

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.
. Monday, February 23, 2009
. 9:49 a.m.
.

.

TRANSCRIPT OF BENCH TRIAL - MORNING SESSION - DAY 11
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

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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 verses Feld Entertainment, Inc.

Will counsel please identify yourselves for the record?

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

THE COURT: Good morning.

MR. GLITZENSTEIN: Good morning, your Honor. Eric Glitzenstein for the plaintiff.

MS. MEYER: Good morning, your Honor. Katherine Meyer for the plaintiffs.

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

MS. SINNOTT: Good morning, your Honor, Michelle Sinnott, tech, for the plaintiff.

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

MS. JOINER: Good morning, your Honor. Lisa Joiner for the defendants.

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

MS. PARDO: Good morning, your Honor. Michelle Pardo for the defendants.

1 MS. PETTEWAY: Good morning, your Honor. Kara
2 Petteway for the defendants.

3 THE COURT: Good morning.

4 MS. STRAUSS: Good morning, your Honor. Julie Strauss
5 for the defendants.

6 MR. PALISOUL: Good morning. Derrick Palisoul for the
7 defendants.

8 THE COURT: Good morning.

9 All right, let's proceed.

10 MS. SANERIB: Thank you, your Honor. Plaintiffs call
11 Carol Buckley, and her name is spelled C-a-r-o-l, and Buckley is
12 B-u-c-k-l-e-y.

13 COURTROOM DEPUTY: Please raise your right hand.

14 Do you solemnly swear that the testimony you're about
15 to give will be the truth, the whole truth and nothing but the
16 truth?

17 MS. BUCKLEY: Yes, I do.

18 THE COURT: Good morning.

19 **CAROL BUCKLEY, WITNESS FOR THE PLAINTIFFS, SWORN**

20 **DIRECT EXAMINATION**

21 BY MS. SANERIB:

22 Q. Good morning, Ms. Buckley. Could you please state your
23 full name for the record?

24 A. Carol Ann Buckley.

25 Q. And if you can speak into the microphone, that will help

1 our court reporter. Thank you.

2 Now, Ms. Buckley, when did you first start working
3 with elephants?

4 A. 35 years ago.

5 Q. And how did you come to work with elephants?

6 A. I was a student at More Park College and I learned about a
7 baby elephant that was living in the same town that I was living
8 in.

9 Q. And did you train that elephant?

10 A. I did. I volunteered my time and trained her sort of in
11 between classes.

12 Q. And how did you know how to train her?

13 A. Well, I had a background in dog training, operant
14 conditioning. I had done that through high school.

15 Q. And did any other elephant trainers ever work with the
16 elephant?

17 A. With this elephant, yes. Robert Smokey Jones.

18 Q. And who is Robert Smokey Jones?

19 A. He's a well-renowned circus elephant trainer, and he is
20 passed away.

21 Q. Okay. And what work did he do with this elephant?

22 A. What he did was to retrain her. She knew how to do all the
23 basic behaviors and he retrained all of them to lay down, sit
24 up, sit on the ground, do tub work, waltz, and basically a
25 circus routine.

1 Q. And were you also trained by Smokey Jones?

2 A. Yes.

3 Q. And about how much time did you and the elephant spend
4 working with Mr. Jones?

5 A. One month.

6 Q. And where did that occur?

7 A. That was in Fontana, Southern California.

8 Q. Okay. And you mentioned that the elephant learned a lot of
9 different behaviors. Can you describe for the Court how the
10 elephant was taught to lay down?

11 A. Yes. Smokey taught Tara to lay down by the use of ropes.
12 He attached ropes to all four feet and then used additional
13 ropes to tie the front feet together and the back feet together.
14 Then put a rope around her neck, loosely, attached another rope
15 to a back leg and then strung that rope through the neck rope up
16 over her back. At that point she was stationary, basically, and
17 then he had his crew, he had four people with him, he had
18 instructed his crew that on the command of "lay down" that they
19 would yank on the rope and actually pull her off balance so
20 she'd fall on her side.

21 Q. Okay. And so he taught the elephant to lay down using
22 ropes and verbal commands?

23 A. Yes.

24 Q. Is that all?

25 A. I think so.

1 Q. Was anything else involved in that?

2 A. He also used the elephant hook, and that was used initially
3 as in connection with the voice command to identify the location
4 on her body where he would cue later on. I didn't know it at
5 the time. But later on then if he needed to cue her if she was
6 being resistant, then he would use that location with the hook
7 and pull down with the hook.

8 Q. Okay. And you said you spent about a month with Mr. Jones;
9 is that correct?

10 A. Yes, one month. And I Tara and I both stayed at his home.

11 Q. And did he teach you to use the bullhook as well to train
12 the elephant?

13 A. Yes, he did. I was there assisting, according to his
14 instruction, and he would -- my memory is that he would have the
15 elephant lay down three times, four times, and then he would
16 hand me the hook and pull me by the arm and put me in the place
17 he wanted me to be in say now you do it.

18 Q. Okay. And after you left Mr. Jones' home, did you keep in
19 touch with him?

20 A. I did for about a year before I moved out of the area. I
21 would go see him about once a week.

22 Q. Okay. And what happened during those visits?

23 A. Well, the visits were day-long. It was understood on my
24 part that it was part of the ritual or tradition that I would
25 spend time with Smokey just talking, talking about elephants,

1 talking about the industry, talking about training, and then in
2 my case specifically, talking about the elephant that I was
3 working with.

4 Q. Okay. And what did you do after you left Mr. Jones' home?

5 A. I had booked an engagement up in northern California at
6 Mariat's (ph) Great America with the elephant.

7 Q. How long were you there?

8 A. Almost two years.

9 Q. Were you still employed by the elephant's owner at that
10 point in time?

11 A. For the first year.

12 Q. And what happened after that first year?

13 A. I purchased the elephant after that.

14 Q. Okay. And did you name the elephant?

15 A. I did. I renamed her from Fluffy to Tara.

16 Q. Okay. And what did you do after you were done at Great
17 America?

18 A. I took an engagement with a circus up in Canada and then
19 traveled with circuses for the next fifteen years.

20 Q. Okay. And how did you travel with the circus?

21 A. I had a custom-built trailer.

22 Q. And did you use a bullhook during this time?

23 A. Yes, I did.

24 Q. And was Tara chained at night?

25 A. Yes.

1 Q. And how was she chained?

2 A. She was chained, if she was inside in an enclosure, like a
3 barn or her trailer, she'd be on one front leg chain and one
4 back leg chain. If she was outside, she'd be on one front leg
5 chain.

6 Q. Okay. Ms. Buckley, did you teach Tara to do something very
7 unique?

8 A. Yes. I taught her to roller skate.

9 Q. Has there ever been another elephant that's roller-skated?

10 A. Not that I know of.

11 Q. During this time when you were working for circuses, did
12 you work alongside any other elephant trainers?

13 A. I did. I would join a show where there were other
14 elephants, so in the early years I remember working with Ben
15 DeWayne, but I also worked alongside Charlie Gray, Jody Watkins,
16 Bucky Steel. That's all I can remember right now.

17 Q. And are those all fairly well-known elephant trainers?

18 A. Yes.

19 Q. Who would you say were the pre-eminent elephant trainers
20 during that time period?

21 A. Well, during that time frame there was like two
22 generations. The older generation were Smokey Jones, Rex
23 Williams, Buckles, Woodcock, and Mack McDonald and Bucky Steel.

24 Q. All right. And when you were working alongside these
25 trainers, would you ever discuss elephant training with them?

1 A. That's all we talked about.

2 Q. And in your opinion did the elephant trainers use similar
3 or different techniques to one another?

4 A. Very similar.

5 Q. Okay. Did you ever perform with Ringling Brothers Circus
6 during this time?

7 A. No, I did not.

8 Q. Were you ever offered a job at Ringling Brothers Circus?

9 A. Yes, I was.

10 Q. Who offered you that job, do you recall?

11 A. Yes. Alex Gutea (ph).

12 Q. And you didn't accept?

13 A. No, because he wouldn't have the elephant as well.

14 Q. Okay. And was there anything memorable about your visit to
15 Ringling Brothers Circus?

16 A. Yes. It was very exciting actually because I was asked to
17 ride one of the elephants in the parade from the railroad car to
18 the building.

19 Q. Okay. Ms. Buckley, have you worked at any zoos with
20 elephants?

21 A. Yes.

22 Q. All right. About how many zoos?

23 A. Half a dozen.

24 Q. And what do you do now?

25 A. I run the elephant sanctuary in Tennessee.

1 Q. What's the elephant sanctuary?

2 A. It's the nation's only natural habitat refuge for
3 elephants, and we take in sick and needy elephants from circuses
4 and zoos.

5 Q. When you started the sanctuary, how many elephants did you
6 have?

7 A. We started with one elephant.

8 Q. How many elephants do you have now?

9 A. Seventeen.

10 Q. And how many elephants have you provided sanctuary for over
11 the years?

12 A. Twenty-four in total.

13 Q. All right. And do you provide sanctuary for both Asian
14 elephants and African elephants?

15 A. Yes, we do.

16 Q. Is the sanctuary a business?

17 A. It's a nonprofit organization.

18 Q. And are there any elephants that you're currently working
19 on providing sanctuary for?

20 A. There are several. There are a group of elephants in
21 Brazil, an elephant in Canada, and an elephant in Texas.

22 Q. Okay. And what's the elephant in Texas?

23 A. Her name is Baby.

24 Q. All right. And where does she reside?

25 A. She's at the Black Beauty Ranch.

1 Q. About how many facilities have you visited in connection
2 with possibly moving elephants to the elephant sanctuary?

3 A. Every elephant we move we visit the facility, so a dozen.

4 Q. Are you ever sent video footage of elephants?

5 A. Very often.

6 Q. And why do people send you video footage?

7 A. Most of the time the reason that we receive the footage is
8 there are questions about either the elephant's behavior or
9 physical condition and they want me to comment on it.

10 Q. All right. So that's something you routinely do as part of
11 your work for elephants?

12 A. Almost every day.

13 Q. Okay. Ms. Buckley, has the USDA ever placed an elephant at
14 your sanctuary?

15 A. They've placed two elephants with us.

16 Q. What was the first elephant?

17 A. The first elephant was Delli.

18 Q. And why was she placed at your sanctuary?

19 A. She was suffering terminally from osteomyelitis, and,
20 according to USDA, she was not receiving adequate veterinary
21 care.

22 Q. And what's osteomyelitis?

23 A. It's an infection in the bones of the feet, well, with
24 elephants in the bones of the feet.

25 Q. How does she get osteomyelitis, do you know?

1 A. Yes. Osteomyelitis is caused by an infection in the foot.
2 Very simply, elephants develop bruising on their foot pads, and
3 if that continues, which it will if you don't take the elephant
4 out of the environment which creates that, then the infection
5 actually migrates through the flesh of the foot and reaches the
6 bones, the toe bones. Once that bacterial infection reaches the
7 toe bones and infects them, then it's terminal because never
8 before has this been cured with elephants.

9 Q. And you mentioned, I think, a second elephant. Who is the
10 second elephant that was placed at the sanctuary?

11 A. That would be Ned.

12 Q. And why did Ned go to the sanctuary?

13 A. Ned was confiscated because he was emaciated, and again,
14 according to the USDA, not only was he not receiving proper
15 medical care, but also he wasn't being fed properly.

16 Q. Ms. Buckley, in your opinion, are these the only two
17 elephants with circuses that were confiscated by the USDA?

18 A. Oh, no. These are just the two worst cases.

19 Q. Okay. And those are the only two cases in existence; is
20 that right?

21 A. Right.

22 Q. Now, the elephants that are at the elephant sanctuary
23 today, how many would you say you have primary responsibility
24 for in terms of their care?

25 A. Well, primary care, every day would be eight of the

1 elephants.

2 Q. Okay. And do you work with any veterinarians?

3 A. Yes. We have a team of veterinarians that I work with.

4 Q. Do you provide any medical care to the elephants or do
5 veterinarians do that?

6 A. The veterinarians are the ones that prescribe the medical
7 care, but the caregivers, myself, are the ones that actually
8 administer that care.

9 Q. Okay. And what kinds of medical issues do you commonly
10 have to address?

11 A. Well, when elephants arrive, many times they're in poor
12 physical condition. Foot problems are the biggest things that
13 we see. Arthritis also. A lot of them are emaciated when they
14 come in, and then also there's a lot of behavior/psychological
15 problems that we see when they first come in, so we can do
16 something as simple as foot soaks, change their diet, address
17 their feet, which is either to trim their feet or to not trim
18 there feet because many times their feet are overtrimmed change
19 their diet so they can put on weight or lose weight, whatever
20 they need to do, and address their psychological condition.
21 Most of the time it's fear that they're dealing with.

22 Q. Do you use any alternative remedies in treating your
23 elephants?

24 A. We use a wide range of remedies. We have access to
25 pharmaceuticals if that's required and if that's what the

1 veterinarian recommends, but we also take advantage of all
2 remedies, such as foot soaks, fluorescence, homeopathic
3 remedies, and also access to the habitat and live vegetation,
4 which are good remedies as well.

5 Q. Approximately how much time do you spend with elephants
6 each week?

7 A. Well, it varies, but by day it's anywhere from, say, ten
8 days to, on my long days, sixteen hours.

9 Q. What do you do with the elephants?

10 A. Well, feed them, clean up after them. Every day access
11 them, their physical condition, access their behavioral
12 condition, supervise and train caregivers, and then just oversee
13 the elephants through the day out in the habitat.

14 Q. Do you use bullhooks at the elephant sanctuary?

15 A. No.

16 Q. Do you use chains at the elephant sanctuary?

17 A. No.

18 Q. Are your elephants brought in every night to the barn?

19 A. No. They have free choice access.

20 Q. What system do you use for managing your elephants at the
21 elephant sanctuary?

22 A. Well, we call it passive control. We use relationship and
23 knowledge of the species.

24 Q. So can you describe a little bit further how passive
25 control works?

1 A. Well, how it works is we access the individual, we
2 determine what her personal needs are. I mean, there's specie
3 needs but there's also individual needs, so we determine what
4 her or his need is, and then we work hard to meet that need. In
5 doing that, we are focusing on relationship because we need
6 trust, we need mutual trust, and once we can gain that, which
7 with an elephant it's fairly easy to do if you provide them with
8 what they need, then we are able to accomplish anything that we
9 need to do simply because we have this relationship with them,
10 so we never tell them what to do. We'll request, but we never
11 tell them and we never punish.

12 Q. Would you recommend that passive control be used at other
13 facilities?

14 A. Well, passive control was really developed at our facility
15 because how we are designed and, no, it couldn't be used at just
16 any other facility.

17 Q. Okay. Even though you use passive control, is there still
18 a danger for your employees in working with elephants?

19 A. There's always a danger when you work with elephants, so
20 yes.

21 Q. Have you had any employees that have been harmed or killed
22 by elephants at the sanctuary?

23 A. We lost Joanna Burg. She was killed by an elephant.

24 Q. Is the elephant sanctuary a licensed facility?

25 A. We are. We are licensed by the United States Department of

1 Agriculture and the Tennessee Wildlife Resources Agency.

2 Q. All right. And have you kept up with the circus industry
3 since you started the elephant sanctuary?

4 A. Yes.

5 Q. How have you done that?

6 A. Well, lots of ways. Since our goal is to help needy
7 elephants, we not only track circuses and visit them when
8 they're -- when we're in the area or they're in our area, I also
9 stay in communication with colleagues who are associated with
10 the industry, and keep up on, you know, the media information.

11 Q. During the course of working with elephants, have you ever
12 served as an instructor?

13 A. Yes, I have.

14 Q. And what have you taught?

15 A. Well, for USDA I did a course on passive control and how
16 elephants are managed in an environment with lots of space and
17 lots of freedom. I also teach from the sanctuary. I do video
18 teleconferences, visits, and I teach about the biology and
19 history of elephants and the crisis that elephants, both captive
20 and wild elephants, are facing today.

21 Q. Does the elephant sanctuary do any work to conserve
22 elephants in their range countries?

23 A. We do.

24 Q. What type of work do you do?

25 A. Well, in Asia we started a grass roots program for captive

1 elephant health care, and this was mobile so we provide all of
2 the funding for that program, and it's in its 5th year, I think.
3 We also fund a program in India for tracking of elephants to
4 keep track, data collection, and we just recently entered into a
5 program in Amboseli and we are funding their scouts to help
6 curtail the recent poaching that's going on, and also we're
7 funding the helicopter as well, which is helping for poaching,
8 anti-poaching.

9 Q. Okay. Do you do any work in the United States to help the
10 welfare of captive elephants?

11 A. We do. We do a lot of education and we do a lot of
12 outreach. We also are available to any organization, any circus
13 or zoo that's interested in gaining information about how the
14 sanctuary works.

15 Q. Okay. Are you a member of the Elephant Manager's
16 Association?

17 A. No.

18 Q. All right. Do you consider that to be a professional
19 organization?

20 A. Not really.

21 Q. Why not?

22 A. Well, it really seems to be a collection of individuals of
23 like mind, that they're not open and receptive to new and
24 different ideas, and they seem really sort of -- they're very
25 traditional.

1 Q. Were you ever a member of the Elephant Manager's
2 Association?

3 A. Yes.

4 Q. And what happened to your membership?

5 A. I was suspended.

6 Q. Why were you suspended?

7 A. Ethics violation.

8 Q. And what was the ethics violation?

9 A. I spoke publicly about prolonged chaining of elephants and
10 expressed that I didn't think that was the right thing to do.

11 Q. And that was an ethics violation?

12 A. Yes. You're not allowed to say anything derogatory about
13 another member or another member institution.

14 Q. At the Elephant Manager's Association?

15 A. Yes.

16 Q. I see. Are you a member of any professional organizations?

17 A. No.

18 Q. Ms. Buckley, have you published any scientific pieces on
19 elephants?

20 A. Yes.

21 Q. All right. And what pieces have you published?

22 A. Well, one that comes to mind is the Elephant's Foot, a
23 chapter in the Elephant's Foot.

24 Q. What was that chapter about?

25 A. It was about the effect of the natural habitat on

1 elephant's feet.

2 MS. SANERIB: And your Honor, I would like to move the
3 admission of Ms. Buckley's chapter. It's called Captive
4 Elephant Foot Care, Natural Habitat Husbandry Techniques. We
5 move admission just to help establish Ms. Buckley's credentials,
6 not for the truth of the matter therein.

7 THE COURT: Any objection?

8 MS. JOINER: Only hearsay.

9 THE COURT: For the limited purposes, admitted.

10 MS. SANERIB: For the record, that will be Plaintiffs'
11 Will Call Exhibit 156.

12 (Plaintiffs' Will Call Exhibit No. 156 was
13 admitted into evidence.)

14 BY MS. SANERIB:

15 Q. Ms. Buckley, are you engaged in any scientific research at
16 the sanctuary?

17 A. Yes, I am.

18 Q. What research is being conducted?

19 A. Specifically what we're doing is we're working with Dr.
20 Susan McCoda on TB research.

21 Q. Who is Dr. Susan McCoda?

22 A. Well, she's foremost in the field. She started out her
23 career as a zoo veterinarian and started focusing on disease,
24 really on TB, and she's independent now so she's working for the
25 sanctuary.

1 Q. Okay. And what in particular is she looking at with
2 respect to tuberculosis?

3 A. Well, many things, but one of the things she's most
4 interested is how stress affects tuberculosis and contracting
5 TB, and a lot of elephants may harbor the organism so it's not
6 live so it's not positive yet, and she wants to see how stress
7 affects that.

8 Q. Do you have elephants at the elephant sanctuary that have
9 tuberculosis or been exposed to tuberculosis?

10 A. We have a group of elephants that have been exposed to
11 tuberculosis over decades. Those are the Hawthorne elephants.
12 We have no culture-positive elephants at all.

13 Q. The Hawthorne elephants, are those circus elephants or zoo
14 elephants?

15 A. They're circus elephants.

16 Q. And Ms. Buckley, did you participate in a court-ordered
17 inspection of elephants in this case?

18 A. Yes, I did.

19 Q. And how many did you participate in?

20 A. Two.

21 Q. And did you review any additional evidence from the case?

22 A. Lots. I read a lot of information and viewed videos and
23 still shots.

24 Q. Okay. Ms. Buckley, are you opposed to elephants being in
25 captivity?

1 A. No.

2 Q. Are you opposed to the use of elephants in circuses?

3 A. No.

4 Q. Why not?

5 A. I'm not opposed to elephants being in captivity or being in
6 any venue in captivity. What I'm opposed to is elephants being
7 used in a way that doesn't meet their need or elephants
8 suffering because of the venue that they're in.

9 Q. Do you believe that you have sufficient expertise regarding
10 elephants to render an expert opinion in this case?

11 A. Yes.

12 Q. All right. Did you submit a curriculum vitae along with
13 your expert report in this case?

14 A. Yes.

15 Q. Did that C.V. summarize your qualifications that we've been
16 discussing this morning?

17 A. Yes, it did.

18 Q. Ms. Sinnott, could you please call up Plaintiffs' Will Call
19 Exhibit 113, and I think at page 37 we should have Ms. Buckley's
20 C.V.

21 Does this appear to be your curriculum vitae, Ms.
22 Buckley?

23 A. Yes, it does.

24 MS. SANERIB: Your Honor, I move the admission of Ms.
25 Buckley's C.V. as Plaintiffs' Will Call Exhibit 113H.

1 THE COURT: Any objection?

2 MS. JOINER: No objection.

3 (Plaintiffs' Will Call Exhibit 113H was admitted
4 into evidence.)

5 BY MS. SANERIB:

6 Q. Ms. Buckley, are you being paid by the plaintiffs in this
7 case?

8 A. No.

9 Q. Why are you donating your time?

10 A. Because I care about the welfare of elephants.

11 MS. SANERIB: Your Honor, I tender Ms. Buckley as an
12 expert for training elephants in the circus and the care and
13 maintenance of captive elephants.

14 THE COURT: All right. Any questions?

15 MS. JOINER: Yes, your Honor.

16 VOIR DIRE

17 BY MS. JOINER:

18 Q. Good morning. Ms. Buckley, would you tell us what year you
19 were at Smokey Jones' house when you said you stayed with him
20 for a month?

21 A. That would probably be 1975.

22 Q. Okay. And is the passive control system that you mentioned
23 unique to the elephant sanctuary?

24 A. I don't believe so.

25 Q. Are there any other facilities in the U.S. that use it?

1 A. I believe that ART 2000 in California uses it, and I have
2 heard rumor that there are some other zoos that use it.

3 Q. Which other zoos?

4 A. I don't know. I don't know.

5 Q. You are not a doctor of veterinary medicine; is that
6 correct?

7 A. No, I'm not.

8 Q. And you're also not a psychologist?

9 A. No, I'm not.

10 Q. And you have not served as a psychologist for people or
11 animals; is that right?

12 A. That's right.

13 Q. And you're not a scientist either; is that correct?

14 A. That's correct.

15 MS. JOINER: Now, are you offering her for an expert
16 on tuberculosis or not?

17 MS. SANERIB: No. I think we're just -- I'm sorry.
18 No, we're just offering her as an expert in the care and
19 maintenance of captive elephants, inasmuch as she's treated
20 tuberculosis, that goes to her expertise in providing care for
21 elephants, but not any particular expertise in tuberculosis.

22 MS. JOINER: Okay. So if she's not going to offer
23 opinions about tuberculosis, then I will forego that part of the
24 voir dire.

25 THE COURT: All right.

1 MS. SANERIB: Well, perhaps it makes sense for you to
2 ask the question.

3 THE COURT: Why don't you both focus your questions to
4 the Court? All right.

5 MS. JOINER: Sorry. I apologize.

6 THE COURT: What's your objection, if you have one?

7 MS. JOINER: If Ms. Buckley is going to offer opinions
8 about tuberculosis on the Ringling her, we would object, first
9 of all, that that's irrelevant to the case, and secondly, to her
10 qualifications. If she's not planning on doing that, I will not
11 spend the time on the voir dire for that.

12 THE COURT: Counsel?

13 MS. SANERIB: Your Honor, Ms. Buckley has reviewed
14 some records regarding tuberculosis in Ringling Brothers'
15 elephants and is going to be speaking generally to providing
16 care to captive elephants and a little bit about tuberculosis.

17 THE COURT: But you're not offering her as an expert
18 on tuberculosis in elephants?

19 MS. SANERIB: Just for providing care on --

20 THE COURT: So it's just care in general then,
21 correct?

22 MS. SANERIB: Yes.

23 BY MS. JOINER:

24 Q. You referenced a captive elephant foot care article that
25 you authored; is that correct?

1 A. Yes.

2 Q. Was that a lecture that you gave at a symposium?

3 A. Yes, it was.

4 Q. And that's not peer-reviewed, is it?

5 A. I don't know.

6 Q. You have a case report in there regarding Jenny, the
7 elephant?

8 A. Yes.

9 Q. And you report that Jenny came to you with overgrown pads
10 and foot problems?

11 A. Yes.

12 Q. And after six weeks in the 40-acre yard her feet were
13 healed; is that correct?

14 A. She had no symptoms.

15 Q. Okay. And after pad trimming, after six weeks, she needed
16 no more foot care; is that correct?

17 A. She needed no more -- she needed only corrective foot care.

18 Q. Have you had to, from the time that article was written
19 until the time she passed away, did you have to do any more pad
20 trimming or foot care on her?

21 A. Only corrective.

22 Q. And how often did you have to do that?

23 A. It depends. She was crippled in one leg, and that's why
24 she needed corrective foot care. Her activity in the habitat
25 was such that she kept her foot pads and her nails trimmed down

1 quite effectively, and what we trimmed was when she would land
2 -- when the crippled leg foot would land on the ground, it would
3 strike the ground at an unnatural angle, and so we would trim
4 the nail and the pad to bring the pad to the natural level.

5 Q. And is the same true for your other elephants at the
6 sanctuary, that they don't need foot trimming after they get out
7 on to the acreage?

8 A. It's all individual with the elephants. It depends on
9 where their feet were when they arrived. It depends on their
10 activity in the habitat, but we do see that the elephants that
11 utilize the habitat and put in miles of movement every day
12 require little to no foot trimming.

13 Q. Okay. And you mentioned that Dr. McCoda worked at the
14 sanctuary; is that correct?

15 A. Yes, she does.

16 Q. And Dr. McCoda is the expert at the sanctuary for
17 tuberculosis; is that right?

18 A. She is the veterinarian that we rely on for all of our
19 instruction on TB.

20 Q. So Dr. McCoda is the one that is this charge; is that
21 correct?

22 A. Dr. McCoda is the veterinarian, correct.

23 Q. Would you please look -- I'd like to go back to the C.V.,
24 please. I'd like to look at page two of your C.V., and the
25 second paragraph indicates that you were an independent

1 contractor that created and implemented elephant programs. Are
2 you claiming that you actually started the elephant programs at
3 those places?

4 A. That I started the program. I was hired to create the
5 programs, yes.

6 Q. Well, for example, at the Kansas City Zoo there, were
7 elephants there before you arrived?

8 A. I wasn't involved with their elephants.

9 Q. You were not?

10 A. No, I was not.

11 Q. Okay. How about the Nashville Zoo that's listed there, did
12 you create or implement an elephant program at the Nashville
13 Zoo?

14 A. Yes, I did.

15 Q. What was the nature of that program?

16 A. They had no elephants. I came in, developed an exhibit
17 program, which included the elephant not being in the
18 traditional elephant yard but being outside of a fenced area,
19 actually grazing in a park like area, and we did educational
20 programs throughout the day for the public.

21 Q. And did you also contract to do elephant rides there for a
22 year?

23 A. For one year.

24 Q. If you would turn, please, to the fourth page of your C.V.,
25 and you list memberships there. You were a member of the

1 Association of Sanctuaries?

2 A. Correct.

3 Q. And there are only three elephant sanctuaries that are
4 accredited by that group; is that right?

5 A. I don't know.

6 Q. Okay. Would you go to the website, please?

7 This is the website for the Association of
8 Sanctuaries. The Black Beauty Ranch is accredited. Are you
9 aware of that?

10 A. I wasn't aware of it.

11 Q. PAWS is accredited, were you aware of that?

12 A. Yes.

13 Q. And you were aware that your own place is accredited?

14 A. Yes.

15 Q. And the Association of Sanctuaries prohibits its members
16 from breeding animals, correct?

17 A. Correct.

18 Q. Is the Association still in operation or has it ceased
19 operations?

20 A. It's in transition, from what I understand. It's being
21 transferred over to and absorbed by another organization.

22 Q. And that other organization is the Global Federation of
23 Animal Sanctuaries?

24 A. Honestly, I'm not familiar with it yet. I just heard that
25 they were making the change.

1 Q. Okay. Now, you testified that you are no longer a member
2 of the Elephant Manager's Association?

3 A. Correct.

4 Q. And it's your testimony that the only reason why there was
5 an ethics violation brought was because you spoke out about
6 chaining?

7 A. Yes. Specifically I inquired why I was being suspended,
8 and I spoke with Mike Keihl, and he told me that there was a
9 pamphlet that was issued by the Elephant Sanctuary and on the
10 backside of that information pamphlet there was five bullet
11 points and the heading said Why do you need an elephant
12 sanctuary? And one of the bullet points said "Due to space
13 limitations. Many zoos and circuses chain their elephants up to
14 16 hours every day." And he said specifically we take offense
15 by that, and I said but it's true, and he said yes, I know it's
16 true, but you can't say derogatory things about zoos and you
17 can't say derogatory things about any of the members of the
18 organization.

19 Q. And there is no other reason?

20 A. No other reason, not that was given to me.

21 Q. And you've mentioned that you were never employed by Feld
22 Entertainment; is that right?

23 A. Correct.

24 Q. And you didn't actually perform with Ringling Brothers?

25 A. Oh, I did.

1 Q. Well, you went on an elephant walk from the training to the
2 arena; is that correct?

3 A. It's a parade that the circus does. They do it in front of
4 the public to attract the public, and they have other performers
5 riding on the elephants.

6 Q. And you have also never worked with Gary Jacobson; is that
7 right?

8 A. Correct.

9 Q. How many times have you been to the CEC in Florida?

10 A. One time.

11 Q. Was that for the inspection in this case?

12 A. Yes, it was.

13 Q. And when is the last time that you've held a bullhook in
14 your hand and actually used it with an elephant?

15 A. At least fifteen years ago, but probably longer than that.

16 Q. And have you done any practicing with the bullhook since
17 then?

18 A. Never.

19 Q. And have you received any further training or instruction
20 on how to use a bullhook since that time?

21 A. No.

22 Q. So even though you never worked for Ringling, you do have a
23 history of litigating against them, don't you?

24 A. I don't know what you mean.

25 Q. You don't recall being a witness for the prosecution in the

1 2001 criminal case against Mark Oliver Gebel?

2 A. Oh, I was an expert witness, yes.

3 Q. And in that case it was for the prosecution; is that
4 correct?

5 A. Correct.

6 Q. Who drove you to the courthouse at the Gebel trial?

7 A. I have no idea.

8 Q. Lanette Williams, wasn't it?

9 A. I don't remember.

10 Q. Well, let's look at --

11 THE COURT: What was the charge?

12 THE WITNESS: He was charged with elephant abuse.

13 THE COURT: And where?

14 THE WITNESS: It was in southern California at the
15 Ringling show.

16 BY MS. JOINER:

17 Q. And you don't recall --

18 A. Who drove me?

19 Q. -- who drove you?

20 A. No.

21 MS. JOINER: Let's pull up the transcript from that
22 trial. I'd like to go to page 551.

23 THE COURT: What year was this?

24 THE WITNESS: I don't remember.

25 MS. JOINER: It was 2000.

1 THE COURT: The last ten years.

2 THE WITNESS: Was I with the ... yeah, probably in the
3 last ten years.

4 BY MS. JOINER:

5 Q. It was December of 2001.

6 THE COURT: I'm sorry, what year?

7 MS. JOINER: December of 2001, your Honor.

8 THE COURT: 2001 and you're asking her who drove her
9 to the court?

10 MS. JOINER: Pardon me?

11 THE COURT: That's all right. Go ahead.

12 MS. JOINER: I didn't hear.

13 THE COURT: Go ahead.

14 MS. SANERIB: Your Honor, I'm wondering if this is
15 part of the voir dire process or if this is cross-examination.

16 THE COURT: It sounds like cross-examination, but I'll
17 give you some leeway if you want to ask that question, but it
18 sounds like we're getting into cross-examination, though.

19 MS. JOINER: Can you turn on the Elmo, please?

20 THE COURT: It goes to bias, motive. Let's move on.

21 MS. JOINER: Okay.

22 At this point, your Honor, we would renew our motion
23 to strike this witness.

24 THE COURT: All right. I'll qualify her as an expert
25 in the areas proffered to the Court over objection.

1 MS. JOINER: Thank you.

2 BY MS. SANERIB (continuing):

3 Q. Now, Ms. Buckley, you spent a lot of time around elephants.
4 Can you explain how they spend most of their time?

5 A. If they're given the choice, female elephants will spend
6 all their time interacting with each other, eating; if they have
7 the freedom to move, they will move, not quickly, but they will
8 meander, but most of their time is spent interacting with each
9 other.

10 Q. And what do those interactions involve?

11 A. Very physical, incredibly physical, especially if they're a
12 bonded pair. They're continually touching each other, leaning
13 on each other; when they sleep there's no space between them,
14 they sleep side by side. They'll swim together, just
15 continually touching. There's a lot of vocalization as well.
16 They're talking to each other all the time. If through their
17 activity they become physically separated, which could be as
18 much as ten feet or a quarter of a mile, depending, they will
19 vocalize, will shriek, some will trumpet, some will scream, be
20 low, and then they'll race back to each other as if they've been
21 separated for years, and then they go through this whole
22 physical interaction in talking to each other and caressing each
23 other and then they calm down and then they continue grazing
24 again.

25 Q. Do elephants sleep?

1 A. They do sleep. They lay down to sleep.

2 Q. And about how long do they sleep during a given day?

3 THE COURT: Do they always lay down to sleep?

4 THE WITNESS: They'll nap standing up, but when
5 they're actually sleeping they're laying down.

6 THE COURT: Well, when they're napping they're
7 sleeping, aren't they?

8 THE WITNESS: Well, you know, when they're standing up
9 they can be close to asleep because you could startle them by
10 approaching and they don't know you're there, but to actually
11 completely relax they've got to lay down, yes.

12 BY MS. SANERIB:

13 Q. And about how many hours in a given 24-hour period do
14 elephants sleep?

15 A. Well, my experience is that a healthy elephant will sleep
16 maybe four, five hours, but that's not all at one time. An
17 elephant that is not healthy can rest up to six, seven, eight
18 hours.

19 Q. And Ms. Buckley, you mentioned that you were involved in
20 both of the inspections in this case, and I'd just like to walk
21 through some of the video footage, some of the photographs of
22 those inspections, and have you describe for the Court what you
23 saw during those inspections.

24 A. Okay.

25 Q. I'm going to start at Auburn Hills, Michigan, and this was

1 the inspection of the Blue Unit, so this is from Plaintiffs'
2 Will Call Exhibit 143. We're going to call this excerpt one,
3 and it includes the following timestamps: from 0 seconds to 26
4 seconds; 1 minute and 15 seconds to 2 minutes and 21 seconds; 3
5 minutes and 48 seconds to 4 minutes and 13 seconds; and 4
6 minutes and 38 seconds to 7 minutes and 16 seconds.

7 So if we could start with excerpt one. And again, Ms.
8 Buckley, if you can just describe what you're seeing as it
9 appears on the screen for the Court.

10 A. Okay. This is the railroad car that we inspected, railroad
11 cars that we inspected at Auburn Hills. When we arrived, this
12 is what we saw. There were no animals out. The doors and
13 windows were not open so we didn't see any animals initially,
14 only after a little bit of time did we see people, but I heard
15 something inside the railroad car and I saw it looked like
16 shavings, dusty shavings falling out from the bottom of the
17 railroad car, and what it sounded like to me was a little motor
18 like an electric motor and it sounded a lot like a leaf blower.

19 Q. And what's going on in this scene?

20 A. Well, there was a -- they're opening the doors, of course,
21 and you see a trash can. It appeared that they were filling the
22 trash can, so they were probably cleaning the inside of that
23 car. It's very hard to see inside because it's very dark inside
24 so it's really hard to see from the distance that we kept who
25 was in there and what was in there.

1 Q. Were you able to actually see elephants inside the train
2 cars, though?

3 A. We were. We were escorted up to the door and allowed to
4 look in.

5 Q. Okay. And we can see this elephant right here
6 (indicating). If we can just pause the video for a second. I
7 know it's hard to see, but can you describe for the Court about
8 how much space this elephant had in the train car?

9 A. Well, when we looked in we could actually get to the door.
10 We could look in. You could see that the elephant almost took
11 up the entire height of that area, and this particular elephant
12 had maybe a couple of inches of clearance, and if she were to
13 raise her head up she would have bumped her head.

14 Q. If we could play it again. And were you able to observe
15 anything else when were you looking at the elephants inside the
16 train cars?

17 A. We were able to see -- well, in some cars we couldn't see,
18 it was too dark, but in the cars we could see, we could see one
19 or two elephants, and they were on chains.

20 Q. Okay. And I think coming up here we might be able to see a
21 little bit of footage of what some of those chains look like,
22 but if you can describe for the Court how were the elephants
23 chained?

24 A. Here's a back leg chain on the elephant. The chain is
25 attached to the floor and then it runs up and goes around the

1 back of the elephant's leg. You see there's a padding around
2 part of the chain that protects the front of the elephant's leg.
3 The back part is not padded, and that's to enable the clip to be
4 attached to the chain so you can actually tie the chain to their
5 leg. That padding there, the goal is to keep from injuring the
6 elephant's leg.

7 Q. Does the padding work, does it serve its purpose?

8 A. Well, a lot of times it does. It keeps -- you don't tear
9 the flesh off of their leg, but the problem with that type of
10 padding is you still have all that tort pressure from the
11 elephant pulling, and so it makes an indentation in the front of
12 the leg there, and also the back of the leg is injured, can be
13 injured by the pin.

14 Q. Okay. And what are we observing here?

15 A. Well, this is the thing I was so surprised about. Let's
16 look at this elephant. She's trying to come out of this door.
17 The doorway is, you know, not tall enough for her to maneuver
18 comfortably. She has to really bend down so she doesn't scrape
19 her head. Now she's coming down a steep ramp. She's checking
20 her footing with her trunk.

21 THE COURT: Can you play that back? I was trying to
22 figure out what was going on there. Now I understand. Can you
23 play it back so I can see it, though?

24 (Video replayed.)

25 MS. SANERIB: Thank you.

1 THE COURT: The top of her head is actually touching
2 the door?

3 THE WITNESS: Yes, touching the door.

4 THE COURT: What's her size in comparison with the
5 other elephants at that time?

6 THE WITNESS: She's a normal size. She's probably a
7 little over eight foot tall. She's standard size.

8 And so you can see that she's -- she's using her trunk
9 to make sure she's safe where she's going, that's normal, but
10 she's coming out very slowly because now she's got to maneuver
11 her back legs at an angle and not drag her back along the top of
12 the door frame, and the door frame is metal, so she's pulling
13 her back legs forward. It's pretty awkward for an elephant, but
14 she's pulling her back legs forward so she can tuck them under.
15 Once she can tuck them under and get them down on that ramp,
16 then she can clear her back. And if you noticed, her second
17 back leg, it was bent and she was dragging it along the floor to
18 get it out.

19 BY MS. SANERIB:

20 Q. Ms. Buckley, have you seen the Ringling Brothers' elephants
21 unload from the train before this?

22 A. Yes.

23 Q. And was this typical of what you've observed in the past?

24 A. Typical to see the elephant struggle to get out, but not
25 typical in how the handlers and trainers were. The trainers

1 just stood and watched her while she was coming out, but the
2 other times I've seen them, elephants coming out of their
3 railroad cars, the trainers will use their hook, pull on them,
4 yell at them and get them to hurry up.

5 You see this elephant, the same thing. See how she
6 has her head so low? She's pulling her head down. She's really
7 insecure about this. She doesn't trust this ramp. Her trunk is
8 continually swirling around to make sure that it's safe. And
9 she's just taking her time because either she doesn't trust it
10 or there's something physical going on with her.

11 Q. And where are her back legs, can you see?

12 A. Her back legs, she just brought one -- she just brought one
13 in, her right leg, and I couldn't see if her left leg was bent
14 or not, but she did the same thing as to pull her leg forward
15 and underneath her, which is sort of an awkward move for an
16 elephant when they're heading downhill. To bring their back leg
17 forward is to compromise them. They could fall forward.
18 Naturally what you would see an elephant do, they would drop
19 their back legs back, they would bend their knees, and they
20 would slide on their belly at an angle like that, but they can't
21 because they would get hurt.

22 Q. If we can go to the next clip. And this is excerpt two
23 from Plaintiffs' Will Call 143, and the time stamp on this is
24 1322 to 1508.

25 And what is happening here?

1 A. Well, they brought all the elephants out and they lined
2 them up and they're getting ready to take them off in a line to
3 the building, so they're filing the elephants out. They're
4 supposed to tail up, which means they're supposed to reach out
5 to the elephant in front of them and grab the tail. And what I
6 noticed about this is that even the little elephant seems stiff,
7 meaning that they weren't fluid, their legs weren't moving
8 smoothly as a healthy elephant might. And then as I watched,
9 the front elephant as you see, she's got a funny gait in the
10 back. She kind of pulls her leg forward. And then the second
11 elephant has not a smooth gait either. And then the last
12 elephant, when you watch her, one leg moves -- this leg. See
13 how she pulls it tight like that? So there's some sort of hip
14 complication going on with her. But I was surprised to see all
15 of these elephants that travel and perform a lot, so in theory
16 they'd get a lot of exercise, they don't move smoothly, as many
17 elephants that I've seen.

18 Q. Okay. And when you say "move smoothly," how would an
19 elephant look when it was moving smoothly?

20 A. Well, with if you were to see an elephant move, say, across
21 the pasture, if you were to block your view of their legs so
22 that you're not distracted by that erratic movement, the top of
23 their back would just like be level. They would just move
24 level.

25 Q. And what do these gait abnormalities indicate to you?

1 A. Well, an elephant if they are -- if they have like a knee
2 injury like our Jenny had, there's a limp, you see a limp. That
3 is in reaction to either the joint is not working properly, it
4 won't flex anymore, or pain.

5 Q. And if we can go to the next excerpt. That is going to be
6 an excerpt from Plaintiffs' Will Call 143, and the time stamp on
7 this is 17 minutes and 52 seconds to 20 minutes and 27 seconds,
8 and then going on to 59 minutes and 30 seconds to 1 hour 1
9 minute and 30 seconds.

10 Again, Ms. Buckley, as the video starts, can you
11 describe for the Court what this is?

12 A. We are inside the railroad car after the elephants have
13 left, and what we're looking at is just what is the environment
14 that these elephants travel in. So the first thing we wanted to
15 look at is, knowing they were on chains, we wanted to see the
16 length of chain, and the space in between the chains to know how
17 much space the elephants had to move forwards and backwards.

18 Q. About how much space did they have?

19 A. Maybe a step, they could take one step forward and one step
20 backwards, and because of the configuration of their chains,
21 opposite legs, opposite front and back leg, they can't turn
22 around. The container is, you know, small enough that the
23 elephants wouldn't successfully be able to turn around, not
24 gracefully anyway, so we noticed that, you know, the chains, the
25 chains were attached to the floor as normal, some were padded,

1 some weren't, none of them were padded in the back where the
2 link is, which causes a lot of scarring on elephants that wear
3 chains.

4 I was interested in the air flow, air exchange so
5 ventilation, heating and cooling, and what I noticed is in the
6 front there you see those two boxes on the front wall that are
7 the heaters, they're electric heaters. Well, no, I don't know
8 if they're electric. They're heaters and they have a blower on
9 them. The concern with that would be that you've got an
10 elephant chained in a spot that they can't move away from the
11 heater, and also, the second elephant is so far back they're not
12 getting the heat that the front elephant gets.

13 But my main concern with this was that around these
14 doors, the elephant doors, they're not sealed, so when the doors
15 close there's a huge draft. You can see standing in there you
16 can see the light coming through and feel the air coming
17 through, elephants are very susceptible to pneumonia, and the
18 one thing that you want to avoid is draft, especially a cold
19 draft. Additionally, this is a steel building inside, I mean
20 steel-skinned, and elephants create a whole lot of moisture when
21 they're breathing, and so what happens in a metal container is
22 all the moisture collects along the ceiling in the walls. It
23 just becomes very wet like a rain forest, and that's not healthy
24 either.

25 The other thing is, the floor is covered but it's not

1 cushioned. What you try to do for elephants is to give them a
2 good surface for their feet so it's a cushion surface,
3 especially for Asian elephants. In this container the floor is
4 covered with a hard -- it's like a hard plastic like they spray
5 on in the beds of trucks, so it's hard. It's meant to be
6 waterproofed, but it's not cushioned.

7 Q. Okay.

8 A. The other thing, I didn't see -- there was no water source
9 for the elephants.

10 Q. Okay. And were you allowed to inspect, was it two
11 different train cars?

12 A. Two different cars, and in one car there appeared to be a
13 feed compartment so that there was hay available, and I do
14 believe that there was actually a water spicket but not a basin
15 for the elephants to have water in. In the second car I didn't
16 see that.

17 Q. Okay. All right. And I think --

18 THE COURT: Is there a basin in any of those cars?

19 THE WITNESS: No.

20 THE COURT: Is that fairly standard?

21 THE WITNESS: In transport containers, it's pretty
22 standard not to have a container, an open container of water,
23 but more recently people are being creative in having a -- have
24 the elephant have access to water so through a grate in the
25 trailer, you know, so the water tank is protected, there will

1 just be a hole that they can reach in and get the water.

2 BY MS. SANERIB:

3 Q. And after we left the train cars, what was the next part of
4 the inspection?

5 A. Then we went to the circus lot, which was a parking lot,
6 and the elephants were set up on the parking lot next to the
7 building.

8 Q. And what surface were they standing on?

9 A. This is asphalt.

10 Q. Okay. And is this part of the inspections?

11 A. This is part of the inspection. This is the beginning of
12 the inspection.

13 Q. And I think we're going to go from the video footage to
14 some of the still photographs to be able to show some of the
15 things that were found during the physical inspection, so if we
16 can stop this and go to Plaintiffs' May Call 54, and I'd like to
17 start on page 16 of that exhibit. And what caught your
18 attention with photograph, Ms. Buckley?

19 A. What caught my attention here is the scar on this
20 elephant's chin. Where this scar is, that's the jaw bone. It
21 runs length-wise like this (indicating), and that's a pretty
22 significant scar.

23 THE COURT: I'm sorry. If you touch the screen ...

24 THE WITNESS: Okay. So that's the scar right there
25 (indicating).

1 THE COURT: All right.

2 THE WITNESS: And the jaw bone runs like that
3 (indicating).

4 Oh, that's handy.

5 That's a fairly significant scar. It's not a recent
6 scar. It could be even several years old, but it is significant
7 to create that amount of depigmentized skin. And we were not
8 allowed to touch the elephants, but from how that looks, I would
9 say that if you touched it, it would be scar tissue all in
10 that -- in this area (indicating), all of that would all be scar
11 tissue, so to the touch you would feel it.

12 BY MS. SANERIB:

13 Q. Okay. And in your opinion, this is the elephant, Karen.
14 Could Karen have gotten that scar from a bullhook?

15 A. Oh, definitely. This is one of the locations that you
16 target on an elephant with a bullhook. They strike the elephant
17 along that bone because it's effective, it causes pain. They'll
18 also use the hook and embed the hook in that area, and in em-
19 bedding the hook both ways, if you embed the hook and tear,
20 you're going to cause a scar like that, or if you continually
21 hit that area with the handle of the bullhook, you will
22 traumatize that tissue, cause an abscess, and end up with a
23 scar.

24 THE COURT: Let me ask you something before you move
25 on. The other circuses that you worked for, do they transport

1 elephants in the same way, the use of the train and those types
2 of cars?

3 THE WITNESS: No. Ringling is the only circus that
4 uses railroad cars. Everybody else using semi-trailers.

5 THE COURT: And tell me, what's the semi-trailer, what
6 accommodations, I guess, for want of another word, what
7 accommodations to the elephants are made in the trailer car?

8 THE WITNESS: Well, in our trailer we have -- it's a
9 reefer trailer, which means it already comes with a heating/air
10 condition unit, it's built in, so we've got the climate control.
11 On the trailer you have ventilation windows; we have a
12 rubberized floor. In our trailer we don't chain elephants so we
13 have a cage constructed inside the trailer to protect the walls
14 of the trailer and to contain the elephant. We have a watering
15 system where in front of the cage system in front of the cage
16 there is a wall, a cage wall, and there is a water tank there
17 with a hole in it and the elephant can just reach through and
18 water herself. In the front of the trailer is where you store
19 your food, supplies, anything that you need, and there's a wall.
20 In ours there's a wall. The great thing about being able to
21 transport elephants if you have to transport them with a trailer
22 is you have much more flexibility in stopping and caring for
23 that elephant. You can stop, pull off the road any time you
24 want to. You can clean out. You can take the elephant out if
25 you want to. You know, any of those things. When you're on a

1 railroad car, you go where the train goes.

2 THE COURT: So you can control the temperatures as
3 well?

4 THE WITNESS: Yes.

5 THE COURT: You can't do that with these elephants in
6 the train cars?

7 THE WITNESS: Well, it didn't appear that they were
8 set up with air conditioning, and they did have a heating unit,
9 but my concern was that because there was such a huge draft not
10 only around the doors, but in the train you drill holes in the
11 floors for the urine to drain out, so there were all these
12 access points for air to come in, so even if they did have a
13 heater going, they couldn't maintain a temperature.

14 THE COURT: What about these vans, do they have holes
15 in the floor of them as well?

16 THE WITNESS: Right.

17 THE COURT: Doesn't that create the same problem?

18 THE WITNESS: It can create the same problem. It
19 depends. What I saw on the railroad cars is very large holes.
20 What we do in our trailer is they're quite small. They're an
21 inch in diameter and they're lined with PCP pipe, so if we have
22 a situation where we transport an elephant in cold weather we
23 plug it and then we just bed the trailer down a lot.

24 THE COURT: Now, are there circuses that transport
25 multiple elephants by use of this van or this other alternate

1 transport?

2 THE WITNESS: Oh, absolutely.

3 THE COURT: Really? Not just one?

4 THE WITNESS: They'll put five elephants in a trailer,
5 in one trailer.

6 THE COURT: And a trailer is pulled by?

7 THE WITNESS: By a semi-tractor.

8 THE COURT: So it's not uncommon?

9 THE WITNESS: Oh, no. It's very common.

10 THE COURT: What's the differential in the cost for
11 transporting by train as opposed to I guess if you own your own
12 train, there's no cost, right?

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

14 THE COURT: And Ringling Brothers is the only circus
15 that transports elephants by way of train?

16 THE WITNESS: In the United States, right.

17 THE COURT: Go ahead.

18 MS. SANERIB: Thank you, your Honor.

19 BY MS. SANERIB:

20 Q. I just had a follow-up question. You were talking a little
21 bit about the transport trailer you have at the elephant
22 sanctuary, and is that a similar mechanism that's used by
23 circuses to transport elephants, or is there something distinct
24 about your transport trailer?

25 A. Really, well, there are probably some features that are

1 distinct, but the cage, the internal cage is different.

2 Circuses still chain their elephants when they transport.

3 Q. And yours has an internal cage?

4 A. It actually has, it's a dual cage.

5 Q. And how does that work?

6 A. Well, it is actually -- the cage is constructed inside and
7 we have the ability to divide it in half if we want to if we're
8 transporting two elephants, and it has gates that are hinge
9 gates that open and close. It's just a really safe mechanism
10 for elephants.

11 THE COURT: So the elephants are not chained at all in
12 these vans?

13 THE WITNESS: Oh, not chained. In our trailer they're
14 not, and I believe PAWS' sanctuary has also designed theirs.

15 There's also an animal transporter, Eddie Novack, and
16 he transports elephants for zoos, moving them back and forth,
17 and he doesn't chain either. He's got a cage inside too.

18 THE COURT: What about these other circuses that
19 transport elephants by alternate means and not using a train,
20 are they chained?

21 THE WITNESS: They're chained.

22 THE COURT: In the vans?

23 THE WITNESS: Yes.

24 THE COURT: Why is that?

25 THE WITNESS: Personally, I mean, I know why they say

1 they're doing it.

2 THE COURT: Why do they say they're doing it?

3 THE WITNESS: To keep the elephants from hurting each
4 other, to keep the elephants in the spot, because you can
5 imagine, five elephants in a semi, they're packed in there, so
6 they have one up on the fifth wheel because the trailer is like
7 this (indicating) and this is the front of it, so they'll put
8 one elephant up there on the fifth wheel and then they put two
9 facing this way, two facing that way, so to keep the elephants
10 in place so they aren't wandering around throughout the trailer,
11 they chain them.

12 THE COURT: Well, there's no room to wander, though,
13 is there?

14 THE WITNESS: Well, there's room to wander, but
15 elephants, they're migratory by nature so they're going to try
16 to move around. If they're not on chain they're going to try to
17 move around. Actually in our trailer that's what we want. We
18 want them to be able to walk back and forth so they don't get
19 stiff.

20 THE COURT: In your trailer there are multiple
21 elephants?

22 THE WITNESS: We can take up to two.

23 THE COURT: But if you were the owner of Ringling
24 Brothers and you wanted to transport by truck transport as
25 opposed to train, how would you do that without using chains?

1 THE WITNESS: I'd build cages in my trailers and just
2 transport two elephants. If you got a longer trailer, our
3 trailer I think is 44, but they come longer than that. You
4 could probably get a longer semi-trailer and haul three
5 elephants.

6 BY MS. SANERIB:

7 Q. And with the transport vehicles, what is it that you're
8 always going to have either these cages inside or the elephants
9 chained, what's the concern?

10 A. We have to protect the elephants from breaking out, you
11 know, damaging the trailer, because there semi-trailers are
12 aluminum siding so you have to protect that, and also, you know,
13 elephants are quite active so the idea that they would overturn
14 the trailer, I mean, that's one of the concerns that I hear, but
15 the elephants that we transport are not chained so in theory
16 they could climb up a little bit but they don't ever disrupt the
17 load, no.

18 Q. And I'd like to go back here to Plaintiffs' May Call
19 Exhibit, this is page -- May Call Exhibit 54, and we're still
20 here at page 16. I was asking you about the scar on Karen's
21 chin. Can you think of anything other than a bullhook that may
22 have caused that scar?

23 A. Not a scar like that. No.

24 THE COURT: What is it about that scar that might
25 persuade me that was caused by a bullhook?

1 THE WITNESS: Well, it's the width of that scar, how
2 wide it is, and the scar tissue surrounding it. That means that
3 there was a dramatic injury, trauma, to the tissue. You have to
4 create quite a bit of trauma extensively and deep.

5 THE COURT: What about another tusk, could that be a
6 tusk scar?

7 THE WITNESS: If an elephant struck this elephant with
8 their tusk, it wouldn't -- that wouldn't stay there. The tusk
9 would slide off of there, where an elephant hook would actually
10 grab the flesh and be embedded into the tissue and be able to
11 tear at it.

12 BY MS. SANERIB:

13 Q. So an elephant's tusk, would it create a scratch?

14 A. An elephant's tusk on the baby sometimes are pointed, but,
15 you know, basically the females don't even have recognizable
16 ivory. Their tusks usually don't even extent beyond the lip
17 line. You see with this elephant you don't see ivory. We call
18 them tushes. They're really tiny. And they're usually blunted
19 at the end just from their own activity, so they're not pointed
20 like a knife.

21 Q. Could an elephant draw blood on another elephant with their
22 little tushes?

23 A. They could. With elephants, especially the females, you
24 don't -- if they're going to use their ivory, they're usually
25 using their ivory as a dominance, a sign of dominance, and they

1 do it from behind. They'll go to the elephant, and they don't
2 necessarily poke, they'll take their ivory and expose it from
3 their lip and then like try and put it on the elephant's
4 backbone where they'll feel it and push down. It's a sign of
5 dominance, but, you know, actually poking and pushing, that's
6 more African than it is Asian.

7 Q. And I'd like to go to page six of this exhibit, and what
8 are we seeing in this photograph?

9 A. Oh, here's another scar right there (indicating), and on
10 the elephant's head there's a little recess area, right where
11 that scar is, is a recessed area, and again, that's a pretty
12 significant scar because of the width of the scarring and the
13 discoloration of the skin. That's what we're looking at.

14 Q. And in your opinion what likely caused that scar?

15 A. Well, it would have to be a pretty heavy-duty elephant
16 fight to create that because it wouldn't have been a tusk. It
17 would have been two elephants heads smashing into each other,
18 and yes, that could be, but it also could be environmental like
19 on the top of the, you know, on the top of the doorway in the
20 railroad car on something sticking out that she scratched her
21 head on.

22 Q. Any possibility that's from a bullhook?

23 A. Well, it could be from a bullhook. When an elephant is
24 being very resistant a trainer will approach an elephant in the
25 front here to get them to put their head down, and since there's

1 a little recession right there, that's a place, a recessed area,
2 you can reach the hook in there and you can pull down, and what
3 they'll do is pull, pull, pull, pull, pull, so along a section
4 of skin, so sink it in, sink it in, sink it in and pull, so that
5 could be scarring from a session of pulling her head down.

6 Q. And I'd like to go to page seven of this exhibit. And what
7 are you seeing in this photograph?

8 A. Well, I don't know. Can we zoom in on this section here
9 (indicating)? This is the leg. This is an elephant's back leg.
10 This is the front of her back leg. Okay. So right here what
11 you're seeing discoloration in these areas. This is injury from
12 chaining, and it's fairly recent, and the reason I can say that
13 is because the necrotic tissue is still there, so there's dead
14 skin. It looks like she was recently wet, either had a bath or
15 got into the water, which, when the skin is necrotic and dead
16 but hasn't been rubbed off or rasped off yet, it will get flaky,
17 very flaky, and you could reach up there with a fingernail and
18 you could scrape that off, but this part right here (indicating)
19 shows two places where the link of the chain is embedded into
20 the leg, and that's very classic. We see that a lot with
21 chained elephants.

22 Q. And I'd like to go to page 11 of this exhibit. And this is
23 from the elephant, Nicole, and what are you seeing in this
24 photograph?

25 A. Well, this again is a back leg, and this is the backside of

1 the back leg, and what we see here is a lot of scarring. I
2 would suggest that much of it is chain scarring, but I wouldn't
3 limit that because we've got two really suspicious-looking scars
4 right here (indicating). Chain scarring will leave these
5 pockets. That's where the chain digs in, but to get a long scar
6 like this suggests a tear in the skin, deep tissue damage, to
7 leave such a wide, and, you know, prominent scar. Now, it could
8 have been the chain, but it looks more like there was a tear
9 across the back of her leg.

10 Q. And what would cause a tear like that?

11 A. An elephant hook could tear that.

12 Q. And if we could go to page 12 of this exhibit, and again
13 this is the elephant Nicole, and what are you seeing in this
14 photograph?

15 A. This is the same thing. This is from the opposite side.
16 And if you look, you see all of these elephant trainers will use
17 the elephant hook to lift an elephant's foot. Now, if you want
18 to make them bend their knee, you put the hook on the front of
19 their foot. If you want them to bring their foot forward, then
20 you put your hook on the back in between, you know, here, the
21 heel, and here to move their foot forward. If you look here,
22 you see all of these marks, did you see all those little marks?
23 Those are like -- those are scars, and they appear to be a
24 result of a type of puncture, some puncture that was traumatic
25 enough to the tissue to leave that scar, and because an elephant

hook is used in that manner, it could be an elephant hook.

Q. And I'd like to go to page 36 of this exhibit. And I think we already looked at this photograph. This is Karen again. And if we could go to page 39. And what is this?

A. That's an elephant hook.

Q. All right. And if we could go through pages 39 to 44 I think this will be the series of photographs from the Auburn Hills inspection, and if you could point out if there's anything about these hooks.

A. Before you move on, let's look at this first one. The elephant hook, of course it's a two-piece tool. This --

THE COURT: What do you mean by two-piece tool?

THE WITNESS: There's a handle, that this part right here (indicating), and then there is the hook part, and this -- it's made separate, so this hook part is created, it's cut out of a flat plate steel, and then if you could see the rest of this, it goes like that (indicating), and so then the handle is drilled from the top, and then you take this hook and you press it into the handle and then usually pin it. There's a pin that guess through right there (indicating). This hook has recently been ground down, which is the technique that you use to resharpen your hook, and you see -- you do it with a grinder, a grinding wheel, and you see all the grinding wheel marks on here as it's been drug across the grinding wheel, and the goal is to make -- to come to this point. You want to come to this point

1 right here (indicating) and make it pointed, so you do that with
2 the grinding wheel working to that point and then usually you
3 buff it. This one hasn't been buffed, so the way this is used,
4 is, this is the point and that is used to prod, to poke, to
5 push, to drive, to cause pain, to get the elephant to move in a
6 direction, or you poke their foot to lift their foot up. This
7 one right here is used to grab, and it's quite effective, that
8 hook, depending on the length from here to here, so that length
9 varies depending on the trainer. Some trainers don't want to
10 have a deep hook because they don't want to sink the hook into
11 the flesh as much. Others will make that length really long
12 because they want to sink it, it's their style. So this hook is
13 actually used to grab, to sink it into the skin, to inflict
14 pain, to reinforce their dominance and control over the animal.

15 BY MS. SANERIB:

16 Q. If we can go on to the next page of this exhibit.

17 A. This shows just a little bit different variety, but what
18 you'll notice is there's black tape not over the handle, not
19 only over the handle, but on a good portion of the hook that is
20 not used on the elephant. The areas of the hook that are used
21 on the elephant, the tip, both tips are exposed. The reason
22 that they do that is, when they take it in for a show, they
23 don't want the lights to reflect off. They don't want people to
24 notice the hook.

25 Q. Now if we can go to the next page.

1 A. Again, this just demonstrates a little bit different angle
2 and style of hook.

3 Q. And the next page?

4 A. And this one has very little hook on it. More length and a
5 little hook end, and of course they must not use that in the
6 show because it's not covered.

7 Q. Okay. And then I think there's one more page. All right.

8 And your Honor, I'm going to move the admission.

9 THE COURT: Each trainer has alternate hooks, they
10 have hooks they use in shows and hooks that aren't covered they
11 use otherwise?

12 THE WITNESS: Yeah. Most of the time they'll have
13 their barn hook, and that's the one that they use predominantly
14 when the elephants are not -- where they're not showing the
15 elephant. That hook gets banged up a lot and thrown around, but
16 their show hook has to be pretty. It has to look not very
17 menacing, so a good trainer has more than one hook.

18 MS. SANERIB: And your Honor, I'd like to move the
19 admission of the excerpts of video footage from Plaintiffs' Will
20 Call Exhibit 143, as well as the photographs from Plaintiffs'
21 May Call 54.

22 THE COURT: Any objection?

23 MS. JOINER: No objection.

24 THE COURT: Admitted.

25 (Plaintiffs' Will Call Exhibit 143 and Plaintiffs' May

1 Call Exhibit 54 were admitted into evidence.)

2 BY MS. SANERIB:

3 Q. And next I'd like to go to the CEC inspection. If we could
4 go to, this is going to be Plaintiffs' Will Call Exhibit 142.
5 It's excerpt number one, and this is timed-stamped 1 hour 27
6 minutes and 49 seconds.

7 (Video played.)

8 BY MS. SANERIB:

9 Q. And if we could have the audio on this.

10 (Video played.)

11 And Ms. Buckley, I just want to show you a little
12 excerpt of this. This is part of a physical inspection, I
13 think, from the CEC; is that correct?

14 A. Yes.

15 Q. All right. And what were your interpretations of how these
16 elephants were handled during the physical inspection?

17 A. Well, I actually I was kind of surprised on how they were
18 handled. There were several elephants. They were antsy. They
19 weren't standing still. They were moving around a lot and the
20 trainer was barking at them. I mean, continually barking at
21 them. He wouldn't just say "come here" once. He'd say, come
22 here, come here, come here, come here, come here. He seemed
23 impatient. He seemed to be losing his temper. The elephants
24 were not responding really well. They weren't leaving, but they
25 weren't responding really well. They weren't paying much

1 attention to him.

2 Q. All right. And so I'd like to go to some of the still
3 photographs from the CEC inspection, and this is again from
4 Plaintiffs' May Call Exhibit 54. I'd like to start with page
5 211.

6 All right. And what are you seeing in this
7 photograph, Ms. Buckley?

8 A. Well, what I noticed with this elephant, actually two
9 things. If you look at the top up here (indicating), there's a
10 scar. That's at the top of her neck. That's an area that is
11 targeted by trainers when you want the elephant to put her head
12 down, either put her head down to stretch out in a stretch-out
13 position, put her head down if she's being resistant when she's
14 supposed to be lying down and she's moving around, you'd want to
15 get her head under control, so that's usually a targeted area.
16 And that's quite a significant scar as well, but if you can zoom
17 in on this area right there (indicating). And if you would go
18 in just a little bit more. This is a wound that's in an odd
19 place, and in addition, if you could zoom in just a little bit
20 more, so you could see this, this is a wound (indicating). It's
21 recent. It hasn't even developed necrotic tissue yet around it,
22 and right in this area (indicating) it is quite raw right in
23 there. You can still see the flesh right there, and then what I
24 found interesting is right around here there and there it's been
25 doctored up with Wonder Dust.

1 Q. What's Wonder Dust?

2 A. Wonder Dust is a powder that is -- you can buy it in a feed
3 store. And it's a sulfur product that is used to address
4 wounds, and when I was first taught to use it, it was primarily
5 used to camouflage a wound.

6 Q. What color is it?

7 A. It's gray.

8 Q. And how can you tell that this is Wonder Dust?

9 A. Well, because I'm accustomed to it. It's really, because
10 that's what Wonder Dust looks like when the skin is wet and you
11 apply this powder, you pump it out of the container, it adheres
12 to the skin very well. It isn't completely waterproof but it's
13 close and it just takes on the pigment of the elephant.

14 Q. And what do you think this wound was from?

15 A. I really don't know because it's in an odd spot. It's not
16 forward on the face where you get a normal pressure wound, so I
17 don't know what her sleeping situation is, but she does have
18 this on both sides of her head so it could be a pressure wound.
19 It doesn't really reassemble a pressure wound because it's not
20 puffy. It's not exuding, you know, any abscess material. It is
21 an odd wound actually. So I don't know what would cause it.

22 Q. And if we could just back the photograph out and take a
23 look at Susan's back again. In your opinion is that likely that
24 that large wound across her back was caused by a bullhook?

25 A. Because of its location, yes, it could be a bullhook.

1 Q. Can you think of anything else that might have caused that
2 wound?

3 A. Not a significant wound like that.

4 THE COURT: How would that be inflicted, though?
5 That's on the back, it's behind her head.

6 THE WITNESS: You reach up with the elephant hook, you
7 reach up and you just turn your hook like this (indicating). At
8 that point you are right on that spot, and then you just pull
9 down, and see, that's what creates the scarring, is that because
10 of the angle that you're at when you go to pull down, it slides
11 and it tears. It doesn't just embed itself straight up and down
12 and that's why you get that tear mark.

13 BY MS. SANERIB:

14 Q. And I'd like to go to page --

15 THE COURT: What's the height, though? What's the
16 height at that point?

17 THE WITNESS: This? Probably eight foot.

18 THE COURT: Eight feet?

19 THE WITNESS: Yes. So a six-foot man, you know.

20 THE COURT: The hooks are how long?

21 THE WITNESS: The hooks, you know, they can be short,
22 they can be short, but they can be up to --

23 THE COURT: Thirty inches or something?

24 THE WITNESS: Two feet.

25 THE COURT: Two feet?

1 THE WITNESS: Yes. I know people who have longer
2 hooks, have three-foot hooks. They call them herd hooks, that
3 they're long-handled hooks. When they have a lot of elephants
4 they can reach out and get all the elephants.

5 MS. SANERIB: Your Honor, may I have permission to
6 approach the witness?

7 THE COURT: Sure.

8 MS. SANERIB: Okay.

9 BY MS. SANERIB:

10 Q. Ms. Buckley, I've just handed you --

11 THE COURT: Before get to that, we've heard some
12 testimony about these head dresses that elephants wear. Could
13 that mark be a from a head dress?

14 THE WITNESS: No. Head dresses are leather or cloth,
15 and there would be a real problem with the construction of a
16 head dress head piece if it caused that wound. And see, this
17 wound is further back. Even with a rider pulling on the head
18 piece, the head piece isn't going to wear there, but it's a
19 leather strap. I mean, that's not going to harm an elephant.

20 THE COURT: What about, I don't know whether riding
21 gear is put on elephants when the riders perform on them. Is
22 there some sort of gear they sit on when they a saddle or
23 something?

24 THE WITNESS: For elephant rides there are saddles
25 which are much farther back.

1 THE COURT: So that wouldn't cause that?

2 THE WITNESS: No.

3 BY MS. SANERIB:

4 Q. When dancers ride on elephants for circus performances, do
5 they use any gear?

6 A. No.

7 Q. And I handed you a bullhook, Ms. Buckley, so if you're
8 describing anything for the Court, if it's helpful to use that
9 to illustrate what you're talking about --

10 A. Thank you.

11 Q. -- go ahead and use.

12 I'd like to go to page 201 of Plaintiffs' May Call
13 Exhibit 54. And this is the same elephant, Susan. And if you
14 can just describe what you're seeing here, Ms. Buckley.

15 A. Well, what we're looking at is a front foot, her left front
16 foot, and we're seeing the pad, a portion of the pad which has a
17 reasonable amount of growth on it, which is good, there's some
18 traction, which is good, but she has a serious problem with the
19 inside nail here, and although nail cracks can be common and not
20 be a problem, this nail is problematic. If you can zoom in on
21 that you'll see that this seems to be a continuing problem.
22 There is no inside of that nail left. The nail is gone. The
23 area that you're looking at, all of that tissue is proud, it's
24 called proud flesh. It's pushing out. It's active. This split
25 is active. We see this a lot of times with osteomyelitis. When

1 there's osteomyelitis it will cause that type of festering in a
2 nail. The abscess starts up at the cuticle, up here, it
3 ruptures, it blows out, abscess material escapes out of there
4 and then you start to see the deterioration of the nail all the
5 way down to the bottom. Most times you can follow a track. If
6 you stuck your finger in right there at that hole you would be
7 able to stick your finger up a track that went all the way up
8 and out the top right there.

9 Q. And in your opinion what likely causes foot problems like
10 this?

11 A. Well, foot problems, I think it's generally understood at
12 this point that foot problems were caused by trauma to the pad
13 or the nail, and in the case of trauma, to the pad. It's the
14 elephant standing on surfaces that are naturally hard surfaces,
15 elephants being restricted from moving around naturally so
16 they're standing or pacing in one place on concrete, on hard
17 packed dirt, that actually causes an abscess on the bottom of
18 their foot and then that abscess will actually migrate through
19 their foot and out through the nail and that's when it infects
20 the bone and causes osteomyelitis.

21 Q. And I'd like to go to page 327 of this exhibit. And this
22 is the elephant, Lutzi, and I think this is one of her front
23 feet. What are you seeing here?

24 A. This is a real issue, or should be an issue for this
25 elephant's caretakers, is that that's excessively thin pad.

1 There is no pad structure, and this is a type of foot that is
2 most susceptible to bruising on the pad, which leads to
3 osteomyelitis. Now, this elephant's pad has either been trimmed
4 down or she's been in an environment where she's shifting back
5 and forth, repetitive movement, maybe in a sandy environment,
6 and she's wearing her pads right off.

7 Q. And I'd like to go to page 110 of May Call 54. And what do
8 you see in this photograph?

9 A. Well, if you look closely right here where the ear meets
10 the head, there is a scar right there (indicating). This is
11 classic. You see this in so many circus elephants. This is a
12 target area. This area gets targeted continually on performing
13 elephants because it's a good handle for the hook. You can
14 reach your hook up, you can stand next to the elephant, reach up
15 behind their ear and grab it. You can reach up forward and grab
16 it. You can be standing in front of the elephant and reach out
17 and grab it. It's just a nice, handy spot and the elephant
18 reacts to it. They will put their head down, they will stand
19 still, you can stop them from moving. The problem with that
20 location is, that's a flex point, so once you rip that skin,
21 then every time the elephant moves their ear, which they do to
22 cool their body, they can reopen that wound and so it takes a
23 long time for that wound to head.

24 Q. And you obviously looked at several other elephants during
25 the inspections. Do you recall generally speaking what you saw

1 during the physical inspections and in the photographs from
2 those inspections?

3 A. Well, with the physical inspections there were two things
4 that really caught my attention. One was how lame most of the
5 elephants appeared. They didn't move smoothly, fluidly like
6 elephants do, but the other thing that really caught my by
7 surprise was the volume of scarring all over the elephants.

8 Q. And where were most of the those scars located?

9 A. Up and down the back legs from the chaining. Some of them
10 were on front legs from chaining, but around the target points
11 for hooks, so around the head, under the chin, a lot of scarring
12 under the chin along the jaw line, up along where the ear meets
13 the head and on top of the head.

14 Q. And I'd like to show a little more video from the CEC
15 inspection. This is Plaintiffs' Will Call 142, and the time
16 stamp here is 1 hour 48 minutes and 11 seconds to 1 hour and 50
17 minutes.

18 THE COURT: All right. We'll take a fifteen-minute
19 recess now. That clock's not working, but we'll start in
20 fifteen minutes.

21 I have to ask you not to discuss your testimony with
22 anyone.

23 THE WITNESS: All right. Thank you.

24 COURTROOM DEPUTY: This Honorable Court now stands in
25 a fifteen-minute recess.

1 (Recess taken at about 11:20 a.m.)

2 COURTROOM DEPUTY: Please remain seated and come to
3 order.

4 (Back on the record at about 11:37 a.m.)

5 THE COURT: All right. Counsel?

6 BY MS. SANERIB:

7 Q. Just a couple of questions for you, Ms. Buckley, before we
8 go on to the video on here. During the Court-Ordered
9 inspection, did you see any wounds on the elephants?

10 A. There was one wound behind the ear that I saw. Of course
11 they wouldn't let us get really close, and we wouldn't touch,
12 and there was an area that looked like it was a brown stain on
13 it.

14 Q. Was that at Auburn Hills or was that at the CEC, do you
15 remember?

16 A. I believe that was at Auburn Hills.

17 Q. Do you remember if it was Nicole or Karen?

18 A. I think it was Nicole, but I'm not sure.

19 Q. And beyond that, did you see any fresh wounds?

20 A. Not fresh wounds where, you know, where there was blood,
21 no.

22 Q. Did you expect to see any fresh wounds during the
23 inspections?

24 A. Well, no, because they knew we were coming.

25 Q. Is that common in the circus industry?

1 A. Yes, it's very common. If you know that the USDA inspector
2 is coming or if someone is coming to inspect the elephants, you
3 work very hard not to inflict fresh wounds.

4 Q. And we looked at a photograph that had a wound that Wonder
5 Dust had been applied to. Do you recall seeing that in any
6 other instances in the photographs?

7 A. Actually, I did. There was a photograph of the back leg,
8 the front of the back leg. And there appeared to be recent
9 wounds, and there was Wonder Dust almost up and down the whole
10 front of that leg.

11 Q. And again, why would Wonder Dust be applied?

12 A. Well, medically speaking, it will keep the wound from
13 abscessing. The sulfur content will dry it out. But
14 cosmetically it will hide the wound as well.

15 Q. I'd like to go to the video footage again. This is from
16 Plaintiffs' Will Call Exhibit 142. We're calling this excerpt
17 number two, and the time stamp is 1 hour and 48 minutes and 12
18 seconds to 1 hour and 50 minutes, and if you can just again
19 describe for the Court what you're seeing as this video footage
20 rolls. Thank you.

21 (Video played.)

22 A. What we're seeing here is the elephants are being led away,
23 so one elephant will be leading, the others will follow.
24 They're supposed to grab each other's tail. You see a lot of
25 lameness here. This elephant, that one right there, she won't

1 even bend her wrist, so her wrist is stiff. This elephant, same
2 thing. Stiff wrist. She can't bend her wrist. This elephant
3 looked a little gimpy in her back hips, that she's not taking a
4 smooth normal gait with her bag legs. I don't see anything
5 about that elephant. This elephant has a really strange
6 posture. Her neck looks incredibly stiff, and she's got this
7 swayback, which is not normal for an Asian elephant, and I
8 believe when they walked I could see that this end elephant, she
9 seemed to have problems, a problem with her hips. But when you
10 look at these other elephants, you can see that they may take
11 one step shorter than the other, one step longer than the other.

12 The other thing I noticed is that they told us that
13 these elephants were out in this little pasture here, but
14 there's no sign of elephants spending any extended time out in
15 this pasture.

16 Q. And what makes you say that?

17 A. Well, first off, the grasses would be glazed up evenly, so
18 you would have areas with hardly any grass and then other areas
19 that are higher. You would have areas that they dug up, because
20 elephants will -- there would be areas that expose dirt. That's
21 because elephants will naturally dig up the dirt and throw it on
22 to their back. That's just natural. The other thing is, it's a
23 real telling sign if any animal has been out in this pasture, is
24 areas of the pasture in a circle will have very green, green
25 grass that's taller than the rest of the grass, and that's from

1 the urine, so the urine creates that very green grass.

2 Q. Can you think of anything else?

3 A. Oh, yeah. The other thing is, when you have elephants
4 loose in an area of pasture, they do like to -- they create
5 trails, and so if this pasture would have little foot trails,
6 not very wide, just wide enough for the elephant to walk, and
7 they would stick to that path, and so it looks like a bunch of
8 like little rabbit trails.

9 Q. And I'd like to go to the third excerpt from Plaintiffs'
10 Will Call 142. The time stamp on this is 2 hours and 53 minutes
11 to 2 hours and 54 minutes and 30 seconds, and then the second
12 excerpt is 3 hours and 14 seconds to 3 hours and 2 minutes. And
13 Ms. Buckley, what is this footage showing?

14 A. This was the inside of the elephant barn at the CEC. It's
15 a long building that's open on both ends, and we were allowed to
16 observe these elephants for hours, and what we're seeing is all
17 of these elephants are on chains, one front leg, one back leg.
18 As you watch them, they're doing this neurotic atypical swaying
19 behavior, which is a repetitive behavior that elephants in
20 captivity are known to do. It's a coping mechanism. It's the
21 way they deal with either being board, afraid, or deprived from
22 meeting their own needs, but the one thing that I noticed about
23 these elephants in watching them is the lack of social activity
24 at all with these elephants. You notice they're never touching
25 each other. They're in their own little world of bobbing and

1 swaying. They're not interacting. They're not even facing each
2 other. Usually an elephant would be reaching out, touching if
3 it's two elephants that are together, they're bonded, they're
4 leaning on each other, they're interacting. These elephants the
5 whole time that I was there showed no normal social interaction
6 and seemed to be like zoned out in their own little world.

7 Q. What would explain that observation? Why do you think that
8 is?

9 A. Well, there is probably several different explanations.
10 One is they may be discouraged from socializing. Another reason
11 would be if they're not friends with each other, that they don't
12 have a relationship with each other, it's very nontypical, so I
13 really don't -- I mean, there's probably more reasons why
14 they're doing that, and it's not about that they're focused on
15 food that they're hungry because they have food in front of
16 them, so they're not distracted by meeting another need.

17 Q. Are elephants commonly discouraged from having social
18 relation with each other?

19 A. My experience in the circus is yes. They're discouraged
20 because, as elephants become more attached to each other, they
21 are then more concerned about the welfare of their friend and
22 they will at times not respond well to their trainer.

23 Q. And can you describe for the Court how these elephants were
24 maintained inside of this barn? Are they chained at all?

25 A. Yes, they're chained. They're on two chains, so they have

1 a front leg chain and a back leg chain.

2 Q. About how much space did they have on those chains?

3 A. Well, they could take a few steps, maybe two steps forward.
4 An elephant on chains in theory is able to lie down, but it's a
5 very restricted area. They can't move around and posture in a
6 way that they would want to. If one wanted to turn to the left
7 four steps and lay down on their right side, they can't do that.
8 They are left to only lay in a specific area that the chains
9 allow them to lay.

10 Q. And what kind of surface were the elephants kept on in this
11 barn?

12 A. These elephants were kept on concrete. This concrete was
13 exceptionally slick. That's one of the things that I noticed,
14 because a lot of times in an elephant barn you would have slick
15 concrete to make it easier for caregivers to keep it clean, but
16 that's not necessarily the best thing for elephants.

17 Q. And why do caregivers want to try to keep the concrete
18 clean?

19 A. Well, you don't want the animal to be standing or laying in
20 their own feces and urine, and elephants create a lot of fecal
21 material and urine, often with gallons of urine, and so they
22 want to keep that out from underneath their feet and off their
23 skin because they lay down in it.

24 Q. What's the concern for them laying down in it and standing
25 in it?

1 A. Well, I mean, it's a contaminant, and so if they have a
2 wound, it can contaminate the wound.

3 The other thing is, it actually stains their skin
4 because they don't have a coat like another animal might. It's
5 just exposed skin, so if these are animals that are going to be
6 on display or shown, they don't want them displayed by feces.

7 Q. Were you able to make observations of the elephants within
8 the barn?

9 A. Yes. I was able to be all the way inside the barn leaning
10 up against the wall in the front of the elephants.

11 Q. Did you notice anything in particular about the elephants'
12 behavior?

13 A. Well, in addition to the nonstop bobbing and swaying, it
14 never stopped, and the lack of social interaction. At one point
15 all of the elephants stopped. They froze. All of them. And
16 that's really indicative of the group. It's a group
17 consciousness of something that's going on, and they all stopped
18 so that they can take in the sound and they can assess what's
19 going on, so they all froze, they stayed frozen, and so I was
20 looking around to see what had gotten their attention, and I
21 turned around and saw a trainer had stepped just a foot or so
22 into the doorway, out of the door into the doorway, and was just
23 standing there looking at the elephants. He stood for a few
24 seconds, turned around and walked away, and as soon as he walked
25 away they started in movement again and started moving and

1 bobbing and swaying again.

2 Q. Okay. And I'd like to return to some photographs from the
3 inspection. This is from Plaintiffs' May Call Exhibit 54, and
4 I'd like to go to page 363 of that exhibit. Ms. Buckley, what
5 are you seeing in this photograph?

6 A. This again is the floor in the barn, and of course
7 elephants aren't there, but I wish we could zoom in on it in the
8 front. You can't see it from this.

9 Q. Okay.

10 A. What I observed while I was there is each elephant where
11 each elephant was standing with their front feet, they had
12 actually worn away the concrete. There was a recessed area
13 right where their feet are moving back and forth, and that
14 really caught my attention because that takes a whole lot of
15 activity to wear down concrete like that. I don't see it
16 effectively. It doesn't effectively show it in the photo.

17 Q. All right.

18 MS. SANERIB: Your Honor, I'd like to move into
19 evidence the excerpts from Plaintiffs' Will Call Exhibit 142,
20 the video from the CEC inspection, as well as the photographs
21 that we were discussing from Plaintiffs' May Call Exhibit 54.

22 THE COURT: Any objection?

23 MS. JOINER: No objection.

24 THE COURT: Admitted.

25 (Plaintiffs' Will Call Exhibit No. 142 was admitted

1 into evidence.)

2 BY MS. SANERIB:

3 Q. Now, Ms. Buckley, we've been talking a little bit about how
4 the bullhook is used, and you have the bullhook up there with
5 you at the witness stand, and I just wanted to start with the
6 very top of the bullhook and sort of go through how the
7 different parts of it are used, so I'm looking at the bullhook.
8 There is that part of the hook that sticks straight up. What is
9 that part of the bullhook used for?

10 A. This part of the bullhook is used to poke, push, shove, to
11 cause pressure and pain to get -- usually to get either the
12 animal or a body part of the animal to move away.

13 Q. Okay. And where is that commonly used on an elephant?

14 A. In their rump. A lot of times trainers will use this to
15 jab the elephant at the heel of their feet, to get them to walk
16 faster, to pick their feet up and move faster. And it is also
17 used if an elephant isn't trunking, trunking up fast enough.
18 They'll use it by jabbing underneath the trunk to get the trunk
19 to go up.

20 Q. And then there's the hook part that curves out, and how is
21 that hook part used?

22 A. This hook part is used to grab, so you reach out and you
23 grab the body part that you're looking for. This is where this
24 is meant to drive the animal away or push. This is meant to
25 pull the animal in and hold them and control them, so this is

1 why this is designed to be able to pierce the skin, not just the
2 skin but actually get some tissue and get a hold of them, get
3 some of the hide. This is used in many different parts of the
4 elephant's body. It's used at the top of the eye, at the top of
5 the head, the neck; it's used in the armpit to move the leg
6 forward to lift the foot. It's used behind the wrist to bring
7 the foot up, it's used at the heel of the wrist, to lift the
8 feet higher, to make them hold their legs up higher. It's used
9 along the backbone to pull on them to pull them down. It's used
10 on the front of the back legs to lift the back leg up to hold it
11 up. It's used on the front of the toes of the back feet to get
12 the feet to come up, all the way up in like a headstand, hold
13 their feet all the way up. It's used to bring the trunk back
14 down. If they're trunked up and they won't put their trunk
15 down, you reach into this covered part, you reach in the trunk
16 and pull and that pulls the trunk down. It's also used in a
17 really horrific way. Take the hook and you actually insert it
18 into the elephant's ear canal and you take the hook and twist it
19 and pull and you actually puncture this piece of flesh that's
20 sticking out right here, it's really fleshy on an elephant and
21 it just actually punctures and goes all the way through and now
22 your hook is hanging on and the elephant cannot get away.

23 Q. And did you see any evidence of that having been done on
24 the Ringling elephants?

25 A. Well, I didn't see any fresh wounds but I saw scarring in

1 that area. It's one little divot of flesh that's there and
2 right in the fold is where the scarring is, that's where you
3 puncture it, and in one elephant she had it on both sides.

4 Q. And can you think of anything else that would have caused
5 scars in those locations on that elephant?

6 A. You know, that's such a sensitive area for elephants. It's
7 somewhat protected. I can't imagine, and I've never seen
8 elephants injured to the degree that would cause that scar.
9 I've never seen an injury there.

10 Q. Okay. And is the shaft part of the bullhook also used?

11 A. Yes, it is. This is the handle, and they're made out of
12 different things. Some are wood, some are metal. This is
13 fiberglass, and it is used like a bat, so you put the hook in
14 your hand and you use this part, and it's very effective in
15 getting an elephant's attention. Either slamming it over their
16 forehead, which is all bone and so it all rattles when you hit
17 them in the head. It's used effectively on areas of the feet
18 where there's bone protruding out, okay, so like this bone, and
19 then on their ankle, so it's slammed on to that bone. It jars
20 the elephant, it causes instant pain and it creates a very sore
21 bend so it can be used later with less force. It's also used
22 when they do a thing called a tune-up with elephants that you
23 just use it like a baseball bat and just slam all over the
24 elephant and just beat all over them to traumatize them and
25 frighten them.

1 Q. So you just mentioned a couple of things there. You were
2 talking about creating an area that's sore, so how does that
3 work and is that common?

4 A. It's very common, and the reason it's done is you don't,
5 when you're in the public, you don't want to be able -- you
6 don't want people to see you cause harm to the elephant and you
7 don't want the people to see you use your hook on the elephant
8 so you create sore spots, spots that are tender, and you know
9 where those spots are because you created them, and so all you
10 have to do is just gesture towards the elephant, just take your
11 hook and swing it a little bit towards them and they're going to
12 know what you're going for so they're going to be more apt to
13 respond to you quicker without you even having to touch them.

14 Q. Okay. And you mentioned a tune-up. What's a tune-up?

15 A. A tune-up is what you do with an elephant who is not
16 responding well, a trained elephant that's already been trained
17 but is being lackadaisical, not moving fast enough, not
18 responding well, maybe getting distracted, but to the point
19 where you're concerned that maybe she's going to hurt somebody
20 or maybe she's just not performing well anymore.

21 Q. And so what's entailed in a tune-up?

22 A. It's done in private, so wherever. It's usually at your
23 home base and your winter quarters, usually inside where other
24 people can't see. A tune-up many times consists of more than
25 one person. It's usually several people because you really want

1 to demonstrate to the elephant that you have a handle over them.
2 Usually the elephant is put on chains, two to four chains, and
3 then they start with the process of rapid command, rapid
4 command, tell them to do something, lift your foot, lift your
5 foot, put it down, trunk, get it up, lay down, stretch, and just
6 start firing on them that way and find a reason to punish them
7 so you push them hard enough that they make a mistake and then
8 you get to start punishing them and then it actually turns into
9 a full beating but you use the hook, you hook their foot, you
10 hook their head, you are just relentless on the commands.

11 Q. And when you're talking about punishing an elephant, what
12 does that mean?

13 A. It means negative re-enforcement. It means hurting them.

14 Q. And how that is done?

15 A. Well, when you use the hook you use it to hook them
16 brutally so that they feel it and it causes pain. You hit them
17 with it. They also use hot shots to punish elephants, and
18 deprivation of food and companionship.

19 Q. And is it common for elephant trainers to record how they
20 punish and tune-up elephants?

21 A. No.

22 Q. And why is that?

23 A. Well, it's a secret. It's it something that is done, and
24 in the industry the belief is that it has to be done to control
25 elephants, but it's something that's difficult to defend so

1 nobody tapes it.

2 MS. SANERIB: Your Honor, we have video footage. It's
3 not from Ringling Brothers Circus, it's from another circus,
4 Carson & Bonds, and it depicts events along the lines that Ms.
5 Buckley was just testifying about, and I'd like to show that
6 video. We're not going to move it into evidence, but I'd like
7 to use it as a demonstrative with this expert to explain to the
8 Court in more detail what happens in a tune-up and how an
9 elephant is punished.

10 THE COURT: Any objection?

11 MS. JOINER: Yes, your Honor. This particular
12 exhibit, as Ms. Sanerib said, is not related to our circus.
13 It's not related to any of the defendants' employees. It's I
14 think over ten years old, and in a case where the particular
15 circus was actually involved in litigation the Court found in
16 *Leavia v USDA* that the videotape had already been addressed and
17 since then 31 inspections had occurred so there was little
18 weight in determining for that particular circus at issue. I
19 don't see how it would relate to ours, so I think it's highly
20 inflammatory. It's misleading under 403. There's hearsay in
21 801, and we also have objections under authenticity and
22 foundation, because there is no witness that could lay a
23 foundation for this.

24 THE COURT: What about that, authenticity and lack of
25 foundation?

1 MS. SANERIB: And again, your Honor, we're just using
2 this as a demonstrative, so our intent is not to actually
3 introduce it into evidence.

4 In terms of the links between what's going on in this
5 video footage and Ringling Brothers, the footage depicted, Tim
6 Frisco, his brother, Joe Frisco, works for Ringling Brothers
7 Circus. Joe Frisco was deposed in this case, and it's
8 plaintiffs' intent to introduce his deposition testimony in
9 which he identifies his brother, says that he and his brother
10 were both taught by their father, they used the same techniques,
11 and he says brother's use of the bullhook in this video footage
12 was not inappropriate.

13 THE COURT: Do you to plan elicit that type of
14 testimony from him during this direct about this footage and use
15 of this tape?

16 MS. JOINER: No, your Honor. In fact, we disagree
17 with the complete characterization of his testimony. He did not
18 know when this tape was made. He said quote, I wasn't there, I
19 couldn't tell you. He said, quote, this is from his deposition:
20 I don't do it that way. It's not done that way. He agreed that
21 the conduct was, quote, unacceptable behavior. He said, quote,
22 I can't answer for my brother, I wasn't there, so I think it's
23 completely inaccurate to say that Mr. Frisco agreed with this or
24 anything that was happening, and simply because it's his
25 brother, which doesn't work for our company, doesn't mean it

1 should just come in here as a demonstrative.

2 THE COURT: I'm not going to allow it to be used.
3 Let's move on.

4 BY MS. SANERIB:

5 Q. Now, Ms. Buckley, I think in our discussion you mentioned
6 winter quarters. What's winter quarters?

7 A. Winter quarters is traditionally where circus elephants are
8 actually the whole circus stays during the time that they're not
9 on the road.

10 Q. And we sort of talked a little bit about a tune-up, but how
11 is an elephant originally taught their performance?

12 A. Well, the original training process also happens, you know,
13 not in the public. It usually happens on the property of the
14 owner of the elephant, so in a circus it would be in their
15 winter grounds. Most of the time there's a barn that is set up
16 with a practice ring in it and the elephant would be brought
17 into the ring along with the trainer and whatever assistants
18 that he or she has with them, and the elephant would be taught
19 individual tricks. That's the beginning of you teach them the
20 tricks.

21 Q. And what are the common tricks for circus elephants?

22 A. Well, common tricks are to lay down, sit on the ground, sit
23 up on the ground, sit on a tub, stand on their hind legs, stand
24 on their front legs, walk in both of those positions, both hind
25 leg and front leg, to do a stretch, to get up on what we call a

1 tub and dance and spin, waltzing, and then running around the
2 ring.

3 Q. And then once an elephant knows those tricks, how does that
4 become a performance?

5 A. Well, the way it becomes a performance is those tricks are
6 choreographed in a routine, and although there is a lot of
7 similarity in most elephant routines because there's the basic
8 tricks that you use, there might be a specialty that the
9 elephant is taught and the routine is tweaked a little bit and
10 maybe there's three elephants or five elephants, but basically
11 what they do is first then teach the elephant to run around in a
12 circle, do that with the guide of a ring curb, and they drive
13 the elephant around and re-enforce it, that's what they want
14 them to do, him or her, and insert the behaviors at the time and
15 routine that they want them, and you utilize your elephant hook
16 to guide the elephant, and at that point it is guiding because
17 what you're doing is when the elephant is running, then you're
18 telling them to stop and you're pulling them over. You put the
19 hook on, you pull them over and you say this is where I need you
20 to stand, you're going to stand here steady, now stand up, so
21 you insert that behavior right there, so as they insert all of
22 the behaviors, then they run the elephant through it and most
23 elephants will pick up a routine by the third time that they do
24 it.

25 Q. All right. How would you describe overall the training

1 process? Is it relatively easy, is it hard on the elephant?

2 What's the impact on the elephant?

3 A. Well, the impact on the elephant is, of course, individual.
4 It depends on the physical condition of the elephant, the mental
5 state of the elephant, the relationship between the trainer and
6 the elephant, but ultimately you're asking this species to run
7 around quickly, which is, although they can, it's not their
8 normal mode. They usually run about 1.5 miles, walk 1.5 miles
9 an hour, so you're asking them to exert this energy and to be
10 running around the ring, and then you're requiring them to do
11 physically exerted behaviors that, yes, they can do. They're
12 very intelligent and they're physically coordinated, but these
13 behaviors that are requested are not natural behaviors that they
14 would do and hold in the wild, and an elephant, if an elephant
15 stands on their two hind legs, you'd be a bull elephant raising
16 their two front feet up quickly to grab something out of a tree
17 and then their feet dropping back down. They don't hold their
18 feet up, they don't walk on their hind legs, so these behaviors
19 are in that sense not natural, even though an elephant can be
20 trained to do them. So there's a level of stress that the
21 elephant is exposed to while they're in training, and then
22 really the ongoing low level stress of being forced to continue
23 to execute those routines show after show, day after day.

24 Q. And when you take the elephant out on the road, how does
25 the elephant trainer ensure the elephant is going to perform in

1 the ring?

2 A. Well, most of the time the trainer makes sure that he has a
3 high level of dominance over the elephant, doesn't allow the
4 elephant to experience very many pleasures, doesn't want the
5 elephant to play or engage too much with other elephants, and
6 really keeps the elephants focused on him or her and on the work
7 at hand.

8 Q. Do traditional circus trainers show affection for the
9 elephants?

10 A. It's my experience if there is affection shown, it's not
11 genuine.

12 Q. Why wouldn't they show affection to the elephants?

13 A. Well, because if you show affection to the elephants and
14 become -- you become soft, and if you're soft the elephant in
15 theory will take advantage of you.

16 Q. Now, we've been talking a lot of about how circus elephants
17 are trained. In your experience and with the evidence you've
18 reviewed for this case, do you have any reason to believe that
19 Ringling Brothers trains its elephants for the circus any
20 differently than any other circus?

21 A. No.

22 Q. Why do you say "no"?

23 A. Well, I don't have to see the actual training in process.
24 You simply look at the elephant, the posturing of the elephant,
25 the response that the elephant makes towards the handler, and

1 the same with the posturing, the body language, the
2 verbalization made by the trainer.

3 Q. I'd like to show some video footage. This is video footage
4 that's actually from a photo shoot that was done at Ringling
5 Brothers. It's Plaintiffs' Will Call Exhibit 135. It's
6 entitled Excerpt 6, FEI 40964, and the time stamp is 44 minutes
7 and 20 seconds to 45 minutes and 20 seconds. This is footage
8 that defendant produced to plaintiffs in discovery.

9 THE COURT: All right. Any objection?

10 MS. JOINER: Yes. We just want to note this is the
11 Red Unit, your Honor, so we consider it irrelevant.

12 THE COURT: Is it?

13 MS. SANERIB: It is highly relevant, your Honor. It
14 shows how the elephants are handled by the circus.

15 THE COURT: Her question is, is this Red Unit?

16 MS. SANERIB: Yes, it is Red Unit.

17 THE COURT: So I assume this is part of your pattern
18 and practice argument?

19 MS. SANERIB: Yes, your Honor.

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

21 BY MS. SANERIB:

22 Q. If you can describe for the Court when you describe this
23 footage as it plays, Ms. Buckley.

24 (Video played.)

25 A. One elephant will put her trunk up. The trainer's yelling

1 at her. He's telling her to line up, which is to turn the other
2 direction. She's not, and in fact, he's yelling at her again
3 telling her to lie down. She won't. He goes over there, he
4 hits her, he hooks her, hooks her again, pokes her in the trunk,
5 tells her to line up again. She turns the wrong way. Again, he
6 gets angry, she then steps off of the tub before she's supposed
7 to so he goes over tells her to sit down. And then hooks her
8 foot and hooks it back down and then hooks her in the front of
9 the leg to make her sit down again.

10 Q. And what you saw, this video footage, is that consistent
11 with how circus elephants are trained and handled by their
12 trainers?

13 A. Yes.

14 Q. Now, Ms. Buckley, in your opinion, if an elephant decides
15 to rampage, will a bullhook stop that elephant?

16 A. No.

17 Q. Can a bullhook be used to stop an elephant from attacking a
18 person?

19 A. If the elephant is engaged in the attack already, no.

20 Q. Could a traditional free contact trainer break up elephants
21 that are shoving each other?

22 A. It would depend on the degree of shoving. If they're
23 playing and they're not intent on a dominant situation with each
24 other, you could probably break it up.

25 Q. Have you ever seen an elephant cut itself on bamboo?

1 A. No. I've seen an elephant scrape itself on bamboo, but not
2 cut.

3 Q. What would the scrape look like?

4 A. Like a scratch.

5 Q. And would it leave a scar?

6 A. No.

7 Q. Have you ever seen an elephant cut itself on a branch?

8 A. I've seen an elephant get a scratch from a branch.

9 Q. And would that leave a scar?

10 A. No.

11 Q. Have you ever taken blood from an elephant?

12 A. Yes.

13 Q. And where is blood typically taken on an elephant?

14 A. Two places. One is behind the ear and the other is inside
15 of the back leg.

16 Q. And do blood draws leave a mark on the elephant?

17 A. It shouldn't leave a mark. You're taking it right out of
18 the vein.

19 Q. Would you ever get a scar on an elephant from a blood draw?

20 A. The only time I've seen scarring from blood draws is when
21 an elephant has been in a situation of having repeated blood
22 drawings from the same location, or having fluids, you know, put
23 in, and then you'll actually -- you can damage the vein itself.

24 Q. And would that look anything like a scar from a bullhook?

25 A. No.

1 Q. Have you ever seen an elephant get a bug bite?

2 A. Yes.

3 Q. Do those bug bites get infected?

4 A. No.

5 Q. Have you ever seen an infected bug bite on an elephant?

6 A. No.

7 Q. And we talked a little bit about elephants fighting and
8 their small ivory, their tushes, and what that could do. In
9 your opinion, could one elephant create a wound on another
10 elephant with their tushes?

11 A. Well, they can create a wound, but it's usually like a
12 scratch, and because they'll take off maybe the top layer of
13 skin, but it's just a scratch.

14 Q. And could you ever compare a scratch from an elephant's
15 tushes with a scratch from a bullhook and say that they look
16 similar in your opinion?

17 A. No. Because a bullhook, either it's a -- either it is a
18 very straight scratch, very even, or its tattered on either side
19 where it has actually torn the skin. It looks much different
20 than a scrape from ivory or even a tree branch.

21 Q. Now, based on your observations of Ringling Brothers
22 Circus, how is control maintained over those elephants?

23 A. Dominance.

24 Q. And I'd like to show you some additional video footage.

25 This is from Plaintiffs' Will Call Exhibit 133A. It was

1 admitted on February 9th. And this is video footage from
2 Oakland, California. As this video footage is playing, if you
3 can describe for the Court what you're seeing.

4 A. Well, apparently they're bringing the elephants somewhere
5 in the parking lot. There are some small elephants right there
6 that are in the back that are chained with their back to us, one
7 swaying, and it looks like they're going to the -- probably
8 going to chain these elephants up. This elephant is pretty
9 gimpy. I say gimpy. She doesn't bend her wrist at all. But
10 it's interesting to see that there are -- well, they've been
11 here before. They know the routine. They're just coming into
12 place and they're backing up to what looks like a highway, a
13 road. There's a road right there. There's a fence behind them,
14 but a road. This guy is tying his shoe. The elephant is quite
15 docile. She backs up on her own to have the back leg chain put
16 on her.

17 Q. And is that common for elephants to do that?

18 A. Well, they become very routined and very submissive and
19 they know what's expected, they know what's coming next, and so
20 if they offer it, it's a better chance that they're not going to
21 get in trouble or punished. And this elephant has already
22 started to sway.

23 Q. Now, in your experience, what would an elephant's normal
24 reaction be to this setting?

25 A. Well, look at the traffic there. That's a lot of traffic.

1 Elephants naturally are concerned about anything behind them.
2 It's just their design. Their eyes are focused to the front and
3 down. They can't see behind them, and so a normal, healthy
4 elephant would at least, you know, want to make sure that
5 they're safe, and they would -- and they wouldn't want their
6 back to that traffic. They would want to be facing the traffic
7 if they have to be chained, so they would investigate the
8 situation. There might be some ear flapping, some trumpeting,
9 elephants interacting with each other with that situation. That
10 would be normal elephant behavior.

11 Q. Do you have any explanation for these elephants' behavior?

12 A. They just seem so desensitized. They don't seem like real
13 elephants.

14 Q. Now, we've talked a lot about training of elephants for the
15 circus, and I just would like to go through your opinions
16 actually in this case and ask you, what are the ramifications of
17 Ringling Brothers' use of traditional free contact training with
18 its elephants? And I guess really focusing on the use of the
19 bullhook. What does that do physically to the elephants?

20 A. Well, the first thing is, it deprives the elephants from
21 free choice, being able to make their own decisions. It
22 complicates their life, their behaviors, and their physical
23 wellness. When an elephant is not allowed to posture according
24 to their needs, when they're not allowed to interact socially
25 with those individuals that are so important to their

1 well-being, all of that is stressful to the elephant, and even
2 if it's a low-lying stress, it's a constant stress that can
3 affect their immune system.

4 Q. And physically speaking, what happens with elephants that
5 are trained using traditional free contact training?

6 A. Well, physically we see a lot of arthritis with performing
7 elephants. We see of course a lot of scarring, a lot of wounds.
8 Eventually we see elephants that develop osteomyelitis.

9 Q. Did you see evidence of those things with the Ringling
10 elephants?

11 A. Yes. I saw a lot of scarring, a lot of limping, a lot of
12 uneven gait, and those feet, that would suggest osteomyelitis.

13 Q. And you mentioned stressful lives of circus elephants. In
14 your ramifications, does that have any health ramifications with
15 them?

16 A. Very definitely it does, and we see that with elephants
17 that come to the sanctuary. Any elephant that's under stress,
18 an animal can deal with short-term stress, the stressors there,
19 they deal with it, it's gone, but it's the low-level, continual
20 stress that we're learning is so detrimental to their immune
21 system, which of course impacts their ability to fight off
22 disease, and we see a big problem with captive elephants
23 developing tuberculosis, and there's a strong possibility that that
24 low-level stress, continual stress, has something to do with the
25 high levels of the TB.

1 MS. JOINER: I'm going to object and move to strike
2 for lack of foundation and competence.

3 THE COURT: I'll allow it.

4 MS. SANERIB: Your Honor, if it's possible, we have
5 one more video clip that I'd like to show to Ms. Buckley. This
6 was the video footage that was subjected to briefing over the
7 course of the last several days. It's Plaintiffs' Will Call
8 Exhibit 128. It is the video footage that was sent to the USDA
9 that the USDA investigator determined constituted physical harm
10 to the elephant. Ms. Buckley is an expert in this case, and
11 under Rule 703 she does not have to look at evidence that's
12 necessarily admissible to the Court. It's our position that
13 that footage should come in as a business record of the USDA,
14 but I'd like to at least be able to show it with Ms. Buckley
15 while she's here today.

16 THE COURT: Objection?

17 MS. JOINER: We object, your Honor. If Ms. Buckley
18 wants to talk about whatever she has opinions on, that's fine,
19 but using this particular piece of evidence in the middle of
20 briefing as a demonstrative defeats of the entire purpose of the
21 briefing.

22 THE COURT: The briefs are filed. I've not read the
23 briefs.

24 I'm not going to allow it.

25 I'll try to read them over the lunch hour, but I'm not

1 going to allow the testimony.

2 MS. SANERIB: Thank you, your Honor.

3 BY MS. SANERIB:

4 Q. Now, Ms. Buckley, I'd like to turn to the chaining and
5 confinement of elephants, and we talked about this a little bit
6 already, but typically, how are elephants chained?

7 A. They're usually chained on two legs, one front, one back,
8 opposite sides.

9 Q. Can they turn around whenever they're chained?

10 A. No.

11 Q. Can they socialize with each other when they're chained?

12 A. They have limited ability to socialize with the elephants
13 on either side of them, and even more limited if they stretch to
14 try and touch another elephant.

15 Q. And Ms. Buckley, I think you've talked about earlier about
16 transporting elephants. Are your elephants chained when you
17 transport them?

18 A. No.

19 Q. When you showed Tara with the circus, how did you transport
20 her?

21 A. I transported her in a trailer and she was chained.

22 Q. And what made you change your mind when you developed your
23 new trailer?

24 A. Because I felt that chaining was very detrimental and was
25 learning more that the chaining can be detrimental and I found

1 that there was an alternative way to do it.

2 Q. The alternative was what?

3 A. To have a cage in the trailer instead of chains.

4 Q. Now, Mr. Rider testified in this case and he talked about
5 elephants pushing one another when they were chained on the
6 train. What would your interpretation of that behavior be?

7 A. Well, I really have to know push, you know, what he was
8 talking about, but if he says push, then that wouldn't
9 necessarily be a friendly exchange. Caressing, touching,
10 leaning, rubbing, that's affectionate between elephants, but
11 pushing is more -- would more indicate an issue between the two
12 elephants maybe over dominance or space.

13 Q. And is that common for elephants that are chained together
14 in the circus?

15 A. It is common.

16 Q. And what has your experience been with that?

17 A. Well, one of the reasons that circuses chain elephants is
18 so that they can control their behavior and keep them from
19 fighting with each other, and keep them from eating each other's
20 food.

21 Q. And do you think that that's a valid rationale for chaining
22 elephants?

23 A. Well, no, because there's an alternative. There's an
24 alternative that meets the need of the elephants' welfare as
25 well as meeting the need of the circus, is that you can create

1 small stalls, you can either have pipe corrals or you can have
2 hot wire corals or you can separate those elephants that don't
3 get along.

4 Q. Now, Ms. Buckley, assume that the record in this case shows
5 that the elephants that are traveling on the road with the
6 circus are chained on the railroad cars for an average of 25
7 hours a week but for as many as 90 to 100 hours. What's your
8 opinion about the ramifications of that for the elephants?

9 A. Well, I think that you run the risk of long-term permanent
10 injury to the elephants. Osteoarthritis is a real issue for
11 elephants. I saw in many of the photos in the footage that some
12 of the Ringling elephants have stiff joints and that can be as a
13 result of being confined on chains for extended periods.
14 There's also the issue of digestion. What impact does that have
15 on an elephant's ability to truly digest their food well while
16 they're on chains, what is the food source, what is the water
17 source, and lack of exercise.

18 Q. And is there anything in particular about elephants that
19 raises concern in terms of the transport, long-term transport?

20 A. Well, in addition to just those physical concerns,
21 psychologically it's an issue because elephants are being
22 deprived of being elephants. They're being deprived of
23 socializing, posturing, just making some choices that are
24 important for their own welfare.

25 Q. Can you describe for the Court how the elephant's foot

1 works?

2 Actually, it might be helpful, there's a diagram in
3 your expert report, so if we could go to Plaintiffs' Will Call
4 Exhibit 113 at page 28. And just highlight that diagram at the
5 bottom there.

6 A. Okay. So an elephant's foot is quite unique. An elephant
7 is actually standing on their toes and there is a cushion area
8 that's this area here (indicating), is a large cushioned area.
9 This is what makes elephants silent when they walk. And of
10 course it protects their bulk. Now, one of the other unique
11 things about elephants is that their bones are stacked, so once
12 you get up to this bone, all the rest of the bones in their leg
13 are stacked. The toes are key. If there is injury to the toe
14 or degeneration of the bone, then you compromise the elephant
15 completely and, you know, eventually the elephant will not be
16 able to walk anymore.

17 Q. And based on what we're seeing with the elephant's foot,
18 what does transport do in this scenario?

19 A. Well, transport adds stress. One of the things that goes
20 on, when an elephant is transported, they stand up. I don't
21 know of any elephant, except for if they're not well, that will
22 lie down while the vehicle or the railroad car is moving, so
23 they're standing. During that time they are balancing
24 themselves, so they're continually, you know, tightening their
25 muscles to keep themselves in balance so that they don't lunge

1 forward, lunge sideways, and the other thing that's going on
2 that I really feel is important is the continual vibration that
3 happens in a railroad car or semi is that that floor is just
4 vibrating continually.

5 Now, elephants are unique in yet another way, is they
6 communicate their through feet through vibration. They send
7 vibration down through this pad and out into the ground, and
8 they communicate that way. They also receive their
9 communication that way, so there is a concern at this point that
10 what is this pollution, this vibrational pollution. What is
11 that doing to elephants? How deeply is that impacting their
12 ability to communicate? How stressful is it? Is it like
13 constant noise pollution that they can't tune it out, and is
14 that indeed another level of stress for them?

15 Q. Now, Ms. Buckley, if the record in this case also shows
16 that those same elephants who are being transported on the road
17 when they're not being transported are chained at night for
18 approximately eight to ten hours, what's your opinion about the
19 effects of that on the elephants?

20 A. Well, I think ultimately when you restrict an elephant's
21 movement and their ability to socialize over that length of time
22 day after day you do create a zombie, and that's maybe what
23 we're seeing with these elephants, is they have no opportunity
24 to engage in, so they just stopping trying.

25 Q. And we saw some video footage -- actually, before I do

1 that, I'd like to show you a little video footage from one of
2 the Ringling elephants. This is from footage that's already
3 been admitted. This is from Plaintiffs' Will Call Exhibit 128,
4 APL 08980, from 0 seconds to 1 minute and 25 seconds, and if you
5 can just describe for the Court initially what you're seeing in
6 this footage.

7 A. Well, right here is a baby elephant. She's quite young.
8 I'd say she's probably about three years old, and she is engaged
9 in neurotic behavior, swaying. It's a repetitive movement
10 wherever part of the body repeats the exact movement over, over
11 and over again. She has other elephants around her and she
12 seems a little agitated, so she's moving backwards. She's
13 flipping her tail. She seems uncomfortable. She's not at ease,
14 she's not calm.

15 Q. And Ms. Buckley, if the record in this case reflected that
16 during the time this elephant was at this venue, she was not
17 taken out to perform, would that have any significance to you?

18 A. Well, first I'd wonder why is she there, and if she isn't
19 taken out to perform, that means she's stuck in this spot on
20 these chains or in this void environment for extended periods of
21 time, and I think psychologically that would be very detrimental
22 to a baby elephant.

23 Q. And do you know why Ringling Brothers would do that to a
24 young elephant?

25 A. Well, I know from experience that baby elephants are very

1 popular in the circus and they're a big money-maker and perhaps
2 they're trying to condition this elephant to eventually be able
3 to take her and use her in the show.

4 Q. And by "condition," what do you mean?

5 A. To get her to accept the parameters that she's going to
6 have to get off chains, she's going to have to walk with a
7 trainer, she's going to have to follow command, and she does
8 need to calm down a bit because she's rather agitated.

9 Q. Now, turning back to the Center For Elephant Conservation,
10 and we saw some video footage from the barn there, assume the
11 record in this case will reflect that those elephants are
12 chained for approximately 12 to 16 hours each day. What is your
13 opinion about that?

14 A. Well, it's highly detrimental for elephants to be
15 restricted in that way, so again, they're going to experience
16 physical complications, probably even permanent, but
17 psychologically you're doing a lot of damage by keeping an
18 elephant in such a sterile environment and restricting their
19 opportunity to make their normal physical postures, but also
20 interacting with the other elephants.

21 Q. And Ms. Buckley, I think you testified earlier today that
22 you have circus elephants that have come to the sanctuary. Have
23 you seen any circus elephants that are in a similar state to the
24 elephants you've seen in the video footage from Ringling
25 Brothers that have come to the sanctuary?

1 A. Yes. We've had several circus elephants, elephants that
2 performed in the circus, come to the sanctuary, and many of
3 them, almost all of them display the neurotic behavior of
4 bobbing and swaying when they arrive. The difference at the
5 sanctuary is that from the time they are transported they're
6 never put on chains again, and what we see is that the elephants
7 that come with that behavior of bobbing and swaying may continue
8 to exhibit that for some length of time. Now, in the barn it
9 happens a lot. The elephants will come in the barn, they don't
10 have to come in the barn, but they can, and when they come in
11 many of them will revert to that bobbing and swaying. Very few
12 elephants exhibit that behavior outside where they have access
13 not only to a vast space but other elephants and a lot of
14 stimuli things to interest them and get their attention. It's
15 only the most damaged individual elephant that will continue to
16 bob and sway outside for some length of time.

17 Q. I'd like to show you a little footage of just that, if I
18 can. This is from Defendants' Exhibit -- this is Defendants'
19 Exhibit 174. It's from 6/23/08, capture seven, and the time
20 stamp is 48 minutes 0 seconds to 51 minutes and 0 seconds. And
21 if you can just describe for the Court what's going on with this
22 footage as it's running.

23 (Video played.)

24 A. These are three of the ex-circus elephants that we received
25 a few years ago. On the right-hand side is Lizzie. In the

1 middle is Frieda. She suffers from an advanced case of
2 osteomyelitis. And Billi Sue, and Billi Sue is swaying. Billy
3 Sue will exhibit this behavior periodically, and sometimes she
4 will exhibit it for a length of time outside. She's our only
5 elephant that will exhibit this behavior outside.

6 Now, she is stopped right now so she's not fully
7 engaged in it, but she then goes back to bobbing and swaying.
8 Usually from the location that these elephants are at, this is
9 on our illecam (ph) which runs 24 hours a day, so the location
10 these elephants are at knowing their behavior, I'm going to say
11 that this is late in the afternoon and that is when we see Billy
12 displaying this behavior, if she does. Since she's
13 interspersing her swaying with dusting, which is a good sign,
14 that means a progression, it means she can distract herself by
15 the natural behavior of dusting, but then she'll revert back
16 into the swaying. Usually when she is exhibiting this is when
17 she wants to go back to the barn, and her friends Frieda and
18 Lizzie don't want to go. She is not confident enough to go back
19 to the barn by herself and so she tries to convince them to go.
20 Eventually she will convince them to go, but in the interim is
21 when she is experiencing that stress of not being able to do
22 what she needs to do because her friends don't want to go. When
23 she first came to us she bobbed and swayed continually and now,
24 depending on the day, depending on the circumstances, there are
25 some days that she doesn't sway at all.

1 Q. When she came to you why do you think it was that she
2 engaged in the bobbing and swaying behavior?

3 A. For ten years prior to coming to us she was confined in a
4 cage, in a 30 by 30 stall inside a barn, and her cage was about
5 five foot deep and maybe ten foot long.

6 Q. And would you say that's pretty equivalent to an elephant
7 being on chains?

8 A. Very equivalent. It restricts their base, yes.

9 Q. And I think you've also mentioned elephants that have come
10 to your sanctuary that have had physical problems, these feet
11 problems. Can you describe for the Court using an example what
12 happens to those elephants once they arrive at the sanctuary and
13 spend some time there?

14 A. What we've noticed over our fifteen years is that elephants
15 that have problem feet can recover. Now, if they have
16 osteomyelitis at the time that they arrive, we don't expect
17 their feet to be cured. We do understand that until a cure is
18 discovered, those elephants eventually will die of this foot
19 disease, but for those who have problem feet but they don't have
20 osteomyelitis, we can see recovery, and it's usually in a six-
21 month time because the six-month time is the length of time it
22 takes for the nails to grow out fully.

23 Let's say with Bunny, Bunny had abscessed toe nails on
24 every foot. Every nail was abscessed. It was documented over a
25 20-year period that she experienced this condition. Her

1 environment was concrete. Inside and outside, she lived on
2 concrete. And so we knew the source of the problem. When she
3 got to the sanctuary we did some trimming, but not a lot. We
4 kept the abscess areas open. She got foot soaks twice a day and
5 her nails of course started to grow and she was very active at
6 that time from day one. She was out in the habitat moving, so
7 she was wearing her foot pads down as well as us doing a little
8 trimming, but within a six-month time these nails were
9 completely grown out. She had no reoccurrence of any of the
10 symptoms.

11 Q. And before we move away from this video footage, I do want
12 to ask you what is it these elephants are standing here on in
13 this video?

14 A. Well, they're in a pasture and they're near the barn, and
15 so they're on -- the area that you see is -- used to be grass,
16 but because there was traffic by the elephants this is one of
17 the little rabbit paths that they make, and then in the center,
18 so when they wore this area down we just put sand in it so they
19 had something to dust with.

20 Q. Okay. And I'd like to show just a little bit of video
21 footage from Ms. Buckley's elephant sanctuary of the elephants
22 there. This is Plaintiffs' Will Call Exhibit 144. The time
23 span is 1 minute and 49 seconds to 5 minutes and 52 seconds, and
24 I just have a few follow-up questions for Ms. Buckley about her
25 sanctuary. We're not moving the admission of this footage, just

1 using it as a demonstrative.

2 MS. JOINER: Objection for relevance.

3 THE COURT: I'll let you ask. Go ahead.

4 MS. SANERIB: Okay.

5 MR. CRYSTAL: If we could not have the audio.

6 THE COURT: I'm sorry. How long is this?

7 MR. CRYSTAL: I just wanted to show just a couple
8 minutes of this, your Honor.

9 THE COURT: It's 12:45. I know we're balancing a
10 couple of things. It's important we start back at two o'clock,
11 so we're going to break for lunch before we do this. We'll
12 start promptly at two o'clock.

13 MS. SANERIB: Okay. Thank you.

14 COURTROOM DEPUTY: This Honorable Court now stands in
15 recess until 2:00.

16 (Recess taken at about 12:40 p.m.)

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I N D E X

WITNESSES:

CAROL BUCKLEY

Direct Examination by Ms. Sanerib

22

E X H I B I T S

Plaintiffs'
Exhibit

No.	Identification	Marked	Admitted
PWC 156			20
PWC 113H			23
PWC 143			59
PMC 54			59
PWC 142			76

1 CERTIFICATE

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

5 Jacqueline M Sullivan
6 JACQUELINE M. SULLIVAN
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