

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 18, 2009  
. 10:24 a.m.  
.

. . . . .

TRANSCRIPT OF BENCH TRIAL - MORNING SESSION - DAY 9  
BEFORE THE HONORABLE EMMET G. SULLIVAN  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

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

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

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

Would counsel please identify yourselves for the record?

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

MR. CRYSTAL: Howard Crystal for the plaintiffs.

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

MS. WINDERS: Good morning, your Honor. Delcianna Winders for the plaintiffs.

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

MR. SIMPSON: Good morning, your Honor. John Simpson for the defendants.

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

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

MS. JOINER: Good morning. Lisa Joiner for the defendants.

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

1 MR. PALISOUL: Derrick Palisoul.

2 THE COURT: I have to do a better job of getting  
3 around Washington in the snow and ice. It doesn't take much to  
4 shut the city down. I'm a native Washingtonian, and it hasn't  
5 gotten better over the years. I'm sorry I was late. I just  
6 couldn't do any better.

7 Is the witness present?

8 MS. SANERIB: Yes, she is.

9 THE COURT: I'm going to ask you to step outside just  
10 for a few minutes, all right?

11 I was able to use the time, though, to focus on some  
12 of her testimony yesterday, and this is my concern. If I  
13 understood her testimony correctly, she has an opinion that this  
14 alternative training method utilizing training without a  
15 bullhook would be most appropriate if the definition of "circus"  
16 was redefined, but that this training method could not under any  
17 circumstances, and she was quite adamant about it, could not  
18 under any circumstances, be utilized in a traditional circus  
19 environment as we understand that environment to be, because of  
20 the reasons she stated: the fact that people are riding  
21 elephants, the fact that they're in the presence of the public,  
22 so why is this relevant at all? We're talking about a "take" in  
23 a traditional circus setting. Why is her expert testimony about  
24 what could happen in a different type of environment relevant to  
25 the issues I have to decide?

1 MS. SANERIB: Your Honor, I think it's really relevant  
2 because her development of an alternate system in and of itself  
3 shows how harmful the traditional system is, and that's the  
4 system that's used by the circus, and so she is here to talk  
5 about the evidence that she's reviewed of the circus, the  
6 techniques that they use, and why those techniques are harmful  
7 to elephants. And her expertise flows from her development of  
8 an alternate system for managing elephants, which, as she said  
9 yesterday, would require, you know, us to rethink the circus if  
10 you're going to use those alternate systems, but her testimony  
11 is really focused on what the traditional system is and why  
12 that's harmful to elephants and why as a result of that she  
13 develops an alternate system, so the focus is really on the  
14 circus and what the traditional training does to the elephants,  
15 and why that prompted people to take a step back and look at how  
16 those animals are trained and whether we need to be doing  
17 something different with them in the zoological community.

18 THE COURT: Right. I'm not going to reach those  
19 issues about whether or not the circuses should do something  
20 different. My focus is on whether or not the activities that  
21 are currently undertaken by circus personnel constitute a "take"  
22 in the meaning of the, you know, the Endangered Species Act, so  
23 again, what's the relevance of this?

24 MS. SANERIB: The relevance of it is because, as you  
25 know she described yesterday, she has a master's in psychology

1 and studied animal behavior, so she understands the basic  
2 premise of animal training, and so she can really help your  
3 Honor understand as a basic system how does that system, free  
4 contact training of elephants, operate, how does it work? And  
5 her expertise really flows from --

6 THE COURT: That's what troubles me. She said the  
7 free contact system will never operate in the traditional circus  
8 environment as we understand that environment to be as Ringling  
9 Brothers operates today. I mean, that's the environment that's  
10 before me, you know. It's not my job, it's not my focus to say  
11 from this day forward you have to do things, the environment has  
12 to change. It may well be that the utilization of certain  
13 methods, chaining and use of hooks, etcetera, rise to the level  
14 of a taking, and maybe they have to be monitored, but I just  
15 don't -- I think this is getting beyond the kin here, you know,  
16 of what I'm really supposed to be focusing on.

17 MS. SANERIB: I guess I have two responses to that,  
18 and the first that is Ms. Laule's opinions are going to be about  
19 the circus, the techniques that they use, what the implications  
20 of those techniques are for elephants.

21 THE COURT: You mean so far as the use of the bullhook  
22 and chaining?

23 MS. SANERIB: And chaining and the extent in which the  
24 circus engages in those activities and what means for those  
25 animals.

1           And the second thing, I think that defendant is making  
2   a really significant argument to your Honor that if you rule in  
3   any way for the plaintiffs in this case, you're going to be  
4   ending all elephants in captivity, and I think part of one of  
5   these things, these --

6           THE COURT: I'm not so sure that's necessarily the  
7   case at all, but I don't have to address that right now. What  
8   if I did rule for the plaintiffs, would that be the end of the  
9   circus as we understood it? No, I don't think so at all, but  
10   I'm not at that point now.

11          MS. SANERIB: We'd like to have some information on  
12   the record, though, that shows there are very different ways of  
13   working with animals in captivity, and you were just saying if  
14   you rule for the plaintiffs in the case, that doesn't  
15   necessarily mean there's implications for other facilities that  
16   have captive elephants, but I think defendant has talked about  
17   what the standards are in the industry, what implications from a  
18   ruling from this Court are, so we'd like to inform your Honor  
19   about what is going on within the captive elephant industry to a  
20   certain extent and do that through the context of our experts'  
21   particular opinions about the circus when the evidence that  
22   they've reviewed from their knowledge and their background in  
23   training elephants, working with elephants, and just ask for  
24   their opinions about what the circus is doing.

25          THE COURT: Well, the thought also occurred to me

1     you're asking for what, declaratory judgment relief and what,  
2     injunctive relief?

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

4             THE COURT: All right. So does this come under the  
5     balancing of harms prong?

6             MS. SANERIB: I think.

7             THE COURT: In other words, the harm to the plaintiff,  
8     I mean the harm to the defendant if hooks and chains rise to the  
9     level of a "taking," the harm to the defendant that defendant  
10    complains of, that is, the ending of the traditional circuses,  
11    is ameliorated because there are what, alternative methods to  
12    training elephants in nonconventional circus environments?

13            MS. SANERIB: Well, I actually think that defendant  
14    has said in their proposed findings of fact and conclusions of  
15    law that if they can't use the bullhook and they can't chain the  
16    elephants, that they won't be able to care for them.

17            THE COURT: Right. And that goes right to harm. They  
18    argue they'll be out of business, and I'm just thinking,  
19    wondering whether or not this particular issue goes to the harm.  
20    Indeed they won't be out of business. It just means you have to  
21    maybe redefine a way in which you do business. I don't know.

22            MS. SANERIB: I think it definitely comes into play  
23    there.

24            THE COURT: It goes to the harm.

25            MS. SANERIB: In balancing of the harms, yes.



1           And I think the other place it comes into play is when  
2     you're looking at those official defendants' harm and harass, if  
3     you look at the definition of harassment, that definition  
4     particularly makes reference to standards within the industry  
5     and what's generally accepted within the industry, so I think  
6     it's very important in determining whether or not these animals  
7     are being harassed by the way in which the circus maintain them,  
8     which the plaintiffs assert they are being harassed. It's  
9     important to look at what the industry is doing as a whole and  
10    whether what the circus does is industry standard or whether  
11    it's something more extreme than that.

12           THE COURT: Maybe the answer is maybe some of her  
13    testimony is relevant insofar as the harm associated with the  
14    way in which circuses train elephants now utilize the hooks and  
15    chaining. I don't know, maybe it stops there, but this  
16    alternative issue, I'm not so sure that's relevant at all.

17           Mr. Simpson or Mr. Shea?

18           MR. SHEA: Yes, your Honor. Your Honor, taking those  
19    points in order, I think we established yesterday that she's  
20    never worked for a circus, never has trained an elephant in free  
21    contact, admitted that she saw FEI's practice, has never seen  
22    FEI's practices herself, either free contact or protected  
23    contact, except through the film snippets given by the  
24    plaintiffs' lawyers in this case, and did admit that free  
25    contact, if it goes away, that the circus could not be

1 conducted.

2 As to the behavior testimony from her, so we agree her  
3 testimony is irrelevant. Also, as to behavior, we say that  
4 testimony about what I just heard is cumulative. We've already  
5 had behaviorists: Dr. Hart, Dr. Poole, and Dr. Clubb, and their  
6 testimony has already been before the Court and they're all  
7 animal behaviorists, so we say that that part of her testimony  
8 would be cumulative.

9 The point about elephants being in captivity or not,  
10 you know, that's irrelevant here. We're talking about a taking  
11 of these elephants at issue by what defendant is doing, and  
12 she's already said she doesn't have firsthand knowledge of that,  
13 and has not worked in the circus industry and has not worked in  
14 the circus training an elephant or even trained an elephant with  
15 free contact and not trained an elephant of any kind of  
16 performance, so we believe her testimony again is irrelevant.

17 And as to balancing of the harms, I mean, we've  
18 already heard you can't conduct a circus in her opinion without  
19 free contact, so that's already in the record, and as so far as  
20 what the industry is doing as a whole and harassment, your  
21 Honor, again, without her knowledge of what FEI is doing today,  
22 I don't see how that fits. I would say it's irrelevant.

23 THE COURT: Counsel, the cumulative issue, I had not  
24 gotten to that. What about that? I mean, we've heard an awful  
25 lot of testimony already from animal behaviorists about the

1 harm, so wouldn't her testimony be cumulative to what I've  
2 already heard? Am I going to learn something new?

3 MS. SANERIB: Yes, I believe you will learn something  
4 new.

5 THE COURT: What's the proffer?

6 MS. SANERIB: The proffer is her expertise really is  
7 in animal training, so how animal training is designed to  
8 manipulate an animal's behavior.

9 THE COURT: She's not trained an elephant, though?

10 MS. SANERIB: She has trained elephants, but not for a  
11 circus, that's right.

12 Your Honor, I would just like to take a step back for  
13 one second on that point. There's not a lot of people who leave  
14 the circus and want to talk about how it's done in the circus,  
15 so to hold plaintiffs to that standard for all of our experts  
16 have to come from the circus industry, that's a high standard.  
17 I think this woman testified yesterday she's worked with sixty  
18 or seventy captive elephants, so she knows elephants. She's  
19 worked in a lot of institutions that use free contact, she can  
20 tell by looking at an elephant and its interactions with its  
21 handler how that animal has been trained. And if it's free  
22 contact training methods that are used, she can explain to you  
23 why that's so harmful to those animals based on how those  
24 trained -- how the training methodology works, how it's designed  
25 to work, how it uses negative enforcement, how it uses

1 punishment, and why that is so harmful to these animals.

2 THE COURT: Even though she's never trained an  
3 elephant in a circus setting?

4 MS. SANERIB: That's correct. That's what she studied  
5 with her master's degree. That's what she does when she works  
6 every single day when she works with elephants, she's converting  
7 them to a different system, so she's taking elephants that have  
8 been trained using negative re-enforcement, using punishment,  
9 and she's taking them to a new system. She doesn't have to  
10 focus on that new system, but in doing that she can explain to  
11 your Honor the harm of using a system based on negative re-  
12 enforcement, which is what the circus does, and it's very  
13 relevant to our case. She can tell us by looking at video  
14 footage, and a lot of behaviorists, I think other experts in  
15 this case have already testified, looking at video footage is a  
16 very common way of assessing an animal's behavior, what's going  
17 on in that situation. She can do it by her observations. I  
18 don't think that every single one of our experts had to go to  
19 those inspections to be able to render an expert opinion in this  
20 case.

21 I think the other point I wanted to respond to that  
22 Mr. Shea raised is, you know, it's not cumulative, because these  
23 experts all bring a different point, they all have a different  
24 perspective on animal behavior. Dr. Clubb had really looked at  
25 abnormal behaviors that developed from confinement in captivity.

1 Ms. Laule really knows animal training and how you manipulate an  
2 animal's behavior and what those ramifications are for her. The  
3 publications that we used to establish her credentials talk  
4 about the role of fear in abnormal behaviors and some of the  
5 implications of using these negative re-enforcement schemes with  
6 animals in captivity on their behavior, what that means for  
7 those animals, so I think it's highly relevant here, and it's  
8 different, it's different from what the other experts have been  
9 talking about.

10 THE COURT: Anything else, counsel?

11 MR. SHEA: Yes, your Honor. Just briefly.

12 If the proffer is how animal training is done, I think  
13 we show she has experience only with protected contact training,  
14 not free contact training, and it's not only in circuses but  
15 also in zoos. She's not trained an elephant in free contact  
16 period, as I understand it, and she has not done so in a zoo,  
17 and thus she has no experience in doing that, which is what is  
18 at issue this case.

19 Also, your Honor, just how you, if I understood  
20 counsel to say she's an expert in how you manipulate an animal's  
21 behavior, but that's only in her system, the one that she is  
22 marketing in her business, which is protected contact, pure  
23 protected contact system, put them behind a barrier, don't work  
24 with them through the ankus, do not take any dominance position,  
25 do not adopt any kind of dominant tone with the elephant, wait

1 on the elephant to respond, that is very different than free  
2 contact, and we believe, your Honor, that again, it's  
3 irrelevant, and to the extent it's about general elephant  
4 behavior, we've had hours of testimony about that and how the  
5 elephants fair in captivity.

6 THE COURT: Anything further? Last word. Next to  
7 last word anyway.

8 MS. SANERIB: All right. Just one quick point, your  
9 Honor, and I think that Ms. Laule explained this yesterday to a  
10 certain extent.

11 In order to develop an alternate system, and we don't  
12 need to talk about that alternate system, but in order to do  
13 that, she said she spent a significant amount of time talking  
14 to, working with free contact elephant trainers understanding  
15 how that system works. She was an integral part of that  
16 community, she developed training documents, other information,  
17 worked very closely with people who work in free contact, had a  
18 very significant understanding of that system, how it worked,  
19 and that it was the only way she could develop an alternative,  
20 so we don't have to talk about the alternative, but that is her  
21 background and that's how she came to develop the alternative,  
22 was through working very closely and having a very, very solid  
23 understanding of free contact.

24 THE COURT: All right. Counsel, I've just about  
25 finished reading the relevant portions. I need about five more

1 minutes. I don't want to sit up here and read it and listen to  
2 the testimony, I don't want to do it, so let me just take five,  
3 six minutes and read what I need and then I'll rule on this  
4 issue.

5 You have one other expert who is going to be called  
6 today?

7 MS. SANERIB: Yes, that's correct.

8 THE COURT: Who is that person and that's that person  
9 going to testify about?

10 MS. SANERIB: Your Honor, her name is Colleen Kinzley.  
11 She's the general curator at the Oakland Zoo. She has worked  
12 with elephants for about twenty years in captivity.

13 THE COURT: So why wouldn't her testimony be  
14 cumulative to this witness' testimony if I allow this witness to  
15 testify?

16 MS. SANERIB: She has, Ms. Kinzley has practical  
17 experience working with elephants.

18 THE COURT: She's trained elephants?

19 MS. SANERIB: She's trained elephants, she's taken  
20 care of their feet.

21 THE COURT: In a circus setting?

22 MS. SANERIB: Not in the circus setting, in a  
23 zoological setting, but she, having worked in the zoological  
24 industry, has worked with a lot of trainers, spent a lot of time  
25 around them, done a lot of inspections of the circus over the

1 years, and she's provided hands-on of elephant feet, seen the  
2 ramifications of chaining overnight, used a bullhook,  
3 participated in breaking baby elephants, so she has a lot of  
4 very relevant testimony about that.

5 Ms. Laule really explains the sort of methodology.  
6 Her master's degree was based in animal training, how you  
7 manipulate behavior, what that means for the animal. Ms.  
8 Kinzley will talk to you about having done it herself and her  
9 practical experience working with these animals in captivity.  
10 Her review of the evidence, participation in a Court-ordered  
11 inspection at the CEC, and what her opinions are in the case.

12 THE COURT: She did participates in the Court-ordered  
13 inspection?

14 MS. SANERIB: She participated at the one in Florida  
15 at the Center For Elephant Conservation.

16 THE COURT: I'll let you speak to her qualifications  
17 at the appropriate time. Just give me five minutes. Let me  
18 finish reading the transcript from yesterday. No need to stand.

19 COURTROOM DEPUTY: This Honorable Court now stands in  
20 a brief recess.

21 (Recess taken at about 10:45 a.m.)

22 COURTROOM DEPUTY: Please remain seated and come to  
23 order.

24 (Back on the record at about 10:49 a.m.)

25 THE COURT: All right, counsel, you can call your



1 witness. Get right to the relevant points, though.

2 MS. SANERIB: Okay.

3 THE COURT: And focus her testimony on the training  
4 methods now, the harm now. I'll allow some leeway with respect  
5 to the alternative, but the alternative, I query whether that's  
6 really germane to the issues before me, but I'm interested in  
7 her views. I'll give whatever weight that is appropriate, if  
8 any, when I address the merits and resolve the merits in this  
9 case. I will allow her to testify subject to objection and  
10 subject to relevance and make a determination of weight later.

11 MS. SANERIB: Thank you, your Honor.

12 THE COURT: Good morning.

13 THE WITNESS: Good morning.

14 THE COURT: You're still under oath. You can have a  
15 seat.

16 Counsel, proceed.

17 **GAIL LAULE, WITNESS FOR THE PLAINTIFFS, PREVIOUSLY SWORN**

18 DIRECT EXAMINATION

19 BY MS. SANERIB (continuing):

20 Q. Good morning, Ms. Laule.

21 A. Good morning.

22 Q. When we left yesterday we had talked just a little bit  
23 about animal training, and I'd like to you explain to Judge  
24 Sullivan what the premise is behind elephant training.

25 A. Okay. It's based on operant conditioning, and operant

1 conditioning is defined as a type of learning in which the  
2 likelihood of the behavior increasing or decreasing, or  
3 occurring again, is based on the consequences that follow it,  
4 and there's really three consequences that operant conditioning  
5 defines: positive re-enforcement, negative re-enforcement, and  
6 punishment. Positive re-enforcement and negative re-enforcement  
7 make it more likely the behavior will happen again. Punishment  
8 makes it less likely.

9 MS. SANERIB: And Ms. Sinnott, could we call up  
10 Plaintiffs' Will Call Exhibit 81?

11 Your Honor, this is a comment letter. We can see it  
12 on the screen here, it's signed by defendant's vice president of  
13 government relations. It was submitted to the USDA on behalf of  
14 defendant and several of defendants' experts in this case, and I  
15 move its admission as a party admission.

16 THE COURT: Any objection?

17 MR. SHEA: None.

18 THE COURT: Admitted.

19 (Plaintiffs' Will Call Exhibit No. 81 was admitted  
20 into evidence at about 10:52 a.m.)

21 MS. SANERIB: May we go to page seven of this exhibit,  
22 please?

23 BY MS. SANERIB:

24 Q. Ms. Laule, you see there's a heading there that says  
25 Handling. And in the paragraph you'll see it says the

1     cornerstone. I believe it's -- go down one more paragraph.

2     Yes, that paragraph. If we can blow that paragraph up. And  
3     then there's the last sentence in that paragraph says the  
4     cornerstone. Can you please read that?

5     A. The cornerstone, however, of all modern animal handling and  
6     the basis for most training of performing animals is behavioral  
7     modification technique of operant conditions.

8     Q. Thank you very much. So what does this indicate to you,  
9     this statement?

10    A. Well, that the training, methods, and system that's being  
11    used in handling circus elephants is exactly the same system  
12    that's used anywhere else with elephants.

13    Q. And can you describe for the Court how this system of  
14    operant conditioning is used with circus elephants by Ringling  
15    Brothers?

16    A. Okay. So basically operant conditioning has three sub-  
17    steps to it. We give the animal a cue or a command or a  
18    stimulus which tells them what we want them to do. Then the  
19    animal actually performs the behavior, and then there's the  
20    consequences that follow that I just mentioned previously, so  
21    you need an example?

22    Q. Yes.

23    A. Let's say we want the -- I'm going to use an example of a  
24    different animal, perhaps, or do you want me to use an elephant?

25    Q. Let's use an elephant.

1 A. So I want the elephant to move from this one room to  
2 another room, okay, I want them to move from A to B. I would,  
3 if I'm going to use positive re-enforcement, the first option I  
4 have, I would open the door, I would say "move over," and then  
5 the animal would move over from A to B, close the door and then  
6 give them a reward, give them some carrots or apples or, you  
7 know, something the animal likes, something positive. If I  
8 wanted to do the same behavior and use negative re-enforcement,  
9 the elephant is in Room A, I would open the door, I would then  
10 take my bullhook, put it behind the elephant's ear and ask them  
11 to move over. Okay. The bullhook is something that the animal  
12 has learned has pain and discomfort associated with it. If I  
13 push hard, it's going to hurt, so the elephant knows that, feels  
14 that hook, moves forward into Area B to escape or avoid that  
15 negative re-enforcement, close the door. I've now gotten the  
16 behavior I want, which is the animal moves from A to B, but it's  
17 occurred through negative re-enforcement, not positive  
18 re-enforcement. And then, yes, so that's how I would increase,  
19 that is how I would get that behavior using operant conditions.

20 Q. What if you applied the bullhook to the elephant and the  
21 elephant refused to go into the room, what would happen?

22 A. That's where it's important to understand how the system of  
23 free contact works with elephants, because in a positive  
24 re-enforcement system like I use with protected contact, my  
25 system is based on voluntary cooperation. That animal has the

1 choice whether to cooperate or not. If he doesn't, there's no  
2 negative consequences except for a very -- I could use  
3 something, a very, very mild form of punishment called a "time  
4 out." That's my only option I have available, but what I do,  
5 but I don't want to use that too much, so my job then is to try  
6 and find a way to make it worthwhile for that animal to move  
7 using my positive techniques. In free contact -- oh, and I'm  
8 sorry. The other thing that's really important is, in protected  
9 contact, I am not part of that elephant's social system. I am  
10 outside that system. I am not worried about being dominant.  
11 I'm not worried about maintaining 100% control because I'm safe,  
12 I'm outside the space where that elephant is. In free contact,  
13 as the trainer, I am dominant over that elephant. I need to  
14 maintain that dominant position, which means if I ask the animal  
15 to do something, I have to make sure they do it because if he  
16 doesn't, then that's eroding my control which potentially erodes  
17 my safety, so I'm going to have to either use that hook harder,  
18 or the other thing about a bullhook is also designed so I can  
19 literally hit the elephant too. I can apply physical  
20 punishment. The punishment says no, do not do it, and then the  
21 hook says, yeah, do it, move this way.

22 Q. Can you further elaborate on that, what you were just  
23 saying about the hook says do it and the punishment says yeah,  
24 don't do it?

25 MR. SHEA: Objection; vague.

1 THE COURT: If you can further elaborate. I don't  
2 know, can you?

3 THE WITNESS: Well, I'm trying to think what else is a  
4 part of that.

5 There's the safety part of it, there's the fact that  
6 the compliance has to be complete, and that's my basic tool for  
7 making that happen, and because the animal has that history of  
8 knowing what that hook is, what then I have that -- they  
9 understand that pain and discomfort is going to happen, okay, if  
10 I have to use that in varying degrees, and that I also have the  
11 option of actually using physical punishment as well.

12 BY MS. SANERIB:

13 Q. And when does physical punishment come into play?

14 A. Well, that should be the last step. Unfortunately  
15 sometimes it's used earlier than it should, but that's basically  
16 the step that says you have to do it, you know, because I have  
17 the power to inflict physical punishment on you. Because I'm  
18 the dominant one here and I must -- I have to get that  
19 compliance.

20 Q. Ms. Laule, do you know what Animal Keepers Forum is?

21 A. Yes. It's the journal that's put out by the American  
22 Association of Zoo Keepers.

23 Q. And are you familiar with that publication?

24 A. Yes. I've actually published in that as well.

25 Q. What kind articles generally appear within that

1 publication?

2 A. There are articles from zoo keepers, so they have a lot to  
3 do with various aspects of zoo keeping, and probably in the last  
4 ten years there have been more articles, ten to fifteen years,  
5 using training operant conditions with zoo animals as well.

6 MS. SANERIB: Ms. Sinnott, I'd like to call up  
7 Plaintiffs' May Call Exhibit 30, please.

8 MR. SHEA: Your Honor, we object to this.

9 THE COURT: What's your objection? How do you want to  
10 use this?

11 MS. SANERIB: Your Honor, I just wanted to show Ms.  
12 Laule it's an article that appeared in this edition of Animal  
13 Keeper Forum. It's written by an elephant keeper and he  
14 explains punishment and how it's used.

15 THE COURT: And that's being offered for what?

16 MS. SANERIB: It's being offered for the truth of the  
17 matter. We think it comes in under Rule 80316 as an ancient  
18 document. It was put out in July 1978. The keeper wrote it for  
19 a journal that went to all of his peers. He had no reason to be  
20 lying when he wrote it.

21 THE COURT: That's ancient, 1979?

22 MS. SANERIB: Twenty years. Twenty years is the  
23 standard to an ancient document. I don't think it applies to  
24 humans.

25 THE COURT: What do you have to say to that? Is that

1 ancient? I hadn't thought about that.

2 MR. SHEA: No. Under 80316, your Honor, the  
3 plaintiffs have to establish the authenticity of this. This is  
4 part of the 1979 document. It's remote in time. Mr. Roberts,  
5 we don't know who he is. This is irrelevant as to FEI's  
6 policies or training, and plaintiffs can't establish the  
7 authenticity of this document through this witness. So it  
8 doesn't come in, it's rank hearsay, and it's irrelevant.

9 THE COURT: I don't think it qualifies as an ancient  
10 document, does it? Do you have some authority on that twenty  
11 years old?

12 MS. SANERIB: Over twenty years old. As to  
13 authenticity, defendant didn't raise an authenticity objection  
14 to this document in our objections.

15 THE COURT: What objections did he raise, relevance  
16 and?

17 MS. SANERIB: Hearsay.

18 THE COURT: Well, it is hearsay, unless it qualifies  
19 as an exception, and an ancient document would be an exception.  
20 But you say it's over twenty years. It's 1979, it's not over  
21 twenty years. It may be twenty years. I don't know.

22 MS. SANERIB: 1979.

23 THE COURT: I'm sorry.

24 I'll provisionally allow it. That's subject to some  
25 points of authorities, but I want the testimony, so I'll allow



1 the questioning over objection.

2 MS. SANERIB: All right. Thank you, your Honor.

3 BY MS. SANERIB:

4 Q. And I'd just like to in this document flip to the third  
5 page of the exhibit.

6 And this is hard to read so if we can blow up the  
7 seventh paragraph.

8 Ms. Laule, if you could just read this for the Court.

9 A. The elephant must fear punishment and discomfort, and I  
10 repeat this, for if you don't chastise when necessary, then some  
11 day she will get you. The reason would be that she did not  
12 respect you. More handlers have been maimed or killed by  
13 elephants than any other animal in the zoo (or in circuses  
14 without the attendant publicity) and the reason was, the  
15 elephant had no fear -- fear of punishment -- from her handler  
16 and trainer.

17 Q. And Ms. Laule, what does this indicate to you?

18 A. Well, it's really exactly what I just said. That is what  
19 the system is based on, that you have to establish and maintain  
20 social dominance, and because we're really small and they're  
21 really big and this is a wild animal and it's simply not natural  
22 for a wild animal like that to accept a person as being the  
23 alpha in their particular social hierarchy, so we have to use  
24 these methods to establish and maintain them.

25 MR. SHEA: Your Honor, we object to the relevance of

1 this testimony. It concerns 1979. It doesn't concern FEI's  
2 methods.

3 THE COURT: All right. Overruled.

4 BY MS. SANERIB:

5 Q. Ms. Laule, in your opinion, is working with elephants  
6 dangerous?

7 A. Yes, it is.

8 Q. Has an elephant ever killed a handler?

9 A. Yes, there's been many cases. In fact, when we started  
10 protected contact in 1991 it was twofold, like I said, but the  
11 first issue was the fact that people were being hurt and killed  
12 by elephants.

13 Q. Can you describe an incident in which an elephant killed  
14 its handler?

15 MR. SHEA: Objection, your Honor. This is still  
16 irrelevant. This doesn't have anything to do with the taking of  
17 the seven elephants at issue as alleged.

18 THE COURT: I'll allow the testimony over objection.

19 THE WITNESS: Well, I think there's been, like I said,  
20 many cases of it. The one that happened in the circus situation  
21 that also got a great deal of publicity was Tike, the elephant  
22 in Honolulu that killed her handler during a performance. Sadly  
23 she than rampaged out of the facility, was ultimately tracked  
24 down and shot and killed.

25 BY MS. SANERIB:

1 Q. And what are the implications of this safety issue for a  
2 person working with an elephant in free contact?

3 A. Well, the implications are that you always have to be so  
4 careful and so diligent about maintaining your position so the  
5 elephant does respect you enough that that's what you are  
6 relying on to keep you safe.

7 Q. And does it influence the handler's decision-making?

8 A. It has to. I mean, it's your own safety that's at stake  
9 here and that's the unfortunate part of the system that's used  
10 with elephants in circuses and in zoos that we call free  
11 contact, is because you are in that position and you have these  
12 tools available to you of negative re-enforcement and physical  
13 punishment and it becomes a subjective decision as to when to  
14 use it and how much to use it.

15 Q. And Ms. Laule, I'd like to go and talk directly about some  
16 of the evidence that's been through the things you reviewed in  
17 this case. In your opinion, having reviewed some evidence in  
18 this case, how does Ringling Brothers --

19 THE COURT: What did you review?

20 THE WITNESS: I looked at videotapes and written  
21 records, papers, documents, things that were provided. You  
22 know, I guess that covers it.

23 BY MS. SANERIB:

24 Q. And having looked at all those materials, in your opinion  
25 how does Ringling Brothers train its elephants?

1 A. It's no doubt to me they use free contact methods. Exactly  
2 the same methods that I encounter in every other system that  
3 I've been in uses free contact.

4 MS. SANERIB: Ms. Sinnott, can we go back to  
5 Plaintiffs' Will Call Exhibit 81, please?

6 BY MS. SANERIB:

7 Q. Again, this is the contact letter from Feld Entertainment  
8 and other traditional handler. If we can look at page eight of  
9 this exhibit, and I'd like to look at the first paragraph there,  
10 just the last sentence.

11 You can highlight the whole paragraph.

12 If you could read that last sentence for the record.

13 A. Similarly, negative re-enforcement and discipline are tools  
14 which ultimately protect the animal and the individuals working  
15 with the animal; by rewarding good behavior, and discouraging  
16 and eliminating unwanted behavior, the animal's life is enriched  
17 and safer.

18 Q. Do you agree with this statement about negative  
19 re-enforcement and discipline?

20 A. Well, I agree about the statement that it protects the  
21 individual, but I don't agree that it protects nor enriches an  
22 animal's life.

23 Q. Why do you say that?

24 A. Because it's the animal, in this case the elephant, that's  
25 being put in this, as I said, rather unnatural circumstance to

1 look to a person as being dominant, and negative re-enforcement  
2 and discipline are adverse stimuli. I can't imagine an  
3 elephant would choose to have those things applied to them.

4 Q. Ms. Laule, if Feld stated that it uses reward and  
5 repetition to train its elephants, what significance does that  
6 have to you?

7 A. Those are simply words I would apply to any learning  
8 situation. They're not operant conditions terms that define a  
9 system. I mean, everyone, animals, people, like to learn  
10 through repetition and there's always some reward, whether it's  
11 negative re-enforcement or punishment. As I said, that's why  
12 behaviors, you know, happen again, so those are descriptive  
13 words but they don't describe specifically the system that's  
14 being used.

15 Q. And I'd like to show you a little bit of video footage, Ms.  
16 Laule.

17 Ms. Sinnott, could you please play -- this is  
18 Plaintiffs' Will Call Exhibit 139, and it's 45 minutes and 9  
19 seconds to 47 minutes and 8 seconds.

20 MR. SHEA: I'm sorry, your Honor. We may have an  
21 objection to this. No, this is 139.

22 MS. SANERIB: That's correct, and this is -- go ahead.

23 MR. SHEA: Exhibit, please?

24 MS. SANERIB: And it's from 45 minutes and 9 seconds  
25 to 47 minutes and 8 seconds. And this is video footage that

1       Feld produced in discovery to plaintiffs.

2               MR. SHEA:  There's no objection, although the time  
3       frame is different than what was on the 72-hour notice.

4               THE COURT:  I'm sorry, there's no objection?

5               MR. SHEA:  There's no objection.

6               THE COURT:  All right.

7               (Video played.)

8               THE COURT:  Go right ahead.

9       BY MS. SANERIB:

10      Q.    Ms. Laule, as we play this footage, if you can describe for  
11      the Court what you're seeing.

12      A.    Okay.

13      Q.    Thank you.

14               (Video playing.)

15      A.    Well, the first thing is that it's clearly a free contact  
16      context.  The people are in with the elephants.  They're using  
17      the bullhook to move the animals forward.  You'll notice she  
18      just gave the little elephant on the right a reward, a food  
19      reward.  She apparently has some treats in her pocket there.  I  
20      would say this training is fairly far along.  I mean, these  
21      animals are -- this is what I would consider to be pretty  
22      difficult behavior, so obviously these animals have been working  
23      on this for a bit so you don't see so much direct interaction  
24      between the person and the animal because the animal already  
25      knows what they're being asked to do and they're, particularly

1 the one on the right, is fairly confident at it. The one on the  
2 left is having a little bit more problems. I notice the  
3 gentleman who is training the animal on the left, there's no  
4 food reward. I don't hear any -- he's talking to the elephant.  
5 There's no particular verbal praise, there's no tactical -- I  
6 don't see any other positive re-enforcement going on, but, you  
7 know, would I call this a fairly benign session, though, because  
8 you don't see the hook being used, you know, to a great degree.

9 Q. And what kind of, overall what kind of re-enforcement would  
10 you say is being used to train these elephants?

11 A. It's pretty much the traditional form, you know, like I  
12 said, I saw one treat handed out. I mean, this is a difficult  
13 behavior. If I was training this animal, it would be having --  
14 I would have a big bucket of food there and the animal would be  
15 getting a lot a lot of re-enforcement for this.

16 MS. SANERIB: And your Honor -- you can stop this.

17 Your Honor, I move the admission of Plaintiffs' Will  
18 Call Exhibit 139A, which is what we just watched from 45 minutes  
19 and 9 seconds to about 47 minutes and 8 seconds.

20 THE COURT: All right, it's admitted.

21 MS. SANERIB: Thank you.

22 (Plaintiffs' Will Call Exhibit No. 139A was admitted  
23 into evidence at about 11:10 a.m.)

24 BY MS. SANERIB:

25 Q. Ms. Laule, what is a hook boil?

1 A. I'm sorry?

2 Q. What is a hook boil?

3 A. A hook boil?

4 Q. Yes.

5 A. It's a wound that occurs when hooking has been excessive  
6 enough that the skin is broken a boil can form.

7 Q. And have you ever seen those types of wounds?

8 A. Actually I have not actually seen boils. I've seen what  
9 was probably the result afterwards. I've seen -- I've seen many  
10 hook wounds, but not specifically a boil.

11 Q. Would you say that a boil is more significant than a hook  
12 wound?

13 MR. SHEA: Objection; calls for speculation.

14 THE COURT: Do you have an opinion about that?

15 THE WITNESS: I would say that that is pretty -- yes,  
16 that would be more extreme.

17 BY MS. SANERIB:

18 Q. And if the record in this case shows that Feld's elephants  
19 have hook boils several times a month, what's your opinion about  
20 that?

21 MR. SHEA: Objection; assumes facts not in evidence;  
22 improper hypothetical.

23 THE COURT: I'll allow it.

24 You can answer it.

25 THE WITNESS: Yeah. I mean, that's one thing I would



1 look for in evaluating how much and to what degree a bullhook is  
2 being used on these elephants.

3 BY MS. SANERIB:

4 Q. And if the record shows that bullhooks are routinely used  
5 on the elephants, what's your opinion about that?

6 A. I would say that, number one, it's very much consistent  
7 with free contact techniques, that is, that is the primary tool  
8 in free contact, and that because of that, you can assume the  
9 animal is functioning in the system that uses negative  
10 re-enforcement and physical punishment.

11 Q. And what does that mean for the elephant?

12 A. What it means for the elephant is that to a great degree  
13 their choice and control in not only the context of just a  
14 straight training session, but overall, the choice and control  
15 that an animal has in that situation is greatly diminished  
16 because, back again we have to maintain, you know, complete  
17 compliance and the fact that the trainer has to keep themselves  
18 safe, you know. One of the things that when I was having many  
19 discussions about free contact with folks that I was teaching  
20 the school with, they kept saying, you know, we have to control  
21 all these factors around this elephant. You know, something  
22 that I would never do in the system that I use, and that has an  
23 impact on an animal's life and the choices they're able to make,  
24 the control they can have in any situation which directly, you  
25 know, goes to diminishment of welfare.

1 Q. And I'd like to show you a couple of video clips. This is  
2 a clip that's been already admitted into evidence. It's  
3 Plaintiffs' Will Call Exhibit 132H, and as we play this clip, if  
4 you can just describe for the Court what you're seeing in the  
5 footage.

6 MR. SHEA: And what is the time mark on that, counsel?  
7 I apologize.

8 MS. SANERIB: The time mark on this is 17 minutes and  
9 7 seconds to 17 minutes and 56 seconds.

10 MR. SHEA: Your Honor, we object. I have 132H as 17  
11 minutes 8 seconds to -- well, I'm sorry. I withdraw the  
12 objection.

13 THE COURT: All right. It's admitted.

14 (Plaintiffs' Will Call Exhibit No. 132H was admitted  
15 into evidence at about 11:13 a.m.)

16 (Video played.)

17 BY MS. SANERIB:

18 Q. Okay.

19 A. Well, again, this is obviously a free contact situation.  
20 The people are directly in the same space as the elephant. You  
21 see him using the hook there to move the elephant over.  
22 Apparently he didn't want her going in that direction so he uses  
23 the hook to pull her over. You notice that she responded, and  
24 then apparently it was okay for her to be standing the way she  
25 was afterwards. He still has his hook with him as he's moving

1 around the other elephants.

2 Q. Could we show that clip again?

3 And Ms. Laule, can you describe the elephant's  
4 reactions.

5 (Video replayed.)

6 A. You know, she immediately responds. He's put the hook  
7 behind her. He's asking her to move towards him, which she  
8 immediately does. You know, I have to say this is a little bit  
9 confusing to me because I can't kind of figure out what the man  
10 wants from the elephant. You know, I mean, he pulls her over  
11 and then just sort of walks away, so from a training perspective  
12 it's a little bit confusing, but clearly at that point he was  
13 asking her to move or telling her to move back in this  
14 direction, and she was doing so.

15 Q. And could we show a clip from, it's Plaintiffs' Will Call  
16 Exhibit 132G. This was already admitted into evidence. And the  
17 time stamp for this one is 1457 to 1541, and if again you can  
18 just describe for the Court what you're seeing as the footage  
19 plays?

20 (Video played.)

21 A. So you notice again everyone has their bullhooks there.  
22 This elephant is having her head dress put on. You notice her  
23 head slowly -- I had to watch this many times. Her head was  
24 sort of slowing coming down. He wants her to pick it higher so  
25 he hits her with the bullhook under her chin. She moves upward,

1       which is what the correct way to respond to that bullhook. It's  
2       a little, I mean, it's concerning to me that I -- well, I can't  
3       hear, but it didn't look like she had any chance prior to being  
4       hit to actually respond. Now he's standing there. I don't know  
5       why he hit that elephant, but clearly he was telling her not to  
6       do something, and I think that just the way I see him moving  
7       around the elephant and to do something like that, he's, you  
8       know, reminding her I'm here and I'm in charge.

9       Q.   And what are the implications of this type of use of the  
10       bullhook for the elephants?

11       A.   Well, it certainly continues to remind them that this is  
12       what the bullhook is for and this is how it works. Also, to me,  
13       in both those cases -- well, no. I'm sorry. The first case he  
14       was actually asking her to move her head specifically. In that  
15       case the only thing I could figure out, I noticed earlier in the  
16       clip she was kind of playing with her chain that was on the  
17       ground or there was something on the ground, and again, like I  
18       said, a lot of this has to do with controlling circumstances  
19       around things, and so the best I can figure is he was saying,  
20       you know, I'm in charge, I am the dominant one here and don't do  
21       that.

22       Q.   And so that's an elephant's natural behavior that's being  
23       impacted by the system?

24       A.   Certainly. I mean, elephants are curious animals. I mean,  
25       they use their trunk that way, to touch things, to move things,

1 to pick things up, and again, the problem with the system is  
2 it's also the trunk which is one, I mean, it is the most  
3 dangerous appendage as far as a person. You can get grabbed,  
4 you can get hit by it, you can get knocked down by it, so it  
5 becomes this -- this very difficult situation, I have to control  
6 with this hook -- excuse me -- what this trunk does, you know,  
7 because it's potentially dangerous to me, but at the same time  
8 you're taking away a lot of what that elephant just normally  
9 naturally does with her trunk.

10 Q. And you've mentioned a lot the elephant knowing what the  
11 bullhook is. How are elephants taught with the bullhook is?

12 A. Well, a bullhook, you know, we can look at it and say, oh,  
13 it's got some sharp points on it, that's a dangerous thing. To  
14 an elephant who doesn't -- has never experienced a bullhook,  
15 it's simply a neutral object, so if I'm going to use it as a  
16 tool to manage an elephant in a free contact system, I have to  
17 establish that tool and make it very clear to the elephant what  
18 this tool represents and what it does, and so what I have to do  
19 is teach that animal it means pain and discomfort, so I'm going  
20 to have to pair that experience, the hook comes, you feel it, it  
21 hurts, okay, so that the animal learns to then react  
22 appropriately, which is when I feel this hook behind my leg, I  
23 then move my leg forward to escape from that pain.

24 THE COURT: Do they ever act inappropriately, lash  
25 out?

1           THE WITNESS: Yes. Yes, they do, which is when people  
2 often times get hurt, yes.

3           So that has to happen initially, the animal has to be  
4 taught this is what this hook means, this is what it feels like,  
5 this is what it can do to you. And then what you hope is that  
6 your system then functions with the animal understanding it and  
7 trying to avoid that as much as possible, and, you know, to a  
8 great extent it does that except that you cannot allow them not  
9 to do things. You're always going back, you have to get that  
10 compliance.

11 BY MS. SANERIB:

12 Q. And could you tell by looking at these elephants on the  
13 video footage that they've been trained with the bullhook?

14 A. Oh, certainly, yeah.

15 Q. How can you tell that?

16 A. It's the way they react. I mean, like I said, as soon as  
17 that hook came here, the elephant moved that way, came to, you  
18 know, underneath the right here by the right cheek. She moved  
19 to the left, which is exactly appropriate. She responded  
20 appropriately to that bullhook. When he hit that elephant  
21 underneath her chin, she moved her head up, you know, and when  
22 he hit the elephant on the trunk, she stopped what she was  
23 doing.

24 Q. And Ms. Laule, I'd like to talk to you just a little bit  
25 about the chaining and confinement of elephants. In your

1 experience, how are elephants maintained at night?

2 A. Well, I know in the zoo situation AZA there has been a  
3 very, very concerted effort over a number of years now to reduce  
4 the amount of chaining to minimal. I'm not aware of, and I  
5 can't say this for certain, but I am not aware of any  
6 facilities, AZA zoos anymore that chain their elephants  
7 overnight as -- well, there may be one or two, okay. The  
8 majority of them, let me put it that way, the vast majority no  
9 longer use chaining as a means of maintaining animals for  
10 housing or for social management, which means keeping them on  
11 chains for extended periods of time, but chaining is used for  
12 very short periods of time for administering veterinary care or  
13 if you need to do something where the animal needs to be  
14 temporarily restrained.

15 Q. And what's your opinion about how long an elephant can be  
16 chained?

17 A. Well, obviously this is relatively arbitrary, but in  
18 thinking about what are the situations where restraint, and  
19 that's what chaining is, is restraint, is necessary in the  
20 course of the daily life of an elephant, and I think it's pretty  
21 reasonable to say that if you can limit chaining to two hours or  
22 less, you should be able to achieve anything you would need to  
23 do for that animal in terms of husbandry, veterinary care,  
24 facility maintenance, you know, whatever things need to be done  
25 where that animal needs to be restrained under those conditions.

1 Q. And in your opinion is it acceptable to chain an elephant  
2 overnight?

3 A. I don't believe that it is appropriate or acceptable to use  
4 chaining as the primary means of housing an animal overnight.  
5 These animals are not like us, and like so many other animals  
6 where when the sun goes down, they go to sleep and they sleep  
7 the whole night, these animals have a behavior pattern that is  
8 active and inactive throughout a 24-hour period of time. So  
9 basically what you're doing is you're restraining those animals  
10 very, you know, you're talking about a small amount of movement  
11 that animal is allowed to do. For a significant amount of time  
12 they would normally be up and moving about and active.

13 Q. If the record in this case shows that the defendants'  
14 elephants are chained on a train, the elephants that are  
15 traveling on the road are chained on the train for an average of  
16 25 consecutive hours a week, and for the time they're not in the  
17 training they're chained overnight, what's your opinion about  
18 that practice?

19 A. I think that's extremely excessive and has a very  
20 detrimental impact on the animal's welfare.

21 Q. What's your basis for saying that?

22 A. Because chaining is restraint, and just the simple fact  
23 that those animals are being denied the opportunity to move,  
24 which is a completely natural thing for an elephant to do, when  
25 they're restrained that way they cannot socialize naturally.



1 They only have access to the animals that are in close proximity  
2 to them, they can't explore their environment, they can't even  
3 change positions, you know, beyond some very minimal movements,  
4 so you really are significantly impacting that animal's natural  
5 species typical behaviors.

6 Q. And if the record in this case shows that the elephants  
7 that are at Ringling Brothers Center For Elephant Conservation  
8 are chained from 13 to 16 hours a night, what is your opinion  
9 about that practice?

10 A. That is exactly the same.

11 And I think I would add, too, that, you know, there's  
12 pretty much agreement that restraint is a stressful experience,  
13 you know, for any animal, and obviously we spent a lot of time  
14 helping them to be comfortable with that, but there's still  
15 something so unnatural about restraint that it's stressful, and  
16 when you talk about leaving animals in that sort of stressful  
17 situation for that long a period of time, there has to be  
18 negative impacts.

19 Q. In your opinion -- and I want to just go back to the  
20 bullhook and ask a couple of follow-up questions. You were just  
21 talking about stress to the animals. Is use of the bullhook  
22 stressful?

23 MR. SHEA: Objection; leading.

24 THE WITNESS: I would certainly argue that --

25 THE COURT: I'm sorry?

1 MR. SHEA: Objection, leading.

2 THE COURT: Do you have an opinion about that, the use  
3 of bullhooks and stress?

4 THE WITNESS: Yes, absolutely.

5 THE COURT: What is your opinion?

6 THE WITNESS: Because it is a tool that is utilizing  
7 adverse techniques, and again, I think it would be hard to say  
8 that the use of adverse techniques is not stressful, and I'm  
9 sorry, and just one other thing is that the fact that the animal  
10 has to always avoid that tool to avoid those adverse  
11 techniques. I mean, that takes a lot of effort to always be  
12 aware of that and to make sure that you do something to avoid  
13 something bad happening.

14 BY MS. SANERIB:

15 Q. And in looking at the video footage that you've reviewed  
16 for this case, how often do you feel the elephants have to avoid  
17 the bullhook?

18 A. Well, certainly any time --

19 MR. SHEA: Objection; calls for speculation.

20 THE COURT: If she has an opinion she can tell us.

21 THE WITNESS: Certainly any time the trainer is  
22 present, if that bullhook is present then the animal has to be  
23 thinking about what does he or she want me to do, what does he  
24 or she not want me to do, and if I cross that line in the wrong  
25 direction, then I know what the consequences are.

1 BY MS. SANERIB:

2 Q. And what does that mean for the animal?

3 A. I think they always have to be on their guard that there is  
4 a level of stress that occurs, that there is, I would say in my  
5 expert opinion of diminishment of welfare because of that, and  
6 certainly an impact on their natural, you know, behaviors.

7 THE COURT: Given the current environment of circus  
8 activity as we understand it, with your interaction with the  
9 public, trainers and animals and people riding elephants all  
10 under the proverbial "big top," what can a circus do otherwise  
11 to control these animals other than use a bullhook?

12 THE WITNESS: There is no other option, and that's why  
13 the system has been around for thousands of years. Because it  
14 started with Mahouts in the field growing up with an elephant  
15 and taking him to work every day, being directly in contact with  
16 him, and, you know, it's the same situation applied, and there  
17 just simply is not, it's like I said yesterday, the circus as we  
18 know it has to use those techniques. If you're willing to  
19 change the way a circus looks and, you know, the interactions of  
20 the people and have some sort of a barrier and know that you can  
21 protect the public, then you can go to less adverse  
22 techniques, but it would require that kind of a change.

23 BY MS. SANERIB:

24 Q. And do you have an opinion about the circus as we know it  
25 and harm?

1     A.    Yeah.  I think that all the things that I've talked about,  
2     the stress on the animal, the use of adverse techniques,  
3     living within a system where that is a constant contact in that  
4     animal's life, the impact of the bullhook, the impact of  
5     chaining or restraint for extended periods of time, and the fact  
6     that these conditions do have a direct negative impact on the  
7     animal's ability to express her species' typical behaviors, but  
8     that would add up, yes, harm to the elephants.

9             MR. SANERIB:  Your Honor, if you're interested, Ms.  
10    Laule did bring a few photographs of protected contact if you  
11    want to see what a system is, how it operates, what the barrier  
12    is.

13            THE COURT:  Sure, I might as well, subject to any  
14    weight that I give your testimony.

15    BY MS. SANERIB:

16    Q.    Ms. Laule, you described protected contact a little bit  
17    yesterday.  If we can show her photographs and if you can just  
18    describe for the judge how it works, show what is going on on  
19    the screen and what's going on with the photographs.

20            MR. SHEA:  Your Honor, the objection is irrelevant.

21            THE COURT:  Over objection, I'll allow it.

22            THE WITNESS:  This is a bull.  He's in his late 20s,  
23    and you see he's being managed there in protected contact.  You  
24    see the barrier, which is the bars there.  He's been asked to  
25    put his foot through the enclosure.  You see the target playing

1 on the ground there. If I touch this will anything happen?

2 THE COURT: Yes.

3 THE WITNESS: There's a target laying there, a short  
4 one and then a longer one. It's just a bamboo pole with a  
5 little, you see that white on the end there that's actually some  
6 paper towel wrapped with tape, so it's a soft thing. He knows  
7 first to touch his head to it then he leans too much on his foot  
8 or whatever part of his body we need. So he's been asked to put  
9 his foot there, now they're doing some husbandry there. They're  
10 cleaning his foot. The gentleman who is kneeling in front of  
11 me, kind of facing through his legs there, a red bucket. That  
12 bucket is filled with food treats, cut fruits and vegetables, so  
13 he is actually re-enforcing elephants. So how the elephant's  
14 trunk is down there? He's actually feeding the elephant,  
15 treating the elephant while the guy is there, the second keeper  
16 is there working on his foot.

17 BY MS. SANERIB:

18 Q. Can we go to the next photograph, please?

19 A. And this is an elephant who is -- this keeper is taking a  
20 blood draw from the elephant from her ear. He's holding the  
21 syringe there. The needle is actually in her ear, and so what  
22 he has done, he has positioned the elephant in what we call a  
23 lean-in so the elephant is parallel to the bars, that puts her  
24 very close to him so he can have physical access to her whole  
25 body. He then asked for her to present her ear, so she put her

1 ear out there, that hole. You notice there's a large area there  
2 where that ear can fit there, and she was obviously de-  
3 sensitized over many sessions to not be afraid of this needle.  
4 You know, slowly paring it over and over and over again with  
5 positive re-enforcement so she's not afraid of it so she knows  
6 what she wants so she's willing to cooperate. He has a whistle  
7 in his mouth. That's a tool we use. That's a way of saying  
8 good, so he's telling her periodically good, you're staying  
9 still like while I'm taking the blood. And you notice the trunk  
10 in front is filled with cut-up produce. You see the trunk and  
11 her mouth, he's probably just given her some food so she's  
12 actually being re-enforced while the draw is being taken.

13 Q. Can we go to the next photograph, please?

14 A. This again is an elephant who's asked to come into a lean-  
15 in position. It's a very safe position because you can see  
16 where the trunk is, you can control the trunk, you can access to  
17 the whole body, so you see the one training in front is actually  
18 reaches back right now to get some treats out of his touch and  
19 the girl in the back there is just doing a physical inspection  
20 of the elephant, and so basically it's the trainer in front  
21 who's controlling. He's the one who asked her to come into  
22 position. They're just doing a physical inspection on her.

23 Q. And I think that Judge Sullivan asked you a question along  
24 these lines yesterday, but is there a way to do some sort of a  
25 performance with elephants using protected contact?

1 A. Yeah. It would be -- it would have to be a situation  
2 similarly. If some kind of barrier, now, it could be a moot  
3 that's between people and the elephant, so you don't have to  
4 have an actually physical structure and, you know, elephants can  
5 be trained to do, you know, all kinds of behaviors and contact  
6 as well. It's just the presentation -- the physical environment  
7 would have to be different. And then, as you asked, could you  
8 change techniques? Yes, but to change techniques to protected  
9 contact, the person cannot be near the elephant because I need  
10 to know that I'm safe and if I'm safe I do not have to use  
11 anything adverse.

12 Q. Thank you.

13 THE COURT: All right. Cross-examination?

14 CROSS-EXAMINATION

15 BY MR. SHEA:

16 Q. Good morning, Ms. Laule.

17 A. Good morning.

18 Q. Now, yesterday you testified that you had been involved in  
19 the Principles of Elephants management course?

20 A. Yes.

21 Q. Taught by the AZA; is that correct?

22 A. Yes.

23 Q. The last time you were involved in that course was in the  
24 year 2000; is that correct?

25 A. No. It was I think -- no. I thought it was '94 to '98, I

1 believe.

2 Q. So the last year was 1998?

3 A. I think so, yes.

4 Q. Yesterday you were shown an article by counsel, or I'm  
5 sorry, it was a Chapter 13 entitled Protected Contact and  
6 Elephant Welfare. Do you recall that?

7 A. Yes.

8 Q. Now, when we took your deposition in this case on August  
9 5th of last year, this had not been finalized it was in press;  
10 is that correct?

11 A. Correct.

12 Q. And I learned yesterday that this has actually been now  
13 published as part of a book, is that true?

14 A. Yes.

15 Q. And the book was just recently published, correct?

16 A. Literally in the last couple of weeks, I believe.

17 Q. I see. Is the language in the version you discussed with  
18 me in deposition the same as that which is in the book today?

19 A. I hope so. I haven't actually gone in and compared, but it  
20 should be.

21 Q. All right. I'd like to turn to that and ask you some  
22 questions about it.

23 Mr. Palisoul, it's Defendants' Exhibit 228.

24 On the first page in the last partial paragraph  
25 here -- first off, let me ask, this is the Chapter 13 that we



1 were just discussing?

2 A. Yes.

3 Q. All right. And I'll show you this highlighted sentence  
4 where you say, Acknowledging the highly opinionated and  
5 contentious environment surrounding elephant management issues,  
6 we suggest three basic rules to follow to aid in this evaluation  
7 and to maximize the potential welfare benefits for captive  
8 elephants. Now, did I read that correctly?

9 A. Yes.

10 Q. So you do acknowledge that there is a highly opinionated  
11 and contentious environment surrounding elephant management  
12 issues; is that right?

13 A. Yes.

14 Q. And as we learned yesterday, or at least it was your  
15 testimony, that roughly half of the zoos in the country have  
16 instituted protected contact methods and roughly half have free  
17 contact methods, correct?

18 A. That would be my guess, yes.

19 Q. All right. So this highly opinionated and contentious  
20 environment exists between those institutions, roughly half and  
21 half, is that your testimony?

22 A. Well, I mean, this isn't like the institutions are battling  
23 over this situation, but I think that what I was stating there  
24 is that elephant management, you know, for up until 1991 there  
25 was only one option, and that was free contact, and it was

1 traditional and everybody, that's what they did. When we  
2 introduced protected contact in 1991 and offered an option, it  
3 is a viable alternate system for managing elephants, that's  
4 where these things came into play, because some people did not  
5 want to change, did not want to convert to protected contact,  
6 wanted to stay with their current methodology, and so there's  
7 not consensus in the whole elephant community as to what's the  
8 best way to go.

9 Q. Ms. Laule, I'd like to go back to page 185 of this  
10 document, and under the sentence under "science based  
11 decision-making" that's highlighted on the screen, please follow  
12 as I read it.

13 Quote: "'Science-based'", end quote, "is a term being  
14 used a lot these days, often more as a wish than a reality,  
15 primarily because there are huge gaps in our knowledge of what  
16 elephants need and what methods best meet those needs." Did I  
17 read that correctly?

18 A. Yes.

19 Q. So it is your opinion that there are huge gaps in our  
20 knowledge of what elephants need and what methods best meet  
21 those needs? Do I understand that correctly?

22 A. Well, with science-based knowledge, yes.

23 Q. You mentioned that again on the next page of your article.  
24 If we can go to 186. You say here in the middle of page 186,  
25 same chapter: Yet with huge gaps in our knowledge and in the

1 absence of science to guide our decision-making, we must have  
2 another mechanism to access options and make informed choices.  
3 Did I read that correctly?

4 A. Yes.

5 Q. And that is what you're talking about, the absence of  
6 science, knowledge about what's best for elephants?

7 A. Yeah. Generally speaking, yes. And it's what, you know,  
8 we talked about at length, there just are not a lot of science-  
9 based studies.

10 Q. That are done on elephants?

11 A. Exactly.

12 Q. Now let me show you the last sentence of your article,  
13 please, or your chapter. It says here: And finally in making  
14 your choices, use science when it is available, and fairness and  
15 reason when it is not. Did I read that correctly?

16 A. Yes.

17 Q. So when science is not available, it is your opinion that  
18 it's fine to extrapolate from studies on other species in order  
19 to make decisions about how to train and manage elephants, is  
20 that true?

21 A. That would be one example of using reason, yes.

22 Q. I see. And science is rarely available, isn't that true?

23 A. Rarely? I mean, if you -- that actually science-based  
24 studies on elephants, yes. On other animals, that's not true.

25 Q. So science-based studies on elephants where elephants have

1 actually been studied, the effective management on their  
2 welfare, those just haven't been done, right?

3 A. That's correct.

4 Q. And for example, there are no studies that compare training  
5 methods between dogs and elephants and their effects on the  
6 welfare, correct?

7 A. No. Not that I know of.

8 Q. Now, as to chaining, Ms. Laule, you have no information to  
9 show that tethering for twelve hours per day is harmful to  
10 elephants, do you?

11 A. For that specific time frame, no, I think that -- no. I  
12 would answer that "no."

13 Q. And you have no data to show that tethering for twelve  
14 hours per day is abusive to elephants, correct?

15 A. Data? No.

16 Q. And the same is true for any number of hours that I might  
17 pick, you just don't have studies to show that tethering for any  
18 specific length of time is abusive, correct?

19 A. Science-based studies, correct.

20 Q. Now, defining elephant welfare is difficult to do in your  
21 opinion because it's subjective, true?

22 A. Because it's subjective?

23 Q. Yes.

24 A. Well, I would say that welfare generally is a great deal  
25 subjective, not necessarily just elephants, and that's why so

1 much is written about it and there's so much discussion, because  
2 it is fairly subjective, although there is consensus on some  
3 parameters you can use.

4 Q. I see. Ms. Laule, there's no specific research that  
5 demonstrates that free contact methods lead to less welfare than  
6 protected contact methods for elephants, true?

7 A. No. I mean, I'm sorry. That is true; however, there are  
8 many studies looking at the use of negative re-enforcement and  
9 punishment and the impact on welfare.

10 Q. And those are studies done on other species, correct?

11 A. Correct.

12 Q. Done in other management systems than free contact,  
13 correct?

14 A. Correct. But they were looking specifically at the  
15 techniques.

16 Q. Well, they don't use the ankus on those other species, do  
17 they?

18 A. I'm saying the operant conditions techniques of negative  
19 re-enforcement and punishment.

20 Q. I see. But not the specific tools that you testified about  
21 today being used in free contact for elephants, correct?

22 A. That's right.

23 Q. Now, you cannot identify any studies that demonstrate that  
24 elephants showed acute or chronic stress from being trained by  
25 free contact methods, correct?

1 A. No. I'm sorry. That's correct.

2 Q. And you cannot identify any studies that demonstrate to a  
3 reasonable scientific certainty that elephants showed acute or  
4 chronic stress from being trained by being cued by a bullhook,  
5 correct?

6 A. Correct.

7 Q. And you cannot identify any studies of elephants that  
8 access fear response by measuring physiological parameters in  
9 response to the use of free contact methods that employ the  
10 ankus, correct?

11 A. That's correct.

12 THE COURT: Let me ask you a question before I forget  
13 it. The bullhook as we understand it is used for negative  
14 re-enforcement or punishment, and it has, when used in those  
15 manners, has a certain impact on the elephant?

16 THE WITNESS: Yes.

17 THE COURT: And what about those scenes we saw where  
18 it appears that the hook was used for some unknown reason, was  
19 just arbitrary, what's the impact on the elephant?

20 THE WITNESS: To me, that is probably the worst  
21 because what the elephant relies on is their ability to predict,  
22 you know, to say, you know, to be able to when I see the hook I  
23 know I'm supposed to do so.

24 THE COURT: Because they've been conditioned.

25 THE WITNESS: Exactly. And also that consistency is

1 so important and fairness too. You know, if I consistently tell  
2 the elephant not to do something, then they learn I shouldn't do  
3 that. But if the elephant is simply doing something and out of  
4 the blue is told don't do that and they don't really understand  
5 what it is they did in the first place and yet now they've been  
6 hit, you know, and suffered that consequence, you know, again, I  
7 can't, you know, I'm not in the mind of the elephant, but it  
8 seems pretty reasonable to assume that that, even, you know,  
9 increases the rate of, you know, the amount of stress, you know,  
10 that animal experiences, because they never know what's right  
11 and what's wrong, and the only way they experience it is by --  
12 or the only way they determine that is by experiencing that  
13 adversity.

14 THE COURT: Go ahead. I'm sorry. Go ahead.

15 BY MR. SHEA:

16 Q. Ms. Laule, on chaining, you have no studies to demonstrate  
17 that two hours is good but longer is bad, correct?

18 A. No, that's correct.

19 Q. And you have no evidence that breeding, feeding, or  
20 sheltering have been disrupted in any of the specific elephants  
21 at issue in this case, correct?

22 A. I'm not sure what you mean by that. I mean, I certainly,  
23 if the animal cannot move, then that behavior has been  
24 disrupted. If they're on chains, they can't move. I don't  
25 think you need a study to determine that. You simply can --

1 that's the reality of it. If they're on chains, they cannot go  
2 socialize with an animal three animals down, so clearly that  
3 has, you know, I can objectively look at that and say, yes, that  
4 has been impacted. I can't see where I would need a study to  
5 determine that.

6 Q. Ms. Laule, I didn't ask you about moving. I asked you  
7 about breeding, feeding, or sheltering, so let me ask again.  
8 You have no evidence that breeding, feeding, or sheltering have  
9 been disrupted in any of the specific elephants at issue in this  
10 case, correct?

11 A. I'll say correct.

12 Q. And you have no evidence of physical punishment being given  
13 to any of the specific elephants at issue in this case, correct?

14 A. Well, if they -- if they're an elephant within the Feld  
15 Corporation that have been managed, they're being managed under  
16 free contact, they will have been exposed to exactly those same  
17 techniques. There's no other option for them.

18 Q. Ms. Laule, let me turn to page 173 of your deposition,  
19 beginning on line 12, and I'll ask you to follow along.

20 Question: What evidence do you have that physical punishment  
21 has been used on Jewell?

22 Answer: It is inherent in the system.

23 Question: But you don't have any specific evidence or  
24 instances you can name to me, do you?

25 Answer: I cannot name to you a situation where it



1 hasn't been used.

2 Question: But you can't name for me a situation where  
3 it has been used, can you, on Jewell?

4 Answer: No.

5 Question: And the same answer for Karen?

6 Answer: Yes.

7 And the same answer for Lutzi?

8 Answer: Yes.

9 And the same answer for Mysore?

10 Answer: Yes.

11 Same answer for Nicole?

12 Answer: Yes.

13 Same answer for Susan?

14 Answer: Yes.

15 Same answer for Zina?

16 Answer: Yes. The first part of my answer also goes  
17 along with each of those elephants, as well.

18 Did I read that correctly?

19 A. Yes.

20 Q. Now, although you testified that physical punishment is  
21 inherent in the free contact system, you agree that free contact  
22 methods are not necessarily abusive, correct?

23 A. Correct.

24 Q. And you have no evidence that free contact methods have  
25 caused any FEI elephant to have slower growth, lower

1 reproductive success, or immuno-suppression, correct?

2 A. Correct.

3 Q. And you have no evidence that any FEI elephants suffered  
4 fear from prolonged use of the guide or ankus, correct?

5 A. I have no evidence, correct.

6 Q. Now, there is disagreement among elephant professionals as  
7 to what constitutes abuse, isn't there?

8 A. Yes.

9 Q. And it's debated among elephant professionals as to whether  
10 use of free contact can constitute abuse, correct?

11 A. I don't know that there is disagreement that it can. I  
12 think everyone agrees that it can. The question is when is  
13 and -- when is it and when is it not, I believe. I mean, that's  
14 the closest I can get. It's -- okay, I guess that's the best  
15 way I can answer it in a qualified yes or no. I forget how you  
16 asked it.

17 Q. Well, let me go to page --

18 THE COURT: Do you want him to reask the question?

19 THE WITNESS: Yeah. Ask me again.

20 BY MR. SHEA:

21 Q. It is debated among elephant professionals whether use of  
22 free contact can constitute abuse, correct?

23 A. I guess I would agree with that.

24 Q. And it is your opinion that free contact and protected  
25 contact management systems are connected to distinctly different

1 perspectives on how elephants are viewed and managed relative to  
2 other captive species, correct?

3 A. I'm sorry. Can you repeat that?

4 Q. I can. It is your opinion that free contact and protected  
5 contact management systems are connected to distinctly different  
6 perspectives on how elephants are viewed and managed relative to  
7 other captive species, correct?

8 MS. SANERIB: Your Honor, I'm going to object. I  
9 don't under that question.

10 THE COURT: Well, do you understand it?

11 THE WITNESS: I'm having a little trouble with it too.

12 THE COURT: Rephrase that question, counsel.

13 BY MR. SHEA:

14 Q. Well, let's go to Defense Exhibit 228, first page. Last  
15 sentence of the first paragraph, beginning with the word  
16 "furthermore." Now, Ms. Laule, we're back to the book chapter  
17 that you recently had published, correct?

18 A. Um-hmm.

19 Q. Ms. Laule, we're back to this book chapter that you  
20 recently published?

21 A. Yes. I'm sorry. Yes.

22 Q. You wrote this along with Ms. Whitaker?

23 A. Yes.

24 Q. I'll show you here the highlighted sentence on page 181.

25 It says: Furthermore, both of the primary management systems'

1 traditional free contact and the more recent protected contact  
2 seem to be connected to distinctly different perspectives on how  
3 elephants are viewed and managed, relative to other captive  
4 species. I read that correctly, did I not?

5 A. Yeah. I knew generally what you're referring to.  
6 Obviously it says "furthermore" so there was much more  
7 discussion prior to this one line. But what I'm referring to  
8 there is that the fact that elephants are managed so entirely  
9 differently than any other species in the zoo, there is no other  
10 species that would allow the use of negative re-enforcement that  
11 is used on elephants, certainly no physical punishment would be  
12 used on any other elephant in the zoo, and in the vast majority  
13 of cases, we would not allow people to go in directly with the  
14 elephants, and so my point of this is that it would appear that  
15 to justify such an entirely different system of managing a  
16 very -- one species in a zoo, people are looking at those  
17 animals as being so distinctly different that they then require  
18 an entirely different system, and I think our point of protected  
19 contact, which is they're not, they're not different. We can  
20 use exactly the same techniques with an elephant that we use  
21 with a gorilla or a giraffe or a sea lion or anything else, so  
22 that is my point of that particular line.

23 Q. Yet there is debate among the zoos as to which system is  
24 better, right, free contacted or protected contact?

25 A. Oh, yes.

1 Q. And it's debated whether use of the bullhook constitutes  
2 abuse, correct?

3 A. Constitutes abuse, yes. It is not debated that it  
4 constitutes the use of negative re-enforcement and physical  
5 punishment.

6 Q. And isn't it debated whether certain time frames of  
7 tethering constitute abuse, correct?

8 A. Yes, but again, I would say at this point the industry  
9 standard in AZA facilities is to minimize it and probably the  
10 two-hour time frame would be agreed to generally.

11 Q. That's not what it says in the current AZA standards, is  
12 it?

13 A. I don't know that it actually calls out a time frame.

14 Q. You don't know one way or the other?

15 A. No, I don't.

16 Q. Let me take you to this point at page 121 of your  
17 deposition beginning on line 18 where I ask, Question: The  
18 debates, do they include whether or not use of tethers is abuse?

19 Answer: Not in the use of tethers but in the length  
20 of time. Well, yes, the specific use of them and the length of  
21 time in relation to that, yes.

22 Question: Does --

23 Answer: Can I say one thing?

24 Question: Yes, please.

25 Answer: But there are certain uses that are accepted,

1 and time frames that are accepted. Did I read that correctly?

2 A. Yes.

3 Q. Now, Ms. Laule, certain -- well, strike that.

4 You believe that there has been significant drift in  
5 many facilities in how protected contact has been implemented,  
6 is that true?

7 A. Yes.

8 Q. And the use of a hybrid system where the ankus is used  
9 along with the barrier or along with other protected contact  
10 principles or tools is it meets the Association of Zoos and  
11 Aquariums definition of protected contact, doesn't it?

12 A. Yes, it does, which I have stated many times in writing  
13 that I disagree with their definitions of those two systems  
14 because they only talk about the barrier and where the people  
15 are, not about the tools and techniques that are used.

16 Q. Let me show you page 182 of your Chapter 13 that we've been  
17 discussing today. In the second paragraph from the bottom  
18 beginning Since, if you could highlight the entire paragraph.

19 And again, this is in your Chapter 13, correct?

20 A. Yes.

21 Q. It says, Since the introduction of protected contact to the  
22 zoological community in 1991, over half of the zoos in the  
23 United States have converted their programs to this management  
24 system. However, during this time there has been significant  
25 drift in many facilities in how protected contact is

1 implemented. For example, in our travels around the country we  
2 encounter elephant management practices that are called  
3 protected contact or "modified" protected contact, in which  
4 trainers simply move to the other side of the physical barrier  
5 and give commands to the elephants. In these situations the  
6 trainer may continue to carry the ankus, use an authoritative  
7 voice to give commands, and maintain a dominance-based  
8 relationship. Did I read that correctly?

9 A. Yes.

10 Q. And it goes on to say, According to the AZA definition, and  
11 that's the Association of Zoos and Aquariums, right?

12 A. Yes.

13 Q. According to the AZA definition, this would qualify as  
14 protected contact?

15 A. According to our definition, it does not.

16 Q. Protected contact is not free contact conducted from the  
17 other side of a barrier. Did I read that correctly?

18 A. Yes.

19 Q. And in fact, you believe that the Association of Zoos and  
20 Aquariums is fueling and supporting this modified protected  
21 contact approach, correct?

22 A. I don't think the organization as an organization is doing  
23 that. With they don't dictate to individual zoos exactly how  
24 to, you know, implement a training program, but certainly their  
25 definition is so vague that it allows interpretation like this.

1 You know, my point of this whole thing is that by introducing  
2 the bullhook into the protected contact context, it's not  
3 protected contact. Protected contact is based on voluntary  
4 cooperation. It's based on positive re-enforcement. You know,  
5 you have violated those basic premises of protected contact by  
6 introducing the bullhook into it.

7 Q. Ms. Laule, let me show you the next paragraph in your  
8 Chapter 13. Page 182, next paragraph. It says: These various  
9 "modifications" of protected contact have been fueled and  
10 supported by the AZA in two ways. The elephant husbandry  
11 resource guide published in 2004 is the husbandry manual  
12 distributed by the AZA elephant taking on advise at this group  
13 to all member institutions housing elephants. The principles of  
14 elephant (PEM) course is required for all elephant managers of  
15 AZA-accredited facilities. Both the resource guide and the PEM  
16 course promote the position that there are no distinct  
17 differences between free contact and protected contact training  
18 systems, only a continuum of options. Although used routinely  
19 throughout the industry and in publications, journals and  
20 conference proceedings, the terms "free contact" and "protected  
21 contact" never appear in the entire resource guide and are  
22 mentioned cursorily in the PEM course. Did I read that  
23 paragraph correctly?

24 A. Yes.

25 Q. Now, currently, there are 78 zoos that are keeping



1 elephants as part of AZA in the U.S., do you know?

2 A. I don't know for certain. That's the number that I've  
3 heard.

4 Q. Now, a number of zoos have tried protected contact, your  
5 brand of it of no ankus, no free contact tools or tools or  
6 approaches. A number have tried that and since incorporated  
7 free contact methods back into their programs to create hybrid  
8 approaches. True?

9 MS. SANERIB: Your Honor, objection. That's a little  
10 argumentative.

11 THE COURT: Well, she can answer it.

12 THE WITNESS: Well, I think that it's happened that  
13 way. Some protected contact programs started from the very  
14 beginning where the ankus was not removed as a tool and was  
15 continued to be used, and there's also been the opposite where  
16 the ankus was present and then they took it away.

17 BY MR. SHEA:

18 Q. Well, one example of an institution which tried pure  
19 protected contact and went back to using some free contact  
20 methods is Disney's Animal Kingdom in Florida, correct?

21 A. Yes, that's correct.

22 Q. And another example --

23 THE COURT: Did you finish your answer?

24 THE WITNESS: Well, I was just going to say yes,  
25 that's correct. However, from the very beginning that system

1 was designed and was run by free contact trainers, and those  
2 people, and I know some of those people personally and they were  
3 very vocal in saying I don't really want to do protected  
4 contact, I'm a free contact trainer, so to me it was actually  
5 fairly predictable that that system would drift or evolve the  
6 way it did.

7 MR. SHEA: And I object to the hearsay portion of her  
8 answer.

9 THE COURT: All right.

10 BY MR. SHEA:

11 Q. Ms. Laule, also another example is the use in a zoo,  
12 correct?

13 A. Yes, it is, and a sad one to me.

14 THE COURT: Why is that?

15 THE WITNESS: Well, because that was a model protected  
16 contact program for many years. It was the first system where a  
17 baby was born into a protected contact system, had never been  
18 exposed to a bullhook, her sister had only been exposed for a  
19 month or two. Those elephants grew up to be perfect examples of  
20 why protected contact works. They could do absolutely anything  
21 they needed to do with those elephants, whether it was  
22 husbandry, veterinary care, management, social management,  
23 anything. It was a wonderful program that I was always very  
24 proud to point people to and say, yeah, if you want to see how  
25 it works, go there, and unfortunately exactly the same thing

1       happened: some individuals came into that system who were  
2       former free contact trainers who wanted to do free contact, and  
3       that's what happened, and to me, probably the saddest of all is  
4       that there's a cue there that was in protected contact for,  
5       well, I think it was '92, so let's say at least twelve years,  
6       but now is back in free contact, and I think that's very sad.

7       BY MR. SHEA:

8       Q.   Now, Ms. Laule, the debates over whether free contact  
9       methods can constitute abuse, you've never heard the term  
10      "taking" used as in whether free contact management constitutes  
11      a taking, correct?

12     A.   I'm sorry, what was the first part of that question?

13     Q.   I said, in debates over whether free contacts methods can  
14      constitute abuse, you've never heard the term "taking" used as  
15      in whether free contact management constitutes a taking,  
16      correct?

17     A.   Not prior to this situation, correct.

18     Q.   Not prior to this lawsuit, correct?

19     A.   Yes, yes, exactly.

20     Q.   Now, the Elephant Husbandry Resource Guide that you write  
21      about in your Chapter 13, that states that chaining is  
22      acceptable up to 16 hours per day, doesn't it?

23     A.   I would have to take your word for it. I don't remember  
24      that.

25     Q.   You don't know one way or the other?

1 A. Correct.

2 Q. And now there's no consensus among elephant professionals  
3 that removing a baby elephant from the mother after birth for  
4 veterinary check is abuse, correct?

5 A. Correct.

6 Q. Now, you disagree with any use of negative re-enforcement  
7 in the training or management of elephants, correct?

8 A. Negative re-enforcement, I can -- my problem is I cannot  
9 think of another reasonable example of negative re-enforcement  
10 besides the bullhook, so I'm going to have to say yes.

11 Q. And the same is true for punishment, isn't that true?

12 A. Ask the question again, please.

13 Q. Sure. You disagree with any use of punishment in training  
14 or managing elephants, correct?

15 A. Physical punishment, yes.

16 Q. Yet you admit the use of punishment is not necessarily  
17 abuse, correct?

18 A. Correct.

19 Q. And to determine whether abuse had occurred, you would need  
20 to know the specifics of the situation, wouldn't you?

21 A. I think that that was the best way, yes, to answer that.

22 Q. And the guide can be used in free contact training in your  
23 opinion without abusing the elephant, correct?

24 A. Yes, correct.

25 Q. Thus, free contact methods are not necessarily abusive, are

1 they?

2 A. That's right. The biggest -- the problem is it can be a  
3 very thin line.

4 Q. And good trainers can train elephants without being  
5 abusive, can't they, in free contact?

6 A. I would believe so, yes.

7 Q. And in your opinion, elephants essential behavior patterns  
8 are disrupted any time you limit a choice, any choice that the  
9 elephant could make, is that true?

10 A. No. That's stated too specifically or not any choice.

11 Q. But limiting an elephant's choice, though, is not  
12 necessarily abuse, correct?

13 A. Not necessarily abuse, yes. It can be.

14 Q. And hitting an elephant on the trunk for reaching out  
15 toward a person or an object is not necessarily abuse, is it?

16 A. No. It's not abuse.

17 Q. Some force with the ankus could be exerted with an elephant  
18 without committing abuse, correct?

19 A. Correct.

20 Q. And whether that level of force constitutes abuse depends  
21 on the reason it was applied, correct?

22 A. I'm sorry, ask that again.

23 Q. Certainly. Whether a level of force with the ankus  
24 constitutes abuse depends on the reason that the force was  
25 applied, correct?

1 A. That sounds reasonable, but I'm not sure. I don't feel  
2 comfortable saying yes or no to that.

3 Q. Let me take you to your deposition at page 142. Beginning  
4 on line 17 I asked, Question: Some force with an ankus could be  
5 exerted with an elephant without committing abuse, correct?

6 Answer: Yes. There has to be a fine line somewhere,  
7 unfortunately, it is a subjective arbitrarily line, but yes.

8 Question: Does that degree of force depend in part on  
9 the reason it was applied with the ankus?

10 Answer: I'm sure that that is the case, as well as  
11 the mindset of the individual and the circumstances in which it  
12 occurs. I would say the vast majority of the time an elephant  
13 is going to be hit more when people are not present to watch it,  
14 as opposed to when they are. So the circumstances can dictate  
15 the level of force, as well. Did I read that correctly?

16 A. Yes. I would agree with that.

17 Q. So would it constitute abuse, force with an ankus could be  
18 used to keep an elephant from injuring a trainer, true?

19 A. Yes.

20 Q. And without constituting abuse, force with an ankus could  
21 be used to keep an elephant from injuring a member of the  
22 public, correct?

23 A. Yes.

24 Q. And without constituting abuse, force with an ankus could  
25 be used to keep an elephant from injuring itself, correct?

1 A. Yes.

2 Q. Or another elephant, correct?

3 A. Yes.

4 Q. So the use of punishment is not necessarily abuse, correct?

5 A. That's correct, it is not necessarily abuse.

6 Q. Now, captive elephants may have better welfare than wild  
7 elephants, isn't that true?

8 A. Captive elephants may have been better welfare, is that  
9 what you said?

10 Q. Than wild elephants, true?

11 A. I think that's possible. Certainly in some circumstances,  
12 yes.

13 Q. Now, we talked about and heard a lot of your testimony  
14 about the bullhook in circuses, but I want to clarify. If  
15 tethering for over two hours was stopped or banned, circuses  
16 could no longer transport the elephants for exhibition as they  
17 currently do, correct?

18 A. I would say it would be very difficult unless there's some  
19 other methods besides tethering.

20 Q. So that's correct, isn't it?

21 A. Yes, with my additional comment.

22 Q. Well, let me show you page 199 of your deposition, starting  
23 on line 16. Question: And if use of tethering for over two  
24 hours was stopped or banned, circuses could no longer transport  
25 the elephants for exhibition as they currently do, isn't that

1 right?

2 Answer: Yes, that's correct. Did I read your  
3 testimony correctly?

4 A. Yes.

5 Q. Now, the USDA recognizes free contact as an appropriate  
6 training method for elephants, correct?

7 A. Yes.

8 Q. And the AZA recognizes free contact as an appropriate  
9 training method for elephants, true?

10 A. Yes.

11 Q. Elephant Managers Association recognizes free contact as an  
12 appropriate training method for elephants, correct?

13 A. Yes.

14 Q. And as you sit here today you do not know how many zoos  
15 combine the use of a barrier such as that used in protected  
16 contact with use of a guide or other free contact methods,  
17 correct?

18 A. Correct.

19 Q. Now, Ms. Laule, do you know the size of the largest  
20 elephant herd kept in any U.S. zoo?

21 A. No.

22 Q. Do you know of any zoo that has a herd of fifteen  
23 elephants?

24 A. In the U.S.?

25 Q. In the U.S.



1 A. In a U.S. zoo?

2 Q. Yes.

3 A. I don't know how many are in San Diego now. They're  
4 probably very close to that.

5 Q. Do you know of any U.S. zoos that have twenty elephants in  
6 their herd?

7 A. I don't think so.

8 Q. So twenty would be the largest number that you could think  
9 of, or is it fifteen?

10 A. Probably more like fifteen, but I'm just guessing because I  
11 don't know for certain.

12 Q. Okay. So you don't know as you sit here today?

13 A. No.

14 Q. Now, I believe you mentioned this, but I want to ask  
15 specifically. Are you aware that handlers frequently use,  
16 elephant handlers in free contact, frequently use the stick end  
17 and not the metal end of the guide to cue elephants?

18 A. I have seen that but I've seen it very rarely.

19 Q. Is it your opinion that the stick end of the guide hurts  
20 elephants when they're cued?

21 A. If it's used simply as a cue just to touch the elephant,  
22 no.

23 Q. Now, you were shown some film clips of what counsel said  
24 were Ringling Brothers' handlers earlier in your testimony  
25 today, correct?

1 A. Yes.

2 Q. You don't know the circumstances, what went on before and  
3 what went on after those film clips, do you?

4 A. No.

5 Q. Ms. Laule, you were shown a film clip where elephants were  
6 rolling tubs, correct?

7 A. Yes.

8 Q. You never trained an elephant to do that behavior, have  
9 you?

10 A. No.

11 Q. And again, you've never trained an elephant to do any type  
12 of performance, correct?

13 A. Correct.

14 MR. SHEA: That's my cross, your Honor.

15 THE COURT: Any redirect?

16 MS. SANERIB: Thank you, your Honor.

17 REDIRECT EXAMINATION

18 BY MS. SANERIB:

19 Q. We can start by going to Defendants' Exhibit 228, please.  
20 I'd like to go to page five of that exhibit.

21 THE COURT: How long do you anticipate your redirect  
22 to be? I'm not trying to curtail you.

23 MS. SANERIB: Probably about 20 minutes, 25 minutes.

24 THE COURT: All right. Let's take a ten-minute  
25 recess. We've been taken testimony for over an hour now. Let's

1 take a recess. We'll break at one o'clock.

2 You can step down.

3 THE WITNESS: Thank you.

4 THE COURT: We'll start again at 12:30.

5 COURTROOM DEPUTY: This Honorable Court now stands in  
6 a short recess.

7 (Recess taken at about 12:13 p.m.)

8 COURTROOM DEPUTY: Please remain seated and come to  
9 order.

10 THE COURT: Are the attorneys here for that sealed  
11 matter?

12 COURTROOM DEPUTY: They're out in the hall, Judge.

13 THE COURT: Let me ask you something before redirect,  
14 I guess two questions. In an effort to measure pervasive abuse,  
15 what evidence would the Court be interested in, what would the  
16 Court see in instances in which there's been pervasive, constant  
17 abuse of elephants by the bullhook, evidence insofar as an  
18 elephant's behavior?

19 THE WITNESS: Behavior?

20 THE COURT: That's one part. And the other part would  
21 be, with respect to elephants who have been confiscated for  
22 abuse by USDA or some other government entity, what would the  
23 Court see, what evidence would the Court see of abuse in those  
24 instances in which they've been actually taken from the circus,  
25 was it?

1 THE WITNESS: Uh-huh. Well, I may not be the best one  
2 to answer that question, because it's a difficult one, but I  
3 know, you know, someone who is a good behavioral researcher  
4 would be able to give you a much better answer about that. What  
5 exactly would the parameters be, how would I go about, you know,  
6 creating a baseline and then looking at changes that have  
7 occurred, what sort of changes would I expect to see, I think  
8 that generally speaking -- this is the difficult part of it.

9 THE COURT: I know it is, because you recognize that  
10 the bullhook can be used appropriately, right?

11 THE WITNESS: Yeah.

12 THE COURT: And we've seen tapes of abuse. I'm just  
13 kind of wondering what's the evidence of chronic abuse,  
14 pervasive abuse.

15 THE WITNESS: Yeah. I would say that you would see, I  
16 mean, it would be -- it would be nice to get some physiological  
17 data. You know, we do look at cortisol and things like that,  
18 but again, I would want some kind of baseline to compare it to,  
19 you know, because you're assuming this was not abuse at one  
20 point.

21 THE COURT: Right, exactly.

22 THE WITNESS: And then this was after the abuse. So  
23 that's a hard thing. I mean, I suppose you could look at base-  
24 lines of other elephants that are not in that situation and, you  
25 know, draw some -- extrapolate from that or draw some

1 conclusions from it, but it's, you know, animals are very  
2 adaptable, and that's the difficult thing about it, and as I've  
3 said too, it's, you know, there can be a lot of harm done  
4 without abuse, and that's the other thing that's extremely  
5 difficult to me, sure, you know, is, what is the long-term  
6 effects of animals that are living in a situation where they may  
7 not be abused but those techniques are a part of their life.

8 THE COURT: Right. We know that they become totally  
9 compliant in many instances.

10 THE WITNESS: In many instances, yes.

11 THE COURT: That can't be evidence of abuse only  
12 though, can it?

13 THE WITNESS: No. It's complicated, you know, and  
14 that's why I say, you know, that's where I rely, you know, and  
15 I'm not a scientist. I'm a behaviorist, you know, and that's my  
16 area of expertise, but what I have done in my own career is,  
17 when I wanted to look at an issue, for example, the benefits of  
18 positive re-enforcement training, I did that with primates  
19 because there was a researcher there who was willing to put the  
20 time and the effort into designing a study that we could look at  
21 that, but I relied on her, you know, to develop that study, and  
22 that's why I'm having a hard time personally answering your  
23 question.

24 THE COURT: That's fine. I appreciate your candor.  
25 It's one I'm struggling with.

1 THE WITNESS: Yeah, yeah.

2 THE COURT: Thank you.

3 THE WITNESS: Um-hmm.

4 BY MS. SANERIB:

5 Q. Following up on that, Ms. Laule, we've looked at a few of  
6 your articles yesterday, they were admitted to show your  
7 expertise, and one of the things you referenced in those  
8 articles was some work of Mia Shepardson where he uses  
9 observable animal behavior as an indicator of well-being.

10 A. Yes.

11 Q. Is that a technique that's frequently used by people who  
12 work with captive animals?

13 A. Yes.

14 MR. SHEA: Objection; leading.

15 THE COURT: It is leading. It is leading.

16 THE WITNESS: I'm sorry.

17 THE COURT: But I'm interested in it. Can you  
18 elaborate on that at all?

19 THE WITNESS: If I can refer to the paper there.

20 THE COURT: Whatever you want to.

21 MS. SANERIB: This was Ms. Laule's 2003 article from  
22 the Animal Welfare Forum. That was admitted yesterday. In the  
23 Journal of --

24 THE WITNESS: Well, one thing I can say for certain is  
25 that one thing you would look at is the expression of species'

1 typical behavior like we've talked about today, what is normal  
2 for an animal to do, and then the other thing is, the absence or  
3 the presence of abnormal behavior, and I know there's been a lot  
4 of discussion in this case about stereotypic behavior. That  
5 would be considered an abnormal behavior. If that behavior is  
6 present, then I would want to look further because I think most  
7 scientists would agree that is an indicator of certainly reduced  
8 welfare. Whether they're stereotyping, you know, is another  
9 question, but it's directly related to that question of, you  
10 know, has harm been done, if those characters of that animal  
11 been affected, so those would be two examples of behavior that  
12 you would look at.

13 BY MS. SANERIB:

14 Q. And Ms. Laule, we pulled up that article and the specific  
15 provision I was referring to, on the screen here, just because  
16 you had asked to see that.

17 A. Yeah. And I guess that is, that is basically what I just  
18 said, looking at the species' typical behavior as well as  
19 abnormal behavior, the presence or absence of it would be  
20 indicative of some sort of disruption, stress, fear in that  
21 animal, that triggers that consequence.

22 Q. And Ms. Sinnott, if we could go back to Defendants' Exhibit  
23 228. And going ahead in that document to page five, and that  
24 second paragraph under the heading Science-Based Decision-Making  
25 that starts off What does science say.

1           And Ms. Laule, I'd like you to just, you know, either  
2 read, or if you remember this paragraph, summarize it for the  
3 Court, whichever one you feel most comfortable with.

4       A.    Yeah. I think this was -- the comment that I was making is  
5 that, is that, as we've said, there's not a lot of specific data  
6 on elephants, and that's recognized by everyone. When it comes  
7 to talking about training techniques, there is an in the  
8 literature about specific techniques and specifically the use of  
9 aversions, you know, negative re-enforcement and punishment and  
10 the use of positive re-enforcement training, and I think one of  
11 the things that is recognized by scientists is that in the  
12 absence of specific studies about a specific species, that it is  
13 reasonable to extrapolate, to look at the literature and see  
14 what's out there, and if it's a study on a different species but  
15 the conditions can be relatively equated, then you can  
16 extrapolate from that, and that was my point in here, is that in  
17 what Mr. Shea was pointing out earlier, that is in the absence  
18 of those studies, there are a lot of other studies and  
19 literature that I think are very relevant.

20       Q.    And is it common in the community for people who work with  
21 captive animals to look at studies for animals other than the  
22 animals they're working with?

23       A.    Very much --

24           MR. SHEA: Objection; leading.

25           THE COURT: Sustained.



1                   It is leading, counsel. Let her testify.

2       BY MS. SANERIB:

3       Q.    What kind of studies are commonly used when you work with  
4       captive animals to assess their welfare and management?

5               MR. SHEA: Again, argumentative.

6               THE COURT: I'll allow the question.

7               Do you understand it?

8               THE WITNESS: Yeah.

9               I mean, for example, when you're talking about animal  
10      welfare, probably the best studies that have been done are with  
11      farm animals, okay, and obviously we have to recognize this is a  
12      domestic animal, this is a wild animal, but I think generally  
13      speaking, there is a lot of recognition of that. When the  
14      primates -- when the Animal Welfare Act was changed and said  
15      that you had to address the psychological well-being of primates  
16      and everybody ran around trying to figure out what psychological  
17      well-being is so now I can turn around and address it, and they,  
18      the scientists, went to other literature because that helped  
19      them to define for this particular species because there wasn't  
20      the information there prior, so that is very much an industry  
21      practice to do that.

22      Q.    Have you reviewed some of that literature?

23      A.    Yes, I have. I've read a fair amount of the literature.

24      Q.    And did you rely on that literature in making your opinions  
25      in this case?

1 A. Yes, to a great extent, as well as my own personal  
2 experience obviously with elephants and all the very specific  
3 things I did with elephants, but I certainly took that into  
4 consideration as well.

5 Q. And having looked at the evidence and having looked at  
6 those studies, what's your opinion?

7 A. Regarding?

8 Q. Regarding Ringling Brothers, looked at the evidence of  
9 Ringling Brothers Circus and the studies you were just referring  
10 to, what's your opinion?

11 A. Well, in terms of a training system, as I said, it is very  
12 clear to me that the system is used as free contact, that it is  
13 done the way I have -- I understand it and the way I've seen it  
14 done in every other situation, and therefore I'm very certain in  
15 saying that the techniques, the tools are the same, the  
16 techniques are the same, the fact that adversives are the  
17 primary mode of eliciting behavior, ensuring that it will happen  
18 again, exists, and all the negative repercussions that stem from  
19 that in terms of the animal's well-being.

20 Q. Again, I'm sorry. What are those negative repercussions  
21 for the elephants?

22 A. The loss of choice and control, the disruption or the  
23 impairment of those species' typical behaviors, the presence of  
24 abnormal behaviors, the impact of the animal not being able to  
25 socialize normally, move normally, follow their own -- their

1 normal pattern of activity because of the extreme levels of  
2 extreme lengths of time of restraint, and I think just the  
3 unnatural aspect of having to accept a person as being socially  
4 dominant, that applies.

5 Q. And is negative re-enforcement a tool, like the ankus, used  
6 with other captive animals?

7 A. No.

8 Q. Would it be inappropriate to use a tool like a bullhook on  
9 a dolphin, for example?

10 MR. SHEA: Objection; leading.

11 THE COURT: You can answer.

12 THE WITNESS: I can tell you that there is absolutely  
13 no other animal I can imagine that anyone would ever think to  
14 use a bullhook on.

15 THE COURT: Why do you have that opinion?

16 THE WITNESS: Because the inherent aspects of negative  
17 re-enforcement and punishment, we just don't do that with other  
18 animals. We just don't. You know, we don't expect them to  
19 cooperate in that particular fashion. You know, we have found,  
20 and this is my point of protected contact, is, just like we can  
21 get -- I can work just about any other animal, you know, exotic  
22 animal, using nothing but positive methods, I can do exactly the  
23 same thing with elephants and I don't need it, and I think that  
24 again it's really only there because it's been tradition, you  
25 know, and again up until 1991 it was the only option, so people

1 just accepted it, and the point now is there are other options.

2 BY MS. SANERIB:

3 Q. Mr. Shea also asked you, and I'm going to paraphrase here,  
4 do you have data regarding chaining of elephants for twelve  
5 hours. And my question is, what's the view in the elephant  
6 community right now about chaining for twelve hours?

7 MR. SHEA: Objection; calls for hearsay.

8 THE COURT: No, she can give an opinion.

9 You've read some literature about this, you got the  
10 studies, and without telling us what other people may have told  
11 you, the result of the studies, do you have an opinion?

12 THE WITNESS: Yes, and when I was involved in the  
13 elephant SSP it was a big point of discussion, and definitely  
14 things have moved forward to the point that -- okay, ask me the  
15 question again.

16 BY MS. SANERIB:

17 Q. First of all, can you explain for the Court what the SSP  
18 is?

19 A. The SSP is a survival plan -- I think I mentioned it  
20 yesterday -- and it's the two African and Asians, SSP have been  
21 combined into the elephant tags, and I believe -- okay, just ask  
22 me again.

23 Q. Yes. My question for you is: What's the view within the  
24 elephant community about chaining for twelve hours?

25 A. This was -- this has definitely been a process of moving

1 away from chaining elephants for extended periods of time. I  
2 remember attending a tag meeting where there was one individual  
3 there from a zoo who was talking about doing modifications to  
4 his barn and he was going to continue to chain his elephants at  
5 night and the overwhelming response in the room was that is not  
6 appropriate. It is time to move away from that, and especially  
7 if you're in a position of doing modifications, you modify that  
8 barn so those animals do not have to be on chains all night.

9 Q. Why is that view held? In your opinion, why is that view  
10 held?

11 A. Well, I think because people recognize that it is a  
12 significant negative impact on that animal and affects the  
13 things we talked about and carries with it a fair amount of  
14 stress.

15 MR. SHEA: I'd object to hearsay.

16 THE COURT: Overruled.

17 BY MS. SANERIB:

18 Q. Mr. Shea asked you about a lot of things, that whether or  
19 not you thought they amounted to abuse, and I just wanted to ask  
20 you a couple of those questions. Is punishment, in a slightly  
21 different way, is punishment of an elephant likely to result in  
22 harm?

23 A. Yes. Physical punishment, yes.

24 Q. And when you talk about that resulting in harm, what are  
25 you talking about?

1 A. I'm talking about animals that function in the system where  
2 physical punishment is inherent in making sure that they  
3 cooperate a hundred percent of the time and that that sort of  
4 management style has a significant impact on their welfare.

5 Q. And using the bullhook as a negative re-enforcer to cue a  
6 behavior or to ensure a behavior is complied with, can that harm  
7 an elephant?

8 MR. SHEA: Objection; leading.

9 THE COURT: I'll allow it.

10 THE WITNESS: Yes, I believe it can, for exactly what  
11 I just described as well.

12 BY MS. SANERIB:

13 Q. And I think Mr. Shea asked you a question about -- or you  
14 had a discussion about the El Paso Zoo and that they had added a  
15 protected contact program and then made a return to a free  
16 contact program, and you mentioned the treatment of the  
17 elephants at that facility. I'm wondering, have you ever worked  
18 at the El Paso Zoo?

19 A. Yes, I did.

20 Q. And are you aware of the circumstances of how those  
21 elephants were --

22 THE COURT: Let her testify.

23 MS. SANERIB: Okay.

24 BY MS. SANERIB:

25 Q. Do you know how the elephants were converted from protected

1 contact to free contact?

2 A. Well, it was a single elephant, Sissie, and she had been at  
3 the Houston Zoo in a protected contact program. She was then  
4 sent to El Paso and the -- the problem became that she now had  
5 to -- you know, the rules are different, you know, in protected  
6 contact. The persons are not socially dominant, the tools are  
7 different, everything about it, so now they had to take her back  
8 to free contact and basically re-establish the trainer's  
9 position with her and they did it in a way where they, they, I  
10 believe, put her on ropes and ran her through a series of  
11 behaviors and basically forced her to comply by very hard use of  
12 the ankus in hooking and in actually physically striking her  
13 multiple times. The whole point being, you have to -- now you  
14 have to recognize again I'm dominant, I'm going to be going in  
15 with you, you have to respect me, you have to do what I ask you  
16 to do, and that's what was required to achieve that.

17 Q. Do you think that --

18 THE COURT: Do you have an opinion?

19 BY MS. SANERIB:

20 Q. What's your opinion about the use of negative  
21 re-enforcement by a keeper to protect himself or herself and  
22 whether that can result in harm to the elephant?

23 A. Well, I understand why it's used and I see the -- I see how  
24 it fits into the system to protect the person. In my opinion,  
25 it does cause harm to the elephant.

1 Q. Mr. Shea asked you about --

2 THE COURT: And the harm is?

3 THE WITNESS: The harm is that the animal is deprived  
4 of a great deal of their choice of control in how they behave,  
5 and that their species' typical behaviors are often impacted.  
6 One primary one is simply the animal's natural inclination to be  
7 curious, to explore, and as I described, that's something that  
8 is often seen as I can't let that happen in a free contact  
9 situation.

10 BY MS. SANERIB:

11 Q. In your opinion, are there any physical ramifications for  
12 the animal?

13 A. Certainly. They can end up with dramatic wounding. I mean  
14 anything from just a hook point to actual, you know, I think you  
15 had mentioned boils and bruising and things like that, so, yes,  
16 there can be physical harm as well, wounding.

17 Q. You had --

18 THE COURT: You didn't, if I understood your testimony  
19 correctly, you didn't have any knowledge about the boils, did  
20 you?

21 THE WITNESS: I have not personally seen boils. I've  
22 seen other examples of, or other wounds that were caused by the  
23 hook, but not boils.

24 THE COURT: How were you able to tell that the wounds  
25 were caused by hooks and not, you know, scratching or by tusks



1 or other animals.

2 THE WITNESS: The point of the hook tends to make a  
3 pretty obvious mark, and it's the location, because there's very  
4 specific hook points that are used on an elephant and obviously  
5 things like moving them forward, you know, a lot of behaviors  
6 you would do repetitively, you'll see those locations where  
7 those injuries will occur.

8 THE COURT: Are those location the more tender  
9 locations on an elephant?

10 THE WITNESS: Yes.

11 THE COURT: So that would be what, the ear, the cheek,  
12 and what?

13 THE WITNESS: Behind the leg, along the shoulder, on  
14 the feet. Those are the main ones I can think of. Back end.

15 BY MS. SANERIB:

16 Q. You and Mr. Shea talked about the elephant husbandry  
17 resource guide. Are you familiar with that document?

18 A. Yes.

19 THE COURT: So the evidence of abuse then would be the  
20 physical manifestations, the injuries, that's evidence? Is that  
21 evidence of abuse, though?

22 THE WITNESS: Well, that would be evidence of what I  
23 would term abuse, okay. Because that would indicate to me an  
24 excessive use of the hook, you know, either for hooking or for  
25 striking. The problem is, I think there is tremendous injury, I

1 mean harm, that can also be done to the elephant without that  
2 excessive use, simply the fact that that happens up to a certain  
3 point every day, and that's again what makes it, you know, a  
4 difficult thing to assess.

5 BY MS. SANERIB:

6 Q. I just wanted to ask, do you know who authored the Elephant  
7 Husbandry Resource Guide?

8 A. Yeah. It was -- I think Debbie Olson is the editor of it.  
9 It was -- that was a husbandry manual that was supposed to come  
10 out from the TAG. It was actually published, I believe, by  
11 International Elephant Foundation, but it was distributed as if  
12 it was the guide for the Tag.

13 Q. And --

14 THE COURT: You can't finish before one, counsel. I  
15 do have a sealed matter that's going to take me a few minutes,  
16 so we're going to break for lunch. You'll have to come back  
17 after lunch.

18 THE WITNESS: Okay.

19 THE COURT: 2:30.

20 MS. SANERIB: 2:30.

21 THE COURT: Because I do have to focus on a criminal  
22 matter that's sealed. And I do have to ask, as delicately as I  
23 can, I have to ask people to leave the courtroom as soon as they  
24 can so I can focus on this sealed matter.

25 THE WITNESS: Okay.

1           THE COURT: I have to ask you not to discuss your  
2 testimony with anyone.

3           THE WITNESS: I understand.

4           THE COURT: You can leave your materials there if you  
5 want to.

6           (A luncheon recess was taken at about 12:52 p.m.)

7                           - - -

## I N D E X

## WITNESSES:

GAIL LAULE

Direct Examination by Ms. Sanerib  
Cross-examination by Mr. Shea  
Redirect Examination by Ms. Sanerib

## E X H I B I T S

Plaintiffs'

Exhibit

No.

Identification

Marked

Admitted

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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