

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

Plaintiffs,

vs.

FELD ENTERTAINMENT, INC.,

Defendant.

CA No. 03-2006  
Washington, DC  
February 9, 2009  
3:00 p.m.

PM Session, Part 2

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

APPEARANCES:

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Proceedings recorded by mechanical stenography; transcript  
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I N D E X

WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

For the Plaintiff:

PATRICK CUVIELLO

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AFTER RECESS

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THE COURT: Let's proceed. Let's move this along, counsel. I get the picture about the swaying. I've seen enough film footage. Let's move it along.

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MS. MEYER: Your Honor, one problem I have is I need to authenticate this video footage because it's going to be relied on by other witnesses. So I'm sorry that it's tedious, but I unfortunately have to do this.

10

11

THE COURT: All right.

DIRECT EXAMINATION CONTINUED

12

BY MS. MEYER:

13

14

Q. I'd like to go to the next excerpt on Exhibit 132, which is from 21:09 to 21:20.

15

(Video played).

16

17

And I'd like to ask you, Mr. CuvIELlo, if you can again with this one tell Judge Sullivan what to focus on here.

18

19

20

21

A. The handler on the far left -- yes, with the curly hair, he is going to quickly take his bull hook and hook the elephant underneath the chin with the hook, and you're going to see the elephant's head go up as well.

22

Q. Can we play that.

23

(Video played).

24

Q. Did you take this videotape?

25

A. Yes, I did.

1 Q. Do you know when you took it?

2 A. 2001.

3 Q. Where?

4 A. At the San Jose Arena in San Jose, California.

5 Q. Is what is shown on the videotape an accurate  
6 reflection of what you saw that day?

7 A. Yes.

8 Q. Can you describe what you saw?

9 A. I saw the handler in the middle of the screen there  
10 take his bull hook and go up to the elephant and hook her  
11 underneath the chin.

12 Q. How often have you seen Ringling Brothers employees  
13 engage in that kind of behavior?

14 A. I see somebody hooking every year.

15 Q. I'd like to go to the next excerpt, which is at 22:35  
16 to 23:09.

17 (Video played).

18 Q. Did you take this videotape, Mr. CuvIELLO?

19 A. Yes, I did.

20 Q. Where did you take it?

21 A. This was in Daly City, California at the Cow Palace.

22 Q. Do you know what year?

23 A. 2001.

24 Q. Is what is shown on this videotape an accurate  
25 reflection of what you saw that day?

1 A. Yes, it is.

2 Q. I'd like to go to the next clip, which is 26:07 to  
3 26:24.

4 (Video played).

5 Q. Sorry, Your Honor. I don't know if you can see it.  
6 Can you identify who that individual is between the two  
7 elephants?

8 A. Yes, that's Jeff Pettigrew.

9 Q. Can you tell Judge Sullivan what to focus on in this  
10 clip?

11 A. Jeff will come in with his bull hook between the two  
12 elephants, and he will jab the elephant on the left with his  
13 bull hook.

14 Q. And can we play that clip.

15 (Video played).

16 Q. Did you take that videotape?

17 A. Yes, I did.

18 Q. Where did you take it?

19 A. That's at the San Jose Arena in San Jose, California.

20 Q. When did you take it?

21 A. That was 2002.

22 Q. And is what's shown on the videotape an accurate  
23 depiction of what you saw that day?

24 A. Yes.

25 Q. I'd like to go to the next excerpt, which is at 27:51

1 to 28:03. And could you tell Judge Sullivan what to focus on  
2 in this video clip?

3 MS. PARDO: Objection to the relevance. It's Red  
4 Unit.

5 THE COURT: I'll allow it.

6 THE WITNESS: In this video clip the handler in the  
7 black on the left just above the 2003, he is going to walk  
8 over to the elephant on the right, who's close to the wall  
9 there, and he's going to yell "back up," and then he's going  
10 to hit her on the side of the head with his bull hook.

11 BY MS. MEYER:

12 Q. Let's play the clip.

13 (Video played).

14 Q. And did you take this videotape?

15 A. Yes, I did.

16 Q. When did you take it?

17 A. This was 2003.

18 Q. Where did you take it?

19 A. This is in Fresno, California.

20 Q. And is what is shown on the videotape an accurate  
21 depiction of what you saw that day?

22 A. Yes, it is.

23 Q. I'd like to go to the next clip, which is at 29:34 to  
24 29:45. And could you tell Judge Sullivan what to focus on in  
25 this clip?

1 MS. PARDO: Objection, irrelevant, Red Unit.

2 THE COURT: Overruled.

3 THE WITNESS: The handler with the blond hair, he  
4 is going to the elephant on the right, he's going to -- the  
5 handler is going to take his bull hook and he's going to take  
6 it and kind of hit the elephant in the mouth as she's walking,  
7 right up above her trunk, as she's walking, with his bull  
8 hook.

9 MS. MEYER: Let's play it.

10 (Video played).

11 BY MS. MEYER:

12 Q. Did you take that videotape?

13 A. Yes, I did.

14 Q. And where did you take it?

15 A. San Jose, California.

16 Q. When did you take it?

17 A. That was 2003.

18 Q. And is what we've seen an accurate depiction of what  
19 you saw that day?

20 A. Yes.

21 Q. How often have you seen Ringling Brothers employees  
22 engage in that kind of behavior?

23 A. The hooking I see every year. That was -- I wouldn't  
24 know if I'd call that a hooking as much as hitting somebody  
25 with the hook.



1 Q. I'd like to see the next excerpt, which is at 33:13 to  
2 35:35.

3 MS. PARDO: Objection, irrelevant. Red Unit.

4 THE COURT: Your objection is preserved, counsel.  
5 Overruled.

6 (Video played).

7 BY MS. MEYER:

8 Q. Did you take this videotape, Mr. CuvIELlo?

9 A. Yes, I did.

10 Q. Do you know when you took it?

11 A. This was 2003.

12 Q. And where did you take it?

13 A. This is in Daly City, the Cow Palace.

14 Q. Can you describe what we're looking at?

15 A. This is the elephants chained up side by side with one  
16 front and one back leg chained. They are just standing in the  
17 parking lot.

18 Q. And where did you take this videotape?

19 A. This is at the Cow Palace in Daly City.

20 Q. When did you take it?

21 A. 2003.

22 (Video played).

23 Q. And does the videotape accurately depict what you saw  
24 that day?

25 A. Yes, it does.

1 Q. Can you describe what we saw at the end of that clip?

2 A. At the end of the clip one of the elephants urinated  
3 while she was chained and had to stand in her urine.

4 Q. How often have you seen Ringling Brothers elephants do  
5 that?

6 A. I think it was more common previous years. Now it  
7 seems like they try and run up with a bucket to catch it.

8 MS. MEYER: I'd like to move into evidence the  
9 clips from Exhibit 132 that we've seen, Your Honor.

10 THE COURT: Over objection, admitted.

11 MS. MEYER: Now I have some additional videotape  
12 that I need to have, I'd like to have Mr. CuvIELLO  
13 authenticate, and I'd like to show it to him in order to do  
14 that.

15 THE COURT: Proceed over objection.

16 MS. MEYER: Okay. So I'd like to go to Will Call  
17 Exhibit 146.

18 BY MS. MEYER:

19 Q. And I'd like to go to the clip that begins at 6:14 and  
20 goes to 6:53.

21 (Video played).

22 Q. And Mr. CuvIELLO, do you recognize this videotape  
23 before we play it?

24 A. Yes, I do.

25 Q. Can you tell me, did you take this videotape?

1 A. Yes, I did.

2 Q. Do you know when you took it?

3 A. 2005.

4 Q. And do you know where you took it?

5 A. This is at the San Jose Arena in San Jose, California.

6 Q. Can you tell Judge Sullivan who this individual is  
7 who's in the middle of the screen here?

8 A. The man in the blue coat is Sacha Houcke, he's one of  
9 Ringling's elephant trainers.

10 Q. How do you know that's Sacha Houcke?

11 A. He was in the program one year.

12 Q. Can you tell Judge Sullivan what he should focus on  
13 with respect to this scene?

14 A. Yes. They're walking the elephants out of the arena  
15 here, and Sacha Houcke will take his bull hook and just  
16 continuously have it at the elephant's left front leg, and he  
17 would just be hooking her like this (indicating). And at one  
18 point when the women are coming down, he will have the  
19 elephant put her foot up and he'll come over and hook her  
20 foot.

21 Q. All right. Let's play the clip.

22 (Video played).

23 Q. Does that videotape accurately depict what you saw on  
24 that day?

25 A. Yes, it does.

1 Q. I'd like to go to the next clip from Will Call 146,  
2 which is 13:15 to 13:40.

3 (Video played).

4 Q. And can you tell Judge Sullivan what to focus on in  
5 this clip, please?

6 A. The man in the middle there, David Polk, he is going to  
7 take his bull hook and hit the elephant, the young elephant  
8 right next to him, underneath the chin. And after he does  
9 that you're going to see Troy Metzler come in from the left of  
10 the screen, walk out on the right of the screen, and then he's  
11 going to come back in hooking an elephant.

12 Q. Before we play it, Mr. CuvIELLO, did you take this  
13 videotape?

14 A. Yes.

15 Q. Do you know when you took it?

16 A. This is 2006.

17 Q. And do you know where?

18 A. This is at the Oakland Coliseum in Oakland, California.

19 Q. Okay. Let's play it.

20 (Video played).

21 Q. And what did you just see there?

22 A. David Polk just hit the young elephant underneath her  
23 chin with his bull hook very quickly.

24 Q. Who's the individual in the front of the screen?

25 A. Who's at the front of the screen?

1 Q. No, let's just keep playing the clip.

2 (Video played).

3 Q. Who's the individual on the left side of the screen?

4 A. That is Troy Metzler.

5 Q. Let's play the clip.

6 (Video played).

7 Q. And what did we see there?

8 A. Troy went over to bring another elephant out, and as he  
9 brought her over he hooked her.

10 Q. Does that videotape accurately depict what you saw that  
11 day?

12 A. Yes, it does.

13 Q. Where was that video clip taken?

14 A. Oakland, California.

15 Q. What year?

16 A. 2006.

17 MS. MEYER: I'd like to move into evidence the  
18 clips from Will Call 146, Your Honor.

19 THE COURT: Over objection, they are admitted.

20 MS. MEYER: Now I have some additional video clips  
21 that I want to show Mr. CuvIELlo, these two, simply -- I'm not  
22 moving them in yet, but simply for purposes of identifying the  
23 individuals who are in them, if I could do that. And let me  
24 lay a foundation first.

25

1 BY MS. MEYER:

2 Q. Mr. CuvIELlo, you mentioned earlier that you are  
3 familiar with Gunther Gebel Williams, is that correct?

4 A. That's correct.

5 Q. How many times have you seen Gunther Gebel Williams?

6 A. I started in '89, and I think 1999 or -- 1999 was I  
7 think the last year I saw him. So that's about five years,  
8 because it was every other year. For 10 years every other  
9 year, so five years.

10 Q. And would you recognize him if you saw him in a  
11 photograph?

12 A. Yes.

13 Q. And would you recognize him if you saw him in  
14 videotape?

15 A. Yes.

16 MS. MEYER: I'd like to show Mr. CuvIELlo a clip  
17 from Will Call 132 that is time stamped on the exhibit 42  
18 seconds to 1:05, simply for the purposes of asking if he can  
19 identify the individual in the video clip.

20 MS. PARDO: I have objections to the authenticity,  
21 Your Honor.

22 THE COURT: All right. Overruled.

23 (Video played).

24 THE COURT: I asked him was he familiar with the  
25 tape, and the next question was how so.

1 THE WITNESS: This was a tape taken by a group  
2 named PAWS.

3 THE COURT: But you didn't take this one?

4 THE WITNESS: I did not take this one.

5 THE COURT: You're just asking him to identify  
6 people in the tape?

7 MS. MEYER: Correct, Your Honor.

8 THE COURT: There may be some objections to the  
9 authenticity. He's not being asked to authenticate the tape.  
10 He can identify, just as he could if he was shown a picture,  
11 if he recognizes someone in the film, he can tell us who that  
12 person or persons are.

13 MS. MEYER: Can we run the clip again so I can ask  
14 those questions of Mr. Cuviello.

15 (Video played).

16 BY MS. MEYER:

17 Q. Do you recognize this individual?

18 A. Yes, I do.

19 Q. Who is it?

20 A. That is Gunther Gebel Williams.

21 (Video played).

22 Q. Do you recognize this individual?

23 A. Yes.

24 Q. Who is it?

25 A. Gunther Gebel Williams.

1 THE COURT: Which one?

2 THE WITNESS: The one in the red cap.

3 (Video played).

4 THE COURT: Have you ever seen any of these  
5 elephants retaliate?

6 THE WITNESS: Not violently, no.

7 BY MS. MEYER:

8 Q. I'd like to, for the same purposes, solely for  
9 identification, show Mr. CuvIELlo an excerpt from a video that  
10 is on Plaintiffs' Will Call Exhibit 133. Again I'm not moving  
11 this into evidence, it's simply for the purposes of having him  
12 identify an individual on the videotape. And this is on Will  
13 Call 133, the first clip is at 49:28 to 49:52.

14 (Video played).

15 Q. Do you know who that individual is that we're seeing  
16 there, Mr. CuvIELlo?

17 A. Yes, I do.

18 Q. Who is it?

19 A. It's Gunther Gebel Williams.

20 Q. I'd like for the same purposes to show you on Will Call  
21 133 a clip that begins at 1:01:09 to 1:01:46.

22 (Video played).

23 Q. Do you know who that individual is?

24 A. Yes, I do.

25 Q. Who is that?



1 A. Gunther Gebel Williams.

2 Q. Now, Mr. CuvIELlo, you mentioned earlier that you had  
3 an opportunity to monitor the circus in San Jose in the year  
4 2000, is that correct?

5 A. That's correct.

6 Q. Did you see the circus -- the elephants maintained  
7 outside at all during that time?

8 A. In San Jose in 2000?

9 Q. Yes.

10 A. Yes.

11 Q. Where did you see them maintained?

12 A. In the parking lot.

13 Q. Can you describe the parking lot scene, please?

14 A. Well, the parking lot is a parking lot, and when they  
15 come in they set up their compound area with a tent for the  
16 elephants, a tent for the horses, they set the tiger cages up,  
17 and some of the performers have trailers they set up in the  
18 parking lot as well. So they cordon off about a third of the  
19 parking lot I would say in the back of the arena. And that's  
20 their animal compound area and some of the performers have  
21 their trailers back there as well.

22 Q. Did you have an opportunity to see how the elephants  
23 were maintained in that parking lot?

24 A. Yes, that year they were kept chained up.

25 Q. And how many days were you there?

1 A. The circus went Wednesday through Sunday and I was  
2 there every day.

3 Q. Were you videotaping at the time?

4 A. Yes, I was.

5 Q. Were there others videotaping at the time?

6 A. Yes, there were.

7 Q. Do you remember any particular observations you had  
8 about the elephants in the parking lot that year?

9 A. It was no different than other years except we just --  
10 the only thing is I had a new camera, but I videotaped the  
11 elephants chained up and swaying, and they had some young  
12 elephants that year. I remember they had some young elephants  
13 that year.

14 MS. MEYER: I'd like to show Mr. CuvIELlo some  
15 clips from Will Call Exhibit 133 for the purpose of  
16 identifying, authenticating the events that occurred.  
17 Identifying -- sorry, identifying the events that occurred  
18 that are shown on that videotape. Your Honor, he did not take  
19 the videotape.

20 THE COURT: I understand.

21 MS. MEYER: Okay, the first clip is from Will Call  
22 133, and it's 10:59 to 13:30.

23 (Video played).

24 BY MS. MEYER:

25 Q. Can you describe -- did you see these events that are

1 being depicted on this video footage?

2 A. Yes, I did. And I want to clarify, this is Oakland,  
3 California, not San Jose, California.

4 Q. My mistake. Thank you.

5 THE COURT: How do you know that?

6 THE WITNESS: I know the area from up on the  
7 landing.

8 BY MS. MEYER:

9 Q. What did you observe?

10 A. This isn't my video, but I observed the same thing,  
11 they'd brought the elephants out of the show and they were  
12 chaining them up in line there.

13 Q. Do you know which unit of the circus this is?

14 A. This is the Blue Unit.

15 Q. How do you know that?

16 A. Even years Blue Unit, odd years Red Unit. And I'm not  
17 sure, but I think their headpieces also correlate with the  
18 color of the -- their headpieces correlate with the Red or  
19 Blue Unit.

20 Q. All right. I'd like to go to the second clip, which is  
21 at 15:35 to 16:36.

22 (Video played).

23 Q. This is the same scene, Mr. CuvIELLO?

24 A. Yes, this is Oakland, California, and it's the same  
25 time.

1 Q. Did you actually observe the events that are depicted  
2 on the videotape?

3 A. Yes, I did.

4 (Video played).

5 Q. I'd like to go to the last clip from this exhibit,  
6 which is at 26:52 to 27:30.

7 (Video played).

8 Q. Can you describe what we're looking at here?

9 A. This is them forcing -- you can see the elephants in  
10 the forefront of the screen where you see one squatting there,  
11 they are forcing her to defecate.

12 Q. Did you see this event that is depicted in the  
13 videotape?

14 A. Yes, I did.

15 Q. And where is this occurring?

16 A. This is Oakland Coliseum, Oakland, California.

17 Q. What year?

18 A. 2000.

19 Q. Is all of the videotape that we watched from  
20 Plaintiffs' Will Call 133, does it accurately depict what you  
21 saw in Oakland in 2000?

22 A. Yes, it does.

23 Q. Is what we -- the last clip we just saw, is that an  
24 example of what you were referring to earlier in your  
25 testimony when you talked about forced defecation?

1 A. Yes, it is.

2 MS. MEYER: I have no further questions at this  
3 time, Your Honor.

4 THE COURT: All right. Cross-examination.

5 CROSS-EXAMINATION

6 BY MS. PARDO:

7 Q. Good afternoon, Mr. CuvIELLO.

8 A. Good afternoon.

9 Q. You're opposed to elephants being in the circus, aren't  
10 you, sir?

11 A. Pardon me?

12 Q. Are you opposed to elephants being in the circus?

13 A. I'm opposed to using elephants in circuses, yes.

14 Q. If you could have your way there would not be any  
15 elephants at Ringling Brothers circus, is that right?

16 A. That's right.

17 Q. You have devoted 20 years to following Ringling  
18 Brothers with a video camera in an attempt to capture  
19 mistreatment on film, is that correct?

20 A. Following around the Bay Area, yes.

21 THE COURT: Let me ask you this. Are you opposed  
22 to any animals being in the circus?

23 THE WITNESS: Yes, I am.

24 THE COURT: Zoos?

25 THE WITNESS: Zoos I would like if they changed

1 their mission to be more rescue oriented.

2 BY MS. PARDO:

3 Q. In terms of circuses that you have targeted through  
4 your activities, is Ringling Brothers your main target?

5 A. No, we target every circus that comes through the Bay  
6 Area.

7 Q. How much videotape would you estimate that you have  
8 taken in the last 20 years of Ringling Brothers?

9 A. Hundreds of hours.

10 Q. Would you say it's your life's work to get elephants  
11 out of the circus?

12 A. I don't know if I would say that. I just -- it just  
13 kind of happened, you know. I don't know if I thought about  
14 it that way.

15 Q. You've dedicated years of your life to try to make this  
16 happen, isn't that right?

17 A. Yes, I've done it every year for 20 years.

18 Q. And you do this by videotaping Ringling Brothers  
19 employees and animals?

20 A. Yes, the employees when they are around the animals.

21 Q. And you've also protested the circus, is that right?

22 A. That's right.

23 Q. You've engaged in leafleting at the circus?

24 A. Yes.

25 Q. And have you also carried signs that are anti-circus at

1 those events?

2 A. Anti-animal use in the circus, but not anti-circus.

3 Q. And you've publicly spoken out to the media in which  
4 you encourage people not to go to the circus, is that right?

5 A. That's true.

6 Q. When did you learn all of the names of the handlers in  
7 the video footage that you --

8 THE COURT: You say anti-animal, but you're not  
9 opposed to the other non-animal events at the circus, correct?

10 THE WITNESS: Yes, or circuses like Cirque de  
11 Soleil.

12 Could you repeat the question.

13 BY MS. PARDO:

14 Q. When did you learn all the names of the handlers that  
15 you testified to in your direct examination?

16 A. There was no one point where I learned them all. It  
17 was over a period of the years, looking at the programs,  
18 hearing other people talk to them. At one point my partner  
19 would talk to the handlers.

20 Q. Did you know their names at the time that you made the  
21 videotape?

22 A. Some of them.

23 Q. What about the elephants, when did you learn the names  
24 of the elephants that you testified to on your direct  
25 examination?

1 A. Same thing, over the years, hearing them call their  
2 names out, seeing them in the program.

3 Q. Is it your testimony that all the names of the handlers  
4 that you identified in your direct have been listed in a  
5 program at some time?

6 A. I can't say they all have been, except maybe in the  
7 back where they list the employees of the circus. I can't say  
8 they have been highlighted, let me put it that way, as far as  
9 in the program. But since I have been buying programs, I have  
10 seen their names listed in the back.

11 Q. When did you first find out about this lawsuit?

12 A. I think it was the year 2000.

13 Q. And you've had contact with the attorneys for  
14 plaintiffs?

15 A. Yes, I have.

16 Q. When did you first get in contact with the plaintiffs'  
17 attorneys?

18 A. I don't remember. It would have probably been  
19 late 2000 or early -- or sometime in 2001.

20 Q. Did you contact them?

21 A. No.

22 Q. How did the contact happen?

23 A. I met a plaintiff in this case, Tom Rider, a former  
24 Ringling employee, and I don't exactly remember the details,  
25 but I'm sure it was through him that the attorneys contacted



1 me.

2 Q. Did you first hear about this lawsuit through Mr.  
3 Rider?

4 A. I don't think so. I think I heard about it prior to  
5 meeting Mr. Rider.

6 Q. And did you speak with anyone at Meyer, Glitzenstein &  
7 Crystal about video footage that you had filmed of the  
8 Ringling Brothers circus?

9 A. Within that time, you mean?

10 Q. Within any time.

11 A. Yes, I have.

12 Q. And when was that?

13 A. It was periodically through the years.

14 Q. Is this as far back as 2000 when you learned about the  
15 lawsuit?

16 A. I would say 2001.

17 Q. Were you ever instructed to save all of the footage  
18 that you have taken of the Ringling Brothers circus by Meyer,  
19 Glitzenstein & Crystal?

20 A. I don't know about that. I would save it anyway, so I  
21 don't remember any instructions from Meyer, Glitzenstein.

22 Q. Did Meyer, Glitzenstein & Crystal ask you to film any  
23 particular Ringling elephants?

24 A. I don't remember that either.

25 Q. Do you remember any instructions about what to film

1 going forward from that conversation?

2 MS. MEYER: Objection, Your Honor, she's assuming  
3 facts that are not in evidence.

4 THE COURT: You can answer the question.

5 THE WITNESS: I don't remember any instructions  
6 from Meyer, Glitzenstein.

7 BY MS. PARDO:

8 Q. Do you remember any conversations about what to film?

9 A. No, I don't.

10 THE COURT: Not to what?

11 MS. PARDO: What to film.

12 THE WITNESS: No, I don't.

13 BY MS. PARDO:

14 Q. Now, at some point did you send any footage or  
15 otherwise give footage to Meyer, Glitzenstein & Crystal?

16 A. Yes, I did.

17 Q. How did that work?

18 A. If I got something that I thought they might want for  
19 their case, I would contact them and say I got this footage,  
20 do you want it. And they would either say -- well, most of  
21 the time they would say yes, send it to me, we'll look at it.

22 Q. Would you actually send it through the mail?

23 A. Yes, I would.

24 Q. Did they pay you for that footage?

25 A. No, they didn't.

1 Q. Did you provide any videotape of Ringling Brothers to  
2 any of the plaintiffs in this case?

3 A. Not directly, but to Meyer, Glitzenstein.

4 Q. Did you ever provide any videotape footage to Nicole  
5 Paquette of the Animal Protection Institute?

6 A. Not in connection with this case.

7 Q. At any time?

8 A. Yes.

9 Q. When was that?

10 A. There was a bill in California, I believe to ban bull  
11 hooks, I think it was, and I think her group was a sponsor of  
12 that bill, and she asked me for some videotape, not just  
13 Ringling, but I think of the zoo stuff, and I sent her some  
14 videotape.

15 Q. What is the organization she's affiliated with?

16 A. The one at the time, I think it was called Animal  
17 Protection Institute. I'm not sure it's still called that.

18 Q. Have you given her any videotapes since the occasion  
19 that you just mentioned?

20 A. Not that I can recall.

21 Q. How much footage did you give her?

22 A. You know, I don't remember. No more than an hour.

23 Q. Was that unedited footage?

24 A. Unedited in what way?

25 Q. Was it the complete raw footage that you had taken of

1 the event?

2 A. Complete raw footage. Like -- well, my footage starts  
3 at certain points and ends at certain points. So do you mean  
4 from a starting point to an end point?

5 Q. Right. Did you give her everything you had from the  
6 starting to the ending point of your footage?

7 A. No.

8 Q. You gave her excerpts?

9 A. Excerpts, yes.

10 Q. And you gave her these videotapes for free, did you  
11 not?

12 A. Yes, I did.

13 Q. Did you ever provide videotape footage to Mr. Rider?

14 A. I don't think I provided it to him, but I showed him  
15 footage. Actually I did provide footage to him for the media,  
16 I did provide a tape for him for the media.

17 Q. Do you know what footage you provided to him?

18 A. Some of the footage that was shown here today and some  
19 footage that wasn't shown here today.

20 Q. Now, you testified that you filmed video footage that  
21 appears on Plaintiffs' Will Call 132, which we watched in the  
22 direct exam, is that right?

23 A. That's correct.

24 Q. And did you notice that those clips contained white  
25 clip numbers in the lower left-hand corner of the screen?

1 A. The date -- oh, the white clip numbers, yes.

2 Q. And you filmed clips 24, 25 and 26, is that correct?

3 A. I don't know offhand. I'd have to look at them.

4 Q. Well, we can take a look at a video declaration -- a  
5 declaration that you've done in this case entitled Declaration  
6 of Patrick CuvIELLO. Can we bring that up on the screen. The  
7 video declaration dated September 29th, 2008. I can put it on  
8 the ELMO.

9 Okay. I've put on the screen what's entitled  
10 Declaration of Patrick CuvIELLO. If you turn to the last  
11 page, I'd like you to take a look at the signature block. Can  
12 you see that, Mr. CuvIELLO?

13 A. Yes.

14 Q. And is that your signature?

15 A. That is my signature.

16 Q. Do you recall preparing this declaration?

17 A. I do.

18 Q. It's dated September 29th, 2008, is that correct?

19 A. Yes.

20 Q. Can you go to page 2 of that declaration, please. And  
21 turn your attention to paragraph H.

22 A. H did you say?

23 Q. H, yes. And it says San Francisco 2000, clips number  
24 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35. Did I  
25 read that correctly, sir?

1 A. Yes.

2 Q. And it also follows, I took this particular footage of  
3 the Ringling Brothers circus in San Francisco, California on  
4 August 30 and 31 and September 1st and 2nd, 2000. Is that  
5 correct?

6 A. Yes.

7 Q. And these 12 clips are true and accurate depictions of  
8 video footage that I recorded and they accurately represent  
9 what I saw when I took the footage on that day. Is that  
10 correct?

11 A. That's correct.

12 Q. So you are familiar with the clips --

13 A. Yes.

14 Q. -- that are listed on there?

15 A. Yes.

16 Q. And all of these clips that I've mentioned were taken  
17 at Cow Palace in the year 2000, is that right?

18 A. That's right.

19 Q. How many hours of videotape of Ringling Brothers did  
20 you film at the Cow Palace in 2000?

21 A. 2000, I would say a tape a show at least, so there were  
22 probably about five, six, seven, eight -- I'd say about seven  
23 or eight hours of video.

24 Q. And that would be for the entire run that the Ringling  
25 Brothers was at Cow Palace in 2000?

1 A. Yes.

2 Q. You had about seven to eight hours?

3 A. Yes.

4 Q. And did you film constantly from the time you arrived  
5 at the arena until you went home?

6 A. No.

7 Q. So you started and stopped filming at various times?

8 A. Yes.

9 Q. Once the camera was filming, how did you decide to  
10 pause or otherwise stop your filming?

11 A. When they would take the animals in and they weren't  
12 there, I would stop filming. Or if I couldn't see the  
13 animals, I would stop filming. But when I got there at the  
14 arena, I mainly would leaflet first. So I wasn't filming  
15 while I was leafleting.

16 Q. Were you looking for specific events to film?

17 A. Specific events? I'm not sure.

18 Q. Anything specific to film?

19 A. I was looking to film the handling of the animals and  
20 the living conditions.

21 Q. Does your camera have a zoom lens?

22 A. Yes, it does.

23 Q. Did it have one in 2000?

24 A. Yes, it did.

25 Q. When you recorded this particular video footage, the

1 Cow Palace footage that is on Plaintiffs' Will Call 132, did  
2 you videotape through an eyepiece on the camera?

3 A. Yes, it was an eyepiece.

4 Q. Did you record that footage with sound?

5 A. Yes.

6 Q. Your video footage from this time period has a time  
7 stamp, is that correct?

8 A. I don't believe it has a time stamp. At the time it  
9 was a new camera, and I didn't really know how to work the  
10 date and time. But right when you start the tape, the first  
11 time you start it on that day, there is a date stamp. I don't  
12 know if it's a time stamp. But after that it would go off  
13 after, I don't know, maybe five seconds. So there is a time  
14 stamp -- or a date stamp at the beginning of each -- each time  
15 I started that day.

16 Q. Was that time stamp set automatically?

17 A. As I said, I'd just bought that camera right before the  
18 circus came, so I didn't figure it out until the next year, or  
19 until -- before they came back the next year.

20 Q. Well, when you turned on the camera did you manually  
21 have to enter a date and time?

22 A. No, I did not, it was already on.

23 Q. So it was an automatic feature?

24 A. Yes.

25 Q. After you started videotaping with a date or time



1 stamp, did you use that feature continuously while you were  
2 videotaping?

3 A. As I said, I didn't use it, it was just on there, it  
4 came on automatically.

5 Q. You didn't deactivate it at any point in your  
6 videotaping?

7 A. I did not.

8 Q. And what did you do with the seven to eight hours of  
9 videotape footage that you had filmed at the Cow Palace in  
10 2000?

11 A. I preserved it.

12 Q. So do you still have the original unedited video  
13 footage of the Ringling Brothers at the Cow Palace in 2000?

14 A. Yes, I do.

15 Q. Where is that kept?

16 A. That is kept at my house.

17 Q. And how is that labeled?

18 A. It's labeled by date and year.

19 Q. Are were you ever asked by plaintiffs or their  
20 attorneys in this case to turn that unedited footage over to  
21 them?

22 A. I don't remember if they -- they never asked for all  
23 seven hours, no.

24 Q. Do you recall who else you have given the Cow Palace  
25 footage that we saw on Plaintiffs' Will Call Exhibit 132 to?

1 A. Could you repeat that.

2 Q. Do you recall if you've ever given the Cow Palace  
3 footage that we saw on your direct examination to anyone else?

4 A. Yes, I have.

5 Q. Who was that?

6 A. I've given it to the media, to other activists around  
7 the country, other groups.

8 Q. Which groups are those?

9 A. PETA is one of them. I think Last Chance for Animals  
10 in Southern California. Some local grassroots groups which I  
11 don't recall the names, but people that I contacted.

12 Q. Did you give it to the USDA?

13 A. Some of it I did. I gave it to the media as well.

14 Q. Now, with respect to the clips that we saw from the Cow  
15 Palace footage that were on Plaintiffs' Will Call Exhibit 132,  
16 those clips had white numbers in the bottom left-hand corner,  
17 did they not?

18 A. Yes.

19 Q. And those white numbers started with number 24 as  
20 played by plaintiffs' counsel, is that correct?

21 A. I wasn't paying that much attention. But if you relate  
22 that to me, I would agree with it.

23 Q. And they went in sequential order, did they not?

24 A. Yes.

25 Q. So first was played clip number 24, followed by 25, and

1 26, was that right?

2 A. Yes.

3 Q. And then we played -- plaintiffs' counsel played clip  
4 30 followed by 31 and 32, is that correct?

5 A. Like I said, I wasn't paying that close attention. If  
6 you relate that to me, I would agree with you.

7 Q. And you did review Plaintiffs' Will Call Exhibit 132  
8 prior to coming into court today, is that correct?

9 A. Yes, I did.

10 Q. And these clips that you identified in your affidavit  
11 from Plaintiffs' Will Call 132 are indeed snippets of video  
12 footage that was edited down from larger raw footage, is that  
13 right?

14 A. Excerpts of the whole footage.

15 Q. But they are edited down from the larger footage, is  
16 that right?

17 A. They are edited by taking a piece out. The content  
18 hasn't been edited.

19 Q. Those clips were several seconds each, is that correct?

20 A. Pardon me?

21 Q. Those clips were each under a minute, isn't that  
22 correct?

23 A. The ones I saw, yes.

24 Q. How did you decide what to edit out of the original Cow  
25 Palace footage?

1 A. I took out the hits, I took out the portions where the  
2 elephants were being hit with the hook or hit with the broom,  
3 or where Waley (phonetic) was threatening them with the bull  
4 hook. I took out portions where they were forcing them to  
5 defecate. That is how I decided.

6 Q. Now, did you actually add the white numbers that appear  
7 in the lower left corner of the footage?

8 A. Yes, I did.

9 Q. And you stated that Plaintiff Will Call Exhibit 132  
10 accurately depicts what you filmed at the Cow Palace in 2000,  
11 is that right?

12 A. That's correct.

13 Q. But the clips on Plaintiffs' Will Call Exhibit 132  
14 don't run chronologically by time stamp, do they?

15 A. Like I said, I'm not that familiar with it.

16 Q. As plaintiffs' counsel played these clips in the  
17 courtroom today, according to the time stamp, the clips jump  
18 forward and backward, isn't that correct?

19 A. You know, I wasn't paying that close attention to the  
20 clip numbers.

21 Q. We can show that briefly. If you can go to clip number  
22 24, and you can freeze the first screen capture.

23 Do you notice the clip number that is in the  
24 left-hand corner of the screen, sir?

25 A. Yes.

1 Q. And what is that?

2 A. 24.

3 Q. And what is the time stamp that is associated on the  
4 same screen?

5 A. 8:19:52 p.m.

6 Q. Could you go to the next clip as played by plaintiffs'  
7 counsel. And that is?

8 A. 25.

9 Q. Number 25. And can you read the time stamp that is  
10 associated with clip 25, please?

11 A. 8:23:47 p.m.

12 Q. I'm keeping track of these on the ELMO. I'll show it  
13 at the conclusion of this. Can you go to the next clip that  
14 was played, please. And that's number 26. It's number 26.

15 And can you indicate the white number on this one, Mr.  
16 Cuviello?

17 A. 25?

18 Q. I believe -- it's hard to see. I think it's 26  
19 actually.

20 A. 26. Okay.

21 Q. Can you read the time stamp?

22 A. 9:09:18 p.m.

23 Q. Okay. Now, I can continue, but as you can see, the  
24 progression is not going in chronological order by time stamp.  
25 Does that refresh your recollection as to what was played in

1 the courtroom in your direct?

2 MS. MEYER: Objection, Your Honor.

3 THE COURT: It's allowable. It's  
4 cross-examination.

5 THE WITNESS: It looked to me like they were going  
6 in order, but if you want to know if they're chronologically  
7 placed, I can tell you that wasn't a consideration when I put  
8 the time stamps on them.

9 BY MS. PARDO:

10 Q. Let's play number -- go to number 30, please. And that  
11 is at 8:44:58. And there is number 30 on the left-hand  
12 corner, is that correct, sir?

13 A. That's correct.

14 Q. And what is the time stamp in the right-hand corner?

15 A. 8:44:58 p.m.

16 Q. Does 8:44:58 p.m. come before or after 9:09:18 p.m.?

17 A. Depends on which day you're talking about. If it was  
18 the same day, it would come before.

19 Q. So that is a clip that has been shown out of order, is  
20 that correct?

21 A. Depends on what you're talking about by "order."

22 Q. Sorry?

23 A. Chronological order?

24 Q. Yes, we're talking about chronological order.

25 A. It may be that it was the next day. I don't know. But

1 I'm telling you chronological order wasn't a consideration  
2 when I put these numbers on here, so they may not be in  
3 chronological order, if that's what your concern is.

4 Q. So you're saying that this might be on a totally  
5 different day?

6 A. It might be, yes.

7 Q. And how --

8 MS. MEYER: I want to object on the grounds that no  
9 representation was made by me or the witness that these clips  
10 were shown in chronological order.

11 THE COURT: That's fine, you can redirect him on  
12 that point. It's cross-examination. In other words, the  
13 point is being made that this is a small snapshot of a larger  
14 snapshot that you have at home, right?

15 THE WITNESS: Yes.

16 THE COURT: All right.

17 BY MS. PARDO:

18 Q. So now you started to say, Mr. Cuviello, you believed  
19 these are from different days?

20 A. They could be. I'd have to check the original tapes.

21 Q. And how are we supposed to know that looking at these  
22 clips?

23 A. You're not going to know that looking at these clips.

24 Q. Is it still your testimony that the clips as played in  
25 this order reflect the accurate chain of events as you viewed

1 them at the Cow Palace?

2 A. That's true.

3 Q. Let's look at these in order by chronological time  
4 stamp now.

5 THE COURT: What is the duration of the entire film  
6 footage of these events depicted here?

7 THE WITNESS: Depicted here, the show -- on  
8 Wednesday, Thursday, Friday, the shows, they would have one  
9 show a day. So I'd be there for that show, and that show is  
10 about 2-1/2 hours. So that's what this would be, those  
11 evenings. And my videotape --

12 THE COURT: Do you have the entire show, is that  
13 correct?

14 THE WITNESS: No, because the animals weren't in  
15 there all the time. They would take the animals out to go  
16 into the show, so there would be times they weren't in there.  
17 So I would say maybe 1-1/2 to two hours each show I would  
18 videotape the animals.

19 THE COURT: Okay.

20 BY MS. PARDO:

21 Q. All right. Let's take a look at these clips as they  
22 progress in time stamp order.

23 A. Sure.

24 Q. Can you pull up the first one, please. Mr. Cuviello,  
25 can you identify the white numbered clip that is in the



1 left-hand corner of the screen?

2 A. 33.

3 Q. And can you identify the time stamp that is in the  
4 right corner?

5 A. 8:17:53 p.m.

6 Q. Can you go to the next one, please. Can you identify  
7 for the Court the white numbered clip in the left-hand corner?

8 A. 24.

9 Q. And the time stamp?

10 A. 8:19:52 p.m.

11 Q. Can you identify --

12 THE COURT: Explain the sequence of those numbers.  
13 They aren't in numerical sequence, you'd agree.

14 THE WITNESS: Right, they're numerical sequence.  
15 What I did when I put this --

16 THE COURT: The last one was 23 or 33?

17 THE WITNESS: 33, I think.

18 THE COURT: And I thought the time was earlier in  
19 the day.

20 THE WITNESS: The time was later, I think it was.

21 THE COURT: What is the time for 33?

22 MS. PARDO: 33 is 8:17:53 p.m.

23 THE COURT: It's earlier, but it's 33. This is 24,  
24 but it's later. So what does all that mean?

25 THE WITNESS: When I put these clips together I

1 didn't go chronologically. Just when I had the tape, I pulled  
2 it out and I put it in my computer, set the clips on my  
3 computer and put the number on it so we would have a reference  
4 point for each clip.

5 THE COURT: So they are not chronologically  
6 sequentially?

7 THE WITNESS: Exactly, yes.

8 BY MS. PARDO:

9 Q. Let's go to the next clip, please. What is the white  
10 clip number in the left-hand corner of the screen, Mr.  
11 Cuviello?

12 A. 25.

13 Q. The time stamp?

14 A. 8:23:47 p.m.

15 Q. Can we go to the next, please? The clip number, sir?

16 A. 32.

17 Q. And the time stamp?

18 A. 8:33:13 p.m.

19 Q. And the next clip, please. Can you read the clip  
20 number for the Court?

21 A. 30.

22 Q. And the time stamp?

23 A. 8:44:59 p.m.

24 Q. The next clip, please. And the time stamp?

25 A. 8:46:09 p.m.

1 Q. And can you go to the next frame, please. And what  
2 clip number is there?

3 A. 34.

4 Q. And the time stamp?

5 A. 8:48:03 p.m.

6 Q. And the next one. The clip number?

7 A. 35.

8 Q. And the time stamp?

9 A. 8:49:33 p.m.

10 Q. And the next one. And the time stamp?

11 A. The time stamp is 8:52:49 p.m.

12 Q. And the next frame, please. Can you read the clip  
13 number, sir?

14 A. 28.

15 Q. And the time stamp?

16 A. 8:54:26 p.m.

17 Q. The next. And the clip number?

18 A. 27.

19 Q. And the time stamp?

20 A. 8:56 p.m.

21 Q. And the final clip. Can you read the number, please,  
22 sir?

23 A. 25.

24 Q. I believe it is 26.

25 A. 26.

1 Q. The white background makes it a little difficult to  
2 see. Can you read the time stamp?

3 A. 9:09:18 p.m.

4 Q. If you would for one moment switch to the ELMO, I've  
5 written down the clip numbers as we just played them followed  
6 by the time stamps, and I've titled this Clips in  
7 chronological order by time stamp. Mr. CuvIELLO, plaintiffs'  
8 counsel did not play every clip of the Cow Palace footage that  
9 was listed on Plaintiffs' Will Call Exhibit 132, is that  
10 correct?

11 A. Yes, that's correct.

12 Q. But do these clips indeed by clip number go out of  
13 order?

14 A. By clip number? Yeah, they are not in order by clip  
15 number.

16 Q. So we start with 33 and we move to 24, then we go to  
17 25, and then up to 32 and so forth, is that correct?

18 A. That's correct.

19 Q. So the clip numbers are actually jumbled out of  
20 sequence, is that correct?

21 A. The clip numbers are not in sequence, yes.

22 Q. The right-hand column, that reflects the time stamp  
23 that we saw on the video. If you look down the list, is it  
24 correct that they actually proceed in time chronologically,  
25 starting with the earliest and going with the latest time, is

1 that right?

2 A. They do look like that from this point. If you can  
3 pull it down some I can check the beginning of it. Pull it  
4 down. 8:17, 8:19, 8:23, 8:33. Yes, they do look like they go  
5 in -- they give the appearance of going in time chronological  
6 order.

7 MS. PARDO: I'd like to mark this. I'm going to  
8 mark this as Defendants' Exhibit 307. Your Honor, at this  
9 time I'd like to move to strike the testimony about the Cow  
10 Palace clips. These are presented in order that does not  
11 actually depict the chronology of the events as they unfolded  
12 at the Cow Palace in 2000. We think they are substantially  
13 edited and they're misleading.

14 THE COURT: Why isn't this just like a wedding  
15 album? It shows all the good, and everything else in the  
16 wedding album, before and after, partying, the car driving  
17 off, and then someone selects some photos from the day's  
18 events?

19 MS. PARDO: Your Honor, if they actually did  
20 proceed in sequence, it would be our position that Your Honor  
21 might better see what actually happened at the Cow Palace that  
22 day.

23 THE COURT: You have the rule of completeness. If  
24 you want to offer everything else, you can.

25 MS. PARDO: We may do that in our case, but we

1 think they are unreliable, and they're not an accurate  
2 depiction of the events such that they do not meet the  
3 foundational requirements for Rule 901. Therefore it should  
4 be stricken.

5 THE COURT: All right. Any response?

6 MS. MEYER: Your Honor, Mr. CuvIELlo did not make  
7 any representations that it was a chronological accounting of  
8 what he saw that day. He simply said he saw those events on  
9 that day and that place.

10 THE COURT: I thought they were offered as a  
11 sampling of what he saw as well. I'll deny the motion. Under  
12 rule of completeness, like anything else, if there are other  
13 pictures in the film footage that defendant believes are  
14 favorable and should be made part of the record under the rule  
15 of completeness, you can certainly introduce them. But I'm  
16 not going to strike the photos.

17 BY MS. PARDO:

18 Q. Mr. CuvIELlo, as plaintiffs' counsel played those clips  
19 to you, was that actually how those events unfolded at the Cow  
20 Palace in 2000?

21 A. That wasn't all one day. Some of those clips were from  
22 different days. So I can't tell you, I don't remember the  
23 chronological order, that they happened in that order, I can't  
24 tell you.

25 Q. You can't tell us the order in which the events

1 actually happened, is that right?

2 THE COURT: The same visit, same circus visit, or  
3 different circus visits over different years?

4 THE WITNESS: It was the same circus at the -- they  
5 perform for five days, and it was over a period of five days.

6 THE COURT: Okay.

7 MS. PARDO: We'd like to play those clips in order  
8 so Your Honor may see that. And these clips are going to run  
9 in chronological order according to the time stamp.

10 (Video played).

11 MS. MEYER: Objection. We did not show that clip.

12 MS. PARDO: Your Honor, I believe you said we could  
13 show these for the rule of completeness -- under the rule of  
14 completeness.

15 THE COURT: Well, I think you have the opportunity  
16 to introduce that in your case in chief. Clearly you can do  
17 that at this point. You certainly are free to do that in your  
18 case in chief. It's nonjury, if you want to do it now, I  
19 guess I see no prejudice to doing that. I'm going to  
20 segregate it as appropriate. If they want to introduce it in  
21 their case in chief, they can do so.

22 MS. PARDO: We think while Mr. CuvIELlo is here it  
23 would make sense for him to be able to explain if the video  
24 differs from what he saw.

25 THE COURT: That's a good point. You live out of

1 town?

2 THE WITNESS: Yes.

3 THE COURT: That is a good point. It's nonjury.

4 MS. MEYER: I would like to also state for the  
5 record no completeness objection was made by the defendants to  
6 this exhibit.

7 THE COURT: But would you agree, even if they  
8 didn't make an objection, they could call the witness in their  
9 case in chief and introduce other pictures that he took?  
10 Would you agree with that, even absent an objection?

11 MS. MEYER: I'm not sure about that, Your Honor.  
12 He lives in California, he's been on our witness list  
13 since 2004 and they never subpoenaed or took his deposition.

14 THE COURT: I'll allow it. Since he's here, I  
15 don't want to not allow it and two days from now realize that  
16 was a mistake and we'd have to bring him back here. So  
17 provisionally I'll allow this, subject to whatever objections  
18 counsel want to make.

19 MS. PARDO: All these clips are on Plaintiffs' Will  
20 Call Exhibit 132, and we made our appropriate objections at  
21 the time.

22 THE COURT: All these exhibits were listed then?  
23 The ones that were not offered?

24 MS. PARDO: Yes, they were on Plaintiffs' Will Call  
25 132.



1 THE COURT: How can you claim unfairness if you  
2 listed them?

3 MS. MEYER: At this point I don't mind if they  
4 show --

5 THE COURT: I think it's fair. I'd rather do it  
6 this way. It's nonjury, it's provisional. Believe me, when I  
7 issue my ruling I'm not going to rely on any evidence that is  
8 incompetent. So go ahead. You're not objecting, is that  
9 right? I think that is the correct way to proceed. How long  
10 is this going to take? How many of these do you have?

11 MS. PARDO: It's under five minutes, Your Honor.

12 THE COURT: Okay. That's fine.

13 (Video played).

14 BY MS. PARDO:

15 Q. Mr. CuvIELlo, when you watched the sequence in  
16 chronological order you could see that the elephant who was  
17 approached by the handler with what you called pliers had been  
18 fooling with the pillar on the right-hand side of the screen,  
19 correct?

20 A. I don't accept that that's chronological order. As I  
21 said, these clips are from different days, so it's not  
22 chronological order.

23 Q. It appears that the elephant pulled something down from  
24 the pillar, is that correct?

25 A. No, that didn't appear to me at all.

1 Q. That's not what you saw on the tape?

2 A. That's not what I saw.

3 Q. Did you see the elephant -- did you see the handler  
4 direct the elephant away from that pillar?

5 A. Yes, I did.

6 Q. Do you have any idea if the elephant could have been  
7 harmed by something near the pillar?

8 A. No.

9 Q. You do not have an idea?

10 A. No.

11 Q. The videotape clips that we saw showed the elephant  
12 going to that pillar more than once, is that correct?

13 A. That's correct.

14 Q. She did that three times in the clips we just saw,  
15 isn't that right?

16 A. I wasn't paying that much attention. If you say that,  
17 I accept that.

18 Q. Now, in the clip where you zoomed in on the handler's  
19 waist area, clip number 29, how far were you standing away  
20 from the handler when you filmed that clip?

21 A. At that point I would say a good 30 or 40 feet.

22 Q. But you were able to zoom in as close as we saw on the  
23 video?

24 A. That's correct.

25 Q. Now, the film footage that we saw did not zoom in on

1 any of the elephants in the Cow Palace clips, is that correct?

2 A. I didn't pay that much attention.

3 Q. Did you have any footage zooming in on the elephant  
4 after the scene where you described pliers were used?

5 A. I don't recall. I'd have to go to the source tape to  
6 look at it.

7 Q. Wouldn't that have been something important to capture  
8 on video?

9 A. Depends on what was happening at the time.

10 Q. With respect to the clip number 32 where the handler's  
11 twirling his guide, do you remember that clip?

12 A. Again, I don't remember the specifics, but is that the  
13 one where he lifts his bull hook up like that (indicating)?

14 Q. That's correct.

15 A. Yes, I do remember that.

16 Q. Let's take a look at that one. That is clip number 32  
17 on Plaintiffs' Will Call Exhibit 132.

18 (Video played).

19 Q. Is it your testimony, sir, that the elephants are in  
20 fear of this action?

21 A. Yes.

22 Q. They don't appear to be reacting on the clip, do they?

23 A. Well, if you watch the elephant, she just touched the  
24 other elephant. That is a sign of insecurity. So if you play  
25 that back, you'll see when he lifted that bull hook, the

1 elephant on the far right touched the other elephant on the  
2 face.

3 Q. Where did you have elephant training, sir?

4 A. I've never been trained except to read books, watch  
5 videos, go see speakers speak.

6 Q. Clip number 25 showed a handler tapping an elephant on  
7 the trunk with a bull hook, is that correct?

8 A. Again, I'm not familiar with each clip by number. If  
9 you want to show it to me, I can tell you if that's correct.

10 Q. Go back to clip number 25 on Plaintiffs' Will Call  
11 Exhibit 132. Mr. Cuviello, where is the footage that occurs  
12 three minutes before this clip?

13 A. It would be on the source tape.

14 Q. But that footage is not on Plaintiffs' Will Call  
15 Exhibit 132, is that correct?

16 A. As I see here, it's not.

17 Q. I'd like you to run clip number 26 on Plaintiffs' Will  
18 Call Exhibit 132. I'm going to have you turn your attention  
19 back to clip number 26.

20 (Video played).

21 Q. This clip abruptly cuts off when the handler starts to  
22 pat the elephant, isn't that correct?

23 A. It looks like it, yes.

24 Q. Is the handler patting the elephant something you  
25 didn't want to get on the film?

1 A. No, the handler is patting the elephant because he's  
2 trying to force defecate her, so he's rubbing her stomach.  
3 That's why he's patting the elephant there. I have plenty of  
4 that on my video. I didn't put these on the plaintiffs' -- if  
5 you want to know why the plaintiffs edited these clips this  
6 way, you have to ask them, not me.

7 Q. So is it your testimony you didn't actually edit this  
8 clip?

9 A. I might have edited this one. I don't know. But you  
10 know, it's -- all I was trying to show them was the hit.

11 Q. You can't say for sure whether this clip has been  
12 edited further than how you provided it to plaintiffs?

13 A. I can't say for sure, no.

14 Q. Let's go to clip number 27. And that's also on  
15 Plaintiffs' Will Call Exhibit 132. 27.

16 (Video played).

17 Q. In clip 27 you film the handler going over a behavior  
18 with the elephant, correct?

19 A. Excuse me?

20 Q. Did you film this scene of the handler going over a  
21 behavior with this elephant, is that correct?

22 A. Going over a behavior. I'm not sure I understand what  
23 you mean by behavior.

24 Q. When the handler directs the elephant to stand on its  
25 hind legs, did you actually film this clip?

1 A. Yes.

2 Q. But you cut off this scene abruptly, didn't you?

3 A. I cut it off abruptly? I don't know if I'd use  
4 "abruptly." I cut it off after I showed him poking the  
5 elephant with the bull hook.

6 Q. The handler had started to feed the elephant the food  
7 reward and you stopped filming, correct?

8 A. I don't know if it was a reward so much as he was  
9 trying to force defecate her there, and it's trying to give  
10 her something to help defecate her.

11 Q. You didn't see the food in his hand?

12 A. As I said, I don't know if it's a reward as much as  
13 it's used to try and help force defecate her.

14 Q. My question is did you see the food in his hand?

15 A. Yes, I did see the food in his hand.

16 Q. You stopped filming at that time, is that your  
17 testimony?

18 A. No, I didn't stop filming at that time.

19 Q. So that is in the original footage, but it is not in  
20 the edited version, is that correct?

21 A. That's correct.

22 Q. Now, Mr. CuvIELLO, isn't it a fact that the Cow Palace  
23 video clips that we viewed from Plaintiffs' Will Call Exhibit  
24 132 were submitted to the USDA in connection with an  
25 investigation?

1 A. I don't remember exactly what was submitted, but I know  
2 a lot of those were submitted as part of the investigation.

3 Q. And this was to investigate the use of pliers, as you  
4 refer to them?

5 A. Pliers, yes.

6 Q. About how long were the video clips that you sent to  
7 the USDA?

8 A. I don't remember. I remember she came over to my house  
9 and we watched some clips, so I don't remember what I gave  
10 her, but I know we watched some clips as well.

11 Q. This was the investigator from the USDA?

12 A. Yes, Diane Ward.

13 Q. And you prepared an affidavit for the USDA about this  
14 incident as well, is that right?

15 A. I think she prepared it and I signed it.

16 Q. But you didn't name any of the elephants that are  
17 featured in the clips where you believe the handler used  
18 pliers, is that right?

19 A. I don't remember the affidavit that correct. If you  
20 have it and I didn't name them, then I didn't name them.

21 Q. Well, we can take a look at that. Can you bring up the  
22 affidavit that we previously showed. Actually that is the  
23 9/25/2000. We have not shown this yet. This is titled  
24 Affidavit, and if you can go to the last page, there is a  
25 signature on the bottom. Is that your signature, Mr.

1 Cuviello?

2 A. Yes, it is.

3 Q. And this is dated September 25th, 2000, is that  
4 correct?

5 A. That's correct.

6 Q. Turning back to the second page. Were you under oath,  
7 Mr. Cuviello, when you made this affidavit?

8 A. Yes.

9 Q. And if you can look in the middle paragraph on Page 2.  
10 In the middle paragraph you have, starting with "I witnessed"  
11 in the middle of the paragraph: I witnessed and videotaped  
12 the events in this videotape showing the babies getting hit  
13 with the ankus and the handler using a folding type pliers to  
14 pinch the sides of the baby elephants.

15 Is that what you wrote in your affidavit, sir?

16 A. Yes, it is.

17 Q. And you did not name the elephants by name at the time?

18 A. I did not.

19 Q. But you subsequently learned the name of the elephants?

20 A. That's true.

21 Q. Which elephant was that?

22 A. Kelly-Anne, I believe. Or the one with the pliers, I'm  
23 sorry, that was Juliet.

24 Q. You've also said that the handler uses a folding-type  
25 pliers to pinch the sides of the baby elephants. Do you have



1 footage of this happening with other elephants?

2 A. I've never seen it other than that one time.

3 Q. So why did you indicate elephants plural?

4 A. I don't remember.

5 Q. So is that an inaccurate statement in your affidavit?

6 A. I only saw him pinch the one elephant, so.

7 Q. So that would be an inaccurate statement then?

8 A. The elephants, the handlers, the baby elephants. Yeah,  
9 it was just one elephant.

10 Q. Can you pull that back up, please. And in the  
11 beginning part of that paragraph you have "I actually  
12 videotaped about 14 hours during this time period, but I have  
13 edited some of the abuse section onto one tape to give to  
14 Diane Ward." Did I read that correctly, sir?

15 A. Yes.

16 Q. You indicated to the USDA in this affidavit that you  
17 had 14 hours of footage during this time period?

18 A. That's what it looks like.

19 Q. Now, previously I believe I asked you how much footage  
20 you had, and I think you said around seven to eight hours, is  
21 that correct?

22 A. That's correct.

23 Q. What is the other seven hours that isn't covered in  
24 your testimony?

25 A. If I said 14 at that time, that's probably more

1 accurate.

2 Q. But the clips that you sent to the USDA were about how  
3 long in total?

4 A. I don't really remember. I remember she was at my  
5 house and she looked at some clips, but I don't remember how  
6 long the clips were.

7 Q. Under five minutes like we played in court today?

8 A. I don't know. I had a defecation tape, a clip that was  
9 quite a number of minutes, so I would say anywhere from five  
10 to 10 minutes.

11 Q. Now, I asked you questions about how you videotaped  
12 Plaintiffs' Will Call Exhibit 132 and the Cow Palace footage.  
13 Was your procedure for videotaping, sir, any different in  
14 other clips that were played in the courtroom today? Your  
15 procedure for videotaping?

16 A. At the Cow Palace in 2000?

17 Q. In any of the clips that we saw?

18 A. I'm not understanding your term "procedure."

19 Q. Well, the manner in which you videotaped at the Cow  
20 Palace in 2000.

21 A. Was it different than?

22 Q. What you've done for other clips that were exhibited in  
23 the Court today?

24 A. No. I held the camera and pointed it at the animals  
25 and videotaped.

1 Q. Did you also look through the eyepiece when you were  
2 videotaping for those other events?

3 A. There was a view finder on the camera, so I would look  
4 at that too.

5 Q. And for the other video clips that were shown that were  
6 not from the Cow Palace, did you also record those with a date  
7 and time stamp?

8 A. Some of them, the ones that had date and time stamp.

9 Q. Was that an automatic feature when you used that?

10 A. No. As I said, the following year I -- well, in  
11 between the time this circus, Ringling left in 2000 and the  
12 year 2001, I looked at my guide and figured how to put a date  
13 and time stamp on it.

14 Q. If you started filming with the date and time stamp,  
15 was that a feature that would run continuously until the  
16 camera was turned off?

17 A. Yes.

18 Q. Now, we saw some clips played today from other exhibits  
19 aside from 132. Did you also still have original raw footage  
20 from those clips that we saw?

21 A. I have raw footage of every clip that you've seen.

22 Q. How do you do the editing?

23 A. Well, the editing is if I see a hit, if I see a hook,  
24 if I see a jab, if I see any use of the bull hook that way, I  
25 cut those parts out, I excerpt them, and I would give them to

1 the media, give them to Cathy, give them to other groups. Or  
2 if I had a chaining or the stereotypic behavior, I would edit  
3 that part out, depending how long it was, and would also give  
4 that or provide that to other people as well.

5 Q. But you never provided the raw unedited footage to  
6 anyone, is that correct?

7 A. No.

8 Q. Can we go to clip 18 on Plaintiffs' Will Call Exhibit  
9 132. And you can freeze that. Do you know whether Feld  
10 Entertainment even owned the elephants in these clips?

11 A. This I do not know.

12 Q. Do you know whether they were owned by Richard  
13 Chipperfield?

14 A. I do not know that either.

15 Q. So you've no personal knowledge of whether these are  
16 actually Ringling elephants?

17 A. No, I don't know.

18 Q. Let's go to clip 21 on Plaintiffs' Will Call 132. And  
19 you can freeze that. Do you know whether Feld Entertainment  
20 owned the elephants shown in the foreground of this clip?

21 A. I do not know.

22 Q. Do you know whether these elephants were owned by Larry  
23 Carden?

24 A. I do not know that either.

25 Q. You have no personal knowledge of whether these are

1 Ringling elephants?

2 A. No.

3 Q. These elephants are in a pen, correct?

4 A. Correct.

5 Q. And they are not tethered, is that right?

6 A. They are not chained up, yes.

7 Q. If you continue the tape for another moment, if you pay  
8 attention to the top right corner as it plays --

9 (Video played).

10 Q. Can you see in the upper right-hand corner the elephant  
11 that is featured there?

12 A. Yes.

13 Q. What is that elephant holding in its trunk?

14 A. That is a tire.

15 Q. You testified on your direct that often there are tires  
16 placed in the pens, is that right?

17 A. I wouldn't say often, but sometimes.

18 Q. Let's go to clip number 44 on Plaintiffs' Will Call  
19 Exhibit 132.

20 (Video played).

21 Q. Did we also see this clip on your direct examination,  
22 Mr. CuvIELLO?

23 A. Yes, I did.

24 Q. And you can freeze that clip. This is a video of an  
25 elephant with a dark circle around its eye, is that correct?

1 A. That's correct.

2 Q. Do you know whether this elephant belongs to Feld  
3 Entertainment?

4 A. I do not know.

5 Q. Do you know whether it was owned by Larry Carden?

6 A. I do not know.

7 Q. Do you know if Ringling Brothers employees handle  
8 Carden elephants?

9 A. I know they did in 2001, I know there were some Carden  
10 elephants there, and possibly 1999 as well, but I know they  
11 did in 2001.

12 Q. So you have no personal knowledge as to whether this is  
13 a Ringling elephant or not?

14 A. No.

15 Q. Let's go to clip 69 on Plaintiffs' Will Call Exhibit  
16 132.

17 (Video played).

18 Q. And you can freeze that clip. Now, the time stamp on  
19 this clip shows 12:58:08 at this particular point, is that  
20 correct?

21 A. That's correct.

22 Q. How long had you been filming at this location on this  
23 particular day?

24 A. On this particular day at 12:58, typically there would  
25 be an 11:30 show. 11:30 show would mean it would start -- it

1 would go until about 2:00 o'clock. So I would say I had been  
2 filming from about 11:45 on.

3 Q. How many hours do you think you filmed after this  
4 particular clip?

5 A. Depends on how many shows they had that day. My guess  
6 would be they had two shows, so it would be another show. I  
7 would film probably a couple hours during the show. And then  
8 this is a Sunday because the tent is down, so they would have  
9 walked the elephants to the train this day and loaded them up,  
10 so I would have filmed that, maybe another hour.

11 Q. So is it your testimony that there was a tent at this  
12 venue during this time period?

13 A. Yes.

14 Q. And it's just not featured in these clips, is that  
15 right?

16 A. Yes, this is the last day. They pulled the tent down.

17 Q. Can you go to Plaintiffs' Will Call Exhibit 121A at  
18 5014.

19 (Video played).

20 Q. You can freeze that clip. Plaintiffs' counsel played  
21 for you clip number 7 which is at 5014 on plaintiffs -- sorry.  
22 Plaintiffs' counsel played for you Plaintiffs' Will Call  
23 Exhibit 132 at clip 7, was that correct?

24 A. Yes.

25 Q. Now, is the footage on Plaintiffs' Will Call Exhibit

1 132 all the footage you had of the scene with the elephants  
2 tethered outside like this?

3 A. All the footage I had of this scene, you're saying?

4 Q. The clip that we saw today on 132, was that all of the  
5 footage that you had taken of that event?

6 MS. MEYER: Your Honor, I've got to object. She's  
7 showing him some footage from a different exhibit that we  
8 didn't show him and asking him questions about footage from an  
9 exhibit that we did show him.

10 THE COURT: Is this part of 132?

11 MS. PARDO: I'm going to ask him questions after we  
12 establish what he saw on 132.

13 THE COURT: This is part of 132?

14 MS. PARDO: Not yet.

15 THE COURT: Let's stick with 132. You may have to  
16 ask a different question if you want to utilize this photo.

17 BY MS. PARDO:

18 Q. Okay. Plaintiffs' counsel played for you clip number 7  
19 on 132, is that correct?

20 A. I believe so, yes.

21 Q. And that featured an elephant tethered outside in the  
22 parking lot, is that correct?

23 A. If you show me the clip I can tell you. I don't  
24 remember each clip by number or time stamp.

25 Q. Do you know if clip number 7 has any other footage that



1 correlates with that scene?

2 A. Was that clip number 7 that you pulled out?

3 Q. No, I'm asking if you know if --

4 THE COURT: You have to show him the numbers.

5 THE WITNESS: I'm not familiar with the numbers.

6 BY MS. PARDO:

7 Q. Let's bring up clip number 7 at Plaintiffs' Will Call  
8 Exhibit 132, and that is at 20:23 to 20:26. We can come back  
9 to that.

10 Did you also review, Mr. Cuviello, Plaintiffs'  
11 Will Call Exhibit 121A when you completed your declaration  
12 about videotape footage?

13 A. If I wrote that in my declaration, then I reviewed it.

14 Q. Well, does in fact Plaintiffs' Will Call Exhibit 121A  
15 have footage of the elephant that is tethered outside of the  
16 venue, that is the same scene as what we saw earlier in the  
17 courtroom today?

18 A. As I said, I'm not that familiar with the exhibits that  
19 I reviewed, and I reviewed them for -- and went over them, and  
20 that's basically it. I didn't think about them until I got  
21 here today, so it's not something that is on my mind all the  
22 time. If you show me the clips I can talk to you about the  
23 clips.

24 Q. Let's bring up Plaintiffs' Will Call Exhibit 121A at  
25 5014. We want to play 5150. You can just let it run. You

1 can put it up from 5014 on.

2 (Video played).

3 Q. Is this footage that you filmed, Mr. Cuviello?

4 A. Yes, it is.

5 Q. And is this the elephant that is tethered that we saw  
6 earlier in the courtroom today that was played by plaintiffs'  
7 counsel?

8 A. There was another clip of this elephant, yes.

9 Q. Is this more footage of that scene that you videotaped  
10 that day?

11 A. It's more footage of that scene, yes, it is.

12 Q. Can we replay that backwards so we can illustrate --

13 (Video played).

14 Q. Mr. Cuviello, I'd like you to look at the handler as he  
15 approaches the elephant. And what we're watching is him  
16 kicking hay, is that correct?

17 A. That's what it looks like, yes.

18 Q. Has the elephant now stopped swaying?

19 A. She did.

20 Q. And you filmed this video clip, did you not, sir?

21 A. Yes, I did.

22 Q. Now, Mr. Cuviello, you also testified that you were  
23 actually present for video footage that was shown on  
24 Plaintiffs' Will Call Exhibit 133 at 10:59. I believe in your  
25 direct you stated that did you not take the footage but that

1 you were present for it?

2 A. Again, I'd have to see the clip.

3 Q. Can we go to Plaintiffs' Will Call Exhibit 133 at  
4 10:59.

5 (Video played).

6 A. Yes, I was there.

7 Q. Now, sir, how long did you videotape on this particular  
8 day?

9 A. This particular day I videotaped quite a bit. In fact  
10 this whole -- at this point when I was videotaping I  
11 videotaped for like 20 minutes straight.

12 Q. And how long did you stay at the venue that day?

13 A. That day I was there pretty much all day. This is the  
14 last show right before they load them up to the train, so I  
15 was there pretty much all day. This is a Sunday because the  
16 tent's down, it's loading up day, so.

17 Q. So is it your testimony that there was a tent up at  
18 some time?

19 A. There was a tent the first four days, and they pull it  
20 down on the last day.

21 Q. Is it also your testimony that there were pens that  
22 were set up?

23 A. Not this year, there were no pens, no.

24 Q. Can we -- do you know if there is additional footage  
25 from this scene that you actually filmed that is on

1 Plaintiffs' Will Call Exhibit 134?

2 A. I don't think there's video of mine on that exhibit. I  
3 don't know. But I did videotape this scene. My footage is  
4 much better actually than this footage.

5 Q. Mr. CuvIELlo, when is the last time you saw Gunther  
6 Gebel Williams at Ringling Brothers?

7 A. As I said earlier, I think it was either 1999 or 2001.  
8 I definitely saw him in 1999. I don't recall -- yes, he was  
9 there in 2001. I do recall him being there in 2001.

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

12 A. I am aware he passed away, yes.

13 Q. Have you ever been present at a train unloading with  
14 other protesters, Mr. CuvIELlo?

15 A. Yes.

16 Q. Have you gone to any of those events with other people  
17 from your organization?

18 A. Yes.

19 Q. And have you also met up with other activists that are  
20 not from your organization at train unloadings?

21 A. Yes.

22 Q. Have you gone to view Ringling Brothers with Barbara  
23 Grove before?

24 A. Yes, I have.

25 Q. Who's Barbara Grove?

1 A. Barbara Grove is an activist in the San Francisco Bay  
2 Area. She was an activist in the San Francisco Bay Area.

3 Q. Have you gone to view Ringling Brothers with Deniz  
4 Bolbol before?

5 A. Yes, I have.

6 Q. Isn't it true that you and other activists often yell  
7 comments at the animals and the Ringling staff while you're  
8 present?

9 A. No, it's not true at all.

10 Q. Isn't it true that you try to provoke some sort of an  
11 incident so that you may catch it on film?

12 A. No, that's not true at all.

13 MS. MEYER: Objection.

14 THE COURT: It's cross-examination. She can ask.  
15 It's allowed. Overruled.

16 BY MS. PARDO:

17 Q. Have you ever done that, sir?

18 A. No, I have not.

19 Q. I'd like to play Plaintiffs' Will Call Exhibit 121B at  
20 2:02:09, please.

21 (Video played).

22 Q. Mr. CuvIELlo, in the clip that was just played, was  
23 that your voice on the tape?

24 A. Yes, one of them.

25 Q. And are you the "Pat" that the female on the tape is

1 talking to?

2 A. Yes, I am.

3 Q. Who's the female voice on the tape?

4 A. That is Barbara Grove.

5 Q. Did you film this, sir?

6 A. No, she filmed it.

7 Q. And you were present when she said: Do it, do it  
8 around the people, I want him to do it, yes?

9 A. Yes.

10 Q. And were you present when she said, yeah, beat that  
11 elephant?

12 A. Yes, I was.

13 Q. Do you believe that provoking a human handler to hurt  
14 an elephant is an appropriate way to promote animal welfare?

15 MS. MEYER: Objection.

16 THE COURT: I recognize he's not an expert. He's  
17 someone who's been observing this for many years. What is  
18 your lay opinion?

19 THE WITNESS: I don't think she was provoking him  
20 to hurt the elephant; he was hurting her before she yelled  
21 that, so he was already hurting the elephant.

22 BY MS. PARDO:

23 Q. Did you try to stop her from yelling like that?

24 A. I did not. She was yelling in response to him hurting  
25 the elephant.

1 Q. I'd like to go to Plaintiffs' Will Call Exhibit 146,  
2 please. I'm going to have you identify the voice on this tape  
3 as well, Mr. Cuviello.

4 A. Okay.

5 Q. And that would be at 2:08:44.

6 (Video played).

7 MS. MEYER: I'm going to lodge an objection based  
8 on hearsay.

9 MS. PARDO: We're not offering this for the truth  
10 of the matter asserted. We want to use this for  
11 identification and also to show bias and motive.

12 THE COURT: All right, let's see it. I don't know  
13 what it is. Let's see it.

14 (Video played).

15 BY MS. PARDO:

16 Q. Is that your voice on the tape, Mr. Cuviello?

17 A. Yes, it is.

18 Q. Who was the other voice?

19 A. Deniz Bolbol.

20 THE COURT: Did you understand what he was saying?

21 THE WITNESS: What I was saying? Yes.

22 THE COURT: What were you saying?

23 THE WITNESS: I said: Hurry up, I just got him  
24 hooking the babies, on the video.

25

1 BY MS. PARDO:

2 Q. Is what was just done on that videotape what you  
3 consider to be hooking?

4 A. Yes.

5 THE COURT: Let me see it again. I'm sorry. I  
6 couldn't hear it. Could I see it again. Could you play it  
7 back again.

8 MS. PARDO: Play it back.

9 (Video played).

10 THE COURT: What is the bias there?

11 MS. PARDO: Well, we can leave that for argument,  
12 Your Honor, but we don't believe that the words of the  
13 videographer matches what is going on, and that affects the  
14 testimony as you're hearing it.

15 THE COURT: That's why I asked to see it again. It  
16 seems to me to be consistent, but you can argue it at some  
17 point.

18 BY MS. PARDO:

19 Q. Mr. CuvIELLO, you testified on direct about a small  
20 claims action that you brought against Ringling Brothers, is  
21 that correct?

22 A. That's correct.

23 Q. You filed a battery and assault claim against Feld  
24 Entertainment in Superior Court, Santa Clara County,  
25 California?



1 A. No, it was small claims court.

2 Q. Sorry. Small claims court.

3 A. Yes.

4 Q. And this incident that you filed suit about allegedly  
5 occurred on August 27, 2000 while you were filming Ringling  
6 Brothers animals outside the San Jose Arena, is that correct?

7 A. That's correct.

8 Q. In connection with that incident, weren't you accused  
9 of making noises at Ringling's animals to agitate them?

10 A. That is what the handler accused me of.

11 Q. Was it clucking noises to prompt the camels to run?

12 A. That is what the handler accused me of.

13 Q. Had you ever tried to provoke the animals before  
14 August 27 to get a reaction from the animal or the handler?

15 MS. MEYER: Objection, Your Honor.

16 THE COURT: He can answer it.

17 MS. MEYER: I object to the question because she  
18 put into the question that assumption that he had provoked the  
19 animal on some other date.

20 THE COURT: Have you ever gone to any of these  
21 circuses and provoked animals?

22 THE WITNESS: Never.

23 BY MS. PARDO:

24 Q. Was Mr. Alfredo Kuba with you on August 27, 2000 when  
25 the alleged incident occurred?

1 A. Yes, he was.

2 Q. Was he videotaping that day?

3 A. Yes, he was videotaping that day.

4 Q. Did you capture this incident that led to your lawsuit  
5 on video?

6 A. I captured -- I turned around as the guy approached me,  
7 so I captured him approaching me, I believe, and him grabbing  
8 my camera.

9 Q. Did this case go to trial on December 17th, 2001?

10 A. It was heard in the small claims. I don't remember the  
11 exact date, but that sounds about right.

12 Q. Did you submit your video as evidence in your case  
13 against Ringling Brothers?

14 A. Yes, I did.

15 Q. And Mr. Kuba was a witness in that case, is that  
16 correct?

17 A. I don't remember if he was a witness or not.

18 Q. You didn't win that case, did you, sir?

19 A. No, I did not.

20 Q. You took nothing on your claims, is that right?

21 A. That's right.

22 Q. And didn't the court find that your videotape was  
23 substantially edited and did not give a clear depiction of the  
24 chronology of the events?

25 A. I don't remember that.

1 Q. We can bring up the statement of decision. You can go  
2 to the next page, please. Now, this is Superior Court of  
3 California, County of Santa Clara. This is the statement of  
4 decision. Can you go to paragraph D, please. The court  
5 states in paragraph D that the video submitted to the Court  
6 for its review was substantially edited and does not give a  
7 clear depiction of the chronology of the events as presented  
8 by the plaintiff in his testimony.

9 Did I read that correctly, sir?

10 A. Pardon me?

11 Q. Did I read that correctly, sir?

12 A. Yes.

13 Q. And is that what the court determined?

14 A. Yes, the court determined that.

15 Q. Now, you've videotaped Ringling Brothers since this  
16 small claims action that was resolved in 2001, is that  
17 correct?

18 A. Yes.

19 Q. And you've known this lawsuit has been going on  
20 since 2000, correct?

21 A. That's correct.

22 Q. But you submitted video excerpts for this lawsuit that  
23 have been edited, have you not?

24 A. I submitted excerpts of video.

25 Q. And in the USDA investigation in which you've submitted

1 videotape you also submitted edited excerpts?

2 A. The excerpts are not edited, the excerpts are edited  
3 from a wider footage of tape.

4 Q. But you did submit edited pieces, did you not?

5 A. I submitted excerpts.

6 Q. Did you submit raw unedited footage?

7 A. The excerpts are raw, unedited.

8 Q. The full raw, unedited --

9 A. I didn't submit the full videotape, if that's what you  
10 want to know.

11 Q. What animal special interest groups or animal rights  
12 groups are you a member of, sir?

13 A. Citizens for Cruelty-Free Entertainment.

14 Q. Is that the only one?

15 A. That is.

16 Q. What is Humanity Through Education?

17 A. Humanity Through Education is a group my partner and I  
18 are starting up.

19 Q. Is that something that is going to replace Citizens for  
20 Cruelty-Free Entertainment?

21 A. Probably.

22 Q. Have you donated money to any animal rights  
23 organizations?

24 A. Yes, I have.

25 Q. And which ones are those?

1 A. Defenders of Wildlife, Animal Protection Institute,  
2 PETA, animal -- let's see, Friends of Animals, Physicians  
3 Committee for Responsible Medicine, numerous groups.

4 Q. Is API, the organization you just mentioned, a  
5 plaintiff in this lawsuit?

6 A. Can you repeat that question.

7 Q. Is API, the Animal Protection Institute, a plaintiff in  
8 this lawsuit?

9 A. Yes.

10 Q. Was Deniz Bolbol also a member of Citizens for  
11 Cruelty-Free Entertainment or Citizens for Cruelty-Free  
12 Circuses?

13 A. Yes.

14 Q. What about Mr. Alfredo Kuba?

15 A. No.

16 Q. Judy Jones, was she a member of that organization?

17 A. No.

18 Q. What about Nicole Paquette?

19 A. No.

20 Q. Was Barbara Grove a member?

21 A. No.

22 Q. Was Mr. Rider associated with that organization?

23 A. No.

24 Q. Does your organization have a website, sir?

25 A. We have a web page. We have a web page.

1 Q. What is the website address?

2 A. I think it's Ringlingabusesanimals.com.

3 Q. Ringlingabusesanimals.com?

4 A. Right.

5 Q. Do you feature a Ringling Brothers performance footage  
6 on that website?

7 A. Performance footage?

8 Q. Yes.

9 A. I don't know if we feature performance footage.

10 Q. Do you have photos of the performance?

11 A. We might have photos of the performance, I'm not sure.

12 Q. Do you have permission to use those photos on the  
13 website?

14 A. No, I don't need permission.

15 Q. What other circuses have you featured on your  
16 Ringlingabusesanimals.com website?

17 A. Well, only the circus Ringling Brothers, as it's  
18 Ringling abuses animals.

19 Q. Are there other circuses that are featured on that  
20 website?

21 A. No, it's a Ringling website.

22 Q. Are you affiliated with the Animal Liberation Front,  
23 sir?

24 A. No.

25 Q. Isn't it true that you have a link on your website that

1 takes you directly to the Animal Liberation Front's website?

2 MS. MEYER: Objection, Your Honor.

3 THE COURT: I'll allow it. It goes to bias,  
4 motive, maybe. I'll allow it. You can argue it.

5 THE WITNESS: I'm not that familiar with the  
6 website. Deniz put it up. But there might be a link on  
7 there.

8 BY MS. PARDO:

9 Q. It's your testimony Deniz Bolbol mans the website?

10 A. Yes.

11 Q. Do you have any input into that website?

12 A. No, she just linked to my videos on YouTube basically.

13 Q. And you've testified on direct that you've met Mr.  
14 Rider before, is that correct?

15 A. Yes.

16 Q. When did you first meet him?

17 A. I met Mr. Rider in 2000.

18 Q. What were the circumstances surrounding your meeting  
19 with Mr. Rider in 2000?

20 A. I met him on the phone first before I met him in  
21 person, and the circumstances were that my partner at the  
22 time, Barbara Grove, had heard about the lawsuit and had heard  
23 that Tom was at PAWS Sanctuary, Performing Animal Welfare  
24 Society. So she contacted him, and I asked her if she would  
25 give me his number so I could contact him.

1 Q. You mentioned that Barbara Grove was your partner at  
2 the time?

3 A. Yes.

4 Q. Has Deniz Bolbol also been a partner at some point?  
5 Has she also been a partner of yours?

6 A. Yes.

7 Q. By partner do you mean significant other?

8 A. Significant other and/or -- actually partner at the  
9 circus efforts and/or significant other.

10 Q. Did you know Mr. Rider when he worked at PAWS?

11 A. Yes, I did.

12 Q. Did you provide transportation to Mr. Rider when he  
13 left PAWS?

14 A. Yes, I did.

15 Q. Was this in May of 2001?

16 A. I don't remember the exact date, but 2001, I believe it  
17 was.

18 Q. And did you take him to your home after you picked him  
19 up there?

20 A. Yes, I did.

21 Q. How long did he stay with you at your residence?

22 A. A few hours, I believe.

23 Q. What did Mr. Rider tell you about the lawsuit?

24 MS. MEYER: Objection, Your Honor, hearsay.

25 THE COURT: Sustained.



1 BY MS. PARDO:

2 Q. Has Mr. Rider ever stayed at your residence for any  
3 other period of time?

4 A. Yes.

5 Q. When was this?

6 A. I don't remember the exact dates, but between 2001 and  
7 I'd say 2003, he stayed a few times.

8 Q. What was the longest period of time he stayed  
9 during 2001 to 2003?

10 A. I'm not sure of the exact time period, but I would say  
11 anywhere from one to two months.

12 Q. Did you ever receive mail at your residence from Mr.  
13 Rider?

14 A. Not that I can recall.

15 Q. Did Mr. Rider receive phone calls while he was at your  
16 residence?

17 A. Yes.

18 Q. Were any of those from Meyer, Glitzenstein & Crystal?

19 A. I don't know, I wasn't privy to them.

20 Q. I'd like you to pull up what has been marked as DX.51,  
21 Defendant's Exhibit 51, and go to page 15, please.

22 Mr. CuvIELLO, I have put a document on the  
23 screen, and I'd like you to take a look at it and tell me if  
24 you recognize it?

25 A. I've never seen it.

1 Q. I'd like you to look at the top portion, and it's a  
2 check addressed to Tom Rider, care of Pat CuvIELlo, 40 Woodhue  
3 Court, Redwood City, California. Is that your address?

4 A. That was my address.

5 Q. That was your address?

6 A. Yes.

7 Q. The document appears to have three checks copied onto a  
8 single page, is that correct?

9 A. Sorry. Has what?

10 Q. The document appears to have three checks copied onto a  
11 single page, is that correct?

12 A. Yes.

13 Q. And your name is listed on two of those checks, is that  
14 correct?

15 A. Yes.

16 Q. The middle check having redactions that we can't read,  
17 is that correct?

18 A. Yes.

19 Q. Did you actually receive these checks for Mr. Rider?

20 A. I don't remember these checks. If they came, they came  
21 in the mail, and it probably just said Tom Rider, care of Pat  
22 CuvIELlo, and I handed them over to him. But I don't really  
23 remember these.

24 Q. You don't remember getting these in the mail?

25 A. No, I've never seen these checks.

1 Q. So you didn't assist Mr. Rider in cashing them then?  
2 You don't recall that?

3 A. I know sometimes I would take him down to a cash  
4 checking place. I don't know if they were these checks or  
5 whatever. So, I don't know.

6 Q. Has the Citizens for Cruelty-Free Circuses ever  
7 publicly supported Tom Rider and his allegations against  
8 Ringling?

9 A. We supported him. I don't know publicly. We've  
10 supported him. I can tell you we support him wholeheartedly.

11 Q. In fact didn't Citizens for Cruelty-Free Circuses  
12 produce a flier that features Mr. Rider speaking out about  
13 Ringling?

14 A. Yes.

15 Q. Since Mr. Rider left his employment with the circus in  
16 1999 has Mr. Rider ever been present with you when you were  
17 videotaping Ringling Brothers?

18 A. Yes.

19 Q. And what occasions was that?

20 A. 2001 when Ringling Brothers was in San Jose. I think  
21 2003 I remember him in Oakland, California. Maybe San Jose, I  
22 don't remember him in San Jose that year. In 2006 in San  
23 Diego at the train, when the train came into San Diego, Mr.  
24 Rider was with us there.

25 Q. Is that all the occasions you can remember?

1 A. That's all I can remember, yes.

2 Q. Did you ever see Mr. Rider videotaping Ringling  
3 Brothers animals or employees after he left the circus?

4 A. Yes.

5 Q. Where did he do that?

6 A. The only one I can remember is -- well, I think he  
7 might have done it 2003 at Oakland. And he definitely did it  
8 2006 at the San Diego train unloading.

9 Q. Mr. Cuviello, you've never worked for a circus, have  
10 you?

11 A. No.

12 Q. You've never owned an Asian elephant?

13 A. No.

14 Q. You never performed husbandry on an Asian elephant?

15 A. No.

16 Q. You've never been employed as a handler of an Asian  
17 elephant?

18 A. No.

19 Q. You've never been employed as a trainer of Asian  
20 elephants?

21 A. No.

22 Q. You have no training as a veterinarian, correct?

23 A. Correct.

24 Q. Or a veterinary technician?

25 A. Correct.

1 Q. You've never provided medical care to an Asian  
2 elephant, have you?

3 A. No.

4 Q. You've never received formal training in the use of a  
5 guide?

6 A. No.

7 Q. Or any training in the use of a guide?

8 A. No.

9 Q. You've never received training on how to tether an  
10 Asian elephant, correct?

11 A. No.

12 Q. You don't know the first thing about how to care for an  
13 Asian elephant, is that correct?

14 A. I think I know the first thing.

15 MS. PARDO: I don't have any more questions.

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY MS. MEYER:

19 Q. Mr. Cuviello, do you have any more videotape that we  
20 haven't seen of Ringling Brothers employees hooking elephants  
21 with bull hooks?

22 A. Yes.

23 Q. Do you have any more videotape of Ringling Brothers  
24 employees hitting elephants with bull hooks?

25 A. I can't say hitting, I can't say yes on that.

1 Q. Do you have any more video footage of elephants in  
2 chains, Ringling Brothers elephants in chains?

3 A. Yes.

4 Q. And do you have any more video footage of Ringling  
5 Brothers elephants swaying?

6 A. Yes.

7 Q. If we showed all the video footage you have of Ringling  
8 Brothers elephants, how long would that take us?

9 A. We'd be here all day.

10 Q. It would take more than a day?

11 A. Could be.

12 Q. Were you ever asked by anyone representing the  
13 defendant to turn over any of your other videotape?

14 A. No.

15 Q. Were you ever served with a subpoena by anyone  
16 representing the defendant for any of your videotape?

17 A. No.

18 Q. Were you ever deposed by the defendant?

19 A. No.

20 Q. Do you know how long you've been listed as a witness in  
21 this case?

22 A. No.

23 Q. Has it been a while?

24 A. I think so, yes.

25 MS. MEYER: I'd like to bring up that affidavit,

1 that USDA affidavit that the defendant used of Mr. CuvIELlo if  
2 I could, because I want to ask him a question about that. Do  
3 we have a way to do that? Are you willing to let us look at  
4 it again? It is the USDA affidavit that you showed of Mr.  
5 CuvIELlo. You didn't give it an exhibit number, you just used  
6 it in your cross-examination. Thank you.

7 BY MS. MEYER:

8 Q. Mr. CuvIELlo, could we go to Page 2, go to Page 2 of  
9 that affidavit. Would you look in the middle of the --  
10 actually the first couple of sentences of the first full  
11 paragraph in that affidavit, if you could just -- why don't  
12 you read the first three sentences, first two sentences.

13 A. Where it starts out "in videotape number 2"?

14 Q. Yes.

15 A. In videotape number 2, I was monitoring the care and  
16 handling of the elephants while they were in Oakland, San  
17 Francisco, and San Jose, California from mid-August to  
18 September 2, 2000, videotaping as much as possible. I  
19 actually videotaped about 14 hours during this time period,  
20 but I have edited some of the abuse section onto one tape to  
21 give to Diane Ward.

22 Q. That's enough. Does that reading of those two  
23 sentences refresh your memory about what was captured on the  
24 14 hours that you refer to in that affidavit?

25 A. Well, it appears I'm talking about all three cities in

1 the Bay Area, not just San Francisco or Daly City.

2 Q. Thank you.

3 MS. MEYER: I need to go to clip number 18 on  
4 Exhibit 132. It was the clip that she showed to him. I don't  
5 know the time stamp. It's the -- excuse me, Your Honor.

6 THE COURT: All right.

7 MS. MEYER: I want to -- actually I want to show  
8 you again -- Ms. Pardo showed you clip number 18, she referred  
9 to it as, from Plaintiffs' Will Call Exhibit 132. And I'd  
10 like to show it again.

11 (Video played).

12 BY MS. MEYER:

13 Q. Mr. CuvIELlo, do you know whether or not the elephants  
14 we're seeing in this video clip were being maintained by the  
15 Ringling Brothers circus?

16 A. Yes.

17 Q. How do you know that?

18 A. They were with Ringling Brothers circus.

19 Q. Is there any other way to tell from this clip that they  
20 were being maintained by the Ringling Brothers circus?

21 A. The handlers are with Ringling Brothers. Robbie, the  
22 guy right there.

23 Q. What about the headdresses?

24 A. The headdresses say Ringling as well.

25 Q. The other clips that you were shown by Ms. Pardo when



1 she was asking you whether or not you knew those were Ringling  
2 Brothers elephants, was all of that video footage taken at the  
3 Ringling Brothers circus?

4 A. Yes, it was.

5 Q. And do you have any reason to believe that those  
6 elephants were not being maintained by the Ringling Brothers  
7 personnel?

8 A. No.

9 Q. Do you believe that they were being maintained by the  
10 Ringling Brothers personnel?

11 A. Yes.

12 Q. What is your basis for saying so?

13 A. The handlers were with Ringling. I know who Larry  
14 Carden is, and he was the only Carden working at Ringling  
15 Brothers at the time for the one she said in 2001. Or 1999,  
16 I'm sorry. So the handlers were not all Carden handlers, they  
17 were Ringling Brothers handlers. And again, they were wearing  
18 Ringling Brothers headdresses, and they were on Ringling  
19 Brothers' train and they were performing for Ringling  
20 Brothers.

21 Q. And you said that you support Tom Rider wholeheartedly,  
22 is that correct?

23 A. That's correct.

24 Q. Why do you say that?

25 A. Because I had been doing this for about 12 years prior

1 to meeting Tom Rider, so I had seen this stuff happening, so  
2 when Tom Rider came out, I knew what he was saying was true,  
3 because I had witnessed it myself, and I supported him in  
4 helping the elephants in the circus.

5 Q. Did you -- you said that you also videotaped with Mr.  
6 Rider over the last few years, is that correct?

7 A. That's correct.

8 Q. And so have you had an opportunity to observe him  
9 around the elephants?

10 A. Yes.

11 Q. And what did you observe?

12 A. Mostly I've only observed him around the Red Unit  
13 elephants, and he was a Blue Unit employee, except in 2006 at  
14 the San Diego train unloading they were Blue Unit elephants on  
15 the train, elephants he had worked with. However, I had asked  
16 Tom to move away from me because Tom was talking too much, so  
17 I didn't want him talking on my video, so I didn't observe him  
18 around those elephants.

19 Q. Have you ever had an opportunity to observe Mr. Rider  
20 doing any media concerning the Ringling Brothers elephants?

21 A. Yes.

22 Q. And what did you observe?

23 A. I observed Tom talking about his experiences at  
24 Ringling Brothers, what he observed at Ringling Brothers as  
25 far as the handling and the treatment of the elephants. And

1 that's it.

2 Q. How did he do?

3 A. How what?

4 Q. How did he do?

5 A. I thought he did well.

6 MS. MEYER: And that's all I have, Your Honor,  
7 except that I did want to make sure that we had moved in the  
8 clips we showed from Exhibit 133. I forgot to do that.

9 THE COURT: Which one was 133?

10 MS. MEYER: 133 is the clips that I had Mr.  
11 Cuviello authenticate based on him being at the scene and  
12 witnessing the events. It's the two clips that he did not  
13 actually take himself, but he verified that he had actually  
14 seen the events that were depicted in the videotape.

15 THE COURT: My recollection is you didn't offer him  
16 to authenticate the tape. He testified as to people he  
17 observed or recognized in the tape, and that's the limited  
18 purpose that that tape was used. I assume you're going to  
19 call someone else to authenticate the tape, I assume.

20 MS. MEYER: Your Honor, as I understand it, one way  
21 to authenticate videotape is to have someone who actually saw  
22 the events that are depicted in the videotape, just as in a  
23 photograph, say I was there on that date in that location, and  
24 I saw the events that are depicted on that videotape. That's  
25 what we've done with Mr. Cuviello.

1 THE COURT: I'll provisionally allow it. There may  
2 be some authority for that. I'll provisionally allow it.

3 MS. MEYER: Thank you, Your Honor.

4 THE COURT: Any other questions before I excuse the  
5 witness?

6 MS. PARDO: No, Your Honor.

7 THE COURT: Thank you. You may be excused. Please  
8 do not discuss your testimony with Mr. Rider or any other  
9 participants in the case.

10 THE WITNESS: Okay. Thank you, Your Honor.

11 THE COURT: Thank you. Have a safe trip home.

12 All right. We had some deposition testimony. Or  
13 do you have another witness?

14 MS. MEYER: It's just deposition testimony.  
15 Unfortunately I need to take a break if I could.

16 THE COURT: How long will this take? Not the  
17 break, how long will the deposition testimony take?

18 MS. MEYER: It depends. We'd like to move in quite  
19 a chunk of it on the grounds that the defendants have never  
20 objected to any of the -- they didn't object to a large part  
21 of --

22 THE COURT: You're talking about -- you're not  
23 talking about reading anything, are you?

24 MS. MEYER: No, I'd like to move it in without  
25 reading it.

1 THE COURT: Yeah.

2 MS. MEYER: The sections --

3 THE COURT: We'll take a short recess. There is  
4 some flexibility here. What about tomorrow? How many  
5 witnesses for tomorrow?

6 MS. MEYER: Two.

7 THE COURT: How long is your direct?

8 MS. SANERIB: They are both expert witnesses, so  
9 they probably will be a good time.

10 THE COURT: How many witnesses after that? Or is  
11 that the end?

12 MS. SANERIB: Not quite the end yet, Your Honor.  
13 On Wednesday we have a substantial amount of deposition  
14 testimony.

15 THE COURT: When you say deposition testimony, you  
16 mean offering by page and line?

17 MS. MEYER: Some of it we're reading into the  
18 record, some of it we're showing via videotape, Your Honor.

19 THE COURT: All right. That's fine. Do you want  
20 to take a short recess? That's fine.

21 MS. MEYER: Yes.

22 THE COURT: Okay. We'll do that.

23 BRIEF RECESS

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AFTER RECESS

THE COURT: Go ahead.

MS. MEYER: All right. Your Honor, the next thing we wanted to do was actually to present the 30(b)(6) testimony that we want to rely on from Mr. Gary Jacobson, which was taken on January 18th, 2008 and --

THE COURT: This is the defendant's corporate witness then, is that correct?

MS. MEYER: Yes, Your Honor.

THE COURT: Defendant's corporate witness --

MS. MEYER: Yes, Your Honor. And we have quite a lot of deposition testimony that we want to rely on from Mr. Jacobson --

THE COURT: His testimony has not been objected to then, correct?

MS. MEYER: A large amount of it has never been objected to, Your Honor, either at the deposition or in response to our designations pursuant to your pretrial order where you said all objections were due in September. There were no objections filed with respect to the first 179 pages of the deposition that I wanted to -- the pages and lines that I would like to move into evidence so we don't have to read them.

THE COURT: You listed his testimony as evidence

1 that you wanted to introduce in your case in chief, correct?

2 MS. MEYER: Yes, Your Honor. Yes, Your Honor. And  
3 what we've done is -- to make this a little bit easier --

4 THE COURT: Let me just see if there's an objection  
5 standing.

6 MR. SIMPSON: The operation of Rule 32 preserves  
7 all objections except to the form of the question until the  
8 time of trial. Therefore, even though it was designated, the  
9 rule specifically allows any objection to be made to the  
10 admissibility of evidence at the time it's offered. So, I  
11 don't think there's been any waiver of objections at all.

12 Moreover, there were objections made in the  
13 deposition to several questions, in fact, we had to come back  
14 for a second session as a result.

15 THE COURT: He was a 30(b)(6) witness designated as  
16 such, for what purpose?

17 MR. SIMPSON: There was a notice and a number of  
18 subject matters.

19 MS. MEYER: Your Honor, if I could have -- I have  
20 two responses.

21 THE COURT: Let me just -- I'm just trying to -- it  
22 may well be that some of the areas -- some of the subject  
23 areas -- I don't know. What were the areas that he was  
24 designated 30(b)(6) for?

25 MS. MEYER: He was designated as an expert -- the

1 corporate representative with respect to how the elephants are  
2 maintained on the road and at the Center for Elephant  
3 Conservation, and also the history and background of the  
4 elephants. It's a pretty wide range of factual information,  
5 Your Honor. I don't have it in front of me.

6 THE COURT: What is your -- go ahead.

7 MS. MEYER: I just need to make something clear,  
8 Your Honor. The deposition testimony that I'm suggesting we  
9 move into evidence without having to read it all into  
10 evidence --

11 THE COURT: You're not going to read it -- how many  
12 pages is it?

13 MS. MEYER: 179 pages. It was not objected to at  
14 all either at the deposition -- no objections at all -- or,  
15 Your Honor, in response to what you required in your pretrial  
16 order, which I believe supercedes whatever Rule 32 provision  
17 Mr. Simpson --

18 THE COURT: I said all objections should be filed  
19 by a certain date.

20 MS. MEYER: You did, Your Honor. Paragraph 7 of  
21 your pretrial order, you say -- it starts on Page 6: Any  
22 objection to any portion of the proffered prior testimony --  
23 you're referring to deposition testimony -- or accompanying  
24 exhibits, and any counter-designation of the testimony shall  
25 be filed in the objection to the pretrial statement on



1 September 16th. And no such objections were made to the  
2 testimony I wanted to move into evidence, Your Honor.

3 THE COURT: Counsel, it did say that.

4 MR. SIMPSON: Well, I think our position is that  
5 the rule preserves those objections, it's clear --

6 THE COURT: Notwithstanding the Court's order?  
7 The Rule 32 deals with pretrial and preserving objections, but  
8 basically when I said, look, we're going to go to trial and  
9 everyone -- you said, bring it on, and been saying, bring it  
10 on, ever since. And I issued a comprehensive pretrial order  
11 that was fair and wanted everyone to lodge their objections.  
12 I think it was incumbent -- let's assume that you're correct,  
13 I don't think you are. But for purposes of our discussion,  
14 what's the harm?

15 MR. SIMPSON: I think you just have to take it  
16 question by question. I mean, there were a lot of questions  
17 that were asked that may not be elicited in an admissible  
18 answer because the witness was speculating or didn't have  
19 personal knowledge. So, I think it's a problem to admit this  
20 wholesale, Your Honor.

21 THE COURT: 179 pages of deposition testimony?

22 MS. MEYER: It's not continuous, Your Honor, it  
23 covers certain pages and certain lines, certain pages, certain  
24 lines, between Page 1 and 179. That's just what we --

25 THE COURT: Is there any dispute as to what he

1 said? I mean, if so, maybe the parties can just give me an  
2 executive summary or something, summarize his testimony. I  
3 mean, he's your expert, he talks about how they're maintained,  
4 which is a relevant topic. I want to hear some testimony  
5 about that.

6 MR. SIMPSON: He is an expert. He's been listed  
7 as --

8 THE COURT: Is he going to be called as one of your  
9 witnesses?

10 MR. SIMPSON: He's going to be called in our case  
11 in chief.

12 THE COURT: Oh. Wait, wait.

13 MS. MEYER: Your Honor, this is 30(b)(6).

14 THE COURT: Let him talk. He's going to be called  
15 in your case in chief?

16 MR. SIMPSON: Yes, sir.

17 THE COURT: It comes in provisionally. It probably  
18 comes in because there were no objections. He's going to  
19 testify, he's available for cross-examination. His testimony  
20 is going to be highly relevant, I think, because I have all  
21 sorts of questions about: How do you maintain elephants if  
22 you can't use bull hooks? Do you both agree that elephants  
23 can't be safety maintained without the use of bull hooks?

24 MS. MEYER: No, Your Honor, we do not agree to that  
25 at all.

1           MR. SIMPSON: I think that's exactly why we're  
2 here. Their whole case is based on an attack on that method  
3 of handling an elephant.

4           THE COURT: Let me ask plaintiff's counsel. How  
5 could an elephant be maintained without the use of a bull  
6 hook --

7           MS. MEYER: Oh, Your Honor --

8           THE COURT: -- in captivity in the circus.

9           MS. MEYER: You're going to be hearing from our  
10 expert -- we have several expert witnesses who will be  
11 describing that.

12          THE COURT: Are they all out there on the left  
13 side?

14          MS. MEYER: Pardon me?

15          THE COURT: Are they all out there now?

16          MS. MEYER: I don't think any of them are here  
17 right today.

18          THE COURT: But there are ways in which plaintiff  
19 maintains that an elephant can be maintained --

20          MS. MEYER: Absolutely -- yes.

21          THE COURT: And controlled?

22          MS. MEYER: Many, many zoos have elephants without  
23 using bull hooks, yes.

24          THE COURT: How about circuses?

25          MS. MEYER: I don't know about the circuses, Your

1 Honor.

2 THE COURT: The zoos are a little bit different  
3 because elephants are kind of behind a wall, behind a moat,  
4 but they aren't in close proximity to patrons -- to visitors,  
5 but that's my naivety. If someone is going to explain all  
6 that -- that's a little bit different, a zoo setting from a  
7 circus setting.

8 MS. MEYER: It is a little bit different, but if in  
9 fact what has to be done to maintain them in a circus  
10 constitutes a take under the Endangered Species Act, that's --

11 THE COURT: All right. I'm going to allow --  
12 provisionally, I'll allow that. I think my order supercedes  
13 that rule, and even if it didn't, I don't see any unfairness  
14 because you plan to call him as an expert, and his deposition  
15 testimony would certainly be available for impeachment  
16 purposes or utilization of cross-examination, so I think it  
17 fairly comes in. Provisionally I'll allow it, and I'm going  
18 to afford anyone an opportunity to address why the Court  
19 shouldn't give it any weight during its consideration of all  
20 the relevant evidence, but provisionally I'll allow it.

21 But, no, I'm not going to read 179 pages. I plan  
22 not to. If I have to, I will. I'm not going to say I'm not  
23 going to do it. My preference would be not to do it. It may  
24 well be that once I hear his testimony I won't have to do it  
25 because I will have a clear understand as to just how -- or

1 maybe I won't have a clear understanding. I'll have an  
2 understanding of how defendants maintain the elephants should  
3 be maintained in a circus, right.

4 MR. SIMPSON: Yes.

5 THE COURT: Subject to what I'm going to hear from  
6 the plaintiff's expert. When am I going to hear from  
7 plaintiff's experts?

8 MS. MEYER: When are you going to hear?

9 THE COURT: Yes.

10 MS. MEYER: Starting tomorrow, Your Honor.

11 THE COURT: I've seen enough film footage.

12 MS. MEYER: So, Your Honor, what we've done --

13 THE COURT: Provisionally it's admitted into the  
14 record.

15 MS. MEYER: I've made a list of the pages and the  
16 lines that we would like to move into evidence.

17 THE COURT: You're going to have to do better than  
18 that. You're going to have to give me those pages and lines.  
19 It's like references -- not today -- but references to  
20 administrative record, you know, when people cite AR-125, and  
21 then we have to go and find it and we have to deal with  
22 ellipses and everything else.

23 So, you'll have to do more than that. You can file  
24 that, but at some point you're going to have to segregate out  
25 the pages and the lines so I can see exactly what the

1 testimony is. We don't have the resources to go back through  
2 all those depositions. First of all, we don't have the  
3 depositions. Maybe they have been filed, I doubt that, but  
4 that's not my big concern. My big concern is at some point  
5 being able to quickly locate the pages and the line references  
6 to the testimony. You can file that, that's great, but at  
7 some point -- we don't have the time to go back and find those  
8 pages.

9 MS. MEYER: I would like to just have this marked  
10 as an exhibit, though. Will Call --

11 THE COURT: That's fine. And it's admitted  
12 provisionally over objection.

13 MS. MEYER: Plaintiff's Will Call Exhibit 152.

14 THE COURT: But you can get an intern to start  
15 working on that at some point, though, Counsel. And that goes  
16 for both sides, in the event that there's additional  
17 deposition testimony. At some point you're going to have to  
18 segregate out the pages and the lines. I'm just reminded that  
19 it -- maybe not in case, and it's still not too late because  
20 there will be further proceedings after I take the issue under  
21 advisement, but -- I just don't recall, I think I did not say  
22 this in this particular case in the pretrial, but sometimes we  
23 require the parties to make color designations and different  
24 counter-designations --

25 MS. MEYER: We've done that, Your Honor.

1 THE COURT: All right. Okay.

2 MS. MEYER: Yes. Yes.

3 THE COURT: So, there should be a joint filing. At  
4 some point I think it would be appropriate -- once the  
5 deposition testimony comes in, just one exhibit with all the  
6 deposition testimony with the different colors. You got to  
7 make it easy -- maybe two, I don't know. It's going to have  
8 to be -- especially if you're dealing with the same portions  
9 of one person's testimony, there has to be an easy way to find  
10 it, Counsel, believe me. Otherwise, it will be hours trying  
11 to locate what we need to locate.

12 MS. JOINER: Your Honor, I have a question.

13 THE COURT: Yes.

14 MS. JOINER: In regard to this particular  
15 deposition, you had mentioned at pretrial that if you were  
16 going to take them back in chambers and read them, the time  
17 would be counted against the parties. And then you had also  
18 discussed, what about objections, and if they were going to be  
19 raised we would do it here. My question is, in this case the  
20 plaintiffs designated the entire deposition transcript, all  
21 266 pages, that's what went into their pretrial order.

22 So, they have now pared that back now in the  
23 72-hour notice provisions, and I have objections now about how  
24 it's been carved and pared out in terms of incompleteness.  
25 So, I'm not sure, how do you want us to address that and how

1 do you want us to do --

2 THE COURT: What is your recommendation? I want to  
3 be fair to you. What is your recommendation? And I want to  
4 be fair to myself as well because I will spend a fair amount  
5 of time on this.

6 MS. JOINER: And these take a lot of time. And we  
7 have a question, just procedurally, how do you want us to do  
8 it and we will do it. If you want to go about it where we get  
9 the list from plaintiffs, and they say, this is what we want  
10 to designate, and then we can have a day or two -- we can say,  
11 we think this particular designation is incomplete, these  
12 lines got cut out, and by the way, here is our  
13 counter-designation.

14 THE COURT: That sounds reasonable. That sounds  
15 fair. But anything -- look, I'm especially looking out for  
16 fairness to the Court as well because that's a time consuming  
17 process. I recognize we're going back and forth. First I  
18 said if there are objections, you want me to consider the  
19 objections during the evening hours, it would count against  
20 your time. I thought that was not fair to both sides, we  
21 limited the time. I still want to be fair. That sounds like  
22 a very reasonable suggestion. So, think about it over the  
23 evening hours and maybe we can do it along -- we'll give it  
24 some thought as well. There has to be an element of fairness  
25 because we don't have hundreds of hours to pour over



1 deposition testimony.

2           It may well be at the end of the day the parties  
3 can agree on a summary of what that testimony is, there's  
4 nothing wrong with that. We have all sorts of expert  
5 testimony introduced, especially in nonjury proceedings in  
6 summary form. The parties can fairly do it.

7           MS. JOINER: Well, we've kind of run into a backlog  
8 in terms of where we are in the notice provisions. If Your  
9 Honor would like to proceed with the live testimony,  
10 obviously, going forward perhaps we can work out something  
11 where we can just submit on paper, either we agree to it, or  
12 plaintiffs can say, we designate this. We can say, here is  
13 our incompleteness objection --

14           THE COURT: Think about it over the evening hours,  
15 I'm receptive to anything that is fair to the counsel and fair  
16 to the Court, recognizing that both sides worked very hard to  
17 pare this down to, what, 50 hours and whatever the time is.  
18 And I want to be fair about it, I want to give fair  
19 consideration to your evidence. And we can still be  
20 innovative and creative, and it may well be that a lot of this  
21 can come in in summary form and cut down -- I'm not asking  
22 anyone to truncate the significant portions of your testimony,  
23 but it shouldn't be that difficult to summarize the testimony  
24 of a witness.

25           He's called to testify about how elephants are

1 maintained. There should be, maybe 25 pages or 50 pages or so  
2 that make the point for defendants. There should be portions  
3 of the deposition testimony that you took de bene esse,  
4 30(b)(6), that counter what they contend to be the proper way  
5 to maintain experts -- proper way to maintain elephants, I  
6 don't know. But give it some thought over the evening hours.

7 MS. MEYER: Just so the record is not -- I don't  
8 want the record to be unclear about this, Your Honor. In  
9 addition to what we're moving in for Mr. Jacobson --

10 THE COURT: You're offering his entire --

11 MS. MEYER: No. No.

12 THE COURT: -- 179 pages, right?

13 MS. MEYER: Correct, that's what --

14 THE COURT: I do not have to pour over that, right?  
15 I'd have to pour over each page and line in an effort to  
16 determine just for what point -- I don't think that's fair to  
17 the Court.

18 MS. MEYER: It's just actually, Your Honor, a lot  
19 of different factual information that we want to be able to  
20 cite in our post-trial submission like: When was an elephant  
21 born? When did they get possession of it? Where did it come  
22 from? Which unit did it work on?

23 THE COURT: Then you -- you pull it out.

24 MS. MEYER: I have.

25 THE COURT: You pull it out and then you cite it in

1 your post-trial submission. That's fair. As long as there's  
2 a citation to the record.

3 MS. MEYER: Great.

4 THE COURT: That's fair.

5 MS. MEYER: Great.

6 THE COURT: But I'm not going to pour over that

7 179 --

8 MS. MEYER: That's fine, Your Honor. I just want  
9 to make sure it was admitted into evidence.

10 THE COURT: Provisionally it is. And to the extent  
11 there's testimony in the deposition that you believe is  
12 helpful to your post-trial submissions, then use it.

13 MS. MEYER: Yes.

14 THE COURT: It's your burden to cite to the page  
15 and the line, and also to attach a copy of the relevant page  
16 and line so I don't have to hunt and look for it, because we  
17 had this discussion this morning with about 20 lawyers in  
18 another species case where --

19 MS. MEYER: Polar bear.

20 THE COURT: -- we talked about creative ellipses,  
21 and lawyers still do that. Creative ellipses. And it's not  
22 fair. It's not fair to me. And you know what it does, is  
23 it -- well, it's not fair, it's not appropriate, and it's not  
24 pursuant to the rules either. So, I don't think I have  
25 objections to your utilizing -- your calling out, but you have

1 to produce the page and line. All right.

2 MS. MEYER: Fine, Your Honor.

3 THE COURT: You mentioned backlog? Backlog of  
4 what -- what are you concerned about?

5 MS. JOINER: Well, in the normal flow of things  
6 when you jump around -- we're not following the order in the  
7 72-hour notice provision, so we skip ahead and we skip back.  
8 So, backlog may not be the right word, but for instance, we  
9 took a witness today who was supposed to be the first day of  
10 trial. So, there are --

11 THE COURT: There shouldn't be a lot of that.  
12 Counsel, you need to give them advance notice, it's only fair  
13 to let you them know if you're going to call someone out of  
14 turn. I've extended the same courtesy to defense counsel as  
15 well. Indeed, I thought someone mentioned -- you may have to  
16 call someone during the plaintiff's case in chief, I thought I  
17 heard that, but let's be fair about it. Give them the notice  
18 that they are entitled to.

19 It was all set up because this is a very complex  
20 trial, there is a lot of paper, a lot of witnesses. It's an  
21 important trial to both sides, but there has to be the element  
22 of fairness and collegiality among counsel as well. So, you  
23 know who the witnesses are for tomorrow, right?

24 MS. JOINER: Yes, yes, we know --

25 THE COURT: Do you know who the witnesses are for

1 the rest of the week?

2 MS. JOINER: Yes, we know who the -- the 72-hour  
3 range, we've all been notified. But there is several  
4 deposition designations that were on these lists. So now I'm  
5 wondering if we're not actually doing them in the courtroom, I  
6 guess we're just going to live testimony and we're going to  
7 figure something else out because we haven't really followed  
8 the day-by-day line up, we're jumping around, which happens.

9 MS. MEYER: Your Honor, for the 30(b)(6) deposition  
10 that we're talking about, in addition to moving in a chunk of  
11 it, we also want to actually read some of it into the record  
12 to the Court, and actually show a little bit of it as well.

13 THE COURT: Of the 30(b)(6)?

14 MS. MEYER: Yes, and we would like to do that  
15 before our next witness because it sets up some of the  
16 testimony for the next witness.

17 THE COURT: It's only fair to let them know the  
18 page and the line number.

19 MS. MEYER: We've done that, Your Honor.

20 THE COURT: How much is it? How time consuming is  
21 that? If you're going to make your point in closing argument,  
22 why do I need to see it now. If it's not -- if it doesn't  
23 consume that much time, that's fine, I'll let you do it.

24 MS. MEYER: I think it will probably take 20  
25 minutes, maybe 25 minutes.

1 THE COURT: All right. Are the defendants on  
2 notice with respect to what portions of that?

3 MS. MEYER: Yes, Your Honor.

4 MS. JOINER: I don't agree.

5 THE COURT: Ms. Joiner is shaking her head no.  
6 Look, I need to talk to these people back here to sign some  
7 documents. Talk about it. It's only fair to let them know  
8 this evening. I'll let you do it tomorrow. But let me just  
9 take about 10 minutes to do what I have to do back here. No  
10 need to stand.

11 BRIEF RECESS

12 AFTER RECESS

13 THE COURT: Counsel, look, this is nonjury, if we  
14 need some modifications of the order so that we can proceed  
15 even in a smoother fashion, you know, I'm willing to do that.  
16 You should have fair notice of what is going to happen on a  
17 given day. You shouldn't have to sit there and wonder who  
18 they're going to call or what deposition testimony. But the  
19 burden is on the party -- you need to let them know the  
20 deposition testimony --

21 MS. MEYER: I have.

22 THE COURT: You have? Well, they say you hadn't.

23 MS. JOINER: No, we are we're jumping around in the  
24 order. But I did just speak to Ms. Meyer, we think we figured  
25 out a proposal we'd like to tell you about for Mr. Jacobson,

1 which would cure the immediate one with his deposition.

2 THE COURT: That's fine. Sure, go ahead. And  
3 anyone else, I'm willing to work with you. It's important  
4 that we have a clear record here.

5 MS. JOINER: So, this evening what we will do is  
6 we'll take from the notice list that we've gotten, the 72-hour  
7 notice. They are going to give me a list of the portions of  
8 the 30(b)(6) deposition that they want to just move in. And  
9 they will give me the portion that they want to actually play  
10 to you in court. And I will take those tonight and sit down  
11 and figure out if I have any incompleteness objections.

12 THE COURT: Great.

13 MS. JOINER: And I will figure out  
14 counter-designations, and in the morning, hopefully, we can  
15 get this done and get on to the experts.

16 THE COURT: That sounds reasonable --

17 MS. MEYER: I guess my only caveat to that, Your  
18 Honor, is to the extent -- all right, that's fine.

19 THE COURT: Speak now. If you have a question --

20 MS. MEYER: I just don't want this to go the  
21 process -- my concern is that you ordered them to tell us what  
22 their objections were back in September, and now suddenly I'm  
23 going to find out what their objections are tomorrow. And I  
24 guess I didn't really focus on that. That, to me, we thought,  
25 given what you ordered us to do in your pretrial order --

1 because we complied with it, we told them what all our  
2 objections to -- anything they designated, we told them what  
3 we objected to --

4 THE COURT: Are there any other people similarly  
5 situated to this one?

6 MS. MEYER: I think this is -- my position would be  
7 if they're saying that the problem here is that we designated  
8 his entire 30(b)(6) deposition, this would be the only person  
9 this would apply to.

10 MS. JOINER: That's part of the problem. The  
11 entire deposition was designated. Now those have been  
12 narrowed, and in the process of narrowing we do --

13 THE COURT: I think it's fair for everyone because  
14 at some point I need to focus on that portion. So, you might  
15 as well tell everyone what that portion is that you're  
16 relying, and I need to hear whatever the objections are, I  
17 think that's only fair.

18 MS. MEYER: Okay.

19 THE COURT: Otherwise it's just there.

20 MS. MEYER: I have no problem with that, Your  
21 Honor. Just so that the record is clear, we have given them  
22 specific pages and lines. We are planning --

23 THE COURT: The 179 pages?

24 MS. MEYER: No, no, no. In our obligation to  
25 provide them 72-hours notice. So, whenever that was, last



1 week some time we gave them a complete list, page and line.

2 THE COURT: That's the -- everyone just heard me  
3 talk about the page and line. All right. It's time to do a  
4 little more than that. I think that's only fair. You have to  
5 do it for the Court anyway because I'm not buying the page and  
6 line, you're going to have to give me the pages.

7 MS. JOINER: We'll --

8 MS. MEYER: Fine.

9 MS. JOINER: Thank you.

10 THE COURT: All right. In September, what, did you  
11 designate the entire deposition testimony?

12 MS. MEYER: We did, Your Honor, for that particular  
13 witness, but --

14 THE COURT: It wasn't until the 72 hours that you  
15 focused on the actual --

16 MS. MEYER: Correct, Your Honor, for that witness.  
17 That's correct.

18 THE COURT: But -- and that's the problem, and  
19 that's -- and now I see what -- I'm sympathetic to that.

20 MS. MEYER: We have no problem giving them the  
21 specific --

22 THE COURT: All right. I think that's only fair.  
23 Had you given them that information back in September, that is  
24 fair notice, but that's not what you did. So, I think that's  
25 a fair resolution, I'll let you proceed. But you're going to

1 have to give them the actual testimony other than the page and  
2 line references. That's what you're asking for? What is it  
3 that you're asking for now? You know the page and line  
4 references. I want to be clear on what you're asking for.

5 MS. JOINER: If I go back now to the 72-hour  
6 notice, all right?

7 THE COURT: You've got to hunt down and get the  
8 pages.

9 MS. JOINER: I did that this weekend. I went  
10 through that. There is 266 pages to the deposition. When I  
11 did this, I thought that this was going to be -- come into the  
12 courtroom and read it, and I set up everything about, you  
13 stopped at Line 20, you need to go to Line 22, it's  
14 incomplete.

15 THE COURT: Right.

16 MS. JOINER: And now what I'm hearing is that she  
17 wants to move part of this list in and she wants to play the  
18 other part. So, if Your Honor is amenable to moving part and  
19 playing part, I have to know which is which, and I will  
20 prepare the papers accordingly.

21 THE COURT: I totally agree with that. You've  
22 already gotten the substance of the pages and lines, so you  
23 don't need that anymore.

24 MS. JOINER: That's correct.

25 THE COURT: I think that's only fair. That's

1 absolutely fair.

2 MS. JOINER: That's correct.

3 THE COURT: It should not be an arduous task.

4 MS. MEYER: That's fine, Your Honor.

5 THE COURT: I didn't know you had done that. I was  
6 trying to accommodate you and make counsel give you that  
7 information, but you already have it.

8 MS. JOINER: I need to know how she's breaking it  
9 up now and what she --

10 THE COURT: If I had known last week -- I think  
11 that's going to be the ruling for both sides. The page and  
12 line references don't get you anywhere, someone has got to do  
13 an awful lot of work. You know if you've gone through pages  
14 and lines, you know exactly what the substance is. So, why  
15 shouldn't an opponent have the substance as opposed to just  
16 references to pages and lines. You've probably just  
17 designated pages and lines as well.

18 MS. JOINER: We had original counter-designation.

19 THE COURT: Yeah.

20 MS. JOINER: You'll recall way back when we had the  
21 cross colors, I think it wound up we were green, they were  
22 yellow and both of them were orange.

23 THE COURT: Yeah. Right.

24 MS. JOINER: But I think what is happening here is  
25 a function of the fact that when the parties originally

1 designated, the designations were much broader. During the  
2 course of this -- on the 72-hour list, things are being  
3 narrowed.

4 THE COURT: Absolutely. People look at the time  
5 constraints and --

6 MS. JOINER: Absolutely. And that's causing  
7 adjustments.

8 THE COURT: Yeah. All right. I'm willing to work  
9 with -- I'm willing to be flexible. But I agree with you.  
10 This should be -- at this point when you're introducing  
11 evidence and calling witnesses and introducing film clips, I  
12 think it's only fair to let your opponent know what you're  
13 doing beforehand. Tomorrow I'll let you do that. You have 20  
14 minutes of that, right?

15 MS. MEYER: I said I think 25.

16 THE COURT: You have some time. We'll allot some  
17 time for that and start at 10:00 o'clock. And then you have  
18 two witnesses tomorrow? How many additional witnesses from  
19 plaintiff, aside from the two tomorrow? Will tomorrow's  
20 witnesses take the entire day?

21 MS. MEYER: Probably, Your Honor. They are expert  
22 witnesses.

23 THE COURT: How many additional witnesses?

24 MS. SANERIB: There is, as Ms. Joiner referred to,  
25 deposition testimony that we've included on our 72-hour

1 filings that we still need to cover. We are just trying to  
2 accommodate out of town witnesses last week, and so some of  
3 that has been pushed into this week. So, there's a  
4 substantial amount of that. And then plaintiff, Tom Rider, is  
5 listed to testify on Thursday.

6 THE COURT: So, there are two experts and Mr.  
7 Rider?

8 MS. SANERIB: Correct.

9 THE COURT: And a lot of additional deposition  
10 testimony. Now, is any of that deposition testimony impacted  
11 by the conversation we just had about videotapes and clips?

12 MS. SANERIB: We will let defendant's counsel know  
13 if there's video being used, the specific portions that are  
14 going to be shown in video. But I don't think it's the same  
15 problems that we have with the Gary Jacobson 30(b)(6)  
16 deposition transcript.

17 THE COURT: In all likelihood, plaintiffs might be  
18 in a position to rest on -- let me finish -- to rest in June.  
19 Since you're shaking your head. You finish the sentence,  
20 plaintiff's side will be able to rest when?

21 MS. SANERIB: Hopefully by next Tuesday or next  
22 Wednesday, we have -- or next Wednesday or Thursday. Monday  
23 is a holiday next week. So, we have a few more expert  
24 witnesses that are coming into town next week, and then we'll  
25 be --

1                   THE COURT: Then I misheard you, I thought there  
2 were two experts. Maybe I just heard what I thought I wanted  
3 to hear. I heard two experts and Mr. Rider, but you have some  
4 other experts?

5                   MS. SANERIB: For this week, yes. And for next  
6 week we have additional, and another plaintiff representative  
7 next week.

8                   THE COURT: All right. We'll start tomorrow at  
9 10:00 o'clock then. Any other issues you want to raise?  
10 Everyone have a wonderful evening.  
11 COURT ADJOURNED AT 6:10 P.M.

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C E R T I F I C A T E

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

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Lisa M. Hand, RPR

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