

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.  
. Friday, February 6, 2009  
. 1:49 p.m.  
.  
.

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TRANSCRIPT OF BENCH TRIAL - AFTERNOON SESSION - DAY 3  
BEFORE THE HONORABLE EMMET G. SULLIVAN  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

KATHERINE A. MEYER, ESQ.  
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For the Defendant:

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202-354-3187

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by computer-aided transcription.

## 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 verses  
4 Feld Entertainment, Inc.

5 Will counsel please identify yourselves for the  
6 record?

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

9 THE COURT: Good afternoon.

10 MS. SANERIB: Tanya Sanerib for the plaintiffs, your  
11 Honor.

12 MS. WINDERS: Delcianna Winders for the plaintiffs.

13 MS. SINNOTT: Michelle Sinnott, tech, for the  
14 plaintiffs.

15 MR. SIMPSON: Good afternoon, your Honor. John  
16 Simpson for the defendant.

17 MS. PARDO: Michelle Pardo for the defendant.

18 MS. PETTEWAY: Kara Petteway for the defendant.

19 MR. SHEA: Lance Shea for the defendant.

20 MS. JOINER: Good afternoon, your Honor. Lisa Joiner  
21 for the defendant.

22 MS. STRAUSS: Julie Strauss with the defendant.

23 MR. PALISOUL: Derrick Palisoul, showing exhibits.

24 THE COURT: Good afternoon to you all. We'll proceed  
25 with the direct examination of the witness.

1 I have a matter that was scheduled some time ago at  
2 2:30. I'm not sure if the attorneys are here for that matter  
3 now. It's not going to take long. It could potentially be  
4 sealed, but probably not. It's on the Guantanamo cases, but it  
5 won't take long, but that's the only interruption we'll have at  
6 2:30. Let's proceed with the examination of the witness.

7 Good afternoon.

8 THE WITNESS: Good afternoon.

9 THE COURT: You're still under oath. We won't  
10 administer the oath again, but you're still under oath.

11 Proceed, counsel.

12 MS. MEYER: Thank you.

13 **LANETTE WILLIAMS, WITNESS FOR THE PLAINTIFFS, PREVIOUSLY SWORN**

14 DIRECT EXAMINATION

15 BY MS. MEYER (continuing):

16 Q. Sergeant Williams, yesterday you mentioned a provision of  
17 the California Penal Code. What provision is that?

18 A. 500.615PC.

19 Q. What does it involve?

20 A. Abuse of an elephant. I'm sorry. Abuse of an elephant.

21 Q. What does it say?

22 A. Something to the effect that it is unlawful to cause injury  
23 to an elephant that, you know, is an open wound, results in an  
24 open wound.

25 Q. And during the week in August 1999 when you were observing

1 the Ringling Brothers' handlers with the elephants in San Jose,  
2 were you in uniform?

3 A. Yes, I was.

4 Q. The entire time?

5 A. Yes.

6 Q. Did you make your presence known to the circus personnel?

7 A. Yes, I did.

8 THE COURT: Was that local statute patterned after any  
9 federal statute, do you know?

10 THE WITNESS: No. I think -- no, I don't believe it  
11 is.

12 THE COURT: At the time that you were employed on the  
13 police force, were you aware of any federal regulations or  
14 statutes that governed the treatment of elephants?

15 THE WITNESS: Yes, but I don't specifically -- that  
16 wasn't one of them.

17 THE COURT: All right. But you were aware that there  
18 were some federal regulations that dealt with elephants?

19 THE WITNESS: Yes.

20 BY MS. MEYER:

21 Q. Now I'd like to go to Exhibit 147, which I think is where  
22 we left off yesterday, your Honor.

23 MS. PARDO: Objection, your Honor.

24 THE COURT: What's your objection?

25 MS. PARDO: We don't believe that the proper predicate

1 has been provided. This witness is not employed by the entity  
2 that at all made that tape. She was not the one who filmed the  
3 inspection, and she's not the appropriate witness to be  
4 testifying on behalf of that organization who made that tape.

5 MS. MEYER: Your Honor, I think I established  
6 yesterday that Sergeant Williams actually observed the events  
7 that are depicted on the videotape, that she was there at the  
8 time, that she can testify to the events that are depicted on  
9 the videotape, accurately depict what she saw that day.

10 THE COURT: All right. I'll allow it over objection.

11 BY MS. MEYER:

12 Q. The first clip that we want to show takes place at 5:37 to  
13 549. That runs the total length.

14 (Video played.)

15 Okay.

16 MS. PARDO: I'm going to object to the hearsay.

17 THE COURT: Actually, I didn't hear anything on there.  
18 I heard something; I couldn't discern what it was. You're  
19 objecting to the voice on the tape?

20 MS. PARDO: That's correct. The voice is narrating  
21 what's going on.

22 THE COURT: What about that?

23 MS. MEYER: That's fine, your Honor. We don't need  
24 the voice on the tape.

25 THE COURT: I agree with that. Sustained.

1           What's that a picture of, if you know?

2           THE WITNESS: That's a picture of the elephant's foot  
3 and the cracked toe nail.

4           THE COURT: Right. But which elephant, when, where?  
5 Do you know?

6           THE WITNESS: That's during the inspection in San  
7 Jose.

8           THE COURT: How do you know that?

9           THE WITNESS: Because I was present when the video was  
10 taken. I believe that elephant is Bonco, but I'm not positive.

11          THE COURT: I'm sorry. You said what?

12          THE WITNESS: I believe her name is Bonco, but I'm not  
13 positive.

14          THE COURT: All right.

15          MS. MEYER: Sorry, your Honor. Were you through  
16 asking the witness questions?

17 BY MS. MEYER:

18 Q. Did you actually see that elephant with that cracked toe  
19 nail during the inspection, Sergeant Williams?

20 A. Yes.

21 Q. And that was one of the Ringling Brothers' elephants; is  
22 that correct?

23 A. Yes, it was.

24 Q. And is that a true and accurate depiction of what you saw  
25 that day?

1 A. Yes.

2 Q. I'd like to go to the next clip, please, which is 6:14 to  
3 6:25.

4 (Video played.)

5 And is what we've observed here a true and accurate  
6 depiction of something you saw on that day in August of 1999 in  
7 San Jose?

8 A. Yes, it was.

9 Q. And what did we just see? Could you describe it to the  
10 judge?

11 A. Those are the elephants that we saw during the inspection  
12 under the tent in San Jose, and that's them swaying, chained and  
13 swaying.

14 Q. And is this an example of the kind of behavior you  
15 testified about yesterday that you had observed the elephants  
16 engaging in during that week?

17 A. Yes.

18 MS. MEYER: I want to move in both of those clips,  
19 your Honor.

20 THE COURT: All right. Over objection, they're  
21 admitted.

22 (Plaintiffs' Exhibit No. 147 was admitted into  
23 evidence at about 1:56 p.m.)

24 BY MS. MEYER:

25 Q. Now, Sergeant Williams, did you take any enforcement action



1 against Ringling Brothers concerning any of the findings that  
2 you made during that week in August of 1999?

3 A. Yes.

4 Q. What did you do?

5 A. We referred the case to the district attorney's office.

6 Q. Okay. What was the basis for the referral?

7 A. We believed it was a violation of 596PC of the California  
8 Penal Code.

9 Q. Is that the penal code provision that you just earlier  
10 explained?

11 A. Yes.

12 Q. And did the D.A. bring an enforcement action?

13 A. No, they did not.

14 Q. Did you report the injuries that you described yesterday  
15 that you had observed to any other law enforcement entity?

16 A. The case was sent to USDA.

17 Q. Okay. And what was the basis for that referral?

18 A. It violated -- I don't remember the specific statute that  
19 it violated. Animal Welfare Act. Violation of the Animal  
20 Welfare Act.

21 Q. Did the USDA take any enforcement action?

22 A. No.

23 Q. All right. Now, when was the next time that you had an  
24 opportunity to observe the Ringling Brothers Circus?

25 A. It would have been in August of 2000.

1 Q. August of 2000?

2 A. Correct.

3 Q. And where would that have been?

4 A. That was in Compaq Center, our San Jose arena in San Jose,  
5 California.

6 MS. PARDO: I'm going to object to the line of  
7 questioning, your Honor. We believe the evidence will show this  
8 was a Red Unit incident that was subject to a criminal jury  
9 trial in California, and we have evidence of the verdict there.  
10 This is essentially going to be a mini trial of that entire  
11 process, and we have some --

12 THE COURT: No, it's not going to be a mini trial, I  
13 can assure of that.

14 What's the relevance of this?

15 MS. MEYER: First of all, we're talking about the year  
16 2000. I think the event you're talking about took place in  
17 2001.

18 MS. PARDO: Yes, I am talking about that.

19 MS. MEYER: So we're not even there yet.

20 The relevance of this line of questioning is that it  
21 concerned an elephant named Jewell who was an elephant that was  
22 on the Blue Unit who is an elephant that Tom Rider knows. It's  
23 extremely relevant to this case, your Honor.

24 THE COURT: I'll allow it.

25 MS. MEYER: Okay.

1 BY MS. MEYER:

2 Q. You said the next time you saw it, the circus was in San  
3 Jose in 2000; is that correct?

4 A. That's correct.

5 Q. All right. And which unit was that?

6 A. That was the Blue Unit.

7 Q. What were the circumstances of your involvement that year?

8 A. I was again assisting the Humane Society of Santa Clara  
9 Valley.

10 Q. Did you have an opportunity to see the unloading of the  
11 elephants?

12 A. Yes, I did.

13 Q. Okay. Do you remember any of the observations you made  
14 regarding the elephants that year?

15 A. I remember one of the elephants had a stiff front leg,  
16 right front leg.

17 Q. Do you know which elephant that was?

18 A. I later learned it was Jewell.

19 Q. How did you know the name of the elephant?

20 A. I asked one of the Ringling employees.

21 Q. What did you observe about Jewell?

22 A. She had a difficulty flexing her leg. I believe it was at  
23 the elbow joint, It would be, I guess comparable to like our  
24 armpit. It's a different anatomy, so it's where the front leg  
25 meets the body, and she carried her leg stiffly and kind of

1 swung it out to walk.

2 Q. Did you go to a performance that year?

3 A. Yes.

4 Q. And did you see -- did you observe Jewell in the  
5 performance?

6 A. Yes. In San Jose Christine and I went to a performance to  
7 observe Jewell to see how she performed.

8 Q. What did you observe?

9 A. That her leg was stiff throughout the whole entire  
10 performance.

11 Q. Now, what was Jewell doing in the show?

12 A. She was made to perform all the different tricks that the  
13 other elephants did. She did a long mount. I can't remember  
14 the specific things that she did exactly, but she did everything  
15 that the other elephants had to do.

16 Q. Now, when was the next time that you had an opportunity to  
17 see the Ringling Brothers' elephants?

18 A. That would have been in August of 2001.

19 Q. And where was that?

20 A. At Oakland.

21 Q. And what were you doing in Oakland?

22 A. I was observing the loading of the elephants.

23 Q. And why were you doing that?

24 A. I wanted to see again how it was done, but also I wanted to  
25 see how long the elephants were in the railroad cars.

- 1 Q. And what time were the elephants loaded on the train in  
2 Oakland that year?
- 3 A. About nine o'clock at night.
- 4 Q. When was the next time you saw them?
- 5 A. I saw them in San Jose the following morning.
- 6 Q. And what time did they get off the train in San Jose?
- 7 A. I believe it was just before one o'clock in the afternoon.
- 8 Q. And were you on duty during the time you saw them in San  
9 Jose?
- 10 A. Yes, I was.
- 11 Q. And were you assisting the Humane Society again?
- 12 A. Yes, I was.
- 13 Q. Did you have an opportunity to see how the elephants were  
14 maintained in August of 2001 at San Jose?
- 15 A. Yes.
- 16 Q. All right. What did you observe?
- 17 A. At times they were kept in a tent similar to the one that  
18 they were in in 1999, and at other times they had enclosures,  
19 they were in enclosures.
- 20 Q. When they were in the tent how were they maintained?
- 21 A. They were chained.
- 22 Q. Can you describe the chains?
- 23 A. Similar to I believe 1999: a front leg and then an  
24 opposite hind leg.
- 25 Q. And did you observe the elephants off chains at any

1 particular time?

2 A. Yes.

3 Q. When was that?

4 A. They had what I think it was called open house before the  
5 performances and the elephants were allowed into electric fenced  
6 areas.

7 Q. Okay. Did you go to any of the open houses during the time  
8 frame in August of 2001?

9 A. Yes, I did.

10 Q. How many did you go to?

11 A. I was at almost all of them. Let's see. I think I was at  
12 seven or eight of them.

13 Q. Okay. And what is an open house?

14 A. It would allow the public to come back to the area where  
15 the elephants were housed and see the elephants and the other  
16 animals, get the public more up close to them.

17 Q. When are they held?

18 A. I believe it's about an hour before the shows.

19 Q. How long do they last?

20 A. I think it's about 40, somewhere between 30 and 45 minutes.

21 Q. Who attends the open house?

22 A. The public.

23 Q. Is the public allowed to take photographs at the open  
24 house?

25 A. Yes.

1 Q. Can you describe what you saw at the open house?

2 A. They had the electric fence enclosures on asphalt. The  
3 elephants were on asphalt, but they put some sand down for the  
4 elephants. They had large tubs for the elephants. They had a  
5 little bit of bamboo, I think they had an old log, something,  
6 old tree or something for them, and I think they also at one  
7 point had some straw.

8 Q. How long did the open house last?

9 A. I believe it was an hour before each performance, and it  
10 lasted 45 minutes or so, I believe.

11 Q. Did you have an opportunity to see what happened to the  
12 elephants after the open house was over?

13 A. They put them back in the tent and chained them up to get  
14 ready to go perform.

15 Q. And do you remember any other occasions during that week in  
16 August of 2001 that involved the display of the elephants?

17 A. I'm not sure I understand the question.

18 Q. Were there any other times during that week when the  
19 elephants were -- there was any special display of the elephants  
20 for the public?

21 A. They had a couple of media events.

22 Q. What do you remember about those?

23 A. The first day they got there it was a media, like a media  
24 day, and they had, in addition to the things I described, they  
25 had frozen cubes of fruit for the elephants, and then one other

1 time when they had their own P.R. people there, their own  
2 cameramen and stuff, they did the same thing, they had big ice  
3 cubes full of fruit for the elephants.

4 Q. Did you see the elephants provided ice cubes with fruits at  
5 any other time during the week that you observed them in August  
6 of 2001?

7 A. No.

8 Q. And did you see in August of 1999, did you see the  
9 elephants provided any ice cubes with fruit?

10 A. No.

11 Q. Do you remember anything else in particular that occurred  
12 that week in 2001 regarding the handling of the elephants?

13 A. Yes.

14 Q. What do you remember?

15 A. I remember seeing the elephants come out of the tent and  
16 Mark Gebel strike one of the elephants.

17 MS. PARDO: Objection, your Honor. This is the line  
18 of questioning I objected to.

19 THE COURT: I'll allow it.

20 This is what, your other evidence theory?

21 MS. MEYER: Yes, your Honor, and also the routine  
22 practice theory.

23 THE COURT: I'll allow it.

24 MS. MEYER: Thank you.

25 BY MS. MEYER:



1 Q. I'm sorry. You said you saw Mark Gebel come out of the  
2 tent and what?

3 A. As the elephants came out of the tent and as they were  
4 approaching the roadway, I saw Mark Gebel stab one of the  
5 elephants.

6 Q. Who is Mark Gebel?

7 A. Mark Gebel is the son of Gunther Gebel-Williams, and he's  
8 one of the headliners, animal trainers.

9 Q. He was one of the headliners at that time?

10 A. Yes.

11 Q. How do you know who he is?

12 A. I had seen him, I had seen him all week handling the  
13 animals.

14 Q. And do you know the name of the elephant that he stabbed?

15 A. Asia.

16 Q. And how do you know that's her name?

17 A. I'd seen her all week, and I also had asked earlier what  
18 her name was.

19 Q. What day did this happen?

20 A. I believe it was on August 25th.

21 Q. What time of day was it?

22 A. It was in the afternoon. I think after one.

23 Q. And where were the elephants when this happened?

24 A. The elephants, to go to the performance, they'd come out of  
25 their tent and then they'd make a left-hand turn through the

1 parking lot and then go down to I believe it was Montgomery  
2 Street where they would take a right. And the elephants had  
3 come out of the tent and Asia was just, I believe she was just  
4 getting to where they -- the lane where they take the tickets to  
5 let you into the parking lot and I heard Mark yelling and then I  
6 looked over.

7 Q. And that's when you saw him stab Asia?

8 A. Yes.

9 Q. And were you with other individuals at that time?

10 A. I was by myself there at that time.

11 Q. Okay. And when you say he stabbed Asia, could you describe  
12 what you mean?

13 A. He, I heard him yell and that's what drew my attention over  
14 there. I saw him with his ankus in his hand and he made a like  
15 a thrust movement at her.

16 Q. Okay. Were you able to see which end of the ankus he used?

17 A. It was the pointed end.

18 Q. And were you able to see where on Asia's body he stabbed  
19 her?

20 A. It was in the front leg area.

21 Q. And what happened next?

22 A. Asia, the best word I can use is, she bolted forward and  
23 then took three fast steps, and then he turned around.

24 Q. And can you describe the tone of voice he was using?

25 A. It was an angry tone.

- 1 Q. And after you saw this what did you do?
- 2 A. I went over and told Christine Franco what I had seen.
- 3 Q. Who is Christine Franco?
- 4 A. She's the humane investigator.
- 5 Q. Was she in charge of the inspection that was being  
6 conducted that week?
- 7 A. Yes.
- 8 Q. So you were assisting her that week; is that correct?
- 9 A. That's correct.
- 10 Q. And why did you tell Christine Franco what you had seen?
- 11 A. Because I was there to assist them and it was going to be  
12 her case.
- 13 Q. All right. And did you believe you had seen a violation of  
14 the law?
- 15 A. Yes.
- 16 Q. And which law was that?
- 17 A. That is 596.5 of the California penal code.
- 18 Q. And what happened next?
- 19 A. I talked to Christine about what she wanted to do as far as  
20 handling the situation, and we determined that we'd have to --  
21 that there was too many elephants to try to get in front of to  
22 stop the elephants and look at the injuries, so we determined it  
23 was best to let them go ahead and perform and then try to get  
24 ahold of her after she came out.
- 25 Q. Do you know which part of the performance the elephants

- 1 were involved in at that point?
- 2 A. This was going to be the final performance.
- 3 Q. This is the end of the performance?
- 4 A. This was a final act of the circus that day.
- 5 Q. Okay. And when did you next see the elephants?
- 6 A. We saw them as they came out of the arena.
- 7 Q. And how much time had elapsed since you had seen Mr. Gebel  
8 stab Asia?
- 9 A. I don't know. Maybe ten, ten, fifteen minutes.
- 10 Q. All right. Did you have an opportunity to observe Asia at  
11 that point?
- 12 A. Yes.
- 13 Q. All right. And what did you observe?
- 14 A. I observed a bloody spot behind her left front leg.
- 15 Q. Okay. And can you describe what you saw in detail?
- 16 A. It appeared to be a puncture-type wound with blood around  
17 it.
- 18 Q. What did the blood look like?
- 19 A. It was red and fresh.
- 20 Q. And how did the location of the wound compare to what you  
21 had seen Mr. Gebel do?
- 22 A. It was in the same location I had seen him stab her.
- 23 Q. Did anyone take photos of the wound?
- 24 A. Yes.
- 25 Q. Who?

1 A. Christine.

2 Q. Christine Franco?

3 A. Yes.

4 Q. Now, do you know if any legal action was taken against Mr.

5 Gebel?

6 A. Yes.

7 Q. What happened?

8 A. He was cited for the misdemeanor violation.

9 Q. Did you have an opportunity to see that citation?

10 A. Yes.

11 Q. I'd like to go to Exhibit 6.

12 MS. PARDO: Objection; hearsay.

13 THE COURT: What is it?

14 MS. MEYER: This is going to be a copy of the

15 citation, and we believe it's --

16 THE COURT: I'll allow it.

17 MS. MEYER: It's a public record, your Honor.

18 BY MS. MEYER:

19 Q. Could you take a look at that Exhibit 6, please, for me,

20 Sergeant Williams?

21 A. Okay.

22 Q. Do you recognize that document?

23 A. Yes.

24 Q. What is it?

25 A. That's the citation that Christine Franco gave Mark Gebel.

1 THE COURT: I'm not going to allow that to come in for  
2 the truth of the matter asserted on it. I'll allow it to come  
3 in because she can testify that she's seen it before, right?

4 THE WITNESS: Yes.

5 THE COURT: So give it whatever weight, if any, that  
6 it's entitled to, but not for the truth of the statements on  
7 that document.

8 MS. MEYER: Your Honor, we think this is a public  
9 record and it comes under the public record exception.

10 THE COURT: Then you can address that when you file  
11 your proposed findings.

12 MS. MEYER: Okay. And I have another basis for  
13 getting it into evidence. If I can make a record on that, your  
14 Honor, or do you want me to wait for that also?

15 THE COURT: What's your basis?

16 MS. MEYER: We have a declaration from Christine  
17 Franco that explains that this is a citation that she issued,  
18 and we believe it comes in under the business record exception.

19 THE COURT: She's not available for cross-examination.  
20 Was something prepared in the ordinary course of business with  
21 her office?

22 MS. MEYER: Yes, your Honor. We can go to that  
23 declaration, which we have electronically.

24 MS. PARDO: Your Honor, we're objecting to the use of  
25 that declaration, and we think that bias is an issue here, and

1 we would want to cross-examine that witness.

2 THE COURT: I don't know if it comes in as a business  
3 record. You're certainly free to attempt to make your record in  
4 that regard.

5 MS. MEYER: Okay.

6 THE COURT: And I'll reserve judgment on that.

7 MS. MEYER: All right.

8 THE COURT: It's doubtful that the declaration comes  
9 in as a business record, but you can lay your foundation.

10 MS. MEYER: All right. If I could do that, I'd like  
11 to go to the affidavit of Christine Franco that we have, and  
12 actually paragraph five of that affidavit.

13 THE COURT: Wait a minute. When was this prepared?

14 MS. MEYER: Pardon?

15 THE COURT: When was this declaration --

16 MS. MEYER: This was prepared last October, October  
17 17th.

18 THE COURT: That's not a business record. That's  
19 prepared in connection with this lawsuit, right?

20 MS. MEYER: The declaration, your Honor, yes. This is  
21 a 90 --

22 THE COURT: She's not available for cross-examination,  
23 is she?

24 MS. MEYER: She's not here for cross-examination, your  
25 Honor.

1 THE COURT: So why should I allow this to come in?  
2 It's certainly not a business record. It's some document  
3 prepared by someone in connection with this litigation. I know  
4 of no exception to the Hearsay Rule that would allow this to  
5 come in.

6 MS. MEYER: Your Honor, I'm only offering this  
7 declaration under 90211 of the federal rules, which is self-  
8 authentication for a business record. This is --

9 THE COURT: It's not a business record. It was  
10 prepared in connection with litigation. It's not a business  
11 record.

12 MS. MEYER: No, your Honor. I'm not offering the  
13 declaration as a business record. I'm offering Exhibit 6 as a  
14 business record. I'm just presenting the declaration to get  
15 Exhibit 6 in.

16 THE COURT: You want me to consider the hearsay in  
17 connection with your request that I allow the record to become a  
18 part of the record, the ticket, the citation, to become a part  
19 of the record, and it may well be, as I indicated, the citation  
20 becomes a part of the record because this sergeant, because the  
21 sergeant can testify this is the ticket she saw someone else  
22 give this elephant trainer, but this declaration is rank  
23 hearsay, but that's your record. As I indicated, I will make a  
24 determination subsequent to this trial as to whether it's  
25 admissible, and, if so, what weight, if any, I give to it, but



1 it strikes me as just rank hearsay here.

2 MS. MEYER: Okay. Just for the record, it's paragraph  
3 five of this declaration that addresses this particular exhibit,  
4 your Honor. And this was a declaration that was --

5 THE COURT: Right. And this declarant, who is not  
6 here before the Court, says under oath: I have reviewed this  
7 exhibit and this is a true and accurate copy of a citation that  
8 I issued.

9 And she's not available for cross-examination. It's  
10 rank hearsay, but I don't have to make a ruling today, but in  
11 all likelihood, that's going to be my ruling when it's time for  
12 me to make it.

13 MS. PARDO: Your Honor, just so that our position is  
14 clear on the record, Rule 90211, Using a Method Other Than Live  
15 Testimony to Authenticate Business Records, is not an  
16 appropriate source of information for the method of the  
17 circumstances indicates lack of trustworthiness, and we believe  
18 the testimony would show exactly that, so that is why we're  
19 objecting to it.

20 THE COURT: All right. I'll allow the examination. I  
21 want to preserve the record. I'll allow the examination, and  
22 subsequent to this trial being over I'll determine the  
23 admissibility of this document and what weight, if any, to give  
24 to it, but I'd be surprised if I concluded that it was anything  
25 other than rank hearsay.

1           Go ahead.

2           MS. MEYER:   Okay.

3           THE COURT:   At this time the citation comes in not for  
4           the truth of the matter asserted on the citation.

5           Any other questions?

6           MS. MEYER:   Yes, your Honor.

7           BY MS. MEYER:

8           Q.    Sergeant Williams, you said you saw the photographs that  
9           were taken of Asia that day?

10          A.    Yes.

11          Q.    And did you see the events that are depicted in those  
12          photographs?

13          A.    I saw the injury, the wound.

14          Q.    Okay. I'd like to show you photographs that are in 120A,  
15          please, and this is for the purpose of ascertaining that these  
16          are -- these photographs depict the wounds?

17          THE COURT:   Just tell us what this is, 120A.

18          MS. MEYER:   There's actually five photographs, your  
19          Honor.

20          THE COURT:   Tell us what this one is, if you can  
21          recall.

22          THE WITNESS:   That's the injury to Asia.

23          THE COURT:   How do you know that that's the injury to  
24          Asia as opposed to an injury to a walrus?

25          THE WITNESS:   I've seen the photographs numerous

1 times, and you can also see, I mean, it doesn't tell which  
2 elephant, but you can see it's a female elephant there.

3 THE COURT: I'm sorry, I'm naive in that regard.

4 THE WITNESS: You can see her teat down there  
5 (indicating).

6 THE COURT: All right.

7 MS. PARDO: Foundational objection, your Honor.

8 MS. MEYER: Your Honor, also there was no objection  
9 made to these photographs by the defendants when we gave them  
10 these exhibits in our pretrial statement. They did not object.

11 MS. PARDO: We did object to two photographs, your  
12 Honor.

13 MS. MEYER: Not to these photographs.

14 THE COURT: Well, it should be a simple matter. I'm  
15 not going to waste any time today to try to determine who's  
16 right. I'll allow the examination to continue and I'll reserve  
17 judgement on whether they become a part of the record. I need  
18 to know, though, with record citation as whether there were any  
19 objections to 120A and the four that follow it.

20 MS. MEYER: Yes.

21 I'm looking at their objections, your Honor. Looking  
22 at the objections that they filed, it says: 120A, color prints  
23 of photos in Exhibit 120, and has the Bates label, and the  
24 response is: No objection by the defendant.

25 THE COURT: All right. Then they're admitted.

1 MS. MEYER: Okay.

2 THE COURT: Objection is waived.

3 (Plaintiffs' Exhibit No. 120A admitted into evidence  
4 at about 2:18 p.m.)

5 THE COURT: What's next?

6 BY MS. MEYER:

7 Q. Could we look at the next photo, please?

8 A. It's the same injury.

9 THE COURT: What's the number?

10 MS. MEYER: This is 120A at page two.

11 THE COURT: All right. That should be noted that way.  
12 We need to have a clear record.

13 MS. MEYER: Yes, your Honor.

14 BY MS. MEYER:

15 Q. Can we go to the next page?

16 THE COURT: 120, page two. You're going to have to  
17 put some designation on there. What's next?

18 BY MS. MEYER:

19 Q. We'll call 120A at page three. That's the same injury?

20 And we'll call 120A at page four.

21 A. That again is the same injury.

22 Q. And 120A at page five, what is that a picture of?

23 A. That's Asia.

24 THE COURT: I'm going to make an assumption you've  
25 seen these photos multiple times over the past many years.

1 THE WITNESS: Yes, sir.

2 THE COURT: How many times?

3 THE WITNESS: Dozens.

4 THE COURT: Dozens of times.

5 BY MS. MEYER:

6 Q. But you also saw them at the time they were taken; is that  
7 correct?

8 A. I saw them, yes.

9 Q. Do you recall actually seeing that wound on Asia?

10 A. Yes.

11 Q. Do you know whether Mr. Gebel was prosecuted for the  
12 offense for which he received a citation?

13 A. Yes.

14 Q. What kind of case was that?

15 A. It was a jury trial.

16 Q. All right. And was it a criminal case?

17 A. Yes.

18 Q. If Mr. Gebel had been convicted, would he face the  
19 possibility of incarceration?

20 A. Yes.

21 Q. Did you testify at the trial in that case?

22 A. Yes, I did.

23 Q. And what was the outcome of that case?

24 A. The jury found him not guilty.

25 Q. Do you have any doubt about what you saw Mr. Gebel do to

1 Asia at that time in August of 2001?

2 A. No, I do not.

3 THE COURT: We're not going to retry the case. She's  
4 entitled to her observations and I've heard her testimony.

5 MS. MEYER: That's fine.

6 THE COURT: Sometimes jurors don't reach the decision  
7 that other people think that the jury should reach, but there's  
8 no doubt in your mind, though, he was guilty, right?

9 THE WITNESS: Absolutely.

10 BY MS. MEYER:

11 Q. Why do you say that?

12 A. Because I know what I saw. I saw it clearly, and I saw the  
13 way she reacted.

14 Q. You mentioned that you presently live in Hohenwald,  
15 Tennessee; is that correct?

16 A. That's correct.

17 Q. When did you move there?

18 A. I moved there in March of '03.

19 Q. Why did you move there?

20 A. I moved there to work at the elephant sanctuary.

21 Q. And what is that?

22 A. It's a sanctuary for elephants, needy and abused and  
23 neglected, where they can live freely.

24 THE COURT: When you say "freely," they're in  
25 captivity, right?

1 THE WITNESS: They're on 2,700 acres, so it's as free  
2 as --

3 THE COURT: Free to roam, no constraints around?  
4 There must be something.

5 THE WITNESS: There's fencing, and they're divided  
6 into -- there's a quarantine section and then there's an Asian  
7 section and then there's an African section, so they each have  
8 several hundred acres, and there's no human -- they're not asked  
9 to do anything by humans, so they're as free as they can be in  
10 the United States.

11 THE COURT: And are ankus hooks used?

12 THE WITNESS: Absolutely not. There's not even one in  
13 the place.

14 THE COURT: Chains, any chains on the premises?

15 THE WITNESS: No, no.

16 THE COURT: How many elephants are there?

17 THE WITNESS: They have two African, and they've lost  
18 one -- a couple of them, so I'm not exactly sure. I think  
19 there's somewhere around 16 or 17.

20 THE COURT: How many Asian elephants?

21 THE WITNESS: Sixteen or seventeen Asians, yes.  
22 There's only two Africans.

23 THE COURT: Does the federal government routinely  
24 inspect the premises?

25 THE WITNESS: I believe so, yes.

1 THE COURT: The local government?

2 THE WITNESS: Yes. They have the Tennessee folks do,  
3 yeah.

4 THE COURT: But you're not aware either Fish and  
5 Wildlife Service or Department of Agriculture, do you know  
6 whether or not either agency has any oversight responsibility?

7 THE WITNESS: I believe the federal government does  
8 have. I think it's USDA, but I have no dealing with that part  
9 of it so I'm not positive.

10 BY MS. MEYER:

11 Q. What did you do there?

12 A. I was an elephant caretaker.

13 Q. How long did you work there?

14 A. Six months.

15 Q. And why did you leave?

16 A. I got carpal tunnel in both wrists.

17 Q. I think you said at the beginning of your testimony that  
18 you retired. Do you do any volunteer work for animals?

19 A. I do some for the elephant sanctuary, and I started, myself  
20 and five other women, started a humane society in Hohenwald, and  
21 we take care of stray and neglected dogs and cats, and my  
22 husband is a cruelty investigator, so I help take care of  
23 cruelty case animals, plus wildlife that needs assistance.

24 MS. MEYER: I have no further questions, your Honor.

25 THE COURT: All right. Let me do this. I mentioned



1 the other case. We're going to take a short recess. You can  
2 leave your materials here, but I want to call the other case.  
3 It shouldn't take long.

4 So you'll have to come in for cross-examination.

5 And you can leave your materials there, counsel. Just  
6 leave a little room, leave room for other attorneys. I don't  
7 think there's a need for there to be much activity on the left  
8 side because the plaintiff lawyers are on the telephone, so you  
9 can just leave the materials there, and I'd ask for government  
10 counsel to come forward.

11 (Recess taken at about 2:22 p.m.)

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

13 (Back on the record at about 2:42 p.m.)

14 MS. PARDO: Carol, could you turn on the Elmo for a  
15 moment?

16 Your Honor, I just wanted to make something clear for  
17 the record before we get started.

18 Before, plaintiffs' counsel had represented that  
19 Plaintiffs' we'll call Exhibit 120A, photos that are contained  
20 in Exhibit 120, was not objected to, and I'm showing you the  
21 pretrial statement. 120 contains the Bates-numbered-marked  
22 photographs that were exhibited in the courtroom today. We  
23 objected to those as being irrelevant and for lack of  
24 authenticity. 120A was provided with an additional copy in  
25 color. No additional objections were made because of the

1 objections made in Exhibit 120, but all photographs that were  
2 exhibited today by plaintiffs were objected to for the same  
3 reasons. I just wanted to make the record clear for you on  
4 that.

5 THE COURT: All right.

6 CROSS-EXAMINATION

7 BY MS. PARDO:

8 Q. Good afternoon, Ms. Williams.

9 A. Good afternoon.

10 Q. You testified on your direct examination about an  
11 inspection of the elephants; is that correct, in August of '99?

12 A. Yes.

13 Q. This was a Red Unit's, Red Unit elephants; is that right?

14 A. Yes.

15 Q. So this occurred over nine years ago; is that correct?

16 A. Yes.

17 Q. And you didn't take the photographs in Plaintiffs' we'll  
18 call Exhibit No. 19 that were showed in the courtroom today?

19 A. No, I did not.

20 Q. You testified that Christine Franco was the one who did  
21 that, right?

22 A. Yes.

23 Q. And you didn't actually conduct that inspection, did you?

24 A. No.

25 Q. Representatives from the Humane Society of Santa Clara

1 Valley did so; is that correct?

2 A. Yes.

3 Q. And you have no personal knowledge of each of the elephants  
4 that are in those photographs, do you?

5 A. I don't understand the question.

6 Q. Could you identify each of the elephants in those  
7 photographs?

8 A. By name, no.

9 Q. And you couldn't identify all the body parts that were  
10 being photographed, could you?

11 A. No.

12 Q. Are you aware that three of the elephants on the Red Unit  
13 during this time of the inspection weren't owned by Ringling  
14 Brothers?

15 A. Yes.

16 Q. And do you know which elephants those were in the  
17 photographs?

18 A. I know their names. They weren't in the photographs. I  
19 assume you mean the ones that Larry Cardin was handling.

20 Q. Can you identify the Cardin elephants?

21 A. Judy, Jenny, and Vicky.

22 Q. Can you identify them by sight?

23 A. Not now, no.

24 Q. Okay. So going back to the photographs, there is nothing  
25 on these elephants' photographs to indicate which one -- which

1 photograph belongs to which elephant; is that correct?

2 A. There's two of them. One of them has the injury, the outer  
3 ear. I think you pronounce it Siam, S-i-a-m, I believe, and  
4 then the one with the longer lacerations were the one we first  
5 saw, Toby.

6 Q. So with the exception of those two elephants, can you  
7 identify any of the others in the photos?

8 A. No.

9 MS. PARDO: Can we bring up what was played as  
10 Plaintiffs' we'll call Exhibit 147, and that would be the clip  
11 that was played in the beginning.

12 (Video played.)

13 BY MS. PARDO:

14 Q. Which elephants are featured in this clip that plaintiffs'  
15 counsel played for you earlier, Ms. Williams?

16 A. All I know is they're the Red Unit elephants.

17 Q. Are those indeed the Cardin elephants that were not owned  
18 by Ringling Brothers?

19 A. I don't believe so.

20 Q. Can you name the elephants?

21 A. No.

22 Q. So what would make you think that those weren't the Cardin  
23 elephants?

24 A. Because his elephants I believe were at the very last part  
25 of the tent.

1 Q. But you have no way of knowing and cannot indeed identify  
2 those as Ringling elephants?

3 A. No.

4 Q. And you testified that you didn't actually have videotape  
5 footage of this; is that correct?

6 A. Correct.

7 Q. Who was the person who videotaped?

8 A. Marcia Mayeda.

9 Q. Were you near the camera when they were filming?

10 A. Yes.

11 Q. When Ms. Mayeda was filming?

12 A. Part of the time, yes.

13 Q. What were you doing the other part of the time?

14 A. Observing.

15 Q. Did you have any role in editing this footage?

16 A. No.

17 Q. What happened to this footage after it was taken?

18 A. My understanding, it was given to the Humane Society --  
19 Humane Society of Santa Clara Valley kept it.

20 Q. Can you say with any certainty what happened to the  
21 videotape after it was filmed?

22 A. No.

23 Q. Was this tape given by the Humane Society to plaintiffs or  
24 their counsel?

25 A. I don't know.

1 Q. You don't know how it got to plaintiffs' counsel?

2 A. I didn't give it to them.

3 Q. Do you know who got a copy of this tape in the intervening  
4 time between when it was taken and when it got to plaintiffs'  
5 counsel?

6 A. The only person I know that had it was Christine.

7 Q. Can you say for sure if anyone else was given a copy?

8 A. No.

9 Q. Ms. Williams, you testified about what you did prior to the  
10 August 1999 inspection of the Ringling Brothers' elephants on  
11 direct, did you not?

12 A. Prior to the inspection?

13 Q. Yes.

14 A. Yes.

15 Q. Is it typical for a police officer to begin gearing up for  
16 assisting with an animal inspection weeks before it's too occur?

17 THE COURT: That's probably argumentative. You can  
18 rephrase that.

19 BY MS. PARDO:

20 Q. Had you ever geared up before an inspection weeks before  
21 the actual inspection?

22 MS. MEYER: Your Honor, I'm going to object because it  
23 assumes some fact that's not in evidence.

24 BY MS. PARDO:

25 Q. Well, didn't you testify that you had done some leg work

1 before you actually saw the animals in August of '99 when they  
2 came into town?

3 A. I said that I had read up on the laws and regulations  
4 regarding animals and I went to the Oakland performance.

5 Q. Didn't you testify on direct that you asked for information  
6 about what kind of animals and the number of animals that were  
7 coming to San Jose?

8 A. I asked that from the arena personnel, if they knew  
9 Steve -- I can't remember -- it starts with a K, Kirshner or  
10 something like that. Krishner.

11 Q. You also testified on direct that you hadn't gotten back  
12 any response, isn't that correct?

13 A. Correct.

14 Q. That's not true, is it?

15 A. That's true.

16 Q. The arena manager that you contacted gave you a response,  
17 didn't he?

18 A. He said he hadn't received anything as of the time I asked  
19 him.

20 Q. He also told you that he hoped you hadn't been brainwashed  
21 by the animal rights people, did he not?

22 A. I don't recall that.

23 Q. You don't recall that?

24 A. No.

25 Q. You didn't stop there, did you?

1 MS. MEYER: Objection, your Honor.

2 BY MS. PARDO:

3 Q. Did you do other things in preparation --

4 THE COURT: Just a minute. Just a minute. That's a  
5 little vague question.

6 BY MS. PARDO:

7 Q. Did you do anything else in preparation before the  
8 inspection of the animals in August of '99?

9 A. Yes. I familiarized myself with the laws and regulations  
10 and I went to Oakland.

11 Q. You testified on direct that you went to the train  
12 unloading?

13 A. Yes.

14 Q. And you testified on direct that you saw what you believed  
15 to be urine coming out of a black box under the elephant cars;  
16 is that correct?

17 A. Yes.

18 Q. Is it your testimony that this was some kind of urine  
19 collection tank?

20 A. That's what I believed at the time, yes.

21 Q. Are you aware that there are holes drilled into the floors  
22 of the train cars for the urine to drain out?

23 A. No.

24 Q. Could what you have seen been the urine draining on to some  
25 part of the under side of the train car?



1 A. It looked like it was coming from a plug from that black  
2 container.

3 Q. But you don't have any knowledge of the specifics of the  
4 train car design, do you?

5 A. No.

6 Q. And you're not here as an expert on the Ringling Brothers'  
7 train car design?

8 A. No, I'm not.

9 Q. Do you have any knowledge about train car mechanics or  
10 design in general?

11 A. No.

12 Q. You also testified that you went to a performance in  
13 Oakland; is that correct?

14 A. That's correct.

15 Q. And you testified on direct that you were not on duty for  
16 this; is that correct?

17 A. That's correct.

18 Q. You went on your own free time to do that?

19 A. Yes.

20 Q. Now, during the performance, you were with the animal  
21 rights protesters outside the arena, isn't that right?

22 A. I stopped for a few minutes to say hi to somebody I knew,  
23 yes, that's right.

24 Q. You also testified on your direct that you had seen Gunther  
25 Gebel-Williams during that 1999 August period; is that right?

1 A. Yes.

2 Q. Are you aware that he passed away in the summer of 2001?

3 A. Yes.

4 Q. Now, you also testified on your direct that the photographs  
5 that we saw as Plaintiffs' will call Exhibit 119 were forwarded  
6 to the Santa Clara district attorney for review; is that right?

7 A. I don't recall what photographs you're talking about.

8 MS. MEYER: Objection. She did not testify to that,  
9 so that's not the scope.

10 MS. PARDO: I'm asking her if she knows.

11 BY MS. PARDO:

12 Q. Do you know if those photographs were forwarded to the  
13 district attorney?

14 A. Which photographs are you speaking of?

15 Q. The ones of the August '99 inspection.

16 A. 1999?

17 Q. Yes.

18 A. My understanding is they were.

19 Q. Do you know if the videotape was also forwarded to the  
20 district attorney's office?

21 A. I do not know that.

22 Q. You don't know that?

23 A. No.

24 Q. And the district attorney's office declined to prosecute,  
25 isn't that correct?

1 A. Yes.

2 Q. Now, you testified on your direct that you tried to  
3 determine what could be another cause of marks that you found on  
4 the elephant; is that right?

5 A. Yes.

6 Q. And you investigated dancer shoes, the tent area, and head  
7 gear. Is that what you testified to on direct?

8 A. And the train, correct.

9 Q. And the train. And did you consider whether these marks  
10 were from insect bites?

11 A. No.

12 Q. You didn't consider whether the tushes that are on an  
13 elephant's head caused these?

14 A. The what?

15 Q. Did you ever consider whether the tushes on an elephant's  
16 head caused these during contact with another elephant?

17 A. No.

18 Q. You did not consider that as a source of the marks?

19 A. Typically they're not sharp enough to do that, but no.

20 Q. Is it a reasonable conclusion that these could have been  
21 from brows?

22 A. I didn't see them with any brows.

23 Q. You didn't see them that day with any brows; is that  
24 correct?

25 A. I didn't see them that week, I don't believe, with any

1 brows in 1999.

2 Q. Do you know that brows can be a cause of scratches on  
3 elephants?

4 A. Yes.

5 Q. So the record is clear, you never actually saw anything  
6 actually make these marks; is that right?

7 A. No.

8 Q. And neither did the other officers from the Humane Society  
9 of Santa Clara Valley as far as you know?

10 MS. MEYER: Objection, your Honor.

11 THE COURT: Sustained.

12 BY MS. PARDO:

13 Q. So you didn't investigate all possibilities of what could  
14 have caused those marks; is that right?

15 A. I guess not. I investigated what I said.

16 Q. Well, would it be reasonable to conclude that the marks on  
17 the elephants could be from other activities, including contact  
18 with other elephants?

19 THE COURT: That's argumentative. You can rephrase  
20 that.

21 BY MS. PARDO:

22 Q. Have you considered contact from her elephants as a source?

23 MS. MEYER: Asked and answered, your Honor.

24 BY MS. PARDO:

25 Q. Had you considered --

1 THE COURT: I'll allow it.

2 THE WITNESS: No.

3 BY MS. PARDO:

4 Q. Had you considered whether the drawing of blood samples  
5 could be a source of any of the marks on the elephant that you  
6 found?

7 A. That I have seen done, and I didn't feel that that was the  
8 cause. I have seen blood drawn in elephants.

9 Q. When had you seen that done?

10 A. I'm sorry. Are you talking 1999?

11 Q. Yes.

12 A. I saw that in 2000.

13 Q. So you did not see it the day that you made the inspection.

14 Now, you spoke in your direct examination that this  
15 information was forwarded to the United States Department of  
16 Agriculture by the Humane Society of Santa Clara Valley; is that  
17 right?

18 A. I didn't do that. That was my understanding.

19 Q. You weren't the person that did that?

20 A. No.

21 Q. But you're here testifying today about that inspection; is  
22 that correct?

23 A. Yes.

24 Q. And you testified on your direct that the USDA in fact has  
25 guidelines on the care of elephants; is that right?

1 A. Under the Animal Welfare Act, yes.

2 Q. And you also testified I believe that you had reviewed  
3 those prior to the '99 inspection?

4 A. Yes.

5 MS. PARDO: Can we bring up Defendant's Exhibit 88?  
6 This is going to be at pages ten to eleven. I'm sorry, eight,  
7 page eight.

8 BY MS. PARDO:

9 Q. This is a memorandum of July 5th, 2001, from Barbara Kohn  
10 to Ron DeHaven?

11 MS. MEYER: I'm going to object to this document on  
12 hearsay grounds.

13 MS. PARDO: This is a public record, your Honor.

14 THE COURT: What's your response?

15 MS. PARDO: This only contains the impressions of the  
16 agency and the role that they are --

17 THE COURT: It's a public record found where?

18 MS. PARDO: This is the United States Department of  
19 Agriculture record.

20 THE COURT: Do you disagree with that, that it's  
21 public?

22 Well, I'll allow the question. Go ahead. The post-  
23 trial pleadings can address the admissibility of that document.  
24 I don't know whether it's public or not. It's appears to be a  
25 memo. I don't know whether it's an internal memo. I don't

1 know. Can you go to the Department of Agriculture and go to the  
2 library and find that memo in the library?

3 MS. PARDO: I think we take the position, your Honor,  
4 that it is a public record made in the normal course of  
5 business, a business record of a public agency.

6 THE COURT: It may well be. It can provisionally come  
7 in for that purpose. I'll allow the questioning to proceed,  
8 though. Go ahead.

9 BY MS. PARDO:

10 Q. As you can see in the top paragraph, this references San  
11 Jose, California, between August 23rd and 29th, 1999.

12 THE COURT: To be clear, so you're not offering it as  
13 a public record, you're offering it as a business record  
14 maintained by this federal government agency; is that right?

15 MS. PARDO: I think it is a public record, your Honor,  
16 but I think it also can be interpreted as a business record of  
17 this agency, yes.

18 MS. MEYER: Your Honor, just for the record, they made  
19 no showing it's a business record. They don't have the  
20 custodian of the record or a declaration from anyone from the  
21 USDA.

22 THE COURT: Was this objected to in pretrial?

23 MS. MEYER: Yes, your Honor.

24 MS. PARDO: There's been no authenticity objections to  
25 this, your Honor.

1           THE COURT: Again, it's either objected to or not. I  
2 don't want to keep getting into this where someone says it's  
3 clear from pretrial it was objected to and someone says it's  
4 clear that it wasn't. If it was objected to, what was the basis  
5 for the objection?

6           MS. PARDO: Maybe we can do it this way, your Honor.

7 BY MS. PARDO:

8 Q. Is it your testimony that there was --

9           THE COURT: Wait a minute. Wait just a minute. I  
10 want to get an answer to this one. Was it objected to, and, if  
11 so, what was the basis?

12          MS. MEYER: Your Honor, it was objected to on the  
13 grounds it was hearsay. What I'm saying is, if they're going to  
14 say it's a business record, they have not produced a custodian  
15 or a declaration from anyone at the USDA.

16          THE COURT: You do have to lay a foundation. It may  
17 well be a business record or a public record or a combination of  
18 both, but there should be something that vouches for its  
19 authentication. It sounds as though they objected to it. Do  
20 you disagree with counsel saying that they objected to it on the  
21 grounds that it's hearsay?

22          MS. PARDO: I'm sorry?

23          THE COURT: Do you disagree with that? They said they  
24 objected to it on the grounds of hearsay.

25          MS. PARDO: We believe that it would meet the public



1 records test, your Honor.

2 THE COURT: This can be addressed in the post-trial  
3 pleadings. I'll allow the questioning only because I want to  
4 conclude this trial at some reasonable point in time, but I'll  
5 reserve ruling on whether or not it becomes a part of the  
6 evidentiary record.

7 BY MS. PARDO:

8 Q. I want to direct your attention to the first paragraph.  
9 This is --

10 THE COURT: It may well be one of those, but it's not  
11 self-authenticating, that's for sure. There should be some  
12 indicia of reliability on this document; otherwise, anyone can  
13 come in court and say this is a public record. I don't know if  
14 it's a public record. You can print all kinds of nomenclature  
15 off the Internet, so there has to be some indicia of reliability  
16 of authentication in order for it to come in as an exception to  
17 the Hearsay rule.

18 Go ahead. Maybe you can play that at a later point.  
19 I'll allow the questioning to proceed, though, provisionally.

20 BY MS. PARDO:

21 Q. Now, in the first paragraph it states this is from San  
22 Jose, California, between August 23rd and 29th, 1999; is that  
23 correct?

24 A. Yes.

25 Q. And that the allegations involved, abuse via improper use

1 of ankus?

2 A. Yes.

3 Q. And in the second paragraph --

4 THE COURT: Is this signed by anyone?

5 MS. PARDO: It has initials in the "From" portion.

6 THE COURT: Who?

7 MS. PARDO: Barbara Kohn.

8 THE COURT: Who is she?

9 MS. PARDO: Your Honor, we can take --

10 THE COURT: Who is Barbara Kohn?

11 MS. PARDO: She's a USDA official, your Honor.

12 THE COURT: I don't know that to be a fact. I'm not  
13 going to allow this. This is stretching the hearsay rule. I'm  
14 not going to allow it. It may well be that you can get it in  
15 some other way, but I'm not going to allow it. I don't know who  
16 this person is. There's no indicia of authenticity and  
17 reliability on this document. You can't just come in and say  
18 this is reliable.

19 BY MS. PARDO:

20 Q. Ms. Williams, do you have any knowledge as to why the USDA  
21 declined to provide for a violation?

22 A. No.

23 Q. But you knew that they decided to issue a no-violation  
24 letter or decided no violation was the result?

25 A. It wasn't sent to me so I never saw it.

1 THE COURT: She learned that through hearsay anyway.

2 Move on.

3 BY MS. PARDO:

4 Q. Isn't it true that the Humane Society of Santa Clara Valley  
5 disapproves of the use of elephants in circuses?

6 MS. MEYER: Objection.

7 THE COURT: I'm sorry. That question again was isn't  
8 it true that?

9 MS. PARDO: The Humane Society of Santa Clara Valley  
10 disapproved of the use of elephants in circuses.

11 THE COURT: I don't think she's the proper witness to  
12 answer that question.

13 You never worked for that agency, did you?

14 THE WITNESS: I worked for them in 1978.

15 MS. PARDO: She also is here to authenticate and  
16 testify to the inspections and the formal documentation from  
17 that agency.

18 THE COURT: I'm not going to allow that. That's  
19 hearsay as well. Next question.

20 BY MS. PARDO:

21 Q. Ms. Williams, were you in fact sitting on the board of the  
22 Humane Society of Santa Clara Valley at one point?

23 A. Many, many years ago, yes.

24 Q. What year was that?

25 A. I think it was in the early '70s.

1 THE COURT: Was that before you became a police  
2 officer?

3 THE WITNESS: Way before.

4 Well, I became a police officer in '83, and it was  
5 sometime in the '70s.

6 BY MS. PARDO:

7 Q. You have no knowledge as to the matter of policy what the  
8 Humane Society's position statement was at the time that you  
9 were liasoning with them and assisting with their inspection?

10 MS. MEYER: Objection again. It's hearsay.

11 THE COURT: Sustained, sustained.

12 BY MS. PARDO:

13 Q. How long were you a San Jose police officer?

14 A. Until I retired?

15 Q. Yes.

16 A. Twenty-plus years.

17 Q. As part of your San Jose police officer training, were you  
18 trained in the proper use of the guide?

19 A. Are you speaking of an ankus?

20 Q. Yes.

21 A. No.

22 Q. You have no training on that subject?

23 A. No.

24 Q. You're not a veterinarian, are you?

25 A. No.

1 Q. Have you had any veterinary training?

2 A. I was a veterinarian assistant for a brief time in San  
3 Diego.

4 Q. Did the Humane Society of Santa Clara Valley require the  
5 people participating in the inspection to have training in the  
6 ankus?

7 A. I wouldn't know.

8 Q. Were you asked if you have had training in the use of the  
9 ankus?

10 A. No.

11 Q. You've been affiliated with organizations before that --  
12 strike that.

13 Have you also had membership in animal rights or  
14 animal welfare organizations?

15 A. Yes, I have.

16 Q. And what are those?

17 A. I made donations to Farm Sanctuary, PAWS, The Humane  
18 Society of the United States.

19 Q. For how many years?

20 A. I don't know exact years, but I can tell you for the last  
21 fifteen years before because there were various ones.

22 PETA.

23 THE COURT: This is after your service as a police  
24 officer terminated?

25 THE WITNESS: No. This is for probably most of my

1 adult life at some point I've belonged to various organizations  
2 and given donations.

3 I don't know which one do you want if you want me to  
4 list them all.

5 BY MS. PARDO:

6 Q. During the 1999 -- from 1999 through the time that you  
7 retired from the police force, can you state which organizations  
8 you've donated money to?

9 A. The only ones I can remember for certain were Farm  
10 Sanctuary, I think Animal Protection Institute.

11 Q. That's the plaintiff in this case?

12 A. Yes, I believe so.

13 PAWS, In Defense of Animals. At some point I belonged  
14 to PETA, and I can't say for sure I belonged at that time or  
15 not.

16 Q. Did you belong to any of the organizations you just named  
17 prior to PETA?

18 A. Yes.

19 Q. And you also made monetary donations?

20 A. That's what I did, is I made donations, yes.

21 Q. And became a member?

22 A. Sometimes you become a member, sometimes you don't.

23 Q. You attended an animal rights conference in Washington,  
24 D.C. in July of 2000, isn't that correct?

25 A. Yes, it is.

1 Q. And you attended select presentations at this conference?

2 A. Yes, I did.

3 Q. Did you also choose to attend a presentation called New  
4 Tactics, Banning Circuses?

5 A. I don't remember. I don't remember exactly which ones I  
6 attended.

7 Q. This is the animal rights conference in 2000 in Washington,  
8 D.C.

9 MS. MEYER: Objection, your Honor.

10 THE COURT: What's the basis? I haven't heard a  
11 question. What are you objecting to?

12 MS. MEYER: This has not been --

13 MS. PARDO: This is an impeachment document, your  
14 Honor.

15 THE COURT: I'm sorry. What's the basis?

16 MS. MEYER: There's no authentication of this  
17 document.

18 THE COURT: She hasn't asked a question yet. What's  
19 your objection?

20 BY MS. PARDO:

21 Q. You said you did not know if you attended such a seminar?

22 A. I couldn't remember if there's a specific one I attended or  
23 not. I said I did attend a conference.

24 Q. Did it indeed have a course called New Tactics, Banning  
25 Circuses?

1 THE COURT: What are you using this for? She said she  
2 can't remember. Are you using this to refresh her recollection?

3 MS. PARDO: I'm using it to see if she remembers that  
4 was the --

5 THE COURT: Does that refresh your recollection,  
6 looking at that document?

7 THE WITNESS: It doesn't tell me which ones I went to.

8 THE COURT: Does it tell that you attended it?

9 THE WITNESS: I know I went to the conference, I think  
10 so.

11 THE COURT: All right. So it doesn't refresh your  
12 recollection in any other way?

13 THE WITNESS: No.

14 THE COURT: All right. Move on.

15 BY MS. PARDO:

16 Q. During the time that you accused Mark Gebel of elephant  
17 abuse, were you liasoning with the Humane Society at that time?

18 A. I was.

19 MS. MEYER: Objection, your Honor. I don't know what  
20 that means, liasoning.

21 THE COURT: I was wondering the same thing. What does  
22 that mean?

23 BY MS. PARDO:

24 Q. Were you assisting with them?

25 A. Yes, I was.



1           THE COURT: Were you associating with that  
2 organization?

3           THE WITNESS: What happened was, their executive  
4 director asked the chief of police if I would assist them for  
5 those three years in inspecting the circuses.

6 BY MS. PARDO:

7 Q. And you mentioned the criminal jury trial that you  
8 testified in December 2001 again Mr. Gebel; is that correct?

9 A. Yes.

10 Q. You were under oath during those proceedings?

11 A. Yes.

12 Q. And this was for the incident involving Asia?

13 A. Yes.

14 Q. You got on the stand and told the jury your story about  
15 what happened with respect to the elephant Asia; is that  
16 correct?

17 A. Correct.

18 Q. And the jury found Mr. Gebel not guilty?

19 A. That is correct.

20 Q. He didn't even have to put on a defense, did he?

21 A. No.

22 Q. And in 2001 did you agree that Ringling's handlers -- would  
23 you agree that Ringling handlers are people who are trained and  
24 skilled in handling elephants?

25 A. Not all of them, no.

1 Q. Would you agree that some of them were?

2 A. Yes.

3 Q. Now, with respect to the incident itself, you claimed it  
4 occurred walking from the animal compound to the arena; is that  
5 correct?

6 A. Correct.

7 Q. And this again was an incident over seven years ago?

8 A. Correct.

9 Q. Now, in fact, you never saw the bullhook actually pierce  
10 Asia's skin; isn't that correct?

11 A. Correct.

12 Q. You saw no contact at all between the bullhook and the  
13 elephant?

14 A. Correct.

15 Q. And in fact, wasn't the elephant obstructing your view from  
16 seeing the handler at all?

17 A. No.

18 Q. Was the elephant obstructing any kind of view of the guide?

19 A. I'm not sure how to answer that. Can you reword that?

20 Q. Sure. Did you testify or do you recall seeing that the  
21 guide didn't in fact touch the skin?

22 THE COURT: Wait a minute. Rephrase that question.

23 MS. PARDO: I'm sorry.

24 BY MS. PARDO:

25 Q. Is it your testimony that you did not see the guide touch

1 the skin of that elephant?

2 A. Yes.

3 Q. And despite seeing no contact between the bullhook and the  
4 elephant, you considered this to be abuse; is that right?

5 A. I considered -- her movement plus the reaction of the  
6 elephant is what made me believe that contact had been made.

7 Q. But you did not immediately go and look at the elephant?

8 A. No.

9 Q. You didn't stop the elephants in the line as they were  
10 walking by?

11 A. I couldn't.

12 Q. You could have asked a Ringling Brothers handler to bring  
13 Asia for an inspection immediately, isn't that correct?

14 A. No.

15 Q. You didn't have the power to do that?

16 A. There was a lot of hostility between Ringling Brothers and  
17 us at that point in time, and the way the circus is, I was told  
18 not to interrupt the circus unless it was a life-threatening  
19 matter. My chief of police told me that. And also for me to  
20 get around to where the handler was to stop them in the street,  
21 I had to wait for all the elephants to pass me and then run  
22 along the street to meet up with Asia, and that was -- that's a  
23 public safety issue, that I wasn't willing to take that risk.

24 Q. What was the risk?

25 A. The risk was of startling the elephants by running next to

1       them.

2       Q.    Now, when the elephants reached their destination did you  
3       go up and perform an inspection at that point?

4       A.    No.  The elephants went in -- they go down a ramp and then  
5       there's an area that's like kind of a loading area, and then  
6       beyond that there is an area that is actually going into the  
7       arena, and the elephants went into there.

8       Q.    So you didn't stop Asia before she went into the arena; is  
9       that correct?

10      A.    No.

11      Q.    And you didn't inspect Asia while she was waiting to go  
12      into the performance; is that right?

13      A.    No.

14      Q.    You didn't order Ringling Brothers to keep Asia out of the  
15      performance?

16      A.    I didn't think that was possible.

17      Q.    You're a police officer for the City of San Jose, isn't  
18      that correct?

19      A.    Correct.

20      Q.    But you didn't think you had the power to do that?

21      A.    My chief instructed me not to stop the circus unless it was  
22      a life-threatening matter.  I didn't think it was a  
23      life-threatening matter, and we can inspect the elephant as she  
24      came out.

25      Q.    You testified earlier you thought it was a stabbing?

1 A. Correct.

2 Q. But it wasn't something that needed to have Asia held out  
3 from the performance, is that your testimony?

4 A. No.

5 Q. And in fact, she went on to perform; is that right?

6 A. That's correct.

7 Q. Are you aware that there were two more shows that day after  
8 the performance?

9 A. That was the final performance of that show.

10 Q. Do you have any knowledge that Asia had to sit out of any  
11 performances?

12 A. No.

13 Q. Now, you were never actually employed by the Humane Society  
14 of Santa Clara Valley in the 1991 to 2001 time frame, were you?

15 A. No.

16 Q. You didn't receive a paycheck from them?

17 A. No.

18 Q. And they didn't have the power to fire you?

19 A. No.

20 Q. At some time after Mark Gebel was cited for this, did the  
21 Humane Society cease having inspecting powers in the City of San  
22 Jose?

23 MS. MEYER: Objection, your Honor.

24 THE COURT: Rephrase that question.

25 BY MS. PARDO:

1 Q. During the time that you were a San Jose police officer, do  
2 you know if the Humane Society's inspection powers changed  
3 during that time?

4 A. They got, the city of San Jose got their own animal  
5 control. I don't know if they took over inspecting or not. I'm  
6 not positive about that.

7 Q. You're not sure how it worked?

8 A. I'm not sure who had what jurisdiction.

9 Q. You testified on your direct examination that you know  
10 Carol Buckley; is that right?

11 A. Yes.

12 Q. Did you know that she's also an expert in this case?

13 A. Yes.

14 Q. You lived on her compound in Hohenwald, Texas [sic]; is  
15 that right?

16 A. No.

17 Q. You worked there?

18 A. I worked there.

19 Q. Ms. Buckley testified at Mark Gebel's trial as well, didn't  
20 she?

21 A. Yes.

22 Q. Did you speak with her during that trial?

23 A. During the trial, no, I don't believe so.

24 Q. While she was in town for that trial?

25 A. I don't believe so.

1 Q. You gave monetary contributions to Ms. Buckley's elephant  
2 compound, didn't you?

3 A. The Elephant Sanctuary, yes, I have.

4 Q. Yes, you have. In fact, in the spring of 2003 you gave a  
5 founder donor award of over \$10,000; is that right?

6 A. That's correct.

7 Q. And in the spring of 2004 you were a patron donor between  
8 one thousand and five thousand dollars; is that right?

9 A. That's correct.

10 Q. You've actually shared membership in an elephant  
11 organization with another expert in this case, isn't that right?

12 A. I don't know who you're referring to.

13 THE COURT: If you give a name, maybe she can answer  
14 that.

15 BY MS. PARDO:

16 Q. Did you serve on the board of directors for the Alliance  
17 For Elephants with Colleen Kinzley?

18 A. Yes.

19 Q. Did Ms. Elly also sit on that organization?

20 A. Yes.

21 Q. And you were board of directors for that organization,  
22 right?

23 A. Yes.

24 Q. Was Scott Glaze also a vice president of that organization?

25 A. Yes.

1 Q. And he runs the Elephant Sanctuary with Ms. Buckley; is  
2 that right?

3 A. Correct.

4 Q. You never worked in a circus, Ms. Williams, have you?

5 A. No.

6 Q. And you've never been trained in the use of tethers; is  
7 that correct?

8 A. No.

9 Q. That's not correct, or you've never been trained?

10 A. I've never been trained.

11 Q. You're opposed to elephants being in the circus, aren't  
12 you?

13 A. Yes.

14 MS. PARDO: I have no more questions.

15 THE COURT: All right.

16 Redirect?

17 REDIRECT EXAMINATION

18 BY MS. MEYER:

19 Q. Sergeant Williams, you in answer to a question by Ms. Pardo  
20 said that the three elephants that were owned by someone other  
21 than Ringling Brothers that you saw during the inspection of  
22 1999, you said they were not in the photo; is that correct?

23 A. I said in that particular photo there that she showed --  
24 they were at the very far end where you walked in, where we  
25 started the inspection with Toby, they were at the very, very



1 far end, and they were three of the elephants that had no  
2 injuries.

3 Q. Okay. And when you went to the animal rights conference in  
4 July of 2000, who paid for you to attend that conference?

5 A. I got release time from the police department to attend.

6 Q. And you said that you were a patron of the Elephant  
7 Sanctuary. You gave them a donation; is that correct?

8 A. Correct.

9 Q. Why did you do that?

10 A. I had just sold my house in San Jose and I made a whole lot  
11 of money so I gave them a large donation, and then the other  
12 one -- that was a ten thousand, and the other one, that was a  
13 gift for a friend.

14 Q. But why did you give a \$10,000 donation to the Elephant  
15 Sanctuary?

16 A. Because I had extra money and I believed they're an  
17 organization that does a good job for the elephants.

18 Q. Okay. And you mentioned some of the animal groups that  
19 you've been a member of over the years, and I think you said you  
20 had been a member of PETA; is that correct?

21 A. That's correct.

22 Q. When were you a member of PETA?

23 A. It was years ago. I don't remember the exact time. I'm  
24 not a member now.

25 Q. Okay. Why did you stop being a member?

1 A. I don't believe in the tactics that -- some of the tactics  
2 they use. I don't believe in throwing paint on people and some  
3 of the protests that they do. I just think for me it's too far  
4 out.

5 Q. And are you a member of any other nonprofit organizations  
6 other than the ones that you named in response to Ms. Pardo's  
7 questions?

8 A. Yes. I've been a member of Mothers Against Drunk Drivers,  
9 Southern Poverty Law Firm, Planned Parenthood, Center For  
10 Science and the Public Interest, Goodwill, Hope for the  
11 Retarded, Citizens Committee on Responsible Medicine. I mean,  
12 I'm sure there's more, but that's what comes to mind.

13 Q. Have you donated money to those organizations as well?

14 A. Yes.

15 Q. When we talk about donating money to those organizations,  
16 how much money are we talking about?

17 A. I usually give -- when I have a lot money I give money.  
18 When I don't have money, you know, I give less, but mostly I  
19 just give money when I can, so I don't have any set amount.  
20 Usually 25, fifty dollars; something like that.

21 Q. And you said that you are opposed to the use of elephants  
22 in circuses; is that correct?

23 A. Yes.

24 Q. And why is that?

25 A. Because I don't believe that that's what a life for an

1 elephant to be. They're very, very social creatures. They need  
2 a lot of interaction, they need a lot of exercise. They need  
3 room to roam, and being chained and dominated, I don't feel that  
4 that's in the best benefit for an elephant or any wild animal.

5 MS. MEYER: I have no further questions, your Honor.

6 THE COURT: All right.

7 Any other questions?

8 MS. PARDO: No, your Honor.

9 THE COURT: All right.

10 Thank you. Are you returning home today?

11 THE WITNESS: Tomorrow.

12 THE COURT: Tomorrow? Have a safe trip.

13 THE WITNESS: Thank you, sir.

14 THE COURT: I have to ask you, please refrain from  
15 talking with any other participants in this trial, any other  
16 experts or any other witnesses.

17 THE WITNESS: Okay.

18 THE COURT: All right. Thank you.

19 All right, counsel. I need to take a ten-minute  
20 recess. And we'll talk further before we adjourn. I don't  
21 think there's any way I can reschedule that matter for Monday at  
22 ten o'clock. There are just too many participants involved in  
23 that. But I don't think it's going to take more than an hour,  
24 but I want to talk about that when I return, but I need to take  
25 a ten-minute recess and we'll talk again in ten minutes.

1 All right. How many witnesses do you have for Monday?

2 MS. MEYER: Just two, your Honor.

3 THE COURT: Just two? Are they experts?

4 MS. MEYER: No.

5 THE COURT: All right. Just two witnesses. How long  
6 do you anticipate your direct to be?

7 MS. MEYER: First witness should be very short. It's  
8 just to authenticate something. And the second witness is going  
9 to take probably around two hours.

10 THE COURT: Two hours? All right. You don't have  
11 anyone else lined up?

12 MS. MEYER: We have a lot of deposition testimony that  
13 we wanted to cover on Monday.

14 THE COURT: All right, that's fine, because we have a  
15 full day. With the exception of that ten o'clock matter, we  
16 have a full day, so I want to try to get as much accomplished as  
17 we can, but give me ten minutes and we'll talk again.

18 There's no need to stand, counsel. Thank you.

19 COURTROOM DEPUTY: This Court is in a ten-minute  
20 recess.

21 (Recess taken at about 3:18 p.m.)

22 COURTROOM DEPUTY: Remain seated. This Honorable  
23 Court is again in session.

24 (Back on the record at about 3:44 p.m.)

25 THE COURT: All right, counsel. I'm going to let you

1 go. But you're going to have to do some work, not necessarily  
2 over the weekend. I'm not really interested in soliciting the  
3 views of any federal agency right now with respect to the scope  
4 of some agency's authority, statutory, regulatory, or otherwise  
5 over Asian elephants in captivity in American circuses, but I am  
6 interested in the parties' views about that, so I want to give  
7 the parties an opportunity to, in a very straightforward manner,  
8 and probably in respective pleadings of no more than ten pages  
9 because I don't think you need more than ten pages, tell me just  
10 what is the scope of any statutory or regulatory authority, if  
11 any, of any federal agency for the overall responsibility for  
12 Asian elephants in captivity in American circuses, and I've  
13 defined that question very broadly, and I just don't want some  
14 statutory citations. I want you to tell me just what it is,  
15 what's the substance, if any, of that regulatory oversight  
16 responsibility vis-a-vis obviously abuse. That's what I'm  
17 concerned about. I want to know what the federal government's  
18 role is, if any. And maybe there is no role with respect to  
19 certain pachyderms. I don't know. But I want to be clear about  
20 it before I start asking the federal government to tell me what  
21 its role is. I want to give the parties an opportunity to  
22 clearly tell me. And I don't think that I need a pleading of  
23 any more than ten pages, filed maybe Wednesday, Wednesday at  
24 noon. That way no one has to work over the weekend, although  
25 everyone probably does anyway. At least you won't have to work

1 on that. But, I mean, you've probably already given it some  
2 thought. I heard conflicting views yesterday about just what  
3 the role is, if any, but based upon your own understanding and  
4 awareness of what the scope of authority maybe is.

5 Will a pleading of ten pages educate the Court, or do  
6 you need more paragraphs?

7 MR. SIMPSON: That's sufficient, your Honor. That's  
8 plenty.

9 THE COURT: You think it's crystal clear what the  
10 authority is, right?

11 MR. SIMPSON: I think it's very clear.

12 MS. MEYER: Ten pages will do it.

13 THE COURT: You think it's crystal clear as well?

14 MS. MEYER: Yes.

15 THE COURT: But you both disagree as to what the  
16 authority is?

17 MS. MEYER: Funny how that happens.

18 THE COURT: Addy reminds me that yesterday counsel for  
19 defendant mentioned that there have been some circuses who have  
20 indeed lost their license, I assume to have -- I'm not sure  
21 whether it's Asian elephants or African elephants. The more  
22 information you can provide me about that and the reasons why,  
23 what happened.

24 MR. SIMPSON: There was an investigation, it's my  
25 understanding -- I need to go actually read the decision. It's

1 not fresh in my mind. There was an investigation involving a  
2 corporation, I believe, a Hawthorn Corporation, and it was by  
3 the U.S. Department of Agriculture, and it concerned the manner  
4 in which that entity was holding Asian elephants. Those  
5 elephants either were confiscated or as a result of a consent  
6 decision between the government and that holder were sent to a sanc- -- sent to Ms. Buckley's sanctuary. There was an elephant  
7 named Ned who coincidentally also currently is being held by Ms.  
8 Buckley, who was confiscated by the USDA, he was held by an  
9 exhibitor by the last name of Ramos, and again it was because of  
10 the USDA's perception of his condition, his weight, etcetera.

12 There were two elephants, as I remember, who were  
13 being held in a mobile trailer in very hot conditions somewhere  
14 in Arizona or New Mexico. They were confiscated by I believe  
15 the USDA after a local animal or police officer noticed the  
16 conditions and placed with a zoo.

17 The King Royal Circus had its license revoked, and I  
18 believe that that's in the summary judgment brief that we filed  
19 last -- in 2006. Either it's a citation, either in our main  
20 brief or in our reply brief, and at the same time in the Cunio  
21 (ph) or the Hawthorne matter, there was a USDA enforcement  
22 action that was brought against an elephant handler who had an  
23 eastern European name I can't pronounce, who in full view of  
24 USDA investigators hooked an elephant named Jane or Jenny,  
25 something like that, in a performance. They witnessed it. He

1 was prosecuted, and that was determined not to be a violation of  
2 the Animal Welfare Act, the mere fact that a cut was put on an  
3 elephant. So we'd be happy to provide those separately or in  
4 connection with this pleading.

5 THE COURT: All right, that's fine. I said ten pages.  
6 I don't know, is that reasonable?

7 MR. SIMPSON: I think so. I'd just assume not have to  
8 do a brief in the middle of this.

9 THE COURT: That's fine. Ten pages will give me the  
10 answer I need, and the answer I need is whether or not I need to  
11 ask someone else, but I'm somewhat concerned. You both say the  
12 answer is clear, but my guess is you're not going to agree to  
13 what the answer is, are you?

14 MR. SIMPSON: I don't think so, but at the same time,  
15 it's not a matter that requires a lot of research because at the  
16 end of the day no Court has ever done this so it's not like  
17 we're coming in with a bunch of cases.

18 THE COURT: Right. But still, though, the federal  
19 government has done some things over time, I assume,  
20 investigations, taken away licenses, and there must be  
21 regulations in place, I assume.

22 MR. SIMPSON: There are, but as far as I know, your  
23 Honor, there's never been an enforcement action by Fish and  
24 Wildlife against the holder of a captive endangered species.

25 THE COURT: Even though there having been allegations



1 of abuse?

2 MR. SIMPSON: All of that has been handled by the  
3 Department of Agriculture, and I'm not aware of a single action  
4 by either the Department of Interior or the United States  
5 against a captive holder of an endangered species on the ground  
6 that what you're doing is a taking. They've probably not given  
7 people permits because they've done things that they believe are  
8 violations of the AWA, but I don't know that there's ever been  
9 an enforcement action, and I could be wrong, but we've looked  
10 and haven't found it.

11 THE COURT: The other thing is, and I just learned  
12 this either in the elevator or at the lunch table one day, I  
13 think Ms. Meyer argued a case before Judge Friedman maybe a year  
14 or so ago, I don't know, an elephant case.

15 MS. MEYER: That was actually Ms. Sanerib.

16 MS. SANERIB: That was me, your Honor.

17 THE COURT: Maybe Judge Friedman would have gotten  
18 this case as related. Anyway, I've just heard that. I don't  
19 think there's a published opinion, is there?

20 MS. SANERIB: No, there's not. There's a transcript.

21 THE COURT: It had to deal with Asian elephants being  
22 transported from the train station to --

23 MS. SANERIB: It had to deal with actually the same  
24 Hawthorne elephants that Mr. Simpson was just discussing, and  
25 it's a question of after the USDA brought an enforcement action

1 against the entity, the Hawthorne Corporation that held those  
2 animals, it made a decision to transfer some of those animals to  
3 a circus in Oklahoma, so it was a challenge to the USDA's  
4 decision. It had previously decided to send the elephants to  
5 the Elephant Sanctuary, reverse course, it was an APA case  
6 against the USDA for the decision to transfer those animals to  
7 Carson & Barnes, and ultimately all but one of those elephants  
8 went to the Elephant Sanctuary in Tennessee.

9 THE COURT: He didn't issue a written opinion, he  
10 issued an oral ruling?

11 MS. SANERIB: That's correct. We have the transcript.

12 THE COURT: Do the issues in this case have any  
13 bearing on this case before me?

14 MS. SANERIB: There was a consent decree at issue in  
15 that case.

16 THE COURT: That was an action against the USDA,  
17 correct?

18 MS. SANERIB: That's correct, yes.

19 THE COURT: Brought by an animal rights group?

20 MS. SANERIB: Brought by an individual and --

21 THE COURT: I'd be interested in the consent decree.  
22 I don't think I have a copy of this, and actually I just heard  
23 about this. I know there was not a written opinion, but was  
24 there an oral ruling?

25 MS. SANERIB: Yes, there was.

1 THE COURT: Do you have the transcript of that?

2 MS. SANERIB: We have the transcript, yes.

3 THE COURT: Are you aware of that?

4 MR. SIMPSON: I was not aware of that case, your  
5 Honor.

6 THE COURT: Would you be kind enough to share with  
7 opposing counsel?

8 MS. SANERIB: Yes, of course. I could e-mail it.

9 THE COURT: However you folks want to work it out.

10 Ten pages would be great. That will give me at least  
11 some preliminary answers that I need.

12 Everyone have a wonderful weekend.

13 Anything else we have to talk about?

14 MS. SANERIB: Actually, I have one more thing.

15 THE COURT: It's probably going to be noon. I don't  
16 want to keep anyone waiting. If I start that matter at ten and  
17 it goes over, there's a ton of legal talent here and I don't  
18 want to keep folks waiting, so let's just say 12:30 to start on  
19 Monday. Just eat your lunch before you come here. Or 1:00? I  
20 guess 12:30, and we'll just go probably till 5:00 or 5:30 or so.

21 MS. SANERIB: Thank you, your Honor.

22 Just one quick question. This is regarding you asked  
23 to file the exhibits to get entered into evidence on ECF.

24 THE COURT: Yes, I did.

25 MS. SANERIB: We cannot do that with the video.

1 THE COURT: I think we can. I think we figured out a  
2 way to do that. We did that in the Stevens case with the  
3 videos.

4 MS. SCHMITT: Have you talked to Joe Burgess?

5 MS. SANERIB: I have not.

6 MS. SCHMITT: Try him first.

7 THE COURT: You need to speak with Joe Burgess.

8 MS. SANERIB: Speak with Joe Burgess, okay.

9 My other question was, we also have photographs that  
10 were taken at the inspections of the elephants. It's  
11 Plaintiffs' we'll call Exhibit 54 which was entered into  
12 evidence, and that because the photographs, in order to keep the  
13 quality, to upload them on the public record, it would just  
14 diminish the quality, so we gave a copy to our opposing counsel  
15 of those photographs on CD and filed with the clerk on CD, so we  
16 have a CD for you of those photographs if you would like them,  
17 and then I guess the question is, we'll try to work out the  
18 video.

19 THE COURT: You can work it out.

20 MS. SANERIB: We can work it out? Okay.

21 THE COURT: Joe, he was a tremendous help in the  
22 Stevens case, and there were a lot of photographs. There was  
23 some film footage. Maybe not film footage. There were a lot of  
24 photographs, though. He helped us out tremendously. He's the  
25 person to speak to. There's an easy way to do that.

1 MS. SANERIB: We're happy to talk to him. We don't  
2 need to take the Court's time with this issue.

3 THE COURT: He's around?

4 COURTROOM DEPUTY: Yes, he is.

5 THE COURT: Is he on the phone?

6 COURTROOM DEPUTY: Yes, sir.

7 THE COURT: Can he speak with counsel? I'm getting  
8 ready to adjourn now. Can he speak with counsel? Actually, if  
9 you want to send someone down also, counsel, if you want to post  
10 some of your exhibits as well, I'm sure --

11 MR. SIMPSON: There was an issue related to that that  
12 I actually discussed with Ms. Meyer, and that is, we would  
13 propose -- well, while we're doing the cross-examination of  
14 their witnesses, certain of our exhibits and other materials  
15 have been shown to witnesses. Some of them have been marked and  
16 some of them haven't. What we would propose is a list of those  
17 materials be prepared and filed, not the documents themselves, a  
18 list be filed in the court's record so it's clear for the record  
19 what's been shown to the witnesses.

20 THE COURT: Absolutely. I think that's fair and  
21 reasonable. Absolutely. Absolutely.

22 Mr. Burgess is available if you want to send someone  
23 down, counsel, to speak with him.

24 COURTROOM DEPUTY: I'm sorry, your Honor. He's on his  
25 way up.

1 THE COURT: You folks can stay here, but he's our  
2 expert and he'll help you any way he can. All right.

3 MS. SANERIB: Thank you, your Honor.

4 THE COURT: I'm going to be in chambers. If there's  
5 some problem after you talk with him and something can't be  
6 done, ask him to let us know.

7 MS. SANERIB: Thank you.

8 Just one more question for you. We're wondering in  
9 terms of keeping time for both sides, are you going to give us a  
10 report at the end of the week of where we stand or would you  
11 like us to try to --

12 THE COURT: We'll go over our records.

13 Let me ask the court reporter as well. When you log  
14 on and log in, you have the time recorded, don't you?

15 COURT REPORTER: I do. I don't know about Lisa.

16 THE COURT: That will be another channel as well. I  
17 think our records are fairly accurate.

18 MS. SANERIB: Thank you, your Honor.

19 THE COURT: But you're probably ahead of your time  
20 anyway, aren't you? You probably aren't going to use up all of  
21 your allotted time anyway in your case, are you?

22 MS. SANERIB: Oh, I think we might.

23 THE COURT: All right.

24 Anything further?

25 No need to stand. Have a nice weekend. We'll start

1 at 12:30 on Monday. Thank you.

2 COURTROOM DEPUTY: Court is adjourned until Monday at  
3 12:30 p.m.

4 (Proceedings adjourned at about 3:57 p.m.)

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Plaintiffs'  
Exhibit

No.	Identification	Marked	Admitted
120A			28



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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