

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE
PREVENTION OF CRUELTY TO
ANIMALS,

Plaintiff,

v.

FELD ENTERTAINMENT, INC.,

Defendant.

.
. CA No. 03-2006
. Washington, D.C.
. Thursday, February 5, 2009
. 10:15 a.m.
.
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TRANSCRIPT OF BENCH TRIAL - MORNING SESSION - DAY 2
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

KATHERINE A. MEYER, ESQ.
TANYA SANERIB, ESQ.
ERIC GLITZENSTEIN, ESQ.
HOWARD CRYSTAL, ESQ.
DELCIANA WINDERS, ESQ.
Meyer, Glitzenstein & Crystal
1601 Connecticut Avenue, N.W.
Suite 700
Washington, D.C. 20009
202-364-4092

For the Defendant:

LISA JOINER, ESQ.
KARA PETTEWAY, ESQ.
JOHN SIMPSON, ESQ.
MICHELLE PARDO, ESQ.
LANCE SHEA, ESQ.
Fulbright & Jaworski, LLP
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202-662-4504

Court Reporter:

JACQUELINE M. SULLIVAN, RPR
Official Court Reporter
U.S. Courthouse, Room 6820
333 Constitution Avenue, NW
Washington, D.C. 20001
202-354-3187

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P R O C E E D I N G S

1
2 COURTROOM DEPUTY: Civil action 03-2006, American
3 Society For the Prevention of Cruelty to Animals, et al versus
4 Feld Entertainment, Inc.

5 Would counsel please identify yourselves for the
6 record?

7 MS. MEYER: Catherine Meyer for the plaintiffs, your
8 Honor.

9 THE COURT: Good morning, counsel.

10 MS. SANERIB: Good morning. Tanya Sanerib for the
11 plaintiff.

12 MR. CRYSTAL: Howard Crystal for the plaintiff.

13 MR. GLITZENSTEIN: Eric Glitzenstein for the
14 plaintiffs.

15 MS. WINDERS: Delciana Winders for the plaintiff.

16 MS. SINNOTT: Michelle Sinnott, tech.

17 THE COURT: For the plaintiff?

18 MS. SINNOTT: For the plaintiffs.

19 THE COURT: Good morning, your Honor. John Simpson
20 for the defendant.

21 MR. SHEA: Good morning, your Honor. Lance Shea for
22 the defendant.

23 MS. JOINER: Good morning, your Honor. Lisa Joiner
24 for the defendant.

25 MS. PETTEWAY: Kara Petteway for the defendant.

1 MS. PARDO: Good morning, your Honor. Michelle Pardo
2 for the defendant.

3 MS. STRAUSS: Good morning, your Honor. Julie Strauss
4 for the defendant.

5 MR. PALISOUL: Derek Palisoul for the defendant.

6 THE COURT: Let's proceed with the cross-examination.
7 I'm mindful that the doctor has a plane to catch.

8 MR. SIMPSON: Your Honor, if I could just bring up two
9 preliminary matters with the Court's indulgence, and I think
10 it's important to get matters like this straightened out when we
11 are just getting the trial started.

12 Would you switch the Elmo on for me, please?

13 Your Honor, it's come to our attention that one of the
14 corporate representatives for the plaintiff, Animal Protection
15 Institute, is blogging the details of this trial on the
16 Internet. Ms. Nicole Piquette, their senior vice president and
17 general counsel, was excused from the Rule of Exclusion of
18 witnesses yesterday by your Honor and chose apparently to
19 broadcast the details of the testimony in this case on the
20 Internet, and I'm concerned that this is an abuse of the
21 privilege that you granted her yesterday, and I am concerned
22 that this kind of thing becomes a bulletin board for fact
23 witnesses in the case to check out what's going on in the trial.
24 You know, she's entitled to her opinion about what's going on,
25 but what I don't want to see is fact witnesses using this as a

1 way to check on what people have testified to. So I think your
2 Honor ought to order her to seize this blogging, and I think
3 your Honor should clarify paragraph fifteen of your order to
4 include instructions that fact witnesses shall not only not
5 review the transcripts of the trial, should not discuss the
6 transcript of the trial with lawyers, but also should not read
7 Internet blogs and similar sources of information where the
8 trial transcript or details of the testimony are being posted.
9 We've already given that instruction to our witnesses, not just
10 don't read the transcript, not just don't talk to lawyers and
11 other witnesses, but don't go out there on the Internet and read
12 news accounts of what's going on so that you get the same
13 information indirectly, so we think as a prophylactic matter,
14 that that ought to be addressed up front, and I think you have
15 the power and discretion to do so under Rule 615.

16 THE COURT: Well, we certainly tell fact witnesses, we
17 tell all witnesses not to discuss their testimony with anyone,
18 but what you're asking me to do is essentially tell them in
19 advance of their testimony not to discuss anyone else's
20 testimony essentially and that doctor -- she's not a doctor --
21 Attorney Piquette, she's in the courtroom today? Is she?

22 MR. SIMPSON: Well, she was entitled to be. It was
23 packed yesterday. I don't know whether she was here or not. I
24 don't know what she looks like. I've never seen her.

25 THE COURT: This blogging issue is an issue that's

1 coming up quite frequently in cases.

2 Let me hear from plaintiff's counsel.

3 Thank you for bringing it to my attention.

4 MS. MEYER: Your Honor, I didn't know about this. If
5 Mr. Simpson had told me about it when he discovered it I
6 certainly would have been in agreement that Ms. Piquette --

7 THE COURT: He probably didn't know about it until
8 today perhaps.

9 MR. SIMPSON: Ten minutes ago.

10 MS. MEYER: I didn't know about it, your Honor. We
11 certainly have instructed our witnesses to abide by all of your
12 instructions, and we have no problem telling Ms. Piquette that
13 she should not be blogging about what goes on in the trial.

14 THE COURT: I think also I need to ask both sides to
15 ask their witnesses, to direct their witnesses, not to search
16 for other bloggers' opinions. This case is going to be tried
17 and decided based on the evidence in the courtroom. I recognize
18 that the public has an interest in what's going on and that
19 there are people who are not participants or connected with any
20 of the organizations wish to blog to their hearts' content about
21 anything they want to blog about, you know, I guess that's their
22 prerogative, but at least insofar as the participants in this
23 trial are concerned and the officers of the various
24 corporations, I have some control and I'm going to direct them
25 not to do any blogging. I think that's only fair.

1 Yes?

2 MR. SIMPSON: Just one other matter briefly, your
3 Honor, and this concerns the sort of orderly designation of
4 witnesses. If your Honor remembers, yesterday, and I want to
5 direct your attention to page 76 of the trial transcript, there
6 was a colloquy between your Honor and counsel for the
7 plaintiffs.

8 THE COURT: I recall that.

9 MR. SIMPSON: Concerning the foundation for
10 Plaintiff's Exhibit 122.

11 THE COURT: Right, the person who is going to
12 authenticate the film.

13 MR. SIMPSON: I was again aware of the full picture
14 here, but apparently your Honor asked the question of Ms. Meyer,
15 why isn't that person here who can authenticate the film, and
16 the answer was: He is scheduled to come tomorrow. We had
17 scheduling difficulties for a number of reasons and it was my
18 assumption that he wasn't here, but it turns out he was here.
19 He's appeared the entire day, so this witness could have been
20 called out of order at Ms. Poole's direct, as your Honor stated
21 you had flexibility to do, and that film could be authenticated
22 or not. Instead, your Honor took it under advisement and then
23 the film was exhibited to the finder of fact, and I think that's
24 prejudicial to us.

25 THE COURT: Well, there's a lot of authority -- I

1 can't put my hands on a case right now from our Circuit --
2 there's a lot of authority from probably all Circuits, that
3 basically holds that the fact-finder in a nonjury case, indeed
4 the judge, is going to make decisions based upon competent
5 evidence and admissible evidence, and during the course of a
6 nonjury trial judges are going to hear all kinds of evidence:
7 incompetent evidence, hearsay, evidence that's ultimately
8 stricken, and whatever I do, whatever decision I reach, I'm
9 going to reach it based upon what I think is the competent
10 evidence in this case, it's been admitted into the trial record
11 pursuant to recognized Rules of Evidence, and I'm going to let
12 the parties know what I've relied on, so the content, if the
13 film footage is never authenticate, believe me, I'm not going to
14 credit it, but if he was here, though, I'm interested if he was
15 here. Why was I told he wasn't here? I'm more concerned about
16 that.

17 MS. MEYER: Your Honor, the reason is that we needed
18 to do Dr. Poole, because of the scheduling, we needed to do Dr.
19 Poole when we did Dr. Poole, so our intention was to have Dr.
20 Poole do --

21 THE COURT: But I was told he wasn't here. Yes. I
22 think that's what I was told.

23 MS. MEYER: I think what I meant to say --

24 THE COURT: Had I been told he was sitting out there,
25 I would have said bring him on in.

1 MS. MEYER: Your Honor, what I meant to say, he wasn't
2 scheduled to testify yesterday.

3 THE COURT: How long would it take you to lay the
4 foundation for the authentication of this film?

5 MS. MEYER: It would take a while, your Honor, because
6 we're showing much more of that compilation video that he did,
7 so that was the problem.

8 THE COURT: He's going to have to testify at some
9 point today because I don't want to go too far. It's nonjury,
10 but I just don't want to continue to stretch the rules. I've
11 looked at the film. It's not been admitted into evidence. I
12 can put it out of my mind, but I'd like to abide by the rules
13 that we all are directed to abide by, but, you know, if it never
14 comes in, I'm certainly not going to credit anything I've seen,
15 but if he's here, as soon as we finish with the doctor, then
16 you're going to have to call him to authenticate that film. I
17 assume you want to use that film footage for other witness, I
18 assume; is that right?

19 MS. MEYER: Yes, but we're not using it today. And
20 this raises another problem, your Honor. Because we did not
21 finish with Dr. Poole yesterday, we have other scheduling
22 problems. We have two witnesses who need to go on today because
23 they have to get back to their jobs.

24 THE COURT: Let me just say this then: We'll finish
25 with Dr. Poole, and I'm not going to allow any more references

1 to the film absent an appropriate authentication.

2 MS. MEYER: That's fine, your Honor.

3 THE COURT: All right. Okay. Let's finish with --
4 strike that. Let's proceed with cross-examination of Dr. Poole.

5 Sorry for the delay, but we have some technological
6 issues up here with the laptop, and if I don't look at the
7 experts all the time, it's not that I'm ignoring them. I have
8 realtime as well. I like to follow the testimony, so if I don't
9 look you in the eye while you're testifying, I'm listening to
10 you.

11 THE WITNESS: Thank you, your Honor.

12 THE COURT: Tell the other experts too. I know
13 counsel have been attempting to get their witnesses to look at
14 me and focus on me as they would a jury, and that's fine. I'm
15 not ignoring them if I don't look at them, so tell them that. I
16 will look at the experts on occasion, as it's nonjury, but I do
17 have the benefit of realtime as well, so I can hear them and
18 read them. Go ahead.

19 MR. SHEA: May it please the Court, Lance Shea for the
20 defendant, your Honor.

21 THE COURT: Good morning.

22 **JOYCE POOLE, Ph.D, WITNESS FOR THE PLAINTIFF, PREVIOUSLY SWORN**

23 **CROSS-EXAMINATION**

24 BY MR. SHEA (continuing):

25 Q. Good morning, Dr. Poole.

1 A. Good morning.

2 Q. Dr. Poole, you have no studies that set forth the criteria
3 for identifying learned helplessness in elephants, is that true?

4 MS. MEYER: Objection, your Honor; outside the scope
5 of the direct.

6 MR. SHEA: Your Honor, she covered these issues in --

7 THE COURT: I'll allow that. Overruled.

8 MR. SHEA: I apologize.

9 BY MR. SHEA:

10 Q. Dr. Poole, you have no studies that set forth the criteria
11 that identify learned helplessness in elephants, correct?

12 A. Me personally?

13 Q. I'm asking if you know of any studies that set forth the
14 criteria for identifying learned helplessness in elephants?

15 A. No, I do not.

16 Q. Dr. Poole, you cannot cite to me any studies reporting that
17 the Stockholm Syndrome or similar syndromes have been diagnosed
18 in elephants, correct?

19 A. I cannot. Regarding learned helplessness, though, it is a
20 term that has been used by people working with elephants.

21 Q. And Dr. Poole, I was just asking about Stockholm Syndrome.

22 THE COURT: I think she wanted to go back to the
23 former question. Is that correct?

24 THE WITNESS: Yes.

25 THE COURT: That's fine.

1 BY MR. SHEA:

2 Q. Dr. Poole, there exists no articles that detail how one
3 would diagnose Stockholm Syndrome in elephants, correct?

4 A. That's correct. But I believe in my deposition I did say
5 to you that it was closer to learned helplessness.

6 THE COURT: Stockholm Syndrome?

7 THE WITNESS: In my original report I mentioned
8 several possibilities that this, when elephants or the Ringling
9 Brothers' elephants are very often in kind of a stupor where
10 they are just not doing anything, even when there is a lot of
11 activity around them when a normal elephant would be
12 inquisitive, and I put this down, I let -- I wrote a number of
13 different possibilities that could cause that kind of behavior.

14 THE COURT: That's based upon your background as a
15 behaviorist?

16 THE WITNESS: Based upon my background as a
17 behaviorist. And I mentioned the Stockholm Syndrome and I
18 mentioned learned helplessness, and when we discussed it then in
19 my deposition, I had realized that it was closer to learned
20 helplessness.

21 THE COURT: You singled out Ringling Brothers Circus'
22 elephants. Is that you're distinguishing the Ringling Brothers'
23 elephants from other elephants in captivity?

24 THE WITNESS: No. No. I mean, I saw this sort of
25 elephants in a kind of -- well, what I would call "nobody's

1 home" kind of behavior. I have seen it in other elephants.
2 I've seen it in the elephants that have been very traumatized.

3 BY MR. SHEA:

4 Q. Dr. Poole, you have no -- I'm sorry.

5 THE COURT: Stockholm Syndrome has not been identified
6 scientifically in elephants, has it?

7 THE WITNESS: It has not.

8 THE COURT: What is that syndrome?

9 THE WITNESS: That's when captives have been -- when
10 people have been held captive and they begin to identify with
11 the captors.

12 BY MR. SHEA:

13 Q. Dr. Poole, you have no studies to sort your opinions that
14 elephants can get a syndrome like people who have been battered
15 spouses, abused children, prisoners of war, and concentration
16 camp survivors, correct?

17 A. Well, it is -- it is basically beginning to be accepted
18 that elephants can suffer from posttraumatic stress disorder.
19 That's a little bit different from what you've said, but I would
20 like to qualify it by saying that --

21 Q. Dr. Poole, I'm sorry, I didn't hear an answer. You have no
22 studies to support your opinion that elephants can get a
23 syndrome like people who have been battered spouses, abused
24 children, prisoners of war, and concentration camp survivors,
25 correct?

1 MS. MEYER: Again, I've got to object. This is
2 outside the scope of direct examination.

3 THE COURT: I'll allow it.

4 THE WITNESS: Again, I've got to come back to that
5 elephants suffering posttraumatic stress disorder, so in the
6 sense that people who have been -- women and children who have
7 been battered and the kind of trauma that they go through, yes,
8 elephants do suffer from that sort of posttraumatic stress
9 syndrome.

10 BY MR. SHEA:

11 Q. I'd like to show you page 110 of your deposition.

12 A. Okay.

13 Q. If you could bring it up at line eight, please.

14 Dr. Poole, I asked you a question beginning on line
15 eight. I just want to ask you about four lines down in that
16 paragraph, there is a sentence beginning near the right margin
17 which states, quote: Small acts of kindness by the captor are
18 exaggerated since finding perspective in a hostage situation is,
19 by definition, "impossible," quote. And then it goes on to say,
20 quote: These symptoms occur under tremendous emotional and
21 often physical duress and represent a common survival strategy
22 for victims of interpersonal abuse, including battered spouse,
23 abused children, prisoners of war, and concentration camp
24 survivors. I put to you that the elephant response is no
25 different. End quote. Did I read that correctly?

1 Answer: Yes.

2 Question: Are there any scientific studies
3 demonstrating that the elephant response is no different than
4 the response you have listed in what I just read, those
5 responses I understand to be from humans?

6 Answer: There are no studies.

7 Did I read your testimony correctly?

8 A. You read that correctly. But it is -- may I?

9 THE COURT: Finish your answer. Yes.

10 THE WITNESS: It is fair to say that in that
11 discussion that we had then, I went on to say that it was closer
12 to learned helplessness. At the same time I would like to say
13 and I would like to have on record that elephants suffer from
14 posttraumatic stress disorder.

15 BY MR. SHEA:

16 Q. Dr. Poole, can you not identify any studies that
17 demonstrate that an elephant suffers from stress when managed by
18 use of the guides, correct?

19 A. Not off the top of my head right now.

20 Q. And assessing such studies is outside your area of
21 expertise, correct?

22 A. No, I don't think so. I mean, when it comes to details of
23 stress, but when it comes to how elephants are behaving, I think
24 that's well within my expertise.

25 Q. Dr. Poole, I'd like to show you page 291 of your

1 deposition, beginning on line ten. It begins, Question: Now,
2 is there any study that demonstrates that an elephant suffers
3 from stress when managed by use of the ankus?

4 Answer: You are talking about like cortisol levels,
5 or something like that?

6 Question: Yes, exactly.

7 Answer: I think there have been studies. I am not
8 sure what they have shown, but what I am saying here in this
9 part is that harassment of the elephants has caused such changes
10 in their basic behavior patterns to make them sort of
11 unrecognizable as elephants in terms of their behavior.

12 Question: Two questions about that. One, can you
13 identify any studies that you think might exist?

14 Answer. I can't. I can't recall the studies on that.
15 That is not my expertise.

16 Did I read that correctly?

17 A. You did. I think that's just what I said before you read
18 that.

19 Q. Now, Dr. Poole, you do not have any particular knowledge
20 about FEI's chaining policies, correct?

21 A. I have that I gained through all the reading that I did of
22 the depositions and the reports from the defense.

23 Q. And that is the extent of your knowledge?

24 A. That I can think of at this moment.

25 Q. Now, Dr. Poole, you're not aware of any money for

1 conservation efforts that FEI is giving to any entity other than
2 the International Elephant Foundation, correct?

3 MS. MEYER: I'm going to object to that, your Honor.
4 It's our position that whether or not Feld Entertainment is
5 giving conservation money to anyone is completely irrelevant.

6 THE COURT: It may be. It may be, but I'll let her
7 answer the question.

8 THE WITNESS: I know that there is some money that is
9 going to some work in Asia. I'm not sure exactly specifically
10 what those studies are, and I'm not sure whether they are all
11 coming under the International Elephant Foundation or not.

12 BY MR. SHEA:

13 Q. Now let's go to page 267 of your deposition, beginning on
14 line eight. Dr. Poole, I asked the question: Do you know
15 whether FEI is giving money for any other conservation efforts
16 than those funded by FEI?

17 Answer: Say that one more time.

18 Question: Do you know any other conservation efforts
19 methods that FEI is supporting?

20 Answer: Oh, FEI. FEI and IEF. Sorry. No, I am not.

21 Question: Are you -- well, did I read that part of
22 your testimony correctly?

23 A. You did.

24 Q. Dr. Poole, you're not aware of any insitu, conservation
25 effort that FEI is supporting directly, correct?

1 A. No. I'm not specifically aware of the specific programs.
2 I know that there are some. I'm not sure whether they are
3 conservation projects or whether they are AI projects, which I
4 wouldn't call conservation projects, so I can't say
5 specifically.

6 Q. Dr. Poole, let me show you on the same page of your
7 deposition, 267, beginning on line 12, or I'm sorry, on line 16.
8 On line 16, Question: Are you aware of any insitu, conservation
9 efforts that FEI is supporting directly?

10 Answer: No, I am not.

11 Did I read your testimony correctly?

12 A. You did, but there have been some months in between, so I
13 have heard about some things. That's why I'm answering slightly
14 differently.

15 Q. I see. So the new information you have has come since your
16 deposition; is that correct?

17 A. Yes, but it's not very specific.

18 Q. Dr. Poole, you don't know the details about the extent to
19 which FEI elephants are exercised on a daily basis, correct?

20 A. Just on the basis of what came out in the depositions,
21 which suggested they have very little exercise, that they're
22 only off chains a very small percentage of the day.

23 Q. Dr. Poole, let me show you page 300 of your deposition,
24 beginning on line three. Question: Do you know any details
25 about the extent to which the elephants are exercised on a daily

1 basis for the pure purpose of exercise?

2 Answer: There was very little said about that in the
3 documents.

4 Did I read that correctly?

5 A. You did.

6 Q. Dr. Poole, you don't know what enrichment items are given
7 to FEI elephants, correct?

8 A. Sorry. That's you're asking me that now?

9 Q. Yes.

10 A. I have seen a tire in the pens.

11 Q. Is that your complete answer?

12 A. I haven't seen much in all the evidence that I reviewed. I
13 did not see much in the way of enrichment items, and not
14 enrichment items that would be in any way part of an elephant's
15 natural environment.

16 Q. Dr. Poole, scientifically speaking now, your work with
17 elephants is almost entirely observational in design; is that
18 true?

19 A. No, not entirely observational, no.

20 Q. I said "almost entirely observational."

21 A. It's almost entirely observational, but I have done
22 experimental work, and quite a number of my papers are based on
23 experimental work.

24 Q. Dr. Poole, your experimental studies are limited to about
25 three elephant sound playback studies, two studies on elephants'

1 scents, s-c-e-n-t-s, and one study on musth at Krueger pools at
2 the Pilanesberg National Park, correct?

3 A. I'm sorry. There are four papers on elephant cognition,
4 three papers that are experimental on elephant cognition.
5 That's two of which have come out since the deposition.

6 THE COURT: On African elephants or Asian?

7 THE WITNESS: These are on African elephants.

8 And then there are the other ones that you cited, but
9 I don't think that represents a small number.

10 BY MR. SHEA:

11 Q. Dr. Poole, let me take you to 103 of your deposition,
12 please. Beginning on line 17. Question: Your work is almost,
13 entirely speaking, scientifically observational in nature, isn't
14 that right?

15 Answer: Almost entirely, but I've done experimental
16 work as well.

17 Did I read that correctly?

18 A. You did.

19 Q. And you've mentioned today in court the experimental
20 studies that you've done, is that true?

21 A. I have not mentioned them all, no.

22 Q. Well, other than three elephant sound playback studies, two
23 studies on elephant scents, one study on musth at the Pilanesberg
24 National Park, and three studies on elephant cognition in
25 African elephants you just mentioned, are there any others?

1 A. No. But those are all in very prestigious journals.

2 Q. Dr. Poole, in your opinion chaining elephants is
3 appropriate for veterinary procedures but inappropriate for any
4 other reason; is that correct?

5 A. That is correct.

6 Q. Now, Dr. Poole, yesterday you mentioned elephant
7 sanctuaries. Do you recall mentioning that during your direct
8 examination?

9 A. I did. I can't remember in what context.

10 Q. Do you know that there is an elephant sanctuary at
11 Hohenwald, Tennessee?

12 A. I do, I do.

13 Q. Who operates that sanctuary?

14 A. Carol Buckley.

15 Q. The elephants at the elephant sanctuary are not allowed to
16 breed; is that correct?

17 A. That's correct.

18 Q. Dr. Poole, the oldest elephant in Amboseli is 67 years old,
19 isn't that right?

20 A. I believe there have been elephants as old as 69.

21 Q. Let me take you to your deposition, page 258, beginning at
22 line seven. I asked you, question: What is the oldest elephant
23 that you know of in Amboseli?

24 Answer: Sixty-seven.

25 Did I read that correctly?

1 A. You read that correctly. The reason I changed that is
2 based on the recent paper that came out. I believe that they
3 had said that the oldest elephant was 70, so I'm correcting
4 that. I moved it down to 69 because I can't quite recall, but
5 yeah, so anyway, in that range.

6 Q. Your testimony was accurate as of the date of your
7 deposition, is that true?

8 A. Yes, yes.

9 Q. Dr. Poole --

10 A. As far as I knew. As far as I knew.

11 Q. Dr. Poole, exhibiting stereotypic behavior is not
12 necessarily an accurate indicator of current welfare in
13 elephants, correct?

14 A. Not necessarily, not necessarily.

15 Q. Dr. Poole, in your opinion, captive breeding is acceptable
16 if done to enrich the welfare of existing elephants, correct?

17 A. Within specific contexts. I would not say that captive
18 breeding in an area that is too small for the elephants is
19 necessarily in their best welfare, but as a general statement,
20 yes. It's very complicated. It raises issues.

21 THE COURT: Go ahead and explain your answer.

22 THE WITNESS: Oh, well, it's rather complicated, but
23 elephants are actually very good breeders if they're given the
24 space to the elephants. They breed very well and very easily,
25 and in Africa in many places in Africa there are too many

1 elephants because they breed so successfully and then you get
2 into a situation where there's the moral issue of whether to
3 cull or not, so if you have elephants, let's say, I mean, I've
4 been arguing to have captive elephants in North America in very
5 large sanctuaries where they could live basically a pretty
6 normal life and have families and so on, and allow breeding, but
7 then would come eventually a situation where you may have too
8 many elephants, and so I have some minor doubts about how such a
9 situation would be dealt with.

10 BY MR. SHEA:

11 Q. Dr. Poole, you just mentioned space that elephants need.
12 Do you believe that captive elephants would each need at least
13 two square kilometers of space?

14 A. I know that you're referring to the "Mind and Movement"
15 paper where I have mentioned that figure, and yes, if -- what
16 I'm talking about there is if we were to do what I believe would
17 be the right thing for elephants, which is to provide them with
18 a space they need to the elephants to allow them to forage
19 naturally without just providing hay, then you do need enough
20 space so that they don't damage the habitat, so that's what I'm
21 saying there, and just a ballpark figure that is thrown around
22 for elephants in the wild is two kilometers per elephant.
23 Square kilometers. Sorry.

24 Q. Dr. Poole, do you know how big two square kilometers is in
25 terms of miles?

1 A. Well, you could use a square mile. I mean, it's not
2 exactly equivalent, but let's say a square mile.

3 Q. So that I understand it, elephants, captive elephants then
4 in your opinion would need one square mile of space?

5 A. I honestly believe that that's where we should be headed,
6 that's correct, if we want to keep captive elephants in North
7 America, to give them the life that they deserve, that we should
8 set aside some big space, perhaps five different places in North
9 America, and allow elephants to be elephants. That's my
10 personal feeling. I think that would be the right thing to do.

11 Q. Dr. Poole, there are currently approximately 500 captive
12 elephants in the United States, is that true?

13 A. To be honest, I can't remember.

14 Q. Okay. Dr. Poole, in your opinion, elephants should not be
15 captured from the wild in order to be held in captivity; is that
16 correct?

17 A. That's correct.

18 Q. And you opposed the importation of elephants Swazi land to
19 the San Diego zoo that was done in recent years, correct?

20 A. I did.

21 Q. Despite efforts to stop the importation, those elephants
22 were imported to the San Diego zoo, correct?

23 A. That's correct.

24 Q. Dr. Poole, in your opinion, the continuum of care in zoos
25 and circuses is not so good to really bad, correct?

1 A. Sorry. The continuum of -- read that again.

2 Q. In your opinion -- let me repeat my question so it's clear.

3 A. Um-hmm.

4 Q. In your opinion, the continuum of care in zoos and circuses
5 is not so good to really bad, correct?

6 A. I think that would be fair, yes.

7 Q. In your opinion, zoos and circuses --

8 A. Sorry. May I just go back a second? I'm talking about
9 space. I'm talking about space here, not about other care.

10 Q. And you're not talking about chaining there?

11 A. Well, I would like to stay off chaining in this, in this --
12 that's sort of another subject.

13 Q. Let me show you page 296 of your deposition, beginning on
14 line 20. Question: In putting elephants in a barn overnight,
15 chained or not, but in a stall, would that be harm as well?

16 Answer: Again, it is a continuum. In the case of
17 Ringling, they are chained for extremely long hours. In some
18 zoos they are chained also for long hours but not as long as.
19 In other zoos they are not chained but they are left out, but
20 they don't get the kind of exercise that they do in the wild, so
21 it is a continuum, not so good to really bad.

22 Did I read your answer, or did I read your testimony
23 correctly?

24 A. Yes. May I just say that I do think -- I think elephants
25 should be provided with a space where they can shelter to get,

1 especially because it's cold in North America, that they could
2 have a place where they can get out of the rain, where there's
3 perhaps some heat provided, but they could come and go as they
4 wished?

5 Q. Dr. Poole, in your opinion, zoos and circuses do not meet
6 the needs of elephants, correct?

7 A. Well, circuses certainly do not meet the needs of
8 elephants.

9 Q. You hold that same opinion as to zoos, do you not?

10 A. It is a continuum, and I feel that you are really trying to
11 make me out to be an extremist.

12 Q. Dr. Poole, let's go to page 122 of your deposition.

13 A. And I would like to have an opportunity to comment, if I
14 may.

15 THE COURT: Sure. Go ahead and comment.

16 THE WITNESS: May I?

17 THE COURT: Yes.

18 THE WITNESS: Yes, I do feel that this is all about
19 making me into an extremist, that I'm really far out there, and
20 I just wanted to say that as a member of the Amboseli research
21 project, I have signed back in 2001 and we have rewritten it
22 more recently, I guess it was earlier in 2008, all of us on this
23 project that represents over -- well, close do 400 years of
24 experience, have signed this letter saying that we do not
25 believe that elephants belong in circuses, that elephants are

1 being shipped around, chained in trains and on cars like so much
2 cargo, but they're being trained with bullhooks to do unnatural
3 acts and that we believe this is a travesty.

4 Now, to try and paint me as if somehow I'm extreme
5 when these are the preeminent elephant experts saying this, I
6 think that is -- I just want you to be aware of that. And I
7 also want you to be aware that Jane Goodal, for instance, who is
8 the preeminent authority on chimpanzees, spends 300 days a year
9 of her life now going around the world talking to kids, talking
10 to people, and advocating for chimpanzees. I don't have that
11 kind of fortitude, but I can't sleep at night if I don't speak
12 out on behalf of these animals. They deserve more than they're
13 getting, especially in the circus.

14 THE COURT: I think you probably minimized your
15 fortitude.

16 MR. SHEA: May I proceed, your Honor?

17 THE COURT: Yes, sir. Go ahead.

18 BY MR. SHEA:

19 Q. Dr. Poole, I'd like to show you page 11226 of your
20 deposition, line 19. The question on page -- I just wanted to
21 ask you about some of those specifics, and I believe you list
22 them succinctly in your conclusion beginning on page 13. At the
23 bottom of the page in the conclusion section you say, quote:
24 Based on decades of research, it is our considered opinion that
25 today's zoos and circuses do not come close to meeting the

1 interests of either male or female elephants, nor do we believe
2 that the slightly expanded exhibits that many zoos are currently
3 contemplating at vast expense will make a significant
4 difference. Am I reading that correctly so far?

5 Answer: Yes.

6 Question: What date was this published, do you know?

7 Answer: As far as I know, it actually hasn't been
8 published yet.

9 Question: But is this current?

10 Answer: This is current.

11 Question: These are your current opinions?

12 Answer: Yes.

13 Did I read your testimony correctly?

14 A. Yes, you did.

15 Q. Dr. Poole, in your opinion, keeping captive elephants in
16 pens is a little bit better than chaining them but not much,
17 correct?

18 A. Correct.

19 Q. Dr. Poole, elephants are kept in chains in home range
20 countries, aren't they?

21 A. You mean captive elephants?

22 Q. Yes. So let me try a better question this time, okay?

23 Captive elephants are kept in chains in home range countries,
24 correct?

25 A. There are places where elephants are kept in chains, that's

1 correct.

2 Q. And they are kept in chains in many home range countries,
3 aren't they, captive elephants?

4 A. Not in Africa. In Asia.

5 Q. So there are many elephants, Asian elephants, who are kept
6 in chains in home range countries in Asia, correct?

7 A. This is a very, very long tradition, but just as in other
8 traditions that are very long, it's not necessarily correct, and
9 based on what we know about elephants now, their capacity for
10 empathy, their other cognitive abilities, their body size, we
11 know that this is not the way they should be cared for.

12 Q. But they are so kept in Asia countries?

13 A. They are so kept, but that doesn't make it right here in
14 this country.

15 Q. Okay. Dr. Poole, now Abood I asked you about yesterday.
16 That was the name of the elephant that you rode in Vaswani,
17 correct?

18 A. That is correct.

19 Q. Abood was killed by a musthed male in Butza while Abood was
20 on chains, correct?

21 A. I believe he was on chains. I wasn't there so I don't know
22 the details.

23 Q. Let's go to page 69 of your deposition. Beginning on line
24 five, question: Do you know how old Abood was at the time?

25 Answer: I think he was in his 30s.

1 Question: Is he still alive, do you know?

2 Answer: No. He was killed. He was killed because he
3 was the elephants there are let out on chains and he was killed
4 by a must male. It was an elephant and elephant fight.

5 And the must male won? was my question.

6 Answer: He won because Abood was on chains.

7 Did I read your testimony correctly?

8 A. It was many years ago, but that's what I recall Randall
9 Moore telling me.

10 Q. Dr. Poole, and that gentleman was the elephant's owners?

11 A. He owned the elephants, yes.

12 Q. Dr. Poole, you obviously spent many years watching African
13 elephants at Amboseli Park in Kenya, correct?

14 A. In Amboseli National Park?

15 Q. Yes.

16 A. Yes.

17 Q. And there has been mass tourism in the Amboseli park for
18 the -- strike that. Let me start again.

19 Dr. Poole, there's been mass tourism in Amboseli park
20 since the late 1960s, correct?

21 A. Sorry. Mass tourism you're saying as in many, many bus
22 tourism?

23 Q. Yes, that's what I'm asking.

24 A. Yes. I would guess about the late 1960s, yes.

25 Q. And in peak years, as many as 200,000 visited the park,

1 correct?

2 A. That's the figure I recall.

3 Q. The visitors go out in mini-busses, Jeeps, or Land Cruisers
4 to see the elephants, correct?

5 A. Correct.

6 Q. And they get as close as one meter away, isn't that true?

7 A. That's true.

8 Q. Elephant poaching for ivory is on the rise in Africa, isn't
9 it?

10 A. That is true.

11 Q. And elephant poaching for ivory is continuing in India; is
12 that right?

13 A. That's true.

14 Q. And human-elephant conflict is escalating in Africa and in
15 Asia, isn't it?

16 A. That's correct.

17 Q. Dr. Poole, in your opinion, if you project forward in
18 Africa or in Asia, the long-term future for wild elephant
19 habitats looks pretty bleak, correct?

20 A. What I would say is that elephant populations, many
21 elephant populations are going to go extinct or be wiped out,
22 that individuals, families, entire populations, are going to be
23 wiped out, but that does not mean that the elephant in the wild
24 will go extinct. I believe that there will be many places,
25 especially the larger national parks where elephants will

1 survive, but if you project forward with the increasing human
2 population, growth and increasing demand for the resources,
3 elephants are, yes, it is true they are under increasing
4 pressure.

5 Q. Dr. Poole, the practice of culling in the wild continues
6 today, correct?

7 A. Well, it is just about to be started again, but this is
8 restricted to a couple of countries in southern Africa.

9 Q. Dr. Poole --

10 A. Sorry. May I just --

11 THE COURT: Go ahead.

12 THE WITNESS: It's areas where elephants are fenced.
13 It's not really been a problem in national parks that are not
14 fenced, and most populations are not fenced at this stage, so
15 ones you put elephants behind fences, some people at least feel
16 that it affects the equilibrium of the habitat, the eco system.

17 BY MR. SHEA:

18 Q. Dr. Poole, in your opinion, capturing wild baby elephants
19 is no less abhorrent than killing them, correct?

20 A. I have said that.

21 Q. So in your opinion, it's better off, isn't it, Dr. Poole,
22 in your opinion, that an entire elephant family be killed than
23 any young elephant in that family end up in a circus, is that
24 true?

25 A. That is correct.

1 Q. Now, Dr. Poole, you believe that captive breeding should
2 not be done in North America, correct?

3 A. That's not correct actually. I think it depends on the
4 situation. As it is now, we have elephants being shipped
5 around, mothers and daughters or mothers and offspring being
6 separated, elephants being bought and sold, being shipped from
7 one zoo to another, families being broken up, being kept in
8 areas that are too small. I could go on. Then I don't think
9 that the breeding the way it's being done in most places, I'm
10 not very happy about it, but I think there could certainly be a
11 situation where you could have captive breeding.

12 Q. But as it stands, you're not happy with any existing
13 captive breeding operation in North America, correct?

14 A. I don't think I can say that. Of the ones I know about.
15 Of the ones that I know about.

16 Q. So the ones you know about, you're not happy about any,
17 correct?

18 A. No, because most are done with AI and yeah.

19 Q. Now, Dr. Poole, it is your view that zoos do not have a
20 moral right to keep elephants because they do not provide a full
21 social experience for elephants, correct?

22 A. That is a strong statement and I read it the other day.
23 Repeat that to me again.

24 Q. Was it your statement?

25 A. I think I recognize it.

1 Q. Well, my question is: Was it your statement?

2 A. I think it's my statement. Read it again.

3 Q. Well, I'm asking you a question.

4 A. Yes, I know.

5 Q. And it is: Is it your view that zoos do not have a moral
6 right to keep elephants because they do not provide a full
7 social experience for elephants?

8 A. It is my statement, but I think it is -- I think the
9 terminology is a bit strong.

10 Q. Well, Dr. Poole, let me ask you -- well, let me just take
11 you to your deposition, page 226, line 18. Question: How did
12 you come to have that document that is -- are we on 226?

13 Line 18, Question: I hand you Exhibit 14 to your
14 deposition, and it looks to be a copy of a keynote address made
15 by you to the 22nd Annual Elephant Manager's Workshop, November
16 9 through 12, 2001. Do you remember giving such an address?

17 Answer: Actually I gave it, believe it or not, in
18 Lamo, Kenya.

19 Question: You did it by video conference?

20 Answer: I sent a tape or something because that was
21 right after 9/11.

22 Question: I was going to ask because all of us here
23 were having a hard time traveling. You sent a tape of this
24 address, but you did give the address; is that right?

25 Answer: Yes.

1 Question: On the fourth page down near the bottom of
2 the page, it would be the last full paragraph, which is a short
3 one, that begins quote: Now to the .tricky question, end quote.
4 In that paragraph three lines down you say, quote: On the basis
5 of all that I have learned about elephants, my personal feeling
6 is that those zoos that cannot provide a full social experience
7 for elephants do not have the moral right to keep them. I don't
8 feel that any of the zoos I have visited meet the standards that
9 we should aspire to. End quote. Did I read that correctly?

10 Answer: You did.

11 Question: As to the first sentence regarding the zoos
12 not having the moral right to keep elephants where they cannot
13 provide a full social experience for them, is that your opinion
14 today?

15 Answer: Yes, basically. I mean, I guess I feel very
16 strongly, having spent so many years with elephants, that they
17 deserve -- they deserve better, but then again, let me say that
18 I am talking on behalf of the elephants that is not taking into
19 consideration all the needs we have as people to see them or
20 whatever. This is from the elephant's perspective.

21 Question: And you don't know of any zoos that give
22 the full social experience for its elephants; am I right?

23 Answer: Correct. Having said that, it is of course a
24 continuum.

25 Did I read your testimony correctly?

1 A. You did.

2 Q. Dr. Poole, also you believe that the sanctuaries,
3 specifically those run by PAWS in northern California and Carol
4 Buckley in Tennessee, do not provide a full social experience
5 for elephants, correct?

6 A. That is correct. May I add to that, please?

7 THE COURT: Sure, you may.

8 THE WITNESS: Remember that those sanctuaries have
9 been set up to provide as sort of a Hospice for abused
10 elephants, or elephants who have suffered very much where they
11 are so -- they're in a little bit of a different category.

12 BY MR. SHEA:

13 Q. Dr. Poole, do you recall being asked yesterday during your
14 direct examination about the life-span of elephants, how old
15 they become in the wild?

16 A. I believe so. I believe so. About the median life-span.
17 Yes, I do.

18 Q. Do you recall saying that the median life-span for females
19 is 56 years old?

20 A. That's correct.

21 Q. And you qualified that, did you not, by saying that is the
22 median life-span for females if you exclude elephants who have
23 been killed by people or have died as a result of wounds
24 inflicted by people, correct?

25 A. Correct.

1 Q. Dr. Poole, what is the life span of elephants, female
2 elephants, what is their life expectancy if you do not exclude
3 mortality caused by humans?

4 A. You want the life expectancy or the median life-span? I
5 think I can give them both to you, and I may be a little bit off
6 on the figures. The life expectancy was 34, and I believe the
7 life-span, median life-span that was recently quoted in the
8 paper that came out was 335.7 or something like that.

9 Q. I see.

10 A. So pretty similar.

11 Q. And for males in the wild, what is their life expectancy if
12 you do not exclude mortality caused by humans?

13 A. If you do not. I think it was in my deposition, wasn't it?
14 I'm not sure I can remember. Was it as low as 24? Did I tell
15 you?

16 Q. Dr. Poole, would you disagree that you wrote in your report
17 that the life expectancy for males was 24 years, but in the
18 absence of human-induced mortality it increases to 39?

19 A. Yeah. That sounds correct.

20 Q. Dr. Poole, the Maasai, M-a-a-s-a-i, people live near
21 Amboseli Park, Kenya, correct?

22 A. That's correct.

23 Q. And in your view, there is a cycle of violence between the
24 elephants at Amboseli Park and the Maasai people, right?

25 A. It has developed over some years.

1 Perhaps I should explain?

2 THE COURT: Sure, go ahead.

3 THE WITNESS: Yeah. When Amboseli was made a national
4 park in 1974, the Maasai were excluded from a small area, 394
5 square kilometers, and as a way of a political protest they
6 began spearing elephants and rhinos and some of the other large
7 animals because elephants are so intelligent they have in a way
8 retaliated. They started to kill Maasai, and particularly live
9 stock, not so much people, but live stock, and the Maasai have
10 again responded by spearing elephants, so it has developed into
11 what I would like to call a cycle of violence and retaliation
12 between the two species.

13 THE COURT: That is fairly atypical, for elephants to
14 attack other animals?

15 THE WITNESS: It is, it is. And even in the Mara
16 where Maasai and elephants live side by side, they don't have
17 this same kind of relationship, so it really does seem to have
18 developed from the spearing that was started by the Maasai
19 feeling that they had been cheated of their land.

20 THE COURT: So this started, but then it stopped years
21 ago?

22 THE WITNESS: Well, no. It's kind of kept up because
23 the elephants kill livestock, so what we know is we now
24 compensate the Maasai if any of the animals that are killed by
25 elephant and that we can verify have been killed by elephants as

1 long as they agree not to cull any elephants in, you know, as a
2 result, so we're hoping that way that they will be able to stop
3 this cycle.

4 BY MR. SHEA:

5 Q. And Dr. Poole, then clearly you believe that the elephants
6 were killing live stock in retribution for the spearing, do I
7 understand that correctly?

8 A. Yes, I do.

9 Q. Thus you believe that the elephants belonging to the Maasai
10 and then kill the live stock for revenge?

11 A. Yes.

12 Q. Dr. Poole, you misinform -- well, let me just ask, was one
13 of these elephants that was speared in the named Odelai?

14 A. Odil.

15 Q. Odil, O-d-i-l?

16 A. Yes, um-hmm. She is still alive.

17 Q. Could you please show me 302A, 1 of 31, defense exhibit?

18 Is this a picture of Odil that is posted on your
19 website, Dr. Poole, with the spear?

20 A. That's correct, that's correct.

21 Q. Dr. Poole, during your direct examination you testified
22 about a portion of the movie Elephant, Lord of the Jungle?

23 A. Um-hmm.

24 Q. And I have a question I'd like to show you out of that, or
25 a clip I'd like to show you and then ask a question. If you

1 could play plaintiffs we'll call it Exhibit 113, 19:24 to 20:32.

2 (Video played.)

3 Dr. Poole, I'll ask you, are there biting flies such
4 as those in Amboseli?

5 A. No, we don't have the -- we don't have Tetsi flies. We
6 occasionally have horse flies, but no, it's not like these, no.

7 Q. Seeing on this film and these flies, I'll ask you is what
8 you see in this clip and on the screen now at the end of the
9 clip a wound?

10 A. You know, those biting flies have an anti-coagulant in
11 them, so I don't know whether I'd call that a wound. I don't
12 think I'd call that a wound.

13 Q. Is it an injury?

14 A. I don't think I would call that an injury. It's a bite
15 from a fly.

16 Q. Has the elephant been harmed?

17 A. It's been harassed, that's for sure.

18 Q. But not harmed, is that your testimony?

19 A. I don't know. Personally I don't call when I'm bitten by a
20 mosquito being harmed, so I guess I would call it the same
21 thing.

22 Q. Dr. Poole, I'd like to show you a clip, the Plaintiff's
23 exhibit, we'll call 113, starting at 44:35 and ending 44:59.

24 (Video played.)

25 Now, Dr. Poole, has this elephant been injured?

1 A. Absolutely.

2 Q. And that's a wound; is that correct?

3 A. That's a wound.

4 Q. Dr. Poole, I have a question about the following clip.
5 This is again Plaintiff's we'll call it Exhibit 113, 45:20
6 through 45:37.

7 (Video played.)

8 So Dr. Poole, has this elephant been wounded?

9 A. I can't actually see it because the -- but I assume if it's
10 been shot by a bullet it's been wounded.

11 Q. I'd like to show you another clip, Plaintiff's we'll call
12 Exhibit 113, starting at 45 minutes 46 seconds through 47
13 minutes 8 seconds.

14 (Video played.)

15 Dr. Poole, you've seen that that elephant in the
16 Endangered Species Act applied to the people who were poaching
17 that, that elephant was taken, wasn't it?

18 A. I'm sorry?

19 Q. That elephant would have been "taken," in your opinion,
20 correct?

21 A. That elephant was wounded and that elephant was killed.

22 Q. And have you seen similar poaching in Amboseli? You have,
23 haven't you?

24 A. I have.

25 Q. And you have various photographs of similar wounding on

1 your website, do you not?

2 A. I do.

3 Q. I'd like to show you a photograph in Defense Exhibit 332A,
4 photograph 8 of 31. This is a photograph on your website,
5 correct?

6 A. Yes. I took that photograph in 1981, I believe.

7 Q. And this elephant had been poached, do I understand that
8 correctly from the caption?

9 A. That elephant had been poached.

10 Q. And definitely wounded and killed, correct?

11 A. Correct.

12 Q. Dr. Poole, I have a question about the following clip,
13 Plaintiff's we'll call it Exhibit 113, starting at 49 minutes
14 and 12 seconds. And going through I believe 51 minutes and 3
15 seconds?

16 (Video played.)

17 Dr. Poole, do you have any reason to disagree that
18 that took that elephant a further four months to die?

19 A. Well, actually there were a lot of inaccuracies on this
20 film in the narrative, but it could happen, that's correct.

21 Q. Dr. Poole, let me show you photograph 5 of 31, Defendant's
22 Exhibit 302A. Dr. Poole, this is a picture of a dead elephant
23 calf on your website, is that true?

24 A. It's not a calf, I don't think. It does say it's a calf.

25 Okay.

1 Q. On the caption it does say "elephant calf"?

2 A. It does say it's a calf. Okay.

3 Q. Had that elephant been poached?

4 A. I don't recall.

5 Q. Or was the elephant, did it die as part of a human-elephant
6 conflict?

7 A. I can't recall on that one. I don't remember which.

8 Q. Dr. Poole, let me show you photograph 25 of 31, Defendant's
9 Exhibit 302A.

10 A. Actually, it says human conflict in Amboseli eco system, so
11 I assume that was from some kind of spearing incident.

12 Q. And Dr. Poole, this is photograph 25 to 31, Defense Exhibit
13 302A. This says it's a picture of Dyanisis being treated for
14 spear wounds. The 63-year-old died a few weeks later in October
15 2003. Did I read that correctly?

16 A. Yes. He was one of my focal males so I know him very well.

17 Q. Is this the disappearing attacks that you were referring to
18 earlier, did the Maasai spear this elephant?

19 A. Yeah. He was speared by Maasai, yes.

20 Q. And he ultimately died from those spear wounds; is that
21 correct?

22 A. That's correct.

23 Q. Dr. Poole, let me show you a film clip from Plaintiff's
24 we'll call Exhibit 142. It's from the inspection at the Center
25 For Elephant Conservation in Polk City, Florida, beginning at 1

1 hour 25 minutes and 15 seconds and going to one hour 25 minutes
2 and 39 seconds.

3 (Video playing.)

4 Dr. Poole, do you recognize this as a film clip from
5 the inspection?

6 A. I do.

7 Q. And you were present at the inspection, correct?

8 A. I was.

9 Q. And in your opinion, that inspection was a "taking" because
10 the elephants were required to perform certain activities with
11 an ankus, such as Zina being asked to raise her foot, correct?

12 A. It was a taking because the elephants were not permitted
13 freedom of movement. I mean, it's within the context of how
14 these elephants are kept. They were not allowed to move forward
15 or backward. They were told to go back in line. They had no,
16 no sense of autonomy in their lives.

17 And I would like to say that, yes, all those pictures
18 you've shown help show a tragic end to what was otherwise a
19 glorious life in the wild where elephants are free to move.
20 Their days are filled with joy and with things to do, so I find
21 that, I mean, you have to remember that in the range states,
22 elephants are living with very, very poor people, people who can
23 barely find enough food to eat and they are competing with
24 elephants, and yes, there is human-elephant conflict. That's
25 just what they have in this world of ours today, but that

1 doesn't mean that we should then haul elephants into captivity
2 and abuse them. I think we're talking about, it's, you know,
3 it's apples and oranges here. I think the comparison -- I'm
4 sorry. I think it's ridiculous.

5 Q. Dr. Poole, that was a long answer to my question.

6 A. I'm sorry.

7 Q. I wanted to confirm that you found in your opinion that an
8 inspection was a "taking," correct?

9 A. Correct.

10 MR. SHEA: I have no further questions at this time,
11 your Honor.

12 THE COURT: All right. I have one question before any
13 redirect.

14 You mentioned yesterday, there was a film shown
15 yesterday, a portion of a film, that appeared to be an
16 elephant -- I'm just trying to think of another word other than
17 "dancing," but it appeared to be an elephant dancing on what
18 appeared to be a --

19 THE WITNESS: A piano.

20 THE COURT: A piano, that's right. And you said it
21 was totally abnormal and you drew a conclusion that in order to
22 teach an elephant to do that -- you had an opinion about how
23 this elephant what taught to do that. What was that opinion?

24 THE WITNESS: One of the things when I first saw that
25 was very early on I remember reading about elephants because

1 they have these so-called pillar-like legs, the way that the
2 legs are built. There's not much spring in them. And one of
3 the things I always say is elephants cannot jump, so here is
4 this elephant hopping and skipping on the piano there. I just
5 can't imagine. I mean, based on what I have read, I can't
6 imagine how it's done, but I think I have to leave that to
7 people who have trained elephants to tell you.

8 THE COURT: So you don't have an opinion about the
9 manner in which the elephant was trained to do that?

10 THE WITNESS: I have one, but since I don't have the
11 expertise, I don't know if I should share it with you.

12 THE COURT: I'm sorry. You don't have the expertise
13 to?

14 THE WITNESS: I have never watched and elephant being
15 trained, I have only read about how it's done. I can tell you
16 how I believe that it's done.

17 THE COURT: What you believe. And you believe what,
18 that the hook was used?

19 THE WITNESS: Yes. That it's forced to do it.

20 THE COURT: I just wanted to be clear. I'm sorry. I
21 should have asked that question when I heard the question on
22 direct.

23 Any redirect?

24 MR. SHEA: I have nothing in response to that, your
25 Honor.

1 THE COURT: Any redirect?

2 MS. MEYER: Yes, your Honor.

3 REDIRECT EXAMINATION

4 BY MS. MEYER:

5 Q. Dr. Poole, do you remember yesterday when Mr. Shea asked
6 you whether you had watched the videotape of the Auburn Hills
7 inspection of Nicole and Karen at the time that you wrote your
8 expert report?

9 A. Yes.

10 Q. Would you please take a look at page 30 of your expert
11 report, and if you would look at paragraph 4 on page 30, and 6
12 lines down with the sentence that begins, The photographs and
13 video footage? Do you see that sentence?

14 A. Yeah, I do.

15 Q. Could you read that sentence, please?

16 A. The photographs and video footage from the inspection of
17 the Blue Unit shows that the pens are quite small and that some
18 of the elephants are even chained while in the pens.

19 Q. And does reading that sentence in your expert report
20 refresh your memory on this subject?

21 A. Yes, it does.

22 Q. What are you referring to in that sentence?

23 A. Well, I'm referring to the pens that we observed in the
24 videotape.

25 Q. And which video footage are you referring to?

1 A. The Auburn Hills video footage.

2 Q. Which inspection was that?

3 A. Well, that was the inspection that I did not attend.

4 Q. Which elephants were inspected in that inspection?

5 A. Oh. Sorry. Karen and Nicole.

6 Q. Dr. Poole, during the time that you were involved in the
7 CEC inspection that you went to, did you see any enrichment
8 items given to the Feld Entertainment elephants?

9 A. I did not.

10 Q. How long were you involved in that inspection?

11 A. I think it was -- I think it was about, I don't remember
12 when we got there actually, maybe around noon, but we were
13 outside. Maybe at one o'clock. We went into the barn I
14 remember at three.

15 Q. When did you leave the barn?

16 A. At 6:30.

17 THE COURT: Enrichment items would consist of what? I
18 think you mentioned --

19 THE WITNESS: In captivity there have been, you know,
20 like a tire or something to pick up and play with. I don't
21 often see elephants playing with any of their enrichment items.

22 THE COURT: Either in circuses or in zoos?

23 THE WITNESS: Yes.

24 BY MS. MEYER:

25 Q. But as I understand your answer, you did not see any

1 enrichment items?

2 A. I did not see any.

3 Q. You mentioned in response to Mr. Shea's questioning that
4 your experimental studies that you've done were all published in
5 prestigious journals. Could you tell us what journal you're
6 referring to?

7 MR. SHEA: Objection; argumentative and leading.

8 THE COURT: I'll allow the answer.

9 THE WITNESS: Nature, Current Biology, Biology
10 Letters. Where was the other? Animal Behavior, I believe.

11 BY MS. MEYER:

12 Q. And why do you say those are prestigious journals?

13 A. Well, especially the Nature is -- they're all very
14 difficult to get published in, so to get a paper in Nature is --
15 yeah, it feels right.

16 Q. And Dr. Poole, why do you believe that baby elephants
17 should not end up in a circus?

18 A. Why do I feel a baby elephant should not end up in the
19 circus?

20 Q. Yes.

21 A. Well, for lots of reasons. Because it's separated from its
22 mother, because it's forced to do -- it's not allowed to have a
23 social life, a normal social life, it doesn't get a chance for
24 social learning from its mothers or members of its family, it's
25 forced to do tricks, unnatural tricks, and it's forced to a life

1 of living on chains and being transported around on trains or,
2 in some other circuses, in trucks.

3 Q. And why do you say that the sanctuaries, PAWS, and the
4 elephant sanctuary in Tennessee to not provide full social
5 experience for elephants?

6 A. Well, if you look at the full social experience, it would
7 be living with adult males, living with having calfs, and both
8 the sanctuary and -- both sanctuaries -- well, one sanctuary is
9 now having males but they won't be integrated with the females.
10 The other sanctuary doesn't have males, and neither of them are
11 breeding their elephants.

12 Q. Is there any other reason that you stated that they don't
13 provide the full social experience for the elephants?

14 A. No. That's really the reason.

15 MS. MEYER: That's all I have, your Honor.

16 THE COURT: Any other questions?

17 MR. SHEA: No, your Honor.

18 THE COURT: I have to ask you this, it probably has
19 nothing to do with this case. Some years ago there was a
20 tsunami and I heard some elephants played a role in the
21 recovery. Did you study that?

22 THE WITNESS: Yeah, yeah, yeah. In fact, we started
23 to write a paper on it, because the elephants, they're able to
24 pick up seismic vibrations through their feet. I've seen
25 elephants responding to zebras stampeding like two kilometers

1 away, so they pick up the movement, so they picked up the
2 movement of the tsunami coming and ran -- they were captive
3 elephants and they were carrying some tourists as I remember the
4 story, and they ran away from the beach and so saved those
5 particular people.

6 THE COURT: And in recovery, do they also not --

7 THE WITNESS: I think, I think you're right there.

8 THE COURT: Did they roam?

9 THE WITNESS: I think they did go in, but they were
10 probably under someone's control going in. Probably people who
11 were trapped, but I don't remember the specifics of that.

12 THE COURT: You said there are sensitivities in their
13 feet that enable them to --

14 THE WITNESS: Yes.

15 THE COURT: What's the impact of the chaining on that
16 ability that they possess in their feet, if any?

17 THE WITNESS: Well, I don't know. I mean, it's
18 more -- it's the pad of the foot. I would think it's more what
19 would disturb them would be in being in these very loud
20 environments. Wherever the circus goes, there's no frequency.
21 Noise --

22 THE COURT: But the pads are shaped in captivity,
23 though; is that right?

24 THE WITNESS: The pads are shaped in captivity.

25 THE COURT: Does that impact the --

1 THE WITNESS: I don't know. I don't know the answer
2 to that.

3 THE COURT: Any other questions?

4 MR. SHEA: No, your Honor.

5 THE COURT: Anything?

6 MS. MEYER: No, your Honor.

7 THE COURT: Have a safe trip home.

8 THE WITNESS: Thank you, your Honor.

9 THE COURT: Call your next witness.

10 THE WITNESS: Actually, may I just clarify?

11 THE COURT: Sure, absolutely.

12 THE WITNESS: Am I not allowed to discuss this now?
13 Am I -- I heard about the blogging, no blogging.

14 THE COURT: We ask that witnesses not discuss their
15 testimony with anyone during the course of the trial.

16 THE WITNESS: Okay.

17 THE COURT: We ask that.

18 THE WITNESS: With family members?

19 THE COURT: Let me hear from counsel. She's
20 testified, she's excused, she's going back home.

21 You're going back to Norway, correct?

22 THE WITNESS: Yes.

23 THE COURT: We certainly ask you that you not speak to
24 any other participants.

25 MR. SIMPSON: I think that's an appropriate direction.

1 THE COURT: No other participants.

2 THE WITNESS: So if I'm off in Norway and I'm talking
3 to my friends, that's fine?

4 THE COURT: That's fine. It's an issue that haunts us
5 sometimes. Thank you. Have a safe trip home.

6 THE WITNESS: Thank you very much, your Honor.

7 MS. MEYER: Your Honor, can I take a short break?

8 THE COURT: Absolutely. We'll take a ten-minute
9 recess. Thank you. No need to stand.

10 COURTROOM DEPUTY: This Honorable Court now stands in
11 a ten-minute recess.

12 (Recess taken at about 11:34 a.m.)

13 COURTROOM DEPUTY: Please remain seated and come to
14 order.

15 (Back on the record at about 11:57 a.m.)

16 THE COURT: All right. Counsel, I just had one
17 question to ask the doctor.

18 (Dr. Joyce Poole recalled at about 11:57 a.m.)

19 THE COURT: I'm sorry, I just have one question, maybe
20 two, depending on your answer, but I think you answered this
21 yesterday. I just want to be clear about it.

22 The chaining in the boxcars or the treatment -- you
23 can have a seat -- the chaining, the ankle chaining in the
24 trains, is that in your view a taking?

25 THE WITNESS: Yes.

1 THE COURT: That's what I thought you said. And it's
2 a taking because?

3 THE WITNESS: Well, because they have -- they can't do
4 anything.

5 THE COURT: And it's totally unnatural?

6 THE WITNESS: It's totally unnatural. I mean, it's
7 just -- it's the most -- for me, it's the most extreme of this
8 whole lifestyle that they live. If you compare how they live in
9 the wild in a family group, on the move continually, their
10 ability to explore, interact with one another, find their own
11 food, search for mates, that sort of picture of elephant life,
12 in this vision fusion society where they're coming together and
13 splitting apart and in communication with one another, to this
14 extreme existence chained in a train.

15 THE COURT: All right. Forgive me because I'm a
16 layperson so the choice of words may not be precise, but from a
17 behavioralist point of view, is there any emotional sequela or
18 emotional trauma associated with any of these takings?

19 THE WITNESS: I believe so, absolutely.

20 THE COURT: What's the basis for your belief?

21 THE WITNESS: Okay. There was a paper that I wrote,
22 and also that came out in Nature in 2000, about some young
23 elephants who had been -- they were orphans from a could you be
24 so in southern Africa in Krueger. They used to cull the
25 elephants and then they would keep the babies who were under

1 sort of between two and four years old and those elephants would
2 be shipped off to zoos and some of them were used to sort of
3 start founder populations, and one of them was in Pilanesberg
4 National Park, so they dumped I can't remember how many, I think
5 it was 830 baby elephants on their own in the park, and
6 everything seemed to be okay for quite a while until some of the
7 young males starting coming into musth, which is this period of
8 heightened sexual and aggressive activity that male elephants go
9 into. They usually go into it when they're in there mid-20s or
10 so. These guys were coming in as teenagers, and the first thing
11 they did was to mount and kill rhinos, so it became, since
12 rhinos are an endangered species, it became a huge issue because
13 they were losing rhinos, so they called me down to see what they
14 might do with it, and it's since been -- it's since been decided
15 that what these elephants have gone through basically were
16 suffering from posttraumatic stress disorder. There's that.
17 And there's also the lack of any role model, so definitely --

18 THE COURT: There is an emotional aspect to it?

19 THE WITNESS: Absolutely. And I've written several
20 papers on emotions in elephants as well.

21 THE COURT: The expression "memory like an elephant,"
22 any basis for that?

23 THE WITNESS: Yes, there is.

24 THE COURT: What is that? What's the origin of that?

25 THE WITNESS: Well, for instance, we know from play-

1 back experiment in Amboseli that elephants are able to remember
2 the voices of up to 200 different individuals. They, we know
3 also from experiments, recent experiment, that through the sense
4 of smell, they have an extraordinary sense of smell, they're
5 able to keep track of where everyone is in the family. That's
6 not the same as the long-term memory, but they're also using
7 long-term memory to remember trails they used to take to old
8 water holes during periods of drought and so on. We also have
9 actually a couple of examples from captivity where elephants
10 have remembered one another after 23 years they had been
11 separated, and I had a case with a male who remembered me after
12 12 years.

13 THE COURT: How does that impact the issue of taking,
14 the fact that an elephant has a significant long-term memory
15 ability and you telling me that elephants experience some
16 emotion?

17 THE WITNESS: Well, I think, for instance, experiences
18 they've had when they were babies, being separated from their
19 mothers, being beaten as babies, being poked with the ankus and
20 stuff, those are things that they're going to carry with them
21 for their life.

22 THE COURT: That is a taking?

23 THE WITNESS: Yes, that's a taking.

24 THE COURT: So the memory aspect is a taking then?

25 THE WITNESS: Yes, yes.

1 THE COURT: That they recall the chainings and the
2 beatings?

3 THE WITNESS: Yes. And they are living with that for
4 their entire lives. And not only that, because they have the
5 capacity for empathy, you know, empathy has been thought until
6 recently to be a cognitive ability that only humans have, and
7 now we're finding some animals are capable. Elephants are one.

8 THE COURT: That supports your theory that there is
9 posttraumatic stress, though?

10 THE WITNESS: Yes. And, you know, in the case where,
11 and I'm sure you'll hear about it, where Benjamin was being
12 beaten and Karen started rattling her chains, she was responding
13 to that, that calf being beaten. She was upset about it, so
14 it's not only what the animal has experienced itself, but the
15 feelings that it has for others and how they're being treated.

16 THE COURT: All right. It's only fair to ask counsel
17 if you have any questions, any follow-up questions.

18 MR. SHEA: Not at this time, your Honor.

19 THE COURT: Well, you better ask them now of this
20 witness. She's about to get on a plane. No other questions?

21 Any questions?

22 MS. MEYER: No, your Honor.

23 THE COURT: All right. Thank you. Thank you very
24 much. Have a safe trip home.

25 THE WITNESS: Thank you very much, your Honor.

1 MR. CRYSTAL: Your Honor, Howard Crystal for the
2 plaintiffs, and at this time we call Archele Hundley.

3 THE COURT: All right.

4 MS. JOINER: Judge, can we note on the record our
5 objection to the Red Unit witness?

6 THE COURT: To the what?

7 MS. JOINER: To the Red Unit witness?

8 THE COURT: Yes.

9 Do you know what? Carol raised a point with me during
10 the recess with regards to the film footage, that part and
11 parcels of exhibits that have not been introduced. Does anyone
12 disagree with the monitors just remaining on? I don't want to
13 keep interjecting myself and say move something into the record
14 at that point. If you don't want to that's fine. I don't have
15 any problems with the monitor being on, but does anyone else
16 have a problem with the monitor being on showing film footage
17 that has not been introduced and received in the evidentiary
18 record.

19 MR. SIMPSON: No objection, your Honor. There will be
20 a number of these things.

21 THE COURT: That's what I thought, and I didn't want
22 to keep interjecting myself. As long as we have a clear record
23 at the close of this, that's fine, but the rules are we aren't
24 going to show anything on the monitor that hasn't been formally
25 received, but if no one has a problem with that, we'll just keep

1 the monitors on. It will make Carol's job easier as well.

2 MS. MEYER: We have no objection.

3 COURTROOM DEPUTY: Please raise your right hand.

4 (Witness sworn by courtroom deputy.)

5 THE WITNESS: I do.

6 THE COURT: Good morning.

7 MR. CRYSTAL: Good morning.

8 THE COURT: Oh, is it morning? Good day.

9 **ARCHELE HUNDLEY, WITNESS FOR THE PLAINTIFFS, SWORN**

10 DIRECT EXAMINATION

11 BY MR. CRYSTAL:

12 Q. Please state your name.

13 A. Archele Hundley.

14 Q. Where do you live?

15 A. Charlestown, West Virginia.

16 Q. Who do you live with?

17 A. My ex-husband and four kids.

18 Q. Did you grow up in that area?

19 A. Yes, I did.

20 Q. And did you go to school there?

21 A. Yes, I did.

22 Q. And have you worked in that area?

23 A. Yes, I have.

24 Q. What kind of work have you done?

25 A. Security, security officer.

1 Q. Ms. Hundley, are you familiar with the Ringling Brothers
2 Circus?

3 A. Yes, I am.

4 Q. Have you ever worked for the Ringling Brothers Circus?

5 A. Yes, I have.

6 Q. What unit did you work for?

7 A. The Red Unit.

8 Q. How long, how many months did you work for the circus?

9 A. From April to June of 2006.

10 Q. What did you do for the circus, Ms. Hundley?

11 A. I was one of the animal care providers, one of the animal
12 handlers. I worked with the miniature horses and horses.

13 Q. What did you do for the horses?

14 A. I groomed them and fed, helped to set up animal compounds,
15 and did the animals walks.

16 Q. What, if any, experience did you have with grooming horses
17 before you worked at the circus?

18 A. I grew up around horses. My dad breeds and races horses.

19 Q. Ms. Hundley, what hours did you work with when you were
20 working at the circus?

21 A. Oh, usually I think we started about 7:00, 7:30, until
22 about 10:00 at night, 11:00 sometimes. It just depended on how
23 many shows we had that day.

24 Q. Were there other animals at the circus when you worked
25 there?

- 1 A. Yes, there were.
- 2 Q. Could you tell us what animals?
- 3 A. We had elephants, camels, goats, laamas, zebras, cows.
- 4 Q. About how many elephants were there?
- 5 A. Ten.
- 6 Q. Did you have a chance to see the elephants while you worked
7 there?
- 8 A. Yes, I did.
- 9 Q. How often did you see them?
- 10 A. Every day.
- 11 Q. What parts of the day did you see them?
- 12 A. Throughout the day all day long. Their compound was right
13 next door to the horses.
- 14 Q. Did you have a chance to get near to the elephants?
- 15 A. Yes.
- 16 Q. Did you ever give the elephants anything?
- 17 A. Yeah.
- 18 Q. What would you give them?
- 19 A. Candy bars.
- 20 Q. Ms. Hundley, do you remember any of the elephants' names?
- 21 A. There was Luna, Tonka, Banana, Baby, Asia, and Zina. There
22 were of course others. I can't think of them right offhand.
- 23 Q. Did you like the elephants, Ms. Hundley?
- 24 A. Yes.
- 25 Q. Why is that?

1 A. Oh, they were just such amazing creatures. They each
2 seemed to have their own individual personalities, and they were
3 just so intelligent.

4 Q. Do you feel like you bonded with the elephants while you
5 were there?

6 A. Yes.

7 Q. And why is that?

8 A. Because I spent a lot of time with them.

9 Q. Ms. Hundley, when would you first see the elephants in the
10 morning?

11 A. About 7:30 a.m.

12 Q. And what would they be doing at that time?

13 A. They were chained.

14 Q. What do you mean?

15 A. They were in the compound or tent. It just depended
16 whether they were being housed indoors or outdoors, and they
17 were chained together.

18 Q. Where were the chains on the elephants?

19 A. One front leg and one back leg.

20 Q. Were all of the elephants chained?

21 A. Yes.

22 Q. And when would you see them come off the chains?

23 A. They might let them go, I don't know, about 8:30, 9:00.

24 Q. And what would happen then?

25 A. They walked them around in a circle for about fifteen

1 minutes and then they would chain them back up.

2 Q. And then when would they next come off the chains?

3 A. They would come off of the chains again, sometimes they
4 might let them off inside the -- they had like an electrical
5 wire that they put up. They might take one or two off of the
6 chains and let them roam around within the electrical fencing
7 and then hook them back up.

8 Q. How long would that be for?

9 A. Usually about a half hour or so, if that.

10 Q. And then when next did you see them off the chains?

11 A. During the shows and performances.

12 Q. How long would that be for?

13 A. They didn't stay in the show the entire show. They would
14 walk them in, walk them around in a circle. About five minutes
15 probably, and then they were right back out and chained again.

16 Q. Would they come off the chains again during a show?

17 A. They might. But they were, I'd say they probably weren't
18 taken off of the chains but maybe two or three times, and they
19 would just walk around in a circle during the show and come back
20 out.

21 Q. And then when you left at the end of the day, where were
22 the elephants?

23 A. Chains.

24 Q. So about how many hours a day would you see the elephants
25 on the chains?

- 1 A. Gosh.
- 2 Q. Many hours?
- 3 A. Many, many hours. Countless hours.
- 4 Q. You mentioned seeing some of the elephants in closures off
5 chains?
- 6 A. Yeah.
- 7 Q. Would they be with other people then?
- 8 A. Yeah. Yeah. There was always a handler close by.
- 9 Q. Were all of the elephants let off the chains in an
10 enclosure?
- 11 A. No.
- 12 Q. Were there some elephants that were never let off the
13 chains?
- 14 A. Yeah.
- 15 Q. Did you have an opportunity to see people working with the
16 elephants?
- 17 A. Yeah, yeah.
- 18 Q. And were those people carrying anything when they were
19 working with the elephants?
- 20 A. Yeah.
- 21 Q. What would that be?
- 22 A. A bullhook.
- 23 Q. Ms. Hundley, what's a bullhook?
- 24 A. It's a torture device, in my opinion, that the circus uses.
- 25 Q. What does it look like?

1 A. It looks like a fireplace poker. It's a big pole with a
2 large hook at the end.

3 Q. Ms. Hundley, I'd like to show you Plaintiff's we'll call
4 Exhibit 182 which was admitted into evidence yesterday. If you
5 could look at this fixture, do you recognize that?

6 A. Yes, I do.

7 Q. What is that?

8 A. Bullhook.

9 Q. Thank you. Ms. Hundley, could you tell us the names of the
10 people with whom you were working at the circus who you saw
11 carrying bullhooks?

12 A. We were all usually on like a first-name basis so I didn't
13 get a lot of their last names. But there was Jimmy, Alex
14 Vargus, Sacha Houck, George, Pista. There was another fellow.
15 Actually, there were two other fellows. I don't remember their
16 names.

17 Q. All these people carried bullhooks?

18 A. Yes.

19 Q. And you mentioned Sacha?

20 A. Yes.

21 Q. What was his position?

22 A. He was the head elephant trainer. He was the animal
23 trainer. He was over the animals.

24 Q. And then you mentioned Alex Vargas?

25 A. Yes.

1 Q. What was his position?

2 A. He was over the staff and compound in general, I think.

3 Q. Was he your immediate supervisor?

4 A. I believe so, yes.

5 Q. And then you mentioned Jimmy?

6 A. Yes.

7 Q. What was his position?

8 A. He was union. He was the steward with the union, the

9 Teamsters.

10 Q. What did he do with the elephants? Did he work with the

11 elephants?

12 A. He did work with the elephants.

13 Q. And then George and Pista, did they work with the

14 elephants?

15 A. George worked with the elephants if someone were sick or

16 something were to happen, but he mainly was at the barn with the

17 elephants at night.

18 Q. Okay. Ms. Hundley, what did you see these individuals do

19 with the bullhooks?

20 A. I've seen them beat the elephants daily with the bullhooks.

21 Q. You say beat the elephants. Where would you see them hit

22 the elephants?

23 A. I've seen them jerk them underneath the jaw, I've seen them

24 smack them behind the ear, inside the ear, on the legs, on the

25 back even.

1 Q. How often would you see that?

2 A. I saw it daily.

3 Q. How many times a day?

4 A. It just, it depended, you know. It depended on if they
5 were having a difficult time with that elephant, if that
6 elephant wasn't happy about going into a performance, if it
7 wasn't listening very well on just how many times they had to
8 hit it or how rough they were with it.

9 Q. Was it sometimes more than five times a day?

10 A. Oh, yeah.

11 Q. Sometimes more than ten times a day?

12 A. Sometimes.

13 Q. Did Sacha Houck who you mentioned, did he hit elephants
14 with bullhooks?

15 A. Oh, yeah.

16 Q. And did Alex Vargus hit elephants with bullhooks?

17 A. Yes.

18 Q. Did Jimmy hit elephants with bullhooks?

19 A. Yes, he did.

20 Q. Did Pista hit elephants with bullhooks?

21 A. Yes.

22 Q. And did George hit elephants with bullhooks?

23 A. Yes.

24 Q. Did anyone tell you why they hit the elephants with
25 bullhooks?

1 A. I was told that in order to keep the elephants submissive
2 that they had to be firm with them in order to keep control of
3 the elephant.

4 Q. And then what parts of the day would you see them hit the
5 elephants with bullhooks mostly?

6 MS. JOINER: I'm going to object as vague.

7 MR. CRYSTAL: I'm sorry. I'm sorry.

8 BY MR. CRYSTAL:

9 Q. The individuals that we've discussed, I was just asking
10 what parts of the day you would see them hit elephants with
11 bullhooks.

12 MS. JOINER: Same objection.

13 THE WITNESS: Many times a day.

14 THE COURT: I didn't hear you. What's your objection?

15 MS. JOINER: The objection is vague. We're just
16 talking about individuals.

17 THE COURT: Why don't you rephrase it?

18 Was this type of activity confined to a certain
19 portion of the day or not?

20 THE WITNESS: No, it wasn't. I saw it every day
21 throughout the day.

22 THE COURT: You say "throughout the day." Throughout
23 the, and your day was -- what was your typical day, the length
24 of your typical day?

25 THE WITNESS: From about 7:30 a.m., 8:00, to about

1 sometimes 10:00, 11:00 at night. It just depended how long the
2 shows went on.

3 THE COURT: Was the activity confined to a particular
4 hour?

5 THE WITNESS: A particular time? No. No, sir.

6 THE COURT: All right. Throughout the day?

7 THE WITNESS: Throughout the day, yeah.

8 BY MR. CRYSTAL:

9 Q. Ms. Hundley, now I'd like to discuss the period when the
10 circus was staying in Tulsa, Oklahoma while you worked at the
11 circus. Do you remember that?

12 A. Yes.

13 Q. Did anything unusual happen with the elephants during that
14 time?

15 A. Yeah. We had a two-week layover in Tulsa, Oklahoma.

16 THE COURT: I'm sorry. When was this, what year?

17 THE WITNESS: It was in 2006.

18 THE COURT: All right.

19 THE WITNESS: We had a two-week layover and the
20 elephants were actually given a bigger pen because we were on
21 the fairgrounds so they were actually able to give them a little
22 more room within the pen and the compound and they actually
23 pulled out a tub, like a bathtub, a pool, for the elephants to
24 play in, which that is the only time that I had ever seen it,
25 and they let about four or five go I think at one time to play

1 in the pool.

2 BY MR. CRYSTAL:

3 Q. What do you mean by "let them go"?

4 A. Let them off the chains, let them off the chains to play in
5 the pool. And two of the elephants got into a fight in Tulsa
6 and so they quickly chained the elephants back up, and one of
7 the elephants became distressed and she refused the command to
8 lie down.

9 Q. Where were you standing when this happened?

10 A. I was on the side of the tent.

11 Q. How far away from the elephants?

12 A. Not even probably five feet.

13 Q. And who was with you?

14 A. Ten feet, if that.

15 Q. I'm sorry.

16 A. Animal crew watched it.

17 Q. What happened?

18 A. We witnessed Sacha Houck trying to make the elephant lie
19 down on her belly and put up her trunk. All the other elephants
20 had already lied down on their bellies and put their trunk up,
21 and this one elephant, she just would not lay down.

22 Q. What happened next?

23 A. He was hitting her with the bullhook behind the ear, on the
24 back on the legs, and she just refused to lie down. He reached
25 over and got a bullhook. Alex Vargus was standing there too.

1 He reached over and he got a bullhook from Alex Vargus and he
2 actually took both bullhooks up onto her back and pulled and she
3 didn't lie down so he then gave, handed it back to Alex. Alex
4 was standing there. I don't know if he was hitting her too,
5 it's kind of vague to me, but he took the bullhook into both of
6 his hands and swung it like a baseball bat into her ear canal
7 and then he pulled down on the handle with all of his body
8 weight.

9 Q. How long did that go on?

10 A. About 35 to 40 minutes.

11 Q. Ms. Hundley, did you see any blood on the elephant?

12 A. Yes.

13 Q. When did you first see blood?

14 A. I first saw blood behind her ear, and then as the beating
15 progressed, I saw after he put the bullhook, after he swung the
16 bullhook into her ear, blood started dripping from inside of her
17 ear and down into her face and onto the ground.

18 Q. And did he keep hitting with the bullhook after he swung it
19 into her ear?

20 A. Yes, he did.

21 Q. And did the elephant lie down?

22 A. Yes. She eventually did lie down. She shrieked and
23 squealed in pain and eventually she laid down.

24 Q. Ms. Hundley, did you complain to anyone at Ringling
25 Brothers about the treatment of the elephants?

1 A. Continually, continually.

2 Q. And what did you tell them?

3 A. I told them I didn't think it was necessary.

4 Q. What did they say to you? Well, who did you talk to? I'm
5 sorry.

6 A. Well, first I mentioned it to Carrie Coleman. She was the
7 veterinary tech, and she had agreed with me to a point that,
8 yeah, at times she thought it was a little excessive, but yet
9 she felt that it had to be done.

10 Q. Who else did you tell?

11 A. Griggs and Belfore. I always get the two names, because I
12 always, you know, Mr. Griggs or Mr. Belfore. It was John or
13 Jason or Jason and John. They were -- one was the production
14 manager and the other one was just one of the main managers.
15 I'm not sure specifically sure of fact exactly what all he was
16 ...

17 Q. What did they say?

18 A. They told me to talk to Sacha.

19 Q. Did you talk to Sacha?

20 A. Yeah, I did.

21 Q. And what did he say?

22 A. I told me if I didn't like it I could pack my bags.

23 Q. Ms. Hundley, we talked a little earlier about seeing the
24 elephants on chains. What would elephants do while they were on
25 their chains?

1 A. Sway back and forth.

2 Q. Did you see them playing with anything?

3 A. One time in Tulsa at the fairgrounds the elephants were
4 chained and I was over there talking to Howard and watching the
5 elephants and he pointed out one of the elephants to me and she
6 was standing there and she was taking her trunk picking at the
7 concrete and there was a small crack there where she had just
8 begun to pick at it, and he said, you know, he said, if you'll
9 watch that, by the end of the week it will be a big hole, and I
10 kept an eye on her and every time I walked by I'd watch and she
11 would pick and pick and pick at it, and sure enough, by the time
12 we left there she had a gigantic hole dug where she had just
13 taken it apart in pieces.

14 Q. Did you ever see anyone give the elephants anything to play
15 with?

16 A. No.

17 Q. Ms. Hundley, what would the elephants be standing on when
18 they were chained?

19 A. On the cement or concrete.

20 Q. Did you ever see them standing on grass?

21 A. No.

22 Q. Ms. Hundley, how did the animals travel between cities?

23 A. By train.

24 Q. Did you travel on the train as well?

25 A. Yes, I did.

1 Q. And what was the longest train ride between cities that you
2 can remember?

3 A. From Worster, Massachusetts, to Tulsa, Oklahoma.

4 Q. How long was that ride?

5 A. Three days.

6 Q. And did the elephants leave the train during those three
7 days?

8 A. No. No. Right before we got in to Tulsa, Oklahoma right
9 at the borderline they did, but for the entire three days they
10 were on the train.

11 Q. Did the train stop during the three days?

12 A. It stopped once a day to feed and water for about ten --
13 about fifteen minutes probably; ten, fifteen minutes.

14 Q. And did you see the elephant cars at the end of that trip?

15 A. Yes.

16 Q. Did you see the inside of the elephant cars?

17 A. Yes, I did.

18 Q. Why did you see that?

19 A. Well, whenever we got to the borderline before we entered
20 into Tulsa, Oklahoma we stopped the train and let the elephants
21 off because they had been on them for three days and they wanted
22 to clean the stockcars before we got into Tulsa.

23 Q. Did you help clean the stockcars?

24 A. Yes, I did.

25 Q. What did you see inside the train?

1 A. The manure was just up passed my ankles. The urine smell
2 was unbelievable. The ammonia smell was so bad it burned your
3 eyes and nose. It was terrible.

4 Q. Was the manure and urine in the places where the elephants
5 had been standing?

6 A. Yes. It was kind of spread throughout, I guess where they
7 had been walking, kind of not walking on it, but standing on it
8 and moving back and forth.

9 Q. What did it smell like?

10 A. Ammonia and manure. As I said, it just burned my eyes and
11 nose.

12 Q. Ms. Hundley, did you see anyone inspect the circus while
13 you worked there?

14 A. One time.

15 Q. Did anyone talk to you about the inspection before it
16 happened?

17 A. Yes.

18 Q. Who was that?

19 A. Carrie Coleman.

20 Q. What did she tell you?

21 A. We were planning to go out to lunch the next day and she
22 told us the day prior to that she didn't know if she was going
23 to be able to go or not because the investigators were supposed
24 to come out and check out the elephants, so to try not to
25 include her because she didn't know if she was going to be able

1 to go. And sure enough, eight a.m. the next morning she said,
2 yeah, I'm not going to be able to make lunch. The USDA is
3 supposed to be here a little after noon to come and look at the
4 elephants.

5 Q. And did they come?

6 A. Yes, they did.

7 Q. Ms. Hundley, why did you leave working at the circus?

8 A. Because of the abuse, the animal abuse that goes on there.
9 It was heartbreaking.

10 Q. And did you file for Unemployment when you left?

11 A. Yes, sir, I did.

12 Q. And how long after you left was that?

13 A. Oh, I don't know. About a couple weeks maybe.

14 Q. Where had you gone, where were you at that point?

15 A. I was in Charlestown, West Virginia.

16 Q. And did you tell Unemployment why you had left your job?

17 A. Yes, I did.

18 Q. What did you tell them?

19 A. Because of the animal abuse that I witnessed when I was
20 there.

21 Q. Ms. Hundley, did you sign a sworn statement about what you
22 saw while you were at the circus?

23 A. Yes.

24 Q. And do you remember how long after you left that that
25 happened?

1 A. Maybe not even a month.

2 Q. And you mentioned earlier the USDA. Is that the Department
3 of Agriculture?

4 A. Yes, yes.

5 Q. And did you ever tell people from the Department of
6 Agriculture what you saw when you worked at the circus?

7 A. Yes.

8 Q. Did you sign a sworn statement for the Department of
9 Agriculture about what you saw at the circus?

10 A. Yes, I did.

11 MR. CRYSTAL: Your Honor, now I'd like to show Ms.
12 Hundley Defense Exhibit 125, which is very similar to one of our
13 exhibits. It just has one minor difference.

14 THE COURT: All right.

15 BY MR. CRYSTAL:

16 Q. Ms. Hundley, if you could take a moment to read through the
17 document and just indicate when you're done looking at each
18 page, because I'd like you to look at the whole thing. You can
19 just say you're ready.

20 A. Yeah. Yeah. Yes. That's my initials, yeah, on the bottom
21 of the page?

22 Q. I'm sorry, what did you say?

23 A. Yeah, that's correct.

24 Q. Those are your initials, is that what you said?

25 A. Yeah, yeah, yeah.

1 Q. Can we go to the last page?

2 A. Yeah.

3 Yes, all right.

4 Q. Ms. Hundley, do you recognize this document?

5 A. Yes, I do.

6 Q. Is that your signature that we're looking at?

7 A. Yes, it is.

8 Q. And what's the date there, do you see that?

9 A. 12/13/06.

10 Q. That's the date by your initials, yes, right. What's the
11 date right below your signature? Do you see that, where it says
12 "subscribed and sworn"?

13 A. Yes, I do see that.

14 Q. So what's that date?

15 A. The 29th of September.

16 Q. And is that when you signed this declaration?

17 A. Yes.

18 Q. And now I'd like to go back to page two, paragraph six, of
19 the declaration. And if you could read for us that paragraph.

20 MS. JOINER: I'm going to object. This is hearsay.

21 THE COURT: What's your response?

22 MR. CRYSTAL: My response is that this is a prior
23 consistent statement of Ms. Hundley.

24 THE COURT: It is.

25 MS. JOINER: There's been no impeachment at this

1 point.

2 THE COURT: What about that?

3 MR. CRYSTAL: I assume there could be. I can do this
4 on redirect.

5 THE COURT: Do you know what? I'll provisionally
6 allow it. I presume there will be as well. This is one of
7 defendant's exhibits. It's going to come in at some point.
8 I'll provisionally admit it at this time.

9 MR. CRYSTAL: Thank you, your Honor.

10 THE COURT: Subject to the appropriate foundation
11 being laid.

12 MR. CRYSTAL: Thank you.

13 THE COURT: It is a prior consistent statement, but
14 indeed there's not been impeachment, but I can anticipate
15 impeachment.

16 THE WITNESS: We had a two-week fair -- well, we had a
17 two-week layover at the fairgrounds in Tulsa, Oklahoma between
18 May 25th and June 6th. Three elephants got into a fight. Two
19 of the elephants were Banana and Baby, and I believe the third
20 one was Tonka. I observed Sacha Houck, as he tried to make the
21 elephants lie down on their bellies and put up their trunk, Baby
22 was distressed and she kept getting up and refused to lie down.
23 Sacha smacked her with the bullhook repeatedly behind the ear
24 and on the leg. He then hooked Baby behind the ear holding the
25 bullhook with both hands and pulled with all of his body weight.

1 Baby refused to go down. Sacha then inserted the bullhook into
2 Baby's ear canal and, holding the bullhook's handle with both
3 hands, again pulled down with all of his weight. This incident
4 lasted for approximately 30 to 45 minutes. Baby bled profusely
5 from inside the ear and behind the ear. She squealed in pain
6 three or four times and let out a loud, shrill shriek.

7 Q. Thank you, Ms. Hundley. Ms. Hundley, now I'd like to show
8 you what's Defendant's Exhibit 126. And if you could, let's get
9 that up. If you could also, as before, take a moment to read
10 through this document and indicate when you've taken a look at
11 each page.

12 A. Okay. Okay. All right. Okay. Okay.

13 Q. Oh, you're not done. Sorry. Is that it?

14 Ms. Hundley, do you recognize this document?

15 A. Yes, I do.

16 Q. Is that your signature?

17 A. Yes, sir, it is.

18 Q. What's the date on this document, if you can see at the
19 bottom?

20 A. It is the 13th of December.

21 Q. And what's the year there?

22 A. 2006.

23 Q. What is this document?

24 A. It's the affidavit that was used with the -- that I gave to
25 Frank Kaiser.

1 Q. Who's Frank Kaiser?

2 A. He was a USDA agent.

3 Q. If you could go to the back quickly to page paragraph 16,
4 this is on page 4, if you could just read that first sentence.

5 A. Investigator Kaiser has shown me a copy of my notarized
6 declaration made September 29th, 2006.

7 Q. Is that the declaration that we were looking at?

8 A. Yes, sir.

9 Q. Now if you could please keep reading that paragraph.

10 A. I have reviewed this document, initialed the bottom of each
11 page. I have reviewed and can attest that it is an exact copy
12 of the declaration I made under oath on that date.

13 Q. Keep reading, please.

14 A. I should point out that I no longer live in Sincinville,
15 West Virginia. In addition, there are corrections that I need
16 to point out in the declaration. They are as follows: Sacha
17 did not insert the hook into the ear canal of Baby. He actually
18 swung the bullhook into the ear canal with full force.

19 Q. Thank you very much. Is what we've read, what you've read
20 us from this declaration, accurate?

21 A. Yes.

22 Q. Is what we've read from the prior declaration accurate?

23 A. Oh, yeah.

24 Q. The earlier one that we read?

25 A. Well, other than I guess --

1 Q. The parts that we read earlier, I was just asking you if
2 that was accurate?

3 A. Oh, yes, yes, yes, yes.

4 MR. CRYSTAL: So your Honor, I would move these two
5 exhibits into evidence.

6 THE COURT: Objection?

7 MS. JOINER: No objection at this time.

8 MR. CRYSTAL: I suggest that we call them, they're
9 tied to our Exhibit 114. So she can be 114A and 114B, if that's
10 all right.

11 (Plaintiffs' Exhibit Nos. 114A and 114B were admitted
12 into evidence at about 12:31 p.m.)

13 BY MS. JOINER:

14 Q. Just a few more questions, Ms. Hundley. Thank you?

15 Ms. Hundley, do you know a group called the People For
16 the Ethical Treatment of Animals?

17 A. Yes, I do.

18 Q. Did you talk to that group before you went to work for the
19 circus?

20 A. No.

21 Q. Did you ever talk to that group while were you working for
22 the circus?

23 A. No.

24 Q. Did you talk to that group after you worked for the circus?

25 A. Yes, I did.

1 Q. And when was that?

2 A. I don't know. About a month or so after I quit the circus.

3 Q. What did you tell them?

4 A. I told them about the abuse and the things that I had
5 witnessed while I was with Ringling Brothers, that I wanted to
6 get some sort of help for the elephants and the animals there.

7 Q. Did you do any work with them?

8 A. Yes.

9 Q. What did you do?

10 A. I've talked to various legislators in hearings and, you
11 know, conferences and --

12 Q. Have you traveled with them?

13 A. I have.

14 Q. Where have you gone?

15 A. Gosh. I've been many places. I can't even say where all.

16 Q. Did you ever let them film you?

17 A. Yes, I did.

18 Q. What was that?

19 A. It was a public service announcement.

20 Q. Did PETA pay you for the work that you did for them?

21 A. No.

22 Q. Ms. Hundley, have you ever gone back to the Red Unit since
23 you worked at the circus?

24 A. Yes, I have.

25 Q. When was that?

- 1 A. In Kentucky.
- 2 Q. How long after you left?
- 3 A. Several months.
- 4 Q. And why did you go back?
- 5 A. I went back because I wanted to try to get some film of the
6 abuse that I witnessed while I was with Ringling Brothers.
- 7 Q. Did you film while you were there?
- 8 A. Yes, I did.
- 9 Q. Whose idea was that?
- 10 A. Mine.
- 11 Q. Did you work with PETA on that?
- 12 A. The equipment came from PETA, yes, it did.
- 13 Q. And did you film -- I'm sorry, you answered that. Thank
14 you.
- 15 I just have a few more questions.
- 16 Ms. Hundley, do you know Robert Tom?
- 17 A. Yes, I do.
- 18 Q. How do you know him?
- 19 A. I worked with him on the Red Unit.
- 20 Q. Did he do good work while were you there?
- 21 A. He did.
- 22 Q. Do you know Margaret Tom?
- 23 A. Yes, I do.
- 24 Q. Who is she?
- 25 A. She was his wife and she worked back stage.

1 Q. Did you observe her to do good work while you worked there?

2 A. Yes, I did.

3 Q. Have you seen them since you left the circus?

4 A. Yes, I have.

5 Q. Where did you see them?

6 A. I saw them a couple of times. Maybe once in Chicago at a
7 hearing.

8 Q. Just a couple more questions.

9 Ms. Hundley, did you ever take your kids to see the
10 circus before you worked there?

11 A. Yes.

12 Q. How often did you do that?

13 A. Every year.

14 Q. Would you take your kids to see a circus now?

15 A. No, I wouldn't.

16 Q. Why not?

17 A. Because of the abuse that goes on.

18 MR. CRYSTAL: I have no further questions at this
19 time, your Honor.

20 THE COURT: All right. Cross-examination?

21 MS. JOINER: May it please the Court.

22 THE COURT: Sure. Good afternoon.

23 CROSS-EXAMINATION

24 BY MS. JOINER:

25 Q. Ms. Hundley, you worked on the Red Unit for approximately

1 two months; is that correct?

2 A. That's correct.

3 Q. I'd like to look at Defense Exhibit 59, please. This is on
4 page 36 of the PDF, and you started in Charlestown; is that
5 right?

6 A. That's correct.

7 Q. So if we can blow this up a little bit, that's line 12, and
8 you started at the end of Charlestown, which would have
9 approximately April 22nd, 2006; is that right?

10 A. Yeah.

11 Q. Okay. And the elephant fight that happened during the
12 layover was approximately at the end of May; is that correct?

13 A. I'm not real sure of the dates. I think it was in
14 actually -- yeah, yeah, maybe. I'm not real sure.

15 Q. Okay. Well, looking here, that break in Tulsa was between,
16 you'll see, between line 16 and 17. That break was May 24th
17 through June 4th of 2006; is that correct?

18 A. Which break was you talking about?

19 Q. Look between line 16 and 17.

20 A. Oh, okay. Yeah, I see it now.

21 Q. Correct?

22 A. Yeah, that's probably about right.

23 Q. Okay. And Tulsa is where you had made up your mind to quit
24 because you just couldn't do it any longer; is that right?

25 A. I couldn't handle much more of it in Tulsa, but I was ready

1 to quit actually after about the first week or two.

2 Q. Okay. But it was in Tulsa that you had decided you had
3 witnessed too much and you just couldn't take it anymore, right?

4 A. Yeah, that was pretty bad in Tulsa.

5 Q. You reached the point where you said that's it, I've had
6 enough?

7 A. Pretty much, yeah.

8 Q. And you made that decision after you had finally complained
9 to management and everyone that you could, correct?

10 A. That's correct.

11 Q. Who do you mean by "management"?

12 A. Well, Jason or Griggs, Belfore, Carrie Coleman. I talked
13 to Alex Vargus and Sacha Houck.

14 Q. But you never called the animal control authorities, did
15 you?

16 A. No.

17 Q. And you never called the police, did you?

18 A. No.

19 Q. And you never contacted the PETA videographer that was
20 following the Red Unit, did you?

21 A. No.

22 Q. And you had apparently observed the PETA staffers on the
23 road quite a bit?

24 A. Um-hmm.

25 Q. And you could have done any of that at any time, couldn't

1 you?

2 A. Well, yeah. Yeah.

3 Q. Okay. And despite the fact that you could have done that
4 at any time, you then went to a press conference in November of
5 2006 and said that Ringling had prohibited you from doing that,
6 didn't you?

7 A. Yes, you could say that, yeah.

8 Q. That's what happened, you told a reporter that you had to
9 sign an agreement to never talk to anybody and could be sued or
10 terminated for talking to anybody other than management, isn't
11 that what you said at a press conference?

12 A. Well, yeah. That's true, that's true.

13 Q. It's true that you had to sign such an agreement?

14 A. Yeah.

15 Q. What did it look like?

16 A. We were told never to talk to USDA, never to talk to any
17 kind of animal rights, any kind of animal group; if he were
18 caught talking to them, that we would be thrown off the train.

19 Q. That's not my question. My question is: You said that you
20 signed an agreement to that effect at the time you were hired,
21 correct?

22 A. We signed an agreement. I signed an agreement actually
23 that basically said if I had any known, anything like the animal
24 rights groups, if you were ever hurt or knew or even belonged to
25 an animal rights group, that you wouldn't be and couldn't be

1 hired by Ringling Brothers.

2 Q. Okay. I'd like to go now to Defense Exhibit 2830. This is
3 a press conference from November 14th of 2006. And you remember
4 spiking at a press conference that PETA held in Chicago at that
5 time, correct?

6 A. I've talked to so many I'm not sure. I'm sure probably so.

7 Q. Okay. Well, let's set the scene. Let's go -- we'll begin
8 at just 01 of the clip?

9 (Video played.)

10 Q. Now if we could stop that for a moment. Would you identify
11 where you're sitting?

12 A. I'm on the right-hand side.

13 Q. Okay. Who's the person in the middle, please?

14 A. That's Margaret Tom.

15 Q. And what's the person on the far left?

16 A. That's Robert Tom.

17 Q. Okay. Now, do you recall being at this press conference?

18 A. Yes, I do.

19 Q. All right. Let's go to clip 1747 to 1815.

20 (Video played.)

21 So my question is: What did that agreement look like?

22 A. Well, it was -- there was a signed agreement, like I said,
23 with basically stating that you didn't belong to any animal
24 rights organizations, is what I was referring to, but we were
25 told -- that's confusing. That we were told that you couldn't

1 actually talk to any of the investigators or anybody to not talk
2 to them, if you were caught talking to them they would fire you.
3 We were warned verbally, continually, you know.

4 Q. So there was no written agreement?

5 A. No.

6 Q. Is that correct?

7 A. I don't know that there was. I don't really recall that
8 there was.

9 Q. Thank you. Let's go back to Exhibit 589, please, which is
10 the schedule. All right. So even though you had had enough,
11 you waited at least two more weeks before you actually left the
12 Red Unit on June 17th, 2006, isn't that right?

13 A. Yes.

14 Q. So you stayed on with the circus and you went to Oklahoma
15 city, isn't that right?

16 A. Yes.

17 Q. And then you went to San Antonio?

18 A. Yes.

19 Q. In fact, you didn't leave until the end of the San Antonio
20 run, correct?

21 A. Towards the middle of San Antonio. I'm not real sure
22 exactly the dates of when I left.

23 Q. Well, it was at least two weeks after the incident that
24 you've described in Tulsa?

25 A. Um-hmm.

1 Q. And that was, despite the fact that you were a, by then,
2 quote, "a nervous wreck" because of the treatment of the
3 elephants, isn't that correct?

4 A. Yeah, that's definitely correct. I was a nervous wreck
5 after the first two weeks.

6 Q. And you spent another two weeks after you had had enough in
7 Tulsa and you were jumpy and nervous of everything around you?

8 A. Yeah, I was.

9 Q. All right. And as you said, you began feeling that way a
10 week-and-a-half after joining Ringling, correct?

11 A. Um-hmm.

12 Q. And you felt that way the whole time that you were there?

13 A. Yeah.

14 Q. All right. And despite all of this, you took time to go
15 sight-seeing to the Alamo in San Antonio before you left the
16 circus, didn't you?

17 A. Oh, yeah.

18 Q. And then after returning home to Charlestown, you waited
19 for at least another two weeks before calling PETA?

20 A. Yeah, probably.

21 Q. Okay. And even though by then were you having major
22 symptoms, isn't that correct?

23 A. Yeah.

24 Q. Yeah. You claim that by then were you having daily anxiety
25 attacks at Ringling, right?

1 A. Well, yeah, um-hmm.

2 Q. And you also claim that some of these involved a tightness
3 in your chest?

4 A. Yes.

5 Q. And you also told me at the time of your deposition that
6 you had had at least ten of them since you left Ringling?

7 A. Yes.

8 Q. Your symptoms also included nightmares and nervousness?

9 A. Yes.

10 Q. And those nightmares started while you were at Ringling,
11 correct?

12 A. Yes, they did.

13 Q. And then they got so bad when you got home that they woke
14 you up night?

15 A. Yes.

16 Q. And for all of these symptoms you never sought any medical
17 treatment?

18 A. Yeah. Actually, I have.

19 Q. Okay. At the time of your deposition you had not.

20 A. I was going through some treatment, yeah.

21 Q. All right. Let's go to page 150.

22 Let me back up a minute.

23 You do remember that I took your deposition in this
24 case in December of 2007?

25 A. Yes.

1 Q. And you were deposed in Charlestown, West Virginia?

2 A. Yes.

3 Q. And were you represented by your attorneys at Squad and
4 Arbs for it?

5 A. Yes.

6 Q. And you understood that you took an oath and swore to tell
7 the truth at that time?

8 A. Yes.

9 Q. And you also reviewed and signed your deposition
10 transcript, isn't that correct?

11 A. Yes.

12 Q. And there was no reason at that time that you could not
13 testify truthfully and accurately?

14 A. No, there wasn't.

15 Q. Okay. So let's go back to page 150 of your deposition,
16 please. At line 15 I ask: And what kind of medical treatment
17 have you had for this?

18 Answer: Nothing. This has been my medical treatment,
19 I think, going out and talking to legislators and trying to get
20 some changes made. I think it's helped me a lot being able to
21 go places and try to, you know, get something done for these
22 animals that are so mistreated?

23 A. And that is exactly the treatment I've gotten. It has
24 helped me tremendously to do these things and try to stop the
25 abuse that goes on at the circus.

1 Q. So you've had no medical treatment?

2 A. No, no medical treatment.

3 Q. And you've never had any medication for these symptoms that
4 you had?

5 A. No.

6 Q. You mentioned when your counsel asked if you had filed for
7 Unemployment when you returned home?

8 A. I'm sorry?

9 Q. You had mentioned with your counsel that you had filed for
10 Unemployment when you returned home; is that correct?

11 A. Yes, yes.

12 Q. And in the sequence of events, did you do that before or
13 after you contacted PETA?

14 A. Before.

15 Q. Okay. And your request for Unemployment was denied?

16 A. It was. I pulled it out.

17 Q. Why did you pull it out?

18 A. Because I was afraid -- I was going to go to Kentucky and I
19 was going to be wearing some hidden cameras, so I was afraid if
20 I didn't hurry up and pull it that the Ringlings would find out.

21 Q. I see. So you applied for it before you talked to PETA?

22 A. Um-hmm.

23 Q. And your testimony is you knew that you were going to go
24 back to Ringling Brothers with hidden cameras before you ever
25 talked to PETA?

1 A. Well, it took -- it took several months of it to go through
2 actually through the court system there, so I when I initially
3 signed up for my Unemployment, no, I hadn't talked to PETA, but
4 later on as the months, as a couple months went by I had, so I
5 pulled it out, yeah. I went ahead and pulled it out.

6 Q. And you're aware, of course, that you cannot receive
7 unemployment if you quit your job?

8 A. Well, yeah.

9 Well, I'm not real sure. I mean, I guess it depends
10 upon the circumstances.

11 Q. Okay. And you filed for Unemployment even though you had
12 called your old boss, John Bellamy at U.S. Security Associates,
13 while you were in San Antonio to tell him that you were coming
14 back?

15 A. Um-hmm.

16 Q. And in San Antonio he said come on back, we'll be glad to
17 have you?

18 A. Yeah, yeah, and that's exactly what I planned on doing. I
19 was going back, and whenever I got back to West Virginia they
20 didn't have anything available right away. It took a couple
21 weeks to find work for me, yes.

22 Q. From the time that you called him in San Antonio and he
23 said come back to the time that you arrived in Charleston there
24 was no job?

25 A. Yeah.

1 Q. How long did that trip take, from San Antonio to Charles-
2 town?

3 A. A couple days.

4 Q. And it is your testimony that you deny contacting PETA in
5 the hopes that they would give you anything for talking to them;
6 is that correct?

7 MR. CRYSTAL: Objection, your Honor. I don't
8 understand.

9 THE COURT: I'm sorry?

10 MR. CRYSTAL: I didn't understand the question.

11 THE COURT: Did you understand it?

12 THE WITNESS: Not completely, no.

13 THE COURT: Why don't you rephrase that?

14 MS. JOINER: Sure.

15 BY MS. JOINER:

16 Q. Let me phrase it this way: Did you contact PETA after you
17 had returned home to Charlestown in the hopes that they would
18 give you anything for talking to them?

19 A. No.

20 Q. Now, when you finally called PETA in Charlestown they
21 returned your phone call on the same day and you spoke to Debbie
22 Leahy for over an hour, correct?

23 A. Yeah.

24 Q. And you continued to have many more conversations with Ms.
25 Leahy that summer?

1 A. Yes, I did.

2 Q. And during those conversations with her, that's when you
3 decided to try to get rehired with the Red Unit?

4 A. I had actually always -- I had always, I guess, wanted to
5 try to get -- I always felt bad because I never did really try
6 to get any kind of footage or anything before I left Ringling
7 Brothers.

8 Q. Was it your idea to wear the hidden camera?

9 A. Yes, it was.

10 Q. And your plan was to work there for a few weeks?

11 A. Actually I didn't think it would take a few weeks. I
12 figured it would probably take a couple days, as abusive as they
13 are, but I was willing to stay as long as I needed to.

14 Q. Well, let's go to page 199 of your deposition, line 17.
15 The question was asked: How long were you planning to work
16 there if you had been rehired?

17 Answer: A few weeks. I knew it wouldn't take more
18 than a few weeks to get video footage of abuse.

19 Was that your testimony?

20 A. That is.

21 Q. So you needed a few weeks to get footage for PETA even
22 though you claim that you saw constant, daily abuse?

23 A. Yeah.

24 Q. And you claim that you needed a few weeks to get footage
25 even though you claim that the elephants were in chains 90 to 95

1 percent of the time?

2 A. Yeah, but, you know, I wasn't very familiar with the
3 cameras and just what I was videotaping or if I was getting
4 anything, so I didn't know how long it would take. I just had
5 no clue.

6 Q. Okay. Just the thought of returning to the Red Unit itself
7 gave you nightmares, didn't it?

8 A. Yes, it did.

9 Q. Extreme anxiety?

10 A. Yes, it did.

11 Q. And uncertainty of what might happen if you were caught
12 wearing that hidden camera?

13 A. That's right.

14 Q. After you came up with this plan with PETA in mid-August
15 you returned once to the Red Unit to try to get rehired; is that
16 correct?

17 A. Yes.

18 Q. And that was in Lexington, Kentucky?

19 A. Yes, ma'am.

20 Q. So if we look back on the schedule, a few weeks down, it
21 was sometime between the time period of August 17th and August
22 20th in 2006; is that correct?

23 A. Yes.

24 Q. Okay.

25 MS. JOINER: And your Honor, what I'd like to do is

1 when we get back tonight, just for purposes of identification
2 we'll print out the way we've highlighted the colors here and
3 we'll mark that as Exhibit 305 just for purposes of
4 identification.

5 THE COURT: That's fine.

6 Let me just ask you, I'm not trying to curtail your
7 examination, I'm asking how much time do you need to finish,
8 because at some point we need to break for lunch. I just want
9 to be sensitive to that.

10 MS. JOINER: I probably have at least a half hour, I
11 think.

12 THE COURT: That's fine. We can't finish obviously
13 before one. Let's just break now for lunch and we'll start
14 again at two o'clock.

15 For planning purposes, how many other witnesses this
16 afternoon?

17 MS. MEYER: We're hoping to get through two more
18 witnesses, if possible, your Honor.

19 THE COURT: That's fine. How much time do you
20 estimate their direct or your direct to be of those witnesses?

21 MR. CRYSTAL: The first one will be about the same as
22 Ms. Hundley, so half hour, 45 minutes.

23 THE COURT: All right.

24 MS. MEYER: The second will be probably around 45
25 minutes.

1 THE COURT: That's fine. We can certainly do that.
2 We'll break until two. We'll start promptly at --
3 there's a glare on that clock. It's not quite one o'clock, I
4 don't think. We'll start promptly at two o'clock. Actually
5 2:10. The cafeteria closes at two and there are other trials
6 going on in the courthouse.

7 I have to ask you, please do not discuss your
8 testimony with anyone.

9 THE WITNESS: Oh, absolutely not.

10 THE COURT: Thank you.

11 (A luncheon recess was taken at about 12:53 p.m.)

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I N D E X

WITNESSES:

JOYCE POOLE, Ph.D

Cross-examination by Mr. Shea (continuing)	10
Redirect Examination by Ms. Meyer	47

ARCHELE HUNDLEY

Direct Examination by Mr. Crystal	59
Cross-examination by Ms. Joiner	85

E X H I B I T S

Plaintiffs'
Exhibit

No.	Identification	Marked	Admitted
Nos. 114A & 114B			82

CERTIFICATE

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

Jacqueline M Sullivan
JACQUELINE M. SULLIVAN

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<p style="text-align: center;">0</p>	<p style="text-align: center;">2</p>	<p>34 [1] - 37:6 35 [1] - 71:10 36 [1] - 86:4 39 [2] - 37:18, 44:2 394 [1] - 38:4</p>	<p>801 [1] - 1:22 82 [1] - 101:19 830 [1] - 55:5 85 [1] - 101:9 8:00 [1] - 68:25 8:30 [1] - 62:23</p>	<p>activities [1] - 44:10 activity [4] - 12:11, 55:8, 68:18, 69:3 acts [2] - 14:17, 27:3 add [1] - 36:6 addition [1] - 81:15 address [4] - 34:14, 34:16, 34:24 addressed [1] - 5:14 admissible [1] - 8:5 admit [1] - 79:8 Admitted [1] - 101:18 admitted [4] - 8:10, 9:11, 65:4, 82:11 adult [1] - 50:7 advance [1] - 5:19 advisement [1] - 7:22 advocating [1] - 27:10 affects [1] - 32:16 affidavit [1] - 80:24 afraid [2] - 94:18, 94:19 Africa [8] - 22:25, 29:4, 31:8, 31:14, 31:18, 32:8, 54:24 African [4] - 20:6, 20:7, 20:25, 30:12 afternoon [2] - 85:22, 99:16 agent [1] - 81:2 aggressive [1] - 55:8 ago [4] - 6:9, 30:8, 38:21, 50:19 agree [1] - 39:1 agreed [1] - 72:7 agreement [9] - 6:6, 88:9, 88:13, 88:20, 88:22, 89:21, 89:22, 90:4 Agriculture [3] - 77:3, 77:6, 77:9 ahead [7] - 10:18, 22:21, 26:15, 27:17, 32:11, 38:2, 95:5 AI [2] - 18:3, 33:18 aided [1] - 2:7 al [1] - 3:3 Alamo [1] - 91:15 Alex [8] - 65:13, 65:24, 67:16, 70:25, 71:1, 71:3, 87:13 alive [2] - 30:1, 39:16 allow [8] - 9:25, 11:7, 14:3, 23:6, 23:18, 24:9, 49:8, 79:6 allowed [4] - 21:15, 44:14, 49:22, 52:12 almost [4] - 19:17, 19:20, 19:21, 20:12 Almost [1] - 20:15</p>
<p>01 [1] - 89:8 03-2006 [2] - 1:4, 3:2</p>	<p>2 [1] - 1:10 20 [1] - 25:14 200 [1] - 56:2 200,000 [1] - 30:25 2000 [1] - 54:22 20001 [1] - 2:4 20004 [1] - 1:23 20009 [1] - 1:18 2001 [2] - 26:21, 34:16 2003 [1] - 43:15 2006 [10] - 60:9, 69:17, 80:22, 81:6, 86:9, 86:17, 88:5, 89:3, 90:12, 98:22 2007 [1] - 92:24 2008 [1] - 26:22 2009 [1] - 1:6 202-354-3187 [1] - 2:4 202-364-4092 [1] - 1:18 202-662-4504 [1] - 1:23 20:32 [1] - 40:1 20th [1] - 98:22 226 [2] - 34:11, 34:12 22nd [2] - 34:15, 86:9 23 [1] - 56:10 24 [2] - 37:14, 37:17 24th [1] - 86:16 25 [4] - 43:8, 43:12, 44:1 258 [1] - 21:21 25th [1] - 79:18 267 [2] - 17:13, 18:7 2830 [1] - 89:2 291 [1] - 15:25 296 [1] - 25:13 29th [2] - 78:15, 81:6 2:10 [1] - 100:5</p>	<p style="text-align: center;">4</p>	<p style="text-align: center;">9</p>	<p style="text-align: center;">A</p>
<p style="text-align: center;">1</p>		<p>4 [2] - 47:11, 81:4 40 [1] - 71:10 400 [1] - 26:23 44:35 [1] - 40:23 44:59 [1] - 40:23 45 [4] - 41:12, 80:4, 99:22, 99:24 45:20 [1] - 41:5 45:37 [1] - 41:6 46 [1] - 41:12 47 [2] - 41:12, 101:6 49 [1] - 42:13 4th [1] - 86:17</p>	<p>9 [1] - 34:16 9/11 [1] - 34:21 90 [1] - 97:25 95 [1] - 97:25 9:00 [1] - 62:23</p>	
<p>1 [2] - 39:17, 43:25 10 [1] - 101:6 103 [1] - 20:11 10:00 [2] - 60:22, 69:1 10:15 [1] - 1:6 110 [1] - 14:11 11226 [1] - 27:19 113 [5] - 40:1, 40:23, 41:5, 41:12, 42:13 114 [1] - 82:9 114A [3] - 82:9, 82:11, 101:19 114B [3] - 82:9, 82:11, 101:19 11:00 [2] - 60:22, 69:1 11:34 [1] - 53:12 11:57 [2] - 53:15, 53:18 12 [5] - 18:7, 34:16, 42:14, 56:12, 86:7 12/13/06 [1] - 78:9 122 [2] - 7:10, 26:12 125 [1] - 77:12 126 [1] - 80:8 12:31 [1] - 82:12 12:53 [1] - 100:11 13 [1] - 27:22 13th [1] - 80:20 14 [1] - 34:13 142 [1] - 43:24 14th [1] - 89:3 15 [2] - 44:1, 93:16 150 [2] - 92:21, 93:15 16 [5] - 18:7, 18:8, 81:3, 86:16, 86:19 1601 [1] - 1:17 17 [4] - 20:12, 86:16, 86:19, 97:14 1747 [1] - 89:19 17th [2] - 90:12, 98:21 18 [2] - 34:11, 34:13 1815 [1] - 89:19 182 [1] - 65:4 19 [1] - 27:20 1960s [2] - 30:20, 30:24 1974 [1] - 38:4 1981 [1] - 42:6 199 [1] - 97:14 19:24 [1] - 40:1</p>	<p style="text-align: center;">3</p>	<p style="text-align: center;">5</p>	<p>a.m [7] - 1:6, 53:12, 53:15, 53:18, 62:11, 68:25, 76:1 abhorrent [1] - 32:19 abide [3] - 6:11, 9:12, 9:13 abilities [1] - 29:10 ability [4] - 51:16, 54:10, 56:15, 57:6 able [9] - 39:2, 50:23, 56:1, 56:5, 69:21, 75:23, 75:25, 76:2, 93:20 abnormal [1] - 45:21 Abood [5] - 29:15, 29:19, 29:24, 30:6 above-entitled [1] - 102:4 absence [1] - 37:18 absent [1] - 10:1 absolutely [3] - 52:11, 54:19, 100:9 Absolutely [3] - 41:1, 53:8, 55:19 abuse [12] - 4:20, 14:22, 45:2, 76:8, 76:19, 83:4, 84:6, 85:17, 93:25, 97:18, 97:22 abused [4] - 13:15, 13:23, 14:23, 36:9 abusive [1] - 97:12 acceptable [1] - 22:15 accepted [1] - 13:17 accounts [1] - 5:12 accurate [5] - 22:6, 22:12, 81:20, 81:22, 82:2 accurately [1] - 93:13 Act [1] - 41:16 action [1] - 3:2</p>	
		<p style="text-align: center;">6</p>		
		<p>5 [2] - 1:6, 42:21 500 [1] - 24:11 51 [1] - 42:14 56 [1] - 36:19 589 [1] - 90:9 59 [2] - 86:3, 101:8</p>		
		<p style="text-align: center;">7</p>		
		<p>6 [1] - 47:11 615 [1] - 5:15 63-year-old [1] - 43:14 67 [1] - 21:18 6820 [1] - 2:3 69 [3] - 21:20, 22:4, 29:23 6:30 [1] - 48:16 6th [1] - 79:18</p>		
		<p style="text-align: center;">8</p>		
		<p>70 [1] - 22:3 700 [1] - 1:17 76 [1] - 7:5 7:00 [1] - 60:21 7:30 [3] - 60:21, 62:11, 68:25</p>		
		<p>8 [2] - 41:13, 42:4</p>		

<p>amazing [1] - 62:1 Amboseli [14] - 21:18, 21:23, 26:20, 30:13, 30:14, 30:17, 30:19, 37:21, 37:24, 38:3, 40:4, 41:22, 43:10, 56:1 America [6] - 23:4, 24:7, 24:9, 26:1, 33:2, 33:13 American [1] - 3:2 AMERICAN [1] - 1:2 ammonia [1] - 75:2 Ammonia [1] - 75:10 animal [13] - 57:14, 60:11, 60:14, 65:22, 76:8, 76:19, 87:14, 88:17, 88:23, 88:25, 89:23 Animal [3] - 4:14, 49:10, 70:16 ANIMALS [1] - 1:3 animals [12] - 27:12, 38:7, 38:14, 38:24, 57:7, 60:15, 60:24, 61:2, 65:23, 73:22, 83:6, 93:22 Animals [2] - 3:3, 82:16 ankle [1] - 53:23 ankles [1] - 75:1 ankus [3] - 16:3, 44:11, 56:19 announcement [1] - 83:19 Annual [1] - 34:15 answer [12] - 7:16, 13:21, 15:9, 17:7, 19:11, 22:21, 25:22, 45:5, 48:25, 49:8, 52:1, 53:20 Answer [27] - 15:1, 15:6, 16:4, 16:7, 16:14, 17:17, 17:20, 18:10, 19:2, 20:15, 21:24, 25:16, 28:5, 28:7, 28:10, 28:12, 29:25, 30:2, 30:6, 34:17, 34:20, 34:25, 35:10, 35:15, 35:23, 93:18, 97:17 answered [2] - 53:20, 84:13 answering [1] - 18:13 anti [1] - 40:10 anti-coagulant [1] - 40:10 anticipate [1] - 79:14 Antonio [8] - 90:17, 90:19, 90:21, 91:15,</p>	<p>95:13, 95:16, 95:22, 96:1 anxiety [2] - 91:24, 98:9 anyway [1] - 22:5 apart [2] - 54:13, 73:13 apologize [1] - 11:8 APPEARANCES [1] - 1:13 appeared [4] - 7:19, 45:15, 45:17, 45:18 apples [1] - 45:3 applied [2] - 41:16, 94:21 appropriate [4] - 10:1, 21:3, 52:25, 79:10 April [2] - 60:9, 86:9 Arbs [1] - 93:4 Archele [2] - 58:2, 59:13 ARCHELE [2] - 59:9, 101:7 area [5] - 15:20, 22:18, 38:4, 59:18, 59:22 areas [2] - 32:12, 33:8 arguing [1] - 23:4 argumentative [1] - 49:7 arrived [1] - 95:23 articles [1] - 12:2 Asia [7] - 17:9, 29:4, 29:6, 29:12, 31:15, 31:18, 61:21 Asian [2] - 20:6, 29:5 aside [1] - 24:8 aspect [2] - 55:18, 56:24 aspire [1] - 35:9 assessing [1] - 15:20 associated [1] - 54:18 Associates [1] - 95:12 assume [5] - 9:17, 9:18, 41:9, 43:11, 79:3 assumption [1] - 7:18 attack [1] - 38:14 attacks [2] - 43:17, 91:25 attempting [1] - 10:13 attend [1] - 48:3 attention [3] - 4:13, 6:3, 7:5 attest [1] - 81:11 Attorney [1] - 5:21 attorneys [1] - 93:3 atypical [1] - 38:13 Auburn [2] - 47:6, 48:1 August [3] - 98:14,</p>	<p>98:21 authenticate [4] - 7:12, 7:15, 8:13, 9:16 authenticated [1] - 7:21 authentication [2] - 9:4, 10:1 authorities [1] - 87:14 authority [3] - 7:25, 8:2, 27:8 autonomy [1] - 44:16 available [1] - 95:20 Avenue [3] - 1:17, 1:22, 2:3 aware [8] - 7:13, 16:25, 17:24, 18:1, 18:8, 27:6, 27:7, 95:6</p>	<p>beat [2] - 66:20, 66:21 beaten [3] - 56:19, 57:12, 57:13 beating [1] - 71:14 beatings [1] - 57:2 became [3] - 55:11, 55:12, 70:7 become [1] - 36:15 becomes [1] - 4:22 BEFORE [1] - 1:11 began [2] - 38:6, 91:9 begin [2] - 13:10, 89:7 Beginning [2] - 20:12, 29:23 beginning [11] - 13:17, 14:14, 14:16, 16:1, 17:13, 18:7, 18:24, 21:21, 25:13, 27:22, 43:25 begins [3] - 16:1, 35:3, 47:12 begun [1] - 73:8 behalf [2] - 27:12, 35:18 behaving [1] - 15:23 behavior [5] - 12:13, 13:1, 16:10, 16:11, 22:11 Behavior [1] - 49:10 behavioralist [1] - 54:17 behaviorist [2] - 12:15, 12:17 behind [7] - 32:15, 66:24, 70:23, 71:14, 79:23, 79:24, 80:5 Before [3] - 72:11, 72:12, 87:12 belief [1] - 54:20 Bellamy [1] - 95:12 bellies [2] - 70:20, 79:21 belly [1] - 70:19 belong [2] - 26:25, 89:23 belonged [1] - 88:24 belonging [1] - 39:9 below [1] - 78:11 BENCH [1] - 1:10 benefit [1] - 10:17 Benjamin [1] - 57:11 best [1] - 22:19 better [5] - 28:16, 28:22, 32:21, 35:17, 57:19 between [12] - 7:6, 18:12, 37:23, 38:12, 55:1, 73:22, 74:1, 79:17, 86:15, 86:16, 86:19, 98:21</p>	<p>big [4] - 23:24, 24:8, 65:1, 73:9 bigger [1] - 69:20 Biology [2] - 49:9 bit [7] - 13:19, 28:16, 34:9, 36:11, 37:5, 86:7, 87:23 bite [1] - 40:14 biting [2] - 40:3, 40:10 bitten [1] - 40:19 bleak [1] - 31:19 bled [1] - 80:4 blog [2] - 6:20, 6:21 bloggers [1] - 6:16 blogging [7] - 4:15, 5:2, 5:25, 6:13, 6:25, 52:13 blogs [1] - 5:7 blood [4] - 71:11, 71:13, 71:14, 71:16 blow [1] - 86:7 Blue [1] - 47:17 board [1] - 4:22 body [3] - 29:10, 71:7, 79:25 bonded [1] - 62:4 borderline [2] - 74:9, 74:19 boss [1] - 95:12 bottom [5] - 27:23, 35:1, 77:20, 80:19, 81:10 bought [1] - 33:6 boxcars [1] - 53:22 break [7] - 53:7, 86:15, 86:16, 86:18, 99:8, 99:13, 100:2 breed [3] - 21:16, 22:24, 23:1 breeders [1] - 22:23 breeding [8] - 22:15, 22:18, 23:6, 33:1, 33:9, 33:11, 33:13, 50:11 breeds [1] - 60:18 briefly [1] - 7:2 bring [3] - 4:8, 8:25, 14:13 bringing [1] - 6:3 broadcast [1] - 4:19 broken [1] - 33:7 Brothers [9] - 12:21, 60:1, 60:4, 71:25, 83:5, 84:6, 89:1, 94:24, 97:7 Brothers' [2] - 12:9, 12:22 Buckley [2] - 21:14, 36:4 built [1] - 46:2</p>
B				
<p>babies [3] - 54:25, 56:18, 56:19 baby [4] - 32:18, 49:16, 49:18, 55:5 Baby [7] - 61:21, 79:19, 79:21, 79:24, 80:1, 80:4, 81:17 Baby's [1] - 80:2 background [2] - 12:14, 12:16 backward [1] - 44:15 bad [7] - 24:25, 25:5, 25:21, 75:2, 87:4, 92:13, 97:5 bags [1] - 72:22 ballpark [1] - 23:21 Banana [2] - 61:21, 79:19 barely [1] - 44:23 barn [4] - 25:14, 48:13, 48:15, 66:16 bars [1] - 61:19 baseball [1] - 71:6 based [8] - 6:17, 8:4, 8:9, 12:14, 19:22, 22:2, 29:9, 46:5 Based [2] - 12:16, 27:24 basic [1] - 16:10 basis [7] - 18:19, 18:20, 19:1, 35:4, 54:20, 55:22, 65:12 bat [1] - 71:6 bathtub [1] - 69:23 battered [4] - 13:14, 13:23, 14:7, 14:22 beach [1] - 51:4</p>	<p>babies [3] - 54:25, 56:18, 56:19 baby [4] - 32:18, 49:16, 49:18, 55:5 Baby [7] - 61:21, 79:19, 79:21, 79:24, 80:1, 80:4, 81:17 Baby's [1] - 80:2 background [2] - 12:14, 12:16 backward [1] - 44:15 bad [7] - 24:25, 25:5, 25:21, 75:2, 87:4, 92:13, 97:5 bags [1] - 72:22 ballpark [1] - 23:21 Banana [2] - 61:21, 79:19 barely [1] - 44:23 barn [4] - 25:14, 48:13, 48:15, 66:16 bars [1] - 61:19 baseball [1] - 71:6 based [8] - 6:17, 8:4, 8:9, 12:14, 19:22, 22:2, 29:9, 46:5 Based [2] - 12:16, 27:24 basic [1] - 16:10 basis [7] - 18:19, 18:20, 19:1, 35:4, 54:20, 55:22, 65:12 bat [1] - 71:6 bathtub [1] - 69:23 battered [4] - 13:14, 13:23, 14:7, 14:22 beach [1] - 51:4</p>	<p>beat [2] - 66:20, 66:21 beaten [3] - 56:19, 57:12, 57:13 beating [1] - 71:14 beatings [1] - 57:2 became [3] - 55:11, 55:12, 70:7 become [1] - 36:15 becomes [1] - 4:22 BEFORE [1] - 1:11 began [2] - 38:6, 91:9 begin [2] - 13:10, 89:7 Beginning [2] - 20:12, 29:23 beginning [11] - 13:17, 14:14, 14:16, 16:1, 17:13, 18:7, 18:24, 21:21, 25:13, 27:22, 43:25 begins [3] - 16:1, 35:3, 47:12 begun [1] - 73:8 behalf [2] - 27:12, 35:18 behaving [1] - 15:23 behavior [5] - 12:13, 13:1, 16:10, 16:11, 22:11 Behavior [1] - 49:10 behavioralist [1] - 54:17 behaviorist [2] - 12:15, 12:17 behind [7] - 32:15, 66:24, 70:23, 71:14, 79:23, 79:24, 80:5 Before [3] - 72:11, 72:12, 87:12 belief [1] - 54:20 Bellamy [1] - 95:12 bellies [2] - 70:20, 79:21 belly [1] - 70:19 belong [2] - 26:25, 89:23 belonged [1] - 88:24 belonging [1] - 39:9 below [1] - 78:11 BENCH [1] - 1:10 benefit [1] - 10:17 Benjamin [1] - 57:11 best [1] - 22:19 better [5] - 28:16, 28:22, 32:21, 35:17, 57:19 between [12] - 7:6, 18:12, 37:23, 38:12, 55:1, 73:22, 74:1, 79:17, 86:15, 86:16, 86:19, 98:21</p>	<p>big [4] - 23:24, 24:8, 65:1, 73:9 bigger [1] - 69:20 Biology [2] - 49:9 bit [7] - 13:19, 28:16, 34:9, 36:11, 37:5, 86:7, 87:23 bite [1] - 40:14 biting [2] - 40:3, 40:10 bitten [1] - 40:19 bleak [1] - 31:19 bled [1] - 80:4 blog [2] - 6:20, 6:21 bloggers [1] - 6:16 blogging [7] - 4:15, 5:2, 5:25, 6:13, 6:25, 52:13 blogs [1] - 5:7 blood [4] - 71:11, 71:13, 71:14, 71:16 blow [1] - 86:7 Blue [1] - 47:17 board [1] - 4:22 body [3] - 29:10, 71:7, 79:25 bonded [1] - 62:4 borderline [2] - 74:9, 74:19 boss [1] - 95:12 bottom [5] - 27:23, 35:1, 77:20, 80:19, 81:10 bought [1] - 33:6 boxcars [1] - 53:22 break [7] - 53:7, 86:15, 86:16, 86:18, 99:8, 99:13, 100:2 breed [3] - 21:16, 22:24, 23:1 breeders [1] - 22:23 breeding [8] - 22:15, 22:18, 23:6, 33:1, 33:9, 33:11, 33:13, 50:11 breeds [1] - 60:18 briefly [1] - 7:2 bring [3] - 4:8, 8:25, 14:13 bringing [1] - 6:3 broadcast [1] - 4:19 broken [1] - 33:7 Brothers [9] - 12:21, 60:1, 60:4, 71:25, 83:5, 84:6, 89:1, 94:24, 97:7 Brothers' [2] - 12:9, 12:22 Buckley [2] - 21:14, 36:4 built [1] - 46:2</p>	

<p>bullet ^[1] - 41:10 bulletin ^[1] - 4:22 bullhook ^[13] - 64:22, 64:23, 70:23, 70:25, 71:1, 71:5, 71:15, 71:16, 71:18, 79:23, 79:25, 80:1, 81:18 Bullhook ^[1] - 65:8 bullhook's ^[1] - 80:2 bullhooks ^[14] - 27:2, 65:11, 65:17, 66:19, 66:20, 67:14, 67:16, 67:18, 67:20, 67:22, 67:25, 68:5, 68:11, 71:2 burned ^[2] - 75:2, 75:10 bus ^[1] - 30:21 busses ^[1] - 31:3 Butza ^[1] - 29:19 BY ^[25] - 10:24, 11:9, 12:1, 13:3, 13:12, 14:10, 15:15, 17:12, 20:10, 23:10, 27:18, 32:17, 36:12, 39:4, 47:4, 48:24, 49:11, 59:11, 68:8, 69:8, 70:2, 77:15, 82:13, 85:24, 96:15</p>	<p>24:11, 28:15, 28:21, 29:3, 33:1, 33:11, 33:13, 51:2 Captive ^[1] - 28:23 captives ^[1] - 13:9 captivity ^[7] - 12:23, 24:15, 45:1, 48:19, 51:22, 51:24, 56:9 captor ^[1] - 14:17 captors ^[1] - 13:11 captured ^[1] - 24:15 capturing ^[1] - 32:18 care ^[4] - 24:24, 25:4, 25:9, 60:11 cared ^[1] - 29:11 cargo ^[1] - 27:2 Carol ^[3] - 21:14, 36:3, 58:9 Carol's ^[1] - 59:1 Carrie ^[3] - 72:6, 75:19, 87:12 carried ^[1] - 65:17 carry ^[1] - 56:20 carrying ^[3] - 51:3, 64:18, 65:11 cars ^[3] - 27:1, 74:14, 74:16 case ^[11] - 4:19, 4:23, 6:16, 8:1, 8:3, 8:10, 25:16, 50:19, 56:11, 57:10, 92:24 cases ^[1] - 6:1 catch ^[1] - 4:7 category ^[1] - 36:11 Catherine ^[1] - 3:7 caught ^[3] - 88:18, 90:2, 98:11 caused ^[3] - 16:9, 37:3, 37:12 CEC ^[1] - 48:7 cement ^[1] - 73:19 Center ^[1] - 43:24 certain ^[2] - 44:10, 68:18 certainly ^[8] - 5:16, 6:6, 6:11, 9:14, 26:7, 33:10, 52:23, 100:1 CERTIFICATE ^[1] - 102:1 certify ^[1] - 102:3 chain ^[1] - 63:1 chained ^[14] - 25:15, 25:17, 25:18, 25:19, 27:1, 47:18, 54:14, 62:13, 62:17, 62:20, 63:15, 70:6, 73:4, 73:18 chaining ^[9] - 16:20, 21:2, 25:10, 25:11, 28:16, 51:15, 53:22,</p>	<p>53:23 chainings ^[1] - 57:1 chains ^[29] - 18:22, 28:19, 28:23, 28:25, 29:2, 29:6, 29:20, 29:21, 30:3, 30:6, 50:1, 57:12, 62:18, 62:22, 63:2, 63:3, 63:6, 63:10, 63:16, 63:18, 63:25, 64:5, 64:9, 64:13, 70:4, 72:24, 72:25, 97:25 Chains ^[1] - 63:23 chance ^[3] - 49:23, 61:6, 61:14 changed ^[1] - 22:1 changes ^[2] - 16:9, 93:20 Charles ^[1] - 96:1 Charleston ^[1] - 95:23 Charlestown ^[8] - 59:15, 76:15, 86:4, 86:8, 91:18, 93:1, 96:17, 96:20 cheated ^[1] - 38:19 check ^[3] - 4:23, 5:1, 75:24 chest ^[1] - 92:3 Chicago ^[2] - 85:6, 89:4 children ^[4] - 13:15, 13:24, 14:6, 14:23 chimpanzees ^[2] - 27:8, 27:10 choice ^[1] - 54:16 chose ^[1] - 4:18 circle ^[3] - 62:25, 63:14, 63:19 Circuit ^[1] - 8:1 Circuits ^[1] - 8:2 circumstances ^[1] - 95:10 Circus ^[2] - 60:2, 60:4 circus ^[30] - 27:13, 32:23, 49:17, 49:19, 51:20, 60:8, 60:10, 60:17, 60:20, 60:24, 64:24, 65:10, 69:10, 69:11, 75:12, 76:7, 76:22, 77:6, 77:9, 82:19, 82:22, 82:24, 83:2, 83:23, 85:3, 85:10, 85:14, 90:14, 91:16, 93:25 Circus' ^[1] - 12:21 circuses ^[9] - 24:25, 25:4, 25:7, 26:5, 26:7, 26:25, 27:25, 48:22, 50:2 cite ^[1] - 11:16</p>	<p>cited ^[1] - 20:8 cities ^[2] - 73:22, 74:1 City ^[1] - 43:25 city ^[1] - 90:15 Civil ^[1] - 3:2 claim ^[5] - 91:24, 92:2, 97:22, 97:24, 97:25 clarify ^[2] - 5:3, 52:10 clean ^[2] - 74:22, 74:23 clear ^[4] - 25:2, 46:20, 53:21, 58:22 clearly ^[1] - 39:5 clip ^[11] - 39:25, 40:8, 40:9, 40:22, 41:4, 41:11, 42:12, 43:23, 44:4, 89:8, 89:19 clock ^[1] - 100:3 close ^[5] - 26:23, 27:25, 31:6, 58:23, 64:8 closer ^[3] - 12:5, 12:19, 15:11 closes ^[1] - 100:5 closures ^[1] - 64:4 clue ^[1] - 98:5 coagulant ^[1] - 40:10 cognition ^[3] - 20:3, 20:4, 20:24 cognitive ^[2] - 29:10, 57:6 cold ^[1] - 26:1 Coleman ^[3] - 72:6, 75:19, 87:12 colloquy ^[1] - 7:6 colors ^[1] - 99:2 COLUMBIA ^[1] - 1:1 coming ^[7] - 6:1, 17:11, 51:2, 54:12, 55:7, 55:10, 95:13 command ^[1] - 70:7 comment ^[2] - 26:13, 26:15 common ^[1] - 14:21 communication ^[1] - 54:13 compare ^[1] - 54:8 comparison ^[1] - 45:3 compensate ^[1] - 38:24 competent ^[2] - 8:4, 8:9 competing ^[1] - 44:23 compilation ^[1] - 9:6 complain ^[1] - 71:24 complained ^[1] - 87:8 complete ^[1] - 19:11 completely ^[2] - 17:5, 96:12</p>	<p>complicated ^[2] - 22:20, 22:22 compound ^[4] - 61:12, 62:15, 66:2, 69:22 compounds ^[1] - 60:14 computer ^[1] - 2:7 computer-aided ^[1] - 2:7 concentration ^[3] - 13:15, 13:24, 14:23 concerned ^[4] - 4:20, 4:21, 6:23, 8:15 Concerning ^[1] - 7:9 concerns ^[1] - 7:3 conclusion ^[3] - 27:22, 27:23, 45:21 concrete ^[2] - 73:7, 73:19 conference ^[6] - 34:19, 88:4, 88:11, 89:3, 89:4, 89:17 conferences ^[1] - 83:11 confined ^[2] - 68:18, 69:3 confirm ^[1] - 45:7 conflict ^[4] - 31:14, 43:6, 43:10, 44:24 confusing ^[1] - 89:25 connected ^[1] - 6:19 Connecticut ^[1] - 1:17 conservation ^[8] - 17:1, 17:5, 17:15, 17:18, 17:24, 18:3, 18:4, 18:8 Conservation ^[1] - 43:25 consideration ^[1] - 35:19 considered ^[1] - 27:24 consist ^[1] - 48:17 consistent ^[2] - 78:23, 79:13 constant ^[1] - 97:22 Constitution ^[1] - 2:3 contact ^[1] - 96:16 contacted ^[2] - 87:19, 94:13 contacting ^[1] - 96:4 contemplating ^[1] - 28:3 content ^[2] - 6:20, 8:12 context ^[2] - 21:9, 44:13 contexts ^[1] - 22:17 continually ^[3] - 54:9, 72:1, 90:3 Continually ^[1] - 72:1</p>
C				
<p>CA ^[1] - 1:4 cafeteria ^[1] - 100:5 calf ^[6] - 42:23, 42:24, 43:1, 43:2, 57:13 calfs ^[1] - 50:7 California ^[1] - 36:3 camels ^[1] - 61:3 camera ^[2] - 97:8, 98:12 cameras ^[3] - 94:19, 94:24, 98:3 camp ^[3] - 13:16, 13:24, 14:23 canal ^[4] - 71:6, 80:2, 81:17, 81:18 Candy ^[1] - 61:19 cannot ^[6] - 11:16, 11:19, 35:6, 35:12, 46:3, 95:6 capable ^[1] - 57:7 capacity ^[2] - 29:9, 57:5 caption ^[2] - 42:8, 43:1 captive ^[15] - 13:10, 22:15, 22:17, 23:4, 23:12, 24:3, 24:6,</p>				

<p>continue [1] - 9:10 continued [1] - 96:24 continues [1] - 32:5 continuing [3] - 10:24, 31:11, 101:6 continuum [7] - 24:24, 25:1, 25:4, 25:16, 25:21, 26:10, 35:24 control [4] - 6:24, 51:10, 68:2, 87:14 conversations [2] - 96:24, 97:2 copy [3] - 34:14, 81:5, 81:11 corporate [1] - 4:14 corporations [1] - 6:24 Correct [7] - 28:18, 31:5, 35:23, 36:25, 42:11, 45:9, 86:21 correct [97] - 11:11, 11:18, 11:23, 12:3, 12:4, 13:16, 13:25, 15:18, 15:21, 16:20, 17:2, 17:25, 18:16, 18:19, 19:7, 20:2, 21:4, 21:5, 21:16, 21:17, 22:13, 22:16, 24:6, 24:16, 24:17, 24:19, 24:22, 24:23, 24:25, 25:5, 26:6, 28:17, 28:24, 29:1, 29:6, 29:8, 29:17, 29:18, 29:20, 30:13, 30:20, 31:1, 31:4, 31:16, 31:19, 32:6, 32:19, 32:25, 33:2, 33:3, 33:13, 33:17, 33:21, 36:5, 36:6, 36:20, 36:24, 37:19, 37:21, 37:22, 39:20, 41:2, 41:20, 42:5, 42:10, 42:20, 43:21, 43:22, 44:7, 44:11, 45:8, 52:21, 77:23, 86:1, 86:2, 86:6, 86:12, 86:17, 87:9, 87:10, 88:21, 89:5, 90:6, 90:20, 91:3, 91:4, 91:10, 91:22, 92:11, 93:10, 94:10, 96:6, 96:22, 98:16, 98:22, 102:3 correcting [1] - 22:3 corrections [1] - 81:15 correctly [19] - 14:25, 15:7, 15:8, 16:16, 17:22, 18:11, 19:4, 20:17, 21:25, 22:1, 25:23, 28:4, 28:13,</p>	<p>30:7, 35:9, 35:25, 39:7, 42:8, 43:15 cortisol [1] - 16:4 counsel [10] - 3:5, 3:9, 4:17, 6:2, 7:6, 10:13, 52:19, 57:16, 94:6, 94:9 Counsel [1] - 53:16 Countless [1] - 64:3 countries [6] - 28:20, 28:23, 29:2, 29:6, 29:12, 32:8 country [1] - 29:14 couple [9] - 32:8, 56:9, 76:13, 85:6, 85:8, 95:4, 95:20, 96:3, 97:12 course [5] - 8:5, 35:23, 52:15, 61:22, 95:6 court [2] - 20:19, 95:2 COURT [121] - 1:1, 3:9, 3:17, 3:19, 4:6, 5:16, 5:25, 6:7, 6:14, 7:8, 7:11, 7:25, 8:21, 8:24, 9:3, 9:8, 9:24, 10:3, 10:12, 10:21, 11:7, 11:22, 11:25, 12:6, 12:14, 12:21, 13:5, 13:8, 14:3, 15:9, 17:6, 20:6, 22:21, 26:15, 26:17, 27:14, 27:17, 32:11, 36:7, 38:2, 38:13, 38:20, 45:12, 45:20, 46:8, 46:12, 46:17, 46:20, 47:1, 48:17, 48:22, 49:8, 50:16, 50:18, 51:6, 51:8, 51:12, 51:15, 51:22, 51:25, 52:3, 52:5, 52:7, 52:9, 52:11, 52:14, 52:17, 52:19, 52:23, 53:1, 53:4, 53:8, 53:16, 53:19, 54:1, 54:5, 54:15, 54:20, 55:18, 55:21, 55:24, 56:13, 56:22, 56:24, 57:1, 57:8, 57:16, 57:19, 57:23, 58:3, 58:6, 58:8, 58:21, 59:6, 59:8, 68:14, 68:17, 68:22, 69:3, 69:6, 69:16, 69:18, 77:14, 78:21, 78:24, 79:2, 79:5, 79:10, 79:13, 82:6, 85:20, 85:22, 96:9, 96:11, 96:13, 99:5, 99:12, 99:19, 99:23,</p>	<p>100:1, 100:10 Court [6] - 2:2, 2:2, 10:19, 53:10, 85:21, 102:2 Court's [1] - 4:9 courthouse [1] - 100:6 Courthouse [1] - 2:3 courtroom [3] - 5:21, 6:17, 59:4 COURTROOM [4] - 3:2, 53:10, 53:13, 59:3 covered [1] - 11:6 cows [1] - 61:3 crack [1] - 73:7 creatures [1] - 62:1 credit [2] - 8:14, 9:14 crew [1] - 70:16 criteria [3] - 11:2, 11:10, 11:14 Cross [3] - 85:20, 101:6, 101:9 CROSS [2] - 10:23, 85:23 cross [2] - 4:6, 10:4 Cross-examination [3] - 85:20, 101:6, 101:9 cross-examination [2] - 4:6, 10:4 CROSS-EXAMINATION [2] - 10:23, 85:23 Cruelty [1] - 3:3 CRUELTY [1] - 1:3 Cruisers [1] - 31:3 CRYSTAL [21] - 1:15, 3:12, 58:1, 59:7, 59:11, 68:7, 68:8, 69:8, 70:2, 77:11, 77:15, 78:22, 79:3, 79:9, 79:12, 82:4, 82:8, 85:18, 96:7, 96:10, 99:21 Crystal [4] - 1:16, 3:12, 58:1, 101:8 cull [3] - 23:3, 39:1, 54:24 culling [1] - 32:5 Current [1] - 49:9 current [4] - 22:12, 28:9, 28:10, 28:11 curtail [1] - 99:6 cycle [3] - 37:23, 38:11, 39:3</p>	<p style="text-align: center;">D</p> <p>D.C [4] - 1:5, 1:18, 1:23, 2:4 dad [1] - 60:18 daily [6] - 18:19, 18:25, 66:20, 67:2, 91:24, 97:22 damage [1] - 23:20 dancing [2] - 45:17 date [8] - 22:6, 28:6, 78:8, 78:10, 78:11, 78:14, 80:18, 81:12 dates [2] - 86:13, 90:22 daughters [1] - 33:5 DAY [1] - 1:10 days [9] - 27:8, 44:20, 74:5, 74:7, 74:9, 74:11, 74:21, 96:3, 97:12 dead [1] - 42:22 dealt [1] - 23:9 Debbie [1] - 96:21 decades [1] - 27:24 December [2] - 80:20, 92:24 decided [4] - 6:17, 55:14, 87:2, 97:3 decision [2] - 8:8, 87:8 decisions [1] - 8:4 declaration [8] - 78:16, 78:19, 81:6, 81:7, 81:12, 81:16, 81:20, 81:22 Defendant [2] - 1:7, 1:19 defendant [8] - 3:20, 3:22, 3:24, 3:25, 4:2, 4:4, 4:5, 10:20 Defendant's [3] - 42:21, 43:8, 80:8 defendant's [1] - 79:7 defense [2] - 16:22, 39:17 Defense [5] - 42:3, 43:12, 77:12, 86:3, 89:2 definitely [3] - 42:10, 55:17, 91:4 definition [1] - 14:19 delay [1] - 10:5 Delciana [1] - 3:15 DELCIANA [1] - 1:16 demand [1] - 32:2 demonstrate [1] - 15:17 demonstrates [1] -</p>	<p>16:2 demonstrating [1] - 15:3 denied [1] - 94:15 deny [1] - 96:4 Department [3] - 77:2, 77:5, 77:8 depended [5] - 60:22, 62:15, 67:4, 69:1 deposed [1] - 93:1 deposition [25] - 12:4, 12:19, 14:11, 16:1, 17:13, 18:7, 18:16, 18:23, 20:5, 20:11, 21:21, 22:7, 25:13, 26:12, 27:20, 29:23, 34:11, 34:14, 37:13, 92:5, 92:19, 92:23, 93:9, 93:15, 97:14 depositions [2] - 16:22, 18:20 DEPUTY [4] - 3:2, 53:10, 53:13, 59:3 deputy [1] - 59:4 Derek [1] - 4:5 described [1] - 90:24 deserve [4] - 24:7, 27:12, 35:17 design [1] - 19:17 designation [1] - 7:3 Despite [1] - 24:21 despite [3] - 88:3, 91:1, 91:14 detail [1] - 12:2 details [7] - 4:15, 4:19, 5:8, 15:22, 18:18, 18:24, 29:22 developed [3] - 37:25, 38:10, 38:18 device [1] - 64:24 diagnose [1] - 12:3 diagnosed [1] - 11:17 die [2] - 42:18, 43:5 died [3] - 36:23, 43:14, 43:20 Diego [2] - 24:19, 24:22 difference [2] - 28:4, 77:13 different [7] - 12:13, 13:19, 14:25, 15:3, 24:8, 36:11, 56:2 differently [1] - 18:14 difficult [2] - 49:14, 67:5 difficulties [1] - 7:17 Direct [1] - 101:8 direct [12] - 6:15, 6:24, 7:5, 7:20, 11:5, 14:2, 21:7, 36:14, 39:21,</p>
---	--	---	---	--

<p>46:22, 99:20 DIRECT [1] - 59:10 directed [1] - 9:13 direction [1] - 52:25 directly [2] - 17:25, 18:9 disagree [3] - 37:16, 42:17, 58:12 disappearing [1] - 43:17 discovered [1] - 6:5 discretion [1] - 5:15 discuss [7] - 5:5, 5:17, 5:19, 52:12, 52:14, 69:9, 100:7 discussed [2] - 12:18, 68:9 discussion [1] - 15:11 disorder [4] - 13:18, 14:5, 15:14, 55:16 distinguishing [1] - 12:22 distressed [2] - 70:7, 79:22 DISTRICT [3] - 1:1, 1:1, 1:11 disturb [1] - 51:19 doctor [5] - 4:7, 5:20, 9:15, 53:17 document [8] - 34:12, 77:17, 78:4, 80:10, 80:14, 80:18, 80:23, 81:10 documents [1] - 19:3 done [19] - 19:21, 20:15, 20:20, 22:16, 24:19, 33:2, 33:9, 33:18, 46:6, 46:15, 46:16, 49:4, 59:24, 72:9, 77:17, 80:13, 87:25, 88:3, 93:21 door [1] - 61:13 doubts [1] - 23:8 down [23] - 12:12, 14:15, 22:4, 35:1, 35:4, 47:12, 55:13, 70:8, 70:19, 70:20, 70:21, 70:24, 71:3, 71:7, 71:17, 71:21, 71:22, 71:23, 79:21, 79:22, 80:1, 80:3, 98:20 Dr [86] - 8:18, 8:19, 9:21, 9:25, 10:4, 10:25, 11:2, 11:10, 11:16, 11:21, 12:2, 13:4, 13:13, 13:21, 14:14, 15:16, 15:25, 16:19, 16:25, 17:14, 17:24, 18:6, 18:18,</p>	<p>18:23, 19:6, 19:16, 19:24, 20:11, 21:2, 21:6, 21:18, 22:9, 22:11, 22:15, 23:11, 23:24, 24:11, 24:14, 24:24, 26:5, 26:12, 27:19, 28:15, 28:19, 29:15, 30:10, 30:12, 30:19, 31:17, 32:5, 32:9, 32:18, 32:21, 33:1, 33:19, 34:10, 36:2, 36:13, 37:1, 37:16, 37:20, 39:5, 39:12, 39:19, 39:21, 40:3, 40:22, 40:25, 41:4, 41:8, 41:15, 42:12, 42:17, 42:21, 42:22, 43:8, 43:12, 43:23, 44:4, 45:5, 47:5, 48:6, 49:16, 53:18 drew [1] - 45:21 dripping [1] - 71:16 drought [1] - 56:8 dug [1] - 73:12 dumped [1] - 55:4 duress [1] - 14:21 during [15] - 8:5, 21:7, 36:13, 39:21, 48:6, 52:15, 56:8, 58:9, 63:16, 63:19, 69:13, 74:6, 74:11, 86:11, 97:2 During [1] - 63:11 Dyanisis [1] - 43:13</p>	<p>elephant [72] - 12:11, 14:24, 15:3, 15:17, 16:2, 19:25, 20:3, 20:4, 20:22, 20:23, 20:24, 21:6, 21:10, 21:15, 21:18, 21:22, 22:3, 23:22, 27:5, 29:16, 30:4, 31:11, 31:14, 31:18, 31:20, 31:21, 31:23, 32:22, 32:23, 38:25, 40:16, 40:25, 41:8, 41:15, 41:17, 41:19, 41:21, 42:7, 42:9, 42:18, 42:22, 43:1, 43:3, 43:5, 43:18, 44:24, 45:16, 45:17, 45:22, 45:23, 46:4, 46:9, 46:14, 49:18, 50:4, 54:11, 55:21, 56:14, 65:22, 67:5, 67:6, 68:3, 70:18, 70:21, 71:11, 71:21, 74:14, 74:16, 86:11 Elephant [6] - 17:2, 17:11, 31:8, 34:15, 39:22, 43:25 elephant's [3] - 19:14, 30:10, 35:20 Elephants [1] - 57:7 elephants [207] - 11:3, 11:11, 11:14, 11:18, 11:20, 12:3, 12:8, 12:9, 12:22, 12:23, 12:25, 13:1, 13:2, 13:6, 13:14, 13:18, 13:22, 14:5, 14:8, 15:13, 15:23, 16:9, 16:11, 18:19, 18:25, 19:7, 19:17, 20:6, 20:7, 20:25, 21:2, 21:15, 21:20, 22:13, 22:16, 22:18, 22:23, 22:24, 23:1, 23:3, 23:4, 23:8, 23:11, 23:12, 23:17, 23:18, 23:22, 24:3, 24:6, 24:9, 24:12, 24:14, 24:18, 24:21, 25:14, 25:24, 26:6, 26:8, 26:25, 28:1, 28:15, 28:19, 28:21, 28:23, 28:25, 29:3, 29:5, 29:9, 30:3, 30:11, 30:13, 31:4, 31:25, 32:3, 32:12, 32:15, 32:18, 33:4, 33:6, 33:20, 33:21, 34:6, 34:7, 35:5, 35:7, 35:12, 35:16, 35:18,</p>	<p>35:22, 36:5, 36:10, 36:14, 36:22, 37:1, 37:2, 37:24, 38:6, 38:7, 38:10, 38:13, 38:16, 38:23, 38:25, 39:1, 39:5, 39:9, 39:13, 44:10, 44:12, 44:14, 44:19, 44:22, 44:24, 45:1, 45:25, 46:3, 46:7, 47:18, 48:4, 48:8, 48:21, 49:16, 50:5, 50:11, 50:13, 50:20, 50:23, 50:25, 51:3, 54:23, 54:25, 55:1, 55:5, 55:8, 55:15, 55:20, 56:1, 56:9, 56:15, 61:3, 61:4, 61:6, 61:14, 61:16, 61:23, 62:4, 62:9, 62:18, 62:20, 63:22, 63:24, 64:4, 64:9, 64:12, 64:16, 64:19, 66:10, 66:11, 66:12, 66:14, 66:15, 66:17, 66:20, 66:21, 66:22, 67:13, 67:16, 67:18, 67:20, 67:22, 67:24, 68:1, 68:5, 68:10, 69:13, 69:20, 69:23, 70:5, 70:6, 70:7, 70:11, 70:19, 71:25, 72:24, 73:3, 73:5, 73:14, 73:17, 74:6, 74:20, 75:4, 75:24, 76:4, 79:18, 79:19, 79:21, 83:6, 91:3, 97:25 elephants' [2] - 19:25, 61:20 Elmo [1] - 4:12 EMMET [1] - 1:11 emotion [1] - 56:16 emotional [4] - 14:20, 54:17, 54:18, 55:18 emotions [1] - 55:20 empathy [3] - 29:10, 57:5 enable [1] - 51:13 enclosure [1] - 64:10 End [2] - 14:25, 35:9 end [13] - 32:23, 35:3, 40:8, 44:18, 49:17, 49:18, 63:21, 65:2, 73:9, 74:14, 86:8, 86:12, 90:19 Endangered [1] - 41:16 endangered [1] - 55:12 ending [1] - 40:23</p>	<p>enrich [1] - 22:16 Enrichment [1] - 48:17 enrichment [6] - 19:6, 19:13, 19:14, 48:7, 48:21, 49:1 entered [1] - 74:19 ENTERTAINMENT [1] - 1:6 Entertainment [3] - 3:4, 17:4, 48:8 entire [6] - 7:19, 31:22, 32:22, 57:4, 63:13, 74:9 entirely [6] - 19:17, 19:19, 19:20, 19:21, 20:13, 20:15 entitled [3] - 4:24, 5:22, 102:4 entity [1] - 17:1 environment [1] - 19:15 environments [1] - 51:20 equilibrium [1] - 32:16 equipment [1] - 84:12 equivalent [1] - 24:2 Eric [1] - 3:13 ERIC [1] - 1:15 escalating [1] - 31:14 especially [4] - 26:1, 27:13, 31:25, 49:13 ESQ [10] - 1:14, 1:14, 1:15, 1:15, 1:16, 1:19, 1:20, 1:20, 1:21, 1:21 essentially [2] - 5:18, 5:20 estimate [1] - 99:20 et [1] - 3:3 Ethical [1] - 82:16 events [1] - 94:12 eventually [3] - 23:7, 71:22, 71:23 Evidence [1] - 8:11 evidence [12] - 6:17, 8:5, 8:6, 8:7, 8:10, 9:11, 19:12, 65:4, 82:5, 82:12 evidentiary [1] - 58:17 ex [1] - 59:17 ex-husband [1] - 59:17 exact [1] - 81:11 exactly [7] - 16:6, 17:9, 24:2, 72:15, 90:22, 93:23, 95:18 exaggerated [1] - 14:18 EXAMINATION [4] -</p>
E				
<p>ear [15] - 66:24, 70:23, 71:6, 71:14, 71:16, 71:17, 71:19, 79:23, 79:24, 80:2, 80:5, 81:17, 81:18 early [1] - 45:25 easier [1] - 59:1 easily [1] - 22:24 eat [1] - 44:23 eco [2] - 32:16, 43:10 effect [1] - 88:20 effort [1] - 17:25 efforts [5] - 17:1, 17:15, 17:18, 18:9, 24:21 eight [4] - 14:13, 14:15, 17:14, 76:1 Either [1] - 48:22 either [1] - 28:1 electrical [2] - 63:4, 63:6</p>				

<p>10:23, 47:3, 59:10, 85:23</p> <p>examination [10] - 4:6, 10:4, 14:2, 21:8, 36:14, 39:21, 85:20, 99:7, 101:6, 101:9</p> <p>Examination [2] - 101:6, 101:8</p> <p>examples [1] - 56:9</p> <p>excessive [1] - 72:8</p> <p>exclude [3] - 36:22, 37:2, 37:12</p> <p>excluded [1] - 38:4</p> <p>Exclusion [1] - 4:17</p> <p>excused [2] - 4:17, 52:20</p> <p>exercise [3] - 18:21, 19:1, 25:20</p> <p>exercised [2] - 18:19, 18:25</p> <p>exhibit [2] - 39:17, 40:23</p> <p>Exhibit [21] - 7:10, 34:13, 40:1, 41:5, 41:12, 42:3, 42:13, 42:22, 43:9, 43:12, 43:24, 65:4, 77:12, 80:8, 82:9, 82:11, 86:3, 89:2, 90:9, 99:3, 101:17</p> <p>exhibited [1] - 7:23</p> <p>exhibiting [1] - 22:11</p> <p>exhibits [5] - 28:2, 58:11, 77:13, 79:7, 82:5</p> <p>exist [1] - 16:13</p> <p>existence [1] - 54:14</p> <p>existing [2] - 22:16, 33:12</p> <p>exists [1] - 12:2</p> <p>expanded [1] - 28:2</p> <p>expectancy [5] - 37:2, 37:4, 37:6, 37:11, 37:17</p> <p>expense [1] - 28:3</p> <p>experience [12] - 26:24, 33:21, 34:7, 35:6, 35:13, 35:22, 36:4, 50:5, 50:6, 50:13, 56:15, 60:16</p> <p>experienced [1] - 57:14</p> <p>experiences [1] - 56:17</p> <p>experiment [2] - 56:1, 56:3</p> <p>experimental [7] - 19:22, 19:23, 19:24, 20:4, 20:15, 20:19, 49:4</p>	<p>experiments [1] - 56:3</p> <p>expert [3] - 47:8, 47:10, 47:19</p> <p>expertise [5] - 15:21, 15:24, 16:15, 46:11, 46:12</p> <p>experts [4] - 10:7, 10:12, 10:16, 27:5</p> <p>explain [2] - 22:21, 38:1</p> <p>explore [1] - 54:10</p> <p>expression [1] - 55:21</p> <p>extent [3] - 16:23, 18:18, 18:25</p> <p>extinct [2] - 31:21, 31:24</p> <p>extraordinary [1] - 56:4</p> <p>extreme [3] - 27:4, 54:7, 54:14</p> <p>Extreme [1] - 98:9</p> <p>extremely [1] - 25:17</p> <p>extremist [2] - 26:11, 26:19</p> <p>eye [2] - 10:9, 73:10</p> <p>eyes [2] - 75:3, 75:10</p>	<p>19:7</p> <p>FEI's [1] - 16:20</p> <p>Feld [3] - 3:4, 17:4, 48:8</p> <p>FELD [1] - 1:6</p> <p>fellow [1] - 65:14</p> <p>fellows [1] - 65:15</p> <p>felt [3] - 72:9, 91:12, 97:5</p> <p>female [2] - 28:1, 37:1</p> <p>females [3] - 36:18, 36:22, 50:9</p> <p>fenced [3] - 32:12, 32:14</p> <p>fences [1] - 32:15</p> <p>fencing [1] - 63:6</p> <p>few [10] - 43:14, 82:14, 84:15, 97:10, 97:11, 97:17, 97:18, 97:21, 97:24, 98:20</p> <p>fifteen [4] - 5:3, 62:25, 74:13</p> <p>fight [4] - 30:4, 70:5, 79:18, 86:11</p> <p>figure [3] - 23:15, 23:21, 31:2</p> <p>figured [1] - 97:12</p> <p>figures [1] - 37:6</p> <p>file [1] - 76:10</p> <p>filed [3] - 94:6, 94:9, 95:11</p> <p>filled [1] - 44:20</p> <p>film [22] - 7:12, 7:15, 7:21, 7:23, 8:13, 9:4, 9:11, 9:16, 9:17, 10:1, 40:7, 42:20, 43:23, 44:4, 45:14, 45:15, 58:10, 58:16, 83:16, 84:5, 84:7, 84:13</p> <p>finally [2] - 87:8, 96:20</p> <p>finder [2] - 7:23, 8:3</p> <p>fine [11] - 10:2, 10:14, 11:25, 53:3, 53:4, 58:14, 58:23, 99:5, 99:12, 99:19, 100:1</p> <p>Finish [1] - 15:9</p> <p>finish [6] - 9:15, 9:21, 9:24, 10:3, 99:7, 99:12</p> <p>fire [1] - 90:2</p> <p>fireplace [1] - 65:1</p> <p>firm [1] - 68:2</p> <p>first [12] - 35:11, 45:24, 55:10, 62:9, 65:12, 71:13, 71:14, 72:6, 81:4, 87:1, 91:5, 99:21</p> <p>first-name [1] - 65:12</p> <p>five [6] - 24:8, 29:24,</p>	<p>63:14, 67:9, 69:25, 70:12</p> <p>fixture [1] - 65:5</p> <p>flexibility [1] - 7:21</p> <p>flies [5] - 40:3, 40:5, 40:6, 40:7, 40:10</p> <p>Florida [1] - 43:25</p> <p>fly [1] - 40:15</p> <p>focal [1] - 43:16</p> <p>focus [1] - 10:14</p> <p>follow [2] - 10:8, 57:17</p> <p>follow-up [1] - 57:17</p> <p>following [3] - 41:4, 42:12, 87:20</p> <p>follows [1] - 81:16</p> <p>food [2] - 44:23, 54:11</p> <p>foot [2] - 44:11, 51:18</p> <p>footage [12] - 8:13, 9:17, 47:13, 47:16, 47:25, 48:1, 58:10, 58:16, 97:6, 97:18, 97:21, 97:24</p> <p>FOR [4] - 1:1, 1:2, 10:22, 59:9</p> <p>forage [1] - 23:18</p> <p>force [1] - 81:18</p> <p>forced [4] - 46:19, 49:22, 49:25</p> <p>foregoing [1] - 102:3</p> <p>Forgive [1] - 54:15</p> <p>formally [1] - 58:24</p> <p>former [1] - 11:23</p> <p>forth [5] - 11:2, 11:10, 11:13, 73:1, 75:8</p> <p>fortitude [2] - 27:11, 27:15</p> <p>forward [3] - 31:17, 32:1, 44:14</p> <p>foundation [3] - 7:9, 9:4, 79:10</p> <p>Foundation [2] - 17:2, 17:11</p> <p>founder [1] - 55:3</p> <p>four [7] - 14:15, 20:3, 42:18, 55:1, 59:17, 69:25, 80:6</p> <p>fourth [1] - 35:1</p> <p>Frank [2] - 80:25, 81:1</p> <p>free [1] - 44:19</p> <p>freedom [1] - 44:13</p> <p>frequency [1] - 51:20</p> <p>frequently [1] - 6:1</p> <p>friends [1] - 53:3</p> <p>front [2] - 5:14, 62:19</p> <p>Fulbright [1] - 1:22</p> <p>full [12] - 7:13, 33:20, 34:6, 35:2, 35:6, 35:13, 35:22, 36:4, 50:4, 50:6, 50:13, 81:18</p>	<p>funded [1] - 17:16</p> <p>fusion [1] - 54:12</p> <p>future [1] - 31:18</p>
G				
			<p>gained [1] - 16:21</p> <p>general [3] - 4:17, 22:19, 66:2</p> <p>gentleman [1] - 30:10</p> <p>George [4] - 65:14, 66:13, 66:15, 67:22</p> <p>gigantic [1] - 73:12</p> <p>given [5] - 5:9, 19:6, 22:23, 48:8, 69:20</p> <p>glad [1] - 95:16</p> <p>glare [1] - 100:3</p> <p>GLITZENSTEIN [2] - 1:15, 3:13</p> <p>Glitzenstein [2] - 1:16, 3:13</p> <p>glorious [1] - 44:19</p> <p>goats [1] - 61:3</p> <p>Goodal [1] - 27:7</p> <p>Gosh [2] - 64:1, 83:15</p> <p>granted [1] - 4:21</p> <p>grass [1] - 73:20</p> <p>grew [1] - 60:18</p> <p>Griggs [3] - 72:11, 72:12, 87:12</p> <p>groomed [1] - 60:14</p> <p>grooming [1] - 60:16</p> <p>ground [1] - 71:17</p> <p>group [7] - 54:9, 82:15, 82:18, 82:21, 82:24, 88:17, 88:25</p> <p>groups [1] - 88:24</p> <p>grow [1] - 59:18</p> <p>growth [1] - 32:2</p> <p>guess [9] - 6:21, 26:22, 30:24, 35:15, 40:20, 75:6, 81:25, 95:9, 97:4</p> <p>guides [1] - 15:18</p> <p>guys [1] - 55:10</p>	
H				
			<p>habitat [2] - 23:20, 32:16</p> <p>habitats [1] - 31:19</p> <p>half [4] - 63:9, 91:10, 99:10, 99:22</p> <p>hand [3] - 34:13, 59:3, 89:12</p> <p>handed [1] - 71:3</p> <p>handle [3] - 71:7, 80:2, 86:25</p>	

<p>handler [1] - 64:8 handlers [1] - 60:12 hands [4] - 8:1, 71:6, 79:25, 80:3 happy [4] - 33:10, 33:12, 33:16, 67:6 harassed [1] - 40:17 harassment [1] - 16:9 hard [1] - 34:23 harm [1] - 25:15 harmful [3] - 40:16, 40:18, 40:20 haul [1] - 45:1 haunts [1] - 53:4 hay [1] - 23:19 head [2] - 15:19, 65:22 headed [1] - 24:5 hear [7] - 6:2, 8:6, 10:17, 13:21, 52:19, 57:11, 68:14 heard [4] - 18:13, 46:21, 50:20, 52:13 hearing [1] - 85:7 hearings [1] - 83:10 hearsay [2] - 8:7, 78:20 heartbreaking [1] - 76:9 hearts' [1] - 6:20 heat [1] - 26:3 heightened [1] - 55:8 held [3] - 13:10, 24:15, 89:4 help [3] - 44:18, 74:23, 83:6 helped [3] - 60:14, 93:20, 93:24 helplessness [8] - 11:3, 11:11, 11:14, 11:19, 12:5, 12:18, 12:20, 15:12 hidden [4] - 94:19, 94:24, 97:8, 98:12 highlighted [1] - 99:2 Hills [2] - 47:6, 48:1 hired [2] - 88:20, 89:1 hit [10] - 66:21, 67:8, 67:13, 67:16, 67:18, 67:20, 67:22, 67:24, 68:4, 68:10 hitting [3] - 70:23, 71:4, 71:18 hmm [9] - 25:3, 39:16, 39:23, 87:24, 90:25, 91:11, 92:1, 94:22, 95:15 Hohenwald [1] - 21:11 hold [1] - 26:9 holding [2] - 79:24, 80:2</p>	<p>holds [1] - 8:3 hole [2] - 73:9, 73:12 holes [1] - 56:8 home [14] - 13:1, 28:19, 28:23, 29:2, 29:6, 52:7, 52:20, 53:5, 57:24, 91:18, 92:13, 94:7, 94:10, 96:17 honest [1] - 24:13 honestly [1] - 24:5 Honor [52] - 3:8, 3:19, 3:21, 3:23, 4:1, 4:3, 4:8, 4:13, 4:18, 5:2, 5:3, 6:4, 6:10, 7:3, 7:4, 7:6, 7:14, 7:20, 7:22, 8:17, 9:1, 9:5, 9:20, 10:2, 10:11, 10:20, 11:4, 11:6, 17:3, 27:16, 45:11, 46:25, 47:2, 50:15, 50:17, 52:4, 52:6, 52:8, 53:6, 53:7, 57:18, 57:22, 57:25, 58:1, 58:19, 77:11, 79:9, 82:4, 85:19, 96:7, 98:25, 99:18 Honorable [1] - 53:10 HONORABLE [1] - 1:11 hook [4] - 46:18, 63:7, 65:2, 81:17 hooked [1] - 79:24 hopes [2] - 96:5, 96:17 hoping [2] - 39:2, 99:17 hopping [1] - 46:4 horse [1] - 40:6 horses [7] - 60:12, 60:13, 60:16, 60:18, 61:13 Hospice [1] - 36:9 hostage [1] - 14:18 Houck [5] - 65:14, 67:13, 70:18, 79:20, 87:13 hour [7] - 44:1, 63:9, 69:4, 96:22, 99:10, 99:22 hours [7] - 25:17, 25:18, 60:19, 63:24, 64:2, 64:3 housed [1] - 62:16 Howard [3] - 3:12, 58:1, 73:4 HOWARD [1] - 1:15 huge [1] - 55:12 human [6] - 31:14, 32:1, 37:18, 43:5,</p>	<p>43:10, 44:24 human-elephant [3] - 31:14, 43:5, 44:24 human-induced [1] - 37:18 humans [4] - 15:5, 37:3, 37:12, 57:6 Hundley [35] - 58:2, 59:13, 60:1, 60:10, 60:19, 61:20, 61:23, 62:9, 64:23, 65:3, 65:9, 66:18, 69:9, 71:11, 71:24, 72:23, 73:17, 73:22, 75:12, 76:7, 76:21, 77:12, 77:16, 78:4, 78:23, 80:7, 80:14, 82:14, 82:15, 83:22, 84:16, 85:9, 85:25, 99:22 HUNDLEY [2] - 59:9, 101:7 hurry [1] - 94:20 hurt [1] - 88:24 husband [1] - 59:17</p>	<p>incident [3] - 43:11, 80:3, 90:23 include [2] - 5:4, 75:25 included [1] - 92:8 including [1] - 14:22 incompetent [1] - 8:7 increases [1] - 37:18 increasing [3] - 32:1, 32:2, 32:3 indeed [2] - 8:3, 79:14 India [1] - 31:11 indicate [2] - 77:17, 80:10 indicator [1] - 22:12 indirectly [1] - 5:13 individual [1] - 62:2 individuals [5] - 31:22, 56:2, 66:18, 68:9, 68:16 indoors [1] - 62:16 induced [1] - 37:18 indulgence [1] - 4:9 inflicted [1] - 36:24 information [3] - 5:7, 5:13, 18:15 initialed [1] - 81:10 initials [3] - 77:20, 77:24, 78:10 injured [1] - 40:25 injury [2] - 40:13, 40:14 inquisitive [1] - 12:12 insert [1] - 81:17 inserted [1] - 80:1 inside [6] - 63:4, 66:24, 71:16, 74:16, 74:25, 80:5 insitu [2] - 17:24, 18:8 insofar [1] - 6:22 inspect [1] - 75:12 inspected [1] - 48:4 inspection [13] - 43:24, 44:5, 44:7, 44:9, 45:8, 47:7, 47:16, 48:2, 48:3, 48:4, 48:7, 48:10, 75:15 instance [3] - 27:7, 55:25, 56:17 Instead [1] - 7:22 Institute [1] - 4:15 instructed [1] - 6:11 instruction [1] - 5:9 instructions [2] - 5:4, 6:12 integrated [1] - 50:9 intelligent [2] - 38:7, 62:3</p>	<p>intention [1] - 8:19 interact [1] - 54:10 interest [1] - 6:18 interested [1] - 8:14 interests [1] - 28:1 interjecting [2] - 58:13, 58:22 International [2] - 17:2, 17:11 Internet [4] - 4:16, 4:20, 5:7, 5:11 interpersonal [1] - 14:22 introduced [2] - 58:11, 58:17 Investigator [1] - 81:5 investigators [2] - 75:23, 90:1 involved [3] - 48:6, 48:10, 92:2 irrelevant [1] - 17:5 issue [6] - 5:25, 23:2, 53:4, 55:12, 56:13 issues [3] - 10:6, 11:6, 22:20 items [7] - 19:6, 19:13, 19:14, 48:8, 48:17, 48:21, 49:1 itself [2] - 57:14, 98:6 ivory [2] - 31:8, 31:11</p>
I				
<p>idea [2] - 84:9, 97:8 identification [2] - 99:1, 99:4 Identification [1] - 101:18 identified [1] - 13:5 identify [6] - 3:5, 11:11, 13:10, 15:16, 16:13, 89:10 identifying [2] - 11:3, 11:14 IEF [1] - 17:20 ignoring [2] - 10:7, 10:15 imagine [2] - 46:5, 46:6 immediate [1] - 66:3 impact [3] - 51:15, 51:25, 56:13 impeachment [3] - 78:25, 79:14, 79:15 important [1] - 4:10 importation [2] - 24:18, 24:21 imported [1] - 24:22 impossible [1] - 14:19 inaccuracies [1] - 42:19 inappropriate [1] - 21:3 INC [1] - 1:6 Inc [1] - 3:4</p>	J			
<p>JACQUELINE [3] - 2:2, 102:2, 102:5 Jane [1] - 27:7 Jason [3] - 72:13, 87:12 jaw [1] - 66:23 Jaworski [1] - 1:22 Jeeps [1] - 31:3 jerk [1] - 66:23 Jimmy [3] - 65:13, 66:5, 67:18 job [4] - 59:1, 76:16, 95:7, 95:24 jobs [1] - 9:23 John [4] - 3:19, 72:12, 72:13, 95:12 JOHN [1] - 1:20 Joiner [2] - 3:23, 101:9 JOINER [17] - 1:19, 3:23, 58:4, 58:7, 68:6, 68:12, 68:15, 78:20, 78:25, 82:7, 82:13, 85:21, 85:24, 96:14, 96:15, 98:25, 99:10</p>				

<p>joining [1] - 91:10 journal [1] - 49:5 journals [3] - 21:1, 49:5, 49:12 joy [1] - 44:20 Joyce [1] - 53:18 JOYCE [2] - 10:22, 101:5 JUDGE [1] - 1:11 judge [1] - 8:4 Judge [1] - 58:4 judges [1] - 8:6 Julie [1] - 4:3 jump [1] - 46:3 jumpy [1] - 91:7 June [4] - 60:9, 79:18, 86:17, 90:12 Jungle [1] - 39:22 jury [1] - 10:14</p> <p style="text-align: center;">K</p> <p>Kaiser [3] - 80:25, 81:1, 81:5 Kara [1] - 3:25 KARA [1] - 1:20 Karen [3] - 47:7, 48:5, 57:12 KATHERINE [1] - 1:14 Keep [1] - 81:13 keep [14] - 24:6, 33:20, 34:6, 35:7, 35:12, 54:25, 56:5, 58:13, 58:22, 58:25, 68:1, 68:2, 71:18, 81:9 keeping [1] - 28:15 Kentucky [3] - 84:1, 94:18, 98:18 Kenya [3] - 30:13, 34:18, 37:21 kept [12] - 28:19, 28:23, 28:25, 29:2, 29:5, 29:12, 29:13, 33:7, 38:22, 44:14, 73:10, 79:22 keynote [1] - 34:14 kids [4] - 27:9, 59:17, 85:9, 85:14 kill [4] - 38:8, 38:23, 39:10, 55:11 killed [10] - 29:19, 30:2, 30:3, 32:22, 36:23, 38:24, 38:25, 41:21, 42:10 killings [2] - 32:19, 39:6 kilometers [6] - 23:13, 23:22, 23:23, 23:24, 38:5, 50:25</p>	<p>kind [19] - 4:22, 12:9, 12:13, 12:25, 13:1, 14:7, 25:20, 27:11, 38:17, 38:22, 43:11, 59:24, 71:5, 75:6, 75:7, 88:17, 93:16, 97:6 kindness [1] - 14:17 kinds [1] - 8:6 knowledge [2] - 16:19, 16:23 known [1] - 88:23 Krueger [2] - 20:1, 54:24</p> <p style="text-align: center;">L</p> <p>laamas [1] - 61:3 lack [1] - 55:17 laid [2] - 71:23, 79:11 Lamo [1] - 34:18 Lance [2] - 3:21, 10:19 LANCE [1] - 1:21 land [2] - 24:18, 38:19 Land [1] - 31:3 laptop [1] - 10:6 large [3] - 23:5, 38:6, 65:2 larger [1] - 31:25 last [3] - 35:2, 65:13, 78:1 lasted [1] - 80:4 late [2] - 30:20, 30:24 lawyers [2] - 5:6, 5:10 lay [2] - 9:3, 70:21 layover [4] - 69:15, 69:19, 79:17, 86:12 layperson [1] - 54:16 leading [1] - 49:7 Leahi [2] - 96:22, 96:25 learned [9] - 11:3, 11:11, 11:14, 11:19, 12:5, 12:18, 12:19, 15:12, 35:5 learning [1] - 49:24 least [8] - 6:22, 23:12, 32:15, 90:11, 90:23, 91:19, 92:6, 99:10 leave [5] - 46:6, 48:15, 74:6, 76:7, 90:19 left [15] - 25:19, 63:21, 73:12, 76:10, 76:12, 76:16, 76:24, 84:2, 85:3, 89:15, 90:11, 90:22, 91:15, 92:6, 97:6 leg [3] - 62:19, 79:24 legislators [2] - 83:10,</p>	<p>93:19 legs [4] - 46:1, 46:2, 66:24, 70:24 length [1] - 68:23 less [1] - 32:19 letter [1] - 26:24 Letters [1] - 49:10 levels [1] - 16:4 Lexington [1] - 98:18 lie [8] - 70:8, 70:18, 70:24, 71:3, 71:21, 71:22, 79:21, 79:22 lied [1] - 70:20 life [22] - 23:6, 24:7, 27:9, 36:14, 36:16, 36:18, 36:22, 37:1, 37:2, 37:4, 37:6, 37:7, 37:11, 37:17, 44:19, 49:23, 49:25, 54:11, 56:21 life-span [7] - 36:14, 36:16, 36:18, 36:22, 37:4, 37:7 lifestyle [1] - 54:8 limited [1] - 19:24 Line [1] - 34:13 line [20] - 14:13, 14:14, 16:1, 17:14, 18:7, 18:8, 18:24, 20:12, 21:22, 25:14, 27:20, 29:23, 34:11, 44:15, 86:7, 86:16, 86:19, 93:16, 97:14 lines [3] - 14:15, 35:4, 47:12 LISA [1] - 1:19 Lisa [1] - 3:23 list [1] - 27:21 listed [1] - 15:4 listening [2] - 10:9, 67:7 live [12] - 23:5, 37:20, 38:8, 38:9, 38:16, 39:6, 39:10, 54:8, 59:14, 59:16, 81:14 lives [2] - 44:16, 57:4 livestock [1] - 38:23 living [5] - 44:22, 50:1, 50:7, 57:3 LLP [1] - 1:22 long-term [4] - 31:18, 56:6, 56:7, 56:14 longest [1] - 74:1 Look [1] - 86:19 look [17] - 10:6, 10:9, 10:13, 10:15, 10:16, 47:10, 47:11, 50:6, 64:25, 65:5, 76:3, 77:18, 80:10, 86:3, 88:15, 89:21, 98:20</p>	<p>looked [1] - 9:11 looking [4] - 77:17, 78:6, 81:7, 86:15 looks [4] - 5:24, 31:19, 34:14, 65:1 Lord [1] - 39:22 losing [1] - 55:13 loud [2] - 51:19, 80:6 low [1] - 37:14 Luna [1] - 61:21 lunch [4] - 75:21, 76:2, 99:8, 99:13 luncheon [1] - 100:11</p> <p style="text-align: center;">M</p> <p>ma'am [1] - 98:19 Maasai [11] - 37:20, 37:24, 38:4, 38:8, 38:9, 38:16, 38:18, 38:24, 39:9, 43:18, 43:19 MAASAI [1] - 37:20 machine [1] - 2:7 main [1] - 72:14 major [1] - 91:21 male [6] - 28:1, 29:19, 30:4, 30:5, 55:8, 56:11 males [7] - 37:11, 37:17, 43:16, 50:7, 50:9, 50:10, 55:7 managed [2] - 15:17, 16:3 management [3] - 87:9, 87:11, 88:10 manager [1] - 72:14 Manager's [1] - 34:15 managers [1] - 72:14 manner [1] - 46:9 manure [3] - 75:1, 75:4, 75:10 Mara [1] - 38:15 Margaret [2] - 84:22, 89:14 margin [1] - 14:16 mark [1] - 99:3 Marked [1] - 101:18 mass [2] - 30:17, 30:19 Mass [1] - 30:21 Massachusetts [1] - 74:3 mates [1] - 54:11 matter [3] - 5:13, 7:2, 102:4 matters [2] - 4:9, 4:10 mean [17] - 12:24, 15:22, 23:3, 24:1,</p>	<p>28:21, 31:23, 35:15, 44:13, 44:21, 45:1, 46:5, 51:17, 54:6, 62:14, 70:3, 87:11, 95:9 meant [2] - 8:23, 9:1 median [5] - 36:16, 36:18, 36:22, 37:4, 37:7 medical [5] - 92:16, 93:16, 93:18, 94:1, 94:2 medication [1] - 94:3 meet [3] - 26:5, 26:7, 35:8 meeting [1] - 27:25 member [1] - 26:20 members [2] - 49:24, 52:18 memory [6] - 47:20, 55:21, 56:6, 56:7, 56:14, 56:24 mentioned [21] - 12:7, 12:17, 12:18, 20:19, 20:21, 20:25, 21:6, 23:11, 23:15, 45:14, 48:18, 49:3, 64:4, 65:19, 65:24, 66:5, 67:13, 72:6, 77:2, 94:6, 94:9 mentioning [1] - 21:7 meter [1] - 31:6 methods [1] - 17:19 MEYER [24] - 1:14, 3:7, 6:4, 6:10, 8:17, 8:23, 9:1, 9:5, 9:19, 10:2, 11:4, 14:1, 17:3, 47:2, 47:4, 48:24, 49:11, 50:15, 52:6, 53:7, 57:22, 59:2, 99:17, 99:24 Meyer [4] - 1:16, 3:7, 7:14, 101:6 MICHELLE [1] - 1:21 Michelle [2] - 3:16, 4:1 mid [1] - 98:14 mid-20s [1] - 55:9 mid-August [1] - 98:14 middle [2] - 89:13, 90:21 might [7] - 16:13, 55:14, 62:23, 63:4, 63:5, 63:17, 98:11 mile [3] - 24:1, 24:2, 24:4 miles [1] - 23:25 mind [2] - 9:12, 86:23 Mind [1] - 23:14 mindful [1] - 4:7</p>
---	--	---	---	---

<p>Mine [1] - 84:10 mini [1] - 31:3 mini-busses [1] - 31:3 miniature [1] - 60:12 minimized [1] - 27:14 minor [2] - 23:8, 77:13 minute [3] - 53:8, 53:11, 92:22 minutes [15] - 6:9, 41:12, 41:13, 42:13, 42:14, 44:1, 63:1, 63:14, 71:10, 74:13, 80:4, 99:22, 99:25 misinform [1] - 39:12 mistreated [1] - 93:22 model [1] - 55:17 moment [4] - 16:24, 77:16, 80:9, 89:10 money [4] - 16:25, 17:5, 17:8, 17:15 monitor [3] - 58:15, 58:16, 58:24 monitors [2] - 58:12, 59:1 month [2] - 77:1, 83:2 months [8] - 18:12, 42:18, 60:8, 84:3, 86:1, 95:1, 95:4 Moore [1] - 30:9 moral [5] - 23:2, 33:20, 34:5, 35:7, 35:12 MORNING [1] - 1:10 morning [15] - 3:9, 3:10, 3:19, 3:21, 3:23, 4:1, 4:3, 10:21, 10:25, 11:1, 59:6, 59:7, 59:8, 62:10, 76:1 mortality [3] - 37:3, 37:12, 37:18 mosquito [1] - 40:20 most [5] - 32:14, 33:9, 33:18, 54:7 mostly [1] - 68:5 mother [1] - 49:22 mothers [4] - 33:5, 49:24, 56:19 mount [1] - 55:11 move [5] - 44:14, 44:19, 54:9, 58:13, 82:4 moved [1] - 22:4 Movement [1] - 23:14 movement [3] - 44:13, 51:1, 51:2 movie [1] - 39:22 moving [1] - 75:8 MR [55] - 3:12, 3:13, 3:21, 4:5, 4:8, 5:22,</p>	<p>6:9, 7:2, 7:9, 7:13, 10:19, 10:24, 11:6, 11:8, 11:9, 12:1, 13:3, 13:12, 14:10, 15:15, 17:12, 20:10, 23:10, 27:16, 27:18, 32:17, 36:12, 39:4, 45:10, 46:24, 49:7, 50:17, 52:4, 52:25, 57:18, 58:1, 58:19, 59:7, 59:11, 68:7, 68:8, 69:8, 70:2, 77:11, 77:15, 78:22, 79:3, 79:9, 79:12, 82:4, 82:8, 85:18, 96:7, 96:10, 99:21 MS [46] - 3:7, 3:10, 3:15, 3:16, 3:18, 3:23, 3:25, 4:1, 4:3, 6:4, 6:10, 8:17, 8:23, 9:1, 9:5, 9:19, 10:2, 11:4, 14:1, 17:3, 47:2, 47:4, 48:24, 49:11, 50:15, 52:6, 53:7, 57:22, 58:4, 58:7, 59:2, 68:6, 68:12, 68:15, 78:20, 78:25, 82:7, 82:13, 85:21, 85:24, 96:14, 96:15, 98:25, 99:10, 99:17, 99:24 must [3] - 20:23, 30:4, 30:5 musth [2] - 20:1, 55:7 musthed [1] - 29:19</p>	<p>29:8 necessary [1] - 72:3 need [11] - 6:14, 9:22, 23:11, 23:12, 23:18, 23:19, 24:4, 53:9, 81:15, 99:7, 99:8 needed [5] - 8:17, 8:18, 97:13, 97:21, 97:24 needs [3] - 26:6, 26:7, 35:19 nervous [3] - 91:2, 91:4, 91:7 nervousness [1] - 92:8 never [14] - 5:24, 8:13, 9:13, 46:14, 64:12, 87:14, 87:17, 87:19, 88:9, 88:16, 92:16, 94:3, 97:5 new [1] - 18:15 news [1] - 5:12 next [7] - 52:9, 61:13, 63:2, 63:10, 70:22, 75:21, 76:1 Nicole [3] - 4:16, 47:7, 48:5 night [5] - 27:11, 60:22, 66:17, 69:1, 92:14 nightmares [3] - 92:8, 92:10, 98:7 nobody's [1] - 12:25 Noise [1] - 51:21 nonjury [4] - 8:3, 8:6, 9:9, 10:16 noon [2] - 48:12, 76:3 normal [3] - 12:11, 23:6, 49:23 North [6] - 23:4, 24:6, 24:8, 26:1, 33:2, 33:13 northern [1] - 36:3 Norway [2] - 52:21, 53:2 Nos [2] - 82:11, 101:19 nose [2] - 75:3, 75:11 notarized [1] - 81:5 note [1] - 58:4 nothing [2] - 46:24, 50:19 Nothing [1] - 93:18 November [3] - 34:15, 88:4, 89:3 number [5] - 7:17, 12:12, 19:22, 20:9, 58:20 NW [1] - 2:3</p>	<p style="text-align: center;">O</p> <p>o'clock [4] - 48:13, 99:14, 100:3, 100:4 oath [2] - 81:12, 93:6 object [4] - 14:1, 17:3, 68:6, 78:20 objection [7] - 58:5, 58:19, 59:2, 68:12, 68:14, 68:15, 82:7 Objection [4] - 11:4, 49:7, 82:6, 96:7 observational [5] - 19:17, 19:19, 19:20, 19:21, 20:13 observe [1] - 85:1 observed [3] - 47:23, 79:20, 87:22 obviously [2] - 30:12, 99:12 occasion [1] - 10:16 occasionally [1] - 40:6 occur [1] - 14:20 October [1] - 43:14 Odelai [1] - 39:13 Odil [3] - 39:14, 39:15, 39:18 ODIL [1] - 39:15 OF [3] - 1:1, 1:3, 1:10 offhand [1] - 61:22 officer [1] - 59:25 officers [1] - 6:23 Official [2] - 2:2, 102:2 offspring [1] - 33:5 often [6] - 12:9, 14:21, 48:21, 61:9, 67:1, 85:12 Oklahoma [7] - 69:10, 69:15, 74:3, 74:8, 74:20, 79:17, 90:14 old [8] - 21:18, 21:20, 29:24, 36:14, 36:19, 55:1, 56:7, 95:12 oldest [3] - 21:18, 21:22, 22:3 once [3] - 74:12, 85:6, 98:15 one [46] - 4:13, 7:2, 12:2, 17:17, 20:1, 20:23, 24:4, 31:6, 33:7, 35:3, 39:12, 43:7, 43:16, 44:1, 45:12, 46:2, 46:10, 48:13, 50:8, 53:16, 53:19, 54:10, 54:13, 55:3, 56:10, 57:7, 58:25, 60:11, 62:19, 63:5, 69:25, 70:6, 70:21, 72:13, 72:14,</p>	<p>73:5, 77:12, 77:13, 79:6, 79:20, 81:24, 99:13, 99:21, 100:3 One [5] - 16:12, 45:24, 62:19, 73:3, 75:14 ones [5] - 20:8, 32:15, 33:14, 33:15, 33:16 operates [1] - 21:13 operation [1] - 33:13 opinion [26] - 4:24, 13:22, 21:2, 22:15, 24:4, 24:14, 24:24, 25:2, 25:4, 25:7, 26:5, 26:9, 27:24, 28:15, 31:17, 32:18, 32:21, 32:22, 35:13, 41:19, 44:9, 45:7, 45:22, 45:23, 46:8, 64:24 opinions [3] - 6:16, 13:13, 28:11 opportunity [2] - 26:13, 64:15 opposed [1] - 24:18 oranges [1] - 45:3 order [8] - 5:2, 5:3, 7:20, 24:15, 45:21, 53:14, 68:1, 68:2 orderly [1] - 7:3 organizations [2] - 6:20, 89:24 origin [1] - 55:24 original [1] - 12:7 orphans [1] - 54:23 otherwise [1] - 44:18 ought [2] - 5:2, 5:14 outdoors [1] - 62:16 outside [4] - 11:4, 14:2, 15:20, 48:13 overnight [1] - 25:14 Overruled [1] - 11:7 own [3] - 54:10, 55:5, 62:2 owned [1] - 30:11 owners [1] - 30:10</p>
	N			P
	<p>N.W [2] - 1:17, 1:22 name [3] - 29:16, 59:12, 65:12 named [1] - 39:13 names [5] - 61:20, 65:9, 65:13, 65:16, 72:11 narrative [1] - 42:20 national [3] - 31:25, 32:13, 38:3 National [4] - 20:2, 20:24, 30:14, 55:4 natural [1] - 19:15 naturally [1] - 23:19 Nature [4] - 49:9, 49:13, 49:14, 54:22 nature [1] - 20:13 near [4] - 14:16, 35:1, 37:20, 61:14 necessarily [5] - 22:12, 22:14, 22:19,</p>			<p>p.m [2] - 82:12, 100:11 pack [1] - 72:22 packed [1] - 5:23 pad [1] - 51:18 pads [2] - 51:22, 51:24 page [31] - 7:5, 14:11, 15:25, 17:13, 18:6, 18:23, 21:21, 25:13, 26:12, 27:19, 27:20, 27:22, 27:23, 29:23, 34:11, 35:1, 35:2,</p>

47:10, 47:11, 77:18, 77:21, 78:1, 78:18, 80:11, 81:3, 81:4, 81:11, 86:4, 92:21, 93:15, 97:14	65:10, 65:17, 77:5	Piquette [4] - 4:16, 5:21, 6:6, 6:12	8:20, 9:21, 9:25, 10:4, 10:25, 11:2, 11:10, 11:16, 11:21, 12:2, 13:4, 13:13, 13:21, 14:14, 15:16, 15:25, 16:19, 16:25, 17:14, 17:24, 18:6, 18:18, 18:23, 19:6, 19:16, 19:24, 20:11, 21:2, 21:6, 21:18, 22:9, 22:11, 22:15, 23:11, 23:24, 24:11, 24:14, 24:24, 26:5, 26:12, 27:19, 28:15, 28:19, 29:15, 30:10, 30:12, 30:19, 31:17, 32:5, 32:9, 32:18, 32:21, 33:1, 33:19, 34:10, 36:2, 36:13, 37:1, 37:16, 37:20, 39:5, 39:12, 39:19, 39:21, 40:3, 40:22, 40:25, 41:4, 41:8, 41:15, 42:12, 42:17, 42:21, 42:22, 43:8, 43:12, 43:23, 44:4, 45:5, 47:5, 48:6, 49:16, 53:18	88:11, 89:3, 89:4, 89:17
pages [1] - 102:3	People [1] - 82:15	Pista [3] - 65:14, 66:13, 67:20	11:10, 11:16, 11:21, 12:2, 13:4, 13:13, 13:21, 14:14, 15:16, 15:25, 16:19, 16:25, 17:14, 17:24, 18:6, 18:18, 18:23, 19:6, 19:16, 19:24, 20:11, 21:2, 21:6, 21:18, 22:9, 22:11, 22:15, 23:11, 23:24, 24:11, 24:14, 24:24, 26:5, 26:12, 27:19, 28:15, 28:19, 29:15, 30:10, 30:12, 30:19, 31:17, 32:5, 32:9, 32:18, 32:21, 33:1, 33:19, 34:10, 36:2, 36:13, 37:1, 37:16, 37:20, 39:5, 39:12, 39:19, 39:21, 40:3, 40:22, 40:25, 41:4, 41:8, 41:15, 42:12, 42:17, 42:21, 42:22, 43:8, 43:12, 43:23, 44:4, 45:5, 47:5, 48:6, 49:16, 53:18	pressure [1] - 32:4
pain [2] - 71:23, 80:5	per [1] - 23:22	place [1] - 26:2	15:25, 16:19, 16:25, 17:14, 17:24, 18:6, 18:18, 18:23, 19:6, 19:16, 19:24, 20:11, 21:2, 21:6, 21:18, 22:9, 22:11, 22:15, 23:11, 23:24, 24:11, 24:14, 24:24, 26:5, 26:12, 27:19, 28:15, 28:19, 29:15, 30:10, 30:12, 30:19, 31:17, 32:5, 32:9, 32:18, 32:21, 33:1, 33:19, 34:10, 36:2, 36:13, 37:1, 37:16, 37:20, 39:5, 39:12, 39:19, 39:21, 40:3, 40:22, 40:25, 41:4, 41:8, 41:15, 42:12, 42:17, 42:21, 42:22, 43:8, 43:12, 43:23, 44:4, 45:5, 47:5, 48:6, 49:16, 53:18	prestigious [3] - 21:1, 49:5, 49:12
paint [1] - 27:4	percent [1] - 98:1	places [8] - 22:25, 24:8, 28:25, 31:24, 33:9, 75:4, 83:15, 93:21	15:25, 16:19, 16:25, 17:14, 17:24, 18:6, 18:18, 18:23, 19:6, 19:16, 19:24, 20:11, 21:2, 21:6, 21:18, 22:9, 22:11, 22:15, 23:11, 23:24, 24:11, 24:14, 24:24, 26:5, 26:12, 27:19, 28:15, 28:19, 29:15, 30:10, 30:12, 30:19, 31:17, 32:5, 32:9, 32:18, 32:21, 33:1, 33:19, 34:10, 36:2, 36:13, 37:1, 37:16, 37:20, 39:5, 39:12, 39:19, 39:21, 40:3, 40:22, 40:25, 41:4, 41:8, 41:15, 42:12, 42:17, 42:21, 42:22, 43:8, 43:12, 43:23, 44:4, 45:5, 47:5, 48:6, 49:16, 53:18	presume [1] - 79:6
PALISOU [1] - 4:5	perform [1] - 44:10	plaintiff [5] - 3:11, 3:12, 3:15, 3:17, 4:14	17:14, 17:24, 18:6, 18:18, 18:23, 19:6, 19:16, 19:24, 20:11, 21:2, 21:6, 21:18, 22:9, 22:11, 22:15, 23:11, 23:24, 24:11, 24:14, 24:24, 26:5, 26:12, 27:19, 28:15, 28:19, 29:15, 30:10, 30:12, 30:19, 31:17, 32:5, 32:9, 32:18, 32:21, 33:1, 33:19, 34:10, 36:2, 36:13, 37:1, 37:16, 37:20, 39:5, 39:12, 39:19, 39:21, 40:3, 40:22, 40:25, 41:4, 41:8, 41:15, 42:12, 42:17, 42:21, 42:22, 43:8, 43:12, 43:23, 44:4, 45:5, 47:5, 48:6, 49:16, 53:18	pretty [4] - 23:5, 31:19, 37:10, 87:4
PALISOU [1] - 4:5	performance [1] - 67:6	PLAINTIFF [1] - 10:22	21:2, 21:6, 21:18, 22:9, 22:11, 22:15, 23:11, 23:24, 24:11, 24:14, 24:24, 26:5, 26:12, 27:19, 28:15, 28:19, 29:15, 30:10, 30:12, 30:19, 31:17, 32:5, 32:9, 32:18, 32:21, 33:1, 33:19, 34:10, 36:2, 36:13, 37:1, 37:16, 37:20, 39:5, 39:12, 39:19, 39:21, 40:3, 40:22, 40:25, 41:4, 41:8, 41:15, 42:12, 42:17, 42:21, 42:22, 43:8, 43:12, 43:23, 44:4, 45:5, 47:5, 48:6, 49:16, 53:18	Pretty [1] - 87:7
paper [6] - 22:2, 23:15, 37:8, 49:14, 50:23, 54:21	performances [1] - 63:11	Plaintiff [2] - 1:4, 1:14	21:2, 21:6, 21:18, 22:9, 22:11, 22:15, 23:11, 23:24, 24:11, 24:14, 24:24, 26:5, 26:12, 27:19, 28:15, 28:19, 29:15, 30:10, 30:12, 30:19, 31:17, 32:5, 32:9, 32:18, 32:21, 33:1, 33:19, 34:10, 36:2, 36:13, 37:1, 37:16, 37:20, 39:5, 39:12, 39:19, 39:21, 40:3, 40:22, 40:25, 41:4, 41:8, 41:15, 42:12, 42:17, 42:21, 42:22, 43:8, 43:12, 43:23, 44:4, 45:5, 47:5, 48:6, 49:16, 53:18	Prevention [1] - 3:3
papers [4] - 19:22, 20:3, 20:4, 55:20	Perhaps [1] - 38:1	plaintiffs [1] - 6:2	21:2, 21:6, 21:18, 22:9, 22:11, 22:15, 23:11, 23:24, 24:11, 24:14, 24:24, 26:5, 26:12, 27:19, 28:15, 28:19, 29:15, 30:10, 30:12, 30:19, 31:17, 32:5, 32:9, 32:18, 32:21, 33:1, 33:19, 34:10, 36:2, 36:13, 37:1, 37:16, 37:20, 39:5, 39:12, 39:19, 39:21, 40:3, 40:22, 40:25, 41:4, 41:8, 41:15, 42:12, 42:17, 42:21, 42:22, 43:8, 43:12, 43:23, 44:4, 45:5, 47:5, 48:6, 49:16, 53:18	PREVENTION [1] - 1:3
paragraph [9] - 5:3, 14:16, 35:2, 35:4, 47:11, 78:18, 78:19, 81:3, 81:9	perhaps [3] - 6:8, 24:8, 26:3	Plaintiffs [7] - 7:10, 40:22, 41:5, 41:11, 42:13, 43:23, 65:3	21:2, 21:6, 21:18, 22:9, 22:11, 22:15, 23:11, 23:24, 24:11, 24:14, 24:24, 26:5, 26:12, 27:19, 28:15, 28:19, 29:15, 30:10, 30:12, 30:19, 31:17, 32:5, 32:9, 32:18, 32:21, 33:1, 33:19, 34:10, 36:2, 36:13, 37:1, 37:16, 37:20, 39:5, 39:12, 39:19, 39:21, 40:3, 40:22, 40:25, 41:4, 41:8, 41:15, 42:12, 42:17, 42:21, 42:22, 43:8, 43:12, 43:23, 44:4, 45:5, 47:5, 48:6, 49:16, 53:18	PREVIOUSLY [1] - 10:22
PARDO [2] - 1:21, 4:1	period [3] - 55:7, 69:9, 98:21	PLAINTIFFS [1] - 59:9	21:2, 21:6, 21:18, 22:9, 22:11, 22:15, 23:11, 23:24, 24:11, 24:14, 24:24, 26:5, 26:12, 27:19, 28:15, 28:19, 29:15, 30:10, 30:12, 30:19, 31:17, 32:5, 32:9, 32:18, 32:21, 33:1, 33:19, 34:10, 36:2, 36:13, 37:1, 37:16, 37:20, 39:5, 39:12, 39:19, 39:21, 40:3, 40:22, 40:25, 41:4, 41:8, 41:15, 42:12, 42:17, 42:21, 42:22, 43:8, 43:12, 43:23, 44:4, 45:5, 47:5, 48:6, 49:16, 53:18	print [1] - 99:2
Pardo [1] - 4:1	periods [1] - 56:8	plaintiffs [6] - 3:7, 3:14, 3:18, 7:7, 40:1, 58:2	21:2, 21:6, 21:18, 22:9, 22:11, 22:15, 23:11, 23:24, 24:11, 24:14, 24:24, 26:5, 26:12, 27:19, 28:15, 28:19, 29:15, 30:10, 30:12, 30:19, 31:17, 32:5, 32:9, 32:18, 32:21, 33:1, 33:19, 34:10, 36:2, 36:13, 37:1, 37:16, 37:20, 39:5, 39:12, 39:19, 39:21, 40:3, 40:22, 40:25, 41:4, 41:8, 41:15, 42:12, 42:17, 42:21, 42:22, 43:8, 43:12, 43:23, 44:4, 45:5, 47:5, 48:6, 49:16, 53:18	prisoners [3] - 13:15, 13:24, 14:23
Park [7] - 20:2, 20:24, 30:13, 30:14, 37:21, 37:24, 55:4	permitted [1] - 44:12	Plaintiffs' [2] - 82:11, 101:17	13:24, 14:23	privilege [1] - 4:21
park [5] - 30:17, 30:19, 30:25, 38:4, 55:5	person [4] - 7:11, 7:15, 89:13, 89:15	plan [2] - 97:10, 98:14	13:24, 14:23	problem [6] - 6:12, 9:7, 9:20, 32:13, 58:16, 58:25
parks [2] - 31:25, 32:13	personal [2] - 24:10, 35:5	plane [2] - 4:7, 57:20	13:24, 14:23	problems [2] - 9:22, 58:15
part [5] - 16:9, 17:21, 19:14, 43:5, 58:10	personalities [1] - 62:2	planned [1] - 95:18	13:24, 14:23	procedures [1] - 21:3
participants [4] - 6:19, 6:22, 52:24, 53:1	Personally [1] - 40:19	planning [3] - 75:21, 97:15, 99:15	13:24, 14:23	proceed [3] - 4:6, 10:4, 27:16
particular [4] - 16:19, 51:5, 69:3, 69:5	personally [1] - 11:12	play [7] - 40:1, 48:20, 55:25, 69:24, 69:25, 70:4, 73:14	13:24, 14:23	Proceedings [1] - 2:7
particularly [1] - 38:8	perspective [2] - 14:18, 35:20	playback [2] - 19:25, 20:22	13:24, 14:23	proceedings [1] - 102:4
parties [1] - 8:12	PETA [16] - 83:20, 84:11, 84:12, 87:19, 87:22, 89:4, 91:19, 94:13, 94:21, 94:25, 95:3, 96:4, 96:16, 96:20, 97:21, 98:14	played [8] - 40:2, 40:24, 41:7, 41:14, 42:16, 50:20, 89:9, 89:20	13:24, 14:23	produced [1] - 2:7
parts [4] - 61:11, 68:4, 68:10, 82:1	PETTEWAY [2] - 1:20, 3:25	point [12] - 9:9, 54:17, 58:9, 58:14, 72:7, 76:14, 79:1, 79:7, 81:14, 81:16, 87:5, 99:8	13:24, 14:23	production [1] - 72:13
passed [1] - 75:1	Petteway [1] - 3:25	poached [3] - 42:7, 42:9, 43:3	13:24, 14:23	profusely [1] - 80:4
patterns [1] - 16:10	Ph.D [2] - 10:22, 101:5	poaching [4] - 31:8, 31:11, 41:16, 41:22	13:24, 14:23	programs [1] - 18:1
PAWS [2] - 36:3, 50:3	phone [1] - 96:21	point [12] - 9:9, 54:17, 58:9, 58:14, 72:7, 76:14, 79:1, 79:7, 81:14, 81:16, 87:5, 99:8	13:24, 14:23	progressed [1] - 71:15
pay [1] - 83:20	photograph [7] - 42:3, 42:4, 42:6, 42:21, 43:8, 43:12	poached [3] - 42:7, 42:9, 43:3	13:24, 14:23	prohibited [1] - 88:5
PDF [1] - 86:4	photographs [3] - 41:25, 47:12, 47:16	poaching [4] - 31:8, 31:11, 41:16, 41:22	13:24, 14:23	project [4] - 26:21, 26:23, 31:17, 32:1
peak [1] - 30:25	phrase [1] - 96:16	point [12] - 9:9, 54:17, 58:9, 58:14, 72:7, 76:14, 79:1, 79:7, 81:14, 81:16, 87:5, 99:8	13:24, 14:23	projects [3] - 18:3, 18:4
pen [2] - 69:20, 69:22	physical [1] - 14:21	poached [3] - 42:7, 42:9, 43:3	13:24, 14:23	promptly [2] - 100:2, 100:4
Pennsylvania [1] - 1:22	piano [3] - 45:19, 45:20, 46:4	poached [3] - 42:7, 42:9, 43:3	13:24, 14:23	prophylactic [1] - 5:13
pens [5] - 19:10, 28:16, 47:17, 47:18, 47:23	pick [7] - 48:20, 50:24, 51:1, 73:8, 73:11	poached [3] - 42:7, 42:9, 43:3	13:24, 14:23	Protection [1] - 4:14
people [27] - 5:1, 6:19, 11:20, 13:10, 13:14, 13:23, 14:6, 27:10, 32:15, 35:19, 36:23, 36:24, 37:20, 37:24, 38:9, 41:16, 44:22, 46:7, 51:5, 51:10, 64:7, 64:15, 64:18,	picked [1] - 51:1	poached [3] - 42:7, 42:9, 43:3	13:24, 14:23	protest [1] - 38:5
	picking [1] - 73:6	poached [3] - 42:7, 42:9, 43:3	13:24, 14:23	provide [9] - 23:17, 33:20, 34:6, 35:6, 35:13, 36:4, 36:9, 50:4, 50:13
	picture [5] - 7:13, 39:18, 42:22, 43:13, 54:11	poached [3] - 42:7, 42:9, 43:3	13:24, 14:23	provided [2] - 25:25, 26:3
	pictures [1] - 44:17	poached [3] - 42:7, 42:9, 43:3	13:24, 14:23	providers [1] - 60:11
	pieces [1] - 73:13	poached [3] - 42:7, 42:9, 43:3	13:24, 14:23	providing [1] - 23:19
	Pilanesberg [3] - 20:2, 20:23, 55:3	poached [3] - 42:7, 42:9, 43:3	13:24, 14:23	provisionally [2] - 79:5, 79:8
	pillar [1] - 46:1	poached [3] - 42:7, 42:9, 43:3	13:24, 14:23	public [2] - 6:18, 83:19
	pillar-like [1] - 46:1	poached [3] - 42:7, 42:9, 43:3	13:24, 14:23	published [4] - 28:6, 28:8, 49:4, 49:14
		poached [3] - 42:7, 42:9, 43:3	13:24, 14:23	pull [2] - 94:17, 94:20
		poached [3] - 42:7, 42:9, 43:3	13:24, 14:23	pulled [8] - 69:23, 71:2, 71:7, 79:25,

80:3, 94:16, 95:5 pure [1] - 19:1 purpose [1] - 19:1 purposes [3] - 99:1, 99:3, 99:15 pursuant [1] - 8:11 put [10] - 8:1, 9:12, 12:12, 14:24, 32:15, 63:5, 70:19, 70:20, 71:15, 79:21 putting [1] - 25:14	33:22, 35:9, 35:25, 43:15, 46:5, 46:15, 47:15, 77:16, 78:19, 80:9, 81:4, 81:19, 81:22, 81:24, 82:1 Read [1] - 34:2 reading [6] - 16:21, 28:4, 45:25, 47:19, 81:9, 81:13 ready [2] - 77:19, 86:25 real [4] - 86:13, 86:14, 90:21, 95:9 realized [1] - 12:19 really [10] - 24:25, 25:5, 25:21, 26:10, 26:19, 32:13, 38:17, 50:14, 90:7, 97:5 realtime [2] - 10:8, 10:17 reason [7] - 8:17, 21:4, 22:1, 42:17, 50:12, 50:14, 93:12 reasons [2] - 7:17, 49:21 recalled [1] - 53:18 receive [1] - 95:6 received [2] - 58:17, 58:25 recent [3] - 22:2, 24:19, 56:3 recently [3] - 26:22, 37:7, 57:6 recess [4] - 53:9, 53:11, 58:10, 100:11 Recess [1] - 53:12 recognize [6] - 6:17, 33:25, 44:4, 65:5, 78:4, 80:14 recognized [1] - 8:11 record [9] - 3:6, 8:10, 15:13, 53:15, 58:4, 58:13, 58:18, 58:22, 102:4 recovery [2] - 50:21, 51:6 Red [11] - 58:5, 58:7, 60:7, 83:22, 84:19, 85:25, 87:20, 90:12, 97:3, 98:6, 98:15 Redirect [1] - 101:6 redirect [4] - 45:13, 46:23, 47:1, 79:4 REDIRECT [1] - 47:3 references [1] - 9:25 referring [7] - 23:14, 43:17, 47:22, 47:23, 47:25, 49:6, 89:24 refresh [1] - 47:20 refused [4] - 70:7,	70:24, 79:22, 80:1 Regarding [1] - 11:19 regarding [1] - 35:11 regards [1] - 58:10 rehired [3] - 97:3, 97:16, 98:15 relationship [1] - 38:17 relied [1] - 8:12 remain [1] - 53:13 remaining [1] - 58:12 Remember [1] - 36:8 remember [22] - 21:9, 24:13, 34:16, 37:14, 43:7, 44:21, 45:25, 47:5, 48:11, 48:14, 51:3, 51:11, 55:4, 56:1, 56:7, 61:20, 65:15, 69:11, 74:2, 76:24, 89:3, 92:23 remembered [2] - 56:10, 56:11 remembers [1] - 7:4 Repeat [1] - 33:23 repeat [1] - 25:2 repeatedly [1] - 79:23 rephrase [2] - 68:17, 96:13 report [5] - 12:7, 37:16, 47:8, 47:11, 47:19 reported [1] - 2:7 reporter [1] - 88:8 Reporter [3] - 2:2, 2:2, 102:2 reporting [1] - 11:16 reports [1] - 16:22 represent [1] - 14:21 representatives [1] - 4:14 represented [1] - 93:3 represents [2] - 20:9, 26:23 request [1] - 94:15 required [1] - 44:10 research [2] - 26:20, 27:24 resources [1] - 32:2 responded [1] - 38:10 responding [2] - 50:25, 57:12 response [7] - 14:24, 15:3, 15:4, 46:24, 49:3, 78:21, 78:22 responses [1] - 15:5 restricted [1] - 32:8 result [2] - 36:23, 39:2 retaliated [1] - 38:8 retaliation [1] - 38:11 retribution [1] - 39:6	returned [5] - 94:7, 94:10, 96:17, 96:21, 98:15 returning [2] - 91:18, 98:6 revenge [1] - 39:10 review [1] - 5:5 reviewed [4] - 19:12, 81:10, 81:11, 93:9 rewritten [1] - 26:21 rhinos [4] - 38:6, 55:11, 55:12, 55:13 ride [2] - 74:1, 74:4 ridiculous [1] - 45:4 right-hand [1] - 89:12 rights [4] - 88:17, 88:24, 88:25, 89:24 Ringling [17] - 12:8, 12:21, 12:22, 25:17, 60:1, 60:4, 71:24, 83:5, 84:6, 88:5, 89:1, 91:10, 91:25, 92:6, 92:10, 94:24, 97:6 Ringlings [1] - 94:20 rise [1] - 31:8 road [1] - 87:23 roam [2] - 51:8, 63:6 Robert [2] - 84:16, 89:16 rode [1] - 29:16 role [2] - 50:20, 55:17 room [1] - 69:22 Room [1] - 2:3 rough [1] - 67:8 RPR [1] - 2:2 Rule [2] - 4:17, 5:15 Rules [1] - 8:11 rules [3] - 9:10, 9:12, 58:23 run [2] - 36:3, 90:20	21:13, 21:15, 50:4, 50:8, 50:10 Sanerib [1] - 3:10 SANERIB [2] - 1:14, 3:10 saved [1] - 51:4 saw [12] - 12:24, 45:24, 65:10, 67:2, 68:20, 71:14, 71:15, 76:22, 77:6, 77:9, 85:6, 97:22 scene [1] - 89:7 scents [2] - 20:1, 20:23 SCENTS [1] - 20:1 schedule [2] - 90:10, 98:20 scheduled [2] - 7:16, 9:2 scheduling [3] - 7:17, 8:18, 9:21 school [1] - 59:20 scientific [1] - 15:2 scientifically [3] - 13:6, 19:16, 20:13 scope [2] - 11:4, 14:2 screen [1] - 40:8 search [2] - 6:15, 54:11 seat [1] - 53:23 seated [1] - 53:13 second [2] - 25:8, 99:24 seconds [6] - 41:12, 41:13, 42:14, 42:15, 44:1, 44:2 section [1] - 27:23 Security [2] - 59:25, 95:12 security [1] - 59:25 see [47] - 4:25, 18:15, 19:13, 31:4, 35:19, 37:9, 40:8, 41:9, 47:13, 48:7, 48:21, 48:25, 49:2, 55:13, 61:6, 61:9, 61:11, 62:9, 62:22, 63:10, 63:24, 64:15, 66:18, 66:21, 67:1, 68:4, 68:10, 71:11, 71:13, 73:2, 73:14, 73:20, 74:14, 74:16, 74:18, 74:25, 75:12, 78:8, 78:11, 78:13, 80:18, 85:5, 85:9, 85:14, 86:16, 86:20, 94:21 seeing [3] - 64:4, 72:23, 91:15 Seeing [1] - 40:7 seem [1] - 38:17
Q				
qualified [1] - 36:21 qualify [1] - 13:20 questioning [1] - 49:3 questions [12] - 16:12, 45:10, 50:16, 52:3, 57:17, 57:20, 57:21, 82:14, 84:15, 85:8, 85:18 quickly [2] - 70:6, 81:3 quit [4] - 83:2, 86:23, 87:1, 95:7 quite [7] - 6:1, 19:22, 22:4, 47:17, 55:6, 87:23, 100:3 quote [10] - 14:17, 14:19, 14:20, 14:25, 27:23, 35:3, 35:4, 35:9, 91:2 quoted [1] - 37:7				
R				
races [1] - 60:18 rain [1] - 26:2 raise [2] - 44:11, 59:3 raised [1] - 58:9 raises [2] - 9:20, 22:20 ran [2] - 51:2, 51:4 Randall [1] - 30:8 range [6] - 22:5, 28:19, 28:23, 29:2, 29:6, 44:21 rather [1] - 22:22 rattling [1] - 57:12 reach [2] - 8:8, 8:9 reached [3] - 70:24, 71:1, 87:5 read [37] - 5:6, 5:10, 5:11, 10:18, 14:25, 15:4, 15:7, 15:8, 16:16, 16:17, 17:21, 18:11, 19:4, 20:17, 21:25, 22:1, 25:1, 25:22, 28:13, 30:7,				
		S		
		Sacha [11] - 65:14, 65:19, 67:13, 70:18, 72:18, 72:19, 79:20, 79:23, 80:1, 81:16, 87:13 safe [3] - 52:7, 53:5, 57:24 San [10] - 24:19, 24:22, 90:17, 90:19, 90:21, 91:15, 95:13, 95:16, 95:22, 96:1 sanctuaries [6] - 21:7, 23:5, 36:2, 36:8, 50:3, 50:8 sanctuary [7] - 21:10,		

<p>seismic [1] - 50:24 seize [1] - 5:2 senior [1] - 4:16 sense [4] - 14:6, 44:16, 56:3, 56:4 sensitive [1] - 99:9 sensitivities [1] - 51:12 sent [2] - 34:20, 34:23 sentence [8] - 14:16, 35:11, 47:12, 47:13, 47:15, 47:19, 47:22, 81:4 separated [4] - 33:6, 49:21, 56:11, 56:18 September [2] - 78:15, 81:6 sequela [1] - 54:17 sequence [1] - 94:12 service [1] - 83:19 SESSION [1] - 1:10 set [7] - 11:2, 11:10, 11:13, 24:8, 36:9, 60:14, 89:7 seven [2] - 21:22, 21:24 Several [1] - 84:3 several [3] - 12:8, 55:19, 95:1 sexual [1] - 55:8 shall [1] - 5:4 shaped [2] - 51:22, 51:24 share [1] - 46:11 Shea [4] - 3:21, 10:19, 47:5, 101:6 SHEA [26] - 1:21, 3:21, 10:19, 10:24, 11:6, 11:8, 11:9, 12:1, 13:3, 13:12, 14:10, 15:15, 17:12, 20:10, 23:10, 27:16, 27:18, 32:17, 36:12, 39:4, 45:10, 46:24, 49:7, 50:17, 52:4, 57:18 Shea's [1] - 49:3 shelter [1] - 25:25 shipped [4] - 27:1, 33:4, 33:6, 55:2 short [2] - 35:2, 53:7 shorthand [1] - 2:7 shot [1] - 41:10 show [24] - 14:11, 15:25, 18:6, 18:23, 25:13, 27:19, 39:17, 39:24, 39:25, 40:22, 41:11, 42:3, 42:21, 43:8, 43:23, 44:18, 58:24, 63:13, 63:16, 63:19, 65:3, 77:11,</p>	<p>80:7 showing [2] - 9:6, 58:16 shown [4] - 16:8, 44:18, 45:14, 81:5 shows [4] - 47:17, 60:23, 63:11, 69:2 shriek [1] - 80:6 shrieked [1] - 71:22 shrill [1] - 80:6 sick [1] - 66:15 side [4] - 38:16, 70:10, 89:12 sides [1] - 6:14 sight [1] - 91:15 sight-seeing [1] - 91:15 sign [4] - 76:21, 77:8, 88:9, 88:13 signature [3] - 78:6, 78:11, 80:16 signed [9] - 26:21, 26:24, 78:16, 88:20, 88:22, 89:22, 93:9, 95:3 significant [2] - 28:3, 56:14 similar [6] - 5:7, 11:17, 37:10, 41:22, 41:25, 77:12 SIMPSON [9] - 1:20, 4:8, 5:22, 6:9, 7:2, 7:9, 7:13, 52:25, 58:19 Simpson [2] - 3:19, 6:5 Sincinville [1] - 81:14 singled [1] - 12:21 SINNOTT [2] - 3:16, 3:18 Sinnott [1] - 3:16 sitting [2] - 8:24, 89:11 situation [6] - 14:18, 23:2, 23:7, 23:9, 33:4, 33:11 six [1] - 78:18 Sixty [1] - 21:24 Sixty-seven [1] - 21:24 size [1] - 29:10 skipping [1] - 46:4 sleep [1] - 27:11 slightly [2] - 18:13, 28:2 smack [1] - 66:24 smacked [1] - 79:23 small [7] - 18:22, 20:9, 22:18, 33:8, 38:4, 47:17, 73:7</p>	<p>Small [1] - 14:17 smell [5] - 56:4, 75:1, 75:2, 75:9 so-called [1] - 46:1 social [12] - 33:21, 34:7, 35:6, 35:13, 35:22, 36:4, 49:23, 49:24, 50:4, 50:6, 50:13 society [1] - 54:12 Society [1] - 3:3 SOCIETY [1] - 1:2 sold [1] - 33:6 someone [1] - 66:15 sometime [1] - 98:21 Sometimes [2] - 67:11, 67:12 sometimes [5] - 53:5, 60:22, 63:3, 67:9, 69:1 soon [1] - 9:15 sorry [19] - 13:4, 13:21, 18:7, 20:3, 41:18, 45:4, 45:6, 46:12, 46:20, 53:19, 68:7, 69:16, 70:15, 72:5, 77:22, 84:13, 94:8, 96:9 Sorry [10] - 10:5, 17:20, 19:8, 23:23, 25:1, 25:8, 30:21, 32:10, 48:5, 80:13 sort [11] - 7:3, 12:24, 13:13, 14:8, 16:10, 25:12, 36:9, 54:11, 55:1, 55:2, 83:6 sought [1] - 92:16 sound [2] - 19:25, 20:22 sounds [1] - 37:19 sources [1] - 5:7 southern [2] - 32:8, 54:24 space [10] - 22:24, 23:11, 23:13, 23:18, 23:20, 24:4, 24:8, 25:9, 25:25 span [8] - 36:14, 36:16, 36:18, 36:22, 37:1, 37:4, 37:7 speaking [2] - 19:16, 20:13 spear [4] - 39:19, 43:14, 43:18, 43:20 speared [2] - 39:13, 43:19 spearing [5] - 38:6, 38:10, 38:18, 39:6, 43:11 species [2] - 38:12,</p>	<p>55:12 Species [1] - 41:16 specific [3] - 18:1, 18:17, 22:17 specifically [5] - 17:9, 18:1, 18:5, 36:3, 72:15 specifics [2] - 27:21, 51:11 spends [1] - 27:8 spent [4] - 30:12, 35:16, 62:8, 91:6 spiking [1] - 89:4 splitting [1] - 54:13 spouse [1] - 14:22 spouses [2] - 13:15, 13:23 spread [1] - 75:6 spring [1] - 46:2 Squad [1] - 93:3 square [6] - 23:13, 23:24, 24:1, 24:2, 24:4, 38:5 Square [1] - 23:23 squealed [2] - 71:23, 80:5 staff [1] - 66:2 staffers [1] - 87:22 stage [2] - 32:14, 84:25 stall [1] - 25:15 stampeding [1] - 50:25 stand [1] - 53:9 standards [1] - 35:8 standing [8] - 70:9, 70:25, 71:4, 73:6, 73:17, 73:20, 75:5, 75:7 stands [2] - 33:12, 53:10 start [5] - 30:18, 55:3, 99:13, 100:2, 100:4 started [12] - 4:11, 32:7, 38:8, 38:18, 38:20, 50:22, 57:12, 60:21, 71:16, 86:4, 86:8, 92:10 starting [4] - 40:23, 41:12, 42:13, 55:7 state [1] - 59:12 statement [10] - 22:19, 33:22, 33:24, 34:1, 34:2, 34:8, 76:21, 77:8, 78:23, 79:13 states [2] - 14:17, 44:21 STATES [2] - 1:1, 1:11 States [1] - 24:12 stating [1] - 89:23</p>	<p>stay [3] - 25:11, 63:13, 97:13 stayed [1] - 90:14 staying [1] - 69:10 stereotypic [1] - 22:11 steward [1] - 66:8 still [2] - 30:1, 39:16 stock [4] - 38:9, 39:6, 39:10 stockcars [2] - 74:22, 74:23 Stockholm [6] - 11:17, 11:21, 12:3, 12:6, 12:17, 13:5 stop [5] - 24:21, 39:2, 74:11, 89:10, 93:24 stopped [3] - 38:20, 74:12, 74:20 story [1] - 51:4 straightened [1] - 4:10 strategy [1] - 14:21 STRAUSS [1] - 4:3 Strauss [1] - 4:3 stress [9] - 13:18, 14:5, 14:8, 15:14, 15:17, 15:23, 16:3, 55:16, 57:9 stretch [1] - 9:10 stricken [1] - 8:8 strike [2] - 10:4, 30:18 strong [2] - 33:22, 34:9 strongly [1] - 35:16 studies [22] - 11:2, 11:10, 11:13, 11:16, 13:13, 13:22, 15:2, 15:6, 15:16, 15:20, 16:7, 16:13, 16:14, 17:10, 19:24, 19:25, 20:20, 20:22, 20:23, 20:24, 49:4 study [4] - 16:2, 20:1, 20:23, 50:21 stuff [1] - 56:20 stupor [1] - 12:9 Subject [1] - 79:10 subject [2] - 25:12, 47:20 submissive [1] - 68:1 subscribed [1] - 78:12 successfully [1] - 23:1 succinctly [1] - 27:22 sued [1] - 88:9 suffer [3] - 13:18, 14:8, 15:13 suffered [1] - 36:10 suffering [2] - 14:5, 55:16 suffers [2] - 15:17,</p>
---	--	---	---	---

<p>16:2 suggest [1] - 82:8 suggested [1] - 18:21 Suite [1] - 1:17 SULLIVAN [4] - 1:11, 2:2, 102:2, 102:5 summer [1] - 96:25 supervisor [1] - 66:3 support [1] - 13:22 supporting [3] - 17:19, 17:25, 18:9 supports [1] - 57:8 supposed [2] - 75:23, 76:3 survival [1] - 14:21 survive [1] - 32:1 survivors [3] - 13:16, 13:24, 14:24 Sway [1] - 73:1 Swazi [1] - 24:18 switch [1] - 4:12 swore [1] - 93:6 SWORN [2] - 10:22, 59:9 sworn [4] - 59:4, 76:21, 77:8, 78:12 swung [4] - 71:6, 71:15, 71:18, 81:18 symptoms [5] - 14:20, 91:22, 92:8, 92:16, 94:3 Syndrome [6] - 11:17, 11:21, 12:3, 12:6, 12:17, 13:5 syndrome [4] - 13:8, 13:14, 13:23, 14:9 syndromes [1] - 11:17 system [3] - 32:16, 43:10, 95:2</p>	<p>53:11 Tennessee [3] - 21:11, 36:4, 50:4 tent [2] - 62:15, 70:10 term [5] - 11:20, 31:18, 56:6, 56:7, 56:14 terminated [1] - 88:10 terminology [1] - 34:9 terms [2] - 16:11, 23:25 terrible [1] - 75:3 testified [3] - 5:1, 39:21, 52:20 testify [3] - 9:2, 9:8, 93:13 testifying [1] - 10:9 testimony [20] - 4:19, 5:8, 5:17, 5:19, 5:20, 10:8, 15:7, 17:22, 18:11, 22:6, 25:22, 28:13, 30:7, 35:25, 40:18, 52:15, 94:23, 96:4, 97:19, 100:8 Tetsi [1] - 40:5 THE [192] - 1:1, 1:2, 1:11, 3:9, 3:17, 3:19, 4:6, 5:16, 5:25, 6:7, 6:14, 7:8, 7:11, 7:25, 8:21, 8:24, 9:3, 9:8, 9:24, 10:3, 10:11, 10:12, 10:21, 10:22, 11:7, 11:22, 11:24, 11:25, 12:6, 12:7, 12:14, 12:16, 12:21, 12:24, 13:5, 13:7, 13:8, 13:9, 14:3, 14:4, 15:9, 15:10, 17:6, 17:8, 20:6, 20:7, 22:21, 22:22, 26:15, 26:16, 26:17, 26:18, 27:14, 27:17, 32:11, 32:12, 36:7, 36:8, 38:2, 38:3, 38:13, 38:15, 38:20, 38:22, 45:12, 45:19, 45:20, 45:24, 46:8, 46:10, 46:12, 46:14, 46:17, 46:19, 46:20, 47:1, 48:17, 48:19, 48:22, 48:23, 49:8, 49:9, 50:16, 50:18, 50:22, 51:6, 51:7, 51:8, 51:9, 51:12, 51:14, 51:15, 51:17, 51:22, 51:24, 51:25, 52:1, 52:3, 52:5, 52:7, 52:8, 52:9, 52:10, 52:11, 52:12, 52:14, 52:16, 52:17,</p>	<p>52:18, 52:19, 52:22, 52:23, 53:1, 53:2, 53:4, 53:6, 53:8, 53:16, 53:19, 53:25, 54:1, 54:3, 54:5, 54:6, 54:15, 54:19, 54:20, 54:21, 55:18, 55:19, 55:21, 55:23, 55:24, 55:25, 56:13, 56:17, 56:22, 56:23, 56:24, 56:25, 57:1, 57:3, 57:8, 57:10, 57:16, 57:19, 57:23, 57:25, 58:3, 58:6, 58:8, 58:21, 59:5, 59:6, 59:8, 59:9, 68:13, 68:14, 68:17, 68:20, 68:22, 68:25, 69:3, 69:5, 69:6, 69:7, 69:16, 69:17, 69:18, 69:19, 77:14, 78:21, 78:24, 79:2, 79:5, 79:10, 79:13, 79:16, 82:6, 85:20, 85:22, 96:9, 96:11, 96:12, 96:13, 99:5, 99:12, 99:19, 99:23, 100:1, 100:9, 100:10 theory [1] - 57:8 they've [1] - 56:18 third [1] - 79:19 Three [2] - 74:5, 79:18 three [13] - 18:24, 19:25, 20:4, 20:22, 20:24, 35:4, 48:14, 63:18, 74:6, 74:9, 74:11, 74:21, 80:6 throughout [3] - 68:21, 68:22, 75:6 Throughout [4] - 61:12, 68:22, 69:6, 69:7 thrown [2] - 23:21, 88:18 Thursday [1] - 1:6 tied [1] - 82:9 tightness [1] - 92:2 tire [2] - 19:10, 48:20 TO [1] - 1:3 today [9] - 5:21, 6:8, 9:9, 9:19, 9:22, 20:19, 32:6, 35:14, 44:25 today's [1] - 27:25 together [2] - 54:12, 62:17 Tom [4] - 84:16, 84:22, 89:14, 89:16 tomorrow [1] - 7:16 tonight [1] - 99:1</p>	<p>Tonka [2] - 61:21, 79:20 took [11] - 7:22, 42:6, 42:18, 71:2, 71:5, 91:14, 92:23, 93:6, 95:1, 95:20 top [1] - 15:19 torture [1] - 64:24 totally [3] - 45:21, 54:5, 54:6 tourism [4] - 30:17, 30:19, 30:21, 30:22 tourists [1] - 51:3 Towards [1] - 90:21 town [1] - 96:2 track [1] - 56:5 tradition [1] - 29:7 traditions [1] - 29:8 tragic [1] - 44:18 trails [1] - 56:7 train [10] - 54:14, 73:23, 73:24, 74:1, 74:6, 74:10, 74:11, 74:20, 74:25, 88:18 trained [4] - 27:2, 46:7, 46:9, 46:15 trainer [2] - 65:22, 65:23 trains [3] - 27:1, 50:1, 53:24 TRANSCRIPT [1] - 1:10 transcript [7] - 2:7, 5:6, 5:8, 5:10, 7:5, 93:10, 102:3 transcription [1] - 2:7 transcripts [1] - 5:5 transported [1] - 50:1 trapped [1] - 51:11 trauma [2] - 14:7, 54:18 traumatized [1] - 13:2 travel [2] - 73:22, 73:24 traveled [1] - 83:12 traveling [1] - 34:23 travesty [1] - 27:3 treated [2] - 43:13, 57:15 treatment [10] - 53:22, 71:25, 91:2, 92:17, 92:20, 93:16, 93:18, 93:23, 94:1, 94:2 Treatment [1] - 82:16 tremendous [1] - 14:20 tremendously [1] - 93:24 TRIAL [1] - 1:10 trial [12] - 4:11, 4:15,</p>	<p>4:23, 5:5, 5:6, 5:8, 6:13, 6:23, 7:5, 8:6, 8:10, 52:15 trials [1] - 100:5 tricks [2] - 49:25 tricky [1] - 35:3 tried [2] - 6:16, 79:20 trip [5] - 52:7, 53:5, 57:24, 74:14, 96:1 trucks [1] - 50:2 true [15] - 11:3, 19:18, 20:20, 22:7, 24:12, 31:6, 31:7, 31:10, 31:13, 32:3, 32:24, 42:23, 88:12, 88:13 trunk [4] - 70:19, 70:20, 73:6, 79:21 truth [1] - 93:7 truthfully [1] - 93:13 try [10] - 27:4, 28:22, 75:24, 84:5, 93:21, 93:24, 97:3, 97:5, 98:15 trying [5] - 26:10, 45:16, 70:18, 93:19, 99:6 tsunami [2] - 50:20, 51:2 tub [1] - 69:23 Tulsa [16] - 69:10, 69:15, 70:5, 73:3, 74:3, 74:8, 74:20, 74:22, 79:17, 86:15, 86:23, 86:25, 87:2, 87:4, 90:24, 91:7 turns [1] - 7:18 Two [2] - 16:12, 79:18 two [35] - 4:8, 9:22, 19:25, 20:5, 20:22, 23:13, 23:22, 23:24, 38:12, 50:25, 53:20, 55:1, 63:5, 63:18, 65:15, 69:15, 69:19, 70:5, 72:11, 78:18, 79:16, 79:17, 82:4, 86:1, 87:1, 90:11, 90:23, 91:5, 91:6, 91:19, 99:14, 99:17, 100:2, 100:4, 100:5 two-week [4] - 69:15, 69:19, 79:16, 79:17 type [1] - 68:18 typical [2] - 68:23, 68:24</p>
T				
<p>takings [1] - 54:18 TANYA [1] - 1:14 Tanya [1] - 3:10 tape [2] - 34:20, 34:23 taught [1] - 45:23 teach [1] - 45:22 Teamsters [1] - 66:9 tech [2] - 3:16, 72:7 technological [1] - 10:5 teenagers [1] - 55:10 ten [7] - 16:1, 53:8, 53:11, 67:11, 74:12, 74:13, 92:6 Ten [3] - 6:9, 61:5, 70:14 ten-minute [2] - 53:8,</p>				
				U
				<p>U.S [2] - 2:3, 95:12 ultimately [2] - 8:7,</p>

