

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE  
PREVENTION OF CRUELTY TO  
ANIMALS,

Plaintiff,

v.

FELD ENTERTAINMENT, INC.,

Defendant.

CA No. 03-2006

Washington, D.C.

Wednesday, February 11, 2009

10:18 a.m.

.....

TRANSCRIPT OF BENCH TRIAL - MORNING SESSION -  
DAY 6

BEFORE THE HONORABLE EMMET G. SULLIVAN  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs

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

For the Defendants:

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

Court Reporter:

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

Proceedings reported by machine shorthand, transcript produced  
by computer-aided transcription.

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

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

5 Will counsel please identify yourself for the record?

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

8 THE COURT: Ms. Meyer.

9 MS. SANERIB: Good morning, your Honor. Tanya Sanerib  
10 for the plaintiffs.

11 MR. CRYSTAL: Good morning, your Honor. Howard  
12 Crystal for the plaintiffs.

13 MS. WINDERS: Good morning. Delcianna Winders for the  
14 plaintiffs.

15 MS. SINNOTT: Good morning. Michelle Sinnott, tech,  
16 for the plaintiffs.

17 MR. SIMPSON: Good morning, your Honor. John Simpson  
18 for the defendant.

19 MR. SHEA: Good morning, your Honor. Lance Shea for  
20 the defendant.

21 MS. JOINER: Good morning, your Honor. Lisa Joiner  
22 for the defendant.

23 MS. PARDO: Good morning. Michelle Pardo for the  
24 defendant.

25 MS. PETTEWAY: Good morning. Kara Petteway for the

1 defendants.

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

4 MR. PALISOUL: Good morning. Derrick Palisoul,  
5 technology, for the defendant. Good morning.

6 THE COURT: Good morning. Welcome.

7 All right, let's proceed.

8 MS. SANERIB: Your Honor, before we call the first  
9 witness this morning, I just have one preliminary question for  
10 you. The parties met with Joe Burgess, and unfortunately we  
11 cannot upload video to the ECF system, so I just want to figure  
12 out the best procedure for getting you those videos that have  
13 been admitted for -- provisionally admitted into evidence.

14 THE COURT: For my personal use?

15 MS. SANERIB: Yes, for your personal use.

16 THE COURT: A DVD, I think. Yes, I think so.

17 MS. SANERIB: Should I just bring them to the  
18 courtroom in the morning?

19 THE COURT: That would be fine.

20 MS. SANERIB: Okay. And your Honor, the plaintiffs  
21 are going to call Dr. Ros Clubb.

22 THE COURT: All right.

23 MS. SANERIB: And Dr. Clubb's name is spelled R-o-s,  
24 and it's C-l-u-b-b.

25 COURTROOM DEPUTY: Please raise your right hand.

1           Do you solemnly swear that the testimony you're about  
2 to give will be the truth, the whole truth, and nothing but the  
3 truth?

4           DR. CLUBB: I do.

5           THE COURT: Good morning.

6           THE WITNESS: Good morning.

7           **ROS CLUBB, Ph.D, WITNESS FOR THE PLAINTIFFS, SWORN**

8                           DIRECT EXAMINATION

9 BY MS. SANERIB:

10 Q. Good morning, Dr. Clubb. Can you please state your full  
11 name for the Court?

12 A. Yes. It's Ros Edwards Clubb.

13 Q. Now, Dr. Clubb, I'd like to start off by talking about your  
14 educational background. Do you have a bachelor's degree?

15 A. Yes. I got a bachelor's in zoology from and Aberdeen  
16 University.

17 Q. And do you have any further educational degrees beyond your  
18 bachelor's degree?

19 A. Yes. I've got a Ph.D from Oxford University.

20 Q. Okay.

21           THE COURT: Can I ask you to keep your voice up a  
22 little bit?

23           THE WITNESS: Sorry.

24           THE COURT: If it means you pull the microphone down  
25 so it amplifies your voice ...

1 THE WITNESS: Is that better?

2 BY MS. SANERIB:

3 Q. And what is your Ph.D in?

4 A. It's in stereotypic behavior in zoo animals.

5 Q. And what was your Ph.D thesis on?

6 A. It was looking at the state of behavior in zoo carnivores  
7 and looking for correlates of their behavior in nature and why  
8 some develop stereotypies more than others.

9 Q. And can you briefly describe for the Court what stereotypic  
10 behavior is?

11 A. Yes. It's an -- it's commonly seen in captive animals, and  
12 it's very repetitive and in variance, a very fixed behavior  
13 pattern that doesn't seem to have any apparent function.

14 Q. And when you were conducting your research for your Ph.D  
15 thesis, what did that entail?

16 A. I looked at a very wide range of studies that have been  
17 done on over thirty species of carnivores in zoos, so in the  
18 captive environment. They commonly develop what's called pacing  
19 stereotypies, so the kind of pacing you would commonly see in a  
20 polar bear, for instance, in an enclosure, pacing back and  
21 forth. And I did an extensive literature review to try and  
22 characterize what those species -- how those species behave in  
23 nature in the wild, and I found that the ones that had the most  
24 wide-ranging behaviors, so a typical example would be the polar  
25 bear, for more and prudent to the development of pacing

1 stereotypies in captivity.

2 Q. And the methodologies that you used, are those common  
3 within the field of animal behavior?

4 A. Very much so. I use quite extensive literature searches to  
5 characterize the studies that had already been done by a very  
6 wide range of other researchers, and I also compiled what's  
7 called the comparative methods, so comparing what's done and how  
8 those animals behave in the wild versus how they behave in  
9 captivity, looking for a correlation between those behaviors.

10 Q. And after receiving your Ph.D, have you done any work  
11 regarding elephants?

12 A. Yes. At Oxford University just after my Ph.D I did a study  
13 on reviewing the welfare of elephants in European zoos, because  
14 up until then there had been various concerns about kind of  
15 welfare problems that have been seen or recorded in elephants in  
16 captivity, and we were approached to basically pool together all  
17 that research, built up a picture of the big picture basically.

18 Q. And when you said "we," who was the "we"?

19 A. Sorry. It was myself and my Ph.D supervisor, Georgia  
20 Mason, and we were commissioned by the RSPCA, the Royal Society  
21 For the Prevention of Cruelty to Animals, to look into this and  
22 to conduct the research.

23 Q. Okay. And does this (indicating) appear to be a copy of  
24 the study that you produced as a result of that work?

25 A. Yes.

1 Q. Okay. And can you explain for the Court a little bit more  
2 about the work you performed to compile this report?

3 A. Certainly. Quite a large part of it was again reviewing  
4 the literature, because there had already been quite a number of  
5 studies done on elephants in captivity, but also we looked and  
6 quite extensively at the behavior and how elephants live in the  
7 wild. And I also talked to people who work with elephants and  
8 keepers as well as zoo curators. I analyzed data from zoo stud  
9 books, which is looking at the births and deaths to look at  
10 mortality rates, infant mortality, as well as breeding rates.  
11 Yeah. That's it.

12 Q. And what generally did the study find?

13 A. What we find overall quite surprising range of welfare  
14 problems in zoo elephants, in captive elephants, and those  
15 included things like the development of stereotypic behavior, so  
16 there was quite -- about 40% of the ones that had been studied  
17 showed that behavior, and there was also evidence of shortened  
18 life spans. They didn't live as long as we would expect based  
19 on how long they live in the wild. Also, things like infant  
20 mortality rates. Quite a lot of infants dying; significant  
21 levels of foot and joint problems in captive elephants, so  
22 across the board there was quite a big body of evidence that the  
23 welfare was poorer in captive elephants.

24 Q. Did the report also include information on the training of  
25 elephants in captivity?



1 A. Yes. We spent quite a lot of time characterizing the kind  
2 of treating methods that are used in captivity in zoos and also  
3 the effects that that could have across the board.

4 Q. And what were the recommendations as a result of the  
5 report?

6 A. Well, the evidence was so strong that we thought that there  
7 was such significant welfare problems that we thought the  
8 captive population shouldn't be added to, so no more elephants  
9 should be added to that population before some work could be  
10 done to actually try and sort those issues out. So we  
11 recommended that no more elephants were imported into zoos, but  
12 also there shouldn't really be any more captive breeding,  
13 particularly because such high infant mortality rates, and that  
14 it should really be a matter of sorting out those welfare  
15 problems and solving them before that continued.

16 Q. Would you make that same recommendation today?

17 A. Well, certainly there's still significant evidence of  
18 welfare problems, but I think some recent papers I've been  
19 working on with them, some coauthors, we discussed that quite at  
20 length and we came to the conclusion that if there were  
21 facilities that were actually performing -- that were actually  
22 raising and breeding elephants well without any adverse effects,  
23 that there was really no reason to recommend that that should  
24 stop, so I think my view now would be that in those facilities  
25 it could continue but in other facilities it shouldn't, but

1 still that the issues need to be sorted out and solved.

2 Q. Okay. And did the Clubb & Mason report pertain to both  
3 Asian elephants and African elephants in captivity?

4 A. Yes, both species.

5 Q. Did you rely on studies of both Asian and African elephants  
6 in captivity for the report?

7 A. Yes, we did.

8 Q. And did you also rely on studies of Asian and African  
9 elephants in the wild, for the record?

10 MR. SHEA: Objection; leading.

11 THE COURT: I'll allow it.

12 THE WITNESS: Yes, we did.

13 BY MS. SANERIB:

14 Q. Did you see any reason to distinguish between these two  
15 species during your conclusions in the report?

16 A. We certainly looked for differences. There are some  
17 evidence that, for instance, Asian elephants have certainly  
18 smaller group sizes in the wild, and there was some evidence we  
19 found from the welfare aspect, the African elephants seemed to  
20 do better than Asian elephants on some measures, such as infant  
21 mortality, but other than that, they seemed to respond quite  
22 similarly and behave quite similarly in the wild.

23 Q. Dr. Clubb, would it surprise you if I told you in leafing  
24 through this report that there is approximately 28 pages of  
25 references that document this report?

1 A. No. It was -- it turned out to be quite a big study and  
2 there's a lot of work that's been done already, and a large part  
3 of what we were doing was trying to collect that, so that  
4 involved quite a lot of reference material.

5 Q. And have you continued to study elephants?

6 A. Yes. Since the publication of that report, I've carried on  
7 working on and particularly survival rates and breeding rates of  
8 elephants in zoos and published one paper with another one  
9 that's in review.

10 Q. And I forgot to ask this earlier, but when you were  
11 obtaining your Ph.D, did you take any courses in animal  
12 training?

13 A. Not particularly taught courses, but it's very much the  
14 kind of principles behind animal training are very much kind of  
15 integral to the study of animal behavior, so some of the course  
16 work I did was related to that, and then I did quite an  
17 extensive literature search looking for the publication of that  
18 report.

19 Q. Okay. And Dr. Clubb, where are you currently employed?

20 A. With the RSPCA in the UK.

21 Q. And what is your position with RSPCA?

22 A. I'm a scientific officer in the wildlife department in the  
23 science group.

24 Q. And what made you decide to take that position?

25 A. Well, I was really quite attracted to the RSPCA because

1 they're one of the few charities who actually have a group,  
2 specifically assigned group, employing scientists and applying  
3 science to the policies in the work of the society, so that's  
4 what really attracted me to that position.

5 Q. And have you done any work on elephant-related issues at  
6 the RSPCA?

7 A. I have done some work. Specifically creating kind of a  
8 literature review on the welfare of circus animals, which  
9 involves elephants, so to some extent, yes.

10 Q. What was that literature review done for?

11 A. The UK government is currently looking at the issue of wild  
12 animals in circuses, and they said that they were going to ban  
13 the use of certain wild animals species, so as part of that  
14 work, we compiled -- well, I as well as some other people at the  
15 RSPCA compiled research pertaining to that issue and then  
16 submitted it to the government, which they formed a working  
17 group to consider the evidence.

18 Q. And has the UK government made a decision yet on whether to  
19 ban any wild animals in circuses?

20 A. No. The decision is currently pending. The outcome of the  
21 actual working group was a report that was written by the  
22 chairman of the working group that is then being considered by  
23 the government. On the outcome of that, we weren't particularly  
24 happy with the whole process that it went through and that's  
25 some of the key issues were missing from the whole procedure, so

1 they didn't look at training or performance, which is obviously  
2 integral to the life of a circus animal. And also quite a large  
3 body of work that we submitted was discounted because it's  
4 recognized that there's not a huge amount of work done on circus  
5 animals in general, so we were given permission to look at the  
6 wide realm, so it's quite common to look at studies where  
7 animals experience similar conditions but not necessarily within  
8 that exact environment, so we submitted quite a large body of  
9 work outlining the implications for the different aspects of  
10 circus life, but that wasn't considered in the end, so I think  
11 the whole process didn't really go anywhere. I know the  
12 government's considering where to go next.

13 Q. Does the RSPCA have a policy on the use of wild animals in  
14 circuses?

15 A. Yes. They have a policy against the use of wild animals in  
16 circuses on the basis that the conditions, the experience are  
17 likely to cause distress and suffering.

18 Q. And are there any conditions in particular that the RSPCA  
19 is concerned about?

20 A. Yes. Particularly the extensive transport, so the regular  
21 transport of circus animals, which is known to cause a whole  
22 range of welfare problems, as well as the temporary nature of  
23 the enclosures and the housing, and obviously greatly restricts  
24 the kind of environment you can provide for those animals, as  
25 well as the confinement, so these in particular are concerns.

1 Q. And do you personally agree with that policy of the  
2 RSPCA's?

3 A. I think there's a lot of evidence to support that, and I  
4 think I don't have a fundamental opposition to the use of  
5 animals in circuses, so if they do experience good welfare and I  
6 was presented with that evidence, then fine, you know, I'd be  
7 happy with that, but I do think the weight of the evidence is  
8 against the ability to provide a suitable environment.

9 Q. Does the RSPCA have a policy against the use of elephants  
10 in zoos?

11 A. We don't have a policy against animals in zoos. We've got  
12 a general policy on captive environments that cause or are  
13 likely to cause distress and suffering. Obviously the work that  
14 we've done as well as the research that's come out recently, the  
15 RSPCA is concerned about the use of elephants in zoos because  
16 the weight of the evidence is that they do experience poor  
17 welfare.

18 Q. Okay. And Dr. Clubb, do you feel that despite working for  
19 an animal welfare charity that you still approach this case and  
20 your opinions in this case objectively?

21 A. Very much so. I got involved in this case a while before I  
22 started working for the RSPCA and I'm very much doing this --  
23 it's all being done on my own time and as an individual with my  
24 own basis for arguments and my own opinion and not as an  
25 employee of the RSPCA.

1 Q. Okay. Dr. Clubb, did you submit a copy of your curriculum  
2 vitae, along with your expert report in this case?

3 A. Yes.

4 Q. I'd like to show you a copy of that.

5 Ms. Sinnott, can you please pull up Plaintiff's Will  
6 Call Exhibit 113 at page 74?

7 Dr. Clubb, does this appear to be the C.V. that you  
8 submitted, along with your expert report?

9 A. Yes, it does.

10 THE COURT: Again, there's personal information on  
11 there, counsel, that I think the witness would appreciate if we  
12 just draw a line for the pertinent information.

13 MS. SANERIB: Your Honor, I move the admission of Dr.  
14 Clubb's C.V. as Plaintiffs' Will Call Exhibit 113D.

15 THE COURT: Any objection?

16 MR. SHEA: Not to the C.V. alone, your Honor. Of  
17 course we would object to the report, but not the C.V.

18 THE COURT: The C.V. is in.

19 (Plaintiff's Will Call Exhibit No. 113D admitted into  
20 evidence at about 10:36 a.m.)

21 MS. SANERIB: All right. Your Honor, I tender Dr.  
22 Clubb as an expert in animal behavior, and stereotypic behavior  
23 in particular.

24 THE COURT: Any voir dire?

25 MR. SHEA: Yes, your Honor.

1 THE COURT: Go ahead.

2 MR. SHEA: If it please the Court, Lance Shea for the  
3 defendant.

4 THE COURT: Good morning.

5 VOIR DIRE

6 BY MR. SHEA:

7 Q. Good morning, Dr. Clubb.

8 A. Good morning.

9 Q. Dr. Clubb, you're not a member of any elephant professional  
10 organizations such as the Elephant Manager's Association,  
11 correct?

12 A. Correct.

13 Q. You're not a member of the International Elephant  
14 Foundation, are you?

15 A. No.

16 Q. You're not a member of the British & Irish Association of  
17 Zoos & Aquariums, correct?

18 A. Correct.

19 Q. You live in the UK; is that right?

20 A. That's right, but members of that organization are keepers  
21 of animals.

22 Q. And you're not a keeper of animals, correct?

23 A. No.

24 Q. You are not a member of the American Zoo & Aquarium  
25 Association, are you?



- 1 A. No.
- 2 Q. Dr. Clubb, now, your Ph.D research, if I understood it  
3 correctly, was on carnivores kept in zoos; is that right?
- 4 A. That's right.
- 5 Q. Elephants aren't carnivores, are they?
- 6 A. That's right.
- 7 Q. Thus, your Ph.D research didn't cover elephants, did it?
- 8 A. No. It was strictly stereotypic behavior in carnivores.
- 9 Q. You're not a free contact elephant trainer, are you?
- 10 A. No.
- 11 Q. You've never trained an elephant using free contact methods  
12 at all, correct?
- 13 A. That's correct.
- 14 Q. You've never trained an elephant using what is called  
15 protected contact methods either, have you?
- 16 A. No.
- 17 Q. You just haven't trained an elephant under any management  
18 system or training system; is that right?
- 19 A. That's right.
- 20 Q. And you've never been trained to use tethers on an  
21 elephant, is that true?
- 22 A. That's true.
- 23 Q. And you've never managed or had elephants under your  
24 management, correct?
- 25 A. Correct.

1 Q. You've never worked for or consulted with a circus; is that  
2 correct?

3 A. That's right.

4 Q. You've never analyzed data regarding the births, deaths,  
5 movements, traits, etcetera, for zoo elephants in the United  
6 States, true?

7 A. True. No, just Europe.

8 Q. And the same is true for circus elephants, correct?

9 A. That's right.

10 Q. You've never conducted behavioral studies in captive Asian  
11 elephants, have you?

12 A. No.

13 Q. And at the time of your deposition, you had not designed  
14 any such study that had been carried out, correct?

15 A. That's right.

16 Q. Dr. Clubb, you've never conducted studies in wild  
17 elephants, right?

18 A. No.

19 Q. I'm sorry?

20 A. I'm sorry. That's right.

21 Q. Am I correct?

22 A. Yes.

23 Q. You've never seen an elephant trained with free contact  
24 methods, correct?

25 A. That's right.

- 1 Q. You have seen elephants handled by free contact methods,  
2 but for only one day in a zoo outside London, correct?
- 3 A. Yes, that's correct.
- 4 Q. And you've never seen directly FEI's free contact methods,  
5 correct?
- 6 A. Not directly, no. Just on the video evidence I've  
7 reviewed.
- 8 Q. Did I hear you just say just on the videos you've reviewed?
- 9 A. Yes.
- 10 Q. You got those videos from plaintiffs' counsel in this case,  
11 correct?
- 12 A. Correct.
- 13 Q. Are there any other videos you've reviewed than those given  
14 to you by plaintiffs' counsel in this case?
- 15 A. On the FEI?
- 16 Q. On the FEI elephants.
- 17 A. No, no.
- 18 Q. Now, you did not attend either of the elephant inspections  
19 in this case, did you?
- 20 A. No. I've just seen the footage from it.
- 21 Q. So you've not seen the FEI elephants directly with your own  
22 eyes, correct?
- 23 A. Not directly, no.
- 24 Q. You've never seen protected contact methods used with  
25 elephants, correct?

- 1 A. No.
- 2 Q. I'm correct, aren't I?
- 3 A. Sorry. Yes.
- 4 Q. And you've never seen veterinary procedures done in  
5 protected contact management, true?
- 6 A. True.
- 7 Q. And you don't recall ever seeing a device such as an  
8 elephant restraint chute used, correct?
- 9 A. No. I haven't seen it used directly, no.
- 10 Q. You've never visited Asia to see the methods by which  
11 captive elephants are managed or trained, correct?
- 12 A. Correct.
- 13 Q. And you've never visited Africa to see the methods by which  
14 captive elephants are trained or managed, correct?
- 15 A. Correct.
- 16 Q. You've never handled or seen an ankus used by FEI, true?
- 17 A. Not directly. Just from the video evidence and the images  
18 for this case.
- 19 Q. I see. You've never seen one used with your own eyes,  
20 correct?
- 21 A. Correct.
- 22 Q. You've never held one, correct?
- 23 A. Correct.
- 24 Q. You've never treated an elephant for any ailment, correct?
- 25 A. Correct.

1 Q. You're not a veterinarian, is that true?

2 A. No, I'm not a veterinarian. I use veterinary studies and  
3 medical studies in my research, but I'm not a veterinarian.

4 Q. So you've never cared for an elephant, correct?

5 A. Correct.

6 Q. Now, Dr. Clubb, you mentioned the report you did with Dr.  
7 Mason right after you got your Ph.D and were shown a copy of it,  
8 is that true?

9 A. That's true.

10 Q. Now, that report, can I call that the Clubb & Mason report,  
11 is that a good term for it?

12 A. Yeah.

13 Q. Okay. The Clubb & Mason report, did I understand  
14 correctly, was issued by your employer, the RSPCA?

15 A. They funded the study, yeah, and they published it.

16 Q. They published it?

17 A. Yes.

18 Q. It was not published in a peer review journal, was it?

19 A. No.

20 Q. Dr. Clubb, that report is, if I understood correctly, was  
21 based on a review of stud book data for zoo elephants in Europe;  
22 is that right?

23 A. That formed part of it, yes.

24 Q. Now, it certainly did not cover zoo elephants in the United  
25 States, did it?

1 A. No.

2 Q. And it didn't cover circus elephants in the United States,  
3 did it?

4 A. No.

5 Q. So it didn't cover the FEI elephants, did it?

6 A. No.

7 Q. Dr. Clubb, that study, the Clubb & Mason report, was a  
8 literature review rather than the result of field data  
9 collection or empirical study; is that right?

10 A. Yeah. The literature review included field studies and  
11 empirical data with the premise that we were going to survey all  
12 that was known about elephant welfare in captivity. Obviously  
13 we couldn't go out and do those studies ourself. I had to rely  
14 on researchers who did that and then use that information.

15 Q. I see. But you didn't go out and do any studies with  
16 elephants, correct?

17 A. Correct.

18 Q. Now, as it stands now, you would stop captive breeding  
19 programs, wouldn't you?

20 A. Well, no. As I just explained, since the publication of  
21 that report we've kind of reconsidered our position and I think  
22 if facilities are breeding well and the elephants aren't showing  
23 any adverse signs of harm or poor welfare, then I see no reason  
24 for them to not carry on but on that basis, so I've kind of  
25 altered my position, I think, based on the evidence I've

1 reviewed since the publication of that report.

2 Q. Is the opinion you just gave based on your knowledge of  
3 captive breeding programs in Europe?

4 A. Just generally because part of the evidence I reviewed for  
5 the report as well as since that for the papers I've published  
6 recently are across the board, including work in the U.S.

7 Q. I see. Now, you just -- have you published a paper  
8 regarding captive breeding programs in North America?

9 A. No. No. I've just reviewed the evidence, or scientific  
10 literature pertaining to elephants in captivity, which includes  
11 the U.S. studies.

12 Q. I see. But you've not published anything on that, have  
13 you?

14 A. No, I haven't.

15 Q. And the paper that counsel just mentioned to you that you  
16 recently published on longevity, that has nothing to do with  
17 U.S. elephants, does it, none of the data in it are from North  
18 America, are they?

19 A. No, they're from Europe.

20 Q. Now, Dr. Clubb, let me show you page 134 of your  
21 deposition, beginning on line 22, regarding captive breeding  
22 programs. I'll ask you to follow along as I read.

23 Question: Are there captive breeding programs in  
24 Europe now?

25 Answer: Yes, there are.

1           Question: So as it stands now, you would be in favor  
2 of stopping those captive breeding programs?

3           Answer: Until the point where the welfare issues were  
4 resolved.

5           Question: How long would that take?

6           Answer: I cannot predict anything like that. I don't  
7 have the forethought to predict how many years of research it's  
8 going to take to do that.

9           Did I read your testimony correctly?

10          A. You did.

11          Q. And you hold this view -- well, strike that question.

12                 Dr. Clubb, it's your opinion that all wild animals  
13 should be banned from circuses, isn't it?

14          A. That's the position of the RSPCA.

15          Q. And that's your position too, isn't it?

16          A. Well, as I said before, I think the weight of the evidence  
17 I've seen is that the circus environment, it would be very  
18 difficult to provide for the needs of animals or wild animals in  
19 that kind of environment, so the weight of the evidence I think  
20 is against keeping animals in captivity. I'm sorry. Wild  
21 animals in circuses, but, as I said, if someone presented me  
22 with the evidence that an animal is experiencing good welfare in  
23 a circus, I'm not fundamentally opposed to it.

24          Q. Let me show you page 132 of your deposition, beginning of  
25 line 15.



1           Question: I see. What wild animals? Give me a list  
2 of animals that the RSPCA believes should not be kept in  
3 circuses.

4           Answer: We believe all wild animals should not be  
5 kept in circuses.

6           Did I read that correctly?

7           A. Yes.

8           Q. And what is your definition of a wild animal?

9           A. An animal that hasn't been domesticated.

10           MR. SHEA: Your Honor, those are my questions at this  
11 time. We move to strike or to exclude Dr. Clubb's testimony  
12 from this matter based on the arguments and our Notice of  
13 Daubert Objections, the Defendant's Notice of Objections of  
14 Daubert objections, and the foregoing testimony. We move to  
15 exclude pursuant to Rule 402 and 703. She simply is not an  
16 elephant expert, in our view. Her major writing about elephants  
17 was issued by her animal rights employer rather than published  
18 in a peer review journal. The report does not cover the FEI  
19 elephants or any elephants in North America. She has conducted  
20 no research directly with elephants and has not observed  
21 elephants or their training or their management in any  
22 meaningful way. She has no expertise in elephant training or  
23 management under any management system and has never provided  
24 care for any elephant and has never worked for or consulted with  
25 a circus. We argue that she should not be able to testify about

1 elephant training or management generally, elephant training or  
2 management of elephants or the effects of those methods on  
3 animal welfare, FEI's current practices or the behavior of  
4 captive or wild Asian elephants or behavioral comparisons of  
5 same.

6 THE COURT: All right.

7 Counsel, any response?

8 BY MS. SANERIB:

9 Q. I have a couple of follow-up questions for you, Dr. Clubb.

10 When you were preparing the Clubb & Mason report, I  
11 believe you mentioned you consulted with different individuals  
12 about that. Did you consult with individuals who have trained  
13 elephants in captivity?

14 MR. SHEA: Objection. It calls for hearsay.

15 THE COURT: She can answer the question whether she  
16 consulted with them as opposed to telling us what an individual  
17 may have said.

18 THE WITNESS: Yes, I did.

19 BY MS. SANERIB:

20 Q. And they're both trainers in traditional free contact as  
21 well as protected contact elephant management?

22 A. Yes.

23 MR. SHEA: Objection; leading.

24 THE COURT: Refrain from leading, counsel.

25 MS. SANERIB: Okay.

1 BY MS. SANERIB:

2 Q. Did those --

3 THE COURT: Refrain from leading. Let her testify.

4 BY MS. SANERIB:

5 Q. In your opinion, Dr. Clubb, are elephants domesticated?

6 MR. SHEA: Objection; leading.

7 THE COURT: If you have an opinion about the  
8 domestication of elephants.

9 THE WITNESS: Yes. I think --

10 THE COURT: What's that opinion?

11 THE WITNESS: I think traditionally a lot of people  
12 have referred to them as domesticated animals, but I think my  
13 opinion is that they haven't been domesticated and they haven't  
14 been selectively bred over many, many generations as we would  
15 classify, for instance, farm animals or pet animals. They have  
16 been tamed, but that's a different process, and that the  
17 domestication process, you're basically selecting for particular  
18 genes and particular traits, and often that involves selecting  
19 them so that they're more adaptive to the captive life, whereas  
20 taming is quite different, and I would say that elephants have  
21 been tamed but not domesticated.

22 BY MS. SANERIB:

23 Q. Is the RSPCA an animal rights group?

24 A. No, it's not. It's an animal welfare group. We've got a  
25 lot of -- our position is quite pragmatic among animal welfare

1 organizations and we do a lot of work with industry, including  
2 the farm animals, research animals, and very much not an animal  
3 rights organization.

4 THE COURT: What's the difference in your view between  
5 an animal rights organization and an animal welfare  
6 organization?

7 THE WITNESS: In my view, animal welfare is promoting  
8 animal welfare within the systems that are in place already. We  
9 don't have -- we don't take an approach which prevents the use  
10 of animals. It's much more kind of a utilitarian approach and  
11 much more pragmatic.

12 So, for instance, we work on standards that are used  
13 in farms and we work with laboratory and research institutes to  
14 try and improve the welfare of the animals within them, not  
15 prevent them using it because we know that that's the current  
16 situation, so all we can do at the moment to effect change is to  
17 improve the welfare of as many animals as possible rather than  
18 saying don't use them.

19 BY MS. SANERIB:

20 Q. Dr. Clubb, you talked about some of the research and  
21 literature reviews you've done on stereotypic behavior?

22 A. Yes.

23 Q. Have any of the studies you've used been published in  
24 journals in the United States?

25 A. Yes. There's particularly for -- you're talking about

1 elephants rather than other species?

2 Q. Let's start with other species to begin with.

3 A. What's really worldwide, there's a lot of literature and  
4 study on stereotypic animal behavior, and it's conducted across  
5 the world really, and including for elephants. Most of the  
6 work, I think all of the work has been done in circuses pretty  
7 much in the states rather than in the UK.

8 Q. So then do researchers in Europe rely on publications from  
9 the United States and vice versa?

10 MR. SHEA: Objection; leading.

11 THE COURT: I'll allow the question. What do they  
12 rely on?

13 THE WITNESS: I don't think there's any divisions in  
14 terms of geographically. The whole purpose of publishing in the  
15 scientific journal is to share the information right across the  
16 board, so I don't think anyone has a geographical division, and  
17 a lot of -- there's no reason to think that the research  
18 conducted in the U.S. doesn't apply in Europe and vice versa, so  
19 it's very much worldwide.

20 MS. SANERIB: Your Honor, I would like to point out  
21 that the Supreme Court in the Daubert decision itself noted that  
22 expert witnesses, including those that are not basing their  
23 expert opinions on firsthand knowledge or observation, can still  
24 be classified as expert witnesses, and that the Supreme Court in  
25 the follow-up joinder decision noted that to arrive at a

1 conclusion by weighing all scientific evidence is not the sort  
2 of junk science with which Daubert was concerned.

3 And I would submit that that is precisely what Dr.  
4 Clubb has done here. She's looked at the relevant science and  
5 analyzed that, and therefore her expert opinions should come in  
6 because she's done that kind of research.

7 THE COURT: Does anyone have any additional argument  
8 in response to counsel's argument to exclude her testimony?

9 MS. SANERIB: No.

10 MR. SHEA: I do have additional argument, your Honor.

11 Your Honor, consulting with trainers is not training,  
12 and I think we established she's not done that or management.  
13 She did not attend the elephant inspections in this case, hasn't  
14 seen them with her own eyes, and is relying only on the types of  
15 things the Court has seen so far: snippets of film taken out of  
16 context, or the I assume the video record of the inspections,  
17 but was not there to view the inspections, so we had the  
18 situation where she is relying totally on paper knowledge here  
19 without anything to connect her opinions to the facts of this  
20 case, and that is what is required under 702. All we have is  
21 Ipsy Dixett (ph), which is not allowed under Rule 702, Daubert,  
22 Joiner, or any of the other cases construing it, and we'd move  
23 to strike or to exclude her testimony.

24 THE COURT: All right. The case is proceeding  
25 nonjury, though. What's the harm, what's the prejudice to

1 anyone if the Court hears her testimony and then at the time  
2 when it determine what it's going to base its opinion on, at  
3 that time make a determination as to what weight, if any, it  
4 gives the testimony of this witness and the others?

5 MR. SHEA: Your Honor, I believe that we have shown  
6 that she is simply not qualified to testify about these matters;  
7 therefore, under Rule 403, as we moved, her opinions would  
8 certainly not be probative but would be prejudicial because this  
9 is a person who is employed with an animal -- I guess you would  
10 call it a welfare group -- I don't want to mince words about  
11 that -- and does have credentials. I mean, she does have a  
12 Ph.D, albeit about carnivores rather than elephants, so we think  
13 the prejudice is strong and the --

14 THE COURT: What's the prejudice?

15 MR. SHEA: -- relevance is very light.

16 THE COURT: The prejudice to whom?

17 MR. SHEA: The prejudice to our client, your Honor,  
18 because she'll be giving opinions with a Ph.D license, if you  
19 would --

20 THE COURT: Right.

21 MR. SHEA: -- without actual knowledge of the facts  
22 here, and her only view is without context, and she has no  
23 real-world experience with elephants to apply that, to fill the  
24 analytical gap between what she's seen on film snippets and what  
25 she may say to this Court.

1 THE COURT: The courts, you know, circuit courts,  
2 including our Circuit, have said time and time again that a  
3 judge sitting nonjury is presumed to make his decisions based on  
4 the competent evidence. And if I hear her testimony and at the  
5 end of the day don't give it any weight, what's the prejudice to  
6 your client?

7 MR. SHEA: Your Honor, I will say to the Court that  
8 the Court has heard it, will have heard it, and to the extent --

9 THE COURT: I can't reject it?

10 MR. SHEA: -- to the extent you divide your mind, you  
11 can. However, if it's been an entire day --

12 THE COURT: If I rely upon it -- just a minute. If I  
13 relied upon it in a written decision, you're certainly going to  
14 know whether I relied upon it or not, that's for sure, aren't  
15 you?

16 MR. SHEA: Certainly.

17 THE COURT: Exactly. And if I say I reject it and you  
18 don't see it there, then presumptively I've not relied on it,  
19 have I?

20 MR. SHEA: That's true.

21 THE COURT: I'll hear it, subject to weight  
22 determination at some point, when I consider the merits in this  
23 case. I think the better part of wisdom is to hear it. I'm the  
24 gatekeeper. It's a Daubert objection. It seems to me there's  
25 no prejudice. If I conclude that an opinion of any expert is



1 not entitled -- or all the experts is not entitled to weight,  
2 then I won't give it weight and I certainly won't rely on it,  
3 and if I do, you'll see it in writing. I'm certainly not going  
4 to do that, reject something and then rely on it. I'm not going  
5 to do that.

6 So let's proceed.

7 MS. SANERIB: I did want to put one brief response on  
8 the record, if I may, your Honor.

9 When plaintiffs submitted their request for Rule 34  
10 inspections and then followed up with a motion to compel those  
11 inspections, one of defendant's complaints was the large number  
12 of people plaintiffs sought to involve in those inspections, so  
13 it's very disingenuous for defendant now to say Dr. Clubb and  
14 others of plaintiffs' experts should not be qualified as experts  
15 because they did not attend those inspections when it's  
16 defendant who said we couldn't bring all the people we wanted to  
17 bring to those inspections, so I don't think that's a solid  
18 basis for the defendant to complain about these experts and  
19 their backgrounds and experience. All the experts who couldn't  
20 attend those inspections watched the video footage, looked at  
21 the photographs, and I just don't think that's a ground in which  
22 they should be disqualified as experts in this case.

23 MR. SIMPSON: Your Honor, we did not exclude anybody  
24 from that inspection. We made concern we didn't want a big gang  
25 of people coming down there to look at the elephants, but any

1 expert in this case designated by the plaintiffs was welcome to  
2 come, to both locations, Florida and Michigan.

3 THE COURT: What's the record citation to the evidence  
4 that the defendants limited the number of experts? It's one  
5 thing to say they limited the number of experts on a given day.  
6 It's quite another thing to say they just totally limited the  
7 number of experts, period.

8 MS. SANERIB: The only citation I have before me, and  
9 I think there might be others, is, this is Feld Entertainment's  
10 response and objections to Plaintiffs' Rule 34 request for entry  
11 upon land. It's docket entry 99. And if you look at the third  
12 page in paragraph seven on the third page, FEI objects to  
13 plaintiffs' request for inspections because they seek to bring  
14 more people than the facilities permit or can handle at any one  
15 time.

16 THE COURT: This was an issue that the magistrate  
17 judge resolved, though, correct?

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

19 THE COURT: In his ruling did he limit the number of  
20 experts that plaintiff could have on the premises? I don't  
21 recall that he did.

22 MS. SANERIB: I don't recall that he did, but he also  
23 asked the parties to try to resolve as many as possible issues  
24 pertaining to those inspections.

25 THE COURT: Did you bring to the magistrate judge's

1 attention that the defendants were limiting the number of  
2 experts?

3 MS. SANERIB: Yes. We said that, you know, we asked  
4 for a certain number of people to be able to attend those  
5 inspections and that we had a reason for all those people being  
6 there, and defendant continued to insist that it was more people  
7 than their facilities could allow.

8 THE COURT: What did the magistrate judge do?

9 MS. SANERIB: I think he asked us to try to -- to work  
10 things out, to try to make it -- to create a solution.

11 THE COURT: I understand that. What happened after  
12 that, though?

13 MS. SANERIB: We had to concede that we were not going  
14 to be able to bring that many people.

15 THE COURT: Why did you concede? You don't normally  
16 concede anything. What do you mean, conceded?

17 MS. SANERIB: Well, your Honor, we were at that point  
18 up against a pretty tight close for fact discovery deadline and  
19 we wanted to be able to inspect the elephants.

20 THE COURT: That's a major issue. If you conceded it,  
21 then you did it on your own. No one ever told me, no one ever  
22 appealed the magistrate judge's ruling on that point. I can't  
23 speak for the magistrate judge. My guess is he would have been  
24 extremely sensitive to any efforts to thwart the plaintiffs from  
25 allowing their experts to view the circus.

1 MS. SANERIB: I don't think this was Magistrate  
2 Facciola's doing at all. It was the negotiations between the  
3 parties, but I'm just saying, you know, defendant said we  
4 couldn't bring as many people as we wanted to at these  
5 inspections. We had to curtail back the number of people we  
6 wanted to bring, and as a result not all of our experts got to  
7 attend those inspections, so I think it's disingenuous --

8 THE COURT: That's the decision that plaintiffs made  
9 unilaterally, though. That wasn't the decision that was forced  
10 on the plaintiffs by the magistrate judge. I certainly didn't  
11 enforce it. I would have been extremely sensitive to anyone's  
12 experts viewing anything, and no one ever brought to my  
13 attention that there was any inappropriate action by defendants  
14 in limiting the number of experts. I would not have tolerated  
15 that, and I don't think the magistrate judge, had you asked him  
16 to allow you permission to allow more experts or to grant a few  
17 more days or weeks, you know, it's always easy to look back  
18 through the looking glass. My guess is he probably would have  
19 been sensitive to it. If he had not, there would have been an  
20 appeal. I can assure you I would have been sensitive to that as  
21 well. I understand the arguments pro and con, but it sounds as  
22 if this was not imposed by the magistrate judge, and I'm not  
23 being critical, but it sounds as if you waived that issue,  
24 though. It sounds like, to use your words, you conceded the  
25 issue.

1 MS. SANERIB: Well, I guess it was sort of a Hobson  
2 choice, either conduct an inspection with some of our experts or  
3 not be able to do it at all.

4 THE COURT: Or ask the magistrate judge for leave to  
5 bring all your experts there.

6 MS. SANERIB: Well, then I think, if you look back at  
7 the transcript from those proceedings before Magistrate  
8 Facciola, he said he was going to twist some arms, and he  
9 certainly did.

10 THE COURT: He said he was going to do what?

11 MS. SANERIB: Twist some arms to get us to agree on  
12 the terms of those inspections, so I think everyone --

13 THE COURT: He didn't twist those arms, though. It  
14 doesn't sound like he made you. He didn't force you to do that.

15 MS. SANERIB: I'm not going to say he ordered us to do  
16 that, but he certainly put a lot of pressure on the parties to  
17 agree on some terms so we could get on with those before the  
18 close of discovery.

19 THE COURT: I'll allow the witness to testify. Again,  
20 I'm the gatekeeper and I'll determine what weight, if any, to  
21 give this expert and all the other experts in the case.

22 BY MS. SANERIB:

23 Q. Before we get into elephants, Dr. Clubb, I'd like to talk  
24 just a little bit more about animal behavior.

25 THE COURT: Define the scope again of the doctor's

1 expertise. You're offering the doctor as an expert in what  
2 areas?

3 MS. SANERIB: In animal behavior, and stereotypic  
4 behavior in general.

5 THE COURT: Of animals in general?

6 MS. SANERIB: Yes.

7 THE COURT: Not of elephants in particular?

8 MS. SANERIB: Well, of elephants in particular. I  
9 mean, she will certainly --

10 THE COURT: That's why I asked you to define the  
11 scope. I want to make sure I understand the scope that you're  
12 offering.

13 MS. SANERIB: In terms of animal behavior, as Dr.  
14 Clubb testified earlier this morning, that field certainly  
15 includes the methodologies of training animals, and that  
16 includes elephants, and she studied stereotypic behavior and she  
17 will talk about stereotypic behavior as a whole in animals and  
18 what we know about stereotypic behavior in elephants.

19 THE COURT: Subject to the objections raised and  
20 subject to cross-examination and subject to the Court's ultimate  
21 Daubert determination, I'll allow the witness to testify.

22 MS. SANERIB: Thank you, your Honor.

23 THE COURT: And that's the procedure I will follow  
24 with respect to all the experts who have testified and any  
25 additional experts who have testified in this case.

1 MS. SANERIB: Okay.

2 BY MS. SANERIB:

3 Q. Dr. Clubb, as a general matter, when do animals exhibit  
4 stereotypic behavior?

5 THE COURT: What is stereotypical behavior, first of  
6 all?

7 THE WITNESS: Okay. It's very repetitive behavior  
8 that's very fixed in form and it doesn't appear to have an  
9 apparent function, so some typical examples would be your pacing  
10 polar bear in a zoo, your lab mouse that circles and circles and  
11 circles, and it's generally developed in animals in captive  
12 situations where they're kept in an environment that doesn't  
13 give them everything they need, and particularly when animals  
14 are frustrated and they can't perform behaviors that they really  
15 really want to perform.

16 So, for instance, in pigs, one of their natural  
17 behaviors that's frustrated in captivity is routing around in  
18 the ground with their snout, and when prevented from that, they  
19 often develop stereotypic bar biting or nosing each other, so  
20 it's associated with deprivation of performing natural behaviors  
21 in particular.

22 THE COURT: That's fairly common in domesticated  
23 animals, though, isn't it? Dogs exhibit repetitive behavior  
24 when they run up and down a fenced yard barking.

25 THE WITNESS: They can do. For instance, stereotypic

1 circling in dogs can develop, but particularly in kennel dogs  
2 where they're in quite close confinement and they're kept off on  
3 their own, so there's kind of general characteristics that we  
4 see across a range of situations that are associated with that  
5 kind of behavior, and generally when you improve that  
6 environment, you see a reduction in the stereotypy or it doesn't  
7 develop at all if it's a very rich environment that provides  
8 what the animal needs.

9 BY MS. SANERIB:

10 Q. And Dr. Clubb, you were giving the example of pigs and the  
11 routing behavior. Are most stereotypical behaviors like that,  
12 they come from a natural behavior?

13 MR. SHEA: Objection; leading.

14 THE COURT: Yes. Let your expert testify, counsel.  
15 Be careful how you frame the questions.

16 MS. SANERIB: All right.

17 BY MS. SANERIB:

18 Q. What is the origin of stereotypic behaviors?

19 A. They often develop from behaviors that we would classify as  
20 normal, but what differentiates them from that normal behavior  
21 is the degree to which they're repeated and how fixed in form  
22 they are. So, for instance, walking is a normal behavior, but  
23 you can see stereotypic pacing, which is very repeated, and  
24 often in the very exact same route, often placed -- the feet are  
25 placed in exactly the same order, and that's the point at which



1 you would classify as a stereotypic behavior rather than a  
2 normal behavior.

3 Q. And do we know what the causal factors are for stereotypic  
4 behavior?

5 A. One of the most common behaviors that's found or common  
6 causes is the prevention of a highly motivated behavior, so an  
7 animal may be very, very motivated to, for instance, reach  
8 around or to travel, and putting him in an environment that  
9 prevents that can often promote the development of stereotypic  
10 behaviors, and so they commonly develop in environments that  
11 would be sub-optimal or barren and often correlate with other  
12 signs of poor welfare.

13 Q. And is there a consensus in the animal behavior community  
14 about the causal factors of stereotypic behavior?

15 A. They're generally accepted to be an indicator of poor  
16 welfare, and they're often used in many, many animal welfare  
17 studies as an indicator of welfare, and they're often measured  
18 to give an indication of what the animal's experiencing, so in  
19 general they're seen as a sign that the environment that the  
20 animal is being kept in or the conditions in which it's being  
21 subjected to are insufficient to give it what it needs.

22 Q. And do all animals have the same reaction to a captive  
23 environment?

24 MR. SHEA: Objection; leading.

25 THE COURT: Sustained. Rephrase.

1 BY MS. SANERIB:

2 Q. Do all captive animals exhibit stereotypic behavior?

3 A. No, certainly not. There's, depending on the kind of  
4 quality of the captive environment, captivity may not induce  
5 that kind of behavior because it's providing everything that the  
6 animal needs but also within an environment that we would  
7 classify as sub-optimal, and some individuals develop  
8 stereotypies and others won't at all or to a lesser degree, and  
9 what's been quite interesting is that recently there's been  
10 quite a lot of work on looking at why that is and why some  
11 animals develop it and some don't, and when there was a very  
12 interesting review of all of that literature, because often we  
13 get confusing results, and it suggests that within the same  
14 environment the animal that has developed the stereotypy might  
15 actually be better off because it's helping it to cope in that  
16 environment than the animal that doesn't stereotype, but if you  
17 look at two different environments, often the animals that have  
18 developed stereotypies are in the poor environment, so it's an  
19 indicator that that environment isn't giving it everything it  
20 needs. So while it can help an animal to cope with a sub-  
21 optimal environment, it's generally seen as indicating that  
22 there's something wrong with the environment, it's not giving it  
23 the ability to express its natural behaviors.

24 Q. And can you give us an example? I think you mentioned two  
25 animals in the same environment.

1 A. Yes. So for instance, if you had -- say in this case  
2 you've got two animals, two elephants in exactly the same  
3 environment and experiencing exactly the same conditions, the  
4 one that's stereotyping may actually be better off at the  
5 current time because that stereotypies is actually helping it to  
6 deal with that environment, whereas the one that isn't stereo-  
7 typing might actually be worse off, but they're both  
8 experiencing the same environment, and that might be poorer  
9 basically in not giving it what they need.

10 Q. You said that stereotypic behavior is an indicator of poor  
11 welfare. Is there research on what happens when the animal's  
12 welfare is improved?

13 A. Yeah. Well, there's a lot of work in attempting to  
14 alleviating the poor welfare of animals in captivity, and often  
15 one of the indicators that's used is the performance of  
16 stereotypies, so a lot of work in zoos, for instance, it's  
17 prudent to trying to reduce the performance of those behaviors  
18 and generally it's taken as sign that the welfare has  
19 improved -- I'm sorry. The reduction of stereotypies is taken  
20 as a sign that the animal's improved. Often because it  
21 correlates with other signs of welfare and from studies that  
22 have been done in other animals, we know that, for instance,  
23 giving an animal more room to move around in, giving it the  
24 ability to perform naturally-motivated behaviors is associated  
25 with good welfare, and often in those conditions we see a

1 reduction in stereotypic behavior.

2 Q. I'd like to talk specifically about elephants, and I  
3 believe you mentioned earlier that as part of your work as a  
4 behaviorist, you start off looking at natural behaviors; is that  
5 correct?

6 A. Yeah. I think the kind of first place that behaviors we  
7 look is to look at how the animal has evolved, what kind of  
8 environment it's evolved to deal with, looking at what kind of  
9 social group it lives in, what kind of behaviors it engages in,  
10 what kind of environment, and what that environment provides, in  
11 order to look at -- to kind of give some context to the animal  
12 in captivity, because it's the same animal but it just happens  
13 to be in a different environment.

14 Q. And what's the context for elephants?

15 A. Well, from what we know from elephants in the wild, they're  
16 extremely social animals, in particularly females, which spend  
17 their lives and their kind of natal herd where they're born, and  
18 they spend the majority of the time traveling, foraging, and  
19 socializing, and they live -- well, depending which species you  
20 look at, the African elephant spends a lot of time in the  
21 Savanna and Asian elephants spend a lot of time in the forest.

22 Q. And what is an elephant's activity budget like over the  
23 course of 24 hours?

24 A. Well, they spent the majority of their time traveling from  
25 place to place foraging, so that takes up quite a big chunk of

1 their time in the wild, because they tend to feed on a diet  
2 that's not particularly rich, so they spent a large chunk of  
3 their time trying to find the forage as well as processing it.

4 Q. Do elephants sleep?

5 A. Yeah. The studies that have been done have estimated about  
6 four to six hours a night, some standing. Most individuals seem  
7 to spend quite a chunk of their sleep time lying down.

8 Q. And is there any research that's been done on captive  
9 elephants?

10 A. Yes.

11 THE COURT: In what context?

12 MS. SANERIB: In terms of their behavior, I guess  
13 behavioral research on captive elephants.

14 THE WITNESS: Yes. There's been studies in zoos as  
15 well as some studies in circuses that look at their activity  
16 budgets looking at what proportion of time they spend engaged in  
17 different activities. And yeah, they tend -- one of the issues  
18 that comes up is stereotypic behavior within those time budgets,  
19 so they often develop those kind of behaviors.

20 BY MS. SANERIB:

21 Q. And what are the most common stereotypic behaviors in which  
22 elephants engage?

23 A. By far the most common is weaving where the animal sways  
24 from side to side and sometimes shifting and swinging one foot  
25 or sometimes engaged in head-bobbing at the same time. So that

1 seems to be by far the most common form.

2 Q. And are those behaviors that you just described seen in the  
3 wild in elephants?

4 A. Well, there's often kind of source behaviors for  
5 stereotypic behaviors. Generally they're just not seen in the  
6 wild, but I did look specifically for that when I was looking at  
7 the wild, the studies that have been done in the wild, and I did  
8 find a couple of references. One to a slight weaving motion  
9 when -- I think it was an Asian elephant -- when it was resting,  
10 with a slight head bob, and an African elephant, the swaying was  
11 classified as a type of behavior that was sometimes seen when  
12 the animal was anxious or apprehensive, but interesting, both  
13 authors noted that it resembled stereotypic behaviors seen in  
14 captive elephants, but it was far more -- those kind of  
15 behaviors were far more pronounced and far more frequent than  
16 those, so it could be a kind of source behavior for  
17 stereotypies.

18 Q. Okay. And what is the cause of stereotypic behavior in  
19 elephants?

20 A. Well, from the work that's been done, the key thing that  
21 comes out is restraint and confinement. So, for instance,  
22 elephants that are kept chained up have a much higher level of  
23 stereotypic behavior than those that aren't. Once they're  
24 unchained, stereotypy reduces, so there's a few studies that  
25 have looked at stereotypic behavior levels of chained animals at

1       circuses verses letting them use pens or unchaining them in  
2       small enclosures and quite drastic reductions in stereotypic  
3       behavior have been seen, and also some work looked at the  
4       stereotypic behavior in elephants found that it rapidly  
5       developed in elephants that were chained up for a very  
6       significant amounts of time, so the key thing that comes out of  
7       that is the restraint and confinement and probably prevention of  
8       performing actual behavior seems to be a key factor in it.

9                 And one other thing that came out, particularly the  
10       study that looked at the development of stereotypy, was the  
11       social behavior, so they find that the elephants that showed  
12       most stereotypy were much more isolated. They had far less  
13       companions, they weren't as social as the ones that had lower  
14       levels, and in particular removing an elephant from its social  
15       group promoted the performance of stereotypies, and when they  
16       were reunited the stereotypic behavior reduced or completely  
17       ceased, so social behaviors are likely to be involved as well,  
18       which isn't surprising considering how incredibly social they  
19       are in nature, so I think those two factors are the key things.

20       Q.    You mentioned that there were studies that documented this.  
21       What are those studies?

22       A.    The ones that look at the stereotypic behavior of circus  
23       animals, there's a few papers done by Ted Friend and his  
24       colleagues, and also Jeanette Schmid who looked at the chained  
25       elephants versus pens, and there's another couple of small

1 studies that anecdotally stopping chaining at night at zoos led  
2 to reduction in stereotypic behavior.

3 Q. I'd like to start with you mentioned in Schmid study, and  
4 if we can pull that up. That is Plaintiffs' Will Call Exhibit  
5 159. And if we can go to page 11 of that, and looking at this  
6 page, if you look at the paragraph right above the graph that  
7 starts with the word 19, highlight that, and what does this  
8 paragraph state?

9 A. It says that so all of them perform stereotypic behaviors  
10 when they were shackled, whereas ten performed only when they  
11 were shackled and not when they were in pens, and when those two  
12 conditions were compared, the ones that were chained or shackled  
13 spent a significantly higher amount of time weaving, so engaged  
14 in stereotypic behaviors, than those were let out to roam around  
15 in paddocks.

16 Q. And do you agree with this?

17 A. Yeah. I know this paper and I know the methodology that  
18 they employed and it seems sound, so, yeah, I don't have reason  
19 to disagree with it.

20 Q. If we can go to page thirteen. And it says at the very  
21 bottom of the page Welfare Implications. If we could look at  
22 that.

23 THE COURT: Counsel, keep your voice up, please.

24 MS. SANERIB: Okay. Sorry.

25 BY MS. SANERIB:



1 Q. The authors provide some Welfare Implications conclusions  
2 here. Have you seen these before?

3 A. Yes.

4 Q. And do you agree with them?

5 A. Yes. From the results of their study, they conclude that  
6 providing more space and not chaining the elephants provides  
7 them with much more opportunities to satisfy their behavior  
8 demands so they have much more opportunities to express their  
9 natural behaviors. That's a clear improvement for the  
10 conditions in the animals, and I have to agree with that.

11 Q. And I think you also mentioned that there was a few studies  
12 that were conducted by Ted Friend?

13 A. Yes.

14 Q. Is one of those Friend and Parker?

15 A. Yes.

16 Q. And if we would look at that, that's Plaintiffs' Will Call  
17 Exhibit 158, and I'd like to go to page ten of this study. And  
18 it says Discussion and underneath that it says "the significant  
19 reduction" in that first paragraph, please. And this says: The  
20 significant reduction in stereotypic behavior observed in these  
21 elephants was consistent with the observations of Schmid, 1995.  
22 That elephants perform less stereotypic behavior when released  
23 into paddocks. Do you agree with the author's conclusions here?

24 A. Yes. They also found not quite as dramatic a decrease, but  
25 a very significant decrease in stereotypies when they moved from

1 chaining to paddocks, which, yeah, does agree with Schmid, so  
2 it's going in the same direction.

3 Q. If we can go to page twelve of the study, the conclusion.  
4 And if you look at the first two sentences, they say: The  
5 amount of time the elephants spent weaving was significantly  
6 decreased an average of 69% by keeping the elephants in pens  
7 when compared to picketing. The incidence of all stereotypic  
8 behavior, weaving, head bobbing, and trunk tossing, also  
9 decreased an average of 57% when the elephants were kept in  
10 pens. Does this also support, in your opinion, that link you  
11 were talking about between chaining and stereotypic behavior?

12 MR. SHEA: Objection; leading.

13 THE COURT: Sustained.

14 BY MS. SANERIB:

15 Q. What's your opinion about this conclusion, Dr. Clubb?

16 A. I'm sorry, I didn't get that.

17 Q. What's your opinion about this conclusion?

18 A. Yeah. This forms part of the evidence towards the linkage  
19 between confinement, and particularly chaining, and the  
20 performance of stereotypic behaviors. Remove the chains, give  
21 them more space and the freedom to perform more natural  
22 behaviors and you see a reduction in stereotypy, and that's  
23 quite consistent with studies that have been done on a whole  
24 range of other animals.

25 Q. Okay. And do you agree with the author's final conclusion,

1 the last sentence of this paragraph?

2 A. Oh, yeah. Yeah. I find this a little odd, to be honest.  
3 They talk about the Kiley-Worthington study which shows a study  
4 of circus animals in the UK, and that they don't think the  
5 welfare of the elephants in circuses is any worse off than other  
6 husbandry systems, and the reason I find that a bit odd is that  
7 they don't discuss at all in the rest of the paper, and they  
8 don't present any evidence for the welfare state of animals in  
9 those other conditions, in order to even start a comparison, and  
10 also given the significant level of stereotypic behavior,  
11 particularly when they were chained, is suggestive of poor  
12 welfare, so for all those reasons it didn't quite make sense to  
13 me, that final paragraph.

14 MS. SANERIB: And Ms. Sinnott, I'd like to show Dr.  
15 Clubb some video. If we could please show an excerpt from  
16 Plaintiffs' Will Call Exhibit 143A, which was admitted into  
17 evidence with Dr. Hart yesterday.

18 And for the record, this is Plaintiffs' Will Call  
19 Exhibit 143 at 4 hours and 46 minutes to 4 hours and 48 minutes.

20 (Video played.)

21 BY MS. SANERIB:

22 Q. Dr. Clubb, did you review this footage while you were  
23 preparing your expert report?

24 A. Yes, I did.

25 Q. Can you describe for the Court the elephants' behaviors?

1 A. Well, if you look at the elephant that's on the left-hand  
2 side, that would be a typical weaving stereotypy in that the  
3 animal swaying from side to side in a very repetitive manner.  
4 You can see a slight head bob as well involved in the weaving,  
5 and the one on the right isn't engaged in much behavior, other  
6 than just feeding, in comparison.

7 Q. And would you consider the elephant on the right's behavior  
8 normal behavior?

9 A. Well, it's difficult to tell in this circumstance, but  
10 there it's not engaged in very many behaviors other than  
11 feeding, so, yeah, it would be difficult to tell.

12 Q. And Dr. Clubb, if the record in this case reflects that the  
13 elephant here on the left named Karen engaged in the behavior  
14 depicted in this footage for about two hours, what is your  
15 opinion about that behavior?

16 A. That's pretty significant levels of stereotypy. Looking at  
17 it's generally seen that the higher the levels of stereotypy,  
18 the more concerned is raised because not only are these very  
19 significant lengths of time to be engaged in one behavior, it  
20 also limits the other behaviors an animal can be engaged in, so  
21 that would be, yeah, I would consider that pretty severe  
22 stereotypy.

23 Q. Does that indicate anything to you?

24 A. Yeah. As I said, it would raise significant welfare  
25 concerns regarding the conditions that the animal was kept, and

1 because of this link between stereotypy and poor welfare, and  
2 that's a significant amount of time.

3 MS. SANERIB: And Ms. Sinnott, I'd like to show an  
4 excerpt from Plaintiffs' Will Call Exhibit 142A.

5 And for the record, this is from the time stamp 2  
6 hours ten minutes and 22 seconds to 2 hours 11 minutes and 42  
7 seconds, and this was admitted into evidence with Dr. Poole on  
8 February 4th.

9 MR. SHEA: Objection. I don't recall seeing this  
10 under 72 Hour Notice, this specific snippet.

11 THE COURT: Counsel?

12 MS. SANERIB: I think that footage from both  
13 inspection tapes was included on our 72 hour filing. I don't  
14 have a copy in front of me. The copy I have, on page eight I  
15 have a listing for both Plaintiffs' Will Call Exhibit 143 and  
16 for Plaintiffs' Will Call Exhibit 142.

17 MR. SHEA: Your Honor, 142 listed is 2 hours 12  
18 minutes through 2 hours 13 minutes and 25 seconds. That's  
19 different than the time period that counsel just requested.

20 THE COURT: This is 142A, I believe, isn't it?

21 MS. SANERIB: Yes.

22 THE COURT: There is a reference to 142A on your --

23 MS. SANERIB: There is reference to 142A on here, yes.  
24 I can show the alternate time stamp if that would make this go  
25 more smoothly.

1           THE COURT: You can proceed with this one. Let's  
2 proceed.

3           MS. SANERIB: If you can play that

4           (Video played.)

5 BY MS. SANERIB:

6 Q. Dr. Clubb, did you also review this video footage preparing  
7 your expert report in this matter?

8 A. Yes, we did.

9 Q. And can you describe the elephant behaviors depicted?

10 A. Yeah. Again, if you look at the elephant on the far left,  
11 that would be what we would call weaving stereotypy again, and  
12 you can see this time there's a slight leg lift within each bout  
13 which is seen each time she swings, and the one next to her on  
14 second from the left also appears to be engaged in swaying  
15 behavior.

16 Q. And Dr. Clubb, if the record in this case reflects that the  
17 elephant at the far left engaged in that behavior she was just  
18 exhibiting on and off for three hours, what would be your  
19 opinion?

20 A. Again, that's quite a significant amount of time to be  
21 engaged in one fixed stereotypic behavior, so it raises real  
22 concerns about the conditions that that animal is kept in  
23 between of links between poor welfare and stereotypic behavior.

24           THE COURT: What's an insignificant period of time for  
25 this type of behavior?

1           THE WITNESS: I think, for instance, if you saw a very  
2 transient behavior, so you're talking very low levels, like half  
3 a percent/one percent of the observation, and a few minutes,  
4 then you wouldn't necessarily be that concerned. You still look  
5 to see what kind of correlates when it was being performed to  
6 give you an indication of why, but the kind of more significant  
7 amounts of time suggest that there is nothing else engaging the  
8 animal so that it's fixed in this routine for a very significant  
9 amount of time. And also it's the performance, the repetitive  
10 performance of stereotypy has been linked to physical harm and  
11 that that kind of weaving behavior over hours and hours and  
12 hours can lead to the development of foot and joint problems, so  
13 it can also induce that kind of harm, so I think if you saw very  
14 transient behaviors you wouldn't necessarily be hugely  
15 concerned, but if you see hours and hours and hours as generally  
16 amongst the scientific community has seen as a more significant  
17 sign of poor welfare.

18           MS. SANERIB: And I'd like to show just one more video  
19 clip, if I might. Ms. Sinnott, can we please go to Plaintiffs'  
20 Will Call Exhibit 128, and the time stamp, for the record, is 0  
21 to 2 minutes, and this footage was admitted with Mr. CuvIELLO on  
22 February 9th.

23           MR. SHEA: Your Honor, we object to the first 35  
24 seconds of this snippet. It was not authenticated by Mr.  
25 CuvIELLO at all. The snippet that was was 35 seconds to 2

1 minutes.

2 MS. SANERIB: All right. We'll show I guess 35  
3 seconds to 2 minutes then.

4 THE COURT: All right. Objection sustained.

5 (Video played.)

6 BY MS. SANERIB:

7 Q. Dr. Clubb, did you review this footage in preparing your  
8 expert report in this matter?

9 A. Yes, I did.

10 Q. And what behavior is this elephant engaged?

11 A. Again, I would classify that as stereotypic weaving  
12 behavior because it's very repetitive, each bout is exactly the  
13 same. She lifts her leg in exactly the same way in each bout.

14 Q. And Dr. Clubb, if the record reflects that this elephant  
15 was born to Feld Entertainment and was raised solely in Feld  
16 Entertainment's facilities, would that have any significance to  
17 you?

18 A. Yes, it would. It would suggest that the conditions that  
19 have induced the development of stereotypic behavior are  
20 specific to Feld rather than being, for instance, some  
21 stereotypies can persist if an animal is being moved to a  
22 different environment, whereas if this animal has been in the  
23 same conditions throughout, then it suggests it's developed  
24 within those conditions and those conditions have caused the  
25 stereotypies to develop.



1 Q. Would that information change your opinion at all about the  
2 elephants Jewell and Karen who we saw previous footage of?

3 A. I think given the -- there is -- there are some conditions  
4 in some stereotypic behaviors that can develop in one set of  
5 circumstances. You move the animal to another and it persists,  
6 so, for instance, there was a common example cited as a polar  
7 bear that develops a really stereotypic behavior around its  
8 enclosure and when it was moved to a bigger enclosure it  
9 performed exactly the same stereotypic to exactly the same  
10 dimension in the new enclosures, so obviously it hadn't adapted,  
11 it wasn't affected by the change in the environment, so that's  
12 always got to be a factor when you're looking at stereotypic  
13 behavior. Is it a symptom of the current environment or is it  
14 potentially a behavior that's persisted? And I think whenever  
15 looking at footage like that, you've got to bear that in mind,  
16 so for instance, in this case, because she's been in the same  
17 environment throughout the whole time, that could be discounted,  
18 but when we're looking at the other animals, you also have to  
19 bear that in mind, but from the research that has been done on  
20 circus animals, what's been quite clear is that the stereotypes  
21 are quite responsive to changes in the environment, so moving it  
22 from a shackled environment to paddocks has been seen to cause  
23 quite drastic reduction in stereotypic behaviors, and you  
24 wouldn't expect to see that if the animals had this fixed what's  
25 called habit, so, yeah, from the evidence I've reviewed, it

1 doesn't seem that that's the case for the elephants in this  
2 case, so, yeah.

3 Q. Okay. And Dr. Clubb, you mentioned earlier a little bit  
4 about transportation of circus elephants, and I'd like to talk a  
5 little bit about Ringling Brothers transportation. Let's assume  
6 that the record in this case shows that the elephants on the  
7 Blue Unit are transported for many consecutive hours each week  
8 and that on average it's 31 to 35 hours, and when they're not  
9 traveling, those same elephants are chained on hard surfaces for  
10 at least 8 hours at night. What is your opinion about that  
11 practice?

12 MR. SHEA: Objection; vague.

13 THE COURT: It is somewhat vague, but can you answer  
14 that question?

15 THE WITNESS: In terms of the welfare of the  
16 elephants, I think those conditions represent quite a severe  
17 level of confinement in terms of the space available to those  
18 animals and the restriction it places on their behavior, so it  
19 greatly restricts the type of behaviors that they can engage in,  
20 and particularly for the extensive levels of time that they're  
21 transported. I would be really concerned about the welfare of  
22 those animals, and given the link between stereotypic behavior  
23 and confinement, I would expect to see more stereotype in those  
24 kind of environments. Everything we know about the development  
25 of stereotypy, particularly confinement, particularly preventing

1 natural behaviors, suggests the welfare of those animals would  
2 be poorer and that it would in my opinion cause them harm in  
3 those conditions.

4 MS. SANERIB: And Ms. Sinnott, I'd like to show Dr.  
5 Clubb an excerpt of footage. This is from Plaintiffs' Will Call  
6 Exhibit 133. It was admitted into evidence on February 9th with  
7 Mr. Gedo, and I'm showing, for the record, from 3 minutes and 30  
8 seconds to 5 minutes and 30 seconds.

9 MR. SHEA: Your Honor, it's the same objection. They  
10 listed Will Call 133 on their 72 Hour Notice, but I have here 15  
11 minutes 35 seconds to 16 minutes and 36 seconds.

12 THE COURT: Counsel?

13 MS. SANERIB: I think Mr. Gedo authenticated the  
14 entire footage. It's all substantially similar.

15 THE COURT: First of all, the purpose of this process  
16 is to let them know that -- let each side know which exhibits  
17 will be utilized.

18 Yes?

19 MR. SHEA: I'm sorry, your Honor. I do have a list  
20 here for 3 minutes and 30 seconds to 5 minutes and 30 seconds.  
21 I apologize if that was the time period.

22 MS. SANERIB: That was the time period, yes.

23 THE COURT: All right.

24 MR. SHEA: I withdraw the objection.

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

1 (Video played.)

2 BY MS. SANERIB:

3 Q. And Dr. Clubb, what does this footage depict?

4 A. I believe it depicts elephants held in the Ringling train  
5 cars, and you can see here the close-up of this elephant. If  
6 this pans out, you can see it. This one that's in the forefront  
7 in the middle of the picture is engaged in stereotypic weaving  
8 behavior.

9 Q. And does this comport with the condition of transportation  
10 that you were just describing to the Court?

11 A. Yeah, exactly. You can see that within this environment  
12 there's very little room for the elephants to move. Again, this  
13 one's engaged in stereotypic behavior. There's very little room  
14 for them to move, let alone engage in any natural essential  
15 behavior patterns. I can't imagine that they would be able to  
16 turn around. The ones that are packed two together, I can't  
17 imagine how they would both be able to lie down at the same time  
18 even, let alone engage in significant social behaviors or  
19 exploration or foraging, all kind of natural behaviors for  
20 elephants, so being kept in that kind of environment for the  
21 length of time you just described would be likely to cause them  
22 harm in my opinion.

23 Q. Okay. And has any research been done on transport?

24 A. There's been a paper by Williams and Friend who looked at  
25 the behavior of elephants in circuses, including the Ringling

1 elephants from the Blue and Red Unit, specifically looking at  
2 their stereotypic behavior within the train cars.

3 Q. And I'd like to switch over to that which I believe is  
4 Plaintiffs' Will Call Exhibit 156. And that is the study you  
5 were just referring to?

6 A. Yes, it is.

7 Q. And could we flip through to the third page of this study,  
8 which I think is the last page? Sorry. Go back one page.  
9 Sorry. And I think it's on both this third page and the second  
10 page. Is that where the data is compiled --

11 A. Yes.

12 Q. -- about what the authors found?

13 A. Yes.

14 Q. And in the discussion I think, if we can look at that first  
15 paragraph under Discussion, and it says: In this study  
16 transported elephants spent from 0 to 88.5% of observed time  
17 weaving as compared to picketed circus elephants, who spent from  
18 0 to 33% of their time per day engaged in weaving.

19 And was that a -- in your opinion, is that a correct  
20 analysis of the data?

21 A. I'm having to look through the methodology and the data  
22 they present, then, yeah, I think I agree with that.

23 Q. And is there any conclusions the authors reach in this  
24 study that you disagree with?

25 A. Yes. From my interpretation of their study would be that

1 the elephants were engaged in very high levels of stereotypic  
2 behavior and some animals actually started stereotyping in that  
3 environment and they had never been seen to stereotype before,  
4 which is consistent with the idea that the greater level of  
5 confinement, the more stereotypic behavior, indicating the  
6 poorer the environment for the animal, and such high levels of  
7 the stereotypy would be a real warning sign to me that there  
8 could be real significant welfare problems, but surprisingly the  
9 authors conclude that there is -- their result show no  
10 indication -- show that there's poor welfare of those animals,  
11 and part of reasoning behind that is that none of the behaviors  
12 are, none of the stereotypic behaviors are what they would  
13 regard as trance-like, and I've never really heard that  
14 definition used, and you're only concerned about stereotypic  
15 behaviors that aren't trance-like that are -- yes, that aren't  
16 trance-like, and I've never seen that used by any other  
17 researchers on stereotypic behavior in any species, and I'm not  
18 quite sure where that comes from. They don't reference why  
19 they're so concerned about just what they call trance-like  
20 stereotypies.

21 THE COURT: We'll take a fifteen-minute.

22 I'm sorry. Have you finished your answer?

23 THE WITNESS: Yes.

24 THE COURT: We'll take a fifteen-minute recess and  
25 start back at a few minutes past twelve.

1           You can step down. I'd ask that you not discuss your  
2 testimony with anybody.

3           COURTROOM DEPUTY: This Honorable Court now stands in  
4 a fifteen-minute recess.

5           (Recess taken at about 11:43 a.m.)

6           COURTROOM DEPUTY: Please remain seated and come to  
7 order.

8           (Back on the record at about 12:07 p.m.)

9           THE COURT: All right. Let's proceed, counsel.

10          MS. SANERIB: Thank you, your Honor.

11          THE COURT: Yes.

12          BY MS. SANERIB:

13          Q.    When we took the break, we were looking at Plaintiffs' Will  
14 Call Exhibit 156.

15                Can you pull that up again?

16                And if we can go to the second page, there's a table  
17 at the top there.

18                Can you just highlight there's Minutes of Video column  
19 there.

20                And Dr. Clubb, can you just read a few of these  
21 minutes of video for the Court, just starting at the top?

22          A.    177 minutes, 124, 177, 124, 379, 244, 1,528.

23          Q.    All right. And Dr. Clubb, have you reviewed any evidence  
24 about the transport of the elephants at issue in this case?

25          A.    Yes. I've seen completion of the amount of the time they

1 spent on the trains that was compiled. I've seen video evidence  
2 that you've just shown of the elephants in the train, and also  
3 the testimony that's been from various people about how long  
4 they spend on the train and the conditions on the train.

5 MS. SANERIB: Ms. Sinnott, can we go to Plaintiffs'  
6 Will Call Exhibit 113, page 51. Can you actually -- I'd like to  
7 go to, flip ahead a couple of pages. One more. I think you're  
8 going backwards. If you could go forwards. One more. And one  
9 more. And can you highlight the third paragraph on this page  
10 that says "These same animals"? Thank you.

11 BY MS. SANERIB:

12 Q. And Dr. Clubb, can you read starting where it says "The  
13 evidence shows"?

14 A. The evidence shows that the average number of consecutive  
15 hours the elephants spent on the train over the course of seven  
16 years is as follows: In 2007, an average of 31 hours; in 2000,  
17 an average of 26 hours; in 2005, an average of 28 hours; in  
18 2004, an average of 27 hours; in 2003, an average of 27 hours;  
19 in 2002, an average of 25 hours; in 2001, an average of 26  
20 hours; and in 2000, an average of 27 hours.

21 And were those averages per week?

22 A. That was per journey.

23 Q. And is this your expert report that we're looking at?

24 A. Yes, it is.

25 Q. Okay. And Dr. Clubb, if those averages changed by a couple



1 of hours, would that change your opinion at all in this case  
2 about the transport of the elephants?

3 A. No. I think you're still talking about a very significant  
4 length of time being in those trains, so, no, it wouldn't.

5 Q. Dr. Clubb, are you aware of any standards for chaining of  
6 elephants?

7 A. There's several zoo standards that specify how long  
8 chaining should occur in zoo elephants. One is the AZA, which  
9 is the British association. Another is EAZA, which is the  
10 European society, and I believe there's the ASD standards, the  
11 American association.

12 Q. If you know any of those standards, could you tell the  
13 Court what they are?

14 A. The AZA and EAZA, so the European and the UK one, specify  
15 that you shouldn't chain elephants for more than three hours  
16 every 24, but it should be kept to a minimum whenever possible.  
17 I believe the EAZAD specifies that it shouldn't be for more of  
18 the majority for the 24-hour period, but they also state that if  
19 any new exhibits or any significant changes are made to the  
20 enclosures, it should allow for no chaining at all in that  
21 outdoor enclosure. I think the EAZAD also specifies that they  
22 should be kept -- they should be allowed to go out to their  
23 enclosures and use the natural substrate as much as possible, so  
24 it's a bit conflicting, but overall these are trying to move  
25 away from chaining.

1           THE COURT: Suppose there's an average -- suppose the  
2 average for transportation is, say, 25 hours and followed by 24  
3 hours of rest. Does that ameliorate this repetitive behavior?

4           THE WITNESS: I think the amount of time they spent in  
5 confinement on the trains is the key point, so I think for any  
6 length of time it's not great. Transport and confinement is  
7 known to be quite stressful for a whole range of animals and is  
8 associated with stereotypic behavior, but for particularly long  
9 periods of time, it prevents expression of natural behaviors for  
10 a very, very long period of time, so if they had rest spots in  
11 between, it probably would help to some extent, depending on  
12 what conditions they were kept in during those rest spots, but  
13 over such, you know, it was a very considerable length of time  
14 to be kept in that kind of environment.

15          THE COURT: What can be done to ameliorate that  
16 repetitive behavior that's observed on, say, the hypothetical 25  
17 hours? If there's 25 hours consistently of transportation, what  
18 efforts can be made to address that behavior --

19          THE WITNESS: I think --

20          THE COURT: -- in a circus setting?

21          THE WITNESS: In a circus setting. I think there's  
22 always going to be a constraint on what you can provide because  
23 obviously the cart can only be as large as it can be to be on a  
24 train, if that makes any sense, because you'd ideally want to  
25 give them more space and give them opportunities to express

1 their natural behaviors, and so allowing them to be able to  
2 socialize but also to lie down, to feed, to engage in as many  
3 specie-specific behaviors as possible, but there's always going  
4 to be a constraint on that just because of the practical  
5 problems of the space they've got and the fact that they're  
6 moving, so I don't know anyone who moves an elephant that can  
7 walk freely along the train, for instance, so I think there's  
8 always going to be an upper limit as to what you can provide.

9 THE COURT: So what you're saying is basically not  
10 much can be done then?

11 THE WITNESS: I don't think much can be done within  
12 the confines of that specific kind of environment.

13 BY MS. SANERIB:

14 Q. And I'm going to move from the traveling elephants to the  
15 ones at stationary facilities. I'd like you to assume that the  
16 record in this case reflects that the elephants that are not on  
17 the road traveling with the circus spend at least twelve to  
18 fifteen hours of every 24-hour period chained on concrete.  
19 What's your opinion about that?

20 A. Well, I think that kind of again you've got a very  
21 significant length of time where not only most of the animals  
22 are restricted, but the kind of behaviors it can perform are  
23 very restricted, and from the work that's been done,  
24 specifically on elephants, suggest that confinement leads to the  
25 development of stereotypic behaviors and is associated with it,

1 the performance of stereotypic behaviors, so I think overall  
2 indicates that harm is caused to those elephants, and also  
3 specifically being chained to restriction of movement on  
4 concrete environments, it's very unyielding, is associated with  
5 the development of foot and joint disorders in zoos, so there's  
6 been an association noted by people who work with elephants and  
7 veterinarians that by keeping elephants in those conditions  
8 where they can't travel and they can't move very far, but also  
9 in that kind of substrate, it could also cause them physical  
10 harm as well.

11 Q. Okay. And Dr. Clubb, have you recommended any time frames  
12 for the chaining of elephants?

13 A. I did. I came up with estimates basically thinking about  
14 the daily kind of routine of elephants in captivity, and I came  
15 up with the figures of six hours out of every 24 hours, and in  
16 my opinion, if that's conducted at regular intervals, thinking  
17 about overnight chaining, I do think overnight chaining would  
18 lead to harm to an elephant, and that's the basis. Obviously  
19 there's going to be some arbitrariness about plucking a figure  
20 out of the air, but looking at overnighting, I think that would  
21 cause harm, and it's certainly been a practice that zoos are  
22 definitely moving away from or have moved away from because of  
23 the concerns that the impact it has on the elephants welfare,  
24 and also in terms of the daily routine, again, a certain  
25 arbitrariness, but I recommended about any more than thirty

1 minutes wouldn't be great for the animal, and that veterinary  
2 procedures could hopefully be taking place if they had to be  
3 chained. I do have concerns about any system that leads to  
4 regular chaining of elephants, and but again, you know, based on  
5 the kind of daily routine of elephants, in fact, they sometimes  
6 do have to do veterinary care, I picked out thirty minutes.

7 Q. And I'd like to talk just a little bit about elephant  
8 training. You mentioned that you did some research on the  
9 primary manners in which elephants are trained. Can you briefly  
10 describe for Judge Sullivan what those methods are?

11 A. Yeah. There's the main way, the traditional way of  
12 training elephants involves what's called free contact training  
13 so the elephant's in the same space as the keeper, hence free  
14 contact, and the main kind of principles behind that are that  
15 the handler maintains a dominance over the elephant, which is  
16 mainly administered through the use of punishment as well as  
17 negative re-enforcement, which is mainly used through the ankus,  
18 the bullhook, and generally within that kind of setting the  
19 keeper requires a hundred percent compliance from the elephant.  
20 Obviously the keeper being in such close quarters with the  
21 elephant carries a certain amount of risk, and hence they  
22 require the animal to perform the behavior when they ask for it.  
23 And the other system that's increasingly been used is protected  
24 contact where there's a barrier between the keeper and the  
25 elephant, and in those circumstances the animal isn't required

1 to have a hundred percent compliance. It can partake in the  
2 training or not, according to whether it wants to or not. And  
3 generally that doesn't involve the use of an ankus and rather it  
4 involves positive re-enforcement, so giving the animals treats  
5 and rewarding it for the kind of behaviors that it performs, so  
6 those are the two main systems.

7 Q. And did you review evidence of the handling of elephants by  
8 Ringling Brothers' employees?

9 A. Yes. I viewed testimony, reviewed testimony as well as  
10 video footage, including the use of the ankus or bullhook, and I  
11 think what I saw was the bullhook is used very frequently, often  
12 with quite a lot of force behind it, and according to several  
13 testimonies, including a USDA inspector and a humane society  
14 inspector, those ankuses are sharp, so I think the way in which  
15 they were used was likely to cause significant wounding and  
16 breaking of the skin, and that was verified by various  
17 testimonies. All perhaps more worryingly is the kind of  
18 monitoring in which it was used. It was used so frequently and  
19 so often to kind of punish behaviors that you wouldn't  
20 necessarily think about things such as touching an elephant next  
21 to it or rattling its chain, and often for no apparent reason,  
22 that I do see anyway, and kind of an evasive handling has been  
23 shown in a whole bunch of other kind of species that kind of  
24 infrequent use of either hitting the animal or prodding it  
25 continually is a cause of serious welfare concern, and it's

1 associated with chronic stress as well as even growth can be  
2 affected of the animal because as much sustained effect on the  
3 animal and that circumstance, I think it really harms the animal  
4 psychologically, but also they've got, there's such level, an  
5 excessive level of control over the behaviors of the animal I  
6 think it significantly impairs their natural behaviors, so from  
7 all the evidence, I think it does cause significant harm.

8 MS. SANERIB: Your Honor, I don't have any further  
9 questions at this time.

10 THE COURT: All right.

11 Any cross-examination?

12 MR. SHEA: Yes, your Honor.

13 CROSS-EXAMINATION

14 BY MR. SHEA:

15 Q. Now, Dr. Clubb, is it your testimony you were prevented  
16 from seeing the animals at issue in this case, the elephants at  
17 issue, because you were prevented from going to the inspection  
18 of them that were ordered in this case?

19 A. I don't really recall what happened. I know that I  
20 certainly didn't go to the visit, but I can't remember, I'm not  
21 aware of the negotiations that went on behind the scenes in  
22 terms of the visits.

23 Q. Well, Dr. Clubb, let me show you page 102 of your  
24 deposition, starting on line twenty.

25 Question: Dr. Clubb, if I understand correctly, you

1 didn't attend the inspections of the FEI elephants done in the  
2 this case, am I correct?

3 Answer: That is correct. It was too difficult for me  
4 to come back at that time.

5 Did I read your testimony correctly?

6 A. You did, yeah. I mean, and I did say that. But thinking  
7 about it, I can't recall the exact -- the exact nature of the  
8 reasons why I didn't go out. It might have been my schedule,  
9 but to be honest, I can't remember honestly.

10 Q. Dr. Clubb, you did not review the medical records of any of  
11 the elephants at issue in this case, did you?

12 A. No, I didn't.

13 Q. And you cannot point to any evidence where harm was in fact  
14 caused to any specific elephant at issue in this case, correct?

15 A. Well, my opinion I think having reviewed the evidence that  
16 I've seen in terms of the treatment of the elephants and the  
17 conditions that they're kept in, it's my opinion that harm has  
18 been caused, and in terms of particularly disrupting their basic  
19 essential behaviors.

20 Q. Dr. Clubb, let me show you page 216 of your deposition  
21 starting on line three. Question: What evidence of physical  
22 injury do you have for Jewell?

23 Answer: Well, as I said in answer to other questions,  
24 I haven't broken it down according to each individual elephant,  
25 so as you can see from my report, I've reviewed the use of the



1 bullhook by Ringling Brothers' employees on elephants in  
2 general.

3 Question: You say in your report generally that those  
4 are likely to cause physical harm. That is really the tenor of  
5 your report, but you don't show any instances where harm was in  
6 fact caused. Can you point me to any evidence that you are  
7 citing where harm was in fact caused to Jewell?

8 Answer: As I said, if you point -- if you point out  
9 Jewell, I haven't reviewed the evidence according to the  
10 individual elephant and identified those in the report.

11 Next page, please.

12 And that is true for the other five elephants at issue  
13 and Zina, correct?

14 Answer: That is correct.

15 Did I read your testimony correctly?

16 A. Yes, you did.

17 Q. You've not identified specific injuries for any of the  
18 specific elephants in this case, correct?

19 A. I didn't review, as I said, I didn't review the evidence  
20 and pinpoint each individual elephant. I generally reviewed the  
21 treatment of all the elephants that were in the footage, so, no,  
22 I haven't picked out specific individuals used in this case.

23 Q. And Dr. Clubb, you did not have specific evidence as you  
24 sit here today to demonstrate that any one of those elephants is  
25 experiencing poor welfare, correct?

1 A. Well, in my opinion, I think the way that the animals are  
2 being treated and the performance is stereotypic behavior  
3 suggests that the environment and the treatment of those  
4 elephants is such that it has caused them harm.

5 Q. Dr. Clubb, let me show you page 240 of your deposition,  
6 line twenty.

7 Question: So then you don't have specific evidence as  
8 you sit here today to demonstrate that any one of those  
9 elephants is experiencing poor welfare, elephant by elephant?

10 Answer: Not elephant by elephant.

11 Did I read your testimony correctly?

12 A. Yes, you did.

13 Q. And we were speaking about, in your deposition there, we  
14 were speaking about the elephants at issue in this case and  
15 Zina, were we not?

16 A. Yes.

17 Q. You cannot identify any specific evidence that any of the  
18 elephants is being "taken," correct?

19 A. As I've explained, I think the evidence I was reviewing was  
20 the treatment of all the elephants and the conditions that they  
21 were kept in, and I think there's sufficient evidence for me to  
22 conclude that they were harmed in the way that they were  
23 treated, but I haven't broken down my report according to each  
24 individual elephant.

25 Q. Dr. Clubb, let me show you page 241 of your deposition,

1 beginning on line four.

2 Question: What specific evidence do you have to  
3 demonstrate that any of those elephants is being taken? And  
4 again I'm looking at elephant by elephant.

5 Answer. As I said, I haven't broken it down elephant  
6 by elephant.

7 Did I read your testimony correctly?

8 A. Yes, you did.

9 Q. Now, you did not have any evidence that any of the  
10 elephants at issue, or Zina, displayed signs of physiological  
11 stress, correct?

12 A. No, that's right. There's been no psychological studies as  
13 I'm aware.

14 Q. In fact, your opinions about psychological stress in the  
15 FEI elephants that you gave in your report were based on studies  
16 done in other species, such as livestock, correct?

17 A. Yes. I think it's generally kind of standard practice that  
18 you can very validly compare a cross species, and that's the  
19 kind of basis for, for instance, studies that test drugs on rats  
20 or mice and extrapolate that to the effects it can have on  
21 humans. It's a similar kind of principle, and given that  
22 there's been extensive work done on particularly livestock in  
23 terms of effective handling, I think it's a valid extrapolation  
24 to look at the likely of harm caused to those elephants based on  
25 how they're handled.

1 Q. Dr. Clubb, so you're saying that you're applying studies in  
2 livestock to elephants, did I understand that correctly?

3 A. Um-hmm, yes.

4 Q. Are there any studies that do that, that compare welfare in  
5 livestock handling to welfare in elephant handling where that  
6 welfare is -- or where the handling is similar?

7 A. Well, there's aspects of the handling as I picked out in my  
8 report, so, for instance, the studies have looked at the effect  
9 of hitting cows or pigs repetitively, and looked at that, and  
10 based on -- and looked at the effect it has on their welfare,  
11 including physiological measures. There are studies that have  
12 looked at the effect of frequent, unpredictable events that are  
13 versive on a whole range of species, so there's characteristics,  
14 shall we say, of the way in which the elephants are handled that  
15 the other studies can be applied to.

16 Q. Well, those studies don't include elephants, do they?

17 A. No.

18 Q. Now, you don't have any evidence specific to the elephants  
19 at issue or Zina about wounding or injury from chaining,  
20 correct?

21 A. No, I don't think so. As I said, I didn't review it  
22 elephant by elephant.

23 Q. And you have no evidence specific to the elephants at issue  
24 or Zina that supports your opinions that use of the guide,  
25 tethering, or even weaning has caused them mental injury,

1 correct?

2 A. You said the use of the guide -- sorry -- did you say?

3 Q. The ankus.

4 A. As I said, I haven't reviewed it elephant by elephant.

5 Q. Now, Dr. Clubb, you just questioned me about the term  
6 "guide." You've heard that term before used as a synonym for  
7 the ankus, haven't you?

8 A. Yes. Sorry. I didn't hear you properly. That's why I  
9 asked.

10 Q. You don't know when any of the elephants at issue or Zina,  
11 if any, began exhibiting stereotypic behavior, correct?

12 A. That's right.

13 Q. And you don't know under what circumstances any of the  
14 elephants at issue or Zina, if any, began exhibiting stereotypic  
15 behavior, correct?

16 A. Correct.

17 Q. And you don't know whether such stereotypic behavior, if  
18 any, has become more or less pronounced over time, correct?

19 A. That's correct.

20 Q. And you have no evidence that any of the elephants at issue  
21 or Zina have been injured by what you call power behaviors in  
22 your report, correct?

23 A. Correct.

24 Q. And you have no evidence that the elephants at issue or  
25 Zina have problems with breeding, feeding, or sheltering,

1 correct?

2 MS. SANERIB: Your Honor, I'm going to object. This  
3 is outside the scope of my direct.

4 THE COURT: Counsel?

5 MR. SHEA: Your Honor, counsel asked her questions and  
6 elicited answers about injury, which is a term used in the  
7 definition of taking, of wounding, I heard that which is used --

8 THE COURT: I'll allow it. I'll allow the question.

9 THE WITNESS: Sorry. Could you repeat the question?

10 BY MR. SHEA:

11 Q. You have no evidence that elephants at issue or Zina have  
12 problems with breeding, feeding, or sheltering, correct?

13 A. Correct. As I said, I haven't reviewed it elephant by  
14 elephant, but I think in terms of the restriction of their  
15 natural behaviors, it's clear to me from the way in which to the  
16 degree to which they're confined in their movements as well as  
17 the treatment that they face at the hands of the handlers does  
18 cause disruption to their essential behaviors, and that was the  
19 basis of my argument basically, but, as I said, I haven't broken  
20 it down by individual elephant.

21 Q. So you have then no evidence that Zina, or I'm sorry,  
22 Jewell, is suffering problems with breeding, feeding, or  
23 sheltering, correct?

24 A. Yes. As I said, I haven't done it by individual elephant.

25 Q. So the same answer would be true for the other elephants at

1 issue; is that right?

2 A. That's right. I've reviewed the evidence according to all  
3 the elephants.

4 Q. Dr. Clubb, what natural behaviors are being suppressed did  
5 you say while elephants are on chains?

6 A. I think it restricts most of their natural behaviors, so  
7 even quite basic movements such as being able to easily lie  
8 down, turn around, move to a place that's a bit more comfortable  
9 in terms of temperature, foraging, socializing, all those  
10 behaviors I think are either completely prevented or extremely  
11 restricted.

12 Q. Is it your testimony that the elephants can't eat while on  
13 chains?

14 A. I'm talking about foraging behavior rather than just the  
15 act of eating.

16 Q. So they can eat, can't they?

17 A. Yes.

18 Q. And they can sleep, can't they?

19 A. Well, they can sleep standing up. I think from the  
20 evidence I've reviewed there's difficulty in terms of the amount  
21 of time or the possibility of lying down, especially two  
22 elephants chained next to each other, and particularly on the  
23 trains.

24 Q. Is it your testimony that the elephants can't lie down on  
25 the train cars?

1 A. I just think from the evidence that has been done in the  
2 Friend report, for instance, only one or two elephants the whole  
3 time actually lay down, and some testimony that I've read  
4 suggests that it's difficult for them to lie down, especially  
5 two elephants at the same time if they're chained next to each  
6 other, so I'm not saying it's impossible, but I think it's  
7 difficult for them.

8 Q. And your basis for that opinion is what again?

9 A. Someone's testimony in terms of the difficulty with them  
10 lying side by side, two adjacent elephants, and the Friend  
11 report, the Williams and Friend report, find that only two  
12 individuals across the four circuses actually were recorded  
13 lying down, even in very long journeys, which is very natural,  
14 and you would expect them to spend much more time lying down. I  
15 also think the, I think it's the Schmid study found that letting  
16 animals off chains and using paddocks find an increase in lying  
17 behavior, which suggests they're not able to lie down as much as  
18 they would like to when they're chained up.

19 Q. You mentioned the Schmid study. Is that S-c-h-m-i-d; is  
20 that right?

21 A. Yes, that's right.

22 Q. And that was in 1995?

23 A. Yes, that's right.

24 Q. And it was in a traveling circus in Europe, correct?

25 A. Yes.



1 Q. Are you saying that that traveling circus' facilities,  
2 methods, and practices were the same as FEI's?

3 A. In terms of the practice of picketing and chaining  
4 elephants side by side, I haven't seen anything to suggest that  
5 difference significantly between these circuses in this study  
6 and the Feld elephants.

7 Q. Do you know the extent to which they're different or not?

8 A. I haven't seen evidence that they're different, but I  
9 couldn't tell you exactly the distance that they were chained  
10 side by side, but there's a lot of other evidence that I've just  
11 listed in terms of the other studies that are being done that  
12 suggest that it is difficult for them.

13 Q. Do you have any evidence as to how often FEI elephants lie  
14 down in train cars?

15 A. The study that was done by William and Friend looked at  
16 Ringling elephants on the trains, and, as I said, only two  
17 individuals lay down at all for the journey. I can't recall the  
18 exact time they spent lying down. That would be in the study,  
19 so, yeah, from that.

20 Q. And that's the only evidence you have?

21 A. I think for the train cars, yeah, but also just the footage  
22 that we saw earlier with the two elephants in the train car,  
23 physically, just looking at it, it would be quite difficult for  
24 them to both lie down at the same time because of their  
25 restriction and the scale.

1 Q. Do you know what elephants were photographed in that film  
2 clip you saw and testified to earlier today about train cars?

3 A. I don't recall. Sorry.

4 Q. Do you know what year that film clip was shot?

5 A. I don't recall. Sorry.

6 Q. Do you even know whose elephants those were?

7 A. They were Feld elephants as far as I'm aware.

8 Q. How do you know that?

9 A. I remember reviewing the evidence. I can't recall exactly  
10 what piece of paper I looked at.

11 Q. So you saw a piece of paper that told you that those were  
12 Feld elephants in that film clip?

13 A. I don't recall the exact -- the exact nature of the  
14 document, but I was under the impression that they were Feld  
15 elephants.

16 Q. Nothing in the film clip told you that they were Feld  
17 elephants, did it?

18 A. No, I don't think so.

19 Q. Now, you've never seen a train car, a Feld train car, for  
20 yourself, have you, an FEI train car?

21 A. No. I didn't attend the inspections.

22 Q. Now, is it your testimony that the FEI elephants cannot  
23 touch others while they're on chains?

24 A. No. I think they can touch others, but they're very  
25 restricted in the elephants that they can touch and they're very

1 restricted in the types of socializing behavior that they can do  
2 because they're so restricted in their movements.

3 Q. Now, Dr. Clubb, for the elephants at issue, you could have  
4 worked up behavior or psychological factors to determine their  
5 welfare, couldn't you?

6 A. Well, as far as I'm aware, there's no -- there's been no  
7 access to the elephants to conduct such kind of psychological  
8 measures. And in terms of the video evidence I've seen have  
9 noted the presence of stereotypic behavior.

10 Q. But you could have requested to work those up, couldn't  
11 you?

12 A. I was under the impression that it wouldn't be possible to  
13 get access to things like blood samples and things like that in  
14 order to get more detailed psychological measures from them.

15 Q. Dr. Clubb, nonetheless, you've not done such a workup on  
16 the elephants, have you?

17 A. No, I haven't.

18 MS. SANERIB: Your Honor, I do want to object to this  
19 line of questioning because again Feld Entertainment opposed our  
20 taking any blood samples of these animals during physical  
21 inspections.

22 THE COURT: Counsel?

23 MR. SHEA: Your Honor, I'll have to turn to counsel.  
24 I wasn't part of the inspection.

25 MR. SIMPSON: The way this worked, your Honor, if they

1 wanted to do an inspection and we said what do you want to do  
2 and they didn't have an answer. They said what should we do?  
3 We're the defendants in this case. So they were supposed to  
4 propose a protocol. We went back and forth. They did that.  
5 Judge Facciola ordered us to carry it out and we did, so if  
6 something slipped through the cracks because they wanted to take  
7 a blood test or a hair sample or whatever, they didn't ask for  
8 it.

9 THE COURT: Did you? Did you ask for it?

10 MS. SANERIB: Yes, we did, your Honor. Our original  
11 Rule 34 inspection request to defendant asked to take samples  
12 from the elephants.

13 THE COURT: And what happened?

14 MS. SANERIB: He would not allow us to take samples.

15 THE COURT: Did you bring that to Judge Facciola's  
16 attention or my attention? Had you brought it to my attention,  
17 you would have gotten the blood tests, the hair samples, and  
18 probably any other scientific evidence that you needed.

19 MS. SANERIB: They had arguments that I think  
20 Magistrate Facciola thought were compelling as to why we  
21 shouldn't be taking blood from these animals.

22 THE COURT: Did Judge Facciola deny the request to  
23 take blood?

24 MS. SANERIB: I would have to go back and review the  
25 transcript.

1 THE COURT: I note that no one brought it to my  
2 attention. If he did rule that way, no one appealed it.

3 MS. SANERIB: That's correct.

4 THE COURT: I'll allow the question. Go ahead.

5 BY MR. SHEA:

6 Q. Dr. Clubb, you've done no studies on the treatment of FEI  
7 elephants, correct?

8 A. I'm sorry. Could you repeat that?

9 Q. Yes. You've done no direct studies, empirical studies, on  
10 the treatment of the FEI elephants, correct?

11 A. That's correct.

12 Q. And you've done no direct empirical studies on the welfare  
13 of the FEI elephants, correct?

14 A. That's correct.

15 Q. And you have no evidence that FEI currently -- well, strike  
16 that.

17 Dr. Clubb, in the Clubb & Mason report you called  
18 urgently for empirical research on the welfare of captive  
19 elephants, didn't you?

20 A. We put a list of recommendations for the research because  
21 it was clear that looking across the board it would be useful to  
22 have more work in that area.

23 MR. SHEA: Could you please, Mr. Palisoul, bring up  
24 Exhibit 3 to Dr. Clubb's deposition at page 252?

25 BY MR. SHEA:

1 Q. Now, Dr. Clubb, this text box at the bottom of the page --  
2 well, first off, this is a page from your report, correct, the  
3 Clubb-Mason report?

4 A. That's correct.

5 Q. And in this text box here that is on the screen, this was  
6 part of the report; is that right?

7 A. That's right.

8 Q. The first recommendation for empirical research was the  
9 following: The factors responsible for poor welfare of zoo  
10 elephants should be empirically investigated as a matter of  
11 urgency. Did I read that correctly?

12 A. That's right, yeah.

13 Q. And at the time of your deposition that investigation had  
14 not been done, correct?

15 A. Well, this was across the board really because we find  
16 we've reviewed so many different aspects and so many different  
17 types of evidence of poor welfare that we were calling for  
18 research to be done across the board so we're not just talking  
19 about one or two aspects, so across the board there hasn't been  
20 one study that's looked to everything, no.

21 Q. Dr. Clubb, without empirical research on elephant welfare,  
22 it would be impossible to tell whether captive institutions  
23 keeping captive elephants are getting it all right, isn't that  
24 correct?

25 A. Well, I think, yeah, in terms of measuring the welfare of

1 elephants in one particular facility to say yes, they have good  
2 welfare, yeah, I would agree.

3 Q. Dr. Clubb, in the Clubb & Mason report, you called for a  
4 number of issues to be assessed by empirical research, isn't  
5 that right?

6 A. We did have various presentations, yes.

7 MR. SHEA: Mr. Palisoul, if you could show page 250 of  
8 that exhibit.

9 BY MR. SHEA:

10 Q. And Dr. Clubb, this is page from the Clubb & Mason report;  
11 is that right?

12 A. That's right.

13 Q. And the box at the bottom of the page, I believe it is box  
14 eight, that was in the report, wasn't it?

15 A. Yes.

16 Q. Now let's zoom back out to look at the text above, and I'd  
17 like to ask Dr. Clubb if you still agree with this statement  
18 beginning about five lines up from the text box: There is  
19 clearly an urgent need for detailed statistically sophisticated  
20 multi-variate study of the factors affecting elephant welfare.  
21 We suggest that a thorough research program which we estimate  
22 would take just three person years to stress hormones and  
23 stereotypy were not looked at could answer a lot of key  
24 questions (See Box 8). We also list some other unanswered  
25 research questions in Box 9.

1                   First off, did I read that correctly?

2       A.    Yes, you did.

3       Q.    Secondly, do you still agree with that statement?

4       A.    Well, I think just to put it in context, this was -- the  
5       idea behind this was to look at all the welfare issues that we'd  
6       highlighted and look at all those questions within one study, so  
7       I think there has been one attempt to kind of one study that's  
8       tried to look at various different aspects but none to date that  
9       look at everything together that we recommend here.

10      Q.    Dr. Clubb, let me show you Box 8.  And does Box 8 describe  
11      the research project that you were calling for urgently in this  
12      report?

13      A.    Yes.

14      Q.    And looking in the middle of the text of Box 8, you say  
15      that the aim of such a project would be to identify specific  
16      aspects of husbandry that correlate with measures of elephant  
17      welfare.  Was that one of the aims that you had for this  
18      project?

19      A.    Yes.  It was to look at a whole range of different measures  
20      from the captive environment as well as a whole range of welfare  
21      problems that we'd seen and match those two up basically.

22      Q.    And one of those was which handling system is best for  
23      elephant health; is that correct?

24      A.    That's correct.

25      Q.    And that research hasn't been done, has it?



1 A. I don't think there's been an overall study of it, no.

2 Q. And the next, another one was what enclosure size is  
3 acceptable to ensure adequate welfare? That was another  
4 suggestion, was it not?

5 A. Yes, it was.

6 Q. And that hasn't been done either, has it?

7 A. There's been a study that's looked to correlates of welfare  
8 and enclosure size that suggests that bigger enclosures are  
9 better, so to some extent that has been conducted.

10 Q. Was that conducted since your deposition?

11 A. Yes, it was, yeah.

12 Q. So it was just reported between what, September and now?

13 A. It was.

14 Q. September '08 and now?

15 A. Yeah. It's been released since then, yes.

16 Q. And is that the Bristol study that you mentioned to me in  
17 your deposition?

18 A. Yes.

19 Q. Now, as I understand this box, what you were expressing  
20 here was conducting a study with a number of what you call  
21 independent variables labeled A through D, and looking to see  
22 what happens or what the effect was on what you called dependent  
23 variables A through F, correct?

24 A. Yes, that's right.

25 Q. So for instance, to read this box correctly, one would

1 understand that a study, you were requesting or calling urgently  
2 for a study to be conducted on the physical aspects of enclosure  
3 design, e.g., size, complexity, flooring substrates, to see what  
4 effect that would have on reproductive success, morbidity,  
5 mortality, the incidence of poor maternal care and infanticide  
6 behavior, problems, aggression and stereotypies, or noninvasive  
7 physiological stress indicators; is that right?

8 A. Yes. It was basically the effect of all those factors at  
9 the top, the effect of those on all the factors on the bottom,  
10 and taking each other into account.

11 Q. I see. So then the study would also include looking at  
12 aspects of husbandry in management such as diet, handling  
13 regime, and time spent indoors and the effect of those variables  
14 on the factors A through F, right?

15 A. Yes. All those factors together, yeah.

16 Q. And to date, those studies have not been done, correct?

17 A. No. As I said, there's been some aspects looked at, but  
18 there's been no overall study to look at all those measures.

19 Q. When you say some aspects have been looked at, is that the  
20 Bristol study you've referred to?

21 A. Mainly, yeah.

22 Q. And when was the Bristol study released?

23 A. It came out either the end of last month, I think it was  
24 last month, yeah, in January.

25 Q. I see. That was funded by the RSPCA, wasn't it?

1 A. Part of it was, and then there was also the Zoo  
2 Association, BEAZA, the UK government, and another welfare  
3 organization, IFO.

4 Q. Did you review drafts of that study before it was released?

5 A. I did see some of it, yeah.

6 Q. Now, I note on Box 8, or I'm sorry, the text above Box 8,  
7 you had said you also listed some other unanswered research  
8 questions in Box 9, and Box 9 appears on the next page of your  
9 report, correct?

10 A. Yes.

11 Q. And Box 9, one of those unanswered additional possible  
12 research questions was about training; is that correct?

13 A. Yes.

14 Q. And that was: How do elephants respond to their handlers  
15 in different types of training regimes, e.g., do they show any  
16 behavioral signs that they perceive them as matriarch? Did I  
17 read that correctly?

18 A. Yes.

19 Q. That research hasn't been done, has it?

20 A. No. I don't think there's -- no. There's been nothing  
21 that's looked specifically at that.

22 Q. And then another of the additional research questions that  
23 you flag here is down near the bottom under Behavioral Problems,  
24 and it begins over about mid-page, and it says: And where does  
25 weaving come from? Did I read that correctly?

1 A. Yes, that's correct.

2 Q. So you were calling at that time for research on where  
3 weaving developed from, right?

4 A. Yeah. We thought it would be useful to get more research  
5 done on that because, as I kind of reviewed earlier, the  
6 evidence that we've got so far in the studies that are being  
7 done suggested restriction of movement or at least restriction  
8 of the natural behaviors, but as with any study, more research  
9 would be even more valuable.

10 Q. But that research hasn't been done, has it?

11 A. No.

12 Q. Now, Dr. Clubb, you testified earlier today that you read  
13 quite a bit of literature in preparing the Clubb & Mason report,  
14 correct?

15 A. Correct.

16 Q. And I think you agreed with counsel that there were twenty-  
17 some or more pages of references in this report; is that right?

18 A. Yeah, I think so.

19 Q. You're not aware of any studies that identify risk factors  
20 for arthritis in elephants, are you?

21 A. There's been various correlations made by researchers in  
22 the field and veterinarians and those who work with elephants,  
23 and risk factors includes being kept on hard or yielding  
24 substrates like concrete, as well as restriction of movement,  
25 and that we reviewed that and the reports.

1 Q. Well, you didn't have that information at the time of your  
2 deposition, did you?

3 A. Well, I certainly make the point that there's risk factors.  
4 Those risk factors were identified or have been identified.

5 Q. Let me show you page 224 of your deposition: Okay. So let  
6 me be more specific before we do this. Did you name any other  
7 risk factors than those you just named?

8 A. I don't recall actually.

9 Q. Okay. Do you know whether age has been shown to be a risk  
10 factor for arthritis in elephants?

11 A. I'm not aware of any in elephants. I know in other species  
12 and humans, for instance, is a risk factor.

13 Q. And also to quote the Clubb & Mason report, this was a  
14 review of -- the Clubb & Mason report was a review of stud book  
15 data. Was that the type of data reviewed?

16 A. That was part of the data we reviewed, yes.

17 Q. What is a stud book?

18 A. It records the births, deaths, and source of animals,  
19 location of animals.

20 Q. And have you reviewed stud books in North America for North  
21 American elephants?

22 A. No, I haven't. It was European zoos that we reviewed.

23 THE COURT: All right. At some point we have to break  
24 for lunch, counsel. Now is probably as good a time as any.  
25 We'll start back at 2:15. Enjoy your lunch.

1 THE WITNESS: Thank you.

2 THE COURT: Please do not discuss any aspect of your  
3 testimony with anyone.

4 THE WITNESS: Okay.

5 THE COURT: I'm not trying to curtail your  
6 examination. How much more time do you need for cross?

7 MR. SHEA: I've always underestimated, your Honor. I  
8 would say about an hour.

9 THE COURT: All right. We'll start back at 2:15.  
10 Thank you. You can step down. Enjoy your lunch.

11 THE WITNESS: Thank you.

12 COURTROOM DEPUTY: This Honorable Court now stands in  
13 recess until 2:15.

14 (A luncheon recess was taken at about 12:59 p.m.)

15 - - -

16

17

18

19

20

21

22

23

24

25

I N D E X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

WITNESSES:

ROS EDWARDS CLUBB, Ph.D

Direct Examination by Ms. Sanerib 5  
Cross-examination by Mr. Shea 71

CERTIFICATE

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

JACQUELINE M. SULLIVAN

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25