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UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, CIVIL ACTION NO. 03-2006

WASHINGTON, D.C.

VERSUS THURSDAY, MARCH 5, 2009

2:30 P.M.

FELD ENTERTAINMENT, INC., DAY 16

**TRANSCRIPT OF BENCH TRIAL - AFTERNOON SESSION**

**BEFORE THE HONORABLE EMMET G. SULLIVAN**

UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF,

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# I N D E X

## WITNESSES:

## PAGE:

Carrie Coleman.....  
BY MS. JOINER.....  
BY MS. SANERIB.....

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GARY JACOBSON.....  
BY MS. JOINER.....

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## EXHIBITS:

Exhibit 168  
Exhibit 326  
Exhibit 192-A  
Exhibit 76  
Exhibit 76-A  
FEI Exhibit 334  
Exhibit 335  
Exhibit 336  
Exhibit 337  
Exhibit 338

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**P-R-O-C-E-E-D-I-N-G-S**

THE DEPUTY CLERK: Please remain seated and come to order.

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

MS. JOINER: Thank you, Your Honor.

BY MS. JOINER:

Q. If we could go back, please to Exhibit 326, we were looking at before lunch and go back to this language right here that you identified for us, Ms. Coleman; does that accurately reflect the events that you witnessed?

A. Yes.

Q. Did you fabricate this document, Ms. Coleman?

A. No, I did not.

Q. Have you ever fabricated any personnel records?

A. No.

Q. And we talked before the break about the dates right here, the August 5, '06 meeting; where was that held?

A. In the 16-wagon, the management office.

Q. And what was the purpose of that meeting?

A. As a formal disciplinary action, they had to sign the write-up and discuss the issues and to remind him that this type of behavior was not acceptable.

Q. Was the plan to fire Mr. Tom going into this meeting?

A. No.

Q. What happened?

1 A. After signing the write-up, the general manager, John  
2 Griggs began by saying that this was happening too often. You  
3 know, he'd had other write-ups previously and that, you know,  
4 something was going to have to change.

5 MS. SANERIB: Your Honor, we object to the hearsay  
6 portions of this.

7 THE COURT: Sustain the objection.

8 BY MS. JOINER:

9 Q. Can you just describe, generally, what happened without  
10 the conversations involved?

11 A. Yes. Basically, an argument ensued. The comments became  
12 heated between Mr. Griggs and Mr. Tom, and at that point, I  
13 excused myself from the meeting.

14 THE COURT: You what?

15 THE WITNESS: I excused myself from the meeting.

16 BY MS. JOINER:

17 Q. And when did you next see Mr. Tom?

18 A. I'd say probably within the next 20 to 30 minutes.

19 Q. And what was he doing?

20 A. He was talking to the members of PETA that followed the  
21 circus.

22 Q. Did you -- when, if at all, did you learn he had been  
23 terminated?

24 A. Shortly thereafter, Mr. Griggs came up and let us know  
25 because we'd have to make arrangements for someone else to

1 cover his shifts.

2 Q. And this document, Exhibit 326, what happened to this  
3 particular document? Who maintained it?

4 A. It became a part of his personnel file so the management.

5 Q. Okay. And is this document maintained in the 16-wagon?

6 A. As far as I know, yes.

7 MS. JOINER: Your Honor, I'd like to move at this  
8 time for the admission of this document as Exhibit 168.

9 THE COURT: I thought that was already admitted. Is  
10 that the one on the screen? I'm sorry. Carol, didn't I admit  
11 that over objection.

12 THE DEPUTY CLERK: I think you did.

13 THE COURT: There was some objection, 608(a)  
14 objection. I thought I admitted that over objection.

15 MS. JOINER: Oh, I'm sorry. Okay.

16 THE COURT: I thought I did, didn't I?

17 MS. JOINER: Oh, okay.

18 THE COURT: It's admitted again.

19 MS. JOINER: It's double admitted.

20 MS. SANERIB: Over objection, yeah.

21 THE COURT: All right.

22 MS. JOINER: Okay. Thank you.

23 BY MS. JOINER:

24 Q. Did Mr. Tom ever complain to you about animal treatment?

25 A. No.

1 Q. Did you ever see him complain to anybody else about  
2 animal treatment?

3 A. No.

4 Q. Were you present at the open house held at College  
5 Station?

6 A. I was.

7 Q. And what, if any, kind of barriers were present for the  
8 animals at that open house?

9 A. We had our typical metal bike rack barriers in front of  
10 the elephants, and we actually had human barriers by the way  
11 of staff members in front of the horses and exotic animals.

12 Q. And were those barriers adequate or inadequate?

13 A. I'd say they were adequate.

14 Q. Do you know Ms. Margaret Tom?

15 A. I do.

16 Q. Who is she?

17 A. Robert Tom's wife.

18 Q. Was she ever employed at the circus?

19 A. She was.

20 Q. What was her job?

21 A. She was a backstage props' person. I don't know exactly  
22 the title, but --

23 Q. Did any part of her duties include working with or  
24 handling animals?

25 A. Not handling them, no; working near them.

1 Q. Are you familiar with the portion of the Red Unit show in  
2 2006 called the "Big Reveal"?

3 A. Yeah. I'm familiar with what you're referring to, yes.

4 Q. Okay. Would you please describe what the "Big Reveal"  
5 is?

6 A. It's right after intermission, and the lights are dark,  
7 and they come on -- there's five silk screens hanging from the  
8 ceiling, and inside that is an elephant on a tub, Asia, and  
9 they start talking -- the ringmaster comes on and starts  
10 talking about elephants, and then at a moment, the silks drop,  
11 and you see her standing there.

12 Q. Okay. And which elephant did you say that was?

13 A. It's Asia.

14 Q. And which handlers participate in that portion of the  
15 show?

16 A. That is Sacha Houcke.

17 Q. To your knowledge, did Jimmy Strickland ever handle Asia  
18 in that portion of the show?

19 A. No.

20 Q. Are any dancers that are involved in that portion of the  
21 show?

22 A. Yes. Following the "Reveal" of Asia, they have what is  
23 called the walk-over, so there are five dancers laying on the  
24 ground, and Asia steps over them.

25 Q. Okay. Now, regardless of the act, sometimes when the

1 animals are out on the floor during the performance, do they  
2 urinate or defecate?

3 A. Of course.

4 Q. What, if anything, does the company do in anticipation of  
5 that?

6 A. We have the floor crew members that are out on the floor  
7 as part of the show have shovels and buckets on hand waiting  
8 for such an occasion.

9 Q. And what, if anything, is the consequence to the animal  
10 if that happens?

11 A. Nothing.

12 MS. JOINER: And, Your Honor, I'd like to go back to  
13 the two prior exhibits and mark them separately because  
14 they're so voluminous. If I could go back to the record  
15 PWC-1-A-Baby, which was PDF-204.

16 THE COURT: All right.

17 MS. JOINER: And I'd like to identify this  
18 separately as Defense Exhibit 326 and move for its admission.

19 THE COURT: Any objections? Are you offering this?

20 MS. JOINER: Yes, sir.

21 THE COURT: Any objection?

22 MS. SANERIB: I just want to understand; are you  
23 offering the one document that's depicted on the screen or  
24 something marked?

25 MS. JOINER: Yes, this one.



1 MS. SANERIB: No objection, Your Honor.

2 THE COURT: And it's marked as what? What's the  
3 marking, exhibit number?

4 MS. JOINER: I'm sorry.

5 THE COURT: It's admitted.

6 MS. JOINER: And the next one I would like to mark  
7 is the transportation order from Exhibit 192. This is  
8 actually PDF-467 out of that document, and I'd like to offer  
9 this as 192-A.

10 THE COURT: Any objection?

11 MS. SANERIB: I believe that's already in evidence,  
12 Your Honor.

13 THE COURT: I'm sorry?

14 MS. SANERIB: I believe it's already in evidence.

15 MS. JOINER: Yes. In a very large, multi-page  
16 document.

17 THE COURT: It's admitted as Defendant's Exhibit --  
18 that number, again.

19 MR. SIMPSON: 192-A.

20 THE COURT: Okay.

21 BY MS. JOINER:

22 Q. Just one more question, Ms. Coleman. Did you ever see  
23 Ms. Hundley or Mr. and Mrs. Tom show any particular interest  
24 in the elephants while they were working there at the Red  
25 Unit?

1 A. No more than the average person, no.

2 MS. JOINER: I have nothing further, Your Honor.

3 THE COURT: All right. Cross-examination.

4 MS. SANERIB: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 **CROSS-EXAMINATION BY MS. SANERIB:**

7 Q. Good afternoon, Ms. Coleman.

8 A. Hello.

9 Q. Ms. Coleman, you don't have a college degree, do you?

10 A. No.

11 Q. And you don't have a vet tech degree, either, do you?

12 A. That's correct.

13 Q. And in your direct testimony, you really failed to  
14 mention that you were one of the handful of people who worked  
15 on the Red Unit who was authorized to speak to the media,  
16 right?

17 A. That's correct.

18 Q. And you received specialized training from people at the  
19 headquarters at Feld Entertainment to speak to the media,  
20 didn't you?

21 A. I did.

22 Q. And you received talking points for speaking to the media  
23 for them?

24 A. I did.

25 Q. And you actually received media training about every six

1 months while working on the Red Unit?

2 A. Approximately.

3 MS. JOINER: I'm going to object to this line of  
4 questioning as irrelevant, Your Honor.

5 THE COURT: Counsel.

6 MS. SANERIB: I think it's highly relevant. It  
7 shows what some of the woman's job descriptions were when she  
8 was working on the Red Unit. I think it shows what her  
9 position was, what her duties were, and what her role was with  
10 the company.

11 THE COURT: I'll allow it. I'll allow it. I don't  
12 think it's fair to say she failed to mention something. I  
13 don't think she was asked about that, but go ahead. I'll  
14 allow it.

15 MS. SANERIB: Well, when you receive training for  
16 something every six months on your job, it's a significant  
17 part of your job. I don't think this was brought up in her  
18 direct.

19 BY MS. SANERIB:

20 Q. I'd like to show a very brief clip of -- Ms. Coleman --  
21 of one of your media clips. This was entered into evidence.  
22 This is from Plaintiff's Will Call Exhibit 94-B. It's PL-  
23 14916, and the clip starts at one minute and 30 seconds.

24 (Playing video at this time.)

25 BY MS. SANERIB:

1 Q. And, Ms. Coleman, is this a general idea of the type of  
2 work you did with the media when you worked for the Red Unit?

3 A. It's an example, yes.

4 THE COURT: I'm sorry. What's your answer?

5 THE WITNESS: It's one example, yes.

6 BY MS. SANERIB:

7 Q. And you also worked with Feld Entertainment's government  
8 relations department, didn't you?

9 A. I did.

10 Q. And you received specialized public relations training  
11 from Feld Entertainment, right?

12 A. It was the same. It was all in one. It wasn't anything  
13 special for each department. It was the same training.

14 Q. Media and government relations?

15 A. Uh-huh; basically, yes.

16 Q. Okay. And you talked to government officials while you  
17 were the vet tech, right?

18 A. I did.

19 Q. And you also led government tours while you were the vet  
20 tech?

21 A. I did.

22 Q. Okay. While you worked on the Red Unit, all of the  
23 elephant handlers carried bull hooks, didn't they?

24 A. Anyone that was a direct handler, yes.

25 Q. Okay. And they used their bull hooks on a daily basis,

1 right?

2 A. Yes.

3 Q. And you never trained elephants, did you?

4 A. No.

5 Q. You never worked with elephants until you started working  
6 at Feld Entertainment, did you?

7 A. That's correct.

8 Q. And even while you were at Feld, you never handled an  
9 elephant with a bull hook, correct?

10 A. That's correct.

11 Q. In fact, any time you were by an elephant, you always had  
12 to have a handler, another employee with you, right?

13 A. Yes.

14 Q. And can you tell me who worked on the elephant crew while  
15 you were on the Red Unit?

16 A. I can try to remember as many as I can. When I started  
17 or when I left?

18 Q. How about in 2006?

19 A. Okay. Sacha Houcke; Alex Vargas; Ryan Henning; Karen  
20 Houcke; Jimmy Strickland; East(Phonetic)Ron Mulnar(Phonetic)  
21 -- take me a few minutes. It's hard to remember everyone.

22 Q. Was there a --

23 A. Antonio Mada(Phonetic) -- okay. That mostly that I can  
24 remember at this moment.

25 Q. Okay. And Sacha Houcke was the head of the animal

1 department at that time, right?

2 A. He was head trainer, yes.

3 Q. And Sacha Houcke was hard to get along with, wasn't he,  
4 for some of the employees?

5 A. Yes. I can accept that.

6 Q. He had a little bit of a temper sometimes?

7 A. Yes.

8 Q. Now, Ms. Coleman, it's your testimony that the elephants  
9 are usually on the train for three hours before it leaves,  
10 right?

11 A. Approximately. It can vary, but --

12 Q. And you said this morning that elephants can touch each  
13 other when they're chained.

14 A. Yes.

15 Q. But they can't touch all the other elephants, right, they  
16 can just touch the elephants that are directly next to them.

17 A. That's correct.

18 Q. Okay. And it's also your testimony that any time an  
19 elephant has an abrasion, that would be written up in the  
20 elephant's medical records, right?

21 A. For the most part.

22 Q. Okay. And you looked at an example of that with Ms.  
23 Joiner for the elephant, Baby?

24 A. Yes.

25 Q. And we talked a little bit about the organization People

1       for the Ethical Treatment of Animals at your deposition,  
2       didn't we?

3       A.    Yes.

4       Q.    And you agreed that they'd be a logical group to contact  
5       if someone witnessed animal mistreatment, right?

6       A.    Would be one.

7       Q.    Now, Ms. Coleman, you testified in direct examination  
8       about a write-up of Mr. Tom. I think that was on the screen  
9       when we came back from lunch, right?

10      A.    Yes.

11      Q.    And that was a write-up from August of 2006, right?

12      A.    That's correct.

13      Q.    And that occurred after the elephant incident you had  
14      talked about in Tulsa, Oklahoma; isn't that right?

15      A.    About two months after, yes.

16      Q.    And you said in your direct testimony that you personally  
17      witnessed all those events that you wrote Mr. Tom up for in  
18      that write-up; isn't that right?

19      A.    That's correct.

20      Q.    But that's not what you said in your deposition, is it?

21      A.    I believe it is.

22      Q.    All right. I'd like to go to your deposition on Page  
23      202; Lines 2 to 4 I think it is. And you'll see, I asked you  
24      a question: So you didn't actually see him loitering outside  
25      for 30 minutes. Answer: Correct. So part of the write-up

1       that you were talking about with Ms. Joiner --

2               MS. JOINER: Your Honor, I'm going to object. If  
3 she's going to do that, I think she needs to read the complete  
4 answer.

5 BY MS. SANERIB:

6 Q. All right. Correct. I saw him come in 30 minutes late,  
7 and he said, I was over here. So I gave him the benefit of  
8 the doubt saying, okay, you were here, but you weren't where  
9 you needed to be.

10 But, nevertheless, you didn't actually see Mr. Tom  
11 outside for those 30 minutes, did you?

12 A. No. I didn't see him outside. I saw him come in 30  
13 minutes late.

14 THE COURT: Excuse me. Excuse me. Just one second,  
15 counsel.

16 (Whereupon, the Court paused the testimony for a  
17 brief moment.)

18 THE COURT: Go right ahead, counsel.

19 MS. SANERIB: Thank you.

20 BY MS. SANERIB:

21 Q. Now, Ms. Coleman, you also talked about the pens that  
22 get set up for the elephants sometime this morning, and you  
23 said they are as large as you can make them.

24 A. Correct.

25 Q. Typically, the pens are about 30 feet by 50 feet, isn't



1       that right?

2       A.    I'd say that's a decent average, sure.

3       Q.    Now, you also testified on direct about an elephant  
4       incident in Tulsa, Oklahoma, right?

5       A.    That's correct.

6       Q.    And the Red Unit I think you said was staying at the  
7       fairgrounds in Tulsa; is that right

8       A.    Yes.   The state fairgrounds.

9       Q.    Okay.   And That was a two-week layover, right?

10      A.    Yes.

11      Q.    And that's pretty unusual for the circus to have a two-  
12      week layover.

13      A.    It happens usually about once a year.

14      Q.    So it's pretty rare, then.

15      A.    Right.

16      Q.    And you said that two elephants got into a fight,  
17      correct?

18      A.    That's correct.

19      Q.    And they were fighting over access to water in a small  
20      pool, weren't they?

21      A.    Uh-huh.

22      Q.    And it's your testimony that it was Baby and Banko or  
23      Baby and Toby that got into the fight.

24      A.    To the best of my recollection.

25      Q.    And I believe you also testified you and Archele Hundley

1 and most of the animal crew were watching the fight, right?

2 A. For most of it, yes.

3 Q. And you said that Mr. Houcke was the one who broke up  
4 the fight with a few other elephant handlers, correct?

5 A. That's correct.

6 Q. And after that, he brought the elephants into the tent  
7 that were fighting, right?

8 A. Correct.

9 Q. And he chained the elephants up, didn't he?

10 A. Uh-huh.

11 Q. And according to your testimony, it was the middle of the  
12 day when he chained the elephants up, right?

13 A. I'd say mid-afternoon. I'd say that's about correct.

14 Q. And Mr. Vargas was in the barn with Mr. Houcke, wasn't  
15 he?

16 A. Not at first. He came, and he joined a little bit later,  
17 but, yes, he was eventually there.

18 Q. But those -- both those two were in the barn, right?

19 A. Yes, that's correct.

20 Q. And Mr. Houcke gave the elephants commands to lie down,  
21 didn't he?

22 A. Yes, he did.

23 Q. He wanted them to lay down on their elbows and their  
24 knees in a stretched out position, right?

25 A. Correct.

1 Q. And one of the elephants wouldn't lie down, would she?

2 A. That's correct.

3 Q. And that was Baby, right?

4 A. As far as I can recall, yes.

5 Q. And Mr. Houcke had to use his bull hook to get her to lay  
6 down, didn't he?

7 A. Yes.

8 Q. And he used his bull hook on her ear?

9 A. The top of her ear, yes.

10 Q. On the top of her head?

11 A. It's possible. I didn't, you know, see it. It's a  
12 little far away, but it is possible.

13 Q. He used his bull hook on her back, right?

14 A. Possibly. Again, I didn't see that directly, but it's  
15 possible.

16 Q. And he used his bull hook repeatedly, didn't he?

17 A. He continued to use it until she'd lied down, yes.

18 Q. And most people would call that an elephant beating,  
19 wouldn't they?

20 MS. JOINER: Objection. Argumentative.

21 THE COURT: It probably is. What would you call it?  
22 Are you familiar with that term?

23 THE WITNESS: Oh, well. Yeah, I've heard the term,  
24 obviously. I wouldn't --

25 THE COURT: What does that term mean to you?

1                   THE WITNESS: Inflicting pain and injury on an  
2 elephant is what I would call a beating.

3 BY MS. SANERIB:

4 Q.   What would you call repeated use of a bull hook on an  
5 elephant?

6 A.   Continuing -- consistency. You have to finish the --  
7 follow through, otherwise, you know, they're not going to  
8 listen. So I'd call it following up; I wouldn't call it  
9 beating.

10 Q.   Okay. And he followed-up with the elephant with the bull  
11 hook for quite awhile, didn't he?

12                   THE COURT: Where do you draw the line? When does a  
13 follow-up become a beating?

14                   THE WITNESS: Again, when it causes injury or pain,  
15 it becomes a beating. So if it's not causing injury or pain,  
16 I would say it's not a beating. It's just continuing --

17                   THE COURT: Follow-up.

18                   THE WITNESS: Right.

19 BY MS. SANERIB:

20 Q.   And, eventually, the elephant laid down, didn't she?

21 A.   Yes, she did.

22 Q.   And, in fact, Mr. Houcke exerted so much force that he  
23 sat down in a chair after he got the elephant to lie down,  
24 didn't he?

25 A.   No. That's not accurate.

1 Q. He didn't sit down in a chair?

2 A. He did sit down in a chair, but it's because he was  
3 waiting with her until she calmed down for awhile. He just sat  
4 there in the tent with the elephant. I don't believe it was  
5 because he was over-exerted. I believe that he was sitting and  
6 waiting with the elephant as she remained -- so she could be  
7 calm.

8 Q. And it took her awhile to calm down, didn't it?

9 A. It did.

10 Q. And it's your testimony that Dr. Wiedner wrote up the  
11 injuries in the elephants, right?

12 A. I believe so.

13 Q. And it was also your testimony that after Mr. Houcke was  
14 down with the elephants, they were bloody, right?

15 A. They had blood on them, yes.

16 Q. Okay. And they had blood on their backs and on their  
17 heads, correct?

18 A. On the forehead, yes.

19 Q. All right. Mrs. Coleman, I'd like to show you some  
20 records. What we have electronically is every record that was  
21 produced on the elephant Baby in discovery in this case. It's  
22 part of the medical records for the elephants that we  
23 compiled, and I'd like to go to sort of the relevant time  
24 period when the Red Unit was in Tulsa, Oklahoma, and flip  
25 through those records, and I want you to point out to me where

1 Dr. Wiedner's write-up is for the elephant Baby.

2 So if we could go to Plaintiff's Will Call Exhibit 1 for  
3 Baby, and if we could go to I think about Page 222 should get  
4 us into the time period around May, 2006. So this is the  
5 record you were looking at with Ms. Joiner; this is from May  
6 18th. This was in Worchester, Massachusetts, right?

7 A. Yes.

8 Q. So that was before the Red Unit went to Tulsa, Oklahoma,  
9 right?

10 A. That's correct. I believe -- yeah, that was the week  
11 prior.

12 Q. And if we can flip to the next page -- and these are just  
13 in chronological order. There's nothing on here about a  
14 write-up from Dr. Wiedner about Baby, is there?

15 A. No.

16 Q. Okay. And we go to the next page. And this is an e-mail  
17 message from Dr. Wiedner, right?

18 A. Yes.

19 Q. And it says -- the title is: Atlanta Elephant Visit for  
20 Zaza (Phonetic). And if we go to the next page of that  
21 record, you'll see these are vet rounds for the Red Unit. If  
22 you look at the date here, this is from February. It looks  
23 like 2006.

24 A. Of 2006, right.

25 Q. So that was before this incident.

1 A. And it was also before I worked here.

2 Q. Okay. We can go to next page then; and the next page.  
3 And this is a visit to the Red Unit, and it's by Dr. Wiedner,  
4 dated June 9th through the 10th, 2006. You'll see the first  
5 elephant on the list is Baby.

6 Do you see anything written-up there about her having  
7 abrasions and scratches from the incident in Tulsa, Oklahoma?

8 A. I do not.

9 Q. Okay. And can we go onto the next page? And then this is  
10 from August 18th, 2006. Is there anything in this record about  
11 the elephant Baby having abrasions and scratches?

12 A. No.

13 Q. Okay. Our vet looked through the records, and he couldn't  
14 find anything either. We've never seen this record that Mrs.  
15 Wiedner or Dr. Wiedner wrote up about the scratches or  
16 abrasions on the elephant Baby.

17 MS. JOINER: Objection. Argumentative. Counsel is  
18 testifying.

19 THE COURT: Counsel is testifying.

20 MS. SANERIB: Okay.

21 THE COURT: -- disregard it. I'll disregard it.

22 BY MS. SANERIB:

23 Q. Mrs. Coleman, is it, in fact, your testimony that  
24 Dr. Wiedner did, in fact, write something up about the  
25 elephant Baby and put it in her medical record?

1 A. I said to the best of my recollection, so I guess I could  
2 be wrong.

3 Q. Okay. But she did prescribe a treatment for the elephant  
4 for the scratches?

5 A. I spoke to her on the phone, and it's just atypical for  
6 scratch to keep them clean, yes.

7 Q. Okay. And could the reason be that nothing was in the  
8 elephant's medical records because the scratches were caused  
9 by bull hooks and usually the bull hook wounds are not  
10 reported in medical records?

11 A. No. I wouldn't say that's accurate.

12 Q. Okay. Why isn't that accurate?

13 A. I would say that since she showed up, since the records  
14 for when she was on the unit were several days later, that it  
15 was probably all healed.

16 Q. So then she wouldn't have made a record of it, right?

17 A. Right. If she didn't see anything.

18 Q. No one would have recorded that?

19 A. If there's nothing to see, then I guess there wouldn't be  
20 any records, either.

21 MS. SANERIB: I have no further questions at this  
22 time.

23 THE COURT: All right. Redirect.

24 MS. JOINER: Just a couple, please.

25 **REDIRECT EXAMINATION BY MS. JOINER:**



1 Q. Counsel just asked you which elephants you thought were  
2 involved in the fight. Let me ask you this: Who would be in a  
3 better position to know the identity of the elephants  
4 involved; would it be you or one of the handlers?

5 A. Obviously, one of the handlers that was involved.

6 Q. And the question was asked about Mr. Houcke and what he  
7 was doing with that elephant. Do you think that Mr. Houcke  
8 was causing any injury or pain to that elephant?

9 A. No.

10 Q. I believe you just said -- did you report this incident  
11 to Dr. Wiedner?

12 A. Yes.

13 Q. Was it your job as a vet tech to double check whatever  
14 Dr. Wiedner had reported to her to see if it made it into the  
15 medical records?

16 A. No.

17 MS. JOINER: Nothing further, Your Honor.

18 THE COURT: All right. Any other questions?

19 MS. SANERIB: No, Your Honor.

20 THE COURT: All right. Thank you. You may step  
21 down. Please do not discuss your testimony with anyone. All  
22 right? Thank you. Watch your step. Call your next witness.

23 MS. JOINER: We call Gary Jacobson, Your Honor.

24 \*

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25 **GARY JACOBSON**, called as a witness in this case,

1 after having been duly sworn, testified as follows:

2 \*

\*

\*

\*

3 THE COURT: Good afternoon.

4 THE WITNESS: Hello.

5 MS. JOINER: Please the Court.

6 **DIRECT EXAMINATION BY MS. JOINER:**

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

8 A. Gary Jacobson; G-A-R-Y; J-A-C-O-B-S-O-N.

9 Q. And by whom are you currently employed?

10 A. Feld Entertainment.

11 Q. Where do you work?

12 A. The CEC, Center for Elephant Conservation.

13 Q. Have you ever handled elephants, Mr. Jacobson?

14 A. Yes, I have.

15 Q. What does it mean to handle an elephant?

16 A. It means to deal with them in the same space, lead them,  
17 feed them, water them, just take care of them.

18 Q. And how long have you been handling elephants?

19 A. Since 1972.

20 Q. How old were you when you first started handling  
21 elephants?

22 A. Twenty-two.

23 Q. And what kind of handling method did you first use with  
24 elephants?

25 A. Hands on.

1 Q. And what do you mean when you say "hands-on"?

2 A. It means you share the same space with the elephant.

3 Q. And is "free contact" another name for "hands-on  
4 handling"?

5 A. Yes, it is.

6 Q. Okay. And what tools, if any, are used with free contact  
7 handling?

8 A. Any number of tools; a guide or a bull hook.

9 Q. And let me just stop you right there. What do you call  
10 it, guide, bull hook?

11 A. I call it a "stick", normally.

12 Q. What is the purpose of the stick?

13 A. It's so you can handle an elephant in a free contact  
14 environment.

15 Q. Is it a generally accepted tool?

16 A. Yes, it is. Worldwide.

17 Q. How, if at all, are voice commands used with the guide?

18 A. Voice commands are used first. You know they would tell  
19 them something once or twice and then back it up with a guide.

20 Q. Are you aware of any other institutions, aside from Feld  
21 Entertainment, that use a guide?

22 A. All circuses, all zoos that are hands-on, and throughout  
23 Europe and Asia.

24 Q. Okay. A couple of demonstratives that we have here  
25 today; do you recognize this guide, Mr. Jacobson?

1 A. Yes. That belongs to me.

2 Q. This is your permanent guide?

3 A. Yes.

4 Q. And how often do you use this?

5 A. Normally, every day.

6 Q. Okay. And do you recognize this?

7 A. Yes.

8 Q. What is this?

9 A. That's a company stick. They're made for Feld  
10 Entertainment.

11 Q. Okay.

12 THE COURT: You probably should give them some  
13 numbers because the record doesn't reflect any numbers; that's  
14 325 I believe.

15 BY MS. JOINER:

16 Q. Okay. This is 325, and we can mark the white one, his,  
17 as -- as long as we can give it back to him at some point --  
18 327.

19 THE COURT: All right.

20 BY MS. JOINER:

21 Q. And were you present for the inspection at the CEC?

22 A. Yes.

23 Q. Were all of the guides that are used at the CEC presented  
24 for inspection for the plaintiffs in this case?

25 A. Yes. The ones that are on site, yes.

1 Q. Okay. Did that include these two?

2 A. Yes.

3 Q. Have you had an opportunity to see the guides that are  
4 used in the Blue Unit?

5 A. Yes.

6 Q. And can you tell us, please, how those guides compare to  
7 these here? (Indicating.)

8 A. I believe most of them are similar to the black one, and  
9 then there may be some other ones similar to the other one,  
10 but probably not as long.

11 Q. Okay. So the ones used in the show, how would they  
12 compare in length with Exhibit 325?

13 A. To the best of my ability, they'd be about that size;  
14 maybe a little shorter.

15 Q. Okay. And what color are the ones used in the show?

16 A. They're black.

17 Q. Why are they black?

18 A. If you have a light-colored hook in the ring, the  
19 spotlights hit it, and it kind of looks like fireworks if  
20 you're up in the seats.

21 Q. Do you think it's possible to hide a guide?

22 A. No.

23 Q. Okay.

24 A. No.

25 THE COURT: They can be put up the sleeve of a

1 jacket, though, can't it?

2 THE WITNESS: I've -- I guess in the past, I've seen  
3 people try to do that, Your Honor.

4 THE COURT: You've never done that?

5 THE WITNESS: No. No. No.

6 BY MS. JOINER:

7 Q. Let me ask you something about that: If somebody were to  
8 stick a guide up there sleeve, what would happen to their  
9 ability to handle or control the elephant?

10 A. You simply wouldn't be able to, you'd have to get it out  
11 and turn it around and do something with it. It would -- it  
12 doesn't make any sense.

13 Q. Did you at some point, Mr. Jacobson, begin presenting or  
14 exhibiting elephants to the public?

15 A. Yes, in 1974.

16 Q. And where was that?

17 A. The Circus World. It was a theme park owned by Feld  
18 Entertainment.

19 Q. And would you explain for us what the difference is  
20 between handling versus presenting an elephant?

21 A. Well, presenting is normally in front of the public in an  
22 act for entertainment purposes.

23 Q. Okay. And I interrupted you; what were you doing at  
24 Circus World?

25 A. Pardon?

1 Q. What were you doing at Circus World?

2 A. I was handling and presenting elephants.

3 Q. Have you done any other presenting of elephants?

4 A. Yes; on other circuses, nightclub.

5 Q. Did you ever work on the Blue Unit for Ringling?

6 A. Yes.

7 Q. When was that?

8 A. 1978; and four months in '79.

9 Q. Do you currently own any elephants?

10 A. Yes.

11 Q. Which one?

12 A. A male named Smokey.

13 Q. Where is he housed?

14 A. At the CEC in Florida.

15 Q. And do you personally have any licenses that pertain to  
16 elephants?

17 A. I have a USDA permit, and Florida Fish and Game.

18 Q. And are those licenses both current and in good standing?

19 A. Yes, they are.

20 Q. Have you ever trained an elephant?

21 A. Yes, I have.

22 Q. Can you tell us, please, what it means to train an  
23 elephant?

24 A. Normally, you take a young elephant that knows really  
25 nothing as far as handling or training goes, and you turn it

1       into a trained elephant.

2       Q.    When did you first train an elephant?

3       A.    The first elephant I trained from scratch was in 1980.

4       Q.    And prior to your training of that elephant, what was  
5       that elephant capable of doing?

6       A.    She was on a circus. She traveled from town to town and  
7       was tied on a picket line.

8       Q.    And what did you train that elephant to do?

9       A.    All of the basics, and it was for a nightclub act.

10      Q.    And when you say "basics", would you please tell us what  
11      the basic -- are you referencing commands or behavior; what  
12      are you referencing?

13      A.    Commands and/or behaviors.

14      Q.    And what do you consider to be the basics?

15      A.    To be able to lead the elephant; lay it down; sit it up;  
16      stand it up; have it stand still; get on pedestals; roller  
17      barrel.

18      Q.    Have you continued to train elephants since then?

19      A.    Yes, I have.

20      Q.    And would you explain what the difference is between an  
21      elephant handler and an elephant trainer?

22      A.    Well, the first year, you normally become a handler, and  
23      from there, you become a trainer, and it's just more  
24      experience and you teach them how to do more things if you're  
25      a trainer.



1 Q. Are you an elephant handler?

2 A. Yes, also.

3 Q. Are you an elephant trainer?

4 A. Yes.

5 Q. Do you have any experience with captive elephant  
6 breeding?

7 A. Yes.

8 Q. And when did you first begin working on captive elephant  
9 breedings?

10 A. 1989.

11 Q. And was that natural or artificial insemination  
12 breeding?

13 A. Natural.

14 Q. Have you continued to work on captive elephant breeding  
15 since then?

16 A. Yes, I have.

17 Q. In what way?

18 A. As a manager of the CEC, we have the largest, more  
19 successful breeding program in this hemisphere.

20 Q. And what type of breeding program -- let me back up --  
21 what type of method of breeding has Feld Entertainment used in  
22 its program?

23 A. Primarily natural. There's been one AI.

24 Q. Can you tell us, please, how many captive elephant births  
25 have you participated in?

1 A. Eighteen.

2 Q. Can you tell us how many people in the US have worked on  
3 18 or more captive elephant births?

4 A. There'd be a hand full, that'd be about it.

5 Q. When did you begin working at the CEC?

6 A. We took the first elephants there June 26th, 1995.

7 Q. And what was your title at that time?

8 A. I was the Director of Training.

9 Q. And what were your duties as the Director of Training?

10 A. I trained the young elephants.

11 Q. At some point, did your title change?

12 A. Yes. In 2000, I became the general manager.

13 Q. And would you tell us what your duties are as general  
14 manager, please?

15 A. I oversee everything, all the physical activities at the  
16 CEC.

17 Q. Is there a staff at the CEC?

18 A. Yes. There's about 18 people.

19 Q. And how many of those people on your staff are actually  
20 handlers?

21 A. All but two.

22 Q. Can you tell us how many traveling shows Feld  
23 Entertainment has with elephants?

24 A. Three.

25 Q. And what are they?

1 A. The Red Unit; the Blue Unit; and the Gold Show.

2 Q. How many years of experience do you have working with  
3 elephants?

4 A. Thirty-seven.

5 Q. And can you tell me, please, how many collective years of  
6 experience your staff of 14 handlers -- 14, 16 handlers at the  
7 CEC have?

8 A. Well over 200 years.

9 Q. How many elephants are currently located at the CEC?

10 A. Twenty-nine.

11 Q. What kind of elephants are they?

12 A. They're Asian.

13 Q. How many are males?

14 A. Eleven.

15 Q. So, there are 8 -- 18 females?

16 A. Eighteen females, yes.

17 Q. Who owns the CEC -- the elephants at the CEC?

18 A. Feld Entertainment.

19 Q. With the exception of yours, Smokey?

20 A. With the exception of Smokey, yes.

21 Q. Okay. Can you tell us which elephants are handled "free  
22 contact" at the CEC?

23 A. All of them except the adult males.

24 Q. And what do you consider to be an adult male?

25 A. Anything normally from eight over.

1 Q. So the free contact includes Jewell; Lutzi; Susan;  
2 Mysore; and Zina?

3 A. Yes.

4 Q. Why do you handle these elephants with free contact?

5 A. Basically, so you can take care of them, and, also, they  
6 were performing elephants, so you have to use the "hands on"  
7 method.

8 Q. Where are Karen and Nicole right now?

9 A. They're on the Blue Unit.

10 Q. And how are they handled?

11 A. In the free contact system.

12 Q. And why is that?

13 A. That's the only way you can keep the elephants safe from  
14 one another and people safe from the elephants.

15 Q. Is there any other way that you're aware of to handle an  
16 elephant in a circus setting?

17 A. No.

18 Q. Are you familiar with protected contact handling?

19 A. Yes.

20 Q. And what does -- what do you understand protected contact  
21 handling to be?

22 A. To me, it means you do not share the same space with the  
23 elephant. There's a barrier in between you and the elephant.

24 Q. And what is the purpose of having that barrier between  
25 the elephant and the human?

1 A. So the -- normally so the elephant cannot hurt you.

2 Q. Do you also refer to protected contact as hands off  
3 handling?

4 A. Yes.

5 Q. And are there any elephants at the CEC that are handled  
6 hands off?

7 A. Yes; a number of males.

8 Q. Which males?

9 A. Charley; Vance; Romeo; Doc; Raja; and Ozzy, I believe.

10 Q. And why are these males now handled with protected  
11 contact?

12 A. They're extremely dangerous.

13 Q. Why are they extremely dangerous?

14 A. The adult males are driven by testosterone. They're  
15 pretty grumpy.

16 Q. How big are adult males?

17 A. Well, when they're eight years, it varies some, but when  
18 they're eight years old, normally, they're pushing about 7000,  
19 8000 pounds, and then the full adults are up to like 15 and  
20 16,000.

21 Q. Would you tell us, please, what is musth?

22 A. It's a period that the males go through, and they sort of  
23 lose their mind. It's an Indian word that means intoxicated,  
24 and they excrete fluid out of the temporal glands on their  
25 heads, and they just sort of lose their minds. It's kind of

1       like a runt and a buck dear.

2       Q.    And what do you do with an elephant that's in musth at  
3       the CEC?

4       A.    Nothing. They're behind bars.

5       Q.    These elephants that you just identified for us that are  
6       now handled hands off, could you tell us how they were handled  
7       until they were eight years of age?

8       A.    These were all performing elephants when they were young,  
9       so they were all in a hands-on society.

10      Q.    Did that include a guide?

11      A.    Yes.

12      Q.    Do you still use a guide with these adult males in  
13      protected contact?

14      A.    Yes.  You can in certain circumstances like when you're  
15      working on their feet or giving them injections.

16      Q.    And how, if at all, has the free contact handling that  
17      these males began with affect the current hands-off handling  
18      that they have now?

19      A.    When you're in close contact with them, they still kind  
20      of remember how to behave when you have them in a shoot and  
21      you use a stick around them.

22      Q.    And what, if any, is the safety effect of having a stick  
23      with you?

24      A.    If you don't have one, they don't listen very well, and  
25      if elephants don't listen very well, you can certainly get in

1 trouble.

2 Q. And what, if any, are the benefits of free contact  
3 handling?

4 A. Normally you can simply take care of elephants better if  
5 you're able to go near them.

6 A. If they're behind bars, everything is at a distance.

7 Q. And what do you have to do to a protected contacted  
8 animal if you want to provide veterinary care to it?

9 A. A lot of times, they're sedated.

10 Q. Is there any -- what, if any, is the risk of sedation to  
11 an elephant?

12 A. Sedation is rather dangerous with elephants.

13 Q. Why is that?

14 A. Because of their size and then sometimes they go down and  
15 die.

16 Q. Can you --

17 THE COURT: Is that because they're overly sedated or  
18 --

19 THE WITNESS: It's -- it's kind of a strange thing.  
20 Veterinarians can really explain it better than I can, but  
21 there's something about their systems that makes it more  
22 dangerous, and, also, if you're going to anesthetize a dog, a  
23 cat, or a human, it's been done millions of times; with  
24 elephants it's relatively new, so it's just not as  
25 experienced.

1 BY MS. JOINER:

2 Q. Okay. And does free contact make the likelihood of having  
3 to sedate an animal more or less likely?

4 A. Much less likely.

5 Q. And what affect, if any, does free contact have on  
6 husbandry of elephants?

7 A. It's easier to take care of them and better if you're in  
8 the same arena with them.

9 Q. Can you approximate how large the community of elephant  
10 managers is in the US?

11 A. It would be -- managers, not that many, but the entire  
12 group of people that handle them would be a few hundred.

13 Q. Okay. And where would elephant managers work, what kinds  
14 of institutions?

15 A. The circuses; the zoos; and parks.

16 Q. Do you belong to any groups or organizations regarding  
17 elephants?

18 A. The Elephant Managers Association.

19 Q. And what is the Elephant Managers Association?

20 A. It's a group of people that either work with elephants or  
21 have an interest in elephants; handlers; trainers;  
22 veterinarians; and then there's just some people who just like  
23 elephants.

24 Q. Is it only for free contact handlers?

25 A. No. It's for everything across the board.



1 MS. JOINER: Okay. At this time, Your Honor, I'd  
2 like to tender Mr. Jacobson as an expert in elephant  
3 handling, care, husbandry, training, and breeding.

4 THE COURT: Any voir dire?

5 BY MS. MEYER:

6 Q. Mr. Jacobson, you're not a veterinarian, are you?

7 A. No.

8 Q. You haven't had any veterinarian training, have you?

9 A. No.

10 Q. And you have no degree in animal behavior, do you?

11 A. No.

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

13 A. No.

14 Q. Okay. The CEC, where you work, is not a member of the  
15 American Zoological and Aquarium Association, is it?

16 A. No, it is not.

17 Q. And Feld Entertainment is also not a member of the  
18 American Zoological and Aquarium Association, is it?

19 A. No.

20 Q. And Feld Entertainment also not a member of the Species  
21 Survival Plan for the Asian elephant, is it?

22 A. I don't think so, no.

23 MS. MEYER: Your Honor, we don't have any objections  
24 to Mr. Jacobson talking about his personal experiences, what  
25 he's observed and his -- and what he knows based on his

1 personal knowledge. What we do have a problem with is him  
2 giving opinions based on anything else because he did not  
3 submit an expert report, so with that caveat.

4 THE COURT: What about that? Did you get a report?

5 MS. JOINER: No, Your Honor. This is not a person  
6 under the rules that is required to do that. We did give them  
7 notice that we would designate him as such, but the rules do  
8 not require anybody --

9 THE COURT: Which rule?

10 MS. JOINER: I'm looking at 26(a)2(B). So with  
11 respect to a witness who is --

12 THE COURT: Just a minute. Just a minute;  
13 26(a)2(B). All right. And the exception you're relying on is  
14 what?

15 MS. JOINER: With respect to a witness who is  
16 retained or specially employed to provide expert testimony in  
17 the case or whose duties as an employee of the party regularly  
18 involved giving expert testimony should be accompanied by a  
19 written report.

20 Mr. Jacobson is neither of those things. He's  
21 worked at the CEC since '95. His expertise arises simply from  
22 what he does; he's not been retained as an expert, and he's  
23 not a person who regularly testifies as an expert for the  
24 company; that's not his job.

25 THE COURT: Counsel.

1 MS. MEYER: And, again, Your Honor, we have no  
2 problem with Mr. Jacobson giving testimony today based on his  
3 personal experience. What we do object to is him going beyond  
4 that and giving expert opinions about the industry in general,  
5 about causation of wounds or other medical conditions of the  
6 elephants, about anything that he reviewed in preparation for  
7 the litigation, etcetera, because he has not done an expert  
8 report, and --

9 THE COURT: Why is there one required of him?

10 MS. MEYER: Pardon me?

11 THE COURT: Why is there a requirement for an expert  
12 report for him?

13 MS. MEYER: Because there is an expert -- there's a  
14 requirement under Rule 28 for all expert report -- for all  
15 experts to give an expert report unless they fall within an  
16 exception, and the exception that is being relied upon here --

17 THE COURT: Rule 26 you mean?

18 MS. MEYER: Rule 26; sorry.

19 THE COURT: You said 28.

20 MS. MEYER: I have -- I guess I have a typo in my  
21 notes.

22 THE COURT: I mean, if it's 28, you can focus me on  
23 the appropriate sub-section.

24 MS. MEYER: It's 26. I have a typo. I'm sorry, Your  
25 Honor. It's 26.

1 THE COURT: 26(a)2(B), that Ms. Joiner references  
2 does say that, in general, in addition to the disclosures  
3 required by Rule 26(a)1, a party must disclose to the other  
4 parties the identity of any witness it may use at trial to  
5 present evidence under Federal 702, 703, 705, unless otherwise  
6 stipulated or ordered by the Court.

7 Was he disclosed, first of all?

8 MS. JOINER: Yes, sir. He was.

9 THE COURT: He was disclosed. Unless otherwise  
10 stipulated or ordered by the Court, this disclosure must be  
11 accompanied by a written report, hyphen, prepared and signed  
12 by the witness, hyphen, if the witness is one retained or  
13 specially employed to provide expert testimony in the case or  
14 one whose duties as the parties employee regularly involved  
15 giving expert testimony.

16 And, basically, she's arguing that he's none of the  
17 above.

18 MS. MEYER: Right, Your Honor. And what I'm saying  
19 is -- and there's case law on this, Your Honor, and the best  
20 case I can site to you is Bynum versus MVM, Inc. 241 F-R-D 52  
21 -- it's a Judge Friedman decision, District Court of DC, 2007,  
22 and pertained to a treating physician.

23 And, basically, what the case law says is that, yes,  
24 a treating physician is someone --

25 THE COURT: This is different, though, from a

1 treating physician rule, though, isn't it?

2 MS. MEYER: Well, I think that's what they're trying  
3 to say, that he qualifies, he does not have to give an expert  
4 report; he falls within the exception because he's allowed to  
5 testify about his personal experience with the elephants at  
6 the CEC, and I have no problem with that; of course, he can.

7 What I have a problem with is if he tries to go  
8 beyond that and start offering expert opinions based on other  
9 matters without an expert report; that would be the problem.  
10 For example, if he's --

11 THE COURT: I don't think Judge Friedman's opinion  
12 covers this point, though. I don't think -- what is it about  
13 Judge Friedman's opinion that might persuade me that you're  
14 correct here?

15 MS. MEYER: I think Judge Friedman's opinion  
16 basically stands for the proposition that you have to look at  
17 the scope of the testimony that's offered, and we're sort of  
18 talking in the abstract.

19 THE COURT: Just a minute. They offered him as an  
20 expert for three or four subject matters. Are you objecting to  
21 him rendering an opinion with respect to those subject matters  
22 that they offered him?

23 MS. MEYER: As long as it's based on his personal  
24 experience, I have no problem with that.

25 THE COURT: That's what he's going to do. He's going

1 to offer his expert opinion.

2 MS. MEYER: Right. Your Honor, again, I'm sort of  
3 talking in the abstract because it may not come up; but if he  
4 -- if during the course of his testimony, he goes beyond his  
5 personal experience and starts to give expert opinions; for  
6 example, if he's reviewed the medical records in anticipation  
7 for this litigation or something like that.

8 THE COURT: Let's deal with the facts. If he exceeds  
9 those boundaries and those areas, again, are, what, husbandry,  
10 training -- what else?

11 MS. JOINER: Yes, sir. Elephant care; handling.

12 THE COURT: Care; handling.

13 MS. JOINER: Husbandry; training; and breeding.  
14 We're not offering him as a vet because, obviously, he's not a  
15 vet.

16 THE COURT: I'll take a look at Judge Friedman's  
17 opinion, but I think he falls squarely within the rules  
18 because he's not one of those people. He's not retained as an  
19 expert. He's not -- well, I don't know. Is he an employee of?  
20 I mean Ringling Brothers owns CEC, correct?

21 MS. JOINER: That is correct. He is an --

22 THE COURT: Why isn't he employee of plaintiff, then?  
23 I mean employee of defendant?

24 MS. JOINER: He definitely is an employee of the  
25 defendant, but what the rule contemplates here is that it's an

1 employee of the entity whose purpose is to be a testifying  
2 expert. That -- that's also not his purpose.

3 THE COURT: How many times has the -- we're talking  
4 about -- I'm going to have to ask you to step outside just for  
5 a moment. All right?

6 THE WITNESS: Okay.

7 THE COURT: We're not going to speak unkindly about  
8 you; we're going to talk about it. All right.

9 (Whereupon, the witness exited the courtroom at this  
10 time.)

11 THE COURT: How many times has he testified as an  
12 expert on behalf of the defendant?

13 MS. JOINER: Never previously, Your Honor.

14 THE COURT: Never?

15 MS. JOINER: He was deposed three times in this  
16 case, and during the course of those depositions, I think  
17 plaintiff took what amounted to expert discovery. So, for  
18 example, the 10-minute clip that we submitted to you was --

19 THE COURT: He rendered those opinions during  
20 depositions?

21 MS. JOINER: Yes. He was asked during his  
22 deposition, for example: I'm going to give you a command, tell  
23 me -- just make sure he's gone. I'm going to give you a  
24 command; tell me what it is; tell me how it works; tell me  
25 what you do. There were also hypotheticals that were given to

1 him in the sense of --

2 THE COURT: So, in other words, you're telling me his  
3 testimony should come as no surprise to plaintiffs.

4 MS. JOINER: I think that is correct. He has never  
5 testified as an expert before, so --

6 THE COURT: All right. Did Judge Friedman go so far  
7 as to say that an expert report was required for that  
8 doctor who was testifying? I didn't think so.

9 MS. MEYER: No. No. No. The treating physician was  
10 exempt.

11 THE COURT: All right. Well, that's right. That's  
12 normally the case.

13 MS. MEYER: Yes. So that's the analogy, to the  
14 extent he's acting similarly as someone who has an expertise  
15 based on his personal experience, which is what he --

16 THE COURT: -- offered him. He's already indicated  
17 his background, training, etcetera, and they want him to offer  
18 opinions, and they didn't provide reports. I'll take a look  
19 at it, but I don't think Judge Friedman articulated anything  
20 new in that report at all.

21 MS. MEYER: The only thing that Judge Friedman said  
22 that I was just -- I was just putting on the record, Your  
23 Honor, it depends on the scope of his testimony, which we  
24 haven't heard yet, and it may not become a problem.

25 THE COURT: You've heard it, I think. You probably



1 cross-examined him during his depositions.

2 MS. MEYER: I had -- I've had no problem with the  
3 testimony he gave in his deposition, but I haven't heard the  
4 testimony he's going to give here, and I --

5 THE COURT: Let me ask you this: Is this a fair  
6 question -- as long as he testifies consistent with his  
7 testimony during the deposition, there's no surprise, and he's  
8 not exceeding the boundaries of the proffer for which he's  
9 being offered as expert, are you satisfied with that?

10 MS. MEYER: Yes.

11 THE COURT: All right. And you'll let me know.

12 MS. MEYER: I certainly will.

13 THE COURT: I have no doubt about that. All right.  
14 That's fair. I think he can testify.

15  
16 MS. MEYER: Yes.

17 MS. JOINER: Thank you, Your Honor.

18 THE COURT: Sure.

19 MS. JOINER: Were you done?

20 MS. MEYER: I'm done.

21 MS. JOINER: Okay. Thank you.

22 THE COURT: Now, what's your best prediction with  
23 respect to the length of his direct?

24 MS. JOINER: I would like to finish Mr. Jacobson  
25 today.

1 THE COURT: With his direct; you can do that?

2 MS. JOINER: Absolutely. I'd like to finish him all  
3 together today. I don't, obviously, know what plaintiffs are  
4 anticipating, but I think hour-and-a-half, two hours; that's  
5 what I'm going to try for.

6 THE COURT: All right. Well, that may get us to the  
7 limit of our own time constraints. Well, that's fine. I mean  
8 at some point, we need to take a recess, and maybe we should  
9 take it now before you even start.

10 (Whereupon, the witness returned to the courtroom.)

11 THE COURT: I'll let you testify, and I assure you  
12 we did not speak unkindly about you. We'll let you testify as  
13 an expert. We're going to have to take our 15-minute recess  
14 now and then just go to 5:30.

15 MS. JOINER: Okay.

16 THE COURT: And you can finish your direct by then.  
17 We'll just proceed with cross-examination.

18 MS. JOINER: I believe so. Thank you.

19 THE COURT: We'll take a 15-minute recess now. You  
20 can step outside. You don't have to stand there. Okay?

21 THE DEPUTY CLERK: This Honorable Court now stands  
22 at a 15-minute recess.

23 (Whereupon, there was a brief recess at this time;  
24 thereafter, court resumed.)

25 THE DEPUTY CLERK: Please remain seated and come to

1 order.

2 THE COURT: Go right ahead, counsel.

3 MS. JOINER: Okay.

4 BY MS. JOINER:

5 Q. Mr. Jacobson, what is elephant husbandry?

6 A. It's the care and management of elephants, the taking  
7 care of them.

8 Q. Have you ever performed any husbandry on elephants?

9 A. Yes.

10 Q. When?

11 A. Every day for the last 37 years.

12 Q. Can you give us some examples of the kinds of elephant  
13 husbandry that you have performed?

14 A. Feeding; watering; foot care; breeding; all the normal  
15 maintenance.

16 Q. And what do you mean when you reference foot care?

17 A. The fact that we work on their feet.

18 Q. And how do you work on their feet?

19 A. With various tools and implements.

20 Q. Do you recognize this? (Indicating.)

21 A. That's a rasp.

22 MS. JOINER: Okay. And I'm going to mark this,  
23 Your Honor, as Exhibit 328.

24 THE COURT: All right.

25 BY MS. JOINER:

1 Q. And would you explain for us, Mr. Jacobson, how a rasp  
2 is used on an elephant?

3 A. It's used primarily on the toe nails and on the pads, and  
4 you can also use it on rough spots on their skin.

5 Q. And which side -- there are two sides, a coarse side and  
6 a finer side?

7 A. Right. The coarse side, of course, is for -- if you're  
8 making large cuts, taking off a lot, and the other side is to  
9 smooth it out and the cuticles.

10 Q. Okay. And is that a normal tool to use with elephants?

11 A. Yes.

12 Q. And can you describe -- we'll mark this as Exhibit 329 --  
13 what this is?

14 A. That's a sweep-off brush. That's just you lay elephants  
15 down and sweep the debris off them with it.

16 Q. Okay. What is this made of?

17 A. Nylon.

18 Q. And where do you use this on the elephant?

19 A. All over its body.

20 Q. Does it hurt them when you use it?

21 A. No. Not at all.

22 Q. And we'll mark this as 330; can you tell us what this is?

23 A. That's a wire brush.

24 Q. What do you do with a wire brush on an elephant?

25 A. We wet the elephants and scrub them with the brushes.

1 Q. Where do you scrub them at?

2 A. Almost everywhere.

3 Q. Does it hurt them when you do that?

4 A. Not at all. It cleans off the dead skin.

5 Q. One's right and one is left-handed, but I'm not sure  
6 which; what are these?

7 A. They are hoof knives for trimming on feet.

8 Q. Okay. And we'll call these together Exhibit 331. And if  
9 you would describe for us how is a hoof knife used on the foot  
10 of an elephant?

11 A. It's for trimming the pads and the toe nails.

12 Q. Okay. And how do you trim it on a pad? How do you trim  
13 a pad?

14 A. It's -- you take long sweeping motions down the bottom of  
15 the foot on the pad.

16 Q. And why do you have to trim the pad of the foot?

17 A. A lot of times they grow uneven.

18 Q. Okay. And one more; would you tell us what these are?

19 A. That's a nippers.

20 Q. And what are nippers used for with elephant husbandry?

21 A. Primarily used for overgrown toe nails.

22 Q. Just like an elephant nail clipper?

23 A. Right; the very same.

24 Q. And one final thing; we'll call this Exhibit 333. And  
25 would you explain to us what this tool is?

1 A. It's a European draw knife.

2 Q. And what do you use a European draw knife for with  
3 elephants?

4 A. It's for doing the pads.

5 MS. JOINER: Okay. I'll set these back down if you  
6 give me a second.

7 BY MS. JOINER:

8 Q. Are these tools that we've just looked at, Mr. Jacobson,  
9 common husbandry tools?

10 A. Yes, they are.

11 Q. What about tethers, are they used in elephant husbandry?

12 A. Yes, they are.

13 Q. What kind of tethers are used at the main barn at the  
14 CEC?

15 A. We primarily use chains.

16 Q. Why do you use chains?

17 A. It is the simple, easiest, cleanest way to tie up  
18 elephants.

19 Q. Have you tried other alternatives?

20 A. We have experimented around with ropes and bands.

21 Q. Did you ever use any of those?

22 A. Yes. They normally eat them.

23 Q. And is the main barn where Jewell, Lutzi, Mysore, and  
24 Zina stay at night?

25 A. Yes.

1 Q. Would you tell us, please, what the daily schedule for  
2 the main barn at the CEC is?

3 A. Certainly. A couple of my guys come in about six in the  
4 morning, and they push the manure in the ditch, clean the  
5 elephants off, and then start to water them.

6 Q. And what do you mean "push the manure in the ditch"?  
7 Would you describe that?

8 A. There's a Gary(Phonetic) barn cleaner behind the  
9 elephants, and the manure is pushed in there.

10 Q. Are the elephants tethered while this is being done?

11 A. Yes.

12 Q. And when are the elephants watered?

13 A. About 6:15.

14 Q. Is anything else done to the elephants at that time?

15 A. Well, they're looked at; everybody looks at them to make  
16 sure everybody is drinking and make sure they've eaten during  
17 the night.

18 Q. Okay. And then what happens next?

19 A. Then they go outside.

20 Q. About what time is it when they do that?

21 A. About seven.

22 Q. Where do they go outside?

23 A. We have various corrals and paddocks that they go into.

24 Q. Can you tell us what the substrate is of those yards?

25 A. It's grass and sand.

1 Q. What do they do during the day out there?

2 A. Depends on which elephants.

3 Q. Okay. Well, let's start with Jewell, Lutzi, Susan,  
4 Mysore, and Zina.

5 A. They go out in the grassy fields. They each have about  
6 one and three-quarters acres apiece.

7 Q. What do they do during the day out there?

8 A. Take naps; eat grass; throw dirt.

9 Q. Have you ever tracked their movement during the day?

10 A. Yeah. We put GPS collars on them.

11 Q. When did you do that?

12 A. There are some students at the center that are doing a  
13 project.

14 Q. When did they first do that?

15 A. About six weeks ago I believe.

16 Q. Which of those five elephants had collars on them?

17 A. I think all but Lutzi.

18 Q. What did that collar indicate about the movement of these  
19 elephants during the day in the yard?

20 MS. MEYER: Your Honor, I'm going to object to this  
21 testimony. This is precisely the kind of thing I'm talking  
22 about. This is something that apparently was done six weeks  
23 ago. It looks like it was done in preparation for litigation.  
24 That's the kind of thing that's not allowed to come in as an  
25 expert -- as expert testimony unless there's been an expert



1 report so that I know what the data is and had an opportunity  
2 to look at it, examine the witness about it, etcetera.

3 THE COURT: Why should I allow any testimony to come  
4 in through this witness that was not a part of his deposition  
5 testimony?

6 MS. JOINER: This wasn't done in connection with the  
7 litigation. It's just something that's happened. It's a  
8 function of the time lag between discovery and trial now.

9 THE COURT: Well, he was deposed. I think it's fair  
10 to limit his testimony to that testimony that was elicited on  
11 direct and cross-examination during his deposition. So the  
12 objection is sustained.

13 BY MS. JOINER:

14 Q. Okay. So let's set aside the collars. Have you yourself  
15 had an opportunity to observe and see what these elephants do  
16 during the day?

17 A. Yes.

18 Q. And what are their movements like during the day?

19 A. The retired ones walk out to the field and throw dirt for  
20 awhile; then they lay down and sleep.

21 Q. Can you tell us how far out the walk from the main barn  
22 is to the field?

23 A. It's roughly a third of a mile.

24 Q. And then what time in the afternoon do you round them up  
25 to bring them back to the main barn?

1 A. About three p.m.

2 Q. What are the elephants doing at this time when you go to  
3 get them?

4 A. They're waiting by the gates, ready to come back.

5 Q. Do you have to force them to come back inside?

6 A. No.

7 Q. Where do they go?

8 A. They go to a wash rack where they're watered and washed  
9 off.

10 Q. And what kind of tools do you use when you wash them off?

11 A. Wire brushes; hoses; and pressure washes.

12 Q. Does the pressure washer hurt them?

13 A. Not at all.

14 Q. And after you bathe them, what do you next with  
15 elephants?

16 A. Then they go in the barn.

17 Q. And approximately what time is it when they go back into  
18 the barn?

19 A. About four.

20 Q. Are they put on tethers at that time?

21 A. Yes.

22 Q. Would you please describe how they are tethered?

23 A. Front and back, opposite legs.

24 Q. And does that change on a daily basis?

25 A. Yes; every other day you switch.

1 Q. Are the elephants -- when are the elephants fed during  
2 the day?

3 A. They're fed when they're put in.

4 Q. And can you tell us what they are fed?

5 A. They receive elephant chow; various fruit; vegetables;  
6 and hay.

7 Q. And who decides their diet?

8 A. We do and the veterinarians.

9 Q. What happens at 6:30 -- around 6:30 at night?

10 A. They're fed more hay, and manure is pushed in the  
11 ditches.

12 Q. You can't hear? Can you try to move that closer?

13 THE COURT: Just try to keep your voice up a little  
14 bit.

15 THE WITNESS: Excuse me. I'm sorry.

16 MS. JOINER: Speak louder.

17 THE WITNESS: I'm trying.

18 BY MS. JOINER:

19 Q. Let's see, we were talking about fed more hay, manure  
20 cleaned up; is that right?

21 A. Correct.

22 Q. And does anything else happen after that in the evening?

23 A. Yes. They're fed for the last time at 8:30.

24 Q. What are they given at 8:30?

25 A. Hay, all the hay that will last through the night, and

1       then the rest of their fruit and vegetables.

2       Q.    How long has this been the daily schedule at the CEC?

3       A.    Pretty much since we've been there.

4       Q.    And when did the CEC open?

5       A.    In June of '95.

6       Q.    Do you consider this daily routine harmful to the  
7       elephants?

8       A.    Not at all.

9       Q.    Are you aware of any kind of state or federal law that  
10       would prohibit this schedule?

11      A.    There is none.

12      Q.    And are you aware of any state or federal law that  
13       restricts the amount of time of chaining for elephants?

14      A.    There is none.

15      Q.    Can you tell how many elephants are in the main barn  
16       overnight?

17      A.    There is, I believe, 17.

18      Q.    Are all of them tethered?

19      A.    All but the ones that are with the mothers.

20      Q.    Do they have enough room to lay down?

21      A.    Yes.

22      Q.    And which, if any, of them lay down?

23      A.    I think all of them lay down except Zina.

24      Q.    How many hours per night do they sleep?

25      A.    Normally, adults, three or four.

1 Q. When they are tethered, do they have the ability to  
2 interact with their neighbors?

3 A. Yes, they do. They can reach one another.

4 Q. How is the lineup in the barn determined?

5 A. By the compatibility of the elephants, how they get  
6 along.

7 Q. And how do you determine that?

8 A. We know the elephants, that, and trial and error.

9 Q. Why don't you just turn all 17 of them loose in the barn  
10 overnight, Mr. Jacobson?

11 A. That would be quite a mess. The barn isn't set up that  
12 way. The big ones would eat the little ones.

13 Q. Why do you say that?

14 A. The elephants are pretty feisty if they're left to their  
15 own devices, a lot of them don't get along.

16 Q. Have you had any experiences where they have not gotten  
17 along?

18 A. Yeah. Actually Zina and Susan got in a rowel the other  
19 night and skinned each other up a little.

20 Q. Would it be possible to put individual stalls in the main  
21 barn at the CEC?

22 A. Yes, it would be.

23 Q. And what would be the effect of individual stalls on the  
24 elephants?

25 A. There'd actually be less room for them. It would be more

1 dangerous for the guys because of having more steel and pipes.

2 Q. What impact, if any, would that have on the ability to  
3 clean around them?

4 A. Any time you have more gates, it just makes everything  
5 more difficult.

6 Q. What kind of surface does the barn floor have?

7 A. Cement.

8 Q. Why is it cement?

9 A. So you can keep it clean.

10 Q. What happens to the barn, the main barn floor, every  
11 morning?

12 A. It's completely cleaned up, scrubbed with bleach and  
13 salt.

14 Q. Why don't you just put down rubber mats in the barn?

15 A. They just tear up the rubber mats.

16 Q. Has the company ever tried to use rubber mats?

17 A. We've put them in trucks and the rail cars, and they chew  
18 them up.

19 Q. Can you tell us if the barn floor is level or sloped?

20 A. It is slanted to the back so the urine runs off.

21 Q. Are the elephants familiar with this daily routine that  
22 you've described?

23 A. Quite.

24 Q. Did you alter this daily routine in any way during the  
25 weeks and months prior to the inspection in this case at the

1 CEC?

2 A. None whatsoever.

3 Q. And were Susan, Lutzi, Jewell, Mysore, and Zina tethered  
4 nightly, consistent with this, prior to the inspection?

5 A. Yes.

6 Q. Where are the adult males at the CEC kept?

7 A. They are housed in individual barns.

8 Q. And when are the adult males at the CEC chained?

9 A. They are never tied up unless we're collecting semen or  
10 working on feet.

11 Q. So that's not part of their daily routine?

12 A. No.

13 Q. Do you have any adult males at CEC that sway?

14 A. Several.

15 Q. Can you give us an example of one?

16 A. Charley, more than the rest.

17 Q. When was the last time that Charley was chained  
18 overnight?

19 A. I don't think since we have been at the CEC, so it would  
20 be over 10 years.

21 Q. And are there certain times when Charley sways?

22 A. Yes.

23 Q. When are those times?

24 A. If he is ready to go out with a female or if he's ready  
25 to come in and eat.

1 Q. Have you ever had the opportunity to go to Asia and  
2 observe elephants there?

3 A. Yes.

4 Q. How many times have you done that?

5 A. Four times.

6 Q. When did you go?

7 A. I've been to Sri Lanka twice; India once; and Thailand  
8 once.

9 Q. Did you ever visit the Udawalawe Park?

10 A. Yes.

11 Q. What kind of elephants were there?

12 A. Asian.

13 Q. Do you know whether they were wild or captive?

14 A. I saw wild and captive elephants there.

15 Q. Did you ever see any elephants there that were swaying?

16 A. Yes.

17 Q. Were they tethered or untethered?

18 A. They were untethered.

19 Q. I want to go back to the topic of guides that we were on  
20 earlier. What is the purpose of the guide again?

21 A. It is more or less like the extension of your arm, and it  
22 is to back up cues to the elephants' verbal commands.

23 Q. Does it make contact with the elephants?

24 A. Sometimes.

25 Q. How much force is used when making contact with the



1 elephant?

2 A. You use as little as possible.

3 Q. Do you stab elephants with the guide?

4 A. No, you do not.

5 Q. Why not?

6 A. You do not do that; we don't stab elephants.

7 Q. Is it ever necessary to hit an elephant with a guide?

8 A. Sometimes.

9 Q. When would that be necessary?

10 A. Breaking up a fight, or if a big one is going after a  
11 small one; sometimes the males.

12 Q. Are you familiar with the term "to correct" an elephant?

13 A. Yes.

14 Q. What does that mean?

15 A. That's to have them comply with your command.

16 Q. Would you ever hit an elephant to correct it?

17 A. I have.

18 Q. When?

19 A. What do you mean "when"?

20 Q. Well, give us an example of when you have corrected an  
21 elephant?

22 A. When we had the calf born, the last calf.

23 Q. And what happened that you had to correct it?

24 A. The mother went after the calf, and I made the mother  
25 stop.

1 Q. And why did you do that?

2 A. She could seriously injure it.

3 Q. Are there generally recognized cue spots on elephants?

4 A. Yes.

5 Q. Can you give us some examples of where they are?

6 A. The back of the front feet is to pick up their feet; the  
7 front of the back feet is to pick up their back feet; the  
8 middle of their back is for them to lay down; the top of the  
9 shoulders is to stretch out; the front of their face is to  
10 back up; under their trunk is to trunk up.

11 Q. Now, are handlers supposed to create permanent bruises on  
12 these cue spots?

13 MS. MEYER: Objection. Leading, Your Honor.

14 THE COURT: Rephrase, counsel.

15 BY MS. JOINER:

16 Q. Have you ever heard of creating permanent bruises on cue  
17 spots?

18 A. No.

19 MS. MEYER: Objection. Leading, Your Honor.

20 THE COURT: You can answer the question.

21 THE WITNESS: No.

22 BY MS. JOINER:

23 Q. Would that be a generally accepted practice?

24 A. No, it would not be.

25 Q. Are you familiar with the term "hook mark"?

1 A. Yes.

2 Q. And what is your understanding of what a hook mark is?

3 A. Similar to a pin prick.

4 Q. What causes hook marks?

5 A. Elephant hook or a guide.

6 Q. Is the purpose of the guide to make marks on the  
7 elephant?

8 A. Not at all.

9 Q. Does the use of a guide always cause a hook mark?

10 A. No, it does not.

11 Q. How often does that happen?

12 A. Actually, seldom.

13 Q. What are the factors that can contribute to a mark being  
14 caused from the guide?

15 A. Well, a lot of it depends on what you're doing with the  
16 elephant, what you're trying to get out of the elephant.

17 Q. And what, if anything, does the skill level of the  
18 handler do?

19 A. Well, normally, the more skilled the handler, the less  
20 marks you leave.

21 Q. And what, if any, does the affect of how trained the  
22 elephant is, have on whether or not there can be a mark?

23 A. The better they're trained, the less likely a mark.

24 Q. Even if a handler is being very, very careful, can a mark  
25 result?

1 A. Yes. You can mark them up.

2 Q. How can that happen?

3 A. Sometimes they'll pull into the hook and pull away from  
4 you.

5 Q. Can you tell us how big hook marks are?

6 A. They're small, like a pin prick.

7 Q. Do they bleed?

8 A. Sometimes, but not very often.

9 Q. And how much blood are we talking about?

10 A. At the most, a drop.

11 Q. Do they require medical care?

12 A. No.

13 Q. Do you think that the use of the guide hurts the  
14 elephants?

15 A. I do not believe it hurts them, no.

16 THE COURT: Can you keep your voice up, please?  
17 There are dead spots in this (Indicating), and your voice  
18 trails off.

19 THE WITNESS: I'm sorry.

20 BY MS. JOINER:

21 Q. You can pull that up a little bit maybe, if that will  
22 help. I don't know. Why is that, Mr. Jacobson?

23 A. Could you repeat the question, please?

24 Q. Sure. Do you think use of the guide hurts the elephants?

25 A. No, I do not.

1 Q. Why?

2 A. I think it may irritate them, but I don't think it hurts  
3 them.

4 Q. Well, would it be a correct way to use the guide --

5 THE COURT: Let him testify.

6 BY MS. JOINER:

7 Q. Yeah. Let me rephrase that here. What, if any, roles do  
8 fear and pain play with the use of the guide on an elephant?

9 A. I don't think the elephants are afraid of us at all, and  
10 I believe that the guide may irritate them, but I certainly  
11 do not believe they're in any kind of pain.

12 Q. Would it be a purpose of the guide to inflict fear or  
13 pain in the elephant?

14 MS. MEYER: Objection, Your Honor. Leading.

15 THE COURT: What's the purpose of the guide, to do  
16 what?

17 THE WITNESS: It's an extension of your arm. You  
18 touch them with it. You pull them to you, make them get over;  
19 touch them, pick their feet up.

20 BY MS. JOINER:

21 Q. Can you tell us what happens to an elephant's reaction or  
22 response the more often the guide is used?

23 A. Hmm, well, it's a matter of training. The better they're  
24 trained, the sharper their reaction time is.

25 Q. Is it -- what if any -- strike that. What role does

1 consistency play with guiding elephant?

2 A. You try to be extremely consistent so the elephant knows  
3 exactly what you want.

4 Q. So let me give you a hypothetical; if you were to use the  
5 guide frequently with an elephant, would you then be able to  
6 take it into a ring and suddenly stop using it?

7 MS. MEYER: Objection, Your Honor. Leading.

8 THE COURT: Would you or would you not be able to do  
9 that?

10 THE WITNESS: You try not to do any more with it out  
11 of the ring than you would in the ring or if you were  
12 practicing. You try to keep everything the same no matter  
13 where you are.

14 BY MS. JOINER:

15 Q. Have you ever seen an elephant miss a cue in a show?

16 A. Yes.

17 Q. What happens?

18 A. You go to the next cue.

19 THE COURT: You don't correct the elephant?

20 THE WITNESS: No. Not in a show, no. Because --

21 THE COURT: Why not?

22 THE WITNESS: -- there is an entire production going  
23 on, so you're going with the band and everything. So you just  
24 go on to the next thing.

25 BY MS. JOINER:

1 Q. And what, if anything, do you do to the elephant after it  
2 misses a cue on the floor and you take it out off of the ring?

3 A. Nothing.

4 Q. Has your use of the guide changed at all over time?

5 A. Yes, it has.

6 Q. Can you describe how?

7 A. You become more proficient, you use it less.

8 Q. Have guides themselves changed at all since you started  
9 working with elephants?

10 A. Tremendously in the last 30 years. They're a lot  
11 smaller.

12 Q. How often are guides used with the free contact elephants  
13 at Feld Entertainment?

14 A. Really, not very much.

15 Q. And when do the handlers at Feld Entertainment carry the  
16 guides?

17 A. They always have one if they have an elephant loose.

18 Q. Why is that?

19 A. It is only way you can stay safe.

20 Q. Is the CEC subject to inspections?

21 A. Yes, we are.

22 Q. By whom?

23 A. The United States Department of Agriculture and Florida  
24 Fish and Game.

25 Q. Are the USDA inspections scheduled in advance or not?

1 A. They're unannounced.

2 Q. I'd like to go to Defense Exhibit 76, please. I just  
3 want to pull up the first page of this exhibit; do you  
4 recognize this form, Mr. Jacobson?

5 A. Yes.

6 Q. What is it?

7 A. It's the old USDA form.

8 Q. And what is the date of this particular document?

9 A. 9/20/'95.

10 Q. And is this actually a USDA inspection report for the  
11 CEC?

12 A. Yes, it is.

13 Q. Would you go down to the bottom, please?

14 A. (Witness complies.)

15 Q. Do you recognize the signature there?

16 A. Which one?

17 Q. The very bottom.

18 A. Jim Williams.

19 Q. And who was Mr. Williams?

20 A. He was the general manager.

21 Q. In 1995? Does the U.S. Fish and Wildlife Service inspect  
22 you at the CEC?

23 A. No, they do not.

24 Q. To your knowledge, what does Fish and Wildlife do?

25 A. They regulate interstate or regulate travel transport.



1 Q. The next page in this exhibit I would like to go to is  
2 PDF-4; do you recognize this form, Mr. Jacobson?

3 A. Yes. That's the current USDA form.

4 Q. If you look at the first line, it says -- PDF-6 -- there  
5 we go. If you look at the first line, it says: I inspected  
6 7, dot, 20 Asian elephants accompanied by Gary Jacobson. Did  
7 I read that correctly?

8 A. Yes.

9 Q. Would you explain what that numerical reference, 7, dot,  
10 20, means with regard to elephants?

11 A. That's the males and the females; seven males and 20  
12 females.

13 Q. So when we see notations like that, it's males in the  
14 left column and females in the right?

15 A. Yes.

16 Q. A couple of lines down, it says: One of the males is one  
17 year old and still with dame(Phonetic).

18 Do you see that?

19 A. Yes.

20 Q. What does that mean?

21 A. The calf is still with its mother.

22 Q. How long do you normally keep them with their moms?

23 A. Normally, about two years.

24 Q. If you look down at the bottom of this at the signature,  
25 is that your signature?

1 A. Yes.

2 Q. I would like to go to PDF-8 of this exhibit. And if  
3 you'd go to the text of this -- blow that up just a little  
4 bit. Okay. What is the result of the inspection that's  
5 indicated here in this report?

6 A. Everything was in compliance.

7 Q. Okay. What is it saying about the number of elephants  
8 present at the CEC at that time?

9 A. There are eight males and 12 females.

10 Q. If you would go down to the bottom, please. Who was the  
11 inspector for this particular inspection?

12 A. Susan McCoda.

13 Q. Who is Dr. Susan McCoda?

14 A. She's an exotic animal vet that was working at that time  
15 for the USDA.

16 Q. Okay. I'd like to go -- can you tell us before I do that  
17 how thorough are these inspections?

18 A. They're quite thorough.

19 Q. Is CEC always perfect when it gets inspected?

20 A. Most of the time, but not always.

21 Q. Let's go to PDF-12, please. And if you could pull the  
22 text up, is this an example of a report where the CEC had a  
23 non-compliance found during the inspection?

24 A. I'm not sure.

25 Q. Well, if you look down at this text right here

1 (Indicating), can you highlight that so you can read that?

2 Can you see that better?

3 A. Yes.

4 Q. All right.

5 A. Yes.

6 Q. Do you know what this report is indicating?

7 A. I believe that the elephant had not been treated.

8 Q. Okay. What does the reference "correct by May 10, 2006"  
9 mean when it is on an inspection report with the USDA?

10 A. It means that they want it corrected.

11 Q. By a particular date?

12 A. Yes. By a particular date.

13 Q. And if you look down at the bottom again; is that your  
14 signature on this?

15 A. Yes.

16 Q. So how does this inspection process work? Do they -- how  
17 does the CEC get copies of these reports?

18 A. The inspector fills out the paperwork while he's there  
19 and leaves a copy.

20 Q. Does the CEC retain a copy of these reports in its normal  
21 course of business?

22 A. Yes.

23 MS. JOINER: Your Honor, I'd like to move for the  
24 admission of the Exhibit 76.

25 THE COURT: Any objection?

1 MS. MEYER: No objection, Your Honor.

2 THE COURT: Admitted.

3 BY MS. JOINER:

4 Q. And there's one additional document I'd like to have you  
5 look at from Exhibit 78. This is PDF-8 in this exhibit, I  
6 believe, and if you could put the text up so he can read that?  
7 Is this also an inspection report for the CEC, Mr. Jacobson?

8 A. Yes.

9 MS. JOINER: And I'd like to move this exhibit  
10 into admission, as well, and I'd like to call this 76-A.

11 THE COURT: Any objection?

12 MS. MEYER: No objection.

13 THE COURT: Admitted.

14 MS. JOINER: Thank you.

15 BY MS. JOINER:

16 Q. Mr. Jacobson, when do you begin training an elephant?

17 A. Right after they're born.

18 Q. And what kind of training is involved with a newborn  
19 elephant?

20 A. Nothing really specific. You just got to spend some time  
21 around them. It's kind of a loose training thing; it is not  
22 like tricks or anything.

23 Q. How many elephants have you trained?

24 A. Quite a few.

25 THE COURT: How many is that?

1 THE WITNESS: Probably close to 20.

2 BY MS. JOINER:

3 Q. Have you ever heard the phrase "breaking an elephant"?

4 A. Yeah. That was some of the old-timers used to use that,  
5 but it really referred to horses, the training of horses and  
6 not elephants.

7 Q. Which commands or behaviors do you start training a young  
8 elephant with?

9 A. The first thing you teach them to do is pick up their  
10 feet.

11 Q. And how do you teach them to pick up their feet?

12 A. Normally, I touch them with a spray from the water hose.  
13 Then you go from there to the stick. You could also put a  
14 rope around their foot, pick their foot up with a rope.

15 Q. Does any of that hurt the animal?

16 A. Not at all.

17 Q. What are some of the other basic commands that you start  
18 with after picking up the feet?

19 A. Teach them how to stand still, how to move up, how to  
20 back up, how to lay down, get on the tub, sit up on the tub,  
21 sit up on the ground.

22 MS. JOINER: With Your Honor's permission, that was  
23 the video clip we previously submitted so if it's okay, I'd  
24 like to skip that. He has identified it, it is in the video,  
25 so I don't want to repeat it here if that's okay.

1 THE COURT: That's fine.

2 MS. MEYER: I'm sorry. I didn't follow that.

3 MS. JOINER: He explained at his deposition all of  
4 the commands for you at his deposition when you said how do  
5 you do this. So I just had him identify those, and rather  
6 than repeating it here, it's on that video.

7 MS. MEYER: I see. Okay. Thank you.

8 BY MS. JOINER:

9 Q. Would you explain how you begin to put together a routine  
10 for elephants?

11 A. First, you teach them how to do the different behaviors  
12 and commands, and then you just put it all together in  
13 segments.

14 Q. Why do elephants need to be trained?

15 A. If you're going to travel around the country with them,  
16 they have to be trained.

17 Q. And are there any benefits of training?

18 A. You can take care of them much better if they're trained.

19 Q. Do you have to train an elephant to accept a tether?

20 A. Yes, you do, but it's rather simple.

21 Q. How do you do that?

22 A. You just put one on their leg for a short amount of time.

23 Q. And why do you do that?

24 A. You need to keep them in one place at night, and then  
25 also when you travel, they need to be tied up.

1 Q. I'd like to go now to some video clips and have you  
2 explain some of this. It's PWC-139; the first one is 40 to  
3 4508. This was produced by Feld Entertainment. It's dated  
4 August 4, 1997.

5 THE COURT: Let me just say this: We're going to  
6 lose Carol next week, correct? So both sides, huddle with her  
7 before you leave today. I don't mean to keep you here 'til  
8 eight o'clock tonight, Carol, but I mean as far as the  
9 sheets, it's very important that if there are inaccuracies,  
10 you need to let me know. We will stop a little bit before  
11 5:30 so you can do that.

12 I'm sorry. I just thought about that now, Carol. I  
13 would have done it earlier. I was looking over my notes the  
14 other night. The -- I'm not sure the record is clear with  
15 respect to that so-called "ancient document". I did admit  
16 that into the record, the 1979 document, so I'm not sure that  
17 -- that wasn't on one of those sheets we talked about last  
18 week that I submitted over objection.

19 What's the exhibit number, Carol? It's 30 I think.  
20 Yeah. Thirty, right. That's right.

21 BY MS. JOINER:

22 Q. Are you ready?

23 (Whereupon, a video clip was played. )

24 BY MS. JOINER:

25 Q. Stop right there. All right. What commands did you have

1 to give those elephants to do that?

2 A. They came in line and then picked their feet up.

3 Q. Is that one of the basic commands that you referenced  
4 earlier?

5 A. Yes.

6 Q. Which two elephants are these?

7 A. Benjamin and Shirley.

8 Q. And who is the person in the screen there?

9 A. That's myself.

10 Q. And who is other person that we just saw in the screen?

11 A. Kathy Jacobson.

12 MS. JOINER: Could you continue on, please?

13 (Whereupon, a video was played.)

14 BY MS. JOINER:

15 Q. Stop right there. Okay. How did you teach the second  
16 elephant to -- tell us first what that is called, where the  
17 second elephant is lifting up?

18 A. That's a long mount.

19 Q. And how did you teach the elephant to do a long mount?

20 A. You do it first on the ground and then just transfer to  
21 the tubs.

22 Q. Is that harmful to the elephants?

23 A. Not at all.

24 (Whereupon, a video was played.)

25 BY MS. JOINER:



1 Q. What are those elephants doing?

2 A. Standing on their heads.

3 Q. How did you teach them to do that?

4 A. First, you teach them to do a hand stand; then put their  
5 trunk down between their front legs and pick their back legs  
6 up.

7 Q. And how do you teach them to do a hand stand?

8 A. You just jump them up on an elephant tub and pick up one  
9 rear foot and then pick up the other rear foot.

10 Q. Then, I think you said after they put their head down,  
11 you pick their back legs up; is that correct?

12 A. Correct.

13 Q. Would you describe how you do that?

14 A. Normally, I use ropes on their back feet to give them  
15 support until they figure out how to do it.

16 Q. Does that hurt them?

17 A. Not at all.

18 MS. JOINER: Continue, please.

19 (Whereupon, a video was played. )

20 BY MS. JOINER:

21 Q. Stop there. What is this maneuver here called?

22 A. That's called a merry-go-round.

23 Q. Is that used in the performances in the show?

24 A. It can be.

25 Q. And how do you train an elephant to do that?

1 A. You mount them up on the tub and then on the elephant,  
2 and you just turn them around. Quite simple.

3 (Whereupon, a video was played. )

4 BY MS. JOINER:

5 Q. What is that behavior right there?

6 A. That's an over the garden wall.

7 Q. And how did you teach them to do that?

8 A. The elephant already knows how to sit on a tub, so it  
9 just goes across the other elephant and sits up.

10 Q. Does that hurt them?

11 A. Not at all.

12 THE COURT: How do you know that, sir?

13 THE WITNESS: I've done a lot of them, and they just  
14 lay there.

15 THE COURT: I mean an elephant weighs how much,  
16 seven tons?

17 THE WITNESS: No. These guys are little guys. She  
18 probably weighs a little over a ton; he probably weighs about  
19 2,500. But they wrestle around like that, Your Honor, and  
20 climb on each another.

21 (Whereupon, a video was played. )

22 BY MS. JOINER:

23 Q. Stop right there. What did you just do with that guide?

24 A. I touched his trunk to make him trunk up.

25 Q. Did you put a mark on him?

1 A. No.

2 Q. Did you hurt him?

3 A. No.

4 MS. JOINER: Okay. Would you continue?

5 (Whereupon, a video was played. )

6 BY MS. JOINER:

7 Q. Stop right there. What is that called right there, that  
8 behavior(Indicating)?

9 A. They were kneeling and shaking their heads.

10 Q. How do you train them to do that?

11 A. You just put a gum wrapper or something on the top of  
12 their head, and it tickles them and they shake their head, and  
13 you associate that with a command.

14 Q. Would you continue?

15 (Whereupon, a video was played.)

16 BY MS. JOINER:

17 Q. Do you remember, Mr. Jacobson, why this footage was  
18 made?

19 A. They were talking about putting it in the show, and they  
20 wanted to see what they were doing.

21 Q. Who is "they"?

22 A. The director that was putting the show together.

23 MS. JOINER: Your Honor, I'd like to move for  
24 admission of that as FEI Exhibit -- I believe we're on 334  
25 now.

1 THE COURT: Any objection?

2 MS. MEYER: No, Your Honor.

3 THE COURT: Admitted.

4 MS. JOINER: The next clip I'd like to look at is  
5 4509 to 4707, and I believe this is already in evidence at  
6 PWC-139(A).

7 THE COURT: All right.

8 (Whereupon, a video was played.)

9 BY MS. JOINER:

10 Q. How did you train an elephant to do that, Mr. Jacobson?

11 A. They have very good balance, and you start by having them  
12 get up on the barrel and you just rock it; then have a block  
13 in front and a block behind, and you move the block a little  
14 in the front, and then the back one catches up. So they can't  
15 really fall off. The barrel stays in place even if they go  
16 forward or backward. It's relatively simple to train.

17 Q. Is that dangerous to do?

18 A. No. I've never, ever heard of an elephant getting hurt  
19 from a barrel.

20 Q. Is it harmful?

21 A. Not at all.

22 Q. Why do you say that?

23 A. It's very simple for them to do. You can train almost  
24 any elephant to roll a barrel.

25 Q. How do you feel about these elephants that you work with

1 at CEC?

2 A. They're like part of the family. In fact, I see more of  
3 them than I do my own family.

4 Q. I'd like to go next to PWC-139 at 4715 to 49.

5 (Whereupon, a video was played.)

6 BY MS. JOINER:

7 Q. Where is this being filmed at, Mr. Jacobson?

8 A. That's in the barn at the CEC.

9 (Whereupon, a video was played.)

10 BY MR. JOINER:

11 Q. What is Mrs. Jacobson doing?

12 A. Besides playing the drum, she's feeding him.

13 Q. And I'm not sure if you back it up a little bit to where  
14 you can see her pockets. What, if anything, is in her  
15 pockets?

16 A. She has treats.

17 Q. How did she -- who trained this elephant?

18 A. I train all the heavy basics, and my wife trains the  
19 trunk tricks.

20 Q. Did she train this particular elephant?

21 A. To do this stuff, yes.

22 Q. How did she train it to pick that up and hit the drum  
23 with it?

24 A. First, they learn how to tail up; once they hold anything  
25 with their trunk, then you just do it with a series of steps.

1 It is pretty easy.

2 Q. When you say "tail up", what do you mean by that?

3 A. That means to walk along holding the elephants tail in  
4 front.

5 Q. Okay. Let's look at the next one.

6 (Whereupon, a video was played.)

7 BY MS. JOINER:

8 Q. How do you train an elephant to do that?

9 A. Once they learn how to pick their feet up, it's  
10 relatively simple. They just pick their foot up, put it  
11 down, pick it up, and put it down.

12 Q. And let's look at --

13 (Whereupon, a video was played. )

14 BY MS. JOINER:

15 Q. How do you train an elephant to wave?

16 A. It's pretty simple, too. First, you get them to hold  
17 something in their trunk and then you just grab their trunk  
18 and physically move it. After awhile, they pick up on it.

19 Q. Okay.

20 (Whereupon, a video was played.)

21 BY MS. JOINER:

22 Q. Can you explain for us how the elephant is able to hold  
23 that?

24 A. They hold it in the end of their trunk. It's quite  
25 simple.

1 Q. And how is that behavior taught?

2 A. Well, they breathe through their nose. Once they figure  
3 out that you want the noise, then they just blow harder.

4 MS. JOINER: Is there one more there or is that the  
5 last one? Okay. I'd like to move for the admission of this  
6 exhibit as 336.

7 THE COURT: Any objection?

8 MS. MEYER: No objection, Your Honor.

9 THE COURT: Admitted.

10 THE DEPUTY CLERK: Counsel, I think it might be 335.

11 MS. JOINER: 335; I'm sorry.

12 THE COURT: Admitted.

13 MS. JOINER: One more clip that I'd like you to look  
14 at for this, Mr. Jacobson, which is PWC-139 at 5434 to 5620.

15 (Whereupon, a video was played. )

16 BY MS. JOINER:

17 Q. Did you train the elephant to do that?

18 A. Actually, my wife did.

19 Q. Do you know how she trained it to do that?

20 A. Once they learn how to pick things up, they already know  
21 how to stand up. First, they just take the ball over and dunk  
22 it, and then later they stand up and dunk it.

23 MS. JOINER: Would you play the rest of it, please?

24 (Whereupon, a video was played.)

25 BY MS. JOINER:

1 Q. Is this a different elephant than we saw in the first  
2 part of the footage?

3 A. Yes. It's a different one.

4 Q. Why is one elephant standing on its hind legs and the  
5 other one not?

6 A. The one is not as far along yet. We have to make sure  
7 that he is comfortable before we can stand him up.

8 Q. How do you determine which elephants do which behaviors?

9 A. It depends on whether they have the physical or the  
10 mental abilities to do them.

11 Q. Why was this footage filmed?

12 A. It was the same as the other footage, it was for a  
13 director.

14 MS. JOINER: I'd like to move for the admission of  
15 this as Exhibit 336.

16 THE COURT: Any objection?

17 MS. MEYER: No objection.

18 BY MS. JOINER:

19 Q. How do you determine, Mr. Jacobson, which elephants  
20 actually travel and perform in the shows?

21 A. It depends on their temperament.

22 Q. Do you have any elephants at the company that are not put  
23 on the road?

24 A. Yes; quite a few, actually.

25 Q. Why is that?



1 A. Because of their temperament.

2 Q. How, if at all, has training changed in the past 10 to 15  
3 years?

4 A. It's -- in the last 20 years, probably, it's has gotten a  
5 lot simpler and a lot easier, and it's not as rough as it used  
6 to be.

7 Q. What is the goal when you're training an elephant?

8 A. To get the most out of them with the least amount of  
9 force or pressure.

10 Q. Do you believe that the elephants fear the handlers at  
11 the CEC?

12 A. I think not.

13 Q. Why do you say that?

14 A. If they were afraid of you, they wouldn't stay with you.  
15 They would leave you.

16 Q. Do you believe that the elephants at the CEC fear the  
17 guide?

18 A. I believe not.

19 Q. Why do you say that?

20 A. The same thing goes; if they were afraid, they wouldn't  
21 stay around you.

22 Q. For the elephants that are handled free contact at the  
23 CEC, how much human interaction do they have on a daily basis?

24 A. Well, we see them first early in the morning and put them  
25 to bed about nine at night, so they spend a lot of time with

1 people.

2 Q. Were you present for the inspection of the CEC in this  
3 case, Mr. Jacobson?

4 A. Yes, I was.

5 Q. Did you participate in it?

6 A. Yes, I did.

7 Q. And what, if anything, did you do to train or prepare the  
8 elephants for it?

9 A. We did absolutely nothing to prepare for it.

10 Q. Did you or anybody else at the CEC alter the chaining  
11 routine prior to the inspection?

12 A. Not at all.

13 Q. And did you or anybody else at the CEC alter the use of  
14 the guides with these elephants prior to the inspection?

15 A. Not at all.

16 Q. And did you yourself change your behavior or handling of  
17 these elephants in any way during the inspection?

18 A. Not really, no.

19 Q. I'd like to go to PWC-142, which is the inspection video,  
20 and look at certain clips from that. The first one is 45  
21 seconds to 117. And would you just describe for us what we're  
22 looking at here, please?

23 (Whereupon, a video was played.)

24 THE WITNESS: Those are the fields where the retired  
25 elephants live.

1 BY MS. JOINER:

2 Q. And what are you doing here?

3 A. We're rounding them up to take them over to wash them off  
4 for the inspection.

5 Q. What is that right there? (Indicating.)

6 A. That's a shade structure.

7 Q. What's a shade structure for?

8 A. To provide the elephants for shade when it's hot.

9 MS. JOINER: Okay. The next clip that I'd like to  
10 go to is 215 to 245.

11 (Whereupon, a video was played.)

12 BY MS. JOINER:

13 Q. What are you doing in this footage, Mr. Jacobson?

14 A. We're taking the elephants over for a bath.

15 Q. Given the age of these elephants, how would you describe  
16 their general condition?

17 A. They're in excellent shape.

18 Q. Why would you say that?

19 A. One of them is 65 years old; the other ones are pushing  
20 60, and they are in good body condition. They all lay down  
21 and sleep. They all eat well. They all drink well. They're  
22 in good shape. The average age of a zoo elephants' death in  
23 America is 42, and these guys are pushing 60.

24 Q. I'd like to go to clip 2030 to 2348.

25 (Whereupon, a video was played. )

1 BY MS. JOINER:

2 Q. Which elephant is this entering the picture?

3 A. This is Susan.

4 Q. What are you doing?

5 A. Giving her a bath.

6 Q. What type of hose are you using?

7 A. It is a three-quarter inch water hose with a pressure  
8 nozzle on it.

9 (Whereupon, a video continued to play.)

10 BY MS. JOINER:

11 Q. Who's the gentleman in the frame with you?

12 A. That's Jim Williams.

13 Q. Are you familiar with a product called "wonderdust"?

14 A. Yes, I am.

15 Q. What color is it?

16 A. It is a light gray in color.

17 Q. Is it waterproof?

18 A. Not at all.

19 Q. What is wonderdust used for?

20 A. Primarily used by farmers and ranchers and some elephant  
21 people use it. It is for scrapes. It is -- basically it is  
22 lyme.

23 Q. Did you or anybody else at the CEC apply wonderdust to  
24 these elephants prior to the inspection?

25 A. No.

1 Q. After this kind of a bath, would there be any wonderdust  
2 left on Susan's face?

3 A. Not at all; none.

4 Q. Do you remember who was present for the baths?

5 A. Dennis Schmitt, and I believe both legal teams, almost  
6 all of the other legal team.

7 MS. JOINER: Okay. I'd like to go now to clip  
8 2639 to 28.

9 (Whereupon, a video was played.)

10 Q. What are we seeing here in this film?

11 A. They're having a drink of water.

12 Q. Is that how you normally water them during the day?

13 A. If we water them during the day, yes.

14 Q. How often do the elephants at CEC get watered?

15 A. Normally the big ones, twice a day.

16 Q. When do you do that?

17 A. Morning and evening.

18 Q. How much does an elephant drink during the day?

19 A. Thirty to 50 gallons a day, big elephants.

20 Q. Do you restrict in any way the water that they drink, the  
21 amount?

22 A. Absolutely not.

23 Q. Why do you use buckets to water them?

24 A. One of the best ways to tell if an elephant is healthy or  
25 not is by watering them with buckets so you can see when they

1 drink and when they don't.

2 THE COURT: Do you only have one bucket for the  
3 elephants? How can you -- how can that be a good test?

4 THE WITNESS: Normally, we don't water out there.

5 THE COURT: Oh, I see.

6 THE WITNESS: We were waiting for some people that  
7 were late, so we just went ahead and watered them.

8 BY MS. JOINER:

9 Q. Okay. So after the baths, what did you do next with the  
10 elephants at the inspection?

11 A. We lined them up and fed them some hay.

12 Q. And did you apply any wonderdust to Susan at that time?

13 A. No.

14 Q. Let's go to 4738 to 4804.

15 (Whereupon, a video was played. )

16 BY MS. JOINER:

17 Q. What's that elephant doing with that tree?

18 A. That's Mysore scratching.

19 Q. How much power does an elephant have?

20 A. Quite a bit when they're scratching.

21 Q. Do you know why she's scratching?

22 A. She was itchy from having a bath.

23 Q. If you look at the very left end here, which elephant is  
24 that?

25 A. That's Tova.

1 Q. Why is Tova there at the inspection?

2 A. She lives with Lutzi, and Lutzi would have been bothered  
3 if Tova wasn't with her.

4 Q. Is it part of the elephants' normal routine to line up  
5 like this during the day?

6 A. Never.

7 Q. Do these elephants ever practice commands or behaviors  
8 anymore?

9 A. No. They're retired.

10 Q. Now, how would you describe Zina during the inspection?

11 A. She was a little agitated.

12 MS. JOINER: Let's take a look at clip one hour, 25  
13 minutes, 15 seconds, to one hour, 27 minutes and 22 seconds.

14 (Whereupon, a video was played. )

15 BY MS. JOINER:

16 Q. Which elephant are we looking at here?

17 A. That's Zina.

18 Q. What are you doing right there?

19 A. I was trying to turn her around. It was a little too out  
20 of context for her.

21 Q. What are you doing?

22 A. I was cuing her to pick her foot up.

23 THE COURT: I'm sure everyone else knows the answer  
24 to this: Why do some people have those air filtration things  
25 on, masks?

1 THE WITNESS: Actually, I don't know why these  
2 people do. I think I would ask the veterinarian about that.

3 THE COURT: Is that the first time you have seen  
4 people with those things on?

5 THE WITNESS: No, sir.

6 BY MS. JOINER:

7 Q. How would you describe Zina's temperament?

8 A. She's a nervous elephant.

9 MS. JOINER: And let's go to one hour, 30 minute,  
10 29, to one hour, 31 minutes, and 29 seconds, and look at a  
11 different elephant.

12 (Whereupon, a video was played. )

13 BY MR. JOINER:

14 Q. Which elephant is this?

15 A. This is Susan.

16 Q. And how is Susan's behavior during the inspection?

17 A. It wasn't exactly marvelous; it was too much out of  
18 context.

19 Q. And how would you describe Susan's temperament?

20 A. She's nice, a very nice old elephant.

21 MS. JOINER: At this time, I would like to move for  
22 the admission of those clips as Exhibit 337.

23 THE COURT: Any objection?

24 MS. MEYER: No objection, Your Honor.

25 BY MS. JOINER:



1 Q. And there's a few photos I'd like to show you, Mr.  
2 Jacobson, if we could pull up Plaintiff's May Call 54, and I  
3 would like to go to PDF-242.

4 Mr. Jacobson, this is the right side of Susan, and if we  
5 can increase this area right here, (Indicating) I want you to  
6 look out for us. What are these things?

7 A. She has little pockets on both sides of her head, and  
8 they're kind of almost like little pimples. There's little  
9 waxy particles in there that you clean out from time to time.

10 Q. And I'd like to go to PDF-226. And this is the left side  
11 of Susan, and I'd like you to enlarge that part. And what are  
12 we looking at right here, Mr. Jacobson? (Indicating.)

13 A. You're looking at the same thing only on the other side  
14 of the head. This is healed up a little bit more than the  
15 other side.

16 Q. Why is the skin right here darker?

17 A. That's from an oily substance that we put on there, an  
18 ointment called "Croata(Phonetic) Cream".

19 Q. What is this right here? (Indicating.)

20 A. That's a temporal gland.

21 Q. How many temporal glands does an elephant have?

22 A. One on each side; two.

23 Q. And if you could go to PDF-211, please. This is again  
24 the elephant, Susan, and I'd like you to focus right here on  
25 this. (Indicating.) What is this?

1 A. That's a scar.

2 Q. How long have you known Susan to have that?

3 A. For as long as I've been around the elephant at the CEC.

4 Q. And where did Susan come from?

5 A. From India.

6 Q. When did she come from India?

7 A. 1954.

8 Q. And given when she came and where she came from, what do  
9 you think this is? (Indicating.)

10 A. There's a very good chance that that's from a chain or a  
11 rope.

12 Q. Do you think that could be a hook mark?

13 A. That's definitely not a hook mark.

14 Q. Why?

15 A. Because it's over a foot long and an inch-and-a-half  
16 wide; inch, inch-and-a-half wide. There's no way you could do  
17 that with a hook.

18 MS. JOINER: And I'd like to mark --

19 THE COURT: -- dragged across the skin would cause a  
20 mark like that.

21 THE WITNESS: That would be from a terrible,  
22 terrible wound. You could make a scratch, but that's a very  
23 severe scar.

24 MS. JOINER: I'd like to move for -- mark these  
25 three and move them as 338.

1 THE COURT: Any objection?

2 MS. MEYER: No objection, Your Honor.

3 THE COURT: Admitted.

4 MS. JOINER: Thank you.

5 BY MS. JOINER:

6 Q. Mr. Jacobson, does Feld Entertainment have a breeding  
7 program?

8 A. Yes.

9 Q. Can we pull up Defense Exhibit 69, please. Now, the  
10 chart portion of this is in evidence, but if you go to this  
11 second page, I just want to clarify why our exhibit differs.  
12 It differs with regard to -- whoops -- this text right here  
13 (Indicating), and plaintiffs, I believe, have objected to this  
14 portion right there (Indicating); is that correct?

15 MS. MEYER: Correct.

16 THE COURT: What's the objection?

17 MS. MEYER: It's an inaccurate statement. It says  
18 the remaining 12 reside at the CEC with their mothers, and Mr.  
19 Jacobson's deposition testimony shows that the -- those  
20 elephants do not reside with their mother's. In fact,  
21 they've been separated from their mothers.

22 THE COURT: Which version is correct, Mr. Jacobson?

23 THE WITNESS: They do not -- well, some of them  
24 live with their mothers, but not all of them.

25 THE COURT: Is that statement correct that the

1 remaining 12 reside at the CEC with their mothers?

2 THE WITNESS: They're not with their mothers; some  
3 of them are, some of them are not.

4 THE COURT: I'll admit it subject to his testimony.  
5 He's the expert.

6 MS. JOINER: Okay.

7 BY MS. JOINER:

8 Q. So if we could go back to the first page of this, Mr.  
9 Jacobson; have you seen this before?

10 A. Yes.

11 Q. Is the information in this chart accurate?

12 A. Yes.

13 Q. Okay.

14 THE COURT: I'm sorry -- that last page -- this is  
15 69. This is in the record; that last document, does it have a  
16 number on it?

17 MS. JOINER: Which document?

18 THE COURT: The one I just allowed to be part of the  
19 --

20 MS. JOINER: The second page?

21 THE COURT: Yes.

22 MS. JOINER: It is the second page of this  
23 document.

24 THE COURT: All right. Okay. That's fine.

25 BY MS. JOINER:

1 Q. If I could just --

2 MS. MEYER: Your Honor, for the record, we have the  
3 same chart already in evidence as our chart "A", Will Call  
4 151, except that it doesn't have the text that we object to.

5 THE COURT: That's fine. That's fine. I'm going to  
6 admit this in defendant's case-in-chief, but subject to his  
7 testimony. He says that they don't live with their mother, so  
8 I'm not going to give that statement any weight.

9 BY MS. JOINER:

10 Q. How many elephants have been born to the breeding program  
11 at Feld Entertainment, Mr. Jacobson?

12 A. Twenty-two.

13 Q. Are those elephants listed here in this chart?

14 A. Yes.

15 Q. And are the locations of the elephants, the mother and  
16 the father, columns, correct?

17 A. Yes.

18 Q. How many of these births have you personally attended?

19 A. Eighteen.

20 Q. And which elephant on here was the result of artificial  
21 insemination?

22 A. Barack; the last one. Well, the fourth one down from the  
23 top.

24 Q. If we can go to the second page, please, and look at that  
25 first statement; is it accurate that 18 of the 22 live births

1 have survived?

2 A. Yes.

3 Q. Is it accurate that these five elephants indicated are on  
4 the Blue Unit?

5 A. Yes.

6 Q. And is Angelica on the Red Unit?.

7 A. Yes.

8 Q. Now, the remaining 12 elephants, is it accurate that they  
9 reside at the CEC?

10 A. Yes, they do.

11 Q. Do their mothers also reside at the CEC?

12 A. Yes, they do.

13 Q. So what you're saying is that they're both at the CEC,  
14 but some of them are not together?

15 A. Some are not with their mothers, correct.

16 THE COURT: All right. So all the elephants reside  
17 -- all those named elephants reside at the CEC, but some of  
18 the elephants do not reside with their mother at the CEC.

19 THE WITNESS: Correct.

20 BY MS. JOINER:

21 Q. Are the mothers chained during the birth, Mr. Jacobson?

22 A. Yes, they are.

23 Q. Would you explain how they're chained?

24 A. Their tied front and back.

25 Q. How many legs?

1 A. Sometimes two; sometimes three.

2 Q. And why is that?

3 A. To keep them in one place and to keep the baby safe when  
4 it's born and to keep the guys safe when the 10,000-pound cow  
5 is delivering.

6 Q. Do you think that those chains harm the mother?

7 A. Not at all.

8 Q. Would you ever attempt to deliver a captive born elephant  
9 without chaining the mother?

10 A. Absolutely not.

11 Q. Why not?

12 A. There is very good chance she would kill the calf and  
13 possibly the help that is standing around.

14 Q. Now, what do you do as an elephant's due date approaches?

15 A. Start living in the barn.

16 Q. And how long do you do that for?

17 A. Normally, at least two weeks; sometimes longer.

18 Q. And during the birthing process, are there any other  
19 elephants present in addition to the mother?

20 A. There's others in the pens next to them.

21 Q. Why is that?

22 A. For company.

23 Q. Do you know -- I think Ms. Meyer may have asked you this  
24 -- do you know what the SSP program is?

25 A. I think it's a species survival program.

1 Q. Does Feld participate in that?

2 A. We're not members, but we give out semen, and we have a  
3 male at a member zoo on loan. And we also have six other  
4 elephants that are out on loan to other zoos.

5 Q. And why are they on loan to other zoos?

6 A. Zoos ask us for surplus elephants so they'll have friends  
7 for the elephants that they have.

8 Q. How often do you get requests for elephants?

9 A. Every year.

10 Q. Can you tell us what the company would have to do if it  
11 were unable to tether Karen and Nicole in the Blue show?

12 A. They would have to come back to the CEC.

13 Q. Why is that?

14 A. You would not be able to handle them without being able  
15 to tie them up. You couldn't house them at night, and you  
16 could not house them in the train if you couldn't tie them up.

17 Q. And what would the company have to do if it were not able  
18 to use the guide with Karen and Nicole in the Blue show?

19 A. It would be the same; they would have to come back to the  
20 CEC.

21 Q. If you couldn't use the guide or the tethers, how would  
22 you get them back to CEC?

23 A. You'd have to have permission to use them to get them  
24 back to the CEC.

25 Q. If you were not able to put Jewell -- Susan, Jewell,



1 Lutz, Mysore, and Dinah on tethers in the main barn at the  
2 CEC, what would you have to do?

3 A. You would have to build cages for them.

4 Q. And why would you have to do that?

5 A. If you cannot handle them with bull hooks or tie them up,  
6 then you have to treat them as if they're wild elephants, so  
7 you have to put them in something to keep everybody safe.

8 Q. Who is responsible at the company for deciding which  
9 elephants go out on the road?

10 A. Primarily me.

11 Q. Are you going to put Susan, Jewell, Lutz, Mysore, or  
12 Dinah back out onto the Blue Unit?

13 A. No. Those are retired for good.

14 Q. Why do you say that?

15 A. They were retired once and went back out, and then they  
16 came back in, and that's it. They will not go out again.  
17 They're -- one is 65, and the others are pushing 60. They're  
18 too old.

19 Q. I'd like to have you look at PWC-132(F), which I believe  
20 is already in evidence.

21 THE COURT: In the wild, the elephants would not have  
22 to be chained to give birth, so what's the reason for them  
23 being chained to give birth at the CEC?

24 THE WITNESS: The mothers get pretty agitated when  
25 they give birth, and it's a pretty horrific process. A lot of

1 times, the first-time mothers kill calves; with the first-time  
2 mothers, when they first have a baby, a lot of times they  
3 kill them.

4 THE COURT: Does that happen in the wild, as well?

5 THE WITNESS: It does, probably not as much because  
6 they live in wild herds, and it's an entirely different  
7 environment.

8 (Whereupon, a video was played.)

9 BY MS. JOINER:

10 Q. Do you recognize -- whoops. Okay. Sorry.

11 THE COURT: I'm sorry. What's the exhibit number,  
12 counsel?

13 MS. JOINER: This is 132(F), which I believe is  
14 already in evidence.

15 THE COURT: It is?

16 MS. JOINER: Yes, sir.

17 BY MS. JOINER:

18 Q. Do you recognize the elephants here, Mr. Jacobson?

19 A. I know who they belong to; they belong to George  
20 Carden(Phonetic).

21 Q. And how are you able to recognize them?

22 A. Because I don't know them. They're not ours.

23 Q. Pardon me?

24 A. I don't know them. They're not our elephants, and  
25 they're released to the show for two years.

1 Q. Do you see -- this looks -- why is this darker right  
2 here? (Indicating.)

3 A. That's Vaseline that they put around the eyes. If the  
4 tissue dries out at all, they put Vaseline on them.

5 MS. JOINER: Your Honor, I have one other document  
6 to show him, but I'm not sure that it's contested; so if it's  
7 not -- it's PWC-35, which is the chart from summary judgment.  
8 It's Exhibit 1. I'd like to move that into evidence.

9 MS. MEYER: We do object to this one, Your Honor.

10 THE COURT: Which one is it? What's the objection?

11 MS. MEYER: The objection is that -- there has been  
12 no -- it has a lack of foundation. It's a chart that they put  
13 together which purports to describe the regulatory status of  
14 each of the elephants, and, whereas, we don't object to some  
15 of the information on there, a lot of the information on there  
16 is hearsay, and for that reason, we have objected.

17 They also did not list this document on their  
18 pretrial statement, and we object for that reason, as well,  
19 Your Honor; but, mainly, because it's hearsay.

20 THE COURT: Was it listed?

21 MS. JOINER: Pardon me?

22 THE COURT: Was it listed as an exhibit?

23 MS. JOINER: They listed it as their Will Call  
24 Exhibit 35.

25 THE COURT: You did?

1 MS. MEYER: We listed it, Your Honor, but we didn't  
2 move it into evidence. They didn't list it on their pretrial  
3 statement, and it's got hearsay information in it, which is  
4 why we didn't move it into evidence.

5 THE COURT: All right.

6 MS. MEYER: And it's not admissible.

7 THE COURT: Did you list it, though?

8 MS. JOINER: We didn't. We had a catch-all category  
9 that said any exhibit listed by plaintiffs. We took an  
10 excerpt of this to have the seven elephants at issue, and  
11 plaintiff objected to that, I believe, because it was  
12 incomplete. So I'm willing to put the entire thing in.

13 THE COURT: With the exception of the hearsay, does  
14 it have any value? Does anyone intend to -- What's the value  
15 of this exhibit?

16 MS. JOINER: This particular exhibit is a summary,  
17 and it simply shows there has been the passage of time; so two  
18 elephants have passed; two have been born. But for the seven  
19 at issue, it's accurate, and it shows the -- to the best of our  
20 knowledge, based on the records, it shows the date and place  
21 of birth for the elephants.

22 THE COURT: All right. Do you dispute that, counsel?  
23 It has some value --

24 MS. MEYER: Yes, Your Honor. Yes, Your Honor. It  
25 has a whole category called "regulatory status and evidence

1       thereof", which is --

2               THE COURT: I'm not concerned about that.    I'm  
3       talking about the evidentiary value that counsel just eluded  
4       to; if it's the summary of when elephants were born and who  
5       was born, then it has some value, putting aside the hearsay;  
6       if the evidence -- if that evidence is disputed, that's  
7       another question.

8               MS. MEYER: We do dispute it, Your Honor, because  
9       there's been no foundation for it at all. When we put on  
10      summary evidence, we had to put a witness on the stand to  
11      authenticate it, to say where the information came from --

12              THE COURT: If there is some dispute, I'm not going  
13      to allow it. I won't allow it. Have the attorneys been  
14      utilizing that procedure for all other exhibits, any other  
15      exhibits listed by an adversary?

16              MS. MEYER: No, Your Honor. We objected to the  
17      defendants putting such a caveat in their pretrial statement  
18      because the rule requires --

19              THE COURT: For that reason, I'm not going to allow  
20      it.

21              MS. JOINER: Would you permit me to try to lay the  
22      foundation with him for it?

23              THE COURT: Well, you didn't -- the rules are for  
24      both sides. If you didn't list it, I'm not going to allow it.

25              MS. JOINER: Okay. Then at this time, Your Honor, I

1 have nothing further.

2 THE COURT: All right. Do you want to use 10  
3 minutes for cross-examination or do you want to call it a day?

4 MS. MEYER: I'd rather call it a day, Your Honor. I  
5 actually have to use the restroom, to be perfectly honest.

6 THE COURT: Carol is going to be here tomorrow,  
7 right? She'll be very happy to talk to you. She'll talk to  
8 you tonight -- she'll stay as long as you want her to.

9 All right. So we'll start at ten o'clock. How many  
10 more witnesses, definite witnesses? Crunch time. How many  
11 witnesses? All right. I'm going to be fair. Who are the  
12 witnesses for Tuesday -- Monday; starting Monday, then; don't  
13 show up Tuesday thinking it's Tuesday. It's Monday; ten  
14 o'clock.

15 MS. JOINER: Right, Monday. Well, obviously, Mr.  
16 Jacobson. And then after that, we'd like to have  
17 Dr. Friend. And then the plaintiff, Mr. Markarian; Ms.  
18 Weisberg and Ms. Liss. And then we have two video depo's for  
19 Mr. Glitzenstein and Angela Martin.

20 THE COURT: Is that your case then; is that it?

21 MS. JOINER: No. We have one more -- we have a  
22 Blue Unit person to come and explain. We have another expert  
23 after that, and then we also have our vet.

24 THE COURT: All right. So you still think Thursday,  
25 huh, do you?

1 MS. JOINER: That's our goal; yes.

2 MR. SIMPSON: That's our goal, Your Honor.

3 THE COURT: All right. Give some thought to what we  
4 talked about early on about -- it sounds like both sides agree  
5 to some sort of brief hiatus after the trial is over. Give  
6 some thought over the next several days, and I will give some  
7 further thought, as well. I think I'm in favor of that, as  
8 well, but I don't want to -- I get involved in other things,  
9 and I don't want to get involved in too many other things and  
10 then the hiatus is longer than I want it to be.

11 So give some thought to it, and we can talk about it  
12 on Monday and figure out the best thing to do, but I think  
13 everyone would benefit from a brief hiatus after the trial is  
14 over and maybe either a combination of some argument before  
15 the findings and proposals are filed and after. I'm open to  
16 whatever suggestions.

17 All right. Enjoy your weekend. We'll start at ten  
18 o'clock on Monday morning. I have to ask you to not discuss  
19 your testimony with anyone.

20 THE WITNESS: Yes, sir.

21 THE COURT: Enjoy your weekend. Thank you, counsel.

22 MS. JOINER: Thank you, Your Honor.

23 [End of proceedings]  
24  
25

C E R T I F I C A T E

I, Wendy C. Ricard, Official United States Court Reporter in and for the District of Columbia, do hereby certify that the foregoing proceedings were taken down by me in shorthand at the time and place aforesaid, transcribed under my personal direction and supervision, and that the preceding pages represent a true and correct transcription, to the best of my ability and understanding.

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Wendy C. Ricard, RPR, CCR  
Official U.S. Court Reporter