

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.
. Thursday, March 5, 2009
. 10:11 a.m.
.
.

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TRANSCRIPT OF BENCH TRIAL - MORNING SESSION - DAY 17
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

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TANYA SANERIB, ESQ.
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9 Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

P R O C E E D I N G S

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

5 Will counsel please identify yourselves for the
6 record?

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

9 THE COURT: Good morning.

10 MS. MEYER: Good morning, your Honor. Katherine Meyer
11 for the plaintiff.

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

14 MS. SINNOTT: Michelle Sinnott, tech, for the
15 plaintiff.

16 THE COURT: Good morning.

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

19 MS. PARDO: Good morning, your Honor. Michelle Pardo
20 for the defendant.

21 THE COURT: Ms. Pardo.

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

24 THE COURT: Ms. Joiner.

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

1 the defendant.

2 THE COURT: Mr. Shea.

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

5 MR. PALISOUL: Derrick Palisoul for the defendant.
6 Good morning, your Honor.

7 THE COURT: Good morning.

8 We also welcome students from Roberts Wesley College
9 in Rochester, New York; is that right?

10 FROM THE GALLERY: Yes.

11 THE COURT: What brings you to Washington, springtime
12 in Washington? Welcome to the court. I understand you have a
13 rather tight schedule this morning. You're welcome to stay for
14 as long as you'd like, and when it's time for you to leave,
15 that's fine, and you won't be interrupting us at all. I'm sorry
16 I don't have time to spend to talk to you. I always look
17 forward to doing that, but this is an interesting trial. This
18 is in the -- how many weeks, fourth week. A few more days, a
19 few more days or so.

20 MR. SIMPSON: Yes, sir.

21 THE COURT: We're going to proceed with the voir dire
22 questions.

23 Let me just raise one point. I took a look at Rule
24 803 last evening. I know you're filing your five-page
25 submission today. My inclination, though, is to allow, and I'm

1 doing this because, first of all, it's nonjury, and secondly,
2 because my understanding is that the witness who testified
3 yesterday will be leaving the District of Columbia probably
4 today or tomorrow, and that's assuming that her husband
5 finishes. Well, he will finish testifying today.

6 Rule 803 is fairly straightforward, though, about a
7 learned treatise, and it seems to me I should allow the witness
8 to testify, either the witness who testified yesterday or her
9 husband, to at least lay the foundation for admissibility of the
10 appropriate statements, not the entire treatise, but the
11 appropriate statements, and then give it whatever weight it's
12 entitled at the.

13 Were you able to locate any cases from our Circuit on
14 this, on this issue?

15 MS. PARDO: Well, your Honor, it is in progress.

16 THE COURT: It's in progress?

17 MS. PARDO: But we do believe your Honor is correct,
18 that the standard for at least reading a learned treatise is one
19 that the expert has relied upon, that they believe it's accepted
20 or useful in the industry in which they work, in which this case
21 it's elephant management, and we believe that many of the
22 questions that were elicited in testimony yesterday show that
23 there is really no other compendium of knowledge outside of
24 other standards that mostly apply to zoos, so it really is one
25 of the few treatises or learned publications out there, and we

1 believe we did elicit some of those foundational questions
2 yesterday, but we'll be providing your Honor with authority this
3 evening.

4 THE COURT: That's fine, that's fine. I'm looking at
5 subparagraph 18, and I'll just read it. To the extent it's
6 called to the attention of an expert witness upon
7 cross-examination or relied upon the expert witness in direct
8 examination, statements contained in published treatises,
9 periodicals or pamphlets on the subject of history, medicine or
10 other science or art established as a reliable authority by the
11 testimony or admission of the witness by other expert testimony
12 or by judicial notice, if admitted the statements may be read
13 into evidence but may not be received as exhibits.

14 It seems to me she should be allowed to testify. If
15 you want to recall her, she should be allowed to testify what
16 her opinion is, and I'll give it whatever weight it's entitled
17 to, if any, as a learned treatise with respect to the statements
18 that are read into evidence.

19 You know, I put you through a task of filing your
20 five-page. That's fine. Please do so. And plaintiffs can
21 respond, but my inclination at this point, especially since this
22 is a nonjury case and I'm going to disregard any evidence that's
23 not competent, that's not proper for the Court's consideration
24 when I resolve the merits, I should go ahead and hear the
25 testimony, especially since she's going to be returning to

1 California. I know I said something about getting her on the
2 telephone, but I'd rather not do that.

3 Do you wish to be heard on that point?

4 MS. SANERIB: Yes, we do, your Honor. And, I mean,
5 our research on this is also preliminary, but we found some
6 cases that make it really clear that the reliable authority test
7 for a learned treatise is a hard one, it's a harsh standard, and
8 we don't think defendant can meet it here. You heard testimony
9 from plaintiffs' expert witnesses that they don't view this
10 document as reliable in any way. They haven't even read it
11 because they don't think it would even pertain to the management
12 of elephants in captivity, so we don't think that there's any
13 weight. We don't think this document should come in, and
14 frankly, your Honor, this is akin to plaintiffs' expert going
15 out, writing a document that says we don't think elephants
16 should be chained for more than two hours a day, and they're
17 trying to introduce that into evidence in this case. That's the
18 kind of advocacy piece that is.

19 THE COURT: And produced at a time years after this
20 lawsuit commenced, correct?

21 MS. SANERIB: Years after this lawsuit commenced.

22 THE COURT: Doesn't that get to a weight
23 determination, though, as opposed to admissibility?

24 MS. SANERIB: I actually think it goes to whether or
25 not it's reliable authority in the first instance, whether it

1 even passes the test for a treatise.

2 THE COURT: What's the prejudice to the Court hearing
3 this? Because this is nonjury, and either disregarding it or
4 regarding it at some point or articulating the reasons why I
5 disregard it or regard it.

6 MS. SANERIB: We think it's hearsay and we don't think
7 it should come in at all. We just didn't think that this
8 exception applies to this type of advocacy pieces. We don't
9 think it should come in. We trust your judgment and you can --

10 THE COURT: The beauty is, is you're going to know
11 whether I relied upon it or not because I'm either going to say
12 that I relied upon it and give you reasons and articulate the
13 weight, and a party can preserve a judge's finding for purposes
14 of appeal, but I can also disregard it. It seems to me I should
15 do it provisionally. I still want your submissions, though. I
16 put you through the task of working, and file your five-page
17 submissions. Were you able to locate any cases from our
18 Circuit? That isn't a question that comes up often. That's why
19 I kind of ignored it yesterday, because it doesn't come up
20 often. I thought about it, and I don't want to guess at this,
21 but taking a look at the rule and giving it some further
22 thought, it seems to me I should apply the same test I've done
23 with other exhibits: just provisionally allow it to come into
24 the record. It's nonjury. I'll just disregard it if it's
25 ultimately determined to be inconsistent with the Rules of

1 Evidence, but at least hear the testimony while the witnesses
2 are here; otherwise, two weeks from now if I say, gee, that
3 testimony was admissible, I should have heard from the
4 witnesses, and to the plaintiffs, if you want to recall her,
5 that's fine. If you want to attempt to lay that foundation
6 through the witnesses on the stand today, that's fine. I need
7 some guidance from you.

8 MS. PARDO: Yes, your Honor. If permitted, after we
9 finish Mr. Johnson we can reconvene for the limited purpose of
10 just going through some of the passages that this witness would
11 have been able to speak to.

12 THE COURT: That's fine.

13 MS. PARDO: And your Honor, we will reserve in our
14 briefing give you the authority, but the Court may already
15 realize by referring to prior exhibits that have been admitted
16 in this case that other standards have come in and that they
17 really apply to the zoo industry so we believe it would be only
18 fair to be able to present the standard that we think is
19 controlling and at least looked to by other managers and
20 compiled by a cross-section of I think over forty people in the
21 elephant management industry.

22 THE COURT: Subject to the plaintiffs' objections and
23 subject to the Court's receipt of additional points of
24 authorities, I'm going to at least hear the testimony and
25 reserve judgment on whether I give it any weight at all when the

1 Court resolves the merits in this case.

2 MS. SANERIB: Your Honor, I would just like to put on
3 the record, your Honor, these are not standards that are binding
4 on any institution. I mean, this is something that Feld
5 Entertainment, its employees, its experts, and their friends got
6 together and wrote. It's not akin to AZA standards which those
7 institutions have to comply with.

8 THE COURT: You're going to make that argument at some
9 point.

10 MS. SANERIB: Certainly.

11 THE COURT: I'll provisionally do it. If it's not
12 appropriate, I'll disregard it when I get to the merits
13 determination.

14 The other point, you mentioned argument. The other
15 point I want to raise, though, is with respect to closing
16 arguments. At some point in this trial there will be closing
17 arguments, and the thought occurred to me over the evening
18 hours, one thought is whether or not I want to hear closing
19 arguments immediately at the conclusion of this trial or alter
20 that, particularly since I'm affording both sides an opportunity
21 to prepare their written submissions, their written proposed
22 findings and conclusions. Maybe what I want to do is to bring
23 counsel back after you've had a chance to take a breather from
24 this trial, after you've had a chance to collect your best
25 thoughts with respect to your proposed findings of fact and your

1 recommended conclusions of law, and then after I've had a chance
2 to consider your best thoughts and give thought to further
3 questions, I may have to bring you back after your submissions
4 have been filed for closing argument. That's one thought that
5 occurred to me. The other thought is to hear the closing
6 argument at the conclusion of the trial. That doesn't give you
7 much of breathing room, immediately hear your closing argument,
8 then have you prepare and file your proposed findings, and then
9 if I have additional questions, bring you back. These are a
10 couple of thoughts. You don't have to respond to them right now
11 unless you want to. But at some point I'd want to hear your
12 best thoughts about that, because there are all sorts of options
13 available now that we don't have available in jury trials
14 because, you know, we don't have to bring jurors back, there's
15 no jury panel, and I want to be fair to counsel and fair to the
16 Court as well.

17 MR. SIMPSON: Your Honor, I think there obviously are
18 advantages to both, but I think maybe the most efficient way is
19 to have a little bit of a breather and then set a time limit on
20 how much time would be devoted to this so the parties can be
21 focused on what they're going to present to the Court and we can
22 have a little time to collect, you know, our focus and our best
23 thoughts so that it's a more organized and more productive way
24 to use your time as opposed to kind of just coming in here 24
25 hours after the fact and having it kind of meander around, so I

1 think that's a good idea.

2 There's also, with respect to these proposed findings,
3 one thought we've had about that would be for the parties to
4 draft their proposed findings and then exchange them in a
5 scrubbed Word document and have the other side just put their
6 objections right on that document like you would answer an
7 interrogatory so we don't have multiple filings flying around.
8 I don't know what your Honor's reaction to that is.

9 THE COURT: No, that's a good idea. Almost like a
10 compare right with objections, a redline. That's not a bad
11 idea.

12 MR. SIMPSON: So that's why you don't have to be
13 constantly looking back and forth and you can have more focused
14 discussion about what's really objectionable for these findings.

15 THE COURT: That's a very good idea.

16 MR. SIMPSON: But I would vote for a slight hiatus so
17 that we can be more focused and helpful to your Honor.

18 THE COURT: That's a good idea. I'll probably
19 surprise you when I tell you how much time I'm going to give
20 each side for closing arguments. It's been a long trial. There
21 are a lot of interesting issues in this case. We're not at the
22 appellate stage. When you get to the appellate court
23 everything's been refined, the argument's already been made, the
24 record's been developed. I'm not trying to minimize the role of
25 the appellate judge, but it's a question of scouring the record

1 and ensuring the Court's decision was correct or not correct,
2 and that's why Courts of Appeal are in a better position to
3 impose very precise time limits and adhere to them. It's a
4 little bit different than a trial court, though, so that's not
5 to say each side will have a day or more than an hour, but we'll
6 talk about that. What's your best thought right now?

7 MS. MEYER: Your Honor, I certainly would like
8 somewhat of a hiatus. That would be great. I would like to do
9 the closing argument close in time to the end of the trial.
10 That's all.

11 THE COURT: Prior to submissions of the proposed
12 findings?

13 MS. MEYER: That's not necessary. Actually, I would
14 like to do it at a time when we could address whatever questions
15 you have, so if it would help you to have the proposed findings
16 and conclusions of law prior to the closing arguments so that
17 you can ask us questions, that would make sense to me.

18 THE COURT: Right.

19 MS. MEYER: But I'll do it whatever way the Court
20 wants to do it.

21 THE COURT: It's just that it's an important part of
22 the trial and I just wanted to share that thought with you. I
23 haven't finally decided. I just wanted to share it and kick it
24 around with you, with both sides. It sounds like everyone's in
25 agreement to some sort of brief hiatus. We'll talk about it

1 more and I'll be interested in more thoughts from counsel either
2 later today or early next week or so.

3 Do you anticipate rebuttal testimony?

4 MS. MEYER: We do, your Honor. Right now nothing
5 lengthy, but some, yes, and it depends on how this plays out
6 over the next week-and-a-half.

7 THE COURT: The battle lines are fairly well drawn,
8 and the thought occurred to me maybe there won't be any
9 rebuttal. I'm not going to preclude you from doing it
10 obviously, but --

11 MS. MEYER: We haven't heard all of their --

12 THE COURT: -- there are two stories here.

13 MS. MEYER: We haven't heard all of their witnesses
14 yet.

15 THE COURT: Fair enough. Let's proceed. We left off
16 yesterday. We had the witness on the stand. I had indicated to
17 plaintiffs' counsel I would allow appropriate voir dire of the
18 expert. Let's bring him in. Oh, he's here.

19 Good morning.

20 THE WITNESS: Good morning.

21 THE COURT: You can have a seat. You're still under
22 oath.

23 THE WITNESS: Thank you.

24 THE COURT: Those oaths always last.

25 Go right ahead with voir dire.

1 **GARY JOHNSON, WITNESS FOR THE DEFENDANT, PREVIOUSLY**

2 **SWORN**

3 VOIR DIRE

4 BY MS. SANERIB:

5 Q. Good morning, Mr. Johnson.

6 A. Good morning.

7 Q. Mr. Johnson, you were retained by defendant in the spring
8 of 2008 to serve as an expert witness; is that correct?

9 A. Yes.

10 Q. And your wife typed the report that was submitted for you
11 in this case; is that right?

12 A. Yes, she did.

13 Q. And your wife signed your name to that report?

14 A. Yes.

15 Q. And in the report you indicate that it would be noted where
16 you and your wife disagree on your opinions, right?

17 A. I don't think so.

18 Q. Can we look at the Johnson's expert report, which is
19 Defendant's Exhibit 24, on page four. If you look right here
20 above the response to the Buckley report, it says: The opinions
21 expressed herein are held jointly by both Carrie and Gary
22 Johnson unless otherwise noted. Do you see that?

23 A. Yes.

24 Q. Did I read that correctly?

25 A. Yes, you did.

1 Q. And there's nothing in this report that indicates you and
2 your wife disagreed on anything; is that correct?

3 A. I don't think so.

4 Q. Okay. So you agreed on everything in this report?

5 A. Yes.

6 Q. And you have the exact same joint opinions as your wife?

7 A. In this report, yes.

8 Q. You're not licensed as a veterinarian, are you?

9 A. No, I'm not.

10 Q. And you don't have any formal medical training of
11 elephants?

12 A. I do not.

13 Q. You've never visited the Elephant Sanctuary in Tennessee,
14 have you?

15 A. I have not.

16 Q. And you haven't reviewed any of their medical records, have
17 you?

18 A. I have not.

19 Q. Now, you testified about a couple of trips to Thailand
20 yesterday; is that right?

21 A. Yes.

22 Q. And you mentioned seeing some three hundred elephants; is
23 that correct?

24 A. Yes.

25 Q. Those are captive elephants, right?

1 A. They were.

2 Q. You haven't studied elephants in the wild, have you?

3 A. I have not, no, ma'am.

4 Q. And you've never worked for Ringling Brothers, have you?

5 A. No, I have not.

6 Q. And there's nothing in the report you and your wife
7 submitted that talks about how Ringling Brothers trains
8 elephants, correct?

9 A. No.

10 Q. Mr. Johnson, when was the last time you showed elephants in
11 the ring for the full tour of a circus?

12 A. Probably four or five years ago.

13 Q. And that was a full season, you were --

14 A. I was probably three, three months or so.

15 Q. When was the last time you did a full-year tour with the
16 circus?

17 A. Probably the '90s.

18 Q. Mr. Johnson, when you inspected the elephants for this
19 case, you didn't see them chained at night, did you?

20 A. No. We were there during the day, so they were all
21 outside.

22 Q. And you didn't see the elephants on the train, did you?

23 A. I did not, no, ma'am.

24 Q. And you only spent a couple of hours inspecting the
25 elephants at the Blue Unit, correct?

1 A. Yeah. Probably hour-and-a-half to two hours. We were on a
2 pretty tight schedule, yes.

3 Q. And you spent about the same amount of time at the Center
4 For Elephant Conservation, right?

5 A. Yes.

6 Q. And you didn't review the medical records or documents for
7 the Oakland Zoo in preparing your expert report, did you?

8 A. No.

9 Q. And you're not a scientist, are you?

10 A. I am not.

11 MS. SANERIB: Your Honor, plaintiffs reiterate their
12 Daubert objections to this expert that are in their Daubert
13 notice. We also reiterate all the objections we made to Mrs.
14 Johnson's testimony yesterday. We object to the unreliability
15 of the witness' opinions, the inappropriate opinions that have
16 been expressed about other experts in this case, the expert's
17 lack of knowledge about Ringling Brothers, and we also object in
18 as much as Mr. Johnson goes beyond the scope of his expert
19 report or his deposition in this case.

20 We also think that this expert is cumulative. We
21 think the testimony is duplicative. He just said that he and
22 his wife jointly prepared their report. They share all the same
23 opinions, and we don't think there's any reason he should be
24 testifying today. His wife testified yesterday and she authored
25 the report.

1 THE COURT: Any additional questions?

2 MS. PARDO: No additional questions. I can respond to
3 Ms. Sanerib.

4 THE COURT: What about the last point, the cumulative
5 issue?

6 MS. PARDO: I can respond to that, your Honor.

7 THE COURT: It's a joint report.

8 MS. PARDO: It is a joint report, your Honor, and as
9 we indicated yesterday and we'll be doing as well, we don't
10 believe there's going to be duplicative testimony. These
11 experts do have different credentials, one being training, which
12 Mr. Johnson laid out for us. We intend to focus on that with a
13 few other topics that have not been already covered. We don't
14 expect there to be duplicative testimony or any cumulative
15 testimony.

16 THE COURT: Over objection, I'll allow the testimony,
17 and consistent with what the Court has done with respect to
18 plaintiffs' experts and other experts' consolidated Daubert
19 analysis, the merits determination, and at the point when I
20 resolve the merits, then I'll determine what weight, if any, to
21 give the testimony of any expert who's testified in the case.

22 MS. PARDO: Thank you, your Honor. May we proceed?

23 THE COURT: Yes.

24 DIRECT EXAMINATION

25 BY MS. PARDO:

1 Q. Good morning, Mr. Johnson.

2 A. Good morning.

3 Q. During the course of your experience with elephants, have
4 you had the opportunity to train an elephant?

5 A. Yes.

6 Q. What sort of system have you trained elephants in?

7 A. The majority of free contact, but we do have a breeding
8 male that is in protected contact.

9 Q. What age of elephant have you trained before?

10 A. Basically all ages. We've had four babies at our facility,
11 and we start an informal training with them almost at birth, and
12 I've had elephants at different ages that we've had to train.

13 Q. What are the first steps in training an elephant who's
14 never had any training before?

15 A. Basically you need to develop a relationship with them,
16 meaning, you know, you have to gain their trust and confidence,
17 and you do that by feeding and grooming. You start with very
18 small steps: handling their trunk, getting them used to their
19 feet being touched, basically getting them used to you, and you
20 don't want them to be afraid of you or your tools, which would
21 be the guide, during the process. You cannot have them afraid
22 of you.

23 Q. Do verbal cues play a role in a free contact training
24 system?

25 A. Yes, they do. An elephant is trained with a physical cue

1 from the guide and also a verbal cue, and the idea of that is,
2 an elephant is very intelligent, so you -- the idea is just to
3 use the verbal cue, and if they get confused or can't hear like
4 during a show or a parade or something, that you can revert back
5 to the guide as a physical cue as a reminder.

6 Q. How long does it take you to train an elephant to do any
7 particular behavior?

8 A. It depends. To a green elephant or a wild elephant, you
9 would spend about a year where you would be comfortable with
10 taking them out into the public or into an event, and then
11 there's still training obviously involved to get them used to
12 all the different surroundings, noises. You try to do all that
13 at home, but there's a certain amount you cannot do. You have
14 to expose them, and so it's almost like training kids or
15 anything. It's an ongoing process. It's like it never
16 finishes.

17 Q. Now, you mentioned that the guide is used during training?

18 A. Yes, always, yes.

19 Q. Is it necessary to make the elephant feel uncomfortable
20 with a guide?

21 A. No.

22 MS. SANERIB: Objection; leading.

23 THE COURT: Sustained. Refrain from leading.

24 BY MS. PARDO:

25 Q. Can you explain how the guide is used in relationship to

1 the elephant during training?

2 A. The way the guide is built, it has a point on one end,
3 which we call it a heel, and then it has a hook end, and the
4 heel is to push them away or move them away from you, and the
5 hook is to bring them to you.

6 Q. What role, if any, does pain play after a training session?

7 A. I don't think that you can cause them pain because they --
8 you don't want to cause them pain. They do not respond well to
9 that.

10 Q. And can you explain what you mean when you say they don't
11 respond well to that?

12 A. Well, when you, if you hook them and hit them and all that,
13 they'd become afraid of you and then they cannot concentrate on
14 what you're trying to teach them; they're worried about being
15 hit or, you know, poked or prodded or whatever.

16 Q. Can you explain if the role of control plays between a
17 handler and an elephant while doing a training session?

18 A. Well, you develop again a relationship with them and you
19 develop a leadership role with I believe any animal you're going
20 to train, an elephant especially, because you do have to lead
21 them, and they look to you as being a leader, and obviously they
22 have to respect you and you have to respect them also.

23 Q. You mentioned when speaking about your credentials that you
24 produced a training or demonstration film?

25 A. We did, for the American Veterinarian Association, on

1 guides and tethers and training.

2 Q. Is there any training that is featured in that film?

3 A. Yes. There's a little bit.

4 MS. SANERIB: Your Honor, we object to the use of this
5 exhibit. Again, it's rank hearsay. There's no foundation for
6 it. The gentleman who is speaking in it who produced it is not
7 on defendant's witness list. They can't authenticate this
8 footage. We don't think it should come in.

9 THE COURT: I want to hear the testimony over
10 objection.

11 BY MS. PARDO:

12 Q. Would it assist in you describing for the Court some of
13 your training techniques?

14 A. Sure.

15 MS. PARDO: If you would pull up DX 171, please.

16 MS. SANERIB: Again, your Honor, I renew plaintiffs'
17 objection to this footage. We had a lot of footage we wanted to
18 show as demonstratives with our footage. We were not permitted
19 to do it. This is exactly the same thing. We don't think it
20 should be shown. If the expert has opinions he can testify how
21 he trains elephants, but we don't --

22 THE COURT: What about that, I didn't allow them to
23 use some of theirs?

24 MS. PARDO: Your Honor, there is a disk particulars
25 that can be made. Mr. Johnson is trying to show you, much like

1 Mr. Raffo did with his testimony, how the guide is applied with
2 an elephant in a picture or in a real setting.

3 THE COURT: He can testify about that. I'm not going
4 to allow the film to be used. He can testify about that.

5 BY MS. PARDO:

6 Q. Okay. Can you explain how you would train a young elephant
7 in an introductory session?

8 A. Basically what you want to do, again, going back to gaining
9 their trust and that, and you use the guide when you walk them,
10 you know, to bring them with you, depending on how big they are,
11 how strong, how wild they are, it depends, you know. You can
12 use ropes to help you if you needed to, but like the last
13 elephant we trained was our baby, JP, who again we started out,
14 you know, we were there when he was born. We helped him start
15 breathing, so he knows us and he knows he's not wild obviously,
16 so you just start with baby steps. You handle his trunk, you
17 touch his feet, and a lot of that is being done by sitting on
18 the floor just kind of playing with him and then you can
19 actually use your finger to touch him behind his foot. When he
20 gives to that, you stop, and then obviously you have the guide
21 with you because you're in with his mother and him, and then as
22 more formal, you start leading him with it. You can touch him
23 in the side holding his trunk to help him, touch him on the side
24 with the guide; when he moves away from that, you stop. You're
25 not trying to cause him any injury or -- you're just trying to

1 get him to understand to give in to the guide, to go away from
2 it, and then also they need to come to it also.

3 Q. Is it appropriate for an elephant trainer to use affection
4 during the training process?

5 A. Yes. Yes, it is.

6 Q. Can you explain why that is?

7 A. You can use, you know, pats, telling them they're good,
8 which that's what we do a lot, food rewards is always used.
9 With our young elephants the last two babies we had born we
10 didn't use too much food because they were so focused on the
11 treat or the food that they couldn't concentrate, so we kind of
12 stopped that and just give them a pat, tell them they were good
13 and let them know that's what you want, because again, it's
14 developing a relationship, a leadership with them. That's what
15 it's all about.

16 Q. How do the elephants react to the guide during training?

17 A. When they're used to it, once they figure out that it is
18 just a guide, that you're just trying to show them, they're fine
19 with it. They're not afraid of it. I mean, you can wave it
20 around them. In fact, after their baths we'll take the guide
21 and brush the water off so they will dry quicker and they're
22 just not -- you cannot have them afraid of it.

23 Q. Now, as an elephant gets older and larger, is it necessary
24 to change how you use the guide with them?

25 A. No, it's not.

1 Q. Why is that the case?

2 A. Because you've done your homework and you've developed this
3 relationship with them, and again, it's just a guide. You're
4 just showing them what you want.

5 Q. In your experience, what are the most --

6 THE COURT: If it's a guide, what's the need for that
7 point on the end of it?

8 THE WITNESS: To bring them to you. The hook part?

9 THE COURT: Yes, the hook part.

10 THE WITNESS: It's to bring them to you. You know,
11 again, it's to guide them, to bring them to you, and the pointed
12 part of the heel is to get them away from you. Because you do
13 need to bring them to you. You know, if they start walking away
14 from you too far, to bring them to you, you know. It's just a
15 matter of how you would lead them, just like you put a leash on
16 a dog. You know, obviously an 8,000 pound elephant you're not
17 going to put a leash on, or a bit in a horse's mouth. It's just
18 a way to communicate to them how to guide them.

19 THE COURT: Is there a more convenient way to lead
20 them other than by the use of that hook?

21 THE WITNESS: I don't believe so, no, sir.

22 BY MS. PARDO:

23 Q. In your experience, what are the most important factors in
24 training an elephant?

25 A. I think relationship and to be consistent day in and day

1 out, day in and day out, and probably that's the hardest thing
2 for all of us to do, is to have that consistency.

3 Q. And in your experience, does free contact rely on violent
4 training methods?

5 A. No.

6 Q. And why is that the case?

7 A. Actually, you know, elephants, they can run away from you.
8 You know, they can be very strong. They're very powerful. I'm
9 a 250-pound guy and I cannot hold an 8,000 pound elephant or a
10 thousand pound elephant with that guide. You just -- it would
11 be physically impossible, nor could you hold a horse, a
12 thousand-pound horse with a halter on him. You just cannot do
13 it, so that's why, if you're going to rely just on fear and make
14 them so afraid of you, how can you take them to a parade to do
15 an educational show, to do an Indian wedding? We do a lot of
16 them. You know, any kind of special event when they're so
17 afraid of you and then you have noises and bands and cars and
18 trucks and all of this going on at the same time, you have to
19 develop this relationship and this trust factor with them. But
20 again, you are --

21 THE COURT: So this trust and not fear them, use of
22 the hook --

23 THE WITNESS: I don't believe you can make them afraid
24 of you, because again, an elephant can run away. A horse, for
25 instance, is a flight animal. When they get afraid of

1 something, their instinct, mother nature bred into them to run
2 away from it. An elephant is neither, but they can be both. A
3 lion, for instance, it's a fight animal. They will fight. An
4 elephant is neither flight or fight, but they can be both.

5 THE COURT: I'm just trying to understand. So in
6 other words, what you're telling me, if I understand you
7 correctly, you establish this trust relationship with the
8 elephant by use of the hook; is that right, it's not because of
9 the elephants fear of the hook?

10 THE WITNESS: No. But the development of the trust is
11 not just with the hook, it's a relationship between you and the
12 animal.

13 THE COURT: So the hook is irrelevant then?

14 THE WITNESS: Well, you need something to guide them,
15 yes.

16 THE COURT: Why don't you just use a harness like you
17 would a horse?

18 THE WITNESS: Well, because, you know, how would you
19 hold a rope around an elephant's neck?

20 THE COURT: Don't they have harnesses on them?

21 THE WITNESS: A bridle?

22 THE COURT: Yes.

23 THE WITNESS: For a horse, a bridle --

24 THE COURT: For the elephant, don't they have head
25 dresses on occasion, especially in the shows, the circus shows?

1 THE WITNESS: They do.

2 THE COURT: Couldn't you put some sort of leash on
3 that and guide the elephant?

4 THE WITNESS: But you need something so they will
5 respond to you, you know. That's why the hook.

6 THE COURT: You need something sharp that they'll
7 respond to, is that what you're saying?

8 THE WITNESS: The guide is pointed and sharp.

9 THE COURT: It's pointed, that's why you have the hook
10 instead of a leash, because it gets the elephant's attention,
11 right?

12 THE WITNESS: Right, but if you pulled on a, say, you
13 put a collar on an elephant and you pulled on it --

14 THE COURT: Right.

15 THE WITNESS: -- they're not going to respond to it,
16 because if you put a, you know, two-inch collar, they're just
17 not going to respond to it.

18 THE COURT: So you need something to get the
19 elephant's attention?

20 THE WITNESS: Right. Their skin is very tough.

21 THE COURT: You need something to penetrate that skin
22 then?

23 THE WITNESS: You don't necessarily penetrate it, no,
24 sir.

25 THE COURT: Then why do you need it then if it doesn't

1 penetrate the skin?

2 THE WITNESS: It's like a fly biting them or a
3 horsefly, for instance, biting them. Does it hurt them?
4 Probably not. Does it irritate them? Maybe. They try to get
5 it off of them. So it's basically the same principle, I
6 believe.

7 THE COURT: It's using a fly.

8 THE WITNESS: Well, but you can't put a fly --

9 THE COURT: You can't train a fly.

10 THE WITNESS: Exactly.

11 THE COURT: If you could train a fly, then you
12 wouldn't need a hook.

13 THE WITNESS: Exactly, sir.

14 BY MS. PARDO:

15 Q. Your Honor asked you about whether a guide is necessary to
16 penetrate the skin. Can you describe the appropriate use of the
17 guide with respect to whether you need to penetrate or not?

18 A. You certainly could penetrate the skin with one, and it
19 does happen, certainly. If you're leading one and you're
20 bringing it to you, you know, if something bothers it you bring
21 it to you and they're going to pull away from you, certainly it
22 would penetrate them.

23 Q. Is that part of normal use of the guide?

24 A. No. That's not what a normal use is. It's just a guide.

25 Q. How often do you find that that happens in using the guide

1 on a regular basis?

2 A. Not that often.

3 Q. If the record in this case would reflect testimony that in
4 order to avoid using the hook in public, you create a sore spot
5 on the elephant's body that you would use to cue later in public
6 so you could use the guide less frequently, would you believe
7 that that was indicative of how elephants are trained or managed
8 in free contact?

9 A. I don't believe that, no, ma'am.

10 Q. Have you ever seen that as a method in free contact of
11 handling or training an elephant?

12 A. I have not.

13 Q. And do you do that yourself?

14 A. No, I don't.

15 Q. Why does that not make sense to you?

16 A. Again --

17 MS. SANERIB: Objection; leading.

18 THE COURT: He can answer the question.

19 BY MS. PARDO:

20 Q. Can you explain that --

21 THE COURT: Do you understand the question?

22 THE WITNESS: Yes, sir.

23 THE COURT: Go ahead.

24 THE WITNESS: It just doesn't make sense, because if
25 you go to -- if you put a spot on them and it's sore and you go

1 to reach for that, they're going to move away from you. It just
2 is common sense to me.

3 BY MS. PARDO:

4 Q. Have you ever heard of the term "tune-up" before in the
5 elephant community?

6 A. No.

7 Q. If the record in this case would reflect that a tune-up is
8 used to reassert dominance over an elephant who's not performing
9 behaviors reliably and that there's force used in that process,
10 would that be something in your experience that is familiar or
11 known to you in the elephant manager's community?

12 A. No. I think the way to prevent that or to cure it is to
13 practice again, you know, spend your time with them.

14 Q. And would the scenario that I just described be effective
15 in getting an elephant to relearn or do a better job at the
16 behaviors it's asked to do?

17 A. No, because if they did something in the show or on a movie
18 set or whatever the venue would be, and you take them home and
19 do that sort of thing, they're not going to know what it's for.
20 I mean, they don't remember, you know, an hour from now, half
21 hour.

22 THE COURT: I thought that elephants have pretty good
23 memories.

24 THE WITNESS: They do. They have very good memories.
25 They're very intelligent animals, but they don't -- they have

1 to -- that has to be corrected at that moment, not, you know,
2 ten minutes later, not twenty minutes later, not back when
3 they're at home or in the barn, whatever the case may be.
4 They're not that intelligent. I mean, if you had a kid, I
5 guess, and said you're going to get a spanking when you get home
6 for doing this, yes, it would probably work, but an elephant or
7 an animal, their mind does not work that way.

8 BY MS. PARDO:

9 Q. Have you ever had an occasion to train an elephant or
10 elephants to do synchronized behaviors?

11 A. Yes.

12 Q. Can you explain what that might look like?

13 A. Basically it's just where you have two or three, four,
14 five -- it doesn't matter -- elephants, and you want them to do
15 something at the same time, and if you again have done your
16 training, when you give the command or the cue, they're all
17 going to follow that.

18 Q. Would you say that's a difficult behavior, something
19 synchronized for elephants to learn?

20 A. No, it's not.

21 Q. Why is that the case?

22 A. Because you've trained them to begin with and given them
23 the cue, given them everything they need so they can follow the
24 direction, so it's really not a big deal to them, nor is it for
25 a horse or a dog or whatever.

1 Q. Have you trained elephants in your experience to do
2 synchronized behaviors for circuses?

3 A. Yes.

4 Q. Have you ever trained an elephant to accept a tether?

5 A. Yes.

6 Q. And how do you go about that process?

7 A. We'll go back to our baby, JP. We would just again, we
8 were -- we handled him with his trunk where you have control
9 over him. It's just like a handle on him, and someone would put
10 a rope on his hind legs.

11 Well, to back up a minute, we would put little dog
12 collars on his feet, for instance, to get him used to something
13 being on his feet, and then we would -- when he's used to that,
14 attach a rope to the end of it with a snap or whatever, tie it
15 off. Not even tie it off, but somebody would hold it and he
16 doesn't fight it because you're helping him, and you might do
17 that for one minute, the next time maybe five minutes, and then
18 pretty soon you can use chain or webbing, whatever, and tie him
19 up. He's there with his mother. You don't do it for long
20 periods of time. He's eating. He's just very comfortable and
21 it's not a big deal to him.

22 Q. Have you ever trained an elephant to do a unique behavior?

23 A. Yes. We actually just did a commercial with our baby, he's
24 two years old, and he was sitting at a table in a kitchen with a
25 glass of milk in front of him and a little boy at the other end

1 and the little boy was drinking out of a cookie straw and JP had
2 to put his trunk in the milk, take it out, put it in, take it
3 out, and then the little boy took a bite of the cookie and JP
4 put his trunk in his mouth and why can't I bite that, and then
5 he gets -- in the commercial he tips the milk over and stomps
6 off. Very cute.

7 Q. Now, would you have to use force to train JP or any
8 elephant to do something like that?

9 A. No. How we would do that, we started with JP. We just had
10 a vase actually that we used. We put a jelly bean in there,
11 rattled it around where he knew it was there, he reaches in,
12 takes it. Hey, that's pretty good. Put another one in, then we
13 added water and then pretty soon added the milk in and then it's
14 not a big deal.

15 Q. In your experience training elephants, how have elephants
16 responded to the training process?

17 A. Very well. I think they actually look forward to the
18 relationship, to the exercise, to the one-on-one with a human.

19 Q. And what makes you say that they like it?

20 A. Well, we have an elephant, Ty, that we've had over thirty
21 years, and she just thrives on it. I mean, when you go into the
22 pen they come right to you. Even if, for instance, last week we
23 had a fellow from Australia from a zoo visit us and we had some
24 elephants up on a different pen and some down here. We looked
25 at these up on the hill, walked halfway to the other pen to look

1 at the rest of the elephants. We stopped there, had some
2 conversation, and all of the elephants came to the fence like,
3 hey, what's going on? You know, let's come on over here, and we
4 did, and they liked the attention, we believe.

5 Q. In deciding what behaviors to train a particular elephant
6 to do, do you perform any sort of assessment of the elephant to
7 see what they might be capable of doing?

8 A. We do, and we try to teach every elephant. They can learn.
9 I think it's good for them mentally and physically. Some are
10 more athletic for different things. Some are not. So obviously
11 you tailor that training to what they're capable of or what
12 they're good at. You want them to win in training. You don't
13 want to make it so difficult that they hate it, that they --
14 that it's fun for them and they enjoy it.

15 Q. Now, you stated you visited Thailand and looked at
16 elephants there; is that right?

17 A. Yes.

18 THE COURT: And you actually transported elephants to
19 Thailand?

20 THE WITNESS: Yes, sir. We took one to do a movie.
21 We were there for four months, yes, sir.

22 THE COURT: On what, a ship or something?

23 THE WITNESS: It was actually a plane. It's a 747, a
24 side-load because of the height, so we have a special-built
25 crate, that it goes into the plane, and it's very nice,

1 actually.

2 THE COURT: Was the elephant chained?

3 THE WITNESS: Yes, she was, in the crate, yes, sir.

4 BY MS. PARDO:

5 Q. And what was the purpose of your visit?

6 A. We took an elephant to Thailand to do a movie called
7 Operation Dumbo Drop.

8 Q. Did you have the opportunity to see captive elephants in
9 Thailand?

10 A. We did. Prior to taking an elephant to Thailand I was
11 hired to go over and try to find an elephant that would be
12 suitable for doing this movie. Obviously they didn't want to
13 take an elephant to the land of elephants, so I went with the
14 director and the producer and we looked at over three hundred
15 different elephants trying to find one that was -- would be
16 suitable for it, and the method of training over there is a
17 little different than what we do, so they saw right away that
18 they were going to have to bring one from the U.S.

19 THE COURT: That's actually amazing, you had to take
20 an elephant to Thailand.

21 THE WITNESS: It is very amazing, yes, sir, but it was
22 kind of neat because again, our experience, to see all of it,
23 her hay was shipped over. She was bathed in bottled water. She
24 drank bottled water because, you know, she's not used to, you
25 know, the water over there, so it was very interesting.

1 BY MS. PARDO:

2 Q. Did you have the opportunity to see elephants tethered in a
3 captive situation in Thailand?

4 A. Yes.

5 Q. What, if anything, did you observe with respect to the
6 tethering?

7 A. Again, looking at all of these different elephants, the one
8 thing that came to mind to me is they always chain them on their
9 right front foot. It's a tradition. A lot of their training
10 beliefs and handling belief is traditional and they believe that
11 you always should chain them on the right front foot when
12 they're out grazing or whatever and they put their chains on
13 very snug on the front foot, which here we do it loose on the
14 front because it's wider and it won't slip off. On the hind we
15 put it, you know, snugger, but they would put the chain on high
16 and on their foot tight, and I saw a lot of elephants with
17 basically deformed front right leg, and I thought, first I
18 thought, well, it's just those elephants, but it just was a
19 common thread with a lot of them and I just found it to be
20 peculiar, you know.

21 THE COURT: Because of the tethering?

22 THE WITNESS: Yes. Because if it's loose, it can just
23 move around, it's not a big deal, but if it's snug on there it
24 can't. So I'm sure it cut off, and again I'm not a
25 veterinarian, but it probably cuts off the blood supply to a

1 degree, or it can.

2 THE COURT: Is that a risk commonly associated with
3 tethering?

4 THE WITNESS: No, sir, it's not, not in this country.
5 I mean, I've never seen it here, but I've seen it in Thailand.

6 BY MS. PARDO:

7 Q. And in your experience of managing and training captive
8 elephants in the U.S., have you ever seen anything like that?

9 A. No, I have not.

10 Q. You mentioned in describing your credentials and in the
11 questions with Ms. Sanerib that you visited the Ringling
12 elephants; is that correct?

13 A. Yes.

14 Q. Do you remember what facilities you have visited?

15 A. We went to the breeding facility in Florida and looked at
16 five elephants there, and then we went to the Blue show and
17 looked at two elephants.

18 Q. Did you have the opportunity to look at the elephants at
19 issue in this case?

20 A. We did, yes.

21 Q. Did any of them have tethering injuries that resembled what
22 you saw in Thailand?

23 A. No, not at all.

24 Q. Did you see any evidence of fresh or old injuries from
25 tethers on the Ringling Brothers' elephants that you looked at?

1 A. No, I don't believe so.

2 Q. Now, when you were working in free contact along side of an
3 elephant, on what occasions did you need to have the guide?

4 A. All the time.

5 Q. Why is that the case?

6 A. Again, it's just a tool that you use. It's just part of
7 their training. It's what they're used to and you need to guide
8 them with it.

9 Q. Now, when you went to the CEC and the Blue Unit and looked
10 at the elephants in this case, did you have any opportunity to
11 observe interactions with their handlers?

12 A. Yes.

13 Q. I'm sorry, go ahead.

14 A. They were in big pens, grassy pens, when we arrived, sand
15 and grass. We arrived, three of the handlers took us out and
16 showed us each elephant, lifted their feet, had them move
17 around, you know. The elephants came right up to us. They're
18 not a problem.

19 Q. Were you able to observe the handler and the elephant
20 interacting?

21 A. Yes.

22 Q. And what observations, if any, were you able to make from
23 seeing that?

24 A. The elephant seemed to be fine with their handlers. They
25 weren't afraid of them. They didn't shy away from the guides.

1 Just seemed normal.

2 Q. Was there anything about the interaction between the
3 handlers and elephants that gave you cause for concern?

4 A. No, not at all.

5 Q. And did you observe any injuries on the bodies of the
6 elephants that you thought were consistent with guide misuse?

7 A. No.

8 Q. Have the training methods that you've been --

9 THE COURT: What types of injuries would be consistent
10 with guide misuse?

11 THE WITNESS: Probably if they had some open wounds,
12 you know.

13 THE COURT: Enjoy your stay.

14 FROM THE GALLERY: Thank you.

15 THE WITNESS: I really never have seen a big misuse of
16 a guide.

17 THE COURT: You've never seen it?

18 THE WITNESS: No, sir.

19 BY MS. PARDO:

20 Q. In your years training elephants, have the methods changed
21 from the time you started until the current time?

22 A. I think it's evolved quite a bit over the probably the last
23 ten to fifteen years. I mean, even in Thailand, we were just
24 there over Thanksgiving for a research symposium, and I was very
25 impressed how to me how far they seem to have come with

1 elephants, and I believe here in this country I think more
2 sharing of information, that it has evolved, the care, you know,
3 the treatment of elephants, you know. I think we try to work
4 with them more, not work against them. You see that in a lot of
5 different programs now. You know, consultants are hired to go
6 into a program like in a zoo or somewhere, to help them to be
7 better managers for the elephants.

8 Q. Is there any behavior that you have trained, that you've
9 changed the way you've done it?

10 A. Yes. Again, with our babies we're trying some new things.
11 Well, I don't know how new they are, but it's new to us, but
12 like JP, for instance, to lay him down, to teach him to lay down
13 on his side, normally you would put ropes on him and, you know,
14 help him with this, but with him we just tried something new.
15 We just got a little mattress and, you know, they're kind of
16 inquisitive, playing about stuff. Once he figured out what it
17 was, he'd want to play on it, and when he'd lay down on it we
18 would reward him. Also then we just tried to formalize it a
19 little bit. We'd take him by the trunk, put the little mattress
20 there, give him the cue on the back with the guide, and when he
21 came down, let him right back up, and if we had time, reward him
22 a little bit if he stayed down, and then eventually it just
23 became longer and longer and he just accepted it. A young
24 elephant like that, they're almost like a little sponge, you
25 know. They're just, you know, absorbing anything they can.

1 Again, to a degree it's like playing with them, but you try to
2 formalize it where they understand. We did it the same way on
3 the other side. Normally you just teach them lay down on the
4 left side, but with ours we do it on both sides.

5 Q. If testimony in this case were to reflect that it's a
6 common practice to train elephants with fear, dominance, and
7 pain, would you have an opinion as to whether that accurately
8 reflects what you've seen done with training in the elephant
9 manager's community?

10 A. No.

11 Q. And can you explain why you believe that not to be the
12 case?

13 A. Again, you're gaining -- you're trying to gain trust and
14 build a relationship, and by causing physical pain I don't
15 believe you're going to create that relationship.

16 Q. In your opinion, can elephants be trained and managed in
17 free contact in a humane manner?

18 A. Yes.

19 Q. And have you seen that outside Have Trunk Will Travel
20 within the elephant manager's community?

21 A. Yes.

22 MS. PARDO: I have no further questions.

23 THE COURT: All right.

24 Cross-examination?

25 MS. SANERIB: Thank you, your Honor.

CROSS-EXAMINATION

1
2 BY MS. SANERIB:

3 Q. Good morning again.

4 A. Good morning.

5 Q. Now, Mr. Johnson, you don't have a degree in animal
6 behavior, do you?

7 A. I do not.

8 Q. And again, you don't know how Ringling Brothers train its
9 elephants, correct?

10 A. No, I don't.

11 Q. And you own a business with your wife, Have Trunk Will
12 Travel, and your income is based on your elephants, right?

13 A. Yes.

14 Q. And you use free contact training with all of your
15 elephants, right?

16 A. All but our breeding male, yes.

17 Q. And in your opinion, elephants that are used in circuses,
18 in films, in public events, they have to be reliably trained to
19 keep themselves, their handlers, and the public safe, isn't that
20 right?

21 A. Yes.

22 Q. And when you say "trained," you mean traditional free
23 contact training, correct?

24 A. Yes.

25 Q. But the use of free contact training didn't stop your

1 elephant, Tess, from escaping and running around in the Denver
2 Zoo, did it?

3 A. It did not, but I think the training helped her not to
4 cause any damages, more damages than she did do.

5 Q. But she knocked over her handler, didn't she?

6 A. I don't believe she did. She went forward and he didn't
7 fall down, but again, I was not there. I don't believe she did.

8 Q. He was injured, wasn't he, the handler?

9 A. He was not.

10 Q. He was not. And your elephant knocked over a baby
11 carriage, didn't she?

12 A. Well, I don't think she knocked it over, but the mother, I
13 believe, backed up and knocked it over, yes.

14 Q. And you told me in your deposition that there wasn't a baby
15 in that baby carriage. Do you remember your testimony?

16 A. I do, but I misspoke. I didn't think there was a baby, but
17 there was, yes.

18 Q. There wasn't, was there? And I'd like to look at actually
19 an Associated Press article from that incident in Denver, if we
20 could look at that.

21 MS. PARDO: We're going to object to the hearsay, your
22 Honor.

23 THE COURT: What's the purpose of the article?

24 MS. SANERIB: The purpose of the article actually
25 reports that the handler was in fact injured by the elephant,

1 and that there was a baby in the baby carriage and the baby was
2 injured.

3 MS. PARDO: I believe he just clarified his testimony
4 about the baby. I don't think there's any point to impeach him
5 on that.

6 MS. SANERIB: But he said that the handler wasn't
7 injured.

8 THE COURT: Does this come in for the truth of the
9 matter asserted? How do I know that's correct, what's stated in
10 the newspaper article?

11 MS. SANERIB: We're using it to refresh his
12 recollection about the events that transpired in the Denver Zoo
13 with his elephant.

14 THE COURT: Do you need to have your recollection
15 refreshed?

16 THE WITNESS: The handler was Jim Williams, and he did
17 not miss a day of work, sir. He had animals to take care of.
18 He did not -- was not injured enough to go to the hospital or
19 not.

20 THE COURT: So you're saying that is your
21 recollection; is that correct?

22 THE WITNESS: Yes, sir.

23 THE COURT: So he doesn't need it refreshed.

24 MS. SANERIB: Okay.

25 BY MS. SANERIB:

1 Q. And Mr. Johnson, do you recall if there were anyone else
2 who were injured as a result of Tess taking off in the Denver
3 Zoo?

4 A. I don't think there was.

5 Q. There wasn't a guy who sprained his ankle?

6 A. I don't know.

7 Q. And do you know if there was a woman who suffered an asthma
8 attack from running away from Tess?

9 A. I don't know.

10 Q. And since the time that Tess escaped and ran around in the
11 Denver Zoo, you haven't taken her out in the public, have you?

12 A. No, but I think that's just responsible management. It
13 wasn't because she wasn't capable or she was so upset. And
14 again, the reason this happened, an elephant had died in the
15 barn, they did a necropsy in the barn where the elephants were
16 being kept, our elephants, and also they were incinerating the
17 body of this elephant, and looking back on it, I mean, that was
18 a very good learning curve for all of us, I think. You do
19 something different. I would not allow that today, to have an
20 elephant incinerated five hundred feet away from where these
21 elephants are kept.

22 Q. So you think your elephants were upset by the death of that
23 elephant?

24 A. I do.

25 Q. And you think they were upset by her incinerating on the

1 grounds?

2 A. I think more of the incinerating, the smell and that, then
3 probably the death, yes.

4 Q. And you think that's what upset the elephants?

5 A. I think it put her on edge, yes, because the minute we took
6 her out of that situation, the minute she stepped on the truck,
7 she was fine.

8 Q. But you still haven't used her with the public, have you?

9 A. We have not, but again, I think that's just responsible
10 management.

11 Q. So even though she's trained in free contact, you still
12 haven't taken her back out in the public?

13 A. No. And we will not.

14 THE COURT: And why won't you?

15 THE WITNESS: Well, one thing is, if it would ever
16 happen again, god forbid, I mean, we would be crucified for
17 being irresponsible, and we feel we are responsible elephant
18 people.

19 BY MS. SANERIB:

20 Q. Mr. Johnson, you're a member of the Asian Elephant Species
21 Survival Program; is that right?

22 A. Yes.

23 Q. And to be a member of that program you have to comply with
24 the AZA's guidelines for elephants, isn't that correct?

25 A. Their recommendations, yes.

1 Q. And you also have to submit information for the Asian
2 elephant's studbook; is that right?

3 A. We do, yes.

4 Q. And is the information you submit accurate?

5 A. Yes.

6 Q. Feld Entertainment isn't a member of the Asian Elephant
7 Species Survival Program, are they?

8 A. I don't know that.

9 Q. But defendant's expert, Mike Keil, heads up that program,
10 doesn't he?

11 A. Yes, he does.

12 Q. And you've known Mike Keil for years, haven't you?

13 A. I'm sorry?

14 Q. You've known Mike Keil for years, haven't you?

15 A. Yes, we have.

16 Q. And one of your elephants is actually at Mike Keil's zoo,
17 right?

18 A. Yes. He's on breeding loan. Our breeding male is on loan
19 to the Portland Zoo, yes.

20 Q. Now, you talked about looking at and inspecting the
21 elephants at Ringling Brothers, correct?

22 A. Yes.

23 Q. And I believe you said in your expert report in your
24 opinion they were healthy, right?

25 A. They were very healthy, yes.

1 Q. You didn't say anything about tuberculosis in your expert
2 report, did you?

3 A. No.

4 Q. And you didn't indicate at all that the facility you
5 inspected the elephants at, the CEC, had been under quarantine
6 for tuberculosis, did you?

7 MS. PARDO: I'm going to object, your Honor. He just
8 said he didn't cover that in his expert report, and, in fact,
9 that's not at issue in this case and we've objected on relevance
10 throughout the trial.

11 THE COURT: Counsel?

12 MS. SANERIB: Your Honor, this expert has represented
13 that the elephants at Ringling Brothers are healthy, and I think
14 that whether or not those elephants have been exposed to
15 tuberculosis goes to the health of those animals.

16 THE COURT: If you can answer it.

17 THE WITNESS: Basically our visual inspection of those
18 elephants, the five that we looked at, for their ages, I thought
19 they were in very good condition. They were in good flesh.
20 Their eyes were nice and bright. They're older animals, sure,
21 they're going to have some limps and gimps, we all do as we get
22 older. I thought they were in excellent health.

23 BY MS. SANERIB:

24 Q. So you didn't look at those animals' medical records then?

25 A. You couldn't tell my looking in their mouth if they had

1 tuberculosis.

2 THE COURT: She said medical records.

3 THE WITNESS: Oh, I'm sorry.

4 No, ma'am, I didn't. I'm sorry.

5 BY MS. SANERIB:

6 Q. You've treated tuberculosis in elephants yourself, right,
7 at Have Trunk Will Travel?

8 A. Yes.

9 Q. Isn't it true that a negative culture for tuberculosis
10 doesn't guarantee that an elephant is free of the disease?

11 A. I don't know that, but I don't believe it is, no.

12 Q. That's what your California, 2008 California permit says,
13 right?

14 A. Right. But by doing trunk washes, that gives you an
15 indication if they do or not.

16 Q. Okay.

17 A. Negative culture is what you're looking for.

18 Q. Right. But it doesn't guarantee, right?

19 A. No.

20 Q. Now, Mr. Johnson, you've known Gary Jacobsen, the manager
21 at the Center For Elephant Conservation, since about 1976 or
22 '77, right?

23 A. Yes.

24 Q. And you called Gary Jacobsen when you had your first baby
25 elephant, didn't you?

1 A. Sure.

2 Q. And you talk to Gary Jacobsen about general gossip in the
3 elephant business, don't you?

4 A. Yes.

5 Q. And you've known Feld's chair of veterinary services,
6 Dennis Schmid, for ten to twelve years, correct?

7 A. Yes.

8 Q. And he's done some work for you at Have Trunk Will Travel,
9 right?

10 A. He has done some ultrasounds. Obviously if we would have a
11 problem with an elephant, a medical problem, you know, I hope he
12 would answer the phone and talk to us about it, and I'm sure he
13 would.

14 Q. Okay. And you met Dennis Schmidt at an elephant manager's
15 conference; is that right?

16 A. I believe so, yes.

17 Q. And you testified earlier this morning about traveling to
18 Thailand, right?

19 A. Yes.

20 Q. And in your opinion, the bullhook is used differently in
21 Thailand than it is here, right?

22 A. It is. It's shaped a little different also.

23 Q. And you said in your deposition that one of the differences
24 with the use of the bullhook in Thailand was in your opinion
25 there's no rhyme or reason to the use of the bullhook, right?

1 A. Right. And again, I did not -- I do not understand the
2 language, and just watching visually, that was what I came up
3 with, but again, not knowing the language and what they're
4 trying to communicate to the elephant, it's just foreign to me.

5 Q. But in your opinion, having no rhyme or reason for your use
6 of the bullhook, it would be an inappropriate use of that tool,
7 correct?

8 A. Yes.

9 Q. And you also said that the handlers in Thailand did a lot
10 of jabbering or a lot of talking to the elephants, right?

11 A. They do, yes.

12 Q. And in your opinion, constantly repeating commands to an
13 elephant is also not appropriate, is it?

14 A. I don't believe it is, no.

15 Q. Now, Mr. Johnson, Ringling Brothers employed Jim Williams,
16 who you mentioned earlier today. He used to work for you,
17 right?

18 A. Yes, he does, did, yes.

19 Q. And his wife, Trudy, is your niece; is that right?

20 A. Yes, she is.

21 Q. And both Jim and Trudy Williams showed you elephants at the
22 Center For Elephant Conservation, didn't they, when you
23 inspected them?

24 A. Yes.

25 Q. And in your opinion, Jim Williams uses similar techniques

1 to the one you use; is that right?

2 A. Yes.

3 Q. And Ringling Brothers' employee, Pat Harned, used to work
4 for you, didn't he?

5 A. He worked for us for probably four or five months, yes.

6 Q. And Pat Harned left Have Trunk Will Travel because the work
7 was too much for him, right?

8 A. It -- I don't know exactly why. He didn't give a reason.
9 That was just my speculation. And until working for us and you
10 become very useful, the pay is not that great probably.

11 Q. I'd like to go to Mr. Johnson's deposition transcript, if
12 we could go to page 48. And look at lines 2 to 9 here.

13 Question: Less than a year. Okay. And do you
14 remember why he left?

15 Answer: --

16 Actually, I think we need to go back up to the top of
17 the last page. If you could go to page 47. All right. So I'm
18 looking at line 13.

19 Question: So you don't know. Okay. So when Pat
20 Harned came to work for you, did you train him then to work for
21 your elephants?

22 Answer: Well, you really can't train them, per se,
23 because it takes so long, but yes, I would have to say yes.

24 Question: Did he handle your elephants?

25 Answer: Yes, he did.

1 Question: About how long did he work for you?

2 Answer: Less than a year.

3 Question: Less than a year, okay. Do you remember
4 why he left?

5 Answer: I think it was just too much for him.

6 Question: What do you mean by that answer?

7 We work pretty hard and we expect a lot out of our
8 people. So I think it was just more than he wanted to --

9 Question: To put in?

10 Answer: Um-hmm.

11 Did I read that correctly?

12 A. You did.

13 THE COURT: Let's do this. I have to return two
14 telephone calls. Let's take our fifteen-minute recess now and
15 then we'll take testimony until one o'clock.

16 MS. SANERIB: Thank you.

17 THE COURT: We'll start back at -- there's still a
18 glare on that clock -- it's looks like 25 to 12 we'll start back
19 at.

20 You can step down, sir. I ask that you not discuss
21 your testimony with anyone.

22 COURTROOM DEPUTY: This Honorable Court now stands in
23 a brief recess.

24 (Recess taken at about 11:14 a.m.)

25 COURTROOM DEPUTY: Please remain seated and come to

1 order.

2 (Back on the record at about 11:35 a.m.)

3 THE COURT: All right. Counsel, you may proceed.

4 MS. SANERIB: Thank you, your Honor.

5 THE COURT: All right.

6 BY MS. SANERIB:

7 Q. Now, we've just been talking about Pat Harned, correct?

8 A. Yes.

9 Q. And another Ringling Brothers' employee, Troy Metzler, he
10 had worked for you at Have Trunk Will Travel as well, right?

11 A. Yes, he did.

12 Q. And he also left Have Trunk Will Travel because the job was
13 too much, didn't he?

14 A. Well, I really don't know why, but that's just because he
15 didn't say why, but that's what I imagine.

16 Q. And does Mr. Metzler use similar techniques in working with
17 elephants to you?

18 A. Yes.

19 Q. Okay. I'd like to show you some video footage that's in
20 evidence in this case. It's from the Blue Unit and it shows Mr.
21 Metzler working with elephants, and I'd just like you to tell me
22 if you think his use of the bullhook is appropriate or not.

23 This is Plaintiffs' Will Call Exhibit 132G.

24 THE COURT: It will pop up there.

25 THE WITNESS: Okay. Thank you.

1 (Video played.)

2 BY MS. SANERIB:

3 Q. Do you see Mr. Metzler there on the left of the elephant?

4 A. Yes.

5 Q. And is that use of the bullhook appropriate in your
6 opinion?

7 A. The elephant didn't react to it much. I don't think it
8 bothered her much.

9 Q. But was that a proper use of that tool?

10 A. Yes.

11 Q. We can play it again if you want to see it again.

12 A. Yes.

13 Q. How about that, was that an appropriate use of the bullhook
14 by Mr. Metzler?

15 A. But I don't know what led up to that, what went on after or
16 before, so it's a little bit unfair for me to say.

17 Q. Would you like to see it again?

18 A. No.

19 Q. No. So you can't say whether or not that was appropriate
20 or inappropriate to strike that elephant on the truck?

21 A. Again, I didn't know why he did it or what led up to it. I
22 mean, maybe she was getting into something. I mean, I don't
23 know.

24 Q. If she was getting into something, then it's appropriate to
25 strike an elephant on the trunk with a bullhook?

1 A. She didn't seem to be bothered by it too much.

2 Q. So her picking her trunk up and moving it away, that to you
3 didn't indicate that she was bothered by being struck with a
4 bullhook?

5 A. Not too much, no, ma'am.

6 Q. I'd like to show you another clip. Again, if Mr.
7 Metzler --

8 THE COURT: When does it cross the line, too much?

9 THE WITNESS: I mean, she didn't run away from him.
10 She obviously wasn't afraid of it. I mean, I would think that
11 it's sort of like if you had a child, which I don't, but if he
12 was going to get into, you know, a hot bowl of oatmeal or
13 something and you slapped his hand.

14 BY MS. SANERIB:

15 Q. All right. I'd like to show you a little more footage of
16 Troy Metzler. Again, this was admitted in the case. This is
17 Plaintiffs' Will Call Exhibit 146B, and again, if we can just
18 talk about whether you think Mr. Metzler's use of the bullhook
19 is appropriate or not. And you can see Mr. Metzler going across
20 the screen there. He's going to come back. Is that an
21 appropriate use of the guide there?

22 A. Yes.

23 Q. Yes. Okay.

24 A. I mean, he just touched her underneath the chin.

25 Q. Okay. Now, you also talked about in your direct

1 testimony about elephants doing synchronized behaviors; is that
2 correct?

3 A. Yes, I did.

4 Q. And you said that you would give a command and the
5 elephants would all perform the same behavior at the same time.
6 Is that your testimony?

7 A. Yes.

8 Q. Now I'd like to show you some video footage that's admitted
9 into evidence in this case of elephants of Ringling Brothers and
10 see if you think that this is an appropriate use of the guide.
11 This is Plaintiffs' Will Call Exhibit 135B, and it's from a
12 photo shoot. Sorry. We're having a little technology moment.

13 MS. PARDO: Your Honor, the only objection we would
14 make is that he was going to illustrate the synchronized
15 behavior in his direct testimony with the film, and we would --

16 THE COURT: The same film?

17 MS. PARDO: Not the same film, but we would argue that
18 it would be useful for the Court to have actually seen that if
19 we're repeating that on cross.

20 THE COURT: The only film, though, was not Ringling
21 Brothers, was it?

22 MS. PARDO: It's not, your Honor, but it was Mr.
23 Johnson who is trained to synchronize behavior.

24 THE COURT: Who prepared that video?

25 MS. PARDO: Mr. Johnson.

1 THE COURT: Oh.

2 MS. SANERIB: Actually, your Honor, I don't think Mr.
3 Johnson did prepare that video. It's copy-righted.

4 THE COURT: I thought there was a question about
5 authentication. We'll talk about that in a second.

6 MS. SANERIB: Just for the record, this is Ringling
7 Brothers' elephants.

8 THE COURT: I understand. What's the Exhibit number?

9 MS. SANERIB: This is Exhibit No. 135A.

10 (Video played.)

11 BY MS. SANERIB:

12 Q. Now, is that appropriate use of the bullhook?

13 A. Yes, it is.

14 THE COURT: I'm sorry, I couldn't hear the question.
15 What was the question?

16 MS. SANERIB: Was that appropriate use of the
17 bullhook?

18 THE COURT: And what was your answer?

19 THE WITNESS: Yes. Yes, sir.

20 BY MS. SANERIB:

21 Q. And these elephants were not just given the command, were
22 they, to perform their synchronized behavior?

23 A. No. Obviously this is a setup shot, and that's probably
24 something they didn't do every day, and they're just a little
25 confused about what they were asking. It wasn't during a normal

1 performance.

2 Q. So then it's your testimony that when elephants are doing
3 something a little different, the handlers then have to use the
4 bullhook to make them do a synchronized behavior?

5 A. Not necessarily. In this case maybe, but again, I didn't
6 see anything inappropriate with him. He didn't try stabbing
7 her. He didn't try -- he was just helping her along.

8 THE COURT: Let me see it again.

9 (Video replayed.)

10 THE COURT: There were two strikes, it appears to be.
11 Both of those were appropriate?

12 THE WITNESS: The first one where he touched her on
13 the trunk, it didn't even look -- it didn't look like to me that
14 the hook part even touched her. It looked like it was just the
15 handle of the hook.

16 THE COURT: Let me see it again.

17 (Video replayed.)

18 THE COURT: That's not the appropriate ... didn't that
19 appear to hook her?

20 THE WITNESS: I can't really tell, but, you know, with
21 the hook being curved and him, you know, doing that with it,
22 it's not like he, you know, because he just went like that,
23 that's what I can see, and my eyes aren't that good, so ...

24 BY MS. SANERIB:

25 Q. Do you know who the handler is in this video?

1 A. I believe it's Gunther Gebel-Williams, but I don't know.

2 Q. So then you would agree that sometimes to get elephants to
3 do a synchronized behavior, you have to use the bullhook,
4 correct?

5 A. To guide them, yes.

6 Q. Now, in the report that you and your wife submitted in this
7 case, you represented that in your experience it's not common
8 practice to use a guide to cause pain or to create wounds; is
9 that correct?

10 A. Yes.

11 Q. And I believe your testimony this morning was that you
12 cannot cause an elephant pain. You said that, didn't you?

13 A. I think you can cause them pain.

14 Q. Okay. Now, if it happens that wounds are created on an
15 elephant, that's an inappropriate use of the bullhook, right?

16 A. But what do you mean by a wound?

17 Q. She gets a cut or a laceration from that bullhook.

18 A. I mean, is it a little scrape or a little puncture? I
19 mean, elephants' skin is pretty thick and pretty durable.

20 Q. In your opinion, any time a bullhook draws blood on an
21 elephant, would that be an appropriate use or an inappropriate
22 use of the bullhook?

23 A. Occasionally it's going to happen, yes.

24 Q. And so that's appropriate then to draw blood on an elephant
25 using a bullhook?

1 A. It depends what the circumstances are. If you have one
2 trying to attack somebody or trying to get away from you or
3 something, you would, yes, and if it drew some blood.

4 Q. That would be okay in your opinion?

5 A. Yes.

6 THE COURT: Suppose blood was drawn in an effort to
7 correct the elephant from not doing what you just described but
8 just merely correction during a training routine, performance,
9 in other words, you referred to drastic scenarios, attacking
10 someone.

11 THE WITNESS: Right.

12 THE COURT: What about in performance when a hook is
13 used to guide an elephant and draws blood?

14 THE WITNESS: And you know sometimes when you would
15 reach for one, you know, again, that's why if you're too heavy-
16 handed and they're going to pull away from you, and if they
17 would bump into it, run into it, and it draws blood, that can
18 happen.

19 THE COURT: So they cause the puncture?

20 THE WITNESS: Yeah. I mean, you're holding the guide,
21 but --

22 THE COURT: But they're running into it?

23 THE WITNESS: But in the circumstances, yes, sir.

24 THE COURT: What about the converse where the person
25 holding the guide positions the hook into the elephant, though?

1 THE WITNESS: I don't think that's probably what the
2 intent was with most people. I mean, I don't know. Again, I
3 don't know, sir.

4 BY MS. SANERIB:

5 Q. But it is possible for a handler to use the guide to draw
6 blood, right?

7 A. Yes. Yes. Any tool you use with a horse, with a dog, can
8 be misused, yes.

9 Q. Okay. And if elephants routinely had bloody wounds on
10 their bodies, a few times a month, would that indicate to you
11 the guide is being used inappropriately?

12 A. Again, depending on the circumstances, you know, what's
13 going on, you know.

14 Q. What would justify routine bloody wounds on elephants
15 several times a month?

16 A. I can't think of any.

17 Q. And you just said that a bullhook can be misused. That's
18 correct, right?

19 A. Yes.

20 Q. And if the guide is misused, it can create punctures and
21 lacerations on the elephant, right?

22 A. Yes, it can.

23 Q. Now, at your facility you oversee your employees who work
24 with the elephants, right?

25 A. Yes.

1 Q. And if the bullhook were misused on your elephants, you'd
2 know about it, wouldn't you?

3 A. Pretty much, yes.

4 Q. And you would do something about it, wouldn't you?

5 A. Yes.

6 THE COURT: What would you do?

7 THE WITNESS: Again, what was the reason, you know,
8 what was going on, was it necessary? You know, you need a
9 certain amount of information to make a decision. I mean, we
10 have fired people.

11 THE COURT: For the inappropriate use of the bullhook?

12 THE WITNESS: For just being a little bit too heavy-
13 handed, yes.

14 THE COURT: What were they doing that resulted in them
15 being fired?

16 THE WITNESS: Just con -- not -- basically not
17 following what we want them to do, you know. Being too -- use
18 of it too much when in an unnecessary situation.

19 THE COURT: Did you have a manual or training guide or
20 something for the use of the hook?

21 THE WITNESS: I think we do, but again, I don't know
22 that for sure, sir.

23 BY MS. SANERIB:

24 Q. Do you recall who the employee was that you fired?

25 A. A fellow by the name of George Donahoe.

1 THE COURT: Where is he working now?

2 THE WITNESS: I don't know. This was many years ago.
3 I'm not sure. I don't think --

4 THE COURT: What did he do?

5 THE WITNESS: He just didn't -- I don't think he fully
6 understood what we would expect, you know, how intelligent an
7 elephant is, you know, how to communicate with one. Again, I
8 don't think he was that interested in pursuing this as a career,
9 so it was best off that he go do something else.

10 BY MS. SANERIB:

11 Q. And is that the only employee that you've ever fired?

12 A. I believe so, yes.

13 Q. Now, you testified in your direct with Ms. Pardo that the
14 elephant moves away from the guide, right?

15 A. You want it to move -- them to move to you with the guide
16 and then also away from you with the guide, yes.

17 Q. And the elephant moves away from what you call the heel of
18 the bullhook because it's sharp, right?

19 A. Yes.

20 Q. And you bring the elephant to you with the metal curved
21 part by hooking their skin, right, and taking them towards you?

22 A. Right.

23 Q. Now, dominance of an animal and fear in an animal are not
24 the same thing, are they?

25 A. I don't believe it is, no.

1 Q. And you've heard of practicing elephants, right?

2 A. Yes.

3 Q. Have you heard of re-routining an elephant for a new show?

4 A. Yes.

5 Q. And ropes are used in training elephants, aren't they?

6 A. Yes, they can be, yes.

7 Q. And chains are used as well, aren't they?

8 A. Normally if you're training one we would prefer to use
9 ropes.

10 Q. But chains are also used by some elephant trainers, aren't
11 they?

12 A. They are, yes.

13 Q. And when an elephant is tied up, it can't flee, can it?

14 A. Right.

15 Q. You learned about elephant training from your wife's
16 stepfather, didn't you?

17 A. I learned a lot from him, but not everything I know.

18 Q. And his name is Smokey Jones, right?

19 A. Yes.

20 Q. And Mr. Jones trained elephants for Ringling Brothers,
21 didn't he?

22 A. Back in the '50s, yes, he did.

23 Q. And Mr. Jones' reputation was for being the roughest,
24 toughest, most ornery elephant man in the business, right, at
25 that time?

1 A. I don't believe, no.

2 Q. You've never heard that before?

3 A. No.

4 Q. Well, in your expert report you and your wife relied on
5 Jack -- Dr. Jack Adams' book, Wild Elephants in Captivity,
6 didn't you?

7 A. Part of it, yes.

8 Q. And doesn't Mr. Adams say in that book that that was Mr.
9 Jones' reputation?

10 A. I don't know. I've never read it. And again, it's a book
11 that he was selling a story.

12 Q. So you relied on that book in your expert report but you've
13 never read it?

14 A. I have not read it, no.

15 Q. And I believe you testified on direct that you went to look
16 at some of Ringling Brothers' elephants for this case, didn't
17 you?

18 A. Yes.

19 Q. And there wasn't a representative from plaintiffs there,
20 was there, during those inspections, from plaintiffs, the
21 plaintiffs in this case?

22 A. From you?

23 Q. From us, yes.

24 A. There was not, no.

25 THE COURT: Let me ask you this, and I want to be

1 sensitive about it. You've never read that book. Did anyone
2 ever read any passages to you or read the book to you?

3 THE WITNESS: A little bit, yes, sir, my wife. When
4 it first came out and looked through it, but again, it's a book,
5 you know.

6 BY MS. SANERIB:

7 Q. And none of plaintiffs' lawyers were present at your
8 inspections, were they?

9 A. They were not.

10 Q. And none of plaintiffs' experts were there, were they,
11 there was experts for Feld Entertainment?

12 THE COURT: Do you know who the plaintiffs are in this
13 case? You may not. Do you know who the plaintiffs are?

14 THE WITNESS: It's Mr. Feld, isn't it?

15 THE COURT: No.

16 MS. SANERIB: Mr. Feld is the defendant in the case.

17 THE WITNESS: Sorry. Sorry.

18 BY MS. SANERIB:

19 Q. That's okay. That's okay.

20 A. But there was no lawyers from either side there.

21 Q. So it was just you and employees of Ringling Brothers,
22 right?

23 A. Yes.

24 Q. And in your opinion, none of the elephants that you
25 inspected had nailbed abscesses on their feet, did they?

1 A. I think one did on the Blue show, but it was being treated.

2 Q. And in your opinion, is a nailbed abscess a serious foot
3 problem?

4 A. No.

5 Q. No. It's your opinion that none of the elephants had
6 bedsores, right?

7 A. Nothing that jumped out, nothing that was, you know, that
8 needed medication that I recall.

9 Q. And your report doesn't address arthritis in elephants,
10 does it?

11 A. I don't believe so.

12 Q. Isn't arthritis a health issue for elephants?

13 A. It can be, yes.

14 MS. SANERIB: I have no further questions at this
15 time.

16 THE COURT: All right.

17 Redirect?

18 REDIRECT EXAMINATION

19 BY MS. PARDO:

20 Q. Mr. Johnson, since you worked with the elephants at the
21 beginning of your career, what has your safety record been with
22 respect to your elephants?

23 A. We've had one incident, and that was the Denver issue.

24 Q. Have you had any other safety issues within your career
25 working with elephants?

1 A. We have not.

2 Q. Ms. Sanerib had asked you about some things contained in
3 your expert report. Did your report respond in part to Ms.
4 Buckley's report?

5 A. It did.

6 Q. Did you actually mention aspects from Ms. Buckley's report
7 in your expert report?

8 A. Yes.

9 Q. And were you aware that Ms. Buckley cited the Wild
10 Elephants in Captivity book in her report first?

11 THE COURT: If you know. If you know.

12 THE WITNESS: I'm not sure.

13 BY MS. PARDO:

14 Q. Was your report responding to anything Ms. Buckley had said
15 about that book?

16 A. I don't know.

17 Q. Okay.

18 MS. PARDO: I have no other questions.

19 THE COURT: All right. Any other questions?

20 MS. SANERIB: No, your Honor.

21 THE COURT: All right. Thank you.

22 THE WITNESS: Thank you, sir.

23 THE COURT: I know your wife testified yesterday. I
24 have to ask you not to discuss your testimony with her.

25 THE WITNESS: Yes, sir.

1 THE COURT: Have a nice day.

2 THE WITNESS: Thank you.

3 THE COURT: You may be excused.

4 Any reason to not excuse the witness?

5 All right. You may be excused.

6 THE WITNESS: Thank you.

7 THE COURT: Have a safe trip home.

8 (Witness excused at about 11:56 a.m.)

9 MS. PARDO: Your Honor, at this point --

10 THE COURT: Who's your next witness?

11 MS. PARDO: We recall Ms. Johnson for those few

12 minutes.

13 THE COURT: That's fine. Over objection, I'll allow

14 it.

15 Who's your next witness after Ms. Johnson?

16 MR. SIMPSON: Carrie Coleman.

17 MS. SANERIB: I thought yesterday you said it was Gary

18 Jacobsen.

19 MR. SIMPSON: It's Carrie Coleman.

20 MS. SANERIB: So you're changing the order then from

21 what you told us last night?

22 THE COURT: Counsel, focus on me.

23 MR. SIMPSON: I think I said yesterday, and I was

24 corrected by Ms. Joiner when I said Jacobsen would come after

25 this witness. It was Carrie Coleman.

1 THE COURT: I just don't recall. I know Ms. Joiner
2 did correct him. I saw that.

3 MS. SANERIB: That's not at all what we heard, your
4 Honor.

5 THE COURT: All right. Are you prejudiced in some
6 way?

7 MS. SANERIB: Well, we just assumed that Mr. Jacobsen
8 was coming next, and they represented on their pretrial
9 statement that he's testifying for about six hours, I think.

10 THE COURT: Who, Mr. Jacobsen?

11 MS. SANERIB: Yes, so we didn't actually think they
12 were getting to Ms. Coleman today.

13 THE COURT: Let's finish with Ms. Johnson.

14 MS. SANERIB: All right.

15 THE COURT: How are you?

16 THE WITNESS: Good, thank you.

17 THE COURT: You're still under oath.

18 THE WITNESS: Yes.

19 THE COURT: An oath is forever.

20 THE WITNESS: Okay.

21 **MS. JOHNSON, WITNESS FOR THE DEFENDANT, PREVIOUSLY SWORN**

22 REDIRECT EXAMINATION

23 BY MS. PARDO:

24 Q. Good morning, Ms. Johnson.

25 A. Good morning.

1 Q. Yesterday you were asked questions about the Elephant
2 Husbandry Resource Guide. Do you remember those questions at
3 all?

4 A. Yes.

5 Q. And can you just remind us what is the Elephant Husbandry
6 Resource Guide?

7 A. It's a guide that was written for elephant people for the
8 whole industry by people that are in the industry, and it covers
9 all parts of the care of elephants.

10 Q. And what organizations participated in preparation of that
11 guide?

12 A. The International Elephant Foundation, American Zoo and
13 Aquarium Association, and the Elephant Managers Association.

14 Q. If you would turn to the preface page, which is PDF page
15 six of DX 2. I'd like you to take a look at the preface page
16 for a moment. Okay. And if you can call out the third
17 paragraph starting with the word "approximately." And if you
18 can read that paragraph for us, Ms. Johnson.

19 A. Approximately five hundred Asian and African elephants live
20 in North America. Half of this population reside in AZA
21 institutions and the other half of our North American elephants
22 are owned by circuses, non-AZA zoos, private individuals,
23 sanctuaries, and corporations. The Elephant Husbandry Resource
24 Guide is an attempt to address the husbandry issues faced by all
25 elephant managers, handlers, and owners recommended by these

1 different types of facilities.

2 Q. Thank you. Is the elephant community limited to AZA
3 members in this country?

4 A. No, it's not.

5 Q. And do you agree with the statement that about half of
6 elephants managed in this country are non-AZA managed elephants?

7 A. That sounds right.

8 Q. Can you just look below on that page, and we'll go larger
9 on that page so you can see it. There's a section entitled
10 Contributing Authors and Reviewers. Have you had a chance to
11 look over that, the authors that contributed to this publication
12 before?

13 A. Yes.

14 Q. Are you one of the contributors to this?

15 A. Yes.

16 Q. Do you know whether Colleen Kinzley was a contributor to
17 this?

18 A. Yes.

19 Q. And she's an expert in plaintiffs' case?

20 A. Yes.

21 Q. Do you know who Dr. Susan Mikota is?

22 A. Yes.

23 Q. Do you know where she works?

24 A. She's at the Elephant Sanctuary.

25 Q. Who's the Elephant Sanctuary owned by?

1 A. Carol Buckley.

2 Q. I'd like, if you would, to turn your attention, the same
3 exhibit, on page 44.

4 Go one page prior if you would. Thank you.

5 Okay. Yesterday, Ms. Johnson, you testified about
6 tethers. Do you remember that testimony?

7 A. Yes, I do.

8 Q. And I would like for you under the section entitled Leg
9 Restraints to read that first paragraph, if you would.

10 A. Leg restraints or tethers are an acceptable and necessary
11 tool in the management of captive elephants. Tethers provide a
12 means to limit an elephant's movements and permit the safe
13 handling of the elephant. Limiting the elephant's movements can
14 facilitate footwork, feeding, veterinary procedures, elephant
15 transport, elephant introductions, practice, scientific
16 investigations, training, training new handlers, training new
17 behaviors, preventing fighting, protecting facilities, as well
18 as fulfilling many other management and husbandry needs.

19 Q. And do you agree with the statements that are made in the
20 paragraph that you just read?

21 A. Yes.

22 Q. Have you used leg restraints or tethers for any of the
23 purposes that are outlined in this paragraph?

24 A. Yes, we have.

25 Q. And that first line that you read, that leg restraints or

1 tethers are an acceptable and necessary tool in the management
2 of captive elephants, do you think that's an accurate statement?

3 A. It is.

4 Q. If you would turn to the next page, and in the top
5 paragraph starting with the word "for instance," if you would
6 read to the end of the paragraph, and this is continuing under
7 the Leg Restraints heading on to the next page.

8 A. For instance, limiting the elephant's movement at night is
9 a viable alternative to keeping elephants in a single stall
10 accommodations. Under normal circumstances, elephants should
11 not be tethered continually for more than sixteen hours without
12 exercise. Elephants under medical care or other special
13 circumstances, such as a mother demonstrating aggressiveness
14 toward her new baby, may require longer tethering periods.

15 Q. And the statement that you just read from the husbandry
16 guide, do you believe that to be an accurate statement?

17 A. Yes.

18 Q. And have you tethered elephants in accordance with what
19 you've just read?

20 A. Yes.

21 Q. And have you ever had any such special circumstances or
22 medical care situations where you required tethering as it's
23 described in this paragraph?

24 A. Yes.

25 Q. If you would just go to the next page of this document, and

1 in the left-hand corner there's a box there that starts with the
2 words "AZA" in large letters. Can you tell me what this gray
3 box is?

4 A. Those are the American Zoo and Aquarium guidelines.

5 Q. And do they appear in other places in this book as well?

6 A. Yes.

7 Q. And do you know why the AZA standards are also featured in
8 this book?

9 A. These were standards that are in existence, that are
10 already in existence and the ones that the zoos use.

11 Q. Okay. And what difference, if any, do the AZA standards
12 have on the other guidelines or standards that are in this book?

13 A. It's just that the -- the elephant in the husbandry
14 resource -- or the guidelines in the husbandry resource manual
15 would include everybody, different facilities, because zoos
16 are -- zoos are different. You know, they are contained, and
17 the other people that have elephants travel with them and do
18 different things.

19 Q. Thank you.

20 THE COURT: All right. Any examination?

21 MS. SANERIB: Yes, your Honor.

22 CROSS-EXAMINATION

23 BY MS. SANERIB:

24 Q. Good morning, Mrs. Johnson.

25 A. Good morning.

1 Q. Mrs. Johnson, can you describe for the Court what the
2 methodology was that was used in creating the Elephant Husbandry
3 Resource Guide?

4 A. It was people that knew about each subject that would write
5 it and then everybody else would, you know, give their input.

6 Q. And what scientific principles are involved in this
7 document?

8 A. It was just what everybody knew. I'm not sure what
9 scientific principles are involved.

10 Q. Are there a number of authors of the document that are not
11 in fact scientists?

12 A. Yes.

13 Q. And the standards in the Elephant Husbandry Resource Guide,
14 they're not binding on anyone, are they?

15 A. No, they're not.

16 Q. And I believe you testified that the AZA has its own
17 standards, correct?

18 A. Yes, they do.

19 Q. And did you also testify that you chain your elephants at
20 Have Trunk Will Travel for sixteen hours or longer?

21 A. No. It said under normal circumstances or under different
22 circumstances.

23 Q. And what do you mean, under different circumstances?

24 A. If there were a circumstance that they needed it. If an
25 elephant were in a barn because she was sick and the weather

1 was, you know -- she couldn't go outside for some reason, that
2 would be one reason.

3 THE COURT: I don't think she understood your
4 question. I don't think she's responding. Why don't you ask
5 your question again?

6 MS. SANERIB: Okay.

7 BY MS. SANERIB:

8 Q. When you were talking with Ms. Pardo, you mentioned that
9 you complied with the standards in the Elephant Husbandry
10 Resource Guide for chaining, correct?

11 A. Yes.

12 Q. But those standards allow elephants to be chained for
13 sixteen hours, right?

14 A. Yes. It says up to.

15 Q. Sixteen hours?

16 A. In a day, yes.

17 Q. And your facility is governed by the AZA standards, right?

18 A. Yes.

19 Q. And the AZA standards say that elephants should be chained
20 as little as possible, but for no more than the majority of a
21 24-hour period, correct?

22 A. Yes, um-hmm.

23 Q. So do you comply with the AZA standards?

24 A. If you needed to chain an elephant longer for a reason, you
25 wouldn't be outside of the AZA standards, and I would do

1 whatever it took to make sure that the elephant was okay and got
2 the best care whatever standards I used.

3 Q. But on a routine basis, aside from an emergency situation,
4 how long do you chain your elephants at night?

5 A. From, I guess they could go in at 5:00 in the winter and
6 come out at 6:30.

7 Q. And you also talked with Ms. Pardo about --

8 THE COURT: When you say 5:00 to 6:00, you're not
9 talking about an hour-and-a-half, you're talking about twelve?

10 THE WITNESS: No, sir. Five at night when it gets
11 dark in the winter.

12 THE COURT: So 13-and-a-half hours? I don't want
13 to -- 12-and-a-half hours?

14 THE WITNESS: I'm not good at math. That's why I
15 didn't say.

16 BY MS. SANERIB:

17 Q. You talked about with Ms. Pardo that the AZA has its own
18 boxes in the Elephant Husbandry Resource Guide, right, those
19 gray boxes?

20 A. Yes, um-hmm.

21 Q. And that's in every instance where the AZA standards are
22 different from what's set in the Elephant Husbandry Resource
23 Guide, correct?

24 A. I'm not sure if it's every time that it's different, but
25 it's, you know, whatever pertained to that section.

1 Q. But you don't know for sure what those boxes are there for
2 then?

3 A. They're the AZA standards, and we wanted to include the AZA
4 standards in the manual, yes.

5 Q. Okay. And so if they're --

6 THE COURT: Before the husbandry guide was published,
7 which was, what, a few years ago?

8 THE WITNESS: Yes, sir.

9 THE COURT: What year, '04; is that right?

10 THE WITNESS: That's sounds right.

11 THE COURT: All right. Then the state-of-the-art
12 standard was what?

13 THE WITNESS: There wasn't one. That's why --

14 THE COURT: There wasn't one?

15 THE WITNESS: That's why we felt the need to write it.

16 THE COURT: I see. So there was no guide there?

17 THE WITNESS: There was --

18 THE COURT: Poor choice of words there. There was no
19 official publication that elephant handlers, trainers, owner,
20 looked to for guidance then?

21 THE WITNESS: The Elephant Managers Association had
22 guidelines, but it was just bare bones. We wanted something
23 that would help explain things better to, you know, so that
24 people would have a better idea of what to do, and also so that
25 people could sort of do it the same way that so everyone wasn't

1 so different and that people just coming in could have something
2 to read and know what other people did. Try to standardize it a
3 little bit.

4 THE COURT: All right.

5 BY MS. SANERIB:

6 Q. Before the Elephant Husbandry Research Guide was developed,
7 the AZA had in place standards for elephant care, correct?

8 A. Yes, they did.

9 MS. SANERIB: I don't have any further questions.

10 THE COURT: Those standards had been in place for how
11 many years?

12 THE WITNESS: A lots of years. I don't know how many,
13 but for a long time.

14 THE COURT: For as long as you've been handling
15 elephants?

16 THE WITNESS: As long as I was aware of them. You
17 know, I started when I was a kid.

18 THE COURT: I know, that's why I asked that question
19 that way.

20 THE WITNESS: And so many things have happened in my
21 lifetime and I don't know when everything came in. We just try
22 to keep up-to-date.

23 THE COURT: All right.

24 Any other questions of your witness?

25 MS. PARDO: Very briefly, your Honor.

REDIRECT EXAMINATION

1
2 BY MS. PARDO:

3 Q. So if you were a non-AZA institution that managed
4 elephants, what book or publication would you have used before
5 this Elephant Husbandry Management Guide?

6 A. The only thing I'm aware of that you could have read to get
7 any information would be the -- whatever guidelines that
8 Elephant Managers Association had.

9 Q. Okay. If you could turn briefly back to the husbandry
10 guide, the page on the document itself is page 263. It's the
11 References portion.

12 If you could call that on the screen.

13 Ms. Johnson, do you recognize this section of the
14 husbandry guide? And we can page through it if you like.

15 A. Yes.

16 Q. What section is this?

17 A. The references.

18 Q. And what is this compiling on these pages? And you can go
19 through it.

20 A. Just the references where the cites for some of the
21 references that are in the book or for all the references, I
22 guess.

23 Q. And what type of cites do they include?

24 A. Some of them are from scientists and researchers and, you
25 know, the authors of the books that pertain to whatever we were

1 talking about.

2 Q. And are these references in this section of the guide cited
3 to throughout the manual?

4 A. Yes.

5 MS. PARDO: I have no further questions. Thank you.

6 THE COURT: Did you have any other questions?

7 MS. SANERIB: Just one more, your Honor.

8 THE COURT: All right.

9 CROSS-EXAMINATION

10 BY MS. SANERIB:

11 Q. Mrs. Johnson, is there anything that prevents an elephant
12 owner from complying with the AZA standards if they wanted to
13 even if they weren't a zoo?

14 A. No. You can do whatever you want, I'm sure.

15 Q. Okay. Thanks.

16 THE COURT: All right. Thank you. You may step down.
17 I still have to ask you not to discuss your testimony with
18 anyone.

19 THE WITNESS: Yes, sir.

20 THE COURT: But I'm going to excuse you. I've excused
21 your husband. Have a safe trip home.

22 THE WITNESS: Thank you.

23 THE COURT: Or stay a few days and enjoy the wonderful
24 weather we're going to have here, maybe.

25 (Witness excused at about 12:10 p.m.)

1 THE COURT: Call your next witness, counsel.

2 MS. SANERIB: So I guess getting back to who the next
3 witness is, we checked the transcript, and what Mr. Simpson said
4 yesterday is --

5 THE COURT: Why don't you come to the microphone? It
6 helps the court reporter tremendously.

7 MS. SANERIB: We checked the transcript from last
8 night, and what we have Mr. Simpson saying is: I forgot. After
9 Mr. Jacobsen is Carrie Coleman. So our understanding was they
10 were calling Mr. Jacobsen, then they were calling Ms. Coleman.

11 MR. SIMPSON: And I was corrected by Ms. Joiner. That
12 was the point.

13 THE COURT: I do recall that. She didn't use a hook,
14 but she pulled him to the side and said something to him.

15 MR. SIMPSON: She didn't use the hook. I made --

16 THE COURT: Are you prejudiced?

17 MS. SANERIB: This was the correction, as we
18 understood it.

19 THE COURT: This was after the correction.

20 MS. SANERIB: He did not say Mrs. Coleman's name
21 yesterday. He was corrected by Ms. Joiner, and then he said
22 after Mr. Jacobsen we're calling Carrie Coleman.

23 THE COURT: All right. I haven't looked at the -- I
24 accept your representation or someone's representation that Mr.
25 Jacobsen's direct is anticipated to be six hours; is that right?

1 MR. SIMPSON: I don't think that's true, and it may
2 have been what we predicted months ago. That's not going to be
3 the case.

4 THE COURT: How long is the direct going to be?

5 MR. SIMPSON: Ms. Coleman is a short witness. She's
6 from out of town, from Florida. She's got job commitments. She
7 really does need to get on today.

8 THE COURT: How long will your direct take?

9 MR. SIMPSON: Thirty minutes.

10 THE COURT: Then Jacobsen this afternoon?

11 MR. SIMPSON: Jacobsen is longer. He's not six hours,
12 though.

13 THE COURT: What's your prejudice?

14 MS. SANERIB: The prejudice, your Honor, is, if they
15 intended to call Carrie Coleman after Mr. Johnson, we would have
16 liked to know about it. That's the prejudice. They told us
17 they were doing Gary Jacobsen and then Carrie Coleman.

18 MR. SIMPSON: Your Honor, there's no prejudice, and
19 they did this multiple times to us on their case. We had
20 Cuveillo. He was on the cusp of going three times. Things
21 change in a trial. I did the best I could. I made a mistake,
22 but Ms. Coleman is a very short witness and I think it's
23 appropriate to proceed with her.

24 MS. MEYER: Your Honor, could I just say just for the
25 record, the purpose of the new 24-hour rule was precisely

1 because the defendant complained when we were taking witnesses
2 out of order after we gave 72 hours' notice, and you said that's
3 not good, that's not fair, because people are preparing for the
4 next day.

5 THE COURT: Right.

6 MS. MEYER: You imposed this rule and you said the
7 night before when you leave the courtroom you need to tell the
8 other side who you're calling the next day, and that's exactly
9 what we did last night, and they gave us the order, and the
10 order was after Mr. Johnson, Mr. Jacobsen. He's listed as a
11 long witness, and then Carrie Coleman.

12 THE COURT: All right.

13 MS. MEYER: That's what they told us.

14 THE COURT: We're going to get to them. How are you
15 really prejudiced, though? I mean, so he's the next witness
16 after Coleman, so how are you really prejudiced?

17 MS. MEYER: The prejudice is that Ms. Sanerib, who's
18 handling the cross-examination of Ms. Coleman, did not expect
19 Ms. Coleman to take the stand today.

20 MR. SIMPSON: No. That would have happened, Judge,
21 regardless. She should have been ready for both of these
22 people. These just not accurate.

23 MS. MEYER: They have Mr. Jacobsen listed for six
24 hours of direct examination.

25 THE COURT: This was what, six months ago? This was

1 filed back in January?

2 MR. SIMPSON: January.

3 MS. MEYER: January, your Honor.

4 THE COURT: That was the supplemental pretrial
5 statement.

6 MS. MEYER: Again, your Honor, that was the whole
7 purpose for the 24-hour rule you imposed, and we abided by it
8 and we expect them to abide by it.

9 MR. SIMPSON: Your Honor, there's no prejudice
10 whatsoever. They knew yesterday both of these witnesses would
11 be called today, so I think we should proceed. And like I said,
12 Ms. Coleman is the shorter of the two. I think the need for her
13 to have to stay over a night --

14 THE COURT: We just spent ten minutes talking about
15 this, and I said on more than one occasion, I said it back in
16 the summer and the fall, when this trial started, I said I would
17 accommodate anyone and allow witnesses to be called out of turn.
18 I meant that then, I mean it now.

19 And I'm sorry for any hardship. What I can do if you
20 want me to, we can, you know, we can break for lunch early, take
21 an early lunch, and that will give you an additional hour or so
22 to prepare for cross-examination of Coleman, but I did say that
23 and I meant that. I even went so far as to say even in
24 situations where a defendant may want to call a witness because
25 of logistics or travel in the plaintiffs' case in chief, I said

1 that's fine, it's nonjury, you know, we can be as innovative as
2 the imagination will allow, it's nonjury, and I can
3 departmentalize that and hear the testimony and not focus on
4 that at the motions stage, so I said that, so I'm sorry if there
5 was a misunderstanding, but, you know, it's not the first time I
6 said I would accommodate someone. Counsel's proffered and I
7 have no reason to disbelieve counsel that, you know, she's from
8 out of town, there's some travel issues.

9 So we've spent another five minutes now, so let's call
10 her. If you would prefer that we break before cross-examination
11 to give you an additional hour to prepare for cross, that's
12 fine, we'll do it that way.

13 MS. SANERIB: I would appreciate that. Thank you,
14 your Honor.

15 THE COURT: All right. We'll do that. Okay. So
16 that's sixteen minutes we spent on that. All right. Let's go.

17 MS. JOINER: If I understood correctly, you wanted to
18 proceed now rather than break now; is that correct?

19 THE COURT: Well, what I said -- well, let me ask
20 plaintiffs. What I said was we'd proceed with the direct
21 examination and then break early for lunch before cross, and I
22 thought you said that's fine, you'd prefer that.

23 MS. SANERIB: Yes, we'll accept that.

24 THE COURT: Actually, that will work out well anyway.
25 We'll break for like about one or more. How long do you

1 anticipate her direct to be?

2 MS. JOINER: I think maybe half hour.

3 THE COURT: Let's get her and finish her before lunch.

4 MS. JOINER: And we're getting her from the witness
5 room right now.

6 COURTROOM DEPUTY: Please raise your right hand.

7 Do you solemnly swear that the testimony you are about
8 to give will be the truth, the whole truth and nothing but the
9 truth?

10 MS. COLEMAN: I do.

11 COURTROOM DEPUTY: Have a seat.

12 THE COURT: Good afternoon. How are you?

13 MS. COLEMAN: Fine.

14 **CARRIE COLEMAN, WITNESS FOR THE DEFENDANT, SWORN**

15 DIRECT EXAMINATION

16 BY MS. JOINER:

17 Q. Would you please state and spell your name for us?

18 A. Carrie Coleman.

19 Q. Where do you currently work?

20 A. Natural Encounters.

21 Q. What is your position there?

22 A. Bird handler, trainer.

23 Q. Did you previously work for Feld Entertainment?

24 A. I did.

25 Q. When was that?

- 1 A. From May of 2006 to July of 2008.
- 2 Q. What was your position there?
- 3 A. Veterinary technician.
- 4 Q. For which unit was that?
- 5 A. The Red Unit.
- 6 Q. Did you have any prior experience as a veterinary
7 technician before working for Ringling?
- 8 A. I did.
- 9 Q. What was your experience?
- 10 A. Five years' experience at Mixed Animal Practice in
11 Belbrazo, Indiana, small animals and exotic animals, and then
12 about a year at a zoo where we did everything from keeping the
13 zookeeper work as well as the technician-type work, medical
14 things.
- 15 Q. Did you have any other additional training or education?
- 16 A. Yes. I did some work at Purdue University in animal
17 sciences, and several continuing educations courses as well for
18 veterinary medical procedures and animal behavior.
- 19 Q. Did you travel with the Red Unit?
- 20 A. I did.
- 21 Q. And is that the same thing as living on the Red Unit?
- 22 A. Yes.
- 23 Q. What were your duties as the Red Unit veterinary
24 technician?
- 25 A. They varied from keeping up the medical records and keeping

1 them in order, keeping up travel papers for the animals to
2 travel between different states, providing medical care as
3 prescribed by veterinarians, including medications and
4 treatments, assisting with any kind of medical procedures,
5 diagnostics and things like that, and being part of media events
6 as well. Set up and tear down of the animal facilities, and
7 various other things.

8 Q. What, if anything, did you do regarding the elephants on
9 the Red Unit?

10 A. Just like with all the other animals, I was -- I would
11 check on them daily and make sure that everything was fine and
12 watch rehearsals and practices to ensure that if they were
13 become injured from something, that I would know what happened
14 and consult the veterinarians and have medical treatment for
15 them.

16 Q. Does Ringling have its own veterinary staff?

17 A. Yes.

18 Q. Who were Ringling's veterinarians?

19 A. There's three full-time veterinarians. Dr. Dennis Schmid,
20 Dr. Ellen Weidner, and Dr. Daniel Graham, and two consulting
21 veterinarians that we work with frequently, Dr. Amery Rasaza and
22 Dr. William Lindsay.

23 Q. Did these veterinarians also live on the Red Unit with you?

24 A. No.

25 Q. How often, if at all, did they come out to the Red Unit?

1 A. At least once every week or two, depending on what needed
2 to be done at the time.

3 Q. How long did they stay when they came out to the Red Unit?

4 A. Anywhere from a day to the full week, so again depending on
5 if we need to do things or if they were just there for a routine
6 visit.

7 Q. Is there a schedule for the veterinarian?

8 A. Yes. It's a rotating schedule.

9 Q. And who at Ringling Brothers is responsible for making the
10 medical records?

11 A. Primarily the veterinarians, our veterinarians and visiting
12 veterinarians that would come in.

13 Q. And what role, if any, did you have as a veterinarian
14 technician regarding the medical records?

15 A. I would put in if I gave medications myself, if I did
16 something like that. And also I was in charge of organizing
17 them and keeping track of them on the unit.

18 Q. Were there any medical records on the Red Unit when you
19 arrived?

20 A. Yes.

21 Q. Where are those records kept?

22 A. The medical records are kept in the veterinary trailer or
23 10-wagon, and there's also copies of certain papers in the
24 management office, which is 16-wagon.

25 Q. And who was responsible for keeping track of the medical

1 records in the veterinary wagon?

2 A. I was.

3 Q. Who had access to the veterinary wagon?

4 A. Myself and the veterinarians.

5 Q. Is there anything else besides medical records that are
6 stored in the veterinary wagon?

7 A. There are some medications and some medical equipment.

8 Q. Did you continue to maintain the medical records after you
9 arrived?

10 A. Yes.

11 Q. Do you know Robert Tom?

12 A. I do.

13 Q. Who is Mr. Tom?

14 A. He was a former employee of the animal crew for the Red
15 Unit of Ringling Brothers.

16 Q. Did you ever tell Mr. Tom that there are no medical records
17 for the animals?

18 A. No.

19 Q. Where are the personnel files for the Red Unit kept?

20 A. They would be in 16-wagon.

21 Q. And what is the 16-wagon?

22 A. That is the management office, so the general manager and
23 operations manager, assistant general manager.

24 Q. And who was responsible for maintaining the personnel
25 records on the Red Unit?

- 1 A. Management, so one of the managers.
- 2 Q. And who had access to the personnel files on the Red Unit?
- 3 A. The same, only the managers.
- 4 Q. Did you have any access to the personnel files?
- 5 A. No.
- 6 Q. Are you familiar with interstates?
- 7 A. Yes.
- 8 Q. Would you explain what they are?
- 9 A. It's basically a form that a veterinarian fills out that
10 says that the animals have been examined and that they're viable
11 for travel to a new destination.
- 12 Q. So what is the purpose of the interstates?
- 13 A. To certify that the animals have been examined by a
14 veterinarian and that there's no obvious signs of illness or
15 disease that could be transferred to other animals.
- 16 Q. And were interstates completed while you were working on
17 the Red Unit?
- 18 A. Yes.
- 19 Q. Was there any time on the Red Unit while you worked there
20 that an interstate was denied for Ringling moving from state to
21 state?
- 22 A. No.
- 23 Q. Was the Red Unit ever inspected while you worked there?
- 24 A. Yes.
- 25 Q. By whom?

1 A. There are several authorities depending on where you're at
2 that have the permission for the jurisdiction to inspect. USDA
3 can inspect any state, and then there's certain state and local
4 authorities as well that you have the jurisdiction to inspect.

5 Q. Did you receive advance notice from the local inspectors?

6 A. At times.

7 Q. And why would they do that?

8 A. Because for some of the places for a permit you'd have to
9 have a permit for the animals so they'd schedule an appointment
10 to do a tour before issuing the permit.

11 Q. And was that the only reason why local inspectors would
12 come out?

13 A. They could also come out if someone were to file a
14 complaint.

15 Q. Did you ever receive any advance notice from the USDA when
16 they came out for an inspection?

17 A. No.

18 Q. And do you know approximately how many times the USDA
19 inspected the Red Unit while you worked there?

20 A. I believe at least ten to twelve.

21 Q. Does the USDA ever inspect the elephants for evidence of
22 improper use of guides?

23 A. Yes.

24 Q. Did that happen while you were there?

25 A. Yes.

1 Q. What was the result of that inspection?

2 A. No findings.

3 Q. Can you tell us, please, how the phrase "USDA" is used on
4 the unit?

5 A. A lot of people -- it's kind of a generic term. A lot of
6 people will say USDA or animal control for any kind of animal
7 enforcement officer.

8 Q. And what do animal control officers get to see when they
9 come to inspect the unit?

10 A. Anything they want.

11 Q. What is your role, if any, during the inspection?

12 A. I am the one that leads the officers around and takes them
13 to the different animal areas, as well as showing them whatever
14 paperwork requirements they want to see.

15 Q. And how long do the animal control officers stay for
16 inspections?

17 A. Sometimes they stay for twenty minutes, sometimes they stay
18 the whole day, sometimes they come back every day while we're in
19 a venue. It just depends on their availability and preference.

20 Q. Can you give us an example of some cities where they would
21 come every day during a venue?

22 A. Yeah. In Norfolk, Virginia, San Jose, California, San
23 Diego, California we had at least one officer every day.
24 Usually two every day, that we had shows over there.

25 Q. Do you know a woman named Archelle Hundley?

1 A. I do.

2 Q. How did you meet her?

3 A. She was on the animal crew when I started.

4 Q. Were you friends with her in the Red Unit?

5 A. Yes.

6 Q. Did Ms. Hundley ever complain to you about the treatment of
7 animals on the Red Unit?

8 MS. SANERIB: Objection; hearsay.

9 THE COURT: I'll allow it.

10 THE WITNESS: No.

11 BY MS. JOINER:

12 Q. Did you ever hear her complain to anybody else about the
13 treatment of the animals on the Red Unit?

14 MS. SANERIB: Objection; hearsay.

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

16 THE WITNESS: No.

17 BY MS. JOINER:

18 Q. Did Ms. Hundley ever mention to you that she was going to
19 quit because of what she perceived as being animal abuse or
20 mistreatment?

21 A. No.

22 MS. SANERIB: Again, hearsay.

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

24 BY MS. JOINER:

25 Q. Did Ms. Hundley ever tell you any reason as to why she may

1 leave the unit?

2 A. Yes. She told me that she -- she was legally separated
3 from her husband when she joined and she told me that she had
4 been thinking about going back and trying to work things out
5 with her husband.

6 THE COURT: Why isn't this hearsay?

7 MS. JOINER: It's not offered for the truth.

8 THE COURT: Just for what purpose?

9 MS. JOINER: Ms. Hundley has offered various differing
10 statements about why she left or when she left, and this goes to
11 this particular witness' knowledge of what was said to her. I
12 don't know whether it's true or not. It was simply said.

13 THE COURT: So what are you offering it for if you're
14 not offering for it for truth of the matter asserted? Then
15 what?

16 MS. JOINER: Because there are several different
17 versions. It goes to credibility.

18 THE COURT: The fact that the statement was made, is
19 that what you're offering it for?

20 MS. JOINER: Yes, sir.

21 THE COURT: For that purpose, it's allowed.

22 MS. SANERIB: Your Honor, we're objecting. This is
23 extrinsic evidence. It's out-of-court statements made by this
24 woman, and it doesn't --

25 THE COURT: It's not being offered for the truth of

1 the matter. It probably doesn't get any weight at all. If it's
2 being offered for the fact that the statement was made, then it
3 goes to what state of mind or something of this witness or what?

4 MS. JOINER: Well --

5 THE COURT: Probably not. What's the value of this
6 testimony?

7 MS. JOINER: Well, I think it is simply that Ms.
8 Hundley -- it is not offered for the truth of the matter
9 asserted. I don't know what the situation was with her husband.
10 It is simply another statement that was made that is an
11 inconsistent statement with the many others as to why she's
12 left. Ms. Hundley was the witness who said I left because --

13 THE COURT: So you're offering this in an effort to
14 impeach her, is that what you're doing?

15 MS. JOINER: Yes.

16 THE COURT: Is that permissible? Is that permissible?

17 MS. JOINER: Well, I thought we saw that with Mr. Feld
18 the other day.

19 THE COURT: All right. Let's move on. I've heard
20 enough about the statements. Let's move on to another area.

21 MS. JOINER: Okay.

22 BY MS. JOINER:

23 Q. Can you tell us, Ms. Coleman, did Ms. Hundley ever appear
24 nervous or upset to you at any time while she worked on the Red
25 Unit?

1 A. No.

2 MS. JOINER: Can you put up, just to put as a date,
3 can you put up Exhibit 305? This was a schedule that we've
4 previously seen before I'll direct your attention here.

5 MS. SANERIB: Your Honor, I object. This wasn't
6 listed for this witness in their 72-hour filing. You said DX
7 305?

8 MS. JOINER: That's correct.

9 MS. SANERIB: I don't have that on your 72-hour
10 filing.

11 MS. JOINER: I thought that on the 72-hour filing we
12 said previous exhibits. It's just a schedule. It's not --

13 THE COURT: This has not been admitted into the
14 evidentiary record, has it?

15 MS. SANERIB: No, this has not.

16 THE COURT: I don't believe it has, has it?

17 MS. JOINER: No. I think it was used at the time.

18 THE COURT: If it wasn't listed you can't use it.

19 MS. JOINER: Okay.

20 BY MS. JOINER:

21 Q. Well, do you recall approximately when the layover was at
22 the Tulsa fairgrounds?

23 A. It would be sometime in June.

24 Q. Of what year?

25 A. 2006. I'm sorry.

1 Q. I'm sorry?

2 A. 2006.

3 Q. Thank you.

4 And if we could go, please, to Defendant's Exhibit
5 128, I would like to go to photo AH 20-2.

6 Were you present during the layover at the Tulsa
7 fairgrounds?

8 A. I was.

9 Q. Do you recognize the scene in this photo?

10 A. I do.

11 Q. And can you tell us which four elephants those are?

12 A. I can.

13 Q. Which ones are they?

14 A. The one that's in the tub currently is Baby. The one next
15 to her would be Toby. The one whose body you can see but
16 nothing else is Bonko, and the last one is Siam.

17 Q. What is that water tub for?

18 A. For play, for enrichment.

19 Q. Can you describe what the area is that these elephants are
20 standing in?

21 A. You could call it their pen. It's an area sectioned off
22 with cattle fencing, that electric cattle fencing, that
23 separates each group of elephants.

24 Q. Okay. I'd like to go to AH 20-5. And again, do you
25 recognize these elephants?

1 A. I do.

2 Q. Is it the same or different elephants than we looked at
3 before?

4 A. This is the same group.

5 Q. And if we look at one more, please. I'd like to go to
6 20-6. Are you able to see the boundary of the pen here, that
7 you can describe it for us or show it to us?

8 A. Not the whole thing. The best part that you can see is if
9 you look over by the semi trailer between the two elephants, you
10 can kind of see wires going across, and that would be a
11 boundary.

12 Q. For this particular pen?

13 A. For this particular, yes.

14 Q. Where was this particular location at in Tulsa?

15 A. This was at the state fairgrounds.

16 Q. Was the public permitted to enter the fairgrounds?

17 A. No.

18 Q. Were cameras prohibited?

19 A. No.

20 MS. JOINER: At this time, your Honor, I would like to
21 move for the admission of these three photographs as Defendant's
22 Exhibit 128A.

23 THE COURT: Any objection?

24 MS. SANERIB: Your Honor, we object. There's no
25 foundation for these photographs. The witness hasn't

1 authenticated them. She didn't say she took them. She didn't
2 say that they're her photographs. I don't think they come in.
3 We're fine with them being used as a demonstrative, but I don't
4 think they should be used as evidence.

5 MS. JOINER: I can go a couple more foundational
6 questions.

7 THE COURT: Go ahead.

8 BY MS. JOINER:

9 Q. Were you present at the fairgrounds?

10 A. Yes.

11 Q. Do these photographs fairly depict the layout of the
12 fairgrounds?

13 A. Yes.

14 THE COURT: Any objection?

15 MS. SANERIB: I don't believe that these are the
16 witness' photographs, though.

17 THE COURT: Were you present when they were taken?

18 THE WITNESS: Yes.

19 THE COURT: I'll admit them. Admitted.

20 (Defendant's Exhibit No. 128A was admitted into
21 evidence at about 12:32 p.m.)

22 BY MS. JOINER:

23 Q. Ms. Coleman, do you recall was there an elephant fight that
24 broke out in Tulsa?

25 A. Yes, there was.

1 Q. Do you know which elephants were fighting?

2 A. It was Baby and I believe Toby.

3 Q. And what were the elephants doing before the fight started?

4 A. Playing in the water tub.

5 Q. Did you see the fight start?

6 A. I saw it as it was going on, so I don't know that I saw it
7 the exact moment it started, but I did see it as it was
8 happening.

9 Q. What did you see the elephants doing to each other?

10 A. I saw one elephant, Baby was in the tub and it was Toby
11 that was standing up on her hind legs with her front legs
12 against Toby's side and kind of pushing on her.

13 Q. Were there any elephant handlers that were present at the
14 time?

15 A. Yes.

16 Q. What, if anything, did the elephant handlers do?

17 A. First they called for Sacha because he's the head animal
18 trainer at the time.

19 Q. And after they called for Sacha, what happened?

20 A. He came over. And then the three gentlemen went in and
21 tried to separate the elephants.

22 Q. And who were the three gentlemen that you're referencing?

23 A. Sacha Houck, Jimmy Strickland, and Antonio Almayta.

24 Q. Were they able to break up the fight?

25 A. Yes.

1 Q. Approximately how long did it take for them to do that?

2 A. It took at least probably five minutes after Sacha arrived.

3 Q. Did they use their guides?

4 A. Yes.

5 Q. And I'm sorry, how many elephants did you say were
6 fighting?

7 A. Two elephants fighting.

8 Q. And what happened to the other two elephants that were in
9 the pen with them?

10 A. They stayed out in the pen.

11 Q. Do you recall approximately what time of day this occurred?

12 A. Mid-afternoon.

13 Q. And can you tell us where you were standing relative to
14 this pen?

15 A. The setup was that there's this pen, which is an extension
16 of the elephant tent, then there's some space between that, and
17 in that empty space is a semi-trailer, followed by the horse
18 tent, and I was between the semi-trailer and the horse tent.

19 Q. Was there anybody standing next to you?

20 A. Yes.

21 Q. Who?

22 A. There were several people. Archelle Hundley was one of
23 them. Mike Ericson, Greg Anderson. And I think Zina was there.
24 Maybe a couple other horse crew members.

25 Q. Once the elephant fight was broken up, what happened next

1 to the two elephants that were fighting?

2 A. They were brought into the elephant tent.

3 Q. And what was done with them once they were in the elephant
4 tent?

5 A. They were chained on the elephant boards by one front and
6 one back leg, as is the standard, and then Sacha went through
7 commands with them to lay them down, get them to lift a leg,
8 lift a trunk, basically things to take their mind off the fact
9 that they were fighting and to get them to, you know, listen to
10 some commands and get their mind on something else.

11 Q. Was there anybody else with Sacha at that time?

12 A. Yes. One of the other elephant crew members had gone to
13 get Alex Vargus, so at that time he was in the tent as well.

14 Q. Did you see Mr. Houck use his bullhook?

15 A. I did.

16 Q. Can you describe for us how he used it?

17 A. He used it in a typical manner, so on the top of the ear to
18 get the elephant to lie down, on the back of her leg to get her
19 to lift her leg.

20 Q. Did you see him use it in any way that you thought was
21 abusive or mistreatment?

22 A. No.

23 Q. Did you see any blood on the elephants?

24 A. Yes.

25 Q. Can you tell us where you saw that?

1 A. They had some scratches on their foreheads and also a
2 couple on the back.

3 Q. Did you see what caused those scratches?

4 A. The fight.

5 Q. How much blood was there?

6 A. I wouldn't say a lot. I mean, it was visible, but it
7 wasn't, you know, profusely running or anything like that.

8 Q. And how long was Mr. Houck putting the elephants through
9 these behaviors?

10 A. It took at least ten minutes, I'd say, about.

11 Q. And what did he do when he was done with that?

12 A. He sat down on a chair and waited with the elephants for a
13 little bit longer as they calmed down.

14 Q. Did he get them to eventually calm down?

15 A. Yes.

16 Q. And what did the two elephants do after that?

17 A. Baby stayed in the run a little bit longer and Sacha stayed
18 with her, but I wasn't back out into the yard and eventually
19 they were both sent back out into the yard.

20 Q. As the veterinary tech, would you tell us, please, where
21 you lived?

22 A. Part of the time I was living on the train, and then
23 another part of the time I was there I had an Argby trailer, so
24 that was parked usually in the animal compound.

25 Q. Did you ever travel in the animal cars on the train?

1 A. No.

2 Q. Do you know whether anybody rides with the elephants on the
3 train?

4 A. Yes. We have someone that rides in a room, specially made
5 for them, in between the elephant cars.

6 Q. I'm sorry?

7 A. It's in between the elephant cars, the two cars.

8 Q. For shorter train rides, when are the elephants put on to
9 the train?

10 A. Typically as soon as the animal compound is ready to go, so
11 as we're tearing down as the shows going, so shortly after the
12 show is finished.

13 Q. So longer train rides, when are the elephants put on to the
14 train?

15 A. We'll typically hold them at the arena for a while so that
16 they don't have to wait on the train as long.

17 Q. Does the train ever get delayed?

18 A. It happens, yes.

19 Q. How often does it happen?

20 A. I'd say fairly infrequently.

21 Q. Does the train ever arrive early?

22 A. Yes.

23 Q. And how often does that happen?

24 A. That happens fairly frequently.

25 Q. Once the elephants are loaded on to the train, is there

1 anything else that has to happen before the train can depart?

2 A. Yes. There are a lot of things that have to happen.

3 Q. Would you tell us what those are?

4 A. I will. The building has equipment that rides on the train
5 as well as in semi-trucks, so we have to wait for everything
6 from the building to then load on to the flat cars of the train,
7 and then also the stock cars are not usually for the most part
8 typically with the rest of the train so they actually have to be
9 moved back to the rest of the train from the animal walk loading
10 sight and connected, and then we connect the flat cars to the
11 passenger cars of the train and then we connect the engines and
12 then we can leave.

13 Q. Okay. Is there any way to give an approximation as to how
14 long it takes once the elephants are loaded to when the train
15 actually departs?

16 A. It depends on the schedule of course of the train yard, but
17 usually within a few hours.

18 Q. Do the elephants have free open access to water on the
19 train?

20 A. No, they do not.

21 Q. Why not?

22 A. Just like during the week, during the normal times, they're
23 watered at specific times, so they get their fill of water.
24 This does a couple of things. One, so that we know which
25 elephant is drinking how much and so that we're sure that

1 they're drinking enough, and two, if you leave the water open
2 they can urinate or defecate in it and then they have
3 contaminated water to drink.

4 Q. How often are the elephants watered when they're on the
5 train?

6 A. Approximately every eight hours.

7 Q. Is there anything on the train in case of an emergency to
8 be able to provide them with water?

9 A. There is a water spicket in the train cars, but that would
10 be not typically used for the normal waterings.

11 Q. What, if anything, is done with the waste that accumulates
12 in the train cars?

13 A. Typically it's pushed off to the side during the run and
14 there's actual drains also for the urine waste to go, and then
15 once the train stops, the cars are completely cleaned out.

16 Q. I would like to go to Exhibit 192. This is PDF 467, and I
17 believe all of the transportation orders are in evidence through
18 plaintiffs' exhibit, your Honor.

19 THE COURT: I think they are as well. Are there
20 objections to what I just said?

21 MS. SANERIB: No. We agree.

22 BY MS. JOINER:

23 Q. Can you back that up just a little bit to let her see that?

24 Do you recognize this document, Ms. Coleman?

25 A. I do.

1 Q. What is it?

2 A. It's a typical transportation schedule order.

3 Q. And where, if at all, were these posted on the Red Unit?

4 A. Several places. There's a bulletin board that is back
5 stage with general information as well as in the pike car.

6 Q. Can you tell us, please, which particular trip this
7 Transportation Order relates to?

8 A. It's from Wester, Massachusetts to Tulsa, Oklahoma.

9 Q. Approximately how long did this trip last?

10 A. It was a good two-and-a-half days.

11 Q. Can I direct your attention down to the 1600 hour entry on
12 Monday, 5/22/06?

13 A. I see it.

14 Q. And it says, Water supplied from tanks on stock cars,
15 circus personnel working on the ground. Do you know what that
16 means?

17 A. Yes. That's a water stop.

18 Q. What is a water stop?

19 A. All of the animal crew members that are on the train get
20 off the train, walk down to the animal cars, and then we water
21 the animals. We have a hose, a big fire hose that we hook up to
22 the water tanks underneath the animal cars and then we're able
23 to put that into the train cars and water the animals.

24 Q. And are the elephants off-loaded during a water stop that
25 you just described?

1 A. No.

2 Q. Let's go down now. If you'd look at the 3600 entry on
3 Tuesday, 5/23/06. This one indicates an animal rest at a thorn
4 yard in Indianapolis, Indiana. Do you see that?

5 A. I do.

6 Q. Would you tell us that what means?

7 A. This is something that we do on our very long train runs
8 where we unload all of the animals and we do a few things: We
9 unload them and give them some exercise to walk around. We have
10 dumpsters there on sight so that we can clean out all of the
11 waste from the cars and have clean cars, and also they have fire
12 trucks that come out to refill the water supplies.

13 Q. Did this particular animal rest occur on this run?

14 A. It did.

15 Q. Did Ms. Hundley participate in this animal rest?

16 MS. SANERIB: Objection, your Honor. This is barred
17 by Rule 608(b).

18 THE COURT: What's the objection?

19 MS. SANERIB: The objection, your Honor, is that we're
20 getting into improper character evidence. This doesn't go to
21 the witness' truthfulness.

22 THE COURT: Counsel?

23 MS. JOINER: Ms. Hundley testified that there was no
24 such water stop.

25 THE COURT: I'm sorry. I can't hear you.

1 MS. JOINER: I'm sorry. Ms. Hundley testified that
2 there was no such water stop. I'm not asking about her
3 credibility. I'm simply asking facts of what happened at this
4 water stop, I mean of her character.

5 THE COURT: I'll allow it.

6 BY MS. JOINER:

7 Q. Did Ms. Hundley actually participate in this animal rest?

8 A. No, she did not.

9 Q. Have you ever seen the elephants load or unload from the
10 train?

11 A. Yes.

12 Q. Do they scrape their back on the top of the door when
13 they're getting in or out of the train?

14 A. No.

15 MS. SANERIB: Objection; leading.

16 THE COURT: Sustained.

17 BY MS. JOINER:

18 Q. What, if anything, do the elephants do when they're loading
19 or unloading from the train?

20 A. They -- we have ramps that lead up to the doors, so whether
21 they're coming in or out, they step down to get out and step up
22 to get in, but there's no unusual impediment.

23 Q. And can you describe for us the height of the train car
24 inside relative to the elephants?

25 A. I'd say for the biggest elephant there's about

1 approximately eight to twelve inches of clearance above her
2 head.

3 Q. Did you ever notice any of the elephants having problems
4 loading or unloading from the railcars?

5 A. Not that I saw.

6 Q. Okay. The pens, I want to go back to that, we were looking
7 at earlier. Can you tell us how often those are used on the Red
8 Unit while you worked there?

9 A. Every city, every stop.

10 Q. And how large are those pens?

11 A. They're as large as we can make them, so we don't have as
12 much room in some arenas as others, but we give them as much
13 room as we possibly can.

14 Q. Are they used indoors or outdoors?

15 A. They are both.

16 Q. Is it accurate to say that the elephants are only unchained
17 when the public is around?

18 A. No, it is not.

19 Q. Can you tell us the daily schedule for the Red Unit
20 elephants?

21 A. Sure. It can vary a little bit from day-to-day depending
22 on how many shows, but typical one show day would be they would
23 get up in the morning and do some vigorous exercise for a while
24 in the morning and they'd have possibly a rehearsal in the
25 morning for an hour or so. After that, occasionally there is a

1 P.R. event or some kind of a media event, but other than that,
2 they usually have the afternoon in their pens, just kind of
3 being there, and then about a half hour before the show starts,
4 the elephants are brought inside the tent and cleaned off and
5 ready to go into the show.

6 Q. Are they tethered or untethered during the day?

7 A. Untethered.

8 Q. Can you tell us approximately what time at night the
9 elephants are put on chains?

10 A. Depending on what time the show ends, between usually
11 between 9:30 and 10:00 at night.

12 Q. And approximately what time of the day in the morning are
13 the elephants unchained?

14 A. Depending if there's an event or not, usually between six
15 and eight.

16 Q. And how are the elephants arranged when they are chained
17 overnight?

18 A. They're arranged in the same -- typically in the same order
19 that they're in their pens so they're in the same groups that
20 they're with during the day as well.

21 Q. Are the elephants able to lie down when they're on their
22 tethers?

23 A. Yes.

24 Q. Are they able to touch each other?

25 A. Yes.

1 Q. Was this daily schedule that you just described for us the
2 same schedule that was in place while Ms. Archelle Hundley
3 worked there?

4 A. Yes.

5 Q. And is this also the schedule that was in place while you
6 worked there with Mr. Tom?

7 A. It was.

8 Q. Did you see any abuse or mistreatment of the elephants
9 while you worked on the Red Unit?

10 A. No.

11 Q. Did you ever see any scratches on the elephants while you
12 worked on the Red Unit?

13 A. Yes.

14 Q. Did you see what caused them?

15 A. Sometimes if the elephants would be playing or fighting,
16 their tushes, which are small tusks, can scratch each other.
17 But also they get browse, which can be bamboos or logs, things
18 like that, so sometimes they can be scratched by that as well.

19 Q. I'd like to go to Plaintiffs' Will Call 1A for Baby at PDF
20 204. This was an exhibit to your deposition. Here we go.
21 Sorry. Do you recognize this document, Ms. Coleman?

22 A. I do.

23 Q. Can you tell us what it is?

24 A. It is a medical record from an on-call veterinarian.

25 Q. Did you call the on-call veterinarian?

1 A. I did.

2 Q. Can you read what it describes for Baby right there?

3 A. Superficial abrasions on the left lateral thorough cumber
4 region. The two abrasions are approximately three inches in
5 length.

6 Q. Did you see how Baby got these abrasions?

7 A. Yes.

8 Q. Can you tell us, please, what happened?

9 A. It happened during the show, so sometime in the evening
10 there were two elephants kind of fighting over a piece of browse
11 and another one stepped up on Baby and was kind of rubbing and
12 scratched her back with her tushes, her little tusks.

13 Q. And what did you do when you saw the marks?

14 A. I called Dr. Weidner at the time and she advised that we
15 could go ahead and call the on-call veterinarian to come out and
16 take a look at it.

17 Q. Do you believe that the elephants are afraid of the guide?

18 A. No.

19 Q. Why do you say that?

20 A. I've seen them pick them up off the ground and hand them
21 back to trainers before. They don't seem to -- it doesn't
22 bother them at all.

23 Q. Can you tell us, please, who is allowed to go near or
24 handle the elephants on the Red Unit?

25 A. The elephant crew members and trainers, myself, and the

1 veterinarians.

2 Q. Is there a union for the animal crew on the Red Unit?

3 A. Yes.

4 Q. What is it?

5 A. It is the Teamsters union.

6 Q. Is there a form for personnel write-ups?

7 A. There is.

8 Q. Is there a process that can be followed if an employee dis-
9 agrees with a write-up?

10 A. There is.

11 Q. What is that process?

12 A. They can file a grievance and speak to their union steward
13 and have the write-up amended until they agree with it.

14 Q. Do you think that the employees generally know that they
15 have that option?

16 A. They all have a handbook and that's outlined in there, so
17 yes.

18 Q. Under the Teamsters agreement, do you know how many written
19 warnings can result in a termination?

20 A. Three.

21 Q. Did you ever have to write up Mr. Robert Tom?

22 A. I did.

23 MS. JOINER: I'd like to go to Defense Exhibit 168,
24 please.

25 MS. SANERIB: And your Honor, we object to this again

1 under Rule 608(a). We think this is extrinsic evidence. It
2 doesn't come in with this witness.

3 THE COURT: Counsel?

4 MS. JOINER: This is a business record that this
5 witness can prove up. She authored it.

6 MS. SANERIB: It's not a hearsay objection, your
7 Honor. We're objecting to it coming in under Rule 608(a) a.

8 MS. JOINER: Again -- I'm sorry, do you want me to
9 respond?

10 THE COURT: Go ahead, yes.

11 MS. JOINER: This is not a character issue. The
12 allegation that was made by Mr. Tom is that he was fired for
13 complaining about animal abuse, and this is the employment
14 record that led to his termination.

15 THE COURT: I'll allow it. Overruled. It's not a
16 608(a) issue at all. Let's proceed.

17 BY MS. JOINER:

18 Q. Do you recognize this document, Ms. Coleman?

19 A. I do.

20 Q. Can you tell us, please, what the date of it is up here at
21 the top?

22 A. It's August 4th, 2006.

23 Q. And what does it mean that that is dated August 4th, 2006?

24 A. That's the day that it was filled out, the form was filled
25 out.

1 Q. What does it indicate here are the reasons for the
2 write-up?

3 A. Late for work and Other.

4 Q. And would you read the description in the box below --
5 first of all, tell me, whose handwriting is that right there
6 (indicating)?

7 A. It's mine.

8 Q. Okay. And would you read that description that you wrote
9 for us, please?

10 A. Tuesday, 8/1/06, late for work, causing other crew member
11 to miss the bus home. Thursday, 8/3/06, loitering outside of
12 the animal compound for thirty minutes without checking animals.
13 At 10:30 p.m., not able to be found and several horses were
14 without water.

15 Q. Did you personally witness both of those events?

16 A. I did.

17 Q. And after you witnessed them, what did you do?

18 A. I spoke with the other supervisors and we decided that a
19 formal written write-up was to be given.

20 Q. If you look down at the last witness line there, is that
21 your signature?

22 A. It is.

23 Q. Did you sign this document?

24 A. I did.

25 Q. Okay. Would you please explain why that's dated 8/5/06

1 next to your signature?

2 A. Because for fairness to the employee, we have to have
3 someone in management's approval and signature as a witness on
4 the form as well, so that was the first date available that we
5 could all three get together, myself, Mr. Tom, and a member of
6 management.

7 Q. Okay. The first line up there is the name of the employee.
8 Do you recognize that?

9 A. I do.

10 Q. Is that Mr. Tom's signature?

11 A. It is.

12 Q. Did he sign that in your presence?

13 A. He did.

14 Q. And can you tell me who the second signature is there
15 underneath?

16 A. That's Jason Belfore. He was the operations manager.

17 Q. Did Mr. Belfore sign that in your presence?

18 A. He did.

19 Q. Okay.

20 THE COURT: How much more time do you need for direct?
21 I'm not trying to curtail you. I'm just ...

22 MS. JOINER: Maybe about ten more minutes.

23 THE COURT: We'll break for lunch until 2:30 and that
24 will give the plaintiffs more of an opportunity to prepare for
25 cross-examination.

1 MS. JOINER: Okay. Thank you.

2 THE COURT: You can step down. You can go to lunch.
3 You cannot discuss your testimony with anyone, all right?

4 COURTROOM DEPUTY: This Honorable Court now stands in
5 recess until 2:30.

6 (A luncheon recess was taken at about 12:55 p.m.)

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I N D E X

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E X H I B I T S

Defendant's
Exhibit

No.	Identification	Marked	Admitted
128A			105

CERTIFICATE

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

Jacqueline M Sullivan
JACQUELINE M. SULLIVAN

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