

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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AMERICAN SOCIETY FOR THE Docket No. 03-2006
PREVENTION OF CRUELTY
TO ANIMALS, ET AL,
Plaintiffs,
v. Washington, D.C.
February 23, 2009
2:00 p.m.
FELD ENTERTAINMENT, INC., PM SESSION (PART 1)
Defendant.
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TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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produced by computer.

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

2 (2:00 P.M.; OPEN COURT.)

3 THE COURT: All right. Before we start, let me just
4 greet these scholars. I understand we have 25 presidential
5 classroom scholars from across the country. Right? That's
6 great. Well, welcome to the court.

7 I'm in the midst of a trial. Actually, that may be
8 generous by saying I'm in the midst of it. I'm not sure we've
9 got midway or not. I'm not sure. But I understand she has
10 some excellent programs scheduled this afternoon with my chief
11 judge, Chief Judge Lamberth. You're more than welcome to
12 stay. Addy -- you've been in excellent hands with Addy, my
13 brilliant lawyer, and she has brought you up to date with
14 respect to the trial and the issues. That's great.

15 I understand you're going to be leaving at 2:50, so
16 it's not a problem to -- at 2:45. It's not a problem to
17 just -- you know, to leave quietly, but you're more than
18 welcome to remain and enjoy the trial.

19 All right. I wish I had more time to talk to you
20 today. You can come back around 8:00 o'clock this evening or
21 so. But maybe next time. But, welcome to court.

22 (OFF-THE-RECORD DISCUSSION.)

23 THE COURT: All right. Let's proceed with the
24 examination.

25 MS. SANERIB: Thank you, Your Honor. And I just

1 wanted to move in two exhibits before I forget about them. We
2 earlier watched Plaintiffs' Will Call Exhibit 135 from time
3 stamp 44 minutes to 45 minutes and 20 seconds. This was the
4 photo shoot footage. So I move the admission of that as
5 Plaintiffs' Will Call Exhibit 135A.

6 THE COURT: Any objection?

7 MS. JOINER: Same objection, Red Unit, irrelevant.

8 THE COURT: All right. Over objection, I'll admit
9 it.

10 (PLAINTIFFS' WILL CALL EXHIBIT 135A ADMITTED.)

11 MS. SANERIB: All right. And, Your Honor, we also
12 wanted to move for admission of the foot diagram that
13 Ms. Buckley discussed. It was just the depiction itself. We
14 move the admission of -- it was depicted in her expert report.
15 And that would come in as Plaintiffs' Will Call Exhibit 113I.

16 THE COURT: Any objection?

17 MS. JOINER: No objection.

18 THE COURT: Admitted.

19 (PLAINTIFFS' WILL CALL EXHIBIT 113I ADMITTED.)

20 MS. SANERIB: Thank you, Your Honor.

21 CAROL BUCKLEY,
22 having been duly sworn, testified further as follows:

23 DIRECT EXAMINATION (CONT'D)

24 BY MS. SANERIB:

25 Q When we broke for lunch, Ms. Buckley, we were getting

1 ready to look at a little bit of video footage. This is from
2 Plaintiffs' Will Call Exhibit 144, and I just had a few more
3 questions for you.

4 You mentioned "choice for elephants" a fair amount
5 in our discussion today, and I'm just wondering why that's so
6 important.

7 A Well, choice is important for elephants because it gives
8 them a sense of self. It allows them to interact with other
9 elephants to the degree that they choose. There is a big
10 thing about elephants sensing that they have some control over
11 their life. And so the freedom and choice is that avenue by
12 which to do that.

13 In giving the elephants that freedom of choice, not
14 only can they develop a healthy self-esteem and learn to
15 interact with other elephants in a healthy way, they can also
16 interact with their habitat. And it sounds odd, but elephants
17 do interact with their habitat.

18 If they are given access to live vegetation and they
19 know that they have the opportunity to make those choices,
20 they will choose vegetation that will actually enhance their
21 health. So choice is sort of, you know, at the base of
22 wellness for elephants.

23 If they have choice, they can return to wellness,
24 they can increase their ability to -- to interact with other
25 elephants in a healthy manner. It just gives them the

1 opportunity to really experience wellness.

2 Q Okay. And, Ms. Buckley, what's your ultimate goal The
3 Elephant Sanctuary?

4 A Well, our goal is to go out of business.

5 Q And that's sort of a strange answer. Why do you say
6 that?

7 A Well, our goal is that all elephants living in captivity
8 are in an environment which addresses their needs. So it
9 would be -- it's our goal to accomplish that through
10 education. And we hope sooner than later that there will be
11 no elephants that need sanctuary anymore.

12 Q Okay.

13 MS. SANERIB: I have no further questions at this
14 time, Your Honor.

15 THE COURT: Okay. Let me ask you something. To
16 what extent does your goal impact your testimony this morning
17 vis-a-vis Ringling Brothers?

18 THE WITNESS: I don't really understand the
19 question.

20 THE COURT: Does it have any impact at all on your
21 testimony?

22 THE WITNESS: No, none at all.

23 THE COURT: Basically, you don't want elephants in
24 captivity at all; is that correct?

25 THE WITNESS: No, that's not correct. What we --

1 THE COURT: I may have misunderstood. What is your
2 goal, then?

3 THE WITNESS: The goal is to go out of business. In
4 other words, our goal is that there aren't any elephants that
5 need sanctuary anymore. The goal is to educate the public and
6 those that are keeping elephants how to more effectively care
7 for elephants, so that they don't become sick, so that they
8 don't have to go to a sanctuary.

9 THE COURT: All right.

10 MS. SANERIB: I forgot, Your Honor. I just have one
11 further question.

12 Q (BY MS. SANERIB) Ms. Buckley, about how many elephants
13 could you accommodate at The Elephant Sanctuary at this point
14 in time?

15 A Well, we have 2700 acres. And, due to the lay of the
16 land and the amount of vegetation that produces and the
17 current usage that we see with the 17 elephants, we could
18 probably accommodate, with the addition of infrastructure,
19 more barns, we could accommodate close to a hundred elephants.

20 MS. SANERIB: Thank you.

21 THE COURT: All right.

22 Cross-examination?

23 MS. JOINER: Thank you, Your Honor.

24 THE COURT: Let me ask you something. With respect
25 to the humane treatment of elephants, are there circuses other

1 than -- are there any circuses providing humane treatment to
2 elephants in the United States?

3 THE WITNESS: There are circuses that maybe have an
4 aspect of humane care. But there is --

5 THE COURT: Would it be in the manner in which they
6 transport?

7 THE WITNESS: Right, transport.

8 THE COURT: No chains?

9 THE WITNESS: Right.

10 THE COURT: What about the hook?

11 THE WITNESS: And also -- well, there -- I don't
12 know of any circuses that don't use hooks or don't -- yeah,
13 that don't use hooks. But I do know that there are some
14 trainers in some circuses that perhaps have one or two
15 elephants and they don't use the hook as readily. They don't
16 need to. They just have one elephant, and it's an elephant
17 that they've lived with their whole life, you know...

18 THE COURT: You said -- and I understand your goal
19 is that in the future, hopefully, no elephants will be
20 transported, referred, et cetera, to sanctuaries.

21 Suppose there were incidents of abusive animal
22 treatment in a circus. Is -- would there be a humane way of
23 transferring the elephants subject to that abuse to another
24 more a humane circus as opposed to a sanctuary?

25 THE WITNESS: Well, in transport, yes. They can be

1 transported in a chain-free trailer to a circus. The problem
2 with creating a humane --

3 THE COURT: Not just transport. I guess it would be
4 just for the purpose of remaining on the premises of that
5 circus anticipating that.

6 THE WITNESS: Okay.

7 THE COURT: Is that a viable alternative?

8 THE WITNESS: Well, it -- right now, there are no
9 circus -- let me put it this way. In order to accommodate the
10 needs that the circus has for the elephant, the elephant has
11 to be able to be trained, highly trained, so that they are
12 controlled.

13 THE COURT: Right.

14 THE WITNESS: Because the circus is -- it's not
15 contained. It's open. And so if the elephant decides to run,
16 they are going to run. So the elephant has to be highly
17 trained.

18 The nature of circus right now, it's very
19 traditional. They are all done the same way. They have a
20 ring, a circus ring; it's either in a building or a tent. The
21 elephant is walked to that location where they perform,
22 they're run into the ring, they run around the ring, they do
23 their tricks, and then they leave. If the circus changed how
24 they were doing it, they could --

25 THE COURT: I was about to say, it's a fundamental

1 concept of the circus, as we understand it, the big-top,
2 everything under the big-top, would it change, then,
3 hypothetically a more humane circus or circus with a more
4 humane attitude towards elephants could be a viable
5 alternative to living in a sanctuary, then?

6 THE WITNESS: Absolutely.

7 THE COURT: But you'd have to change the whole
8 concept.

9 THE WITNESS: Yeah. You'd have to change the
10 concept. But it can be done.

11 THE COURT: By what? By requiring a stationary
12 circus?

13 THE WITNESS: No, not necessarily. What they do
14 with tigers is, tigers are never exposed to the public outside
15 of a cage. They are always in some sort of cage. In the
16 circus, they are moved in their cage cars, little wagons. And
17 then that's hooked up to an arena that's fenced in. And it's
18 the same arena, a ring, that the elephants perform in. But
19 when the cats are there, there is a barrier.

20 And you could do the same thing with elephants. You
21 could do it with hotwire. I mean, USDA approves hotwire for
22 elephants, containment for elephants. So you could do exactly
23 what they're doing in the idea of having elephants on exhibit.
24 You could do that, contain them with hotwire or other ways.

25 And then you could change your routine, what you're

1 expecting the elephant to do. Instead of having elephants
2 do -- exert physical behaviors in running around in a circle
3 and doing the traditional thing that we see, you could go more
4 towards education; bring those elephants out in the ring and
5 show people what elephants are.

6 So now you have elephants out in the ring, and maybe
7 you put a watermelon down on the ground and the elephant goes
8 over and steps on it. Another elephant picks it up and puts
9 it in their mouth. When they pick this watermelon up and put
10 it in their mouth, they expose their ivory. They pull their
11 trunk back, they open their mouth, they show their tongue.
12 You could be talking about these elephants. You can really be
13 educating the public about what this species is. If someone
14 was motivated, they could create a humane situation for
15 elephants and still do education.

16 THE COURT: Yeah. Hotwire, is that like an electric
17 fence for dogs or something?

18 THE WITNESS: Right, like used for horses and
19 cattle. It's a strand of wire. It's hooked to an electric
20 box -- you need electricity, or it can be solar. And it gives
21 out a pulsing electrical current. It's -- and if you touched
22 it, you know, you'd move your hand. It won't hurt you. And
23 it's not a -- it's not a constant current. It's a pulse.

24 And, in fact, Ringling uses that hotwire in some of
25 their locations.

1 THE COURT: So it's like an electric collar for dogs
2 or something?

3 THE WITNESS: No. That's a shock collar. This is
4 simply a containment, a way to contain.

5 And elephants are very smart. They don't even have
6 to touch the hotwire to learn about it. They sense it, and
7 they are not going to go near it, you know.

8 THE COURT: All right. Thank you.

9 Sorry to get you up there and make you stand up
10 there.

11 MS. JOINER: That's all right.

12 THE COURT: Go ahead. My apologies to you.

13 Cross-examination. I'm sorry.

14 MS. JOINER: I'm not going anywhere. That's okay.

15 THE COURT: All right. Well, I have a few more
16 questions.

17 No, no.

18 CROSS-EXAMINATION

19 BY MS. JOINER:

20 Q Do you recall earlier, Ms. Buckley, when you talked about
21 some video footage of Red Unit elephants?

22 A The Red Unit for the photo shoot?

23 Q Yes.

24 A Yes.

25 Q And who was the handler in that?

1 A Well, I don't know for sure.

2 Q You can't identify the handler in that clip?

3 A Well, I've only seen him from the back of the head, so --
4 I think I know who it is. But, no, I can't say for sure.

5 Q Okay. During the first 20 years of your career, you used
6 an ankus with elephants; is that correct?

7 A Almost 20 years, yes.

8 Q All right. And you carried the ankus with you any time
9 that you were with the elephants; is that right?

10 A No.

11 THE COURT: Is there a difference between an ankus
12 and a bull hook?

13 THE WITNESS: It's a different term. A few years
14 ago, maybe 15 years ago, the industry started -- the zoo
15 industry started calling it an ankus instead of an elephant
16 hook.

17 Q (BY MS. JOINER) I'd like to go -- we talked about this
18 before lunch. But you testified at a trial as an expert on
19 elephant handling, training, and use of the ankus back in 2001.
20 Do you recall that?

21 A Ask your question again, please.

22 Q You previously testified at a trial as an expert on
23 elephant handling, training, and the use of an ankus back in
24 2001; is that correct?

25 A Which trial was that?

1 Q That was the Gabel trial.

2 A Okay. Yes.

3 Q All right. And you were sworn at that time to tell the
4 truth; is that correct?

5 A Correct.

6 Q And you were subject to cross-examination?

7 A Yes.

8 Q All right. Let's take a look at page 519 of that
9 transcript.

10 My screen is not on. There it is. All right.

11 Line 6 (reading) The first 20 years of your career
12 with elephants you used an ankus?

13 (Reading) Answer: Yes.

14 (Reading) Question: How often did you use an
15 ankus?

16 (Reading) Answer: I carried the ankus any time I
17 was with the elephants. So every day.

18 Did I read that correctly?

19 A You read it correctly.

20 Q Okay. Now the ankus can be used with various degrees of
21 pressure; is that right?

22 A Correct.

23 Q And using the ankus is part of what you have called
24 dominance training; is that right?

25 A Dominance-based training, correct.

1 Q Okay. And the goal of that dominance-based training is
2 for the trainer to assert his own dominance over the elephant.

3 A The goal is for the trainer to control the elephant.

4 Q Okay. And to be dominant over the elephant, correct?

5 A Correct.

6 Q And to remain dominant, you -- it's your position that
7 you can't ever allow the elephant to make any choices. I
8 mean, can't ever allow the elephant to make their own choices
9 in order to retain a dominance, correct?

10 A No. What I said is that it increases your chances of
11 losing dominance if you give the elephant choices.

12 Q So the goal is to not give the elephant any choices; is
13 that your testimony?

14 A Correct.

15 Q All right. And when you used the ankus, it didn't break
16 the skin of the elephant every time you used it, did it?

17 A Not every time, no.

18 Q And whether the skin breaks depends upon how you use the
19 ankus; is that right?

20 A Yes.

21 Q It depends on how the elephant reacts, correct?

22 A It depends on many factors, including how the trainer
23 uses the ankus, how the elephant responds to the ankus, and
24 the health of the skin of the elephant.

25 Q Depends on how trained the elephant is, correct?

1 A How -- not necessarily.

2 Q Okay. Let's go back to the Gabel trial transcript at
3 page 526. I want to look at line 7 through 23.

4 And the question was asked (reading) Now, it didn't
5 break the skin of the elephants every time you used the ankus,
6 did it?

7 (Reading) Answer: No. It depends on how you use
8 the ankus and how the elephant reacts, how trained the
9 elephant is, how cooperative she is, and how skilled you are
10 with the hook. So the hook can very easily break the skin of
11 an elephant.

12 Did I read that correctly?

13 A You read it correctly.

14 Q Okay. So there are lots of factors that go into whether
15 or not the skin is actually broken when an ankus guide, hook,
16 whatever you want to call it, is used?

17 A Correct.

18 Q Okay. And you admit that you yourself were actually
19 heavy-handed when you used an ankus; is that right?

20 A I was heavy-handed at times when I used the ankus; not
21 all the time.

22 Q An elephant's scars can last a lifetime; is that right?

23 A Elephant scars can last a lifetime.

24 Q And Tarra herself has some hook scars; is that correct?

25 A Tarra has no hook scars.

1 Q Okay. Does she have any scars?

2 A Yes, she does.

3 Q How many scars does she have?

4 A She has two scars. She has one scar on her front
5 shoulder, which was from an elephant shoving her into a pipe
6 corral. And she has another scar on the inside of her right
7 back leg, right on the bony area, where a trainer beat her on
8 the inside of the leg with a bull hook.

9 Q So she does have a hook scar?

10 A Not a hook scar. She has a beating scar.

11 Q Would you explain to us what the difference is, please?

12 A The difference is a hook scar is made from the hook,
13 embedding the hook into the skin. But the other scar, like
14 the scar Tarra has, is caused from beating the elephant with
15 the handle of the elephant hook.

16 Q Okay. Now, you currently do not use an ankus at your
17 place in Tennessee; is that right?

18 A Correct.

19 Q And you believe that elephants must always be given their
20 choice of their behavior; is that right?

21 A I believe that an elephant should be given an opportunity
22 to make choices about things that are important to them.

23 Q You believe that they must always be given their choice
24 of behavior, don't you?

25 A I think you already asked that question.

1 Q Is the answer "yes"?

2 A No. The answer is that elephants should be given choices
3 for the things that are important for them.

4 Q Okay. Let's turn to page 210 of your deposition, please,
5 lines 1 through 6.

6 The question was asked during your deposition in
7 this case (reading) Must elephants always be given the choice
8 of their behavior?

9 (Reading) Answer: In my opinion, and in my
10 experience with working to achieve a situation where elephants
11 are in a healthy environment, they should always be able to
12 make all their own choices.

13 Did I read that correctly?

14 A You read it correctly. And the question was not must
15 they always be given their own choices, choices of their
16 behavior. And that's different.

17 So in this case, the question should they be allowed
18 to make their own choices with their behaviors, absolutely.
19 They should always be allowed to make their own choices about
20 their own behaviors.

21 Q Always, correct?

22 A Yes.

23 Q And this means that you will not intervene with the bull
24 hook to break up an elephant fight; is that correct?

25 A We don't have bull hooks on grounds, and we would never

1 use bull hooks. So, no, we would not intervene with a bull
2 hook to break up a fight.

3 Q And the contingency plan you have at your place for an
4 elephant that goes on a rampage is a tranquilizer gun; is that
5 correct?

6 A Elephants don't go on rampages.

7 THE COURT: How would you break up a fight if you
8 don't use the hook?

9 THE WITNESS: Okay. We don't break up a fight. We
10 make sure that we create situations where the elephants are
11 able to deal with their own situations, their own
12 disagreements. And that is by giving elephants ample space to
13 leave.

14 THE COURT: All right. In the unforeseen
15 circumstance in which you have a fight, though, between two
16 elephants, you would -- they just -- you would just let them
17 fight?

18 THE WITNESS: Yeah. And we have females. We do
19 have one bull, but we primarily have females.

20 What we've learned is that if they have
21 disagreements, which they will, that if you give them space,
22 one will leave. And if you try and intervene, it just adds
23 fuel to the fire.

24 It -- the more dominant one will want to prove that
25 she's tougher. If you just back away, the -- quickly, it will

1 dissolve. And, because there is space, then you don't have to
2 be concerned about one hurting the other.

3 What happens with elephants when they fight, and how
4 they get hurt, is they can't flee in a confined space.

5 THE COURT: What do you do in a situation where an
6 elephant is charging an attendant at the sanctuary?

7 THE WITNESS: We don't have that situation hap- --
8 well, we had that situation happen once. It wasn't even a
9 charge. It was two feet away. She just turned and hit her.

10 One of the things that we do is make sure that we
11 are managing elephants in a way that is as safe as possible,
12 and part of that is observation. We have to be observing the
13 elephants continually to see what state of mind they're in, to
14 see what physical condition they're in, what their health is,
15 which is going to have an impact on how they act out.

16 We also require a high level of relationship between
17 the caregiver and the elephant. We do practice protected
18 contact -- most of the staff, besides myself and Scott Blais,
19 practice protected contact with all of the elephants, which
20 means that there is a barrier -- in design -- a barrier
21 between them and the elephants, so that they are not in a
22 situation where, if an elephant were to charge, the elephant
23 couldn't reach them, you know.

24 Q (BY MS. JOINER) Did I understand your testimony correctly
25 that you say elephants do not rampage?

1 A The word "rampage," define that for me.

2 Q You don't know what that means?

3 A Define it, your definition of rampage.

4 Q Okay. Well, let me ask it this way. You're a licensed
5 facility in Tennessee, aren't you?

6 A Yes, we are.

7 Q And you're required to have a contingency plan in case of
8 an emergency if something goes wrong with an elephant, aren't
9 you?

10 A We are required in case of emergency to have a plan, yes.

11 Q And you do, in fact, have a contingency plan, don't you?

12 A Yes, we do, for emergencies.

13 Q Part of that contingency plan includes a tranquilizer
14 gun.

15 A In our plan we have it, yes. We have a tranquilizer gun.

16 Q You have never actually seen a bruise on an elephant,
17 correct?

18 A I have not seen a bruise on the body of an elephant.
19 I've seen bruises on the feet of elephants.

20 Q Okay. But you have seen puncture wounds on your elephant
21 at the sanctuary, haven't you?

22 A Puncture wounds?

23 Q That's correct.

24 A Restate your question. I don't understand.

25 Q You have seen puncture wounds on your elephant at the

1 sanctuary, have you not?

2 A I don't understand your question. What kind of puncture
3 wounds?

4 Q Any kind.

5 A Okay. Define "puncture."

6 Q Okay. Let's just go to your deposition transcript --

7 A Okay.

8 Q -- from the Gabel trial, at page 535, line 4 through 10.

9 The question was asked (reading) Have you ever seen
10 a puncture wound on any of your elephants since you've been
11 running the sanctuary?

12 (Reading) Answer: A puncture wound? The only
13 puncture wound I've ever seen is Tarra puncture the end of her
14 trunk. They have a little finger to the end of her trunk.
15 She punctured several places on the end of her trunk when she
16 was learning to pick blackberries.

17 Did I read that correctly?

18 A Yes, you did.

19 Q And you've also seen scratches on elephants at the
20 sanctuary, have you not?

21 A I have seen scratches.

22 Q And you've also seen a divot of flesh that's been torn
23 out on elephants at the sanctuary, have you not?

24 A I'm trying to remember if I've seen -- I can't remember.

25 Q You can't remember if you've ever seen any scratches or

1 divots of flesh on the elephants?

2 A Just scratches. I've seen divots. What's a divot?

3 Q Well, let's go to page 535 of the Gabel transcript, lines
4 11 through 16.

5 (Reading) How about behind their legs? Have you
6 ever seen puncture wounds behind their legs?

7 (Reading) Answer: No. The only thing we see on
8 the elephants, any injuries, are scratches or actually a divot
9 of flesh that's been torn out, a piece of flesh, not
10 necessarily deep, but the surface skin's been torn away.

11 Did I read that correctly?

12 A You read it correctly.

13 Q Now, the judge was asking you earlier -- you don't
14 believe that elephants belong in the circus, do you?

15 A It is not true to say that I don't believe that elephants
16 belong in the circus. It is true to say that currently, the
17 way elephants are kept in circuses and the way elephants are
18 trained and perform in the circus, I don't believe that's in
19 their best interest and doesn't meet their welfare need.

20 Q You also do not believe that elephants belong in
21 captivity, do you?

22 A That is not true. I -- it is not true.

23 Q All right. Let's look at your Gabel trial transcript on
24 page 540, line 23.

25 Question is asked (reading) There has been much

1 made about positions of people regarding the issue of animals
2 being used in circuses. What is your feeling about the use of
3 elephants in circuses?

4 (Reading) Answer: I'm very clear about how I feel
5 about elephants, and it's not about elephants in circuses,
6 it's about elephants in captivity. And I personally feel that
7 elephants don't belong in captivity.

8 Did I read that correctly?

9 A You read it correctly. And that was in 2001, as you have
10 said. And over time and with experience, seeing what we have
11 been able to do for elephants at the elephant sanctuary, I
12 have changed my position, and I don't feel that elephants
13 should not be allowed to live in captivity. I believe that,
14 if they are in captivity, their welfare needs should be met.

15 Q And when did you change your position?

16 A Over time of running the elephant sanctuary the last 15
17 years.

18 Q You can't pinpoint when you changed your position?

19 A No. I didn't just one day wake up and change my mind.

20 Q Okay. Well, you've also previously opined that elephants
21 simply cannot be sustained in captivity; is that correct?

22 A I don't really agree with that statement today, no.

23 Q But you offered that opinion once in a federal court
24 case, did you not?

25 A I may have offered that opinion at one time in a court

1 case, but that doesn't mean that I haven't changed my mind
2 since, through my experience at the sanctuary.

3 Q Okay. Well, you recall giving a declaration in the
4 Swaziland case, did you not?

5 A I did.

6 Q And that was back in 2003?

7 A Right.

8 Q And your opinion in that case was that elephants simply
9 cannot be sustained in captivity, wasn't it?

10 A And that was in regards to wild elephants being captured
11 and brought into a captive situation where there is actually
12 an opportunity for those same wild elephants to be relocated
13 to another wild location. And so that is sort of taken out of
14 context. That was really applied to those elephants, that
15 particular group of wild elephants, that were going to be
16 brought into a zoo.

17 Q You're fully aware that wild elephants can be sustained
18 in captivity, aren't you?

19 A They can be sustained, I suppose, but they don't last
20 long.

21 Q Ringling's herd is self-sustaining, isn't it?

22 A I don't know if they are self-sustaining.

23 Q In fact, it is the only herd in the U.S. that is
24 self-sustaining, isn't it?

25 A How do you define "self-sustaining"?

1 Q It has a gene pool that is diverse enough that it can
2 sustain itself in its own herd.

3 A I do not know if Ringling has a herd that is
4 self-sustaining.

5 Q Okay. Now, you've changed your mind today to say -- or
6 at some point -- to now say that elephants can be kept in
7 captivity if their needs are met. Is that -- am I
8 understanding correctly?

9 A You're understanding correctly.

10 Q But you don't know, as you sit here today, if such a
11 facility exists in North America; is that right?

12 A I don't know if such facilities exist. I have not seen
13 such facilities yet in North America.

14 Q Okay. And you also don't believe that elephants belong
15 in zoos either, do you?

16 A That is an incorrect statement.

17 Q Were you interviewed in 2005 by the Chicago Tribune?

18 A I may have been.

19 Q Okay. And you run a website for the elephant sanctuary,
20 do you not?

21 A I provide information for the sanctuary's website,
22 correct.

23 Q And, on your website, you post some of the articles and
24 interviews that you participate in, don't you?

25 A I post a lot of articles about elephants. And if those

1 articles happen to have information -- interviews from me, as
2 well, it's usually just articles about elephants both in the
3 wild and in captivity.

4 Q Do you disagree that elephants -- let me rephrase that.
5 You don't believe that elephants should be on display, do you?

6 A That is not correct.

7 Q Okay. Let's pull up the May 29th, 2005, article.

8 All right. Go to the first page, please.

9 This is a Chicago Tribune article from May 29, 2005,
10 and you're quoted in that article. I want to go down to page
11 5.

12 And I want to focus on the language that says
13 (reading) One natural behavior Buckley will not allow is
14 breeding.

15 And it quotes you as saying, "If they come here, we
16 let them become extinct, she said, underlining the philosophy
17 that elephants should not be in captivity."

18 Next quote. "There is a big difference between
19 extinction in captivity and in the wild."

20 Did I read that correctly?

21 A You read it correctly. But that quote is not -- I did
22 not say that. I may have said something close to that, and
23 that's what his interpretation was. It is not in quotes that
24 says elephants should be in captivity -- oh, it is -- no, it's
25 not in quotes. I did not say that to him. That's what the

1 reporter said.

2 Q I see.

3 A And we all know that the media doesn't always get the
4 information correct when they speak to you.

5 Q That's correct. So, in this instance, this article is
6 wrong; is that right?

7 A I'm not saying that the article is wrong. I'm saying
8 that I was not accurately quoted. And my position about
9 elephants living in zoos is -- again, it's not about the venue
10 where the elephant lives. It's about the quality of life that
11 the elephant is given. And if zoos can provide the quality of
12 life and meet the elephant's needs in zoos, and that is
13 captivity, then that is fine with me.

14 The elephant sanctuary is captivity. Any elephant
15 that is in any venue is in captivity. And the goal for us,
16 that we believe, is that we should try and meet their
17 psychological and physical needs.

18 Q You don't believe that elephants should be on display for
19 the public, do you?

20 A I believe that it compromises elephants to have them on
21 display in the traditional way that elephants are displayed,
22 which is to have the elephants performing, wearing costumes,
23 doing tricks for people. The whole purpose of an elephant
24 performing tricks is to entertain the public.

25 Q Well, that's the whole reason why you have your Elecam,

1 correct?

2 A To entertain the public? Definitely not.

3 Q To display your elephants, because the public is not
4 welcome at your facility; isn't that right?

5 A No, that's not right. The Elecam is an educational tool,
6 and it provides a window into the world of elephants without
7 disturbing the elephants at all. So it gives us an
8 opportunity to educate the public without compromising the
9 elephants.

10 Q But the public cannot come to your facility and see those
11 elephants in person, can they?

12 A No. There is no reason that the public should have to
13 come to the elephant sanctuary, especially when you have
14 technology such as live-streaming video that will allow the
15 viewer to see elephants acting as elephants do normally,
16 naturally. This is the way that they learn what elephants are
17 really like.

18 Q You also do not believe in captive breeding; is that
19 correct?

20 A I'm opposed to captive breeding at the elephant sanctuary
21 because we do, indeed, have limited space. And our position
22 is that we need to be a home to the most needy of elephants.
23 And, if we breed elephants, then we are taking up that space.

24 Q Limited space, but you just told your counsel that if you
25 built additional facilities and infrastructure, you have

1 physical space for up to a hundred elephants; is that right?

2 A And we do. And if we bred elephants, we would be taking
3 away additional space for needy elephants. There are 600
4 elephants that are living in captivity today.

5 Q And you have at least two elephants that are breeding age
6 at your facility; is that correct?

7 A Well, because I don't know that the industry is really
8 clear on what the breeding age is, there are some
9 disagreements if first-time mothers need to be, you know,
10 under 40 years old. So our population ranges from 25 years
11 old to 64. And we have probably three or four that are
12 younger than 40.

13 Q So you have at least two that are considered breeding
14 age; is that right?

15 A If breeding age is considered younger than 40, uh-huh,
16 yes, we do.

17 Q All right. And by depriving those elephants of breeding,
18 you're not putting them in an environment that meets their
19 biological needs, are you?

20 A I'm not depriving them of breeding, of being bred. I am
21 depriving them of being bred. One of the things that we've
22 learned at the sanctuary is -- through the research -- is
23 there is no external signs behavior-wise, any biological
24 change, external change in elephants. We see nothing in the
25 females, as if you -- you would expect to see them when they

1 are cycling. They don't.

2 And so that's one of the reasons that we were very
3 clear that we would not bring male elephants in, because we
4 didn't want to create an environment where there might be
5 chemical messages from the male or the breeding activity from
6 the male that might then change the females and bring them to
7 the point that maybe they would be interested in breeding. At
8 this point, we see nothing that indicates that the elephants
9 are cycling at all.

10 Q You're not putting them in an environment that meets
11 their biological needs, are you?

12 A We are not allowing them to be bred.

13 Q And that doesn't meet their biological needs, does it?

14 A I'm not sure that it's a biological need to be bred. It
15 is definitely a natural behavior that happens. And elephants,
16 males and females that are together, will breed.

17 But there are a lot of human women that don't have
18 babies also, and I don't think it's a detrimental aspect of
19 their life.

20 Q In addition to testifying in litigation, you also give
21 statements at various legislative hearings as well, correct?

22 A Yes.

23 Q All right. And you spoke at a legislative hearing for
24 the Chicago City Council in February of 2006?

25 A I did speak in Chicago, correct.

1 Q And you were there to support a proposed ordinance to ban
2 circus elephants, weren't you?

3 A No. It wasn't to ban circus elephants. I believe it was
4 to ban the use of bull hooks and chaining.

5 Q And who first asked you to testify at that hearing?

6 A I don't recall.

7 Q Okay. I'd like to go to Exhibit 284, please. This is
8 the Chicago City Hall tape, at Clip No. 49:21 through 50:13,
9 where the question was asked about breeding and biological
10 needs.

11 (VIDEO CLIP PLAYED.)

12 Q (BY MS. JOINER) In addition, Ms. Buckley, you also
13 oppose the importation of any elephants into the U.S., don't
14 you?

15 A It's illegal to import elephants into the U.S.

16 Q It's not illegal if its done with a permit under CITES,
17 is it?

18 A You can get a CITES permit if you prove conservation.

19 Q And you actually sued to stop the import in the Swaziland
20 case, did you not?

21 A I was a party to the lawsuit to prevent those elephants
22 from being brought into captivity. And that was only after we
23 found several locations for those elephants to be moved to in
24 a wild situation.

25 Q And it was your opinion that importing those elephants

1 would have an extremely detrimental effect on them; is that
2 right?

3 A It had the possibility of having an extremely detrimental
4 effect on them.

5 Q You didn't phrase it as a possibility to that Court, did
6 you?

7 A I don't know if I did or not. But you asked me the
8 question, and I'm answering you.

9 Q Well, let's take a look at your declaration that you
10 submitted in the Swaziland case. I want to go to the first
11 page, please. Next page, please.

12 This is your declaration. I'm going to go to the
13 last page, please.

14 Do you recognize your signature?

15 A Yes, I do.

16 Q Okay. And I'd like to go back now to paragraph 13. I
17 want to read the first sentence of that paragraph.

18 (Reading) The sanctuary -- that means the elephant
19 sanctuary, is that right, that's referenced there?

20 A Correct.

21 Q (Reading) The sanctuary firmly believes that elephants
22 should be left in the wild because the conditions commonly
23 associated with captivity have extremely detrimental effects
24 on the animals.

25 Did I read that correctly?

1 A Yes, you did.

2 Q And you mentioned with counsel that your -- your current
3 space would permit you to take an additional 100 elephants; is
4 that right?

5 A Yes. And I have a question. Can I go back to this item
6 you have here, this paragraph?

7 This paragraph says (reading) The sanctuary firmly
8 believes that elephants should be left in the wild because the
9 conditions commonly associated with captivity have extremely
10 detrimental effects.

11 Now, it's a little bit different than asking,
12 bringing the elephants in, would that be detrimental?

13 Bringing them in has -- has one effect on them. But
14 living their life in captivity has a greater impact on them.
15 And I will state that it is extremely detrimental for
16 elephants to be living in captivity.

17 Q Thank you. I believe you said that you had 17 elephants
18 that are currently at your sanctuary; is that right?

19 A Correct.

20 Q And --

21 THE COURT: Do you have to get permits from the
22 federal government for those elephants?

23 THE WITNESS: We don't -- all of the elephants that
24 are already in the U.S. are permitted, in theory. For us to
25 bring an elephant to the sanctuary, we have to get a state

1 permit.

2 THE COURT: One second. Good luck. Enjoy your stay
3 at the court. Bye-bye.

4 (STUDENTS LEAVE COURTROOM.)

5 THE WITNESS: There is a state agency called the
6 Tennessee Wildlife Resources Agency, and they are responsible
7 for overseeing all the wildlife -- or exotics and wildlife.
8 And so for us to bring an elephant into Tennessee to the
9 sanctuary, we must get a permit for each individual elephant
10 that comes to us.

11 THE COURT: All right. But you don't have to get a
12 permit from either the USDA or Fish & Wildlife Service, then;
13 is that correct?

14 THE WITNESS: No. That's correct.

15 THE COURT: Is there an exemption that applies to
16 the sanctuary?

17 THE WITNESS: No. No.

18 Q (BY MS. JOINER) We were talking earlier, the number of
19 elephants that you currently have at the sanctuary, I believe
20 you said, is 17; is that correct?

21 A Correct.

22 Q And your goal right now is to raise a \$100 million
23 endowment for the 17 elephants that are at the sanctuary;
24 isn't that correct?

25 A That's not our goal right now. This has been our -- our

1 understanding that, for this organization to continue to be
2 able to help the elephants that we bring to the sanctuary,
3 that there has to be an endowment set up for each elephant.

4 We originally started with an endowment of --
5 suggesting that we needed an endowment of a hundred and -- I
6 think it was seventy-five thousand dollars.

7 And, very recently, I went to our board and I said
8 that's fairly unrealistic. We really need to be realistic and
9 let people know how expensive it is to keep an elephant
10 properly. So it was probably a month ago that we voted and
11 decided that we would go ahead and raise our goal to a million
12 dollars for each endowment.

13 Q Okay. Let's go to page 110 of your deposition. This is
14 from the deposition that was taken on July 28th, 2008. And
15 I would like to go to the question that was asked at line 17.

16 (Reading) I see. How large do you want the
17 endowment to be for the current elephants?

18 (Reading) Answer: Well, considering the longevity
19 of an elephant and the numbers that we, you know, hope to be
20 able to care for in the future, we would like to see that
21 endowment at the 100 million.

22 Did I read that correctly?

23 A Yes, you did. And that's because we are projecting that
24 we can accommodate 100 elephants. And we would, of course --
25 we're not set up for needing the hundred -- wanting the

1 hundred million dollar endowment now. We would -- each time a
2 new elephant comes in, we would set up an account for her.

3 Q And without any changes to your infrastructure right now,
4 you would have the ability to take up to ten more Asian
5 elephants; is that correct?

6 A Well, actually, we could take more.

7 Q How many more could you take?

8 A We could probably take 20 more with what we've got.

9 Q And how many more African elephants could you take right
10 now without any changes?

11 A We could take three more.

12 Q And the total number of Asian elephants in North America
13 is approximately 300; is that correct?

14 A Yes.

15 Q And you do not have any plans to reintroduce any of your
16 elephants into the wild, correct?

17 A It's my understanding that it's illegal to reintroduce
18 elephants back into their homeland. We have no plans to do
19 that.

20 Let me correct myself. That it's illegal to
21 reintroduce elephants from the United States into their
22 homeland.

23 Q Okay. So if you aren't going to breed elephants and you
24 aren't going to import them, then how are you going to acquire
25 more elephants for the sanctuary?

1 A We are not looking to acquire elephants. We rescue
2 elephants. We're a home for needy elephants. So if somebody
3 needs to place an elephant with us, we are available.

4 THE COURT: How does that work?

5 THE WITNESS: Several different ways. A zoo
6 outgrows their space, their elephant space, and they don't
7 have the funds to build a bigger enclosure. They look around
8 for another zoo to place the elephant at. And if, for reasons
9 that that elephant doesn't fit into their collection, then the
10 elephant -- they'll ask us to take it.

11 In some cases, the zoo or circus is told to move
12 their elephants, told to make their facilities better, or to
13 move their elephants. Some elephants are confiscated from the
14 USDA. We got eight circus elephants from the Hawthorne
15 Corporation, and those elephants came to us as a result of a
16 lawsuit. The company was found guilty of 19 counts of
17 elephant abuse. And the agreement that was made was that this
18 company would place all of their elephants.

19 THE COURT: So you're licensed by USDA, though?

20 THE WITNESS: Correct.

21 THE COURT: Now, the license entails what? It's a
22 license to do what?

23 THE WITNESS: It's a license to have the elephants
24 on exhibit.

25 THE COURT: On exhibit?

1 THE WITNESS: Uh-huh.

2 THE COURT: All right. And that license was issued
3 after what, some sort of investigation by USDA?

4 THE WITNESS: You have to apply for the permit. And
5 you're not supposed to get -- have an elephant on the premises
6 until you have their permit.

7 THE COURT: All right. "Permit" as distinguished
8 from "license"?

9 THE WITNESS: I just called it a license. Excuse
10 me. It is a license, yes.

11 THE COURT: You just mentioned permits earlier.
12 You're not --

13 THE WITNESS: Yeah. With TWRA, it's a permit. With
14 the USDA, it's a license.

15 THE COURT: All right. TWRA, that's not a federal
16 agency, or is it?

17 THE WITNESS: It's a state agency. And we are
18 licensed by that agency, but we need to get an individual
19 permit for every elephant that comes in.

20 THE COURT: From the state?

21 THE WITNESS: From the state.

22 THE COURT: But not from the federal government?

23 THE WITNESS: Not from the federal government.

24 THE COURT: All right. And are there periodic
25 inspections by the state?

1 THE WITNESS: The state has annual inspections. In
2 our case, because we're so large, we're inspected three times
3 a year, so they can cover our entire facility.

4 USDA, they're required to do an inspection once a
5 year, but they are also required to inspect if they receive a
6 complaint.

7 THE COURT: All right. Now, I want to be clear now,
8 because you've said permits and licenses from USDA. So which
9 one is it?

10 THE WITNESS: From USDA it's a license.

11 THE COURT: Not a permit?

12 THE WITNESS: It's not a permit. Sorry.

13 THE COURT: And the only regulation is definitely by
14 the state and maybe by the federal government on an annual
15 basis or an as-need basis.

16 THE WITNESS: Inspections are from both
17 organizations annually; minimally, annually.

18 Q (BY MS. JOINER) If I understood your testimony
19 correctly, you were saying that elephants could come to the
20 elephant sanctuary through gifts or donations from other
21 circuses, zoos, or whatever; is that correct?

22 A The elephants are donated to us, correct.

23 Q It can also come to you by a confiscation by the USDA?

24 A Correct.

25 Q And could they also come to you through litigation?

1 A I have no idea. None have come to us through litigation.

2 Q And you've never thought about obtaining the elephants
3 through litigation?

4 A No, because we don't look to obtain elephants. We are
5 not looking to get elephants. We are looking to create -- we
6 are -- we have created a space where elephants can come if
7 they need it.

8 THE COURT: You hope to never see another elephant.

9 THE WITNESS: Exactly. Yeah. Exactly.

10 THE COURT: It's not that you don't -- it's not like
11 you like elephants, but you don't want to see them come to the
12 sanctuary under the circumstances that they normally bring
13 them there.

14 THE WITNESS: Exactly. And when a new elephant
15 comes, that just increases our workload. And, usually, the
16 elephant is in bad physical condition, and we have -- this
17 elephant we just got, Ned, he's a mess, you know.

18 And it's hard to see him that way. It's hard to
19 identify what his ailment is. And so, no, we are not out
20 there trying to get elephants.

21 Q (BY MS. JOINER) Ms. Buckley, when did you become an
22 expert in this case?

23 A I don't know.

24 Q Was it last year?

25 A I don't know.

1 Q You don't know. All right.

2 MS. JOINER: I want to pull up Judge Facciola's
3 September 25, 2007, order. And there are certain things I
4 would like to ask the Court direct your attention to and take
5 judicial notice of.

6 THE COURT: Sure.

7 Q (BY MS. JOINER) Paragraph 1, if you would scroll down a
8 little bit. This required -- and you'll see here,
9 Ms. Buckley, that expert witnesses had to be disclosed by
10 Plaintiffs by October 12, 2007. So you would have had to have
11 been an expert in this case by then; is that right?

12 A If that's what that says, yeah.

13 Q Okay. And I want to read the next line into the record,
14 if Your Honor will permit.

15 (Reading) In addition to the identity of the
16 expert, such disclosure shall also include, A, the expert's
17 curriculum vitae; and, B, a precise detailed description of
18 each test or procedure the expert wishes to perform and its
19 purpose.

20 The next paragraph I'd like to ask you to take
21 notice of is paragraph 3, (reading) The handling and
22 interactions with the elephants.

23 (Reading) At all times, Defendant will have the
24 primary responsibility of supervising Plaintiffs' handling of
25 and interactions with the elephants. If, during the

1 inspections, Plaintiffs' experts are in need of assistance
2 from Defendant in the handling of the elephants and
3 administering of the tests or procedures, Defendant shall
4 provide such assistance.

5 And paragraph 5 gave Defendant the primary
6 responsibility of maintaining the safety during the
7 inspections.

8 And paragraph 7, which I would also like to read, if
9 Your Honor will allow, says (reading) That Plaintiffs are to
10 take every precaution necessary to conduct their inspections
11 in the least intrusive manner possible in order to keep the
12 disruption of Defendant's operations, animal husbandry, and
13 daily routines to a minimum.

14 Had you seen this order before, Ms. Buckley?

15 A I'm sure I read it.

16 THE COURT: This is not staged. So even I have to
17 leave. We have to leave.

18 (EMERGENCY ALARM - A RECESS WAS TAKEN.)

19 THE DEPUTY CLERK: Please remain seated and come to
20 order.

21 THE COURT: All right. That was not a drill. There
22 actually was a fire in one of the electrical areas.

23 So let's proceed.

24 Q (BY MS. JOINER) Ms. Buckley, before the break we were
25 talking about the \$100 million endowment for the elephant

1 sanctuary. And that amount is for the elephants that are
2 currently there, correct?

3 A No. Excuse me. Ask that question again.

4 Q That amount would be for the elephants that are currently
5 there at the sanctuary, correct?

6 A 100 million?

7 Q Yes.

8 A No. It's 1 million per elephant.

9 Q Okay. Let's go to your deposition, please, at page 113,
10 lines 10 through 17.

11 (Reading) I see. With the hundred million in
12 endowment, would that accommodate a hundred elephants?

13 (Reading) Answer: No. I'm talking about right now
14 what we want for just the elephants we have.

15 (Reading) Question: Okay.

16 (Reading) Answer: So if we increase numbers of
17 elephants, all the other numbers would increase, as well.

18 Did I read that correctly?

19 A You did, but it's a confusion. That's -- what we do is
20 set endowments at 1 million per elephant, and projected 100
21 elephants would be 100 million.

22 Q Now, is it your opinion that it is simply unacceptable
23 for an elephant to be kept by herself?

24 A Yes, it's -- it is very detrimental for an elephant to be
25 kept alone -- a female elephant to be kept alone.

1 Q Do you consider that to be a taking?

2 A For -- to keep a female elephant alone, I consider it a
3 take, yes.

4 THE COURT: Excuse me one second. Excuse me one
5 second.

6 (PAUSE.)

7 THE COURT: Go right ahead.

8 Q (BY MS. JOINER) You mentioned on direct the phrase "needy
9 elephants." Would you describe for us what you mean by needy
10 elephants, please?

11 A Any elephant that is not living in an environment where
12 she's getting her needs met, her welfare needs met.

13 Q And, in your opinion, you think that most every elephant
14 in the U.S. is needy; is that right?

15 A There are many elephants in the United States that I
16 consider to be needy. They don't have access to a vast space
17 to exercise their natural posturing, and there are many
18 elephants that are not kept in social situations where they
19 can interact with other elephants. And, additionally, some
20 elephants are kept in facilities that are far too small to
21 accommodate them.

22 Q And you consider the neediest elephants to be those that
23 are living alone; is that right?

24 A Yes. Well, I consider them in the group of the neediest.

25 Q Okay. And for you, you consider space, not the guide or

1 tethers, to be the key component to elephant welfare; is that
2 correct?

3 A I do agree that space is one of the key components for
4 welfare.

5 Q And you are aware of only two zoos in the U.S. that
6 provide sufficient space for their elephants, the Oakland Zoo
7 and the North Carolina Zoo; is that correct?

8 A I visited both of those zoos, and -- recently, and do
9 consider those zoos both to be striving to better the welfare
10 of their elephants and that they recognize space is a key.

11 Q Okay. And those are the only two that you can identify
12 that have sufficient space; is that correct?

13 A Yes. I've not visited all zoos in the United States, so
14 I can't speak to all of the zoos. But those are two that I
15 visited that do have -- are working to provide the space
16 necessary.

17 Q But there is no study at this time that determines the
18 space requirement for captive elephants, correct?

19 A There is no study being done in captivity -- there is no
20 study about captive elephant space, but there is lots of
21 information, scientific information that exists that
22 determines how elephants live in the wild, the space that they
23 utilize in the wild, and to what purposes they use that space.

24 Q So my question focused just on captive elephants. There
25 is no study that determines space requirements for captive

1 elephants, correct?

2 A There is no study that I know of that determines space
3 for captive elephants, but captive elephants aren't a unique
4 species. They are wild elephants brought into captivity.

5 Q And that would be all of them in the U.S., correct?

6 A Any elephant that is brought into captivity is a wild
7 elephant. The elephants that are born in captivity are not
8 domesticated animals. So they, too, are wild animals born in
9 captivity.

10 Q And you mentioned a little bit on your direct about
11 protected contact and the form that you use at the sanctuary.

12 Did you say that your other handlers use a barrier
13 in their form of protected contact? Did I understand that
14 correctly?

15 A What I said is that our caregivers -- all caregivers,
16 with the exception of Scott and myself, use protected contact
17 with all of the elephants. And that's inside and out in the
18 habitat as well.

19 The protected contact doesn't necessarily mean that
20 you have to have a physical barrier, but you have a barrier.
21 So when the caregivers are out in the habitat, then they're on
22 a motorized vehicle, and they have restricted space that
23 they're to keep between themselves and the elephant, and that
24 creates the protected contact barrier.

25 Q Okay. And free contact means that there is no protected

1 barrier between the handler and the elephant; is that right?

2 A Correct.

3 Q Okay. And under both of those systems, free contact and
4 protected contact, it still requires domination of the human
5 will over the elephant will, doesn't it?

6 A In traditional free contact, it is dominance over the
7 elephant.

8 Q And it's that way in peer protected contact too, isn't
9 it?

10 A I'm not familiar enough with peer protected contact to
11 know.

12 Q Well, you gave that opinion in a federal court case,
13 didn't you?

14 A I don't know.

15 Q Well, let's go back to your declaration from the
16 Swaziland case, and let's pull up paragraph 24.

17 And I want to look at the -- you can read the whole
18 thing, but I want to look at the last sentence. Let me know
19 when you're ready.

20 A (Witness reading document.)

21 Okay. I'm ready.

22 Q The last sentence there that you provided states that
23 (reading) While pure protected contact is certainly better
24 than traditional free contact, the net result is still
25 domination of the human will over the elephant's will.

1 Did I read that correctly?

2 A Yes, you did.

3 Q And your system you now call passive control; is that
4 right?

5 A Can you ask that question again, now that we're seeing
6 this statement? What was your question in regards to this?

7 Q The question that predated this paragraph?

8 A Yes.

9 Q The question that predated this paragraph was that
10 (reading) Both free contact and pure protected contact
11 require domination of the human will over the elephant?

12 A Okay.

13 Q Okay?

14 A Uh-huh.

15 Q All right. Your system you now call passive control; is
16 that right?

17 A Correct.

18 Q And you have used that system, with the exception of
19 Tina, only on elephants that were free contact trained; is
20 that right?

21 A We have used passive control on every elephant that has
22 come to the sanctuary.

23 Q And, with the exception of Tina, have all the elephants
24 that have come to your sanctuary been trained in free contact
25 methods?

1 A I believe they all were.

2 Q And you agree that there could be a public safety issue
3 if someone were to run up to unchained elephants and startle
4 them?

5 A There could be a danger of running up to a chained
6 elephant.

7 Q As well -- oh, I'm sorry. Go ahead.

8 A One of our elephants, Frieda, came from a circus, and she
9 killed someone when they approached her while she was on
10 chains.

11 Q Okay. And there could also be a safety issue if the
12 elephant is unchained; is that correct?

13 A If the public has access to elephants, chained or
14 unchained, there is a danger issue.

15 Q Okay. And your passive control system of handling
16 elephants would be very dangerous to use with the public,
17 wouldn't it?

18 A Our passive control -- yes. We wouldn't use it with the
19 public.

20 Q Okay. And, likewise, it would be unsafe for use in the
21 circus, wouldn't it?

22 A Not necessarily unsafe to use in the circus. It would be
23 a very -- it would be a system that could be adapted in the
24 management of elephants.

25 Q All right. I want to go back to the Gabel trial at page

1 529. And the question is at line 18.

2 (Reading) So this is a system that cannot be used
3 in, say, the circus situation?

4 (Reading) Answer: I would say it's unsafe.

5 Did I read that correctly?

6 A Uh-huh.

7 MS. SANERIB: What's the context of that statement?

8 I'm sorry. I'm just unclear, from what you're reading,
9 what --

10 MS. JOINER: You want to back up and read that
11 question?

12 MS. SANERIB: Yeah.

13 Q (BY MS. JOINER) Okay. Let's back up, and we'll read the
14 question above.

15 Line 9 begins (reading) Now, using the methods of
16 discipline, is that dangerous to the people who are around the
17 elephant, because the elephant is basically free to do
18 whatever it wants if it doesn't want to obey?

19 (Reading) Answer: First, there is no discipline,
20 so there is no discipline in the system. And it would be very
21 dangerous to use the system where the elephant -- where the
22 public has access to the elephant, because you cannot
23 guarantee that the elephant is going to respond to you.

24 Did I read that correctly?

25 A Yes, you did.

1 Q Okay. Now, you also claim that your non-dominance system
2 of handling the elephants is safe for the trainer to use; is
3 that correct?

4 A Yes.

5 Q And that's because the trainer has not set themselves up
6 as the dominant individual, so there is no competition for
7 dominance.

8 A That's one of the reasons.

9 Q And, because there is no competition for dominance, you
10 claim that there is no danger that the elephants will become
11 aggressive, correct?

12 A That's incomplete. It is dominance -- competition for
13 dominance is one of the things that triggers aggression in
14 elephants, but there are many other things that trigger
15 aggression in elephants.

16 Q Okay. Well, let's go back and look at your testimony
17 from page 529, please.

18 A What year was this?

19 Q This was in 2001.

20 A Okay.

21 Q And the question is asked at line 21.

22 (Reading) How about for the trainer? Is it unsafe
23 for the trainer?

24 (Reading) Answer: No, not at all. Because, in
25 this system, the trainer has not set themselves up as the

1 dominant individual, so there's no competition for dominance,
2 as there is in the other system.

3 (Reading) So in this system, if the elephant
4 refuses, they know they're not going to be punished. It's not
5 even considered wrong when they decide not to do it. In this
6 system, it's not considered wrong. It's one of their choices,
7 and that's the choice they made. So, since there's no
8 competition for dominance, there's no danger that the
9 elephants will become aggressive.

10 Did I read that correctly?

11 A You did. And since -- since that time, in 2001, we've
12 had an experience with an elephant that was -- after an
13 incident, where she actually went after one of our caregivers
14 and killed the caregiver, the elephant was diagnosed with
15 post-traumatic stress disorder.

16 We were not aware that this was a possibility in
17 elephants. We didn't know that they could have this disorder,
18 this disease. And so, of course, it brings more information
19 to the table on elephants and how they might react in
20 different situations.

21 Q And that caregiver was Ms. Burke; is that correct?

22 A Yes, it was.

23 Q And that incident happened in July of 2006?

24 A Yes.

25 Q And, just a few months before that incident, you still

1 believed that, without exception, every single elephant that
2 has a horrible reputation arrived at the sanctuary and showed
3 no aggression to people?

4 A That was our experience.

5 Q Okay. And Ms. Burke had worked at the sanctuary for six
6 years; is that right?

7 A Correct. Or a little longer, I believe.

8 Q And, as of July of 2006 -- let me back up. The elephant
9 involved was Winkie, correct?

10 A Correct.

11 Q And, as of July 2006, how long had Winkie been at the
12 elephant sanctuary?

13 A Winkie arrived in 2000.

14 Q So she had been there about six years?

15 A Correct.

16 Q And this particular elephant had a known history of
17 aggression; isn't that right?

18 A Not at the elephant sanctuary.

19 Q But, prior to coming there, she was known within the
20 elephant community to have a history of aggression; is that
21 correct?

22 A In the elephant industry she was known as being
23 aggressive.

24 Q And she had hurt her keepers at the zoo in Madison,
25 Wisconsin, where she had been?

1 A I didn't know that she had hurt a keeper. But I did know
2 that a Ringling veterinarian came to look at her when he was
3 in town, and she did try and hurt him.

4 Q And that's the only instance where you had heard of this
5 elephant hurting anybody?

6 A It's the only specific incident that I heard of, that I
7 remember.

8 Q Okay. And, as of July 2006, neither Ms. Burke or
9 Mr. Blais, who was with her that day, had established any
10 dominance over that particular elephant, had they?

11 A No, they did not -- they had not.

12 Q And they also did not have any kind of equipment with
13 them, such as a guide or tethers or anything of that sort?

14 A They had no weapon.

15 Q And in fact, Winkie, at the time she had been there, had
16 not seen any guides or tethers for at least six years; is that
17 right?

18 A Correct.

19 Q And what was the size of her yard, or her enclosure where
20 she was at? How many acres?

21 A All right. Let's see. Until a year prior to -- not even
22 a year -- six months prior to the accident, she had access to
23 200 acres -- in the six months prior to the accident, she had
24 access to 2200 acres.

25 Q And was this under the same system that you described

1 where she could come and go as she pleased?

2 A Yes.

3 Q And I believe you described that that elephant kicked
4 or -- how -- explain to us, please, what that elephant did to
5 Ms. Burke.

6 A Joanna was standing right next to Winkie. Scott was on
7 the other side, not standing next to Winkie, but on the other
8 side. Winkie, in one movement, swung her head and her trunk,
9 hit Joanna across the chest with her trunk. Joanna fell to
10 the ground, and Winkie stepped on her, one step. And that was
11 that quick.

12 Q Winkie also crushed her with her head, didn't she?

13 A No, she did not. She stepped on her with her foot.

14 Q Did you ever talk to Mr. Blais about that?

15 A Yes, I did.

16 Q Did Mr. Blais ever say that he saw that elephant crush
17 her with his head?

18 A No. He said she didn't -- she crushed her with her foot.

19 Q Have you ever seen any of the investigative reports that
20 were done by the Tennessee authorities in this particular
21 case?

22 A Yes, I did.

23 Q Okay. Do you recall seeing Mr. Blais' statement?

24 A I don't recall, but I'm sure -- I don't recall.

25 Q Would it refresh your recollection if you looked at it?

1 A Sure.

2 MS. SANERIB: Your Honor, I'm going to object on
3 hearsay grounds.

4 THE COURT: I'll allow it.

5 Q (BY MS. JOINER) If you would go, please, to the second
6 statement here -- second one, please. Second statement. Thank
7 you.

8 And I want to direct your attention down to about --
9 approximately 10 lines down. This was a statement that
10 Mr. Blais --

11 THE COURT: The only question is whether or not that
12 statement refreshes your recollection. That's the only
13 question.

14 THE WITNESS: No, I don't remember reading this.

15 Q (BY MS. JOINER) You don't remember reading this?

16 A No, I don't remember seeing this.

17 Q Okay. Well, we'll set that aside.

18 As the director of the elephant sanctuary, did you
19 have to investigate what happened?

20 A I don't know that we were legally required to. But, of
21 course, within our organization, we did take that
22 responsibility seriously.

23 Q Okay. And Mr. Blais never told you that that elephant
24 head-butted Ms. Burke?

25 A No, because she didn't head-butt her.

1 Q Did the elephant kick her?

2 A No. She stepped on her.

3 THE COURT: Sorry. Did you see this?

4 Unfortunately, I hate to bring that up. Did you see it,
5 though?

6 THE WITNESS: No, I did not see it.

7 THE COURT: What's the source of your information?

8 THE WITNESS: The source is Scott Blais. He was
9 there.

10 Q (BY MS. JOINER) If an elephant kicks an individual --
11 setting aside Ms. Burke, if an elephant kicks an individual in a
12 manner that hurts them, do you consider that to be aggressive
13 behavior?

14 A Yes.

15 Q And if an elephant uses its head to push down on a human
16 being, regardless of whether it just injures or actually is
17 fatal to them, that is also a clear sign of aggression, is it
18 not?

19 A Yes, it is.

20 Q And if an elephant steps on a human being, that is also a
21 clear sign of aggression, is it not?

22 A If the elephant steps on the human being in an aggressive
23 manner. If the elephant is playing, that's a different issue.

24 Q Okay. Now, in your opinion, it is a taking to use
25 negative reinforcement with an elephant; is that right?

1 A Define "negative reinforcement." Specifically, what type
2 of negative reinforcement?

3 Q Didn't you use "negative reinforcement" on your direct?
4 Didn't I hear you say that?

5 A I don't recall. I probably did, but I need to know
6 specifically what you are asking.

7 THE COURT: When you used that term on direct, what
8 did you have in mind?

9 THE WITNESS: Well, it would depend what the
10 question was, because negative --

11 THE COURT: Why don't you define it. What does
12 "negative reinforcement" mean to you?

13 THE WITNESS: Negative reinforcement can be anything
14 from depravation of food, companionship, shelter, to physical
15 abuse.

16 Q (BY MS. JOINER) And it can also include just denying the
17 elephant the right of their choice; isn't that right?

18 A At this point, I don't know if I would call that -- no.
19 It's -- reinforcement is an action preventing them from making
20 a choice. If it was in the moment that you took their choice
21 away from them, that would be negative reinforcement.

22 Q Okay. Let's go to page 155 of your deposition, please,
23 line 19. And I would like to read through line 2 on the next
24 page.

25 The question is asked (reading) Is it a taking to

1 use negative reinforcement with an elephant?

2 (Reading) Answer: Is -- I believe that's a typo --
3 in my opinion, in my experience, if you use negative
4 reinforcement with an elephant, you are denying them the right
5 to their choice and, therefore, you are taking.

6 (Reading) Question: And by "taking," I mean in
7 your view under the Endangered Species Act.

8 (Reading) Answer: Correct.

9 Did I read that correctly?

10 A Yes.

11 Q So if you queue an elephant with a bull hook, that's a
12 taking also, correct?

13 A If queuing them harms them, then it is negative
14 reinforcement. And, if you harm them, that's taking.

15 Q Let's go to page 159 of your deposition, line 23.

16 The question is asked (reading) Okay. You --

17 THE COURT: How do you -- how do you regulate that
18 activity, though? How do you regulate -- you'd agree, would
19 you not, that some use of the bull hook is appropriate or not?

20 THE WITNESS: Well, the problem is it's the whole
21 philosophy of management when you're using a bull hook,
22 because then you're using dominance, and you feel that
23 punishment -- punishment is a part of it. So you just change
24 how you manage elephants. You do it differently.

25 THE COURT: Do you consider just the handling of the

1 bull hook, without more appropriate or inappropriate use of
2 the bull hook, more harm?

3 THE WITNESS: Well, if it actually was used in a way
4 that the elephant wasn't harmed, it wouldn't be being used as
5 it was designed. I mean, it's a hook. It's pointed.

6 THE COURT: It's also a deterrent, though, isn't it?
7 I mean, elephants know that it inflicts pain.

8 THE WITNESS: Right. It inflicts pain.

9 THE COURT: Right. So what about -- what about the
10 trainer who has it in his hand and is barking out commands to
11 the elephant, and the elephant performs? Is that elephant
12 being harmed?

13 THE WITNESS: Not in that moment. But they are not
14 touching them with the elephant hook in that moment.

15 THE COURT: If he touches -- you know, at what point
16 is there harm? Is there a harm when the touch occurs?

17 THE WITNESS: Well, see, here's the thing. The only
18 reason an elephant reacts to the bull hook is because of the
19 history. If they had never been hurt by the bull hook, they
20 are not going to react negatively to it at all. But, because
21 there is a history of the pain and -- the pain that they've
22 experienced --

23 THE COURT: Sure.

24 THE WITNESS: -- that's why the hook is effective.

25 THE COURT: So the touching, then, is a harm?

1 THE WITNESS: If -- if it elicits a reaction,
2 fear --

3 THE COURT: Well, tell me something. Suppose the
4 elephant -- I don't know what the commands are, but a command
5 is set up...

6 THE WITNESS: Say, "Come here."

7 THE COURT: "Come here," right. And the elephant
8 doesn't respond, and the elephant -- and the handler hits --
9 not hits them, but...

10 THE WITNESS: Well, what they're going to do, they
11 are going to reach underneath the chin and yank the elephant
12 to them.

13 THE COURT: Suppose he doesn't do that, though, or
14 she doesn't do that, he just touches them?

15 THE WITNESS: Well, if they are not touching them,
16 they're not...

17 THE COURT: No, they touch him.

18 THE WITNESS: If they just touch them? If they are
19 just touching them, then -- and the elephant isn't reacting,
20 and there's no fear reaction?

21 THE COURT: Yes. I mean, suppose the command is
22 given, and the elephant doesn't react, and the handler just
23 reaches out and --

24 THE WITNESS: Uh-huh.

25 THE COURT: -- touch -- and doesn't -- doesn't

1 puncture the elephant, doesn't, you know, do anything to draw
2 blood, but touches him in a way to get his attention to
3 respond to the command, is that a harm?

4 THE WITNESS: If the elephant responds without a
5 fear reaction, then I don't believe it would be considered a
6 harm. But if the reaction is a fear-based reaction, then
7 that -- they're responding to the pain that they experience.
8 And that would be a take.

9 THE COURT: A fear-based reaction would be a what, a
10 trumpeting or...

11 THE WITNESS: No. Their eyes get big, they'll
12 squeal, they'll -- they'll squeak. They'll pull away the part
13 of the body that you're trying to pull on, or they come into
14 you really quickly, because they don't want you to hurt them.
15 I mean, it's obvious their reaction, their response.

16 Q (BY MS. JOINER) We were looking at the testimony on page
17 159.

18 THE COURT: So it's the use -- I'm sorry to
19 interrupt.

20 It's the use of the hook and the fear reaction by
21 the elephant that produces the harm?

22 THE WITNESS: I believe so, because the initial harm
23 was the -- physically what you did to them to hurt them, that
24 was a take.

25 Then if your treatment of them continues to elicit

1 that fear, then you're harming them again, because you're
2 eliciting that fear from them.

3 Q (BY MS. JOINER) We were at page 159 of your deposition,
4 and we were looking at the question that begins at page 23,
5 which says: (Reading) Okay. Using a bull hook to queue an
6 elephant, as you described in your record, is any use of a bull
7 hook to queue an elephant a taking?

8 (Reading) Answer: In my experience, if you use a
9 bull hook to queue an elephant, you are queuing what you
10 already taught the elephant. You taught the elephant a
11 respect for the bull hook; therefore, you can use the bull
12 hook as a queue, and it's effective, so yes, that would be
13 taking.

14 Did I read that correctly?

15 A Correct.

16 Q And it's also your opinion that any tethering whatsoever
17 is a take; is that right?

18 A Except for emergency situations.

19 Q Do you mean emergency medical situations?

20 A Could be emergency medical.

21 Q Okay. And the only zoos that you are aware of that are
22 not taking elephants are the Oakland Zoo and the North
23 Carolina Zoo; is that correct?

24 A The only zoos that I have visited that I would consider
25 are making an effort to meet the elephants' needs are Oakland

1 Zoo and North Carolina Zoo.

2 THE COURT: Carol. Excuse me, I'm sorry.

3 (PAUSE.)

4 THE COURT: Sorry. Go ahead.

5 MS. JOINER: That's all right.

6 Q (BY MS. JOINER) The Elephant Managers Association and the
7 Association of Zoos and Aquariums together are the two largest
8 groups of elephant handlers in the U.S.; is that correct?

9 A I don't know.

10 Q Well, you do know that you're not a member of either one;
11 is that right?

12 A Correct.

13 Q Okay. And the sanctuary is not accredited by the AZA?

14 A The sanctuary is not a zoo and the AZA is a zoo
15 organization. No, we are not accredited by a zoo
16 organization.

17 Q Okay. So you disagree with the philosophy of the AZA in
18 numerous ways as well; isn't that right?

19 A Aside from the fact that we're not a zoo and so therefore
20 not accredited, there are standards that zoos have created for
21 elephants that I believe are substandard.

22 Q And among those things that you disagree with about the
23 AZA is that you disagree with their SSP, the Species Survival
24 Plan, and their breeding standards; is that right?

25 A I don't even know what their breeding standards are, so I

1 don't have a position on their breeding standards. I -- I do
2 have a concern that the SSP represents that they're breeding
3 elephants for conservation purposes, but indeed none of those
4 captive bred babies are reintroduced into the wild, and indeed
5 what SSP is doing is breeding elephants for captivity.

6 Q Well, you disagree with allowing the mother to be chained
7 during birth, correct?

8 A Yes.

9 Q And you disagree with the public exhibition of elephants,
10 correct?

11 A I don't necessarily disagree with the public exhibition
12 of elephants but the traditional public exhibition of
13 elephants.

14 Q And you disagree with allowing a baby to be removed from
15 its mother prior to a, quote, natural weaning age; is that
16 correct?

17 A I disagree with separating the mother and baby because it
18 directly impacts both those individuals and any other herd
19 members and it is not in the best interest and welfare of the
20 elephants.

21 Q And you also disagree with allowing elephants to live in
22 pairs, don't you?

23 A No, I do not disagree with it. I know that elephants
24 prosper by being in a natural herd setting, which is many
25 elephants, and if there is -- if there are only two, then it's

1 better than being alone.

2 Q But you disagree with only two; isn't that right?

3 A If the goal is to only keep two and there's no reason to
4 keep the two except that maybe the facility doesn't want to
5 get a third, I would disagree with that.

6 Q Now, in your opinion, chaining is a take; is that right?

7 A Yes, chaining is a take.

8 Q And the use of adverse stimuli is a take?

9 A Adverse stimuli is a broad term. Basically speaking,
10 yes, I would say that genuinely speaking, adverse stimuli is a
11 take.

12 Q And the SSP breeding guidelines are a take; is that
13 right?

14 A I don't know what their breeding guidelines are.

15 Q Let's go to page 220 of your deposition, please. I want
16 to look at lines 21 through 23.

17 MS. SANERIB: And, Your Honor, I think this is going
18 well beyond the scope of the direct examination.

19 THE COURT: I'll allow it. It's within the scope.

20 Q (BY MS. JOINER) The question was asked: (Reading) The
21 SSP outlines regarding breeding, did I understand that
22 correctly?

23 (Reading) Answer: Right, the breeding protocol.

24 (Reading) Question: What does that mean?

25 (Reading) Meaning they may -- they make

1 recommendation on the actual breeding of elephants all the way
2 through the birthing of the baby. So if breeding is going to
3 be natural breeding, they stipulate what can or can't be done.
4 What -- in other words, a female can be tied up while a male
5 is breeding her.

6 And it continues on. That was your understanding at
7 the time of your deposition with regard to the SSP and
8 breeding; is that right?

9 A Yes, but it's different between what you are asking about
10 was the -- the SSP, not the protocol. I mean, there are
11 different areas of SSP, and -- regarding elephants, and I am
12 familiar with some of the breeding protocol.

13 Q Okay. You also believe that chaining during a birth is a
14 take; is that correct?

15 A Yes, I do.

16 Q And that corporal punishment is a take; is that correct?

17 A Yes.

18 Q And any kind of negative reinforcement is a take?

19 A Negative reinforcement again is a broad term. Generally
20 speaking, negative reinforcement would be considered a take.

21 Q And keeping a female ultimately alone at a zoo is a take;
22 is that correct?

23 A Keeping a female elephant alone for no reasons that
24 benefit or for no reasons of health matters or behavioral
25 matters would be a take.

1 Q You didn't put those qualifiers on it at your deposition,
2 did you?

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

4 Q Let's take a look. Let's go to page 224, please, line 17
5 through 20.

6 (Reading) So keeping a captive elephant as an
7 individual in the zoo is a taking?

8 (Reading) Answer: Keeping an elephant in captivity
9 alone in a zoo, female, is a take.

10 Did I read that correctly?

11 A Yes, you did.

12 Q If a female is tied up --

13 THE COURT: You mean if the female elephant is the
14 only elephant in the zoo?

15 THE WITNESS: That's the whole point. You see,
16 females have so social that unless there is a psychological
17 concern or if they have health problems, keeping them alone is
18 so detrimental to them.

19 THE COURT: So if that happens, if there were three
20 elephants and two were moved -- were transported elsewhere,
21 then it would be inhumane to keep the third one alone?

22 THE WITNESS: Absolutely.

23 Q (BY MS. JOINER) Okay. It's also your opinion that if the
24 female is tied up for breeding, that's a take, correct?

25 A I believe so.

1 Q And you also believe that forcing an elephant to stand
2 still for artificial insemination is a take; is that correct?

3 A I believe much of the process of artificial insemination,
4 as I understand it, is a take.

5 Q We talked before the break about the sanctuary being
6 closed to the public, and you've explained, not in this forum
7 but others, that you could open it to the public but you
8 choose not to spend the money to do that; is that correct?

9 A That's not correct. It's not that we don't choose the
10 money -- we don't choose to spend the money to do it. We
11 don't choose to open up the sanctuary to the public.

12 Q Okay. Let's go back to Exhibit 284, please. This is a
13 statement you provided to the Chicago City Hall, and I would
14 like to play 31:35 through 32:02.

15 THE COURT: All right.

16 (VIDEO CLIP PLAYED.)

17 Q (BY MS. JOINER) Was that your statement?

18 A That was my statement.

19 Q Now, you do have tours at the sanctuary for those who pay
20 \$2,000 a year for five years, correct?

21 A We -- I think we got that -- we do have tours for people
22 who pay a designated amount of money, limited tours, and that
23 is not of the elephants. The information that is provided
24 prior to someone making the donation is they are made fully
25 aware that they will not see any elephants. The purpose of

1 the tour is for those donors who are giving what they consider
2 a significant amount of money, actually see where the money
3 goes to.

4 And so we give them a tour of the facilities,
5 actually the barns with elephants not present, and they know
6 they're not going to see elephants and so they don't --
7 they're not anticipating seeing elephants and they're not
8 disappointed when they don't.

9 Q And the cost of that is \$10,000; is that right?

10 A I believe it's 10,000, yes.

11 Q Okay. And to make sure that the visitors can't see the
12 elephants, you put produce out to pull the elephants away from
13 the visitors, correct?

14 A Not necessarily. If the elephants are -- now that
15 they're in the new habitat, the 2200 acres, we did put produce
16 out at the first VIP tour when that barn was new because the
17 elephants were utilizing areas that were in sight of the
18 barns, but since that time, the elephants have started -- they
19 utilize all of the habitat and they're out.

20 If there's a situation where there is a elephant
21 that would be in view, we feed her or we go put food, produce
22 or hay in an area that she -- we would normally drop hay
23 anyway so that she wanders off over the hill or around at the
24 bend or back in the woods so that she's not on exhibit.

25 Q And you do that because you don't think it's appropriate

1 for people to look at the elephants; is that correct?

2 A I think it's not appropriate for people to have the
3 expectation that they're going to be able to see elephants and
4 be entertained by seeing elephants.

5 Q And if people want to be entertained by elephants, they
6 should go to a different venue; is that right?

7 A When people say that they want to see elephants, I tell
8 them there are elephants that live in zoos and circuses, make
9 it worth their while, go see them there.

10 Q And as a 501(c)(3), the sanctuary depends upon donations,
11 correct?

12 A The Elephant Sanctuary is nonprofit and supported by
13 donations, correct.

14 Q Okay. And it's currently trying to raise 3.5 million; is
15 that right?

16 A We're not currently in a fundraising phase, no.

17 Q Were you in a fundraising phase during this summer,
18 during your deposition?

19 A I don't think we were fundraising -- Oh, okay, for the
20 education center. Well, that has changed. We have an
21 education center that we're building. Downtown Hohenwald,
22 we've purchased two buildings downtown, and we were going to
23 build larger and so we were going to do fundraising for that.
24 We have canceled that project, downsized and are building with
25 the funds that we've already raised.

1 Q Okay. And the sanctuary currently raises between four to
2 six million per year; is that right?

3 A We receive donations of, yeah, four to six million a
4 year.

5 Q And that's tax free, correct?

6 A We're a nonprofit organization, so it is tax free.

7 Q And the annual operating budget at the sanctuary is about
8 1.5 million; is that right?

9 A No, it's about 2.2 now.

10 Q At the time of your deposition it was 1.5 million; is
11 that correct?

12 A No, I believe it was already at 2.2, and I wasn't
13 up-to-date on it.

14 Q Okay. I'd like to go to Exhibit 266 at this time. These
15 are annual reports from The Elephant Sanctuary, and I'd like
16 to go to look at the year 2001, which is PDF 10 in this
17 exhibit.

18 Now, you do annual reports every year for the
19 sanctuary; is that correct?

20 A Yes, we do.

21 Q Okay. And part of that report includes a summary of
22 financial activities; is that right?

23 A Correct.

24 Q And the information listed in those would be correct; is
25 that right?

1 A According to our accountant.

2 Q Okay. So I wanted to direct your attention -- if we can
3 blow this up a little bit, the top box there.

4 So for 2001, the sanctuary for total public support
5 and revenue had \$752,000 -- \$752,334; is that right?

6 A That's what it says, right.

7 Q Well, you have no reason to doubt that, correct?

8 A No.

9 Q Okay. And then net assets at the end of the year were
10 \$1,316,356; is that correct?

11 A Correct.

12 Q All right. How many elephants did you have at the
13 sanctuary in 2001?

14 A I will have to count. Perhaps six.

15 Q Six total?

16 A Perhaps. I'm not sure.

17 Q Okay. And now I'm going to -- instead of going through
18 every year, I would like to go through, if it's okay with Your
19 Honor, just certain years. I'd like to go to 2004. That's
20 PDF 46.

21 These are the financial activities for the 2004
22 year, and the total public support and revenue for 2004 at the
23 sanctuary was \$5,382,283; is that right?

24 A Correct.

25 Q And if we go down to the bottom line, the net assets were

1 \$6,662,305; is that correct?

2 A Right.

3 Q And how many elephants did you have in 2004?

4 A Oh, boy.

5 Q Approximately?

6 A Could have been -- could have been as many as 15.

7 Q Okay.

8 A No, it would have been less than that. I don't know, but
9 more than 10, less than 15.

10 Q Okay.

11 A I'm trying to think when the Hawthorns came.

12 Q Somewhere between 10 and 15, right?

13 A Right.

14 Q Okay. And then let's look at one more, please, the 2006
15 financials, which is PDF 77 of this document. And that
16 indicates that the total public support and revenue is
17 \$4,154,915; is that correct?

18 A Correct.

19 Q Then net assets by the end of 2006 were \$11,211,000 --
20 \$-211,068 for 2006; is that right?

21 A Uh-huh, yes.

22 Q I'm sorry, go ahead.

23 A Yes.

24 Q And how many elephants did you have at the sanctuary as
25 of 2006?

1 A I think 18.

2 Q Now, your donors at the elephant sanctuary have included
3 the Oakland Zoo; is that right?

4 A Not the Oakland Zoo, I don't believe. Maybe the Friends
5 of the Oakland Zoo.

6 Q Well, maybe you can help us clarify it. Let's go back to
7 PDF 11 in this document. And just to help you get your
8 bearings, I can show you the first page. This is the 2001
9 report, Ms. Buckley.

10 A Okay.

11 Q Okay. Give me a moment. I have to grab my hard copy,
12 I'm sorry.

13 Mr. Palisoul has got it highlighted for me.

14 The Oakland Zoo in Knowland Park, is that the same
15 Oakland Zoo where --

16 A Would you scroll up so we see what category this is in?

17 Q Absolutely.

18 A Category of giving.

19 Q Yes, absolutely.

20 A Okay. Yes, yes, that is.

21 Q And Lynette Williams has also contributed to The Elephant
22 Sanctuary; is that correct?

23 A She used to, right, and the contribution for the Oakland
24 Zoo was reimbursement for a program that I did for them at the
25 zoo when they were having their Elephant Awareness Week, so

1 that paid for my airfare and my room and my food to be there
2 for three days.

3 Q Okay. And PETA has also made contributions to The
4 Elephant Sanctuary; is that correct?

5 A PETA made a contribution, I believe, when Lota, when one
6 of the elephants -- I think it was Lota, they did some PR
7 about her, so I contacted them and said, "If you're doing
8 press about this elephant, then you should -- your members
9 should be contributing to the rescue of this elephant," and
10 they contributed, I believe -- they were in the category -- I
11 think they contributed -- I thought they contributed a
12 thousand, but I'm not sure.

13 Q And the Born Free Foundation has also contributed to you,
14 correct?

15 A The Born Free Foundation hasn't contributed to us in two
16 years, but at our inception, the Born Free Foundation sent a
17 representative out to visit our facility and they decided they
18 wanted us to be one of their programs, one of their adoption
19 programs for their members.

20 Q And Denise Bolbol has also contributed to the sanctuary;
21 is that correct?

22 A I don't know.

23 Q Let's go to page 64. Maybe you can take a look at that
24 and will help us.

25 This page 64 is in the 2005 report. I'm sorry, I

1 have the page number that is off. It's in the 2006 report,
2 which is page 15 if you go by page numbers. She's listed as
3 an In Kind Donor; is that correct?

4 A Yes, she is. That means that she gave us something, so
5 she would have sent us stationery for the office or candy for
6 the caregivers or any number of in kind donations that we
7 receive from our 76,000 members.

8 Q And what is: The Ark Trust-HSUS Hollywood" office?

9 A That is -- that is the office in L.A. that does the
10 Genesis Awards.

11 Q And they have also contributed to the sanctuary, correct?

12 A I was honored as a -- in one of their -- one of their
13 annual events, and again, that was probably the payment for my
14 expenses to get to the event.

15 Q Okay. You don't know whether stereotypic behavior can be
16 caused by a single event, do you?

17 A I don't know that there is research that has determined
18 exactly what has caused stereotypic behavior, and I don't know
19 that there is any research that says one event can cause it.

20 Q Yeah, there is no science to support that, is there?

21 A Not that I know of.

22 Q Okay. Nobody really knows that tethering causes
23 stereotypic behavior, do they?

24 A Oh, I think we surely do. By observation, we can tell.
25 In fact, my experience is that when Tarra -- when I first met

1 Tarra, she was not chained. She was less than a year old.
2 And after being trained by Smoky Jones, he instructed me to
3 keep her on chains, and within three weeks of the time that
4 she started -- that she was put on chains, she started
5 stereotypic behavior.

6 Q Let's go to page 92 of your deposition, line 11. Okay.
7 The question is asked: (Reading) Okay. Is it -- in your
8 opinion is stereotypic behavior caused by tethering elephants?

9 (Reading) Answer: As I said, I don't believe -- I
10 don't think that one single factor can always be contributed
11 to the bobbing and swaying, so maybe there are cases with
12 individuals that that is one factor that could cause them to
13 sway. My experience is that there are many, many different
14 things that cause elephants to bob and sway.

15 And we can read the next question as well.

16 (Reading) But as I understand you, it's not that any of those
17 things could cause them to bob and sway alone.

18 (Reading) Answer: I don't know. We don't know
19 that yet.

20 Did I read that correctly?

21 A You read it correctly. The reality is that what I mean
22 when I'm saying that is there are a lot of things going on
23 beyond the elephant being on chains. The elephant is
24 experiencing stress, maybe it's fearful, it's being isolated,
25 it's not socializing, all of those things coupled with being

1 on chains.

2 Q And there is no study that proves stereotypic behavior
3 causes joint problems, is there?

4 A I don't think -- I don't know if there's a study, but you
5 don't need to have a study when you have so many animals that
6 are developing joint problems, joint -- captivity induced
7 joint problems that you don't see in wild elephants and all of
8 those same elephants are on chains.

9 Q So the answer to my question is that there's no study?

10 A No study that I know of.

11 Q Okay. But you absolutely consider the performance of
12 stereotypic behavior by itself to be a sufficient indicator
13 that the elephant has poor welfare; is that correct?

14 A Yes, because I believe, from my experience, elephants bob
15 and sway when they're being denied or they are denied a
16 welfare need.

17 Q Okay. And you have at least one elephant at the
18 sanctuary that exhibits stereotypic behavior, don't you?

19 A Billy Sue does exhibit stereotypic behavior periodically
20 outside and also inside.

21 Q And other elephants will exhibit, I believe you said on
22 direct, stereotypic behavior when they come into the barn; is
23 that right?

24 A Inside the barn.

25 Q And that's even though they're not chained in the barn or

1 forced to be in the barn; is that right?

2 A Right. But it's their only choice. They have -- the
3 reason the elephants come in the barn is for the shelter, to
4 get warm if it's cold, and they only come into the barn a few
5 weeks out of the year in the wintertime.

6 So they have a choice to make. They can come into
7 the barn and be warm or they can go outside and not be warm,
8 and they make that choice and they know it's their choice, but
9 ultimately they shouldn't have to choose to come into a barn
10 to be warm. They should be in an environment where it is warm
11 enough and they don't have to come into the barn. So it is
12 stressful for them and they do -- they -- some of them will
13 still bob and sway. Others don't.

14 Q How long -- I apologize if you already said this. How
15 long has Billy been at The Elephant Sanctuary?

16 A Three years.

17 Q Okay. And she comes in in the afternoon -- or excuse me,
18 she sways in the afternoon before the sun goes down when she's
19 ready to go in the barn?

20 A When she sways. She has really made a lot of progress in
21 the last year. We've noticed that her -- she's a very fearful
22 individual. She had been kept somewhat in isolation for 10
23 years and was just very fearful.

24 Over the past year, she's made a lot of progress and
25 so now it isn't a daily routine of her swaying. She has spent

1 many afternoons out in the habitat dusting and grazing, but
2 there are times, still, that she will then fall into that, and
3 it's usually when she wants to go into the barn and the others
4 don't.

5 Q She does it before the sun comes down; is that right?

6 A Before the -- yeah, because she comes into the barn --
7 she'll come into the barn when it's dark. She doesn't want to
8 be outside when it's dark.

9 Q Okay. And Billy has bonded, did you say, with Liz and
10 Frieda?

11 A Correct.

12 Q All right. So those -- Billy, Liz and Frieda are a
13 threesome?

14 A Correct.

15 Q Okay. And they always stick together?

16 A Yes.

17 Q Have they formed their own surrogate herd between the
18 three of them?

19 A Yes.

20 Q I'd like to look at -- your counsel showed you a clip
21 from the Elecam, and I want to go to a different time frame.

22 Exhibit 174, this is the capture from the
23 June 23rd Clip 7 at 49:18 -- or excuse me, at -- it's clip
24 16 at 12:18 to 13:38.

25 (VIDEO CLIP PLAYED.)

1 Q (BY MS. JOINER) Do you see the two elephants there,
2 Ms. Buckley?

3 A Uh-huh, Debbie and Ronnie.

4 Q Debbie and Ronnie?

5 A Yeah.

6 Q Which one is on the left?

7 A That's Debbie.

8 Q Is Debbie swaying?

9 A Yes, she is. She's standing behind the hotwire. The
10 gate is open, but she doesn't have access. There's a hotwire
11 there. And she's -- it is in the late afternoon, as you can
12 see the sky, and she is allowed -- she's led in. That hotwire
13 is taken down about this time of evening for her and she comes
14 into this area which is called the night yard and she is fed
15 inside there.

16 Q Okay. That's enough. I want to go to the June 26th,
17 Clip 6 at 51:45 to 52:36.

18 (VIDEO CLIP PLAYED.)

19 Q (BY MS. JOINER) Is this the threesome that we were
20 looking at earlier?

21 A Yes, it is.

22 Q Can you identify left to right for us which ones they
23 are?

24 A On from right -- from left to right, Liz, Billy, Frieda.

25 Q Okay.

1 A The one in the middle is Billy.

2 Q And Billy is the one that's swaying in this clip; is that
3 correct?

4 A Correct.

5 Q And if you look at the shadows, this is midday, isn't it?

6 A I don't know what time it is, but the location that
7 they're standing in suggests that it's -- it's later in the
8 day because they only come to this area -- they're in this
9 area first thing in the morning when they go out and then
10 later in the day when they come back.

11 Q You do see the shadows there, correct?

12 A I see the shadows.

13 Q And then one more clip I would like to go to, please.
14 This is the -- still Exhibit 174, June 27th Clip 5, and I
15 would like to go to 33 minutes to 33:30.

16 MS. SANERIB: Can you -- I'm sorry, can you say what
17 year this is from?

18 MS. JOINER: This was taken this summer, June 2008.

19 (VIDEO CLIP PLAYED.)

20 Q (BY MS. JOINER) There we go. And would you identify
21 which three these are again?

22 A It's Frieda on the right, Billy in the middle, Lizzy on
23 the left.

24 Q Okay. Thank you. You mentioned osteoarthritis in your
25 direct examination. You're not aware of any studies regarding

1 the occurrence rate of osteoarthritis in wild Asian elephants,
2 correct?

3 A Not aware of a study.

4 Q Okay. And --

5 A Well, my understanding is, it doesn't occur in wild
6 elephants so there wouldn't be a study.

7 Q Your understanding is that there is no osteoarthritis in
8 wild elephants?

9 A That's my understanding.

10 Q Okay. So you have not also not seen any studies
11 regarding the occurrence rate of osteoarthritis if I asked it
12 for wild African elephants as well, correct?

13 A I haven't seen anything, no.

14 Q Now, you claim that the average life span of captive
15 elephants is 35 years; is that correct?

16 A I don't claim that.

17 Q You've never --

18 A That's a statement that comes out of research from the
19 zoo industry.

20 Q Do you disagree with that statement?

21 A Well, I didn't do the research. I only know what they --
22 their conclusions was from their research.

23 Q Well, you relied on that in your declaration, did you
24 not, in the Swaziland case?

25 A No, I don't believe so.

1 Q Okay. Well, let's pull that declaration back up again
2 and take a look.

3 Paragraph 43, I want to direct your attention to the
4 second sentence. (Reading) The average life span of captive
5 elephants is 35 years, nearly one-half their normal life span
6 in the wild.

7 Did I read that correctly?

8 A Yes, you did.

9 Q All right.

10 A And so what is your question about that?

11 Q My question is that you claim that the average life span
12 of captive elephants is 35 years, correct?

13 A As per research.

14 Q Okay. And with one exception, the elephants that are at
15 issue in this case exceed that, don't they, their ages?

16 A And the elephants at issue are?

17 Q Do you know which elephants are at issue in this case?

18 A I'm asking you. You're talking about the Ringling
19 Elephants?

20 Q That's correct.

21 A Okay. We were just talking sanctuary elephants, so now
22 we're back at Ringling, which is good.

23 Q Right. I'm sorry. Let's back up again. We're talking
24 about the average life span of captive elephants being 35
25 years, okay.

1 A Uh-huh.

2 Q And with one exception, the elephants that are at issue
3 in this case exceed that, don't they?

4 A Yes, I believe they do.

5 Q Okay. Nicole is the only one that does not, and she's
6 approximately 34 years; is that right?

7 A I believe so.

8 Q And then Karen is approximately 40 years old; is that
9 right?

10 A I believe so.

11 Q And the rest of the elephants that are at issue are
12 between 58 and 63 years old; aren't they?

13 A I believe so, but the research is talking an average of,
14 and so you're just talking about act the live elephants right
15 now. You're not talking about your whole collection, and so
16 when it averages out, it might -- it might look different.

17 Q Okay. Well, you'd agree that a 50- or 60-year-old
18 elephant is old?

19 A Sure.

20 Q Okay.

21 A Just because one elephant lives that long doesn't mean
22 that all of the elephants are living that long.

23 Q Certainly not, but in this case it means that there has
24 been at least five of them that have lived that long?

25 A Yes, and you've had hundreds of elephant at Ringling.

1 Q You talked earlier about some of the alternative
2 treatment methods that you've used with your elephants at the
3 sanctuary.

4 A Uh-huh.

5 Q Did you mention the acupuncture that was performed on
6 Delhi?

7 A Oh, no. Yeah, we do -- Dr. Susan McCurdle [ph.] did
8 acupuncture on Delhi and will be doing acupuncture on Frieda,
9 I think, soon.

10 Q And that acupuncture, I assume, pierces the skin; is that
11 correct?

12 A It does.

13 Q Do you consider that to be a taking?

14 A No, because in this case, it was -- it was emergency
15 procedure to ensure that she was not in pain.

16 Q You're not aware of any studies that have compared the
17 behavior of Asian elephants with the behavior in African
18 elephants, correct?

19 A I'm not aware of any studies.

20 Q Okay. And up until November with Ned, you did not take
21 any male elephants at the sanctuary; is that right?

22 A Correct, but I have worked with male elephant before.

23 Q Okay. Is Ned going to be staying at the sanctuary
24 permanently?

25 A We don't know.

1 Q All right. Ned is not capable of breeding, is he?

2 A No, Ned has been surgically castrated.

3 Q Okay. Now, you mentioned even your elephants at the
4 sanctuary are in captivity; is that right?

5 A Correct.

6 Q And they still requirement management; correct?

7 A Correct.

8 Q So you have to feed the elephants three times a day?

9 A We have a schedule of a minimum of three times a day.

10 Q And the water wagon also goes out three times a day?

11 A In certain habitats it goes out three times a day but not
12 all habitats.

13 Q Okay. And your four-wheelers are equipped with the foot
14 turning tools and stools that you use for elephants; is that
15 right?

16 A They are set up to carry not only diets but also any
17 equipment we need to use.

18 Q And that's because sometimes even out in the habitat you
19 still have to do foot work on the elephants; is that right?

20 A Well, actually we do foot work in the barn. The
21 elephants that are in the 2200 acres are those elephants that
22 have been with us the longest and are utilizing their habitat
23 to the point that they need only corrective trimming, and that
24 can be done in the wintertime when they come in the barn.

25 THE COURT: Let me ask you this: The elephant --

1 the elephant that was surgically castrated, was that -- should
2 prevent him from procreating?

3 THE WITNESS: Yes.

4 THE COURT: Is that a take?

5 THE WITNESS: You know, I haven't even thought about
6 it. The male elephants -- this particular elephant was born
7 around the same time that four others were born and they were
8 considered surplus. They were considered just sort of no
9 value, and the idea that I understood was that they decided to
10 castrate this elephant and I think a couple others as well,
11 one, to see if the surgery could be successful, and two, they
12 were hoping that that would calm the elephant to -- not
13 have -- when he grew up, he wouldn't be as aggressive.

14 THE COURT: Would the alternative have existed to
15 return that elephant to the wild?

16 THE WITNESS: Well, that's a real, you know,
17 difficult question to answer. One thing is, when I've
18 inquired with the United States Department of Agriculture and
19 Fish & Wildlife about taking a wild caught Asian elephant that
20 was sent to the U.S., taking them back with the understanding
21 there would be the whole process of desensitizing,
22 deprogramming them, having them in a herd environment,
23 everything perfect to reintroduce them into the wild, I was
24 told that because it was an endangered species, you couldn't
25 get a permit to reintroduce them into the wild.

1 And currently it's -- in Asia, it's very difficult
2 right now for elephants that are there that are in captivity
3 and the wild, so they're in a crisis situation.

4 THE COURT: But the surgery castration of the bulls
5 is consistent with your philosophy that they should not be
6 breeding while in captivity at least at the sanctuary?

7 THE WITNESS: Right. And keep in mind, we didn't
8 have anything to do with his castration. When we rescued him,
9 the plan was that we would keep him -- he was starving, so we
10 were supposed to get him stable and then move him to another
11 sanctuary, and it was at that time that we learned that he was
12 surgically castrated, and also at that time that we learned
13 that he was not going to recover as quickly as anyone
14 expected.

15 Q (BY MS. JOINER) Have you been able to put any weight on
16 Ned since he's been there in November?

17 A Ned, no, we have not. He -- his condition has not been
18 diagnosed, but his symptoms are very clearly he has problems
19 with digestion.

20 THE COURT: Excuse me one second. I've got to take
21 a phone call. Excuse me, I'm sorry. That fire drill was not
22 a recess. I was outside in the cold with everyone else. That
23 wasn't a recess, so I'm not trying to curtail you. How much
24 more time do you need?

25 MS. JOINER: I think maybe about 10 or 15 minutes.

We're close.

THE COURT: Okay. Let's take a 10-minute recess. I have to return a phone call. I'm sorry. Take a 10-minute recess.

(PROCEEDINGS END AT 4:51 P.M.)

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C-O-N-T-E-N-T-S

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CERTIFICATE OF REPORTER

I, Catalina Kerr, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Catalina Kerr

Date