural way.

1           And then through our behavioral observations, we  
2 saw that the elephants were spending a lot of time walking,  
3 moving about their enclosure, their outdoor enclosure, and  
4 able to wear the foot pad and nails more naturally. The other  
5 thing that we observed that we didn't expect was more of a  
6 surprise, is that one of our elephants, Donna, we had always  
7 observed that she would be stiff in the morning coming out of  
8 the barn after we unchained her, she appeared to have  
9 stiffness in her hips and hind legs. And after we stopped  
10 chaining, over a period of months, that stiffness went away.

11           Also, I think from a behavioral standpoint, one  
12 of the things that we had a big problem with, again,  
13 particularly with this elephant Donna was a lot of stereotypic  
14 swaying. And taking her off chains greatly reduced the amount  
15 of time that she spends in stereotypic behavior.

16       Q.    Did you have the opportunity to observe the elephants  
17 at the Center for Elephant Conservation walking during that  
18 inspection?

19       A.    Yes, I did.

20       Q.    And do you recall anything about their gaits?

21       A.    Yeah, there were a couple of them that appeared to be  
22 very stiff, also in the hind legs, whether it was the hips or  
23 something happening in the hind limbs, I don't know, but they  
24 certainly did not appear to have a normal flexible gait.

25       Q.    Ms. Kinzley, do you know what a stud book is?

1 A. Yes, I do.

2 Q. And is there a stud book for elephants?

3 A. Yeah, there are two stud books that the American Zoo  
4 Association manages, one for African elephants and one for  
5 Asian elephants. And they're basically a listing of all of  
6 the elephants within the AZA community as well as a number of  
7 institutions outside of the AZA, listing their age, sex, their  
8 current location as well as previous locations.

9 Q. Ms. Sinnott, can we please call up Plaintiff's Will  
10 Call Exhibit 36. And, Ms. Kinzley, what document is this?

11 A. This is the Asian elephant stud book.

12 Q. I'd like to go to Page 9 of this document, please. Ms.  
13 Kinzley, there's three -- I guess they're called organizations  
14 or institutions that are listed here. Could you either read  
15 or describe those for Judge Sullivan?

16 A. Yeah, it's just the sort of three levels of  
17 participation in the stud book. So, the first level is AZA  
18 institutions that have this species and are participating  
19 fully so that the elephant TAG, which is the Taxon Advisory  
20 Group, would make recommendations about breedings and  
21 potentially transfers of elephants within that group.

22 The next category is AZA nonmembers, but  
23 participating institutions who have gone through an  
24 application process and have been approved and participate  
25 again with the TAG recommendations. And then the third



1 category is also non-AZA institutions, but that have not gone  
2 through that application process, but do provide -- so they  
3 don't participate with the TAG, and the TAG doesn't make  
4 recommendations to those facilities, but they do provide  
5 information for the stud book.

6 Q. Do you know what class or what category Feld  
7 Entertainment falls into?

8 A. I believe they're in the third category of a non-AZA  
9 institution that does not participate -- or the TAG does not  
10 make recommendations for that facility.

11 Q. And what significance does that have for you?

12 A. Well, they have not gone through the application  
13 process, they don't participate fully in the efforts to manage  
14 a captive population with the zoo community. I think that  
15 Ringling does not meet many of the standards that AZA has for  
16 elephant holding institutions. So, I would expect that that  
17 would be an obstacle to fully participating.

18 Q. And you just made a reference to -- what was it, AZA  
19 standards for elephants?

20 A. Yes, that's correct.

21 MS. SANERIB: Before we move off of this exhibit,  
22 Your Honor, I move the admission of Plaintiff's Will Call  
23 Exhibit 36, which is the Asian elephant stud book.

24 THE COURT: Any objection?

25 MR. SHEA: No objection.

1 THE COURT: Admitted.

2 MS. SANERIB: Thank you.

3 BY MS. SANERIB:

4 Q. I'd like to call up the AZA Standards for Elephant  
5 Management, which is Plaintiff's Will Call Exhibit 74, and  
6 just go over a couple of these standards with you, Ms.  
7 Kinzley. Does this appear to be the current standards?

8 A. Yes, I believe so.

9 Q. Do these standards apply to Asian elephants?

10 A. Both African and Asian.

11 Q. If we can go to Page 2 of this document. If we can  
12 look at that first requirement under the heading Temperature.  
13 And what is that requirement?

14 A. To summarize, it's basically a requirement that  
15 elephants be kept outside on a natural substrate for as many  
16 hours out of a 24-hour period as possible, weather allowing,  
17 so, temperature allowing.

18 Q. If we look further down that same page, there's a  
19 heading 1.4. If we can just blow up sort of the bottom part  
20 of that page, that's perfect. What is this heading?

21 A. This category has to do with space requirements. The  
22 minimum space requirements for AZA facilities.

23 Q. What's the first space requirement listed here?

24 A. The first one has to do with indoor space, and it  
25 requires a minimum of 400 square feet for a single elephant,

1 and an additional 400 square feet for each additional elephant  
2 indoors. And then 1800 square feet for an outdoor single  
3 elephant, and an additional 900 square feet for each  
4 additional elephant.

5 Q. And we were looking at video footage earlier of the  
6 inside of the barn at the Center for Elephant Conservation, do  
7 you believe that that meets these indoor space requirements?

8 A. No, I do not.

9 Q. And have you seen the video footage from the inspection  
10 that was conducted in Auburn Hills of the Blue Unit?

11 A. Yes, I have.

12 Q. Did you see the elephants that were chained inside of a  
13 tent at night?

14 A. Yes, I did.

15 Q. Do you believe those elephants had enough space to meet  
16 the space requirement?

17 A. No, not at all.

18 Q. Did you also see from the Blue Unit inspection  
19 elephants in pens outdoors?

20 A. Yes.

21 Q. And do you think that those pens met the outdoor space  
22 requirements here?

23 A. No, they did not.

24 Q. I'd like to go to Page 7 of this document. And at the  
25 bottom of this page, it says: The AZA considers the following

1 training tools and techniques to be inappropriate. Can you  
2 summarize those for the Court?

3 A. Well, these are a number of things that are sort of the  
4 extreme end of free contact punishment or training, and it  
5 starts with the insertion of any implement into a bodily  
6 orifice, unless directed by a veterinarian. Striking an  
7 elephant with anything more substantial than an ankus.  
8 Striking an elephant with a sharp object, including the hook  
9 of an ankus. Striking an elephant on or around sensitive  
10 areas, such as the eyes, mouth, ears or genital region.

11 No tools and training should be applied  
12 repeatedly with such force that they cause physical harm to  
13 the animal. And, it says, example, breaking the skin,  
14 bleeding, bruising. And then withholding or reducing an  
15 animal's daily recommended amount of food or water, and  
16 withholding veterinary care.

17 Q. And then, finally, I'd like you to go to Page 9 of this  
18 document, and you'll see there's a heading 5.5, that is  
19 entitled Restraint. If we can just look at that. And what is  
20 that first requirement under Restraint?

21 A. It's talking about leg chaining, the use of leg chains  
22 as a restraint, and that it's an acceptable method of  
23 temporary restraint, but that they should not be subjected to  
24 prolonged chaining, and then in parentheses, for the majority  
25 of a 24-hour period, unless necessary for veterinary treatment

1 or transport.

2 MS. SANERIB: Your Honor, I move the admission of  
3 Plaintiff's Will Call Exhibit 74.

4 THE COURT: Any objection?

5 MR. SHEA: No objection, Your Honor.

6 THE COURT: Admitted.

7 MS. SANERIB: And that's all I have for right now.

8 THE COURT: I'm sorry.

9 MS. SANERIB: That's all I have for right now.

10 THE COURT: Any cross-examination?

11 MR. SHEA: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. SHEA:

14 Q. Good afternoon, Ms. Kinzley.

15 A. Hello.

16 Q. You don't know of any studies that compare the  
17 behaviors in Asian and African elephants that are controlled  
18 studies, correct?

19 A. No, I'm not familiar with controlled studies. I know  
20 that Dr. Sukumar has referred to the work that's been done  
21 with African elephants and sort of making the comparison  
22 between the two.

23 Q. But you know of no controlled studies making those  
24 comparisons, correct?

25 A. I do not, no.

1 Q. And you know of no study where researchers tabulated  
2 behaviors of both species and compared them in order to  
3 determine the extent to which the behaviors are similar or  
4 different, correct?

5 A. No, I know of no such studies.

6 Q. And you don't know of any studies that report the rate  
7 of serious foot problems in wild Asian elephants, true?

8 A. No.

9 Q. And I'm correct, is that correct?

10 A. You are correct.

11 Q. And you know of no studies that report the rate of  
12 osteomyelitis in wild Asian or African elephants, correct?

13 A. I'm not familiar with any studies on that.

14 Q. And you have no scientific proof that chaining causes  
15 stereotypic behavior, correct?

16 A. I would not say that I am aware of any scientific study  
17 looking at that, but I certainly think that it's well-accepted  
18 within the elephant community that elephants that have been  
19 kept on chains for long periods of time develop swaying  
20 behavior. Elephants that have not been chained, if they  
21 develop a stereotypic behavior, it's typically pacing like  
22 other hoof stock.

23 Q. So, first off, it's true that elephants that have not  
24 been chained but are kept in captivity develop stereotypic  
25 behavior?

1 A. They may.

2 Q. Well, your elephant Osh has done so, hasn't he?

3 A. He did. We observed pacing behavior when we  
4 first saw him in England, and we also saw a couple other  
5 elephants at that facility that were pacing. But he has never  
6 exhibited pacing since he's been at the Oakland Zoo.

7 Q. All right. Going back to scientific proof that  
8 chaining causes stereotypic behavior, whether or not that  
9 exists. Let me show you Page 181 of your deposition.

10 A. Okay.

11 Q. Beginning on line 13. Question: Is there any  
12 scientific study that proves that chaining causes stereotypic  
13 behavior? Answer: Not that I'm aware of.

14 Did I read your testimony correctly?

15 A. Yes. And I would answer the same today.

16 Q. Now, you don't know the cause of the stiffness that you  
17 claim to have seen in the elephants at the CEC, correct?

18 A. No, I don't.

19 Q. And you cannot say that the elephants at issue in this  
20 case were injured by ropes, can you?

21 A. No, I can just say that those -- the scarring is  
22 consistent with wounds caused by ropes, and I know that the  
23 CEC uses ropes in their training of elephants.

24 Q. But you don't know that any of those were so caused --  
25 caused by ropes, correct?

1 A. No, not definitively.

2 Q. Now, you don't know the amount of time that FEI  
3 traveling elephants are kept in pens each day, do you?

4 A. No, I don't.

5 Q. You have not seen an FEI baby trained in recent years,  
6 correct?

7 A. No, I have not.

8 Q. And you have no evidence that FEI sets elephants up to  
9 make a mistake in order to punishment them, do you?

10 A. No, I don't.

11 Q. Now, you mentioned your elephant Donna just recently in  
12 your testimony, correct?

13 A. Yes.

14 Q. And Donna sways still today, although she has not been  
15 chained since 1991, is that correct?

16 A. That's correct.

17 Q. And you believe that she is in a better welfare  
18 situation today than she was prior to 1991 when she was  
19 chained, correct?

20 A. Yes.

21 Q. And would you characterize her welfare situation to be  
22 good today at the Oakland Zoo?

23 A. Yes, I do think it's good. I think one point I would  
24 make is that we put a lot of effort into minimizing that  
25 stereotypic behavior because we don't think that it's healthy



1 for her. So, the way we feed and the way we use the facility  
2 to increase her physical activity, as well as that of the  
3 other elephants, is geared towards minimizing or eliminating  
4 stereotypic behavior. But once a stereotypic behavior  
5 develops, you know, it's very difficult to get rid of.

6 Q. Now, Donna, the elephant at your zoo exhibits her  
7 stereotypic behavior in a wide variety of circumstances, such  
8 as being stressed or bored or anticipating something  
9 happening, or frustrated, or whatever the case may be,  
10 correct?

11 A. Yes, that's true.

12 Q. Now, the only elephant inspection you attended in this  
13 case was at the FEI Center for Elephant Conservation, true?

14 A. That's correct.

15 Q. Thus, you did not inspect the elephants Karen or  
16 Nicole, correct?

17 A. I just saw the video from that inspection.

18 Q. But you didn't inspect them yourself, correct?

19 A. No, I did not.

20 Q. And at the inspection you attended you saw no  
21 conditions that you thought were fresh injuries from use of  
22 the guide, correct?

23 A. No, I didn't see any fresh injuries.

24 Q. And you saw none that you thought were from chaining,  
25 correct?

1 A. I saw scars that I thought were from ropes or chaining.

2 Q. But you saw no fresh injuries from ropes or chaining,  
3 correct?

4 A. No. No fresh injuries.

5 Q. And you have no evidence that any of the elephants at  
6 issue in this case or Zina were injured by hind leg stands,  
7 correct?

8 A. No.

9 Q. Am I correct?

10 A. Yes. Sorry, no evidence.

11 Q. Your elephants at the Oakland Zoo, they're most often  
12 kept on dirt, grass and mud, is that right?

13 A. That's correct.

14 Q. And when kept inside, they're kept on concrete with  
15 three-quarters inch rubber padding over the top, is that  
16 right?

17 A. Yes, heated concrete.

18 Q. But it has rubber mats on the service, is that right?

19 A. It has rubber mats and they also get straw and wood  
20 shaving as bedding.

21 Q. Now, you testified at your deposition that you don't  
22 have any foot problems in your elephants, correct?

23 A. No. Their feet are healthy, that's correct.

24 Q. And your elephants do have nail cracks, don't they?

25 A. Yes, they do have some nail cracks.

1 Q. Now, as I understand it, your elephants are not chained  
2 at all, is that true?

3 A. They are chained occasionally. Every couple of months  
4 we will chain them just to maintain that behavior, make sure  
5 that they're comfortable with it.

6 Q. I see. In your opinion, toenail cracks are relatively  
7 normal occurrence, right?

8 A. I think they occur more if the elephants are spending a  
9 lot of time on hard surfaces, but I don't think they -- I  
10 think they occur with less frequency in the wild than they do  
11 in captivity.

12 Q. Let me take you to your deposition on Page 136, Line --  
13 oh, I'm sorry. Let me ask it this way. You do see toenail  
14 cracks in the wild, is that correct?

15 A. Yes.

16 Q. And you don't consider those a foot problem, do you?

17 A. I think cracks can be relatively normal. Certainly,  
18 they can become a foot problem. I think the nail cracks are  
19 something that we address on sort of a preventative fashion to  
20 prevent them from becoming infected or creating a situation  
21 where the nail completely blows out and you have exposed  
22 tissue that is more likely to become infected.

23 Q. So, the goal in managing toenail cracks is to keep them  
24 from becoming infected, right?

25 A. Yes.

1 Q. The cracks are not painful or uncomfortable to the  
2 elephants if managed, correct?

3 A. I don't know if I would say that. I mean, I think they  
4 can be uncomfortable for the elephants, it depends on the  
5 severity of the crack. I mean, there's a whole range of what  
6 a toenail crack can look like from just a very tiny little  
7 split, which I certainly would not expect to bother the  
8 elephant to cracks that can become very deep and go up into  
9 the cuticle, which I think potentially can be uncomfortable or  
10 painful for the elephant.

11 Q. Let me turn to your deposition, Page 138, beginning on  
12 Line 2. Question: I see. And the goal to -- the goal -- and  
13 is the goal to keep infection from setting in in the  
14 underlying material? Answer: Yeah. I mean, I guess that's  
15 why I don't consider these necessarily to be foot problems. I  
16 consider this to be foot maintenance because cracks, I think,  
17 are a relatively normal occurrence, you know, and I do see  
18 cracks in the feet of elephants in the wild, cracks in their  
19 nail. I think, you know, what we're doing is, you know,  
20 providing this sort of maintenance and husbandry to prevent  
21 the crack from becoming an infection or becoming, you know,  
22 large, where it might expose the soft tissue of the foot.  
23 These cracks are all in the actual nail of the toenail, you  
24 know, and there is no blood involved, there is, you know,  
25 we're not trimming any soft tissue. It's not something that

1 is painful or uncomfortable for the elephant. We haven't had  
2 that kind of problem. We have on a few occasions had  
3 situations where an elephant has dropped, or at least we  
4 presume they have dropped a log or something on their foot,  
5 and have, you know, torn the nail surface and exposed the nail  
6 bed, and you know, the vessels and the nerves and so forth.  
7 And those are very painful and are treated with antiseptics  
8 and those kinds of things while they are healing.

9 Did I read your testimony correctly?

10 A. Yes.

11 Q. And you've had elephants that have had toenail cracks  
12 that went all the way up into the cuticle, correct?

13 A. Yeah. But we have not had very large or deep nail  
14 cracks, and that's what I was specifically referring to as the  
15 experience that we've had at the Oakland Zoo. I have had  
16 experiences with more severe nail cracks at the Brookfield  
17 Zoo, and prior to looking at the deposition testimony, that's  
18 what I was talking about in terms of the range of severity  
19 that you can see in a crack.

20 Q. But your elephants have had toenail cracks that went  
21 all the way up the nail into the cuticle, correct?

22 A. Yes.

23 Q. And you've been able to successfully manage those  
24 cracks, haven't you?

25 A. Yes, we have.

1 Q. One way to manage those cracks is to bevel them so --  
2 as to prevent them from closing, is that right?

3 A. Yes, typically -- that's what I was talking about in  
4 terms of the bleeding. Is that you would trim as much as you  
5 can trim without getting into the soft vascular tissue of the  
6 nail. So, just trying to trim the outer most portion of the  
7 nail so that you're opening it up and hopefully preventing  
8 something from getting wedged into the crack that might cause  
9 an infection. And then the other thing that we use is a hoof  
10 patch, a material that is designed for horses that we'll put  
11 across the crack to help support the nail while it grows out.

12 Q. I see. But you do bevel the cracks to keep them open,  
13 correct?

14 A. As much as the crack will allow. You know, we think  
15 that it's important not to draw blood because then you're just  
16 increasing the animal's exposure to an infection. And so we  
17 will trim that portion of the nail that we can trim without  
18 going too deep. So, it really depends on the particular  
19 crack.

20 Q. And when you're talking about trimming here you're  
21 talking about beveling the crack to keep it open, correct?

22 A. Right.

23 Q. Now, you do not see any toenail cracks on the FEI  
24 elephants that you inspected in this case that caused you any  
25 concern, correct?

1       A.    I wouldn't say that.  I thought there were some pretty  
2 severe damage to the nails.  I don't know if they were  
3 actually cracks.  It looked like the top of the nail had blown  
4 out on a couple of elephants that -- and they had some exposed  
5 tissue there.  So, it looked like a couple that were fairly  
6 severe.

7       Q.    Well, I asked you about this in your deposition.  Let's  
8 go to Page 141, Line 14.  Question:  I'll ask you about  
9 specific things that you saw, but did you -- do you recall as  
10 you sit here today, seeing any toenail cracks on the elephants  
11 you inspected in this case that caused you concern?  Answer:  
12 I really don't remember that.  And toenail cracks are not  
13 uncommon, so I would expect that there may have been cracks.

14                       Did I read your testimony correctly?

15       A.    Yeah.  And I guess to clarify, what I would say is that  
16 I think in that discussion we were specifically talking about  
17 toenail cracks, which are different from seeing anything of  
18 concern on the toenails.  I don't think that what I was  
19 observing on that inspection I would describe as a toenail  
20 crack.  A crack is usually something that starts at the bottom  
21 of the nail and splits up the nail and generally is fairly  
22 narrow.  These were situations where the upper portion of the  
23 toenail was gone.

24       Q.    But I was asking you about toenail cracks, and you  
25 didn't see any that were of concern that you could tell me

1 about in your deposition on the FEI elephants that you  
2 inspected, correct?

3 A. Yeah. I don't remember seeing toenail cracks in  
4 particular, there may have been some there.

5 Q. Now, in your deposition you could name only four zoos  
6 that had protected contact programs that potentially were  
7 similar to yours. Do you recall that testimony?

8 A. I believe so.

9 Q. And one was the San Diego Zoo and Wild Animal Park,  
10 correct?

11 A. Yes.

12 Q. And North Carolina Zoo, is that correct?

13 A. Yes.

14 Q. The Brookfield Zoo, is that correct?

15 A. Uh-huh.

16 Q. And the Santa Barbara Zoo you said had a pretty similar  
17 program, is that correct?

18 A. I believe so. Zoo Atlanta is another one that comes to  
19 mind. Dallas. I mean, there are certainly a number of  
20 facilities out there that have similar programs, but I  
21 certainly couldn't provide you with a complete list of who  
22 they all are.

23 Q. You've named six now because you just added Zoo Atlanta  
24 and Dallas, right?

25 A. Yes.



1 Q. Now, in fact, numerous zoos in the U.S. use free  
2 contact programs to manage their elephants, isn't that right?

3 A. That's true.

4 Q. Those zoos are AZA members, correct?

5 A. Yes.

6 Q. And the Oakland Zoo is an AZA member, is it not?

7 A. Yes, that's correct.

8 Q. Also, numerous zoos use hybrid systems in which they  
9 use free contact and protected contact methods to manage their  
10 elephants, correct?

11 A. There are a few, I'm not sure I would say numerous, but  
12 I know there are a few that are using a combination.

13 Q. Do you know how many?

14 A. I don't.

15 Q. Ms. Kinzley, I'd like to show you the Elephant  
16 Husbandry Resource Guide. If we can see --

17 MR. SHEA: Yes, it's Defense Exhibit 2.

18 THE COURT: All right.

19 BY MR. SHEA:

20 Q. Ms. Kinzley, you are familiar with this, right?

21 A. Yes, I haven't read it cover to cover, but I certainly  
22 am familiar with it and I'm pretty sure we contributed to one  
23 of the chapters.

24 Q. Right. Let's go to the next page, please. If we can  
25 look at the second full paragraph in the first column or the

1 third full paragraph, beginning Approximately.

2 Ms. Kinzley, you've testified about the stud  
3 books today in North America for elephants, correct?

4 A. Yes.

5 Q. And those stud books are kept -- do you know who keeps  
6 the stud book for Asian elephants? Who is the keeper?

7 A. Mike Keele.

8 Q. And it says here in this guide that approximately 500  
9 Asian and African elephants live in North America. Half of  
10 this population reside in AZA institutions, and the other half  
11 of our North American elephants are owned by circuses, non-AZA  
12 zoos, private individuals, sanctuaries, and corporations.

13 Did I read that correctly?

14 A. Yes.

15 Q. Is that correct, that statement?

16 A. I would assume so. I don't have any reason to believe  
17 that it's not correct.

18 Q. All right. And if we can go to the bottom of the page  
19 where we have contributing authors. Can we expand that,  
20 please. Now, I note, Ms. Kinzley, that you're on the list  
21 right about dead center of the second paragraph, correct?

22 A. Yes.

23 Q. And you actually contributed a chapter to this book,  
24 didn't you?

25 A. Yes, on hand raising.

1 Q. Hand raising elephants?

2 A. Yes.

3 Q. And I'll note that there are some other contributing  
4 authors here. Down on the first column we have Gary Jacobson,  
5 is that right?

6 A. Yes.

7 Q. And Gary Johnson, correct?

8 A. Yes.

9 Q. Kari Johnson, is that true?

10 A. Yes.

11 Q. And then you mentioned Mike Keele, he's right above  
12 your name about three lines up, is that right?

13 A. Yes.

14 Q. Over in the far right column we have Dr. Dennis  
15 Schmitt, is that correct?

16 A. Yes.

17 Q. Those were contributing authors to this piece, is that  
18 true?

19 A. Yes.

20 Q. Now, we've mentioned Dr. Schmitt, and I'll just ask  
21 you, he is one of the most knowledgeable veterinarians on  
22 artificial insemination of elephants, isn't it?

23 A. I believe so.

24 Q. Now, as we looked at this prior page, the American Zoo  
25 and Aquarium Association, the Elephant Managers Association

1 and the International Elephant Foundation have published this  
2 guide, haven't they?

3 A. Yes.

4 Q. And you're actually -- the title of your chapter was  
5 Supplemental Feeding and Hand Raising of Calves, is that  
6 correct?

7 A. I believe so.

8 Q. Now, this guide on Page 68.

9 MS. SANERIB: Your Honor, I want to object, the  
10 witness said that she's not read this document cover to cover.

11 MR. SHEA: Your Honor, she's a contributing author.  
12 I understood her to say that she hadn't read it cover to cover  
13 in awhile.

14 THE WITNESS: I've never read it cover to cover. I  
15 contributed my portion of it, but I haven't ever read the  
16 entire document.

17 MR. SHEA: You haven't?

18 THE WITNESS: I have not.

19 BY MR. SHEA:

20 Q. This is sent by the AZA to all AZA member zoos, is it  
21 not?

22 A. Yes.

23 Q. And you've never read it?

24 A. I have never read it cover to cover, no.

25 Q. Which portions have you read, do you recall?

1       A.    I don't recall which portions that I have read.  I know  
2 I specifically haven't read the portion on training because I  
3 don't agree with the ideas that they have about training.

4       Q.    You say in the Oakland Zoo --

5               THE COURT:  How do you know if you haven't read it?

6               THE WITNESS:  Because that's the big controversy  
7 within the zoo community, is you know, changing the term of  
8 the bull hook and ankus to a guide to make it sound like sort  
9 of the kinder, gentler tool.  And then also there's a lot of  
10 controversy about protected contact and free contact, and you  
11 know, we have -- there's been a lot of debates about it within  
12 the AZA community.  And essentially the free contact people  
13 sort of won out on this one, and so we knew that it was turned  
14 into this idea that it's a continuum and that, you know, the  
15 bull hook is now a guide.  And that's something that I find  
16 objectionable and didn't want hear more about it in writing.

17              THE COURT:  You didn't want to know what the other  
18 side is thinking, though, in writing?

19              THE WITNESS:  Well, I already know what they're  
20 thinking.  I didn't want to torture myself with reading about  
21 it again.

22 BY MR. SHEA:

23       Q.    Ms. Kinzley, did you read the portion of this on  
24 chaining?  After all, you do chain elephants at the Oakland  
25 Zoo from time to time?

1 A. I don't believe that I did. A lot of this is material,  
2 you know, that has been rehashed and discussed over and over  
3 and over again. So, you know, I don't feel like it's  
4 necessary for me to read material that has been discussed  
5 and -- I've been participating in discussions about, so --

6 THE COURT: Nothing new?

7 THE WITNESS: I don't believe so.

8 BY MR. SHEA:

9 Q. But those discussions continue, don't they?

10 A. Some of them do. The guide came out quite awhile ago.  
11 I mean, this is also sort of old material, so it's not --  
12 that's part of the reason why I can't tell you what parts of  
13 it I read or haven't read. I don't remember what parts of it  
14 I've read, it's been so long ago.

15 Q. It's still the current version of this guide, though,  
16 is it not?

17 A. It is.

18 Q. Now, in your opinion, an ankus cannot be used to train  
19 an elephant without causing pain, correct?

20 A. You know, fundamentally, how the ankus is trained, you  
21 know, it must cause, you know, some kind of discomfort or pain  
22 in order for the elephant to move away from that feeling.  
23 That's why all of the queue points are positioned in such a  
24 way that the elephant has to, you know, a position behind the  
25 front leg so when the ankus is used the elephant moves forward

1 away from the ankus. Or a position on top of the shoulder, so  
2 again, as the ankus is used the elephant moves down away from  
3 the ankus.

4 But that's not to say that there isn't a wide  
5 range of how it is applied, and it certainly can be applied in  
6 a way that is gentler without the frequency or forcefulness  
7 that I've observed in the circus situation, and particularly  
8 with the evidence that I've reviewed in the Ringling case.

9 I think the explanation for that is very clear,  
10 that elephants in the circus, and in particular in this case,  
11 are taken out among the public. The public is in very close  
12 proximity. They're often out on the street, so the handlers  
13 keep very tight control over them and are much more forceful,  
14 I think. I think it represents more of the extreme end of  
15 free contact.

16 An elephant in a zoo setting that never leaves  
17 its enclosure, doesn't come within contact of the public, is  
18 not asked to perform fast high powered behaviors. It might  
19 not be necessary to use the bull hook with the same frequency  
20 or forcefulness.

21 Q. Ms. Kinzley, let me take you to Page 62 of your  
22 deposition in this case, starting on Line 5. Question: Okay.  
23 Now, can you use an ankus to train an elephant without causing  
24 pain? Answer: I don't believe so.

25 Did I read your testimony correctly?

1 A. Yes. And as I stated at the beginning, I think, you  
2 know, the initial training of the elephant has to cause some  
3 sort of pain or discomfort in order for the elephant to move  
4 away from the ankus. Otherwise, it wouldn't be used as an  
5 ankus or bull hook. You would teach the elephant to move  
6 towards the object instead of away from the object.

7 Q. Now, you would not say, though, that the guide should  
8 not be used with elephants, correct?

9 A. My preference is for protected contact because I think  
10 that that ensures that the elephant won't be physically  
11 disciplined or potentially abused. But I do believe that  
12 there are some situations in that the bull hook could be used  
13 in such a way that it is not abusive, you know, very minimal,  
14 does not ever break the skin of the elephant or cause any  
15 kinds of wounds or abrasions, or the elephant is not hit in  
16 such a way to cause bruising or contusions.

17 Q. Now, Ms. Kinzley, you were trained to use the ankus at  
18 the Phoenix Zoo, is that right?

19 A. That's correct.

20 Q. And you worked there from 1983 until 1986, is that  
21 true?

22 A. Yeah, I was there full time from '83. I started in  
23 '82.

24 Q. And when you used the ankus on the elephants at the  
25 Phoenix Zoo, you hurt them, didn't you?



1 A. At times, most definitely.

2 Q. And in your deposition you described a process of using  
3 ropes and hooks at the Phoenix zoo to train elephants to lie  
4 down, right?

5 A. That's correct.

6 Q. And in that process the elephants were hooked and hit  
7 with ankuses, weren't they?

8 A. Yes, they were.

9 Q. And they were pulled to the ground by five or six  
10 people with ropes, is that right?

11 A. Yes.

12 Q. And you believe they suffered during the process, don't  
13 you?

14 A. Yes, I do.

15 Q. And you believe that the training was very stressful  
16 for those elephants, correct?

17 A. Yes, I do.

18 Q. But you do not believe that such treatment was a  
19 taking, do you?

20 A. I do think that it was a taking. I think that the  
21 hooking of the elephants does physically harm them. I think  
22 in reviewing my deposition and the questions that you were  
23 asking me, I was thinking that you were talking about more of  
24 the behavioral aspect of it. And I think the point that I was  
25 trying to make in saying that they were not being taken in

1 that situation was that -- different from the circus  
2 situation, you know, those elephants would be trained and then  
3 they would be free -- after that training session they would  
4 be free to go and behave in their -- in the way that they  
5 would like to behave and interact with their environment and  
6 with each other.

7           Phoenix was very unique for the time in that back  
8 in 1983 they were not chaining their elephants overnight,  
9 which was very unusual. At that time most zoos did chain  
10 their elephants overnight. So, I felt that the overall  
11 situation at Phoenix was different, but certainly, you know,  
12 that instance of training and what was happening with those  
13 elephants was very physically harmful to them and  
14 psychologically harmful to them.

15           THE COURT: What's a taking in your view?

16           THE WITNESS: Well, I think that's the part I have  
17 difficulty with. Certainly, it is not a term that I normally  
18 use. So, trying to understand what it exactly means. But  
19 when I was reviewing it and looking at it -- causing harm to  
20 the animals, I certainly do think that hooking an elephant, in  
21 particular, if you're hooking them to the point where you're  
22 causing a physical wound, whether it's a puncture or abrasion,  
23 seems to me to fit under a take.

24           THE COURT: Okay.

25

1 BY MR. SHEA:

2 Q. Ms. Kinzley, let me show you Page 60 of your deposition  
3 beginning on Line 8. Question: Okay. So, despite them  
4 having received hook wounds from your handling and having been  
5 struck by the ankus from your handling, that was not a taking  
6 in your mind? Answer: I think those things happened on a  
7 much more occasional basis there. Question: I see. So those  
8 didn't constitute a taking in your mind? Answer: No.  
9 Question: Okay. No, they did not? Answer: No, they did not  
10 because they weren't repeated. It wasn't something that the  
11 elephants were experiencing on a regular basis. It was, you  
12 know, an occasional thing that happened with those elephants.

13 Did I read your testimony correctly?

14 A. Yes.

15 Q. And during your deposition you believe that the process  
16 was not a taking, or stated so, because it was appropriate for  
17 the time period, is that correct?

18 A. I don't think -- I don't remember saying it was  
19 appropriate for the time period. I think my confusion with  
20 that had to do with the questioning, and I think at one point  
21 I asked to sort of review the definition of take, and try to  
22 understand more precisely what it meant. But I think in  
23 looking at it, again, you know, because it talks about the  
24 harming of the animal and causing a physical wound, I mean, it  
25 certainly is causing a physical wound using the hook. And if

1 you're causing hook wounds and making the animal bleed, and  
2 certainly causing a very stressful situation.

3 Q. I see. Let's go to Page 61 of your deposition,  
4 beginning on Line 8. Question: Okay. So, the teaching them  
5 to lie down is what you were just referring to by them  
6 receiving hook wounds and being struck with the hook, is that  
7 right? Answer: Yeah. I think it's a very stressful  
8 experience for them. Question: But that wasn't a taking  
9 then, was it, in your mind? Answer: Well, again, I think I  
10 would associate it more with something that's more ongoing,  
11 you know, and I don't think that that's an appropriate way to  
12 train an elephant to lie down. I wouldn't do that at this  
13 time. I think that there are much more progressive and much  
14 more humane methods, you know, for training an elephant to lie  
15 down, you know. But at that time, you know, more than 20  
16 years ago, you know, that was, you know, the customarily  
17 practice for teaching an elephant to lie down, and I think it  
18 certainly was very harsh, and I think that, you know, they  
19 suffered, but I'm not sure according to, you know, the  
20 definition of take, that that would really constitute a take.

21 Did I read your testimony correctly?

22 A. Yes.

23 Q. And, again, that time period was 1983 to 1986, is that  
24 true?

25 A. Yes.

1 Q. Now, as far as you know this method that you described  
2 of teaching elephants to lie down continues today in free  
3 contact, is that true?

4 A. Yes, as far as I know.

5 Q. You were senior elephant keeper at the Brookfield Zoo  
6 from 1986 to 1990, is that correct?

7 A. Yes.

8 Q. And Patience was the name of an elephant at the  
9 Brookfield Zoo who you believe was taken by extremely rough  
10 treatment, isn't that right?

11 A. Yes.

12 Q. I'd like to ask you some questions about the other  
13 elephants at the Brookfield Zoo, the ones other than Patience.  
14 All of those elephants were managed by use of the ankus and  
15 chains, weren't they?

16 A. Yes.

17 Q. And it was daily management, is that correct?

18 A. Yes.

19 Q. And you occasionally saw hook marks on them, true?

20 A. Yes.

21 Q. And those elephants were struck with the ankus,  
22 correct?

23 A. Yes, they were.

24 Q. And, in your opinion, the elephants at the Brookfield  
25 Zoo, other than Patience, were not taken from use of the bull

1 hook, even though they were struck with the bull hook and  
2 received hook marks, correct?

3 A. Well, again, I am attempting to clarify my  
4 understanding. When we did the deposition, one of the pieces  
5 that I focused on was sort of the ongoing nature of it. And  
6 in looking at it again, it seems like the physical harm is an  
7 important piece of that. And certainly it's something for me  
8 that has always been very disturbing, that you're causing  
9 physical harm to these animals.

10 So, I would correct that and say that I do think  
11 that it seems to me to apply under the animal being taken.  
12 That if you're causing that kind of physical harm where you  
13 are wounding them or causing bruising, then that would apply.

14 Q. Well, let me show you Page 77 of your deposition,  
15 beginning on Line 22. Question: The other elephants were not  
16 taken from use of the bull hook, but were taken because of the  
17 length of time they were on -- they were chained, do I  
18 understand that correctly? Answer: That's correct. Yes.

19 Did I read your testimony correctly?

20 A. Yes.

21 Q. And you were at the Brookfield Zoo again from 1986  
22 until 1990, correct?

23 A. That's correct.

24 Q. Now, while at the Phoenix and Brookfield Zoos you saw  
25 hook boils, didn't you?

1 A. Yes.

2 Q. And you described to me in deposition, hook boils  
3 looking like large pimples, is that correct?

4 A. I don't think they actually looked like a pimple, it's  
5 the same sort of function in that it's a bump, it's infected,  
6 it oftentimes opens up and exudes pus, but they are certainly  
7 much larger than what most of us think of when we think of a  
8 pimple.

9 Q. But, again, to you it looked like a large pimple,  
10 correct?

11 A. It's the same idea, same concept.

12 Q. Now, you believe that it is common for elephants to be  
13 struck with ankuses currently in zoos, correct?

14 A. I don't know about zoos. I mean, I haven't reviewed  
15 current free contact practices in zoos. I've reviewed the  
16 material in this case. So, I know that in the materials that  
17 I reviewed for the Ringling elephants, it is common for them  
18 to be struck with the bull hook and frequently with great  
19 force that causes actual wounds.

20 Q. Ms. Kinzley, I was asking you about zoos. Let's turn  
21 to Page 83 of your deposition, beginning on Line 16. Now,  
22 going to Page 68 of your deposition -- or I'm sorry, Page 83  
23 of your deposition, beginning on Line 16.

24 Question: Okay. So, at zoos today in the U.S.  
25 are elephants being struck by the ankus? Answer: I would

1 think so.

2 Did I read your testimony correctly?

3 A. Yes.

4 Q. Now, you testified earlier today about elephant's skin,  
5 right?

6 A. Yes.

7 Q. Elephants will rub their skin against anything that  
8 might be available, won't they?

9 A. Yes.

10 Q. They will rub against trees, rocks, another elephant or  
11 even concrete, true?

12 A. Termite mounds, yep.

13 Q. And, in fact, they will straddle termite mounds with  
14 termites in them to scratch their bellies, won't they?

15 A. Yes, they will.

16 Q. Now, you use a relatively stiff bristled nylon brush to  
17 clean an elephants's skin, isn't that right?

18 MS. SANERIB: Objection, I think that misstates the  
19 record.

20 THE COURT: You can answer it.

21 THE WITNESS: Yes. We use a stiff bristled nylon  
22 brush.

23 BY MR. SHEA:

24 Q. And some handlers use a wire brush to remove overgrown  
25 skin, correct, of elephants?



1 A. On particular parts of the body the wire brush might be  
2 used on the back of an elephant where the skin is particularly  
3 thick, and as you say, overgrown.

4 Q. Now, you've lead ecotourism trips for many years,  
5 correct?

6 A. Yes, I have.

7 Q. And those were the safaris you mentioned earlier in  
8 your testimony today, correct?

9 A. Yes.

10 Q. And those trips have been, I believe you said, to Kenya  
11 and Tanzania, is that correct?

12 A. Yes.

13 Q. And those trips are made for the purpose of viewing  
14 elephants, true?

15 A. Yes, primarily.

16 Q. And those are both African countries, aren't they?

17 A. Yes.

18 Q. The trips cost roughly \$5,500 per person to attend,  
19 right?

20 A. Yeah, it ranges \$4,500 to \$5,500, sounds about right  
21 for the time.

22 Q. In your opinion, is it -- it is a taking to chain an  
23 elephant for 12 hours during the day, absent a need for such  
24 chaining for veterinary care, is that right?

25 A. Yes.

1 Q. Now, in your opinion, elephants can be chained for two  
2 hours per day without a taking being committed, is that right?

3 A. I think two hours would be an acceptable amount of time  
4 to be able to perform a husbandry or medical procedures that  
5 would be necessary for the animal.

6 Q. But you don't have any support for that opinion except  
7 your own say so, correct?

8 A. Well, it's my experience that that would be a typical  
9 amount of time -- really, more than enough time to be able to  
10 provide the elephant with the care that it needs. So, if you  
11 had an individual that in addition to basic husbandry also  
12 needed to have foot soaks or some other medical procedure,  
13 that amount of time would be adequate to be able to provide  
14 that animal with the care that it required. And I think that  
15 that's sort of generally accepted within the community. That  
16 two hours would be -- 30 minutes to two hours would be typical  
17 amount of time that somebody might be engaged in daily  
18 husbandry and medical care of an elephant.

19 Q. Ms. Kinzley, let me show you Page 157 of your  
20 deposition, beginning on Line 16. Question: Okay. There  
21 are -- the two hours that you mentioned here. You don't cite  
22 any authority that supports this two hour limit, do you have  
23 any? Answer: No. That's based on my experience in caring  
24 for elephants and the amount of time that I would think would  
25 be appropriate, sort of the maximum amount of time I think

1 would be appropriate as the sort of routine amount of time for  
2 an elephant to spend on chains. I think it could be  
3 considerably shorter than that, maybe 30 minutes or 20  
4 minutes, but I don't see any reason why elephants should have  
5 to routinely be chained for more than two hours a day.

6 Did I read your testimony correctly?

7 A. Yes, that's correct.

8 Q. And, in your opinion, chaining can be appropriate for  
9 some cases of elephant births, correct?

10 A. Yes.

11 Q. Now, you've been the curator of -- the general curator  
12 and elephant manager at the Oakland Zoo since 1990, did I  
13 understand that correctly?

14 A. Yes. I am no longer the elephant manager. Several  
15 year ago we hired another elephant manager so that I could  
16 spend more time in the curator side of things.

17 Q. I see. So you're still the general curator, correct?

18 A. Yes, I am.

19 Q. And you've been there since 1990, correct?

20 A. June of '90.

21 Q. Since 1996, six elephants have died at the Oakland Zoo,  
22 haven't they?

23 A. Yes.

24 Q. And you started protected contact with these elephants  
25 in 1991, June of '91, is that correct?

1 A. That's correct, yes.

2 Q. Two of the elephants were stillborn, correct?

3 A. Yes.

4 Q. And one was a baby killed by her mother, is that true?

5 A. His mother, yes.

6 Q. And another was Smoky, an older adult bull, is that

7 right?

8 A. Yes.

9 Q. One was a baby that had to be euthanized because it was  
10 born with a dislocated hip, is that true?

11 A. Yes.

12 Q. And one was a baby that died from a viral infection,  
13 correct?

14 A. Yes.

15 Q. Now, that baby was -- was it Kijani, is that the way I  
16 pronounce the name?

17 A. Kijani.

18 Q. Kijana. K-I-J-A-N-A, is that right?

19 A. I at the end.

20 Q. So it's K-I-J-A-N-I?

21 A. Yeah.

22 Q. Now, that was a surprise baby, wasn't it, you didn't  
23 know the mother, Lisa, was pregnant until Kijani was born?

24 A. That's correct.

25 Q. Now, during this time period what was the size of the

1 herd at the Oakland Zoo?

2 A. Three females and one male.

3 Q. Now, at the Oakland Zoo you've not been able to  
4 successfully breed captive elephants, correct?

5 A. Well, I think we've been quite successful at breeding  
6 them, but like many facilities with African elephants, it's  
7 been a great struggle to have them survive -- the calves  
8 survive.

9 Q. Now, you remember in your deposition I was asking you  
10 about a newspaper article in which you had been quoted,  
11 correct?

12 A. I remember there was a couple that you asked about.

13 Q. All right. Let me show you Page 199 of your  
14 deposition -- or 198, starting on Line 25. Question: Okay.  
15 Right below the quote I just read they asked, how do you  
16 know -- then you're quoted here as saying, quote, we have not  
17 been able to successfully breed elephants, and without having  
18 a family group you're not meeting the social needs of the  
19 female elephants in particular. Did I read that correctly?  
20 Answer: Yes.

21 Did I read your testimony correctly?

22 A. Yes.

23 Q. In fact, every calf born at the Oakland Zoo during your  
24 tenure has died, hasn't it?

25 A. Yes.

1 Q. And, in your opinion, that failure to successfully  
2 breed captive elephants causes you to fail in providing for  
3 the elephant's social needs, is that correct?

4 A. I think that that is a very important part of the  
5 elephant family group. So, that's why we feel that breeding  
6 is important in terms of maintaining healthy captive  
7 populations.

8 Q. And it's your opinion that that failure to successfully  
9 breed causes you to fail in providing for the elephant's  
10 social needs, isn't that right?

11 A. That's correct.

12 Q. And, also, it's your opinion that all zoos are failing  
13 to provide for the social needs of their elephants, correct?

14 A. I would not say all zoos. I think there are examples  
15 now where there have been situations where facility-wise and  
16 from the standpoint of the social group. One example that  
17 comes to mind is the San Diego Wild Animal Park. I think they  
18 have a situation that shows a great deal of promise, and they  
19 have their growing family group in that situation.

20 Those animals have a very large habitat where  
21 they have the opportunity to choice their activities and  
22 engage in their environment in a very natural way. They're  
23 managed in protected contact. There is no dominance or  
24 physical discipline. So, I think that's an example of where  
25 we can be successful in captively managing elephants.

1 Q. Let me show you Page 197 of your deposition, beginning  
2 on Line 18. Question: When you say "we", those are things  
3 you have done at the Oakland Zoo, is that right? Answer:  
4 That's correct. Question: Two questions down they ask: What  
5 are the failures? They quote you as saying, quote, elephants  
6 are the one that I would say there are not many facilities  
7 that are meeting their needs, and we're among those that  
8 aren't. Did I read that accurately? Answer: Yes. Question:  
9 Was that an accurate quote. Answer: I think it is accurate.  
10 I think, you know, it's very limited and probably doesn't  
11 include everything that I had to say about that. I was  
12 talking specifically about the -- or I believe anyway from the  
13 context of the other stuff, talking about the social aspects  
14 of it, and that, you know, are motivation on trying to breed  
15 elephants had been to create a natural social structure, a  
16 natural family unit, which is what we do with the vast  
17 majority of species that we keep in captivity. And we try to  
18 keep them in species appropriate social groupings. And  
19 elephants are one where we have yet to be successful at that,  
20 and I think that is true of most facilities. Question: Okay.  
21 When you say most facilities, you mean most zoo facilities?  
22 And you say -- I would include circuses in that as well.

23 So, have I read your testimony correctly?

24 A. Yes.

25 Q. Now, Ms. Kinzley, you've managed elephants under

1 protected contact methods for the entire time from June of  
2 1991 until the present at the Oakland Zoo, is that correct?

3 A. That's correct.

4 Q. And you plan to have that management system continue  
5 there, correct?

6 A. Yes, we do.

7 Q. Now, isn't it true that several zoos have tried that  
8 type of protected contact but have changed their programs back  
9 to use some forms of free contact methods?

10 A. I'm aware of a couple that have made that change.

11 Q. And which are those?

12 A. I believe Disney's Animal Kingdom is using some  
13 elements of free contact, and I also think that the Houston  
14 Zoo, very recently, is using some elements of free contact.

15 Q. Ms. Kinzley, how old are the five elephants at the CEC,  
16 do you know?

17 A. I don't recall their ages. I know that they're older  
18 animals.

19 Q. That was a pretty confusing question. The five that  
20 you inspected, do you know their ages?

21 A. I don't.

22 Q. And you're aware that those elephants have been  
23 tethered for decades overnight, is that true?

24 A. Yes. I believe so.

25 Q. And how old are your elephants that are at the Oakland



1 Zoo?

2 A. Our oldest elephant is 41, and our -- we have two that  
3 are in their late -- or, actually, I guess one now in early  
4 30s, and one in her late 20s, and a young bull that is 15  
5 years old.

6 Q. And the young bull is the one you flew over from  
7 England on an airplane, is that correct?

8 A. That's correct.

9 Q. Now, you have no evidence of block and tackle use with  
10 FEI elephants, do you?

11 A. No, I don't.

12 Q. Now, when was the last time -- let me back up. During  
13 your testimony earlier today you talked about going out with  
14 animal control officers and going to Ringling Brothers Circus,  
15 is that right?

16 A. Yes, I have done that in the past.

17 Q. How long ago was the last time you did that?

18 A. I would say four, maybe even five years ago. I believe  
19 it was prior to my doing the work in Namibia.

20 Q. I see. As I understand it, the elephants at the San  
21 Diego Wildlife Park, were they imported elephants?

22 A. Yes, they were.

23 Q. Where were those imported from?

24 A. They were imported from South Africa, I believe.

25 Q. Now, you were shown a film clip earlier today which the

1 Court also asked you about where you said elephants were being  
2 forced to defecate, do I understand that correctly?

3 A. That's correct.

4 Q. You didn't see any of those handlers touch any of those  
5 elephants with a bull hook, did you?

6 A. Not in that case.

7 Q. In fact, one of the handlers was patting the elephant  
8 on the side, wasn't he?

9 A. I didn't catch that, but that certainly could have  
10 happened.

11 Q. Let's look at that film clip, which I believe is  
12 Plaintiff's Will Call 133.

13 (Video playing).

14 Q. He's patting that elephant, correct, the man in the  
15 yellow pants?

16 A. Yep.

17 Q. That elephant on the right, what behavior is that  
18 elephant engaging in?

19 A. From the back it looks like a crouch position. I can't  
20 see if its front leg is up, but the back is a crouch.

21 Q. I see. Is that like a salute position, do you know?

22 A. Some people might call it a salute. I typically think  
23 of salute as one front foot up and the trunk up and the ears  
24 out. But a crouch is usually one hind leg down and one front  
25 leg up and the trunk up.

1 Q. I see. Now, you were also shown a film clip of a  
2 trainer who -- it was a Ringling Brothers performance clip, do  
3 you recall that this morning?

4 A. Yes, in the ring?

5 Q. Yes.

6 A. Yes.

7 Q. And it was where a dancer was getting down off an  
8 elephant, do you recall that?

9 A. I think that was the piece prior.

10 Q. Well, about that clip where the dancer is getting down  
11 off the elephant, is it your testimony that there were not  
12 verbal commands given those elephants?

13 A. I would assume there were verbal commands. The verbal  
14 commands typically go along with the use of the bull hook.

15 Q. And you were shown a photograph which I think it was  
16 Plaintiff's May Call 54, where you testified that the top of  
17 the ear looked consistent to scarring from use of an ankus, is  
18 that true?

19 A. Yes, that's correct.

20 Q. You can't conclusively say that an ankus caused  
21 whatever condition you saw there, can you?

22 A. No, I can't. But there -- it looks to me to be  
23 consistent with wounds that I have seen caused by an ankus and  
24 the scarring that will result from that.

25 Q. But you say consistent with?

1 THE COURT: We can't finish -- sorry to cut you  
2 off. We can't finish today. Do you plan to leave this  
3 evening?

4 THE WITNESS: Well, it's already been adjusted.

5 MR. SHEA: Your Honor, I only have a couple more  
6 minutes.

7 THE COURT: How long is your redirect?

8 MS. SANERIB: Probably 10 minutes.

9 THE COURT: We told the court reporter 5:30, so I  
10 don't want to go back on that. You'll have to come back  
11 tomorrow. We'll start at 10:00 o'clock tomorrow morning. I  
12 have to ask you not to discuss your testimony with anyone.

13 THE WITNESS: Okay.

14 THE COURT: Thank you. Let me hear, though, from  
15 counsel, how many additional witnesses for your case in chief?

16 MS. MEYER: Your Honor, we have one more fact  
17 witness -- live fact witness, two more expert witnesses. But  
18 then we also have quite a slew of deposition testimony, Your  
19 Honor.

20 THE COURT: All right. So, in all likelihood  
21 you're not going to be able to rest tomorrow, are you?

22 MS. MEYER: I don't think so, Your Honor.

23 THE COURT: All right. We'll start at  
24 10:00 o'clock tomorrow.

25 MR. SIMPSON: Your Honor, can we get an inventory

1 of what they plan to do tomorrow?

2 THE COURT: Who are you calling tomorrow?

3 MS. MEYER: Yes. Tomorrow we are going to,  
4 obviously, finish with Ms. Kinzley. And then we are going to  
5 go through -- hopefully go through the deposition testimony  
6 of -- do you want me to do list for you, too? Margaret Tom,  
7 Robert Ridley, Betsy Swart, Gerald Ramos, James Andacht, and  
8 then live testimony from Nicole Paquette, if there's --

9 THE COURT: How much time do you need for the  
10 deposition testimony?

11 MS. MEYER: Probably about three -- our part of it,  
12 around three hours all --

13 THE COURT: That you're going to read deposition  
14 testimony?

15 MS. MEYER: Pardon me? Some of it is by video,  
16 Your Honor, it's not all going to be read.

17 THE COURT: What's that?

18 MS. MEYER: Some of it is by video.

19 THE COURT: All right. That's fine. All right.  
20 That's fine. We'll start at 10:00 o'clock.

21 MS. MEYER: Can I ask Your Honor for an extension  
22 of time on the brief that you asked us to file today by the  
23 close of business. Could we file that tomorrow morning or  
24 even by --

25 THE COURT: I actually had forgotten all about it.

1 MS. MEYER: Well, I haven't, Your Honor.

2 THE COURT: You certainly may file it tomorrow.

3 MS. MEYER: Thank you, Your Honor.

4 THE COURT: At whatever time is convenient for you.

5 MR. SIMPSON: And I take it that our response --

6 THE COURT: Absolutely. Absolutely. Everyone have  
7 a wonderful evening. We'll start tomorrow at 10:00.

8 END OF PROCEEDINGS AT 5:30 P.M.

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C E R T I F I C A T E

I, Lisa M. Hand, RPR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

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Lisa M. Hand, RPR





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